

VOLUME I

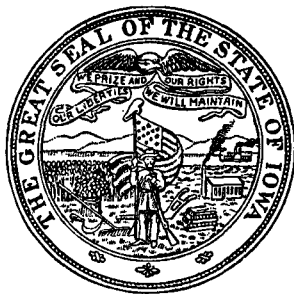
# CODE OF IOWA

1958

CONTAINING

ALL STATUTES OF A GENERAL AND  
PERMANENT NATURE

To and including the acts of a permanent nature of the  
Fifty-seventh General Assembly, 1957



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PUBLISHED BY THE STATE OF IOWA UNDER AUTHORITY OF CHAPTER 14 HEREOF

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1958

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Section 14.20 of the Code of Iowa is as follows:

**"14.20 Official statutes.** The Code and session laws published under authority of the state shall constitute the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules thereof."

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## PREFACE TO CODE 1958

The Code of 1958 is published pursuant to section 14.15 which requires that a new code be issued "after the final adjournment of each odd-numbered regular session of the general assembly." It follows substantially the Code of 1954 as to form and the only material changes are in the addition of the laws and of the amendments passed by the sessions of the Fifty-sixth and Fifty-seventh General Assemblies. It was deemed advisable, and because of the popular reception, to continue to publish the code in two volumes with the index bound separately in a distinguishing color. The section numbers as they appear in the two volumes are clearly marked on the back for convenience in selection.

Your attention is called to the many cross-references under the sections that you may determine at a glance the treatment of the same subject matter in other parts of the code. The users of the work are urged to take advantage of this quick and convenient method of finding similar laws and relevant subject matters. In the same manner the historical references following each section give quick and convenient access to the source and history of the act.

The same numbering of the code sections has been continued and it is only where it has been necessary to intersperse new law between numbered chapters that the alphabetical system is used. For instance, where there has been new law, which cannot be incorporated in any existing chapter, it is designated by the letter A, B or C, as the case may be. See chapter 135, et seq.

To provide a quick method to determine where the Acts of the Fifty-sixth and Fifty-seventh General Assemblies appear in the code, a table of corresponding sections has been prepared and placed in the back of volume II.

A completely new index to the code was prepared and published with the Code of 1946. Due to the great amount of editorial work involved and the attendant cost, it has not been possible to complete a new revision of the index. However, considerable time and effort have been expended to increase its usefulness and this policy will be continued.

Your attention is called to the skeleton index printed on colored paper which will give a quick reference to subject matter frequently referred to by the users of the code.

All changes in the Rules of Civil Procedure have been incorporated in the code.

It is the wish of the editor to supply all who have occasion to use the code of Iowa with a practical and convenient access to the laws. For this reason it is his hope that he may have the benefit of criticism and suggestion from the users of this work.

Statehouse

Des Moines, Iowa

CHARLES W. BARLOW  
CODE EDITOR

WAYNE A. FAUPEL  
DEPUTY CODE EDITOR

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ABBREVIATIONS

C51.....	Code of 1851
R60.....	Revision of 1860
C73.....	Code of 1873
C97.....	Code of 1897
S13.....	Supplement 1913
SS15.....	Supplemental Supplement 1915
C24.....	Code of 1924
C27.....	Code of 1927
C31.....	Code of 1931
C35.....	Code of 1935
C39.....	Code of 1939
C46.....	Code of 1946
C50.....	Code of 1950
C54.....	Code of 1954
GA.....	General Assembly
§ or Sec.....	Section
Ch.....	Chapter
Et seq.....	And following
HF.....	House File
SF.....	Senate File
Ex.....	Extra Session
R.C.P.....	Rules of Civil Procedure
Stat. L.....	Statutes at Large (U.S.)
U.S.C.....	United States Code

**HISTORICAL CHRONOLOGICAL OUTLINE**  
OF  
**CODES AND SESSION LAWS**

SHOWING

1. Territorial or other governmental jurisdictions over the territory which is now the state of Iowa.
  2. Assemblies and session laws—territorial and state.
  3. Official and private codes with code revision publications.
- (Date shown at each Iowa territorial and state session is starting date; G.A. means General Assembly; Stat. L. means United States Statutes at Large; vol. means volume.)

**LOUISIANA PURCHASE**—Treaty of Paris, April 30, 1803.

**LOUISIANA DISTRICT**—U. S. Authority established October 31, 1803 (2 Stat. L. 245).

**INDIANA TERRITORY**—Louisiana District attached thereto for governmental purposes from October 1, 1804 (2 Stat. L. 287, 289), to July 4, 1805 (2 Stat. L. 331). Capital at Saint Vincennes (now Vincennes, Indiana).

**STATUTES APPLICABLE:**

**Laws Adopted by the Governor and the Judges of the Territory.** (1 vol., reprint of 1886) passed at the following sessions:

1. January 12, 1801
2. January 30, 1802
3. February 16, 1802
4. October 1, 1804 (Republished with laws governing Missouri Territory, see Missouri Territory below).

**LOUISIANA TERRITORY** from July 4, 1805 (2 Stat. L. 331), to December 7, 1812 (2 Stat. L. 743).

**STATUTES APPLICABLE:**

**Laws Passed by the Governor and Judges Assembled in Legislature October 1810** (1 vol.). Capital at St. Louis. This territory renamed Missouri Territory, December 7, 1812.

**MISSOURI TERRITORY** from December 7, 1812 (2 Stat. L. 743), to August 10, 1821 (Proclamation of James Monroe in "Messages and Papers of the Presidents", vol. II, page 97). Capital at St. Louis.

**STATUTES APPLICABLE:**

**Laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri up to the year 1824** (1 vol. reprint). Covers period from October 1, 1804, to August 10, 1821.

**Digest of the Laws of Missouri Territory to 1818 with Spanish Land Grant Regulations.**

**UNDIVIDED U. S. TERRITORY** from August 10, 1821, to June 28, 1834 (4 Stat. L. 701). This was the part of Missouri Territory remaining after the state of Missouri, containing the seat of the government of the territory, was admitted to the Union. This remaining territory had no local constitutional status nor capital.

**MICHIGAN TERRITORY** from June 28, 1834 (4 Stat. L. 701) to July 4, 1836 (5 Stat. L. 10). Capital at Detroit.

**STATUTES APPLICABLE:**

**Ordinance for Government of the Northwest Territory, July 13, 1787**  
**Laws of the Territory of Michigan, 1827** (1 vol.)  
**Laws of Legislative Boards, 1821-1823** (1 vol.)  
**Acts of Legislative Councils**—First to Sixth sessions and Sixth special session—1824 to 1835 (several volumes).

**WISCONSIN TERRITORY** from July 4, 1836 (5 Stat. L. 10), to July 4, 1838 (5 Stat. L. 235). Capital at Belmont until March 4, 1837; then at Madison, but legislative sessions held at Burlington (now Iowa) until June 23, 1838, awaiting completion of buildings at Madison.

**STATUTES APPLICABLE:**

**Laws of Wisconsin Territory, 1836-1838**, first session starting October 25, 1836; second session starting November 6, 1837; special session held at Burlington (now Iowa) from June 11, 1838, to June 23, 1838. Act of Congress creating the Territory of Iowa approved June 12, 1838, effective July 4, 1838.

**IOWA TERRITORY** from July 4, 1838 (5 Stat. L. 235), to December 28, 1846 (9 Stat. L. 117). Capital at Burlington until 1841, and Iowa City until February 1, 1857, when finally located at Des Moines.

**STATUTES APPLICABLE:**

**Statute Laws of Iowa Territory, 1838-1839.** November 12, 1838, enacted wholly at first session—commonly called "Old Blue Book".

- Territorial Session Laws—1839–1840, November 4, 1839
- Territorial Session Laws, extra session—1840, July 6, 1840
- Territorial Session Laws—1840–1841, November 2, 1840
- Territorial Session Laws—1841–1842, December 6, 1841
- Territorial Session Laws—1842–1843, December 5, 1842
- Revised Statutes of Iowa Territory, 1843** (compilation, commonly called “Blue Book”)
- Territorial Session Laws—1843–1844, December 4, 1843
- Territorial Session Laws, extra session—1844, June 17, 1844
- Territorial Session Laws—1845, May 5, 1845
- Territorial Session Laws—1845–1846, December 1, 1845
- STATE OF IOWA** (Territorial Sessions end—State Sessions begin).
- 1 G.A. November 30, 1846 (Ch. 78, §5 made Territorial Laws applicable to the state of Iowa. Iowa became a state December 28, 1846)
- 1 G.A. January 3, 1848, extra session
- 2 G.A. December 3, 1848
- 3 G.A. December 3, 1850
- Code 1851** (enacted) effective July 1, 1851.  
See 3 G.A., Ch. 98, §5
- 4 G.A. December 6, 1852
- 5 G.A. December 4, 1854
- 5 G.A. July 2, 1856, extra session
- 6 G.A. December 1, 1856
- Constitutional Debates (2 vols.) 1857
- Journal of Convention (1 vol.) 1857
- 7 G.A. January 4, 1858
- Report of Code Commission on Civil Practice, 1859 (1 vol.)
- 8 G.A. January 9, 1860
- Revision of 1860** (compiled, except part III Civil Practice and part IV Criminal Practice, which were enacted July 4, 1860). Acts do not appear in session laws.
- 8 G.A. May 15, 1861, extra session
- 9 G.A. January 13, 1862
- 9 G.A. September 3, 1862, extra session
- 10 G.A. January 11, 1864
- 11 G.A. January 8, 1866
- 12 G.A. January 13, 1868
- 13 G.A. January 10, 1870
- Templin's Compendium of Repeals and Amendments, 1871** (a private publication).  
Proposed revision, 1872 (2 vols.) as reported to 14th G.A.  
Code Commission's Report, 1872 (1 vol.)
- 14 G.A. January 8, 1872  
Report of Code Commissioners [with proposed revision] 1873 (1 vol.) as reported to 14th Adj. G.A.
- 14 G.A. January 15, 1873, adjourned session
- Code 1873** (enacted), effective September 1, 1873, see §49 thereof. Acts do not appear in session laws of adjourned session
- 15 G.A. January 12, 1874
- Overton's Annotated Code of Civil Procedure for Iowa and Wisconsin, 1875** (a private publication)
- 16 G.A. January 10, 1876
- 17 G.A. January 14, 1878
- Templin's Compendium of Repeals and Amendments, 1878** (a private publication)
- Stacy's Code of Civil Procedure, 1878** (a private publication)
- Davis' Criminal Code 1879** (a private publication)
- 18 G.A. January 12, 1880
- McClain's Annotated Statutes, 1880** (2 vols., a private publication)
- Miller's Rev. and Anno. Code 1880** (includes statutes to July 4, 1880, and annotations including vol. 51 Iowa—some editions in 1 vol.; other editions in 2 vols., a private publication)
- 19 G.A. January 9, 1882
- Miller's Rev. and Anno. Code 1883** (includes statutes to July 4, 1882, and annotations including vol. 59 Iowa, a private publication)
- 20 G.A. January 14, 1884
- McClain's Supplement, 1882–1884** (a private publication)
- McClain's Annotated Statutes, 1884** (1 vol., same as McClain's Statutes, 1880, 2 vols., with the supplement 1882–1884 bound therein)
- Miller's Rev. and Anno. Code 1884** (includes statutes to July 4, 1884, and annotations including vol. 61 Iowa, a private publication)
- Miller's Annotated Code 1886** (published in 1885, includes statutes to July 4, 1884, and annotations including vol. 64 Iowa—some editions in 1 vol.; other editions in 2 vols., a private publication)
- 21 G.A. January 11, 1886
- 22 G.A. January 9, 1888
- McClain's Annotated Code 1888** (some editions in 1 vol.; other editions in 2 vols., a private publication)
- Miller's Rev. and Anno. Code 1888** (includes statutes to July 4, 1888, and annotations including May term, 1888, a private publication)
- 23 G.A. January 13, 1890
- Miller's Rev. and Anno. Code 1888–1890** (same as edition of 1888 together with acts 23 G.A., and annotations including May term 1890—some editions in 1 vol.; other editions in 2 vols., a private publication)
- 24 G.A. January 11, 1892
- McClain's Supplement 1888–1892** (a private publication)

- 25 G.A. January 8, 1894
- 26 G.A. January 13, 1896
  - Proposed revision, 1896 (commonly called "Black Code")
  - Code Commission's Report, 1896 (1 vol.)
  - Black Code substitute bills, 1897
- 26 G.A. January 19, 1897, extra session

**Code 1897** (enacted), effective October 1, 1897, see §50 thereof, [two editions]. Acts do not appear in session laws of extra session

- 27 G.A. January 10, 1898
- 28 G.A. January 8, 1900
- 29 G.A. January 13, 1902

**Supplement of 1902** (compiled)

- 30 G.A. January 11, 1904
- 31 G.A. January 8, 1906
- 32 G.A. January 14, 1907

**Supplement of 1907** (compiled—contained all of supplement of 1902)

- 32 G.A. August 31, 1908, extra session
- 33 G.A. January 11, 1909
- 34 G.A. January 9, 1911
- 35 G.A. January 13, 1913

**Supplement of 1913** (compiled—contained all of supplements of 1902 and 1907)

- 36 G.A. January 11, 1915

**Supplemental Supplement of 1915** (compiled)

- 37 G.A. January 8, 1917
- 38 G.A. January 13, 1919
- 38 G.A. July 2, 1919, extra session

**Compiled Code of 1919** (included all law to date as determined by the Code Commission, with repealed and obsolete matter omitted; only a limited edition published as a preliminary step in Code Revision)

- Code Commission's Report, 1919 (1 vol.)
- 39 G.A. January 10, 1921

**Supplement to Compiled Code 1921**

Supplement to Code Commission's Report, 1922

Code Revision Bills, 1922 (as revised after 39 G.A.)

Briefs of Code Commission Bills, 1922

- 40 G.A. January 8, 1923

**Supplement to Compiled Code 1923**

Code Revision Bills, 1923 (as revised after 40 G.A.)

Minutes of Code Supervising Committee, 1924 (original in Code Editor's office)

- 40 G.A. December 4, 1923, extra session
- 40 G.A. July 22, 1924, adjourned session

**Code 1924** (compiled, except for those chapters which were revised and enacted by the 40th Ex. G.A.). Only those acts which were effective on publication appear in session laws. The remaining Code Revision acts were effective on October 28, 1924

- 41 G.A. January 12, 1925
- 42 G.A. January 10, 1927

**Code 1927** (compiled)

- 42 G.A. March 5, 1928, extra session
- 43 G.A. January 14, 1929
- 44 G.A. January 12, 1931

**Code 1931** (compiled)

- 45 G.A. January 9, 1933
- 45 G.A. November 6, 1933, extra session
- 46 G.A. January 14, 1935

**Code 1935** (compiled)

- 46 G.A. December 21, 1936, extra session
- 47 G.A. January 11, 1937
- 48 G.A. January 9, 1939

**Code 1939** (compiled)

- 49 G.A. January 13, 1941
- 50 G.A. January 11, 1943
- 50 G.A. January 26, 1944, extra session
- 51 G.A. January 8, 1945

**Code 1946** (compiled)

- 52 G.A. January 13, 1947
- 52 G.A. December 16, 1947, extra session
- 53 G.A. January 10, 1949

**Code 1950** (compiled)

- 54 G.A. January 8, 1951
- 55 G.A. January 12, 1953

**Code 1954** (compiled)

- 56 G.A. January 10, 1955
- 57 G.A. January 14, 1957

**Code 1958** (compiled)

For a summary of the history of codification in Iowa the reader is referred to Emlin McClain's discussion in 1 Iowa Law Bulletin 1-28; also, Dan E. Clark's paper in Statute Law-Making in Iowa in 3 Iowa Applied History Series 399-427. For a more detailed treatment of the subject see a series of articles by Clifford Powell in The Iowa Journal of History and Politics, volumes 9-12, and an article by O. K. Patton on "The Iowa Code of 1924" published in the Iowa Law Bulletin, Volume X, No. 1.



# THE DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776

[*Literal reprint of the Declaration of Independence as it appears in the Revised Statutes of the United States, 1878*]

*The unanimous Declaration of the thirteen united States of America.*

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

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

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

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

He has refused to pass other Laws for the accommodation of large districts of people, un-

less those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

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

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

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

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

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

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

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

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

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

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

For quartering large bodies of armed troops among us:

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

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

For imposing taxes on us without our Consent:

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

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

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

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

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

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

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

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

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

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

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

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

Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

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

JOHN HANCOCK.

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

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

*Rhode Island.*—STEP. HOPKINS, WILLIAM ELLERY.

*Connecticut.*—ROGER SHERMAN, SAM'EL HUNTINGTON, WM. WILLIAMS, OLIVER WOLCOTT.

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

*New Jersey.*—RICHD. STOCKTON, JNO. WITHERSPON, FRAS. HOPKINSON, JOHN HART, ABRA. CLARK.

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

*Delaware.*—CAESAR RODNEY, GEO. READ, THO. M'KEAN.

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

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

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

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

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

# ARTICLES OF CONFEDERATION

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

PREAMBLE.

ARTICLE I. Style of confederacy.

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

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

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

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

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

ARTICLE VII. Military appointments.

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

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

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

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

*“Articles of Confederation and perpetual Union between the States of Newhampshire, Mas-*

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

ARTICLE X. Powers of the committee of the states.

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

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

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

*sachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.*

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

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

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or

attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

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

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

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

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

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

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

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

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

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

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

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

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

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

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be ap-

pointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

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

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

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

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the mat-

ter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward;" provided also that no State shall be deprived of territory for the benefit of the United States.

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

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and

regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

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

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor

ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

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

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

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

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

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

afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly

plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

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

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

JOSIAH BARTLETT,

JOHN WENTWORTH, JUNR.,

August 8th, 1778.

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

JOHN HANCOCK,  
SAMUEL ADAMS,  
ELBRIDGE GERRY,

FRANCIS DANA,  
JAMES LOVELL,  
SAMUEL HOLTEN.

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

WILLIAM ELLERY,  
HENRY MARCHANT,

JOHN COLLINS.

*On the part and behalf of the State of Connecticut.*

ROGER SHERMAN,  
SAMUEL HUNTINGTON,  
OLIVER WOLCOTT,

TITUS HOSMER,  
ANDREW ADAMS.

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

JAS. DUANE,  
FRA. LEWIS,

WM. DUER,  
GOUV. MORRIS.

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

JNO. WITHERSPOON,

NATHL. SCUDDER.

*On the part and behalf of the State of Pennsylvania.*

ROBT. MORRIS,  
DANIEL ROBERDEAU,  
JONA. BAYARD SMITH,

WILLIAM CLINGAN,  
JOSEPH REED, 22d July, 1778.

*On the part & behalf of the State of Delaware.*

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

NICHOLAS VAN DYKE.

*On the part and behalf of the State of Maryland.*

JOHN HANSON, March 1, 1781,

DANIEL CARROLL, Mar. 1, 1781.

*On the part and behalf of the State of Virginia.*

RICHARD HENRY LEE,  
JOHN BANISTER,  
THOMAS ADAMS,

JNO. HARVIE,  
FRANCIS LIGHTFOOT LEE.

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

JOHN PENN, July 21st, 1778,  
CORNS. HARNETT,

JNO. WILLIAMS.

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

HENRY LAURENS,  
WILLIAM HENRY DRAYTON,  
JNO. MATHEWS,

RICHD. HUTSON,  
THOS. HEYWARD, JUNR.

*On the part & behalf of the State of Georgia.*

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

EDWD. LANGWORTHY.

EXPLANATORY NOTE

On February 29, 1952, the Congress by Joint Resolution designated September 17 of each year as "Citizenship Day."

On June 27, 1952, the Congress passed, over the President's veto, "An Act to revise the laws relating to immigration, naturalization, and nationality, and for other purposes," to be known as the "Immigration and Nationality Act."

From official publications of these Acts there is incorporated herein the Nationality Laws of the United States as of June 1, 1957.



# CITIZENSHIP AND NATIONALITY LAWS

## JOINT RESOLUTION DESIGNATING SEPTEMBER 17 OF EACH YEAR AS "CITIZENSHIP DAY".

Act of February 29, 1952

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the 17th day of September of each year is hereby designated as "Citizenship Day" in commemoration of the formation and signing, on September 17, 1787, of the Constitution of the United States and in recognition of all who, by coming of age or by naturalization have attained the status of citizenship, and the President of the United States is hereby authorized to issue annually a proclamation calling upon officials of the Government to display the flag of the United States on all Government buildings on such day, and inviting the people of the United States to observe the day in schools and churches, or other suitable places, with appropriate ceremonies.

That the civil and educational authorities of States, counties, cities, and towns be, and they are hereby, urged to make plans for the proper observance of this day and for the full instruction of citizens in their responsibilities and opportunities as citizens of the United States and of the States and localities in which they reside.

Nothing herein shall be construed as changing, or attempting to change, the time or mode of any of the many altogether commendable observances of similar nature now being held from time to time, or periodically, but, to the contrary, such practices are hereby praised and encouraged.

SEC. 2. Either at the time of the rendition of the decree of naturalization or at such other time as the judge may fix, the judge or someone designated by him shall address the newly naturalized citizen upon the form and genius of our Government and the privileges and responsibilities of citizenship; it being the intent and purpose of this section to enlist the aid of the judiciary, in cooperation with civil and educational authorities, and patriotic organizations in a continuous effort to dignify and emphasize the significance of citizenship.

SEC. 3. The joint resolution entitled "Joint resolution authorizing the President of the United States of America to proclaim I Am an American Citizen Day, for the recognition, observance, and commemoration of American citizenship", approved May 3, 1940 (54 Stat. 178), is hereby repealed. [66 Stat. 9]

## IMMIGRATION AND NATIONALITY ACT

Act of June 27, 1952, C 477, 66 Stat. 163

AN ACT to revise the laws relating to immigration, naturalization, and nationality; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act". [66 Stat. 163.]

Table of contents omitted.

### TITLE I—GENERAL

#### Definitions

SECTION 101. (a) As used in this Act—

(1) The term "administrator" means the administrator of the Bureau of Security and Consular Affairs of the Department of State.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or non-immigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas. In cases of aliens, in the Canal Zone and the outlying possessions of the

United States, the term "consular officer" means an officer designated by the Governor of the Canal Zone, or the governors of the outlying possessions, for the purpose of issuing immigrant or nonimmigrant visas under this Act.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13) The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary: *Provided*, That no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) (i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized *de jure* by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized *de jure* by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such voca-

tion) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

[Act of June 18, 1954, C 323, 68 Stat. 264. Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national, if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible to the United States under the Immigration and Nationality Act (66 Stat. 163), be considered to be classifiable as a nonimmigrant under section 101(a) (15) (E) of said Act if entering solely for the purposes specified in subsection (i) or (ii) of said section.]

(F) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn;

(G) (i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as an industrial trainee;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immi-

gration officer specified by this Act or any section thereof.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3 (a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4 (a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) The term "naturalization court", unless otherwise particularly described, means a court authorized by section 310 (a) of title III to exercise naturalization jurisdiction.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term "nonquota immigrant" means—

(A) an immigrant who is the child or the spouse of a citizen of the United States;

(B) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(C) an immigrant who was born in Canada, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and the spouse or the child of any such immigrant, if accompanying or following to join him;

(D) an immigrant who was a citizen of the United States and may, under section 324 (a) or 327 of title III, apply for reacquisition of citizenship;

(E) an immigrant included within the second proviso to section 349 (a) (1) of title III;

(F) (i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or

(G) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment, in his discretion, shall have recommended the granting of nonquota status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "quota immigrant" means any immigrant who is not a nonquota immigrant. An alien who is not particularly specified in this Act as a nonquota immigrant or a nonimmigrant shall not be admitted or considered in any manner to be either a nonquota immigrant or a nonimmigrant notwithstanding his relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Residence shall be considered continuous for the purposes of sections 350 and 352 of title III where there is a continuity of stay but not necessarily an uninterrupted physical presence

in a foreign state or states or outside the United States.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes (except as used in section 310 (a) of title III) Alaska, Hawaii, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a legitimate child; or

(B) a stepchild, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above.

(3) The term "person" means an individual or an organization.

(4) The term "special inquiry officer" means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this Act to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this Act, as the Attorney General shall prescribe.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in title III—

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, 321, 322, and 323 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) As used in chapter 3 of title III—

(1) The term "veteran" means a person who served in the armed forces of the United States at any time in an active-duty status during the period from April 21, 1898, to August 12, 1898, or from April 6, 1917, to November 11, 1918, or from December 7, 1941, to December 31, 1946, all dates inclusive, and who was discharged therefrom under honorable conditions. The records of the armed forces shall be conclusive as to type of a discharge and as to whether the conditions under which a discharge was given were honorable.

(2) (A) The term "Spanish-American War" relates to the period from April 21, 1898, to August 12, 1898; (B) the term "World War I" relates to the period from April 6, 1917, to November 11, 1918; and (C) the term "World War II" relates to the period from December 7, 1941, to December 31, 1946, all dates inclusive.

(e) For the purposes of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of

value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally co-ordinated Communist movement.

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(2) one who during such period has committed adultery;

(3) a member of one or more of the classes of persons, whether excludable or not, described in paragraphs (11), (12), and (31) of section 212 (a) of this Act; or paragraphs (9), (10), and (23) of section 212 (a), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of the crime of murder.

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

(g) For the purposes of this Act any alien ordered deported (whether before or after the enactment of this Act) who has left the United States, shall be considered to have been deported in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed. [66 Stat. 166]

#### **Applicability of Title II to Certain Nonimmigrants**

SEC. 102. Except as otherwise provided in this Act, for so long as they continue in the

nonimmigrant classes enumerated in this section, the provisions of this Act relating to ineligibility to receive visas and the exclusion or deportation of aliens shall not be construed to apply to nonimmigrants—

(1) within the class described in paragraph (15) (A) (i) of section 101 (a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15) (A) (i), and, under such rules and regulations as the President may deem to be necessary, the provisions of paragraph (27) of section 212 (a);

(2) within the class described in paragraph (15) (G) (i) of section 101 (a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15) (G) (i), and the provisions of paragraph (27) of section 212 (a); and

(3) within the classes described in paragraphs (15) (A) (ii), (15) (G) (ii), (15) (G) (iii), or (15) (G) (iv) of section 101 (a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs, and the provisions of paragraphs (27) and (29) of section 212 (a). [66 Stat. 173]

**Powers and Duties of the Attorney General and the Commissioner**

SEC. 103. (a) The Attorney General shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act. He is authorized, in accordance with the civil service laws and regulations and the Classification Act of 1949, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this Act; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the bound-

aries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail employees of the Service for duty in foreign countries.

(b) The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$17,500 per annum. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this Act which are conferred upon the Attorney General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General. [66 Stat. 173]

**Powers and Duties of the Secretary of State; Bureau of Security and Consular Affairs**

SEC. 104. (a) The Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, except those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas; (2) the powers, duties and functions of the Bureau of Security and Consular Affairs; and (3) the determination of nationality of a person not in the United States. He shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the department or independent establishment under whose jurisdiction the employee is serving, any of the powers, functions, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Department of State or of the American Foreign Service.

(b) There is hereby established in the Department of State a Bureau of Security and Consular Affairs, to be headed by an administrator (with an appropriate title to be designated by the Secretary of State), with rank and compensation equal to that of an Assistant Secretary of State. The administrator shall be a citizen of the United States, qualified by experience, and shall maintain close liaison with

the appropriate committees of Congress in order that they may be advised regarding the administration of this Act by consular officers. He shall be charged with any and all responsibility and authority in the administration of the Bureau and of this Act which are conferred on the Secretary of State as may be delegated to him by the Secretary of State or which may be prescribed by the Secretary of State. He shall also perform such other duties as the Secretary of State may prescribe.

(c) Within the Bureau there shall be a Passport Office, a Visa Office, and such other offices as the Secretary of State may deem to be appropriate, each office to be headed by a director. The Directors of the Passport Office and the Visa Office shall be experienced in the administration of the nationality and immigration laws.

(d) The functions heretofore performed by the Passport Division and the Visa Division of the Department of State shall hereafter be performed by the Passport Office and the Visa Office, respectively, of the Bureau of Security and Consular Affairs.

(e) There shall be a General Counsel of the Visa Office, who shall be appointed by the Secretary of State and who shall serve under the general direction of the Legal Adviser of the Department of State. The General Counsel shall have authority to maintain liaison with the appropriate officers of the Service with a view to securing uniform interpretations of the provisions of this Act.

(f) The Bureau shall be under the immediate jurisdiction of the Deputy Under Secretary of State for Administration. [66 Stat. 174]

#### **Liaison With Internal Security Officers**

SEC. 105. The Commissioner and the administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this Act in the interest of the internal security of the United States. The Commissioner and the administrator shall maintain direct and continuous liaison with each other with a view to a co-ordinated, uniform, and efficient administration of this Act, and all other immigration and nationality laws. [66 Stat. 175]

Title II deals with immigration and is not included here.

### **TITLE III—NATIONALITY AND NATURALIZATION**

#### **CHAPTER 1—NATIONALITY AT BIRTH AND BY COLLECTIVE NATURALIZATION**

##### **Nationals and Citizens of the United States at Birth**

SEC. 301. (a) The following shall be nationals and citizens of the United States at birth:

(1) a person born in the United States, and subject to the jurisdiction thereof;

(2) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or

other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(3) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(4) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(5) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(6) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United States for at least five years: *Provided*, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

(c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: *Provided, however*, That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act,

complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended. [66 Stat. 235]

[Act of March 16, 1956, C. 85, 70 Stat. 50. Section 301 (a) (7) of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents, one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940.]

**Persons Born in Puerto Rico On or After April 11, 1899**

SEC. 302. All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth. [66 Stat. 236]

**Persons Born in the Canal Zone or Republic of Panama On or After February 26, 1904**

SEC. 303. (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

**Persons Born in Alaska On or After March 30, 1867**

SEC. 304. A person born in Alaska on or after March 30, 1867, except a noncitizen Indian, is a citizen of the United States at birth. A noncitizen Indian born in Alaska on or after March 30, 1867, and prior to June 2, 1924, is declared to be a citizen of the United States as of June 2, 1924. An Indian born in Alaska on or after June 2, 1924, is a citizen of the United States at birth. [66 Stat. 237]

**Persons Born in Hawaii**

SEC. 305. A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is declared to be a citizen of the United States as of April 30, 1900. A person born in Hawaii

on or after April 30, 1900, is a citizen of the United States at birth. A person who was a citizen of the Republic of Hawaii on August 12, 1898, is declared to be a citizen of the United States as of April 30, 1900. [66 Stat. 237]

**Persons Living in and Born in the Virgin Islands**

SEC. 306. (a) The following persons and their children born subsequent to January 17, 1917, and prior to February 25, 1927, are declared to be citizens of the United States as of February 25, 1927;

(1) All former Danish citizens who, on January 17, 1917, resided in the Virgin Islands of the United States, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who did not make the declaration required to preserve their Danish citizenship by article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark, or who, having made such a declaration have heretofore renounced or may hereafter renounce it by a declaration before a court of record;

(2) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in those islands, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country;

(3) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in the United States, and were residing in those islands on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country; and

(4) All natives of the Virgin Islands of the United States who, on June 28, 1932, were residing in continental United States, the Virgin Islands of the United States, Puerto Rico, the Canal Zone, or any other insular possession or territory of the United States, and who, on June 28, 1932, were not citizens or subjects of any foreign country, regardless of their place of residence on January 17, 1917.

(b) All persons born in the Virgin Islands of the United States on or after January 17, 1917, and prior to February 25, 1927, and subject to the jurisdiction of the United States are declared to be citizens of the United States as of February 25, 1927; and all persons born in those islands on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth. [66 Stat. 237]

**Persons Living in and Born in Guam**

SEC. 307. (a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States as of August 1, 1950, if they were residing on August 1, 1950, on the island of Guam or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the island of Guam on April 11, 1899, including those temporarily ab-



sent from the island on that date, who were Spanish subjects, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality; and

(2) All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent from the island on that date, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are hereby declared to be citizens of the United States: *Provided*, That in the case of any person born before August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall have made, prior to August 1, 1952, a declaration under oath of such desire, said declaration to be in form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this act. [66 Stat. 237]

#### **Nationals But Not Citizens of the United States at Birth**

SEC. 308. Unless otherwise provided in section 301 of this title, the following shall be nationals, but not citizens, of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; and

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession. [66 Stat. 238]

#### **Children Born Out of Wedlock**

SEC. 309. (a) The provisions of paragraphs (3), (4), (5), and (7) of section 301 (a), and of paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

(b) Except as otherwise provided in section 405, the provisions of section 301 (a) (7) shall apply to a child born out of wedlock on or

after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before or after the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, on or after the effective date of this Act, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year. [66 Stat. 238]

### CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

#### **Jurisdiction to Naturalize**

SEC. 310. (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District courts of the United States now existing, or which may hereafter be established by Congress in any State, District Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico, the District Court of the Virgin Islands of the United States, and the District Court of Guam; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts, except as otherwise specifically provided in this title.

(b) A person who petitions for naturalization in any State court having naturalization jurisdiction may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Attorney General with such blank forms as may be required in naturalization proceedings.

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title, and not otherwise. [66 Stat. 239]

#### **Eligibility for Naturalization**

SEC. 311. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married. Notwithstanding section 405 (b), this section shall apply to any person whose petition for natu-

ralization shall hereafter be filed, or shall have been pending on the effective date of this Act. [66 Stat. 239]

**Requirements as to Understanding the English Language, History, Principles, and Form of Government of the United States.**

SEC. 312. No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: *Provided*, That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the effective date of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years: *Provided further*, That the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. [66 Stat. 239]

**Prohibition Upon the Naturalization of Persons Opposed to Government or Law, or Who Favor Totalitarian Forms of Government**

SEC. 313. (a) Notwithstanding the provisions of section 405 (b), no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 7 of the Subversive Activities Control Act of 1950; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required

to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, dis-

tributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5).

(b) The provisions of this section or of any other section of this Act shall not be construed as declaring that any of the organizations referred to in this section or in any other section of this Act do not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means.

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the petition is filed he may not be included within such classes.

(d) Any person who is within any of the classes described in subsection (a) solely because of past membership in, or past affiliation with, a party or organization may be naturalized without regard to the provisions of subsection (c) if such person establishes that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation of law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes. [66 Stat. 240]

**Ineligibility to Naturalization of Deserters from the Armed Forces of the United States**

SEC. 314. A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military, air, or naval forces of the United States, or who, having been duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or who, whether or not having been duly enrolled, went or shall go beyond the limits of the United States, with intent to avoid any draft into the military, air, or naval service, lawfully ordered, shall, upon conviction thereof by a court martial or a court of competent jurisdiction, be permanently ineligible to become a citizen of the United States; and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof. [66 Stat. 241]

**Alien Relieved from Training and Service in the Armed Forces of the United States Because of Alienage Barred from Citizenship**

SEC. 315. (a) Notwithstanding the provisions of section 405 (b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in

the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien. [66 Stat. 242]

**Requirements as to Residence, Good Moral Character, Attachment to the Principles of the Constitution, and Favorable Disposition to the United States**

SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, unless the petitioner shall establish to the satisfaction of the court that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the petition for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and com-

merce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

(c) The granting of the benefits of subsection (b) of this section shall not relieve the petitioner from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing a petition for naturalization.

(d) No finding by the Attorney General that the petitioner is not deportable shall be accepted as conclusive evidence of good moral character.

(e) In determining whether the petitioner has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period.

(f) Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which

the petitioner is a member or affiliate are pending under section 13 or 14 of the Subversive Activities Control Act of 1950. [66 Stat. 242]

#### **Temporary Absence of Persons Performing Religious Duties**

Sec. 317. Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing a petition for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 316 (a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General and the naturalization court that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister. [66 Stat. 243]

#### **Prerequisite to Naturalization; Burden of Proof**

Sec. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any

other Act: *Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title. [66 Stat. 244]

#### **Married Persons**

SEC. 319. (a) Any person whose spouse is a citizen of the United States may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316 (a) if such person immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his petition has been living in marital union with the citizen spouse, who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State in which he filed his petition for at least six months.

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. [66 Stat. 244]

#### **Child Born Outside of United States of One Alien and One Citizen Parent at Time of Birth; Conditions Under Which Citizenship Automatically Acquired**

SEC. 320. (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when—

(1) such naturalization takes place while such child is under the age of sixteen years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of sixteen years.

(b) Subsection (a) of this section shall not apply to an adopted child. [66 Stat. 245]

#### **Child Born Outside of United States of Alien Parents; Conditions Under Which Citizenship Automatically Acquired**

SEC. 321. (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

(4) Such naturalization takes place while such child is under the age of sixteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of sixteen years.

(b) Subsection (a) of this section shall not apply to an adopted child. [66 Stat. 245]

#### **Child Born Outside of United States; Naturalization on Petition of Citizen Parent; Requirements and Exemptions**

SEC. 322. (a) A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of section 313, 314, 315, or 318 of this Act, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the petition of such citizen parent, upon compliance with all the provisions of this title, except that no particular period of residence or physical presence in the United States shall be required. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

(b) Subsection (a) of this section shall not apply to an adopted child. [66 Stat. 246]

**Children Adopted by United States Citizens**

SEC. 323. (a) An adopted child may, if not otherwise disqualified from becoming a citizen by reason of section 313, 314, 315, or 318 of this Act, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents, upon compliance with all the provisions of this title, if the adoptive parent or parents are citizens of the United States, and the child—

(1) was lawfully admitted to the United States for permanent residence;

(2) was adopted before attaining the age of sixteen years; and

(3) subsequent to such adoption has resided continuously in the United States in legal custody of the adoptive parent or parents for two years prior to the date of filing such petition.

(b) In lieu of the residence and physical presence requirements of section 316 (a) of this Act such child shall be required to establish only two years' residence and one year's physical presence in the United States during the two-year period immediately preceding the filing of the petition. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States. [66 Stat. 246]

**Former Citizens of United States Regaining United States Citizenship**

SEC. 324. (a) Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act of such person other than by marriage be naturalized upon compliance with all requirements of this title, except—

(1) no period of residence or specified period of physical presence within the United States or within the State where the petition is filed shall be required;

(2) the petition need not set forth that it is the intention of the petitioner to reside permanently within the United States;

(3) the petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(4) the petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner and the witnesses have appeared before such examiner for examination.

Such person, or any person who was naturalized in accordance with the provisions of section 317 (a) of the Nationality Act of 1940, shall have, from and after her naturalization, the status of a native-born or naturalized citizen of the United States, whichever status

existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317 (a) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(b) No person who is otherwise eligible for naturalization in accordance with the provisions of subsection (a) of this section shall be naturalized unless such person shall establish to the satisfaction of the naturalization court that she has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for a period of not less than five years immediately preceding the date of filing a petition for naturalization and up to the time of admission to citizenship, and, unless she has resided continuously in the United States since the date of her marriage, has been lawfully admitted for permanent residence prior to filing her petition for naturalization.

(c) (1) A woman who was a citizen of the United States at birth and (A) who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, or by her marriage on or after such date to an alien ineligible to citizenship, (B) whose marriage to such alien shall have terminated subsequent to January 12, 1941, and (C) who has not acquired by an affirmative act other than by marriage any other nationality, shall, from and after taking the oath of allegiance required by section 337 of this title, be a citizen of the United States and have the status of a citizen of the United States by birth, without filing a petition for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313: *Provided*, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317 (b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the judge or clerk of a naturalization court.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, or naturalization court, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, or naturalization court, shall be delivered to such woman at a cost not exceeding \$5, which certified copy shall be evidence of the facts stated therein before any court of record

or judicial tribunal and in any department or agency of the Government of the United States. [66 Stat. 246]

**Nationals But Not Citizens of the United States; Residence Within Outlying Possessions**

SEC. 325. A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified, may, if he becomes a resident of any State, be naturalized upon compliance with the applicable requirements of this title, except that in petitions for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of this title shall include residence and physical presence within any of the outlying possessions of the United States. [66 Stat. 248]

**Former Philippine Citizens Excepted from Certain Requirements**

SEC. 326. Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) entered the United States prior to May 1, 1934, and (3) has, since such entry, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of petitioning for naturalization under this title. [66 Stat. 248]

**Former United States Citizens Losing Citizenship by Entering the Armed Forces of Foreign Countries During World War II**

SEC. 327. (a) Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of title III of this Act, except section 316 (a), and except as otherwise provided in subsection (b), be naturalized by taking before any naturalization court specified in section 310 (a) of this title the oath required by section 337 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice.

(b) No person shall be naturalized under subsection (a) of this section unless he—

(1) is, and has been for a period of at least five years immediately preceding taking the oath required in subsection (a), a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and

(2) has been lawfully admitted to the United States for permanent residence and intends to reside permanently in the United States.

(c) Any person naturalized in accordance with the provisions of this section, or any person who was naturalized in accordance with the provisions of section 323 of the Nationality

Act of 1940, shall have, from and after such naturalization, the status of a native-born, or naturalized, citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein, or in any other provision of law, shall be construed as conferring United States citizenship retroactively upon any such person during any period in which such person was not a citizen.

(d) For the purposes of this section, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

(e) This section shall not apply to any person who during World War II served in the armed forces of a country while such country was at war with the United States. [66 Stat. 248]

**Naturalization Through Service in the Armed Forces of the United States**

SEC. 328. (a) A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating three years, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, and without having been physically present in the United States for any specified period, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) no residence within the jurisdiction of the court shall be required;

(2) notwithstanding section 336 (c), such petitioner may be naturalized immediately if the petitioner be then actually in the Armed Forces of the United States, and if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service;

(3) the petitioner shall furnish to the Attorney General, prior to the final hearing upon his petition, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than honorable. The certificate or certificates herein provided for shall be conclusive evidence of such service and discharge.

(c) In the case such petitioner's service was not continuous, the petitioner's residence in the United States and State, good moral character, attachment to the principles of the Con-



stitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such petition between the periods of petitioner's service in the Armed Forces, shall be alleged in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon. Such allegation and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

(d) The petitioner shall comply with the requirements of section 316 (a) of this title, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service within five years immediately preceding the date of filing such petition shall be considered as residence and physical presence within the United States.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 316 (a). [66 Stat. 249]

**Naturalization Through Active-Duty Service in the Armed Forces During World War I or World War II**

SEC. 329. (a) Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this

section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 331 of this title;

(2) no period of residence or specified period of physical presence within the United States or any State shall be required;

(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

(4) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, and was separated from such service under honorable conditions; and

(5) notwithstanding section 336 (c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service.

(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

(d) The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under section 701 of the Nationality Act of 1940, as amended (56 Stat. 182, 58 Stat. 886, 59 Stat. 658; 8 U. S. C. 1001), and which is still pending on the effective date of this Act, shall be determined in accordance with the provisions of this section. [66 Stat. 250]

**Constructive Residence Through Service on Certain United States Vessels**

SEC. 330. (a) (1) Any periods of time during all of which a person who was previously lawfully admitted for permanent residence has served honorably or with good conduct, in any capacity other than as a member of the Armed Forces of the United States, (A) on board a



vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or (B) on board a vessel whose home port is in the United States, and (i) which is registered under the laws of the United States, or (ii) the full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States, shall be deemed residence and physical presence within the United States within the meaning of section 316 (a) of this title, if such service occurred within five years immediately preceding the date such person shall file a petition for naturalization. Service on vessels described in clause (A) of this subsection shall be proved by duly authenticated copies of the records of the executive departments or agency having custody of the records of such service. Service on vessels described in clause (B) of this subsection may be proved by certificates from the masters of such vessels.

(2) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person had served honorably or with good conduct for an aggregate period of five years on any vessel described in section 325 (a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 316 (a) of this title, if such petition is filed within one year from the effective date of this Act. Notwithstanding the provisions of section 318, a person entitled to claim the exemptions contained in this paragraph shall not be required to establish a lawful admission for permanent residence.

(3) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person not within the provisions of paragraph (2) had, prior to September 23, 1950, served honorably or with good conduct on any vessel described in section 325 (a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and was so serving on September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 316 (a) of this title, if such person at any time prior to filing his petition for naturalization shall have been lawfully admitted to the United States for permanent residence, and if such petition is filed on or before September 23, 1955.

(b) Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this Act, be naturalized upon compliance with the applicable provisions of the naturalization laws in effect upon

the date such petition was filed: *Provided*, That any such person shall be subject to the provisions of section 313 and to those provisions of section 318 which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act. [66 Stat. 251]

#### **Alien Enemies; Naturalization Under Specified Conditions and Procedure**

SEC. 331. (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's petition for naturalization shall be pending at the beginning of the state of war and the petitioner is otherwise entitled to admission to citizenship.

(b) An alien embraced within this section shall not have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General's objection to such final hearing shall cause the petition to be continued from time to time for so long as the Attorney General may require.

(c) The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have a petition for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this title, and thereupon such alien shall have the privilege of filing a petition for naturalization.

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. Notwithstanding the provisions of section 405 (b), this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date.

(e) Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien. [66 Stat. 252]

**Procedural and Administrative Provisions; Executive Functions**

SEC. 332. (a) The Attorney General shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination, in the discretion of the Attorney General, and under such rules and regulations as may be prescribed by him, may be conducted before or after the applicant has filed his petition for naturalization. Such examination shall be limited to inquiry concerning the applicant's residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, ability to read, write, and speak English, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

(b) The Attorney General is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing citizenship textbooks to such candidates as are receiving instruction in preparation for citizenship within or under the supervision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and co-operating with official State and national organizations, including those concerned with vocational education.

(c) The Attorney General shall prescribe and furnish such forms as may be required to give effect to the provisions of this chapter, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

(d) Employees of the Service may be designated by the Attorney General to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Attorney General may, in his discretion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

(e) A certificate of naturalization or of citizenship issued by the Attorney General under the authority of this title shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and outlying possession of the United States, as a certificate of naturalization

or of citizenship issued by a court having naturalization jurisdiction.

(f) Certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this Act shall be admitted in evidence equally with the originals in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

(g) The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters, without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of persons seeking to comply with requirements under the immigration and nationality laws. Such studio shall be under the supervision of the Attorney General. [66 Stat. 252]

**Photographs**

SEC. 333. (a) Three identical photographs of the applicant shall be signed by and furnished by each petitioner for naturalization or citizenship. One of such photographs shall be affixed by the clerk of the court to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Three identical photographs of the applicant shall be furnished by each applicant for—

- (1) a record of lawful admission for permanent residence to be made under section 249 (a);
- (2) a certificate of derivative citizenship;
- (3) a certificate of naturalization or of citizenship;
- (4) a special certificate of naturalization;
- (5) a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed;
- (6) a new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had his name changed by order of a court of competent jurisdiction or by marriage; and
- (7) a declaration of intention.

One such photograph shall be affixed to each such certificate issued by the Attorney General and one shall be affixed to the copy of such certificate retained by the Service. [66 Stat. 253]

**Petition for Naturalization; Declaration of Intention**

SEC. 334. (a) An applicant for naturalization shall make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting if physically able to write, and duly verified by two wit-

nesses, which petition shall be on a form prescribed by the Attorney General and shall include averments of all facts which in the opinion of the Attorney General may be material to the applicant's naturalization, and required to be proved upon the hearing of such petition.

(b) No person shall file a valid petition for naturalization unless (1) he shall have attained the age of eighteen years and (2) he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General. An application for petition for naturalization by an alien shall contain an averment of lawful admission for permanent residence.

(c) Petitions for naturalization may be made and filed during the term time or vacation of the naturalization court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court.

(d) If the applicant for naturalization is prevented by sickness or other disability from presenting himself in the office of the clerk to make the petition required by subsection (a), such applicant may make such petition at such other place as may be designated by the clerk of court or by such clerk's authorized deputy.

(e) Before a petition for naturalization may be made outside of the office of the clerk of the court, pursuant to subsection (d) above, or before a final hearing on a petition may be held or the oath of allegiance administered outside of open court, pursuant to sections 336 (a) and 337 (c) respectively of this title, the court must satisfy itself that the illness or other disability is sufficiently serious to prevent appearance in the office of the clerk of court and is of a permanent nature, or of a nature which so incapacitates the person as to prevent him from personally appearing in the office of the clerk of court or in court as otherwise required by law.

(f) Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing a petition for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this or any other Act. [66 Stat. 254]

#### **Investigation of Petitioners; Preliminary Examinations on Petitions**

SEC. 335. (a) At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 336 (a), an employee of the Service, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person petitioning for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of his petition for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. For such purposes any such employee so designated is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to administer oaths, including the oath of the petitioner for naturalization and the oaths of petitioner's witnesses to the petition for naturalization, and to require by subpoena the attendance and testimony of witnesses, including petitioner, before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of any court exercising naturalization jurisdiction as specified in section 310 of this title; and any such court may, in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 310 of this title.

(c) The record of the preliminary examination upon any petition for naturalization may, in the discretion of the Attorney General, be transmitted to the Attorney General and the recommendation with respect thereto of the employee designated to conduct such preliminary examination shall when made also be transmitted to the Attorney General.

(d) The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefor.

In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court. The recommendations of such employee and of the Attorney General shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by such employee or the Attorney General, as the case may be. The judge to whom such recommendations are submitted shall, if he approve such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of each such lists shall thereafter be filed permanently of record in such court and the duplicate of each such list shall be sent by the clerk of such court to the Attorney General.

(e) After the petition for naturalization has been filed in the office of the clerk of court, the petitioner shall not be permitted to withdraw his petition, except with the consent of the Attorney General. In cases where the Attorney General does not consent to withdrawal of the petition, the court shall determine the petition on its merits and enter a final order accordingly. In cases where the petitioner fails to prosecute his petition, the petition shall be decided upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

(f) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition for naturalization the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(g) At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 316 during such residence shall be proved by the oral testimony of at least two credible witnesses,

citizens of the United States, in addition to the affidavits required by subsection (f) of this section to be included in the petition. At the hearing, residence and physical presence within the United States during the five-year period required by section 316 (a), but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 316 during such period at such places, shall be proved either by depositions taken in accordance with subsection (d) of section 332, or oral testimony, of at least two such witnesses for each place of residence.

(h) Notwithstanding the provisions of subsections (f) and (g) of this section, the requirements of subsection (a) of section 316 as to the petitioner's residence, good moral character, attachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 316 in which the alien has been absent from the United States because of his employment by or contract with the Government of the United States or an American institution of research, recognized as such by the Attorney General, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, or employment by a public international organization in which the United States participates.

(i) (1) A petitioner for naturalization who removes from the jurisdiction of the court in which his petition for naturalization is pending may, at any time thereafter, make application to the court for transfer of the petition to a naturalization court exercising jurisdiction over the petitioner's place of residence, or to any other naturalization court if the petition was not required to be filed in a naturalization court exercising jurisdiction over the petitioner's place of residence: *Provided*, That such transfer shall not be made without the consent of the Attorney General, and of the court to which the petition is transferred.

(2) Where transfer of the petition is authorized the clerk of court in which the petition was filed shall forward a certified copy of the petition and the original record in the case to the clerk of court to which the petition is transferred, and proceedings on the petition shall thereafter continue as though the petition had originally been filed in the court to which transferred, except that the court to which the petition is transferred may in its discretion, require the production of two credible United States citizen witnesses to testify as to the petitioner's qualifications for naturalization since the date of such transfer. [66 Stat. 255]

**Final Hearing in Open Court Upon Petitions for Naturalization; Final Order Under the Hand of the Court Entered Upon Record; Examination of Petitioner and Witnesses Before the Court**

SEC. 336. (a) Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the petitioner and the witnesses, except as provided in subsection (b) of this section, shall be examined under oath before the court and in the presence of the court. If the petitioner is prevented by sickness or other disability from being in open court for the final hearing upon a petition for naturalization, such final hearing may be had before a judge or judges of the court at such place as may be designated by the court.

(b) The requirement of subsection (a) of this section for the examination of the petitioner and the witnesses under oath before the court and in the presence of the court shall not apply in any case where an employee designated under section 335 (b) has conducted the preliminary examination authorized by subsection (b) of section 335; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court.

(c) Except as otherwise specifically provided in this title, no final hearing shall be held on any petition for naturalization nor shall any person be naturalized nor shall any certificate of naturalization be issued by any court within a period of thirty days after the filing of the petition for naturalization. The Attorney General may waive such period in an individual case if he finds that the waiver will be in the public interest and will promote the security of the United States. Notwithstanding any other provisions of this title, but except as provided in sections 328 (b) (2) and 329 (b) (5), in any case in which the final hearing on any petition for naturalization is scheduled to be held within sixty days preceding the holding of a general election within the territorial jurisdiction of the naturalization court, such final hearing may be held, but the petitioner shall not be permitted to take the oath required in section 337 (a) of this title prior to the tenth day next following such general election. In any case in which the oath is not taken at the time of the final hearing, the petitioner shall not be a citizen of the United States until such oath has been taken.

(d) The Attorney General shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call

witnesses, including the petitioner, produce evidence, and be heard in opposition to, or in favor of, the granting of any petition in naturalization proceedings.

(e) The clerk of court shall, if the petitioner requests it at the time of filing the petition for naturalization, issue a subpoena for the witnesses named by such petitioner to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. If it should appear after the petition has been filed that any of the verifying witnesses thereto are not competent, and it further appears that the petitioner has acted in good faith in producing such witnesses found to be incompetent, other witnesses may be substituted in accordance with such regulations.

(f) It shall be lawful at the time and as a part of the naturalization of any person, for the court, in its discretion, upon the bona fide prayer of the petitioner included in the petition for naturalization of such person, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith. [66 Stat. 257]

**Oath of Renunciation and Allegiance**

SEC. 337. (a) A person who has petitioned for naturalization shall, in order to be and before being admitted to citizenship, take in open court an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be required to take an oath containing the substance of clauses (1) through (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the naturalization court that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clauses (5) (B) and (5) (C), and a person who shows by clear and convincing evidence to the satisfaction of the naturalization court that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clause

(5) (C). The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 322 or 323 of this title the naturalization court may waive the taking of the oath if in the opinion of the court the child is unable to understand its meaning.

(b) In case the person petitioning for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the petitioner shall in addition to complying with the requirements of subsection (a) of this section, make under oath in open court in the court in which the petition for naturalization is made, an express renunciation of such title or order of nobility, and such renunciation shall be recorded in the court as a part of such proceedings.

(c) If the petitioner is prevented by sickness or other disability from being in open court, the oath required to be taken by subsection (a) of this section may be taken before a judge of the court at such place as may be designated by the court. [66 Stat. 259]

#### **Certificate of Naturalization; Contents**

SEC. 338. A person admitted to citizenship by a naturalization court in conformity with the provisions of this title shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: Number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status and country of former nationality; title, venue, and location of the naturalization court; statement that the court, having found that the petitioner intends to reside permanently in the United States, except in cases falling within the provisions of section 324 (a) of this title, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the petitioner be admitted as a citizen of the United States of America; attestation of the clerk of the naturalization court; and seal of the court. [66 Stat. 259]

#### **Functions and Duties of Clerks**

SEC. 339. (a) It shall be the duty of the clerk of each and every naturalization court to forward to the Attorney General a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was filed, and to forward to the Attorney General certified copies of such other proceedings and orders instituted in

or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

(b) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such court to citizenship a certificate of naturalization and to forward to the Attorney General within thirty days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Attorney General within thirty days after the close of the month in which such certificate was issued.

(c) It shall be the duty of the clerk of each and every naturalization court to report to the Attorney General, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

(d) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General, and shall account to the Attorney General for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

(e) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in chronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of such court, all declarations of intention and petitions for naturalization. [66 Stat. 259]

#### **Revocation of Naturalization**

SEC. 340. (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: *Provided*, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any

proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

(b) The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

(c) If a person who shall have been naturalized after the effective date of this Act shall within five years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of section 313, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

(d) If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to

authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with statements of the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

(e) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 of the Nationality Act of 1940 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or been available to a wife or minor child of the naturalized person had such naturalization not been revoked: *Provided*, That this subsection shall not apply in any case in which the revocation and setting aside of the order was the result of actual fraud.

(f) Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship under the provisions of subsection (a) of this section on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under and by virtue of such naturalization of such parent or spouse, regardless of whether such person is residing within or without the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship. Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization under the provisions of subsections (c) or (d) of this section, or under the provisions of section 329 (c) of this title on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful mis-



representation, shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which would have been enjoyed by such person had there not been a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization, unless such person is residing in the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization.

(g) When a person shall be convicted under section 1425 of title 18 of the United States Code of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(h) Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. In case such certificate was not originally issued by the court making such order, it shall direct the clerk of court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Attorney General of the entry of such order and of such cancellation. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

(i) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act.

(j) Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of any naturalization court, by or in

which a person has been naturalized, to correct, reopen, alter, modify, or vacate its judgment or decree naturalizing such person, during the term of such court or within the time prescribed by the rules of procedure or statutes governing the jurisdiction of the court to take such action. [66 Stat. 260]

#### **Certificates of Citizenship; Procedure**

SEC. 341. A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138; 8 U. S. C. 601), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (3), (4), (5), or (7) of section 301 (a) of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139; 8 U. S. C. 603, 605), or under the provisions of section 303 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of a petitioner for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States. [66 Stat. 263]

#### **Cancellation of Certificates Issued by the Attorney General, the Commissioner or a Deputy Commissioner; Action Not to Affect Citizenship Status**

SEC. 342. The Attorney General is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record heretofore issued or made by the Commissioner or a Deputy Commissioner or hereafter made by the Attorney General if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the docu-



ment and not the citizenship status of the person in whose name the document was issued. [66 Stat. 263]

**Documents and Copies Issued by the Attorney General**

SEC. 343. (a) A person who claims to have been naturalized in the United States under section 323 of the Nationality Act of 1940 may make application to the Attorney General for a certificate of naturalization. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen and that he has been naturalized as claimed in the application, such individual shall be furnished a certificate of naturalization by the Attorney General, but only if the applicant is at the time within the United States.

(b) If any certificate of naturalization or citizenship issued to any citizen or any declaration of intention furnished to any declarant is lost, mutilated, or destroyed, the citizen or declarant may make application to the Attorney General for a new certificate or declaration. If the Attorney General finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Attorney General before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who shall have, or may come into possession of it is hereby required to surrender it to the Attorney General.

(c) The Attorney General shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

(d) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

(e) The Attorney General is authorized to make and issue certifications of any part of the naturalization records of any court, or of any certificate of naturalization or citizenship, for use in complying with any statute, State or Federal, or in any judicial proceeding. No such certification shall be made by any clerk of court except upon order of the court. [66 Stat. 263]

**Fiscal Provisions**

SEC. 344. (a) The clerk of court shall charge, collect, and account for the following fees:

(1) For making, filing, and docketing a petition for naturalization, \$10, including the final hearing on such petition, if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by the naturalization court.

(2) For receiving and filing a declaration of intention, and issuing a duplicate thereof, \$5.

(b) The Attorney General shall charge, collect, and account for the following fees:

(1) For application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed, \$5.

(2) For application for a certificate of citizenship, \$5.

(3) For application for the issuance of a special certificate of citizenship to obtain recognition, \$5.

(4) For application for a certificate of naturalization under section 323 of the Nationality Act of 1940, or under section 343 (a) of this title, \$5.

(5) For application for a certificate of citizenship in changed name, \$5.

(6) Reasonable fees in cases where such fees have not been established by law, to cover the cost of furnishing copies, whether certified or uncertified, of any part of the records, or information from the records, of the Service. Such fees shall not exceed a maximum of 25 cents per folio of one hundred words, with a minimum fee of 50 cents for any one such service, in addition to a fee of \$1 for any official certification furnished under seal. No such fee shall be required from officers or agencies of the United States or of any State or any subdivision thereof, for such copies or information furnished for official use in connection with the official duties of such officers or agencies.

(7) Notwithstanding the preceding provisions of this subsection, no fee shall be charged or collected for an application for declaration of intention or a certificate of naturalization in lieu of a declaration or a certificate alleged to have been lost, mutilated, or destroyed, submitted by a person who was a member of the military or naval forces of the United States at any time after April 20, 1898, and before July 5, 1902; or at any time after April 5, 1917, and before November 12, 1918; or who served on the Mexican border as a member of the Regular Army or National Guard between June 1916 and April 1917; or who has served or hereafter serves in the military, air, or naval forces of the United States after September 16, 1940, and who was not at any time during such period or thereafter separated from such forces under other than honorable conditions, who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform, or who was not at any time during such period or thereafter discharged from such military, air, or naval forces on account of alienage.

(c) The clerk of any naturalization court specified in subsection (a) of section 310 (ex-

cept the courts specified in subsection (d) of this section) shall account for and pay over to the Attorney General one-half of all fees up to the sum of \$6,000, and all fees in excess of \$6,000, collected by any such clerk in naturalization proceedings in any fiscal year.

(d) The clerk of any United States district court (except in Alaska and in the District Court of the Virgin Islands of the United States and in the District Court of Guam) shall account for and pay over to the Attorney General all fees collected by any such clerk in naturalization proceedings: *Provided, however,* That the clerk of the District Court of the Virgin Islands of the United States and of the District Court of Guam shall report but shall not be required to pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings.

(e) The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such respective clerks in their quarterly accounts which they are hereby required to render to the Attorney General within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Attorney General.

(f) The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this title upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.

(g) All fees collected by the Attorney General and all fees paid over to the Attorney General by clerks of courts under the provisions of this title shall be deposited by the Attorney General in the Treasury of the United States: *Provided, however,* That all fees received from applicants residing in the Virgin Islands of the United States, and in Guam, required to be paid under subsection (b) of this section, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

(h) During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing a petition for naturalization or issuing a certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Attorney General as in the case of other reports required of clerks of courts by this title.

(i) In addition to the other fees required by this title, the petitioner for naturalization shall, upon the filing of a petition for naturalization,

deposit with and pay to the clerk of court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom such petitioner may request a subpoena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner. [66 Stat. 264]

**Mail Relating to Naturalization Transmitted Free of Postage and Registered**

SEC. 345. All mail matter of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Service by clerks of courts addressed to the Department of Justice or the Service, or any official thereof, and endorsed "Official Business", shall be transmitted free of postage and, if necessary, by registered mail without fee, and so marked. [66 Stat. 266]

**Authorization Granted for Publication and Distribution of Citizenship Textbooks from Naturalization Fees**

SEC. 346. Authorization is hereby granted for the publication and distribution of the citizenship textbook described in subsection (b) of section 332 and for the reimbursement of the appropriation of the Department of Justice upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Service for the cost of such publication and distribution, such reimbursement to be made upon statements by the Attorney General of books so published and distributed. [66 Stat. 266]

**Compilation of Naturalization Statistics and Payment for Equipment**

SEC. 347. The Attorney General is authorized and directed to prepare from the records in the custody of the Service a report upon those heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign-born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation for the enforcement of this Act by the Service. [66 Stat. 266]

**Admissibility in Evidence of Testimony as to Statements Voluntarily Made to Officers or Employees in the Course of Their Official Duties**

SEC. 348. (a) It shall be lawful and admissible as evidence in any proceedings founded under this title, or any of the penal or criminal provisions of any law relating to immigration, naturalization, or citizenship, for any officer or employee of the United States to render testimony as to any statement voluntarily made to such officer or employee in the course of the performance of the official duties

of such officer or employee by any defendant at the time or subsequent to the alleged commission of any crime or offense which may tend to show that such defendant did not have or could not have had knowledge of any matter concerning which such defendant is shown to have made affidavit, or oath, or to have been a witness pursuant to such law or laws.

(b) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 339 (a), (b), or (c), such clerk of court shall forfeit and pay to the United States the sum of \$25 in each and every case in which such violation or omission occurs and the amount of such forfeiture may be recovered by the United States in a civil action against such clerk.

(c) If any clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (d) of section 339, such clerk of court shall be liable to the United States in the sum of \$50, to be recovered in a civil action, for each and every such certificate not properly accounted for or returned. [66 Stat. 267]

#### CHAPTER 3—LOSS OF NATIONALITY

##### Loss of Nationality by Native-Born or Naturalized Citizen

SEC. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided*, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this Act, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 101 (a) (27) (E); or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

(3) entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided*,

That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or

(4) (A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(6) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(7) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(8) deserting the military, air, or naval forces of the United States in time of war, if and when he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military, air, or naval forces: *Provided*, That, notwithstanding loss of nationality or citizenship under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military, air, or naval forces in time of war or the re-enlistment or induction of such a person in time of war with permission of competent military, air, or naval authority shall be deemed to have the immediate effect of restoring such nationality or citizenship heretofore or hereafter so lost; or

(9) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(10) departing from or remaining outside of the jurisdiction of the United States in time

of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

(b) Any person who commits or performs any act specified in subsection (a) shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act. [66 Stat. 267, as amended by Act of September 3, 1954, C 1256, 68 Stat. 1146]

#### **Dual Nationals; Divestiture of Nationality**

SEC. 350. A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years unless he shall—

(1) prior to the expiration of such three-year period, take an oath of allegiance to the United States before a United States diplomatic or consular officer in a manner prescribed by the Secretary of State; and

(2) have his residence outside of the United States solely for one of the reasons set forth in paragraph (1), (2), (4), (5), (6), (7), or (8) of section 353, or paragraph (1) or (2) of section 354 of this title: *Provided, however*, That nothing contained in this section shall deprive any person of his United States nationality if his foreign residence shall begin after he shall have attained the age of sixty years and shall have had his residence in the United States for twenty-five years after having attained the age of eighteen years. [66 Stat. 269]

#### **Restrictions on Expatriation**

SEC. 351. (a) Except as provided in paragraphs (7), (8), and (9) of section 349 of this title, no national of the United States can expatriate himself, or be expatriated, under this Act while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this chapter if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

(b) A national who within six months after

attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349 (a) of this title. [66 Stat. 269]

#### **Loss of Nationality by Naturalized National**

SEC. 352. (a) A person who has become a national by naturalization shall lose his nationality by—

(1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 353 of this title, whether such residence commenced before or after the effective date of this Act;

(2) having a continuous residence for five years in any other foreign state or states, except as provided in sections 353 and 354 of this title, whether such residence commenced before or after the effective date of this Act.

(b) (1) For the purpose of paragraph (1) of subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of section 353 shall not be counted in computing quantum of residence.

(2) For the purpose of paragraph (2) of subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of sections 353 and 354 shall not be counted in computing quantum of residence. [66 Stat. 269]

#### **Section 352 Not Effective as to Certain Persons**

SEC. 353. Section 352 (a) shall have no application to a national who—

(1) has his residence abroad in the employment of the Government of the United States; or

(2) is receiving compensation from the Government of the United States and has his residence abroad on account of disability incurred in its service; or

(3) shall have had his residence in the United States for not less than twenty-five years subsequent to his naturalization and shall have attained the age of sixty years when the foreign residence is established; or

(4) had his residence abroad on October 14, 1940, and temporarily has his residence abroad, or who thereafter has gone or goes abroad and temporarily has his residence abroad, solely or principally to represent a bona fide American educational, scientific, philanthropic, commercial, financial, or business organization, having its principal office or place of business in the United States, or a bona fide religious organization having an office and representative in the United States, or an international agency of an official character in which the

United States participates, for which he receives a substantial compensation; or

(5) has his residence abroad and is prevented from returning to the United States exclusively (A) by his own ill health; or (B) by the ill health of his parent, spouse, or child who cannot be brought to the United States, whose condition requires his personal care and attendance: *Provided*, That in such case the person having his residence abroad shall, at least every six months, register at the appropriate Foreign Service office and submit evidence satisfactory to the Secretary of State that his case continues to meet the requirements of this subparagraph; or (C) by reason of the death of his parent, spouse, or child: *Provided*, That in the case of the death of such parent, spouse, or child the person having his residence abroad shall return to the United States within six months after the death of such relative; or

(6) has his residence abroad for the purpose of pursuing a full course of study of a specialized character or attending full-time an institution of learning of a grade above that of a preparatory school: *Provided*, That such residence does not exceed five years; or

(7) is the spouse or child of an American citizen, and who has his residence abroad for the purpose of being with his American citizen spouse or parent who has his residence abroad for one of the objects or causes specified in paragraph (1), (2), (3), (4), (5), or (6) of this section, or paragraph (2) of section 354 of this title; or

(8) is the spouse or child of an American national by birth who while under the age of twenty-one years had his residence in the United States for a period or periods totaling ten years, and has his residence abroad for the purpose of being with said spouse or parent; or

(9) was born in the United States or one of its outlying possessions, who originally had American nationality and who, after having lost such nationality through marriage to an alien, reacquired it; or

(10) has, by Act of Congress or by treaty, United States nationality solely by reason of former nationality and birth or residence in an area outside the continental United States: *Provided*, That subsections (b) and (c) of section 404 of the Nationality Act of 1940, as amended (8 U. S. C. 804 (b) and (c)), shall not be held to be or to have been applicable to persons defined in this paragraph. [66 Stat. 270]

**Section 352 (A) (2) Not Applicable as to Certain Persons**

Sec. 354. Section 352 (a) (2) of this title shall have no application to a national—

(1) who is a veteran of the Spanish-American War, World War I, or World War II, and the spouse, children, and dependent parents of such veteran whether such residence in the territory of a foreign state or states commenced before or after the effective date of this Act: *Provided*, That any such veteran

who upon the date of the enactment of this Act has had his residence continuously in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated for three years or more, and who has retained his United States nationality solely by reason of the provisions of section 406 (h) of the Nationality Act of 1940, shall not be subject to the provisions or requirements of section 352 (a) (1) of this title: *Provided further*, That the provisions of section 404 (c) of the Nationality Act of 1940, as amended, shall not be held to be or to have been applicable to veterans of World War II;

(2) who has established to the satisfaction of the Secretary of State, as evidenced by possession of a valid unexpired United States passport or other valid document issued by the Secretary of State, that his residence is temporarily outside of the United States for the purpose of (A) carrying on a commercial enterprise which in the opinion of the Secretary of State will directly and substantially benefit American trade or commerce; or (B) carrying on scientific research on behalf of an institution accredited by the Secretary of State and engaged in research which in the opinion of the Secretary of State is directly and substantially beneficial to the interests of the United States; or (C) engaging in such work or activities, under such unique or unusual circumstances, as may be determined by the Secretary of State to be directly and substantially beneficial to the interests of the United States;

(3) who is the widow or widower of a citizen of the United States and who has attained the age of sixty years, and who has had a residence outside of the United States and its outlying possessions for a period of not less than ten years during all of which period a marriage relationship has existed with a spouse who has had a residence outside of the United States and its outlying possessions in an occupation or capacity of the type designated in paragraphs (1), (2), (3), (4), or (5) (A) of section 353, or paragraphs (1), (2), or (4) of this section;

(4) who has attained the age of sixty years, and has had a residence outside of the United States and its outlying possessions for not less than ten years, during all of which period he has been engaged in an occupation of the type designated in paragraphs (1), (2), or (4) of section 353, or paragraph (2) of this section, and who is in bona fide retirement from such occupation; or

(5) who shall have had his residence in the United States for not less than twenty-five years subsequent to his naturalization and prior to the establishment of his foreign residence. [66 Stat. 271]

**Loss of American Nationality Through Parent's Expatriation; Not Effective Until Person Attains Age of Twenty-five Years**

Sec. 355. A person having United States nationality, who is under the age of twenty-one and whose residence is in a foreign state

with or under the legal custody of a parent who hereafter loses United States nationality under section 350 or 352 of this title, shall also lose his United States nationality if such person has or acquires the nationality of such foreign state: *Provided, That*, in such case, United States nationality shall not be lost as the result of loss of United States nationality by the parent unless and until the person attains the age of twenty-five years without having established his residence in the United States. [66 Stat. 272]

**Nationality Lost Solely from Performance of Acts or Fulfillment of Conditions**

SEC. 356. The loss of nationality under this chapter shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this chapter. [66 Stat. 272]

**Application of Treaties; Exceptions**

SEC. 357. Nothing in this title shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party and which has been ratified by the Senate upon the effective date of this title: *Provided, however*, That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention. [66 Stat. 272]

CHAPTER 4—MISCELLANEOUS

**Certificate of Diplomatic or Consular Officer of the United States as to Loss of American Nationality Under Chapter IV, Nationality Act of 1940, or Under Chapter 3 of this Title**

SEC. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. [66 Stat. 272]

**Certificate of Nationality To Be Issued by the Secretary of State for a Person Not a Naturalized Citizen of the United States for Use in Proceedings of a Foreign State**

SEC. 359. The Secretary of State is hereby authorized to issue, in his discretion and in accordance with rules and regulations prescribed by him, a certificate of nationality for

any person not a naturalized citizen of the United States who presents satisfactory evidence that he is an American national and that such certificate is needed for use in judicial or administrative proceedings in a foreign state. Such certificate shall be solely for use in the case for which it was issued and shall be transmitted by the Secretary of State through appropriate official channels to the judicial or administrative officers of the foreign state in which it is to be used. [66 Stat. 273]

**Proceedings for Declaration of United States Nationality in the Event of Denial of Rights and Privileges as National**

SEC. 360. (a) If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28, United States Code, against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any exclusion proceeding under the provisions of this or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is hereby conferred upon those courts.

(b) If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer of the United States in the foreign country in which he is residing for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a

person under sixteen years of age who was born abroad of a United States citizen parent.

(c) A person who has been issued a certificate of identity under the provisions of subsection (b), and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this Act relating to the conduct of proceedings involving aliens seeking admission to the United States. A final determination by the Attorney General that

any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise. Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this Act relating to aliens seeking admission to the United States. [66 Stat. 273]

Title IV Containing Miscellaneous Administrative  
and Fiscal Provisions and Amendments To and  
Repeals of Other Laws Is Not Included Here

## AUTHENTICATION OF RECORDS

Section 14.12, subsection 6, paragraph "e" requires that each official publication of the Code shall contain the laws of the United States relating to the authentication of records.

Pursuant to said statute the following laws of the United States are incorporated herein.

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

#### **State and Territorial Statutes and Judicial Proceedings; Full Faith and Credit**

SEC. 1738. The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

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

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

#### **State and Territorial Nonjudicial Records; Full Faith and Credit**

SEC. 1739. All nonjudicial records or books kept in any public office of any State, Terri-

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

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

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



**CONSTITUTIONS**  
**(Federal and State)**

# CONSTITUTION OF THE UNITED STATES OF AMERICA

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

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

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

ARTICLE I.

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

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

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

Representatives and direct Taxes shall be apportioned among the several States which maybe included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such

Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION. 6.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid

out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

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

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

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

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

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

To borrow Money on the credit of the United States;

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

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

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

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

To establish Post Offices and post Roads;

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

To constitute Tribunals inferior to the supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

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

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

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

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

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

No Bill of Attainder or ex post facto Law shall be passed.

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

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

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

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

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

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

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

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

## ARTICLE. II.

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

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the

State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

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

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

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

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

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that

Period any other Emolument from the United States, or any of them.

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

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

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

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

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

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

### ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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

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

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

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

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

#### ARTICLE. IV.

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

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

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall

on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

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

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

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

#### ARTICLE. V.

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

Statutory provision, ch 55

#### ARTICLE. VI.

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

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which

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

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

ARTICLE. VII.

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

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

Attest WILLIAM JACKSON G<sup>o</sup> WASHINGTON—  
Secretary President  
and deputy from Virginia

- New Hampshire* { JOHN LANGDON  
NICHOLAS GILMAN
- Massachusetts* { NATHANIEL GORHAM  
RUFUS KING
- Connecticut* { W<sup>m</sup> SAM<sup>l</sup> JOHNSON  
ROGER SHERMAN
- New York* . . . . . ALEXANDER HAMILTON
- New Jersey* { WIL: LIVINGSTON  
DAVID BREARLEY.  
W<sup>m</sup> PATERSON.  
JONA: DAYTON.
- Pennsylvania* { B FRANKLIN  
THOMAS MIFFLIN  
ROB<sup>t</sup> MORRIS  
GEO. CLYMER  
THO<sup>s</sup> FITZSIMONS  
JARED INGERSOLL  
JAMES WILSON  
GOUV MORRIS
- Delaware* { GEO: READ  
GUNNING BEDFORD jun  
JOHN DICKINSON  
RICHARD BASSETT  
JACO: BROOM
- Maryland* { JAMES MCHENRY  
DAN OF S<sup>t</sup> THO<sup>s</sup> JENIFER  
DAN<sup>l</sup> CARROLL
- Virginia* { JOHN BLAIR—  
JAMES MADISON JR.
- North Carolina* { W<sup>m</sup> BLOUNT  
RICH<sup>d</sup> DOBBS SPAIGHT.  
HU WILLIAMSON

- South Carolina* { J. RUTLEDGE  
CHARLES COTESWORTH PINCKNEY  
CHARLES PINCKNEY  
PIERCE BUTLER.
- Georgia* { WILLIAM FEW  
ABR BALDWIN

In Convention Monday, September 17th 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, M<sup>r</sup> Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, Resolved,

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

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

By the Unanimous Order of the Convention.  
G<sup>o</sup> WASHINGTON Presid<sup>t</sup>.  
W. JACKSON Secretary.

AMENDMENTS TO THE CONSTITUTION.

AMENDMENT 1.

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



## AMENDMENT 2.

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

## AMENDMENT 3.

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

## AMENDMENT 4.

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

## AMENDMENT 5.

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

## AMENDMENT 6.

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

## AMENDMENT 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## AMENDMENT 8.

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

## AMENDMENT 9.

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

## AMENDMENT 10.

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

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

## AMENDMENT 11.

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

The above amendment was submitted by congress to the legislatures of the several states on March 5, 1794, and was, in a message of the president to congress January 8, 1798, declared to have been duly ratified by the legislatures of three-fourths of the states.

## AMENDMENT 12.

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

the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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

#### AMENDMENT 13.

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

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

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

#### AMENDMENT 14.

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

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the ene-

mies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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

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

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

#### AMENDMENT 15.

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

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

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

#### AMENDMENT 16.

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

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

#### AMENDMENT 17.

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

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

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

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

AMENDMENT 18.

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

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

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

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

Repealed by amendment 21, December 5, 1933.

AMENDMENT 19.

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

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

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

AMENDMENT 20.

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

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

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

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

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

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

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

AMENDMENT 21.

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

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

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

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

AMENDMENT 22.

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

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

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

# CONSTITUTION OF THE STATE OF IOWA

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

## PREAMBLE.

Boundaries.

## ARTICLE I.—BILL OF RIGHTS.

- SEC. 1. Rights of persons.  
2. Political power.  
3. Religion.  
4. Religious test—witnesses.  
5. Dueling.  
6. Laws uniform.  
7. Liberty of speech and press.  
8. Personal security—searches and seizures.  
9. Right of trial by jury—due process of law.  
10. Rights of persons accused.  
11. When indictment necessary.  
12. Twice tried—bail.  
13. Habeas corpus.  
14. Military.  
15. Quartering soldiers.  
16. Treason.  
17. Bail—punishments.  
18. Eminent domain.  
19. Imprisonment for debt.  
20. Right of assemblage—petition.  
21. Attainder—ex post facto law—obligation of contract.  
22. Resident aliens.  
23. Slavery—penal servitude.  
24. Agricultural leases.  
25. Rights reserved.

## ARTICLE II.—RIGHT OF SUFFRAGE.

- SEC. 1. Electors.  
2. Privileged from arrest.  
3. From military duty.  
4. Persons in military service.  
5. Disqualified persons.  
6. Ballot.  
7. General election.

## ARTICLE III.—OF THE DISTRIBUTION OF POWERS.

SEC. 1. Departments of government.

### LEGISLATIVE DEPARTMENT.

- SEC. 1. General assembly.  
2. Sessions.  
3. Representatives.  
4. Qualifications.  
5. Senators—qualifications.  
6. Number and classification.  
7. Officers—elections determined.  
8. Quorum.

9. Authority of the houses.  
10. Protest—record of vote.  
11. Privileged from arrest.  
12. Vacancies.  
13. Doors open.  
14. Adjournments.  
15. Bills.  
16. Executive approval—veto.  
17. Passage of bills.  
18. Receipts and expenditures.  
19. Impeachment.  
20. Officers subject to impeachment—judgment.  
21. Members not appointed to office.  
22. Disqualification.  
23. Failure to account.  
24. Appropriations.  
25. Compensation of members.  
26. Time laws to take effect.  
27. Divorce.  
28. Lotteries.  
29. Acts—one subject—expressed in title.  
30. Local or special laws—general and uniform—boundaries of counties.  
31. Extra compensation—payment of claims.  
32. Oath of members.  
33. Census. [Repealed]  
34. Senators—number—method of apportionment. [Repealed]  
35. Senators—representatives—number—apportionment—districts. [Repealed]  
36. Ratio of representation. [Repealed]  
37. Districts.  
38. Elections by general assembly.

## ARTICLE IV.—EXECUTIVE DEPARTMENT.

- SEC. 1. Governor.  
2. Election and term.  
3. Lieutenant governor—returns of elections.  
4. Election by general assembly.  
5. Contested elections.  
6. Eligibility.  
7. Commander in chief.  
8. Duties of governor.  
9. Execution of laws.  
10. Vacancies.  
11. Convening general assembly.  
12. Message.  
13. Adjournment.  
14. Disqualification.  
15. Term—compensation of lieutenant governor.  
16. Pardons—reprieves—commutations.

17. Lieutenant governor to act as governor.
18. President of senate.
19. Vacancies.
20. Seal of state.
21. Grants and commissions.
22. Secretary—auditor—treasurer.

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- SEC. 1. Control—management.
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  13. Submission of constitution.
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  15. Mills county.
  16. General elections — even-numbered years.

**AMENDMENTS OF 1868.**

1. Qualifications of electors.
2. Census.
3. Senators—apportionment.
4. Senators — representatives — apportionment.
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**AMENDMENT OF 1880.**

Representatives—qualifications.

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[Nullified]

## AMENDMENTS OF 1884.

1. General election. [Repealed]
2. Judicial districts.
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## AMENDMENTS OF 1904.

1. Biennial elections. [Superseded]
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Ratio and apportionment.

## AMENDMENT OF 1908.

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## AMENDMENT OF 1916.

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

**Boundaries.** Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri—as established by the constitution of that State—adopted June 12th. 1820—crosses the said middle of the main channel

## AMENDMENT OF 1926.

Legislative department.

## AMENDMENT OF 1928.

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## AMENDMENT OF 1936.

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## AMENDMENT OF 1942.

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1. Succession of governor.
2. Vacancy, governor and lieutenant governor.

of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

## ARTICLE I.

## BILL OF RIGHTS.

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

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

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

**Religious test—witnesses.** SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privi-

leges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

Referred to in §735.3 of the Code.

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

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

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

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

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

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

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

\*As to indictment and the number of grand jurors, see amendment 3 of 1884.

For civil jurisdiction of Justice of Peace, see Art. XI, §1.

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

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

**Military.** SEC. 14. The military shall be subordinate to the civil power. No standing

army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

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

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

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

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

\*See amendment of 1908.

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

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

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

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

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

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

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

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

## ARTICLE II.

## RIGHT OF SUFFRAGE.

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

\*The above section was amended in 1868 by striking the word "white" from the first line thereof. See first amendment of 1868.

For qualifications of electors, see also amendment 19, U. S. constitution.

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

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

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

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

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

Sec. 7. For provisions relative to general election, see amendment of 1916; see also Code, §39.1.

## ARTICLE III.

## OF THE DISTRIBUTION OF POWERS.

**Departments of government.** SECTION 1. The powers of the government of Iowa shall be divided into three separate departments—the Legislative, the Executive, and the Judicial: and no person charged with the exercise of

powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

## LEGISLATIVE DEPARTMENT.

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

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

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

\*For provisions relative to the time of holding the general election, see amendment of 1916; see also Code, §39.1.

**Qualifications.** SEC. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a [free white] [male]\* citizen of the United States, and shall have been an inhabitant of this State one year next preceding his

election, and at the time of his election shall have had an actual residence of sixty days in the County, or District he may have been chosen to represent.

\*For amendment striking "free white" and "male", see amendments of 1880, 1926.

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

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

See amendment No. 2 of 1904, also amendment of 1928.

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

**Quorum.** SEC. 8. A majority of each house shall constitute a quorum to transact business;



but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

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

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

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

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

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

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

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

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

such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

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

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

Referred to in §14.10 of the Code.

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

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

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

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

**Failure to account.** SEC. 23. No person who may hereafter be a collector or holder of public monies, shall have a seat in either House of the General Assembly, or be eligible to hold any

office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

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

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

Statutory provisions, Code, §§2.11 to 2.15.

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

Supplementary provisions, §3.7 et seq. of the Code.

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

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

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

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

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

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

For changing the names of persons;

For the incorporation of cities and towns;

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

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any

county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

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

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

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

\*The above section was amended in 1868 by striking the word "white" therefrom. See second amendment of 1868.

\*\*This section repealed by amendment of 1936.

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

\*The above section has been amended three times. In 1868 it was amended by striking the word "white" therefrom. See third amendment of 1868.

\*\*In 1904 this section was repealed and a substitute adopted in lieu thereof. See amendment No. 2 of 1904.

In 1928 it was amended by adding a limiting clause. See amendment of 1928.

**Senators—representatives—number—apportionment—districts.** SEC. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of [white]\* inhabitants in each, upon ratios to be

fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.\*\*

\*The above section has been amended twice. In 1868 it was amended by striking the word "white" therefrom. See fourth amendment of 1868.

\*\*In 1904 this section was repealed and a substitute adopted in lieu thereof. See amendment No. 2 of 1904.

**Ratio of representation.** SEC. 36. At its first session under this Constitution, and at every subsequent regular session, the General As-

sembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.\*

\*The above section was repealed in 1904 and a substitute adopted in lieu thereof. See amendment No. 2 of 1904.

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

See amendment No. 2 of 1904, section 35.

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

## ARTICLE IV.

### EXECUTIVE DEPARTMENT

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

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

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

For statutory provisions, see Code, §50.35.

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

See amendment No. 1 of 1952.

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

For statutory provisions, see Code, §§58.1 to 58.7, inclusive.

**Eligibility.** SEC. 6. No person shall be eligible to the office of Governor, or Lieutenant

Governor, who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

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

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

Duty as to state accounts, §79.8.

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

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

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

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

**Adjournment.** SEC. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly

to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

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

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

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

**Lieutenant governor to act as governor.** SEC. 17. In case of the death, impeachment,

resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

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

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

\*The above section was repealed in 1952 and a substitute adopted in lieu thereof. See amendment No. 2 of 1952.

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

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

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

## ARTICLE V.

### JUDICIAL DEPARTMENT.

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

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

See sec. 10 following; also §684.1 of the Code.

**Election of judges — term.** SEC. 3. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their Court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected, shall be classified so that one Judge shall go out of office

every two years; and the Judge holding the shortest term of office under such classification, shall be Chief Justice of the Court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they shall have been elected.

**Jurisdiction of supreme court.** SEC. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall

have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.

*Jurisdiction, Rules of Civil Procedure, number 331.*

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

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

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

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

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

*For statutory provisions relative to salary of judges of the supreme court, see §684.17 and the biennial salary act.*

**Judicial districts.** SEC. 10. The State shall be divided into eleven Judicial Districts; and after the year Eighteen hundred and sixty, the General Assembly may re-organize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District, or one Judge of either Court, at any one session; and no re-organization of the districts, or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time.

*See amendment 2 of 1884; also §684.1 of the Code.*

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

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

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

*\*The above section was repealed in 1884 and a substitute adopted in lieu thereof. See amendment 4 of 1884.*

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

*For provisions relative to the grand jury, see amendment 3 of 1884.*

## ARTICLE VI.

### MILITIA.

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

*\*The above section was amended in 1868 by striking the word "white" therefrom. See fifth amendment of 1868.*

**Exemption.** SEC. 2. No person or persons conscientiously scrupulous of bearing arms

shall be compelled to do military duty in time of peace: Provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

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

## ARTICLE VII.

## STATE DEBTS.

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

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

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

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

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

For statutory provisions, see Code §§6.2, 6.4.

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

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

Sec. 8. See amendment of 1942.

## ARTICLE VIII.

## CORPORATIONS.

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

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

**State not to be a stockholder.** SEC. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless in-

curring in time of war for the benefit of the State.

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

**Banking associations.** SEC. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months

after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

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

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

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

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

for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

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

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

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

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

Analogous provision, §491.39 of the Code.

## ARTICLE IX.

### EDUCATION AND SCHOOL LANDS.

#### 1st. Education.\*

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

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

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

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

**First session.** SEC. 4. The first session of the Board of Education shall be held at the

Seat of Government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.

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

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

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

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

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

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

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

**Common schools.** SEC. 12. The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such school shall be

organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

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

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

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

\*The board of education was abolished in 1864 by 10 GA. ch 52, §1. For statutory provisions, see Code, §262.1 et seq.

## 2nd. School Funds and School Lands.

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

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

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

shall be inviolably appropriated to the support of Common schools throughout the State.

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

Similar constitutional provision, Art. XII, §4. Analogous statute, §666.3 of the Code.

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



soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

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

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

## ARTICLE X.

### AMENDMENTS TO THE CONSTITUTION.

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

amendment or amendments shall become a part of the Constitution of this State.

For statutory provisions, see Code, §§6.1, 6.3 to 6.7, inclusive, 49.43 to 49.50, inclusive.

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

**Convention.** SEC. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

## ARTICLE XI.

### MISCELLANEOUS.

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

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

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

county tax lists, previous to the incurring of such indebtedness.

Referred to in §384.3 of the Code.  
Statutory limitation, §§407.1, 407.2 of the Code.

**Boundaries of state.** SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.

**Oath of office.** SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

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

**Land grants located.** SEC. 7. The General Assembly shall not locate any of the public lands, which have been, or may be granted

by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

**Seat of government established—state university.** SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University, at Iowa City, in the County of Johnson.

## ARTICLE XII.

### SCHEDULE.

**Supreme law—constitutionality of acts.** SECTION 1. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect

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

**Proceedings not affected.** SEC. 3. All indictments, prosecutions, suits, pleas, complaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offences, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they would have been, had not this Constitution been made.

**Fines inure to the state.** SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.

Similar constitutional provision, Art. IX (2nd div.), §4. Analogous statute, §666.3 of the Code.

**Bonds in force.** SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

**First election for governor and lieutenant governor.** SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant Governor. There shall also be elected at such election, the successors of such State Senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December One thousand eight hundred and fifty six.

**First election of officers.** SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, members of Congress and such State officers as shall be elected at the April election, in the year One thousand eight hundred and fifty seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and fifty six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided*, That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty eight.

**For judges of supreme court.** SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty nine.

**General assembly—first session.** SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

**Senators.** SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty nine, at which time their successors shall be elected as may be prescribed by law.

**Offices not vacated.** SEC. 11. Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire: but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

**Judicial districts.** SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly, in accordance with the provisions of this Constitution.

**Submission of constitution.** SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution — Yes." Those against the Constitution, "New Constitution—No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and

shall take effect from and after the publication of said proclamation.

**Proposition to strike out the word "white".** SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "White" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in manner following—Namely:

A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; and those given for the adoption of such proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to a majority of those cast for and against this Constitution, then said word "White" shall be stricken from said Article and be no part thereof.

**Mills county.** SEC. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the sixth Judicial District of this State.

Sec. 16. For provisions relative to biennial election, see amendment No. 1 of 1904.

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty seven, and of the Independence of the United States of America, the eighty first.

In testimony whereof we have hereunto subscribed our names.

TIMOTHY DAY  
S. G. WINCHESTER  
DAVID BUNKER  
D. P. PALMER  
GEO. W. ELLS  
J. C. HALL  
JOHN. H. PETERS  
WM. A. WARREN  
H. W. GRAY  
ROBT. GOWER  
H. D. GIBSON  
THOMAS SEELY

A. H. MARVIN  
J. H. EMERSON  
R. L. B. CLARKE  
JAMES A. YOUNG  
D. H. SOLOMON  
M. W. ROBINSON  
LEWIS TODHUNTER  
JOHN EDWARDS  
J. C. TRAER  
JAMES F. WILSON  
AMOS HARRIS  
JNO T. CLARK

S AYERS  
HARVEY J. SKIFF  
J. A. PARVIN  
W. PENN. CLARKE  
JEREMIAH HOLLINGSWORTH  
WM. PATTERSON  
D. W. PRICE.  
ALPHEUS SCOTT  
GEORGE GILLASPY  
EDWARD JOHNSTONE  
AYLETT R. COTTON.

Attest:

TH: J. SAUNDERS, *Secretary.*  
E. N. BATES *Asst. Secretary.*

FRANCIS SPRINGER *President.*

PROCLAMATION.

Whereas an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A.D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty-one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor

of said State, by virtue of the authority conferred upon me, hereby declare the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L.S. Done at Iowa City this Third day of September A.D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh.

JAMES W. GRIMES.

By the Governor,  
ELIJAH SELLS,  
*Secretary of State.*

AMENDMENTS TO THE CONSTITUTION

AMENDMENTS OF 1868

- 1st Strike the word "white," from Section 1 of Article 2 thereof;
- 2d Strike the word "white," from Section 33 of Article 3, thereof;
- 3d Strike the word "white," from Section 34 of Article 3 thereof;
- 4th Strike the word "white," from Section 35 of Article 3 thereof;
- 5th Strike the word "white," from Section 1 of Article 6, thereof;

AMENDMENT OF 1880

Strike out the words "free white" from the third line of section four (4) of article three (3) of said constitution, relating to the legislative department.

AMENDMENT OF 1882

Add as Section 26 to Article I.\* of said constitution the following:

SECTION 26 No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof.\*

\*On April 21, 1883, the supreme court, in the case of Koehler v. Hill, 60 Iowa 543, held that, owing to certain irregularities, this amendment, as submitted to and adopted by the people, did not become a part of the constitution.

For prohibition of intoxicating liquors, see also amendment 18, U. S. Constitution, p. lxxviii, now repealed by amendment 21.

AMENDMENTS OF 1884

Amendment 1. The general election for State, District County and Township officers shall be held on the Tuesday next after the first Monday in November.\*

\*The above amendment, published as section 7 of article II, was repealed by the amendment of 1916.

Amendment 2. At any regular session of the General Assembly the State may be divided into the necessary Judicial Districts for District Court purposes, or the said Districts may be reorganized and the number of the Districts and the Judges of said Courts increased or diminished; but no re-organization of the Districts or diminution of the Judges shall have the effect of removing a Judge from office.

See section 10 of article 5.

Amendment 3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.

Amendment 4. That Section 13 of Article 5 of the Constitution be stricken therefrom, and the following adopted as such Section.

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of

the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.

AMENDMENTS OF 1904

AMENDMENT NO. 1

Add as Section 16, to Article 12 of the constitution, the following:

SEC. 16. The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.\*

Practically the same amendment as the above was ratified in 1900, but the supreme court, in the case of State ex rel. Bailey v. Brookhart, 113 Iowa 250, held that said amendment was not proposed and adopted as required by the constitution, and did not become a part thereof.

\*The above amendment of 1904 has apparently been superseded by the amendment of 1916.

AMENDMENT NO. 2

That Sections thirty-four (34) thirty-five (35) and thirty-six (36) of Article three (3) of the constitution of the State of Iowa, be repealed and the following be adopted in lieu thereof.

SECTION 34. The Senate shall be composed of fifty members to be elected from the several

senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.\*

\*See amendment of 1928; also Art. III, sec. 6.

SECTION 35. The House of Representatives shall consist of not more than one hundred and eight members. The Ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

SECTION 36. The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as herein before required.

AMENDMENT OF 1908

That there be added to section eighteen (18) of article one (1) of the constitution of the State of Iowa, the following:

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

AMENDMENT OF 1916

To repeal section seven (7) of article two (2) of the constitution of Iowa and to adopt in lieu thereof the following, to-wit:

"The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election

shall be held at such time as the general assembly may by law provide."

The above amendment repealed the first amendment of 1884, which was published as section 7 of Article II. See also amendment No. 1 of 1904.

For statutory provisions, see Code, §39.1.

AMENDMENT OF 1926

Strike out the word "male" from Section four (4) of article three (3) of said constitution, relating to the legislative department.

AMENDMENT OF 1928

That the period (.) at the end of said section thirty-four (34) of article three (3) of the constitution of the state of Iowa be stricken and the following inserted:

" , but no county shall be entitled to more than one (1) senator."\*

See Art. III, sec. 6. \*Applicable to amendment No. 2 of 1904.

AMENDMENT OF 1936

Amend article three (III) by repealing section thirty-three (33) relating to the state census.

AMENDMENT OF 1942

That Article Seven (VII) of the Constitution of the State of Iowa be amended by adding thereto, as Section eight (8) thereof, the following:

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

AMENDMENTS OF 1952

Amendment 1. Section four (4) of Article IV of the Constitution of Iowa is amended by adding thereto the following: "If, upon the completion of the canvass of votes for Governor and Lieutenant Governor by the General Assembly, it shall appear that the person who received the highest number of votes for Governor has since died, resigned, is unable to qualify, fails to qualify, or for any other reason is unable to assume the duties of the office of Governor for the ensuing term, the powers and duties of the office shall devolve upon the person who received the highest number of votes for Lieutenant Governor until the disability is removed and, upon inauguration, he shall assume the powers and duties of Governor."

Amendment 2. Section nineteen (19) of Article IV of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof: "Sec. 19. If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the

President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President pro tempore of the Senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of Governor the same shall devolve upon the Speaker of the House of Representatives; and if the Speaker of the House of Representatives, for any of the above causes, shall be incapable of per-

forming the duties of the office of Governor, the Justices of the Supreme Court shall convene the General Assembly by proclamation and the General Assembly shall organize by the election of a President pro tempore by the Senate and a Speaker of the House of Representatives. The General Assembly shall thereupon immediately proceed to the election of a Governor and Lieutenant Governor in joint convention."

# IOWA-MISSOURI BOUNDARY COMPROMISE

## 48TH GENERAL ASSEMBLY

State of Iowa

CHAPTER 304

H. F. 651

AN ACT to provide for the relinquishment of jurisdiction over certain lands lying in Lee County, State of Iowa, to the State of Missouri.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. The Des Moines river in its present course, as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa.

SEC. 2. The State of Iowa hereby relinquishes all jurisdiction to all lands in Lee County lying south and west of the Des Moines River, being south and east of the east and west boundary line between the States of Iowa and Missouri.

SEC. 3. The title of record in Missouri to any lands, the jurisdiction of which is relinquished to the State of Iowa, shall be accepted as the record title by the courts of Iowa.

SEC. 4. Nothing in this act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Missouri to the State of Iowa. Provided further that any matter now in controversy and affecting the title

to the land being relinquished by the State of Missouri to the State of Iowa shall be continued in the courts of the State of Missouri until the final determination thereof and such final determination shall be accepted by the courts of the State of Iowa with full force and effect.

SEC. 5. The land being relinquished to the State of Iowa, upon which taxes have been lawfully imposed in the State of Missouri during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Iowa until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the lands herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar Act relinquishing and waiving to the State of Iowa all claim of jurisdiction over land lying north and east of the Des Moines River is passed by the legislature of the State of Missouri at its present session.

SEC. 8. (Effective on publication, April 23, 1939.)

## 60TH GENERAL ASSEMBLY

State of Missouri

Laws 1939, p. 475

S. B. 350

AN ACT authorizing the compromising and settling of a controversy between the State of Missouri and the State of Iowa over a part of the boundary between said states caused by a shifting of the channel of the Des Moines River and providing for the re-affirmance and re-establishing of said boundary line as being the Des Moines River, as heretofore established by Congress, and providing for the relinquishment of all claim of jurisdiction by Missouri to all lands lying north and east of the Des Moines River, and providing that the title of record in Iowa to any lands, the jurisdiction of which is relinquished by the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri, and providing further for the disposition of pending litigation, and providing for the jurisdiction of the courts

over said land, the imposition of taxes thereon, and the effective date of this Act, and providing that said Act shall be void and of no effect unless a similar Act is passed by the Legislature of the State of Iowa, at its present session, relinquishing all claim of jurisdiction over all land lying south and west of the Des Moines River, with an emergency clause, and declaring this to be a revision bill, and also a subject matter recommended by the Governor in a special message to the General Assembly.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

SECTION 1. The Des Moines River shall be the true boundary line as between Missouri and Iowa.

SEC. 2. The State of Missouri hereby relinquishes all jurisdiction to all lands lying north and east of the Des Moines River.

SEC. 3. The title of record in Iowa to any lands, the jurisdiction of which is relinquished to the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri.

SEC. 4. Nothing in this Act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Iowa to the State of Missouri. Provided further that any matter now in controversy and affecting the title to the land being relinquished by the State of Iowa to the State of Missouri shall be continued in the courts of the State of Iowa until the final determination thereof, and such final determination shall be accepted by the Courts of the State of Missouri with full force and effect.

SEC. 5. The land being relinquished to the State of Missouri, upon which taxes have been lawfully imposed in the State of Iowa during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Missouri until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the land herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar act relinquishing and waiving to the State of Missouri, all claim of jurisdiction over land in Lee County, Iowa, lying south and west of the Des Moines River is passed by the Legislature of the State of Iowa at its present session.

SEC. 8. A controversy existing between the Courts of the State of Missouri and the Courts of the State of Iowa as to which has jurisdiction over certain land abutting upon the Des Moines River and between the County of Lee in Iowa and the County of Clark in Missouri as to the right to levy and collect taxes on said land and so that the public peace may be preserved, creates and there is an emergency which exists within the meaning of the Constitution and this Act shall take effect and be in force from and after its passage and approval.

SEC. 9. By reason of revising the Statutes relating to boundaries of counties and settling a dispute as to the boundary between this state and the State of Iowa which is the northern boundary of Clark County, the General Assembly hereby declares this bill to be a revision bill within the meaning of Section 41, Article IV, of the Constitution of Missouri; and also, this bill has in pursuance of Section 41, Article IV, of the Constitution of Missouri been recommended by the Governor, by special message, for the consideration of the General Assembly.

[House committee substitute for Senate Bill No. 350. Effective June 16, 1939.]

### ACT OF CONGRESS

Approved August 10, 1939

53 U. S. Public Laws 1345

WHEREAS, under date of December 13, 1937, the State of Missouri commenced suit against the State of Iowa in the Supreme Court of the United States for the purpose of determining the boundary line between the County of Clark in the State of Missouri and the County of Lee in the State of Iowa; and

WHEREAS, by stipulation filed in the said Supreme Court of the United States, it was proposed that the legislature of Iowa and the legislature of Missouri pass like bills, the State of Missouri waiving and relinquishing to the State of Iowa all jurisdiction to lands lying North and East of the Des Moines River, now in the County of Clark, State of Missouri, and the State of Iowa waiving and relinquishing to the State of Missouri all lands lying South and West of the Des Moines River, and now in the County of Lee, State of Iowa, and that said Acts be submitted to the Congress of the United States for its approval; and

WHEREAS, in accordance with said stipulation, the Forty-eighth General Assembly of the State of Iowa did at such session pass such Act, this Act being known and designated as House File No. 651, Acts of the Forty-eighth General Assembly of Iowa, bearing the signatures of John

R. Irwin, Speaker of the House; Bourke B. Hickenlooper, President of the Senate; and the signature and approval of George A. Wilson, Governor of Iowa, under date of April 18th, 1939, said Act being thereupon properly published and becoming law under date of April 23, 1939; and

WHEREAS, said Act provided in substance that the Des Moines River in its present course as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa; that the State of Iowa relinquishes all jurisdiction to all lands in Lee County lying South and West of the Des Moines River, being South and East of the East and West boundary line between the States of Iowa and Missouri, and that the effective date of the relinquishment of jurisdiction shall be as of midnight of the 31st day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, in accordance with stipulation as aforesaid, the Sixtieth General Assembly of the State of Missouri did, at such session, pass a like Act, this Act being known and designated



as Senate Bill 350 of the Acts of the Sixtieth General Assembly of Missouri and bearing the signature and approval of Lloyd C. Stark, Governor of Missouri, under date of June 16, 1939; and

WHEREAS, said Act provides in substance that the Des Moines River shall be the true boundary line as between Missouri and Iowa; that the State of Missouri relinquishes all jurisdiction to all lands lying North and East of the Des Moines River and that the effective date of the relinquishment of jurisdiction over the land herein described shall be as of midnight of the 31st day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, the said Acts of the States of Iowa and Missouri constitute an agreement between said States establishing a boundary between said States; Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress is hereby given to such agreement and to the establishment of such boundary; and said Acts of the States of Iowa and Missouri are hereby approved. [Pub. Res. No. 47, 76th Congress.]*

Approved, August 10, 1939.

## IOWA-NEBRASKA BOUNDARY COMPROMISE

### 50TH GENERAL ASSEMBLY

#### State of Iowa

#### CHAPTER 306

#### H. F. 437

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westwardly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency.

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

SECTION 1. On and after the enactment of a similar and reciprocal law by the State of Nebraska, and the approval and consent of the Congress of the United States of America, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E.

¼ of the N. W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S. W. ¼ of the N. W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. ¼ of the S. W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. ¼ of the N. E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. ¼ of the N. W. ¼ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940,

and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the secretary of state of the State of Iowa and with the secretary of state of the State of Nebraska.

SEC. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

SEC. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

SEC. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right

of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided*, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the enactment of a similar and reciprocal law by the State of Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America. Said similar and reciprocal law shall contain provisions identical with those contained herein for the cession to Iowa of all lands now in Nebraska but lying easterly of said boundary line described in section 1 of this act and contiguous to lands in Iowa and also contain provisions identical with those contained in sections 3 and 4 of this act but applying to lands ceded to Nebraska.

SEC. 6. (Effective on publication, April 21, 1943.)

## 56th GENERAL ASSEMBLY

### State of Nebraska

#### CHAPTER 130

#### L. B. 438

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency.

*Be it enacted by the people of the state of Nebraska,*

SECTION 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the Legislature of the State of Iowa, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point

on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. ¼ of the N. W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S. W. ¼ of the N. W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. ¼ of the S. W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. ¼ of the N. E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S. E. corner of said section, and

running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

SEC. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

SEC. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any

pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

SEC. 4. Taxes for the current year may be levied and collected by Iowa, or its authorized governmental subdivisions and agencies, on lands ceded to Nebraska and any liens or other rights accrued or accruing including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section; Provided, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the approval and consent of the Congress of the United States of America to the compact effected by this act and the similar and reciprocal act enacted by the 1943 Session of the Legislature of Iowa as House File 437 of that body.

SEC. 6. That Chapter 121, Session Laws of Nebraska, 1941, is repealed.

SEC. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Approved May 7, 1943.

## ACT OF CONGRESS

Approved July 12, 1943

U. S. PUBLIC LAWS

[PUBLIC LAW 134—78TH CONGRESS]

[CHAPTER 220—1ST SESSION]

[H. R. 2794]

AN ACT to approve and consent to the compact entered into by Iowa and Nebraska establishing the boundary between Iowa and Nebraska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the approval and consent of the Congress is hereby given to the compact effected by an Act enacted by the Legislature of the State of Iowa entitled "An Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United

States of America and to declare an emergency", approved April 15, 1943 (House File 437, Acts of the Fiftieth General Assembly), and the similar and reciprocal Act enacted by the State of Nebraska entitled "A bill for an Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this Act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this Act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency", approved May 7, 1943 (Legislative bill 438, Fifty-sixth session of the Nebraska State Legislature).

Approved July 12, 1943.

# ADMISSION OF IOWA INTO THE UNION

## AN ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[Approved March 3, 1845.]

WHEREAS, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. *And be it further enacted,* That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into

the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

SEC. 4. *And be it further enacted,* That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa city the first day of November, anno Domini eighteen hundred and forty-four, or by the legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress, the admission of the said State of Iowa into the Union, on an equal footing in all respects whatsoever with the original States, shall be considered as complete.

SEC. 5. *And be it further enacted,* That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. *And be it further enacted,* That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted,* That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided,* That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States.

## AN ACT SUPPLEMENTAL TO THE ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[Approved March 3, 1845.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

SEC. 2. *And be it further enacted,* That the said State shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep the records of the said court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. *And be it further enacted,* That there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. *And be it further enacted,* That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services: the said payments to be made quarterly, at the treasury of the United States.

SEC. 5. *And be it further enacted,* That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. *And be it further enacted,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa city, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the

said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided,* That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided, also,* That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided,* That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the con-

sent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher

than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

#### AN ACT TO DEFINE THE BOUNDARIES OF THE STATE OF IOWA

[Approved, August 4, 1846]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following shall be, and they are hereby, declared to be the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," viz. Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri

River; thence, up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning.

SEC. 2. \* \* \* \* \*

SEC. 3. \* \* \* \* \*

SEC. 4. *And be it further enacted,* That so much of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," relating to the said State of Iowa, as is inconsistent with the provisions of this act, be and the same is hereby repealed. [9 Stat. L. 52]

#### AN ACT FOR THE ADMISSION OF THE STATE OF IOWA INTO THE UNION

[Approved December 28, 1846.]

WHEREAS, the people of the Territory of Iowa did, on the eighteenth day of May, anno Domini eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government—which constitution is republican in its character and features—and said convention has asked admission of the said Territory into the Union as a State, on an equal footing with the original States, in obedience to "An Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred forty-five [5 Stat. L. 742, 743.], and "An Act to define the Boundaries of the State of Iowa, and to repeal so much of the Act of the third of March, one thousand eight hundred and forty-five as relates to the Boundaries of Iowa," which said last act was approved August fourth, anno

Domini eighteen hundred and forty-six [9 Stat. L. 52.]: Therefore—

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That all the provisions of "An Act supplemental to the Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five [5 Stat. L. 788-790.], be, and the same are hereby declared to continue and remain in full force as applicable to the State of Iowa, as hereby admitted and received into the Union.

Approved, December 28, 1846. [9 Stat. L. 117.]

AN ACT AND ORDINANCE ACCEPTING THE PROPOSITIONS MADE BY  
CONGRESS ON THE ADMISSION OF IOWA INTO THE UNION AS A STATE.

[Approved January 15, 1849.]

SECTION 1. *Be it enacted and ordained by the General Assembly of the State of Iowa,* That the propositions to the State of Iowa on her admission into the Union, made by the act of Congress, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to Congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a Constitution for said State, and which were rejected by Congress: *Provided,* The General Assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the Constitution of Iowa, to appropriate the five per cent. of the net proceeds of sales of all public lands lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all expenses incident to the same, to the support of common schools.

SECTION 2. *And be it further enacted and ordained,* as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable with-

out the consent of the United States, that the State of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, County, Township, or other purposes, for the term of three years from and after the dates of the patents respectively.

SECTION 3. It is hereby made the duty of the Secretary of State, after the taking effect of this act, to forward one copy of the same to each of our Senators and Representatives in Congress, who are hereby required to procure the consent of Congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SECTION 4. This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.

**CODE OF IOWA**  
**Chapters 1 to 534, inclusive**



# THE CODE OF IOWA

## 1958

AS AUTHORIZED BY CHAPTER FOURTEEN HEREOF

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### TITLE I

#### SOVEREIGNTY AND JURISDICTION OF THE STATE, AND THE LEGISLATIVE DEPARTMENT

##### CHAPTER 1

###### SOVEREIGNTY AND JURISDICTION OF THE STATE

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|--|---------------------------------------|
| 1.1 State boundaries.                      | 1.7 Legislative grant.                |
| 1.2 Sovereignty.                           | 1.8 Applicability of statute.         |
| 1.3 Concurrent jurisdiction.               | 1.9 National forests.                 |
| 1.4 Acquisition of lands by United States. | 1.10 Offenses.                        |
| 1.5 Federal fish and game refuge.          | 1.11 Effigy Mounds National Monument. |
| 1.6 Conditions.                            |                                       |

**1.1 State boundaries.** The boundaries of the state are as defined in the preamble of the constitution. [C51,§1; R60,§1; C73,§1; C97, §1; C24, 27, 31, 35, 39,§1; C46, 50, 54,§1.1]

Referred to in §1.2

**1.2 Sovereignty.** The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government. [C51,§2; R60,§2; C73,§2; C97,§2; C24, 27, 31, 35, 39,§2; C46, 50, 54,§1.2]

**1.3 Concurrent jurisdiction.** The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state. [C51,§3; R60,§3; C73,§3; C97,§3; C24, 27, 31, 35, 39,§3; C46, 50, 54,§1.3]

See act of congress, Aug. 4, 1846 [9 Stat. L. p. 52]

**1.4 Acquisition of lands by United States.** The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States

of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States. [R60,§§2197, 2198; C73,§4; C97, §4; S13,§§4-a-4-d, 2024-c; C24, 27, 31, 35, 39,§4; C46, 50, 54,§1.4]

Referred to in §1.8

**1.5 Federal fish and game refuge.** The state of Iowa hereby consents that the government of the United States may in any manner acquire in this state such areas of land or water or of land and water as said government may deem necessary for the establishment of the "Upper Mississippi River Wild Life and Fish Refuge" in accordance with the act of congress, approved June 7, 1924, [16USC, ch 8] provided the states of Illinois, Wisconsin, and Minnesota grant a like consent. [C27, 31, 35,§4-a1; C39,§4.1; C46, 50, 54,§1.5]

Referred to in §§1.6, 1.8

**1.6 Conditions.** Any acquisition by the government of the United States of land and water, or of land or water, under section 1.5 shall be first approved by the state conservation commission, by the state conservation

director of this state, and the executive council. [C27, 31, 35,§4-a2; C39,§4.2; C46, 50, 54,§1.6]

Referred to in §1.8

**1.7 Legislative grant.** There is hereby granted to the government of the United States, so long as it shall use the same as a part and for the purposes of the said "Upper Mississippi River Wild Life and Fish Refuge", all areas of land subject to overflow and not used for agricultural purposes or state fish hatcheries or salvaging stations, owned by this state within the boundaries of the said refuge, as the same may be established from time to time under authority of the said act of congress. [C27, 31, 35,§4-a3; C39,§4.3; C46, 50, 54, §1.7]

Referred to in §1.8

**1.8 Applicability of statute.** Section 1.4 shall apply to all lands acquired under sections 1.5 to 1.7, inclusive. [C27, 31, 35,§4-a4; C39, §4.4; C46, 50, 54,§1.8]

**1.9 National forests.** The consent of the state of Iowa is hereby given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Iowa as in the opinion of the federal government may be needed for the establishment, consolidation and extension of national forests and/or for the establishment and extension of wild life, fish and game refuges and for other conservation uses in the state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state. This section shall not, in any manner or to any extent, modify, limit or affect the title and ownership of the state to all wild life as provided in section 109.2;

provided, that the state of Iowa shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state of Iowa against any persons charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this law had not been passed. [C35,§4-f1; C39,§4.5; C46, 50, 54,§1.9]

**1.10 Offenses.** Power is hereby conferred upon the congress of the United States to pass such laws and to make or provide for the making of such rules and regulations, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this law. [C35,§4-f2; C39,§4.6; C46, 50, 54,§1.10]

**1.11 Effigy Mounds National Monument.** The executive council may, upon a majority recommendation of the conservation commission, convey to the United States as a gift and in the manner provided by section 111.33, two hundred and four and thirty-nine hundredths acres, more or less, located within the boundaries of Effigy Mounds National Monument as established by presidential proclamation number 2860, of October 25, 1949, in Allamakee and Clayton counties in the state of Iowa, and in section ten of township ninety-five, range three west of the fifth principal meridian and in sections twenty-seven and thirty-three township ninety-six range three west of the fifth principal meridian. [C54,§1.11]

## CHAPTER 2

## GENERAL ASSEMBLY

See reference in §68.10

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| <ul style="list-style-type: none"> <li>2.1 Sessions—place.</li> <li>2.2 Temporary organization.</li> <li>2.3 Certificates of election.</li> <li>2.4 Temporary officers—committee on credentials.</li> <li>2.5 Permanent organization.</li> <li>2.6 Officers—tenure.</li> <li>2.7 Oaths.</li> <li>2.8 Parliamentary rules.</li> <li>2.9 Journals.</li> <li>2.10 Legislative printing—appropriation.</li> <li>2.11 Compensation of full-time members.</li> <li>2.12 Mileage of presiding officers.</li> <li>2.13 Compensation of lieutenant governor.</li> <li>2.14 Compensation of speaker.</li> <li>2.15 Compensation of part-time members.</li> <li>2.16 Salary and mileage at regular session.</li> <li>2.17 Payment semimonthly.</li> <li>2.18 Officers and employees.</li> <li>2.19 Compensation of chaplains, officers, and employees.</li> <li>2.20 Current expenses of general assembly.</li> <li>2.21 Issue of warrants.</li> <li>2.22 Appropriation.</li> <li>2.23 Freedom of speech.</li> <li>2.24 Contempt.</li> <li>2.25 Punishment for contempt.</li> <li>2.26 Warrant—execution.</li> <li>2.27 Fines—collection.</li> <li>2.28 Punishment—effect.</li> </ul> | <ul style="list-style-type: none"> <li>2.29 Witness—attendance compulsory.</li> <li>2.30 Witnesses—compensation.</li> <li>2.31 Joint conventions.</li> <li>2.32 Secretary—record.</li> <li>2.33 Canvass of votes for governor.</li> <li>2.34 Tellers.</li> <li>2.35 Method of canvassing vote.</li> <li>2.36 Election—vote—how taken.</li> <li>2.37 Second poll.</li> <li>2.38 Certificates of election.</li> <li>2.39 Adjournment.</li> <li>2.40 Confirmation of appointments.</li> </ul> |
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## LEGISLATIVE RESEARCH COMMITTEE AND BUREAU

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- 2.49 Research bureau.
- 2.50 Director.
- 2.51 Salary of director.
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- 2.53 Information and assistance.
- 2.54 Office and supplies—salaries.

**2.1 Sessions—place.** The sessions of the general assembly shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger. [C51,§4; R60,§13; C73,§5; C97,§5; C24, 27, 31, 35, 39,§5; C46, 50, 54,§2.1]

**2.2 Temporary organization.** At ten o'clock in the forenoon of the day on which the general assembly shall convene, and at the place of convening the houses respectively, the president of the senate, or in his absence some person claiming to be a member, shall call the senate to order. If necessary, a temporary president shall be chosen from their own number by the persons claiming to be elected senators; and some person claiming to be elected a member of the house of representatives shall call the house to order, and the persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives, a clerk for the time being. [C51,§5; R60,§14; C73,§6; C97,§6; C24, 27, 31, 35, 39,§6; C46, 50, 54,§2.2]

**2.3 Certificates of election.** Such secretary and clerk shall receive and file the certificates of election presented, each for his own house, and make a list therefrom of the persons who appear to have been elected members of the respective houses. [C51,§6; R60,§15; C73,§7; C97,§7; C24, 27, 31, 35, 39,§7; C46, 50, 54,§2.3]

**2.4 Temporary officers—committee on credentials.** The persons so appearing to be members shall proceed to elect such other officers for the time being as may be requisite; and when so temporarily organized shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members. [C51,§7; R60,§4; C73,§8; C97,§8; C24, 27, 31, 35, 39,§8; C46, 50, 54,§2.4]

**2.5 Permanent organization.** The members reported by the committee as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers. [C51,§8; R60,§5; C73,§9; C97,§9; C24, 27, 31, 35, 39,§9; C46, 50, 54,§2.5]

**2.6 Officers—tenure.** The president pro tempore of the senate and the speaker of the house of representatives shall hold their offices until the first day of the meeting of the regular session next after that at which they were elected. All other officers elected by either house shall hold their offices only during the session at which they were elected, unless sooner removed, except as may be otherwise provided by resolution of the general assembly. [R60,§16; C73,§13; C97,§17; C24, 27, 31, 35, 39,§10; C46, 50, 54,§2.6; 56GA, ch 47,§1]

**2.7 Oaths.** Any member may administer oaths necessary in the course of business of

the house of which he is a member, and, while acting on a committee, in the course of business of such committee. [C51,§10; R60,§7; C73, §10; C97,§10; C24, 27, 31, 35, 39,§11; C46, 50, 54, §2.7]

**2.8 Parliamentary rules.** In the absence of other rules, those of parliamentary practice comprised in Robert's Rules of Order Revised shall govern. [R60,§686; C73,§27; C97,§31; C24, 27, 31, 35, 39,§12; C46, 50, 54,§2.8]

**2.9 Journals.** The secretary of the senate and the clerk of the house of representatives shall preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of the legislature. The secretary of state shall cause the same to be bound and preserved as the original journals of the senate and the house. [C97,§132; C24, 27, 31, 35, 39,§13; C46, 50, 54,§2.9]

Printing of journals, §§17.15-17.17

**2.10 Legislative printing — appropriation.** There is hereby appropriated out of the general funds of the state not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, for each biennium for the purpose of paying the cost of printing for each legislative session.

The state comptroller is hereby authorized to issue warrants for the payment of said bills upon vouchers approved by the state printing board. [C46, 50, 54,§2.10]

**2.11 Compensation of full-time members.** The compensation of the members of the general assembly, except the speaker, shall be: To every member the sum of thirty dollars per day for each regular and each extra session while in session; and in going to and returning from the place where the general assembly is held, seven cents per mile, by the nearest traveled route, for each regular and each extra session. [C51,§11; R60,§18; C73,§12; C97,§12; S13, §12; C24, 27, 31, 35, 39,§14; C46, 50, 54,§2.11; 57GA, ch 49,§1]

S13,§12, editorially divided  
Rates effective in 1959, 57GA, ch 49,§3

**2.12 Mileage of presiding officers.** The mileage of the lieutenant governor while acting as president of the senate and the mileage of the speaker of the house shall be the same as that of a member of the general assembly. [C27, 31, 35,§14-a1; C39,§14.1; C46, 50, 54,§2.12]

41GA, ch 18,§2, editorially divided

**2.13 Compensation of lieutenant governor.** The compensation of the lieutenant governor while acting as president of the senate shall be double the compensation of a member of the general assembly. [C27, 31, 35,§14-a2; C39,§14.2; C46, 50, 54,§2.13]

See Const., Art. IV,§15

**2.14 Compensation of speaker.** The speaker of the house of representatives shall receive

as compensation for his services as speaker and as a member of the general assembly a sum equal to twice the compensation of a member of the general assembly. [C27, 31, 35,§14-a3; C39,§14.3; C46, 50, 54,§2.14]

**2.15 Compensation of part-time members.** When a vacancy occurs during the session of the general assembly, and by reason thereof the term of office of any member does not cover the entire session, such member shall be paid the sum of thirty dollars per day during the remainder of such session. [S13,§12; C24, 27, 31, 35, 39,§15; C46, 50, 54,§2.15; 57GA, ch 49,§2]

**2.16 Salary and mileage at regular session.** Within thirty days after the convening of the general assembly, the presiding officers of the two houses shall jointly certify to the state comptroller the names of the members, officers, and employees of their respective houses, and the amount of mileage due each member, respectively, who shall thereupon draw a warrant upon the state treasurer for the amount due each member for mileage, as above certified. [C97,§14; C24, 27, 31, 35, 39,§16; C46, 50, 54,§2.16; 57GA, ch 49,§4]

**2.17 Payment semimonthly.** At any session, the compensation of the lieutenant governor, speaker of the house of representatives, and members shall be paid semimonthly during such session, upon certificate of the presiding officer of each house showing the number of days of allowance and compensation as provided by law. [C97,§14; C24, 27, 31, 35, 39,§17; C46, 50, 54,§2.17; 57GA, ch 49,§5]

**2.18 Officers and employees.** Each house of the general assembly may employ such officers and janitors as it shall deem necessary for the conduct of its business. [C97,§152; S13,§152; C24, 27, 31, 35, 39,§18; C46, 50, 54,§2.18]

**2.19 Compensation of chaplains, officers, and employees.** The compensation of the chaplains, officers, and employees of the general assembly shall be fixed by joint action of the house and senate by resolution at the opening of the session, or as soon thereafter as conveniently can be done, and no other or greater compensation shall be allowed such chaplains, officers, and employees, except that they shall be furnished by the state such stationery and supplies as may be necessary for the proper discharge of their duties. [C73,§12; C97,§13; C24, 27, 31, 35, 39,§19; C46, 50, 54,§2.19]

**2.20 Current expenses of general assembly.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president and secretary of the senate and speaker and chief

clerk of the house, after vouchers for said items of expense have been approved by action of the house and senate by resolution. Provided, however, that any interim expenses authorized by either branch of the general assembly shall be paid upon requisition to the state comptroller signed by the presiding officer of the legislative branch authorizing the same.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of five hundred dollars annually, or so much thereof as may be necessary, for each branch of the general assembly for the payment of any unpaid expense filed after adjournment of the general assembly or incurred in the interim between sessions of the general assembly. The state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president of the senate for senate expense and the speaker of the house for house expense. [C46, 50, 54,§2.20]

**2.21 Issue of warrants.** The state comptroller shall also issue to each officer and employee of the general assembly, from time to time, upon certificates signed by the president of the senate and the speaker of the house, warrants for the amount due for services rendered. [C97,§15; C24, 27, 31, 35, 39,§20; C46, 50, 54,§2.21]

**2.22 Appropriation.** Said warrants shall be paid out of any moneys in the treasury not otherwise appropriated. [C97,§16; C24, 27, 31, 35, 39,§21; C46, 50, 54,§2.22]

**2.23 Freedom of speech.** No member shall be questioned in any other place for any speech or debate in either house. [C51,§9; R60,§6; C73,§11; C97,§11; C24, 27, 31, 35, 39,§22; C46, 50, 54,§2.23]

**2.24 Contempt.** Each house has authority to punish as for a contempt, by fine or imprisonment or both, any person who commits any of the following offenses against its privileges, dignity, or authority:

1. Arresting a member, knowing him to be such, in violation of his privilege, or assaulting, or threatening to assault, or threatening any harm to the person or property of, a member, knowing him to be such, for anything said or done by him in such house as a member thereof.

2. Attempting by menace, or by force, or by any corrupt means, to control or influence a member in giving his vote, or to prevent his giving it.

3. Disorderly or contemptuous conduct, tending to disturb its proceedings.

4. Refusal to attend, or to be sworn, or to affirm, or to be examined, as a witness before it, or before a committee thereof, when duly subpoenaed.

5. Assaulting or preventing any person go-

ing before it, or before any of its committees, by its order, the offender knowing such fact.

6. Rescuing or attempting to rescue any person arrested by its order, the offender knowing of such arrest.

7. Impeding any officer of such house in the discharge of his duties as such, the offender knowing his official character. [C51,§12; R60, §8; C73,§14; C97,§18; C24, 27, 31, 35, 39,§23; C46, 50, 54,§2.24]

**2.25 Punishment for contempt.** Fines and imprisonment for contempt shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds thereof. [C51,§14; R60,§10; C73,§15; C97,§19; C24, 27, 31, 35, 39,§24; C46, 50, 54,§2.25]

C97,§19, editorially divided

**2.26 Warrant — execution.** Imprisonment shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the acting secretary or clerk, running in the name of the state, and directed to the sheriff or jailer of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person. [C51,§14; R60,§10; C73, §15; C97,§19; C24, 27, 31, 35, 39,§25; C46, 50, 54, §2.26]

**2.27 Fines—collection.** Fines shall be collected by a similar warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury. [C51,§14; R60,§10; C73, §15; C97,§19; C24, 27, 31, 35, 39,§26; C46, 50, 54, §2.27]

Executions generally, §791.6

**2.28 Punishment—effect.** Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in the jail of the county in which the general assembly is then sitting; or, if there be no such jail, then in one of the nearest county jails.

Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act. [C51,§§13, 15; R60, §§9, 11; C73,§16; C97,§20; C24, 27, 31, 35, 39,§27; C46, 50, 54,§2.28]

**2.29 Witness — attendance compulsory.** Whenever a committee of either house, or a joint committee of both, is charged with an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon him, which service shall be made in the manner required in case of a subpoena in a civil action in the district court, such order stating the time and place he is required to appear, signed by the presiding officer of the house appointing the committee, and attested by its acting secretary or clerk; or, in case of a joint committee,

signed and attested by such officers of either house. [C73,§17; C97,§21; C24, 27, 31, 35, 39,§28; C46, 50, 54,§2.29]

Referred to in **§2.30**  
As to service, **§622.77**  
Criminating questions, **§§622.14, 622.15**

**2.30 Witnesses — compensation.** Witnesses shall be entitled to the same compensation for attendance under section 2.29 as before the district court, but shall not have the right to demand payment of their fees in advance. [C73,§18; C97,§22; C24, 27, 31, 35, 39,§29; C46, 50, 54,§2.30]

As to fees, **§§622.69, 622.72**

**2.31 Joint conventions.** Joint conventions of the general assembly shall meet in the hall of the house of representatives for such purposes as are or shall be provided by law. The president of the senate, or, in his absence, the president pro tempore of the senate shall preside at such joint conventions. [R60,§§674, 675; C73,§19; C97,§23; C24, 27, 31, 35, 39,§30; C46, 50, 54,§2.31]

**2.32 Secretary—record.** The clerk of the house of representatives shall act as secretary of the convention, and he and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journal of each house. [R60,§677; C73,§21; C97,§25; C24, 27, 31, 35, 39, §31; C46, 50, 54,§2.32]

**2.33 Canvass of votes for governor.** The general assembly shall meet in joint session on the second Tuesday of January, or as soon thereafter as both houses have been organized after the biennial election, and canvass the votes cast for governor and lieutenant governor and determine the election; and when the canvass is completed, the oath of office shall be administered to the persons so declared elected and the governor shall deliver to the joint assembly any message he may deem expedient. [S13,§30-a; C24, 27, 31, 35, 39,§32; C46, 50, 54,§2.33]

**2.34 Tellers.** After the time for the meeting of the joint convention has been designated and prior thereto, each house shall appoint one teller, and the two shall act as judges of the election. [R60,§676; C73,§20; C97,§24; C24, 27, 31, 35, 39,§33; C46, 50, 54,§2.34]

**2.35 Method of canvassing vote.** Canvassing the votes for governor and lieutenant governor shall be conducted according to the foregoing provisions, so far as applicable. [C73,§26; C97,§30; C24, 27, 31, 35, 39,§34; C46, 50, 54,§2.35]

**2.36 Election—vote—how taken.** When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which his name stands when thus arranged. The name of the person voted for, and the names of the

members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate. [R60,§§678, 679; C73,§22; C97,§26; C24, 27, 31, 35, 39,§35; C46, 50, 54,§2.36]

**2.37 Second poll.** If no person shall receive the votes of a majority of the members present, a second poll may be taken, and so on from time to time until some person receives such majority. [R60,§680; C73,§23; C97,§27; C24, 27, 31, 35, 39,§36; C46, 50, 54,§2.37]

**2.38 Certificates of election.** When any person shall have received a majority of the votes as aforesaid, the president shall declare him to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which he shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journal of each house. The governor shall issue a commission to the person so elected. [R60,§682; C73,§25; C97,§29; C24, 27, 31, 35, 39,§37; C46, 50, 54,§2.38]

**2.39 Adjournment.** If the purpose for which the joint convention is assembled is not concluded, the president shall adjourn the same from time to time as the members present may determine. [R60,§681; C73,§24; C97,§28; C24, 27, 31, 35, 39,§38; C46, 50, 54,§2.39]

**2.40 Confirmation of appointments.** When the nomination of a public officer is required to be confirmed by the senate, the nomination shall not be considered by the senate until it shall have been referred to a committee of five senators who shall, if possible, represent different political parties. The committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. The consideration of the nomination by the senate shall not be had on the same legislative day on which the nomination is so referred, unless it be the last day of the session. [C27, 31, 35,§38-b1; C39,§38.1; C46, 50, 54,§2.40]

**BUDGET AND FINANCIAL CONTROL COMMITTEE**

**2.41 Committee created.** There is hereby created a committee to be known as the budget and financial control committee, which shall have ten members. Five of said members shall be members of the house of representatives and appointed by the speaker; three of these members shall be from the majority party and two from the minority party. Five of said members shall be members of the senate and appointed by the president of the senate; three of which shall be from the majority party and two from the minority party; provided, however, that when the membership of the minority party is not more than ten percent of the

total membership of their respective house, then in that case, there shall be four members appointed from the majority party and one member appointed from the minority party of such house. The presiding officers of the senate and house, in appointing such members to the budget and financial control committee, shall make the appointments, so far as is practicable, to represent each congressional district of the state. [C97,§181; S13,§181; C24, 27, 31, 35, 39,§§39, 40; C46, 50,§§2.41, 2.42; C54,§2.41]

**2.42 Terms of office—vacancies.** The terms of office for the committee members shall be four years beginning February 1 after the convening of the general assembly in regular session. Any vacancies occurring on the committee shall be filled by appointment for the unexpired term made in the same manner as original appointments. A vacancy shall exist whenever a committee member ceases to be a member of the general assembly.

The expiration of terms of office of the membership of said committee shall be staggered, and in order to achieve that purpose the initial appointments of members by the speaker of the house shall be three members for the two-year terms and two members for the four-year terms, and initial appointments by the president of the senate shall be three members for four-year terms and two members for two-year terms. [C97,§181; S13,§181; C24, 27, 31, 35, 39,§39; C46, 50,§2.41; C54,§2.42]

**2.43 Authorized purposes of committee.** The authorized purposes of the budget and financial control committee shall be as follows:

1. *Budget.* To gather information relative to budget matters for the purpose of aiding the legislature to properly appropriate money for the functions of government, and to report their findings to the legislature.

2. *Examination.* Said committee shall examine into the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby.

3. *Reorganization.* The committee shall make a continuous study of all offices, departments, agencies, boards, bureaus and commissions of the state government and shall determine and recommend to each session of the legislature what changes therein are necessary to accomplish the following purposes:

a. To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government.

b. To increase the efficiency of the operations of the state government to the fullest extent practicable within the available revenues.

c. To group, co-ordinate, and consolidate judicial districts, agencies and functions of the government, as nearly as may be according to major purposes.

d. To reduce the number of offices, agencies, boards, commissions, and departments by consolidating those having similar functions, and to abolish such offices, agencies, boards, commissions and departments, or functions thereof, as may not be necessary for the efficient and economical conduct of state government.

e. To eliminate overlapping and duplication of effort on the part of such offices, agencies, boards, commissions and departments of the state government. [C97,§§181, 182; S13,§181; C24, 27, 31, 35, 39,§§42, 45; C16, 50,§§2.44, 2.47; C54,§2.43]

**2.44 Powers and duties.** For the purpose of carrying out the foregoing authorized purposes, the committee shall have the following powers and duties:

1. *Organization.* To elect one of their own number chairman and to determine their own method of procedure.

2. *Meetings.* To hold monthly meetings at the office of the state comptroller or at such meeting place as the committee may direct. Six members shall constitute a quorum.

3. *Special meetings.* To meet on call of the chairman or any three members.

4. *Record.* To make a record of its meetings and transactions which shall be kept in the office of the secretary of state and shall be open to public inspection.

5. *Subpoenas.* To summon and examine witnesses, administer oaths, compel the production of books and papers and punish for contempt in the conduct of any investigation.

6. *Investigators.* To employ its own investigators and other necessary personnel and pay for same from funds appropriated.

7. *Suggestions to governor.* To make suggestions to the governor concerning the committee's opinion as to what ought to be included in the budget.

8. *Departmental co-operation.* To require all offices, departments, agencies, boards, bureaus and commissions of the state to co-operate and furnish such information as the committee may from time to time desire. The office and facilities of the state comptroller shall be available to the committee for its meetings. [C97, §§181, 183; S13,§181; C24, 27, 31, 35, 39,§§41, 43, 46; C46, 50,§§2.43, 2.45, 2.48; C54,§2.44]

Administration of oaths, §78.1

Contempt, §§622.76, 622.77; also ch 665

Production of books and papers, §622.65 and R.C.P. 129

**2.45 Compensation and expenses.** For meetings of the committee other than those held during the time the legislature is in session, each member of the committee shall receive his actual traveling expenses and a per diem of twenty dollars per day for each day in attendance. [C97,§181; S13,§181; C24, 27, 31, 35, 39,§44; C46, 50,§2.46; C54,§2.45]

LEGISLATIVE RESEARCH COMMITTEE AND BUREAU

**2.46 Committee created.** There is hereby created a continuing legislative committee of

six members which shall be entitled the legislative research committee. Three members shall be appointed by the president of the senate from the members of the senate, two from the majority party and one from the minority party. Three members shall be appointed by the speaker of the house of representatives from the members of the house, two from the majority party and one from the minority party. Members shall be appointed prior to the adjournment of each regular biennial session and shall serve for two year terms beginning at the adjournment of such session and ending at the adjournment of the next regular session or until their successors are appointed. In so far as possible, upon appointment of members of the committee during each regular session of the general assembly, at least one member of the committee from each house shall be reappointed. [56GA, ch 48,§1; 57GA, ch 50,§2]

**2.47 Powers and duties of committee.** The legislative research committee shall select its officers and prescribe its rules of procedure. In addition to any other powers and duties provided herein, it shall have the following powers and duties:

1. To establish policies for the operation of the legislative research bureau created by section 2.49, including the priority to be given to research requests and the distribution of research reports.
2. To appoint a director of the legislative research bureau for such term of office as may be set by the committee and to appoint successors and fill vacancies in this office.
3. To prepare a report to be submitted each biennium to the general assembly at its regular session.

The committee may co-operate with other states to discuss mutual legislative and governmental problems. [56GA, ch 48,§§1, 2, 5; 57GA, ch 50,§3]

**2.48 Expenses of committee.** Members of the legislative research committee shall be reimbursed as provided in section 2.54 for necessary expenses incurred in the performance of their duties. [56GA, ch 48,§4; 57GA, ch 50,§4]

**2.49 Research bureau.** There is hereby created a legislative research bureau which shall operate under the direction and control of the legislative research committee. The administrative head of the legislative research bureau shall be the director of the bureau. It shall be the duty of the bureau to co-operate with and serve all members and committees of the general assembly. It shall upon proper request of members and committees of the general assembly prepare research reports upon any governmental matter. Such research reports and the findings therein shall not contain any recommendations from the research committee or the research bureau. The bureau shall assist and serve any interim committee of

the general assembly and upon written request, approved by the legislative research committee, serve as the staff agency for any such interim committee. The bureau shall draft and prepare bills for committees and individual members of the general assembly. [56GA, ch 48,§§1, 5; 57GA, ch 50,§5]

Referred to in §2.47

**2.50 Director.** The director of the research bureau shall serve on a full-time basis and shall have the following powers and duties:

1. He shall be in charge of the research and bill drafting functions of the bureau.
2. He shall employ and supervise all employees of the legislative research bureau in such positions and at such salaries as shall be authorized by the legislative research committee.
3. He shall employ, with the approval of the research committee, such temporary employees as may be required to provide a bill drafting service during sessions of the general assembly. Such employees shall be under the supervision of the director and shall be paid from the appropriation made for the general assembly. [56GA, ch 48,§§1, 3; 57GA, ch 50,§6]

**2.51 Salary of director.** The salary of the director of the legislative research bureau shall be seventy-five hundred dollars per year. [56GA, ch 48,§1; 57GA, ch 50,§7]

**2.52 Requests for research.** Requests for research on governmental matters may be made to the legislative research bureau by either house of the general assembly, committees of either house of the general assembly, interim committees of the general assembly or either house thereof, the legislative research committee or upon petition by five or more members of the general assembly. Any legislative committee appointed for the session may request the research bureau to do research between sessions on any matter under consideration by such committee. Bills shall be drafted and prepared by the legislative research bureau upon request of any member of the general assembly. Research or bill drafting requests made between sessions shall be in writing. [56GA, ch 48,§5; 57GA, ch 50,§8]

**2.53 Information and assistance.** The legislative research bureau may call upon any department, agency or office in the state, or any political subdivision of the state, for such information and assistance as may be needed in the performance of the duties of the research bureau and such information and assistance shall be furnished in so far as the same shall be within the resources and authority of such departments, agencies, offices and political subdivisions. Nothing herein shall be construed to require the production or opening of any public records which are required by law to be kept private or confidential.



The research bureau may co-operate with other states and the federal government in the exchange of research reports and materials. [56GA, ch 48,§5; 57GA, ch 50,§9]

**2.54 Office and supplies—salaries.** The office of the research bureau shall be located in the statehouse. Office space, supplies, postage and equipment shall be furnished by the executive council. All other expenses and salaries

shall be paid by the budget and financial control committee from the contingent fund provided for the budget and financial control committee. Expenses of the research committee and research bureau shall be paid upon the approval of the director of the bureau and, if an extraordinary expense, upon the approval of the research committee. [56GA, ch 48,§4; 57GA, ch 50,§10]

Referred to in §2.48

## CHAPTER 3

### STATUTES AND RELATED MATTERS

- 3.1 Form of bills.
- 3.2 Length of sections.
- 3.3 Head notes and historical references.
- 3.4 Bills—approval—passage over veto.
- 3.5 Failure of governor to return bill.
- 3.6 Acts—where deposited.
- 3.7 Acts effective July fourth.
- 3.8 Publication of acts.

- 3.9 Designation of papers.
- 3.10 Acts effective—certification.
- 3.11 Private acts—when effective.
- 3.12 Appropriation acts—when effective.
- 3.13 Pro rata disbursement of appropriations.
- 3.14 Certain appropriations prohibited.
- 3.15 Copies of acts effective by publication.
- 3.16 Cost of publishing.

**3.1 Form of bills.** Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the numbers of the sections or chapters of the code to be amended or repealed, but it shall not be necessary to refer to such sections or chapters in the title.

2. Shall refer to the number of the general assembly and of the sections and chapters of the acts thereof to be amended in case the bill relates to a section or sections of an act not appearing in the code.

3. All references to statutes shall be expressed in words, followed by the numerals in parentheses, and if omitted the reporter of the supreme court in preparing acts for publication in the session laws shall supply the same.

4. The title to a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject so expressed may be omitted from the title. [C73,§38; C97,§41; S13,§§41-a,b; C24, 27, 31, 35, 39,§47; C46, 50, 54,§3.1]

Form and style of printing bills, §17.18  
See 211 Iowa 612

**3.2 Length of sections.** Where practicable, sections of bills shall not exceed sixteen lines in length and shall be germane to the title, chapter, or section to which they relate. [C24, 27, 31, 35, 39,§48; C46, 50, 54,§3.2]

**3.3 Head notes and historical references.** Proper head notes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the code, or any session law from which the matter of the bill was taken, but neither said head notes nor said historical references shall be considered as a part of the law as enacted. [C24, 27, 31, 35, 39,§49; C46, 50, 54,§3.3]

**3.4 Bills—approval—passage over veto.** If the governor approves a bill, he shall sign and date it; if he returns it with his objections and it afterwards passes as provided in the constitution, a certificate, signed by the presiding officer of each house in the following form, shall be endorsed thereon or attached thereto: "This bill, having been returned by the governor, with his objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and nays by a vote of two-thirds of the members of each house, has become a law this ..... day of ..... ." [C51,§§16, 17; R60, §§19, 20; C73,§§28, 29; C97,§32; C24, 27, 31, 35, 39,§50; C46, 50, 54,§3.4]

Constitutional provision, Art. III,§16

**3.5 Failure of governor to return bill.** When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the constitution, it shall be authenticated by the secretary of state indorsing thereon: "This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this ..... day of ....., ..,"

Secretary of State."

[C51,§18; R60,§21; C73,§30; C97,§33; C24, 27, 31, 35, 39,§51; C46, 50, 54,§3.5]

Constitutional provision, Art. III,§16

**3.6 Acts—where deposited.** The original acts of the general assembly shall be deposited with and kept by the secretary of state. [C51, §19; R60,§22; C73,§31; C97,§34; C24, 27, 31, 35, 39,§52; C46, 50, 54,§3.6]

**3.7 Acts effective July fourth.** All acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the fourth day of July following their

passage, unless some specified time is provided in the act, or they have sooner taken effect by publication. [C51,§22; R60,§25; C73,§34; C97,§37; C24, 27, 31, 35, 39,§53; C46, 50, 54,§3.7]

Acts of private nature, §3.11  
Constitution, Art. III,§26

**3.8 Publication of acts.** Acts which are to take effect from and after publication in newspapers shall be published in two or more papers. [C51,§21; R60,§24; C73,§33; C97,§36; S13,§36; C24, 27, 31, 35, 39,§54; C46, 50, 54,§3.8]  
S13,§36, editorially divided

**3.9 Designation of papers.** In case either or both of the papers named in the act should fail or decline to publish said act as required therein, the secretary of state may designate another paper or papers in which publication shall be made, and if such papers are not designated in the act, the same may be designated by the secretary of state, and the act published accordingly. [C73,§33; C97,§36; S13,§36; C24, 27, 31, 35, 39,§55; C46, 50, 54,§3.9]

**3.10 Acts effective—certification.** All such acts shall take effect from and after the date of the last publication, and the secretary of state shall make and sign, on the original roll of each of such acts, a certificate, stating in what papers it was published, and the date of the last publication in each of them, which certificate and the printing thereof at the foot of the act shall be presumptive evidence of the facts therein stated. [C51,§21; R60,§24; C73,§33; C97,§36; S13,§36; C24, 27, 31, 35, 39,§56; C46, 50, 54,§3.10]

Proof of publication, §622.92

**3.11 Private acts—when effective.** Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or indorsed as provided in this chapter. [C51,§20; R60,§23; C73,§32; C97,§35; C24, 27, 31, 35, 39,§57; C46, 50, 54,§3.11]

**3.12 Appropriation acts — when effective.** All annual appropriations shall be for the fiscal

year beginning with July 1 and ending with June 30 of the succeeding year and when such appropriations are made payable quarterly, the quarters shall end with September 30, December 31, March 31, and June 30; but nothing in this section shall be construed as increasing the amount of any annual appropriation. [S13,§116-a; C24, 27, 31, 35, 39,§58; C46, 50, 54,§3.12]

Referred to in §3.13

**3.13 Pro rata disbursement of appropriations.** Annual appropriations shall be disbursed in accordance with the provisions of the acts granting the same pro rata from the time such acts shall take effect up to the first day of the succeeding quarter as provided in section 3.12. [S13,§116-b; C24, 27, 31, 35, 39,§59; C46, 50, 54,§3.13]

**3.14 Certain appropriations prohibited.** No appropriations shall be made to any institution not wholly under the control of the state. [S13,§116-c1; C24, 27, 31, 35, 39,§60; C46, 50, 54,§3.14]

**3.15 Copies of acts effective by publication.** The secretary of state shall, immediately after an act of a general nature takes effect by publication, furnish a certified copy of such act to each clerk of the district court, who shall retain the same on file for public inspection for at least six months, and shall furnish copies thereof on payment of a fee of ten cents for each one hundred words. [SS15,§36-a; C24, 27, 31, 35, 39,§61; C46, 50, 54,§3.15]

**3.16 Cost of publishing.** The compensation for the publication of laws which are ordered by the general assembly to take effect by publication, unless otherwise fixed, shall be audited and paid by the state, and shall be the rates of legal advertisements allowed by law. There is hereby provided from any money in the state treasury not otherwise appropriated, a sum sufficient to pay for such publication. [C73,§44; C97,§47; C24, 27, 31, 35, 39,§62; C46, 50, 54,§3.16]

## CHAPTER 4

### CONSTRUCTION OF STATUTES

4.1 Rules.

4.2 Common law rule of construction.

4.3 References to other statutes.

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

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

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

3. *Number and gender.* Words importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person

or thing, and words importing the masculine gender only may be extended to females.

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

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

6. *Insane.* The words “insane person” include idiots, lunatics, distracted persons, and persons of unsound mind.

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

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

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

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

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

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

13. *Person.* The word “person” may be extended to bodies corporate.

14. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word “seal” shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto.

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

16. *Town.* The word “town” means an incorporated town, and may include cities.

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

18. *Written—in writing.* The words “written” and “in writing” may include any mode of representing words and letters in general use, except that signatures, when required by

law, must be made by the writing or mark of the person.

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

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

21. *Executor—administrator.* The term “executor” includes administrator, and the term “administrator” includes executor, where the subject matter justifies such use.

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

23. *Computing time.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday.

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

25. *Clerk—clerk’s office.* The word “clerk” means clerk of the court in which the action or proceeding is brought or is pending; and the words “clerk’s office” mean his office.

26. *Population.* The word “population”, where used in this Code or any statute hereafter passed, shall be taken to be that as shown by the last preceding national census, unless otherwise specially provided. [C51,§§26, 2513; R60,§§29, 4121, 4123, 4124; C73,§45; C97, §48; C24, 27, 31, 35, 39,§63; C46, 50, 54,§4.1]

Similar provision, §26.6

**4.2 Common law rule of construction.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice. [C51, §2503; R60,§2622; C73,§2528; C97,§3446; C24, 27, 31, 35, 39,§64; C46, 50, 54,§4.2]

**4.3 References to other statutes.** Any statute which adopts by reference the whole or a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed. [56 GA, ch 49,§1]

## CHAPTER 5

### UNIFORM STATE LAWS

5.1 Commission on uniform laws—vacancies.  
5.2 Tenure—compensation—expenses.

5.3 Organization.  
5.4 Duties—reports.

**5.1 Commission on uniform laws — vacancies.** The governor shall appoint three commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation, or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee. [C24, 27, 31, 35, 39, §65; C46, 50, 54, §5.1]

**5.2 Tenure—compensation—expenses.** Said commissioners shall hold office for a term of four years, and until their successors are duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed his duties ineligible for reappointment. No member of said commission shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for expenses in performing the duties of his office. [C24, 27, 31, 35, 39, §66; C46, 50, 54, §5.2]

**5.3 Organization.** The commissioners shall meet at the state capitol at least once in two years and shall organize by the election of one

of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected and qualified. [C24, 27, 31, 35, 39, §67; C46, 50, 54, §5.3]

**5.4 Duties—reports.** It shall be the duty of each of said commissioners to attend the meeting of the national conference of commissioners on uniform state laws, or to arrange for the attendance of at least one of their number at such national conference, and both in and out of such national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report to the legislature at its next session, and from time to time thereafter as said commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to each legislature. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally to devise and recommend such additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter. [C24, 27, 31, 35, 39, §68; C46, 50, 54, §5.4]

## CHAPTER 6

### CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

6.1 Publication of proposed amendment.  
6.2 Publication of proposed public measure.  
6.3 Proof of publication—record—report to legislature.  
6.4 Submission at general election.  
6.5 Submission at special election.

6.6 Certification—sample ballot.  
6.7 Proclamation.  
6.8 Canvass—declaration of result—record.  
6.9 Expenses.  
6.10 Action to test legality.  
6.11 Parties.

**6.1 Publication of proposed amendment.** Whenever any proposition to amend the constitution has passed the general assembly and been referred to the next succeeding legislature, the secretary of state shall cause the same to be published, once each month, in two newspapers of general circulation in each congressional district in the state, for the time required by the constitution. [C97, §55; S13, §55; C24, 27, 31, 35, 39, §69; C46, 50, 54, §6.1]

Referred to in §6.3  
Time of publication, constitution, Art. X, §1  
Voting on public measures, see §§49.43–49.50

**6.2 Publication of proposed public measure.** Whenever any public measure has passed the general assembly which under the constitution must be published and submitted to a vote of

the entire people of the state, the secretary of state shall cause the same to be published, once each month, in at least one newspaper of general circulation in each county in the state, for the time required by the constitution. [C24, 27, 31, 35, 39, §70; C46, 50, 54, §6.2]

Referred to in §6.3  
Time of publication, constitution, Art. VII, §5  
Voting on public measures, see §§49.43–49.50

**6.3 Proof of publication—record—report to legislature.** Proof of the publication specified in sections 6.1 and 6.2 shall be made by the affidavits of the publishers of the newspapers designated by the secretary of state, and such affidavits, with the certificate of the secretary of state of the selection of such newspapers, shall be filed in his office, recorded in a book

kept for that purpose, and preserved by him, and in the case of constitutional amendments he shall report to the following legislature his action in the premises. [C97,§55; S13,§55; C24, 27, 31, 35, 39,§71; C46, 50, 54,§6.3]

**6.4 Submission at general election.** Whenever a public measure has passed the general assembly which under the constitution must be submitted to a vote of the entire people of the state and no time is fixed by the constitution or legislature for such submission, or whenever a proposition to amend the constitution has been adopted by two succeeding general assemblies and no time is fixed by the last general assembly adopting the same for its submission to the people, said measure or amendment shall be submitted to the people at the ensuing general election, in the manner required by law. [C97,§56; C24, 27, 31, 35, 39, §72; C46, 50, 54,§6.4]

*Submission, §§6.1, 6.2, 6.5, 49.43-49.50; constitution, Arts. VII, X*

**6.5 Submission at special election.** The general assembly may provide for the submission of a constitutional amendment to the people at a special election for that purpose, at such time as it may prescribe, proclamation for which election shall be made by the governor, and the same shall in all respects be governed and conducted as prescribed by law for the submission of a constitutional amendment at a general election. [C97,§58; C24, 27, 31, 35, 39, §73; C46, 50, 54,§6.5]

*See note under §6.4*

**6.6 Certification—sample ballot.** The secretary of state shall, not less than twenty days preceding any election at which a constitutional amendment or public measure is to be submitted to a vote of the entire people of the state, transmit to the auditor of each county a certified copy of such amendment or measure and a sample of the ballot to be used in such cases, prepared in accordance with law. [C24, 27, 31, 35, 39,§74; C46, 50, 54,§6.6]

**6.7 Proclamation.** Whenever a proposition to amend the constitution is to be submitted to a vote of the electors, the governor shall include such proposed amendment in his election proclamation. [C97,§57; C24, 27, 31, 35, 39,§75; C46, 50, 54,§6.7]

*Additional provisions, §39.4 et seq.*

**6.8 Canvass—declaration of result—record.** The judges of election, county boards of canvassers, and other election officials shall canvass the vote on any constitutional amendment or public measure, and make return thereof, in the same manner as required by law for the canvass and return of the vote for public officers. The board of state canvassers shall canvass such returns, declare the result, and enter the same of record, immediately following and in connection with the proofs of publication of such amendment or measure, in the book kept for that purpose by the secretary of state. [C97,§56; C24, 27, 31, 35, 39,§76; C46, 50, 54,§6.8]

*Canvass of votes, ch 50*

**6.9 Expenses.** Expenses incurred under the provisions of this chapter shall be audited and allowed by the state comptroller, and paid out of any money in the state treasury not otherwise appropriated. [C97,§59; C24, 27, 31, 35, 39,§77; C46, 50, 54,§6.9]

**6.10 Action to test legality.** Whenever an amendment to the constitution of the state of Iowa shall have been proposed and agreed to by the general assembly and shall have been agreed to by the succeeding general assembly, any taxpayer may file suit in equity in the district court at the seat of government of the state, challenging the validity, legality or constitutionality of such amendment, or the procedure connected therewith, and in such suit the district court shall have jurisdiction to determine the validity, legality or constitutionality of said amendment or the procedure connected therewith, and enter its decree accordingly, and may grant a writ of injunction enjoining the governor and secretary of state from submitting such constitutional amendment, if it, or the procedure connected therewith, shall have been found to be invalid, illegal or unconstitutional. [C31, 35,§77-d1; C39, §77.1; C46, 50, 54,§6.10]

*General procedure, §§619.2, 619.3, 624.7, 686.3, 686.6, 686.13, and R.C.P. 53*

**6.11 Parties.** In such suit the taxpayer shall be plaintiff and the governor and secretary of state shall be defendants. Any taxpayer may intervene, either as party plaintiff or defendant. [C31, 35,§77-d2; C39,§77.2; C46, 50, 54,§6.11]

# TITLE II

## EXECUTIVE DEPARTMENT

### CHAPTER 7

#### GOVERNOR

Identification and use of publicly owned automobiles, etc., §740.20 et seq

7.1 Office—secretary.  
7.2 Journal.  
7.3 Counsel.  
7.4 Expenses.

7.5 Highway construction patents.  
7.6 Reward for arrest.  
7.7 Accounting.  
7.8 Salary.

**7.1 Office—secretary.** The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive department of the state. He shall keep a secretary at said office during his absence. [C73,§55; C97,§60; C24, 27, 31, 35, 39,§78; C46, 50, 54,§7.1]

**7.2 Journal.** He shall cause a journal to be kept in the executive office, in which a record shall be made of each official act as done, except if in cases of emergency an act is done away from the office, such entry shall be made as soon thereafter as may be. He shall cause a like military record to be kept of his acts done as commander in chief. [C73,§56, 57; C97,§61; C24, 27, 31, 35, 39,§79; C46, 50, 54, §7.2]

**7.3 Counsel.** Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause. [C51,§40; R60,§44; C73,§59; C97,§63; C24, 27, 31, 35, 39,§80; C46, 50, 54,§7.3]

Employment by executive council, §13.7

**7.4 Expenses.** The expenses thus incurred, and those caused in executing the laws, may be allowed by him and paid from the contingent fund. [C51,§41; R60,§45; C73,§60; C97,§64; C24, 27, 31, 35, 39,§81; C46, 50, 54,§7.4]

**7.5 Highway construction patents.** The governor, whenever he deems such action to be in the interest of the public, shall have power to direct the attorney general to appear for and on behalf of any county, city, town, or other municipality of this state or for and on behalf of any officer thereof or contractor therewith, whenever any such county, city,

town, or other municipality or officer or contractor is a party to any action or proceeding in any court wherein is involved the validity of any alleged patent on any matter or thing entering into highway, bridge, or culvert construction, or on any parts thereof, and may employ such legal assistance in addition to the attorney general as he may deem necessary and may pay for the same out of any fund in the state treasury not otherwise appropriated. Whenever the attorney general is so directed by the governor it shall be his duty to comply therewith. [S13,§64-a; C24, 27, 31, 35, 39,§82; C46, 50, 54,§7.5]

Employment by executive council, §13.7  
Special counsel, §307.9

**7.6 Reward for arrest.** Whenever the governor is satisfied that a crime has been committed within the state, punishable by death or by imprisonment in the penitentiary for a term of ten years or more, and the person committing the same has not been arrested or has escaped from arrest or custody or his whereabouts is unknown, he may in his discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of such persons, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state.

Such reward shall be paid only upon the conviction of said person and affirmance thereof by the supreme court, if appealed thereto. [R60,§57; C73,§58; C97,§62; C24, 27, 31, 35, 39,§83; C46, 50, 54,§7.6]

**7.7 Accounting.** All fees paid to the governor shall be turned over to the treasurer of state. [SS15,§4-e; C24, 27, 31, 35, 39,§84; C46, 50, 54,§7.7]

**7.8 Salary.** The salary of the governor shall be twelve thousand dollars per annum. [C50, 54,§7.8]

## CHAPTER 8

## BUDGET AND FINANCIAL CONTROL ACT

Referred to in §117.14

- 8.1 Title.
- 8.2 Definitions.
- 8.3 Governor.
- 8.4 State comptroller—salary—bond.
- 8.5 General powers and duties.
- 8.6 Specific powers and duties.
- 8.7 Accounting.
- 8.8 Stating account.
- 8.9 Compelling payment.
- 8.10 Defense to claim.
- 8.11 Requested credits—oath required.
- 8.12 Requisition for information.
- 8.13 Claims—limitations.
- 8.14 Claims—approval.
- 8.15 Vouchers.
- 8.16 Warrants—form.
- 8.17 Required payee.
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- 8.19 Claims exceeding appropriations.
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**THE BUDGET**

- 8.21 Budget transmitted.
- 8.22 Nature and contents.

- 8.23 Biennial departmental estimates.
- 8.24 Biennial estimate of income.
- 8.25 Tentative budget.
- 8.26 Hearings.
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**EXECUTION OF THE BUDGET**

- 8.30 Availability of appropriations.
- 8.31 Quarterly requisitions—exceptions—modifications.
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- 8.33 Limit of expenditures—reversion.
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- 8.40 Misdemeanors—removal—impeachment.
- 8.41 Special reserve fund created.
- 8.42 Use of fund.
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**8.1 Title.** This chapter shall be known and may be cited as the “Budget and Financial Control Act”. [C35,§84-e1; C39,§84.01; C46, 50, 54,§8.1]

**8.2 Definitions.** When used in this chapter:

1. The terms, “department and establishment” and “department” or “establishment”, mean any executive department, commission, board, institution, bureau, office, or other agency of the state government except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

2. “State funds” means any and all moneys appropriated by the legislature, or money collected by or for the state, or an agency thereof, pursuant to authority granted by any of its laws.

3. “Private trust funds” means any and all endowment funds and any and all moneys received by a department or establishment from private persons to be held in trust and expended as directed by the donor.

4. “Special fund” means any and all government fees and other revenue receipts earmarked to finance a governmental agency to which no general fund appropriation is made by the state.

5. “Repayment receipts” means those moneys collected by a department or establishment that supplement an appropriation made by the legislature.

6. “Budget” means the budget document required by this chapter to be transmitted to the legislature.

7. “Government” means the government of the state of Iowa.

8. “Unencumbered balance” means the unobligated balance of an appropriation after charging thereto all unpaid liabilities for goods and services and all contracts or agreements payable from an appropriation or a special fund.

9. “Code” or “the Code” means the Code of Iowa. [C35,§84-e2; C39,§84.02; C46, 50, 54,§8.2]

**8.3 Governor.** The governor of the state shall have:

1. Direct and effective financial supervision over all departments and establishments, and every state agency by whatever name now or hereafter called, including the same power and supervision over such private corporations, persons and organizations that may receive, pursuant to statute, any funds, either appropriated by, or collected for, the state, or any of its departments, boards, commissions, institutions, divisions and agencies.

2. The efficient and economical administration of all departments and establishments of the government.

3. The initiation and preparation of a balanced budget of any and all revenues and expenditures for each regular session of the legislature. [C35,§84-e3; C39,§84.03; C46, 50, 54, §8.3]

**8.4 State comptroller—salary—bond.** There is hereby created an office to be known as “office of state comptroller”, which shall be directly attached to the office of the governor and shall be under the general direction, super-

vision and control of the governor. Such office shall be in immediate charge of an officer to be known as "state comptroller", who shall be appointed by the governor, with the approval, in executive session, of two-thirds of the senate, and shall hold office at his pleasure and shall receive a salary not to exceed forty-five hundred dollars a year. Before entering upon the discharge of his duties, he shall take the constitutional oath of office and he shall give a surety bond in such penalty as may be fixed by the governor, payable to the state, but such penalty shall not be less than twenty-five thousand dollars conditioned upon the faithful discharge of his duties. The premium on his bond shall be paid out of the state treasury. [C24, §§309, 311-316; C27, §§309, 311, 313-316; C31, §§309, 311, 314-316, 1063; C35, §84-e4; C39, §84.04; C46, 50, 54, §8.4]

See biennial salary Act

**8.5 General powers and duties.** The state comptroller shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistant comptrollers and such clerical assistants as he may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by him, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of his department.

4. *Delegated powers and duties.* Perform and exercise all those duties and powers now\* delegated by law and performed by the state auditor which relate to bookkeeping and accounting.

5. *Miscellaneous duties.* Exercise and perform such other powers and duties as may be prescribed by law.

6. *Division of personnel.* There shall be a personnel division in the office of the state comptroller which shall be organized as follows:

a. *Director.* The division shall be in the charge of an administrative officer appointed by the comptroller with the approval of the governor, and shall be known as the director of personnel.

b. *Plan of classification and compensation.* Through the personnel director, the executive council shall adopt and establish a plan of classification and compensation for each position and type of employment in state government, except for positions for which the salaries or compensation is fixed by statute, and shall prescribe therein the necessary salary schedules, fixing a minimum and maximum for each class of employees doing the same general type of work. With the approval of the executive council, the personnel director shall make such regulations and adopt such methods of qualifying employees for positions

as will make the plan effective, and shall prescribe rules to provide for personnel administration which shall include rules governing appointments, promotions, demotions, transfers, separations, vacations and sick leave as provided by law, and hours of employment.

The plan adopted for personnel administration shall be based on merit system principles and standards.

All departments under the director of personnel shall have the right to appeal any plan of classification and compensation for each type of employment to the executive council provided that the request comes from the head of the department.

The executive council shall hear the appeal within thirty days from the date requested and evidence and argument may be submitted on behalf of the department.

The executive council shall enter a written opinion directing the director of personnel to take whatever action is necessary to carry out their decision.

c. *Exempted employees.* The employees under the attorney general, employees of the supreme court, employees of the clerk and reporter of the supreme court, and those employees under the state banking board and the employees of institutions under the state board of regents shall not come under the division of personnel.

For employees of department of public instruction, see ch 267

See biennial appropriation Acts for applicability of personnel provisions

d. *Merit system.* The present joint merit system now effective [July 4, 1951] in state agencies expending federal funds shall remain in full force and effect so far as they apply to such agencies until such time as the plan and rules promulgated under the provisions of the preceding sections are approved by the appropriate federal agencies. [C51, §§50-58; R60, §§71-79, 1967; C73, §§66-74; C97, §§89-97, 162; S13, §§89, 162, 163-a, 170-e, f; SS15, §§170-r, s, t, u; C24, §§102-109, 391-407; C27, §§102-109, 130-a1, 391-407; C31, §§102-109, 130-a1, 391-397, 397-d1, 398-407; C35, §84-e5; C39, §84.05; C46, 50, 54, §8.5; 56GA, ch 50, §1; ch 131, §1]

\*Effective July 4, 1933

Referred to in §§97B.67, 308.22

**8.6 Specific powers and duties.** The specific duties of the state comptroller shall be:

1. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants.

2. *Collection and payment of funds.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment.

3. *Contracts.* To certify, record and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

4. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all depart-



ments and agencies of the state government other than those of the legislative branch.

5. *Accounts.* To keep the central budget and proprietary control accounts of the state government. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income and expense.

6. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and/or institution for disbursement purposes where needed; provided, that these revolving funds shall be reimbursed only upon vouchers approved by the state comptroller. It is the purpose of this subdivision to establish a preaudit system of settling all claims against the state, but the preaudit system shall not be applicable to the institutions under the control of the state board of regents or to the state fair board.

7. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account-current each month from each educational institution and the state fair board.

Referred to in §§8.81, 11.2

8. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

9. *Apportionment of interest.* To apportion the interest of the permanent school fund on the first Monday of March of each year, among the several counties in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with him by the superintendent of public instruction.

See §§257.18(18), 302.13

10. *Report of standing appropriations.* To biennially prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and

the purpose for which such appropriation is made and furnish a copy of such report to each member of the general assembly on or before the first day of each regular session.

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

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

13. *Certification for levy.* On August 1 the state comptroller shall, for each year of the biennium, certify to the state tax commission, the amount of money to be levied for general state taxes.

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

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

16. *Rules and regulations.* To make such rules and regulations, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the state comptroller's office.

17. *Budget report.* The comptroller shall prepare and file in his office, on or before the first day of December of each even-numbered year, a state budget report, which shall show in detail the following:

a. Classified estimates in detail of the expenditures necessary, in his judgment, for the support of each department and each institution and department thereof for the ensuing biennium.

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current biennium and with the expenditures of like character for the last two preceding bienniums.

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

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

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

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

g. A detailed statement of all appropriations made during the two preceding bienniums, also of unexpended balances of appropriations at

the end of the last fiscal year and estimated balances at the end of the current fiscal year.

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

*i.* Statements showing:

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

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

(3) The estimated condition of the treasury at the end of the next biennium, if his recommendations are adopted.

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

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

(6) The millage necessary to produce such amount.

(7) Such other data or information as the comptroller may deem advisable.

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

19. *Board of control.* For the purpose of performing the duties of the comptroller provided in this chapter as applied to the state board of control, the comptroller shall assign an employee of his office to check and audit all claims against the state board of control before such claims are approved by the board. He shall keep all records and accounts relating to the expenditures of the board. He shall, in the checking and auditing of claims against the board and keeping the records and accounts of the board, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The state board of control shall furnish said employee of the comptroller with office space and such help and assistants as may be necessary to properly perform the duties therein specified. [C51,§50; R60,§§71, 1967; C73,§66; C97,§89; S13,§§89, 161-a; C24, 27, 31,§§102, 130, 329; C35,§84-e6; C39,§84.06; C46, 50, 54,§8.6; 56GA, ch 131,§§2, 3; 57GA, ch 51,§§1,2]

Referred to in §§8.31, 218.86, 218.89, 444.22

Report to governor, §17.3

See §§218.84-218.89

Auditor for highway commission appointed, §313.20

8.7 *Accounting.* The comptroller may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render statements thereof and information in reference thereto. [C51,§52; R60,§73; C73,§68; C97,§91; C24, 27, 31, §104; C35,§84-e7; C39,§84.07; C46, 50, 54,§8.7]

46GA, ch 4,§7, editorially divided

8.8 *Stating account.* If any officer who is accountable to the treasury for any money or property neglects to render an account to the comptroller within the time prescribed by law, or, if no time is so prescribed, then, within twenty days after being required so to do by the comptroller, the comptroller shall state an

account against him from the books of his office, charging ten percent damages on the whole sum appearing due, and interest at the rate of six percent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on such account, or on the official bond of such officer. [C51,§54; R60,§75; C73,§70; C97,§93; C24, 27, 31,§105; C35,§84-e8; C39, §84.08; C46, 50, 54,§8.8]

Referred to in §8.10

8.9 *Compelling payment.* If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the comptroller, fails to pay the amount found due, the comptroller shall charge such officer with twenty percent damages on the amount due, with interest on the aggregate from the time the same became due at the rate of six percent per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission. [C51,§55; R60,§76; C73,§71; C97,§94; C24, 27, 31,§106; C35,§84-e9; C39,§84.09; C46, 50, 54,§8.9]

Referred to in §8.10

8.10 *Defense to claim.* The penal provisions in sections 8.8 and 8.9 are subject to any legal defense which the officer may have against the account as stated by the comptroller, but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time named in sections 8.8 and 8.9. [C51,§56; R60, §77; C73,§72; C97,§95; C24, 27, 31,§107; C35,§84-e10; C39,§84.10; C46, 50, 54,§8.10]

8.11 *Requested credits — oath required.* When a county treasurer or other receiver of public money seeks to obtain credit on the books of the comptroller's office for payment made to the treasurer, before giving such credit, the comptroller shall require him to take and subscribe an oath that he has not used, loaned, nor appropriated any of the public money for his private benefit, nor the benefit of any other person. [C51,§57; R60,§78; C73,§73; C97,§96; C24, 27, 31,§108; C35,§84-e11; C39,§84.11; C46, 50, 54,§8.11]

8.12 *Requisition for information.* In those cases where the comptroller is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made thereon to the comptroller, as a notice in a civil action, shall be evidence of the making of the requisition therein expressed. [C51,§58; R60,§79; C73,§74; C97,§97; C24, 27, 31,§109; C35, §84-e12; C39,§84.12; C46, 50, 54,§8.12]

8.13 *Claims—limitations.* The state comptroller shall be limited in authorizing the payment of claims, as follows:

1. *Three months limit.* No claim shall be

allowed by the state comptroller's office when such claim is presented after the lapse of three months from its accrual.

**2. Convention expenses.** No claims for expenses in attending conventions, meetings, conferences or gatherings of members of any association or society organized and existing as quasi-public association or society outside the state of Iowa shall be allowed at public expense, unless authorized by the executive council; and claims for such expenses outside of the state shall not be allowed unless the voucher is accompanied by so much of the minutes of the executive council, certified to by its secretary, showing that such expense was authorized by said council. This section shall not apply to claims in favor of the governor, attorney general, Iowa state commerce commissioners, or to trips referred to in section 217.10.

**3. Payment from fees.** No claims for per diem and expenses payable from fees shall be approved for payment in excess of such fees where the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury. [C51,§53; R60,§74; C73,§69; C97,§92; S13,§170-f; SS15, §170-s,-t; C24, 27, 31,§§393, 398, 407; C35,§84-e13; C39,§84.13; C46, 50, 54,§8.13]

**8.14 Claims—approval.** The state comptroller before approving a claim shall determine:

1. That the creation of the claim is clearly authorized by law.

2. That the claim has been authorized by an officer or official body having legal authority to so authorize and that the fact of such authorization has been certified to said comptroller by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form and duly verified.

5. That the charges are reasonable, proper, and correct and no part of said claim has been paid. [C46, 50, 54,§8.14]

**8.15 Vouchers.** Before a warrant shall be issued for any claim payable from the state treasury, there shall be filed an itemized, sworn voucher which shall show in detail the items of service, expense, thing furnished, or contract upon which payment is sought.

Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order therefor is entered. [C46, 50, 54,§8.15]

**8.16 Warrants—form.** Each warrant shall bear on the face thereof the signature of the comptroller or a facsimile thereof, a proper number, date, amount, name of payee, and a reference to the law under which it is drawn, and a statement indicating the purpose for which warrant is issued, whether for salaries or wages, services or supplies, and what kind of supplies, and for what office or department, or for any other general or special purpose

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whatsoever, which particulars shall be entered in a warrant register kept for that purpose in the order of issuance; and, as soon as practicable after issuing such warrant register, the comptroller shall certify a duplicate thereof to the treasurer. [C31,§102(8); C46, 50, 54,§8.16]

**8.17 Required payee.** All warrants shall be drawn to the order of the person, firm, or contractor entitled to payment or compensation, except that when goods or material are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to bearer for net amount of invoice and current exchange, and the treasurer of state shall furnish such foreign draft payable to order of person, firm, or corporation from whom purchase is made. [C46, 50, 54,§8.17]

**8.18 Prohibited payee.** In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee of the same, except for personal service rendered or expense incurred by said employee, unless there be express statutory authority therefor. [C46, 50, 54,§8.18]

**8.19 Claims exceeding appropriations.** No claim shall be allowed when the same will exceed the amount specifically appropriated therefor. [C46, 50, 54,§8.19]

**8.20 Cancellation of state warrants.** The state comptroller as of March 31, June 30, September 30, and December 31 of each year shall cancel and request the treasurer of state to stop payment on all state warrants which have been outstanding and unredeemed by the state treasurer for one year or longer. [C46, 50, 54, §8.20]

See §249.41

### THE BUDGET

See §8.6 subsection 17

**8.21 Budget transmitted.** Not later than February 1 of the year of each biennial legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth his financial program for each of the fiscal years of the ensuing biennium and having the character and scope hereinafter set forth. [SS15,§191-b; C24, 27, 31,§334; C35,§84-e14; C39,§84.14; C46, 50, 54,§8.21]

Referred to in §8.27

**8.22 Nature and contents.** The budget shall consist of three parts, the nature and contents of which shall be as follows:

#### PART I

*Governor's budget message.* Part I shall consist of the governor's budget message, in which he shall set forth:

1. His program for meeting all the expenditure needs of the government for each of the years of the biennium to which the budget relates, indicating the classes of funds, general or special, from which such appropriations are to be made and the means through which such expenditures shall be financed.

2. Financial statements giving in summary form:

a. The condition of the treasury at the end of the last completed fiscal year, the estimated condition of the treasury at the end of the year in progress, and the estimated condition of the treasury at the end of each of the two years to which the budget relates if his budget proposals are put into effect.

b. Statements showing the bonded indebtedness of the government, debt authorized and unissued, debt redemption and interest requirements and condition of the sinking funds, if any.

c. A summary of appropriations recommended for each of the two years of the biennium to which the budget relates for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

d. A summary of the revenue, estimated to be received by the government during each of the two years of the biennium to which the budget relates, classified according to sources, in comparison with the actual revenue received by the government during the last completed fiscal year and estimated income during the year in progress.

e. Such other financial statements, data and comments as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition and operation of the government and the effect that the budget as proposed by him will have on such condition and operations.

If the estimated revenues of the government for the ensuing biennium as set forth in the budget on the basis of existing laws, plus the estimated amounts in the treasury at the close of the year in progress, available for expenditure in the ensuing biennial period is less than the aggregate recommended for the ensuing biennial period as contained in the budget, the governor shall make recommendations to the legislature in respect to the manner in which such deficit shall be met, whether by an increase in the state tax or the imposition of new taxes, increased rates on existing taxes, or otherwise, and if the aggregate of such estimated revenues, plus estimated balances in the treasury is greater than such recommended appropriations for the ensuing biennial period, he shall make such recommendations in reference to the application of such surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in his opinion is in the interest of the public welfare.

#### PART II

*Recommended appropriations.* Part II shall present in detail for each of the two years of the ensuing biennium his recommendations for appropriations to meet the expenditure needs of the government from each general class of funds, in comparison with actual expenditures for each of said purposes during the last com-

pleted fiscal year and estimated expenditures for the year in progress, classified by departments and establishments and indicating for each the appropriations recommended for:

1. Meeting the cost of administration, operation, and maintenance of such departments and establishments.

2. Appropriations for meeting the cost of land, public improvements, and other capital outlays in connection with such departments and establishments.

Each item of expenditure, actual or estimated, and appropriations recommended for administration, operation and maintenance of each department or establishment shall be supported by detailed statements showing the actual and estimated expenditures and appropriations classified by objects according to a standard scheme of classification to be prescribed by the state comptroller, hereinabove provided for.

#### PART III

*Appropriation bills.* Part III shall embrace a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. Such appropriation bills shall indicate the funds, general or special, from which such appropriations shall be paid, but such appropriations need not be in greater detail than to indicate the total appropriation to be made for:

1. Administration, operation, and maintenance of each department and establishment for each fiscal year of the biennium.

2. The cost of land, public improvements, and other capital outlays for each department and establishment, itemized by specific projects or classes of projects of the same general character. [SS15,§191-b; C24, 27, 31,§§332, 333, 335; C35,§84-e15; C39,§84.15; C46, 50, 54,§8.22]

Referred to in §§8.25, 8.27

**8.23 Biennial departmental estimates.** On, or before, September 1, next prior to each biennial legislative session, all departments and establishments of the government shall transmit to the state comptroller, hereinabove provided for, on blanks to be furnished by him, estimates of their expenditure requirements, including every proposed expenditure, for each fiscal year of the ensuing biennium, classified so as to distinguish between expenditures estimated for (a) administration, operation and maintenance, and (b) the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with such supporting data and explanations as may be called for by the state comptroller, hereinabove provided for. In case of the failure of any department or establishment to submit such estimates within the time above specified, the governor shall cause to be prepared such estimates for such department or establishment as in his opinion are reasonable and proper. [S13, §163-a; SS15,§191-a; C24, 27, 31,§§327, 328; C35, §84-e16; C39,§84.16; C46, 50, 54,§8.23]

Referred to in §8.25

**8.24 Biennial estimate of income.** On, or before, October 1, next prior to each biennial legislative session, the state comptroller, hereinabove provided for, shall prepare an estimate of the total income of the government for each fiscal year of the ensuing biennium, in which the several items of income shall be listed and classified according to sources or character, departments or establishments producing said funds and brought into comparison with the income actually received during the last completed fiscal year and the estimated income to be received during the year in progress. [C35,§84-e17; C39,§84.17; C46, 50, 54,§8.24]

Referred to in §8.25

**8.25 Tentative budget.** Upon the receipt of the estimates of expenditure requirements called for by section 8.23 and the preparation of the estimates of income called for by section 8.24 and not later than December 1, next succeeding, the state comptroller, hereinabove provided for, shall cause to be prepared a tentative budget conforming as to scope, contents and character to the requirements of section 8.22 and containing the estimates of expenditures and revenue as called for by sections 8.23 and 8.24, which tentative budget shall be transmitted to the governor. [C24, 27, 31,§332; C35,§84-e18; C39,§84.18; C46, 50, 54,§8.25]

Referred to in §8.26

**8.26 Hearings.** Immediately upon the receipt by him of the tentative budget provided for by section 8.25 the governor shall make provision for public hearings thereon, at which he may require the attendance of the heads and other officers of all departments, establishments and other persons receiving or requesting the grant of state funds and the giving by them of such explanations and suggestions as they may be called upon to give or as they may desire to offer in respect to items of requested appropriations in which they are interested. The governor shall also extend invitations to the governor-elect and the state comptroller to be present at such hearings and to participate in the hearings through the asking of questions or the expression of opinion in regard to the items of the tentative budget. [C24, 27, 31, §331; C35,§84-e19; C39,§84.19; C46, 50, 54,§8.26]

**8.27 Preparation of budget.** Following his inauguration, the governor shall proceed to the formulation of the budget provided for by sections 8.21 and 8.22. [C35,§84-e20; C39,§84.20; C46, 50, 54,§8.27]

**8.28 Supplemental estimates.** The governor shall transmit to the legislature supplemental estimates for such appropriations as in his judgment may be necessary on account of laws enacted after transmission of the budget, or as he deems otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the budget. Whenever such supplemental estimates amount to an aggregate which, if they had been contained in the budget, would have required the gov-

ernor to make a recommendation for the raising of additional revenue, he shall make such recommendation. [C35,§84-e21; C39,§84.21; C46, 50, 54,§8.28]

**8.29** Repealed by 54GA, ch 44,§7.

#### EXECUTION OF THE BUDGET

**8.30 Availability of appropriations.** The appropriations made shall not be available for expenditure until allotted as provided for in section 8.31. All appropriations now or hereafter made are hereby declared to be maximum and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named in the event that the estimated budget resources during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full. The governor shall restrict allotments only to prevent an overdraft or deficit in any fiscal year for which appropriations are made. [C35,§84-e23; C39, §84.23; C46, 50, 54,§8.30]

**8.31 Quarterly requisitions — exceptions — modifications.** Before an appropriation for administration, operation and maintenance of any department or establishment shall become available, there shall be submitted to the governor, not less than twenty days before the beginning of each quarter of each fiscal year, a requisition for an allotment of the amount estimated to be necessary to carry on its work during the ensuing quarter. Such requisition shall contain such details of proposed expenditures as may be required by the governor.

The governor shall approve such allotments, unless he finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event he may modify such allotments to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year, and shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, and to the state comptroller, hereinabove provided for, who shall set up such allotments on his books and be governed accordingly in his control of expenditures.

Allotments of appropriations made for equipment, land, permanent improvements, and other capital projects may, however, be allotted in one amount by major classes or projects for which they are expendable without regard to quarterly periods.

Allotments thus made may be subsequently modified by the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon his own initiative to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year; and the head of the

department or establishment and the state comptroller, hereinabove provided for, shall be given notice of such modification in the same way as in the case of original allotments.

Provided, however, that the allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from (a) state appropriations, (b) stores, and (c) repayment receipts.

The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, will be that outlined in section 8.6, subsection 7.

The finding by the governor that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, as provided herein, shall be subject to the concurrence in such finding by the executive council before reductions in allotment shall be made, and in the event any reductions in allotment be made, such reductions shall be uniform and prorated between all departments, agencies and establishments upon the basis of their respective appropriations. [C35,§84-e24; C39,§84.24; C46, 50, 54,§8.31; 56GA, ch 131,§4]

Referred to in §§8.30, 8.32  
See Opinion of Atty. Gen., May 20, 1957

**8.32 Conditional availability of appropriations.** All appropriations made to any department or establishment of the government as receive or collect moneys available for expenditure by them under present laws, are declared to be in addition to such repayment receipts, and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation, and maintenance, or public improvements of such departments:

Provided, that such receipts or collections shall be deposited in the state treasury as part of the general fund or special funds in all cases, except those collections made by the state fair board, the institutions under the state board of regents and the state conservation commission.

Provided further, that no repayment receipts shall be available for expenditures until allotted as provided in section 8.31; and

Provided further, that the collection of repayment receipts by the state fair board and the institutions under the state board of regents shall be deposited in a bank or banks duly designated and qualified as state depositories, in the name of the state of Iowa, for the use of such boards and institutions, and such funds shall be available only on the check of such boards or institutions depositing them, which are hereby authorized to withdraw such funds, but only after allotment by the governor as provided in section 8.31; and

Provided further, that this chapter shall not

apply to endowment and/or private trust funds or to gifts to institutions owned or controlled by the state or to the income from such endowment and/or private trust funds, or to private funds belonging to students or inmates of state institutions.

The provisions of this chapter shall not be construed to prohibit the state fair board from creating an emergency or sinking fund out of the receipts of the state fair and state appropriation for the purpose of taking care of any emergency that might arise beyond the control of the board of not to exceed three hundred thousand dollars, provided, however, that any expenditure from said fund shall be subject to the approval of the executive council. Neither shall the provisions of this chapter be construed to prohibit the state fair board from retaining an additional sum of not to exceed three hundred fifty thousand dollars to be used in carrying out the provisions of chapter 173. [C35,§84-e25; C39,§84.25; C46, 50, 54,§8.32; 56GA, ch 131,§5]

**8.33 Limit of expenditures—reversion.** No obligation of any kind whatsoever shall be incurred or created subsequent to the last day of the biennial fiscal term for which an appropriation for administration, operation, support, and maintenance is made against any said appropriation, except when specific provision otherwise is made in the act making the appropriation. On the last day of the biennial fiscal term it shall be the duty of the head of each department, board, or commission, or officer receiving appropriations for administration, operation, support, and maintenance under any act, to file with the state comptroller a list of all obligations incurred, and for which warrants have not been drawn, up to and including that date. On September 30, following the close of each biennial fiscal term all unencumbered or unobligated balances of appropriations made for said biennial fiscal term shall revert to the state treasury and to the credit of the fund from which the appropriation or appropriations were made, except that capital expenditures for the purchase of land or the erection of the buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. This section shall not be construed to repeal the provisions of sections 19.11 to 19.14, inclusive. [C35,§84-e26; C39,§84.26; C46, 50, 54,§8.33]

Referred to in §117.14

**8.34 Charging off unexpended appropriations.** Except as otherwise provided by law, the comptroller shall transfer to the fund from which any appropriation was made, any unexpended or unencumbered balance of such appropriation remaining at the expiration of three months after the close of the biennial fiscal term for which the appropriation was made. At the time the transfer is made on the books of his office he shall certify such fact to the treasurer of state, who shall make cor-

responding entries on the books of the treasurer's office. [C27, 31, §130-a1; C35, §84-a1; C39, §84.27; C46, 50, 54, §8.34]

Aid to children exception, §239.12  
Aid to blind exception, §241.21

**8.35 General supervisory control.** The governor and the state comptroller and any officer of the office of state comptroller, hereinabove provided for, when authorized by the governor, are hereby authorized to make such inquiries regarding the receipts, custody and application of state funds, existing organization, activities and methods of business of the departments and establishments, assignments of particular activities to particular services and regrouping of such services, as in the opinion of the governor, will enable him to make recommendations to the legislature, and, within the scope of the powers possessed by him, to order action to be taken, having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of government. [C35, §84-e27; C39, §84.28; C46, 50, 54, §8.35]

**8.36 Fiscal year.** The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government. [C35, §84-e28; C39, §84.29; C46, 50, 54, §8.36]

**8.37 Biennial fiscal term.** The biennial fiscal term of the state ends on the thirtieth day of June in each odd-numbered year, and the succeeding biennial fiscal term begins on the day following. [C73, §129; C97, §123; S13, §123; C24, 27, 31, §129; C35, §84-a2; C39, §84.30; C46, 50, 54, §8.37]

**8.38 Misuse of appropriations.** No state department, institution, or agency, or any board member, commissioner, director, manager, or other person connected with any such department, institution, or agency, shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated, except as otherwise provided by law. A violation of the foregoing provision shall make any person violating same, or consenting to the violation of same liable to the state for such sum so expended, together with interest and costs, which shall be recoverable in an action to be instituted by the attorney general for the use of the state, which action may be brought in any county of the state. [C35, §84-e29; C39, §84.31; C46, 50, 54, §8.38]

**8.39 Use of appropriations—transfer.** No appropriation nor any part thereof shall be used for any other purpose than that for which it was made except as otherwise provided by law; provided that the governing board or head of any state department, institution, or

agency may, with the written consent and approval of the governor and state comptroller first obtained, at any time during the biennial fiscal term, partially or wholly use its unexpended appropriations for purposes within the scope of such department, institution, or agency.

Provided, further, when the appropriation of any department, institution, or agency is insufficient to properly meet the legitimate expenses of such department, institution, or agency of the state, the state comptroller, with the approval of the governor, is authorized to transfer from any other department, institution, or agency of the state having an appropriation in excess of its necessity, sufficient funds to meet that deficiency. [C97, §187; SS15, §170-q; C24, 27, 31, §345; C35, §84-a3; C39, §84.32; C46, 50, 54, §8.39]

Referred to in §24.24

**8.40 Misdemeanors — removal — impeachment.** A refusal to perform any of the requirements of this chapter, and the refusal to perform any rule or requirement or request of the governor and/or the state comptroller made pursuant to or under authority of this chapter, by any board member, commissioner, director, manager, building committee, or other officer or person connected with any institution, or other state department or establishment as herein defined, shall subject the offender to a penalty of two hundred fifty dollars, to be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the governor upon thirty days notice in writing to such offender; and, if such offender be an officer elected by vote of the people, such offense shall be sufficient cause to subject the offender to impeachment. [S13, §163-a; C24, 27, 31, §330; C35, §84-e30; C39, §84.33; C46, 50, 54, §8.40]

Constitutionality, 45 GA, ch 4, §31  
Misdemeanor, punishment, §687.7  
Omnibus repeal, 45GA, ch 4, §33

**8.41 Special reserve fund created.** There is hereby appropriated and set aside out of the general fund to a special reserve fund, which fund is hereby created, the sum of thirty million dollars. [C50, 54, §8.41]

See 55GA, chs 4, 7, 8

**8.42 Use of fund.** The special reserve fund shall be used to augment the general fund as necessity requires, such necessity to be determined by the governor and the budget and financial control committee. [C50, 54, §8.42]

**8.43 Transfer to general fund.** When the governor and the budget and financial control committee have determined that necessity re-

quires the augmenting of the general fund by funds from the special reserve fund, funds in such amounts as they may direct shall be

transferred from the special reserve fund to the general fund. [C50, 54,§8.43]

Omnibus repeal, 53GA, ch 44,§4

## CHAPTER 9

### SECRETARY OF STATE

Beer permit board—duties, §§124.2, 124.3  
Identification and use of publicly owned automobiles, etc., §740.20 et seq.

- |   |             |
|---|-------------|
| 9.1 Duties—records.                       | 9.4 Fees.   |
| 9.2 Records relating to cities and towns. | 9.5 Salary. |
| 9.3 Commissions.                          |             |

**9.1 Duties—records.** The secretary of state shall keep his office at the seat of government, and perform all duties required of him by law; he shall have charge of and keep all the acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copies of the constitutions of the state, and all bonds, books, records, maps, registers, and papers which are now or may hereafter be deposited to be kept in his office, including all books, records, papers, and property pertaining to the state land office. [C51,§43; R60,§59; C73, §61; C97,§66; C24, 27, 31, 35, 39,§85; C46, 50, 54, §9.1]

**9.2 Records relating to cities and towns.** He shall receive and preserve in his office all papers transmitted to him in relation to the incorporation of cities and towns, or the annexation of territory thereto, or the consolidation or abandonment of municipal corporations; and shall keep an alphabetical list of said cities and towns in a book provided for that purpose, in which shall be entered the name of the town or city, the character of the same, whether town or city, the county in which situated, and the date of organization. [R60, §1046; C73,§65; C97,§67; C24, 27, 31, 35, 39,§86; C46, 50, 54,§9.2]

**9.3 Commissions.** All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office, and forthwith forward to the state comptroller a copy of said registration; provided, however, that notarial commissions shall be registered only in the office of the governor. [C51,§44; R60,§60; C73, §62; C97,§68; S13,§68; C24, 27, 31, 35, 39,§87; C46, 50, 54,§9.3]

**9.4 Fees.** The secretary of state shall collect all fees directed by law to be collected by him, including the following:

1. For certificate, with seal attached, two dollars.
2. For a copy of any law or record, upon the request of any private person or corporation, fifty cents per page. [C51,§2524; R60,§4133; C73,§3756; C97,§85; C24, 27, 31, 35, 39,§88; C46, 50, 54,§9.4; 57GA, ch 52,§1]

**9.5 Salary.** The salary of the secretary of state shall be five thousand dollars per annum. [C31, 35,§88-c1; C39,§88.1; C46, 50, 54,§9.5]

See biennial salary Act.

## CHAPTER 10

### LAND OFFICE

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|---|---|
| 10.1 Records.                               | 10.8 Maps—field notes—records—papers.     |
| 10.2 Separate grants.                       | 10.9 Color of title relinquished.         |
| 10.3 Tract books.                           | 10.10 Quitclaim deeds.                    |
| 10.4 Land office—how kept—certified copies. | 10.11 Lists of federal granted lands.     |
| 10.5 Patents.                               | 10.12 Dubuque and Pacific Railroad lands. |
| 10.6 When patents issued.                   | 10.13 University lands.                   |
| 10.7 Corrections.                           | 10.14 Effect of patents.                  |

**10.1 Records.** The books and records of the land office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record, in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; to preserve, by proper records,

copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest. [R60,§§92, 95; C73,§83; C97,§72; C24, 27, 31, 35, 39,§89; C46, 50, 54,§10.1]

**10.2 Separate grants.** Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the



sixteenth sections, the swamp lands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate. [R60,§94; C73,§84; C97,§73; C24, 27, 31, 35, 39,§90; C46, 50, 54,§10.2]

**10.3 Tract books.** Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when. [R60,§93; C73,§85; C97,§74; C24, 27, 31, 35, 39,§91; C46, 50, 54,§10.3]

**10.4 Land office—how kept—certified copies.** The land office shall be kept open during business hours. The documents and records therein shall be subject to inspection by parties having an interest therein, and certified copies thereof, signed by the secretary, with the seal of his office attached, shall be deemed presumptive evidence of the facts to which they relate, and on request they shall be furnished by him for a reasonable compensation. [R60,§101; C73,§86; C97,§75; C24, 27, 31, 35, 39,§92; C46, 50, 54,§10.4]

**10.5 Patents.** Patents for lands shall issue from the land office, shall be signed by the governor and recorded by the secretary; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the secretary, and all patents shall be delivered free of charge. [R60,§97; C73,§87; C97,§76; C24, 27, 31, 35, 39,§93; C46, 50, 54,§10.5]

**10.6 When patents issued.** No patents shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of person to whom sold, date of sale, price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and, if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office. [R60,§§98, 99; C73,§88; C97,§77; C24, 27, 31, 35, 39,§94; C46, 50, 54,§10.6]

**10.7 Corrections.** The secretary is authorized and required to correct all clerical errors of his office in name of grantee and description of tract of land conveyed by the state, found upon the records of such office; he shall attach his official certificate to each conveyance so corrected, giving the reasons therefor; record the same with the record of the original conveyance, and make the necessary corrections in the tract and plat books of his office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and

effect of a deed originally correct, subject to prior rights accrued without notice. [C73,§89; C97,§78; C24, 27, 31, 35, 39,§95; C46, 50, 54,§10.7]

**10.8 Maps — field notes — records — papers.** The secretary of state shall receive and safely keep in his office, as public records, any field notes, maps, records, or other papers relating to the public survey of this state, whenever turned over to the state in pursuance of law; the United States at all times to have free access thereto for the purpose of taking extracts therefrom or making copies thereof. [C73,§90; C97,§79; C24, 27, 31, 35, 39,§96; C46, 50, 54,§10.8]

**10.9 Color of title relinquished.** Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants is inferior to the rights of any valid interfering pre-emptor or claimant, he is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the interior department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants. [C73,§91; C97,§80; C24, 27, 31, 35, 39,§97; C46, 50, 54,§10.9]

**10.10 Quitclaim deeds.** Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, he is authorized to quitclaim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally. [C73,§92; C97,§81; C24, 27, 31, 35, 39,§98; C46, 50, 54,§10.10]

**10.11 Lists of federal granted lands.** In cases where lands have been granted to the state of Iowa by act of congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by act of congress, and such lands have been granted, by act of the general assembly, to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the secretary of state is hereby authorized to prepare, on the application of such person or company, or on the application of a party claiming title to any land through such person or company, a list or lists of lands situated in each county inuring to such applicant, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state, with the state seal, and then be certified to by the secretary to be true and correct copies of the lists made to this state, and deliver them to such applicant, who is hereby authorized to have them recorded in the proper county, and

when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee, or his or its assigns, to the lands therein described, under the grant of congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such acts of congress or the acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be void; but lands in litigation shall not be included in such lists until the actions are determined and such lands adjudged to be the property of the company; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swamp-land grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified. [C73,§93; C97,§82; C24, 27, 31, 35, 39,§99; C46, 50, 54,§10.11]

**10.12 Dubuque and Pacific Railroad lands.**

The secretary of state is hereby authorized upon the application of any person claiming title under the trust deeds executed by the Dubuque and Pacific Railroad Company, to secure its construction bonds, to any lands included in the list of lands certified to the state of Iowa, by the commissioner of the general land office and approved by the secretary of the interior, as selected to satisfy the grant made to the state of Iowa, by act of congress approved May 15, 1856, in aid of the construction of a railroad from Dubuque to Sioux City; to certify said land as inuring to the grantees of the said Dubuque and Pacific Railroad Company, which certificate shall be signed by the governor, and attested by the secretary of state, with the seal of the state, and deliver the

same to such applicant who is hereby authorized to have said certificate recorded in the county in which the land so certified, is situated, and when so recorded, shall be notice to all persons the same as deeds now are, and shall be evidence of the title from the state of Iowa, to any person deriving title to said land under the Dubuque and Pacific Railroad Company, to the land therein described under the grant of congress by which the land was certified to the state so far as the certified lists made by the commissioner aforesaid, conferred title to the state, but where lands embraced in such lists are not of the character embraced by such acts of congress or the acts of the general assembly of the state, and are not intended to be granted thereby, the lists so far as these lands are concerned, shall be void; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swamp-land grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified. [C39,§99.1; C46, 50, 54,§10.12]

**10.13 University lands.** The secretary of state is hereby authorized to issue patents for lands, the legal title to which is vested in the state university, in cases wherein it is shown to the satisfaction of the governor and attorney general that such lands have been in fact sold by the authority of the state and paid for, and that the certificates of purchase have been lost or destroyed. [C97,§83; C24, 27, 31, 35, 39,§100; C46, 50, 54,§10.13]

**10.14 Effect of patents.** The patents thus issued shall inure to the benefit of the original purchaser and his grantees only, and a clause to this effect shall be inserted in the patent. [C97,§84; C24, 27, 31, 35, 39,§101; C46, 50, 54,§10.14]

CHAPTER 11  
AUDITOR OF STATE

Beer permit board—duties, §§124.2, 124.3

Duties of World War II Compensation Board, see 55 GA. ch 55, §15

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

AUDIT OF STATE DEPARTMENTS

- 11.1 Definition.
- 11.2 Annual settlements.
- 11.3 State highway commission.
- 11.4 Report of audits.
- 11.5 Method of keeping accounts.

AUDIT OF COUNTIES, CITIES, AND  
SCHOOL DISTRICTS

- 11.6 Examination of counties.
- 11.7 State examiners.
- 11.8 Assistants.
- 11.9 Municipal and school examiners' salaries.
- 11.10 Examinations.
- 11.11 Scope of examinations.
- 11.12 Subpoenas.
- 11.13 Refusal to testify.
- 11.14 Reports—public inspection.
- 11.15 Report filed with county attorney.
- 11.16 Duty of attorney general.

- 11.17 Disclosures prohibited.
- 11.18 Examination of cities, townships, and schools.
- 11.19 Examiner's powers and duties.
- 11.20 Bills—audit and payment.
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- 11.22 Uniform system of accounting.
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REPORTS

- 11.24 Title of act.
- 11.25 Reports required.
- 11.26 Annual report.
- 11.27 Biennial report.
- 11.28 Individual audit reports.
- 11.29 Fees.
- 11.30 Salary.
- 11.31 Publication of municipal reports by state auditor.

AUDIT OF STATE DEPARTMENTS

**11.1 Definition.** The term "department" shall be construed to mean any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state. [C24, 27, 31, §339; C35, §101-a1; C39, §101.1; C46, 50, 54, §11.1]

Referred to in §24.24

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

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the comptroller's office as required by section 8.6, subsection 7 and that a final audit of such state agencies shall be made at the close of each fiscal year. [C97, §161; S13, §161-a; C24, 27, 31, §340; C35, §101-a2; C39, §101.2; C46, 50, 54, §11.2]

Referred to in §24.24

**11.3 State highway commission.** The annual audit of the accounts of the state highway commission shall be made by accountants from the office of the auditor of state and there is hereby annually appropriated from any funds in the state treasury, not otherwise ap-

propriated, a sum sufficient to defray the cost of the audit. [C31, §340-c1; C35, §101-a3; C39, §101.3; C46, 50, 54, §11.3]

Referred to in §24.24

**11.4 Report of audits.** The auditor of state shall make or cause to be made and filed and kept in his office written reports of all audits and examinations, which reports shall set out in detail the following:

1. The actual condition of such department found to exist on every examination.

2. Whether, in his opinion,

a. All funds have been expended for the purpose for which appropriated.

b. The department so audited and examined is efficiently conducted, and if the maximum results for the money expended are obtained.

c. The work of the department so audited or examined needlessly conflicts with or duplicates the work done by any other department.

3. All illegal or unbusinesslike practices.

4. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.

5. Comparisons of prices paid and terms obtained by the various departments for goods and services of like character and reasons for differences therein, if any.

6. Any other information which, in his judgment, may be of value to him.

All such reports shall be filed and kept in his office. [S13, §161-a; C24, 27, 31, §342; C35, §101-a4; C39, §101.4; C46, 50, 54, §11.4]

Referred to in §§11.28, 24.24

**11.5 Method of keeping accounts.** Each department and institution of the state shall keep its records and accounts in such form and by such methods as to be able to exhibit in its reports the matters required by the auditor of state, unless otherwise specifically prescribed by law. Each department and institution of the state shall keep its records and accounts in a current condition. The failure of the head of any department of the state to comply with this provision shall be ground for his suspension from office. [S13,§161-a; C24, 27, 31,§343; C35,§101-a5; C39,§101.5; C46, 50, 54,§11.5]

Referred to in §24.24

Suspension of state officers, ch 67

#### AUDIT OF COUNTIES, CITIES, AND SCHOOL DISTRICTS

**11.6 Examination of counties.** The financial condition and transactions of all counties shall be examined once each year by the auditor of state. [S13,§§100-d, 1056-a11, -a13; C24, 27, 31, 35, 39,§113; C46, 50, 54,§11.6]

Referred to in §123.58

**11.7 State examiners.** The auditor of state shall appoint such number of state examiners of accounts as may be necessary to make such examinations. Said examiners shall be of recognized skill and integrity, familiar with the system of accounting in county, school and city offices, and with the laws relating to the county, school and city affairs. Each examiner shall give bond in the sum of two thousand dollars, conditioned as bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such examiners shall be subject at all times to the direction of said auditor of state. [S13,§§100-a, 1056-a11; C24, 27, 31, 35, 39,§114; C46, 50, 54,§11.7]

Referred to in §123.58

Conditions, approval, filing of bonds, §§64.2, 64.19, 64.23

**11.8 Assistants.** The auditor of state shall appoint such additional assistants to the examiners as may be necessary, who shall be subject to discharge at any time by the auditor. [S13,§100-a; C24, 27, 31, 35, 39,§115; C46, 50, 54, §11.8]

**11.9 Municipal and school examiners' salaries.** County, municipal, and school examiners, and their assistants, shall be paid a per diem of not to exceed eighteen dollars each for each day they actually work, and their actual and necessary expenses. Said payment shall be made from the general fund on the certification of the auditor of state, and the general fund shall be reimbursed as provided in sections 11.20 and 11.21. [C46, 50, 54,§11.9; 57GA, ch 53,§1]

**11.10 Examinations.** Said examiners shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said officers and shall have the right, in the presence of the custodian or his deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county,

school, or city in any depository which has public funds in its custody pursuant to the law. [S13,§§100-d, 1056-a11; C24, 27, 31, 35, 39, §116; C46, 50, 54,§11.10]

Referred to in §123.58  
Depositories, §454.12

**11.11 Scope of examinations.** All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county, school, or city; whether the cost price for improvements and material in said county, school, or city is in excess of the cost price for like things in other counties, schools, or cities of the state; whether the county, school, or city authorities are complying with the law; and whether the accounts and reports are being accurately kept. [S13, §§100-d, 1056-a11; C24, 27, 31, 35, 39,§117; C46, 50, 54,§11.11]

Referred to in §123.58

**11.12 Subpoenas.** The auditor of state and all examiners shall, in all matters pertaining to an authorized examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations in shorthand, shall be paid as other expenses of the examiner. [S13,§§100-d, 1056-a11; C24, 27, 31, 35, 39,§118; C46, 50, 54,§11.12]

Expenses, §§11.20, 11.21

**11.13 Refusal to testify.** In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or shall attend and refuse to make oath or affirmation, or, being sworn or affirmed, shall refuse to testify, the auditor of state or the examiner may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions. [S13,§100-d; C24, 27, 31, 35, 39,§119; C46, 50, 54,§11.13]

Procedure for contempt, §§622.76, 622.77, 622.84, 622.102; also ch 665

**11.14 Reports—public inspection.** A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor of the city council if a city office is under examination. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with him, shall constitute a misdemeanor and shall be punishable by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed fifteen days.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the county, municipality or school district which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, such notice shall be sent to the official newspapers of the county. [S13, §§100-d, 1056-a11; C24, 27, 31, 35, 39, §120; C46, 50, 54, §11.14; 56GA, ch 51, §1]

Referred to in §123.58

**11.15 Report filed with county attorney.** If said examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be his duty to co-operate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity. [S13, §100-d; C24, 27, 31, 35, 39, §121; C46, 50, 54, §11.15]

**11.16 Duty of attorney general.** In the event such examination discloses any grounds which would be ground for removal from office, a fourth copy of said report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in his judgment, the facts and circumstances warrant. [S13, §100-d; C24, 27, 31, 35, 39, §122; C46, 50, 54, §11.16]

**11.17 Disclosures prohibited.** No such examiner shall make any disclosure of the result of any investigation, except as he is required by law to report the same or to testify in court. Any violation of this provision shall be ground for removal. [S13, §100-d; C24, 27, 31, 35, 39, §123; C46, 50, 54, §11.17]

Exception, §622.15

**11.18 Examination of cities, townships, and schools.** The financial condition and transactions of all cities and city offices, and all school offices, other than those in rural and village independent districts and school townships and all consolidated school districts and independent school districts in cities and towns of less than five thousand population, shall be examined at least once each year and such examination may be made by the auditor of state, or in lieu of the examination by state accountants the local governing body whose accounts are to be examined, in case it elects so to do, may contract with, or employ, certified or registered public accountants, certified and registered in the state of Iowa, and pay the same from the proper public funds. If the city or school district elect to have the audit made by certified or registered public accountants, they must so notify the auditor of state within sixty days after the close of the fiscal year to be examined. If any city or school district does not file such notification with the auditor of state within the required period, the auditor of state is authorized to

make the examination and cover any period which has not been previously examined.

Any township or municipal corporation not embraced within the foregoing provisions of this chapter and any school corporation in which an annual examination is not required may, on application to the auditor of state, secure an examination of its financial transactions and condition of its funds, or a like examination shall be had on application of one hundred or more taxpayers, or if there are fewer than five hundred taxpayers, then by five percent thereof. The examination in any such school district may be had upon the written request of the county superintendent of schools. In lieu of such examination by state accountants, the local governing body may contract with, or employ, certified or registered public accountants and pay the same from the proper public funds. [S13, §§100-e, 1056-a12; C24, 27, 31, 35, 39, §124; C46, 50, 54, §11.18]

Referred to in §§11.19, 123.58

**11.19 Examiner's powers and duties.** Where an examination is made under contract with, or employment of, certified or registered public accountants, the examiner shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state examiners employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, town, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the examiner shall be filed with the clerk of the city, town, township, or school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.

All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with him, shall constitute a misdemeanor and shall be punishable by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed fifteen days.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, town, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.

Failure to file such report with the auditor of state shall bar such accountant from making any city or school audits thereafter under the provisions of section 11.18. [C39, §124.1; C46, 50, 54, §11.19; 56GA, ch 51, §§2,3]

**11.20 Bills—audit and payment.** Where the examination is made by the state auditor under the provisions of this chapter, each examiner shall file with the local governing body and

also with the auditor of state a detailed, itemized and sworn voucher of his per diem and expense, which expense shall not exceed the sum of three dollars per day for the time such examiner is actually engaged in such examination. The said statement or voucher shall be subject to approval by such governing body and when so approved shall be forwarded to the auditor of state. If the local governing body fails to disapprove the said statement of expense within ten days from the filing thereof the auditor of state and state comptroller may approve the said claim and the same shall be paid from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21. [S13, §§100-a-e, 1056-a11; C24, 27, 31, 35, 39, §125; C46, 50, 54, §11.20]

Referred to in §11.9

**11.21 Repayment — objections.** Upon payment by the state of the per diem and expenses aforesaid, the auditor of state shall at once file with the warrant-issuing officer of the county, school, or city, whose offices were examined, a copy of the vouchers so paid by the state. Upon audit and approval by the board of supervisors, city, county, or school board, the said warrant-issuing officer shall draw his warrant for said amount on the general fund of the county, school, or city in favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state. In the event of the disapproval of any items of said vouchers by the county, school, or city authorities, written objections shall be filed with the auditor of state and said disapproved items of said vouchers shall not be paid to the auditor of state until changed and final approval is given.

Whenever the county board of supervisors, the school board, or the council shall file written objections with the auditor of state, he or his representative may hold a public hearing in the city where the examination was made, on the question of compensation and expenses, and shall give the complaining board notice of the time and place of hearing. After such hearing he shall have the power to reduce the compensation and expenses of the examiner and assistant examiner whose bills have been questioned. Any examiner or assistant examiner who shall be found guilty of padding his per diem or expense account shall be immediately discharged by the auditor of state and shall not be eligible for re-employment in either position. Such examiner or assistant examiner must thereupon reimburse the auditor of state for all such compensation and expenses so found to have been overpaid to him and in the event of his failure so to do, the auditor of state may collect the same amount from the examiner's bondsman by suit, if necessary. [S13, §§100-a-e, 1056-a11; C24, 27, 31, 35, 39, §126; C46, 50, 54, §11.21]

Referred to in §§11.9, 11.20, 123.58

**11.22 Uniform system of accounting.** The auditor of state shall prescribe a uniform sys-

tem of blanks and forms for all financial accounts, receipts, and reports of all county, city, and town offices. Said system shall, as far as practicable, follow the classifications and definitions of such transactions in use in the national census office, when not in conflict with the laws of this state. Said blanks and forms shall, by said auditor, be revised, from time to time, in order to render the same more efficient and to meet changes in the law. [S13, §§100-b, 550-a, 741-a, 1056-a10, -a13; C24, 27, 31, §111; C35, §130-a2; C39, §130.1; C46, 50, 54, §11.22]

**11.23 Duty to install.** It shall be the specific duty of each county, school, city, and town officer to install and use in his office a system of uniform blanks and forms as prescribed by law. State examiners of accounts are charged with the specific duty to assist all such officers in installing said system. [S13, §§100-b-c, 1056-a10; C24, 27, 31, §112; C35, §130-a3; C39, §130.2; C46, 50, 54, §11.23]

Referred to in §123.58

#### REPORTS

**11.24 Title of act.** This act\* shall be known and may be cited as the "State Audit Act". [C35, §130-e1; C39, §130.3; C46, 50, 54, §11.24]

\*45GA, ch 5

**11.25 Reports required.** The auditor of state shall make the following reports:

1. An annual report to the governor and general assembly of all municipal financial operations.

2. A biennial report to the governor and the general assembly of all operations of his office.

3. Individual audit reports giving the results of all examinations and audits of all departments and establishments and all fiscal officers of the state and local governments. [C35, §130-e2; C39, §130.4; C46, 50, 54, §11.25]

Annual report to governor, §17.4

Biennial report, §17.3

**11.26 Annual report.** The annual report shall include statistics of all municipal financial operations similar to those now tabulated and reported in his annual report on municipal finances. [C35, §130-e3; C39, §130.5; C46, 50, 54, §11.26]

**11.27 Biennial report.** The biennial report shall include:

1. A narrative report and such statistical statements as the state auditor deems essential to display the results of his audits of the state departments and establishments.

2. A narrative report and statistical statements of all county financial operations similar to that now tabulated and reported in his biennial report.

3. Statistics on building and loan associations now required by law to be published biennially. The biennial report shall also include the results of his audit of the documents and the records of the state comptroller's office created in the budget and financial control

act, which records shall be audited by him; and, the results of his audit of all taxes and other revenue collected and paid into the treasury, and the sources thereof. This report shall also include his recommendations to improve the business methods of the government and any other matters having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of the government. [C35,§130-e4; C39,§130.6; C46, 50, 54,§11.27]

**11.28 Individual audit reports.** The individual audit reports shall include exhibits and schedules to report data similar to that now required by section 11.4, and shall as nearly as possible correspond and be prepared similar in form to the audit reports rendered by certified public accountants, and such reports shall include information as to the assets and liabilities of the various departments and institutions audited as of the beginning and close of the fiscal year audited, the receipts and expenditures of cash, the disposition of materials and other properties, and the net income and net operating cost. These reports shall also set forth the cost as to each inmate, member, or student per year in the various classifications of expenses, and shall make comparisons thereof, and shall give such other information, suggestions, and recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state; provided, that the daily audit report of the state treasury shall be submitted to the state comptroller; provided, further, that copies of all individual audit reports of all state departments and establishments shall be transmitted to the executive council and to the state comptroller's office after the completion of each audit, and that copies of all local government audits shall, until otherwise provided, be also supplied to

the comptroller's office; provided, further, that copies of such audit reports shall also be supplied to the officers of the counties, schools, cities, and towns, as now provided by law; and, provided further, that summaries of the findings, recommendations, and comparisons, together with any other information deemed essential, shall be printed and distributed to members of the legislature, and such officials, including state officers, as may be designated by the executive council. [C35,§130-e5; C39, §130.7; C46, 50, 54,§11.28]

Constitutionality, 45GA, ch 5,§12  
Omnibus repeal, 46GA, ch 5,§13

**11.29 Fees.** The auditor of state shall collect such fees as are provided for in the title on building and loan associations. [C97,§100; C24, 27, 31,§110; C35,§130-a4; C39,§130.8; C46, 54,§11.29]

See §§534.77, 534.78

**11.30 Salary.** The salary of the auditor of state shall be five thousand dollars per annum. [C31, 35,§130-cl; C39, §130.9; C46, 50, 54,§11.30]

See biennial salary Act

**11.31 Publication of municipal reports by state auditor.** The auditor of state shall prepare the annual reports certified to him under the provisions of the chapter\* on the powers and duties of municipal officers for publication in a separate volume. Said reports shall show under appropriate schedules the total receipts and expenditures, assets and indebtedness, and related data of all cities and towns in the state, together with comments and recommendations respecting desirable changes in the law governing financial administration in municipal corporations. [S13,§1056-a9; C24, 27, 31, 35, 39, §5682; C46, 50,§363.59; C54,§11.31]

\*Chapter 868A

## CHAPTER 12

### TREASURER OF STATE

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

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| 12.1 Office—accounts.                        | 12.12 Statement required.                        |
| 12.2 Daily balance sheet.                    | 12.13 Payment of claims.                         |
| 12.3 Record and payment of warrants.         | 12.14 Statement itemized.                        |
| 12.4 Receipts.                               | 12.15 Comptroller and treasurer to keep account. |
| 12.5 Payment.                                | 12.16 Swamp land indemnity.                      |
| 12.6 Report to and account with comptroller. | 12.17 Biennial report.                           |
| 12.7 Interest on bonds.                      | 12.18 Salary.                                    |
| 12.8 Investment or deposit of surplus.       | 12.19 Six months limit on checks.                |
| 12.9 Repealed by 57GA, ch 54,§8.             | 12.20 Issuance of new check.                     |
| 12.10 Deposits by state officers.            |  |
| 12.11 Unclaimed fees.                        |  |

**12.1 Office—accounts.** The treasurer shall keep his office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury in books kept for that purpose, in which he shall specify the names of the persons from whom money

is received, and on what account, and the time thereof. [C51,§62; R60,§83; C73,§75; C97,§101; C24, 27, 31, 35, 39,§131; C46, 50, 54,§12.1]

**12.2 Daily balance sheet.** The treasurer of state shall so keep the books of his office that

at the close of each day's business the account of each fund will show the balance or deficit therein, and show also the total amount of the money in the state treasury, and should the books not be in balance, the daily statement shall show the amount of the surplus or deficit by which the books fail to balance. [C24, 27, 31, 35, 39,§132; C46, 50, 54,§12.2]

**12.3 Record and payment of warrants.** He shall enter in a book the memorandum of warrants issued as certified to him by the state comptroller, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to endorse it, and shall write on the face thereof "redeemed", and enter in the book containing the comptroller's memoranda, in appropriate columns, the name of the person to whom paid, date of payment, and amount of interest paid. [C51,§63; R60,§84; C73,§76; C97,§102; C24, 27, 31, 35, 39,§133; C46, 50, 54,§12.3]

**12.4 Receipts.** When money is paid him, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the comptroller in order to obtain the proper credit, and the treasurer must be charged therewith. [C51,§64; R60,§85; C73,§77; C97,§103; C24, 27, 31, 35, 39,§134; C46, 50, 54,§12.4]

**12.5 Payment.** He shall pay no money from the treasury but upon the warrants of the comptroller, and only in the order of their presentation. [C51,§65; R60,§86; C73,§78; C97, §104; S13,§104; C24, 27, 31, 35, 39,§135; C46, 50, 54,§12.5]

Related provisions, §§8.6, 74.5  
Warrants not paid for want of funds, §§74.1-74.7

**12.6 Report to and account with comptroller.** Once in each week he shall certify to the comptroller the number, date, amount, and payee of each warrant taken up by him, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, he is directed to account with the comptroller and deposit in his office all such warrants received at the treasury, and take the comptroller's receipt therefor. [C51, §67; R60,§88; C73,§80; C97,§106; S13,§106; C24, 27, 31, 35, 39,§137; C46, 50, 54,§12.6]

Analogous provisions, §§334.7, 368A.4

**12.7 Interest on bonds.** When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day, at the expiration of which time the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury. [C73,§82; C97,§108; C24, 27, 31, 35, 39,§138; C46, 50, 54,§12.7]

Deposits in general, ch 453

**12.8 Investment or deposit of surplus.** The treasurer of state shall invest or deposit, as provided by law, any of the public funds not currently needed for operating expenses. [C24, 27, 31, 35, 39,§141; C46, 50, 54,§12.8; 57GA, ch 54,§1]

Referred to in §§334.11, 453.7  
Investment or deposit, §452.10

**12.9** Repealed by 57GA, ch 54,§1.

**12.10 Deposits by state officers.** All elective and appointive state officers, boards, commissions, and departments, except the state fair board, the state board of regents, Iowa state commerce commission, and the board of control of state institutions, shall, within ten days succeeding the collection thereof, deposit, with the treasurer of state, or to the credit of said treasurer in any depository by him designated, ninety percent of all fees, commissions, and moneys collected or received; the balance actually collected in cash, remaining in the hands of any officer, board, or department shall not exceed the sum of five thousand dollars and no money collected shall be held more than thirty days. [C73,§3778; C97,§191; S13,§170-d; C24, 27, 31, 35, 39,§143; C46, 50, 54,§12.10; 56GA, ch 131,§6]

Referred to in §685.3

**12.11 Unclaimed fees.** All officers, boards, and commissions of the state government shall on the first Monday in January and July of each year pay to the treasurer of state for the use of the state, all fees and charges not belonging to the said office, and in his or its hands at the date of preceding payment, even though unrepresented checks are outstanding against said funds, and take the treasurer's receipt therefor. [C27, 31, 35,§143-b1; C39, §143.1; C46, 50, 54,§12.11]

Analogous provision, §606.16

**12.12 Statement required.** At the time of making such payment the officer, board, or commission shall furnish the said treasurer a written statement which shall show in detail the amount due each person and for what due and such other information as may be necessary to clearly designate each claim. A duplicate of such statement and receipt shall be filed with the comptroller. [C27, 31, 35,§143-b2; C39,§143.2; C46, 50, 54,§12.12]

Analogous provision, §606.17

**12.13 Payment of claims.** The comptroller shall charge the treasurer of state with the amount of the payment as so much state revenue and shall enter the various claims upon the proper records as claims allowed, and on demand and proper proof by the person entitled thereto shall issue warrants accordingly, provided such demand is made within five years from the time the treasurer received said funds. [C27, 31, 35,§143-b3; C39,§143.3; C46, 50, 54,§12.13]

Analogous provision, §606.18

**12.14 Statement itemized.** Each deposit shall be accompanied by an itemized statement



of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the comptroller. [S13,§170-d; C24, 27, 31, 35, 39, §144; C46, 50, 54,§12.14]

**12.15 Comptroller and treasurer to keep account.** The treasurer and comptroller shall each keep an accurate account of the moneys so deposited. [S13,§170-f; C24, 27, 31, 35, 39,§145; C46, 50, 54,§12.15]

**12.16 Swamp land indemnity.** All swamp land indemnity money paid by the federal government to this state under any act of congress relating thereto shall be paid by the treasurer of state to the county treasurer of the county where the land, on account of which such payment is made, is located. The county treasurer shall be liable on his bond for the safe custody of said funds and shall promptly notify the board of supervisors of the receipt thereof. Said funds shall be applied by the said supervisors as required by law. [S13,§§116-d,e,f; C24, 27, 31, 35, 39,§146; C46, 50, 54,§12.16]

**12.17 Biennial report.** The treasurer of state shall, biennially, at the time provided by

law, report to the governor the state of the treasury and exhibit therein the amount received and paid out by the treasurer since his last report, and the balance remaining in the treasury. [C51,§68; R60,§89; C73,§81; C97,§107; C24, 27, 31, 35, 39,§147; C46, 50, 54,§12.17]

**Time of report, §17.8**  
See also §258.12

**12.18 Salary.** The salary of the treasurer of state shall be five thousand dollars per annum. [C31, 35,§147-c1; C39,§147.1; C46, 50, 54,§12.18]

See biennial salary Act

**12.19 Six months limit on checks.** On the first day of each quarter of each fiscal year of the state the state treasurer shall stop payment on and make void all treasury checks dated six months or more prior to that date, and the state treasurer shall not redeem any such check thereafter. [C46, 50, 54,§12.19]

**12.20 Issuance of new check.** Upon presentation of any check voided as above provided by the holder thereof after said six months period, the state treasurer is hereby authorized to issue to said holder, a new check for the amount of the original check. [C46, 50, 54, §12.20]

## CHAPTER 13

### ATTORNEY GENERAL

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

13.1 Department of justice.

13.2 Duties.

13.3 Disqualification—substitute.

13.4 Assistant attorneys general.

13.5 Assistant for tax commission,

13.6 Assistant for social welfare board.

13.7 Special counsel.

13.8 Expenses.

13.9 Salary.

**13.1 Department of justice.** The department of justice, with the attorney general as head thereof, shall be located at the seat of government. [R60,§124; C73,§§150, 3770; C97, §§208, 211; S13,§§208, 211; C24, 27, 31, 35, 39,§148; C46, 50, 54,§13.1]

**13.2 Duties.** It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the supreme court in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in his judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in his official capacity.

4. Give his opinion in writing, when requested, upon all questions of law submitted

to him by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

5. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

6. Report to the governor, at the time provided by law, the condition of his office, opinions rendered, and business transacted of public interest.

7. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business intrusted to their charge.

8. Promptly account, to the treasurer of state, for all state funds received by him.

9. Keep in proper books a record of all official opinions, and a register of all actions prosecuted and defended by him, and of all proceedings had in relation thereto, which books shall be delivered to his successor.

10. Perform all other duties required by law. [R60, §§124-127, 130, 131; C73, §§150-153; C97, §§208-210; S13, §208-a; C24, 27, 31, 35, 39, §149; C46, 50, 54, §13.2]

Biennial report, §17.6

**13.3 Disqualification—substitute.** If, for any reason, the attorney general be disqualified from appearing in any action or proceeding, the executive council shall appoint some suitable person for that purpose and defray the reasonable expense thereof from any unappropriated funds in the state treasury. [C24, 27, 31, 35, 39, §150; C46, 50, 54, §13.3]

**13.4 Assistant attorneys general.** The attorney general may appoint a first assistant attorney general and such other assistant attorneys general as may be authorized by law, who shall devote their entire time to the duties of their positions. The assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general. [C97, §212; S13, §212; C24, 27, 31, 35, 39, §151; C46, 50, 54, §13.4]

Special assistants: Claims against state, §25.4; highway commission, §307.9; motor vehicle dealers licensing act, §222.12

**13.5 Assistant for tax commission.** The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the state tax commission, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said state tax commission, and upon request of the attorney general the state tax commission shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general. [C39, §151.1; C46, 50, 54, §13.5]

**13.6 Assistant for social welfare board.** The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the state board of social welfare,

and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said state board of social welfare, and upon request of the attorney general the state board of social welfare shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general. [C39, §151.2; C46, 50, 54, §13.6]

See §249.20

**13.7 Special counsel.** No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government, or the head thereof, or to any state board or commission, but the executive council may employ legal assistance, at a reasonable compensation, in any pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that his department cannot for reasons stated by him perform said service, which reasons and action of the council shall be entered upon its records. This section shall not affect the office of the commerce counsel nor legal counsel of the Iowa employment security commission. [S13, §208-b; C24, 27, 31, 35, 39, §152; C46, 50, 54, §13.7]

Commerce counsel, §476.7

Employment by governor, §§7.3-7.5

Employment security commission, §96.17, subsection 1

**13.8 Expenses.** The attorney general and his assistants shall be repaid their actual and necessary expenses incurred in transacting their official duties at places other than the seat of government. [C73, §3770; C97, §211; S13, §211; C24, 27, 31, 35, 39, §153; C46, 50, 54, §13.8]

**13.9 Salary.** The salary of the attorney general shall be six thousand dollars per annum, and the salaries of the first assistant attorney general and other assistant attorneys general shall be such as may be fixed by law. [C31, 35, §153-c1; C39, §153.1; C46, 50, 54, §13.9]

See biennial salary Act

## CHAPTER 14

## REPORTER OF THE SUPREME COURT AND CODE EDITOR

Referred to in §15.38

## GENERAL PROVISIONS

- 14.1 Appointment.
- 14.2 Office.
- 14.3 Duties.
- 14.4 Recommendations—printing and reference.

## SUPREME COURT REPORTS

- 14.5 Access to opinions.
- 14.6 Standard for reports.
- 14.7 New edition.
- 14.8 Copyrights.
- 14.9 Skeleton-digest of opinions.
- 14.10 Session laws.

## THE CODE

- 14.11 Original enrolled bills.
- 14.12 Style of Code.
- 14.13 Editorial work.
- 14.14 Formal matters omitted.
- 14.15 Future Codes.
- 14.16 Preparation.
- 14.17 Citation of permanent Code.
- 14.18 Citation of session laws.
- 14.19 Citation of prior Codes.
- 14.20 Official statutes.
- 14.21 Publication of parts of Code.
- 14.22 Appropriation.

## GENERAL PROVISIONS

**14.1 Appointment.** Within ninety days prior to the first secular day in January, 1927, and every four years thereafter the judges of the supreme court shall appoint a reporter of the supreme court who shall hold office for four years from said secular day and until his successor has been appointed, and has qualified. Vacancies shall be filled by said judges for the unexpired portion of the term. Chapter 70 shall not apply to appointments under this section. [C73,§583; C97,§1067; S13,§§207-a,-b; C24, 27, 31, 35, 39,§154; C46, 50, 54,§14.1]

**14.2 Office.** The office of the reporter of the supreme court shall be at the seat of government. He shall devote his entire time to the duties of his office. [C97,§213; SS15,§224-a; C24, 27, 31, 35, 39,§155; C46, 50, 54,§14.2]

**14.3 Duties.** The reporter of the supreme court shall be editor of the Code and his duties shall be to:

1. Submit such recommendations as he deems proper to each general assembly for the purpose of amending, revising, and codifying such portions of the law as may be conflicting, redundant, or ambiguous, and to lay said recommendations before the presiding officers of each house.

2. Edit and compile the Code after each odd-numbered session of the general assembly so that the same may be printed as herein provided.

3. Prepare and cause to be published immediately following the issuance of the Code in 1931, and every two years thereafter, a volume which shall by proper annotations show the construction placed by the supreme court of this state and the federal courts on all statutes of this state since the then existing permanent volume of annotations. When the accumulation of annotations reaches a sufficient amount they shall be published as a permanent volume.

4. Promptly prepare syllabi for all opinions of the supreme court and an index and proper tables for each volume of the reports, and he may publish advance sheets of said reports.

5. Prepare the manuscript copy of all laws, acts, and joint resolutions passed at each session of the general assembly, and arrange the same in chapters with comprehensive index and in such manner that each chapter will show the number of the house or senate file, and cause the same to be printed by the superintendent of printing. In so doing the Code editor shall have the right to the possession of the enrolled acts and shall have sole charge of the editing and proofreading notwithstanding the provisions of section 16.3.

6. Prepare and cause to be published, at such times as the supreme court shall by order direct, the rules of civil procedure and supreme court rules.

7. Prepare the manuscript copy, and cause to be printed by the state superintendent of printing in each year in which a Code is published, a volume which shall contain the permanent rules and regulations of general application, promulgated by each state board, commission, bureau, division or department, other than a court, having statewide jurisdiction and authority to make such rules. The Code editor may omit from said volume all rules and regulations applying to professional and regulatory examining and licensing provisions and any rules and regulations of limited application. The Code editor may make reference in the volume as to where said omitted rules and regulations may be procured.

This volume shall be known as the Iowa departmental rules and any rule printed therein may be cited as . . . . . I.D.R. . . . . giving the year of publication and the page where the particular rule, by number, may be found.

The Code editor may provide cumulative, semiannual supplements for insertion in the latest published volume and a place shall be provided in the binding of said volume for insertion of such supplements. [C51,§46; R60, §§62, 113, 115, 144; C73,§§35, 155, 156; C97,p.5, §§88, 216; S13,p.3; SS15,§§224-c,-h; C24, 27, 31, 35, 39,§156; C46, 50, 54,§14.3; 56GA, ch 52,§1; 57GA, ch 55,§§1, 2]

**14.4 Recommendations—printing and reference.** The recommendations of the editor of the Code shall be printed in such numbers as the printing board deems necessary for public use, and when laid before the presiding officers of the respective houses shall be referred in each house to appropriate committees. [C24, 27, 31, 35, 39,§157; C46, 50, 54,§14.4]

#### SUPREME COURT REPORTS

**14.5 Access to opinions.** He shall, under the direction of the judges of the supreme court, have such access to the opinions of the court as will enable him to discharge his duties. [R60,§112; C73,§154; C97,§213; SS15,§224-b; C24, 27, 31, 35, 39,§158; C46, 50, 54,§14.5]

**14.6 Standard for reports.** The size, style, type, binding, and appearance of volume 195 of the supreme court reports shall be substantially followed in the future publications of said reports. A majority of the judges of the supreme court may prescribe a different standard volume. [C97,§218; SS15,§224-d; C24, 27, 31, 35, 39,§159; C46, 50, 54,§14.6]

**14.7 New edition.** The supreme court may, when the public interest requires it, order the publication of a new edition of any volume of its reports of which the copyright is not owned by the state, and may require compliance therewith within six months by an order entered of record. Failure to comply with said order shall work a forfeiture of said copyright to the state. [R60,§120; C73,§158; C97,§214; SS15,§224-f; C24, 27, 31, 35, 39,§160; C46, 50, 54,§14.7]

**14.8 Copyrights.** All supreme court reports and books of annotations hereafter published shall be copyrighted in the name of the state of Iowa; but this shall not be construed to prevent the contractor by whom any volume of the reports of the supreme court is published, his representatives, or assigns, from continuing the exclusive publication and sale of such volume so long as he or they shall, in all respects, comply with the requirements of their contract. [C97,§217; SS15,§224-g; C24, 27, 31, 35, 39,§161; C46, 50, 54,§14.8]

**14.9 Skeleton-digest of opinions.** The state printing board is directed to cause to be printed, from time to time, in cumulated, pamphlet form, and from copy to be furnished by the Code editor, the skeleton card digest which covers the current opinions of the supreme court and which is being maintained in the office of said Code editor. The Code editor shall have sole charge of the proofreading. Said pamphlet shall be sold by the superintendent of printing at a price which will fairly reimburse the state for the cost of printing and paper stock. [C35,§240-g; C39,§161.1; C46, 50, 54,§14.9]

#### 14.10 Session laws.

1. The size, style, type, binding, general arrangement and tables of the published acts of the forty-ninth general assembly shall be sub-

stantially followed in the future publication of the session laws.

2. The acts of each general assembly shall, as nearly as possible, be arranged in said published volume in the same consecutive order in which the same or similar subject matters are arranged in the Code.

3. The secretary of state shall prepare and deliver to the Code editor for insertion in each published volume of session laws a correct list of state officers and deputies, judges of the supreme, district, superior, and municipal courts and members of the general assembly.

4. There shall also be inserted in each volume of the session laws, the statement of the condition of the state treasury as provided by the constitution. Said statement shall be furnished by the state comptroller.

See constitution, Art. III,§18

5. The enrolling clerks of the house and senate shall make arrangements whereby the Code editor will receive suitable copies of all acts and resolutions as soon as the same are enrolled. [C73,§36; C97,§39; SS15,§224-i; C24, 27, 31, 35,§§162, 162-d1, 163, 164, 165, 167; C39, §§221.1, 221.2, 221.3, 221.4, 221.5; C46, 50, 54, §14.10]

#### THE CODE

**14.11 Original enrolled bills.** In the preparation of the Code the editor of the Code shall have the right to the possession of the enrolled bills. [C24, 27, 31, 35, 39,§166; C46, 50, 54,§14.11]

**14.12 Style of Code.** The Code shall be prepared and published substantially in the following form and style:

1. The printing of the text shall be in double columns from type forms thirty-six picas wide by fifty-four picas high and in eight-point type on a nine-point base with spacing of approximately six points between sections.

2. The chapters shall be numbered consecutively (commencing with number one) and without regard to titles.

3. Each section shall be indicated by a number printed in bold face type.

4. Each section shall have appropriate catchwords printed in bold face type contrasting with the text and followed immediately by the first word of the section.

5. Proper historical references shall immediately follow the last word of each section.

6. The Code provided for herein shall include:

a. An analysis of the Code by titles and chapters.

b. The declaration of independence.

c. Articles of confederation.

d. The constitution of the United States.

e. Laws of the United States relating to citizenship, naturalization, and the authentication of records.

f. The constitution of Iowa.

g. The act admitting Iowa into the union as a state.

h. Chapter analysis at the head of each chapter.

i. All of the statutes of Iowa of a general and permanent nature.

j. The rules of the supreme court.

k. An index covering the constitution and statutes of the state of Iowa and the rules of the supreme court.

7. The Code editor may insert under any section a reference to any other related section or subject matter.

8. The chapter number shall appear at the top of each page.

9. The Code shall be printed upon a good quality of paper and bound in good grade of buckram to specifications prepared by the state printing board. [C97,p.5; S13,p.3; C24, 27, 31, 35, 39,§168; C46, 50, 54,§14.12]

**14.13 Editorial work.** The Code editor in preparing the copy for an edition of the Code shall have power to:

1. Correct therein all misspelled words in the original enrollments.

2. Correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.

3. Transpose sections or to divide sections so as to give to distinct subject matters a section number but without changing the meaning. [C24, 27, 31, 35, 39,§169; C46, 50, 54,§14.13]

**14.14 Formal matters omitted.** When any act of the general assembly subsequent to the issuance of the Code of 1924 contains in the substantive part of the act a reference to a section of the Code and designates such section by such reference as "Code 1924", "Code 1927", "Code 1931", etc., or the equivalent thereof, the Code editor is directed in the preparation of the ensuing Code to omit the year indicated by such reference. [C27, 31, 35,§169-b1; C39,§169.1; C46, 50, 54,§14.14]

**14.15 Future Codes.** A new Code shall be issued as soon as possible after the final adjournment of each odd-numbered regular session of the general assembly. The Code editor shall, immediately after the issuance of a new Code, prepare copy for the ensuing Code, and at all times keep the same revised to date in the files of his office. The printing board shall cause such Code to be printed and bound at the time required by law but the proofreading on such Code shall be solely under the direction and control of the Code editor. [C24, 27, 31, 35, 39,§170; C46, 50, 54,§14.15]

**14.16 Preparation.** All new editions of the Code shall be so prepared and printed that each section of the general statute law shall appear in said new edition in its new or finally revised

and amended form. All sections of law of a general nature enacted after the last preceding Code shall be inserted in each new edition in such logical order as the editor of the Code may determine.

All new editions of the Code may be printed in one or two volumes as shall be determined by the majority of a committee consisting of the Code editor, the chief justice of the supreme court and the superintendent of printing. [C24, 27, 31, 35, 39,§171; C46, 50, 54,§14.16]

**14.17 Citation of permanent Code.** The permanent Codes published subsequent to the adjournment of the extra session of the fortieth general assembly shall be known and cited as "The Code—", giving year of edition of such Code. [C24, 27, 31, 35, 39,§172; C46, 50, 54, §14.17]

**14.18 Citation of session laws.** The session laws of each general assembly shall be known and cited as "..... General Assembly, Chapter ....., Section ....." (inserting the appropriate number). [C24, 27, 31, 35, 39,§173; C46, 50, 54,§14.18]

**14.19 Citation of prior Codes.** All prior Codes and supplements shall be cited by the year in which published. [C24, 27, 31, 35, 39,§174; C46, 50, 54,§14.19]

**14.20 Official statutes.** The Code and session laws published under authority of the state shall constitute the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules thereof. [C97,p.5; S13,p.3; C24, 27, 31, 35, 39, §175; C46, 50, 54,§14.20]

**14.21 Publication of parts of Code.** The printing board may cause to be printed from time to time, in the form of leaflets, folders, or pamphlets and in such numbers as the board deems reasonable, parts of the Code for the use of public officers. Such orders shall be limited to actual needs as shown by experience or other competent proof, and the printing shall, as far as practicable, be done from the plates or slugs from which the Code has been printed. [C97,p.5; S13,p.3; C24, 27, 31, 35, 39,§176; C46, 50, 54,§14.21]

**14.22 Appropriation.** There is hereby appropriated out of any money in the treasury not otherwise appropriated an amount sufficient to defray all expenses incurred in the carrying out of the provisions of this chapter, but before any obligations for expenditure from this appropriation shall be incurred the same shall be approved by the comptroller. [C24, 27, 31, 35,§177; C46, 50, 54,§14.22]

## CHAPTER 15

## STATE PRINTING BOARD

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- 15.3 Financial interest.
- 15.4 Appointment and tenure.
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**15.1 Board created.** A state printing board, hereinafter referred to as "the printing board", is hereby created. Said board shall be composed of the secretary of state, auditor of state, attorney general, and of two appointive members to be appointed by the governor. [C24, 27, 31, 35, 39, §178; C46, 50, 54, §15.1]

**15.2 Appointive members.** The appointive members of said board shall be residents of this state, of good moral character, and shall have had at least five years actual experience in the printing trade. [C24, 27, 31, 35, 39, §179; C46, 50, 54, §15.2]

**15.3 Financial interest.** No member of said board and no appointee thereof shall be financially interested, directly or indirectly, in any plant or business in which work is performed for the state, under the provisions of this and chapters 16 and 17; nor shall he be interested in any contract let under said chapters. [C24, §§180, 214; C27, 31, 35, 39, §180; C46, 50, 54, §15.3]

Similar provisions, §§18.4, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11

**15.4 Appointment and tenure.** The governor shall, on or before July 1, each year, appoint one member of said board which appointee, after qualifying, shall serve for two years from said date. Appointees to fill vacancies shall serve from the date of appointment and qualification and for the unexpired term. [C24, 27, 31, 35, 39, §181; C46, 50, 54, §15.4]

**15.5 Compensation.** The appointive members shall receive a compensation of ten dollars and actual expenses for each day actually employed hereunder in the business of the state. [C24, 27, 31, 35, 39, §182; C46, 50, 54, §15.5]

**15.6 Duties.** The printing board shall:

1. Let contracts, except as provided in section 15.28, for all printing for all state offices, departments, boards, and commissions when the cost of such printing is payable out of any taxes, fees, licenses, or funds collected for state purposes.

2. Direct the manner, form, style, and quantity of all public printing when such matters are not otherwise expressly prescribed by law.

3. Employ and discharge all assistants necessary to enable the board to perform its duties and determine the compensation of such assistants when not otherwise determined by law.

4. Prescribe rules, not inconsistent with law, for the conduct of its business.

5. Keep a full and detailed record of all its meetings, actions, and proceedings.

6. Hear and determine all complaints which may be made to it with reference to any official action of the superintendent of printing.

7. Make biennial reports to the governor as to the cost of the public printing for each department during the preceding fiscal term, with recommendations of any retrenchments that can be made therein.

8. Perform all other duties required by law. [C24, 27, 31, 35, 39, §183; C46, 50, 54, §15.6]

Referred to in §15.38  
Blanks relative to university hospitals, §§225.30, 255.27  
Printing for board of educational examiners, §260.28  
Style of code and supreme court reports, §§14.6, 14.12  
Time of biennial report, §17.3

**15.7 "Printing" defined.** The term "printing" as used in this and chapters 16 and 17 shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books,

journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards and commissions held as a part of their library collection. [C24, 27, 31, 35, 39,§184; C46, 50, 54,§15.7]

**15.8 Printing for state institutions.** The power of the printing board to let contracts shall not embrace printing for any state institution when such institution, through its governing board, is able and desires to do such printing in its own printing plant. [C24, 27, 31, 35, 39,§185; C46, 50, 54,§15.8]

**15.9 Contracts with state institutions.** The printing board may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of this and chapters 16 and 17 at any school or institution under the ownership or control of the state. In all such cases, the work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required. [C24, 27, 31, 35, 39,§186; C46, 50, 54,§15.9]

**15.10 Specifications and rules.** The printing board shall, from time to time, adopt and print specifications and rules covering all matters relating to printing that are the subject of contracts, which specifications and rules shall contain, among other things, the following:

1. Provisions for the grouping of the work to be done or material furnished, so far as the same can be made the subject of general contracts, into classes according to the character or use thereof, or with relation to the department for which intended, or in any manner most convenient for securing bids and entering into contracts. All or any part of the printing needed for any department, board, or commission may be placed in a class by itself.

2. Estimates of the probable amount of work to be done, or material to be purchased, under each class or item, during the period of the proposed contracts.

3. Provisions for furnishing and keeping on file samples of work or stock, and other things necessary to assure compliance with the contracts.

4. Fixed standards for books and booklets, and for other printing so far as practicable, and for stock and material.

5. A schedule of maximum rates or prices, so far as the same can be made applicable, with provision that bids not within the maximum (each class being computed as a unit), may be rejected.

6. Details as to the delivery of stock to the state and placing the same in possession of contractors, and for delivery of the finished product and for a complete accounting for stock and reasonable allowance for waste where it is unavoidable.

7. A rule as to part payment for work in process of completion, or material in process

of delivery, in proportion to the part completed or delivered.

8. General regulations necessary to assure prompt and satisfactory compliance with the proposed contracts, the submission of samples, the delivery of the product (which may be at the expense of the state), the preparation and filing of bills, and such general matters as will assure to the state the utmost economy and efficiency. [C24, 27, 31, 35, 39,§187; C46, 50, 54,§15.10]

**15.11 Advertisements for bids.** The secretary of the board shall, from time to time as directed by the board, advertise for bids for the doing of the public printing. Such advertisements shall be published once each week for three consecutive weeks in seven newspapers in seven different cities of the state, one of which newspapers shall be published in Des Moines. [C24, 27, 31, 35, 39,§188; C46, 50, 54,§15.11]

**15.12 Requirements.** Said advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the board will receive bids, and the day, hour, and place when bids will be publicly opened and contracts awarded. [C24, 27, 31, 35, 39,§189; C46, 50, 54,§15.12]

**15.13 Information furnished.** The secretary of the board shall supply prospective bidders and others on request with the specifications and rules of the board, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject. [C24, 27, 31, 35, 39,§190; C46, 50, 54,§15.13]

**15.14 Specifications public.** The specifications shall be kept on file in the office of the secretary, open to public inspection, together with samples, so far as possible, of the work to be done or the material to be furnished. [C24, 27, 31, 35, 39,§191; C46, 50, 54,§15.14]

**15.15 Form of bids.** Bids must be:

1. In writing and only on the blanks furnished with the specifications.

2. Signed by the bidder.

3. Submitted in sealed envelopes which shall be properly indorsed.

4. In the hands of the secretary of the board by the time fixed in the advertisements for bids. [C24, 27, 31, 35, 39,§192; C46, 50, 54,§15.15]

**15.16 Deposit with bid.** Each bidder must deposit with the board at the time he files his bid, a certified check payable to the state treasurer for an amount to be fixed in the specifications, either covering all classes or items, or separate checks for each bid in case he makes more than one bid. Checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them. [C24, 27, 31, 35, 39,§193; C46, 50, 54,§15.16]

**15.17 Opening of bids — award.** All bids shall be publicly opened and read and the contracts let at the time and place fixed therefor, or on such adjourned day or days as may be named by the board, of which adjournment all parties shall take notice. In the award of contracts, due consideration shall be given not only to the price bid, but to the mechanical and other equipment, and financial responsibility of the bidder, and his ability and experience in the performance of like or similar contracts. [C24, 27, 31, 35, 39,§194; C46, 50, 54,§15.17]

**15.18 Rejection of bids—procedure.** The board shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the board may advertise for and secure new bids. [C24, 27, 31, 35, 39,§195; C46, 50, 54,§15.18]

**15.19 Combination of bidders.** When the board is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, it shall reject all of them and readvertise for bids as in the first instance. [C24, 27, 31, 35, 39, §196; C46, 50, 54,§15.19]

**15.20 Acceptance of bid.** Each accepted bid shall have indorsed thereon, over the signature of the printing board or of a majority thereof, the word “accepted” with the date of such acceptance, which indorsement shall constitute immediate notice to the bidder of the fact of acceptance. [C24, 27, 31, 35, 39,§197; C46, 50, 54,§15.20]

**15.21 Duration of contract.** Contracts for printing and for work and material relating thereto shall be for a period not exceeding three years. [C24, 27, 31, 35, 39,§198; C46, 50, 54,§15.21]

**15.22 Duty to enter into contract—forfeiture.** Each successful bidder must within ten days after the award, enter into a contract in accordance with his bid, and unless this is done, or the delay is for reasons satisfactory to the board, the certified check submitted with the bid shall be forfeited to the state. The specifications on which the bid is made shall constitute a part of the contract. [C24, 27, 31, 35, 39,§199; C46, 50, 54,§15.22]

**15.23 Contract provisions.** Such contracts shall, among other provisions, provide that:

1. The contractor shall complete all unfinished portions of jobs or orders in hand at the expiration of the contract.

2. The contract may be canceled, or other agreed penalty imposed, for failure to perform the terms thereof in a manner satisfactory to the printing board.

3. The contractor may be released on such conditions as may be agreed on, in case of injury to his plant by fire, or other providential contingency.

4. In order to avoid delay and inconvenience in the departments, and unnecessary transportation charges to the state, deliveries of printing for the various state officials, departments, boards, and commissions shall be made in such manner as the printing board, after consultation with the various departments, shall order. [C24, 27, 31, 35, 39,§200; C46, 50, 54,§15.23]

**15.24 Bond.** A bond for the faithful performance of the contract shall be required in connection with each contract, in an amount to be fixed by the printing board, which bond shall be filed with and approved by the board. [C24, 27, 31, 35, 39,§201; C46, 50, 54,§15.24]

**15.25 Written orders.** No printing shall be performed under any contract except on written orders therefor, on detailed forms prescribed by the printing board, and duly signed by the secretary of the board or by some person authorized by the board. Every order shall designate the contract under which the order is given, the class of the required printing, the definite quantity and kind thereof, and be issued in duplicate with a stub copy preserved. A separate series of stubs and duplicates shall be used for each class of printing. [C24, 27, 31, 35, 39,§202; C46, 50, 54,§15.25]

**15.26 Assistants outside Des Moines.** The printing board may, at the various points in the state, outside the city of Des Moines, at which state institutions or departments are located, appoint assistants and empower such assistants to issue in the name of the printing board, orders for printing. Such assistants shall be furnished with a copy of the contract under which the orders are to be given, necessary blank order books and proper instructions as to their procedure. Such assistants on issuing an order shall immediately forward the original thereof to the printing board. [C24, 27, 31, 35, 39,§203; C46, 50, 54,§15.26]

Referred to in §15.29

**15.27 Acceptance of printing—penalty.** No printing shall be accepted as in compliance with the contract when such printing is not of the grade of workmanship which is usually employed by first-class printers on printing of such class, nor when such printing is not of the full quality contracted for. If immediate necessity and lack of time to procure printing elsewhere compel the use of defective printing furnished by a contractor, it shall be accepted without approval, and one-half of the contract price thereon shall be deducted as liquidated damages for such breach of contract. [C24, 27, 31, 35, 39,§204; C46, 50, 54,§15.27]

**15.28 Contracts by institutional heads.** The printing board may authorize the managing board, or head, or chief executive officer of any institution or department of the state located outside the city of Des Moines to secure, under the specifications of the board, competitive bids for printing needed by such institution or



department, and submit such bids to the printing board. If said board approves any of said bids, such authorized board, head, or officer may contract for such printing with such bidder, but such contract shall not be valid until a duplicate copy thereof is filed with and approved by the printing board. [C24, 27, 31, 35, 39, §205; C46, 50, 54, §15.28]

Referred to in §15.6

**15.29 Emergency contracts.** The board may at any time award a special contract or may authorize its assistants as designated in section 15.26 to award a special contract for any work or material coming within the provisions of this and chapters 16 and 17 but not included in contracts already in existence, or which cannot properly be made the subject of a general contract, if the amount of each such contract shall not exceed the amount of seven hundred fifty dollars, and if special bids have been duly solicited by the said board from persons or firms engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be done. [C24, 27, 31, 35, 39, §206; C46, 50, 54, §15.29; 56GA, ch 53, §1]

**15.30 Paper.** The board may contract for paper as part of the printing or may purchase paper and furnish the same to the contractor. All paper purchased for use of the state shall, when practicable, have a distinguishing mark or water line by which it can be identified. [R60, §2170; C73, §121; C97, §165; S13, §165; C24, 27, 31, 35, 39, §207; C46, 50, 54, §15.30]

**15.31 Paper account.** The board shall keep an accurate account with anyone doing printing for the state, and charge him with the value of all paper drawn, and credit him with all paper used on behalf of the state, and compel an accounting for all paper not so used. [C97, §169; C24, 27, 31, 35, 39, §208; C46, 50, 54, §15.31]

**15.32 Account with each department.** The printing board shall keep an account with each separate officer, board, department, and commission of the state to which printing is furnished by the state, and in such manner as to show in detail at all times what printing has been so furnished, and the cost thereof. [C24, 27, 31, 35, 39, §209; C46, 50, 54, §15.32]

**15.33 Budget estimates.** Each official, board, department, commission or agency of the state shall file as part of its budget its estimate of expenditures for printing for the ensuing biennium and such expenditure shall be paid from its official, board, department, commission or agency appropriation. [C24, 27, 31, 35, 39, §210; C46, 50, 54, §15.33; 55GA, ch 47, §6]

Referred to in §15.34

**15.34 Superintendent to separate items.** Should the amount of a warrant for printing include printing for more than one officer, board, department, or commission, the secretary of the board of printing shall at once fur-

nish the treasurer with a statement of the correct amounts chargeable under section 15.33 to each officer, board, department, or commission. [C24, 27, 31, 35, 39, §211; C46, 50, 54, §15.34]

**15.35 Vouchers—form—audit.** All bills accruing under contracts for printing shall be filed with the printing board. They shall be in duplicate, or in larger numbers if ordered by the board, verified and itemized with full details necessary for computation according to the terms of the contract and orders given in relation thereto or according to law, and shall be accompanied by samples of the work or materials when practicable and when so ordered by the board.

All such bills shall be examined and approved by the printing board and the duplicate vouchers passed to the state comptroller.

All bills approved by the board shall be indorsed accordingly before presentation to the comptroller. [C24, 27, 31, 35, 39, §212; C46, 50, 54, §15.35]

**15.36 Centralized printing department.** A centralized printing department be and is hereby established under the jurisdiction of the state printing board. [C54, §15.36]

**15.37 Printing machinery centralized.** With the exception only of machines of the offset type, mimeographs and similar duplicators, no department or agency of the state located in the city of Des Moines shall possess or operate any presses, varitypes and other printing machinery, and all such presses, machines of the offset type, varitypes and other printing equipment owned by the state of Iowa or possessed by any of its departments or agencies operating such equipment in the city of Des Moines shall be centralized in a state building at the city of Des Moines to be and remain under the control of the state printing board. [C54, §15.37; 56GA, ch 54, §1]

**15.38 Powers and duties of board.** The state printing board is hereby authorized and directed:

1. To possess itself of all such presses, varitypes and other printing equipment, inventory all of such described equipment, and through the executive council sell such of the above described machinery and equipment as is no longer necessary or is unfit for use.

2. To maintain such machinery and equipment and in its discretion, when such equipment is outmoded and becomes obsolescent, to purchase machinery and equipment for replacement purposes.

3. To make such printing department, its machinery and equipment available for the state printing services when in its discretion it is to the best interests of the state that it, rather than the contract procedure provided by section 15.6 shall be used; and to effectuate this power and direction, the state printing board shall adopt suitable rules and regulations for the administration and fulfillment of the power and direction hereby imposed.

4. To install and maintain an accurate accounting system appropriate and fitted to the purposes and the operations of this department. Each official, board, department, commission or agency shall requisition the state printing board for its printing needs, accompanying such requisition with a statement of costs of compilation and editorial work upon the material to be published.

5. To avoid duplication, overlapping and redundancy of pamphlets and publications, other than official documents and books and publications authorized by chapters 14 and 17, to examine the contents of proposed pamphlets or publications and to approve or disapprove such pamphlets or publications only for such reason; and to effectuate this power, the state printing board shall adopt rules and regulations for its administration. [C54,§15.38; 56GA, ch 54,§2]

**15.39 Cost systems maintained by departments.** Each official, board, department, commission or agency located outside the city of Des Moines, who maintains printing equipment, or does any printing for the state or its departments shall likewise keep an accurate cost system and make report each June 30 to the printing board of such amounts, and these shall be included in the biennial report of the state printing board. [C54,§15.39]

Referred to in §15.42

**15.40 Departmental pamphlets—costs.** Each official, board, department, commission and agency, who as part of its membership fee provides pamphlets and books, shall furnish all the costs of such publications. These costs shall be included in their printing budget. [C54,§15.40]

**15.41 Paper stock drawn from printing board.** All mimeograph paper, envelopes and other paper stock to be used in their Des Moines offices shall be drawn by the several state departments and agencies from the state printing board with its approval and charged to the several officials, boards, departments, commissions or agencies and paid from the printing appropriation of each board, official, department, commission or agency. [C54, §15.41]

**15.42 Permissive use of duplicators.** Either mimeographs, similar duplicators or machines of the offset type may be used in departments or agencies located in the city of Des Moines provided that no more than five thousand copies of any one master copy or original are made, and provided that a cost system be kept and reported as provided for in section 15.39. The master copy or stencil used on these machines shall be prepared by a typewriter means of composition only, and no photographic master of aluminum, metal, zinc, paper or stencil of any type shall be used. [56GA, ch 54,§3]

## CHAPTER 16

### SUPERINTENDENT OF PRINTING

Referred to in §§15.3, 15.7, 15.9, 15.29

#### GENERAL PROVISIONS

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- 16.16 Congressional library.
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- 16.26 Code commission briefs.
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- 16.29 Exchange.
- 16.30 Legislative journals and bills.
- 16.31 Index to bills.
- 16.32 Enrolling clerks to keep records.

#### GENERAL PROVISIONS

**16.1 Appointment.** The printing board shall, by a majority vote, appoint some person having the same qualifications as the appointive members of the board who shall be officially known as superintendent of printing. Said superintendent shall serve during the pleasure of the board. [SS15,§144-e; C24, 27, 31, 35, 39, §213; C46, 50, 54,§16.1]

**16.2 Duties.** The superintendent of printing shall:

1. Have an office at the seat of government and devote his entire time to the duties of his position.
2. Have charge of the office equipment and supplies of the printing board and of the stock, if any, required in connection with printing contracts.

3. Have general supervision, under the direction of said board, of all matters pertaining to the enforcement of the contracts of the printing board.

4. Keep a detailed record of all meetings and proceedings of the printing board and of the award of contracts by said board.

5. Prepare, under the directions of said board, the specifications and advertisements for printing.

6. Have control and direction of the document department.

7. Have legal custody of all Codes, session laws, books of annotations, tables of corresponding sections, publications, except premium lists published by the Iowa state fair board, containing reprints of statutes or departmental rules, or both, reports of state departments, and reports of the supreme court, and sell, account for, and distribute the same as provided by law.

8. Be responsible on his official bond for the public property coming into his possession.

9. Be ex officio secretary and general executive officer of the state printing board.

10. In odd-numbered years, compile for publication the Iowa official register which shall contain historical, political, and other statistics of general value, but nothing of a partisan character.

11. Annually, September 1, cause to be printed in pamphlet form, to be paid for out of the general fund not otherwise appropriated, and gratuitously distributed upon request, the name, residence, official title, salary, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government, except such personnel as receive an annual salary of less than three hundred dollars. The number of such personnel and the total amount received by them shall be shown for each department in the salary book. The head of each department, board, or commission shall, on request of said superintendent, furnish the latter with the data covering said particular department, board, or commission. Such report shall be mailed to each member of the general assembly within ten days after the printing of such report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading.

12. Perform such other duties as are necessary, or incident to his position, or which may be ordered by the printing board, or required by law. [C97,§§70, 218-223; S13,§70; SS15,§§144-h,-i,-j, 224-d; C24, 27, 31, 35, 39,§215; C46, 50, 54,§16.2; 56GA, ch 55,§1; 57GA, ch 56,§1]

Data for official register, §§19.6, 26.4  
Sale and distribution, §§16.22, 16.23, 16.24, 16.25, 16.28, 17.22

**16.3 Manuscript — editing — general directions.** The manuscript of every report or document, or for any book, booklet, bulletin, or anything to be printed, or a copy thereof, shall be

transmitted to the superintendent of printing at the time it is filed or as soon as it is ready for printing, with all photographs, drawings, maps, engravings, charts, or other material properly a part thereof. He shall edit, revise, condense, and arrange the same for printing, simplify where practicable the typographical arrangement, and, when not otherwise covered, give all necessary instructions for the type, illustrations, headings, titles, paper, cover, binding, and other similar details. The authority here given to edit, revise, condense, and eliminate portions of manuscript shall apply notwithstanding any provisions elsewhere. Where tables or other matters are once printed it shall be sufficient thereafter to refer to the same without repeating them. [SS15, §144-i; C24, 27, 31, 35, 39,§216; C46, 50, 54,§16.3]

Referred to in §14.3

**16.4 Co-operation.** It shall be the duty of the said superintendent to advise with the officials and heads of departments as to the preparation of manuscript or copy for any printed matter, so the same may be handled in the most economical manner in the editing and printing. Officials or employees shall conform so far as practicable to all regulations of the superintendent for the improvement of the reports or other publications, or for decreasing the expense of preparation, printing, or distribution. [SS15,§144-i; C24, 27, 31, 35, 39, §217; C46, 50, 54,§16.4]

**16.5 Appeals.** In case of a disagreement between the superintendent and the head of any department as to the editing of manuscript, an appeal may be taken to the printing board which shall have authority to determine the matter in controversy. [SS15,§144-i; C24, 27, 31, 35, 39,§218; C46, 50, 54,§16.5]

**16.6 Record relative to documents.** The superintendent shall keep a record of the number of each report or document ordered printed, the number received, and the number and manner of distribution. [SS15,§144-j; C24, 27, 31, 35, 39,§219; C46, 50, 54,§16.6]

**16.7 Reserve supply.** The superintendent shall designate, subject to the approval of the printing board, the number of copies of reports and publications to be held in reserve, and copies thus held in reserve shall be distributed only upon the written request of the head of the department, approved by the superintendent, and ordered by the printing board. [SS15, §144-j; C24, 27, 31, 35, 39,§220; C46, 50, 54,§16.7]

**16.8 Unused documents.** The superintendent shall from time to time make report to the printing board of any documents in his custody deemed not needed and which have been printed five years or more, and if such report has the written approval of the head of the department from which the documents were issued, the printing board may condemn and order such documents sold, and the proceeds

turned into the unappropriated funds of the state. [SS15,§144-l; C24, 27, 31, 35, 39,§221; C46, 50, 54,§16.8]

**DISTRIBUTION**

**16.9 Custody of documents and storage rooms.** The superintendent shall receive and have the custody of the Iowa documents, reports, and all other printed matter and make and supervise the distribution of the same in such manner as will be most economical and useful to the public. He shall have charge of the state storage building or rooms, in which he shall keep the reports and documents. [SS15,§§144-m,-n; C24, 27, 31, 35, 39,§222; C46, 50, 54,§16.9]

Geological reports, §16.20  
Reports of Grand Army of the Republic, §33.1

**16.10 Information as to documents.** The superintendent shall advise the public of the publication of reports and documents and of the nature of the material therein, and give information as to the publications that are for free distribution and how to obtain them. [SS15,§§144-j,-n; C24, 27, 31, 35, 39,§223; C46, 50, 54,§16.10]

**16.11 Mailing lists.** The superintendent shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. He shall revise such lists, eliminating duplications and adding thereto libraries, institutions, public officials, and persons having actual use for the material. He shall arrange such lists so as to reduce to the minimum the postage or other cost for delivery. [SS15,§144-n; C24, 27, 31, 35, 39,§224; C46, 50, 54,§16.11]

**16.12 Copies to departments.** The superintendent shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons calling for the same. [SS15,§144-n; C24, 27, 31, 35, 39,§225; C46, 50, 54,§16.12]

**16.13 Assembly members.** The official reports, the miscellaneous documents and other publications upon request, and the completed journals of the general assembly and ten copies of the official register, shall be sent to each member of the general assembly, and, so far as they are available, additional copies upon their request. [SS15,§144-n; C24, 27, 31, 35, 39, §226; C46, 50, 54,§16.13]

**16.14 Libraries.** The completed journals of the general assembly, and the official register shall be sent to each free public library in Iowa, the state library, the library commission, libraries at state institutions, and college libraries. [SS15,§§144-m,-n; C24, 27, 31, 35, 39, §227; C46, 50, 54,§16.14]

**16.15 Newspapers.** The journals of the general assembly and the official register shall be sent to each newspaper of general circulation in Iowa, and editors of newspapers in Iowa

shall be entitled to other publications on request when they are available. [SS15,§§144-m,-n; C24, 27, 31, 35, 39,§228; C46, 50, 54,§16.15]

**16.16 Congressional library.** Two copies of each publication shall be sent to the library of congress. [C97,§126; S13,§126; SS15,§§144-m,-n; C24, 27, 31, 35, 39,§229; C46, 50, 54,§16.16]

**16.17 County auditors.** The completed journals of the general assembly, and the official register shall be sent to each county auditor, who shall be required to keep the same at all times available for the inspection of the public. [C97,§126; S13,§126; SS15,§§144-m,-n; C24, 27, 31, 35, 39,§230; C46, 50, 54,§16.17]

**16.18 County superintendents.** The official register shall be distributed, in addition to the foregoing provisions, to the school libraries, through the county superintendent of schools to whom they shall be sent in bulk, and who shall direct their distribution each in his own county. [C97,§71; S13,§71; C24, 27, 31, 35, 39, §231; C46, 50, 54,§16.18]

**16.19 General distribution.** The superintendent may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may make request therefor. [C24, 27, 31, 35, 39,§233; C46, 50, 54,§16.19]

Distribution to state historical society, §304.7  
Reports of engineering examiners, §114.10

**16.20 Geological reports.** The reports and bulletins of the geological survey shall be placed at the disposal of the state geologist. [C97,§126; S13,§126; C24, 27, 31, 35, 39,§234; C46, 50, 54,§16.20]

Sale and distribution of reports, §305.10

**16.21 Purchase by municipalities—accounting.** The board of supervisors may purchase and pay for out of the general fund such additional number of copies of the Code and session laws as may be deemed necessary for the use of county and township officers. The council or commission of each city or town shall have like power in order to supply the public offices of the city or town.

Each officer, except a state officer, at the expiration of his term of office, shall deliver any Code and session laws furnished to him to his successor in office. [C73,§§39, 40, 43; C97,p.4, §§43, 46; S13,pp.1, 2, §§43, 46; C24, 27, 31, 35, 39, §236; C46, 50, 54,§16.21]

**16.22 Old Codes—free distribution.** The superintendent of printing may distribute gratuitously, to interested persons, the Code of 1897 and all supplements and supplemental supplements thereto; also all Codes which have been issued subsequent to the Code of 1897 and which have been supplanted by a newly issued Code; also all session laws which antedate the publication of the last issued Code by at least four years; provided that he shall maintain in reserve such number of copies of each such books as may be fixed by the executive council.

Such reserve when fixed shall not be distributed except on the order of the executive council. [S13,§46-a; C24, 27, 31, 35, 39,§237; C46, 50, 54,§16.22]

**16.23 Former statutes.** Upon application, in writing, from the librarian or chief executive officer of any incorporated college in this state, the superintendent of printing shall, upon the approval of the executive council, forward to said applicant, without charge, bound volumes of the laws heretofore enacted. [S13,p.3; C24, 27, 31, 35, 39,§238; C46, 50, 54,§16.23]

**16.24 Code—session laws.** The superintendent of printing shall make free distribution of the Code, rules of civil procedure and supreme court rules, and of the acts of each general assembly, as follows:

1. To state law library for exchange purposes .....100 copies
2. To law library of state university for exchange purposes ..... 75 copies
3. To state historical department 5 copies
4. To state historical society .... 5 copies
5. To each judge of the supreme, district, superior, and municipal courts of Iowa ..... 1 copy
6. To each judge of the federal courts in Iowa..... 1 copy
7. To the clerk of the supreme court of Iowa ..... 1 copy
8. To the clerk of each federal court in Iowa ..... 1 copy
9. To each state institution under the control of either the state board of regents or state board of control ..... 1 copy
10. To each elective state officer.. 2 copies
11. To the separate departments of principal state offices and each major subdivision thereof ..... 1 copy
12. To each member of the present and subsequent general assemblies.. 1 copy
13. To chief clerk of the house .... 1 copy
14. To secretary of the senate .... 1 copy
15. To the office of attorney general and to the reporter of the supreme court and Code editor such number of copies as will enable them to perform the duties of their respective offices.
16. To the clerk of the district court, the county attorney, the county auditor, the county recorder, county assessor, the county treasurer, the sheriff, and the county superintendent of each county in the state, to the clerk of each superior or municipal court in the state, and also for use in each court room of the district, superior, or municipal court ..... 1 copy
17. To library of congress and the library of the United States supreme court ..... 1 copy each

18. To library of the Iowa state college of agriculture and mechanic arts and the libraries at the state university and state teachers college ..... 1 copy each

19. To library of the United States department of justice ..... 1 copy

20. To library of the judge advocate general, United States war department ..... 1 copy

21. To library of the United States department of agriculture ..... 1 copy

22. To library of the United States department of labor ..... 1 copy

23. To legal staff, office of public debt, United States treasury department ..... 1 copy

24. To library of the United States department of state ..... 1 copy

25. To law library of the United States department of the interior... 1 copy

26. To library of the United States department of internal revenue... 1 copy [C73,§39; C97,p.4,§42; S13,p.1,§42; C24, 27, 31, 35,§235; C39,§238.1; C46, 50, 54,§16.24; 56GA, ch 131,§7; 57GA, ch 57,§1]

See §304.7

**16.25 Book of annotations and tables of corresponding sections.** The superintendent of printing shall make free distribution of the book of annotations to the Code, and of the supplements to said book of annotations, and of the book of tables of corresponding sections of the Code, as follows:

1. To state law library for exchange purposes ..... 60 copies
2. To law library of state university for exchange purposes ..... 75 copies
3. To state historical department 2 copies
4. To state historical society .... 1 copy
5. To the office of each judge of the supreme, district, superior, and municipal courts, and of the federal courts in Iowa ..... 1 copy
6. To the office of each clerk of the federal courts in this state, and of the supreme, district, superior and municipal courts of this state.. 1 copy
7. To the office of governor, secretary of state, auditor of state, treasurer of state, commissioner of insurance, and commerce counsel, each ..... 1 copy
8. To the office of attorney general ..... 10 copies
9. To each member of the general assembly upon their request ..... 1 copy
10. To the office of the reporter of the supreme court and Code editor.. 5 copies
11. To the office of each county auditor, and county attorney ..... 1 copy
12. To each court room of the district, superior, and municipal courts 1 copy

13. To the library of the supreme court of the United States ..... 1 copy [C27, 31, 35,§238-a2; C39,§238.2; C46, 50, 54, §16.25; 57GA, ch 57,§2]

**16.26 Code commission briefs.** The superintendent of printing is authorized to make free distribution of the book known as briefs of Code commission bills. [C27, 31, 35,§238-a1; C39,§238.3; C46, 50, 54,§16.26]

**16.27 Free distribution of skeleton-digest.** Free distribution of said pamphlets [skeleton-digest] shall be made as follows:

1. To each judge of the supreme, district, municipal, and superior courts, two copies.
2. To the attorney general and to each assistant attorney general, two copies.
3. To the Code editor, not to exceed twenty-five copies. [C35,§240-g2; C39,§238.4; C46, 50, 54, §16.27]

See §14.9 for publication of skeleton-digest

**16.28 Supreme court reports.** The superintendent of printing shall make free distribution of the reports of the supreme court as follows:

1. To library of congress ..... 2 copies
2. To library supreme court United States ..... 2 copies
3. To each supreme, district, superior, and municipal judge (not including police judges) ..... 1 copy
4. To each United States district judge whose district lies within this state ..... 1 copy
5. To the clerk of the supreme court ..... 1 copy
6. To the attorney general ..... 3 copies
7. To the state law library ..... 75 copies
8. To each county clerk of district court in each county ..... 1 copy
9. To each county where district court is held in more than one place ..... 2 copies
10. To supreme court reporter .. 3 copies
11. To law library state university ..... 75 copies
12. To library state historical society ..... 5 copies
13. To the library Iowa state college of agriculture and mechanic arts ..... 2 copies
14. To supreme court consultation room ..... 10 copies

15. To the governor ..... 1 copy
16. To the auditor of state ..... 2 copies
17. To the industrial commissioner 2 copies [R60,§119; C73,§159; C97,§215; SS15,§224-e; C24, 27, 31, 35, 39,§239; C46, 50, 54,§16.28; 57GA, ch 57,§3]

**16.29 Exchange.** The volumes delivered to the state [law] library shall be used for the purpose of effecting exchange with other states, foreign countries and provinces, for similar reports. All books received in such exchange shall become a part of the state library. [R60,§119; C73,§159; C97,§215; SS15, §224-e; C24, 27, 31, 35, 39,§240; C46, 50, 54,§16.29]

**16.30 Legislative journals and bills.** The daily journals of the general assembly and the printed bills shall be sent by the superintendent of printing by mail to subscribers therefor. The journals and bills for both houses for any one session may be purchased for such sum as is fixed by the state printing board. The said superintendent shall cause to be printed a sufficient number of copies to fill orders received and reported to him. [C97,§§127, 130; SS15,§§132-b,-c,-d; C24, 27, 31, 35, 39,§241; C46, 50, 54,§16.30]

**16.31 Index to bills.** The superintendent of printing shall throughout each legislative session compile and cause to be printed a cumulative bulletin of bills and joint resolutions which bulletin shall contain a brief history of each bill, and detailed information as to the status of legislation and shall be conveniently indexed. The bulletin shall be printed and delivered one day before the mid-term recess of each legislature and thereafter twenty-five days after the end of said recess. The last issue of each bulletin shall be brought down to the time of final adjournment and shall be promptly furnished to all members of the general assembly and to such others as the superintendent may determine. [C24, 27, 31, 35, 39, §242; C46, 50, 54,§16.31]

Referred to in §16.32

**16.32 Enrolling clerks to keep records.** The enrolling clerks of the senate and house shall, under the directions of the secretary of the senate and house, respectively, keep a daily cumulative record of the information required in section 16.31 and in such manner that the same may be promptly furnished to the superintendent at the close of each week. [C24, 27, 31, 35, 39,§243; C46, 50, 54,§16.32]

## CHAPTER 17

## OFFICIAL REPORTS AND DOCUMENTS

Referred to in §§15.3, 15.7, 15.9, 15.29, 15.38

- 17.1 Official reports—preparation.
- 17.2 Made to governor.
- 17.3 Biennial reports—time covered and date of filing.
- 17.4 Annual reports—time covered and date of filing.
- 17.5 Governor.
- 17.6 Attorney general.
- 17.7 Auditor of state on municipal finances.
- 17.8 Superintendent of banking.
- 17.9 Highway commission.
- 17.10 Commerce commission.
- 17.11 Mine inspectors.
- 17.12 Delay.
- 17.13 Governor may grant extension.
- 17.14 Number of copies—style.
- 17.15 Legislative journals.
- 17.16 Legislative proceedings.

- 17.17 Corrected journals.
- 17.18 Legislative bills.
- 17.19 Legalizing acts of local nature.
- 17.20 Miscellaneous documents.
- 17.21 Legal publications.
- 17.22 Price.
- 17.23 Price of departmental reports.
- 17.24 Annotations.
- 17.25 New editions.
- 17.26 Number printed.
- 17.27 Other necessary publications—when necessary to sell.
- 17.28 Governor may fix filing date.
- 17.29 Title pages—complimentary insertions.
- 17.30 Inventory of state property.
- 17.31 Lists compiled by council secretary.
- 17.32 Records open to public.

**17.1 Official reports — preparation.** State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the superintendent of printing of the right to edit and revise said report. [C24, 27, 31, 35, 39, §244; C46, 50, 54, §17.1]

**17.2 Made to governor.** All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by him shall be delivered to the superintendent of printing. [C24, 27, 31, 35, 39, §245; C46, 50, 54, §17.2]

**Industrial commissioner's report transmitted to general assembly, §86.9**

**17.3 Biennial reports — time covered and date of filing.** Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. State comptroller on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Secretary of agriculture.

4. Superintendent of public instruction.
5. Board of control.
6. Board of regents.
7. Board of parole.
8. Printing board.
9. Industrial commissioner.
10. Commissioner of public health.
11. Commissioner of labor.
12. Board of curators of state historical society.
13. Curator of state department of history and archives.
14. State librarian.
15. Library commission.
16. Superintendent of public buildings and grounds.
17. State conservation director.
18. Adjutant general.

[C73, §125; C97, §122; S13, §122; C24, 27, 31, 35, 39, §246; C46, 50, 54, §17.3; 56GA, ch 131, §8; 57GA, ch 58, §6]

- Adjutant general, §29.12
- Auditor of state, §§11.25, 11.27
- Board of accountancy, §116.2
- Board of control, §§217.11, 219.21
- Board of curators of state historical society, §304.6
- Board of regents, §262.26
- Board of parole, §247.32
- Commissioner of labor, §91.4, subsection 4
- Commissioner of public health, §§135.37, 136.10
- Custodian of public buildings and grounds, §18.3
- Industrial commissioner, §86.9
- Library trustees (semiannual), §303.3, subsection 13
- Printing board, §15.6, subsection 7
- Secretary of agriculture, §159.15
- Secretary of executive council, §19.6
- Social welfare board, §235.2, subsection 5, and §251.2, subsection 3
- State board for vocational education, §259.4, subsection 15, and §259.8
- State comptroller, Const., Art. III, §18. Also §§8.6, 8.21-8.25, 14.10, subsection 4, and §§262.22, 302.18
- State conservation director, §109.10
- State soil conservation committee, §467A.11
- State tax commission, §421.17, subsections 12 and 13
- Superintendent of public instruction, §257.18, subsection 19, and §258.13
- Treasurer of state, §§12.17, 258.12

**17.4 Annual reports—time covered and date of filing.** Reports of the following officials and

departments shall cover the year ending December 31 of each year, and shall be filed as soon as practicable after said date:

1. Commissioner of insurance.
2. Apiarist.
3. State geologist.
4. Fire marshal.
5. Board of accountancy.
6. Board of engineering examiners.
7. Inspector of passenger boats. [C24, 27, 31, 35, 39, §247; C46, 50, 54, §17.4]

Apiarist, §266.21  
 Auditor of state, §§11.25, 11.26  
 Board of accountancy, §116.2  
 Board of architectural examiners, §118.4  
 Board of educational examiners, §260.28  
 Commissioner of insurance, §§505.12, 505.13  
 Commission for the blind, §93.6, subsection 7  
 Engineering examiners, §114.10  
 Fair board, §173.21  
 Fire marshal, §100.33  
 Inspector of passenger boats, §106.1  
 Iowa liquor control commission, §123.63  
 Savings and loan supervisor, §534.57  
 State geologist, §305.7  
 State tax commission, §422.68

**17.5 Governor.** The biennial report of the governor to the general assembly on reprieves, commutations, pardons, and remission of fines and forfeitures shall cover the two years ending with December 31 immediately preceding the convening of the general assembly in regular session and shall be filed as soon as practicable after said date. [C24, 27, 31, 35, 39, §248; C46, 50, 54, §17.5]

**17.6 Attorney general.** The biennial report of the attorney general shall cover the period of his regular term and shall be filed as soon as practicable after the expiration of said term and not later than February 1. [C24, 27, 31, 35, 39, §249; C46, 50, 54, §17.6]

**17.7 Auditor of state on municipal finances.** The annual report of the auditor of state on municipal finances shall cover the year ending December 31 preceding the filing of the report, and shall be filed as soon as possible after said date and not later than September 1. [C24, 27, 31, 35, 39, §250; C46, 50, 54, §17.7]

**17.8 Superintendent of banking.** The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than September 1. [C24, 27, 31, 35, 39, §251; C46, 50, 54, §17.8]

Annual report, §524.21

**17.9 Highway commission.** The annual report of the state highway commission shall cover the year ending June 30 and shall be filed not later than September 1 of each year, provided the summary report of county highway engineers may be filed on a date not later than February 1. [C24, 27, 31, 35, 39, §252; C46, 50, 54, §17.9]

Additional provision, §307.5, subsection 8

**17.10 Commerce commission.** The annual report of the Iowa state commerce commission shall, as to all statistical data, cover the year

ending December 31 preceding the filing of the report, and the proceedings of the commission to date of filing the report each year. Said report shall be filed on or before December 1. [C24, 27, 31, 35, 39, §253; C46, 50, 54, §17.10]

Additional provision, §474.14

**17.11 Mine inspectors.** The report of the mine inspectors shall cover the biennial period ending December 31 of each odd-numbered year, and shall be filed on or before August 15 following the end of said reporting period. [C97, §2483; S13, §2483; C24, 27, 31, 35, 39, §254; C46, 50, 54, §17.11]

Additional provision, §82.12

**17.12 Delay.** Should the governor deem the delay in filing a report to be unreasonable he shall take such steps as will correct the delinquency. [C24, 27, 31, 35, 39, §255; C46, 50, 54, §17.12]

**17.13 Governor may grant extension.** The governor shall have authority to grant an extension of time for the completion of any report or any portion thereof, but in the case of any delay deemed by him to be unnecessary or unreasonable he shall take whatever steps may be necessary to have the delayed report prepared for filing. [C24, 27, 31, 35, 39, §256; C46, 50, 54, §17.13]

**17.14 Number of copies—style.** The annual and biennial reports shall be published, printed, and bound in such number as the board of printing may order. The officials and heads of departments shall furnish the printing board with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience. [C73, §130; C97, §125; S13, §125; C24, 27, 31, 35, 39, §257; C46, 50, 54, §17.14]

**17.15 Legislative journals.** The record of the transactions of the senate and house shall be published in a daily journal, printed in number as authorized by the general assembly or directed by the superintendent of printing. The completed journals shall be published in book form, with index and record of bills, in an edition of not less than one thousand in library binding and not less than one thousand in paper covers. There shall also be printed for the general assembly or the members thereof such other material necessary for the transaction of legislative business. [C97, §§127, 130; SS15, §§132-b, -d; C24, 27, 31, 35, 39, §259; C46, 50, 54, §17.15]

**17.16 Legislative proceedings.** The reports of the legislative proceedings shall be delivered by the secretary of the senate and the chief clerk of the house to the superintendent of printing promptly upon completion, and he



shall cause such reports to be printed in accordance with the contracts covering the same. He shall require that proof copies of the daily journal be furnished the next legislative day after date and shall promptly deliver them to the sergeants at arms of each house. The corrections and changes made therein by the general assembly shall be made before the printing of the corrected or completed journal. [C24, 27, 31, 35, 39, §260; C46, 50, 54, §17.16]

**17.17 Corrected journals.** The journal, as corrected by order of the general assembly, shall be printed promptly and be delivered by the superintendent to the sergeants at arms of each house. An index, record and history of bills, and list of bills passed, shall be prepared by the superintendent of printing for the completed edition of the journal. [C24, 27, 31, 35, 39, §261; C46, 50, 54, §17.17]

**17.18 Legislative bills.** The bills introduced in the general assembly shall be printed on good paper with pages approximately eight inches by ten inches in size with type not less than ten point in size, the lines spaced with pica slugs, each printed line to be one line of the original bill as introduced, and the lines of each section to be separately numbered. The number of copies of each bill to be printed unless otherwise ordered shall be fixed by the superintendent according to the needs of the general assembly, and to supply subscribers therefor. [C24, 27, 31, 35, 39, §262; C46, 50, 54, §17.18]

**Recommendations of code editor, §14.4**

**17.19 Legalizing acts of local nature.** A bill which seeks to legalize the acts of any official or board or other official body, in regard to any matter of public nature or for any person or persons, company or corporation, shall not be considered until it is printed as a bill and distributed to members of the general assembly, and the printing shall be without expense to the state. The superintendent of printing shall not order any such bill printed until he has received a deposit to cover the cost thereof at the rate which shall be fixed under the current contract for legislative printing for the bills, and shall exclude from the journals all such bills and the newspaper publication of such bill shall be without expense to the state, and same shall not be published until the cost of same has been paid to the secretary of state. [C24, 27, 31, 35, 39, §263; C46, 50, 54, §17.19]

**Additional requirements, §585.1**

**17.20 Miscellaneous documents.** There shall be published, printed, and bound, uniform with the official reports, unless otherwise provided, and for the periods indicated, the following miscellaneous documents, each of which shall be compiled by the head or secretary of the department or association having charge thereof:

1. Iowa book of agriculture, biennially.
2. Iowa official register, biennially.

3. Assessments by state tax commission relative to public utilities, annually.

4. Proceedings of Iowa academy of science, annually. [C24, 27, 31, 35, 39, §264; C46, 50, 54, §17.20]

**17.21 Legal publications.** The Code, Iowa departmental rules, rules of civil procedure and supreme court rules, session laws, annotations, tables of corresponding sections, and reports of the supreme court shall be printed, and paid for in the same manner as other public printing. [C97, §218-224; SS15, §224-d; C24, 27, 31, 35, 39, §265; C46, 50, 54, §17.21; 57GA, ch 55, §3]

**17.22 Price.** Said publications shall be sold at a price to be established by dividing the total cost only, of printing, binding and paper stock by the total number printed of each edition.

1. Code and Iowa departmental rules.
2. Session laws.
3. Daily journals and bills.
4. Book of annotations to the Code.
5. Supplements to the book of annotations.
6. Tables of corresponding sections to the Code.
7. Reports of the supreme court.
8. Rules of civil procedure and supreme court rules.

The Iowa departmental rules shall be distributed with each order for purchase of the Code and the price set for the Code and departmental rules as provided above shall include the cost of both the Code and departmental rules. The departmental rules may also be distributed separately. [C27, 31, 35, §265-a1; C39, §265.1; C46, 50, 54, §17.22; 57GA, ch 55, §4]

45GA, ch 9, §7, editorially divided

See §16.30

Skeleton-digest, see §14.9

Departmental rules, §17A.9

**17.23 Price of departmental reports.** The state printing board shall establish and fix a selling price for all other state departmental reports and any other state publications it may designate, which price per volume shall be the amount charged any person, other than public officials, who may desire to purchase the same; such price shall cover the cost of printing and distribution. The state printing board may distribute gratis to such state or local public officials, or offices, it may deem necessary, copies of departmental annual reports. [C35, §265-e1; C39, §265.2; C46, 50, 54, §17.23; 57GA, ch 56, §3]

**17.24 Annotations.** Books of annotations shall, so far as practicable, be printed and bound in the same manner, form, and style as the Code. [C24, 27, 31, 35, 39, §266; C46, 50, 54, §17.24]

**17.25 New editions.** New editions of the Code, book of annotations, and reports of the supreme court may be published by the printing board when the supply on hand of the last

edition becomes exhausted and when a new edition is necessary in order to meet the demand. [C24, 27, 31, 35, 39, §267; C46, 50, 54, §17.25]

**17.26 Number printed.** The number of each edition of the Code, tables of corresponding sections, session laws, annotations, and reports of supreme court shall be determined by the printing board. [C73, §37; C97, §40; C24, 27, 31, 35, 39, §268; C46, 50, 54, §17.26]

**17.27 Other necessary publications—when necessary to sell.** There may be published other miscellaneous documents, reports, bulletins, books, and booklets that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the printing board.

When such publications paid for by public funds furnished by the state, contain reprints of statutes or departmental rules, or both, they shall be sold and distributed at cost by the department ordering same. Such publications shall be obtained from the superintendent of printing on requisition by the department and the selling price shall be determined by the printing board by dividing the total cost of printing, paper and binding by the number printed. Said price shall be set at the nearest multiple of ten to the quotient thus obtained. Distribution of such publications shall be made by the superintendent of printing gratis to public officers, purchasers of licenses from state departments required by statute, and departments. Funds from the sale of such publications shall be deposited monthly in the general fund of the state. [C24, 27, 31, 35, 39, §269; C46, 50, 54, §17.27; 57GA, ch 56, §2]

Additional geological reports, §305.9  
Publication of parts of Code, §14.21  
Publication of board of control bulletins, §218.46

**17.28 Governor may fix filing date.** The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The superintendent of printing shall report to the governor any failure to furnish manuscript or other delay affecting any publication. [C24, 27, 31, 35, 39, §270; C46, 50, 54, §17.28]

**17.29 Title pages—complimentary insertions.** The superintendent of printing shall provide the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but no such title shall have written or printed thereon or attached thereto the words "Compliments of" followed by the name of the author, nor any other words of similar import. [C24, 27, 31, 35, 39, §271; C46, 50, 54, §17.29]

**17.30 Inventory of state property.** State officials, boards, commissions and heads of departments, divisions and all agencies of state government shall on or before December 31, 1941, and on or before said date in each year thereafter, file with the secretary of the executive council written detailed inventories of all real and personal property belonging to the state and in their charge or under their control and management or for which they are responsible, such inventories to be made under such rules and regulations and upon such forms as may be prescribed by the executive council. [C46, 50, 54, §17.30]

Referred to in §17.31

**17.31 Lists compiled by council secretary.** The secretary of the executive council, upon the filing with him of all the inventories, provided for in section 17.30, shall compile therefrom in two subdivisions one complete inventory of all the real and personal property owned by the state, as shown by said inventories. Such compilation shall list all real estate and improvements under one subdivision and the personal property under one subdivision, but classified as to the items included therein.

Such compiled completed inventory shall be revised and enlarged as the subsequent inventories are filed with him as provided in said section. [C46, 50, 54, §17.31]

**17.32 Records open to public.** Said inventories shall be kept as permanent records in the office of the secretary of the executive council and shall be open for inspection and available for the information of the executive council, all other public officials, and the public, but the executive council shall not incur the expense of printing the same in book or pamphlet form. [C46, 50, 54, §17.32]

## CHAPTER 17A

## ADMINISTRATIVE RULES AND REGULATIONS

Referred to in §§97B.4, 324.58

17A.1 Definitions.  
 17A.2 Procedure to make rules.  
 17A.3 Rules enrolled.  
 17A.4 Copy to Code editor.  
 17A.5 Copies mailed.

17A.6 Petition for reconsideration.  
 17A.7 Effect of former rules.  
 17A.8 Publishing limited rules.  
 17A.9 Distribution of rules and regulations.  
 17A.10 Rule of construction.

**17A.1 Definitions.** As used in this chapter the following words and phrases shall have the meanings respectively ascribed to them.

1. "Administrative agency" or "agency" means each state board, commission, bureau, division, or department, other than a court, having statewide jurisdiction.

2. "Person" includes individuals, associations, partnerships, and corporations.

3. "Rules and regulations" includes rules, regulations and amendments thereto of general application and rules of administrative procedure issued under authority of law but shall not include rules and regulations adopted relating solely to the internal operation of the agency nor to rules and regulations adopted relating to the management, discipline, or release of any person committed to any state institution, nor such rules and regulations of the state department of health as may be necessary during emergencies such as floods, epidemics, invasion, or other disasters. [C54, §17A.1]

**17A.2 Procedure to make rules.** Wherever in the statutes any administrative agency is empowered to make rules and regulations, said agency shall proceed as follows:

1. A copy of the proposed rule or regulation before adoption shall be forwarded to the attorney general who shall, within twenty days, approve or disapprove of the form and legality thereof.

2. Upon such approval by the attorney general the agency may adopt the rule or regulation and shall cause a copy thereof to be filed in the office of the secretary of state.

3. If the attorney general disapproves of the form or legality of any proposed rule or regulation he shall state in writing his reasons therefor, and the administrative agency shall then not proceed until the reasons for his objections have been removed. If the attorney general fails to approve or disapprove within twenty days the agency may proceed as though he had approved. [C54, §17A.2]

Referred to in §17A.3

**17A.3 Rules enrolled.** When a rule or regulation adopted as provided in section 17A.2 is filed in the office of the secretary of state, he shall make an original copy thereof in substantially the same manner that acts of the general assembly are enrolled, indorse thereon the time and date of filing in his office, and de-

posit and index the same in the files of his office. [C54, §17A.3]

Referred to in §17A.7

**17A.4 Copy to Code editor.** The secretary of state shall furnish a copy of every rule and regulation, filed in his office, to the Code editor. [C54, §17A.4]

Referred to in §17A.7

**17A.5 Copies mailed.** Each administrative agency shall mail a copy of each of its rules and regulations to the office of the clerk of each district court, to the secretary of the state bar association, to each district and supreme court judge, and to any person requesting same. [C54, §17A.5]

**17A.6 Petition for reconsideration.** Any group of twenty or more persons substantially interested or affected in their rights of person or property by a rule or regulation adopted by any administrative agency may petition to the attorney general for a reconsideration of such rule or regulation or for an amendment or modification thereof. Such petition shall set forth a clear, concise description of the facts and the grounds upon which such action is sought. Upon filing of such petition the attorney general shall cause the agency to grant the petitioners a public hearing. The agency shall give thirty days notice of the time and place of such hearing to said petitioners by registered mail. [C54, §17A.6]

**17A.7 Effect of former rules.** Within six months after July 4, 1951 every administrative agency shall file its rules and regulations, existing on that date in the office of the secretary of state, who shall proceed therewith as provided in sections 17A.3 and 17A.4. After the expiration of said period any rule or regulation not so filed shall be of no further force or effect. [C54, §17A.7]

**17A.8 Publishing limited rules.** Each administrative agency promulgating professional and regulatory examining and licensing rules and regulations and each agency promulgating rules and regulations of limited application shall cause the same to be published in pamphlet form for distribution upon demand. [C54, §17A.8]

**17A.9 Distribution of rules and regulations.** The volume of rules and regulations published

by the Code editor shall be sold and distributed by the superintendent of printing in the same manner as codes and session laws. [C54, §17A.9]

**17A.10 Rule of construction.** Nothing in this chapter shall be construed as giving any additional power to any administrative agency to make rules and regulations. [C54, §17A.10]

## CHAPTER 18

### SUPERINTENDENT OF PUBLIC BUILDINGS

18.1 Appointment and tenure.

18.2 Duties.

18.3 Biennial report.

18.4 Interest in contracts.

18.5 Rules—violation.

18.6 Governor's home maintenance.

**18.1 Appointment and tenure.** The executive council shall appoint a superintendent of public buildings and grounds who shall hold office during the pleasure of said council. [C97, §145; SS15, §147; C24, 27, 31, 35, 39, §272; C46, 50, 54, §18.1; 57GA, ch 58, §1]

**18.2 Duties.** It shall be the duty of the superintendent, except as otherwise provided by law, to:

1. Have charge of, preserve and adequately protect the state capitol and grounds, and all other state grounds and buildings at the seat of government, and all property connected therewith or used therein or thereon.

2. See that all parts and apartments of said buildings are properly ventilated and kept clean and in order.

3. See that all visitors, at proper hours, are properly escorted over said grounds and through said buildings, free of expense.

4. Have at all times, charge of and supervision over the police, janitors, and other employees of his department in and about the capitol and other state buildings at the seat of government. The police when serving in and about the capitol and other state buildings at the seat of government are hereby designated as peace officers.

5. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under his control, or for committing or threatening to commit a nuisance therein or thereon.

6. Keep in his office a complete record containing an itemized account of all state property, including furniture and equipment, under his care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

7. Perform all other duties required by law or order of the executive council. [C73, §120; C97, §§147, 148, 150; S13, §150; SS15, §147; C24, 27, 31, 35, 39, §273; C46, 50, 54, §18.2; 57GA, ch 58, §2; ch 59, §1]

**18.3 Biennial report.** The superintendent shall, at the time provided by law, make a verified report which shall cover all transactions for the preceding biennial period and show in detail:

1. All expenditures made on account of the department of public buildings and property.

2. The condition of all real and personal property of the state under his care or control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

3. The measures necessary for the care and preservation of the property under his control.

4. Any recommendations as to methods which would tend to render the public service more efficient and economical.

5. Any other matter ordered by the governor. [C97, §151; S13, §151; C24, 27, 31, 35, 39, §274; C46, 50, 54, §18.3; 57GA, ch 58, §3]

**Time of report, §17.3**

**18.4 Interest in contracts.** The superintendent shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state; and a violation of the provisions of this section shall be deemed a misdemeanor, and on conviction thereof he shall be fined in any sum not exceeding one thousand dollars, and be removed from office. [C97, §153; C24, 27, 31, 35, 39, §275; C46, 50, 54, §18.4; 57GA, ch 58, §4]

**Similar provisions, §§15.3, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11**

**18.5 Rules—violation.** The executive council shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol building and the capitol grounds and all buildings and erections thereon. Such rules when established shall be posted in conspicuous places about said buildings and grounds. Any person violating any such rule shall be guilty of a misdemeanor and upon conviction be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C27, 31, 35, §275-b1; C39, §275.1; C46, 50, 54, §18.5]

**18.6 Governor's home maintenance.** The superintendent of public buildings and grounds of the state of Iowa, under the direction of the governor, is hereby authorized to provide, furnish and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa located at 2900 Grand Avenue, Des Moines, Polk county, Iowa. [C50, 54, §18.6; 57GA, ch 58, §5]

CHAPTER 19  
EXECUTIVE COUNCIL

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| <p>19.1 Membership.<br/>19.2 Secretary.<br/>19.3 Records kept.<br/>19.4 Supplies.<br/>19.5 Requisition blanks.<br/>19.6 Report for official register.<br/>19.7 Contingent fund.<br/>19.8 Anticipation of revenues.<br/>19.9 Compromise of claims.<br/>19.10 Court costs.<br/>19.11 Report of unexpended balances.<br/>19.12 Notice to transfer balance.<br/>19.13 Order of transfer.<br/>19.14 Duty to transfer.<br/>19.15 Assignment of rooms.<br/>19.16 Veteran's newsstand.</p> | <p>19.17 Room in statehouse for U.S.W.V.<br/>19.18 Repairs—supplies.<br/>19.19 Mailing room.<br/>19.20 Advertisement for bids.<br/>19.21 Contracts.<br/>19.22 Identification of state property.<br/>19.23 Disposal of state property.<br/>19.24 Supply account.<br/>19.25 Officers entitled to supplies.<br/>19.26 Postage.<br/>19.27 Drawing supplies.<br/>19.28 Account with officer.<br/>19.29 Performance of duty—expense.<br/>19.30 Necessary record.<br/>19.31 Additional compensation and expenses.</p> |
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**19.1 Membership.** The executive council shall consist of the:

1. Governor,
2. Secretary of state,
3. Auditor of state,
4. Treasurer of state, and
5. Secretary of agriculture.

A majority shall constitute a quorum. No deputy shall act on the council for his principal. [R60,§993; C73,§111; C97,§155; C24, 27, 31, 35, 39,§276; C46, 50, 54,§19.1]

**19.2 Secretary.** The executive council shall choose a secretary who shall hold office during its pleasure, and perform such duties as may be required by law or by the executive council. [R60,§999; C73,§§119, 120; C97,§§156, 157; S13, §§156, 157; C24, 27, 31, 35, 39,§277; C46, 50, 54, §19.2]

Additional duties, §§111.1, 114.9, 114.11

**19.3 Records kept.** He shall keep a complete record of the proceedings of the executive council. [C73,§119; C97,§§156, 157; S13,§157; C24, 27, 31, 35, 39,§278; C46, 50, 54,§19.3]

**19.4 Supplies.** He shall have charge of the supplies and postage purchased for state use, and shall keep a stock book record and ledger account of the receipts and disbursements thereof. [C73,§§119, 120; S13,§157; C24, 27, 31, 35, 39,§282; C46, 50, 54,§19.4]

**19.5 Requisition blanks.** He shall, under the direction of the executive council, prepare and maintain forms for requisitions for supplies for persons entitled to draw the same. [C73,§§119, 120; C97,§157; S13,§157; C24, 27, 31, 35, 39,§283; C46, 50, 54,§19.5]

Officers entitled to supplies, §19.25

**19.6 Report for official register.** He shall, as soon as practicable after January 1 of each odd-numbered year, prepare a report of the proceedings of the executive council for the two preceding calendar years. Said report shall include a statement of:

1. The official canvass of the votes cast at the last general election.
2. The cities and towns, the class of which may have been changed.
3. Other acts of said council that are of general interest.

Said report shall be published in the Iowa official register. [C73,§120; C97,§157; S13,§157; C24, 27, 31, 35, 39,§284; C46, 50, 54,§19.6]

Time of filing report, §17.3

**19.7 Contingent fund.** A contingent fund set apart for the use of the executive council may be expended for the purpose of paying the expenses of suppressing any insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring any state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for no other purpose whatever. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, which when completed will cost more than one hundred thousand dollars, shall, before work is begun thereon, be subject to approval or rejection by the budget and financial control committee. [C73,§120; C97,§170; C24, 27, 31, 35, 39,§286; C46, 50, 54,§19.7]

**19.8 Anticipation of revenues.** The executive council may anticipate the revenues for any year, when the current revenues for such year are insufficient to pay all warrants issued in said year, by causing state warrants, in an amount not exceeding the estimated state revenues for said year, and drawing not to exceed five percent per annum, to be issued, advertised, and sold on sealed bids to the highest bidder. All bids and all records pertaining thereto, and the names of all purchasers shall be kept on file. [S13,§170-a; C24, 27, 31, 35, 39, §287; C46, 50, 54,§19.8]

**19.9 Compromise of claims.** The executive council, on a written report to it by the attorney general together with his opinion as to the

legal effect of the facts, may determine by resolution to be duly entered in its official records, the terms on which claims of doubtful equity or collectibility, and in favor of the state, may be compromised and settled with all or any of the parties thereto. Such terms may be withdrawn prior to acceptance, or in case the debtor fails to comply therewith within a reasonable time. The attorney general shall have full authority to execute all papers necessary to effect any such settlement. [S13, §170-h; C24, 27, 31, 35, 39, §288; C46, 50, 54, §19.9]

**19.10 Court costs.** The executive council may pay, out of any money in the state treasury not otherwise appropriated, any expense incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or interested. [S13, §170-i; C24, 27, 31, 35, 39, §289; C46, 50, 54, §19.10]

**19.11 Report of unexpended balances.** All commissions, boards, officers, or persons placed in charge, by statute, of special work for which a specific appropriation of state funds has been made, shall, biennially, report to the executive council the progress of such special work, the balance on hand in such fund, a list of all unpaid bills, and the amount of each, then outstanding, with such other information as the council shall from time to time require. [SS15, §170-q; C24, 27, 31, 35, 39, §290; C46, 50, 54, §19.11]

Referred to in §8.33

**19.12 Notice to transfer balance.** When said council is satisfied that the work for which such special fund was created has been completed or abandoned, it shall fix a day for hearing on the question whether the unexpended balance then on hand should be transferred to the general revenue fund of the state, and shall cause a ten days notice of such hearing to be given such commission, board, officer, or person, at which hearing showing may be made why such unexpended balance should not be so transferred. [SS15, §170-q; C24, 27, 31, 35, 39, §291; C46, 50, 54, §19.12]

Referred to in §8.33

**19.13 Order of transfer.** If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the state comptroller. [SS15, §170-q; C24, 27, 31, 35, 39, §292; C46, 50, 54, §19.13]

Referred to in §8.33

**19.14 Duty to transfer.** The state comptroller shall, on receipt from the secretary of the council of a copy of such record, make such transfer. [SS15, §170-q; C24, 27, 31, 35, 39, §293; C46, 50, 54, §19.14]

Referred to in §8.33

**19.15 Assignment of rooms.** The executive council shall control the assignment of rooms in the capitol building, provided that room four in the basement story shall be the permanent quarters of the Grand Army of the Republic, department of Iowa. Assignments may be changed at any time. Assignment of rooms which are necessary for legislative purposes shall terminate on the convening of the general assembly. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term "capitol" or "capitol building" as used in the Code shall be descriptive of all buildings upon the capitol grounds. [C97, §152, 164; S13, §152, 164; C24, 27, 31, 35, 39, §295; C46, 50, 54, §19.15]

G.A.R. quarters transferred, see 55GA, ch 1, §21

**19.16 Veteran's newsstand.** The executive council shall, on the application of any disabled, honorably discharged soldier, sailor, marine, or woman who served in the military or naval forces of the United States in the late Civil war, Spanish-American war, Philippine insurrection, China relief expedition, World War I, World War II from December 7, 1941, to September 2, 1945, both dates inclusive, or the Korean conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, cause to be reserved in the state capitol a reasonable amount of space in the lobby of said state capitol to be used by such applicant rent-free as a stand for the sale of news, tobaccos, and candies and may in such application permit installation of merchandise vending machines. Should there be more than one applicant for such reserved space, the executive council shall award the same to the person in its opinion most deserving of the same. The executive council shall prescribe the regulations by which the stand shall be operated. [C39, §295.1; C46, 50, 54, §19.16; 57GA, ch 60, §1; ch 63, §2]

Courthouses, §332.5

**19.17 Room in statehouse for U.S.W.V.** There shall be provided by the executive council of the state, in the statehouse in the city of Des Moines, a place for occupation by such person or persons as shall be designated by the department of Iowa, United Spanish War Veterans organization of the state of Iowa, and such place shall be known as the headquarters for the department of Iowa, United Spanish War Veterans of the state of Iowa. [C46, 50, 54, §19.17]

**19.18 Repairs — supplies.** The executive council may contract for the repairing of all buildings and grounds of the state at the seat of government, for the necessary telephone, telegraph, lighting, and water service for such buildings and grounds, for all necessary furniture, fuel, stores, and supplies for the said buildings and grounds, and for the various departments of the state government at the

seat of government. Payment for telephone, telegraph, water, and lighting service shall not exceed the minimum charge to private parties.

Any such project for repairing of buildings or grounds at the seat of government for which no specific appropriation has been made, which when completed will cost more than one hundred thousand dollars, shall, before work is begun thereon, be subject to approval or rejection by the budget and financial control committee. [C51, §§45, 60; R60, §§61, 81, 2170; C73, §§120, 121; C97, §§164, 165; S13, §§164, 165; C24, 27, 31, 35, 39, §296; C46, 50, 54, §19.18]

**19.19 Mailing room.** The executive council shall designate and set apart in the capitol building, a room to be known as the mailing room, and shall install therein one or more postage metering machines for the purpose of metering first and second class mail and parcel post mail. All officials of the state, whether elected or appointed, whose offices are located in the capitol building or in buildings adjacent thereto, or whose offices are located in the city of Des Moines, shall be and they are hereby required to dispatch their first and second class and parcel post mail to the mailing room so designated for the purpose of having the same sealed, metered, and posted.

This section shall not apply to registered mail. [C35, §296-e1; C39, §296.1; C46, 50, 54, §19.19]

**19.20 Advertisement for bids.** The secretary of the executive council shall, from time to time, on the order of the council, advertise in two newspapers published at the seat of government, and in such other newspapers as the council may order, for sealed proposals for furnishing supplies (except government postage and other noncompetitive supplies) which advertisements shall state the kind, quality, quantity, and time and place of delivery, the time and place when such proposals will be opened, and when the same must be filed with such secretary, and other matters as the council may direct. [R60, §2169; C73, §121; C97, §166; S13, §166; C24, 27, 31, 35, 39, §297; C46, 50, 54, §19.20]

**19.21 Contracts.** All bids shall be opened at the time and place specified. Contracts shall be let to the lowest responsible bidder, but the council may reject all bids and readvertise. Successful bidders shall give security, to be approved by the council, for the faithful performance of all contracts. [R60, §2169; C73, §121; C97, §167; C24, 27, 31, 35, 39, §298; C46, 50, 54, §19.21]

**19.22 Identification of state property.** All furniture, stores, or supplies for use in and about the capitol shall, when practicable, be marked with the word "Iowa". [C97, §165; S13, §165; C24, 27, 31, 35, 39, §299; C46, 50, 54, §19.22]

**19.23 Disposal of state property.** Said council may dispose of any personal property when

the same shall, for any reason, become unnecessary or unfit for further use by the state. [S13, §165; C24, 27, 31, 35, 39, §300; C46, 50, 54, §19.23]

**19.24 Supply account.** The executive council shall take charge of all property purchased, and shall keep a complete and itemized account of all such property, with the cost and disposition thereof. [R60, §2170; C73, §122; C97, §§168, 169; S13, §168; C24, 27, 31, 35, 39, §301; C46, 50, 54, §19.24]

**19.25 Officers entitled to supplies.** The council shall, unless otherwise provided, furnish the following officers and departments with all articles and supplies required for the public use and necessary to enable them to perform the duties imposed upon them by law:

1. Governor.
2. Secretary of state.
3. Auditor of state.
4. Treasurer of state.
5. Secretary of agriculture.
6. Attorney general.
7. Judges of supreme court.
8. Clerk of supreme court.
9. Reporter of supreme court.
10. Iowa state commerce commissioners.
11. Commerce counsel.
12. General assembly and members thereof.
13. Standing and special committees of the general assembly.
14. Chief clerk of the house.
15. Secretary of the senate.
16. State board of public instruction.
17. Board of control of state institutions.
18. State board of regents and the finance committee thereof.
19. Insurance department.
20. Historical department.
21. Mine inspectors.
22. Labor commissioner.
23. Board of parole.
24. State department of health.
25. State comptroller.
26. State board of educational examiners.
27. State library.
28. Law library.
29. State library commission.
30. State printing board and superintendent of printing.
31. State fire marshal.
32. Industrial commissioner.
33. Adjutant general.
34. Superintendent public buildings and grounds.
35. State tax commission.
36. State conservation commission.
37. Real estate commission.

This section shall not be construed to prevent the furnishing of supplies to other officers who are entitled to receive them under other provisions of law. [R60, §2170; C73, §122; C97, §168; S13, §168; C24, 27, 31, 35, 39, §302; C46, 50, 54, §19.25; 56GA, ch 131, §9; 57GA, ch 58, §7]

**19.26 Postage.** Postage shall not be furnished to the general assembly, its members, officers, employees, or committees. [C97,§168; S13,§168; C24, 27, 31, 35, 39,§303; C46, 50, 54,§19.26]

**19.27 Drawing supplies.** Supplies shall be delivered only on a written requisition on the secretary of said council, signed by the officer entitled thereto, specifying the amount and kind necessary. The secretary shall take receipts for all such supplies and file and preserve the same. [R60,§2170; C73,§122; C97,§169; C24, 27, 31, 35, 39,§304; C46, 50, 54,§19.27]

**19.28 Account with officer.** The council shall keep an accurate, itemized account with each office, board, commission, or person drawing supplies, charging thereto the several articles furnished at the cost price. [C97,§169; C24, 27, 31, 35, 39,§305; C46, 50, 54,§19.28]

**19.29 Performance of duty — expense.** The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon such council when such duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to such limitation, the council may incur the necessary expense to perform or cause to be performed

any legal duty imposed on said council, and pay the same out of any money in the state treasury not otherwise appropriated. [S13, §§170-l,n,p; C24, 27, 31, 35, 39,§306; C46, 50, 54,§19.29]

Referred to in §19.30

**19.30 Necessary record.** Before incurring any expense authorized by section 19.29, the council shall, in each case, by resolution, entered upon its records, set forth the necessity for incurring such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council. [S13,§§170-m,n; C24, 27, 31, 35, 39, §307; C46, 50, 54,§19.30]

**19.31 Additional compensation and expenses.** Members of the executive council and its regular employees shall be paid no additional salary or compensation for special service, but shall receive their necessary traveling expenses, including subsistence, when absent from the seat of government on official business. [S13,§170-o; C24, 27, 31, 35, 39,§308; C46, 50, 54,§19.31]

## CHAPTER 20

### WAR SURPLUS COMMODITIES BOARD

20.1 Board created.

20.2 Organization of board—expenses.

20.3 Budget and financial control committee member.

20.4 Meetings—quorum.

20.5 Powers and duties.

20.6 Revolving fund.

**20.1 Board created.** A state war surplus commodities board is hereby created and established hereinafter referred to as the "board", to consist of a member of the board of control of state institutions, a member of the state board of regents, a member of the Iowa state highway commission, a member of the executive council of the state, a member of the conservation commission of the state, the commissioner of the Iowa state department of health, a member of the department of public instruction, a member of the Iowa development commission, and the chairman of the budget and financial control committee selected by the budget and financial control committee of each general assembly. [C46, 50, 54,§20.1; 56GA, ch 131,§10]

**20.2 Organization of board—expenses.** The board shall select the chairman from among its members. The secretary of the executive council of the state shall be secretary of the state war surplus commodities board. Members of the board shall serve as ex officio members of their respective agencies and shall receive the compensation as provided for their position, and shall be reimbursed for their

actual and necessary traveling expenses incurred in performing their duties as members of the board. [C46, 50, 54,§20.2]

**20.3 Budget and financial control committee member.** The chairman of the budget and financial control committee shall serve as a member of the board from and after his appointment as such chairman and until his successor is named by the budget and financial control committee of the succeeding general assembly. [C46, 50, 54,§20.3]

**20.4 Meetings — quorum.** The board shall meet at least once each month and shall hold special meetings on call of the chairman. Four members shall constitute a quorum. The board shall establish such rules and regulations as it may deem necessary to govern its own procedure. [C46, 50, 54,§20.4]

**20.5 Powers and duties.** The powers and duties of the board shall be to:

1. Collect and assemble or cause to be collected or assembled all pertinent information available regarding surplus equipment, merchandise, supplies, surplus war materials and other governmental property that may be



purchased from the federal government or any division thereof, which information shall be a public record available to anyone.

2. Enter into contract for and purchase from the federal government of equipment, property and supplies for the use of the state, its agencies or departments, or any township, county, city, towns and independent or consolidated school districts or any local governmental unit.

3. Enter into contract with or sell to any township, county, city, towns, and independent and consolidated school districts or any local governmental unit or the state, its departments, commissions, boards or agencies, any equipment, property, and supplies that the board has purchased from the federal government, provided, however, that the township, county, city, towns, and independent or consolidated school districts or any local governmental unit, the state, its departments, commissions, boards or agencies, reimburses the board for the purchase price and expense connected with acquiring said equipment, property, and supplies.

4. The board may contract or make any purchase or sale up to fifty thousand dollars but any contract, purchase, or sale in excess of fifty thousand dollars must first be approved by the executive council before said contract, purchase, or sale is made.

5. To provide for the warehousing and distribution of such surplus war commodities, as may be given to the state by the federal government, among the various departments and subdivisions of the state. [C46, 50, 54, §20.5]

**20.6 Revolving fund.** There is hereby set aside from the emergency relief fund, for a revolving fund for the use of the state war surplus commodities board, the sum of five hundred thousand dollars or as much thereof as may be necessary for it to perform its duties, to be used by the board in the purchase of property, and all moneys received or recovered by the board from whatever source shall be credited to the revolving fund. [C46, 50, 54, §20.6]

Constitutionality, 51GA, ch 60, §8

## CHAPTER 21

### DISPATCHER OF STATE AUTOMOBILES

21.1 Authority in governor.

21.2 Car dispatcher—employees—duties.

21.3 Violations—withdrawing use of car.

21.4 Private use—rate for state business.

21.5 Penalty for private use.

21.6 Revolving fund—replenishment.

**21.1 Authority in governor.** Upon the taking effect of this chapter, the authority to assign all state-owned motor vehicles to state officers and employees, or to state offices, departments, bureaus, and commissions, shall be transferred and vested in the governor. [C39, §308.1; C46, 50, 54, §21.1]

**21.2 Car dispatcher—employees—duties.** In order to carry out the powers vested in him by this chapter, the governor shall appoint a state car dispatcher and such other employees as may be necessary, their compensation to be fixed by the governor and comptroller, but said compensation of the state car dispatcher shall not exceed three thousand dollars per year, to carry out the provisions of this chapter. The secretary of the executive council may be appointed by the governor as the state car dispatcher, without additional compensation. Subject to the approval of the governor, the said state car dispatcher shall have the following duties:

1. He shall assign to a state officer or employee or to a state office, department, bureau, or commission, one or more motor vehicles which may be required by said officer or department, after said officer or department has shown the necessity for such transportation. The state car dispatcher shall have the power to assign said motor vehicle either for part

time or full time. He shall have the right to revoke said assignment at any time.

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

3. The state car dispatcher shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state car dispatcher in which such officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to him, giving the quantity and price of each purchase, including the cost and nature of all repairs on such motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state car dispatcher and forward the same to him at the statehouse, giving such information as the state car dispatcher

may request in such report. The state car dispatcher shall each month compile the costs and mileage of state-owned motor vehicles from such reports and keep a cost history card of each motor vehicle and such costs shall be reduced to a cost-per-mile basis for each motor vehicle. It shall be the duty of the state car dispatcher to call to the attention of the head of any department to which a motor vehicle has been assigned any evidence of the mis-handling or misuse of any state-owned motor vehicle which is called to his attention.

4. The state car dispatcher shall purchase all new motor vehicles for all branches of the state government. Before purchasing any motor vehicle he shall make requests for public bids by advertisement and he shall purchase the vehicles from the lowest responsible bidder for the type and make of car designated. No passenger motor vehicle except ambulances, busses or trucks shall be purchased for an amount in excess of the sum of two thousand dollars retail delivered price.

5. In the event that it shall be deemed necessary for a state officer or employee to use his own motor vehicle on state business, the state car dispatcher may authorize such use and allowance for same.

6. The state car dispatcher may authorize the establishment of motor pools consisting of a number of state-owned cars under his supervision and which he may cause to be stored in a public or private garage. In the event that such pool is established by the state car dispatcher, any state officer or employee shall not use state-owned cars except when he shall find it necessary to use a state-owned motor vehicle to make a trip outside of the city of Des Moines on state business, and he shall notify the state car dispatcher of such intention, if possible, within a reasonable length of time before the said trip is to be made. The said state car dispatcher may assign one of the motor vehicles from the motor pool to said state officer or employee for such trip. If two or more state officers or employees are required to make a trip to the same destination and return to Des Moines at the same time, the state car dispatcher may assign one car to these state officers or employees to make such trip.

7. The state car dispatcher shall cause to be marked on every state-owned motor vehicle a sign in a conspicuous place which indicates its ownership by the state except cars necessary for use in police work. All state-owned motor vehicles shall display registration plates bearing the word "official" except cars assigned for use in police work for which ordinary plates may be used when necessary but only upon order of the state car dispatcher who shall keep an accurate record of the registration plates used on all state cars.

8. The state car dispatcher shall have the authority to make such other rules regarding the operation of state-owned motor vehicles, with the approval of the governor, as may be

necessary to carry out the purpose of this chapter.

All rules and regulations adopted by the car dispatcher shall be approved by the executive council before becoming effective. [C39, §308.3; C46, 50, 54, §21.2]

Marking vehicles generally, §740.21  
 "Official" plates, §§321.19, 321.170  
 Police car plates, §321.19

**21.3 Violations—withdrawing use of car.** If any state officer or employee violates any of the provisions of this chapter, the state car dispatcher shall have the authority to withdraw the assignment of any state-owned motor vehicle or revoke the allowance for the use of his privately owned motor vehicle, to any such state officer or employee. An appeal from such order by the state car dispatcher may be taken to the governor whose decision shall be final. [C39, §308.4; C46, 50, 54, §21.3]

**21.4 Private use—rate for state business.** No state officer or employee shall use any state-owned car for his own personal private use, nor shall he be compensated for driving his own motor vehicle except if such is done on state business and in such case he shall not receive more than seven cents per mile. [C39, §308.5; C46, 50, 54, §21.4]

See also §79.9

**21.5 Penalty for private use.** Any state officer or employee found guilty of using any state-owned motor vehicle for his own private business or pleasure shall, upon conviction, be fined not to exceed one hundred dollars or imprisoned not to exceed thirty days in the county jail. [C39, §308.6; C46, 50, 54, §21.5]

Omnibus repeal, 48GA, ch 181, §7  
 Private use of public property generally, §740.20

**21.6 Revolving fund—replenishment.** There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars, which shall be known as the car dispatcher revolving fund. From this fund shall be paid all purchases of gasoline, oil, tires, repairs, and all other general expenses incurred in the operation of state-owned motor vehicles, also all purchases of new motor vehicles or replacements, and all salaries and expenses of the car dispatcher's department shall be paid from said fund.

At the end of each month the state car dispatcher shall render a statement to each state department or agency thereof for the actual cost of operation of and depreciation on all motor vehicles assigned to such department or agency, together with a fair proportion of the cost of administration of the state car dispatcher's department during such month, as shall be determined by him, all subject to review by the executive council upon complaint of any state department or agency adversely affected. Such expense shall be paid by the state departments or agencies in the

same manner as other expenses of such department are paid, and when such cost of operation and administration is paid by the department, such sum shall be credited to the car dispatcher revolving fund. If any sur-

plus accrues to said revolving fund in excess of twenty-five thousand dollars for which there is no anticipated need or use, the governor may order such surplus turned over to the general fund of the state. [C46, 50, 54, §21.6]

## CHAPTER 22

### APPEAL BOARD—STATE INSTITUTION CONSTRUCTION CONTRACTS

Referred to in §24.24

- 22.1 Board created.  
22.2 Vacancies and removals.

- 22.3 Jurisdiction.  
22.4 Compensation and expense.

**22.1 Board created.** There shall be nominated by the governor and appointed in the manner required for the appointment of the state comptroller, two competent persons to act with the comptroller as members of an appeal board in certain cases. Their terms of office shall be for four years, beginning on the first day of July of each odd-numbered year. [C24, 27, 31, 35, 39, §346; C46, 50, 54, §22.1]

**Method of appointment, §8.4**

**22.2 Vacancies and removals.** Vacancies in appointments of such members of the appeal board shall be filled and the removal from office shall be accomplished in the same manner as provided for the comptroller. [C24, 27, 31, 35, 39, §348; C46, 50, 54, §22.2]

**Vacancies, §69.8**

**22.3 Jurisdiction.** The said members of the appeal board and the state comptroller shall sit and act together as a board of appeal

and the comptroller shall be chairman of the board. Said board shall only consider and determine appeals from the action of the state board of regents, the state board of control, or the state fair board in respect to the letting of contracts for buildings or other improvements in which the amount involved is in excess of twenty-five thousand dollars. The hearings before the board shall be de novo and the evidence shall be preserved on file. The decision of the board shall be final and be entered of record in the office of the comptroller. [C24, 27, 31, 35, 39, §349; C46, 50, 54, §22.3; 56GA, ch 131, §11]

**22.4 Compensation and expense.** The members of the appeal board, other than the comptroller, shall be paid on a per diem basis and the amount of their compensation shall be fixed by the executive council. [C24, 27, 31, 35, 39, §350; C46, 50, 54, §22.4]

## CHAPTER 23

### PUBLIC CONTRACTS AND BONDS

Referred to in §§24.24, 385.2, 394.4, 463.4, 463.6

- 23.1 Terms defined.  
23.2 Notice of hearing.  
23.3 Objections—hearing—decision.  
23.4 Appeal.  
23.5 Information certified to appeal board.  
23.6 Notice of hearing on appeal.  
23.7 Hearing and decision.  
23.8 Enforcement of performance.

- 23.9 Nonapproved contracts void.  
23.10 Witness fees—costs.  
23.11 Report on completion.  
23.12 Issuance of bonds—notice.  
23.13 Objections.  
23.14 Notice of hearing.  
23.15 Decision.  
23.16 Bonds and taxes void.

**23.1 Terms defined.** The words “public improvement” as used in this chapter shall mean any building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

The word “municipality” as used in this chapter shall mean county, except in the exercise of its power to make contracts for secondary road improvements, city, town, township, school district, state fair board, state board of regents, and state board of control.

The words “appeal board” as used in this chapter shall mean the “state appeal board”,

composed of the auditor of state, treasurer of state, and state comptroller. [C24, 27, 31, 35, 39, §351; C46, 50, 54, §23.1; 56GA, ch 131, §12]

**23.2 Notice of hearing.** Before any municipality shall enter into any contract for any public improvement to cost five thousand dollars or more, the governing body proposing to make such contract shall adopt proposed plans and specifications and proposed form of contract therefor, fix a time and place for hearing thereon at such municipality affected thereby or other nearby convenient place, and

give notice thereof by publication in at least one newspaper of general circulation in such municipality at least ten days before said hearing. [C24, 27, 31, 35, 39,§352; C46, 50, 54, §23.2]

**23.3 Objections—hearing—decision.** At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and forthwith enter of record its decision thereon. [C24, 27, 31, 35, 39,§353; C46, 50, 54,§23.3]

**23.4 Appeal.** Interested objectors in any municipality equal in number to one-fourth of one percent of those voting for the office of governor at the last general election in said municipality, but in no event less than ten, may appeal from the decision to the appeal board by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record.

The notice shall be in writing and shall set forth the objections to such decision and the grounds for such objections; provided that at least three of the persons signing said notice shall have appeared at the hearing and made objection, either general or specific, to the adoption of the proposed plans, specifications or contract for, or cost of such improvement. [C24, 27, 31, 35, 39,§354; C46, 50, 54,§23.4]

**23.5 Information certified to appeal board.** In case an appeal is taken, such body shall forthwith certify and submit to the appeal board for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted. [C24, 27, 31, 35, 39,§355; C46, 50, 54, §23.5]

**23.6 Notice of hearing on appeal.** The appeal board shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by certified mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government. [C24, 27, 31, 35, 39,§356; C46, 50, 54,§23.6; 57GA, ch 267,§2]

**23.7 Hearing and decision.** At such hearing, the appellants and any other interested person may appear and be heard. The appeal board shall examine, with the aid of competent assistants, the entire record, and if it shall find that the form of contract is suitable for the improvement proposed, that the improvement and the method of providing for payment therefor is for the best interests of the municipality and the taxpayers therein, and that such improvements can be made within the estimates therefor, it shall approve the same. Otherwise, it may reject the same as a whole or, it shall recommend such modifications of the plans, specifications, or contract, as in its judgment shall be for the public benefit, and if such modifications are so made, it shall approve the same.

The appeal board shall certify its decision to the body proposing to enter into such contract unless it shall have rejected the same as a whole, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the appeal board which shall at once render its final decision thereon and transmit the same to the municipality. [C24, 27, 31, 35, 39,§357; C46, 50, 54,§23.7]

**23.8 Enforcement of performance.** After any contract for any public improvement has been completed and any five persons interested request it, the appeal board shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation it finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions. [C24, 27, 31, 35, 39,§358; C46, 50, 54,§23.8]

**23.9 Nonapproved contracts void.** If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the appeal board. In no case shall any municipality expend for any public improvement any sum in excess of five percent more than the contract price without the approval of the appeal board. [C24, 27, 31, 35, 39, §359; C46, 50, 54,§23.9]

**23.10 Witness fees—costs.** Witness fees and mileage for witnesses on hearing appeals shall

be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality. [C24, 27, 31, 35, 39, §361; C46, 50, 54, §23.10]

**Witness fees, §622.69**

**23.11 Report on completion.** Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the appeal board a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans, and specifications.
7. Any failure of the contractor to comply with the plans and specifications. [C24, 27, 31, 35, 39, §362; C46, 50, 54, §23.11]

**23.12 Issuance of bonds—notice.** Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds. [C24, 27, 31, 35, 39, §363; C46, 50, 54, §23.12]

**Referred to in §§357A.12, 359.45, 385.2, 394.4, 395.25  
Sixty percent vote required, §75.1**

**23.13 Objections.** At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, five or more taxpayers may file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto. [C24, 27, 31, 35, 39, §364; C46, 50, 54, §23.13]

**Referred to in §§357A.12, 359.45, 385.2, 394.4**

**23.14 Notice of hearing.** Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the appeal board, and upon receipt of such certificate, petition, and information, it shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the appeal board. Notice of such hearing shall be given by certified mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing. [C24, 27, 31, 35, 39, §365; C46, 50, 54, §23.14; 57GA, ch 267, §3]

**Referred to in §§357A.12, 359.45, 385.2, 394.4**

**23.15 Decision.** The appeal board shall determine the matters involved in such appeal and its decision shall be final, unless either party, within thirty days from the making of such decision, gives notice to the other party of an appeal to the district court from such decision. Its decision shall be certified to the executive officer of the municipality affected.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the appeal board. [C24, 27, 31, 35, 39, §366; C46, 50, 54, §23.15]

**Referred to in §§357A.12, 359.45, 385.2, 394.4**

**23.16 Bonds and taxes void.** Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void. [C24, 27, 31, 35, 39, §367; C46, 50, 54, §23.16]

**Referred to in §§357A.12, 359.45, 385.2, 394.4**

**Rule of construction of this chapter and section 408.11, see 49GA, ch 71, §13**

## CHAPTER 24

### LOCAL BUDGET LAW

**Referred to in §§24.24, 176A.8, 176A.10, 273.13, 298.1, 309.97, 363C.7(16), 404.5(4)**

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| <p>24.1 Short title.</p> <p>24.2 Definition of terms.</p> <p>24.3 Requirements of local budget.</p> <p>24.4 Time of filing estimates.</p> <p>24.5 Estimates itemized.</p> <p>24.6 Emergency fund—levy.</p> | <p>24.7 Supplemental estimates.</p> <p>24.8 Estimated tax collections.</p> <p>24.9 Filing estimates—notice of hearing—<br/>amendments.</p> <p>24.10 Levies void.</p> <p>24.11 Meeting for review.</p> |
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- 24.12 Record by certifying board.
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- 24.27 Protest to budget.
- 24.28 Hearing on protest.
- 24.29 Appeal.
- 24.30 Review by and powers of board.
- 24.31 Rules of procedure—record.
- 24.32 Decision certified to county.
- 24.33 Appropriation for expenses.

**24.1 Short title.** This chapter shall be known as the "Local Budget Law." [C24, 27, 31, 35, 39,§368; C46, 50, 54,§24.1]  
 40ExGA, ch 4,§60, editorially divided

**24.2 Definition of terms.** As used in this chapter and unless otherwise required by the context:

1. The word "municipality" shall mean the county, city, town, school district, and all other public bodies or corporations that have power to levy or certify a tax or sum of money to be collected by taxation, but shall not include any drainage district, township, or road district.

2. The words "levying board" shall mean board of supervisors of the county and any other public body or corporation that has the power to levy a tax.

3. The words "certifying board" shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

4. The words "fiscal year" shall mean the year ending on the thirtieth day of June, and any other period of twelve months constituting a fiscal period, and ending at any other time, except in the case of school districts it shall be the period of twelve months beginning on the first day of July of the current calendar year.

5. The word "tax" shall mean any general or special tax levied against persons, property, or business, for public purposes as provided by law, but shall not include any special assessment nor any tax certified or levied by township trustees.

6. The words "state board" shall mean the state appeal board as created by section 24.26. [C24, 27, 31, 35, 39,§369; C46, 50, 54,§24.2; 56GA, ch 56,§1]

Referred to in §§24.25, 441.5

**24.3 Requirements of local budget.** No municipality shall certify or levy in any year any tax on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

- 1. The amount of income thereof for the several funds from sources other than taxation.
- 2. The amount proposed to be raised by taxation.

3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing, which in the case of school districts shall be the period of twelve months beginning on the first day of July of the current calendar year.

4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years. [C24, 27, 31, 35, 39,§370; C46, 50, 54,§24.3; 56GA, ch 56,§2]

Referred to in §24.9

**24.4 Time of filing estimates.** All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and action thereon as hereinafter provided. [C24, 27, 31, 35, 39,§371; C46, 50, 54,§24.4]

Referred to in §24.9

**24.5 Estimates itemized.** The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the state board. [C24, 27, 31, 35, 39,§372; C46, 50, 54,§24.5]

Referred to in §24.9

**24.6 Emergency fund—levy.** Each municipality as defined herein, may include in the estimate herein required, an estimate for an emergency fund. Each such municipality shall have power to assess and levy a tax for such emergency fund at a rate not to exceed one mill upon the taxable property of the municipality, provided that no such emergency tax levy shall be made until such municipality shall have first petitioned the state board to make such levy and received its approval thereof. Transfers of moneys may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in any such fund arising from any cause, provided, however, that no such transfer shall be made except upon the written approval of the state board, and then only when such approval is requested by a two-thirds

vote of the governing body of said municipality. [C24, 27, 31, 35, 39,§373; C46, 50, 54, §24.6]

Referred to in §§24.9, 24.14

**24.7 Supplemental estimates.** Supplemental estimates for particular funds may be made for levies of taxes for future years when the same are authorized by law. Such estimates may be considered, and levies made therefor at any time by filing the same, and upon giving notice in the manner required in section 24.9. Such estimates and levies shall not be considered as within the provisions of section 24.8. [C27, 31, 35,§373-a1; C39,§373.1; C46, 50, 54,§24.7]

Referred to in §24.9

**24.8 Estimated tax collections.** The amount of the difference between the receipts estimated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of the assessed value of all property that is assessed. [C24, 27, 31, 35, 39, §374; C46, 50, 54,§24.8]

Referred to in §§24.7, 24.9

**24.9 Filing estimates—notice of hearing—amendments.** Each municipality shall file with the secretary or clerk thereof the estimates required to be made in sections 24.3 to 24.8, inclusive, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing thereon, and shall publish such estimates and any annual levies previously authorized as provided in section 76.2, with a notice of the time when and the place where such hearing shall be held at least ten days before the hearing. Provided that in rural independent districts, school townships, and municipalities of less than two hundred population such estimates and the notice of hearing thereon shall be posted in three public places in the district in lieu of publication.

For a county, such publication shall be in the official newspapers thereof.

For any other municipality such publication shall be in a newspaper published therein, if any, if not, then in a newspaper of general circulation therein.

Budget estimates adopted and certified in accordance with this chapter may be amended and increased as the need arises to permit appropriation and expenditure during the fiscal year covered by such budget of unexpended cash balances on hand at the close of the preceding fiscal year and which cash balances had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended, and also to permit appropriation and expenditure during the fiscal year covered by such budget of amounts

of cash anticipated to be available during such year from sources other than taxation and which had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended. Such amendments to budget estimates may be considered and adopted at any time during the fiscal year covered by the budget sought to be amended, by filing such amendments and upon publishing the same and giving notice of the public hearing thereon in the manner required in this section. Within twenty days of the decision or order of the certifying or levying board, such proposed amendment of the budget shall be subject to protest, hearing on such protest, appeal to the state appeal board and review by such body, all in accordance with the provisions of sections 24.27 to 24.32, inclusive, so far as applicable. Amendments to budget estimates accepted or issued under the provisions of this section shall not be considered as within the provisions of section 24.14. [C24, 27, 31, 35, 39,§375; C46, 50, 54,§24.9]

Referred to in §24.7

**24.10 Levies void.** The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by him. No levy shall be valid unless and until such notice is published and filed. [C24, 27, 31, 35, 39,§376; C46, 50, 54,§24.10]

**24.11 Meeting for review.** The certifying board or the levying board, as the case may be, shall meet at the time and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof. [C24, 27, 31, 35, 39,§377; C46, 50, 54,§24.11]

Referred to in §24.27

**24.12 Record by certifying board.** After the hearing has been concluded, the certifying board shall enter of record its decision in the manner and form prescribed by the state board and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy. [C24, 27, 31, 35, 39,§378; C46, 50, 54,§24.12]

40ExGA, ch 4,§69, editorially divided

**24.13 Procedure by levying board.** Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards. [C24, 27, 31, 35, 39,§379; C46, 50, 54,§24.13]

**24.14 Tax limited.** No greater tax than that so entered upon the record shall be levied or collected for the municipality proposing such tax for the purpose or purposes indicated; and thereafter no greater expenditure of public money shall be made for any specific purpose than the amount estimated and appropriated

therefor, except as provided in sections 24.6, 24.15 and subsection 4 of section 343.11. All budgets set up in accordance with the statutes shall take such funds [allocations made by sections 123.50 and 324.73] into account, and all such funds, regardless of their source, shall be considered in preparing the budget, all as is provided in this chapter. [C24, 27, 31, 35, 39,§380; C46, 50, 54,§24.14]

Referred to in §24.9

**24.15 Further tax limitation.** No tax shall be levied by any municipality in excess of the estimates published, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the constitution and laws of the state. [C24, 27, 31, 35, 39,§381; C46, 50, 54,§24.15]

Referred to in §24.14

Tax limit, Constitution, Art. XI,§3; ch 407

**24.16 Expenses—how paid.** The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget shall be paid out of the general funds of each municipality respectively. [C24, 27, 31, 35, 39,§382; C46, 50, 54,§24.16]

**24.17 Budgets certified.** The local budgets of the various municipalities shall be certified by the chairman of the certifying board or the levying board, as the case may be, in duplicate to the county auditor not later than the fifteenth day of August each year on blanks prescribed by the state board, and according to rules and instructions which shall be furnished all certifying and levying boards in printed form by said state board.

One copy of said budget shall be retained on file in his office by the county auditor, and the other shall be certified by him to the state board. [C24, 27, 31, 35, 39,§383; C46, 50, 54, §24.17]

**24.18 Summary of budget.** Before forwarding copies of local budgets to the state board, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the annual financial report of the county auditor, and one copy shall be certified by him to the state board. [C24, 27, 31, 35, 39,§384; C46, 50, 54, §24.18]

**24.19 Levying board to spread tax.** At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the state board. [C24, 27, 31, 35, 39, §385; C46, 50, 54,§24.19]

**24.20 Tax rates final.** The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing year for the purposes set out in the budget. [C24, 27, 31, 35, 39,§386; C46, 50, 54,§24.20]

**24.21 Transfer of inactive funds.** Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the fund or funds of the municipality designated by such board, unless other provisions have been made in creating such fund in which such balance remains. [C24, 27, 31, 35, 39,§387; C46, 50, 54, §24.21]

**24.22 Transfer of active funds—poor fund.** Upon the approval of the state board, it shall be lawful to make temporary or permanent transfers of money from one fund of the municipality to another fund thereof; but in no event shall there be transferred for any purpose any of the funds collected and received for the construction and maintenance of secondary roads. The certifying board or levying board, as the case may be, shall provide that money temporarily transferred shall be returned to the fund from which it was transferred within such time and upon such conditions as the state board shall determine, provided that it shall not be necessary to return to the emergency fund, or to any other fund no longer required, any money transferred therefrom to any other fund. No transfer shall be made to a poor fund unless there is a shortage in said fund after the maximum permissible levy has been made for said fund. [C24, 27, 31, 35, 39,§388; C46, 50, 54,§24.22]

Analogous provisions, §252.43

**24.23 Supervisory power of state board.** The state board shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in compiling and tabulating all data required by this chapter. [C24, 27, 31, 35, 39,§389; C46, 50, 54,§24.23]

**24.24 Violations.** Failure on the part of any public official to perform any of the duties prescribed in chapters 22, 23, and 24, and sections 8.39 and 11.1 to 11.5, inclusive, shall constitute a misdemeanor, and shall be sufficient ground for removal from office. [C24, 27, 31, 35, 39, §390; C46, 50, 54,§24.24]

Punishment, §687.7



**24.25 Estimates submitted by departments.**

1. On or before the first day of July of each year, each elective or appointive officer or board, except tax certifying boards as defined in subsection 3 of section 24.2, having charge of any county office or department shall prepare and submit to the county auditor the following:

a. An estimate of the actual expenditures of such office or department during the current year;

b. A statement of the requested expenditures to be budgeted for such office for the next calendar year;

c. An estimate of the revenues, except property tax, to be collected for the county by such office during the current year;

d. An estimate of the revenues, except property tax, to be collected for the county by such office during the next calendar year.

Such estimates and statements shall be itemized in the same manner as the various expenditures and revenues are itemized in the records of the auditor.

2. On or before the tenth day of July of each year, the auditor shall submit to the board of supervisors, a compilation of the various office and department estimates in as much detail as they were submitted to him. With this compilation, the auditor shall show the itemized expenditures and revenues for the two years preceding the current year and an estimate of the cash balances of each county fund at the end of the current year.

3. The board of supervisors, in the preparation of the county budget as required by this chapter, shall have authority to consult with any such county officer or board concerning his budget estimates and requests and to adjust the budget requests for any such county office or department. [57GA, ch 61,§1]

**24.26 State appeal board.** There is hereby created to administer this act\* a state board to be known as the state appeal board, which state board shall consist of the

1. Comptroller,
2. Auditor of state, and
3. Treasurer of state

each of whom shall personally serve as a member of the state board during his tenure of office. At its first meeting, which shall be held within thirty days after July 4, 1937, and at each annual meeting held thereafter, the state board shall organize by the election, from their own number, of a chairman and a vice-chairman; and by appointing a secretary. Two members of the state board shall constitute a quorum for the transaction of any business. The state board may, from time to time, as such services are required, appoint one or more competent and specially qualified persons as deputies, to appear and act for it at initial hearings as hereinafter provided. The annual meeting of the state board shall be held on the second Tuesday of January in each year. Each deputy appointed by the state

board shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of his official duties as hereinafter set out. Such expenses to be audited and approved by the state board and proper receipts filed therefor. [C39,§390.1; C46, 50, 54,§24.25]

Referred to in §24.2  
\*47GA, ch 91

**24.27 Protest to budget.** Not later than the first Tuesday in September, a number of persons in any municipality equal to one-fourth of one percent of those voting for the office of governor at the last general election in said municipality, but in no event less than ten, who are affected by any proposed budget, expenditure or tax levy, or by any item thereof, may appeal from any decision of the certifying board or the levying board, as the case may be, by filing with the county auditor of the county in which such municipal corporation is located, a written protest setting forth their objections to such budget, expenditure or tax levy, or to one or more items thereof, and the grounds for such objections; provided that at least three of such persons shall have filed a joint written objection, at or before the time of the meeting contemplated in section 24.11 which shall include a detailed statement of the objections to said budget, expenditures or tax levy for each and every fund, or the items therein to which objection is taken and an analysis of the fund or funds, or items therein showing grounds for such objections or shall have appeared and made objection, either general or specific, as provided by section 24.11. Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of said written protest, together with the budget, proposed tax levy or expenditure to which objections are made, and shall transmit the same forthwith to the state board, and shall also send a copy of such protest to the certifying board or to the levying board, as the case may be. [C39,§390.2; C46, 50, 54,§24.26; 57GA, ch 62,§1]

Referred to in §24.9

**24.28 Hearing on protest.** The state board, within a reasonable time, shall fix a date for an initial hearing on such protest and shall designate a deputy to hold such hearing, which shall be held in the county or in one of the counties in which such municipality is located. Notice of the time and place of such hearing shall be given by certified mail to the chief executive officer of the municipality and to the first ten property owners whose names appear upon such protest, at least five days before the date fixed for such hearing. At all such hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which such objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item thereof, is

necessary, reasonable, and in the interests of the public welfare. [C39,§390.3; C46, 50, 54, §24.27; 57GA, ch 267,§4]

Referred to in §§24.9, 24.29

**24.29 Appeal.** The deputy designated to hear any particular appeal shall attend in person and conduct such hearing in accordance with the procedure prescribed in section 24.28, and shall promptly report the proceedings had at such hearing, which report shall become a part of the permanent record of the state board. At the request of either party, or on his own motion, the deputy shall employ a stenographer to report the proceedings, in which event the stenographic notes shall be filed with the report. Either party desiring to have a transcript of such notes presented to the state board with the deputy's report, may have the same made at his initial expense, such expense to eventually follow the result. [C39, §390.4; C46, 50, 54,§24.28]

Referred to in §24.9

**24.30 Review by and powers of board.** It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted to it upon appeal, as herein provided; but in no event may it increase such budget, expenditure, tax levies or assessments or any item contained therein. Said state board shall have authority to adopt rules and regulations not inconsistent with the provisions of this chapter, to employ necessary assistants, authorize such expenditures, require such reports, make such investigations, and take such other action as it deems necessary to promptly hear and determine all such appeals; provided, however, that all persons so employed shall be selected

from persons then regularly employed in some one of the offices of the members of said state board. [C39,§390.5; C46, 50, 54,§24.29]

Referred to in §24.9

**24.31 Rules of procedure—record.** The manner in which objections shall be presented, and the conduct of hearings and appeals, shall be simple and informal and in accordance with the rules prescribed by the state board for promptly determining the merits of all objections so filed, whether or not such rules conform to technical rules of procedure. Such record shall be kept of all proceedings, as the rules of the state board shall require. [C39, §390.6; C46, 50, 54,§24.30]

Referred to in §24.9

**24.32 Decision certified to county.** After a hearing upon such appeal, the state board shall certify its decision with respect thereto to the county auditor, and such decision shall be final. The county auditor shall make up his records in accordance with such decision and the levying board shall make its levy in accordance therewith. Upon receipt of such decision, the county auditor shall immediately notify both parties thereof, whereupon the certifying board shall correct its records accordingly, if necessary. Final disposition of all such appeals shall be made by the state board on or before October 15 of each year. [C39,§390.7; C46, 50, 54,§24.31]

Referred to in §24.9

**24.33 Appropriation for expenses.** For the purpose of carrying out the provisions of this act\*, there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of five thousand dollars, or so much thereof as is necessary, for each annual period. [C39,§390.8; C46, 50, 54,§24.32]

Omnibus repeal, 47GA, ch 91,§5  
\*47GA, ch 91

## CHAPTER 25

### CLAIMS AGAINST THE STATE AND BY THE STATE

- 25.1 Receipt, investigation, and report.
- 25.2 Examination of report.
- 25.3 Filing with general assembly—testimony.
- 25.4 Assistant attorney general—salary.

- 25.5 Testimony—filing with board.
- 25.6 Claims by state against municipalities.
- 25.7 Claims refused—effect.
- 25.8 Limitation on claims to be considered.

**25.1 Receipt, investigation, and report.** When a claim is filed or made against the state, on which in the judgment of the comptroller the state would be liable except for the fact of its sovereignty or which has no appropriation available for its payment, the comptroller shall deliver said claim to the state appeal board. The state appeal board shall make a record of the receipt of said claim and forthwith deliver same to the special assistant attorney general for claims who shall, with a view to determining the merits and legality thereof, fully investigate said claim, including

the facts upon which it is based and report in duplicate his findings and conclusions of law to the state appeal board. [C46, 50, 54,§25.1]

**25.2 Examination of report.** The state appeal board shall examine the report made on each claim by the special assistant attorney general for claims and prepare and make a recommendation thereon in writing. [C46, 50, 54,§25.2]

**25.3 Filing with general assembly—testimony.** On the second day after the convening

of each regular session of the general assembly, the state appeal board shall file with the clerk of the house of representatives and the secretary of the senate a copy of the report made to it by the special assistant attorney general for claims and its recommendation thereon for each claim, which report and recommendation shall be delivered to the claims committee of the house and senate. Any testimony taken by the special assistant attorney general for claims shall be preserved by the state appeal board and made available to the claims committee of the general assembly. [C24, 27, 31,§405; C46, 50, 54,§25.3]

**25.4 Assistant attorney general—salary.** The attorney general shall appoint a special assistant attorney general for claims who shall, under the direction of the attorney general, investigate and report on all claims between the state and other parties, which may be referred to the state appeal board, and on any other claims or matters which the state appeal board or the attorney general may direct. He shall receive such compensation as shall be fixed by the state appeal board and approved by the governor, and be paid his reasonable and necessary expenses incurred in connection with the performance of his duties, said compensation and expenses to be paid out of any funds in the state treasury not otherwise appropriated. [C46, 50, 54,§25.4]

**25.5 Testimony—filing with board.** The special assistant attorney general for claims shall fully investigate each claim and the facts upon which same is based and may take testimony in the form of affidavits or otherwise, and in connection therewith he shall ex officio be empowered to administer oaths, to compel the attendance of witnesses and certify to any district court for contempt. All testimony, affidavits, and other papers in connection with a claim, obtained by the special assistant attorney general for claims in making his investigation shall be filed with his report to the state appeal board. [C24, 27, 31,§403; C46, 50, 54,§25.5]

**25.6 Claims by state against municipalities.** The state appeal board shall have power and authority to investigate and collect claims which the state may have against municipal

or political corporations in the state including counties, cities, towns, townships, and school districts. The board shall refer any such claim to the special assistant attorney general for claims, when any such claim has not been promptly paid, and if the special assistant attorney general for claims is not able to collect the full amount of said claim, he shall fully investigate same and report to the state appeal board his findings of fact and conclusions of law, together with any recommendation he may have as to said claim. Thereafter the state appeal board may effect a compromise settlement with the debtor in such amount and under such terms as the said board may deem just and equitable in view of the findings and conclusions reported to it. In the event the state appeal board is unable to collect a claim in full or effect what it has determined to be a fair compromise, it shall deliver same to the attorney general for such action as he shall determine and the special assistant attorney general for claims is specifically charged with carrying out the directions of the attorney general with reference thereto. When any claim is compromised by the state appeal board, it shall file in the office of the comptroller a statement as to the settlement, together with a true copy of the agreement of settlement, and if in settlement an amount less than the face amount is accepted in full, the proper entries shall be made in the books of the comptroller, and auditor of state showing the amount of the claim, the amount of the settlement and the amount charged off. [C46, 50, 54,§25.6]

**25.7 Claims refused—effect.** When any claim against the state has been presented to the general assembly through the state appeal board, and the general assembly has failed or refused to make an appropriation therefor, such failure or refusal to appropriate shall constitute an adjudication against said claim, which shall bar any further proceedings before the general assembly for the payment of same. [C46, 50, 54,§25.7]

**25.8 Limitation on claims to be considered.** No claim against the state shall be considered or allowed by the general assembly except it be presented before the state appeal board as provided in this chapter. [C46, 50, 54,§25.8]

## CHAPTER 26

### CENSUS

26.1 Federal and state co-operation.  
26.2 Federal census.  
26.3 Publication.

26.4 Publication in official register.  
26.5 Evidence.  
26.6 Population of counties, cities, and towns.

**26.1 Federal and state co-operation.** The executive council is authorized, so far as practicable, to co-operate with the census bureau of the United States in the gathering, compilation, and publication of census statistics. [S13, §177-a; C24, 27, 31, 35, 39,§424; C46, 50, 54,§26.1]

**26.2 Federal census.** The secretary of state shall, whenever a general census is taken by the federal government, procure from the supervisor of such census, or other proper federal official, a copy of such part of said census as gives the population of the state of Iowa by

counties, by townships, by cities, and by towns, and file the same in his office and attach thereto, dated and signed by him, a certificate that the same is the census report furnished to him by said federal official. [S13,§177-c; C24, 27, 31, 35, 39,§425; C46, 50, 54,§26.2; 56GA, ch 57,§1]

**26.3 Publication.** He shall at once cause such census report and certificate to be published once in each of two daily newspapers of the state and of general circulation, and from and after the date of such publication said census shall be in full force and effect throughout the state. On payment of a fee of two dollars he shall furnish a certified copy of the whole or any part of such census report. [S13, §177-c; C24, 27, 31, 35, 39,§426; C46, 50, 54,§26.3]

**26.4 Publication in official register.** The superintendent of printing shall publish said federal census report and certificate aforesaid in full in each copy of the Iowa official register.

[S13,§177-c; C24, 27, 31, 35, 39,§427; C46, 50, 54, §26.4]

**26.5 Evidence.** Said certified census records in the office of the secretary of state, and said authorized publications, including the certificates attached thereto, shall be competent evidence of all matters therein contained. [S13, §177-c; C24, 27, 31, 35, 39,§428; C46, 50, 54,§26.5] 40GA, ch 226,§21, editorially divided

**26.6 Population of counties, cities, and towns.** Whenever the population of any county, township, city, or town is referred to in any law of this state, it shall be determined by the last certified, or certified and published, official census unless otherwise provided. If there be a difference between the original certified record in the office of the secretary of state and the published census the former shall prevail. [C97,§177; S13,§177-c; C24, 27, 31, 35, 39, §429; C46, 50, 54,§26.6; 56GA, ch 57,§2]

Similar provision, §4.1, subsection 26

CHAPTER 27

DEPUTIES OF STATE OFFICERS

27.1 Deputies.

27.2 Deputy to qualify.

**27.1 Deputies.** The secretary, auditor, treasurer of state, and secretary of agriculture may each appoint, in writing, any person, except one holding a state office, as deputy, for whose acts the appointing officer shall be responsible, and from whom the appointing officer shall require bond, which appointment and bond must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and revocation shall be filed with and kept by the secretary of state. The state shall pay the reasonable cost of the bonds required by this section. [C51, §§411-413, 416; R60, §§642-644, 647; C73, §§766-768, 770, 3756-3758; C97, §§87, 99, 116; S13, §§87, 99, 116; C24, 27, 31, 35, 39, §430; C46, 50, 54, §27.1]

Deputy county officers, §341.1

**27.2 Deputy to qualify.** The deputy shall qualify by taking the oath of the principal, to be indorsed upon and filed with the certificate of appointment, and when so qualified he shall, in the absence or disability of the appointing officer, unless otherwise provided, perform all the duties pertaining to the office of the appointing officer. [C51, §§411, 412, 416; R60, §§642, 643, 647; C73, §§766, 767, 770; C97, §§87, 99, 116; S13, §§87, 99, 116; C24, 27, 31, 35, 39, §431; C46, 50, 54, §27.2]

Deputy may not act on executive council, §19.1  
Oath of principal, §63.10

CHAPTER 28

IOWA DEVELOPMENT COMMISSION

See "Greater Iowa Commission," H.C.R. 12, 46GA; H.J. 521, 1116; S.J. 1103; also 47GA, ch 280

- 28.1 Creation of commission—terms.
- 28.2 Compensation.
- 28.3 Director—his duties.
- 28.4 Commission employees.
- 28.5 Offices.

- 28.6 Meetings and rules.
- 28.7 Duties of commission.
- 28.8 Powers.
- 28.9 Warrants.

**28.1 Creation of commission—terms.** There is hereby created and established a commission to be known as "The Iowa Development Commission", hereinafter referred to as "the commission", to consist of eleven members, all of whom shall be appointed by the gover-

nor and four of whom shall be members of the legislature, two from the house and two from the senate. The legislative members of the commission shall serve for two years or until their successors shall be appointed by the governor.

The commission shall be nonpartisan and the members shall be appointed without reference to their political affiliation. The governor shall appoint one of said members as chairman and one as vice chairman. As the terms of the members so appointed shall expire, their successors shall be appointed, each for a term of four years; provided, however, that upon the death, disability, or resignation of any member, the governor shall appoint a person to serve for the unexpired term. [C46, 50, 54, §28.1; 56GA, ch 58,§1]

**28.2 Compensation.** The members of the commission shall serve without compensation, except that they shall be reimbursed for their actual and necessary expense actually incurred in performing their duties as members of the commission. [C46, 50, 54,§28.2]

**28.3 Director—his duties.** The commission shall choose a director, who shall not be a member of the commission, and shall fix the compensation of such director, which shall be payable out of the funds of the commission hereinafter appropriated. The director shall attend the meetings of the commission and shall serve as its secretary, and shall have general charge of the work of the commission, subject to its orders and direction, and shall serve at the pleasure of the commission. [C46, 50, 54,§28.3]

**28.4 Commission employees.** The commission shall be empowered to employ such assistants, clerks, and stenographers as its business may require. All said employees shall be paid from the funds hereinafter appropriated to the commission. [C46, 50, 54,§28.4]

**28.5 Offices.** The executive council shall furnish to the commission suitable offices in the state capitol, or other state buildings, or elsewhere in the city of Des Moines. [C46, 50, 54,§28.5]

**28.6 Meetings and rules.** The commission shall meet once each month, and shall hold special meetings on call of the chairman. Five members shall constitute a quorum. The commission shall adopt such rules and regulations as it may deem necessary to govern its own procedure. [C46, 50, 54,§28.6]

**28.7 Duties of commission.** It shall be the duty of the commission to:

1. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial and agricultural and recreational opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced therefrom; power and water resources; transportation facilities; available markets; the availability of labor; the banking and financing facilities; the availability of industrial sites; and the advantages of the state as a whole, and the particular sections thereof, as industrial locations; and such other fields of research

and study as the commission may deem necessary. Such information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to such industries.

2. Acquaint the people of Iowa with the industries located within the state, and the industrial, agricultural, and recreational opportunities existing in the state; and to encourage closer co-operation between the various industries of the state themselves and with the people of the state.

3. Encourage new industrial enterprises to locate in Iowa, by legitimate educational and advertising mediums directed to point out the opportunities of the state as a commercial, industrial, and agricultural field of opportunity, and by solicitation of industrial enterprises.

4. Aid in the promotion and development of manufacturing in Iowa, the Iowa development commission, may adopt a label or trade-mark bearing the words "Made in Iowa" or "Product of Iowa" together with any other appropriate design or inscription and this label or trade-mark shall be registered in the office of the secretary of state.

- a. The Iowa development commission shall have the right to register or file such label or trade-mark under the laws of the United States or any foreign country which permits such registration, making such registration as an association or through an individual for the use and benefit of the Iowa development commission.

- b. The commission shall grant authority to use such label or trade-mark to such persons or firms who make a satisfactory showing to the commission that the products on which the label or trade-mark is to be used are bona fide Iowa products. Such trade-mark or label use shall be registered with the commission.

- c. No person, firm, partnership, or corporation shall use the said label or trade-mark or advertise the same, or attach the same on any manufactured article or agricultural product except as provided herein.

5. Encourage the traveling public to visit Iowa, by the disseminating of information as to the natural advantages of the state, its lakes and resorts, and its highways and other facilities for transient travel.

6. Do such other and further acts as shall, in the judgment of the commission, be necessary and proper in fostering and promoting the industrial and agricultural development and economic welfare of the state of Iowa. [S13, §§138-c1, c2, c3, c5; C24, 27, 31, 35, 39, §§9876, 9878, 9879, 9881-9883; C46, §§28.7, 549.1, 549.3, 549.4, 549.6-549.8; C50, 54, §28.7]

**28.8 Powers.** In the performing of its duties, the commission is hereby empowered and authorized to make and enter into contracts, and to generally do all such things as in its judgment may be necessary, proper and

expedient in accomplishing its duties herein enumerated; provided, however, that as far as may be practicable in performing its duties in connection with the collection and assembling of information, the commission shall cooperate with boards, commissions, agencies and institutions of this state, and shall have access to any and all records, data, information and statistics of such other boards, commissions, agencies and institutions of this state, and upon such terms as may be mutually agreed upon to have such studies and research conducted as may be necessary and proper, the cost thereof to be paid out of the funds hereinafter appropriated to the commission.

The commission is authorized to seek advice and counsel of informed individuals, or any agricultural, industrial, professional, labor or trade association, or business or civic group in the accomplishment of the aims and objectives of this chapter. [C46, 50, 54,§28.8]

**28.9 Warrants.** The comptroller is authorized and directed to draw warrants on the treasurer of state for the several sums and for the purposes specified in this chapter upon duly itemized and verified vouchers that have been approved by the chairman or director of the commission. [C46, 50, 54,§28.9]

**Constitutionality, 51GA, ch 68,§12**

# TITLE III

## MILITARY CODE AND RELATED MATTERS

### CHAPTER 29

#### MILITARY CODE

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- POWERS OF ATTORNEY EXECUTED BY  
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- 29.92 Death of principal—effect.
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**29.1 Definitions.** The following words, terms, and phrases when used in this chapter shall have the respective meanings herein set forth:

1. "Militia" shall mean the forces provided for in the Constitution of Iowa.

2. "National guard" shall mean the Iowa units, detachments and organizations of the national guard of the United States and the air national guard of the United States as such forces are defined in the National Defense Act and acts amendatory thereto, the Iowa national guard and the Iowa air national guard.

3. "Company" shall mean the smallest administrative military unit and shall include a company of infantry, engineers, signal corps, a flight of the air service, a battery of field artillery, or any similar organization in any branch authorized by federal law for this state, including a permanent detachment.

4. "Battalion" shall mean two or more companies grouped together by competent orders for command purposes including battalions as shown in appropriate federal tables of organization.

5. "Active state service" shall be understood and construed to be service on behalf of the state, in case of public disaster, riot, tumult, breach of the peace, resistance of process, or whenever any of the foregoing is threatened, whenever called upon in aid of civil authorities, or under martial law, or at encampments whether ordered by state or federal authority, or upon any other duty requiring the entire time of the organization or person, except when called or ordered into the federal service of the United States.

6. "Federal service" shall mean service exclusively under federal laws and regulations.

7. "On duty" shall mean and include drill periods, all other training, and service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted man to the place of performance of such duty and return home after performance of such duty, but shall not include federal service.

8. "In service of the United States" and "Not in service of the United States" used herein, shall have the same meaning as such terms have in the National Defense Act of Congress (39 Stat. L. ch 134), approved June 3, 1916, and amendments thereto.

9. "Officer" shall mean and include commissioned officers and warrant officers.

10. "Law and regulations" means and includes state and federal law and regulations.

11. "Advisory council" shall mean a board of officers composed of the general officers, regimental commanders and commanders of separate battalions of the Iowa national guard and the senior commander of the Iowa air national guard.

12. Except when otherwise expressly defined herein military words, terms and phrases shall

have the meaning commonly ascribed to them in the military profession. [C97,§2168; S13,§2215-f2; C24, 27, 31,§433; C35,§467-f2; C39,§467.02; C46, 50,§29.2; C54,§29.1]

**29.2 National guard and air national guard created.** There is hereby created the Iowa national guard and the Iowa air national guard. The Iowa national guard shall be composed of such organized land forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority. The Iowa air national guard shall be composed of such organized air forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority. [C51,§621; R60,§1002; C73,§1039; C97,§2167; S13,§2215-f1; C24, 27, 31, §432; C35,§467-f1; C39,§467.01; C46, 50,§29.1; C54, §29.2]

**29.3 Units of guard.** The Iowa units, detachments, and organizations of the national guard of the United States and the air national guard of the United States shall consist of such units, detachments, and organizations, as may be specified by the secretary of defense with the approval of the governor, in accordance with law and regulations. [C73,§1045; C97,§2168; SS15,§2215-f4; C24, 27, 31,§435; C35, §467-f7; C39,§467.07; C46, 50,§29.7; C54,§29.3]

**29.4 Organization — armament — equipment and discipline.** The organization, armament, equipment and discipline of the national guard, and the militia when called into active state service, except as hereinafter specifically provided, shall be the same as that which is now or may be hereafter prescribed under the provisions of federal law and regulations as to those requirements which are mandatory therein, but as to those things which are optional therein they shall become effective when an order or regulation to that effect shall have been promulgated by the governor. [C51, §§623-631; R60,§§1004-1015; C73,§§1038-1057; C97,§§2182, 2186; S13,§§2215-f3,-f8,-f9; C24, 27, 31, §§434, 439, 440; C35,§§467-f6,-f9,-f10; C39,§§467.06, 467.09, 467.10; C46, 50,§§29.6, 29.9, 29.10; C54, §29.4]

**29.5 Government, discipline and uniforming.** The national guard shall be subject to the provisions of federal law and regulations relating to the government, discipline and uniforming thereof; and to the provisions of this chapter and to regulations published pursuant hereto. [C51,§631; R60,§1012; C73,§1044; C97, §2205; S13,§§2215-f6,-f7; C24, 27, 31,§§437, 438; C35,§467-f8; C39,§467.08; C46, 50,§29.8; C54,§29.5]

**29.6 Military forces of state.** The military forces of the state of Iowa shall consist of the national guard and the militia. [C73,§1045; C97,§2168; SS15,§2215-f4; C24, 27, 31,§435; C35, §467-f7; C39,§467.07; C46, 50,§29.7; C54,§29.6]

**29.7 Commander-in-chief.** The governor shall be the commander-in-chief of the military



forces, except so much thereof as may be in federal service. The governor may employ the military forces of the state for the defense or relief of the state, the enforcement of its laws, and the protection of life and property therein and he shall have the power, in cases of insurrection, invasion, or breaches of peace, or imminent danger thereof, to order into active state service such of the military forces of the state as he may deem proper, under the command of such officer as he may designate. [C35,§467-f26; C39,§467.26; C46, 50,§29.26; C54, §29.7]

Constitutional provisions, Art. IV,§7

**29.8 Active service.** The governor shall have the power to order into active state service such of the military forces of the state as he may deem proper, under command of such officer as he may designate, for the purpose of aiding the civil authorities of any political subdivision of the state in maintaining law and order in such subdivision in cases of breaches of the peace or imminent danger thereof, if the law enforcement officers of such subdivision are unable to maintain law and order, and the civil authorities request such assistance. [C51,§623; R60,§1004; C73,§1051; C97,§§2169, 2170; S13,§2215-f19; C24, 27, 31,§449; C35,§§467-f28,-f29; C39,§§467.28, 467.29; C46, 50,§§29.28, 29.29; C54,§29.8]

**29.9 Field training.** The governor may order the national guard into camp for field training for such period or periods as he may direct. He may, in his discretion, order such organizations or personnel of the national guard, as he may deem proper, to active state service, or duty, or to assemble for purposes of drill, instruction, parade, ceremonies, guard and escort duty, and schools of instruction, and prescribe all regulations and requirements therefor.

The governor shall also provide for the participation of the national guard, or any portion thereof, in field training at such times and places as may be designated by the secretary of defense. [C73,§1049; C97,§§2184, 2185; S13, §2215-f21; C24, 27, 31,§450; C35,§467-f51; C39, §467.53; C46, 50,§29.53; C54,§29.9]

**29.10 Inspections.** The governor may order such inspections of the different organizations, units, and personnel of the national guard as he may deem proper and necessary.

The form and mode of inspection shall be prescribed by the adjutant general. [C73, §1049; C97,§2191; S13,§2215-f22; C24, 27, 31,§451; C35,§467-f52; C39,§467.54; C46, 50,§29.54; C54, §29.10]

**29.11 Adjutant general—appointment, term and removal.** There shall be an adjutant general of the state who shall be appointed and commissioned by the governor upon the recommendation of a majority of the advisory council. When a majority of the members of the advisory council are in federal service in time

of war, said appointment shall be made by the governor without such recommendation. The rank of the adjutant general shall be at least that of brigadier general and he shall hold office for a term of four years. At the time of his appointment he shall be a federally recognized commissioned officer of the national guard with not less than ten years military service in the armed forces of this state or of the United States, at least five of which have been commissioned service, and who shall have reached the grade of a field officer. He shall be removed only upon conviction of a felony or upon conviction by a court-martial. [C73, §1054; C97,§2174; SS15,§2215-f14; C24, 27, 31,§445; C35,§467-f40; C39,§467.42; C46, 50,§29.42; C54, §29.11]

**29.12 Powers and duties.** The adjutant general shall have control of the military department, and perform such duties as pertain to the office of the adjutant general under law and regulations. He shall superintend the preparation of all letters and reports required by the United States from the state, and perform all the duties prescribed by law. He shall have charge of the state military reservations, and all other property of the state kept or used for military purposes. It shall be the duty of the adjutant general to cause an inventory to be taken at least once each year of all military stores, property and funds under his jurisdiction. In each year preceding a regular session of the general assembly he shall prepare a detailed report of the transactions of his office, the expenses thereof, and such other matters as shall be required by the governor for the period since the last preceding report, and the governor may at any time require a similar report.

The adjutant general shall make and preserve by counties a permanent registry of the graves of all persons who shall have served in the military or naval forces of the United States in time of war, and whose mortal remains rest in Iowa.

The adjutant general is authorized to enter into an agreement with the secretary of defense to operate the water plant at Camp Dodge for the use and benefit of the United States, and the state of Iowa upon such terms and conditions as shall be approved by the governor. [C73,§§1054, 1055; C97,§2175; SS15, §2215-f15; C24, 27, 31,§§446, 446-c1, 447; C35, §467-f42; C39,§467.44; C46, 50,§29.44; C54,§29.12]

Time of filing report, §17.3

**29.13 Military land.** The adjutant general, with the approval of the governor, is authorized to expend from the funds appropriated for the support and maintenance of the national guard, and the permanent Camp Dodge improvement fund, such amounts as he may deem necessary for the purchase of additional land, constructing, equipping, and improving state military reservations, installations, and firing ranges, owned or leased by the state of Iowa or the United States for the use and

benefit of the national guard and for the maintenance of all such facilities. [S13,§2215-f41; C24, 27, 31,§466; C35,§467-f43; C39,§467.45; C46, 50,§29.45; C54,§29.13]

**29.14 Leasing facilities.** The adjutant general shall have authority to operate or lease any of the facilities at Camp Dodge. Any income or revenue derived from such operation or leasing shall be deposited with the state treasurer as a Camp Dodge permanent improvement fund. [C35,§467-f44; C39,§467.46; C46, 50,§29.46; C54,§29.14]

**29.15 Merit and service badges.** The adjutant general, from the funds appropriated for the support and maintenance of the national guard, shall procure and issue to the members of the national guard, entitled thereto, merit or service badges for such service and periods of service under such regulations and according to the design and pattern thereof, as may be determined by the adjutant general. Members of the national guard who, by order of the president, have served or shall serve in federal forces during national emergency, shall be entitled to count the period of such federal service toward the procurement of a service badge. [S13,§2215-f34; C24, 27, 31,§462; C35, §467-f53; C39,§467.55; C46, 50,§29.55; C54,§29.15]

**29.16 Assistant adjutant general.** There shall be an assistant adjutant general of the state who shall be appointed by the governor, upon the recommendation of the adjutant general. He shall have such rank as is consistent with federal law and regulations and at the time of his appointment shall be a federally recognized commissioned officer of the national guard with not less than five years service in the national guard or in the armed forces of the United States, at least three years of which shall have been commissioned service and he shall have reached the grade of captain.

The assistant adjutant general shall serve in the office of the adjutant general and aid him by performing such duties as the adjutant general may assign him. In the absence or disability of the adjutant general he shall perform the duties of that office as acting adjutant general. [C73,§1054; C97,§2174; SS15,§2215-f14; C24, 27, 31,§445; C35,§467-f41; C39,§467.43; C46, 50,§29.43; C54,§29.16]

**29.17 Governor's staff.** The military and naval staff of the governor shall consist of the adjutant general, who shall be the chief of staff; the assistant adjutant general, who shall be the assistant chief of staff and such aides, residents of the state, as the governor may appoint, or may detail from the armed forces of the state.

The aides appointed shall be commissioned at a rank not higher than the military rank of colonel or the naval rank of captain, except in the case of a person who holds or has held a higher rank in the armed forces of the state or nation in which case the commission may

issue for such higher rank. [C73,§1054; C97, §2174; SS15,§2215-f14; C24, 27, 31,§445; C35,§467-f27; C39,§467.27; C46, 50,§29.27; C54,§29.17]

**29.18 Federal disbursing officer.** The governor, pursuant to federal authority, shall detail, upon recommendation of the adjutant general, a federally recognized commissioned officer of the national guard who shall be properly and disbursing officer of the United States for the state of Iowa. Such officer may be removed upon the recommendation of the adjutant general.

The property and disbursing officer shall receipt and account for all funds and property belonging to the United States in possession of the national guard, and shall make such returns and reports concerning the same as may be required by the secretary of defense. He shall render, through the department of defense, such accounts of federal funds intrusted to him for disbursement as may be required. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the secretary of defense, for the faithful performance of his duties and for the safekeeping and proper disposition of the federal property and funds intrusted to his care. The said property and disbursing officer may also be the quartermaster and property officer of the state. [R60, §1013; C73,§1050; C97,§2190; S13,§2215-f12; C24, 27, 31,§443; C35,§467-f45; C39,§467.47; C46, 50, §29.47; C54,§29.18]

**29.19 Quartermaster.** There shall be detailed a federally recognized commissioned officer of the national guard to be the quartermaster and property officer of the state, and as such, shall have charge of and be accountable for, under the adjutant general, all state military property, and who may be the United States property and disbursing officer. He shall keep such property returns and reports on the same and shall give such bond to the state of Iowa as the governor may direct. [S13,§2215-f28; C24, 27, 31,§456; C35,§467-f18,-f46; C39,§467.18, 467.48; C46, 50,§29.18, 29.48; C54, §29.19]

**29.20 Officers.** Officers of the national guard shall be selected from the classes of persons having the qualifications prescribed by federal law and regulations. They shall be appointed by the governor upon the recommendation of their superiors in the chain of command, provided that they shall have successfully passed such tests as to physical, moral, and professional fitness, as shall be prescribed by law and regulations. Each officer shall take an oath of office and shall hold office until he shall have attained the maximum age of retirement that is prescribed by federal law or regulations pertaining to officers of the armed forces of the United States, unless his commission or warrant is sooner vacated by resignation, death or as hereinafter

provided. In case the officer has no immediate superiors, within the state, in the chain of command, he shall be appointed, as above provided, upon the recommendation of the adjutant general. A commission shall designate the arm or branch of service in which the officer is commissioned. [C51, §§624, 626-628; R60, §§1005, 1007-1009; C73, §§1047, 1048; C97, §§2176-2180; S13, §2215-f10; C24, 27, 31, §441; C35, §467-f11; C39, §467.11; C46, 50, §29.11; C54, §29.20]

**29.21 Powers and duties.** In addition to the powers and duties prescribed in this chapter all officers of the national guard shall have the same powers and perform like military duties as officers of similar rank and position in the armed forces of the United States insofar as may be authorized by law. Officers are authorized to administer oaths in all matters connected with the service. [C35, §467-f16; C39, §467.16; C46, 50, §29.16; C54, §29.21]

**29.22 Fitness determined—vacation of commissions.** The moral character, capacity and general fitness for the service of any national guard officer may be determined at any time by an efficiency board as provided by federal law and regulations. Commissions or warrants of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Any officer permanently removing from the state shall resign his commission or warrant upon request of the adjutant general or make application to be placed upon the inactive list, and upon failure to do so, his commission or warrant shall be revoked by the governor. Officers rendered surplus by the disbandment of their organization shall be disposed of as provided by law and regulations. Subject to the approval of their superior commanders and the adjutant general officers may, upon their own application, be placed on the inactive list, as such list may be authorized by law and regulations. [C97, §§2183, 2199; S13, §2215-f11; C24, 27, 31, §442; C35, §467-f12; C39, §467.12; C46, 50, §29.12; C54, §29.22]

**29.23 Roll of retired officers.** Any officer of the national guard who shall have served as such officer for a period of not less than ten years in the national guard, or who shall have served, for a period of not less than ninety days, in the armed forces of the United States during any war, and who is honorably discharged therefrom, and who shall have served as such officer in the national guard for a period of not less than five years, who resigns or is retired, or who is now or may hereafter become disabled and retired, may, upon his request in writing to the adjutant general, stating his grounds therefor, be placed, by order of the commander-in-chief, on a roll in the office of the adjutant general to be known as the "roll of retired officers". Any officer registered on the roll of retired officers is en-

titled to wear the uniform of the rank last held by him on state or other occasions of ceremony, when the wearing of such uniform is not in conflict with federal law.

The adjutant general shall have the power, on good cause shown, to retire any officer, as herein provided, in the next higher grade than that held by said officer during his military service. [C35, §467-f15; C39, §467.15; C46, 50, §29.15; C54, §29.23]

**29.24 Unassigned list.** There shall be maintained in the office of the adjutant general a list to be known as the unassigned list, to which officers may be transferred, pending their resignation or removal from the service. Any officer may be transferred by the adjutant general to such unassigned list upon the recommendation of his commanding officer, either immediate or remote. Before such transfer is made the adjutant general shall notify the officer, either in person or by certified mail mailed to his last known address of the intended transfer. The officer shall have ten days from the date of mailing of said notice in which to apply to the adjutant general for an efficiency board. Should the officer fail to apply for an efficiency board, the transfer shall be made upon the expiration of the ten-day period. If the officer requests an efficiency board, the adjutant general will be governed by the finding of such board. All officers transferred to such unassigned list shall remain subject to military discipline and to courts-martial for military offenses to the same extent and in like manner as if upon the active list. [C35, §467-f13; C39, §467.13; C46, 50, §29.13; C54, §29.24; 57GA, ch 267, §5]

**29.25 Enlistments.** All enlistments in the national guard shall be as prescribed by federal law and regulations. [C97, §2173; S13, §2215-f13; C24, 27, 31, §444; C39, §467.22; C46, 50, §29.22; C54, §29.25]

**29.26 State headquarters and detachment.** The number and grade of officers and enlisted men in the state headquarters and headquarters detachment shall be as prescribed by federal law and regulations, but in case of war, invasion, insurrection, riot or imminent danger thereof, the governor may temporarily increase such force to meet such emergency.

All officers appointed to the state headquarters and headquarters detachment shall have had previous military experience and shall hold their positions until they shall have reached the age of retirement herein provided, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by an efficiency board or a court-martial, as the exigencies of the case may warrant, legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the national guard. [C51, §§624, 626-628; R60, §§1005, 1007-1009; C73, §§1047, 1048; C97, §§2176-2180; S13, §2215-f10; C24, 27, 31, §441; C35, §467-f23; C39, §467.23; C46, 50, §29.23; C54, §29.26]

**29.27 Pay and allowances.** Officers and enlisted men while in active state service shall receive the same pay and allowances as are paid for the same rank or grade for service in the armed forces of the United States. When in active state service, except when such service is for the purpose of training, enlisted men shall receive additional pay in the sum of three dollars per day; provided, however, that no employee of the state who receives pay from the state as such employee during said active state service shall receive the additional pay herein provided for enlisted men.

In the event any officer or enlisted man shall be killed while on duty or in active state service, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in active state service, in line of duty, his dependents, as defined by the workmen's compensation law of the state, shall receive the maximum compensation provided by the said law.

Any officer or enlisted man who suffers injuries or contracts disease, in line of duty, while on duty or in active state service, shall receive hospitalization and medical treatment, and during the period that he is totally disabled from engaging in any gainful occupation he shall also receive the pay and allowances of his grade. In the event of partial disability, he shall be allowed such partial pay and allowances as may be determined by a board of three officers to be appointed by the governor. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in active state service, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

All payments herein provided for shall be paid on the approval of the adjutant general by warrant drawn against any state funds not otherwise appropriated.

In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

No payment received by any officer or enlisted man under the provisions of this section shall bar the right of such officer or enlisted man, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions of this section reduce the amount of damages recoverable by such officer, enlisted man, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable. [C51,§625; R60, §1006; C73,§1051; C97,§§2189, 2212, 2213; S13, §2215-f23; C24, 27, 31,§452; C35,§§467-f21,f31; C39,§§467.21, 467.31; C46, 50,§§29.21, 29.31; C54, §29.27]

**29.28 Leave of absence of civil employees.** All officers and employees of the state, or a

subdivision thereof, or a municipality therein, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to active state or federal service, be entitled to a leave of absence from such civil employment for the period of such active state or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence. [C35,§467-f25; C39, §467.25; C46, 50,§29.25; C54,§29.28]

**29.29 Payment from treasury.** When in active state service, the compensation of officers and enlisted men and expenses of the national guard and claims for death, injury and illness of the members thereof, incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated. [C51,§625; R60,§1006; C73,§1051; C97,§§2189, 2212, 2213; S13,§2215-f23; C24, 27, 31,§452; C35, §467-f31; C39,§467.31; C46, 50,§29.31; C54,§29.29]

**29.30 Inactive guard.** An inactive national guard may be organized and maintained in such manner as may be prescribed or authorized by law and regulations. [C35,§467-f14; C39, §467.13; C46, 50,§29.14; C54,§29.30]

**29.31 Unlawful organizations.** It shall be unlawful for any body of men, other than the national guard and the troops of the United States, to associate themselves together as a military organization within the limits of this state without the written permission of the governor, which he may at any time revoke, but this provision shall not prevent civic, social, or benevolent organizations from wearing uniforms and swords not in conflict with the other provisions of this chapter. [C97,§2200; S13,§2215-f5; C24, 27, 31,§436; C35,§467-f3; C39, §467.03; C46, 50,§29.3; C54,§29.31]

**29.32 Rifle and pistol range.** The sum of three hundred dollars annually or so much thereof as is necessary, is hereby allowed to each company or other unit of the national guard for the procurement, construction, and maintenance of a rifle or pistol range. The payments herein provided shall be made from the funds appropriated for the support and maintenance of the national guard. [S13, §2215-f26; C24, 27, 31,§454; C35,§467-f49; C39, §467.51; C46, 50,§29.51; C54,§29.32]

**29.33 Per capita allowance to company.** Each company or similar unit of the national guard showing attendance and actual drill of those present for such drills as are prescribed in compliance with the national defense act or amendments thereto, or substitutes therefor, and such regulations as may be prescribed

from time to time by the secretary of defense, pursuant thereto, shall receive an annual allowance for military purposes, in the sum of five dollars per capita, to be paid in semi-annual installments on the basis of two dollars and fifty cents per capita. For the purpose of computing each semiannual installment the per capita strength shall be the average enlisted strength of the unit, for that semiannual period, provided however, that in the event the average attendance of any unit during any semiannual period falls below fifty percent of the average enlisted strength of such unit in that period, such allowance shall not be paid for that period. The semiannual periods herein referred to shall begin January 1 and July 1. Such allowance shall be paid from the funds appropriated for the support and maintenance of the national guard, and the adjutant general shall prescribe regulations governing its expenditure. [SS15,§2215-f27; C24, 27, 31,§455; C35,§467-f50; C39,§467.52; C46, 50,§29.52; C54, §29.33]

**29.34 Clothing and equipment.** The commanding officer of a company receiving clothing or equipment for the use of his command shall distribute same to the members of his command, taking receipts and requiring the return of each article at such time and place as he shall direct.

Upon the direction of any company commander it shall be the duty of the county attorney to bring action in the name of the state of Iowa against any person for the recovery of any property issued by said company commander or his predecessor, or for the value thereof as set forth in the price list promulgated by the federal government.

All sums so collected shall be paid to such company commander and used for the replacement of military property charged to the organization. [C51,§629; R60,§1010; C73,§1050; C97,§2190; SS15,§2215-f31; C24, 27, 31,§459; C35, §467-f55, f56; C39,§467.57, 467.58; C46, 50, §29.57, 29.58; C54,§29.34]

**29.35 Use for military only.** All arms, clothing, equipment, and other military property furnished or issued by the federal government or the state or for which an allowance has been made, shall be used for military purposes only, and each officer and enlisted man upon being separated from the military forces of the state, or upon demand of his commanding officer, shall forthwith surrender such military property in his possession to said commanding officer. Any member of the national guard who shall neglect to return to the armory of the unit, or place in charge of the commanding officer of the organization to which he belongs, any arms, clothing, equipment, or other military property or portion thereof, belonging to the federal government or the state, upon being notified by said commanding officer to do so, shall be guilty of a misdemeanor. [S13,§2215-f35; C24, 27, 31,§463; C35,§467-f4; C39,§467.04; C46, 50,§29.4; C54,§29.35]

**29.36 Injury or destruction of property.** Every person who shall willfully or wantonly injure or destroy any articles of arms, clothing, equipment, or other military property furnished or issued by the federal government or the state, and refuses to make good such injury or loss; or who shall sell, dispose of, secrete or remove the same with intent to sell or dispose of it, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than four months, or by both such fine and imprisonment. [R60, §1014; C73,§1050; C97,§2194; S13,§2215-f32; C24, 27, 31,§460; C35,§467-f57; C39,§467.59; C46, 50, §29.59; C54,§29.36]

**29.37 Bond of officers.** Each officer responsible or accountable for property for military use, or funds of the state or of the United States, shall execute and deliver to the adjutant general a bond therefor, with sureties to be approved by the governor, and payable to the state, in such amount as may be fixed by the governor, conditioned for the proper care, use, and return in good order, wear, use and unavoidable loss and damage excepted, of all such state and United States property, and the proper care and faithful disbursement and accounting of all such funds coming into the hands of such officer. Provided, however, that the adjutant general, with the approval of the governor, may obtain an adequate indemnity bond covering all or part of the officers so accountable or responsible, in which case the officers so covered shall not be required to furnish individual bonds as hereinbefore provided.

Upon the violation of any of the conditions of any bond executed and delivered under the provisions of this section, action thereon shall be brought by the adjutant general on behalf of the state. It shall be the duty of the attorney general of the state to prosecute all actions upon such bonds. No further payments shall be made under any provision of this chapter to the accountable officer of any organization or unit who does not fully and satisfactorily account to the adjutant general for all moneys theretofore paid to him under any provision of this chapter. [R60,§1013; C73, §1050; C97,§2190; S13,§2215-f12; C24, 27, 31,§443; C35,§467-f17; C39,§467.17; C46, 50,§29.17; C54, §29.37]

**29.38 Misdemeanors.** Any officer or enlisted man of the national guard who knowingly makes any false certificate of muster or false return of federal or state property or funds in his possession shall be guilty of a misdemeanor. [C97,§2192; S13,§2215-f30; C24, 27, 31,§458; C35,§467-f19; C39,§467.19; C46, 50, §29.19; C54,§29.38]

**29.39 Embezzlement.** Any officer or enlisted man of the national guard who willfully neglects or refuses to apply all money, in his possession drawn from the state treasury, to the purpose for which such money was ap-

propriated or who fails or refuses to account for or return any state or federal property or funds in his possession shall be guilty of the crime of embezzlement by bailee and punished accordingly. [C97,§2192; S13,§2215-f30; C24, 27, 31,§458; C35,§467-f20; C39,§467.20; C46, 50,§29.20; C54,§29.39]

See §710.4

**29.40 False wearing of uniform.** No member of the national guard shall wear the uniform thereof while not on duty without permission from competent authority. No person, firm, or corporation, other than a military organization or the members of veterans of such organizations organizing for the benefit of all its members, shall incorporate under the name of, or adopt any trade name which embodies the name or designation, officially or generally recognized as the name of a military organization now or heretofore in existence, or any distinctive part of such name. Any person found guilty of a violation of any of the provisions of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days.

Any person who, without authority under the laws of the United States or of one of the states, wears the uniform of, or a distinctive part of the uniform of the armed forces of the United States, shall be guilty of a misdemeanor, and shall be punished as provided in this section. [S13,§2215-f35; C24, 27, 31,§463; C35,§467-f4; C39,§467.04; C46, 50,§29.4; C54,§29.40]

**29.41 Exemption from jury and other exemptions.** Every officer and enlisted man of the national guard shall be exempt from jury duty. No member of the national guard shall be arrested, or served with any summons, order, warrant, or other civil process after having been ordered to any duty, or while going to, attending, or returning from, any place to which he is required to go for military duty. Nothing herein shall prevent his arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of his duty. The articles of equipment personally owned by such members shall be exempt from seizure or sale for debt. Every member of the national guard who has faithfully served the full term of his commission, warrant or enlistment, shall, upon application, be entitled to an honorable discharge, exempting him from military duty except in time of war or public danger. [C97, §2209; S13,§2215-f33; C24, 27, 31,§461; C35,§467-f24; C39,§467.24; C46, 50,§29.24; C54,§29.41]

**29.42 Trespass or interference.** Any person who shall trespass upon any military reservation, camp, or armory, in violation of the orders of the commander thereof, or officer charged with the responsibility therefor, or shall molest, or interfere with any member of the national guard, in the discharge of his duty, shall be guilty of a misdemeanor. The commanding officer of such force may order

the arrest of such person and cause him to be delivered to a peace officer or magistrate. [C97, §2188; S13,§2215-f29; C24, 27, 31,§457; C35,§467-f54; C39,§467.56; C46, 50,§29.56; C54,§29.42]

Punishment, §687.7

**29.43 Discrimination prohibited—leave of absence.** No person, firm, or corporation, shall discriminate against any officer or enlisted man of the national guard or organized reserves of the armed forces of the United States because of his membership therein. No employer, or agent of any employer, shall discharge any person from employment because of being an officer or enlisted man of the military forces of the state, or hinder or prevent him from performing any military service he may be called upon to perform by proper authority. Any member of the national guard or organized reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty or service from his private employment, other than employment of a temporary nature, and upon completion of such duty or service the employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position, provided, however, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position. Such period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to his particular employment. Any person violating any of the provisions of this section shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for a period of not to exceed thirty days. [C35,§467-f5; C39,§467.05; C46, 50,§29.5; C54,§29.43; 56GA, ch 59,§1]

**29.44 Assault on guardsman.** Whenever the national guard is called into service under proclamation of the governor for the performance of any duties contemplated in this chapter any person who willfully assaults, or fires at, or throws any dangerous missiles at, against, or upon any member or body of the national guard so engaged, or civil officer or other persons lawfully aiding or assisting them in the discharge of their duties, shall be deemed guilty of a felony and upon conviction shall be imprisoned in the state penitentiary for not more than two years. [C35,§467-f30; C39,§467.30; C46, 50,§29.30; C54,§29.44]

**29.45 Martial law.** When a military district is established under martial law, the chief justice or an associate justice of the supreme court may, upon written agreement of the parties or their attorneys, on good cause being shown, order any civil or criminal case on file in the office of the clerk of any court of record

within the military district transferred to any court of record outside of the military district. The said cause shall be docketed without fee and proceed in all respects with the same force and effect as though transferred on a change of venue. When the said military district is dissolved, the cause and all proceedings in connection therewith may be retransferred by the supreme court to the original court, where it shall be redocketed without fee. [C39,§467.32; C46, 50,§29.32; C54,§29.45]

**29.46 Military court or commission.** The governor may establish within such military district a military court or commission to take jurisdiction and cognizance of all public offenses against the peace and dignity of the state, and the violation of ordinances and military rules and regulations which are now, or may hereafter be, promulgated or enacted for the preservation of law and order and the public safety.

The military court or commission may make such orders, judgments, and decrees in civil cases as may be agreed upon by the litigants or their attorneys, or as may be necessary because of an emergency or to prevent waste, with the same force and effect as though made and entered by a judge of the district court in regular term time. The said court or commission shall have full power and authority to issue all necessary process for the conduct of its proceedings, and like power to compel the attendance of witnesses therein as are exercised by civil courts of the state. [C39, §467.33; C46, 50,§29.33; C54,§29.46]

**29.47 Arrests and subpoenas.** Troops occupying a military district established under martial law, may, if necessary, pursue, arrest and subpoena persons wanted in said military district, anywhere within the state of Iowa.

All peace officers of the state shall serve process and execute the orders of a military court in the same way and to the same extent as corresponding instruments of civil courts. [C35,§467-f34; C39,§§467.32, 467.36; C46, 50, §§29.32, 29.36; C54,§29.47]

**29.48 Commitment and fines.** In default of payment of any fine imposed by any military court acting under martial law, or by any courts-martial, the offender shall be committed to any county jail designated by any court of this state for a period equal to one day for each three dollars of fine imposed and unpaid. [C35,§467-f35; C39,§467.37; C46, 50,§29.37; C54, §29.48]

**29.49 Military jails.** The keepers and wardens of all county jails or state institutions are required to receive and confine all military offenders or other persons when delivered to them, under a certificate of commitment of a military court or commanding officer, for and during the term of sentence or confinement as set forth in said commitment. [C35,§467-f36; C39,§467.38; C46, 50,§29.38; C54,§29.49]

**29.50 Immunity.** The commanding officer and members of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob, or the enforcement of the laws, shall have the same immunity as peace officers. [C35,§467-f37; C39,§467.39; C46, 50,§29.39; C54,§29.50]

**29.51 Suit or proceeding—defense.** In the event any suit or proceeding shall be commenced in any court by any person against any officer of the military forces for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any enlisted man acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, it shall be the duty of the attorney general or state judge advocate, upon the request of the adjutant general, to defend any member of the military forces of the state against whom any such suit or proceeding has been instituted. The costs of such defense shall be paid out of any funds in the state treasury not otherwise appropriated. Before any suit or proceeding shall be filed or maintained against any officer or enlisted man as herein provided, the plaintiff shall be required to give security, to be approved by the court in a sum not less than one hundred dollars to secure the costs. If the plaintiff fails to recover judgment, such costs shall be taxed and judgment rendered therefor against him and his sureties. When troops are called into active state service by the governor under martial law or as aid to the civil authorities, in addition to his other duties, any judge advocate on duty with such troops may be appointed by the attorney general as an assistant attorney general, without pay for his services for acting in such capacity. [C35,§467-f38; C39, §467.40; C46, 50,§29.40; C54,§29.51]

**29.52 Malice must be proved.** No action or proceeding shall be maintained against any officer appointing a military court or against any member of a military court or commission, officer or agent acting under its authority, or reviewing its proceedings, on account of the imposition of a fine or penalty or for the execution of a sentence of any person, unless it be shown that such officer, member or agent has acted from motives of malice. [C35,§467-f39; C39,§467.41; C46, 50,§29.41; C54, §29.52]

**29.53 Call by president of U. S.** Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the government of the United States, or the president is unable, with the regular forces at his command, to execute the laws of the union, it shall be lawful for the president to call forth such number of the national guard as he may deem necessary to assist in repelling such invasion, suppressing such rebellion, or to assist in enabling him to execute such laws, and to issue his orders for that purpose, through the gov-



ernor to such officers of the national guard as he may think proper; and the president may specify, in his call, the period for which such service is required, and the guard so called forth shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by order of the president.

Whenever the president shall require, in any of the designated instances, more troops than can be supplied by the national guard, the governor shall, in his discretion, organize forthwith such other national guard forces as he may deem necessary, or order into the service of the United States so many of the unorganized militia of the state as is required, designating the same by draft if a sufficient number do not volunteer, and shall commission officers therefor.

Officers and enlisted men called into federal service through the national guard shall upon completion of such service continue to serve the balance of their enlistment period the same as though it had not been interrupted by such service. [C97,§2169; S13,§2215-f18; C24, 27, 31, §448; C35,§467-f58; C39,§467.60; C46, 50,§29.60; C54,§29.53]

**29.54 Expense allowance of commander.** The senior line commander of troops of the Iowa national guard shall receive an annual expense allowance in the sum of one thousand eight hundred dollars, payable during each calendar year, in such sums and at such times as requested by the said commander, provided however, that no payment shall be made during such time as the Iowa national guard is in federal service. [C54,§29.54]

**29.55 Insurance.** The adjutant general is hereby authorized to procure insurance against the liability of officers and enlisted men of the national guard, and employees of the adjutant general by reason of claims for bodily injuries, death, or property damage, made upon such officers, enlisted men and employees resulting from their operation of a motor vehicle while in the performance of their duties. [C54,§29.55]

**29.56 Claims.** The adjutant general is hereby authorized to appoint a claims board or boards each composed of not less than three nor more than five officers of the national guard, to consider, investigate and settle claims to be paid out of funds not otherwise appropriated, on account of damage to or loss or destruction of private property, both real and personal, or personal injury or death, when such damage, loss, destruction, injury or death is caused as an incident to the training, practice, operation or maintenance of the national guard where the amount of such claim does not exceed one thousand dollars; provided, that no claim shall be considered unless presented within one year after the occurrence of the accident or incident out of which such claim arises; provided further, that any such settlements made by such boards shall be sub-

ject to approval (1) by the adjutant general and (2) by the executive council; provided further, that any such settlements made by such boards, approved by the adjutant general and approved by the executive council shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary; provided further, that no claim shall be allowed hereunder arising from accident or incident occurring while the unit, detachment, or organization of the Iowa national guard involved is in federal service. [C54,§29.56]

**29.57 Armory board.** The governor shall appoint an armory board which shall consist of the adjutant general, at least two officers from the active commissioned personnel of the national guard, and at least one other person, who is a citizen of the state of Iowa, of good moral character. One member of such board shall have had at least five years experience in the building construction trade. The board shall meet at such times and places as are ordered by the governor. The members, so appointed, shall serve at the pleasure of the governor. Civilian members of the board shall receive compensation of ten dollars and actual expenses for each day actually employed under the provisions of this chapter.

The board shall be empowered to acquire land or real estate by purchase, contract for purchase, gift, bequests or condemnation and to acquire, own, contract for the construction of, erect, purchase, maintain, alter, operate, and repair armories when funds for the same are made available by the federal government, the state of Iowa, municipalities, corporations or individuals. The title to such property so acquired shall be taken in the name of the state of Iowa and such real estate may be sold by the executive council, upon recommendation of the board, when no longer needed for the purpose for which it was acquired.

In carrying out the provisions of this section, the armory board may:

1. Borrow money.
2. Mortgage any real estate acquired and the improvements erected thereon when purchasing or improving the same, in order to secure necessary loans.

3. Pledge the rents, profits, and income received from any such property for the discharge of obligations executed.

No obligation created hereunder shall ever be or become a charge against the state of Iowa, but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged.

2. From the net rents, profits, and income which have not been pledged for other purposes arising from any other armory or like improvement under the control and management of said board, or,

3. From the income derived from gifts and



requests for armory purposes under the control of the armory board.

All property, real or personal, acquired by, and all bonds, debentures or other written evidences of indebtedness, given as security by said board, shall be exempt from taxation.

When property acquired by the armory board, under the provisions of this law, shall be free and clear of all indebtedness, the title of such property shall pass to the state of Iowa.

There shall be no liability to the state of Iowa under the provisions of this section. No member of the armory board and no member of the state executive council shall be held to any personal or individual liability for any action taken by them under the provisions of this chapter.

The board shall fix the amount to be paid to commanding officers of each division, brigade, regiment, battalion, company, or other unit of the national guard for headquarters expenses and shall provide by regulation how the same shall be disbursed by such commanding officers. The actions of the armory board shall be subject to the approval of the governor.

The allowances made by the armory board shall, when approved by the governor, be paid from the funds appropriated for the support and maintenance of the national guard. [C24, 27, 31, §453; C35, §467-f47; C39, §467.49; C46, 50, §29.49; C54, §29.57]

**29.58 Armories leased.** The armory board as lessee, may lease property to be used for armory purposes. Leases may be made for any term not to exceed twenty years. Rents under such leases shall be paid from funds appropriated for the support and maintenance of the national guard.

Leases made under the provisions of this section may provide for an option to purchase the leased property and may make provision for the application upon the purchase price of rental payments made under the lease. [C24, 27, 31, §453; C35, §467-f47; C39, §467.49; C46, 50, §29.49; C54, §29.58]

**29.59 Approval of executive council.** All action of the armory board in connection with the acquiring of land or real estate, or improvements thereon, or the disposal of same, or the creation of any indebtedness, shall be with the approval of the state executive council. [C54, §29.59]

**29.60 Property exempt from taxation.** All personal and real property held and used for armory or military purposes shall be exempt from taxation; and it shall be lawful for any county or city or town which owns public utilities to grant to any organization or unit of the national guard, which is stationed in such place, the free use of such public utilities. [S13, §2215-f40; C24, 27, 31, §465; C39, §467.50; C46, 50, §29.50; C54, §29.60]

**29.61 System of discipline.** The system of discipline of the national guard shall conform

generally to that of the armed forces of the United States and all personnel on duty or in active state service shall be subject to the punitive and disciplinary provisions of this chapter. Trial and punishment by civil authorities shall not bar trial and punishment or dismissal from the service by court-martial for any military offense involved. [C35, §467-f61; C39, §467.63; C46, 50, §29.63; C54, §29.61]

**29.62 Punishment.** Under such regulations as the adjutant general may prescribe, the commanding officer of any detachment, company, or higher command may, for minor offenses, impose disciplinary punishment upon officers and enlisted men of his command without intervention of a court-martial, unless the accused demands trial by court-martial.

The disciplinary punishment for officers authorized by this section may include admonition, reprimand, withholding privileges, restrictions to certain specified limits for not to exceed one week and if imposed by a general officer, forfeiture of not to exceed one-half of the officer's pay for a period not to exceed two weeks.

For enlisted personnel the disciplinary punishment authorized by this section may include admonition, reprimand, withholding of privileges not exceeding one week and when in field training may in addition include extra fatigue for not to exceed one week and restrictions within certain specified limits for not to exceed one week, but shall not include forfeiture of pay or confinement under guard. [C54, §29.62]

**29.63 Military offenses punishable by court-martial.** The following delinquencies, as defined by the Uniform Code of Military Justice of the United States, are hereby declared to be military offenses for which an offender will be punished according to law as a court-martial may direct, within the limitations set forth by the Table of Maximum Punishments of the Uniform Code of Military Justice.

1. Fraudulent enlistment. (Art. 83)
2. False official statement. (Art. 107)
3. Absence without leave. (Art. 86)
4. Disrespect toward or insulting national or state officials. (Art. 88)
5. Disrespect toward a superior officer in the execution of his office. (Art. 89)
6. Assaulting or disobeying a superior officer in the execution of his office. (Art. 90)
7. Insubordinate conduct toward a noncommissioned officer in the execution of his office. (Art. 91)
8. Mutiny or sedition. (Art. 94)
9. Releasing a prisoner without proper authority. (Art. 96)
10. Drunkenness on duty. (Art. 112)
11. Conduct unbecoming an officer and a gentleman. (Art. 133)
12. Conduct to the prejudice of good order and military discipline. (Art. 134)

13. Frauds against the government. (Art. 132)

[C97, §§2196-2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, §29.63]

**29.64 Charges preferred.** Any member of the national guard may prefer charges against any other person subject to the provisions of this chapter. [C54, §29.64]

**29.65 Apprehension.** Apprehension is the taking into custody of a person. Any person authorized under regulations governing the national guard to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it. [C54, §29.65]

**29.66 Arrest.** Arrest is the restraint of a person by an order not imposed as a punishment for an offense directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

An enlisted man may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other members of the national guard. A commanding officer may authorize warrant officers, or noncommissioned officers to order enlisted men of his command or subject to his authority into arrest or confinement.

An officer subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order officers into arrest or confinement may not be delegated.

No person shall be ordered into arrest or confinement except for probable cause.

Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. [C54, §29.66]

**29.67 Confinement.** Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. [C35, §467-f35; C39, §467.37; C46, 50, §29.37; C54, §29.67]

**29.68 Refusal to keep prohibited.** No provost marshal, commander of a guard, or master-at-arms, shall refuse to receive or keep any prisoner committed to his charge by an officer of the military forces of this state, when the committing officer furnishes a statement,

signed by him, of the offense charged against the prisoner.

Every commander of a guard or master-at-arms to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment. [C54, §29.68]

**29.69 Military courts.** The military courts of this state for the national guard shall be:

1. Courts of inquiry.
2. General courts-martial.
3. Special courts-martial.
4. Summary courts-martial.

They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the armed forces of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for said similar courts. The jurisdiction of the courts herein provided is not limited to the geographical area of Iowa. [C35, §§467-f33, -f61; C39, §§467.35, 467.63; C46, 50, §§29.35, 29.63; C54, §29.69]

Constitutionality, §467-f62, Code 1935; 40ExGA, ch 10, §68

**29.70 Courts of inquiry.** Courts of inquiry, to consist of one or more officers, may, and on the request of any officer involved shall, be instituted by the governor for the purpose of investigating the conduct of any officer, or any accusation or imputation against him, or any actions made the subject of military complaint. Such court of inquiry shall, without delay, report a statement of facts and, when required, the evidence adduced and an opinion with recommendations thereon to the governor, who may, in his discretion, thereupon order court-martial for the trial of the officer whose conduct has been inquired into. [C97, §§2196-2198; SS15, §2215-f36; C24, 27, 31, §464; C35, §467-f32; C39, §467.34; C46, 50, §29.34; C54, §29.70]

**29.71 General courts-martial.** General courts-martial may be convened by order of the governor or any general officer and such courts shall have the power to impose punishment for the commission of a misdemeanor or felony in accordance with the statutory provisions of the criminal code of Iowa relating to the misdemeanor or felony involved; to sentence to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks. Any two or more of such punishments may be combined in the sentences imposed by such courts. [C39, §467.33; C46, 50, §29.33; C54, §29.71]

**29.72 Special courts-martial.** The commanding officer of each garrison, fort, post, camp, or station, brigade, regiment, detached battalion

or other detached command, may appoint special courts-martial; but such special courts-martial may in any case be appointed by superior authority when such authority deems it desirable. Special courts-martial shall have power to try any person subject to military law, except an officer, for any crime or offense made punishable by this chapter. Special courts-martial shall have jurisdiction only of misdemeanors and minor military offenses and punishment imposed by such courts for misdemeanors shall be in accordance with the statutory provisions of the criminal code of Iowa relating to the misdemeanors involved. [C54, §29.72]

**29.73 Summary court.** The commanding officer of each garrison, fort, post, camp, or station, regiment, detached battalion, company, or other detachment of the national guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violation of laws governing such organizations; and said court, when satisfied of the guilt of such enlisted man may impose fines not exceeding twenty-five dollars for any single offense; may sentence noncommissioned officers to reduction to the ranks; may impose a forfeiture not to exceed two-thirds of his pay for thirty days. The proceedings of such courts shall be informal and the minutes thereof shall be the same as prescribed for summary courts of the armed forces of the United States. [C54, §29.73]

**29.74 Confinement in lieu of fine.** All courts-martial, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed; provided, that such sentences of confinement shall not exceed one day for each three dollars of fine authorized. [C35, §467-f35; C39, §467.37; C46, 50, §29.37; C54, §29.74]

**29.75 Approval of governor.** No sentence imposed by a general courts-martial shall be ordered into execution until approved by the governor.

No sentence imposed by a special courts-martial shall be ordered into execution until approved by the authority appointing the court. [C54, §29.75]

**29.76 Warrants of arrest.** Presidents of courts-martial and summary-court officers shall have power to issue warrants to arrest accused persons and to bring them before the courts for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

Military personnel executing the provisions of this section shall have all the powers and immunities of peace officers. [C35, §467-f37; C39, §467.39; C46, 50, §29.39; C54, §29.76]

**29.77 Issuance of process.** Military courts are empowered to issue all process, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such process may be directed to appropriate military personnel, the sheriff of any county or any other peace officer of the state and shall be in such form as may, from time to time, be prescribed by the adjutant general. It shall be the duty of all persons herein provided to whom such process may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same.

The keepers and wardens of all city or county jails and of all other jails, penitentiaries or prisons, designated by the governor or the adjutant general of the state, shall receive the bodies of persons committed by the process of a military court and confine them in the manner provided by law for civilian offenders.

No public officer shall demand or be entitled to receive any fees or charges for receiving, executing, returning, or rendering any services in connection with any process of a military court, or for receiving or confining a person in jail or custody under such process. [C35, §467-f34; C39, §467.36; C46, 50, §29.36; C54, §29.77]

**29.78 Fines.** Fines may be paid to a court or to an officer executing its process. The amount of any fine imposed may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected.

The proceeds of all fines in summary, general, and special courts-martial cases shall be paid to the adjutant general and paid into the maintenance fund of the national guard, and all costs of prosecution shall be paid out of the same fund. [C35, §467-f60; C39, §467.62; C46, 50, §29.62; C54, §29.78]

**29.79 Marshals.** The president of a general or a special court-martial, or a summary court officer may each appoint by warrant, and at any time remove, one or more marshals, each of whom shall, before entering upon his duties, execute a bond to the state in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the president of the court or officer appointing him, for the faithful performance of his duties and the prompt payment of all moneys collected by him. Each marshal shall perform the usual duties of such marshals and shall execute any process, or order issued by such president or court or officer, and perform all acts and duties by this

section imposed on or authorized to be performed by any sheriff, marshal, or constable. A bond given as herein provided may be prosecuted for breach of the conditions thereof, in the name of the state, by a judge advocate of the national guard, and all moneys recovered shall be paid to the maintenance fund of the national guard. [C35,§467-f38; C39,§467.40; C46, 50,§29.40; C54,§29.79]

**29.80 Immunity from prosecution.** No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceeding on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, or process, of a military court. [C35,§467-f37; C39,§467.39; C46, 50,§29.39; C54,§29.80]

**29.81 Jurisdiction presumed.** The jurisdiction of the courts and boards established by this chapter shall be presumed. [C39,§467.33; C46, 50,§29.33; C54,§29.81]

**29.82 Custom and usage.** All matters relating to the organization, discipline, and government of the military forces not otherwise provided for in this chapter, shall be decided by the custom, regulations, and usage of the armed forces of the United States. [C35,§467-f61; C39,§467.63; C46, 50,§29.63; C54, §29.82]

**IOWA STATE GUARD**

**29.83 Activation.** Whenever any part of the national guard is in federal service the governor may activate such part of the unorganized militia, to be designated the "Iowa State Guard", as he may deem necessary, subject to provisions of federal law and regulations relating to such military organizations. [C46, 50, §29.64; C54,§29.83]

**29.84 Applicable powers and duties.** The powers and duties of the governor, the adjutant general and the assistant adjutant general, with relation to the Iowa state guard shall be the same as those powers and duties prescribed in this chapter for such officers with relation to the national guard. [C46, 50, §29.65; C54,§29.84]

**29.85 Chief of staff.** In the event the state headquarters of the national guard is inducted into federal service, the governor shall appoint a chief of staff for the Iowa state guard. [C46, 50,§29.64; C54,§29.85]

**29.86 Applicable provisions.** The provisions of this chapter pertaining to the administration and employment of the national guard shall be applicable to the Iowa state guard. The rules and regulations relating to, appointment of officers, enlistments, term and conditions of service in, and discharge from, the Iowa state guard shall be such as are directed by the governor. [C46, 50,§29.65; C54,§29.86]

**29.87 Officers and duties.** The powers and duties of officers and enlisted men of the Iowa state guard shall be the same as those prescribed in this chapter for officers and enlisted men of the national guard and the punitive and disciplinary provisions of this chapter relating to the national guard shall be applicable to the Iowa state guard. [C46, 50,§§29.16, 29.33; C54,§29.87]

**29.88 Immunity and exemption.** The provisions of this chapter relating to immunity from suit and exemption from personal liability of members of the national guard shall apply to members of the Iowa state guard. [C46, 50,§29.39; C54,§29.88]

**29.89 Pay and allowances.** Officers and enlisted men of the Iowa state guard while in active state service shall receive the same pay, allowances, and compensation as provided by law for members of the Iowa national guard. [C46, 50,§§29.31, 29.67; C54,§29.89]

**29.90 Expense.** Any expense necessary for organizing, equipping, and maintaining the Iowa state guard shall be paid on approval of the governor by warrant drawn on any state funds not otherwise appropriated, or funds now or hereafter appropriated for the maintenance of the national guard. [C46, 50,§29.68; C54,§29.90]

**29.91 Immunity from national service.** The Iowa state guard shall not be called, ordered or in any manner drafted as such into the military service of the United States. However, no person shall by reason of his membership in the Iowa state guard be exempt from federal military service under federal law. [C46, 50,§29.66; C54,§29.91]

**POWERS OF ATTORNEY EXECUTED BY SERVICE PERSONNEL**

**29.92 Death of principal—effect.** Except as otherwise provided in this chapter no agency created by a power of attorney in writing given by a principal who is at the time of execution, or who after executing such power of attorney becomes, either a member of the armed forces of the United States, or a person serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia, or a person outside said limits by permission, assignment or direction of any department, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal.

Except as otherwise provided in this chapter

no report or listing either official or otherwise, of "missing" or "missing in action" shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [C46, 50, §§29.69, 29.71; C54, §29.92]

Referred to in §29.94

**29.93 Affidavit.** An affidavit, executed by an attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence

of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. [C46, 50, §29.70; C54, §29.93]

Referred to in §29.94

**29.94 Express revocation or termination.** Sections 29.92 and 29.93 of this chapter shall not operate to alter, invalidate, or in any manner affect any express provision for revocation or termination contained in any power of attorney. [C46, 50, §29.72; C54, §29.94]

## CHAPTER 30

### MILITARY MATERIAL STORES

30.1 Prohibited use of terms.

30.2 False advertising.

30.3 Penalties.

**30.1 Prohibited use of terms.** No owner, proprietor, manager or person in charge or control of any privately owned or operated store, shop, or other place of business, in, at, or from which goods, wares, or merchandise are sold or offered for sale to the public, shall use, or cause or permit to be used, as the name or designation, or as a part of the name or designation, of such store, shop or other place of business, any of the following words or expressions, viz: "Army," "Navy," "Marine," "Coast Guard," "Post Exchange," "Government," "GI," "P-X," or any other word or expression denoting or relating to an agency or activity of the United States government or importing or implying that such store, shop or other place of business is owned or operated by the United States government or its military or naval forces or any agency of the United States government. [C46, 50, 54, §30.1]

**30.2 False advertising.** No such owner, proprietor, manager, or person in charge or control of any such privately owned or operated store, shop, or other place of business, or person employed in the sale of goods, wares, or merchandise therein, shall in any manner advertise or assert or imply that any such goods,

wares, or merchandise were made for or acquired from the United States government or its military or naval forces or any agency of the United States government, if such advertisement, assertion, or implication be contrary to the fact. Without limiting the general effect of the foregoing prohibitions, it is expressly provided that any designation, express or implied, of any stock, lot or group of goods, wares, or merchandise as having been made for or acquired from such government, forces, or agency, shall constitute a violation of such prohibitions unless all of the articles in the stock, lot, or group so designated shall have been made for or acquired from such government, forces, or agency. [C46, 50, 54, §30.2]

**30.3 Penalties.** If any person shall violate any of the provisions of this chapter, he shall be guilty of a misdemeanor and, on the occasion of the first conviction, shall be fined not less than ten dollars nor more than one hundred dollars and, on the occasion of the second or any subsequent conviction, shall be imprisoned not less than one day nor more than thirty days, according to the discretion of the court, within said limits, in any case. [C46, 50, 54, §30.3]

## CHAPTER 31

### STATE BANNER—DISPLAY OF FLAG

31.1 Specifications of state banner.

31.2 Use of state banner.

31.3 Flags on public buildings.

31.4 Mothers' Day.

31.5 Independence Sunday.

31.6 Columbus Day.

31.7 Veterans' Day.

**31.1 Specifications of state banner.** The banner designed by the Iowa society of the Daughters of the American Revolution and presented to the state, which banner consists

of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe being in the center, and upon the central white stripe being depicted a spreading

eagle bearing in its beak blue streamers on which is inscribed, in white letters, the state motto, "Our liberties we prize and our rights we will maintain" and with the word "Iowa" in red letters below such streamers, as such design now appears on the banner in the office of the governor of the state of Iowa, is hereby adopted as a distinctive state banner, for use on all occasions where a distinctive state symbol in the way of a banner may be fittingly displayed. [C24, 27, 31, 35, 39,§468; C46, 50, 54,§31.1]

**31.2 Use of state banner.** Such design may be used as a distinctive state banner and may as such be displayed on all proper occasions where the state is officially represented as distinct from other states, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states, such display in all cases to be subservient to and along with the display of the national emblem and, when displayed with the latter, to be placed beneath the stars and stripes. [C24, 27, 31, 35, 39,§469; C46, 50, 54,§31.2]

**31.3 Flags on public buildings.** It shall be the duty of the custodians of all public buildings of the state to raise over such building the flag of the United States of America, upon each secular day when weather conditions are favorable, and it shall be the duty of any board of public officers charged with the duty of providing for the supplies of any such public building to provide, in connection with other supplies for any such building of the state, a suitable flag for the purposes herein provided. [S13,§2804-c; C24, 27, 31, 35, 39,§470; C46, 50, 54,§31.3]

Display of flags on school sites, §280.4

**31.4 Mothers' Day.** The governor of this state is hereby authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as Mothers' Day, as a public expression of reverence for the homes of our state, and to urge the celebration of Mothers' Day in said procla-

mation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their sons and daughters. [C24, 27, 31, 35, 39,§471; C46, 50, 54,§31.4]

**31.5 Independence Sunday.** The governor is hereby authorized and requested to issue annually a proclamation, calling upon the citizens of Iowa to assemble themselves in their respective communities for the purpose of holding suitable religious-patriotic services and the display of the American colors, in commemoration of the signing of the Declaration of Independence, on Independence Sunday, which is hereby established as the Sunday preceding the Fourth of July of each year, or on the Fourth when that date falls on Sunday. [C27, 31, 35,§471-b1; C39,§471.1; C46, 50, 54, §31.5]

**31.6 Columbus Day.** The governor of this state is hereby authorized and requested to issue annually a proclamation, calling upon our state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches, and places of business on the twelfth day of October, known as Columbus Day; to commemorate the life and history of Christopher Columbus and to urge that services and exercises be had in churches, halls and other suitable places expressive of the public sentiment befitting the anniversary of the discovery of America. [C35,§471-g1; C39,§471.2; C46, 50, 54,§31.6]

**31.7 Veterans' Day.** The governor is hereby authorized and requested to issue annually a proclamation designating the eleventh day of November as Veterans' Day and calling upon the people of Iowa to observe it as a legal holiday in honor of those who have been members of the armed forces of the United States, and urging state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches and places of business; that business activities be held to the necessary minimum; and that appropriate services and exercises be had expressive of the public sentiments befitting the occasion. [56GA, ch 60,§1]

## CHAPTER 32

### DESECRATION OF FLAG

32.1 Desecration of flag or insignia.

32.2 Actions for penalty.

32.3 "Federal flag and insignia" defined.

32.4 "State flag and insignia" defined.

32.5 Presumptive evidence of desecration.

32.6 Enforcement.

**32.1 Desecration of flag or insignia.** Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any

flag, standard, color, ensign, shield, or other insignia of the United States, or upon any flag, ensign, great seal, or other insignia of this state, or shall expose or cause to be exposed to public view, any such flag, standard,

color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon, cast contempt upon, satirize, deride or burlesque, either by words or act, such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, or who shall, for any purpose, place such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, upon the ground or where the same may be trod upon, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered, with costs, in a civil action or suit in any court having jurisdiction. [S13,§5028-a; C24, 27, 31, 35, 39,§472; C46, 50, 54,§32.1]

37GA, ch 411, editorially divided

**32.2 Actions for penalty.** Such action or suit may be brought by and in the name of the state, on the relation of any citizen thereof, and such penalty, when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the clerk of the district court of the county in which the offense is committed, shall be paid into the county treasury for the benefit of the school fund, and two or more penalties may be sued for and recovered in the same action or suit. [S13,§5028-a; C24, 27, 31, 35, 39,§473; C46, 50, 54,§32.2]

**32.3 "Federal flag and insignia" defined.** The words "flag, standard, color, ensign, shield,

or other insignia of the United States" as used in this chapter, shall include any flag, standard, color, ensign, shield, or other insignia of the United States, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, standard, color, insignia, shield, or other insignia of the United States of America, or a picture or a representation of any of them. [S13,§5028-a; C24, 27, 31, 35, 39,§474; C46, 50, 54,§32.3]

**32.4 "State flag and insignia" defined.** The words "flag, ensign, great seal, or other insignia of this state" as used in this chapter, shall include any flag, ensign, great seal, or other insignia, or any picture or any representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, ensign, great seal, or other insignia of the state, or a picture or a representation of any of them. [S13,§5028-a; C24, 27, 31, 35, 39, §475; C46, 50, 54,§32.4]

**32.5 Presumptive evidence of desecration.** The possession by any person other than a public officer, as such, of any flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, on which shall be anything made unlawful by this chapter, or of any article or substance or thing on which shall be anything made unlawful by this chapter, shall be presumptive evidence that the same is in violation of this chapter. [S13, §5028-a; C24, 27, 31, 35, 39,§476; C46, 50, 54,§32.5]

**32.6 Enforcement.** It shall be the duty of the sheriffs of the various counties, chiefs of police, and town marshals to enforce the provisions of this chapter, and for failure to do so they may be removed as by law provided.

This chapter shall not be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in private correspondence, on any of which shall be printed, painted, or placed, said flag, disconnected from any advertisement.

Nothing in this chapter shall be construed as rendering unlawful the use of any trademark or trade emblem actually adopted by any person, firm, corporation, or association prior to January 1, 1895. [C24, 27, 31, 35, 39, §477; C46, 50, 54,§32.6]

General removal law, §66.1

## CHAPTER 33

## GRAND ARMY OF THE REPUBLIC

## 33.1 Distribution of annual reports.

**33.1 Distribution of annual reports.** The department of Iowa, Grand Army of the Republic, shall furnish to the superintendent of

printing, for distribution to state institutions, fifty copies of the annual reports of the department. [C24, 27, 31, 35, 39,§479; C46, 50, 54,§33.1]

## CHAPTER 34

## PENSIONS

## 34.1 Northern border brigade.

## 34.2 Spirit Lake relief expedition of 1857.

## 34.3 Mitchell's cavalry.

**34.1 Northern border brigade.** The survivors of the northern border brigade, as shown by the roster of Iowa soldiers (volume 6, pp. 181 to 207, inclusive), or their widows shall receive a monthly pension of twenty dollars, during the lifetime of each such survivor or his widow, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated; provided that in cases where the said survivors are now receiving pensions from the federal government this section shall not apply. [C24, 27, 31, 35, 39,§480; C46, 50, 54,§34.1]

**34.2 Spirit Lake relief expedition of 1857.** The survivors of the Spirit Lake relief expedition of 1857, as shown by the roster of Iowa soldiers (volume 6, pp. 922 to 937, inclusive), or their widows shall receive a monthly pension of twenty dollars per month, during the lifetime of each such survivor or widow, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated. [C24, 27, 31, 35, 39, §481; C46, 50, 54,§34.2]

**34.3 Mitchell's cavalry.** The survivors of the frontier guards of Mitchell's cavalry as shown by the original muster roll and pay rolls of a military company organized and commanded by John Mitchell under the authority of a commission dated July 4, 1861, signed by Governor Samuel J. Kirkwood and identified as "John Mitchell's Company of Iowa Volunteers", all of which commission, pay roll, and return thereon, is on file in the official archives of Iowa in the historical department, and the surviving widows of deceased members thereof, shall receive a pension of two hundred forty dollars on the first day of June, 1923, and twenty dollars per month thereafter during the lifetime of each such person, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated; provided that in cases where the said persons are now receiving a pension from the federal government, this section shall not apply. [C24, 27, 31, 35, 39,§482; C46, 50, 54, §34.3]

## CHAPTER 35

## BONUS BOARD

## WORLD WAR I

Referred to in §250.11

## 35.1 Creation of board.

## 35.2 Investment of bonus and disability fund.

## 35.3 Choice of securities.

## 35.4 Collection and disposition of interest.

## 35.5 Payment of claims.

## 35.6 Rules and regulations.

## 35.7 Orphans educational fund.

## 35.8 Money comprising fund.

## 35.9 Expenditure by board.

## 35.10 Eligibility and payment of aid.

## 35.11 Expenses chargeable to fund.

**35.1 Creation of board.** There is hereby created a board to be known as the "bonus board" to consist of the state auditor, the state treasurer, the adjutant general and the adjutant of the Iowa department of the American Legion. [C39,§482.01; C46, 50, 54,§35.1]

This act was originally temporary in nature but since then the legislature has added some permanent duties to the board. The temporary features of the act may be found in the acts of the 39th GA, ch 332

**35.2 Investment of bonus and disability fund.** The treasurer of state upon the order of the bonus board shall invest such portions of the additional bonus and disability fund created by section 8, chapter 332, acts of the thirty-ninth general assembly, as said board may from time to time specify. [C27, 31, 35, §145-b1; C39,§482.02; C46, 50, 54,§35.2]

Referred to in §35.6



**35.3 Choice of securities.** In issuing such order to the treasurer of state said bonus board shall specify the securities in which such sums are to be invested, but in no event shall the board specify securities other than those issued by the United States or the state of Iowa. [C27, 31, 35,§145-b2; C39,§482.03; C46, 50, 54,§35.3]

Referred to in §35.6

**35.4 Collection and disposition of interest.** The interest from such investments shall be collected by the treasurer of state and shall constitute a part of the additional bonus and disability fund provided by section 8, chapter 332, acts of the thirty-ninth general assembly, to be disbursed by the treasurer of state upon the order of said bonus board for the purposes prescribed in said section. [C27, 31, 35,§145-b3; C39,§482.04; C46, 50, 54,§35.4]

Referred to in §35.6

**35.5 Payment of claims.** When any award from such additional bonus and disability fund is made by said bonus board, payment shall be made in the manner provided in section 7\*, chapter 332, acts of the thirty-ninth general assembly. [C27, 31, 35,§145-b4; C39,§482.05; C46, 50, 54,§35.5]

Referred to in §35.6

\*See §8.6, subsection 2

**35.6 Rules and regulations.** Said bonus board shall have power to establish such rules and regulations as the board deems necessary to carry out the provisions of sections 35.2 to 35.5, inclusive. [C27, 31, 35,§145-b5; C39,§482.06; C46, 50, 54,§35.6]

**35.7 Orphans educational fund.** The bonus board is hereby authorized and empowered to administer the war orphans educational aid fund as hereinafter provided. [C39,§482.07; C46, 50, 54,§35.7]

**35.8 Money comprising fund.** Any money hereafter appropriated for the purpose of aiding in the education of children of honorably discharged men or women who served in the military or naval forces of the United States in World War I or World War II, as provided by this chapter, shall be known as the war orphans' educational aid fund. [C39,§482.08; C46, 50, 54,§35.8]

**35.9 Expenditure by board.** Said bonus board is authorized to expend not to exceed three hundred dollars per year for any one child who shall have lived in the state of Iowa

for two years preceding application for aid hereunder, and who is the child of a man or woman who died during World War I between the dates of April 6, 1917 and June 2, 1921, or during World War II between the dates of September 16, 1940 and September 2, 1945, both dates inclusive, or the Korean conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, while serving in the military or naval forces of the United States, or as a result of such service, to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for such child or children incident to attendance at any educational or training institution of college grade, or in any business or vocational training school of standards approved by said bonus board, said educational institutions to be located within the state of Iowa. [C39,§482.09; C46, 50, 54,§35.9; 57GA, ch 60,§9; ch 63,§1]

**35.10 Eligibility and payment of aid.** Eligibility for aid hereunder shall be determined upon application to the Iowa bonus board, whose decision shall be final. The eligibility of eligible applicants shall be certified by the adjutant general of Iowa to the comptroller of Iowa, and all amounts that may be or may become due to any individual or any training institution under this chapter shall be paid to the individual or institution by said comptroller upon receipt by him of certification by the president or governing board of such educational or training institution as to accuracy of charges made, and as to the attendance of the individual at such educational or training institution. It shall be proper for the bonus board to pay over said annual sum of three hundred dollars to such educational or training institution in a lump sum, or in such installments as the circumstances may warrant, upon receiving from such institution such written undertaking as the bonus board may require to assure the use of said funds for such child for the authorized purposes and for no other purpose. No person shall be eligible for the benefits of this chapter until he shall have graduated from a high school or educational institution offering a course of training equivalent to high school training. [C39,§482.10; C46, 50, 54,§35.10]

**35.11 Expenses chargeable to fund.** Any expense incurred in carrying out the provisions of this chapter shall be chargeable to this fund. [C39,§482.11; C46, 50, 54,§35.11]

## CHAPTER 35A

## SERVICE COMPENSATION BOARD

## WORLD WAR II

- 35A.1 Debt authorized.  
 35A.2 Bonds—form.  
 35A.3 Service compensation fund.  
 35A.4 Persons entitled—basis of compensation.  
 35A.5 College students excluded.  
 35A.6 Omitted.  
 35A.7 Duties of state auditor.  
 35A.8 Applications.
- 35A.9 False statements—penalty.  
 35A.10 Repealed by 55GA, ch 55,§14.  
 35A.11 Exemptions.  
 35A.12 Tax levy.  
 35A.13 Appropriation—reversion.  
 35A.14 Authority of state treasurer.  
 35A.15 Bonds to be sold.  
 35A.16 Limitation of indebtedness.

**35A.1 Debt authorized.** The state of Iowa is hereby authorized to become indebted in the amount of eighty-five million dollars and in evidence thereof there shall be issued and sold negotiable coupon bonds of said state as hereinafter provided, and the proceeds thereof shall be paid into the treasury of the state to be expended for the payment of service compensation to the persons defined in section 35A.4, or for the benefit of such persons as prescribed by section 35A.4, and for expenses incurred in carrying out the provisions of this chapter. [C50, 54,§35A.1]

Referred to in §35A.16  
 Section 35A.10 repealed by 55GA, ch 55,§14

**35A.2 Bonds—form.** The treasurer of the state is hereby directed to cause to be prepared negotiable coupon bonds of this state in the amount of eighty-five million dollars, such bonds to bear interest at the rate of not to exceed two and one-half percent per annum which interest shall be paid semiannually. Such bonds shall be issued so that said indebtedness shall be payable in twenty equal annual installments, the last of which shall be within twenty years from the date of issue, bonds to be callable in numerical order on six months notice at one hundred one and one-half percent of the par value. Said bonds shall be signed by the governor under the great seal of said state, attested by the secretary of state and countersigned by the treasurer of state, and the full faith, credit and resources of the state of Iowa shall be pledged for the payment thereof. The interest coupons attached to said bonds shall bear the lithographed facsimile signatures of said officials. The treasurer of state shall sell said bonds to obtain funds to carry out the provisions of this chapter, and to make the payments hereinafter provided. Such bonds shall be sold at not less than the par value thereof and accrued interest thereon to the highest and most responsible bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the state of Iowa. Advertisements of sale shall recite that the treasurer of state, in his discretion, may reject any or all bids received and, in such event, he shall readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. If any of said bonds are not

presented for payment within ten years after maturity they shall be barred. [C50, 54,§35A.2]

Referred to in §§35A.14, 35A.15

**35A.3 Service compensation fund.** The proceeds of such bonds so paid into the treasury of state shall constitute a service compensation fund and shall be distributed to the persons entitled thereto as hereinafter prescribed. Said eighty-five million dollars is hereby appropriated out of said service compensation fund for the purpose of carrying out the provisions of this chapter. [C50, 54,§35A.3]

Referred to in §35A.13

**35A.4 Persons entitled—basis of compensation.** Every person, male or female, who served on active duty, in the armed forces of the United States, at any time between September 16, 1940, and September 2, 1945, both dates inclusive, and who at the time of entering into such service was a legal resident of the state of Iowa, and who had maintained such residence for a period of at least six months immediately prior thereto, and was honorably separated or discharged from such service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status, shall be entitled to receive from the service compensation fund ten dollars for each month that such person was in active domestic service and twelve and one-half dollars for each month that such person was in active foreign service, all prior to December 31, 1946, not to exceed a total sum of five hundred dollars, provided that such person served for a period of not less than one hundred twenty days prior to December 31, 1946. Compensation for a fraction of a month shall not be considered unless it be sixteen days or more in which event it shall be computed as a full month. No person shall be entitled to such compensation who received a bonus or compensation of like nature, as provided in this chapter, from another state. No person shall be entitled to such compensation who being in the service of the armed forces of the United States, subsequent to September 16, 1940, refused on conscientious, political, religious, or other grounds to subject himself or herself to military discipline. Service in the merchant marine shall not be considered for the purposes of this chapter. The surviv-

ing unremarried widow or widower, child or children, stepchild or stepchildren, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that such deceased person would be entitled to under this chapter, if living; but, if any person has heretofore died or shall hereafter die, from service connected causes incurred between September 16, 1940, and December 31, 1946, the first of survivors as hereinbefore designated and in the order named, shall be paid five hundred dollars, regardless of the length of such service. [C50, 54,§35A.4]

Referred to in §§35A.1, 35A.7, 35A.8, 35A.15

**35A.5 College students excluded.** Active duty in the armed forces of the United States shall include all time for which credit is received in the computation of terminal leave, including such leave time as provided for by federal statutes, including Armed Forces Leave Act of 1946\*, and attendance at an armed forces school including such schools conducted at a college, university, or similar institution of learning, but shall exclude time pursuing a course of instruction in a college, university, or other institution of learning as a duly enrolled student. [C50, 54,§35A.5]

\*60 Stat. L. 968

**35A.6** Omitted as obsolete, see 55GA, ch 55,§1.

**35A.7 Duties of state auditor.** It shall be the duty of the state auditor to administer the provisions of this chapter, to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. In the event an application is disapproved by the state auditor, the claimant shall have the right of appeal to the district court of the state of Iowa in and for the county of his legal residence within a period of thirty days from date of mailing by certified mail of notice of such disapproval. The appeal shall be perfected by filing in the office of the state auditor, a written notice of appeal setting forth the order or finding appealed from and the grounds of the appeal. Within thirty days after the filing of such notice of appeal the state auditor shall make, certify and file in the office of the clerk of the district court to which the appeal is taken, a full and complete transcript of all documents in the proceeding, including any depositions, a transcript or certification of the evidence, if reported, including the notice of appeal. The clerk shall forthwith docket such appeal. The appeal shall be heard in such district court as in equity de novo. Appeal may be taken to the supreme court from any final order or judgment or decree of the district court. When any application has been approved by the state auditor, payment shall be made to the applicant in accordance with the provisions of this chapter. It shall be the duty of the state auditor to prepare vouchers and transmit the same to the state comptroller in payment of the bonus claims

provided for herein and other necessary administrative expenses; said state comptroller shall issue a warrant for the amount stated therein and the state treasurer shall pay such warrants out of said bonus fund. The state auditor is hereby empowered to employ such assistants and incur such other expenses as may be necessary for such administration and carrying out of the provisions of this chapter, and the funds necessary for such administration and carrying out the provisions of this chapter shall be expended from said compensation fund; such assistants as said state auditor may determine shall give bond in such amount as may be fixed by said state auditor, and shall, whenever practicable, be persons within the classes as defined in section 35A.4. The state auditor is hereby empowered to make, adopt and promulgate such rules and regulations for the carrying out of the provisions of this chapter as it deems necessary and expedient and which are not inconsistent with any provisions of this chapter. [C50, 54,§35A.7; 57GA, ch 267,§6]

**35A.8 Applications.** Before receiving any compensation under the provisions of this chapter, the claimant, or his successor in interest, shall file with the state auditor, application on forms provided by state auditor; such application must be so filed on or before December 31, 1950. Such application shall state facts sufficient to establish the status of such applicant within a class as defined in section 35A.4, and shall be duly verified. [C50, 54, §35A.8]

**35A.9 False statements—penalty.** Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be punished by a fine of not more than one thousand dollars or be imprisoned for not more than one year, or both, and shall forfeit all benefits he or she might have been entitled to under this chapter. [C50, 54,§35A.9]

**35A.10** Repealed by 55GA, ch 55,§14.

**35A.11 Exemptions.** All payments and allowances made under this chapter shall be exempt from taxation and from levy and sale on execution and all bonds issued hereunder shall be exempt from taxation. [C50, 54, §35A.11]

**35A.12 Tax levy.** To provide for the payment of the principal of said bonds so issued and sold and the interest thereon as the same become due and mature, there is hereby imposed and levied upon all of the taxable property within the state of Iowa in addition to all other taxes, a direct annual tax for each of the years said bonds are outstanding sufficient in amount for the payment of principal of said bonds as it shall become due, and sufficient in amount to produce additional sums as may be needed to pay the interest on said bonds each year for twenty years. The treasurer of the

state shall annually certify to the state tax commission prior to the time for levy of general state taxes the amount of money required to be raised to pay the principal and interest on such bonds maturing in the ensuing year, and said state tax commission shall annually fix the rate per centum necessary to be levied and assessed upon the valuation of the taxable property within this state to produce funds sufficient to pay the principal of and interest upon such bonds as the same become payable, and such additional annual direct tax shall be levied, certified, assessed and collected at the same time and in the same manner as are taxes for general state purposes. [C50, 54,§35A.12]

Sections 35A.1 to 35A.12 of this chapter were ratified by a majority of the people of the state voting at the general election in November 1948

**35A.13 Appropriation—reversion.** 1. There is hereby appropriated from the general fund of the state not otherwise appropriated, the sum of fifty million dollars to the service compensation fund established by section 35A.3, to pay certain compensation to Iowa veterans of the armed forces of the United States in World War II.

2. There is hereby appropriated from the general fund of the state from funds not otherwise appropriated the sum of eight million dollars, or so much thereof as may be necessary to carry out the provisions of the following paragraph, to the service compensation fund provided for by section 35A.3. Notwithstanding the provisions of any other statute or statutes, the balance remaining in the service compensation fund after the payment of all expenditures herein authorized shall revert to the general fund of the state.

3. The sum herein appropriated shall be used for the purpose of paying claims filed with the World War II service compensation board on or before December 31, 1950, which have been, or might hereafter be, allowed by that board and to pay the expenses of the administration of that board in carrying out its duties as prescribed by the provisions of this chapter. There is hereby reverted to the general fund of the state the sum of four hundred and fifty thousand dollars from funds appropriated.

4. There is hereby reappropriated from the funds appropriated by subsection 2 which remain to the credit of the World War II service compensation fund and are not needed for the purpose of carrying out the provisions of subsection 3, an amount sufficient to carry out the provisions of subsection 5.

5. The auditor of state as provided in this chapter is hereby authorized to pay World War II service compensation as provided for by the provisions of this chapter to applicants who file claims for such compensation between the dates of July 1, 1953 and June 30, 1957, inclusive, provided such applicants are otherwise

found eligible for such compensation according to the conditions and provisions of this chapter. [C50, 54,§35A.13; 57GA, ch 64,§§1, 2]

Referred to in §35A.15

**35A.14 Authority of state treasurer.** The treasurer of the state of Iowa is hereby authorized and directed to sell thirty-five million dollars of bonds, as provided in section 35A.2, and his authority and direction therein to sell in excess of said sum is hereby revoked. [C50, 54,§35A.14]

Referred to in §35A.15

**35A.15 Bonds to be sold.** The treasurer of the state of Iowa is hereby directed to sell the bonds referred to in section 35A.14 as follows:

*Group 1.* To sell immediately eight million seven hundred fifty thousand dollars of bonds, being numbers one to eight thousand seven hundred fifty inclusive, of one thousand dollars each, maturing on or before December 2, 1953, in the manner provided in section 35A.2.

*Group 2.* To sell eight million seven hundred fifty thousand dollars of bonds, being numbers eight thousand seven hundred fifty-one to seventeen thousand five hundred inclusive, of one thousand dollars each, maturing on or before December 2, 1958, in the manner provided in section 35A.2, but the sales shall be delayed until the funds appropriated in section 35A.13 hereof and the proceeds of group one have all been used for the payment of the compensation provided in section 35A.4.

*Group 3.* To sell eight million seven hundred fifty thousand dollars of bonds, being numbers seventeen thousand five hundred one to twenty-six thousand two hundred fifty inclusive, of one thousand dollars each, maturing on or before December 2, 1963, in the manner provided in section 35A.2, but the sales shall be delayed until the funds appropriated in section 35A.13 and the proceeds of groups one and two have all been used for the payment of the compensation provided in section 35A.4.

*Group 4.* To sell eight million seven hundred fifty thousand dollars of bonds, being numbers twenty-six thousand two hundred fifty-one to thirty-five thousand inclusive, of one thousand dollars each, maturing on or before December 2, 1968, in the manner provided in section 35A.2, but the sales shall be delayed until the funds appropriated in section 35A.13 and the proceeds of groups one, two and three have all been used for the payment of the compensation provided in section 35A.4. [C50, 54, §35A.15]

**35A.16 Limitation of indebtedness.** No debt in excess of thirty-five million dollars shall be contracted by authority of section 35A.1 and the sale of bonds in excess of said amount is hereby expressly forbidden. [C50, 54,§35A.16]

Saving clause, 53GA, ch 40,§5

## CHAPTER 35B

## KOREAN VETERANS' BONUS

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|---|-----------------------------------|
| 35B.1 Debt authorized.                        | 35B.6 Service compensation board. |
| 35B.2 Bonds—form.                             | 35B.7 Duties.                     |
| 35B.3 Service compensation fund.              | 35B.8 Application.                |
| 35B.4 Persons entitled—basis of compensation. | 35B.9 False statements—penalty.   |
| 35B.5 College students excluded.              | 35B.10 Exemptions.                |
|   | 35B.11 Tax levy.                  |

**35B.1 Debt authorized.** The state of Iowa is hereby authorized to become indebted in the amount of twenty-six million dollars and in evidence thereof there shall be issued and sold negotiable coupon bonds of said state as hereinafter provided, and the proceeds thereof shall be paid into the treasury of the state to be expended for the payment of service compensation to the persons defined in section 35B.4, or for the benefit of such persons as prescribed by said section, and for expenses incurred in carrying out the provisions of this chapter. [56GA, ch 61,§1]

**35B.2 Bonds—form.** The treasurer of the state is hereby directed to cause to be prepared negotiable coupon bonds of this state in the amount of twenty-six million dollars, such bonds to bear interest at the rate of not to exceed two and one-half percent per annum which interest shall be paid semiannually, such bonds shall be issued so that said indebtedness shall be payable in twenty equal annual installments, the last of which shall be within twenty years from the date of issue, bonds to be callable in numerical order on six months notice at one hundred one and one-half percent of the par value. Said bonds shall be signed by the governor under the great seal of said state, attested by the secretary of state and countersigned by the treasurer of state, and the full faith, credit and resources of the state of Iowa shall be pledged for the payment thereof. The interest coupons attached to said bonds shall bear the lithographed facsimile signatures of said officials. The treasurer of state shall sell said bonds to obtain funds to carry out the provisions of this chapter, and to make the payments hereinafter provided, such bonds shall be sold at not less than the par value thereof and accrued interest thereon to the highest and most responsible bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the state of Iowa. Advertisements of sale shall recite that the treasurer of state, in his discretion, may reject any or all bids received and, in such event, he shall readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. If any of said bonds are not presented for payment within ten years after maturity they shall be barred. [56GA, ch 61,§2]

**35B.3 Service compensation fund.** The proceeds of such bonds so paid into the treasury

of state shall constitute a service compensation fund and shall be distributed to the persons entitled thereto as hereinafter prescribed. Said twenty-six million dollars is hereby appropriated out of said service compensation fund for the purpose of carrying out the provisions of this chapter. [56GA, ch 61,§3]

**35B.4 Persons entitled—basis of compensation.** Every person, male or female, who served on active duty, in the armed forces of the United States, at any time between June 27, 1950 and July 27, 1953, both dates inclusive, and who at the time of entering into such service was a legal resident of the state of Iowa, and who had maintained such residence for a period of at least six months immediately prior thereto, and was honorably separated or discharged from such service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status, shall be entitled to receive from the service compensation fund ten dollars for each month that such person was in active domestic service, and twelve and one-half dollars for each month that such person was in active foreign service, all prior to July 27, 1953, not to exceed a total sum of five hundred dollars, provided that such person served for a period of not less than one hundred twenty days prior to November 25, 1953. Compensation for a fraction of a month shall not be considered unless it be sixteen days or more in which event it shall be computed as a full month. No person shall be entitled to such compensation who received a bonus or compensation of like nature, as provided in this chapter, from another state. No person shall be entitled to such compensation who being in the service of the armed forces of the United States, subsequent to June 26, 1950 refused on conscientious, political, religious, or other grounds to subject himself or herself to military discipline. Service in the merchant marine shall not be considered for the purposes of this chapter. The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that such deceased person would be entitled to under this chapter, if living; but, if any person has heretofore died or shall hereafter die, from service-connected causes incurred between June 27, 1950 and July 27, 1953, both dates inclusive, and who has not received the benefits of this chapter, the first

of survivors as hereinbefore designated and in the order named, shall be paid five hundred dollars, regardless of the length of such service, and provided further that if such eligible beneficiary is a minor at the time such compensation is payable, same may be paid to a custodian duly recognized by United States Veterans Administration. [56GA, ch 61,§4]

Referred to in §§35B.1, 35B.7, 35B.8

**35B.5 College students excluded.** Active duty in the armed forces of the United States shall include all time for which credit is received in the computation of terminal leave, including such leave time as provided for by federal statutes, including Armed Forces Leave Act of 1946, and attendance at an armed forces school including such schools conducted at a college, university, or similar institution of learning but excluding any period he was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies. [56GA, ch 61,§5]

**35B.6 Service compensation board.** There is hereby created a board to be known as the "Service Compensation Board" to consist of the state auditor, state treasurer, and the adjutant general. The board shall maintain its office at the seat of government in Des Moines, Iowa. [56GA, ch 61,§6]

**35B.7 Duties.** It shall be the duty of the said board to administer the provisions of this chapter, to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. In the event an application is disapproved by the board, the claimant shall have the right of appeal to the district court of the state of Iowa in and for the county of his legal residence within a period of thirty days from date of mailing by certified mail of notice of such disapproval. The appeal shall be perfected by filing in the office of the board, a written notice of appeal setting forth the order or finding appealed from and the grounds of the appeal. Within thirty days after the filing of such notice of appeal the board shall make, certify and file in the office of the clerk of the district court to which the appeal is taken, a full and complete transcript of all documents in the proceeding, including any depositions, a transcript or certification of the evidence, if reported, including the notice of appeal. The clerk shall forthwith docket such appeal. The appeal shall be heard in such district court as in equity de novo. Appeal may be taken to the supreme court from any final order or judgment or decree of the district court. When any application has been approved by the board, payment shall be made to the applicant in accordance with the provisions of this chapter. It shall be the duty of the board to prepare vouchers and transmit the same to the state comptroller in payment of the bonus

claims provided for herein and other necessary administrative expenses; said state comptroller shall issue a warrant for the amount stated therein and the state treasurer shall pay such warrants out of said bonus fund. The board is hereby empowered to employ such assistants and incur such other expenses as may be necessary for such administration and carrying out of the provisions of this chapter, and the funds necessary for such administration and carrying out the provisions of this chapter shall be expended from said compensation fund; such assistants as said board may determine shall give bond in such amount as may be fixed by said board, and shall, whenever practicable, be persons within the classes as defined in section 35B.4. The board is hereby empowered to make, adopt and promulgate such rules and regulations for the carrying out of the provisions of this chapter as it deems necessary and expedient and which are not inconsistent with any provisions of this chapter. [56GA, ch 61,§7; 57GA, ch 267,§93]

**35B.8 Applications.** Before receiving any compensation under the provisions of this chapter, the claimant, or his successor in interest, shall file with the service compensation board, application on forms provided by said board; such application must be so filed on or before December 31, 1960. Such application shall state facts sufficient to establish the status of such applicant within a class as defined in section 35B.4, and shall be duly verified. [56GA, ch 61,§8]

**35B.9 False statements—penalty.** Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be punished by a fine of not more than one thousand dollars or be imprisoned for not more than one year, or both, and shall forfeit all benefits he or she might have been entitled to under this chapter. [56GA, ch 61,§9]

**35B.10 Exemptions.** All payments and allowances made under this chapter shall be exempt from taxation and from levy and sale on execution and all bonds issued hereunder shall be exempt from taxation. [56GA, ch 61,§10]

**35B.11 Tax levy.** To provide for the payment of the principal of said bonds so issued and sold and the interest thereon as the same become due and mature, there is hereby imposed and levied upon moneys and credits and other intangible personal property subject to taxation at other than the general property rate a direct annual tax of one mill upon the dollar, which shall be additional to all other taxes levied upon such intangible personal property, any other provisions of the Code notwithstanding, for each of the years said bonds are outstanding. There is also hereby imposed and levied upon all other taxable property within the state of Iowa, in addition to all other taxes, a direct annual tax for each of the

years said bonds are outstanding, sufficient in amount, together with the receipts from the tax imposed upon moneys and credits and other intangible personal property, for the payment of principal of said bonds as it shall become due, and sufficient in amount to produce additional sums as may be needed to pay the interest on said bonds each year for twenty years. The one mill tax upon moneys and credits and other intangible personal property shall be collected in the same manner as other taxes upon money and credits and intangible personal property and shall be remitted to the treasurer of state and applied to the payment of the principal and interest of the soldiers' bonus bonds. The treasurer of the state shall annually certify to the state tax commission prior to the time for levy of general state taxes the amount of money required to be raised to pay the principal and interest on such

bonds, maturing in the ensuing year, and said state tax commission shall annually fix the rate per centum necessary to be levied and assessed upon the valuation of the taxable property within this state to produce funds sufficient to pay the principal of and interest upon such bonds as the same become payable, taking into consideration the receipts to be derived from the one mill tax imposed upon moneys and credits and other intangible personal property, and such additional annual direct tax shall be levied, certified, assessed and collected at the same time and in the same manner as are taxes for general state purposes. If any funds remain after the final payment of all legal claims and expenses, they shall be transferred to the general fund of the state of Iowa. [56GA, ch 61,§11]

Constitutionality, 56GA, ch 61,§12

Submitted to, and approved by, the electors Nov. 6, 1956

## CHAPTER 36

### REVOLUTIONARY WAR MEMORIAL COMMISSION

36.1 Commission created.  
36.2 Personnel.  
36.3 Without compensation.  
36.4 To locate graves.  
36.5 Approval.

36.6 Marker.  
36.7 Records.  
36.8 Definition.  
36.9 Appropriation.

**36.1 Commission created.** A commission of three persons is hereby created for the purpose of determining the location in this state of the unmarked graves of soldiers or sailors who served in the war of the American revolution, and to supervise, as herein provided, the erection over each of said unmarked graves of a suitable marker or monument [C27, 31, 35,§482-a1; C39,§482.12; C46, 50, 54,§36.1]

**36.2 Personnel.** Said commission shall be known as the revolutionary war memorial commission. It shall consist of the curator of the historical, memorial, and art department of the state library, who shall be chairman of said commission, and of two other persons, one of whom shall be a member of the association known as the Sons of the American Revolution, and one who shall be a member of the association known as the Daughters of the American Revolution, which two latter members shall be appointed by the governor. [C27, 31, 35,§482-a2; C39,§482.13; C46, 50, 54,§36.2]

**36.3 Without compensation.** Said commission shall serve without compensation, but shall be furnished by the executive council with such necessary stationery and postage as will enable it to perform its duties. [C27, 31, 35,§482-a3; C39,§482.14; C46, 50, 54,§36.3]

**36.4 To locate graves.** Said commission shall proceed with due diligence to collect and preserve in some proper manner, trustworthy evidence of the location of the grave of each

soldier or sailor of the American revolution who is buried in this state. [C27, 31, 35,§482-a4; C39,§482.15; C46, 50, 54,§36.4]

**36.5 Approval.** When evidence has been obtained which satisfies the commission or a majority thereof of the location of an unmarked grave in which a soldier or sailor of the American revolution was buried, the commission shall lay such testimony before the executive council for its approval or disapproval. [C27, 31, 35,§482-a5; C39,§482.16; C46, 50, 54,§36.5]

**36.6 Marker.** If the finding of the commission is approved by said council, the commission shall, at a cost not exceeding two hundred fifty dollars for each grave, erect over said unmarked grave a marker or monument with such inscription thereon as it may deem appropriate. [C27, 31, 35,§482-a6; C39,§482.17; C46, 50, 54,§36.6]

**36.7 Records.** The commission shall preserve full minutes of its proceedings and findings and the same shall be filed with said curator and become a part of the records of his office, and said minutes, proceedings, findings, correspondence, and other documents bearing upon the fact of the burial in Iowa of soldiers and sailors of the revolution, shall be published as a report to the general assembly. [C27, 31, 35,§482-a7; C39,§482.18; C46, 50, 54, §36.7]

**36.8 Definition.** The term "unmarked grave" shall be deemed to include a grave over which a monument or marker now exists in a state of material decay. [C27, 31, 35, §482-a8; C39, §482.19; C46, 50, 54, §36.8]

**36.9 Appropriations.** There is hereby appro-

priated from any funds in the state treasury not otherwise appropriated the sum of twenty-five hundred dollars or so much thereof as may be necessary, which shall be expended solely in the payment of said markers or monuments. [C27, 31, 35, §482-a9; C39, §482.20; C46, 50, 54, §36.9]

CHAPTER 37

MEMORIAL HALLS AND MONUMENTS FOR SOLDIERS, SAILORS, AND MARINES

Referred to in §§347.14, 370.31, 372.17

- 37.1 Memorial buildings and monuments.
- 37.2 Petition.
- 37.3 Election.
- 37.4 Notice.
- 37.5 Acquisition of site.
- 37.6 Bonds.
- 37.7 Levy for bonds.
- 37.8 Levy for maintenance.
- 37.9 Commissioners appointed—vacancies.
- 37.10 Qualifications—method of appointing.
- 37.11 When posts do not exist.
- 37.12 When one post fails to act.
- 37.13 When posts do not act.
- 37.14 Selection of successors.

- 37.15 Ex officio member.
- 37.16 Disbursement of funds.
- 37.17 Gifts and bequests.
- 37.18 Name—uses.
- 37.19 Record—monuments—how inscribed.
- 37.20 Funds, monuments, and memorials previously initiated.
- 37.21 Joint memorials.
- 37.22 Unexpended funds.
- 37.23 Contract to repay.
- 37.24 Investment of funds.
- 37.25 Accumulations.
- 37.26 General powers.

**37.1 Memorial buildings and monuments.** Memorial buildings and monuments designed to commemorate the service rendered by soldiers, sailors, and marines of the United States may be erected and equipped at public expense in the manner provided by this chapter by:

1. Any county which has not heretofore made an appropriation for such purpose under any prior law.
2. Any town or city operating under any form of government. [C97, §§435, 436; C24, 27, 31, 35, 39, §483; C46, 50, 54, §37.1]

**37.2 Petition.** The petition for the erection and equipment of any such hall or monument shall request the submission of the proposition to a vote of the people and shall:

1. When it is proposed to erect the same at the expense of the county, be signed by ten percent of the qualified electors thereof as shown by the poll list in the last preceding general election, or by a majority of the members of the Grand Army of the Republic, the Spanish-American War Veterans Association, the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) of the county.
2. When it is proposed to erect the same at the expense of a city or town, be signed by ten percent of the qualified electors thereof as shown by the poll list in the last preceding regular municipal election. [C97, §435; C24, 27, 31, 35, 39, §484; C46, 50, 54, §37.2]

**37.3 Election.** Upon the filing of the requisite petition, the board of supervisors, or city

or town council, as the case may be, shall cause the proposition to be submitted at a regular election, or at a special election to be called if requested in the petition, in substantially the following form:

"Shall the county (or city or town) of ..... erect and equip (or purchase and equip) a memorial building (or erect a monument) as provided in chapter 37 of the Code, and issue bonds in the sum of ..... dollars to cover the expense of the same (or levy a tax of ..... mills on the dollar for a period of ..... years to defray the expense of the same)?" [C24, 27, 31, 35, 39, §485; C46, 50, 54, §37.3]

**37.4 Notice.** Notice of such election shall be given by publication in one newspaper published in the county, city, or town, as the case may be, once each week for at least four consecutive weeks. If no newspaper is published therein, then such notice may be given by posting in three public places within the limits of said corporation, and by publication for four consecutive weeks in a newspaper of general circulation in the county; the last publication to be not less than five nor more than twenty days prior to such election. [C97, §435; C24, 27, 31, 35, 39, §486; C46, 50, 54, §37.4]

Referred to in §895.25

**37.5 Acquisition of site.** When the proposition to erect any such building or monument has been carried by a majority vote of all voters voting thereon, any such county, city, or town shall have the power to purchase or condemn grounds suitable for a site for any such building or monument. Such condemnation proceedings shall be in the manner pro-



vided for taking private property for works of internal public improvement. [C24, 27, 31, 35, 39, §487; C46, 50, 54, §37.5]

Condemnation procedure, ch 472  
Vote required to authorize bonds, §75.1

**37.6 Bonds.** For the purpose of providing funds for the acquisition of necessary ground therefor, and for purchasing, erecting, constructing, or reconstructing such building or monument, and for the necessary equipment therefor, the county, city, or town may issue bonds to be known as liberty memorial bonds, to be issued and sold as provided by law relative to general county and city bonds; they shall provide for portions of such bonds to become due at different, definite periods, but none in more than twenty years from date. In issuing such bonds, such county, city, or town may become indebted in an amount which, added to all other indebtedness, shall not exceed five percent of the actual value of the taxable property in such county, city, or town as determined by the last state and county tax lists. [C24, 27, 31, 35, 39, §488; C46, 50, 54, §37.6]

City bonds, ch 408  
County bonds, ch 346  
Maturity and payment, ch 76  
Sale of bonds, ch 75

**37.7 Levy for bonds.** For the purpose of liquidating such bonds together with the interest thereon, such county shall levy upon all the property within the limits thereof, subject to taxation for such purpose, in addition to all other taxes provided by law, a special tax not exceeding in any one year four mills\* on the dollar for a period of not exceeding twenty years.

For the purpose of liquidating any such liberty memorial bonds issued by cities and towns pursuant to the provisions of this chapter, together with interest thereon, taxes shall be levied by such cities and towns in accordance with chapter 76, and said bonds and interest thereon shall be payable through the debt service fund. [C24, 27, 31, 35, 39, §489; C46, 50, 54, §37.7]

Referred to in §404.10(12)  
\*Alternate levy, see §404.10(12)

**37.8 Levy for maintenance.** For the development, operation, and maintenance of such building or monument constructed, purchased, or donated under this chapter, there may be thereafter levied a tax as follows:

1. By a county owning same, not to exceed one and one-fourth mills\* on all the taxable property within said county.

2. By a city having a population in excess of fifty thousand persons as shown by the last preceding census, owning same, not to exceed two mills\* on all the taxable property within said city.

3. By any city having a population of at least fifteen thousand but not more than fifty thousand, owning same, not to exceed three mills\* on all the taxable property within said city.

4. By a city having a population of less than

fifteen thousand, owning same, not to exceed four mills\* on all the taxable property within said city.

5. By a town owning same, not to exceed five mills\* on all the taxable property within said town. [C24, 27, 31, 35, 39, §490; C46, 50, 54, §37.8]

Referred to in §404.10(12)  
\*Alternate levy, see §404.10(12)

**37.9 Commissioners appointed—vacancies.** When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city or town council, as the case may be, shall appoint a commission consisting of five members, in the manner and with the qualifications hereinafter provided, which shall have charge and supervision of the erection of said building or monument, and when erected, the management and control thereof.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners elected to take office after January 1, 1952, one commissioner shall be elected for a term of one year, two commissioners shall be elected for a term of two years, and two commissioners shall be elected for a term of three years, or in each of the foregoing instances until his successor is elected and qualified. Thereafter, the successors in each instance shall hold office for a term of three years. [C97, §436; C24, 27, 31, 35, 39, §491; C46, 50, 54, §37.9]

Referred to in §37.21

**37.10 Qualifications—method of appointing.** Each such commissioner shall be an honorably discharged soldier, sailor, or marine of the United States, selected in the following manner:

Within sixty days after the election, each post of the Grand Army of the Republic, Spanish-American War Veterans, and the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) in the county, city, or town, as the case may be, shall appoint three delegates who shall, within ninety days after such election, meet in convention in the county, city, or town, as the case may be, and by ballot select five commissioners, whose names shall be forthwith furnished to the board of supervisors, or the city or town council, as the case may be, whereupon said board of supervisors or city or town council shall by resolution appoint them as such commissioners. [C97, §436; C24, 27, 31, 35, 39, §492; C46, 50, 54, §37.10]

**37.11 When posts do not exist.** In case no post of any one of said associations is maintained in the county, city, or town, as the case may be, then those which do exist shall proceed in the manner above provided and elect said commissioners. [C24, 27, 31, 35, 39, §493; C46, 50, 54, §37.11]

**37.12 When one post fails to act.** In case any post which does exist fails to send delegates to said convention, then the delegates which do attend shall proceed as above indicated and elect said commissioners. [C24, 27, 31, 35, 39,§494; C46, 50, 54,§37.12]

**37.13 When posts do not act.** In case no convention of delegates from said posts meets and elects said commissioners, then the board of supervisors of the county, or the city or town council, as the case may be, shall, at the expiration of ninety days after the election to erect a building or monument, select and appoint five commissioners. [C24, 27, 31, 35, 39, §495; C46, 50, 54,§37.13]

**37.14 Selection of successors.** Not less than sixty days before the expiration of the term of office of said commissioners, their successors in office shall be selected in the manner above provided, but if no selection shall have been made in said manner at the expiration of said term of office, then the board of supervisors, or the city or town council, as the case may be, shall appoint such successors. [C24, 27, 31, 35, 39,§496; C46, 50, 54,§37.14]

**37.15 Ex officio member.** In case any such memorial hall or building shall be a city or town hall, coliseum or auditorium, the mayor of such city or town may be an ex officio member of the commission heretofore provided for, in which case there shall be selected but four commissioners as otherwise provided, and such four, together with the mayor, shall constitute a commission of five. [C24, 27, 31, 35, 39,§497; C46, 50, 54,§37.15]

**37.16 Disbursement of funds.** All funds voted under the provisions of this chapter shall be disbursed by the county or city officers, only upon the written order of said commissioners. Such commission shall report to and make settlement with the board of supervisors or the city council, as the case may be, at the time and in the manner required of county and city officers. [C97,§436; C24, 27, 31, 35, 39, §498; C46, 50, 54,§37.16]

Collection and accounting of fees, ch 342  
 Examination of accounts, §343.5  
 Reports by city officers, §§368A.7, 368A.9  
 Settlement of accounts, §332.3  
 Settlement with county treasurer, §452.6

**37.17 Gifts and bequests.** Gifts and bequests to any county, city, or town, or to the commission, for any of the purposes provided in this chapter, may be accepted and the property shall be used in accordance with the provisions of this chapter, and as may be expressly designated by the donor. [C24, 27, 31, 35, 39, §499; C46, 50, 54,§37.17]

**37.18 Name—uses.** Any such memorial hall or building shall be given an appropriate name and shall be available so far as practical for the following purposes:

1. The special accommodations of soldiers, sailors, marines, nurses, and other persons

who have been in the military or naval service of the United States.

2. For military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club room, and rest room.

3. County, town, or city hall, offices for any county or municipal purpose, community house, recreation center, memorial hospital, and municipal coliseum or auditorium.

4. Similar and appropriate purposes in general community and neighborhood uses, under the control and regulation of the custodians thereof. [C24, 27, 31, 35, 39,§500; C46, 50, 54, §37.18]

**37.19 Record—monuments—how inscribed.**

When any such memorial hall shall be erected, the commission shall cause to be kept a record therein which shall contain the name of each soldier, sailor, and marine, who served honorably in any of the wars in which the United States has been engaged, and who enlisted or entered the service from the county, city, or town, as the case may be, stating the time of his service, the name of the war and organization in which he served, and whether or not he died in the service.

When any such monuments shall be erected, the names of the deceased soldiers, sailors, and marines referred to in this section shall be placed thereon, and from time to time the names of others who subsequently die. [C97, §435; C24, 27, 31, 35, 39,§501; C46, 50, 54,§37.19]

**37.20 Funds, monuments, and memorials previously initiated.**

In any case of funds heretofore raised or in the process of being raised, by tax levy or other provision of law heretofore existing, for any of the purposes provided by this chapter, the board of supervisors or the city or town council, as the case may be, shall cause such funds to be used and applied to all intents and purposes for the acquisition of necessary ground and the purchase, erection, construction or reconstruction and equipment of such monument or memorial building in the same manner and to the same extent as if such funds had been raised for said purpose by a bond issue, as provided in this chapter, and all the provisions of this chapter shall apply to said funds.

All other provisions of this chapter shall apply to any monument or memorial heretofore constructed or hereafter constructed from funds raised under any provision of law heretofore existing.

In all cases covered by this section, the taking effect of this chapter shall fix the time for the selection and appointment of the commissioners to all intents and purposes the same as an election on the proposition to erect a memorial building or monument, as provided in this chapter. [C24, 27, 31, 35, 39,§502; C46, 50, 54,§37.20]

**37.21 Joint memorials.** Any city or town may join with the county in which such city or town is located in the joint erection or pur-

chase of memorial buildings or monuments and suitable ground and equipment therefor, and the maintenance thereof, providing the council of such city or town and the board of supervisors of such county can so agree, but in cases where commissioners have already been appointed under section 37.9, such agreement shall be between such commissioners, but if only one of such parties has appointed commissioners, then such agreement shall be between the commissioners already appointed and the council of such city or town or the board of supervisors of such county, as the case may be. [C27, 31, 35,§502-b1; C39,§502.1; C46, 50, 54,§37.21]

**37.22 Unexpended funds.** Whenever in any county, funds have been raised by taxation for the purpose of erecting and maintaining memorial buildings or monuments, and said funds are under control of a commission as provided in this chapter, and said funds have remained unexpended for a period of five years or more, and when no unpaid obligation exists against said funds, the said commission, or a majority of the members thereof, may disburse said funds for the erection, purchase or improvement of one or more memorial buildings, monuments, parks, playgrounds, swimming pools, homes or club rooms for duly incorporated and acting posts or chapters of veterans' organizations operating under a United States Congressional charter, in the county. [C31, 35,§502-c1; C39,§502.2; C46, 50, 54,§37.22]

Referred to in §§37.24, 37.26

**37.23 Contract to repay.** When such erection, purchase or improvement has been made, the commission shall take from the posts or chapters which are beneficiaries of such erection, purchase or improvement, the promissory obligation of such posts or chapters to repay the amount expended by the commission with or without annual interest, together with such security as the commission may require. [C31, 35,§502-c2; C39,§502.3; C46, 50, 54,§37.23]

Referred to in §37.26

**37.24 Investment of funds.** Funds not disbursed as provided in section 37.22 may be invested by said commission in such securities as are authorized by section 682.23. [C31, 35, §502-c3; C39,§502.4; C46, 50, 54,§37.24]

Referred to in §37.26

**37.25 Accumulations.** All interest accumulations shall become part of the principal fund and all uninvested funds shall be kept on deposit with the county treasurer. [C31, 35,§502-c4; C39,§502.5; C46, 50, 54,§37.25]

Referred to in §37.26

**37.26 General powers.** For the purpose of carrying out the provisions of sections 37.22 to 37.25, inclusive, the commission shall have authority to receive and to convey title to real estate, to take mortgage or other security and to release or transfer the same. [C31, 35,§502-c5; C39,§502.6; C46, 50, 54,§37.26]

## CHAPTER 38

### REGISTRATION OF ALIENS

#### 38.1 Registration of aliens.

**38.1 Registration of aliens.** When a state of war exists between the United States and a foreign country, or, in the judgment of the governor, public safety or necessity requires such action, the governor may, by proclamation, direct every subject or citizen of such foreign countries as the governor may designate in such proclamation, who are in this state, or who may from time to time come into the state, to appear within twenty-four hours after the date specified in such proclamation or after arrival within the state, before such public authorities as the governor may designate in such proclamation, and personally register his or her name, residence, business, length of stay and such other information as the governor may require. Such proclamation shall be published in such newspapers as the governor may designate. Every person to whom such proclamation is applicable shall

also comply with such rules of personal identification as the governor shall from time to time prescribe. The occupant of every private residence, and the owner, lessee or proprietor, operating or managing every hotel, inn, boarding or rooming house, shall, within twenty-four hours after the date specified in such proclamation, notify such public authorities of the presence therein of every subject or citizen of a foreign country to whom such proclamation is applicable, and shall each day thereafter notify such public authorities of the arrival thereat or departure therefrom of every such subject or citizen. A failure to comply with any such proclamation or to perform any act required by this section shall be a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or imprisonment for one year, or both. [C24, 27, 31, 35, 39,§503; C46, 50, 54,§38.1]

# TITLE IV

## ELECTIONS AND OFFICERS

See reference in §§347.3, 386.6, 420.292

### CHAPTER 39

#### TIME OF ELECTION AND TERM OF OFFICE

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| 39.1 General election.                                 | 39.14 Judges of district court.                            |
| 39.2 Special election.                                 | 39.15 State senators.                                      |
| 39.3 Proclamation concerning election.                 | 39.16 Representatives.                                     |
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| 39.10 United States senators.                          | 39.23 Township clerk.                                      |
| 39.11 Judges of the supreme court.                     | 39.24 Repealed by 52GA, ch 240,§50.                        |
| 39.12 Repealed by 55GA, ch 114,§29.                    | 39.25 Sex no disqualification.                             |
| 39.13 Commerce commissioners.                          |  |

**39.1 General election.** The general election for state, district, county, and township officers shall be held throughout the state on Tuesday, next after the first Monday in November of each even-numbered year. [C51, §239; R60,§459; C73,§573; C97,§1057; S13,§1057-a; C24, 27, 31, 35, 39,§504; C46, 50, 54,§39.1]

Constitution, amendments of 1904, 1916

**39.2 Special election.** Special elections authorized by law, or held to fill vacancies in any office to be filled by the vote of the qualified voters of the entire state or of any district, county, or township may be held at the time designated by such law, or by the officer authorized to order such election. [C51,§237; R60,§460; C73,§574; C97,§1058; C24, 27, 31, 35, 39,§505; C46, 50, 54,§39.2]

**39.3 Proclamation concerning election.** At least thirty days before any general election, the governor shall issue his proclamation, designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof to the sheriff of each county. Said proclamation shall designate by number the several districts in which congressional and judicial officers are to be chosen without other description.

The office of senator in the state legislature shall be designated substantially as follows:

“In the senatorial districts numbered (giving the number of each senatorial district in which a senator is to be chosen), each one senator.”

The office of representative in the state legislature shall be designated as follows:

“In the counties of (naming the counties in which two representatives are to be chosen) each two representatives. In all other counties of the state, each one representative.” [R60, §462; C73,§577; C97,§1061; SS15,§1061; C24, 27, 31, 35, 39,§506; C46, 50, 54,§39.3]

Additional provision, §6.7

**39.4 Proclamation concerning revision of constitution.** In the years in which the constitution requires a vote on the question of calling a convention and revising the constitution, the following question shall be included in said proclamation:

“Shall there be a convention to revise the constitution and amend the same?” [C97,§1061; SS15,§1061; C24, 27, 31, 35, 39,§507; C46, 50, 54, §39.4]

Constitutional requirement, Art. X,§3

**39.5 Notice of election.** The sheriff shall give at least ten days notice thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county; or, if there be no such paper, by posting such a copy in at least five of the most public places in the county. [R60,§463; C73, §578; C97,§1062; C24, 27, 31, 35, 39,§508; C46, 50, 54,§39.5]

Referred to in §39.6

**39.6 Notice of special election.** A similar proclamation shall be issued before any special election ordered by the governor, designating the time at which such special election shall be held; and the sheriff of each county in

which such election is to be held shall give notice thereof, as provided in section 39.5. [R60,§464; C73,§579; C97,§1063; C24, 27, 31, 35, 39,§509; C46, 50, 54,§39.6]

**39.7 Time of choosing officer.** At the general election next preceding the expiration of the term of any officer, his successor shall be elected. [R60,§461; C73,§575; C97,§1059; C24, 27, 31, 35, 39,§510; C46, 50, 54,§39.7]

**39.8 Term of office.** The term of office of all officers chosen at a general election for a full term shall commence on the second secular day of January next thereafter, except when otherwise provided by the constitution or by statute; that of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor. [R60,§462; C73,§576; C97, §1060; S13,§1060; C24, 27, 31, 35, 39,§511; C46, 50, 54,§39.8]

Governor and lieutenant governor, const., Art. IV,§15  
Judges of supreme and district courts, const., Art. V,§11

**39.9 State officers—term.** The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general shall hold office for a term of two years. [C51,§239; R60,§§465, 466; C73,§§580, 581; C97,§§1064, 1065; S13,§1065; C24, 27, 31, 35, 39,§512; C46, 50, 54,§39.9]

**39.10 United States senators.** Senators in the congress of the United States shall be elected in the same manner in which state officers are elected. [R60,§674; C73,§26; C97,§30; S13,§1087-c; C24, 27, 31, 35, 39,§513; C46, 50, 54, §39.10]

Term of office, constitution (U.S.), amendment 17

**39.11 Judges of the supreme court.** Three judges of the supreme court shall be chosen at each general election. The term of office of each judge shall be six years. [R60,§467; C73, §582; C97,§1066; S13,§§193-1a, 1066; C24, 27, 31, 35, 39,§514; C46, 50, 54,§39.11]

**39.12** Repealed by 55GA, ch 114,§29.

**39.13 Commerce commissioners.** Two Iowa state commerce commissioners shall be elected at the general election in 1926 and each fourth year thereafter. One Iowa state commerce commissioner shall be elected in the year 1924 and each fourth year thereafter. [C97,§1068; S13,§1068; C24, 27, 31, 35, 39,§516; C46, 50, 54, §39.13]

**39.14 Judges of district court.** Judges of the district court shall be elected at the general election in each judicial district and hold office for four years, except when elected to fill a vacancy, in which case the election shall be only for the unexpired term. [C51,§239; R60, §468; C73,§§584, 585; C97,§1069; C24, 27, 31, 35, 39,§517; C46, 50, 54,§39.14]

**39.15 State senators.** Senators in the general assembly shall be elected at the general

election in the respective senatorial districts and shall hold office for the term of four years. [C51,§239; R60,§471; C73,§588; C97,§1071; S13, §1071; C24, 27, 31, 35, 39,§518; C46, 50, 54,§39.15]

**39.16 Representatives.** Members of the house of representatives shall be elected at the general election in the respective representative districts and hold office for the term of two years. [C51,§239; R60,§470; C73,§587; C97, §1070; S13,§1070; C24, 27, 31, 35, 39,§519; C46, 50, 54,§39.16]

**39.17 County officers.** There shall be elected in each county, at each general election, an auditor, a treasurer, a clerk of the district court, a sheriff, a recorder of deeds, a county attorney, and a coroner, who shall hold office for the term of two years. [C51,§§96, 239; R60, §§224, 472, 473; C73,§589; C97,§1072; S13,§1072; C24, 27, 31, 35, 39,§520; C46, 50, 54,§39.17]

**39.18 Board of supervisors and township trustees.** There shall be elected, biennially, in counties and townships, members of the board of supervisors and township trustees, respectively, for a term of three years to succeed those whose terms of office will expire on the second secular day of January following said election; there shall also be elected a member or members for a term of three years to succeed those whose terms will expire on the second secular day in January one year later than the aforesaid date. It shall be specified on the ballot when each shall begin his term of office. [C51,§239; R60,§475; C73,§§295, 591; C97,§§411, 1074; S13,§1074; SS15,§411; C24, 27, 31, 35, 39,§521; C46, 50, 54,§39.18]

**39.19 Board of supervisors—limitation.** No person shall be elected a member of the board of supervisors who is a resident of the same township with any of the members holding over, except that:

1. A member-elect may be a resident of the same township as a member he is elected to succeed.

2. In counties having five or seven supervisors two members may be residents of a township which embraces a city of thirty-five thousand population. [C97,§411; SS15,§411; C24, 27, 31, 35, 39,§522; C46, 50, 54,§39.19]

**39.20 Supervisors—certain counties with dual county seats.** In counties of over fifty thousand population having two places at which the district court is held and where the board of supervisors consists of five members, not more than three of said members shall be elected from either of the territories served by said courts within that county. [C46, 50, 54, §39.20]

**39.21 Justices and constables.** In all townships, except such as are included in the territorial limits of municipal courts, there shall be elected, biennially, two justices of the peace and two constables, who shall hold office two years and be county officers. [C51,§§221, 243; R60,§§443, 474, 477, 478; C73,§§389, 590, 592, 593;

C97,§1073; SS15,§1073; C24, 27, 31, 35, 39,§523; C46, 50, 54,§39.21]

**39.22 Township trustees—manner of election.** Township trustees and the township clerk shall, in townships which embrace no city or town, be elected by the voters of the entire township. In townships which embrace a city or town, said officers shall be elected by the voters of the township who reside outside the corporate limits of such city or town; but any such officer may be a resident of said city or town. [C27, 31, 35,§523-b1; C39,§523.1; C46, 50, 54,§39.22]

**39.23 Township clerk.** There shall be elected, biennially, in each civil township one township clerk, who shall hold his office for the term of two years. [C51,§239; R60,§475; C73,§591; C97,§1075; S13,§1075; C24, 27, 31, 35, 39,§524; C46, 50, 54,§39.23]

**39.24** Repealed by 52GA, ch 240,§50.

**39.25 Sex no disqualification.** No person shall be disqualified on account of sex from holding any office created by the statutes of this state. [C24, 27, 31, 35, 39,§526; C46, 50, 54, §39.25]

## CHAPTER 40

### CONGRESSIONAL DISTRICTS

#### 40.1 Districts designated.

**40.1 Districts designated.** The state of Iowa is hereby organized and divided into eight congressional districts, which shall be composed, respectively, of the following counties:

First district shall consist of the counties of Iowa, Johnson, Cedar, Scott, Muscatine, Washington, Louisa, Jefferson, Henry, Des Moines, Van Buren, and Lee.

Second district shall consist of the counties of Winneshiek, Allamakee, Fayette, Clayton, Buchanan, Delaware, Dubuque, Linn, Benton, Jones, Jackson, and Clinton.

Third district shall consist of the counties of Worth, Mitchell, Howard, Cerro Gordo, Floyd, Chickasaw, Franklin, Butler, Bremer, Hardin, Grundy, Black Hawk, Tama, and Marshall.

Fourth district shall consist of the counties of Jasper, Poweshiek, Mahaska, Keokuk, Union,

Clarke, Lucas, Monroe, Wapello, Ringgold, Decatur, Wayne, Appanoose, and Davis.

Fifth district shall consist of the counties of Dallas, Polk, Madison, Warren, Marion, and Story.

Sixth district shall consist of the counties of Emmet, Kossuth, Winnebago, Palo Alto, Hancock, Pocahontas, Humboldt, Wright, Calhoun, Webster, Hamilton, Crawford, Carroll, Greene, and Boone.

Seventh district shall consist of the counties of Harrison, Shelby, Audubon, Guthrie, Pottawattamie, Cass, Adair, Mills, Monona, Montgomery, Adams, Fremont, Page, and Taylor.

Eighth district shall consist of the counties of Lyon, Osceola, Dickinson, Sioux, O'Brien, Clay, Plymouth, Cherokee, Buena Vista, Woodbury, Ida, and Sac. [C27, 31, 35,§526-a1; C39, §526.1; C46, 50, 54,§40.1]

Constitutional provision, Art. III,§37

## CHAPTER 41

### STATE SENATORIAL DISTRICTS

#### 41.1 Districts designated.

**41.1 Districts designated.** The number of senators in the general assembly is hereby fixed at fifty, and they are hereby apportioned among the several counties according to the number of inhabitants in each, and under said apportionment the state is hereby divided into fifty senatorial districts, each district to have one senator, as follows:

1. Lee county shall constitute the first district.

2. Jefferson county and Van Buren county shall constitute the second district.

3. Appanoose county and Davis county shall constitute the third district.

4. Lucas county and Wayne county shall constitute the fourth district.

5. Decatur county, Ringgold county, and Union county shall constitute the fifth district.

6. Adams county and Taylor county shall constitute the sixth district.

7. Fremont county and Page county shall constitute the seventh district.

8. Mills county and Montgomery county shall constitute the eighth district.

9. Des Moines county shall constitute the ninth district.

10. Henry county and Washington county shall constitute the tenth district.

11. Clarke county and Warren county shall constitute the eleventh district.

12. Keokuk county and Poweshiek county shall constitute the twelfth district.

13. Wapello county shall constitute the thirteenth district.

14. Mahaska county shall constitute the fourteenth district.

15. Marion county and Monroe county shall constitute the fifteenth district.

16. Adair county and Madison county shall constitute the sixteenth district.

17. Audubon county, Dallas county, and Guthrie county shall constitute the seventeenth district.

18. Cass county and Shelby county shall constitute the eighteenth district.

19. Pottawattamie county shall constitute the nineteenth district.

20. Louisa county and Muscatine county shall constitute the twentieth district.

21. Scott county shall constitute the twenty-first district.

22. Clinton county shall constitute the twenty-second district.

23. Cedar county, Jackson county, and Jones county shall constitute the twenty-third district.

24. Lyon county, Osceola county, and Sioux county shall constitute the twenty-fourth district.

25. Iowa county and Johnson county shall constitute the twenty-fifth district.

26. Linn county shall constitute the twenty-sixth district.

27. Calhoun county and Webster county shall constitute the twenty-seventh district.

28. Marshall county shall constitute the twenty-eighth district.

29. Jasper county shall constitute the twenty-ninth district.

30. Polk county shall constitute the thirtieth district.

31. Boone county and Story county shall constitute the thirty-first district.

32. Woodbury county shall constitute the thirty-second district.

33. Buchanan county and Delaware county shall constitute the thirty-third district.

34. Crawford county, Harrison county, and Monona county shall constitute the thirty-fourth district.

35. Dubuque county shall constitute the thirty-fifth district.

36. Clayton county shall constitute the thirty-sixth district.

37. Hamilton county, Hardin county, and Wright county shall constitute the thirty-seventh district.

38. Black Hawk county shall constitute the thirty-eighth district.

39. Bremer county, Butler county, and Franklin county shall constitute the thirty-ninth district.

40. Allamakee county and Fayette county shall constitute the fortieth district.

41. Mitchell county, Winnebago county, and Worth county shall constitute the forty-first district.

42. Howard county and Winneshiek county shall constitute the forty-second district.

43. Cerro Gordo county and Hancock county shall constitute the forty-third district.

44. Chickasaw county and Floyd county shall constitute the forty-fourth district.

45. Benton county, Grundy county, and Tama county shall constitute the forty-fifth district.

46. Cherokee county, Ida county, and Plymouth county shall constitute the forty-sixth district.

47. Clay county, Dickinson county, and O'Brien county shall constitute the forty-seventh district.

48. Carroll county, Greene county, and Sac county shall constitute the forty-eighth district.

49. Emmet county, Kossuth county, and Palo Alto county shall constitute the forty-ninth district.

50. Buena Vista county, Humboldt county, and Pocahontas county shall constitute the fiftieth district. [C27, 31, 35, §526-a2; C39, §526.2; C46, 50, 54, §41.1]

Constitutional provision, amendment No. 2 of 1904

## CHAPTER 42

### STATE REPRESENTATIVE DISTRICTS

42.1 Ratio of representation.

42.2 Number.

42.3 Determination of tie.

**42.1 Ratio of representation.** The ratio of representation for the purpose of determining the counties which shall be entitled to two representatives, each, is fixed at twenty-five thousand six hundred thirty-nine. [C27, 31, 35, §526-b1; C39, §526.3; C46, 50, 54, §42.1]

Constitutional provision, amendment No. 2 of 1904

**42.2 Number.** The counties of Polk, Woodbury, Linn, Scott, Pottawattamie, Dubuque,

Black Hawk, Clinton and Wapello shall each be entitled to two representatives in the house of representatives of this state. All other counties shall each be entitled to one representative. [C27, 31, 35, §526-b2; C39, §526.4; C46, 50, 54, §42.2]

**42.3 Determination of tie.** Should two or more counties happen to have the same population and each of such counties be equally

entitled to the ninth place among the nine counties having two representatives, the executive council shall determine the question

by lot and preserve a record of the result thereof. [C27, 31, 35, §526-b3; C39, §526.5; C46, 50, 54, §42.3]

## CHAPTER 43

## NOMINATIONS BY PRIMARY ELECTION

Referred to in §§44.4, 44.9

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| 43.2 "Political party" defined.              | 43.60 Abstracts to secretary of state.                                    |
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 43.120 Bribery—illegal voting.  
 43.121 Nominations by petition or nonparty organizations.

**43.1 “Primary election” defined.** The term “primary election” as used in this chapter shall be construed to apply to an election by the members of various political parties:

1. For the purpose of placing in nomination candidates for public office.

2. For selecting delegates to conventions.

3. For the selection of party committeemen. [S13,§1087-a2; C24, 27, 31, 35, 39,§527; C46, 50, 54, §43.1]

**43.2 “Political party” defined.** The term “political party” shall mean a party which, at the last preceding general election, cast for its candidate for governor at least two percent of the total vote cast at said election.

A political organization which is not a “political party” within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapters 44 and 45. [S13,§1087-a3; C24, 27, 31, 35, 39,§528; C46, 50, 54,§43.2]

Nominations by petition or nonparty organizations, §43.121

**43.3 Offices affected by primary.** Candidates of all political parties for all offices which are filled at a regular biennial election by direct vote of the people, except the office of judge of the supreme and district courts, shall be nominated at a primary election at the time and in the manner hereinafter directed. [S13, §1087-a1; C24, 27, 31, 35, 39,§529; C46, 50, 54, §43.3]

Nomination and election of judges, ch 46

**43.4 Delegates and party committeemen.** Delegates to the county convention of political parties and party county committeemen of such parties shall be elected at said primary election at said times and places. [S13,§1087-a1; C24, 27, 31, 35, 39,§530; C46, 50, 54,§43.4]

**43.5 Applicable statutes.** The provisions of chapters 49, 50, and 738 shall apply, so far as applicable, to all said primary elections, except as hereinafter provided. [S13,§1087-a1; C24, 27, 31, 35, 39,§531; C46, 50, 54,§43.5]

Criminal offenses, §§43.119, 43.120  
 General criminal statutes, ch 738

**43.6 Nomination of United States senators.** Senators in the congress of the United States, in case of a full term, shall be nominated in the year preceding the expiration of the term of office of the incumbent. In case of a vacancy, such senators shall be nominated in the year

in which occurs the first biennial election following the occurrence of the vacancy. [R60, §674; C73,§26; C97,§30; S13,§1087-c; C24, 27, 31, 35, 39,§532; C46, 50, 54,§43.6]

Vacancies filled by governor, §69.8, subsection 1

**43.7 Time of holding.** The primary election by all political parties shall be held at the usual voting places of the several precincts on the first Monday in June in each even-numbered year. [S13,§1087-a4; C24, 27, 31, 35, 39, §533; C46, 50, 54,§43.7]

**43.8 Secretary of state to furnish blanks.** The secretary of state shall, at state expense, furnish blank nomination papers, in the form provided in this chapter, to any qualified elector who desires to petition for the nomination of any candidate, or to any person who intends to be a candidate, for any office for which nomination papers are required to be filed in his office. [S13,§1087-a11; C24, 27, 31, 35, 39,§534; C46, 50, 54,§43.8]

Referred to in §43.9

**43.9 County auditor to furnish blanks.** The county auditor shall, at county expense, perform the duty specified in section 43.8, as to all offices for which nomination papers are required to be filed in his office. [S13,§1087-a11; C24, 27, 31, 35, 39,§535; C46, 50, 54,§43.9]

**43.10 Blanks furnished by others.** Blank nomination papers which are in form substantially as provided by this chapter may be used even though not furnished by the secretary of state or county auditor. [C24, 27, 31, 35, 39, §536; C46, 50, 54,§43.10]

**43.11 Filing of nomination papers.** Nomination papers in behalf of a candidate shall be filed:

1. For an elective county office, in the office of the county auditor at least fifty-five days prior to the day fixed for holding the primary election.

2. For United States senator, for an elective state office, for representative in congress, and for member of the general assembly, in the office of the secretary of state not more than eighty-five days nor less than sixty-five days prior to the day fixed for holding said primary election.

3. For elective offices in cities and towns, as provided in section 363.11. [S13,§1087-a10; C24, 27, 31, 35, 39,§537; C46, 50, 54,§43.11; 56GA, ch 62,§§1, 2]

Referred to in §43.13

**43.12 Noting time of filing.** The officer receiving nomination papers for filing shall in-dorse thereon the day, and time of day, of filing. [C24, 27, 31, 35, 39,§538; C46, 50, 54,§43.12]

**43.13 Failure to file nomination papers.** No candidate for any office named in section 43.11 shall have his name printed on the official primary ballot of his party unless nomination papers are filed as therein provided. [S13, §1087-a10; C24, 27, 31, 35, 39,§539; C46, 50, 54, §43.13]

**43.14 Form of nomination papers.** All nomination papers shall be about eight and one-half by thirteen inches in size and in substantially the following form:

"I, the undersigned, a qualified elector of ..... county, and state of Iowa, and a member of the ..... party, hereby nominate ..... of ..... county, state of Iowa, who has affiliated with and is a member of the ..... party, as a candidate for the office of ..... to be voted for at the primary election to be held in June, 19....."

No signatures shall be counted unless they are on sheets each having such form written or printed at the top thereof. [S13,1087-a10; C24, 27, 31, 35, 39,§540; C46, 50, 54,§43.14]

**43.15 Requirements in signing.** The following requirements shall be observed in the signing and preparation of nomination blanks:

1. Each signer may sign as many nomination papers for the same office as there are officers to be elected to said office, and no more.
2. Each signer shall add his residence, with street and number, if any, and the date of signing.
3. All signers, for all nominations, of each separate part of a nomination paper, shall reside in the same county.
4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination paper.
5. Only one candidate shall be petitioned for or nominated in the same nomination paper. [S13,§1087-a10; C24, 27, 31, 35, 39,§541; C46, 50, 54,§43.15]

**43.16 Withdrawals and additions not allowed.** A nomination paper, when filed, shall not be withdrawn nor added to, nor any signature thereon revoked. [S13,§1087-a10; C24, 27, 31, 35, 39,§542; C46, 50, 54,§43.16]

**43.17 Affidavit to nomination papers.** The affidavit of a qualified elector, other than the candidate, shall be appended to each such nomination paper, or papers, if more than one for any candidate, stating that he is personally acquainted with all the persons who have signed the same; that he knows them to be electors of that county and believes them to be affiliated with the party named therein; that

he knows that they signed the same with full knowledge of the contents thereof; that their respective residences are truly stated therein; and that each signer signed the same on the date stated opposite his name. [S13,§1087-a10; C24, 27, 31, 35, 39,§543; C46, 50, 54,§43.17]

Referred to in §273.5

**43.18 Affidavit by candidate.** Every candidate shall make and file an affidavit in substantially the following form:

"I, ..... , being duly sworn, say that I reside at ..... street, (city or town) of ..... county of ..... in the state of Iowa; that I am eligible to the office for which I am a candidate, and that the political party with which I affiliate is the ..... party; that I am a candidate for nomination to the office of ..... to be made at the primary election to be held in June, 19...., and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of the ..... party. I furthermore declare that if I am nominated and elected I will qualify as such officer.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19....

.....  
(Name)  
....."  
(Official title)

[S13,§1087-a10; C24, 27, 31, 35, 39,§544; C46, 50, 54,§43.18]

Referred to in §§43.19, 43.21, 43.116

**43.19 Manner of filing affidavit.** The affidavit provided in section 43.18 shall be filed with the nomination papers when such papers are required; otherwise alone. [S13,§1087-a10; C24, 27, 31, 35, 39,§545; C46, 50, 54,§43.19]

Nomination paper not required, §43.21

**43.20 Signatures required.** Nomination papers shall be signed as follows:

1. If for a state office, or United States senator, by at least one percent of the voters of the party of such candidates, in each of at least ten counties of the state, and in the aggregate not less than one-half of one percent of the total vote of his party in the state, as shown by the last general election.
2. If for a representative in congress, or senator in the general assembly in districts composed of more than one county, by at least two percent of the voters of his party, as shown by the last general election, in each of at least one-half of the counties of the district, and in the aggregate not less than one percent of the total vote of his party in such district, as shown by the last general election.
3. If for an office to be filled by the voters of the county, by at least two percent of the party vote in the county, as shown by the last general election.

In each of the above cases, the vote to be

taken for the purpose of computing the percentage shall be the vote cast for governor. [S13,§1087-a10; C24, 27, 31, 35, 39,§546; C46, 50, 54,§43.20]

**43.21 Township or precinct office.** The name of a candidate for an office to be filled by the voters of any subdivision of a county, including the office of party committeeman, shall be printed on the official primary ballot of his party:

1. If a nomination paper signed by ten qualified voters of said subdivision is filed in his behalf with the county auditor at least fifty-five days prior to such primary election, or

2. If the candidate files with the county auditor, fifty-five days prior to such primary election, his personal affidavit as provided by section 43.18. [S13,§1087-a10; C24, 27, 31, 35, 39, §547; C46, 50, 54,§43.21; 56GA, ch 62,§3]

**43.22 Nominations certified.** The secretary of state shall, at least fifty-five days before a primary election, furnish to each county auditor a certificate under his hand and seal, which certificate shall show:

1. The name and post-office address of each person for whom a nomination paper has been filed in his office, and for whom the voters of said county have the right to vote at said election.

2. The office for which such person is a candidate.

3. The political party from which such person seeks a nomination. [S13,§1087-a12; C24, 27, 31, 35, 39,§548; C46, 50, 54,§43.22; 56GA, ch 62,§4]

**43.23 Notice of election.** Such auditor shall, immediately after receiving said certified matter from the secretary of state, publish a proclamation of the time of holding the primary election, the hours during which the polls will be open, the offices for which candidates are to be nominated, and that the primary election will be held in the regular polling places in each precinct. [S13,§1087-a12; C24, 27, 31, 35, 39,§550; C46, 50, 54,§43.23]

**43.24 Publication of notice.** Such notice shall appear once before the primary election. in not to exceed two newspapers of general circulation published in such county. One of such newspapers shall represent the political party which cast the largest vote in such county at the last preceding general election, and the other, if any, shall represent the political party which cast the next largest vote in such county at such general election. [S13, §1087-a12; C24, 27, 31, 35, 39,§551; C46, 50, 54, §43.24]

**43.25 Correction of errors.** The county auditor shall correct any errors or omissions in the names of candidates and any other errors brought to his knowledge before the printing of the ballots. [S13,§1087-a12; C24, 27, 31, 35, 39,§552; C46, 50, 54,§43.25]

**43.26 Ballot — form.** The official primary election ballot shall be prepared, arranged, and printed substantially in the following form:

PRIMARY ELECTION BALLOT  
(Name of Party)

of  
.....Township or Precinct, .....Ward,  
City or Town of....., County of.....,  
State of Iowa.

Primary election held on the .....day  
of June, 19....

FOR UNITED STATES SENATOR  
(Vote for one.)

- William K. Brown
- J. R. Wayne
- .....

FOR GOVERNOR  
(Vote for one.)

- Howard Collins
- William Longley
- .....

(Followed by other elective state and district  
officers in order.)

FOR COUNTY AUDITOR  
(Vote for one.)

- William Strong
- Robert Thompson
- .....

(Followed by other elective county officers in  
order.)

FOR DELEGATES TO COUNTY  
CONVENTION  
(Vote for ....)

- .....
- .....
- .....
- .....
- .....

FOR TOWNSHIP CLERK  
(Vote for one.)

- John H. Black
- Joseph Raymond
- .....

FOR TOWNSHIP TRUSTEES  
(Vote for two.)

- Clarence Foster
- William Jones
- H. S. Wilson
- .....

(Followed by other elective township officers  
in order.)

FOR PARTY COMMITTEEMEN  
(Vote for one man and for one woman.)

- John Doe
- Richard Roe
- .....
- Martha Doe
- Mary Roe
- .....

[S13,§1087-a14; C24, 27, 31, 35, 39,§553; C46, 50,  
54,§43.26]

**43.27 Printing of ballots.** The ballots of each political party shall be printed in black ink, on separate sheets of paper, uniform in color, quality, texture, and size, with the name

of the political party printed at the head of said ballots, which ballots shall be prepared by the county auditor in the same manner as for the general election, except as in this chapter provided. [S13,§1087-a13; C24, 27, 31, 35, 39,§554; C46, 50, 54,§43.27]

Preparation of ballots, §§43.28, 49.30-49.52, 49.57-49.59

**43.28 Names of candidates—arrangement.** The names of all candidates for offices shall be arranged and printed upon the primary election ballots in the following manner: The county auditor shall prepare a list of the election precincts of his county, by arranging the various townships, towns, and cities in the county in alphabetical order, and the wards or precincts of each city, town, or township in numerical order under the name of such city, town, or township. He shall then arrange the surnames of all candidates for such offices alphabetically for the respective offices for the first precinct in the list; thereafter, for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The procedure for arrangement of names on ballots provided in this section shall likewise be substantially followed in primary elections in political subdivisions of less than a county. [S13,§1087-a13; C24, 27, 31, 35, 39,§§556, 557; C46, 50,§§43.28, 43.29; C54, §43.28]

**43.29 Publishing sample ballot.**

1. The county auditor shall, prior to the day of primary election, publish a list of candidates for each political party to be voted for at such election, except township, city or town officers. Such publication shall be, as near as may be, in the form in which such candidates will appear on the official ballot, with the names of the candidates arranged alphabetically. Such publication shall be in not less than two newspapers within the county, representing, if possible, the political parties which cast at the preceding general election the largest and the next largest number of votes.

2. For each publication of the official ballot, the space occupied thereby shall be measured as if it were in brevier type set solid, and the charge therefor shall be at the rate provided in section 618.11. In no case shall the cost of publishing such primary ballot exceed thirty-five dollars for each of said ballots published. [56GA, ch 63,§§1, 2]

**43.30 Sample ballots.** The county auditor shall take from the official printed ballots of each precinct ten ballots of each political party, and shall write or stamp, in red ink, near the top of each ballot, the words "sample ballot" and shall sign or stamp his official signature thereunder. Said ballots shall be delivered to the judges, but shall not be voted, received, or counted. Said judges shall, before the opening of the polls, cause said sample

ballots to be posted in and about the polling places. [S13,§1087-a15; C24, 27, 31, 35, 39,§558; C46, 50, 54,§43.30]

**43.31 Judges and clerks.** Judges and clerks of primary elections shall be selected, appointed, and shall organize, and vacancies shall be filled, as in case of general elections. Judges are authorized to administer oaths as herein-after provided. [SS15,§1087-a5; C24, 27, 31, 35, 39,§559; C46, 50, 54,§43.31]

Administration of oaths, §§43.44, 49.76, 49.81, 49.90  
 Double election boards, ch 51  
 Organization, §§49.75, 49.76  
 Selection of judges, §§49.12-49.18

**43.32 Expenses of primary elections.** The expenses of primary elections shall be paid in the same manner as expenses of general elections. The compensation of judges and clerks shall be seventy-five cents per hour. [SS15, §1087-a5; C24, 27, 31, 35, 39,§560; C46, 50, 54, §43.32]

Election expenses, §49.118  
 For compensation of judges and clerks in general election, see §49.20

**43.33 Supplies—pollbooks and ballots.** All necessary election supplies, including pollbooks, as provided by law for the general election, together with a sufficient number of official primary ballots of each party, shall be furnished for the primary election board for each precinct by the county auditor. [S13, §1087-a16; C24, 27, 31, 35, 39,§561; C46, 50, 54, §43.33]

Election supplies, §49.28

**43.34 Form of pollbooks.** Such pollbooks shall contain blank spaces for the names of the candidates of the several parties for the different offices to be written in and shall be in substantially the following form:

No.	Name	Repub- lican	Democrat	Prohibi- tionist	Social- ist
1	James Smith .....	X			
2	Tom Jones .....		X		
3	Dan Brown .....			X	
	George White .....				X

[S13,§1087-a16; C24, 27, 31, 35, 39,§562; C46, 50, 54,§43.34]

**43.35 Designating party affiliation.** It shall be the duty of the clerks of the primary election when entering the name of a voter to place in the pollbooks a cross, thus (X), in the column designating the party ticket which was given to said voter upon his application for a ticket. [S13,§1087-a16; C24, 27, 31, 35, 39,§563; C46, 50, 54,§43.35]

**43.36 Australian ballot.** The Australian ballot system as now used in this state, except as herein modified, shall be used at said primary election. The indorsement of the judges and the facsimile of the auditor's signature shall appear upon the ballots as provided for general elections. [S13,§1087-a6; C24, 27, 31, 35, 39,§564; C46, 50, 54,§43.36]

Australian ballot system, ch 49  
 Indorsement by judges, §49.82  
 Signature of officer, §49.57

**43.37 Opening of polls.** In cities where registration is required, the polls shall be open from seven o'clock a. m. to eight o'clock p. m., and in all other precincts from eight o'clock a. m. to eight o'clock p. m. [S13,§1087-a6; C24, 27, 31, 35, 39,§565; C46, 50, 54,§43.37]

Analogous provision, §49.73

**43.38 Voter confined to party ticket.** The elector shall be allowed to vote for candidates for nomination on the ballot of the party with which he is registered as affiliated, and shall receive no other ballot. The voter shall return the ballot, folded, to one of the judges who shall deposit it in the ballot box. [S13,§1087-a6; C24, 27, 31, 35, 39,§566; C46, 50, 54,§43.38]

**43.39 Ballot for another party's candidate.** If any primary elector write upon his ticket the name of any person who is a candidate for the same office upon some other party ticket than that upon which his name shall be so written, such ballot shall be so counted for such person only as a candidate of the party upon whose ballot his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. [S13, §1087-a6; C24, 27, 31, 35, 39,§567; C46, 50, 54, §43.39]

**43.40 Records of party affiliation.** Prior to all primary elections, the county auditor shall, for each precinct, prepare two alphabetically arranged lists of all voters, with their party affiliation, as shown by the pollbooks of the last preceding primary election, and deliver the same to the judges at least one day prior to each primary election. All such lists shall, with the pollbooks, be returned by the judges to the auditor. [S13,§1087-a7; C24, 27, 31, 35, 39,§568; C46, 50, 54,§43.40]

Referred to in §48.24

Registration cards in lieu of lists, §48.24

**43.41 Change of party affiliation.** Any elector, who, having declared his party affiliation, desires to change the same, may, not less than ten days prior to the date of any primary election, file a written declaration with the county auditor stating his change of party affiliation, and the auditor shall enter a record of such change on the pollbooks of the last preceding primary election in the proper column opposite the voter's name and on the voting list. [S13, §1087-a8; C24, 27, 31, 35, 39,§569; C46, 50, 54,§43.41]

Criminal offenses, §738.24

**43.42 New voters.** Any elector whose party affiliation has not, for any reason, been registered, or any elector who has changed his residence to another precinct, or a first voter or citizen of this state casting his first vote in this state, shall be entitled to vote at any primary election by declaring his party affiliation at the time of voting. [S13,§1087-a8; C24, 27, 31, 35, 39,§570; C46, 50, 54,§43.42]

**43.43 Challenges.** Each political party shall be entitled to have two party challengers pres-

ent at each polling place, to be appointed by the respective party committeemen. Any judge or clerk of the primary election or any party challenger may challenge any voter upon the grounds mentioned in section 49.79 and such challenge shall be determined as there provided. [S13,§1087-a9; C24, 27, 31, 35, 39,§571; C46, 50, 54,§43.43]

**43.44 Change of affiliation.** Any elector whose party affiliation has been recorded as provided by this chapter, and who desires to change his party affiliation on the primary election day, shall be subject to challenge. If the person challenged insists that he is entitled to vote the ticket of the political party to which he has transferred his political affiliation and the challenge is not withdrawn, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you have in good faith changed your party affiliation to and desire to be a member of the ..... party." If he take such oath he shall thereupon be given a ticket of such political party and the clerks of the primary election shall change his enrollment of party affiliation accordingly. [S13,§1087-a9; C24, 27, 31, 35, 39,§572; C46, 50, 54,§43.44]

Perjury in examination, §738.28

**43.45 Counting ballots and returns.** Upon the closing of the polls the judges and clerks shall immediately:

1. Place the ballots of the several political parties in separate piles.

2. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

3. Certify to the number of votes cast upon the ticket of each political party for each candidate for each office.

4. Seal the ballots cast on behalf of each of the parties in separate envelopes, and on the outside of such envelope write or print the names of said party's candidates for all offices and opposite each name enter the number of votes cast for such candidate in said precinct.

5. Seal all the envelopes of all political parties in one large envelope and on the outside thereof, or on a paper attached thereto, enter the number of votes cast by each party in said precinct.

6. Seal the pollbooks, containing the tally sheets and certificates of the election judges, in an envelope, on the outside of which are written or printed in perpendicular columns the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in said precinct.

7. Enter at the bottom of each party column on said envelope the total vote cast by said party in said precinct.

8. Communicate the results of the ballots cast for each candidate for office upon the ticket of each political party, by telephone or

telegraph or in person, to the county auditor of the county in which said polls are located; and the county auditor shall remain on duty until the results are communicated to him from each polling place in the county. [S13, §1087-a17; C24, 27, 31, 35, 39, §573; C46, 50, 54, §43.45]

Returns as to delegates and committeemen, §43.92

**43.46 Delivering returns.** Said judges and clerks shall deliver said pollbooks, tally sheets, certificates, envelopes containing ballots, and all unused supplies to the county auditor within twenty-four hours after the close of the polls. Said auditor shall carefully preserve said returns and envelopes in the condition in which received and deliver them to the county board of canvassers. [S13, §1087-a17; C24, 27, 31, 35, 39, §574; C46, 50, 54, §43.46]

Referred to in §43.47

**43.47 Messenger sent for returns.** If the returns from any precinct are not delivered as provided in section 43.46, the county auditor shall forthwith send a messenger for any such missing returns, and said messenger shall be paid as provided for such services in the general election law. [S13, §1087-a17; C24, 27, 31, 35, 39, §575; C46, 50, 54, §43.47]

Messengers, §§50.23, 50.47

**43.48 Elector may ascertain vote cast.** Any elector of the county shall have the right, before the day fixed for canvassing the returns, to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the envelope containing the pollbooks. [S13, §1087-a17; C24, 27, 31, 35, 39, §576; C46, 50, 54, §43.48]

**43.49 Canvass by county board.** On the second Tuesday next following the primary election, the board of supervisors shall meet, open and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length:

1. The number of ballots cast in the county by each political party, separately, for each office.
2. The name of each person voted for and the number of votes given to each person for each different office. [S13, §1087-a19; C24, 27, 31, 35, 39, §577; C46, 50, 54, §43.49]

**43.50 Signing and filing of abstract.** The members of the board shall sign said abstracts and certify to the correctness thereof, and file the same with the county auditor. [S13, §1087-a19; C24, 27, 31, 35, 39, §578; C46, 50, 54, §43.50]

**43.51 Finality of canvass.** Such canvass and certificate shall be final as to all candidates for nomination to any elective county office or office of a subdivision of a county. [S13, §1087-a19; C24, 27, 31, 35, 39, §579; C46, 50, 54, §43.51]

**43.52 Who nominated for county office.** The candidate or candidates of each political party for each office to be filled by the voters of the

county having received the highest number of votes, and not less than thirty-five percent of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office, except that no candidate whose name is not printed on the official ballot who receives less than ten percent of the whole number of votes cast in the county for governor on the party ticket with which he affiliates, at the last general election, shall be declared to have been nominated to any such office. [S13, §1087-a19; C24, 27, 31, 35, 39, §580; C46, 50, 54, §43.52]

Nomination by convention, §43.97

**43.53 Who nominated for township office.** The candidate or candidates of each political party for each office to be filled by the voters of any subdivision of a county having received the highest number of votes shall be duly and legally nominated as the candidate or candidates of his party for such office, except that no candidate whose name is not printed on the official primary ballot, who receives less than five percent of the votes cast in such subdivision for governor on the party ticket with which he affiliates, at the last general election, nor less than five votes, shall be declared to have been nominated to any such office. [S13, §1087-a19; C24, 27, 31, 35, 39, §581; C46, 50, 54, §43.53]

**43.54 Right to place on ballot.** Each candidate so nominated shall be entitled to have his name printed on the official ballot to be voted for at the general election without other certificate. [S13, §1087-a19; C24, 27, 31, 35, 39, §582; C46, 50, 54, §43.54]

**43.55 Nominee certified.** The said canvassing board shall separately prepare and certify a list of the candidates of each party so nominated. It shall deliver to the chairman of each party central committee for the county a copy of the list of candidates nominated by the party he represents; and shall also certify and deliver to such chairman a list of the offices to be filled by the voters of a county for which no candidate of his party was nominated because of the failure of any candidate for any such office to receive the legally required number of votes, together with the names of the candidate for each of such offices voted for at the primary election and the number of votes received by each of such candidates. [S13, §1087-a19; C24, 27, 31, 35, 39, §583; C46, 50, 54, §43.55]

**43.56 Recount.** Any candidate whose name appears upon the official primary ballot of any voting precinct may require the board of supervisors of the county in which such precinct is situated to recount the ballots cast in any such precinct as to the office for which he was a candidate, by filing with the county auditor not later than one o'clock p. m. on Monday after the official canvass made by the board of supervisors is finished, a showing in writing, duly sworn to by such candidate,

that fraud was committed, or error or mistake made, in counting or returning the votes cast in any such precinct as to the office for which he was a candidate. [S13,§1087-a18; C24, 27, 31, 35, 39,§584; C46, 50, 54,§43.56]

Referred to in §43.59

**43.57 Showing must be specific.** The showing for such recount must be specific, and from it there must appear reasonable ground to believe that a recount of the ballots would produce a result as to the applicant's candidacy different from the returns made by the judges. [S13,§1087-a18; C24, 27, 31, 35, 39,§585; C46, 50, 54,§43.57]

Referred to in §43.59

**43.58 Recount granted.** If such showing is made to the satisfaction of the board, it shall thereupon recount the ballots cast in any such precinct for the office for which the contestant was a candidate, and if the result reached by the board on the recount of the ballots as to such office be different from that returned by the judges of election, it shall be substituted therefor as the true and correct return and so regarded in all subsequent proceedings. The action of the board shall be final and no other contest of any kind shall be permitted. [S13, §1087-a18; C24, 27, 31, 35, 39,§586; C46, 50, 54, §43.58]

Referred to in §43.59

**43.59 "Candidate" defined.** The term "candidate" as used in sections 43.56 to 43.58, inclusive, shall include and apply to persons voted for as delegates and party committeemen. [S13, §1087-a18; C24, 27, 31, 35, 39,§587; C46, 50, 54, §43.59]

**43.60 Abstracts to secretary of state.** The county board of canvassers shall also make a separate abstract of the canvass as to the following offices and certify to the same and forthwith forward it to the secretary of state, viz.:

1. United States senator.
2. All state offices.
3. Representative in congress.
4. Senators and representatives in the general assembly. [S13,§1087-a20; C24, 27, 31, 35, 39,§588; C46, 50, 54,§43.60]

**43.61 Returns filed and abstracts recorded.** When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same and record each of the abstracts above mentioned in the election book. [SS15,§1087-a21; C24, 27, 31, 35, 39,§589; C46, 50, 54,§43.61]

**43.62 Publication of proceedings.** The published proceedings of the canvassing board shall be confined to a brief statement of:

1. The names of the candidates nominated by the electors of the county or subdivision thereof and the offices for which they are so nominated.

2. The offices for which no nomination was made by a political party participating in the primary, because of the failure of the candidate to receive the legally required number of votes cast by the party for such office. [SS15,§1087-a21; C24, 27, 31, 35, 39,§590; C46, 50, 54,§43.62]

**43.63 Canvass by state board.** On the second Monday after the June primary election, the executive council shall meet as a canvassing board, and open and canvass the abstract returns received from each county in the state. The board shall make an abstract of its canvass, stating in words written at length, the number of ballots cast by each political party, separately, for each office designated in the abstracts forwarded to the secretary of state, the names of all the persons voted for, and the number of votes received by each person for each office, and shall sign and certify thereto. [S13,§1087-a22; C24, 27, 31, 35, 39,§591; C46, 50, 54,§43.63]

**43.64 State canvass conclusive.** The canvass and certificates by the state board of canvassers shall be final as to all candidates named therein. [S13,§1087-a22; C24, 27, 31, 35, 39,§592; C46, 50, 54,§43.64]

**43.65 Who nominated.** The candidate of each political party for each office to be filled by vote of the people having received the highest number of votes in the state or district of the state, as the case may be, provided he received not less than thirty-five percent of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office, except as provided in section 43.66. [S13,§1087-a22; C24, 27, 31, 35, 39,§593; C46, 50, 54,§43.65]

Nomination by convention, §§43.101, 43.109

**43.66 Minimum requirement for nomination.** A candidate whose name is not printed on the official ballot, must, in order to be nominated, receive such number of votes as will equal at least ten percent of the whole number of votes cast for governor at the last general election in the state, or district of the state, as the case may be, on the ticket of the party with which such candidate affiliates. [C24, 27, 31, 35, 39,§594; C46, 50, 54,§43.66]

Referred to in §§43.65, 43.98, 43.106, 43.110

**43.67 Nominee's right to place on ballot.** Each candidate so nominated shall be entitled to have his name printed on the official ballot to be voted at the general election without other certificate. [S13,§1087-a22; C24, 27, 31, 35, 39,§595; C46, 50, 54,§43.67]

**43.68 Certified list of nominees.** The state board of canvassers shall prepare and certify separate lists of the candidates nominated by each party, as shown by the state canvass, and deliver to the chairman of each party central committee for the state a copy of the list of

candidates nominated by the party which said chairman represents. [S13,§1087-a22; C24, 27, 31, 35, 39,§596; C46, 50, 54,§43.68]

**43.69 Certificates in case of failure to nominate.** Said state board shall, at once after completing its canvass, prepare separate certificates for each political party as to each office for which no candidate was nominated because of the failure of any candidate for any such office to receive the legally required number of votes cast by such party for such office. Such certificates shall show the names of the several candidates for each of such offices voted for at the primary election and the number of votes received by each of said candidates. [S13,§1087-a22; C24, 27, 31, 35, 39,§597; C46, 50, 54,§43.69]

Referred to in §43.70

**43.70 Delivery of certificates.** The certificate provided in section 43.69 shall be sent:

1. To the chairman of the state central committee of said party, in case of offices to be filled by the voters of the entire state.
2. To the chairman, if known, of the district central committee of said party, and to each county auditor, in case of offices to be filled by the voters of any district of the state composed of more than one county.
3. To the chairman of the county central committee of said party, and to the county auditor, in case of offices to be filled by the voters of a district of the state composed of one county. [S13,§1087-a22; C24, 27, 31, 35, 39, §598; C46, 50, 54,§43.70]

**43.71 Messenger sent for abstracts.** If returns of abstracts have not been received by the state canvassing board from all the counties by the time fixed for such state canvass, the secretary of state shall immediately send a messenger after said missing abstracts, and the said board may adjourn from time to time until said abstracts are received. [S13,§1087-a22; C24, 27, 31, 35, 39,§599; C46, 50, 54,§43.71]

**43.72 State returns filed and recorded.** When the canvass is concluded, the board shall deliver the original abstract returns to the secretary of state, who shall file the same in his office and record the abstracts of the canvass of the state board and certificates attached thereto in the book kept by him known as the election book. [S13,§1087-a23; C24, 27, 31, 35, 39,§600; C46, 50, 54,§43.72]

**43.73 Secretary of state to certify nominees.** Not less than fifty-five days before the general election the secretary of state shall certify to the auditor of each county, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to him by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, his place of residence, the office to which he is nominated, and the order in which the tickets of

the several political parties shall appear on the official ballot. [C97,§1105; S13,§1087-a23; SS15,§1105; C24, 27, 31, 35, 39,§601; C46, 50, 54, §43.73; 56GA, ch 62,§5]

Referred to in §43.74

**43.74 Certificate in case of additional nominations.** If, after the foregoing certificate has been forwarded, other authorized nominations are certified to the secretary of state, including nominations to be voted on at any time at a special election, said secretary shall at once, in the form provided in section 43.73, certify said nominations to the county auditors with a statement showing the reason therefor. [S13,§1087-a23; C24, 27, 31, 35, 39,§602; C46, 50, 54,§43.74]

**43.75 Tie vote.** In case of a tie vote resulting in no nomination for any office, or election of delegates or party committeemen, the tie shall forthwith be determined by lot by the board of canvassers, or judges of election, as the case may be. [S13,§1087-a24; C24, 27, 31, 35, 39,§603; C46, 50, 54,§43.75]

**43.76 Vacancies in nominations prior to convention.** Vacancies in nominations made in the primary election when such vacancies occur before the holding of the county, district, or state convention shall be filled:

1. By the county convention if the office in which the vacancy occurs is to be filled by the voters of the county.
2. By a district convention if the office in which the vacancy occurs is to be filled by the voters of a district composed of more than one county.
3. By the state convention if the office in which the vacancy occurs is to be filled by the voters of the entire state. [S13,§§1087-a24,-a24a; C24, 27, 31, 35, 39,§604; C46, 50, 54,§43.76]

**43.77 Failure of convention to fill.** If the convention does not fill such vacancy, the same shall, except in case of vacancy in the office of United States senator, be filled by the party central committee for the county, district, or state as the case may be. [S13,§§1087-a24,-a24a; C24, 27, 31, 35, 39,§605; C46, 50, 54, §43.77]

**43.78 Vacancies in nominations subsequent to convention.** Vacancies in nominations made in the primary election when such vacancies occur after the holding of a county, district, or state convention, shall, except as provided in section 43.79, be filled by the party central committee for the county, district, or state as the case may be. [S13,§§1087-a24,-a24a; C24, 27, 31, 35, 39,§606; C46, 50, 54,§43.78]

**43.79 Vacancies in nomination of United States senator.** Vacancies in nominations made in the primary election, for office of United States senator, when such vacancy occurs after the holding of the state convention or too late to be filled by said convention and thirty days prior to the holding of the regular November



election, shall be filled by a state convention. For this purpose, the chairman of the party's state central committee shall, within ten days after said vacancy occurs, reconvene the delegates to the last preceding state convention. [S13,§1087-a24a; C24, 27, 31, 35, 39,§607; C46, 50, 54,§43.79]

Referred to in §43.78

**43.80 Vacancies in nominations of presidential electors.** Vacancies in nominations of presidential electors shall be filled by the party central committee for the state. [C31, 35,§607-c1; C39,§607.1; C46, 50, 54,§43.80]

**43.81 Vacancies in office prior to convention.** Nominations occasioned by vacancies in office when such vacancies occur too late for the filing of nomination papers for candidates in the primary election, and before the holding of the county, district, or state convention, shall be made by the convention which has jurisdiction to make nominations for the office in question. [S13,1087-a24; C24, 27, 31, 35, 39, §608; C46, 50, 54,§43.81]

Filling vacancies, §§43.97, 43.101, 43.109

**43.82 Vacancies in office subsequent to convention—United States senator.** Nominations occasioned by vacancies in office when such vacancies occur after the holding of the county, district, or state convention, or when they occur before said convention, but too late to be made thereby, shall be made by the party central committee for the county, district, or state, as the case may be, except that when the vacancy is in the office of senator of the United States, and occurs thirty days prior to the holding of the regular November election, nomination shall be made by convention as provided in case of vacancies in nominations for such office. [S13,§§1087-a24, a24a; C24, 27, 31, 35, 39, §609; C46, 50, 54,§43.82]

Nominations by convention, §43.79

**43.83 Vacancies in office of congressman or state senator.** A nomination to be voted on at a special election and occasioned by a vacancy in the office of representative in congress, or senator in the general assembly for a district composed of more than one county, shall be made by a convention duly called by the district central committee. [S13,§1087-a24; C24, 27, 31, 35, 39,§610; C46, 50, 54,§43.83]

**43.84 Vacancies in office of state senator or representative.** A nomination to be voted on at a special election and occasioned by a vacancy in the office of representative in the general assembly, or of a senator in such assembly for a district composed of one county, shall be made by the county central committee. [S13,§1087-a24; C24, 27, 31, 35, 39, §611; C46, 50, 54,§43.84]

**43.85 County convention reconvened.** When a nomination is directed to be made by a district convention composed of more than one county, and the county convention in any county of the district has adjourned without

selecting delegates to such convention, the county convention shall be reconvened for the purpose of making such selection. [C24, 27, 31, 35, 39,§612; C46, 50, 54,§43.85]

**43.86 Committee may call convention.** A party central committee empowered to make a nomination to fill a vacancy, either in a nomination authorized to be made at the primary or to fill a vacancy in office, may, in lieu of exercising such right, call a convention to make such nomination. [C24, 27, 31, 35, 39, §613; C46, 50, 54,§43.86]

**43.87 Vacancies in nominations and in offices for subdivisions of county.** Vacancies in nominations made in the primary election, and nominations occasioned by vacancies in offices, when such offices are to be filled by a territory smaller than a county shall be filled by the members of the party committee for the county from such subdivision. [S13,§1087-a24; C24, 27, 31, 35, 39,§614; C46, 50, 54,§43.87]

**43.88 Certification of nominations.** Nominations made in case of vacancies, and nominations made by state, district, and county conventions, shall, under the name, place of residence, and post-office address of the nominee, and the office to which he is nominated, and the name of the political party making the nomination, be forthwith certified to the proper officer by the chairman and secretary of the convention, or by the committee, as the case may be, and if such certificate is received in time, the names of such nominees shall be printed on the official ballot the same as if the nomination had been made in the primary election. [S13,§1087-a24; C24, 27, 31, 35, 39,§615; C46, 50, 54,§43.88]

**43.89 County convention.** Each political party shall hold a county convention at the county seat on the fourth Friday following each primary election, which convention shall convene at ten o'clock a. m. [S13,§1087-a25; C24, 27, 31, 35, 39,§616; C46, 50, 54,§43.89]

**43.90 Delegates.** Said county convention shall be composed of delegates elected at the last preceding primary election. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective party county central committees, and a statement designating the number from each voting precinct in the county shall be filed by such committee in the office of the county auditor at least fifty-five days before the primary election; if not so done, the auditor shall fix the number. [S13,§1087-a25; C24, 27, 31, 35, 39,§617; C46, 50, 54,§43.90; 56GA, ch 62,§6]

**43.91 Election.** The requisite number of names of candidates of his choice for delegates to the county convention to which each precinct is entitled shall be written, or pasted with uniform white pasters, on the blank lines upon the ballot, by the voter while in the booth, or by someone designated by a voter

unable to write, after the ballots are received and before they are deposited, and the requisite number of persons from each precinct who receive the highest number of votes shall be the delegates from the precinct to the county convention. [S13,§1087-a25; C24, 27, 31, 35, 39, §618; C46, 50, 54,§43.91]

**43.92 Returns as to delegates and committeemen.** Returns shall be made by the judges of election respecting delegates and members of the county central committee in the same manner as for other offices, except that the judges of election shall canvass the returns as to delegates and members of the county central committee, and certify the result to the auditor with the returns. [S13,§1087-a25; C24, 27, 31, 35, 39,§619; C46, 50, 54,§43.92]

**Returns, §43.45**

**43.93 Notification and certificate as to delegates.** The auditor shall, immediately after the final count and canvass of the votes and returns by the board of supervisors, notify the delegates and members of the county central committee who have thus been elected, of their election, and of the time and place of holding the county convention, and shall on the second Thursday following the primary election, deliver a certified list thereof to the chairman of the respective party central committees for the county. [S13,§1087-a25; C24, 27, 31, 35, 39,§620; C46, 50, 54,§43.93]

**43.94 Term of office of delegates.** The term of office of such delegates shall begin on the day following the final canvass of the votes by the board of supervisors, and shall continue for two years and until their successors are elected. [S13,§1087-a25; C24, 27, 31, 35, 39, §621; C46, 50, 54,§43.94]

**43.95 Calling convention to order.** When the delegates, or a majority thereof, or when delegates representing a majority of the precincts, thus elected, shall have assembled in the county convention, the convention shall be called to order by the chairman of the county central committee, who shall present the certified list of delegates and members of the county central committee, and a list of the offices for which no nomination was made at the primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor. [S13,§1087-a25; C24, 27, 31, 35, 39,§622; C46, 50, 54,§43.95]

**43.96 Proxies prohibited.** If any precinct shall not be fully represented the delegates present from such precinct shall cast the full vote thereof, and there shall be no proxies. [S13,§1087-a25; C24, 27, 31, 35, 39,§623; C46, 50, 54,§43.96]

**43.97 Duties performable by county convention.** The said county convention shall:

1. Make nominations of candidates for the party for any office to be filled by the voters

of a county when no candidate for such office has been nominated at the preceding primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.

2. Make nominations in those cases where a nomination made in the primary election has become vacant before the convening of the convention.

3. Make nominations to fill vacancies in office occurring too late to file nomination papers in the primary election.

4. Elect delegates to the next ensuing regular state convention, to the state judicial convention, and to all district conventions of that year, including judicial district convention, upon such ratio of representation as may be determined by the party organization for the state, district or districts of the state, as the case may be. Delegates to district conventions need not be selected in the absence of any apparent reason therefor.

5. Elect a member of the party central committee for the senatorial and congressional districts composed of more than one county.

6. Elect the member, or members, of the judicial district central committee as required by the law relative to the nomination and election of supreme, district, and superior judges. [S13,§1087-a25; C24, 27, 31, 35, 39,§624; C46, 50, 54,§43.97]

**Judicial district central committee, §46.7**  
**Judicial delegates, §46.11**  
**Legally required vote, §§43.52, 43.53**  
**Vacancies in office, §43.81**

**43.98 Nominations prohibited.** In no case shall the county convention make a nomination for an office unless in the primary election of that party a person has received for such office at least one-half of the number of votes required for nomination by section 43.66, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers. [S13,§1087-a25; C24, 27, 31, 35, 39,§625; C46, 50, 54,§43.98]

**43.99 Party committeemen.** A man member and a woman member of the county central committee for each political party shall, at said primary election, be elected from each precinct. The term of office of a member shall begin immediately following the adjournment of the county convention and shall continue for two years and until his or her successor is elected and qualified, unless sooner removed by the county central committee for inattention to duty, incompetency, or failure to support the ticket nominated by the party which elected such member. [S13,§1087-a25; C24, 27, 31, 35, 39,§626; C46, 50, 54,§43.99]

**43.100 Central committee—vacancies.** The county central committee elected in the primary election shall organize on the day of the convention, immediately following the same.

Vacancies in such committee may be filled by majority vote of the committee, but no two

members thereof from the same precinct shall be of the same sex. [S13,§1087-a25; C24, 27, 31, 35, 39,§627; C46, 50, 54,§43.100]

**43.101 District convention.** Each political party shall hold a senatorial or congressional convention in districts composed of more than one county:

1. When no nomination was made in the primary election for the office of senator in the general assembly, or of representative in congress, as the case may be, because of the failure of any candidate to receive the legally required number of votes cast by his party for such candidates.

2. When a vacancy exists in a nomination made in the primary election.

3. When a nomination is required to fill a vacancy in either of said offices, and when said vacancy occurred after said primary election, or, if before said election, too late for the filing of nomination papers. [S13,§1087-a26; C24, 27, 31, 35, 39,§628; C46, 50, 54,§43.101]

Referred to in §43.105  
Legally required vote, §43.65  
Vacancies in office, §43.81

**43.102 Call for district convention.** The district central committee, through its chairman, shall as soon as practicable after the necessity for such convention is known, issue a call for such senatorial or congressional convention, and immediately file a copy thereof with each county auditor in the district. Said call shall state the number of delegates to which each county will be entitled, the time and place of holding the convention, and the purpose thereof. [S13,§1087-a26; C24, 27, 31, 35, 39,§629; C46, 50, 54,§43.102]

**43.103 Duty of county auditor.** The county auditor, in case the district delegates for his county have not been selected, shall deliver a copy of said call to the chairman of the convention which selects said delegates. [S13, §1087-a26; C24, 27, 31, 35, 39,§630; C46, 50, 54, §43.103]

**43.104 Organization.** The organization of a district convention and the procedure therein shall be substantially the same as in the state convention. [S13,§1087-a26; C24, 27, 31, 35, 39, §631; C46, 50, 54,§43.104]

Organization, §43.108

**43.105 Nominations.** The convention when organized shall make nominations to meet any of the conditions named in section 43.101. [S13, §1087-a26; C24, 27, 31, 35, 39,§632; C46, 50, 54, §43.105]

**43.106 Nominations prohibited.** In no case shall any district convention of a party make a nomination for an office unless in the primary election of that party a person has received for such office at least one-half of the number of votes required for nomination by section 43.66, except nominations to fill vacancies in

office when such vacancies occurred too late for the filing of nomination papers. [S13,§1087-a26; C24, 27, 31, 35, 39,§633; C46, 50, 54,§43.106]

**43.107 State convention.** Each political party shall, not earlier than the first nor later than the fifth Wednesday following the county convention, hold a state convention at such time and place as may be determined by the party organization. [S13,§1087-a27; C24, 27, 31, 35, 39,§634; C46, 50, 54,§43.107]

State judicial convention, §46.1

**43.108 Organization — proxies prohibited.** The convention shall be called to order by the chairman of the state central committee, who shall thereupon present a list of delegates, as certified by the various county conventions, and effect a temporary organization. If any county shall not be fully represented, the delegates present from such county shall cast the full vote thereof, and there shall be no proxies. [S13,§1087-a27; C24, 27, 31, 35, 39,§635; C46, 50, 54,§43.108]

Organization of district convention, §43.104

**43.109 Nominations authorized.** Said state convention shall make nominations of candidates for the party for any office to be filled by the voters of the entire state:

1. When no candidate for such office has been nominated at the preceding primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.

2. When a vacancy exists in a nomination made in the primary election.

3. When a nomination is required to fill a vacancy in an office and when such vacancy occurred after the primary election, or, if before such election, too late for the filing of nomination papers.

4. Presidential electors in those years when presidential candidates are to be voted on.

5. In all cases otherwise provided by law. [S13,§1087-a27; C24, 27, 31, 35, 39,§636; C46, 50, 54,§43.109]

Legally required vote, §43.65  
Vacancies in office, §43.81

**43.110 Nominations prohibited.** In no case shall the state convention of a party make a nomination for an office unless in the primary election of that party a person has received for such office at least one-half of the number of votes required for nomination by section 43.66, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers. [S13,§1087-a27; C24, 27, 31, 35, 39,§637; C46, 50, 54,§43.110]

**43.111 State central committee—platform.** Said convention shall elect a state central committee consisting of one man and of one woman from each congressional district, adopt a state platform, and transact such other business as may properly be brought before it.

The state central committee elected at said state convention may organize at pleasure for political work as is usual and customary with such committees, and shall continue to act until succeeded by another committee duly elected. [S13,§1087-a27; C24, 27, 31, 35, 39,§638; C46, 50, 54,§43.111]

**43.112 Nominations in certain cities and towns.** This chapter shall, so far as applicable, govern the nominations of candidates by political parties for all offices to be filled by a direct vote of the people in cities acting under a special charter in 1950 having a population of over fifteen thousand, except all such cities as adopt a plan of municipal government which specifically provides for a nonpartisan primary election.

In other cities, and in towns, candidates of a political party which at the last preceding general state election cast, in such city or town, for its candidate for governor at least two percent of the total vote cast in such city or town, may, under the provisions of chapter 44, be nominated by a convention or caucus for city or town offices elective by the people. [S13,§1087-a34; C24, 27, 31, 35, 39,§639; C46, 50, 54,§43.112]

Referred to in §§43.114, 363.2  
Judges of superior court, §46.18  
See §363.11 et seq.

**43.113 Duty of city and town officers.** The duties devolving upon the county auditor and board of supervisors, by this chapter, shall, in municipal elections, devolve upon the city clerk and city council, respectively. Said council shall meet to perform said duties within two days next following the primary election. [S13,§1087-a34; C24, 27, 31, 35, 39,§640; C46, 50, 54,§43.113]

**43.114 Time of holding special charter city primary.** In special charter cities holding a municipal primary election under the provisions of section 43.112 such primary shall be held on the first Monday in October of the year in which general municipal elections are held. [S13,§1087-a34; C24, 27, 31, 35, 39,§641; C46, 50,§§43.114, 420.2; C54,§43.114]

**43.115 Percentage of signers.** The percentage of voters signing petitions required for printing the name of a candidate upon the official primary ballot shall be the same as is required of a candidate for a county office and shall be based upon the vote cast for mayor by the respective parties in the preceding city election. [S13,§1087-a34; C24, 27, 31, 35, 39,§642; C46, 50, 54,§43.115]

Signatures required, §43.20

**43.116 Certain names not printed on ballots.** The names of candidates for city precinct committeemen, and for delegates to the city convention shall not be printed upon the official primary ballot, but in each case a blank line or lines shall be provided therefor. A candidate for ward alderman or ward councilman may

have his name printed on the primary ballot by filing in the office of the city clerk at least thirty days prior to the day fixed for holding the primary election, an affidavit as provided in section 43.18. [S13,§1087-a34; C24, 27, 31, 35, 39,§643; C46, 50, 54,§43.116]

**43.117 Plurality vote nominates and elects.** A plurality shall nominate the party candidate for alderman and a plurality shall elect the precinct committeemen and delegates to the city convention. [S13,§1087-a34; C24, 27, 31, 35, 39,§644; C46, 50, 54,§43.117]

**43.118 Expense.** The entire expense of conducting said municipal primary election shall be audited by the city council and paid by the city. [S13,§1087-a34; C24, 27, 31, 35, 39,§645; C46, 50, 54,§43.118]

**43.119 Misconduct.** Any party committeeman or any primary election officer or public officer upon whom a duty is imposed by this chapter or by chapters herein made applicable, who shall willfully neglect to perform any such duty, or who shall willfully perform it in such a way as to hinder the objects thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the manner in which a ballot may have been voted, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment. [S13,§1087-a31; C24, 27, 31, 35, 39,§646; C46, 50, 54,§43.119]

Applicable chapters, §43.5

**43.120 Bribery—illegal voting.** Whoever is guilty of any of the following acts shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than six months, to wit:

1. Offering or giving a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at a primary election.
2. Receiving and accepting such bribe by an elector entitled to vote at any primary election.
3. Making false answers to any of the provisions of this chapter relative to his qualifications and party affiliations.
4. Willfully voting or offering to vote at a primary election by one who has not been a resident of this state for six months next preceding said primary election, or who is not twenty-one years of age, or who is not a citizen of the United States.
5. Willfully voting or offering to vote at a primary election by one who knows himself not to be a qualified elector of the precinct where he votes or offers to vote.
6. Violating any provision of this chapter, or any provision of law made applicable to this chapter.

7. Knowingly procuring, aiding, or abetting any violation specified in this section. [S13, §1087-a33; C24, 27, 31, 35, 39, §647; C46, 50, 54, §43.120]

Applicable chapters, §43.5

**43.121 Nominations by petition or nonparty organizations.** This chapter shall not be construed to prohibit nomination of candidates for office by petition, or by nonparty organiza-

tions, as hereafter provided in this title, but no person so nominated shall be permitted to use the name, or any part thereof, of any political party authorized or entitled under this chapter to nominate a ticket by primary vote, or that has nominated a ticket by primary vote under this chapter. [S13, §1087-a29; C24, 27, 31, 35, 39, §648; C46, 50, 54, §43.121]

Nominations by petition, ch 45

## CHAPTER 44

### NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

Referred to in §§43.2, 43.112, 363.11, 363.16

- 44.1 Political nonparty organizations.
- 44.2 Nominations certified.
- 44.3 Certificate.
- 44.4 Nominations and objections—time and place of filing.
- 44.5 Notice of objections.
- 44.6 Hearing before secretary of state.
- 44.7 Hearing before county auditor.
- 44.8 Hearing before mayor.

- 44.9 Withdrawals.
- 44.10 Effect of withdrawal.
- 44.11 Vacancies filled.
- 44.12 Insufficient time for convention.
- 44.13 Certificates in matter of vacancies.
- 44.14 Filing of certificates.
- 44.15 Presumption of validity.
- 44.16 Correction of errors.

**44.1 Political nonparty organizations.** Any convention or caucus of qualified electors representing a political organization which is not a political party as defined by law, may, for the state, or for any division or municipality thereof, or for any county, or for any subdivision thereof, for which such convention or caucus is held, make one nomination of a candidate for each office to be filled therein at the general election. [C97, §1098; C24, §649; C27, 31, 35, §655-a1; C39, §655.01; C46, 50, 54, §44.1]

Referred to in §44.2  
Political party defined, §43.2

**44.2 Nominations certified.** Nominations made under section 44.1 shall be certified by the chairman and secretary of the convention or caucus, who shall enter their place of residence opposite their signatures, and attach to said certificate their affidavit to the effect that the certificate is true. [C97, §1099; C24, §650; C27, 31, 35, §655-a2; C39, §655.02; C46, 50, 54, §44.2]

- 44.3 Certificate.** Said certificate shall state:
1. The name of each candidate nominated.
  2. The office to which each candidate is nominated.
  3. The name of the political organization making such nomination, expressed in not more than five words.
  4. The place of residence of each nominee, with the street or number thereof, if any.
  5. In case of presidential electors, the names of the candidates for president and vice-president shall be added to the name of the organization.
  6. The name and address of each member of the organization's executive or central committee.

7. The provision, if any, made for filling vacancies in nominations. [C97, §1099; C24, §650; C27, 31, 35, §655-a3; C39, §655.03; C46, 50, 54, §44.3]

Additional certification, §44.13

**44.4 Nominations and objections—time and place of filing.** Nominations made under provisions of this chapter, chapter 43 and chapter 45 which are required to be filed in the office of the secretary of the state shall be filed in said office not more than eighty-five nor less than sixty-five days prior to the date of the general election to be held in November; and those nominations which are required to be filed in the office of the county auditor shall be filed in said office not less than fifty-five days prior to the date of said general election.

Objection to the legal sufficiency of a certificate of nomination or to the eligibility of a candidate may be filed by any person who would have the right to vote for a candidate for the office in question. Such objections must be filed with the officer with whom such certificate is filed and within the following time:

1. Those with the secretary of state, not less than sixty days before the day of election.
2. Those with other officers, not less than fifty days before the day of election.
3. In case of nominations to fill vacancies occurring after said sixty-five or fifty-five days, as the case may be, objections shall be filed within three days after the filing of the certificate, provided such vacancies shall be filled not later than sixty days prior to the election in the case of offices, certificate for which is required to be filed in the office of the secretary of state, and not later than fifty days prior to the election in case of offices, certificate for which is required to be filed in the office of the county auditor. [C97, §1103; C24, §654; C27,

31, 35,§655-a4; C39,§655.04; C46, 50, 54,§44.4; 56GA, ch 62,§7]

See §§45.4, 46.15

**44.5 Notice of objections.** When objections are filed notice shall forthwith be given to the candidate affected thereby, addressed to his place of residence as given in the certificate of nomination, stating that objections have been made to said certificate, also stating the time and place such objections will be considered. [C97,§1103; C24,§654; C27, 31, 35,§655-a5; C39,§655.05; C46, 50, 54,§44.5]

See §46.15

**44.6 Hearing before secretary of state.** Objections filed with the secretary of state shall be considered by the secretary and auditor of state and attorney general, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named officers, said officer or officers so objected to shall not pass upon the same, but their places shall be filled, respectively, by the treasurer of state, the governor, and the superintendent of public instruction. [C97,§1103; C24,§654; C27, 31, 35, §655-a6; C39,§655.06; C46, 50, 54,§44.6]

See §46.15

**44.7 Hearing before county auditor.** Objections filed with the county auditor shall be considered by the county auditor, clerk of the district court, and county attorney, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named county officers, said officer or officers so objected to shall not pass upon such objection, but their places shall be filled, respectively, by the county treasurer, the sheriff, and county superintendent. [C97, §1103; C24,§654; C27, 31, 35,§655-a7; C39,§655.07; C46, 50, 54,§44.7]

See §46.15

**44.8 Hearing before mayor.** Objections filed with the city or town clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate of nomination of either of said city or town officials, he shall not pass upon said objection, but his place shall be filled by a member of the council against whom no such objection exists, chosen as above provided. [C97,§1103; C24,§654; C27, 31, 35,§655-a8; C39,§655.08; C46, 50, 54,§44.8]

See §46.15

**44.9 Withdrawals.** Any candidate named under this chapter or chapter 43 may withdraw his nomination by a written request, signed and acknowledged by him before any officer empowered to take acknowledgment of deeds. Such withdrawal must be filed as follows:

1. In the office of the secretary of state, at least sixty days before the day of election.
2. In the office of the proper county auditor,

at least fifty days before the day of the election.

3. In the office of the proper city or town clerk, at least twelve days before the day of the election.

4. In the office of the secretary of state, in case of a special election to fill vacancies, at least sixteen days before the day of election.

5. In the office of the proper county auditor, or city or town clerk, in case of a special election to fill vacancies, at least twelve days before the day of election. [C97,§1101;SS15, §1101; C24,§652; C27, 31, 35,§655-a9; C39,§655.09; C46, 50, 54,§44.9; 56GA, ch 62,§8]

See §45.4

**44.10 Effect of withdrawal.** No name so withdrawn shall be printed on the official ballot under such nomination. [C97,§1101; SS15, §1101; C24,§652; C27, 31, 35,§655-a10; C39,§655.10; C46, 50, 54,§44.10]

See §45.4

**44.11 Vacancies filled.** If a candidate named under this chapter declines a nomination, or dies before election day, or should any certificate of nomination be held insufficient or inoperative by the officer with whom it is required to be filed, or in case any objection made to any certificate of nomination, or to the eligibility of any candidate therein named, is sustained by the board appointed to determine such questions, the vacancy or vacancies thus occasioned may be filled by the convention, or caucus, or in such manner as such convention or caucus has previously provided. [C97,§1102; C24,§653; C27, 31, 35,§655-a11; C39, §655.11; C46, 50, 54,§44.11]

**44.12 Insufficient time for convention.** If the time is insufficient for again holding such convention or caucus, or in case no such previous provisions have been made, such vacancy shall be filled by the regularly elected or appointed executive or central committee of the particular division or district representing the political organization holding such convention, or caucus. [C97,§1102; C24,§653; C27, 31, 35,§655-a12; C39,§655.12; C46, 50, 54,§44.12]

**44.13 Certificates in matter of vacancies.** The certificates of nominations made to supply such vacancies shall state, in addition to the facts required in an original certificate, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and shall be signed and sworn to by the presiding officer and secretary of the convention, or caucus, or by the chairman and secretary of the committee, as the case may be. [C97,§1102; C24,§653; C27, 31, 35,§655-a13; C39,§655.13; C46, 50, 54,§44.13]

Original certificates, §44.8

**44.14 Filing of certificates.** Said certificates of nominations shall be filed as follows:

1. For state, congressional, judicial, and legislative offices, with the secretary of state, not more than eighty-five nor less than sixty-five days before the general election, and such certificates for all other offices, except for cities and towns, shall be filed with the county auditor not more than seventy-five nor less than fifty-five days before the general election.

2. For city and town offices, with the clerks thereof, not more than forty, nor less than fifteen, days before the city or town election.

3. In case of special elections to fill vacancies for offices to be filled by the electors of a larger district than a county, with the secretary of state, not less than fifteen days before the time of holding such special election.

4. In case of special elections to fill vacancies for offices to be filled by the voters of a county, with the county auditor, not less than twelve days before the time of holding such special election. [C97,§1104; SS15,§1104; C24,

§655; C27, 31, 35,§655-a14; C39,§655.14; C46, 50, 54,§44.14; 56GA, ch 62,§9]

**44.15 Presumption of validity.** Certificates thus filed, and being apparently in conformity with law, shall be regarded as valid, unless objection in writing thereto shall be made, and, under proper regulations, shall be open to public inspection, and preserved by the receiving officer for not less than six months after the election is held. [C97,§1104; SS15,§1104; C24,§655; C27, 31, 35,§655-a15; C39,§655.15; C46, 50, 54,§44.15]

See §45.4

**44.16 Correction of errors.** Any error found in such certificate may be corrected by the substitution of another certificate, executed as is required for an original. [C97,§1104; SS15, §1104; C24,§655; C27, 31, 35,§655-a16; C39,§655.16; C46, 50, 54,§44.16]

## CHAPTER 45

### NOMINATIONS BY PETITION

Referred to in §§43.2, 43.121, 44.4, 46.20, 363.11, 363.16

- 45.1 Nominations by petition.
- 45.2 Adding name by petition.
- 45.3 Preparation of petition.

- 45.4 Filing—presumption — withdrawals — objections.

**45.1 Nominations by petition.** Nominations for candidates for state offices may be made by nomination paper or papers signed by not less than one thousand qualified voters of the state; for county, district or other division, not less than a county, by such paper or papers signed by at least two percent of the qualified voters residing in the county, district or division; as shown by the total vote of all candidates for governor at the last preceding general election in such county, district or division; and for township, city, town or ward, by such paper or papers signed by not less than twenty-five qualified voters, residents of such township, city or ward. [C97,§1100; C24, §651; C27, 31, 35,§655-a17; C39,§655.17; C46, 50, 54,§45.1]

**45.2 Adding name by petition.** The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office. [C97, §1100; C24,§651; C27, 31, 35,§655-a18; C39,§655.18; C46, 50, 54,§45.2]

Other methods, chs 43, 44; also §363.11 et seq.

**45.3 Preparation of petition.** Each petitioning voter shall add to his signature his place of business, post-office address, and date of signing. Before filing said petition, there shall

be indorsed thereon or attached thereto the affidavit of at least one of the signers of said petition, which affidavit or affidavits shall show:

1. The name and residence (including street and number, if any) of said nominee, and the office to which he is nominated.

2. That each of said signers are qualified voters of the state and entitled to vote for such nominee for such office.

3. That each of said petitioners voluntarily signed said petition.

Such petition when so verified shall be known as a nomination paper. [C97,§1100; C24, §651; C27, 31, 35,§655-a19; C39,§655.19; C46, 50, 54,§45.3]

**45.4 Filing — presumption — withdrawals — objections.** The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the law relating to nominations by political organizations which are not political parties. [C97,§1104; SS15,§1104; C24,§652, 654, 655; C27, 31, 35,§655-a20; C39,§655.20; C46, 50, 54,§45.4]

Statutes applicable, ch 44

CHAPTER 46

NOMINATION AND ELECTION OF JUDGES

- 46.1 State judicial convention.
- 46.2 Call.
- 46.3 Delegates.
- 46.4 Number.
- 46.5 Procedure.
- 46.6 Nomination.
- 46.7 District central committee.
- 46.8 District judicial convention.
- 46.9 Call.
- 46.10 Filing.

- 46.11 Delegates.
- 46.12 Organization.
- 46.13 District judges—how elected.
- 46.14 Certification.
- 46.15 Objections.
- 46.16 Certification to county auditor.
- 46.17 Form of printing of ballots.
- 46.18 Judges of superior court.
- 46.19 General election laws applicable.
- 46.20 Nominations by petition.

**46.1 State judicial convention.** A state judicial convention of each political party shall be held not less than one nor more than two weeks after the regular state convention of such party. [C24, 27, 31, 35, 39, §656; C46, 50, 54, §46.1]

**46.2 Call.** Such state judicial convention shall convene at a time and place to be fixed by the state party committee, which shall issue a call therefor in the same manner that the call for the regular state convention is issued. [C24, 27, 31, 35, 39, §657; C46, 50, 54, §46.2]

**Regular state convention, §48.107**

**46.3 Delegates.** Delegates to the state judicial convention shall be elected at, and certified by, the county conventions at the same time and in the same manner as delegates to the regular state convention, except that no person shall be elected to act as delegate to both conventions. [C24, 27, 31, 35, 39, §658; C46, 50, 54, §46.3]

**Certification of delegates, §48.108**

**46.4 Number.** Each county shall be entitled to the same number of delegates at the state judicial convention that it is entitled to have at the regular state convention. [C24, 27, 31, 35, 39, §659; C46, 50, 54, §46.4]

**Number of delegates, §48.97**

**46.5 Procedure.** The method of procedure, organization, and voting of delegates shall be the same in the state judicial convention as is provided for the regular state party convention. [C24, 27, 31, 35, 39, §660; C46, 50, 54, §46.5]

**Organization of state convention—no proxies, §48.108**

**46.6 Nomination.** The state judicial convention shall nominate candidates for the office of judge of the supreme court and may transact such other business as is proper. Such judges shall be elected at the general election in November in the same manner as the governor is elected, except that the state board of canvassers shall canvass the returns and declare the result. [C24, 27, 31, 35, 39, §661; C46, 50, 54, §46.6]

**46.7 District central committee.** In each judicial district there shall be a district central committee composed of one member from

each county of such district, except that in districts composed wholly of one county there shall be three members of such committee, and in districts composed of two counties there shall be two members of such committee from the county having the larger population. Such committeemen shall be selected by the county convention in each county held in accordance with the provisions of the law relative to nominations by primary election. Vacancies in any such district committee shall be filled by the county central committee of the county where such vacancy occurs. [C24, 27, 31, 35, 39, §662; C46, 50, 54, §46.7]

**Judicial district central committee, §48.97**

**46.8 District judicial convention.** In each judicial district in which a judge of the district court is to be elected, a judicial convention shall be held by each political party participating in the primary election of that year. Such convention shall be held not earlier than the first, nor later than the fifth, Thursday following the date of holding the county convention. [C24, 27, 31, 35, 39, §663; C46, 50, 54, §46.8]

**Time of holding county convention, §48.89**

**46.9 Call.** Not less than ten days nor more than forty days before the day fixed for holding the county convention, a call for such judicial convention to be held shall be issued by the party central committee for such district, and published in at least one newspaper of general circulation in each county in the district, which shall state, among other things, the number of delegates each county in the district shall be entitled to, and the time and place of holding the convention. [C24, 27, 31, 35, 39, §664; C46, 50, 54, §46.9]

**Time of holding county convention, §48.89**

**46.10 Filing.** Such call shall be filed with the county auditor in each county in the district not less than five days before the date of holding the county convention as now fixed by law, and the county auditor shall attach a copy thereof to the certified list of delegates required to be delivered by him to the chairman of the county central committee of the respective political parties. [C24, 27, 31, 35, 39, §665; C46, 50, 54, §46.10]

**Time of holding county convention, §48.89**



**46.11 Delegates.** Each county convention held in such judicial district shall select such number of delegates to the judicial convention as is specified for that county in the call for such judicial convention. [C24, 27, 31, 35, 39, §666; C46, 50, 54, §46.11]

Similar provision, §43.97

**46.12 Organization.** The organization and procedure in such judicial district convention shall be the same as in the state convention. Such convention may nominate as many candidates for the office of judge of the district court as there are judges in said district to be elected at the general election to be held in the year in which such convention is held, and may transact such other business as may properly come before it. [C24, 27, 31, 35, 39, §667; C46, 50, 54, §46.12]

Organization of state convention, §43.108

**46.13 District judges—how elected.** Judges of the district court shall be elected at the general election in the same manner as state senators are elected. [C24, 27, 31, 35, 39, §668; C46, 50, 54, §46.13]

Election of state senators, §39.15

**46.14 Certification.** All nominations for the office of judge of the supreme or district court shall be certified to the secretary of state, as near as may be in the same manner that nominations for other state offices are now certified under existing law. [C24, 27, 31, 35, 39, §669; C46, 50, 54, §46.14]

Certification of nominations, §43.88

**46.15 Objections.** Objections to the legal sufficiency of such certificate of nomination or eligibility of the candidate shall be governed by the provisions of law of this title relative to objections to certificates of nomination by political organizations which are not political parties. [C24, 27, 31, 35, 39, §670; C46, 50, 54, §46.15]

Objections, §§44.4–44.8

**46.16 Certification to county auditor.** The names of such nominees shall, at the time of certifying nominations under the primary election, be certified by the secretary of state to

the officer having charge of the printing of the ballots. [C24, 27, 31, 35, 39, §671; C46, 50, 54, §46.16]

Time of certification, 43.73

**46.17 Form of printing of ballots.** The names of such nominees shall be printed on the ballot under the proper party designation in the manner required by law for the printing of the names of candidates for state and district offices. [C24, 27, 31, 35, 39, §672; C46, 50, 54, §46.17]

Arrangement of party nominees, §49.31

**46.18 Judges of superior court.** Judges of superior courts shall be nominated and elected in the manner provided by law for the nomination and election of other elective officers in the cities where such courts are located. [C24, 27, 31, 35, 39, §673; C46, 50, 54, §46.18]

Election of superior court judges, §603.4  
Primary elections in certain cities, §43.112

**46.19 General election laws applicable.** All the laws relating to the certificates of nomination, filing the same, certifying nominations to the officers having charge of the printing of the ballots, printing of the names of candidates on the official ballot, the method of withdrawal, filling vacancies, conducting general elections, canvassing the ballot, announcing the result, recounting the ballot, publishing notice of nomination and election, contesting the election, and the penalty for illegal voting, misconduct of the election officials, and the making of the sworn return, shall, so far as applicable, be the same for the election of supreme, district, and superior judges as is now provided by the general election laws for the election of state, district, county, and city officers. [C24, 27, 31, 35, 39, §674; C46, 50, 54, §46.19]

**46.20 Nominations by petition.** Candidates for the offices named in this chapter may be nominated by petition as elsewhere provided in this title, but no person so nominated shall be permitted to use the name of any political party authorized under this chapter to nominate candidates for such office. [C24, 27, 31, 35, 39, §675; C46, 50, 54, §46.20]

Nominations by petition, ch 45

## CHAPTER 47

### REGISTRATION OF VOTERS

Referred to in §§48.20, 53.38. Permanent registration, ch 48

47.1 Registration required.

47.2 Registers.

47.3 Vacancies.

47.4 Consolidation of precincts.

47.5 Books and supplies.

47.6 Effect of consolidation.

47.7 Qualifications.

47.8 Oath of registers.

47.9 Term and compensation.

47.10 Notice.

47.11 Time of publication.

47.12 Form of registry books.

47.13 Expenses.

47.14 Public inspection.

47.15 Place of meeting of registers.

47.16 Time of meeting of registers.

47.17 Duration of meetings.

47.18 Right of registration.

47.19 Oath.

47.20 Questions propounded to applicant.

47.21 Completing registration.

47.22 Keeping registry book.

- 47.23 Alphabetical list.
- 47.24 Posting.
- 47.25 Correction.
- 47.26 Certifying and copying.
- 47.27 Division.
- 47.28 Use of lists at election.
- 47.29 Return of alphabetical lists.
- 47.30 Corrections of lists.
- 47.31 Sick voters.
- 47.32 Registration on election day.
- 47.33 Certificates granted on election day.
- 47.34 Wrongful striking from list.

- 47.35 Certificates delivered to judges.
- 47.36 Registers to certify duplicate registrations.
- 47.37 Striking off names.
- 47.38 New registry—how often.
- 47.39 Registration book in nonpresidential years.
- 47.40 Transfer constitutes registration.
- 47.41 Clerk or auditor to furnish registration records.
- 47.42 Clerk or auditor to preserve records.
- 47.43 Penalty.

**47.1 Registration required.** Registration of voters shall be made for all elections, in all cities having a population of ten thousand or more, not counting inmates of any state institution. Provided, however, that by city ordinance, registration of voters may be required in any city having a population of not less than four thousand and not more than ten thousand. Provided, however, that the county board of supervisors by proper action may require registration of voters in any township having a population of 1,500 or more.

Registration of voters shall not be made for school elections except as otherwise provided. [C73,§599; C97,§§1076, 1078, 1131; S13,§1076-a; SS15,§1076; C24, 27, 31, 35, 39,§676; C46, 50, 54, §47.1; 56GA, ch 64,§1]

Registration in school districts, §§277.16–277.18, 277.33, 277.34

**47.2 Registers.** The city council or board of supervisors shall, for each precinct in the city or such township in the county and on or before the sixth Monday preceding each general election, appoint one suitable person from each of the two political parties which cast the greatest number of votes at the last general election, from three names presented by each chairman of the city central political committee of such parties, to be registers of voters. [C73,§599; C97,§1076; SS15,§1076; C24, 27, 31, 35, 39,§677; C46, 50, 54,§47.2; 56GA, ch 64,§2]

**47.3 Vacancies.** If for any cause any register shall not be appointed at or before the time above mentioned, or, if appointed, shall be unable for any cause to serve, the mayor of such city or chairman of the board of supervisors of such county shall forthwith, on similar recommendation, make such appointments and fill all vacancies. [C97,§1076; SS15,§1076; C24, 27, 31, 35, 39,§678; C46, 50, 54,§47.3; 56GA, ch 64,§3]

**47.4 Consolidation of precincts.** All cities or counties in which registration is required may, by resolution passed not less than thirty days or more than sixty days preceding any general, city, or special election, consolidate the voting precincts of the city or county into registration districts for the purpose of registration only and appoint registers for such registration districts and designate the place of meeting, at one of the usual voting places within the consolidated district; but such reg-

isters must be residents and electors of the registration district in which they are to serve. [C24, 27, 31, 35, 39,§679; C46, 50, 54,§47.4; 56GA, ch 64,§4]

**47.5 Books and supplies.** In case of consolidation as aforesaid, the registers for the consolidated district shall be furnished with separate blank registration books for each voting precinct embraced in the consolidation, and each registration shall be entered in the books for that voting precinct of which the registering voter is a resident and in no other books. Said registers shall perform within said consolidated district all the duties which would devolve upon the several boards of registers in case there were no consolidation. [C24, 27, 31, 35, 39,§680; C46, 50, 54,§47.5]

**47.6 Effect of consolidation.** An order of consolidation as aforesaid shall have the effect of terminating the term of office of all registers of all precincts embraced in the consolidation, and the registers appointed to act in the consolidated district shall serve only for the election in question. [C24, 27, 31, 35, 39,§681; C46, 50, 54,§47.6]

**47.7 Qualifications.** Said registers shall be electors of the precinct in which they are to serve, of good clerical ability, temperate, of good habits and reputation, and shall be able to speak the English language understandingly. [C97,§1076; SS15,§1076; C24, 27, 31, 35, 39, §682; C46, 50, 54,§47.7]

**47.8 Oath of registers.** Said registers shall qualify by taking an oath or affirmation to the effect that they will well and truly discharge all of the duties required of them by law. [C97, §1076; SS15,§1076; C24, 27, 31, 35, 39,§683; C46, 50, 54,§47.8]

**47.9 Term and compensation.** Registers shall hold their office for two years and receive compensation at the rate of five dollars for each day of eight hours engaged in the discharge of their duties. [C97,§1076; SS15,§1076; C24, 27, 31, 35, 39,§684; C46, 50, 54,§47.9; 56GA, ch 64,§5]

**47.10 Notice.** The times and places of making registration of voters shall be published by the mayor or chairman of the board in the two leading political party papers published in

such city or county, except no publication shall be required for a special election. If there be but one such paper published in the city or county, publication of notice therein shall be sufficient. [C73,§597; C97,§1085; C24, 27, 31, 35, 39,§685; C46, 50, 54,§47.10; 56GA, ch 64,§6]

**47.11 Time of publication.** The publication shall be made for a period of three days prior to the opening of the registry book, if the paper is a daily paper, and for one week, if a weekly paper, and shall call the attention of the voters to the necessity of complying with the laws with reference to registration, in order to be entitled to vote at the ensuing election. [C97,§1085, C24, 27, 31, 35, 39,§686; C46, 50, 54,§47.11]

**47.12 Form of registry books.** Registry books shall be substantially in the following form:

REGISTER OF VOTERS.....PRECINCT.....WARD

Number	Residence	Name	Age	Nativity	Color	Term of Residence			Naturalized	Date of papers	Court	By act of congress	Qualified voter	Date of application	Last preceding place of residence	Signature
						Precinct, street number	County	State								

[C73,§596; C97,§1077; S13,§1077; C24, 27, 31, 35, 39,§687; C46, 50, 54,§47.12]

**47.13 Expenses.** Said registry book and all blanks and materials necessary to carry out the provisions of this chapter shall be furnished by the city clerk or county auditor and shall be printed at the equal expense of the city and county. Registers shall be paid by the city in city elections and in all other cases by the county. [C97,§§1076, 1077; S13,§1077; SS15,§1076; C24, 27, 31, 35, 39,§688; C46, 50, 54, §47 13, 56GA, ch 64,§7]

**47.14 Public inspection.** Registry books shall be open for public inspection and examination during the time fixed for registration. [C73,§596; C97,§1077; S13,§1077; C24, 27, 31, 35, 39,§689; C46, 50, 54,§47.14]

**47.15 Place of meeting of registers.** The registers, in case the city council or board of supervisors fails to consolidate the voting precincts into registration districts, shall meet at the usual voting place in the precinct for which they have been appointed. In case of

such consolidation, the registers shall meet at the usual voting place specified in the resolution of the city council or board of supervisors consolidating the precincts. The meeting of the registers on election day shall be at the regular polling places and the duties to be performed by the registers shall be that of registration and to also act as clerks of election. [C73,§597; C97,§§1077, 1082; C24, 27, 31, 35, 39, §690; C46, 50, 54,§47.15; 56GA, ch 64,§8]

**47.16 Time of meeting of registers.** Registers shall meet:

1. On the second Thursday prior to any general, city, or special election.
2. On the last Saturday before any such election.
3. On the day of such election. [C73,§§597, 600; C97,§§1077, 1080, 1082; S13,§1077; C24, 27, 31, 35, 39,§691; C46, 50, 54,§47.16]

**47.17 Duration of meetings.** At the first meeting the registers shall hold a session for two consecutive days, and in presidential years, the session shall be for three consecutive days. All sessions shall be from eight o'clock a. m. to nine o'clock p. m., except on election day, when the session shall end with the closing of the polls. [C73,§597; C97,§§1077, 1080; S13,§1077; C24, 27, 31, 35, 39,§692; C46, 50, 54,§47 17]

**47.18 Right of registration.** Any person claiming to be a voter, or that he will be on election day, may appear before said registers in the election precinct where he claims the right to vote, and make and subscribe, under oath, the statement in said registry book. The signature of the applicant shall be made at the right-hand end of the line under the column "Signature". No person shall register at any other time or place than is designated in this chapter, except as otherwise specially provided by law. [C73,§597; C97,§§1077, 1078; S13,§1077; C24, 27, 31, 35, 39,§693; C46, 50, 54,§47.18]

Registration by absent voter, §53.30

**47.19 Oath.** The following oath shall be administered by one of the registers to each applicant for registration:

"You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, or voter, and your right as such to register and vote under the laws of this state" [C73,§597; C97,§1077; S13,§1077; C24, 27, 31, 35, 39,§694; C46, 50, 54,§47.19]

**47.20 Questions propounded to applicant.** The registers shall, after the administration of said oath, carefully and fully examine said applicant relative to all matters of information indicated by the registry book and, in addition:

1. Whether said applicant came into the precinct for the sole purpose of voting at said election.
2. How long he intends to reside in said precinct.

3. Such other questions as may tend to test his qualifications as a resident of the precinct, citizenship, and right to vote. [C73,§597; C97, §1077; S13,§1077; C24, 27, 31, 35, 39,§695; C46, 50, 54,§47.20]

**47.21 Completing registration.** If the applicant appears to have the right to be registered, the registers shall fill out the above prescribed form of statement, which the applicant shall sign and swear to, as above provided. [C73, §597; C97,§1077; S13,§1077; C24, 27, 31, 35, 39, §696; C46, 50, 54,§47.21]

**47.22 Keeping registry book.** The following requirements shall be observed in the making of registrations, and in the preparation and keeping of the registry book:

1. Each statement for each registrant shall be dated and consecutively numbered, commencing with the number "1" at each registration.

2. The registry book shall, at the close of each day's registration, be ruled off so as to prevent further entries.

3. The registry book shall, when not in use by the registers, be kept in the custody of the city clerk or county auditor until disposed of as provided by law. [C97,§1078; C24, 27, 31, 35, 39,§697; C46, 50, 54,§47.22; 56GA, ch 64,§9]

**Destruction of books, §50.19**

**47.23 Alphabetical list.** The registers shall, within three days after the completion of the registration, made in the second week preceding the election, prepare two alphabetical lists of the names of all persons registered, which lists shall contain, for each person, all the information appearing on the registry book, and, in addition, the date when each person removed to such precinct from his last preceding place of residence when such removal occurred within one year. [C97,§1079; C24, 27, 31, 35, 39, §698; C46, 50, 54,§47.23]

**47.24 Posting.** One of said lists shall be forthwith conspicuously posted by the registers at the usual place of holding elections in such precinct, for inspection of the public, and the other copy shall be retained in their possession. [C73,§599; C97,§1079; C24, 27, 31, 35, 39,§699; C46, 50, 54,§47.24]

**47.25 Correction.** At the meeting on Saturday preceding the election the registers shall:

1. Revise and correct the registry book by striking therefrom the name of any person not entitled to vote at said election.

2. Add to such book, consecutively numbering them, the names of all persons applying for registration who on election day will be entitled to vote in said precinct.

3. Revise and correct the alphabetical list which is in their possession so that it will correspond to the registration to date. [C73, §599; C97,§1080; C24, 27, 31, 35, 39,§700; C46, 50, 54,§47.25]

**47.26 Certifying and copying.** When the alphabetical list has been revised and corrected, it shall be certified and copied by the registers, who shall deliver, or cause to be delivered, such list and copy to the judges of the election of the proper precinct, which delivery shall be made on election day, and before the opening of the polls. [C73,§§599, 600; C97,§1080; C24, 27, 31, 35, 39,§701; C46, 50, 54, §47.26]

**47.27 Division.** The original of said alphabetical list and the copy thereof may each be divided by the registers into not exceeding three separately bound parts. [C24, 27, 31, 35, 39,§702; C46, 50, 54,§47.27]

**47.28 Use of lists at election.** At the opening of the polls and before any ballot shall be received, the judges of the election shall appoint one of their number, or one of the clerks, to check the name of each voter whose name is on the alphabetical lists, to whom a ballot is delivered. [C97,§1080; C24, 27, 31, 35, 39, §703; C46, 50, 54,§47.28]

**47.29 Return of alphabetical lists.** The copy of the alphabetical list thus delivered shall be preserved by the judges, and returned with the vote from that precinct, and the original alphabetical list shall be returned to the city clerk or county auditor. [C73,§599; C97,§1080; C24, 27, 31, 35, 39,§704; C46, 50, 54,§47.29; 56GA, ch 64,§10]

**47.30 Corrections of lists.** All proceedings of registers shall be public, and any person entitled to vote in a precinct shall have the right to be heard before them in reference to corrections of or additions to the lists of such precinct. No person shall be admitted to registry unless he appears in person, except as in this chapter provided, and, if demanded, he shall furnish to the registers such proofs of his right thereto as may by law be required by judges of election of any person offering to vote. [C97,§1081; C24, 27, 31, 35, 39,§705; C46, 50, 54,§47.30]

**Sick and absent voters, §§47.31, 53.30**

**47.31 Sick voters.** If an elector is, by reason of sickness, unable to go to the place of registry on any day the registers may be in session, the registers shall, upon the filing before them, by a registered elector, of an affidavit to that effect, visit such sick elector at his place of residence on any day when not in session, administer the proper oath, and place his name on the registry book and alphabetical list, if found entitled thereto. [C97,§1081; C24, 27, 31, 35, 39,§706; C46, 50, 54,§47.31]

**47.32 Registration on election day.** Registration on election day shall be granted to the following named persons and to no others:

1. To a person who was absent from the city during all the days fixed for registration.

2. To a person who, being a foreigner, has

received his final papers since the last preceding day for registration.

3. To a person whose name was, on the preceding Saturday, and in the absence of such person, stricken from the registration, and who, on said election day, shall prove to the satisfaction of said registers that he is a lawfully qualified voter of said precinct. [C97, §1082; C24, 27, 31, 35, 39, §707; C46, 50, 54, §47.32]

Referred to in §47.88

**47.33 Certificates granted on election day.** Certificates of registration granted on election day shall contain:

1. All the data showing the qualification of the voter as shown by the registration.

2. The special matter showing this voter's right to such certificate under section 47.32.

3. A signed verification of all such data and matter by the applicant.

4. An indorsement by the registers to the effect that the person therein named is a qualified voter in that precinct and that he is entitled to be registered as such.

5. An affidavit of a freeholder who is a registered voter in that precinct, who shall make oath to the qualification of the applicant as a voter in that precinct. [C97, §1082; C24, 27, 31, 35, 39, §708; C46, 50, 54, §47.33]

**47.34 Wrongful striking from list.** If the applicant be one whose name was stricken from registration, such affidavit of said freeholder shall contain the facts showing the right of said applicant to vote in that precinct. Registration in such cases shall be made in the manner required for regular registration. [C97, §1082; C24, 27, 31, 35, 39, §709; C46, 50, 54, §47.34]

Regular registration, §§47.18-47.21

**47.35 Certificates delivered to judges.** Certificates of registration granted on election day shall be handed in to the judges of election when a ballot is delivered to him. The data therefrom, showing the voter's name and his qualification as a voter, shall be entered on the alphabetical lists by the judges and clerks of the election, under the appropriate headings, and the original certificate shall be returned to the city clerk or county auditor, who shall carefully preserve it in the same manner and for the same time as the alphabetical list and pollbook. [C97, §1082; C24, 27, 31, 35, 39, §710; C46, 50, 54, §47.35; 56GA, ch 64, §11]

Preservation, §50.19

**47.36 Registers to certify duplicate registrations.** The registers, prior to each election except presidential elections, and after completing their registration, shall certify the names of all persons by them registered to the registers of the ward or precinct of the same city or county, which the registration shows such persons gave as their last place of residence. [C97, §1083; C24, 27, 31, 35, 39, §711; C46, 50, 54, §47.36; 56GA, ch 64, §12]

Referred to in §47.87

**47.37 Striking off names.** The registers to whom names are certified under section 47.36 shall strike the names of such persons so certified from the registry lists of the ward or precinct in which they last resided, if found thereon. [C97, §1083; C24, 27, 31, 35, 39, §712; C46, 50, 54, §47.37]

**47.38 New registry—how often.** A new registry of voters shall be taken in each year of a presidential election. [C97, §1084; C24, 27, 31, 35, 39, §713; C46, 50, 54, §47.38]

**47.39 Registration book in nonpresidential years.** For all state or municipal elections, general or special, except in presidential years, the registers shall prepare a new registry book by copying from the pollbook of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election, which new registry book shall show all the facts of qualification of each voter as they appear on the last preceding registry book, and which, when thus made up, shall be used at each election until a new registry book is prepared as required by law. [C73, §594; C97, §1084; C24, 27, 31, 35, 39, §714; C46, 50, 54, §47.39]

Referred to in §47.40  
New registry book, §47.38

**47.40 Transfer constitutes registration.** Every person thus registered, as provided in section 47.39, shall be considered as entitled to vote at any election at which said registry book may be used, unless his name shall be dropped by the correction of registration, as authorized by law. [C97, §1084; C24, 27, 31, 35, 39, §715; C46, 50, 54, §47.40]

Striking off names, §§47.25, 47.87

**47.41 Clerk or auditor to furnish registration records.** The city clerk or county auditor shall, on the application of the registers, deliver to them, prior to their first meeting for each election, the registry book, alphabetical list, and pollbook, which they require in order to properly prepare the necessary registry book for the next ensuing election; all of which shall be returned to him when they have completed their work for such election. [C73, §599; C97, §1086; C24, 27, 31, 35, 39, §716; C46, 50, 54, §47.41; 56GA, ch 64, §13]

**47.42 Clerk or auditor to preserve records.** The city clerk or county auditor shall carefully preserve all registry books and alphabetical lists and other papers pertaining to the registration, until destroyed as provided by law. [C97, §1086; C24, 27, 31, 35, 39, §717; C46, 50, 54, §47.42; 56GA, ch 64, §14]

Destruction of books, §50.19

**47.43 Penalty.** If any register or judge of election shall willfully neglect or disregard any duty imposed, or shall make, or permit to be made, any registration, statement, or list, except at the time and place and in the manner herein authorized and prescribed, or shall

knowingly make, or permit to be made, any false statement as aforesaid, or if any person shall willfully make, or authorize to be made, any statement required to be made, false in any particular, or shall violate any of the pro-

visions of this chapter, every such register or judge of election, person or persons, shall be guilty of a misdemeanor. [C97,§1087; C24, 27, 31, 35, 39,§718; C46, 50, 54,§47.43]

Punishment, §687.7

CHAPTER 48

PERMANENT REGISTRATION

Referred to in §53.38

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- 48.25 Entries required.

**48.1 Commissioner of registration.** The office of commissioner of registration is hereby created in all cities now or hereafter having a population of more than one hundred twenty-five thousand inhabitants. The city clerk of each such city is hereby constituted such commissioner of registration. [C27, 31, 35,§718-b1; C39,§718.01; C46, 50, 54,§48.1]

Referred to in §48.20  
Permissive adoption by other cities, §48.22

**48.2 Definitions.** For the purposes of this chapter, the word "elections" shall be held to mean general, municipal, special, school, or primary elections, and shall include state, county, and municipal elections. [C27, 31, 35,§718-b2; C39,§718.02; C46, 50, 54,§48.2]

Referred to in §48.20

**48.3 Registration required.** From and after July 1, 1928, no qualified voter shall be permitted to vote at any election unless such voter shall register as provided in this chapter. [C27, 31, 35,§718-b3; C39,§718.03; C46, 50, 54,§48.3]

Referred to in §48.20

**48.4 Commissioner of registration—duties.** The said commissioner of registration shall have complete charge of the registration of all qualified voters within such city. He shall appoint such deputies and clerks as may be necessary, from the two political parties receiving the highest vote at the last general election. The number of such deputies and clerks for all precinct registration places, and the central registration office, shall be equally divided between the members of the two said political parties. These appointments shall be subject to the approval of the city council. The commissioner of registration shall provide such printed forms and blanks as may be necessary, together with such other supplies and equipment as are necessary to properly carry

out the provisions of this chapter. Subject to the provisions of this chapter, the city council shall prescribe by ordinance such reasonable rules and regulations as to office hours and places and manner of registration as may be necessary. Registration places shall be established throughout the city in the proportion of one to each precinct which shall be open for registration as provided under this chapter during not less than two nor more than four days between July 1 and up to and including the tenth day prior to the next election following the adoption of the plan for registration provided in this chapter. Such registration places shall be selected by the commissioner of registration and shall be open between seven o'clock a. m. and nine o'clock p. m. The commissioner of registration shall appoint the two clerks of election for each precinct, who shall have charge of the election register. [C27, 31, 35,§718-b4; C39,§718.04; C46, 50, 54,§48.4]

Referred to in §48.20

**48.5 Registration lists.** The commissioner of registration shall proceed to take the necessary steps for establishing the permanent registration plan. He shall provide for an original list of qualified voters, indexed alphabetically, which shall be kept at the office of the commissioner of registration in a place and in such manner as to be properly safeguarded. Such list shall be known as the "original registration list" and shall not be removed from the commissioner's office except upon order of court. A second list, to be known as the "duplicate registration list", shall be prepared by the commissioner from the original registration list. Such duplicate registration list shall be open to public inspection at all reasonable times. [C27, 31, 35,§718-b5; C39,§718.05; C46, 50, 54,§48.5]

Referred to in §48.20

**48.6 Form of records.** For the purpose of expediting the work of the commissioner of registration, for uniformity, and for preparation of abstracts and other forms in use by the election boards, the registration records shall be substantially as follows:

Suitable card index devices shall be provided. There shall also be provided suitable index cards of sufficient facial area to contain in plain writing and figures the data required thereon. The following information concerning each applicant for registry shall be entered on the card:

1. Ward.
2. Election precinct.
3. If a man:
  - a. The name of the applicant, giving surname and christian names in full.
  - b. Residence, giving name and number of the street, avenue, or other location of the dwelling, and such additional clear and definite description as may be necessary to give the exact residence of the applicant.
  - c. Date of birth.
  - d. Term of residence in the United States; in the state; in the county; in the precinct.
  - e. Nativity.
  - f. Citizenship. (If naturalized give date of papers and court; also date of naturalization of parents.)
  - g. Date of application for registration.
  - h. Signature of voter. (The applicant after registration shall be required to sign his name on both the original and duplicate registration lists.)

4. If a woman:
  - a. The information requested shall be the same as for the males, with such additional information as may be necessary to determine the qualifications of the applicant for registration. Provided, that, after such original registration, whenever any change of name shall occur, due to marriage or divorce, such applicant shall not be allowed to vote until she has reregistered; and after such reregistration, the previous registration card shall be removed from the files. [C27, 31, 35,§718-b6; C39,§718.06; C46, 50, 54,§48.6]

Referred to in §48.20

**48.7 Change of residence.** There shall be provided removal notices to be given out upon request for the use of any registered voter moving to a new location. These notices shall be printed upon thin card, shall contain a blank form showing where the applicant last resided and the address and exact location to which he is moving, and shall have a line for his signature similar to the one upon the original registration card. Upon receipt of such removal notices, but not later than ten days prior to any election, the commissioner of registration shall make entry of any such change of residence on the original and duplicate registration lists and the applicant shall thereupon be qualified to vote in the new election

precinct. The voter who changes his residence within ten days preceding an election shall vote in the precinct where he is registered. [C27, 31, 35,§718-b7; C39,§718.07; C46, 50, 54, §48.7]

Referred to in §48.20

**48.8 Election register.** The commissioner shall compile and shall deliver to the judges of election in each precinct the duplicate registration list of the voters in that precinct, which shall be known as the election register. Such register shall contain the name and address of every registered voter in that election precinct, indexed by street and house number, or alphabetically by surname, together with a space following each name in which shall be recorded the words "voted" or "not voted", the date, and if a primary, the party, as the case may be; also a space for remarks in which shall be recorded any challenges, affidavit or other information as may be required. The entry of the words "voted" or "not voted", challenge, affidavit, or other information, shall be made by the judges of election immediately after approving the certificate of registration. [C27, 31, 35,§718-b8; C39,§718.08; C46, 50, 54,§48.8; 57GA, ch 65,§1]

Referred to in §§48.20, 48.21

**48.9 Correction of list.** For the purposes of preventing fraudulent voting and for eliminating excess names, following the close of registration or at any other time as may be deemed necessary, the commissioner of registration may send by mail to any voter whose name appears on the original registration list, a notice bearing a statement substantially as follows:

You are hereby notified that your name and address appear on the original registration list as shown on the opposite side of this card. If there is any mistake in the above name and address, present this card at the office of the commissioner of registration, No. .... City Hall, for correction on or before....., 19.... The return of this card by the post office to the commissioner of registration will be accepted as evidence on which to challenge your vote on election day.  
.....  
Commissioner of Registration.

Upon the return by the post office of any such notice, the commissioner of registration shall, and at other times may, direct an authorized clerk to check up, in person, the name and address of any voter, and if said voter is found to have removed from the address as recorded on the original registration list, the commissioner of registration shall cause to be entered on the election register of the proper precinct, in the proper space opposite the said voter's name, the word "challenged". No one so challenged shall be permitted to vote except by complying with all the provisions applicable to the proving of challenges. [C27, 31, 35, §718-b9; C39,§718.09; C46, 50, 54,§48.9]

Referred to in §48.20

**48.10 Deceased persons — record.** Every fifteen days, or at any more frequent times, the commissioner of health or other officer in charge of the death records in any such city shall report to the commissioner of registration the names and addresses of all persons over twenty-one years of age who have died within such city. The commissioner of registration shall, upon receipt of such report, examine the original registration list and duplicate registration list and shall remove therefrom, to an inactive file, the registration cards of all registered persons certified by the health commissioner as deceased. [C27, 31, 35,§718-b10; C39, §718.10; C46, 50, 54,§48.10]

Referred to in §48.20

**48.11 Time and method of registration.** The commissioner of registration, or a duly authorized clerk acting for him, shall, up to and including the tenth day next preceding any election, receive the application for registration of all such qualified voters as shall personally appear for registration at the office of the commissioner or at any other place as is designated by him for registration, who then are or on the date of election next following the day of making such application will be entitled to vote. Any qualified voter who applies for registration shall subscribe to the following oath or affidavit:

“You do solemnly swear or affirm that you will fully and truly answer such questions as shall be put to you, touching your qualifications as a voter, under the laws of this state?”

Upon being sworn, the applicant shall answer such questions as are required, as hereinafter set forth, and the clerk shall fill out the form which the applicant shall sign, and he shall not be required to register again for any election; provided, however, that failure to vote at least once in four calendar years wherein elections are held shall operate as a challenge and shall require the applicant to reregister. In case a qualified voter is unable to write his name, he shall be required to make a cross, which shall be certified by the signing of the name of the applicant by the registration clerk taking the application. A qualified voter who is unable to sign his name shall not be permitted to mail or hand in removal notices as is in this chapter provided, but must appear in person to secure a removal of his name to his new voting precinct. [C27, 31, 35,§718-b11; C39,§718.11; C46, 50, 54,§48.11]

Referred to in §48.20

**48.12 Disabled or absent voters.** Any person entitled to register who is permanently disabled by sickness or otherwise, or who will be absent from the election precinct until after the next succeeding election, may up to and including the tenth day next preceding an election, apply in writing to the commissioner of registration who shall thereupon forward to such voter duplicate registration cards which shall be executed by the voter before a notary public and returned to the commissioner of registration. If such registration cards are

properly executed and show that the voter is duly qualified, then such cards shall be placed in the registration lists. [C27, 31, 35,§718-b12; C39,§718.12; C46, 50, 54,§48.12]

Referred to in §48.20

**48.13 Election registers.** The commissioner of registration shall have nine full days between the last day of registration and election day to perfect his election registers and, for that purpose, nine days before any election day shall be days upon which voters may not register. During these nine days the commissioner shall complete the election registers and, on the day before election day, he shall deliver them as required by law to each election precinct. [C27, 31, 35,§718-b13; C39,§718.13; C46, 50, 54,§48.13]

Referred to in §48.20

**48.14 Revision of lists.** At the close of each calendar year after the fourth year of the registration under this chapter, clerks of registration shall check up the original registration list for the purpose of eliminating excess names and, to that end, they shall examine the election registers and whenever it appears that a registered voter has not voted at least once in four calendar years wherein elections are held, his card shall be taken from the original and duplicate registration lists and placed in a transfer file, and a printed postal card notice of that fact with the information that his vote has been challenged, and that the voter must reregister to remove such challenge, shall be sent to the last known address of said voter. When removal notices are received by the clerks, they shall examine the signatures and compare them with the original and, if they are not similar, a postal card notice specifying a refusal to transfer for that cause, shall be sent to the applicant at the new address given. [C27, 31, 35,§718-b14; C39,§718.14; C46, 50, 54, §48.14]

Referred to in §48.20

**48.15 Challenges.** Any person may challenge a registration at any time by filing a written challenge with the commissioner of registration. Persons so challenging shall appear before the commissioner of registration thereafter to prove their challenge, and the person so challenged shall have notice of the challenge. The commissioner shall decide the right to the entry under the evidence. Either party may appeal to the district court of the county in which the challenge is made, and a date for the hearing shall be fixed and the decision of such court shall be final. [C27, 31, 35,§718-b15; C39,§718.15; C46, 50, 54,§48.15]

Referred to in §48.20

**48.16 Penalties.** Any officer or employee who shall willfully fail to perform or enforce any of the provisions of this chapter, or who shall unlawfully or fraudulently remove any registration card or record from its proper compartment in the registration records, or who shall willfully destroy any record provided by this chapter, or any person who shall



willfully or fraudulently register more than once, or register under any but his true name, or votes or attempts to vote by impersonating another who is registered, or who willfully or fraudulently registers in any election precinct where he is not a resident at the time of registering, or who adds a name or names to a page or pages, or who violates any of the provisions of this chapter, shall be guilty of felony and, upon conviction, shall be imprisoned in the state penitentiary for not less than one year. [C27, 31, 35, §718-b16; C39, §718.16; C46, 50, 54, §48.16]

Referred to in §48.20

**48.17 Qualification of officers.** Before entering upon his duties, each officer or clerk in whatever capacity shall subscribe to an oath in such form as provided by the attorney for the city. [C27, 31, 35, §718-b17; C39, §718.17; C46, 50, 54, §48.17]

Referred to in §48.20

**48.18 Expenses.** The cost of material, equipment and labor for the installation and maintenance of the permanent registration system shall be shared equally by the county and the city, and the city council of such city shall allocate from the general fund of the city sufficient funds, based upon the estimate prepared by the commissioner of registration and subject to the approval of the city council. The city council of any city in which this chapter applies may, in its judgment, compensate the commissioner of registration for the additional service required by the performance of the duties herein described, in addition to any salary such commissioner of registration as city clerk may receive at the time of the adoption of this chapter, and notwithstanding any provisions of the charter of such city, and the compensation so paid to the commissioner of registration may be retained by him, notwithstanding any provisions in the charter or ordinances of such city to the contrary. The city council shall by ordinance fix the compensation paid to deputies or clerks. [C27, 31, 35, §718-b18; C39, §718.18; C46, 50, 54, §48.18; 54GA, ch 159, §27]

Referred to in §§48.19, 48.20

**48.19 Registration fund.** The city council of any city having a population of one hundred twenty-five thousand or over may establish a permanent registration fund and the money provided by said city council under authority of section 48.18 shall be placed in said fund.

The money received from the county in which said city is located for one-half of the expenses of the installation and maintenance of the permanent registration system as provided for in section 48.18 shall be placed in said permanent registration fund. [C35, §718-e1; C39, §718.19; C46, 50, 54, §48.19]

**48.20 Nonapplicability of statutes.** The provision of chapter 47, and lines 6 to 10, inclusive, of section 49.78, shall not be applicable to sections 48.1 to 48.18, inclusive, of this chapter. [C27, 31, 35, §718-b19; C39, §718.20; C46, 50, 54, §48.20]

**48.21 Certificate of registration.** In municipalities having permanent registration for elections, before any person offering to vote receives the ballots from the judge or is permitted to enter the voting machine, a certificate containing the following information shall be signed by the applicant:

**CERTIFICATE OF REGISTERED VOTER**

I hereby certify that I am a qualified voter duly registered under the permanent registration act of 1927 in the ..... precinct, ..... ward, city of ....., county of ....., Iowa.

Party affiliation (if primary election) .....

Signature of voter .....

Address .....

Approved:

.....  
Judge or Clerk of Election.

The certificate of registration shall be approved by a judge or clerk of election if the signature of the voter on the certificate of registration and the signature on the registry list appear to be the same. The voter shall present this certificate to the judge in charge of the ballots or voting machine, as proof of his right to vote. After voting the voter shall present his certificate of registration to the judge or clerk in charge of the register of election, who shall make entry as provided in section 48.8. The certificates shall be arranged in alphabetical order after the close of the election, placed in envelopes provided for that purpose, and returned to the city clerk as commissioner of registration. [C27, 31, 35, §718-b20; C39, §718.21; C46, 50, 54, §48.21]

Referred to in §48.25

**48.22 Permissive adoption.** The city council of any other city or board of supervisors of any county in which registration of voters is required, may, by ordinance, adopt the plan for registration provided in this chapter. When the city council of any such city or board of supervisors of any such county enacts an ordinance establishing such plan, all of the provisions of this chapter shall apply to such city or county. [C27, 31, 35, §718-b21; C39, §718.22; C46, 50, 54, §48.22; 56GA, ch 65, §1]

**48.23 Ordinances.** The council or board may adopt ordinances necessary to carry into effect the provisions of this chapter. [C27, 31, 35, §718-b22; C39, §718.23; C46, 50, 54, §48.23; 56GA, ch 65, §2]

**48.24 Party affiliations.** The lists of voters provided for in section 43.40 need not be prepared in cities or townships in counties having the permanent registration system. The registration cards provided for in this chapter shall be used in lieu of such lists. [C31, 35, §718-c1; C39, §718.24; C46, 50, 54, §48.24; 56GA, ch 65, §3]

**48.25 Entries required.** The entries required to be made in sections 49.83 and 49.91 shall be made on the certificates of registration provided for in section 48.21. [C31, 35, §718-c2; C39, §718.25; C46, 50, 54, §48.25]

Omnibus repeal, 42GA, ch 21, §23

## CHAPTER 49

## METHOD OF CONDUCTING ELECTIONS

Referred to in §53.6. Chapter applicable to primary elections, §43.5. Criminal offenses, ch 738; also §§43.119, 43.120

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| 49.4 Change in precincts by supervisors.                     | 49.58 Vacancies certified before ballots are printed.     |
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| 49.13 Judges in cities and towns.                            | 49.67 Form of reserve supply.                             |
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49.110 Intimidation of employees by employer.  
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49.117 Compensation of police.  
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 49.121 Promise of influence.  
 49.122 Penalty.

**49.1 Elections included.** The provisions of this chapter shall apply to all elections known to the laws of the state, except school elections. [C97,§1088; C24, 27, 31, 35, 39,§719; C46, 50, 54, §49.1]

School elections, ch 277

**49.2 Terms defined.** For the purposes of this chapter:

1. The term "general election" means any election held for the choice of national, state, judicial, district, county, or township officers.

2. The term "city election" means any municipal election held in a city or town.

3. The term "special election" means any other election held for any purpose authorized or required by law. [C97,§1089; C24, 27, 31, 35, 39,§720; C46, 50, 54,§49.2]

Applicable to primary elections, §43.5

**49.3 Election precincts.** Election precincts shall, except as otherwise provided, be as follows:

1. Each township when there is no part of a city therein.

2. The portion of a township outside the limits of any city.

3. Such divisions of cities as may be fixed by the council by ordinance.

4. Each incorporated town, for town elections. [C51,§245; R60,§480; C73,§§501, 605; C97, §1090; S13,§1090; C24, 27, 31, 35, 39,§721; C46, 50, 54,§49.3]

Exceptions, §§49.4-49.7

**49.4 Change in precincts by supervisors.** The board of supervisors may divide a township, or part thereof, into two or more precincts, or change or abolish such division. An order establishing precincts shall define their boundaries. [C73,§603; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§722; C46, 50, 54,§49.4]

**49.5 City precincts.** The council of a city may, from time to time, by ordinance definitely fixing the boundaries, divide the city into such number of election precincts as will best serve the convenience of the voters. [C97,§1090; S13, §1090; C24, 27, 31, 35, 39,§723; C46, 50, 54,§49.5]

**49.6 Power to combine township and city precincts.** The board of supervisors and the council of any city of less than thirty-five hundred inhabitants, not including the inmates of any state institution, may combine any part of the township outside of such city with any or all the wards or precincts thereof as one election precinct, or change or abolish such precinct. [C97,§1090; S13,§1090; C24, 27, 31, 35, 39, §724; C46, 50, 54,§49.6]

**49.7 Portions of townships combined.** No precinct shall contain different townships or parts thereof, except where, by reason of the existence of a village or incorporated town on or near a township line, the board of supervisors may create a voting precinct in compact form, from said town or village, and may include therein territory adjoining and adjacent to said village or town, which is situated in two or more townships. [C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§725; C46, 50, 54,§49.7]

Referred to in §49.8

**49.8 Changes in precincts.** In cases contemplated in section 49.7, the board may, from time to time, make such changes in said boundaries as the convenience of the voters may require. [S13,§1090; C24, 27, 31, 35, 39,§726; C46, 50, 54,§49.8]

**49.9 Proper place of voting.** No person shall vote in any precinct but that of his residence, except as provided in section 363.21. [C73,§605; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§727; C46, 50, 54,§49.9]

**49.10 Polling places for certain precincts.**

1. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, and a polling place for a township which entirely surrounds another township containing a city, may be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the board of supervisors may provide.

2. If a petition be filed with the county supervisors ninety days before any primary, general or special election stating that there is no suitable or adequate polling place within a township constituting a voting precinct and that it is desirable and to the interest of the voters of such township voting precinct that a voting place therefore be designated outside the territorial limits of such township precinct, the board of supervisors shall fix as a polling place for such township precinct, such polling place outside the township precinct as the board deems most convenient to the electors of the township precinct. Such petition must be signed by voters of the precinct exceeding in number one-half the total number of votes cast in the township precinct for the office of governor at the last preceding general election. [C97,§1091; S13,§1091; C24, 27, 31, 35, 39,§728; C46, 50, 54,§49.10; 57GA, ch 66,§1]

**49.11 Notice of boundaries of precincts.** The board of supervisors or council shall number

or name the several precincts established, and cause the boundaries of each to be recorded in the records of said board of supervisors or council, as the case may be, and publish notice thereof in some newspaper of general circulation, published in such county or city, once each week for three consecutive weeks, the last to be made at least thirty days before the next general election. The precincts thus established shall continue until changed. [C73, §604; C97, §1092; C24, 27, 31, 35, 39, §729; C46, 50, 54, §49.11]

**49.12 Election boards.** Election boards shall consist of three judges and two clerks. Not more than two judges and not more than one clerk shall belong to the same political party or organization, if there be one or more electors of another party qualified and willing to act as such judge or clerk. In all election precincts with voters in excess of one thousand an additional election board may be named. Nothing in this chapter shall change or abrogate any of the provisions of law relating to double election boards. [C51, §§246, 248; R60, §§481, 483; C73, §606; C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §730; C46, 50, 54, §49.12; 56GA, ch 66, §1]

Referred to in §51.3  
 Additional clerks, §47.15  
 Boards in primary elections, §43.81  
 Double election boards, ch 51

**49.13 Judges in cities and towns.** In cities and towns, the councilmen shall be judges of election; but in case more than two councilmen belonging to the same political party or organization are residents of the same election precinct, the county board of supervisors may designate which of them shall serve as judge. [C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §731; C46, 50, 54, §49.13]

**49.14 Judges and clerk in township precincts.** In township precincts, the clerk of the township shall be a clerk of election of the precinct in which he resides, and the trustees of the township shall be judges of election, except that, in townships not divided into election precincts, if all the trustees be of the same political party, the board of supervisors shall determine by lot which two of the three trustees shall be judges of such precinct. [C51, §§246, 248; R60, §§481, 483; C73, §606; C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §732; C46, 50, 54, §49.14]

**49.15 Supervisors to choose members—chairman.** The membership of such election board shall be made up or completed by the board of supervisors from the parties which cast the largest and next largest number of votes in said precinct at the last general election, or that one which is unrepresented. The board of supervisors shall also designate one member of said election board to be the chairman of that board, and of the counting board, if any, with authority over the mechanics of the work of said boards. [C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §733; C46, 50, 54, §49.15]

**49.16 Council to act in cities and towns.** In city and town elections, the powers given in this chapter and duties herein made incumbent upon the board of supervisors shall be performed by the council. [C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §734; C46, 50, 54, §49.16]  
 City and town elections, §363.8 et seq.

**49.17 Boards with only one voting machine.** The election board in precincts using only one voting machine shall consist of three judges, only two of whom shall be of the same political party, and two of whom shall also act as clerks. [C24, 27, 31, 35, 39, §735; C46, 50, 54, §49.17]

**49.18 Vacancies occurring on election day.** If, at the opening of the polls in any precinct, there shall be a vacancy in the office of clerk or judge of election, the same shall be filled by the members of the board present, and from the political party which is entitled to such vacant office under the provisions of this chapter. [C51, §247; R60, §482; C73, §607; C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §736; C46, 50, 54, §49.18]  
 Vacancies in primary elections, §43.81

**49.19 Boards for special elections—duty of auditor.** The election board at any special election shall be the same as at the last preceding general election. In case of vacancies happening therein, the county auditor may make the appointments to fill the same when the board of supervisors is not in session. [C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §737; C46, 50, 54, §49.19]

**49.20 Compensation of members.** The members of election boards shall receive seventy-five cents per hour while engaged in the discharge of their duties. Compensation shall be paid to members of election boards only after the vote has been canvassed and it has been determined in the course of such canvass that the pollbook jurat has been properly executed by the election board. [SS15, §1093; C24, 27, 31, 35, 39, §738; C46, 50, 54, §49.20]

Referred to in §51.14  
 For compensation of judges and clerks at primary elections, see §43.32

**49.21 Polling places.** In townships the trustees, except as otherwise provided, shall provide, at the expense of the county, suitable places in which to hold all elections provided for in this chapter, and see that the same are warmed and lighted. [C51, §§222, 245; R60, §§444, 480; C73, §§391, 603; C97, §§566, 1113; C24, 27, 31, 35, 39, §739; C46, 50, 54, §49.21]

Referred to in §49.22

**49.22 Duty of mayor and clerk.** In cities and towns, the duties placed upon the trustees by section 49.21 shall be performed by the mayor and clerk. [C97, §1113; C24, 27, 31, 35, 39, §740; C46, 50, 54, §49.22]

**49.23 Notice of change.** When a change is made from the usual place of holding elections in the township, notice of such change shall be given by posting up notices in three public

places in the township, ten days prior to the day on which the election is to be held. [C51, §222; R60, §444; C73, §391; C97, §566; C24, 27, 31, 35, 39, §741; C46, 50, 54, §49.23]

**49.24 Schoolhouses as polling places.** In precincts outside of cities and towns the election shall, if practicable, be held in the public school building. All damage to the building or furniture shall be paid by the county. [C97, §1113; C24, 27, 31, 35, 39, §742; C46, 50, 54, §49.24]

Expenses, §49.118

Schoolhouses as polling places, §297.9

**49.25 Arrangement and number of polling places and booths.** The number, arrangement, and construction of polling places and voting booths shall be as follows:

1. A guardrail shall be so constructed and placed that only such persons as are inside such rail can approach within six feet of the ballot box, or of the booths.

2. The voting booths shall be so arranged that they can only be reached by passing within said guardrail, and so that they shall be in plain view of the election officers, and both booths and ballot boxes shall be in plain view of persons outside of the guardrail.

3. Each booth shall be at least three feet square, and have three sides inclosed, the side in front to open and shut by a door swinging outward, or closed with a curtain.

4. Each side of the booth shall be seven feet high, and the door or curtain shall extend to within two feet of the floor, and shall be closed while the voter is preparing his ballot.

5. Each booth shall contain a shelf at least one foot wide, at a convenient height for writing, and shall be well lighted.

6. The number of voting booths shall not be less than one to every sixty voters or fraction thereof who voted at the last preceding election in the precinct.

7. The booths and compartments shall be so built and arranged, if possible, as to be permanent, so that after the election they may be taken down and deposited with the township, city, or town clerk, as the case may be, for safe-keeping and for future use. [C97, §1113; C24, 27, 31, 35, 39, §743; C46, 50, 54, §49.25]

**49.26 Ballot boxes.** The auditor shall furnish each precinct in the county, except as provided in section 49.27, the necessary ballot boxes with locks and keys therefor. [C51, §254; R60, §489; C73, §614; C97, §1130; S13, §1130; C24, 27, 31, 35, 39, §744; C46, 50, 54, §49.26]

**49.27 Separate ballot box and ballots for township officers.** When the territory of a precinct is such that one or more of the officers of a township can be legally voted for by only a part of the precinct voters, the auditor shall prepare separate ballots for such township officer or officers, and the trustees shall furnish a separate ballot box in which such special ballots shall be deposited when voted. Only such special ballots shall be placed in said special

ballot box. The judges of election shall have the right to administer an oath to any person and to examine him under oath in order to determine whether he is entitled to vote for the township officer or officers. [C97, §1130; S13, §1090, 1130; C24, 27, 31, 35, 39, §745; C46, 50, 54, §49.27]

Referred to in §49.26

**49.28 Auditor to furnish pollbooks and supplies.** The auditor shall prepare and furnish to each precinct two pollbooks, and all other books, blanks, materials, and supplies necessary to carry out the provisions of this chapter. Each pollbook shall contain a column for the names of the voters, a column for the number, and sufficient printed blank leaves to contain the entries of the oaths, certificates, and returns. [C51, §255; R60, §490; C73, §615; C97, §1113, 1132; C24, 27, 31, 35, 39, §746; C46, 50, 54, §49.28]

**49.29 Voting by ballot.** In all elections regulated by this chapter, the voting shall be by ballots printed and distributed as hereinafter provided, except as may be otherwise specially directed by law. [C97, §1097; C24, 27, 31, 35, 39, §747; C46, 50, 54, §49.29]

**49.30 All candidates on one ballot—exception.** The names of all candidates to be voted for in such election precinct, except presidential electors, shall be printed on one ballot, except that at any election where voting machines are used, and it is impossible to place the names of all candidates on the machine ballot, the county auditor, city clerk, or town clerk, may provide a separate printed ballot for the candidates for judge of district court where there is no contest, and the township ticket, or either; one of each of said printed ballots to be furnished each qualified voter. [C51, §256; R60, §491; C73, §616; C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §748; C46, 50, 54, §49.30; 56GA, ch 67, §1]

Referred to in §§49.31, 52.10

**49.31 Arrangement of party nominees.** All nominations of any political party or group of petitioners, except as provided in section 49.30, shall be placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except as provided in section 49.32.

In counties where two representatives are to be elected to the general assembly at a general or special election the names of candidates shall be arranged and printed on the ballots in the following manner:

The county auditor shall prepare a list of the election precincts of his county, by arranging the various townships, towns and cities in the county in alphabetical order, and the wards or precincts in each city, town, or township in numerical order under the name of such city, town, or township. He shall then arrange the surnames of each political party's

candidates for such offices alphabetically for the respective offices for the first precinct on the list; thereafter, for each political party occupying an odd-numbered position on the ballot he shall reverse the position of the candidates' names in each succeeding precinct, and for each political party occupying an even-numbered position on the ballot he shall reverse the position of the candidates' names in each succeeding group of two precincts beginning with the third and fourth, followed by the fifth and sixth and so on through the list of precincts. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§749; C46 50, 54,§49.31]

Referred to in §52.10

**49.32 Candidates for president in place of electors.** The candidates for electors of president and vice-president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which they are to be elected the names of candidates for president and vice-president, respectively, of such parties or group of petitioners shall be placed on the ballot, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted titles for each political party, or group of petitioners, nominating a set of candidates for electors. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§750; C46, 50, 54,§49.32]

Referred to in §§49.31, 52.10

**49.33 One square for president and vice-president.** Upon the left-hand margin of each separate column of the ballot, immediately opposite the names of the candidates for president and vice-president, a single square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed in front of a bracket inclosing the names of the said candidates for president and vice-president. The votes for said candidates shall be counted and certified to by the election judges in the same manner as the votes for other candidates. [C24, 27, 31, 35, 39,§751; C46, 50, 54,§49.33]

Referred to in §52.10  
Canvass of votes, ch 50

**49.34 United States senators.** At all general elections next preceding the expiration of the term of office of United States senator, there shall be placed upon the official ballot in the proper place the names of candidates for all parties or groups of petitioners for said office that have been nominated by law. The votes for said candidates shall be counted and certified to by the election judges in the same manner as votes for other candidates. [S13,§1106; C24, 27, 31, 35, 39,§752; C46, 50, 54,§49.34]

Referred to in §52.10  
Canvass of votes, ch 50

**49.35 Order of arranging names.** Each list of candidates for the several parties and groups of petitioners shall be placed in a separate column on the ballot, in such order as the authorities charged with the printing of the ballots shall decide, except as otherwise pro-

vided, and be called a ticket. [C97,§1106; S13, §1106; C24, 27, 31, 35, 39,§753; C46, 50, 54,§49.35]

Referred to in §52.10  
Order of names in primaries, §43.28

**49.36 Candidates of nonparty organization.** The term "group of petitioners" as used in the foregoing sections shall embrace an organization which is not a political party as defined by law. [C24, 27, 31, 35, 39,§754; C46, 50, 54, §49.36]

Referred to in §52.10  
Nonparty organization, §43.2; also ch 44  
Political party defined, §43.2

**49.37 Columns to be separated.** Each of the columns containing the list of candidates, including the party name, shall be separated by a distinct line. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§755; C46, 50, 54,§49.37]

Referred to in §52.10

**49.38 Candidate's name to appear but once.** The name of a candidate shall not appear upon the ballot in more than one place for the same office, whether nominated by convention, primary, caucus, or petition, except as hereinafter provided. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§756; C46, 50, 54,§49.38]

Referred to in §52.10  
Name to be repeated, §49.41

**49.39 Dual nomination.** When two or more political parties, or when two or more political organizations which are not political parties, or when a political party and a political organization which is not a political party, nominate the same candidate for the same office, such nominee shall forthwith designate, in writing, the political party name, or the political organization name, under which he desires to have his name printed on the official ballot for the ensuing general election; such written designation shall be filed with the officer with whom the nomination paper, or certificate of nomination by a convention or caucus, is filed and the name of such nominee shall appear on the ballot in accordance therewith. [C97,§1106; S13, §1087-a6, 1106; C24, 27, 31, 35, 39,§757; C46, 50, 54,§49.39]

Referred to in §§49.40, 52.10

**49.40 Failure to designate.** If the designation referred to in section 49.39 be not filed, the following rules shall govern:

1. If the nomination be by two or more political parties, the name of such nominee shall be printed under the party designation under which nomination papers were first filed in his behalf.
2. If the nomination be by a political party and also by a political organization which is not a political party, the name of such nominee shall be printed under the name of the political party or political organization first filing nomination papers, or certificate of nomination, as the case may be.
3. If the nomination be by two or more political organizations which are not political parties, the name of such nominee shall be printed

under the name of the political organization first filing a certificate of nomination of such candidate. [C97,§1106; S13,§§1087-a6, 1106; C24, 27, 31, 35, 39,§758; C46, 50, 54,§49.40]

Referred to in §52.10

**49.41 Nominees for judge of district court.**

The name of a nominee for the office of judge of the district court shall be printed on said general official ballot as a candidate of each political party, political organization, or group of petitioners nominating such candidate. The bar association or convention of attorneys of any county or judicial district shall be deemed a political organization for the purpose of this section. [S13,§1106; C24, 27, 31, 35, 39,§759; C46, 50, 54,§49.41]

Referred to in §52.10

Nonparty organizations, §43.2; also ch 44

**49.42 Form of official ballot.** Said ballot shall be substantially in the following form:

- |   |  |   |   |
|---|--|---|---|
| <p><input type="radio"/> REPUBLICAN</p> <p><input type="checkbox"/> { For President, A.... B...., of Ohio.<br/>For Vice-President, C.... D...., of New York.<br/>For United States Senator, E.... F...., of....County.<br/>For Governor, G.... H...., of.....County.<br/>For Lieutenant Governor, I.... J...., of.....County.<br/>For Judge of Supreme Court, L.... M...., of.....County.</p> | <p><input type="radio"/> DEMOCRATIC</p> <p><input type="checkbox"/> { For President, N.... O...., of Virginia.<br/>For Vice-President, P.... Q...., of Indiana.<br/>For United States Senator, R.... S...., of....County.<br/>For Governor, T.... U...., of.....County.<br/>For Lieutenant Governor, V.... W...., of.....County.<br/>For Judge of Supreme Court, X.... Y...., of.....County.</p> | <p><input type="radio"/> PROHIBITION</p> <p><input type="checkbox"/> { For President, A.... B...., of Maine.<br/>For Vice-President, C.... D...., of Illinois.<br/>For United States Senator, E.... F...., of....County.<br/>For Governor, G.... H...., of.....County.<br/>For Lieutenant Governor, I.... J...., of.....County.<br/>For Judge of Supreme Court, L.... M...., of.....County.</p> | <p><input type="radio"/> UNION LABOR</p> <p><input type="checkbox"/> { For President, N.... O...., of Idaho.<br/>For Vice-President, P.... Q...., of Ohio.<br/>For United States Senator, R.... S...., of....County.<br/>For Governor, T.... U...., of.....County.<br/>For Lieutenant Governor, V.... W...., of.....County.<br/>For Judge of Supreme Court, X.... Y...., of.....County.</p> |
|---|--|---|---|

[C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§760; C46, 50, 54,§49.42]

Referred to in §§52.10, 52.12

**49.43 Constitutional amendment or other public measure.**

When a constitutional amendment or other public measure is to be voted upon by the electors, it shall be printed in full upon a separate ballot, preceded by the words, "Shall the following amendment to the constitution (or public measure) be adopted?" [C97, §1106; S13,§1106; C24, 27, 31, 35, 39,§761; C46, 50, 54,§49.43]

Referred to in §49.45

**49.44 Form of ballot.** Upon the right-hand margin, opposite said words, two spaces shall be left, one for votes favoring such amendment or public measure, and the other for votes opposing the same. In one of these spaces the word "yes" or other word required by law shall be printed; in the other, the word "no" or other word required, and to the right of each space a square shall be printed to receive the voting cross. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§762; C46, 50, 54,§49.44]

Referred to in §49.45

**49.45 General form of ballot.** Ballots referred to in sections 49.43 and 49.44 shall be substantially in the following form:

"Shall the following amendment YES  to the constitution (or public meas- NO  ure) be adopted?"

(Here insert in full the proposed constitutional amendment or public measure.) [C97, §1106; S13,§1106; C24, 27, 31, 35, 39,§763; C46, 50, 54,§49.45]

Referred to in §278.2

**49.46 Marking ballots on public measures.**

The elector shall designate his vote by a cross mark, thus, "X", placed in the proper square. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§764; C46, 50, 54,§49.46]

Referred to in §278.2

**49.47 Notice on ballots.** At the top of ballots on such public measures shall be printed the following:

"[Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (X) mark in the square after the word 'Yes'. For a negative vote make a similar mark in the square following the word 'No'.]" [S13,§1106; C24, 27, 31, 35, 39,§765; C46, 50, 54, §49.47]

Referred to in §278.2

**49.48 Different measures on same ballot.**

If more than one constitutional amendment or public measure is to be voted upon, they shall be printed upon the same ballot, one below the other, with one inch space between the several constitutional amendments or public measures to be submitted. [S13,§1106; C24, 27, 31, 35, 39,§766; C46, 50, 54,§49.48]

**49.49 Printing of ballots on public measures.**

All of such ballots for the same polling place

shall be of the same size, similarly printed, upon yellow colored paper. On the back of each such ballot shall be printed appropriate words, showing that such ballot relates to a constitutional or other question to be submitted to the electors, so as to distinguish the said ballots from the official ballot for candidates for office, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed. [S13,§1106; C24, 27, 31, 35, 39,§767; C46, 50, 54,§49.49]

**49.50 Indorsement and delivery of ballots.** Ballots on such public measures shall be indorsed and given to each voter by the judges of election, as in case of ballots generally, and shall be subject to all other laws governing ballots for candidates, so far as the same shall be applicable. [S13,§1106; C24, 27, 31, 35, 39, §768; C46, 50, 54,§49.50]

**49.51 County auditor to control printing.** For all elections held under this chapter, except those of cities or towns, the county auditor shall have charge of the printing of ballots in his county, and shall cause to be placed thereon the names of all candidates which have been certified to him by the secretary of state, in the order the same appear upon said certificate, together with those of all other candidates to be voted for thereat, whose nominations have been made in conformity with law. [C97,§1107; SS15,§1107; C24, 27, 31, 35, 39,§769; C46, 50, 54,§49.51]

**49.52 Candidates for township offices—when omitted.** The name of a candidate for a township office shall not be placed upon the general official ballot for a precinct when the territory of said precinct is such that only a part of the precinct voters can legally vote for said candidate. In such case special ballots shall be prepared as heretofore provided. [C97,§1107; SS15,§1107; C24, 27, 31, 35, 39,§770; C46, 50, 54, §49.52]

Separate ballots, §49.27

**49.53 City or town clerk to control printing.** In city or town elections, the clerk shall have charge of the printing of the ballots, and shall cause to be placed thereon the names of all candidates to be voted for thereat, whose nominations have been made as provided by law. [C97,§1107; SS15,§1107; C24, 27, 31, 35, 39,§771; C46, 50, 54,§49.53]

**49.54 Publication of ballot.** For publication of the official ballot, forty cents for each ten lines of brevier or its equivalent may be charged, the space necessarily occupied thereby being measured as if it were in brevier type set solid. In no case shall the cost of publishing the official ballot exceed forty dollars for each of the two papers in which it shall be published, except in presidential years, when it shall not exceed the sum of seventy dollars for each of said papers. [C73,§3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39,§772; C46, 50, 54,§49.54]

**49.55 Delivery of ballots to judges.** In all cases the ballots shall be furnished the election judges at the polling place in each precinct not less than twelve hours before the opening of the polls on the morning of the election. [C97,§1107; SS15,§1107; C24, 27, 31, 35, 39,§773; C46, 50, 54,§49.55]

**49.56 Maximum cost of printing.** The cost of printing the official election ballots shall not exceed thirty-seven dollars and fifty cents per thousand ballots or fraction thereof except in presidential years, when the cost shall not exceed forty-five dollars per thousand where two thousand or more ballots are printed for a county. Where less than two thousand ballots are printed the price shall not exceed forty-five dollars per thousand, except in presidential years when the price shall not exceed sixty dollars per thousand or fraction thereof. [SS15,§1107; C24, 27, 31, 35, 39,§774; C46, 50, 54,§49.56]

Referred to in §53.46

**49.57 Method and style of printing ballots.** Ballots shall be prepared as follows:

1. They shall be on plain white paper, through which the printing or writing cannot be read.

2. The party name shall be printed in capital letters, not less than one-fourth of an inch in height.

3. The names of candidates shall be printed in capital letters, not less than one-eighth, nor more than one-fourth of an inch in height.

4. A square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

5. On the outside of the ballot, so as to appear when folded, shall be printed the words "Official ballot", followed by the designation of the polling place for which the ballot is prepared, the date of the election, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed. [C97,§1109; S13,§1109; C24, 27, 31, 35, 39,§775; C46, 50, 54,§49.57]

One square for president, etc., §49.33  
Signature in primary elections, §43.36

**49.58 Vacancies certified before ballots are printed.** The name supplied for a vacancy by the certificate of the secretary of state, or by nomination certificates or papers for a vacancy filed with the county auditor, or city or town clerk, shall, if the ballots are not already printed, be placed on the ballots in place of the name of the original nominee. [C97,§1108; C24, 27, 31, 35, 39,§776; C46, 50, 54,§49.58]

**49.59 Vacancies certified after ballots are printed.** If vacancies be certified after the ballots have been printed, new ballots, whenever practicable, shall be furnished. [C97, §1108; C24, 27, 31, 35, 39,§777; C46, 50, 54,§49.59]



**49.60 Inserting name of vacancy nominee.** When it may not be practicable, after a vacancy has been certified, to have new ballots printed, the election officers having charge of them shall place the name supplied for the vacancy upon each ballot used before delivering it to the judges of election. [C97,§1108; C24, 27, 31, 35, 39,§778; C46, 50, 54,§49.60]

**49.61 Furnishing judges name of vacancy nominee—pasters.** If said ballots have been delivered to the judges of election before a vacancy has been certified, said auditor or clerk shall immediately furnish the name of such substituted nominee to all judges of election within the territory in which said nominee may be a candidate.

Pasters with the name of the substituted nominee thereon shall likewise be furnished the voter with his ballot when possible to do so. [C97,§1108; C24, 27, 31, 35, 39,§779; C46, 50, 54,§49.61]

Referred to in §49.62

**49.62 Filling in name of vacancy nominee.** Judges of election having charge of the ballots shall, in the case contemplated in section 49.61, place the name supplied for the vacancy upon each ballot issued before delivering it to the voter, by affixing a paster, or by writing or stamping the name thereon. [C97,§1108; C24, 27, 31, 35, 39,§780; C46, 50, 54,§49.62]

**49.63 Time of printing—inspection and correction.** Ballots shall be printed and in the possession of the officer charged with their distribution in time to enable him to furnish ballots to absent voters as provided by law. Said printed ballots shall be subject to the inspection of candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter. [C97,§1110; C24, 27, 31, 35, 39, §781; C46, 50, 54,§49.63]

Ballot to absent voter, §53.2  
Correction of primary ballots, §43.25

**49.64 Number ballots delivered.** The officers charged with the printing of the ballots shall cause ballots of the kind to be voted in each precinct, to be delivered to the judges of election as follows: In general elections which are presidential elections seventy-five ballots for every fifty votes, or fraction thereof, cast in said precinct at the last preceding general election which was also a presidential election; and in general elections which are not presidential elections, seventy-five ballots for every fifty votes, or fraction thereof, cast therein at the last preceding general election which was not a presidential election. [C97,§1110; C24, 27, 31, 35, 39,§782; C46, 50, 54,§49.64]

**49.65 Packing ballots — delivery — receipts.** Such ballots shall be put up in separate sealed packages, with marks on the outside, clearly designating the polling place for which they are intended and the number of ballots inclosed, and receipt therefor shall be given by the judge or judges of election to whom they

are delivered, which receipt shall be preserved by the officer charged with the printing of the ballots. [C97,§1110; C24, 27, 31, 35, 39,§783; C46, 50, 54,§49.65]

**49.66 Reserve supply of ballots.** Any officer charged with the printing and distribution of ballots shall provide and retain at his office an ample supply of ballots, in addition to those distributed to the several voting precincts, and if at any time the ballots furnished to any precinct shall be lost, destroyed, or exhausted before the polls are closed, on written application, signed by a majority of the judges of such precinct, or signed and sworn to by one of such judges, he shall immediately cause to be delivered to such judges, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the provisions of this chapter. [C97,§1110; C24, 27, 31, 35, 39,§784; C46, 50, 54,§49.66]

**49.67 Form of reserve supply.** For general elections, the supply of ballots so retained shall only equal the number provided for the precinct casting the largest vote at the preceding general election, and shall include only the portions of the various tickets to be voted for throughout the entire county, with blank spaces in which the names of candidates omitted may be written by the voter, and with blank spaces in the indorsement upon the back of such ballots, in which the name of the precinct shall be written by the judges of election. [C97,§1110; C24, 27, 31, 35, 39,§785; C46, 50, 54,§49.67]

**49.68 Attorney general to furnish instructions.** The attorney general shall prepare, and from time to time revise, written instructions to the voters relative to voting, and deliver such instructions to the secretary of state. Such instructions shall cover the following matters:

1. The manner of obtaining ballots.
2. The manner of marking ballots.
3. That unmarked or improperly marked ballots will not be counted.
4. The method of gaining assistance in marking ballots.
5. That any erasures or identification marks, or otherwise spoiling or defacing a ballot, will render it invalid.
6. Not to vote a spoiled or defaced ballot.
7. How to obtain a new ballot in place of a spoiled or defaced one.
8. Upon the right of an employee to absent himself for two hours for the purpose of voting, by application for leave so to do made before the day of election, without deduction from his salary or wages.
9. Any other matters thought necessary. [C97,§1111; C24, 27, 31, 35, 39,§786; C46, 50, 54,§49.68]

**49.69 Copies of instructions.** The secretary of state shall furnish county auditors and

city clerks with copies of the foregoing instructions. [C97,§1111; C24, 27, 31, 35, 39,§787; C46, 50, 54,§49.69]

**49.70 Judges furnished instructions.** The county auditor and city clerk shall cause copies of the foregoing instructions to be printed in large, clear type, under the heading of "Card of Instructions", and shall furnish the judges of election with a sufficient number of such cards as will enable them to comply with section 49.71. [C97,§1111; C24, 27, 31, 35, 39,§788; C46, 50, 54,§49.70]

**49.71 Posting instruction cards and sample ballots.** The judges of election, before the opening of the polls, shall cause said cards of instructions to be securely posted as follows:

1. One copy in each voting booth.

2. Not less than four copies, with an equal number of sample ballots, in and about the polling place. [C97,§1112; C24, 27, 31, 35, 39, §789; C46, 50, 54,§49.71]

Referred to in §49.70  
Sample primary ballots, §43.30  
Sample voting machine ballots, §52.13

**49.72 Publication of list of nominations.** The county auditor shall, prior to the day of election, publish a list of all nominations made as provided by law, and to be voted for at such election, except township, city, or town officers. Such publication shall be, as near as may be, in the form in which such nominees will appear on the official ballot. Such publication shall be in two newspapers, representing, if possible, the political parties which cast at the preceding general election the largest number and the next largest number of votes. [C97,§1112; C24, 27, 31, 35, 39,§790; C46, 50, 54, §49.72]

**49.73 Time of opening and closing polls.** At all elections the polls shall be opened at eight o'clock in the forenoon, except in cities where registration is required, when the polls shall be opened at seven o'clock in the forenoon, or in each case as soon thereafter as vacancies in the places of judges or clerks of election have been filled. In all cases the polling places shall be closed at eight o'clock in the evening. [C51,§251; R60,§486; C73,§611; C97,§1096; S13, §1096; C24, 27, 31, 35, 39,§791; C46, 50, 54,§49.73]

Analogous provision, §43.37

**49.74 Voters entitled to vote.** All persons entitled to vote at said election who are within said polling places at the time said polling places are closed shall be permitted to vote. [C27, 31, 35,§791-a1; C39,§791.1; C46, 50, 54, §49.74]

**49.75 Oath.** Before opening the polls, each of the judges and clerks shall take the following oath: "I, A. B., do solemnly swear that I will impartially, and to the best of my knowledge and ability, perform the duties of judge (or clerk) of this election, and will studiously endeavor to prevent fraud, deceit, and abuse

in conducting the same." [C51,§249; R60,§484; C73,§609; C97,§1094; C24, 27, 31, 35, 39,§792; C46, 50, 54,§49.75]

Referred to in §51.5, 277.11  
Organization in primary elections, §43.31

**49.76 How administered.** Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the pollbooks, subscribed by the person taking it, and certified by the officer administering it. [C51,§250; R60,§485; C73,§610; C97,§1095; C24, 27, 31, 35, 39,§793; C46, 50, 54,§49.76]

Referred to in §277.11  
Oaths in primary elections, §43.31

**49.77 Ballot furnished to voter.** The judges of election of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall give his name, and, if required, his residence, to such judges, one of whom shall thereupon announce the same in a loud and distinct tone of voice. [C97,§1114; C24, 27, 31, 35, 39,§794; C46, 50, 54,§49.77]

**49.78 Voting under registration.** In precincts where registration is required, if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat such name in the same manner; if the name of the person desiring to vote is not found on the register\* of voters, his ballot shall not be received until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. [C97,§1114; C24, 27, 31, 35, 39,§795; C46, 50, 54,§49.78]

Referred to in §48.20  
Registration on election day, §47.32  
\*Not applicable where registration permanent, §48.20

**49.79 Challenges.** Any person offering to vote may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified. No judge shall receive a ballot from a voter who is challenged, until such voter shall have established his right to vote. [C51,§258; R60,§493; C73,§619; C97,§1115; C24, 27, 31, 35, 39,§796; C46, 50, 54,§49.79]

Referred to in §43.43

**49.80 Examination on challenge.** When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him under oath touching his qualifications as a voter. [C51,§259; R60, §494; C73,§620; C97,§1115; C24, 27, 31, 35, 39, §797; C46, 50, 54,§49.80]

**49.81 Oath in case of challenge.** If the person challenged be duly registered, or if such person is offering to vote in a precinct where registration is not required, and insists that he is qualified, and the challenge be not withdrawn, one of the judges shall tender to him the following oath:

"You do solemnly swear that you are a citizen of the United States, that you are a resi-

dent in good faith of this precinct, that you are twenty-one years of age as you verily believe, that you have been a resident of this county sixty days, and of this state six months next preceding this election, and that you have not voted at this election."

If said person takes such oath, his vote shall be received. [C51,§259; R60,§494; C73,§620; C97,§1115; C24, 27, 31, 35, 39,§798; C46, 50, 54,§49.81]

**49.82 Voter to receive one ballot—indorsement by judge.** One of the judges of election shall give the voter one ballot and only one, on the back of which a judge shall indorse his initials, in such manner that they may be seen when the ballot is properly folded. No ballot without said official indorsement shall be deposited in the ballot box. The voter's name shall immediately be checked on the registry list. [C97,§§1116, 1117; C24, 27, 31, 35, 39,§799; C46, 50, 54,§49.82]

Indorsement in primary elections, §43.36

**49.83 Names to be entered on pollbook.** The name of each person, when a ballot is delivered to him, shall be entered by each of the clerks of election in the pollbook kept by him, in the place provided therefor. [C51,§260; R60,§495; C73,§621; C97,§1116; C24, 27, 31, 35, 39,§800; C46, 50, 54,§49.83]

Referred to in §48.25  
Entries on registration certificates, §48.25

**49.84 Marking and return of ballot.** On receipt of the ballot, the voter shall, without leaving the inclosed space, retire alone to one of the voting booths, and without delay mark his ballot, and, before leaving the voting booth, shall fold the same in such manner as to conceal the marks thereon, and deliver the same to one of the judges of election. The number of the voter on the pollbooks or register lists shall not be indorsed on the back of his ballot. [C51,§257; R60,§492; C73,§617; C97,§§1117, 1119; S13,§1119; C24, 27, 31, 35, 39,§801; C46, 50, 54,§49.84]

**49.85 Depositing ballots.** One of the judges of election shall at once, after receiving the ballot, in the presence of the voter, deposit such ballot in the ballot box and the voter shall quit said inclosed space as soon as he has voted. [C51,§257; R60,§492; C73,§617; C97,§1117; C24, 27, 31, 35, 39,§802; C46, 50, 54,§49.85]

**49.86 Failure to vote—return of ballot.** Any voter who, after receiving an official ballot, decides not to vote, shall, before retiring from within the guardrail, surrender to the election officers the official ballot which has been given him, and such fact shall be noted on each of the poll lists. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided in this chapter. [C97,§1117; C24, 27, 31, 35, 39,§803; C46, 50, 54,§49.86]

Penalty, §49.119

**49.87 Prohibited ballot—taking ballot from polling place.** No voter shall vote or offer to

vote any ballot except such as he has received from the judges of election, nor take or remove any ballot from the polling place before the close of the poll. [C97,§1117; C24, 27, 31, 35, 39,§804; C46, 50, 54,§49.87]

**49.88 Limitation on time for voting.** No voter shall be allowed to occupy a voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes, in case all of said voting booths are in use and other voters waiting to occupy the same, nor to again enter the inclosed space after having voted; nor shall more than two voters in excess of the whole number of voting booths provided be allowed at any one time in such inclosed space, except by the authority of the election officers to keep order and enforce the law. [C97,§1117; C24, 27, 31, 35, 39, §805; C46, 50, 54,§49.88]

**49.89 Selection of officials to assist voters.** At, or before, the opening of the polls, the judges of each precinct shall select two members of the election board, of different political parties, to assist voters who may be unable to mark their ballots. [C97,§1118; C24, 27, 31, 35, 39,§806; C46, 50, 54,§49.89]

**49.90 Assisting voter.** Any voter who may declare upon oath that he cannot read the English language, or that, by reason of any physical disability other than intoxication, he is unable to mark his ballot, shall, upon request, be assisted by said two officers, in marking said ballot. Said officers shall mark said ballot as directed by the voter, and shall thereafter give no information regarding the same. [C97,§1118; C24, 27, 31, 35, 39,§807; C46, 50, 54, §49.90]

**49.91 Assistance indicated on pollbook.** The clerks of election shall enter upon the poll lists, after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact. [C97,§1118; C24, 27, 31, 35, 39,§808; C46, 50, 54,§49.91]

Referred to in §48.25  
Entry on registration certificate, §48.25

**49.92 Voting mark.** The voting mark shall be a cross which shall be placed in the circle at the head of a ticket, or in the squares opposite the names of candidates. [C97,§§1119, 1121; S13,§§1119, 1121; C24, 27, 31, 35, 39,§809; C46, 50, 54,§49.92]

Referred to in §49.98

**49.93 But one vote for same office except in groups.** No voter shall vote for more than one candidate for the same office, nor for a greater number of candidates for two or more offices of the same class than there are offices of such class to be filled at such election. [C97, §1120; S13,§1120; C24, 27, 31, 35, 39,§810; C46, 50, 54,§49.93]

Referred to in §49.98

**49.94 How to mark a straight ticket.** If the names of all the candidates for whom a voter

desires to vote appear upon the same ticket, and he desires to vote for all candidates whose names appear upon such ticket he may do so in any one of the following ways:

1. He may place a cross in the circle at the top of such ticket without making a cross in any square beneath said circle.

2. He may place a cross in the square opposite the name of each such candidate without making any cross in the circle at the top of such ticket.

3. He may place a cross in the circle at the top of such ticket and also a cross in any or all of the squares beneath said circle. [C97, §§1119, 1120; S13, §§1119, 1120; C24, 27, 31, 35, 39, §811; C46, 50, 54, §49.94]

Referred to in §49.98

**49.95 Voting part of ticket only.** If the names of all the candidates for whom the voter desires to vote appear upon a single ticket but he does not desire to vote for all the candidates whose names appear thereon, he shall place a cross in the square opposite the name of each such candidate for whom he desires to vote without making any cross in the circle at the top of such ticket. [C97, §§1119, 1120; S13, §§1119, 1120; C24, 27, 31, 35, 39, §812; C46, 50, 54, §49.95]

Referred to in §49.98

**49.96 Group candidates for offices of same class.** Where two or more offices of the same class are to be filled at the same election, and all of the candidates for such offices, for whom the voter desires to vote, appear upon his party ticket at the top of which he has marked a cross in the circle, he need not otherwise indicate his vote for such candidates; but if the name of any candidate for whom he desires to vote for such office appears upon a different ticket, then as to such group of candidates the cross in the circle does not apply and to indicate his choice the voter must place a cross in the square opposite the name of each such candidate for whom he desires to vote whether the same appears under such marked circle or not. [C97, §§1119, 1120; S13, §§1119, 1120; C24, 27, 31, 35, 39, §813; C46, 50, 54, §49.96]

Referred to in §49.98

**49.97 How to mark a mixed ticket.** If the names of all candidates for whom a voter desires to vote do not appear upon the same ticket, he may indicate the candidates of his choice by marking his ballot in any one of the following ways:

1. He may place a cross in the circle at the top of a ticket on which the names of some of the candidates for whom he desires to vote appear and also a cross in the square opposite the name of each other candidate of his choice, whose name appears upon some ticket other than the one in which he has marked the circle at the top.

2. He may place a cross in the square opposite the name of each candidate for whom he desires to vote without placing any cross in any circle. [C97, §§1119, 1120; S13, §§1119, 1120; C24, 27, 31, 35, 39, §814; C46, 50, 54, §49.97]

Referred to in §49.98

**49.98 Counting ballots.** The ballots shall be counted according to the markings thereon, respectively, as provided in sections 49.92 to 49.97, inclusive, and not otherwise. If, for any reason, it is impossible to determine from a ballot, as marked, the choice of the voter for any office, such ballot shall not be counted for such office. When there is a conflict between the cross in the circle on one ticket and the cross in the square on another ticket on the ballot, the cross in the square shall be held to control, and the cross in the circle in such case shall not apply as to that office. Any ballot marked in any other manner than as authorized in sections 49.92 to 49.97, inclusive, and in such manner as to show that the voter employed such mark for the purpose of identifying his ballot, shall be rejected. [C97, §1120; S13, §1120; C24, 27, 31, 35, 39, §815; C46, 50, 54, §49.98]

**49.99 Writing name on ballot.** The voter may also insert in writing in the proper place the name of any person for whom he desires to vote and place a cross in the square opposite thereto. The writing of such name without making a cross opposite thereto, or the making of a cross in a square opposite a blank without writing a name therein, shall not affect the validity of the remainder of the ballot. [C97, §1119; S13, §1119; C24, 27, 31, 35, 39, §816; C46, 50, 54, §49.99]

**49.100 Spoiled ballots.** Any voter who shall spoil his ballot may, on returning the same to the judges, receive another in place thereof, but no voter shall receive more than three ballots, including the one first delivered to him. None but ballots provided in accordance with the provisions of this chapter shall be counted. [C97, §1121; S13, §1121; C24, 27, 31, 35, 39, §817; C46, 50, 54, §49.100]

**49.101 Defective ballot does not nullify vote.** No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.

2. Because of any error in stamping or writing the indorsement thereon by the officials charged with such duties.

3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place. [C97, §1122; C24, 27, 31, 35, 39, §818; C46, 50, 54, §49.101]

**49.102 Defective ballots.** Said defective ballots shall be counted for the candidate or candidates for such offices named in the nomination papers, certificate of nomination, or certified abstract. [C97, §1122; C24, 27, 31, 35, 39, §819; C46, 50, 54, §49.102]

**49.103 Wrong ballots.** Said wrong ballots shall be counted as cast for all candidates for whom the voter had the right to vote, and for whom he did vote. [C97, §1122; C24, 27, 31, 35, 39, §820; C46, 50, 54, §49.103]

**49.104 Persons permitted at polling places.** The following persons shall be permitted to be present at and in the immediate vicinity of the polling places, provided they do not solicit votes:

1. Any person who is by law authorized to perform or is charged with the performance of official duties at the election.

2. Any number of persons, not exceeding three from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization.

3. Any number of persons not exceeding three from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots. [C97,§1124; C24, 27, 31, 35, 39,§821; C46, 50, 54,§49.104]

**49.105 Ordering arrest.** Any judge or clerk of election shall order the arrest of any person who conducts himself in a noisy, riotous, tumultuous or disorderly manner at or about the polls, so as to disturb the election, or insults or abuses the judges or clerks of election, or commits a breach of the peace, or violates any of the provisions of this chapter. [C51,§253; R60,§488; C73,§613; C97,§1128; C24, 27, 31, 35, 39,§822; C46, 50, 54,§49.105]

**49.106 May commit disorderly person.** Any constable or special policeman may forthwith arrest such person and bring him before the judges of election, and they, by a warrant under their hands, may commit him to the jail of the county for a term not exceeding twenty-four hours, but they shall permit him to vote. [C51,§253; R60,§488; C73,§613; C97,§1128; C24, 27, 31, 35, 39,§823; C46, 50, 54,§49.106]

**49.107 Prohibited acts on election day.** The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, treating voters, or soliciting votes, during the receiving of the ballots, within one hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.

2. Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting.

3. A voter allowing any person to see how his ballot is marked.

4. A false statement by a voter as to his ability to mark his ballot.

5. Interfering or attempting to interfere with a voter when inside the inclosed space, or when marking his ballot.

6. Endeavoring to induce a voter to show how he marks, or has marked his ballot.

7. Marking, or causing in any manner to be marked, on any ballot, any character for the purpose of identifying such ballot. [C97,§§1124, 1134; S13,§1137-a5; C24, 27, 31, 35, 39,§824; C46, 50, 54,§49.107]

Referred to in §49.108  
Assisting voter, §49.90  
Opposing by challenge, §49.79  
Voting mark, §49.92

**49.108 Penalty.** Any violation of the provisions of section 49.107 shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days in the county jail, or by both fine and imprisonment. [C97,§1134; C24, 27, 31, 35, 39, §825; C46, 50, 54,§49.108]

**49.109 Employees entitled to time to vote.** Any person entitled to vote at a general election in this state who does not have three consecutive hours in the period between the time of the opening and the time of the closing of the polls during which he is not required to be present at work for an employer, shall be entitled to such time off from his work time to vote as will in addition to his non-working time total three consecutive hours during the time the polls are open. Application by any employee for such absence shall be made individually and in writing prior to the date of the election, and the employer shall designate the period of time to be taken. Such voter shall not be liable to any penalty nor shall any deduction be made from his regular salary or wages on account of such absence. [C97,§1123; C24, 27, 31, 35, 39,§826; C46, 50, 54,§49.109; 56GA, ch 68,§1; ch 69,§1]

Referred to in §49.110  
See §49.2

**49.110 Intimidation of employees by employer.** Any employer who shall refuse to an employee the privilege conferred by section 49.109, or shall subject such employee to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employee as to how he shall vote, by offering any reward, or threatening discharge from employment, or otherwise intimidating or attempting to intimidate such employee from exercising his right to vote, shall be punished by a fine of not less than five dollars nor more than one hundred dollars. [C97,§1123; C24, 27, 31, 35, 39,§827; C46, 50, 54,§49.110]

**49.111 Unlawful acts.** It shall be unlawful for any person, prior to the closing of the polls, willfully to do any of the following acts:

1. Destroy, deface, tear down, or remove any list of candidates, card of instruction, or specimen ballot posted as provided by law.

2. Remove or destroy any of the supplies or articles furnished for the purpose of enabling voters to prepare their ballots. [C97,§1135; C24, 27, 31, 35, 39,§828; C46, 50, 54,§49.111]

Referred to in §49.112  
Posting required, §§43.30, 49.71

**49.112 Penalty.** Any person violating section 49.111 shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned not less than ten nor more than thirty days, or be punished by both said fine and imprisonment. [C97,§1135; C24, 27, 31, 35, 39,§829; C46, 50, 54,§49.112]

**49.113 Official neglect or misconduct.** Any public officer upon whom a duty is imposed by this chapter, who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder the object thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the manner in which any ballot may have been voted, shall be punished by a fine of not less than five dollars nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [C97, §1137; C24, 27, 31, 35, 39,§830; C46, 50, 54,§49.113]

**49.114 Special police.** The city council shall detail and employ, at each election, from citizens, or from the police force of the city, from two to four special policemen for each voting precinct and fully empower them for the special occasion of such election to prevent violations of this chapter, or of any other lawful command made under this chapter. Said special police shall be men of good character and reputation and shall be appointed on the nomination of the principal political committee of each political party recognized as the two leading parties, and in equal numbers from each of said political parties. No other peace officer than those above named shall exercise his authority for preserving order at or within one hundred feet of such voting places, unless called in by an emergency. If no policeman be in attendance, the judges of election may appoint one or more specially, by writing, who shall have all the powers of such special policeman. [C97,§1125; C24, 27, 31, 35, 39,§831; C46, 50, 54,§49.114]

**49.115 Constables.** Except in voting precincts within any city, any constable of the township, who may be designated by the judges of election, shall attend at the place of election; if none attend, the judges of the election may, in writing, specially appoint one or more, who shall have all the powers of a regular constable. [C51,§252; R60,§487; C73, §612; C97,§1126; C24, 27, 31, 35, 39,§832; C46, 50, 54,§49.115]

Powers of constable, §601.121; also chs 755-758

**49.116 Preserving order.** All special policemen and constables are authorized and required to preserve order and peace at all places of election, and such special policemen, constables, and all other persons are authorized and required to obey the lawful orders and commands of said judges of election given to prevent violations of this chapter. [C51,§252; R60,§487; C73,§612; C97,§1127; C24, 27, 31, 35, 39, §833; C46, 50, 54,§49.116]

**49.117 Compensation of police.** The special policemen appointed under the provisions of this chapter, when not appointed from the police force of the city, shall be entitled to receive fifty cents an hour for their services. [S13,§1129; C24, 27, 31, 35, 39,§834; C46, 50, 54, §49.117]

**49.118 Election expenses.** The expense of necessary booths, guardrails, and ballot boxes shall be paid by the county. All other election expenses authorized by law shall be paid by the county in case of general elections or special elections held by the county, and in all other cases by the city, town, or other municipality in which the election is held. [C97,§1129; S13,§1129; C24, 27, 31, 35, 39,§835; C46, 50, 54, §49.118]

Schoolhouses as polling places, §§49.24, 297.9

**49.119 Penalty.** Any person violating or attempting to violate any provisions or requirements of this chapter, or failing or refusing to comply with any order or command of an election officer, made in pursuance of the provisions of this chapter, shall, unless otherwise provided, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment of not less than twenty days, nor more than six months, in the county jail. [C97,§1133; C24, 27, 31, 35, 39,§836; C46, 50, 54,§49.119]

**49.120 Promise of position.** It shall be unlawful for any candidate for any office to be voted for at any primary, general, municipal, or special election, prior to his nomination or election, to promise, either directly or indirectly, to support or use his influence in behalf of any person or persons for any position, place, or office, or to promise directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or using his, her, or their influence in securing his or her nomination, election, or appointment. [S13,§1134-a; C24, 27, 31, 35, 39,§837; C46, 50, 54,§49.120]

Referred to in §49.122

**49.121 Promise of influence.** It shall be unlawful for any person to solicit from any candidate for any office to be voted for at any primary, municipal, general, or special election, or any candidate for appointment to any public office, prior to his nomination, election, or appointment, a promise, directly or indirectly, to support or use his or her influence in behalf of any person or persons for any position, place, or office, or a promise either directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or her, or using his, her, or their influence in securing his or her nomination, election, or appointment. [S13,§1134-b; C24, 27, 31, 35, 39,§838; C46, 50, 54,§49.121]

Referred to in §49.122

**49.122 Penalty.** Any person violating any of the provisions of sections 49.120 and 49.121 shall be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by

imprisonment in the county jail not less than thirty days nor more than six months. [S13, §1134-c; C24, 27, 31, 35, 39,§839; C46, 50, 54, §49.122]

## CHAPTER 50

### CANVASS OF VOTES

Chapter applicable to primary elections, §43.5. Criminal offenses, ch 738; also §§43.119, 43.120

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| <p>50.1 Canvass by judges.<br/> 50.2 Judges declare election.<br/> 50.3 Double or defective ballots.<br/> 50.4 Ballots objected to.<br/> 50.5 Disputed ballots returned separately.<br/> 50.6 Ballots in excess of poll list.<br/> 50.7 Error on county office—township office.<br/> 50.8 Error on state or district office—tie vote.<br/> 50.9 Return of ballots not voted.<br/> 50.10 Record of ballots.<br/> 50.11 Proclamation of result.<br/> 50.12 Return and preservation of ballots.<br/> 50.13 Destruction of general election ballots.<br/> 50.14 Destruction of primary election ballots.<br/> 50.15 Destruction in abeyance pending contest.<br/> 50.16 Return of board.<br/> 50.17 Return of pollbook and registration book.<br/> 50.18 Return of remaining poll and registration books.<br/> 50.19 Preservation of books—when destroyed.<br/> 50.20 Canvass of returns for city, town and township officers.<br/> 50.21 Abstracts of votes—certificates of election.<br/> 50.22 Notice to candidate of his election.<br/> 50.23 Messengers for missing returns.</p> | <p>50.24 Canvass by board of supervisors.<br/> 50.25 Abstract of votes.<br/> 50.26 Duplicate abstracts.<br/> 50.27 Declaration of election.<br/> 50.28 Returns filed.<br/> 50.29 Certificate of election.<br/> 50.30 Abstracts forwarded to secretary of state.<br/> 50.31 Abstracts for governor and lieutenant governor.<br/> 50.32 Indorsement on other envelopes.<br/> 50.33 Forwarding of envelopes.<br/> 50.34 Missing abstracts.<br/> 50.35 Abstracts on governor.<br/> 50.36 Envelopes containing other abstracts.<br/> 50.37 State canvassing board.<br/> 50.38 Time of state canvass.<br/> 50.39 Abstract.<br/> 50.40 Record of canvass.<br/> 50.41 Certificate of election.<br/> 50.42 Certificates mailed.<br/> 50.43 Senator or congressman.<br/> 50.44 Tie vote.<br/> 50.45 Canvass public—result determined.<br/> 50.46 Special elections—canvass and certificate.<br/> 50.47 Messengers for election returns.</p> |
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**50.1 Canvass by judges.** When the poll is closed, the judges shall forthwith, and without adjournment:

1. Publicly canvass the vote, and credit each candidate with the number of votes counted for him.

2. Ascertain the result of the vote.

3. Compare the poll lists and correct errors therein.

4. Cause each clerk to keep a tally list of the count. [C51, §§261, 266; R60, §§496, 501; C73, §§622, 626; C97, §1138; C24, 27, 31, 35, 39, §840; C46, 50, 54, §50.1]

**50.2 Judges declare election.** The candidate receiving the highest number of votes, if for an office in that precinct alone, shall be declared elected, and the judges shall issue certificates accordingly. [C97, §1138; C24, 27, 31, 35, 39, §841; C46, 50, 54, §50.2]

**50.3 Double or defective ballots.** If two or more marked ballots are so folded together as to appear to be cast as one, the judges shall indorse thereon "Rejected as double". Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed.

Every ballot not counted shall be indorsed "Defective" on the back thereof. [C51, §262; R60, §497; C73, §623; C97, §1139; C24, 27, 31, 35, 39, §842; C46, 50, 54, §50.3]

Referred to in §50.5

**50.4 Ballots objected to.** Every ballot objected to by a judge or challenger, but counted, shall be indorsed on the back thereof "Objected to", and there shall also be indorsed thereon, and signed by the judges, a statement as to how it was counted. [C97, §1139; C24, 27, 31, 35, 39, §843; C46, 50, 51, §50.4]

Referred to in §50.5

**50.5 Disputed ballots returned separately.** All ballots indorsed as required by sections 50.3 and 50.4 shall be inclosed and securely sealed in an envelope, on which the judges shall indorse "Disputed ballots", with a signed statement of the precinct in which, and date of the election at which, they were cast. [C97, §1139; C24, 27, 31, 35, 39, §844; C46, 50, 54, §50.5]

**50.6 Ballots in excess of poll list.** If the ballots for any office exceed the number of the voters in the poll lists, such fact shall be certi-

fied, with the number of the excess, in the return. [C51,§263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§845; C46, 50, 54,§50.6]

**50.7 Error on county office—township office.** If, in case of such excess, the vote of the precinct where the error occurred would change the result as to a county office if the person appearing to be elected were deprived of so many votes, then the election shall be set aside as to him in that precinct, and a new election ordered therein; but no person residing in another precinct at the time of the general election shall be allowed to vote at such special election. If the error occurs in relation to a township office, the trustees may order a new election or not, in their discretion. [C51,§263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§846; C46, 50, 54,§50.7]

**50.8 Error on state or district office—tie vote.** If the error be in relation to a district or state office, it shall be certified with the number of the excess to the state canvassers. If the error affects the result of the election, the canvass shall be suspended and a new vote ordered in the precinct where the error occurred. When there is a tie vote due to such an excess, there shall be a new election. No person residing in another precinct at the time of the general election shall be allowed to vote at such special election. When the new vote is taken and returned, the canvass shall be completed. [C51,§263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§847; C46, 50, 54, §50.8]

**50.9 Return of ballots not voted.** Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the judges of election to the officer or authorities charged with their printing and distribution, and a receipt taken therefor, and they shall be preserved for six months. [C51,§269; R60,§504; C73, §630; C97,§1141; C24, 27, 31, 35, 39,§848; C46, 50, 54,§50.9]

C97, §1141, editorially divided

**50.10 Record of ballots.** Such officer shall keep a record of the number of ballots delivered for each polling place, the name of the person to whom, and the time when, delivered, and enter upon such record the number and character of the ballots returned, with the time when and the person by whom they are returned. [C97,§1141; C24, 27, 31, 35, 39,§849; C46, 50, 54,§50.10]

**50.11 Proclamation of result.** When the canvass is completed one of the judges shall publicly announce the total number of votes received by each of the persons voted for, the office for which he is designated, as announced by the clerks, and the number of votes for, and the number of votes against, any proposition which shall have been submitted to a vote of the people, and he shall communicate said information by telephone or telegraph or in person to the county auditor of the county in

which said polling place is located immediately upon completion of the canvass; and the county auditor shall remain on duty until such information is communicated to him from each polling place in his county. [C97,§1142; C24, 27, 31, 35, 39,§850; C46, 50, 54,§50.11]

**50.12 Return and preservation of ballots.** Immediately after making such proclamation, and before separating, the judges shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those indorsed "Rejected as double", "Defective", or "Objected to", unite the ends of such wire in a firm knot, seal the knot in such a manner that it cannot be untied without breaking the seal, inclose the ballots so strung in an envelope, and securely seal such envelope. The judges shall at once return all the ballots to the officer from whom they were received, who shall carefully preserve them for six months. [C51, §269; R60,§504; C73,§630; C97,§1142; C24, 27, 31, 35, 39,§851; C46, 50, 54,§50.12]

Referred to in §§52.22, 53.40, 58.41

**50.13 Destruction of general election ballots.** If at the expiration of six months no contest is pending, the officer having the ballots in custody, without opening the package in which they have been inclosed, shall destroy the same by burning, in the presence of two electors, one from each of the two leading political parties, who shall be designated by the chairman of the board of supervisors, or, in municipal elections, by the mayor of the city or town. [C97,§1143; S13,§1143; C24, 27, 31, 35, 39,§852; C46, 50, 54,§50.13]

Referred to in §§53.40, 53.41

**50.14 Destruction of primary election ballots.** The ballots cast at a primary election, with the nomination papers, shall, where no contest is pending, be destroyed ten days prior to the holding of the general election following the primary election at which said ballots were cast. [C97,§1143; S13,§§1087-a10, 1143; C24, 27, 31, 35, 39,§853; C46, 50, 54,§50.14]

Referred to in §§53.40, 53.41

**50.15 Destruction in abeyance pending contest.** If a contest is pending, the ballots shall be kept until the contest is finally determined, and then so destroyed. [C97,§1143; S13,§1143; C24, 27, 31, 35, 39,§854; C46, 50, 54,§50.15]

Referred to in §§53.40, 53.41

**50.16 Return of board.** A return shall be made in each pollbook, giving, in words written at length, the whole number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office; which return shall be signed by the judges, and be substantially as follows:

At an election at.....in.....township, or in .....precinct of.....township, in .....county, state of Iowa, on the..... day of .....A. D....., there were....



ballots cast for the office of.....of which  
 A.....B.....had.....votes.  
 C.....D.....had.....votes.  
 (and in the same manner for any other officer).

A true return: L.... M.... }  
 N.... O.... } Judges of Election  
 P.... Q.... }

Attest: R.....S..... }  
 T.....U..... } Clerks of Election.

[C51, §§267, 303; R60, §§502, 537; C73, §§628, 661; C97, §1144; C24, 27, 31, 35, 39, §855; C46, 50, 54, §50.16]

**50.17 Return of pollbook and registration book.** In each precinct, one of the pollbooks containing the aforesaid signed and attested return, and one of the registration books, if any, shall be delivered by one of the judges within two days to the county auditor. [C51, §268; R60, §§333, 503, 1131; C73, §§503, 629; C97, §1145; C24, 27, 31, 35, 39, §856; C46, 50, 54, §50.17]

**50.18 Return of remaining poll and registration books.** The other of said pollbooks and the other registration book, if any, shall be forthwith delivered by one of the judges to the township, city, or town clerk, depending on whether the precinct is a township, city, or town precinct. [C51, §268; R60, §§333, 503, 1131; C73, §§503, 629; C97, §1145; C24, 27, 31, 35, 39, §857; C46, 50, 54, §50.18]

**50.19 Preservation of books — when destroyed.** The receiving officer shall file said books, and the registry books and lists and other papers pertaining to registration, in his office, and preserve the same for three years and until the determination of any contest then pending, after which they shall be destroyed. [C51, §268; R60, §§333, 503, 1131; C73, §§503, 629; C97, §1145; C24, 27, 31, 35, 39, §858; C46, 50, 54, §50.19]

**50.20 Canvass of returns for city, town and township officers.** If there are two or more precincts in any township, city, or ward, the trustees and clerk, or the mayor and clerk, as the case may be, shall, on the day after the election, meet and canvass the returns from all precincts for votes cast for officers to be elected by such township, city, or ward. [R60, §1131; C73, §§502, 631; C97, §1146; C24, 27, 31, 35, 39, §859; C46, 50, 54, §50.20]

**50.21 Abstracts of votes—certificates of election.** The returns shall be opened in the presence of all the canvassers, and an abstract of votes made and signed by them, and the result declared, and a certificate of election signed by them giving the candidates elected. If the mayor shall have been a candidate at such election, a justice of the peace of the county, selected by the clerk, shall act with him in making the canvass. [R60, §1131; C73, §§503, 631; C97, §1146; C24, 27, 31, 35, 39, §860; C46, 50, 54, §50.21]

**50.22 Notice to candidate of his election.** Notice of the result of the election of town-

ship, city, and town officers shall be given by the township, city, or town clerk, as the case may be, within five days thereafter by mailing notice to each person who has been declared elected, which notice shall specify the office to which such person has been elected and require him to appear before the proper officer and qualify according to law. [C51, §317; R60, §548; C73, §633; C97, §1147; C24, 27, 31, 35, 39, §861; C46, 50, 54, §50.22]

Qualification by public officers, ch 63

**50.23 Messengers for missing returns.** The county auditor shall, on the fourth day following an election, send messengers for all returns not then received by him. The expense of securing such returns shall be paid by the county. [C51, §270; R60, §505; C73, §634; C97, §1148; C24, 27, 31, 35, 39, §862; C46, 50, 54, §50.23]

Mileage paid messengers, §50.47

**50.24 Canvass by board of supervisors.** At their meeting on the Monday after the general election, at twelve o'clock, noon, the board of supervisors shall open and canvass the returns, and make abstracts, stating, in words written at length, the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office. [C51, §§271, 304, 305; R60, §§335, 506, 538, 539; C73, §§635, 662; C97, §1149; C24, 27, 31, 35, 39, §863; C46, 50, 54, §50.24]

**50.25 Abstract of votes.** The abstract of the votes for each of the following classes shall be made on a different sheet:

1. President and vice-president of the United States.
2. Governor and lieutenant governor.
3. All state officers not otherwise provided for.
4. Representatives in congress.
5. Senators and representatives in the general assembly for the county alone.
6. Senators in the general assembly by districts comprising more than one county.
7. Judges of the district court.
8. County officers.
9. Senators in the congress of the United States. [C51, §§272, 304, 305; R60, §§507, 538, 539; C73, §§636, 662; C97, §1150; S13, §1150; C24, 27, 31, 35, 39, §864; C46, 50, 54, §50.25]

Additional provision, §6.8

**50.26 Duplicate abstracts.** All abstracts of votes, except the abstracts of votes for county officers, shall be made in duplicate, and signed by the board of county canvassers. One of said abstracts shall be forwarded to the secretary of state, and the other filed by the county auditor. [C51, §§272, 304, 305; R60, §§507, 538, 539; C73, §§637, 662; C97, §1151; S13, §1151; C24, 27, 31, 35, 39, §865; C46, 50, 54, §50.26]

**50.27 Declaration of election.** Each abstract of the votes for such officers as the county alone elects, except district judges, and sena-

tors and representatives in the general assembly, shall contain a declaration of whom the canvassers determine to be elected. [C51,§275; R60,§509; C73,§639; C97,§1152; C24, 27, 31, 35, 39, §866; C46, 50, 54,§50.27]

**50.28 Returns filed.** When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same, and record each of the abstracts above mentioned in the election book. [C51,§276; R60, §§335, 510; C73,§640; C97,§1154; C24, 27, 31, 35, 39,§867; C46, 50, 54,§50.28]

**50.29 Certificate of election.** When any person is thus declared elected, there shall be delivered to him a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA, }  
..... County. }

At an election holden in said county on the ..... day of....., A. D. ....  
A..... B..... was elected to the office of ..... of the said county for the term of ..... years from the ..... day of ..... , A. D. .... (or if he was elected to fill a vacancy, say for the residue of the term ending on the ..... day of ..... , A. D. ....), and until his successor is elected and qualified.

C..... D.....,  
President of Board of Canvassers.  
Witness, E..... F.....,  
County Auditor (clerk).

Such certificate shall be presumptive evidence of his election and qualification. [C51, §277; R60, §§511, 514; C73, §641; C97, §1155; C24, 27, 31, 35, 39, §868; C46, 50, 54, §50.29]

**50.30 Abstracts forwarded to secretary of state.** The auditor shall, within ten days after the election, forward to the secretary of state, in separate, securely sealed envelopes, one of the said duplicate abstracts of votes for each of the following offices:

1. President and vice-president of the United States.
2. Governor and lieutenant governor.
3. United States senator.
4. Representative in congress.
5. Supreme and district judges.
6. Senators and representatives in the general assembly for the county alone.
7. Senators in the general assembly in districts comprising more than one county.
8. All state officers not otherwise specified above. [C51, §§283, 284, 305; R60, §§517, 518, 539; C73, §§645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §869; C46, 50, 54, §50.30]

**50.31 Abstracts for governor and lieutenant governor.** The envelope containing the abstracts of votes for governor and lieutenant governor shall be indorsed substantially as follows: "Abstract of votes for governor and lieutenant governor from .....

county". After being so indorsed said envelope shall be addressd, "To the Speaker of the House of Representatives". [C51, §283; R60, §517; C73, §645; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §870; C46, 50, 54, §50.31]

Referred to in §50.32

**50.32 Indorsement on other envelopes.** Said remaining envelopes shall be indorsed substantially in the manner provided in section 50.31, with changes necessary to indicate the particular office, and each shall be addressd, "To the Secretary of State". [C51, §§283, 305; R60, §§517, 539; C73, §§645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §871; C46, 50, 54, §50.32]

**50.33 Forwarding of envelopes.** Said envelopes, including the one addressd to the speaker, after being prepared, sealed, and indorsed as aforesaid, shall be placed in one package and forwarded to the secretary of state. [C51, §§284, 305; R60, §§518, 539; C73, §§645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §872; C46, 50, 54, §50.33]

**50.34 Missing abstracts.** If the abstracts from any county are not received at the office of the secretary of state within fifteen days after the day of election, he shall send a messenger to the auditor of such county, who shall furnish him with them, or, if they have been sent, with a copy thereof, and he shall return them to the secretary without delay. [C51, §285; R60, §519; C73, §649; C97, §1158; C24, 27, 31, 35, 39, §873; C46, 50, 54, §50.34]

Mileage paid messengers, §50.47

**50.35 Abstracts on governor.** The envelopes containing the abstracts of votes for governor and lieutenant governor shall not be opened by the secretary of state, but he shall securely preserve the same and deliver them to the speaker of the house of representatives at the time said abstracts are canvassed as provided by law. [C24, 27, 31, 35, 39, §874; C46, 50, 54, §50.35]

Canvass for governor, §2.33 et seq.; also Const., Art. IV, §3

**50.36 Envelopes containing other abstracts.** All other envelopes containing abstracts of votes shall be kept by the secretary of state, unopened, until the time fixed by law for the canvass of such abstracts, and they shall then be opened only in the presence of the state board of canvassers. [C51, §286; R60, §520; C73, §650; C97, §1159; C24, 27, 31, 35, 39, §875; C46, 50, 54, §50.36]

Canvass by state canvassers, §50.38

**50.37 State canvassing board.** The executive council shall constitute a board of canvassers of all abstracts of votes required to be filed with the secretary of state, except for the offices of governor and lieutenant governor. No member of such board shall take part in canvassing the votes for an office for which he is a candidate. [C51, §287; R60, §521; C73, §647, 651; C97, §§1160, 1162; S13, §1162; C24, 27, 31, 35, 39, §876; C46, 50, 54, §50.37]

Additional provisions, §6.8

**50.38 Time of state canvass.** On the twentieth day after the day of election, the board of state canvassers shall open and canvass all of the returns. If they are not received from all the counties, it may adjourn, not exceeding twenty days, for the purpose of obtaining them, and, when received, shall proceed with the canvass. The returns of votes cast for senators and representatives in the general assembly shall be canvassed at least twenty days prior to the convening of the general assembly. [C51, §§288, 306; R60, §§522, 540; C73, §§647, 652, 663; C97, §§1161, 1162; S13, §1162; C24, 27, 31, 35, 39, §877; C46, 50, 54, §50.38]

Canvass under special election, §50.46

**50.39 Abstract.** It shall make an abstract stating, in words written at length, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom it declares to be elected; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed. [C51, §§289, 306; R60, §§523, 540; C73, §§653, 663; C97, §1163; C24, 27, 31, 35, 39, §878; C46, 50, 54, §50.39]

**50.40 Record of canvass.** The secretary of state shall file the abstracts when received and shall have the same bound in book form to be kept by him as a record of the result of said state election, to be known as the state election book. [C51, §290; R60, §524; C73, §654; C97, §1164; S13, §1164; C24, 27, 31, 35, 39, §879; C46, 50, 54, §50.40]

**50.41 Certificate of election.** Each person declared elected by the state board of canvassers shall receive a certificate thereof, signed by the governor, or, in his absence, by the secretary of state, with the seal of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To A..... B....., Greeting: It is hereby certified that, at an election holden on the ..... day of ..... you were elected to the office of ..... of said state, for the term of ..... years, from and after the ..... day of ..... (or if to fill a vacancy, for the residue of the term, ending on the ..... day of .....).

Given at the seat of government this..... day of .....

If the governor be absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected. [C51, §§288, 306; R60, §§522, 540; C73, §§652, 657, 663; C97, §1165; C24, 27, 31, 35, 39, §880; C46, 50, 54, §50.41]

**50.42 Certificates mailed.** The secretary of state shall deliver or mail certificates of elec-

tion to the persons declared elected. [C51, §§292, 294; R60, §§526, 528; C73, §§648, 656, 658; C97, §1167; C24, 27, 31, 35, 39, §881; C46, 50, 54, §50.42]

**50.43 Senator or congressman.** The certificate of the election of a senator or representative in congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state. [C51, §294; R60, §528; C73, §658; C97, §1166; C24, 27, 31, 35, 39, §882; C46, 50, 54, §50.43]

**50.44 Tie vote.** If more than the requisite number of persons, including presidential electors, are found to have an equal and the highest number of votes, the election of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names cannot be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter. [C51, §§281, 282, 307, 316; R60, §§515, 516, 541, 547; C73, §§632, 643, 644, 664; C97, §1169; C24, 27, 31, 35, 39, §883; C46, 50, 54, §50.44]

Referred to in §277.21

**50.45 Canvass public — result determined.** All canvasses of returns shall be public, and the persons having the greatest number of votes shall be declared elected. [C51, §§262, 273, 307; R60, §§497, 508, 541; C73, §§623, 638, 664; C97, §1170; C24, 27, 31, 35, 39, §884; C46, 50, 54, §50.45]

**50.46 Special elections—canvass and certificate.** In case a special election has been held, the board of county canvassers shall meet at one o'clock in the afternoon of the second day thereafter, and canvass the votes cast thereat. The county auditor, as soon as the canvass is completed, shall transmit to the secretary of state an abstract of the votes so canvassed, and the state board, within five days after receiving such abstracts, shall canvass the returns. A certificate of election shall be issued by the county or state board of canvassers, as in other cases. All the provisions regulating elections, obtaining returns, and canvass of votes at general elections, except as to time, shall apply to special elections. [R60, §673; C73, §§791–793; C97, §1171; C24, 27, 31, 35, 39, §885; C46, 50, 54, §50.46]

Referred to in §55.17  
Certificate, §§50.29, 50.41

**50.47 Messengers for election returns.** Messengers sent for the returns of elections shall be paid from the state or county treasury, as the case may be, ten cents a mile going and returning. [C51, §295; R60, §529; C73, §3827; C97, §1172; C24, 27, 31, 35, 39, §886; C46, 50, 54, §50.47]

Messengers, §§43.47, 50.28, 50.34

CHAPTER 51

DOUBLE ELECTION BOARDS

- 51.1 Election counting board.
- 51.2 Qualifications.
- 51.3 "Receiving" and "counting" boards defined.
- 51.4 Selection of counting board—duties.
- 51.5 Oath.
- 51.6 Administration of oath.
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- 51.8 Ballot boxes.

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- 51.11 Presence of persons.
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- 51.13 Certification of count—returns.
- 51.14 Compensation of board.
- 51.15 Applicability of law.
- 51.16 Violations.
- 51.17 Circulation of information.

**51.1 Election counting board.** In all election precincts the board of supervisors may appoint for each primary and general election three additional judges and two additional clerks to be known as the election counting board. [C24, 27, 31, 35, 39,§887; C46, 50, 54,§51.1]

39GA, ch 60,§1, editorially divided  
 Referred to in §51.3  
 Election boards, §49.12 et seq.

**51.2 Qualifications.** Each of such appointees shall be of good moral character, well informed, able to read, write, and speak the English language, shall be a voter in the election precinct in which he is to serve, and entitled to vote therein. [C24, 27, 31, 35, 39,§888; C46, 50, 54,§51.2]

Referred to in §51.3

**51.3 "Receiving" and "counting" boards defined.** The judges and clerks of election as provided in existing law shall be known as the receiving board and it shall be their duty to supervise the casting of ballots at said election, and the judges and clerks provided for in sections 51.1 and 51.2 shall be known as the counting board. [C24, 27, 31, 35, 39,§889; C46, 50, 54,§51.3]

39GA, ch 60,§2, editorially divided  
 Regular election boards, §49.12

**51.4 Selection of counting board—duties.** The counting board shall be chosen from the two political parties casting the highest number of votes at the last general election. Not more than two judges nor more than one clerk shall belong to the same political organization, provided that two of such judges shall be chosen from the political party casting the highest number of votes at the last preceding general election. The receiving board shall perform all the functions of judges and clerks of election as now provided by law except as to counting and certifying the vote as by this chapter provided. [C24, 27, 31, 35, 39,§890; C46, 50, 54,§51.4]

Duties, §§51.7, 51.9, 51.13

**51.5 Oath.** All judges and clerks shall take an oath as now provided in existing law for judges of election and in addition to such oath the counting board shall take the following oath:

"I .....do swear (or affirm) that I will duly attend to the ensuing election during the continuance thereof as a member of

the counting board; that I will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; that I will make and return a perfect return of the said election, and will in all things truly, impartially, and faithfully perform my duty respecting the same to the best of my judgment and ability; that I am not directly or indirectly interested in any bet or wager on the result of this election." [C24, 27, 31, 35, 39,§891; C46, 50, 54,§51.5]

39GA, ch 60,§7, editorially divided  
 Oath, §49.75

**51.6 Administration of oath.** This oath shall be administered at the time the board enters upon its duties by a clerk of the receiving board who is hereby empowered to administer such oath. [C24, 27, 31, 35, 39,§892; C46, 50, 54,§51.6]

**51.7 Duties of double boards.** The counting boards shall proceed to the respective voting places to which they have been appointed, at one o'clock p. m., or in any precinct in which the board of supervisors shall deem it necessary, at such earlier hour after nine o'clock a. m., as such board of supervisors may direct, and shall take charge of the ballot box containing the ballots already cast in that precinct. It shall retire to a partitioned space or room provided for that purpose and there proceed to count and tabulate the ballots as it shall find them deposited in the ballot box. The receiving board shall continue to receive the votes of electors in the other box provided, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The two boards shall then exchange the first box for the second box and so continue until they have counted and tabulated all the votes cast on that election day. When the hour arrives for closing the polls, the receiving board shall certify to all matters pertaining to casting of ballots and shall then unite with the counting board in the counting of ballots. The judges shall then divide the ballots not counted and each group of judges and clerks shall proceed to canvass their portion of the same. When the canvass has been completed the judges and clerks shall report the result of their can-

vass by telephone or telegraph or in person to the county auditor of the county in which said voting place is located immediately after completion thereof, which report shall be incorporated in the returns provided by law. [C24, 27, 31, 35, 39,§893; C46, 50, 54,§51.7; 56GA, ch 70,§1]

Return, §50.16

**51.8 Ballot boxes.** It shall be the duty of the board of supervisors to provide the judges of election with such ballot boxes and other election supplies as may be required to be furnished in duplicate to accomplish the purpose of this chapter. [C24, 27, 31, 35, 39,§894; C46, 50, 54,§51.8]

**51.9 Manner of counting.** Whenever the counting board receives from the receiving board the ballot box, they shall also be furnished a statement from the receiving board giving the number of votes as shown by the pollbooks up to that time, which shall equal the number of votes in the ballot box. The counting board shall on opening the ballot box first count the ballots therein. If the number of ballots found in the ballot box exceeds the number as shown by the statement received from the receiving board the counting judges shall proceed to examine the official indorsement of said ballots, and, if any ballots are found that do not bear proper official indorsement, said ballots shall be kept separate and a record of such ballots shall be made and returned under the head of excess ballots. The counting board shall then proceed to count the ballots as now provided by law. [C24, 27, 31, 35, 39,§895; C46, 50, 54,§51.9]

Counting primary ballots, §43.45

Counting general election ballots, §50.1, et seq.

**51.10 Secrecy of ballot.** The space or room occupied by the counting board shall be policed in such manner as to prevent any person, or persons, from gaining information regarding the progress of the count before the polls are closed. [C24, 27, 31, 35, 39,§896; C46, 50, 54, §51.10]

**51.11 Presence of persons.** No person shall be admitted into the space or room where such ballots are being counted until the polls are

closed, except the counting board. [C24, 27, 31, 35, 39,§897; C46, 50, 54,§51.11]

**51.12 Counting quarters—guarding ballots.** Boards of supervisors shall provide suitable places for the counting of ballots, but when it becomes necessary to remove the ballot box from one room to another, or from one building to another, and at all times when they are in possession of the counting board, they shall be under constant observation of at least two counting judges. [C24, 27, 31, 35, 39,§898; C46, 50, 54,§51.12]

**51.13 Certification of count—returns.** Both boards shall certify to all matters pertaining to counting and canvassing of votes and shall return pollbooks and ballots to the county auditor as provided by law. [C24, 27, 31, 35, 39, §899; C46, 50, 54,§51.13]

Return of books and ballots, §§50.5, 50.9, 50.12, 50.17, 50.18

**51.14 Compensation of board.** Compensation for counting judges and clerks shall be the same as now provided by law for clerks and judges of election. [C24, 27, 31, 35, 39,§900; C46, 50, 54,§51.14]

Compensation, §49.20

**51.15 Applicability of law.** This chapter shall apply to all general and primary elections, but shall not apply to school elections or town elections, or where voting machines are used. [C24, 27, 31, 35, 39,§901; C46, 50, 54,§51.15]

**51.16 Violations.** Any judge or clerk violating the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not to exceed five hundred dollars, or imprisonment in the county jail not to exceed six months. Any person so convicted shall be disfranchised for five years thereafter. [C24, 27, 31, 35, 39,§902; C46, 50, 54,§51.16]

39GA, ch 60,§8, editorially divided  
Referred to in §51.17

**51.17 Circulation of information.** Anyone circulating or attempting to circulate any information with reference to the result of the counted ballots shall be guilty of a misdemeanor and punished as provided by section 51.16. [C24, 27, 31, 35, 39,§903; C46, 50, 54,§51.17]

CHAPTER 52  
VOTING MACHINES

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| <p>52.1 Use of voting machines.<br/>52.2 Purchase.<br/>52.3 Terms of purchase.<br/>52.4 Commissioners—term—removal.<br/>52.5 Examination of machine.<br/>52.6 Compensation.<br/>52.7 Construction of machine approved.<br/>52.8 Experimental use.<br/>52.9 Duties of local authorities.<br/>52.10 Ballots—form.<br/>52.11 Locking of unused party row.<br/>52.12 Exception—party circle and general form.</p> | <p>52.13 Sample ballots.<br/>52.14 Two sets of ballots.<br/>52.15 Delivery of ballots.<br/>52.16 Duties of election officers — independent ballots.<br/>52.17 Voting machine in plain view—guardrail.<br/>52.18 Method of voting.<br/>52.19 Instructions.<br/>52.20 Injury to machine.<br/>52.21 Canvass of vote.<br/>52.22 Locking machine.<br/>52.23 Written statements of election.<br/>52.24 What statutes apply—separate ballots.</p> |
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**52.1 Use of voting machines.** At all state, county, city, town, primary, and township elections held in the state, ballots or votes may be cast, registered, recorded, and counted by means of voting machines, as hereinafter provided. [S13,§1137-a7; C24, 27, 31, 35, 39,§904; C46, 50, 54,§52.1]

**52.2 Purchase.** The board of supervisors of any county, or the council of any incorporated city or town in the state may, by a two-thirds vote, authorize, purchase, and order the use of voting machines in any one or more voting precincts within said county, city, or town, until otherwise ordered by said board of supervisors or city or town council. [S13,§1137-a8; C24, 27, 31, 35, 39,§905; C46, 50, 54,§52.2]

**52.3 Terms of purchase.** The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality, and may for that purpose issue bonds, certificates of indebtedness, or other obligations, which shall be a charge on the county, city, or town. Such bonds, certificates, or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [S13,§1137-a14; C24, 27, 31, 35, 39, §906; C46, 50, 54,§52.3]

**52.4 Commissioners—term—removal.** The governor shall appoint three commissioners, not more than two of whom shall be from the same political party. The said commissioners shall hold office for the term of five years, subject to removal at the pleasure of the governor. [S13,§1137-a9; C24, 27, 31, 35, 39,§907; C46, 50, 54,§52.4]

**52.5 Examination of machine.** Any person or corporation owning or being interested in any voting machine may call upon the said commissioners to examine the said machine, and make report to the secretary of state upon the capacity of the said machine to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections

and imperfections. Their report shall be filed in the office of the secretary of state and shall state whether in their opinion the kind of machine so examined can be safely used by such voters at elections under the conditions prescribed in this chapter. If the report states that the machine can be so used, it shall be deemed approved by the commissioners, and machines of its kind may be adopted for use at elections as herein provided. Any form of voting machine not so approved cannot be used at any election. [S13,§1137-a10; C24, 27, 31, 35, 39,§908; C46, 50, 54,§52.5]

S13,§1137-a10, editorially divided

**52.6 Compensation.** Each commissioner is entitled to one hundred fifty dollars for his compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination. No commissioner shall have any interest whatever in any machine reported upon. Provided that said commissioner shall not receive to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned into the state treasury. [S13, §1137-a10; C24, 27, 31, 35, 39,§909; C46, 50, 54, §52.6]

**52.7 Construction of machine approved.** A voting machine approved by the state board of voting machine commissioners must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, must permit a voter to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy.

It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for that office; and it must afford him an opportunity to vote for any or all persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice.

It may also be provided with one ballot in each party column or row containing only the words "presidential electors", preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors.

Such machine shall be so constructed as to accurately account for every vote cast upon it. [S13,§1137-a11; C24, 27, 31, 35, 39,§910; C46, 50, 54,§52.7]

**52.8 Experimental use.** The board of supervisors of any county or the council of any city or town may provide for the experimental use at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted. [S13,§1137-a12; C24, 27, 31, 35, 39,§911; C46, 50, 54,§52.8]

**52.9 Duties of local authorities.** The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election district or districts within the county, city, or town as the officers adopting the same may direct. [S13,§1137-a13; C24, 27, 31, 35, 39,§912; C46, 50, 54,§52.9]

**52.10 Ballots — form.** All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in sections 49.30 to 49.42, inclusive, except that the lists may be arranged in horizontal rows or vertical columns. [S13,§1137-a15; C24, 27, 31, 35, 39,§913; C46, 50, 54,§52.10]

**52.11 Locking of unused party row.** At all general elections the officer in charge of preparing the ballot upon every voting machine shall cause the party row next underneath the names of the Republican candidates, and also the party row underneath the names of the Democratic candidates, to be locked and left blank except when more than seven political parties have nominated candidates whose names are entitled to be placed on the official ballot. [C27, 31, 35,§913-a1; C39,§913.1; C46, 50, 54,§52.11]

**52.12 Exception — party circle and general form.** The provisions of section 49.42 shall not

be applicable to voting machines owned prior to April 1, 1921, by any county or municipality insofar as they relate to the party circle and the form of the ballot generally; but nothing herein contained shall prohibit the use of voting machines equipped to comply with the foregoing provisions. [C24, 27, 31, 35, 39,§914; C46, 50, 54,§52.12]

**52.13 Sample ballots.** The officers or board charged with the duty of providing ballots for any polling place shall provide therefor two sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballots are arranged for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election and the day next preceding election day. [S13,§1137-a16; C24, 27, 31, 35, 39,§915; C46, 50, 54,§52.13]

**52.14 Two sets of ballots.** Two sets of ballots shall be provided for each polling place for each election for use in the voting machine. [S13,§1137-a17; C24, 27, 31, 35, 39,§916; C46, 50, 54,§52.14]

**52.15 Delivery of ballots.** The ballots and stationery shall be delivered to the election board of each election precinct before ten o'clock in the forenoon of the day next preceding the election. [S13,§1137-a18; C24, 27, 31, 35, 39,§917; C46, 50, 54,§52.15]

**52.16 Duties of election officers—independent ballots.** The judges of election and clerks of each precinct shall meet at the polling place therein, at least three-quarters of an hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guardrail the furniture, stationery, and voting machine for the conduct of the election. The judges of election shall then and there have the voting machine, ballots, and stationery required to be delivered to them for such election; and, if it be an election at which registered voters only can vote, the registry of such electors required to be made and kept therefor. The judges shall thereupon cause at least two instruction cards to be posted conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on the voting machine, the ballots containing the names of the offices to be filled at such election, and the names of the candidates nominated therefor. If not previously done, the machine shall be so arranged as to show that no vote has been cast, and the same shall not be thereafter operated, except by electors in voting. Before the polls are open for election, each judge shall carefully examine every machine and see that no vote has been cast, and the same shall be subject to inspection of the election officers. Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein referred to as independent ballots. When two or more persons are to be

elected to the same office, and the machine requires that all independent ballots voted for that office be deposited in a single receptacle or device, an elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. With that exception, and except for presidential electors, no independent ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any independent ballot so voted shall not be counted. An independent ballot must be cast in its appropriate place on the machine, or it shall be void and not counted. [S13,§1137-a19; C24, 27, 31, 35, 39,§918; C46, 50, 54,§52.16]

**52.17 Voting machine in plain view—guardrail.** The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling place, and at least three feet from the guardrail, and at least four feet from the clerk's table. A guardrail shall be constructed at least three feet from the machine, with openings to admit electors to and from the machine. [S13,§1137-a20; C24, 27, 31, 35, 39,§919; C46, 50, 54,§52.17]

**52.18 Method of voting.** After the opening of the polls, the judges shall not allow any voter to pass within the guardrail until they ascertain that he is duly entitled to vote. Only one voter at a time shall be permitted to pass within the guardrail to vote. The operating of the voting machine by the elector while voting shall be secret and obscured from all other persons, except as provided by this chapter in cases of voting by assisted electors. No voter shall remain within the voting machine booth longer than one minute, and if he shall refuse to leave it after the lapse of one minute, he shall be removed by the judges. [S13,§1137-a21; C24, 27, 31, 35, 39,§920; C46, 50, 54,§52.18]

**52.19 Instructions.** In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two judges of opposite political parties shall give such instructions to him; but no judge or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such elector shall vote as in the case of an unassisted voter. [S13,§1137-a22; C24, 27, 31, 35, 39,§921; C46, 50, 54,§52.19]

**52.20 Injury to machine.** No voter, or other person, shall deface or injure the voting ma-

chine or the ballot thereon. It shall be the duty of the judges to enforce the provisions of this section. During the entire period of an election, at least one of their number, designated by them from time to time, shall be stationed beside the entrance to the booth and shall see that it is properly closed after a voter has entered it to vote. He shall also, at such intervals as he may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury. [S13,§1137-a23; C24, 27, 31, 35, 39,§922; C46, 50, 54,§52.20]

**52.21 Canvass of vote.** As soon as the polls of the election are closed, the judges of the election thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all persons who may be lawfully within the polling place, and proceed to canvass the vote. After the canvass has been completed said judges shall immediately communicate the result thereof by telephone or telegraph or in person to the county auditor of the county in which said polling place is located. [S13, §1137-a24; C24, 27, 31, 35, 39,§923; C46, 50, 54, §52.21]

**52.22 Locking machine.** The judges of election shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine against voting, and it shall so remain for the period of thirty days.

Whenever independent ballots have been voted, the judges shall return all of such ballots properly secured in a sealed package as prescribed by section 50.12. [S13,§1137-a25; C24, 27, 31, 35, 39,§924; C46, 50, 54,§52.22]

*Independent ballots, §52.16*  
*Locking unused party row, §52.11*

**52.23 Written statements of election.** After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the judges shall make and sign written statements of election, as required by the election laws now in force, except that such statements of the canvass need not contain any ballots except the independent ballots as herein provided. [S13,§1137-a26; C24, 27, 31, 35, 39,§925; C46, 50, 54,§52.23]

**52.24 What statutes apply—separate ballots.** All of the provisions of the election law now in force and not inconsistent with the provisions of this chapter shall apply with full force to all counties, cities, and towns adopting the use of voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures. [S13, §1137-a27; C24, 27, 31, 35, 39,§926; C46, 50, 54, §52.24]



CHAPTER 53

ABSENT VOTERS LAW

Referred to in §462.12

- 53.1 Right to vote—conditions.
- 53.2 Application for ballot.
- 53.3 School secretary.
- 53.4 Application blanks.
- 53.5 Form of blank application.
- 53.6 Residence.
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- 53.50 Appropriation.
- 53.51 Rule of construction.
- 53.52 Inconsistent provisions—rule.

**53.1 Right to vote—conditions.** Any qualified voter of this state may, as provided in this chapter, vote at any general, municipal, special, or primary election, or at any election held in any independent town, city, or consolidated school district:

- 1. When, in the conduct of his business or due to other necessary travel, he expects to be absent on election day from the county in which he is a qualified voter.
- 2. When, through illness or physical disability, he expects to be prevented from personally going to the polls and voting on election day. [SS15,§1137-b; C24, 27, 31, 35, 39,§927; C46, 50, 54,§53.1]

Referred to in §§53.2, 53.49, 277.34

**53.2 Application for ballot.** Any voter, under the circumstances specified in section 53.1, may, on any day not Sunday, election day, or a holiday and not more than twenty days prior to the date of election, make application to the county auditor, or to the city or town clerk, as the case may be, for an official ballot to be voted at such election. [SS15, §1137-c; C24, 27, 31, 35, 39,§928; C46, 50, 54,§53.2]

Referred to in §§53.39, 53.49

**53.3 School secretary.** In the application of this chapter to elections held in independent city, town, and consolidated school districts, the secretary of the school board shall perform

the duty herein imposed on the county auditor or clerk of the city or town. [C24, 27, 31, 35, 39,§929; C46, 50, 54,§53.3]

Referred to in §53.49  
For school districts having printed ballots, §277.8

**53.4 Application blanks.** Said officers shall furnish to any qualified voter of the county, city, or town of which they are such officers, blanks on which to make application for such ballot. [SS15,§1137-d; C24, 27, 31, 35, 39,§930; C46, 50, 54,§53.4]

Referred to in §§53.39, 53.49

**53.5 Form of blank application.** Applications for ballots shall be made on blanks substantially in the following form:

"APPLICATION FOR BALLOT TO BE VOTED AT THE.....ELECTION ON .....

State of..... }  
County of..... } ss.

I, ....., do solemnly swear that I have been a resident of the state of Iowa for six months, of the county of..... for sixty days, and of the.....precinct of.....ward of the city, town, or township of.....ten days next preceding this election, and that I am a duly qualified voter entitled to vote at said election; that my occupation is....., and that on account of.....  
(Business, illness, or physical disability)

I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same, before the day of said election. I am affiliated with the .....party.

(Fill out only in case of primary election)

Signed.....
Date.....
Residence (street and number, if any).....
City or town.....
P. O. Address.....

Subscribed and sworn to before me this .....day of ....., A. D. 19....

[SS15,§1137-d; C24, 27, 31, 35, 39,§931; C46, 50, 54,§53.5]

Referred to in §§53.6, 53.39, 53.49

53.6 Residence. The requirement in section 53.5 for ten days residence in the precinct shall not apply to general elections as defined in chapter 49. [C24, 27, 31, 35, 39,§932; C46, 50, 54, §53.6]

Referred to in §53.49

53.7 Penalty clause added. Immediately below said form, sections 53.34 and 53.35 shall be printed in full. [SS15,§1137-d; C24, 27, 31, 35, 39,§933; C46, 50, 54,§53.7]

Referred to in §53.49

53.8 Party affiliation. Said application shall designate the voter's party affiliation only when the application is for a primary election ballot. [SS15,§1137-d; C24, 27, 31, 35, 39,§934; C46, 50, 54,§53.8]

Referred to in §53.49

53.9 Ballot mailed. Upon receipt of such application, and immediately after the ballots are printed, it shall be the duty of such auditor or clerk to mail to said applicant, postage prepaid, such official ballot or ballots as such applicant would have the right to cast at such election. [SS15,§1137-e; C24, 27, 31, 35, 39,§935; C46, 50, 54,§53.9]

Referred to in §53.49

40ExGA, SF27,§8, editorially divided

53.10 Application mailed. If the voter is absent from the county and requests said application by letter, the auditor may send him both the application and ballot at the same time. [C24, 27, 31, 35, 39,§936; C46, 50, 54, §53.10]

Referred to in §53.49

53.11 Personal delivery of ballot. Such officer shall deliver said ballot or ballots to any qualified elector applying in person at the office of such auditor or clerk, as the case may be, and subscribing to the foregoing application, not more than fifteen days before the date of said election, but said ballot shall be immediately marked, inclosed in the ballot envelope with proper affidavit thereon, and returned to said officer. [SS15,§1137-e; C24, 27, 31, 35, 39, §937; C46, 50, 54,§53.11]

Referred to in §§53.42, 53.49

53.12 Duty of auditor. It shall be the duty of said auditor or clerk to fold said ballot or ballots in the manner in which they are required to be folded when voted, and to inclose the same in an unsealed envelope, to be furnished by him, which envelope shall bear upon the face thereof the name, official title, and post-office address of such auditor or clerk. [SS15,§1137-f; C24, 27, 31, 35, 39,§938; C46, 50, 54,§53.12]

Referred to in §53.49

53.13 Voter's affidavit on envelope. On the reverse side of said unsealed envelope shall be printed a blank form of affidavit in substantially the following form:

"State of..... } ss.
County of..... }

I, ....., do solemnly swear that the following matters relating to my qualifications for registration and voting are true:

Residence, city, town, or township of.....
..... street, No.....
county, Iowa. Age.....years; date of birth ..... (Month) (Day) (Year)

Nativity..... Color..... Sex.....
Term of residence in precinct.....
Term of residence in county.....
Term of residence in state.....
Naturalized..... Date of naturalization papers.....
Court in which naturalized.....
Date of application..... Whether by act of congress..... Whether qualified voter..... Last preceding place of residence, city, town, or township of..... street, No. ....
I am affiliated with the ..... party.

(Fill out only in case of primary election)

I am engaged in the business or work of .....; that I shall be prevented from attending the polls on the day of election on account of (here affiant will state whether absence from the county of his residence or physical disability), and that I have marked the inclosed ballot in secret.

Signed.....

Subscribed and sworn to before me this.... day of ....., A. D. ...., and I hereby certify that the affiant exhibited the inclosed ballot to me unmarked; that he then in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot and inclosed and sealed the same in this envelope; that the affiant was not solicited or advised by me for or against any candidate or measure.

.....
.....
(Official title.)"

[SS15,§1137-f; C24, 27, 31, 35, 39,§939; C46, 50, 54,§53.13]

Referred to in §53.49

53.14 Party affiliation. Said affidavit shall designate the voter's party affiliation only in case the ballot inclosed is a primary election ballot. [SS15,§1137-f; C24, 27, 31, 35, 39,§940; C46, 50, 54,§53.14]

Referred to in §53.49

**53.15 Marking ballot.** The voter, on receipt of said ballot or ballots, shall, in the presence of the officer administering the oath and of no other person, mark such ballot or ballots, but in such manner that such officer will not know how such ballot is marked. [SS15,§1137-g; C24, 27, 31, 35, 39,§941; C46, 50, 54,§53.15]

Referred to in §53.49

**53.16 Taking and subscribing oath.** After marking such ballot, the voter shall, before said officer, make and subscribe to the affidavit on the reverse side of the envelope, and, in the presence of such officer, fold such ballot, or ballots, separately, so as to conceal the markings thereon, and deposit the same in said envelope, which shall then be securely sealed. [SS15,§1137-g; C24, 27, 31, 35, 39,§942; C46, 50, 54,§53.16]

Referred to in §53.49

**53.17 Mailing or delivering ballot.** The sealed envelope containing the said ballot or ballots may be personally delivered by the voter to the auditor, deputy, or clerk at the office of said auditor or clerk, prior to election day. If not so delivered, said envelope shall be inclosed in a carrier envelope, which shall also be securely sealed, and mailed by the voter, postage paid, to reach said auditor or clerk prior to election day. [SS15,§1137-g; C24, 27, 31, 35, 39,§943; C46, 50, 54,§53.17]

Referred to in §53.49

**53.18 Manner of preserving ballot and application.** Upon receipt of such ballot, the auditor or clerk shall at once inclose the same, unopened, together with the application made by the voter, in a large carrier envelope, securely seal the same, and indorse thereon, over his official signature, the following:

1. Names of the judges of election of the precinct (naming it) of which the voter is a resident.

2. The name of the city or town in which or near which such judges will hold the election in said precinct.

3. The street number, or other clear designation of the polling place in said precinct, and a statement that "This envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open." [SS15,§§1137-h,-i; C24, 27, 31, 35, 39,§944; C46, 50, 54,§53.18]

Referred to in §53.49

**53.19 Delivery of ballot.** In case said voter's ballot is received by the auditor or clerk prior to the delivery of the official ballots to the judges of election of the precinct in which said elector resides, such ballot, envelope, and application, sealed in the carrier envelope, shall be inclosed in such package and therewith delivered to the judges of such precinct. [SS15,§§1137-h,-i; C24, 27, 31, 35, 39,§945; C46, 50, 54,§53.19]

Referred to in §§53.20, 53.49

**53.20 Auditor may mail or personally deliver.** If said voter's ballot be received after

the time specified in section 53.19, said receiving officer shall at once mail said carrier envelope, postage prepaid, to said judges. Said officer may, in person or by deputized agent, personally deliver said envelope to said judges, if he can so do without expense to the county, city, or town. [SS15,§1137-i; C24, 27, 31, 35, 39,§946; C46, 50, 54,§53.20]

Referred to in §53.49

**53.21 Receipt for ballot.** In case ballots and applications are personally delivered, the delivering officer shall take the receipt of the judges therefor. [SS15,§1137-i; C24, 27, 31, 35, 39,§947; C46, 50, 54,§53.21]

Referred to in §53.49

**53.22 Ballots rejected.** All ballots forwarded to absent voters and not received by the auditor or city or town clerk in time for delivery to the judges of election before the closing of the polls shall be rejected. [C24, 27, 31, 35, 39,§948; C46, 50, 54,§53.22]

Referred to in §53.49

**53.23 Casting ballots.** At any time between the opening and closing of the polls on such election day the judges of election of said precinct shall open the outer or carrier envelope only, announce the absent or disabled voter's name, and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the judges find the affidavits executed, that the signatures correspond, the applicant a duly qualified elector of the precinct, and that the applicant has not voted in person at said election, they shall open the envelope containing the voter's ballot in such manner as not to deface or destroy the affidavit thereon, and take out the ballot or ballots therein contained without unfolding or permitting the same to be unfolded or examined, and having indorsed the ballot in like manner as other ballots are required to be indorsed, deposit the same in the proper ballot box and enter the voter's name in the poll-book, the same as if he had been present and voted in person. [SS15,§1137-j; C24, 27, 31, 35, 39,§949; C46, 50, 54,§53.23]

Referred to in §53.49

**53.24 Precincts using voting machines.** In precincts using voting machines, none of said ballot envelopes shall be opened until immediately after the closing of the polls to voters who vote in person. If there be more than one absent voter's ballot entitled to be cast, they shall, without being unfolded, be thoroughly intermingled in some proper manner, after which they shall be unfolded and, under the personal supervision of all the judges, be registered on the voting machine the same as if the absent voter had been present and voted in person. [C24, 27, 31, 35, 39,§950; C46, 50, 54,§53.24]

Referred to in §53.49

**53.25 Rejecting ballot.** In case such affidavit is found to be insufficient, or that the signatures do not correspond, or that the applicant

is not a duly qualified elector in such precinct, or that the ballot envelope is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or that said voter has voted in person, such vote shall not be accepted or counted. [SS15,§1137-j; C24, 27, 31, 35, 39,§951; C46, 50, 54,§53.25]

Referred to in §53.49

**53.26 Rejected ballots—how handled.** Every ballot not counted shall be indorsed on the back thereof “Rejected because (giving reason therefor).” All rejected ballots shall be inclosed and securely sealed in an envelope on which the judges shall indorse “Defective ballots”, with a statement of the precinct in which and the date of the election at which they were cast, signed by the judges and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such election. [SS15, §1137-j; C24, 27, 31, 35, 39,§952; C46, 50, 54,§53.26]

Referred to in §53.49  
Return of rejected ballots, §50.5

**53.27 Rejection of ballot—return of envelope.** If the ballot is rejected, said ballot envelope, with the affidavit of the voter indorsed thereon, shall be returned with said rejected ballot in the envelope indorsed “Defective ballots.” [C24, 27, 31, 35, 39,§953; C46, 50, 54,§53.27]

Referred to in §53.49

**53.28 Affidavit envelope constitutes registration.** The affidavit upon the ballot envelope shall constitute a sufficient registration of the voter in precincts where registration is required. [C24, 27, 31, 35, 39,§954; C46, 50, 54, §53.28]

Referred to in §53.49

**53.29 Alphabetical list completed.** The judges of election shall, in case the ballot is deposited in the box, enter the voter’s name on the alphabetical lists if not already there, with the same data as is entered when a certificate of registration is filed. [C24, 27, 31, 35, 39,§955; C46, 50, 54,§53.29]

Referred to in §53.49

**53.30 Ballot envelope preserved.** The ballot envelope having the voter’s affidavit thereon shall, in case the ballot is deposited in the box, be preserved and returned with the certificates of registration, pollbook, and alphabetical lists to the city clerk, who shall preserve the same, and it shall be used by the registers of election, in precincts where registration is required, in making up the new registry lists from the pollbooks, and such affidavits shall serve as the registration record of the voter for the new registry books and lists. [C24, 27, 31, 35, 39, §956; C46, 50, 54,§53.30]

Referred to in §53.49

**53.31 Challenges.** The vote of any absent voter may be challenged for cause and the

judges of election shall determine the legality of such ballot as in other cases. [SS15,§1137-k; C24, 27, 31, 35, 39,§957; C46, 50, 54,§53.31]

Referred to in §53.49  
Challenges, §§49.79–49.81

**53.32 Ballot of deceased voter.** When it shall be made to appear by due proof to the judges of election that any elector, who has so marked and forwarded his ballot, has died before the ballot is deposited in the ballot box, then the ballot of such deceased voter shall be indorsed, “Rejected because voter is dead”, and be returned by the judges of election with the unused ballots to the official issuing it; but the casting of the ballot of a deceased voter shall not invalidate the election. [SS15,§1137-l; C24, 27, 31, 35, 39,§958; C46, 50, 54,§53.32]

Referred to in §53.49

**53.33 Laws made applicable.** This chapter and all other election laws now in force, and not inconsistent with this chapter, shall apply to all counties, cities, and towns in which voting machines are used, and the proper election officials in such counties shall take such action as is necessary to carry out the provisions of this chapter. [SS15,§1137-m; C24, 27, 31, 35, 39, §959; C46, 50, 54,§53.33]

Referred to in §53.49

**53.34 False affidavit.** Any person who shall willfully swear falsely to any of such affidavits shall be guilty of perjury, and punished accordingly. [SS15,§1137-n; C24, 27, 31, 35, 39,§960; C46, 50, 54,§53.34]

Referred to in §§53.7, 53.49

**53.35 Refusal to return ballot.** Any person who, having procured an official ballot or ballots, shall willfully neglect or refuse to cast or return the same in the manner provided, or who shall willfully violate any provision of this chapter, shall, unless otherwise provided, be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed thirty days. Any person who applies for a ballot and willfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable. [SS15,§1137-n; C24, 27, 31, 35, 39,§961; C46, 50, 54,§53.35]

Referred to in §§53.7, 53.49

**53.36 Offenses by officers.** If any county auditor, city or town clerk, or any election officer shall refuse or neglect to perform any of the duties prescribed by this chapter, or shall violate any of the provisions thereof, he shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not to exceed ninety days. [SS15,§1137-n; C24, 27, 31, 35, 39,§962; C46, 50, 54,§53.36]

Referred to in §53.49

ABSENT VOTING BY ARMED FORCES

**53.37 “Armed forces” defined.** The term “Armed Forces of the United States”, as used in this division shall mean the army, navy,

marine corps, coast guard, and air force of the United States.

For the purpose of absentee voting only, there shall be included in the term "armed forces of the United States" the following:

1. Spouses and dependents of members of the armed forces while in active service.

2. Members of the merchant marine of the United States and their spouses and dependents.

3. Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

4. Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents. [C54,§53.37; 56GA, ch 62,§15]

Referred to in §53.49

#### **53.38 Affidavit constitutes registration.**

Whenever registration is required in order to vote at either the primary election or general election, in the case of voters in the armed forces of the United States, the affidavit upon the ballot envelope of such voter, otherwise qualified, shall constitute a sufficient registration, whether the registration required be under the provisions of chapter 47 or chapter 48. [C54,§53.38]

Registration of voters, §§47.1, 48.3

**53.39 Request for ballot.** The provisions of sections 53.2, 53.4 and 53.5 shall not apply in connection with the primary and general elections in the case of a qualified elector of the state of Iowa serving in the armed forces of the United States; in any such case an application for ballot as provided for in said sections shall not be required and an absent voter's ballot shall be sent or made available to any such voter upon a request being made therefor as provided for in this division. All official ballots to be voted by qualified absent voters in the armed forces of the United States at the primary election and the general election shall be printed prior to forty days before the said respective elections and shall be available for transmittal to such qualified electors in the armed forces of the United States forty days prior to the respective elections. The provisions of this chapter shall apply to absent voting by qualified voters in the armed forces of the United States at said elections except as modified by the provisions of this division. [C54,§53.39; 56GA, ch 62,§10]

**53.40 Request requirements — transmission of ballot.** Request in writing for ballot for the primary election and for the general election may be made by any member of the armed forces of the United States who is or will be

a qualified voter on the day of the election at which said ballot is to be cast, at any time prior to either of said elections, the request stating for which election the request is made. In the case of the general election such request may likewise be made, not more than seventy days before said election, for and on behalf of a voter in the armed forces of the United States by a spouse, parent, adult brother, adult sister, or adult child of any such voter, residing in the county of said voter's residence, provided that any such request made by other than the voter may be required to be made on forms prescribed by the Iowa servicemen's ballot commission.

A request shall show the residence (including street address, if any) of the voter, the age of the voter, and length of residence in the city, town or township, county and state, and shall designate the address to which the ballot is to be sent, and in the case of the primary election, the party affiliation of such voter. Such request shall be made to the county auditor of the county of the voter's residence, provided that if the request is made by the voter to any elective state, city, town or county official, the said official shall forward it to the county auditor of the county of the voter's residence, and such request so forwarded shall have the same force and effect as if made direct to the county auditor by the voter.

The county auditor shall immediately on the fortieth day prior to the particular election transmit ballots to the voter by mail or otherwise, postage prepaid, as may be directed by the Iowa servicemen's ballot commission, requests for which are in his hands at that time, and thereafter so transmit ballots immediately upon receipt of requests for same. A request for ballot for the primary election which does not state the party affiliation of the voter making the request shall be void and of no effect. A request which does not show that the person for whom ballot is requested will be a qualified voter in the precinct in which said ballot is to be cast on the day of the election for which the ballot is requested, shall not be honored; provided that a request which states the age and the city or town, including street address, if any, or township, and county where in the voter resides, and which shows a sufficient period of residence, shall be sufficient to show that he is such a qualified voter. A request by the voter containing substantially the information required herein shall be sufficient.

If the affidavit on the ballot envelope shows that the affiant is not a qualified voter on the day of the election at which said ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained therein shall be preserved and returned by the judges of election to the county auditor, who shall preserve same for the period of time and under the conditions provided for in sections 50.12 to 50.15, inclusive. [C54,§53.40; 56GA, ch 62,§11]

**53.41 Records by county auditor.** The county auditor of each county shall establish

and maintain a record of all requests for ballots which are made, and of all ballots transmitted, and the manner of transmittal, from and received in his office under the provisions of this division. In the event more than one request for absent voter's ballot for a particular election shall be made to the county auditor by or on behalf of a voter in the armed forces of the United States, the request first received shall be honored, except that if one of the requests is made by the voter himself, and a request on his behalf has not been previously honored, such request of the voter shall be honored in preference to a request made on his behalf by another. Not more than one ballot shall be transmitted by the county auditor to any voter for a particular election. In the event the county auditor shall receive more than one absent voter's ballot, provided for by this division, from or purporting to be from any one voter for a particular election, all of said ballots so received from or purporting to be from such voter shall be null and void, and the county auditor shall not deliver any of said ballots to the judges of election, but shall retain them in his office, and preserve them for the period and under the conditions provided for in sections 50.12 to 50.15, inclusive. [C54, §53.41]

**53.42 Voting in person in auditor's office.** Notwithstanding the provision as to time found in section 53.11 any qualified voter in the armed forces of the United States may personally appear in the office of the county auditor of the county of his residence and there vote an absent voter's ballot at any time not earlier than forty days before the primary or general election, as the case may be. [C54, §53.42; 56GA, ch 62,§12]

**53.43 Identification on envelope.** The envelopes used in connection with voting by absent voter's ballot by voters who are members of the armed forces of the United States, shall have stamped or printed on them the words "Serviceman's Ballot" and a designation of the election at which said ballot is to be cast, either "Primary Election" or "General Election", as the case may be. [C54,§53.43]

**53.44 Administration of oath.** Any commissioned officer in the armed forces of the United States, or any person authorized by the government of the United States to administer oaths to members of the armed forces of the United States are authorized to administer and attest any oath required in connection with the voting of an absent voter's ballot by a voter in the armed forces of the United States. Such officer or person shall show his rank and branch of service or other legal qualifications in connection with his signature in attesting any oath. [C54, §53.44]

**53.45 Ballot commission created.** There is hereby created the "Iowa Servicemen's Ballot Commission", which shall be composed of the secretary of state, who is the state official

charged with the conduct and supervision of elections and who shall be chairman of the commission, and four other members who shall be appointed in the following manner, to wit: On or before January 15, the respective chairmen of the state central committees of the two political parties which cast the largest and second largest number of votes for governor at the next preceding general election, as shown by the records in the office of the secretary of state, shall each designate two members, qualified electors of the state of Iowa, from his political party for membership on said commission and notify the governor thereof in writing; the governor shall immediately upon receipt of such notification appoint said persons so designated as members of the commission and issue his commission of appointment therefor; in the event either of said state chairmen shall fail to so make such designation and notification of either or both of said designates within said ten days, the governor shall immediately thereafter make the appointment thereto from the membership of the political party of the chairman failing to make such designation and notification and issue his commission of appointment therefor. The commissioners appointed shall qualify by subscribing the oath provided in section 63.10. The members of the commission shall be reimbursed their actual expenses in the performance of their duties, but shall receive no compensation for their services. [C54,§53.45]

**53.46 Powers and duties of commission.** The said commission is authorized and empowered:

1. To make rules and regulations for the purpose of carrying out the provisions and intent of this division;

2. To prescribe and direct the preparation of specially printed ballots, envelopes and other papers of different size and weight to be used in connection with absent voting by voters in the armed forces of the United States, if, in the discretion of the commission, it shall determine that such a special ballot and other papers will facilitate voting by such voters; provided that the content of any such specially printed matter shall be the same as that used for absent voters generally in the particular precinct in which said serviceman's ballot is to be cast, and provided further that such ballots, envelopes and other papers shall be substantially uniform in size and weight throughout the state; and provided further that the provisions of section 49.56, establishing the maximum cost of printing ballots, shall not govern as to the cost of any specially printed ballots authorized by this division, but the cost of printing any such specially printed ballots by the several counties shall not exceed an amount, per thousand such ballots or fraction thereof, which may be determined by the state printing board upon the basis of cost and weight of paper, size of ballots and type measurements;

3. To prescribe any forms that are not other-

wise prescribed by law, and which in the judgment of the commission are necessary to facilitate the carrying out of the purposes and intent of this division;

4. To arrange for special transportation of ballots either in co-operation with the government of the United States through any authorized instrumentality thereof or otherwise, and to that end the commission is empowered to direct the county auditors of the several counties of the state to send ballots to voters in the armed forces of the United States other than in the usual course of mail;

5. To employ such clerical assistance as it may require in carrying out its functions, to purchase and requisition any office supplies it may require, and certify for payment the expenses of carrying out its functions;

6. To call upon any department or division of the state government for information and assistance in connection with carrying out the provisions of this division;

7. To co-operate with any authorized departments, agencies and instrumentalities of the government of the United States in effecting the intent and purposes of this division. [C54, §53.46]

**53.47 Materials furnished by printing board.**

In order to establish uniformity in size, weight and other characteristics of the ballot and facilitate its distribution and return, the state printing board shall upon direction of the "Iowa Servicemen's Ballot Commission" purchase any material needed for any special ballots, envelopes and other printed matter, and sell any such materials to the several counties of the state at cost plus handling and transportation costs.

There is hereby appropriated to the state printing board from the general fund of the state such sums as may be necessary to purchase any materials provided for herein. The proceeds from sale of such materials to counties shall be turned into the general fund of the state upon receipt of same by the state printing board. [C54, §53.47]

**53.48 Postage on ballots.** In the event the government of the United States or any branch, department, agency or other instrumentality thereof shall make provision for sending of any voting matter provided for in this division through the mails postage free, or otherwise, the election officials of the state of Iowa and of the several counties of the state are authorized to make use thereof under the direction of the Iowa servicemen's commission. [C54, §53.48]

**53.49 Applicable to armed forces only.** The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 to 53.36, inclusive, shall apply to all other qualified voters not members of the armed forces of the United States. [C54, §53.49; 56GA, ch 62, §16]

**53.50 Appropriation.** There is hereby appropriated to the Iowa servicemen's ballot commission from the general fund of the state such sums as are necessary for it to pay its expenses and perform its functions under this division. Warrants shall be drawn by the comptroller upon certification by the chairman of the commission, or in the event of his inability or unavailability to act by three members of the commission. [C54, §53.50]

**53.51 Rule of construction.** This division shall be liberally construed in order to provide means and opportunity for qualified voters of the state of Iowa serving in the armed forces of the United States to vote at the primary and general elections. [C54, §53.51]

**53.52 Inconsistent provisions — rule.** The provision or provisions of this division which are inconsistent with any provision or provisions of any other existing statute or any part of any such other existing statute, shall prevail. Likewise, the provision or provisions of any other existing statute or any part of any other existing statute which is not inconsistent with this division, shall prevail. [C54, §53.52]

## CHAPTER 54

## PRESIDENTIAL ELECTORS

54.1 Time of election—qualifications.  
 54.2 How elected.  
 54.3 Canvass.  
 54.4 Nonpolitical parties.  
 54.5 Presidential nominees.

54.6 Certificate.  
 54.7 Meeting—certificate.  
 54.8 Certificate of governor.  
 54.9 Compensation.

**54.1 Time of election—qualifications.** At the general election in the years of the presidential election, or at such other times as the congress of the United States may direct, there shall be elected by the voters of the state one person from each congressional district into which the state is divided, and two from the state at large, as electors of president and vice-president, no one of whom shall be a person holding the office of senator or representative in congress, or any office of trust or profit under the United States. [C51,§301; R60,§535; C73,§659; C97,§1173; S13,§1173; C24, 27, 31, 35, 39,§963; C46, 50, 54,§54.1]

**54.2 How elected.** A vote for the candidates of any political party, or group of petitioners, for president and vice-president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors. [C24, 27, 31, 35, 39,§964; C46, 50, 54, §54.2]

**54.3 Canvass.** The canvass of the votes for candidates for president and vice-president of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or group of petitioners, respectively, and the certificate of such election made by the governor shall be in accord with such return. [C24, 27, 31, 35, 39, §965; C46, 50, 54,§54.3]

**54.4 Nonpolitical parties.** The term “group of petitioners” as used in this chapter shall embrace an organization which is not a political party as defined by law. [C24, 27, 31, 35, 39, §966; C46, 50, 54,§54.4]

Nonparty organization defined, §43.2

**54.5 Presidential nominees.** The names of the candidates for president and vice-president, respectively, of a political party as defined in the law relating to primary elections, shall, at least sixty-five days prior to the election, be certified to the secretary of state by the chairman and secretary of the state central committee of said party. [C24, 27, 31, 35, 39,§967; C46, 50, 54,§54.5; 56GA, ch 62,§13]

“Political party” defined, §48.2

**54.6 Certificate.** At the expiration of ten days from the completed canvass, the governor, under his hand and the seal of state, shall issue to each presidential elector declared elected a certificate of his election, the same in substance as required in other cases, and shall notify him to attend at the seat of government on the first Monday after the second Wednesday in December next following his election, reporting his attendance to him. If there be a contest of the election, no certificate shall issue until it is determined. [C51,§308; R60,§542; C73, §665; C97,§1168; C24, 27, 31, 35, 39,§968; C46, 50, 54,§54.6]

Certificate of election, §50.41

**54.7 Meeting—certificate.** The presidential electors shall meet in the capitol, at the seat of government, on the first Monday after the second Wednesday in December next following their election. If, at the time of such meeting, any elector for any cause is absent, those present shall at once proceed to elect, from the citizens of the state, a substitute elector or electors, and certify the choice so made to the governor, and he shall immediately cause the person or persons so selected to be notified thereof. [C51,§§308-310; R60,§§542-544; C73, §§665-667; C97,§1174; C24, 27, 31, 35, 39,§969; C46, 50, 54,§54.7]

**54.8 Certificate of governor.** When so met, the said electors shall proceed, in the manner pointed out by law, with the election, and the governor shall duly certify the result thereof, under the seal of the state, to the United States secretary of state, and as required by act of congress relating to such elections. [C51,§311; R60,§545; C73,§668; C97,§1175; C24, 27, 31, 35, 39, §970; C46, 50, 54,§54.8]

**54.9 Compensation.** The electors shall each receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly. [C51,§312; R60,§546; C73,§669; C97,§1176; C24, 27, 31, 35, 39, §971; C46, 50, 54,§54.9]

Mileage, §2.11



CHAPTER 55

AMENDMENTS TO FEDERAL CONSTITUTION

Federal constitutional provision, Art. V

- 55.1 Governor's duty to call convention.
- 55.2 Proclamation.
- 55.3 Election—date.
- 55.4 Delegate at large.
- 55.5 Nomination by mass convention.
- 55.6 Electors—organization.
- 55.7 County convention.
- 55.8 Candidates—statement required.
- 55.9 Nominations certified.
- 55.10 Judges and clerks.
- 55.11 Secretary to furnish ballots.
- 55.12 Cost of ballots.

- 55.13 Publication required.
- 55.14 Ballots—arrangement of names.
- 55.15 Form of ballot.
- 55.16 Marking ballot.
- 55.17 Applicable statutes—canvass of votes.
- 55.18 Expenses.
- 55.19 Compensation prohibited.
- 55.20 State convention.
- 55.21 Journal.
- 55.22 Certification of ratification.
- 55.23 When chapter inoperative.

**55.1 Governor's duty to call convention.** Within sixty days from the date on which the governor of Iowa shall receive notice of an amendment to the constitution of the United States proposed by the Congress of the United States for ratification by convention in the several states, it shall be the duty of the governor, by proclamation to call such convention, to be held at the seat of government in Des Moines, not later than three months from the date of issuance of such proclamation. [C35, §971-e1; C39, §971.01; C46, 50, 54, §55.1]

Referred to in §55.2

**55.2 Proclamation.** The proclamation to be issued by the governor, as provided in section 55.1, shall fix the date and time for the holding of such convention and the date of the holding of a special election for the election of delegates to such convention. [C35, §971-e2; C39, §971.02; C46, 50, 54, §55.2]

**55.3 Election—date.** The date of the special election provided to be stated in the said proclamation shall not be more than thirty days before the date fixed for the holding of such convention. [C35, §971-e3; C39, §971.03; C46, 50, 54, §55.3]

**55.4 Delegate at large.** Subject to the provisions of this chapter, each county in the state shall be entitled to nominate two persons from among the qualified voters in each county, respectively, to be candidates for the office of delegate at large to the state convention, provided, however, that one of such candidates shall be nominated by those favoring the ratification of such amendment, and one nominated by those opposed to the ratification of such amendment. Said delegates shall be nominated as hereinafter provided. [C35, §971-e4; C39, §971.04; C46, 50, 54, §55.4]

**55.5 Nomination by mass convention.** The nominations for delegates to such convention from each county shall be made at mass conventions of the qualified electors of such county in the manner provided for in this chapter. [C35, §971-e5; C39, §971.05; C46, 50, 54, §55.5]

**55.6 Electors—organization.** Upon the issuance of a proclamation by the governor calling such convention, the qualified voters in each county in the state shall organize themselves into two groups, one of which groups shall consist of those persons favoring the ratification of the amendment proposed by the Congress of the United States, and the other to consist of persons opposed thereto. [C35, §971-e6; C39, §971.06; C46, 50, 54, §55.6]

**55.7 County convention.** At eleven o'clock a.m., on the fourth Monday following the date of issuance of such proclamation by the governor, the group of qualified voters in each county favoring the ratification of such proposed amendment, and the group opposed thereto, shall convene in separate county conventions at the seat of government of such county, at such places as the county auditor of such county shall designate, and such auditor shall publish such designation of places by one publication in two newspapers if there be such two newspapers of general circulation in said county, at least three days prior to said convention, and shall nominate one delegate as a candidate to the convention hereinafter provided for. [C35, §971-e7; C39, §971.07; C46, 50, 54, §55.7]

**55.8 Candidates — statement required.** No person shall be nominated at any county convention held under the provisions of this chapter until he has executed and delivered to the chairman of such county convention a statement signed by him or her and attested by the chairman and secretary of the convention in the following form:

DELEGATE'S STATEMENT

I, ....., hereby certify that I am a qualified elector of the state of Iowa; that for more than ... (years) (months) last past I have resided in the .....; that I am favorable to (or opposed to) the ratification of the amendment to the constitution of the United States of America, proposed by the congress of the United States on the..... day of ....., 19.....

Dated this ..... day of ....., 19.....

.....  
 Chairman, county convention  
     For ratification  
     Against ratification  
 .....

Secretary, county convention  
     For ratification  
     Against ratification  
 [C35,§971-e8; C39,§971.08; C46, 50, 54,§55.8]

**55.9 Nominations certified.** It shall be the duty of the chairman and secretary of each of such county conventions before adjournment thereof to certify the name of the person nominated as delegate to the convention by their respective county conventions to the secretary of state, which certification and the written statement of the person so nominated shall be delivered to the secretary of state not later than nine o'clock in the forenoon of the third day following the day during which the county convention was held. [C35,§971-e9; C39,§971.09; C46, 50, 54,§55.9]

**55.10 Judges and clerks.** The chairman and secretary of each county convention shall select from among the membership of its group in such county one person to act as judge of election, and two persons to act as clerks of election, in each of the several voting precincts in such county; the persons so selected to perform such services without compensation, and the said chairman and secretary of each of such county conventions shall certify to the county auditor the names and addresses of the persons so selected, which certification shall be made not later than nine o'clock in the forenoon of the second day following the date on which such county convention was held. In the event that the judge and clerk or clerks of election, as above provided, shall fail or refuse to act, the chairman and secretary of the respective county conventions are authorized to fill the vacancy thus caused, and if practicable shall certify the names appointed to fill such vacancy to the county auditor. If vacancies occur in the office of the judge or clerk of election, and they are not filled as herein provided, then and in that event, the acting judges and clerks shall fill such vacancies, and the failure of any judge or clerk of election named, as in this chapter provided, to act at the election, shall in no wise invalidate the election. [C35§971-e10; C39, §971.10; C46, 50, 54,§55.10]

**55.11 Secretary to furnish ballots.** All the ballots for such special election shall be furnished by the secretary of state and delivered by him to the several county auditors in the state for distribution to each election precinct in their respective counties at least three days prior to the date of such special election. [C35, §971-e11; C39,§971.11; C46, 50, 54,§55.11]

46GA, ch 1,§18, editorially divided

**55.12 Cost of ballots.** The cost of printing said ballots shall not exceed a proportionate amount, space and composition considered, of

the cost of printing ballots for a general state election. [C35,§971-e12; C39,§971.12; C46, 50, 54, §55.12]

45GA, ch 2,§3, editorially divided

**55.13 Publication required.** The secretary of state shall cause said ballots, together with the governor's proclamation of such special election, to be published in two newspapers of general circulation in each county at least ten days prior to the date of such special election. [C35,§971-e13; C39,§971.13; C46, 50, 54,§55.13]

**55.14 Ballots — arrangement of names.** It shall be the duty of the secretary of state, as the certificates of nomination of candidates for election to the office of delegate at large to the state convention are filed in his office, as in this chapter provided, to list the same alphabetically by counties in two groups, one group to consist of the names of the nominees favoring the ratification of the proposed constitutional amendment, and the other to consist of the names of the nominees opposed thereto. [C35,§971-e14; C39,§971.14; C46, 50, 54,§55.14]

**55.15 Form of ballot.** The ballot to be voted at such special election shall be of such measurement and type size as the secretary of state may designate, and shall be in substantially the following form:

BALLOT FOR VOTING FOR DELEGATES  
 AT LARGE TO A STATE CONVENTION  
 (THE PROPOSED AMENDMENT TO THE  
 CONSTITUTION OF THE UNITED STATES)  
 (Here set out proposed amendment)  
 INSTRUCTIONS TO VOTERS  
 CANDIDATES FOR DELEGATES AT LARGE  
 TO THE STATE CONVENTION

	Group of Candidates Favoring Ratification	Group of Candidates Opposing Ratification	Group of Unofficial Candidates—Names to be written in by voter if he so desires
	○	○	○
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

The use of voting machines at such special election is hereby prohibited. [C35,§971-e15; C39,§971.15; C46, 50, 54,§55.15]

**55.16 Marking ballot.** At the special election to be held for the purpose of electing delegates to the state convention, as in this chapter provided, each of the groups of candidates officially nominated shall be voted upon as a unit by placing a cross in the circle at the head of such group; provided, however, if any qualified voter shall so choose to do, he may disregard each of the groups of candidates officially nominated as in this chapter provided, and cast his ballot for any other qualified elector of the state. If any such voter shall

so determine to disregard the groups of candidates officially nominated and desire to vote for some other elector or electors as candidates, he shall write such elector's name or names, in number not to exceed ninety-nine, on the blank lines provided therefor appearing on the ballot in the right hand column designated "Group of unofficial candidates—names to be written in by voter if he so desires"; and shall vote for such candidates whose names are so written in by him as a unit by placing a cross in the circle appearing at the head of such group. The candidates in the group receiving the largest number of votes shall be the delegates to said convention. [C35,§971-e16; C39, §971.16; C46, 50, 54,§55.16]

**Delegates, §55.4**

**55.17 Applicable statutes—canvass of votes.** All the statutes relating to the manner of conducting elections for state and county officers, so far as applicable, shall govern the election of delegates, except the canvass of the vote and certification thereof shall be made in accordance with section 50.46. [C35,§971-e17; C39, §971.17; C46, 50, 54,§55.17]

**55.18 Expenses.** The expense of holding such election shall be paid by the state treasurer, out of funds in his hands not otherwise appropriated. All bills of necessary and proper expense incurred according to law shall be submitted to the county auditors in the several counties by claimants with itemized, verified statements of account, which shall be filed with said county auditors within ten days after the holding of such election, and the several county auditors shall thereupon duly itemize and certify such claims for expense to the state comptroller, who shall draw warrants therefor to the persons entitled thereto in the amount found to be due. [C35,§971-e18; C39,§971.18; C46, 50, 54,§55.18]

**55.19 Compensation prohibited.** No delegate shall receive any compensation, directly or indirectly, for his services as such delegate. [C35,§971-e19; C39,§971.19; C46, 50, 54,§55.19]

**55.20 State convention.** The convention shall be the judge of the election and qualification of its members and shall have power to elect its president, secretary, and other officers and to adopt its own rules. [C35,§971-e20; C39, §971.20; C46, 50, 54,§55.20]

**55.21 Journal.** The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. Upon final adjournment the journal shall be filed with the secretary of state. [C35, §971-e21; C39,§971.21; C46, 50, 54,§55.21]

**55.22 Certification of ratification.** If the convention shall agree, by vote of the majority of the total number of delegates present, to the ratification of the proposed amendment, a certificate to that effect shall be executed by the president and secretary of the convention and transmitted to the secretary of state, who shall transmit the certificate under the great seal of the state of Iowa, to the secretary of state of the United States. [C35,§971-e22; C39, §971.22; C46, 50, 54,§55.22]

**55.23 When chapter inoperative.** If at or about the time of submitting any such amendment, Congress shall either in the resolution submitting the same or by statute prescribe the manner in which the convention shall be constituted and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the preceding provisions of this chapter shall be inoperative; the convention shall be constituted and shall operate as the said resolution or act of Congress shall direct; and all officers of the state who may, by the said resolution or statute, be authorized or directed to take any action to constitute such a convention for this state, are hereby authorized and directed to act thereunder and in obedience thereto, with the same force and effect as if acting under a statute of this state. [C35,§971-e23; C39,§971.23; C46, 50, 54,§55.23]

## CHAPTER 56

### STATEMENT OF EXPENSES

56.1 Statement.

56.2 Requirement.

56.3 Filing.

56.4 Statements by party chairmen.

56.5 Additional statements.

56.6 Public inspection.

56.7 Limitation on expenses.

56.8 Limitation as to senator and representative.

56.9 Penalty.

**56.1 Statement.** Every candidate for any office voted for at any primary, municipal, special or general election shall, within thirty days after the holding of such election, file a true, detailed, and sworn statement showing all sums of money or other things of value disbursed, expended, or promised, directly or indirectly, by him, and to the best of his knowl-

edge and belief by any other person or persons in his behalf, for the purpose of aiding or securing his nomination or election. [S13, §1137-a1; C24, 27, 31, 35, 39,§972; C46, 50, 54, §56.1]

**56.2 Requirement.** Such statement shall show the dates, amounts, and from whom such

sums of money or other things of value were received, and the dates, amounts, purposes, and to whom paid or disbursed, and shall include the assessment of any person, committee, or organization in charge of the campaign of such candidate. [S13,§1137-a1; C24, 27, 31, 35, 39, §973; C46, 50, 54,§56.2]

**56.3 Filing.** Such statement shall be filed:

1. With the county auditor, in case of municipal or county offices.
2. With the secretary of state, in case of state or federal offices. [S13,§1137-a1; C24, 27, 31, 35, 39,§974; C46, 50, 54,§56.3]

**56.4 Statements by party chairmen.** The chairman of each party central committee for the state, district, or county shall file a true, detailed, and sworn statement of receipts and expenditures within thirty days after the general election. The chairmen of state and district central committees shall file said statements with the secretary of the state; and the chairmen of county central committees, with the county auditor. Such statements shall contain all the information required to be filed by candidates, and in addition thereto shall state the amounts or balances remaining on hand. [S13,§1137-a3; C24, 27, 31, 35, 39,§975; C46, 50, 54, §56.4]

**56.5 Additional statements.** If after the filing of any of the foregoing statements said candidate or chairman shall, directly or indirectly, receive any money or other thing of value contributed, expressly or tacitly, for the purpose of reimbursing or aiding said candidate in his nomination or election, or for the purpose of defraying the expense of said committee, said candidate, or chairman, as the

case may be, shall within thirty days after the receipt of such contribution or gift file a like sworn statement. [C24, 27, 31, 35, 39,§976; C46, 50, 54,§56.5]

**56.6 Public inspection.** Said statements shall be open at all times to the inspection of the public, and remain on file and be a part of the permanent records in the office where filed. [S13,§1137-a4; C24, 27, 31, 35, 39,§977; C46, 50, 54,§56.6]

**56.7 Limitation on expenses.** It shall be unlawful for any candidate to expend in connection with any primary election campaign more than fifty percent of the annual salary applicable to the position for which he is a candidate, and unlawful for him to expend in connection with his campaign for election to any office more than fifty percent of the annual salary applicable to the position for which he is a candidate. [C24, 27, 31, 35, 39,§978; C46, 50, 54,§56.7]

40ExGA, SF 29,§7, editorially divided

**56.8 Limitation as to senator and representative.** It shall be unlawful for anyone who is a candidate for the office of state representative or state senator to expend in connection with any primary election campaign, special election campaign, or general election campaign more than fifty percent of the salary of a member at one regular session of the general assembly. [C24, 27, 31, 35, 39,§979; C46, 50, 54,§56.8]

**56.9 Penalty.** The violation of any provision of this chapter shall constitute a misdemeanor. [S13, 1137-a6; C24, 27, 31, 35, 39,§980; C46, 50, 54,§56.9]

Punishment, §687.7

## CHAPTER 57

### CONTESTING ELECTIONS—GENERAL PROVISIONS

- 57.1 Grounds of contest.
- 57.2 Certificate withheld.
- 57.3 Incumbent.

- 57.4 Change of result.
- 57.5 Recanvass in case of contest.
- 57.6 Other contests.

**57.1 Grounds of contest.** The election of any person to any county office, or to a seat in either branch of the general assembly, may be contested by any person eligible to such office; and the election of any person to a state office, or to the office of presidential elector, by any eligible person who received votes for the same office; and the grounds therefor shall be as follows:

1. Misconduct, fraud, or corruption on the part of judges of election in any precinct, or of any board of canvassers, or any member of either board, sufficient to change the result.
2. That the incumbent was not eligible to the office at the time of election.
3. That the incumbent has been duly convicted of an infamous crime before the elec-

tion, and the judgment has not been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of election.

4. That the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property; or thing of value, for the purpose of procuring his election.
5. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result.
6. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.
7. Any other cause which shows that another person was the person duly elected. [C51,

§§339, 341, 368, 380, 387; R60, §§569, 571, 598, 610, 617; C73, §§692, 718, 730, 737; C97, §1198; C24, 27, 31, 35, 39, §981; C46, 50, 54, §57.1]

**57.2 Certificate withheld.** If notice of contesting the election of an officer is filed before the certificate of election is delivered to him, it shall be withheld until the determination of the contest. [C51, §367; R60, §597; C73, §713; C97, §1219; C24, 27, 31, 35, 39, §982; C46, 50, 54, §57.2]

**57.3 Incumbent.** The term "incumbent" in this chapter means the person whom the canvassers declare elected. [C51, §340; R60, §570; C73, §693; C97, §1199; C24, 27, 31, 35, 39, §983; C46, 50, 54, §57.3]

**57.4 Change of result.** When the misconduct, fraud, or corruption complained of is on the part of the judges of election in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to

that office. [C51, §342; R60, §572; C73, §694; C97, §1200; C24, 27, 31, 35, 39, §984; C46, 50, 54, §57.4]

**57.5 Recanvass in case of contest.** The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the judges in counting or refusing to count ballots corrected by such court or tribunal. [C97, §1143; S13, §1143; C24, 27, 31, 35, 39, §985; C46, 50, 54, §57.5]

**57.6 Other contests.** All the provisions of the chapter in relation to contested elections of county officers shall be applicable, as near as may be, to contested elections for other offices, except as herein otherwise provided, and in all cases process and papers may be issued to and served by the sheriff of any county. [C51, §§379, 396; R60, §§609, 626; C73, §§729, 745; C97, §1250; C24, 27, 31, 35, 39, §986; C46, 50, 54, §57.6]

Contesting election of county officers, ch 62

## CHAPTER 58

### CONTESTING ELECTIONS OF GOVERNOR AND LIEUTENANT GOVERNOR

58.1 Notice—grounds.  
58.2 Notice to incumbent.  
58.3 Houses notified.  
58.4 Contest court.

58.5 Powers and proceedings.  
58.6 Testimony.  
58.7 Judgment.

**58.1 Notice—grounds.** The contestant for the office of governor or lieutenant governor shall, within thirty days after the proclamation of the result of the election, deliver to the presiding officer of each house of the general assembly a notice of his intent to contest, and a specification of the grounds of such contest, as provided in chapter 62. [C51, §388; R60, §618; C73, §738; C97, §1239; C24, 27, 31, 35, 39, §987; C46, 50, 54, §58.1]

**58.2 Notice to incumbent.** As soon as the presiding officers have received the notice and specifications, they shall make out a notice, directed to the incumbent, including a copy of the specifications, which shall be served by the sergeant at arms. [C51, §389; R60, §619; C73, §739; C97, §1240; C24, 27, 31, 35, 39, §988; C46, 50, 54, §58.2]

**58.3 Houses notified.** The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received. [C51, §390; R60, §620; C73, §740; C97, §1241; C24, 27, 31, 35, 39, §989; C46, 50, 54, §58.3]

**58.4 Contest court.** Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box, the

names of the senators in their presence by their secretary, and the names of the representatives in their presence by their clerk.

2. The secretary of the senate in the presence of the senate, and the clerk of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each.

3. As soon as the names are thus drawn, the names of the members drawn by each house shall be communicated to the other, and entered on the journal of each house. [C51, §391; R60, §621; C73, §741; C97, §1242; C24, 27, 31, 35, 39, §990; C46, 50, 54, §58.4]

**58.5 Powers and proceedings.** The members thus drawn shall constitute a committee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting, at such times as they may designate; and may adjourn from day to day or to a day certain, not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent; and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses. [C51, §392; R60, §622; C73, §742; C97, §1243; C24, 27, 31, 35, 39, §991; C46, 50, 54, §58.5]

**58.6 Testimony.** The testimony shall be confined to the matters contained in the specifications. [C51,§393; R60,§623; C73,§743; C97, §1244; C24, 27, 31, 35, 39,§992; C46, 50, 54,§58.6]

**58.7 Judgment.** The judgment of the committee pronounced in the final decision on the election shall be conclusive. [C51,§394; R60, §624; C73,§744; C97,§1245; C24, 27, 31, 35, 39, §993; C46, 50, 54,§58.7]

## CHAPTER 59

### CONTESTING ELECTIONS FOR SEATS IN THE GENERAL ASSEMBLY

59.1 Statement served.

59.2 Subpoenas.

59.3 Depositions.

59.4 Return of depositions.

59.5 Statement and depositions—notice.

59.6 Power of general assembly.

**59.1 Statement served.** The contestant for a seat in either branch of the general assembly shall, within thirty days after the incumbent is declared elected, serve on the incumbent a statement as required in relation to county officers, except the list of illegal votes, which shall be served with the notice of taking depositions relative to them, and if no such deposition is taken, then twenty days before the first day of the next session. [C51,§381; R60,§611; C73,§731; C97,§1233; C24, 27, 31, 35, 39,§994; C46, 50, 54,§59.1]

**Statement of contest, §62.5**

**59.2 Subpoenas.** Any judge or clerk of a court of record may issue subpoenas in the above cases, as in those provided in chapters 61 and 62, and compel the attendance of witnesses thereunder. [C51,§382; R60,§612; C73, §732; C97,§1234; C24, 27, 31, 35, 39,§995; C46, 50, 54,§59.2]

**59.3 Depositions.** Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court, but no cause for taking the same need be shown. [C51,§383; R60,§613; C73,§733; C97,§1235; C24, 27, 31, 35, 39,§996; C46, 50, 54, §59.3]

**Depositions in general, R. C. P. 153 et seq.**

**59.4 Return of depositions.** A copy of the statement, and of the notice for taking depo-

sitions, with the service indorsed, and verified by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then, with the depositions, shall be sealed up and transmitted to the secretary of state, with an indorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before whom the contest is to be tried. [C51, §384; R60,§614; C73,§734; C97,§1236; C24, 27, 31, 35, 39,§997; C46, 50, 54,§59.4]

**59.5 Statement and depositions—notice.** The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session, regular or special, of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to his house that such papers are in his possession. [C51,§385; R60, §615; C73,§735; C97,§1237; C24, 27, 31, 35, 39,§998; C46, 50, 54,§59.5]

**59.6 Power of general assembly.** Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial. [C51,§386; R60,§616; C73,§736; C97,§1238; C24, 27, 31, 35, 39,§999; C46, 50, 54,§59.6]

## CHAPTER 60

### CONTESTING ELECTIONS OF PRESIDENTIAL ELECTORS

60.1 Court of contest.

60.2 Clerk.

60.3 Oath.

60.4 Statement.

60.5 Organization and trial.

60.6 Judgment.

**60.1 Court of contest.** The court for the trial of contested elections for presidential electors shall consist of the chief justice of the supreme court, who shall be presiding judge of the court, and four judges of the district court not interested, to be selected by the supreme court, two of whom, with the chief justice, shall constitute a quorum for the transaction of the business of the court. If the chief

justice should for any cause be unable to attend at the trial, the judge longest on the supreme court bench shall preside in place of the chief justice; and any question arising as to the membership of the court shall be determined by the members of the court not interested in the question. [C97,§1246; C24, 27, 31, 35, 39,§1000; C46, 50, 54,§60.1]

**C97,§1246, editorially divided**

**60.2 Clerk.** The secretary of state shall be the clerk of the court, or, in his absence or inability to act, the clerk of the supreme court. [C97,§1246; C24, 27, 31, 35, 39,§1001; C46, 50, 54, §60.2]

**60.3 Oath.** Each member of the court, before entering upon the discharge of his duties, shall take an oath before the secretary of state, or some officer qualified to administer oaths, that he will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, he will, to the best of his knowledge and ability, administer justice according to law and the facts in the case. [C97,§1246; C24, 27, 31, 35, 39,§1002; C46, 50, 54,§60.3]

**60.4 Statement.** The contestant shall file the statement provided for in chapter 62 in the office of the secretary of state within ten days from the day on which the returns are canvassed by the state board of canvassers, and, within the same time, serve a copy of the same, with a notice of the contest, on the incumbent. [C97,§1247; C24, 27, 31, 35, 39,§1003; C46, 50, 54, §60.4]

**60.5 Organization and trial.** The clerk of the court shall, immediately after the filing of

the statement, notify the judges herein named, and fix a day for the organization of the court within three days thereafter, and also notify the parties to the contest. The judges shall meet on the day fixed, and organize the court, and make and announce such rules for the trial of the case as they shall think necessary for the protection of the rights of each party and a just and speedy trial of the case, and commence the trial of the case as early as practicable thereafter, and so arrange for and conduct the trial that a final determination of the same and judgment shall be rendered at least six days before the first Monday after the second Wednesday in December next following. [C97,§1248; C24, 27, 31, 35, 39,§1004; C46, 50, 54,§60.5]

**60.6 Judgment.** The judgment of the court shall determine which of the parties to the action is entitled to hold the office of presidential elector, and shall be authenticated by the presiding judge and clerk of the court and filed with the secretary of state; and the judgment so rendered shall constitute a final determination of the title to the office, and a certificate of appointment shall be issued to the successful party as an elector. [C97,§1249; C24, 27, 31, 35, 39,§1005; C46, 50, 54,§60.6]

## CHAPTER 61

### CONTESTING ELECTIONS OF STATE OFFICERS

Referred to in §59.2

61.1 Contest court.

61.2 Clerk.

61.3 Statement filed.

61.4 Selection of court.

61.5 Notice of selection.

61.6 Organization.

61.7 Contest relative to office of district judge.

61.8 Delivery of papers.

61.9 Time of trial.

61.10 Notice to incumbent—trial.

61.11 Subpoenas—depositions.

61.12 Judgment filed—execution.

61.13 Power of judge.

61.14 Compensation of judges.

**61.1 Contest court.** The court for the trial of contested state offices, except that of governor and lieutenant governor, shall consist of three district judges, not interested, who shall be selected by the chief justice of the supreme court, except that when the chief justice is a party to the contest, the governor shall select said district judges. [C51,§369; R60,§599; C73, §719; C97,§1224; C24, 27, 31, 35, 39,§1006; C46, 50, 54,§61.1]

**61.2 Clerk.** The secretary of state shall be the clerk of this court; but if the person holding that office is a party to the contest, the clerk of the supreme court, or, in case of his absence or inability, the auditor of state shall be clerk. [C51,§370; R60,§600; C73,§720; C97, §1225; C24, 27, 31, 35, 39,§1007; C46, 50, 54,§61.2]

**61.3 Statement filed.** The statement as provided in chapter 62 must be filed with such clerk within thirty days from the day when incumbent was declared elected. [C51,§371; R60, §601; C73,§721; C97,§1226; C24, 27, 31, 35, 39, §1008; C46, 50, 54, §61.3]

**61.4 Selection of court.** Upon the filing of such statement, the chief justice of the supreme court, or governor, as the case may be, shall select the membership of the court to try such contest, and immediately certify such selection to the clerk of the supreme court. Vacancies shall also be filled by the chief justice, or governor, as the case may be. [C24, 27, 31, 35, 39,§1009; C46, 50, 54,§61.4]

**61.5 Notice of selection.** The clerk of the supreme court, on receipt of such certificate, shall forthwith in writing notify the members of such court of contest of their selection. [C51 §372; R60,§602; C73,§722; C97,§1227; C24, 27, 31, 35, 39,§1010; C46, 50, 54,§61.5]

**61.6 Organization.** The members so selected for said contest court shall, in cases of contest over offices other than district judge, meet at the seat of government within ten days after said notification and qualify by taking the oath required in case of contest over the office of presidential elector, and proceed, at said place, with the discharge of their duties. [C51,

§375; R60,§605; C73,§725; C97,§1229; C24, 27, 31, 35, 39,§1011; C46, 50, 54,§61.6]

Oath, §60.3

**61.7 Contest relative to office of district judge.** In case of contests relative to the office of district judge, such selected members of said court shall meet, qualify, and transact the business of said court of contest at such place or places as they may designate, and in such case, after organizing, may select a clerk other than the one heretofore specified. [C24, 27, 31, 35, 39,§1012; C46, 50, 54,§61.7]

**61.8 Delivery of papers.** Upon the organization of said court of contest, all papers in the possession of the clerk of the supreme court shall be forthwith delivered to said court of contest. [C24, 27, 31, 35, 39,§1013; C46, 50, 54,§61.8]

**61.9 Time of trial.** The time for the trial of any contest relative to a state office shall not be set beyond the last Monday in January following the election. [C51,§372; R60,§602; C73, §722; C97,§1227; C24, 27, 31, 35, 39,§1014; C46, 50, 54,§61.9]

**61.10 Notice to incumbent—trial.** Upon the organization of said court of contest, the court shall cause a notice of said contest to be served on the incumbent, together with a copy of the statement of contest filed by the contestant. No trial shall be held sooner than twenty days following said notice, except by consent of all parties. [C51,§372; R60,§602; C73,§722; C97, §1227; C24, 27, 31, 35, 39,§1015; C46, 50, 54,§61.10]

**61.11 Subpoenas — depositions.** The secretary of state, the several clerks of the supreme

and district courts, under their respective seals of office, and either of the judges of the supreme or district courts, under their hands, may issue subpoenas for witnesses to attend this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections. [C51,§373; R60,§603; C73,§723; C97,§1228; C24, 27, 31, 35, 39,§1016; C46, 50, 54, §61.11]

Contempts, ch 665  
Depositions in county contest, §62.16

**61.12 Judgment filed—execution.** A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance against the party's property generally. [C51,§377; R60,§607; C73,§727; C97,§1231; C24, 27, 31, 35, 39,§1017; C46, 50, 54,§61.12]

**61.13 Power of judge.** The presiding judge of this court shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise. [C51,§378; R60,§608; C73,§728; C97,§1232; C24, 27, 31, 35, 39,§1018; C46, 50, 54,§61.13]

**61.14 Compensation of judges.** The judges shall be entitled to receive for their travel and attendance the sum of six dollars each per day, with such mileage as is allowed to members of the general assembly, to be paid from the state treasury. [C51,§376; R60,§606; C73,§726; C97, §1230; C24, 27, 31, 35, 39,§1019; C46, 50, 54,§61.14]

Mileage, §2.11

## CHAPTER 62

### CONTESTING ELECTIONS OF COUNTY OFFICERS

Referred to in §§57.6, 58.1, 59.2, 60.4, 61.3

- 62.1 Contest court.
- 62.2 Judges.
- 62.3 Clerk.
- 62.4 Sheriff to attend.
- 62.5 Statement.
- 62.6 Bond.
- 62.7 When auditor is party.
- 62.8 Names of voters specified.
- 62.9 Trial—notice.
- 62.10 Place of trial.
- 62.11 Subpoenas.
- 62.12 Postponement.
- 62.13 Procedure—powers of court.

- 62.14 Sufficiency of statement.
- 62.15 Amendment—continuance.
- 62.16 Testimony.
- 62.17 Voters required to testify.
- 62.18 Judgment.
- 62.19 How enforced.
- 62.20 Appeal.
- 62.21 Judgment.
- 62.22 Process—fees.
- 62.23 Compensation.
- 62.24 Costs.
- 62.25 How collected.

**62.1 Contest court.** The court for the trial of contested county elections shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. [C51, §343; R60,§573; C73,§695; C97,§1201; C24, 27, 31, 35, 39,§1020; C46, 50, 54,§62.1]

**62.2 Judges.** The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil actions; if either the contestant or the incumbent fails to nominate, the presiding judge shall appoint



for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule. [C51, §§347, 348; R60, §§577, 578; C73, §700; C97, §1206; C24, 27, 31, 35, 39, §1021; C46, 50, 54, §62.2]

**62.3 Clerk.** The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court, but when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded. [C51, §344; R60, §574; C73, §696; C97, §1202; C24, 27, 31, 35, 39, §1022; C46, 50, 54, §62.3]

**62.4 Sheriff to attend.** The court or presiding judge may direct the attendance of the sheriff or a constable when necessary. [C51, §359; R60, §589; C73, §708; C97, §1214; C24, 27, 31, 35, 39, §1023; C46, 50, 54, §62.4]

**62.5 Statement.** The contestant shall file in the office of the county auditor, within twenty days after the day when the incumbent was declared elected, a written statement of his intention to contest the election, setting forth the name of the contestant, and that he or she is qualified to hold such office, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some elector of the county, that the causes set forth are true as he verily believes. [C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1024; C46, 50, 54, §62.5]

C97, §1203, editorially divided

**62.6 Bond.** The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail. [C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1025; C46, 50, 54, §62.6]

**62.7 When auditor is party.** When the auditor is a party, the clerk of the district court shall receive such statement and approve such bond. [C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1026; C46, 50, 54, §62.7]

**62.8 Names of voters specified.** When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement. [C51, §346; R60, §576; C73, §698; C97, §1204; C24, 27, 31, 35, 39, §1027; C46, 50, 54, §62.8]

**62.9 Trial—notice.** The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty nor less than twenty days thereafter, and shall cause a notice of such trial to be served on the incum-

bent, with a copy of the contestant's statement, at least ten days before the day set for trial. [C51, §§347, 349, 350; R60, §§577, 579, 580; C73, §699; C97, §1205; C24, 27, 31, 35, 39, §1028; C46, 50, 54, §62.9]

**62.10 Place of trial.** The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties. [C51, §357; R60, §587; C73, §707; C97, §1213; C24, 27, 31, 35, 39, §1029; C46, 50, 54, §62.10]

**62.11 Subpoenas.** Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court or by the county auditor, and shall command the witnesses to appear at . . . , on . . . , to testify in relation to a contested election, wherein A . . . B . . . is contestant and C . . . D . . . is incumbent. [C51, §§352, 356; R60, §§582, 586; C73, §§704, 706; C97, §1210; C24, 27, 31, 35, 39, §1030; C46, 50, 54, §62.11]

**62.12 Postponement.** The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court. [C51, §353; R60, §583; C73, §701; C97, §1207; C24, 27, 31, 35, 39, §1031; C46, 50, 54, §62.12]

**62.13 Procedure—powers of court.** The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case. [C51, §§354, 358, 361; R60, §§584, 588, 591; C73, §702; C97, §1208; C24, 27, 31, 35, 39, §1032; C46, 50, 54, §62.13]

**62.14 Sufficiency of statement.** The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. [C51, §355; R60, §585; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §1033; C46, 50, 54, §62.14]

C97, §1211, editorially divided

**62.15 Amendment—continuance.** If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if he states on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be at the

cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed. [C51, §§355, 361; R60, §§585, 591; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §1034; C46, 50, 54, §62.15]

**62.16 Testimony.** The testimony may be oral or by deposition, taken as in an action at law in the district court. [C51, §351; R60, §581; C73, §703; C97, §1209; C24, 27, 31, 35, 39, §1035; C46, 50, 54, §62.16]

*Depositions in general, R.C.P. 153 et seq.*

**62.17 Voters required to testify.** The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and, if he was not a qualified voter in the county where he voted, then to answer for whom he voted. [C51, §360; R60, §590; C73, §709; C97, §1215; C24, 27, 31, 35, 39, §1036; C46, 50, 54, §62.17]

**62.18 Judgment.** The court shall pronounce judgment whether the incumbent or any other person was duly elected, and adjudge that the person so declared elected will be entitled to his certificate. If the judgment be against the incumbent, and he has already received the certificate, the judgment shall annul it. If the court find that no person was elected, the judgment shall be that the election be set aside. [C51, §362; R60, §592; C73, §714; C97, §1220; C24, 27, 31, 35, 39, §1037; C46, 50, 54, §62.18]

**62.19 How enforced.** When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs. [C73, §715; C97, §1221; C24, 27, 31, 35, 39, §1038; C46, 50, 54, §62.19]

*Referred to in §62.20*

**62.20 Appeal.** The party against whom judgment is rendered may appeal within twenty days to the district court, but, if he be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in section 62.19, unless he gives a bond, with security to be approved

by the district judge in a sum to be fixed by him, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that, if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case. [C73, §716; C97, §1222; S13, §1222; C24, 27, 31, 35, 39, §1039; C46, 50, 54, §62.20]

*Presumption of approval of bond, §682.10*

**62.21 Judgment.** If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages, against the appellant and the sureties thereon. [C73, §717; C97, §1223; C24, 27, 31, 35, 39, §1040; C46, 50, 54, §62.21]

**62.22 Process—fees.** The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits. [C51, §§356, 374; R60, §§586, 604; C73, §§706, 724; C97, §1212; C24, 27, 31, 35, 39, §1041; C46, 50, 54, §62.22]

**62.23 Compensation.** The judges shall be entitled to receive four dollars a day for the time occupied by the trial. [C51, §363; R60, §593; C73, §710; C97, §1216; C24, 27, 31, 35, 39, §1042; C46, 50, 54, §62.23]

**62.24 Costs.** The contestant and the incumbent are liable to the officers and witnesses for the costs made by them, respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs. [C51, §364; R60, §594; C73, §711; C97, §1217; C24, 27, 31, 35, 39, §1043; C46, 50, 54, §62.24]

**62.25 How collected.** A transcript of the judgment, filed and recorded in the office of the clerk of the district court as provided in relation to transcripts from justices' courts, shall have the same effect as there provided, and execution may issue thereon. [C51, §365; R60, §595; C73, §712; C97, §1218; C24, 27, 31, 35, 39, §1044; C46, 50, 54, §62.25]

*Transcripts from justice court, §§601.69–601.71*

CHAPTER 63

TIME AND MANNER OF QUALIFYING

- 63.1 Time.
- 63.2 Repealed by 56GA, ch 71,§1.
- 63.3 Unavoidable casualty.
- 63.4 Contest.
- 63.5 Governor and lieutenant governor.
- 63.6 Judges.
- 63.7 Officer holding over.

- 63.8 Vacancies—time to qualify.
- 63.9 Temporary officer.
- 63.10 Other officers.
- 63.11 Oath on bond.
- 63.12 Re-elected incumbent.
- 63.13 Approval conditioned.

**63.1 Time.** Each officer, elective or appointive, before entering upon his duties as such, shall qualify by taking the prescribed oath and by giving, when required, a bond, which qualification shall be perfected, unless otherwise specified, before noon of the second secular day in January of the first year of the term for which such officer was elected. [C51, §§319, 334, 335; R60, §§549, 564, 565; C73, §§670, 685-687; C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §1045; C46, 50, 54, §63.1]

Prescribed oath, §§63.5, 63.6, 63.10; bonds, ch 64  
Unavoidable casualty, §63.3

**63.2** Repealed by 56GA, ch 71,§1.

**63.3 Unavoidable casualty.** When on account of sickness, the inclement state of the weather, unavoidable absence, or casualty, an officer has been prevented from qualifying within the prescribed time, he may do so within ten days after the time herein fixed. [C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §1047; C46, 50, 54, §63.3]

General time to qualify, §§63.1, 63.4-63.8

**63.4 Contest.** In case the election of an officer is contested, the successful party shall qualify within ten days after the decision is rendered. [C51, §335; R60, §565; C73, §687; C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §1048; C46, 50, 54, §63.4]

**63.5 Governor and lieutenant governor.** The governor and lieutenant governor shall each qualify within ten days after the result of the election shall be declared by the general assembly, by taking an oath in its presence, in joint convention assembled, administered by a judge of the supreme court, to the effect that he will support the constitution of the United States and the constitution of the state of Iowa, and will faithfully and impartially, and to the best of his knowledge and ability, discharge the duties incumbent upon him as governor, or lieutenant governor, of this state. [C51, §§320, 334; R60, §§550, 564; C73, §§671, 685; C97, §1178; C24, 27, 31, 35, 39, §1049; C46, 50, 54, §63.5]

**63.6 Judges.** All judges of courts of record shall qualify by the first day of January following the election, by taking and subscribing an oath to the effect that they will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will, to the best of their knowledge and ability, administer

justice according to the law, equally to the rich and the poor. [C51, §§322, 334; R60, §§552, 564; C73, §§673, 685; C97, §1179; C24, 27, 31, 35, 39, §1050; C46, 50, 54, §63.6]

Failure to take oath, §740.11

**63.7 Officer holding over.** When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within the time provided by section 63.8. [C51, §338; R60, §568; C73, §690; C97, §1195; S13, §1195; C24, 27, 31, 35, 39, §1051; C46, 50, 54, §63.7]

**63.8 Vacancies—time to qualify.** Persons elected or appointed to fill vacancies, and officers entitled to hold over to fill vacancies occurring through a failure to elect, appoint, or qualify, as provided in chapter 69, shall qualify within ten days from such election, appointment, or failure to elect, appoint, or qualify, in the same manner as those originally elected or appointed to such offices. [C51, §440; R60, §668; C73, §786; C97, §1275; C24, 27, 31, 35, 39, §1052; C46, 50, 54, §63.8]

Referred to in §63.7

**63.9 Temporary officer.** Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent shall qualify, in the manner required by this chapter, for the office so to be filled. [C73, §691; C97, §1194; C24, 27, 31, 35, 39, §1053; C46, 50, 54, §63.9]

Similar provisions, §§67.8, 68.5

**63.10 Other officers.** All other civil officers, elected by the people or appointed to any civil office, unless otherwise provided, shall take and subscribe an oath substantially as follows:

“I, . . . . ., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of . . . . . (naming it) in (naming the township, town, city, county, district, or state, as the case may be), as now or hereafter required by law.” [C51, §331, 332; R60, §§561, 562, 1084, 1132; C73, §§504, 514, 675, 676; C97, §1180; C24, 27, 31, 35, 39, §1054; C46, 50, 54, §63.10]

Referred to in §§53.45, 63.11, 257.13, 386B.6  
Exceptions as to oath, §§63.5, 63.6  
Failure to take oath, §740.11

**63.11 Oath on bond.** Every civil officer who is required to give bond shall take and sub-

scribe the oath provided for in section 63.10, on the back of his bond, or on a paper attached thereto, to be certified by the officer administering it. [C51,§331; R60,§561; C73,§675; C97, §1181; C24, 27, 31, 35, 39,§1055; C46, 50, 54,§63.11]

Officers required to give bonds, ch 64  
See also §§64.15, 64.19

**63.12 Re-elected incumbent.** When the incumbent of an office is re-elected, he shall qualify as above directed. [C51,§338; R60,§568; C73, §690; C97,§1193; C24, 27, 31, 35, 39,§1056; C46, 50, 54,§63.12]

C97, §1193, editorially divided

**63.13 Approval conditioned.** When the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer. [C73,§690; C97,§1193; C24, 27, 31, 35, 39,§1057; C46, 50, 54, §63.13]

CHAPTER 64

OFFICIAL AND PRIVATE BONDS

Referred to in §215.12

- 64.1 Bond not required.
- 64.2 Conditions of bond of public officers.
- 64.3 Liability of surety.
- 64.4 Conditions of other bonds.
- 64.5 Want of compliance—effect.
- 64.6 State officers—amount of bonds.
- 64.7 Amount of bonds, when not fixed by law.
- 64.8 County officers.
- 64.9 Minimum bonds of county officers.
- 64.10 Bond of county treasurer.
- 64.11 Expense of bonds paid by county.
- 64.12 Township clerk—expense of bond.
- 64.13 Municipal officers.
- 64.14 Payable by town—when.

- 64.15 Bonds of deputy officers.
- 64.16 Minimum number of sureties—qualifications.
- 64.17 Surety company bonds.
- 64.18 Beneficiary of bond.
- 64.19 Approval of bonds.
- 64.20 Time for approval.
- 64.21 Approval by auditor.
- 64.22 Failure of board to approve—application to judge.
- 64.23 Custody of bond.
- 64.24 Recording.
- 64.25 Failure to give bond.

**64.1 Bond not required.** Bonds shall not be required of the following public officers:

1. Governor.
2. Lieutenant governor.
3. Members of the general assembly.
4. Judges of the supreme, district, superior, and municipal courts.
5. Township trustees.
6. Aldermen, councilmen, and commissioners of cities and towns. [C51,§323; R60,§553; C73,§674; C97,§1182; S13,§1182; SS15,§694-c11; C24, 27, 31, 35, 39,§1058; C46, 50, 54,§64.1]

**64.2 Conditions of bond of public officers.** All other public officers, except as otherwise specially provided, shall give bond with the conditions, in substance, as follows:

“That as ..... (naming the office), in ..... (city, town, township, county, or state of Iowa), he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver

them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of his office by law.”

The attachment of a renewal certificate to an existing bond shall not constitute compliance with this section. [C51,§324; R60,§§554, 1084, 1132; C73,§§504, 514, 674; C97,§1183; C24, 27, 31, 35, 39,§1059; C46, 50, 54,§64.2]

Referred to in §358B.10  
Construction of public bonds, §666.1

**64.3 Liability of surety.** The sureties on such bond shall be liable for all money or public property that may come into the hands of such officer at any time during his possession of such office. [C51,§324; R60,§§554, 1084, 1132; C73,§§504, 514, 674; C97,§1183; C24, 27, 31, 35, 39, §1060; C46, 50, 54,§64.3]

**64.4 Conditions of other bonds.** All other bonds required by law, when not otherwise specially provided, shall be conditioned as the bonds of public officers. [S13,§§1177-a,-d; C24, 27, 31, 35, 39,§1061; C46, 50, 54,§64.4]

**64.5 Want of compliance—effect.** All bonds required by law shall be construed as impliedly containing the conditions required by statute, anything in the terms of said bonds to the contrary notwithstanding. [C51,§337; R60,

§567; C73,§689; C97,§1192; S13,§1177-c; C24, 27, 31, 35, 39,§1062; C46, 50, 54,§64.5]

**Implied conditions, §14.1**

**64.6 State officers—amount of bonds.** State officers shall give bonds in an amount as follows:

1. Secretary of state, auditor of state, attorney general, clerk of the supreme court, not less than ten thousand dollars.

2. Treasurer of state, not less than three hundred thousand dollars.

3. Members of board of control of state institutions, twenty-five thousand dollars.

4. Each member of the finance committee of the state board of regents, twenty-five thousand dollars.

5. Each treasurer of a state institution under the control of the state board of regents shall furnish a surety bond, the amount thereof to be determined by the said board.

6. Commissioner of public health, secretary of agriculture, and each Iowa state commerce commissioner, not less than five thousand dollars.

7. Superintendent of public instruction, not less than two thousand dollars.

8. Superintendent of public buildings and grounds, such amount as the executive council may fix.

9. Commissioner of insurance, fifty thousand dollars.

10. Superintendent of banking, twenty thousand dollars.

11. State fire marshal, five thousand dollars.

12. Mine inspectors, two thousand dollars.

13. Labor commissioner, two thousand dollars.

14. Deputy labor commissioner, one thousand dollars.

15. Members state conservation commission, five thousand dollars.

16. State conservation director, ten thousand dollars.

17. State conservation officers, one thousand dollars.

18. Secretary of executive council, such amount as the executive council may fix.

19. State librarian, five thousand dollars.

20. Law librarian, three thousand dollars.

21. Curator historical department, one thousand dollars.

22. Superintendent of printing, five thousand dollars.

23. Industrial commissioner, one thousand dollars.

24. Members state highway commission, five thousand dollars.

25. Reporter of the supreme court, not less than one thousand dollars.

26. Members of appeal board under chapter 22, five thousand dollars.

27. All other public officers, in the amount provided by law, or as fixed under section 64.7.

28. The state shall pay the reasonable cost of the bonds required in subsections 1 to 26, both inclusive, of this section.

1. [C51,§326; R60,§§128, 556; C73,§678; C97, §1184; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

2. [C51,§326; R60,§556; C73,§678; C97,§1184; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

3. [S13,§2727-a2; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

4. [S13,§2682-i; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6; 56GA, ch 131,§13]

5. [R60,§1739; C73,§1614; C97,§2654; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6; 56GA, ch 131,§13]

6. [C97,§1184; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

7. [C51,§326; C73,§678; C97,§1184; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

8. [C97,§145; SS15,§147; C24, 27, 31, 35, 39, §1063; C46, 50, 54,§64.6; 57GA, ch 58,§8]

9. [S13,§1683-r; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

10. [C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

11. [S13,§2468-a; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

12. [C97,§2478; SS15,§2478; C24, 27, 31, 35, 39, §1063; C46, 50, 54,§64.6]

13. [C97,§2469; S13,§2469; C24, 27, 31, 35, 39, §1063; C46, 50, 54,§64.6]

14. [C24, 27, 31, 35, 39,§1063, C46, 50, 54, §64.6]

15. [C31,§1703-d7; C35, 39,§1063; C46, 50, 54, §64.6]

16. [C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

17. [SS15,§2562; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

18. [S13,§157; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

19. [C51,§446; R60,§691; C73,§1890; C97,§2860; S13,§2881-h; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

20. [C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

21. [S13,§2881-h; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

22. [SS15,§144-g; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

23. [C24, 27, 31, 35, 39,§1063; C46, 50, 54, §64.6]

24. [SS15,§1527-s; C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

25. [C73,§678; C97,§1184; C24, 27, 31, 35, 39, §1063; C46, 50, 54,§64.6]

26. [C24, 27,§347; C31, 35, 39,§1063; C46, 50, 54,§64.6]

27. [C24, 27, 31, 35, 39,§1063; C46, 50, 54,§64.6]

28. [C46, 50, 54,§64.6; 56GA, ch 131,§13; 57GA, ch 58,§8]

Referred to in §257.14

**64.7 Amount of bond, when not fixed by law.** In all cases where no amount or a minimum amount is fixed by law for the official bond of a public officer, the approving officer or board shall fix the bond at such amount as public interest may require. [C24, 27, 31, 35, 39,§1064; C46, 50, 54,§64.7]

Referred to in §64.6

**64.8 County officers.** The bonds of the following county officers, viz: Clerks of the district courts, county attorneys, recorders, coroners, auditors, superintendents of schools, sheriffs, justices of the peace, and constables,

and assessors shall each be in a penal sum to be fixed by the board of supervisors. [C51, §§326, 327; R60, §§556, 557; C73, §678; C97, §1185; S13, §1185; C24, 27, 31, 35, 39, §1065; C46, 50, 54, §64.8]

Referred to in §273.16

**64.9 Minimum bonds of county officers.**

Bonds of members of the board of supervisors, clerks of the district courts, county auditors, sheriffs, and county attorneys shall not be in less sum than five thousand dollars each, and those of justices and constables, not less than five hundred dollars each. [C51, §327; R60, §557; C73, §678; C97, §1185; S13, §§1182-a, 1185; C24, 27, 31, 35, 39, §1066; C46, 50, 54, §64.9]

**64.10 Bond of county treasurer.** The bond of the county treasurer shall be in the sum of ten thousand dollars. [C24, §1066; C27, 31, 35, §1066-a; C39, §1066.1; C46, 50, 54, §64.10]

**64.11 Expense of bonds paid by county.**

If any county treasurer, clerk of the district court, county attorney, recorder, auditor, sheriff, coroner, members of soldiers relief commission, members of the board of supervisors, engineer, steward or matron shall elect to furnish a bond with any association or incorporation as surety as provided in this chapter, the reasonable cost of such bond shall be paid by the county where the bond is filed. [S13, §1185; C24, 27, 31, 35, 39, §1067; C46, 50, 54, §64.11; 56GA, ch 72, §1; 57GA, ch 67, §1]

Surety company bonds authorized, §64.17

**64.12 Township clerk—expense of bond.** All bonds required of the township clerk shall be furnished and paid for by the township. [C27, 31, 35, §1067-b1; C39, §1067.1; C46, 50, 54, §64.12]

**64.13 Municipal officers.** The bonds of all municipal officers who are required to give bonds shall each be in such penal sum as may be provided by law or as the council shall from time to time prescribe by ordinance; but the bonds of mayors shall not be in less sum than five hundred dollars each. [R60, §§1084, 1132; C73, §§504, 514; C97, §1185; S13, §1185; C24, 27, 31, 35, 39, §1068; C46, 50, 54, §64.13]

Bonds not required, §64.1

**64.14 Payable by town—when.** In all instances where a municipal officer receives a compensation of one hundred dollars per year or less and is required to furnish bond for his office, the reasonable cost of such bond may be paid by such municipality. [C46, 50, 54, §64.14]

**64.15 Bonds of deputy officers.** Bonds required by law of deputy state, county, city, and town officers shall, unless otherwise provided, be in such amounts as may be fixed by the governor, board of supervisors, or the council, as the case may be, with sureties as required for the bonds of the principal, and filed with the same officer. The giving of such bond shall not relieve the principal from liability for the official acts of the deputy. The reasonable cost of the bonds required of

deputy county officers shall be paid by the county where the bond is filed. [C51, §411; R60, §642; C73, §766; C97, §1186; C24, 27, 31, 35, 39, §1069; C46, 50, 54, §64.15; 56GA, ch 72, §2]

Bonds of deputies, §§27.1, 341.4  
See also §§63.10, 64.19

**64.16 Minimum number of sureties—qualifications.** Every bond required by this chapter, except as hereinafter specified, shall be executed with at least two sureties, each of whom shall be a freeholder of the state. The bonds of the state treasurer and of the county treasurer shall have not less than four sureties, possessed of like qualifications. [C51, §§328, 329; R60, §§558, 559; C73, §679; C97, §1187; C24, 27, 31, 35, 39, §1070; C46, 50, 54, §64.16]

**64.17 Surety company bonds.** Any association or incorporation which does the business of insuring the fidelity of others, and which has authority by law to do business in this state, shall be accepted as surety upon bonds required by law. [C97, §1187; C24, 27, 31, 35, 39, §1071; C46, 50, 54, §64.17]

**64.18 Beneficiary of bond.** All bonds of public officers shall run to the state, and be for the use and benefit of any corporation, public or private, or person injured or sustaining loss, with a right of action in the name of the state for its or his use. [C51, §325; R60, §555; C73, §677; C97, §1188; S13, §1188; C24, 27, 31, 35, 39, §1072; C46, 50, 54, §64.18]

**64.19 Approval of bonds.** Bonds shall be approved:

1. By the governor, in case of state and district officers, elective or appointive.
2. By the board of supervisors, in case of county officers, township clerks, and assessors.
3. By a judge or the clerk of the district court of the county in question, in case of members of the board of supervisors.
4. By the township clerk, in case of other township officers.
5. By the mayor, or as may be provided by ordinance, in case of city and town officers.
6. By the city or town council, in case of the office of mayor. [C51, §330; R60, §560; C73, §680; C97, §1188; S13, §§1182-a, 1188; C24, 27, 31, 35, 39, §1073; C46, 50, 54, §64.19]

Bonds of notary public, §77.4  
See §§63.11, 64.15

**64.20 Time for approval.** All bonds shall be approved or disapproved within five days after their presentation for that purpose, and indorsed, in case of approval, to that effect and filed. [C51, §330; R60, §560; C73, §680; C97, §1188; S13, §1188; C24, 27, 31, 35, 39, §1074; C46, 50, 54, §64.20]

**64.21 Approval by auditor.** When a bond, approvable by the board of supervisors, of any public officer is presented after the final adjournment of the January session of said board, except those of the county auditor and treasurer, the auditor may approve such bond,

in which case he shall report his action to the board at its next session. The action of the auditor in approving the bond shall stand as the action of the board unless the board enters its disapproval. If such disapproval be entered, the new bond must be given within five days from the date of such decision, but the old bond shall stand good for all acts done up to the time of the approval of the new bond. [C51, §330; R60, §560; C73, §680; C97, §1189; C24, 27, 31, 35, 39, §1075; C46, 50, 54, §64.21]

**64.22 Failure of board to approve—application to judge.** If the board of supervisors refuses or neglects to approve the bond of any county officer, he may within five days thereafter, or after the expiration of the time allowed for such approval, present the same for approval to a judge of the district court of the proper district, who shall fix a day for the hearing. Notice of such hearing shall be given the board and return made in the same manner as in a civil action, and the court or judge at the time fixed shall, unless good cause for postponement be shown, proceed to hear the matter and approve the bond, if found sufficient, and such approval shall have the same force and effect as an approval by the board. [C73, §681; C97, §1190; C24, 27, 31, 35, 39, §1076; C46, 50, 54, §64.22]

Notice and return, ch 617

**64.23 Custody of bond.** The bonds and official oaths of public officers shall, after approval and proper record, be filed:

1. For all state officers, elective or appointive, except those of the secretary of state, with the secretary of state.
2. For the secretary of state, with the state auditor.
3. For county and township officers, except those of the county auditor, with the county auditor.
4. For county auditor, with the county treasurer.

5. For members of the board of supervisors, and for justices of the peace, with the clerk of the district court.

6. For officers of cities and towns, and officers not otherwise provided for, when both bond and oath are required, in the office of the officer or clerk of the body approving the bond.

7. For officers of cities and towns when only an oath is required, in the office of the mayor. [C51, §333; R60, §563; C73, §682; C97, §1188, 1191; S13, §§1182-a, 1188; C24, 27, 31, 35, 39, §1077; C46, 50, 54, §64.23]

**64.24 Recording.** The secretary of state, each county auditor, and each auditor or clerk of a city or town, shall keep a book, to be known as the "Record of Official Bonds", and all official bonds shall be recorded therein in full as follows:

1. In the record kept by the secretary of state, the official bonds of all state officers, elective or appointive, except the bonds of notaries public.
2. In the record kept by the county auditor, the official bonds of all county officers, elective or appointive, justices of the peace, township clerks, and constables.
3. In the record kept by the city or town auditor or clerk, the official bonds of all city or town officers, elective or appointive.

Said records shall have an index which, under the title of each office, shall show the name of each principal, his sureties, and the date of the filing of the bond.

A bond when recorded shall be returned to the officer charged with the custody thereof. [C73, §683; C97, §1196; S13, §1196; C24, 27, 31, 35, 39, §1078; C46, 50, 54, §64.24]

**64.25 Failure to give bond.** Any officer who acts in an official capacity without giving bond when such bond is required shall be fined in an amount not exceeding the amount of the bond required of him. [C73, §684; C97, §1197; C24, 27, 31, 35, 39, §1079; C46, 50, 54, §64.25]

## CHAPTER 65

### ADDITIONAL SECURITY AND DISCHARGE OF SURETIES

- 65.1 Additional security.
- 65.2 New bond.
- 65.3 Effect.
- 65.4 Sureties on bonds of public officers.
- 65.5 Notice.
- 65.6 Subpoenas.

**65.1 Additional security.** Whenever the governor shall deem it advisable that the bonds of any state officer shall be increased and the security enlarged, or a new bond given, he shall notify said officer of the fact, the amount of new or additional security to be given, and the time when the same shall be executed; which said new security shall be approved and filed as provided by law. [R60,

- 65.7 Hearing—order—effect.
- 65.8 Failure to comply.
- 65.9 Justice of the peace.
- 65.10 Sureties on other bonds.
- 65.11 Return of premium by surety.

§660; C73, §772; C97, §1280; C24, 27, 31, 35, 39, §1080; C46, 50, 54, §65.1]

Referred to in §65.3  
Approval and filing of bonds, §§64.19, 64.23

**65.2 New bond.** Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days notice to show cause to the contrary, may require him

to give additional security by a new bond, within a reasonable time to be prescribed. [C51, §§418, 419; R60, §§649, 650; C73, §773; C97, §1281; C24, 27, 31, 35, 39, §1081; C46, 50, 54, §65.2]

Referred to in §65.3  
Approval, §64.19

**65.3 Effect.** If a requisition made under either section 65.1 or section 65.2 be complied with, both the old and the new security shall be in force; if not, the office shall become and be declared vacant, and the fact be certified to the proper officer, to be recorded in the election book or township record. [C51, §420; R60, §§651, 661; C73, §774; C97, §1282; C24, 27, 31, 35, 39, §1082; C46, 50, 54, §65.3]

**65.4 Sureties on bonds of public officers.** When any surety on the bond of a public officer desires to be relieved of his obligation, he may petition the approving officer or board for relief, stating the grounds therefor. [C51, §421; R60, §652; C73, §775; C97, §1283; C24, 27, 31, 35, 39, §1083; C46, 50, 54, §65.4]

Approving officers, §64.19

**65.5 Notice.** The surety shall give the principal at least twenty-four hours notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice the approving officer may hear the matter, or may postpone it, as justice requires. [C51, §422; R60, §653; C73, §776; C97, §1284; C24, 27, 31, 35, 39, §1084; C46, 50, 54, §65.5]

**65.6 Subpoenas.** The approving officer may issue subpoenas in his official name for witnesses, compel them to attend and testify, in the same way an officer authorized to take depositions may. [C51, §427; R60, §658; C73, §780; C97, §1288; C24, 27, 31, 35, 39, §1085; C46, 50, 54, §65.6]

Enforcing attendance, etc., §§622.84, 622.102

**65.7 Hearing—order—effect.** If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed, and, upon such new bond being given, the petitioning surety upon the former bond

shall be declared discharged from liability on the same for future acts, which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief. [C51, §424; R60, §655; C73, §777; C97, §1285; C24, 27, 31, 35, 39, §1086; C46, 50, 54, §65.7]

**65.8 Failure to comply.** If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book. [C51, §425; R60, §656; C73, §778; C97, §1286; C24, 27, 31, 35, 39, §1087; C46, 50, 54, §65.8]

**65.9 Justice of the peace.** If the proceedings relate to a justice of the peace, and he is removed from office, the county auditor shall notify the proper township trustees or clerk of the removal. [C51, §426; R60, §657; C73, §779; C97, §1287; C24, 27, 31, 35, 39, §1088; C46, 50, 54, §65.9]

**65.10 Sureties on other bonds.** When the principal on the bond has been appointed by a judge or court or is under the jurisdiction of a court, the petition for release must be presented to said court and the release shall be made subject to the orders of said court.

Such petition for release may be presented either by the principal or the surety on the bond.

Sureties on other bonds required by law who desire to be released of their obligation may proceed in the manner required for release in case of bonds of public officers.

The provisions of this section shall not apply to sureties on bonds given to secure the performance of contracts for public works, nor to sureties on appearance bonds in criminal cases. [C51, §421; R60, §652; C73, §775; C97, §1283; S13, §1177-b; C24, 27, 31, 35, 39, §1089; C46, 50, 54, §65.10]

Release of obligation, §65.4 et seq.

**65.11 Return of premium by surety.** When a surety is released as heretofore provided, he shall refund to the party entitled thereto the premium paid, if any, less a pro rata part thereof for the time said bond has been in force. [S13, §1177-b; C24, 27, 31, 35, 39, §1090; C46, 50, 54, §65.11]

## CHAPTER 66

### REMOVAL FROM OFFICE

Referred to in §§123.12, 217.4, 363C.10, 363C.11

66.1 Removal by court.  
66.2 Jurisdiction.  
66.3 Who may file petition.  
66.4 Bond for costs.  
66.5 Petition—other pleading.  
66.6 Notice.  
66.7 Suspension from office.  
66.8 Effect of suspension.  
66.9 Salary pending charge.  
66.10 Governor to direct filing.

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66.14 Appointment of judge.  
66.15 Order by appointed judge.  
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- 66.21 Hearing on appeal.
- 66.22 Effect of appeal.
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- 66.24 Want of probable cause.
- 66.25 Expense of judge and reporter.

- 66.26 Appointive state officers.
- 66.27 Subpoenas—contempt.
- 66.28 Witness fees.
- 66.29 City or town elective officers.
- 66.30 Ordinance.

**66.1 Removal by court.** Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For willful or habitual neglect or refusal to perform the duties of his office.
2. For willful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated. [S13,§1258-c; C24, 27, 31, 35, 39,§1091; C46, 50, 54,§66.1]

Impeachable officers, Constitution, Art. III, §20  
 Industrial commissioner, §86.7  
 Member board of control, §217.4  
 Member state board of regents, §262.4  
 Mine examiner, §82.2  
 Mine inspector, §82.9  
 Municipal officers, §§66.29, 368.40  
 Notary public, §77.11  
 Peace officers, §32.6  
 Registered architects, §118.1  
 State comptroller, §8.4

**66.2 Jurisdiction.** The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.
2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.
3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed. [C24, 27, 31, 35, 39,§1092; C46, 50, 54,§66.2]

**66.3 Who may file petition.** The petition for removal may be filed:

1. By the attorney general in all cases.
2. As to state officers, by not fewer than twenty-five electors of the state.
3. As to any other officer, by five qualified electors of the district, county, or municipality where the duties of the office are to be performed.
4. As to district officers, by the county attorney of any county in the district.
5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed. [S13, §1258-d; C24, 27, 31, 35, 39,§1093; C46, 50, 54, §66.3]

**66.4 Bond for costs.** If the petition for removal is filed by anyone other than the attorney general or the county attorney, the

court shall require the petitioners to file a bond in such amount and with such surety or sureties as the court may require, said bond to be approved by the clerk, to cover the costs of such removal suit, including attorney fees, if final judgment is not entered removing the officer charged. [C35,§1093-e1; C39,§1093.1; C46, 50, 54,§66.4]

Presumption of approval of bond, §682.10

**66.5 Petition—other pleading.** The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant, and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto. [S13,§§1258-d,-e; C24, 27, 31, 35, 39,§1094; C46, 50, 54,§66.5]

Amendments generally, R.C.P. 85(d), 88, 89, and 247

**66.6 Notice.** Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten days nor more than twenty days after completed service of said notice. [S13,§1258-f; C24, 27, 31, 35, 39,§1095; C46, 50, 54,§66.6]

Service of notice, ch 617

**66.7 Suspension from office.** Upon the filing of the petition in the office of the clerk of the district court, and presentation of the same to the judge, the court or judge may suspend the accused from office, if in his judgment sufficient cause appear from the petition and affidavits which may be presented in support of the charges contained therein. [S13,§1258-g; C24, 27, 31, 35, 39,§1096; C46, 50, 54,§66.7]

**66.8 Effect of suspension.** In case of suspension, the order shall be served upon the officer in question and it shall be unlawful for him to exercise or attempt to exercise any of the functions of his office until such suspension is revoked. [C24, 27, 31, 35, 39,§1097; C46, 50, 54, §66.8]

**66.9 Salary pending charge.** An order of the district court or of a judge thereof suspending a public officer from the exercise of his office, after the filing of a petition for the removal from office of such officer, shall, from the date of such order, automatically suspend the further payment to said officer of all official salary or compensation until said petition has been dismissed, or until said officer has

been acquitted on any pending indictments charging misconduct in office. [C35,§1097-e1; C39,§1097.1; C46, 50, 54,§66.9]

**66.10 Governor to direct filing.** The governor shall direct the attorney general to file such petition against any of said officers whenever he has reasonable grounds for such direction. The attorney general shall comply with such direction and prosecute such action. [S13, §§1258-d,-e; C24, 27, 31, 35, 39,§1098; C46, 50, 54, §66.10]

Referred to in §66.11

**66.11 Duty of county attorney.** The county attorney of any county in which an action is instituted under section 66.10 shall, at the request of the attorney general, appear and assist in the prosecution of such action. In all other cases instituted in his county, the county attorney shall appear and prosecute when the officer sought to be removed is other than himself. [S13,§1258-d; C24, 27, 31, 35, 39, §1099; C46, 50, 54,§66.11]

**66.12 Special prosecutor.** When the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings. [S13,§1258-d; C24, 27, 31, 35, 39,§1100; C46, 50, 54,§66.12]

**66.13 Application for outside judge.** At any time not less than five days prior to the time the accused is required to appear, a copy of the petition may be filed by either party in the office of the clerk of the supreme court, together with an application to the supreme court for the appointment of a judge outside the judicial district in which the trial is to be had to hear said petition. [S13,§1258-f; C24, 27, 31, 35, 39,§1101; C46, 50, 54,§66.13]

**66.14 Appointment of judge.** It shall be the duty of the chief justice of the supreme court, upon the filing of said copy and application, or in his absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge outside of such district to proceed to the county in which the complaint was filed, and hear the same. The clerk of the supreme court shall transmit a certified copy of said order to the clerk of the district court where the cause is pending. [S13, §1258-f; C24, 27, 31, 35, 39,§1102; C46, 50, 54, §66.14]

**66.15 Order by appointed judge.** Upon the receipt of such commission, said judge shall immediately make an order fixing a time and place of hearing in the county in which the petition is filed. Said time shall not be less than ten days nor more than twenty days from the date of the order. [S13,§1258-f; C24, 27, 31, 35, 39,§1103; C46, 50, 54,§66.15]

**66.16 Filing order—effect.** Said order shall be forwarded to the clerk of the district court of the county in which the hearing is to be

had. Said order shall supersede the time and place specified in any notice already served. [S13,§1258-f; C24, 27, 31, 35, 39,§1104; C46, 50, 54, §66.16]

**66.17 Notice to accused.** The clerk shall file said order, and forthwith give the defendant, by mail, notice of the time and place of hearing. [S13,§1258-f; C24, 27, 31, 35, 39,§1105; C46, 50, 54,§66.17]

**66.18 Nature of action—when triable.** The proceeding shall be summary in its nature, shall be triable as an equitable action, and may be heard either in vacation or term time. [S13, §1258-g; C24, 27, 31, 35, 39,§1106; C46, 50, 54, §66.18]

Trial of equitable action, ch 624

**66.19 Temporary officer.** Upon such suspension, the board or person authorized to fill a vacancy in the office shall temporarily fill the office by appointment. In case of a suspension of a clerk or sheriff, the district court or judge thereof may supply such place by appointment until a temporary appointment shall be made. Such orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor, and be by him entered in the election book; those of city and town officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment. [C51,§§404, 407, 410; R60,§§635, 638, 641; C73,§§752, 753, 758; C97,§1257; S13,§1258-g; C24, 27, 31, 35, 39,§1107; C46, 50, 54,§66.19]

**66.20 Judgment of removal.** Judgment of removal, if rendered, shall be entered of record, and the vacancy forthwith filled as provided by law. [S13,§1258-h; C24, 27, 31, 35, 39,§1108; C46, 50, 54,§66.20]

Removal under indictment, §740.8  
Vacancies in office, ch 69

**66.21 Hearing on appeal.** In case of appeal, the supreme court shall fix the time of hearing and the filing of abstracts and arguments, and said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard. [S13,§1258-i; C24, 27, 31, 35, 39,§1109; C46, 50, 54,§66.21]

**66.22 Effect of appeal.** The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore said defendant to office pending such appeal. [S13,§1258-i; C24, 27, 31, 35, 39,§1110; C46, 50, 54,§66.22]

**66.23 Effect of dismissal.** If the petition be dismissed on final hearing on the merits, the defendant shall have judgment against the state, if the action was instituted by the attorney general, and against the county, city, town,

or other subdivision of the state if the action is otherwise instituted, for the reasonable and necessary expenses incurred by the defendant in making his defense, including a reasonable attorney fee, to be fixed by the court or judge. Such payment shall be made out of any funds in the state treasury not otherwise appropriated, or out of the general fund of the county, city, town, or other subdivision of the state, as the case may be. [S13,§1258-i; C24, 27, 31, 35, 39, §1111; C46, 50, 54,§66.23]

Referred to in §404.6(8)

**66.24 Want of probable cause.** If the action is instituted upon complaint of citizens, and it appears to the court that there was no reasonable cause for filing the complaint, such expense may be taxed as costs against the complaining parties. [S13,§1258-i; C24, 27, 31, 35, 39,§1112; C46, 50, 54,§66.24]

**66.25 Expense of judge and reporter.** A judge who is required to preside at such hearing, outside of his judicial district, and the judge's official reporter who is required to report such hearing, shall be allowed, from the state treasury, their necessary and actual expenses incurred by reason of such hearing. [S13,§1258-j; C24, 27, 31, 35, 39,§1113; C46, 50, 54,§66.25]

**66.26 Appointive state officers.** Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes:

1. Habitual or willful neglect of duty.
2. Any disability preventing a proper discharge of the duties of his office.
3. Gross partiality.
4. Oppression.
5. Extortion.
6. Corruption.
7. Willful misconduct or maladministration in office.
8. Conviction of felony.
9. A failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.
10. Becoming ineligible to hold the office. [S13,§1258-b; C24, 27, 31, 35, 39,§1114; C46, 50, 54, §66.26]

Industrial commissioner, §86.7  
 Member of board of control, §217.4  
 Member state board of regents, §262.4  
 Mine examiner, §82.2  
 Mine inspector, §82.9  
 Registered architects, §118.1  
 State comptroller, §8.4

**66.27 Subpoenas—contempt.** The executive council, in any investigation held by it, may issue subpoenas for witnesses and for the production of records, books, papers, and other evidence. If a witness, duly subpoenaed, refuses to appear, or refuses to testify, or otherwise refuses to comply with said subpoena, such fact shall be certified by such council to the district court or judge of the county where the hearing is being held and said court or judge shall proceed with said refusal as though the same had occurred in a legal proceeding before said court or judge. [C24, 27, 31, 35, 39, §1115; C46, 50, 54,§66.27]

Contempts, ch 665

**66.28 Witness fees.** Said witnesses, if in the employ of the state, shall not be entitled to any witness fees, but shall receive the mileage allowed witnesses in the district court. Other witnesses shall receive the fees and mileage allowed witnesses in district court. A sum sufficient to pay said fees and mileage is hereby appropriated out of any unappropriated funds in the state treasury. [C24, 27, 31, 35, 39, §1116; C46, 50, 54,§66.28]

Witness fees, §622.69 et seq.

**66.29 City or town elective officers.** Any city or town officer elected by the people may be removed from office, after hearing on written charges filed with the council of such city or town, for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds vote of the entire council. [R60,§1087; C73,§516; C97,§1258; SS15,§1258; C24, 27, 31, 35, 39,§1117; C46, 50, 54,§66.29]

Removal of municipal officers, §§66.1, 363.40, 363B.12

**66.30 Ordinance.** The council may, by ordinance, provide as to the manner of preferring and hearing such charges. No person shall be twice removed by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district court as in this chapter provided. [R60,§1087; C73,§516; C97, §1258; S13,§1258-a; SS15,§1258; C24, 27, 31, 35, 39, §1118; C46, 50, 54,§66.30]

CHAPTER 67

SUSPENSION OF STATE OFFICERS

- 67.1 Commission to examine accounts.
- 67.2 Power of commission.
- 67.3 Refusal to obey subpoena—fees.
- 67.4 Nature of report.
- 67.5 Duty of governor.
- 67.6 Effect of order—penalty.
- 67.7 Salary pending charge.

- 67.8 Temporary appointment.
- 67.9 Governor to protect state.
- 67.10 Governor to report to general assembly.
- 67.11 Failure to impeach or convict.
- 67.12 Compensation of commissioners.
- 67.13 Reports revealing grounds of removal.

**67.1 Commission to examine accounts.** The governor shall, when of the opinion that the public service requires such action, appoint, in writing, a commission of three competent accountants and direct them to examine the books, papers, vouchers, moneys, securities, and documents in the possession or under the control of any state officer, board, commission, or of any person expending or directing the expenditure of funds belonging to or in the possession of the state. [R60, §§46, 47, 55, 56; C73, §759; C97, §1259; C24, 27, 31, 35, 39, §1119; C46, 50, 54, §67.1]

**67.2 Power of commission.** Said commissioners while in session shall have power to issue subpoenas, to call any person to testify in reference to any fact connected with their investigation, and to require such persons to produce any paper or book which the district court might require to be produced. Each commissioner shall have power to administer oaths. [R60, §54; C73, §765; C97, §1260; C24, 27, 31, 35, 39, §1120; C46, 50, 54, §67.2]

**67.3 Refusal to obey subpoena — fees.** If any witness, duly subpoenaed, refuses to obey said subpoena, or refuses to testify, said commission shall certify said fact to the district court or judge thereof of the county where the investigation is being had and said court or judge shall proceed with said witness in the same manner as though said refusal had occurred in a legal proceeding before said court or judge.

Witnesses shall be paid in the manner provided for witnesses before the executive council and from the same appropriation. [C24, 27, 31, 35, 39, §1121; C46, 50, 54, §67.3]

Contempts, ch 665  
Payment of witnesses before council, §66.28  
Witness fees, §622.69 et seq.

**67.4 Nature of report.** Such accountants shall make out a full, complete, and specific statement of the transactions of said officer with, for, or on behalf of the state, showing the true balances in each case, and report the same to the governor, with such suggestions as they may think proper. [R60, §§46, 47, 55, 56; C73, §759; C97, §1259; C24, 27, 31, 35, 39, §1122; C46, 50, 54, §67.4]

**67.5 Duty of governor.** The governor, if he finds from said report that matters exist which would be grounds for removing said officer from office, shall proceed as follows:

1. If the officer is an elective state officer, not removable under impeachment proceedings, or if said officer is an appointive state officer, he shall lay a copy of said report before the attorney general.

2. If the officer is an appointive state officer, he shall also lay a copy of said report before the executive council.

3. If the officer is one who is removable only under impeachment proceedings he shall, by written order, forthwith suspend such officer from the exercise of his office, and require him to deliver all the moneys, books, papers, and other property of the state to him, to be disposed of as hereinafter provided. [R60, §48; C73, §760; C97, §1261; C24, 27, 31, 35, 39, §1123; C46, 50, 54, §67.5]

Failure to keep proper accounts, §11.5  
Impeachable officers, Constitution, Art. III, §20; also §68.1  
Removal by executive council, §66.26  
Suspension member state board of regents, §262.5

**67.6 Effect of order—penalty.** It shall be unlawful for such officer, after the making of such order of suspension, to exercise or attempt to exercise any of the functions of his office until such suspension shall be revoked; and any attempt by the suspended officer to exercise such office shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment. [R60, §49; C73, §761; C97, §1261; C24, 27, 31, 35, 39, §1124; C46, 50, 54, §67.6]

**67.7 Salary pending charge.** An order of the governor suspending an impeachable state officer from the exercise of his office shall, from the date of said order, automatically suspend the further payment to said officer of all official salary or compensation, except as herein provided. If articles of impeachment are duly voted against said officer during the general assembly first convening after said order, and the accused is convicted thereon, all right to said suspended salary or compensation shall be deemed forfeited by said officer. If said articles are not so voted, or if the said officer be acquitted on duly voted articles, the said suspended salary or compensation shall be forthwith paid to said officer, unless an indictment or its equivalent, growing out of his misconduct while in office, is then pending against the said officer, in which case said salary or compensation shall be paid to said officer only on his acquittal or the dismissal of the charges. [C35, §1124-e1; C39, §1124.1; C46, 50, 54, §67.7]

**67.8 Temporary appointment.** On the making of such order, the governor shall appoint a temporary incumbent of said office. Such appointee, after qualifying, shall perform all the duties and enjoy all the rights belonging to the said office, until the removal of the suspension of his predecessor, or the appointment or election of a successor. [R60,§51; C73,§762; C97,§1262; C24, 27, 31, 35, 39,§1125; C46, 50, 54,§67.8]

Qualification by temporary officer, §§63.9, 68.5

**67.9 Governor to protect state.** When the governor shall suspend any public officer, he shall direct the proper legal steps to be taken to indemnify the state from loss. [R60,§52; C73,§763; C97,§1263; C24, 27, 31, 35, 39,§1126; C46, 50, 54, §67.9]

**67.10 Governor to report to general assembly.** Forthwith after the organization of the general assembly first convening after the making of said order of suspension, the governor shall lay before it the order and all information and evidence relating thereto in his possession. [C24, 27, 31, 35, 39,§1127; C46, 50, 54,§67.10]

**67.11 Failure to impeach or convict.** The adjournment of such assembly without voting articles of impeachment against such officer or a verdict of "not guilty" on such articles duly preferred, shall work a revocation of such order of suspension. [C24, 27, 31, 35, 39,§1128; C46, 50, 54,§67.11]

**67.12 Compensation of commissioners.** Said commissioners shall each receive for the time actually employed in the performance of their duties the sum of ten dollars per day, which sum shall be paid out of any unappropriated funds in the state treasury. [R60,§53; C73,§764; C97,§1264; C24, 27, 31, 35, 39,§1129; C46, 50, 54, §67.12]

**67.13 Reports revealing grounds of removal.** When any report as to the condition of a state office, other than the report of said commission, is made and filed under authority of law, and said report reveals grounds for the removal from office of a public officer, the person filing said report shall also file a copy thereof with the governor and with the attorney general. [C24, 27, 31, 35, 39,§1130; C46, 50, 54,§67.13]

## CHAPTER 68

### IMPEACHMENT

68.1 Impeachment defined.

68.2 Specification of charges—majority must concur.

68.3 Board of managers—articles.

68.4 Notice to governor.

68.5 Officer suspended—temporary appointment.

68.6 President of senate—notice to senate.

68.7 Warrant of arrest.

68.8 Appearance—answer—counsel.

68.9 Organization of court.

68.10 Powers of court.

68.11 Record of proceedings—administering oaths.

68.12 Process for witnesses.

68.13 Punishment.

68.14 Compensation—fees—payment.

**68.1 Impeachment defined.** An impeachment is a written accusation against the governor, or a judge of the supreme, district, or superior court, or other state officer, by the house of representatives before the senate, of a misdemeanor or malfeasance in office. [R60, §4937; C73,§4546; C97,§5469; C24, 27, 31, 35, 39, §1131; C46, 50, 54,§68.1]

**68.2 Specification of charges—majority must concur.** An impeachment must specify the offenses charged as in an indictment. If more than one misdemeanor or malfeasance is charged, each shall be stated separately and distinctly. A majority of all the members of the house of representatives elected must concur in the impeachment. [C51,§§3157, 3158; R60,§§4938-4940; C73,§§4547-4549; C97,§5470; C24, 27, 31, 35, 39,§1132; C46, 50, 54,§68.2]

**68.3 Board of managers—articles.** When an impeachment is concurred in, the house of representatives shall elect from its own body seven members whose duty it shall be to prosecute the same, and, as a board of managers,

they shall be authorized to exhibit and present articles of impeachment in accordance with the resolutions of the house previously adopted. [C97,§5471; C24, 27, 31, 35, 39,§1133; C46, 50, 54,§68.3]

**68.4 Notice to governor.** When an impeachment is concurred in, the clerk of the house of representatives must forthwith in writing notify the governor thereof. [C97, §5472; C24, 27, 31, 35, 39,§1134; C46, 50, 54,§68.4]

**68.5 Officer suspended—temporary appointment.** Every officer impeached shall be suspended by the governor from the exercise of his official duties until his acquittal, and the governor shall forthwith appoint some suitable person to temporarily fill the office, and he, having qualified as required by law, shall perform all the duties and enjoy all the rights pertaining to the office until the removal of the suspension of his predecessor or the election of a successor. [C51,§3165; R60,§4948; C73,§4554; C97,§5473; C24, 27, 31, 35, 39,§1135; C46, 50, 54, §68.5]

Qualification by temporary officer, §§63.9, 67.8

**68.6 President of senate—notice to senate.**

If the president of the senate is impeached, notice thereof must be immediately given to the senate, which shall thereupon choose another president, to hold his office until the result of the trial is determined. [C51,§3167; R60,§4949; C73,§4555; C97,§5474; C24, 27, 31, 35, 39,§1136; C46, 50, 54,§68.6]

**68.7 Warrant of arrest.** When presented with an impeachment, the senate must forthwith cause the person accused to be arrested and brought before it. The warrant of arrest or other process shall be issued by the secretary of the senate, signed by him, and may be served by any person authorized by the senate or president. [C51,§§3159, 3160; R60,§§4941, 4942; C73,§§4550, 4551; C97,§5475; C24, 27, 31, 35, 39,§1137; C46, 50, 54,§68.7]

Approval of warrant and expenses, §§79.12, 79.13

**68.8 Appearance—answer—counsel.** Upon the appearance of the person impeached, he is entitled to a copy of the impeachment, and to a reasonable time in which to answer the same, and shall be allowed counsel as in an ordinary criminal prosecution. [C51,§3161; R60,§4943; C73,§4552; C97,§5476; C24, 27, 31, 35, 39,§1138; C46, 50, 54,§68.8]

Right to counsel, §775.4  
Time to plead, §775.11

**68.9 Organization of court.** When an impeachment is presented, the senate shall, after the hour of final adjournment of the legislature, be forthwith organized as a court of impeachment for the trial thereof, at the capitol.

An oath or affirmation shall be administered by the secretary of the senate to its president, and by him to each member of that body, to the effect that he will truly and impartially try and determine the charges of impeachment according to the law and evidence.

No member shall sit on the trial or give his evidence thereon until he has taken such oath or affirmation.

The organization of such court shall be perfected when such presiding officer and the members present, but not less than a majority of the whole number, have taken and subscribed the oath or affirmation. [C51,§3162; R60,§4944; C73,§4553; C97,§5477; C24, 27, 31, 35, 39,§1139; C46, 50, 54,§68.9]

**68.10 Powers of court.** The court of impeachment shall sit in the senate chamber, and have power:

1. To compel the attendance of its members as the senate may do when engaged in the ordinary business of legislation.

2. To establish rules and regulations necessary for the trial of the accused.

3. To appoint from time to time such subordinate officers, clerks, and reporters as are necessary for the convenient transaction of its business, and at any time to remove any of them.

4. To issue subpoenas, process, and orders, which shall run into any part of the state, and may be served by any adult person authorized so to do by the president of the senate, or by the sheriff of any county, or his deputy, in the name of the state, and with the same force and effect as in an ordinary criminal prosecution, and to compel obedience thereto.

5. To exercise the powers and privileges conferred upon the senate for punishment as for contempts in the chapter entitled "General Assembly".

6. To adjourn from time to time, and to dissolve when its work is completed. [C97,§5478; C24, 27, 31, 35, 39,§1140; C46, 50, 54,§68.10]

Contempts, §2.24 et seq., ch 665

**68.11 Record of proceedings—administering oaths.** The secretary of the senate, in all cases of impeachment, shall keep a full and accurate record of the proceedings, which shall be a public record; and shall have power to administer all requisite oaths or affirmations, and issue subpoenas for witnesses. [R60,§4959; C73,§4570; C97,§5479; C24, 27, 31, 35, 39,§1141; C46, 50, 54,§68.11]

**68.12 Process for witnesses.** The board of managers and counsel for the person impeached shall each be entitled to process for compelling the attendance of persons or the production of papers and records required in the trial of the impeachment. [C97,§5480; C24, 27, 31, 35, 39,§1142; C46, 50, 54,§68.12]

**68.13 Punishment.** When any person impeached is found guilty, judgment shall be rendered for his removal from office and his disqualification to hold any office of honor, trust, or profit under the state. [C97,§5481; C24, 27, 31, 35, 39,§1143; C46, 50, 54,§68.13]

**68.14 Compensation — fees — payment.** The presiding officer and members of the senate, while sitting as a court of impeachment, and the managers elected by the house of representatives, shall receive the sum of six dollars each per day, and mileage at the rate of five cents per mile in going from and returning to their places of residence by the ordinary traveled routes; the secretary, sergeant at arms, and all subordinate officers, clerks, and reporters, shall receive such amount as shall be determined upon by a majority vote of the members of such court. The same fees shall be allowed to witnesses, to officers, and to other persons serving process or orders, as are allowed for like services in criminal cases, but no fees can be demanded in advance. The state treasurer shall, upon the presentation of certificates signed by the presiding officer and secretary of the senate, pay all of the foregoing compensations and the expenses of the senate incurred under the provisions of this chapter. [C97,§5482; C24, 27, 31, 35, 39,§1144; C46, 50, 54, §68.14]

Sheriff's fees, §337.11  
Witness fees, §622.69 et seq.  
Witnesses in criminal cases, ch 781

## CHAPTER 69

### VACANCIES IN OFFICE

Referred to in §68.8

- 69.1 Holding over.
- 69.2 What constitutes vacancy.
- 69.3 Possession of office.
- 69.4 Resignations.
- 69.5 Vacancy in general assembly.
- 69.6 Vacancy in state boards.
- 69.7 Duty of officer receiving resignation.

- 69.8 Vacancies—how filled.
- 69.9 Person removed not eligible.
- 69.10 Appointments.
- 69.11 Tenure of vacancy appointee.
- 69.12 Officers elected to fill vacancies—tenure.
- 69.13 Vacancies—when filled.
- 69.14 Special election to fill vacancies.

**69.1 Holding over.** Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until his successor is elected and qualified, unless he resigns, or is removed or suspended, as provided by law. [C51,§241; C73,§784; C97,§1265; C24, 27, 31, 35, 39,§1145; C46, 50, 54,§69.1]

**69.2 What constitutes vacancy.** Every civil office shall be vacant upon the happening of either of the following events:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.
2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.
3. The incumbent ceasing to be a resident of the state, district, county, township, city, town, or ward by or for which he was elected or appointed, or in which the duties of his office are to be exercised.
4. The resignation or death of the incumbent, or of the officer-elect before qualifying.
5. The removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant.
6. The conviction of incumbent of an infamous crime, or of any public offense involving the violation of his oath of office. [C51,§§334, 429; R60,§§564, 662, 1132; C73,§§504, 686, 781; C97,§1266; C24, 27, 31, 35, 39,§1146; C46, 50, 54,§69.2]

**Duty of holdover officer to requalify, §63.7**  
**Vacancy on board of supervisors, §331.12**  
**Vacancy on school board, §277.29**

**69.3 Possession of office.** When a vacancy occurs in a public office, possession shall be taken of the office room, the books, papers, and all things pertaining thereto, to be held until the qualification of a successor, as follows: Of the office of the county auditor, by the clerk of the district court; of the clerk or treasurer, by the county auditor; of any of the state officers, by the governor, or, in his absence or inability at the time of the occurrence, as follows: Of the secretary, by the treasurer; of the auditor, by the secretary; of the treasurer, by the secretary and auditor, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor; and the secretary shall take the keys of the safe and desks, after depositing the books, papers,

money and warrants therein, and the auditor shall take the key of the office room. [C51, §444; R60,§671; C73,§788; C97,§1267; C24, 27, 31, 35, 39,§1147; C46, 50, 54,§69.3]

**69.4 Resignations.** Resignations in writing by civil officers may be made as follows, except as otherwise provided:

1. By the governor, to the general assembly, if in session, if not, to the secretary of state.
2. By state senators and representatives, and all officers appointed by the senate or house, or by the presiding officers thereof, to the respective presiding officers of the senate and house, when the general assembly is in session, and such presiding officers shall immediately transmit to the governor information of the resignation of any member thereof; when the general assembly is not in session, all such resignations shall be made to the governor.
3. By senators and representatives in congress, all officers elected by the qualified voters in the state or any district or division thereof larger than a county, or chosen by the general assembly, all judges of courts of record, all officers, trustees, inspectors, and members of all boards and commissions now or hereafter created under the laws of the state, and all persons filling any position of trust or profit in the state, for which no other provision is made, to the governor.

4. By all county and township officers, to the county auditor, except that of the auditor, which shall be to the board of supervisors.

5. By all councilmen and officers of cities and towns, to the clerk or mayor. [C51,§430; R60, §663; C73,§782; C97,§1268; C24, 27, 31, 35, 39, §1148; C46, 50, 54,§69.4]

**69.5 Vacancy in general assembly.** When a vacancy shall occur in the office of senator or representative in the general assembly, except by resignation, the auditor of the county of his residence shall notify the governor of such fact and the cause. [C51,§443; R60,§672; C73,§§789, 790; C97,§1269; C24, 27, 31, 35, 39, §1149; C46, 50, 54,§69.5]

**69.6 Vacancy in state boards.** In case of a vacancy from any cause, other than resignation or expiration of term, occurring in any of the governing boards of the state institutions, the secretary thereof shall immediately notify the governor. [C97,§1270; C24, 27, 31, 35, 39, §1150; C46, 50, 54,§69.6]

**69.7 Duty of officer receiving resignation.**

An officer receiving any resignation, or notice of any vacancy, shall forthwith notify the board, tribunal, or officer, if any, empowered to fill the same by appointment. [C97,§1271; C24, 27, 31, 35, 39,§1151; C46, 50, 54,§69.7]

**69.8 Vacancies—how filled.** Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided.

3. *Supreme court appointees.* In the offices of clerk and reporter of the supreme court, by the supreme court.

4. *County offices.* In county offices, including justices of the peace and constables, by the board of supervisors.

5. *Board of supervisors.* In the membership of the board of supervisors, by the clerk of the district court, auditor, and recorder.

6. *Clerk of the district court.* In the office of the clerk of the district court, by the said court or by a judge thereof, by order entered of record in the court journal which order shall be effective until the vacancy shall be filled in the manner provided by law.

7. *Township offices.* In township offices, including trustees, by the trustees, but where the offices of the three trustees are all vacant, the county auditor shall appoint. [C51,§436; R60, §664; C73,§§513, 783, 794; C97,§1272; S13,§1272; C24, 27, 31, 35, 39,§1152; C46, 50, 54,§69.8]

General power of governor, Constitution, Art. IV,§10  
Auditor temporarily to act as recorder, §335.1  
Special sheriff or coroner, §339.2

**69.9 Person removed not eligible.** No person can be appointed to fill a vacancy who has been removed from office within one year next preceding. [C51,§441; R60,§669; C73,§787; C97, §1273; C24, 27, 31, 35, 39,§1153; C46, 50, 54,§69.9]

**69.10 Appointments.** Appointments under the provisions of this chapter shall be in writing, and filed in the office where the oath of office is required to be filed. [C51,§439; R60, §667; C73,§785; C97,§1274; C24, 27, 31, 35, 39, §1154; C46, 50, 54,§69.10]

Place of filing oath, §64.23

**69.11 Tenure of vacancy appointee.** An officer filling a vacancy in an office which is filled by election of the people shall continue to hold until the next regular election at which such vacancy can be filled, and until a successor is elected and qualified. Appointments to all other offices, made under this chapter, shall continue for the remainder of the term of each office, and until a successor is appointed and qualified. [C51,§§429, 439; R60,§§662, 667, 1101; C73,§§530, 781, 785; C97,§1276; C24, 27, 31, 35, 39, §1155; C46, 50, 54,§69.11]

**69.12 Officers elected to fill vacancies—tenure.** Officers elected to fill vacancies, either at a special or general election, shall hold for the unexpired portion of the term, and until a successor is elected and qualified, unless otherwise provided by law. [R60,§1083; C73,§513; C97, §1277; C24, 27, 31, 35, 39,§1156; C46, 50, 54,§69.12]

Duty to requalify, §63.8

**69.13 Vacancies—when filled.** If a vacancy occurs in an elective office in a city, town, or township ten days, or a county office fifty days, or any other office sixty days, prior to a general election, it shall be filled at such election, unless previously filled at a special election. [C51,§§431–435; R60,§§672, 1101; C73,§§530, 789, 794, 795; C97,§1278; C24, 27, 31, 35, 39,§1157; C46, 50, 54,§69.13; 56GA, ch 62,§14]

**69.14 Special election to fill vacancies.** A special election to fill a vacancy shall be held for a representative in congress, or senator or representative in the general assembly, when the body in which such vacancy exists is in session, or will convene prior to the next general election, and the governor shall order such special election at the earliest practicable time, giving ten days notice thereof. [C51,§443; R60, §672; C73,§789; C97,§1279; C24, 27, 31, 35, 39, §1158; C46, 50, 54,§69.14]



## CHAPTER 70

## SOLDIERS PREFERENCE LAW

Referred to in §§14.1, 363C.7(7, 8)

Soldiers preference laws applicable to newsstands in the capitol, §19.16, in courthouses, §332.5; discrimination against members of armed forces, §29.43; leave of absence, §29.8; barbershop licenses, §158.11; paroles for persons entering military service, §247.9; pardon for paroled persons in military service, §248.4; no tuition at public school, §282.6; general tax relief, chapters 250 and 427; homestead tax credit, §§425.3, 425.4, 425.11; retirement for policemen and firemen, §§411.9, 411.10; presumed death of missing persons, §634.12; guardianship of veterans, chapter 672

70.1 Appointments and promotions.  
70.2 Physical disability.  
70.3 Duty to investigate and appoint.  
70.4 Mandamus.

70.5 Appeals.  
70.6 Removal—certiorari to review.  
70.7 Burden of proof.  
70.8 Exceptions.

**70.1 Appointments and promotions.** In every public department and upon all public works in the state, and of the counties, cities, towns, and school districts thereof, honorably discharged men and women from the military or naval forces of the United States in any war in which the United States was or is now engaged, including the Philippine insurrection, China relief expedition, and the Korean conflict at any time between June 27, 1950 and July 27, 1953, both dates inclusive, who are citizens and residents of this state shall be entitled to preference in appointment, employment, and promotion over other applicants of no greater qualifications. For the purposes of this section World War II shall mean service in the armed forces of the United States between December 7, 1941, and September 2, 1945, both dates inclusive. [S13,§1056-a15; C24, 27, 31, 35, 39,§1159; C46, 50, 54,§70.1; 56GA, ch 73,§1; 57GA, ch 60,§2]

Referred to in §70.5

**70.2 Physical disability.** The persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age or by reason of any physical disability, provided such age or disability does not render such person incompetent to perform properly the duties of the position applied for. [S13,§1056-a15; C24, 27, 31, 35, 39,§1160; C46, 50, 54,§70.2]

**70.3 Duty to investigate and appoint.** When any preferred person shall apply for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ some person to fill such position or place shall, before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said applicant for such place or position, and if the applicant is of good moral character and can perform the duties of said position so applied for, as hereinbefore provided, said officer, board, or person shall appoint said applicant to such position, place, or employment. Said appointing officer, board or person shall set forth in writing and file for public inspection, the specific grounds upon which it is held that the person appointed is entitled to said appointment, or in the case such appointment is refused, the specific grounds for the refusal thereof. [S13,§1056-a15; C24, 27, 31, 35, 39,§1161; C46, 50, 54,§70.3]

**70.4 Mandamus.** A refusal to allow said preference, or a reduction of the salary for said position with intent to bring about the resignation or discharge of the incumbent, shall entitle the applicant or incumbent, as the case may be, to maintain an action of mandamus to right the wrong. [S13,§§1056-a15,-a16; C24, 27, 31, 35, 39,§1162; C46, 50, 54,§70.4]

Referred to in §70.5

**70.5 Appeals.** In addition to the remedy provided in section 70.4, an appeal may be taken by any person belonging to any of the classes of persons to whom a preference is hereby granted, from any refusal to allow said preference, as provided in this chapter, to the district court of the county in which such refusal occurs. The appeal shall be made by serving upon the appointing board within twenty days after the date of the refusal of said appointing officer, board, or persons to allow said preference, a written notice of such appeal stating the grounds of the appeal; a demand in writing for a certified transcript of the record, and all papers on file in his office affecting or relating to said appointment. Thereupon, said appointing officer, board, or person shall, within ten days, make, certify, and deliver to appellant such a transcript; and the appellant shall, within five days thereafter, file the same and a copy of the notice of appeal with the clerk of said court, and said notice of appeal shall stand as appellant's complaint and thereupon said cause shall be entered on the trial calendar of said court for trial the same as in case of an appeal from a justice of the peace. The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning said appointment from which the appeal is taken, and if the court shall find that the said applicant is qualified as defined in section 70.1, to hold the position for which he has applied, said court shall, by its mandate, specifically direct the said appointing officer, board or persons as to their further action in the matter. An appeal may be taken from judgment of the said district court on any such appeal on the same terms as an appeal is taken in civil actions. [C35,§1162-g1; C39,§1162.1; C46, 50, 54,§70.5]

Appeals, R.C.P. 335, 336, and 353

**70.6 Removal—certiorari to review.** No person holding a public position by appointment or employment, and belonging to any of the

classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari. [S13,§1056-a16; C24, 27, 31, 35, 39,§1163; C46, 50, 54,§70.6]

**70.7 Burden of proof.** The burden of proving incompetency or misconduct shall rest

upon the party alleging the same. [S13,§1056-a16; C24, 27, 31, 35, 39,§1164; C46, 50, 54,§70.7]  
40GA, ch 227,§6, editorially divided

**70.8 Exceptions.** Nothing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. [S13,§1056-a16; C24, 27, 31, 35, 39,§1165; C46, 50, 54,§70.8]

**CHAPTER 71**

**NEPOTISM**

**71.1 Employments prohibited.**

**71.1 Employments prohibited.** It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of the state or by virtue of the ordinance of any city or town in the state, to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected, appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in cases where such person appointed receives compen-

**71.2 Payment prohibited.**

sation at the rate of six hundred dollars per year or less, nor shall it apply to persons teaching in public schools. [C24, 27, 31, 35, 39,§1166; C46, 50, 54,§71.1]

Approving officers and boards, §64.19  
Computation of degrees, §4.1, subsection 24

**71.2 Payment prohibited.** No person so unlawfully appointed or employed shall be paid or receive any compensation from the public money and such appointment shall be null and void and any person or persons so paying the same or any part thereof, together with his bondsmen, shall be liable for any and all moneys so paid. [C24, 27, 31, 35, 39,§1167; C46, 50, 54,§71.2]

**CHAPTER 72**

**DUTIES RELATIVE TO PUBLIC CONTRACTS**

Referred to in §255.24

**72.1 Unauthorized contracts.**

**72.2 Executive council may authorize indebtedness.**

**72.1 Unauthorized contracts.** Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law. [R60,§2181; C73,§127; C97,§§185, 186; C24, 27, 31, 35, 39,§1168; C46, 50, 54,§72.1]

Analogous provision, §343.10

**72.2 Executive council may authorize indebtedness.** Nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions, upon the prior written direction of the executive council, specifying the items and amount of such indebtedness to be increased, and the necessity therefor. [C97,§186; C24, 27, 31, 35, 39, §1169; C46, 50, 54,§72.2]

**72.3 Divulging contents of sealed bids.** No public officer or deputy thereof, if any, shall

**72.3 Divulging contents of sealed bids.**

**72.4 Penalty.**

directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law. [S13, §1279-a; C24, 27, 31, 35, 39,§1170; C46, 50, 54,§72.3]

Referred to in §72.4

**72.4 Penalty.** A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on his bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, town, school district, or other municipal corporation of which the violator is an officer or deputy. [S13,§1279-a; C24, 27, 31, 35, 39,§1171; C46, 50, 54,§72.4]

## CHAPTER 73

## PREFERENCE FOR IOWA PRODUCTS AND LABOR

73.1 Preference authorized—conditions.  
 73.2 Advertisements for bids—form.  
 73.3 Iowa labor.  
 73.4 "Person" defined.  
 73.5 Violations.

73.6 Iowa coal.  
 73.7 Bids and contracts.  
 73.8 Certificate.  
 73.9 Violations—remedy.  
 73.10 Exceptions.

**73.1 Preference authorized — conditions.** Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. [C27, 31, 35, §1171-b1; C39, §1171.01; C46, 50, 54, §73.1]

**73.2 Advertisements for bids — form.** All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows:

"By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa." [C27, 31, 35, §1171-b2; C39, §1171.02; C46, 50, 54, §73.2]

**73.3 Iowa labor.** Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, and every person acting as contracting agent for any such commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any such commission, board, committee, officer or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvement or works. The provisions of this and sections 73.4 and 73.5 shall not apply to the purchase of materials and supplies to be used in the construction of any road or highway. [C31, 35, §1171-d1; C39, §1171.03; C46, 50, 54, §73.3]

Referred to in §73.5

**73.4 "Person" defined.** A person shall be deemed to be a domestic laborer of this state if he is a citizen and has resided in this state for more than six months. [C31, 35, §1171-d2; C39, §1171.04; C46, 50, 54, §73.4]

Referred to in §§73.3, 73.5

**73.5 Violations.** Any officer or person who is connected with, or is a member or agent or representative of any commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city or town, or contractor, who fails to give preference to Iowa labor as required in sections 73.3 and 73.4, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days. Each separate case of failure to give preference to Iowa labor shall constitute a separate offense. [C31, 35, §1171-d3; C39, §1171.05; C46, 50, 54, §73.5]

Referred to in §73.3

**73.6 Iowa coal.** It shall be unlawful for any commission, board, county officer or other governing body of the state, or of any county, township, school district, city or town, to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workmen's compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, nor to mines employing miners not now under the provisions of the workmen's compensation act or who permit the miners to work in individual units in their own rooms. [C39, §1171.06; C46, 50, 54, §73.6]

Referred to in §§73.7, 73.9, 73.10

**73.7 Bids and contracts.** Before any user of coal designated in section 73.6, whose annual consumption of coal exceeds, in delivered value, the sum of three hundred dollars, shall purchase any coal, it shall make request for bids for such coal by advertising in a newspaper published in the county in which the purchaser has its principal office, and such

advertisement shall, among other things, state the date, time and place such bids shall be received, which date and time shall not be less than fifteen days after publication, and the advertisement shall contain the approximate quantity and description of coal to be purchased, and the bids for such coal shall be opened in public at the time, date and place indicated in the said advertisement and, unless the purchasing body shall determine that the general good of the state, including the best interests of the taxpayer and the employment of labor, the adaptability of the coal offered, or the efficiency and cost of operation of purchaser's plant makes it advisable to do otherwise, the contract shall be let to the lowest responsible bidder, but any and all bids may be rejected; however, if all bids are rejected, then an advertisement for bids shall again be made as hereinbefore provided. After any bid is accepted, a written contract shall be entered into and the successful bidder shall furnish a good and sufficient bond with qualified sureties for the faithful performance of the contract. Any contract for purchase of coal provided for in sections 73.6 to 73.9, inclusive, may contain the provision that the purchaser may, in the event of an emergency, purchase coal elsewhere without advertising for bids in any year, for not more than ten percent of said purchaser's annual coal requirements. [C39,§1171.07; C46, 50, 54,§73.7]

Referred to in §§73.8, 73.9, 73.10

**73.8 Certificate.** No bid for coal produced in Iowa, which comes under the provisions of section 73.7, shall be considered unless it states the name of the producer and gives the location of the mine from which the coal is to be produced, and unless there is attached thereto a certificate of the secretary of the state mine inspectors that the producer designated in such bid is now complying with all the workmen's compensation and mining laws of the state. [C39,§1171.08; C46, 50, 54,§73.8]

Referred to in §§73.7, 73.9, 73.10

**73.9 Violations—remedy.** Any contract entered into or carried out in whole or in part, in violation of the provisions of sections 73.6 to 73.8, inclusive, shall be void and such contract or any claim growing out of the sale, delivery or use of the coal specified therein, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in said sections shall have the right to maintain an action in equity to prevent the violation of the terms of said sections. [C39,§1171.09; C46, 50, 54,§73.9]

Referred to in §§73.7, 73.10

**73.10 Exceptions.** The provisions of sections 73.6 to 73.9, inclusive, shall not apply to municipally owned and operated public utilities nor to school townships and rural independent districts. [C39,§1171.10; C46, 50, 54, §73.10]

## CHAPTER 74

### PUBLIC WARRANTS NOT PAID FOR WANT OF FUNDS

74.1 Applicability.

74.2 Indorsement and interest.

74.3 Record of warrants.

74.4 Assignment of warrant.

74.5 Call for payment.

74.6 Mailing notice—terminating interest.

74.7 Indorsement of interest.

**74.1 Applicability.** This chapter shall apply to all warrants which are legally drawn on a public treasury, including the treasury of a city, and which, when presented for payment, are not paid for want of funds. [C35,§1171-f1; C39,§1171.11; C46, 50, 54,§74.1; 54GA, ch 165,§69]

**74.2 Indorsement and interest.** When any such warrant is presented for payment, and not paid for want of funds, or only partially paid, the treasurer shall indorse the fact thereon, with the date of presentation, and sign said indorsement, and thereafter said warrant or the balance due thereon, shall draw interest at four percent per annum on state and county warrants, and four percent per annum on city, drainage, and school warrants, unless the treasurer arranges for the sale of said warrant at par at a lower rate of interest. [C51,§§65, 153; R60,§§86, 361; C73,§§78, 328, 1748; C97, §§104, 483, 660, 2768; S13,§§104, 483; C24, 27, 31, §§135, 4318, 5160, 5645, 7496; C35,§1171-f2; C39, §1171.12; C46, 50, 54,§74.2]

Change in interest rate not applicable to outstanding bonds, 49GA, ch 263,§7

**74.3 Record of warrants.** The treasury shall keep a record of all warrants so indorsed, which record shall show the number and amount, the date of presentation, and the name and post-office address of the holder, of each warrant. [C51,§§66, 153; R60,§§87, 361; C73,§§79, 328; C97,§§105, 483, 660; S13,§483; C24, 27, 31, §§136, 5160, 5646, 7496; C35,§1171-f3; C39,§1171.13; C46, 50, 54,§74.3]

**74.4 Assignment of warrant.** When any warrant shall be assigned or transferred after being so indorsed, the assignee or transferee shall be under duty, for his own protection, to notify the treasurer in writing of such assignment or transfer and of his post-office address. Upon receiving such notification, the treasurer shall correct the aforesaid record accordingly. [C24, 27, 31,§7497; C35,§1171-f4; C39,§1171.14; C46, 50, 54,§74.4]

**74.5 Call for payment.** When the treasurer has funds on hand in the fund on which such warrants are drawn, sufficient to pay a warrant, he shall, by notice posted at his office and

in a place readily accessible to the public, call said warrant or warrants for payment, giving the number thereof. Said warrants shall be paid in the order of presentation. [C51, §§66, 153; R60, §§87, 361; C73, §§79, 328; C97, §§105, 484, 660; C24, 27, 31, §§136, 5161, 5647, 7496; C35, §1171-f5; C39, §1171.15; C46, 50, 54, §74.5]

**74.6 Mailing notice — terminating interest.** In addition to the posting aforesaid, the treasurer shall mail to each holder of a warrant, in accordance with the aforesaid record, a notice of his readiness to pay said warrant, describing it by number and amount, and note the date of such mailing on the record aforesaid. On the expiration of thirty days from the

date of said mailing, interest on said warrant shall cease irrespective of the posting aforesaid. [C51, §§66, 153; R60, §§87, 361; C73, §§79, 328; C97, §§105, 484, 660; C24, 27, 31, §§136, 5161, 5647, 7496, 7498; C35, §1171-f6; C39, §1171.16; C46, 50, 54, §74.6]

**74.7 Indorsement of interest.** When a warrant which legally draws interest is paid, the treasurer shall indorse upon it the date of payment, and the amount of interest allowed. [C51, §153; R60, §361; C73, §328; C97, §§484, 660; C24, 27, 31, §§5161, 5646, 5648, 7496; C35, §1171-f7; C39, §1171.17; C46, 50, 54, §74.7]

Analogous section, §452.2

## CHAPTER 75

### AUTHORIZATION AND SALE OF PUBLIC BONDS

Referred to in §§309.52, 346.4, 391A.33(4), 394.6, 396.14

75.1 Bonds—election—vote required.  
75.2 Notice of sale.  
75.3 Sealed and open bids.  
75.4 Rejection of bids.  
75.5 Selling price.

75.6 Commission and expense.  
75.7 Penalty.  
75.8 Sale of state bonds.  
75.9 Exchange of bonds.

**75.1 Bonds—election—vote required.** When a proposition to authorize an issuance of bonds by a county, township, school district, city or town, or by any local board or commission, is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election.

All ballots cast and not counted as a vote for or against the proposition shall not be used in computing the total vote cast for and against said proposition. [C31, 35, §1171-d4; C39, §1171.18; C46, 50, 54, §75.1; 57GA, ch 68, §1]

**75.2 Notice of sale.** When public bonds are offered for sale, the official or officials in charge of such bond issue shall, by advertisement published for two or more successive weeks in at least one newspaper located in the county, give notice of the time and place of sale of said bonds, the amount to be offered for sale, and any further information which may be deemed pertinent. [C24, 27, 31, 35, 39, §1172; C46, 50, 54, §75.2]

**75.3 Sealed and open bids.** Sealed bids may be received at any time prior to the calling for open bids. After the sealed bids are all filed, the official or officials shall call for open bids. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. The official or officials shall then open any sealed bids that may have been filed and they shall note in the minutes the substance of the best sealed bid. [C24, 27, 31, 35, 39, §1173; C46, 50, 54, §75.3]

**75.4 Rejection of bids.** Any or all bids may be rejected, and the sale may be advertised

anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [C24, 27, 31, 35, 39, §1174; C46, 50, 54, §75.4]

**75.5 Selling price.** No public bond shall be sold for less than par, plus accrued interest. [C24, 27, 31, 35, 39, §1175; C46, 50, 54, §75.5]

**75.6 Commission and expense.** No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale. [C24, 27, 31, 35, 39, §1176; C46, 50, 54, §75.6]

**75.7 Penalty.** Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39, §1177; C46, 50, 54, §75.7]

Punishment, §687.7

**75.8 Sale of state bonds.** All contracts for the sale of bonds issued by the state shall be subject to the approval of the executive council. [C24, 27, 31, 35, 39, §1178; C46, 50, 54, §75.8]

**75.9 Exchange of bonds.** Nothing in this chapter shall be deemed to prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, or judgments as otherwise provided by law. [C24, 27, 31, 35, 39, §1179; C46, 50, 54, §75.9]

CHAPTER 76

MATURITY AND PAYMENT OF BONDS

Referred to in §§37.7, 330.7, 330.16, 368.16, 368.29, 370.7, 372.11, 381.7, 384.3, 390.14, 395.25, 404.18

- 76.1 Mandatory retirement.
- 76.2 Mandatory levy.
- 76.3 Tax limitations.
- 76.4 Permissive application of funds.
- 76.5 Exceptions.
- 76.6 Place of payment.

EXTENSION OR RENEWAL OF BONDS

- 76.7 Particular bonds affected—payment.
- 76.8 Laws applicable.
- 76.9 No limit of former power.

**76.1 Mandatory retirement.** Hereafter issues of bonds of every kind and character by counties, cities, towns, and school districts shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue. Each issue of bonds shall be scheduled to mature serially in the same order as numbered. [C27, 31, 35,§1179-b1; C39,§1179.1; C46, 50, 54, §76.1]

**76.2 Mandatory levy.** The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in such public corporation sufficient to pay the interest and principal of such bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or auditors of the counties, as the case may be, in which such public corporation is located; and the filing thereof shall make it a duty of such officer or officers to enter annually this levy for collection until funds are realized to pay the bonds in full.

If the resolution is so filed prior to the first day of October, said annual levy shall begin with the tax levy of the year of filing. If the resolution is filed after the first day of October in any year, such levy shall begin with the levy of the calendar year succeeding the year of the filing of such resolution. [C27, 31, 35, §1179-b2; C39,§1179.2; C46, 50, 54,§76.2; 57GA, ch 69,§1]

Referred to in §24.9

**76.3 Tax limitations.** Tax limitations in any law for the issuance of bonds shall be based on the latest equalized actual valuation then existing and shall only restrict the amount of bonds which may be issued. [C31, 35,§1179-cl; C39,§1179.3; C46, 50, 54,§76.3]

**76.4 Permissive application of funds.** Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest of such bonds, such funds may be so appropriated and used and the levy for the

payment of the bonds correspondingly reduced. [C27, 31, 35,§1179-b3; C39,§1179.4; C46, 50, 54,§76.4]

**76.5 Exceptions.** The provisions of this chapter shall not apply to bonds, the interest or principal of which are payable out of the primary road fund or out of special assessments against benefited property. [C27, 31, 35, §1179-b4; C39,§1179.5; C46, 50, 54,§76.5]

**76.6 Place of payment.** The principal and interest of all bonds of any public body in this state, issued subsequent to March 23, 1934, shall be payable at the office of the treasurer or public official charged with the duty of making payment. [C35,§1179-f1; C39,§1179.6; C46, 50, 54,§76.6]

EXTENSION OR RENEWAL OF BONDS

**76.7 Particular bonds affected—payment.** Counties, cities, towns, and school corporations may at any time or times extend or renew any legal indebtedness or any part thereof they may have represented by bonds or certificates where such indebtedness is payable from a limited annual tax or from a voted annual tax, and may by resolution fund or refund the same and issue bonds therefor running not more than twenty years to be known as funding or refunding bonds, and make provision for the payment of the principal and interest thereof from the proceeds of an annual tax for the period covered by such bonds similar to the tax authorized by law or by the electors for the payment of the indebtedness so extended or renewed. [C46, 50, 54,§76.7]

Referred to in §76.9

**76.8 Laws applicable.** All laws relating to the issuance of funding or refunding bonds by counties, cities, towns, and school corporations, as the case may be, not inconsistent with the provisions herein contained and to the extent the same may be applicable, shall govern the issuance of the funding and refunding bonds for the purpose herein authorized. [C46, 50, 54, §76.8]

Referred to in §76.9

**76.9 No limit of former power.** Sections 76.7 and 76.8 shall be construed as granting additional power without limiting the power already existing in counties, cities, towns, and school corporations. [C46, 50, 54,§76.9]

CHAPTER 77  
NOTARIES PUBLIC

- 77.1 Appointment.
- 77.2 When appointments made.
- 77.3 Notice of expiration of term.
- 77.4 Conditions.
- 77.5 Certificate filed.
- 77.6 Revocation—notice.
- 77.7 Powers within county of appointment.
- 77.8 Powers in any county.
- 77.9 Oaths and protest by interested notary.
- 77.10 Corporation employee as notary.

- 77.11 Improperly acting as notary.
- 77.12 Acting under maiden name.
- 77.13 Record to be kept.
- 77.14 Death—resignation—removal.
- 77.15 Neglect to deposit records.
- 77.16 Neglect of executor to deposit records.
- 77.17 Change of residence.
- 77.18 Duty of clerk as to records.
- 77.19 Notary fees.

**77.1 Appointment.** The governor may at any time appoint one or more notaries public in each county and may at any time revoke such appointment. [C51,§78; R60,§195; C73,§258; C97,§373; S13,§373; C24, 27, 31, 35, 39,§1197; C46, 50, 54,§77.1]

**77.2 When appointments made.** Such appointments, if for a full term, shall be made on July 4, 1924, and on the same day each three years thereafter. All commissions shall expire on the fourth day of July in the same years. No commission shall be for a longer period than three years. [C51,§78; R60,§195; C73,§258; C97,§373; S13,§373; C24, 27, 31, 35, 39,§1198; C46, 50, 54,§77.2]

**77.3 Notice of expiration of term.** The governor shall, on or before May 1 preceding the expiration of each commission, notify each notary public of such expiration and furnish him with a blank application for reappointment and a blank bond. [C97,§373; S13,§373; C24, 27, 31, 35, 39,§1199; C46, 50, 54,§77.3]

**77.4 Conditions.** Before any such commission is delivered to the person appointed, he shall:

1. Procure a seal on which shall be engraved the words "Notarial Seal" and "Iowa", with his surname at length and at least the initials of his Christian name.

2. Execute a bond to the state of Iowa in the sum of five hundred dollars conditioned for the true and faithful execution of the duties of his office, which bond, when secured by personal surety, shall be approved by the clerk of the district court of the county of his residence; all other bonds shall be approved by the governor.

3. Write on said bond, or a paper attached thereto, his signature, and place thereon a distinct impression of his official seal.

4. File such bond with attached papers, if any, in the office of the governor.

5. Remit to the governor the sum of five dollars for the three-year period provided by law.

When the governor is satisfied that the foregoing requirements have been fully complied with, he shall execute and deliver a commission to the person appointed. [C51,§80, 83; R60,§197, 200, 207–209; C73,§259; C97,§374; S13, §374; C24, 27, 31, 35, 39,§1200; C46, 50, 54,§77.4]

**77.5 Certificate filed.** When the governor delivers a commission to the person appointed, he or his secretary shall make a certificate of such appointment and forward the same to the clerk of the district court of the proper county, who shall file and preserve the same in his office, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [C73,§260; C97,§375; S13,§375; C24, 27, 31, 35, 39,§1201; C46, 50, 54,§77.5]

**77.6 Revocation—notice.** Should the commission of any person appointed notary public be revoked by the governor, he shall immediately notify such person and also the clerk of the district court of the proper county, through the mail. [C73,§261; C97,§376; S13,§376; C24, 27, 31, 35, 39,§1202; C46, 50, 54,§77.6]

**77.7 Powers within county of appointment.** Each notary is invested, within the county of his appointment, with the powers and shall perform the duties which pertain to that office by the custom and law of merchants. [C51,§79; R60,§196; C73,§262; C97,§377; S13,§377; C24, 27, 31, 35, 39,§1203; C46, 50, 54,§77.7]

**Referred to in §77.8**

**77.8 Powers in any county.** Such notary public is also invested with the powers specified in section 77.7 in any county of the state, provided he has filed in such county, with the clerk of the district court, a certified copy of his certificate of appointment. [S13,§377; C24, 27, 31, 35, 39,§1204; C46, 50, 54,§77.8]

**77.9 Oaths and protest by interested notary.** Any notary public, who is at the same time an officer, director, or stockholder of a corporation, is also hereby invested with the power to administer oaths to any officer, director, or stockholder of such corporation in any matter wherein said corporation is interested, and is hereby authorized to protest for nonacceptance or nonpayment, bills of exchange, drafts, checks, notes, and other negotiable or non-negotiable instruments which may be owned or held for collection by such corporation, as fully and effectually as if he were not an officer, director, or stockholder of such corporation. [C24, 27, 31, 35, 39,§1205; C46, 50, 54,§77.9]

**77.10 Corporation employee as notary.** Any employee of a corporation who is a notary public and who is not otherwise financially interested in the subject matter of said instrument, is hereby authorized to take acknowledgments of any person on an instrument running to such corporation, regardless of the title or position that said notary shall hold as an employee of such corporation. [C39,§1205.1; C46, 50, 54,§77.10]

**77.11 Improperly acting as notary.** If any notary public exercises the duties of his office after the expiration of his commission, or when otherwise disqualified, or appends his official signature to documents when the parties have not appeared before him, he shall be fined not less than fifty dollars, and shall be removed from office by the governor. [R60,§210; C73, §3975; C97,§4912; C24, 27, 31, 35, 39,§1206; C46, 50, 54,§77.11]

**77.12 Acting under maiden name.** When a female has, prior or subsequent to the adoption of this Code, been commissioned a notary public, and has, after the issuance of said commission and prior to the expiration thereof, contracted a marriage, the official acts of such notary public after said marriage and prior to the expiration of said commission shall not be deemed illegal or insufficient because, after said marriage, she performed said official acts under the name in which said commission was issued. [C24, 27, 31, 35, 39,§1207; C46, 50, 54, §77.12]

**77.13 Record to be kept.** Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself. [C51,§81; R60,§198; C73,§263; C97,§378; C24, 27, 31, 35, 39, §1208; C46, 50, 54,§77.13]

**77.14 Death—resignation—removal.** On the death, resignation, or removal from office of any notary, his records, with all his official papers, shall, within three months therefrom, be deposited in the office of the clerk of the district court in the county for which such notary shall have been appointed. [C51,§85; R60,§202; C73,§264; C97,§379; C24, 27, 31, 35, 39, §1209; C46, 50, 54,§77.14]

**77.15 Neglect to deposit records.** If any notary, on his resignation or removal, neglects for three months so to deposit them, he shall be guilty of a misdemeanor and be liable in an action to any person injured by such neglect. [C51,§85; R60,§202; C73,§264; C97,§379; C24, 27, 31, 35, 39,§1210; C46, 50, 54,§77.15]

Punishment, §687.7

**77.16 Neglect of executor to deposit records.** If an executor or administrator of a deceased notary willfully neglects, for three months after his acceptance of that appointment, to deposit in said clerk's office the records and papers of a deceased notary which came into his hands, he shall be held guilty of a misdemeanor. [C51,§85; R60,§202; C73,§264; C97, §379; C24, 27, 31, 35, 39,§1211; C46, 50, 54,§77.16]

Punishment, §687.7

**77.17 Change of residence.** If a notary remove his residence from the county for which he was appointed, such removal shall be taken as a resignation. [C51,§86; R60,§203; C73,§265; C97,§380; C24, 27, 31, 35, 39,§1212; C46, 50, 54, §77.17]

**77.18 Duty of clerk as to records.** Each clerk aforesaid shall receive and safely keep all such records and papers of the notary in the cases above named, and shall give attested copies of them, under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary. [C51,§87; R60,§204; C73,§266; C97,§381; C24, 27, 31, 35, 39,§1213; C46, 50, 54,§77.18]

Fees, §77.19

**77.19 Notary fees.** Notaries public shall be entitled to the following fees:

1. For all services in connection with the legal protest of a bill or note, two dollars.
2. For being present at a demand, tender, or deposit and noting the same, seventy-five cents.
3. For administering an oath, ten cents.
4. For certifying to an oath under his official seal, twenty-five cents.
5. For any other certificate under seal, twenty-five cents. [C51,§2542; R60,§4151; C73, §3801; C97,§382; C24, 27, 31, 35, 39,§1214; C46, 50, 54,§77.19]

## CHAPTER 78

### ADMINISTRATION OF OATHS

78.1 General authority.  
78.2 Limited authority.

78.3 Jurat by deputy.

**78.1 General authority.** The following officers are empowered to administer oaths and to take affirmations:

1. Judges of the supreme, district, superior, municipal, and police courts.
2. Official court reporters of district, supe-



rior, and municipal courts in taking depositions under appointment or by agreement of counsel.

3. Clerks and deputy clerks of the supreme, district, superior, police, and municipal courts.

4. Justices of the peace within the county of their residence.

5. Notaries public within the county of their appointment, and within any county in which they have filed with the clerk of the district court of said county a certified copy of their certificate of appointment. [C51, §§227, 979, 980, 1594; R60, §§201, 449, 1843, 1844, 2684; C73, §§277, 278, 396; C97, §393; C24, 27, 31, 35, 39, §1215; C46, 50, 54, §78.1; 56GA, ch 257, §2]

Referred to in §§78.2, 277.28

Fees for administering and certifying oaths, §§77.19, 79.8, 601.128

Members of general assembly, §2.7

**78.2 Limited authority.** The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.

2. Members of all boards, commissions, or bodies created by law.

3. All county officers other than those named in section 78.1.

4. Mayors and clerks of cities and towns, judges and clerks of election, township clerks, assessors, and surveyors.

5. All duly appointed referees or appraisers.

6. All investigators for old-age assistance as provided for under chapter 249.

7. Fieldmen, auditors, and other employees of the income, corporation, and sales tax division of the state tax commission, as set forth in chapter 422. [C51, §§980, 1865; R60, §§1844, 3201; C73, §§277, 278; C97, §393; C24, 27, 31, 35, 39, §1216; C46, 50, 54, §78.2]

Referred to in §§277.28, 586.1

Fish and game shipments, §109.25

Veterinary assistants, §163.5

**78.3 Jurat by deputy.** In preparing a jurat to an oath or affirmation administered by a deputy, it shall be sufficient for the deputy to affix his own name, together with the designation of his official position, and the seal of his principal, if any. [C24, 27, 31, 35, 39, §1217; C46, 50, 54, §78.3]

## CHAPTER 79

### SALARIES, FEES, MILEAGE, AND EXPENSES IN GENERAL

79.1 Salaries—payment—vacations—sick leave—  
—injuries in line of duty.

79.2 Appraisers of property.

79.3 General fees.

79.4 When fees payable.

79.5 Fees payable in advance.

79.6 Receipt for fees paid.

79.7 Report of fees.

79.8 State accounts—inspection.

79.9 Charge for use of automobile.

79.10 Mileage and expenses—prohibition.

79.11 Mileage and expenses—when unallowable.

79.12 Warrants prohibited.

79.13 Particulars required.

**79.1 Salaries — payment — vacations — sick leave — injuries in line of duty.** Salaries specifically provided for in an appropriation act of the general assembly shall be in lieu of existing statutory salaries, for the positions provided for in any such act, and all salaries shall be paid in equal monthly or semi-monthly installments and shall be in full compensation of all services, except as otherwise expressly provided. All employees of the state including highway maintenance employees of the state highway commission are granted one week's vacation after one year's employment and two weeks' vacation per year after the second and through the tenth year of employment, and three weeks' vacation per year after the tenth and all subsequent years of employment, with pay. Leave of absence of thirty days per year with pay may be granted in the discretion of the head of any department to employees of such department when necessary by reason of sickness or injury; unused portions of such leave for any one year may be accumulative for three consecutive years. Provided, however, that notwithstanding the

foregoing limitations, state highway commission maintenance employees, uniformed members of the division of highway safety and uniformed force and members of the division of criminal investigation and bureau of identification, except clerical workers, of the department of public safety may upon the recommendation of the commissioner with the approval of the executive council, be granted additional leave of absence with pay, for injuries sustained in line of duty. It is further provided that employees of institutions under the state board of regents who are employed for nine months or more in any twelve-month period shall be entitled, in the discretion of the board, to a leave of absence with pay of two and one-half days for each month of employment when necessary by reason of sickness or injury, and such portion as is unused may be accumulated to a total of ninety days acquired over a period not exceeding four consecutive years or consecutive twelve-month periods. [C73, §3780; C97, §1289; C24, 27, 31, 35, 39, §1218; C46, 50, 54, §79.1; 56GA, ch 74, §1; ch 75, §1; ch 76, §1; ch 131, §59]

Referred to in §218.17

**79.2 Appraisers of property.** The compensation of appraisers appointed by authority of law to appraise property for any purpose shall be fifty cents per hour for each appraiser for the time necessarily spent in effecting the appraisal and five cents a mile for the distance traveled in going to and returning from the place of appraisal, which shall, unless otherwise provided, be paid out of the property appraised or by the owner thereof. [C51,§2550; R60,§4158; C73,§3813; C97,§1290; SS15,§1290-a; C24, 27, 31, 35, 39,§1219; C46, 50, 54,§79.2]

**79.3 General fees.** Any officer legally called on to perform any of the following services, in cases where no fees have been fixed therefor, shall be entitled to receive:

1. For drawing and certifying an affidavit, or giving a certificate not attached to any other writing, twenty-five cents.

2. For affixing his official seal to any paper, whether the certificate be under seal or not, thirty-five cents.

3. For making out a transcript of any public papers or records under his control for the use of a private person or corporation, or recording articles of incorporation, for every one hundred words, ten cents. [C51,§2523; R60,§4132; C73,§3819; C97,§1291; C24, 27, 31, 35, 39,§1220; C46, 50, 54,§79.3]

**79.4 When fees payable.** When no other provision is made on the subject, the party requiring any service shall pay the fees therefor upon the same being rendered, and a bill of particulars being presented, if required. [C51,§2557; R60,§4164; C73,§3837; C97,§1295; C24, 27, 31, 35, 39,§1221; C46, 50, 54,§79.4]

**79.5 Fees payable in advance.** All fees, unless otherwise specifically provided, are payable in advance, if demanded, except in the following cases:

1. When the fees grow out of a criminal prosecution.

2. When the fees are payable by the state or county.

3. When the orders, judgments, or decrees of a court are to be entered, or performed, or its writs executed. [C73,§3842; C97,§1298; C24, 27, 31, 35, 39,§1222; C46, 50, 54,§79.5]

**79.6 Receipt for fees paid.** Every person charging fees shall, if required by the person paying them, give him a receipt therefor, setting forth the items, and the date of each. [C51,§2549; R60,§4157; C73,§3836; C97,§1294; C24, 27, 31, 35, 39,§1223; C46, 50, 54,§79.6]

**79.7 Report of fees.** All officers required by the provisions of this Code to collect and pay over fines and fees shall, except as otherwise provided, on the first Monday in January in each year, make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed,

and the amount of fines and fees collected, together with vouchers for the payment of all sums collected to the proper officer. [R60, §4314; C73,§3973; C97,§1301; C24, 27, 31, 35, 39, §1224; C46, 50, 54,§79.7]

*Accounting by justices and constables, §601.181 et seq.*

**79.8 State accounts—inspection.** The books, accounts, vouchers, and funds belonging to, or kept in, any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by him, or by the general assembly or either house thereof; and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months. [C51,§59, 69; R60,§§80, 90; C73,§132; C97,§184; C24, 27, 31, 35, 39,§1225; C46, 50, 54,§79.8]

**79.9 Charge for use of automobile.** When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, no charge shall be made, allowed, or paid for the use of an automobile in excess of seven cents per mile of actual and necessary travel except as otherwise provided. [C31, 35,§1225-d1; C39, §1225.01; C46, 50, 54,§79.9]

*44GA, ch 12,§6, editorially divided*

**79.10 Mileage and expenses—prohibition.** No law shall be construed to give to a public officer or employee both mileage and expenses for the same transaction. [C31, 35,§1225-d2; C39,§1225.02; C46, 50, 54,§79.10]

*Analogous provision, §387.11, subsection 10*

**79.11 Mileage and expenses—when unallowable.** No public officer or employee shall be allowed either mileage or transportation expense when he is gratuitously transported by another, nor when he is transported by another public officer or employee who is entitled to mileage or transportation expense. [C31, 35,§1225-d3; C39,§1225.03; C46, 50, 54,§79.11]

**79.12 Warrants prohibited.** No warrant shall be issued requiring any peace officer to go beyond the boundaries of the state at public expense except with the approval of a judge of the district court. [C35,§1225-e1; C39, §1225.04; C46, 50, 54,§79.12]

**79.13 Particulars required.** The board of supervisors shall not approve any claim for mileage or other traveling expenses presented by any peace officer including the sheriff and his deputies and municipal court bailiffs and deputy bailiffs, unless the destinations, and number of miles covered in each trip are given, or, in the case of extended trips, unless railroad, hotel, and other traveling expenses, excepting meals, are verified by receipts. [C35, §1225-e2; C39,§1225.05; C46, 50, 54,§79.13]

*When mileage untaxable, §127.19*

## **POLICE POWER**

# TITLE V

## POLICE POWER

### CHAPTER 80

#### DEPARTMENT OF PUBLIC SAFETY

- |  |   |
|--|---|
| 80.1 Department created.               | 80.15 Examination—oath—probation—dismissal. |
| 80.2 Commissioner—appointment.         | 80.16 Bonds.                                |
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#### DUPLICATION IN POLICE OFFICERS PROHIBITED

- 80.22 Prohibition on other departments.  
80.23 "Special state agents" construed.  
80.24 Industrial disputes.  
80.25 Liquor control fund.

**80.1 Department created.** There is hereby created a department of the state government which shall be known and designated as the department of public safety, which shall consist of a commissioner of public safety and of such officers and employees as may be required. [C39,§1225.06; C46, 50, 54,§80.1]

**80.2 Commissioner—appointment.** The chief executive officer of the department of public safety shall be the commissioner of public safety. The governor shall, within sixty days after this chapter shall have become effective, and in every fourth year after the year 1939, within sixty days following the organization of the regular session of the general assembly in said year, appoint, with the approval of two-thirds of the members of the senate in executive session, a commissioner of public safety, who shall be a man of high moral character, of good standing in the community in which he lives, of recognized executive and administrative capacity, and who shall be selected solely with regard to his qualifications and fitness to discharge the duties of his office. He shall have been for a period of at least five years, immediately prior to his appointment, a resident of the state of Iowa. The commissioner of public safety shall devote his entire time to the duties of his office and shall serve for a period of four years from July 1 of the year of his appointment at an annual salary of five thousand dollars. The governor, with the approval of the executive council, may remove the commissioner of public safety for cause after a public hearing before the executive council. [C39,§1225.07; C46, 50, 54,§80.2]

See biennial salary Act

**80.3 Vacancy.** A vacancy in the office of the commissioner of public safety that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days, the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. A vacancy occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [C39, §1225.08; C46, 50, 54,§80.3]

**80.4 Highway patrol.** The commissioner shall succeed in the administration and control of the Iowa highway safety patrol established under chapter 134, acts of the forty-seventh general assembly. The commissioner is authorized to employ the members of said patrol; however, not to exceed two hundred seventy-five men\*, inclusive of operators' and chauffeurs' license examiners, and not more than sixty percent of said patrol shall at any time be members of the same political party. Provided, however, the present\*\* personnel of the highway patrol in good standing are excepted from the provisions of this section. [C27, 31, §5017-a1; C35. §§5018-g1, g2; C39, §1225.09; C46, 50, 54, §80.4; 57GA, ch 70, §1]

\*See 57GA, ch 70, §1

\*\*Act effective April 21, 1939

**80.5 Officers of patrol.** The commissioner is authorized to appoint a chief, a first and

second assistant and all other supervisory officers of said patrol. All appointments and promotions shall be made on the basis of seniority and merit examination. There shall not be more than twenty supervisory officers in the said patrol unless the membership thereof is increased to such a number as to require the appointment of additional supervisory officers. [C39,§1225.10; C46, 50, 54,§80.5]

**80.6 Impersonating officer—uniform.** Any person who impersonates a member of the Iowa safety patrol or other officer or employee of the department, or wears a uniform likely to be confused with the official uniform of any such officer, with intent to deceive anyone, shall be guilty of a misdemeanor and be punished as provided in section 321.482. [C46, 50, 54,§80.6]

**80.7 Railway special agents.** The commissioner may appoint as special agent any person who is regularly employed by a common carrier by rail to protect the property of said common carrier, its patrons, and employees. Such special agents shall not receive any compensation from the state. [C39,§1225.11; C46, 50, 54,§80.7]

Referred to in §80.15

**80.8 Patrolmen and employees—salaries.** The commissioner, with the approval of the governor, shall appoint such deputies, inspectors, officers, clerical workers and other employees as may be required to properly discharge the duties of this department, provided, however, that all members in good standing of what was heretofore\* known as the Iowa highway safety patrol shall, upon the enactment of this chapter, immediately become members of this department without appointment and the rank of all members of the Iowa highway safety patrol shall remain the same as heretofore.

The commissioner may delegate to the members of the Iowa highway safety patrol such additional duties in the enforcement of this chapter as he may deem proper and incidental to the duties now imposed upon them by law.

The salaries of all members and employees of the department and the expenses of the department shall be provided for by the legislative appropriation therefor. The compensation of the members of the highway patrol shall be fixed according to grades as to rank and length of service by the commissioner with the approval of the governor. The members of the highway patrol shall be paid additional compensation in accordance with the following formula: When members of the highway patrol have served for a period of five years their compensation then being paid shall be increased by the sum of fifteen dollars per month beginning with the month succeeding the foregoing described five-year period; when members thereof have served for a period of ten years their compensation then being paid shall be increased by the sum of fifteen dollars per month beginning with the month suc-

ceeding the foregoing described ten-year period, such sums being in addition to the increase provided herein to be paid after five years of service; when members thereof have served for a period of fifteen years their compensation then being paid shall be increased by the sum of fifteen dollars per month beginning with the month succeeding the foregoing described fifteen-year period, such sums being in addition to the increases previously provided for herein; when members thereof have served for a period of twenty years their compensation then being paid shall be increased by the sum of fifteen dollars per month beginning with the month succeeding the foregoing described twenty-year period, such sums being in addition to the increases previously provided for herein. While on active duty each patrolman shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals while away from home and within his district. [C27, 31,§5017-a1; C35,§5018-g9; C39,§1225.12; C46, 50, 54,§80.8; 57GA, ch 70,§2]

\*Effective April 21, 1939

For temporary provisions, see 57GA, ch 70,§2

**80.9 Duties of department.** It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city or town, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city or town, with the approval of the commissioner;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws.

When any member of the department shall be acting in co-operation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, his jurisdiction shall be statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws;

b. To enforce all laws relating to traffic on

the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and busses; to issue operators' and chauffeurs' licenses; to see that proper safety rules are observed and to give first aid to the injured;

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; and to disseminate fire-prevention education;

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe;

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office. [SS15,§65-b; C24,§13410; C27, 31,§§5017-a1, 13410; C35,§§5018-g6, 13410; C39,§1225.13; C46, 50, 54, §80.9]

**80.10 Peace officers short course.** For the instruction of law-enforcement officers of this state, including members and prospective members of the department of public safety and peace officers of the several counties, townships, cities and towns, the commissioner of public safety is hereby authorized and directed to utilize the existing peace officers short course and the laboratories and facilities in connection therewith in the college of law of the state university of Iowa. [C39,§1225.14; C46, 50, 54,§80.10]

**80.11 Course of instruction.** The course or courses of instruction for peace officers shall include instruction in the following subjects and such others as shall be deemed advisable by the college of law and the commissioner of public safety:

1. Criminal law.
2. Identification of criminals and fingerprinting.
3. Methods of criminal investigation.
4. Rules of criminal evidence.
5. Presentation of cases in court.
6. Making of complaints and securing of criminal warrants.
7. Securing and use of search warrants.
8. How to secure extradition and return.
9. Small arms instruction.
10. Regulation of traffic.
11. First aid. [C39,§1225.15; C46, 50, 54,§80.11]

**80.12 Attendance at short course.** The commissioner of public safety is authorized to send members of the department of public safety to any course of instruction for peace officers, not exceeding a total of six weeks length in

any one year, given by the college of law of the state university of Iowa, or the course of instruction in public safety education given at Iowa state college of agriculture and mechanic arts, and such members shall be considered on duty while in attendance upon such authority. The legislative body in any county, city, or town, may authorize the attendance at such course of any law-enforcing officer under the jurisdiction of such county, city or town and may provide for the payment of the actual and necessary expenses of such person while in attendance, which payment shall be made out of the general fund of such county, city or town. [C39,§1225.16; C46, 50, 54,§80.12]

**80.13 Training schools.** The commissioner is authorized to hold a training school for candidates for or members of the department of public safety, and may send to recognized training schools such members as the commissioner may deem advisable, for periods not to exceed one month in any calendar year. The expenses of such school of training shall be paid in the same manner as other expenses of the patrol. [C27, 31,§5017-a1; C35,§5018-g10; C39, §1225.17; C46, 50, 54,§80.13]

**80.14 Diplomas.** To each person satisfactorily completing the course of study prescribed, an appropriate certificate or diploma shall be issued. [C39,§1225.18; C46, 50, 54,§80.14]

**80.15 Examination—oath—probation—dismissal.** No applicant for membership in the department of public safety, except clerical workers and special agents appointed under section 80.7, shall be appointed as a member until he has passed a satisfactory physical and mental examination. In addition, such applicant must have resided in the state of Iowa for at least the period of two years, immediately prior to making application, must be a citizen of the United States, of good moral character, and be not less than twenty-two years of age. The mental examination shall be conducted under the direction or supervision of the commissioner of public safety and may be oral or written or both. Each applicant shall take an oath on becoming a member of the force, to uphold the laws and constitution of the United States and of the state of Iowa. During the period of twelve months after appointment, any member of the department of public safety, except members of the present Iowa highway safety patrol who have served more than six months, shall be subject to dismissal at the will of the commissioner. After the twelve months service, no member of the department, who shall have been appointed after having passed the before-mentioned examinations, shall be subject to dismissal unless charges have been filed with the secretary of the executive council and a hearing held before the executive council, if requested by said member of the department, at which he shall have an opportunity to present his defense to such charges. The decision of the executive council by majority vote shall be final. All

rules and regulations regarding the enlistment, appointment, and employment affecting the personnel of the department shall be established by the commissioner with the approval of the governor. [C27, 31,§5017-a1; C35,§§5018-g3,-g5; C39,§1225.19; C46, 50, 54,§80.15]

Referred to in §97A.1

**80.16 Bonds.** All special agents appointed by the commissioner of public safety and all members of the state department of public safety excepting the members of the clerical force shall, upon appointment, give bond, conditioned upon the faithful discharge of their duties, in the sum of five thousand dollars, which bond shall be approved by the appointing officer. The premium on said bond shall be paid from the funds of this department. [C24, §13409; C27, 31,§§5017-a1, 13409; C35,§§5018-g8, 13409; C39,§1225.20; C46, 50, 54,§80.16]

**80.17 General allocation of duties.** In general, the allocation of duties of the department of public safety shall be as follows:

1. Commissioner's office.
2. Division of statistics and records.
3. Division of criminal investigation and bureau of identification.
4. Division of highway safety and uniformed force.
5. Division of fire protection.
6. Division of inspection.

Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in inter-departmental operations or to forbid other divisional allocations of duties in the discretion of the commissioner of public safety. [C39,§1225.21; C46, 50, 54,§80.17]

**80.18 Expenses and supplies.** It shall be the duty of the commissioner of public safety to provide for the members of the department when on duty, suitable uniforms, subsistence, arms, equipment, quarters, and other necessary supplies, and also the expense and means of travel and boarding the members of the department, according to rules and regulations made by the commissioner, as may be provided by appropriation. [SS15,§65-c; C24,§13408; C27, 31,§§5017-a1, 13408; C35,§§5018-g7, 13408; C39, §1225.22; C46, 50, 54,§80.18]

**80.19 Public safety education.** The commissioner may co-operate with any recognized agency in the education of the public in highway safety and no money shall be expended for such purpose except it be specifically appropriated by the legislature for that purpose.

Any recognized agency receiving appropriations of state money for public safety shall annually file with the auditor of state an itemized statement of all its receipts and expenditures. [C39,§1225.23; C46, 50, 54,§80.19]

**80.20 Divisional headquarters.** The commissioner of public safety may, subject to the

approval of the governor, establish divisional headquarters at various places in the state. Supervisory officers shall be at all times on duty in each district headquarters. [C39, §1225.24; C46, 50, 54,§80.20; 57GA, ch 70,§3]

**80.21 Fees and rewards.** No fees or rewards shall be retained personally by members of the department in addition to their salaries, and any such fees or rewards earned by any members of said department shall be credited to the fund as herein provided to pay the expenses of this department. All salaries herein provided for and all expenses incurred under the provisions of this chapter shall be allowed and audited in the same manner as in other state offices, and shall be payable out of moneys hereafter appropriated. [C27, 31, §5017-a1; C35,§5018-g11; C39,§1225.25; C46, 50, 54, §80.21]

**DUPLICATION IN POLICE OFFICERS PROHIBITED**

**80.22 Prohibition on other departments.** All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes, which are specifically reserved by this act\* to this department. But the commissioner of public safety shall, upon the requisition of the attorney general, from time to time assign for service in the department of justice such of its officers, not to exceed six in number, as may be requisitioned by the attorney general for special service in the department of justice, and when so assigned such officers shall be under the exclusive direction and control of the attorney general. [C24, 27, 31, 35,§13407; C39,§1225.26; C46, 50, 54,§80.22]

\*48GA, ch 120

**80.23 "Special state agents" construed.** Whenever mention is made, in the Code, of "special state agents" in connection with law enforcement, the same shall be construed to mean members of the state department of public safety. [C39,§1225.27; C46, 50, 54,§80.23]

**80.24 Industrial disputes.** The police employees of the department shall not be used or called upon for service within any municipality in any industrial dispute unless actual violence has occurred therein, and then only either by order of the governor or on the request of the chief executive officer of the municipality or the sheriff of the county wherein the dispute has occurred if such request is approved by the governor. [C39,§1225.28; C46, 50, 54,§80.24]

**80.25 Liquor control fund.** The liquor control commission shall pay to the general fund for services received by it, at the hands of this department, the sum of twenty-five hundred dollars per month. [C39,§1225.29; C46, 50, 54, §80.25]

Constitutionality, 48GA, ch 120,§100

## CHAPTER 80A

## LICENSING PRIVATE DETECTIVES

- 80A.1 Definitions.
- 80A.2 Persons exempt.
- 80A.3 Personal license.
- 80A.4 Agency license.
- 80A.5 Requirements for license.
- 80A.6 Expiration of license—fee.

- 80A.7 Display of license.
- 80A.8 Identification cards.
- 80A.9 Duplicate license.
- 80A.10 Suspension or revocation.
- 80A.11 Badges or insignia.
- 80A.12 Penalties.

**80A.1 Definitions.** The following words and phrases when used in this chapter shall for the purposes of this chapter have the meanings respectively ascribed to them, the singular to include the plural and the masculine gender to include the feminine gender:

1. "Private detective business or profession" shall mean and include the business of making for hire, reward or gratis an investigation or investigations for the purpose of obtaining information with reference to any of the following matters: Crimes against a commonwealth or wrongs done or threatened; the habits, conduct, movement, whereabouts, associations, transactions, reputation or character of any person, firm or corporation; the credibility of witnesses or other persons; the location or recovery of lost or stolen property; the causes, origin of or responsibility for fires or accidents or injuries or damages to persons or to real or personal property; or concerning the truth or falsity of any statement or representation; or the business of securing for hire, reward, or gratis evidence to be used before investigation committees, boards of award or arbitration, or in the trial of civil or criminal cases, or the business of furnishing for hire, reward, or gratis guards or other persons to protect persons or property; or to prevent the theft or the unlawful taking or use of real or personal property, or the business of performing the services of such guard or other person for any of said purposes.

2. "Detective agency" shall mean and include any person, firm or corporation engaged in the private detective business who advertises as such or employs one or more detective agents in conducting such business.

3. "Private detective" shall mean and include any person who advertises himself as such or who singly conducts a private detective business without the assistance of any other detective agents other than those employed as such on a part time basis only and who do not make such an occupation their principal business or means of livelihood.

4. "Detective agent" shall mean any person or operative employed by a detective agency or private detective and engaging in any of the activities of the private detective business or profession as defined in this section.

5. "Commissioner" or "commissioner of public safety" shall mean the commissioner of public safety of the state of Iowa. [C50, 54, §80A.1]

**80A.2 Persons exempt.** The provisions of this chapter shall not apply to any detective or officer belonging to and on the payroll of the police force of the United States, or of any state, or of any county, city, town or village thereof, appointed or elected by due authority of law; nor to any person in the employ of the police force or police department or law enforcement agency of any state, or of any county, city, town or village thereof in the performance of his official duties; nor to any county attorney; nor to any attorneys-at-law in the regular practice of their profession; nor to any person, firm or corporation whose business is solely the making of investigations and adjustments for insurance companies or the furnishing of information with respect to the business and financial standing and credit of persons, firms or corporations; nor to any person making any investigation of any matter in which such person or the person, firm or corporation by whom such person is solely employed is interested or involved, nor to any person making any investigation for any person, firm or corporation engaged in the business of transporting persons or property in interstate commerce, nor to any person or persons, firm or corporation while engaged in the collection, editing or dissemination of news for or on behalf of any newspaper, magazine, radio broadcasting station or press or wire news services. [C50, 54, §80A.2]

**80A.3 Personal license.** It shall be unlawful for any person to engage in or attempt to engage in business as a private detective without first obtaining a license therefor issued by the commissioner of public safety. [C50, 54, §80A.3]

**80A.4 Agency license.** It shall be unlawful for any person, firm or corporation to conduct or engage in business as a detective agency or to employ persons to act as detective agents in the conduct of such business without first obtaining a license therefor issued by the commissioner of public safety, which license shall include authority for the detective agency to employ detective agents. [C50, 54, §80A.4]

**80A.5 Requirements for license.** Every application for a private detective or detective agency license, as required by this chapter shall be made to the commissioner of public safety and shall be in such form as the commissioner may prescribe and shall contain a showing that the applicant has qualified under the following conditions:



1. That the applicant is at least twenty-one years of age.

2. That the applicant is a citizen of the United States.

3. That the applicant is of good moral character and has not been convicted of a felony.

Each applicant shall submit to the commissioner of public safety with his application such pictures and fingerprints of himself and such description of his physical characteristics and appearance as and in the manner and upon such forms as the commissioner of public safety may prescribe. In the event that the applicant is a partnership, all of the members thereof actively engaged in the detective business in this state shall have such qualifications as are prescribed in subsections 1, 2, and 3 of this section, and shall submit such pictures, fingerprints and descriptions of his physical characteristics and appearance as are hereby required to be submitted by individual applicants; and in the event that the applicant is a corporation, the articles of incorporation shall authorize the corporation to engage in the business of conducting a detective agency and at least one officer or executive officer and every corporate officer actively participating in the detective business in this state shall have such qualifications as are required by subsections 1, 2, and 3 of this section; and shall submit such pictures, fingerprints and descriptions of his physical characteristics and appearance as are required by this section to be submitted by individual applicants. Upon approval of the applications and the passing by the applicant of an examination prescribed and conducted by the commissioner of public safety to ascertain the qualifications, fitness and competency of the applicant to engage in the private detective business or profession, the commissioner of public safety shall issue a license to such applicant as a private detective or as a detective agency, as the case may be, upon the filing with said commissioner of public safety by such applicant of a surety bond which, in the case of a detective agency, shall be in an amount not less than two thousand dollars and which, in the case of a private detective, shall be in an amount of not less than one thousand dollars, issued by a corporate surety company authorized to do business in the state and approved by the commissioner of public safety, conditioned for the faithful, lawful and honest conduct of such applicant and those employed by such applicant in carrying on the private detective business, which bond shall be in such form as the commissioner of public safety may prescribe and shall be taken in the name of the people of the state and shall provide that any person, firm or corporation injured by a breach of the conditions of such bond may bring an action on the said bond in the name of the people of the state of Iowa for the use of such person, firm or corporation so injured to recover legal damages suffered by reason of such breach; provided, however, that the aggregate liability of the surety for all such dam-

ages shall in no event exceed the amount of said bond. [C50, 54,§80A.5]

Referred to in §80A.10

**80A.6 Expiration of license—fee.** Licenses issued under the provisions of this chapter shall expire on the last day of December each year. Applicants for licenses shall deposit with each application a fee equal to the fee herein prescribed for such license and if the application be approved, said amount shall be applied on the license fee, but if such application is disapproved, the same shall not be returnable or refunded. The annual license fee for a private detective shall be ten dollars. The annual license fee for a private detective agency shall be twenty-five dollars. When a license is issued in the month of February or in succeeding months, the fee therefor shall be computed on the basis of one-twelfth of the annual license fee, as provided herein, multiplied by the number of unexpired months of the year, including the month in which said license is issued. Whenever any such fee so computed contains a fractional part of a dollar, it shall be computed as of the nearest fractional quarter-dollar thereto. [C50, 54,§80A.6]

**80A.7 Display of license.** There shall be conspicuously displayed in the place or places of business or office or offices of every private detective or detective agency, the license issued to said private detective or detective agency, pursuant to this chapter, or a full size facsimile reproduction of said license. [C50, 54,§80A.7]

**80A.8 Identification cards.** Every private detective agency and private detective shall issue to each of its officers and detective agents an identification card which shall include a physical description and the fingerprints of and a picture of said officer or detective agent. Such identification cards shall be in such form as approved by the commissioner of public safety and there shall be imprinted upon or attached to said identification card a facsimile reproduction of the license issued to said detective agency pursuant to this chapter. It shall be unlawful for any detective agency or private detective to employ any person as a detective agent unless at the time of such employment there is issued to such detective agent an identification card as provided in this section. It shall be unlawful for any person to act as a detective agent unless he has in his immediate possession an identification card as provided in this section. [C50, 54,§80A.8]

**80A.9 Duplicate license.** A duplicate license shall be issued by the commissioner of public safety upon the payment of a fee therefor in the amount of one dollar and the filing with him in such form as he shall prescribe, a statement under oath that the original license has been lost or destroyed and that, if the original license is recovered, such original or the duplicate issued will be returned immediately to the commissioner of public safety for cancellation. [C50, 54,§80A.9]

**80A.10 Suspension or revocation.** The commissioner of public safety may either refuse to issue or may suspend or may revoke a license issued by him, pursuant to this chapter for any one or any combination of the following reasons:

1. Fraud in obtaining a license.
2. Violation of any of the terms and provisions of this chapter.
3. If the holder of any license or a member of any partnership or an officer of any corporation licensed by the commissioner of public safety, pursuant to the provisions of this chapter, has been adjudged guilty of the commission of a crime involving moral turpitude.
4. If the holder of any license is found guilty of willful betrayal of any information obtained by the licensee in the course of the conduct of the private detective business.
5. Upon the disqualification or insolvency of the surety on the licensee's bond, unless such licensee files a new bond with sufficient surety within fifteen days of the receipt of notice from the commissioner.
6. If the licensee or applicant for a license shall fail to have any of the qualifications as provided in section 80A.5. [C50, 54,§80A.10]

**80A.11 Badges or insignia.** Unless otherwise authorized by law, no person, while engaged in any activity of the private detective business or profession, as defined by this chapter, shall wear, carry or display any distinctive or identifying badge or insignia pertaining to said business or profession other than that pre-

scribed or approved by the commissioner and, in the event that a private detective or any officer or employee of a detective agency shall wear a uniform while engaged in any activity of the private detective business or profession as defined in this chapter, there shall be conspicuously displayed thereon such distinctive identifying badges or insignia as the commissioner may prescribe or approve and the manner of displaying such badges or insignia shall be subject to the approval of the commissioner. "Uniform" as used in this section shall mean any manner of dress of a particular style and distinctive appearance as distinguished from ordinary clothing customarily used and worn by the general public. [C50, 54,§80A.11]

**80A.12 Penalties.** Any person, firm or corporation who violates any of the provisions of this chapter or who makes any false statement or representation in any application or statement filed with the commissioner of public safety, as required by this chapter, or any person who falsely states or represents that he has been or is a private detective or advertises himself as such, or any person, firm or corporation who engages in the private detective business or profession as defined in this chapter, without being possessed of a current, valid license therefor, as provided by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. [C50, 54,§80A.12]

## CHAPTER 81

### ITINERANT MERCHANTS

- 81.1 Definition of the included class.
- 81.2 License required.
- 81.3 Application—contents—fees.
- 81.4 Insurance policies and bonds required.
- 81.5 Department as process agent.
- 81.6 Service of original notice.
- 81.7 Issuance of license—plates.

- 81.8 Nontransferability.
- 81.9 Revocation of license.
- 81.10 Departmental rules.
- 81.11 Fees to treasurer.
- 81.12 Exemption from peddler's license.
- 81.13 Penalties.
- 81.14 Injunction proceedings.

#### **81.1 Definition of the included class.**

1. When used in this chapter:
  - a. "Motor vehicle" shall have the same meaning as when used in any statutes regulating the use and operation of motor vehicles; provided, that in this chapter the term shall always include as one vehicle a tractor-semi-trailer or tractor-trailer combination.
  - b. "Highway" shall mean any thoroughfare defined by any statute or ordinance as a public highway or street.
  - c. "Person" shall mean a natural person, firm, partnership, association, corporation, trust, trustee, lessee, or receiver, as the context may require, regardless of the gender of the pronoun used in conjunction therewith.

d. "Department" shall mean the motor vehicle department\* of the state.

e. "Established place of business" shall mean any permanent warehouse, building, or structure, at which a permanent business is carried on throughout the year or usual production or marketing season in good faith, and at which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for the requirements of such business, and which is recognized as a permanent place of business. It shall not mean tents, temporary stands or other temporary quarters.

f. "Insurance company" shall mean any insurance company, insurance association, recip-

rocal or interinsurance exchange authorized to do business in the state of Iowa.

g. "Itinerant merchant" shall mean any person who transports personal property for sale by him within this state, by use of a motor vehicle, except as herein otherwise provided.

2. The term "itinerant merchant" shall not mean or include the following:

a. A person using a motor vehicle, operated by him or his agent, for the transportation of milk, dairy products, grain, fruits, feed, seed, vegetables, livestock, poultry, or other agricultural products, produced or fed by him on a farm operated by him, or any person using a motor vehicle for the transportation of newspapers, books, or magazines.

b. A person transporting property when such transportation is incident to a business conducted by him at an established place of business operated by him, either within or without this state, and when said property is being transported to or from said established place of business, and when the entire course of such transportation extends not more than three hundred and fifty miles from said established place of business; provided, however, that when the entire course of said transportation is for the purpose of delivery of said property subsequent to sale thereof said three hundred and fifty miles restriction shall not apply.

c. A person licensed under the provisions of sections 203.6 or 203.7.

d. A person operating in the manner of an itinerant merchant, buying or selling within a radius of fifty miles from his residence, provided he has secured a permit, upon the payment of a fee of one dollar to cover expense of mailing and manufacture, upon application to the county treasurer or the department, said permit to set forth the city, town, or township of his residence and the Iowa motor vehicle license number of the vehicle used by him. The permit shall be carried by such operator at all times.

e. A salesman selling manufactured articles produced by his employer who sells the same to retail dealers for the purpose of resale.

3. Any person operating in the manner of an itinerant merchant claiming exemption because of interstate operations by passing through or across the state, shall obtain from the department a permit without payment of fee for each trip or operation. This permit shall state the date the trip is to be made, type of load to be carried, approximate route to be traversed, and source and destination of load. [C39,§1225.30; C46, 50, 54,§81.1]

Referred to in §81.2  
\*See §321.2

**81.2 License required.** No person shall engage in business or use any motor vehicle in this state as an itinerant merchant, as defined and fixed in section 81.1, without complying with the chapter and without obtaining from the department the license required by this chapter. [C39,§1225.31; C46, 50, 54,§81.2]

**81.3 Application—contents—fees.** An application for a license to engage in business as an itinerant merchant shall be made to the department or county treasurer upon forms to be prepared by the department. The county treasurer shall retain a fee of fifty cents from each itinerant merchant license fee. A separate application and license shall be required for each motor vehicle to be operated. In addition to any other essential information required by the department, said application shall state the following: Name and legal status of the applicant; his business address; if a natural person his residence address; if not a natural person the names and business and residence addresses of the principal and managing officers, agents or partners; a general description of the business to be conducted and the area in this state in which it will be conducted; an exact description of the motor vehicle to be used including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number; such application shall be sworn to.

Upon payment of the license fee as herein after determined, the department shall issue a license which shall entitle the applicant to be an itinerant merchant. The fee shall be based upon the maximum weight of the load which said merchant may transport at any one time and shall be as follows: On not to exceed one thousand pounds at one time, ten dollars; on not to exceed three thousand pounds at one time, twenty-five dollars; on a load in excess of three thousand pounds at one time, forty dollars. Provided however that the license fee of an itinerant merchant for transportation of property in a motor vehicle which is licensed under chapter 321 shall be the sum of two dollars regardless of the weight of the load. The fee shall be reduced fifty percent after June 30. Each license shall expire at the end of the calendar year. [C39,§1225.32; C46, 50, 54, §81.3]

**81.4 Insurance policies and bonds required.**

1. No license shall be issued by the department until the applicant shall have filed with each application, and the same have been approved by the department, an insurance policy and a bond issued by a company as herein defined authorized to do business within the state of Iowa as follows:

a. An indemnity bond in the penal sum of five hundred dollars for an itinerant merchant operating with more than twenty-five hundred pounds actual load. Such bond shall be in such form as may be prescribed by the department for the purpose of protecting the public against fraud, conditioned upon the use of honest weights, measures, and grades, if the commodities to be handled by the itinerant merchant are those customarily sold by weight, measure and grade; accurate representation as to quality or class of such commodities, and the actual payment of checks, drafts, debentures or other securities delivered by such itinerant merchant in exchange for the purchase of commodities to be handled by him. The surety on such bond

shall be a surety company authorized to engage in the surety business in this state. In such bond the surety shall appoint the head of the motor vehicle department the agent of the surety for the service of process in the event that personal service cannot be had upon it within the state and shall designate the post-office address to which process against said surety in any suit on said bond may be sent or served. Whenever the bond provided for in this section shall be exhausted, the department shall forthwith cancel the license. Said license so canceled shall be renewed for the balance of the period for which issued by filing an additional bond with corporate surety in like amount conditioned as required in the previous bond.

Nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

No suit or action against the surety on any such bond shall be brought later than one year from the accrual of the cause of action thereon.

b. A liability insurance policy which shall bind the obligors to pay damages for injuries to persons and damage to property resulting from the negligent operation of the motor vehicle operated under authority of the itinerant merchant's license, said policy or bond to be conditioned to pay any sum up to five thousand dollars for personal injury to or death of one individual, and up to ten thousand dollars for personal injuries or deaths resulting from any single accident, and up to one thousand dollars for damage to property in any single accident.

2. Every insurance policy and bond filed with the department under the provisions of this chapter shall contain an indorsement or provision that the same shall not be canceled by the obligor, shall not expire, and shall not become reduced in amount, until ten days after notice thereof by certified United States mail has been sent to the department. Upon receipt of such notice the department shall immediately send the itinerant merchant at his last known address by restricted certified mail, a notice advising him that unless a new insurance policy or bond is filed prior to the time such cancellation, expiration or reduction becomes effective, the license of such itinerant merchant shall be revoked at the time such cancellation, expiration or reduction becomes effective. If a new policy or bond is not filed in accordance with such notice the department must revoke said license at said time.

3. Any person having a cause of action against the itinerant merchant arising out of the matters described in paragraph "a" of subsection 1 of this section may join said itinerant merchant and the surety on his bond in the same action, or may sue said surety without joining said itinerant merchant in the action if the itinerant merchant is deceased or if it is

impossible to obtain jurisdiction of his person within the state. [C39,§1225.33; C46, 50, 54,§81.4; 57GA, ch 267,§7]

Referred to in §81.6

**81.5 Department as process agent.** Before a license shall issue, the applicant shall sign and file with the department an irrevocable power of attorney appointing the department his agent to accept service of original notice, in the event that personal service cannot be had upon the applicant in this state, for all causes of action against him arising out of the conduct of his business as an itinerant merchant and the operation of the motor vehicle described in the application. [C39,§1225.34; C46, 50, 54,§81.5]

Referred to in §81.6

**81.6 Service of original notice.** Whenever service of original notice in any cause of action described in section 81.5 cannot be made upon the itinerant merchant and/or the bonding company within the state of Iowa, such service may be made upon either or both by sending sufficient copies of such original notice to the department by certified United States mail. The department shall immediately upon receipt thereof indorse upon each copy the date and hour received and shall file one copy, whereupon service of said original notice shall be deemed to be completed upon said itinerant merchant and/or said bonding company as of the date of said filing. The department shall immediately send one copy of said original notice to said itinerant merchant and/or one copy to said bonding company at the last known address of each, by restricted certified mail. The venue of any such action may be laid in any county of this state in which said cause of action arose, or in any other place authorized by law. [C39,§1225.35; C46, 50, 54, §81.6; 57GA, ch 267,§8]

**81.7 Issuance of license—plates.** Upon the approval of the application and upon compliance with the terms of this chapter, the department shall issue to the applicant a license as an itinerant merchant. Such license shall be numbered, shall specifically describe the itinerant merchant and the motor vehicle as they are described in the application, and shall at all times be carried in the cab of the motor vehicle described and be subject to inspection by any proper person. The department shall also issue to the itinerant merchant a license plate containing the same number as the license, of distinctive color and size, which shall at all times be displayed on the rear of the motor vehicle described in the license. [C39, §1225.36; C46, 50, 54,§81.7]

**81.8 Nontransferability.** No license or license plate issued pursuant to this chapter may be sold or transferred, and no license or license plate may be transferred from one vehicle to another. [C39,§1225.37; C46, 50, 54,§81.8]

**81.9 Revocation of license.** The department may revoke any license or permit issued under the provisions of this chapter after prop-

er hearing before it, by the sending of due notice thereof by restricted certified mail, to the itinerant merchant at his last known address, not less than twenty days before the date of said hearing, for any of the following causes:

1. Failure to comply with the provisions of this chapter or to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the products sold by the itinerant merchant.

2. If any judgment recovered against any itinerant merchant with reference to the operation of his business remains unpaid for a period of six months, provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.

The department shall give immediate notice of the revocation of any license issued under the provisions of this chapter, to the surety or insurance company issuing the bond or policy to the licensee as provided in section 81.4. [C39,§1225.38; C46, 50, 54,§81.9; 57GA, ch 267.9]

**81.10 Departmental rules.** The department shall make and enforce such rules for the administration of this chapter as may be necessary and proper. [C39,§1225.39; C46, 50, 54, §81.10]

**81.11 Fees to treasurer.** All fees received by the department from the issuance of licenses shall be deposited monthly with the

treasurer of state. [C39,§1225.40; C46, 50, 54, §81.11]

**81.12 Exemption from peddler's license.** Nothing in this chapter shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants; provided that any person licensed under the provisions of this chapter shall not be required to obtain the license required by section 444.13. [C39,§1225.41; C46, 50, 54,§81.12]

**81.13 Penalties.** Any person violating any provision of this chapter shall be guilty of a misdemeanor, except as herein otherwise provided, and shall upon conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [C39,§1225.42; C46, 50, 54,§81.13]

**81.14 Injunction proceedings.** Any county attorney may commence an action in any court of competent jurisdiction, in the name of the state as plaintiff on the relation of such county attorney, to enjoin any person from violating any of the provisions of this chapter. Such action may be maintained upon due showing that the defendant has violated any of the provisions of this chapter. [C39,§1225.43; C46, 50, 54,§81.14]

Constitutionality, 48GA, ch 209,§15

## CHAPTER 81A

### TRANSIENT MERCHANTS

81A.1 Definitions.

81A.2 License required.

81A.3 Application for license.

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**81A.1 Definitions.** The term "transient merchant" as used herein shall mean and include every merchant, whether an individual person, a firm, corporation, partnership or association, and whether owner, agent, bailee, consignee or employee, who shall bring or cause to be brought within the state of Iowa any goods, wares or merchandise of any kind, nature or description, with the intention of temporarily or intermittently selling or offering to sell at retail such goods, wares or merchandise within the state of Iowa. The term "transient merchant" shall also mean and include every merchant, whether an individual person, a firm, corporation, partnership or an association, who shall by himself or itself, or by agent, consignee or employee temporarily or intermittently engage in or conduct at one or more locations a business within the state of Iowa for the sale at retail of any goods, wares or merchandise of any nature or description. A merchant engaging in business shall be presumed to be temporarily or intermittently in business unless it is the intention of such

merchant to remain continuously in business at each location where he is engaged in business within the state of Iowa as a merchant for a period of more than sixty days. The provisions of this chapter shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling or distributing live stock feeds, fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees. [56GA, ch 77,§1]

**81A.2 License required.** It shall be unlawful for any transient merchant as herein defined, to sell, dispose of, or offer for sale any goods, wares or merchandise of any kind, nature or description, at any time or place within the state of Iowa, outside the limits of any city or town in the state of Iowa, or within the limits of any city or town in the state of Iowa that has not by ordinance enacted pursuant to the provisions of section 368.6 provided

for the licensing of transient merchants, unless such transient merchant, as herein defined, shall have a valid license as herein provided and shall have complied with the regulations herein set forth. [56GA, ch 77,§2]

**81A.3 Application of license.** Any transient merchant as defined herein, desiring a transient merchant's license shall at least ten days prior to the first day any sale is made, file with the secretary of state of the state of Iowa an application in writing duly verified by the person, firm, corporation, partnership or association proposing to sell or offer to sell at retail any goods, wares or merchandise, or to engage in or conduct a temporary or intermittent business for the sale at retail of any goods, wares or merchandise, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm, corporation, partnership or association making the application, and if a corporation, the names and addresses of the officers thereof, and if a firm, partnership or association and not a corporation, the names and addresses of all members thereof.

2. If the application be made by an agent, bailee, consignee or employee, the application shall so state and set out the name and address of such agent, bailee, consignee or employee and shall also set out the name and address of the owner of the goods, wares and merchandise to be sold or offered for sale.

3. The application shall state whether or not the applicant has an Iowa retailers sales tax permit and if the applicant has such permit, shall state the number of such permit.

4. If the applicant be a corporation, the application shall state whether or not the applicant is an Iowa corporation or a foreign corporation, and if a foreign corporation, shall state whether or not such corporation is authorized to do business in Iowa.

5. The value of the goods to be sold or offered for sale or the average inventory to be carried by any such transient merchant engaging in or conducting an intermittent or temporary business as the case may be.

6. The date or dates upon which said goods, wares or merchandise shall be sold or offered for sale, or the date or dates upon which it is the intention of the applicant to engage in or conduct a temporary or intermittent business.

7. The location and address where such goods, wares or merchandise shall be sold or offered for sale, or such business engaged in or conducted. [56GA, ch 77,§3]

**81A.4 Bond required.** At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent

or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond. In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon him to each party for whom he is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court. Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plaintiff may reside or Polk county, Iowa shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone. [56GA, ch 77,§4]

**81A.5 Issuance of license.** Upon receiving an application for a transient merchant's license, the secretary of state shall investigate or cause to be investigated, the reputation and character of the applicant. If, upon making such investigation, the secretary of state is satisfied that the statements and representations contained in the application are true, and that the applicant is of good reputation and character, and the holder of an Iowa retailer's sales tax permit, and if a foreign corporation, has authority to do business in the state of Iowa, he shall issue to the applicant a license as a transient merchant upon payment of the fee as herein prescribed for the period of time requested in said application and for use at the location and place where it is stated in said application the sale will be held or the business conducted, both of which shall be set out in said license. Such license shall be valid only for the period of time and at the location and place described therein. [56GA, ch 77,§5]

**81A.6 License fee.** Prior to issuing the said transient merchant's license, the secretary of state shall collect for the state of Iowa a license fee in the sum of twenty-five dollars for each day the applicant, as shown by his application, shall propose to sell or offer for sale any goods, wares or merchandise, or for each day the applicant, as shown by his application, proposes to engage in and conduct a business as a transient merchant as the case may be. [56GA, ch 77,§6]

**81A.7 Misrepresentation.** It shall be unlawful for any transient merchant making sales or engaging in or conducting a business under a transient merchant's license to make any false or misleading statements or representation regarding any article sold or offered for sale by such transient merchant as to condition, quality, original cost, or cost to such transient merchant of any article sold or offered for sale or to sell or offer for sale goods, wares or merchandise of a value in excess of the value thereof as shown by said application, or to sell or offer for sale at retail any goods, wares or merchandise, or to engage in or conduct an intermittent or temporary business on any days or at any place other than those shown by such license. [56GA, ch 77,§7]

**81A.8 Revocation.** The secretary of state may revoke any license issued under the provisions of this chapter after proper hearing before him, by the sending of due notice of said hearing by registered letter to the "transient merchant" at his last known address, re-

turn receipt requested, not less than twenty days before the date of said hearing, for any of the following causes:

1. For any violations of the provisions of this chapter.

2. For failure to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the product sold by the "transient merchant."

3. If any judgment recovered against any "transient merchant" with reference to the operation of his business remains unpaid for a period of six months provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.

The secretary of state shall give immediate notice of the revocation of any license issued under the provisions of this chapter to the surety or sureties furnishing the bond provided for herein.

In the event of such revocation, no other "transient merchant" license shall be issued to such applicant for a period of two years thereafter. [56GA, ch 77,§8]

**81A.9 Penalty.** Any merchant, whether an individual person, a firm, corporation, partnership or association violating any of the provisions of this chapter shall, upon conviction, be fined in a sum not to exceed one hundred dollars, or be imprisoned not to exceed thirty days in jail. Each sale made in violation of the provisions hereof shall be and constitute a separate offense. [56GA, ch 77,§9]

Constitutionality, 56GA, ch 77,§10

## CHAPTER 82

### COAL MINES AND MINING

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### 82.1 Board of examiners — compensation.

The executive council shall, on or before June 30 of each even-numbered year, appoint a board of five examiners, consisting of two practical miners and two mine operators, all holding certificates of competency as mine foremen, and one mining engineer, each of whom shall have had at least five years actual experience in his profession immediately preceding his appointment, who shall hold office for a term of two years, and until their successors have been appointed and have qualified.

Each member of the board of examiners shall, in addition to necessary traveling and hotel expenses, receive ten dollars per day for each day actually engaged in the discharge of his duties, including compensation for the time spent in traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination questions and the reading of papers, in addition to the time actually spent in conducting examinations. No examiner shall receive more than four hundred dollars per diem compensation in any one year. [C97,§2479; S13,

§2479-a; C24, 27, 31, 35, 39,§1226; C46, 50, 54, §82.1]

### 82.2 Qualifications — malfeasance — removal.

No member of said board shall be interested in or connected with any school, scheme, plan, or device having for its object the preparation, education, or instruction of persons in the knowledge required of applicants for certificates of competency. Any member of said board shall be summarily removed from office by the executive council, upon due notice and hearing, for violation of the law, misfeasance or malfeasance in the performance of his duties, or for other sufficient cause and his successor shall thereupon be appointed by the said executive council for the unexpired term. [S13,§2479-a; C24, 27, 31, 35, 39,§1227; C46, 50, 54,§82.2]

Removal by executive council, §66.26

**82.3 Mine inspectors—examinations.** The board shall meet in the office of the state mine inspectors at the seat of government on the first Monday in March of each even-numbered year for the examination of applicants for cer-



tificates of competency for mine inspector, and at such other times and places as shall be necessary in the discharge of its duties. It shall adopt rules and regulations and prescribe and conduct such examinations of applicants as shall carry out the purpose and intent of this chapter in relation to the qualifications of mine inspectors. Notice of all such examinations shall be published in at least one newspaper in each mine district not less than fifteen days preceding the date of such examination. [C97,§2480; S13,§2489-c; C24, 27, 31, 35, 39,§1228; C46, 50, 54,§82.3]

40ExGA, SF 41,§3, editorially divided

**82.4 Mine foremen and hoisting engineers.** The board shall hold such meetings at such times and places as may be necessary for the examination of applicants for certificates of mine hoisting engineers and mine foremen. It shall prescribe and adopt such rules and regulations therefor as may be reasonably necessary for the conducting of such examination, which shall include among other things to be determined by the board, the following:

**Examination of mine foremen**

A knowledge on the part of such applicants of:

1. The conditions relating to the safety of the underground workings of a mine.
2. The nature and properties of noxious, poisonous, and explosive gases found in mines.
3. The different systems of working coal mines and ventilation thereof.
4. The administering of first aid treatment to injured workmen.

**Examination of hoisting engineers**

A knowledge on the part of such applicants of the conditions relating to the safety of machinery in charge of a mine hoisting engineer, including all property connected therewith used in operating such machinery and also the machinery utilized at escape ways and shafts and ventilating apparatus. [C97,§2480; S13, §2489-c; C24, 27, 31, 35, 39,§1229; C46, 50, 54, §82.4]

**82.5 Scope of examinations — certificates.** Such questions shall not be exclusive of any other questions to be presented by the board, but the board shall prepare and present such additional questions as they may deem best to carry out the spirit and intent of the law. The board shall issue to those examined and found to possess the requisite qualifications, certificates of competency for the position of mine foremen or mine hoisting engineers. [S13, §§2489-c,-d; C24, 27, 31, 35, 39,§1230; C46, 50, 54, §82.5]

**82.6 Examination — mine inspectors.** The examination for mine inspectors shall consist of oral and written questions in theoretical and practical mining and mine engineering, on the nature and properties of noxious and poisonous gases found in mines, and on the different systems of working and ventilating coal and gypsum mines. During the progress of the examination, access to books, memoranda, or

notes shall not be allowed, and the board shall issue to those examined and found to possess the requisite qualifications, certificates of competency for the position of mine inspector; but certificates shall be granted only to persons of twenty-five years of age or over, of good moral character, citizens of the state, and with at least five years experience in the practical working of mines, and who have not been acting as agent or superintendent of any mines for at least six months next preceding such examination. [C97,§2481; C24, 27, 31, 35, 39, §1231; C46, 50, 54,§82.6]

**82.7 Mine inspectors—vacancies.** The governor shall on or before July 1, 1927, and every four years thereafter, appoint three mine inspectors from those receiving certificates of competency from the board of examiners as by law provided, who shall hold their office for a term of four years and until their successors shall be appointed and qualify, subject to removal by him for cause. Any vacancies occurring shall be filled in the same manner as original appointments, for the unexpired term only. [C73,§1567; C97,§2478; SS15,§2478; C24, 27, 31, 35, 39,§1232; C46, 50, 54,§82.7]

**82.8 Removal of inspector—bond—notice.** Charges of gross neglect of duty or malfeasance in office against any inspector may be made in writing, sworn to, and filed with the governor, and must be made by five miners, or one or more mine operators; such charges shall be accompanied with a bond in the sum of five hundred dollars, running to the state, with two or more sureties approved by the clerk of the district court of the county in which the sureties reside, conditioned for the payment of all costs and expenses arising from the investigation of the charges, and thereupon the governor shall convene the board of examiners at such time and place as he may designate, giving the inspector and the person whose name first appears in the charge ten days notice thereof. [C97,§2484; S13,§2484; C24, 27, 31, 35, 39,§1233; C46, 50, 54,§82.8]

**82.9 Manner of trial—report of findings—costs.** The board, at the time and place fixed, shall proceed to hear, try, and determine the matter, and for this purpose shall summon any material witness desired by either party, and any member may administer the proper oath to all witnesses. Evidence may also be taken by deposition as in other cases, and continuances of the hearing may be granted in furtherance of justice and upon the application of either party. After the evidence has been fully heard, the board shall report to the governor its action and decision. If the charges are sustained, the inspector shall be forthwith removed by the governor, and the costs and expenses of the hearing taxed against the inspector, but if the charges are not sustained, the costs shall be taxed against the parties filing the charges and their bondsmen. [C97, §2484; S13,§2484; C24, 27, 31, 35, 39,§1234; C46, 50, 54,§82.9]

**Depositions in general, R.C.P. 153 et seq.**

**82.10 Appeal—notice—manner of trial.** The aggrieved party shall have the right to appeal from such findings and order to the district court of any county in the district of the inspector against whom charges were made, by giving notice in writing to the board, or any member thereof, served in the same manner as original notices, within ten days from the time of filing the findings with the governor, or if the order of removal is made, within ten days therefrom. Upon such appeal all matters shall be heard bearing upon the charges made, and the pleadings may be amended within the discretion of the court. The appeal shall be tried as an equitable action and the first term after the appeal is perfected shall be the trial term. Upon such hearing the court shall render and enter such order or decree as the evidence warrants in equity and justice. Nothing herein contained shall prevent the governor from proceeding under any law provided for the suspension or removal of state officers for malfeasance or nonfeasance in office. [S13, §2484; C24, 27, 31, 35, 39, §1235; C46, 50, 54, §82.10]

Method of trial, ch 624  
Service of notice, R.C.P. 56(a)  
Suspension by governor, ch 67

**82.11 Qualifications of inspector.** Each inspector shall devote his entire time and attention to the business incumbent upon him. An inspector shall in no way be financially interested in or connected with any mining property or directly or indirectly act as agent, officer, or representative of any person, firm, or corporation engaged or interested in mining or any business connected therewith. [C97, §2478; SS15, §2478; C24, 27, 31, 35, 39, §1236; C46, 50, 54, §82.11]

**82.12 General office—report to governor.** The three inspectors shall maintain a general office at the seat of government and keep therein all records, correspondence, documents, apparatus, or other property pertaining to their office; they shall at the time provided by law, make a biennial report to the governor of their official doings, including therein all matters which by this chapter are specially committed to their charge, adding such suggestions as to needed future legislation as in their opinion may be important. [C73, §1569; C97, §2483; S13, §2483; C24, 27, 31, 35, 39, §1237; C46, 50, 54, §82.12]

Biennial report, §17.11

**82.13 Inspection districts—local office—expenses.** The governor shall divide the state into three inspection districts, and assign one inspector to each district. Each inspector shall maintain an office at some suitable place in his district, to be approved by the governor, and shall reside in the district and remain therein, unless otherwise engaged in the conduct of his official duties. The expenses of the local office of the mine inspector, including rental and other necessary expenses, not exceeding three hundred dollars per year, shall be paid by the state. [C97, §2482; S13, §2482; C24, 27, 31, 35, 39, §1238; C46, 50, 54, §82.13]

**82.14 Duties of inspector—record—co-operation with U. S. bureau.** He shall examine, test, and adjust, as often as he deems necessary, all scales, beams, and other apparatus used in weighing coal at the mines. He shall examine all the mines in his district as often as the time will permit, which examination shall be made at least once every six months, keep a record of the inspections made, showing date, the condition in which the mine is found, the extent and manner in which the laws relating to the government of mines and their operation are observed and obeyed, the progress made in improvements for better security to health and life, number of accidents happening and their character, the number employed, and such other matters as may be of public interest and connected with the mining industries of the state.

The mine inspector shall have power to cooperate with the United States bureau of mines, its director, agents, and inspectors, in carrying out the provisions of Public Law 552, Laws of the 82nd Congress, approved July 16, 1952, or any other agency of the federal government for providing safety in mines of this state in such reasonable manner as may be necessary to qualify for co-operative inspections of coal mines of this state by state and federal agencies, including the authority to make such reports in form and containing such information as the director of United States bureau of mines may from time to time prescribe and require. [C73, §1567; C97, §2482; S13, §2482; C24, 27, 31, 35, 39, §1239; C46, 50, 54, §82.14]

**82.15 Posting of reports.** Inspectors, immediately after making an inspection, shall post or cause to be posted, at some convenient and conspicuous place to which employees of such mine and their representatives shall have free access, a summary report of the conditions found to exist in the mine, together with any requests or orders made for changes or repairs. [C24, 27, 31, 35, 39, §1240; C46, 50, 54, §82.15]

Referred to in §82.16

**82.16 Duty of mine owner.** The owner of every mine in this state, subject to inspection, shall provide a suitable place for the posting of reports as provided in section 82.15, which place shall be so located and constructed as to protect the report, when posted, from the weather and from improper removal. The place for posting such report and the means of protection therefor, shall conform to the direction of the mine inspector. [C24, 27, 31, 35, 39, §1241; C46, 50, 54, §82.16]

**82.17 Unlawful destruction.** Any person who, without the consent of the mine inspector, intentionally destroys such report, or place for keeping the same, shall be deemed guilty of a misdemeanor. [C24, 27, 31, 35, 39, §1242; C46, 50, 54, §82.17]

Punishment, §687.7

**82.18 Filling or sealing abandoned mine.** It shall be the duty of the owner, lessee, operator of the mine or owner of land on which

mine is located, to permanently fill, or seal all openings to the same immediately after it is finished or abandoned, so as to prevent any person or animal from entering or falling into the said finished or abandoned mine; and before said filling or sealing is commenced or undertaken, the mine owner, lessee or operator shall notify the mine inspector of the district in which the mine is located, and the same shall be subject to the approval of said mine inspector who is hereby authorized and empowered to prescribe the manner and the kind of material with which the same shall be filled or sealed. [C35,§1241-g1; C39,§1242.1; C46, 50, 54, §82.18]

Referred to in §§82.20, 82.21

**82.19 Opening or breaking seal.** It shall be unlawful for any person, firm or corporation to open or to break any seal placed on any finished or abandoned mine; or to open or to break any seal placed on any mine ordered closed by the mine inspector, unless said person, firm or corporation, has first received a written permit from the mine inspector to do so, and then only in the manner prescribed by him in said permit. [C35,§1241-g2; C39,§1242.2; C46, 50, 54, §82.19]

Referred to in §§82.20, 82.21

**82.20 Removal of machinery or material.** It shall be unlawful for any owner, lessee, or operator of any coal mine, or any person, firm or corporation, to take or move away from the premises of a finished or an abandoned mine any machinery, equipment or material without the consent of the mine inspector until first all the requirements of sections 82.18 to 82.21, inclusive, have been complied with, and have been approved in writing by the mine inspector. [C35,§1241-g3; C39,§1242.3; C46, 50, 54, §82.20]

Referred to in §82.21

**82.21 Penalty.** Any owner, lessee, operator, or the agent thereof, or officer, or agent of any firm or corporation, refusing or neglecting to comply with the provisions of sections 82.18 to 82.20, inclusive, in relation to filling, or sealing the openings of finished or abandoned mines, shall be fined not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months, or both. [C35, §1241-g4; C39,§1242.4; C46, 50, 54, §82.21]

Referred to in §82.20

**82.22 New mines—license.** Any person or persons, firm or corporation, contemplating opening a coal mine, either by shaft, slope, drift, or strip methods, to mine or produce for sale, barter or trade, shall first obtain a license from the state mine inspector of the district in which the intended mine is to be located, which permit, shall be issued as hereinafter provided, permitting and authorizing said opening in said location and at a specified time. [C39,§1242.5; C46, 50, 54, §82.22]

Referred to in §§82.24, 82.25

**82.23 Form of license.** The state mine inspectors are hereby authorized to provide a

suitable form upon which application shall be made, which shall include name of operator, post-office address, location of mine, kind of power to be used for hoisting and haulage, kind of opening, name of supervising official, and number of years of actual mining experience. The applicant shall be required to furnish all necessary information before a license shall be issued. It shall be the duty of the state mine inspectors to issue said permit, without cost, when the above provisions have been complied with. [C39,§1242.6; C46, 50, 54, §82.23]

Referred to in §§82.24, 82.25

**82.24 Personal use excepted.** The provisions of sections 82.22 to 82.25, inclusive, shall not apply to any person who shall mine coal on his own property for his own personal use. [C39,§1242.7; C46, 50, 54, §82.24]

Referred to in §82.25

**82.25 Violations—injunction.** If at any time the owner, operator, lessee, agent or managing officer fails to comply with sections 82.22 to 82.24, inclusive, it shall be the duty of the mine inspector, in whose district said mine is located, to file a complaint with the county attorney of the county in which said mine is located, who shall bring action in the name of the state to enjoin further operation until the above provisions are complied with. [C39, §1242.8; C46, 50, 54, §82.25]

Referred to in §82.24

**82.26 Right to enter mine.** The inspector shall have the right at all reasonable times, by day or night, to enter any mine in his district or any district to which he may be sent by the governor, for the purpose of ascertaining its condition, and the manner of its operation, by making personal examination and inquiry in relation thereto, but not so as to unnecessarily obstruct or impede the working of the mine; and to this end the mine owner or person in charge shall furnish such mine inspector all necessary assistance. [C97, §2482; S13, §2482; C24, 27, 31, 35, 39, §1243; C46, 50, 54, §82.26]

**82.27 Terms defined.** Wherever the word "operator" occurs in this chapter it shall include the owner, lessee, agent, managing officer, and person in charge of any mine. [C24, 27, 31, 35, 39, §1244; C46, 50, 54, §82.27]

**82.28 Maps—surveys.** The operator of any mine shall comply with the following provisions relative to maps and surveys:

1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.

2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.

3. *Boundaries and surface lines.* Every such map or plan shall correctly show the surface boundary lines of the coal rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, and ponds, and reservations made of coal and mineral.

4. *Underground conditions.* For the underground workings said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.

5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each and every seam of coal operated in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.

6. *Rise and dip of seam.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the seam.

7. *Copies.* The original or true copies of all such maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state mine inspector for the district in which said mine is located, within thirty days after the completion of the same.

8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of said extended map shall be forwarded to the inspector of mines in the district in which said mine is located so as to show all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of said workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the inspector of mines within thirty days after the last survey is made.

9. *Abandoned mine.* When any coal mine is worked out or is about to be abandoned or in-

definitely closed, the operator of the same shall make or cause to be made a completed and extended map of said mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the inspector a copy of the completed map.

10. *Surveys ordered.* The inspector shall order a survey to be made of the workings of any mine, and the result to be extended on the maps of the same and the copies thereof, when in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. If not made by the operator when ordered by the inspector, such inspector shall cause it to be made and paid for by the state and the amount collected from the operator. [C97,§2485; S13,§2485; C24, 27, 31, 35, 39,§1245; C46, 50, 54,§82.28]

**82.29 Failure to furnish map.** When the operator of any mine neglects or refuses for a period of ninety days to furnish to said inspector the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the inspector shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the inspector, to bring action in the name of the state for such recovery. [S13, §2485-a; C24, 27, 31, 35, 39,§1246; C46, 50, 54, §82.29]

**82.30 Maps property of state—custody—copies.** The maps so delivered to the inspector shall be the property of the state and shall remain in the custody of the inspector during his term of office, and be delivered to his successor in office. They shall be kept at the office of the inspector and be open to examination by all persons interested in the same; but such examination shall only be made in the presence of the inspector or his office assistant, and he shall not permit any copies of the same to be made without the written consent of the operator or the owner of the property, except as otherwise provided. [C97,§2485; S13,§2485; C24, 27, 31, 35, 39,§1247; C46, 50, 54,§82.30]

**82.31 Escape ways and air shafts.** The operator of any mine shall construct and maintain at least two distinct openings for each seam of coal worked, which, in mines operated by shaft, shall be separated by natural strata of not less than three hundred feet in breadth, and in mines operated by slope or drift not less than two hundred feet in breadth, through which ingress and egress at all times shall be unobstructed to the employees and persons having occasion to use the same as escape ways or places of exit from the mine; but

where five or a less number of persons are employed, the mine inspector in the exercise of a sound discretion shall have the power to waive the requirements of this section. [C97, §2486; S13, §2486; C24, 27, 31, 35, 39, §1248; C46, 50, 54, §82.31]

**82.32 Constructing escape shafts.** In all mines there shall be allowed one year to make escape shafts or other means of exit as provided by law, but not more than twenty persons shall be employed in such mine at any time until the provisions of the law relating to escape shafts or other means of exit shall have been complied with and after the expiration of the period above mentioned it shall not be operated until made to conform to the provisions of law with reference to the escape shafts or other means of exit. [C97, §2487; S13, §2487; C27, 31, 35, §1248-a1; C39, §1248.1; C46, 50, 54, §82.32]

**82.33 Stairways—air and escape shafts.** All escape shafts not provided with hoisting appliances as hereinafter provided shall have stairs at an angle of not more than sixty degrees in ascent, nor less than two and one-half feet in width, with proper, safe, and substantial landings at convenient and easy distances, and equipped with substantial handrails or banisters. If a shaft be used for an escape way and air shaft, that part used as an escape way shall be divided and partitioned closely with substantial material from the part used as an air shaft, all of which shall be kept in safe condition. [S13, §2486-a; C24, 27, 31, 35, 39, §1249; C46, 50, 54, §82.33]

**82.34 Hoisting appliances for escape shafts.** All escape shafts not provided with stairs shall be provided with suitable appliances for hoisting underground workmen at all times, ready for use both day and night, while the workmen are in the mine. The hoisting apparatus shall be separate and apart from the hoisting shaft, and the equipment shall include a depth indicator, brake on the drum, steel or iron cable, safety catches on cages, and covers on cages to securely protect any person while on the cage. [S13, §2486-b; C24, 27, 31, 35, 39, §1250; C46, 50, 54, §82.34]

**82.35 Underground connection.** Where two or more mines are connected underground the owners by joint agreement may use the hoisting shaft, slope, or drift of the one as an escape way for the other, and the road or traveling ways thereto on either side shall be kept clear of every obstruction to travel by the respective operators, and the intervening doors, if any, shall remain unlocked and ready at all times for immediate use. When such connection has once been established between contiguous mines, it shall be unlawful for the operator of either mine to close the same without consent both of contiguous operators and of the inspector of mines of the district; but when either operator desires to abandon mining operations, the expenses and duty of maintain-

ing such connection shall devolve upon the party continuing operation. [S13, §2486-c; C24, 27, 31, 35, 39, §1251; C46, 50, 54, §82.35]

**82.36 Location of shafts—approval.** No escape shaft or other place of exit, air shaft or opening for ventilation, not including hoisting shafts, shall be located or constructed without first giving notice to the mine inspector, and obtaining his approval thereof in writing, who shall retain a copy and file in his office and preserve with other records of that mine. [S13, §2486-d; C24, 27, 31, 35, 39, §1252; C46, 50, 54, §82.36]

**82.37 Additional air way or escape way.** The mine inspector of the district in which any mine is located shall have the right at any time to order such additional air way or escape way, shaft, opening, or other place of exit as may be deemed necessary for the purpose of furnishing necessary additional ventilation or means of escape. [S13, §2486-d; C24, 27, 31, 35, 39, §1253; C46, 50, 54, §82.37]

**82.38 Appeal from order—trial.** The operator shall have the right to appeal from such order to the district court, where the action shall be tried in equity, and shall have precedence over any and all other cases, and the first term held after the taking of such appeal shall be the trial term; but in any case the mine inspector may elect, by giving five days notice to the party taking the appeal, to bring said cause on for hearing before any judge of the judicial district in which such mine is located, who shall have discretion to fix a time and place for such trial in vacation. Upon such hearing the court shall render and enter such order or decree as the evidence warrants in equity and justice. [S13, §2486-d; C24, 27, 31, 35, 39, §1254; C46, 50, 54, §82.38]

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**82.39 Ventilation — obstruction prohibited.** Escape ways shall be ventilated and kept free from vitiated air, accumulation of ice, and obstructions of every kind; nor shall steam or heated air be discharged therein during the daytime unless an attendant be kept in charge thereof and the equipment so arranged that the steam or warm air may be readily turned off at any time, and a conspicuous signboard placed in plain view indicating the point where the steam or warm air may be turned off. All surface or other water which flows therein shall be conducted by rings or other means to receptacles so as to keep the stairway reasonably free from water. [S13, §2486-e; C24, 27, 31, 35, 39, §1255; C46, 50, 54, §82.39]

**82.40 Traveling ways—signboards.** In any mine affected by this chapter and every seam of coal or other mineral worked therein, the following requirements shall apply:

1. *Ways.* There shall be constructed, kept, and maintained safe and accessible traveling ways to and from any and all escape ways or places of exit, which shall be maintained free

from falls of roof, standing water, and other obstructions and made at least five feet high and seven feet wide. In any case when, in the judgment of the inspector of the district where the mine is located, it is impracticable by reason of any conditions to make the traveling way of such dimensions, then the traveling way may be made and maintained not less than three feet in height and six feet in width, upon written permission of the mine inspector.

2. *Signboards.* At all points where the passage or traveling ways to an escape shaft or place of exit intersect other roadways or entries, conspicuous signboards shall be placed thereat indicating the way to such shaft or place of exit.

3. *Inspection.* All traveling ways shall be inspected by the mine foreman or his assistant at least once each week, and written report of their condition made and filed in the office of the mine, which shall be open for examination to all the employees of the mine and all other persons entitled thereto at all reasonable times. [S13,§2486-f; C24, 27, 31, 35, 39,§1256; C46, 50, 54, §82.40]

Referred to in §82.41

#### 82.41 Dispute as to orders—copy—appeal.

If any dispute or difference should arise as to the findings or orders of the mine inspector under the provisions of section 82.40, between such inspector and employer operating the mine, or between such inspector and at least five employees working in the mine, then and in that case the inspector shall furnish, on demand, to the aggrieved party or parties a copy of his findings or orders complained of and he shall also file the originals thereof in the general office of the state mine inspectors, and the aggrieved party or parties may have the right to appeal from said findings and orders to the district court of the county in which said mine is located on the same terms and conditions as appeals from orders relating to air shafts and escape ways. [S13,§2486-f; C24, 27, 31, 35, 39,§1257; C46, 50, 54,§82.41]

Referred to in §82.42

#### 82.42 Time and manner of trial—final order.

When an appeal is taken as provided in section 82.41, the case shall be docketed and precedence given over all other cases excepting criminal cases where the party is in jail, and the inspector may bring the case on for hearing before any judge of the judicial district where the mine is located by giving five days notice in writing to the opposite party. If the evidence shows that the order was a reasonable one as made by the inspector the findings and order of the inspector shall stand as made by him. If the evidence shows that the order was not a reasonable one, the court shall vacate it or so modify it as to be equitable and just. [S13,§2486-f; C24, 27, 31, 35, 39,§1258; C46, 50, 54,§82.42]

#### 82.43 Traveling way around hoisting shafts.

At the bottom of each hoisting shaft there shall be constructed a safe and convenient

traveling way around the shaft for employees and animals, and it shall be unlawful for any person to pass across the shaft bottom in any other manner than by such traveling way, except such employees as may be necessary to perform the work at the bottom of the shaft, or those engaged in making repairs. [S13, §2486-j; C24, 27, 31, 35, 39,§1259; C46, 50, 54, §82.43]

82.44 *Place of refuge in haulage roads.* On all single-track haulage roads where hauling is done by machinery or other mechanical device, and on all gravity or inclined planes in mines where it is impracticable to construct a separate traveling way, and which persons employed in the mines must use while performing their work, or travel, on foot, to and from their work, places of refuge must be cut in the side wall not less than three feet in depth and four feet wide and five feet high, and not more than twenty yards apart unless there be a clear space of not less than two and one-half feet between the car when on the track and the rib or side of the entry of the haulage way. [S13,§2486-k; C24, 27, 31, 35, 39, §1260; C46, 50, 54,§82.44]

Referred to in §82.45

#### 82.45 Separate traveling way—exception. In

no case shall such haulage way referred to in section 82.44 be used as a traveling way unless it shall first be determined by the inspector that it is impracticable to construct, keep, or maintain a separate traveling way; and in all cases, unless otherwise determined by the inspector to be impracticable, there shall be kept and maintained a separate traveling way for the employees which shall at all times be maintained in good and safe condition and free from falls of roof and other obstructions. [S13,§2486-k; C24, 27, 31, 35, 39,§1261; C46, 50, 54, §82.45]

82.46 *Signals—tripcar lights.* On every such haulage way over one hundred feet in length used as a traveling way and when haulage is done by tail rope or cable, a signal line and code of signals shall be maintained so as to afford means of communication at all times between the haulage engineer and persons along such haulage way; and a conspicuous light shall be carried on the front of trip or train of cars moved by mechanical means. [S13,§2486-k; C24, 27, 31, 35, 39,§1262; C46, 50, 54,§82.46]

82.47 *Doors in haulage ways.* On all haulage ways where doors are maintained to direct the air current, it shall be unlawful for any person at any time to leave any of the doors open that direct the air current. Each person shall, after passing through such doors, see that they are properly closed. [S13,§§2488-c, 2489-16a; C24, 27, 31, 35, 39,§1263; C46, 50, 54, §82.47]

82.48 *Entries used by draft animals.* All entries constructed after July 4, 1911, in which the haulage is done by animals and wherein

employees work or use the same as a means of ingress and egress to and from their working places, shall be maintained substantially eight feet in width from one rib or side of the entry or haulage way to the opposite side, and shall be kept free from timbers or refuse and as even on the surface each side of the track as may be reasonably practicable; but this section shall not apply to such haulage ways in long-wall work when the inspector of the district where the mine is located shall determine that it is impracticable to maintain such width of entry or haulage way. [S13,§2486-l; C24, 27, 31, 35, 39,§1264; C46, 50, 54,§82.48]

**82.49 Area of breaks-through in rooms.** All breaks-through in entries must be of an area of not less than twenty-five feet and in rooms not less than twenty feet to secure proper ventilation. [S13,§2488-e; C24, 27, 31, 35, 39, §1265; C46, 50, 54,§82.49]

**82.50 Breaks-through in entries.** All breaks-through in entries except the last one shall be securely closed and all stoppings in breaks-through except the one next to the last in entries shall be made with some substantial material so as to securely and completely close the same, and prevent the air from passing through or in any part thereof, which shall be subject to the state mine inspector's approval, who is hereby authorized and empowered to require any change to be made in the material or construction of such stoppings. The stopping in next to the last break-through in entries may be constructed temporarily of some suitable material until one additional break-through has been made, when the temporary stopping shall be replaced by permanent stopping as by this section provided. [S13,§2488-d; C24, 27, 31, 35, 39,§1266; C46, 50, 54,§82.50]

**82.51 Breaks-through in rooms.** All breaks-through in the rooms, except the last one, shall be closed and securely fastened so as to prevent the air from passing through the same, which stoppings shall be subject to the approval of the mine inspector of the district in which the mine is operated. [S13,§2488-e; C24, 27, 31, 35, 39,§1267; C46, 50, 54,§82.51]

**82.52 Closing of abandoned rooms.** The mouth or openings of all abandoned rooms, entries, and workings shall be securely closed with permanent stoppings, in such manner as to prevent the passage of air or the escape of gases. [S13,§2488-e; C24, 27, 31, 35, 39,§1268; C46, 50, 54,§82.52]

**82.53 Precaution against fire.** It shall be unlawful to erect, keep, or maintain any inflammable structure or building or other material in the space intervening between the main or hoisting shaft, slope, or drift, and the escape shaft or other place of exit; or any powder magazine in such location or manner as to jeopardize the free and safe exit of employees from the mine by any escape shaft or other place of exit in case of fire or other casualty

to the main shaft, slope, drift, buildings, or other structures. [S13,§2486-g; C24, 27, 31, 35, 39,§1269; C46, 50, 54,§82.53]

**82.54 Boiler and engine rooms.** All boiler and engine rooms at any mine shall be constructed of fireproof material, and in no case shall the boiler room be placed within sixty feet of the hoisting shaft, slope, or drift. [S13, §2486-h; C24, 27, 31, 35, 39,§1270; C46, 50, 54, §82.54]

**82.55 Shaft lights.** In all cases, after twilight, or when steam or other causes obscure the plain view of the top and openings of any shaft, there shall be maintained a good and substantial light, but in no case shall an open light or torch be used. [S13,§2486-i; C24, 27, 31, 35, 39,§1271; C46, 50, 54,§82.55]

**82.56 Ventilation.** The operator of any mine shall provide and maintain an amount of ventilation of not less than one hundred cubic feet of air per minute for each person employed in the mine and not less than five hundred cubic feet of air per minute for each animal used therein, which shall be so circulated throughout the mine as to dilute, render harmless, and expel all noxious and poisonous gases in all working parts of the mine. In no case shall the air current be a greater distance than sixty feet from the working face, except when making crosscuts in entries for an air course, then the distance shall not be greater than seventy feet; but in a special case requiring it, the state mine inspector may, in writing, grant permission to go beyond the limit herein mentioned. When the air current is carried to the working face of the room in double room mining, such air current shall be treated as a compliance with this section. [C97,§2488; S13,§2488; C24, 27, 31, 35, 39,§1272; C46, 50, 54,§82.56]

**82.57 Air measurement—record.** The measurement of the air currents in any mine shall be taken at the bottom of the intake and near the mouth of each split thereof, and also near the working face of the entries. The person in charge of the mine shall be furnished with an anemometer by the owner or lessee of the mine, and shall take the measurements of the air as in this section provided at least once each week and make a record thereof showing the time and place the measurements were taken. Such record shall be kept at the office of the mine, and a report showing such measurements sent each month to the inspector of the district. [S13,§2488; C24, 27, 31, 35, 39,§1273; C46, 50, 54,§82.57]

**82.58 Air current split—men on split.** In every mine the air current shall be split and so conducted that not more than eighty employees at any time shall be working on or in each split, except in case of emergency. But the inspector of the district where the mine is located may in writing grant permission for a greater number, not exceeding fifty addi-



tional, when the required number of cubic feet of air per minute is properly circulated therein. [S13,§2488-a; C24, 27, 31, 35, 39,§1274; C46, 50, 54,§82.58]

**82.59 Contrivances for supplying air.** Efficient means in the way of exhaust steam, fans, furnaces, or other contrivances of sufficient capacity shall be kept in operation to supply air current, but if a furnace is used it shall be so constructed by lining the upcast for a distance of not less than fifty feet or for such greater distance as in special cases may be required by the mine inspector, with incombustible material. No furnace shaft shall be constructed in connection with an escape shaft or other way of exit for the employees of a mine. [C97,§2488; S13,§§2486-d, 2488-b; C24, 27, 31, 35, 39,§1275; C46, 50, 54,§82.59]

**82.60 Unhealthful conditions.** When the mine inspector finds the air insufficient or the employees working under unsafe or improper health conditions, he shall at once give notice to the mine operator, and upon failure to make the necessary changes within such time as the inspectors shall fix, such inspector shall order the employees, except such as may be necessary to correct the defect and make the repairs, to cease work and remain out of the mine until such conditions are corrected. [C97,§2488; S13,§2488-f; C24, 27, 31, 35, 39,§1276; C46, 50, 54, §82.60]

**82.61 Speaking tubes.** The operator of any mine shall, where the voice cannot be distinctly heard from top to bottom, provide and maintain a metal speaking tube or other adequate means of communication and keep the same in complete order from the bottom or interior to the top or exterior. [C97,§2489; S13, §2489; C24, 27, 31, 35, 39,§1277; C46, 50, 54,§82.61]

**82.62 Signalmen at top and bottom.** In all cases where mechanical means are used in any mine to hoist or lower employees, the operator of such mine shall keep and maintain a suitable, sober, and competent person at the top and at the bottom in charge of the signals during such time of lowering and raising the employees, who shall be and remain on duty for at least thirty minutes before and after the usual hours for beginning and stopping the ordinary work of the mine. [C97,§2489; S13, §2489; C24, 27, 31, 35, 39,§1278; C46, 50, 54,§82.62]

**82.63 Safety appliances and regulations.**

1. *Brakes.* In all shafts where the employees are raised and lowered by machinery there shall be provided a good and sufficient brake on the drum, so adjusted that it may be operated by the engineer without leaving his post at the levers.

2. *Flanges on drum.* Flanges shall be so arranged on the ends of the drum of any engine used that when the whole cable is wound on the drum, there shall be not less than four inches of clearance between the outer surface of the cable and the outer edge of the flanges.

3. *Hoisting cable.* The ends of the hoisting cable shall be well secured on the drum and at least two and one-half laps of the same shall remain on the drum when the cage is at rest at the lowest caging place in the shaft.

4. *Index dial.* An index dial or indicator shall be so arranged and placed as to indicate to the engineer at all times the true position of the cages in the shaft.

5. *Safety catches.* All cages used in any shaft shall be equipped with efficient safety catches and suspended between good substantial guides, and so constructed overhead with boiler iron that falling objects cannot strike persons on the cage.

6. *Safety gates.* At all landings and openings at the top of all shafts there shall be maintained an approved safety gate constructed in such manner as at all times to close the opening or entrance to the shaft when the cage is not at rest at that point. There shall be adequate springs at the top of each slope and a trail or dog attached to each train used therein. [S13,§2489-1a; C24, 27, 31, 35, 39,§1279; C46, 50, 54,§82.63]

**82.64 Persons allowed on cage.** Not more than ten persons shall be allowed on any cage when ascending or descending, and such less number as may be fixed by the mine inspector. No person at any time shall be allowed to ride in the shaft or any cage with a car, tools, or other material, or when such car, tools, or material is on the opposite cage, except when absolutely necessary in the performance of work in the making of repairs. No person shall ride upon a loaded trip in any part of the mine, except the conductor or person in charge thereof or any person in the performance of his duty. [S13,§2489-1a; C24, 27, 31, 35, 39,§1280; C46, 50, 54,§82.64]

**82.65 Speed of cage carrying men.** Cages on which employees are riding shall not be lifted or lowered at a rate of speed greater than four hundred feet per minute, and no cage having any unstable or self-dumping platform or device shall be used for the carriage of employees or material other than coal or mineral unless the same is provided with some convenient device by which the cage platform can be securely locked when employees are being conveyed thereon. [S13, §2489-2a; C24, 27, 31, 35, 39,§1281; C46, 50, 54, §82.65]

**82.66 Code of signals—location.** In all mines operated by machinery there shall be placed in plain view of the engineer while at his post of duty, and in a conspicuous place at the top and at the bottom of each shaft, slope, or drift, the following code of signals, which shall be used between the engineer and the other employees in the operation of the mine:

1. One ring or whistle shall signify to hoist coal or empty cage; and also to stop when the cage is in motion.

2. Two rings or whistles shall signify to lower cage.



3. Three rings or whistles shall signify that employees are ready to enter cage either top or bottom; when return signal of one ring or whistle is received from the engineer employees may enter the cage, but not before, when one ring or whistle shall be given to start.

4. Four rings or whistles shall signify to hoist slowly; warning of danger.

5. Five rings or whistles shall signify accident within the mine and a call for stretcher and supplies.

6. Six rings or whistles shall call for a reversal of the fan.

7. From top to bottom one ring or whistle shall signify all ready, get on cage.

8. Two rings or whistles from top to bottom shall signify send away empty cage which shall be answered from the bottom with one ring or whistle and the cage may then be moved.

9. The operator of such mine may with written consent of the mine inspector add to this code of signals in his discretion when deemed necessary for the efficiency of the mine or the safety of the employees, but any addition thereto shall be placed as in this section provided for the code of signals. [S13, §§2489-3a, 4a; C24, 27, 31, 35, 39, §1282; C46, 50, 54, §82.66]

**82.67 Engineers—competency.** The operator of any mine shall not place in charge of any engine in and around the mine any but competent and sober engineers who shall not permit any person but those designated to handle, operate, or interfere with it or any part of the machinery except such as may be necessary in making proper and needed repairs, and then only when the engine or machinery is not in use in hoisting or lowering employees or hoisting coal or mineral. [S13, §2489-3a; C24, 27, 31, 35, 39, §1283; C46, 50, 54, §82.67]

**82.68 Engineer to inspect machinery.** It shall be the duty of the engineer at least once each day to carefully inspect all of the machinery and apparatus under his charge and all of its parts, and if any defects appear which will render its use unsafe to any employee in the mine, he shall cease operating the machinery until the defects are corrected. [S13, §2489-3a; C24, 27, 31, 35, 39, §1284; C46, 50, 54, §82.68]

**82.69 Persons not permitted in engine room.** No person but the engineer shall be allowed in the engine room except on business connected with the operation of the mine or to repair machinery, and in such case the person shall immediately retire therefrom when the work is completed or business transacted, and no person shall be permitted to talk to the engineer while in the performance of his duty in hoisting or lowering employees, coal, or mineral. [S13, §2489-3a; C24, 27, 31, 35, 39, §1285; C46, 50, 54, §82.69]

**82.70 "Mine foreman" defined.** The term "mine foreman" as used in this chapter and

the law of this state, shall mean and be construed to be one in charge of the underground workings or departments of the mine or any part thereof, either by day or night. [S13, §2489-14a; C24, 27, 31, 35, 39, §1286; C46, 50, 54, §82.70]

**82.71 Certificate of competency.** It shall be unlawful for any operator of any coal mine to employ any person as mine foreman, pit boss, or hoisting engineer at any coal mine employing five or more persons therein, and for any person to attempt to discharge such duties unless he shall hold a certificate of competency for such position as provided in this chapter. [S13, §§2489-a, f; C24, 27, 31, 35, 39, §1287; C46, 50, 54, §82.71]

**82.72 Temporary employment.** In case of the discharge, resignation, or disability of any person lawfully performing the duties of foreman, pit boss, or hoisting engineer, the operator shall have sixty days within which to secure the services of a certificated person to take the place of the one so discharged, resigned, or disabled; and during such time a competent and capable person may be temporarily employed to perform such services, whether holding a certificate or not. [S13, §2489-a; C24, 27, 31, 35, 39, §1288; C46, 50, 54, §82.72]

**82.73 Certificate of competency—how procured.** Any person may secure such certificate of competency who satisfactorily passes the examination, written and oral, prescribed by the board of examiners. [S13, §§2489-b, d; C24, 27, 31, 35, 39, §1289; C46, 50, 54, §82.73]

**82.74 Revocation of certificate.** In any case where a mine foreman, pit boss, engineer, or other person receiving a certificate under the law pertaining to mines and mining within this state has willfully disobeyed the orders of the mine inspector or has been convicted of a misdemeanor relating to his duties in mine operation, his certificate shall be revoked, upon complaint being filed with the board of examiners, who shall proceed to hear the case at such time and place as it may determine, which shall be as soon as practicable after the charges are filed and notice given by it to the accused. The board shall have power to subpoena witnesses and administer oaths and a majority of the board shall be required to determine the questions at issue; the costs incurred shall be taxed to the losing party and collected as in other cases. [S13, §2489-15a; C24, 27, 31, 35, 39, §1290; C46, 50, 54, §82.74]

Taxation and collection of costs, ch 625 and §626.108

**82.75 Fees—certificates recorded.** Every person applying for a certificate under this chapter shall pay to the examining board a fee of two dollars, and every successful applicant shall pay to said board an additional fee of two dollars, all of said fees to be accounted for and paid into the state treasury. Each certificate issued under this chapter shall be

recorded in the office of the examining board, and shall show the name, age, residence, and mining experience of the person to whom it was issued. [S13,§2489-e; C24, 27, 31, 35, 39, §1291; C46, 50, 54,§82.75]

**82.76 Duties of foreman or pit boss.** The duties of the mine foreman or pit boss in charge of any mine or any part thereof shall be:

1. *Inspection.* To make careful inspection of the mine from day to day by himself or assistant and at all times when in his judgment conditions may require.

2. *Directions and rules.* To give such directions and formulate such rules for the guidance of the men employed in the mine as skillful and safe operation of the mine may require.

3. *Props.* To see that the mines are at all times sufficiently supplied with props of proper lengths, caps, and other timbers necessary to securely prop the roof of such mine and the rooms wherein the men are employed, and such material shall be conveniently placed for the use of the miners upon their request.

4. *Ventilation.* To keep a careful watch over the ventilating apparatus and airways, together with all of the stoppings, doors, and other means of directing the air current.

5. *Minors.* To keep a record of the boys under sixteen years of age employed by him during the time of school vacation, showing their ages, names, and residence of parents or guardians and character of employment, which records shall be kept at the office of the mines and open for inspection at all reasonable times.

6. *Daily examination.* To examine all escape ways, the traveling ways leading thereto, or cause them to be examined by his assistant, once each day, and make written report of the conditions and file in the office at the mine, which report shall be open for examination at all reasonable times to representatives of the employees and other persons entitled thereto, and send a copy of such report each month to the mine inspector of the district in which said mine is operated.

7. *Guarding dangerous ways.* If he finds any escape way or traveling way impassable or dangerous, he shall immediately upon the discovery of the defect, place such obstructions at the defective place as may be reasonably necessary to apprise the employees of the danger. [S13,§2489-13a; C24, 27, 31, 35, 39,§1292; C46, 50, 54,§82.76]

**82.77 Duty of miners and other employees.** It shall be the duty of each employee:

1. *Examination of working place.* To examine his working place upon entering the same and not commence to mine or load coal or other material until it is made safe.

2. *Prop and timber roof.* To securely prop and timber the roof of his working place therein and to obey any order or orders given by the superintendent or mine foreman relating to the width of the working place and to the

security of the mine in the part thereof where he is at work.

3. *Waste.* To avoid waste of props, caps, timbers, and other material, and when he has any such not suitable for his purpose to place the same at some convenient point near the track, and where the same may be readily seen, and inform the mine foreman, or other person in charge, of their being unsuitable for the purpose intended.

4. *Drawslate.* When drawslate or other like material is over the coal, to see to it that proper timbers are placed thereunder for his safety before working under the same. [S13,§2489-16a; C24, 27, 31, 35, 39,§1293; C46, 50, 54,§82.77]

**82.78 Unlawful to injure property.** No workman or other person shall knowingly commit any of the following acts:

1. Injure a water gauge, barometer, air course, brattice, or any equipment, machinery, or livestock.

2. Obstruct or throw open any airway, handle or disturb any part of the machinery or the hoisting engine of the mine.

3. Open a door of a mine and neglect to close it.

4. Endanger the mine or those working therein.

5. Disobey any order given in pursuance of law or do a willful act whereby the safety of persons working in or about a mine or the security of the mine or the machinery connected therewith may be endangered.

6. Place any refuse material or any obstruction in any part of the air course or any part of the breaks-through in the entries or rooms other than as by this chapter provided. [S13, §2489-17a; C24, 27, 31, 35, 39,§1294; C46, 50, 54, §82.78]

**82.79 Use of intoxicants prohibited.** No person shall go into, at, or around a mine or the buildings, tracks, or machinery connected therewith while under the influence of intoxicants, and no person shall use, carry, or have in his possession, at, in, or around the mine or the buildings, tracks, or machinery connected therewith, any intoxicants. [S13,§2489-18a; C24, 27, 31, 35, 39,§1295; C46, 50, 54,§82.79]

**82.80 Shot examiners—proof of competency.** In all mines where the coal is blasted, competent persons shall be employed to examine all drill holes before they are charged. Before entering upon the discharge of their duties, said examiners shall give proof of their competency to the mine inspector of the district in which the mine where they are employed is located, and said inspector shall certify to the operator of each mine the persons who have given proof of their competency to act in the capacity of shot examiners. The mine inspector shall refuse to give permission to any person to act as shot examiner who, in his judgment, is not competent. He shall revoke any permission granted should it appear that

a shot examiner is incompetent, negligent, or careless in the performance of his work. [S13, §2495-b; C24, 27, 31, 35, 39, §1296; C46, 50, 54, §82.80]

**82.81 Drill holes—unlawful charging.** In charging drill holes with powder or other explosives it shall be unlawful for any miner or other person to use any tamper, unless such tamper be made of wood, and no drill hole shall be charged until the shot examiner shall have examined the same. [C24, §1297; C27, 31, 35, §1296-a1; C39, §1296.1; C46, 50, 54, §82.81]

**82.82 Drill holes—when unlawful to charge.** The shot examiner shall forbid the charging or firing of any drill holes with powder or other explosive if in his judgment it would be unsafe to the employees or the mine to discharge the shot. In any case where the shot examiner forbids the charging or firing of any drill hole, he shall make a cross with chalk markings at the mouth of the hole when condemned, and make an entry thereof in a book kept by him for that purpose, stating the name of the person working in such place, the number of drill holes therein which he forbids being charged, and the date thereof, which record shall be retained for at least one week. It shall be unlawful for any shot firer or other person to discharge any shot or blast which has been condemned by the shot examiner. In any case when the mine foreman shall have forbidden the charging of any drill hole or the firing of any shot, no person shall be permitted to charge such hole or fire such shot. If the shot examiner forbids the charging of a hole or the firing of a shot, the mine foreman shall not cause the hole to be charged or the shot fired. [S13, §2489-19a; C24, 27, 31, 35, 39, §1297; C46, 50, 54, §82.82]

**82.83 Firing while others in mine.** No shot firer or any other person shall do any blasting or exploding of shots in any coal mine of this state, nor shall any superintendent or mine foreman permit the firing of shots or blasting in any coal mine in this state, until each and every person except the shot firer or firers is out of said mine, except that the mine inspectors of the state shall permit the firing of shots while others, than those firing the shots, are in the mine, provided:

1. Any explosive so used shall be of the type known as "permissible explosives" and shall be on the approved list of permissible explosives of the United States Bureau of Mines and subject to the approval of the mine inspectors of the state.

2. Firing of shots while others, than those firing the shots, are in the mine shall in no case be permitted until the operator shall have complied with the rules and regulations approved by the mine inspectors of the state, which rules shall safeguard the safety and health of the employees of the mine; and any violation of such rules and regulations shall be deemed just cause for revoking said permission.

3. Firing of shots while others, than those firing the shots, are in the mine shall in no case be permitted in any coal mine except in mines where the coal is mechanically undercut. [C39, §1297.1; C46, 50, 54, §82.83]

**Constitutionality, 51GA, ch 74, §2**

**82.84 Transportation of powder.** No person, firm, or corporation shall be permitted to transport, carry, or convey by any electrical means whatever, any powder or other explosives into any coal mine until after the coal miners and other employees have ceased their work and departed from the mines. [S13, §2496-a; C24, 27, 31, 35, 39, §1298; C46, 50, 54, §82.84]

**82.85 Transportation and delivery.** The transportation and delivery of all powder and other explosives in coal mines shall be done by the operator or by men employed by him for that purpose. [S13, §2496-d; C24, 27, 31, 35, 39, §1299; C46, 50, 54, §82.85]

**82.86 Storage of powder—what permitted.** No operator of any coal mine shall suffer or permit, under any circumstances, the storing of powder or other explosives in any coal mine except as follows:

1. Each miner shall be permitted to have in his separate and individual possession at one time not more than two kegs containing twenty-five pounds of powder each, and other explosives sufficient for one day's use.

2. Such powder or other explosive shall be kept by the miner in a wooden or metallic box or boxes securely locked, and said boxes shall be kept at a reasonable distance from the track; and black powder and high explosives shall be kept in separate boxes. [S13, §2496-b; C24, 27, 31, 35, 39, §1300; C46, 50, 54, §82.86]

**Referred to in §82.87**

**82.87 Supply for following day.** It shall not be construed as storing powder, as defined in section 82.86, to deposit the powder or other explosives at the end of the electrical or mechanical haulage at the face of the mine for the following day's use, if deposited in conformity with the provisions of section 82.86. [S13, §2496-c; C24, 27, 31, 35, 39, §1301; C46, 50, 54, §82.87]

**82.88 Supply of caps—timbers—props.** The operator of any mine shall at all times keep a sufficient supply of props, caps, and other necessary timbers to be used by employees in the mine, convenient and ready for use, and shall send such materials down when requested and deliver them at the places where needed. [S13, §2489-5a; C24, 27, 31, 35, 39, §1302; C46, 50, 54, §82.88]

**82.89 Material for tamping.** In all mines where coal is blasted from the solid, the operator shall furnish sand, soil, or clay to be used for tamping which shall be delivered to the employee and placed at a convenient distance from the working places ready for use, and so as not to obstruct any employee in his work. No person shall be permitted to use any

substance or material other than sand, soil, or clay for tamping. [S13,§2489-6a; C24, 27, 31, 35, 39,§1303; C46, 50, 54,§82.89]

**82.90 Sprinkling or rock dusting of roadways.** The operator of any mine shall not permit the accumulation of dust upon and along any roadway; and where any roadway is dry and dusty shall cause the same to be sprinkled or rock dusted at least once each week. Provided, however, that if the state mine inspector finds that any mine requires sprinkling or rock dusting oftener than once a week in order to promote the safety of persons and property in such mine, the operator of such mine shall cause the same to be sprinkled or dusted from time to time other than once a week when so ordered by the state mine inspector. [S13, §2489-7a; C24, 27, 31, 35, 39,§1304; C46, 50, 54, §82.90]

**82.91 Stables—location—construction—use.** The operator of any mine shall not locate a stable at any point in a mine where the air current supplied to the employees passes through such place and in no case shall such stable be located without first having the written approval of the mine inspector of that district, a copy of which shall be filed in his office. The material used in the construction of stables in mines shall, as nearly as practicable, be incombustible and such stables shall not be used as a place for storing any inflammable material, except such hay as may be reasonably necessary for one day's use. [S13, §2489-8a; C24, 27, 31, 35, 39,§1305; C46, 50, 54, §82.91]

**82.92 Telephone systems.** In all mines where the working parts thereof exceed two thousand feet from the foot of the slope, shaft, or the mouth of a drift as the case may be, a good and substantial telephone system or other like suitable means of communication shall be maintained at all times ready for use, from the bottom to some suitable and convenient point at or near the face of such working parts which shall be extended as the works of the mine progress two thousand feet therefrom. [SS15,§2489-10a; C24, 27, 31, 35, 39, §1306; C46, 50, 54,§82.92]

**82.93 Stretchers—blankets—bandages.** The operator of any mine shall at all times keep at some convenient place at the mine, in readiness for use in case of accident, one good and substantial stretcher for each fifty employees or fraction thereof engaged in the operation of the mine, and proper and sufficient blankets for each stretcher, together with a sufficient supply of bandages. [S13,§2489-11a; C24, 27, 31, 35, 39,§1307; C46, 50, 54,§82.93]

**82.94 Washing facilities.** The operator of any coal mine, in the operation of which more than twenty persons are employed, shall provide and maintain adequate washing facilities for all employees in and about said mine. [C27, 31, 35,§1307-a1; C39,§1307.1; C46, 50, 54,§82.94]

Referred to in §82.95

**82.95 Inspection.** It shall be the duty of the mine inspector of each mining district to inspect the washing facilities provided or maintained at each mine in his district and to make such reasonable orders as will carry out the provisions of this and section 82.94. [C27, 31, 35,§1307-a2; C39,§1307.2; C46, 50, 54,§82.95]

**82.96 Gasoline and engines—use and location.** No gasoline engine, except gasoline haulage motors where the exhaust is properly cared for, or supplies of gasoline therefor, shall be located in or near the air current which supplies the employees of any mine with air, but in all cases shall be placed upon the return of the air and located at least twenty feet from any and all traveling ways. In no case shall any gasoline engine or place for supply of gasoline be located without first having the approval in writing of the mine inspector, who shall determine the suitability of the location of said engine and supplies. The supply of gasoline shall be kept at the place designated and shall not exceed twelve gallons at any one time. [S13,§2489-9a; C24, 27, 31, 35, 39,§1308; C46, 50, 54,§82.96]

**82.97 Temporary location of engine.** In case of emergency a gasoline engine may be temporarily placed where needed and the inspector of the district in which the mine is located immediately notified thereof; he shall at once proceed to the mine and determine as to the safety of the employees while the engine is so operated at such location. If in his judgment the operation thereof can be continued at such place with reasonable safety to the employees, such operation may be continued while the employees are at work until the emergency shall have passed; otherwise the inspector shall order the employees, except such as are required to operate the engine and work connected therewith, to leave the mine until the same is made safe. [S13,§2489-9a; C24, 27, 31, 35, 39,§1309; C46, 50, 54,§82.97]

**82.98 Fire extinguishers required.** At all hoisting shafts, air shafts, escape shafts, and places of exit, boiler and engine rooms, stables in mines, and places where gasoline engines are used, there shall be kept ready for use at all times at least two hand fire extinguishers of approved make, conveniently placed for immediate use when needed. [S13,§2489-9a; C24, 27, 31, 35, 39,§1310; C46, 50, 54,§82.98]

**82.99 Gas masks.** In all coal mines of this state where shot firemen fire shots, the owner, operator, or person in charge of such mine, shall furnish each shot fireman with an efficient gas mask, approved by the mine inspector of the district where such mine is located, which shall be examined each day and kept in proper condition to serve the purposes intended. [C27, 31, 35,§1310-b1; C39,§1310.1; C46, 50, 54,§82.99]

Referred to in §82.100

**82.100 Shooting without mask.** It shall be unlawful for any person to perform the duties

of shot fireman in any coal mine in this state without having in his possession and on his person an efficient gas mask as required by section 82.99. [C27, 31, 35,§1310-b2; C39,§1310.2; C46, 50, 54,§82.100]

**82.101 Gasoline motors prohibited.** In any mine hereafter opened or equipped for operation no gasoline haulage motor shall be installed or used in the underground workings for any purpose, and it shall be the duty of the mine inspector to enforce the provisions of this section. [C24, 27, 31, 35, 39,§1311; C46, 50, 54,§82.101]

**82.102 Methane gas—open lights prohibited.** Notwithstanding the fact that coal mines in Iowa are classified as nongassy, where the inspector finds that the air at the working face, roof, or rib contains more than twenty-five hundredths of one per centum of methane gas when tested by a permissible methane gas detector or a permissible flame safety lamp, the mine inspector shall immediately forbid the use of any kind of open lights in the mine and the operator shall then furnish and keep in good order electric cap-lamps of a kind approved by the United States bureau of mines, in addition to the flame safety lamps required to make an examination for gas. [C97,§2493; S13,§2493; C24, 27, 31, 35, 39,§1312; C46, 50, 54, §82.102]

**82.103 Preshift examination for gas.** Any mine regularly employing fifteen or more men underground shall make a preshift examination with a safety lamp or a methane gas detector within four hours prior to the start of every shift on each working day. Such examination shall be made by a competent employee certified by the state board of mine examiners as qualified to perform such an examination. A safety lamp or methane gas detector shall not be required during daily inspections made at any other time except as hereinafter provided. Provided, however, that in longwall operations, an examination of the face shall not be required until such time as the removal of coal from in front of the face shall make such examination possible. Such examination shall be made with a safety lamp or a methane gas detector every day which the mine produces coal.

The preshift examination and the examination provided for longwall mines shall include testing of the roof in each working place and the person making such examination shall put his initials and the date of such examination on a suitable marker in each of the places examined, and a daily record of such examinations shall be kept at the office of the mine.

Notwithstanding the number of persons employed in any mine, where the state mine inspector finds that a preshift or other examination would provide greater safety in any mine or reduce the danger of accidents, the state mine inspector may order such examinations as he shall find to be required.

When the operator of any mine uses explosives in shooting coal from the solid or otherwise, he shall designate a person to make the above mentioned examinations and such operator shall also designate an alternate, who may be the foreman of the mine, to make examinations when the regular examiner is not available. Provided, however, that persons so designated by the mine operator shall be limited to those persons who shall have appeared before the board of mine examiners at their regular meetings and demonstrated, to the satisfaction of the board, their knowledge of the construction and operation of the flame safety lamp and the methane gas detector, approved by the bureau of mines, and demonstrated their proficiency in making examinations for the detection of methane gas and air deficiency in coal mines. [S13,§2495-a; C24, 27, 31, 35, 39,§1313; C46, 50, 54,§82.103]

*Inspection of petroleum products, ch 208*

**82.104 Check-in and check-out maintained.** In order to promote safety in coal mines of this state, there shall be a suitable check-in and check-out system maintained by the operator of every underground mine in this state, which system shall first be approved by the state mine inspector, such check-in and check-out system shall be such as to insure that every person other than the shot firer shall have left the mine before any shots are fired. [S13,§2495-a; C24, 27, 31, 35, 39,§1314; C46, 50, 54, §82.104]

**82.105 Electrical current permitted in mines.** All wires or cables at or in any mine used for transmitting electrical current in excess of one hundred volts shall be armored or insulated insofar as practicable, except trolley and all return wires or cables. Wires or cables used for conducting or transmitting current in excess of two hundred seventy-five volts shall be placed and protected for the safety of persons and animals as provided in section 82.106. [C24, 27, 31, 35, 39,§1315; C46, 50, 54,§82.105]

**82.106 Electrical current.** All wires, cables, or transformers used at or in any mine for transmitting, conducting, or transforming electrical current in excess of two hundred seventy-five volts shall be armored, insulated, isolated, or placed so as to prevent injury to persons and animals insofar as possible consistent with the use for which such instrumentalities are intended. At the approach to a transformer, if used, there shall be displayed a sign, with the word "danger" and the number of volts of electrical current conducted, indicated thereon in large plain letters and figures, on which light shall be thrown at all times when electrical current is being conducted or transmitted. [C24, 27, 31, 35, 39,§1316; C46, 50, 54,§82.106]

*Referred to in §82.105*

**82.107 Grounding and insulation of current.** Electric pumps and stationary electric machines shall be insulated and grounded in their

emplacement, by the use of wires or other equivalent means and inspected with such frequency and kept in such repair that contact therewith will be rendered harmless insofar as possible consistent with the use for which such machinery is intended. [C24, 27, 31, 35, 39,§1317; C46, 50, 54,§82.107]

**82.108 Electrical equipment.** It shall be unlawful for any person to inspect, repair, handle, disturb, or interfere with any of the electrical equipment or machinery of a mine except the mine inspector, operator, superintendent, mine foreman, or those designated by such persons to do such work, and those whom such designated persons may request or permit to aid in the work of handling or repairing. [C24, 27, 31, 35, 39,§1318; C46, 50, 54,§82.108]

**82.109 Scales and weighers—duties—damages.** The operators shall, if the miners are paid by weight, provide the mine with suitable scales of standard make, and require the person selected to weigh the coal delivered from the mine to take and subscribe an oath before some person authorized to administer oaths, to the effect that he will keep the scales correctly and truly balanced, and accurately weigh and a true record keep of each car delivered, which oath, with that of the checkweighman hereinafter provided for, shall be conspicuously displayed with record of weights at the place of weighing, which record shall carry the account of each miner by itself, be open to the inspection at all proper times of miners and all others having a pecuniary interest in the mine. All damages sustained on account of a failure to weigh and credit to the proper person any coal mined shall be recoverable in an action brought within two years from the time the right thereto accrued, and a knowledge of a violation of this provision by the miner shall not be a defense thereto. [C97, §2490; S13,§2490; C24, 27, 31, 35, 39,§1319; C46, 50, 54,§82.109]

**82.110 Checkweighman—duties.** The miners employed and working in any mine may furnish a competent checkweighman, who, before entering upon his duties, shall take and subscribe an oath to the effect that he is duly qualified and will faithfully discharge his duties as checkweighman, and he shall at all proper times have access to and the right to examine the scales, machinery, or apparatus used in weighing, and to see all measures and weights of coal mined and the accounts kept thereof; but not more than one person on the part of the miners collectively shall have this right, and such examination and inspection shall be so made as to create no unnecessary interference with the use of such scales, machinery, or apparatus. [C97,§2490; S13,§2490; C24, 27, 31, 35, 39,§1320; C46, 50, 54,§82.110]

**82.111 When weighed — weights — impurities.** The operator shall, where the miner is to be paid by the ton or other quantity, unless otherwise agreed upon in writing, weigh the coal before screening, and the miner shall be

credited at the rate of eighty pounds to the bushel and two thousand pounds to the ton, but no payment shall be required for sulphur, rock, slate, blackjack, dirt, or other impurities which may be loaded or found with the coal. [C97,§2490; S13,§2490; C24, 27, 31, 35, 39,§1321; C46, 50, 54,§82.111]

**82.112 Pay days—failure to pay—damages.** All wages shall be paid in money upon demand semimonthly, by paying the amount earned during the first fifteen days of each month not later than the first Saturday after the twentieth of said month, and for those earned after the fifteenth of each month not later than the first Saturday after the fifth of the succeeding month. A failure or refusal to make payment within five days after demand shall entitle the laborer to recover the amount due him, and one dollar per day additional, not exceeding the amount due, for each day such payment is neglected or refused, and in any action therefor the court shall tax as a part of the costs a reasonable attorney fee to plaintiff's attorney. [C97,§2490; S13,§2490; C24, 27, 31, 35, 39,§1322; C46, 50, 54,§82.112]

Referred to in §82.118

**82.113 Wages—how paid—coercion prohibited.** The operator shall not sell, give, deliver, or issue, directly or indirectly, to any person employed, in payment for labor due or as advances for labor to be performed, any script, check, draft, order, or other evidence of indebtedness payable or redeemable otherwise than in money at its face value. He shall not compel or in any manner endeavor to coerce any employee to purchase goods or supplies from any particular person, firm, company, or corporation, but upon demand all wages shall be paid in money as provided in section 82.112. [C97,§2490; S13,§2490; C24, 27, 31, 35, 39,§1323; C46, 50, 54,§82.113]

**82.114 Annual reports—what to contain.** The operator of any mine shall, on or before the first day of February in each year, send to the office of the inspector of the district where the mine is located, upon blanks furnished by the state, a correct return with respect to the year ending January 1 of each year showing the quantity of coal mined and the number of persons ordinarily employed at, in, and around such mine, designating the number of persons below and above ground, and such other information as required by such blank. [SS15,§2489-12a; C24, 27, 31, 35, 39,§1324; C46, 50, 54,§82.114]

**82.115 Uniform reports.** The inspectors shall prepare uniform blanks which shall be used in all cases where reports are required to be made to the district mine inspectors or the inspectors at their general office. [S13, §2484-a; C24, 27, 31, 35, 39,§1325; C46, 50, 54, §82.115]

**82.116 Report of accidents.** Forthwith upon the happening of any accident resulting in the death of an employee, the operator shall

report the same by mail or otherwise to the mine inspector of the district and the coroner of the county in which the accident happens. In all other cases of personal injury, not resulting in death, the operator shall make a report to the mine inspector of the district upon a standard form provided by the inspector for that purpose, containing a detailed statement of the extent of the injury and the manner in which it occurred. [C97,§2482; S13, §2482; SS15,§2489-12a; C24, 27, 31, 35, 39,§1326; C46, 50, 54,§82.116]

**82.117 Safety of employees.** In addition to any and all other remedies, if any owner or person in charge of any mine shall fail to provide any of the appliances specified in this chapter for the safety of the employees, or the appliances provided do not conform to such requirements, or such owner or agent shall neglect, for twenty days after notice given in writing by the mine inspector of such failure to remedy the same, such inspector may apply to the district court, or any judge thereof, in an action brought in the name of the state, for writ of injunction to restrain the working of the mine with more persons than are necessary to make the improvements needed and prevent deterioration of the mine, until such appliances have been supplied. In case an injury happens to those engaged in work because of such failure, the negligence of such operator shall be held to be the proximate cause of such injury. [C73,§1568; C97, §2492; C24, 27, 31, 35, 39,§1327; C46, 50, 54, §82.117]

**82.118 Changes not covered by statute.** In all cases not covered by statute when it is found necessary that some change, improvement, or device is required to reasonably secure the safety or health of the employees of any mine, and the operator neglects or refuses to make the change or improvement or supply the device needed within a reasonable time after written notice so to do given by the inspector of the district in which the mine is located, the inspector shall file a verified petition with the clerk of the district court of the county where the mine is located setting forth all such facts and asking a mandatory writ to compel the making of such improvements. [C73,§1568; S13,§2494-a; C24, 27, 31, 35, 39,§1328; C46, 50, 54,§82.118]

**82.119 Notice of time and place of hearing.** Such inspector shall give five days notice to the accused in the same manner as original notices are served, stating the time and place and the name of the judge before whom the case will be tried. The accused party shall be required to appear at the time and place mentioned in the notice, which may be at any place convenient for the judge in the judicial district. [S13,§2494-a; C24, 27, 31, 35, 39,§1329; C46, 50, 54,§82.119]

Service of notice, R.C.P. 56(a)

**82.120 Title of proceeding—time to plead.** The proceeding shall be entitled the state of

Iowa as plaintiff and the operator as defendant, who shall plead on or before noon of the fourth day after notice. At the time and place fixed in the notice the case shall be heard and tried by the judge in equity, who shall make such order as the evidence warrants. [S13, §2494-a; C24, 27, 31, 35, 39,§1330; C46, 50, 54, §82.120]

Method of trial, ch 624

**82.121 Witnesses.** The clerk of the district court where such petition has been filed shall issue subpoenas at the request of either party, and witnesses shall be required to respond thereto as in other cases, and it shall be the official duty of the county attorney to represent the plaintiff in all matters pertaining to such proceeding. Pending such proceeding the judge may, if he deems it advisable for the safety of the employees, order the mine closed until such hearing is completed, and if changes are ordered, then till such changes are made. [S13,§2494-a; C24, 27, 31, 35, 39,§1331; C46, 50, 54,§82.121]

Attendance of witnesses, §622.66 et seq.

**82.122 Burden of proof.** The burden of proof shall rest upon the plaintiff to show that the proposed change, improvement, or device is reasonably required for the safety or health of the employees. If the evidence in the whole case shows that the proposed change, improvement, or device is necessary for the purposes intended, the judge shall forthwith issue a mandatory order specifying the improvements required and the time within which they shall be made, and enter the same of record in the district court of the county in which the mine is located. [S13,§2494-a; C24, 27, 31, 35, 39,§1332; C46, 50, 54,§82.122]

**82.123 Contempt of court—penalty.** If the defendant fails to comply with the order made by the judge within the time fixed, such defendant may be charged with contempt of court, and upon conviction thereof be fined not to exceed five hundred dollars and committed to the county jail until such fine is paid. [S13,§2494-a; C24, 27, 31, 35, 39,§1333; C46, 50, 54,§82.123]

Contempts, ch 665

**82.124 Right of adjoining landowner.** Upon affidavit of any person owning land in the vicinity of any mine, or his agents, filed with the inspector of the district stating that it is necessary for the protection of his property to know how near his land the excavations in the mine extend, the inspector shall make an examination or employ a surveyor therefor if necessary, to determine the length and direction of entries and other works toward the land of the applicant and the extent of excavation of same on all of his land, if any, and file a report thereof in his office. The inspector may in such case permit examination of such map or copies thereof as may be in his custody, for the purpose of determining the location of the workings. If it be found necessary

to survey the premises to discover the facts, the owner or person filing the affidavit shall first give a bond or other security to the inspector in favor of the state in the sum of one hundred dollars conditioned to pay all costs and expenses incurred thereby. [S13,§2485-b; C24, 27, 31, 35, 39,§1334; C46, 50, 54,§82.124]

**82.125 Expenses.** The necessary expenses incurred and compensation of fifteen dollars per day to the inspector for the use of the state and twenty dollars per day to the surveyor shall be paid by the applicant except when it shall be shown that said applicant's property has been undermined, in which case the expense shall be paid by the mine owner, operator, lessee, or person in charge. [S13, §2485-b; C24, 27, 31, 35, 39,§1335; C46, 50, 54, §82.125]

**82.126 Double damages.** In any case where any operator, without permission, takes coal from adjoining land, he shall be liable for double damages to the owner and for all expenses caused thereby. [S13,§2485-b; C24, 27, 31, 35, 39,§1336; C46, 50, 54,§82.126]

**82.127 Violations — misdemeanors — penalties.** Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished as hereinafter provided, respectively:

1. *Maps.* Any owner, operator, lessee, or person in charge of any mine, refusing or neglecting to comply with the provisions of this chapter in relation to making and furnishing to the mine inspector maps of such mine, shall be fined one hundred dollars and be imprisoned in the county jail until such fine and costs are paid.

2. *Orders.* Any person, employer, or employee refusing or neglecting to comply with any order of the mine inspector relating to insufficient air, improper ventilation, or unsafe and improper health conditions in any mine, shall be fined not less than five dollars nor more than one hundred dollars.

3. *Unlawful employment.* Any owner, oper-

ator, lessee, agent, or managing officer of any mine who shall employ any mine foreman, pit boss, or hoisting engineer who does not hold a certificate of competency from the board of examiners, except as otherwise provided in this chapter, shall be fined not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months, or both.

4. *Explosives.* Any owner, lessee, operator, or the agent thereof, or officer or agent of any firm or corporation violating any of the provisions of this chapter relating to the transportation and storage of powder and other explosives in and about any mine, shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days.

5. *Weighing.* Any owner, lessee, or operator, or any party in charge of any mine, or any weighman or checkweighman violating any of the provisions of this chapter relating to the correct weighing and recording of the weights of coal mined at any mine shall be fined not exceeding five hundred dollars or be imprisoned in the county jail not exceeding sixty days.

6. *General prohibitions.* Any miner, workman, or other person violating any of the provisions of this chapter relating to injuring or interfering with any air course or brattice, obstructing or throwing open doors in mines, disturbing any part of the machinery or equipment, disobeying any orders in carrying out the provisions of this chapter, riding upon a loaded car or other means of transportation in the mine except as in this chapter permitted, doing any act whereby the lives, limbs, or health of persons or the security of the mine and machinery are endangered, or neglecting or refusing to securely prop or support the roof and entries under his control, or neglecting or refusing to obey any order of the superintendent in relation to the safety of the mine in the part under his control, shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C97, §§2491, 2494; S13, §§2485-a, 2488-f, 2489-f, 2494, 2496-e; C24, 27, 31, 35, 39, §1337; C46, 50, 54, §82.127]



CHAPTER 83  
GYPSUM MINES

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**83.1 Escape shafts.** The owner or person in charge of any gypsum mine operated by shaft or one having a slope or drift opening in which five or more men are employed shall construct and maintain at least two distinct openings, which in shaft mines hereafter constructed shall be separated by not less than three hundred feet and in slope or drift mines by not less than two hundred feet in breadth through which, in every shaft or slope mine, ingress and egress at all times shall be unobstructed and free from water. [S13,§2496-f; C24, 27, 31, 35, 39,§1338; C46, 50, 54,§83.1]

*S13,§2496-f, editorially divided*

**83.2 Stairs.** All escape shafts hereafter constructed shall have stairs at an angle of not more than sixty degrees in descent, with a stairway not less than two feet in width, kept in safe condition, with proper landings at easy and convenient distances apart and adequate means of escape from mines now in operation. [S13,§2496-f; C24, 27, 31, 35, 39,§1339; C46, 50, 54, §83.2]

**83.3 Fans — combustible materials.** Such owner or person shall provide all air shafts with fans for ventilating purposes, and no combustible material shall be allowed to be or remain between any escape shaft and hoisting shaft, nor shall any building hereafter erected be located within two hundred feet of an escape shaft without written permission from the state inspector. [S13,§2496-f; C24, 27, 31, 35, 39,§1340; C46, 50, 54,§83.3]

**83.4 Joint use.** Where two or more mines are connected underground the several owners may, by agreement, use the hoisting shaft or slope of one mine as an escape for the other. No escape shaft shall be located or constructed without first giving notice to, and obtaining the approval in writing of the state mine inspector. [S13,§2496-f; C24, 27, 31, 35, 39,§1341; C46, 50, 54,§83.4]

**83.5 Ventilation.** The owner or person in charge of any mine shall provide and maintain, whether the mine be operated by shaft, slope, or drift, an amount of ventilation of not less than one hundred cubic feet of air per minute for each person, nor less than five hundred

cubic feet of air per minute for each mule or horse employed therein, which shall be so circulated throughout the mines as to dilute, render harmless, and expel all noxious and poisonous gases in all working parts of the same. [S13,§2496-h; C24, 27, 31, 35, 39,§1342; C46, 50, 54,§83.5]

*S13,§2496-h, editorially divided*

**83.6 Air Measurement.** In no case shall the air current be a greater distance than sixty feet from the working face, except when making crosscuts in entries for air courses; then, in that case, the distance shall not be greater than seventy feet; but the state mine inspector may, in writing, grant permission to go beyond the limit herein mentioned, when the conditions are such in a special case as to require it. [S13,§2496-h; C24, 27, 31, 35, 39,§1343; C46, 50, 54,§83.6]

**83.7 Insufficient air.** When the mine inspector shall find the air insufficient, or men working under unsafe conditions, he shall at once give notice to the mine owner or his agent or person in charge, and upon the failure to make the necessary changes within a reasonable time, to be fixed by him, he may order the men out, to remain out until the mine is put in proper condition. [S13,§2496-h; C24, 27, 31, 35, 39,§1344; C46, 50, 54,§83.7]

**83.8 Speaking tubes—safety appliances.** The owner or person in charge of any mine shall in all mines operated by shaft or slope, where the voice cannot be distinctly heard, provide and maintain a metal speaking tube or other means of communication, kept in complete order from the bottom or interior to the top or exterior, also a sufficient safety catch and proper cover overhead on all cages, and an adequate brake to all drums or other devices used for lowering or hoisting persons, an approved safety gate at the top of each shaft, springs at the top of each slope, and a trail attached to each train used therein. [S13,§2496-i; C24, 27, 31, 35, 39,§1345; C46, 50, 54,§83.8]

*S13,§2496-i, editorially divided*

**83.9 Competent engineers.** He shall not knowingly place in charge of any engine used in or about the operation of the mines any but experienced, competent, and sober engineers,

who shall have the same qualifications as are required of hoisting engineers at coal mines, and who shall not allow anyone but those designated for that purpose to handle or in any way interfere with it or any part of the machinery, nor shall more than ten persons be allowed to descend or ascend in any cage at one time, or such less number as may be fixed by the state mine inspector, nor anyone but the conductor on a loaded car or cage. [S13,§2496-i; C24, 27, 31, 35, 39,§1346; C46, 50, 54,§83.9]

**83.10 Props.** He shall at all times keep a sufficient supply of timber to be used as props, convenient and ready for use, and shall send such props down when required and deliver them to the places where needed. [S13,§2496-i; C24, 27, 31, 35, 39,§1347; C46, 50, 54,§83.10]

**83.11 Violation—writ of injunction.** In addition to any and all other remedies, if any owner or person in charge of any mine shall fail to provide the requirements herein specified, or such owner or agent neglect for twenty days after notice given in writing by the state mine inspector of such failure to remedy the same, such inspector may apply to the district court or any judge thereof in an action brought in the name of the state for a writ of injunction to restrain the working of the mine with more persons at the same time than are necessary to make the improvements needed, save as may be required to prevent waste, until such appliances have been provided, and in case an injury happens to those engaged in the work because of such failure, the same shall be held culpable negligence on the part of the operator of the mine. [S13,§2496-j; C24, 27, 31, 35, 39,§1348; C46, 50, 54,§83.11]

**83.12 Duties and powers of inspector.** It is hereby made the duty of the state mine inspector to enforce the provisions of this chapter. He shall have the right to enter any gypsum mine under the provisions of this chapter, at any time, but shall not unnecessarily interfere with the working of any mine, nor shall more than six months intervene between examinations of any such mine. [S13,§2496-k; C24, 27, 31, 35, 39,§1349; C46, 50, 54,§83.12]

**83.13 Fatal accidents—reports.** Every person in charge of a mine under the provisions of this chapter shall, within twenty-four hours after a fatal accident happens to any employee in or around the mine, report the same to the coroner of the county in which the mine is operated and to the state mine inspector. [S13, §2496-l; C24, 27, 31, 35, 39,§1350; C46, 50, 54, §83.13]

**83.14 Maps.** The owner, operator, lessee, or person in charge of any gypsum mine shall make or cause to be made an accurate map or plan of such mine, drawn to a scale not more than two hundred feet to the inch, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, operator, lessee, or person in

charge, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made. [S13,§2496-m; C24, 27, 31, 35, 39,§1351; C46, 50, 54,§83.14]

**S13,§2496-m, editorially divided**

**83.15 Details required.** Every such map or plan shall correctly show the surface boundary lines of the rights pertaining to each mine and all section or quarter-section lines or corners within the same; the lines of town lots or streets; the tracks or sidetracks of all railroads, the location of all wagon roads, rivers, streams, ponds, and reservations made of gypsum and mineral. For the underground workings said map shall show all shafts, slopes, tunnels, or other opening to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water. [S13, §2496-m; C24, 27, 31, 35, 39,§1352; C46, 50, 54, §83.15]

**83.16 Separate maps.** A separate and similar map drawn to the same scale in all cases shall be made of each and every seam of gypsum operated in any mine in the state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them and in such case the surface map shall be drawn upon transparent cloth or paper so it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavation of the mine, together with any other principal workings of the mines. [S13,§2496-m; C24, 27, 31, 35, 39,§1353; C46, 50, 54,§83.16]

**83.17 Rise and dip of seam.** Each map shall also show, by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the seam. [S13,§2496-m; C24, 27, 31, 35, 39,§1354; C46, 50, 54,§83.17]

**83.18 Copies.** The original or true copies of all such maps shall be kept at the office of the mine and true copies thereof shall also be furnished the state mine inspector for the district in which said mine is located within thirty days after the completion of the same. [S13, §2496-m; C24, 27, 31, 35, 39,§1355; C46, 50, 54, §83.18]

**83.19 Custody and examination.** The maps so delivered to the inspector shall be the property of the state and shall remain in the custody of the said inspector during his term of office and be delivered to his successor in office. They shall be kept at the office of the inspector and be open to examination to all persons interested in the same. But such examinations

shall only be made in the presence of the inspector or his office assistant, and he shall not permit any copies of the same to be made without the written consent of the operator or the owner of the property, except as herein and otherwise provided. [S13,§2496-m; C24, 27, 31, 35, 39,§1356; C46, 50, 54,§83.19]

**83.20 Additional survey.** An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey with the date thereof shall be promptly and accurately entered upon the original map and a true, correct, and accurate copy of said extended map shall be forwarded to the inspector of mines in the district in which said mine is located so as to show all changes in plan of new work in the mine, and all extension of the old workings to the most advanced face or boundary of said workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the inspector of mines within thirty days after the last survey is made. [S13,§2496-m; C24, 27, 31, 35, 39,§1357; C46, 50, 54,§83.20]

**83.21 Abandoned mine.** When any gypsum mine is worked out or is about to be abandoned or indefinitely closed, the owner, operator, lessee, or person in charge of the same shall make or cause to be made a complete extended map of said mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine and their exact relation to the boundary of section lines on the surface, and deliver to the inspector a copy of the completed maps. [S13,§2496-m; C24, 27, 31, 35, 39,§1358; C46, 50, 54,§83.21]

**83.22 Inspector may order survey.** The state inspector of mines shall order a survey to be made of the workings of any mine and the result to be extended on the maps of the same and the copies thereof whenever in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of the adjoining mine requires it; and if not made by the owner, operator, lessee, or person in charge when ordered by the inspector it shall be made or caused to be made by the inspector and paid for by the state and the amount collected from the owner, operator, lessee, or person in charge as other debts are collected. [S13,§2496-m; C24, 27, 31, 35, 39,§1359; C46, 50, 54,§83.22]

**83.23 Violations.** Any owner or person in charge of any gypsum mine who shall fail to comply with the provisions of this chapter, or any of them, or shall hinder or obstruct the carrying out of any of the requirements of this chapter shall be punished by imprisonment in the county jail not exceeding sixty days or by a fine not exceeding five hundred dollars; or if any miner, workman, or other person knowingly injure or interfere with any air course or brattice, or obstruct or throw open doors or disturb any part of the machinery, or disobey any order given in carrying out the provisions of this chapter whereby the lives and health of the persons or the security of the mines and machinery is endangered, or shall neglect or refuse to securely prop any entries under his control, or refuse to obey any order given by the superintendent in relation to the safety of the mine or that part of the mine under his charge or control, he shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [S13,§2496-n; C24, 27, 31, 35, 39,§1360; C46, 50, 54,§83.23]

## CHAPTER 84

### OIL AND GAS WELLS

- 84.1 Protection of underground fresh water strata.
- 84.2 Offset drilling.
- 84.3 Notice to be given state geologist.
- 84.4 Plugging dry and abandoned wells.
- 84.5 Log, potential and plugging record to be filed.
- 84.6 Duty to have forfeited lease released—affidavit of noncompliance—notice to landowner—remedies.

- 84.7 Action to obtain release—damages, costs and attorney's fees—attachment.
- 84.8 Extension upon contingency—affidavit.
- 84.9 Liens for labor or materials and of contractor and subcontractor—manner of perfecting liens—enforcement of liens.
- 84.10 State or any municipality to have authority to execute leases.

**84.1 Protection of underground fresh water strata.** The driller, owner, or operator, drilling well or wells for oil and gas purposes, shall use such practical methods as pipe, cement, mud, or any other scientific method, known or commonly used in the oil industry, as will properly protect all contiguous underground fresh water strata from pollution or contam-

ination to a depth of three hundred feet. The provisions of this section shall not apply to hole or holes core-drilled for geological purposes. It shall be the duty of any such driller, owner, or operator to file with the state geologist a sworn report, on blanks to be furnished by the state geologist, which report shall contain a complete record of their compliance

with this section. Said report shall be filed within sixty days after the completion of said well. [C39,§1360.01; C46, 50, 54,§84.1]

**84.2 Offset drilling.** If oil or gas is discovered in paying quantities on an adjoining leasehold, and the products therefrom are taken out of the ground and marketed, and said well is within three hundred thirty feet of another lessor's property line, then within ninety days after written notice has been given lessee to the effect that such oil or gas has commenced to be transported off and marketed from the said adjoining premises, the lessee or lessees of the land lying within three hundred thirty feet of the said wells shall begin to drill an offset well to each of such wells so located, so as to properly protect the lessor from drainage from offsetting wells; and upon failure on his part to so commence said offset well, and complete same with diligence, the said contract and lease shall automatically expire and become null and void. [C39,§1360.02; C46, 50, 54, §84.2]

**84.3 Notice to be given state geologist.** Notice shall be given to the state geologist of the intention to drill, deepen, or plug any well or wells drilled for oil or gas purposes, and of the exact location of each and every such well. In case of drilling, notice shall be given in writing at least five days prior to the commencement of drilling operations for oil and gas. [C39,§1360.03; C46, 50, 54,§84.3]

**84.4 Plugging dry and abandoned wells.** Dry or abandoned wells must be plugged by confining all oil, gas, or water in the strata in which they occur by the use of mud-laden fluid and in addition to mud-laden fluid, cement and plugs may be used, and all such wells shall first be thoroughly cleaned out of the bottom of the hole and before the casing is removed from the hole, the hole shall be filled from the bottom up to the top with mud-laden fluid of maximum density and which shall weigh at least twenty-five percent more than equal volume of water; provided, the state geologist may direct that some other method shall be used. Before plugging dry and abandoned wells, notice shall be given to the state geologist and to all available adjoining lease and property owners and they may be present to witness the plugging of these wells; but plugging shall not be delayed because of the inability to deliver notices to adjoining lease and property owners. [C39,§1360.04; C46, 50, 54,§84.4]

**84.5 Log, potential and plugging record to be filed.** The owner or operator shall, upon the completion of any well, drilled for oil or gas purposes, file with the state geologist a complete record or log of the same, duly signed and sworn to, upon the blanks to be furnished by the state geologist; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and fully verified on blanks to be furnished by the state geologist; and producers

shall also report in writing, separately, the potential of any producing well, within ten days from the completion of its initial potential test. [C39,§1360.05; C46, 50, 54,§84.5]

**84.6 Duty to have forfeited lease released—affidavit of noncompliance—notice to landowner—remedies.** When any oil or gas lease, heretofore, or hereafter, given on land situated in Iowa and recorded, shall become forfeited by failure of lessee to comply with its provisions or of the Iowa law, it shall be the duty of lessee, within sixty days after date of forfeiture of any such lease, to have such lease surrendered in writing, duly acknowledged and placed on record in the county where the leased land is situated, or lease may be released by a marginal release on margin of record thereof, without cost to owner of land described therein. If said lessee shall fail to execute and record a release of such recorded lease within the time provided for, then the owner of the land may execute and file with the recorder of the county or counties in which such forfeited lease has been recorded an affidavit of noncompliance in substantially the following form:

**AFFIDAVIT OF NONCOMPLIANCE**

State of Iowa }  
County of ..... } ss.  
....., being first duly sworn, upon his oath deposes and says that he is ..... as referred to in an oil and gas mining lease dated the ..... day of ....., 19..., and which lease is recorded in Volume ....., Page ....., of the County Records of.....County, ....., and which said lease covers the following described lands: .....

And further, deponent says that on the .... day of ....., 19..., under the terms of said lease, there should have been paid to him or deposited to his credit in the ..... Bank of ..... the sum of ..... Dollars (\$...), the payment of which was necessary in order to keep the above described lease in force and effect. Deponent hereby swears the above payment has never been made to him or his representatives, in money or otherwise, nor has same been deposited to his credit in the above bank.

And further, deponent says that there has been no drilling or development of any nature or kind whatsoever done on the land covered by the lease referred to herein, as called for under the terms of said lease.

.....  
.....  
Subscribed and sworn to before me, a Notary Public in and for ..... County, Iowa, this ..... day of ....., 19.....  
.....  
Notary Public

My commission expires .....  
Affidavit of the Banker  
State of ..... }  
County of ..... } ss.  
I, ....., (Cashier) (President) of

the ..... Bank of ....., being first duly sworn, upon my oath hereby declare that there has not been deposited to the credit of ..... in the ..... Bank of ..... by ..... or any other party, any sum of money whatsoever, in payment of rental under the terms of said oil and gas mining lease herein referred to.

Witness my hand this .... day of ....., 19.....

..... (Cashier) (President) of .... Bank

Subscribed and sworn to before me, a Notary Public in and for said County and State on the .....day of ....., 19....

Notary Public

My commission expires .....

If the lessee shall, within thirty days after the filing of such affidavit, give notice in writing to the county recorder of the county where said land is located that said lease has not been forfeited and that said lessee still claims that said lease is in full force and effect, then the said affidavit shall not be recorded but the county recorder shall notify the owner of the land of the action of the lessee, and the owner of the land shall be entitled to the remedies provided by this chapter for the cancellation of such disputed lease. If the lessee shall not notify the county recorder as above provided, then the county recorder shall record said affidavit, and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee against the lessor, and said lease shall stand forfeited. [C39,§1360.06; C46, 50, 54,§84.6]

**84.7 Action to obtain release—damages, costs and attorney’s fees—attachment.** Should the owner of such lease neglect or refuse to execute a release as provided by this chapter, or contend lease is in full force and effect, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney’s fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such

actions, writs of attachment may issue as in other cases. [C39,§1360.07; C46, 50, 54,§84.7]

**84.8 Extension upon contingency—affidavit.** If a recorded lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, the owner of said lease may at any time before the expiration of the definite term of said lease file with said county recorder an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened, or the record of such lease shall not impart notice to the public of the continuance of said lease. This affidavit shall be recorded in full by the county recorder and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of said lease, until the same shall be forfeited, canceled, set aside, or surrendered according to law. [C39,§1360.08; C46, 50, 54,§84.8]

**84.9 Liens for labor or materials and of contractor and subcontractor—manner of perfecting liens—enforcement of liens.** Provisions of chapter 572 as to mechanic’s liens and/or labor and materials furnished for improvements on real estate and of contractors and subcontractors, shall apply to labor and materials furnished for gas and/or oil wells, or pipe lines, and such liens shall not attach on the real estate, but shall attach to the whole of the lease held, and upon the gas and/or oil wells, buildings and appurtenances and pipe lines for which said labor or materials were furnished, and shall be perfected and enforced as provided by said chapter. [C39,§1360.09; C46, 50, 54,§84.9]

**84.10 State or any municipality to have authority to execute leases.** The state or any municipality is hereby authorized to enter into a gas or oil lease upon such terms as may be agreed upon, subject to the approval of the district court of the county in which the land is located, upon filing an application in the district court of such county and by giving notice to the public by publishing a notice of the said application for four weeks in the newspaper designated for legal publications in said county stating the time and place where said application will come on for hearing and that objections thereto will be heard at such time. [C39,§1360.10; C46, 50, 54,§84.10]  
Constitutionality, 48GA, ch 63,§11

CHAPTER 85

WORKMEN’S COMPENSATION

Referred to in §§85.9 86.8 86.9, 86.13, 86.39, 87.1, 87.2, 87.18, 87.14, 87.21, 87.22, 87.24, 627.13

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**85.1 To whom not applicable.** This chapter shall not apply to:

1. Any household or domestic servant.
2. Persons whose employment is of a casual nature.

3. Persons engaged in agriculture, insofar as injuries shall be incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith, whether on or off the premises of the employer, except that employers engaged in agriculture and also engaged in any other trade or business not excluded by the provisions of this section, may, by serving notice thereof upon the industrial commissioner by certified United States mail, elect to provide, secure, and pay workmen's compensation in the manner as by this chapter provided for all personal injuries sustained, arising out of and in the course of the employment. Upon such an election the employee, except as otherwise provided by this chapter, shall accept compensation in the manner provided by this chapter and the employer shall be relieved from other liability for recovery of damages, or other compensation for such injury.

4. As between a municipal corporation, city, or town, and any person or persons receiving any benefits under, or who may be entitled to benefits from, any "firemen's pension fund" or "policemen's pension fund" of any municipal corporation, city, or town, except volunteer

firemen and except as otherwise provided by law. [S13,§2477-m; C24, 27, 31, 35, 39,§1361; C46, 50, 54,§85.1; 57GA, ch 267,§10]

Referred to in §§85.2, 87.16  
 Compensation to peace officers, §85.62

**85.2 Compulsory when.** Where the state, county, municipal corporation, school district, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 85.1. [S13,§2477-m; C24, 27, 31, 35, 39,§1362; C46, 50, 54,§85.2]

**85.3 Acceptance presumed—notice to non-resident employers.**

1. Except as provided by this chapter, it shall be conclusively presumed that every employer has elected to provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.

2. Any employer who is a nonresident of the state, for whom services are performed within the state by employees entitled to

rights under this or chapter 85A by virtue of having such services performed shall be deemed:

a. To agree that such employer and employees shall be subject to the jurisdiction of the industrial commissioner and to all of the provisions of this chapter, chapters 85A, 86, and 87, as to any and all personal injuries sustained by an employee arising out of and in the course of such employment within this state.

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served any and all notices authorized or required by the provisions of this chapter, chapters 85A, 86, and 87 and to agree that any and all such services of notice on the secretary of state shall be of the same legal force and validity as if personally served upon such nonresident employer in this state. [S13, §2477-m; C24, 27, 31, 35, 39, §1363; C46, 50, 54, §85.3]

Referred to in §§85.4, 86.36, 87.13

85.4 Rejection. The presumption as stated in section 85.3 shall continue and be in force until notice in writing of an election to the contrary shall have been given to the employees by posting the same in some conspicuous place where the business is carried on, and also by filing notice with the industrial commissioner with return thereon by affidavit showing the date and place notice was posted. Any employer beginning business and giving notice at once of his rejection of this chapter shall not be considered as under such provisions, but such employer shall not be relieved of the payment of compensation until thirty days after the posting and filing of such notice with the industrial commissioner. [S13, §2477-m; C24, 27, 31, 35, 39, §1364; C46, 50, 54, §85.4]

Referred to in §87.13

85.5 Employer's notice to reject. An employer's notice of election to reject the provisions of this chapter shall be substantially in the following form:

To the employees of the undersigned, and the Iowa industrial commissioner:

You are hereby notified that the undersigned rejects the provisions to provide, secure, and pay compensation to employees of the undersigned for injuries received as provided in chapter 85 of the Code, and elects to pay damages for personal injuries received by such employee under the common law and statutes of this state as modified by sections 85.15 and 85.19 of said chapter.

Signed..... (Employer.)

State of Iowa, }
..... County. } ss.

The undersigned on oath says that a true copy of the foregoing notice was on the ... day of ....., 19...., posted at ..... (State fully place where posted.)

Subscribed and sworn to before me by .... this ..... day of ....., 19....

(Notary Public.)

[S13, §2477-m; C24, 27, 31, 35, 39, §1365; C46, 50, 54, §85.5]

85.6 Posting notice to reject. The employer shall keep such notice posted in some conspicuous place where the business is carried on, which shall apply to the employees subsequently employed by the employer with the same force and effect and to the same extent as employees in the employ at the time the notice was given. [S13, §2477-m; C24, 27, 31, 35, 39, §1366; C46, 50, 54, §85.6]

85.7 Defenses when employee rejects. In the event an employee elects to reject the provisions of this chapter, the rights and remedies thereof shall not apply where such employee brings an action to recover damages for injuries received arising out of and in the course of his employment, except as otherwise provided by this chapter; and in such actions the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the defenses of contributory negligence, assumption of risk, and fellow servant rule, except as otherwise provided by law. [S13, §2477-m2; C24, 27, 31, 35, 39, §1367; C46, 50, 54, §85.7]

Referred to in §85.9
Assumption of risk, §§88.14, 477.16, 479.125
Contributory negligence, §§479.124, 479.125, R.C.P. 97

85.8 Certain defenses not available. When an employee who has rejected the provisions of this chapter, receives an injury through failure of the employer to furnish or failure to exercise reasonable care to keep and maintain any safety device, appliance, or equipment as required by law, statutory rule or regulation, or through the violation of any other statutory requirements or regulations on the part of such employer, then the doctrine of assumed risk in relation to such cause of injury shall not be available as a defense to such employer in any action for damages on account of such injury. [S13, §2477-m2; C24, 27, 31, 35, 39, §1368; C46, 50, 54, §85.8]

Referred to in §85.9

85.9 Employee's notice to reject. The notice required to be given by an employee shall be substantially in the following form:

To .. and the Iowa industrial commissioner:
(Name of employer.)

You are hereby notified that the undersigned hereby elects to reject the terms, conditions, and provisions of chapter 85 of the Code for the payment of compensation as provided thereby, and elects to rely upon the common law as modified by sections 85.7 and 85.8 of said chapter for the right to recover for personal injury which I may receive, if any, arising out of and in the course of my employment while in line of duty for my employer above named.

Dated this .... day of ....., 19....
Signed .....

State of Iowa, }  
..... County. } ss.

The undersigned on oath says that the above written notice was on the ..... day of ....., 19...., served on the with- in named employer of the undersigned by delivering to ..... a true copy thereof.

.....  
(Name of person serving.)

Subscribed and sworn (or affirmed) to before me by the said ..... this ..... day of ....., 19....

.....  
(Notary Public.)

[S13,§2477-m2; C24, 27, 31, 35, 39,§1369; C46, 50, 54,§85.9]

**85.10 Affidavit of employee as to rejection.** When an employer or one who is an applicant for employment rejects the provisions of this chapter, he shall, in addition to such notice, state in an affidavit to be filed with said notice who, if any person, requested, suggested, or demanded of such person to reject the provisions of this chapter. If such request, suggestion, or demand has been made of such employee by any person, such employee shall state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place made, and persons present, and if it be found that the employer of such employee, or an employer to whom an applicant for employment has applied, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand to such employee or applicant for employment to reject the provisions of this chapter, the rejection made under such circumstances shall be conclusively presumed to have been fraudulently procured, and such rejection shall be null and void and of no effect, unless such employee has a permanent disability at the time of making the affidavit, then and in that event such rejection shall be presumed to have been fraudulently procured. [S13,§2477-m2; C24, 27, 31, 35, 39,§1370; C46, 50, 54,§85.10]

**85.11 Interested person not to administer oath.** No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affiant required in case an employee or applicant for employment elects to reject the provisions of this chapter. And the person administering such oath to such affiant shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this chapter in the event that he sustains an injury in the course of such employment; all of which shall be shown by certificate of the person administering the oath herein contemplated.

The industrial commissioner shall refuse to file the notice and affidavit, unless the same

fully and in detail complies with the requirements hereof.

If such rejection, affidavit, or certificate is found insufficient for any cause, they shall be returned to the person who executed the instrument, with the reasons indorsed thereon by the industrial commissioner. [S13,§2477-m2; C24, 27, 31, 35, 39,§1371; C46, 50, 54,§85.11]

**85.12 Tenure of election.** When the employer or employee has given notice in compliance with this chapter electing to reject the terms thereof, such election shall continue and be in force until such employer or employee shall thereafter elect to come under the provisions of this chapter as is provided in section 85.13. [S13,§2477-m3; C24, 27, 31, 35, 39,§1372; C46, 50, 54,§85.12]

**85.13 Waiver of election to reject.** When an employer or employee rejects the provisions of this chapter, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this chapter, which shall become effective when filed with the industrial commissioner and posted at the place of business. [S13,§2477-m3; C24, 27, 31, 35, 39,§1373; C46, 50, 54,§85.13]

Referred to in §85.12

**85.14 Liability when employer and employee reject.** When the employer and the employee elect to reject the provisions of this chapter, the liability of the employer shall be the same as though the employee had not rejected the provisions hereof. [S13,§2477-m4; C24, 27, 31, 35, 39,§1374; C46, 50, 54,§85.14]

**85.15 Defenses not available when employer rejects.** An employer who rejects the provisions of this chapter in the manner and form provided, shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the course of the employment on the grounds that:

1. The employee assumed the risks inherent in or incidental to or arising out of his or her employment, or the risks arising out of the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising out of the failure of the employer to furnish reasonably safe tools or appliances, or the risks arising out of the failure of the employer to exercise reasonable care in selecting reasonably competent employees in the business, or on the ground that the employer exercised reasonable care in selecting reasonably competent employees in the business.
2. The injury was caused by the negligence of a coemployee.
3. The employee was negligent, unless such negligence was willful and with intent to cause the injury, or the result of intoxication on the part of the injured party. [S13,§2477-m; C24, 27, 31, 35, 39,§1375; C46, 50, 54,§85.15]

Referred to in §85.5



**85.16 Willful injury—intoxication.** No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's willful intent to injure himself or to willfully injure another.

2. When intoxication of the employee was the proximate cause of the injury. [S13, §§2477-m, m1; C24, 27, 31, 35, 39, §1376; C46, 50, 54, §85.16]

**85.17 Implied acceptance.** Where the employer and employee have not given notice of an election to reject the terms of this chapter, every contract of hire, express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure, and pay, and on the part of the employee to accept compensation in the manner as by this chapter provided for all personal injuries sustained arising out of and in the course of the employment. [S13, §2477-m; C24, 27, 31, 35, 39, §1377; C46, 50, 54, §85.17]

**85.18 Contract to relieve not operative.** No contract, rule, regulation, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided. [S13, §2477-m7; C24, 27, 31, 35, 39, §1378; C46, 50, 54, §85.18]

**85.19 Negligence presumed.** In actions by an employee against an employer for personal injury sustained, arising out of and in the course of the employment, when the employer has rejected the provisions of this chapter, the following provisions shall apply:

1. It shall be presumed:

a. That the injury to the employee was the direct result and growing out of the negligence of the employer.

b. That such negligence was the proximate cause of the injury.

2. In such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence. [S13, §2477-m; C24, 27, 31, 35, 39, §1379; C46, 50, 54, §85.19]

Referred to in §85.5

**85.20 Rights of employee exclusive.** The rights and remedies provided in this chapter for an employee on account of injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury; and all employees affected by this chapter shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions hereof until notice in writing shall have been served upon his employer, and also on the industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer. [S13, §2477-m2; C24, 27, 31, 35, 39, §1380; C46, 50, 54, §85.20]

**85.21 Subsequent election to reject.** An employer having come under this chapter, who thereafter elects to reject the terms, conditions, and provisions thereof, shall not be relieved from the payment of compensation to any employee who sustains an injury arising out of and in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such employee, subject to the approval of the industrial commissioner. [S13, §2477-m5; C24, 27, 31, 35, 39, §1381; C46, 50, 54, §85.21]

**85.22 Liability of others — subrogation.** When an employee receives an injury for which compensation is payable under this chapter, and which injury is caused under circumstances creating a legal liability against some person other than the employer to pay damages, the employee, or his dependent, or the trustee of such dependent, may take proceedings against his employer for compensation, and the employee or, in case of death, his legal representative may also maintain an action against such third party for damages. When an injured employee or his legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

1. If compensation is paid the employee or dependent or the trustee of such dependent under this chapter, the employer by whom the same was paid, or his insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, with legal interest, and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which he is liable. In order to continue and preserve the lien, the employer or insurer shall, within thirty days after receiving notice of such suit from the employee, file, in the office of the clerk of the court where the action is brought, notice of the lien.

2. In case the employee fails to bring such action within ninety days, or where a city or town or city under special charter is such third party, within thirty days after written notice so to do given by the employer or his insurer, as the case may be, then the employer or his insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might. In case of recovery, the court shall enter judgment for distribution of the proceeds thereof as follows:

a. A sum sufficient to repay the employer for the amount of compensation actually paid by him to that time.

b. A sum sufficient to pay the employer the present worth computed on a six percent basis

of the future payments of compensation for which he is liable, but such sum thus found shall not be considered as a final adjudication of the future payments which the employee shall receive and the amount received by the employer, if any, in excess of that required to pay the compensation shall be paid to the employee.

c. The balance, if any, shall be paid over to the employee.

3. Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the industrial commissioner.

4. A written memorandum of any settlement, if made, shall be filed by the employer or insurance carrier in the office of the industrial commissioner.

5. For subrogation purposes hereunder, any payment made unto an injured employee, his guardian, parent, next friend, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such employee shall be considered as having been so paid as damages resulting from and because said injury was caused under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability or otherwise. [S13,§2477-m6; C24, 27, 31, 35, 39,§1382; C46, 50, 54,§85.22]

Referred to in §85.68

**85.23 Notice of injury—failure to give.** Unless the employer or his representative shall have actual knowledge of the occurrence of an injury, or unless the employee or someone on his behalf or some of the dependents or someone on their behalf shall give notice thereof to the employer within fifteen days after the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if such notice is given or knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced thereby, and then only to the extent of such prejudice; but if the employee or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of another, or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice; but unless

knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. [S13,§2477-m8; C24, 27, 31, 35, 39,§1383; C46, 50, 54,§85.23]

**85.24 Form of notice.** No particular form of notice shall be required, but may be substantially as follows:

To .....  
You are hereby notified that on or about the ..... day of ....., 19...., personal injury was sustained by ....., while in your employ at .....  
(Give name and place employed and point .....; and that compensation where located when injury occurred.) will be claimed therefor.  
Signed.....

No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. [S13,§2477-m8; C24, 27, 31, 35, 39,§1384; C46, 50, 54,§85.24]

**85.25 Service of notice.** The notice may be served on anyone upon whom an original notice may be served in civil cases. Service may be made by any person, who shall make return verified by affidavit upon a copy of the notice, showing the date and place of service and upon whom served; but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time. [S13,§2477-m8; C24, 27, 31, 35, 39,§1385; C46, 50, 54,§85.25]

Service of notice, R.C.P. 56(a)

**85.26 Limitation of actions.** No original proceedings for compensation shall be maintained in any case unless such proceedings shall be commenced within two years from the date of the injury causing such death or disability for which compensation is claimed. [C24, 27, 31, 35, 39,§1386; C46, 50, 54,§85.26]

**85.27 Professional and hospital services—prosthetic devices.** The employer, with notice or knowledge of injury, shall furnish reasonable surgical, medical, osteopathic, chiropractic, chiropodial, nursing and hospital services and supplies therefor. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one permanent prosthetic device. The amount which may be allowed for medical and surgical services shall not exceed the sum of five hundred dollars, and the amount which may be allowed for hospital services and supplies shall not exceed the sum of one thousand dollars, excluding therefrom all reasonable charges for necessary services of special nurses and ambulance charges, which shall be paid in full. The commissioner may upon application and upon reasonable proofs being furnished of necessity therefor, allow and order additional surgical,

medical, osteopathic, chiropractic, chiropodial and hospital services and supplies, but not to exceed an aggregate cost of one thousand dollars in addition to the amounts hereinbefore allowed.

Charges believed to be excessive may be referred to the industrial commissioner for adjustment under authority of section 86.39. [S13, §2477-m9; C24, 27, 31, 35, 39, §1387; C46, 50, 54, §85.27]

Referred to in §§85.29, 85A.5

**85.28 Burial expense.** When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed three hundred dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter. [S13, §2477-m9; C24, 27, 31, 35, 39, §1388; C46, 50, 54, §85.28]

Referred to in §85.29

**85.29 Liability in case of no dependents.** When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's sickness, if any, and the expense of burial, as provided in sections 85.27 and 85.28, and this shall be the only compensation; provided that if, from the date of the injury until the date of the death, any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee. [S13, §2477-m9; C24, 27, 31, 35, 39, §1389; C46, 50, 54, §85.29]

**85.30 Maturity date and interest.** Compensation payments shall be made each week beginning on the fifteenth day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments, interest at six percent from date of maturity. [C24, 27, 31, 35, 39, §1391; C46, 50, 54, §85.30]

**85.31 Death cases—dependents.**

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of his injury, the weekly compensation for a period of three hundred weeks from the date of his injury.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of his injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings.

3. If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to

the annual earnings of the deceased at the time of the injury.

4. When weekly compensation has been paid to an injured employee and thereafter death of the employee results from such injury, the compensation to dependents shall run for a period of time which together with weekly compensation paid to the injured employee prior to death shall equal three hundred weeks of compensation.

5. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

6. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state. [S13, §§2477-m9, -m10; C24, 27, 31, 35, 39, §1392; C46, 50, 54, §85.31]

**85.32 When compensation begins.** Except as to injuries resulting in permanent partial disability, compensation shall begin on the eighth day of disability after the injury.

If the period of incapacity extends beyond the twenty-eighth day following the date of injury, then the compensation for the fourth week shall be increased by adding thereto an amount equal to one-third of one week of compensation.

If the period of incapacity extends beyond the thirty-fifth day following the date of injury, then the compensation for the fifth week shall be increased by adding thereto an amount equal to one-third of one week of compensation.

If the period of incapacity extends beyond the forty-second day following the date of injury, then the compensation for the sixth week shall be increased by adding thereto an amount equal to one-third of one week of compensation.

If the period of incapacity extends beyond the forty-second day following the date of injury, then the compensation thereafter shall be only the weekly compensation. [S13, §2477-m9; C24, 27, 31, 35, 39, §1393; C46, 50, 54, §85.32]

Referred to in §85.33

**85.33 Temporary disability—healing period.**

The employer shall pay to the employee for injury producing temporary disability and beginning upon the eighth day thereof, weekly compensation benefit payments for a period not exceeding three hundred weeks, including the periodical increase in cases to which section 85.32 applies.

In the event the employee has suffered an injury causing permanent partial disability for which compensation is payable under the provisions of section 85.35, the employer shall pay to the employee compensation for a healing period which shall not be more than twenty-five percent of the period during which weekly compensation is required to be paid under the provisions of said section, or for a period of not more than twenty weeks, whichever is the lesser. [S13,§2477-m9; C24, 27, 31, 35, 39, §1394; C46, 50, 54,§85.33]

Referred to in §85.35

**85.34 Permanent total disability.** For an injury causing permanent total disability, the employer shall pay the weekly compensation during the period of his disability, not, however, beyond five hundred weeks. [S13,§2477-m9; C24, 27, 31, 35, 39,§1395; C46, 50, 54,§85.34]

**85.35 Permanent partial disabilities.** Compensation for permanent partial disability shall begin at the termination of the healing period provided in section 85.33 and shall be based upon the extent of such disability, and for all cases of permanent partial disability included in the following schedule compensation shall be paid as follows:

1. For the loss of a thumb, weekly compensation during sixty weeks.
2. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.
3. For the loss of a second finger, weekly compensation during thirty weeks.
4. For the loss of a third finger, weekly compensation during twenty-five weeks.
5. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.
6. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and compensation shall be one-half of the time for the loss of such thumb or finger.
7. The loss of more than one phalange shall equal the loss of the entire finger or thumb.
8. For the loss of a great toe, weekly compensation during forty weeks.
9. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.
10. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the compensation shall be one-half of the time provided for the loss of such toe.
11. The loss of more than one phalange shall equal the loss of the entire toe.

12. For the loss of a hand, weekly compensation during one hundred seventy-five weeks.

13. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred thirty weeks.

14. For the loss of a foot, weekly compensation during one hundred fifty weeks.

15. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred weeks.

16. For the loss of an eye, weekly compensation during one hundred twenty-five weeks.

17. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

18. For the loss of hearing in one ear, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

19. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, caused by a single accident, shall equal a permanent total disability, to be compensated as such.

20. In all other cases of permanent partial disability, the compensation shall bear such relation to the periods of compensation stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. [S13,§2477-m9; C24, 27, 31, 35, 39, §1396; C46, 50, 54,§85.35]

Referred to in §85.33

**85.36 Basis of computation.**

1. Compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages, or earnings in the employment of the same employer during the year next preceding the injury.

2. Employment by the same employer shall mean in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

3. The annual earnings, if not otherwise determinable, shall be three hundred times the average daily earnings in such computation.

4. If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. If this basis of computation is impossible, or should appear to be unreasonable, three hundred times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be the basis for the computation.

5. In case of injured employees who earn

either no wages or less than three hundred times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality, the yearly wage shall be reckoned as three hundred times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that kind is not obtainable, then the class most kindred or similar in the same general employment in the same neighborhood.

6. For employees in a business or enterprise which customarily shuts down and ceases operation during a season of each year, the number of working days which it is the custom of such business or enterprise to operate each year instead of three hundred shall be the basis for computing the annual earnings; but the minimum number of days which shall be used as a basis for the year's work shall not be less than two hundred.

7. Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of the employment.

8. In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which he shall have suffered.

This subsection shall not apply to compensable injuries arising under the second injury compensation act.

9. In computing the compensation to be allowed a volunteer fireman his earnings as such fireman shall be disregarded and he shall be paid the maximum compensation allowable under the workmen's compensation law. [S13,§2477-m15; C24, 27, 31, 35, 39,§1397; C46, 50, 54,§85.36]

**85.37 Compensation schedule.** In all cases where an employee receives a personal injury for which compensation other than for medical, surgical, and hospital services and burial expenses, is payable, such compensation shall be upon the basis of sixty-six and two-thirds percent per week of the average weekly earnings but not to exceed thirty-two dollars nor less than fifteen dollars per week, except if at the time of his injury his earnings are less than twelve dollars per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings. [S13,§2477-m9; C24, 27, 31, 35, 39,§1390; C46, 50, 54,§85.37; 56GA, ch 78,§§1, 2]

**85.38 Contributions from employees.** The compensation herein provided shall be the

measure of liability which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this chapter, and it shall not be in anywise reduced by contribution from employees or donations from any source. [S13, §2477-m12; C24, 27, 31, 35, 39,§1398; C46, 50, 54, §85.38]

**85.39 Examination of injured employees.** After an injury, the employee, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state, without cost to the employee; but if the employee requests, he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employee to submit to such examination shall deprive him of the right to any compensation for the period of such refusal. When a right of compensation is thus suspended, no compensation shall be payable for the period of suspension. [S13,§2477-m11; C24, 27, 31, 35, 39,§1399; C46, 50, 54,§85.39]

**85.40 Statement of earnings.** The employer shall furnish, upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury. [C24, 27, 31, 35, 39,§1400; C46, 50, 54,§85.40]

**85.41 Refusal to furnish statement.** On failure of the employer to furnish such statement of earnings for thirty days after receiving written request therefor from an injured employee, his agent, attorney, dependent, or legal representative, such employer shall pay a penalty of twenty-five dollars for each offense to be collected by the commissioner in any court having jurisdiction and paid into the state treasury. [C24, 27, 31, 35, 39,§1401; C46, 50, 54, §85.41]

**85.42 Conclusively presumed dependent.** The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

c. When the deceased leaves no dependent children and the surviving spouse remarries,

then all compensation shall cease on the date of such marriage.

2. A child or children under sixteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of his or her death. An adopted child or children or stepchild or stepchildren shall be regarded the same as issue of the body.

3. A parent of a minor who is receiving the earnings of the employee at the time when the injury occurred. Stepparents shall be regarded as parents. [S13,§2477-m16; C24, 27, 31, 35, 39,§1402; C46, 50, 54,§85.42]

Referred to in §85.43

**85.43 Payment to spouse.** If the deceased employee leaves a surviving spouse, the full compensation shall be paid to her or him, subject to the exceptions in section 85.42; provided that where a deceased employee leave a surviving spouse and a child or children under sixteen years of age, or over said age if physically or mentally incapacitated from earning, the industrial commissioner may make an order of record for an equitable apportionment of the compensation payments.

If the spouse dies before full payment, the balance shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such balance shall be paid to partial dependents, if any, in proportion to their dependency.

If the deceased leaves dependent child or children who was or were such at the time of the injury, and the surviving spouse remarries, then and in such case, the unpaid portion of the compensation shall be paid to the proper compensation trustee for the use and benefit of such dependent child or children. [S13, §2477-m16; C24, 27, 31, 35, 39,§1403; C46, 50, 54, §85.43]

**85.44 Payment to actual dependents.** In all other cases, questions of dependency in whole or in part shall be determined in accordance with the facts as of the date of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency. [S13,§2477-m16; C24, 27, 31, 35, 39, §1404; C46, 50, 54,§85.44]

**85.45 Commutation.** Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.
2. When the written approval of such commutation by the industrial commissioner has been filed in the proceedings to commute.
3. When it shall be shown to the satisfaction

of the court or a judge thereof that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor. [S13,§2477-m14; C24, 27, 31, 35, 39,§1405; C46, 50, 54,§85.45]

**85.46 Proceedings for commutation.** A written petition for commutation may be made to the district court in and for the county in which the injury occurred or to any judge thereof, and shall have indorsed thereon the approval of the industrial commissioner.

Notice of the filing or presentation of such petition shall be served upon the opposite party or parties for the time and in the manner required for original notices. The court or judge in term time or vacation shall hear and determine the matter as a proceeding in equity and render such judgment and decree, granting such commutation in whole or in part or dismissing the petition, as equity will warrant on the facts presented.

In any case parties in interest may agree in writing to waive presenting the petition for commutation to the district court and in such case, if the application is approved by the industrial commissioner, governed by the law applicable to the district court, he may enter an order for commutation which shall have the same force and effect as if made by the district court with the right upon the part of either party to file a certified copy thereof in the district court as provided for an award. [S13,§2477-m14; C24, 27, 31, 35, 39,§1406; C46, 50, 54,§85.46]

Filing of award, §679.13  
Method of trial, ch 624  
Time and manner of service, R.C.P. 53 and 56(a)

**85.47 Basis of commutation.** When the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five percent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding, or judgment shall be discharged of record. [S13,§2477-m14; C24, 27, 31, 35, 39,§1407; C46, 50, 54,§85.47]

**85.48 Partial commutation.** When partial commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest calculated at five percent per annum, with provisions for the payment of weekly compensation not included in such commutation, subject to any provisions of the law applicable to such unpaid weekly payments; all remaining payments, if any, to be

paid at the same time as though such commutation had not been made. [S13,§2477-m15; C24, 27, 31, 35, 39,§1408; C46, 50, 54,§85.48]

**85.49 Trustees for incompetent.** When an injured minor employee, or a minor dependent, or one mentally incompetent, is entitled to compensation under this chapter, payment shall be made to the clerk of the district court for the county in which the injury occurred, who shall act as trustee, and the money coming into his hands shall be expended for the use and benefit of the person entitled thereto under the direction and orders of a judge of the district court, in which such county is located, during term time or in vacation. The clerk of the district court, as such trustee, shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best. The cost of such bond shall be paid by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county. If the domicile or residence of such injured minor employee or minor dependent or one mentally incompetent be in a county other than that in which the injury to the employee occurred the industrial commissioner may order and direct that compensation to such minors or incompetents be paid to the clerk of the district court of the county wherein they shall be domiciled or reside. [S13,§2477-m13; C24, 27, 31, 35, 39,§1409; C46, 50, 54,§85.49]

**85.50 Report of trustee.** The clerk of the district court as such trustee shall, on or before September 30 of each year, make annual reports to the court of all money or property received or expended for each person for whom he is acting as trustee.

Every clerk of the district court of every county upon his completion of his term of office, or upon his resignation, removal from office or otherwise becoming disqualified as such clerk shall make an accounting and final report to be approved by a judge of the district court for said county and all funds and other property shall be delivered to the successor in the office of such clerk. [S13,§2477-m13; C24, 27, 31, 35, 39,§1410; C46, 50, 54,§85.50]

Not applicable to trustees appointed before July 4, 1947. See 52GA, ch 67,§4

**85.51 Alien dependents in foreign country.** In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent or dependents residing outside the United States, the consul general, consul, vice consul, or consular agent of the nation of which the said dependent or dependents are citizens, or the duly appointed representative of such consular official resident in the state of Iowa, shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensa-

tion which said nonresident aliens would have if resident in the state of Iowa. [C24, 27, 31, 35, 39,§1411; C46, 50, 54,§85.51]

**85.52 Consular officer as trustee.** Such consular officer or his duly appointed representative resident in the state of Iowa shall file in the district court of the county in which the accident occurred resulting in the death of said employee evidence of his authority, and thereupon the court or a judge thereof shall appoint him a trustee for such nonresident alien dependents, and thereafter he shall be subject to the jurisdiction of said court until his final report of distribution and payment has been filed and approved. Such consular official or his said representative shall qualify as such trustee by giving bond with approved sureties in a sum to be fixed by said court or judge, and the amount of said bond may be increased or decreased from time to time as said court or judge may direct. [C24, 27, 31, 35, 39,§1412; C46, 50, 54,§85.52]

**85.53 Notice to consular officer.** If such consular officer, or his duly appointed representative, shall file with the industrial commissioner evidence of his authority, the industrial commissioner shall notify such consular officer or his representative of the death of all employees leaving alien dependent, or dependents, residing in the country of said consular officer so far as same shall come to his knowledge. [C24, 27, 31, 35, 39,§1413; C46, 50, 54,§85.53]

**Analogous provision, §682.15**

**85.54 Contracts to avoid compensation.** Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten dollars nor more than fifty dollars for each offense. [S13,§2477-m17; C24, 27, 31, 35, 39,§1414; C46, 50, 54,§85.54]

**85.55 Waivers prohibited—physical defects.** No employee or dependent to whom this chapter applies, shall have power to waive any of the provisions of this chapter in regard to the amount of compensation which may be payable to such employee or dependent hereunder. However, any person who has some physical defect which increases the risk of injury, may, subject to the approval of the industrial commissioner, enter into a written agreement with his employer waiving compensation for injuries which may occur directly or indirectly because of such physical defect, provided, however, that such waiver shall not affect the employee's benefits to be paid from the second injury fund under the provisions of section 85.64. [S13,§2477-m17; C24, 27, 31, 35, 39,§1415; C46, 50, 54,§85.55]

**85.56 Contracts presumed fraudulent.** Any contract or agreement made by any employer or his agent or attorney with any employee or any other dependent under the provisions of this chapter within twelve days after the injury shall be presumed to be fraudulent. [S13, §2477-m18; C24, 27, 31, 35, 39, §1416; C46, 50, 54, §85.56]

**85.57 Employees in interstate commerce.** So far as permitted, or not forbidden, by any act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees. [S13, §2477-m21; C24, 27, 31, 35, 39, §1417; C46, 50, 54, §85.57]

**85.58 Employees of state.** All valid claims now due or which may hereafter become due employees of the state under the provisions of this chapter shall be paid out of any funds in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39, §1418; C46, 50, 54, §85.58]

Referred to in §85.60

**85.59 Payment of state employees.** The state comptroller is hereby authorized and directed to draw warrants on the state treasury for any and all amounts due state employees under the provisions of this chapter upon there being filed in his office, either a memorandum of settlement approved by the industrial commissioner or of an award made by a board of arbitration, for which no review is pending, or an order of the industrial commissioner from which no appeal has been taken, or a judgment of any court of the state accompanied by a certificate of the industrial commissioner setting forth the amount of compensation due and the statutory provisions under which the same should be paid. [C24, 27, 31, 35, 39, §1419; C46, 50, 54, §85.59]

Referred to in §85.60

**85.60 Approval not required.** Claims for compensation under sections 85.58 and 85.59 shall not require approval by the state comptroller. [C24, 27, 31, 35, 39, §1420; C46, 50, 54, §85.60]

**85.61 Definitions.** In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. "Employer" includes and applies to any person, firm, association, or corporation, state, county, municipal corporation, school district, and the legal representatives of a deceased employer.

2. "Workman" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, except as hereinafter specified.

3. The following persons shall not be deemed "workmen" or "employees":

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business.

b. An independent contractor.

c. A person holding an official position, or standing in a representative capacity of the employer, however officials elected or appointed by the state, counties, school districts and municipal corporations shall be deemed employees, including members of the Iowa highway safety patrol and conservation officers except when acting as peace officers performing law enforcement duties referred to in section 85.62.

4. The term "workman" or "employee" shall include the singular and plural of both sexes. Any reference to a workman or employee who has been injured shall, when such workman or employee is dead, include his dependents as herein defined or his legal representatives; and where the workman or employee is a minor or incompetent, it shall include his guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

5. The words "injury" or "personal injury" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee, or because of his employment.

c. They shall not include a disease unless it shall result from the injury.

6. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

7. The word "court" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

8. The term "volunteer firemen" shall mean any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fireman for a municipality at the request of the chief or other person in command of the fire department of such municipality, or of any other officer of such municipality having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee. [S13, §2477-m16; C24, 27, 31, 35, 39, §1421; C46, 50, 54, §85.61]

See §863B.1



**85.62 Peace officers.** Any policeman (except those pensioned under the policemen's pension fund created by law), any sheriff, marshal, constable, state highway patrolman, conservation officer, and any and all of their deputies and any and all other legally appointed or elected law-enforcing officers, who shall sustain an injury while performing the duties of a law-enforcing officer and from causes arising out of and in the course of his official duty, or employment as a law-enforcing officer, become temporarily or permanently physically disabled or if said injury results in death shall be entitled to compensation for all such injuries or disability together with statutory medical, nursing, hospital, surgery and funeral expenses, and where the officer is paid from public funds said compensation shall be paid out of the general fund of the state.

Where death occurs, compensation shall be paid to the dependents of the officer the same as in other compensation cases.

The compensation to be paid to such officers shall be computed the same as in other compensation cases, except where injury results in death, permanent total or permanent partial disability, then the weekly compensation shall be the maximum allowed by the workmen's compensation law.

The industrial commissioner shall have jurisdiction as in other cases and it shall be the duty of the industrial commission to investigate and determine the compensability of the claims of such law-enforcing officers. [C24, 27, 31, 35, 39, §1422; C46, 50, 54, §85.62]

Referred to in §85.61

**SECOND INJURY COMPENSATION ACT**

**85.63 Title of act.** This division shall be known and referred to as the "Second Injury Compensation Act." [C46, 50, 54, §85.63]

**85.64 Limitation of benefits.** If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Any benefits received by any such employee, or to which he may be entitled, by reason of such increased disability from any state or federal fund or agency, to which said employee has not directly contributed, shall be regarded

as a credit to any award made against said second injury fund as aforesaid. [C46, 50, 54, §85.64]

Referred to in §85.55

**85.65 Payments to second injury fund.** The employer, or, if insured, his insurance carrier in each case of compensable injury causing death shall pay to the treasurer of state for the second injury fund the sum of one hundred dollars, said payment to be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents; provided, however, that such payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 4, 1945. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter. [C46, 50, 54, §85.65]

**85.66 Second injury fund—payments—custodian.** When the total amount of such payments provided for in the preceding section, together with accumulated interest thereon and earnings, equals or exceeds fifty thousand dollars no further contributions to said fund shall be required; but whenever, thereafter, the amount of such sum shall be reduced below thirty thousand dollars by reason of payments made to employees pursuant to the provisions of this division, the said contributions shall be resumed forthwith and shall continue until such sum, together with accumulated interest and earnings, shall again amount to fifty thousand dollars. The industrial commissioner shall promulgate rules and regulations for the maintenance of the second injury fund and the making of contributions thereto, and shall determine when the contributions shall be made to said fund and when they shall be suspended; and he is hereby empowered and authorized to enforce said rules and regulations and the collection of said contributions.

Moneys so collected shall constitute a "Second Injury Fund", in the custody of the treasurer of state, to be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys thereof in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which said fund is invested, if necessary, for the proper administration or in the best interests of said fund. Disbursements from such fund shall be paid by the treasurer of state only upon the written order of the industrial commissioner. The treasurer of state as custodian of such fund shall quarterly furnish to the industrial commissioner a statement of the fund, setting forth the balance of moneys in said fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of such payments, and setting forth the balance of the

fund remaining to its credit. Such statement shall be open to public inspection in the office of the industrial commissioner. [C46, 50, 54, §85.66]

**85.67 Administration of fund—special counsel.** The industrial commissioner shall be charged with the conservation of the assets of the second injury fund, and the collection of contributions thereto. In furtherance of this purpose, the attorney general shall appoint a member of his staff to represent the industrial commissioner and the fund in all proceedings and matters arising under this division. In his award the industrial commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time such payments shall continue. The industrial commissioner shall administer the provisions of this division in connection with and under the same procedure as other cases arising under this chapter. [C46, 50, 54, §85.67]

**85.68 Actions.** The industrial commissioner, on behalf of the second injury fund created under the provisions of this division, shall have a cause of action under the provisions of section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of such previously disabled person was caused. Any such action shall be brought by the industrial commissioner on behalf of said fund, and any recovery, less the necessary and reasonable expenses incurred by the industrial commissioner, shall be paid to the treasurer of state and credited to said fund. [C46, 50, 54, §85.68]

**85.69 Federal contributions.** The treasurer of state is hereby authorized to receive and credit to said fund any sum or sums that may at any time be contributed to the state by the United States or any agency thereof, under any act of congress or otherwise, to which the state may be or become entitled by reason of any payments made to any previously disabled person out of said fund. [C46, 50, 54, §85.69]

This division is an amendment to this chapter. See 51GA, ch 81, §10

## CHAPTER 85A

### OCCUPATIONAL DISEASE COMPENSATION

Referred to in §85.3

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**85A.1 Short title.** This chapter shall be known and referred to as the "Iowa Occupational Disease Law". [C50, 54, §85A.1]

**85A.2 Employers included.** All employers as defined by the workmen's compensation law of Iowa and who are engaged in any business or industrial process hereinafter designated and described are employers within the provisions of this chapter and shall be subject thereto. [C50, 54, §85A.2]

**85A.3 Employees covered.** All employees as defined by the workmen's compensation law of Iowa employed in any business or industrial process hereinafter designated and described and who in the course of their employment are exposed to an occupational disease as herein

defined are subject to the provisions of this chapter. [C50, 54, §85A.3]

**85A.4 Disablement defined.** Disablement as that term is used in this chapter is the event or condition where an employee becomes actually incapacitated from performing his work or from earning equal wages in other suitable employment because of an occupational disease as designated and defined in this chapter in the last occupation in which such employee is injuriously exposed to the hazards of such disease. [C50, 54, §85A.4]

**85A.5 Compensation payable.** All employees subject to the provisions of this chapter who shall become disabled from injurious exposure to an occupational disease herein des-

ignated and defined within the conditions, limitations and requirements provided herein, shall receive compensation, reasonable surgical, medical, osteopathic, chiropractic, nursing and hospital services and supplies therefor, and burial expenses as provided in the workmen's compensation law of Iowa except as otherwise provided in this chapter.

If, however, an employee incurs an occupational disease for which he would be entitled to receive compensation if he were disabled as provided herein, but is able to continue in employment and requires medical treatment for said disease, then he shall receive reasonable medical services therefor, but not in excess of the amount provided in section 85.27. [C50, 54,§85A.5]

**85A.6 Dependents defined.** Dependents of a deceased employee whose death has been caused by an occupational disease as herein defined and under the provisions, conditions and limitations of this chapter shall be those persons defined as dependents under the workmen's compensation law of Iowa and such dependents shall receive compensation benefits as provided by said law. [C50, 54,§85A.6]

**85A.7 Limitations and exceptions.** The provisions of this chapter providing payment of workmen's compensation on account of occupational disease as defined and set out in this chapter, shall be subject to the following limitations and exceptions:

1. No compensation shall be payable if the employee, at the time of entering the employment of the employer in writing falsely represented himself to said employer as not having been previously disabled, laid off or compensated, or having lost time by reason of an occupational disease.

2. No compensation for death because of an occupational disease shall be payable to any person whose relationship to the deceased employee arose subsequent to the beginning of the first compensable disability, except only after-born children of a marriage existing at the beginning of such disability.

3. When such occupational disease causes the death of an employee and there are no dependents entitled to compensation, then the employer shall pay the medical, hospital and burial expenses as is provided by the workmen's compensation law, and shall also pay to the treasurer of the state for the use and benefit of the second injury compensation fund such amount as is required by the second injury compensation law.

4. Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the com-

ensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the industrial commissioner may determine is for the best interests of the claimant or claimants.

5. No compensation shall be allowed or payable for any disease or death intentionally self-inflicted by the employee or due to his intoxication, or due to his being a narcotic drug addict, his commission of a misdemeanor or felony, his refusal to use a safety appliance or health protective, his refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or his failure or refusal to perform or obey any statutory duty. The burden of establishing any such ground shall rest upon the employer.

6. No compensation shall be payable or allowed in any case where the last injurious exposure to the hazards of such occupational disease occurred prior to the effective date of this chapter. [C50, 54,§85A.7]

**85A.8 Occupational disease defined.** Occupational diseases shall be only those diseases hereinafter designated and defined and which arise out of and in the course of the employment hereinafter designated and described. Such diseases shall have a direct causal connection with the designated occupations or processes hereinafter set out opposite such named diseases respectively and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the occupation or process. Such disease must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease. [C50, 54,§85A.8]

**85A.9 Compensable occupational diseases and description of process or occupation.** The following occupational diseases and their respective process or occupation are hereby declared to be "occupational diseases" within the meaning, definition and provisions herein contained. For the purposes of and within the meaning of this chapter, no other diseases shall be considered "occupational" and compensable under the provisions of this chapter.

Column 1. Description of disease declared to be an "occupational disease"	Column 2. Description of process or occupation, in which said disease is declared to be an industrial hazard and compensable.	10. Bursitis, synovitis or tenosynovitis	10. Any process or occupation involving continued or repeated pressure on the parts affected.
1. Lead poisoning	1. Any process or occupation involving the use of or direct contact with lead or its preparation or compounds.	11. Chrome ulceration of the skin or nasal passages	11. Any process or occupation involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, sodium or their preparations.
2. Mercury poisoning	2. Any process or occupation involving the use of or direct contact with mercury or its preparations or compounds.	12. Cyanide poisoning	12. Any process or occupation involving the use of or direct contact with cyanides.
3. Poisoning by nitrous fumes	3. Any process or occupation in which nitrous fumes are evolved.	13. Brucellosis (undulant fever)	13. Any process or occupation involving the handling of animals or carcasses of animals infected with brucellosis.
4. Poisoning by carbon monoxide	4. Any process or occupation in which carbon monoxide is produced.	14. Erysipeloid	14. Any process or occupation involving the handling of animals or carcasses of animals infected with swine erysipelas.
5. Poisoning by methyl chloride halogens or other halogenated hydrocarbons	5. Any process or occupation involving the use of or direct contact with methyl chloride, halogens or other halogenated hydrocarbons.	15. Silicosis	15. Any process or occupation involving an exposure to or direct contact with silicon dioxide dust.
6. Poisoning by benzol or by nitro and amido derivatives of benzol (dinitrobenzol, aniline) and other aromatic hydrocarbons	6. Any process or occupation involving the use of benzol, nitro or amido derivatives of benzol and other aromatic hydrocarbons or their preparations or compounds.	16. Conjunctivitis	16. Any process or occupation involving an exposure to or direct contact with electro or oxy-acetylene welding or other radiant energy. [C50, 54, §85A.9]
7. Dermatitis. Infection or inflammation of the skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, vapors and solids	7. Any process or occupation involving the handling or use of oils, cutting compounds, lubricants, or involving contact with dusts, liquids, fumes, gases, vapors or solids.		
8. Zinc poisoning	8. Any process or occupation involving the use of or direct contact with zinc or its preparations, compounds or alloys.		
9. Manganese poisoning	9. Any process or occupation involving the use of or direct contact with manganese or its compounds.		

**85A.10 Last exposure — employer liable.** Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, shall be liable therefor. The notice of injury and claim for compensation as hereinafter required shall be given and made to such employer, provided, that in case of silicosis, the only employer liable shall be the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of not less than sixty days which period shall be after October 1, 1947. [C50, 54, §85A.10]

**85A.11 Diagnosis for brucellosis.** When any employee is clinically diagnosed as having brucellosis (undulant fever), it shall not be considered that the employee has the disease unless the clinical diagnosis is confirmed by:

1. A positive blood culture for brucella organisms, or
2. A positive agglutination test which must be verified by not less than two successive

positive agglutination tests, each of which tests shall be positive in a titer of one to one hundred sixty or higher. Said subsequent agglutination tests must be made of specimens taken not less than seven nor more than ten days after each preceding test.

The specimens for the tests required herein must be taken by a licensed practicing physician or osteopathic physician, and immediately delivered to the state hygienic laboratory of the state department of health at Iowa City, and each such specimen shall be in a container upon which is plainly printed the name and address of the subject, the date when the specimen was taken, the name and address of the subject's employer and, a certificate by the physician or osteopathic physician that he took the specimen from the named subject on the date stated over his signature and his address.

The state hygienic laboratory shall immediately make the test and upon completion thereof it shall send a report of the result of such test to the physician or osteopathic physician from whom the specimen was received and also to the employer.

In the event of a dispute as to whether the employee has brucellosis, the matter shall be determined as any other disputed case. [C50, 54,§85A.11]

**85A.12 Disablement or death following exposure—limitations.** An employer shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to the trade, occupation, process, or employment, and such disease actually arises out of the employment, and unless disablement or death results within three years in case of silicosis, or within one year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease commencing within the period above limited for which compensation has been paid or awarded or timely claim made as provided by this chapter and results within seven years after such exposure. [C50, 54,§85A.12]

**85A.13 Provisions relating to silicosis.**

1. *Silicosis defined.* Whenever used in this chapter, "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of silica dust.

2. *Presumptions.* In the absence of conclusive evidence in favor of the claim, disability or death from silicosis shall be presumed not to be due to the nature of any occupation within the provisions of this chapter unless during the ten years immediately preceding the disablement of the employee who has been exposed to the inhalation of silica dust over a period of not less than five years, two years of which shall have been in employment in this state.

3. *Compensation payable.* Except as in this chapter otherwise provided, compensation for disability from uncomplicated silicosis shall be payable in accordance with the provisions hereof; provided, however, that no compensation shall be payable for disability from silicosis of less than thirty-three and one-third percent of total, and provided further that, during the transitory period, the aggregate compensation payable to employees and their dependents for disability and death for uncomplicated silicosis shall be limited as follows: If disablement occurs or in case of no claim for prior disablement, if death occurs in the third calendar month after October 1, 1947, the total compensation and death benefits payable shall not exceed the sum of five hundred dollars. If disablement occurs or in case of no claim for prior disablement, if death occurs during the next calendar month, the total compensation and death benefits payable shall not exceed five hundred and fifty dollars. Thereafter, the total amount or limit of the compensation and death benefits payable for disability and death shall be increased at the rate of fifty dollars per month, the aggregate payable in each case to be limited according to the foregoing formula for the month in which disability occurs. or, in case of no claim for prior disablement, in which death occurs. Such progressive increase in the limits of the aggregate compensation and benefits for disability and death shall continue until the limit upon such benefits fixed in the workmen's compensation law is reached, and thereafter the total aggregate of such compensation and benefits shall be the total compensation and benefits otherwise provided in the workmen's compensation law.

4. *Silicosis complicated with other diseases.* In case of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for uncomplicated silicosis, provided, however, that the silicosis was an essential factor in causing such disability or death. In case of disability or death from silicosis complicated with any other disease, or from any other disease complicated with silicosis, the compensation shall be reduced as herein provided. [C50, 54, §85A.13]

**85A.14 Restriction on liability.** No compensation shall be payable under this chapter for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of injury under the workmen's compensation law. [C50, 54,§85A.14]

**85A.15 Employers limit of liability.** Payments of compensation and compliance with other provisions herein by the employer or his insurance carrier in accordance with the findings and orders of the industrial commissioner or the appellate court in appealed cases, shall discharge such employer from any and all further obligation. [C50, 54,§85A.15]

**85A.16 Reference to compensation law.** The provisions of the workmen's compensation law, so far as applicable, and not inconsistent herewith, shall apply in cases of compensable occupational diseases as specified and defined herein. [C50, 54,§85A.16]

**85A.17 Disability.** Compensation payable under this chapter for temporary disability, permanent total disability or permanent partial disability, shall be such amounts as are provided under the workmen's compensation law. [C50, 54,§85A.17]

**85A.18 Notice of disability or death—filing of claims.** Except as herein otherwise provided, procedure with respect to notice of disability or death, as to the filing of claims and determination of claims shall be the same as in cases of injury or death arising out of and in the course of employment under the workmen's compensation law. Written notice shall be given to the employer of an occupational disease by the employee within ninety days after the first distinct manifestation thereof, and in the case of death from such an occupational disease, written notice of such claim shall also be given to the employer within ninety days thereafter. [C50, 54,§85A.18]

**85A.19 Autopsy.** Upon the filing of a claim for compensation for death from an occupational disease where an autopsy is necessary in order to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the industrial commissioner and shall be made under the supervision of the coroner of the county in which death occurs or in any county where the body of such employee may be taken.

The industrial commissioner may designate a duly licensed physician to perform or attend such autopsy and to certify his findings thereon. Such findings shall be filed in the office of the industrial commissioner. The industrial commissioner may also exercise such authority on his own motion or on application made to him at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered and no compensation shall be payable. [C50, 54,§85A.19]

**85A.20 Medical board.** There is hereby created a medical board for occupational diseases which shall consist of the industrial hygiene physician of the state department of health and two physicians selected by the dean of the college of medicine of the state university of Iowa, from the staff of said college, who shall be qualified to diagnose and report on occupational diseases. The medical board shall have the use, without charge, of all necessary laboratory and other facilities of the college of medicine and of the university hospital at the state university of Iowa, and of

the state department of health in performing its duties prescribed herein. [C50, 54,§85A.20]

**85A.21 Controverted medical questions.** Controversial medical questions may be referred by the industrial commissioner to the medical board for investigation and report to the industrial commissioner when agreed to by the parties or on his own motion. No award shall be made in any case where controversial medical questions have been referred to the board until the board shall have duly investigated the case and made its report with respect to all such medical questions. The date of disablement, if in dispute, shall be deemed a medical question. [C50, 54,§85A.21]

**85A.22 Examination of employee by medical board.** The medical board, upon reference to it by the industrial commissioner of a claim for occupational disease, shall notify the claimant or claimants and the employer or his insurance carrier to appear before the medical board at a time and place stated in the notice. If the employee be living, he shall appear before the medical board at the time and place specified to submit to such clinical and X-ray examinations as the medical board may require. The claimant and the employer shall each be entitled, at his own expense, to have present at all examinations conducted by the medical board, a physician admitted to practice in the state, who shall be given every reasonable facility for participating in every such examination. If a physician admitted to practice in the state shall certify that the employee is physically unable to appear at the time and place designated by the medical board, such board shall, on notice to the parties, change the time and place of examination to such other time and place as may reasonably facilitate the examination of the employee. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to such examination. [C50, 54,§85A.22]

**85A.23 Medical board's report—date of disablement.** The medical board shall, as soon as practicable after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. If the date of disablement is controverted and cannot be fixed exactly, the medical board shall fix the most probable date having regard to all the circumstances of the case. The medical board shall also include in its report the name and address of the physician or physicians if any who appeared before it and what if any medical reports and X-rays were considered by it. [C50, 54,§85A.23]

**85A.24 Findings and report.** The medical board shall file its report in triplicate with the industrial commissioner who shall mail or deliver a certified copy thereof to the claimant and to the employer. The report of the medical board shall become a part of the record of

the case. The industrial commissioner shall make his decision or award in the case based upon the entire record. The report of the medical board in any case may be remanded by the commissioner to the board for reconsideration and further report. The members of the medical board shall not be prohibited from testifying before the industrial commissioner, board of arbitration, or any other person, commission or court as to the results of the examination or the condition of any employee examined by the board. [C50, 54, §85A.24]

**85A.25 Existing diseases barred.** There shall be no liability for the payment of compensation under the provisions of this chapter to any person who on October 1, 1947 is suffering with an occupational disease. An employer may at his own expense require his employees to submit to a physical examination prior to October 1, 1947, and in the case of new employees employed after July 4, 1947, within ninety days of the commencement of the employment of such new employees, for the purpose of determining whether any such person is affected with or has an occupational disease. In the event it is determined by such examination that any employee is suffering from or is affected with an occupational disease, the employer may require the employee to waive in writing any claim for compensation under the provisions of this chapter on account thereof as a condition to continuing in the employment of the employer.

In cases of dispute as to the existence of the disease the controversy may be referred to the industrial commissioner who shall decide the matter and who may, upon his own motion or by agreement of the parties, submit the controverted question to the medical board provided herein for its investigation and report, and said board shall immediately pro-

ceed with the investigation and with the examination of the employee and forthwith make its report to the industrial commissioner. Said examination shall be made and the investigation conducted in the same manner as is provided herein as to other controverted medical questions. The industrial commissioner shall then make his decision on the matter, and said decision shall have the same force and effect and be subject to all the other provisions of law applicable the same as any other decision of the industrial commissioner. [C50,54,§85A.25]

**85A.26 Insurance contracts.** No policy of insurance in effect at the time of the enactment of this chapter covering the liability of an employer under the workmen's compensation law, shall be construed to cover the liability of such employer under this chapter for any occupational disease unless such liability is expressly accepted by the insurance carrier issuing such policy and is indorsed thereon. The insurance or security in force to cover compensation liability under this chapter shall be separate and distinct from the insurance or security under the workmen's compensation law and any insurance contract covering liability under either this chapter or the workmen's compensation law need not cover any liability under the other. [C50, 54,§85A.26]

**85A.27 Administration.** The industrial commissioner shall have jurisdiction over the operation and administration of the compensation provisions of this chapter and said commissioner shall perform all of the duties imposed upon him by this chapter and such further duties as may hereafter be imposed by law. [C50, 54,§85A.27]

Effective October 1, 1947, except §85A.25 which became effective July 4, 1947. See 52GA, ch 71,§27  
Constitutionality, 52GA, ch 71,§29

## CHAPTER 86

### INDUSTRIAL COMMISSIONER

Referred to in §§85.3, 85.31, 85.61, 87.1, 87.2, 87.18, 87.14, 87.21, 87.24

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**86.1 Industrial commissioner — term.** The governor shall, prior to the adjournment of the general assembly in 1925, and each six years thereafter, appoint, with the approval of the senate, an industrial commissioner whose term of office shall be six years from July 1 of the year of appointment. He shall maintain his office at the seat of government. An appointment to fill a vacancy may be made when the senate is not in session, but shall be acted upon at the next session thereof. [S13,§2477-m22; C24, 27, 31, 35, 39,§1423; C46, 50, 54,§86.1]

Confirmation procedure, §2.40

**86.2 Appointment of deputies.** The commissioner may appoint three deputy industrial commissioners for whose acts he shall be responsible and who shall serve during the pleasure of the commissioner. [C24, 27, 31, 35, 39,§1424; C46, 50, 54,§86.2]

**86.3 Duties of deputies.** In the absence or disability of the industrial commissioner, or when acting under the directions of the commissioner, the deputies shall have all of the powers and perform all of the duties of the industrial commissioner pertaining to his office. [C24, 27, 31, 35, 39,§1425; C46, 50, 54,§86.3]

**86.4 Political activity and contributions.** It shall be unlawful for the commissioner, or any appointee of the commissioner while in office, to espouse the election or appointment of any candidate to any political office, contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. [S13,§§2477-m23,-m37; C24, 27, 31, 35, 39,§1427; C46, 50, 54,§86.4]

**86.5 Political promises.** Any person who is a candidate for appointment as commissioner who makes any promise to another, express or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as a commissioner, appoint such person or one whom he may recommend to any office within the power of the commissioner to appoint, shall be fined one hundred dollars. [S13,§2477-m38; C24, 27, 31, 35, 39,§1428; C46, 50, 54,§86.5]

**86.6 Recommendations of commissioner.** All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing, signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection,

and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same, and filed by the commissioner and open for public inspection at all reasonable times. If any person recommending the appointment of another within the contemplation of this section refuses to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a memorandum thereof, stating the name of the person recommended and the name of the person who made the same, which shall be filed in the office of the governor or the commissioner as the case may be. [S13,§2477-m39; C24, 27, 31, 35, 39,§1429; C46, 50, 54,§86.6]

**86.7 Interest in affected business.** It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this chapter during his term of office, and if he violates this statute, it shall be sufficient grounds for his removal from office, and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy. [S13, §2477-m39; C24, 27, 31, 35, 39,§1430; C46, 50, 54, §86.7]

Similar provisions, §§15.3, 18.4, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 563.23, 741.8, 741.11

**86.8 Duties.** It shall be the duty of the commissioner:

1. To establish and enforce all necessary rules and regulations not in conflict with the provisions of this chapter and chapters 85 and 87 for carrying out the purposes thereof.

2. To prepare and distribute the necessary blanks relating to computation, adjustment, and settlement of compensation arising thereunder.

3. To preside as chairman of boards of arbitration for the settlement of controversies.

4. To keep records of all proceedings and decisions of such boards, issue subpoenas for witnesses, administer oaths, examine books and records of parties subject to such provisions.

5. In general to do all things not inconsistent with law in carrying out said provisions according to their true intent and purpose. [S13, §2477-m24; C24, 27, 31, 35, 39,§1431; C46, 50, 54, §86.8]

Vocational education, §§259.4, 259.5

**86.9 Biennial reports.** The commissioner shall, at the time provided by law, make a biennial report to the governor setting forth in appropriate form the business and expense of the office for the two preceding years, the num-



ber of arbitrations and the results thereof, and such other matters pertaining to his office as may be of public interest, together with any recommendations for change or amendment of the laws as found in this chapter and chapters 85 and 87, and such recommendations, if any, shall be transmitted by the governor to the first general assembly in session thereafter. [S13,§2477-m24; C24, 27, 31, 35, 39,§1432; C46, 50, 54,§86.9]

Time of making report, §17.3

**86.10 Records of employer—right to inspect.**

All books, records, and pay rolls of the employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the commissioner in his administration of the law.

Information so obtained shall be used for no other purpose than to advise the commissioner or insurance association with reference to such matters.

A refusal on the part of the employer to submit his books, records, or pay rolls for the inspection of the commissioner or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars for each such offense, to be collected by civil action in the name of the state, and paid into the state treasury. [S13,§2477-m36; C24, 27, 31, 35, 39,§1433; C46, 50, 54,§86.10]

**86.11 Reports of injuries.** Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than seven days, then within forty-eight hours thereafter, not counting Sundays and legal holidays, the employer having had notice or knowledge of the occurrence of such injury and resulting disability, a report shall be made in writing, by the employer to the industrial commissioner on forms to be procured from the commissioner for that purpose. If such injury to the employee results in permanent total disability, permanent partial disability or death, then the employer, upon notice or knowledge of the occurrence of the employment injury, shall file a report with the industrial commissioner, within forty-eight hours after having notice or knowledge of the permanent injury to the employee or his death. [S13,§2477-m36; C24, 27, 31, 35, 39,§1434; C46, 50, 54,§86.11]

**86.12 Failure to report.** Any employer who willfully fails to make the reports required by this chapter shall be liable to a penalty of fifty

dollars for each offense to be recovered by the commissioner. The commissioner shall be represented by the county attorney of the county in which such proceedings is brought. [S13,§2477-m36; C24, 27, 31, 35, 39,§1435; C46, 50, 54,§86.12]

**86.13 Compensation agreements.** If the employer and the employee reach an agreement in regard to the compensation, a memorandum thereof shall be filed with the industrial commissioner by the employer or the insurance carrier, and unless the commissioner shall, within twenty days, notify the employer or the insurance carrier and employee of his disapproval of the agreement by certified mail sent to their addresses as given on the memorandum filed, the agreement shall stand approved and be enforceable for all purposes, except as otherwise provided in this and chapters 85 and 87.

In case the injured employee is a minor, either he or his trustee may give a valid and binding release for the compensation paid on his account.

Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this and chapter 85.

Any failure on the part of the employer or insurance carrier to file such memorandum of agreement with the industrial commissioner within thirty days after the payment of weekly compensation is begun shall stop the running of section 85.26 as of the date of the first such payment. [S13,§2477-m25; C24, 27, 31, 35, 39,§1436; C46, 50, 54,§86.13; 57 GA, ch 267, §11]

**86.14 Failure to reach agreement.** If the employer and injured employee or his representatives or dependents fail to reach an agreement in regard to compensation, either party may file with the industrial commissioner a petition for arbitration together with two copies thereof, stating therein his or her claims in general terms. Thereupon the commissioner or one of the deputies shall in writing notify the parties that the defendant is given at least ten days in which to answer said petition or otherwise plead. A defense other than a general denial of claimant's alleged facts must be plead as a special defense. [S13, §§2477-m26, -m28; C24, 27, 31, 35, 39, §§1437, 1438; C46, 50, 54,§86.14]

**86.15 Board of arbitration.** Petitions for arbitration shall be heard before a deputy industrial commissioner unless either party shall notify the industrial commissioner or a deputy before the time fixed for hearing that they desire a board of arbitration to hear and determine the rights of the respective parties. When a board of arbitration is requested by either party, such board shall consist of three persons, one of whom shall be a deputy industrial commissioner, who shall act as chairman. The other two arbitrators shall be named, respectively, by the two parties to the proceeding. [S13, §§2477-m26, -m28; C24, 27, 31, 35, 39, §§1437, 1438; C46, 50, 54,§86.15]

**86.16 Oath of arbitrators.** The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

"I, . . . . ., do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

(Signed) . . . . ."

[S13,§2477-m27; C24, 27, 31, 35, 39,§1439; C46, 50, 54,§86.16]

**86.17 Hearings.** The deputy industrial commissioner or the board of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the deputy industrial commissioner or the board of arbitration shall be in the county where the injury occurred, but by written stipulation of the parties filed in the case it may be held at any other place in the state. If the injury occurred outside this state the hearings shall be held in the county seat of this state which is nearest to the place where the injury occurred unless the interested parties and the industrial commissioner or one of his deputies mutually agree by written stipulation that the same may be held at some other place. [S13,§2477-m29; C24, 27, 31, 35, 39,§1440; C46, 50, 54,§86.17]

**86.18 Liberal rules of evidence.** While sitting as a board of arbitration, or when conducting a hearing on review, or in making any investigation or inquiry, neither the board of arbitration nor the commissioner or his deputies shall be bound by common law or statutory rules of evidence or by technical or formal rules of procedure; but they shall hold such arbitrations, or conduct such hearings and make such investigations and inquiries in such manner as is best suited to ascertain and conserve the substantial rights of all parties thereto. Process and procedure under this chapter shall be as summary as reasonably may be. [C24, 27, 31, 35, 39,§1441; C46, 50, 54, §86.18]

Referred to in §87.25

**86.19 Appointment of reporter.** If either, or both, parties to any proceeding hereunder shall furnish compensation for a shorthand reporter in such reasonable amount as the commissioner or one of his deputies shall fix, the commissioner or one of his deputies shall appoint a reporter to report the proceedings of any hearing before the commissioner or one of his deputies, or a board of arbitration. The amount so paid shall be taxed as other costs. Any such reporter shall faithfully and accurately report any proceeding for which he or she shall be employed. [C24, 27, 31, 35, 39,§1442; C46, 50, 54,§86.19]

Taxation of costs, §86.40

**86.20 Transcript of evidence — compensation.** The official shorthand reporter appointed for any hearing before the commissioner or one of his deputies or a board of arbitration on written request by either party to the controversy, or by the commissioner or one

of his deputies, shall make a transcript of the evidence or so much thereof as shall be requested, to be paid for at the rate of not to exceed ten cents for each one hundred words. The transcript shall be paid for by the party requesting it, and if used as the record of the evidence on a review or appeal, the expense shall be taxed as part of the costs against the losing party, or apportioned as the case may be. [C24, 27, 31, 35, 39,§1443; C46, 50, 54,§86.20]

**86.21 Depositions.** The deposition of any witness may be taken and used as evidence in any hearing pending before a board of arbitration or the industrial commissioner or one of his deputies in compensation proceedings.

Such depositions shall be taken in the same manner as provided for the taking of depositions for use in the district court, and when so taken shall be admissible in evidence in such hearings in the same manner, subject to the same rules governing the admission of evidence as in the district court.

Either party upon written notice, may elect to take the deposition of a witness, who may live within one hundred miles of the place of hearing, if the testimony of such witness is desired to show the physical condition of the injured party or testimony relating to the cause of injury.

Application for a commission to take depositions in such case shall be filed in the office of the clerk of the district court of the county wherein the injury occurred. [C24, 27, 31, 35, 39,§1444; C46, 50, 54,§86.21]

Depositions, R.C.P. 153 et seq.

**86.22 Witnesses—books and records.** The district court is hereby empowered to enforce by proper proceedings the provisions of this chapter relating to the attendance and testimony of witnesses and the examination of books and records. [S13,§2477-m24; C24, 27, 31, 35, 39,§1445; C46, 50, 54,§86.22]

Contempts, ch 665

**86.23 Findings of arbitration board or deputy commissioner filed.** The decision of a deputy industrial commissioner or board of arbitration, together with a statement or certificate of evidence submitted at the hearing, the findings of fact, rulings of law, and any other matters pertinent to questions arising at such hearing, shall be filed in the office of the industrial commissioner. [S13,§2477-m29; C24, 27, 31, 35, 39,§1446; C46, 50, 54,§86.23]

**86.24 Review.** Any party aggrieved by the decision or findings of a deputy industrial commissioner or board of arbitration may, within ten days after such decision is filed with the industrial commissioner, file in the office of the commissioner a petition for review, and the commissioner shall thereupon fix a time for the hearing on such petition and notify the parties.

At such hearing, the commissioner shall hear the parties, consider all evidence taken before the deputy industrial commissioner or board of arbitration if it has been transcribed,

and may hear any additional evidence, and he may affirm, modify, or reverse the decision of the board, or may remand it to the board for further findings of facts.

Additional evidence to that presented and admitted in arbitration proceedings shall not be introduced by either party unless such party gives the opposite party, or his attorney, five days notice thereof in writing, stating the particular phase of the controverted claim to which such additional evidence will apply. [S13,§§2477-m29,m32; C24, 27, 31, 35, 39,§1447; C46, 50, 54,§86.24]

**86.25 Decision and findings of fact.** The decision of the industrial commissioner in any case on review before him shall be in writing, filed in his office, and shall set forth his findings of fact and conclusions of law. [S13,§2477-m32; C24, 27, 31, 35, 39,§1448; C46, 50, 54,§86.25]

**86.26 Appeal.** Any party aggrieved by any decision or order of the industrial commissioner in a proceeding on review of an arbitration decision, may within thirty days from the date such decision or order is filed, appeal therefrom to the district court of the county in which the injury occurred, by filing in the office of the commissioner a written notice of appeal setting forth in general terms the decision appealed from and the grounds of the appeal. The commissioner shall forthwith give notice to the other parties in interest. [S13,§2477-m33; C24, 27, 31, 35, 39,§1449; C46, 50, 54,§86.26]

Referred to in §§86.34, 87.24

**86.27 Transcript on appeal.** Within thirty days after a notice of appeal is filed with the commissioner, he shall make, certify, and file in the office of the clerk of the court to which the appeal is taken, a full and complete transcript of all documents in the case, including any depositions, and a transcript or certificate of the evidence, if reported, together with the notice of appeal. [S13,§2477-m33; C24, 27, 31, 35, 39,§1450; C46, 50, 54,§86.27]

Referred to in §87.25

**86.28 Trial on appeal.** The first term after the appeal is taken shall be the trial term, and if the appeal is taken during a term, it shall be triable at that term at any time after ten days from the date of filing the transcript by the commissioner and ten days notice in writing by either party upon the other. Such appeal shall have precedence on the docket and for trial over all other civil business except appeals of the same kind which shall be tried in the order in which they are filed, except as otherwise agreed in writing by all parties in interest and filed. [C24, 27, 31, 35, 39,§1451; C46, 50, 54,§86.28]

**86.29 Record on appeal—findings of fact conclusive.** The transcript as certified and filed by the industrial commissioner shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud the findings of fact made by

the industrial commissioner within his powers shall be conclusive. [C24, 27, 31, 35, 39,§1452; C46, 50, 54,§86.29]

**86.30 Decision on appeal.** Any order or decision of the industrial commissioner may be modified, reversed, or set aside on one or more of the following grounds and on no other:

1. If the commissioner acted without or in excess of his powers.

2. If the order or decree was procured by fraud.

3. If the facts found by the commissioner do not support the order or decree.

4. If there is not sufficient competent evidence in the record to warrant the making of the order or decision. [C24, 27, 31, 35, 39,§1453; C46, 50, 54,§86.30]

Referred to in §87.26

**86.31 Judgment or order remanding.** When the district court, on appeal, reverses or sets aside an order or decision of the industrial commissioner, it may remand the case to the commissioner for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court. [C24, 27, 31, 35, 39,§1454; C46, 50, 54,§86.31]

**86.32 Costs on appeal.** The clerk shall charge no fee for any service rendered in compensation cases except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs in such appeals shall be in the discretion of the court. [C24, 27, 31, 35, 39,§1455; C46, 50, 54, §86.32]

**86.33 Appeal to supreme court.** An appeal may be taken to the supreme court from any final order, judgment, or decree of the district court, but such appeal shall be docketed, placed upon the term calendar, and submitted in the same time and manner as criminal cases in said court. [C24, 27, 31, 35, 39,§1456; C46, 50, 54,§86.33]

Appeals, see ch 686

**86.34 Review of award or settlement.** Any award for payments or agreement for settlement made under this chapter where the amount has not been commuted, may be reviewed by the industrial commissioner or a deputy commissioner at the request of the employer or of the employee at any time within three years from the date of the last payment of compensation made under such award or agreement, and if on such review the commissioner finds the condition of the employee warrants such action, he may end, diminish, or increase the compensation so awarded or agreed upon. Any party aggrieved by any decision or order of the industrial commissioner or a deputy commissioner on a review of award or settlement as provided in this section, may appeal to the district court

of the county in which the injury occurred and in the same manner as is provided in section 86.26. [S13,§2477-m34; C24, 27, 31, 35, 39,§1457; C46, 50, 54,§86.34]

Referred to in §86.35

**86.35 Notice of review.** When any interested party desires a review of payments or settlement as provided in section 86.34, he shall file a petition for review with the industrial commissioner setting forth the grounds upon which the right of review is claimed. The commissioner shall give the parties in interest notice of the time fixed for such hearing, which shall not be less than five days from the date of filing such petition. [S13,§2477-m34; C24, 27, 31, 35, 39,§1458; C46, 50, 54,§86.35]

**86.36 Notice and service—resident and non-resident employers.**

1. Any notice to be given by the commissioner or court provided for in this chapter shall be in writing, but service thereof shall be sufficient if mailed by certified mail, addressed to the last known address of the parties, unless otherwise provided in this chapter.

2. Whenever service of any notice is made on a nonresident employer under the provisions of subsection 2 of section 85.3, the same shall be done in the following manner:

a. By filing a copy of said notice with the secretary of state.

b. By mailing to such employer within ten days after said filing with the secretary of state, by restricted certified mail addressed to the nonresident employer at his last known residence or place of abode, a copy of said notice on which shall be noted the date of filing of the copy with the secretary of state.

3. In lieu of mailing said copy of notice to the nonresident employer in a foreign state, plaintiff may cause the same to be personally served in the foreign state on such employer by any adult person not a party to the proceedings, by delivering said copy of notice to the nonresident employer or by offering to make such delivery in case he refused to accept delivery.

4. Proof of the filing of a copy of said notice with the secretary of state and proof of the mailing or personal delivery of the copy to said nonresident employer shall be made by affidavit of the party doing said acts. All affidavits of service shall be indorsed upon or attached to the original of the papers to which they relate and all such proofs of service, including the restricted certified mail return receipt shall be forthwith filed with the original of the papers.

5. The secretary of state shall keep a record of all notices filed with him pursuant to section 85.3 and this section and shall not permit said filed notices to be taken from his office except on an order of court but shall, on request and without fee, furnish any nonresident employer or his insurer with a certified copy of any notice in which he is named.

6. The term nonresident employer as used

in section 85.3 and this section shall not be construed to mean foreign corporations lawfully qualified to transact business within the state of Iowa under chapter 494. [S13,§2477-m34; C24, 27, 31, 35, 39,§1459; C46, 50, 54,§86.36; 57GA, ch 267,§12]

**86.37 Place of hearing.** All petitions for review of the decision and findings of a deputy industrial commissioner or board of arbitration shall be held at the seat of the government, and all petitions for review of payments or settlements shall be heard in the county where the injury occurred, provided, however, with the approval of the industrial commissioner the parties interested may agree upon another place of hearing. [C24, 27, 31, 35, 39, §1460; C46, 50, 54,§86.37]

**86.38 Examination by physician—fee.** The industrial commissioner may appoint a duly qualified, impartial physician to examine the injured employee and make report. The fee for this service shall be five dollars, to be paid by the industrial commissioner, together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employee shall not be prohibited from testifying before the industrial commissioner, board of arbitration, or any other person, commission, or court, as to the results of his examination or the condition of the injured employee. [S13,§2477-m30; C24, 27, 31, 35, 39,§1461; C46, 50, 54,§86.38]

**86.39 Fees — approval — lien.** All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85 and 87 shall be subject to the approval of the industrial commissioner, and no lien for such service shall be enforceable without the approval of the amount thereof by the industrial commissioner. For services rendered in the district court and supreme court, the attorney's fee shall be subject to the approval of a judge of the district court. [S13,§§2477-m20, m35; C24, 27, 31, 35, 39,§1462; C46, 50, 54,§86.39]

Referred to in §85.27

**86.40 Compensation of arbitrators—costs.** The arbitrators except the commissioner shall each receive five dollars as a fee for services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer, who may deduct an amount equal to one-half the sum from any compensation found due the employee. All other costs incurred in the hearing before a board of arbitration or the commissioner shall be taxed in the discretion of such board or the commissioner as the case may be. [S13,§2477-m31; C24, 27, 31, 35, 39, §1463; C46, 50, 54,§86.40]

**86.41 Witness fees.** Witness fees and mileage on hearings before an arbitration board or the industrial commissioner shall be the same as in the district court. [S13,§2477-m24; C24, 27, 31, 35, 39,§1464; C46, 50, 54,§86.41]

Witness fees and mileage, §822.69 et seq.

86.42 Judgment by district court on award. Any party in interest may present a certified copy of an order or decision of the commissioner, or an award of a board of arbitration from which no petition for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree or judgment in accordance therewith and cause the clerk to notify the parties. Such decree or judgment, in the absence of an appeal from the decision of the industrial commissioner, shall have the

same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court. [S13,§2477-m33; C24, 27, 31, 35, 39,§1465; C46, 50, 54,§86.42]

86.43 Judgment—modification of. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the court shall revoke or modify the decree or judgment to conform to such decision. [S13, §2477-m33; C24, 27, 31, 35, 39,§1466; C46, 50, 54,§86.43]

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

Referred to in §§85.3, 85.31, 85.61, 86.8, 86.9, 86.13, 86.39, 87.13, 87.14, 87.21, 87.24

- 87.1 Insurance of liability required.
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87.14 Mines—insurance required.

- 87.15 Injunctions.
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87.21 Employer failing to insure.
87.22 Manner of election—failure to elect.
87.23 Notice to employer of election.
87.24 Trial by jury.
87.25 Evidence—instructions.
87.26 Waiver of jury.
87.27 Appeal.

87.1 Insurance of liability required. Every employer subject to the provisions of this and chapters 85 and 86, unless relieved therefrom as hereinafter provided, shall insure his liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

Every such employer shall exhibit, on demand of the insurance commissioner, evidence of his compliance with this section; and if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under the common law as modified by statute, and in the same manner and to the same extent as though such employer had legally exercised his right to reject the provisions relating to compensation for injury to employees. [S13,§2477-m41; C24, 27, 31, 35, 39,§1467; C46, 50, 54,§87.1]

87.2 Notice of failure to insure. Any employer who fails to insure his liability as required herein shall keep posted a sign of sufficient size and so placed as to be easily seen by his employees in the immediate vicinity where working, which sign shall read as follows:

NOTICE TO EMPLOYEES

You are hereby notified that the undersigned employer has failed to insure his liability to pay compensation as required by law, and that because of such failure he is liable to his em-

ployees in damages for personal injuries sustained by his employees in the same manner and to the same extent as though he had legally exercised his right to reject the provisions relating to compensation.

(Signed) .....

Any employer coming under the provisions of this and chapters 85 and 86 who fails to comply with this section or to post and keep the above notice in the manner and form herein required, shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39,§1468; C46, 50, 54,§87.2]

Punishment, §687.7

87.3 Maximum commission for renewal. No insurer of any obligation under this chapter shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this chapter, more than fifteen percent of the premium charged. [S13,§2477-m46; C24, 27, 31, 35, 39, §1469; C46, 50, 54,§87.3]

87.4 Mutual companies. For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner;

and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter. [S13, §2477-m42; C24, 27, 31, 35, 39, §1470; C46, 50, 54, §87.4]

**87.5 Benefit insurance.** Subject to the approval of the industrial commissioner, any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefit, or insurance in lieu of compensation and insurance; but such scheme shall in no instance provide less than the benefits provided and secured, nor vary the period of compensation provided for disability or for death, or the provisions of law with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; and the approval of the industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits, in addition to those required by law, commensurate with such contributions. [S13, §2477-m43; C24, 27, 31, 35, 39, §1471; C46, 50, 54, §87.5]

**87.6 Certificate of approval.** When such scheme or plan is approved by the industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions relating to compensation and insurance during a period of time fixed by said department. [S13, §2477-m44; C24, 27, 31, 35, 39, §1472; C46, 50, 54, §87.6]

**87.7 Termination of plan—appeal.** Such scheme or plan may be terminated by the industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter; but from any such order of said industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved, appeal to the district court in the same time and manner as appeals from actions of the industrial commissioner, which appeal shall be tried as an equitable action. [S13, §2477-m45; C24, 27, 31, 35, 39, §1473; C46, 50, 54, §87.7]

Appeal to district court, §86.26

**87.8 Insolvency clause prohibited.** No policy of insurance issued under this chapter shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is unpaid. [S13, §2477-m48; C24, 27, 31, 35, 39, §1474; C46, 50, 54, §87.8]

**87.9 Policy clauses required.** Every policy shall provide that the workman shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability, or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of any obligation of the insured to said workman or his dependents. [S13, §2477-m48; C24, 27, 31, 35, 39, §1475; C46, 50, 54, §87.9]

**87.10 Other policy requirements.** Every policy issued by an insurance corporation, association, or organization to insure the payment of compensation shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer, and the insurer shall be bound by every agreement, adjudication, award or judgment rendered against the insured. [S13, §2477-m47; C24, 27, 31, 35, 39, §1476; C46, 50, 54, §87.10]

**87.11 Relief from insurance.** When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such commissioner security satisfactory to him and the industrial commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or industrial commissioner. [S13, §2477-m49; C24, 27, 31, 35, 39, §1477; C46, 50, 54, §87.11]

Referred to in §87.21

**87.12 Mines — conclusive presumption.** It shall be conclusively presumed that the work and operation of any and all coal mines, or production of coal, under whatever system of operation is an extra hazardous business, enterprise and occupation. [C35, §1477-g1; C39, §1477.1; C46, 50, 54, §87.12]

**87.13 Interpretative clause.** The law as the same appears in section 85.4 and other sections of chapters 85, 86, and 87, including the words "except as provided in this chapter" as the same appear in section 85.3 all insofar as it relates to the right to reject the terms, provisions and conditions of the compensation law, shall not apply to any employer or employee engaged in the operation of coal mines, or production of coal, under any system of remov-

ing coal for sale, but all provisions of the law in chapters 85, 86, and 87 relating to compensation for injuries sustained arising out of and in the course of such employment shall be exclusive, compulsory and obligatory upon the employer and employee in such employment. [C35,§1477-g2; C39,§1477.2; C46, 50, 54,§87.13]

**87.14 Mines — insurance required.** It shall be unlawful for any person, firm, association, corporation or partnership to engage in the business of operating a mine under any system of removing coal for sale, or any work in connection therewith, or incident thereto, without first obtaining insurance covering compensation payments or obtaining relief therefrom as provided in chapters 85, 86, and 87, as herein amended. Any violation of this section shall be deemed a misdemeanor and upon conviction of such offense the offender shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. Each day such offense is committed shall be regarded as a separate, wrongful act and may be prosecuted in one proceeding, but in separate counts, at the election of the prosecuting attorney. [C35, §1477-g3; C39,§1477.3; C46, 50, 54,§87.14]

**87.15 Injunctions.** It shall be the duty of the attorney general of the state and/or the county attorney of the county where such offense has been committed, or when he has reason to believe such offense is about to be committed to bring an action in equity in the name of the state to enjoin such offenders from continuing such wrongful acts, and the court or judge before whom such action is brought shall, if the facts warrant, issue a temporary or permanent writ of injunction without bond. [C35,§1477-g4; C39,§1477.4; C46, 50, 54,§87.15]

**87.16 Bond in lieu of insurance.** Any employer who has more than five persons engaged in hazardous employment, except the employments recited in section 85.1, and who has failed, omitted, and neglected to secure the payment of compensation by carrying insurance or is not relieved therefrom as by the statutes in such cases provided, shall furnish a bond approved by the industrial commissioner, as to form and security, conditioned to secure and pay workmen's compensation in accordance with the law; such bond shall be in such amount as may be fixed by the industrial commissioner having due regard for the number of employees and considering the industrial experience in such industry as a class. [C31, 35,§1477-c1; C39,§1477.5; C46, 50, 54,§87.16]

Referred to in §87.19

**87.17 Notice to be posted.** Such employer shall post and keep posted in some conspicuous place upon the premises where the business is conducted, a notice in form approved by the industrial commissioner, stating the nature of the security furnished by such employ-

er to secure the compensation payments contemplated by the law. [C31, 35,§1477-c2; C39, §1477.6; C46, 50, 54,§87.17]

Referred to in §87.19

**87.18 Duty of mine inspectors.** It shall be the duty of each coal mine inspector in his inspection district to report to the industrial commissioner, on blanks furnished by the commissioner, any employer who has failed, omitted, or neglected to comply with the provisions of the law with reference to the posting and keeping posted the notice as provided by law, with such other information required by the commissioner, and it shall be the duty of each factory inspector to perform like service in their respective districts. [C31, 35,§1477-c3; C39, §1477.7; C46, 50, 54,§87.18]

Referred to in §87.19

**87.19 Failure to comply—proceedings.** Upon the receipt of information by the industrial commissioner of any employer failing to comply with sections 87.16 to 87.18, inclusive, he shall at once notify such employer by certified mail; that unless such employer comply with the requirements of law, legal proceedings will be instituted to enforce such compliance.

Unless such employer comply with the provisions of the law within fifteen days after the giving of such notice, the industrial commissioner shall report such failure to the attorney general, whose duty it shall be to bring an action in a court of equity to enjoin the further violation. Upon decree being entered for a temporary or permanent injunction, a violation shall be a contempt of court and punished as provided for contempt of court in other cases. [C31, 35,§1477-c4; C39,§1477.8; C46, 50, 54,§87.19; 57GA, ch 267,§13]

Contempts, generally, ch 665

**87.20 Revocation of release from insurance.** The insurance commissioner with the concurrence of the industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order theretofore made relieving any employer from carrying insurance as provided by this chapter. [S13,§2477-m49; C24, 27, 31, 35, 39, §1478; C46, 50, 54,§87.20]

**87.21 Employer failing to insure.** When any employer has more than five persons employed in hazardous employment, excepting the employments recited in the first section of chapter 85, and such employer has elected to reject the compensation provisions of said chapter, or when any such employer has not rejected the terms and provisions thereof by filing and posting notices as provided in chapter 85, but has failed to insure his or its liability in one of the ways provided in this chapter, unless relieved from carrying such insurance as provided in section 87.11, then any such employer's employee who has not rejected the provisions of chapters 85, 86, and 87, in case of personal injury in the course of, and arising out of such employment, shall have the right

to elect to collect compensation as provided in chapters 85 and 86, or collect damages at common law as modified by said chapter 85. [C24, 27, 31, 35, 39,§1479; C46, 50, 54,§87.21]

Referred to in §§87.22, 87.24, 87.26

**87.22 Manner of election—failure to elect.** Any employee entitled to make an election as provided in section 87.21 shall do so in writing signed by himself indicating the election, made and filed with the industrial commissioner within sixty days after receiving an injury for which such employee is entitled to either compensation or damages.

If such injured employee or one having the right to elect for him, fails to make an election within sixty days, then and in that event it shall be conclusively presumed that the employee elected to accept compensation according to the schedule of compensation as provided in chapter 85. [C24, 27, 31, 35, 39,§1480; C46, 50, 54,§87.22]

Referred to in §§87.23, 87.24, 87.26

**87.23 Notice to employer of election.** Within five days after a written election has been filed in the office of the industrial commissioner as provided in section 87.22, the commissioner shall give notice thereof in writing to the employer by certified mail as provided for giving other notice by the commissioner. [C24, 27, 31, 35, 39,§1481; C46, 50, 54,§87.23; 57GA, ch 267,§14]

Referred to in §§87.24, 87.26  
Notice and service, §86.36

**87.24 Trial by jury.** When an injured employee has exercised his or her right to enforce a compensation claim, based upon the provisions of sections 87.21, 87.22, and 87.23, and an appeal, as provided in section 86.26, is taken to the district court from a decision or award as made by the industrial commissioner, the employer and/or the insurance carrier, on the hearing on such appeal in the district court, shall have the right of trial by jury upon the issues of fact tendered and allowable within the terms of chapters 85, 86, and 87, and made of record in arbitration proceedings and/or

upon hearing before the industrial commissioner. But the right of a trial by jury shall only apply to compensation cases within the purview of sections 87.21, 87.22, and 87.23. [C35, §1481-e1; C39,§1481.1; C46, 50, 54,§87.24]

**87.25 Evidence—instructions.** On the trial of the case in the district court with a jury, the evidence, when certified by the industrial commissioner or his deputy, as provided in section 86.27, shall be the only competent, relevant and material evidence in the case which shall be read from the record thus certified, subject to the rulings of the trial judge upon objections made in the commissioner's court and urged in the district court. But the law of procedure and evidence, as provided in section 86.18, shall apply and govern insofar as reasonably applicable. The trial judge shall give the jury written instruction on the law of the case, but the jury shall determine the facts upon the issues submitted. [C35,§1481-e2; C39,§1481.2; C46, 50, 54,§87.25]

**87.26 Waiver of jury.** Upon questions of law raised in the district court, the appeal shall be considered as if made upon one or more of the grounds for appeal, as provided in section 86.30. If demand in writing for a jury trial has not been made and filed with the clerk of the court to which the appeal is taken, within five days before the case is assigned for hearing, it shall be conclusively presumed that the party entitled thereto has waived a jury trial, and in such case the hearing of the case and appeals to the supreme court of Iowa shall, in all respects, be governed by the rules of law and procedure applicable to workmen's compensation cases to which sections 87.21, 87.22, and 87.23 do not apply. [C35,§1481-e3; C39, §1481.3; C46, 50, 54,§87.26]

**87.27 Appeal.** When the case is tried with a jury, an appeal may be taken to the supreme court of Iowa on alleged errors of law upon the same grounds and governed by the law and procedure as provided for civil cases triable with a jury. [C35,§1481-e4; C39,§1481.4; C46, 50, 54,§87.27]

## CHAPTER 88

### HEALTH AND SAFETY APPLIANCES

88.1 Enforcement.

88.2 Water closets—separate for each sex.

88.3 Washing facilities.

88.4 Seats for female employees.

88.5 Steam and water gauges and valves.

88.6 Safety appliances.

88.7 Removal of guards or appliances.

88.8 Blowers and pipes for dust.

88.9 Pipes and flues for gases.

88.10 Notice of violation.

88.11 Record of accidents.

88.12 Report of accidents—evidence.

88.13 Penalties.

88.14 Assumption of risks.

**88.1 Enforcement.** It shall be the duty of the commissioner of labor of the state, and the mayor and chief of police of every city or town, to enforce the provisions of this chapter. [SS15,§4999-a5; C24, 27, 31, 35, 39,§1482; C46, 50, 54,§88.1]

**88.2 Water closets—separate for each sex.** Every manufacturing or mercantile establishment, workshop, or hotel in which five or more persons are employed, shall be provided with a sufficient number of water closets, earth closets, or privies for the reasonable use of the



persons employed therein, which shall be properly screened and ventilated and kept at all times in a clean condition and free from all obscene writing or marking; and such water closets or privies shall be supplied in the proportion of at least one to every twenty employees; and if women or girls are employed in such establishment, the water closets, earth closets, or privies used by them shall have separate approaches and be separate and apart from those used by the men or boys. [S13, §4999-a1; C24, 27, 31, 35, 39, §1483; C46, 50, 54, §88.2]

Referred to in §§88.10, 88.13

**88.3 Washing facilities.** In factories, mercantile establishments, mills, and workshops, adequate washing facilities shall be provided for all employees; and when the labor performed by the employees is of such a character as to require or make necessary a change of clothing, wholly or in part, by the employees, there shall be provided a dressing room, or rooms, lockers for keeping clothing, and adequate washing facilities separate for each sex, and no person or persons shall be allowed to use the facilities assigned to the opposite sex. A sufficient supply of water suitable for drinking purposes shall be provided. [S13, §4999-a1; C24, 27, 31, 35, 39, §1484; C46, 50, 54, §88.3]

Referred to in §§88.10, 88.13

**88.4 Seats for female employees.** All employers of females in any workshops, mercantile, or manufacturing business or establishment shall provide and maintain suitable seats, when practicable, for the use of such female employees, at or beside the counter or workbench where employed, and permit the use thereof by such employees to such extent as the work engaged in may reasonably admit. [C97, §4999; C24, 27, 31, 35, 39, §1485; C46, 50, 54, §88.4]

Referred to in §§88.10, 88.13  
Similar provisions, §92.11

**88.5 Steam and water gauges and valves.** Every person owning or operating a steam boiler in this state shall provide the same with steam gauge, safety valve, and water gauge, and keep the same in good order. [C73, §4064; C97, §§5025, 5026; S13, §4999-a2; C24, 27, 31, 35, 39, §1486; C46, 50, 54, §88.5]

Referred to in §§88.10, 88.13

**88.6 Safety appliances.** It shall be the duty of the owner, agent, superintendent, or other person in charge of any workshop, manufacturing or other industrial establishment or concern operated by machinery, either in a fixed location or when portable and moved from place to place therein in carrying on such industry, so far as practicable, to install and keep in order belt shifters or other safe mechanical means for throwing belts on and off pulleys, install loose pulleys, and protect, by guards or housing, all gearing, cogs, belting, shafting, tumbling rods, universal or knuckle joints, set screws, saws, planes, and other machinery, when so located or used that em-

ployees may receive injury thereby. The provisions of this chapter shall not apply to agricultural pursuits. [C73, §4064; C97, §§5025; S13, §4999-a2; C24, 27, 31, 35, 39, §1487; C46, 50, 54, §88.6]

Referred to in §§88.10, 88.13  
See §88.14 and note following

**88.7 Removal of guards or appliances.** When any person shall remove any guard or safety appliance from any machine or other equipment, or shall so adjust or place the same as to destroy or impair its use in preventing bodily injury or safeguarding health, for the purpose of enabling the employee operating said machine to perform any special work that cannot otherwise be performed, it shall be the duty of said employee or employer to immediately replace it after such special work has been completed. [SS15, §4999-a5; C24, 27, 31, 35, 39, §1488; C46, 50, 54, §88.7]

Referred to in §§88.10, 88.18

**88.8 Blowers and pipes for dust.** All persons, companies, or corporations operating any factory or workshop where emery wheels or emery belts of any description, or tumbling barrels used for rumbling or polishing castings, are used, shall provide the same with blowers and pipes of sufficient capacity, placed in such a manner as to protect the person or persons using same from the particles of dust produced or caused thereby, and to carry away said particles of dust arising from or thrown off such wheels, belts, and tumbling barrels, while in operation, directly to the outside of the building, or to some receptacle placed so as to receive or confine such particles of dust; but grinding machines upon which water is used at the point of grinding contact, and small emery wheels which are used temporarily for tool grinding, are not included within the provisions of this section, and the shops employing not more than one man at such work may, in the discretion of the labor commissioner, be exempt from the provisions hereof. [S13, §4999-a4; C24, 27, 31, 35, 39, §1489; C46, 50, 54, §88.8]

Referred to in §§88.10, 88.18

**88.9 Pipes and flues for gases.** Any factory, workshop, printshop, or other place where molten metal or other material which gives off deleterious gases or fumes is kept or used shall be equipped with pipes or flues so arranged as to give easy escape to such gases or fumes into the open air, or provided with other adequate ventilators. [S13, §4999-a4; C24, 27, 31, 35, 39, §1490; C46, 50, 54, §88.9]

Referred to in §§88.10, 88.18

**88.10 Notice of violation.** When the commissioner or his inspector shall discover or have reason to believe that any provision of sections 88.2 to 88.9, inclusive, is being violated, he shall give to the person, company, corporation, or the manager or superintendent thereof, a notice in writing to comply with such provision within a reasonable time to be fixed in said notice and which time shall be of

not less than seven nor more than thirty days duration, except that such time may be extended by the commissioner for good cause shown.

In fixing the time in such notice, the commissioner shall take into consideration the nature of the failure or defect constituting the violation, the danger to be apprehended therefrom, and the probable length of time and amount of labor required to remedy or cure such defect. [SS15,§4999-a5; C24, 27, 31, 35, 39,§1491; C46, 50, 54,§88.10]

**88.11 Record of accidents.** Manufacturers, manufacturing corporations, proprietors, or corporations operating any mercantile establishment, mill, workshop, business house, or mine, other than those subject to inspection by the state mine inspector, shall keep a careful record of any accident occurring to an employee while at work for the employer, when such accident results in the death of the employee or in such bodily injury as will or probably may prevent him from returning to work within two days thereafter. The said record shall at all times be open to inspection by an inspector of the bureau of labor. [S13, §2477-1a; C24, 27, 31, 35, 39,§1492; C46, 50, 54, §88.11]

Referred to in §88.13

**88.12 Report of accidents—evidence.** Within forty-eight hours after the occurrence of an accident, the record of which is required to be kept, a written report thereof shall be forwarded to the commissioner of labor and said commissioner may require further and additional report to be furnished him should the first report be by him deemed insufficient. No statement contained in any such report shall be admissible in any action arising out of the accident therein reported. [S13,§2477-1a; C24, 27, 31, 35, 39,§1493; C46, 50, 54,§88.12]

Referred to in §88.13

**88.13 Penalties.** Any person, corporation, firm, agent, or superintendent violating any of the provisions of this chapter shall be guilty

of a misdemeanor and shall be punished as follows:

1. For a violation of any one of the provisions of sections 88.2, 88.3, and 88.4, by a fine not exceeding ten dollars for each offense.

2. For a violation of section 88.5, by a fine of not less than fifty dollars nor more than five hundred dollars.

3. For a violation of any one of the provisions of sections 88.6, 88.7, 88.8, 88.9, 88.11, and 88.12, by a fine not exceeding one hundred dollars. [C73,§4064; C97,§§4999, 5025, 5026; S13, §§2477-1a, 4999-a1, a2; SS15,§4999-a5; C24, 27, 31, 35, 39,§1494; C46, 50, 54,§88.13]

**88.14 Assumption of risks.** In all cases where the property, works, machinery, or appliances of an employer are defective or out of repair, and where it is the duty of the employer from the character of the place, work, machinery, or appliances to furnish reasonably safe machinery, appliances, or place to work, the employee shall not be deemed to have assumed the risk, by continuing in the prosecution of the work, growing out of any defect as aforesaid, of which the employee may have had knowledge when the employer had knowledge of such defect, except when in the usual and ordinary course of his employment it is the duty of such employee to make the repairs, or remedy the defects. Nor shall the employee under such conditions be deemed to have waived the negligence, if any, unless the danger be imminent and to such extent that a reasonably prudent person would not have continued in the prosecution of the work; but this statute shall not be construed so as to include such risks as are incident to the employment; and no contract which restricts liability hereunder shall be legal or binding. [S13, §4999-a3; C24, 27, 31, 35, 39,§1495; C46, 50, 54, §88.14]

This section (88.14) was placed in this chapter by the code editor simply because the chapter seemed to afford a logical location for the section. Said section was no part of 40ExGA, SF 43, which now appears as sections 88.1 to 88.13, inclusive. The importance of this last statement will appear by reading the last sentence of section 88.6, which sentence was an amendment injected into section 88.6 by the 40ExGA Railroad employees, §479.125

## CHAPTER 89

### BOILER INSPECTION

89.1 Inspectors—bonds—qualifications.

89.2 Inspection made—certificate.

89.3 Boilers exempt.

89.4 Rules—records.

89.5 New boilers—notice to commissioner.

89.6 Insured boilers—waiver of inspection.

89.7 Fees for inspection.

89.8 Disposal of fees.

89.9 Penalty.

89.10 Injunction.

89.11 Hearing—notice—decree.

**89.1 Inspectors—bonds—qualifications.** The commissioner of labor shall, on or before the first day of July, 1941, and every two years thereafter, appoint a state boiler inspector, subject to the approval of the executive council, who shall work under the direct supervision of the commissioner of labor and who

shall devote his full time to the duties of his office. Before entering upon the duties of his office, the state boiler inspector shall give a bond in the sum of twenty-five hundred dollars for the faithful performance of his duties, the same to be approved by the secretary of state and deposited in the office of the same.

The commissioner of labor may, subject to the approval of the executive council, appoint deputy inspectors possessing the same qualifications as the state boiler inspector, whenever the same may be necessary to carry out the provisions of this chapter, and such deputy inspector shall be subject to and governed by the same rules and regulations applicable to and governing the acts and conduct of the state boiler inspector. The person so appointed shall be a practical boilermaker and shall be qualified by not less than ten years experience in the construction, installation, repair and inspection of boilers, steam generators, superheaters, with knowledge of their operation and use for the generating of steam for power, heating or other purposes, and shall neither directly nor indirectly be interested in the manufacture, ownership or agency of the same. [C46, 50, 54,§89.1]

#### **89.2 Inspection made—certificate.**

1. It shall be the duty of the state boiler inspector, to inspect or cause to be inspected internally and externally, at least once every twelve months, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which the same is used, all steam boilers, tanks, jacket kettles, generators and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes, in order to determine whether said equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which the same is used.

2. The labor commissioner and the boiler inspectors shall have the right and power to enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. Upon making an inspection of any equipment covered by this chapter, the inspector shall give to the owner or user thereof a certificate of inspection, upon forms prescribed by the labor commissioner, which certificate shall be posted in a place near the location of said equipment.

4. The owner or user of any equipment covered in this chapter, or persons in charge of same, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the inspector. [C46, 50, 54,§89.2]

**89.3 Boilers exempt.** The provisions of this chapter shall not apply to boilers of railway locomotives subject to federal inspection, boilers operated and regularly inspected by railway companies operating in interstate commerce, boilers under the jurisdiction and subject to inspection by the United States government, boilers used exclusively for agricultural purposes, heating boilers in residences, buildings, and apartment houses using a pres-

sure of less than fifteen pounds per square inch and/or having a safety valve set at not higher than fifteen pounds pressure per square inch, and fire engine boilers brought into the state for temporary use in times of emergency. [C46, 50, 54,§89.3]

#### **89.4 Rules—records.**

1. The commissioner of labor is hereby authorized and empowered to prescribe rules within the provisions of this chapter, for the purpose of carrying the same into effect including rules for the methods of testing equipment and construction and installation of new equipment covered by this chapter, and said rules and regulations shall, as nearly as possible, conform to the rules formulated by the boiler code committee of the American society of mechanical engineers and known as the American society of mechanical engineers boiler code of 1937 as amended.

2. The state boiler inspector shall investigate and report to the commissioner the cause of any boiler explosion that may occur in the state, the loss of life, injuries sustained, and estimated loss of property, if any; and such other data as may be of benefit in preventing a recurrence of similar explosions.

3. He shall keep in the office of the commissioner a complete and accurate record of the name of the owner or user of each steam boiler or other equipment subject to this chapter, giving a full description of said equipment, including the type, dimensions, age, condition, the amount of pressure allowed, and the date when last inspected. [C46, 50, 54,§89.4]

#### **89.5 New boilers — notice to commissioner.**

Before any equipment included under the provisions of this chapter is installed by any owner, user or lessee thereof, a ten days written notice of intention to install same shall be given to the commissioner of labor. The notice shall designate the proposed place of installation, the type and capacity of such equipment, the use to be made thereof, the name of company which manufactured same, and whether said equipment is new or used. [C46, 50, 54,§89.5]

#### **89.6 Insured boilers—waiver of inspection.**

1. The inspection required by this chapter shall not be made where any owner or user of any equipment under this chapter, obtains an inspection by a representative of a reputable insurance company, and obtains a policy of insurance from said company upon said equipment, and furthermore files with the commissioner of labor a certificate of inspection by said insurance company, or a certificate of renewal of insurance, upon forms approved by the commissioner, and a statement that said equipment is insured. Upon such showing the commissioner of labor shall issue a waiver of inspection by the labor department for the period covered by said policy of insurance.

2. The state boiler inspector shall notify the

user of any equipment or appurtenance found to be unsafe or unfit for operation in writing, setting forth the nature and extent of such defects and condition. Said notice shall indicate whether or not said equipment shall be used without making repair or replacement of defective parts, or whether or how said equipment may be used in a limited capacity before repairs or replacements are made, and the state boiler inspector may permit the user a reasonable time to make such repairs or replacements. [C46, 50, 54,§89.6]

**89.7 Fees for inspection.** An annual inspection fee of each boiler or pressure unit made by the boiler inspector according to the terms of this chapter shall be paid by the owner or user as follows:

1. Boilers having a working pressure of fifteen pounds to seventy pounds per square inch, three dollars for one boiler and two dollars for each additional boiler of like size when set in batteries.

2. Boilers having a working pressure of seventy-one pounds to and including one hundred fifty pounds per square inch, four dollars for one boiler and three dollars for each additional boiler of like size when set in batteries.

3. Boilers having a working pressure of one hundred fifty-one pounds to four hundred fifty pounds per square inch, inclusive, five dollars for one boiler and four dollars for each additional boiler of like size when set in batteries.

4. Boilers having a working pressure of four hundred fifty-one pounds and excess per square inch, seven dollars for one boiler and five dollars for each additional boiler of like size when set in batteries.

5. Steam stills, tanks, jacket kettles and all other reservoirs, fired or unfired, having pressures in excess of one hundred fifty pounds per square inch, four dollars.

6. If at any time the owner, user or agent of the owner of a steam boiler or equipment within the state shall desire a special inspection of any boiler or equipment, it shall be made by the boiler inspection department after due request therefor, and the inspector making the inspection shall collect a fee of ten dollars

for each boiler, together with his expenses in connection therewith. [C46, 50, 54,§89.7]

**89.8 Disposal of fees.** All fees provided for in this chapter shall be collected by the commissioner of labor and remitted to the state comptroller together with an itemized statement showing the source of collection, and such fees shall be placed in the state general fund. [C46, 50, 54,§89.8]

**89.9 Penalty.** Any person or persons, corporations and directors, managers and superintendents, and officers thereof, violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in a sum not more than one hundred dollars. [C46, 50, 54,§89.9]

**89.10 Injunction.** In addition to any and all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter, shall continue to use any equipment covered by this chapter, after receiving a notice of defect as provided by this chapter, without first correcting said defects or making replacements, the commissioner of labor may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of said alleged defective equipment. [C46, 50, 54,§89.10]

**89.11 Hearing—notice—decree.** The commissioner shall notify in writing the owner or user of said equipment of the time and place of hearing of said petition as fixed by the court or judge, and shall serve said notice on the defendant at least five days prior to said hearing in the same manner as original notices are served. The general provisions relating to civil practice and procedure as may be applicable, shall govern the proceedings, except as herein modified. In event the defendant does not appear or plead to said action, default shall be entered against the defendant. The action shall be tried in equity, and the court or judge shall make such order or decree as the evidence warrants. [C46, 50, 54,§89.11]

Constitutionality, 49GA, ch 97,§12

## CHAPTER 90

### BOARDS OF ARBITRATION

90.1 Petition for appointment.

90.2 Notification by governor.

90.3 Governor to appoint for parties.

90.4 Third appointee.

90.5 Agreement to be bound by decision.

90.6 Oath—organization.

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**90.1 Petition for appointment.** When any dispute arises between any person, firm, corporation, or association of employers and their employees or association of employees, of this

state, except employers or employees having trade relations directly or indirectly based upon interstate trade relations operating through or by state or international boards of

conciliation, which has or is likely to cause a strike or lockout, involving ten or more wage earners, and which does or is likely to interfere with the due and ordinary course of business, or which menaces the public peace, or which jeopardizes the welfare of the community, and the parties thereto are unable to adjust the same, either or both parties to the dispute, or the mayor of the city, or the chairman of the board of supervisors of the county in which said employment is carried on, or on petition of any twenty-five citizens thereof over the age of twenty-one years, or the labor commissioner, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter; and the manager of the business of any person, firm, corporation, or association of such employers, or any organization representing such employees, or if such employees are not members of any organization, then a majority of such employees affected may make the application as provided in this chapter, but in no case shall more than twenty employees be required to join in such application. [S13, §2477-n; C24, 27, 31, 35, 39, §1496; C46, 50, 54, §90.1]

Referred to in §90.2

**90.2 Notification by governor.** The governor shall at once upon application made to him as herein provided, and upon his being satisfied that the dispute comes within the provisions of section 90.1, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation and make request upon each party to the dispute that each of them recommend within three days from the date of notice, the names of five persons who have no direct interest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended. [S13, §2477-n1; C24, 27, 31, 35, 39, §1497; C46, 50, 54, §90.2]

40GA, ch 230, §2, editorially divided

**90.3 Governor to appoint for parties.** Should either of the parties fail or neglect to make any recommendation within the said period, the governor shall, as soon thereafter as possible, appoint a fit person who shall be deemed to be appointed on the recommendation of the parties in default. [S13, §2477-n1; C24, 27, 31, 35, 39, §1498; C46, 50, 54, §90.3]

**90.4 Third appointee.** The members of the board so appointed shall within five days of their appointment recommend to the governor the name of one person who is ready and willing to act as a third member of the board, and upon failure or neglect upon their part to make such recommendation within the said period, or upon the failure or refusal of the person so recommended to act, the governor shall as soon thereafter as possible appoint

some person to act as the third member of the board. [S13, §2477-n1; C24, 27, 31, 35, 39, §1499; C46, 50, 54, §90.4]

**90.5 Agreement to be bound by decision.** In all cases when the application is made by both parties to the dispute, they shall set forth in the application whether or not they agree to be bound by the decision of the board of arbitration and conciliation; and if both parties agree to be so bound by such decision, then the same shall be binding and enforceable as set out in section 90.12. [S13, §2477-n2; C24, 27, 31, 35, 39, §1500; C46, 50, 54, §90.5]

**90.6 Oath—organization.** Each member of the board shall, before entering upon the duties of his office, be sworn to a faithful and impartial discharge thereof; they shall organize at once by the choice of one of their number as chairman, and one of their number as secretary, and shall have power to employ all necessary clerks and stenographers to properly carry out the duties of their appointment. [S13, §2477-n3; C24, 27, 31, 35, 39, §1501; C46, 50, 54, §90.6]

S13, §2477-n3, editorially divided

**90.7 Compensation.** The members of the board shall receive a compensation of five dollars per diem for the time actually employed, together with their traveling and other necessary expenses, the same to be payable out of the state treasury upon warrants drawn by the state comptroller. [S13, §2477-n3; C24, 27, 31, 35, 39, §1502; C46, 50, 54, §90.7]

**90.8 Evidence—witnesses.** For the purpose of this inquiry the board shall have all the powers of summoning before it and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence, to produce books, papers, and other documents or things as the board may deem requisite to the full investigation of the matters into which it is inquiring, as are vested in the district court in civil cases. [S13, §2477-n4; C24, 27, 31, 35, 39, §1503; C46, 50, 54, §90.8]

40GA, ch 230, §3, editorially divided

**90.9 Oath—rule of evidence.** Any member of the board may administer an oath, and the board may accept, admit, and call for such evidence as in equity and good conscience it thinks material and proper, whether strictly legal evidence or not. [S13, §2477-n4; C24, 27, 31, 35, 39, §1504; C46, 50, 54, §90.9]

**90.10 Subpoenas—by whom served—fees.** A subpoena or any notice may be delivered or sent to any sheriff, constable, or any police officer who shall forthwith serve the same, and make due return thereof, according to directions. Witnesses in attendance and officers serving subpoenas or notices shall receive the same fees as are allowed in the district court, payable from the state treasury, upon the certificate of the board that such fees are due and correct. The board shall have the

same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes. [S13, §2477-n4; C24, 27, 31, 35, 39, §1505; C46, 50, 54, §90.10]

Contempts, ch 665  
Officers' fees, §337.11  
Witness fees, §622.69 et seq.

**90.11 Investigation—report filed—public inspection.** The board shall as soon as practical visit the place where the controversy exists and make careful inquiry into the cause, and the said board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both of the parties to the dispute to adjust said controversy, and make a written decision thereof, which shall at once be made public and open to public inspection and shall be recorded by the secretary of the board, and a copy of such report shall be filed in the office of the clerk of the city or town in which the controversy arose and shall be open for public inspection. [S13, §2477-n5; C24, 27, 31, 35, 39, §1506; C46, 50, 54, §90.11]

**90.12 Investigation—decision.** The board of arbitration and conciliation shall within ten days from the date of their appointment, unless such time shall be extended by the governor, complete the investigation of any controversy submitted to them, and during the pendency of such period neither party shall engage in any strike or lockout. Any decision made by the board shall date from the date of the

appointment of the board and shall be binding upon the parties who join in the application as herein provided for a period of one year. [S13, §2477-n6; C24, 27, 31, 35, 39, §1507; C46, 50, 54, §90.12]

Referred to in §90.5

**90.13 Decision—report to governor.** Within five days after the completion of the investigation, unless the time is extended by the governor for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the governor of their findings of fact and of their recommendation to each party to the controversy. [S13, §2477-n7; C24, 27, 31, 35, 39, §1508; C46, 50, 54, §90.13]

**90.14 Decision filed and published.** Every decision and report shall be filed in the office of the governor, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published at a rate of not to exceed thirty-three and one-third cents per ten lines of brevier type or its equivalent in two newspapers of general circulation in the county in which the business is located upon which the dispute arose.

All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the governor of the state and shall only be subject to inspection upon his order. [S13, §2477-n7; C24, 27, 31, 35, 39, §1509; C46, 50, 54, §90.14]

## CHAPTER 91

### BUREAU OF LABOR

- 91.1 Labor commissioner.
- 91.2 Appointment.
- 91.3 Vacancies.
- 91.4 Industrial statistics and information.
- 91.5 Other duties—jurisdiction in general.
- 91.6 Appointment of inspectors.
- 91.7 Woman inspector—duties.
- 91.8 Traveling expenses—limitation.
- 91.9 Right to enter premises.
- 91.10 Power to secure evidence.

- 91.11 Prosecutions for violations.
- 91.12 Reports to bureau.
- 91.13 Persons furnishing information.
- 91.14 Reports and records preserved—when destroyed.
- 91.15 Definition of terms.
- 91.16 Violations—penalties.
- 91.17 Acceptance of federal act.
- 91.18 State agency.

**91.1 Labor commissioner.** The bureau of labor shall be under the control of a labor commissioner, who shall have his office at the seat of government and shall devote his entire time to the duties of his office. [C97, §2469; S13, §2469; C24, 27, 31, 35, 39, §1510; C46, 50, 54, §91.1]

**91.2 Appointment.** The governor shall, within sixty days after the organization of the regular session of the general assembly in 1925, and each two years thereafter, appoint, with the approval of two-thirds of the mem-

bers of the senate, a labor commissioner who shall serve for a period of two years from July 1 of the year of appointment. [C97, §2469; S13, §2469; C24, 27, 31, 35, 39, §1511; C46, 50, 54, §91.2]

Confirmation procedure, §2.40

**91.3 Vacancies.** A vacancy in said position which may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes in regular session. Prior to the expiration of said thirty

days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term.

Vacancies occurring during a session of the general assembly shall be filled as regular appointments are filled and before the end of said session and for the unexpired portion of the regular term. [C97,§2469; S13,§2469; C24, 27, 31, 35, 39,§1512; C46, 50, 54,§91.3]

**91.4 Industrial statistics and information.** The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into his hands by virtue of his office, and deliver the same to his successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to all departments of labor in the state, especially in its relation to the commercial, social, educational, and sanitary conditions surrounding the laboring classes, the means of escape from, and the protection of life and health in factories, the employment of children, the number of hours of labor exacted from them and from women, and to the permanent prosperity of the mechanical, manufacturing, and productive industries of the state.

3. To collect as fully as practicable such information and reliable reports from each county in the state, the amount and condition of the mechanical and manufacturing interests, the value and location of the various manufacturing and coal productions of the state, also sites offering natural or acquired advantages for the profitable location and operation of different branches of industry; he shall by correspondence with interested parties in other parts of the United States, impart to them such information as may tend to induce the location of mechanical and producing plants within the state, together with such other information as shall tend to increase the productions, and consequent employment of producers.

4. To submit the foregoing statistics and information to the governor in biennial reports in which he shall give a statement of the business of the bureau since the last regular report, and shall compile therein such information as may be considered of value to the industrial interests of the state, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics, and apprentices, wages earned, the savings from the same, with age and sex of laborers employed, the number and character of accidents, the sanitary condition of institutions where labor is employed, the proportion of married laborers and mechanics who live in rented houses, with the average annual rental, and the value of property owned by laborers and mechanics; to include in such report what progress has been made with schools now in operation for the instruction of students in the mechanic arts, and what systems have been found most practical, with details thereof.

5. To issue from time to time, with the consent of the executive council, bulletins containing information of importance to the industries of the state and to the safety of wage earners. [C97,§§2469, 2470; S13,§§2469, 2470; C24, 27, 31, 35, 39,§1513; C46, 50, 54,§91.4]

**Destruction of records, §91.14**  
**Time of making biennial report, §17.8**

**91.5 Other duties—jurisdiction in general.** The commissioner shall have jurisdiction and it shall be his duty to supervise the enforcement of:

1. All laws relating to safety appliances and inspection thereof and health conditions in manufacturing and mercantile establishments, workshops, machine shops, and other industrial concerns within his jurisdiction.

2. All laws of the state relating to child labor.

3. All laws relating to the state free employment bureau\* and employment agencies.

4. Such other provisions of law as are now or shall hereafter be within his jurisdiction. [S13,§2477-f; SS15,§§2477-g1, 4999-a5,-a10; C24, 27, 31, 35, 39,§1514; C46, 50, 54,§91.5]

**Employment agencies, §§91.18, 94.1 et seq.**  
**\*See section 96.12**  
**Vocational education, §§258.2, 259.4, 259.5**

**91.6 Appointment of inspectors.** The appointment, by the commissioner, of all factory inspectors shall be subject to the approval of the executive council. [S13,§2477; C24, 27, 31, 35, 39,§1515; C46, 50, 54,§91.6]

**91.7 Woman inspector—duties.** One of the factory inspectors in the bureau of labor shall be a woman, who shall inspect the sanitary and general conditions of all factories, workshops, hotels, cafes, restaurants, stores, and all other establishments and places where women and children are employed; collect statistics and report the same to the commissioner with such recommendations as she believes will improve working conditions of women and children, and to which the commissioner shall make special reference in his biennial reports to the governor. She shall perform such other services under the direction of the commissioner as will tend to promote the health and general welfare of the women and children employed in the industries within the state. [S13,§2477; C24, 27, 31, 35, 39,§1516; C46, 50, 54,§91.7]

**91.8 Traveling expenses—limitation.** The commissioner, inspectors, and other employees of the office shall be allowed their necessary traveling expenses while in the discharge of their duties. Such expense in the aggregate, exclusive of salaries, shall not exceed the sum of four thousand dollars per annum. [C97, §2477; S13,§2477; C24, 27, 31, 35, 39,§1517; C46, 50, 54,§91.8]

**91.9 Right to enter premises.** The labor commissioner and the inspectors shall have the power to enter any factory or mill, workshop, mine, store, business house, public or

private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof. [C97,§2472; S13,§2472; C24, 27, 31, 35, 39,§1518; C46, 50, 54,§91.9]

**91.10 Power to secure evidence.** The labor commissioner and his deputy shall have the power to issue subpoenas, administer oaths, and take testimony in all matters relating to the duties required of them, said testimony to be taken in some suitable place in the vicinity to which testimony is applicable. No witness shall be compelled by such subpoena to go outside the county of his residence, except when the hearing is in a county adjoining the county of his residence, then he shall be required to obey such subpoena. Witnesses subpoenaed and testifying before the commissioner or an inspector shall be paid the same fees as witnesses before a justice's court, such payment to be made out of the general funds of the state on voucher by the commissioner, but such expense for witnesses shall not exceed one hundred dollars annually. [C97,§2471; S13, §2471; C24, 27, 31, 35, 39,§1519; C46, 50, 54, §91.10]

**91.11 Prosecutions for violations.** If the commissioner or an inspector shall learn of any violation of, or neglect to comply with the law in respect to the employment of children, or in respect to fire escapes, or the safety of employees, or for the preservation of health, such officer may give the county attorney of the county in which such factory or building is situated, written notice of the facts, whereupon that officer shall institute the proper proceedings against the person guilty of such offense or neglect.

If the commissioner or inspector is of the opinion that such violation or neglect is not willful, or is an oversight or of a trivial nature, he may in his discretion fix a time within which the defect or evil may be corrected and notify the owner, operator, superintendent, or person in charge, and if corrected within the time fixed, then the commissioner or inspector shall not cause prosecution to be begun. [C97,§2472; S13,§2472; C24, 27, 31, 35, 39,§1520; C46, 50, 54,§91.11]

**91.12 Reports to bureau.** It shall be the duty of every owner, operator, or manager of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment where labor is employed, as herein provided, to make to the bureau, upon blanks furnished by the commissioner, such reports and returns as he may require for the purpose of compiling such labor statistics as are contemplated in this chapter; and the owner, operator, or business manager shall make such reports or returns within sixty days from the receipt of blanks furnished by

the commissioner, and shall certify under oath to the correctness of the same. [C97,§2474; S13, §2474; C24, 27, 31, 35, 39,§1521; C46, 50, 54, §91.12]

**91.13 Persons furnishing information.** Any use of the names of individuals, firms, or corporations furnishing the commissioner information required by this chapter for his biennial report, in such manner as to disclose any of their private or personal affairs, is hereby prohibited. [C97,§2475; C24, 27, 31, 35, 39,§1522; C46, 50, 54,§91.13]

**91.14 Reports and records preserved—when destroyed.** No report or return made to said bureau in accordance with the provisions of this chapter, and no schedule, record, or document gathered or returned by its officers or employees, shall be destroyed within two years after the collection or receipt thereof. At the expiration of two years all records, schedules, or papers accumulating in said bureau during said period that may be considered of no value by the commissioner may be destroyed by authority of the executive council first obtained. [C97,§2476; C24, 27, 31, 35, 39,§1523; C46, 50, 54,§91.14]

**91.15 Definition of terms.** The expressions "factory", "mill", "workshop", "mine", "store", "business house", and "public or private work", as used in this chapter, shall be construed to mean any factory, mill, workshop, mine, store, business house, public or private work, where wage earners are employed for a compensation. [C97,§2473; SS15,§2473; C24, 27, 31, 35, 39,§1524; C46, 50, 54,§91.15]

**91.16 Violations—penalties.** Persons violating any of the provisions of this chapter shall be punished as in this section provided, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, business house, public or private work, who shall refuse to allow the commissioner of labor or any inspector or employee of the bureau of labor to enter the same, or who shall hinder or deter him in collecting information which it is his duty to collect shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days.

2. Any person duly subpoenaed to attend a hearing before the commissioner or deputy or a court in any proceeding provided by this chapter who shall willfully neglect or refuse to attend or testify at the time and place named in the subpoena shall be fined not exceeding fifty dollars or imprisoned in the county jail not exceeding thirty days.

3. Any officer or employee of the bureau of labor, or any person making unlawful use of names or information obtained by virtue of his office, shall be fined not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year.



4. Any owner, operator, or manager of a factory, mill, workshop, mine, store, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns he may require to enable him to discharge his duties shall be fined not to exceed one hundred dollars or imprisoned in the county jail not to exceed thirty days. [C97, §§2471, 2472, 2474, 2475; S13, §§2471, 2472, 2474; C24, 27, 31, 35, 39, §1525; C46, 50, 54, §91.16]

**91.17 Acceptance of federal act.** The state of Iowa hereby accepts the provisions of the act of Congress approved June 6, 1933, [29 USC, §49 et seq.] entitled, "An act to provide for the establishment of a national employment sys-

tem and for co-operation with the states in the promotion of such system, and for other purposes." [C35, §1525-f1; C39, §1525.1; C46, 50, 54, §91.17]

**91.18 State agency.** The state bureau of labor is hereby designated and constituted the agency of the state for the purposes of such act [29 USC, §49 et seq.] with full power to co-operate with all authorities of the United States having powers or duties under such act and to do and perform all things necessary to secure to the state the benefits of such act in the promotion and maintenance of a system of public employment offices. [C35, §1525-f2; C39, §1525.2; C46, 50, 54, §91.18]

This section suspended; see §96.12  
State employment agencies, §94.1 et seq.

## CHAPTER 92

### CHILD LABOR

- 92.1 Child labor—age limit—exception.
- 92.2 Hours of labor—noon intermission.
- 92.3 Where part-time school prevails.
- 92.4 Cleaning or operating machinery.
- 92.5 Permit for child labor.
- 92.6 Labor permit—how obtained.
- 92.7 What permit shall show.
- 92.8 Duplicate permit filed.

- 92.9 Superintendent of public instruction.
- 92.10 Authority of officers.
- 92.11 Life, health, or morals endangered.
- 92.12 Street occupations forbidden.
- 92.13 Street occupations for boys.
- 92.14 Night work prohibited.
- 92.15 Violations—penalties.
- 92.16 Enforcement—duties of officers.

**92.1 Child labor—age limit—exception.** No person under fourteen years of age shall be employed with or without compensation in any mine, manufacturing establishment, factory, mill, shop, laundry, slaughter house, or packing house, or in any store or mercantile establishment where more than eight persons are employed, or in any livery stable, garage, place of amusement, or in the distribution or transmission of merchandise or messages; but nothing in this section shall be construed as prohibiting any child from working in any of the above establishments or occupations when operated by his parents. [SS15, §2477-a; C24, 27, 31, 35, 39, §1526; C46, 50, 54, §92.1]

Referred to in §§92.2, 92.5

**92.2 Hours of labor—noon intermission.** No person under sixteen years of age shall be employed at any of the places or in any of the occupations specified in section 92.1 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening, and if such person is employed exceeding five hours of each day, a noon intermission of not less than thirty minutes shall be given between the hours of eleven and one o'clock, and such person shall not be employed more than eight hours in any one day, exclusive of the noon hour intermission; nor shall any such person be employed more than forty-eight hours in any one week. [SS15, §2477-c; C24, 27, 31, 35, 39, §1527; C46, 50, 54, §92.2]

**92.3 Where part-time school prevails.** When in any organized school district there shall

have been established a part-time school, department, or class, no person under sixteen years of age shall be employed for more than forty hours in any one week. [C24, 27, 31, 35, 39, §1528; C46, 50, 54, §92.3]

**92.4 Cleaning or operating machinery.** The following acts shall be unlawful:

1. Directing or permitting any boy under sixteen or girl under eighteen years of age to clean machinery while it is in motion.

2. Permitting any boy or girl under sixteen years of age to operate or assist in operating any freight or passenger elevator.

3. Permitting any boy or girl under sixteen years of age to operate or assist in operating dangerous machinery; but this provision shall not apply to pupils working under an instructor in manual training departments in public schools of the state or under an instructor in a school, shop, or industrial plant, in a course of vocational education approved by the state board for vocational education. [SS15, §2477-a; C24, 27, 31, 35, 39, §1529; C46, 50, 54, §92.4]

**92.5 Permit for child labor.** No child under sixteen years of age shall be employed, permitted, or suffered to work in or in connection with any of the establishments or occupations mentioned in section 92.1 unless the person, firm, or corporation employing such child procures and keeps on file, accessible to any officer charged with the enforcement of this chapter, a work permit issued as hereinafter provided, and keeps two complete lists of the names and

ages of all such children under sixteen years of age employed in or for such establishments or in such occupations, one on file in the office and one conspicuously posted near the principal entrance of the place or establishment in which such children are employed.

On termination of the employment of a child whose permit is on file, such permit shall be returned by the employer within two days to the officer who issued it with a statement of the reasons for the termination of such employment.

A work permit shall be issued for every position obtained by a child between the ages of fourteen and sixteen years. The permit in no case shall be issued to the child, parent, guardian, or custodian, but to its prospective employer. [SS15,§2477-d; C24, 27, 31, 35, 39,§1530; C46, 50, 54,§92.5]

**92.6 Labor permit—how obtained.** A work permit shall be issued only by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized in writing by the local school board in the community where such child resides, upon the application of the parent, guardian, or custodian of the child desiring such permit. The person authorized to issue work permits shall not issue any such permit, except as provided in sections 92.12 and 92.13, until he has received, examined, approved, and filed:

1. A written agreement from the person, firm, or corporation into whose service the child under sixteen years of age is about to enter, promising to give such child employment, describing the work to be performed and agreeing to return the work permit of such child to the office from which it was issued within two days after the termination of the employment of such child.

2. The school record of such child filled out and signed by the superintendent of the school which such child has last attended certifying that the child is able to read intelligently and write legibly simple sentences in the English language and has completed a course of study equivalent to six yearly grades in reading, writing, spelling, English language, geography, and arithmetic. Such school record shall give also the name, date of birth, and residence of the child as shown on the records of the school and also the name of its parent, guardian, or custodian. In exceptional cases where a child is strong, healthy, and well developed physically, superintendents or local school boards may, with the approval of the labor commissioner, issue permits for boys and girls between the ages of fourteen and sixteen, with less educational acquirements, good for vacation only.

3. A certificate signed by a medical inspector of schools, or if there be no such inspector, then by a physician appointed by the board of education, certifying that the applicant for the work permit has reached the normal development of a child of its age and is in sufficiently

sound health and physically able to perform the work for which the permit is sought.

4. Evidence of age showing that the child is fourteen years old, or more, which shall consist of one of the following proofs required in the order herein designated as follows:

a. A transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births.

b. A passport or a transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

c. A school census record.

d. In cases where none of the above named proofs are obtainable, a certificate signed by the local medical inspector of schools, or if there be no such inspector, then by a physician appointed by the local board of education, certifying that in his opinion the applicant for the work permit is fourteen years of age or more. [SS15,§2477-d; C24, 27, 31, 35, 39,§1531; C46, 50, 54,§92.6]

**92.7 What permit shall show.** Every such work permit shall state the name, sex, the date and place of birth, the residence of the child in whose name it is issued, the color of hair and eyes, the height and weight, the proof of age, the school grade completed, the name and location of the establishment where the child is to be employed, the work for which the permit is issued, that the papers required for its issuance have been duly examined, approved, and filed, and that the person named therein has personally appeared before the officer issuing the permit and has been examined. [SS15,§2477-d; C24, 27, 31, 35, 39,§1532; C46, 50, 54,§92.7]

**92.8 Duplicate permit filed.** A duplicate of every such work permit issued shall be filled out and forwarded to the office of the labor commissioner between the first and the tenth day of the month following the month in which it is issued. [SS15,§2477-d; C24, 27, 31, 35, 39,§1533; C46, 50, 54,§92.8]

**40ExGA, HF 44,§8, editorially divided**

**92.9 Superintendent of public instruction.** The blank forms for the work permit, the employer's agreement, the school record, and the physician's certificate shall be formulated by the superintendent of public instruction and furnished by him to the local school authorities. [SS15,§2477-d; C24, 27, 31, 35, 39,§1534; C46, 50, 54,§92.9]

**92.10 Authority of officers.** Any officer whose duty it is to enforce the provisions of this chapter shall have authority to demand of any employer in or about whose place or establishment a child apparently under the age of sixteen years is employed, permitted, or suffered to work, and whose permit is not filed as required by this chapter, that such employer shall either furnish him within ten days the same documentary evidence of age of such

child as is required upon the issuance of a work permit, or shall cease to employ or permit or suffer such child to work in such place or establishment. [SS15,§2477-d; C24, 27, 31, 35, 39,§1535; C46, 50, 54,§92.10]

**92.11 Life, health, or morals endangered.**

No person under sixteen years of age shall be employed at any work or occupation which, by reason of its nature or the place of employment, the health of such person may be injured, or morals depraved, or at any work in which the handling or use of gunpowder, dynamite, or other like explosive is required, or in or about any mine during the school term, or in or about any hotel, cafe, restaurant, bowling alley, pool or billiard room, cigar store, barber shop, or in any occupation dangerous to life or limb.

No female under twenty-one years of age shall be employed in any capacity where the duties of such employment compel her to remain constantly standing. [SS15,§2477-b; C24, 27, 31, 35, 39,§1536; C46, 50, 54,§92.11]

Serving beer, §124.21  
Similar provision, §88.4

**92.12 Street occupations forbidden.** No boy under eleven years of age nor girl under eighteen years of age shall be employed, permitted, or suffered to work at any time in any city of ten thousand or more inhabitants within this state in or in connection with the street occupations of peddling, bootblacking, the distribution or sale of newspapers, magazines, periodicals, or circulars, nor in any other occupations in any street or public place, except that in such cities, the superintendent of schools or person authorized by him, upon sufficient showing made by a judge of the superior, municipal, or juvenile court, may, in exceptional cases, issue a permit to a boy under eleven years of age. [SS15,§2477-a1; C24, 27, 31, 35, 39,§1537; C46, 50, 54,§92.12]

Referred to in §§92.6, 92.13

**92.13 Street occupations for boys.** No boy between eleven and sixteen years of age shall be employed or permitted to work in any such city in connection with any of the occupations mentioned in section 92.12 unless he complies with all the requirements for the issuance of work permits as described in this chapter except the filing of an employer's agreement, but the school record so required shall certify only that the boy is regularly attending school and that the work in which he wishes to engage will not interfere with his progress at school. Upon compliance with these requirements such boy shall be entitled to receive from the officer authorized to issue work permits a badge which shall authorize such boy to engage in the above-mentioned occupations at such time or times, between four a.m. and seven-thirty p.m. each day, as the public schools of the city or district where such boy resides are not in session, but at no other time, except that during the summer school vacation such boy may engage in such occupation until

the hour of eight-thirty p.m. All such badges issued in the same calendar year shall be of the same color, which color shall be changed each year, and shall become void upon the first day of January following their issuance. [SS15,§2477-a1; C24, 27, 31, 35, 39,§1538; C46, 50, 54,§92.13]

Referred to in §92.6

**92.14 Night work prohibited.** No person under eighteen years of age shall be employed in the transmission, distribution, or delivery of goods or messages between the hours of ten in the evening and five in the morning in any city of ten thousand or more inhabitants. [SS15,§2477-c; C24, 27, 31, 35, 39,§1539; C46, 50, 54,§92.14]

**92.15 Violations—penalties.** Any parent, guardian, or other person, who having under his control any person under sixteen years of age causes or permits said person to work or be employed in violation of the provisions of this chapter, or any person making, certifying to, or causing to be made or certified to, any statement, certificate, or other paper for the purpose of procuring the employment of any person in violation of said provisions, or who makes, files, executes, or delivers any such statement, certificate, or other paper containing any false statement for the purpose of procuring the employment of any person in violation of this chapter, or for the purpose of concealing the violation thereof in such employment, and any person, firm, or corporation, or the agent, manager, superintendent, or officer of any person, firm, or corporation, whether for himself or such person, firm, corporation, either by himself or acting through any agent, foreman, superintendent, or manager, who employs any person, or permits any person to be employed in violation of the provisions of this chapter, or who shall refuse to allow any authorized officer or person to inspect any place of business under said provisions, if demand is made therefor at any time during business hours, or who shall willfully obstruct such officer or person while making such inspection, or who shall fail to keep posted the lists containing the names of persons employed under sixteen years of age and other information as required by this chapter, or who shall knowingly insert any false statement in such list, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

The parent or person in charge of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be punished by a fine of not more than fifteen dollars.

Whoever furnishes or sells to any minor any article of any description with the knowledge that said minor intends to sell said article in violation of the provisions of this chapter relating to street occupations, shall be pun-

ished by a fine of not less than fifteen dollars nor more than one hundred dollars for each offense.

Whoever violates any other provision of this chapter, shall be fined not to exceed one hundred dollars. [S13,§2477-e; SS15,§2477-a1; C24, 27, 31, 35, 39,§1540; C46, 50, 54,§92.15]

**92.16 Enforcement—duties of officers.** It shall be the duty of the labor commissioner, his deputies, inspectors, and assistants, to enforce the provisions of this chapter. It shall also be the duty of all mayors and police officers, town and city marshals, sheriffs and their deputies, school superintendents, school truant and attendance officers, within their several jurisdictions, to co-operate in the enforcement

of such provisions and furnish the labor commissioner, his deputies and assistants all information coming to their knowledge regarding any violations of such provisions. All such officers and any person authorized in writing by any court of record shall have authority to enter for purposes of investigation any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of such provisions.

It shall be the duty of county attorneys to investigate all complaints made to them of violations of any such provisions, and to prosecute all such cases of violation within their respective counties. [S13,§2477-f; SS15,§2477-a1; C24, 27, 31, 35, 39,§1541; C46, 50, 54,§92.16]

## CHAPTER 93

### COMMISSION FOR THE BLIND

93.1 Membership.

93.2 Tenure.

93.3 Officers—assistants.

93.4 Expenses.

**93.1 Membership.** The Iowa commission for the blind is hereby created. Said commission shall consist of the superintendent of the Iowa braille and sight-saving school, and two other members to be appointed by the governor. [C27, 31, 35,§1541-a1; C39,§1541.1; C46, 50, 54,§93.1]

**93.2 Tenure.** Prior to July 1 of each year, commencing with 1926, the governor shall appoint a member of said board to succeed the member whose term of office expires on said date. All such appointees shall serve for a period of two years from July 1 of the year of appointment. [C27, 31, 35,§1541-a2; C39, §1541.2; C46, 50, 54,§93.2]

**93.3 Officers—assistants.** The commission shall elect its own officers and shall employ such assistants as may be necessary to carry out the provisions of this chapter, and hold such meetings as it may determine. [C27, 31, 35,§1541-a3; C39,§1541.3; C46, 50, 54,§93.3]

**93.4 Expenses.** The members of the commission shall receive no compensation for their services, but shall be entitled to receive their traveling and other necessary expenses incurred in the performance of their duties as members of the commission. [C27, 31, 35,§1541-a4; C39,§1541.4; C46, 50, 54,§93.4]

**93.5 Bureau of information.** The commission for the blind shall act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment, teaching them industries; giving them such assistance as may be necessary or advisable in helping the adult blind in marketing their products. [C27, 31, 35,§1541-a5; C39, §1541.5; C46, 50, 54,§93.5]

93.5 Bureau of information.

93.6 Duties.

93.7 Federal aid—conditions excluded.

**93.6 Duties.** The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, capacity for education and industrial training, and such other facts as the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by such other lawful method as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of such cases are preventable and co-operate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training whenever the commission shall deem it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under such employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission shall have authority as provided in this chapter to use any receipts or earnings that accrue from the operation of workshops, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the state comptroller.

6. Discourage begging, either directly or indirectly, on the part of the blind within the limits of the state.

7. Make an annual report to the governor of its proceedings for each fiscal year. It shall

embody therein a properly classified and tabulated statement of its estimates for the ensuing year with its own opinion of the necessity or expediency of appropriations in accordance with such estimates. Such annual report shall also present a concise review of the work of the commission for the preceding year with such suggestions and recommendations for improving the condition of the blind as may be expedient.

8. Perform all other duties required of it by law. [C27, 31, 35, §1541-a6; C39, §1541.6; C46, 50, 54, §93.6]

Annual report, §17.4

**93.7 Federal aid—conditions excluded.** The Iowa commission for the blind is hereby authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying out rehabilitation and physical restoration of the blind, and shall have the same powers and duties for that purpose, as provided the state board for vocational education in chapter 259.

No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than that it be used for assistance to the blind as provided in this section. [C46, 50, 54, §93.7]

## CHAPTER 94

### STATE EMPLOYMENT BUREAU AND EMPLOYMENT AGENCIES

See §96.12 for transfer of duties to employment security commission

94.1 Free employment bureau.  
94.2 Duty as to free employment services.  
94.3 Extension of service.  
94.4 Service free.  
94.5 Failure to procure employment.  
94.6 Limitation of fee.

94.7 Unlawful practices—civil liability.  
94.8 Copy of application or agreement.  
94.9 Division of fees prohibited.  
94.10 Records required.  
94.11 Investigation by labor commissioner.  
94.12 Violations.

**94.1 Free employment bureau.** The labor commissioner shall maintain in his office at the seat of government a department to be called the state free employment bureau, and he is hereby directed to adopt such rules and regulations as are necessary to carry out the purposes of this chapter. He shall, with the approval of the executive council, appoint a competent person who shall be placed in charge of such work and be known as the chief clerk of the bureau, whose term of office shall be the same as that of the commissioner. [SS15, §2477-g1; C24, 27, 31, 35, 39, §1542; C46, 50, 54, §94.1]

Administration of sections 94.1 to 94.4, inclusive, transferred to employment security commission, §96.12

**94.2 Duty as to free employment services.** It shall be the duty of the commissioner through the free employment service to:

1. Adopt all means at his command to bring together those desiring to employ labor and those desiring employment.

2. Supply information as to opportunities for securing employment and the character and conditions of work to be performed in the various industries of the state including agricultural pursuits.

3. Adopt all available means for steadying employment and avoiding unemployment. [SS15, §2477-g2; C24, 27, 31, 35, 39, §1543; C46, 50, 54, §94.2]

**94.3 Extension of service.** With the approval of the executive council, the commissioner may establish within the state such branches of free employment agencies as shall afford the best distribution of labor, and for such purposes may co-operate with any federal,

state, municipal, or other free employment bureau or association. [SS15, §2477-g2; C24, 27, 31, 35, 39, §1544; C46, 50, 54, §94.3]

**94.4 Service free.** No fee or compensation shall be received, either directly or indirectly, from persons applying to the bureau for employment or help. [SS15, §2477-g2; C24, 27, 31, 35, 39, §1545; C46, 50, 54, §94.4]

**94.5 Failure to procure employment.** Every person, firm, or corporation who shall agree or promise, or who shall advertise through the public press, or by letter, to furnish employment or situations to any person or persons, and in pursuance of such advertisement, agreement, or promise, shall receive any money, personal property, or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated or agreed upon, or if no time be specified then within a reasonable time, shall upon demand return all such money, personal property, or valuable consideration of whatever character. The provisions of this section, however, shall not apply to registration fees of one dollar or less. [S13, §2477-h; C24, 27, 31, 35, 39, §1546; C46, 50, 54, §94.5]

**94.6 Limitation of fee.** No such person, firm, or corporation shall charge a fee for the furnishing or procurement of any situation or employment paying less than two hundred fifty dollars per month which shall exceed twenty-five percent of the wages paid for the first month of any such employment or situation furnished or procured, but in no event shall the charge for the furnishing or pro-

curement of any situation or employment be in excess of five percent of the annual gross earnings. The provisions of this section shall not apply to the furnishing or procurement of vaudeville acts, circus acts, theatrical, stage or platform attractions or amusement enterprises. [C27, 31, 35, §1546-a1; C39, §1546.1; C46, 50, 54, §94.6; 57GA, ch 71, §1]

**94.7 Unlawful practices—civil liability.** No person, firm, or corporation shall send an application for employment to an employer who has not applied to such person, firm, or corporation for help or labor. Nor shall any person, firm, or corporation engaged in the business of operating an employment agency or bureau, fraudulently promise or deceive either through a false notice or advertisement or other means, any applicant for help or employment with regard to the service to be rendered by such person, firm, corporation, agency, or bureau. Any person who violates any of the provisions of this section shall be liable in a civil suit for damages to any person who is damaged or injured thereby and shall also be guilty of a misdemeanor, and upon conviction, shall be punished as provided in section 94.12. [C27, 31, 35, §1546-a2; C39, §1546.2; C46, 50, 54, §94.7]

**94.8 Copy of application or agreement.** It shall be unlawful for any person, firm, or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment unless there is delivered to such person making such application or contract, at the time of the making thereof, a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the applicant. [S13, §2477-i; C24, 27, 31, 35, 39, §1547; C46, 50, 54, §94.8]

**94.9 Division of fees prohibited.** It shall be unlawful for any person, firm, or corporation, or any person employed or authorized by such

person, firm, or corporation, to receive any part of any fee or any percentage of wages or any compensation of any kind whatever, that is agreed upon to be paid by any such employee to any employment bureau or agency for services rendered to any such employee in procuring for him employment with such person, firm, or corporation. [S13, §2477-j; C24, 27, 31, 35, 39, §1548; C46, 50, 54, §94.9]

**94.10 Records required.** Every person, firm, or corporation operating an employment agency or engaged in the business of finding employment for others, for which any fee is charged, shall keep a record of the applications received and what, if any, employment was found or furnished to the applicant, giving the name of each applicant and the name and address of his employer, if employment is found, and the fee charged each applicant. [C24, 27, 31, 35, 39, §1549; C46, 50, 54, §94.10]

**94.11 Investigation by labor commissioner.** The labor commissioner, his deputy or inspectors, and the chief clerk of the bureau shall have authority to examine at any time the records, books, and any papers relating in any way to the conduct of any employment agency or bureau within the state, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file or cause to be filed, an information against any person, firm, or corporation guilty of such violation of law. [S13, §2477-k; C24, 27, 31, 35, 39, §1550; C46, 50, 54, §94.11]

**94.12 Violations.** Any person, firm, or corporation violating any of the provisions of this chapter, or who shall refuse access to records, books, or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not to exceed thirty days. [S13, §2477-l; C24, 27, 31, 35, 39, §1551; C46, 50, 54, §94.12]

Referred to in §94.7

## CHAPTER 95

### LICENSE FOR EMPLOYMENT AGENCIES

95.1 License.  
95.2 Application.  
95.3 Issuance or refusal.

95.4 Fee.  
95.5 Revocation of license.  
95.6 Violations.

**95.1 License.** Every person, firm, or corporation who shall keep or carry on an employment agency for the purpose of procuring or offering to procure help or employment, or the giving of information as to where help or employment may be procured either directly or through some other person or agency, and where a fee, privilege, or other thing of value is exacted, charged or received either directly or indirectly, for procuring, or assisting or

promising to procure employment, work, engagement or situation of any kind, or for procuring or providing help or promising to provide help for any person, whether such fee, privilege, or other thing of value is collected from the applicant for employment or the applicant for help, shall before transacting any such business whatsoever procure a license from a commission, consisting of the secretary of state, the industrial commissioner, and the

labor commissioner, all of whom shall serve without compensation. [C31, 35,§1551-c1; C39, §1551.01; C46, 50, 54,§95.1]

Referred to in §§95.2, 95.3, 95.6

**95.2 Application.** Application for such license shall be made in writing to the commission provided in section 95.1. It shall contain the name of the applicant, and if applicant be a firm, the names of the members, and if it be a corporation, the names of the officers thereof; and the name, number and address of the building and place where the employment agency is to be conducted. It shall be accompanied by the affidavits of at least two reputable citizens of the state in no way connected with applicant, certifying to the good moral character and reliability of the applicant, or, if a firm or corporation, of each of the members or officers thereof, and that the applicant is a citizen of the United States, if a natural person; also a surety company bond in the sum of two thousand dollars to be approved by the labor commissioner and conditioned to pay any damages that may accrue to any person or persons because of any wrongful act, or violation of law, on the part of applicant in the conduct of said business. There shall also be filed with the application a schedule of fees to be charged for services rendered to patrons, which schedule shall not be changed during the term of license without consent being first given by the commission.

Any person, firm, or corporation applying for a license, as provided in this chapter, to operate an employment agency for furnishing or procuring of employment shall furnish the commission with its contract form, which form shall distinctly provide that no fee or other thing of value in excess of one dollar shall be

collected in advance of the procuring of employment and no license shall be issued unless such contract form contains such provision. Thereafter, any person, firm, or corporation to whom a license has been issued that violates this provision of its contract shall have his license canceled. [C31, 35,§1551-c2; C39,§1551.02; C46, 50, 54,§95.2]

**95.3 Issuance or refusal.** The commission shall fully investigate all applicants for the license required by section 95.1, and shall not issue any license earlier than one week after the application therefor is filed, provided, however, that the commission shall either grant or refuse such license within thirty days from the date of the filing of the application. All licenses issued under the provisions of this chapter shall expire on June 30 next succeeding their issuance. [C31, 35,§1551-c3; C39, §1551.03; C46, 50, 54,§95.3]

**95.4 Fee.** The annual license fee shall be fifty dollars. [C31, 35,§1551-c4; C39,§1551.04; C46, 50, 54,§95.4]

**95.5 Revocation of license.** The commission may revoke at any time any such a license issued by it upon good cause shown and when there has been a substantial violation of any of the provisions of law regulatory of such business. [C31, 35,§1551-c5; C39,§1551.05; C46, 50, 54,§95.5]

**95.6 Violations.** Any person in any manner undertaking to do any of the things described in section 95.1, without first securing a license as herein provided, shall be guilty of a misdemeanor. [C31, 35,§1551-c6; C39,§1551.06; C46, 50, 54,§95.6]

**Punishment, §687.7**

**CHAPTER 96**

**EMPLOYMENT SECURITY**

Referred to in §97C.19

See also reference in §97.52

<p>96.1 Name.</p> <p style="text-align: center;"><b>DECLARATION OF STATE PUBLIC POLICY</b></p> <p>96.2 Guide for interpretation.</p> <p style="text-align: center;"><b>BENEFITS</b></p> <p>96.3 How paid and amounts.</p> <p style="text-align: center;"><b>BENEFIT ELIGIBILITY CONDITIONS</b></p> <p>96.4 Required findings.</p> <p style="text-align: center;"><b>DISQUALIFICATION FOR BENEFITS</b></p> <p>96.5 Causes.</p> <p style="text-align: center;"><b>CLAIMS FOR BENEFITS</b></p> <p>96.6 Filing—determination—appeal.</p> <p style="text-align: center;"><b>CONTRIBUTIONS</b></p> <p>96.7 Payment—rates.</p> <p style="text-align: center;"><b>PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE</b></p> <p>96.8 Conditions and requirements.</p>	<p style="text-align: center;"><b>SHORT TITLE</b></p> <p style="text-align: center;"><b>UNEMPLOYMENT COMPENSATION FUND</b></p> <p>96.9 Control, management, and use.</p> <p style="text-align: center;"><b>EMPLOYMENT SECURITY COMMISSION</b></p> <p>96.10 The commission and divisions.</p> <p style="text-align: center;"><b>ADMINISTRATION</b></p> <p>96.11 Powers, rules and personnel.</p> <p style="text-align: center;"><b>EMPLOYMENT SERVICE</b></p> <p>96.12 State employment service.</p> <p style="text-align: center;"><b>EMPLOYMENT SECURITY ADMINISTRATION FUND</b></p> <p>96.13 Control and use.</p> <p style="text-align: center;"><b>COLLECTION OF CONTRIBUTIONS</b></p> <p>96.14 Priority—refunds.</p> <p style="text-align: center;"><b>PROTECTION OF RIGHTS AND BENEFITS</b></p> <p>96.15 Waiver—fees—assignments.</p> <p>96.16 Offenses.</p> <p style="text-align: center;"><b>REPRESENTATION IN COURT</b></p> <p>96.17 Counsel.</p> <p>96.18 Nonliability of state.</p>
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## DEFINITIONS

96.19 Scope.  
 96.20 Reciprocal benefit arrangements.  
 96.21 Termination.

96.22 Servicemen not disqualified.  
 96.23 Base period exclusion.  
 96.24 Employer to be notified.

## SHORT TITLE

**96.1 Name.** This chapter shall be known and may be cited as the "Iowa Employment Security Law." [C39,§1551.07; C46, 50, 54,§96.1]

## DECLARATION OF STATE PUBLIC POLICY

**96.2 Guide for interpretation.** As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [C39,§1551.08; C46, 50, 54, §96.2]

## BENEFITS

**96.3 How paid and amounts.**

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 7, paragraph "g" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the commission may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to his weekly benefit amount.

3. *Partial unemployment.* Each eligible individual who is partially unemployed in any week shall be paid with respect to such weekly benefits in an amount equal to his weekly benefit amount less the total amount of wages earned in such week reduced by three dollars.

4. *Determination of benefit.* The weekly benefit amount of any individual shall be an amount equal to one twentieth of his total wages paid for insured work in that calendar quarter in his base period in which his wages were the highest, but in no case shall said amount be more than thirty dollars nor less than five dollars in any one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the total of the wage credits accrued to his account during his base period, or twenty-four times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who earns wages in insured work. After the expiration of each calendar quarter, the commission shall compute wage credits for each individual by crediting his account with one-third of the wages for insured work paid him during such quarter, or two hundred dollars, whichever is the lesser. Benefits paid to an eligible individual shall be charged against the base period wage credits in his account which have not previously been charged hereunder, in the same chronological order as the wages on which such wage credits are based were paid.

Referred to in §96.20, subsection 2

6. *Part-time workers.*

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

b. The commission shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Canning industry workers.* An individual employed by an employer engaged in the canning or freezing of fresh perishable fruits or vegetables and employed solely within the canning season or seasons, as determined by the commission, shall not be eligible to receive benefits based on such employment unless he earns wages of two hundred dollars or more



for employment performed for one or more other employers during his base period. [C39, §1551.09; C46, 50, 54, §96.3; 56GA, ch 79, §§1-3; ch 80, §1; 57GA, ch 72, §1]

Referred to in §96.19, subsection 13; and §96.20

**BENEFIT ELIGIBILITY CONDITIONS**

**96.4 Required findings.** An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

1. He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe.

2. He has made a claim for benefits in accordance with the provisions of section 96.6 subsection 1.

3. He is able to work, and is available for work.

4. Prior to any week, in any benefit year, for which he claims benefits he has been totally unemployed for a waiting period of one week (and for the purposes of this subsection, two weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. No week shall be counted as a week of total unemployment for the purposes of this subsection:

a. If benefits have been paid with respect thereto;

b. Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections 2 and 5 of this section;

c. Unless it occurs after benefits first could become payable to any individual under this chapter.

5. He has within his base period been paid wages in insured work equal to not less than twenty times his weekly benefit amount. [C39, §1551.10; C46, 50, 54, §96.4]

Referred to in §§96.3, 96.19, subsection 13; and §96.20

**DISQUALIFICATION FOR BENEFITS**

**96.5 Causes.** An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If he has left his work voluntarily without good cause attributable to his employer, if so found by the commission. But he shall not be disqualified if the commission finds that:

a. He left his employment in good faith for the sole purpose of accepting better employment, which he did accept, and that he remained continuously in said new employment for not less than twelve weeks;

b. He has been laid off from his regular employment and has sought temporary employment, and has notified his temporary employer that he expected to return to his regular job when it became available, and the temporary employer employed him under these conditions, and the worker did return to his regular

employment with his regular employer as soon as it was available.

c. He left his employment for the necessary and sole purpose of taking care of a member of his immediate family who was then injured or ill, and if after said member of his family sufficiently recovered, he immediately returned to and offered his services to his employer, provided, however, that during such period he did not accept any other employment.

Referred to in §96.22  
Exceptions applicable to persons entering the military forces, see 50GA, ch 69, §1

2. *Discharge for misconduct.* If the commission shall find that he has been discharged for misconduct in connection with his employment, he shall forfeit not less than two nor more than nine weeks' benefits as may be ordered by the commission.

3. *Failure to accept work.* If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment, if any.

a. In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence, and any other factor which it finds bears a reasonable relation to the purposes of this subsection.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that:

a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Referred to in §96.6, subsection 2

5. *Other compensation.* For any week with respect to which he is receiving or has received remuneration in the form of:

a. Wages in lieu of notice;

b. Compensation for temporary disability under the workmen's compensation law of any state or under a similar law of the United States; or

c. Old-age benefits under title II of the social security act [42 USC, ch 7], as amended, or similar payments under any act of Congress;

d. Benefits paid as retirement pay or as private pension.

Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

6. *Benefits from other state.* For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply. [C39, §1551.11; C46, 50, 54, §96.5]

Referred to in §96.19, subsection 19

#### CLAIMS FOR BENEFITS

##### 96.6 Filing—determination—appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the commission may prescribe.

Referred to in §§96.4, 96.19, subsection 16

2. *Initial determination.* A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make its determinations with respect thereto in accordance with the procedure described in subsection 3 of this section, except

that in any case in which the payment or denial of benefits will be determined by the provisions of section 96.5 subsection 4, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or other interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission, shall be paid only after such determination; provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

Referred to in §96.7, subsection 3

3. *Appeals.* Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5 of this section.

4. *Appeal tribunals.* To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee, as fixed by the commission per day of active service on such tribunal, plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

5. *Commission review.* The commission may

on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard in accordance with the requirements of subsection 3, by the full membership of the commission, or, in the absence or disqualification of the labor representative or the employer representative on the commission, by the public representative acting alone. The commission shall promptly notify the interested parties of its findings and decision.

6. *Procedure.* The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

7. *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary traveling expenses at a rate fixed by the commission, which fees shall be charged to the unemployment compensation administration fund of the commission.

8. *Appeal to courts.* Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission or who has been designated by the commission for that purpose, or at the commission's request, by the attorney general.

9. *Court review.* Within ten days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in

the state of Iowa the action shall be brought in the district court of Polk county, Iowa, against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served on a member of the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commission shall forthwith mail one such copy to each such defendant. The commission shall within sixty days after notice of appeal has been served on the commission certify and file with said district court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein, or so much thereof as may be agreed upon by the parties to such appeal. Such agreement as to the records, papers and documents to be certified shall be in writing, signed by the parties to the appeal, and shall be filed with the commission. A copy of such agreement shall be filed with the transcript of the records filed with the district court. With such transcript the commission shall file its answer. The transcript as certified and filed by the commission shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud any finding of fact by the commission, after notice and hearing as herein provided, shall be binding upon the court on appeal, when supported by substantial and competent evidence. The commission may also, in its discretion, certify to such courts, questions of law involved in any decision by it. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state.

10. *Decision on appeal.* Any order or decision of the commission may be modified, reversed, or set aside on one or more of the following grounds and on no other:

1. If the commission acted without or in excess of its powers.

2. If the order or decree was procured by fraud.

3. If the facts found by the commission do not support the order or decree.

4. If there is not sufficient competent evidence in the record to warrant the making of the order or decision.

11. *Judgment or order remanding.* When the district court, on appeal, reverses or sets aside an order or decision of the commission, it may remand the case to the commission for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree

shall have the same force and effect as if action had been originally brought and tried in said court.

12. *Appeal.* An appeal may be taken from any final order, judgment, or decree of the district court to the supreme court of Iowa, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order. [C39,§1551.12; C46, 50, 54,§96.6]

See §94.1

### CONTRIBUTIONS

#### 96.7 Payment—rates.

##### 1. *Payment.*

a. On and after July 1, 1936, contributions shall accrue on all taxable wages paid by an employer for insured work.

b. Such contributions shall become due and be paid to the commission for the fund at such times and in such manner as the commission by regulation prescribes.

c. In the payment of any contribution the fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

d. Contributions required from an employer shall not be deducted in whole or in part from the wages paid to individuals in his employ.

2. *Rate of contribution by employers.* Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

a. One and eight-tenths percent with respect to employment for the six months period beginning July 1, 1936, provided that if the total of such contributions at such one and eight-tenths percent rate equals less than nine-tenths of one percent of the annual payroll of any employer for the calendar year 1936, such employer shall pay, at such time as the commission shall prescribe, an additional lump sum contribution with respect to employment for such six months period beginning July 1, 1936, equal to the difference between nine-tenths of one percent of his annual payroll for the calendar year 1936 and the total of his contributions at such one and eight-tenths percent rate for such six months period beginning July 1, 1936, and provided further that in no event shall employers' contributions at such one and eight-tenths percent rate exceed nine-tenths of one percent of his annual payroll for the calendar year 1936;

b. One and eight-tenths percent with respect to employment in the calendar year 1937;

c. Two and seven-tenths percent with respect to employment during the calendar years 1938, 1939, 1940; and

d. Two and seven-tenths percent of wages paid by him during the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after December 31, 1940, except as may be otherwise prescribed in subsection 3 of this section.

##### 3. *Future rates based on benefit experience.*

a. (1) The commission shall maintain a separate account for each employer and shall credit his account with all contributions which he has paid or which have been paid on his behalf.

(2) Benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of such individual occurred. Provided, that in any case in which a claimant to whom such benefits are paid is in the employ of a base period employer at the time he is receiving such benefits, and he is receiving the same employment from such employer that he received during his base period, then no charge of benefits paid to such claimant shall be made against the account of such employer.

(3) The amount of benefits so charged in any calendar quarter against the account of any employer shall not exceed the amount of such individual's wage credits based on employment with such employer during such quarter.

(4) The commission shall by general rule prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same calendar quarter.

(5) Nothing in this chapter shall be construed to grant any employer or the individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

(6) As soon as practicable after the close of each calendar quarter, and in any event within twenty days after the close of such quarter, the commission shall notify each employer of the amount that has been charged to his account for benefits paid during such quarter. This statement to the employer shall show the name of each claimant to whom such benefit payments were made, the claimant's social security number, and the amount of benefits paid to such claimant. Any employer who has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to such claimants may within thirty days after the receipt of such statement appeal to the commission for a hearing to determine the eligibility of the claimant to receive such benefits. The commission may hear the case or may refer the same to an appeal tribunal for hearing. In either case both the employer and the claimant shall receive notice of the time and place of such hearing.

(7) Any employer may at any time make voluntary payments to his account in excess of the other requirements of this chapter, and all such payments shall be considered on any

computation date as contributions required under the provisions of this chapter if they are paid by the employer not later than thirty days after such computation date.

b. In any case in which the enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, or in any case in which one or more employing units have been reorganized or merged into a single employing unit and the successor employer continues to operate such enterprise, such successor employer shall assume the position of the predecessor employer or employers with respect to such predecessors' pay rolls, contributions, accounts and contribution rates to the same extent as if there had been no change in the ownership or control of such enterprise or business.

In determining each employer's rate of contribution for the calendar year 1945, and for each year thereafter, such employer shall be given full credit for the payrolls, contributions, accounts and contribution rates of his predecessor employer or employers to the same extent as if there had been no change in the organization or the ownership of the business. Provided, that in any case in which such sale, transfer, merger or reorganization has taken place in any year after the predecessor employer's rate of contribution (hereafter called rate) has been determined for such year the employer's rate for the remainder of such year, shall, upon his application to the commission be determined in the following manner:

(1) If the successor employer has no rate or if he has a rate and it is the same rate as that of his predecessor employer or employers, their rates being the same rate, his rate shall be that of the predecessor employer or employers.

(2) If the rate or rates of the predecessor employers are not the same rate, and that of the successor employer if he has a rate is not the same rate as that of the predecessor employer then the rate of the successor employer shall be redetermined under the combined experience of the predecessor employer or employers and the successor employers.

**Referred to in §96.8, subsection 4**

c. Each employer's rate of contribution shall be two and seven-tenths percent except as otherwise provided in this chapter. No reduced rate of contribution shall be granted to such employer until there shall have been twelve consecutive calendar quarters immediately preceding the computation date throughout which his account has been chargeable with benefit payments.

d. Each employer's rate for each calendar year after December 31, 1956, shall be determined on the basis of his record and the record of the predecessor owner of such enterprise, if any, up to the computation date for such year. If, on the computation date, the total of all contributions paid to an employer's

account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date exceeds the total benefits charged to such account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, such employer's contribution rate shall be:

(1) One and eight-tenths percent, if such excess equals or exceeds two and one-half percent but is less than five percent of his average annual payroll.

(2) Nine-tenths of one percent, if such excess equals or exceeds five percent but is less than seven and one-half percent of his average annual payroll.

(3) Forty-five hundredths of one percent, if such excess equals or exceeds seven and one-half percent but is less than ten percent of his average annual payroll.

(4) If such excess equals or exceeds ten percent of his average annual payroll, then no contributions shall be required.

(5) Whenever the unemployment trust fund account of the state equals or exceeds one hundred ten million dollars the contribution rates in subparagraphs 1, 2, and 3 hereof shall be reduced to and shall remain at fifty percent thereof until said unemployment trust fund account of the state shall have been reduced to seventy million dollars, in which event the said contribution rates shall revert to the rates stated in subparagraphs 1, 2, and 3 hereof.

**Above rates effective January 1, 1955, see 56GA, ch 81, §4**

e. No employer's rate for the period of twelve months commencing January 1 of any calendar year after December 31, 1937, shall be less than two and seven-tenths percent, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than one and eight-tenths percent unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

f. Based upon the formula above provided in this section the commission shall fix the rate of contribution for each employer. The commission shall notify the employer of the rate so fixed. An employer may appeal to the commission for a revision of the rate of contribution so fixed within thirty days from the date of the notice to such employer. The commission after such hearing may set aside its former determination or modify it and may grant the employer a new rate of contribution. The commission shall notify the employer of this determination by certified mail. From this determination the employer may appeal to the district court for further hearing. The manner in which such appeal shall be taken and heard shall be in accordance with the provisions of subsections 5 and 6 of this section.

#### 4. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required by the commission pursuant to subsection 7 of section 96.11, the commission shall examine such reports and determine the correct amount of contributions due, and the amount so determined by the commission shall be the contributions payable. If the contributions found due shall be greater than the amount theretofore paid, the excess, together with interest as provided in this chapter, shall be paid by the employer within thirty days after the commission shall have given notice thereof to the employer by certified mail.

b. If the commission discovers from the examination of the reports or otherwise that wages payable for employment, or any part thereof, have not been listed in the reports, or that no reports were filed when due, or that reports have been filed showing contributions due but no contributions in fact have been paid, it may at any time within five years after the time such reports were due, determine the correct amount of contributions payable, together with interest as provided in this chapter. The amount so determined shall be paid within thirty days after the commission shall have given notice thereof to the employer by certified mail.

c. The certificate of the commission to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished, as required under the provisions of this chapter shall be prima-facie evidence thereof.

5. *Revision of contributions.* An employer may appeal to the commission for revision of the contributions and interest assessed against such employer at any time within thirty days from the date of the notice of the assessment of such contributions and interest. The commission shall grant a hearing thereon and if, upon such hearing, it shall determine that the amount of contributions payable with interest thereon is incorrect, it shall revise the same according to the law and the facts and adjust the computation of the contributions and interest accordingly. The commission shall notify the employer by certified mail of its findings.

#### 6. *Appeals.*

a. An appeal may be taken by the employer to the district court of the county in which such employer resides, or in which such employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the wages payable for employment were earned or paid or in Polk county, within sixty days after the date of the notice to such employer notifying such employer of his rate of contribution, or of the commission's determination as provided for in subsection 3 of this section or subsection 5 of this section.

b. The appeal shall be taken by the employer filing in the office of the clerk of the district

court of such county his petition setting forth the errors complained of in the commission's ruling. The employer shall cause an original notice to be served upon the chairman of the commission in the same manner as provided for in ordinary actions in court. The commission shall within thirty days from the date on which said notice was served on the commission certify and file with the clerk of said court a copy of the records and proceedings upon which the rate of contributions or the assessment of contributions was established.

The plaintiff shall file with the clerk of said court a bond for the use of the defendant, with sureties approved by the clerk, in penalty to be fixed and approved by the clerk of said court. In no case shall the bond be less than fifty dollars conditioned that the plaintiff shall perform the orders of the court.

c. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the employer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

7. *Jeopardy assessments.* If the commission believes that the assessment or collection of contributions payable will be jeopardized by delay, the commission may immediately make an assessment of the estimated amount of contributions due, together with all interest thereon as provided by this chapter, and demand payment thereof from the employer. If such payment is not made, a distress warrant may be issued or a lien filed against such employer immediately.

The commission shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the contributions involved, and with securities satisfactory to the commission. [C39, §1551.13; C46, 50, 54, §96.7; 56 GA, ch 81, §§1,2; 57GA, ch 72, §§2-5; ch 267, §15]

Referred to in §§96.19, 96.20

### PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE

#### 96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit shall cease to be an employer subject to this chapter, as of the first day of January of any calendar year, if it files with the commission, prior to the fifteenth day of February of such year, a written application

for termination of coverage, and the commission finds that there was no twenty different weeks within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in paragraph "b" or "c" or "d" of section 96.19 subsection 6 shall be treated as a single employing unit.

3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the commission a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the commission a written notice to that effect.

Referred to in §96.19, subsections 5 and 6

4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 3 paragraph "b", the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the commission may, on its own motion, terminate said account. [C39, §1551.14; C46, 50, 54, §96.8; 56GA, ch 82, §1; 57GA, ch 73, §2]

Referred to in §96.19, subsection 6

UNEMPLOYMENT COMPENSATION FUND

96.9 Control, management, and use.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of:

a. All contributions collected under this chapter, together with any interest thereon collected pursuant to section 96.14,

b. All fines and penalties collected pursuant to the provisions of this chapter,

c. Interest earned upon any moneys in the fund,

d. Any property or securities acquired through the use of moneys belonging to the fund, and

e. All earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission. The state comptroller shall issue warrants upon the fund pursuant to the order of the commission and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.

c. A benefit account. All moneys payable to the fund shall, upon receipt thereof by the commission, be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the comptroller under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as cus-



todian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the trust fund deposited with the secretary of the treasury of the United States under the provisions of this subsection 2 of this section for any calendar year shall be allocated and credited to and become a part of each employer's reserve account, said allocation to be made in the following manner: For the calendar year 1950 and each calendar year thereafter, the commission shall add and credit to each employer's reserve account, the percentage of the total interest paid upon the aggregate of the reserve accounts of all of the employers in the state in said year that each such employer's individual reserve account bears to said aggregate reserve account. Said interest shall be credited and applied in the same manner as a voluntary contribution made by each such employer.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the commission deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the comptroller pursuant to the order of the commission for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the comptroller for the payment of benefits and refunds shall bear the signature of the comptroller. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be re-deposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all

funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the commission.

5. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the railroad unemployment insurance act\*, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1(a) of the railroad unemployment insurance act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1(a) of the railroad unemployment insurance act pursuant to the provisions of this chapter during the period July 1, 1939 to December 31, 1939, inclusive.

6. *Cancellation of warrants.* The state comptroller, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on



all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and certification by the commission. [C39,§1551.15; C46, 50, 54,§96.9]

Referred to in §§96.13, 96.20

\*See 45 USC, ch 11

Omnibus repeal, 50GA, ch 75,§2

#### EMPLOYMENT SECURITY COMMISSION

##### 96.10 The commission and divisions.

1. *Commission created.* There is hereby created a commission to be known as the Iowa employment security commission. The commission shall consist of three members who shall devote their entire time to the duties of their office; one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. During his term of membership on the commission no member shall serve as an officer or committee member of any political party organization, and not more than two members of the commission shall be members of the same political party. Each of the three members of the commission shall be appointed by the governor immediately after the effective date of this chapter, subject to approval by a two-thirds vote of the members of the senate in executive session, and shall serve for a term of six years, or until his successor is appointed and qualified, except that

a. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

b. The terms of the members first appointed after the date of enactment of this chapter shall expire, as designated by the governor at the time of appointment, one member on June 30, 1939, and one member on June 30, 1941, and one member on June 30, 1943, or in each of the foregoing instances until his successor is appointed and qualified.

The governor may at any time, after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in the performance of his duties as a member of the commission. Before entering upon the discharge of his official duties, each member of the commission shall take and subscribe to an oath of office, which shall be filed in the office of the secretary of state. Any vacancy occurring for any cause in the membership of this commission shall be filled for the unexpired term by appointment by the governor subject to approval by a two-thirds vote of the members of the senate in executive session at the next regular session of the legislature. Each member of the commission shall be entitled to receive as compensation for his services the sum of five thousand dollars per year, payable monthly. In addition to the compensation here-

inbefore prescribed, each member of the commission shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of his official duties. For the purposes of this chapter the first meeting in July shall be designated the annual meeting. Two members of the commission shall constitute a quorum for the transaction of business. At its first meeting, and at each annual meeting held thereafter, the commission shall organize by the election of a chairman and vice chairman from its own number, each of whom, except those first elected, shall serve for a term of one year and until his successor is elected. The commission shall adopt and use an official seal for the authentication of its orders and records. The commission shall establish and maintain its principal place of business in the city of Des Moines.

2. *Divisions.* The commission shall have power to establish and maintain such divisions under it as it deems necessary for the purposes of this chapter. [C39,§1551.16; C46, 50, 54,§96.10]

Referred to in §97B.66

#### ADMINISTRATION

##### 96.11 Powers, rules and personnel.

1. *Duties and powers of commission.* It shall be the duty of the commission to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe. Not later than the fifteenth day of December of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *Regulations and general and special rules.* General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become

effective in the manner and at the time prescribed by the commission. Each employer shall post and maintain printed statements of all regulations in places readily accessible to individuals in his service, and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations relating to the filing of claims for benefits. Such printed statements shall be supplied by the commission to each employer without cost to him.

Referred to in §96.19, subsection 7(8)

3. *Publication.* The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

4. *Personnel.* Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The commission shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. All positions shall be filled by persons selected and appointed on the basis of competency and fitness for the position to be filled. The commission shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions and demotions based upon ratings of efficiency and fitness and for terminations for cause. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder.

5. *Advisory councils.* The commission may appoint a state advisory council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

6. *Employment stabilization.* The commission with the advice and aid of such advisory councils as it may appoint, and through its appropriate divisions, shall take all appropri-

ate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

Referred to in §96.7, subsection 4

8. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, or appeal tribunal, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, or an appeal tribunal, there to produce evidence if so ordered or there to give testimony touching the matter

under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena, shall be punished by a fine of not more than two hundred dollars or by imprisonment, for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

10. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission, or an appeal tribunal, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. *State-federal co-operation.* In the administration of this chapter, the commission shall co-operate to the fullest extent consistent with the provisions of this chapter, with the federal social security board, created by the social security act, passed by congress and approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the federal social security board may from time to time require, and shall comply with such provisions as the federal social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the federal social security board governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in administration of this chapter. Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

The commission may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The commission may afford reasonable co-operation

with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the commission shall pay the commission such compensation therefor as the commission determines to be fair and reasonable.

12. *Destruction of records.* The commission may in its discretion destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the commission and are deemed by the commission no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the commission and such order shall be spread on the minutes of the commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund. [C39,§1551.17; C46, 50, 54,§96.11]

**EMPLOYMENT SERVICE**

**96.12 State employment service.**

1. *Duties of commission.* The employment security commission shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes", approved June 6, 1933, as amended, and known as the Wagner-Peyser act [48 Stat. L. 113; 29 USC§49]. All duties and powers conferred upon any other department, agency, or officer of this state relating to the establishment, maintenance, and operation of free employment offices shall be vested in the commission. The provisions of the said act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The commission is hereby designated and constituted the agency of this state for the purpose of said Wagner-Peyser act. If this chapter shall become inoperative for the reason prescribed in section 96.21, the Iowa state employment division shall not be affected thereby, but such division shall, upon the happening of such contingency, be deemed to be a division of the bureau of labor of the state of Iowa, with the same force and effect as if this chapter had not been passed, and that all funds and property made available to the Iowa state employment service division under this chapter shall under such contingency become, and shall be declared to be, the funds and property of the Iowa state em-

ployment service of the bureau of labor of Iowa. The commission may co-operate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of employment service facilities. The railroad retirement board shall compensate the commission for such services or facilities in the amount determined by the commission to be fair and reasonable.

2. *Financing.* For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund. [C39,§1551.18; C46, 50, 54,§96.12]

Referred to in §96.13, subsection 1

#### EMPLOYMENT SECURITY ADMINISTRATION FUND

##### 96.13 Control and use.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the social security board for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the social security board, the railroad retirement board, the United States employment service, established under the Wagner-Peyser act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the commission, and the commission shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for

such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under title III of the social security act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the commission shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the social security act. [C39,§1551.19; C46, 50, 54,§96.13]

#### COLLECTION OF CONTRIBUTIONS

##### 96.14 Priority—refunds.

1. *Interest on past-due contributions.* Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of one-half of one percent per month from and after such date until payment plus accrued interest is received by the commission, provided that the commission may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with respect to contributions required. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

2. *Lien of contributions—collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer.

The lien aforesaid shall attach at the time the contributions become due and payable and

shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commission shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of unemployment contribution liens", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall indorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The commission shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of contributions as to which the commission has filed notice with a county recorder, the commission shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The commission shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all contributions as soon as practicable after the same become delinquent, except that no property of the employer shall be exempt from the payment of said contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workmen's compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

Referred to in §96.16, subsection 4

3. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(b) of that act [11 USC., §104(b), as amended].

4. *Refunds, compromises and settlements.* In any case in which the commission finds that an employer has paid contributions or interest thereon, which have been erroneously paid, and who has filed an application for adjustment thereof, the commission shall make such adjustment, compromise, settlement, and make such refund of erroneous payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited, and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the commission on its own initiative. In any case in which the commission finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the commission may institute a proceeding in the district court in the county in which the enterprise against which such tax is levied is located, requesting authority to compromise such contribution. Notice of the filing of such application shall be given to the interested parties as the court may prescribe. The court upon such hearing shall have power to authorize the commission to compromise and settle its claim for such contribution and shall fix the amount to be received by the commission in full settlement of such claim and shall authorize the release of the commission's lien for such contribution.

Referred to in §96.19, subsection 7

5. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

6. *Original notice—form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

“And unless you appear thereto and defend in the district court of Iowa in and for . . . . . county at the courthouse in . . . . ., Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, default will be entered and judgment rendered against you by the court if then in session in said county, and if the court is not then in session said default will be entered and judgment rendered by the court on the first day of the first succeeding term or as soon thereafter as the same may be reached.”

7. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of two dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the secretary of state.

8. *Notification to nonresident—form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

“To . . . . . (Here insert the name of each defendant and his residence or last known place of abode as definitely as known.)

“You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . ., 19 . . . . , with the secretary of state of the state of Iowa.

“Dated at . . . . ., Iowa, this . . . . . day of . . . . ., 19 . . . . .

.....  
Plaintiff.  
By.....  
Attorney for Plaintiff.”

9. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

10. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said

nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be indorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

11. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

12. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

13. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action.

14. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant. [C39, §1551.20; C46, 50, 54, §96.14; 57GA, ch 267, §16]

Referred to in §96.9

PROTECTION OF RIGHTS AND BENEFITS

96.15 Waiver—fees—assignments.

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

2. *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission, or an appeal tribunal or a court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any pro-

visions of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months, or both.

3. *No assignment of benefits—exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void. [C39,§1551.21; C46, 50, 54,§96.15]

#### 96.16 Offenses.

1. *Penalties.* Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or for any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars or by imprisonment for not longer than thirty days. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

2. *False statement.* Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

3. *Unlawful acts.* Any person who shall willfully violate any provisions of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each

day such violation continues shall be deemed to be a separate offense.

4. *Misrepresentation.* Any person who, by reason of any error, or by reason of the non-disclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in section 96.14 subsection 2 for the collection of past-due contributions. [C39,§1551.22; C46, 50, 54,§96.16]

#### REPRESENTATION IN COURT

##### 96.17 Counsel.

1. *Legal services.* In any civil action to enforce the provisions of this chapter, the commission and the state may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or, at the commission's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the state, the validity of this chapter, the expenses and compensation of such special counsel employed by the commission in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. *County attorney.* All criminal actions for violations of any provision of this chapter, or of any rules or regulations issued by the commission pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the commission, shall be prosecuted by the attorney general. [C39,§1551.23; C46, 50, 54, §96.17]

96.18 *Nonliability of state.* Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums. [C39, §1551.24; C46, 50, 54,§96.18]

#### DEFINITIONS

96.19 *Scope.* As used in this chapter, unless the context clearly requires otherwise:

1. *"Annual payroll"*. The term "annual payroll" as used in subsection 3 "d" of section 96.7 means the total amount of taxable wages paid by an employer for insured work during



the period of four consecutive calendar quarters ending on September 30 of each year, and the term "average annual payroll" as used in said subsection means the average of the "annual payrolls" of an employer for the last three periods of four consecutive calendar quarters immediately preceding the computation date.

2. "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

3. "Commission" means the employment security commission established by this chapter.

4. "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

5. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 6 or section 96.8 subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 6 or section 96.8 subsection 3 shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 6 or section 96.8 subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the commission. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid

directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

6. "Employer" means:

a. Any employing unit which for some portion of a day in each of twenty different weeks within either the current or the preceding calendar year, excepting the calendar year 1935 (whether or not such weeks are or were consecutive) has or had in employment four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such day).

b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter.

c. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

e. Any employing unit which, having become an employer under paragraph "a", "b", "c" or "d", has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8 subsection 3 any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit which is an employer under the provisions of Subchapter (C)\* (Federal Unemployment Tax Act) of the Internal Revenue Code.

Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the commission that his employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

Referred to in §96.8, subsection 2  
\*26 USC 1600 et seq.

7. "Employment".

a. Except as otherwise provided in this subsection 7, "employment" means service, including service in interstate commerce, performed



for wages or under any contract of hire, written or oral, express or implied.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (a) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

c. Services performed within this state but not covered under paragraph "b" of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

d. Services not covered under paragraph "b" of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact.

g. The term "employment" shall not include:

(1) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions.

(2) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United

States; provided, however, that the general language just used shall not include any such instrumentality of the United States after congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal internal revenue code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided for in section 96.14 subsection 4, which section provides for the refunding of contributions erroneously collected.

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11 subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter.

Referred to in §96.3, subsection 1

(4) Agricultural labor.

The term "agricultural labor", as used in this chapter includes all services performed:

On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm, its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

In connection with the production or harvesting of maple sirup or maple sugar or any

commodity defined as an agricultural commodity in section 15 (g) of the federal agricultural marketing act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

The phrase "agricultural labor" as used herein, shall be construed to apply only to this subsection and shall not be construed to apply or define "agricultural labor" as used in the workmen's compensation act.

(5) Domestic service in a private home.

(6) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother.

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(8) Services performed during school vacations or outside of school hours by students who devote their time and efforts chiefly to their studies, rather than to incidental employment.

8. "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

9. "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

10. "*Total and partial unemployment*".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at his then regular job, he works less than the regular full-time week and in which he earns less than his weekly benefit amount plus three dollars.

c. An individual shall be deemed partially unemployed in any week in which he, having been separated from his regular job, earns at odd jobs less than his weekly benefit amount plus three dollars.

11. "State" includes, in addition to the states of the United States, Alaska, Hawaii, and the District of Columbia.

12. "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

13. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

14. "Week" means such period or periods of seven consecutive calendar days ending at midnight, or as the commission may by regulations prescribe.

15. "*Weekly benefit amount*". An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

16. "*Benefit year*". The term "benefit year" means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

Referred to in §96.22

17. "Base period" means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the

last completed calendar quarter immediately preceding the date on which he filed a valid claim.

Exceptions applicable to persons entering the military forces, see 50GA, ch 69,§3  
 Referred to in §96.23

18. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

19. "Customary self-employment". An employee shall be deemed to be engaged in "his customary self-employment", as said words are used in section 96.5, during the periods in which he customarily devotes the major portion of his working time and efforts: (a) To his individual enterprises and interests; or (b) to her duties as housewife; or (c) to attending classes and preparing his studies for any school or college.

20. "Insured work" means employment for employers.

21. "Taxable wages". The term "taxable wages" shall include all wages paid to an individual by an employer in any calendar year for insured work equal to the sum of three thousand dollars. Wages paid to such individual in any calendar year by an employer in excess of three thousand dollars are not taxable. Contributions on such taxable wages are to be credited to the calendar quarter in which such wages are paid.

22. "Computation date". The computation date for contribution rates shall be October 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective. [C39,§1551.25; C46, 50, 54,§96.19; 56 GA, ch 81,§3; ch 82,§2; 57GA, ch 72,§§6, 7; ch 73,§1]

**96.20 Reciprocal benefit arrangements.**

1. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

2. The commission may enter into arrangements with the appropriate agencies of other states or of the federal government (a) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of section 96.3 and section 96.4 subsection 5; provided such other state agency or agency of the federal

government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests, and (b) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 96.3 subsection 5 and section 96.9, but no reimbursement so payable shall be charged against any employer's account for the purposes of section 96.7. The commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

3. The commission is hereby authorized to enter into agreements with the appropriate agencies of other states or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state. [C39,§1551.26; C46, 50, 54,§96.20]

Constitutionality, 46ExGA, ch 4,§§22, 23; 47GA, ch 102, §§22, 23; 50GA, ch 77,§3; 51GA, ch 88,§4  
 Omnibus repeal, 48GA, ch 64,§3  
 Omnibus repeal, 48GA, ch 65,§6  
 Omnibus repeal, 48GA, ch 67,§7  
 Omnibus repeal, 48GA, ch 68,§9  
 Omnibus repeal, 48GA, ch 69,§8  
 Omnibus repeal, 49GA, ch 98,§8  
 Omnibus repeal, 49GA, ch 99,§2  
 Omnibus repeal, 49GA, ch 100,§2  
 Omnibus repeal, 49GA, ch 101,§17  
 Omnibus repeal, 49GA, ch 103,§3  
 Omnibus repeal, 49GA, ch 104,§2  
 Omnibus repeal, 49GA, ch 105,§2  
 Omnibus repeal, 50GA, ch 70,§2  
 Omnibus repeal, 50GA, ch 75,§2  
 Omnibus repeal, 50GA, ch 77,§2  
 Omnibus repeal, 50GA, ch 78,§2  
 Omnibus repeal, 51GA, ch 88,§5  
 Omnibus repeal, 51GA, ch 90,§3  
 Omnibus repeal, 52GA, ch 74,§9  
 Omnibus repeal, 53GA, ch 68,§2  
 Saving clause, 46ExGA, ch 4,§21; 47GA, ch 102,§21; 49GA, ch 104,§3

**96.21 Termination.** If at any time title IX of the social security act, as amended, shall be amended or repealed by congress or held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under this chapter may be credited against the tax imposed by said title IX, in any such event the operation of the provisions of this chapter requiring the payment of contributions and benefits shall immediately cease, the commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit, and such moneys, together with any other moneys in the unemployment compensation fund shall be refunded, without interest and under regulations prescribed by the commis-

sion, to each employer by whom contributions have been paid, proportionately to his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. When the commission shall have executed the duties prescribed in this section and performed such other acts as are incidental to the termination of its duties under this chapter, the provisions of this chapter, in their entirety, shall cease to be operative. [C39,§1551.27; C46, 50, 54,§96.21]

Referred to in §96.12, subsection 1  
Omnibus repeal, 47GA, ch 102,§25

**96.22 Servicemen not disqualified.** Notwithstanding any other provision of this chapter to the contrary, any individual in good faith leaving his employment after July 1, 1951, and prior to July 1, 1955, to join the armed forces of the United States, and who does so join, or who attempting to so join is rejected, shall not be disqualified under the provisions of subsection 1 of section 96.5 for voluntarily leaving his employment.

Any benefit year as defined in subsection

16 of section 96.19 of any individual shall be extended by any time spent after June 30, 1951, and prior to July 1, 1955, by such individual after the beginning of such benefit year in the armed forces of the United States. [C54,§96.22]

**96.23 Base period exclusion.** Any calendar quarter commencing after June 30, 1951, and ending prior to July 1, 1955, the greater portion of which is spent by such individual in the armed forces of the United States, shall not be considered as any portion of the base period provided for in subsection 17, of section 96.19. [C54,§96.23]

**96.24 Employer to be notified.** Whenever an employee is separated from his employment for the purpose of joining the armed forces of the United States, the employee shall notify the employer in writing of his acceptance and date of reporting for service and the employer shall, within fifteen days after said notice from the employee, notify the Iowa employment security commission of such separation and date of termination of wages on a form furnished by the commission. [C54,§96.24]

## CHAPTER 97

### OLD-AGE AND SURVIVORS' INSURANCE SYSTEM

97.1 to 97.49, inclusive, Code 1950, repealed by 55GA, ch 71,§1, except as indicated herein.

See Acts 54GA for amendments

97.50 Repeal of prior law—rights preserved.  
97.51 Special fund created—refunds.

97.52 Administration agreements.  
97.53 Rule of construction.

**97.50 Repeal of prior law—rights preserved.** Chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly, is hereby repealed, subject to the provisions which follow:

1. Any person being paid any benefits under the provisions of sections 97.13 to 97.18, inclusive, chapter 97, Code 1950, as amended, as of June 30, 1953, shall continue to receive such benefits as though that chapter had not been repealed.

2. Any person who became entitled to any benefits under the provisions of sections 97.13 to 97.19, inclusive, chapter 97, Code 1950, as amended, through the retirement or death of any person prior to June 30, 1953, shall be paid the same benefits upon proper application, subsequent to June 30, 1953, as though that chapter had not been repealed.

3. Any individual who was, as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be a fully insured individual at age sixty-five, on the basis of service prior to June 30, 1953 (but who is not under public employment as of such date), shall be entitled to receive, in the event of his reaching sixty-five years of age after June 30, 1953, not less than the same individual primary benefit he would have received under the provisions of section 97.13, Code 1950,

as amended, had he been eligible for retirement as of that date as though chapter 97, Code 1950, as amended, had not been repealed. Any individual who was as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be fully insured at age of sixty-five, on the basis of service prior to June 30, 1953, and who is as of June 30, 1953, under public employment, and also under coverage of a federal civil service retirement plan, shall be entitled to receive after reaching sixty-five years of age, provided he is no longer in public employment, not less than the same individual primary benefit he would have received under the provisions of section 97.13, Code 1950, as amended, had he been eligible for retirement as of that date, as though chapter 97, Code 1950, as amended, had not been repealed; and any wife, widow, child or other dependent of such individual would become entitled to any benefits as provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as though that chapter had not been repealed.

4. Any wife, widow, child, or other dependent of any fully insured individual who left employment or died prior to June 30, 1953, who would become entitled to any benefit as

provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as amended, as though that chapter had not been repealed.

5. Any currently insured individual under the terms of subsection 7 of section 97.45, Code 1950, as amended, who is not in Iowa public employment as of June 30, 1953, shall continue to be a currently insured individual against death for the period designated in said subsection and the provisions of coverage for benefit purposes under said subsection shall apply to such individuals as they would have applied as though chapter 97, Code 1950, as amended, had not been repealed. [C46, 50, §§97.13-97.19; C54, §97.50]

Referred to in §§97.52, 97.53, 97B.41, 97B.43, 97B.56

**97.51 Special fund created—refunds.** There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Old-Age and Survivors' Insurance Liquidation Fund", this fund to consist of all unexpended moneys collected under the provisions of chapter 97, Code 1950, as amended, together with all interest thereon, and also to include all securities and other assets acquired by and through the use of the moneys belonging to the Iowa old-age and survivors' insurance trust fund, and any other moneys that may be paid into this fund. There is hereby transferred to the Iowa old-age and survivors' insurance liquidation fund all funds and assets of the old-age and survivors' insurance trust fund created by the provisions of section 97.5, Code 1950. There shall also be deposited in the Iowa old-age and survivors' insurance liquidation fund all receipts after June 30, 1953 as a result of the collection of taxes or other moneys, as provided by section 97.8, Code 1950.

1. The treasurer of state is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the Iowa employment security commission, hereafter referred to as the "commission". It shall be the duty of the trustee:

a. To hold said trust funds.

b. Under the direction of the commission and as designated by the commission, invest such portion of said trust funds as are not needed for current payment of benefits, in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts and/or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law; also to sell and dispose of same when needed for the payment of benefits.

c. Disburse such trust funds upon warrants drawn by the comptroller pursuant to the order of the employment security commission.

2. All moneys which are paid or deposited into this fund are hereby appropriated and

made available to the commission to be used only for the purposes herein provided:

a. To be used by the commission for the payment of claims for benefits.

b. To be used by the commission for the payment in accordance with any agreement with the federal social security administration of amounts required to obtain retroactive federal social security coverage of Iowa public employees, dating from January 1, 1951, and for the payment of refunds which were authorized by the provisions of section 97.7, Code 1950, and for the payment of such other refunds to employees as may be authorized by the general assembly, and such other purposes as may be authorized by the general assembly.

Referred to in §97C.14

3. The Iowa employment security commission shall be vested with authority to administer the Iowa old-age and survivors' insurance liquidation fund and shall also administer all other provisions of this chapter.

4. Any public employee subject to coverage under the provisions of chapter 97, Code 1950, as amended, in public service as of June 30, 1953, and who has not applied for and qualified for benefit payments under the provisions of chapter 97, Code 1950, as amended, who had contributed to the Iowa old-age and survivors' insurance fund prior to the repeal of said chapter 97, as amended, shall be entitled to a refund of contributions paid into the Iowa old-age and survivors' insurance fund by such employee without interest, but there shall be deducted from the amount of any such refund any amount which has been or will be paid in his behalf as his contribution as an employee to obtain retroactive federal social security coverage. Any former public employee not in public service as of June 30, 1953, who has contributed to the Iowa old-age and survivors' insurance fund, his beneficiaries or estate, when no benefit has been paid under chapter 97, Code 1950, based upon such employee's prior record, shall be entitled to a refund of seventy-five percent of all contributions paid by him into said fund, without interest. The commission shall prescribe rules and regulations in regard to the granting of such refunds. In the event of such refund any individual receiving the same shall be deemed to have waived any and all rights in behalf of himself or any beneficiary or his estate to further benefits under the provisions of chapter 97, Code 1950, as amended.

5. Any employee in public service as of June 30, 1953 may, in lieu of receiving the cash refund of his contributions, elect to come under the coverage of any new retirement system which may be created by the general assembly, to which he is eligible, with credits toward future benefits in consideration of his prior contributions and length of service, and may direct the transfer of the amount payable to him to the assets of such new retirement system.

6. In the payment of any benefits in the future, as a result of the provisions of chapter 97, Code 1950, as amended, the commission shall follow the same procedure as provided by said chapter 97, as amended, as though said chapter had not been repealed, except the requirements of section 97.21, subsection 4, paragraph "a" and 97.21, subsection 5 shall not be applicable, but no primary benefit, based upon employment prior to June 30, 1953, shall be paid to any individual for any month during which he receives compensation for work in any position which would have been subject to coverage under the provisions of said chapter 97, as amended, if his earnings for such month exceed one hundred dollars, nor shall any benefit be paid to a wife or dependent of such employee for such month. [C46, 50, §§97.5, 97.7, 97.8, 97.9, 97.12, 97.23, 97.35; C54, §97.51]

Referred to in §§97.52, 97.53, 97B.41, 97B.43, 97B.56, 97C.14

**97.52 Administration agreements.** The Iowa employment security commission is author-

ized to enter into arrangements with the federal bureau of employment security whereby services performed by the commission and its employees both under sections 97.50 to 97.53, inclusive, and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. The money spent for rentals, supplies, and equipment used by the commission in administering both chapters shall be equitably apportioned and charged against said funds. [C46, 50, §§97.3-97.5, 97.23, 97.48; C54, §97.52]

Referred to in §§97.53, 97B.41, 97B.43, 97B.56

**97.53 Rule of construction.** As used in sections 97.50 to 97.52, inclusive, unless clearly indicated by the context to the contrary, all references to employment or service refer to employment or service in Iowa public employment. [C46, 50, §§97.1, 97.2; C54, §97.53]

Referred to in §§97.52, 97B.41, 97B.43, 97B.56  
Sections 97.50 to 97.53, inclusive, effective June 30, 1953, 55GA, ch 71, §6

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM

- 97A.1 Definitions of words and phrases.
- 97A.2 Creation of system—purpose— name.
- 97A.3 Membership in system.
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- 97A.11 Contributions by the state.
- 97A.12 Exemption from taxation and execution.
- 97A.13 Protection against fraud.

**97A.1 Definitions of words and phrases.** The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "System" shall mean the Iowa department of public safety peace officers' retirement, accident and disability system as defined in section 97A.2.

2. "Peace officer" or "peace officers" shall mean all members of the divisions of highway safety and uniformed force and criminal investigation and bureau of identification in the department of public safety, except clerical workers, who have passed a satisfactory physical and mental examination and have been duly appointed as members of the state department of public safety in accordance with the provisions of section 80.15.

3. "Member" or "member of system" shall mean a member of the Iowa department of public safety peace officers' retirement, accident and disability system as defined by section 97A.3.

4. "Board of trustees" shall mean the board provided for in section 97A.5 to administer the

Iowa department of public safety peace officers' retirement, accident and disability system.

5. "Medical board" shall mean the board of physicians provided for in section 97A.5.

6. "Membership service" shall mean service as a peace officer in the division of highway safety and uniformed forces or the division of criminal investigation and bureau of identification in the department of public safety rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

7. "Beneficiary" shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

8. "Widow" shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.

9. "Child" or "children" shall mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement.

10. "Regular interest" shall mean interest

at the rate of four percent per annum, compounded annually.

11. "Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund together with regular interest thereon as provided in section 97A.8.

12. "Earnable compensation" or "compensation earnable" shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank or position.

13. "Amount earned" shall mean the amount of money actually earned by a beneficiary in some definite period of time.

14. "Average final compensation" shall mean the average earnable compensation of the member during his last five years of service as a member of the state department of public safety, or if he has had less than five years of such service, then the average earnable compensation of his entire period of service.

15. "Annuity" shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

16. "Pensions" shall mean annual payments for life derived from the appropriations provided by the state of Iowa. All pensions shall be paid in equal monthly installments.

17. "Retirement allowance" shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

18. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

19. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees and regular interest.

20. "Actuarial equivalent" shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the board of trustees, and regular interest.

21. "Department" means the department of public safety of this state.

22. "Commissioner" means the commissioner of public safety of this state. [C50, 54,§97A.1]

**97A.2 Creation of system—purpose—name.** There is hereby created and established a retirement or pension system to be known as the Iowa department of public safety peace officers' retirement, accident and disability system. It is the intent and purpose of this chapter to provide certain retirement and other benefits for the peace officers of the Iowa de-

partment of public safety herein named, or benefits to their dependents in amounts and under terms and conditions hereinafter set forth. Such system shall be under the management of the board of trustees hereinafter described, and shall transact all of its business, invest all of its funds, and hold all of its cash and security and other property in the name of the Iowa department of public safety peace officers' retirement, accident and disability system. The retirement system so created shall begin operation on the effective date\* of this chapter. [C50, 54,§97A.2]

Referred to in §97A.1  
\*Effective date, July 4, 1949

**97A.3 Membership in system.**

1. All members of the division of highway safety and uniformed force and the division of criminal investigation and bureau of identification in the department of public safety, excepting the members of the clerical force, who are employed by the state of Iowa when this chapter becomes effective, and all persons thereafter employed as a member of such divisions in the department of public safety, except the members of the clerical force, shall be members of this system. Such members shall not be required to make contributions under any other pension or retirement system of the state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member of this system. [C50, 54,§97A.3]

Referred to in §97A.1

**97A.4 Service creditable.** The board of trustees shall fix and determine by proper rules and regulations how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay.

Any member of the system who has been employed continuously prior to the passage of this chapter in the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification in the department of public safety, or as a member of the Iowa highway safety patrol, or as a peace officer or a member of the uniformed force in any department or division whose functions were transferred to, merged, or consolidated in the department of public safety at the time such department was created, shall receive credit for such service in determining retirement and disability benefits provided for in this chapter. [C50, 54,§97A.4]

**97A.5 Administration.**

1. *Board of trustees.* The general administration and the responsibility for the proper

operation of the system and for making effective the provisions of this chapter are hereby vested in a board of trustees to administer the system. Such board of trustees shall be constituted as follows: The commissioner of public safety, who shall be chairman of said board, the state treasurer, and a member of the system, to be chosen by the members thereof for a term of two years.

2. *Voting.* Each trustee shall be entitled to one vote on said board and two concurring votes shall be necessary for a decision by the trustees on any question at any meeting of said board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules and regulations.* The board of trustees shall, from time to time, establish such rules and regulations, not inconsistent with this chapter, for the administration of funds created by this chapter and as may be necessary or appropriate for the transaction of its business.

5. *Employees.* The board of trustees shall appoint a secretary who may, but need not be, one of its members. It shall engage such stenographic, clerical and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board of trustees, and all other expenses of said board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as said board of trustees shall approve.

6. *Data—records—reports.* The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the system and for checking the expense of the system. The secretary of the board shall keep a record of all the acts and proceedings taken by said board, which records shall be open to public inspection, and he shall keep a complete record of the names of all of the members, their ages and length of service, the salary of each member, together with such other facts as may be necessary in the administration of the provisions of this chapter, and for the purpose of obtaining such facts, he shall have access to the records of the various departments of the state. The board of trustees shall biennially make a report to the state legislature showing the fiscal transactions of the system for the preceding biennium, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the system.

7. *Legal advisor.* The attorney general of the state of Iowa shall be the legal advisor for the board of trustees.

8. *Medical board.* The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and

pass upon the medical examinations required under the provisions of this chapter and shall report in writing to the board of trustees, its conclusions and recommendations upon all matters duly referred to it.

9. *Duties of commissioner of insurance.* The state commissioner of insurance shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

10. *Tables—rates.* Immediately after the establishment of this system, the state commissioner of insurance shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 11 of this section. The board of trustees shall adopt tables and certify rates of contributions to be used by the system.

11. *Actuarial investigation.* In the year 1952, and at least once in each two-year period thereafter, the state commissioner of insurance shall make an actuarial investigation in the mortality, service and compensation experience of the members and beneficiaries of the system and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the system such mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the state of Iowa in accordance with section 97A.8.

12. *Valuation.* On the basis of such tables as the board of trustees shall adopt, the state commissioner of insurance shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter. [C50, 54, §97A.5]

Referred to in §97A.1

#### 97A.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

a. Any member in service may retire upon his written application to the board of trustees, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have completed twenty-two years or more of creditable service, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of sixty-five years, shall be retired



forthwith, provided, that upon the request of the commissioner of public safety, the board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the commissioner of public safety.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the state in addition to his annuity which together with his annuity shall make a total service retirement allowance equal to one-half of his average final compensation.

Provided, however, that any person eligible to or receiving federal social security benefits shall, upon retirement at the age of sixty-five years or after, continue to receive such benefits as provided in paragraphs *a* and *b* hereof, but such benefits shall be reduced by the amount of any federal social security benefit received by such person.

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the commissioner of public safety, any member who has had five or more years of membership service shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with his annuity shall make a total retirement allowance equal to ninety percent of one-seventieth of his average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of his average final compensation, otherwise a pension which together with his annuity shall provide a total retirement allowance equal to one-half of his average final compensation.

5. *Accidental disability benefit.* Upon application of a member in service or of the commissioner of public safety, any member who has become totally and permanently incapacitated for duty as the natural and proximate

result of an accident or exposure occurring while in the actual performance of duty at some definite time and place shall be retired by the board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of sixty-six and two-thirds percent of his average final compensation.

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the board of trustees.

a. Should any beneficiary for disability not incurred in line of duty, be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age

fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and upon his subsequent retirement he shall be credited with all his service as a member.

c. The commissioner of public safety may, subject to approval of the medical board, assign any former member of the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such division.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, there shall be paid to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board of trustees:

a. His accumulated contributions and, if the member has had one or more years of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earned by him during the year immediately preceding his death; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs "a" and "b" of this subsection 8 shall be paid to his estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such, there shall be paid a pension which, together with the actuarial equivalent of his accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than fifty dollars per month;

c. To his widow to continue during her widowhood; or

d. If there be no widow, or if the widow dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of his child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains the age of eighteen; or

e. If there be no surviving widow or child under age eighteen, then to his dependent father and/or mother, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member was the natural and proximate result of an accident or exposure occurring at

some definite time and place while the member was in the actual performance of duty, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board of trustees:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to his widow, children or dependent parents as provided in paragraphs "c", "d", and "e" of subsection 8 of this section.

c. If there be no widow, children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph "b" of this section, in lieu of the pension provided in paragraph "b" of this subsection 9, shall be paid to his estate.

10. *Return of accumulated contributions.* Should a member cease to be a peace officer in the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification in the department of public safety except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the state commissioner of insurance to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the state under the provisions of any workmen's compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the state under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workmen's compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the state under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

13. *Pension to widow and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4 and/or 6 of this section there shall be paid a pension:

a. To his widow to continue during her widowhood, equal to one-half the amount received by such deceased beneficiary, but in no instance less than fifty dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the wife either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child.

14. *Appeals from action of the board of trustees.* An appeal may be taken from any action of the board of trustees acting under the provisions of this section by any member of the system to the district court of Polk county within thirty days after he receives written notice of the trustees' action. The board of trustees shall be represented by the attorney general. The appeal shall be taken by written notice to the chairman of the board of trustees and served as an original notice. When said notice is so served, it shall with the return thereon, be filed in the office of the clerk of the said district court and docketed as other cases, with the member as plaintiff and the board of trustees as defendant. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the board of trustees. An appeal may be taken by the member or by the board of trustees to the supreme court of this state in the same manner appeals are taken in suits in equity irrespective of the amount involved. [C50, 54, §97A.6; 56GA, ch 1, §35; ch 83, §§1, 2]

#### 97A.7 Management of funds.

1. The board of trustees shall be the trustees of the several funds created by this chap-

ter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds.

2. The investments of the several funds created by this chapter are hereby limited to interest-bearing bonds issued by the United States, by the state of Iowa, and those issued by counties, school districts, and/or general obligation or limited levy bonds issued by municipal corporations in this state as authorized by law.

3. The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys and other assets of the system. Any additional amount required to meet the interest on the funds of the system shall be paid by the state of Iowa and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the state of Iowa.

4. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as his authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

5. No trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of the board of trustees shall directly or indirectly for himself or as agent in any manner use the assets of the system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the board become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees. [C50, 54, §97A.7]

**97A.8 Method of financing.** All the assets of the system created and established by this chapter shall be credited according to the purpose for which they are held to one of five

funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Annuity savings fund.*

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of contributions payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20	3.91%
21	3.97%
22	4.04%
23	4.11%
24	4.18%
25	4.26%
26	4.33%
27	4.41%
28	4.48%
29	4.56%
30	4.64%
31	4.72%
32	4.80%
33	4.88%
34	4.97%
35	5.05%
36	5.14%
37	5.22%
38	5.31%
39	5.40%
40	5.50%

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The board of trustees shall certify to the state comptroller and the state comptroller shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The state comptroller shall certify to the board of trustees on each and every pay roll, or in such other manner as the board of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. All taxes or contributions heretofore paid into the old-age and survivors' insurance trust fund by a member of the system, together with all taxes or contributions heretofore paid by the member's employers into said fund because of such member's employment in public service, are hereby transferred therefrom and shall be paid into the annuity savings fund and shall be credited to the individual account of such member therein. The state treasurer shall ascertain the amount heretofore paid by such member and employers as aforesaid and transfer the amount so paid to the annuity savings fund created by this chapter.

e. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the state and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the state of Iowa an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be eight percent.

b. On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the state commissioner of insurance shall make each valuation required by this chapter and shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be sufficient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate".

The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the state commissioner of insurance after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall not be less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, provided, however, that the aggregate payment by the state shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the state shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the state of Iowa to pay the administration expenses of the system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Biennially the board of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing biennium to provide for the expense of operation of the system. [C50, §97A.8; 56GA, ch 84, §1]

Referred to in §§97A.1, 97A.5, 97A.7, 97A.9

**97A.9 Military service exceptions.** Any member who voluntarily or by induction enters the military service and who is serving in any branch of the armed forces of the United States, shall have the period of such military service included as part of his period

of service in the department and shall not be required to continue the contributions required of him under section 97A.8 during such period of military service, provided that he shall within six months after he has been granted an honorable discharge from such military service return and resume his duties in the department, and provided further, that such member shall be declared physically capable of resuming such duties upon examination by the medical board. [C50, 54, §97A.9]

Referred to in §97A.10

**97A.10 Creation of fund to pay contributions of absent members.** The state shall create a fund for the purpose of paying the contributions to this system of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such fund shall be used for the purpose of paying the contributions which are required of the members under section 97A.9, for a period during which such member is serving in the armed forces and not later than six months after his honorable discharge. Should any member fail to return to service with his division within six months after his honorable discharge from the military service, the amount credited to his account in this fund by the state shall revert back to the state and such member or his representative shall not be entitled to claim any interest in the contribution so made by the state. [C50, 54, §97A.10]

**97A.11 Contributions by the state.** On or before the first day of November in each year, the board of trustees shall certify to the state comptroller the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be paid by the state comptroller out of the funds appropriated for the Iowa department of public safety, to the treasurer of state, the same to be credited to the system for the ensuing year. [C50, 54, §97A.11]

**97A.12 Exemption from taxation and execution.** The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C50, 54, §97A.12]

**97A.13 Protection against fraud.** Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the system in any attempt to defraud the system as a result of such act, shall be guilty of a misdemeanor

and shall be punishable therefor under the laws of this state. Should any change or error in records result in any member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and, as far as practi-

cable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid. [C50, §54,§97A.13]

Constitutionality, 53GA, ch 70,§14  
Omnibus repeal, 53GA, ch 70,§15

## CHAPTER 97B

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Chapter 97, Code 1950, repealed by Chapter 71, Acts 55GA, with certain rights preserved  
See sections 97.50 to 97.53, inclusive

Referred to in §386B.15

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|---|---|
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**97B.1 System created.** A public employees' retirement system is hereby created and established to become effective as of July 4, 1953 and to be known as the "Iowa Public Employees' Retirement System" hereinafter called the "system". [C46, 50,§97.1; C54,§97B.1]

**97B.2 Purpose of chapter.** The purpose of this chapter is to promote economy and efficiency in the public service by providing an orderly means whereby employees who become superannuated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system which will provide for the payment of annuities to public employees, thereby enabling the employees to care for themselves in

retirement, and which by its provisions will improve public employment within the state, reduce excessive personnel turnover and offer suitable attraction to high-grade men and women to enter public service in the state. [C46, 50,§97.2; C54,§97B.2]

**97B.3 Administration.** The Iowa employment security commission, hereinafter called the "commission", shall be vested with authority to administer the Iowa public employees' retirement system. [C46, 50,§97.3; C54, §97B.3]

**97B.4 Powers and duties.** It shall be the duty of the commission to administer this chapter; and it shall have power and authority

to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon complying with chapter 17A. Not later than the fifteenth day of December of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the Iowa public employees' retirement fund. [C46, 50, §§97.4, 97.23; C54, §97B.4]

See chapter 17A for rules and regulations  
See §§96.4-96.11

**97B.5 Officers and employees.** Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, actuaries, and other persons as may be necessary in the performance of its duties. The commission shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. All positions shall be filled by persons selected and appointed on the basis of competency and fitness for the position to be filled. The commission shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commission shall establish and enforce fair and reasonable regulations based upon ratings of efficiency and fitness and for terminations for cause. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder. The commission is authorized to enter into arrangements with the federal bureau of employment security whereby services performed by the commission and its employees both under this chapter and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. That money spent for rentals, supplies and equipment used by both agencies shall be equitably apportioned and charged against said funds. [C46, 50, §97.38; C54, §97B.5]

**97B.6 Old records.** The commission may in its discretion destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the commission and are deemed by the commission no longer necessary to the proper administration of this chapter. Such destruction or disposition shall be made only by order of the commission and such order shall be spread on the minutes of the commission. Any

moneys received from the disposition of such records shall be deposited to the credit of the public employees' retirement fund. [C46, 50, §§97.25, 97.26; C54, §97B.6]

**97B.7 Fund created.**

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the "retirement fund". This fund shall consist of all moneys collected under this chapter, together with all interest, dividends and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

2. The treasurer of the state of Iowa is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the commission. It shall be the duty of the trustee:

a. To hold said trust funds.

b. Invest such portion of said trust funds as in the judgment of the commission are not needed for current payment of benefits under this chapter in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts and/or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law, or other investments authorized by insurance companies in this state.

c. Disburse such trust funds upon warrants drawn by the comptroller pursuant to the order of the commission.

3. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the commission to be used only for the purposes herein provided:

a. To be used by the commission for the payment of retirement claims for benefits under this chapter, or such other purposes as may be authorized by the general assembly.

b. To be used by the commission to pay refunds provided for in this chapter. [C46, 50, §§97.5, 97.7; C54, §97B.7]

**97B.8 Advisory investment board.** A board shall be established to be known as the "Advisory Investment Board of the Iowa Public Employees' Retirement System", hereinafter called the "board", whose duties shall be to advise and confer with the commission in matters relating to the investment of the trust funds of the Iowa public employees' retirement system. The powers of the board shall be purely advisory and the commission shall not be bound in the making of any investment by the recommendations of the board. The board shall consist of five members. Three of the members shall be appointed by the governor, one of whom shall be an executive of a domestic life insurance company, one an executive of a state or national bank operating

within the state of Iowa, and the third shall be an executive of a major industrial corporation located within the state of Iowa. The chairman of the social security committee of the house of representatives of the general assembly and the chairman of the social security committee of the senate of the general assembly shall be ex officio members of the board. Members appointed by the governor shall be paid their actual expenses incurred in performance of their duties and shall receive in addition thereto the sum of twenty-five dollars for each day of service not exceeding forty days per year. Ex officio members shall receive their actual expenses incurred in the performance of their duties. The appointive terms of the members appointed by the governor shall be for a period of six years dating from July 1 of the year in which they are appointed, but the governor shall designate, in the case of the original appointees, one who shall serve for a period of two years, a second who shall serve for a period of four years, and a third who shall serve for a period of six years. In the event of vacancy, through resignation or any other cause, in the membership of the board, the governor shall have the power of appointment. Appointees to this board shall be subject to confirmation by a two-thirds vote of the senate, but in the event of interim appointments, such confirmation shall be necessary at the next session of the senate. [C46, 50,§97.5; C54,§97B.8]

**97B.9 Taxes—payment and interest.** Taxes unpaid on the date on which they are due and payable as prescribed by the commission, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the commission, provided that the commission may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with respect to taxes required. Interest collected pursuant to this section shall be paid into the Iowa public employees' retirement fund.

1. If within thirty days after due notice the employer defaults in payment of taxes or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect taxes or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.

2. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision.

3. Every political subdivision is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter. [C46, 50,§§97.6, 97.8, 97.9, 97.12; C54,§97B.9]

**97B.10 Refunds.** In any case in which the commission finds the employer has paid taxes thereon which have been erroneously paid, and has filed application for an adjustment thereof, the commission shall make such adjustment, compromise or settlement and make such refund of such payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years of date of payment and not thereafter. For lack of time and cause, adjustments, compromises or refunds may be made by the commission on its own initiative. [C46, 50,§97.7; C54,§97B.10]

**97B.11 Tax on employer and employee.** In addition to all other taxes, there is hereby levied upon each employer, as defined in section 97B.41, and also upon each employee, as defined in section 97B.41, a tax equal to three and one-half percent of the wages paid by the employer to the employee for any service performed after June 30, 1953, while such employee is a member of the system. [C46, 50, §§97.8, 97.12; C54,§97B.11]

Tax limited to first \$4,000 wages, §97B.41

**97B.12 Statement to employee.** The employer shall furnish to all employees a written statement in a form prescribed by the commission suitable for retention by the employee, showing the wages paid to the employee after July 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering each quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement. [C46, 50, §97.11; C54,§97B.12]

**97B.13 No income tax deduction.** For the purposes of the state income tax, the tax imposed by this chapter shall not be allowed as a deduction to the taxpayer in computing his net income for any year in which such tax is deducted from his wages. [C46, 50,§97.10; C54, §97B.13]

**97B.14 Taxes matched by employer.** The taxes deducted from the wages of the em-



ployee by the employer shall be matched by the employer making the deduction and forwarded to the commission for recording and deposited with the treasurer of state to the credit of the Iowa public employees' retirement fund. Such taxes as deducted by the employer shall be paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the taxpayer, as may be prescribed by the commission. [C46, 50,§97.12; C54,§97B.14]

**97B.15 Rules and regulations.** The commission shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this chapter, which are necessary or appropriate to carry out such provisions and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder. [C46, 50,§97.23; C54,§97B.15]

**97B.16 Hearings.** The commission is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this chapter. Whenever requested by any such individual or by any other person who makes a showing in writing that his or her rights may be prejudiced by any decision the commission has rendered, it shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse its findings of fact and such decision. The commission is further authorized, on its own motion, to hold such hearings and to conduct such investigations and other proceedings as it may deem necessary or proper for the administration of this chapter. In the course of any hearing, investigation, or other proceedings, it may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the commission even though inadmissible under rules of evidence applicable to court procedure. [C46, 50,§97.24; C54,§97B.16]

**97B.17 Records maintained.** The commission shall establish and maintain records of the amount of wages paid to each individual subject to coverage under this chapter and shall maintain a record of the contribution of each individual, and also of the contribution made by each employer in behalf of said individuals and such records shall be the basis for the compilation of the retirement benefits provided under this chapter. Such records shall be evidence for the purpose of proceedings before the commission or any court of the amounts of such wages and the periods in which they were paid, and the absence of an entry as to an individual's wages in such records for any period shall be evidence that no

wages were paid such individual in such period. [C46, 50,§§97.25-97.27; C54,§97B.17]

**97B.18 Statement of accumulated credit.** After the expiration of each calendar year and prior to July 1 of the succeeding year, the commission shall furnish each covered individual with a statement of his accumulated credits under this chapter up to the end of such calendar year. The commission shall mail such statement to each employer not later than June 30 of the succeeding calendar year. The employer shall distribute such statements to its employees, and the records of the commission as shown by said statement as to the wages of such individual for such year and the periods of payment shall be conclusive for the purpose of this chapter, except as hereinafter provided. [C46, 50,§§97.11, 97.25; C54, §97B.18]

Referred to in §97B.19

**97B.19 Revision for error.** If, prior to the expiration of six months following the delivery of such statement, it is brought to the attention of the commission that any entry of such wages in such records is erroneous, or that any item of such wages has been omitted from the records, the commission may correct such entry or include such omitted item in its records, as the case may be. Written notice of any revision of any such entry which is adverse to the interest of any individual shall be given to such individual in any case where such individual has previously been notified by the commission of the amount of wages and of the period of payments shown by such entry. Upon request in writing made prior to the expiration of six months immediately following the giving of the statement provided for in section 97B.18, the commission shall afford any individual, or after his death shall afford his beneficiary or any other person so entitled in the judgment of the commission, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of such individual in such record, or any revision of any such entry. If a hearing is held, the commission shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall revise its records accordingly. Any party aggrieved by the decision of the commission under this section or section 97B.20 may appeal to the district court in the manner as provided in section 97B.29. [C46, 50,§§97.22, 97.26, 97.28; C54, §97B.19]

Referred to in §§97B.20, 97B.21

**97B.20 Appeal—hearing.** After the expiration of six months, as provided for in section 97B.19, and no appeal has been taken, the commission shall revise any entry or include in its records any omitted item of wages to conform its records with tax or wage reports or portions of tax reports. Notice shall be given of such conditions and to such individuals as is provided for revisions under section 97B.19. Upon request, notice and opportunity for hear-

ing with respect to any such entry, omission or revision shall be afforded under such conditions and to such individuals as is provided for in section 97B.19, but no evidence shall be introduced at any such hearing except with respect to conformity of such records with such tax reports. [C46, 50, §§97.22, 97.26; C54, §97B.20]

Referred to in §§97B.19, 97B.21

**97B.21 Appeal to court.** Within thirty days after any decision of the commission under sections 97B.19 and 97B.20, such decision shall be reviewable by commencing a civil action in the district court of the state of Iowa as provided in section 97B.29. [C46, 50, §§97.22, 97.27, 97.29; C54, §97B.21]

**97B.22 Witnesses and evidence.** For the purpose of any hearing, investigation, or other proceeding authorized or directed under this chapter, or relative to any other matter within its jurisdiction hereunder, the commission and/or appeal referee shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceedings may be required from any political subdivision in the state. Subpoenas of the commission shall be served by anyone authorized by it (1) by delivering a copy thereof to the individual named therein, or (2) by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the state of Iowa. In the discharge of the duties imposed by this chapter, the chairman or an appeal referee and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the administration of this chapter. [C46, 50, §§97.30, 97.32; C54, §97B.22; 57GA, ch 267, §17]

Witness fees, §622.69

**97B.23 Penalty for contumacy.** In case of contumacy by, or refusal to obey a subpoena duly served upon any person, any district court of the state of Iowa for the district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, shall have jurisdiction to issue an order re-

quiring such person to appear and give testimony, or to appear and produce evidence, or both. Any failure to obey such order of the court may be punished by said court as contempt thereof. [C46, 50, §§97.31, 97.32; C54, §97B.23]

Contempts, chapter 665

**97B.24 Production of books and papers.** No person so subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [C46, 50, §97.32; C54, §97B.24]

Perjury, chapter 721

**97B.25 Applications for benefits.** A representative designated by the commission and hereinafter referred to as a deputy, shall promptly examine applications for retirement benefits and on the basis of facts found by him shall either determine whether or not such claim is valid and if valid, the month with respect to which benefits shall commence, the monthly benefit amount payable, and the maximum duration thereof. The deputy shall promptly notify the applicant and any other interested party of the decision and the reasons therefor. Unless the applicant or other interested party, within thirty calendar days after such notification was mailed to his last known address, files an appeal from such decision, to the appeal referee as provided in section 97B.26, such decision shall be final and benefits shall be paid or denied in accord therewith. [C46, 50, §§97.33, 97.39, 97.41; C54, §97B.25]

**97B.26 Referee.** Unless such appeal is withdrawn, an appeal referee to be designated by the commission for this purpose, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. At said hearing all of the evidence taken and the proceedings had shall be taken and fully reported by a certified shorthand reporter. Said reporter shall promptly transcribe said evidence and proceedings and certify to same. The said transcript shall then be made available for use by the commission and by the courts at subsequent appeals, if any. The parties shall be duly notified of such referee's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission unless, within thirty days after the date of notification or mailing of such deci-

sion, further appeal is initiated pursuant to section 97B.27. [C46, 50,§§97.24, 97.33; C54, §97B.26]

Referred to in §97B.25

**97B.27 Review of decision.** Anyone aggrieved by the decision of the appeal referee may, at any time before such appeal referee decision becomes final, petition the commission for review of such appeal referee's decision. The commission shall review the record made before the appeal referee, but no additional evidence shall be heard. On the basis of such record the commission shall either affirm, modify, or reverse the decision of the appeal referee and shall determine the rights of the appellant on the basis of such record. It shall promptly notify the appellant and any other interested party by written decision. [C46, 50, §97.33; C54,§97B.27]

Referred to in §97B.26

**97B.28 Conclusiveness of finding.** Any decision of the commission in the absence of an appeal therefrom, as herein provided, shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission, as provided by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission or who has been designated by the commission for that purpose or, at the commission's request, by the attorney general. [C46, 50,§97.34; C54,§97B.28]

Referred to in §97B.33

**97B.29 Judicial review.** At any time prior to such commission decision becoming final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk county, Iowa, against the commission for the review of this decision, in which action any other parties to the proceeding before the commission shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served on a member of the commission or upon such person as the commission may designate, and such service shall be deemed completed service on all parties, but there shall be left with the parties so served as many copies of the petition as there are defendants, and the commission shall forthwith mail one such copy to each such defendant. When service is completed such petition shall be filed by appellant with the clerk of the district court who shall docket said cause in the same manner as provided for

other civil actions. The commission shall, within sixty days after the notice of appeal has been served on the commission, certify and file with said district court all documents and papers and a transcript of all testimony taken in the matter, together with the findings of fact and decision of the commission therein. With such transcript the commission shall file its answer. The transcript, as certified and filed by the commission, shall be the record upon which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud, any findings of fact by the commission after notice and hearing, as herein provided, shall be binding on the court on appeal when supported by substantial and competent evidence. The commission may also, in its discretion, certify to such courts, questions of law involving any decision by it. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law and the employment security law of this state. [C46, 50,§97.33; C54, §97B.29]

Referred to in §§97B.19, 97B.21

**97B.30 Powers of court.** Any order or decision of the commission may be modified, reversed, or set aside on one or more of the following grounds and no other:

1. If the commission acted without or in excess of its power.
2. If the order or decree was procured by fraud.
3. If the facts found by the commission do not support the order or decree.
4. If there is not sufficient competent evidence in the record to warrant the making of the order or decision. [C46, 50,§97.34; C54, §97B.30]

**97B.31 Judgment or decree.** When the district court, on appeal, reverses or sets aside an order or decision of the commission, it may remand the case to the commission for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court. [C46, 50,§97.33; C54,§97B.31]

**97B.32 Appeal to supreme court.** An appeal may be taken from any final order, judgment, or decree of the district court to the supreme court of Iowa, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a

supersedes or stay unless the commission shall so order. [C46, 50,§97.33; C54,§97B.32]

**97B.33 Certification to comptroller.** Upon final decision of the commission, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this chapter, the commission shall certify to the state comptroller the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the commission, through the state comptroller, shall make payment in accordance with the certification of the commission provided, that where a review of the commission decision is or may be sought under section 97B.28, certification of payment may be withheld pending such review. The state comptroller shall not be held personally liable for any payment or payments made in accordance with a certification by the commission. [C46, 50,§97.35; C54,§97B.33]

**97B.34 Payment to incompetents.** When it appears to the commission that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person. [C46, 50,§97.36; C54,§97B.34]

Referred to in §97B.35

**97B.35 Finality of such payments.** Any payment made after June 30, 1953, under the conditions set forth in section 97B.34, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment. [C46, 50,§97.37; C54,§97B.35]

**97B.36 Representatives of commission.** The commission is authorized to delegate to any member, officer, or employee of the commission designated by it any of the powers conferred upon it by this chapter and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of said chapter. [C46, 50, §97.38; C54,§97B.36]

**97B.37 Recognition of agents.** The commission may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the commission, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice be-

fore the district or supreme court of the state, shall be entitled to represent claimants before the commission upon filing with the commission a certificate of his right to so practice from the presiding judge or clerk of any such court. [C46, 50,§97.38; C54,§97B.37]

**97B.38 Fees for services.** The commission may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the commission under this chapter, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the commission, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both. [C46, 50,§97.42; C54,§97B.38]

**97B.39 Rights not transferable.** The right of any person to any future payment under this chapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. These moneys shall also be exempt from taxation, either as income or as personal property. [C46, 50,§97.43; C54, §97B.39]

**97B.40 Fraud.** Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized under this chapter, shall willfully make or cause to be made any false statement or representation as to the amount of any wages paid or received for the period during which earned or unpaid, knowing it to be false or whoever makes or causes to be made any false statement of a material fact knowing it to be false in any application for any payment under this chapter, or whoever willfully makes or causes to be made any false statement, representation, affidavit, or document in connection with such an application knowing them to be false, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both. [C46, 50,§97.44; C54, §97B.40]

**97B.41 Definitions.** When used in this chapter:

1. For the purpose of this chapter the term, "wages", means all remuneration for employ-

ment; including the cash value of remuneration paid in any medium other than cash, but not including the cash value of remuneration paid in any medium other than cash necessitated by the convenience of the employer, such amount as agreed upon by employer and employee and reported to the commission by the employer shall be conclusive of the value of remuneration in a medium other than cash; except that such term shall not include—

That part of the remuneration which, after remuneration equal to four thousand dollars has been paid to an individual with respect to employment during any calendar year or any part of any calendar year after July 4, 1953, is paid to such individual with respect to such employment.

2. The term, "employment", means any service performed under an employer-employee relationship under the provisions of this chapter.

3. a. The term, "employer", means the state of Iowa, the counties, municipalities and public school districts therein and all of the political subdivisions thereof and all of their departments and instrumentalities, all hereinafter called political subdivisions, as of July 4, 1953.

b. The term, "employee", means any individual who is in employment as defined in this chapter, except

(1) Members of the general assembly, elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions.

(2) Such persons who are members of any other retirement system in the state which is maintained in whole or in part by the public contributions other than persons who are covered under the provisions of chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly on June 30, 1953, under the provisions of sections 97.50 to 97.53, inclusive.

4. The masculine form of expression shall be deemed to include the feminine.

5. "System" means the retirement plan as contained herein or as duly amended.

6. "Abolished system" means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53, inclusive.

7. "Contributions" or "taxes" means the payments to the fund as provided herein, by the employer and/or by the members, necessary to provide the benefits of the retirement system.

8. "Member" means an individual who is a member of the retirement system created by this chapter.

9. "Accumulated contributions of a member" means the total obtained, as of any date, by accumulating each individual contribution by the member at two percent interest, compounded annually, from the end of the calen-

dar year in which such contribution was made to the first day of the month of such date.

10. "Service" means uninterrupted service under this chapter by an employee from the date he last entered employment of the employer until the date his employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by:

a. Service in the armed forces of the United States during a period of war or national emergency, provided the employee was employed by the employer immediately prior to entry into such armed forces, and further provided the employee was released from such service and returns to employment with the employer within ninety days of the date on which he shall have the right of release from such service or within such longer period as may be provided by the laws of the United States applicable thereto.

b. Leave of absence or vacation authorized by the employer for a period not exceeding twelve months.

c. The termination at the end of the school year of the contract of employment of an employee who is a teacher in the public schools of the state of Iowa, provided the employee enters into a further contract of employment as a teacher in the public schools of the state of Iowa for the next succeeding school year.

d. Temporary or seasonal interruptions in service such as service of school bus drivers, school teachers, instructors at Iowa state college, the state university of Iowa, or Iowa state teachers college, employees in state schools or hospital dormitories or other positions when the temporary suspension of service does not terminate the period of employment of the employee.

Referred to in §97B.48

11. "Prior service" means any service by an employee rendered at any time prior to July 4, 1953, except any such service while the employee was a public elected official.

12. "Years of prior service" means the total of all periods of prior service of a member. In the determination of such total years of prior service any fraction of the total in excess of an integral number of years which is at least six months shall be deemed to be a complete year and any smaller fraction shall be disregarded.

13. "Beneficiary" means the person or persons entitled to receive any benefits at the death of a member payable under this chapter who has or have been designated in writing by the member and filed with the commission, or if no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary shall be the estate of the member.

14. "Reserve" means the amount required, as of any date, under the actuarial assumptions of the retirement system, to provide benefits

under the retirement system based upon contributions of members and employers as of said date, and credits to members on account of service prior to July 1, 1953.

15. "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the commission.

16. For purposes of this chapter "interest earned" shall be determined on the following basis:

a. Interest earnings shall be on an accrued basis,

b. Capital gains and losses, realized or unrealized, shall not be included, and

c. The interest rate shall be based upon mean invested assets of the retirement fund.

17. No definition or provision of this chapter shall be construed so as to include temporary employees of the general assembly of Iowa unless such employees shall make application to the Iowa employment security commission to be covered under the provisions of this chapter. [C46, 50, §§97.1-97.5, 97.7-97.9, 97.12, 97.14, 97.18, 97.23, 97.45, 97.48; C54, §97B.41; 56GA, ch 85, §1]

Retroactive to January 10, 1955  
Referred to in §97B.11

**97B.42 Mandatory membership.** Each employee whose employment commences after July 4, 1953 or who has not qualified for credit for prior service rendered prior to July 4, 1953, or any publicly elected official of the state or any of its political subdivisions, other than members of the general assembly, elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions, shall become a member upon the first day of the month following the month in which such employee is employed. He shall continue to be a member so long as he continues in public employment except that he shall cease to be a member if after making said election he joins another retirement system in the state which is maintained in whole or in part by public contributions or payments which has been in operation prior to July 4, 1953 and was subsequently liquidated and may have thereafter been re-established. However, the participation in such other retirement system shall be voluntary and shall not be a condition for continuance of employment. The term "employee" as used herein shall not include any individual performing any service in any calendar quarter in which the remuneration for such service does not equal or exceed the sum of two hundred dollars or any services performed during school vacations or outside of school hours by individuals who are students and who devote their time and efforts chiefly to their studies, rather than to incidental employment. [C46, 50, §§97.2, 97.45; C54, §97B.42]

**97B.43 Prior service credit.** Each member in service on July 4, 1953 who made contri-

butions under the abolished system, and who has not applied for and qualified for benefit payments under the abolished system, shall receive credit for years of prior service in the determination of retirement allowance payments under any of the provisions of this chapter, provided (1) such member elects to become a member on or before October 1, 1953, (2) such member has not made application for a refund of such part of his contributions under the abolished system as is payable under the provisions of sections 97.50 to 97.53, inclusive, and (3) such member gives written authorization prior to October 1, 1953, to the commission to credit to the retirement fund the amount of his contribution which would be subject to claim for refund. The amount so credited shall, after such transfer, be considered as a contribution to the system made as of July 4, 1953 by the member and shall be included as such in the determination of the amount of any accumulated contributions payable under this chapter in the event of the death prior to retirement or termination of employment of the member, but shall not be included in the accumulated contributions of the member in the determination of the amount of any retirement allowance payable under this chapter. Provided, however, an employee who was under a contract of employment as a teacher in the public schools of the state of Iowa at the end of the school year 1952-1953, or any person covered by the provisions of (c) or (d) of subsection 10\*, of section 97B.41 shall be considered as in service as of July 4, 1953 if they were members of the abolished system.

Any person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, and who is not eligible for prior service credit under other provisions of this section, shall be entitled to a credit for years of prior service in the determination of the retirement allowance payment under any of the provisions of this chapter, provided such public employee makes application to the employment security commission for such credit for prior public service, accompanied by such verification of his claim as the commission may require. His allowance for prior service credits shall be computed in the same manner as otherwise provided in this section, but shall not exceed the sum of four hundred fifty dollars nor be less than three hundred dollars per annum. Any such person shall be entitled to receive retirement allowances contributed as provided by this chapter, effective from the date of application to the employment security commission, provided such application is approved. [C46, 50, §§97.13, 97.45; C54, §97B.43]

Referred to in §97B.53

\*Reference was to subsection 9 in enrolled Act

**97B.44 Beneficiary.** Each member shall designate on a form to be furnished by the commission a beneficiary for any death benefits payable hereunder on the death of such member. Such designation may be changed from

time to time by the member by filing a new designation with the commission. [C46, 50, §§97.14-97.18; C54,§97B.44]

**97B.45 Retirement age at sixty-five.** A member may retire on the first day of any month coinciding with or following the date he attains the age of sixty-five upon written notification to the commission, setting forth at what time the retirement is to become effective, provided such effective date shall be after his last day of service. A member shall retire from the employment of the employer no later than the first day of the month coinciding with or next following the date he attains the age of seventy, except as otherwise provided in section 97B.46 following. [C46, 50, §§97.13, 97.39; C54,§97B.45]

**97B.46 Service after age seventy.** A member may, on the request of the employer, remain in the active employ of the employer beyond the date he attains the age of seventy for such period or periods as the employer from time to time shall approve. The member shall retire from the employment of the employer at the end of the last approved period, on the first day of the month next following or coinciding with such date. [C54,§97B.46]

Referred to in §97B.45

**97B.47 Retirement at age fifty-five.** A member may retire from the employment of the employer on the first day of any month coinciding with or next following the date he attains the age of fifty-five and prior to the date he attains the age of sixty-five, upon written notification to the commission, made by the member, setting forth at what time the retirement is to become effective, provided that such effective date shall be after his last day of service, and after the filing of such notice, but shall not be less than thirty days or more than ninety days subsequent to the filing of such notice. [C54,§97B.47]

Referred to in §§97B.50, 97B.53

**97B.48 Re-employment after retirement.** Anything in this chapter to the contrary notwithstanding, should a retired member be at any time in regular full-time employment after his retirement under any of the provisions of this chapter, his retirement allowance payments under this chapter shall cease as long as he remains in service. Upon any later retirement under any of the provisions of this chapter such member shall receive a retirement allowance based upon (1) contributions, if any, under this chapter, of the member and of his employer on his behalf due to his service while a member during his period of re-employment, plus (2) the amount of his retirement allowance payable prior to his re-employment, increased on an actuarial basis for the period between his date of re-employment and his date of later retirement. [C54, §97B.48]

**97B.49 Monthly payments of allowance.** A member shall upon retirement at or after the

date he attains the age of sixty-five receive a monthly retirement allowance which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of each such monthly retirement allowance shall be determined as the sum of subsections 1 and 2 following:

1. The actuarial equivalent of the total under this chapter of the contributions of the member and the contributions of his employer on his behalf due to his service after July 4, 1953 while a member, with interest earned thereon not to exceed two percent per annum to be added at the end of each calendar year, from the end of the calendar year in which such contribution was made to the date the retirement allowance is to commence.

2. One-third of one percent of the monthly rate of the total wages not in excess of three thousand dollars annually received by the member during the twelve consecutive months of his period of prior service for which such total wages were at their greatest amount multiplied by the years of prior service of the member credited hereunder, if any. [C46, 50, §§97.5, 97.45; C54,§97B.49]

Referred to in §§97B.50, 97B.53

**97B.50 Payments when retired at fifty-five.** A member shall upon retirement at age fifty-five or later, under the provisions of section 97B.47 receive a monthly retirement allowance which shall commence on the date of such retirement and shall be continued on the first day of each month thereafter during his lifetime.

The amount of each monthly retirement allowance shall be determined in the same manner as provided in section 97B.49, except that the amount of any monthly retirement allowance so determined in accordance with subsection 2 of section 97B.49 shall be reduced on an actuarial equivalent basis for the period that the retirement date precedes the first day of the month next following or coinciding with the date he attains the age of sixty-five.

If the monthly retirement allowance of any member as computed under the provisions of section 97B.49 or section 97B.50 shall be less than eight and thirty-three hundredths dollars per month, such retirement allowance shall be payable semiannually, commencing on the member's retirement date, equal in amount to the actuarial equivalent of the monthly retirement allowance otherwise payable. [C46, 50, §§97.13, 97.45; C54,§97B.50]

Referred to in §97B.53

**97B.51 Optional allowance.** Each member shall have the right at any time prior to his retirement date to elect to have his retirement allowance payable under the option hereinafter set forth in this section in lieu of the retirement allowance otherwise payable to him upon retirement under any of the provisions of the retirement system. The amount of any optional retirement allowance shall be the actuarial equivalent of the amount of such re-



tirement allowance otherwise payable to him. The member shall make such an election by written request to the commission and such an election will be subject to the approval of the commission.

1. A member may elect to receive a decreased retirement allowance during his lifetime and have such decreased retirement allowance (or a designated fraction thereof) continued after his death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant. In case of such an election, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of either the member or the contingent annuitant after the member's retirement.

2. The election by a member or the contingent annuitant of the option stated under subsection 1 of this section shall be null and void if the member dies prior to retirement.

3. A member who had elected to take the option stated in subsection 1 of this section may, at any time prior to his retirement, revoke such an election by written notice to the commission. [C54,§97B.51]

Referred to in §§97B.52, 97B.53

#### **97B.52 Payment to beneficiary.**

1. If a member dies prior to the date his first retirement allowance is payable under the retirement system, the accumulated contributions by the member at date of death will be payable to his beneficiary.

2. If a member dies after the date his first retirement allowance is payable under the retirement system, the excess, if any, of the accumulated contributions by the member as of said date, over the total monthly retirement allowances received by him under the retirement system will be paid to his beneficiary unless the retirement allowance is then being paid in accordance with subsection 1 of section 97B.51.

3. Other than as provided above in subsections 1 and 2 of this section, or section 97B.51, all rights to any benefits under the retirement system will cease upon the death of a member. [C46, 50,§§97.14-97.18, 97.39; C54,§97B.52]

**97B.53 Termination of employment.** All rights to all benefits under the retirement system will cease upon a member's termination of employment with the employer prior to his retirement, other than by death, except as provided hereafter:

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the accumulated contributions by the member at the date of such termination will be paid to such member, except as may be provided in subsection 2 and subsection 5 of this section.

2. If the employment with the employer of a member is terminated prior to his retirement, other than by death, but after he has either (a) attained the age of forty-eight and completed at least eight years of service, or (b)

has attained the age of fifty-five, he shall receive a monthly retirement allowance commencing on the first day of the month next following or coinciding with the date he attains the age of sixty-five, if he is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of any month coinciding with or next following the date he attains the age of fifty-five and prior to the date he attains the age of sixty-five, and continuing on the first day of each month thereafter during his lifetime, provided the member does not receive prior to the date his retirement allowance is to commence, a refund of his accumulated contributions under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either section 97B.49 or in section 97B.50, whichever is applicable, but if such monthly benefit is less than eight and thirty-three hundredths dollars per month, it shall be paid semiannually as provided in section 97B.50.

3. A member who is entitled to the benefits of subsection 2 of this section shall have the right, prior to the commencement of his retirement allowance, to receive a refund of his accumulated contributions, and in the event of the death of the member prior to the commencement of his retirement allowance and prior to the receipt of any such refund the benefits of subsection 1 of section 97B.51 shall be paid.

4. No member shall be entitled to any refund based upon any credit for prior service as determined under the provisions of section 97B.43 or for any portion of any contribution made by an employer unless otherwise provided by this chapter.

5. Any member whose employment is terminated after he has accumulated five or more years of employment, either under the provisions of this chapter or as a result of prior service credits, may elect to leave his accumulated contributions in the retirement fund. A member shall not be considered as having terminated his employment if he accepts other employment in the state of Iowa under which he is eligible to membership in the Iowa public employees' retirement system, within three months after he has left public employment. In the event he returns to public employment at any time within five years after this termination of employment he shall be entitled to resume membership in the system with the same credits for prior service and accumulated contributions that he had earned when his original employment was terminated. No interest shall be credited on his accumulated contributions nor on his employer's accumulated contributions during the period from the time of his termination of employment to his resumption of employment. Any member who has resumed employment under the provisions of this subsection shall not be eligible for any second period of absence from membership as a result of termination of service until he shall have been



employed for a period of five years or more from the date of resumption of employment. Unless a member terminating employment elects at the time or prior to the time his employment is terminated, his accumulated contributions shall be returned to him. In any case, where a member elects not to receive his accumulated contributions and does not resume public service within five years from the date of termination of employment, his accumulated contributions shall be refunded to him, at the end of the five years immediately following his termination of employment, or in the event of his prior death, to his beneficiary or his estate, but in no case shall interest be allowed upon his accumulated contributions for any period he is not an employee.

Any member who elects not to withdraw his accumulated contributions upon termination of employment may at any time request the return of his accumulated contributions, but if he receives such return of contributions he shall be deemed to have waived all claims for any other benefits from the fund. [C46, 50, §§97.6, 97.13, 97.45; C54,§97B.53]

**97B.54 Accrued liability contribution.** The accrued liability contribution shall be that annual amount required to provide for the liquidation, prior to July 1, 1998, of the liability for retirement allowances payable under this chapter arising from the prior service of members credited under this chapter. The unfunded accrued liability at any particular time shall be the excess, if any, of the present value of retirement allowances due to prior service, over the sum of (1) the net total accumulated accrued liability contributions (after adjustment for retirement allowance payments due to prior service) and (2) any assets transferred to the retirement fund in accordance with section 97B.56, with interest on such sum at the rates of interest earned each year on the retirement fund. Accrued liability contributions shall be determined on actuarial bases adopted by the commission. Such contributions shall be determined by the commission after each valuation of the assets and liabilities of the system, and shall continue in force until a new valuation is made. At least sixty days prior to each regular session of the general assembly, the commission shall certify to the state comptroller and the governor the amount of the accrued liability contributions payable hereunder, and the amount so ascertained shall be included in the governor's budget message and appropriation bills submitted to the general assembly. [C46, 50,§97.13; C54, §97B.54]

Referred to in §§97B.55, 97B.56  
Biennial appropriation, see 56GA, ch 72,§54

**97B.55 Limit of state's liability.** Anything in this chapter to the contrary notwithstanding, the sum of all the amounts payable in any year by the state of Iowa under section 97B.54 shall not exceed five hundred thousand dollars. [C54,§97B.55]

**97B.56 Abolished system—liquidation fund.** The assets of the old-age and survivors' liquidation fund, established by sections 97.50 to 97.53, inclusive, and any future payments or assets payable to the old-age and survivors' liquidation fund, are hereby transferred to the retirement fund and all payments hereafter due in accordance with the provisions of said sections shall be paid from the retirement fund, and the liability for such payments shall be considered as allowances arising from prior service as provided in section 97B.54. [C54, §97B.56]

Referred to in §97B.54  
See §§97.50–97.53

**97B.57 Distribution of information.** The commission shall prepare and distribute to the employees, at the expense of the state and in such a manner as it shall deem appropriate, information concerning the retirement system. [C54,§97B.57]

**97B.58 Information furnished by employer.** To enable the commission to perform its functions, the employer shall upon the request of the commission supply full and timely information to the commission of all matters relating to the pay of all members, date of birth, their retirement, death or other cause for termination of employment, and such other pertinent facts as the commission may require. [C46, 50,§§97.23–97.25; C54,§97B.58]

**97B.59 Actuary employed.** The commission shall employ an actuary as its technical adviser. The compensation of the actuary and of other employees shall be fixed by the commission within the appropriations made therefor. [C54,§97B.59]

**97B.60 Actuarial investigation.** At least once in each two-year period, the commission shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the commission shall, from time to time, determine upon an actuarial basis the condition of the system and shall report to the general assembly its findings and recommendations. The commission shall adopt from time to time mortality tables and all other necessary factors for use in all actuarial calculations required in connection with the retirement system. [C54,§97B.60]

**97B.61 Annual valuation of assets.** The commission shall cause an annual valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed by the employer under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system. [C54,§97B.61]

**97B.62 Accepting employment deemed consent.** Every employee accepting employment or continuing in employment shall as long as

he continues to be a member and has not become a member of another retirement system in the state which is maintained in whole or in part by public contributions or payments be deemed to consent and agree to any deductions from his compensation required by this chapter and to all other provisions thereof. [C46, 50, §§97.2, 97.9; C54, §97B.62]

**97B.63 Members of other systems.** Nothing in this chapter shall be deemed to exclude from coverage, under the provisions of this chapter, any public employee who is not on or as of July 4, 1953, a member of another retirement system supported by public funds. All such employees and their employers shall be required to make contributions as specified as to other public employees and employers.

Nothing in this chapter shall be deemed to prohibit the re-establishment of a retirement system supported by public funds which had been in operation prior to July 4, 1953 and was subsequently liquidated. [C46, 50, §§97.6, 97.45; C54, §97B.63]

**97B.64 Insurance laws not applicable.** None of the laws of this state regulating insurance or insurance companies shall apply to the commission or to the Iowa public employees' retirement system or any of its funds. [C46, 50, §97.47; C54, §97B.64]

**97B.65 Revision rights reserved.** The right is reserved to the general assembly to alter, amend, or repeal any provision of this chapter or any application thereof to any person, provided, however, that to the extent of the funds in the retirement system the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to any member of the system shall not be repudiated, provided further however, that the amount of benefits accrued on account of prior service shall be adjusted to the extent of any unfunded accrued liability then outstanding. [C46, 50, §§97.11, 97.13; C54, §97B.65]

**97B.66 Additional compensation to commissioners.** Each member of the Iowa employment security commission shall be paid for his services, in addition to his compensation now provided in section 96.10 the sum of one thousand dollars per year, payable monthly, to be paid from the funds hereby appropriated for the administration of this chapter. [C46, 50, §97.49; C54, §97B.66]

Biennial appropriation, 55GA, ch 72, §67

**97B.67 Personnel law applicable.** Nothing in this chapter shall be interpreted as removing the Iowa employment security commission out from under the provisions of section 8.5. [C54, §97B.67]

See §8.5, subsection 6; also 57GA, ch 1, §64

## CHAPTER 97C

### FEDERAL SOCIAL SECURITY ENABLING ACT

Referred to in §§294.12, 386B.15

- 97C.1 Declaration of policy.
- 97C.2 Definitions.
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- 97C.19 Apportionment of expense.
- 97C.20 Referenda by governor.

**97C.1 Declaration of policy.** In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors' insurance system embodied in the Social Security Act, Title II of the federal Social Security Act, it is hereby declared to be the policy of the general assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act, Title II. [C54, §97C.1]

**97C.2 Definitions.** For the purposes of this chapter:

1. The term "wages" means all remunera-

tion for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal Insurance Contribution Act, would not constitute "wages" within the meaning of that Act.

2. The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

3. The term "employee" includes elective and appointive officials of the state or any political subdivision thereof, except members of the general assembly, elective officials in positions, the compensation for which is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions; provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which he may be entitled as an employee.

4. The term "employer" means the state of Iowa and all of its political subdivisions which employ persons eligible to coverage under an agreement entered into by this state and the federal security administrator under the provisions of the Social Security Act, Title II, of the Congress of the United States as amended.

5. The term "state agency" means the Iowa employment security commission.

6. The term "political subdivision" includes an instrumentality (a) of the state of Iowa, (b) of one or more of its political subdivisions or (c) of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions.

7. The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," Title II, (including regulations and requirements issued pursuant thereto) as such Act has been and may from time to time be amended.

8. The term "Federal Insurance Contributions Act" means subchapter "A" of chapter 9 of the federal internal revenue code as such code has been and may from time to time be amended.

9. The term "Federal Security Administrator" means the administrator of the federal security agency (or his successor in function), and includes any individual to whom the federal security administrator has delegated any of his functions under the Social Security Act, Title II, with respect to coverage under such Act of employees of states and their political subdivisions. [C46, 50,§97.45; C54,§97C.2; 56GA, ch 86,§1]

Referred to in §§97C.3, 97C.10

**97C.3 Federal-state agreement.** The state agency, with the approval of the governor and the attorney general, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors' insur-

ance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in section 97C.2 of this chapter. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act, Title II, as to the services to be covered, such agreement shall provide in effect that:

1. Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of said Social Security Act.

2. The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, Title II, contributions with respect to wages (as defined in section 97C.2 of this chapter), equal to the sum of taxes which would be imposed by sections 1400 and 1410 of the federal Insurance Contributions Act, if the services covered by the agreement constituted employment within the meaning of that Act.

3. Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, provided that in the case of an agreement or modification made after the effective date of this chapter [May 3, 1953] and prior to January 1, 1954, such agreement or modification of the agreement shall be made effective with respect to any such services performed on or after January 1, 1951.

4. All services which constitute employment as defined in section 97C.2, and are performed in the employ of the state, or any political subdivision, by employees of the state, or of any political subdivision, shall be covered by the agreement. [C46, 50,§97.45; C54,§97C.3]

Referred to in §§97C.4, 97C.5, 97C.13, 97C.14, 97C.15, 97C.17

**97C.4 Other states—joint agreements.** Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the federal security administrator whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they

would be required to pay under section 97C.5 if they were covered by an agreement made pursuant to section 97C.3, and (3) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of section 97C.3 and other provisions of this chapter. [C54,§97C.4]

**97C.5 Tax on employees.** Every employee whose services are covered by an agreement entered into under section 97C.3 shall be required to pay for the period of such coverage into the contribution fund established by section 97C.12, a tax which is hereby imposed with respect to wages received during the calendar year of 1953, equal to one and one-half per centum of such wages; with respect to wages received during the calendar years 1957 to 1959, both inclusive, not to exceed two and one-fourth per centum of such wages; with respect to wages received during the calendar years 1960 to 1964, both inclusive, not to exceed two and three-fourths per centum of such wages; with respect to wages received during the calendar years 1965 to 1969, both inclusive, not to exceed three and one-fourth per centum of such wages; with respect to wages received during the calendar years 1970 to 1974, both inclusive, not to exceed three and three-fourths per centum of such wages; and with respect to wages received after December 31, 1974, not to exceed four and one-half per centum of such wages. Such payment shall be considered a condition of employment as a public employee. Taxes deducted from the wages of the employee by the employer and taxes imposed upon the employer shall be forwarded to the state agency for recording and shall be deposited with the treasurer of state to the credit of the contribution fund established by section 97C.12 of this chapter. [C46, 50,§97.9; C54,§97C.5; 57GA, ch 74,§1]

Referred to in §§97C.4, 97C.6, 97C.9, 97C.12  
Tax limited to first \$4,200 wages by Social Security Act

**97C.6 Collection of tax.** The tax imposed by sections 97C.5 and 97C.14 shall be collected by each employer from the employee by deducting the amount of the tax from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such taxes. [C46, 50,§§97.7, 97.9, 97.45; C54,§97C.6]

**97C.7 Income tax deduction.** For the purpose of the state income tax, the tax imposed by this chapter shall be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages. [C54,§97C.7]

Federal tax deduction, §422.9

**97C.8 Statement to employees.** The employer shall furnish to all employees a written

statement in a form prescribed by the state agency suitable for retention by the employees, showing the wages paid to the employee after January 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that, if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement. [C46, 50,§97.11; C54,§97C.8]

**97C.9 Adjustments or refund.** If more or less than the correct amount of the tax imposed by section 97C.5 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe. [C54,§97C.9]

**97C.10 Tax on employer.** In addition to all other taxes there is hereby imposed upon each employer as defined in section 97C.2 subsection 4 of this chapter, a tax equal to the following per centum of the wages paid by the employer to each employee: with respect to wages received during the calendar year 1953, equal to one and one-half per centum of such wages; with respect to wages received during the calendar years 1957 to 1959, both inclusive, not to exceed two and one-fourth per centum of such wages; with respect to wages received during the calendar years 1960 to 1964, both inclusive, not to exceed two and three-fourths per centum of such wages; with respect to wages received during the calendar years 1965 to 1969, both inclusive, not to exceed three and one-fourth per centum of such wages; with respect to wages received during the calendar years 1970 to 1974, both inclusive, not to exceed three and three-fourths per centum of such wages; and with respect to wages received after December 31, 1974, not to exceed four and one-half per centum of such wages. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income available. The political subdivision is hereby authorized and directed to levy in addition to all other taxes a property tax sufficient to meet its obligations under the provisions of this chapter, if such tax levy is

necessary because other funds are not available. [C46, 50,§97.12; C54,§97C.10; 57GA, ch 74,§2]

Referred to in §97C.12

**97C.11 Payment—adjustment or refund.**

Such taxes as deducted by the employer from the earnings of employees or upon the employers shall be paid in such manner, at such times and under such conditions as may be prescribed by the state agency. If more or less than the correct amount of the tax imposed upon the employer is paid or deducted, proper adjustments or refund, if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe. [C46, 50,§97.7; C54,§97C.11]

Referred to in §97C.12

**97C.12 Contribution fund.**

There is hereby established in the office of the treasurer of state a special fund to be known as the contribution fund. Such fund shall consist of, and there shall be deposited in such fund: (1) all taxes, interest, and penalties collected under sections 97C.5, 97C.10, and 97C.11; (2) all moneys appropriated thereto under this chapter; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund, and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. All moneys in this fund shall be mingled and undivided. [C54,§97C.12]

Referred to in §§97C.5, 97C.14

**97C.13 Fund kept separate.**

The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for, payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 97C.3, or the payment of refunds provided for in this chapter. [C54,§97C.13]

**97C.14 Elected officials—retroactive payments.** Any elective official of the state of Iowa, or any of its political subdivisions, who becomes subject to federal social security coverage under the provisions of the agreement referred to in section 97C.3 shall, not later than October 1, 1953, pay into the contribution fund established by section 97C.12 a tax sufficient to pay in his behalf an amount equal to three

percent of his compensation received as a public official for each year or portion thereof that he has served as a public elective official since January 1, 1951, not to exceed thirty-six hundred dollars for any year of service. The employment security commission shall collect the tax hereby imposed and the proceeds from such tax shall be used for the purpose of obtaining retroactive federal social security coverage for elective officials, for the period beginning January 1, 1951, in the same manner as is provided in the case of other public employees by the provisions in subsection 2 of section 97.51 in order to obtain retroactive federal social security coverage during this period of time, such contribution to be collected and guaranteed by the employer. The employment security commission will pay any such amount contributed to provide for retroactive federal social security coverage for the individual in question in the same manner as other payments are made for retroactive coverage of public employees. Provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which he may be entitled as an employee. [C46, 50,§§97.7, 97.45; C54,§97C.14; 56GA, ch 86,§2]

Referred to in §97C.6

**97C.15 Payments to secretary of treasury.**

From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 97C.3 and the Social Security Act, Title II. [C54, §97C.15]

**97C.16 Custodian of fund.**

The treasurer of state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto. [C54,§97C.16]

**97C.17 Standing appropriation.**

There is hereby authorized to be appropriated annually from the general fund of the state of Iowa to the contribution fund, in addition to the taxes collected and paid into the contribution fund, such additional sums as are found to be necessary in order to make payments to the secretary of the treasury of the United States which the state is obliged to make pursuant to any agreement entered into under section 97C.3. [C54,§97C.17]

**97C.18 Rules and regulations.**

The state agency shall make and publish such rules and

regulations, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter, and the state agency shall comply with regulations relating to payments and reports as may be prescribed by the federal security administrator. [C54,§97C.18]

**97C.19 Apportionment of expense.** The Iowa employment security commission is authorized to enter into arrangements with the federal bureau of employment security whereby services performed by the commission and its employees both under this chapter and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. The money spent for rentals, supplies, and equipment used by the commission in administering both chapters shall be equitably apportioned and charged against said funds. [C46, 50,§97.48; C54,§97C.19]

Iowa Employment Security, chapter 96

**97C.20 Referenda by governor.** With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum

upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 (d) (3) of the social security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218 (d) (3) (C) of the social security Act to be given to employees shall contain or shall be accomplished by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218 (d) (3) of the social security Act have been met, the governor shall so certify to the secretary of health, education, and welfare. [56GA, ch 1,§14]

## CHAPTER 98

### CIGARETTES AND TOBACCO

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**98.1 Definition of words, terms, and phrases.** The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irre-

spective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars. Excepting where the context clearly shows that cigarettes alone are intended, the term "cigarettes" shall mean and

include cigarettes, cigarette papers or wrappers, and tubes upon which a tax is imposed by section 98.6.

2. "Individual packages of cigarettes" shall mean and include every package of cigarettes ordinarily sold at retail, and shall include any and every package of cigarettes upon which a federal stamp or token is required. "Packages of cigarettes" shall also include books and sets of papers, wrappers, or tubes.

3. "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

4. "Place of business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

5. "Stamps" shall mean the stamp or stamps printed, manufactured or made by authority of the commission, as hereinafter provided, and issued, sold or circulated by it and by the use of which the tax levied hereunder is paid. It shall also mean any impression, indicium, or character fixed upon packages of cigarettes, cigarette papers, or tubes by metered stamping machine or device which may be authorized by the commission to the holder of state or manufacturers' permits and by the use of which the tax levied hereunder is paid.

6. "Counterfeit stamp" shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the commission as hereinafter provided, and issued, sold or circulated by it.

7. "Previously used stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

8. "First sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

9. "Drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

10. "Commission" shall mean the state tax commission of Iowa or its duly authorized assistants and employees.

11. "Attorney general" shall mean the attorney general of the state or his duly authorized assistants and employees.

12. "Distributor" shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.

13. "Wholesaler" shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

14. "Retailer" shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

15. "Distributing agent" shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

16. "Manufacturer" shall mean and include every person who ships cigarettes into this state from outside the state.

17. "State permit" shall mean and include permits issued by the commission to distributors, wholesalers, and retailers within the state.

18. "Retail permit" shall mean and include permits issued to retailers.

19. "Manufacturer's permit" shall mean and include permits issued by the commission to a manufacturer.

20. "Distributing agent's permit" shall mean and include permits issued by the commission to distributing agents. [C24, 27, 31, 35, 39, §1552; C46, 50, 54, §98.1]

**98.2 Sale or gift to minor prohibited.** No person shall furnish to any minor under twenty-one years of age by gift, sale, or otherwise, any cigarette or cigarette paper, or any paper or other substance made or prepared for the purpose of use in making of cigarettes. No person shall directly or indirectly by himself or agent sell, barter, or give to any minor under sixteen years of age any tobacco in any other form whatever except upon the written order of his parent or guardian or the person in whose custody he is. [C97, §§5005, 5006; C24, 27, 31, 35, 39, §1553; C46, 50, 54, §98.2]

Referred to in §§98.3, 98.5

**98.3 Violation.** Any person who shall violate any of the provisions of section 98.2 shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days. For a second or any subsequent violation such

person shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment. [C97, §§5005, 5006; C24, 27, 31, 35, 39, §1554; C46, 50, 54, §98.3]

**98.4 Minors required to give information.**

Any minor under twenty-one years of age in any place other than at the home of his parent or parents, being in the possession of a cigarette or cigarette papers, shall be required at the request of any peace officer, juvenile court officer, truant officer, or teacher in any school to give information as to where he or she obtained such article. [S13, §§5007-c, d; C24, 27, 31, 35, 39, §1555; C46, 50, 54, §98.4]

Referred to in §98.5

**98.5 Violation.** Any minor under twenty-one years of age refusing to give information as required by section 98.4 shall be guilty of a misdemeanor and if eighteen years of age or over, shall be punished by a fine not exceeding five dollars or by imprisonment in the county jail not exceeding five days, or by both such fine and imprisonment.

If such minor shall be under the age of eighteen years he or she shall be certified by the magistrate or justice of the peace before whom the case is tried, to the juvenile court of the county for such action as said court shall deem proper.

If any minor having been convicted of violating section 98.4 shall give information which shall lead to the arrest of the person or persons having violated any of the provisions of section 98.2 and shall give evidence as a witness in any proceedings that may be prosecuted against said person or persons, the court in its discretion may suspend sentence against the offending minor. [S13, §§5007-c, d; C24, 27, 31, 35, 39, §1556; C46, 50, 54, §98.5]

**98.6 Tax imposed.**

1. There is hereby levied, assessed, and imposed, and shall be collected and paid to the commission, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

Class A. On cigarettes weighing not more than three pounds per thousand, one and one-half mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, two and one-half mills on each such cigarette.

Class C. On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes, made up in packages, books, or sets, on each such package, book or set containing:

a. Fifty papers or less, three-fourths of one cent.

b. More than fifty papers but not more than one hundred papers, one and one-half cents.

c. More than one hundred papers, three-

fourths of one cent for each fifty or fractional part thereof.

Class D. On tubes, one and one-half cents for each fifty tubes or fractional part thereof.

2. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a first sale in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about his person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of such tax shall be evidenced by stamps purchased from the commission and securely affixed to each individual package of cigarettes in amounts equal to the tax thereon as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the commission.

4. The tax imposed shall be in lieu of any other occupation or excise tax on cigarettes imposed by any political subdivision of the state. [C24, 27, 31, 35, §1570; C39, §1556.01; C46, 50, 54, §98.6; 56GA, ch 213, §3]

Referred to in §98.1

**98.7 Printing and custody of stamps.** The state printing board shall be and is hereby required to design and have printed or manufactured, cigarette tax stamps of such size, denomination, and type and in such quantities as may be determined by the commission. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes or cigarette papers. Such stamps shall be in the possession of and under the control of the comptroller.

Upon requisition of the commission, the comptroller shall deliver to it the stamps designated in such requisition, and shall charge the commission with the stamps so delivered, and shall keep an accurate record of all stamps coming into and leaving his possession.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section. [C24, 27, 31, 35, §1574; C39, §1556.02; C46, 50, 54, §98.7]

**98.8 Sale and exchange of stamps.**

1. Stamps shall be sold by and purchased from the commission only. The commission shall sell stamps to the holder of a state or manufacturer's permit which has not been revoked and to no other person. Stamps shall be sold to such permit holders at a discount



of not to exceed five percent from the face value. Stamps shall be sold in unbroken sheets of one hundred stamps only.

2. Orders for cigarette tax stamps shall be sent direct to the commission, and it shall be the duty of the commission to invoice the stamps ordered to the purchaser upon a form of invoice to be prescribed by the commission.

3. Stamps in unbroken sheets of one hundred stamps may be exchanged, with the commission, for stamps of a different denomination. The commission shall be authorized to make refunds on unused stamps to the person who purchased said stamps at a price equal to the amount paid for such stamps when proof satisfactory to said commission is furnished that any stamps upon which a refund is requested were properly purchased from said commission and paid for by the person requesting such refund. In making such refund, the commission shall prepare a voucher showing the amount of refund due and to whom payable and the comptroller shall then issue a warrant upon order of the commission to pay such refund out of any funds in the state treasury not otherwise appropriated.

The commission may promulgate rules and regulations providing for refunds of the face value of stamps affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made by issuing new stamps of an aggregate value of the tax paid on the cigarettes adjudged to be unfit for use, consumption, unsalable, or any other loss suffered.

4. The commission shall have the power and authority in the enforcement of this chapter to recall any stamps which have been sold by it and which have not been used, and it shall be the duty of said commission, upon receipt of such recalled stamps, to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of the said commission.

5. The commission shall keep a record of all stamps sold by it or under its direction, of all stamps exchanged by it, and of all refunds made by it. [C24, §§1574, 1575; C27, 31, 35, §§1574, 1574-a1, 1575; C39, §1556.03; C46, 50, 54, §98.8]

**98.9 Change of design.** The design of the stamps used may be changed as often as the commission may deem necessary for the best enforcement of the provisions of this chapter. [C39, §1556.04; C46, 50, 54, §98.9]

**98.10 Affixing of stamps by distributors.** Except as provided in section 98.17, every distributor in this state shall cause to be affixed upon every individual package of cigarettes received by him, upon which no sufficient tax stamp is already affixed, a stamp or stamps of an amount equal to the tax due thereon. Such stamps shall be affixed within forty-eight hours, exclusive of Sundays and legal holidays, from the hour the cigarettes were received,

and shall be affixed before such distributor sells, offers for sale, consumes, or otherwise distributes or transports the same. It shall be unlawful for any person, other than a distributing agent or distributor, bonded pursuant to section 98.14. or common carrier to receive or accept delivery of any cigarettes without stamps affixed to evidence the payment of the tax, or without having in his possession the requisite amount or number of stamps necessary to stamp such cigarettes, and the possession of any unstamped cigarettes, without the possession of the requisite amount or number of stamps, shall be prima-facie evidence of the violation of this provision. [C24, 27, 31, 35, §1571; C39, §1556.05; C46, 50, 54, §98.10]

**98.11 Cancellation of stamps.** No stamps affixed to a package of cigarettes shall be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the commission in making an examination as to the genuineness of said stamp; provided, however, that the commission may direct and require such cancellation of the tax stamps affixed to packages of cigarettes or cigarette papers which, in its judgment, is necessary and essential to carry out properly the provisions of this chapter. [C39, §1556.06; C46, 50, 54, §98.11]

**98.12 Use of stamping machines.** The commission, with the consent of the executive council, may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, cigarette papers and tubes as evidence of the payment of the tax imposed by this chapter, in lieu of the purchase and affixation of stamps as provided herein.

In the event the commission and executive council decide to purchase such machines they shall be paid for upon order of the commission out of any funds in the state treasury not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the commission.

All of the provisions of this chapter relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund as provided herein. [C39, §1556.07; C46, 50, 54, §98.12]

**98.13 Distributor's, wholesaler's, and retailer's permits.**

1. *Permits required.* Every distributor, wholesaler, and retailer in this state, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state

and/or retail cigarette permit as a distributor, wholesaler, or retailer, as the case may be.

2. *Issuance.* The commission shall issue state permits to distributors, wholesalers, and retailers subject to the conditions hereinafter provided. Cities and towns may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities and towns. Upon issuance of a retail permit by a city or town council or board of supervisors, such council or board shall forthwith certify to the commission the action so taken.

3. *Fees—expiration.* All permits provided for in this chapter shall expire on June 30 of each year. No permit shall be granted or issued until the applicant shall have paid for the period ending June 30 next, to the state tax commission or the city, town or county granting such permit, the fees provided for in this chapter. The annual state permit fee for a distributor and wholesaler shall be one hundred dollars when the permit is granted during the months of July, August, or September, provided that whenever a state permit holder shall operate more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each such duplicate state permit, but refunds as provided in this chapter shall not apply to any duplicate permit issued.

The fee for retail permits to be issued under the provisions of this chapter shall be as follows when the permit is granted during the months of July, August, or September:

a. In towns and other places outside any city or town, fifty dollars.

b. In cities of less than fifteen thousand population, seventy-five dollars.

c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the said fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of said maximum schedule, and if granted during the months of April, May, or June, one-fourth of the said maximum schedule.

#### 4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the state tax commission, or the city, town, or county granting the permit shall make refunds to the said holder as follows:

Three-fourths of the annual fee if the surrender is made during July, August, or September.

One-half of the annual fee if the surrender is made during October, November, or December.

One-fourth of the annual fee if the surren-

der is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said state tax commission, city, town, or county shall make refunds to the holder as follows:

A sum equal to one-half of an annual fee if the surrender is made during October, November, or December.

A sum equal to one-fourth of an annual fee if the surrender is made during January, February, or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be so surrendered during the first three months of the period covered by said payment, and the said state tax commission, city, town or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application—bond.* Said permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 98.14, and upon forms furnished by the commission upon written request. The failure to furnish such forms shall be no excuse for the failure to file the same unless absolute refusal is shown. Said forms shall set forth:

a. The manner under which such distributor, wholesaler, or retailer, transacts or intends to transact such business as distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business in Iowa, for which the permit is to apply.

c. If the applicant is not an individual, the principal officers or members thereof, not to exceed three, and their addresses.

d. Such other information as the commission shall by rules and regulations prescribe.

6. *No sales without permit.* No distributor, wholesaler, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits—trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the commission may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required

to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit—form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the commission.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer, at his place of business, so as to be easily seen by the public and the persons authorized to inspect the same. The proprietor or keeper of any building or place wherein cigarettes shall be kept for sale, or with intent to sell, shall upon request of the commission or any peace officer exhibit his permit to so keep and sell. His refusal or failure to so exhibit such permit shall be prima-facie evidence that such cigarettes are kept for sale or with intent to sell in violation of the provisions of this chapter. [S13,§5007-a; C24, 27,§§1557, 1558, 1560, 1563, 1564, 1584; C31, 35,§§1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39,§1556.08; C46, 50, 54,§98.13]

**98.14 Bonds.**

1. No retail permit, state permit, or manufacturer's permit shall be issued until the applicant therefor shall file a bond, with good and sufficient surety, to be approved by the commission or the body granting the permit, which bond shall be in favor of the state and for the benefit of the county, city, or town, as the case may be, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this chapter.

Said bonds shall be on forms prescribed by the commission and in the following amounts:

a. Retail permit, not less than five hundred dollars.

b. State permit, not less than five hundred dollars.

c. Manufacturer's permit, not less than five thousand dollars.

2. No distributor or person shall engage in interstate business unless he files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of such distributor or other person shall be fixed by the commission, subject to the minimum limitation herein provided. Said bond shall be approved by the commission and payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the requirements of this

chapter affecting said distributor or other person, on a form prescribed by the commission.

3. An additional bond or a new bond may be required by the commission at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the commission shall have the power and the authority to cancel any existing bond made and secured by and for said distributor or other person. In the event said bond is canceled, said distributor or other person shall within forty-eight hours after receiving cigarettes or forty-eight hours after said cancellation, excluding Sundays and legal holidays, cause any cigarettes in his possession to have the requisite amount of stamps affixed to represent the tax as herein provided. [C24, 27, 31, 35,§§1561, 1562; C39, §1556.09; C46, 50, 54,§98.14]

Referred to in §§98.10, 98.13, 98.15, 98.17

**98.15 Records and reports of permit holders.**

1. The commission is authorized to prescribe such forms as may be necessary for the efficient administration of this chapter and is authorized to require such uniform books and records to be used and kept by each permit holder as it deems necessary. The commission may also require each permit holder to keep and retain in his possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps as herein provided. All of such evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the commission.

2. Where a state permit holder sells cigarettes at retail, he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such cigarette invoices shall be kept separate and apart.

3. The commission may by regulation require every holder of a manufacturer's or state permit to make and deliver to the commission on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the commission, and may require that such reports shall be properly sworn to and executed by the permit holder or his duly authorized representative.

4. Every permit holder shall, when requested by the commission, make such additional reports as the commission deems necessary and proper and shall at the request of the commission furnish full and complete information pertaining to any transaction of the permit holder involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in

section 98.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the commission as are required by it.

6. If any distributor or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the commission by such distributor or other person, or his representative, or a copy thereof, certified to by the commission, showing the number of cigarettes sold by such distributor or his representative, upon which such tax, penalty or cost of audit has not been paid, or any audit made by the commission or its representative from the books or records of said distributor or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from or to whom such distributor or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima-facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown. [C27, 31, 35, §§1570-b1, -b2; C39,§1556.10; C46, 50, 54,§98.15]

**98.16 Manufacturer's permit.** The commission may, at its discretion, and upon application of any manufacturer, issue without charge to such manufacturer a manufacturer's permit. Such application shall contain such information as the commission shall prescribe. The holder of such manufacturer's permit shall be authorized to purchase stamps from the commission, and to affix such stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state. [C39,§1556.11; C46, 50, 54,§98.16]

**98.17 Distributing agent's permit.**

1. Every distributing agent in the state, now engaged, or who desires to become engaged, in the business of storing unstamped cigarettes which are received in interstate commerce for distribution or delivery only upon order received from without the state or to be sold outside the state, shall file with the commission, an application for a distributing agent's permit, on a form prescribed by the commission, to be furnished upon written request. The failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Iowa to which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The commission may require any other information it may desire in said

application. No distributing agent shall engage in such business until such application has been filed and fee in the sum of one hundred dollars paid for the permit and until the permit has been obtained. Such permit shall expire on June 30 following the date of issuance. All of the provisions of the last two paragraphs of section 98.14, relative to bonds, are incorporated herein and by this reference made applicable to distributing agents. Upon failure to furnish adequate bond as required, the permit shall be revoked without hearing. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

2. Upon receipt of the application and bond and the permit fee herein provided for, the commission may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in his own conveyances to the state boundary for distribution outside the state, and any nonresident customer of such distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. Such nonresident purchaser shall be required to have in his possession an invoice evidencing the purchase of such unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this chapter.

3. Cigarettes set aside for interstate business must be kept separate from intrastate stock and those not so kept shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale".

4. It shall be unlawful for any distributing agent to sell at retail cigarettes, cigarette papers or tubes from automobiles, trucks, or any similar conveyances. [C39,§1556.12; C46, 50, 54, §98.17]

Referred to in §98.10

**98.18 Forms for records and reports.** The commission shall furnish, without charge, to holders of the various permits, such forms in sufficient quantities as will enable such permit holders to make the reports required to be made under this chapter. The permit holders shall furnish at their own expense such books, records, and invoices, as are required to be used and kept, but such books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the commission, and shall be kept and used in the manner prescribed by the commission; provided that the commission may, in its discretion, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. Such authorization may be revoked at any time. [C39,§1556.13; C46, 50, 54,§98.18]

**98.19 Examination of records and premises.**

1. For the purpose of enabling the commission to determine the tax liability of permit holders or any other person dealing in cigarettes or to determine whether a tax liability has been incurred, it shall have the right to inspect any premises where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required to be kept or any other records that may be kept incident to the conduct of the cigarette business of said permit holder or any other person dealing in cigarettes.

2. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

3. It shall be unlawful for any of the foregoing permit holders to fail to produce upon demand of the commission any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises. [C39,§1556.14; C46, 50, 54,§98.19]

**98.20 Subpoena for witnesses and papers.**

For the purpose of enforcing the provisions of this chapter and of detecting violations thereof, the commission shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all relevant books, papers, and records. Such attendance and production may be required at the statehouse at Des Moines, or at any place convenient for such investigation. In case any person fails or refuses to obey a subpoena so issued, the commission may procure an order from the district court in the county where such person resides, or where such person is found, requiring such person to appear for examination and/or to produce such books, papers, and records as are required in the subpoena. Failure to obey such order shall be punished by such court as contempt thereof. [C39,§1556.15; C46, 50, 54,§98.20]

**98.21 Cigarettes retailer may not sell.** Unless a retail permit holder shall also hold a state permit, it shall be unlawful for a retailer to sell or have in his possession cigarettes upon which the stamp tax has not been affixed. [C39,§1556.16; C46, 50, 54,§98.21]

**98.22 Revocation of permit.**

1. If any person holding a permit issued by the commission under the provisions of this chapter, including a retailer permit for railway car, has violated any provision of this chapter, or any rule or regulation promulgated hereunder, the commission may revoke the permit

issued to said person, after giving such permit holder an opportunity to be heard upon five days written notice stating the reason for such contemplated revocation and the time and place at which he may appear and be heard. The said hearing shall be held in the county of the permit holder's place of business, or in a county in or through which it transacts business. Such notice shall be given by mailing a copy thereof by certified mail to the permit holder's place of business as the same appears on his application for a permit. If, upon such hearing, the commission shall find that such violation has occurred, it may revoke the permit or permits.

2. If any retailer has violated any of the provisions of this chapter, the board of supervisors or the city or town council which issued the permit may revoke his permit or permits upon the same hearing and notice as is prescribed in the preceding paragraph.

3. If a permit is revoked no new permit shall be issued to the permit holder for any place of business, or to any other person for the place of business at which such violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority. [C24, 27, 31, 35,§1559; C39,§1556.17; C46, 50, 54,§98.22; 57GA, ch 267,§18]

Referred to in §98.23

**98.23 Retailer's permit for railway car.**

1. Subject to the provisions of this chapter, a retailer's permit may be issued by the commission to any dining car company, sleeping car company, railroad or railway company. Such permit shall authorize the holder thereof to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by such applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this chapter. The application for such permit shall be in such form and contain such information as may be required by the commission. Each such permit shall be good throughout the state. Only one such permit shall be required for all cars operated in this state by such applicant, but a duplicate of such permit issued as herein provided shall be posted in each car in which such cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in such cars. No cigarettes shall be sold in such cars without having affixed thereto stamps evidencing the payment of the tax as provided in this chapter.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the commission a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this chapter provided.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and

two dollars for each duplicate thereof, which fee shall be paid to the commission. The commission shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 3 of section 98.22 shall apply to the revocation of such permit and the issuance of a new one. [C39,§1556.18; C46, 50, 54,§98.23]

**98.24 Carrier to permit access to records.** Every common carrier in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the commission free access to such books and records. [C39, §1556.19; C46, 50, 54,§98.24]

**98.25 Administration.**

1. The commission shall administer the provisions of this chapter, and it is hereby made the duty of the commission to collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.

2. Said commission also shall have the power and authority to make and publish rules and regulations, not inconsistent with this chapter, necessary and advisable for its detailed administration, to enforce the provisions thereof, and to collect the taxes and fees herein imposed. The commission may promulgate rules and regulations hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

3. The state tax commission is hereby authorized to appoint an assistant, whose sole duty it shall be to administer and enforce the provisions of this chapter, including the collection of all taxes provided for herein. In such enforcement the state tax commission may call to its aid the attorney general, the special agents of the state, any county attorney or any peace officer. The commission is authorized to appoint such clerks and additional help as may be needed to carry out the provisions of this chapter. [C24, 27, 31, 35,§1576; C39, §1556.20; C46, 50, 54,§98.25]

**98.26 Liens and actions.** All of the provisions for the lien of the tax, its collection, and all actions as provided in the sales tax act shall apply to the tax imposed by this chapter, except that where the sales tax and the cigarette tax may become conflicting liens, they shall be of equal priority. [C24, 27, 31, 35, §1565; C39,§1556.21; C46, 50, 54,§98.26]

Sales tax act, ch 422

**98.27 Venue of actions to collect.** Venue of any civil proceedings filed under the provisions of this chapter to collect the taxes, fees, and penalties levied herein shall be in a court of competent jurisdiction in Polk county, or in any court having jurisdiction. [C39,§1556.22; C46, 50, 54,§98.27]

**98.28 Assessment of tax by commission.** If after any audit, examination of records, or

other investigation the commission finds that any person has sold cigarettes, without stamps affixed thereto as required by this chapter or that any person has failed to pay any tax herein imposed upon such person, the commission shall fix and determine the amount of tax due, and shall assess such tax against such person, together with a penalty, which is hereby imposed, equal to the amount of said tax. If any person fails to furnish evidence satisfactory to the commission showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by him, the presumption shall be that such cigarettes were sold without the proper stamps affixed thereto. [C24, 27, 31, 35,§1568; C39,§1556.23; C46, 50, 54,§98.28]

Referred to in §98.29

**98.29 Notice and appeal.** The commission shall notify any person assessed pursuant to section 98.28 by sending a written notice of such determination and assessment by certified mail to the principal place of business of such person as shown on his application for permit, if any, and in case no such application was filed by such person, to his last known address. Such person may appeal from such determination and assessment to the district court in the same manner and subject to the same procedure as is provided in section 422.29. [C39,§1556.24; C46, 50, 54,§98.29; 57GA, ch 267,§19]

**98.30 Assessment of cost of audit.** The commission may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether such permit holder or other person has paid the amount of the taxes required to be paid by him under the provisions of this chapter. If such taxes have not been paid, as required, the commission shall assess against such permit holder or other person, as additional penalty, the reasonable expenses and costs of such investigation and audit. [C39,§1556.25; C46, 50, 54, §98.30]

**98.31 Civil penalty for certain violations.** If a permit holder shall (a) fail to keep any of the records required to be kept by the provisions of this chapter, or (b) if a permit holder shall sell any cigarettes upon which a tax is required to be paid by this chapter without at the time having a valid permit, or (c) if any distributor, wholesaler, or distributing agent shall fail to make any reports to the commission required herein to be made, or (d) make a false or incomplete report to said commission, or (e) if any distributing agent shall store any unstamped cigarettes in the state or distribute or deliver any unstamped cigarettes within this state without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall be civilly liable to the state as a pen-

alty in the sum of fifty dollars for each offense. Each violation shall constitute a separate offense, and the same violation shall constitute a separate offense for each day it continues. [C24, 27, 31, 35, §1572; C?9, §1556.26; C46, 50, 54, §98.31]

**98.32 Seizure and forfeiture—procedure.**

1. All cigarettes on which taxes are imposed by this chapter, which shall be found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by him in violation of this chapter, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purpose, and all equipment or other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where such cigarettes are found, may be seized by the commission, with or without process and the same shall be from the time of such seizure forfeited to the state of Iowa, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles, and property so seized as aforesaid, remaining in the possession or custody of the commission, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrevocable.

2. The commission, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisalment thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the commission and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the commission, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in

said proceeding is a nonresident of the state or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the commission to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury.

5. In the event the cigarettes seized hereunder and sought to be sold upon forfeiture shall be unstamped, the officers selling the same shall be furnished by the commission, sufficient stamps which shall be affixed to the cigarettes prior to the sale thereof.\* [C39, §1556.27; C46, 50, 54, §98.32]

\*See §751.28

**98.33 Seizure not to affect criminal prosecution.** The seizure, forfeiture, and sale of cigarettes and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter. [C39, §1556.28; C46, 50, 54, §98.33]

**98.34 Restrictions on injunction.** Any person who shall invoke the power and remedies of injunction against the state tax commission to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued shall file such proceedings in a court of competent jurisdiction in Polk county, and venue for such injunction is hereby declared to be in Polk county. [C39, §1556.29; C46, 50, 54, §98.34]

**98.35 Tax and fees paid to general fund.** The proceeds derived from the sale of stamps and the payment of taxes, fees and penalties provided for under this chapter, and the permit fees received by the commission from all permits issued by it, shall be credited to the general fund of the state. All permit fees provided for in this chapter and collected by cities and towns in the issuance of permits granted by such municipalities shall be paid to the treasurer of the city or town wherein the permit is effective and credited to the general fund of said city or town. Permit fees so collected by counties shall be paid to the county treasurer and credited to the general fund of such county. [C24, 27, 31, 35, §1569; C39, §1556.30; C46, 50, 54, §98.35]

**98.36 Certain unlawful acts enumerated.**

1. Except as otherwise provided in this chapter, it shall be unlawful for any person to have in his possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this chapter, without having affixed to each individual package of cigarettes or cigarette papers, the proper stamp evidencing the payment of such tax and the absence of said stamp on said individual package of cigarettes shall be notice to all persons that the tax has not been paid and shall be prima-facie evidence of the nonpayment of said tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of the commission, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the state tax commission or sell stamps purchased from said commission.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless he be the holder of a permit, or his representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit-holder for the sale of cigarettes to any state permit holder.

6. It shall be unlawful to sell or vend cigarettes by means of a device known as a vending machine.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

Violation of this section by the holder of a distributor's, wholesaler's, or manufacturer's

permit shall be grounds for the revocation of such permit. [C24,§1573; C27, 31, 35,§§1573, 1575-a2; C39,§1556.31; C46, 50, 54,§98.36]

**98.37 Certain offenses and penalties provided.** Whoever shall violate any provision of this chapter for which a fine and/or imprisonment is not elsewhere specifically provided, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not to exceed thirty days. [C39,§1556.32; C46, 50, 54,§98.37]

**98.38 Counterfeiting and previously used stamps.** Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in his possession with intent to use, sell, circulate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars or by imprisonment not more than one year or both such fine and imprisonment. [C24, 27, 31, 35,§1573; C39,§1556.33; C46, 50, 54,§98.38]

**98.39 Manufacturer's samples.** The commission may, in its discretion, authorize a manufacturer to distribute in the state through his factory representative, free sample packages of cigarettes containing five cigarettes or less, when such individual packages bear a stamp equal to the tax herein imposed. Such packages shall bear the word "Sample" in letters easily read. Such authority may be withdrawn at any time in the discretion of the commission. [C39,§1556.34; C46, 50, 54,§98.39]

Constitutionality, 48GA, ch 72,§39

**98.40 Advertisement near public schools.** No bills, pictures, posters, placards, or other matter used to advertise the sale of tobacco in any form shall be distributed, posted, painted, or maintained within four hundred feet of premises occupied by a public school or used for school purposes. This provision shall not apply to advertisement in newspapers regularly published and distributed to subscribers and purchasers as such. [S13,§5028-s; C24, 27, 31, 35, 39,§1585; C46, 50, 54,§98.40]

Referred to in §98.41

**98.41 Penalty.** Any person violating any of the provisions of section 98.40 shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [S13,§5028-t; C24, 27, 31, 35, 39,§1586; C46, 50, 54,§98.41]



## CHAPTER 99

## HOUSES USED FOR PROSTITUTION, GAMBLING, OR POOL SELLING

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**99.1 Houses of prostitution, etc.** Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, prostitution, or gambling, or pool selling as defined by section 726.6 is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, prostitution, or gambling, or pool selling as defined by section 726.6 is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided. [SS15,§4944-h1; C24, 27, 31, 35, 39,§1587; C46, 50, 54,§99.1]

**99.2 Injunction—procedure.** When a nuisance is kept, maintained, or exists, as defined in this chapter, the county attorney, or any citizen of the county, or any society, association, or body incorporated under the laws of this state, may maintain an action in equity in the name of the state of Iowa, upon the relation of such county attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists, from further permitting such building or ground or both to be so used. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1588; C46, 50, 54,§99.2]

**99.3 Notice—temporary writ—without bond.** The defendants shall be served with notice as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise as the complainant may elect, unless the court or judge

by previous order, shall have directed the form and manner in which such evidence shall be presented. [SS15,§4944-h2; C24, 27, 31, 35, 39, §1589; C46, 50, 54,§99.3]

*Time and manner of service, R.C.P. 53 et seq.*

**99.4 "Owners" defined—notice.** The person in whose name the real estate affected by the action stands on the books of the county auditor, for the purposes of taxation, shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the notice and petition as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action" and service thereon may be had by publishing such notice in the manner prescribed for the publication of original notices in ordinary actions. [SS15,§4944-h9; C24, 27, 31, 35, 39,§1590; C46, 50, 54,§99.4]

*40ExGA, HF 52,§4, editorially divided  
Service by publication, R.C.P. 60 et seq.*

**99.5 Trial.** Any person having or claiming such ownership, right, title, or interest, and any owner or agent in behalf of himself and such owner may make, serve, and file his answer therein within twenty days after such service, and have trial of his rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such trial and shall modify, add to, or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby. [SS15, §4944-h9; C24, 27, 31, 35, 39,§1591; C46, 50, 54, §99.5]

**99.6 Temporary restraining order.** Where a temporary injunction is prayed for, the court, or judge in vacation, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical

instruments, and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1592; C46, 50, 54,§99.6]

**99.7 Writ—how served.** The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1593; C46, 50, 54,§99.7]

40 ExGA, HF 52,§6, editorially divided

**99.8 Inventory.** The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property situated in and used in conducting or maintaining such nuisance. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1594; C46, 50, 54,§99.8]

**99.9 Mutilation or removal of notice.** Where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect. [SS15,§4944-h2; C24, 27, 31, 35, 39, §1595; C46, 50, 54,§99.9]

**99.10 Notice.** Three days notice in writing shall be given to the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1596; C46, 50, 54,§99.10]

40ExGA, HF 52,§7, editorially divided

**99.11 Answer.** Each defendant so notified shall serve upon the complainant or his attorney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court of the county wherein such cause is triable, but the court may allow additional time for so answering, provided such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. [SS15, §4944-h2; C24, 27, 31, 35, 39,§1597; C46, 50, 54, §99.11]

**99.12 Scope of injunction.** When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued, and any violation of the provisions of the injunction or temporary restraining order herein provided, shall be a contempt and punished as hereinafter provided. [SS15,§4944-h2; C24, 27, 31, 35, 39,§1598; C46, 50, 54,§99.12]

Punishment, §99.20

**99.13 Trial term.** The action when brought shall be triable at the first term of the court. [SS15,§4944-h3; C24, 27, 31, 35, 39,§1599; C46, 50, 54,§99.13]

40ExGA, HF 52,§8, editorially divided

**99.14 Evidence.** In such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of said nuisance and shall be prima-facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance. [SS15,§4944-h3; C24, 27, 31, 35, 39,§1600; C46, 50, 54,§99.14]

**99.15 Dismissal.** If the complaint is filed by a citizen or a corporation, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed and the dismissal approved by the county attorney in writing or in open court. [SS15,§4944-h3; C24, 27, 31, 35, 39, §1601; C46, 50, 54,§99.15]

40ExGA, HF 52,§9, editorially divided

**99.16 Delay in trial.** If the court is of the opinion that the action ought not to be dismissed, he may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one term of court, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. [SS15,§4944-h3; C24, 27, 31, 35, 39,§1602; C46, 50, 54,§99.16]

**99.17 Costs.** If the action is brought by a citizen or a corporation and the court finds there were no reasonable grounds or cause for said action, the costs may be taxed to such citizen or corporation. [SS15,§4944-h3; C24, 27, 31, 35, 39,§1603; C46, 50, 54,§99.17]

**99.18 Violation of injunction.** In case of the violation of any injunction granted under the provisions of this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court, or in vacation a judge thereof, may summarily try and punish the offender. [SS15, §4944-h4; C24, 27, 31, 35, 39,§1604; C46, 50, 54, §99.18]

SS15,§4944-h4, editorially divided

**99.19 Procedure.** The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. [SS15, §4944-h4; C24, 27, 31, 35, 39,§1605; C46, 50, 54, §99.19]

**99.20 Penalty.** A party found guilty of contempt under the provisions of this chapter shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months or by both fine and imprisonment. [SS15,§4944-h4; C24, 27, 31, 35, 39,§1606; C46, 50, 54,§99.20]

**99.21 Abatement—sale of property.** If the existence of the nuisance be admitted or established in an action as provided in this chapter, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1607; C46, 50, 54,§99.21]

40ExGA, HF 52,§10, editorially divided  
Referred to in §99.25  
Sale of chattels, §626.74 et seq.

**99.22 Fees.** For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, on execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1608; C46, 50, 54,§99.22]

Fees, §337.11

**99.23 Breaking closed building — punishment.** If any person shall break and enter or use a building, erection, or place so directed to be closed, he shall be punished as for contempt as provided in this chapter. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1609; C46, 50, 54,§99.23]

Punishment, §99.20

**99.24 Duty of county attorney.** In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the county attorney to proceed promptly under this chapter to enforce the provisions and penalties thereof; and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. [SS15,§4944-h6; C24, 27, 31, 35, 39, §1610; C46, 50, 54,§99.24]

SS15,§4944-h6, editorially divided

**99.25 Proceeds.** All moneys collected under this chapter shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in section 99.21 shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided. [SS15,§4944-h6; C24, 27, 31, 35, 39,§1611; C46, 50, 54,§99.25]

**99.26 Release of property.** If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, or in vacation by the judge thereof, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation the judge, if satisfied of his good faith, may order the premises, closed or sought to be closed under the order of abatement, delivered to said owner, and said order of abatement canceled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, penalty, or liability to which it may be subject by law. [SS15, §4944-h7; C24, 27, 31, 35, 39,§1612; C46, 50, 54, §99.26]

**99.27 Mulct tax.** When a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this chapter, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance and the owner or agent of said premises, a tax of three hundred dollars. The imposing of said tax shall be made by the court as a part of the proceeding. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1613; C46, 50, 54,§99.27]

40ExGA, HF 52,§12, editorially divided  
Nuisance defined, §99.1

**99.28 Certification and payment of tax.** The clerk of said court shall make and certify a return of the imposition of said tax forthwith to the county auditor, who shall enter the same as a tax upon the property, and against the persons upon which or whom the lien was imposed, as and when the other taxes are entered, and the same shall be and remain a lien on the land upon which such lien was imposed until fully paid. Any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said tax shall not relieve the persons or property from any other penalties provided by law. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1614; C46, 50, 54,§99.28]

**99.29 Collection of tax.** The provisions of the law relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax herein prescribed insofar as the same are applicable. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1615; C46, 50, 54,§99.29]

40ExGA, HF 52,§13, editorially divided  
Collection of taxes, ch 445 et seq.

**99.30 Application of tax.** The said tax collected shall be applied in payment of any deficiency in the costs of the action and abatement

on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of personal property as hereinbefore provided, and the remainder of said tax together with the unexpended portion of the proceeds of the sale of personal property shall be distributed to the temporary school fund of the county, except that ten percent of the amount of the whole tax collected and of the whole proceeds of the sale of said personal property, as provided in this chapter, shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1616; C46, 50, 54,§99.30]

**99.31 Tax assessed.** When such nuisance has been found to exist under any proceeding in the district court or as in this chapter provided, and the owner or agent of such building or ground whereon the same has been found to exist was not a party to such proceeding, nor appeared therein, the said tax of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this chapter set forth. [SS15,§4944-h9; C24, 27, 31, 35, 39,§1617; C46, 50, 54,§99.31]

Constitutionality, 36GA, ch 71,§10

## CHAPTER 99A

### POSSESSION OF GAMBLING DEVICES—LICENSES REVOKED

99A.1 Definitions.

99A.2 Intentional possession.

99A.3 Proceedings to revoke.

99A.4 Duties of peace officers.

99A.5 Order to show cause.

99A.6 Licenses revoked—appeal.

99A.7 County attorney—duty.

99A.8 Witnesses.

99A.9 Owner of premises—when penalized.

**99A.1 Definitions.** For the purpose of this chapter, the words, terms, and phrases defined in this section shall have the meanings given them.

1. "Gambling devices" means roulette wheels, klondike tables, poker tables, punch boards, faro layouts, keno layouts, slot machines, any ticket, sheet, or writing of any kind used or designed to be used for gambling purposes, and all machines and devices used for gambling or with an element of chance attending operation, and all machines and devices of any nature whatsoever adapted, devised and designed for the purpose of gambling. Nothing in this definition shall be construed to include ordinary playing cards.

2. "Person" means an individual, a copartnership, an association, corporation, or any other entity or organization.

3. "Municipality" means any county, city, village, township or town.

4. "License" includes permits of every kind, nature and description issued pursuant to any statute or ordinance for the carrying on, or used in the carrying on, of any business, trade, vocation, commercial enterprise or undertaking.

5. "Licensee" means any person to whom a license of any kind is issued.

6. "Licensed business" means any business, trade, vocation, commercial enterprise, or undertaking for which any license is issued.

7. "Licensed premises" means the place or building, or the room in a building of the licensed business, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated

or used in connection with the buildings of the licensed business.

8. "Issuing authority" and "authority issuing the license" mean and include the officer, board, bureau, department, commission, or agency of the state, or of any of its municipalities, by whom any license is issued and include the councils and governing bodies of all municipalities. [C54,§99A.1]

**99A.2 Intentional possession.** The intentional possession or willful keeping of a gambling device upon any licensed premises is cause for the revocation of any license upon the premises where the gambling device is found. Possession by an employee of the licensee on the premises of the licensee shall give rise to the presumption of intentional possession by the licensee.

All licenses of any licensed business shall be revoked if the intentional possession or willful keeping of any such gambling device upon the licensed premises is established, notwithstanding that it may not be made to appear that such devices have actually been used or operated for the purpose of gambling. [C54, §99A.2]

**99A.3 Proceedings to revoke.** The proceedings for revocation shall be had before the issuing authority, which shall have power to revoke the license or licenses involved, as hereinafter provided. [C54,§99A.3]

**99A.4 Duties of peace officers.** Every sheriff, deputy sheriff, constable, marshal, policeman, police officer, and peace officer shall observe and inspect licensed premises and ascertain whether gambling devices are present thereon and immediately report the find-

ing thereof to the authority or authorities issuing the license or licenses applicable to the premises in question. [C54,§99A.4]

Referred to in §99A.5

**99A.5 Order to show cause.** Upon the receipt of such information from any of the peace officers referred to in section 99A.4, if any issuing authority is of the opinion that cause exists for the revocation of any such license, then that authority shall issue an order to show cause directed to the licensee of the premises, stating the ground upon which the proceeding is based and requiring him to appear and show cause at a time and place within the county in which the licensed premises are located, not less than ten days after the date of the order, why his license should not be revoked. The order to show cause shall be served upon the licensee as an original notice, or by certified mail, not less than eight days before the date fixed for the hearing thereof. A copy of the order shall forthwith be mailed to the owner of the premises, as shown by the records in the office of the county recorder at his last known post-office address. A copy of the order shall at the same time be mailed to any other issuing authority, of which the authority issuing the order to show cause has knowledge, by which other licenses to that licensee may have been issued, and any such other authority may participate in the revocation proceedings after notifying the licensee and the officer or authority holding the hearing of its intention so to do on or before the date of hearing, and after the hearing take such action as it could have taken had it instituted the revocation proceedings in the first instance. [C54,§99A.5; 57GA, ch 267,§20]

**99A.6 Licenses revoked—appeal.** If, upon the hearing of the order to show cause, the issuing authority finds that the licensee intentionally possessed or willfully kept upon his licensed premises any gambling device, then the license or licenses under which the licensed business is operated, or used in the operation of such business on the licensed premises, shall be revoked.

A licensee whose license has been revoked or any owner of licensed premises aggrieved by an order of an issuing authority, may within fifteen days after the date of the order of the issuing authority file an application for writ of certiorari in the district court in and for the county where the business of the licensee is located.

Unless the licensee has filed an application for writ of certiorari in the district court, re-

vocation shall date from the sixteenth day following the date of the order of the issuing authority. In the event the licensee has filed an application for writ of certiorari in the district court revocation shall date from the thirty-first day following entry of the order of the district court, if action by the district court is adverse to the licensee.

If the licensee appeals to the supreme court of Iowa, or applies for writ of certiorari to such court, revocation shall not be effective pending determination by the supreme court of Iowa, provided the licensee shall post bond with the clerk of the district court in an amount fixed by the clerk of the court in the district wherein the business is licensed, conditioned to pay all costs adjudged against him on the appeal, or the hearing on a writ, if the action of the district court is affirmed. Revocation shall date from the day following final disposition of such court.

No new license or licenses shall be granted the licensee, nor for the same business if it is established that the owner had actual knowledge of the existence of the gambling devices resulting in the license revocation, upon the same premises, for the period of one year following the date of revocation. [C54, §99A.6]

Referred to in §§99A.7, 99A.9

**99A.7 County attorney—duty.** The county attorney for the county in which the hearing is held shall, and the attorney general may, attend the hearing, interrogate the witnesses, and advise the issuing authority. The county attorney, shall, and the attorney general may, also appear for the issuing authority in any certiorari proceeding taken pursuant to the provisions of section 99A.6. [C54,§99A.7]

**99A.8 Witnesses.** The issuing authority may issue subpoenas and compel the attendance of witnesses at any hearing. Witnesses duly subpoenaed and attending any such hearing shall be paid fees and mileage by the issuing authority equal to the fees and mileage paid witnesses in the district court. [C54, §99A.8]

**99A.9 Owner of premises—when penalized.** When the license is revoked under the provisions of this chapter, subject to the provisions of section 99A.6, the owner of the premises upon which any licensed business has been operated shall not be penalized by reason thereof unless it is established that he had knowledge of the existence of the gambling devices resulting in the license revocation. [C54,§99A.9]

CHAPTER 100  
STATE FIRE MARSHAL

Referred to in §101.7

Enforcement of compressed gas system law, ch 101

Regulations for hotels, restaurants and food establishments, §170.38. See also ch 135C for nursing homes

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|   | 100.35 Rules and regulations of marshal. |

**100.1 Fire marshal.** The chief officer of the division of fire protection in the department of public safety shall be known as the state fire marshal.

His duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;
2. To investigate into the cause, origin and circumstances of fires;
3. To promote fire safety and reduction of loss by fire through educational methods;
4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:
  - a. The prevention of fires;
  - b. The storage, transportation, handling and use of inflammable liquids, combustibles, and explosives;
  - c. The storage, transportation, handling and use of liquid petroleum gas;
  - d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, nursing homes, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;
5. To promulgate fire safety regulations. The state fire marshal shall have exclusive right to promulgate fire safety regulations as they apply to enforcement or inspection requirements by the state fire marshal, but such regulations shall be promulgated only after public hearing and approval thereof by the attorney general. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, pro-

claim, or amend rules, regulations and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, such rules, regulations and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the same may relate to the use, occupancy and construction of such buildings, establishments or structures. The word "construction" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. Such rules, regulations and minimum standards shall be in substantial compliance with the standards of the National Fire Protection Association relating to fire safety as published in the national fire codes. [S13,§§2468-a,m; C24, 27, 31, 35, 39,§1619; C46, 50, 54,§100.1; 57GA, ch 75,§1]

**100.2 Duties of city, town and township officers.** The chief of the fire department of every city or town in which a fire department is established, the mayor or chief executive officer of every city or town in which no fire department exists, the chief of the fire department responding to every township fire where there is a contract for fire protection in effect, or the township clerk of every township outside the limits of any city or town not having a contract for fire protection shall investigate into the cause, origin and circumstances of every fire occurring in such city, town, village, or township by which property has been destroyed or damaged or which results in bodily injury to any person, and determine whether such fire was the result of natural causes, negligence or design. The state fire marshal may assist in such investigation or may superin-

tend and direct the investigation if he deems it necessary. [S13, §§2468-d,-e; C24, 27, 31, 35, 39, §1624; C46, 50, 54, §100.2; 57GA, ch 75, §2]

Referred to in §100.3

**100.3 Time of investigation—report.** Whenever the investigation of a fire indicates that bodily injury, or property damage to the extent of fifty dollars or more, was caused by such fire, or where arson is suspected, the official required by section 100.2 to make such investigation shall, within one week of the occurrence of the fire, report in writing to the state fire marshal stating all facts relating to the cause and origin of the fire and such other information as may be called for by the report forms provided by the state fire marshal. Furthermore, when the investigating officer believes the fire was by design, or whenever death occurs as the result of a fire such officer shall immediately notify the state fire marshal. [S13, §2468-e; C24, 27, 31, 35, 39, §1625; C46, 50, 54, §100.3; 57GA, ch 75, §3]

Referred to in §100.34

**100.4 Refusal of officer to investigate.** Any chief of a fire department, mayor, or township clerk who fails or refuses to make the investigation and report required of him, shall be fined in a sum not less than five dollars nor more than one hundred dollars. [S13, §2468-e; C24, 27, 31, 35, 39, §1626; C46, 50, 54, §100.4]

**100.5 Record of fires.** The fire marshal shall keep in his office a record of all fires occurring in the state, showing the name of the owners, name or names of occupants of the property at the time of the fire, the sound value of the property, the amount of insurance thereon, the total amount of insurance collected, the total amount of loss to the property owner, together with all the facts, statistics, and circumstances, including the origin of the fire, which may be determined by the investigation. Such record shall at all times be open to public inspection. [S13, §2468-f; C24, 27, 31, 35, 39, §1627; C46, 50, 54, §100.5]

**100.6 Testimony under oath.** The fire marshal or his designated subordinate shall, when in their opinion further investigation is necessary, take or cause to be taken the testimony under oath of all persons supposed to have knowledge of any facts, or to have means of knowledge in relation to the matter in which an examination is herein required to be made, and shall cause the same to be reduced to writing. [S13, §2468-g; C24, 27, 31, 35, 39, §1628; C46, 50, 54, §100.6]

**100.7 Oaths—attendance of witnesses.** The fire marshal and his designated subordinates shall each have power in any county in the state to administer an oath and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this chapter a subject of inquiry and investigation, and may

require the production of any books, papers, or documents necessary for such investigation. [S13, §2468-h; C24, 27, 31, 35, 39, §1629; C46, 50, 54, §100.7]

**100.8 Refusal to testify or produce books.** Any witness who refuses to be sworn, or refuses to testify, except as otherwise provided by law, or who disobeys any lawful order of said fire marshal, or his designated subordinates, or who fails to produce any books, papers, or documents touching any matter under examination, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [S13, §2468-h; C24, 27, 31, 35, 39, §1630; C46, 50, 54, §100.8]

**100.9 Crimes in connection with fires.** If the fire marshal shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be arrested and charged with the offense, or either of them, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all of the information obtained, including a copy of all matter and testimony taken in the case. [S13, §2468-g; C24, 27, 31, 35, 39, §1631; C46, 50, 54, §100.9]

**100.10 Authority to enter and inspect.** The state fire marshal, and his designated subordinates, in the performance of their duties, shall have authority to enter any building or premises and to examine the same and the contents thereof. [S13, §2468-i; C24, 27, 31, 35, 39, §1632; C46, 50, 54, §100.10]

**100.11 Fire escapes.** It shall be the duty of the fire marshal to enforce all laws relating to fire escapes. [C39, §1632.1; C46, 50, 54, §100.11]

Similar provision, §103.10

**100.12 Additional authority.** In order to effect the purposes of this chapter, the chief of the fire department aforesaid shall have authority to enter any building or premises and to examine the same and the contents thereof, and orally or in writing, to order the correction of any condition contemplated by section 100.13. Should said order be not complied with the officer making the inspection shall report such inspection and the facts thereof to the state fire marshal who shall proceed as though the inspection had been made by himself. [C31, 35, §1632-c1; C39, §1632.2; C46, 50, 54, §100.12]

**100.13 Removal or repair.** When the fire marshal acting in person or through his designated subordinate shall find any building or structure, which for want of proper repair or by reason of age and dilapidated condition, is especially liable to fire, and is so situated as to endanger other buildings or property there-

in, or when any such official shall find in any building or upon any premises combustible or explosive matter or inflammable materials dangerous to the safety of any buildings or premises, he shall in writing order the same to be removed or remedied, or he may order the owner or occupant to follow safe-storage procedures for explosives as set forth by the fire prevention code of the National Fire Protection Association. Any such order shall be complied with by the owner or occupant of said building or premises, within such reasonable time as the fire marshal shall specify. [S13,§2468-j; C24, 27, 31, 35, 39,§1633; C46, 50, 54, §100.13; 57GA, ch 75,§4]

Referred to in §100.12

**100.14 Review of order.** Any owner, lessee, or occupant of a building may, within five days after an order is issued for the removal, destruction, or repair thereof, or the removal of the contents thereof or the change of any other conditions, file with the fire marshal a petition for a review of such order. Thereupon the marshal shall fix a place which shall be within the county where the property is situated, and a time, for such review, which shall be not less than three nor more than ten days after the filing of such petition, and notify the petitioner thereof. [C24, 27, 31, 35, 39,§1634; C46, 50, 54,§100.14]

**100.15 Hearing on review.** The marshal shall hear the evidence both for and against said order and may affirm, modify, or revoke such order according to the facts presented at such hearing, and make record of his findings and final order. [C24, 27, 31, 35, 39,§1635; C46, 50, 54,§100.15]

**100.16 Appeal.** Any owner, lessee, or occupant of a building may appeal to the district court of the county where such building is located from a final order of the fire marshal requiring the removal, destruction, or repair of such building, or the removal of any of its contents, or changing of its condition in any other respect, within thirty days from the delivery to such person of a copy of such final order. [S13,§2468-j; C24, 27, 31, 35, 39,§1636; C46, 50, 54,§100.16]

**100.17 How appeal taken.** Such appeal shall be taken by filing in the office of the fire marshal notice of such appeal, specifying the order appealed from and the court and term thereof to which the appeal is taken, accompanied by a bond in the penal sum of one hundred dollars with sureties approved by the clerk of said court, conditioned to pay all costs that shall be adjudged against appellant and abide the decree, judgment, and order of the court. [C24, 27, 31, 35, 39,§1637; C46, 50, 54, §100.17]

**100.18 How tried—trial term.** Said appeal shall be tried in equity and the first term shall be the trial term, and if filed in term time shall be triable at any time after the filing of the

transcript. The court may affirm, modify, or revoke the order from which the appeal is taken. [C24, 27, 31, 35, 39,§1638; C46, 50, 54, §100.18]

**100.19 Transcript.** Forthwith after notice of appeal is filed in the office of the fire marshal, he shall make or cause to be made a certified transcript of the proceedings on review before him, including the order appealed from, notice of appeal, bond and all documentary evidence filed in the proceeding and transmit the same to the clerk of said court who shall docket said appeal and entitle it in the name of the appellant against the state of Iowa. [C24, 27, 31, 35, 39,§1639; C46, 50, 54,§100.19]

**100.20 County attorney.** The county attorney shall represent the state and the fire marshal, but not to the exclusion of any other attorney who may be engaged in said cause. [C24, 27, 31, 35, 39,§1640; C46, 50, 54,§100.20]

**100.21 Appeal to supreme court.** Either party may appeal from a judgment or order of the district court within the time and in the manner provided by law for appeals in ordinary actions. [C24, 27, 31, 35, 39,§1641; C46, 50, 54,§100.21]

Time and manner of appeal, R.C.P. 335, 336, and 353

**100.22 Suspension of order.** Any order of the fire marshal from which an appeal has been taken to the district or supreme court, shall remain suspended during the pendency of such appeal. [C24, 27, 31, 35, 39,§1642; C46, 50, 54,§100.22]

**100.23 Costs.** If the appellant fails in the appeal the costs shall be taxed against him, but if the order is revoked or annulled the costs shall be taxed to the state. If the order shall be modified, the court may in its discretion apportion the costs. [C24, 27, 31, 35, 39, §1643; C46, 50, 54,§100.23]

**100.24 Enforcing decree and judgment.** The court shall issue such mandatory and other writs as shall be necessary to enforce its decree, judgment, or any final order in any such case, and may punish as for contempt of court any refusal to obey the same. [C24, 27, 31, 35, 39,§1644; C46, 50, 54,§100.24]

Contempts, ch 665

**100.25 Appeal exclusive remedy.** Unless appealed from as in this chapter provided, any order made by the fire marshal shall be final, and the right of appeal as herein provided shall be the exclusive remedy against the enforcement of such orders. [C24, 27, 31, 35, 39, §1645; C46, 50, 54,§100.25]

**100.26 Time for compliance with order.** When no petition of review has been filed or when the fire marshal on review or the court on appeal has affirmed or modified an order for the removal, destruction, or repair of a building, or the removal of any of its contents, or the change of any of its conditions, the



owner, lessee, or occupant shall comply with such order within thirty days after the delivery of the same or a copy thereof to him, either personally or by certified letter to his last known address, or by service upon his duly appointed agent. If such owner, lessee, or occupant shall fail to comply with such order he shall be subject to a penalty of ten dollars for each day of failure or neglect after the expiration of said period, which shall be recovered in the name of the state and paid into the treasury of the county where collected. [S13,§2468-j; C24, 27, 31, 35, 39,§1646; C46, 50, 54, §100.26; 57GA, ch 267,§21]

Referred to in §101.7

**100.27 Refusal to obey orders.** If any person fails to comply with a final order of the marshal or of a court on appeal and within the time fixed, then such officers are empowered and authorized to cause such building or premises to be repaired, torn down, demolished, materials and all dangerous conditions removed, as the case may be, and at the expense of such person, and if such person within thirty days thereafter fails, neglects, or refuses to repay said officers the expense thereby incurred by them, such officers shall certify said expenses, together with twenty-five percent penalty thereon, to the auditor of the county in which said property is situated. [C24, 27, 31, 35, 39,§1647; C46, 50, 54,§100.27]

40ExGA, HF 53,§27, editorially divided

**100.28 Notice.** Notice of the reasonableness and amount of assessment shall be given in a manner as provided for giving notice in ordinary actions by the marshal or his designated subordinate to the property owner, also notifying the property owner that a hearing thereon shall be had before the auditor of said county on a day not less than ten nor more than fifteen days from the date of completed service of notice upon the property owner and if no appeal is taken therefrom to the district court at the time fixed in said notice the auditor shall hear and determine the matter. Any person aggrieved by the order and determination of the auditor may appeal therefrom to the district court of the county by serving notice within twenty days thereafter upon said auditor; and such appeal shall be heard and determined by the court as in cases of appeals from the order of the fire marshal as provided in this chapter. [C24, 27, 31, 35, 39, §1648; C46, 50, 54,§100.28]

Service of notice, R.C.P. 56(a)

**100.29 Entry of tax.** Said auditor shall enter said expense on the tax records of said county as a special charge against the real estate on which said building is or was situated, if in the name of such person, otherwise as a personal tax against such person, and the same shall be collected as other taxes and, when collected, shall, together with the penalty thereon, be refunded to the fire marshal, and by him paid into the state treasury where

it shall be credited to the appropriation for expenses of the fire marshal's office. [C24, 27, 31, 35, 39,§1649; C46, 50, 54,§100.29]

Collection of taxes, ch 445

**100.30 Investigation may be private.** Investigation by or under the direction of the state fire marshal or his designated subordinates may in their discretion be private. They may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not allowed to communicate with each other until they have been examined. [C24, 27, 31, 35, 39,§1650; C46, 50, 54,§100.30]

**100.31 Fire drills in public schools.** It shall be the duty of the state fire marshal and his designated subordinates to require all private and public school officials and teachers to conduct fire drills in all school buildings at least once each month when school is in session; and to require the officials and teachers of all schools to keep all doors and exits of their respective rooms and buildings unlocked during school hours or when such areas are being used by the public at other times.

Every school building with two or more classrooms shall have a warning system of a type approved by the Underwriters' Laboratories and by the state fire marshal. Said warning system shall be used only for fire drills or as a warning for emergency. Every school building shall also be equipped with first-aid fire extinguishers, with the type, size and number in accordance with National Fire Protection Association standards and approved by the state fire marshal.

The state fire marshal or his deputies shall cause each public or private elementary or high school, college or university to be inspected at least once every two years to determine whether each school meets the fire safety standards of this code and is free from other fire hazards. Provided, however, that cities which employ fire department inspectors shall cause such inspections to be made. [S13,§2468-k; C24, 27, 31, 35, 39,§1651; C46, 50, 54,§100.31; 57GA, ch 75,§5]

**100.32 Bulletin.** The state fire marshal may cooperate with any recognized agency in the education of the public in fire safety, but no money shall be expended for such purpose except it be specifically appropriated by the legislature for that purpose. Any such agency receiving appropriations of state money for fire safety purposes shall annually file with the auditor of the state an itemized statement of all its receipts and expenditures.

The state fire marshal may cause fire-safety information and educational material to be printed and distributed to schools, fire departments, or other interested persons or organizations. [S13,§2468-k; C24, 27, 31, 35, 39,§1652; C46, 50, 54,§100.32; 57GA, ch 75,§6]

**100.33 Annual report.** The state fire marshal shall file with the governor annually, at

the time provided by law, a detailed report of his official acts and of the affairs of his office which report shall be published and distributed as the reports of other state officers. [S13,§2468-n; C24, 27, 31, 35, 39,§1653; C46, 50, 54,§100.33]

Time of filing report, §17.4

**100.34 Fee for fires reported.** Every official reporting a fire to the state fire marshal as required by section 100.3 shall be paid the sum of fifty cents for each fire so reported to the satisfaction of the state fire marshal and in addition thereto there shall be paid to township clerks mileage at the rate of ten cents per mile for each mile traveled to and from the place of fire. Said allowances shall be paid by the state fire marshal out of any funds appropriated for the use of the office of said state fire marshal, provided that such fees shall not be paid to any full-time salaried public official who is paid for full time at such duties. [S13,§2468-o; C24, 27, 31, 35, 39,§1654; C46, 50, 54,§100.34; 57GA, ch 75,§7]

### 100.35 Rules and regulations of marshal.

The fire marshal shall adopt, amend, promulgate and enforce rules, regulations and standards relating to fire protection, fire safety and the elimination of fire hazards in churches, schools, hotels, theaters, amphitheatres, hospitals, nursing homes, custodial homes, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Any person, firm or corporation violating any of such rules and regulations of the fire marshal shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day of the continuing violation of such rules and regulations after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases. [57GA ch 75,§12]

## CHAPTER 101

### FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

101.1 Rules and regulations by fire marshal.  
101.2 Scope of rules.  
101.3 Advisory committee.  
101.4 Nonconforming use.

101.5 Publication of rules.  
101.6 Ordinances of municipalities.  
101.7 Enforcement.  
101.8 Assistance by local officials.

#### 101.1 Rules and regulations by fire marshal.

The state fire marshal is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable regulations for the safe transportation, storage, handling and use of flammable liquids and liquefied petroleum gases. For purpose of this chapter: "Flammable liquid" means a liquid having a flash point below two hundred degrees fahrenheit and a Reid vapor pressure not exceeding forty psi absolute. "Liquefied petroleum gas" means material composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane) and butylenes. [C35,§§1655-g1,-g2,-g4; C39, §§1655.1, 1655.2, 1655.4; C46, 50, 54,§§101.1, 101.2; 57GA, ch 76,§§1, 2]

**101.2 Scope of rules.** The regulations shall be in keeping with the latest generally recognized safety criteria for the materials covered of which the applicable criteria recommended and published from time to time by the National Fire Protection Association shall be prima-facie evidence. [C35,§1655-g2; C39,§1655.2; C46, 50, 54,§101.2; 57GA, ch 76,§§1(1), 2]

**101.3 Advisory committee.** The regulations covering flammable liquids and those covering

liquefied petroleum gas shall be separately formulated and separately promulgated. To assist in the formulation of these regulations the state fire marshal shall appoint and confer respectively with an advisory committee on flammable liquids and an advisory committee on liquefied petroleum gas. Each advisory committee shall consist of persons designated by the state fire marshal and who are representative of interests in this state and are experienced in matters of fire prevention and safety with respect to the materials to be covered. [57GA, ch 76,§1(2)]

**101.4 Nonconforming use.** The regulations shall make reasonable provision under which facilities in service prior to the effective date of the regulations and not in strict conformity therewith may be continued in service unless the nonconformity is such as to constitute a distinct hazard to life or adjoining property; and for guidance in enforcement may delineate these types of nonconformity that should be considered distinctly hazardous, those that should not be considered distinctly hazardous and those the need for elimination of which should be evaluated in the light of local factors. As to any regulation the need for compliance with which is conditioned on local factors, the regulations shall provide, as a condition precedent to evaluation or issuance of a compliance order, for reasonable notice to the proprietor of the facility affected of intention

to evaluate the need and of the time and place at which he may appear and offer evidence thereon. [C35,§1655-g3; C39,§1655.3; C46, 50, 54, §101.3; 57GA, ch 76,§§1(3), 2]

**101.5 Publication of rules.** The regulations shall be promulgated pursuant to chapter 17A, only after a public hearing at least twenty days notice of the time and place of which is given by publication in a newspaper of general circulation throughout the state and by mail to any person who has filed his name and address with the state fire marshal for the purpose of receiving the notice. [57GA, ch 76, §1(4)]

**101.6 Ordinances by municipalities.** Regulations promulgated pursuant to this chapter shall have uniform force and effect throughout the state and no municipality or political subdivision shall enact or enforce any ordinance or regulation inconsistent or not in keeping with the state-wide regulations. Provided that nothing in this chapter shall in any way impair the power of any municipality when authorized by other law to regulate the use of land by comprehensive zoning or to control the construction of buildings and structures under building codes or restricted fire district regulations. Provided, further, that the size, weight and cargo carried by vehicles used in the transportation or delivery of flammable liquids or liquefied petroleum gas shall be

governed by the uniform provisions of the motor vehicle and highway traffic laws of this state and local ordinances therein authorized. [57GA, ch 76,§1(5)]

**101.7 Enforcement.** Compliance with the regulations may be enforced by orders of the state fire marshal subject to review, appeal and enforcement as provided in chapter 100 for orders for elimination of fire-hazard conditions, except that the regulations may provide for compliance time, other than as specified in section 100.26 based upon the amount and character of work, availability of suitable equipment or materials and appropriate continued operation of any facility. [C35,§§1655-g3,-g4; C39,§§1655.3, 1655.4; C46, 50, 54,§§101.2, 101.4; 57GA, ch 76,§§1(6), 2]

**101.8 Assistance by local officials.** The chief fire prevention officer of every city, town or village having an established fire prevention department, the chief of the fire department of every other city, town or village in which a fire department is established, the mayor of every town or city in which no fire department exists, the township clerk of every township outside the limits of any city, town or village and all other local officials upon whom fire prevention duties are imposed by law shall assist the state fire marshal in the enforcement of the regulations. [57GA, ch 76, §1(7)]

CHAPTER 102

FIRE COMPANIES

- 102.1 Exemptions of members.
- 102.2 Certificate of service—evidence.

- 102.3 Certificate of exemption.
- 102.4 False claim to exemption.

**102.1 Exemptions of members.** Any person while an active member of any fire engine, hook and ladder, hose, or any other company for the extinguishment of fire, or the protection of property at fires, under the control of the corporate authorities of any city or town, shall be exempt from the performance of military duty and labor on the roads on account of poll tax, and from serving as a juror. Any person who has been an active member of such company in any city or town as aforesaid, and has faithfully discharged his duties as such for the term of ten years, shall thereafter be exempt from military duty in time of peace, from serving as a juror, and from labor on the roads. [R60,§1763; C73,§1560; C97,§2462; C24, 27, 31, 35, 39,§1656; C46, 50, 54,§102.1]

cate, under the corporate seal, to such person, setting forth the name of the company of which such person was a member and the duration of such membership, which certificate shall be received in all courts as evidence that the person legally holding the same is entitled to such exemption. [R60,§1764; C73,§1561; C97,§2463; C24, 27, 31, 35, 39,§1657; C46, 50, 54, §102.2]

**102.3 Certificate of exemption.** To entitle a person to exemption from labor on the roads before the expiration of the term of ten years, he shall, on or before the first day of April of each year, file with the clerk of the city or town a certificate, signed by the foreman of the company of which he is a member, that the holder thereof is an active member of said fire company, and thereupon the clerk shall enter said exemption upon the street tax list for that year. [C73,§1562; C97,§2464; C24, 27, 31, 35, 39,§1658; C46, 50, 54,§102.3]

**102.2 Certificate of service—evidence.** Any person who has thus served in any company for the term of ten years shall receive from the foreman of the company of which he shall have been a member a certificate to that effect, and on its presentation to the clerk he shall file the same in his office and give his certifi-

**102.4 False claim to exemption.** Any person who shall by misrepresentation, or by the use of a false certificate or the certificate of

any other person, endeavor to avail himself of the benefits of this chapter, upon conviction thereof, shall be imprisoned in the county jail for a period of not more than six nor less

than one month, and pay a fine of not less than ten nor more than one hundred dollars. [R60,§1765; C73,§1563; C97,§2465; C24, 27, 31, 35, 39,§1659; C46, 50, 54,§102.4]

## CHAPTER 103

### FIRE ESCAPES AND OTHER MEANS OF ESCAPE FROM FIRE

- 103.1 Fire escapes.
- 103.2 Terms defined.
- 103.3 Fire escapes required.
- 103.4 Location of fire escapes and exits.
- 103.5 How constructed.
- 103.6 Construction and arrangement.
- 103.7 Class of escapes—stairways.
- 103.8 Doors to open outward.
- 103.9 Number and size of exits.

- 103.10 Supervision of fire escapes.
- 103.11 Standard specifications.
- 103.12 Rules and regulations.
- 103.13 Building inspectors.
- 103.14 Powers and duties.
- 103.15 Notice to owner.
- 103.16 Appeal.
- 103.17 Violations.

**103.1 Fire escapes.** Every church, school, hotel, theater, amphitheater, asylum, hospital, nursing home, college or university building, lodge hall, club room, public meeting place, and all other structures in which persons congregate from time to time, whether publicly or privately owned, shall have at least two means of exit from each story. All such buildings shall be equipped with such protection from fire, and means of escape therefrom, as in this chapter provided.

After the thirty-first day of December, 1957, every such new or remodeled building, except private one- or two-family dwellings and farm buildings, shall have at least two means of exit from each story and shall be equipped with such protection from fire, and means of escape therefrom, as in this chapter provided. [SS15,§4999-a6; C24, 27, 31, 35, 39,§1660; C46, 50, 54,§103.1; 57GA, ch 75,§8]

Referred to in §103.3

**103.2 Terms defined.** The word "building" as used in this chapter shall include all structures or inclosures of each of the classes mentioned or referred to herein. The word "story" shall include a basement story when such basement story is on the average five feet or more above the ground. The word "exit" shall mean a doorway or doorways or windows, or such doorways together with connecting hallways or stairways, either interior or exterior, or fire escapes, by means of which occupants may proceed safely from a room or space to a street or to a space which provides safe access to a street. Two or more separate exit ways may use the same corridor or hallway. [SS15,§4999-a6; C24, 27, 31, 35, 39,§1661; C46, 50, 54,§103.2; 57GA, ch 75,§9]

**103.3 Fire escapes required.** In addition to the requirements of section 103.1, every building coming under the provisions of this chapter shall have at least the number of exits of the kind prescribed by law and as determined by the following formula:

Number of exits shall equal C times P.

P equals the average maximum number of

persons on the story with the highest number above the first story.

C is a coefficient and is fixed, and shall be taken for the various classes of buildings as follows:

1. Buildings having wooden or combustible walls, C equals .020.
2. Buildings having brick or combustible walls with combustible interior, C equals .014.
3. Buildings having brick or incombustible walls and incombustible roof and slow burning construction, C equals .012.
4. Buildings of fireproof construction throughout, C equals .007.
5. Buildings of wooden or combustible walls equipped with efficient water sprinkler system, C equals .014.
6. Buildings having brick or incombustible walls with combustible interior equipped with efficient water sprinkler system, C equals .008.
7. Buildings having brick or incombustible walls and incombustible roof and slow burning construction equipped with efficient water sprinkler system, C equals .006.
8. Fireproof buildings equipped with efficient water sprinkler system, C equals .003.

Nothing in this chapter shall be construed to permit less than two exits from each story of every building except private one- or two-family dwellings and farm buildings. When the result of said formula is two or less than two, the number of exits shall be two. The number of additional exits required shall include any fraction as a unit, except when such fraction shall be thirty-three hundredths or less, in which case the fraction may be dropped if permitted by the inspector. [SS15,§4999-a7; C24, 27, 31, 35, 39,§1662; C46, 50, 54,§103.3; 57GA, ch 75,§10]

**103.4 Location of fire escapes and exits.** The following regulations as to location of fire escapes and exits are hereby established:

1. The second exit required by law shall be placed as far as possible from the existing inside stairway or passage to the lower floors

of the building, taking into account the hazard and the path or route of access to the escape from such stairway.

2. The distance to the nearest fire escape from any inside stairway or passage to the lower floor shall not exceed two hundred feet by way of the path or route of access to such fire escape from such stairway or passage.

3. Additional fire escapes to those otherwise provided by law shall be provided wherever it is necessary to pass within twenty feet of any stairway or elevator shaft from any portion of the building more than twenty feet from such stairway or shaft to reach the fire escape required by the provisions of law and where there are peculiar, unusual, or extreme hazards, additional fire escapes may be required by those authorized by law to regulate and fix the number and requirements of fire escapes.

4. When the inspector shall deem it necessary on account of the height of any building or on account of the number of persons ordinarily occupying said building, either permanently or temporarily in the course of business, such building shall be equipped with a sufficient number of fire escapes to permit the exit of all occupants within the following periods of time:

a. Buildings with wooden or combustible walls, two minutes.

b. Buildings having brick or incombustible walls with combustible interior, three minutes.

c. Buildings having brick or incombustible walls and incombustible roof and slow burning interior construction, four minutes.

d. Buildings of fireproof construction throughout, fifteen minutes; or a less period of time if hazard of merchantable contents of such building may so require.

In estimating the period of time required the rate of descent on the fire escapes shall not be taken in excess of one and five-tenths feet of vertical distance, or height, per second, when said fire escapes are fully loaded, which rate of descent shall be estimated to permit the exit of not to exceed one person per second; but the time of complete exit as herein provided may be increased where efficient sprinkler systems are installed, such increase of time to be determined by the character and efficiency of the sprinkling system unless peculiar or unusual hazards exist. [SS15,§4999-a7; C24, 27, 31, 35, 39,§1663; C46, 50, 54,§103.4; 57GA, ch 75,§11]

**103.5 How constructed.** All fire escapes shall be constructed as described in the following classifications:

Class A. Fire escapes of this class shall consist of those more safe and efficient than outside ladders and stairways and which shall have been approved as such by the state fire marshal, and may include inside stairways and means of escape in fireproof buildings when approved by said fire marshal.

Class B. Fire escapes of this class shall consist of a suitable outside stairway of not less

than twenty-two inches clear width of steel or wrought iron constructed with platform and with stationary stairway carried down to within six and one-half feet of the ground, or with a drop or counterbalanced stairway from the second story platform or balcony to the ground.

Class C. Fire escapes of this class shall consist of at least one ladder, not less than eighteen inches in width, of steel or wrought iron construction, of sufficient size and strength for safety, attached to the outside walls of the building and provided with platforms of steel or wrought iron inclosed by suitable railings and of such dimensions and in such proximity to the windows of each story above the first as to render access to the ladder from each story easy and safe, the said ladder to extend to within six and one-half feet of the ground or to be provided with a drop ladder hung at the second story in such a manner that it can be easily lowered for use. [SS15,§4999-a8; C24, 27, 31, 35, 39,§1664; C46, 50, 54,§103.5]

#### **103.6 Construction and arrangement.**

1. All of the above classes of fire escapes shall be of suitable material, construction, arrangement, and location to make the same safe and efficient and no fire escape of a higher class shall be less safe and efficient than one of a lower class and the provisions of each lower class with respect to platform, access to windows and openings, and sufficiency of strength shall apply to the upper class except where allowed to be modified by those having authority.

2. All fire escapes reaching the top floor shall have suitable extensions reaching from the upper platform to safe landing on the roof of the building; but the state fire marshal may waive this provision when on examination he finds that such ladder would be an element of danger.

3. All fire escapes of any of the foregoing classes shall have such windows or openings leading to the platform or balconies of the same as shall be necessary to make the same safe and efficient, and all routes or paths of access to said fire escapes shall be safe and sufficient, with all doors of rooms leading to fire escapes one-half glass and equipped with mortise latches or equivalent so that the same may be easily and quickly opened by breaking the glass and turning the latches from the inside of the doors, all so as to render access to the fire escape from each floor above the first easy and safe. No window or door leading to the platform of a fire escape shall be fastened against exit.

4. The attachment of all fire escapes shall be made in a thorough and substantial manner and sufficient to carry the full load that may be placed on said fire escapes when the same are crowded, with a factor of safety of not less than four.

5. Suitable signs indicating the location of fire escapes shall be posted at all entrances to elevators, stairways, landings, and in all rooms.

6. In all buildings which are used for lodging or sleeping purposes, and in opera houses, theaters, and public assembly halls, and other buildings occupied or used at night where, in the judgment of the state fire marshal, this provision should apply, red lights shall be maintained at night or when the buildings are darkened, to indicate the place or opening through which access to the fire escape is obtained. Red lights shall not be used for lighting purposes in such buildings at locations where they may be mistaken for an exit light. [SS15,§4999-a8; C24, 27, 31, 35, 39,§1665; C46, 50, 54,§103.6]

### 103.7 Class of escapes—stairways.

1. Hotels, lodging houses, tenements, apartment buildings, schools, retail or department stores, seminaries, college buildings, office buildings, hospitals, asylums, opera houses, theaters, assembly halls, and factories required by law to be equipped with fire escapes shall be equipped with those of class "A" or class "B". All other buildings and structures required to be equipped with fire escapes shall be equipped with those of class "A", "B", or "C", or with a combination of such classes.

2. Class "C" shall not be used on any building over three stories in height in which more than five persons are at any one time allowed upon any one of the floors above said third story nor where any of the persons allowed upon any floor above the third story are females or minors; but the state fire marshal may under peculiar conditions and where the hazards are not great:

a. Permit fire escapes of class "C" to be used on buildings of more than three stories, but when ladder fire escapes are permitted on buildings more than three stories in height the ladders thereof must offset at the platforms and must not continue in the same line for more than one story.

b. Permit fire escapes of class "C" or other approved means of escape to be used on an ordinary dwelling of not more than three stories in height and temporarily used in part for lodging purposes when not more than five persons, none of whom are under sixteen years of age, occupy the third floor.

3. Where stairways not less than forty-four inches in clear width are provided they shall be taken as the equivalent of two or more single stairways in proportion to their width, provided the means of escape and efficiency and safety of said escapes are not thereby diminished. [SS15,§4999-a9; C24, 27, 31, 35, 39, §1666; C46, 50, 54,§103.7]

**103.8 Doors to open outward.** The entrance and exit doors of all hotels, churches, lodge halls, courthouses, assembly halls, theaters, opera houses, colleges, public schoolhouses, and other structures where the hazard is deemed sufficient by the inspector, and the entrance doors to all class and assembly rooms in public school buildings, shall open outward

and shall not be fastened against exit or so the same cannot be easily opened from within. [SS15,§4999-a9a; C24, 27, 31, 35, 39,§1667; C46, 50, 54,§103.8]

**103.9 Number and size of exits.** Inspectors shall, subject to the final decision of the state fire marshal, have power to determine the number and size of exits from all theaters, opera houses, and assembly halls, and from other buildings having one or more balconies, the location of such exits with reference to fire escapes, and shall require that no exit shall be fastened so as to prevent free passage from the building. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1668; C46, 50, 54,§103.9]

**103.10 Supervision of fire escapes.** The state fire marshal, except when otherwise specially provided by law, shall have general charge and supervision of the inspection and regulation of fire escapes and means of escape and of the enforcement of the law relating thereto, and for this purpose the inspectors named herein, and others upon whom there is imposed by law or ordinance any duty with reference to fire escapes, shall be subject to his direction and to the rules and regulations adopted by such state fire marshal. [SS15, §4999-a10; C24, 27, 31, 35, 39,§1669; C46, 50, 54, §103.10]

Fire escapes, §§100.11, 170.38, 413.36

**103.11 Standard specifications.** The said state fire marshal shall adopt standard uniform specifications for the various classes of fire escapes provided by law and shall furnish such specifications to all persons who are by law made inspectors of fire escapes and means of escape from fire, and such persons shall keep the same on file in their respective offices. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1670; C46, 50, 54,§103.11]

**103.12 Rules and regulations.** The state fire marshal shall make all necessary rules and regulations to carry out the purpose of this law and have the same printed in pamphlet form for distribution; and he shall have the power to approve any and all plans relating to fire escapes of the various classes, and it shall be his duty to see that the same conform to the law, and to make rulings and orders relative thereto, and where any dispute or disagreement arises with respect to the plans and specifications for any fire escape or means of escape from fire, the state fire marshal shall have the power and authority to determine and pass upon the same and make orders relative thereto. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1671; C46, 50, 54,§103.12]

**103.13 Building inspectors.** The building inspector or other officer performing like duties in cities having such officer, and if there be no such officer, then the chief of the fire department, and if there be no chief of a paid fire department, the mayor of such city or town, or if the building is not within the corporate limits of any city or town, then the

chairman of the board of supervisors, shall inspect all fire escapes within their respective jurisdictions, except buildings otherwise required by law to be inspected. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1672; C46, 50, 54,§103.13]

**103.14 Powers and duties.** Such inspection officers shall as often as necessary, and whenever complaint is made, carefully inspect and examine such fire escapes, and such inspection shall include all paths or routes between any interior passage to a lower floor and the opening and means of access to the said fire escapes, and the signs, lights, exits, and means of escape of all buildings required to be equipped with fire escapes and required to have certain exits and means of escape; and upon the complaint of any person that any fire escape, exit, or means of escape from fire is being maintained contrary to law, or any rule or regulation relative thereto or relative to protection against fire is being violated, such inspector shall examine into the conditions complained of and determine what, if any, requirements should be made in relation thereto, and shall have power to make all reasonable requirements and regulations in conformity with the law and to determine all matters with respect to fire escapes, protection from fire, and means of escape from buildings. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1673; C46, 50, 54,§103.14]

**103.15 Notice to owner.** It shall be the duty of any inspector required by law to inspect fire escapes or means of escape from fire to serve or cause to be served a written notice in behalf of the state of Iowa upon the owner, if he be a resident of the county in which the buildings are situated, or if he be a non-resident of such county, then upon his agent or lessee, that the buildings are not provided with fire escapes in accordance with the provisions of this chapter, or that the fire escapes or means of escape from fire are defective, unsafe, or dangerous, notifying such owner of such lack of fire escapes, condition of the building, defective, dangerous, or unsafe means of

escape from fire or any matter relating thereto, and notifying him to comply with the law and requirements of the state fire marshal within sixty days after the service of such notice; but the time of such notice may be extended by the state fire marshal if necessary. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1675; C46, 50, 54,§103.15]

**103.16 Appeal.** The owner, by himself, his agent, or lessee, may appeal from the action or requirement of any inspector at any time within sixty days after the service of such notice by a written communication addressed to said state fire marshal, setting forth such objections as he may have to the complaint, requirement, or regulations of such inspector; and it shall be the duty of the state fire marshal to pass upon and determine all matters of disagreement relating to fire escapes and the means of escape from fire in buildings, and all rules, regulations, findings, and orders made by the state fire marshal in his discretion, shall be reasonable and not unduly burdensome. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1676; C46, 50, 54,§103.16]

**103.17 Violations.** Any person who shall violate any of the provisions of law relating to fire escapes, or means of escape from fire, or any owner, agent, or trustee having the full care and control of any building and who has been served with notice as provided herein and who shall, within sixty days of the service of the notice, or within the time as extended by the state fire marshal, fail and neglect to comply with the requirements of law, or of the state fire marshal, or who shall fail, refuse, or neglect to perform any order or requirement fixed by law, or by the state fire marshal, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each additional week of neglect to comply with such notice, order, or requirement shall constitute a separate offense. [SS15, §4999-a11; C24, 27, 31, 35, 39,§1677; C46, 50, 54, §103.17]

## CHAPTER 104

### PASSENGER AND FREIGHT ELEVATORS

104.1 General equipment.  
104.2 Violations.

104.3 Ordinances.  
104.4 Door or gate interlock.

**104.1 General equipment.** Every elevator and elevator opening and machinery connected therewith in every elevator, hoistway, hatchway, and wellhole shall be so constructed, guarded, equipped, maintained, and operated as to render it safe for the purposes for which it is used. Nothing herein contained shall be construed to apply to any elevator hoisting device and anything connected therewith coming under the jurisdiction of the state mine inspector. [C24, 27, 31, 35, 39,§1678; C46, 50, 54,§104.1]

**104.2 Violations.** Every person, firm, or corporation operating an elevator in violation of any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days or by both such fine and imprisonment. [C24, §§1679, 1684; C27, 31, 35, 39,§1679; C46, 50, 54, §104.2]

**104.3 Ordinances.** Cities and towns are hereby empowered to enact ordinances providing for the inspections and regulation of the operation of such elevators and of the operators thereof. [C24, 27, 31, 35, 39, §1683; C46, 50, 54, §104.3]

**104.4 Door or gate interlock.** The hoistway doors and gates of all passenger elevators shall be equipped with an approved interlock (locking device), electrical, mechanical, or electro-mechanical, which will prevent the normal operation of the elevator car, unless the hoist-

way door at which the car is standing is closed and locked; or unless all hoistway doors are closed and locked; and second, shall prevent opening the hoistway door from the landing side except by a key or special mechanism; unless the car is standing at the landing door; or unless the car is coasting past the landing with its operative device in the "Stop" position. The interlock shall not prevent the movement of the car when the emergency release is in temporary use or when the car is being moved by a car-leveling device. [C27, 31, 35, §1684-a1; C39, §1684.1; C46, 50, 54, §104.4]

## CHAPTER 105

### LIABILITY OF HOTEL KEEPERS AND STEAMBOAT OWNERS

105.1 Liability for precious articles — safe deposit.

105.2 Exception.

105.3 Nature of liability.

105.4 Limitation on liability.

105.5 Leaving baggage after registering off.

105.6 Forwarding baggage.

105.7 Nonliability—conveyance.

105.8 Liability—conveyance.

105.9 Liability during transit.

**105.1 Liability for precious articles—safe deposit.** No keeper of any hotel, inn, or eating house, nor the owner of any steamboat, shall be liable to any guest for more than one hundred dollars for the loss of or injury to any money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, documents of any kind, or other similar property, if such keeper or owner at all times provides:

1. A metal safe or vault, in good order and fit for the safekeeping of such property.

2. Locks or bolts on the door and proper fastenings on the transoms and windows of the sleeping quarters used by guests.

3. Printed notices posted up in a conspicuous place in the office or other public room and in the quarters occupied by guests, stating that such places for safe deposit are provided for the use and accommodation of guests and patrons. [C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §1685; C46, 50, 54, §105.1]

Referred to in §§105.2, 105.3

**105.2 Exception.** The limited liability provided in section 105.1 shall not apply where:

1. A guest has offered to deliver such valuables to said keeper or owner for custody in such metal safe or vault, and

2. Said keeper or owner has omitted or refused to receive and deposit the same in such safe or vault and give such guest a receipt therefor.

But such keeper or owner shall not be required to receive from any one guest for deposit in such safe or vault, property having a market value of more than five hundred dollars. [C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §1686; C46, 50, 54, §105.2]

Referred to in §105.3

**105.3 Nature of liability.** The liability of such keeper or owner for loss of or injury to

personal property placed by any guest in his care, other than that described in sections 105.1 and 105.2, shall be that of a depository for hire. [C24, 27, 31, 35, 39, §1687; C46, 50, 54, §105.3]

**105.4 Limitation on liability.** In no event shall the liability of such keeper or owner exceed the following amounts:

1. For each trunk and its contents, two hundred fifty dollars.

2. For each valise and its contents, one hundred fifty dollars.

3. For each box, bundle, or package and its contents, fifty dollars.

4. For any and all other miscellaneous effects of each guest, not exceeding one hundred dollars. [C24, 27, 31, 35, 39, §1688; C46, 50, 54, §105.4]

**105.5 Leaving baggage after registering off.** In case baggage or other personal property of a guest has remained in any hotel, inn, eating house, or steamboat forty-eight hours after the guest has paid his bill and registered off and the relation of keeper and guest has ceased, such keeper or owner may hold such baggage or property at the risk of the owner. [C24, 27, 31, 35, 39, §1689; C46, 50, 54, §105.5]

**105.6 Forwarding baggage.** In case baggage or other property has been forwarded to any hotel, inn, eating house, or steamboat, and the owner of such baggage or property does not within forty-eight hours become a guest, such keeper or owner may hold such baggage or property at the risk of the owner. [C24, 27, 31, 35, 39, §1690; C46, 50, 54, §105.6]

**105.7 Nonliability—conveyance.** No keeper or owner of any hotel, inn or eating house shall be liable by reason of his innkeeper's lia-



bility or his responsibility as innkeeper to any guest for the loss of or damage to the automobile or other conveyance of such guest left in any garage not personally owned and operated by such hotel, inn or eating house or the owner or keeper thereof. [C31, 35, §1690-c1; C39, §1690.1; C46, 50, 54, §105.7]

**105.8 Liability—conveyance.** The liability of the keeper or owner of any hotel, inn or eating house, for the loss of or damage to the conveyance of any guest or the personal property of such guest left in such conveyance, where said hotel, inn or eating-house keeper, is the owner and operator of such garage, shall be that of a bailee for hire, except that such hotel, inn, rooming-house or eating-house keeper or owner shall not be liable to the guest in an amount in excess of fifty dollars for loss or damage to personal property left in the conveyance unless said guest shall have listed with said hotel, inn, rooming house or

eating house, the personal property contained in said automobile or conveyance, at the time the same is left in said garage so owned by and operated by the said hotel, inn, rooming house or eating house. [C31, 35, §1690-c2; C39, §1690.2; C46, 50, 54, §105.8]

Referred to in §105.9

**105.9 Liability during transit.** Except as provided in section 105.8 no keeper or owner of any hotel, inn, rooming house or eating house shall be liable for the loss of or damage to the personal property kept therein of any guest, while the said conveyance is in transit between the said hotel, inn, rooming house or eating house and any garage in which the same is temporarily stored, nor for any damage done by said conveyance while in transit, unless in said transit the same is being driven or operated by an employee or agent of the said hotel, inn, rooming house or eating house. [C31, 35, §1690-c3; C39, §1690.3; C46, 50, 54, §105.9]

## CHAPTER 106

### WATER NAVIGATION REGULATIONS

Referred to in §109.1

- 106.1 Inspectors and conservation officers.
- 106.2 Boats—inspection and license.
- 106.3 Engineer or pilot license.
- 106.4 Fees.
- 106.5 Suspension or revocation.
- 106.6 Penalty.
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- 106.8 Registration.
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- 106.10 Classes of boats.
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- 106.13 Speed limits.
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#### ARTIFICIAL LAKES, BOAT RACES

- 106.16 Certain boats excluded.
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#### BUOYS AND STRUCTURES

- 106.18 Regulations for buoys.
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#### GENERAL PROVISIONS

- 106.21 Negligence not exonerated.
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- 106.25 Unworthy boats drydocked.
- 106.26 Official duty exemption.
- 106.27 Penalty.
- 106.28 Operating motorboat while intoxicated or under influence of drugs.

**106.1 Inspectors and conservation officers.** The state conservation commission shall appoint one or more qualified persons as inspectors of passenger boats. He shall hold office at the will of the commission, make such reports as the commission may require, and receive such compensation as the commission may determine. He shall be required to give bond for the faithful performance of his duties in the sum of two thousand dollars.

The commission is herewith empowered and authorized to employ such number of qualified persons as it may deem advisable to serve as conservation officers.

Boat inspectors and conservation officers are herewith vested with the powers, and charged

with the duties of peace officers, in enforcing the provisions of this chapter. [C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §1703.01; C46, 50, 54, §106.1]

Annual report to governor, §17.4

**106.2 Boats—inspection and license.** Any person having upon the inland waters of the state any boat, operated by machinery used for hire or offered for hire, must have his craft and all its appurtenances annually inspected and licensed before it is so used.

Every such owner shall file in the office of the secretary of the commission an application for inspection of boats and licensing thereof, on a blank to be furnished by the commission for that purpose.

The boat inspector shall have the power and authority to determine whether the boat is safe for the transportation of passengers and upon what waters it may be used, to determine and designate the number of passengers, including crew, that may be carried, to determine whether the machinery, equipment and all appurtenances are such as to make said boat seaworthy where used and equipped as provided herein, and such other matters as are pertinent.

After said boat has been inspected and licensed as provided herein, the license shall be kept posted in a conspicuous place upon or in said boat and shall be so maintained at all times by the owner of said boat.

Any license issued for the operation of a boat shall be in effect only for the calendar year in which such license is issued.

The owner of all boats used for hire is held responsible for the proper equipping and licensing thereof, as provided in this chapter. [C97,§2512; S13,§2512; C24, 27, 31,§1692; C35, §1703-e2; C39,§1703.02; C46, 50, 54,§106.2]

**106.3 Engineer or pilot license.** No motor boat shall be operated for hire by a pilot or engineer upon the inland waters of the state, without his first having obtained an annual engineer's and/or pilot's license hereby required for all operators, who have charge of the steering or directing of the boat's course, or who do steer or direct the boat's course. An engineer's license is required for all operators who have charge of or operate the equipment by which the boat is propelled. If one person acts in a dual or alternate capacity, he shall first obtain both an engineer's and pilot's license.

Any person desiring a pilot's or engineer's license shall file with the commission an application therefor upon forms prepared and furnished by the commission. Such license may be issued by the boat inspector or inspectors aforesaid. Before the boat inspector shall issue such license, he shall investigate the competency of the applicant, his acquaintance with and experience in boat work, his habits as to sobriety, his mental and physical qualifications for the work, his acquaintance with the waters for which application to operate upon is made, his familiarity with the laws and regulations pertaining to boat operation, and all other pertinent matters. Such license shall not be issued to any one under the age of eighteen years.

Any license issued for operating as a pilot or as an engineer shall be in effect only for the calendar year in which such license is issued. [C97,§2512; S13,§2512; C24, 27, 31,§1694; C35,§1703-e3; C39,§1703.03; C46, 50, 54,§106.3]

**106.4 Fees.** The annual fee for the inspection and licensing of boats operated for hire shall be based upon the passenger-carrying capacity, including crew, for which said boat is licensed to operate.

Such fee shall be computed at the rate of fifty cents per person capacity, but shall not

exceed the maximum of twenty dollars.

The fee for inspecting and licensing each sailboat operated for hire shall be not less than one dollar.

The annual fee for pilot's license is one dollar.

The annual fee for an engineer's license is two dollars.

The provisions for this section shall not apply to rowboats propelled by outboard motors, except that all rowboats whether with or without outboard motors, which are rented to the public for hire, and including boats furnished with leased cottages, shall be subject to annual inspection by the boat inspector. For such inspection, a fee of twenty-five cents per boat shall be charged. If such boat or boats are found to be in satisfactory condition, the boat inspector shall attach thereto a small metal plate—said plate giving the date of inspection and the passenger-carrying capacity. The responsibility for requesting such inspection with sufficient notice is upon the owner of the boat or boats, and no such rowboat or boats offered or used for hire shall be so used until such inspection has been made and the craft or crafts found to be in satisfactory condition.

The boat inspector shall collect all license fees, and these shall be turned over to the general treasury and be available for the use of the commission. [C97,§2512; S13,§2512; C24, 27, 31,§1694; C35,§1703-e4; C39,§1703.04; C46, 50, 54,§106.4]

**106.5 Suspension or revocation.** The boat inspector or inspectors may for cause temporarily suspend or revoke the license of any boat, pilot, or engineer that has been issued under this chapter, and the commission, after a due hearing in the matter at its next session, shall make final determination in the matter. Any license issued upon an application, or a statement which is untrue as to any material facts, shall be void from date of issue. Any license which is revoked or found void shall forthwith be returned to the commission. [C97, §2513; S13,§2513; C24, 27, 31,§1695; C35,§1703-e5; C39,§1703.05; C46, 50, 54,§106.5]

**106.6 Penalty.** If any owner, agent or master of any boat, plying the inland waters of the state, shall hire or offer to hire, such boat for the carrying of a person or persons thereon, without first obtaining annually, before operating such boat in service, a license as in this chapter required, or if such owner, agent or master, having obtained such license, shall permit or receive for carriage on such boat a greater number of persons than authorized therein, or if any person shall act as pilot or engineer on any boat mentioned for which inspection and license are herein required, without first obtaining a license therefor, or if having such license he continues to follow such avocation after the same has been revoked or has expired, he shall be fined in the sum of not to exceed one thousand dollars or imprisoned in the county jail not to exceed one year or punished by both fine and impris-

onment; but the provisions of this chapter shall not apply to vessels licensed by authority of the United States. [C97,§2513; S13,§2513; C24, 27, 31,§1695; C35,§1703-e6; C39,§1703.06; C46, 50, 54,§106.6]

**106.7 Block numbers on boat.** Every licensed motorboat operated for hire shall have visible, upon both sides of the bow, a block number corresponding to the license number, plainly marked in figures not less than four inches in height. Such number shall be in color contrasting with the color of the boat. [C35,§1703-e7; C39,§1703.07; C46, 50, 54,§106.7]

C35,§1703-e7, editorially divided

**106.8 Registration.** All machinery propelled boats, not operated for hire and capable of a speed of eight miles or more per hour, shall be registered with the commission. No fee shall be required for such registration. The registry number shall be plainly marked, upon both sides of the bow, in block figures not less than four inches in height. Such number shall be in color contrasting with the color of the boat. [C35,§1703-e7; C39,§1703.08; C46, 50, 54, §106.8]

Constitutionality, 45GA, ch 29,§9  
Omnibus repeal, 45GA, ch 29,§11

**106.9 Definition of "motorboat".** A motorboat is defined as any boat or watercraft propelled by machinery. Any boat or craft propelled by attachment to another craft which is propelled by machinery shall be deemed a motorboat. [C39,§1703.09; C46, 50, 54,§106.9]

**106.10 Classes of boats.** For the purpose of this chapter boats are classified as follows:  
Class I. All steamboats.

Class II. All boats with inboard motors used for commercial purposes.

Class III. All motorboats with inboard motors used for private purposes.

Class IV. All motorboats of plane or gliding type, including combination plane and displacement types, propelled by an outboard motor.

Class V. All rowboats of displacement type, with outboard motor.

Class VI. All rowboats or canoes propelled by hand.

Class VII. All sailboats. [C39,§1703.10; C46, 50, 54,§106.10]

**106.11 Equipment requirements.** No person shall operate any boat as hereinafter designated on the waters of the state which is not equipped as follows:

1. A fire extinguisher of type and size approved by the commission shall be carried by all motorboats when operated for hire. Such fire extinguisher shall be capable of extinguishing burning gasoline and be of the carbon dioxide, carbon tetrachloride, or foam type.

2. Any boat, except steamboats, carrying passengers for hire shall be equipped with air tanks of sufficient capacity to sustain afloat

the boat when full of water with all her full complement of passengers and crew on board.

3. Every motorboat carrying passengers for hire shall carry one life preserver, life belt, buoyant cushion, or ring buoy of type approved by the commission for each person on board.

4. No motorboat, propelled in whole or in part by gas, gasoline, or naphtha, shall be operated unless the same is provided with an exhaust or muffler device so constructed and used as to muffle the noise of the exhaust, and no such boat shall be operated with a cut-out or any such device which shall make the muffler ineffective.

5. No motorboat in class I, II, III, or IV shall be operated unless it be equipped with a whistle, horn or sound device capable of making a signal that can be heard from a distance of one thousand feet in calm weather. Sirens are specifically prohibited.

6. Owners of steamboats operated for hire are hereby required to carry boiler insurance covering each steamboat so operated and copies of the insurance policies shall be filed with the commission. [C39,§1703.11; C46, 50, 54,§106.11]

**106.12 Arrangement of lights.** No person shall operate any boat during the period between thirty minutes after sundown and sunrise which is not equipped with lights as herein prescribed:

1. Every motorboat in class I, II, or III and all boats in class IV, which in the latter case are capable of a speed of eight miles or more per hour, shall have the following lights:

a. A bright white light in forepart of the boat as near the bow as practical. The glass of the lens shall be not less than three and one-half inches in diameter. In general, this light shall, when in use, be kept pointed in direction boat is traveling.

b. A white light aft (stern) to show all around the horizon. A combined lantern in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

c. All boats in class IV, not capable of exceeding eight miles per hour, shall have a constant white light in the forepart of the vessel and to be so constructed as to be visible all around the horizon.

2. All boats in class V and VI shall have, when operated on any lake, and when over three hundred feet from shore, a white light that is constant and so placed as to be visible from any direction.

3. All boats in class VI shall have when operated on any river or stream, a white light which is constant and so placed as to be visible from any direction.

4. All boats in class VII shall have a white light directed on the main sail in such a way

as to constantly illuminate the sail by shining on and through the sail. Such light shall be of sufficient intensity to make the sail visible from all directions for a distance of not less than two thousand feet. [§13,§2514-a; C24, 27, 31,§1697; C39,§1703.12; C46, 50, 54,§106.12; 56GA, ch 87,§§1, 2]

#### OPERATION LAWS

**106.13. Speed limits.** No person shall operate any boat on any of the waters of the state under the jurisdiction of the commission in a careless or reckless manner or in such a manner as to endanger life and property nor in any manner other than herein prescribed:

1. No boat in class II, III, IV or V shall be operated on a state-owned lake at a speed greater than five miles per hour when within two hundred fifty feet from another craft.

2. No boat in class I, II, III, IV or V shall be operated at a speed exceeding five miles per hour unless vision is unobstructed three hundred feet ahead.

3. It shall be unlawful to operate any motorboat within three hundred feet of the shore of any lake at a speed greater than ten miles per hour.

4. It shall be unlawful for class I, II, III, and IV boats to operate on West Okoboji lake within the following named zones, which zones shall be marked by the conservation commission with markers at the terminal points of each boundary, with not less than one marker buoy on the boundary line between the terminals of each zone herein established.

a. That portion of West Okoboji known as Brown's Bay and lying south of a direct line connecting the Lime Kiln Point and Pocahontas Point.

b. That portion of West Okoboji known as Emerson's Bay and the area adjacent thereto and lying west of a line drawn from a point three hundred feet due east of Gull Point due south and intersecting the north boundary of zone "a".

c. That portion of West Okoboji lying to the westward of a line drawn from a point three hundred feet due east of Gull Point northwest to the southwest corner of Babcock's property on the north shore of Miller's Bay.

d. That portion of West Okoboji lying westward of a line drawn due south southwest from Manhattan Point and intersecting the northeast boundary of zone "c".

e. That portion of West Okoboji lying to the eastward of a line drawn from Colcord's Point southward to a point three hundred feet due southwest of Dixon's Point.

Except that all boats in said classes may operate in such zones at a maximum speed of ten miles per hour for the purpose of going to or from landings and twenty miles per hour when operating three hundred feet or more from the shoreline or from any other craft. [C39,§1703.13; C46, 50, 54,§106.13; 57GA, ch 77,§1]

**106.14 Right of way rules.** Boat traffic shall be governed by the following rules:

1. Passing from rear—keep to the left.

2. Passing head-on—keep to the right.

3. Passing at right angles—boat at the right has right of way, other conditions being equal.

4. Sailboats have right of way over all other boats. Motorboats, when passing sailboats, shall always pass on leeward side.

5. Any boat backing from a landing has the right of way over incoming boats. [C39, §1703.14; C46, 50, 54,§106.14]

**106.15 Aircraft restrictions.** It shall be unlawful for any aircraft to make use of the inland lakes of the state except in the transportation of persons or property between points separated by a distance of thirty miles or more. Nothing herein shall prohibit the use of such waters by any aircraft in danger or distress or the use of such waters by the operators of private aircraft, not operated for hire. The foregoing provisions notwithstanding, the state conservation commission may, on the recommendation of the aeronautics commission, designate certain areas on inland lakes of the state where seaplane flight instruction may be conducted under such conditions as may be adopted by the conservation commission and approved by the aeronautics commission. [C39,§1703.15; C46, 50, 54,§106.15; 56GA, ch 88,§1]

#### ARTIFICIAL LAKES, BOAT RACES

##### 106.16 Certain boats excluded.

1. No motorboat in class I, II, or III and no boats in classes IV and V, shall be permitted on any artificial lake under the jurisdiction of the commission. Provided, however, that boats in classes IV and V, when equipped with an outboard motor not to exceed six horsepower, shall be permitted upon any artificial lake of one hundred acres or more in size.

2. No person shall operate any sailboat on any artificial lake under the jurisdiction of the commission except those lakes specifically designated by the commission. All sailboats so operated must be of a type and size approved by the commission.

3. All privately owned boats on artificial lakes under the jurisdiction of the commission shall be kept only at locations designated by the commission.

4. All privately owned rowboats used on or kept at the artificial lakes under the jurisdiction of the commission shall be seaworthy for the waters where they are kept or used. They shall not be loaded to the extent that more than one-third of the height of the freeboard is submerged. All such boats shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 1 of each year. [C39, §1703.16; C46, 50, 54,§106.16; 57GA, ch 78,§1]

**106.17 Races.** No boat race or regatta shall be conducted upon state waters unless permission is granted by the commission.

Boats not participating in such race or regatta shall remain at least fifty feet from the racing course during such contest.

Laws pertaining to speeds or passing distances shall not apply to boats or boat operators engaged in such race or regatta. [C39, §1703.17; C46, 50, 54, §106.17]

**BUOYS AND STRUCTURES**

**106.18 Regulations for buoys.**

1. No private buoy or any obstruction of any kind shall be maintained less than one hundred feet from shore nor more than three hundred feet, except by permission from the commission.

2. All private buoys must float in a vertical position with at least eighteen inches projecting above the water and shall be painted white or have a white flag of at least one square foot in area attached thereto.

3. It shall be unlawful to tamper with, move or attempt to move any state-owned buoy.

4. No boat shall be anchored away from the shore and left unguarded unless it be attached to a buoy. [C39, §1703.18; C46, 50, 54, §106.18]

**106.19** Repealed by 57GA, ch 84, §2, see §111.4.

**106.20 Driving over ice.** No craft or vehicle operating on the surface of ice on the inland meandered lakes and streams of the state and propelled by machinery in whole or in part shall be operated without a permit being issued for such operation by the commission. Ice-cutting machinery, automobiles, motorcycles and trucks, when such are used without endangering public safety are excepted from the provisions of this section. Any such permit issued may be revoked by the commission if such craft or vehicle is operated in a careless manner or endangers others. [C39, §1703.20; C46, 50, 54, §106.20]

**GENERAL PROVISIONS**

**106.21 Negligence not exonerated.** Nothing in this chapter shall exonerate any owner, operator or crew of any craft from the consequences of any neglect to carry lights, signals or equipment or from any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case. [C39, §1703.21; C46, 50, 54, §106.21]

**106.22 Federally licensed boats—exception.** The provisions of this chapter shall not apply to boats licensed by authority of the United States when such boats are operated in accordance with the federal laws and regulations therefor, provided that such boats comply with the provisions of this chapter relating to lights and operation. [C39, §1703.22; C46, 50, 54, §106.22]

**106.23 Accidents reported.** All navigation accidents shall be reported as promptly as possible to the nearest police officer and to the commission or its authorized representative. [C39, §1703.23; C46, 50, 54, §106.23]

**106.24 Overloading boats for hire.** No person offering a boat for hire nor any person using a rented boat shall permit said boat to be occupied by more passengers and crew than the licensed capacity of the boat permits. [C39, §1703.24; C46, 50, 54, §106.24]

**106.25 Unworthy boats drydocked.** No person shall place or allow to remain in the public waters any boat for hire which has failed to pass inspection. [C39, §1703.25; C46, 50, 54, §106.25]

**106.26 Official duty exemption.** Members of the commission, its deputies, agents, and employees shall not be deemed violating the provisions of this chapter applying to the work of the commission while on duty and acting within the scope of their employment. [C39, §1703.26; C46, 50, 54, §106.26]

**106.27 Penalty.** Any person violating any of the provisions of this chapter, for which another penalty is not otherwise specifically provided, shall, upon conviction, be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [S13, §2514-d; C24, 27, 31, §1700; C35, §1703-e10; C39, §1703.27; C46, 50, 54, §106.27]

*Constitutionality, 47GA, ch 99, §136*

**106.28 Operating motorboat while intoxicated or under influence of drugs.** Whoever, while in an intoxicated condition or under influence of narcotic drugs, operates a motorboat upon the public waters of this state, shall, upon conviction or a plea of guilty, be punished, for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense, and each offense thereafter, by imprisonment in the penitentiary for a period not to exceed three years.

The court shall also in pronouncing sentence provide for the revocation of the pilot's and/or engineer's license of the defendant, if any, issued under this chapter, and the immediate surrender of the defendant's liquor permit issued under chapter 123. The clerk of court shall immediately certify to the state conservation commission and to the liquor control commission a true copy of the judgment sentencing the defendant under this section.

The court in pronouncing sentence may provide as to the period during which a pilot's

and/or engineer's license as required by this chapter shall not be issued or reissued to the defendant, provided said period shall be not less than sixty days nor more than one year from the date of sentence or revocation. If the court does not so provide the state conservation commission may issue or reissue such license only upon application by the defendant

after the expiration of a sixty-day period following the date of sentencing.

The liquor control commission shall not issue the defendant a new liquor permit until such time as the court or judge of the court having original jurisdiction of the defendant for good cause shown shall so certify to the liquor control commission. [C50, 54, §106.28]

## CHAPTER 107

### STATE CONSERVATION COMMISSION

Referred to in §109.1

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

- |        |                                    |        |                                      |
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| 107.2  | Appointment.                       | 107.16 | Removal.                             |
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| 107.14 | Conservation officers.             | 107.28 | Fish restoration projects.           |

**107.1 Creation of commission—membership.** There is hereby created a state conservation commission which shall consist of seven citizens of the state who are interested in and have substantial knowledge of the subjects embraced in this chapter. Not more than four of said members shall, when appointed, belong to the same political party. No person appointed to said commission shall during his term hold any other state or federal office. [S13, §1400-p; C24, 27, §§1795, 2604; C31, §§1703-d2, -d3, 1795, 2604; C35, §1703-g1; C39, §1703.28; C46, 50, 54, §107.1]

**107.2 Appointment.** Said members shall be appointed by the governor with the approval of two-thirds of the members of the senate. [C24, 27, §1795; C31, §§1703-d2, 1795; C35, §1703-g2; C39, §1703.29; C46, 50, 54, §107.2]

**107.3 Full-time appointments.** During the session of the general assembly in 1937 and at a corresponding time each two years thereafter, the governor shall appoint two or three members, as the case may be, for a full term of six years. [C24, 27, §1796; C31, §§1703-d3, 1796; C35, §1703-g3; C39, §1703.30; C46, 50, 54, §107.3]

**107.4 Vacancies.** In case of vacancies, the governor shall appoint for the unexpired portion of the term, and if the general assembly be not then in session the governor shall, upon the convening of the general assembly, promptly report said appointment to the senate for its approval. [C31, §1703-d5; C35, §1703-g4; C39, §1703.31; C46, 50, 54, §107.4]

**107.5 Compensation.** Each member of the commission shall receive the sum of ten dollars for each day actually and necessarily employed in the discharge of official duties, provided said compensation shall not exceed six hundred dollars for each fiscal year. [C31, §1703-d6; C35, §1703-g5; C39, §1703.32; C46, 50, 54, §107.5]

**107.6 Expenses generally.** The members and employees of the commission, the conservation director and conservation officers shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties when absent from their usual place of abode, unless said appointees or employees are serving under a contract which requires them to defray their own expenses. [C31, §1703-d6; C35, §1703-g6; C39, §1703.33; C46, 50, 54, §107.6]

**107.7 Bonds—surety.** The commission may require bonds of appointees and employees other than those herein specifically named. All bonds insuring the fidelity of the commissioners, and of the appointees and employees of the commission shall be signed by a surety authorized by law to execute such bonds. [C31, §1703-d7; C35, §1703-g7; C39, §1703.34; C46, 50, 54, §107.7]

**107.8 Premium.** The premium on all the aforesaid fidelity bonds shall be paid from the administration fund of the commission. [C31, §1703-d7; C35, §1703-g8; C39, §1703.35; C46, 50, 54, §107.8]

**107.9 Offices.** The commission shall keep its office at the seat of government. The executive council shall supply and properly furnish said rooms. [C31,§1703-d10; C35,§1703-g9; C39,§1703.36; C46, 50, 54,§107.9]

**107.10 Organization and meetings.** Said commission shall organize annually by the election of a chairman. The commission shall meet annually at the seat of government on the first Tuesday of January, April, July, and October and at such other times and places as it may deem necessary. Meetings may be called by the chairman, and shall be called by the chairman on the request of two members of the commission. [C31,§§1703-d8,-d9; C35,§1703-g10; C39,§1703.37; C46, 50, 54,§107.10]

**107.11 Conservation director.** The commission shall employ an administrative head who shall be known as state conservation director and be responsible to the commission for the execution of its policies. He shall be a person of executive ability and possess special knowledge relative to the duties herein imposed on the commission. [C31,§§1703-d16,-d19; C35,§1703-g11; C39,§1703.38; C46, 50, 54,§107.11]

**107.12 Term and salary.** Said director shall serve during the pleasure of the commission and shall receive an annual salary, not to exceed five thousand five hundred dollars, to be fixed by the commission. [C31,§1703-d17; C35,§1703-g12; C39,§1703.39; C46, 50, 54,§107.12]

**107.13 Officers and employees—salaries.** Said director shall, with the consent of the commission and at such salary as the commission shall fix, employ such assistants, including a professionally trained state forester of recognized standing, as may be necessary to carry out the duties imposed by this chapter on the commission; also and under the same conditions, said director shall appoint such officers as may be necessary to enforce the laws, rules, and regulations, the enforcement of which are herein imposed on said commission. Said officers shall be known as state conservation officers. The salaries of the state conservation officers shall be thirty-four hundred fifty dollars per year for the first year of service; thirty-eight hundred dollars for the second year of service; and thereafter such salaries shall be increased each year in the sum of one hundred dollars until a maximum salary of forty-two hundred dollars per year is reached. [C31,§§1703-d20,-d22; C35,§1703-g13; C39,§1703.40; C46, 50, 54,§107.13; 57GA, ch 79,§1]

Salary increases as of July 4, 1957, 57GA, ch 79,§1

**107.14 Conservation officers.** No person shall be appointed as a conservation officer until he has satisfactorily passed a competitive examination, held under such rules as the commission may adopt, and other qualifications being equal only those of highest rank in examinations shall be appointed. [C35,§1703-g14; C39,§1703.41; C46, 50, 54,§107.14]

**107.15 Peace officers.** Conservation officers shall have the power of, and be deemed peace officers within the scope of the duties herein imposed on them. The conservation officers are likewise given the power of peace officers with respect to all violations of the motor vehicle laws and all public offenses committed in their presence. [C73,§4052; C97,§2540; SS15,§§2539, 2540; C24, 27, 31,§1715; C35,§1703-g15; C39,§1703.42; C46, 50, 54,§107.15]

**107.16 Removal.** The appointees and employees aforesaid may be removed by the said director at any time subject to the approval of the commission. [C31,§1703-d20; C35,§1703-g16; C39,§1703.43; C46, 50, 54,§107.16]

**107.17 Funds.** The financial resources of said commission shall consist of three funds:

1. A state fish and game protection fund,
2. A state conservation fund, and
3. An administration fund.

The state fish and game protection fund, except as otherwise provided, shall consist of all moneys accruing from license fees and all other sources of revenue arising under the division of fish and game.

The conservation fund, except as otherwise provided, shall consist of all other funds accruing to the conservation commission.

The administration fund shall consist of an equitable portion of the gross amount of the two aforesaid funds, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter. [C31,§§1703-d23, 1820; C35,§1703-g17; C39,§1703.44; C46, 50, 54,§107.17]

Referred to in §§107.27, 107.28

**107.18 Report of funds.** The conservation director shall, at least monthly, make return and pay to the treasurer of state all moneys then in his hands belonging to the aforesaid funds. [C31,§§1703-d23, 1820; C35,§1703-g18; C39,§1703.45; C46, 50, 54,§107.18]

**107.19 Expenditures.** All funds accruing to the fish and game protection fund, except the said equitable portion, shall be expended solely in carrying on the activities embraced in the division of fish and game.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this act\* shall be subject to approval by the state comptroller. [C35,§1703-g19; C39,§1703.46; C46, 50, 54,§107.19]

Referred to in §§107.27, 107.28  
\*46GA, ch 13

**107.20 Limitation to state lands—exception.** Any and all funds appropriated to the state conservation commission which are used in growing or handling nursery stock shall be used for growing or handling of such stock for distribution only on state-owned lands. Provided, however, that the commission may continue to produce and sell at private sale game

cover packets and trees for erosion control such as are now offered for sale by it, and may continue to produce trees for a demonstration windbreak in each township in the state, and may dispose of trees now growing under their present plan of distribution. [C46, 50, 54, §107.20]

Effective July 4, 1941

**107.21 Divisions of department.** The department of conservation, herein created, shall consist of the following divisions:

1. A division of fish and game which shall include matters relating to fish and fisheries, waterfowl, game, fur-bearing and other animals, birds, and other wild life resources.

2. A division of lands and waters which shall include matters relating to state waters, state parks, forests and forestry, and lakes and streams, including matters relating to scenic, scientific, historical, archaeological, and recreational matters.

3. A division of administration which shall include matters relating to accounts, records, enforcement, technical service, and public relations. [C35, §1703-g20; C39, §1703.47; C46, 50, 54, §107.21]

**107.22 Political activity.** No member, officer, or employee of the commission shall, directly or indirectly, exert his influence to induce any other officers or employees of the state to adopt his political views, or to favor any particular candidate for office, nor shall such member, officer, or employee contribute in any manner, directly or indirectly, any money or other things of value to any person, organization, or committee for political campaign or election purposes. Any person violating this section shall be removed from his office or position. [C35, §1703-g22; C39, §1703.48; C46, 50, 54, §107.22]

Constitutionality, §1703-g23, Code 1935; 46GA, ch 13, §37

**107.23 General duties.** It shall be the duty of the commission to protect, propagate, increase and preserve the fish, game, fur-bearing animals and protected birds of the state and to enforce by proper actions and proceedings the laws, rules and regulations relating thereto. The commission shall collect, classify, and preserve all statistics, data, and information as in its opinion shall tend to promote the objects of this chapter; shall conduct research in improved conservation methods and disseminate information to residents of Iowa in conservation matters.

Upon the issuance of such data and information in printed form to private individuals, groups or clubs, the commission shall be entitled to charge therefor the actual cost of printing and publication as determined by the state printer. [C31, 35, §1703-d11; C39, §1703.49; C46, 50, 54, §107.23]

44GA, ch 26, §7, editorially divided

**107.24 Specific powers.** The commission is hereby authorized and empowered to:

1. Expend any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any act, or acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.

2. Acquire by purchase, condemnation, lease, agreement, gift and devise lands or waters suitable for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:

a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the provisions of the law and the regulations of the commission;

b. Fish hatcheries, fish nurseries, game farms and fish, game, fur-bearing animal and protected bird refuges.

3. Extend and consolidate lands or waters suitable for the above purposes by exchange for other lands or waters and to purchase, erect and maintain buildings necessary to the work of the commission.

4. Capture, propagate, buy, sell, or exchange any species of fish, game, fur-bearing animals and protected birds needed for stocking the lands or waters of the state, and to feed, provide and care for such fish, animals and birds.

5. The commission is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the commission.

6. The commission is hereby further authorized to adopt, publish and enforce such administrative orders as are authorized in section 109.38.

7. Pay the salaries, wages, compensation, traveling and other necessary expenses of the state conservation commissioners, state conservation director, state conservation officers and other employees of the commission, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.

8. Control by shooting or trapping any fish, game, fur-bearing animals and protected birds for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for such purpose without the consent of the owner or occupant thereof.

9. Provide for the protection against fire and other destructive agencies on state and privately owned forest and wild life areas, and to co-operate with federal and other state agencies in protection programs approved by the conservation commission, and with the consent of the owner on privately owned areas. [C31, 35, §1703-d12; C39, §1703.50; C46, 50, 54, §107.24]



**107.25 Orders—publication.** Administrative orders shall be made only after an investigation of the matter concerned and shall take effect, unless otherwise designated in the order, after publication in at least one newspaper of general state circulation or in a newspaper having circulation in the territory affected. A copy of all such orders shall before publication be filed with the secretary of state. [C31, §1703-d13; C35, §1703-e12; C39, §1703.51; C46, 50, 54, §107.25]

**107.26 Interpretation and limitations.** The foregoing sections shall not be construed as authorizing the commission to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to promulgate any open season on any fish, animal or bird contrary to the laws of the state of Iowa, or to extend except as provided in this chapter any open season or bag limit on any kind of fish, game, fur-bearing animals or of any birds prescribed by the laws of the state of Iowa or by federal laws or regulations, or to contract any indebtedness or obligation beyond the funds to which they are lawfully entitled. [C31, 35, §1703-d15; C39, §1703.52; C46, 50, 54, §107.26]

**107.27 Federal wild life Act—assent.** The state of Iowa hereby assents to the provisions of the Act of Congress entitled "An act to provide that the United States shall aid the states

in wild life restoration projects, and for other purposes," approved September 2, 1937 [50 Stat. L. 917], and the state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to the conduct and establishment of co-operative wild life restoration projects, as defined in said Act of congress, in compliance with said Act and with rules and regulations promulgated by the secretary of agriculture thereunder; and no funds accruing to the state of Iowa from license fees paid by hunters shall be diverted for any other purpose than as set out in sections 107.17 and 107.19. [C39, §1703.53; C46, 50, 54, §107.27]

**107.28 Fish restoration projects.** The state of Iowa hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the states in fish restoration projects, and for other purposes", approved August 9, 1950, Public Law 681, and the state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to the conduct and establishment of co-operative fish restoration projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the secretary of the interior thereunder; and no funds accruing to the state of Iowa from license fees paid by fishermen shall be diverted for any other purposes than as set out in sections 107.17 and 107.19. [C54, §107.28]

## CHAPTER 108

### ACQUISITION OF LANDS BY CONSERVATION COMMISSION

Referred to in §109.1

108.1–108.6, inc. Repealed by 57GA, ch 80, §1.  
108.7 Stream control on private lands.  
108.8 Jurisdiction—public access.

108.9 Accreted land.  
108.10 Artificial lakes—soil conservation.

**108.1 to 108.6, inc.** Repealed by 57GA, ch 80, §1.

**108.7 Stream control on private lands.** Upon receiving consent in writing from the owner thereof, the state conservation commission may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

1. Deepening.
2. Filling.
3. Widening.
4. Contracting.
5. Improving and protecting banks.
6. Constructing spillways and discharge structures.
7. Controlling erosion on land tributary thereto.
8. Providing structures or other works conducive to the regulation of stream flow.

Any action taken by the commission under the provisions of this section shall be subject to the approval of the Iowa natural resources council. [C46, 50, 54, §108.7]

Referred to in §108.8

**108.8 Jurisdiction—public access.** Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish the purposes set out in said agreement and in case any improvement contemplated by section 108.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof. [C46, 50, 54, §108.8]

**108.9 Accreted land.** Any land created, by any such improvement, in areas now under

the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of. [C46, 50, 54, §108.9]

#### 108.10 Artificial lakes—soil conservation.

In the construction of artificial lakes on intermittent streams, for which funds may hereafter be appropriated by the general assembly, the state conservation commission shall not proceed with actual construction work unless and until soil conservation practices are in

effect on at least seventy-five percentum of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices shall have been shown by the owners or operators of seventy-five percentum of said land by signing of a soil conservation farm plan and co-operative agreements with the local soil conservation district governing body. [C35, §1703-g28; C39, §1703.58; C46, 50, 54, §108.5; 56GA, ch 89, §1; 57GA, ch 80, §1]

## CHAPTER 109

### FISH AND GAME CONSERVATION

Referred to in §§109.1, 110.14

- 109.1 Definitions.
- 109.2 State ownership and title—exceptions.
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- 109.4 Fish hatcheries—game farms.
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- 109.7 Hunting on game refuges.
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**109.1 Definitions.** Words and phrases as used in chapters 106 to 112, inclusive, and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. "Closed season": That period of time during which hunting, fishing, trapping or taking is prohibited.
2. "Open season": That period of time during which hunting, fishing, trapping or taking is permitted.
3. "Measurement of fish": Length from end of nose to longest tip of tail.
4. "Person": Person shall mean any person, firm, partnership or corporation.
5. "Sell and sale": Selling, bartering, exchanging, offering or exposing for sale.
6. "Possession": Both active and constructive possession and any control of things referred to.
7. "Transport and transportation": All carrying or moving or causing to be carried or moved.
8. "Take or taking or attempting to take or hunt": Any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird or fish protected by the state laws or regulations adopted by the commission whether or not such game be then subsequently captured, killed or injured.
9. "Bag limit or possession limit": The number of any kind of game, fish, bird or animal or other wild life form permitted to be taken or held in a specified time.
10. "Contraband": The term "contraband" as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.
11. "Alien": Alien shall not be construed to

mean any person who has applied for naturalization papers.

12. "Director": The term "director" shall mean the regularly appointed director of the state conservation commission and wherever such director is authorized or required to do an act, unless otherwise provided, it shall be construed as authorizing performance by a regular assistant or duly authorized agent of such director. [C39,§1703.60; C46, 50, 54,§109.1]

**109.2 State ownership and title—exceptions.** The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wild life, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise in this chapter provided. [S13,§§2562-c, 2563-j; SS15,§2562-b; C24, 27, 31, 35, 39,§1704; C46, 50, 54,§109.2]

Referred to in §1.9

**109.3 Conclusive presumption.** Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs, or other wild life in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing. [S13, §2562-c; SS15,§2562-b; C24, 27, 31, 35, 39,§1705; C46, 50, 54,§109.3]

**109.4 Fish hatcheries—game farms.** The state conservation director shall have the right to establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and impartially and equitably distribute all birds, eggs, and fry raised by or furnished to the state, or for it through other sources, in the streams, lakes, and natural covers of the state. [C97,§2539; SS15,§2539; C24, 27, 31, 35, 39,§1709; C46, 50, 54,§109.4]

**109.5 State game refuges.** Whenever any land, stream, or lake has been declared by the state conservation commission to be a public park and has been taken for public park purposes, or where any land is now owned and used by the state of Iowa, the state conservation director shall have the right and power to establish state game refuges or sanctuaries on such land where the same is suitable for this purpose. [C27, 31, 35,§1709-a1; C39, §1709.1; C46, 50, 54,§109.5]

41GA, ch 82,§1, editorially divided

**109.6 Game management area.** Whenever the commission shall establish and create a game management area upon any public lands or waters, or with the consent of the owner thereof upon any private lands or waters, it shall with the consent of such owner, if any, have the right to post and prohibit, and to regulate or limit such lands or waters against trespassing, and/or against hunting, fishing, or trapping, and any violation thereof shall be unlawful. [C35,§1709-e1; C39,§1709.2; C46, 50, 54,§109.6]

**109.7 Hunting on game refuges.** It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the state conservation director.

The director shall have the authority to specify the distance from a state game refuge where shooting may be prohibited, and shall have notice of same published in one newspaper in the county so affected, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of game refuge. [C27, 31, 35,§1709-a2; C39,§1709.3; C46, 50, 54,§109.7]

**109.8 Notice of establishment.** Whenever any such refuge or preserve is established by the director, he shall publish one notice of such establishment in an official newspaper in the county in which the refuge is located and shall post notices in conspicuous places around the said refuge. [C27, 31, 35,§1709-a3; C39, §1709.4; C46, 50, 54,§109.8]

**109.9 Spawning grounds.** The director shall have the right to set aside certain portions of

any state waters for spawning grounds where the same are suitable for this purpose for such length of time as he may deem advisable by the placing of notices around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [C31, 35,§1709-c1; C39,§1709.5; C46, 50, 54,§109.9]

Punishment, §687.7

**109.10 Reports and accounting.** At the time provided by law, the director shall make a report to the governor of his doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund. [C97,§2539; SS15, §2539; C24, 27, 31, 35, 39,§1710; C46, 50, 54, §109.10]

Time of report, §17.3

**109.11 Arrests—assistance of peace officers.** State conservation officers may arrest without warrant any person violating the provisions of this chapter. They may serve and execute any warrant or process issued by any court in enforcing said provisions, in the same manner as any peace officer might serve and execute the same, and they shall receive the same fee therefor. They may call to their aid any peace officer or other person, whose duty shall then be to enforce or aid in enforcing the provisions of this chapter. [C97,§2562; SS15,§2562; C24, 27, 31, 35, 39,§1713; C46, 50, 54,§109.11]

Arrest, ch 755 et seq.

Hunting on land of another, §714.25

**109.12 Seizure of unlawful game.** It shall be the duty of the director, conservation officers, and police officers of the state, to seize with or without warrant and take possession of any fish, furs, birds, or animals, or mussels, clams, and frogs, except for bait which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point beyond the borders thereof, contrary to the provisions of this chapter. [SS15,§2539; C24, 27, 31, 35, 39,§1714; C46, 50, 54,§109.12]

**109.13 Search warrants.** Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, furs, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to any of the provisions of this chapter, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under

such warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if such trial results in a conviction the property seized shall be confiscated by the director or his officers. [SS15,§2539; C24, 27, 31, 35, 39,§1716; C46, 50, 54,§109.13]

Search warrant proceedings, ch 751

**109.14 Dams—fishways.** It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No permanent dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, except by written approval of the state conservation director, nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated except by written approval of the state conservation director, which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the director. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly. [C97,§§2540, 2547, 2548; S13,§2547; SS15,§§2540, 2548; C24, 27, 31, 35, 39,§1741; C46, 50, 54,§109.14]

**109.15 Injury to dam.** It shall be unlawful for any owner or his agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without having received written approval from the Iowa natural resources council. [C24, 27, 31, 35, 39, §1742; C46, 50, 54,§109.15]

**109.16 Taking by director for stocking and exchange.** The director may take from any of the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish commissioners or wardens of other states or the federal government. [C97,§2546; S13,§2546; C24, 27, 31, 35, 39,§1744; C46, 50, 54,§109.16]

**109.17 Undesirable fish.** It shall be the duty of the director, so far as is possible, to remove from the inland waters of the state at any time and in any manner, provided that he shall do so with minimum injury to the lake or stream or the other fish, any undesirable or injurious fish. All such fish removed shall be destroyed or disposed of so as to eliminate them, so far as is possible, from the inland waters of the state. The proceeds, if any, from the sale of these fish shall be credited to the state fish and game protection fund.

Undesirable or injurious fish shall mean any species that in the judgment of the commission exist in improper proportions to other aquatic life.

In the removal of undesirable and injurious fish by net or seine, other than the removal of such fish by the director, he shall enter into written contract for the taking of such fish from the public waters of the state. All such contracts shall be let to the highest bidder. Bids shall be made in percentages of gross receipts for the sale of the fish so taken, to be paid to the state, but no contract shall be let until the director shall have advertised for such bids once each week for two consecutive weeks in three newspapers of the state for general circulation.

Said advertisement for bids shall state the date, time and place at which such bids will be received. Upon receipt of the bids the director shall submit all bids received, together with the proposed contract, to the treasurer of the state for his approval, and if the treasurer of state finds that any one of the bids received from any bidder is a fair and proper bid and is one advantageous to the state, and that the person making such bid is competent and reliable, and that the contract protects the interests of the state, then he shall approve the bid and contract, but if he finds that such bid is not fair, proper and advantageous to the state or that the person making the bid is not competent and reliable or that the contract does not fairly protect the interests of the state, he shall reject all bids and contracts; and then the director shall readvertise in the same manner and for the same length of time as heretofore provided, and the bids and contracts shall again be submitted to the treasurer of state for his approval as heretofore provided, until a fair, proper and advantageous bid and a competent and reliable bidder is received and found. All contracts for the removal of rough fish from any waters of the state shall not be for more than one year and shall specify:

1. The particular waters from which such fish are to be taken.
2. The compensation to be paid the state, and the times and terms of payment.
3. That no fish shall be taken except in the presence and under the supervision of some regularly employed representative of the conservation commission.
4. That all expense incurred by the commission in connection with such contract shall be paid by the person holding such contract.
5. That such contract may be forfeited and canceled by the state in the event of a breach thereof.
6. Such other provisions for the protection of the state's interest as the director may require. [C97,§2546; S13,§2546; C24, 27, 31, 35, 39, §1745; C46, 50, 54,§109.17]

**109.18 Bond.** The holder of such contract shall, prior to the taking of any fish there-

under, file with the treasurer of state a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars. Said bond to be approved by the treasurer of state. No contract shall be issued unless the bond required herein is attached to said contract and delivered to the treasurer of state. Such bond shall be conditioned for the faithful performance of the contract, the payment of all damages resulting from a breach thereof, and such other conditions as to the director may seem right and proper. [C24, 27, 31, 35, 39, §1746; C46, 50, 54, §109.18]

**109.19 Reciprocity of states.** Any person licensed by the authorities of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, and South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such states and Iowa, may take them from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license therefor from the state conservation director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa. [C24, 27, 31, 35, 39, §1762; C46, 50, 54, §109.19]

**109.20 Parrots and canaries.** This chapter shall not be construed to forbid the selling or shipping of parrots, canaries, or any other cage birds which are imported from other countries or not native to any part of the United States. [S13, §2563-r; C24, 27, 31, 35, 39, §1777; C46, 50, 54, §109.20]

**109.21 Birds as targets.** No person shall keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. Nothing in this section shall prevent any person from shooting at live pigeons, sparrows, crows and starlings when used in the training of hunting dogs. [S13, §2563-i; C24, 27, 31, 35, 39, §1778; C46, 50, 54, §109.21]

Referred to in §109.22

**109.22 Field and retriever meets.** Notwithstanding the provisions of section 109.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All such birds must be released on the day of trials on premises where the trials are held.

Such birds released may be shot by official

guns after having secured a permit as herein provided.

Such permits may be issued by the director of the state conservation commission upon proper application and the payment of a fee of two dollars for each trial held. A representative of the commission shall attend all such trials and enforce the laws and regulations governing same.

The person or persons designated by the committee in charge to do the shooting for such trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

Before any birds are released under this section, they must each have attached a tag provided by the conservation commission and attached by a representative of the conservation commission at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as herein required.

Any person who shall violate any provision of this section, shall upon conviction be punished as provided in section 109.32. [C46, 50, 54, §109.22; 56GA, ch 90, §1]

**109.23 Transportation for sale prohibited.** It shall be unlawful for any person, firm, or corporation to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds.

It shall be unlawful to ship from the state any birds caught, taken, or killed in the state, or to take, ship, or carry from the state for any purpose any such fish, game, animals, or birds unless lawfully caught, taken, or killed by a nonresident licensee under the provisions of this chapter, who may take or carry such birds as have been lawfully caught, taken, or killed, or take, carry, or ship such fish, game, or animals as have been lawfully caught, taken, or killed, to his place of residence as indicated on such license. [C97, §2555; SS15, §§2540, 2555; C24, 27, 31, 35, 39, §1780; C46, 50, 54, §109.23]

Referred to in §109.28  
Analogous provision, §109.38

**109.24 Transportation regulations.** Any person, firm, or corporation desiring the shipment or transportation of any fish or animals shall deliver to the common carrier to which the shipment is offered, a statement under oath, in duplicate, showing the name and address of the shipper, the date and number of his license, where and by what officer issued, the name and residence of the consignee to whom

the shipment is made, the kind and number of fish or animals in the shipment, that the same have not been unlawfully killed, bought, sold, or had in possession, and are not being shipped for the purpose of market or sale, and that such shipment does not contain a greater number of fish or animals than may be lawfully shipped in one day. One copy of such affidavit shall be retained by the common carrier receiving such shipment, for the period of twelve months thereafter, and the other copy shall be attached in a secure manner to the package or container of such fish or animals. [C97, §2555; SS15, §§2540, 2555; C24, 27, 31, 35, 39, §1781; C46, 50, 54, §109.24]

Referred to in §109.28

**109.25 Oaths—administration of.** In addition to all officers authorized by law to administer oaths, the agent of any common carrier receiving for transportation any fish, animals, or birds, as in this chapter provided, is hereby authorized to administer the required oath. [C97, §2540; SS15, §2540; C24, 27, 31, 35, 39, §1782; C46, 50, 54, §109.25]

Referred to in §109.28  
Oaths generally, §78.1

**109.26 Unlawful transportation.** No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person. [C97, §2555; SS15, §2555; C24, 27, 31, §1783; C35, §1782-e1; C39, §1782.1; C46, 50, 54, §109.26]

Referred to in §109.28

**109.27 Shipping restrictions.** It shall be unlawful for any common carrier to receive for transportation any game, fish, animals, or birds in greater numbers or in any other way or manner than in this chapter provided. [C97, §2555; SS15, §2555; C24, 27, 31, 35, 39, §1784; C46, 50, 54, §109.27]

Referred to in §109.28

**109.28 Exceptions.** The foregoing provisions regarding the possession and transportation of fish shall not apply to such fishing as is done under written permits from the state conservation director or to such fishing as is permitted with nets or seines in certain boundary waters of the state or fishing done on private fishing preserves. Nothing in the foregoing sections 109.23 to 109.27, inclusive, shall pertain to rabbits. [C97, §§2546, 2547; S13, §§2546, 2547; SS15, §2547-a; C24, 27, 31, 35, 39, §1785; C46, 50, 54, §109.28]

40ExGA, HF 54, §74, editorially divided

**109.29 Commercial shipments.** It shall be unlawful for any person, firm or corporation to ship any fish taken with licensed nets or seines unless there is attached to each container a tag stating the name and address of the consignor and the consignee, the amount of each kind contained therein, the waters from which taken, and that same were taken with licensed nets or seines. [C24, 27, 31, 35, 39, §1786; C46, 50, 54, §109.29]

**109.30 Entire shipment contraband.** In the shipping of fish, game, animals, birds, or furs, whenever a container includes one or more fish, game, animals, birds or furs that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the director or his officers. [C24, 27, 31, 35, 39, §1787; C46, 50, 54, §109.30]

**109.31 Game brought into the state.** It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state. [SS15, §2555; C24, 27, 31, 35, 39, §1788; C46, 50, 54, §109.31]

**109.32 Violation.** Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals in violation of the provisions of this chapter or of administrative orders of the state conservation commission or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter, or use the same at a time, place or in a manner or for a purpose prohibited, or do any other act in violation of such provisions for which no other punishment is provided, shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days.

Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense. [R60, §§4381-4383; C73, §§4048, 4053, 4063; C97, §§2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, §§2547-e, 2551-b, 2561, 2563-a8, -i, -o, -s, -v; SS15, §§2540-a, 2544, 2551, 2552, 2556; C24, 27, 31, 35, 39, §1789; C46, 50, 54, §109.32]

Referred to in §§109.22, 109.59, 109.61, 109.87, 109.119

**109.33 Violations relating to dams.** Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited, or shall injure or destroy any dam lawfully erected, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not more than one hundred days. [C97, §§2548, 2550; SS15, §2548; C24, 27, 31, 35, 39, §1790; C46, 50, 54, §109.33]

**109.34 Violations by common carrier.** Any common carrier which shall violate any of the provisions of this chapter relating to receiving, having in possession, shipping or delivering any fish, fowls, birds, birds' nests, eggs, or plumage, game or animals, in violation of the provisions of this chapter or contrary to the regulations and restrictions therein provided, and any agent, employee, or servant of such corporation violating such provisions, shall be

fined not less than one hundred dollars nor more than three hundred dollars, and any such agent, employee, or servant may be imprisoned not exceeding thirty days. [C73,§4049; C97, §2557; C24, 27, 31, 35, 39,§1791; C46, 50, 54, §109.34]

**109.35 Attorney general and county attorneys.** It shall be the duty of the attorney general, when requested by the director, to give his opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys in this state when requested by the director or any conservation officer, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof. [R60,§4385; C73,§4051; C97, §2559; SS15,§2559; C24, 27, 31, 35, 39,§1792; C46, 50, 54,§109.35]

**109.36 Information—venue.** In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate count if more than one charge is included in one information.

Prosecutions for violations may be brought in the county in which any fish, fowl, bird, bird's nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in possession of any person. [R60,§4385; C73,§4051; C97,§2559; SS15, §2559; C24, 27, 31, 35, 39,§1793; C46, 50, 54, §109.36]

**109.37 Presumptive evidence.** It shall be presumptive evidence of a violation of the provisions of this chapter for any person to:

1. Fail to have a license upon his person at any time required by law, or then refuse to exhibit the same on request of any person desiring to examine it.

2. Have in his possession any fish, game, furs, birds, birds' nests, eggs or plumage, or animals, which have been unlawfully caught, taken, or killed.

3. Be in possession of such fish, game, furs, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.

4. Have in his possession any implements, devices, equipment or means whatever of taking fish, birds, or animals protected by this chapter at any place where the possession or use thereof is prohibited. [C97,§2554; S13, §2563-a10; SS15,§§2554, 2555; C24, 27, 31, 35, 39, §1794; C46, 50, 54,§109.37]

Analogous provision, §110.12

PROPAGATION AND PROTECTION OF FISH, GAME,  
WILD BIRDS AND ANIMALS

**109.38 Prohibited acts—deer, raccoon and rough fish regulations.** It shall be unlawful for any person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame birds, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish, or any part thereof, except upon the terms, conditions, limitations and restrictions set forth herein, and administrative orders necessary to carry out the purposes set out in section 109.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking deer, raccoon or rough fish, if the investigation reveals that such action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by such means as they may deem advisable to salvage such imperiled fish populations.

2. If following an investigation the commission finds that the number of hunters licensed to take deer should be limited or further regulated they may, by their own motion, conduct a drawing or so regulate as to accomplish that purpose, except that owners or tenants of land shall be permitted to hunt deer on land owned or leased by them notwithstanding but subject to all other laws and regulations. [R60,§4381; C73,§4048; C97,§§2551, 2555; S13,§§2562-c, 2563-j,k,m,n; SS15,§§2540, 2551, 2555, 2562-b,c, 2563-a1,a2,u; C24, 27, 31,§§1718, 1719, 1755, 1767, 1774; C35,§1718-c1; C39,§1794.001; C46, 50, 54,§109.38]

Referred to in §§107.24, 109.76, 109.119

Analogous provision, §109.23

Hunting from airplane prohibited, §109.120

**109.39 Biological balance maintained.** The open seasons, closed seasons, bag limits, size limits, catch limits, possession limits and territorial limitations set forth herein pertaining to fish, game and various species of wild life are based upon a proper biological balance as hereinafter defined being maintained for each species or kind. The seasons, catch limits, bag limits, size limits, possession limits and territorial limitations set forth herein shall prevail and be in force and effect for each and every species of wild life to which they pertain as long as the biological balance for each species or kind remain such as to assure the maintenance of an adequate supply of such species. The commission is hereby designated the sole agency to determine the facts as to whether such biological balance does or does not exist. If the commission, after investigation finds that the number and/or sex of each or any species or kind of wild life is at variance to aforesaid condition, the com-



mission shall by administrative order extend, shorten, open or close seasons and/or change catch limits, bag limits, size limits, and/or possession limits or areas in accordance with said findings. For the purpose of this section, biological balance is defined as that condition when all losses to population are compensated by natural reproductive activity or artificial replenishment, replacement or stocking. [C39, §1794.002; C46, 50, 54, §109.39]

Referred to in §§109.38, 109.48, 109.87, 109.100, 109.119

DEFINITIONS

**109.40 Fur-bearing animals.** The following are hereby declared to be fur-bearing animals for the purpose of regulation and protection under this chapter: Beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, wolf, ground hog, red fox, and gray fox. [C97, §2553; SS15, §2553; C24, 27, 31, §1766; C39, §1794.003; C46, 50, 54, §109.40]

Referred to in §109.119

**109.41 Game.** For the purposes of this chapter the term "game" shall be construed to mean all of the wild animals and wild birds specified in this section except those designated as not protected, and shall include the heads, skins, and any part of same, and the nests and eggs of birds and their plumage.

1. The Anatidae: such as swans, geese, brant, and ducks.

2. The Rallidae: such as rails, coots, mudhens, and gallinules.

3. The Limicolae: such as shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tattlers, gotwits, and curlews.

4. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

5. The Columbidae: mourning doves and wild rock doves only.

6. The Sciuridae: such as gray squirrels, fox squirrels, and flying squirrels.

7. The Leporidae: cottontail rabbits and jack rabbits only.

8. The Cervidae: such as deer and elk. [S13, §§2563-k, m, n; C24, 27, 31, §1774; C39, §1794.004; C46, 50, 54, §109.41]

Referred to in §§109.119, 110A.3

**109.42 Nongame birds protected.** Protected nongame birds shall include any wild bird other than game, either resident or migratory, including the plumage, skins, body, or any part thereof, and their nests and eggs, except that the following are not protected by this chapter: European starling, English or house sparrow, blackbird, crow, sharpshinned hawk, Cooper's hawk, and great horned owl. [S13, §2563-q; C24, 27, 31, §1776; C39, §1794.005; C46, 50, 54, §109.42]

Referred to in §109.119

**109.43 Mussels.** As used in this chapter, the word "mussels" shall mean and embrace the pearly, fresh water mussels or clams or

naiad, and the shells thereof. [C24, 27, 31, §1763; C39, §1794.006; C46, 50, 54, §109.43]

Referred to in §109.119

**109.44 Fish.** The term "fish" as used in this chapter shall mean any fish of the class Pisces. [C39, §1794.007; C46, 50, 54, §109.44]

Referred to in §109.119

**109.45 Frogs.** The term "frog" as used in this chapter shall mean any frog of the family Ranidae. [C39, §1794.008; C46, 50, 54, §109.45]

Referred to in §109.119

**109.46 Spawn.** The term "spawn" as used in this chapter shall mean any of the eggs of any fish, frog, or mussel. [C39, §1794.009; C46, 50, 54, §109.46]

Referred to in §109.119

**109.47 Importing fish and game—permits.** It shall be unlawful except as otherwise provided for any person, firm or corporation, to bring into the state of Iowa for the purpose of propagating or introducing, or to place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal that are not native to Iowa, unless application is first made in writing to the commission for a permit therefor and such permit granted. Such permit shall be granted only after the commission has made such investigation or inspection of the fish, birds or animals as it may deem necessary to determine whether or not such fish, birds or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wild life and the people of the state, and may or may not approve such planting, releasing or introduction according to its findings. Nothing in the above shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and they shall not be required to have a permit as provided above when such birds or animals are not released to the wild but are held on the game breeder's premises as breeding stock. [C39, §1794.010; C46, 50, 54, §109.47]

Referred to in §109.119

TERRITORIES, OPEN SEASONS, BAG AND POSSESSION LIMITS FOR GAME

**109.48 Restrictions.** It shall be unlawful for any person except as otherwise provided, to willfully disturb, pursue, shoot, kill, take or attempt to take or have in possession any game bird or animal at any time except during the open season period as set by the commission under authority of section 109.39, not to exceed a limit below set out and embraced within the dates between September 1 and March 1, both inclusive, specified for each variety and each locality, respectively, or in said open season take in any one day in excess of the number designated for each variety or each locality, respectively, or have in possession any variety of game bird or animal in excess of the number allowed in possession as indicated in the following table:

Kind of Animal and Locality	Open Season	Bag Limit	Possession Limit
SQUIRRELS—Gray and fox. Entire state.	September 1—March 1	6	12
RABBITS—Cottontail and jack. Entire state.	September 1—March 1	10	
QUAIL—Bobwhite. Entire state.	September 1—March 1	8	8
PHEASANTS— Chinese, Mongolian, ringneck. Entire state.	September 1—March 1	3 male birds	6 male birds
DUCKS—Entire state.	September 1—March 1	10	10
GEESE, BRANT—Entire state.	September 1—March 1	4	4
HUNGARIAN PARTRIDGES— Entire state.	September 1—March 1	2	2
COOT, MUDHEN, GREBE— Entire state.	September 1—March 1	15	15
WILSON OR JACKSNIPPE— Entire state.	September 1—March 1	15	15
EUROPEAN STARLINGS— Entire state.	Continuous	none	none

In the case of deer, the open season shall be September 1 to March 1 for the entire state, and there shall be a limit of one deer per season for any person.

[R60,§4381; C73,§4048; C97,§§2551, 2552; S13, §2563-q; SS15,§§2551, 2552, 2563-u; C24,§§1767, 1768, 1776; C27, 31,§§1767, 1767-a1, 1768, 1776; C39,§1794.011; C46, 50, 54,§109.48; 56GA, ch 91, §1]

Referred to in §109.119

**109.49 Special permit to kill.** The owner or operator of any fish hatchery may kill or take any pied-billed grebe, gull or tern, American bittern, black-crowned night heron, merganser, great blue heron, also known as blue crane, poorjoe or cranky, or kingfisher, within the bounds of such hatchery after having been issued a permit by the commission. Each such permittee shall file with the commission an itemized report showing the species and number of birds killed during the period covered by the permit. Report shall be filed on or before January 1 each year. Failure to file such report shall be grounds for refusal to issue subsequent permits. [S13,§2563-q; C24, 27, 31,§1776; C39,§1794.012; C46, 50, 54,§109.49]

Referred to in §109.119

**109.50 Selling birds.** No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided. [C39,§1794.013; C46, 50, 54,§109.50]

Referred to in §109.119

**109.51 Hunting license not trapping license.** A hunting license shall not permit the holder to trap any fur-bearing animal as defined in this chapter. [SS15,§2563-a1; C24, 27,§1718; C31, §1718-c1; C39,§1794.014; C46, 50, 54,§109.51]

Referred to in §109.119

**109.52 Exhibiting catch to officer.** Any person who shall have in his possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any conservation officer or any peace officer exhibit the same to him, and a refusal to do so shall constitute a violation of this chapter. [C31, §1768-c1; C39,§1794.015; C46, 50, 54,§109.52]

Referred to in §109.119

**109.53 Chasing from dens.** It shall be unlawful to have in possession while hunting or to use while hunting any ferret or mechanical device or any substance to be used for chasing animals from their dens. [C31,§1767-c1; C39,§1794.016; C46, 50, 54,§109.53]

Referred to in §109.119

**109.54 Shooting rifle over water or highway.** No person shall at any time shoot any rifle on or over any of the public waters or public highways of the state or any railroad right of way. [C31,§1772-c2; C39,§1794.017; C46, 50, 54, §109.54]

Referred to in §109.119

**109.55 Selling game.** Except as otherwise provided, it shall be unlawful for any person to buy or sell, dead or alive, any bird or animal or any part thereof which is protected by this chapter but nothing in this section shall apply to fur-bearing animals or rabbits. [C97,§2554; SS15,§2554; C24, 27, 31,§1769; C39,§1794.018; C46, 50, 54,§109.55]

Referred to in §109.119

**109.56 Training dogs.** It shall be unlawful to train any bird dog on game in the wild from March 15 to July 15 each year. A pistol or revolver shooting blank cartridges may be used while training bird dogs during closed

season. It shall be unlawful to train any fox-hound, raccoon hound or trailing dog on any fur-bearing animal between sunset and sunrise for thirty days just prior to the open season on raccoon. It shall be unlawful for any person to use a dog to hunt, molest, or chase any raccoon thirty days before the opening of the season for the hunting or trapping of raccoons. [C39,§1794.019; C46, 50, 54,§109.56]

Referred to in §109.119  
Hunting on land of another, §714.25

**109.57 Possession and storage.** Any person having lawful possession of game may hold same for not to exceed ten days after the close of the open season for such game. A permit to hold such game for a longer period may be granted by the commission. [C39,§1794.020; C46, 50, 54,§109.57]

Referred to in §109.119

**109.58 Trapping birds or poisoning animals.** No person except those acting under the authority of the state conservation director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal. [R60,§4381; C73, §4048; C97,§2551; SS15,§§2539, 2551; C24, 27, 31, §1773; C39,§1794.021; C46, 50, 54,§109.58]

Referred to in §109.119

**109.59 Pigeons—interference prohibited.** It shall be unlawful for any person or persons, except the owner or his representatives, to shoot, kill, maim, injure, steal, capture, detain, or to interfere with any homing pigeon, commonly called, "carrier pigeon", which shall at the time, have the name, initials, or other identification of its owner, stamped, marked, or attached thereon; or to remove any mark, band, or other means of identification from such pigeon which has the name, initials, or emblem of the owner stamped or marked upon it.

Whoever shall violate the provisions of this section shall be punished as is provided in section 109.32. [C46, 50, 54,§109.59]

Referred to in §109.119

**GAME BREEDERS**

**109.60 Raising game.** It shall be unlawful for any person to raise or sell game of the kinds protected by this chapter without first procuring a game breeder's license as provided by law. [C39,§1794.022; C46, 50, 54,§109.60]

Referred to in §109.119

**109.61 License to possess.** A licensed game breeder may hold in possession at any time any game bird, game animal or fur-bearing animal raised by him or obtained from without the state or from a licensed game breeder within the state. Such licensee may buy, sell, or otherwise dispose of such game birds, game animals, fur-bearing animals, or any part thereof. Possession and use of such game

birds, game animals or fur-bearing animals obtained from a licensed game breeder shall be deemed lawful, provided that no game birds so obtained may be sold for food, except under the following conditions: Upon filing with the state conservation commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat, licensed game breeders may sell dressed pheasants to markets for resale providing each pheasant has affixed in a conspicuous and legible manner the imprint of such stamp. Such stamps shall bear the name and license number of the game breeder in letters of at least twelve point type size.

Markets selling such stamped pheasants shall maintain the stamp on each and every pheasant until finally sold or disposed of. All markets selling such stamped pheasants shall keep a record showing the total number of pheasants sold together with the name and address of the game breeder from whom purchased and the number of pheasants in each such purchase. Markets retailing such stamped pheasants, together with their records, shall be subject to inspection by any authorized representative of the state conservation commission at any reasonable hour.

Violation of the provisions of this section shall constitute a misdemeanor and punishment shall be as provided for in section 109.32. [C39,§1794.023; C46, 50, 54,§109.61]

Referred to in §109.119

**109.62 Records—report.** Any holder of a game breeder's license shall keep a record of all purchases and all sales of stock showing the kinds and numbers of each, dates of transactions, and from whom purchased, and to whom sold. Such record shall be open for inspection by the commission at any time. Each licensee shall on or before May 1 of each year file a report with the commission setting out the information mentioned above on forms supplied by the commission. [C39,§1794.024; C46, 50, 54,§109.62]

Referred to in §109.119

**BAIT DEALERS**

**109.63 Sale of bait — license.** Any person may be authorized to sell minnows, frogs, and clams for fish bait upon the payment of a license fee of five dollars to the commission. Minnow and bait boxes and tanks shall be open to inspection by the director and conservation officers at all times. They shall have tanks and bait boxes of sufficient size, with proper aeration to keep the bait alive and prevent heavy loss.

Such license shall authorize the licensee to take from the lakes and streams in the state that are not closed to the taking of minnows, frogs and clams, sufficient minnows, frogs and clams to carry on and supply his customers with bait for hook and line fishing.

Such licensees shall comply with all state laws pertaining to possession, taking, selling of bait handled by them and any licensee upon conviction for violating any state conservation

laws, shall forfeit his license if demanded by the director.

Holders of a bait dealer's license, when obtaining bait from lakes and streams, shall take only such sized bait as can be used and shall return all small minnows and frogs to the water immediately with as little loss as possible. [C39,§1794.025; C46, 50, 54,§109.63]

Referred to in §109.119

#### PRIVATE FISH HATCHERY

**109.64 License—regulations.** It shall be unlawful for any person to operate a private fish hatchery or engage in the business of propagating fish native to the state of Iowa in private waters until such person has applied for and has been issued a private fish hatchery license as provided by state law. Such license shall be renewed each year.

The term "private fish hatchery" covering private fish hatcheries shall include all private ponds, with or without buildings, used for the purpose of propagating or holding fish for commercial purposes.

No license shall be issued to operate private fish hatcheries on privately owned or non-meandered lakes and streams or ponds that may become stocked with fish from public waters by overflow or natural migration.

Holders of private fish hatchery licenses may, in said hatchery, possess, propagate, buy, sell, deal in and transport the fish produced from breeding stock lawfully acquired, but all fish sold for food purposes must comply with the state law regarding size limits.

They may sell fish for stocking purposes within or without the state, but no fish shall be sold for stocking purposes within the state that are not native to the state and to the waters where stocked.

Each operator of a private fish hatchery shall make an annual report of the number, kinds and sizes of the fish propagated and to whom sold during the license year on forms supplied by the commission. Failure to make such report shall be grounds for refusal to renew the license under which the hatchery operates.

Operators of private fish hatcheries shall secure their breeding stock from licensed private fish hatcheries in the state or from lawful sources outside the state and it shall be unlawful for such hatcheries to secure stock in any other way.

Private fish hatchery operators who hold and feed carp, buffalo and other fish lawfully taken by commercial fishermen, may hold, feed and sell such fish under private fish hatchery licenses. [C73,§4054; C97,§2545; C24, 27, 31,§1707; C39,§1794.026; C46, 50, 54,§109.64]

Referred to in §109.119

#### SCIENTIFIC COLLECTING

**109.65 License.** The commission may, after investigation, issue to any person a scientific collector's license under which license such person may be permitted to collect for scientific purposes only, any birds, nests, eggs, or wild animals or fish. No person to whom

such license is issued shall dispose of any such collection or part thereof except upon written permission of the commission. The application for such license shall be made upon blanks to be furnished by the commission. Each holder of such license shall, within thirty days after the expiration of such, file with the commission a report showing all specimens by him collected. Such license may be revoked at any time for cause. [S13,§§2563-o,p; C24, 27, 31,§1779; C39,§1794.027; C46, 50, 54,§109.65]

Referred to in §109.119

**109.66 Banding or marking.** It shall be unlawful for any person to capture birds or animals for banding purposes except that the commission may, after investigation, issue a permit to any person permitting him to capture birds or animals for the purpose of banding or marking same for scientific study, but no such birds or animals may be killed or injured or retained in possession, but must be liberated safely and promptly. Such permit may be revoked at any time for cause. Each holder of such permit shall report to the commission once each month the number, kind of birds or animals banded, and the band numbers. [C39,§1794.028; C46, 50, 54,§109.66]

Referred to in §109.119

#### ANGLING LAWS

**109.67 Seasons and limits.** Except as expressly provided in this chapter a closed season is established for each variety of fish listed in the following tables; provided, however, that within the meandering lines of the waters of the Mississippi and Missouri rivers, and within the inland waters in Lee county, Iowa, continuous pole and line fishing, only, shall be permitted for all fish, except that there shall be a closed season on wall-eyed pike during March and April and a closed season on large and small mouth bass during March, April, and May. Restrictions as to the daily catch limit, possession limit, minimum length and weight shall remain as provided in this section. The table designated "A" shall be applicable to all waters of the state except the Mississippi river and Missouri river. The table designated "B" shall be applicable to the Mississippi river and Missouri river only. Such closed season shall extend during all the time in each year except the period embraced within the dates, both inclusive, set opposite the names of each variety in the column headed "open season"; and except as expressly provided in this chapter no person shall take, capture, or kill fish of any such variety at any time other than the open season therefor, nor in the open season in excess of the daily catch limit in any one day, nor have in possession in excess of the possession limit at any time, nor under the minimum length or weight for each fish designated opposite each variety in the columns headed respectively "daily catch limit", "possession limit" and "minimum length or weight". Measurement of length shall be taken in a straight line from the tip of the snout to the utmost end of the tail fin.

TABLE A

Kind of Fish	Open Season	Daily Catch Limit	Possession Limit	Minimum Length or Weight
Trout—brown, rainbow, brook	5 a. m. May 1 to 9 p. m. September 30. Trout shall be fished for only from one hour before sunrise to 9 p. m. each day	8	16	7 inches
Northern pike	May 15 to November 30	8	16	15 inches
Large-mouth bass	June 15 to November 30	5	10	10 inches
Small-mouth bass	June 15 to November 30	5	10	10 inches
Sand pike, Sauger pike, wall-eyed pike	May 15 to November 30	8	16	12 inches
Bullheads	Continuous	25	50	None
Sheepshead	Continuous	No catch or possession limits		None
Rock sturgeon, sand sturgeon, paddlefish	August 1 to November 30	15	30	Rock sturgeon and paddlefish —not less than five pounds. Sand sturgeon not less than one pound.
Yellow perch, yellow bass, striped bass, silver bass	May 15 to November 30	15	30	7 inches
Crappies, calico bass	June 15 to November 30	15	30	7 inches
Warmouth bass, rock bass, sunfish, bluegills	June 15 to November 30	15	30	5 inches
Catfish	April 15 to November 30	15	30	12 inches
Suckers, redborse	Continuous	15	30	None
Carp, buffalo, quillback, gar, dogfish	Continuous	None	None	None
Minnnows	May 12 to November 30	None	None	None
Frogs	May 12 to November 30	Four dozen (Bait dealers excepted)	Eight dozen (Bait dealers excepted)	(Applies to bait dealers only)

The total catch limit of all fish under this division, excluding those having a continuous open season on which there is no daily catch limit, shall not exceed twenty-five per day.

TABLE B

Kind of Fish	Open Season	Daily Catch Limit	Possession Limit	Minimum Length or Weight
Rock sturgeon, sand sturgeon, paddlefish	August 1 to November 30	None	None	Rock sturgeon not less than five pounds. Sand sturgeon not less than one pound. Paddlefish not less than five pounds.
Northern pike	Continuous	15	30	15 inches
Catfish	Continuous	15	30	12 inches
Sheepshead	Continuous	None	None	None
Bullheads, carp, buffalo, gar, quillback, dogfish, suckers, redhorse	Continuous	None	None	None
Large-mouth bass, small-mouth bass	June 1 to March 1 next	5	10	10 inches
Crappie, perch, yellow bass, silver bass	Continuous	15	30	7 inches
Sunfish, bluegill, rock bass, warmouth bass	Continuous	15	30	5 inches
Wall-eyed pike	May 1 to March 1 next	8	16	12 inches
Minnows	Continuous	None	None	None

It shall be unlawful for any person at any time to have in possession more than thirty fish of all kinds in the aggregate, except that this aggregate possession limit shall not apply to the fish named in this section on which there is no daily catch limit, or to the director and his duly authorized representatives when carrying out duties imposed by state law, or commercial fishermen, or wholesale fish markets, when operating under proper license and dealing in commercial fish. [C97,§2540; SS15, §2540; C24, 27, 31,§§1731, 1732, 1733; C39, §1794.029; C46, 50, 54,§109.67]

Referred to in §109.119

**109.68 Special restrictions.** In Lake Wapello in Davis county and Upper Keomah lake in Mahaska county fish may be taken only between five o'clock a.m. June 15 and ten-thirty p.m. November 30, each year. Fish may be taken from such artificial lakes during such open season only between five o'clock a.m. and ten-thirty p.m. each day. Lake Keomah proper, Lake Macbride and Upper Pine lake shall be open to fishing beginning June 15, 1938, under such restrictions as herein apply to Lake Wapello. [C39,§1794.030; C46, 50, 54, §109.68]

Referred to in §109.119

**109.69 Special local limits.** It shall be unlawful for any person to take from Lake Wapello in Davis county and Upper Keomah lake in Mahaska county in any one day more than twelve fish in the aggregate of which twelve not more than five may be black bass and not more than seven may be crappies. [C39,§1794.031; C46, 50, 54,§109.69]

Referred to in §109.119

**109.70 Bait inspected.** It shall be unlawful for any person to use for bait in any state-owned artificial lake minnows or small fish which have not been inspected and approved by a representative of the commission. [C39, §1794.032; C46, 50, 54,§109.70]

Referred to in §109.119

**109.71 Releasing unlawful catch.** Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible. [C39,§1794.033; C46, 50, 54,§109.71]

Referred to in §109.119

**109.72 Hooks.** No person shall at any time take from the waters of the state any fish, except as otherwise provided in this chapter, except with hook, line and bait, nor shall any person use more than two lines with one hook on each line in still fishing or trolling, and in fly fishing not more than one fly may be used on one line, and in trolling and bait casting not more than one trolling spoon or artificial bait may be used on one line. No person shall leave such fish line or lines and hooks in the water unattended or take or attempt to take any fish by snagging or to purposely hook them in any other part than in the mouth. One hook shall mean a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook. [C73, §4052; C97,§§2540, 2542; SS15,§2540; C24, 27, 31, §1734; C39,§1794.034; C46, 50, 54,§109.72]

Referred to in §109.119

**109.73 Trot lines.** It shall be unlawful for any person to use in the inland waters of the state open to the use of trot or throw lines,

more than five throw lines or trot lines and such lines shall not have in the aggregate more than fifteen hooks, but no person shall leave such line set, and he shall be in constant attention of such line, and no person shall use such throw line or trot line in any stocked lake or within three hundred feet of any dam or spillway or in any stream or portion of stream, closed or posted against the use of such tackle. One end of such throw line or trot line shall be set from the shore and be visible above the shore water line, but no such throw line or trot line shall be set entirely across a stream or body of water. [C73,§4052; C97,§§2540, 2542; SS15,§2540; C24, 27, 31,§1734; C39,§1794.035; C46, 50, 54,§109.73]

Referred to in §109.119

**109.74 Where permitted.** It shall be unlawful to use trot or throw lines in the rivers and streams of the state, except in the Mississippi river, Missouri river,\*Big Sioux river, and all rivers and streams south of United States highway 30 as it is now located. [C73,§4052; C97,§§2540, 2542; C24, 27, 31,§1734; C39,§1794.036; C46, 50, 54,§109.74]

Referred to in §109.119

**109.75 Number permitted.** It shall be unlawful for any one person to use, in the Mississippi river, Missouri river or Big Sioux river, more than one throw or trot line having more than twenty-five hooks. [C73,§4052; C97,§§2540, 2542; C24, 27, 31,§1734; C39,§1794.037; C46, 50, 54, §109.75]

Referred to in §109.119

**109.76 Unlawful means—exception.** It shall be unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, artificial light, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes or electricity in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. No person shall take or kill, or attempt to take or kill any fish by hand fishing, providing however, that it shall be lawful to spear carp, buffalo, quillback, gar, and dogfish in the overflow waters of the Mississippi river, and in Cedar and Iowa rivers, in Muscatine and Louisa counties, and in Winnebago river in Worth and Cerro Gordo counties.

The spearing of carp or buffalo by persons lawfully permitted to fish shall be lawful from the first day of May to and including the thirty-first day of October, each year, between the hours of sunrise and sunset thereof and at such other times and at such places as the commission may determine necessary to carry out the purposes of section 109.38, subsection 1. [C97,§2540; SS15,§2540; C24, 27, 31,§1735; C39, §1794.038; C46, 50, 54,§109.76]

Referred to in §109.119

**109.77 Repealed by 54GA, ch 68,§1.**

**109.78 Stocking private water.** No private water may be stocked by the commission un-

less the owner agrees that such waters shall be open to the public for fishing, except that the commission may, after investigation to determine their suitability as to size, depth, living conditions for fish, and management, provide a breeding stock of fish for privately owned farm ponds on request of the owner. [C39,§1794.040; C46, 50, 54,§109.78]

Referred to in §109.119

**109.79 Selling black bass.** It shall be unlawful for any person to buy, sell, barter or to offer for sale any black bass or part thereof whether taken within or without the state. [C24, 27, 31,§1754; C39,§1794.041; C46, 50, 54, §109.79]

Referred to in §109.119

**109.80 Minnows—nets—violations.** For the purpose of taking minnows only, it shall be lawful for any person to use a minnow dip net not to exceed four feet in diameter or a minnow seine not to exceed fifteen feet in length and having a mesh not smaller than one-fourth inch bar measure or larger than one-half inch bar measure and on issuance of permit by the commission, licensed bait dealers may use minnow seines not exceeding fifty feet in length.

"Minnows" shall be defined as chubs, shiners, suckers, dace, stonerollers, mud-minnows, redhorse, blunt-nose, fat-head, or other small fish commonly used for fish bait that have only one dorsal fin.

"Commercial purposes" shall be construed to mean selling, giving, or furnishing to others.

It shall be unlawful for any person:

1. To take or attempt to take minnows for commercial purposes from any of the waters of the state, or transport the same without first procuring a bait dealer's license therefor as provided by state law; provided, however, that no license other than a license to fish in the waters of this state shall be required of persons taking minnows for their individual use for bait.

2. To seine, take, attempt to take, transport or carry away any minnows from the waters of any stream inhabited or stocked with trout except that chubs, suckers and redhorse may be taken from trout streams with pole and line during open trout season, and chubs may be taken with pole and line only, at any time, from streams not stocked with trout.

3. To transport in any manner or for any purpose outside this state any minnows, dead or alive, taken in the state except that the director may transport for the purposes set out by state law.

4. To use minnows except for bait in hook and line fishing.

The commission shall have the power to designate the lakes and streams and parts of same from which minnows shall not be taken when investigation shows that the minnow population should be protected for the best management of the lake or stream and if such investigation shows that lakes or streams or any

portion of them should be closed to taking minnows for such length of time as deemed advisable by the commission. Then in that case the director is hereby authorized to post such lakes and streams or portions of them with notices or signs which clearly state that the lake or stream or portion so posted is closed to the taking of minnows and it shall be unlawful for any person to take in any manner, minnows from such posted stream.

Minnow traps not exceeding twenty-four inches in length may be used wherever the taking of minnows is allowed. [C73,§4052; C97, §2541; C24, 27, 31,§1736; C39,§1794.042; C46, 50, 54,§109.80]

Referred to in §109.119

**109.81 Selling minnows outside state.** Except as otherwise provided no person shall carry, transport or ship or cause to be carried, transported or shipped any minnows for the purpose of sale beyond the boundaries of the state. [C39,§1794.043; C46, 50, 54,§109.81]

Referred to in §109.119

**109.82 Prohibited bait.** It shall be unlawful to transport or to use or to sell or offer for bait or to place into any inland waters of the state or into any waters from which waters of the state may become stocked any fish of carp, quillback, gar, or dogfish, and any minnows or fish of any of these species taken shall not be returned to any such waters, but shall be destroyed. [C39,§1794.044; C46, 50, 54,§109.82]

Referred to in §109.119

**109.83 Frog season.** It shall be unlawful for any person to take, capture or have in possession frogs from December 1 to May 11 in any year. [C39,§1794.045; C46, 50, 54,§109.83]

Referred to in §109.119

**109.84 Frogs—catching—selling.** It shall be unlawful to take, attempt to take, or kill in any manner whatsoever, or to sell, or have in possession, or to transport in any manner, any species of frogs in the state except as follows:

Frogs may be taken from May 12 to the following November 30.

Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized by law to sell bait may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

Nothing herein shall prevent any person from catching frogs on his own premises for his private use. [C39,§1794.046; C46, 50, 54, §109.84]

Referred to in §109.119

**109.85 Prohibited areas.** It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes. [C39, §1794.047; C46, 50, 54,§109.85]

Referred to in §109.119

**109.86 Federal employees excepted.** The United States commissioner of fisheries, and his duly authorized agents, are hereby authorized to conduct fish culture operations, rescue work on the boundary waters of the state, and other operations necessary for rescue and hatchery work. [C39,§1794.048; C46, 50, 54, §109.86]

Referred to in §109.119

#### TRAPPING OF FUR-BEARING ANIMALS

**109.87 Open seasons.** Except as otherwise provided, no person shall take, capture, kill, or have in possession any fur-bearing animal or any part thereof of any of the following varieties at any time except during the open season as set by the commission under authority of section 109.39 and embraced within the dates between September 1 and March 1 both dates inclusive, specified for each variety and each locality, respectively, except where such killing, trapping, or ensnaring may be for the protection of public or private property. Provided, it shall be lawful for any person to have in his possession, sell, transport, or otherwise dispose of during such open season as herein provided, and for ten days thereafter, the carcass of, hide or skin of any animal named in this section.

1. Badger	September 1 to March 1.
2. Mink	September 1 to March 1.
3. Raccoon	September 1 to March 1.
4. Skunk	September 1 to March 1.
5. Opossum	September 1 to March 1.
6. Civit cat	September 1 to March 1.
7. Muskrat	September 1 to March 1.
8. Beaver	September 1 to March 1.

Such open season on beaver, badger, mink, raccoon, skunk, opossum, civit cat, and muskrat to begin at noon on the first day thereof.

#### 9. Red fox or

gray fox	Continuous open season.
10. Weasel	Continuous open season.
11. Ground hog	Continuous open season.
12. Wolf, coyote	Continuous open season.
13. Otter	Continuous closed season.

Taking or attempting to take beaver on private lands or waters without permission of the owner or tenant shall constitute a misdemeanor or punishable as provided in section 109.32. [C97,§2553; SS15,§2553; C24,§1766; C27, 31,§§1766, 1766-a1; C39,§1794.049; C46,§§109.87, 109.93; C50, 54,§109.87]

Referred to in §109.119



**109.88 Selling furs outside state.** It shall be unlawful for any person except a licensed fur dealer to ship, transport, or sell any skin or hide of any fur-bearing animal defined in this chapter to dealers or buyers outside of this state unless he first obtains from the commission a special permit tag authorizing such shipment. [C27, 31, §1766-a2; C39, §1794.050; C46, 50, 54, §109.88]

Referred to in §109.119

**109.89 Permit to hold hides.** Upon application, which shall be filed with the commission within ten days after the close of the open season, any person may be permitted to hold hides or skins of fur-bearing animals lawfully taken for a longer time than specified above. Such application shall be verified and shall show the number and varieties of the skins or hides to be held by the applicant. The commission shall thereupon issue a permit to such applicant to hold such skins or hides, which permit shall authorize the holder to sell or otherwise dispose of such skins or hides. [C31, §1766-c4; C39, §1794.051; C46, 50, 54, §109.89]

Referred to in §109.119

**109.90 Disturbing dens.** It shall be unlawful for any person to molest or disturb, in any manner, any muskrat house, beaver dam, skunk, mink, or raccoon den except by permission of a conservation officer.

Provided however, that nothing in this section shall prohibit the owner thereof to destroy any such den to protect his own property. [C39, §1794.052; C46, 50, 54, §109.90]

Referred to in §109.119

**109.91 Shooting or spearing.** No person shall kill with shotgun or spear any beaver, mink, otter, or muskrat, or have in possession any of said animals or the carcasses, skins or parts thereof that have been killed with shotgun or spear. [C31, §1767-c2; C39, §1794.053; C46, 50, 54, §109.91]

Referred to in §109.119

**109.92 Box traps—disturbing dens—tags for traps.** Except as otherwise provided in this chapter no person shall at any time, use or attempt to use any colony or box trap including figure four box traps, in taking, capturing, trapping or killing any game bird or animal or fur-bearing animals.

It shall be unlawful for any person, except as otherwise provided, to use any chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens.

A license tag for each trap for which a license fee has been paid, stamped with the year of issuance, shall be furnished by the commission without additional charge. All licensed traps, when in use, shall have said tag attached to trap or chain and conservation officers shall have authority to confiscate any trap when found in use without such tag attached. Tags shall be renewed annually. [R60, §4381; C73, §4048; C97, §§2551, 2558; SS15, §§2539,

2551; C24, 27, 31, §§1771, 1773; C39, §1794.054; C46, 50, 54, §109.92]

Referred to in §109.119

**109.93** Repealed by 53GA, ch 78, §3. See §109.87.

**FUR DEALERS**

**109.94 Definition.** The term "fur dealer" as used in this chapter shall mean any person, firm, partnership, or corporation engaged in the business of buying, bartering, trading or otherwise obtaining raw hides or skins of fur-bearing animals. [C39, §1794.055; C46, 50, 54, §109.94]

Referred to in §109.119

**109.95 License.** A license shall be required of each such fur dealer. The commission shall, upon application and the payment of the required license fee, furnish proper certificates to dealers. [C31, §1766-c3; C35, §1794-e1; C39, §1794.056; C46, 50, 54, §109.95]

Referred to in §109.119

**109.96 Possession by dealer.** A licensed fur dealer may have in his possession at any time skins or hides of animals which have been lawfully taken. [C31, §1766-c4; C39, §1794.058; C46, 50, 54, §109.96]

Referred to in §109.119

**109.97 Report.** Fur dealers shall, within fifteen days after the close of the open season in which fur-bearing animals may be lawfully taken, prepare and file with the commission a verified inventory. Such inventory shall show the number and kind of hides and skins which have been purchased. [C31, §1766-c1; C39, §1794.059; C46, 50, 54, §109.97]

Referred to in §109.119

**109.98 Reporting violations.** It shall be the duty of each fur dealer to report to the commission, the name of any person if known to such dealer, who attempts to sell any skins or hides which appear to have been unlawfully possessed by said person. [C31, §1766-c2; C39, §1794.060; C46, 50, 54, §109.98]

Referred to in §109.119

**MUSSELS**

**109.99 License.** It shall be unlawful for any person to take, catch or kill mussels for commercial purposes without first having procured a mussel license as provided by law. [C24, 27, 31, §1755; C39, §1794.061; C46, 50, 54, §109.99]

Referred to in §109.119

**109.100 Where and when taken.** The state waters of Iowa shall be open to the taking of mussels under the conditions set forth in this chapter, and it shall be unlawful for any person, firm or corporation to take, catch, kill or have in possession mussels, except at such times and under such terms, conditions and limitations as set forth herein.

The territorial limitations shall be as established by the state conservation commission under authority of section 109.39 and except as

provided for in said section the season shall be June 15 to November 30 of each year.

Except where the conservation commission shall act in emergency, notice of the change in territorial limitations shall be published at least six months before the open season of each year. [C39,§1794.062; C46, 50, 54,§109.100]

Referred to in §109.119

**109.101 Exceptions—use.** Manufacturers of pearl buttons or of fish bait may at any time possess mussels which have been lawfully taken. Nothing in this or preceding sections shall be construed to prohibit a licensed fisherman from taking mussels to be used by him for food or bait. [C39,§1794.063; C46, 50, 54,§109.101]

Referred to in §109.119

**109.102 Definitions.** For the purposes of this chapter the term "crowfoot bar" shall mean a bar of any material bearing a series of hooks designed to catch or adapted for catching mussels by the insertion of such hooks between the shells of the mussels; "commercial purposes" shall mean and be presumed to be the taking, catching, killing or having in possession mussels for the purpose of the sale of the shell or viscera, unless the contrary is proven; "rig" shall mean one boat equipped with not more than four crowfoot bars, one boat equipped with power, and one barge. [C24, 27, 31,§1763; C39,§1794.064; C46, 50, 54, §109.102]

Referred to in §109.119

**109.103 Manner of taking.** It shall be unlawful for any person to operate more than one boat for each license, or one rig in taking, catching or killing mussels for commercial purposes. One additional boat for the purpose of towing, may be used, but only when no apparatus for taking, catching, or killing mussels is used or kept thereon.

It shall be unlawful for any person to have in possession in the water while engaged in taking, catching or killing mussels for commercial purposes, more than four crowfoot bars, or for more than two such bars to be in the water at the same time, or for any crowfoot bar to be of greater length than twenty feet.

It shall be lawful for any person to take mussels by hand, but the use of a fork or any similar instrument with tines in excess of six inches in length is prohibited. [C24, 27, 31, §1758; C39,§1794.065; C46, 50, 54,§109.103]

Referred to in §109.119

**109.104 Undersized mussels.** It shall be unlawful for any person to take, or kill, offer for sale or have in possession for commercial purposes, any mussel of a size less than three inches in the greatest dimension for those species commonly known as "sandshells", "muckets", "creepers", "grandma", "pocket-books", "buckhorns", "washboards", "lady-fingers", "squaw foot", and "cucumbers", and one and one-half inches in the greatest dimension for all other species, except that prosecution under this section shall not be initiated when errors in size exist in less than five per-

cent by number, or three percent by weight, whichever is greater, of the mussels taken or possessed. Undersized mussels shall be immediately culled and returned to the water from where taken, without avoidable injury, except that the so-called "pig-toes" may be retained. [C24, 27, 31,§1759; C39,§1794.066; C46, 50, 54,§109.104]

Referred to in §109.119

**109.105 Report.** On or before April 1, each year, the holder of a mussel license shall make a written report to the commission on blanks furnished by the commission stating the total weight of mussels taken, caught or killed under such license, the names and location of waters from which the mussels were taken and the amount received for the shells or viscera sold or processed and sold. Failure to make such report shall authorize the commission to refuse the issuance of another license until the report is filed. [C24, 27, 31,§1757; C39, §1794.067; C46, 50, 54,§109.105]

Referred to in §109.119

#### COMMERCIAL FISHING

**109.106 Nets or seines.** It shall be unlawful except as otherwise provided for any person to use any net or any seine in taking fish other than in the lawful taking of minnows. [C39, §1794.068; C46, 50, 54,§109.106]

Referred to in §109.119

**109.107 Seining—closed waters.** It shall be lawful to use seines, pound nets, dip nets, hoop nets, gill nets, fyke nets, fiddler nets, or trammel nets in the Missouri river or Mississippi river, except as hereinafter provided in this section but only when such nets or seines have been properly licensed, and properly tagged, in accordance with the provisions of chapter 110, and of this section, and only when such nets or seines comply with the provisions of law and at such times and in such manner and for the taking of such species of fish as are permitted by law.

It shall be unlawful for any person to place any net or seine, trap or trotline of any kind within one hundred yards of the mouth of any tributary stream emptying into the Mississippi river or Missouri river or within one hundred yards from the farthest projection of any dam in the Mississippi river and Missouri river.

All licensed nets or seines shall have attached for each five hundred feet or portion thereof a metal tag identifying the net and license for its use. Identification tags shall be furnished by the commission and a charge of ten cents shall be made for each tag and such tags shall be renewed annually. Tags must at all times be attached to fishing tackle while in use and conservation officers shall have authority to confiscate any net or seine when found in use without such tag attached.

It shall be unlawful for any person to fish with or use any wooden fish basket or trap of any kind in the boundary or inland waters of the state.

It shall be unlawful for fish peddlers, wholesale fish markets, jobbing houses or other

places for the wholesale or retail marketing of fish to have in possession catfish under the legal thirteen inch commercial size limit provided in Iowa laws. [SS15,§2547-a; C24, 27, 31, §1747, 1750; C39,§1794.069; C46, 50, 54,§109.107]

Referred to in §§109.109, 109.119

**109.108 Size of mesh.** It shall be unlawful for any person to fish with or to use any seine, pound net, hoop net, dip net, fiddler net or fyke net, having a mesh of less than one and one-half inches square or bar measure or to fish with or to use any trammel net having a mesh of less than two inches square or bar measure, or to fish with or use a gill net having a mesh of less than three and three-quarters inches square or bar measure. Such measurements shall apply to meshes when in use and no allowance shall be made for shrinkage due to any cause. Any commercial fishing equipment in use shall be subject to inspection by the commission or its authorized agents at any time. [S13,§2547-c; C24, 27, 31,§1751; C39, §1794.070; C46, 50, 54,§109.108]

Referred to in §109.119

**109.109 Nets permitted in boundary rivers—license.** It shall be lawful to fish with and to use pound nets, dip nets, gill nets, hoop nets, fyke nets, fiddler nets and trammel nets in the Mississippi river and Missouri river at any time. Provided a trotline license is procured for the sum of one dollar, the holder of said license may use a trotline, with no more than one hundred hooks, in the waters of the Mississippi and Missouri rivers. A tag as provided in section 109.107, paragraph three, shall be attached thereto.

It shall also be lawful to use in the Mississippi and Missouri rivers basket traps made of wood. The end opposite the throat shall contain a hole not less than one and one-half inches in diameter. Basket traps shall be licensed and tagged as hoop nets. [SS15,§2547-a; C24, 27, 31,§1747; C39,§1794.071; C46, 50, 54, §109.109; 56GA, ch 92,§1]

Referred to in §109.119

Use of traps and trot lines restricted, §109.107

**109.110 Season seining permitted.** It shall be lawful to fish with or to use seines in the Mississippi river and Missouri river between June 15 and May 15 of the following year, both dates inclusive, but at no other time. [C39, §1794.072; C46, 50, 54,§109.110]

Referred to in §109.119

**109.111 Permissive catch.** It shall be lawful to take from the waters of the Mississippi river and Missouri river with licensed and tagged nets or seines the following species of fish: Carp, buffalo, gar, suckers, quillback, sheepshead, northern pike, pickerel, bullheads, dogfish, rock sturgeon, sand sturgeon, catfish or paddlefish, subject to minimum weight or length of requirements provided by law. [S13, §2547-c; C24, 27, 31,§1751; C39,§1794.073; C46, 50, 54,§109.111]

Referred to in §109.119

**109.112 Seining in boundary rivers.** It shall be lawful to take from the waters of the Mississippi river and the Missouri river with licensed and tagged nets or seines, and have in possession the following list of fish taken from said waters: Carp, buffalo, suckers, redhorse, bullheads, quillback, catfish, gar, northern pike, pickerel, sheepshead or dogfish, at any time, except that the above named fish may not be taken by seines between May 15 and June 15, both dates exclusive, each year.

It shall be unlawful to take or have in possession paddlefish, rock sturgeon or sand sturgeon from December 1 to July 31 of the following year, both dates inclusive. [S13,§2547-c; C24, 27, 31,§1751; C39,§1794.074; C46, 50, 54, §109.112]

Referred to in §109.119

**109.113 Size limits.** It shall be lawful for any person to take or catch, with licensed nets or seines, any catfish not less than thirteen inches long, any buffalo not less than fifteen inches long, any northern pike or pickerel not less than eighteen inches long, any bullhead not less than nine inches long, any sheepshead not less than ten inches long, any sucker or redhorse not less than twelve inches long, any sand sturgeon weighing not less than one pound, any rock sturgeon weighing not less than five pounds, any paddlefish weighing not less than five pounds. [S13,§2547-c; C24, 27, 31, §1751; C39,§1794.075; C46, 50, 54,§109.113]

Referred to in §109.119

**109.114 Gar destroyed.** It shall be unlawful for any person to place any gar pike in any waters of the state and such fish when taken shall be destroyed. [C39,§1794.076; C46, 50, 54, §109.114]

Referred to in §109.119

**109.115 Sale of fish.** It shall be lawful for the holder of a net or seine license to possess and sell such species and sizes of fish as are lawfully taken and such fish may be delivered to original buyers and/or may be sold by such licensee at a place on the bank to which they are brought from the nets or seines, but any such sales shall be made by the licensee or his agent. Any other sale of fish taken under this section shall require a wholesale fish market or fish peddler's license. [SS15,§2547-a; C24, 27, 31,§1752; C39,§1794.077; C46, 50, 54,§109.115]

Referred to in §109.119

**109.116 Report of licensee.** Each holder of a net or seine license shall make a report to the commission annually showing the amounts, kinds and value of fish caught during the period of the license, where fish were caught and kind of tackle used. Failure or refusal to make said report shall be cause for the commission to refuse issuance of license or renewal until such report is made. [C24, 27, 31,§1749; C39,§1794.078; C46, 50, 54,§109.116]

Referred to in §109.119

**109.117 Wholesale license.** It shall be unlawful for any person, firm or corporation to

peddle fish or to operate a wholesale fish market, jobbing house, or other place for the wholesale marketing of fish, or distribution of fish, without first procuring a license. The commission shall upon application and the payment of the required fee furnish a license to wholesale fish markets or fish peddlers. The commission may upon application and the payment of the required fee issue a certificate to each person who as a representative of a wholesale fish market is engaged in peddling fish. [SS15,§2547-a; C24, 27, 31,§1752; C39, §1794.079; C46, 50, 54,§109.117]

Referred to in §109.119

**109.118 Records and report.** Each holder of a wholesale fish-market or fish-peddler's license shall keep an accurate record of the species and quantities of all fish taken from Iowa waters acquired or handled by such licensee during the licensed year. Such records shall be open at all reasonable times to inspection by the commission. Such licensee shall within thirty days after the expiration of the license make a report upon blanks furnished

by the commission of all fish acquired or handled by such licensee. Failure to make such report shall be cause to refuse to issue a new license. [C24, 27, 31,§1753; C39,§1794.080; C46, 50, 54,§109.118]

Referred to in §109.119

**109.119 Penalties.** Whoever shall violate any of the provisions of the foregoing sections numbered 109.38 to 109.118, inclusive, shall be punished as is provided in section 109.32. [C39, §1794.081; C46, 50, 54,§109.119]

Constitutionality, 47GA, ch 99,§136

**HUNTING FROM AIRCRAFT**

**109.120 Prohibited acts.** It shall be unlawful for any person to intentionally kill, wound or attempt to kill or wound any animal, fowl or fish from or with an aircraft in flight. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by a term not to exceed thirty days in the county jail. [C50, 54,§109.120]

CHAPTER 110

FISH AND GAME LICENSES AND CONTRABAND ARTICLES AND GUNS

Referred to in §§109.1, 109.107

- 110.1 Licenses.
- 110.2 Blanks.
- 110.3 Issuance of license.
- 110.4 Depositaries—bond.
- 110.5 Fees.
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- 110.7 Duplicate licenses and permits.
- 110.8 Accounting.
- 110.9 Duplicate issuance.
- 110.10 Tenure of license.
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- 110.12 Showing license to officer.
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- 110.18 Public nuisance.
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**GUNS**

- 110.22 "Gun" defined.
- 110.23 Manner of conveyance.
- 110.24 Prohibited guns.

**PENAL PROVISION**

- 110.25 Penalties.

**110.1 Licenses.** Except as otherwise provided in this chapter, no person shall fish, trap, hunt, pursue, catch, kill or take in any manner, or use or have possession of, or sell or transport all or any portion of any wild animal, bird, game or fish, the protection and regulation of which is desirable for the conservation of the resources of the state, without first procuring a license or certificate so to do and the payment of a fee as follows:

**Fishing licenses:**  
All persons legal residents of the state, except otherwise provided.....\$ 2.00

**Hunting licenses:**  
All persons legal residents of the state, except otherwise provided..... 2.00

Hunting and fishing combined licenses:  
All persons legal residents of the state, except otherwise provided.....\$ 3.50

**Hunting license (nonresident):**  
Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a hunting license as that charged to residents of Iowa by the state in which applicant resides, provided, however, that in no case shall said fee be less than five dollars, and provided further that if the state of applicant's residence does not provide for a non-resident hunting license, the fee shall be the minimum provided for herein.

Special deer hunting license:  
 All persons legal residents of the state \$10.00

Fishing license (nonresident):  
 Six-day license for nonresident or alien 3.00

Fishing license for longer than six days (nonresident):  
 Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a fishing license as that charged to residents of Iowa by the state in which applicant resides, provided, however, that in no case shall said fee be less than three dollars, and provided further that if the state of applicant's residence does not provide for a nonresident fishing license, the fee shall be the minimum provided for herein.

If any state by law prohibits the issuance of a hunting or fishing license to residents of this state, or if any state by law permits the issuance of a hunting or fishing license, but in so doing limits or restricts the privileges of residents of this state more than it limits or restricts the privileges of its own residents, no hunting or fishing license, or combined hunting and fishing license, shall be issued in this state to the residents of such state.

Game breeder's license..... 2.00

Trapping license for legal resident of state using not more than fifteen traps ..... 1.00

Trapping license for legal resident of state using more than fifteen traps, per trap including tag..... .15

Trapping license for nonresident or alien:  
 Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a trapping license as that charged to residents of Iowa by the state in which the applicant resides, provided, however, that no such license shall be issued to nonresidents from states that will not extend to residents of Iowa a similar privilege and provided in addition that in no case shall said fee be less than ten dollars.

Fur-dealer's license ..... 10.00

Nonresident fur-dealer's license:  
 Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a nonresident fur-dealer's license as that charged to residents of Iowa, by the state in which the applicant resides, provided, however, that no such license shall be issued to nonresident fur dealers from states that will not extend to residents of Iowa a similar privilege and provided, in addition, that in no case shall said fee be less than fifty dollars.

Net or seine licenses for residents of state:  
 Each 300 feet or fraction thereof of trammel net .....\$10.00  
 Each 500 feet or fraction thereof of seine ..... 15.00  
 Each pound net with less than 100 feet lead on each side..... 3.00  
 Each pound net 100 or more feet lead on each side..... 6.00  
 Each bait, dip, hook or fyke net used for commercial purposes..... 1.00

Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a net or seine license as that charged to residents of Iowa by the state in which the applicant resides, provided, however, that no such license shall be issued to nonresidents from states that will not extend to residents of Iowa a similar privilege and provided in addition that in no case shall said fee be less than the regular Iowa resident net and seine license fee.

Mussel licenses:  
 Legal residents ..... 2.00

Mussel licenses:  
 Upon submitting suitable evidence of legal residence in any other state, nonresidents of Iowa shall be charged the same fee for a mussel license as that charged to residents of Iowa by the state in which the applicant resides, provided, however, that no such license shall be issued to nonresidents from states that will not extend to residents of Iowa a similar privilege and provided in addition that in no case shall said fee be less than twenty-five dollars.

Wholesale fish-market or fish-peddler's license ..... 10.00

Peddlers, employed by wholesale fish market, certificate ..... 1.00

Scientific collector's license..... 2.00

Private fish hatcheries..... 2.00

Bait dealer's license..... 5.00

Each one hundred feet of gill net or fraction thereof ..... 2.00

[S13, §§2563-a2, -o, -p; SS15, §§2547-a, 2562-b, 2563-a1; C24, §§1706, 1718, 1719, 1748, 1752, 1756, 1779; C27, §§1706, 1718, 1719, 1719-a1, 1748, 1752, 1756, 1779; C31, §§1706, 1718, 1718-c1, 1719, 1719-a1, 1748, 1752, 1756, 1766-c3, 1779; C35, §1794-e1; C39, §1794.082; C46, 50, 54, §110.1; 56GA, ch 91, §2; 57GA, ch 81, §1]

**110.2 Blanks.** The state conservation director shall provide blanks for, and determine in addition to the following requirements, the method of issuing licenses. [S13, §2563-a3; C24, 27, 31, §1722; C35, §1794-e2; C39, §1794.083; C46, 50, 54, §110.2]

**110.3 Issuance of license.** All licenses other than hunting, fishing, and trapping licenses,

shall be issued by the director upon application to the departmental office at Des Moines. Hunting, fishing, and trapping licenses shall be issued by the recorder of each county. [SS15,§2563-a4; C24, 27, 31,§1724; C35,§1794-e3; C39,§1794.084; C46, 50, 54,§110.3]

**110.4 Depositories—bond.** The county recorder may designate various depositories for the sale of such licenses other than the office of the county recorder. The director may designate depositories other than those designated by the recorders of the various counties, but in so doing the interest of the state shall be fully protected either by a sufficient cash deposit or a satisfactory bond. Depositories designated by the county recorder or the director may have the privilege of charging an additional five percent of the cost of each license to be retained for the service rendered in issuing the license. [C31,§1724-c1; C35,§1794-e4; C39,§1794.085; C46, 50, 54,§110.4]

**110.5 Fees.** The county recorder shall be responsible for all fees for the issuance of hunting and fishing licenses sold through his office, or issued through his office and sold by others. All unused license blanks shall be surrendered to the county recorder upon his demand. [C31,§1724-c1; C35,§1794-e5; C39,§1794.086; C46, 50, 54,§110.5]

**110.6 Lost or destroyed blanks.** When license blanks in the possession of the county recorder or depositories are accidentally destroyed, either by fire or theft, the holder of such blanks shall only be relieved from accountability upon the presentation of satisfactory proof and the filing of a bond to the director that such blanks have actually been so destroyed. [C35,§1794-e6; C39,§1794.087; C46, 50, 54,§110.6]

**110.7 Duplicate licenses and permits.** Whenever any license, certificate or permit, for which a fee has been set, has been lost, destroyed or stolen, the director or the county recorder where the license was issued in the first instance, may issue a certificate to replace said license, if written evidence is filed with either director or recorder, in affidavit form, by the person to whom the original was issued, setting forth the circumstances and accompanied by a fee of twenty-five cents, said fee to be kept by the county recorder for the use of the county, if issued by him, and placed in the fish and game protection fund if issued by the director. If, on examination of the evidence, the director or the recorder, as the case may be, is satisfied that said license has been lost, destroyed or stolen, he shall issue a duplicate license which shall be plainly marked "duplicate" and said duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. [C39,§1794.088; C46, 50, 54,§110.7]

**110.8 Accounting.** Within five days after the end of each month, each county recorder

shall remit to the director, all duplicate licenses and all fees for such licenses issued during the previous month. On or before the tenth of April each year, each county recorder shall remit to the director all unused license blanks for the previous year, and he shall make a final accounting for all license fees received for that period. [SS15,§2563-a4; C24, 27, 31,§1725; C35,§1794-e7; C39,§1794.089; C46, 50, 54,§110.8]

**110.9 Duplicate issuance.** All licenses shall be issued in duplicate, one copy of which shall be given to the applicant,\* one shall be forwarded to the director, and the license stub shall be retained in the office of the county recorder. [C35,§1794-e8; C39,§1794.090; C46, 50, 54,§110.9]

**110.10 Tenure of license.** Every license shall expire on April 1 following its issuance. [S13,§2563-a8; C24, 27, 31,§1727; C35,§1794-e9; C39,§1794.091; C46, 50, 54,§110.10]

**110.11 Form of license.** All hunting, fishing, and trapping licenses shall contain a general description. Such licenses shall be upon such forms as the commission shall adopt. The occupation, address, and the signature of the applicant and all signatures and other writing shall be in ink. All licenses shall bear a facsimile signature of the director and the signature of the recorder by whom it is issued. All licenses shall clearly indicate the nature of the privilege granted. [S13,§2563-a3,-a8; C24, 27, 31,§1722, 1727; C35,§1794-e10; C39,§1794.092; C46, 50, 54,§110.11]

**110.12 Showing license to officer.** Every person shall, while fishing, hunting or trapping, show his license, certificate or permit, to any conservation officer, constable, sheriff, deputy sheriff, police officer, peace officer, or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing or trapping when requested by said persons to do so. Any failure to so carry or refusal to show or so exhibit his license, certificate or permit, shall be a violation of this chapter. [C39,§1794.093; C46, 50, 54,§110.12]

Analogous provision, §109.37

**110.13 Unlawful use—effect.** The use of a license by a person other than that to whom issued shall nullify said license and such use shall constitute a misdemeanor. [S13,§2563-a9; C24, 27, 31,§1729; C35,§1794-e11; C39,§1794.094; C46, 50, 54,§110.13]

Punishment, §687.7

**110.14 Revocation or suspension.** Upon the conviction of a licensee of any violation of chapter 109 of the Code, or of this act,\* or of any administrative order adopted and published by the state conservation commission, the magistrate may, as a part of the judgment, revoke the license of said licensee, or suspend the same for any definite period. [S13,§2563-a9;

C24, 27, 31, §1729; C35, §1794-e12; C39, §1794.095; C46, 50, 54, §110.14]

\*46GA, ch 30

**110.15 Record of revocation.** Whenever a license is revoked the date and cause of such revocation shall be noted on the stub retained by the county recorder and upon the duplicate on file in the office of the commission. The commission may refuse the issuance of a new license to any person whose license has theretofore been revoked. [S13, §2563-a7; C24, 27, 31, §1726; C35, §1794-e13; C39, §1794.096; C46, 50, 54, §110.15]

**110.16 Game birds or animals as pets.** Any person may possess not more than two game birds or fur-bearing animals confined as pets without being required to purchase a license as a game breeder, but he shall not be allowed to increase his stock beyond the original number nor shall he be allowed to kill or sell such stock. [C24, 27, 31, §1720; C35, §1794-e14; C39, §1794.097; C46, 50, 54, §110.16]

45GA, ch 30, §23, editorially divided

**110.17 License not required.** Owners or tenants of land, and their children, may hunt, fish or trap upon such lands and may shoot ground squirrels, gophers or woodchucks upon adjacent roads without securing a license so to do.

No resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age shall be required to have a license to fish in the waters of the state.

No license shall be required of minor pupils of the state school for the blind, state school for the deaf, nor of minor inmates of other state institutions under the board of control, except that this provision shall not apply to the inmates of the men's penitentiary at Fort Madison, the men's reformatory at Anamosa, and the women's reformatory at Rockwell City, nor shall any person during the time the United States is engaged in war who is a member of the military or naval forces of the United States be required to have a license to hunt or fish in this state. No license shall be required of any person who is receiving old-age assistance under chapter 249. [S13, §2563-a3; C24, 27, 31, §§1720, 1723; C35, §1794-e15; C39, §1794.098; C46, 50, 54, §110.17; 57GA, ch 81, §§2, 3]

Hunting on land of another, §714.25

**CONTRABAND ARTICLES**

**110.18 Public nuisance.** Any device, contrivance or material used to violate any regulation adopted by the commission, or any other provision of this chapter, is hereby declared to be a public nuisance, and it shall be the duty of the state conservation director and his officers, or any peace officer, to seize such devices, contrivances, or materials so used, without warrant or process, and to deliver them to some magistrate having jurisdiction. Provided, however, no gun, fishing rod, fishing tackle, or

automobile shall be construed to be a public nuisance under this section. [C73, §4052; C97, §2540; SS15, §§2539, 2540; C24, 27, 31, §1715; C35, §1794-e16; C39, §1794.099; C46, 50, 54, §110.18]

**110.19 Confiscation.** Said magistrate, upon said delivery being made to him, shall docket the proceeding and fix a day and hour for hearing thereon which shall not be more than ten nor less than three days after said delivery. Written notice of the time and place of said hearing shall be personally served upon the person from whom the aforesaid articles or things were taken if such person is found in the county, otherwise, said notice shall be served by posting the same in some conspicuous place as near as reasonably possible to the place where the seizure was made. Said notice shall be so served at least two full days prior to said hearing. [C35, §1794-e17; C39, §1794.100; C46, 50, 54, §110.19]

**110.20 Trial.** Trial of said cause shall be, so far as practicable, by the same procedure as is provided in chapter 751 of the Code, so far as the same is applicable, and except as hereinafter provided. [C35, §1794-e18; C39, §1794.101; C46, 50, 54, §110.20]

**110.21 Order.** On said hearing, said magistrate may order such devices, contrivances or materials confiscated and destroyed, or placed at the disposal of the director who may either use or sell the same, depositing the proceeds of such sale in the fish and game protection fund. [C35, §1794-e19; C39, §1794.102; C46, 50, 54, §110.21]

**GUNS**

**110.22 "Gun" defined.** The word "gun" as used in this chapter, shall include every kind of a gun or rifle, except a revolver or pistol, and shall include those provided with pistol mountings which are designated to shoot shot cartridges. [C31, §1772-c1; C35, §1794-e20; C39, §1794.103; C46, 50, 54, §110.22]

45GA, ch 30, §24, editorially divided

**110.23 Manner of conveyance.** No person, except as permitted by law, shall have or carry any gun in or on any vehicle on any public highway, unless such gun be taken down or contained in a case, and the barrels and magazines thereof be unloaded. [C24, 27, 31, §1772; C35, §1794-e21; C39, §1794.104; C46, 50, 54, §110.23]

**110.24 Prohibited guns.** No person shall use a swivel gun, nor any other firearm, except such as is commonly shot from the shoulder or hand in the hunting, killing or pursuit of game, and no such gun shall be larger than number 10 gauge. [C97, §2558; C24, 27, 31, §1771; C35, §1794-e22; C39, §1794.105; C46, 50, 54, §110.24]

**PENAL PROVISION**

**110.25 Penalties.** Whoever shall violate any of the provisions of this chapter shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days. [C46, 50, 54, §110.25]

## CHAPTER 110A

## GAME BREEDING AND SHOOTING PRESERVES

110A.1 License requirements.

110A.2 Boundaries posted.

110A.3 What birds released.

110A.4 Manner of release—records.

110A.5 Tags and other markings.

110A.6 Seasons—hunting license.

110A.7 Special wardens.

110A.8 License refusal.

110A.9 Violations—penalty.

**110A.1 License requirements.** Any person owning, holding or controlling by lease or otherwise, which possession must be for a term of five or more years, any contiguous tract of land having an area of not less than three hundred twenty acres, and not more than twelve hundred and eighty acres, and providing that there shall be no more than one such area in any township and that not more than three percent of the land area of any county shall be so licensed, who desires to establish a game breeding and shooting preserve area, to propagate, preserve and shoot game birds thereon under the regulations as hereinafter provided, shall make application to the state conservation commission for a license as herein provided. Such application shall be made under oath of the applicant or under oath of one of its principal officers if the applicant is an association, club or corporation. The application shall be accompanied by a license fee of fifty dollars. Upon receipt of such application, the state conservation commission shall inspect the proposed licensed area described in such application and the premises and facilities where game birds are to be propagated, raised or liberated and the cover for game birds in such area and the ability of the applicant to operate a property of this character. If the commission finds that the area contains not less than three hundred twenty acres and not more than twelve hundred and eighty acres, is contiguous, there is no other licensed area in the township and that the licensing of the proposed area will not exceed the three percent county limitation, and has the proper requirements for the operation of such a property; that the game birds propagated or released thereon are not likely to be a menace to other game; that the proposed area will not interfere with the normal activities of migratory birds; that the operation of such property will not work a fraud upon persons who may be permitted to hunt thereon; and that the issuing of the license will otherwise be in the public interest; the commission shall approve such application and issue a game breeding and shooting preserve area license for the operation of such property on the tract described in such application with the rights and subject to the limitations in this chapter prescribed. All game breeding and shooting preserve area licenses expire on March 31 of each year. [57GA, ch 82,§1]

**110A.2 Boundaries posted.** Upon receipt of such license, the licensee shall promptly post such licensed areas at intervals of not more

than five hundred feet with signs to be prescribed by the commission. The boundaries of such licensed game breeding and shooting preserve areas shall also be clearly defined by natural or artificial boundaries or by signs. [57GA, ch 82,§2]

**110A.3 What birds released.** The licensee of any licensed game breeding and shooting preserve area may take, or authorize to be taken within the season hereinafter fixed and designated, and in such numbers as herein provided:

Pen-reared game birds, as defined in section 109.41, released on licensed area may be taken during the shooting season provided in this chapter but not to exceed eighty percent of the total number of the species of said game birds released. Pen-reared waterfowl, two generations removed from the wild and chukar partridge may be released at any time of year for shooting purposes and one hundred percent may be harvested by shooting. The word waterfowl shall be defined as those birds constituting the Anatidae as listed in section 109.41. All birds so released shall be at least twelve weeks of age before liberation date. A minimum of one hundred pen-reared birds of each species to be shot shall be released during the open season. Experimental releases of less than one hundred birds of each species shall require a special permit from the conservation commission. [57GA, ch 82,§3]

**110A.4 Manner of release—records.** For the purpose of this chapter, game birds shall be released upon licensed game breeding and shooting preserve areas in a manner satisfactory to the commission. The licensee shall keep a register which shall clearly show the number and kind of game birds released and propagated each year, the date of release, and also the number and kind of game birds taken, the date when taken and the disposition made of such game birds, and shall make such reports under oath as to game birds released, propagated and taken, at such times and in such manner as may be required by the commission. The commission shall keep an adequate record of the number of birds released and propagated on each licensed game breeding and shooting preserve area in each year and of the birds taken. [57GA, ch 82,§4]

**110A.5 Tags and other markings.** The commission shall prepare special tags suitable for use upon legs of game birds, which tags shall be of a type not removable without breaking



and mutilating the tag, such tags, to be used to designate birds taken upon a licensed game breeding and shooting preserve area. Upon application and payment of a fee of five cents for each such tag, the commission shall furnish licensees with such tags; provided that the commission shall not in any year furnish any licensee a number of tags in excess of the number of game birds which may lawfully be taken from such licensed area as hereinbefore provided. One of such tags shall be securely affixed to one of the legs of each game bird taken before removing same from such licensed area, and such tag shall remain upon the leg of such game bird until such bird is finally prepared for consumption.

All waterfowl released for shooting purposes shall be punched through the outer web of the bird's right foot at not more than four weeks of age, so as to provide for permanent identification. [57GA, ch 82,§5]

**110A.6 Seasons—hunting license.** No person shall take any game bird upon a game breeding and shooting preserve area, by shooting in any manner, except between September 1, and March 1, of each year, both dates inclusive.

Waterfowl may not be shot over any water area wherein pen-reared birds might serve as live decoys for wild waterfowl.

Every person taking game birds upon such licensed game breeding and shooting preserve area shall secure a hunting license so to do in accordance with the provisions of the game laws of Iowa, with the exception that a non-resident may secure a hunting license restricted to shooting preserve areas for a license fee of five dollars per year. [57GA, ch 82,§6]

**110A.7 Special wardens.** The commission may designate any operator of a licensed game breeding and shooting preserve area or any of his or its agents or employees as a special representative of the commission with power to enforce the game laws and to prevent trespassing upon such property and to hunt and trap rodents and other mammals or birds which are destroying or likely to destroy the game birds raised or liberated on such area. Such special representative shall be subject to rules and regulations to be prescribed by the commission and shall serve without compensation from the commission. [57GA, ch 82,§7]

**110A.8 License refusal.** The commission may either refuse to issue or refuse to renew or may suspend or may revoke any game breeding and shooting preserve area license if the commission finds that such licensed area or the operator thereof is not complying or does not comply with the provisions of this chapter, or that such property, or area is operated in violation of other provisions of this chapter, or in an unlawful or illegal manner. [57GA, ch 82,§8]

**110A.9 Violations—penalty.** Any licensee or any other person, who willfully and intentionally transfers or permits the transfer of the tags issued to the operator of one licensed game breeding and shooting preserve area to the operator of another licensed game breeding and shooting preserve area, or to any other person, or who affixes such tags to game birds not taken from a licensed game breeding and shooting preserve area or to game birds taken from any area other than the area for which such tags were issued, is guilty of a misdemeanor. [57GA, ch 82,§9]

## CHAPTER 111

### CONSERVATION AND PUBLIC PARKS

Referred to in §109.1

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- 111.48 Camping areas.
- 111.49 Time limit.
- 111.50 Registering—vacating.
- 111.51 Camping refused.

**111.1 Secretary.** The secretary of the executive council shall, without additional compensation, act as secretary of the state conservation commission. [C24, 27, 31, 35, 39, §1797; C46, 50, 54,§111.1]

**111.2 Duties in general.** The commission shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state. [C24, 27, 31, 35, 39,§1798; C46, 50, 54,§111.2]

**111.3 Duties as to parks.** It shall be the duty of the commission, under the supervision and direction of the executive council, to establish, maintain, improve, and beautify public parks and preserves upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted therefor. The commission shall have the power under such supervision and direction, to maintain, improve or beautify state-owned bodies of water, and to provide proper public access thereto. The commission shall have the power to provide and operate facilities for the proper public use of the areas above described. [C24, 27, 31, 35, 39,§1799; C46, 50, 54,§111.3]

**111.4 Construction permit—regulations—commercial concessions.** No person, association or corporation shall build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from such commission a written permit, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469. No such permit, in matters relating to or in any manner affecting flood control, shall be issued without approval of the Iowa natural resources council. No person shall maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in such a manner as to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

#### ICE, SAND, AND GRAVEL REMOVAL

- 111.52 Agreement with commission.
- 111.53 Permits.
- 111.54 Barriers on ice field.
- 111.55 Dredging.
- 111.56 Disturbing natural bank.
- 111.57 Penalties.

#### MAINTENANCE EQUIPMENT

- 111.58 Use by cities, counties and highway commission.

It shall be the duty of the commission to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said commission may prohibit, restrict or order the removal thereof, when in the judgment of said commission it will be for the best interest of the public.

Any person, firm, association, or corporation violating any of the provisions of this section or any rule or regulation adopted by the commission under the authority of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days.

No person, association or corporation shall operate any commercial concession on any state-owned lands or waters without first obtaining from the conservation commission a permit therefor. The commission may issue and revoke such permits for the protection of the public health, safety, morals or welfare. [C27, 31, 35,§1799-b2; C39,§§1703.19, 1799.1; C46, 50, 54,§§106.19, 111.4; 57GA, ch 83,§§1, 2; ch 84, §§1,2]

**111.5 Obstruction removed.** The commission shall have full power and authority to order the removal of any pier, wharf, sluice, piling, wall, fence, obstruction, erection or building of any kind upon or over any state-owned lands or waters under their supervision and direction, when in their judgment it would be for the best interests of the public, the same to be removed within thirty days after written notice thereof by the commission. Should any person, firm, association or corporation fail to comply with said order of the commission within the time provided, the commission shall then have full power and authority to remove the same. [C27, 31, 35,§1799-b3; C39, §1799.2; C46, 50, 54,§111.5]

**111.6 Costs—lien.** The cost of such removal shall be paid by the owner of said pier, wharf, sluice, piling, wall, fence, obstruction, erection or building, and the state shall have a lien upon the property removed for such costs. Said costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of chattel mortgages in chapter 652. [C31, 35, §1799-d1; C39,§1799.3; C46, 50, 54,§111.6]

**111.7 Eminent domain.** The executive council may, upon the recommendation of the commission, purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be made to an amount in excess of funds appropriated therefor by the general assembly. [C24, 27, 31, 35, 39,§1800; C46, 50, 54,§111.7]

**111.8 Highways.** The executive council may, upon the recommendation of the commission, purchase or condemn highways connecting such parks with the public highways. When such highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county. [C24, 27, 31, 35, 39,§1801; C46, 50, 54,§111.8]

**111.9 Condemnation statutes.** All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. [C24, 27, 31, 35, 39,§1802; C46, 50, 54, §111.9]

*Eminent domain, ch 471 et seq.*

**111.10 Title to lands.** The title to all lands purchased, condemned, or donated, hereunder, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of such sale shall be placed to the credit of the said public state parks fund to be used for such park purposes. [C24, 27, 31, 35, 39,§1803; C46, 50, 54,§111.10]

**111.11 Gifts.** The commission with the written consent of the executive council, may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the same as public state parks. [C24, 27, 31, 35, 39,§1804; C46, 50, 54,§111.11]

**111.12 Conditions—lands.** The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state. [C24, 27, 31, 35, 39,§1805; C46, 50, 54,§111.12]

*40ExGA, SF 55,§3, editorially divided*

**111.13 Conditions—personalty.** If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose. [C24, 27, 31, 35, 39,§1806; C46, 50, 54,§111.13]

**111.14 Reversion of gift.** If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or

funds donated by filing his request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes. [C24, 27, 31, 35, 39,§1807; C46, 50, 54,§111.14]

**111.15 Use of private funds.** The commission may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the commission, by and with the consent of the executive council. [C24, 27, 31, 35, 39,§1808; C46, 50, 54,§111.15]

**111.16 Landscape architect.** The commission may call upon the state college of agriculture and mechanic arts for the services of at least one competent landscape architect, engineer, or gardener, who shall, under the direction of the commission, proceed to work with it in the improvement of the state property under the control of said commission. The president of said college shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with said commission. [C24, 27, 31, 35, 39,§1809; C46, 50, 54,§111.16]

*40ExGA, SF 55,§6, editorially divided  
Referred to in §111.17*

**111.17 Expense and compensation.** All necessary expenses incurred by such landscape architect, engineer, or gardener, under the provisions of section 111.16, shall be paid in the same manner as are other expenditures by the commission, but no compensation shall be paid for such services. [C24, 27, 31, 35, 39, §1811; C46, 50, 54,§111.17]

**111.18 Jurisdiction.** Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction shall be subject to the approval of the Iowa natural resources council in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of such property into state parks, and when so established all of the provisions of this chapter relative to public parks shall apply thereto. [C24, 27, 31, 35, 39,§1812; C46, 50, 54,§111.18]

*40GA, ch 33,§9, editorially divided*

**111.19 Boundaries.** The commission shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property when said commission deems it feasible and necessary, and shall where deemed advisable mark the same so that the boundaries of such

state-owned property may be easily ascertainable to the public. [C24, 27, 31, 35, 39,§1813; C46, 50, 54,§111.19]

**111.20 Highway commission—duties.** The commission may call upon the highway commission for the services of at least one competent engineer, who shall, under the direction of the conservation commission, proceed to work in conjunction with it in carrying out the true spirit and purpose of this chapter. [C24, 27, 31, 35, 39,§1814; C46, 50, 54,§111.20]

40GA, ch 33,§10, editorially divided

**111.21 County engineer—duties.** The commission may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the commission, shall mark such boundary lines as herein provided. [C24, 27, 31, 35, 39,§1815; C46, 50, 54,§111.21]

**111.22 Surveys and plats.** All surveys and plats shall be filed with the secretary of the commission, and shall become public records of this state. [C24, 27, 31, 35, 39,§1816; C46, 50, 54,§111.22]

**111.23 Compensation.** The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the highway commission, and of the county engineer by the county, as the case may be. [C24, 27, 31, 35, 39,§1817; C46, 50, 54,§111.23]

**111.24 Boundaries—adjustment.** Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the commission may, with the approval of the executive council, adjust said boundary line or take such other action in the premises, all with the approval of the executive council, as in its judgment may seem right. When such disputed boundary line is fixed it shall be surveyed and marked as herein provided. [C24, 27, 31, 35, 39,§1818; C46, 50, 54,§111.24]

40GA, ch 33,§12, editorially divided

**111.25 Leases.** The commission may, with the approval of the executive council, lease for periods not exceeding five years such parts of the property under its jurisdiction as to it may seem advisable. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. [C24, 27, 31, 35, 39,§1819; C46, 50, 54,§111.25]

**111.26 Special police.** The commission in carrying out its duties may appoint the state conservation director, chief of division of lands and waters, chief of division of fish and game, and four assistants and boat inspectors as special police. Such officers are hereby vested with the powers and charged with the duties of peace officers while in the performance of their official duties. [C35,§1821-e1; C39,§1821.1; C46, 50, 54,§111.26]

**111.27 Management by municipalities.** The commission may, subject to the approval of the executive council, enter into an agreement or arrangement with the board of supervisors of any county or the council of any city or town whereby such county, city, or town shall undertake the care and maintenance of any state park. Counties, cities, and towns are authorized to maintain such parks and to pay the expense thereof from the general fund of such county, city or town as the case may be. [C24, 27, 31, 35, 39,§1822; C46, 50, 54,§111.27]

**111.28 Expenditure by cities.** Any one or more cities or towns may through action of its city or town council expend money to aid in the purchase of land within the county for state parks which, when purchased, shall be the property of the state of Iowa, to be cared for as state parks. [C27, 31, 35,§1822-a1; C39, §1822.1; C46, 50, 54,§111.28]

41GA, ch 121,§1, editorially divided  
Referred to in §111.30

**111.29 Limitation on expenditures.** The amount to be paid by such city or cities, or by such town or towns shall in no event exceed one-half of the total purchase price of the land involved in any single purchase, and in no event shall the total amount paid by such city or cities, or by such town or towns in any single purchase exceed the sum of fifty thousand dollars. [C27, 31, 35,§1822-a2; C39,§1822.2; C46, 50, 54,§111.29]

Referred to in §111.30

**111.30 City funds available.** Any such city or cities, or any town or towns aiding in the purchase of land for state parks, as provided for in sections 111.28 and 111.29 may pay for the same out of the general fund, or the park fund, or may issue bonds for the payment of the same and levy a tax for the payment of such bonds and the interest thereon. [C27, 31, 35,§1822-a3; C39,§1822.3; C46, 50, 54,§111.30]

**111.31 Sale of islands.** No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the commission, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter. [C24, 27, 31, 35, 39,§1823; C46, 50, 54, §111.31]

**111.32 Sale of park lands.** The executive council may, upon a majority recommendation of the commission, sell or exchange such parts of public lands under the jurisdiction of the commission as in its judgment may be undesirable for conservation purposes, excepting state-owned, meandered lands already surveyed and platted at state expense as a conservation plan and project tentatively adopted and now in the process of rehabilitation and development authorized by a special legislative act. Such sale or exchange shall be made

upon such terms, conditions or considerations as the commission may recommend and that may be approved by the executive council, whereupon the secretary of state shall issue a patent therefor in the manner provided by law in other cases. The proceeds of any such sale or exchange shall become a part of the funds to be expended under the provisions of this chapter. [C24, 27, 31, 35, 39, §1824; C46, 50, 54, §111.32]

**111.33 Form of conveyance.** Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached. [C24, 27, 31, 35, 39, §1825; C46, 50, 54, §111.33]

Referred to in §1.11

**111.34 Powers in municipalities.** Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities or towns, and when established without the support of the public state parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or operate any such park as herein contemplated for pecuniary profit. [C24, 27, 31, 35, 39, §1827; C46, 50, 54, §111.34]

**111.35 Prohibited destructive acts.** It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure or deface plant life, trees, buildings, or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands and/or waters under the jurisdiction of the conservation commission for any purpose whatsoever, except upon the terms, conditions, limitations and restrictions as set forth by the conservation commission. [C39, §1828.01; C46, 50, 54, §111.35]

Referred to in §111.57

**111.36 Speed limit.** The maximum speed limit of all vehicles on state park and preserve drives, roads and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the state conservation commission shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives or highways, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or

other parts of the park roads, drives or highways. [C39, §1828.02; C46, 50, 54, §111.36; 57GA, ch 85, §1]

Referred to in §111.57

**111.37 Excessive loads.** Excessively loaded vehicles shall not operate over state park or preserve drives, roads or highways. The determination as to whether the load is excessive will be made by the state conservation director or his representative and will depend upon the load and the road conditions. [C39, §1828.03; C46, 50, 54, §111.37]

Referred to in §111.57

**111.38 Parking.** All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency. [C39, §1828.04; C46, 50, 54, §111.38]

Referred to in §111.57

**111.39 Hitching to trees.** No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property. [C39, §1828.05; C46, 50, 54, §111.39]

Referred to in §111.57

**111.40 Fires.** No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party. [C39, §1828.06; C46, 50, 54, §111.40]

Referred to in §111.57

**111.41 Removing plants, flowers or fruit.** No person shall, in any manner, remove, destroy, injure or deface any tree, shrub, plant, or flower, or the fruit thereof, or disturb or injure any structure or natural attraction, except that upon written permission of the commission certain specimens may be removed for scientific purposes. [C39, §1828.07; C46, 50, 54, §111.41]

Referred to in §111.57

**111.42 Firearms, etc.** The use by the public of firearms, fireworks, explosives and weapons of all kinds is prohibited in all state parks and preserves. [C39, §1828.08; C46, 50, 54, §111.42]

Referred to in §111.57

See also §§868.11, 695.27, 732.17-732.19

**111.43 Littering grounds.** No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose. [C39, §1828.09; C46, 50, 54, §111.43]

Referred to in §111.57

**111.44 Prohibited areas.** No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the state conservation director or his representative. [C39, §1828.10; C46, 50, 54, §111.44]

Referred to in §111.57

**111.45 Animals on leash.** No privately owned animal shall be allowed to run at large

in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle. [C39, §1828.11; C46, 50, 54, §111.45]

Referred to in §111.57

**111.46 Closing time.** Except by arrangement or permission granted by the director or his authorized representative, all persons shall vacate state parks and preserves before ten-thirty o'clock p. m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose. [C39, §1828.12; C46, 50, 54, §111.46]

Referred to in §111.57

**111.47 Camping.** The commission is hereby authorized to fix fees for camping and other special privileges which shall be in such amounts as may be determined by the commission upon a basis of the cost of providing and reasonable value of such privileges. [C39, §1828.13; C46, 50, 54, §111.47]

Referred to in §111.57

**111.48 Camping areas.** No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission. [C39, §1828.14; C46, 50, 54, §111.48]

Referred to in §111.57

**111.49 Time limit.** No person shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks. [C39, §1828.15; C46, 50, 54, §111.49]

Referred to in §111.57

**111.50 Registering — vacating.** Any person who camps in any state park or preserve shall register his or her name and address with the park custodian and advise the custodian when the camp is vacated. [C39, §1828.16; C46, 50, 54, §111.50]

Referred to in §111.57

**111.51 Camping refused.** Custodians are given authority to refuse camping privileges and to rescind any and all camping permits for cause. [C39, §1828.17; C46, 50, 54, §111.51]

Referred to in §111.57

#### ICE, SAND, AND GRAVEL REMOVAL

**111.52 Agreement with commission.** No person shall remove any ice, sand, gravel, stone, wood, or other natural material from any lands or waters under the jurisdiction of the

commission without first entering into an agreement with the commission. [C39, §1828.18; C46, 50, 54, §111.52]

Referred to in §111.57

**111.53 Permits.** The commission may enter into agreements for the removal of ice, sand, gravel, stone, wood, or other natural material from lands or waters under the jurisdiction of the commission if, after investigation, it is determined that such removal will not be detrimental to the state's interest. The commission may specify the terms and consideration under which such removal is permitted and issue written permits for such removal. [C39, §1828.19; C46, 50, 54, §111.53]

Referred to in §111.57

**111.54 Barriers on ice field.** Any person removing ice under a permit shall erect barriers on any part of an ice field where ice is cut, where said field crosses or traverses any part of a stream or lake that is used as a way of passage. [C39, §1828.20; C46, 50, 54, §111.54]

Referred to in §111.57

**111.55 Dredging.** In removing sand, gravel, or other material from state-owned waters by dredging, the operator shall so arrange his equipment that other users of the lake or stream shall not be endangered by cables, anchors, or any concealed equipment. No waste material shall be left in the water in such manner as to endanger other craft or to change the course of any stream. [C39, §1828.21; C46, 50, 54, §111.55]

Referred to in §111.57

**111.56 Disturbing natural bank.** Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission. [C39, §1828.22; C46, 50, 54, §111.56]

Referred to in §111.57

**111.57 Penalties.** Any person violating any of the provisions of the foregoing sections numbered 111.35 to 111.56, inclusive, shall, upon conviction, be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [C39, §1828.23; C46, 50, 54, §111.57]

#### MAINTENANCE EQUIPMENT

**111.58 Use by cities, counties and highway commission.** The council within the limits of the municipal corporation, the board of supervisors within the limits of the county and the state highway commission, are hereby given authority to permit use of maintenance equipment under their control in state parks and other lands of the conservation commission, notwithstanding any other provisions of the Code to the contrary. [56GA, ch 93, §1]

## CHAPTER 111A

## COUNTY CONSERVATION BOARD

111A.1 Purposes.

111A.2 Petition—board membership.

111A.3 Meetings—annual report.

111A.4 Powers and duties.

111A.5 Rules and regulations—officers.

111A.6 Funds—tax levy—gifts.

111A.7 Joint operations.

111A.8 School property used.

111A.9 Advice and assistance.

**111A.1 Purposes.** The purposes of this chapter are to create a county conservation board and to authorize counties to acquire, develop, maintain, and make available to the inhabitants of the county, public parks, preserves, parkways, playgrounds, recreational centers, county forests, wildlife and other conservation areas, and to promote and preserve the health and general welfare of the people, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing adequate programs of public recreation. [56GA, ch 12, §4]

**111A.2 Petition—board membership.** Upon petition of two hundred voters in any county to the board of supervisors thereof, said board shall submit to the people of the county at the next primary or general election the question whether a county conservation board shall be created as provided for in this chapter. If at said election the majority of votes polled for the creation of a county conservation board, the board of supervisors shall within sixty days after said election, create a county conservation board to consist of five bona fide residents of such county. The members first appointed shall hold office for the term of one, two, three, four and five years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term shall be filled by appointment for the unexpired term. When any member of the board, during the term of office, shall cease to be a bona fide resident of the county, he or she shall thereby be disqualified as a member of said board and his or her office shall thereupon be declared vacant. Members of the board shall be selected and appointed on the basis of their demonstrated interest in conservation matters, and shall serve without compensation, but may be paid their actual and necessary expenses incurred in the performance of their official duties. [56GA, ch 12,§5; 57GA, ch 86,§1]

**111A.3 Meetings — annual report.** Within thirty days after their appointment, the board shall organize by selecting from its members a president and secretary and such other officers as are deemed necessary, who shall hold office for the calendar year in which elected and until their successors are selected and qualify. Three members of the board shall constitute a quorum for the transaction of business. The board shall hold regular

monthly meetings. Special meetings may be called by the president, and shall be called on the request of a majority of members, as the necessity may require. The county conservation board shall have power to adopt bylaws, to adopt and use a common seal, and to enter into contracts. The county board of supervisors shall provide suitable offices for the meetings of the county conservation board and for the safekeeping of its records. Such records shall be subject to public inspection at all reasonable hours and under such regulations as the county conservation board may prescribe. Said board shall annually make a full and complete report to the county board of supervisors of its transactions and operations for the preceding year. Such report shall contain a full statement of its receipts, disbursements, and the program of work for the period covered, and may include such recommendations as may be deemed advisable. A copy of this report shall be filed with the state conservation commission. [56GA, ch 12, §6]

**111A.4 Powers and duties.** The county conservation board shall have the custody, control and management of all real and personal property heretofore or hereafter acquired by the county for public parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas, and other county conservation and recreation purposes and is authorized and empowered:

1. To study and ascertain the county's park, preserve, parkway, and recreation and other conservation facilities, the need for such facilities, and the extent to which such needs are being currently met, and to prepare and adopt a co-ordinated plan of areas and facilities to meet such needs.

2. To acquire in the name of the county by gift, purchase, lease, agreement or otherwise, in fee or with conditions, suitable real estate within or without the territorial limits of the county areas of land and water for public parks, preserves, parkways, playgrounds, recreation centers, forests, wildlife and other conservation purposes. The state conservation commission, the county board of supervisors, or the governing body of any city, town or village may, upon request of the county conservation board, designate, set apart and transfer to the county conservation board for use as parks, preserves, parkways, playgrounds, recreation centers, play fields, tennis courts, skating rinks, swimming pools, gymnasiums, rooms for arts and crafts, camps and

meeting places, community forests, wildlife areas and other recreational purposes, any land and buildings owned or controlled by the state conservation commission or such county or municipality and not devoted or dedicated to any other inconsistent public use. In acquiring or accepting land, due consideration shall be given to its scenic, historic, archaeological, recreational or other special features, and no land shall be acquired or accepted which in the opinion of the board and the state conservation commission is of low value from the standpoint of its proposed use.

3. The county conservation board shall file with and obtain approval of the state conservation commission on all proposals for acquisition of land, and all general development plans and programs for the improvement and maintenance thereof before any such program is executed.

4. To plan, develop, preserve, administer and maintain all such areas, places and facilities, and construct, reconstruct, alter and renew buildings and other structures, and equip and maintain the same.

5. To accept in the name of the county gifts, bequests, contributions and appropriations of money and other personal property for conservation purposes.

6. To employ and fix the compensation of an executive officer who shall be responsible to the county conservation board for the carrying out of its policies. The said executive officer shall have the power, subject to the approval of said board, to employ and fix the compensation of such assistants and employees as may be deemed necessary for carrying out the purposes and provisions of this chapter, but not in excess of those paid state conservation officers and employees for like services.

7. To charge and collect reasonable fees for the use of such facilities, privileges and conveniences as may be provided and for admission to amateur athletic contests, demonstrations and exhibits and other noncommercial events.

8. To let out and rent privileges in or upon any property under its control upon such terms and conditions as are deemed by it to be in the public interest. [56GA, ch 12,§7]

**111A.5 Rules and regulations—officers.** The county conservation board may make, alter, amend or repeal rules and regulations for the protection, regulation and control of all parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. No rules and regulations adopted shall be contrary to, or inconsistent with, the laws of the state of Iowa. Such rules and regulations shall not take effect until ten days after their adoption by said board and after their publication once a week for two weeks in at least one paper circulating in the county and after a copy thereof has been posted near each gate or principal entrance to the public ground to

which they apply. The board may designate the executive officer and such employees as he may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of the state of Iowa and the apprehension of violators thereof. [56GA, ch 12,§8]

**111A.6 Funds—tax levy—gifts.** Upon the adoption of any county of the provisions of this chapter, the county board of supervisors of such county may by resolution appropriate an amount of money from the general fund of the county for the payment of expenses incurred by the county conservation board in carrying out its powers and duties, and it may levy or cause to be levied an annual tax, in addition to all other taxes, of not less than one-fourth mill or more than one mill on the dollar of the assessed valuation of all real and personal property subject to taxation within such county, which tax shall be collected by the county treasurer as other taxes are collected, and shall be paid into a separate and distinct fund to be known as the county conservation fund, to be paid out upon the warrants drawn by the county auditor upon requisition of the county conservation board for the payment of expenses incurred in carrying out the powers and duties of said conservation board. The county conservation board shall have no power or authority to contract any debt or obligation in any year in excess of the moneys in the hands of the county treasurer immediately available for such purposes. Gifts, contributions and bequests of money and all rent, licenses, fees and charges and other revenue or money received or collected by the board shall be deposited in the county conservation fund to be used for the purchase of land, property and equipment and the payment of expenses incurred in carrying out the activities of the board, except that moneys given, bequeathed, or contributed upon specified trusts shall be held and applied in accordance with the trust specified. [56GA, ch 12,§9]

**111A.7 Joint operations.** Any county conservation board may co-operate with the federal government or the state government or any department or agency thereof to carry out the purposes and provisions of this chapter. Any county conservation board may join with any other county board or county boards to carry out the provisions of this chapter, and to that end may enter into agreement with each other and may do any and all things necessary or convenient to aid and to co-operate in carrying out the provisions of the chapter. Any city, town, village or school district may aid and co-operate with any county conservation board or any combination thereof in equipping, operating and maintaining any parks, preserves, parkways, playgrounds, recreation centers, and conservation areas, and for providing, conducting and supervising programs of activities, and may appropriate money for such purposes. The state conserva-



tion commission, county engineer, county agricultural agent, and other county officials shall render such assistance as shall not interfere with their regular employment. The board of supervisors is authorized to make available to the use of the county conservation board, county-owned equipment and operators and any county-owned materials it deems advisable. [56GA, ch 12,§10]

**111A.8 School property used.** The governing body of any school district may grant the use of any buildings, grounds, or equipment of the district to any county conservation board for the purpose of carrying out the

provisions of this chapter whenever such use of the school buildings, grounds or equipment for such purposes will not interfere with the use of the buildings, grounds, and equipment for any purpose of the public school system. [56GA, ch 12,§11]

See §297.9

**111A.9 Advice and assistance.** The state conservation commission and the state department of education\* shall advise with and may assist any county or counties in carrying out the purposes of this chapter. [56GA, ch 12,§12]

\*State department of public instruction probably intended Constitutionality, 56GA, ch 12,§13

## CHAPTER 112

### DAMS AND SPILLWAYS

Referred to in §109.1

112.1 Resolution of necessity.  
112.2 Expert plan.  
112.3 Hearing—damages.  
112.4 Adoption of plan.  
112.5 Appraisal of damages.

112.6 Filing appraisalment.  
112.7 Damages determined.  
112.8 Appeal—bond.  
112.9 Final determination and costs.  
112.10 Tentative plan.

**112.1 Resolution of necessity.** Whenever, in the opinion of the state conservation commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated. [C24, 27, 31,§1826; C35,§1828-e1; C39,§1828.24; C46, 50, 54,§112.1]

**112.2 Expert plan.** The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project. [C24, 27, 31,§1826; C35,§1828-e2; C39,§1828.25; C46, 50, 54, §112.2]

**112.3 Hearing—damages.** After said approval the commission, if it wishes to proceed further with the project, shall, with the consent of the Iowa natural resources council, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the county or counties where the water elevations are affected, under the tenta-

tive plan approved. The last of such publication or publications shall not be less than five days prior to the day set for hearing. Any claim by any persons whomsoever, for damages which may be caused by said project shall be filed with the commission at or prior to the time of the hearing provided herein. [C24, 27, 31,§1826; C35,§1828-e3; C39,§1828.26; C46, 50, 54,§112.3]

**112.4 Adoption of plan.** If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners. [C24, 27, 31,§1826; C35,§1828-e4; C39,§1828.27; C46, 50, 54,§112.4]

**112.5 Appraisal of damages.** If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a registered civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project. [C24, 27, 31,§1826; C35,§1828-e5; C39,§1828.28; C46, 50, 54,§112.5]

**112.6 Filing appraisal.** The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project. [C24, 27, 31,§1826; C35,§1828-e6; C39, §1828.29; C46, 50, 54,§112.6]

**112.7 Damages determined.** At the time fixed for hearing and after receipt of the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings. [C24, 27, 31,§1826; C35,§1828-e7; C39,§1828.30; C46, 50, 54,§112.7]

**112.8 Appeal—bond.** Appeals from orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant shall be treated as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. All appeals shall be taken within twenty days after

date of final action or order of the commission from which such appeal is taken, by filing with the secretary of the commission a notice of appeal designating the court to which the appeal is taken, the order or action appealed from and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the appellant. [C24, 27, 31, §1826; C35,§1828-e8; C39,§1828.31; C46, 50, 54, §112.8]

45GA, ch 35,§8, editorially divided

**112.9 Final determination and costs.** The amount of damages or compensation found by the court shall be entered of record. Unless the result on the appeal is more favorable to the appellant than the action of the commission, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission. [C24, 27, 31,§1826; C35,§1828-e9; C39,§1828.32; C46, 50, 54,§112.9]

**112.10 Tentative plan.** If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed. [C24, 27, 31,§1826; C35,§1828-e10; C39,§1828.33; C46, 50, 54,§112.10]

## CHAPTER 113

### FENCES

113.1 Partition fences.  
 113.2 Trimming and cutting back.  
 113.3 Powers of fence viewers.  
 113.4 Decision.  
 113.5 Contribution postponed.  
 113.6 Default—damages and fees collected as taxes.  
 113.7 Service of notice on nonresidents.  
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 113.9 Notice.  
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 113.14 Lands in different townships.  
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 113.16 Right to build fence on line.  
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 113.18 "Lawful fence" defined.  
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 113.20 "Tight fence" defined.  
 113.21 Duty to keep fence tight.  
 113.22 Controversies.  
 113.23 Appeal.  
 113.24 Certification of decree.  
 113.25 Record kept—fees of clerk.

**113.1 Partition fences.** The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year. [C51,§§895, 900, 901; R60,

§§1526, 1531, 1532; C73,§§1489, 1494, 1495; C97, §2355; C24, 27, 31, 35, 39,§1829; C46, 50, 54,§113.1]  
 39GA, ch 76,§1, editorially divided

**113.2 Trimming and cutting back.** If said fence be hedge, the owner thereof shall trim

or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk. [C51,§900; R60,§1531; C73,§1494; C97,§2355; C24, 27, 31, 35, 39,§1830; C46, 50, 54,§113.2]

**113.3 Powers of fence viewers.** The fence viewers shall have power to determine any controversy arising under this chapter, upon giving five days' notice in writing to the opposite party or parties, prescribing the time and place of meeting to hear and determine the matter named in said notice. Upon request of any landowner, the fence viewers shall give such notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence. [C51,§§896, 898, 902, 909; R60,§§1527, 1529, 1533, 1540; C73,§§1490, 1492, 1496, 1503; C97,§2356; C24, 27, 31, 35, 39,§1831; C46, 50, 54, §113.3]

C97,§2356, editorially divided  
 Referred to in §113.5  
 Trustees as fence viewers, §359.17

**113.4 Decision.** At said time and place the fence viewers shall meet and determine by written order the obligations, rights, and duties of the respective parties in such matter, and assign to each owner the part which he shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made. [C51,§§896, 898, 902, 909; R60,§§1527, 1529, 1533, 1540; C73,§§1490, 1492, 1496, 1503; C97,§2356; C24, 27, 31, 35, 39,§1832; C46, 50, 54,§113.4]

Referred to in §113.5

**113.5 Contribution postponed.** In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which he shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in sections 113.3 and 113.4; but the adjoining owner shall not be required to contribute thereto until he becomes liable so to do, as elsewhere in this chapter provided. [C51,§901; R60,§1532; C73,§1495; C97,§2357; C24, 27, 31, 35, 39,§1833; C46, 50, 54,§113.5]

**113.6 Default—damages and fees collected as taxes.** If the erecting, rebuilding, or repairing of such fence be not completed within thirty days from and after the time fixed therefor in such order, the adjoining owner may do or complete the same, and the value thereof may be fixed by the fence viewers, and unless the sum so fixed, together with all fees of the fence viewers caused by such default, as taxed by them, is paid to the landowner so erecting, rebuilding, trimming or cutting back or repairing such fence, within

ten days after the same is so ascertained; or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and said sum, together with the fees of the fence viewers, as taxed by them, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county auditor the full amount due from the party or parties in default, including all fees and costs taxed, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists, and the county auditor shall enter the same upon the tax list and the amount shall be collected as other taxes and when so collected same shall be paid to the party or parties entitled thereto. [C51,§§897, 899, 902; R60,§§1528, 1530, 1533; C73,§§1491, 1493, 1496; C97,§2358; S13, §2358; C24, 27, 31, 35, 39,§1834; C46, 50, 54,§113.6]

Collection of taxes, ch 445 et seq.  
 Fees of fence viewers, §359.46

**113.7 Service of notice on nonresidents.** The notice by the fence viewers provided for in this chapter may be served upon any owner non-resident of the county where his land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers, and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same. [C97,§2359; S13, §2359; C24, 27, 31, 35, 39,§1835; C46, 50, 54,§113.7]

Proof of service, R.C.P. 63

**113.8 Orders.** All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk. [C97,§2360; C24, 27, 31, 35, 39, §1836; C46, 50, 54,§113.8]

C97,§2360, editorially divided

**113.9 Notice.** All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a justice of the peace. [C97,§2360; C24, 27, 31, 35, 39,§1837; C46, 50, 54,§113.9]

Service and return, §601.23 and R.C.P. 56(a)

**113.10 Entry and record of orders.** Such orders, decisions, notices, and returns shall be entered of record at length by the township clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in his office in a book kept for that purpose, and index such record in the name of each adjoining owner as grantor to the other. [C97,§2360; C24, 27, 31, 35, 39,§1838; C46, 50, 54,§113.10]

**113.11 Record conclusive.** The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts. [C97,§2360; C24, 27, 31, 35, 39,§1839; C46, 50, 54,§113.11]

Appeal, §113.23

**113.12 Division by agreement—record.** The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated. [C51,§905; R60,§1536; C73,§1499; C97,§2361; C24, 27, 31, 35, 39,§1840; C46, 50, 54,§113.12]

**113.13 Orders and agreements—effect.** Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees. [C51,§905; R60,§1536; C73,§1499; C97,§2362; C24, 27, 31, 35, 39,§1841; C46, 50, 54,§113.13]

**113.14 Lands in different townships.** When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of his township as fence viewers, and the clerk of the other township one from his township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county. [C51,§906; R60,§1537; C73,§1500; C97,§2363; C24, 27, 31, 35, 39,§1842; C46, 50, 54,§113.14]

**113.15 Fence on another's land.** When a person has made a fence or other improvement on an inclosure, which is found to be on land of another, such person may enter upon the land of the other and remove his fence or other improvement and material, upon his first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties cannot agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party. [C51,§§907, 908; R60,§§1538, 1539; C73, §§1501, 1502; C97,§2364; C24, 27, 31, 35, 39,§1843; C46, 50, 54,§113.15]

**113.16 Right to build fence on line.** A person building a fence may lay the same upon the line between him and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land. [C51,§910; R60,§1541; C73, §1504; C97,§2365; C24, 27, 31, 35, 39,§1844; C46, 50, 54,§113.16]

**113.17 Fence on one side of line.** The provisions concerning partition fences shall apply to a fence standing wholly upon one side

of the division line. [C51,§911; R60,§1542; C73, §1505; C97,§2366; C24, 27, 31, 35, 39,§1845; C46, 50, 54,§113.17]

**113.18 "Lawful fence" defined.** A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.

2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.

3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.

4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. Any other kind of fence which, in the opinion of the fence viewers, shall be equivalent thereto. [R60,§§1544, 1545; C73,§1507; C97, §2367; S13,§2367; C24, 27, 31, 35, 39,§1846; C46, 50, 54,§113.18]

Referred to in §113.22  
Schoolyard fences, §§297.13, 297.14

**113.19 Duty to maintain tight fences.** All partition fences may be made tight by the party desiring it, and when his portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct his portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart. [R60,§1545; C73,§1507; C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1847; C46, 50, 54,§113.19]

Referred to in §113.22

**113.20 "Tight fence" defined.** All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less

than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of a tight partition fence which, in the opinion of the fence viewers, is equivalent thereto. [C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1848; C46, 50, 54,§113.20]

Referred to in §113.22

**113.21 Duty to keep fence tight.** In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep his share of the partition fence in such condition as shall restrain such sheep or swine. [C73,§1507; C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1849; C46, 50, 54,§113.21]

Referred to in §113.22

**113.22 Controversies.** Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under sections 113.18 to 113.21, inclusive, including the partition fences made sheep and swine tight. [C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1850; C46, 50, 54,§113.22]

Notice, §§113.3, 113.7, 113.9

**113.23 Appeal.** An appeal may be taken to the district court from any order or decision of the fence viewers by any person affected, in the same manner appeals are taken from justices of the peace, except that the appeal bond shall be approved by the township clerk, in which event the township clerk, after re-

cording the original papers, shall file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases. [C97,§2369; C24, 27, 31, 35, 39, §1851; C46, 50, 54,§113.23]

Manner of taking appeal, R.C.P. 358  
Presumption of approval, §682.10

**113.24 Certification of decree.** Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall thereupon enter on his record a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate. [C24, 27, 31, 35, 39,§1852; C46, 50, 54,§113.24]

**113.25 Record kept—fees of clerk.** The township clerk shall enter all matters herein required to be made of record in his record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for his certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded. [C97,§2370; C24, 27, 31, 35, 39,§1853; C46, 50, 54,§113.25]

## CHAPTER 114

### CIVIL ENGINEERS

Referred to in §455.4

- 114.1 Registered engineers and surveyors.
- 114.2 Terms defined.
- 114.3 Board of engineering examiners—qualifications.
- 114.4 Appointment and tenure.
- 114.5 Vacancies—how filled.
- 114.6 Official seal—bylaws.
- 114.7 Attorney general to assist—general powers.
- 114.8 Compensation and expenses.
- 114.9 Organization of the board—meetings—quorum.
- 114.10 Annual report.
- 114.11 Secretary—duties of.
- 114.12 Engineering examiners fund.

- 114.13 Applications and examination fees.
- 114.14 General requirements for registration.
- 114.15 Examinations—report required.
- 114.16 Seal—certificate evidence of registration.
- 114.17 Certificate.
- 114.18 Expirations and renewals.
- 114.19 Land surveyor's certificate.
- 114.20 Foreign registrants.
- 114.21 Revocation of certificate.
- 114.22 Procedure.
- 114.23 Expenditures.
- 114.24 Injunction.
- 114.25 Violations.
- 114.26 Applicability of chapter.

**114.1 Registered engineers and surveyors.** No person shall practice professional engineering or land surveying in the state unless he be a registered professional engineer or a registered land surveyor as provided in this chapter, except as permitted by section 114.26. [C24, 27, 31, 35, 39,§1854; C46, 50, 54,§114.1]

**114.2 Terms defined.** The "board" means the state board of engineering examiners provided by this chapter.

The term "professional engineer" as used in this chapter shall mean a person, who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering,

acquired by professional education and/or practical experience, is qualified to engage in engineering practice as hereinafter defined.

The practice of "professional engineering" within the meaning and intent of this chapter includes any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with structures, buildings, equipment, processes, works, or projects, wherein the public welfare, or the safeguarding of life, health or property is or may be concerned or involved, when such professional service requires the application of engineering principles and data.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be active practice in engineering work.

The term "land surveyor" as used in this chapter shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of "land surveying" within the meaning and intent of this chapter includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions thereof. [C24, 27, 31, 35, 39, §1855; C46, 50, 54, §114.2]

**114.3 Board of engineering examiners—qualifications.** There is hereby created a state board of engineering examiners consisting of five members who shall be appointed by the governor. Each member of the board shall be a professional engineer at least thirty-five years of age, and shall have been a resident of this state for at least three years immediately preceding his appointment and shall have had at least ten years active practice preceding his appointment and during such time shall have had charge of engineering work as principal or assistant for at least two years, and shall be a member in good standing of a recognized state or national engineering society. No two members of said board shall be from the same branch of the profession of engineering. [C24, 27, 31, 35, 39, §1856; C46, 50, 54, §114.3]

**114.4 Appointment and tenure.** Appointments to said board shall be made as follows:

1. Two members on July 1, 1925, and each four years thereafter.

2. Three members on July 1, 1927, and each four years thereafter. [C24, 27, 31, 35, 39, §1857; C46, 50, 54, §114.4]

**114.5 Vacancies—how filled.** Vacancies in the membership of the board caused by death, resignation, or removal from office, shall be filled by an appointment from the governor for the unexpired portion of the term. [C24, 27, 31, 35, 39, §1858; C46, 50, 54, §114.5]

**114.6 Official seal—bylaws.** The board shall adopt and have an official seal which shall be affixed to all certificates of registration granted and may make all bylaws and rules, not inconsistent with law, necessary for the proper performance of its duty. [C24, 27, 31, 35, 39, §1859; C46, 50, 54, §114.6]

**114.7 Attorney general to assist—general powers.** Such board, or any committee thereof, shall be entitled to the counsel and to the services of the attorney general, and shall have power to compel the attendance of witnesses, pay witness fees and mileage, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction. [C24, 27, 31, 35, 39, §1860; C46, 50, 54, §114.7]

Administration of oaths, §78.2  
Attendance of witnesses, ch 781

**114.8 Compensation and expenses.** Each member of the board shall receive as compensation the sum of ten dollars per day for the time actually spent in traveling to and from, and in attending sessions of the board and its committees, and shall receive all necessary traveling and incidental expenses incurred in the discharge of his duties, but in no event shall the state be chargeable with any expense incurred under the provisions of this chapter. [C24, 27, 31, 35, 39, §1861; C46, 50, 54, §114.8]

**114.9 Organization of the board—meetings—quorum.** The board shall elect annually from its members a chairman and a vice chairman. The secretary of the executive council, or one of his assistants, to be designated by him, shall act as secretary of said board. The board shall hold at least one stated meeting on the first Tuesday of December of each year, and special meetings shall be called at other times by the secretary at the request of the chairman or three members of the board. At any meeting of the board, three members shall constitute a quorum. The board shall have power to employ such legal, technical and clerical assistants and incur such expense as may be necessary to properly carry out the provisions of this chapter. [C24, 27, 31, 35, 39, §1862; C46, 50, 54, §114.9]

**114.10 Annual report.** At the time provided by law, the board shall submit to the governor a written report of its transactions for the preceding year, and shall file with the secretary of state a copy thereof, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary, and a complete list of those registered under this chapter with their addresses and the dates of their certificates of registration. Said report shall be printed by the state and a copy mailed to, and placed on file in the office of the clerk of each incorporated city or town in the state and in the office of the auditor of each county therein. [C24, 27, 31, 35, 39, §1863; C46, 50, 54, §114.10]

Annual report, §17.4

**114.11 Secretary—duties of.** The secretary shall keep on file a record of all certificates of registration granted and shall make annually such revisions of said record as may be necessary. In revising said record the secretary shall communicate annually by mail with every professional engineer and surveyor registered hereunder, as provided in section 114.18. [C24, 27, 31, 35, 39, §1864; C46, 50, 54, §114.11]

**114.12 Engineering examiners fund.** The secretary shall collect and account for all fees provided for by this chapter and pay the same to the state treasurer who shall keep such moneys in a separate fund to be known as the fund of the board of engineering examiners, which shall be continued from year to year and shall be drawn on only to defray expenditures as provided in this chapter. [C24, 27, 31, 35, 39, §1865; C46, 50, 54, §114.12]

**114.13 Applications and examination fees.** Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detail summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering experience. The examination fee shall be fifteen dollars which shall accompany the application. Should the board deny the issuance of a certificate of registration to any applicant who has appeared for examination, the initial fee deposited shall be retained as an application fee. [C24, 27, 31, 35, 39, §1866; C46, 50, 54, §114.13]

**114.14 General requirements for registration.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or land surveyor, respectively, to wit:

1. As a professional engineer:

*a.* Graduation from an approved course in engineering of four years or more in an approved school or college; and a specific record of an additional four years or more of practical experience in engineering work of a character satisfactory to the board.

*b.* Successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation from an approved four year engineering course; and a specific record of eight years or more of practical experience in engineering work.

2. As a land surveyor:

*a.* Graduation from an approved course in surveying in an approved school or college; and an additional four years or more of practical experience in land surveying work.

*b.* Successfully passing a written, or written and oral, examination in surveying prescribed by the board; and a specific record of eight years or more of practical experience in land surveying work. The practical experience re-

quired in this section may be obtained under the exemption provisions of section 114.26.

In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The satisfactory completion of each year of an approved course in engineering in an approved school or college, without graduation, shall be considered as equivalent to a year of practical experience. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two years of practical experience; provided, however, that no applicant shall receive credit for more than four years of practical experience because of educational qualifications.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such registration though he may not be practicing his profession at the time of making his application.

Provided, that no person shall be eligible for registration as a professional engineer, or land surveyor, who is not of good character and reputation. [C39, §1866.1; C46, 50, 54, §114.14; 57 GA, ch 87, §1]

Applicable provisions prior to Jan. 1, 1959, see 57GA, ch 87, §2, 3

**114.15 Examinations—report required.** Examinations for registration shall be given at stated or called meetings of the board. The scope of the examinations and the methods of procedure shall be prescribed by the board. As soon as practicable, after the close of each examination, a report shall be filed in the office of the secretary of the board by the members conducting such examinations. Said report shall show the action of the board upon each application, whereupon the secretary of the board shall notify each applicant of the result of his examination. [C24, 27, 31, 35, 39, §1867; C46, 50, 54, §114.15]

**114.16 Seal—certificate evidence of registration.** Each registrant shall provide himself with a suitable seal with a uniform inscription thereon formulated by the board, with which he shall stamp all plans, specifications, surveys, and reports made or issued by him. A certificate of registration provided for in this chapter shall be presumptive evidence that the person named therein is legally registered. [C24, 27, 31, 35, 39, §1868; C46, 50, 54, §114.16]

**114.17 Certificate.** To any applicant who shall have passed the examination as a professional engineer and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration as a professional engineer signed by the chairman and secretary of the board under the seal of such board, which certificate shall authorize the applicant to practice professional engineering as defined in this chapter. Such certificate shall not carry with it the right to practice land surveying, unless specifically so stated in said certificate, which permission shall be

granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of said board. [C24, 27, 31, 35, 39,§1869; C46, 50, 54,§114.17]

**114.18 Expirations and renewals.** Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this chapter, of the date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of two dollars. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such a person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased two dollars per year for each year or fraction of a year that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed ten dollars. For the duration of any war in which the United States is engaged the board may, in its discretion, defer the collection of renewal fees without penalty, which have or may become due from registered professional engineers who are employed in the war effort, and residing outside the state, or who are members of the armed forces of the United States, and may renew the engineering certificates of said registered professional engineers. [C27, 31, 35,§1869-b1; C39,§1869.1; C46, 50, 54, §114.18]

Referred to in §114.11

**114.19 Land surveyor's certificate.** To any applicant who shall have passed the examination as a land surveyor and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration signed by its chairman and secretary under the seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to his assistants and to witnesses produced for examination, with reference to facts connected with land surveys being made by such land surveyor. [C24, 27, 31, 35, 39,§1870; C46, 50, 54,§114.19]

Administration of oaths, ch 78; also §855.9

**114.20 Foreign registrants.** The board shall from time to time examine the requirements for registration of professional engineers and land surveyors in other states, territories, and countries, and shall record those in which in the judgment of the board standards not lower than those provided by this chapter are maintained. The secretary of the board upon presentation to him of satisfactory evidence, by any person, that he holds a certificate of reg-

istration issued to him by proper authority in any state, territory or country so recorded, and upon the receipt of a fee of ten dollars, shall issue to such person a certificate of registration to practice professional engineering or land surveying as provided by this chapter, signed by the chairman and the secretary under the seal of the board, whereupon the person to whom such certificate is issued shall be entitled to all the rights and privileges conferred by the certificate issued after examination by the board. [C24, 27, 31, 35, 39,§1871; C46, 50, 54,§114.20]

**114.21 Revocation of certificate.** The board shall have the power by a four-fifths vote of the entire board to revoke the certificate of any professional engineer or land surveyor registered hereunder, found guilty of any fraud or deceit in his practice, or guilty of any fraud or deceit in obtaining his certificate, or in case he is found by the same vote to be incompetent. [C24, 27, 31, 35, 39,§1872; C46, 50, 54,§114.21]

**114.22 Procedure.** Proceedings for the revocation of a certificate of registration shall be begun by filing with the secretary of the board written charges against the accused. The board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish him a copy of all charges at least thirty days prior to the date of the hearing. The accused shall have the right to appear personally or by counsel, to cross-examine witnesses or to produce witnesses in his defense. [C24, 27, 31, 35, 39,§1873; C46, 50, 54,§114.22]

**114.23 Expenditures.** Warrants for the payment of expenses and compensations provided by this chapter shall be issued by the state comptroller upon presentation of vouchers drawn by the chairman and secretary of the board and approved by said comptroller, but at no time shall the total amount of warrants exceed the total amount of the examination and registration fees collected as herein provided. [C24, 27, 31, 35, 39,§1874; C46, 50, 54, §114.23]

**114.24 Injunction.** Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with his name use any designation tending to imply or designate him as a professional engineer or land surveyor, may be restrained by permanent injunction. [C24, 27, 31, 35, 39,§1875; C46, 50, 54,§114.24]

**114.25 Violations.** Any person who violates such permanent injunction or presents or attempts to file as his own the certificate of registration of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a



revoked certificate of registration, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. [C24, 27, 31, 35,§1875; C39,§1875.1; C46, 50, 54,§114.25]

**114.26 Applicability of chapter.** This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

Corporations engaged in designing and building works for public or private interests not their own shall be deemed to practice professional engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of registration hereun-

der. This chapter shall not apply to corporations engaged solely in building said work. This chapter shall not apply to any professional engineer or land surveyor working for the United States government, nor to any professional engineer or land surveyor employed as an assistant to a professional engineer or land surveyor registered under this chapter, nor to the operation and/or maintenance of power and mechanical plants or systems, nor to any professional engineer or land surveyor from without this state until a reasonable length of time as prescribed by the rules of the board shall have elapsed to permit the registration of such person under this chapter, provided that, before practicing within this state, he shall have applied for the issuance to him of a certificate of registration and shall have paid the fee prescribed in this chapter. [C24, 27, 31, 35, 39,§1876; C46, 50, 54,§114.26]

Referred to in §§114.1, 114.14

## CHAPTER 115

### CERTIFIED SHORTHAND REPORTERS

115.1 Board of examiners.

115.2 Appointment.

115.3 Examination.

115.4 Who eligible.

115.5 Temporary substitutes appointed.

115.6 Unlawful use of title.

115.7 Examination fee.

115.8 Revocation of certificates.

115.9 Violations punished.

**115.1 Board of examiners.** The board of examiners for court reporters herein provided for shall consist of three members, two of whom shall be official shorthand reporters of the district court of Iowa and one of whom shall be a practicing attorney of the state of Iowa. [C24, 27, 31, 35, 39,§1877; C46, 50, 54, §115.1]

**115.2 Appointment.** The said board of examiners shall be appointed by the chief justice of the supreme court for a term of three years, and the said board of examiners shall, subject to the approval of the chief justice of the supreme court, make such rules and regulations as may be necessary for the proper performance of its duties. [C24, 27, 31, 35, 39,§1878; C46, 50, 54,§115.2]

**115.3 Examination.** The board of examiners shall fix stated times for the examination of the candidates and shall receive for their services only their necessary traveling expenses, such expenses to be paid from such funds as may accrue hereunder. [C24, 27, 31, 35, 39,§1879; C46, 50, 54,§115.3]

**115.4 Who eligible.** No person shall be appointed to the position of shorthand reporter of any district, superior, or municipal court in this state, unless he be a certified shorthand reporter who has been found competent to report court proceedings, references, or proceedings of like character, by the board of examiners provided for in this chapter. [C24, 27, 31, 35, 39,§1880; C46, 50, 54,§115.4]

**115.5 Temporary substitutes appointed.** If the regularly appointed shorthand reporter should be disabled from performing his duty, the judge of such court may appoint a substitute whom he deems competent to act during the disability of the regular reporter, or until his successor is appointed. [C24, 27, 31, 35, 39, §1881; C46, 50, 54,§115.5]

**115.6 Unlawful use of title.** Any citizen of the state of Iowa who shall have received from the board of examiners a certificate of his qualifications as a shorthand reporter, as herein provided, shall be styled and known as a certified shorthand reporter, and no other person shall assume such title or use the abbreviation C.S.R., or any words, letters, or figures to indicate that the person using the same is a certified shorthand reporter. [C24, 27, 31, 35, 39,§1882; C46, 50, 54,§115.6]

**115.7 Examination fee.** Each applicant for examination shall pay to the clerk of the supreme court as an examination fee the sum of five dollars, payable before the examination is commenced. The fees thus paid to said clerk shall be by him paid into the state treasury upon receipt thereof, to be kept as a special fund to be used as provided for in this chapter. [C24, 27, 31, 35, 39,§1883; C46, 50, 54,§115.7]

**115.8 Revocation of certificates.** The board of examiners may revoke any such certificate for sufficient cause, after written notice to the holder thereof and hearing thereon. Any member of the board of examiners may, upon being

duly designated by said board or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of said board. [C24, 27, 31, 35, 39,§1884; C46, 50, 54,§115.8]

**115.9 Violations punished.** Any violation of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [C24, 27, 31, 35, 39,§1885; C46, 50, 54,§115.9]

## CHAPTER 116 ACCOUNTANCY

116.1 Board of accountancy.  
116.2 Powers and duties.  
116.3 Annual register.  
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**116.1 Board of accountancy.** The board of accountancy shall consist of three members, all of whom shall be practicing certified public accountants, having practiced accountancy in this state for at least five years. Within sixty days after this chapter takes effect, the governor shall appoint the members of said board for terms as follows: One for a term ending June 30, 1930, one for a term ending June 30, 1931, and one for a term ending June 30, 1932, and upon the expiration of each of said terms and of each succeeding term, a member shall be appointed for a term of three years but no person shall be eligible for more than two consecutive terms of office. Vacancies occurring in the membership of the board for any cause shall be filled by the governor for the unexpired term. [SS15,§2620-b; C24, 27, §1886; C31, 35,§1905-c1; C39,§1905.01; C46, 50, 54, §116.1]

do business in this state in the penal sum of five thousand dollars and shall on or before June 30 in each year, pay all sums remaining after the payment of the expenses authorized by this chapter into the state treasury to be there carried to the credit of and subject to withdrawal by the board of accountancy; (9) the board shall make a biennial report to the governor of its proceedings, with an account of all moneys received and disbursed, a list of the names of all practitioners whose certificates to practice have been revoked or suspended, and such other information as it may deem proper or the governor request, and do all other things required by this chapter to be done by said board. [SS15,§§2620-c,-d,-g,-h; C24, 27,§§1888, 1889, 1895, 1899, 1902; C31, 35,§1905-c2; C39,§1905.02; C46, 50, 54,§116.2]

Annual report to governor, §17.4  
Biennial report, §17.3

**116.2 Powers and duties.** The board shall have power and it shall be its duty to: (1) Adopt, print, publish, and distribute reasonable rules not inconsistent with the provisions of this chapter for the guidance of the public, registered practitioners, and applicants for examination; (2) compel the attendance of witnesses; (3) administer oaths; (4) take testimony; (5) require proof in all matters pertaining to the administration of this chapter; (6) keep a record of all their proceedings including applications for examinations, registration, and certificates to practice showing the reasons for the refusal of any such application or for the revocation or suspension of any registration or certificate to practice; (7) preserve testimony taken in all hearings provided for in this chapter. Testimony may be oral or by deposition; and when oral the questions and answers shall be taken down by a certified shorthand reporter and full transcripts thereof made for the use of the parties interested; (8) the treasurer elected shall upon assuming office file with the auditor of state a good and sufficient bond in a company authorized to

**116.3 Annual register.** The board of accountancy shall have printed and published for public distribution, in January of each year, an annual register which shall contain the names, arranged alphabetically by classifications, of all practitioners registered under this chapter; the names of the board of accountancy; and such other matters as may be deemed proper by the board of accountancy. Copies of said reports shall be mailed to each registered practitioner. [SS15,§2620-d; C24, 27, §1895; C31, 35,§1905-c3; C39,§1905.03; C46, 50, 54, §116.3]

**116.4 No compensation—expenses.** No compensation shall be paid to any member of the board for services as such, but the members thereof shall be allowed the necessary traveling, printing and other expenses incident to the discharge of their duties. Bills for the expense of the board or its members shall be audited and allowed by the state comptroller and shall be paid from the fees received under the provisions of this chapter. [SS15,§2620-h; C24, 27,§1900; C31, 35,§1905-c4; C39,§1905.04; C46, 50, 54,§116.4]

**116.5 Annual meetings.** The board shall hold an annual meeting during the first week in July of each year, and a special meeting within sixty days after this chapter takes effect, for the purpose of electing from its accountant members, a chairman, a secretary and a treasurer; and it shall meet not less than four times each year, at least two of which meetings shall be held at the statehouse. Two members shall constitute a quorum except as otherwise provided. [SS15,§2620-c; C24, 27, §1888; C31, 35,§1905-c5; C39,§1905.05; C46, 50, 54, §116.5]

**116.6 Definitions.** The term "accountant" includes all persons engaged in the practice of accountancy, within the meaning and intent of this chapter, who, holding themselves out to the public as qualified practitioners, and maintaining an office for this purpose, either in their own names, or as office managers and/or as managing officers of assumed name, association or corporate organization, perform for compensation, on behalf of more than one client, a service which requires the audit or verification of financial transactions and accounting records; the preparation, verification and certification of financial, accounting, and related statements for publication or for credit purposes; and/or who in general and incidental to such work, render professional assistance in any and all matters of principal and detail concerning accounting procedure and the recording, presentation, and certification of financial facts.

The practice of accountancy shall mean and include any person, firm, or corporation who practices as an accountant as defined in the next preceding paragraph. [SS15,§2620-a; C24, 27,§1890; C31, 35,§1905-c6; C39,§1905.06; C46, 50, 54,§116.6]

Referred to in §116.7

**116.7 Other terms defined.**

1. A "certified public accountant" is a person who receives from the board of accountancy of the state, a certificate under any law of the state relating to certified public accountants and which certificate has not been revoked under due process of law; and is entitled to use the abbreviation C.P.A. in connection with his name. All other practitioners may use their title in full as stated herein and no other.

2. A "public accountant" is a person who is engaged in the practice of accountancy at the time of enactment of this chapter and who is not a certified public accountant, but who can qualify as a practitioner under the provisions of section 116.6.

3. A "senior accountant" or "senior staff accountant" means a person employed by a practitioner entitled to registration under this chapter, and who, through the experience deemed necessary by his employer, has qualified and has been placed in charge of public accounting assignments.

4. A "junior accountant" is a person who,

through lack of experience, is required to work under the supervision of a senior accountant or a practitioner as herein defined.

5. "Office" as used in section 116.6, means one or more office rooms through which public accounting work is handled.

6. "Office managers" and/or "managing officers" as used in section 116.6, means persons having charge of public accountancy work handled through an office as defined in subsection 5 of this section. [SS15,§2620-a; C24, 27, §1890; C31, 35,§1905-c7; C39,§1905.07; C46, 50, 54, §116.7]

**116.8 Examination.** All applicants for registration and certificates to practice accountancy, except persons actually engaged in such practice at the date of the passage of this chapter, and except as provided in section 116.10, and all persons who desire to become certified public accountants shall be required to take a written examination to be conducted by the board of accountancy, and upon satisfactorily passing the same shall receive certificates as certified public accountants and shall be entitled to practice as such upon the payment of annual fees as in this chapter provided.

Such examination shall be upon the following subjects: Theory of accounts, practical accounting, auditing, taxation, general commercial knowledge, and commercial law.

Examinations as above provided shall be conducted by the board of accountancy at least once each year in May or November, or both, as the board may deem expedient.

The board shall at its meetings establish the time and place of holding such examinations, and shall cause to be published a notice thereof for not less than three consecutive days in each of three daily newspapers published in this state, the last publication to be not less than sixty days prior to such examination, and shall notify all candidates of their success or failure within a reasonable time, stating the grade received on each paper or subject. [SS15,§2620-d; C24, 27,§1891; C31, 35,§1905-c8; C39,§1905.08; C46, 50, 54,§116.8]

Referred to in §§116.9, 116.10

**116.9 Qualifications for examination.** Every applicant for the examination provided for in section 116.8 must be over twenty-one years of age, a resident of this state, a citizen of the United States or have declared his or her intention to become such, of good moral character, a graduate of a high school having at least a four-year course of study or its equivalent as determined by the board of accountancy, or shall pass a preliminary examination to be given by the board at least thirty days before the regular examination; and a graduate of a college or university commerce course of at least three years, majoring in accounting, and in addition shall have had at least one year's service as a staff accountant in the employ of a practitioner entitled to registration under this chapter.

The following shall, however, be accepted in lieu of the college or university commerce course and the one year of service:

1. Three years continuous practical accounting experience as a public accountant or as a staff accountant.

2. Three years continuous employment as a field examiner under a revenue agent-in-charge of the income tax bureau of the treasury department of the United States, or as a field examiner in the auditor's, comptroller's, banking, income tax, or insurance departments of this state. [SS15,§2620-d; C24, 27,§1892; C31, 35,§1905-c9; C39,§1905.09; C46, 50, 54,§116.9; 57GA, ch 88, §1]

**116.10 Registration of applicants.** All applicants for registration and certificates to practice accountancy shall be required to take and pass the examination provided for in section 116.8, except as follows:

1. The holders of unrevoked certified public accountant certificates granted in this state prior to September 30, 1929, and who are not engaged in practice at that time may register their certificates in December, 1929.

2. The holders of unrevoked certified public accountant certificates granted by other states or of equivalent certificates granted by the recognized authority of foreign countries may register their certificates, provided such certificates were issued as the result of an examination which, in the judgment of the board of accountancy, was equivalent to the standard set by it, or the holders thereof shall have been in continuous practice thereunder for at least seven years.

3. All senior accountants who have been continuously employed as such for at least three years prior to June 30, 1929, by practitioners entitled to registration under this chapter or as senior accountants in the employ of public accountants of recognized standing in other states shall be registered as public accountants, provided the last year of such employment shall have been in this state.

4. Certificates to practice either as certified public accountants or public accountants, shall not be issued to any person referred to herein until such person shall have filed with the board of accountancy a written declaration of intention to practice as defined by this chapter. [SS15,§§2620-d,f; C24, 27,§§1895, 1896; C31, 35, §1905-c12; C39,§1905.10; C46, 50, 54,§116.10]

Referred to in §116.8

**116.11 Oath—bond or insurance.** Every applicant for certificate to practice accountancy shall be required, prior to the issuance thereof, to subscribe and file with the board the following oath: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and conscientiously perform the duties of a practitioner of accountancy to the best of my ability and in accordance with the law."

Every person having been granted a certificate to practice accountancy under the provisions of this chapter, or any renewal thereof, shall give a bond in the sum of five thousand dollars to the accountancy board and approved by it before entering upon the discharge of his duties for the faithful performance of the same.

However, in lieu of that five thousand dollar bond, such person may file a certification from an insurance carrier that such person is insured, as an individual or a member of a partnership, under an accountancy liability policy in an equal or greater amount. [C24, 27, §1898; C31, 35,§1905-c13; C39,§1905.11; C46, 50, 54, §116.11; 57GA, ch 89,§1]

**116.12 Fees.** The board of accountancy shall collect the following fees:

1. For examination of applicants, the sum of twenty-five dollars.

2. For registration of certified public accountant certificates granted by other states and foreign countries, the sum of twenty-five dollars.

3. For issuance of certificates to practice, the sum of ten dollars in December, 1929, and annually thereafter; for periods of less than six months, five dollars.

4. For registration of firm, assumed, association or corporate names; of certified public accountants not in practice; and of senior accountants entitled thereto, the sum of five dollars payable in December, 1929, and annually thereafter.

On the failure of payment of any of the annual fees above provided, the registration shall be automatically canceled and any registrant so defaulting shall not be entitled to receive a certificate to practice until he or she shall have paid the registration fee as provided herein, together with the amount of such default or arrears. [SS15,§2620-d; C24, 27,§§1894, 1897; C31, 35,§1905-c14; C39,§1905.12; C46, 50, 54, §116.12]

**116.13 Renewal of certificates.** Registrations and certificates to practice shall be subject to renewal in December of each year upon payment of the fees provided by this chapter. [C31, 35,§1905-c15; C39,§1905.13; C46, 50, 54, §116.13]

**116.14 Revocation.** The board of accountancy shall revoke and cancel the registration or certificate to practice of any person upon proof that the holder thereof has been convicted of a felony or any lesser offense involving dishonesty or fraud; or has been principal or accessory to the issuance or certification of false or fraudulent financial or related statements; or has obtained registration and certificate to practice or either by means of false statements or representations; or may suspend such registration and certificates or either upon proof that the holder thereof has been guilty of unprofessional or unethical conduct in connection with the practice of accountancy. Such suspension shall be for such period of

time, not exceeding one year, as in the discretion of the board shall be deemed appropriate.

Neither revocation nor suspension as herein provided shall be ordered by the board until a written notice stating the name of the person or persons who filed the charges, or that the board initiated the charges; a full and complete copy of the charges which have been preferred; and fixing the time and place where the hearing shall be had; shall have been served upon the person against whom such charges are filed in the manner of serving original notices in the district court of Iowa, at least twenty days before the date fixed for hearing.

The board may adjourn such hearing from time to time upon request of the party charged, for the purpose of a fair hearing, and the certificate holder shall have the right to be represented by counsel.

All hearings as herein provided shall be before the full board, and a two-thirds vote of the members thereof shall be required before any cancellation, revocation or suspension shall be ordered.

The district court is empowered to enforce by proper proceedings the provisions of this chapter relating to the attendance and testimony of witnesses and the examination of books and records. [SS15,§2620-g; C24, 27,§1899; C31, 35,§1905-c16; C39,§1905.14; C46, 50, 54, §116.14]

**116.15 Confidential information.** The information acquired by registered practitioners or their employees, agents, or servants in the course of professional engagements shall be deemed confidential and privileged, and except by written permission of the clients involved, or of their heirs or personal representatives, shall not be disclosed to any person; provided, however, that nothing contained in this section shall be construed to modify, change, or otherwise affect the criminal or bankruptcy laws of this state or of the United States. [C31, 35,§1905-c17; C39,§1905.15; C46, 50, 54, §116.15]

**116.16 Corporations.** Articles of incorporation shall not, after the passage of this chapter, be granted which include among their objects, the practice of accountancy, but nothing contained in this chapter shall be construed to alter, abridge, revoke or in any manner affect the rights and powers of existing corporations. [C31, 35,§1905-c18; C39,§1905.16; C46, 50, 54, §116.16]

**116.17 Unlawful practice.** It shall be unlawful after September 30, 1929, for any person to practice accountancy in this state as defined in this chapter either as an individual or as a member of any firm or association or under a firm, assumed or corporate name, whether maintaining an office for such practice or not, unless such person is the holder of a certificate to practice for the current year

or is entitled to registration as in this chapter provided and has made application therefor. [SS15,§2620-i; C24, 27,§1904; C31, 35,§1905-c19; C39,§1905.17; C46, 50, 54,§116.17]

**116.18 Penalties—injunction.** Any person, firm or corporation who shall practice accountancy in this state in violation of the provisions of this chapter, or who shall in any manner hold themselves out to the public as practitioners of accountancy without having complied with all of the provisions of this chapter, shall for each such offense be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding thirty days, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Any person, firm or corporation who shall sign, execute, or publish any report, financial, accounting, or related statement, designating himself or themselves as registered or certified practitioners or knowingly permit the printing and publication of any announcement in writing to the effect that such report or statement has been prepared by a registered or certified practitioner when in fact the person, firm or corporation preparing the same was not registered or certified as in this chapter provided, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the county jail for a term not exceeding one year.

Any practitioner of accountancy who shall willfully or knowingly utter or certify to the correctness of any report, financial, accounting, or related statement, which is known to such practitioner to be false, misleading to the public, or designed to mislead any person, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not to exceed five thousand dollars, or by imprisonment in the state prison for a term not exceeding two years, or by both such fine and imprisonment in the discretion of the court.

Any person, firm, or corporation who shall practice accountancy in this state as defined in this chapter in violation of the provisions of this chapter may be restrained by permanent injunction. [SS15,§§2620-i,-j; C24, 27, §§1904, 1905; C31, 35,§1905-c20; C39,§1905.18; C46, 50, 54,§116.18]

**116.19 Exceptions.** Nothing contained in this chapter shall be construed to prevent:

1. The holders of certified public accountant certificates granted by other states from practicing in this state in connection with temporary engagements incident to their professional practice in the states of their domicile but, who have neither office nor legal address in this state; provided they file with the board of accountancy, and with the auditor of state, at least five days before commencing work for a client, the written appointment of a registered practitioner in this state to act as agent upon whom legal service may be had in all

matters which may arise from such temporary professional engagements.

2. The employment by registered practitioners of nonregistered persons to serve as staff accountants provided the latter do not issue reports or accounting statements in their own names except such office records as may be customary.

3. Attorneys at law duly admitted to practice in this state from doing anything usual and

proper in connection with their duties as such attorneys.

4. The employment of persons by more than one individual firm or corporation for the purpose of keeping books, making trial balances, or performing general commercial bookkeeping. [C31, 35, §1905-c21; C39, §1905.19; C46, 50, 54, §116.19]

Constitutionality, 43GA, ch 59, §24

## CHAPTER 117

### REAL ESTATE BROKERS AND SALESMEN

Effective January 1, 1946, see 51GA, ch 96, §45

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**117.1 License mandatory.** No person shall act as a real estate broker or real estate salesman without first obtaining a license as provided in this chapter. The word "person" as provided in said chapter shall mean and include partnership, association, or corporation. [C31, 35, §1905-c23; C39, §1905.20; C46, 50, 54, §117.1]

Referred to in §117.44

**117.2 Individual licenses necessary.** No copartnership, association, or corporation shall be granted a license, unless every member or officer of such copartnership, association, or corporation, who actively participates in the brokerage business of such copartnership, association, or corporation, shall hold a license as a real estate broker, and unless every employee who acts as a salesman for such copartnership, association, or corporation shall hold a license as a real estate salesman. [C31, 35, §1905-c24; C39, §1905.21; C46, 50, 54, §117.2]

**117.3 "Broker" defined.** The term "real estate broker" within the meaning of this chapter shall include any person, other than a salesman and except as herein provided, who

engages for all or part of his time in the following:

1. The business of selling, exchanging, purchasing, or renting of real estate for another for a fee, commission, or other consideration.

2. Listing real estate of others for sale, exchange, or rental for a fee, commission, or other consideration or advertises or holds himself out as a real estate broker. [C46, 50, 54, §117.3]

Referred to in §117.6

**117.4 "Real estate" defined.** "Real estate" as used in this chapter shall mean real property wherever situated, and shall include any and all estate therein. [C46, 50, 54, §117.4]

**117.5 "Salesman" defined.** "Real estate salesman" as used in this chapter is a person employed by or otherwise associated with a real estate broker, as a selling, renting, or listing agent or representative of said broker. [C31, 35, §1905-c25; C39, §1905.22; C46, 50, 54, §117.5]

**117.6 Acts constituting dealing in real estate.** Any person, partnership, association, or

corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, does, offers or attempts or agrees to do, engages in or offers or attempts or agrees to engage in, either directly or indirectly, any single act or transaction contained in the definition of a real estate broker as set out in section 117.3, whether said act be an incidental part of a transaction, or the entire transaction, shall constitute such person, partnership, association, or corporation a real estate broker or real estate salesman within the meaning of this chapter. [C46, 50, 54,§117.6]

**117.7 Acts excluded from provisions.** The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, or advertising of any real estate in any of the following cases:

1. Owners or lessors, or to the regular employees thereof, with respect to the property owned and leased where such acts are performed in the regular course of or incident to the management of property owned and the investment therein.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, authorizing the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.

3. Nor shall the provisions of this chapter apply to an attorney admitted to practice in Iowa.

4. The acts of one while acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or under court order or while acting under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction.

6. An isolated real estate rental transaction by an owner's representative on behalf of said owner; such transaction not being made in the course of repeated and successive transactions of a like character. [C31, 35,§1905-c26; C39, §1905.23; C46, 50, 54,§117.7]

**117.8 Commission created.** There is hereby created the Iowa real estate commission which shall consist of the secretary of state as chairman and four members appointed by the governor with approval of two-thirds of the senate in executive session, each of whom prior to the date of his appointment shall have been actively engaged as a real estate broker within this state for a period of not less than five years. Of the first appointments hereunder two members shall be appointed for terms of two years and two members shall be appointed for terms of four years and until their successors have been appointed and qualified. Thereafter, at the expiration of the term of each appointed member, the governor shall

appoint a successor for a term of four years. The terms of all of said appointments shall commence on July 1 of the year in which the appointment is made. There shall at no time be more than one appointed commissioner from any one county, nor may any person act as an appointed commissioner while holding any other elective or appointive state or federal office. In the event of a vacancy on the commission, the governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of the majority of the members of the commission shall be termed the action of the commission. [C46, 50, 54,§117.8]

**117.9 Rules and regulations.** The commission is empowered to promulgate rules and regulations to carry out and administer the provisions of this chapter consistent therewith. Said commission may carry on a program of education of real estate practices and matters relating thereto. [C31, 35,§1905-c33; C39,§1905.30; C46, 50, 54,§117.9]

**117.10 Office and supplies.** The commission shall be provided by the executive council with office space in the office of the secretary of state and with office furniture, power, light, and other proper conveniences necessary for the carrying out of this chapter. Necessary printing and supplies shall be purchased by the commission subject to the general laws of the state. [C31, 35,§1905-c27; C39,§1905.24; C46, 50, 54,§117.10]

**117.11 Director.** The commission shall employ a director at a salary not to exceed thirty-six hundred dollars per annum and such clerks and assistants as shall be necessary to discharge the duties imposed by the provisions of this chapter and to effect the purposes of this chapter, and the commission shall determine the duties of such director, clerks, and assistants. [C31, 35,§1905-c27; C39,§1905.24; C46, 50, 54,§117.11]

**117.12 Compensation of commissioners.** Each appointed member of the commission shall receive as full compensation for each day actually spent on the work of the commission the sum of ten dollars per diem and his actual and necessary expenses in the performance of duties pertaining to his office. The total per diem compensation of a single member of the commission shall not exceed five hundred dollars per annum. [C46, 50, 54, §117.12]

**117.13 Seal—records.** The commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under

authority of this chapter shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commission. [C31, 35,§1905-c28; C39,§1905.25; C46, 50, 54,§117.13]

**117.14 Fees and expenses.** All fees and charges collected by the commission under the provisions of this chapter shall be paid into the general fund in the state treasury. All expenses incurred by the commission under the provisions of this chapter, including compensation to the director, clerks, and assistants shall be paid out of the general fund in the state treasury. The commission shall be subject to the provisions of chapter 8 and shall be subject to the provisions of section 8.33. [C31, 35,§1905-c29; C39,§1905.26; C46, 50, 54, §117.14]

**117.15 Qualifications.** Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or salesman in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the commission. The applicant must be a person whose application has not been rejected in this or any other state within six months prior to the date of application, or whose real estate license has not been revoked in this or any other state within two years prior to date of application. Every applicant for a license as a real estate broker or salesman shall be of the age of twenty-one years or over and a citizen of the United States. Provided, however, that any person not a citizen of the United States may be eligible for a license if due proof is made to the commission that he has declared his intention to become a citizen of the United States. [C31, 35,§1905-c30; C39,§1905.27; C46, 50, 54,§117.15; 57GA, ch 90,§1]

**117.16 Application forms—sworn statement.** Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared or furnished by the real estate commission. Such application shall be accompanied by the recommendation of at least two citizens, real estate owners, not related to the applicant, who have owned real estate for a period of one year or more and have known the applicant for a period of six months, in the county in which said applicant resides, or has his place of business, which recommendation shall certify that the applicant bears a good reputation for honesty, truthfulness, fair dealing and competency, and recommending that a license be granted to the applicant.

Every applicant for a license shall furnish a sworn statement setting forth his present address, both of business and residence, a complete list of all former places where he may have resided or been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period, and the length of such residence, together with

the name and address of at least one real estate owner in each of said counties where he may have resided or have been engaged in business and whether he has been convicted of a criminal offense involving moral turpitude, and if so, what offense.

The commission shall prepare and furnish written application blanks for salesman's license, to contain request for such information as the commission may require. The application shall be accompanied by a written statement by the broker in whose service he is about to enter, stating that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the license be granted to the applicant. [C31, 35,§1905-c31; C39,§1905.28; C46, 50, 54,§117.16]

**117.17 Other proof.** The commission, with due regard to the paramount interests of the public, may require such other proof as shall be deemed desirable as to the honesty, truthfulness, integrity, reputation, and competency of the applicant. [C31, 35,§1905-c32; C39, §1905.29; C46, 50, 54,§117.17]

**117.18 Enforcement of rules.** The commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter. [C31, 35,§1905-c33; C39,§1905.30; C46, 50, 54,§117.18]

**117.19 License denied—hearing.** If the commission, after an application in proper form has been filed with it, accompanied by the proper fee and the applicant's certification of trustworthiness, competence, and integrity, shall deny a license to the applicant, upon his application in writing, and within a period of thirty days of such denial, he shall be entitled to a hearing as provided in section 117.35. [C31, 35,§1905-c34; C39,§1905.31; C46, 50, 54,§117.19]

Referred to in §117.35

**117.20 Written examination.** Each applicant for a license must pass a written examination conducted by said commission or its authorized representative which examination shall be of scope and wording sufficient in the judgment of the commission to establish the competency and trustworthiness of the applicant to act as a real estate broker or salesman in such manner as to protect the interests of the public. An examination for a real estate broker shall be of a more exacting nature than that for a real estate salesman and require higher standards of knowledge of real estate. [C46, 50, 54,§117.20]

See 51GA, ch 96,§20

**117.21 Nonresident license.** A nonresident of this state may be licensed as a real estate broker, or a real estate salesman, upon complying with all requirements of law and with all the provisions and conditions of this chapter relative to resident brokers and salesmen,



and the filing by the applicant with the commission of a certification from the state of original licensure signed by the duly qualified and authorized official or officials of such state that the applicant is there currently licensed, that no charges against the applicant are there pending, and that applicant's record in such state justifies the issuance of a license to such applicant in Iowa. The commission may waive the requirement of an examination in the case of a nonresident broker who is licensed under the laws of a state having similar requirements and where similar recognition and courtesies may be extended to licensed real estate brokers and salesmen of this state. [C31, 35,§1905-c57; C39,§1905.54; C46, 50, 54, §117.21; 57GA, ch 90,§2]

**117.22 Nonresident's place of business.** A nonresident to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, shall not be required to maintain a definite place of business within this state. Provided, that such nonresident, if a broker, shall maintain an active place of business within the state of his domicile, and provided further, that the privilege of so submitting a certification of licensure certified to by the qualified and authorized official or officials of the state of original licensure, in lieu of the recommendations and statements otherwise required, shall only apply to licensed real estate brokers and real estate salesmen of those states under the laws of which similar recognition and courtesies are extended to licensed real estate brokers and real estate salesmen of this state. [C31, 35,§1905-c57; C39,§1905.54; C46, 50, 54, §117.22; 57GA, ch 90,§3]

Referred to in §117.31

**117.23 Actions against nonresidents.** Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise, by the service of any process or pleadings authorized by the laws of this state on the chairman of the commission, said consent stipulating and agreeing that such service of such process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant within the state of Iowa. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolutions of the proper officers, or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission, and the other immediately forwarded by certi-

fied mail to the main office of the applicant against whom or which said process or pleadings are directed. [C31, 35,§1905-c57; C39, §1905.54; C46, 50, 54,§117.23; 57GA, ch 267,§22]

**117.24 Custody of salesman's license.** The license of such real estate salesman shall be delivered or mailed to the real estate broker by whom such real estate salesman is employed and shall be kept in the custody and control of such broker. [C31, 35,§1905-c36; C39,§1905.33; C46, 50, 54,§117.24]

**117.25 Display of license.** It shall be the duty of every real estate broker to conspicuously display in his place of business the current license issued to him and the licenses issued to his employees. [C31, 35,§1905-c37; C39,§1905.34; C46, 50, 54,§117.25]

**117.26 Pocket cards.** The commission shall prepare and deliver to each licensee a pocket card, which card among other things shall contain an imprint of the seal of the commission and shall certify that the person whose name appears thereon is a licensed real estate broker or real estate salesman, as the case may be, and if it is a real estate salesman's card it shall also contain the name and address of his employer. The matter to be printed on such pocket card, except as above set forth, shall be prescribed by the commission. [C31, 35,§1905-c38; C39,§1905.35; C46, 50, 54,§117.26]

**117.27 Fees.** The annual fee for each real estate broker's license shall be ten dollars. The annual fee for each real estate salesman's license shall be five dollars. [C31, 35,§1905-c40; C39,§1905.37; C46, 50, 54,§117.27]

**117.28 Expiration of license.** Every license shall expire as of December 31 of the year of issuance. The commission shall upon the written request of the applicant on forms prescribed by the commission, and payment of the annual fee therefor as herein required, issue a new license for each ensuing year in the absence of any reason or condition which might warrant the revocation of a license after a hearing as provided in sections 117.34 and 117.35. [C31, 35,§1905-c42; C39,§1905.39; C46, 50, 54,§117.28]

**117.29 Revocation of license.** The revocation of a broker's license shall automatically suspend every real estate salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued upon payment of a fee of one dollar, if granted during the same year in which the original license was granted. [C31, 35,§1905-c43; C39,§1905.40; C46, 50, 54, §117.29]

**117.30 Actions—license as prerequisite.** No person, copartnership, association, or corporation engaged in the business or acting in the

capacity of a real estate broker or a real estate salesman within this state shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as a real estate broker or salesman without alleging and proving that such person, copartnership, association, or corporation was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose. [C31, 35,§1905-c44; C39,§1905.41; C46, 50, 54,§117.30]

**117.31 Place of business.** Every real estate broker, except as provided in section 117.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a copartnership, association, or corporation, a duplicate shall be issued to the members or officers thereof, and a single fee of one dollar in each case shall be paid for each duplicate license. [C31, 35,§1905-c45; C39, §1905.42; C46, 50, 54,§117.31]

**117.32 Change of location.** Notice in writing shall be given to the commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee of one dollar. [C31, 35,§1905-c46; C39,§1905.43; C46, 50, 54,§117.32]

**117.33 Salesmen—change of employment.** When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by certified mail to the commission such real estate salesman's license on the reverse side of which the employing broker shall set out the date and cause of termination of employment. The real estate broker shall at the time of mailing such real estate salesman's license to the commission address a communication to the last known residence address of such real estate salesman stating that his license has been delivered or mailed to the commission. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this chapter either directly or indirectly under authority of said license from and after the date of receipt of said license by the commission; provided, that another license shall not be issued to such real estate salesman until he shall return his former pocket card to the commission or shall satisfactorily account to them for the same. The commission shall upon presentation of evidence by the salesman that he has been employed by another broker issue another license and pocket card for the balance of the current year showing each change of employment. A fee of one

dollar will be charged for the issuance of such a license. Not more than one license shall be issued to any real estate salesman for the same period of time. [C31, 35,§1905-c47; C39,§1905.44; C46, 50, 54,§117.33; 57GA, ch 267,§23]

**117.34 Investigations by commission.** The commission may upon its own motion and shall upon the verified complaint in writing of any person, provided such complaint together with evidence, documentary or otherwise presented in connection therewith, makes out a prima-facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this state and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned herein is found to be guilty of:

1. Making any substantial misrepresentation.
2. Making any false promise of a character likely to influence, persuade or induce.
3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salesmen or advertising or otherwise.
4. Acting for more than one party in a transaction without the knowledge of all parties for whom he acts.
5. Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this chapter, from any person, except his employer, who must be a licensed real estate broker.
6. Representing or attempting to represent a real estate broker other than his employer, without the express knowledge and consent of the employer.
7. Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others.
8. Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public.
9. Paying a commission or any part thereof for performing any of the acts specified in this chapter to any person who is not a licensed broker or salesman under the provisions of this chapter or who is not engaged in the real estate business in another state.
10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.
11. Any other conduct, whether of the same or different character from that hereinbefore specified, or demonstrates such bad faith, improper, fraudulent, or dishonest dealings as

would have disqualified him from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate salesman, employee, or partnership or associate of a licensed real estate broker, shall not be cause for the revocation of the license of any real estate broker, partial or otherwise, unless the commission finds that said employer, partner, or associate had guilty knowledge thereof. [C31, 35,§1905-c48; C39,§1905.45; C46, 50, 54,§117.34; 57GA, ch 90,§4]

Referred to in §117.28

**117.35 Hearing on charges.** The commission shall, upon request of the applicant as provided in section 117.19, or before revoking any license, set the matter down for a hearing and at least twenty days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto. Such written notice of hearing may be served by delivery personally to the applicant or licensee or by mailing the same by certified mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesman, the commission shall also notify the broker employing him or into whose employ he is about to enter by mailing such notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe. [C31, 35, §1905-c49; C39,§1905.46; C46, 50, 54,§117.35; 57GA, ch 267,§24]

Referred to in §§117.19, 117.28

**117.36 Attendance of witnesses.** In the preparation and conducting of such hearings, the director shall have power to execute and sign subpoenas to require the attendance and testimony of any witnesses and the producing of any papers or books. He may administer oaths, examine witnesses, and take any evidence he deems pertinent to the determination of the charges. Any such hearing may be held before two or more members of the commission as may be directed by the commission. [C31, 35,§1905-c50; C39,§1905.47; C46, 50, 54, §117.36]

**117.37 Fees and mileage.** Any witnesses so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the courts of this state in civil cases. [C31, 35,§1905-c51; C39,§1905.48; C46, 50, 54,§117.37]

**117.38 Request for witnesses.** Any party to any hearing before the commission shall have the right to the attendance of witnesses in his behalf at such a hearing upon making a request thereof to the commission and designat-

ing the person or persons sought to be subpoenaed. [C31, 35,§1905-c52; C39,§1905.49; C46, 50, 54,§117.38]

**117.39 Disobedience to subpoena.** In case of a disobedience to a subpoena the commission may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the persons to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order may be punished as a contempt. [C31, 35,§1905-c53; C39,§1905.50; C46, 50, 54,§117.39]

**117.40 Depositions.** The testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided. [C31, 35,§1905-c54; C39,§1905.51; C46, 50, 54,§117.40]

**117.41 Findings of fact.** If the majority of the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license may be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of fact and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive, but the district court of the county of the licensee's residence or the judge thereof shall have the power to review questions of law involved in any final decision or determination of the commission; provided that an application is made by the aggrieved party within ten days after such determination by certiorari, mandamus, or by any other method permissible under the rules and practices of said court, or the laws of this state, and said court may make such further orders in respect thereto as justice may require. [C31, 35,§1905-c56; C39,§1905.53; C46, 50, 54,§117.41]

**117.42 List of licensees.** The commission shall at least annually prepare a list of the names and addresses of all licensees licensed by it under the provisions of this chapter, and of all persons whose licenses have been suspended or revoked within one year; together with such other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public. One of such lists shall be mailed to the clerk of the district court in each county of the state and shall be held by said clerk of the district court as a public record. Such lists shall also

be mailed by the commission to any person in this state upon request. [C31, 35,§1905-c58; C39,§1905.55; C46, 50, 54,§117.42]

**117.43 Penalties.** Any person found guilty of violating a provision of this chapter in a first offense shall be punished by a fine of not to exceed one hundred dollars or by imprisonment for a term of not to exceed thirty days in jail. [C31, 35,§1905-c59; C39,§1905.56; C46, 50, 54,§117.43]

**117.44 Complaints referred to court.** The commission may refer a complaint for violation of section 117.1 before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions hereof and collect the penalties herein provided. [C31, 35,§1905-c60; C39,§1905.57; C46, 50, 54,§117.44]

## CHAPTER 118

### REGISTERED ARCHITECTS

118.1 Appointment of board—removal.  
118.2 Officers.  
118.3 Records—roster.  
118.4 Report.  
118.5 Duties.  
118.6 Certificate.  
118.7 Plans by others.

118.8 Examination.  
118.9 Registration.  
118.10 Renewals.  
118.11 Fees.  
118.12 Payment of expenses.  
118.13 Revocation.  
118.14 Penalty for violation.

**118.1 Appointment of board — removal.** Within ninety days after the approval of this chapter the governor shall appoint five architects who have been in active practice in the state of Iowa for not less than ten years, as members of the board of architectural examiners, hereinafter called the board. Two of the members of the first board so appointed shall be designated by the governor to hold office until July 1, 1930, and three until July 1, 1932. Thereafter all appointments shall be for a period of five years, the terms to begin on July 1 in the year of appointment. Each member shall file with the secretary of state the constitutional oath of office and shall hold office until his successor is appointed and has qualified. The governor may remove any member of the board for misconduct, incapacity, or neglect of duty. [C27, 31, 35,§1905-b1; C39, §1905.58; C46, 50, 54,§118.1]

Constitutional oath of office, Constitution, Art. XI, §5  
General removal provisions, §§66.1, 66.26  
Statutory oath of office, §63.10

**118.2 Officers.** During the month of July of each year the board shall elect from its members a president, vice-president, and secretary. The duties of the officers shall be such as are usually performed by such officers. All meetings of the board, except as provided in section 118.13, shall be held at the seat of government. The members of the board shall serve without pay. [C27, 31, 35,§1905-b2; C39, §1905.59; C46, 50, 54,§118.2]

**118.3 Records — roster.** The board shall keep a record, open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain a roster showing the name, place of business and residence, and the date and number of the certificate of reg-

istration of every registered architect entitled to practice his profession in the state of Iowa. [C27, 31, 35,§1905-b3; C39,§1905.60; C46, 50, 54, §118.3]

**118.4 Report.** On or before the thirtieth day of June of each year the board shall submit to the governor a report of its transactions for the preceding year, together with a complete statement of the receipts and expenditures of the board. This report shall include a roster of the name, place of business and number of certificate of registration of every registered architect entitled to practice his profession in the state of Iowa. A copy of this report shall be filed with the secretary of state. [C27, 31, 35,§1905-b4; C39,§1905.61; C46, 50, 54,§118.4]

Annual report, §17.4

**118.5 Duties.** The board shall be charged with the duty of enforcing the provisions of this chapter and may incur such expense as shall be necessary thereto, and shall make rules for the examination of applicants for the certificate of registration provided by this chapter, and shall, after due public notice, hold at least two meetings each year, not less than three months apart, for the purpose of examining applicants for registration and the transaction of business pertaining to the affairs of the board as such. No action at any meeting can be taken without three votes in accord. [C27, 31, 35,§1905-b5; C39,§1905.62; C46, 50, 54,§118.5]

**118.6 Certificate.** Any person wishing to practice architecture in the state of Iowa under the title "Architect" shall secure from the board a certificate under the title "Architect" as provided by this chapter. Each member of a firm or corporation practicing archi-

ecture must have a certificate of registration under the provisions of this chapter. Any properly qualified person, who shall have been exclusively engaged in the practice of architecture in the state at the time this chapter takes effect, may, within ninety days after the approval of this chapter, apply for and will be granted a certificate of registration without examination, by payment to the board of the fee for certificate of registration as prescribed in section 118.11. [C27, 31, 35, §1905-b6; C39, §1905.63; C46, 50, 54, §118.6]

**118.7 Plans by others.** Nothing contained in this chapter shall prevent any person from making plans and specifications or supervising the construction of any building or part thereof, for himself or others, provided he does not use any form of the word or title "Architect". [C27, 31, 35, §1905-b7; C39, §1905.64; C46, 50, 54, §118.7]

**118.8 Examination.** Any citizen of the United States, or any person who has declared his intention of becoming such citizen, being at least twenty-one years of age and of good moral character, may apply for a certificate of registration or for such examination as shall be requisite for such certification under this chapter; but before receiving such certificate, this applicant shall submit satisfactory evidence of having completed the course in a high school or the equivalent thereto, and of having subsequently thereto completed such courses in mathematics, history and languages as may be prescribed by the board.

Upon complying with the above requirements, the applicant shall satisfactorily pass an examination in such technical and professional subjects as shall be prescribed by the board. In lieu of examination, the board may accept satisfactory evidence of the applicant's knowledge of architectural practice and of any one of the qualifications set forth under subsections 1, 2, and 3 of this section.

1. A diploma of graduation or satisfactory certificate from an architectural college or school that he has completed a technical course approved by the board of architectural examiners, and subsequent thereto, of at least two years satisfactory experience in the office of a reputable architect.

2. Registration or certification during the current year as an architect in another state or country, where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in this state at date of application.

3. An architect who has practiced architecture for a period of more than ten years outside of this state shall, except as otherwise provided in subsection 2, be required to take only a practical examination, the nature of which shall be prescribed by the board. [C27, 31, 35, §1905-b8; C39, §1905.65; C46, 50, 54, §118.8]

Referred to in §118.9

**118.9 Registration.** When the applicant has complied with the requirements as set forth

in section 118.8, to the satisfaction of at least three members of the board, and has paid the fees prescribed in section 118.11, the secretary shall enroll the applicant's name and address in the roster of registered architects and issue to him a certificate of registration, signed by the officers of the board, which certificate shall entitle him to practice as an architect in the state of Iowa. [C27, 31, 35, §1905-b9; C39, §1905.66; C46, 50, 54, §118.9]

**118.10 Renewals.** Every registered architect in the state who desires to continue the practice of his profession shall, annually, during the month of June of each year, renew his certificate of registration, and pay to the board the renewal fee required by section 118.11.

Every certificate and renewal shall expire on the thirtieth day of June following its issuance. [C27, 31, 35, §1905-b10; C39, §1905.67; C46, 50, 54, §118.10]

**118.11 Fees.** The fee to be paid to the board by an applicant for an examination under this chapter shall be ten dollars. The fee to be paid to the board by an applicant for a certificate of registration as a registered architect shall be fifteen dollars.

The fee to be paid to the board for renewal of a certificate shall be ten dollars.

All fees provided for by this chapter shall be paid to and receipted for by the treasurer of state, who shall keep such moneys in a separate fund, to be known as the fund of the board of architectural examiners, which shall be continued from year to year, and shall not be used for any purposes other than the purposes of this chapter. [C27, 31, 35, §1905-b11; C39, §1905.68; C46, 50, 54, §118.11]

Referred to in §§118.6, 118.9, 118.10

**118.12 Payment of expenses.** The members of the board shall be reimbursed for the actual expenses incurred in attending the meetings of the board and for office supplies, printing, and clerical hire, and other necessary expenses incurred in carrying out the provisions of this chapter, from moneys in the fund of the board of architectural examiners only. Warrants for payments of expenses of the board shall be issued by the state comptroller and paid by the treasurer of state upon presentation of vouchers regularly drawn by the president and secretary of the board, provided, however, that at no time shall the total amount of vouchers exceed the total amount in the fund of the board of architectural examiners. [C27, 31, 35, §1905-b12; C39, §1905.69; C46, 50, 54, §118.12]

**118.13 Revocation.** The board may revoke any certificate after thirty days notice with grant of hearing to the holder thereof, if proof satisfactory to the board be presented in the following manner:

1. In case it is shown that the certificate was obtained through fraud or misrepresentation.

2. In case the holder of the certificate has been found guilty by such board or by a court of justice of any fraud or deceit in his professional practice, or has been convicted of a felony by a court of justice.

3. In case the holder of the certificate has been found guilty by such board of gross incompetency or of negligence in the planning or construction of buildings.

4. In case it is proved to the satisfaction of such board that the holder of the certificate is an habitual drunkard, or is habitually addicted to the use of narcotic drugs.

Proceedings for the revocation of a certificate shall be begun by filing written charges against the accused with the board. A time and place for the hearing of the charges shall be fixed by the board. Where personal service or services through counsel cannot be effected, services may be had by publication. At the hearing, the accused shall have the right to be represented by counsel, to introduce evidence and to examine and cross-ex-

amine witnesses. The board shall have the power to subpoena witnesses, to administer oaths to such witnesses, and to employ counsel. The board shall make a written report of its findings, which report shall be filed with the secretary of state, and which shall be conclusive. [C27, 31, 35, §1905-b13; C39, §1905.70; C46, 50, 54, §118.13]

Referred to in §118.2

**118.14 Penalty for violation.** On and after March 28, 1927, the use of the title "Architect", or the use of any word or any letters or figures indicating or intending to imply that the person using the same is an architect, without compliance with the provisions of this chapter, the making of any willfully false oath or affirmation in any matter or proceeding where an oath or affirmation is required by this chapter, shall be deemed a misdemeanor, punishable with a fine of not more than two hundred dollars, or imprisonment for not more than one year, or both. [C27, 31, 35, §1905-b14; C39, §1905.71; C46, 50, 54, §118.14]

## CHAPTER 119

### GOLD AND SILVER ALLOY

119.1 Fraudulent marking.

119.2 Tests.

119.3 "Sterling silver."

119.4 "Coin silver."

119.5 Other articles of silver.

119.6 Tests for articles.

119.7 Gold-plated or gold-filled articles.

119.8 Silver-plated articles.

119.9 Violation.

119.10 "Person" defined.

**119.1 Fraudulent marking.** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made, in whole or in part, of gold or any alloy of gold, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any mark indicating or designed to indicate that the gold or alloy in such article is of a greater degree of fineness than the actual fineness or quality thereof, unless the actual fineness thereof, in the case of flatware or watch-cases, be not less by more than three one-thousandths parts, and in case of all other articles be not less by more than one-half carat than the fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article, or upon any tag, card, or label attached thereto, or upon any container in which such article is inclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S13, §5077-b; C24, 27, 31, 35, 39, §1906; C46, 50, 54, §119.1]

Referred to in §119.2

**119.2 Tests.** In any test for the ascertainment of the fineness of the gold or alloy in any such article, according to the foregoing standards, the part of the gold or alloy taken for

the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article; and in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and its alloys contained in any article mentioned in this and section 119.1, except watch-cases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article, all such gold, alloys, and solder being assayed as one piece, shall not be less than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed. [S13, §5077-b; C24, 27, 31, 35, 39, §1907; C46, 50, 54, §119.2]

**119.3 "Sterling silver."** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the com-

ponent parts of the metal purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor, but in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard. [S13,§5077-b1; C24, 27, 31, 35, 39,§1908; C46, 50, 54,§119.3]

Referred to in §119.6

**119.4 "Coin silver."** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is inclosed, the words "coin" or "coin silver", or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; but in case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards. [S13,§5077-b1; C24, 27, 31, 35, 39,§1909; C46, 50, 54,§119.4]

Referred to in §119.6

**119.5 Other articles of silver.** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any mark or word, other than the word "sterling" or the word "coin", indicating, or designed to indicate that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word, other than the word "sterling" or "coin", stamped, branded, engraved, or imprinted upon any part of said article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S13,§5077-b1; C24, 27, 31, 35, 39,§1910; C46, 50, 54,§119.5]

Referred to in §119.6  
Punishment, §119.9

**119.6 Tests for articles.** In any test for the ascertainment of the fineness of any such article mentioned in this and sections 119.3 to 119.5, inclusive, according to the foregoing standards, the part of the article taken for the test shall be such portion as does not contain

or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article, and provided further and in addition to the foregoing test and standards, that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in sections 119.3 to 119.5, inclusive, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article, all such silver, alloy, or solder being assayed as one piece, shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed. [S13,§5077-b1; C24, 27, 31, 35, 39, §1911; C46, 50, 54,§119.6]

**119.7 Gold-plated or gold-filled articles.** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of gold or of any alloy of gold and which article is known in the market as "rolled gold-plate", "gold-plate", "gold-filled", or "gold-electroplate," or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold-plate, or gold-plate, or gold-electroplate, or is gold-filled, as the case may be, is guilty of a misdemeanor. [S13, §5077-b2; C24, 27, 31, 35, 39,§1912; C46, 50, 54, §119.7]

**119.8 Silver-plated articles.** Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver or of any alloy of silver, and which article is known in the market as "silver-plate" or "silver-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is encased or inclosed, the word "sterling" or the word "coin" either alone or in conjunction with any other words or marks, is guilty of a misdemeanor. [S13, §5077-b3; C24, 27, 31, 35, 39,§1913; C46, 50, 54, §119.8]

**119.9 Violation.** Every person guilty of a violation of the provisions of this chapter, and

every officer, manager, director, or agent of any such person directly participating in such violation or consenting thereto, shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than three months, or both, at the discretion of the court; but nothing in this chapter shall apply to articles manufactured prior to June 13, 1907.

[S13,§5077-b4; C24, 27, 31, 35, 39,§1914; C46, 50, 54,§119.9]

**119.10 "Person" defined.** The term "person" as used in this chapter shall embrace persons, firms, partnerships, companies, corporations, and associations. [C24, 27, 31, 35, 39,§1915; C46, 50, 54,§119.10]

## CHAPTER 120

### WATCHMAKERS AND REPAIRMEN

120.1 Certificate required.

120.2 Definition.

120.3 Board of watchmaking examiners.

120.4 Seal.

120.5 Fees and expenses.

120.6 Application.

120.7 Examination.

120.8 Certificates of registration.

120.9 Apprentice watchmakers.

120.10 Revocation.

120.11 Duplicates.

120.12 Conflicting statutes.

120.13 Penalty.

**120.1 Certificate required.** It shall be unlawful for any person, copartnership, association or corporation to engage in watchmaking as defined in this chapter without first obtaining a certificate of registration as herein provided. The certificate shall at all times be conspicuously displayed in the place of business or employment of the holder thereof. [C46, 50, 54,§120.1]

**120.2 Definition.** The term "watchmaking", for the purposes of this chapter, includes and means the repairing, replacing, rebuilding, reconditioning, cleaning, adjusting, or regulating of the mechanical parts of watches, clocks, and/or time-recording instruments and estimating the cost of the repairs thereof, and the manufacturing and fitting of parts designed for use or used in watches. Such term shall not include or mean the manufacturing or repairing of watch cases, nor shall it include or mean the repairing of electric clocks where the repair is necessary or incidental to the electric mechanism contained in such clocks, but shall include the repairing of all winding mechanisms for time-keeping instruments whether they are parts of such cases or not. The term "board" as used in this chapter shall mean the Iowa board of examiners in watch making. [C46, 50, 54,§120.2]

#### 120.3 Board of watchmaking examiners.

1. There is hereby created a board to be known as the board of examiners in watchmaking whose duties it shall be to carry out the provisions of this chapter. Such board shall consist of five members, only three of whom shall belong to the same political party, to be appointed by the governor. All persons so appointed shall be residents of this state and actually engaged in watchmaking as defined in this chapter, for at least five years immediately preceding the time of their appointment. Within thirty days after the effective date of this chapter, the governor shall appoint the board as provided herein. Each member of said board shall hold office for

three years and until his successor shall be appointed and qualified, except that in the first appointment, one member shall be appointed for one year, two for two years, two for three years and the term of office in such case shall be designated by the governor at the time of the appointment. Members of the board, before entering upon their duties, shall respectively take and file an official oath.

2. The board shall choose, annually, one of its members as chairman and one as secretary who shall severally have power to administer oaths and take affidavits, certifying thereto under the seal of the board. The board shall meet at least once every six months or whenever a majority of the board shall call a meeting at Des Moines, at the place to be designated by the chairman. A majority of the board shall constitute a quorum. The secretary shall give bond in the sum of five thousand dollars. The secretary shall keep a full record of the proceedings of the board which shall be open for inspection at all reasonable times. The members of the board shall be compensated as follows: Each member of the board shall be paid a per diem of ten dollars during sessions of the board, not to exceed, however, two days time at any meeting; also, they shall be paid their actual traveling expenses in attending the meeting; the secretary in addition to such per diem and expenses may be paid annually a salary to be fixed by the board, but such salary shall not exceed fifteen hundred dollars. The per diem allowed each member of the board shall not exceed the sum of three hundred dollars in any year.

3. The board shall have power to adopt rules and regulations to carry out the intent of this chapter. The secretary shall collect the fees and shall pay the same quarterly to the treasurer of the state.

4. The board may appoint such clerks and assistants as it may deem necessary for the execution of its functions and fix their salaries.

5. The board shall on the thirtieth day of June of each year report its proceedings to



the state comptroller including an account of moneys received and disbursed. [C46, 50, 54, §120.3]

**120.4 Seal.** The board shall adopt a seal which shall be used to authenticate all of its proceedings and records and licenses to be issued which seal shall be under the control of the secretary. [C46, 50, 54, §120.4]

**120.5 Fees and expenses.** All examination, license and renewal fees received from such persons licensed to practice watchmaking shall be paid to and collected by the secretary of the board, who shall remit to the treasurer of the state quarterly all fees collected, and at the same time render to the state comptroller an itemized and verified report showing the source from which said fees were obtained. All such fees collected and remitted shall be placed in a special fund by the treasurer of state and the state comptroller to be known as the "watchmakers' fund", to be used by the board to administer and enforce the laws relating to the practice of watchmaking, to elevate the standards of schools of watchmaking, and to promote the educational and professional standards of watchmakers and watchmaking in this state, and no part of such expense shall be paid out of the general fund of the state. Any remainder in said fund at the end of each fiscal year, after all expense in carrying out the provisions of this chapter, have been paid, or a sum sufficient for payment thereof set apart, shall be paid into the general fund of the state. Said fund shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the chairman of the board and attested by the secretary, for the payment of all salaries and other expenses necessary to carry out the provisions of this chapter, but in no event shall the total expenses therefor exceed the total fees collected and deposited to the credit of said fund. [C46, 50, 54, §120.5]

**120.6 Application.** Applicants for certificates shall be examined at a time and place fixed by the board. Applications for examination shall be filed with the board at least ten days before the time set for the examination and shall be accompanied by an examination fee of ten dollars. The applicant shall be of good moral character and shall furnish an affidavit in support of the same from at least two reputable citizens in the community in which he lives; shall be at least nineteen years of age and shall have at least three years previous experience at the bench under the supervision of a watchmaker, holding a certificate under the provisions of this chapter, or said applicant shall have had at least one year schooling in a recognized watchmaker's school, together with one year experience at the bench under the provisions of this chapter or at least two years schooling in a recognized watchmaker's school. [C46, 50, 54, §120.6]

**120.7 Examination.** An applicant to be entitled to a certificate otherwise provided in

this chapter shall pass an examination before the board, which examination shall be confined to such knowledge, practical ability, and skill as is essential in the proper repairing of watches, clocks, and time-recording instruments, and shall include an examination of theoretical knowledge of watch construction and repair, and also a practical demonstration of the applicant's skill in the manipulation of watchmaker's tools. The board shall make rules and regulations for conducting examinations, and shall define the standards of workmanship and skill. In case of failure at any examination, the applicant shall have the privilege of taking another examination at any other examination period upon the payment of a fee of five dollars and the board shall conduct such examinations at least twice in each year. [C46, 50, 54, §120.7]

#### **120.8 Certificates of registration.**

1. If the applicant successfully passes the examination, the secretary of the board shall register such fact and shall issue to him a certificate of registration.

2. A watchmaker who is not a resident of the state, may, in the discretion of the board, be issued a certificate without the examination upon the payment of a fee of ten dollars and upon filing a written application with the board, together with evidence of five years practice as a watchmaker in some other state immediately previous to the time of the application by furnishing such evidence in connection with his skill as a watchmaker as the board may require. The board, upon presentation by an applicant of a license or certificate to practice watchmaking issued to the applicant upon examination by the duly constituted authority of another state which by its laws licenses or regulates watchmakers, and which by its laws would grant a certificate of license under similar circumstances and conditions, may in its discretion, issue a certificate of registration to said applicant without examination, upon payment of a fee of ten dollars.

3. Persons actually engaged in watchmaking within this state prior to the effective date of this chapter shall be exempt from taking the examination herein provided, upon making application for a certificate of registration within six months after said date, accompanied by an application fee of five dollars and the affidavit of the applicant setting forth the fact of his having actually engaged in watchmaking, together with the affidavits of two freeholders in this state setting forth that they know that the applicant has been so engaged in watchmaking and if the board shall be satisfied that such applicant is entitled thereto, it shall cause its secretary to so register such applicant and issue to such person a certificate of registration on a form to be designed by the board.

4. Every certificate of registration shall expire on the thirtieth day of June following the date of issuance of such certificate, and shall be renewed annually upon application by the

holder thereof, without examination. Application for such renewal shall be made in writing to the department, accompanied by a renewal fee of five dollars, at least thirty days prior to the expiration of such certificate. Every renewal shall be displayed in connection with the original certificate. Every year or not later than May 1, the board shall notify each certificate holder by mail of the expiration of his certificate. Any watchmaker who allows his certificate to lapse by failing to renew the same as hereinbefore provided, may obtain reinstatement thereof without examination, in the discretion of the board, if he applies therefor within three years following the expiration date of his certificate and pays the renewal fees then due. [C46, 50, 54, §120.8]

Persons in military and war work, see 51GA, ch 97, §8; 52GA, ch 86, §3

**120.9 Apprentice watchmakers.** Any person sixteen years of age or over, of good moral character, apprenticed to a registered watchmaker, may pursue the trade of watchmaking upon obtaining from the board a certificate of registration as an apprenticed watchmaker, which certificate shall be conspicuously displayed at all times in the place of employment of such apprentice. No apprentice certificate shall be renewed unless the application therefor shall be accompanied by a sworn statement of the employer or employers as to the length of time the applicant has been actually employed under his certificate in the pursuit of the watchmaking trade. Apprentice watchmakers shall pay a fee of one dollar for the certificate which shall expire on June 30 of each year and shall pay a renewal fee of one dollar annually. Any applicant for a certificate of registration as a watchmaker who fails to pass the examination provided for herein may in the discretion of the board be issued a certificate as an apprentice watchmaker. [C46, 50, 54, §120.9]

**120.10 Revocation.** The board may revoke a certificate of registration obtained through error of the board or fraud of the applicant, or if the holder is grossly incompetent, guilty of immoral or unethical conduct, or obtained or sought anything of value by fraudulent representation in the practice of watchmaking.

The holder of such certificate shall be given thirty days notice in writing enumerating the charges and fixing a date for the hearing thereon. Such notice shall be given to the certificate holder by certified mail addressed to him at his last known address as shown by the secretary. At the hearing he shall have the opportunity to defend himself against the charges and to introduce evidence tending to disprove the charges. If the board should refuse any such application and refuse to renew any such license, the applicant may within thirty days after the order of the board and not afterward appeal therefrom by a writ of certiorari to the district court where upon such appeal the hearing shall be de novo and all legal evidence pertaining to the matter of whether or not such license should be renewed may be submitted, including new evidence not submitted to the board. Upon the expiration of one year, and after satisfactory proof that the cause of revocation no longer exists, a person whose certificate has been revoked may be issued a certificate of registration at the discretion of the board, upon payment of the fee herein provided. [C46, 50, 54, §120.10; 57GA, ch 267, §25]

**120.11 Duplicates.** A duplicate of any certificate provided by this chapter shall be issued upon filing with the secretary a sworn statement that the original certificate has been lost or destroyed, and upon payment of one dollar for the issuance of the same. [C46, 50, 54, §120.11]

**120.12 Conflicting statutes.** No provisions of law in conflict with the provisions of this chapter shall have any effect thereon or upon the rights of any person licensed hereunder. [C46, 50, 54, §120.12]

**120.13 Penalty.** Anyone not having a certificate of registration who shall hold himself out as a watchmaker or as one qualified to do watchmaking or anyone who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment. [C46, 50, 54, §120.13]

## CHAPTER 121

### SECONDHAND WATCHES

121.1 Definitions.

121.2 Tag affixed to watch.

121.3 Written information furnished to purchaser—record kept.

121.4 Advertising.

121.5 Penalty.

**121.1 Definitions.** The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Consumer" shall mean individual, firm, partnership, association, or corporation who

buys for own use or for the use of another but not for resale.

2. "Secondhand watch" means:

a. A watch which, as a whole, the case thereof, or the movement thereof, has previously been sold to a consumer; provided, however,

that a watch which has been so sold, and is thereafter returned within sixty days from the date of such sale, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a secondhand watch for the purpose of this chapter, if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers (if any) on the case and the movement of the watch or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least three years from the date of the sale of the watch and to be open for inspection during all business hours by the county attorney of the county in which such person is engaged in business; or

b. Any watch whose case or movement serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered, or covered.

3. "Sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange. [C46, 50, 54,§121.1]

**121.2 Tag affixed to watch.** Any person, or agent or employee thereof, who sells a secondhand watch shall affix and keep affixed to the same a tag at least one inch by one and one-half inches with the word "secondhand" legibly written or printed thereon in the English language. [C46, 50, 54,§121.2]

**121.3 Written information furnished to purchaser—record kept.** Any person, or agent or

employee thereof, who sells a secondhand watch shall deliver to the vendee a written notice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the fact that the watch is secondhand, the name of the watch or its maker, and the serial number (if any), or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered, or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such secondhand watch for at least one year from the date of the sale thereof, and shall be open to inspection during all business hours by the county attorney of the county in which the vendor is engaged in business. [C46, 50, 54,§121.3]

**121.4 Advertising.** Any person advertising secondhand watches for sale in any manner shall state clearly in such advertisement that the watches so advertised are secondhand watches. If such advertisement is printed or written, the fact that such watches are secondhand shall be printed or written in bold-faced letters. [C46, 50, 54,§121.4]

**121.5 Penalty.** Any person or persons, firm or firms, partnership or partnerships, association or associations, corporation or corporations, or any agent or servant thereof, who shall violate any of the provisions of this chapter shall be punishable by fine not to exceed three hundred dollars or by imprisonment not to exceed ninety days, or both. [C46, 50, 54, §121.5]

## CHAPTER 122

### ORGANIZATIONS SOLICITING PUBLIC DONATIONS

122.1 Conditions.

122.2 Fees.

122.3 Revocation of permit.

122.4 Exceptions.

122.5 Enforcement.

122.6 Violations.

**122.1 Conditions.** No organization, institution, or charitable association, either directly or through agents or representatives, shall solicit public donations in this state, unless it be a corporation duly incorporated under the laws of this state or authorized to do business in this state; has first obtained a permit therefrom from the secretary of state; and has filed with the secretary of state a surety company bond in the sum of one thousand dollars, running to the state and conditioned that the applicant will devote all donations directly to the purpose stated and for which the donations were given, and will otherwise comply with the laws of this state and the requirements of the secretary of state in regard thereto. The secretary of state shall have full discretion as to whom he will issue permits, and shall satisfy himself before issuing any such permit that the applicant is reputable and that the

purposes for which donations from the public are to be solicited are legitimate and worthy. [S13,§5077-c; C24,§1916; C27, 31, 35,§1921-b1; C39, §1915.1; C46, 50, 54,§122.1]

**122.2 Fees.** The secretary of state shall collect a fee of one dollar for each such permit issued. Such a permit will authorize the applicant therefor, either directly or through its agents or representatives, to solicit public donations in any county, city, or township in this state, subject, however, to such restrictions as the secretary of state may prescribe. [S13, §5077-c; C24,§1917; C27, 31, 35,§1921-b2; C39, §1915.2; C46, 50, 54,§122.2]

**122.3 Revocation of permit.** Said permit shall expire annually on the thirty-first day of December following the date of issuance, or it may be suspended or revoked at any time at

the discretion of the secretary of state when in his judgment the authority vested therein is abused or the transactions consummated thereunder are not in conformity with the intent and purpose of this chapter. [C24,§1918; C27, 31, 35,§1921-b3; C39,§1915.3; C46, 50, 54, §122.3]

**122.4 Exceptions.** Nothing in this chapter, however, shall be construed to prohibit any person as representative or agent of any local organization, church, school, or any recognized society or branch of any church or school, from publicly soliciting funds or donations from within the county in which such person resides, or such church, school, institution, organization, or charitable association is located, or within an adjoining county if such residence or location is within six miles of such adjoining county. Any such organized institution or charitable association having a permit under the provisions of this chapter shall file an annual report with the secretary of state during the month of December of each year, which report shall contain the following information:

1. The names and post-office addresses of its officers, and whether any change has been made during the year previous to making such report.

2. A detailed statement of all moneys received during the year previous to making said report.

3. A detailed statement of moneys disbursed during the year previous to making said report, and for what purpose.

At the time of filing this annual report said organization, institution, or charitable association shall pay to the secretary of state a filing fee in the sum of two dollars. [S13,§5077-c; C24, §§1919, 1920; C27, 31, 35,§1921-b4; C39,§1915.4; C46, 50, 54,§122.4]

**122.5 Enforcement.** The secretary of state shall enforce the provisions of this chapter and may call to his aid the attorney general, the county attorney of any county, and any peace officer in the state, for the purpose of investigation and prosecution. He may call upon the extension division of the state university of Iowa and the board of control of state institutions for assistance. [C27, 31, 35, §1921-b5; C39,§1915.5; C46, 50, 54,§122.5]

**122.6 Violations.** Any person who shall violate the provisions of this chapter or who shall solicit funds without a permit, or if under a permit thereafter divert the same to purposes other than for which said donations were contributed, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not to exceed thirty days. [S13, §5077-d; C24,§1921; C27, 31, 35,§1921-b6; C39, §1915.6; C46, 50, 54,§122.6]

# TITLE VI

## ALCOHOLIC BEVERAGES

Referred to in §§135A.8, 247.20, 724.5

### CHAPTER 123

#### IOWA LIQUOR CONTROL ACT

Identification and use of publicly owned automobiles, etc., §740.20 et seq

Referred to in §§106.28, 321.281

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| 123.44 Interdicted person.                        | 123.92 Violations by members and employees—acceptance of bribe. |
| 123.45 New permit after cancellation.             | 123.93 Duty of county attorney and peace officers.              |
| 123.46 Miscellaneous prohibitions.                | 123.94 Saving clause as to permits.                             |
| 123.47 Advertisements.                            |   |
| 123.48 Prohibited sale, etc.                      |   |

**123.1 Public policy declared.** This chapter shall be cited as the "Iowa Liquor Control Act", and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be the public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as hereinafter provided for in this chapter through the medium of an Iowa liquor control commission by this chapter created, in which is vested the sole and exclusive authority to purchase alcoholic liquors, as defined herein, for the purpose of resale. [C35,§1921-f1; C39,§1921.001; C46, 50, 54,§123.1]

**123.2 Conflicting statutes superseded.** Whenever any provisions of the existing laws are in conflict with the provisions of this chapter, the provisions of this chapter shall control and supersede all such existing laws.\* [C35, §1921-f2; C39,§1921.002; C46, 50, 54,§123.2]

\*See saving clause, 45ExGA, ch 24,§2, effective March 9, 1934

**123.3 General prohibition.** It shall be unlawful to manufacture for sale, sell, offer or keep for sale, possess and/or transport vinous, fermented, spirituous, or alcoholic liquor, except beer as defined in chapter 124, or as the same may hereafter be amended for any purpose whatsoever, except upon the terms, conditions, limitations and restrictions as set forth herein. [C35,§1921-f3; C39,§1921.003; C46, 50, 54,§123.3]

Referred to in §123.5, subsection 21

**123.4 Sacramental wines.** Nothing in this chapter shall affect the purchase or use of sacramental wines to be used exclusively for sacramental purposes. [C35,§1921-f4; C39, §1921.004; C46, 50, 54,§123.4]

Permits to clergymen, ch 134

**123.5 Definitions.** For the interpretation of this chapter, unless the context indicates a different meaning:

1. "Commission" means the commission created by this chapter under the name of the "Iowa liquor control commission".

2. "Alcohol" means the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

3. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, and includes, among other things, brandy, rum, whisky, and gin.

4. "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits, (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.).

5. "Alcoholic liquor" includes the three

varieties of liquor above defined (alcohol, spirits, and wine), and every liquid or solid, patented or not, containing alcohol, spirits, or wine, and susceptible of being consumed by a human being, for beverage purposes. Any liquid or solid containing more than one of the three varieties above defined is considered as belonging to that variety which has the highest percentage of alcohol, according to the order in which they are above defined.

6. "Person" includes any natural person, association, partnership, corporation, and club.

7. "Whosoever" when used in reference to any offender under this chapter, includes every person who acts for himself or for any other person, and includes also such other person.

8. "Residence" means the premises where a person resides, permanently, or temporarily.

9. "License" means a contract between the commission and a licensee entitled thereto under the provisions of this chapter.

10. "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance or substances capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes "blending", "bottling", or the preparation for "sale."

11. "Package" means any container or containers, receptacle or receptacles used for holding liquor.

12. "Distillery", "winery", and "brewery" means not only the premises wherein "alcohol" or "spirits" is distilled, or rectified "wine" is fermented, but in addition a "person" owning, representing or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of "alcoholic liquor" in any form.

13. "Importer" means the "person" transporting or ordering, authorizing or arranging the transportation or shipment of "alcoholic liquor" into the state of Iowa whether such "person" is a resident or citizen of Iowa or not.

14. "Interdicted person" means a person to whom the sale of liquor is prohibited by an order of the commission or the court under this chapter.

15. "Import" means the transporting or ordering or arranging for the transportation or shipment of "alcoholic liquor" into the state of Iowa whether by a resident of the state or otherwise.

16. "State liquor store" means a store established by the liquor control commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

17. "Special distributor" means a person especially designated by the commission to dispense alcoholic liquors, subject to the provisions of this chapter, in such cities and towns as in the opinion of the commission

there is not sufficient demand for a state liquor store.

18. "Warehouse" means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods and/or for the conduct of normal warehousing business.

19. "Public place" includes any place, building or conveyance to which the public has or is permitted to have access and any place of public resort.

20. "Permit" means a permit for the purchase and/or consumption of liquor by an individual under this chapter.

21. Whenever reference shall be made to anything forbidden under this chapter, and relating to alcoholic liquor, the words, "to sell" includes: To solicit, or receive an order for; to keep or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with the intent to sell; to keep or transport in contravention of section 123.3; to traffic in for a valuable consideration, promised or obtained directly or indirectly, or under any pretext or by any means whatsoever, to procure or allow to be procured for any other person; and the word, "sale" includes every act of selling as above defined.

22. "Wholesaler" means any person who shall sell, barter, exchange, offer for sale or have in possession with intent to sell, alcoholic liquor and wines to retailers for resale. [C35,§1921-f5; C39,§1921.005; C46, 50, 54,§123.5]

Additional definitions, §§124.2, 125.2

**123.6 Commission created.** There is hereby created a commission composed of three electors of this state to be known and designated as the Iowa liquor control commission, not more than two of whom shall belong to the same political party, and no two of whom shall, at the time of appointment, reside in the same congressional district. The commission shall be held strictly accountable for the enforcement of the provisions of this chapter. [C35,§1921-f6; C39,§1921.006; C46, 50, 54,§123.6]

45ExGA, ch 24,§5, editorially divided

**123.7 Appointment — term.** The members of the first commission shall be appointed by the governor, subject to approval of the senate by a majority vote of the members in executive session, as follows: One for a term to expire July 1, 1935; one for a term to expire July 1, 1937; and one for a term to expire July 1, 1939. Said terms shall begin immediately upon the appointment, approval and qualification.

Thereafter, the term of each member of said commission shall be six years; and the governor shall, within sixty days following the organization of each regular session of the general assembly, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to the member of said commission whose term of office will

expire July 1 next following. [C35,§1921-f7; C39,§1921.007; C46, 50, 54,§123.7]

**123.8 Vacancies.** Any vacancy or vacancies on said commission which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the organization of the next general assembly. Prior to the expiration of said period of thirty days, the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Any vacancy or vacancies occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term. [C35,§1921-f8; C39,§1921.008; C46, 50, 54,§123.8]

**123.9 Bonds.** The commissioners shall post a bond or bonds, at the expense of the state, with such sureties as the executive council shall approve to guarantee to the state the proper handling and accounting of such moneys and merchandise and other properties as may be required in the administration of this chapter. It shall be the duty of the commission to secure from all agents, servants, and employees of the commission holding positions of trust a bond or bonds with such sureties as the commission will approve adequate to guarantee to the state the proper handling and accounting of all moneys, merchandise and other properties. [C35,§1921-f9; C39,§1921.009; C46, 50, 54,§123.9]

**123.10 Organization — salary — assistants.** The commission shall, on July 1 of each year, select one of its members as chairman, who shall serve in such capacity for the succeeding year. Each member of the commission shall devote his entire time to the duties of his office, and his salary shall be five thousand dollars a year. Said commission may employ a secretary and such other assistants and/or employees as may reasonably be necessary, and at such salary each as may be fixed by the state division of personnel. [C35,§1921-f10; C39,§1921.010; C46, 50, 54,§123.10]

**123.11 Expenses.** Members of the commission and said secretary, assistants and/or employees shall be allowed their actual and necessary expenses while traveling on business of the commission outside of their place of residence; provided, however, that an itemized account of such expenses shall be verified by the member, secretary, assistant and/or employee making claim for payment and shall be approved by a majority of the members of the commission. If such account is paid, the same shall be filed in the office of said commission and be and remain a part of its permanent records. All of said salaries and expenses shall be payable out of the liquor control act fund created by this chapter. [C35,§1921-f11; C39,§1921.011; C46, 50, 54,§123.11]

**123.12 Removal.** Any member, secretary, officer or employee of said commission shall be removable for any of the causes and in the manner provided by chapter 66 relating to removal from office; such removal shall not be in lieu of any other punishment that may be prescribed by the laws of the state of Iowa. [C35,§1921-f12; C39,§1921.012; C46, 50, 54,§123.12]

**123.13 Exemption from suit.** The commission, or any member of the commission, shall not be personally liable for any action at law for damages sustained by any person because of any action performed or done by the commission, or any member of the commission, in the performance of their respective duties in the administration and in the carrying out of the purposes and provisions of this chapter. [C35,§1921-f13; C39,§1921.013; C46, 50, 54, §123.13]

**123.14 Prohibition on members and employees.** No member, officer or employee of said commission shall, while holding such office or position, hold any other office or position under the laws of this state or of any other state or of the United States, and shall not engage in any occupation or business inconsistent and/or interfering with the duties of such employment; and no such member, officer or employee shall, while holding such office or position, serve on or under or be a member of any committee of any political party, and shall not, directly or indirectly, use his influence to induce any other officer or officers, employee or employees, elector or electors of this state to adopt his political views or to favor any particular candidate for office, nor shall any such member, officer or employee contribute in any manner, directly or indirectly, any money or other things of value to or for any person or persons, committee or committees, for campaign or election purposes. Any such member, officer or employee who violates any of the terms and/or provisions of this section shall be deemed guilty of corruption. [C35,§1921-f14; C39, §1921.014; C46, 50, 54,§123.14]

**123.15 Place of business.** The principal place of business of the liquor control commission shall be in the city of Des Moines, and the executive council shall provide suitable quarters or offices for the liquor control commission in Des Moines. [C35,§1921-f15; C39,§1921.015; C46, 50, 54,§123.15]

**123.16 Powers.** The commission shall have the following functions, duties and powers:

1. To buy, import, and have in its possession for sale and sell liquors in the manner set forth in this chapter.

2. To establish, maintain and/or discontinue state liquor stores and special distributors and to determine the cities and towns in which state liquor stores and special distributors shall be located. However, no liquor store or special distributor shall be established within three hundred feet of any school building used

for school purposes or any church used as such.

3. To grant and refuse, or cancel for cause, permits for the purchase of liquor.

4. To rent, lease, and/or equip any building or any land necessary to carry out the purposes of this chapter.

5. To lease all plants and lease or buy equipment it may consider necessary and useful in carrying into effect the objects and purposes of this chapter.

6. To appoint vendors, clerks, or other employees required for the operation or carrying out of this chapter and to dismiss the same, but not without cause deemed by the commission in its discretion as sufficient; to fix their salaries or remuneration; assign them their title, duties and powers.

7. To issue and grant permits and licenses; and to revoke all such licenses and permits for cause, under this chapter.

8. To determine the nature, form and capacity of all packages containing liquor kept or sold under this chapter; provided, that all spirituous and vinous liquor shall be purchased and sold only in the original package.

9. To license, inspect and control the manufacture of alcoholic liquors and regulate the entire liquor industry in the state.

10. To employ a chemist, maintain a laboratory, to test, label and certify to all alcoholic liquors sold in Iowa.

11. To establish and maintain in its own name in the state treasury a special account, hereinafter known as the liquor control act fund, in an amount necessary for use of the commission, said amount to be determined by the state comptroller.

The commission shall refer all alleged violations of the liquor control act to the state department of public safety. [C35,§1921-f16; C39,§1921.016; C46, 50, 54,§123.16]

### **123.17 Rules and regulations.**

1. The commission may make such rules and regulations not inconsistent with this chapter, which to the commission may seem expedient or necessary for carrying out the provisions of this chapter and for the efficient administration thereof.

2. Without attempting or intending to limit the power of the commission as to the provisions contained in subsection 1 hereof, it is declared that the commission may and it does have the power to make regulations in the manner set forth in the foregoing subsection and that said powers shall extend to and include the following:

a. Prescribing the duties of the secretary, officers, clerks, servants, agents, or employees of the commission and regulating their conduct while in the discharge of their duties.

b. Regulating the management, equipment and merchandise of state liquor stores, and warehouses in and from which liquors are transported, kept or sold and prescribing the



books and records to be kept therein. This paragraph shall apply to special distributors insofar as in the opinion of the commission it is deemed necessary for proper regulation and control.

*c.* Regulating the purchase of liquor generally and the furnishing of liquor to state liquor stores and special distributors established under this chapter, determining the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses or for sale at any state liquor store or by any special distributor.

*d.* Prescribing forms or information blanks to be used for the purpose of this chapter or the regulations made thereunder and the terms and conditions under which permits and licenses may be issued or granted.

*e.* Prescribing the nature and character of proof to be furnished and conditions to be observed in the issuance of duplicate permits where the originals have been either lost or destroyed.

*f.* Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each brand, class or variety of liquors kept for sale under this chapter, and such prices shall be uniform throughout the state.

*g.* Prescribing what official seals or labels should be attached to the packages of liquor sold under this chapter including the various kinds of official seals or labels for the different classes or varieties or brands of liquors.

*h.* Prescribing the kind, quantity, and character of liquors which may be purchased or sold under any permits including the quantity which may be purchased or sold at any one time or within any specified period of time.

*i.* Prescribing the duties of employees authorized to issue permits or licenses under this chapter.

*j.* Prescribing, subject to this chapter, the days and hours during which state liquor stores and special distributors shall be kept open for the purpose of the sale or dispensing of liquors.

*k.* Prescribing, subject to this chapter, the records of sales to permit holders and by those holding licenses, for the report of the same to the commission and for the confidential character of the reports or records of individual permit holders.

*l.* Prescribing the place and the manner in which liquor may be lawfully kept or stored by the licensed manufacturer under this chapter.

*m.* Prescribing the time, manner, means, and method by which distillers, brewers, vendors, or others having permission under this chapter may deliver or transport liquors and prescribing the time, manner, means, and methods by which liquor under this chapter may be lawfully conveyed, carried, or transported.

*n.* Prescribing, subject to the provisions of this chapter, the conditions and qualifications

necessary for the obtaining of licenses and the books and records to be kept and the remittance to be made by those holding licenses and determining the number of persons, firms, or corporations who shall be entitled to licenses and providing for the inspection of the records of all such licenses.

*o.* Prescribing the conditions and qualifications necessary for the obtaining of permits under this chapter.

*p.* Prescribing the purchase of liquor and furnishing liquor to state liquor stores and special distributors under this chapter.

3. The liquor control commission shall prepare, print, and furnish all forms required under this chapter. [C35,§1921-f17; C39, §1921.017; C46, 50, 54,§123.17]

**123.18 State liquor stores.** The commission shall establish and maintain in any city or incorporated town which the commission may deem advisable, a state liquor store or stores or special distributors, as provided for in section 123.19, for storage and sale of liquor in accordance with the provisions of this chapter and the regulations made thereunder. The commission may, from time to time, as determined by it, fix the prices of the different classes, varieties, or brands of liquor to be sold. [C35,§1921-f18; C39,§1921.018; C46, 50, 54, §123.18]

**123.19 Special distributors.**

1. In cities and towns where the establishment of a state liquor store, under the provisions of this chapter, does not seem advisable, the commission may select a special distributor, who shall have been in business in and a resident of such city or town not less than two years immediately prior to such appointment, to sell alcoholic liquors for consumption off the premises; provided, however, that in no case such special distributor shall be the holder of a class "B" permit to sell beer as provided in chapter 124, nor shall such special distributor be granted such beer permit while being such distributor.

2. Special distributors shall be paid a sum to be fixed by the commission, but in no event shall this sum be in excess of nine hundred dollars per annum. All alcoholic liquors sold by such distributors shall be sold in the original package at the price fixed by the commission, without profit to the distributor, and in accordance with the rules and regulations of the commission.

3. At any time, if in the judgment of the commission it shall appear advisable, the commission may establish a state liquor store in such city or town to replace the special distributor.

4. If, after a state liquor store has been in operation in any city or town, such store should show a loss to the state, the commission may discontinue such store and select a special distributor in accordance with the provisions of this chapter.

5. No special distributor shall be selected in any city or town where there is a state liquor store in operation. [C35,§1921-f19; C39,§1921.019; C46, 50, 54,§123.19]

Referred to in §123.18

**123.20 Vendors.** In the conduct and management of state liquor stores the commission is empowered to employ a person who shall be known as a "vendor" who shall, subject to the directions of the commission, observe all provisions of this chapter and the rules and regulations of the commission. [C35,§1921-f20; C39,§1921.020; C46, 50, 54,§123.20]

**123.21 Qualifications of employees.** The liquor control commission shall prescribe from time to time by rule or regulation the qualifications to be possessed by persons desiring employment in state liquor stores or establishments. [C35,§1921-f21; C39,§1921.021; C46, 50, 54,§123.21]

**123.22 Sales regulated.**

1. A vendor or special distributor may not sell to any person nor may any person purchase alcoholic liquors from such vendor unless the person be the holder of a permit entitling such person to purchase liquors under such permit in conformity with the provisions of this chapter and the regulations established by the commission.

2. Before the vendor or special distributor shall sell or deliver to any person any alcoholic liquors he shall:

a. Have first demanded and received the permit or order in writing dated and signed by the purchaser setting forth the number of his permit, the kind and quantity of the liquor ordered or furnish such information in writing as may be determined by the regulations established by the commission.

b. Have received from the purchaser his permit and have indorsed thereon the kind and quantity of liquor sold, the date of sale and such other information as may be required by the commission.

c. Have demanded and received the purchase price of such liquor in cash. [C35,§1921-f22; C39,§1921.022; C46, 50, 54,§123.22]

**123.23 Consumption on premises.** No vendor, officer, clerk, servant, agent, or employee of the commission employed in any state liquor store, state-owned warehouse, or special distributor, shall allow any alcoholic liquor to be consumed on the premises of such state warehouse, store, or special distributor nor shall any person consume any liquor on such premises. [C35,§1921-f23; C39,§1921.023; C46, 50, 54,§123.23]

**123.24 Restrictions on sales — seals — labeling.** No alcoholic liquor shall be sold to any purchaser except in sealed container with the official seal or label prescribed by the commission and no such container shall be opened upon the premises of any state warehouse, store or special distributor. Such seal or label

shall bear the seal of the commission and a facsimile of the signature of the chairman of the liquor control commission and shall certify the quality, age, and contents of the bottle or package on which it is affixed and must be attached and sealed to all liquors sold in the state. Possession of alcoholic liquors bought or sold in the state which do not carry such label or seal shall be considered a violation of this chapter. No alcoholic liquor shall be labeled "whisky" unless it is a distillate of fermented mash of grain or mixture of grains. Spirits, the alcoholic content of which is distilled of any other substance, must be labeled "imitation." No spirits shall contain any substance, compound, or ingredient which is injurious to health or deleterious for human consumption. [C35,§1921-f24; C39,§1921.024; C46, 50, 54,§123.24]

**123.25 Sales prohibited.** It shall be unlawful to transact the sale or delivery of any liquor in, on, or from the premises of any state liquor store, special distributor, or warehouse:

1. After the closing hour as established by the commission.

2. On any legal holiday.

3. On any Sunday.

4. On any national or state election day.

5. On any municipal election day held in the municipality in which such store, warehouse, or special distributor may be situated.

6. During such other periods or days as may be designated by the commission. [C35,§1921-f25; C39,§1921.025; C46, 50, 54,§123.25]

**123.26 Transportation permitted.** It shall be lawful to transport, carry, or convey liquors as defined by this chapter from the place of purchase by the commission to any state warehouse, store, special distributor or depot established by the commission for the purposes of this chapter or from one such place to another and when so permitted by this chapter the regulations made thereunder and in accordance therewith, it shall be lawful for any common carrier, or other person to transport, carry, or convey liquor sold by a vendor or a special distributor from a state warehouse, store or depot to any place to which the same may be lawfully delivered under this chapter and the regulations established by the commission; provided, however, that no common carrier or other person shall break, open, allow to be broken or opened any container or package containing alcoholic liquor or to use or drink or allow to be used or drunk any liquor therefrom while in the process of being transported or conveyed; provided, however, that nothing in this chapter shall affect the right of any permit holder to purchase, possess, or transport alcoholic liquors as defined by this chapter and subject to the provisions of this chapter and the regulations made thereunder. [C35,§1921-f26; C39,§1921.026; C46, 50, 54,§123.26]

Unlawful transportation, §§125.18, 125.19

**123.27 Permits.**

1. There shall be two classes of permits under this chapter:

- a. Individual permits.
- b. Special permits.

2. Upon application being made, in the form and manner prescribed by the commission, to the commission, or to any agent authorized by the commission to issue permits accompanied by payment of the prescribed fee, and upon the commission or such authorized agent being satisfied that the applicant has complied with the rules and regulations established by the commission for the issuance of such a permit for the purchase, possession and/or transportation of alcoholic liquors under this chapter, the commission or such authorized agent shall issue to the applicant a permit of the class applied for as follows:

a. An "individual permit" in the form prescribed by the commission may be granted to an individual of the full age of twenty-one years who is not disqualified under the provisions of this chapter entitling the applicant to purchase liquor or beverages for medicinal or personal purposes in accordance with the terms and provisions of such permit and the provisions of this chapter by complying with such terms and conditions as may be prescribed by the commission.

b. A "special permit" in form as prescribed by the commission and subject to its issuance and/or use to such rules and regulations as the commission may adopt, may be issued as provided in this section, notwithstanding the other provisions of this chapter, as follows:

(1) To a physician, pharmacist, dentist, or veterinarian, which will entitle the holder to purchase liquor from the state liquor stores or special distributors for use medicinally and in compounding prescriptions and to sell the same for use medicinally in the compounded prescription only upon the prescription of a licensed physician or surgeon, and to purchase liquor from the state liquor stores or special distributors for use in manufacturing or compounding lotions, compounds, and other like commodities not susceptible for beverage purpose, and to sell the same for public use.

(2) To a soldiers home, sanitarium, hospital, college, or home for the aged which will entitle the holder to purchase liquor from the state liquor stores or special distributors for use for medicinal, laboratory and scientific purposes only.

Referred to in §123.28

c. Notwithstanding any of the provisions of this chapter, patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and other like commodities, none of which are susceptible of use as a beverage, but which require as one of their ingredients alcohol or vinous liquors, may be manufactured and sold within this state, provided a special permit so to do is first obtained, as in this subsection provided.

Any person, firm, or corporation desiring such permit shall file with the liquor commission the affidavit of such person, member of the firm, secretary or other managing officer of the corporation, as the case may be, stating therein the following facts:

(1) The name, place of business, and post-office address of the person, firm, or corporation desiring such permit.

(2) The business in which said person, firm, or corporation is engaged and the articles manufactured by them which require in their manufacture the use of alcohol or vinous liquors.

(3) That neither the applicant, nor any member of the firm, nor officer of the corporation has been convicted of any violation of the laws of this state with reference to the sale of intoxicating liquors within three years last past prior to the date of said affidavit.

If the liquor commission is satisfied that the facts stated in said affidavit are true and that the applicant is a person fit and proper to be entrusted with the permit applied for, the same shall be issued upon the filing by the applicant of a bond in the sum of two thousand dollars, with approved sureties, conditioned that the applicant will faithfully observe the provisions of this chapter and the rules and regulations of the commission.

Such special permit when so issued shall entitle the holder thereof to import into the state, or purchase from licensed distillers within the state or from the commission, alcohol or vinous liquors for use in manufacture, in accordance with the terms of said permit, and to sell the product of such manufacture, regardless of any of the other provisions of this chapter with respect to purchase and sale of alcohol or vinous liquors.

It shall be the duty of every manufacturer holding such special permit under the provisions of this subsection whenever such manufacturer shall purchase any alcoholic liquor from any person, firm or corporation, other than the liquor commission, immediately upon receipt thereof to file with the liquor commission a report of the receipt of such liquor in accordance with the rules and regulations as they may be established by the liquor commission.

3. Nothing in this chapter shall prohibit the legitimate sale of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and other like commodities, none of which are generally classified or used as a beverage but which require as one of their ingredients alcoholic or vinous liquors, through the ordinary retail or wholesale channels. [C35,§1921-f27; C39,§1921.027; C46, 50, 54, §123.27]

**123.28 Fees.** On all such [individual] permits issued on or after July 1, 1934, the fee shall be one dollar, and such permits shall expire on June 30 following date of issuance.

For a "special permit" under paragraph *b* of subsection 2 of section 123.27 the fee shall be three dollars per year. [C35,§1921-f28; C39, §1921.028; C46, 50, 54,§123.28]

**123.29 Nature of permit.** A permit shall be a purely personal privilege and shall expire on June 30 following date of issuance and shall be revocable for cause. It shall not constitute property nor shall it be subject to attachment and execution nor shall it be alienable nor assignable and in any case it shall cease upon the death of the permittee. Every permit shall be issued in the name of the applicant and no person holding a permit shall allow any other person to use the permit. [C35,§1921-f29; C39,§1921.029; C46, 50, 54,§123.29]

**123.30 Signature to permit.** No permit shall be issued or delivered to an applicant for the same unless said applicant has in the presence of some person duly authorized by the commission written his signature thereon or filed his signature with such duly authorized person in the manner prescribed by the regulations as fixed by the commission for the purpose of the future identification of said permit holder and until the signature has been witnessed and attested to by such duly authorized official authorized to issue permits. [C35, §1921-f30; C39,§1921.030; C46, 50, 54,§123.30]

**123.31 Duplicate permits.** Any permit holder whose permit has been lost, destroyed, or stolen may make application to the commission or such other duly authorized agent entitled to issue permits and upon satisfactory proof of loss, destruction, or theft of said permit, subject to the conditions contained in the regulations, may obtain a duplicate permit in lieu of the permit so lost, destroyed, or stolen for which duplicate permit a fee of fifty cents shall be paid. [C35,§1921-f31; C39, §1921.031; C46, 50, 54,§123.31]

**123.32 Suspension or cancellation of permit.** Whenever the holder of any permit issued under the provisions of this chapter violates any of the provisions of this chapter or any regulations made thereunder or is an interdicted person or is otherwise disqualified from holding such permit, the commission, upon satisfactory proof of such fact, the existence of such violation, the interdiction or disqualification of such permit holder, may, in its discretion, with or without hearing, suspend the permit and any and all rights of said permit holders for such period of time as the commission may see fit or may fully cancel said permit. [C35,§1921-f32; C39,§1921.032; C46, 50, 54, §123.32]

**123.33 Surrender of permit.** Whenever a permit has been suspended or canceled as herein provided the holder of such permit shall forthwith deliver the same to the commission. Upon failure of the permit holder to deliver said permit to the commission upon request, the commission shall forthwith cancel the same. In the case of a suspension of

the permit, the commission shall return the permit to the holder at the expiration of such period of suspension. Where the permit has been canceled, the commission shall notify the vendors, or such other persons as may be provided in the regulations made under this chapter, of the cancellation of said permit and no permit shall thereafter be issued to such person whose permit has been canceled within a period of one year from the date of cancellation of said permit. [C35,§1921-f33; C39, §1921.033; C46, 50, 54,§123.33]

45ExGA, ch 24,§26, editorially divided

**123.34 Presentation by unlawful holder.** Whenever a permit shall be produced at a state-owned warehouse, store, or distributor as defined by this chapter by a person who is not the lawful holder thereof, or where any permit which has been suspended or canceled is produced at such warehouse or store, the vendor or official in charge of such warehouse or store shall retain such permit in his custody and forthwith notify the commission of such fact and the commission shall, unless such permit has been canceled, forthwith cancel the same; provided, however, that the proper holder of any permit lost, destroyed, or stolen may, upon satisfactory proof to the commission that he was not a party to such improper use, obtain a return of such permit and re-establish his rights thereunder. [C35,§1921-f34; C39,§1921.034; C46, 50, 54,§123.34]

**123.35 Revocation of permits.** Without attempting or intending to limit the powers and duties of the commission in the matter of the revocation of permits for cause or for any good and sufficient reason, the commission, municipal and district court are hereby empowered to revoke the permit of any holder as defined in this chapter upon satisfactory proof of any of the following grounds or causes:

- a. Drunkenness.
- b. Simulation of drunkenness.
- c. Nonsupport of family or dependents.
- d. Desertion of family or dependents.
- e. The commission of any misdemeanor or felony in which the use of alcoholic liquor was a contributing factor. [C35,§1921-f35; C39, §1921.035; C46, 50, 54,§123.35]

Referred to in §123.49  
Revocation upon conviction of driving while intoxicated,  
§321.281

**123.36 Manufacturer's license.** Upon application in the prescribed form and accompanied by a fee of two hundred fifty dollars, the commission may in accordance with this chapter, and in accordance with the regulations, made thereunder, grant a license, good for a period of one year after date of issuance to a manufacturer which shall allow the manufacture, storage and wholesale disposition and sale of alcoholic liquors and wines to the commission and to customers outside of the state. [C35, §1921-f36; C39,§1921.036; C46, 50, 54,§123.36]

**123.37 Wholesaler's license.** Upon application in the prescribed form and accompanied

by a fee of one hundred dollars and subject to the provisions of this chapter and the rules and regulations of the commission, the commission shall grant a license good for a period of one year after date of issuance, to a wholesaler, which shall allow the wholesaler to purchase alcoholic liquor from distillers either within or without the state for the purpose of selling to the commission and customers of such wholesaler engaged in the sale of alcoholic liquor and wines at retail outside of the state. [C35,§1921-f37; C39,§1921.037; C46, 50, 54, §123.37]

**123.38 Conditions — bond.** As a condition precedent to the approval and granting of any license to the manufacturer or wholesaler applying therefor, there shall be filed with the commission a statement under oath that the applicant is a bona fide manufacturer or wholesaler of alcoholic liquors, and that the said applicant will faithfully observe and comply with all rules and regulations of the commission then existing, or thereafter made, and that he will in all respects comply with the provisions of this chapter; together with a bond of five thousand dollars for a manufacturer and one thousand dollars for a wholesaler with a surety to be approved by the commission; said bond to be in favor of the state of Iowa for the benefit of the state in case of any violation of this chapter. [C35,§1921-f38; C39,§1921.038; C46, 50, 54,§123.38]

**123.39 Gift of liquors prohibited.** No manufacturer or wholesaler shall give away any alcoholic liquor of any kind or description at any time in connection with his business except for testing or sampling purposes only. [C35,§1921-f39; C39,§1921.039; C46, 50, 54, §123.39]

**123.40 Interest in liquor business.** No member or employee of the commission, directly or indirectly, individually, or as a member of a partnership or as a shareholder in a corporation shall have any interest whatsoever in dealing in or in the manufacture of alcoholic liquor nor receive any kind of profit whatsoever nor have any interest whatsoever in the purchases or sale by the persons authorized to purchase and sell alcoholic liquor except that no such provisions shall prevent any such commissioner or employee from purchasing and keeping in his possession for the personal use of himself, or his family, or his guests any liquors which may be lawfully purchased. [C35,§1921-f40; C39,§1921.040; C46, 50, 54, §123.40]

**123.41 Cash sales.** No vendor of any state liquor store or special distributor shall sell any alcoholic liquor to any individual permit holder except for cash. [C35,§1921-f41; C39, §1921.041; C46, 50, 54,§123.41]

**123.42 Consumption in public places—intoxication.** It is hereby made unlawful for any person to use or consume any alcoholic liquors upon the public streets or highways, or in any

public place, and no person shall be intoxicated nor simulate intoxication in a public place; and any person violating any provisions of this section shall be fined not to exceed one hundred dollars or sentenced not to exceed thirty days in the county jail. [C35,§1921-f42; C39,§1921.042; C46, 50, 54,§123.42]

See also §125.11

**123.43 Minors.** Except in the case of liquor given or dispensed to a person under the age of twenty-one years by parent or guardian for beverage or medicinal purposes or as administered to him by either the physician or dentist for medicinal purposes no person shall sell, give, or otherwise supply liquor to any such person under the age of twenty-one years, or knowingly permit any person under that age to consume alcoholic liquors. [C35,§1921-f43; C39,§1921.043; C46, 50, 54,§123.43]

**123.44 Interdicted person.** Except in the case of liquor supplied to an interdicted person upon the prescription of a physician or administered by either a physician or dentist for medicinal purposes, no person shall procure for or sell or give to any interdicted person any alcoholic liquors, nor directly or indirectly, assist in procuring or supplying any alcoholic liquors to an interdicted person. [C35,§1921-f44; C39,§1921.044; C46, 50, 54,§123.44]

**123.45 New permit after cancellation.** No person whose permit or license has been canceled shall within one year after date of such cancellation make application for or receive another permit or license. [C35,§1921-f45; C39, §1921.045; C46, 50, 54,§123.45]

**123.46 Miscellaneous prohibitions.**

1. No person whose permit has been either suspended or canceled shall purchase or attempt to purchase any alcoholic liquors during the period of such suspension or cancellation.

2. No person shall apply for the purchase of any alcoholic liquors except in his own name.

3. No person shall sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquors. [C35,§1921-f46; C39,§1921.046; C46, 50, 54,§123.46]

**123.47 Advertisements.** Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state.

1. No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the commission and then only in strict accordance with such regulations.

2. This section of the chapter shall not apply, however:

- a. To the liquor control commission.
- b. To the correspondence, or telegrams, or general communications of the commission, or its agents, servants, and employees.
- c. To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of such agents, servants, or employees of any telegraph company. [C35,§1921-f47; C39,§1921.047; C46, 50, 54, §123.47]

**123.48 Prohibited sale, etc.** No person not expressly authorized by this chapter to deal in alcoholic liquors shall within the state keep for sale, or offer for sale anything which is either labeled or branded with the name of any kind of alcoholic liquor whether the same contains any alcoholic liquor or not. [C35, §1921-f48; C39,§1921.048; C46, 50, 54,§123.48]

**123.49 Orders of interdiction.** Whenever it shall be established to the satisfaction of either the commission or the judge of any superior, municipal or district court that the holder of any permit defined under this chapter shall have been guilty of any of the grounds or causes for the revocation of a permit, as set forth in section 123.35 of this chapter, or who shall by the excessive use of alcoholic liquors injure his health, impair, or endanger the welfare of his family, mispend, squander, or waste his estate, an order of interdiction may be made by either the commission or the judge of any superior, municipal or district court directing the suspension or cancellation of any permit and prohibiting the sale of alcoholic liquors to such persons until the further order of either the commission or the court making such an order. In the event such order is made by the court, a certified copy of the same shall be forthwith filed with the commission. The commission or the court may as a part of its order of interdiction in any such case provide and declare forfeited any alcoholic liquor in the possession of such permit holder or may take possession of and retain for such permit holder any alcoholic liquors until such order of interdiction may be satisfied, set aside, or modified by either the commission or the court entering such order.

Whenever by satisfactory proof it shall appear to either the commission or to the court making such an order of interdiction that the interdicted person has purged himself of the conduct, grounds, reasons, or causes for the suspension, cancellation, or order of interdiction, the commission or the court making such an order of interdiction may set aside or modify said order, and if deemed advisable, in any such case reinstate said interdicted person to his or her rights and privileges under this chapter. Whenever such order of interdiction has been made by or filed with the commission, the commission shall forthwith notify the vendors of such order of interdiction. [C35,§1921-f49; C39,§1921.049; C46, 50, 54, §123.49]

### **123.50 Liquor control fund.**

1. For the purpose of enabling the commission to carry out the provisions of this chapter, there is hereby appropriated from the funds of the state treasury not otherwise appropriated the sum of five hundred thousand dollars and the state comptroller shall set aside from the appropriation the amount necessary to be used by the commission for the purchase of alcoholic liquors and payment of such other expenses as may be necessary to establish and operate state liquor stores and special distributors in accordance with the provisions of this chapter and to perform such other duties as are imposed upon it by this chapter.

2. All money hereafter received by the commission, including any money received under the appropriation herein made, shall constitute what shall hereafter be known as the liquor control act fund. Whenever said liquor control act fund shall have a balance in excess of one million five hundred thousand dollars the comptroller shall transfer such excess to the general fund of the state treasury, which amount shall be used to reduce the general state tax levy against real estate.

3. The state treasurer shall semiannually distribute, a sum of money equal to five percent of the gross amount of sales made by the state liquor stores, to the cities and towns of the state in the manner hereinafter provided. Such amount shall be distributed to the cities and towns of the state in proportion to the population that each incorporated city or town bears to the total population of all incorporated cities and towns of the state as computed by the latest federal census. Such apportionment shall be made semiannually as of July 1 and January 1 of each year. Warrants for the same shall be issued by the state comptroller upon certification of the state treasurer and mailed to the city clerk of each incorporated city and town of the state and shall be made payable to such incorporated city or town and shall be subject to expenditure under the direction of the city council or other governing bodies of such incorporated city or town for any lawful municipal purpose.

4. In any case where a city or town has been incorporated since the last federal census, the mayor and council shall certify to the state treasurer the actual population of such incorporated city or town as of date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this section for any period after said corporation has been dissolved.

5. The state treasurer shall credit to a military service tax fund\* hereby created a sum of money equal to five percent of the gross amount of sales made by the state liquor stores in the cities and towns of the state.

Any amount thus credited shall be allocated to the various taxing districts of the state as reimbursement for losses of revenue due to exemption or remission of property taxes which would be imposed upon property upon which soldiers exemptions or soldiers tax credits are provided under such terms as the general assembly may provide. [C35,§1921-f50; C39,§1921.050; C46, 50, 54,§123.50]

Referred to in §§24.14, 426A.1  
\*Sec §426A.10

**123.51 Fees — accounting.** It shall be the duty of the commission or its authorized agents to issue individual permits, to remit to the commission all fees received by them from the issuance of individual permits and the commission shall upon receipt of such funds credit the same to the “liquor control act fund” herein provided. The commission or authorized agents designated to sell individual permits shall report the fees received and remit the same once each month, said report and remittances to be made on or before the tenth day of the month succeeding that for which the report is made. [C35,§1921-f51; C39,§1921.051; C46, 50, 54,§123.51]

**123.52 Drawing appropriation.** The appropriation hereby made shall be paid by the treasurer of state upon the orders of the commission, in such amounts and at such times as in the discretion of the commission, may be necessary to carry on operations in accordance with the terms of this chapter. [C35,§1921-f52; C39,§1921.052; C46, 50, 54,§123.52]

**123.53 Annual report.** It shall be the duty of the commission to make a report to the governor of the state, ending with June 30 of each year, showing fully the results of the operations of the commission covering the period since the last previous report, and which report shall show:

1. Amount of profit or loss, if any, on account of state liquor stores and special distributors.
2. Number of such liquor stores opened, the number closed, and the number thereof operating on last day included in report.
3. Number of such special distributors appointed and number of such appointments in force on last day shown in report.
4. Amount of fees received from such stores and amount of fees received from such distributors, separately and in gross.
5. The amount of said liquor control act fund then in the hands of the commission and also in the hands of the state treasurer.
6. All other funds on hand and the source from which derived.
7. The total quantity and particular kind of alcoholic liquor sold.
8. The increase or decrease of such liquor sales.
9. Number of arrests and/or convictions for violations of this chapter and/or any other law of this state pertaining to alcoholic liquors.

In order that the said commission may be provided with the necessary information to make out the report required by this chapter, it shall be the duty of every justice of the peace, police court, mayor’s court and every clerk of a court of record in this state to forward to said commission during the month of July of each year a full and complete report of each case commenced in the court of such justice, police court, mayor’s court, or any court of record, in which a violation of this chapter or any other law of this state pertaining to alcoholic liquors was charged, and the disposition of the same. [C35,§1921-f53; C39, §1921.053; C46, 50, 54,§123.53]

Annual report, §17.4

**123.54 State monopoly.** There is hereby granted unto said commission the sole and exclusive right of importation, into the state, of all forms of alcoholic liquor, except as otherwise provided in this chapter, and no person, partnership, club, corporation, or association shall so import any such alcoholic liquor; and no distillery shall sell any such alcoholic liquor within the state to any person, partnership, club, corporation, or association but only to the commission, except as otherwise provided in this chapter, the intent hereof being to vest in said commission exclusive control within the state both as purchaser and vendor of all alcoholic liquor sold by such distilleries within the state or imported therein, except beer as referred to in chapter 124 and amendments thereto, and except as otherwise provided in this chapter. [C35,§1921-f54; C39,§1921.054; C46, 50, 54,§123.54]

**123.55 Saving clause.** This chapter shall not impair or affect any act done, offense committed or right accruing, secured or acquired, or penalty, forfeiture, or punishment incurred prior to the time this chapter takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted, as fully and to the same extent as if this chapter had not been passed. [C35,§1921-f55; C39,§1921.055; C46, 50, 54,§123.55]

Effective March 9, 1934

**123.56 Native wines.** Notwithstanding anything in this chapter contained, but subject to any regulations or restrictions which the commission may impose, manufacturers of native wines from grapes, cherries, other fruit juices, or honey grown and produced in Iowa may sell, keep, or offer for sale and deliver the same in such quantities as may be permitted by the commission for consumption off the premises.

A manufacturer of native wines shall not sell such wines otherwise than as permitted by this section or allow any wine so sold, or any part thereof, to be drunk upon the premises of such manufacturer. Notwithstanding anything in this chapter contained, any person may manufacture native wine as herein defined for consumption on his own premises. [C35,§1921-f56; C39,§1921.056; C46, 50, 54,§123.56]

**123.57 Examination of accounts.** The auditor of state shall cause the financial condition and transactions of all offices, departments, stores, warehouses, depots and liquor transactions of special distributors of the liquor control commission to be examined at least once each year by the state examiners of accounts and at shorter periods if requested by the commission, governor, or executive council. [C35,§1921-f57; C39,§1921.057; C46, 50, 54,§123.57]

**123.58 Auditing.** All provisions of sections 11.6, 11.7, 11.10, 11.11, 11.14, 11.18, 11.21, and 11.23 of the Code, relating to auditing of financial records of governmental subdivisions which are not inconsistent herewith are hereby made applicable to the liquor control commission, the liquor transactions of its special distributors and any of its offices, stores, warehouses, and depots. [C35,§1921-f58; C39, §1921.058; C46, 50, 54,§123.58]

**123.59 "Bootlegger" defined.** Any person who shall, by himself, or his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or leave in a place for another to secure, any alcoholic liquor as herein defined, with intent to sell or dispense of the same by gift or otherwise, or who shall, within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquors in violation of this chapter, or aid in the delivery and distribution of any alcoholic liquors so ordered or shipped, or who shall in any manner procure for, or sell or give any alcoholic liquors to any minor or interdicted person, for any purpose except as authorized and permitted in this chapter, shall be termed a bootlegger and upon conviction shall be sentenced to the county jail or the penitentiary, in the discretion of the court, for a period not exceeding one year. [C35,§1921-f59; C39,§1921.059; C46, 50, 54,§123.59]

Injunction against, §§123.71, 128.17; see also §125.7

**123.60 Nuisances.** The building, erection, or place, or the ground itself, in or upon which the unlawful manufacture or sale, or keeping with intent to sell, use or give away, any alcoholic liquors is carried on or continued or exists, and any vehicle or other means of conveyance used in transporting such liquor in violation of this chapter, and the furniture, fixtures, vessels and contents, kept or used in connection therewith, are declared a nuisance and shall be abated as in this chapter provided. [C35,§1921-f60; C39,§1921.060; C46, 50, 54, §123.60]

Referred to in §123.61; see also §125.9

**123.61 Penalty.** Whoever shall erect, establish, continue or use any building, erection or place for any of the purposes prohibited in section 123.60, is guilty of a nuisance and upon conviction shall be punished by a fine of not less than three hundred dollars, nor more

than one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment and shall stand committed until such fine imposed is paid. [C35,§1921-f61; C39,§1921.061; C46, 50, 54, §123.61]

**123.62 Injunction.** Actions to enjoin nuisances shall be brought in equity in the name of the state by the county attorney who shall prosecute the same to judgment. [C35,§1921-f62; C39,§1921.062; C46, 50, 54,§123.62]

See also §128.1 et seq.

**123.63 Temporary writ.** In such action, the court or a judge in vacation, shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, that the nuisance complained of exists. [C35,§1921-f63; C39,§1921.063; C46, 50, 54,§123.63]

**123.64 Notice.** Three days notice in writing shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. [C35,§1921-f64; C39,§1921.064; C46, 50, 54,§123.64]

**123.65 Scope of injunction.** When an injunction has been granted, it shall be binding upon the defendant throughout the state and any violation of the provisions of this chapter anywhere within the state shall be punished as a contempt, as herein provided. [C35,§1921-f65; C39,§1921.065; C46, 50, 54,§123.65]

**123.66 Trial of action.** The action, when brought, shall be triable at the first term of court after due and timely service of notice of the commencement thereof has been given. [C35,§1921-f66; C39,§1921.066; C46, 50, 54,§123.66]

**123.67 General reputation.** In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the place described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction. [C35, §1921-f67; C39,§1921.067; C46, 50, 54,§123.67]

General reputation, §§123.89, 126.17, 128.6, 128.40

**123.68 Contempt.** In the case of a violation of any injunction granted under the provisions of this chapter, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings shall be commenced by filing with the clerk of the court an information under oath setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue under which the defendant shall be arrested. [C35,§1921-f68; C39,§1921.068; C46, 50, 54,§123.68]

**123.69 Trial of contempt action.** The trial shall be as in equity and may be had upon



depositions, or either party may demand the production and oral examination of the witnesses. [C35,§1921-f69; C39,§1921.069; C46, 50, 54,§123.69]

Referred to in §123.70

**123.70 Penalty for contempt.** A party found guilty of contempt under the provisions of section 123.69 shall be punished by a fine of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail not less than six months, nor more than twelve months, or by both such fine and imprisonment. [C35,§1921-f70; C39, §1921.070; C46, 50, 54,§123.70]

See also §128.15

**123.71 Injunction against bootlegger.** A bootlegger as defined in this chapter may be restrained by injunction from doing or continuing to do any of the acts prohibited herein, and all the proceedings for injunctions, temporary and permanent, and for punishments for violation of the same as prescribed herein, shall be applicable to such person, company, or corporation, and the fact that an offender has no known or permanent place of business, or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing. [C35,§1921-f71; C39,§1921.071; C46, 50, 54,§123.71]

Bootlegger defined, §§123.59, 125.7  
Injunction proceedings, §128.17

**123.72 Conditions.** In no case shall a bootlegger injunction proceeding, as provided in this chapter, be maintained unless it be shown to the court that efforts in good faith have been made to discover the base of supplies or place where the defendant charged as a bootlegger conducts his unlawful business or receives or manufactures the alcoholic liquors, of which he is charged with bootlegging. [C35, §1921-f72; C39,§1921.072; C46, 50, 54,§123.72]

**123.73 Order of abatement.** If the existence of the nuisance be established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the confiscation of the alcoholic liquors by the state, and in case a vehicle or other means of conveyance is abated, the sale thereof as hereinafter provided, the removal from the building or place of all fixtures, furniture, vessels or movable property used in any way in conducting the unlawful business and sale thereof, in the manner provided for the sale of chattels under execution, and the effectual closing of the building, erection or place against its use for any purpose prohibited in this chapter, and so keeping it for a period of one year unless sooner released. [C35,§1921-f73; C39,§1921.073; C46, 50, 54,§123.73]

Execution sales, §626.74 et seq.; see also §128.19

**123.74 Use of abated premises.** If anyone shall use a building or place so directed to be closed, he shall be punished as for con-

tempt, as provided in this chapter. [C35,§1921-f74; C39,§1921.074; C46, 50, 54,§123.74]

**123.75 Fees.** For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution: and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. [C35,§1921-f75; C39,§1921.075; C46, 50, 54,§123.75]

**123.76 Proceeds of sale.** The proceeds of the sale of the personal property in abatement proceedings shall be applied first in payment of the costs of the action and abatement, and second to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the defendant. [C35,§1921-f76; C39,§1921.076; C46, 50, 54,§123.76]

**123.77 Abatement of nuisance.** If the owner appears and pays all costs of the proceeding and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or in vacation by the clerk, auditor and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation a judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner and the said order of abatement canceled, so far as same may relate to said property. [C35,§1921-f77; C39,§1921.077; C46, 50, 54,§123.77]

Referred to in §123.79

**123.78 Abatement before judgment.** If the proceedings be an action in equity and said bond be given and costs therein paid before judgment, and order of abatement, the action shall thereby be abated as to said building only. [C35,§1921-f78; C39,§1921.078; C46, 50, 54, §123.78]

Referred to in §123.79

**123.79 Existing liens.** The release of the property under the provisions of either section 123.77 or 123.78 shall not release it from any judgment lien, penalty or liability, to which it may be subject by law. [C35,§1921-f79; C39, §1921.079; C46, 50, 54,§123.79]

**123.80 Abatement bond a lien.** Undertakings of bonds for abatement shall immediately after filing by the clerk of the district court be docketed and entered upon the lien index as required for judgments in civil cases, and from the time of such entries shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [C35,§1921-f80; C39,§1921.080; C46, 50, 54,§123.80]

**123.81 Attested copies filed.** Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated in the same

manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [C35, §1921-f81; C39, §1921.081; C46, 50, 54, §123.81]

**123.82 Forfeiture of bond.** If the owner of a property who has filed such abatement bond as in this chapter provided fails to abate the said liquor nuisance on the premises covered by the bond, or fails to prevent the maintenance of any liquor nuisance on said premises at any time within the period of one year, the court must, after a hearing in which the said fact is established direct an entry of such violation of the terms of his said bond, to be made on the record and the undertaking of his bond thereupon forfeited. [C35, §1921-f82; C39, §1921.082; C46, 50, 54, §123.82]

See also §128.28

**123.83 Procedure.** A proceeding to forfeit an abatement bond shall be commenced by filing with the clerk of the court, by the county attorney of the county where the bond is filed, an application under oath to forfeit said bond, setting out the alleged facts constituting the violation of the terms of said bond, upon which the judge or court shall direct by order attached to said application that a notice be issued by the clerk of the district court directed to the principal and sureties on said bond to appear at a certain date fixed to show cause, if any they have, why the said bond should not be forfeited and judgment entered for the penalty therein fixed. [C35, §1921-f83; C39, §1921.083; C46, 50, 54, §123.83]

**123.84 Method of trial.** The trial shall be to the court and as in equity, and be governed by the same rules as to evidence as in contempt proceedings. [C35, §1921-f84; C39, §1921.084; C46, 50, 54, §123.84]

How issues tried, R.C.P. 177; contempt, §123.69  
See also §128.30

**123.85 Judgment.** If the court after hearing finds a liquor nuisance has been maintained on the premises covered by the abatement bond and that liquor has been sold or kept for sale on the premises contrary to law within one year from the date of the giving of said bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of said bond against the principal and sureties thereof, and the lien on the real estate heretofore created shall be decreed foreclosed and the court shall provide for a special and general execution for the enforcement of said decree and judgment. [C35, §1921-f85; C39, §1921.085; C46, 50, 54, §123.85]

**123.86 Appeal.** Appeal may be taken as in equity cases and the cause be triable de novo except that if the state appeals it need not file an appeal or supersedeas bond. [C35, §1921-f86; C39, §1921.086; C46, 50, 54, §123.86]

Appeals generally, ch 686

**123.87 County attorney to prosecute.** It shall be the duty of the county attorney to prosecute in the name of the state all forfei-

tures of abatement bonds and the foreclosures of same. [C35, §1921-f87; C39, §1921.087; C46, 50, 54, §123.87]

**123.88 Prompt service.** It shall be a misdemeanor for any peace officer to delay service of original notices, writs of injunction, writs of abatement or warrants for contempt in any equity case filed for injunction or abatement by the state. [C35, §1921-f88; C39, §1921.088; C46, 50, 54, §123.88]

Punishment, §687.7

**123.89 Evidence.** On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible. [C35, §1921-f89; C39, §1921.089; C46, 50, 54, §123.89]

General reputation, §§123.67, 126.17, 128.6, 128.40

**123.90 Counts.** Information or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty. [C35, §1921-f90; C39, §1921.090; C46, 50, 54, §123.90]

**123.91 Penalties generally.** Unless other penalties are herein provided, any person who violates any of the provisions of this chapter, or who makes a false statement concerning any material fact in submitting an application for a permit or license, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment. [C35, §1921-f91; C39, §1921.091; C46, 50, 54, §123.91]

**123.92 Violations by members and employees—acceptance of bribe.** Any member, secretary, officer or employee of the commission who shall knowingly or willfully violate any of the provisions of this chapter, or knowingly and willingly aid, assist or permit any such violation, shall be guilty of a misdemeanor and be punishable by fine of not to exceed one thousand dollars, nor less than three hundred dollars, or by imprisonment in the county jail for not less than three months, nor more than one year, or by both such fine and imprisonment.

Section 739.2 is hereby made applicable to the members and employees of the liquor control commission. [C35, §1921-f92; C39, §1921.092; C46, 50, 54, §123.92]

Constitutionality, §1921-f93, Code 1935; 45ExGA, ch 24, §86

**123.93 Duty of county attorney and peace officers.** In every county the county attorney will constitute the head of the enforcement provision for the liquor control commission. The state department of public safety, the sheriff and his deputy or deputies, and the police department of every city, including the day and night marshal of any incorporated

town, shall be supplementary aids to such county attorney.

Any neglect, misfeasance, or malfeasance shown by any peace officer included in this section will be sufficient cause for his removal as provided for by the statutes of the state. [C35,§1921-f94; C39,§1921.093; C46, 50, 54,§123.93]

Removal from office, ch 66

**123.94 Saving clause as to permits.** No repeal declared in this chapter shall be deemed to affect the validity or continued operation of any existing permit issued under chapters 130 to 134, inclusive, of the Code, until said permits are formally terminated by the commission and the power to terminate is hereby vested in the commission. [C35,§1921-f95; C39, §1921.094; C46, 50, 54,§123.94]

## CHAPTER 124

### BEER AND MALT LIQUORS

Referred to in §§123.3, 123.19, 123.54  
Original act. 45GA, ch 37

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**124.1 Permit required.** It shall be unlawful for any person to manufacture for sale or sell beer unless a permit is first obtained as provided for in this chapter. [C35,§1921-f96; C39,§1921.095; C46, 50, 54,§124.1]

#### 124.2 Definitions.

1. The term “person” as used in this chapter shall include corporation, firm, copartnership, and association.

2. “Brewer” shall mean any person, firm or corporation who shall manufacture beer for the purpose of sale, barter, exchange or transportation.

3. “Permit board” shall mean the state permit board composed of the chairman of the state tax commission, the secretary of state, and the auditor of state.

4. “Wholesaler” shall mean any person, firm or corporation, other than a brewer or bottler, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in, beer, provided, however, that no wholesaler shall be permitted to sell for consumption upon the premises.

5. “Retailer” shall mean any person, who shall sell, barter, exchange, offer for sale or

have in possession with intent to sell any beer for consumption on the premises where sold.

6. The term “good moral character” shall not be construed to include the following: Any person, firm, or corporation who, preceding the making of an application for any permit under the provisions of this chapter, has been found guilty of violating any of the provisions of the beer act or any of the intoxicating liquor laws of the state or who has been convicted of a felony or an indictable misdemeanor.

7. “Permit” or “license” shall mean an authorization issued by the state tax commission or by the city or town council of any city or town or by the board of supervisors of any county.

8. “Application” shall mean a formal written request for the issuance of a permit supported by a verified statement of facts.

9. “Regulation” shall mean any reasonable rule or ordinance adopted by the council or board of any city, town or county and not in conflict with the provisions of any of the statutes of the state.

10. “Beer” for the purpose of this chapter shall mean any liquid capable of being used

for beverage purposes made by the fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains containing not more than four percent of alcohol by weight.

No beer shall be sold in this state after July 1, 1934, unless made from sixty-six and two-thirds percent or more of barley malt. [C35, §1921-f97; C39, §1921.096; C46, 50, 54, §124.2]

Additional definitions, §§123.5, 125.2

**124.3 Permits — classes of — state permit board.** Permits for the manufacture and sale, or sale of beer shall be divided into three classes, and shall be known as either class "A", "B" or "C" permits, except as otherwise provided in this chapter. A class "A" permit shall allow the holder thereof to manufacture and/or sell at wholesale, beer as defined in this chapter; provided, however, that nothing herein contained shall prohibit the holder of a class "A" permit from manufacturing beer of a higher alcoholic content for shipment outside this state. A class "B" permit shall allow the holder thereof to sell at retail beer for consumption on or off the premises. A class "C" permit shall allow the holder thereof to sell at retail beer for consumption off the premises.

In order to promote uniform compliance with the provisions of this chapter there is hereby created a state permit board to be composed of the chairman of the state tax commission, the secretary of state, and the auditor of state, which board shall issue state permits and shall have the power to revoke the same upon hearing as provided in this chapter and to review actions of the city or town councils, and boards of supervisors, in refusing to revoke permits, as hereinafter provided. The permit board shall serve without additional compensation. The permit board shall meet on the first Monday in each month for a regular meeting, and upon call at any time. The majority of its members shall constitute a quorum but no final action shall be taken in the revocation of a permit without a majority vote. In the event it should be impossible for any of the officials designated as members of this board to be present at any meeting of the board, such official may designate a deputy or assistant in his department to attend such meeting or meetings and act for him and in his stead but at no meeting shall any final decision of the board be made unless at least two members thereof are present in person. [C35, §1921-f98; C39, §1921.097; C46, 50, 54, §124.3]

**124.4 Duties and powers.** The state permit board may review the action of any city or town council, and boards of supervisors, in any case where a hearing has been had relative to the cancellation or revocation of a permit and it appears from the records of the hearing held by said city or town council or board of supervisors, that the permit has not been revoked or canceled, and it appears from an investigation made by the state

permit board that there is reasonable ground to believe that such permit holder has been guilty of violation of the provisions of this chapter, and upon such hearing the permit board shall make a finding, after hearing the facts with reference to the grounds for the revocation of such permit, and by a majority vote shall determine whether or not such permit shall be revoked and make an order accordingly, and said finding shall be final.

If the state permit board finds from investigation that a review of the action of any city or town council, and boards of supervisors, should be had, or that such governing bodies have failed to take action, the state permit board shall thereupon fix a date for the hearing thereof and shall notify the permit holder of such hearing by certified mail of the date fixed for hearing and the date set for the hearing shall not be less than seven days from the mailing of the notice. Such notice shall be mailed to the permittee at the post-office address where his place of business is conducted under his permit. All such hearings shall be held at the seat of government, at Des Moines.

In the preparation and conduct of the hearing the board shall have power to require by subpoena the testimony of witnesses and the production of papers or documents and any member of the board may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. The fees and mileage of such witnesses shall be the same as prescribed by law in the trial of civil cases and the permittee in all such hearings shall have the opportunity to be heard in person and by counsel. All parties to any hearing before the board shall have the right to the attendance of witnesses at such hearings upon making request therefor to the board and designating the person or persons sought to be subpoenaed. In case of disobedience to a subpoena the board may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of papers or documents and such court may issue an order requiring the persons to appear before the board and give evidence or to produce papers as the case may be, and any failure to obey such orders of the court may be punished by the court for contempt thereof. Testimony may be taken by deposition as in civil cases and any person may be compelled to appear and testify as in civil actions in the courts of this state. Any person who shall neglect and refuse to attend and testify or answer any lawful question or produce documentary evidence if it is in his power to do so, in obedience to a subpoena or lawful requirement by such board, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished in accordance with the provisions of section 687.7

Like hearings may also be had in cases where a verified petition signed by at least ten taxpayers has first been presented to the city

or town council, or the boards of supervisors, as the case may be, or where the state permit board from its investigation asks that a hearing be had on the revocation of a permit, and in the event the city or town council, including boards of supervisors, neglects or refuses to have such hearing, the matter may be presented to the state permit board upon such verified petition in writing, signed by at least ten taxpayers of the jurisdiction for which the permit was granted, or the state permit board may upon its own motion conduct such hearing, and the same procedure as in this section provided shall apply with reference to notice of hearing witnesses, testimony and contempt proceedings for failure to appear, and the board shall make a finding in such cases, which finding shall be binding on the permit holder and also on the city or town councils, or boards of supervisors, as the case may be. [C35,§1921-g1; C39,§1921.098; C46, 50, 54,§124.4; 57GA, ch 267,§26]

**124.5 Power to issue permits.** Power is hereby granted to the state tax commission to issue the class "A" permit, provided for in this chapter, and to revoke the same for causes herein stated. Power is hereby granted to cities and towns to issue the class "B" permits and class "C" permits within their respective limits and to revoke same for the causes herein stated, or in the event the place of business of the permit holder is conducted in a disorderly manner. Power is hereby granted to boards of supervisors to issue, at their discretion, class "B" and "C" permits in their respective counties in villages platted prior to January 1, 1934, and to clubs as defined in section 124.16 and to revoke same for causes herein provided, or in the event the place of business of the permit holder is conducted in a disorderly manner.

Each applicant applying for a class "B" or "C" permit, shall, in addition to procuring a permit from a city or town council, or board of supervisors, as provided in this chapter, also make application through such city or town council or board of supervisors for a state permit from the state permit board. Such applicant shall deposit with said application a fee of three dollars which shall be forwarded to the state permit board, together with the certification to the state board of the issuance of such class "B" or "C" permit. Such fees collected shall be placed in a special fund by the state tax commission to be used by the state permit board for the purpose of enforcing the provisions of this chapter.

Upon the issuance of a permit by a city or town council, or board of supervisors, such council or board shall forthwith certify to the state permit board the action so taken. The state permit board shall promptly issue a state permit to all applicants to whom a permit has been issued by a city or town council or by a board of supervisors, which shall expire at the same time as the permit issued by said council or board, and shall forthwith certify

to such council or board as to the issuance of each permit.

Upon the revoking of a permit by any city or town council or board of supervisors, such council or board shall certify to the state permit board the action so taken, and thereupon the state permit board shall immediately cancel its permit to such permit holder, and such action of the state permit board and other granting authority shall be final. [C35,§1921-f99; C39,§1921.099; C46, 50, 54,§124.5]

**124.6 Tenure — character of permittee — voluntary surrender of permit — refund.** All permits provided for in this chapter shall expire at the end of one year from the date of issuance, and may be renewed for a like period upon application being made therefor to the proper authorities as in this chapter provided. Permits hereunder defined shall be issued only to persons who are citizens of the state of Iowa, who are of good moral character and repute, provided, however, that in the case of a corporation the word "citizen" as used in this section shall be construed to mean a corporation organized and existing or permitted and authorized to do business under the laws of this state.

Any class "B" permittee or his executor, administrator or any person duly appointed by the court to take charge of and administer the property or assets of such permittee for the benefit of his creditors, may voluntarily surrender any permit, issued under this chapter, to the issuing authority and when so surrendered the issuing authority shall refund to the person so surrendering the permit a proportionate amount of the permit fee paid for such permit as follows; if surrendered during the first three months of the period for which said permit was issued the refund shall be three-fourths of the amount of the permit fee; if surrendered more than three months but not more than six months after issuance the refund shall be one-half of the amount of the permit fee; if surrendered more than six months but not more than nine months after issuance the refund shall be one-fourth of the amount of the permit fee. No refund shall be made, however, for any permit surrendered more than nine months after issuance. No refund shall be made to any permit holder, upon the surrender of his permit, if there is at the time of said surrender a complaint filed with the board or council charging him with a violation of the provisions of this chapter. If upon hearing on any such complaint, so filed, his permit be not revoked, then said permit holder shall be eligible, upon surrender of his license, to receive a refund as herein provided. But in event his license is revoked upon such hearing then he shall not be eligible for the refund of any portion of his permit fee. [C35,§1921-f100; C39,§1921.100; C46, 50, 54,§124.6]

**124.7 Prohibited interest.** It shall be unlawful for any person or persons to be either

directly or indirectly interested in more than one class of permit. [C35,§1921-f101; C39, §1921.102; C46, 50, 54,§124.7]

**124.8 Class "A" application.** A class "A" permit shall be issued by the authority so empowered in this chapter to any person who:

1. Submits a written application for a permit, which application shall state under oath:

a. The name and place of residence of the applicant and the length of time he has lived at such place of residence.

b. That he is a citizen of the state of Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the place or building where the applicant intends to operate.

e. The name of the owner of the building and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

2. Establishes:

a. That he is a person of good moral character.

b. That the place or building where he intends to operate conforms to all laws, health and fire regulations, applicable thereto, and is a safe and proper place or building.

3. Furnishes a bond in the form prescribed and to be furnished by the state tax commission, with good and sufficient sureties to be approved by the state tax commission conditioned upon the faithful observance of this chapter, in the sum of five thousand dollars. [C35,§1921-f102; C39,§1921.103; C46, 50, 54, §124.8]

**124.9 Class "B" application.** Except as otherwise provided in this chapter a class "B" permit shall be issued by the authority so empowered in this chapter to any person who:

1. Submits a written application for a permit, which application shall state under oath:

a. The name and place of residence of the applicant, and the length of time he has lived at such place of residence.

b. That he is a citizen of the state of Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the place or building where the applicant intends to operate.

e. The name of the owner of the building and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

f. That the place of business for which the permit is sought is and will continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and is located within a business district or an area now or hereafter zoned as a business district.

2. Establishes:

a. That he is a person of good moral character.

b. That the place or building where he intends to operate conforms to all laws, health and fire regulations applicable thereto, and is a safe and proper place or building.

3. Furnishes a bond in the form prescribed and to be furnished by the state tax commission with good and sufficient sureties to be approved by the authorities to which application is submitted, conditioned upon the faithful observance of this chapter, in the sum of five hundred dollars. Said bond shall be further conditioned to the effect that the permittee and his surety, as a part of the permit granted hereunder, shall consent to forfeiture of the principal sum of said bond in event of cancellation of the permit as a result of charges filed and hearing had thereon as provided in this chapter. [C35,§1921-f103; C39,§1921.104; C46, 50, 54,§124.9]

**124.10 Class "C" application.** No class "C" permit shall be issued to any person except the owner or proprietor of a grocery store or pharmacy as those terms are hereinafter defined. Except as otherwise provided in this chapter a class "C" permit shall be issued by the authority so empowered in this chapter to any person who is the owner or proprietor of a grocery store or pharmacy, who:

1. Submits a written application for a permit, which application shall state under oath:

a. The name and place of residence of the applicant and the length of time he has lived at such place of residence.

b. That he is a citizen of the state of Iowa.

c. The place of birth of the applicant and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the place or building where the applicant intends to operate.

e. The name of the owner of the building and if such owner is not the applicant that such applicant is the actual lessee of the premises.

2. Establishes that he is a person of good moral character.

3. Furnishes a bond in the form and conditioned as prescribed and to be furnished by the state tax commission, with good and sufficient sureties to be approved by the authorities to which such application is submitted, conditioned upon the faithful observance of this chapter, in the sum of five hundred dollars.

"Grocery store" means and includes any retail establishment, the principal business of which consists of the sale of food or food products for consumption off the premises.

"Pharmacy" shall mean a drug store in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist. [C35, §1921-f104; C39,§1921.105; C46, 50, 54,§124.10]

**124.11 Authority under class "A" permit.** Any person holding a class "A" permit issued by the state tax commission, as in this chapter provided, shall be authorized to manufacture and sell, or sell at wholesale, beer for consumption off the premises, such sale or sales within the state to be made only to persons holding subsisting class "A", "B" or "C" permits issued in accordance with the provisions of this chapter. [C35,§1921-f105; C39,§1921.106; C46, 50, 54,§124.11]

**124.12 Authority under class "B" permit.** Subject to the provisions of this chapter, any person holding a class "B" permit, issued as herein provided, shall be authorized to sell beer for consumption on or off the premises; provided, however, that unless otherwise provided in this chapter, no sale of beer shall be made for consumption on the premises unless food is served and consumed therewith, and unless such place where such service is made is equipped with tables and seats sufficient to accommodate not less than twenty-five persons at one time. It shall be unlawful for any licensee hereunder to give away beer, or to promote the sale of beer by the gift of any lunch, meal, or articles of food except pretzels, cheese or crackers. [C35,§1921-f106; C39,§1921.107; C46, 50, 54,§124.12]

**124.13 Authority under class "C" permit.** Any person holding a class "C" permit issued as herein provided, shall be allowed to sell beer for consumption off the premises, provided, however, that such sales when made shall be in original containers only and that no sale or delivery shall be made between the hours of one a.m. and six a.m., and no sale or delivery on Sunday. [C35,§1921-f107; C39,§1921.108; C46, 50, 54,§124.13]

**124.14 Sale on trains — bond.** Subject to the provisions of this chapter, any dining car company, sleeping car company, railroad company or railway company may make application to the state tax commission for a special class "B" permit, and the state tax commission may issue a permit to any such company which shall authorize the holder thereof to keep for sale and sell on any dining car, sleeping car, buffet car or observation car operated by such applicant in, through or across the state, beer containing no greater content of alcohol by weight than is lawful under this chapter for consumption in such cars. The application for such permit shall be in such form and contain such information as may be required by the state tax commission. Each such permit shall be good throughout the state as a state permit. Only one such permit shall be required for all cars operated in this state by such applicant, but a duplicate of such permit issued, as herein provided, shall be posted in each car in which such beverages are sold; and no further permit shall be required or tax levied for the privilege of selling beverages for consumption in such cars. As a condition precedent to the issuing of any per-

mit hereunder, the applicant shall give bond to the state tax commission, with good and sufficient sureties thereon to be approved by the state tax commission, conditioned upon the faithful performance of this chapter in the penal sum of one thousand dollars. [C35, §1921-f108; C39,§1921.109; C46, 50, 54,§124.14]

Referred to in §§124.24, 124.32

**124.15 Permits to clubs.** Cities and towns shall upon proper application, issue to a club within their respective limits a class "B" permit for the sale of beer for consumption on the premises subject to the provisions of this chapter. The board of supervisors of any county shall issue class "B" permits to clubs located in such counties outside of the limits of cities and incorporated towns. [C35,§1921-f109; C39,§1921.110; C46, 50, 54,§124.15]

**124.16 Class "B" club permits.** No club shall be granted a class "B" permit under this chapter:

1. If the buildings occupied by such club are not wholly within the territorial limits of the city or town to which such application is made; provided, however, that a golf or country club whose buildings are located outside the territorial limits of the city or town may be issued a class "B" permit by the local board of supervisors, and further provided, that all of the permit fees authorized under this subsection shall be collected and retained by the county in which such golf or country club is located and credited to the general fund of said county and provided, further, that such golf or country club shall comply with the restrictions contained in the succeeding subsections of this section.

2. If it is a proprietary club, or operated for pecuniary profit.

3. Unless it is incorporated under the laws of the state of Iowa, and its charter is in full force and effect, and/or excepting regularly chartered branches of nationally incorporated organizations.

4. Unless such club has a permanent local membership of not less than fifty adult members.

5. Unless the application for such permit is approved by a majority of the bona fide members of such club who are present at a regular meeting, or a special meeting called to consider the same.

6. Unless it was in operation as a club on the first day of January, A.D., 1934, or being thereafter formed, was in continuous operation as a club for at least two years immediately prior to the date of its application for a class "B" permit. [C35,§1921-f110; C39,§1921.111; C46, 50, 54,§124.16]

Referred to in §§124.5, 124.24, 124.35

**124.17 Application.** Every club desirous of obtaining a class "B" permit shall make a written application therefor, executed by its president and attested by its secretary or other similar officers performing the duties

usually performed by a president or secretary which application shall state under oath:

1. The name of the club and the location of the premises occupied by it.
2. The names of the officers of said club.
3. That the buildings occupied by said club are wholly within the corporate limits of the city or town to which such application is made.
4. The purposes for which such club was formed and is maintained, and the number of the bona fide members thereof regularly paying dues.
5. That the application for such permit was approved by a majority of the bona fide members of such club present at a regular meeting or at a special meeting called to consider the same. [C35,§1921-f111; C39,§1921.112; C46, 50, 54,§124.17]

**124.18 Bond.** Every club making application for a class "B" permit shall furnish a bond with good and sufficient sureties to be approved by the authorities issuing the permit, conditioned upon the faithful observance of this chapter. Such bond shall be in the sum of one thousand dollars. [C35,§1921-f112; C39, §1921.113; C46, 50, 54,§124.18]

**124.19 Sales by hotels.** Hotels holding class "B" permits may serve beer to their guests either in the dining room or dining rooms or to any guests duly registered at such hotel in the rooms of such guests. [C35,§1921-f113; C39, §1921.114; C46, 50, 54,§124.19]

**124.20 Prohibited sales and advertisements.** No holder of a permit under the provisions of this chapter shall exhibit or display or permit to be exhibited or displayed on the premises any signs or posters containing the words "bar", "barrooms", "saloon" or words of like import.

Nor shall any such beer be sold or delivered to or consumed by any person, on the premises of any class "B" permit holder, between the hours of twelve o'clock midnight on Saturday and seven o'clock of the following Monday morning.

It shall be unlawful for any person to sell, give or make available to any minor or to permit any minor to purchase or consume any beer on the premises of a class "B" or class "C" permit holder, or for any minor to buy or attempt to buy or to secure or attempt to secure beer from any person, and it shall further be unlawful for any person to offer beer, with or without consideration, to any minor, except within a private home and with the knowledge and consent of the parent or guardian of said minor. A violation of the provisions of this paragraph by any holder of a class "B" or class "C" permit or any of his agents or employees in connection with the operation of a beer business under said class "B" or class "C" permit shall be a mandatory ground for revocation of said permit, in addition to other mandatory grounds provided in this chapter.

[C35,§1921-f114; C39,§1921.115; C46, 50, 54, §124.20]

Referred to in §§124.34, 124.35

**124.21 Minors.** Minors are prohibited from serving beer in the place of business of any permit holder in which the business of selling beer constitutes more than fifty percent of the gross business transacted therein. [C35,§1921-g3; C39,§1921.116; C46, 50, 54,§124.21]

**124.22 Brewers, etc.—prohibited interest.** No person engaged in the business of manufacturing, bottling or wholesaling beer nor any jobber nor any agent of such person shall directly or indirectly supply, furnish, give or pay for any furnishings, fixtures or equipment used in the storage, handling, serving or dispensing of beer or food within the place of business of another permittee authorized under the provisions of this chapter to sell beer at retail; nor shall he directly or indirectly pay for any such permit, nor directly or indirectly be interested in the ownership, conduct or operation of the business of another permittee authorized under the provisions of this chapter to sell beer at retail. Any permittee who shall permit or assent or be a party in any way to any such violation or infringement of the provisions of this chapter shall be deemed guilty of a violation of the provisions of this chapter. [C35,§1921-f115; C39,§1921.117; C46, 50, 54, §124.22]

**124.23 Investigation of applicant.** The authorities empowered by this chapter to issue permits shall make a thorough investigation to determine the fitness of the applicant and the truth of the statements made in and accompanying the application, and the decision of such authority on the application shall be rendered within thirty days after the application is received. [C35,§1921-f116; C39,§1921.118; C46, 50, 54,§124.23]

45ExGA, ch 25,§25, editorially divided

**124.24 Fees.** The annual permit fee for a class "A" permit shall be two hundred fifty dollars. The annual permit fee for a class "B" permit, except class "B" permits issued to hotels and clubs as contemplated in this chapter, and golf or country clubs, shall be fixed by the authorities empowered by this chapter to issue permits, but the amount of said permit fee shall not be less than one hundred dollars, nor more than three hundred dollars. For a golf or country club, as defined in section 124.16, subsection 1, the license may be granted for a period of six months, for which the license fee shall be fifty dollars. The class "B" permits to be issued under the provisions of this chapter to hotels shall be as follows:

1. Hotels having two hundred fifty guest rooms or more shall pay an annual permit fee of two hundred fifty dollars.
2. Hotels having more than one hundred and less than two hundred fifty guest rooms shall pay an annual permit fee of one hundred fifty dollars.
3. Hotels having one hundred guest rooms



or less shall pay an annual permit fee of one hundred dollars.

The permit fee for class "C" permits shall be twenty-five dollars. The annual permit fee for special class "B" permits, issued under section 124.14, shall be one hundred dollars, and three dollars for each duplicate thereof, which fees shall be paid into the state tax commission. The state tax commission shall issue duplicates of such permits from time to time as applied for by each such company. [C35, §1921-f117; C39, §1921.119; C46, 50, 54, §124.24]

**124.25 Barrel tax.** In addition to the annual permit fee to be paid by all class "A" permittees, under the provisions of this chapter, there shall be levied and collected from such permittees on all beer manufactured for sale or sold in this state at wholesale and on all beer imported into this state for sale at wholesale and sold in this state at wholesale, a tax of two and forty-eight hundredths dollars for every barrel containing thirty-one gallons, and at a like rate for any other quantity or for the fractional part of a barrel. Provided, however, that no tax shall be levied or collected on beer shipped outside this state by a class "A" permittee or sold by one class "A" permittee to another class "A" permittee.

All revenue derived from the tax hereby imposed shall accrue to the state general fund.

All of the provisions of this chapter relating to the administration of the barrel tax on beer shall apply to this section. [C35, §1921-f118; C39, §1921.120; C46, 50, 54, §124.25]

Referred to in §124.32

**124.26 Report of barrel sales — penalty.** Every person holding a class "A" permit shall on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which such person is issued a permit, make a report under oath to the state tax commission upon forms to be furnished by it for such purpose showing the exact number of barrels of beer, or fractional parts thereof, sold by such permit holder during the preceding calendar month. Such report shall also state the name and address of the several purchasers of such beer and such other information as the state tax commission may require, and such permit holders shall at the time of filing said report pay to the state tax commission the amount of tax due at the rate fixed in accordance with the provisions of this chapter.

A penalty of ten percent of the amount of the tax shall be added thereto if the report is not filed and the tax paid to the commission by said tenth day of the calendar month. [C35, §1921-f119; C39, §1921.121; C46, 50, 54, §124.26]

**124.27 Books of account required.** Each class "A" permittee shall keep proper books of account and records showing the amount of beer sold by him, which books of account shall be at all times open to inspection by the state tax commission or its authorized representative. Each class "B" and class "C" per-

mittee shall keep proper books of account and records showing each purchase of beer made by him, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which books of account and records shall be at all times open to inspection by the state tax commission or its authorized representative. [C35, §1921-f120; C39, §1921.122; C46, 50, 54, §124.27]

**124.28 Separate locations—class "A".** Every class "A" permittee having more than one place of business shall be required to have a separate license for each separate place of business maintained by such permittee wherein such beer is stored, warehoused, or sold. [C35, §1921-f121; C39, §1921.123; C46, 50, 54, §124.28]

**124.29 Separate locations—class "B" or "C".** Every person holding a class "B" or class "C" permit having more than one place of business wherein such beer is sold shall be required to have a separate license for each separate place of business, except as otherwise herein provided. [C35, §1921-f122; C39, §1921.124; C46, 50, 54, §124.29]

**124.30 Mandatory revocation.** If a permit holder under the provisions of this chapter, is convicted of a felony or is convicted of a sale of beer contrary to the provisions of this chapter or is convicted of bootlegging, or who is guilty of the sale or dispensing of wines or spirits in violation of the law, or who shall allow the mixing or adding of alcohol to beer or any other beverage on the premises of class "B" permittees or who shall be guilty of the violation of this chapter as amended, or of any ordinances enacted by any city or town as provided for in this chapter, his permit shall be revoked by the authorities issuing same, and he shall not again be allowed to secure a permit for the distribution or sale of beer nor shall he be an employee of any person engaged in the manufacture, distribution or sale of beer. [C35, §1921-f123; C39, §1921.125; C46, 50, 54, §124.30]

Additional revocation provisions, see §124.40

**124.31 Keeping liquor where beer is sold—closing hours.** No liquor for beverage purposes having an alcoholic content greater than four percent by weight, shall be used, or kept for any purpose in the place of business of class "B" permittees, or on the premises of such class "B" permittees, at any time. A violation of any provision of this section shall be grounds for revocation of the permit. This section shall not apply in any manner or in any way, to any railway car of any dining car company, sleeping car company, railroad company or railway company, having a special class "B" permit: to the premises of any hotel for which a class "B" permit has been issued, other than that part of such premises regularly used by the hotel for the principal purpose of selling beer or food to the general public; to the private premises of any bona fide private club or association for which a class

"B" permit has been issued, having a select and discriminate membership and owned and operated by and for the benefit of the members which is under the exclusive control of the membership or, to drug stores regularly and continuously employing a registered pharmacist, from having alcohol in stock for medicinal and compounding purposes.

Nothing herein contained shall be construed as authorizing the selling of any liquor for beverage purposes having an alcoholic content greater than four percentum by weight.

Cities and towns shall have the power and authority to adopt ordinances and county boards of supervisors shall have the power and authority to adopt resolutions fixing the hours during which intoxicating liquors may be consumed by any person on the premises of private clubs or associations, except fraternal organizations, service clubs and bona fide golf and country clubs. [C35,§1921-g4; C39,§1921.126; C46, 50, 54,§124.31; 56GA, ch 94,§§1, 2; 57GA, ch 91,§1]

Constitutionality, 57GA, ch 91,§2

**124.32 Purchase from nonpermit holder.** It shall be unlawful for the holder of any class "B" or class "C" permit issued under the provisions of this chapter to sell beer, except beer purchased from a person holding a subsisting class "A" permit issued in accordance with the provisions of this chapter, and/or on which the tax provided in section 124.25 has been paid.

Provided, however, the provisions of this section shall not apply to the holders of special class "B" permits issued under section 124.14 for sales in cars engaged in interstate commerce.

It shall be unlawful for any person not holding a class "A" permit to import beer into this state for the purpose of sale or resale. [C35,§1921-f124; C39,§1921.127; C46, 50, 54, §124.32]

**124.33 Distribution of funds.** The revenues obtained from permit fees and the barrel tax collected under the provisions of this chapter shall be distributed as follows:

1. All permit fees collected under the provisions of this chapter by any municipality shall be retained by such municipality and allocated to its general fund.

2. All license fees and taxes collected by the state tax commission shall accrue to the state general fund. [C35,§1921-f125; C39,§1921.128; C46, 50, 54,§124.33]

**124.34 Power of municipalities.** It is expressly provided, any provision of this chapter to the contrary notwithstanding, that cities and towns, and boards of supervisors, shall have the power and authority to revoke any permit issued under their authority for a violation of any of the provisions of this chapter, or any ordinance adopted by a city or town under the provisions hereof, or any rule or regulation adopted by a board of supervisors, or for any cause which, in the judg-

ment of the governing body, may be inimical to or prevent the carrying out of the intent and purposes of this chapter. Any permit revoked as in this chapter provided shall not be renewed or a new permit shall not be granted to the same person for a period of one year from the date of revocation; further, the governing body may refuse to issue a permit effective on the same premises to any other person for a period of one year from the date of revocation. Cities and towns are hereby empowered to adopt ordinances for the enforcement of this chapter, and are further empowered to adopt ordinances providing for the limitation of class "B" permits, provided, however, where an ordinance is adopted providing for the limitation of class "B" permits the minimum limitation shall not be less than one class "B" permit to be issued upon application meeting the requirements of this chapter for each five hundred population or fractional part thereof up to twenty-five hundred population and one additional permit for each seven hundred fifty population or fractional part thereof over and above twenty-five hundred population. However, in towns having a population of one thousand or less, at least two permits shall be allowed if proper application is made therefor in accordance with the requirements of the provisions of this chapter, and said city and town councils are further empowered to adopt ordinances, subject to the express provisions of section 124.20, for the fixing of the hours during which beer may be sold and consumed in the places of business of class "B" permittees, and further providing that subject to the express provisions of said section 124.20 no sale or consumption of beer shall be allowed on the premises of a class "B" permittee, as above provided, between the hours of one a. m. and six a. m.; and for the location of the premises of class "B" permittees; and are empowered to adopt ordinances, not in conflict with the provisions of this chapter, governing any other activities or matters which may affect the sale and distribution of beer under class "B" permits and the welfare and morals of the community involved.

In determining the number of permits to be issued under the provisions of this section, class "B" permits issued to clubs and hotels as contemplated in this chapter, shall be excluded from the limitation as to number, as in this section provided. [C35,§1921-f126; C39, §1921.129; C46, 50, 54,§124.34]

**124.35 Closing hours.** Subject to the express provisions of section 124.20, no beer shall be sold or consumed in the places of business of class "B" permittees located outside of a city or town between the hours of one a.m. and six a.m., except clubs as contemplated in section 124.16. Boards of supervisors are authorized and empowered, subject to the above, to fix opening and closing hours and are further authorized and empowered to adopt rules and regulations for the prohibiting or regulation of dancing in places where beer

is sold; and are empowered to adopt rules and regulations, not in conflict with the provisions of this chapter, governing any other activities or matters which may affect the sale and distribution of beer under class "B" permits and the welfare and morals of the community involved. [C35,§1921-g5; C39,§1921.130; C46, 50, 54,§124.35]

**124.36 Bottling beer.** No person, firm or corporation shall bottle beer within the state of Iowa, except class "A" permittees who have complete equipment for bottling beer and who have received the approval of the local board of health as to sanitation, and it shall be the duty of local boards of health to inspect the premises and equipment of class "A" permittees who desire to bottle beer. [C35,§1921-g6; C39,§1921.131; C46, 50, 54,§124.36] •

**124.37 Violations.** Any person who violates any of the provisions of this chapter, or who manufactures for sale or sells beer without a permit as provided herein, or who makes a false statement concerning any material fact in submitting any application for a permit, or for a renewal of a permit, or in any hearing concerning the revocation thereof, shall be punished by a fine of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months, nor more than one year, or by both such fine and imprisonment. It is hereby made unlawful for any person to use or consume beer upon the public streets or highways, or in automobiles or other vehicles on said streets or highways, and any person violating this provision of this chapter shall be fined not to exceed one hundred dollars or imprisonment in the county jail, not to exceed thirty days. [C35,§1921-f127; C39,§1921.132; C46, 50, 54,§124.37]

**124.38 Labels on bottles, barrels, etc. — conclusive evidence.** All bottles, kegs, barrels or other original containers in which beer is sold in this state shall bear a label on the outside thereof, stating as follows: "This beer does not contain more than four per centum of alcohol by weight." The label on any bottle, keg, barrel or other container, in which beer is offered for sale in this state, representing the alcoholic content of such beer as being in excess of four per centum by weight shall be conclusive evidence as to the alcoholic content of the beer contained therein. [C35, §1921-f128; C39,§1921.133; C46, 50, 54,§124.38]

Constitutionality, 45ExGA, ch 25,§37

**124.39 Dancing — police — booths — lights.**

1. No dancing shall be permitted in connection with the operation of a beer business under any class "B" license, except that cities and towns may, by ordinance, and county boards of supervisors may by resolution authorize and license dancing in connection with the operation of a beer business under a class "B" license provided the floor space

used for dancing purposes therein contain at least five hundred square feet, all of which shall be of the same general floor level as the place where the beer is dispensed; said space to be used for dancing shall be in the same room as, or in a room adjacent to and opening directly from, the place where beer is dispensed and with a full view at all times of the major portion thereof from the place where beer is dispensed. Said floor space shall not be obstructed or crossed in any part or portion by partitions or other obstructions of any kind, except necessary structural posts, pillars or similar supports.

2. It is further provided that the holder of a class "B" license where dancing shall be permitted in connection therewith, as herein provided, shall, at his own expense, provide for the attendance thereat, at all times during the hours when dancing is permitted, of a policeman who shall be a member of the regularly constituted police force of the city or town, or an officer of the sheriff's department in case said license has been issued by the board of supervisors, or especially deputized for that purpose; said officers shall wear the regulation police officer's uniform of said city or town, or of the sheriff's office as the case may be, and if no prescribed uniform shall have been adopted, then said officers shall be required to wear such distinctive uniform as the council or sheriff shall designate; the provisions of subsections 1 and 2 of this section shall not apply to any club holding a class "B" permit under this chapter or to hotels with fifty or more guest rooms when the operator thereof holds the class "B" license in connection with which dancing is permitted.

3. No booths shall be permitted or used in connection with the operation of a beer business under any class "B" license issued in the state, unless the same are entirely open at one side with an unobstructed view therein from the rest of the room. The total height of any booth structure shall not exceed forty inches, provided, however, that any person who is the holder of a class "B" permit on the date when this section shall become effective\*, and whose place of business is, on said date, equipped with booths of a greater height than forty inches, but not to exceed fifty inches, shall be permitted to continue the use of the same for such period of time as said business is operated by him. In no event, however, shall any booth structure be of greater height than fifty inches and no booths installed in the place of business of any class "B" permit holder on or after the date when this section shall become effective\*, shall exceed forty inches in height.

4. The place of said business shall be lighted so that all objects are plainly visible at all times, and all parts of such place of business shall be illuminated to a minimum of two foot-candles as measured by a foot-candle meter at a plane of thirty inches above the floor line. [C46, 50, 54,§124.39]

\*Effective July 4, 1941

**124.40 Revocation of "B" licenses on citizens' complaint.** In addition to all other provisions of this chapter for the revocation of class "B" licenses, it is further provided that ten or more citizens of any precinct, or of any city or town where said city or town contains more than one precinct, wherein the business under the class "B" license referred to in such complaint is conducted may join in filing, and it shall be the duty of every peace officer to so file with the board or council which granted the license in question, a complaint in writing, when such complainant or complainants shall have knowledge of any violations of this chapter by any license holder, setting forth the alleged acts of violation with reasonable accuracy. The said board or council shall, upon receipt of any such complaint, forthwith fix a date for hearing thereon and shall immediately thereafter cause a written notice of the date, time, and place of said hearing, together with a copy of the complaint filed, to be served by any peace officer upon the permit holder complained against, and upon the surety, or the agent or representative of such surety, on his bond. Said date of hearing shall not be sooner than five nor later than fifteen days after the filing of said complaint. Said hearing may be adjourned or continued at the discretion of the board or council for good cause shown and the specific reasons therefor entered of record in the records of the board or council, but except for extraordinary or unusual circumstances, specifically stated in writing and placed in the minutes of such board or council, no more than two continuances of not to exceed five days each shall be granted. At said hearing the person or persons filing the complaint may be represented by counsel and the permit holder may be represented by counsel. The board or council, as the case may be, shall make full inquiry into the charges made in the complaint, being authorized to administer oaths and take testimony thereon, and if it appears that the permit holder has violated any provision of this chapter for which mandatory revocation is provided, the board or council shall immediately revoke said license, and the bond of the permit holder provided for in section 124.9, shall be forfeited and its principal or penal sum shall become immedi-

ately due and payable to such city, town, or county, as the case may be. A certification of such order of forfeiture shall forthwith be filed with the clerk of the district court of the county and when so filed the clerk of the court shall forthwith enter a judgment in favor of the city whose council granted said permit or in favor of the county whose board of supervisors granted said permit, as the case may be, and against the permittee and the surety on his bond in the full amount of the principal sum of said bond. Either the complainant or the permittee may appeal to the district court of the county in which such permit was issued, or a judge thereof in vacation, from the decision of the board or council by serving written notice of such appeal on the opposite party in the same manner as service of original notices of suits and filing said notice and return of service thereof with the board or council within ten days after the entry of such decision. In the event the decision of the board or council provides for a revocation of the permit, same shall stand revoked immediately and shall not be reinstated unless the district court or judge shall reverse the decision of the board or council. When notice of appeal has been served and filed, the board or council, as the case may be, shall immediately certify all the original papers to the clerk of the district court together with a certified copy of the order appealed from. The appeal shall be heard and determined by the district court without jury, or by a judge thereof in vacation within ten days thereafter and the hearing thereof shall be given precedence over other matters pending in said court. The board or council and the permit holder may be represented by counsel at such hearing. The said district court, or judge thereof in vacation, shall have full jurisdiction to hear and determine the matter de novo, and the decision of the court or judge shall be final and not subject to appeal to the supreme court except on the question of violation of the constitutional rights of either party. Nothing herein shall preclude prosecution of the license holder for any violations of law. [C46, 50, 54, §124.40]

Mandatory revocation, §124.30

CHAPTER 125

GENERAL PROHIBITIONS

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- 125.31 Delivery to sheriff.
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**125.1 Interpretation.** Courts and jurors shall construe this title so as to prevent evasion. [C51,§929; R60,§1581; C73,§1554; C97,§2431; C24, 27, 31, 35, 39,§1922; C46, 50, 54,§125.1]

**125.2 Definition.** The word "liquor" or the phrase "intoxicating liquor" when used in this title, shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, wine, spirituous, vinous, and malt liquor, and all intoxicating liquor whatever provided, however, that the words "liquor" or "intoxicating liquor" wherever used in this title of the Code shall not be construed to include beer, ale, porter, stout, or any other malt liquor containing not more than four percent of alcohol by weight. [R60,§1583; C73,§1555; C97, §2382; SS15,§2382; C24, 27, 31, 35, 39,§1923; C46, 50, 54,§125.2]

Additional definitions, §§123.5, 124.2

**125.3 General prohibition.** No one, by himself, clerk, servant, employee, or agent, shall, for himself or any person else, directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of the statute, or keep for sale, or have possession of any intoxicating liquor, except as provided in this title; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this title, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom, or any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquor; or use or have possession of any material with intent to use it in the manufacture of intoxicating liquors; provided,

however, that alcohol may be manufactured for industrial and nonbeverage purposes, by persons, firms, or corporations who have qualified for that purpose as provided by the laws of the United States, and the laws of the state of Iowa. Such alcohol, so manufactured, may be denatured, transported, used, possessed, sold, and bartered and dispensed, subject to the limitations, prohibitions and restrictions imposed by the laws of the United States and the state of Iowa. [C51,§§924-928; R60,§§1559, 1563, 1583, 1587; C73,§§1523, 1540-1542, 1555; C97,§2382; SS15,§2382; C24, 27, 31, 35, 39,§1924; C46, 50, 54,§125.3]

Referred to in §125.5  
Permissible possession and use, §§123.22 et seq., 125.16, 126.24, 751.31, 751.32; also chs 130-134  
Sale of drugged liquors, §732.4; to Indians, §732.5

**125.4 Accessories.** Any clerk, servant, employee, or agent engaged or aiding in any violation of this title shall be charged and convicted as principal. [C51,§928; R60,§§1559, 1562, 1587; C73,§§1523, 1540-1542; C97,§2382; SS15, §2382; C24, 27, 31, 35, 39,§1925; C46, 50, 54,§125.4]

Accessories in general, §688.1

**125.5 First conviction.** Whoever is found guilty of violating any of the provisions of section 125.3, shall be punished as a bootlegger as provided in this chapter. [C51,§930; R60, §§1561-1563; C73,§§1525, 1540-1542; C97,§2383; S13,§2383; C24, 27, 31, 35, 39,§1926; C46, 50, 54, §125.5]

Second and subsequent convictions, §§126.19, 126.20

**125.6 Clerk to report.** The clerk of the district court of any county shall within forty-eight hours after a judgment of conviction has been entered by the district court in his county against any person for any violation of the intoxicating liquor laws of this state, mail to the state bureau of investigation at Des Moines, a complete report thereof on forms to be furnished by said bureau. [C27, 31, 35,§1926-b1; C39,§1926.1; C46, 50, 54,§125.6]

**125.7 "Bootlegger" defined.** Any person who shall, by himself, or his employee, servant, or agent, for himself or any person, com-

pany, or corporation, keep or carry around on his person, or in a vehicle, or leave in a place for another to secure, any intoxicating liquor as herein defined, with intent to sell or dispose of the same by gift or otherwise, or who shall within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of intoxicating liquor, in violation of law, or aid in the delivery and distribution of any intoxicating liquor so ordered or shipped, or who shall in any manner procure for, or sell, or give any intoxicating liquors to any minor for any purpose, or give to or in any manner procure for or sell the same to any intoxicated person, or to one in the habit of becoming intoxicated, shall be termed a bootlegger, and shall be fined not less than three hundred dollars nor more than one thousand dollars and be imprisoned in the county jail not less than three months nor more than one year. [C51, §§924-928; R60, §§1559, 1562, 1563, 1583, 1587; C73, §§1523, 1540-1542, 1555; C97, §2382; SS15, §§2382, 2461-a; C24, 27, 31, 35, 39, §1927; C46, 50, 54, §125.7]

Injunction against, §128.17  
See also §123.59

**125.8 Venue.** In case of a sale in which a shipment or delivery of such liquors is made by a person or corporation, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent, or employee. [C24, 27, 31, 35, 39, §1928; C46, 50, 54, §125.8]

Venue, §125.29

**125.9 Nuisance.** The building, erection, or place, or the ground itself, in or upon which the unlawful manufacture or sale or keeping with intent to sell, use, or give away said liquors is carried on or continued or exists, and the furniture, fixtures, vessels and contents, are declared a nuisance, and in addition to all other penalties provided in this title, shall be abated as hereinafter provided. [C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, 35, 39, §1929; C46, 50, 54, §125.9]

Judgment of abatement, §128.19  
See also §123.60

**125.10 Penalty for nuisance.** Whoever shall erect, establish, continue or use any building, erection, or place for any of the purposes herein prohibited, is guilty of a nuisance, and upon conviction shall pay a fine of not less than three hundred nor more than one thousand dollars and costs of prosecution, which shall include a reasonable attorney's fee to be taxed by the court, and stand committed to the county jail until such fine and costs are paid, and be imprisoned in the county jail for a period of not less than three months nor more than one year. [C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, 35, 39, §1930; C46, 50, 54, §125.10]

Extent of imprisonment, §§762.32, 789.17

**125.11 Intoxication punished.** If any person shall be found in a state of intoxication,

any peace officer shall, without a warrant, take him into custody and detain him in some suitable place until an information can be made before a magistrate and a warrant of arrest issued, under which he shall at once be taken before the magistrate issuing the same, or, if for any reason he cannot act, to the next nearest one, where he shall be tried, and, if found guilty, shall be fined in the sum of not less than five nor more than twenty-five dollars and costs of prosecution, or imprisoned in the county jail not more than thirty days. [R60, §§1568, 1586; C73, §1548; C97, §2402; C24, 27, 31, 35, 39, §1931; C46, 50, 54, §125.11]

Referred to in §125.12  
See also §123.42

**125.12 Penalty remitted.** The penalty, or any portion of it, imposed under section 125.11, may be remitted by the magistrate before whom the trial is had, and the accused discharged from custody, upon his giving information in writing and under oath, stating when, where, and of whom he purchased or received the liquor which produced the intoxication, and the kind and character of the liquor, and, in addition, giving bail for his appearance before any court to give evidence in any action or complaint to be commenced or preferred against such party for furnishing the same. [R60, §§1568, 1586; C73, §1548; C97, §2402; C24, 27, 31, 35, 39, §1932; C46, 50, 54, §125.12]

**125.13 Clubrooms.** Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist, or abet in keeping or maintaining, any clubroom or other place in which intoxicating liquors are received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatever, and every person who shall use, barter, sell, or give away, or assist or abet another in bartering, selling, or giving away, any intoxicating liquors so received or kept, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [C97, §2404; C24, 27, 31, 35, 39, §1933; C46, 50, 54, §125.13]

See chapter 123

**125.14 False statements.** If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this state, shall make to any company, corporation, or common carrier, or to any agent thereof, or other person, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or pack-

age in order to conceal the fact that the same contains intoxicating liquors, for the purposes aforesaid; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, he shall be fined for each offense one hundred dollars and costs of prosecution, and the costs shall include a reasonable attorney fee to be taxed by the court, and be committed to the county jail until such fine and costs are paid. [C97,§2420; C24, 27, 31, 35, 39,§1934; C46, 50, 54,§125.14]

Referred to in §125.16  
Extent of imprisonment, §§762.32, 789.17

**125.15 Packages in transit.** Any peace officer of the county under process or warrant to him directed shall have the right to open any box, barrel, or other vessel or package for examination, if he has reasonable ground for believing that it contains intoxicating liquors, either before or while the same is being so transported or conveyed. [C97,§2420; C24, 27, 31, 35, 39,§1935; C46, 50, 54,§125.15]

**125.16 Labeling shipments.** It shall be unlawful for any common carrier or for any person to transport or convey by any means, whether for compensation or not, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly labeled or marked, showing the quantity and kind of liquors contained therein, the name of the party to whom they are to be delivered, and the name of the shipper. No person shall be authorized to receive or keep such liquors unless the same be marked or labeled as herein required. The violation of any provision of this section by any common carrier, or any agent or employee of any carrier, or by any person, shall be punished the same as provided in section 125.14. [C97,§2421; C24, 27, 31, 35, 39,§1936; C46, 50, 54,§125.16]

Referred to in §125.18

**125.17 Carrying or drinking on trains.** Any person who shall, upon any railway car, street or interurban car, in service, carry upon his person or in any hand baggage, suit case, or otherwise, for unlawful purposes, any intoxicating liquor, and any person who shall drink any such liquors as a beverage on any such car, shall be guilty of a misdemeanor. [S13, §2461-f; SS15,§2461-g1; C24, 27, 31, 35, 39,§1937; C46, 50, 54,§125.17]

Referred to in §125.18  
Punishment, §687.7

**125.18 Illegally transported liquors.** Liquors conveyed, carried, transported, or delivered in violation of either of sections 125.16 or 125.17, whether in the hands of the carrier or someone to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale. [C97,§2421; C24, 27, 31, 35, 39,§1938; C46, 50, 54,§125.18]

**125.19 Shipments unlawful—exception.** It shall be unlawful for any person, firm, or corporation, or any agent or employee thereof,

to carry any intoxicating liquor into the state or from one point to another within the state for the purpose of delivering, or to deliver same to any person, company, or corporation within the state, except for lawful purposes. [SS15,§2421-a; C24, 27, 31, 35, 39,§1939; C46, 50, 54,§125.19]

Transportation permitted, §123.26

**125.20 Record of shipments.** It shall be the duty of all common carriers, or corporations, or persons who shall for hire carry any intoxicating liquor into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating liquor to any person, company, or corporation, to keep, at each station or office where it employs an agent or other person to make delivery of freight and keep records relative thereto, a record book, wherein such carrier shall, promptly upon receipt and prior to delivery, enter in ink, in legible writing, in full, the name of the consignor of each shipment of intoxicating liquor to be delivered from or through such station, from where shipped, the date of arrival, the quantity and kind of liquor, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered. [SS15,§2421-b; C24, 27, 31, 35, 39, §1940; C46, 50, 54,§125.20]

Referred to in §125.21

**125.21 Inspection of shipping records.** The record book required by section 125.20 shall be kept in the said local office of such carrier and shall, during business hours, be open to inspection by any peace or law enforcing officer. It shall be a misdemeanor to refuse such inspection. [SS15,§§2421-c,-d; C24, 27, 31, 35, 39,§1941; C46, 50, 54,§125.21]

**125.22 Record receipt upon delivery.** No shipment billed in whole or in part as intoxicating liquor shall be delivered to the consignee until such consignee upon such record book enters in ink, in legible writing, his full name and residence or place of business, giving the name of the town or city, and the street name and number where there is such, and certifies that such liquor is for his own lawful purposes. [SS15,§2421-b; C24, 27, 31, 35, 39,§1942; C46, 50, 54,§125.22]

**125.23 Unlawful delivery.** It shall be a misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquors to any person other than to the consignee.
2. To deliver any intoxicating liquors without having the same receipted for as heretofore provided.
3. To deliver any intoxicating liquors where there is reasonable ground to believe that such liquor is intended for unlawful use. [SS15, §2421-c; C24, 27, 31, 35, 39,§1943; C46, 50, 54, §125.23]

Punishment, §687.7  
Receipts required, §125.20

**125.24 Immunity from damage.** In no case shall any corporation, common carrier, person, or the agent thereof, be liable in damages for complying with any requirement of this title. [SS15,§2421-c; C24, 27, 31, 35, 39,§1944; C46, 50, 54,§125.24]

**125.25 Federal statutes.** The requirements of this title relative to the shipment and delivery of intoxicating liquors and the records to be kept thereof shall be construed in harmony with federal statutes relating to interstate commerce in such liquors. [SS15, §2421-e; C24, 27, 31, 35, 39,§1945; C46, 50, 54, §125.25]

**125.26 Illegal transportation.** Any person who unlawfully transports intoxicating liquor into this state shall be guilty of a felony and upon conviction thereof shall be punished as follows:

1. For the first offense by a fine not less than five hundred dollars, nor more than one thousand dollars or by imprisonment in the penitentiary not exceeding two years in the discretion of the court.

2. For the second and each subsequent offense by imprisonment in the penitentiary not more than three years. [C31, 35,§1945-d1; C39,§1945.1; C46, 50, 54,§125.26]

**125.27 Illegal transportation generally.** Any person, firm, or corporation, and any agent or employee thereof, who engages in the transportation of intoxicating liquors shall for each act of transportation be fined in a sum not exceeding one thousand dollars or be imprisoned in the county jail not exceeding one year or be punished by both such fine and imprisonment and pay the cost of prosecution, including a reasonable attorney fee to be taxed by the court. [R60,§1580; C73,§1553; C97,§2419; C24,§2058; C27, 31, 35,§1945-a1; C39,§1945.2; C46, 50, 54,§125.27]

**125.28 Defenses.** In any prosecution under this title for the unlawful transportation of intoxicating liquors it shall be a defense:

1. That the character and contents of the

shipment or thing transported were not known to the accused or to his agent or employee, or

2. That the purchase and transportation of said liquors was authorized by a law of this state. [C97,§2419; C24,§2059; C27, 31, 35,§1945-a2; C39,§1945.3; C46, 50, 54,§125.28]

Authorized transportation, §§123.26, 126.24; also chs 130-134

**125.29 Venue.** In any prosecution under this title for the unlawful transportation of intoxicating liquors, the offense shall be held to have been committed in any county in the state in which the liquors are received for transportation, through which they are transported, or in which they are delivered. [C97, §2419; C24,§2060; C27, 31, 35,§1945-a3; C39,§1945.4; C46, 50, 54,§125.29]

Venue, §125.8

**125.30 Right to receive liquors.** The consignee of intoxicating liquors shall, on demand of the carrier transporting such liquors, furnish the carrier, at the place of delivery, with legal proof of the consignee's legal right to receive such liquors at the time of delivery, and until such proof is furnished the carrier shall be under no legal obligation to make delivery nor be liable for failure to deliver. [C24, §2061; C27, 31, 35,§1945-a4; C39,§1945.5; C46, 50, 54,§125.30]

**125.31 Delivery to sheriff.** If such proof be not furnished the carrier within ten days after demand, the carrier may deliver such liquors to the sheriff of the county embracing the place of delivery, and such delivery shall absolve said carrier from all liability pertaining to said liquors. [C24,§2062; C27, 31, 35,§1945-a5; C39,§1945.6; C46, 50, 54,§125.31]

Similar provision, §131.23 et seq.

**125.32 Destruction.** The sheriff shall, on receipt of such liquors from the carrier, report the receipt to the district court of his county or to a judge thereof, and the court or judge shall proceed to summarily enter an order for the destruction of said liquors. [C24,§2063; C27, 31, 35,§1945-a6; C39,§1945.7; C46, 50, 54, §125.32]

Disposal, §751.31



## CHAPTER 126

## INDICTMENT, EVIDENCE, AND PRACTICE

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**126.1 Peace officers to file information.** Peace officers shall see that all provisions of this title are faithfully executed within their respective jurisdictions, and when informed, or they have reason to believe, that the law has been violated, and that proof thereof can be had, they shall file an information to that effect against the offending party before a magistrate, who shall thereupon proceed according to law. [R60,§1578; C73,§1551; C97,§2428; S13,§2428; C24, 27, 31, 35, 39,§1946; C46, 50, 54, §126.1]

S13, §2428, editorially divided  
Referred to in §126.3

**126.2 Peace officer to investigate.** Any peace officer shall, whenever directed in writing so to do by the county attorney, make special investigation of any alleged or supposed infraction of the law within his county, and report in writing with reference thereto within a reasonable time to such county attorney. [R60,§1578; C73,§1551; C97,§2428; S13,§2428; C24, 27, 31, 35, 39,§1947; C46, 50, 54,§126.2]

Referred to in §126.3

**126.3 Violation of duty.** Any peace officer failing to comply with any of the provisions of sections 126.1 and 126.2 shall pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office. [R60,§1578; C73,§1551; C97,§2428; S13, §2428; C24, 27, 31, 35, 39,§1948; C46, 50, 54,§126.3]

**126.4 Services and expense.** The peace officer shall file with the county auditor a detailed, sworn statement of the services rendered and of his actual itemized expenses incurred in connection with said investigation, accompanied by the written order of the county attorney. If the officer be one who is receiving a definite and fixed salary, the board of supervisors shall audit and allow only so much of such expense account as it shall find reasonable and necessary. If the officer be one not receiving a fixed and definite salary, the board of supervisors shall allow such additional sum for services as it may deem reasonable and just, which allowance shall be final. [R60, §§1578, 4168; C73, §§1551, 3829; C97, §2428; S13, §2428; C24, 27, 31, 35, 39, §1949; C46, 50, 54, §126.4]

**126.5 Duty of county attorney.** Upon trials of information for violations of this title, the county attorney shall appear for the state, unless some other attorney, selected by the peace officer who filed the information, shall have previously appeared. [R60,§1578; C73, §§1551, 3829; C97,§2428; S13,§2428; C24, 27, 31, 35, 39,§1950; C46, 50, 54,§126.5]

Referred to in §126.6

**126.6 Attorney fee.** The attorney selected by a peace officer in accordance with the provisions of section 126.5, shall receive, for prosecuting such charge before a justice of the peace, five dollars, to be taxed as costs in the case. [R60,§1578; C73,§3829; C97,§2428; S13, §2428; C24, 27, 31, 35, 39,§1951; C46, 50, 54,§126.6]

**126.7 Unnecessary allegations.** In any indictment or information under this title, it shall not be necessary:

1. To set out exactly the kind or quantity of intoxicating liquors manufactured, sold, given in evasion of the statute, or kept for sale.

2. To set out the exact time of manufacture, sale, gift, or keeping for sale.

3. To negative any exceptions contained in the enacting clause or elsewhere, which may be proper ground of defense.

But proof of the violation by the accused of any provision of this title, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person. [R60,§1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39,§1952; C46, 50, 54,§126.7]

Negating exceptions, §§204.19, 773.23

**126.8 Counts.** Informations or indictments under this title may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty. [C51,§931; R60,§1562; C73,§1540; C97, §2425; C24, 27, 31, 35, 39, §1953; C46, 50, 54, §126.8]

**126.9 Former conviction.** In any prosecution for a second or subsequent offense, as provided in this title, it shall not be requisite to set forth in the indictment or information the record of a former conviction, but it shall be sufficient briefly to allege such conviction. [R60,§1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39,§1954; C46, 50, 54,§126.9]

Subsequent offenses, §§126.10, 126.19

**126.10 "Second conviction" defined.** The second or subsequent convictions provided for in this title shall be convictions on separate informations or indictments, and, unless shown in the information or indictment, the charge shall be held to be for a first offense. [R60, §1562; C73,§1540; C97,§2425; C24, 27, 31, 35, 39, §1955; C46, 50, 54,§126.10]

**126.11 Record of conviction.** On the trial of any cause, wherein the accused is charged with a second or subsequent offense, a duly authenticated copy of the former judgment in any court in which such judgment was so had, shall be competent and prima-facie evidence of such former judgment. [SS15,§2461-n; C24, 27, 31, 35, 39,§1956; C46, 50, 54,§126.11]

**126.12 Proof of sale.** It shall not be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this title. [R60,§1569; C73,§1549; C97, §2424; C24, 27, 31, 35, 39,§1957; C46, 50, 54, §126.12]

**126.13 Purchaser as witness.** The person purchasing any intoxicating liquor sold in violation of this title shall in all cases be a competent witness to prove such sale. [R60,§1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39,§1958; C46, 50, 54,§126.13]

**126.14 Peace officer as witness.** Every peace officer shall give evidence, when called upon, of any facts within his knowledge tending to prove a violation of the provisions of this title. [R60,§1578; C73,§1551; C97,§2428; S13,§2428; C24, 27, 31, 35, 39,§1959; C46, 50, 54,§126.14]

**126.15 Judgment lien.** For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this title, or costs paid by the county on account of such violation, the personal and real property, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the purpose, with the knowledge of the owner or his agent, by the person manufacturing, selling, or giving, contrary to the provisions of this title, or keeping with intent to sell intoxicating liquors contrary to law, shall be liable, and the same shall be a lien on such real estate until paid. [R60,§1579; C73,§§1552, 1558; C97,§2422; C24, 27, 31, 35, 39,§1960; C46, 50, 54,§126.15]

Referred to in §126.17

Lien of judgment in general, §624.23

**126.16 Enforcement of lien.** Costs paid by the county for the prosecution of actions or

proceedings, civil or criminal, under this title, as well as the fines inflicted or judgments recovered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property to subject it to the payment thereof. [C73, §1558; C97,§2422; C24, 27, 31, 35, 39,§1961; C46, 50, 54,§126.16]

Referred to in §126.17

Equitable proceedings, §630.16

**126.17 Evidence of owner's knowledge.** In actions under sections 126.15 and 126.16, evidence of the general reputation of the place kept shall be admissible on the question of knowledge of the owner, and written notice given him or his agent by any citizen of the county shall be sufficient to charge him with the same. [C97,§2422; C24, 27, 31, 35, 39,§1962; C46, 50, 54,§126.17]

General reputation, §§123.67, 123.89, 128.6, 128.40, 724.4

**126.18 Action to subject property.** The county attorney in the name of the state, or any citizen of the county in his own name, may maintain an action to subject real property to the payment of the costs and fines aforesaid, and in all such actions, if successful, there shall be added to the judgment, as additional costs, in favor of the county attorney or citizen, as the case may be, a reasonable attorney fee to be fixed by the court. [C24, 27, 31, 35, 39,§1963; C46, 50, 54,§126.18]

**126.19 Second and subsequent conviction.** Whoever has been convicted, or has entered a plea of guilty, in a criminal action, in any court of record, of a violation:

1. Of any provision of this title, or of the laws amendatory of, or supplementary to, this title, or

2. Of any provision of the prior laws of this state relating to intoxicating liquors which were in force prior to the enactment of this title, or

3. Of any provision of the laws of the United States or of any other state relating to intoxicating liquors,—and is thereafter convicted or enters a plea of guilty of a subsequent criminal offense against any provision of this title or of the laws amendatory of, or supplementary to, this title, shall be punished as follows:

a. For his second conviction, by a fine of not less than five hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail or the state penitentiary for not less than six months nor more than one year.

b. For his third and each subsequent conviction, by imprisonment in the state penitentiary for not more than three years. [R60,§§1561, 1563, 1577; C73,§§1525, 1538, 1540, 1542, 1559; SS15,§2461-m; C24, 27, 31, 35, 39,§1964; C46, 50, 54,§126.19]

**126.20 Habitual violators.** Any person who has been twice convicted of contempt either under the provisions of this title or under the

provisions of any former law of this state relating to intoxicating liquors, or who has been once convicted of contempt under the provisions of this title and once convicted of contempt under said prior laws, or who has been once convicted of contempt under either this title or under said prior laws and once convicted of a criminal offense under either this title or under said prior laws, shall be deemed an habitual violator, and if such person is thereafter convicted in the district court under an indictment or trial information of a violation of this title, he shall be imprisoned in the penitentiary or men's or women's reformatory for a term of not exceeding three years. [C24, 27, 31, 35, 39, §1965; C46, 50, 54, §126.20]

Contempt, §128.4

**126.21 Duty of county attorney.** It is made the specific and special duty of the county attorney in all criminal prosecutions under this title and under statutes amendatory thereof, or supplementary thereto, to make diligent and careful inquiry, search, and investigation for former convictions in this state, of the accused, and equally the duty of the county attorney properly and adequately to plead in the indictment or trial information all former convictions of the accused of which he has acquired knowledge. [C31, 35, §1965-d1; C39, §1965.1; C46, 50, 54, §126.21]

**126.22 Duty of court.** When an indictment or trial information contains an allegation of one or more former convictions of the accused, and a plea of guilt is entered to the main offense or offenses only, the court shall require proof of said allegations of former convictions and the same shall not be dismissed or ignored except on the sworn statement of the county attorney that he is unable to prove and establish the same. [C31, 35, §1965-d2; C39, §1965.2; C46, 50, 54, §126.22]

**126.23 Prima-facie evidence.** In all actions, prosecutions and proceedings, criminal or civil, under the provisions of this title, the

finding of intoxicating liquors or of instruments or utensils used in the manufacture of intoxicating liquors, or materials which are being used, or are intended to be used in the manufacture of intoxicating liquors, in the possession of or under the control of any person, under and by authority of a search warrant or other process of law, and which shall have been finally adjudicated and declared forfeited by the court, shall be prima-facie evidence, in any action, criminal or civil, of maintaining a nuisance or bootlegging, or of illegal transportation of intoxicating liquors, as the case may be, by such person. [C27, 31, 35, §1966-a1; C39, §1966.1; C46, 50, 54, §126.23]

Referred to in §126.24  
See Code 1897, §2427

**126.24 Defense.** The possessor of liquor may show in defense, that the liquor found in his possession was manufactured, transported, and sold to him legally, as the possessor of a permit issued according to the laws of the United States and the state of Iowa, or wine received from a minister authorized by the church of which he is a member to administer wine as a religious observance or that the liquor found in his possession was purchased from a pharmacist authorized to fill prescriptions for medical purposes, or lawfully furnished to him by a physician, and that the said liquor was owned and kept by him for medical purposes only.

Nothing in this and section 126.23 shall prevent any peace officer, in the discharge of his duty, from having possession of, or from transporting intoxicating liquor. [C27, 31, 35, §1966-a2; C39, §1966.2; C46, 50, 54, §126.24]

See Code 1897, §2427

**126.25 Attempt to destroy.** The destruction of or attempt to destroy any liquid by any person while in the presence of peace officers or while a property is being searched by a peace officer, shall be prima-facie evidence that such liquid is intoxicating liquor and intended for unlawful purposes. [C27, 31, 35, §1966-a3; C39, §1966.3; C46, 50, 54, §126.25]

## CHAPTER 127

### SEIZURE AND SALE OF CONVEYANCES

Referred to in §204.14

127.1 "Conveyance" defined.  
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127.18 Other state departments.  
127.19 Requisition by county or city.  
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**127.1 "Conveyance" defined.** The term "conveyance" as used in this chapter shall em-

brace wagons, buggies, teams, automobiles, motor vehicles, water and air craft, and all

other forms of conveyances except railway, street, and interurban cars. [C24, 27, 31, 35, 39,§2000; C46, 50, 54,§127.1]

**127.2 Seizure under transportation.** A peace officer who discovers that intoxicating liquor has been or is being transported in violation of law, shall summarily arrest the offender and likewise seize said liquor and the conveyance used to effect said transportation. [C24, 27, 31, 35, 39,§2001; C46, 50, 54,§127.2]

Referred to in §127.3

**127.3 Replevin not available.** A conveyance seized under section 127.2 shall not be subject to replevin. [C24, 27, 31, 35, 39,§2002; C46, 50, 54,§127.3]

**127.4 Custody.** Said conveyance shall be turned over to the sheriff of the county in which the seizure was made, and shall be retained in his custody until disposed of as hereinafter provided. [C24, 27, 31, 35, 39,§2003; C46, 50, 54,§127.4]

**127.5 Release.** Said conveyance shall be returned to the owner upon execution by him of a good and valid bond with sufficient sureties in a sum double the value of the property, which said bond shall be approved by the sheriff of the county and shall be conditioned to pay the value of said conveyance, when seized, to said sheriff in case a judgment of forfeiture be entered against said conveyance. [C24, 27, 31, 35, 39,§2004; C46, 50, 54,§127.5]

**127.6 Information.** The officer shall at once file an information against the accused before some court of the county other than the district court. In addition to the information, the officer shall also file with the said court a written return or statement setting forth a brief description of the conveyance, liquors, and vessels seized. [C24, 27, 31, 35, 39,§2005; C46, 50, 54,§127.6]

**127.7 Forfeiture.** The court, upon conviction of a person so arrested, shall enter an order of forfeiture of the liquors, vessels, and conveyance seized and forthwith file with the clerk of the district court a certified transcript of such order. The district court or a judge thereof shall, on such notice as the court or judge may prescribe, proceed to adjudicate the legality and priority of all claims to and liens on said conveyance, and shall proceed against said liquors and vessels as in case of transcripts filed in search warrant proceedings. [C24, 27, 31, 35, 39,§2006; C46, 50, 54,§127.7]

Referred to in §§127.8, 127.9  
Procedure under search warrants, ch 751

**127.8 Optional procedure.** In lieu of declaring a forfeiture, under section 127.7, of said liquors and vessels, the said court may, in any case, proceed against the said liquors and vessels, in the manner in which it would proceed had said liquors been seized on a duly issued search warrant. [C24, 27, 31, 35, 39, §2007; C46, 50, 54,§127.8]

Procedure under search warrants, ch 751

**127.9 Procedure as to conveyance.** In lieu of declaring a forfeiture, under section 127.7, of said conveyance, the said court may, in any case, proceed as provided in section 127.10. [C24, 27, 31, 35, 39,§2008; C46, 50, 54,§127.9]

**127.10 Information.** An information, under oath, and in substantially the following form, shall be filed in the district court against a conveyance promptly upon the seizure thereof, to wit:

“State of Iowa

vs.

One certain automobile (or other conveyance as the case may be)

..... being duly sworn do say on oath that (here describe the conveyance with reasonable certainty) was, on the ..... day of ....., 19....., in the county of ....., in the state of Iowa, employed in the transportation of intoxicating liquors in violation of law, and, because of such unlawful use, was at said time and place seized and is now in the custody of the sheriff of said county; that to the best knowledge and belief of this affiant said conveyance belongs to ..... Wherefore it is asked that said conveyance be dealt with as provided by law.” [C24, 27, 31, 35, 39,§2009; C46, 50, 54,§127.10]

Referred to in §127.9

**127.11 Procedure.** Upon the filing of said information, the procedure for the forfeiture of said conveyance shall be the same as is provided for the forfeiture of intoxicating liquors seized under search warrant, except in the following particulars:

1. *Service of notice.* The notice of hearing of forfeiture shall, in addition to the service provided in chapter 751, be published once a week for two weeks in some newspaper published in the city or county in which said conveyance was seized, and if the conveyance be a motor vehicle a copy of the aforesaid notice shall forthwith be mailed to the commissioner of public safety.

2. *Hearing.* Said notice shall fix the day of hearing at a time not less than thirty days after the notice is fully served.

3. *Right to contest.* The written claim of the owner or other claimant shall allege, under oath, that said conveyance was not being employed, when seized, in the unlawful transportation of intoxicating liquors, or that if it was being so employed such use was without the knowledge or consent, directly or indirectly, of said claimant.

4. *Presumption.* If it be made to appear that any intoxicating liquors were found in or on said conveyance when it was seized, it shall be presumed that the conveyance was, when seized, employed with the knowledge and consent of all claimants, in the unlawful transportation of such liquors.

5. *Trial.* The trial shall be by the court.

6. *Judgment.* A judgment of forfeiture shall direct that said conveyance be sold by the sheriff as chattels under execution, and a

certified copy of such order shall constitute an execution. [C24, 27, 31, 35, 39, §2010; C46, 50, 54, §127.11]

**127.12 Duty of commissioner.** The commissioner of public safety, upon receipt of the notice aforesaid, shall, if the owner appears of record in his office, notify such owner of the fact of seizure, and if not of record, said commissioner shall mail such description to the county treasurer of each county. [C24, 27, 31, 35, 39, §2011; C46, 50, 54, §127.12]

**127.13 Orders as to claims.** On the hearing the court shall determine whether any claim or lien shall be allowed. If allowed, he shall enter an order fixing therein the amount and priority of all such claims or liens allowed, and shall enter such further order for the protection of the claimants or lienholders as the evidence may warrant. [C24, 27, 31, 35, 39, §2012; C46, 50, 54, §127.13]

**127.14 Notice.** Whenever a judgment of forfeiture has been entered by any court, directing the sale of a conveyance under the provisions of this chapter, the clerk of the district court shall immediately notify the state bureau of investigation of such order, together with a full description of the conveyance, and if it be a motor vehicle, the name of the manufacturer thereof, the model, serial number, and description of the condition of said motor vehicle, before said conveyance shall be advertised for sale. [C24, 27, 31, 35, 39, §2013; C46, 50, 54, §127.14]

43GA, ch 60, §1, editorially divided

**127.15 Requisition by department.** The state department of justice may, if the conveyance is such a one as may be used by said department in connection with its duties and the enforcement of the law, requisition said conveyance for said department and said requisition shall be delivered to the clerk of the district court of the county having jurisdiction of such conveyance, within ten days after the notice of judgment of forfeiture has been received by the bureau of investigation. If said conveyance is not so requisitioned within ten days after the clerk of the district court has notified the department of justice of the judgment of forfeiture, then the conveyance shall be sold by the sheriff as provided in this chapter. [C31, 35, §2013-c1; C39, §2013.1; C46, 50, 54, §127.15]

Referred to in §127.19

**127.16 Order for delivery.** When any such conveyance is requisitioned by the department of justice, the clerk of the district court shall immediately issue to the sheriff of the county or other officer having possession of said conveyance, an order directing that said conveyance be turned over to the state department of justice, or any of its duly commissioned agents directed by the attorney general to receive it. [C31, 35, §2013-c2; C39, §2013.2; C46, 50, 54, §127.16]

Referred to in §127.19

**127.17 Costs.** When any such conveyance is requisitioned by the state department of justice, said department shall pay to the clerk of the district court, the court costs and the expense incurred by the county or the sheriff in keeping said conveyance. [C31, 35, §2013-c3; C39, §2013.3; C46, 50, 54, §127.17]

Referred to in §127.19

**127.18 Other state departments.** Any department of the state government needing a motor vehicle for official use in said department may make written application therefor to the executive council. The executive council shall, if it determines that said department should have such a motor vehicle, by written application request the department of justice to requisition a suitable motor vehicle for the applicant department whenever one is available, in the manner hereinbefore provided. Whenever any department receives a motor vehicle under the provisions hereof, the head thereof shall cause the court costs and all other costs incurred in connection with the confiscation and forfeiture of said motor vehicle to be paid to the clerk of the court or the sheriff of the proper county, as the case may be. [C31, 35, §2013-c4; C39, §2013.4; C46, 50, 54, §127.18]

Referred to in §127.19

**127.19 Requisition by county or city.** The board of supervisors of a county or the council of any city or town in such county may apply to the department of justice that any motor vehicle seized in such county and requisitioned under sections 127.15 to 127.18, inclusive, be delivered to such board or council for use in performing official duties by officials and officers of the county or city or town. No officer of any county or city shall be allowed mileage for the performance of any official duty wherein he uses a publicly owned car. The department of justice may allow such application whereupon the automobile shall be delivered to the board of supervisors or to the council for use in accord with such application. Should the county and city or town both make application for the same vehicle and the applications be granted, the vehicle shall be delivered to the public body whose officers first seized the vehicle. [C31, 35, §2013-c5; C39, §2013.5; C46, 50, 54, §127.19]

**127.20 Proceeds.** The sheriff shall apply the proceeds of a sale, or of the forfeited bond, in the following order:

1. Expense of keeping the conveyance.
2. Court costs.
3. Liens in the order established by the court. [C24, 27, 31, 35, 39, §2014; C46, 50, 54, §127.20]

**127.21 School fund.** Any balance of said proceeds shall be paid by the sheriff to the county treasurer who shall credit the same to the county school fund. [C24, 27, 31, 35, 39, §2015; C46, 50, 54, §127.21]

Temporary school fund, §302.3

**127.22 Duplicate receipts.** The sheriff, in paying a balance to the county treasurer, shall take duplicate receipts therefor and file one

of said receipts with the county auditor. [C24, 27, 31, 35, 39,§2016; C46, 50, 54,§127.22]

## CHAPTER 128

### INJUNCTION AND ABATEMENT

- |        |                           |        |                                       |
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**128.1 Action to enjoin.** Actions to enjoin nuisances may be brought in equity in the name of the state by the county attorney, who shall prosecute the same to judgment, or any citizen of the proper county may institute and maintain such a proceeding in his name. [R60, §1564; C73,§1543; C97,§§2405, 2406; S13,§2406; SS15,§2405; C24, 27, 31, 35, 39,§2017; C46, 50, 54, §128.1]

See also §123.62 et seq.

**128.2 Temporary injunction.** In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge, by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the plaintiff may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented, that the nuisance complained of exists. [R60,§1564; C73,§1543; C97,§2405; SS15,§2405; C24, 27, 31, 35, 39,§2018; C46, 50, 54,§128.2]

**128.3 Notice.** Three days notice in writing shall be given the defendant of the hearing of the application, and, if then continued at his instance, the writ as prayed shall be granted as a matter of course. [C97,§2405; SS15, §2405; C24, 27, 31, 35, 39,§2019; C46, 50, 54,§128.3]

**128.4 Scope of injunction.** When an injunction has been granted, it shall be binding on the defendant throughout the state, and any violation of the provisions of this title anywhere within the state shall be punished as a

contempt, as provided in this chapter. [C97, §2405; SS15,§2405; C24, 27, 31, 35, 39,§2020; C46, 50, 54,§128.4]

Contempt, §128.13 et seq.

**128.5 Immediate trial.** The action when brought shall be triable at the first term of court after due and timely service of notice of the commencement thereof has been given. [C97,§2406; S13,§2406; C24, 27, 31, 35, 39,§2021; C46, 50, 54,§128.5]

**128.6 General reputation.** In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the place described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction. [C97,§2406; S13,§2406; C24, 27, 31, 35, 39,§2022; C46, 50, 54, §128.6]

General reputation, §§123.67, 123.89, 126.17, 128.40

**128.7 Attorney fee.** In each and every action in equity for injunction against a person charged with keeping an intoxicating liquor nuisance, and to abate the same, and on each and every action to enjoin and restrain a bootlegger as provided in this title, the court or judge before whom the same shall be heard and determined, shall, if the plaintiff be successful, allow the attorney prosecuting such cause an attorney's fee of twenty-five dollars, such fee to be assessed as cost in such cause, and paid by the defendant, and such fee is not to be paid by the county in which such action is brought. [C97,§§2406, 2429; S13,§2406; C24, 27, 31, 35, 39,§2023; C46, 50, 54,§128.7]

Referred to in §128.9

**128.8 Limitation.** In each and every proceeding in equity for a contempt for violating any injunction, temporary or permanent, issued or decreed therein, the court or judge before whom the same shall be heard and determined shall, if the plaintiff be successful, allow the attorney prosecuting such cause a reasonable attorney's fee, such fee to be assessed as costs in such cause, such fee to be paid by the defendant and not to be paid by the county but in no case where the defendant enters a plea of guilty shall the fee be more than twenty-five dollars. [C24,§2023; C27, 31, 35,§2023-a1; C39,§2023.1; C46, 50, 54,§128.8]

**128.9 Conditions of taxation.** In no case shall an attorney fee be allowed in an intoxicating liquor nuisance injunction proceeding, as provided in section 128.7, unless the property in which the nuisance is maintained, and the owner of such property, shall be made party defendants, and an order of abatement issued as a part of the judgment, unless the court or judge hearing the cause shall find from competent evidence that the nuisance has been abated in good faith prior to the hearing, and the costs of the action paid. [C27, 31, 35,§2023-a2; C39,§2023.2; C46, 50, 54,§128.9]

**128.10 Dismissal of action.** Such action, when brought by a citizen, shall not be dismissed upon the motion of either the plaintiff or defendant until the county attorney shall have been notified in writing of the filing of such motion, and until such county attorney shall have made a personal investigation of the place of business sought to be enjoined, and of all matters set forth in said motion for dismissal, and shall have filed, in writing, a report of his findings in said cause, and his recommendation in reference to the disposition of the same. [C97,§2406; S13,§2406; C24, 27, 31, 35, 39,§2024; C46, 50, 54,§128.10]

**128.11 Delay in trial.** If any such action by a citizen shall remain upon the docket for two terms of court, without trial, it shall be the duty of the judge of such court to order the plaintiff and his attorney or attorneys of record to appear in open court for examination as to the reasons why such cause has not been brought on for trial; and it shall be the duty of the county attorney to conduct such examination, if the judge shall so order. [S13, §2406; C24, 27, 31, 35, 39,§2025; C46, 50, 54, §128.11]

**128.12 Bad faith in prosecution.** Whenever the court shall have reason to believe that any such action to enjoin has not been brought or prosecuted in good faith, said court shall direct the grand jury to investigate all the facts and circumstances connected with the bringing and prosecution of the same. [S13,§2406; C24, 27, 31, 35, 39,§2026; C46, 50, 54,§128.12]

**128.13 Violation.** In case of the violation of any injunction granted under the provisions of this title, the court, or in vacation a judge thereof, may summarily try and punish

the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. [C97,§2407; SS15,§2407; C24, 27, 31, 35, 39,§2027; C46, 50, 54,§128.13]

**128.14 Method of trial.** The trial shall be as in equity and may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. [C97, §2407; SS15,§2407; C24, 27, 31, 35, 39,§2028; C46, 50, 54,§128.14]

Referred to in §128.15  
How issues tried, R.C.P. 177

**128.15 First conviction.** A party found guilty of contempt under the provisions of section 128.14, shall for the first offense be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment. [C97,§2407; SS15, §2407; C24, 27, 31, 35, 39,§2029; C46, 50, 54, §128.15]

See also §123.70

**128.16 Subsequent convictions.** A party who has once been found guilty of contempt for violating the provisions of any such injunction, shall for each such subsequent violation be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than six months nor more than one year. [SS15,§2407; C24, 27, 31, 35, 39,§2030; C46, 50, 54,§128.16]

**128.17 Bootleggers.** A bootlegger, as defined in this title, may be restrained by injunction from doing or continuing to do any of the acts prohibited by law, and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person, company or corporation, and the fact that an offender has no known or permanent place of business or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing. [S13,§2461-b; C24, 27, 31, 35, 39, §2031; C46, 50, 54,§128.17]

Bootlegger defined, §§123.59, 125.7; see also §123.71

**128.18 Showing required.** In no case shall a bootlegger injunction proceeding as provided in this title be maintained unless it be shown to the court that efforts in good faith have been made to discover the base of supplies or a place where the defendant charged as a bootlegger conducts his unlawful business or receives or manufactures the intoxicating liquors of which he is charged with bootlegging. [C27, 31, 35,§2031-a1; C39,§2031.1; C46, 50, 54,§128.18]

**128.19 Abatement.** If the existence of the nuisance be established in a civil or criminal

action, an order of abatement shall be entered as a part of the judgment in the case; which order shall direct the destruction of the liquor, the removal from the building or place of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business, and sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building, erection, or place against its use for any purpose prohibited in this title, and so keeping it for a period of one year, unless sooner released. [C51,§935; R60,§1559; C73, §§1523, 1543; C97,§2408; C24, 27, 31, 35, 39,§2032; C46, 50, 54,§128.19]

Sale of chattels, §626.74 et seq.  
See also §123.73

**128.20 Use of premises.** If anyone shall break or use a building or place so directed to be closed, he shall be punished as for contempt as provided in this title. [C97,§2408; C24, 27, 31, 35, 39,§2033; C46, 50, 54,§128.20]

Punishment, §§123.70, 128.15, 128.16

**128.21 Fees.** For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. [C97,§2408; C24, 27, 31, 35, 39,§2034; C46, 50, 54,§128.21]

Sheriff fees, §387.11

**128.22 Proceeds.** The proceeds of the sale of the personal property in abatement proceedings shall be applied, first, in payment of the costs of the action and abatement; second, to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the defendant. [C97, §2409; C24, 27, 31, 35, 39,§2035; C46, 50, 54, §128.22]

**128.23 Abatement after judgment.** If the owner appears and pays all costs of the proceedings, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk, auditor, and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property. [C97,§2410; S13,§2410; C24, 27, 31, 35, 39,§2036; C46, 50, 54,§128.23]

Referred to in §128.25

**128.24 Abatement before judgment.** If the proceeding be an action in equity, and said bond be given and costs therein paid before judgment and order of abatement, the action

shall be thereby abated as to said building only. [C97,§2410; S13,§2410; C24, 27, 31, 35, 39, §2037; C46, 50, 54,§128.24]

Referred to in §128.25

**128.25 Effect of release.** The release of the property under the provisions of either of sections 128.23 or 128.24 shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. [C97, §2410; S13,§2410; C24, 27, 31, 35, 39,§2038; C46, 50, 54,§128.25]

**128.26 Abatement bonds.** Undertakings of bond for abatement shall, immediately after filing by the clerk of the district court, be docketed and entered upon the lien index as required for judgments in civil cases, and, from the time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [C24, 27, 31, 35, 39,§2039; C46, 50, 54,§128.26]

**128.27 Copies filed in proper counties.** Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [C24, 27, 31, 35, 39,§2040; C46, 50, 54,§128.27]

**128.28 Forfeiture of bond.** If the owner of the property who has filed said abatement bond as in this chapter provided, fails to abate the said liquor nuisance on the premises covered by the bond or fails to prevent the maintenance of any liquor nuisance on said premises at any time within the period of one year, the court must, after a hearing in which the said fact is established, direct an entry of such violation of the terms of his said bond, to be made on the record, and the undertaking of his bond is thereupon forfeited. [C24, 27, 31, 35, 39,§2041; C46, 50, 54,§128.28]

Abatement bond, §128.23  
See also §123.82

**128.29 Procedure.** The proceeding to forfeit said abatement bond shall be commenced by filing with the clerk of the court, by any citizen of the county where the bond is filed, an application, under oath, to forfeit said bond, setting out the alleged facts constituting the violation of the terms of said bond, upon which the judge or court shall direct by order attached to said application, that a notice be issued by the clerk of the district court, directed to the principal and sureties on said bond, to appear at a certain date fixed, to show cause, if any they have, why the said bond should not be forfeited and judgment entered for the penalty therein fixed. [C24, 27, 31, 35, 39,§2042; C46, 50, 54,§128.29]

**128.30 Method of trial.** The trial shall be to the court and as in equity and be governed



by the same rules as to evidence as in contempt proceedings. [C24, 27, 31, 35, 39, §2043; C46, 50, 54, §128.30]

How issues tried, R.C.P. 177; contempt, §128.14  
See also §123.84

**128.31 Judgment.** If the court, after hearing, finds that a liquor nuisance has been maintained on the premises covered by the abatement bond and that liquor has been sold or kept for sale on the premises contrary to law, within one year from the date of the giving of said bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of said bond against the principal and sureties thereon and the lien on the real estate heretofore created shall be decreed foreclosed; and the court shall provide for a special and general execution for the enforcement of said decree and judgment. [C24, 27, 31, 35, 39, §2044; C46, 50, 54, §128.31]

**128.32 Appeal.** Appeal may be taken as in any equity case and the cause be triable de novo, except that if applicant for forfeiture appeals, he need not file appeal or supersedeas bond. [C24, 27, 31, 35, 39, §2045; C46, 50, 54, §128.32]

Appeals generally, ch 686

**128.33 Limitation of actions.** No application for forfeiture of abatement bond shall be considered or heard unless the same has been filed within one year after the termination of the one year period covered by the said bond; and after said period herein provided has fully elapsed, the bond shall be deemed absolutely void and the lien created thereby fully satisfied. [C24, 27, 31, 35, 39, §2046; C46, 50, 54, §128.33]

**128.34 County attorney.** It shall be the duty of the county attorney to prosecute all forfeitures of abatement bonds and the foreclosure of the same. [C24, 27, 31, 35, 39, §2047; C46, 50, 54, §128.34]

**128.35 Advance payment of fees.** In an action brought by a citizen to enjoin a nuisance, as defined in this title, no officer or witness shall be entitled to receive in advance fees for service or attendance. [C97, §2412; C24, 27, 31, 35, 39, §2048; C46, 50, 54, §128.35]

**128.36 Prompt service of papers.** It shall be a misdemeanor for any peace officer to delay service of original notice, writ of injunction, writ of abatement, or warrant for contempt, in any equity case filed for injunction or abatement, either by the state or a private citizen, under this chapter. [C24, 27, 31, 35, 39, §2049; C46, 50, 54, §128.36]

Punishment, §687.7

**128.37 Costs.** If a prosecution brought by a citizen fails, the costs shall be taxed to the plaintiff and in no event shall the county pay any costs or attorney fees in such prosecution. [C97, §2412; C24, 27, 31, 35, 39, §2050; C46, 50, 54, §128.37]

Costs payable by county, §337.12

**128.38 Mulct tax.** When a permanent injunction shall issue against any person for maintaining a nuisance as herein defined or against any owner or agent of the building kept or used for the purposes prohibited by this title, a tax shall be imposed upon said building and upon the ground upon which the same is located, and against the persons maintaining said nuisance and against the owner or agent of said premises, when they knew, or ought in reason to have known, of said nuisance. [C97, §§2432-2447; S13, §§2433, 2437-2439, 2445; SS15, §2435; C24, 27, 31, 35, 39, §2051; C46, 50, 54, §128.38]

**128.39 Amount.** Said tax shall be in the sum of six hundred dollars and shall be imposed in the same manner and with the same consequences as governs the imposition of a tax in injunction proceedings against places used for the purpose of lewdness, assignation, or prostitution. [C24, 27, 31, 35, 39, §2052; C46, 50, 54, §128.39]

Houses of prostitution, ch 99

**128.40 Evidence.** On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible. [C24, 27, 31, 35, 39, §2053; C46, 50, 54, §128.40]

General reputation, §§123.67, 123.89, 126.17, 128.6, 724.4

**128.41 Life of liens acquired prior to 1930.** From and after January 1, 1944, no judgment or decree of injunction entered prior to January 1, 1930, in any action brought under the provisions of chapter 6, title XII, Code of 1897, and all acts amendatory thereto or under the provisions of chapter 98, Code 1939, and all acts amendatory thereto, shall be enforced against any real or personal property named or referred to in any such judgment or decree; and from and after January 1, 1944, any lien or encumbrance created on real or personal property by or under any such decree, shall expire unless action to renew such lien or encumbrance is brought prior to said date, and in the event action to renew same is brought prior to said date, such lien or encumbrance shall continue until said action goes to final judgment and decree, and any lien or encumbrance renewed under any such decree shall expire ten years from the date thereof. [C46, 50, 54, §128.41]

## CHAPTER 129

## CIVIL ACTIONS AND LIABILITY

(Dram Shop Law)

Additional civil liability, see §§126.15–126.17

129.1 Care of intoxicated person.  
 129.2 Civil action.  
 129.3 Married women.  
 129.4 Damages recovered by minor.  
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 129.6 Recovery of payments.

129.7 Transactions invalidated.  
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 129.9 Good-faith holders.  
 129.10 Attempt to collect prohibited.  
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 129.12 Termination of lease.

**129.1 Care of intoxicated person.** Any person who shall, by the manufacture, sale, or giving away of intoxicating liquors contrary to the provisions of this title, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five dollars per day in addition thereto for every day such intoxicated person shall be kept, in consequence of such intoxication, which sums may be recovered in a civil action before any court having jurisdiction thereof. [C73,§1556; C97,§2417; C24, 27, 31, 35, 39,§2054; C46, 50, 54,§129.1]

**129.2 Civil action.** Every wife, child, parent, guardian, employer, or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name against any person who shall, by selling or giving to another contrary to the provisions of this title any intoxicating liquors, cause the intoxication of such person, for all damages actually sustained, as well as exemplary damages. [C73, §1557; C97,§2418; C24, 27, 31, 35, 39,§2055; C46, 50, 54,§129.2]

Referred to in §§129.3, 129.4  
 Liability of sureties, §129.5

**129.3 Married women.** A married woman shall have the same right, under section 129.2, to bring suits, prosecute and control the same and the amount recovered, as a single woman. [C73,§1557; C97,§2418; C24, 27, 31, 35, 39,§2056; C46, 50, 54,§129.3]

Action by married woman, R.C.P. 10

**129.4 Damages recovered by minor.** All damages recovered by a minor under section 129.2 shall be paid either to such minor or his parent, guardian, or next friend, as the court shall direct. [C73,§1557; C97,§2418; C24, 27, 31, 35, 39,§2057; C46, 50, 54,§129.4]

**129.5 Principal and surety.** Where anyone is required under the provisions of this title to give a bond, the principal and sureties shall be jointly and severally liable for all civil damages and costs which may be adjudged against the principal for any violation of any of the provisions of this title. [R60,§1579; C73,§§1552, 1558; C97,§2422; C24, 27, 31, 35, 39,§2064; C46, 50, 54,§129.5]

Similar provision, §130.13

**129.6 Recovery of payments.** All payments or compensation for intoxicating liquor sold in violation of this title, whether such payments or compensation be in money or anything else whatsoever, shall be held to have been received in violation of law, and to have been received upon a valid promise and agreement of the receiver to pay on demand to the person furnishing such consideration the amount of said money, or the just value of such other thing. [R60,§1571; C73,§1550; C97,§2423; C24, 27, 31, 35, 39,§2065; C46, 50, 54,§129.6]

Referred to in §129.9

**129.7 Transactions invalidated.** All sales, transfers, liens, and securities of every kind which, either in whole or in part, shall have been made for or on account of intoxicating liquors sold in violation of this title shall be null and void against all persons, and no rights of any kind shall be acquired thereby. [R60, §1571; C73,§1550; C97,§2423; C24, 27, 31, 35, 39, §2066; C46, 50, 54,§129.7]

Referred to in §129.9

**129.8 Action prohibited.** No action shall be maintained for intoxicating liquors or the value thereof, sold in any other state or country, contrary to the law of said state or country, or with intent to enable any person to violate any provision of this title; nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent may have been illegally deprived of the same. [R60,§1571; C73,§1550; C97,§2423; C24, 27, 31, 35, 39,§2067; C46, 50, 54,§129.8]

Referred to in §129.9

**129.9 Good-faith holders.** Nothing in sections 129.6 to 129.8, inclusive, shall affect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holders of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this title. [R60,§1571; C73,§1550; C97,§2423; C24, 27, 31, 35, 39,§2068; C46, 50, 54,§129.9]

Holders in due course, §541.57

**129.10 Attempt to collect prohibited.** The collection of payment, the solicitation of pay-

ment, and all attempts, directly or indirectly, to collect payment within this state for intoxicating liquor sold or shipped within or into this state to be used for illegal purposes within this state, is hereby prohibited and made illegal, and the violation hereof is hereby made a misdemeanor. [SS15,§2423-a; C24, 27, 31, 35, 39,§2069; C46, 50, 54,§129.10]

Referred to in §129.11  
Punishment, §687.7

**129.11 Restraint of collection by injunction.** Every person who for himself or for another violates any of the provisions of section 129.10, may be restrained by injunction from continuing to do any of the acts therein prohibited, and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person. [SS15,§2423-b; C24, 27, 31, 35, 39,§2070; C46, 50, 54,§129.11]

Injunctions, ch 664

**129.12 Termination of lease.** Upon a violation of any provision of this title committed upon real estate occupied by a tenant, his agent, servant, clerk, employee, or anyone claiming under him, the landlord of such premises, by himself or agent, may, in writing, notify such agent, tenant, or the person in possession of said leased premises, to the effect that he has terminated such lease and demands possession thereof within three days after the giving of such notice, and, after the expiration of said three days, may recover possession thereof in an action of forcible entry and detainer, without further notice to quit, upon proof of the violation of any provision of this title committed upon such real estate and of the giving of such notice. [C97,§2426; C24, 27, 31, 35, 39,§2071; C46, 50, 54,§129.12]

Forcible entry or detention, ch 648  
Landlord and tenant, ch 562

## CHAPTER 130

### PERMITS TO LICENSED PHARMACISTS

Referred to in §§123.94, 132.1

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**130.1 Permits.** A licensed pharmacist may, in the manner hereinafter provided, obtain a permit to buy, keep, and sell intoxicating liquors, for medical purposes. [R60,§1575; C73, §1526; C97,§2385; C24, 27, 31, 35, 39,§2072; C46, 50, 54,§130.1]

Permits under liquor control act, §123.27; saving clause, §123.94

**130.2 Petition.** All applications for a permit to sell intoxicating liquors for the pur-

pose allowed in this chapter shall be by petition, in which the applicant shall show:

1. His name.
2. His residence and business at the time of making the application and during the two preceding years.
3. That he is a citizen of the United States and of this state.
4. That he is a registered pharmacist and is operating and for the last six months has

lawfully operated a regular prescription pharmacy or drug store in the town, city, or township in which he proposes to engage in the business under the permit applied for, and that he owns not less than one-half interest in said pharmacy or drug store and desires a permit to buy, keep, and sell liquors for medicinal purposes only.

5. The place, particularly describing it, where the business is to be conducted.

6. That he has not been adjudged guilty of any violation of the law relating to intoxicating liquors and has never forfeited or surrendered a permit to sell intoxicating liquors in order to avoid a prosecution for a violation of the laws relating to intoxicating liquors.

7. That he is not the keeper of a hotel, eating house, saloon, restaurant, or place of public amusement, nor are any of said named businesses located in his said place of business or directly connected therewith.

8. That he is not addicted to the use of intoxicating liquors as a beverage, and that he will not, while holding a permit, employ or retain in his employment any person in his said business who is known to him to be so addicted. [R60,§1575; C73,§§1526, 1527; C97,§2387; C24, 27, 31, 35, 39,§2073; C46, 50, 54,§130.2]

Allowable sales, §§130.18, 130.22

**130.3 Verification.** Said petition shall be signed and sworn to by the applicant, and filed in the office of the clerk of the district court of the county in which the buying and selling is to be carried on, at least ten days before the term at which the matter is to be for trial. [C97,§2387; C24, 27, 31, 35, 39,§2074; C46, 50, 54,§130.3]

**130.4 Notice.** Notice of an application for a permit shall state the name of the applicant, with the firm name, if any, under which he is doing business, the purpose of the application, the particular location of the place where the proposed business is to be carried on; that the required petition is or will be on file in the clerk's office of the court, naming it, at least ten days before the first day of the term, naming it, when the application will be made. [C73,§1529; C97,§2388; S13,§2388; C24, 27, 31, 35, 39,§2075; C46, 50, 54,§130.4]

**130.5 Service.** Said notice must be served in the following manner:

1. By publication thereof once each week for three consecutive weeks in a newspaper regularly published and printed in the English language, and of general circulation in the township, town, or city where the applicant proposes to conduct the business, or, if none be regularly published therein, then in one of the papers selected by the board of supervisors for the publication of its proceedings, the last publication of which shall be not less than ten nor more than twenty days before the first day of the term at which the hearing is to be had.

2. By serving a copy of said notice person-

ally upon the county attorney in the same manner and for the same length of time as is required of original notices in said courts. [C73,§1529; C97,§2388; S13,§2388; C24, 27, 31, 35, 39,§2076; C46, 50, 54,§130.5]

Time and manner of service, R.C.P. 53 and 56(a)

**130.6 Appearance.** The county attorney shall appear in all cases, and any number of persons, not less than five, filing any remonstrance, may also appear in person or by counsel and resist the application. [C73,§1530; C97,§2389; C24, 27, 31, 35, 39,§2077; C46, 50, 54,§130.6]

**130.7 Hearing.** All applications shall be tried at the first term after completed service has been made of the required notice, if the business of the court shall allow. [C97,§2389; C24, 27, 31, 35, 39,§2078; C46, 50, 54,§130.7]

**130.8 Vacation.** If for any reason the application cannot be tried in term time, the same may be heard by the judge in vacation, at a time to be fixed by the court and made of record. [C97,§2389; C24, 27, 31, 35, 39,§2079; C46, 50, 54,§130.8]

**130.9 Consolidation.** If more than one permit is applied for in the same locality, the applications shall be heard at the same time, unless for cause shown it be otherwise ordered. [C97,§2389; C24, 27, 31, 35, 39,§2080; C46, 50, 54,§130.9]

**130.10 Remonstrances.** The county attorney, or one or more citizens of the county wherein the application is made, may file a written remonstrance against the granting of the permit. All remonstrances shall specifically state the reasons therefor, and be filed in the clerk's office by noon of the first day of the term, unless further time be given, and shall be so filed before the day fixed for the trial. [C73,§1530; C97,§2389; C24, 27, 31, 35, 39,§2081; C46, 50, 54,§130.10]

**130.11 Limitation.** No permit shall be granted unless the court shall find from competent evidence that all the averments in the petition are true, that the reasonable convenience and necessities of the people, considering the population and all the surroundings, make the granting of the permit proper, and that the applicant is possessed of the character and qualifications required, worthy of the trust to be reposed in him, and likely to discharge the same with fidelity. Any licensed pharmacist who has been or is hereafter convicted of violating any provision of any statute relating to intoxicating liquors, or who for the purpose of avoiding a prosecution for such violation has surrendered or hereafter surrenders a permit issued under this chapter, shall be forever barred from securing a permit under this chapter. The court may grant or refuse any application. [C73,§1530; C97,§2389; C24, 27, 31, 35, 39,§2082; C46, 50, 54,§130.11]

**130.12 Bond.** No permit shall issue until the applicant shall execute to the state a bond

in the penal sum of one thousand dollars, with good and sufficient sureties to be approved by the clerk of the court, conditioned that he will well and truly observe and obey the laws of the state now or hereafter in force in relation to the sale of intoxicating liquors, that he will pay all fines, penalties, damages, and costs that may be assessed or recovered against him for a violation of such laws during the time for which the permit is granted. [R60,§1575; C73,§1528; C97,§2390; S13,§2390; C24, 27, 31, 35, 39,§2083; C46, 50, 54,§130.12]

Death of permit holder, §130.57  
 Similar provision, §133.4

**130.13 Sureties.** The principal and sureties in said bond shall be liable thereon, jointly and severally, for all civil damages and costs that may be recovered against the principal in any action brought by a wife, child, parent, guardian, employer, or other person under the provisions of this title. [C73,§§1528, 1532; C97, §2390; S13,§2390; C24, 27, 31, 35, 39,§2084; C46, 50, 54,§130.13]

Similar provision, §129.5

**130.14 Custody of bond.** The bond, after being approved and recorded by the clerk, shall be deposited with the county auditor, and suit may be brought thereon at any time by the county attorney, or by any person for whose benefit the same is given. [C73,§§1528, 1532; C97,§2390; S13,§2390; C24, 27, 31, 35, 39, §2085; C46, 50, 54,§130.14]

**130.15 New bond.** If at any time the sureties on the bond shall file with the court or clerk a written request for release, or become insolvent, or be deemed insufficient by the court granting the permit, or its clerk, such court or clerk shall require a new bond to be executed within a reasonable time to be fixed. If the permit holder fails or neglects to furnish a new bond within the time so fixed, the permit shall from that date become null and void. [C97,§2390; S13,§2390; C24, 27, 31, 35, 39,§2086; C46, 50, 54,§130.15]

**130.16 Proceeds.** The clear proceeds of all money which may be collected by the state for breaches of the bond shall go to the school fund of the county. [C73,§§1528, 1532; C97, §2390; S13,§2390; C24, 27, 31, 35, 39,§2087; C46, 50, 54,§130.16]

Temporary school fund, §302.3

**130.17 Oath.** In addition to giving the bond required, the applicant shall take and subscribe the following oath, which shall be indorsed upon the bond: "I, ....., do solemnly swear (or affirm) that I will well and truly perform all and singular the conditions of the within bond, and keep and perform the trust confided in me to purchase, keep, and sell intoxicating liquors. I will not sell, give, or furnish to any person any intoxicating liquors otherwise than as provided by law, and especially I will not sell or furnish any intoxicating liquors to any person who is not known to me personally, or duly identified, nor to any intoxicated person, or persons

who are in the habit of becoming intoxicated; and I will make true, full, and accurate reports as required by law; and said reports shall show every sale and delivery of such liquors made by me, or for me, during the months embraced therein, and all the intoxicating liquors sold or delivered to any and every person, as returned." [C97,§2391; C24, 27, 31, 35, 39, §2088; C46, 50, 54,§130.17]

**130.18 Issuance.** Upon taking said oath, filing said bond, and paying the costs and fee herein provided, the clerk of the court shall issue a permit to the applicant authorizing him to buy, keep, and sell intoxicating liquors, not including malt liquors, for medical purposes, as hereinafter provided. [C97,§2392; S13,§2392; C24, 27, 31, 35, 39,§2089; C46, 50, 54, §130.18]

**130.19 Location and tenure.** The permit so issued shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time, not exceeding five years, the same shall be in force, unless sooner revoked. [C73,§1531; C97,§2392; S13, §2392; C24, 27, 31, 35, 39,§2090; C46, 50, 54, §130.19]

**130.20 Fee.** On and after January 1, 1925, each permit holder under this chapter shall, on the first day of January, April, July, and October of each year, pay into the county treasury, as a fee for the granting of such permit, all proceeds of all sales of intoxicating liquors in excess of two hundred percent of the wholesale price of such liquors. [C24, 27, 31, 35, 39,§2091; C46, 50, 54,§130.20]

**130.21 Price lists.** The pharmacy examiners shall from time to time fix the fair and reasonable wholesale price of intoxicating liquors for all points in this state and furnish such price lists to permit holders. The fixing of said prices shall be for the sole purpose of furnishing a basis for the computation of said fee. [C24, 27, 31, 35, 39,§2092; C46, 50, 54,§130.21]

**130.22 Limitation on sales.** A permit holder in making sales under his permit shall comply with the following:

1. Only spirituous and vinous liquor, the sale of which has been authorized by federal statutes or regulations and upon which the federal internal revenue tax has been paid, shall be sold.

2. Sales shall be made only on prescriptions which have been issued in accordance with federal and state statutes and regulations, and which have been issued by physicians licensed under the laws of this state and actually and in good faith engaged in this state in the general practice of their profession.

3. No permit holder shall sell or furnish, on any prescription, any vinous liquor that contains more than twenty-four percent of alcohol by volume, nor sell or furnish on any prescription more than one-fourth of one gallon of

vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days.

4. No prescription for said liquors shall be filled if the permit holder has reason to believe that the physician issuing the same is prescribing for other than medical purposes or that a patient is securing, through one or more physicians, quantities of such liquors in excess of the amount necessary for medical purposes or in excess of the aggregate amount specified in subsection 3 above.

5. No prescription for liquor shall be filled except by the permit holder himself or by a pharmacist licensed under the laws of this state and in the employ of such permit holder.

6. No prescription shall be filled more than once. [C24, 27, 31, 35, 39,§2093; C46, 50, 54, §130.22]

**130.23 Request.** Before selling or delivering any intoxicating liquors, a written request therefor must, after being fully, accurately, and legibly filled out in ink in the presence of the applicant and by the person making the sale, be signed by the applicant in his true name, and attested by the holder of the permit. [C97,§2394; S13,§2394; C24, 27, 31, 35, 39, §2094; C46, 50, 54,§130.23]

**130.24 Form.** Said written requests shall be in the following form:

Stub

No....., 19....  
Purchaser .....  
Address .....  
Purchase .....  
For Whom .....  
Address .....  
Certifier .....  
Address .....  
(Official Form.....)  
Series .....

CERTIFIED REQUEST OF PURCHASER

No....., Iowa, ....., 19....  
To..... Reg. Phar. No.....  
I hereby make request for the purchase of the following intoxicating liquors:

AMOUNT	KIND
My true name is.....	I am not a minor, and reside in.....township (or town of.....) at No....., in the county of....., state of.....
The actual purpose for which this request is made is to obtain said liquor for....., residing at No.....township....., (or town of.....), county of....., state of....., who is a member of my immediate family, (or a patient unable, because of illness, to call for the same) and the same is desired for medicinal use and is to fill a prescription issued to..... by Dr....., who	

offices at No....., township or town of .....county, state of .....and the same was issued to me in strict compliance with federal statutes and not in evasion thereof, and neither myself nor the said..... habitually use intoxicating liquors as a beverage, nor do we intend to use the above named liquor for that purpose.

(Signature of purchaser)

(If the applicant is unknown to the permit holder, the blank below shall also be filled out and signed by a witness.)

I, ....., hereby certify that I am acquainted with....., the applicant for the purchase of the foregoing described liquors and the said.....is not a minor and is not in the habit of using intoxicating liquors as a beverage, and is worthy of credit as to the truthfulness of the statements in the foregoing request and my residence is No.....street, ....., state of.....

(Signature of certifier)

Attested by .....  
Registered Pharmacist No.....  
[C97,§2394; S13,§2394; C24, 27, 31, 35, 39,§2095; C46, 50, 54,§130.24]

**130.25 Blanks.** The blanks for such requests shall, with proper stubs, in all cases, be printed in book form and shall be furnished to the permit holder at cost by the county auditor of the county in which such permit is in force, and shall contain the facsimile signature of the county auditor; both stub and request shall be numbered consecutively. [S13,§2394; C24, 27, 31, 35, 39,§2096; C46, 50, 54, §130.25]

**130.26 Preservation and inspection.** The permit holder shall preserve the stubs in book form and shall keep them at all times, subject to the inspection of the pharmacy examiners, the county attorney, any grand jury, peace officer, or justice of the peace in the county in which the permit is in force. [S13,§2394; C24, 27, 31, 35, 39,§2097; C46, 50, 54,§130.26]

**130.27 Duty to refuse.** The request shall be refused unless the permit holder has reason to believe the statements to be true, and in no case granted unless the permit holder filling it personally knows the person applying is not a minor, intoxicated, nor in the habit of using intoxicating liquors as a beverage. [C97,§2394; S13,§2394; C24, 27, 31, 35, 39,§2098; C46, 50, 54, §130.27]

**130.28 Identification.** If the applicant is not so personally known, before filling the order or delivering the liquor, the permit holder shall require identification and the statement, in writing, of a reliable and trustworthy person, of good character and habit, known personally to him, that the applicant is not a minor nor in the habit of using intoxicating liquors as a beverage and is worthy of credit as to the truthfulness of the statements in the application. Said statement so made shall be legibly

signed by the witness in his own name, stating his address correctly. [C97,§2394; S13,§2394; C24, 27, 31, 35, 39,§2099; C46, 50, 54,§130.28]

**130.29 Penalties.** If any person shall make any false or fictitious signature, or sign any name other than his own, to any request for the purchase of intoxicating liquors as heretofore provided, or as may be hereinafter provided, or to any other paper required to be signed, or make any false statement in any paper or application or request signed to procure liquors, he shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars and costs of prosecution, and shall be committed until said fine and costs are paid, or shall be imprisoned not less than ten nor more than thirty days. [R60, §1577; C73,§1559; C97,§2395; C24, 27, 31, 35, 39, §2100; C46, 50, 54,§130.29]

Extent of imprisonment, §§762.32, 789.17  
Similar provision, §762.32

**130.30 Change in location.** Upon the expiration of the lease or the destruction of the building where such business is conducted, or for other good and sufficient cause shown, consent in writing of the bondsmen having been obtained therefor, or a new bond given, the district court of the county which granted said permit, or a judge of said court, may change the place specified in said permit to some other place in the same city, town, or township upon motion therefor. [C97,§2392; S13,§2392; C24, 27, 31, 35, 39,§2101; C46, 50, 54, §130.30]

Referred to in §130.31

**130.31 County attorney.** A copy of the application mentioned in section 130.30, and notice of the time when and the place where the same will be heard, shall be given to the county attorney of the county where said place is situated, at least five days before said hearing. [S13,§2392; C24, 27, 31, 35, 39,§2102; C46, 50, 54,§130.31]

**130.32 Violations.** If any holder of a permit shall sell, give, dispose of, or use intoxicating liquors in any manner or for any purpose other than for medical purposes as heretofore authorized, he shall be liable to all the penalties and proceedings provided for in this title. [C97,§2386; S13,§2386; C24, 27, 31, 35, 39, §2103; C46, 50, 54,§130.32]

**130.33 Prescriptions prohibited.** No physician shall issue a prescription for vinous or spirituous liquors for other than medical purposes, or in excess of the amount reasonably necessary for such purposes or in excess of the quantity heretofore specified; nor shall he issue or deliver such prescription to a person when he has reasonable grounds for believing that such person will use the liquors obtained thereunder for beverage purposes. [C24, 27, 31, 35, 39,§2104; C46, 50, 54,§130.33]

Referred to in §130.37  
Permissible quantity, §130.22

**130.34 Record of prescriptions.** Every physician shall keep, in his own handwriting and

in his office, a permanent record, legibly written in ink, of every prescription for intoxicating liquors issued by him. Said record shall be alphabetically arranged under the name of the patient and shall show:

1. The date of the prescription.
2. The amount and kind of liquors prescribed.
3. The name of the patient and his post-office address, including street number, if any.
4. The name of the person to whom the prescription was delivered and his post-office address, including street number, if any.
5. The purpose or ailment for which the liquors are prescribed.
6. The directions for the use of said liquors, including the amount and frequency of the dose. [C24, 27, 31, 35, 39,§2105; C46, 50, 54, §130.34]

Referred to in §§130.35, 130.37

**130.35 Reports filed.** Every physician shall, on or before the twentieth day of January, April, July, and October, each year, file with the county auditor of the county of his residence an exact duplicate of the record provided for in section 130.34. Each filing shall cover the three calendar months preceding the filing. [C24, 27, 31, 35, 39,§2106; C46, 50, 54, §130.35]

Referred to in §130.37

**130.36 Oath.** Said physician shall securely attach to each duplicate record so filed by him his oath in the following form:

"I, ....., do say on oath that the hereto attached record is an exact duplicate of the record of prescriptions kept by me in my office for the months of ....., ....., and ....., 19....; that said record has been accurately prepared and kept by me and shows every prescription for intoxicating liquors issued and delivered by me during said months; that I have in no case issued a prescription for such liquors for other than medical purposes or for a quantity of such liquors in excess of the amount reasonably necessary for said purposes or for a quantity of such liquors in excess of the quantity permitted by state or federal statutes and regulations; nor have I issued such prescription to a person when I had reason to believe that such person would use the liquors obtained thereunder for beverage purposes." [C24, 27, 31, 35, 39,§2107; C46, 50, 54,§130.36]

Referred to in §130.37

**130.37 Penalty.** Upon conviction for a violation of any provision of sections 130.33 to 130.36, inclusive, the court, as a part of the judgment, shall order the certificate or license of such physician to practice his profession suspended for a period of not less than one year nor more than five years. [C24, 27, 31, 35, 39,§2108; C46, 50, 54,§130.37]

**130.38 Effect of suspension.** During the period of such suspension such physician shall be wholly barred from the practice of his

profession in this state, and the clerk of said court shall forthwith notify the state department of health of such suspension and the period thereof; and any physician practicing or attempting to practice his profession during the interim of such a suspension shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39, §2109; C46, 50, 54, §130.38]

**130.39 Conviction in federal courts.** When a physician or pharmacist, licensed under the laws of this state, is convicted in any federal court of this state of a violation of the federal statutes or regulations relating to intoxicating liquors, or to narcotics, and said judgment has become final, the county attorney of the county where said physician or pharmacist resides shall forthwith file in the office of the clerk of the district court of said county a duly certified copy of said judgment and thereupon said district court, or a judge thereof, shall, on such notice to the defendant in said judgment as the court or judge may prescribe, enter an order suspending for a period of not less than one year nor more than five years the license of such physician or pharmacist to practice his profession in this state. In such proceeding the county attorney shall appear on behalf of the state. [C24, 27, 31, 35, 39, §2110; C46, 50, 54, §130.39]

**130.40 Revocation of license.** Upon proof of such violation by a licensed pharmacist, the court shall order his license revoked without the formality of a special proceeding for that purpose, as provided in title VIII dealing with the practice of certain professions affecting the public health. In such event the clerk shall notify the state department of health as provided in such title. [C73, §§1534, 1535; C97, §§2386, 2400; S13, §§2386, 2400; C24, 27, 31, 35, 39, §2111; C46, 50, 54, §130.40]

Revocation in general, §147.55 et seq.

**130.41 Records.** The clerk of the court shall preserve as a part of the record and files all papers, except bonds, pertaining to the granting or revocation of permits, and keep suitable books in which bonds and permits shall be recorded. [C97, §2393; S13, §2393; C24, 27, 31, 35, 39, §2112; C46, 50, 54, §130.41]

**130.42 Costs.** Whether said permit be granted or refused, the applicant shall pay the costs incurred in the case, and, when granted, he shall make payment before any permit issue, except the court may tax the cost of any witnesses summoned by private persons resisting said application, and the fees for serving such subpoenas, to such persons, when it is shown that such witnesses were summoned maliciously, or without probable cause to believe their evidence material. The fees shall be as provided in actions at law in the district court. [C97, §2393; S13, §2393; C24, 27, 31, 35, 39, §2113; C46, 50, 54, §130.42]

Costs generally, ch 625

**130.43 False oath.** If any permit holder or his clerk shall make false oath touching any

matter required to be sworn to, the person so offending shall be punished as provided by law for perjury. [R60, §1577; C73, §1559; C97, §2395; C24, 27, 31, 35, 39, §2114; C46, 50, 54, §130.43]

Perjury, §721.1

**130.44 False return.** If any person holding a permit under this chapter purchases or procures any intoxicating liquor otherwise than as herein authorized, or fails to make the reports to the county auditor in the time or form required, or makes any false return to the county auditor, or fills a prescription for intoxicating liquors more than once, he shall be guilty of a misdemeanor and punished accordingly. [C97, §2395; C24, 27, 31, 35, 39, §2115; C46, 50, 54, §130.44]

Punishment, §687.7

**130.45 Civil and criminal liability.** Every permit holder or his clerk, violating this chapter, shall be subject to all the penalties, forfeitures, and judgments, and may be prosecuted by all the proceedings and actions, criminal and civil, whether at law or in equity, provided for or authorized by this title, and the permit shall not shield any person who abuses the trust imposed by it or violates the law. [C73, §1538; C97, §2399; C24, 27, 31, 35, 39, §2116; C46, 50, 54, §130.45]

**130.46 Destruction of liquor.** In case of conviction in any proceeding, civil or criminal, the liquors in possession of the permit holder shall by order of the court be destroyed. [C97, §2399; C24, 27, 31, 35, 39, §2117; C46, 50, 54, §130.46]

Disposal, §751.81

**130.47 Evidence.** On the trial of an action or proceeding against any person for manufacturing, selling, giving away, or keeping with intent to sell, intoxicating liquors in violation of law, or for any failure to comply with the conditions or duties, imposed by law, the prescriptions for liquors, the returns made to the auditor, the quantity and kinds of liquors sold or kept, purchased or disposed of, the purpose for which liquors were obtained by or from him and for which they were used, and the character and habits of sobriety or otherwise of the purchasers, shall be competent evidence, and may be considered, so far as applicable to the particular case. [C97, §2399; C24, 27, 31, 35, 39, §2118; C46, 50, 54, §130.47]

**130.48 Production of books.** In any suit, prosecution or proceeding under this chapter, the court shall compel the production in evidence of any books or papers required to be kept by either federal or state statutes. [C97, §2399; C24, 27, 31, 35, 39, §2119; C46, 50, 54, §130.48]

Similar provisions, R.C.P. 129 et seq.

**130.49 Revocation of permit.** Permits shall be deemed trusts reposed in the recipients, and may be revoked, upon sufficient showing, by order of a court or judge. Complaint may be presented at any time to the district court or a judge thereof, which shall be in writing and signed and sworn to by three citizens of



the county in which the permit was granted. [C73,§1535; C97,§2400; S13,§2400; C24, 27, 31, 35, 39,§2120; C46, 50, 54,§130.49]

**130.50 Service of complaint.** A copy of the complaint shall, with a notice in writing of the time and place of hearing, be served on the accused five days before the hearing, and if the complaint is sufficient, and the accused appear and deny the same, the court or judge shall proceed without delay, unless continued for cause, to hear and determine the controversy. [C73,§1535; C97,§2400; S13,§2400; C24, 27, 31, 35, 39,§2121; C46, 50, 54,§130.50]

**130.51 Suspending permit.** If continued or appealed at the instance of the permit holder, his permit may, in the discretion of the court, be suspended during the controversy. [C97, §2400; S13,§2400; C24, 27, 31, 35, 39,§2122; C46, 50, 54,§130.51]

**130.52 Trial and judgment.** The complainant and accused may be heard in person or by counsel, or both, and proofs may be offered by the parties; and if it shall appear upon such hearing that the accused has in any way abused the trust, or that liquors are sold by the accused or his employees in violation of law, or dispensed unlawfully, or that he has in any proceeding, civil or criminal, been adjudged guilty of violating any of the provisions of this title, the court or judge shall revoke and set aside the permit. [C73,§1535; C97,§2400; S13,§2400; C24, 27, 31, 35, 39,§2123; C46, 50, 54,§130.52]

**130.53 Record.** The papers and order in such case shall be immediately returned to and filed by the clerk of the court, and, if heard by a judge, the order shall be entered of record as if made in court. [C97,§2400; S13,§2400; C24, 27, 31, 35, 39,§2124; C46, 50, 54,§130.53]

**130.54 Automatic revocation.** If for any cause a licensed pharmacist who holds a permit shall cease to hold a valid license, his permit shall be forfeited and be null and void. [C97,§2401; S13,§2401; C24, 27, 31, 35, 39,§2125; C46, 50, 54,§130.54]

**130.55 Clerks.** The acts of clerks employed by a permit holder in conducting his business shall be considered the acts of the permit holder, who shall be liable therefor as if he had personally done them. [C97,§2401; S13, §2401; C24, 27, 31, 35, 39,§2126; C46, 50, 54, §130.55]

**130.56 Partners.** A partner who is a licensed pharmacist, not holding a permit, shall have the same rights and be subject to the same restrictions as clerks, and for his acts the permit holder shall be held responsible the same in all respects as for his clerks. [C97, §2401; S13,§2401; C24, 27, 31, 35, 39,§2127; C46, 50, 54,§130.56]

**130.57 Death of permit holder.** In case a permit holder shall die, his personal or legal representative may continue the business, subject to the provisions hereof, through the agency of any reputable licensed pharmacist, upon the approval of the court or judge thereof, granting such permit, and the giving of a bond as hereinbefore provided. [C97,§2401; S13,§2401; C24, 27, 31, 35, 39,§2128; C46, 50, 54, §130.57]

Bond, §130.12

**130.58 Existing permits.** All unexpired, un-canceled, and unrevoked permits to licensed pharmacists to sell and dispense intoxicating liquors, which have heretofore been issued under prior statutes, shall be deemed issued under and subject to the provisions of this chapter. [C24, 27, 31, 35, 39,§2129; C46, 50, 54, §130.58]

CHAPTER 131

PERMITS TO WHOLESALE DRUGGISTS

Referred to in §§123.94, 132.1

- 131.1 Wholesale drug corporation.
- 131.2 Application.
- 131.3 Procedure.
- 131.4 Name of pharmacist.
- 131.5 Substitute authorized.
- 131.6 Unlawful sales.
- 131.7 Permit and authority.
- 131.8 Good-faith practice.
- 131.9 Interpretative clause.
- 131.10 Limitation.
- 131.11 Manner of sale.
- 131.12 Form.
- 131.13 Requests.
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- 131.15 Reports.
- 131.16 Special requirement.
- 131.17 Return of requests.
- 131.18 Oath.
- 131.19 Manner of shipping.
- 131.20 Transportation.
- 131.21 Affiant.
- 131.22 Delivery.
- 131.23 Undelivered shipments.
- 131.24 Effect of delivery.
- 131.25 Order.
- 131.26 Violations.
- 131.27 Violations by purchasers.
- 131.28 "Corporation" construed.

**131.1 Wholesale drug corporation.** A corporation which is located and doing a wholesale drug business within this state may be

granted a permit to purchase and sell intoxicating liquors, for the purpose hereinafter specified, and for use in the compounding and

manufacture of patent and proprietary medicines, toilet articles, tinctures, extracts, and other like commodities, none of which is susceptible to use as a beverage but which requires as one of its ingredients alcohol or vinous liquor. [S13,§2401-a; C24, 27, 31, 35, 39, §2130; C46, 50, 54,§131.1]

Permits under liquor control act, §123.27, subsection 2; saving clause, §123.94

**131.2 Application.** Application for such permit shall be by petition which shall show:

1. The name of the corporation, and that it is actually engaged within this state in the wholesale drug business.

2. The place, particularly describing it, where said business will be conducted and where sales will be made under the proposed permit.

3. That neither the applicant nor any member of the firm, or officers of the corporation has been convicted of any violation of the laws of this state with reference to the sale of intoxicating liquors within three years last past, prior to the date of the said affidavit.

4. That one or more licensed pharmacists, specifically naming them, are financially interested in said corporation and actually engaged in the conduct of said business and will have personal charge of the sales of said liquors in case the permit is granted, and are not users of intoxicating liquors as a beverage.

5. Sworn verification by some managing officer of the corporation. [S13,§2401-a; C24, 27, 31, 35, 39,§2131; C46, 50, 54,§131.2]

**131.3 Procedure.** The petition shall be filed in the district court and all laws pertaining to permits granted to individual licensed pharmacists, insofar as applicable and not herein otherwise provided, shall apply to said application by a wholesale druggist and to the permit issued thereon. [C24, 27, 31, 35, 39, §2132; C46, 50, 54,§131.3]

General procedure, ch 130

**131.4 Name of pharmacist.** A permit to a wholesale drug corporation, in addition to all other requirements, shall specify the name of each licensed pharmacist who will have personal charge of sales under said permit. [C24, 27, 31, 35, 39,§2133; C46, 50, 54,§131.4]

**131.5 Substitute authorized.** Should said pharmacist die or for any other reason terminate his connection with the permit holder, the district court or a judge thereof may, on written application by the permit holder, and on notice to the county attorney, order the substitution in said permit of the name of some other proper pharmacist. [C24, 27, 31, 35, 39, §2134; C46, 50, 54,§131.5]

**131.6 Unlawful sales.** Sales of liquors not made under the personal supervision of a pharmacist named in said permit shall be illegal and shall automatically cancel said permit. [C24, 27, 31, 35, 39,§2135; C46, 50, 54,§131.6]

**131.7 Permit and authority.** The permit issued to a wholesale drug corporation shall authorize said corporation, under the limitations herein provided, to sell:

1. Alcohol for specified chemical and mechanical purposes to persons, firms, and corporations who have qualified, under federal and state statutes and regulations, to purchase and use alcohol for such purposes.

2. Alcohol and wine for the purpose of manufacturing patent and proprietary medicines and toilet articles and compounding medicines, tinctures, extracts, or other like commodities, none of which are susceptible of use as a beverage, to pharmacists who are registered under the laws of this state and who are actively engaged in this state in the retail drug business and in such compounding.

3. Alcohol and wine for the purpose of manufacturing patent and proprietary medicines and toilet articles and compounding medicines, tinctures, extracts, or other like commodities, none of which are susceptible of use as a beverage, to firms or corporations which are actively engaged in this state in the retail drug business and in compounding such medicines, tinctures, extracts, or other like commodities under the immediate supervision of a pharmacist licensed under the laws of this state.

4. Alcohol and wines for the purpose of manufacturing patent and proprietary medicines, tinctures, extracts, toilet articles, and perfume, or other like commodities, which require such liquors as an ingredient thereof, and which are not susceptible of use as a beverage, to persons, firms, and corporations who are holders of permits to so manufacture.

5. Intoxicating liquors to licensed pharmacists holding a permit to sell such liquors on prescription for medical purposes.

6. Intoxicating liquors to manufacturing and industrial establishments for the purpose of furnishing first-aid treatment to injured persons as defined by federal statutes and regulations.

7. Intoxicating liquors for medical purposes, to bona fide hospitals or sanatoriums engaged in the treatment of persons suffering from recognized diseases and ailments.

8. Intoxicating liquors for medical purposes to bona fide hospitals or sanatoriums engaged in the treatment of chronic alcoholism by the tapering-off method.

9. Intoxicating liquors to licensed physicians for the purpose of use by them in accordance with federal statutes or regulations or in accordance with state statutes, for compounding such preparations as are necessary for use in their professional practice, and for sterilization and laboratory purposes.

10. Intoxicating liquors to licensed dentists for the purpose of use by them in accordance with federal statutes or regulations or in accordance with the state statutes as are nec-

essary for use in their professional practice and for sterilization and laboratory purposes.

11. Alcohol to licensed veterinarians for any legitimate nonbeverage purpose.

12. Alcohol and other intoxicating liquors to any person, firm, or corporation located and doing business in any foreign state and legally entitled to purchase and receive such liquors under the laws of such foreign state. [S13, §2401-a; C24, 27, 31, 35, 39, §2136; C46, 50, 54, §131.7]

Referred to in §§131.8, 131.12

131.8 Good-faith practice. The term "licensed physician", "licensed dentist", or "licensed veterinarian" as employed in section 131.7 shall be construed to embrace only those persons who are in good faith and actively engaged in the general practice of their respective professions. [C24, 27, 31, 35, 39, §2137; C46, 50, 54, §131.8]

131.9 Interpretative clause. Nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form, or device, which may be used as a beverage, and which is intoxicating in its character. [C97, §2385; C24, 27, 31, 35, 39, §2138; C46, 50, 54, §131.9]

131.10 Limitation. The authority granted to a wholesale druggist to sell intoxicating liquors shall in no case authorize a sale in a quantity in excess of that authorized by federal or state statutes and regulations. [C24, 27, 31, 35, 39, §2139; C46, 50, 54, §131.10]

131.11 Manner of sale. Such sales shall be made only on the written signed request of the purchaser. Said request shall also be countersigned by the licensed pharmacist, who has charge of the sale, with his name, the number of his license, and the date the liquors are delivered for transportation. [S13, §2401-a; C24, 27, 31, 35, 39, §2140; C46, 50, 54, §131.11]

131.12 Form. The form, contents, and requirements of said written requests shall be substantially as follows:

....., Iowa, ....., 19....

(Name of permit holder)

..... hereby makes request for the purchase of the following intoxicating liquors:

Amount Kind

.....

The purchaser named above:

(Here describe the business and state the purpose for which the liquors are desired, which description and statement of purpose must be in accordance with section 131.7.)

.....

(Signature of purchaser)

I, ....., being the licensed pharmacist having personal supervision of the above sale, hereby countersign said request and certify that said liquors were, on the ..... day

of ....., 19...., delivered in the following manner, to wit:

.....

Licensed pharmacist.

No. ....

[S13, §2401-a; C24, 27, 31, 35, 39, §2141; C46, 50, 54, §131.12]

131.13 Requests. Requests for intoxicating liquors may be made out and signed by the applicant at his place of business and forwarded to the permit holder of whom request is made, and the permit holder may, by his own conveyance, personally deliver said liquors to the applicant, or cause such delivery to be made by a common carrier. [S13, §2401-b; C24, 27, 31, 35, 39, §2142; C46, 50, 54, §131.13]

131.14 Personal delivery. The applicant may personally present said written request for the purchase of such liquors to the permit holder and the permit holder may deliver said liquors directly to the applicant. [S13, §2401-b; C24, 27, 31, 35, 39, §2143; C46, 50, 54, §131.14]

131.15 Reports. The permit holder in making the reports required herein shall specify the manner in which each sale of liquors was delivered, to wit: Whether a delivery was made by his own conveyance, or by a common carrier, or by direct delivery to the applicant. [C24, 27, 31, 35, 39, §2144; C46, 50, 54, §131.15]

131.16 Special requirement. No sale shall be made on a request unless such request is filled out with pen and ink. [C24, 27, 31, 35, 39, §2145; C46, 50, 54, §131.16]

131.17 Return of requests. Said requests shall be preserved by the permit holder and filed with the county auditor at the time of the filing with the county auditor of the reports hereinafter provided for. [S13, §2401-b; C24, 27, 31, 35, 39, §2146; C46, 50, 54, §131.17]

Reports by permit holder, ch 132

131.18 Oath. Requests filed with the county auditor shall be accompanied by an affidavit by the licensed pharmacist or pharmacists having personal charge of the sales, showing that said requests comprise all the requests filled by said wholesale druggist during the time covered by said requests. [C24, 27, 31, 35, 39, §2147; C46, 50, 54, §131.18]

131.19 Manner of shipping. Intoxicating liquors shipped by a wholesale druggist under the aforesaid authorization shall not be inclosed in the same box, package, or carton with other drugs or merchandise. In all cases of such shipments the bill of lading shall set out the kind and amount of intoxicating liquors contained in the shipment, and one copy of the bill of lading shall be signed for the wholesale drug corporation by the licensed pharmacist having personal charge of the sale, or by an officer of such drug corporation. [S13, §2401-c; C24, 27, 31, 35, 39, §2148; C46, 50, 54, §131.19]

**131.20 Transportation.** Common carriers shall transport the liquors purchased or sold by a wholesale drug corporation under the authority of the permit herein provided, whether such shipment be interstate or intrastate:

1. When the consignor files with the agent of the carrier, at the point of origin, an affidavit stating:

a. That the consignee is a person, firm, or corporation who has a legal right to make such purchase;

b. That the liquors are consigned to the station nearest to the consignee's place of business; and

c. That the consignor and consignee are in all respects acting lawfully in the transportation of said liquor.

2. When bill of lading is made out and signed as heretofore provided.

3. When carrier is furnished with copy of the permit held by the wholesale drug corporation and said copy is duly certified to be correct by the clerk of the court issuing the permit. [S13,§2401-d; C24, 27, 31, 35, 39,§2149; C46, 50, 54,§131.20]

Referred to in §131.21

**131.21 Affiant.** If the consignor is a corporation, the affidavit provided for in section 131.20 shall be made by the pharmacist having charge of the sales of such liquors or by some managing officer of the corporation. [C24, 27, 31, 35, 39,§2150; C46, 50, 54,§131.21]

**131.22 Delivery.** The carrier shall not make delivery of such liquors:

1. Until the consignee files with the carrier an affidavit by the consignee himself or by the president, vice-president, secretary, or general manager or superintendent of the consignee, that said liquors are solely for the use and purposes specified in the written request for the purchase of such liquors, naming said purpose, and

2. Until the consignee personally signs the record book of intoxicating liquor shipments and deliveries required to be kept by common carriers. [S13,§2401-d; C24, 27, 31, 35, 39,§2151; C46, 50, 54,§131.22]

**131.23 Undelivered shipments.** Should a consignee fail to comply with the law and

obtain delivery of a shipment of intoxicating liquors within fifteen days after notice to him by mail, such carrier may make application to the district court, or to a judge thereof, of the county in which the liquors are being held, for an order for the delivery of said liquors by said carrier to the sheriff and for an order for the destruction thereof. [C24, 27, 31, 35, 39, §2152; C46, 50, 54,§131.23]

Similar provisions, §§125.81, 125.82

**131.24 Effect of delivery.** A delivery of said liquors to the sheriff under an order of the court shall discharge the carrier from all civil liability for said liquors. [C24, 27, 31, 35, 39, §2153; C46, 50, 54,§131.24]

**131.25 Order.** The court shall summarily hear said application and, upon proof of the truth thereof, shall enter an order for the delivery of said liquors to the sheriff and for the destruction of said liquors. [C24, 27, 31, 35, 39,§2154; C46, 50, 54,§131.25]

Disposal, §751.31

**131.26 Violations.** The failure of a permit holder hereunder to comply with any provision of this chapter shall render such holder subject to all the penalties, forfeitures, and proceedings, civil and criminal, provided in this title for the unlawful sale and keeping for sale of intoxicating liquors. [S13,§2401-e; C24, 27, 31, 35, 39,§2155; C46, 50, 54,§131.26]

**131.27 Violations by purchasers.** Any person, firm, or corporation, and the agents and officers thereof, who purchases or obtains any intoxicating liquors for any purpose authorized by this chapter or knows that such liquors have been so obtained, and uses or permits said liquors, or any part thereof, to be used for beverage purposes or for any purpose other than that for which it was purchased, or obtained, shall be fined in a sum not exceeding one thousand dollars and, in addition, if a person, be imprisoned in the county jail for a period not exceeding one year. [C24, 27, 31, 35, 39,§2156; C46, 50, 54,§131.27]

Nonpayment of fine, §§762.32, 789.17

**131.28 "Corporation" construed.** The term "corporation" as used in this chapter shall be construed to include corporations, firms, and persons engaged in the general wholesale drug business within this state. [S13,§2401-f; C24, 27, 31, 35, 39,§2157; C46, 50, 54,§131.28]

## CHAPTER 132

### REPORTS BY PERMIT HOLDERS

Referred to in §123.94

132.1 Reports required.  
132.2 Form of reports.  
132.3 When filed.

132.4 Return of requests.  
132.5 Oath.

**132.1 Reports required.** A permit holder under either of chapters 130 or 131 shall make and file with the county auditor of the county

in which the permit has been granted, the same reports covering all intoxicating liquors received, used, and sold as are required by

federal statutes and regulations to be made and filed by said permit holder with the federal prohibition director. [C73, §§1533, 1537; C97, §§2397, 2398; C24, 27, 31, 35, 39, §2159; C46, 50, 54, §132.1]

Referred to in §132.2

**132.2 Form of reports.** A report under section 132.1 may be in the form of an original draft made from the federal report, or it may consist of a carbon copy made at the time of the making of said federal report. Said blank forms may be exact reproductions of the blank forms furnished by the federal department. [C24, 27, 31, 35, 39, §2160; C46, 50, 54, §132.2]

**132.3 When filed.** Said reports shall be filed with the county auditor within the time in which they are required to be filed with said director. [C24, 27, 31, 35, 39, §2161; C46, 50, 54, §132.3]

**132.4 Return of requests.** On or before the fifteenth day of January, March, May, July, September, and November of each year, each permit holder other than a wholesale druggist shall, in addition to all other requirements of this chapter, make full returns to the county

auditor, under oath, of all requests filled by him and his clerks during the two preceding months. [C97, §2397; C24, 27, 31, 35, 39, §2162; C46, 50, 54, §132.4]

Referred to in §132.5

**132.5 Oath.** The oath provided for in section 132.4 shall be in the following form:

I, ....., being duly sworn, on oath state that the requests for liquors herewith returned are all that were received and filled at my pharmacy during the months of ....., A. D. ....; that I have carefully preserved the same, and that they were filled out, signed, and attested on the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kinds of liquors required, and that no liquors have been sold or dispensed under color of my permit during said months except as shown by the requests herewith returned, and that I have faithfully observed and complied with the conditions of my bond and oath taken by me thereon indorsed, and with all the laws relating to my duties in the premises. [C97, §2397; C24, 27, 31, 35, 39, §2163; C46, 50, 54, §132.5]

CHAPTER 133

PERMITS TO MANUFACTURERS

Referred to in §123.94

Permits under liquor control act, §§123.27, 123 94

- 133.1 Patent and proprietary medicines.
- 133.2 Application.
- 133.3 Notice.
- 133.4 Granting permit.

- 133.5 Term.
- 133.6 Record.
- 133.7 Report.
- 133.8 Violations.

**133.1 Patent and proprietary medicines.** Patent and proprietary medicines, tinctures, extracts, toilet articles, and perfume, and other like commodities, none of which are susceptible of use as a beverage but which require as one of their ingredients alcohol or vinous liquors, may be manufactured within this state, provided a permit so to manufacture is first obtained as hereinafter provided. [C24, 27, 31, 35, 39, §2164; C46, 50, 54, §133.1]

**133.2 Application.** Any person, firm, or corporation desiring such permit shall apply to the judge of the district court of the county in which the principal place of business is located by filing with the clerk of said court the affidavit of the person, member of the firm, or secretary or other managing officer of the corporation, as the case may be, stating therein the following facts:

1. The name, place of business, and post-office address of the person, firm, or corporation desiring such permit.
2. The business in which said person, firm, or corporation is engaged and the articles manufactured by them which require in their

manufacture the use of alcohol or vinous liquors, and approximately the amount required during a calendar month.

3. That neither the applicant nor any member of the firm nor officer of the corporation has been convicted of any violation of the laws of this state with reference to the sale of intoxicating liquors within three years last past prior to the date of said affidavit. [C24, 27, 31, 35, 39, §2165; C46, 50, 54, §133.2]

**133.3 Notice.** Upon the filing of said affidavit, together with other proof submitted, if any, the clerk shall immediately notify the county attorney of such application, and the county attorney shall appear in said proceeding on behalf of the state. [C24, 27, 31, 35, 39, §2166; C46, 50, 54, §133.3]

**133.4 Granting permit.** If, after a hearing, the judge is satisfied that the facts stated in said affidavit are true and that the applicant is a person fit and proper to be intrusted with the permit applied for, the same shall be issued upon the filing by the applicant of a bond in the sum of two thousand dollars, the

sureties to be approved by the clerk, conditioned as the bond of licensed pharmacist permit holders. [C24, 27, 31, 35, 39,§2167; C46, 50, 54,§133.4]

Bond of pharmacist, §130.12

133.5 Term. A permit issued under this chapter, unless revoked for cause, shall remain in force for a period of five years from the date of its issuance. [C24, 27, 31, 35, 39,§2168; C46, 50, 54,§133.5]

133.6 Record. It shall be the duty of said clerk to keep a record of permits issued hereunder and to give each permit holder a serial number. [C24, 27, 31, 35, 39,§2169; C46, 50, 54,§133.6]

133.7 Report. It shall be the duty of any manufacturer holding a permit under the provisions of this chapter whenever such manufacturer shall purchase any intoxicating liquor from any person, firm, or corporation, to file an affidavit immediately upon receipt of the shipment of such liquor, with the county auditor of the county in which such manufacturer shall have its place of business, in the following form:

State of Iowa }  
.....County } ss.

....., being first duly sworn on oath deposes and says that he is a managing officer of the ..... company or corporation engaged in the manufacture of patent medicines, proprietary medi-

cines, tinctures, extracts, toilet articles, perfumes or other like commodities, and that the location of the said company or corporation is in the city of ..... county, Iowa.

That on the .....day of ....., 19...., said company or corporation ordered from the ..... company or corporation of..... (Number and street)

(City and state)  
the following liquors:

(Kinds of liquors and amounts)

That the said liquors were received by this manufacturer on the....day of....., 19...., for a purpose and use authorized by the permit held by this manufacturer.

Subscribed and sworn to before me on this ..... day of ....., 19....  
.....  
Notary public.

[C27, 31, 35,§2169-a1; C39,§2169.1; C46, 50, 54, §133.7]

133.8 Violations. Any person, firm, or corporation violating any provision of this chapter shall be guilty of a misdemeanor and punished accordingly. [C24, 27, 31, 35, 39,§2170; C46, 50, 54,§133.8]

Punishment, §687.7

CHAPTER 134

PERMITS TO CLERGYMEN

Referred to in §123.94

- 134.1 Permit.
- 134.2 Application.
- 134.3 County attorney.
- 134.4 Permit record.
- 134.5 Order in triplicate.

- 134.6 Sacramental use.
- 134.7 Shipment.
- 134.8 Carriers may transport.
- 134.9 Use for other purposes.
- 134.10 Violation revokes permit.

134.1 Permit. Any minister, priest, or rabbi of any church, sect, denomination, or creed which uses wines in its sacrificial ceremonies or sacraments, and who desires to purchase and have transported by either intrastate or interstate common carriers and have possession of such sacramental wines shall, before purchasing or transporting such sacramental wines, apply for and obtain a permit authorizing such sale or transportation as hereinafter provided. [C24, 27, 31, 35, 39,§2171; C46, 50, 54,§134.1]

134.2 Application. Any such minister, priest, or rabbi desiring such permit shall apply to the judge of the district court of the county in which such minister, priest, or rabbi resides, by filing with the clerk of the district court the affidavit of such minister, priest, or

rabbi, as the case may be, stating therein the following facts:

1. The name and post-office address of the applicant and the location of the church, building, or synagogue where such minister, priest, or rabbi ministers or officiates.
2. The kind and character of the wine and approximately the amount required during the calendar month. [C24, 27, 31, 35, 39,§2172; C46, 50, 54,§134.2]

134.3 County attorney. It shall be the duty of the county attorney to appear for and represent the petitioner without expense to the petitioner. If, after a hearing, the judge is satisfied that the facts stated in said affidavit are true the permit shall be issued accordingly, which permit, unless revoked for cause,

shall remain in force for five years from the date of its issuance. [C24, 27, 31, 35, 39, §2173; C46, 50, 54, §134.3]

Referred to in §134.5

134.4 Permit record. It shall be the duty of the clerk to keep a record of permits issued under the provisions of this chapter, giving each permit holder a serial number; and at the time of the issuance of said permit, or afterwards, while the same remains in force, on application of the permit holder the clerk shall deliver to him certificates showing his authority to buy, transport, and use such sacramental wines as may be covered by said permit, which certificates shall be in triplicate and on red paper and in substantially the following form:

CLERGYMAN'S SHIPPING PERMIT

This is to certify that ....., of....., county of ..... and state of Iowa, is the holder of a clergyman's permit No....., which will expire on the ... day of ....., 19...., and that such permit holder is authorized to purchase and have transported to him sacramental wines of the kinds and amounts specified below, providing one duplicate of this certificate is firmly pasted or affixed to the exterior of the package and one duplicate hereof is attached to the bill of lading; and after the delivery of said wine to such permit holder, said duplicate with the date of the delivery indorsed or stamped thereon shall be by the delivering carriers promptly mailed to the undersigned.

Kinds of Wine Amount and purpose for which to be used.

.....  
.....

.....  
Clerk of the District Court,  
.....County, Iowa.

SHIPPING ORDER

.....  
.....

Please ship to me via.....  
(Here insert name of carrier)  
the wine above specified.

[C24, 27, 31, 35, 39, §2174; C46, 50, 54, §134.4]

Referred to in §134.5

134.5 Order in triplicate. When the holder of any permit granted under section 134.3 desires to purchase and have transported any wine provided for in this chapter, he shall make a written order in triplicate upon the blanks provided in section 134.4, which shall be furnished to him by said clerk, setting forth the exact amount and kind of wine ordered, from whom and by what railway, express company, or other common carrier the said liquor is to be transported. One copy of this order shall be immediately filed with the clerk of the district court of the county in which the permit is issued, one copy shall be attached to the package in which shipment is made in a conspicuous place in such way that it cannot be removed without showing evi-

dence of mutilation where the entire order is shipped in one package, and if the said order shall be contained and shipped in more than one package, then the consignor shall attach the original copy to one of said packages and a duplicate thereof to each additional package required to ship said order, and the third copy shall be attached at the original point of shipment to the waybill of the common carrier transporting such wine. This copy, when the holder of the permit or his authorized agent shall have receipted for said wine, shall be stamped with the date of delivery of such wine and immediately filed by the agent of the common carrier which has transported the said wine with the clerk of the district court of the county in which permit is granted. The clerk of the district court shall compare the copy of the order filed by the agent of the common carrier with the copy filed by the holder of the permit and, if any discrepancy exists, he shall report such fact to the county attorney. [C24, 27, 31, 35, 39, §2175; C46, 50, 54, §134.5]

134.6 Sacramental use. It shall be lawful for any person, firm, or corporation holding a permit in the state of Iowa for the sale of alcohol, spirituous or vinous liquors to sell sacramental wines to holders of permits under this chapter, and to deliver the same to common carriers for transportation to such permit holders under the conditions as provided by this chapter, anything to the contrary in any other law notwithstanding. [C24, 27, 31, 35, 39, §2176; C46, 50, 54, §134.6]

134.7 Shipment. It shall be the duty of any permit holder within this state or dealer without the state filling such order to paste or otherwise attach firmly one duplicate of such certificate to the exterior of such package, which shall be sufficient authority for the transportation and delivery to such permit holders of the package containing such wine. [C24, 27, 31, 35, 39, §2177; C46, 50, 54, §134.7]

134.8 Carriers may transport. When the provisions of this chapter have been fully complied with, common carriers are authorized to transport to such permit holders wine described therein, in the manner specified therein, and the permit holder is authorized to carry or convey such wine to his place of business, anything in any other law to the contrary notwithstanding. [C24, 27, 31, 35, 39, §2178; C46, 50, 54, §134.8]

134.9 Use for other purposes. Any person receiving or having shipped any wine under the provisions of this chapter, and using or permitting the same to be used for any purpose other than for sacramental purposes, or using or permitting the same to be used for beverage purposes shall be guilty of a misdemeanor and shall forfeit all his rights under any permit granted under the provisions of this chapter. [C24, 27, 31, 35, 39, §2179; C46, 50, 54, §134.9]

Punishment, §687.7

**134.10 Violation revokes permit.** Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and any violation of any of the

liquor laws of this state by a permit holder shall automatically revoke any permit held by him. [C24, 27, 31, 35, 39, §2180; C46, 50, 54, §134.10]

Punishment, §687.7



# TITLE VII

## PUBLIC HEALTH

Referred to in §169.36

See also reference in §147.55

### CHAPTER 135

#### STATE DEPARTMENT OF HEALTH

Identification and use of publicly owned automobiles, etc., §740.20 et seq

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##### MISCELLANEOUS PROVISIONS

- 135.30 Adoption of rules.
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##### GENERAL PROVISIONS

**135.1 Definitions.** For the purposes of this title, unless otherwise defined:

1. "Commissioner" shall mean the commissioner of public health.

2. "State department" or "department" shall mean the state department of health.

3. "Health officer" shall mean the physician who is the health officer of the local board of health.

4. "Local board" shall mean the local board of health.

5. "Physician" shall mean a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy, or chiropractic under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopath and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", and a person licensed as a chiropractor shall be designated as a "chiropractor".

6. "Rules" shall include regulations and orders.

7. "Sanitation officer" shall mean the policeman who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the execution of health and quarantine regulations. [S13,§2583-b; C24, 27, 31, 35, 39,§2181; C46, 50, 54, §135.1]

**135.2 Appointment.** The governor shall, within sixty days after the convening of the general assembly in 1925, and every four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a commissioner of public health who shall be a physician specially trained in public hygiene and sanitation. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2182; C46, 50, 54, §135.2]

Confirmation procedure, §2.40

**135.3 Disqualifications.** The commissioner shall not be an officer or member of the instructional staff of any of the state educational institutions nor of any college in which is

taught any of the professions for which a license must be obtained from the department to practice the same in this state, nor shall the commissioner hold any other lucrative office of the state, elective or appointive, during his term, but he shall devote his entire time to the duties of his office. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2183; C46, 50, 54,§135.3]

**135.4 Term of office.** The term of office of the commissioner shall be four years, commencing on July 1 of the year of appointment. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2184; C46, 50, 54,§135.4]

**135.5 Vacancies.** All vacancies in the office of the commissioner of public health that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the date on which the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments before the end of said session and for the unexpired portion of the regular term. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2185; C46, 50, 54,§135.5]

**135.6 Assistants and employees.** The commissioner shall employ such assistants and employees as may be authorized by law, and the persons thus appointed shall perform such duties as may be assigned to them by the commissioner, but the head of the division of examinations and licenses shall not be a person who has been licensed to practice any of the professions for which a license must be obtained from the department to practice the same in this state. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2186; C46, 50, 54,§135.6]

**135.7 Bonds.** The commissioner shall require every employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the commissioner which bond shall be approved by him and filed in the office of the secretary of state. [C24, 27, 31, 35, 39,§2187; C46, 50, 54,§135.7]

**135.8 Seal.** The state department of health shall have an official seal and every commission, license, order, or other paper executed by the department may be attested with its seal. [C24, 27, 31, 35, 39,§2188; C46, 50, 54,§135.8]

**135.9 Expenses.** The commissioner, field and office assistants, inspectors, and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route and their necessary and incidental expenses when engaged in the performance of official business. [C97,§2574; S13,§2564, 2574; C24, 27, 31, 35, 39,§2189; C46, 50, 54,§135.9]

**135.10 Office.** The state department of health shall be located at the seat of government. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39, §2190; C46, 50, 54,§135.10]

**135.11 Powers and duties.** The commissioner of public health shall be the head of the "State Department of Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, and, unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the bacteriological and epidemiological laboratory at the state university.

Laboratory tests, §§263.7, 263.8

5. Make inspections of the sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

6. Make inspections of the sanitary conditions in any locality of the state upon written petition of five or more citizens from said locality, and issue directions for the improvement of the same, which shall be executed by the local board.

7. Make inspections of the public water supplies, sewer systems, sewage treatment plants, and garbage and refuse disposal plants throughout the state, and direct the method of installation and operation of the same.

8. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and towns and amend the same when deemed necessary in the manner prescribed in section 135.12. Said rules and amendments shall be published in the same manner as other rules of the department.

Referred to in §§185.12, 358A.25

9. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

10. Hear and determine all appeals from the order of any local board made in connection with the enforcement of the housing law, and enforce its orders therein.

11. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa State Department of Health".

12. Exercise general supervision over the administration and enforcement of the venereal disease law, chapter 140.

13. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation.

14. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

15. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health", title VIII.

16. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, a division of vital statistics, and a division of examinations and licenses; but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

17. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

1. [C97,§2565; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
- 2, 3. [C24, 27, 31, 35, 39,§2191; C46, 50, 54, §135.11]
4. [C97,§2565; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
5. [C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
6. [S13,§2569-a; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
7. [C97,§2565; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
- 8, 9, 10. [C24, 27, 31, 35, 39,§2191; C46, 50, 54, §135.11]
11. [S13,§§2572-a,-b,-c; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
12. [C24, 27, 31, 35, 39,§2191; C46, 50, 54, §135.11]
13. [S13,§2575-a42; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
14. [C97,§2565; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]
- 15, 16. [C24, 27, 31, 35, 39,§2191; C46, 50, 54, §135.11]
17. [C97,§2565; C24, 27, 31, 35, 39,§2191; C46, 50, 54,§135.11]

**135.12 Plumbing code committee.** The code of rules governing the installation of plumbing provided for in section 135.11 may be amended biennially as conditions may require. The necessary amendments shall be determined by a plumbing code committee which shall be appointed by the commissioner of public health on or before July 1, 1925, and every four years thereafter. Such committee shall consist of

the engineer who is head of the division of sanitary engineering, the commissioner of health, the housing commissioner, one master plumber, and one journeyman plumber. The engineer member shall be chairman of the committee. [C24, 27, 31, 35, 39,§2192; C46, 50, 54, §135.12]

Referred to in §135.11

**135.13 Powers of committee.** The committee shall meet at the call of the chairman, which shall be issued during the month of December of each even-numbered year. It shall continue in session until it has agreed upon the amendments deemed necessary to the existing code governing the installation of plumbing. [C24, 27, 31, 35, 39,§2193; C46, 50, 54,§135.13]

Referred to in §135.14

**135.14 Compensation and expenses.** The members of the committee shall receive no compensation for their services, but they shall receive their necessary traveling and hotel expenses in discharging the duties prescribed in section 135.13. [C24, 27, 31, 35, 39,§2194; C46, 50, 54,§135.14]

Referred to in §135.15

**135.15 Plumbing code fund.** Cities and towns licensing plumbers shall pay to the treasurer of state one dollar for each license issued and twenty-five cents for each renewal thereof. The fees so received shall be kept by the treasurer of the state in a separate fund to be known as the plumbing code fund. Such fund shall be used in paying the claims arising under section 135.14 and in paying the cost of printing the code of rules governing the installation of plumbing, plumbers' license and application blanks. [C24, 27, 31, 35, 39,§2195; C46, 50, 54,§135.15]

**135.16 Mining camps.** When the health conditions in any mining camp become a menace to the health of the inhabitants thereof, the department shall require compliance with the provisions of the housing law insofar as the same may be reasonably applicable in such camp. [C24, 27, 31, 35, 39,§2196; C46, 50, 54, §135.16]

Housing law, ch 418

**135.17 Permits for construction of new mining camps.** No new mining camp shall be constructed of more than five houses until a written permit is secured from the department. Application for said permit shall be made in writing, accompanied by a plat of the proposed camp showing in detail the location, topography, character of the houses to be built, and the provisions to be made for drainage, sewage, outside toilets, and water supply. Within three weeks from the receipt of such application the department shall inspect the proposed camp and, if satisfied that the same will comply with the general provisions of the housing law as far as reasonably applicable, shall issue the permit requested. [C24, 27, 31, 35, 39,§2197; C46, 50, 54,§135.17]

Housing law, ch 418

## STREAM AND LAKE POLLUTION

**135.18 Investigation upon petition or on initiative by department.** The department may, upon its own initiative, study, investigate, or survey any stream, watercourse, lake, or other body of water within the state and bordering on the state, and may determine ways and means of eliminating pollution, and may determine methods, so far as practicable, and necessary in the light of the use to which the water is being, or may be, put, of controlling the extent of such pollution of said waters. The department shall make such investigations upon the written petition of:

1. The council of any city or town.
2. The local board of health.
3. The trustees of any township.
4. Twenty-five residents of the state.
5. Any state agency or agencies.

For the purposes of this chapter, pollution means such contamination, or other alteration of the physical, chemical or biological properties, of such waters of the state, or such discharge of such liquid, gaseous or solid substances into such waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. [C24, 27, 31, 35, 39, §2198; C46, 50, 54, §135.18; 56GA, ch 95, §1]

Referred to in §§135.24, 135.25

**135.19 Hearing necessary.** Whenever such complaint of pollution of any of the aforesaid waters is filed with the department, or whenever it acts upon its own initiative, it shall make a full and complete investigation which may include such engineering studies, bacteriological, biological, and chemical analyses of the water and location of the sources of contamination as may be found necessary, and, if the pollution taking into account the use to which the water is being, or may be, put, is found to exist, the department shall make an order fixing the time and place for a hearing which shall be not less than ten days thereafter. Such hearing shall be public and shall be conducted, so far as possible, in the same manner as a court hearing, and every alleged offender shall have the right to appear by counsel, present testimony, and examine witnesses. [C24, 27, 31, 35, 39, §2199; C46, 50, 54, §135.19]

**135.20 Time and place of hearing—order.**

1. Notice of the time and place of hearing shall be served upon each alleged offender at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action in a court of record.

2. After such hearing the department may, if it believes the alleged offender is guilty of the charges, enter an order directing such person to desist in the practice found to be

the cause of such pollution or corruption, taking into account the use to which the water is being, or may be, put, or it may order a change in the method of passing waste materials into the water so that the same will be rendered innocuous and harmless.

3. No order shall be issued under the provisions of subsection 2 of this section without the written approval of a majority of the members of the Iowa natural resources council.

4. If any such change is ordered, unless such practice is rendering such water dangerous to the public health, a reasonable time shall be granted to the offender in which to put in use the method ordered.

5. The department shall keep a complete record of such proceeding, including all the evidence taken, and such record shall be open to public inspection. [C24, 27, 31, 35, 39, §2199-2203; C46, §135.19-135.24; C50, 54, §135.20]

Manner of service, R.C.P. 56(a)  
Referred to in §135.25

**135.21 Appeal from order.** An appeal may be taken by the aggrieved party from any order entered in such proceeding to the district court of the county in which the alleged offense was committed. Such appeal shall be perfected by serving a written notice on the commissioner of public health within thirty days of the entry of such order. The hearing on appeal shall be tried as a suit in equity and shall be de novo. The court may receive additional testimony and may affirm, modify, or reverse any such order. The setting aside of any such order of the department by the court upon any such appeal shall not prevent or preclude said department from again instituting proceedings against the same person, firm, corporation or municipality when in its opinion the public health is endangered. [C24, 27, 31, 35, 39, §2204; C46, §135.25; C50, 54, §135.21]

**135.22 Transcript.** Within thirty days after an application for an appeal is filed with the commissioner, he shall make, certify, and file in the office of the clerk of the court to which the appeal is taken, a full and complete transcript of all documents and papers relating to the case. [C24, 27, 31, 35, 39, §2205; C46, §135.26; C50, 54, §135.22]

**135.23 Trial.** The first term after the appeal is taken shall be the trial term, and if the appeal is taken during a pending term, it shall be triable during such term at any time after ten days from the date that the transcript is filed by the commissioner. The hearing on appeal shall be tried as a suit in equity and shall be de novo. [C24, 27, 31, 35, 39, §2206; C46, §135.27; C50, 54, §135.23]

How issues tried, R.C.P. 177

**135.24 Injunction.**

1. Any person, firm, corporation, municipality, or any officer or agent thereof causing pollution as defined in section 135.18 of this chapter of such waters of the state or placing or causing to be placed any wastes, including sewage, industrial waste, and all liquid, gas-

eous or solid substances, in a location where they will probably cause pollution of such waters of the state may be enjoined from continuing such action.

2. It shall be the duty of the attorney general, only on request of the department, to bring an action for an injunction against any person, firm, corporation, municipality, or agent thereof violating the provisions of this section. In any such action any previous finding of the department after hearing or due notice shall be prima-facie evidence of the fact or facts found therein. [56GA, ch 95,§2]

### 135.25 Contempt—penalty.

1. Failure to obey any order issued under the provisions of section 135.20 made by the department with reference to matters pertaining to the pollution of waters shall constitute prima-facie evidence of contempt. In such event the department may certify to the district court of the county in which such disobedience shall occur, the fact of such failure. The district court shall then proceed to hear and determine the matter and, if the order be found to be reasonable and lawful, to punish for contempt to the same extent as though such failure were in connection with an order made by the district court which is made punishable by contempt.

2. Any person, firm, or corporation, or any officer or agent thereof, found guilty of contempt under this section shall be fined in a sum not to exceed one thousand dollars. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of streams or other bodies of water, and a conviction under this section shall not be a bar to prosecution under any other penal statute. [C24, 27, 31, 35, 39, §§2207, 2208; C46, §§135.28, 135.29; C50, 54, §§135.24, 135.25; 56GA, ch 95, §§2, 3]

Extent of imprisonment, §789.17

### 135.26 Permits issued.

1. It shall be unlawful to carry on any of the following activities without first securing a written permit from the department, as is required by it, for the disposal of all wastes, including sewage, industrial waste and all liquid, gaseous or solid substances, which are or may be discharged thereby into the waters of the state.

a. The construction, installation or modification of any disposal system or part thereof or any extension or addition thereto.

b. The construction or installation of any industrial or commercial establishment or any extension or modification thereof or addition thereto, the operation of which will cause pollution as defined in section 135.18.

c. The construction or use of any new outlet for the discharge of any wastes directly into the waters of the state. Provided, however, that no permit shall be required for any new disposal system or extension or addition to

any existing disposal system that receives or may receive only domestic or sanitary sewage from a building housing or occupied by fifteen persons or less.

However, no permit shall be issued when the proposed use, when added to the existing uses or condition of such waters, will result in pollution as defined in section 135.18.

2. Plans and specifications for any waste disposal system covered by subsection 1 of this section shall be submitted to the department before a written permit may be issued, and the construction of any such waste disposal system shall be in accordance with said plans and specifications as approved by the department. In case it shall be necessary or desirable to make material changes in such plans or specifications, revised plans or specifications together with reasons for the proposed changes will be submitted to the department for a supplemental written permit. [C24, 27, 31, 35, 39, §2198; C46, 50, 54, §§135.18, 135.26; 56GA, ch 95, §§1, 4]

Referred to in §135.28

135.27 Plans of system filed. The department may require any owner of a waste disposal system discharging into any of the aforesaid waters to file with it complete plans of the whole or of any part of such system and any other information and records concerning the installation and operation of such system. [C50, 54, §135.27; 56GA, ch 95, §5]

### 135.28 Rules and regulations.

1. The department shall have the right to establish procedure for the review of any reports, plans, specifications, or other data relative to any waste disposal system, written permits for which are required by section 135.26, and may make use of such assistance for such review as existing boards, commissions, and departments of the state may be able to render.

2. The department is empowered to adopt and enforce rules and regulations governing the method and manner under which plans, specifications, or other data relative thereto shall be submitted for waste disposal systems or for additions or changes to or extensions of such systems.

3. The department is empowered to adopt and enforce rules and regulations consistent with and not different from the provisions of this chapter restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the waters of the state. [C50, 54, §§135.26, 135.28; 56GA, ch 95, §§4, 6]

135.29 Sewage treatment. No sewage or any other waste liquid or solid substance of a decomposable, putrescible, oily, chemical, or other character whether treated or untreated shall be discharged directly into any state-owned natural or artificial lake, provided, that this section shall not be construed as to prohibit the discharge of adequately treated sewage or wastes into a stream tributary to a lake

upon the written permission of the state department of health and the state conservation commission. [C50, 54, §135.29]

#### MISCELLANEOUS PROVISIONS

**135.30 Adoption of rules.** Immediately after the adoption of any rule the department shall forward a certified copy of such rule to the county auditor of each county and to each local board of health. When such rule shall be amended, notice of said amendment shall be given in the same manner. [S13, §2571-b; C24, 27, 31, 35, 39, §2209; C46, 50, 54, §135.30]

**135.31 Time rules take effect.** The rules of the department shall take effect and be in force in the respective counties from and after the date stated in the certified copies of said rules which are forwarded to the county auditors. [C24, 27, 31, 35, 39, §2210; C46, 50, 54, §135.31]

**135.32 Publication and distribution.** The department shall publish from time to time a sufficient number of its rules to supply the needs of the several counties. The county auditor shall annually forward to the department a certified list of the names and addresses of the clerks of all the local boards of health in his county. Upon receipt of said list the department shall forward to the local boards sufficient copies for distribution in each county; and the clerk of the local board shall upon request furnish a copy of said rules to any resident, physician, or citizen. [S13, §2571-b; C24, 27, 31, 35, 39, §2211; C46, 50, 54, §135.32]

**135.33 Refusal of board to enforce rules.** If any local board shall fail to enforce the rules of the state department or carry out its lawful directions, the department may enforce the same within the territorial jurisdiction of such local board, and for that purpose it may exercise all of the powers given by statute to the local board, and may employ the necessary assistants to carry out its lawful directions. [C97, §2572; S13, §§2569-a, 2572; C24, 27, 31, 35, 39, §2212; C46, 50, 54, §135.33]

Powers of local board, ch 137

**135.34 Expenses for enforcing rules.** All expenses incurred by the state department in determining whether its rules are enforced by a local board, and in enforcing the same when a local board has failed to do so, shall be paid in the same manner as the expenses of enforcing such rules when enforced by the local

board. [S13, §2572; C24, 27, 31, 35, 39, §2213; C46, 50, 54, §135.34]

Payment enforced, §137.13 et seq.

**135.35 Duty of peace officers.** All peace officers of the state when called upon by the department shall enforce its rules and execute the lawful orders of the department within their respective jurisdictions. [C97, §2572; S13, §2572; C24, 27, 31, 35, 39, §2214; C46, 50, 54, §135.35]

**135.36 Interference with health officer.** Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39, §2215; C46, 50, 54, §135.36]

Punishment, §687.7

**135.37 Biennial report.** The department shall make a report to the governor in each even-numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, such information and statistics concerning the public health and enforcement of the several laws administered by it, and such instruction upon the subject of hygiene and sanitation as may be thought useful for dissemination among the people, with such suggestions as to legislation as may be deemed advisable. [C97, §2565; C24, 27, 31, 35, 39, §2216; C46, 50, 54, §135.37]

See §136.10

Time of making report, §17.3

**135.38 Penalty.** Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a misdemeanor. If said rules relate to the practice of cosmetology or barbering said misdemeanors shall be punished by a fine of not to exceed one hundred dollars or by imprisonment not to exceed thirty days. [C73, §419; C97, §2573; S13, §2575-a6; C24, 27, 31, 35, 39, §2217; C46, 50, 54, §135.38]

Punishment, §687.7

**135.39 Federal aid.** The state department of health is hereby authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying on public health work in the state of Iowa. [C31, 35, §2217-c1; C39, §2217.1; C46, 50, 54, §135.39]

## CHAPTER 135A

## HOSPITAL AND HEALTH FACILITY SURVEY

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**135A.1 Title.** This chapter may be cited as the "Iowa Hospital Survey and Construction Act". Nothing in this chapter shall be construed as adding to or deleting from the professional practice Acts, Title VIII of the Code, or the hospital licensure law, chapter 135B. [C50, 54,§135A.1; 56GA, ch 96,§1]

**135A.2 Definitions.** Definitions as used in this chapter:

1. "Commissioner" means the commissioner of public health.

2. "The federal Act" means Title VI of the public health service Act and any amendments thereto (42USC, §§291 to 291v).

3. "The surgeon general" means the surgeon general of the public health service of the United States.

4. "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

5. "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

6. "Nonprofit hospital" or "other nonprofit health facility" means any hospital or other health facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, directly or indirectly, to the benefit of any private shareholder or individual.

7. "Other health facilities" means diagnostic or treatment centers, rehabilitation facilities, and nursing homes as those terms are defined in the federal Act. [C50, 54,§135A.2; 56GA, ch 96, §§2-4]

**135A.3 Administration—division of hospital survey and construction.** There is hereby established in the state department of health a division of hospital survey and construction which shall be administered by a full-time salaried director under the supervision and

direction of the commissioner. The state department of health through such division, shall constitute the sole agency of the state for the purpose of:

1. Making an inventory of existing hospitals and other health facilities, surveying the need for construction of hospitals and other health facilities, and developing a program of hospital construction as provided in this chapter, and

2. Developing and administering a state plan for the construction of public and other nonprofit hospitals and other health facilities as provided in this chapter. [C50, 54,§135A.3; 56GA, ch 96, §§5, 6]

**135A.4 General powers and duties.** In carrying out the purposes of the chapter, the commissioner is authorized and directed:

1. To require such reports, make such inspections and investigations, and, with the advice of the hospital advisory council, prescribe such regulations as he deems necessary. No reports shall be required, inspections and investigations made, or regulations adopted which would have the effect of discriminating against a hospital or other institution or facilities contemplated hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided that such school or system of practice is recognized by the laws of this state.

2. To provide such methods of administration, appoint a director and other personnel of the division and take such other action as may be necessary to comply with the requirements of the federal Act and the regulations thereunder.

3. To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties.

4. To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private.

5. To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution, subject to the approval by the executive council, made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purposes.

6. On November 1 of each year, to make an annual report to the governor on activities and expenditures pursuant to this chapter. [C50, 54, §135A.4; 56GA, ch 96, §7]

**135A.5 Hospital and other health facilities advisory council.** The governor shall appoint a hospital and other health facilities advisory council, hereinafter referred to as the "council", to advise and consult with the state department of health in carrying out the administration of this chapter. The advisory council shall consist of the commissioner who shall serve as chairman ex officio and seventeen members to include: Five individuals of recognized ability in the field of hospital administration (four from a list submitted by the Iowa Hospital Association and one from a list submitted by the Iowa Osteopathic Hospital Association); five individual doctors (four from a list submitted by the Iowa State Medical Society and one from a list submitted by the Iowa Society of Osteopathic Physicians and Surgeons); one member representing nongovernmental organizations or groups, or state agencies, concerned with rehabilitation; one individual dentist (from a list submitted by the Iowa State Dental Society); one individual nurse (from a list submitted by the Iowa State Nurses Association); and four individuals with broad civic interest representing consumers of hospital or other health facility services. The governor shall appoint four members for terms of one year, four members for terms of two years, four members for terms of three years, and five members for terms of four years, provided, however, that the terms of no more than two members of any of the three aforesaid groups shall expire in the same year. Their successors shall be appointed for terms of four years, except when appointed to complete an unexpired term. Members whose terms expire shall hold office until appointment of their successors. Members of the council shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties. The council shall meet quarterly each year, and additional meetings shall be held at the call of the chairman or the request of any four of its members. [C50, 54, §135A.5; 56GA, ch 96, §8]

**135A.6 Survey and planning activities.** The commissioner is authorized and directed to make an inventory of existing hospitals and other health facilities, including public, nonprofit and proprietary hospitals and other health facilities, to survey the need for construction of hospitals and other health facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospi-

tals and other health facilities, as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and other health facility, and similar services to all the people of the state. In making the inventory and survey and developing a construction program with respect to diagnostic or treatment centers the commissioner shall, in the first instance, advise and consult with a subcommittee of the council, which subcommittee shall consist of the five individual doctors and the individual dentist then serving as members of the council. [C50, 54, §135A.6; 56GA, ch 96, §9]

**135A.7 Construction program.** The construction program shall provide in accordance with regulations prescribed under the federal Act, for adequate hospital and other health facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and other health facility service reasonably accessible to all persons in the state. [C50, 54, §135A.7; 56GA, ch 96, §10]

**135A.8 Application for federal funds for survey and planning—expenditure.** The commissioner is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited in the state treasury and shall be available to the commissioner for expenditure for carrying out the purposes of this chapter, in accordance with the provisions of Title VI of the public health service Act, any amendments thereto, and the statutes of the state of Iowa. [C50, 54, §135A.8; 56GA, ch 96, §11]

**135A.9 State plan.** The commissioner shall, with the advice of the council, prepare and submit to the surgeon general a state plan which shall include the hospital and other health facilities construction program developed under this chapter and which shall provide for the establishment, administration and operation of hospital and other health facilities construction activities in accordance with the requirements of the federal Act and regulations thereunder. The commissioner shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description to all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the commissioner shall make the plan or a copy thereof available upon request to all interested persons or organizations. The commissioner shall from time to time review the hospital and other health facilities construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state



plan, not inconsistent with the requirements of the federal Act, as he may deem advisable. [C50, 54,§135A.9; 56GA, ch 96,§12]

**135A.10 Minimum standards for hospital maintenance and operation.** The commissioner shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and other health facilities which receive federal aid for construction under the state plan. [C50, 54,§135A.10; 56GA, ch 96,§13]

**135A.11 Priority of projects.** The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal Act, and provide for the construction, insofar as financial resources are available therefor and also for maintenance and operations in the order of such relative need. [C50, 54,§135A.11]

**135A.12 Construction projects—applications.** Applications for hospital and other health facilities construction projects for which federal funds are requested shall be submitted to the commissioner and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a health facility, provided that no application for a diagnostic or treatment center shall be approved unless the applicant is (1) the state, a political subdivision, or a public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [C50, 54, §135A.12; 56GA, ch 96,§14]

**135A.13 Consideration and forwarding of applications.** The commissioner shall afford to every applicant for a construction project an

opportunity for a fair hearing. If the commissioner, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of this chapter and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [C50, 54, §135A.13]

**135A.14 Inspection of projects.** From time to time the commissioner shall cause to be inspected each construction project approved by the surgeon general, and, if the inspection so warrants, the commissioner shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [C50, 54,§135A.14]

**135A.15 Hospital and health facilities construction fund.** The commissioner is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. There is hereby established, separate and apart from all public moneys and funds of this state, a hospital and other health facilities construction fund. Money received from the federal government for a construction project approved by the surgeon general shall be deposited to the credit of this fund and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Warrants for all payments from the hospital and other health facilities construction fund shall bear the signature of the commissioner or his duly authorized agent for such purpose. [C50, 54,§135A.15; 56GA, ch 96,§15]

Constitutionality, 52GA, ch 90,§16  
Omnibus repeal, 52GA, ch 90,§17

## CHAPTER 135B

## LICENSURE AND REGULATION OF HOSPITALS

Referred to in §§135A.1, 155.3

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**135B.1 Definitions.** As used in this chapter:

1. "Hospital" means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums, rest homes, nursing homes, boarding homes, or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests. "Hospital" shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Public Law 725, 79th Congress, approved August 13, 1946.\*

2. "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

3. "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing. [C50, 54, §135B.1]

\*60 Stat. L.

**135B.2 Purpose.** The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards

(1) for the care and treatment of individuals in hospitals and (2) for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in hospitals, in the interest of the health, welfare and safety of the public. [C50, 54, §135B.2]

**135B.3 Licensure.** No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license. [C50, 54, §135B.3]

Effective January 2, 1948  
See §135B.18

**135B.4 Application for license.** Licenses shall be obtained from the state department of health. Applications shall be upon such forms and shall contain such information as the said department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as may be lawfully prescribed hereunder. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be paid over into the state treasury credited to the general fund if the license is issued. In case of death of any person holding such license or the sale of any hospital licensed hereunder within the first year of the tenure of such license the department shall certify to the state comptroller a claim on behalf of the licensee for refund of a proportionate share of the license fee. Said refund shall be based on one-twelfth the amount thereof multiplied by the remaining months in the year. The comptroller shall thereupon draw a warrant against the general fund payable to the order of the licensee. Hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one

hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars. [C50, 54,§135B.4]

**135B.5 Issuance and renewal of license.** Upon receipt of an application for license and the license fee, the state department of health shall issue a license if the applicant and hospital facilities comply with the provisions of this chapter and the regulations of the said department. Each such license, unless sooner suspended or revoked, shall be renewable annually upon payment of ten dollars and upon filing by the licensee, and approval by the department, of an annual report upon such uniform dates and containing such information in such form as the state department of health, with the advice of the hospital licensing board, shall prescribe by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the state department of health. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said department. [C50, 54,§135B.5]

**135B.6 Denial or revocation of license — hearings and review.** The state department of health shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the rules, regulations or minimum standards promulgated under this chapter.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to hearing, the department may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the department. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, or served personally upon, the applicant or licensee. The decision shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the court, pursuant to section 135B.14.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said department with the advice of the hospital licensing board. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to section 135B.14. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. [C50, 54, §135B.6; 57GA, ch 267,§27]

**135B.7 Rules, regulations, and enforcement.** The state department of health with the advice of the hospital licensing board, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to the different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of the chapter. Rules, regulations and standards may be adopted imposing requirements in excess of those provided in chapter 413, but no rule, regulation or standard shall be adopted imposing requirements less than those provided by said chapter. No rules, regulations or standards shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided that such school or system of practice is recognized by the laws of this state. [C50, 54,§135B.7]

Referred to in §135B.17

**135B.8 Effective date of regulations.** Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. [C50, 54,§135B.8]

**135B.9 Inspections and consultations.** The state department of health shall make or cause to be made such inspections as it may deem necessary. The state department of health shall, with the advice of the hospital licensing board, prescribe by regulations that any licensee or applicant for license desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the state department of health for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [C50, 54,§135B.9]

**135B.10 Hospital licensing board.** The five individuals appointed by the governor to the

hospital advisory council as individuals of recognized ability in the field of hospital administration, shall function as and be the hospital licensing board. [C50, 54,§135B.10]

**135B.11 Functions of hospital licensing board.** The hospital licensing board shall have the following responsibilities and duties:

1. To consult and advise with the department of health in matters of policy affecting administration of this chapter, and in the development of rules, regulations and standards provided for hereunder.

2. To review and approve such rules, regulations and standards authorized hereunder prior to their promulgation by the department of health as specified herein.

The members of the board shall receive no compensation or expenses for their services as members thereof. [C50, 54,§135B.11]

**135B.12 Information confidential.** Information received by the state department of health through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. [C50, 54,§135B.12]

**135B.13 Annual report of department.** The state department of health shall prepare and publish an annual report of its activities and operations under this chapter. [C50, 54, §135B.13]

**135B.14 Judicial review.** Any applicant or licensee who is dissatisfied with the decision of the commissioner of public health as a result of the hearing provided herein may, within thirty days after the mailing or serving of notice of the decision as provided in said section, file a notice of appeal in the district court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the department. Thereupon the department shall within thirty days certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. The trial before the court shall be de novo and all legal evidence pertaining to the matter of whether or not such license shall be denied, suspended or revoked, as the case may be, may be submitted including new or additional evidence not submitted to the commissioner, and the court shall have power to affirm, modify or reverse the decision of the commissioner. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved. [C50, 54,§135B.14]

Referred to in §135B.6

**135B.15 Penalties.** Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars or more than five hundred dollars, and

each day of continuing violation after conviction shall be considered a separate offense. [C50, 54,§135B.15]

**135B.16 Injunction.** Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. [C50, 54,§135B.16]

**135B.17 Construction.** This chapter shall not be construed as affecting, modifying or repealing any provision of chapter 413, except as provided in section 135B.7, and provided further that this chapter shall be construed as being in addition to and not in conflict with chapters 235 and 236. [C50, 54,§135B.17]

Omnibus repeal, 52GA, ch 91,§19  
Constitutionality, 52GA, ch 91,§18

**135B.18 County homes exempted.** The provisions of this chapter shall not apply to county homes established pursuant to chapter 253 and managed by the county board of supervisors. [C54,§135B.18]

#### PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

**135B.19 Title of division.** This law may be cited as the "Pathology and Radiology Services in Hospitals Law." [57GA, ch 92,§1]

**135B.20 Definitions.** Definitions as used in this division:

1. "Hospital" shall mean all hospitals licensed under this chapter.

2. "Doctor" shall mean any person licensed to practice medicine and surgery or osteopathy or osteopathy and surgery in this state.

3. "Technician" shall mean technologist as well.

4. "Joint conference committee" shall mean the joint conference committee as required by the joint commission on accreditation of hospitals or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

5. "Employees" as used in section 135B.24, and "employment" as used in section 135B.25, shall include and pertain to members of the religious order operating the hospital even though the relationship of employer and employee does not exist between such members and the hospital. [57GA, ch 92,§2]

**135B.21 Functions of hospital.** The ownership and maintenance of the laboratory and X-ray facilities and the operation of same under this division are proper functions of a hospital. [57GA, ch 92,§3]

**135B.22 Character of services.** Pathology and radiology services performed in hospitals

are the product of the joint contribution of hospitals, doctors and technicians but these services constitute medical services which must be performed by or under the direction and supervision of a doctor, and no hospital shall have the right, directly or indirectly, to direct, control or interfere with the professional medical acts and duties of the doctor in charge of the pathology or radiology facilities or of the technicians under his supervision. Nothing herein contained shall affect the rights of third parties as a result of negligence in the operation or maintenance of the aforesaid pathology and radiology facilities. [57GA, ch 92,§4]

**135B.23 Agreement with doctor.** Each hospital shall arrange for such services and for the direction and supervision of its pathology or radiology department by entering into either an oral or written agreement with a doctor who is a member of or acceptable to the hospital medical staff. Such doctor may or may not be a specialist. The department may be supervised and directed by a qualified member of the staff and specific services may be referred to a specialist, or the specialist may also direct and supervise the department as may be desired. Any contract so entered into shall be in accordance with the provisions of this division. [57GA, ch 92,§5]

**135B.24 Employees.** Unless the department is leased or unless the hospital and doctor mutually agree otherwise, technicians and other personnel, not including doctors, shall be employees of the hospital, subject to the rules and regulations of the hospital applicable to employees generally, but under the direction and supervision of the doctor in charge of the department as set forth elsewhere in this division. [57GA, ch 92,§6]

Referred to in §135B.20

**135B.25 Hiring and dismissal of technicians.** The doctor and hospital shall mutually agree upon the employment of any technicians necessary for the proper operation of said department and no technicians shall be dismissed from said employment without the mutual consent of the parties, provided, however, that in the event the hospital and doctor are unable mutually to agree upon the hiring or discharge or disciplining of any employee of said department, the matter shall be promptly submitted to the joint conference committee for final determination. [57GA, ch 92,§7]

Referred to in §135B.20

**135B.26 Compensation.** The contract between the hospital and doctor in charge of the laboratory or X-ray facilities may contain any provision for compensation of each upon which they mutually agree, provided, however, that no contract shall be entered into which in any way creates the relationship of employer and employee between the hospital and the doctor, and a percentage arrangement is not and shall not be construed to be unprofessional conduct

on the part of the doctor or in violation of the statutes of this state upon the part of the hospital. [57GA, ch 92,§8]

**135B.27 Admission agreement.** The hospital admission agreement signed by the patient or his legal representative shall contain the following statement:

"Pathology and radiology services are medical services performed or supervised by doctors, and the personnel and facilities are or may be furnished by the hospital for said services. Charges for such services are or may be collected, however, by the hospital on behalf of said doctors pursuant to an agreement between said doctors and the hospital, and from said charges I consent that an agreed sum will be retained by the hospital in accordance with an existing agreement between the doctor and the hospital." [57GA, ch 92,§9]

**135B.28 Hospital bill.** The hospital bill shall properly include the charges for pathology and radiology services as long as the name of the doctor is stated and it fairly appears that the charge is for medical services. The said hospital bill shall also contain a statement substantially in the following form:

"The pathology and radiology charges are for medical services rendered by or under the direction of the doctor listed above and are collected by the hospital on behalf of the doctor, from which charges an agreed sum will be retained by the hospital in accordance with an existing agreement to which retention you consented at the time of your admission to the hospital. [57GA, ch 92,§10]

**135B.29 Fees.** All fees to be charged by the doctors for pathology and radiology services shall be mutually agreed upon by the hospital and the doctor. In the event dispute shall arise between the parties the matter shall be submitted to the joint conference committee for final determination. [57GA, ch 92,§11]

**135B.30 Radiology and pathology fees.** Fees for radiology and pathology services must be paid for as medical and not hospital services. In all cases where payment is to be made by a corporation organized pursuant to chapter 514, payment for radiology and pathology services shall be made by a medical service corporation and not by a hospital service corporation. [57GA, ch 92,§12]

**135B.31 Exceptions.** Nothing in this division is intended or should affect in any way that obligation of public hospitals under chapter 347 or chapter 380, as well as the state hospital at Iowa City, to provide medical treatment for indigent persons or tuberculous patients as provided in chapters 254 and 255, wherein medical treatment is provided by hospitals of that category to patients of certain entitlement, nor to the operation by the state of mental or other hospitals authorized by law. Nothing herein shall in any way

affect or limit the practice of dentistry or the practice of oral surgery by a dentist. [57GA, ch 92,§13]

**135B.32 Construction.** Nothing herein shall deprive any hospital of its tax exempt or non-profit status. [57GA, ch 92,§14]

## CHAPTER 135C

### NURSING HOMES REGULATION

Referred to in §170.38

- |         |                                   |         |                              |
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| 135C.2  | Purpose.                          | 135C.13 | Appeal.                      |
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| 135C.10 | Denial, suspension or revocation. | 135C.21 | Penalty.                     |
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**135C.1 Definitions.** As used in this chapter:

1. "Nursing home" means any institution, place, building or agency which is devoted primarily to the maintenance and operation of facilities for the housing, for a period exceeding twenty-four hours, and for providing skilled nursing care and related medical services for, two or more nonrelated individuals who are not acutely ill and not in need of hospital care, but who, by reason of age, illness, disease, injury, convalescence or physical or mental infirmity need such care. Nursing home does not include hospitals or custodial homes.

2. "Custodial home" means any institution, place, building or agency which is devoted primarily to the maintenance and operation of facilities for the housing, for a period exceeding twenty-four hours, and for care in excess of food, shelter, laundry or services incident thereto for, two or more nonrelated individuals who are not in need of nursing care or related medical services but who, by reason of age, illness, disease, injury, convalescence or physical or mental infirmity are unable to care for themselves. Custodial home does not mean hospitals or nursing homes.

3. "Person" means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

4. "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing. [C50, 54,§135C.1; 57GA, ch 93,§1]

**135C.2 Purpose.** 1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for aged, infirm and convalescent persons by both public and private agencies by providing for the adoption and enforcement of rules, regulations and standards:

- For the care and treatment of individuals in nursing homes and custodial homes, and
- For the location, construction, maintenance and sanitary operation of such nursing homes and custodial homes which will promote safe and adequate care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules, regulations and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules, regulations or standards shall have the burden of proof to establish that such rules, regulations or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in nursing homes and custodial homes. [C50, 54,§135C.5; 57GA, ch 93,§2]

**135C.3 Nature of care.** An institution licensed as a nursing home shall provide an organized continuing twenty-four hour program of nursing care commensurate with the needs of the patients and under the immediate direction of a licensed physician, licensed registered nurse or licensed practical nurse licensed by the state of Iowa, whose combined training and supervised experience is such as to assure adequate and competent nursing direction. Medical and nursing care shall be under the direction of either a "house physician" or individually selected physicians, but surgery or obstetrical care shall not be provided within the home. Persons in active or acute stages of alcoholism, drug addiction, mental illness or communicable disease may not be admitted to any licensed nursing home. [57GA, ch 93,§3]

**135C.4 Custodial homes.** An institution licensed as a custodial home shall provide an organized continuous twenty-four hour program of care commensurate with the needs of

the residents of the home and under the immediate direction of a person whose combined training and supervised experience is such as to ensure adequate and competent care. Persons who may not be admitted to nursing homes and persons in need of nursing care shall not be admitted to any licensed custodial home. [C50, 54,§135C.9; 57GA, ch 93,§4]

Persons not admitted to nursing homes, see §135C.3

**135C.5 Rest homes, etc.** Infirmaries operated in connection with custodial homes or with rest homes, homes for the aged, or boarding homes, may be licensed as nursing homes. No nursing home or custodial home shall be established or operated in any building in which other businesses are housed or other activities are carried on, the existence of which is determined by the department or the fire marshal to be detrimental to the proper care of the residents of the home. [57GA, ch 93,§5]

**135C.6 License required.** After July 4, 1957, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish or operate a nursing home or custodial home in this state without a license for such home. [C50, 54, §135C.2; 57GA, ch 93,§6]

**135C.7 Application—fees.** Licenses shall be obtained from the state department of health. Applications shall be upon such forms and shall require such information as the said department may reasonably require, which may include affirmative evidence of compliance with such other statutes and local ordinances as may be applicable. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied, which fee shall be paid over into the state treasury and credited to the general fund if the license is issued. There shall be an annual license fee based upon the bed capacity of the home. Nursing homes having ten beds or less shall pay an annual fee of ten dollars, nursing homes having more than ten beds and not more than twenty-five beds shall pay an annual fee of twenty dollars, nursing homes having more than twenty-five beds and not more than seventy-five beds shall pay an annual fee of thirty dollars, nursing homes having more than seventy-five beds and not more than one hundred fifty beds shall pay an annual fee of forty dollars, and all other nursing homes shall pay an annual license fee of fifty dollars. Custodial homes having ten beds or less shall pay an annual fee of five dollars, custodial homes having more than ten beds and not more than twenty-five beds shall pay an annual fee of ten dollars, custodial homes having more than twenty-five beds and not more than seventy-five beds shall pay an annual fee of fifteen dollars, custodial homes having more than seventy-five beds and not more than one hundred fifty beds shall pay an annual fee of twenty dollars, and all other custodial homes

shall pay an annual license fee of twenty-five dollars. [C50, 54,§§135C.3, 135C.4; 57GA, ch 93,§7]

**135C.8 Scope of license.** Licenses for nursing homes or custodial homes shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the state department of health. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the department. Such licenses, unless sooner suspended or revoked, shall expire one year after the date of issuance and shall be renewed annually upon an application by the licensee. Applications for such renewal shall be made in writing to the department, accompanied by the required fee, at least thirty days prior to the expiration of such license. [C50, 54,§135C.5; 57GA, ch 93,§8]

**135C.9 Inspection before issuance.** Upon receipt of the license fee and the application for license as a nursing home or custodial home the department shall:

1. If the application is for a nursing home, cause an inspection to be made of the premises by the personnel of the department of health.

2. If the application is for a custodial home, forward the application to the county board of social welfare of the county in which the premises are located. The county board shall make, or cause to be made, an inspection of the premises. After making such inspection the county board shall return the application to the board of health together with its findings from said inspection as to whether the proposed custodial home meets the standards for such homes as prescribed in the published regulations of the state department of health.

3. With regard to both nursing homes and custodial homes the department shall not issue a license until the premises have been inspected by the state fire marshal or his deputy for such purpose, the appointment of whom, including members of municipal fire departments, is hereby authorized, and the department has received a certificate signed by such marshal or his deputy that the premises comply with the fire-hazard and fire-safety rules, regulations and standards of the department as promulgated by the fire marshal. [C50, 54,§135C.6; 57GA, ch 93,§9]

**135C.10 Denial, suspension or revocation.** The state department of health shall have the authority to deny, suspend, or revoke a license in any case where the department finds that there has been a failure to comply with the provisions of this chapter or the rules, regulations or minimum standards promulgated hereunder, or for any of the following reasons:

1. Cruelty or indifference to the welfare of nursing home or custodial home patients.

2. Appropriation or conversion of the property of a nursing home or custodial home

patient without his written consent or the written consent of his legal guardian.

3. Evidence that the moral character of the applicant, manager or supervisor of the home is not reputable.

4. Permitting, aiding, or abetting the commission of any illegal act in the nursing home or custodial home.

5. Inability or failure to operate and conduct the nursing home or custodial home in accordance with the requirements of this Act and the minimum standards, rules and regulations issued pursuant thereto.

6. Obtaining or attempting to obtain a license by fraudulent means or misrepresentation.

7. Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the nursing home or custodial home.

8. Securing the devise or bequest of the property of a patient in a nursing home or custodial home by undue influence. [C50, 54, §135C.6; 57GA, ch 93,§10]

**135C.11 Notice—hearings.** Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The decision shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the court, pursuant to section 135C.13.

The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by said department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to section 135C.13. A copy or copies of the transcript may be obtained by an interested party upon payment of the cost of preparing such copy

or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. [C50, 54, §135C.6; 57GA, ch 93, §11]

**135C.12 Conditional operation.** In any case where the department of health shall have the authority to deny, suspend or revoke a license, the department shall have the authority to conditionally issue or continue a license dependent upon the performance by the licensee of such reasonable conditions within such reasonable period of time as may be set by the department so as to permit the licensee to commence or continue the operation of the nursing home or custodial home pending his full compliance with this chapter or any regulations issued hereunder. In such case, if the licensee does not make diligent efforts to comply with such conditions as prescribed, the department may, under the proceedings hereinbefore prescribed, suspend or revoke the license. [57GA, ch 93, §12]

**135C.13 Appeal.** Any applicant or licensee who is dissatisfied with the decision of the commissioner of public health as a result of the hearing procedure provided herein may appeal the decision within thirty days after the mailing or serving of notice of the decision by filing a notice of appeal in the district court of the county where the home or proposed home is located, and by serving a copy of said notice of appeal upon the department. Thereupon the department shall within thirty days certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. The trial before the court shall be de novo and all legal evidence pertaining to the matter of whether or not such license shall be denied, suspended, or revoked, as the case may be, may be submitted including new or additional evidence not submitted to the commissioner, and the court shall have power to affirm, modify, or reverse the decision of the commissioner. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved. [57GA, ch 93, §13]

Referred to in §135C.11

**135C.14 Rules and regulations.** The department of health shall adopt, amend, promulgate and enforce rules and regulations setting minimum standards for nursing homes and custodial homes. Such rules, regulations and standards shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the home, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. Such rules, regulations and standards regarding location and construction of the home may impose requirements in excess of those provided in chapter 413 but shall not impose require-



ments less than those provided by such chapter. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal;

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents;

3. All sanitary conditions within the home and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents;

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident; and

5. Equipment essential to the health and welfare of the resident. [C50, 54,§135C.5; 57GA, ch 93,§14]

**135C.15 Time to comply.** Any nursing home or custodial home which is in operation at the time of promulgation of any applicable rules and regulations or minimum standards under this chapter shall be given reasonable time from the date of such promulgation to comply with such rules, regulations and minimum standards. [57GA, ch 93,§15]

**135C.16 Inspections.** The state department of health shall make or cause to be made such further inspections as it may deem necessary. The state department of health shall prescribe by regulation that any licensee or applicant for license desiring to make specific types of alterations or additions to its facility or to construct new facilities shall, before commencing such alteration or additions or new construction, submit plans and specifications therefor to the state department of health for preliminary inspection and approval or recommendations with respect to the compliance with the regulations and standards herein authorized. An inspector of the department of health, county board of social welfare, or fire marshal, may enter any licensed nursing home or custodial home or purported nursing home or custodial home without a warrant. [57GA, ch 93,§16]

**135C.17 Duties of other departments.** It shall be the duty of the state department of social welfare, state fire marshal, and the officers and agents of other governmental units to assist the state department of health in carrying out the provisions of this chapter,

insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any person or persons cared for in nursing homes or custodial homes. [57GA, ch 93,§17]

**135C.18 Employees.** The state department of health may employ such assistants and inspectors as may be necessary to administer and enforce the provisions of this chapter. [57GA, ch 93,§18]

**135C.19 Confidential information.** Information received by the state department of health through reports, inspection, or as otherwise authorized in this chapter shall not be disclosed publicly in such manner as to identify individuals or nursing homes or custodial homes, except in a proceeding involving the question of licensure or the denial, suspension, or revocation of a license. [57GA, ch 93,§19]

**135C.20 Information distributed.** The state department of health shall prepare, publish and send to licensed nursing and custodial homes an annual report of its activities and operations under this chapter and such other bulletins containing fundamental health principles and data as may be deemed essential to assure proper operation of nursing homes and custodial homes. [57GA, ch 93,§20]

**135C.21 Penalty.** Any person establishing, conducting, managing, or operating any nursing home or custodial home without a license shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months, or both. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense. Any such person establishing, conducting, managing or operating any nursing home or custodial home without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state. [C50, 54,§135C.7; 57GA, ch 93,§21]

Constitutionality, 57GA, ch 93,§22  
Prior licenses, see 57GA, ch 93,§23

**135C.22 Exceptions.** The provisions of this chapter shall not be applicable to institutions operated by or under the board of control or the board of regents of state institutions. [C50, 54,§135C.8; 57GA, ch 93,§24]

## CHAPTER 135D

## MOBILE HOMES AND PARKS

- 135D.1 Definitions.
- 135D.2 Annual license for park.
- 135D.3 Application for annual license.
- 135D.4 Form of application for annual license.
- 135D.5 Primary and annual license fees.
- 135D.6 Sanitary and safety facilities reported.
- 135D.7 Permit from department of health.
- 135D.8 Denial of permit or license.
- 135D.9 Monthly fees.
- 135D.10 Responsibility for monthly fee — distribution.

- 135D.11 Distribution of copies of permit.
- 135D.12 Forms furnished by department.
- 135D.13 Notice to municipal treasurer.
- 135D.14 Parks owned by public.
- 135D.15 Seasonal operation.
- 135D.16 Rules and regulations.
- 135D.17 Revocation and suspension of license.
- 135D.18 Penalty.
- 135D.19 Construction of statute.
- 135D.20 Powers delegated to local boards.
- 135D.21 Fee in lieu of property tax.

**135D.1 Definitions.** The following definitions shall apply to this chapter:

1. "Mobile home" shall mean any vehicle used or so constructed as to permit its being used as a conveyance upon the public streets or highways and duly licensable as such, and shall include self-propelled or nonself-propelled vehicles, so designed, constructed, reconstructed or added to by means of an enclosed addition or room in such manner as will permit the occupancy thereof as a dwelling or sleeping place for one or more persons, having no permanent foundation and supported by wheels, jacks or similar supports.

2. "Mobile home park" shall mean any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.

The term "mobile home park" shall not be construed to include mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. [C54,§135D.1]

**135D.2 Annual license for park.** No person, firm or corporation shall establish, maintain, conduct or operate a mobile home park within this state without first obtaining an annual license therefor from the state department of health. Such annual license shall be issued for the calendar year applied for and shall expire at midnight on December 31 of such year. Any mobile home park located in more than one municipality shall be dealt with as two separate mobile home parks. [C54, §135D.2]

**135D.3 Application for annual license.** The application for annual license to operate and maintain a mobile home park shall be made to the state department of health, at such office and in such manner as may be prescribed by regulations of that department; provided that when such mobile home park is located within a municipality, the application shall be filed with the local board of health who shall forward

the same to the state department of health. [C54,§135D.3]

**135D.4 Form of application for annual license.** The application for such annual license shall be in writing and upon such form as the state department of health may by regulation provide, and shall include the following information:

1. The full name and address of the applicant or applicants or names and addresses of the partners if the applicant is a partnership, or the names and addresses of the officers if the applicant is a corporation, and present or last occupation of the applicant at the time of the filing of the application.

2. A legal description of the site, lot, field or tract of land upon which it is proposed to operate and maintain a mobile home park.

3. The proposed and existing facilities on and about such site, lot, field or tract of land for the proposed construction or alteration and maintaining of a sanitary community building for toilets, urinals, sinks, wash basins, slop sinks and showers, drains, laundry facilities, source of water supply; sewage, garbage and waste disposal.

4. The proposed method of lighting the structures and site, lot, field or tract of land upon which said mobile home park is to be located.

5. Designate the calendar months of the year in which applicant will operate said mobile home park.

6. Plans and drawings for new construction, including buildings, wells, and sewage disposal systems, not in existence at the time of the application. [C54,§135D.4]

Referred to in §135D.5

**135D.5 Primary and annual license fees.** The application for the first annual primary license shall be submitted with all plans and specifications enumerated in section 135D.4, and payment of twenty-five dollars for each mobile home park with facilities for twenty or fewer mobile homes, or fifty dollars for each mobile home park with facilities for more than twenty mobile homes, and shall be accompanied by an approved permit from the municipality whereon the park is to be located, or a statement that the municipality does not

require an approved permit. In the event a mobile park has facilities for three or less mobile homes, the annual license fee shall not exceed ten dollars.

Each year thereafter, the license fee shall be twenty-five dollars. All annual license fees collected by the department of health shall be deposited with the state treasurer.

When the application is received by the state department of health, it shall promptly cause the mobile home park and appurtenances thereto to be inspected. When such inspection and report has been made and the state department of health finds that all requirements of this chapter and such conditions of health and safety as the state department of health may require have been met by the applicant, the state department of health shall forthwith issue such annual primary license in the name of the state. [C54,§135D.5]

Referred to in §135D.9

**135D.6 Sanitary and safety facilities reported.** During the pendency of the application for such annual primary license, any change in the sanitary or safety facilities of the intended mobile home park shall be immediately reported in writing to the state department of health to the office to which the application was made. If no objection is made by the state department of health to such a change in such sanitary or safety facilities within sixty days of the date such change is reported, it shall be deemed to have the approval of the state department of health. [C54,§135D.6]

**135D.7 Permit from department of health.** When the application has been approved, the state department of health shall issue a permit to the applicant to construct or make alterations pertaining to water and sewage disposal upon a mobile home park and the appurtenances thereto according to the plans and specifications presented with the approved application.

No approval of plans and specifications and issuance of a permit to construct or make alterations upon a mobile home park and the appurtenances by the state department of health shall be construed as having been approved for other than sanitation.

Such a permit does not relieve the applicant from securing building permits in municipalities having a building code; or from complying with any other municipal ordinance or ordinances, applicable thereto, and not in conflict with this statute. [C54,§135D.7]

**135D.8 Denial of permit or license.** If the application for a permit to construct or make alterations upon a mobile home park and the appurtenances thereto, or a primary license to operate the same, is denied by the state department of health, it shall so state in writing, giving the reasons for denying the application. If the objection can be corrected, the applicant may amend his application and resubmit it for approval, and if denied the applicant may within thirty days thereafter appeal from the

decision of the state board of health to the district court of the county in which said mobile home park is located, and the case shall be tried in equity. [C54,§135D.8]

**135D.9 Monthly fees.** In addition to the primary and annual license fee provided for in section 135D.5, each licensee is hereby required to pay for each occupied mobile home occupying space within such licensed mobile home park a monthly fee as follows: For trailers up to thirty feet in length, two dollars per month or major fraction thereof; for trailers from thirty to thirty-five feet in length, two and one-half dollars per month or major fraction thereof; and for trailers over thirty-five feet in length, three dollars per month or major fraction thereof which monthly fee shall be paid by the licensee on or before the tenth day of the month, following the month for which such additional fee is due, in the manner herein prescribed. In computing the length herein above described, the total length therein set out shall expressly include the trailer hitch or such other permanent extensions as may be attached to said trailer used or designed for use as a trailer hitch. Provided, however, that the licensee of a mobile home park shall not be required to collect or pay a monthly fee, as herein provided, for any space occupied by a mobile home accompanied by an automobile, if such mobile home and automobile bear license plates issued by any other state other than the state of Iowa, for an accumulated period not to exceed ninety days in any twelve-month period; provided, further, that all occupants of the said mobile home with accompanying automobile are tourists or vacationists. When one or more persons occupying a mobile home bearing a foreign license are employed within the state of Iowa, there shall be no exemption for monthly fees. In the event that an occupied mobile home is not harbored in a mobile home park the owner of said mobile home shall pay a monthly fee in the amount and in the manner as has heretofore been provided in this section. Each mobile home park licensee is hereby required to keep an accurate and complete record of the number of units of mobile homes harbored in his park and to report such information on or before the tenth day of each month to the county assessor and the records of every such licensee shall be open to inspection by the county assessor. [C54,§135D.9]

**135D.10 Responsibility for monthly fee—distribution.** The monthly fee for each occupied mobile home situated upon a licensed mobile home park shall be paid by the licensee thereof, or by the owner where the mobile home is not situated in a mobile home park, to the county treasurer of the county wherein such licensed mobile home park or mobile home is situated, on or before the tenth day of each and every month following thereafter. Such monthly fee is hereby allocated and required to be paid by the county treasurer as follows:

For each monthly fee collected by the county treasurer, fifty percent shall be paid to the local public school district wherein said licensed mobile home park or mobile home is located; twenty-five percent shall be paid to the municipal corporation wherein said licensed mobile home park or mobile home is located, and twenty-five percent shall be retained for the general fund by the county treasurer. If there is no municipality, fifty percent shall be retained by the county treasurer for the general fund. [C54,§135D.10]

**135D.11 Distribution of copies of permit.** When the state department of health has approved an application for permit to construct or make alterations upon a mobile home park or the appurtenances thereto or a license to operate and maintain the same, it shall retain the original and keep a file thereof. One copy shall be returned to the applicant or his agent, one copy to the local board of health, if the mobile home park is located within the limits of a municipality. [C54,§135D.11]

**135D.12 Forms furnished by department.** The state department of health shall furnish all necessary forms to be executed in making application for all licenses under this chapter. [C54,§135D.12]

**135D.13 Notice to municipal treasurer.** It shall be the duty of the state department of health to notify, or cause to be notified, the treasurer of each municipality of the issuance of each mobile home park license issued within the jurisdiction of such municipality. [C54, §135D.13]

**135D.14 Parks owned by public.** Any mobile home park owned and operated by any municipality or political subdivision of this state shall meet all provisions of this chapter. [C54,§135D.14]

**135D.15 Seasonal operation.** If any applicant for a mobile home park license desires to operate such mobile home park only during the months from May 1 to October 1, they should pay only one-half of the above-mentioned annual license fee, but should pay the full monthly fees hereinbefore required for each month of operation. If in the opinion of the state department of health the sanitary and facility requirements herein contained are too rigid for the mobile home park, it may in writing or by regulation modify such requirements as circumstances may permit and require. [C54,§135D.15]

**135D.16 Rules and regulations.** The department shall have full authority to prescribe reasonable rules and regulations for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules and regulations shall be filed and entered by the department in its office in an index, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. Whenever a new ruling or regulation is adopted by the department, a copy of the

same shall be mailed by it to each licensee hereunder. All rules and regulations issued shall be in conformity with the provisions of chapter 17A. [C54,§135D.16]

**135D.17 Revocation and suspension of license.** Any license granted hereunder shall be subject to revocation or suspension by a court of proper authority and jurisdiction, and the state department of health shall first serve or cause to be served a written notice specifying a way or ways in which said licenses and fees provided for in this chapter or any special rules or regulations promulgated by the state department of health pertaining thereto. Said notice shall direct the licensee to remove or abate such nuisance, unsanitary or objectionable condition specified in said notice within five days, or within such reasonable period of time or extended period of time as may be reasonably allowed by the complaining officer. If the licensee fails to comply with the terms and conditions of said notices, within the time specified or such extended period or a period of time, the complaining officer may require the county attorney of the county in which such violation occurred to start a civil action to remove or abate such nuisance, unsanitary, unhealthful, or objectionable condition as complained of in the court of proper authority and jurisdiction of the city or county in the name of the state of Iowa, and if found guilty a decision may be entered by the court to revoke or suspend such license. [C54,§135D.17]

**135D.18 Penalty.** Any person violating any provision of this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months or by both such fine and imprisonment. [C54,§135D.18]

**135D.19 Construction of statute.** The licenses and fees provided for in this chapter shall be in addition to any licenses and fees provided for in chapter 321. [C54,§135D.19]

**135D.20 Powers delegated to local boards.** The state department of health shall have the power to delegate to local boards of health the duties of inspection and regulation of mobile home parks located within the jurisdiction of such local board of health, where, in the opinion of the state department of health, such delegation can best effectuate the policies of this chapter. When said duties are so delegated, fifty percent of the annual license fee collected therefrom shall be turned over to the treasurer of the jurisdiction involved, and there is hereby appropriated from the general fund of the state an amount sufficient to pay the proportionate fees allowable to the jurisdiction involved, as provided in this section. [C54,§135D.20; 56GA, ch 97,§1]

**135D.21 Fee in lieu of property tax.** All mobile homes for which a monthly fee is collected under the provisions of this chapter shall not be assessed for property tax but this exemption shall not apply to the property contained in any mobile home. [C54,§135D.21]

## CHAPTER 136

## STATE BOARD OF HEALTH

136.1 Composition of board.  
 136.2 Appointment.  
 136.3 Duties.  
 136.4 Questions submitted.  
 136.5 Meetings.

136.6 Place.  
 136.7 Officers.  
 136.8 Supplies.  
 136.9 Compensation and expenses.  
 136.10 Publication of proceedings.

**136.1 Composition of board.** The state board of health shall consist of:

1. The commissioner of public health.
2. The members of the executive council.
3. Five health officers to be appointed by the governor. [S13,§2564-a; C24, 27, 31, 35, 39,§2218; C46, 50, 54,§136.1]

Referred to in §136.2

**136.2 Appointment.** The governor shall appoint, prior to the second Tuesday in January, 1925, and every two years thereafter, the five health officers provided for in section 136.1, who shall serve for a period of two years or until their successors are appointed and qualify. Not more than one of such health officers shall be appointed from any one congressional district. [C24, 27, 31, 35, 39,§2219; C46, 50, 54, §136.2]

**136.3 Duties.** The state board of health shall be an advisory body to the state department of health and shall have the following powers and duties to:

1. Consider and study the entire field of legislation and administration concerning public health, hygiene, and sanitation.
2. Advise the department relative to:
  - a. The causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health.
  - b. The sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.
  - c. The public water supplies, sewer systems, sewage treatment plants, and garbage and refuse disposal plants, and the method of installing and operating the same.
  - d. Contagious and infectious diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines, housing, and vital statistics.
3. Recommend policies and practices to the department relative to any duty imposed upon it by law, which recommendations shall be given due consideration by the department.
4. Appoint a committee, upon the request of the department, to advise with the department relative to any duty imposed upon it by law.
5. Investigate the conduct of the work of the department, and for this purpose it shall have access at any time to all books, papers, documents, and records of the department.
6. Advise or make recommendations to the governor and general assembly relative to public health, hygiene, and sanitation.

7. Adopt rules, not inconsistent with law, for its internal control and management, a copy of which rules shall be filed with the department.

8. Act by committee, or by a majority of the board.

9. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department. [C97,§2565; C24, 27, 31, 35, 39,§2220; C46, 50, 54, §136.3]

**136.4 Questions submitted.** The department may lay before the board, or any committee thereof, at any regular or special meeting, any matter upon which it desires the advice or opinion of such body or committee. [C24, 27, 31, 35, 39,§2221; C46, 50, 54,§136.4]

**136.5 Meetings.** The board shall meet semi-annually, on the second Tuesday in July and January of each year, and at such other times as may be deemed necessary by the commissioner of public health or the governor. The officer calling a special meeting of the board shall give each member ten days written notice by mail of such meeting. A majority of the members of the board shall constitute a quorum. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2222; C46, 50, 54,§136.5]

**136.6 Place.** The meetings of the board shall be held at the seat of government unless otherwise ordered by the board. The executive council shall furnish the board with suitable quarters in which to hold its meetings. [C97, §2564; S13,§2564; C24, 27, 31, 35, 39,§2223; C46, 50, 54,§136.6]

**136.7 Officers.** At the meeting held in July of each year a president and secretary shall be elected from the board, who shall serve for a period of one year. At the request of the board the department shall furnish an executive clerk from the regular employees of the department to record the minutes of the meetings of the board. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2224; C46, 50, 54,§136.7]

**136.8 Supplies.** The department shall furnish the board of health with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and

the same shall be considered and accounted for as if obtained for the use of the department. [S13,§2564; C24, 27, 31, 35, 39,§2225; C46, 50, 54, §136.8]

**136.9 Compensation and expenses.** The members of the board shall receive no compensation as such, but the traveling expenses of the members shall be paid from any funds in the state treasury not otherwise appropriated.

[C97,§2574; S13,§§2564, 2574; C24, 27, 31, 35, 39, §2226; C46, 50, 54,§136.9]

**136.10 Publication of proceedings.** Upon request of the board the department shall incorporate the proceedings of the board, or any part thereof, in its biennial report to the governor, and the same shall be published as a part of the official report of the department. [C24, 27, 31, 35, 39,§2227; C46, 50, 54,§136.10]

Biennial report, §§17.3, 135.37

## CHAPTER 137

### LOCAL BOARD OF HEALTH

- 137.1 Organization.
- 137.2 Chairman—duties.
- 137.3 Clerk—duties.
- 137.4 Health officer.
- 137.5 Sanitation and quarantine officer.
- 137.6 Meetings.
- 137.7 Duties.
- 137.8 Publication of rules.
- 137.9 General duties.
- 137.10 Special duties.

- 137.11 Additional duties.
- 137.12 Right to enter premises.
- 137.13 Abatement of nuisance.
- 137.14 Closing of premises.
- 137.15 Refusal of admittance.
- 137.16 Costs for abating nuisance.
- 137.17 Peace officers to enforce.
- 137.18 Interference with officers.
- 137.19 Penalty.

**137.1 Organization.** The local board of health shall consist:

1. In cities and towns, of the mayor, health physician, and members of the city or town council.

2. In counties, of the chairman of the board of supervisors, the county auditor, and the county superintendent of schools, having jurisdiction outside the territorial limits of cities and towns; provided, however, the township trustees in any township may organize as a local board of health for such township. [C73,§§393, 415; C97,§§574, 2568; C24, 27, 31, 35, 39,§2228; C46, 50, 54,§137.1]

**137.2 Chairman—duties.** In cities and towns the mayor shall be chairman of the local board, and when said board is not in session he shall as mayor and as chairman of said board enforce the statutes of the state relative to public health and the rules of the state department and local board. In counties the members of the board of health shall elect one of their number as chairman and in townships the trustees shall elect one of their number as chairman who shall have the same duties as the chairman of the local board in cities and towns. [C24, 27, 31, 35, 39,§2229; C46, 50, 54, §137.2]

**137.3 Clerk—duties.** The town, city, or township clerk, or the county auditor, as the case may be, shall be clerk of the local board, keep its records, and perform such other duties as may be prescribed by the local board. [C73,§418; C97,§2568; C24, 27, 31, 35, 39,§2230; C46, 50, 54,§137.3]

**137.4 Health officer.** Each local board shall have a health officer who shall be a physician, or one specially trained in public hygiene and

sanitation. In cities and towns the health physician shall be such health officer. In every other case the local board shall appoint said health officer who shall hold office during its pleasure. [C73,§418; C97,§2568; C24, 27, 31, 35, 39,§2231; C46, 50, 54,§137.4]

**137.5 Sanitation and quarantine officer.** Upon request of the local board, the mayor in every city or town shall appoint a permanent sanitation and quarantine officer who shall be subject to the orders and directions of the local board and its health officer in the execution of health and quarantine regulations. [C24, 27, 31, 35, 39,§2232; C46, 50, 54,§137.5]

**137.6 Meetings.** The local board shall meet for the transaction of business on the first Monday of April and November in each year and at such other times as it may deem necessary. [S13,§2571-b; C24, 27, 31, 35, 39,§2233; C46, 50, 54,§137.6]

**137.7 Duties.** The duties of the local board shall be to:

1. Obey and enforce the rules and lawful orders of the state department.

2. Furnish the state department at the times and in the manner prescribed by the department, reports of its proceedings.

3. Establish, maintain, and terminate quarantines in all cases of quarantinable diseases as may be required by law or by the rules of the state department.

4. Make such rules, not inconsistent with law or the rules of the state department as may be necessary for the enforcement of the various laws, the administration of which is imposed upon the local board.

5. Have, subject to the rules of the state department, charge of the burial or disposal of

the dead, and of all cemeteries dedicated to public use not legally controlled by other trustees or persons.

6. Regulate all fees and charges of persons employed by it in the execution of health laws, its own rules, and those of the state department.

1. [C97,§2572; S13,§2572; C24, 27, 31, 35, 39, §2234; C46, 50, 54,§137.7]

2. [C97,§2571; S13,§2571-b; C24, 27, 31, 35, 39, §2234; C46, 50, 54,§137.7]

3, 4. [C73,§§415, 417, 418; C97,§2568; C24, 27, 31, 35, 39,§2234; C46, 50, 54,§137.7]

5. [C73,§393; C97,§§574, 2568; C24, 27, 31, 35, 39,§2234; C46, 50, 54,§137.7]

6. [C97,§2568; C24, 27, 31, 35, 39,§2234; C46, 50, 54,§137.7]

Brewery inspection, §124.36  
 Disposal of dead bodies, ch 141  
 Duty as to diseases among animals, §§163.17, 165.85  
 Quarantinable diseases, §189.1

**137.8 Publication of rules.** All rules adopted by the local board shall take effect after publication in some newspaper of general circulation in the city, town, county, or township in which said board has jurisdiction, or after posting a copy of the same in five public places therein. [C97,§2571; S13,§2571-b; C24, 27, 31, 35, 39,§2235; C46, 50, 54,§137.8]

**137.9 General duties.** The health officer shall:

1. Be the executive officer of the local board in all matters pertaining to the public health, the control of communicable diseases, disposal of refuse and night soil, and the pollution of wells and other sources of water supply.

2. Recommend to the local board the proper measures to be taken for the abatement of unhealthful conditions and for the preservation of the public health.

3. Receive reports of cases of reportable diseases, impose and terminate quarantine.

4. Keep a record of cases reported to him (name, age, sex, address, birthplace, occupation, school or place of employment of the person reported to be ill, the name of the person making the report, the date of receipt by him of the report, the date of transmission of the report to the state department of health, the date of quarantine, the date of release from quarantine, the termination of the case and source of infection if known) in a book kept for the purpose.

5. Forward reports of cases to the state department of health in accordance with its rules and regulations. [C24, 27, 31, 35, 39,§2236; C46, 50, 54,§137.9]

**137.10 Special duties.** At least twice each year, and oftener if necessary, the health officer shall personally inspect, or cause to be inspected, the schools, public buildings, and public utilities within the jurisdiction of the local board, and he shall recommend to the local board the necessary measures to be taken by it for the maintenance of such schools, pub-

lic buildings, and public utilities in a sanitary condition. In case of sickness where no physician is in attendance, the health officer shall investigate the character of such sickness and report his findings to the local board. [C24, 27, 31, 35, 39,§2237; C46, 50, 54,§137.10]

**137.11 Additional duties.** In addition to his statutory duties the health officer shall perform such other duties as the local board may assign to him. [C24, 27, 31, 35, 39,§2238; C46, 50, 54,§137.11]

**137.12 Right to enter premises.** The local board, health officer, or sanitation officer, may enter any building, vessel, or other place for the purpose of examining into, preventing, or removing any nuisance, source of filth, or cause of sickness. [C97,§2569; C24, 27, 31, 35, 39,§2239; C46, 50, 54,§137.12]

Referred to in §§137.15, 137.16

**137.13 Abatement of nuisance.** The local board may order the owner, occupant, or person in charge of any property, building, or other place, to remove at his own expense any nuisance, source of filth, or cause of sickness found thereon, by serving on said person a written notice, stating some reasonable time within which such removal shall be made, and if such person fails to comply with said order, the local board may cause the same to be executed at the expense of the owner or occupant. [C73,§§415, 417; C97,§§2568, 2569; C24, 27, 31, 35, 39,§2240; C46, 50, 54,§137.13]

Referred to in §§137.15, 137.16

**137.14 Closing of premises.** In such cases the local board may order the occupants of said place to move therefrom and fix some reasonable time for compliance therewith. If the order is not complied with, said board may forcibly remove the occupants and close the premises; and said place shall not be again occupied as a dwelling or place of business without the written permission of the local board. [C73,§§415, 417; C97,§2568; C24, 27, 31, 35, 39,§2241; C46, 50, 54,§137.14]

Referred to in §§137.15, 137.16

**137.15 Refusal of admittance.** In case any member of the local board, the health officer, or the sanitation officer, in proceeding under the authority of sections 137.12 to 137.14, inclusive, shall be refused entry to any place, complaint may be made under oath to any magistrate of the county, whether a member of the local board or not, and said magistrate shall thereupon issue his warrant, directed to some peace officer of the county, commanding him between the hours of sunrise and sunset, accompanied by two or more members of said board, the health officer, or the sanitation officer, to prevent, remove, or destroy any nuisance, source of filth, or cause of sickness, found to exist in said place, which order shall be executed by said officer under the direction of the members of the local board, the health

officer, or the sanitation officer. [C97,§2569; C24, 27, 31, 35, 39,§2242; C46, 50, 54,§137.15]

Referred to in §§137.16, 139.12

**137.16 Costs for abating nuisance.** All expenses incurred by the local board in proceeding under sections 137.12 to 137.15, inclusive, may be recovered by suit in the name of the local board, or said board may certify the amount of said expense, together with a description of the property, to the county auditor who shall enter the same upon the tax books as costs for removing a nuisance and said amount shall be collected as other taxes. [C24, 27, 31, 35, 39,§2243; C46, 50, 54,§137.16]

Collection of taxes, ch 445 et seq.

**137.17 Peace officers to enforce.** Peace officers, when called upon by the local board, shall

enforce its rules and execute the lawful orders of said board. [C97,§§2568, 2572; S13,§2572; C24, 27, 31, 35, 39,§2244; C46, 50, 54,§137.17]

**137.18 Interference with officers.** No person shall interfere with the local board, or its officers, or authorized agents, in the discharge of any duty imposed by law, or the rules of the state department or the local board. [C24, 27, 31, 35, 39,§2245; C46, 50, 54,§137.18]

**137.19 Penalty.** Any person who knowingly violates any provision of this chapter, or of the rules of the local board, or any lawful order, written or oral, of said board, or of its officers or authorized agents, shall be guilty of a misdemeanor. [C73,§419; C97,§2573; S13,§2575-a6; C24, 27, 31, 35, 39,§2246; C46, 50, 54,§137.19]

Punishment, §687.7

## CHAPTER 138

### COUNTY BOARD OF HEALTH

138.1 Adoption of plan.

138.2 County board of health.

138.3 Organization.

138.4 Expenses.

**138.1 Adoption of plan.** The county board of supervisors of any county may, by mutual agreement with boards of health of cities, towns, and townships of their county, adopt the county health unit plan.

In case of the adoption of a county health unit plan in any county having a population of one hundred seventy-five thousand or more, the civil service status and pension rights of any then existing employee of any then existing departments of health in such county shall be maintained and protected. [C31, 35,§2246-c1; C39,§2246.1; C46, 50, 54,§138.1]

**138.2 County board of health.** When a county health unit plan is adopted, a county board of health shall be appointed by the county board of supervisors to guide and direct all public health activities within such county.

This board of health shall consist of not more than eleven members, three of which shall be members of the local county medical society, and the others, who may include representatives of local boards of health of incorporated cities or towns situated within the county, shall all be appointed by the county board of supervisors. All financial expenditures shall first be approved by the county board of supervisors, by budget or otherwise.

The county board of health shall serve as such without pay. [C31, 35,§2246-c2; C39,§2246.2; C46, 50, 54,§138.2]

**138.3 Organization.** The organization of a county health unit plan shall be made only after consultation and after advising with the state commissioner of health or his agent, who is hereby charged with the duty of the investigation of all activities in public health in operation within the county at the time and with the further duty of advising the county board of health and the county board of supervisors toward the correlation and co-ordination of all public health activities under the county health unit plan. The state board of health shall adopt rules of procedure for the organization of county boards of health, as such, and shall also specify their duties. [C31, 35,§2246-c3; C39,§2246.3; C46, 50, 54,§138.3]

**138.4 Expenses.** The expense incurred by the county health unit shall be paid by the county board of supervisors upon their own motion from county funds legally available. Other organizations, including local boards or board of health, may unite with the county board of supervisors in defraying the necessary expense of such county health unit. [C31, 35,§2246-c4; C39,§2246.4; C46, 50, 54,§138.4]



## CHAPTER 139

## CONTAGIOUS AND INFECTIOUS DISEASES

Referred to in §§141.11, 155.17, 170.26

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**139.1 Definitions.** For the purposes of this chapter:

1. "Communicable disease" shall mean any infectious or contagious disease.

2. "Placard disease" shall mean whooping cough, measles, mumps, chickenpox, or any other disease designated as a placard disease by the state department.

3. "Quarantinable disease" shall mean scarlet fever (including scarlet rash and scarlatina), smallpox, diphtheria (including membranous croup), cholera, leprosy, cerebrospinal meningitis, anterior poliomyelitis, Spanish influenza, bubonic plague, or any other disease designated as quarantinable by the state department.

4. "Quarantine" shall mean the complete detention of a person within his own residence or temporary place of abode and the exclusion of the public from said place for the purpose of safeguarding the public from a communicable disease.

5. "Isolation" shall mean the separation of persons or animals presumably or actually affected with disease, or who are disease carriers, or have been exposed to communicable disease, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent to susceptible persons. [S13,§2571-a; SS15,§2571-1a; C24, 27, 31, 35, 39,§2247; C46, 50, 54,§139.1]

**139.2 Warning signs and reports.** The form of quarantine, temporary quarantine, and warning signs shall be prescribed by the rules of the state department, and the forms for all reports required by this chapter shall be likewise prescribed. [C24, 27, 31, 35, 39,§2248; C46, 50, 54,§139.2]

**139.3 Quarantinable and placard diseases.** The physician attending any person infected with a quarantinable disease or placard disease shall immediately report the same orally to the local board or to one of its officers and at once

follow said report with a written report. The local board or officer thus informed shall report the same immediately to the post office where the quarantined family receives or dispatches mail. Such reports shall be made in accordance with the rules of the state department and the local board. In case there is no attending physician, the parents, guardian, school teacher, or the householder of the premises wherein such disease exists shall report the same. [SS15,§2571-1a; C24, 27, 31, 35, 39, §2249; C46, 50, 54,§139.3]

**139.4 Report to department.** All quarantinable and placard diseases shall be reported by the local board to the state department as prescribed by the rules of the department. [C24, 27, 31, 35, 39,§2250; C46, 50, 54,§139.4]

**139.5 Communicable diseases.** In case any person shall be infected with any communicable disease, dangerous to the public health, whether a resident or otherwise, the local board shall make such orders in regard to the care of said person as are necessary to protect the public health, and said orders shall be executed by the mayor, township clerk, health officer, or sanitation officer as the local board may direct or provide by its rules. [S13,§2571-a; C24, 27, 31, 35, 39,§2251; C46, 50, 54,§139.5]

**139.6 Quarantine.** A quarantine shall be established in every case of a quarantinable disease, and in such cases the infected person may be removed and isolated in a separate house or hospital for detention and treatment. All quarantines and isolations ordered under the authority of this section shall be executed in accordance with the rules of both the state department and the local board. [C73,§§415, 418; C97,§2568; S13,§2571-a; C24, 27, 31, 35, 39, §2252; C46, 50, 54,§139.6]

**139.7 Placard diseases.** A quarantine shall not be established in case of a placard disease, but a warning sign shall be posted which shall serve merely as a warning to the public. [SS15,

§§2571-2a,-3a; C24, 27, 31, 35, 39,§2253; C46, 50, 54,§139.7]

**139.8 Warning signs.** All quarantinable and placard diseases shall, as soon as possible, be definitely diagnosed and the proper warning sign placed in a conspicuous place on the house, dwelling, or place in which the quarantinable or placard disease exists. [C24, 27, 31, 35, 39,§2254; C46, 50, 54,§139.8]

**139.9 Temporary quarantine.** When the type of the disease cannot be immediately determined or diagnosed, a temporary quarantine shall be established and all the requirements of quarantine shall be observed, but such temporary quarantine shall terminate within forty-eight hours after being established. [C24, 27, 31, 35, 39,§2255; C46, 50, 54, §139.9]

**139.10 Instructions to persons.** Every official, when establishing a quarantine or removing an infected person for the purpose of isolation, shall furnish to said person printed instructions relative to the duties and restrictions imposed upon him by law and by the rules of the state department and local board. [S13,§2571-b; C24, 27, 31, 35, 39,§2256; C46, 50, 54,§139.10]

**139.11 Temporary isolation hospitals.** When no detention hospital has been established by the county, the local board shall provide a suitable place, when necessary, for the isolation of persons infected with communicable diseases dangerous to the public health, and the expense incident thereto shall be paid by the county in the same manner as other expenses incurred under the provisions of this chapter. [S13,§2571-a; C24, 27, 31, 35, 39,§2257; C46, 50, 54,§139.11]

Payment of expense, §139.27 et seq.

**139.12 Forcible removal.** The forcible removal and isolation of any infected person shall be accomplished by an application to any civil magistrate in the manner provided in section 137.15 for the removal and abatement of nuisances; and such magistrate shall issue the warrant, as directed in such cases, to remove such person to the place designated by the local board, and to take possession of the infected house, lodging room, premises, or effects until the same have been properly fumigated or disinfected. [S13,§2571-a; C24, 27, 31, 35, 39, §2258; C46, 50, 54,§139.12]

**139.13 Fees for removing.** The officers designated by the magistrate shall be entitled to receive for their services such reasonable compensation as shall be determined by the local board. The amount so determined shall be certified and paid in the same manner as other expenses incurred under the provisions of this chapter. [S13,§2571-a; C24, 27, 31, 35, 39,§2259; C46, 50, 54,§139.13]

Payment of expense, §139.27 et seq.

**139.14 Removal to another jurisdiction.** No person known to be infected with any com-

municable disease dangerous to the public health shall move or be removed from the jurisdiction of one local board to the jurisdiction of another local board without the written permission of the local board from whose jurisdiction the infected person is to be removed, and if the removal is to another county, then the written permission of the local board into whose jurisdiction the infected person is to be removed shall also be secured. [S13,§2575-a3; C24, 27, 31, 35, 39,§2260; C46, 50, 54,§139.14]

Referred to in §139.16

**139.15 Removal to residence.** When the infected person resides not more than fifteen miles from the place at which it is determined that he is infected with a communicable disease dangerous to the public health and said person requests that he be removed to his place of residence, the local board shall grant permission for his immediate removal, unless in its judgment such removal would involve great danger to the infected person or the public health. [S13,§2575-a5; C24, 27, 31, 35, 39,§2261; C46, 50, 54,§139.15]

Referred to in §139.16

**139.16 Method of removal.** All removals of infected persons as provided in sections 139.14 and 139.15 shall be by private conveyance along the least frequented highways, under escort of the health officer or sanitation officer, and as thoroughly isolated as possible. [S13,§2575-a5; C24, 27, 31, 35, 39,§2262; C46, 50, 54,§139.16]

Referred to in §139.17

**139.17 Payment of expenses.** All expenses of removal under section 139.16 shall be paid by the county in which the infected person has a legal settlement and all bills for said expenses shall be presented, allowed, and paid in the same manner as bills for quarantine and isolation. [S13,§2575-a4,-a5; C24, 27, 31, 35, 39,§2263; C46, 50, 54,§139.17]

Payment of claims, §139.27 et seq.

**139.18 Detention hospitals.** The local board of the city or town which is allowed to maintain a detention hospital for patients infected with communicable diseases, outside the limits of said municipality, shall have exclusive jurisdiction and control of such detention hospital and grounds for the enforcement of all sanitary and health regulations. [S13,§2575-a2; C24, 27, 31, 35, 39,§2264; C46, 50, 54,§139.18]

**139.19 Location of detention hospitals.** All controversies arising between local authorities respecting the location of detention hospitals and grounds for the treatment of communicable diseases, shall be referred to the state department, which shall give two days notice to the parties interested, and after investigating the matter make such order as the facts warrant, which action shall be final. [S13, §2575-a1; C24, 27, 31, 35, 39,§2265; C46, 50, 54, §139.19]

**139.20 Termination of quarantines.** In the absence of the health officer, the quarantine or isolation authorized by this chapter may be

terminated by the county auditor, mayor, the township clerk or other officer acting under the directions of the health officer. [C73, §§415, 418; C97, §2568; C24, 27, 31, 35, 39, §2266; C46, 50, 54, §139.20]

**139.21 Disinfection.** In case of death from or the termination of any quarantinable disease, the person who was infected and the place of quarantine or isolation, with all persons, furniture, bedding, clothing, and all other articles contained therein, shall be disinfected in accordance with the rules of the state department and under the direction of the local board, which shall require the attending physician to superintend or perform the work. In case there be no attending physician, or in case the attending physician refuses to perform this duty, then the local board shall employ some other suitable person to perform such work. [S13, §2571-a; C24, 27, 31, 35, 39, §2268; C46, 50, 54, §139.21]

**139.22 Disinfection from other diseases.** The funeral director or embalmer or person in charge of the funeral of any person dying from any communicable disease which is not quarantinable shall within forty-eight hours after the death of such person report to one of the officers of the local board the name and residence of the deceased person, together with the cause of death. Upon receipt of said notice the officer receiving the same shall cause said premises to be disinfected in accordance with the rules of the state department. [S13, §2571-a; C24, 27, 31, 35, 39, §2269; C46, 50, 54, §139.22; 56GA, ch 98, §1]

**139.23 Medical attendance and supplies.** In case any person under quarantine or the persons liable for the support of such person shall, in the opinion of the local board, be financially unable to secure the proper care, provisions, or medical attendance, the local board shall furnish such supplies and services during the period of quarantine and may delegate such duty by its rules to one of its officers or to the health officer. [S13, §2571-a; C24, 27, 31, 35, 39, §2270; C46, 50, 54, §139.23]

**139.24 County liability for supplies.** The local board shall provide the proper care, provisions and medical attendance for every person removed and isolated in a separate house or hospital for detention and treatment, and the same shall be paid for by the county in which the infected person has a legal settlement if patient or legal guardian is unable to pay same. [S13, §2571-a; C24, 27, 31, 35, 39, §2271; C46, 50, 54, §139.24]

**139.25 Rights of isolated persons.** Any person removed and isolated in a separate house or hospital may employ, at his own expense, the physician or nurse of his choice, and may provide such supplies and commodities as he may require. [S13, §2571-a; C24, 27, 31, 35, 39, §2272; C46, 50, 54, §139.25]

**139.26 Supplies and services.** All services and supplies furnished to individuals or fam-

ilies under the provisions of this chapter must be authorized by the local board or by one of its officers acting under the rules of said board, and a written order therefor designating the person or persons employed to furnish such services or supplies, issued before said services or supplies were actually furnished, shall be attached to the bill when the same is presented for audit and payment. [S13, §2571-a; C24, 27, 31, 35, 39, §2273; C46, 50, 54, §139.26]

**139.27 Filing of bills.** All bills incurred in carrying out the provisions of this chapter in establishing, maintaining, and terminating quarantine and isolation, in providing a necessary house or hospital for isolation, and in making disinfections, shall be filed with the clerk of the local board. Said board at its next regular meeting or special meeting called for the purpose shall examine and audit the same and, if found correct, approve and certify the same to the county board of supervisors for payment. [S13, §2571-a; C24, 27, 31, 35, 39, §2274; C46, 50, 54, §139.27]

**139.28 Allowing claims.** All bills for supplies furnished and services rendered for persons removed and isolated in a separate house or hospital, or for persons financially unable to provide their own sustenance and care during quarantine, shall be allowed and paid for only on a basis of the local market price for such provisions, services, and supplies in the locality in which the same shall have been furnished. No bill for disinfecting premises or effects shall be allowed unless it shall be found that the infected person or those liable for his support are financially unable to pay the same. [S13, §2571-a; C24, 27, 31, 35, 39, §2275; C46, 50, 54, §139.28]

**139.29 Approval and payment of claims.** The board of supervisors shall not be bound by the action of the local board in approving such bills, but shall allow the same from the poor fund for a reasonable amount and within a reasonable time. [S13, §2571-a; C24, 27, 31, 35, 39, §2276; C46, 50, 54, §139.29]

**139.30 Reimbursement from county.** If any person receives services or supplies under this chapter who does not have a legal settlement in the county in which such bills were incurred and paid, the amount so paid shall be certified to the board of supervisors of the county in which said person claims settlement or owns property and the board of supervisors of such county shall reimburse the county from which such claim is certified, in the full amount originally paid by it. [S13, §2571-a; C24, 27, 31, 35, 39, §2277; C46, 50, 54, §139.30]

Referred to in §252.24

**139.31 Exposing to contagious disease.** Any person who knowingly exposes another to infection from any communicable disease, or knowingly subjects another to the danger of contracting such disease from a child or other irresponsible person, shall be liable for all

damages resulting therefrom, and be punished as provided in this chapter. [C73,§419; C97, §2573; C24, 27, 31, 35, 39,§2278; C46, 50, 54, §139.31]

**139.32 Penalty.** Any person who knowingly violates any provision of this chapter, or of the

rules of the state department or the local board, or any lawful order, written or oral, of said department or board, or of their officers or authorized agents, shall be guilty of a misdemeanor. [C73,§419; C97,§2573; S13,§2575-a6; C24, 27, 31, 35, 39,§2279; C46, 50, 54,§139.32]

Punishment, §687.7

## CHAPTER 140

### VENEREAL DISEASE

Referred to in §135.11

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**140.1 "Venereal disease" defined.** For the purposes of this chapter "venereal disease" shall mean syphilis, gonorrhoea, or chancroid. [C24, 27, 31, 35, 39,§2280; C46, 50, 54,§140.1]

**140.2 Reports.** Immediately after the first examination or treatment of any person infected with any venereal disease, the physician giving the same shall mail to the state department of health a report stating the case number, age, sex, color, marital condition, occupation, name of the disease, probable source of infection, and duration of the disease, except when the case occurs in a jurisdiction of a full-time municipal or county health officer, in which instance such report shall be sent direct to such officer who shall immediately forward same to the state department of health. It shall be the duty of the state department of health to report the number of the case and the name of the venereal disease reported as occurring in its jurisdiction, to each local board of health each month. [C24, 27, 31, 35, 39, §2281; C46, 50, 54,§140.2]

Referred to in §140.5

**140.3 Blood tests for pregnant women.** Each physician attending a pregnant woman in this state during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman within fourteen days of the first examination, and submit such sample for standard serological tests for

syphilis to the state bacteriological laboratory of the state university at Iowa City or such other laboratories co-operating with and approved by the state department of health. Every other person permitted by law to attend upon pregnant women in the state but not permitted by law to take blood tests, shall cause a sample of the blood of such pregnant woman to be taken by a duly licensed physician and submitted for standard serological tests for syphilis to the state bacteriological laboratory of the state university at Iowa City or such other laboratories co-operating with and approved by the state department of health. Such laboratory tests as are required by this section shall be made on request without charge by the state department of health. If such person reacts positively to such test, then the husband and father, other children by the same mother, or person responsible for pregnancy shall be subjected to same blood test as herein provided. The result of all laboratory tests shall be reported on standard forms prescribed by the commissioner of public health. [C39,§2281.1; C46, 50, 54,§140.3]

**140.4 Reporting on birth certificate.** In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on the birth certificate or stillbirth certificate, as the case may be, wheth-

er a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed, and if made, the date when such test was made, and if not made, the reason why such test was not made. In no event shall the birth certificate state the result of the test. [C39,§2281.2; C46, 50, 54,§140.4]

Constitutionality, 48GA, ch 82,§3

**140.5 Information.** Every physician who examines or treats a person infected with any venereal disease shall give said person at the time of the first examination or treatment a circular of information concerning venereal disease and a copy of the provisions of this chapter, and he shall include in the report required by section 140.2 a statement that the requirements of this section have been complied with. [C24, 27, 31, 35, 39,§2282; C46, 50, 54,§140.5]

**140.6 Former physician.** When a person applies for treatment of any venereal disease, the physician shall ascertain whether such person has previously consulted or employed some other physician for the same purpose, and if so, to immediately notify the physician last consulted or employed that the infected person is now under his care and treatment. [C24, 27, 31, 35, 39,§2283; C46, 50, 54,§140.6]

**140.7 False information.** Any person infected with a venereal disease who shall refuse to give or who falsely gives to a physician any information concerning prior treatment for the same, or relative to the name and address of the physician last consulted or employed, shall be punished as provided in this chapter. [C24, 27, 31, 35, 39,§2284; C46, 50, 54,§140.7]

**140.8 Conditions.** After a person infected with any venereal disease has consulted or employed a physician and fails to report to said physician for treatment during a period of ten days, the physician shall report the name and address of said person to the state department of health unless he shall receive during said period of time a report from some other physician that the infected person is now under his care and treatment. It shall be the duty of the state department of health when such reports are received to report the name of the infected person to the local board of health of the jurisdiction wherein he resides. [C24, 27, 31, 35, 39,§2285; C46, 50, 54,§140.8]

Referred to in §140.10

**140.9 Circulars of information.** All reports to the local board or by one physician to another concerning persons infected with venereal disease shall be made upon forms to be prescribed by the state department of health, and all circulars of information, copies of the venereal disease law, and forms for reports, which are required to be used or distributed by this chapter, shall be supplied by the department to the proper persons. [C24, 27, 31, 35, 39, §2286; C46, 50, 54,§140.9]

**140.10 Power of local board.** When a local board of health has been officially notified by the state department of health, as provided in section 140.8, that any person infected with any venereal disease is not under the care and treatment of a physician or has not reported to said physician for a period of ten days, or is not taking recognized precautionary measures to prevent the infection of others, said board shall take such measures as it is authorized to take to protect the public health in the case of other communicable diseases dangerous to the public health, except as otherwise provided in this chapter. [C24, 27, 31, 35, 39,§2287; C46, 50, 54,§140.10]

Communicable diseases, ch 139

**140.11 Quarantine procedure.** When in the judgment of the local board it is necessary for the protection of the public health that any person infected with any venereal disease be quarantined, the procedure shall be the same as for other communicable diseases, except that the name of the disease present may be omitted from the quarantine card and the unafflicted members of the household shall be unrestricted. The local board may isolate such person in the detention hospital provided for in this chapter and shall cause to be administered to said person a proper course of treatment. [C24, 27, 31, 35, 39,§2288; C46, 50, 54, §140.11]

**140.12 Detention hospitals.** When in the judgment of the board of supervisors of any county, or when advised by the state department acting with the United States public health service, that it is necessary to provide a detention hospital in the county for the isolation of persons infected with venereal diseases, said board of supervisors may provide such hospital and shall have power to construct, purchase, or rent a suitable place for such purposes and to equip and maintain the same in accordance with plans and specifications provided in advance by the state department. [C24, 27, 31, 35, 39,§2289; C46, 50, 54,§140.12]

Referred to in §140.13

**140.13 Tax levy.** For the purposes of section 140.12, including the purchase of real estate for hospital purposes, the board of supervisors shall have power to levy a special tax for a period not to exceed fifty years, but such levy shall not exceed one-half mill on the dollar in any one year. [C24, 27, 31, 35, 39,§2290; C46, 50, 54,§140.13]

Referred to in §140.14

**140.14 Bond issue.** Any county may anticipate the collection of the tax herein provided and may issue interest-bearing bonds at a rate of interest not to exceed five percent per annum, to be denominated hospital bonds. Said bonds and the interest thereon shall be secured by said tax, and shall be payable only out of the hospital fund provided for in section 140.13. No bonds shall be issued in excess of taxes authorized to be levied. [C24, 27, 31, 35, 39, §2291; C46, 50, 54,§140.14]

**140.15 Conditions of bonds.** Such bonds shall be issued and sold in accordance with the provisions of existing statutes relating to the issuance and sale of bonds by counties. In issuing such bonds the board of supervisors may cause portions of the same to become due at different definite periods, but no bonds so issued shall be due and payable in less than three or more than fifty years from date of issue. [C24, 27, 31, 35, 39,§2292; C46, 50, 54, §140.15]

*Issuance and sale, chs 75, 846  
Maturity and payment, ch 76*

**140.16 Physician and attendants.** The board of supervisors shall appoint and fix the compensation of a physician and such nurses and other attendants as may be necessary to provide proper treatment and care for persons isolated in such detention hospital. In case the board of supervisors shall fail to make such provision the chairman of the local board shall name a physician to render the necessary medical and surgical service, and shall provide such other attendants as may be required. [C24, 27, 31, 35, 39,§2293; C46, 50, 54,§140.16]

**140.17 Rules for detention hospitals.** The state department shall prescribe the rules for the maintenance and operation of the detention hospitals provided for in this chapter. [C24, 27, 31, 35, 39,§2294; C46, 50, 54,§140.17]

**140.18 Termination of isolation.** In case of isolation the local board shall not terminate said isolation until the case has become non-infectious or until permission has been given by the state department. [C24, 27, 31, 35, 39, §2295; C46, 50, 54,§140.18]

**140.19 Test for infectiousness.** In order to determine whether a venereal disease has become noninfectious an examination shall be made. Gonorrhoea shall be deemed to be infectious until at least two successive smears, taken not less than forty-eight hours apart, fail to show gonococci upon a microscopic examination of the same. [C24, 27, 31, 35, 39, §2296; C46, 50, 54,§140.19]

**140.20 Examination.** Any person, subjected to examination under this chapter, may demand that some other physician than the health officer or physician representing the local board shall also make an examination; said physician shall be appointed by the chairman of the local board. In case the health officer or physician representing the local board and said physician cannot agree upon the diagnosis they shall select a third physician to make an examination, and the decision of two of said physicians shall determine the diagnosis. [C24, 27, 31, 35, 39,§2297; C46, 50, 54, §140.20]

**140.21 Examination of women.** In making examinations of women for the purpose of ascertaining the existence of any venereal disease, women physicians shall be appointed for said purpose, if practicable, when requested by

the person to be examined. [C24, 27, 31, 35, 39, §2298; C46, 50, 54,§140.21]

**140.22 Fee.** The compensation of physicians, other than health officers and those representing the local board, for making examinations under this chapter, shall be five dollars for each examination. [C24, 27, 31, 35, 39,§2299; C46, 50, 54,§140.22]

**140.23 Payment of expenses.** The expenses incident to isolation under this chapter, including examinations, medical and surgical services, nursing and care, shall be paid as in cases of isolation for other diseases. [C24, 27, 31, 35, 39,§2300; C46, 50, 54,§140.23]

*Payment, §139.27 et seq.*

**140.24 Release on bond.** Any person, except a prostitute, infected with any venereal disease may be released from isolation upon bond. Written application for such release shall be made to the local board, under oath, and must state that the applicant is not a prostitute; and such written application shall be accompanied by a certificate to that effect signed by some peace officer, magistrate, township clerk, or trustee of the city, town, or township wherein the case occurs. [C24, 27, 31, 35, 39,§2301; C46, 50, 54,§140.24]

**140.25 Bond—conditions.** If the application is approved the applicant shall file with the county auditor a bond in the penal sum of one thousand dollars conditioned that the applicant will not permit or perform any act which might expose to infection any other person, and will continue treatment until cured, and will faithfully observe the rules and other requirements of the state department, local board, and health officer. Said bond shall run to and for the benefit of the county wherein the venereal disease occurs, and shall be signed by one or more freeholders as sureties, to be approved by the county auditor; but a cash guaranty in a like amount may be accepted in lieu of such bond. [C24, 27, 31, 35, 39,§2302; C46, 50, 54,§140.25]

**140.26 Examination before release.** Before any person is released from any such bond as cured, an examination shall be made in the manner provided in this chapter, and permission secured from the state department. [C24, 27, 31, 35, 39,§2303; C46, 50, 54,§140.26]

**140.27 Parents responsible.** The parents of minors acquiring venereal diseases and living with said parents shall be legally responsible for the compliance of such minors with the provisions of this chapter. [C24, 27, 31, 35, 39, §2304; C46, 50, 54,§140.27]

**140.28 Confidential matters.** The identity of persons infected with venereal disease shall be kept secret, and all information, records, and reports concerning the same shall be confidential and shall be inaccessible to the public, but said records and reports shall be open to inspection by law-enforcing officers and to persons who have contracted venereal diseases

from infected persons, when an order for the same has been issued by any court of record, except as otherwise herein provided, and the alleged infected person shall have access to such records pertaining to himself without an order of court. [C24, 27, 31, 35, 39,§2305; C46, 50, 54,§140.28]

**140.29 Druggists to keep record.** Every pharmacist or person who sells any proprietary drug, preparation, or article of any kind used for the cure or treatment of any venereal disease, except on physician's order or prescription, shall keep a record of the name, address, and sex of each purchaser. A copy of said record shall be mailed each week to the state department of health, or to the full-time county or municipal health officer, if such exists within the county. [C24, 27, 31, 35, 39,§2306; C46, 50, 54,§140.29]

**140.30 Suppression of prostitution.** The local board, health officer, sanitation officer, and all other officers enforcing the provisions of this chapter shall use all proper means of suppressing prostitution, and no certificate or other evidence of freedom from venereal disease shall be issued by said officers. [C24, 27, 31, 35, 39,§2307; C46, 50, 54,§140.30]

**140.31 Transmitting disease.** Any person infected with any venereal disease who shall transmit the same to another person, or expose another to infection by intercourse, shall be punished as provided in this chapter, and in addition thereto shall be liable to the party injured for all damages sustained by reason of said injury. [C24, 27, 31, 35, 39,§2308; C46, 50, 54,§140.31]

**140.32 Failure to report.** Any physician who fails to make or falsely makes any of the reports required by this chapter concerning persons infected with any venereal disease, or who discloses the identity of such person, except as herein provided, shall be punished as provided in this chapter. Failure to report any venereal disease as specified in this chapter shall be cause for the refusal of a renewal of license as provided in section 147.10. [C24, 27, 31, 35, 39,§2309; C46, 50, 54,§140.32]

**140.33 Inspection of cases.** In all suspected cases of venereal disease in the infectious stages, the local board shall immediately use every available means to determine whether the person suspected is infected with said disease and if so, to ascertain the sources of such infection. [C24, 27, 31, 35, 39,§2310; C46, 50, 54, §140.33]

**140.34 Officer to make examinations.** The health officer in each county, city, town, or township shall examine every person reasonably suspected of having any venereal disease in the infectious stages to ascertain if such person is so infected, but no person shall be

subjected to such examination who is under the care and treatment of a physician and is taking recognized precautionary measures to prevent the infection of others. [C24, 27, 31, 35, 39,§2311; C46, 50, 54,§140.34]

**140.35 Temporary isolation.** Persons reasonably suspected of being infected with any venereal disease may be temporarily isolated in the detention hospital provided for in this chapter by the local board until an examination can be made. [C24, 27, 31, 35, 39,§2312; C46, 50, 54,§140.35]

**140.36 Prophylactic treatment of eyes.** Every physician shall immediately, upon the birth of an infant, instill into the eyes of such newly born infant a prophylactic solution approved by the state department. [C24, 27, 31, 35, 39,§2313; C46, 50, 54,§140.36]

Referred to in §§140.37, 140.38

**140.37 Detection of eye infection.** Every physician who shall detect any inflammation, swelling, or redness in the eyes of any infant, or any unnatural discharge therefrom, within six months after its birth, shall immediately treat such child with the prophylactic solution prescribed in section 140.36. Any other person having the care of such child who shall discover any such condition of the eyes, within said time, shall immediately report the same and the location of such infant to the local board. [C24, 27, 31, 35, 39,§2314; C46, 50, 54, §140.37]

Referred to in §140.38

**140.38 Children exempted.** Nothing in sections 140.36 and 140.37 shall be construed to require medical treatment for the minor child of any person who is a member of a well-recognized church or religious denomination, and whose religious convictions in accordance with the tenets or principles of his church or religious denomination are against medical treatment for disease. [C24, 27, 31, 35, 39,§2315; C46, 50, 54,§140.38]

**140.39 Religious scruples recognized.** No provision of this chapter, as it now is or as the same may be amended, shall be construed to require or compel any person who is a member of a well-recognized church or religious denomination, and whose religious convictions in accordance with the tenets or principles of his or her church or religious denomination are opposed to medical treatment for disease, to take or follow a course of medical treatment prescribed by law, or a physician, providing such person shall submit to and comply with all rules and regulations regarding quarantine, detention and confinement that may be prescribed by the local board of health. [C39, §2315.1; C46, 50, 54,§140.39]

**140.40 Penalty.** Any person violating any of the provisions of this chapter shall be punished by a fine of not more than five hundred

dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment. [C24, 27, 31, 35, 39, §2316; C46, 50, 54, §140.40]

**140.41 Penalty.** Any person who knowingly violates any of the provisions of this act\* shall

be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. [C39, §2316.1; C46, 50, 54, §140.41]

\*48GA, ch 83  
Constitutionality, 48GA, ch 83, §6

## CHAPTER 141

### DISPOSAL OF DEAD BODIES

Referred to in §§144.11, 144.52, 340.19

- 141.1 Definitions.
- 141.2 Certificate and burial permit.
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- 141.31 Record of burials.
- 141.32 No person in charge of cemetery.
- 141.33 Forged papers.
- 141.34 Penalty.
- 141.35 Post-mortem examinations.

**141.1 Definitions.** For the purpose of this chapter:

1. "Local registrar" shall mean the local registrar of vital statistics.
2. "State registrar" shall mean the state registrar of vital statistics.
3. "Registration district" or "district" shall mean the district established by law for the registration of vital statistics.
4. "Person" shall include firm and corporation.
5. "Dead body" shall mean the dead body of a human being. [C24, 27, 31, 35, 39, §2317; C46, 50, 54, §141.1]

**141.2 Certificate and burial permit.** No person, without securing a proper death certificate and a burial or removal permit, shall:

1. Keep a dead body for more than seventy-two hours after death or discovery of the same.
2. Remove such body from or into any registration district in this state. Provided, that in cases where it is impossible to secure such certificate, burial or removal permit without delay, the state registrar may permit the attending embalmer or his registered student, to remove a body from or into any registration district in the state on the condition that such certificate, removal or burial permit will be secured and properly filed before the body is buried or otherwise disposed of, said permit

to be executed in triplicate on a form prepared by the state department of health.

3. Bury or make other final disposition of such body in this state. [C24, 27, 31, 35, 39, §2318; C46, 50, 54, §141.2]

**141.3 Execution and filing.** The funeral director or embalmer or other person in charge of the funeral or disposition of the body of every person dying in this state shall be responsible for the proper execution of a death certificate, which shall be filled out in durable black ink, in a legible manner, and filed with the local registrar of the registration district in which the death occurred or the body was found. [SS15, §587-b; C24, 27, 31, 35, 39, §2319; C46, 50, 54, §141.3; 56GA, ch 98, §2]

**141.4 Contents of certificate.** The certificate of death shall be executed on the United States standard form, approved by the national office of vital statistics, and shall contain the following items:

#### PART I

##### CERTIFICATION OF PERSONAL PARTICULARS

1. *Place of death.* including state, county, township, town, city, or industrial camp. If in a city, the street and house number; if in a hospital or other institution, the name of the same shall be given in place of the street and house number.
2. *Full name.* If an unnamed child, the surname preceded by "unnamed".
3. *Residence.* Length of residence in city or



town where death occurred, and in the United States, if of foreign birth.

4. *Sex.*

5. *Color or race*, as white, black, mulatto (or other Negro descent), Indian, Chinese, Japanese, or other race.

6. *Conjugal condition*, as single, married, widowed, or divorced.

7. *Date of birth*, including the year, month, and day.

8. *Age*, in years, months, and days. If less than one day, the hours or minutes.

9. *Occupation*. The occupation of every person, male or female, who had any remunerative employment, shall be reported stating:

a. Trade, profession, or particular kind of work.

b. General nature of industry, business, or establishment in which employed (or employer).

10. *Birthplace*, at least state or foreign country, if known.

11. *Name of father.*

12. *Birthplace of father*, at least state or foreign country, if known.

13. *Maiden name of mother.*

14. *Birthplace of mother*, at least state or foreign country, if known.

15. *Name and address of informant.*

**PART II**

**CERTIFICATION OF DEATH AND LAST SICKNESS PARTICULARS**

16. *Date of death*, year, month, day, and hour. Time last seen alive.

17. *Period of medical attendance.*

18. *Cause of death*, showing the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause) and the contributory (secondary) cause, if any, and the duration of each, and whether attributable to dangerous or insanitary conditions of employment.

Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal.

Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be sufficient.

19. *For deaths in hospitals, institutions, or of nonresidents*, the length of residence at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence shall be given.

20. *Signature and address of physician*, or official making the certification of death and last sickness particulars.

**PART III**

**CERTIFICATION OF BURIAL PARTICULARS**

21. *Place of burial or removal*, including name of cemetery where interment is to be

made, or in case of cremation, the name of the person to whom the ashes are delivered.

22. *Date of burial or removal.*

23. *Signature and address of funeral director or embalmer*, or person acting as such.

**PART IV  
ATTESTATION**

24. *Official signature of registrar*, with the date when certificate was filed, and registration number. [C24, 27, 31, 35, 39,§2320; C46, 50, 54,§141.4; 56GA, ch 98,§3]

**141.5 Particulars.** In the execution of a death certificate, the personal particulars shall be obtained from the person best qualified to supply them. The death and last sickness particulars shall be furnished by the attending physician, or in the absence of such person, or if there be no such person, by the coroner. The burial particulars shall be supplied by the funeral director or embalmer or person acting as such. Each informant shall certify to the particulars supplied by him by signing his name below the list of items furnished. [C24, 27, 31, 35, 39, §2321; C46, 50, 54,§141.5; 56GA, ch 98,§4]

**141.6 Deaths without medical attendance.** In case of any death occurring without medical attendance, the funeral director or embalmer, or person acting as such, shall promptly report the case to the coroner. In such cases the coroner shall furnish such information as may be required by the state registrar in order to classify the death. [C24, 27, 31, 35, 39,§2322; C46, 50, 54,§141.6; 56GA, ch 98,§5]

Referred to in §141.7

**141.7 Stillbirths.** A certificate of stillbirth and a burial or removal permit shall be required for every stillborn child which has advanced to the fifth month of uterogestation. The cause of stillbirth shall be stated giving both the fetal and maternal causes, if known. If a premature birth, such fact shall be stated and the period of uterogestation, in months, if known. Stillbirth occurring without the attendance of a physician shall be treated as deaths without medical attendance as provided in section 141.6. [C24, 27, 31, 35, 39,§2323; C46, 50, 54,§141.7]

See also §144.20

**141.8 Issuance of burial permit.** Upon receipt of a death certificate the local registrar shall:

1. If the certificate is properly executed and complete, issue a burial or removal permit, as may be desired, to the funeral director, embalmer, or other person filing the same.

2. If the certificate is incomplete or improperly executed, return such certificate to the funeral director, embalmer, or other person filing the same for immediate correction.

Any person supplying any of the particulars in such certificate shall complete or correct the same in accordance with the directions of the local registrar. [C24, 27, 31, 35, 39,§2324; C46, 50, 54,§141.8; 56GA, ch 98,§6]

**141.9 Fee.** No fee shall be charged by a local registrar for the issuance of a burial or removal permit. [C24, 27, 31, 35, 39,§2325; C46, 50, 54,§141.9]

**141.10 Completeness of certificate.** No certificate of death shall be held complete and correct that does not supply all of the particulars called for in the United States standard form certificate, detailed in accordance with the rules of the state department of health, or satisfactorily account for their omission. [C24, 27, 31, 35, 39,§2326; C46, 50, 54, §141.10]

**141.11 Communicable diseases.** In case a death occurs from some communicable disease, as defined in the chapter on contagious and infectious diseases, no permit for the removal or other disposition of the body shall be issued by the local registrar, except under such rules as may be prescribed by the state department. [C24, 27, 31, 35, 39,§2327; C46, 50, 54,§141.11]

*Contagious and infectious diseases, ch 189*

**141.12 Burial permit.** The burial or removal permit shall be issued upon a form prescribed by the state department and shall state:

1. The name, age, sex, cause of death, and other necessary details required by the state department.
2. That a satisfactory certificate of death has been filed as required by law.
3. That permission is granted to inter, remove, or otherwise dispose of the body.
4. The name and location of the cemetery where interment of the body is to be made, or in case of cremation, the name of the person to whom the ashes are to be delivered. [C24, 27, 31, 35, 39,§2328; C46, 50, 54,§141.12]

*Certificate of death, §§141.8, 141.4*

**141.13 Burial in foreign district.** No burial permit shall be required from the local registrar of the district in which a burial is to be made, when a body is removed from one district to another district in this state, for purpose of final disposition. [C24, 27, 31, 35, 39, §2329; C46, 50, 54,§141.13]

**141.14 Transportation of bodies.** No person or common carrier shall ship or receive for shipment within this state or to any point outside the state, by any public conveyance, a dead body unless the box containing the corpse shall have attached thereto an embalmer's certificate showing the name and official number of the embalmer by whom the body was prepared, and the method of preparation employed. [S13,§2575-a43; C24, 27, 31, 35, 39,§2330; C46, 50, 54,§141.14]

*Referred to in §141.15*

**141.15 Papers to be carried by escort.** In addition to the requirements of section 141.14, the person accompanying the body shall have in his possession:

1. A copy of the physician's or coroner's certificate of cause of death.

2. A transit permit issued by the local board or local registrar. [S13,§2575-a43; C24, 27, 31, 35, 39,§2331; C46, 50, 54,§141.15]

**141.16 Shipment by express.** When the body is shipped by express a copy of the certificate of cause of death and the transit permit shall be attached to the waybill and delivered with the body at destination. [C24, 27, 31, 35, 39,§2332; C46, 50, 54,§141.16]

**141.17 Shipping permit.** All transit permits shall be issued by the local board or local registrar upon application of an embalmer and shall be signed by the local health officer or local registrar. No transit permit shall be issued to any embalmer who is not in good standing as shown by the records of the state department. [S13,§§2575-a39,-a43; C24, 27, 31, 35, 39,§2333; C46, 50, 54,§141.17]

**141.18 Importation of bodies.** A body imported from outside the state shall be subject to the same rules as to transportation as bodies shipped from within the state. [C24, 27, 31, 35, 39,§2334; C46, 50, 54,§141.18]

**141.19 Permit for imported bodies.** When a dead body is transported from outside this state into the state for final disposition, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the sexton of the cemetery as authority for final disposition of the body and he shall make return thereon to the local registrar as provided in section 141.30. [C24, 27, 31, 35, 39,§2335; C46, 50, 54,§141.19]

**141.20 Shipments for scientific purposes.** The provisions of this chapter relating to the transportation and importation of dead bodies, shall not be applicable to the shipment within this state of dead bodies intended for use for scientific purposes when the same are so designated by the shipper. Such bodies shall be prepared and shipped under special rules provided for that purpose by the state department. [S13,§2575-a43; C24, 27, 31, 35, 39,§2336; C46, 50, 54,§141.20]

**141.21 Disinterment for reburial.** No person shall disinter the dead body of a human being for removal from one grave to another in the same cemetery or for removal to another cemetery without obtaining from the state department a permit for that purpose, and the department may by rule entirely prohibit disinterments for such purpose of the bodies of persons who have died of extremely contagious diseases. A dead body, properly prepared by an embalmer and deposited in a receiving vault, however, shall not be considered as a buried body within the meaning of this section. [C24, 27, 31, 35, 39,§2337; C46, 50, 54, 141.21]

**141.22 Disinterment for autopsy.** No person shall disinter the dead body of a human being for the purpose of holding an autopsy thereon

in order to determine the cause of death without obtaining for that purpose either:

1. An order of the district court of the county in which the body is buried, or
2. A special permit from the state department of health. [C24, 27, 31, 35, 39,§2338; C46, 50, 54,§141.22]

**141.23 Application for disinterment.** An application to the state department for a disinterment permit either for the purpose of reburial or for holding an autopsy shall be upon a form furnished by the department and shall state:

1. Name of person whose body is to be disinterred.
2. Date of death.
3. Age at death.
4. Cause of death.
5. Name and location of the cemetery (county and township) from which the body is to be removed, and the same items concerning the cemetery in which the body is to be reinterred.
6. Relation of the applicant to the deceased person.
7. Name of the embalmer who is to perform the disinterment.
8. Such other information as the department may require. [C24, 27, 31, 35, 39,§2339; C46, 50, 54,§141.23]

**141.24 Application for court order.** An application for a court order for a disinterment for the purpose of holding an autopsy may be made by the county attorney, coroner, or any attorney representing any party in any criminal or civil proceedings. Such application shall contain substantially the items required in an application for a permit made to the state department of health, and such other information as the court may direct. [C24, 27, 31, 35, 39,§2340; C46, 50, 54,§141.24]

**141.25 Granting of application.** No application for a permit to disinter for the purpose of holding an autopsy shall be granted by the court or state department except under circumstances such as to cause the belief that someone is criminally or civilly liable for such death. A proper showing shall be made in every case and due consideration shall be given to the public health, the dead, and the feelings of relatives and friends. The limitations of this section shall not apply when the application is made by the surviving spouse or next of kin. [C24, 27, 31, 35, 39,§2341; C46, 50, 54, §141.25]

**141.26 Authority under permit.** No person who is granted a permit to disinter the dead body of a human being for the purpose of reburial shall open the casket containing such body or permit an autopsy thereon. Such acts may only be performed under a special permit granted by the state department or under an order of court as provided in this chapter. [C24, 27, 31, 35, 39,§2342; C46, 50, 54,§141.26]

**141.27 Method of making a disinterment.** Every disinterment shall be made by an embalmer and shall be performed in accordance with the rules of the state department governing the same. [C24, 27, 31, 35, 39,§2343; C46, 50, 54,§141.27]

**141.28 Delivery of burial permit.** The funeral director or embalmer, or person acting as such, shall deliver the burial, removal, or disinterment permit to the person in charge of the cemetery before interring, disposing of, or disinterring any body therein. [SS15,§587-b; C24, 27, 31, 35, 39,§2344; C46, 50, 54,§141.28; 56GA, ch 98,§7]

**141.29 Duty of sexton.** The person in charge of every cemetery shall see that all the requirements of this chapter relative to burial, removal, and disinterment permits have been complied with before any burial, disposal, or disinterment is made in said cemetery. [C24, 27, 31, 35, 39,§2345; C46, 50, 54,§141.29]

**141.30 Indorsement and return of permit.** Such person shall indorse upon said permit the date of burial, disposal, or disinterment, over his signature, and shall return the same to the local registrar of the district in which the cemetery is located within ten days from the date of burial, or within the time fixed by the state department. In case reburial is made in another cemetery after disinterment, the disinterment permit shall accompany the body and shall be dealt with as an original burial permit. [C24, 27, 31, 35, 39,§2346; C46, 50, 54,§141.30]

Referred to in §141.19

**141.31 Record of burials.** The record-keeping officer of every cemetery shall make and keep a permanent record of all burials, disposals, disinterments, or reburials made in such cemetery, which record shall at all times be open to public inspection. This record shall, in each case, state the name of each deceased person, place of death, date of burial, disposal, disinterment, or reburial, and name and address of the funeral director or embalmer. [SS15,§587-a; C24, 27, 31, 35, 39,§2347; C46, 50, 54,§141.31; 56GA, ch 98,§8]

**141.32 No person in charge of cemetery.** In case there is no person in charge of the cemetery, the funeral director or embalmer, or person acting as such, shall sign said permit, giving the date of burial, disposal, or disinterment, and shall write across the face of said permit the words "No person in charge", and file the same, within ten days, with the local registrar of the district in which the cemetery is located. [C24, 27, 31, 35, 39,§2348; C46, 50, 54,§141.32; 56GA, ch 98,§9]

**141.33 Forged papers.** Any person who shall issue a forged death certificate, burial, removal, disinterment, or transit permit, or who shall certify falsely as to the cause of death or the preparation of a dead body, shall be guilty of forgery and punished accordingly.

[S13,§2575-a45; C24, 27, 31, 35, 39,§2349; C46, 50, 54,§141.33]

Forgery, §718.1

**141.34 Penalty.** Any person who shall violate any provision of this chapter shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than thirty days in the county jail, or be punished by both such fine and imprisonment. [S13,§2575-a45; C24, 27, 31, 35, 39,§2350; C46, 50, 54,§141.34]

**141.35 Post-mortem examinations.** An autopsy or post-mortem examination may be performed upon the body of a deceased person by a physician or surgeon whenever the written consent thereto has been obtained in any of the following manners:

1. By written authorization signed by the deceased during the lifetime.

2. By written consent of any party whom the deceased during his lifetime designated by written instrument to take charge of his body for burial.

3. By consent of decedent's surviving spouse.

4. If the surviving spouse is incompetent, unavailable, or does not claim the body for burial, or if there be no surviving spouse, by consent of an adult child, parent, brother or sister of the decedent. The consent of any one of such persons shall be sufficient provided that such autopsy shall not be performed under a consent given by one of such persons if, before such autopsy is performed, any of said others shall object in writing to the physician or surgeon by whom the autopsy is to be performed.

5. If none of the above persons is available to claim the body, then by consent of any other relative or friend who assumes custody of the body for burial.

The provisions of this section shall not be applicable to any post-mortem or scientific examination performed under authority of section 339.22 whether made under a summons by a coroner or by the coroner himself if he be a physician. [C54,§141.35]

## CHAPTER 142

### DEAD BODIES FOR SCIENTIFIC PURPOSES

142.1 Delivery of bodies.

142.2 Furnished to physicians.

142.3 Notification of state department.

142.4 Surrender to relatives.

142.5 Disposition after dissection.

142.6 Record of receipt.

142.7 Record and bodies.

142.8 Purpose for which body used.

142.9 Failure to deliver dead body.

142.10 Use without proper record.

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142.12 Disposition by will or written instrument.

142.13 Burial in private cemetery lot.

**142.1 Delivery of bodies.** The body of every person dying in a public asylum, hospital, county home, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during his last illness that his body should be buried or cremated, nor if such is the desire of his relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the state department of health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. In the event the deceased person has not expressed a desire during his last illness that his body should be buried or cremated and should have no relatives that request his body for burial or cremation, if a friend objects to the use of the de-

ceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter. [C73,§4018; C97,§4946; S13,§4946-b; C24, 27, 31, 35, 39,§2351; C46, 50, 54,§142.1; 56GA, ch 99, §§1-3, 6]

Referred to in §§142.2, 142.3, 156.2  
Approval of osteopathic and chiropractic colleges, §§150.6, 151.4  
Coroner's duties, §339.19

**142.2 Furnished to physicians.** When there are more dead bodies available for use under section 142.1 than are desired by said colleges or schools, the same may be delivered to physicians in the state for scientific study under such rules as may be adopted by the state department. [S13,§4946-b; C24, 27, 31, 35, 39,§2352; C46, 50, 54,§142.2]

Referred to in §§142.3, 156.2, 156.5

**142.3 Notification of state department.** Every coroner, funeral director or embalmer, and the managing officer of every public asylum, hospital, county home, penitentiary, or reformatory, as soon as any dead body shall come into his custody which may be used for scientific purposes as provided in sections 142.1

and 142.2, shall at once notify the nearest relative or friend of the deceased, if known, and the state department by telegram, and hold such body unburied for forty-eight hours. Upon receipt of such telegram the department shall telegraph instructions relative to the disposition to be made of said body. Complete jurisdiction over said bodies is vested exclusively in the state department of health. No autopsy or post mortem, except as are legally ordered by county coroners, shall be performed on any of said bodies prior to their delivery to the medical schools. [S13,§4946-c; C24, 27, 31, 35, 39,§2353; C46, 50, 54,§142.3; 56GA, ch 98,§10; ch 99,§4]

See also §339.19

**142.4 Surrender to relatives.** When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days after claiming it, all rights thereto shall cease and the body may then be used as if no claim had been made. [C73,§4018; C97,§4946; S13, §4946-c,d; C24, 27, 31, 35, 39,§2354; C46, 50, 54, §142.4; 56GA, ch 99,§5]

**142.5 Disposition after dissection.** The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and a failure to do so shall be a misdemeanor. [C73,§4019; C97,§4947; C24, 27, 31, 35, 39,§2355; C46, 50, 54,§142.5]

Referred to in §156.2  
Punishment, §687.7

**142.6 Record of receipt.** Any college, school, or physician receiving the dead body of any human being for scientific purposes shall keep a record showing:

1. The name of the person from whom, and the time and place, such body was received.
2. The description of the receptacle in which the body was received, including the shipping direction attached to the same.
3. The description of the body, including the length, weight, and sex, apparent age at time of death, color of hair and beard, if any, and all marks or scars which might be used to identify the same.

4. The condition of the body and whether mutilated so as to prevent identification. [C97, §4948; C24, 27, 31, 35, 39,§2356; C46, 50, 54, §142.6]

Referred to in §§142.7, 142.10

**142.7 Record and bodies.** The record required by section 142.6 and the dead body of every human being received under this chapter shall be subject to inspection by any peace officer, or relative of the deceased. [C97,§§4948, 4949; C24, 27, 31, 35, 39,§2357; C46, 50, 54,§142.7]

**142.8 Purpose for which body used.** The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be punished by imprisonment for a term not exceeding one year in the county jail. [C73,§4020; C97,§4950; C24, 27, 31, 35, 39,§2358; C46, 50, 54,§142.8]

**142.9 Failure to deliver dead body.** Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the state department of the existence of such body, or fail to deliver the same in accordance with the instructions of the department, shall be punished by a fine not exceeding five hundred dollars. [S13, §4946-e; C24, 27, 31, 35, 39,§2359; C46, 50, 54, §142.9; 56GA, ch 99,§7]

**142.10 Use without proper record.** Any physician or member of the instructional staff of any college or school who uses, or permits others under his charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in section 142.6 having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [C97,§4949; C24, 27, 31, 35, 39,§2360; C46, 50, 54, §142.10]

**142.11 Penalties.** Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be imprisoned in the penitentiary not more than two years, or fined not exceeding twenty-five hundred dollars, or both. [S13,§4946-e; C24, 27, 31, 35, 39,§2361; C46, 50, 54,§142.11]

**142.12 Disposition by will or written instrument.** Every inhabitant of this state of the age of twenty-one years or more and of sound mind may, by his will or by a written instrument executed in the same manner as a deed, arrange for or prescribe for the disposition to be made, after death, of his body or any organ, member or part thereof, provided the same is for the purpose of scientific use as provided in this chapter, or for other advancement of medical science, or for the replacement or rehabilitation of diseased or worn-out parts or organs of other humans. The person or persons having the right to a body for burial may likewise consent to such use of the body or parts thereof. Any such disposition of his own body may be revoked by the testator or grantor at any time prior to his death by the execution of a written instrument in the same manner as the original grant. [56GA, ch 99,§8]

**142.13 Burial in private cemetery lot.** In the event such deceased person, whose body has been used for scientific purposes as provided herein, shall own or have the right of

burial in a private or family cemetery lot in the state of Iowa, that such deceased person's body shall be buried in such lot. [56GA, ch 99, §9]

## CHAPTER 143

### PUBLIC HEALTH NURSES

143.1 Authority to employ.  
143.2 Co-operation.

143.3 Duties.

**143.1 Authority to employ.** The board of supervisors of any county, the council of any city or town, or the school board of any school district may employ public health nurses at such periods each year and in such numbers as may be deemed advisable. The compensation and expenses thereof shall be paid out of the general fund of the political subdivision employing said nurses. [C24, 27, 31, 35, 39, §2362; C46, 50, 54, §143.1]

**143.2 Co-operation.** The said boards and councils within any county may co-operate in

the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities. [C24, 27, 31, 35, 39, §2363; C46, 50, 54, §143.2]

**143.3 Duties.** The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health. [C24, 27, 31, 35, 39, §2364; C46, 50, 54, §143.3]

## CHAPTER 144

### REGISTRATION OF VITAL STATISTICS

Referred to in §135.11

144.1 Definitions.  
144.2 State registrar.  
144.3 Quarters and equipment.  
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144.6 Local registrars.  
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144.44 Adopted children—certificates of birth.  
144.45 Written records of adoption—sealing.  
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144.48 Copies of record as evidence.  
144.49 System exclusive.  
144.50 Investigation.  
144.51 Duty of county attorney.  
144.52 Duty of attorney general.  
144.53 Penalty.  
144.54 Second offense.

**144.1 Definitions.** For the purpose of this chapter:

1. "Local registrar" shall mean the local registrar of vital statistics.

2. "State registrar" shall mean the state registrar of vital statistics.

3. "Vital statistics" shall mean statistics concerning births, deaths, marriages, and divorces.

4. "Person" shall include firm and corporation.

5. "County registrar" shall mean the county

registrar of vital statistics. [C24, 27, 31, 35, 39, §2384; C46, 50, 54, §144.1]

**144.2 State registrar.** The commissioner of public health shall be the state registrar. [C24, 27, 31, 35, 39, §2387; C46, 50, 54, §144.2]

**144.3 Quarters and equipment.** Suitable quarters shall be provided by the executive council for the division of vital statistics at the seat of government, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this chapter. [C24, 27, 31, 35, 39, §2388; C46, 50, 54, §144.3]

**144.4 County clerk as registrar.** The clerk of the district court of each county shall be the county registrar. [C46, 50, 54, §144.4]

**144.5 Deputy registrar.** Each county registrar shall appoint one of his deputy clerks of court as deputy county registrar and said deputy county registrar shall act in his place in case of his absence or disabilities; and such deputy shall, in writing, accept such appointment. [C46, 50, 54, §144.5]

**144.6 Local registrars.** The county registrar shall with the approval of the board of supervisors, appoint as many local registrars as are, in his opinion, necessary to carry out the provisions of this chapter and shall assign to each local registrar a definite district, except that local registrars in cities having a population of thirty-five thousand or more, shall be appointed by the local board of health. A copy of such appointments and assignments shall be kept as a permanent record in the office of the county registrar and a copy thereof shall be forwarded to the state registrar. [C24, 27, 31, 35, 39, §2389; C46, 50, 54, §144.6]

**144.7 Removal.** Any local registrar who in the judgment of the state department fails or neglects to make prompt and complete return of births and deaths, and otherwise efficiently discharge the duties of his office, shall be forthwith removed by the department. [C24, 27, 31, 35, 39, §2392; C46, 50, 54, §144.7]

**144.8 Duties of state registrar.** The state registrar shall:

1. Have general supervision of the registration of vital statistics.

2. Have supervisory power over local registrars, deputy registrars, and subregistrars, and clerks of the district court in the enforcement of the law relative to the disposal of dead bodies and the registration of vital statistics.

3. Prepare and issue such detailed instructions as may be required to procure the uniform observance of the provisions of said law and the maintenance of a perfect system of registration.

4. Furnish blank certificates of births, deaths, and other forms and record books required by this chapter to all persons concerned with the administration of the same. No other

blanks and records shall be used than those supplied by the state registrar.

5. Carefully examine the certificates received from the local registrars and clerks of the district court, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory.

6. Systematically arrange, bind, and deposit in the state historical building at the seat of government, the original certificates of births, deaths, and marriages for the preceding calendar year.

7. Prepare and maintain a comprehensive and continuous card index of all births, deaths, marriages, and divorces reported. Said index shall be arranged alphabetically:

a. In the case of deaths, by the names of decedents.

b. In the case of births, by the names of fathers, mothers, and children.

c. In the case of marriages and divorces, by the names of both parties.

8. Prepare and mail to the county registrar for the county of residence of any decedent who dies in any county of this state other than that of his residence a photostatic or other copy of the certificate of death for such decedent immediately upon receipt of such certificate from the county registrar reporting the decedent's death which copy shall be clearly identified as having been provided by such state registrar. [C24, 27, 31, 35, 39, §2393; C46, 50, 54, §144.8; 56GA, ch 100, §1]

Disposal of dead bodies, ch 141

**144.9 Duties of local registrar.** The local registrar shall, subject to the direction and supervision of the state registrar:

1. Strictly and thoroughly enforce the law relative to the disposal of dead bodies and the registration of births and deaths in his registration district.

2. Issue instructions to all physicians, funeral directors, embalmers, and the people in general in his district, concerning the registration of births and deaths.

3. Distribute to the proper persons all forms and blanks required for the registration of births and deaths, and for the making of other records incident thereto.

4. Distribute to every physician, funeral director, embalmer, and retail casket dealer registered in his district, a copy of the law relative to the registration of vital statistics and the disposal of dead bodies, and of the rules of the state department pertaining thereto.

5. Carefully examine each certificate of birth or death when presented for record, in order to ascertain whether it has been made out in accordance with law and the instructions of the state registrar; and if any such certificate is incomplete or unsatisfactory, he shall have the same corrected.

6. Number consecutively the certificates of birth and death, in two separate series, begin-

ning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attestation of the date of filing in his office.

7. Make a complete and accurate copy of each birth and death certificate registered by him in a record book supplied by the state registrar, to be preserved permanently in his office as the local record.

8. On the third day of each month, transmit to the county registrar, in a stamped return envelope furnished by the state registrar, all original certificates registered by him for the preceding month. If no births or deaths occur in any month, he shall on the third day of the following month report that fact to the county registrar, on a card provided for such purpose.

9. Make a return, within thirty days after the close of each calendar year, to the state registrar of all physicians, funeral directors, embalmers, or retail casket dealers, who have been registered in his district during the whole or any part of the preceding calendar year.

10. Make an immediate report to the state registrar of any violation of the law relative to registration of vital statistics and the disposal of dead bodies of which he has knowledge. [C24, 27, 31, 35, 39,§2394; C46, 50, 54,§144.9; 56GA, ch 98,§11]

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#### 144.10 Reports to state registrar.

1. On the tenth day of every month the county registrar shall transmit to the state registrar, in a stamped return envelope furnished by the state registrar, the original certificates transmitted to him by the several local registrars after first making a permanent record thereof in a book to be approved by the state registrar. If no births or deaths occur within the county in any month, he shall on the tenth day of the following month report that fact to the state registrar on a card provided for that purpose.

2. The county registrar shall record and file copies of certificates of death for decedents who are residents of the county at time of death but die outside the county as soon as they are received by him from the state registrar in the same books and in the same fashion as is provided relative to such certificates for decedents who die within the county. [C46, 50, 54,§144.10; 56GA, ch 100,§2]

**144.11 Regulation.** Every provision of this chapter, of the chapter relative to the disposal of dead bodies, and of the rules of the state department applicable to county registrars in the registration of births and deaths, and the issuance of burial permits, shall apply to deputy registrars and local registrars. [C24, 27, 31, 35, 39,§2396; C46, 50, 54,§144.11]

Disposal of dead bodies, ch 141

**144.12 Birth certificate.** Within ten days after each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth filled out

with durable black ink in a legible manner. [C24, 27, 31, 35, 39,§2397; C46, 50, 54,§144.12]

**144.13 Contents of birth certificate.** The certificate of birth shall be executed on the United States standard form, approved by the national office of vital statistics, and shall contain the following items:

1. *Place of birth*, including state, county, township, town, or city. If in the city, the street, and the house number; if in a hospital or other institution, the name of the same shall be given in place of the street and house number.

2. *Full name of child.* If the child dies without a name, before the certificate is filed, the words "died unnamed" shall be entered. If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" shall be left blank, to be filled out by a supplemental report, as hereinafter provided.

3. *Sex of child.*

4. *Plurality of birth.* Whether a twin, triplet, or other plural birth; number of each child in order of birth. A separate certificate shall be required for each child in case of plural births.

5. *Legitimacy of birth*, whether legitimate or illegitimate.

6. *Date of birth*, including the year, month, and day.

7. *Full name of father.* If the child is illegitimate, the name of the putative father shall not be entered without his consent, unless the paternity of the child has been determined in a regular legal proceeding instituted for that purpose, but the other particulars relating to the putative father (items nine to twelve, inclusive) shall be entered, if known, otherwise, as "unknown".

8. *Residence of father.*

9. *Color or race of father.*

10. *Age of father at last birthday*, in years.

11. *Birthplace of father*, at least state or foreign country, if known.

12. *Occupation of father.* The occupation shall be reported if engaged in any remunerative employment, stating:

a. Trade, profession, or particular kind of work.

b. General nature of industry, business, or establishment in which employed (or employer).

13. *Maiden name of mother.*

14. *Residence of mother.*

15. *Color or race of mother.*

16. *Age of mother at last birthday*, in years.

17. *Birthplace of mother*, at least state or foreign country, if known.

18. *Occupation of mother.* The occupation shall be reported if engaged in any remunerative employment, stating:

a. Trade, profession, or particular kind of work.



b. General nature of industry, business, or establishment in which employed (or employer).

19. *Number of children born to the mother, including present birth.*

20. *Number of children of the mother living.*

21. *Certification of attendance at birth, including:*

a. Statement of year, month, day (as given in item six).

b. Hour of birth.

c. Whether the child was born alive or still-born.

This certification shall be signed by the attending physician, with date of signature and address. If there is no physician in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of the public or private institution where the birth occurred, or other competent person.

22. *Exact date of filing in office of local registrar, attested by his official signature, and registration number of birth.* [C24, 27, 31, 35, 39, §2398; C46, 50, 54, §144.13]

**144.14 Person in attendance at birth.** The attending physician, or person acting as midwife, shall be responsible for the proper execution and return of a certificate for each birth, in accordance with the provisions of this chapter. [C24, 27, 31, 35, 39, §2399; C46, 50, 54, §144.14]

**144.15 Reporting birth.** In case there is no physician, or person acting as midwife, in attendance upon the birth, a report of the same shall be made within ten days thereafter to the local registrar of the district in which the birth occurred. It shall be the duty of the following persons, in the order named, to make such report:

1. The father or mother of the child.

2. The householder or owner of the premises where the birth occurred.

3. The manager or superintendent of the public or private institution in which the birth occurred. [C24, 27, 31, 35, 39, §2400; C46, 50, 54, §144.15]

Referred to in §144.16

**144.16 Certificate of birth.** When the report of a birth is received under section 144.15, the local registrar shall secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the proper certificate of birth. [C24, 27, 31, 35, 39, §2401; C46, 50, 54, §144.16]

**144.17 Incomplete certificates.** No certificate of birth shall be held complete and correct that does not supply all of the items of information called for in the United States standard form certificate, detailed in accordance with the rules of the state department, or satisfactorily account for their omission. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant and require

him to supply the missing items of information if they can be obtained, or he may obtain them from any other person having the required knowledge. [C24, 27, 31, 35, 39, §2402; C46, 50, 54, §144.17]

**144.18 Interrogation of informants.** Every person making a return of a birth or reporting the same, or who may be interrogated in relation thereto, shall answer correctly, and to the best of his knowledge, all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as provided in this chapter, and the informant, as to any statement made in accordance herewith, shall verify such statement by his signature, when requested to do so by the local registrar. [C24, 27, 31, 35, 39, §2403; C46, 50, 54, §144.18]

**144.19 Supplemental return.** When any certificate of birth of a living child is presented without the statement of the given name, then the registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the local registrar as soon as the child shall have been named. [C24, 27, 31, 35, 39, §2404; C46, 50, 54, §144.19]

**144.20 Stillborn children.** A stillborn child (a child born dead) shall be registered on a standard stillbirth certificate. Such certificate shall not be required if the fetus has not reached the twentieth week of gestation. [C24, 27, 31, 35, 39, §2405; C46, 50, 54, §144.20]

Disposal of dead bodies, §141.7

**144.21 Altering certificates — legitimations.** No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this chapter, shall be altered or changed in any respect except by amendments properly dated, signed, and witnessed.

In cases of legitimations the state registrar upon receipt of proof thereof shall prepare a new certificate of birth in the new name of the legitimated child. The evidence upon which the new certificate is made and the original certificate shall be sealed and filed in a confidential file. The new birth certificate shall be the only birth certificate open to public inspection. [C24, 27, 31, 35, 39, §2406; C46, 50, 54, §144.21]

**144.22 Records of personal particulars.** Every superintendent in charge of any hospital, county home, jail, reformatory, penitentiary, or other institution, public or private, to which persons resort for treatment of diseases or for confinement, or are committed by process of law, shall keep a record, as directed by the state registrar, of all the personal particulars and data relative to each patient, inmate, or prisoner in such institution which are required in the United States standard forms of birth and death certificates. [C24, 27, 31, 35, 39, §2407; C46, 50, 54, §144.22]

Referred to in §144.23

**144.23 Source of information.** The personal particulars and data required by section 144.22 shall be obtained from the individual himself if practicable to do so; and when not, the same shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. [C24, 27, 31, 35, 39,§2408; C46, 50, 54,§144.23]

**144.24 Time of making record.** Such record shall be made for each patient, inmate, or prisoner at the time of his admittance; and in case of each person admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. [C24, 27, 31, 35, 39,§2409; C46, 50, 54,§144.24]

**144.25 Physicians — funeral directors — embalmers — casket dealers.** Every physician, funeral director, embalmer, and retail casket dealer, shall, not later than the first day of January of each year, register his name, address, and occupation with the local registrar of the district in which he resides. Such registration shall also be made immediately upon removing to another registration district. [C24, 27, 31, 35, 39,§2410; C46, 50, 54,§144.25; 56GA, ch 98,§12]

**144.26 Casket sales.** Every person selling a casket at retail shall keep a record, which shall be open at all times to the state and local registrar for inspection, showing:

1. Name of the purchaser.
2. Purchaser's post-office address.
3. Name of deceased.
4. Date and place of death of deceased.

This section shall not apply to any person selling caskets at wholesale to funeral directors, embalmers, or other dealers. [C24, 27, 31, 35, 39,§2411; C46, 50, 54,§144.26; 56GA, ch 98,§16]

**144.27 Report.** On the first day of each month every person selling caskets at retail shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose. Such reports shall not be required from funeral directors and embalmers when they have direct charge of the disposition of the dead body for which a casket is sold. [C24, 27, 31, 35, 39,§2412; C46, 50, 54,§144.27; 56GA, ch 98,§13]

**144.28 Information to accompany caskets.** Every person selling a casket at retail, and not having charge of the disposition of the body, shall inclose within the casket the following:

1. A notice furnished by the state registrar, calling attention to the requirements of the law relative to the disposal of dead bodies and the registration of vital statistics.
2. A blank certificate of death.
3. The rules and regulations of the state department concerning the disposal of dead bodies. [C24, 27, 31, 35, 39,§2413; C46, 50, 54, §144.28]

Disposal of dead bodies, ch 141

**144.29 Duty to furnish information.** Upon demand of the state registrar in person, by mail, or through the local registrar, every physician, informant, funeral director, embalmer, or other person having knowledge of the facts relative to any birth or death, shall supply such information as he may possess, upon a form provided by the state registrar or upon the original birth or death certificate. [C24, 27, 31, 35, 39,§2414; C46, 50, 54,§144.29; 56GA, ch 95,§14]

**144.30 Private genealogical records.** If any person, organization, company, society, or association is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such person, company, society, or association may file such record, or a duly authenticated transcript thereof, with the state registrar. The state registrar shall preserve such record or transcript and make an index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to public inspection, subject to such reasonable conditions as the state registrar may prescribe. [C24, 27, 31, 35, 39,§2415; C46, 50, 54,§144.30]

Referred to in §144.31

**144.31 Certified copies.** The state registrar shall, upon request, supply to any applicant for any proper purpose, a certified copy of any record filed under section 144.30. For his services, the state registrar shall charge a fee of one dollar for each hour or fractional part of an hour spent in making such copy, and twenty-five cents for attaching his certificate thereto. [C24, 27, 31, 35, 39,§2416; C46, 50, 54, §144.31; 56GA, ch 101,§1]

**144.32 Fee.** Each local registrar shall be paid twenty-five cents for each birth or death certificate properly executed, filed, recorded, and returned to the county registrar, as required by law. [C24, 27, 31, 35, 39,§2417; C46, 50, 54,§144.32]

**144.33 Fee for reporting no registration.** In case no birth or death is registered during any month, the local registrar shall be paid the sum of twenty-five cents for a report to that effect, made within the time prescribed in this chapter. [C24, 27, 31, 35, 39,§2418; C46, 50, 54, §144.33]

**144.34 No fee for registering physicians, etc.** No fee or other compensation shall be charged by any local registrar to any physician, funeral director, embalmer, or casket dealer for registering his name under this chapter or making return thereof to the state registrar. [C24, 27, 31, 35, 39,§2419; C46, 50, 54,§144.34; 56GA, ch 98,§15]

**144.35 Payment of local registrars.** All amounts payable to a registrar under the provisions of this chapter shall be paid by the county in which the registration district is located, immediately upon certification by the state registrar, in the manner in which other

claims are paid by the county. The state registrar shall annually, or at such other times as he may deem expedient, certify to the auditor of each county the number of births and deaths properly registered in said county, with the name of each registrar and the amount due him as fees under the provisions of this chapter. [C24, 27, 31, 35, 39,§2420; C46, 50, 54,§144.35]

Manner of payment, §331.21

**144.36 Record book of marriages and divorces.** The clerk of the district court in each county shall keep a record book for marriages and a record book for divorces. The form of said books shall be uniform throughout the state and shall be prescribed by the state department. Said books shall be provided at the expense of the county. [C24, 27, 31, 35, 39,§2421; C46, 50, 54,§144.36]

**144.37 Contents of record book for marriages.** The record book for marriages shall show the same items and personal particulars for each marriage solemnized in the county as are required in the return of a marriage as prescribed by the chapter on "Marriage" in the title on "Domestic Relations". [C24, 27, 31, 35, 39,§2422; C46, 50, 54,§144.37]

Marriage, ch 595

**144.38 Contents of record book for divorces.** The record book for divorces shall show the following items for each divorce granted in the county:

1. Full name, color, age, nationality, and number of prior marriages of each of the parties.

2. Date of marriage.

3. Cause of divorce.

4. Date of divorce.

5. Person to whom divorce granted (husband or wife).

6. Such additional data respecting each divorce as the state department may prescribe. [C24, 27, 31, 35, 39,§2423; C46, 50, 54,§144.38]

**144.39 Source of entries.** The items respecting each marriage shall be taken from the return thereof, and the items respecting each divorce shall be taken as far as possible from the court records. The other data necessary to complete the entries in the record book of divorces shall be supplied by the parties to the action or by their attorneys. [C24, 27, 31, 35, 39,§2424; C46, 50, 54,§144.39]

**144.40 Marriages and divorces.** The clerk of the district court shall on or before the tenth day of each month transmit to the state registrar:

1. All the original returns of marriages filed in his office during the preceding calendar month.

2. A copy of the entries made in the record book for divorces for every divorce granted in the county during the preceding calendar month.

3. Such other data relative to marriages and

divorces as the state registrar may prescribe. [C24, 27, 31, 35, 39,§2425; C46, 50, 54,§144.40]

**144.41 Certified copies.** The state registrar or any county registrar shall, upon request, supply to any applicant for any proper purpose, a certified copy of the record of any birth, death, or marriage registered under the provisions of this chapter, for the making and certifying of which he shall charge a fee of one dollar. [C24, 27, 31, 35, 39,§2426; C46, 50, 54,§144.41; 56GA, ch 101,§2]

**144.42 Search of records—fee.** In cases in which search of the files and records is made, but no certified copy is requested, or the requested record is not found, the state registrar shall charge a fee of one dollar for each hour or fractional part of an hour spent in search. [C24, 27, 31, 35, 39,§2427; C46, 50, 54,§144.42; 56GA, ch 101,§3]

**144.43 Repealed by 56GA, ch 101,§4.**

**144.44 Adopted children—certificates of birth.** When a decree declaring a child legally adopted or annulment of adoption is entered in any court of record in this state, an abstract of the decree upon a form provided for that purpose shall be forwarded by the clerk of said court to the state registrar of vital statistics on or before the tenth day of the succeeding month. This certificate or abstract of the decree of adoption shall be filed with the original record of birth and shall remain a part of the records of the state bureau of vital statistics, and shall not be accessible to any one except upon order of court. Upon request a certificate of birth shall be issued bearing the name of the child as shown in the decree of adoption, but no reference to the adoption shall be made in any birth certificate. The certificate of birth shall contain the name of the parents, who adopted the child, as the father and mother of the adopted child.

When a new birth certificate is made to replace the original birth certificate of an adopted child, the state registrar shall inform the county registrar whose records contain copies of the original certificate that he shall effectively seal a cover over such copy in a manner as not to deface or destroy such copy and that thereafter the information contained in such copy shall only be available upon court order.

A new certificate of birth may be issued by the state registrar in accordance with this chapter in the case of a child born in the state, but adopted by a legal proceeding in another state, in the District of Columbia, or in any territory of the United States which has jurisdiction of the child, upon the filing with the state registrar a copy of the decree, judgment or other certification as may be required by the registrar from the judge who entered it or the person having the legal custodianship of the records in the proceeding. When any such certificate is issued, it shall be treated in all respects the same as, and governed by, all the provisions of this chapter pertaining to a certificate issued in the case of a child adopted

in this state. If the birth occurred outside the state of Iowa, the state registrar shall forward the certificate of said decree to the appropriate registration authority. All certificates of birth shall contain the name of the parents, who adopted the child, as father and mother of said child.

Upon receipt of a certificate of annulment of adoption, the state registrar shall restore the original certificate of birth to its original status in the files, and shall notify the county registrar to do likewise. [C46, 50, 54, §144.44]

See ch 600, adoption

**144.45 Written records of adoption—sealing.** In the cases where an adoption was consummated under previous laws by the procedure of written records in the office of the county recorder and where a child has been legally adopted in that manner, an abstract of the written record upon a form provided for that purpose shall be forwarded by the county recorder of said county to the state registrar of vital statistics on or before July 1, 1946. This certificate or abstract of the record in the county recorder's office showing the adoption shall be filed with the original record of birth and shall remain a part of the records of the state bureau of vital statistics and shall not be accessible to any one except upon order of the court.

Upon request a certificate of birth shall be issued bearing the name of the child as shown by the written instrument that was recorded in the office of the county recorder that shows the adoption but no reference to the adoption shall be made in any birth certificate and the name of the parents who adopted the child shall appear on the birth certificate as the father and mother of the child.

When a new birth certificate is made to replace the original birth certificate of an adopted child, the state registrar shall inform the county registrar whose records contain copies of the original certificate that he shall effectively seal a cover over such copy in a manner as not to deface or destroy such copy and that thereafter the information contained in such copy shall only be available upon court order. [C46, 50, 54, §144.45]

Constitutionality, 51GA, ch 98, §3  
See ch 600, adoption

**144.46 Copies for national office.** The national office of vital statistics shall have the privilege of making, at its own expense and without paying the legal fees, copies of all records and vital statistics provided for in this chapter. [C24, 27, 31, 35, 39, §2429; C46, 50, 54, §144.46]

**144.47 Accounting for fees.** The state registrar shall keep a true and correct account of all fees received by him and turn the same over to the state treasurer as provided by law. [C24, 27, 31, 35, 39, §2430; C46, 50, 54, §144.47]

Payment to state treasurer, §12.10

**144.48 Copies of record as evidence.** Any certified copy of the record of a birth, death,

or marriage, made under this chapter, shall be presumptive evidence in all courts and places of the facts therein stated. [C24, 27, 31, 35, 39, §2431; C46, 50, 54, §144.48]

Similar provision, §622.37

**144.49 System exclusive.** No system for the registration of births, deaths, or marriages shall be maintained in the state or any of its political subdivisions other than the one provided for in this chapter. [C24, 27, 31, 35, 39, §2432; C46, 50, 54, §144.49]

**144.50 Investigation.** The state department shall have authority to investigate cases of irregularity or violation of the law relative to the registration of vital statistics and the disposal of dead bodies, and all registrars shall aid the department in such investigations. [C24, 27, 31, 35, 39, §2433; C46, 50, 54, §144.50]

**144.51 Duty of county attorney.** The state department shall report, when deemed necessary, cases of violation of said law to the proper county attorney, with a statement of the facts and circumstances; and when any such case is reported to such county attorney he shall forthwith initiate and promptly follow up the necessary court proceedings against the person responsible for the alleged violation of law. [C24, 27, 31, 35, 39, §2434; C46, 50, 54, §144.51]

**144.52 Duty of attorney general.** Upon request of the state department, the attorney general shall assist in the enforcement of the provisions of this chapter and of the chapter relative to the disposal of dead bodies. [C24, 27, 31, 35, 39, §2435; C46, 50, 54, §144.52]

Disposal of dead bodies, ch 141

**144.53 Penalty.** Any person violating any of the provisions of this chapter or of any rule of the state department relative thereto, or falsifying any certificate of birth or any record established by this chapter, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than thirty days in the county jail, or be punished by both such fine and imprisonment. [C24, 27, 31, 35, 39, §2436; C46, 50, 54, §144.53]

Referred to in §144.54

**144.54 Second offense.** If any person who has been convicted under section 144.53 shall be again convicted of a violation of any of the provisions of this chapter or of any rule of the state department relative thereto, on a similar charge, he shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment; and if a physician, he shall, in addition, have his license to practice his profession revoked; but such former conviction shall be referred to in the indictment or information, stating the court, date, and place that judgment was rendered. [C97, §2578; S13, §2578; C24, 27, 31, 35, 39, §2437; C46, 50, 54, §144.54]

Revocation in general, §147.55 et seq.

## CHAPTER 145

## STATE BOARD OF EUGENICS

- |                                       |                                    |
|---------------------------------------|------------------------------------|
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| 145.11 Service of order.              | 145.22 Fee.                        |

**145.1 State board.** A state board of eugenics is hereby created. Said board shall consist of the medical director of the state psychopathic hospital connected with the college of medicine of the state university at Iowa City, of the commissioner of public health, and of the superintendents of the following state institutions, to wit:

1. Mental health institute, Cherokee, Iowa.
2. Mental health institute, Clarinda, Iowa.
3. Mental health institute, Independence, Iowa.
4. Mental health institute, Mount Pleasant, Iowa.
5. The institution for feeble-minded children at Glenwood.
6. The hospital for epileptics and school for feeble-minded at Woodward.

7. The women's reformatory at Rockwell City. [C31, 35,§2437-c1; C39,§2437.01; C46, 50, 54, §145.1]

See §§218.1, 226.1

**145.2 Quarterly reports of defective.** Each member of said board, and the warden of the penitentiary and the warden of the men's reformatory, shall, annually, on the first day of January, April, July and October, report to the state board of eugenics the names of all persons, male or female, living in this state, of whom he or she may have knowledge, who are feeble-minded, insane, syphilitic, habitual criminals, moral degenerates, or sexual perverts and who are a menace to society. [C31, 35, §2437-c2; C39,§2437.02; C46, 50, 54,§145.2]

Referred to in §§145.3, 145.4

**145.3 Notice.** Any person reported to the state board of eugenics, under the provisions of section 145.2, must be served with a notice in writing of such report and fixing a time and place not less than ten days subsequent to such report for the time and place of examination and hearing before said board. Said notice shall be served as provided in section 145.11. [C31, 35,§2437-c3; C39,§2437.03; C46, 50, 54,§145.3]

**145.4 Hearing.** Any person reported to the state board of eugenics, as provided in section 145.2, and who has been notified thereof, shall have the right to appear personally before said board and to be represented by counsel at such

hearing. He shall have the right to have witnesses subpoenaed and to introduce such evidence in regard to the matter at issue as the board shall deem relevant, material and proper. [C31, 35,§2437-c4; C39,§2437.04; C46, 50, 54,§145.4]

**145.5 Examination and hearing.** It shall be the duty of said board at the time and place named in the notice to the person reported upon, with such reasonable continuances from time to time and from place to place as the board may determine, to proceed to hear and consider the evidence offered and to examine into the innate traits, the mental and physical conditions, the personal records and family traits and history of the person reported upon and notified as in this chapter provided, insofar as the same can be ascertained. If the person reported upon is an inmate of any institution, the said board shall see to it that the inmate shall have opportunity and leave to attend the said examination and hearing in person, if desired by him or if requested by his guardian or person served with the notice as aforesaid. [C31, 35,§2437-c5; C39,§2437.05; C46, 50, 54,§145.5]

**145.6 Witnesses.** To enable the board to discharge said duty, said board, or the chairman thereof, on the order of the board, shall have power and authority to issue subpoenas and to cause the same to be served. [C31, 35, §2437-c6; C39,§2437.06; C46, 50, 54,§145.6]

**145.7 Contempt.** Should a witness be duly served with a subpoena and refuse to appear, or should a witness refuse to answer, the board shall report such refusal to the district court or judge thereof, of the county in which the refusal occurs, and the court, or judge thereof, shall proceed as though such refusal had occurred in a proceeding before said court or judge. [C31, 35,§2437-c7; C39,§2437.07; C46, 50, 54,§145.7]

**145.8 Oaths.** Any member of said board shall have power to administer an oath to witnesses before it. [C31, 35,§2437-c8; C39,§2437.08; C46, 50, 54,§145.8]

**145.9 Order for sterilization.** If in the judgment of a majority of said board procreation by such persons would produce a child or children having an inherited tendency to feeble-mindedness, syphilis, insanity, epilepsy, crimi-

nality, or degeneracy, or who would probably become a social menace or ward of the state, and there is no probability that the condition of such person so investigated and examined will improve to such an extent as to avoid such consequences, then it shall be the duty of such board to make an order embodying its conclusions with reference to such person in said respects and specifying such a type of sterilization as may be deemed by said board best suited to the condition of said person and most likely to produce the beneficial results in the respects specified in this section, but nothing contained in this chapter shall be construed to authorize castration nor removal of sound organs from the body. [SS15,§§2600-s2,-s3; C24, 27,§§3361, 3362; C31, 35,§2437-c9; C39,§2437.09; C46, 50, 54,§145.9]

**145.10 Findings.** After fully inquiring into the condition of each of such persons, said board shall make separate written findings and conclusions for each of the persons into whose condition it has examined, including its findings, conclusions, and order thereon as herein provided, and the same shall be preserved in the records of said board and a copy thereof shall be furnished to the official who reported the case. [SS15,§2600-s4; C24, 27,§3365; C31, 35, §2437-c10; C39,§2437.10; C46, 50, 54,§145.10]

**145.11 Service of order.** If an operation is deemed necessary by said board for such person so investigated, then a copy of the order of said board recommending such operation shall be served forthwith on said person, or, in the case of an insane or feeble-minded person, upon his legal guardian, and if such person has no legal guardian, then upon his nearest known kin, or personal friend, within the state, and if such person has no known kin or personal friend within the state, then the board shall cause application to be made to the district court of the county in which such person resided or may be found for the appointment of some suitable person to act as guardian of the person reported upon during and for the purposes of the proceedings under this chapter, to defend the rights and interests of the said person, and the court shall, by proper order, appoint some suitable person to act as guardian for said purposes who shall be paid from any funds in the state treasury not otherwise appropriated, a fee, but not exceeding twenty-five dollars, as may be determined by the judge of said court, for his services under said appointment. Such guardian may be removed or discharged at any time by said court, or the judge thereof in vacation, and a new guardian appointed and substituted in his place. [C31, 35,§2437-c11; C39,§2437.11; C46, 50, 54,§145.11]

Referred to in §145.3

**145.12 Purpose and objects sought.** Said investigation, findings, and orders of said board shall be made with the purpose in view of securing a betterment of the physical, mental, neural or psychical condition of the person, to protect society from the acts of such person,

or from the menace of procreation by such person, and not in any manner as a punitive measure. [C31, 35,§2437-c12; C39,§2437.12; C46, 50, 54,§145.12]

**145.13 Consent to operation.** If any person whose condition has been examined and reported upon by said board, as hereinbefore provided, shall consent in writing to have the operation specified in the order of said board performed, such operation shall thereupon be performed upon said person by or under the direction of the superintendent of the institution in which he is confined, if such person be an inmate of any of the state institutions herein mentioned, or if he is not an inmate of any of said institutions, such operation shall be performed by or under the direction of the state board of eugenics. All such operations shall be performed with due regard for the physical condition of the person upon whom it is performed and in a safe and humane manner. [SS15,§2600-s2; C24, 27,§3361; C31, 35, §2437-c13; C39,§2437.13; C46, 50, 54,§145.13]

Referred to in §145.14

**145.14 "Consent" defined.** In case the person to be operated upon be feeble-minded or insane, the consent hereinbefore mentioned in section 145.13 shall be construed to mean the written consent of such person's legal guardian, or if such person has no legal guardian, then the written consent of such person's nearest known kin or personal friend within the state of Iowa, or if such person be insane, or feeble-minded, and has neither legal guardian nor known kin or personal friend within the state of Iowa, then the written consent of the guardian appointed by the court for such person as provided in this chapter. [C31, 35,§2437-c14; C39,§2437.14; C46, 50, 54,§145.14]

**145.15 Absence of consent.** If any such person shall not consent, within twenty days from the service of such order upon him, to the performance of such operation, said board of eugenics, through its secretary, or other officer having charge of its records and files, within fifteen days thereafter, or such further time as the court or judge thereof may allow, shall file a transcript of its proceedings and of its said findings, conclusions, and order with reference to said person with the clerk of the district court of the county in which such person resides or may be found. [C31, 35, §2437-c15; C39,§2437.15; C46, 50, 54,§145.15]

**145.16 Appearance.** Upon the filing of such findings, conclusions, and order, the clerk of the district court shall issue a summons directed to such person and deliver the same to the sheriff, together with a copy of such order prepared and certified by him and it shall be the duty of said sheriff to forthwith serve said summons and copy of order upon said person therein named, who shall be required, within twenty days after such service upon him, to enter his appearance in writing with the clerk of the district court in such case or by appearing in person before said clerk, who shall

thereupon enter the appearance of such person in such proceeding. If he be an insane or feeble-minded person such appearance may be made by his guardian, if he have one; if not, then by his nearest of kin or near friend. If he be confined in an institution, facility shall be furnished him for making such appearance. [C31, 35,§2437-c16; C39,§2437.16; C46, 50, 54, §145.16]

**145.17 Court procedure.** The issue thereby raised shall be whether the findings and conclusions of said board shall be affirmed by the court, and shall be tried in the district court of such county, as a special proceeding, in the same manner as a civil action at law in which the state shall be the plaintiff and the person so summoned shall be the defendant. Each party shall have the same rights as to production of evidence and the case shall be tried in the same manner as any other civil action. In all such cases the county attorney of the county where such proceedings are tried shall appear and prosecute such action on behalf of the state. If the defendant has no attorney and he is unable to secure one, the court shall appoint an attorney from the membership of the bar of said county to conduct his defense, and appeal, if any be taken as herein-after provided, and such attorney shall be compensated by the state, upon order of the court. Upon the request of either party to such proceeding all questions of fact shall be tried by a jury and the court in every instance shall have the testimony fully reported at the expense of the state. [C31, 35,§2437-c17; C39, §2437.17; C46, 50, 54, §145.17]

**145.18 Judgment.** If the findings and conclusions of the state board of eugenics shall be affirmed by the court, the defendant shall be immediately placed in custody by the sheriff of said county, and may be admitted to bail by the court, who shall fix the amount of such bail, and if not so admitted to bail, shall be held until the operation provided in such findings be performed. [C31, 35,§2437-c18; C39, §2437.18; C46, 50, 54,§145.18]

**145.19 Appeal.** Either party to said proceedings may take an appeal from the district court to the supreme court of this state in the same manner and within the same time and

with like effect as appeals in other civil actions are taken, and such case shall be tried in the supreme court in the same manner as other appeals in actions at law. If the defendant be represented by an attorney appointed by the court, and, in the opinion of the court, is financially unable to meet his part of the expense of an appeal, the defendant's actual and necessary expense of such appeal and prosecution thereof to final decree by the supreme court shall be paid by the state upon order of said district court, same to be paid out of the general funds of the state not otherwise appropriated. [C31, 35,§2437-c19; C39, §2437.19; C46, 50, 54,§145.19]

**145.20 Expenses.** The state shall be liable under this chapter, except as hereinabove provided for, only for the actual traveling expenses of the members of the board incurred in the performance of their duties, and the actual and necessary expense incident to investigations of said board either on original case or an appeal therefrom. [C31, 35,§2437-c20; C39,§2437.20; C46, 50, 54,§145.20]

**145.21 Selection of physician.** Nothing in this chapter shall be construed to empower or authorize the state board of eugenics or its representatives, or the state health officer, or his representatives, or the superintendent of any of the institutions mentioned, or his representatives, to interfere in any manner with the individual's right to select the physician of his choice; provided, that such physician is in the judgment of the state board of eugenics competent to perform such operation; nor to interfere with the practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means; provided that such practice, treatment or administration shall not in any way interfere with the operation of this chapter, and the carrying out of its purposes. [SS15,§2600-s2; C24, 27,§3363; C31, 35,§2437-c21; C39,§2437.21; C46, 50, 54,§145.21]

**145.22 Fee.** A physician or surgeon, who is not in the employ of the state, shall receive a reasonable compensation for an operation performed hereunder, which compensation shall be paid from any funds in the state treasury not otherwise appropriated. [C31, 35, §2437-c22; C39,§2437.22; C46, 50, 54,§145.22]

## **PRACTICE ACTS**



# TITLE VIII

## THE PRACTICE OF CERTAIN PROFESSIONS AFFECTING THE PUBLIC HEALTH

Referred to in §§180.40, 185.11, 185A.1

### CHAPTER 146

#### BASIC SCIENCE LAW

146.1 Title.	146.13 Applicants—qualifications.
146.2 Definitions.	146.14 Applications for examination.
146.3 Board established.	146.15 Examinations—notice of.
146.4 Examination required.	146.16 Examination—time—scope—passing grade.
146.5 Exceptions.	146.17 Quorum.
146.6 Appointment.	146.18 Certificates.
146.7 Meetings—powers.	146.19 Form.
146.8 Duties of secretary.	146.20 Waiver of examination.
146.9 Supplies.	146.21 Additional waivers.
146.10 Offices.	146.22 Misdemeanors.
146.11 Compensation and expenses.	146.23 Discretion of boards.
146.12 Fees.	

**146.1 Title.** This chapter shall be known as the "Iowa Basic Science Law". [C35,§2437-g1; C39,§2437.23; C46, 50, 54,§146.1]

#### **146.2 Definitions.**

1. The basic sciences shall mean the following subjects: Anatomy; physiology; chemistry; pathology; bacteriology; hygiene.

2. The practice of the healing art shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition.

3. A license shall mean a certificate issued to a person licensed to practice certain professions affecting the public health as provided in this title. [C35,§2437-g2; C39,§2437.24; C46, 50, 54,§146.2]

**146.3 Board established.** There is hereby established a board of examiners in the basic sciences of six members authorized and directed to conduct a written examination of all persons who shall hereafter apply for a license to practice medicine and surgery, osteopathy, osteopathy and surgery, chiropractic or any other system or method of healing that may hereafter be legalized in this state; said examination shall cover the six following basic sciences, viz: Anatomy; physiology; chemistry; pathology; bacteriology; hygiene. [C35,§2437-g3; C39,§2437.25; C46, 50, 54,§146.3]

**146.4 Examination required.** No person shall hereafter\* be eligible for examination or be permitted to take an examination for a

license to practice medicine and surgery, osteopathy, osteopathy and surgery, chiropractic or any other system or method of healing that may be hereafter legalized in this state or be granted any such license until he has presented to the licensing board empowered to issue a license, a certificate of proficiency in the basic sciences as provided in this chapter. This requirement shall be in addition to all other requirements now or hereafter in effect with respect to the issuance of such license or licenses. [C35,§2437-g4; C39,§2437.26; C46, 50, 54, §146.4]

\*Act effective July 4, 1985

**146.5 Exceptions.** Nothing in this chapter shall be construed to apply to persons holding licenses as physicians and surgeons, osteopaths, osteopaths and surgeons or chiropractors at the time this chapter takes effect\*; nor shall this chapter, at any time, be construed to apply to dentists, dental hygienists, nurses, pharmacists, optometrists, embalmers, chiropodists, barbers or cosmetologists practicing within the limits of their respective licenses or Christian Scientists. This chapter shall not apply to students regularly registered, enrolled and in attendance as of July 1, 1936, in accredited schools of medicine, osteopathy or chiropractic in the state of Iowa. [C35,§2437-g5; C39,§2437.27; C46, 50, 54,§146.5]

\*Effective July 4, 1985

**146.6 Appointment.** The governor shall, with the approval of two-thirds of the senate in executive session, appoint a board of examiners in the basic sciences, hereinafter referred to as the "board," consisting of six members learned respectively in the basic sciences named herein from the faculties of the universities and four-year colleges accred-

ited by the Iowa state board of educational examiners, who shall be appointed two for two years, two for four years and two for six years from the dates of their respective appointments. On the expiration of the term of any member the governor shall, with the approval of two-thirds of the senate in executive session, fill the vacancy or vacancies by appointment for a term of six years; on the death, resignation or removal of any member the governor shall, with the approval of two-thirds of the senate in executive session, fill the vacancy by appointment for the unexpired portion of the term. No member of the board shall hold a degree in any of the healing arts. Not more than one member of the board shall be appointed from the faculties of any one of the universities or four-year colleges described herein. [C35,§2437-g6; C39,§2437.28; C46, 50, 54, §146.6]

**146.7 Meetings—powers.** The board shall meet and organize, as soon as practicable, after appointment. It shall have power to elect officers from its members, to adopt a seal and to make such rules, in addition to the rules hereinafter specified, as it deems expedient to carry this chapter into effect. The board shall elect a chairman and secretary from its members. [C35,§2437-g7; C39,§2437.29; C46, 50, 54, §146.7]

**146.8 Duties of secretary.** The secretary of the board shall keep a correct record of the proceedings of said board and the questions submitted in the examination of the applicant, and the applicant's answers thereto, and upon the granting of a certificate of proficiency in the basic sciences shall, at the time of granting said certificate, certify to the state department of health the application upon which such certificate was issued, together with the questions submitted in the examination of such applicant and the answers thereto and such secretary shall deposit with the department of health all records not needed for the current use of his examining board. [C35,§2437-g8; C39,§2437.30; C46, 50, 54,§146.8]

**146.9 Supplies.** The state department of health shall furnish the board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the departments in the same manner in which the regular supplies are obtained and the same shall be considered and accounted for as if obtained for the use of the department. [C35, §2437-g9; C39,§2437.31; C46, 50, 54,§146.9]

**146.10 Offices.** The executive council shall furnish the board with a suitable office and quarters in which to conduct the examinations held by said board at the seat of government. [C35,§2437-g10; C39,§2437.32; C46, 50, 54,§146.10]

**146.11 Compensation and expenses.** Each member of the board shall, in addition to necessary traveling and hotel expenses, receive ten

dollars per day for each day actually engaged in the discharge of his duties, including compensation for the time spent in traveling to and from the place of conducting the examination, and for a reasonable number of days for the preparation of examination questions and the reading of papers, in addition to the time actually spent in conducting examinations. The compensation and expenses of the members and other expense of the board shall be paid out of the fees received from applicants. [C35,§2437-g11; C39,§2437.33; C46, 50, 54,§146.11]

**146.12 Fees.** The fee for examination or any re-examination by the board shall be ten dollars. The fee for the issuing of a certificate by authority of reciprocity, as provided herein, shall be ten dollars. All fees shall be paid to the secretary of the board by the applicant at the time of filing application. The secretary shall pay all money received as fees into the state treasury to be placed in a special fund to the credit of the board. The state treasurer shall pay out of such fund the compensation and expense of the members and other expenses incurred by the board on vouchers signed by the president and secretary of the board. [C35,§2437-g12; C39,§2437.34; C46, 50, 54, §146.12]

**146.13 Applicants—qualifications.** No person shall be eligible for examination for a certificate of proficiency in the basic sciences until he shall have furnished satisfactory evidence to the board that he has attained the age of twenty-one years, is of good moral character and is a graduate of an accredited high school or possesses the educational qualifications equivalent to those required for graduation by an accredited high school, to be determined by the board. [C35,§2437-g13; C39,§2437.35; C46, 50, 54,§146.13]

**146.14 Applications for examination.** Any person desiring to take the examination for a certificate of proficiency in the basic sciences shall make application to the board, at least fifteen days before the examination, on a form provided by the board. Such application shall be accompanied by the examination fee and such affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the board and shall be signed and verified by the oath of the applicant. Provided, that said application shall not contain questions to be answered by said applicant which will disclose the professional school he may have attended or what system of treating the sick he intends to pursue. [C35,§2437-g14; C39,§2437.36; C46, 50, 54,§146.14]

**146.15 Examinations—notice of.** The board shall give public notice of the time and place of all examinations to be held under this chapter and such notice shall be given in such manner as the board may deem expedient and in ample time to allow all candidates to comply with the provisions of this title. [C35,§2437-g15; C39,§2437.37; C46, 50, 54,§146.15]

**146.16 Examination—time—scope—passing grade.** Said board shall meet at Des Moines and there conduct examinations in the basic sciences four times each year respectively, on the second Tuesday in January, April, July and October. The examination shall be conducted in writing in such manner that the applicant shall be known by number only until such examination papers are read and the proper grade determined. The examination shall be of such a nature as to constitute a reasonable test as to whether the person so examined has such knowledge of the elementary principles of the basic sciences as might be acquired after the completion of a course of study of the following subjects for the number of hours specified:

Subject	Hours
Anatomy .....	400
Physiology .....	200
Chemistry .....	200
Pathology .....	160
Bacteriology .....	100
Hygiene .....	40

The board shall establish rules for conducting of all examinations, grading of examinations and passing upon the technical qualifications of applicants as shown by such examinations. An applicant to pass the examination must obtain a grade of not less than seventy percent in any one subject and a total average grade of seventy-five percent in all subjects. If an applicant fails to attain the required grade in one or more subjects, he may be re-examined in the subject or subjects in which he failed, at any examination within one year without further application or examination fee. No part in the preparation of questions, the actual giving of the examinations or the grading of papers can in any way be delegated to any person other than a member of the board, or otherwise performed by any person not then a member of such board. [C35,§2437-g16; C39,§2437.38; C46, 50, 54,§146.16]

Referred to in §146.21

**146.17 Quorum.** Three members of the board shall constitute a quorum for conducting examinations. [C35,§2437-g17; C39,§2437.39; C46, 50, 54,§146.17]

**146.18 Certificates.** The board shall issue a certificate of proficiency in the basic sciences to each of the successful applicants after examination, as provided in this chapter. [C35, §2437-g18; C39,§2437.40; C46, 50, 54,§146.18]

**146.19 Form.** Each certificate of proficiency in the basic sciences shall be in the form prescribed by the board, under the name and seal of the board and signed by its chairman and secretary. [C35,§2437-g19; C39,§2437.41; C46, 50, 54,§146.19]

**146.20 Waiver of examination.** The board may, in its discretion, waive the examination and issue a certificate of proficiency in the basic sciences provided for herein and may accept in lieu of examination proof that the

applicant has passed before a board of examiners in the basic sciences or by whatsoever name it may be known or before any examining or licensing board in the healing art of any state, territory or other jurisdiction under the United States, or of any foreign country, an examination in anatomy, physiology, chemistry, pathology, bacteriology, and hygiene as comprehensive and as exhaustive as that required under authority of this chapter. [C35, §2437-g20; C39,§2437.42; C46, 50, 54,§146.20]

**146.21 Additional waivers.** Upon presentation to said board of examiners of a certificate from any college or university accredited by the north central association of secondary schools and colleges that the person seeking a certificate of proficiency under the provisions of this chapter has completed a course of study in one or more of said basic sciences of the number of hours provided for in section 146.16 of this chapter and has attained a grade of seventy-five percent in said subject or subjects the said board of examiners shall waive examination in said subject or subjects, and if said applicant shall have completed a course of study in all of said basic sciences of the number of hours provided for herein and has attained an average grade of seventy-five percent in each of said subjects the board of examiners shall upon receipt of a certificate to that effect setting forth the grades of the applicant in each of said subjects as hereinbefore provided issue to said applicant a certificate of proficiency in the basic sciences as provided for under the Iowa basic science law without further examination. [C35,§2437-g21; C39,§2437.43; C46, 50, 54,§146.21]

**146.22 Misdemeanors.** Any person who shall practice the healing art without first having obtained a certificate of proficiency in the basic sciences or violate or participate in the violation of any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. It shall be the duty of the attorney general and of the several county attorneys to prosecute violations of this chapter. [C35,§2437-g22; C39,§2437.44; C46, 50, 54,§146.22]

**146.23 Discretion of boards.** No provision of this chapter shall be construed as repealing any statutory provision in force at the time of its passage with reference to the requirements governing the issuing of licenses to practice the healing art, or any branch thereof, but any board authorized to issue licenses to practice the healing art, or any branch thereof, may, in its discretion, accept certificates issued by the board of examiners in the basic sciences in lieu of examining applicants in such sciences, or may continue to examine applicants in such sciences as heretofore. [C35, §2437-g23; C39,§2437.45; C46, 50, 54,§146.23]

Constitutionality, 46GA, ch 17,§24

CHAPTER 147

GENERAL PROVISIONS REGULATING PRACTICE PROFESSIONS

Referred to in §§155.3, 155.13, 158.12, 203A.2

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**147.1 Definitions.** For the purpose of this and the following chapters of this title:

1. "Examining board" shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

2. "Licensed" when applied to a physician and surgeon, chiropodist, osteopath, osteopath and surgeon, chiropractor, nurse, dentist, dental hygienist, optometrist, pharmacist, practitioner of cosmetology, practitioner of barbering, funeral director or embalmer shall mean a person licensed under this title.

3. "Profession" shall mean medicine and surgery, chiropody, osteopathy, osteopathy and surgery, chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, cosmetology, barbering, funeral directing or embalming.

4. "Department" shall mean the state department of health. [C24, 27, 31, 35, 39, §2438; C46, 50, 54, §147.1]

#### LICENSES

**147.2 License required.** No person shall engage in the practice of medicine and surgery, chiropody, osteopathy, osteopathy and surgery, chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, cosmetology, barbering, funeral directing or embalming as defined in the following chapters of this title, unless he shall have obtained from the state department of health a license for that purpose. [C97, §§2582, 2588; S13, §§2575-a28, -a31, -a36, 2582, 2583-a, -d, -r, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §2439; C46, 50, 54, §147.2]

**147.3 Qualifications.** No person shall be licensed to practice a profession under this title until he shall have furnished satisfactory evidence to the department that he has attained the age of twenty-one years and is of good moral character, except that women may be licensed as dental hygienists, or men or women may be licensed as barbers, or as cosmetologists, upon attaining the age of eighteen years. [S13, §§2575-a29, -a37, 2583-a, -l; C24, 27, 31, 35, 39, §2440; C46, 50, 54, §147.3]

Referred to in §152.3

**147.4 Grounds for refusing.** The department may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked by the district court. [C97, §§2578; S13, §§2575-a33, -a41, 2578, 2583-c; C24, 27, 31, 35, 39, §2441; C46, 50, 54, §147.4]

Grounds for revocation, §§147.55 et seq., 154.4

**147.5 Form.** Every license to practice a profession shall be in the form of a certificate under the seal of the department, signed by the commissioner of public health. Such license shall be issued in the name of the

examining board which conducts examinations for that particular profession. The number of the book and page containing the entry of said license in the office of the department shall be noted on the face of the license. [C97, §§2576, 2577, 2591; S13, §§2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §2442; C46, 50, 54, §147.5]

**147.6 Certificate presumptive evidence.** Every license issued under this title shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified. [C97, §2576; S13, §§2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §2443; C46, 50, 54, §147.6]

**147.7 Display of license.** Every person licensed under this title to practice a profession shall keep his license publicly displayed in the place in which he practices. [C97, §2591; S13, §2600-o1; C24, 27, 31, 35, 39, §2444; C46, 50, 54, §147.7]

**147.8 Record of licenses.** The name, age, nativity, location, number of years of practice of the person to whom a license is issued to practice a profession, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department to be known as the registry book, and the same shall be open to public inspection. [C97, §2591; S13, §§2575-a40, 2583-a, -k, 2600-d; C24, 27, 31, 35, 39, §2445; C46, 50, 54, §147.8]

**147.9 Change of residence.** When any person licensed to practice a profession under this title changes his residence he shall notify the department and such change shall be noted in the registry book. [C97, §2591; C24, 27, 31, 35, 39, §2446; C46, 50, 54, §147.9]

**147.10 Renewal.** Every license to practice a profession shall expire on the thirtieth day of June following the date of issuance of such license, and shall be renewed annually upon application by the licensee, without examination. Application for such renewal shall be made in writing to the department accompanied by the legal fee at least thirty days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. Every year the department shall notify each licensee by mail of the expiration of his license. This section and section 147.11 shall not apply to dentists and dental hygienists. [C97, §2590; S13, §§2575-a39, 2589-d; C24, 27, 31, 35, 39, §2447; C46, 50, 54, §147.10]

Referred to in §§140.32, 147.11  
 Dentists and dental hygienists renewal, §153.11

**147.11 Reinstatement.** Any licensee who allows his license to lapse by failing to renew the same, as provided in section 147.10, may be reinstated without examination upon recommendation of the examining board for his profession and upon payment of the renewal fees then due. [C24, 27, 31, 35, 39, §2448; C46, 50, 54, §147.11]

Referred to in §147.10

#### EXAMINING BOARDS

**147.12 Examining boards.** For the purpose of giving examinations to applicants for licenses to practice the professions for which a license is required by this title, the governor shall appoint a board of examiners for each of said professions. [C97, §§2576, 2584; S13, §§2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2449; C46, 50, 54, §147.12]

Referred to in §147.13

**147.13 Designation of boards.** The examining boards provided in section 147.12 shall be designated as follows: For medicine and surgery, medical examiners; for chiropody, chiropody examiners; for osteopathy and osteopathy and surgery, osteopathic examiners; for chiropractic, chiropractic examiners; for nursing, nurse examiners; for dentistry and dental hygiene, dental examiners; for optometry, optometry examiners; for cosmetology, cosmetology examiners; for barbering, barber examiners; for pharmacy, pharmacy examiners; for funeral directing and embalming, funeral director and embalmer examiners. [C24, 27, 31, 35, 39, §2450; C46, 50, 54, §147.13]

**147.14 Composition of boards.** Each examining board shall consist of three members, except the dental, medical examiners and nurse boards each of which shall consist of five members. [C97, §§2564, 2576, 2584; S13, §§2564, 2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2451; C46, 50, 54, §147.14]

**147.15 Professional qualifications.** Every medical, chiropody, chiropractic, nurse, optometry, pharmacy, cosmetology, barbering, and funeral director and embalmer examiner shall be a person licensed to practice the profession for which the board, of which he is a member, conducts examinations for licenses to practice such profession. An osteopathic examiner shall be a licensed osteopath or an osteopath and surgeon, and a dental examiner shall be a licensed dentist. [C97, §§2564, 2576, 2584; S13, §§2564, 2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2452; C46, 50, 54, §147.15]

**147.16 Practice requirement for examiners.** Each examiner shall be actively engaged in the practice of his profession and shall have been so engaged in this state for a period of five years just preceding his appointment, except nurse examiners who shall be so actively engaged for a period of five years, but only the last two of which need be in this state. [C97, §2584; S13, §§2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2453; C46, 50, 54, §147.16]

**147.17 Qualifications for medical examiners.** In addition to the preceding requirements, each medical examiner shall be a graduate of some reputable school of medicine. [C97, §§2564, 2576; S13, §§2564, 2576; C24, 27, 31, 35, 39, §2454; C46, 50, 54, §147.17]

**147.18 Disqualifications.** No examiner shall be an officer or member of the instructional staff of any school in which any profession regulated by this title is taught, or be connected therewith in any manner, and no funeral director and embalmer or optometry examiner shall be connected in any manner with any wholesale or jobbing house dealing in optical or embalming supplies, and no cosmetology examiner shall be connected with any wholesale or jobbing house dealing in supplies sold to practitioners of cosmetology, and no barber examiner shall be connected with any wholesale or jobbing house dealing in supplies sold to practitioners of barbering, providing, however, that the foregoing shall not apply to nurse examiners. [C97, §2564; S13, §§2564, 2583-a, -j, 2600-k; C24, 27, 31, 35, 39, §2455; C46, 50, 54, §147.18]

**147.19 Term.** The members of each examining board shall be appointed for a term of three years, except the dental, medical and nurse examiners who shall be appointed for a term of five years. No nurse examiner shall be appointed to more than two consecutive terms. The term of each examiner shall commence on July 1 in the year of appointment and the terms of the members of each board shall be rotated in such a manner that one examiner shall retire each year. [C97, §§2564, 2576, 2584; S13, §§2564, 2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2456; C46, 50, 54, §147.19]

Temporary appointments to medical examiners, 55GA, ch 86, §2

**147.20 Nomination of examiners.** The regular state association or society or its managing board for each profession may submit each year to the governor a list of six persons of recognized ability in such profession, who have the qualifications prescribed for examiners for that particular profession. If such list is submitted, the governor in making an appointment to the board of examiners for such profession shall select one of the persons so named. [S13, §§2583-a, -h, 2600-b; C24, 27, 31, 35, 39, §2457; C46, 50, 54, §147.20]

**147.21 Vacancies.** Any vacancy in the membership of an examining board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments. [C97, §§2564, 2576; S13, §§2564, 2576, 2583-h, 2600-b; C24, 27, 31, 35, 39, §2458; C46, 50, 54, §147.21]

**147.22 Officers.** Each examining board shall organize annually and shall select a chairman and a secretary from its own membership. [C97, §§2576, 2585; S13, §§2576, 2583-l, 2585, 2600-c; C24, 27, 31, 35, 39, §2459; C46, 50, 54, §147.22]

Referred to in §§147.98, 147.105

**147.23 Transaction of business by mail.** Each examining board shall, as far as practicable, provide by rule for the conducting of its business by mail, but all examinations shall be conducted in person by the board or by some representative of the board as provided in section 147.39. Any official action or vote taken by mail shall be preserved by the secretary in the same manner as the minutes of regular meetings. [C24, 27, 31, 35, 39,§2460; C46, 50, 54,§147.23]

**147.24 Compensation.** Each member of an examining board shall, in addition to necessary traveling and hotel expenses, receive ten dollars per day for each day actually engaged in the discharge of his duties, including compensation for the time spent in traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination questions and the reading of papers, in addition to the time actually spent in conducting examinations. [C97,§2574; S13,§§2574, 2575-a34,-a44, 2583-a,-p, 2600-g; C24, 27, 31, 35, 39,§2461; C46, 50, 54,§147.24]

**147.25 Appropriation.** There is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay the compensation and expenses of the members of each examining board, inspectors and clerical assistants for each such board. [S13,§§2575-a34,-a44, 2583-a,-n,-p, 2600-g; C24, 27, 31, 35, 39,§2462; C46, 50, 54, §147.25]

Referred to in §158.9

**147.26 Supplies.** The department shall furnish each examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the same shall be considered and accounted for as if obtained for the use of the department. When examinations are held at the state university, the necessary articles and supplies for conducting the same shall be furnished by the university authorities. [C97,§2583; S13,§§2575-a34,-a44, 2583, 2583-a,-p, 2600-g; C24, 27, 31, 35, 39,§2463; C46, 50, 54,§147.26]

Referred to in §147.103

**147.27 Quarters.** The executive council shall furnish each examining board with suitable quarters in which to conduct the examinations held by said board at the seat of government. When examinations are held at the state university, the superintendent of buildings and grounds shall furnish such quarters. [S13,§2583-a; C24, 27, 31, 35, 39,§2464; C46, 50, 54,§147.27]

**147.28 National organization.** Each examining board may maintain a membership in the national organization of the state examining boards of its profession.

There is hereby annually appropriated out of the funds in the state treasury not otherwise appropriated a sum sufficient to pay the fees necessary for each such state examining board to maintain membership in its national organization, but such sum shall not exceed two hundred dollars for any year. The amount of said fees shall be certified to the state comptroller by the commissioner of public health, and the comptroller is hereby authorized to draw warrants and the treasurer of state to pay same for this purpose. [C27, 31, 35,§2465-b1; C39,§2465.1; C46, 50, 54,§147.28]

#### EXAMINATIONS

**147.29 Applications.** Any person desiring to take the examination for a license to practice a profession shall make application to the state department of health at least fifteen days before the examination, on a form provided by the department. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the department and shall be signed and verified by the oath of the applicant. [S13,§2575-a37; C24, 27, 31, 35, 39,§2466; C46, 50, 54,§147.29]

Exceptions, §147.94 et seq.

**147.30 Time and place of examinations.** The department shall give public notice of the time and place of all examinations to be held under this title. Such notice shall be given in such manner as the department may deem expedient and in ample time to allow all candidates to comply with the provisions of this title. [S13,§2576; C24, 27, 31, 35, 39,§2467; C46, 50, 54,§147.30]

**147.31 Accredited high schools.** The department shall prepare and keep up to date a list of accredited high schools and other secondary schools for the purpose of passing upon the qualifications of an applicant for an examination when such applicant is required by any provision of this title to be a graduate of such school. The secretary of the state board of regents and the registrars of the state university, the state college of agriculture and mechanic arts, and the state teachers college shall supply the necessary data to the department for the preparation of said list. [C24, 27, 31, 35, 39,§2468; C46, 50, 54,§147.31; 56GA, ch 131,§14]

**147.32 Accredited colleges.** The state department of health shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by this title. The examining board for each profession shall make recommendations relative thereto and shall approve the list for the profession for which it gives license examinations. No such school shall be accredited by the department unless it has been so recommended and approved by the proper examining board together with the commissioner of health. Such recommendations and ap-

proval shall be made at some regular session of the board held for the purpose of giving an examination. [C24, 27, 31, 35, 39,§2469; C46, 50, 54,§147.32]

**147.33 Professional schools.** As a basis for such action on the part of the examining board, the registrar of the state university and the dean of the professional school of said institution which teaches the profession for which said board gives license examinations, shall supply such data relative to any such professional school as said board may request. [C24, 27, 31, 35, 39,§2470; C46, 50, 54,§147.33]

**147.34 Time of examination.** Each examining board shall hold regular sessions for the purpose of giving examinations at such times as the department may fix, not to exceed four in any one year. The medical examiners, dental examiners, and pharmacy examiners shall hold a similar session at the state university at the close of each school year to give examinations to students of the medical, dental, and pharmacy colleges of said institution and to other applicants who are qualified to take the same. In case there are other schools located in the state at which any of the professions regulated by this title are taught, two of the examinations for the profession taught at any such school may be held each year at such institution, if the examining board for that profession so desires. All other sessions of the examining boards shall be held at the seat of government unless otherwise ordered by the department. [C97,§§2576, 2582, 2589, 2597; S13, §§2575-a29, a37, 2576, 2582, 2583-a, i, k, 2589-a, 2600-c, d; SS15,§2589-a; C24, 27, 31, 35, 39,§2471; C46, 50, 54,§147.34]

**147.35 Names of eligible candidates.** Prior to each examination the department shall transmit to each examining board the list of candidates who are eligible to take the examination given by such board. In making up such list the department may call upon any examining board, or any member thereof, for information relative to the eligibility of any applicant. [C24, 27, 31, 35, 39,§2472; C46, 50, 54, §147.35]

**147.36 Rules.** Each examining board shall establish rules for:

1. The conducting of examinations.
2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [C97,§2584; S13,§§2575-a38, 2583-a, i, 2600-e; SS15,§2584; C24, 27, 31, 35, 39,§2473; C46, 50, 54,§147.36]

**147.37 Identity of candidate concealed.** All examinations in theory shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. In examinations in practice the identity of the candidate shall also be concealed as far as possible. [C97,§2576; S13,

§§2576, 2583-a; C24, 27, 31, 35, 39,§2474; C46, 50, 54,§147.37]

**147.38 Quorum and representation.** Two members of each board, except the dental board and medical board, shall constitute a quorum for conducting examinations. Three members of the dental board and medical board shall constitute a quorum for conducting examinations. [C97,§2576; S13,§§2575-a30, a38, 2576, 2583-i, 2600-c; C24, 27, 31, 35, 39,§2475; C46, 50, 54,§147.38]

Composition of boards, §147.14

**147.39 Clerk.** Upon the request of any examining board, the department shall detail some employee to act as clerk of any examination given by said examining board. Such clerk shall have charge of the candidates during the examination and perform such other duties as the examining board may direct. If the duties of such clerk are performed away from the seat of government, he shall receive his necessary railroad and hotel expenses, which shall be paid from the appropriations to the department in the same manner in which other similar expenses are paid. [C24, 27, 31, 35, 39,§2476; C46, 50, 54,§147.39]

Referred to in §147.23

**147.40 Certification of applicants.** Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the members of said board. After each examination, the examining board shall certify the names of the successful applicants to the state department of health in the manner prescribed by it. The department shall then issue the proper license and make the required entry in the registry book. [C97, §2576; S13,§§2575-a30, a38, 2576, 2583-i, 2600-c; C24, 27, 31, 35, 39,§2477; C46, 50, 54,§147.40]

**147.41 Partial examinations.** Any examining board may give a partial examination for a license to practice a profession to any applicant who has completed a portion of his professional course. For such purpose said board shall establish by rule:

1. The portion of such course which shall be completed prior to such examination.
2. The subjects to be covered by such examination and the subjects to be covered by the final examination to be taken by such applicant after the completion of his professional course and prior to the issuance of his license, but the subjects covered in the partial and final examinations shall be the same as those specified in this title for the regular examination. [C24, 27, 31, 35, 39,§2478; C46, 50, 54,§147.41]

Referred to in §147.42

**147.42 Rules relative to partial examinations.** In case any examining board shall provide for partial examinations under section 147.41, the department shall adopt rules establishing:



1. The portion of the license fee fixed in this chapter which shall be paid for a partial examination.

2. The credentials which shall be presented to the department by an applicant showing his qualifications to take such examination.

3. The method of certifying the list of the eligible applicants for such examination to the proper examining board.

4. The method of certifying back to the department the list of applicants who successfully pass such examination.

5. The method of keeping the records of such applicants for use at the time of completing the examination for a license.

6. The credentials which shall be presented to the department by such an applicant upon the completion of his professional course.

7. The method of certifying such applicant to the proper examining board for the remainder of his examination.

8. Such other matters of procedure as are necessary to carry into effect section 147.41. [C24, 27, 31, 35, 39, §2479; C46, 50, 54, §147.42]

**147.43 Preservation of records.** All matters connected with each examination for a license shall be filed with the state department of health and preserved for five years as a part of the records of the department, during which time said records shall be open to public inspection. [C97, §2576; S13, §§2576, 2578-a, 2583-a; C24, 27, 31, 35, 39, §2480; C46, 50, 54, §147.43]

#### RECIPROCAL LICENSES

**147.44 Agreements.** For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this title, the department shall enter into a reciprocal agreement with every state which is certified to it by the proper examining board under the provisions of section 147.45 and with which this state does not have an existing agreement at the time of such certification. [C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §2481; C46, 50, 54, §147.44]

Referred to in §147.107

**147.45 States entitled to reciprocal relations.** The department shall at least once each year lay before the proper examining board the requirements of the several states for a license to practice the profession for which such examining board conducts examinations for licenses in this state. Said examining board shall immediately examine such requirements and after making such other inquiries as it deems necessary, shall certify to the department the states having substantially equivalent requirements to those existing in this state for that particular profession and with which said examining board desires this state to enter into reciprocal relations. [S13, §§2575-a30, -a39, 2589-b, 2600-m; C24, 27, 31, 35, 39, §2482; C46, 50, 54, §147.45]

Referred to in §§147.44, 147.107

**147.46 Reciprocal agreements.** In negotiating any reciprocal agreement, the department shall be governed by the following regulations:

1. *Protection to licensees of this state.* When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this title which affects the right of said person to be licensed or to practice his profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

2. *Special conditions.* When any examining board has established by rule any special condition upon which reciprocal agreements shall be entered into, as provided in section 147.47, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice the professions for which such examining board conducts examinations. [S13, §§2575-a30, -a39, 2582-a, 2589-b, 2600-m; C24, 27, 31, 35, 39, §2483; C46, 50, 54, §147.46]

Referred to in §147.107

**147.47 Special conditions.** An examining board shall have power to provide by rule that no reciprocal relation shall be entered into by the department with any state with reference to licenses to practice the profession for which such examining board conducts examinations, unless every person licensed in another state when applying for a license to practice in this state shall comply with one or both of the following conditions:

1. Furnish satisfactory proof to the department that he has been actively engaged in the practice of his profession for a certain period of years to be fixed by such examining board.

2. Pass a practical examination in the practice of his particular profession as prescribed by such examining board. [S13, §2600-m; C24, 27, 31, 35, 39, §2484; C46, 50, 54, §147.47]

Referred to in §§147.46, 147.107

**147.48 Termination of agreements.** When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the proper examining board and certified to the department for its guidance in enforcing the provisions of this section. [C24, 27, 31, 35, 39, §2485; C46, 50, 54, §147.48]

Referred to in §147.107

**147.49 License of another state.** The department shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state, with

which this state has established reciprocal relations, and subject to the rules of the examining board for such profession, license said applicant to practice in this state, unless under the rules of said examining board a practical examination is required in such cases. [C97, §2582; S13, §§2575-a30, -a39, 2582, 2583-1, 2589-b, 2600-m; C24, 27, 31, 35, 39, §2486; C46, 50, 54, §147.49]

Referred to in §147.107

**147.50 Practical examinations.** If the rules of any examining board require an applicant for a license under a reciprocal agreement to pass a practical examination in the practice of his profession, then such applicant shall make application therefor to the department upon a form provided by it. [C24, 27, 31, 35, 39, §2487; C46, 50, 54, §147.50]

Referred to in §147.107

**147.51 Applicability of other provisions.** All the provisions of this chapter relative to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, shall apply as far as applicable to applicants for practical examinations. [C24, 27, 31, 35, 39, §2488; C46, 50, 54, §147.51]

Referred to in §147.107

**147.52 Reciprocity.** When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person holding a diploma or certificate from any college in this state in which one of the professions regulated by this title is taught, which affects the right of said person to be licensed in said state, the same requirement or disability shall be placed upon any person holding a diploma from a similar college situated therein, when applying for a license to practice in this state. [S13, §2582-a; C24, 27, 31, 35, 39, §2489; C46, 50, 54, §147.52]

Referred to in §147.107

**147.53 Power to adopt rules.** The department and each examining board shall have power to establish the necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter. [C24, 27, 31, 35, 39, §2490; C46, 50, 54, §147.53]

Referred to in §147.107

**147.54 Change of residence.** Any licensee who is desirous of changing his residence to that of another state or territory shall upon application to the department, and payment of the legal fee, receive a certified statement that he is a duly licensed practitioner in this state. [S13, §2600-n; C24, 27, 31, 35, 39, §2491; C46, 50, 54, §147.54]

Referred to in §147.107

REVOCATION OF LICENSES

**147.55 Grounds.** A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring his license.
  2. Incompetency in the practice of his profession.
  3. Immoral, unprofessional, or dishonorable conduct.
  4. Habitual intoxication or addiction to the use of drugs.
  5. Conviction of an offense involving turpitude.
  6. Fraud in representations as to skill or ability.
  7. Use of untruthful or improbable statements in advertisements. This shall not be construed as permitting dentists or dental hygienists to advertise their services or products, contrary to the other provisions of this title relative thereto.
  8. Distribution of intoxicating liquors or drugs for any other than lawful purposes.
  9. Willful or repeated violations of this title, the title on "Public Health", or the rules of the state department of health.
  10. Continued practice while knowingly having an infectious or contagious disease.
1. [C97, §2578; S13, §§2575-a33, -a41, 2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  2. [C97, §2578; S13, §§2578, 2583-c, -m; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  3. [C97, §2578; S13, §§2575-a33, -a41, 2578, 2583-m, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  4. [C97, §2578; S13, §§2575-a41, 2578, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  5. [C97, §2578; S13, §§2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  6. [C97, §2578; S13, §§2578, 2583-c; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  7. [C97, §2578; S13, §§2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  8. [C73, §1535; C97, §§2386, 2400; S13, §§2386, 2400; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  9. [C97, §2596; S13, §§2575-a33, -a41; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]
  10. [S13, §2583-c; C24, 27, 31, 35, 39, §2492; C46, 50, 54, §147.55]

Referred to in §§147.56, 148.6, 148.7, 154.4, 156.9  
See also §§144.54, 147.4

**147.56 Unprofessional conduct.** For the purposes of section 147.55 "unprofessional conduct" shall consist of any of the following acts:

1. Solicitation of professional patronage by agents or persons popularly known as "cap-pers" or "steerers", or profiting by the acts of those representing themselves to be agents of the licensee.
2. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.
3. Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court.

4. Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient or assisting in the care or treatment of a patient without the consent of said patient or his legal representative.

5. Advertisement of any medicine or means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

6. Procurement or aiding or abetting in the procurement of a criminal abortion.

7. Willful betrayal of a professional secret.

8. Willful neglect of a patient in a critical condition and as to dentists and dental hygienists "unprofessional conduct" shall also consist of any of the acts denominated as such in the other provisions of this title relating to dentists and dental hygienists. [C97,§2578; S13, §2578; C24, 27, 31, 35, 39,§2493; C46, 50, 54, §147.56]

Referred to in §§148.6, 148.7

**147.57 Dental hygienist and dentist.** The practice of dentistry by a dental hygienist shall also be grounds for the revocation of her license, and the permitting of such practice by the dentist under whose supervision said dental hygienist is operating shall be grounds for revoking the license of said dentist. [S13, §2600-o5; C24, 27, 31, 35, 39,§2494; C46, 50, 54, §147.57]

**147.58 Jurisdiction of revocation.** The district court of the county in which a licensee resides shall have jurisdiction of the proceeding to revoke or suspend his license. [C24, 27, 31, 35, 39,§2495; C46, 50, 54,§147.58]

Referred to in §148.6

**147.59 Petition for revocation.** The petition for the revocation or suspension of a license may be filed by the attorney general in all cases. Said petition shall be filed in the office of the clerk of the district court having jurisdiction. [C24, 27, 31, 35, 39,§2496; C46, 50, 54, §147.59]

Referred to in §148.6

**147.60 Duty of department.** The state department of health shall direct the attorney general to file such petition against any licensee upon its own motion, or it may give such direction upon the sworn information of some person who resides in the county wherein the licensee practices. [C97,§§2578, 2596; S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§2497; C46, 50, 54,§147.60]

Referred to in §148.6

**147.61 Attorney general and county attorney.** The attorney general shall comply with such direction of the department and prosecute such action on behalf of the state, but the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [C24, 27, 31, 35, 39,§2498; C46, 50, 54,§147.61]

Referred to in §148.6

**147.62 Rules governing petition.** The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.

2. The charges against the licensee shall be stated in full.

3. Amendments may be made as in ordinary actions.

4. All allegations shall be deemed denied but the licensee may plead thereto if he desires. [C24, 27, 31, 35, 39,§2499; C46, 50, 54,§147.62]

Referred to in §148.6

Amendments allowed, R.C.P. 88 and 249

**147.63 Trial.** Upon the presentation of the petition, or a copy thereof, to the court or judge, he shall make an order fixing the time and place for the hearing, which shall be not less than ten nor more than twenty days thereafter. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§2500; C46, 50, 54, §147.63]

Referred to in §148.6

**147.64 Notice.** Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§2501; C46, 50, 54,§147.64]

Referred to in §148.6

Manner of service, R.C.P. 56(a)

**147.65 Nature of action.** The proceeding shall be summary in its nature, triable as an equitable action, and may be heard either in vacation or term time. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39, §2502; C46, 50, 54,§147.65]

Referred to in §148.6

How issues tried, R.C.P. 177

**147.66 Judgment.** Judgment of revocation or suspension of the license shall be entered of record and the licensee shall not engage in the practice of his profession after his license is revoked or during the time for which it is suspended. The clerk of the court shall, upon the entry of such judgment, forthwith furnish the state department of health with a certified copy thereof. [C73,§1535; C97,§§2386, 2400; S13, §§2386, 2400, 2575-a33,-a41, 2578-a; C24, 27, 31, 35, 39,§2503; C46, 50, 54,§147.66]

Referred to in §148.6

**147.67 Default.** In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the court, after receiving satisfactory evidence of the truth of the charges, shall order the license revoked or suspended. [S13,§§2575-a33,-a41, 2578-a; C24, 27, 31, 35, 39,§2504; C46, 50, 54, §147.67]

Referred to in §148.6

**147.68 Costs.** If the judgment is adverse to the licensee the costs shall be taxed to him as in ordinary civil actions, but if the state is the

unsuccessful party the costs shall be paid out of any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39,§2505; C46, 50, 54,§147.68]

Referred to in §148.6  
Costs, ch 625

**147.69 Unpaid costs.** All costs accrued at the instance of the state, when the successful party, which the attorney general certifies cannot be collected from the defendant, shall be paid out of any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39, §2506; C46, 50, 54,§147.69]

Referred to in §148.6

**147.70 Hearing on appeal.** Both parties shall have the right of appeal, and in such event, the supreme court shall fix the time of hearing, and for filing abstracts and arguments. Said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstracts and arguments are filed in said court in time for said action to be heard. [S13,§§2578-b, 2600-o5; C24, 27, 31 35, 39,§2507; C46, 50, 54,§147.70]

Referred to in §148.6

**147.71 Effect of appeal.** The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore the right of said defendant to practice his profession pending such appeal. [C24, 27, 31, 35, 39,§2508; C46, 50, 54,§147.71]

Referred to in §148.6  
Supersedeas bond, R.C.P. 337 (a)

USE OF TITLES AND DEGREES

**147.72 Professional titles and abbreviations.** Any person licensed to practice a profession under this title may append to his name any recognized title or abbreviation, which he is entitled to use, to designate his particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise himself in such a manner as to lead the public to believe that he is engaged in the practice of any other profession than the one which he is licensed to practice. [S13,§§2575-a28,-a31, 2583-q; C24, 27, 31, 35, 39,§2509; C46, 50, 54,§147.72]

Referred to in §147.73

**147.73 Titles used by holder of degree.** Nothing in section 147.72 shall be construed:

1. As authorizing any person licensed to practice a profession under this title to use or assume any degree or abbreviation of the same unless such degree has been conferred upon said person by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health, or by some recognized state or national accredited agency.

2. As prohibiting any holder of a degree conferred by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health, or by some recognized state or national accrediting

agency, from using the title which such degree authorizes him to use, but he shall not use such degree or abbreviation in any manner which might mislead the public as to his qualifications to treat human ailments. [C24, 27, 31, 35, 39,§2510; C46, 50, 54,§147.73]

**147.74 False representation.** Any person who falsely holds himself out by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which he holds a license or who fails to use the following designations shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be sentenced to thirty days in jail.

A physician or surgeon may precede his name with the title "Doctor", and shall add after his name the letters, "M. D."

An osteopath or osteopathic surgeon may use the prefix "Doctor", but shall add after his name the letters, "D. O." or "O. S." as the case may be, or the words, "Osteopath" or "Osteopathic Surgeon".

A chiropractor may use the prefix "Doctor", but shall add after his name the letters, "D. C." or the word, "Chiropractor".

A dentist may use the prefix "Doctor", but shall add after his name the letters "D. D. S." or the word "Dentist" or "Dental Surgeon".

A chiropodist may use the prefix "Dr." but shall add after his name the word "Chiropodist".

Any graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after his name the letters "Opt." or "Optometrist".

No other practitioner licensed to practice his profession under any of the provisions of this title shall be entitled to use the prefix "Dr." or "Doctor". [C31, 35,§2510-d1; C39,§2510.1; C46, 50, 54,§147.74]

ITINERANTS

**147.75 Defined.** "Itinerant physician", "itinerant osteopath", "itinerant chiropractor", "itinerant optometrist", "itinerant cosmetologist", or "itinerant chiropodist" as used in the following sections of this title shall mean any person engaged in the practice of medicine and surgery, osteopathy, osteopathy and surgery, chiropractic, optometry, cosmetology, or chiropody, as defined in the chapter relative to the practice of said professions who, by himself, agent, or employee goes from place to place, or from house to house, or by circulars, letters, or advertisements, solicits persons to meet him for professional treatment at places other than his office maintained at the place of his residence. [C97,§2581; S13,§§2581, 2583-e; C24, 27, 31, 35, 39,§2511; C46, 50, 54,§147.75]

Referred to in §147.78

**147.76 License required.** Every itinerant physician, itinerant osteopath, itinerant chiropractor, itinerant optometrist. itinerant cos-

metologist, or itinerant chiropodist shall, in addition to his regular license to practice his profession, procure from the state department of health a license to practice as an itinerant. [C97,§2581; S13,§§2581, 2583-e; C24, 27, 31, 35, 39,§2512; C46, 50, 54,§147.76]

Referred to in §147.78

**147.77 Issuance.** Upon receipt of an application from any such licensed practitioner for an itinerant's license, accompanied by the legal fee, the department shall issue to the applicant, when the provisions of this title have been complied with, a license to practice as an itinerant physician and surgeon, itinerant osteopath, itinerant osteopath and surgeon, itinerant chiropractor, itinerant optometrist, itinerant chiropodist, or itinerant cosmetologist, as the case may be, for a period of one year. [C97, §2581; S13, §§2581, 2583-e; C24, 27, 31, 35, 39, §2513; C46, 50, 54, §147.77]

Referred to in §147.78

**147.78 Exception.** Sections 147.75 to 147.77, inclusive, shall not be construed to prevent any physician and surgeon, osteopath, osteopath and surgeon, chiropodist, chiropractor, or optometrist, otherwise legally qualified, from attending patients in any part of the state to which he may be called in the regular course of business, or in consultation with other practitioners. [C97, §2581; S13, §2581; C24, 27, 31, 35, 39, §2514; C46, 50, 54, §147.78]

**147.79 Refusal or revocation.** The department may, for satisfactory reasons, refuse to issue an itinerant's license or may revoke such license upon satisfactory evidence of incompetency or gross immorality. [C97, §2581; S13, §§2581, 2583-e; C24, 27, 31, 35, 39, §2515; C46, 50, 54, §147.79]

#### FEES

**147.80 License—examination—renewal fees.** The following fees shall be collected by the state department of health:

1. For a license to practice medicine and surgery, osteopathy and surgery, and dentistry, issued upon the basis of an examination given by an examining board, twenty-five dollars.

2. For a license to practice any of the professions enumerated in the preceding subsection issued under a reciprocal agreement, fifty dollars.

3. For a license to practice chiropody, osteopathy, chiropractic, and optometry, issued upon the basis of an examination given by an examining board, twenty dollars.

4. For a license to practice any of the professions enumerated in the preceding subsection issued under a reciprocal agreement, forty dollars.

5. For a license to practice nursing, dental hygiene, pharmacy, cosmetology, barbering, funeral directing and embalming, issued upon the basis of an examination given by an examining board, ten dollars.

6. For a license to practice any of the pro-

fessions enumerated in the preceding subsection issued under a reciprocal agreement, twenty dollars; except that a license to practice nursing shall be ten dollars.

7. For the renewal of a license to practice any of the professions enumerated in the preceding subsections, one dollar; except the renewal fee of a license to practice medicine and surgery, or cosmetology shall be three dollars, and except the renewal fee of a license to practice pharmacy shall be two dollars and fifty cents, and except the renewal fee of a license to practice nursing shall be two dollars and except the renewal fee of a license to practice funeral directing and the renewal fee of a license to practice embalming shall be two dollars each.

Referred to in §147.101

8. For a license to practice as an itinerant physician and surgeon, itinerant osteopath, itinerant osteopath and surgeon, itinerant chiropodist, itinerant chiropractor, or itinerant optometrist, two hundred fifty dollars.

9. For a certified statement that a licensee is licensed in this state, five dollars.

10. For an examination to determine whether an applicant has the educational attainments of a high school graduate, five dollars.

11. For a license to conduct a school teaching cosmetology, an annual fee of one hundred dollars.

12. For a license to practice as an itinerant cosmetologist, in addition to any other fee required of cosmetologists, one hundred dollars.

13. For a permit to practice as an apprentice in cosmetology, one dollar.

14. For a license to conduct a school of barbering, an annual fee of twenty-five dollars.

15. For transfer of license upon change of ownership of a barber shop or barber school, a fee of one dollar.

16. For the renewal of a license to practice barbering an annual fee of five dollars; for the renewal of a license to operate a barber shop an annual fee of three dollars.

1. [C97, §2576; S13, §§ 2576, 2583-a, 2600-d; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

2. [C97, §2582; S13, §§2582, 2583-a, 2600-m; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

3. [S13, §§2583-a,-l,-n; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

4. [S13, §§2583-a,-l,-n; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

5. [C97, §2590; S13, §§2575-a30,-a38, 2589-d; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

6. [S13, §§2575-a30,-a39, 2589-b; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

7. [C97, §§2590, 2591; S13, §§2575-a39, 2589-d; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80; 56 GA, ch 102, §1]

8. [C97, §2581; S13, §§2581, 2583-e; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

9. [S13, §2600-n; C24, 27, 31, 35, 39, §2516; C46, 50, 54, §147.80]

10. [S13,§2583-a; C24, 27, 31, 35, 39,§2516; C46, 50, 54,§147.80]

11, 12, 13. [C31, 35, 39,§2516; C46, 50, 54, §147.80]

14, 15. [C46, 50, 54,§147.80]

16. [57GA, ch 94,§1]

Referred to in §§147.101, 158.11  
Exemption to members of armed forces, 51GA, ch 99,§1

**147.81 Second examination.** Any applicant for a license who fails in his examination shall be entitled to a second examination without further fee at any time within a period of fourteen months after the first examination. [C97, §§2576, 2590; S13,§§2576, 2583-n, 2589-d; C24, 27, 31, 35, 39,§2517; C46, 50, 54,§147.81]

**147.82 Fees paid into treasury.** All fees collected under this chapter shall be paid into the state treasury. [C97,§2583; S13,§§2575-a44, 2583-a,-s; C24, 27, 31, 35, 39,§2518; C46, 50, 54,§147.82]

Exception, §147.94 et seq.  
Paying fees into state treasury, §12.10

VIOLATIONS—CRIMES—PUNISHMENT

**147.83 Injunction.** Any person engaging in any business or in the practice of any profession for which a license is required by this title without such license may be restrained by permanent injunction. [C24, 27, 31, 35, 39,§2519; C46, 50, 54,§147.83]

Injunctions, ch 664

**147.84 Forgeries.** Any person who shall file or attempt to file with the state department of health any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [C97,§§2580, 2595; S13,§2583-d; C24, 27, 31, 35, 39,§2520; C46, 50, 54,§147.84]

Forgery, ch 718

**147.85 Fraud.** Any person who shall present to the department a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been issued by said department shall be punished as provided in section 147.86. [C97, §§2580, 2581, 2595; S13,§§2575-a45, 2581, 2583-c,-d; C24, 27, 31, 35, 39,§2521; C46, 50, 54,§147.85]

**147.86 Penalties.** Any person violating any provision of this or the following chapters of this title, except insofar as said provisions apply or relate to or affect the practice of pharmacy, of cosmetology, and of barbering, shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months or by both such fine and imprisonment. [C97,§§2580, 2581, 2588, 2590, 2591, 2595; S13,§§2575-a35,-a45, 2581, 2583-d,-r, 2589-d, 2600-o4; SS15,§2588; C24, 27, 31, 35, 39,§2522; C46, 50, 54,§147.86]

Referred to in §147.85

ENFORCEMENT PROVISIONS

**147.87 Enforcement.** The state department of health shall enforce the provisions of this and the following chapters of this title and for

that purpose shall make necessary investigations relative thereto. Every licensee and member of an examining board shall furnish the department such evidence as he may have relative to any alleged violation which is being investigated. [C24, 27, 31, 35, 39,§2523; C46, 50, 54,§147.87]

Referred to in §§147.95, 147.109

**147.88 Department inspector and assistant.** There is hereby created the position of health department inspector and assistant who shall be attached to the state department of health and who shall be appointed by the commissioner of health of the state of Iowa. The health department inspector's duties shall consist of investigating all violations of this title, securing all available evidence and reporting to the department of health. [C31, 35,§2523-cl; C39,§2523.1; C46, 50, 54,§147.88]

Referred to in §§147.95, 147.109

**147.89 Report of violators.** Every licensee and member of an examining board shall report, also, to the department the name of every person, without a license, that he has reason to believe is engaged in:

1. Practicing any profession for which a license is required.

2. Operating as an itinerant practitioner of such profession. [C24, 27, 31, 35, 39,§2524; C46, 50, 54,§147.89]

Referred to in §§147.95, 147.109

**147.90 Rules and forms.** The state department of health shall establish the necessary rules and forms for carrying out the duties imposed upon it by the provisions of this and the following chapters of this title. [C24, 27, 31, 35, 39,§2525; C46, 50, 54,§147.90]

**147.91 Publications.** The department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published:

1. The law regulating the practice of the profession.

2. The rules of the department relative to licenses.

3. The rules of the examining board relative to examinations.

Such pamphlet shall be supplied to any person applying for the same. [C24, 27, 31, 35, 39, §2526; C46, 50, 54,§147.91]

**147.92 Attorney general and county attorney.** Upon request of the state department of health the attorney general shall institute in the name of the state the proper proceedings against any person charged by the department with violating any provision of this or the following chapters of this title and the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [S13,§2600-o7; C24, 27, 31, 35, 39,§2527; C46, 50, 54,§147.92]

**147.93 Prima-facie evidence.** The opening of an office or place of business for the practice of

any profession for which a license is required by this title, the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima-facie evidence of engaging in the practice of such profession. [S13, §§2575-a28,-a31, 2600-o; C24, 27, 31, 35, 39,§2528; C46, 50, 54,§147.93]

#### EXCEPTIONS

**147.94 Pharmacists.** The provisions of this chapter relative to the making of application for a license, the issuance of a license, the negotiation of reciprocal agreements for recognition of foreign licenses, the collection of license and renewal fees, and the preservation of records shall not apply to the licensing of persons to practice pharmacy, but such licensing shall be governed by the following regulations:

1. Every application for a license to practice pharmacy shall be made direct to the secretary of the pharmacy examiners.

2. Such license and all renewals thereof shall be issued by said examiners.

3. Every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by said examiners.

4. All license and renewal fees exacted from persons licensed to practice pharmacy shall be paid to and collected by the secretary of the pharmacy examiners.

5. All records in connection with the licensing of pharmacists shall be kept by said secretary.

1. [C97,§2589; S13,§2589-b; SS15,§2589-a; C24, 27, 31, 35, 39,§2529; C46, 50, 54,§147.94]

2. [C97,§2590; S13,§2589-d; C24, 27, 31, 35, 39, §2529; C46, 50, 54,§147.94]

3. [S13,§2589-b; C24, 27, 31, 35, 39,§2529; C46, 50, 54,§147.94]

4. [C97,§2590; S13,§2589-d; C24, 27, 31, 35, 39, §2529; C46, 50, 54,§147.94]

5. [C97,§§2586, 2595; C24, 27, 31, 35, 39,§2529; C46, 50, 54,§147.94]

Referred to in §147.96

**147.95 Enforcement.** The provisions of this title insofar as they affect the practice of pharmacy shall be enforced by the pharmacy examiners and the provisions of sections 147.87, 147.88, and 147.89 shall not apply to said profession. [C97,§2584; S13,§2596-c; SS15,§2584; C24, 27, 31, 35, 39,§2530; C46, 50, 54,§147.95]

Referred to in §147.96

**147.96 Pharmacy examiners.** In discharging the duties and exercising the powers provided for in sections 147.94 and 147.95, the pharmacy examiners and their secretary shall be governed by all the provisions of this chapter which govern the department of health when discharging a similar duty or exercising a similar power with reference to any of the

professions regulated by this title. [C24, 27, 31, 35, 39,§2531; C46, 50, 54,§147.96]

**147.97** Repealed by 57GA, ch 96,§3.

**147.98 Secretary of pharmacy examiners.** The pharmacy examiners shall have the right to employ a full-time secretary, who shall not be a member of the examining board, at such compensation as may be fixed from time to time in the biennial salary act and the provisions of section 147.22 providing for a secretary for each examining board shall not apply to the pharmacy examiners. [C97,§2585; S13,§2585; C24, 27, 31, 35, 39,§2532; C46, 50, 54,§147.98]

**147.99 Duties of secretary.** The secretary of the pharmacy examiners shall, upon the direction of said examiners, make inspections of alleged violations of the provisions of this title relative to the practice of pharmacy and of chapters 203, 204, and 205. Said secretary shall be allowed his necessary traveling and hotel expenses in making such inspections. [C97, §2585; S13,§2585; C24, 27, 31, 35, 39,§2533; C46, 50, 54,§147.99]

See also §204.20

**147.100 Renewal fee.** The secretary of the pharmacy examiners shall annually add two dollars and fifty cents to the renewal fee provided in this chapter for a person licensed to practice pharmacy. Such additional amount shall be considered as a part of the regular renewal fee and payment of the same shall be a prerequisite to the renewal of his license. The funds derived from the additional renewal fee collected under this section shall be paid to the state pharmacy association upon the order of its treasurer and secretary. Said funds shall be used by such association in the advancement of the art and science of pharmacy. [C97, §2590; S13,§2589-d; C24, 27, 31, 35, 39,§2534; C46, 50, 54,§147.100]

**147.101 Association fee collected.** The state department of health shall annually add three dollars to the renewal fee provided for in subsection 7 of section 147.80, for one licensed to practice embalming and shall annually add three dollars to the renewal fee provided for in subsection 7 of section 147.80 for one licensed to practice funeral directing, and such additional moneys shall be accepted as part of the regular renewal fee. The payment of the same shall be prerequisite to the renewal of such licenses. The funds derived by the state department of health from the additional renewal fees collected under this section in behalf of the profession of funeral directing and embalming shall be paid to the board of funeral directing and embalming examiners at such time as said board of funeral directing and embalming examiners or the Iowa funeral directors association conducts a state-wide educational meeting for its members, in such amounts as are necessary for such said meeting only and such funds so collected by the state department of health shall be used for the advancement of the arts and sciences of

the funeral directing and embalming profession. [C39,§2534.1; C46, 50, 54,§147.101]

**147.102 Physicians and surgeons, chiropractors and osteopaths.** Notwithstanding the provisions of this title, every application for a license to practice medicine and surgery, chiropractic, osteopathy, or osteopathy and surgery, shall be made direct to the secretary of the examining board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the examining board for such profession, and all examination, license, and renewal fees received from such persons licensed to practice any of such professions shall be paid to and collected by the secretary of the examining board of such profession, which secretary shall turn the same over to the department of health on the first day of January, 1925, and quarterly thereafter. [S13,§2583-a; C24, 27, 31, 35, 39,§2535; C46, 50, 54,§147.102]

**147.103 Clerical help, inspectors and supplies.** Subject to the approval of the executive council, the examining boards for medicine and surgery, chiropractic, osteopathy, and osteopathy and surgery, may employ such clerical assistance as may be necessary to enable said boards to perform the duties imposed upon them by law. Payment for such assistance shall be made out of the appropriation provided for said examining boards in the biennial departmental appropriations. The executive council shall also furnish said boards with the necessary quarters and all articles and supplies required for the public use, and the provisions of section 147.26 shall not apply to said boards. The commissioner of public health, upon the request of and with the approval of the medical examining board, shall appoint an inspector and incur such other expenses as may be necessary to properly administer and aid in the enforcement of the provisions of the law relating to those licensed to practice medicine and surgery by said board. The amount of compensation for such inspector shall be fixed by the executive council and paid from the same funds as is provided for the clerical assistants. [C24, 27, 31, 35, 39,§2536; C46, 50, 54,§147.103]

Budget regulated by chapter 8

**147.104 Records.** The secretary of each of said boards shall keep a correct record of the proceedings of said board, and upon the granting of any license to practice any of said professions the board shall, at the time of granting said license, certify to the department of health the application upon which such license was issued, together with the questions submitted in the examination of such applicant and the answers thereto, and such secretary shall deposit with the department of health all records not needed for the current use of his examining board. [S13,§2583-a; C24, 27, 31, 35, 39, §2537; C46, 50, 54,§147.104]

**NURSE EXAMINERS**

**147.105 Secretary.** The board of nurse examiners is authorized to appoint a full-time secretary who shall not be a member of the board, and the provisions of section 147.22 which provide for a secretary for each examining board shall not apply to this board. [C35, §2537-g1; C39,§2537.1; C46, 50, 54,§147.105]

Referred to in §§147.107-147.110, inc.

**147.106 Duties.** All records which pertain to the licensing of nurses in this state shall be kept by the secretary who shall keep a record of all proceedings of the board of nurse examiners and perform such further duties as the board shall generally or specifically determine. [C35,§2537-g2; C39,§2537.2; C46, 50, 54,§147.106]

Referred to in §§147.107-147.110, inc.

**147.107 Applications — reciprocal agreements—fees.** Every application for a license to practice nursing in this state shall be made direct to the secretary of the board of nurse examiners, and upon the granting of any such license the secretary shall certify to the department of health that such license has been granted. Every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the board. Notwithstanding the provisions of sections 147.44 to 147.54, inclusive, the conditions for the recognition of any such license issued in another state shall be determined by the board, and it may certify for a license to practice nursing in this state without examinations an applicant who has been duly licensed as a nurse under the laws of another state, territory or foreign country, if in the opinion of the board the applicant meets all the qualifications required for a registered or licensed practical nurse under section 152.3. All examination, license and renewal fees received from such persons licensed to practice nursing shall be paid to and collected by the secretary of the board, who shall remit to the treasurer of state quarterly all fees collected, and at the same time render to the state comptroller an itemized and verified report showing the source from which said fees were obtained. All such fees collected and remitted shall be placed in a special fund by the treasurer of state and the state comptroller to be known as the "Nurses' fund", to be used by the board to administer and enforce the laws relating to the practice of nursing, to elevate the standards of schools of nursing, and to promote the educational and professional standards of nurses and nursing in this state, and no part of such expense shall be paid out of the state treasury. Any remainder in said fund at the end of each fiscal year, after all expense in carrying out the provisions of sections 147.105 to 147.110, inclusive, have been paid, or a sum sufficient for payment thereof set apart, shall be paid into the general fund of the state. Said fund shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the chairman of the board and attested by the secretary, for the payment of all salaries and other expenses necessary to carry out the



provisions of said sections, but in no event shall the total expenses therefor exceed the total fees collected and deposited to the credit of said fund. [C35,§2537-g3; C39,§2537.3; C46, 50, 54,§147.107]

Referred to in §§147.108-147.110, inc.

**147.108 Assistants — payment.** Subject to the approval of the commissioner of public health, the board may appoint such assistants and inspectors as may be necessary to properly administer and enforce the provisions of sections 147.105 to 147.110, inclusive. They shall perform such duties as the board shall assign to them. The amount of salary or compensation of the secretary and such appointees shall be fixed by the executive council. [C35,§2537-g4; C39,§2537.4; C46, 50, 54,§147.108]

Referred to in §§147.107, 147.109, 147.110

**147.109 Enforcement — applicable statutes.** The provisions of this title insofar as they affect the practice of nursing shall be enforced by the board of nurse examiners, and the provisions of sections 147.87, 147.88, and 147.89 shall not apply to said profession. In discharging the duties and exercising the powers provided for in sections 147.105 to 147.110, inclusive, the board and its secretary shall be governed by all the provisions of law which govern the department of health when discharging a similar duty or exercising a similar power that pertains to the nursing profession. [C35,§2537-g5; C39,§2537.5; C46, 50, 54, §147.109]

Referred to in §§147.107, 147.108, 147.110

**147.110 Interpretation.** No provision of law in conflict with any provision of sections 147.105 to 147.109, inclusive, shall have any effect thereon or upon the rights of any person licensed under this title. [C35,§2537-g6; C39, §2537.6; C46, 50, 54,§147.110]

Referred to in §§147.107-147.109, inc.

#### WOUNDS BY CRIMINAL VIOLENCE

**147.111 Report of treatment of wounds.** Any person licensed under the provisions of this title, who shall administer any treatment to any person suffering an injury of violence, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such injury of violence, shall at once but not later than twelve hours thereafter, report said fact to the sheriff of the county in which said treatment was administered or an application therefor was made, stating therein the name of such person, his residence if ascertainable, and giving a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions hereof are concerned. [C31, 35,§2537-d1; C39,§2537.7; C46, 50, 54, §147.111]

Referred to in §147.112

**147.112 Report by sheriff.** The sheriff of any county who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once report said fact, giving all the details relative thereto to the chief of the bureau of investigation. No sheriff shall divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime. [C31, 35,§2537-d2; C39,§2537.8; C46, 50, 54,§147.112]

**147.113 Violations.** Any person failing to make the report required herein shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one hundred dollars. [C31, 35,§2537-d3; C39,§2537.9; C46, 50, 54,§147.113]

## CHAPTER 148

### PRACTICE OF MEDICINE AND SURGERY

Referred to in §§150.1, 150.7, 152.2, 155.3, 514.17

Enforcement, §§147.87, 147.90, 147.92

Penalty, §147.86

- 148.1 Persons engaged in practice.
- 148.2 Persons not required to qualify.
- 148.3 Requirements for license.
- 148.4 Certificates of national board.
- 148.5 Resident physician's license.

- 148.6 Revocation—alternative procedure.
- 148.7 Proceedings.
- 148.8 Voluntary surrender of license.
- 148.9 Reinstatement.

**148.1 Persons engaged in practice.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

1. Persons who publicly profess to be physicians or surgeons or who publicly profess to assume the duties incident to the practice of medicine or surgery.

2. Persons who prescribe, or prescribe and furnish medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section. [C97,§2579; C24, 27, 31, 35, 39, §2538; C46, 50, 54,§148.1]

Referred to in §148.2

**148.2 Persons not required to qualify.** Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery who have completed at least two years study in a medical school, approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed chiroprodists, osteopaths, osteopaths and surgeons, chiropractors, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon licensed in this state. [C97, §§2579, 2581; S13, §2581; C24, 27, 31, 35, 39, §2539; C46, 50, 54, §148.2]

**148.3 Requirements for license.** Each applicant for a license to practice medicine shall:

1. Present a diploma issued by a medical college approved by the medical examiners. The medical examiners may accept, in lieu of a diploma from a medical college approved by them, all of the following:

a. A diploma issued by a medical college which has been neither approved nor disapproved by the medical examiners; and

b. The completion of three years of training as a resident physician, which training has been approved by or is acceptable to the medical examiners; and

c. The recommendation of the educational council for foreign medical graduates, incorporated or similar accrediting agency.

2. Pass an examination prescribed by the medical examiners in the subjects of anatomy, chemistry, physiology, materia medica and therapeutics, obstetrics, pathology, theory and practice, and surgery; but in the subjects of materia medica and therapeutics, and theory and practice, each applicant shall be examined in accordance with the teachings of the school of medicine which he desires to practice. The board of medical examiners may require written, oral, and practical examinations of the applicant.

3. Present to the state department of health satisfactory evidence that applicant has completed one year of internship in a hospital approved by the state board of medical examiners. No hospital shall be approved which does not provide the internship without expense to the intern.

4. Be a citizen of the United States or have legally declared his intention of becoming a citizen.

1. [C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §2540; C46, 50, 54, §148.3; 57GA, ch 95, §1]

2. [C97, §2576; S13, §2576; C24, 27, 31, 35, 39, §2540; C46, 50, 54, §148.3]

3. [C27, 31, 35, 39, §2540; C46, 50, 54, §148.3]

4. [C54, §148.3]

5. Repealed by 57GA, ch 95, §2.

Referred to in §148.4  
Approved colleges, §147.32  
Basic science examination, §146.16

**148.4 Certificates of national board.** The state department of health may, with the approval of the medical examiners, accept in lieu of the examination prescribed in section 148.3 a certificate of examination issued by the national board of medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for licenses issued under reciprocal agreements. [S13, §2582; C24, 27, 31, 35, 39, §2541; C46, 50, 54, §148.4]

**148.5 Resident physician's license.** Any physician, who is a graduate of a medical school and is serving only as a resident physician and who is not licensed to practice medicine and surgery in this state, shall be required to obtain from the medical examiners a temporary or special license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident only, under the supervision of a licensed practitioner of medicine and surgery, in an institution approved for this purpose by the medical examiners. Such license shall be valid for one year and may be annually renewed at the discretion of the medical examiners for a period not to exceed six additional years. The fee for this license shall be fifteen dollars, and if extended beyond one year, an annual renewal fee of three dollars per year shall be required. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure shall be mandatory for this resident licensure except as specifically designated by the medical examiners. The granting of a resident physician's license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license such individual. The medical examiners shall revoke said license at any time they shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the medical examiners. [C54, §148.5; 57GA, ch 95, §3]

**148.6 Revocation—alternative procedure.** In lieu of and as an alternative to the provisions of sections 147.58 through 147.71, inclusive, the

medical examiners after due notice and hearing may direct the commissioner of public health to issue an order to revoke, suspend or place on probation the license of any person licensed to practice medicine and surgery for any of the grounds set forth in sections 147.55 and 147.56. [57GA, ch 95,§4]

**148.7 Proceedings.** Any proceeding for revocation, suspension or probation of a license to practice medicine and surgery shall be substantially in accord with the following procedure:

1. The medical examiners may, upon their own motion or upon verified complaint in writing, and shall, if such complaint is filed by the commissioner of public health, issue an order fixing the time and place for hearing thereon. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has absented or removed himself from the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever he may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the medical examiners shall proceed with the hearing as hereinafter provided.

*Service of notice, R.C.P. 56 et seq.*

3. The hearing shall be before a member or members designated by the board. The board shall designate one member to serve as presiding member. Such presiding member is hereby empowered to issue subpoenas, administer oaths and take or cause depositions to be taken in connection with the hearing. He shall issue subpoenas at the request and on behalf of the licensee.

4. A stenographic record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by his attorney, with the right to produce evidence in his own behalf, to examine and cross-examine witnesses and to examine documentary evidence produced against him.

5. In case any person refuses to obey a subpoena issued by the presiding member or to answer any proper question put to him during the hearing, the presiding member may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of such person and the produc-

tion of papers. Any failure to obey such order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and his attorney shall have the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

7. If a majority of the members of the board vote in favor of finding the licensee guilty of any act or offense specified in sections 147.55 or 147.56, the board shall prepare written findings of fact and its decision based thereon. Such findings of fact and decision shall be filed with the commissioner of public health who shall within ten days from such filing enter an order revoking, suspending or placing on probation the license as directed by the board in its decision. A copy of the commissioner's order shall immediately be sent by registered mail to the licensee's last known post office address accompanied by a copy of the board's findings of fact and decision.

8. The licensee shall have the right to a judicial review of the board's decision and the order of the commissioner. Such review shall be initiated by application to the district court in and for Polk county, or to the district court of the county in which the licensee resides, by any method permissible under the laws of this state. Such application must be made within thirty days after the date of the commissioner's order. On any such review, the hearing shall be tried as a suit in equity and shall be de novo. [57GA, ch 95,§5]

**148.8 Voluntary surrender of license.** The commissioner of public health is hereby authorized to accept the voluntary surrender of a license if accompanied by a written statement of intention. Such voluntary surrender, when so accepted, shall have the same force and effect as an order of revocation. [57GA, ch 95,§6]

**148.9 Reinstatement.** Any person whose license has been suspended, revoked or placed on probation may apply to the board of medical examiners for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the commissioner of public health who shall thereupon issue a license as directed by the board. [57GA, ch 95,§7]

CHAPTER 149  
PRACTICE OF CHIROPODY

Enforcement, §§147.87, 147.90, 147.92  
Penalty, §147.86

- 149.1 Persons engaged in practice.
- 149.2 Persons not required to qualify.
- 149.3 License.

- 149.4 Approved school.
- 149.5 Amputations—general anesthetics.
- 149.6 Title or abbreviation.

**149.1 Persons engaged in practice.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of chiroprody:

1. Persons who publicly profess to be chiroprpodists or who publicly profess to assume the duties incident to the practice of chiroprody.
2. A chiroprpodist is one who examines or diagnoses or treats ailments of the human foot, medically or surgically. [C24, 27, 31, 35, 39, §2542; C46, 50, 54, §149.1]

**149.2 Persons not required to qualify.** This chapter shall not apply to the following:

1. Physicians and surgeons, or osteopaths, or osteopathic surgeons authorized to practice in this state.
2. Chiroprpodists licensed to practice in the state prior to July 4, 1937.
3. Nothing herein shall affect or alter the existing right now held by retailers, manufacturers or others to sell corrective shoes, arch supports, drugs or medicines for use on feet. [C24, 27, 31, 35, 39, §2543; C46, 50, 54, §149.2]

**149.3 License.** Every applicant for a license to practice chiroprody shall:

1. Be a graduate of an accredited high school.
2. Present a diploma issued by a school of chiroprody approved by the board of chiroprody examiners.
3. Pass an examination in the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacy and materia medica, pathology, physiology, histology, bacteriology, neurology, practical and clinical chiroprody, foot orthopedics, and others, as prescribed by the board of

chiroprody examiners, and must obtain a general average of at least seventy-five percent and not less than seventy percent in any one subject. [C24, 27, 31, 35, 39, §2544; C46, 50, 54, §149.3]

**149.4 Approved school.** No school of chiroprody shall be approved by the board of chiroprody examiners as a school of recognized standing unless said school:

1. Requires for graduation or the receipt of any chiroprpodic degree the completion of a course of study covering a period of at least eight months in each of four calendar years.
2. After January 1, 1940, no school of chiroprody shall be approved by the board of chiroprody examiners which does not have as an additional entrance requirement one year's study in a recognized college, junior college, university or academy. [C24, 27, 31, 35, 39, §2545; C46, 50, 54, §149.4]

Approved schools, §147.32

**149.5 Amputations—general anesthetics.** A license to practice chiroprody shall not authorize the licensee to amputate the human foot or perform any surgery on the human body at or above the ankle, or use any anesthetics other than local. [C24, 27, 31, 35, 39, §2546; C46, 50, 54, §149.5]

**149.6 Title or abbreviation.** Every licensee shall be designated as a registered chiroprpodist and shall not use any title or abbreviation without the designation "practice limited to the foot," nor mislead the public in any way as to the limited field or practice. [C24, 27, 31, 35, 39, §2547; C46, 50, 54, §149.6]

Titles and degrees, §§147.72, 147.73

CHAPTER 150

PRACTICE OF OSTEOPATHY AND SURGERY

Enforcement, §§147.87, 147.90, 147.92, 152.2, 155.3, 514.17  
Penalty, §147.86

- 150.1 Definitions.
- 150.2 Persons engaged in practice.
- 150.3 Persons not required to qualify.
- 150.4 Requirements—osteopathy.
- 150.5 Requirements—osteopathy and surgery.

- 150.6 Approved colleges.
- 150.7 Scope of practice.
- 150.8 Internal curative medicines—surgery.
- 150.9 County physician.
- 150.10 State patients.

**150.1 Definitions.** For the purpose of this code, the following definitions are enacted:

1. Osteopathy is that school of healing art which teaches and practices scientific methods and modalities used in the prevention and

treatment of human diseases, but whose basic concept, in contrast with all other schools, places paramount emphasis upon the normality of blood circulation and all other body functions as a necessary prerequisite to health

and holds that such normality is more certain of achievement by and through manual stimulation or inhibition of the nerve mechanism controlling such functions, or by the correction of anatomical maladjustments.

2. Osteopathic practice is that method of rehabilitating, restoring and maintaining body functions by and through manual stimulation or inhibition of nerve mechanism controlling such body functions, or by the correction of anatomical maladjustment, and/or by other therapeutic agents, methods and modalities used supplementary thereto; but such supplementary agents, methods or modalities shall be used only preliminary to, preparatory to and/or in conjunction with such manual treatment. Such osteopathic practice is hereby declared not to be the practice of medicine within the meaning of chapter 148, and is not subject to the provisions of said chapter. [C35,§2554-g1; C39,§2554.01; C46, 50, 54,§150.1]

Referred to in §150.7

**150.2 Persons engaged in practice.** For the purpose of this title:

1. The following classes of persons shall be deemed to be engaged in the practice of osteopathy:

a. Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to such practice of osteopathy.

b. Persons who treat human ailments by that school of healing art hereinbefore defined as osteopathy.

2. The following classes of persons shall be deemed to be engaged in the practice of osteopathy and surgery:

a. Persons publicly professing to be osteopathic physicians and surgeons, or publicly professing to assume the duties incident to such practice of osteopathic surgery.

b. Persons who treat human ailments according to that school of healing art hereinbefore defined as osteopathy, including the practice of major surgery. [C24, 27, 31,§2548; C35,§2554-g2; C39,§2554.02; C46, 50, 54,§150.2]

Referred to in §150.3

**150.3 Persons not required to qualify.** Section 150.2 shall not be so construed as to include the following classes of persons:

1. Licensed practitioners of medicine and surgery, chiropradists, chiropractors, nurses, and dentists, who are exclusively engaged in the practice of their respective professions.

2. Practitioners of medicine and surgery of the United States army, navy, or public health service when acting in the line of duty in this state, or osteopathic physicians or osteopathic physicians and surgeons, licensed in another state, when incidentally called into this state in consultation with an osteopathic physician or osteopathic physician and surgeon, licensed in this state.

3. Students of osteopathy or of osteopathy and surgery who have completed at least two years study in a college of osteopathy approved

by the osteopathic examiners and who render gratuitous service to persons in case of emergency. [C24, 27, 31,§2549; C35,§2554-g3; C39, §2554.03; C46, 50, 54,§150.3]

**150.4 Requirements—osteopathy.** Every applicant for license to practice osteopathy shall:

1. Present to the osteopathic examiners of Iowa satisfactory evidence that he has a preliminary education equal at least to the requirements for graduation from an accredited high school or other secondary school of equal or greater standards, and that prior to his matriculation in an osteopathic college he has also completed two years of college or university study consisting of at least sixty semester hours of collegiate work in an accredited college or university, during which college or university course he has had at least twelve semester hours of chemistry, eight semester hours of physics, eight semester hours of biology, six semester hours of English, twelve semester hours of nonscience subjects; provided, however, that this two years of collegiate preosteopathic work shall not be required of any applicant who has matriculated in an accredited college of osteopathy prior to March 1, 1935.

2. Present a diploma issued by an accredited college of osteopathy approved by the osteopathic examiners of Iowa.

3. Pass an examination in the science of osteopathy as herein defined and in the practice of the same, including minor surgery, as prescribed by the osteopathic examiners of Iowa. [S13,§2583-a; C24, 27, 31,§2550; C35,§2554-g4; C39, §2554.04; C46, 50, 54,§150.4]

Referred to in §150.5

**150.5 Requirements—osteopathy and surgery.** In addition to all the requirements of section 150.4, every applicant for a license to practice osteopathy and surgery shall:

1. Present satisfactory evidence that he has completed either:

a. A two-year postgraduate course, of nine months each, in an accredited college of osteopathy approved by the osteopathic examiners of Iowa, involving a thorough and intensive study of the subject of surgery as prescribed by such osteopathic examiners, or

b. A one-year postgraduate course of nine months, as prescribed in the preceding paragraph, and, in addition thereto, has completed a one-year course of training as a surgical assistant in a hospital having at least twenty-five beds for patients and equipped for doing major surgical work.

2. Pass an examination as prescribed by the osteopathic examiners in the subject of surgery, which shall be of such character as to thoroughly test the qualifications of the applicant as a practitioner of major surgery. [S13, §2583-a; C24, 27, 31,§2551; C35,§2554-g5; C39, §2554.05; C46, 50, 54,§150.5]

Referred to in §150.7

Basic science examination, §146.16

**150.6 Approved colleges.** No college of osteopathy shall be approved by the osteopathic examiners as an accredited college of recognized standing unless it has in all respects met the standards fixed and required by the bureau of professional education of the American Osteopathic Association, and which requires completion of a scientific course of professional study, including all of the basic subjects and courses then being taught generally in approved medical schools, and covering a period of not less than four full school years of nine months each, in actual resident attendance. Such professional course shall require a specific and published schedule of study and clinical practice for the entire school period, and this schedule shall include a study of:

1. Such basic and fundamental subjects as anatomy (regional, dissection, applied, surgical and microscopic); histology; physiology; pathology; diagnosis (physical, differential and laboratory); chemistry, including bio-chemistry and toxicology; pharmaco-dynamics; bacteriology.

2. Surgery (major, minor, orificial and orthopedic).

3. Principles of osteopathy and comparative therapeutics.

4. Practice of osteopathy as applied to the diagnosis and treatment of human diseases, including clinical practice; neurology and psychiatry; obstetrics; pediatrics; eye, ear, nose and throat; urology; gynecology; proctology; dietetics; X-ray, both diagnostic and therapeutic; hygiene; dermatology; syphilology; and jurisprudence.

5. Supplemental therapeutics, including such subjects as hydrotherapy; electrotherapy; drug therapy; biological therapy and psychotherapy. [S13, §2583-a; C24, 27, 31, §2553; C35, §2554-g6; C39, §2554.06; C46, 50, 54, §150.6]

**150.7 Scope of practice.** One licensed as an osteopathic physician may practice osteopathy as defined in section 150.1, including obstetrics and minor surgery. One specially licensed as an osteopathic physician and surgeon under section 150.5 may also practice major surgery. Neither osteopathic physicians nor osteopathic physicians and surgeons licensed under this chapter shall be subject to the provisions of chapter 148. [C35, §2554-g7; C39, §2554.07; C46, 50, 54, §150.7]

**150.8 Internal curative medicines—surgery.** A license to practice osteopathy or osteopathy and surgery shall not authorize the licensee to prescribe or give internal curative medicines and a license to practice osteopathy shall not authorize the licensee to engage in major operative surgery. The words “internal curative medicine”, as used herein, shall be so construed as not to include antidotes, biologics, drugs necessary to the practice of minor surgery and obstetrics, or to the simpler remedies commonly given for temporary relief. [S13, §2583-b; C24, 27, 31, §2554; C35, §2554-g8; C39, §2554.08; C46, 50, 54, §150.8]

**150.9 County physician.** The board of supervisors of any county may enter into contract with one licensed hereunder for the care and treatment of its indigent sick. [C35, §2554-g9; C39, §2554.09; C46, 50, 54, §150.9]

See also §252.39

**150.10 State patients.** One licensed hereunder shall have the right to examine applicants, recommend admissions and make reports in connection with the admission of patients to all state-owned institutions. [C35, §2554-g10; C39, §2554.10; C46, 50, 54, §150.10]

## CHAPTER 151

### PRACTICE OF CHIROPRACTIC

Enforcement, §§147.87, 147.90, 147.92

Penalty, §147.86

151.1 “Chiropractic” defined.

151.2 Persons not engaged in.

151.3 License.

151.4 Approved college.

151.5 Operative surgery—drugs.

151.6 Display of word “chiropractor”.

**151.1 “Chiropractic” defined.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.

2. Persons who treat human ailments by the adjustment by hand of the articulations of the spine or by other incidental adjustments. [C24, 27, 31, 35, 39, §2555; C46, 50, 54, §151.1]

Referred to in §151.2

**151.2 Persons not engaged in.** Section 151.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed osteopaths, and licensed osteopaths and surgeons who are exclusively engaged in the practice of their respective professions.

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in con-

sultation with a chiropractor licensed in this state.

3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the chiropractic examiners, who practice chiropractic under the direction of a licensed chiropractor and in accordance with the rules of said examiners. [C24, 27, 31, 35, 39, §2556; C46, 50, 54, §151.2]

**151.3 License.** Every applicant for a license to practice chiropractic shall:

1. Present satisfactory evidence that he possesses a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.

2. Present a diploma issued by a college of chiropractic approved by the chiropractic examiners.

3. Pass an examination prescribed by the chiropractic examiners in the subjects of anatomy, physiology, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including a clinical demonstration of vertebral palpation, nerve tracing and adjusting. [C24, 27, 31, 35, 39, §2557; C46, 50, 51, §151.3]

Referred to in §151.4  
Basic science examination, §146.16

**151.4 Approved college.** No college of chiropractic shall be approved by the chiropractic

examiners as a college of recognized standing unless said college:

1. Requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of four academic years totaling not less than four thousand sixty-minute hours in actual resident attendance.

2. Gives an adequate course of study in the subjects enumerated in subsection 3 of section 151.3 and including practical clinical instruction.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [C24, 27, 31, 35, 39, §2558; C46, 50, 54, §151.4]

Approved colleges, §147.32  
Temporary exceptions, 54GA, ch 75, §1

**151.5 Operative surgery — drugs.** A license to practice chiropractic shall not authorize the licensee to practice operative surgery, osteopathy, nor administer or prescribe any drug or medicine included in materia medica. [C24, 27, 31, 35, 39, §2559; C46, 50, 54, §151.5]

**151.6 Display of word "chiropractor".** Every licensee shall place upon all signs used by him, and display prominently in his office the word "chiropractor". [C24, 27, 31, 35, 39, §2560; C46, 50, 54, §151.6]

Titles and degrees, §§147.72, 147.73

## CHAPTER 152

### PRACTICE OF NURSING

Enforcement, §§147.87, 147.90, 147.92  
Penalty, §147.86

152.1 Practice of nursing defined.  
152.2 Exceptions.  
152.3 Licenses.

152.4 Approval of training schools.  
152.5 Professional abbreviations restricted.

**152.1 Practice of nursing defined.** For the purpose of this title any person shall be deemed to be engaged in the practice of nursing as a registered nurse who performs any professional services requiring the application of principles of biological, physical or social sciences and nursing skills in the observation of symptoms, reactions and the accurate recording of facts and carrying out of treatments and medication prescribed by licensed physicians in the care of the sick, in the prevention of disease or in the conservation of health.

For the purpose of this title the practice of nursing as a licensed practical nurse shall mean the performance of such duties as are required in the physical care of a convalescent, a chronically ill or an aged or infirm patient, and in carrying out such medical orders as are prescribed by a licensed physician or nursing services under the direct supervision of a registered nurse, requiring the knowledge of simple nursing procedures but not requiring the professional knowledge and skills of a

registered nurse. [S13, §2575-a32; C24, 27, 31, 35, 39, §2561; C46, 50, 54, §152.1]

Referred to in §152.3

**152.2 Exceptions.** The practice of nursing as defined in this chapter shall not confer any authority to practice medicine as defined in chapter 148 or to practice osteopathy or osteopathy and surgery as defined in chapter 150 and it shall not include the following:

1. The care of sick by domestic servants, housekeepers, nursemaids, companion or household aides, whether employed regularly or because of an emergency or illness, provided such person does not hold himself out or accept employment as a person licensed to practice nursing under this title.

2. The domestic administration of family remedies.

3. The furnishing of nursing assistance in case of an emergency.

4. The performance of nursing services by

students enrolled in accredited schools of nursing incidental to their courses of study.

5. The performance of services by nonprofessional workers in offices, hospitals or nursing homes under the direct supervision of a physician or nurse licensed under this title provided such person does not hold himself out or accept employment as a person licensed to practice nursing under this title.

6. The practice of nursing by a licensed nurse of another state rendered to a person temporarily residing in this state.

7. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

8. The practice of nursing by any licensed nurse of another state employed in this state by the federal government or any bureau, agency or division thereof when performed in the discharge of his official duties. [S13, §§2575-a28, a31, a32; C24, 27, 31, 35, 39, §2562; C46, 50, 54, §152.2]

Titles and degrees, §§147.72, 147.73

**152.3 Licenses.** Licenses to practice nursing shall be issued in two classifications, (1) a license to practice nursing as a registered nurse; and (2) a license to practice nursing as a licensed practical nurse.

Notwithstanding the provisions of section 147.3, every applicant for a license to practice nursing as a registered nurse shall:

1. Have attained the age of twenty years;
2. Be of good moral character;
3. Be a citizen of the United States, or have legally declared his intention of becoming such a citizen;
4. Be a graduate of an accredited high school and have completed a course of study in, and hold a diploma issued by a school of nursing for registered nurses approved by the board of nurse examiners; and,

5. Pass an examination prescribed by the board of nurse examiners which shall include but not be limited to the subjects of medical nursing, surgical nursing, nursing of children, obstetric and gynecologic nursing, psychiatric nursing and communicable disease nursing.

Notwithstanding the provisions of section 147.3, every applicant for a license to practice nursing as a licensed practical nurse shall:

1. Have attained the age of nineteen years;
2. Be of good moral character;
3. Be a citizen of the United States or have legally declared his intention of becoming a citizen;
4. Have completed a course of study through the tenth grade in public schools or its equiv-

alent in parochial or secular schools, and have successfully completed a course of integrated study in and hold a diploma from a school of nursing for licensed practical nurses approved by the board of nurse examiners or have successfully completed at least one year of a course of study in a school of nursing for registered nurses, and

5. Pass an examination on subjects relating to the duties and services of a licensed practical nurse as defined in section 152.1. Said examination, however, shall be based only on the subjects of sanitation, hygiene and the practical application of bedside practice which shall reflect a fair test of the applicant's ability to care for patients in bedside practice.

Upon making application therefor, any person meeting the requirements as to age, character and citizenship specified above, shall be entitled to take the examination for a license as a licensed practical nurse without the educational training required above, if he has reputationally performed the duties and services of a licensed practical nurse as defined in section 152.1, for a period of at least two years in the five years immediately preceding the date of such application. Such application shall be made on or before July 4, 1951, and the statements of the applicant must be verified by affidavits of two physicians licensed under this title. [S13, §§2575-a29, a30; C24, 27, 31, 35, 39, §2563; C46, 50, 54, §152.3]

Referred to in §147.107

**152.4 Approval of training schools.** No school of nursing for registered nurses shall be approved by the board of nurse examiners as a school of recognized standing unless said school is affiliated with a hospital and requires for graduation or any degree the completion of at least a three years course of study in subjects prescribed by the board.

No school of nursing for licensed practical nurses shall be approved by the board of nurse examiners as a school of recognized standing unless said school is affiliated with a hospital and requires for graduation the completion of at least a one year course of study, integrated in theory and practice, as prescribed by the board.

Nothing in this section shall be construed to prohibit the establishment or maintenance of a school of nursing for practical nurses and a school of nursing for registered nurses within the same hospital. [S13, §§2575-a29; C24, 27, 31, 35, 39, §2564; C46, 50, 54, §152.4]

Approved schools, §147.32

**152.5 Professional abbreviations restricted.** No person shall practice nursing as a registered nurse as defined in this chapter or assume the title of registered nurse, or use the abbreviation "RN" after his name or in any manner hold himself out or profess to be a registered nurse in this state without first procuring a license under the provisions of this title.

No person shall assume the title of licensed



practical nurse or use the abbreviation "LPN" after his name or in any manner hold himself out or profess to be a licensed practical nurse without first procuring a license under the provisions of this title.

Nothing in this chapter shall be construed to

prohibit any person not registered or licensed hereunder from performing nursing services with or without pay; provided such person does not hold himself out or profess to be a registered nurse or licensed practical nurse. [C50, 54, §152.5]

## CHAPTER 153

### PRACTICE OF DENTISTRY

Referred to in §§155.3, 514.17  
Enforcement, §§147.87, 147.90, 147.92  
Penalty, §147.86

- 153.1 "Practice of dentistry" defined.
- 153.2 Persons not engaged in.
- 153.3 License.
- 153.4 Names of employed dentists to be posted.
- 153.5 Employment of unlicensed dentist.
- 153.6 Practice under own name.
- 153.7 "Practice of dental hygiene" defined.
- 153.8 Dental hygienists.
- 153.9 Approved hygiene school.
- 153.10 Definition.
- 153.11 Renewal of licenses.
- 153.12 Time of renewal.
- 153.13 Renewal and notice of expiration.

- 153.14 Determining right to renewal.
- 153.15 Record of hearing.
- 153.16 Oaths of witnesses.
- 153.17 Persons entitled to testify.
- 153.18 Grounds for rejecting application.
- 153.19 Record and notice of order.
- 153.20 Appeal.
- 153.21 Effect of appeal.
- 153.22 Reinstatement of former licensee.
- 153.23 Reinstatement of lapsed license.
- 153.24 Revocation of license.
- 153.25 Unprofessional conduct.
- 153.26 Application.

**153.1 "Practice of dentistry" defined.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.

2. Persons who treat, or attempt to correct by any medicine, appliance, or method, any disorder, lesion, injury, deformity, or defect of the oral cavity, teeth, gums, or maxillary bones of the human being, or give prophylactic treatment to any of said organs. [S13, §2600-o; C24, 27, 31, 35, 39, §2565; C46, 50, 54, §153.1]

Referred to in §153.2

**153.2 Persons not engaged in.** Section 153.1 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college.

2. Licensed "physicians and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their professions.

3. Persons who are members of an incorporated society and practice dentistry solely for and among the members of such incorporated society without charge.

4. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

1, 2. [S13, §§2600-l, -o; C24, 27, 31, 35, 39, §2566; C46, 50, 54, §153.2]

3. [S13, §2600-l; C24, 27, 31, 35, 39, §2566; C46, 50, 54, §153.2]

4. [C24, 27, 31, 35, 39, §2566; C46, 50, 54, §153.2]

**153.3 License.** Every applicant for a license to practice dentistry shall:

1. Present a diploma issued by a dental college approved by the dental examiners.

2. Pass an examination prescribed by the dental examiners in the science of dentistry and the practice of dental surgery.

The state department of health, with the approval of the dental examiners, may accept in lieu of the requirements in subsections 1 and 2 of this section, certificate of satisfactory examination issued by the national board of dental examiners of the United States of America, but every applicant for a license, upon the basis of such certificate, shall be required to pay the prescribed fee for a license issued under reciprocal agreements. [S13, §2600-d; C24, 27, 31, 35, 39, §2567; C46, 50, 54, §153.3]

Approved colleges, §147.82  
License exception, §147.10

**153.4 Names of employed dentists to be posted.** Every person who owns, operates, or controls a dental office in which anyone other than himself is practicing dentistry shall display the name of such person in a conspicuous manner at the public entrance to said office. [S13, §2600-o1; C24, 27, 31, 35, 39, §2568; C46, 50, 54, §153.4]

**153.5 Employment of unlicensed dentist.** No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place, but persons who are not licensed dentists may perform laboratory work. [S13,§2600-o2; C24, 27, 31, 35, 39,§2569; C46, 50, 54,§153.5]

**153.6 Practice under own name.** No person shall operate any place in which dentistry is practiced under any other name than his own, or display, in connection with his practice, on any advertising matter any other than his own name; but two or more licensed dentists who are associated in the practice may use all of their names, and a widow, heir, or any legal representative of a deceased dentist, may operate such office for a reasonable time for the purpose of disposing of the same. [C24, 27, 31, 35, 39,§2570; C46, 50, 54,§153.6]

**153.7 "Practice of dental hygiene" defined.** Any woman may be licensed as a dental hygienist and such license shall authorize her to remove lime deposits, accretions, and stains upon the exposed surfaces of the teeth and directly beneath the free margins of the gums, but such practice must be carried on in a dental office, a public or private school, or in a public institution, and under the supervision of a licensed dentist. Dental hygienists shall not otherwise engage in the practice of dentistry. [C24, 27, 31, 35, 39,§2571; C46, 50, 54,§153.7]

**153.8 Dental hygienists.** Every applicant for a license to practice dental hygiene shall:

1. Present satisfactory evidence of a preliminary education equivalent to two years in an accredited high school or other secondary school.
2. Present a diploma from a training school for dental hygiene approved by the dental examiners.
3. Pass an examination prescribed by the dental examiners in the subjects taught in the curriculum of an accredited training school for dental hygiene. [C24, 27, 31, 35, 39,§2572; C46, 50, 54,§153.8]

**153.9 Approved hygiene school.** No training school for dental hygiene shall be approved by the dental examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of not less than one year of at least nine months in actual continuous attendance.
2. Gives a suitable course covering the subject of dental hygiene.
3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as specified herein. [C24, 27, 31, 35, 39,§2573; C46, 50, 54,§153.9]

Approved schools, §147.32

**153.10 Definition.** For the purpose of this chapter, "commissioner" shall mean the com-

missioner of public health or his deputy. [C35, §2573-g1; C39,§2573.01; C46, 50, 54,§153.10]

**153.11 Renewal of licenses.** Every license to practice dentistry or dental hygiene shall expire on the thirtieth day of June following the date of issuance of such license. Application for renewal of such license shall be made in writing to the department at least sixty days prior to the expiration of such license, accompanied by the legal fee and the affidavit of the applicant, upon a form to be prescribed by said department, in which affidavit the applicant shall state in substance that he has not during the term of the license which he then holds or the last renewal thereof violated any of the provisions of this title or committed any of the acts of unprofessional conduct, naming them, as defined in this title. [C35,§2573-g2; C39,§2573.02; C46, 50, 54,§153.11]

**153.12 Time of renewal.** Such renewal of license shall not be issued by the department prior to the fifteenth day of May of each year. [C35,§2573-g3; C39,§2573.03; C46, 50, 54,§153.12]

**153.13 Renewal and notice of expiration.** Every year the department shall notify each licensee by mail of the expiration of his license, and subject to the provisions of this chapter the same shall be renewed upon application being made, without examination. [C35,§2573-g4; C39,§2573.04; C46, 50, 54,§153.13]

**153.14 Determining right to renewal.** If, prior to the renewal of any such license, the commissioner is informed upon oath or affirmation lawfully administered, that any such applicant has during the term of his last license or the last renewal thereof violated any of the provisions of this title or committed any of the acts of unprofessional conduct as defined in this title, or if it is certified in writing to said department by the state board of dental examiners, or any member thereof, that said board of examiners, or any member thereof, is credibly informed that such violation of law or act of unprofessional conduct has been so committed by such applicant, then the department shall notify such applicant by certified letter, with postage prepaid, mailed to his address as shown by the records of said department that such information or certificate has come to the attention of the department, and that on a day named the applicant may appear before the commissioner at the office of the department and show cause why said license should be renewed. In such event the renewal of license shall not be made prior to the date so fixed and the making of such a showing by the applicant. [C35,§2573-g5; C39,§2573.05; C46, 50, 54,§153.14; 57GA, ch 267,§28]

**153.15 Record of hearing.** The time and place of such hearing before the commissioner shall be entered as part of the records of the department, and shall be open to public inspection. [C35,§2573-g6; C39,§2573.06; C46, 50, 54, §153.15]

**153.16 Oaths of witnesses.** The commissioner is hereby empowered to and shall administer oaths to all persons offering testimony at such hearing. [C35,§2573-g7; C39,§2573.07; C46, 50, 54,§153.16]

**153.17 Persons entitled to testify.** Upon such hearing being had any person having knowledge of the facts pertaining to the propriety of the renewal of such license may testify thereto. [C35,§2573-g8; C39,§2573.08; C46, 50, 54,§153.17]

**153.18 Grounds for rejecting application.** If at said hearing, and if appeal is taken, then upon appeal as hereinafter provided, it shall be established that the applicant has theretofore failed to comply with all of the provisions of this title or has during the term of his license or the last renewal thereof committed any of the acts of unprofessional conduct as defined in this title, then the commissioner shall reject such application and said license shall not be renewed except as hereinafter provided. [C35,§2573-g9; C39,§2573.09; C46, 50, 54,§153.18]

Unprofessional conduct, §153.25

**153.19 Record and notice of order.** The minutes of all evidence heard by said commissioner or exhibits introduced, at said hearing for or against the granting of said application for a license, together with the order of the commission granting or rejecting such application for renewal of license, which shall be in writing, shall be and become a part of the records of said department and shall be open to public inspection. Written notice of said order shall be mailed to the applicant by the department. [C35,§2573-g10; C39,§2573.10; C46, 50, 54, §153.19]

**153.20 Appeal.** If the commissioner should reject any such application, and refuse to renew any such license, the applicant may, within thirty days after the order of the commissioner, and not afterward, appeal therefrom by a writ of certiorari to the district court where upon such appeal the hearing shall be de novo and all legal evidence pertaining to the matter of whether or not such license should be renewed may be submitted, including new evidence not submitted to the commissioner. [C35,§2573-g11; C39,§2573.11; C46, 50, 54,§153.20]

**153.21 Effect of appeal.** The order of the commissioner rejecting such application, and refusing to renew such license, shall remain in force and effect until such appeal is successfully prosecuted by the applicant and finally determined upon the merits and no new or temporary license shall be issued to the applicant pending such appeal. [C35,§2573-g12; C39, §2573.12; C46, 50, 54,§153.21]

**153.22 Reinstatement of former licensee.** Any former licensee whose application for renewal of license has been rejected by the commissioner and who has not successfully prosecuted an appeal therefrom as herein provided shall not thereafter receive such a

license or renewal thereof except upon the recommendation of the examining board of his profession, with the approval of the commissioner, and the payment of the renewal fees then due. Such examining board may require examination of the former licensee, in which case he shall pay the examination fees provided by law. [C35,§2573-g13; C39,§2573.13; C46, 50, 54,§153.22]

**153.23 Reinstatement of lapsed license.** Any former licensee who has allowed his license to lapse by failing to file application for the renewal of the same as above provided may be reinstated with or without examination as the examining board of his profession may decide, but then only upon the recommendation of said examining board, with the approval of the commissioner, and upon payment of the renewal fees then due, and then only upon filing application and affidavit with the department in the manner and form above provided.

If examination shall be required by said examining board such former licensee shall pay the fees provided by law. [C35,§2573-g14; C39, §2573.14; C46, 50, 54,§153.23]

Application and affidavit, §153.11

**153.24 Revocation of license.** As to dentists and dental hygienists a license to practice either of such professions shall be revoked or suspended in the manner and upon the grounds elsewhere provided in this title, and also when the affidavit accompanying the application of such licensee for renewal of license filed with the department is not in all respects true. [C35, §2573-g15; C39,§2573.15; C46, 50, 54,§153.24]

Revocation of license, §147.55

**153.25 Unprofessional conduct.** As to dentists and dental hygienists "unprofessional conduct" shall consist of any of the acts denominated as such elsewhere in this title, and also any other of the following acts:

1. All advertising of any kind or character other than the carrying or publishing of a professional card or the display of a window or street sign at the licensee's place of business; which professional card or window or street sign shall display only the name, address, profession, office hours, and telephone connections of the licensee.

2. Exploiting or advertising through the press, on the radio, or by the use of handbills, circulars or periodicals, other than professional cards stating only the name, address, profession, office hours, and telephone connections of the licensee.

3. Employing or making use of advertising solicitors or publicity agents or soliciting employment personally or by representative. [C35,§2573-g16; C39,§2573.16; C46, 50, 54,§153.25]

Additional prohibitions, §147.56

**153.26 Application.** The provisions hereof shall not in any wise apply to acts done or violations of law committed prior to the enactment hereof. [C35,§2573-g17; C39,§2573.17; C46, 50, 54,§153.26]

Constitutionality, 46GA, ch 24,§5  
Omnibus repeal, 46GA, ch 24,§6

## CHAPTER 154

## PRACTICE OF OPTOMETRY

Enforcement, §§147.87, 147.90, 147.92

Penalty, §147.86

- 154.1 "Optometry" defined.
- 154.2 Persons not engaged in.
- 154.3 License.
- 154.4 Revocation.
- 154.5 Approved school.

- 154.6 Expiration and renewal of licenses.
- 154.7 Notice of expiration.
- 154.8 Postgraduate study as requisite.
- 154.9 Ophthalmic lenses—sale.

**154.1 "Optometry" defined.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons who employ any means other than drugs for the measurement of the powers of vision of the human eyes, and adapt lenses for aiding the same.

2. Persons who allow the public to use any mechanical device for such purpose.

3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession. [S13,§2583-g; C24, 27, 31, 35, 39,§2574; C46, 50, 54,§154.1]

**154.2 Persons not engaged in.** This chapter shall not be construed to include the following classes:

1. Merchants or dealers who sell glasses as merchandise in an established place of business and who do not profess to be optometrists or practice optometry as herein defined.

2. Licensed physicians and surgeons. [S13, §2583-q; C24, 27, 31, 35, 39,§2575; C46, 50, 54, §154.2]

**154.3 License.** Every applicant for a license to practice optometry shall:

1. Present satisfactory evidence of a preliminary education equivalent to at least four years study in an accredited high school or other secondary school.

2. Present a diploma from an accredited school of optometry.

3. Pass an examination prescribed by the optometry examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry. [S13,§2583-l; C24, 27, 31, 35, 39,§2576; C46, 50, 54,§154.3]

Referred to in §154.5  
Accredited high schools, §147.31

**154.4 Revocation.** In addition to the grounds for revocation of license set forth in section 147.55, any licensed optometrist who shall practice or advertise as practicing his profession, under a false or assumed name or shall by such advertisement mislead the public to believe that he is practicing for or on behalf of an unlicensed person, shall have his license revoked. [C35,§2576-e1; C39,§2576.1; C46, 50, 54, §154.4]

**154.5 Approved school.** No school of optometry shall be approved by the optometry

examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of at least four school years of nine months each year of actual continuous attendance.

2. Gives an adequate course of study in which at least one hundred fifty hours of the instruction are devoted to each of the subjects enumerated in subsection 3 of section 154.3.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [S13,§2583-l; C24, 27, 31, 35, 39,§2577; C46, 50, 54,§154.5]

Approved schools, §147.32

**154.6 Expiration and renewal of licenses.**

Every license to practice optometry shall expire on the thirtieth day of June of each year. Application for renewal of such license shall be made in writing to the department of health at least thirty days prior to the annual expiration date, accompanied by the legal renewal fee and the affidavit of the licensee or other proof satisfactory to the department and to the Iowa state board of optometry examiners, that said applicant has attended, since the issuance of the last license to said applicant, an educational program or clinic as conducted by the Iowa optometric association, or its equivalent, for a period of at least two days. The attendance requirement at said educational program or clinic shall not be conditioned upon membership in said Iowa optometric association. Nonmembers shall be admitted to said annual educational program or clinic upon payment of their pro rata share of the cost. In lieu of attendance at the said annual educational program or clinic, it shall be the duty of the board of optometry examiners to recognize and approve attendance at local optometric study group meetings as shall, in the judgment of said board, constitute an equivalent to attendance at the annual educational program of said association. [C46, 50, 54,§154.6]

**154.7 Notice of expiration.** Notice of expiration of the annual license to practice optometry shall be given by the state department of health to all certificate holders by mailing said notice to the last known address of such licensee on or before the fifteenth day of April of each year, and said notice shall contain a statement of the educational program attend-

ance requirement and the amount of legal fee required as a condition to the renewal of the license for the coming year. Subject to the provisions of this chapter, said license shall be renewed without examination. [C46, 50, 54, §154.7]

**154.8 Postgraduate study as requisite.** The filing of proof of attendance at an educational program or clinic as provided in this chapter shall be a condition precedent to the issuance of a renewal license, provided, however, that the Iowa state board of optometry examiners may reinstate such licensee to practice optometry upon presentation of satisfactory proof of postgraduate study of a standard approved by said examiners, and payment of all fees due. Licensees residing and practicing in other

states are not required to comply with the postgraduate requirement. [C46, 50, 54, §154.8]

**154.9 Ophthalmic lenses—sale.** It shall be unlawful for any person to dispense an ophthalmic lens or lenses, without first having obtained a written prescription or order therefor from a duly licensed practitioner referred to in this chapter, or other practitioner authorized to write said prescriptions or orders. Each such practitioner shall furnish his patient without charge a copy of his patient's prescription. For the purpose of this section, an ophthalmic lens shall mean one which has been ground to fill the requirements of a particular prescription. [C46, 50, 54, §154.9]

Constitutionality, 49GA, ch 118, §6

## CHAPTER 155

### PHARMACISTS AND WHOLESALE DRUGGISTS

Enforcement, §§147.87, 147.90, 147.92, 147.99

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#### DIVISION I

##### LICENSE TO PRACTICE PHARMACY

**155.1 Persons engaged in.** For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of pharmacy:

1. Persons who engage in the business of selling, or offering or exposing for sale, drugs and medicines at retail.

2. Persons who compound or dispense drugs and medicines or fill the prescriptions of licensed physicians and surgeons, dentists, or veterinarians. [C97, §2588; SS15, §2588; C24, 27, 31, 35, 39, §2578; C46, 50, 54, §155.1]

Referred to §155.2

**155.2 Persons not engaged in.** Neither section 155.1 nor section 155.6 shall be construed to include the following classes:

1. Persons who assist in the selling or dispensing of drugs and medicines under the supervision of a licensed pharmacist.

2. Persons who sell, offer or expose for sale, completely denatured alcohol or concentrated

lye, insecticides or fungicides in original packages or biological products as defined in chapter 166 or commercial feeds or stock tonics as defined in chapter 198.

3. Persons licensed to practice medicine, dentistry, or veterinary medicine who dispense drugs and medicines as an incident to the practice of their professions.

4. Persons who sell, offer or expose for sale proprietary medicines or domestic remedies which are not in themselves poisonous or in violation of the law relative to intoxicating liquors. [C97, §2588; SS15, §2588; C24, 27, 31, 35, 39, §2579; C46, 50, 54, §155.2]

Referred to in §155.3  
Intoxicating liquors, ch 123 et seq.

**155.3 Definitions.** For the purposes of this chapter:

1. "Drugs and medicines" shall include all medicinal substances and preparations for internal or external use recognized in the United State Pharmacopoeia or National Formulary, and any substance or mixture of substances

Intended to be used for the cure, mitigation, or prevention of disease of either man or animals.

2. "Pharmacy" shall mean a drug store in which drugs and medicines are exposed for sale or sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist.

3. The term "board" shall mean the board of pharmacy examiners established by chapter 147.

4. The term "person" means any individual, firm, partnership, corporation or association.

5. The term "wholesaler" shall mean any person operating or maintaining a manufacturing plant, wholesale distribution center, wholesale business or any other business in which drugs, medicinal chemicals, medicines or poisons, are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale at wholesale to a retailer for resale in this state. The term "wholesaler" shall not include those wholesalers who sell only the products defined in subsection 7.

6. The term "wholesale salesman" means any individual who takes an order from a retailer in this state for, or makes delivery of, any drug, medicinal chemical, medicines or poisons, to a retailer in this state for resale. The term "wholesale salesman" shall not apply to those salesmen who sell only the products defined in subsection 7.

7. For the purpose of division II of this chapter and subsections 3 to 8, inclusive, of this section, the term "proprietary medicines" or "domestic remedies" means and includes completely compounded packaged drugs, medicines and nonbulk chemicals which are not in themselves poisonous or in violation of the law relative to intoxicating liquors which are sold, offered, promoted and advertised by the manufacturer or primary distributor directly to the general public under a trademark, trade name, or other trade symbol privately owned, whether or not registered in the United States Patent Office, and the labeling of which bears (a) a statement specifying affections, symptoms or purposes for which the product is recommended, (b) adequate directions for use and such cautions as may be necessary for the protection of users, (c) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, (d) a statement of the active ingredients, and (e) the name and address of the manufacturer or primary distributor: Provided, however, this definition shall not apply to the sale, or offering for sale, of any drug for use by man which is only advertised or promoted professionally to licensed physicians, dentists or veterinarians by the manufacturer or primary distributor, or the label of which bears the statement "Caution: Federal law prohibits dispensing without prescription", or which sale is by law limited to dispensing by prescription.

8. The provisions of division II of this chapter and subsections 3 to 8, inclusive, of this

section, shall not apply to persons selling, offering or exposing for sale, the preparations referred to in subsections 2, 3 and 4 of section 155.2 or persons licensed to practice veterinary medicine under the provisions of chapter 169 who dispense or sell veterinary drugs, or medicines for animal use only, or the holder of an itinerant vendor's license as defined in chapter 203 which persons shall not be required to have a license under this chapter while operating under the provisions of subsections 2, 3 or 4 of section 155.2 or licensed under the provisions of chapter 169 or 203 or to hospitals licensed under chapter 135B or to persons licensed under chapters 148, 150 or 153. [C24, 27, 31, 35, 39, §2580; C46, 50, 54, §155.3; 57GA, ch 96, §1]

Referred to in §§155.23, 155.24, 155.25

**155.4 License.** Every applicant for a license to practice pharmacy shall:

1. Present satisfactory evidence of possessing the qualifications enumerated in one of the following paragraphs:

a. The completion of two years work in an accredited college of pharmacy and at least two years of practical experience as a clerk under the supervision of a licensed pharmacist in a pharmacy.

b. The completion of three years work in an accredited college of pharmacy and at least one year of practical experience as specified in the preceding paragraph.

2. Pass an examination prescribed by the pharmacy examiners in the science and practice of pharmacy. This section shall apply to all persons who prior to July 4, 1936, were actually in attendance in any recognized college of pharmacy, irrespective of the time when such persons apply for said license. [S13, §2589-b; C24, 27, 31, 35, 39, §2581; C46, 50, 54, §155.4]

Referred to in §155.5

**155.5 Applicants for license—requirements.** On and after July 4, 1936, every applicant for a license to practice pharmacy, except for those embraced in section 155.4, shall:

1. Be not less than twenty-one years of age, and of good moral character, and of temperate habits.

2. Be a graduate of an accredited high school, or its equivalent.

3. Be a graduate of a school or college of pharmacy, or of a department of pharmacy of a university, recognized and approved by the board of pharmacy examiners.

4. File proof, satisfactory to the board, of a minimum of one year practical experience in a pharmacy, substantiated by proper affidavits; said experience to be under the supervision of a licensed pharmacist and not concurrent with time of college attendance.

5. Pass an examination prescribed by the board of pharmacy examiners in the science and practice of pharmacy. [C35, §2581-g1; C39, §2581.1; C46, 50, 54, §155.5]

**155.6 Sales by unlicensed person.** No unlicensed person or licensed pharmacist shall allow anyone who is not a licensed pharmacist to sell, or dispense any drugs, or medicines or fill the prescriptions of licensed physicians, dentists and veterinarians, unless the same be done under the immediate personal supervision of a licensed pharmacist, and all drugs, and medicines sold, exposed, or offered for sale shall be under the immediate personal supervision of a registered pharmacist at all times except for temporary absence, however during a period of temporary absence of a registered pharmacist no drugs or medicines shall be sold or offered for sale in the pharmacy except proprietary medicines or domestic remedies. [C97,§2588; SS15,§2588; C24, 27, 31, 35, 39,§2582; C46, 50, 54,§155.6]

44GA, ch 54,§3, editorially divided  
Referred to in §155.2

**155.7 Display of certificate.** No person shall allow or permit the certificate of a licensed pharmacist to remain in or on display in his place of business, unless the licensed pharmacist owning said certificate is employed therein.

No licensed pharmacist shall allow or permit his certificate, as a licensed pharmacist, to remain in or on display at any place of business unless legally employed therein. [C31, 35, §2582-d1; C39,§2582.1; C46, 50, 54,§155.7]

**155.8 Use of terms.** No person shall use the word or words: "drug", "druggist", "drug store", "pharmacy", "pharmacist", or "apothecary", on any sign, card, circular, device, or advertisement, unless his place of business is operated as a pharmacy as defined in this chapter. [C97,§2588; SS15,§2588; C31, 35,§2582-d2; C39,§2582.2; C46, 50, 54,§155.8]

**155.9 Approved colleges.** No college of pharmacy shall be approved by the pharmacy examiners as a college of recognized standing unless the entrance and graduation requirements are equivalent to those prescribed by the American association of colleges of pharmacy. [S13,§2589-b; C24, 27, 31, 35, 39,§2583; C46, 50, 54,§155.9]

Approved colleges, §147.32

#### DIVISION II PHARMACY BUSINESS LICENSES

**155.10 Pharmacy license.** No person shall establish, conduct or maintain a pharmacy in this state without a license. This license shall be identified as a retail pharmacy license. [57GA, ch 96,§2(1)]

**155.11 Wholesale drug license.** No person shall establish, conduct or maintain a wholesale business as defined in this chapter without a license. This license shall be identified as a wholesale drug license. [57GA, ch 96,§2(2)]

**155.12 Application.** Licenses shall be obtained from the board for each and every place of business. Applications shall be upon such forms and shall contain such information as the board may reasonably require. Each appli-

cation for license shall be made by owner to the secretary of the board, accompanied by the license fee, which shall be paid over into the state treasury and credited to the general fund if the license is issued. The license fee for an original application for a retail pharmacy license or a wholesale drug license, shall be twenty-five dollars and the annual renewal license fee shall be fifteen dollars. These licenses shall be due annually on the first day of each January. The board shall issue a license upon receipt of an application accompanied by the license fee and after approval thereof by the board.

The application for a retail pharmacy license shall show the owner's name and the name or names of the registered pharmacists in the pharmacy and signed by the owner and each pharmacist. Every registered pharmacist shall immediately notify the board of any change of his address or employment. [57GA, ch 96, §2(3)]

**155.13 Renewal—denial, suspension or revocation.** Each license issued under this chapter unless sooner suspended or revoked, shall be renewable annually, on January 1, of each year upon payment of the annual license fee. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. The board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regulations promulgated hereunder, or the violation thereof, and in addition the board shall have the power to deny, suspend or revoke a license, when the applicant or licensee, or any employee, providing the offense is committed on licensed premises or is in the conduct of the business licensed, is guilty of any of the following facts or offenses:

1. Fraud in procuring a license.
2. Conviction of an offense, or where a penalty or fine has been invoked, for violation of chapter 147, chapter 203, chapter 203A, chapter 204, or the federal food, drug and cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.
3. Distributing on the premises of intoxicating liquors or drugs for any other than lawful purposes.
4. Willful or repeated violations of the title on "Public Health" of the Code or the rules of the department of health.
5. Use of untrue or misleading statements, or untrue or misleading advertising, pertaining to the products which they are licensed to sell, or pertaining to the type of license they hold.
6. Substitution of a drug, substance, or brand other than the drug, substance or brand ordered in the prescription of a physician, dentist or veterinarian licensed by law.

7. Conviction of a crime involving turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.

8. Violations of the provisions of this chapter. [57GA, ch 96,§2(3)]

57GA, ch 96,§2 (3), editorially divided

**155.14 Notice—hearing.** Such denial, suspension or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension or revocation shall become effective thirty days after the mailing or service thereof, unless the applicant or licensee, within such thirty-day period shall give written notice to the board requesting a hearing in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the board. At any time at or prior to the hearing the board may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified or set aside by the board. A copy of such decisions, setting forth the findings of facts and the particular reasons for the decision shall be sent by registered mail, or served, unless the applicant or licensee, within such thirty days, appeals the decision to the district court. [57GA, ch 96,§2(3)]

Referred to in §155.15  
57GA, ch 96,§2 (3), editorially divided

**155.15 Procedure at hearing.** The procedure governing hearings authorized by section 155.14 shall be in accordance with rules promulgated by said board. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed to the court. A copy or copies of the transcript may be obtained by the party or parties involved in the controversy on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees as prescribed by law in courts of record in criminal cases. [57GA, ch 96,§2(3)]

57GA, ch 96,§2 (3), editorially divided

**155.16 Appeal.** Any applicant or licensee who is dissatisfied with the decision of the board as a result of the hearing provided herein may, within thirty days after the mailing or service of notice of the decision as provided in said section, file a notice of appeal in the district court of the county in which the licensee is located and serve a copy of said notice of appeal upon said board. Thereupon the board shall within thirty days certify and file with the court a copy of the record and decision, including the transcript of the hearings upon which the decision was based. The

trial before the court shall be an equity action and legal evidence pertaining to the matter of whether or not such permit shall be denied, suspended or revoked as the case may be, may be submitted including new or additional evidence not submitted to the board, and the court shall have the power to affirm, modify or reverse the decision of the board. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved. [57GA, ch 96,§2(4)]

**155.17 Sanitary requirements.** The following sanitary regulations shall be complied with in every retail pharmacy licensed under this chapter:

1. The floors, walls, ceilings, woodwork, windows, utensils, machinery and other equipment shall be kept in a thoroughly clean condition.

2. All parts of the interior of the premises shall be at all times adequately protected from dirt and contamination from any source.

3. Dirt, refuse and waste products subject to decomposition or fermentation shall be removed daily.

4. Clothing of all persons shall be kept clean. No person infected with any communicable disease as defined in chapter 139 shall work in any establishment.

5. All apparatus and equipment shall be kept in a thoroughly clean condition. [57GA, ch 96,§2(5)]

**155.18 Prescription department.** The prescription department of a retail pharmacy shall contain the following:

1. The latest or current edition of the United States Pharmacopoeia and National Formulary and any supplement thereto.

2. A prescription balance sensitive to one-fourth grain.

3. The necessary instruments and apparatus to properly compound and dispense drugs and medicines. [57GA, ch 96,§2(6)]

**155.19 Rules and regulations.** The board shall adopt, amend, promulgate and enforce such reasonable rules, regulations and standards as may be designed to accomplish the purposes of this chapter, and as may be necessary for the provisions set forth herein. [57GA, ch 96,§2(7)]

**155.20 Restricted drugs and medicines.** No prescription-legend drug or medicine, which contains the legend: "Caution: Federal law prohibits dispensing without prescription", or which drug or medicine can only be dispensed upon a prescription according to law, may be sold at wholesale or brokerage for resale to other licensed pharmacies. [57GA, ch 96,§2(8)]

Referred to in §155.22

**155.21 Wholesalers restricted.** No wholesaler shall sell or distribute, nor shall any wholesale salesman take orders for or deliver any drug, or medicine, which contains the



legend caution: "Caution: Federal law prohibits dispensing without prescription", or where the dispensing of said drug or medicine is limited to prescriptions by law, to any retailer in this state for the purpose of resale unless such retailer is licensed as a pharmacy as provided in this chapter to keep for sale and to sell such drugs or medicine at retail. [57GA, ch 96,§2(9)]

Referred to in §155.22

**155.22 Exceptions.** Sections 155.20 and 155.21 do not apply to sales by wholesalers of drugs and medicines to licensed physicians, dentists or veterinarians. [57GA, ch 96,§2(10)]

**155.23 Exceptions.** Nothing contained in this division and subsections 3 to 8, inclusive of section 155.3 shall be construed to prevent the sale of drugs, medicines, medicinal chemicals, poisons, proprietary medicines or domestic remedies at wholesale to a licensed wholesaler, or to the state department of health, or to the board of pharmacy examiners. [57GA, ch 96,§2(11)]

**155.24 Inspections.** The board shall make or cause to be made such inspections of pharmacies and wholesalers as may be reasonably necessary to accomplish the purposes of this division and subsections 3 to 8, inclusive of section 155.3. [57GA, ch 96,§2(12)]

**155.25 Sales exempted.** Anything in this division and subsections 3 to 8, inclusive of section 155.3, to the contrary notwithstanding, persons or places of business, including but not limited to manufacturers, wholesalers and retailers who sell, offer or expose for sale, drugs, medicines, medicinal chemicals, non-bulk chemicals, paints or lacquer products or both, mixtures of substances, biologics, commercial feeds, stock tonics or any other substance or substances or proprietary medicines of any kind to be used for the cure, mitigation or prevention of disease of animals or fowl and so labeled or who sell, offer or expose for sale any preparation of any nature for any agricultural use and so labeled, including but not limited to, insecticides, fungicides, herbicides, rodenticides, pesticides, chemicals and

poisons, shall be exempt from both the provisions of this chapter. [57GA, ch 96,§2(13)]

**155.26 Possession of prescription drugs.** Any person found in possession of a drug or medicine limited by law to dispensation by a prescription, unless such drug or medicine was so lawfully dispensed, shall be deemed guilty of violating the provisions of this section, and upon conviction thereof, shall be fined not more than one thousand dollars or be imprisoned in the county jail for not more than one year, or both. This section shall not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, or nurse acting under the direction of a physician, nor to a common carrier or messenger when transporting such drug or medicine in the same unbroken package in which the drug or medicine was delivered to him for transportation. [57GA, ch 96,§2(14)]

**155.27 Penalty.** Any person violating any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not otherwise provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars or shall be imprisoned in the county jail for not less than thirty days, or both. [57GA, ch 96,§2(15)]

**155.28 Injunction.** Notwithstanding the existence or pursuit of any other remedy, the board may, in the manner provided by law maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a retail pharmacy or wholesaler, without license, or to prevent the violation of the provisions of this chapter. Upon request of the board, the attorney general shall institute the proper proceedings and the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [57GA, ch 96,§2(16)]

Constitutionality, 57GA, ch 96,§2(17)  
Division II effective January 1, 1958

## CHAPTER 156

### PRACTICE OF FUNERAL DIRECTING AND EMBALMING

Enforcement, §§147.87, 147.90, 147.92

Penalty, §147.86

156.1 Definitions.  
156.2 Persons excluded.  
156.3 Eligibility requirements.  
156.4 Funeral directors.  
156.5 Embalmers.  
156.6 Concurrent study and studentship.  
156.7 Renewal of licenses.

156.8 Studentship.  
156.9 Revocation of license.  
156.10 Inspection.  
156.11 After death of licensee.  
156.12 Funeral directors and embalmers—solicitation of business—penalty.

#### 156.1 Definitions.

1. "Board" shall mean board of funeral directors and embalmer examiners.

2. A "funeral director" is a person engaged in or conducting, or holding himself out, in whole or in part, as being engaged in:

a. Preparing, other than embalming, for the burial or disposal, or directing and supervising the burial or disposal of dead human bodies.

b. Furnishing, in connection with the disposition or sale of any casket, vault or other burial receptacle, any funeral services, or embalming, directly or indirectly, by himself, or in conjunction with another.

c. Who shall, in connection with his name or funeral establishment, use the words, "funeral director", "mortician" or any other title implying that he is engaged as a funeral director as defined in this subsection.

3. An "embalmer" is a person engaged in, or holding himself out as engaged in, the practice of disinfecting or preserving dead human bodies, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by direct application into the organs or cavities for the purpose of preservation or disinfection.

Nothing contained in this chapter shall be construed as prohibiting the operation of any funeral home or funeral establishment by any person, fiduciary, firm, co-operative burial association or corporation; provided that each such person, firm, co-operative burial association or corporation shall at all times employ an embalmer and funeral director licensed under the provisions of this chapter, and shall keep the state department of health advised of the name of the licensee or licensees so employed. [S13,§2575-a36; C24, 27,§2584; C31, 35,§2585-c1; C39,§2585.01; C46, 50, 54,§156.1]

Referred to in §156.2

**156.2 Persons excluded.** Section 156.1 shall not be construed to include the following classes of persons:

1. Manufacturers, wholesalers, and jobbers of caskets, vaults, or other burial receptacles not engaged in the other functions of furnishing of funeral services or embalming as above defined.

2. Those who distribute or sell caskets, vaults, or any other burial receptacles and who do not furnish any funeral service or embalming, directly or indirectly, by himself or in conjunction with another, except a registered student under the personal direction of a licensed funeral director or embalmer.

3. Those who use bodies for scientific purposes as defined in sections 142.1, 142.2, and 142.5; or those who make scientific examinations of dead bodies, or perform autopsies.

4. Physicians or institutions who preserve parts of human bodies either for scientific purposes or for use as evidence in prospective legal cases.

5. Persons burying their own dead under burial permit from the registrar of vital statistics. [C31, 35,§2585-c2; C39,§2585.02; C46, 50, 54,§156.2]

### 156.3 Eligibility requirements.

1. To be eligible to take the examination for funeral director's or embalmer's license, a person must:

a. After April 3, 1953, have completed one academic year of instruction in a recognized college, junior college, or university in a course of study approved by the board or have equivalent education as defined by the board and have satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

b. After September 1, 1955, have completed two academic years of instruction in a recognized college, junior college or university in a course of study approved by the board or have equivalent education as defined by the board and have satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

2. The eligibility requirements set forth in subsection 1 shall not apply to any student to whom a certificate of studentship was issued before April 3, 1953, and who satisfies the legal requirements in effect at the time of his legal registration. [S13,§2575-a37,-a38; C24, 27,§2585; C31, 35,§2585-c3,-c4,-c9; C39,§2585.03, 2585.04, 2585.09; C46, 50,§156.3, 156.4, 156.9; C54,§156.3]

### 156.4 Funeral directors.

1. The practice of a funeral director must be conducted from a funeral establishment equipped for the care and preparation for burial or transportation of dead human bodies.

2. No person shall engage in, or hold himself out as engaged in, the practice of a funeral director unless licensed.

3. Applications for the examination for a funeral director's license shall be in writing and verified on a blank to be prescribed and furnished by the board.

Accompanying the application shall be affidavits from at least two reputable freeholders of the county in which the applicant resides or proposes to conduct the practice of a funeral director to the effect that the applicant is of good moral character, of temperate habits, and a citizen of the United States.

4. Written and oral examinations for funeral director's license shall be held at least once a year at a time and place to be designated by the board. The examination shall include the subjects of funeral directing, burial or other disposition of dead human bodies, sanitary science, public health, transportation, business ethics, and such other subjects as the board may designate and the laws of the state of Iowa and rules and regulations relating to communicable diseases, quarantine and causes of death.

5. After the applicant shall have completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed at one of the regular examinations held by the board during the first year after his graduation. The applicant

may then receive a class "A" certificate of studentship and shall then complete a minimum of one additional year of studentship. The applicant shall during this studentship direct or assist in the direction of not less than twenty-five funerals under the direct supervision of a licensed funeral director in good standing in this state. [C24, 27, §2585; C31, 35, §§2585-c3, -c4; C39, §§2585.03, 2585.04; C46, 50, §§156.3, 156.4; C54, §156.4]

Referred to in §156.6

#### 156.5 Embalmers.

1. No person shall engage in, or hold himself out as engaged in, the practice of an embalmer unless licensed.

2. Applications for the examination for an embalmer's license shall be in writing and verified on a blank to be prescribed and furnished by the board. Accompanying the application shall be affidavits from at least two reputable freeholders of the county in which the applicant resides or proposes to conduct the practice of an embalmer to the effect that the applicant is of good moral character, of temperate habits, and a citizen of the United States.

3. Written and oral examinations for an embalmer's license shall be held at least once a year at a time and place to be designated by the board. The examination shall include the subjects of anatomy, practical embalming, restorative art, sanitation, public health, business ethics, and such other subjects as the board may designate and the laws of the state of Iowa and rules and regulations relating to communicable diseases, quarantine and causes of death.

4. After the applicant shall have completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed at one of the regular examinations held by the board during the first year after his graduation. The applicant may then receive a class "A" certificate of studentship and shall then complete a minimum of one additional year of studentship. The applicant shall during this studentship arterially embalm not less than twenty-five human bodies under the direct supervision of a licensed embalmer in good standing in this state. The applicant shall demonstrate his proficiency as an embalmer, as directed by the board of funeral director and embalmer examiners by operation on a dead human body, which body shall be furnished by the state department of health, under the provisions of section 142.2. This particular requirement shall apply to all applicants for a license as an embalmer by reciprocity, as well as by examination. [S13, §§2575-a37, -a38; C24, 27, §2585; C31, 35, §§2583-c3, -c4; C39, §§2585.03, 2585.04; C46, 50, §§156.3, 156.4; C54, §156.5]

Referred to in §156.6

**156.6 Concurrent study and studentship.** The course of instruction and studentships required under the provisions of section 156.4

for funeral directors and under section 156.5 for embalmers may be taken concurrently. [C54, §156.6]

**156.7 Renewal of licenses.** The department of health shall issue separate renewal licenses to funeral directors and to embalmers. [C54, §156.7]

**156.8 Studentship.** The board of funeral director and embalmer examiners shall, by rule approved by the state department of health, provide for studentships in funeral directing and embalming, and shall regulate the registration and training thereof; and no applicant shall be eligible to take the funeral directors' or embalmers' examinations who has not first been legally registered as a student. For such registration a fee of five dollars shall be collected from the applicant for each license. [C31, 35, §2585-c4; C39, §2585.04; C46, 50, §156.4; C54, §156.8]

**156.9 Revocation of license.** For the purpose of revoking a license under the provisions of section 147.55, "unprofessional conduct" on the part of a funeral director or embalmer shall in addition to the provisions of said section consist of any one of the following acts:

1. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

2. Executing a death certificate or shipping paper for use of anyone except a licensed funeral director or licensed embalmer or a registered student who is working under the immediate personal supervision of a licensed funeral director or licensed embalmer.

3. Recommending to the board of funeral director and embalmer examiners an applicant for a license who has not, to his personal knowledge, complied with the requirements of the law and the rules of the board of funeral director and embalmer examiners.

4. If the licensee shall engage generally in the business of selling or issuing burial contracts or burial certificates in anticipation of the death of a person, or if he shall enter into any contract with another whereby he agrees or undertakes to furnish funeral supplies or funeral service to persons who have been solicited by such other or who have agreed with such other to purchase the same; provided, this subsection shall not apply to contracts with the United States or any department of the federal government, including army and veterans' hospitals, or to any contract made in conjunction with the sale of any life insurance policy issued by a life insurance company licensed to transact business in Iowa. [C31, 35, §2585-c5; C39, §2585.05; C46, 50, §156.5; C54, §156.9]

**156.10 Inspection.** The commissioner of public health shall have power to inspect all places where dead human bodies are prepared or held for burial, or entombment; and to prescribe and enforce such rules and regulations in connection therewith as may be necessary

for the preservation of the public health. [C31, 35, §2585-c7; C39, §2585.06; C46, 50, §156.6; C54, §156.10]

**156.11 After death of licensee.** Any heir or legal representative of a licensed funeral director or licensed embalmer may maintain a funeral home after the death of such licensed funeral director or licensed embalmer, provided that a licensed funeral director and licensed embalmer shall be employed to operate such funeral home and the state department of health shall be notified of such employment by the licensee or licensees. [C39, §2585.08; C46, 50, §156.8; C54, §156.11]

**156.12 Funeral directors and embalmers—solicitation of business—penalty.** Every funeral director or embalmer, or any person acting for him, who pays or causes to be paid,

directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business for such funeral director or embalmer, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director or embalmer in order to secure business for him shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or shall be imprisoned in the county jail for not less than thirty days, or both; provided that nothing herein contained shall be construed as prohibiting any person, firm, co-operative burial association or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. [C54, §156.12]

See §147.56

## CHAPTER 157

### COSMETOLOGY

Enforcement, §§147.87, 147.90, 147.92

- 157.1 Definitions.
- 157.2 Exceptions.
- 157.3 License.
- 157.4 Examination.
- 157.5 Electrolysis.
- 157.6 Rules—practice in home.
- 157.7 Present practitioners.
- 157.8 Assistants.

- 157.9 Accredited schools.
- 157.10 Conflicting statutes.
- 157.11 Temporary permits.
- 157.12 Managers—license required.
- 157.13 Employment restricted.
- 157.14 Fees.
- 157.15 Penalty.

**157.1 Definitions.** For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of cosmetology:

1. Persons who, for compensation, engage in or who hold themselves out to the public as being engaged in any one or any combination of the following practices: Cutting, dressing, curling, waving, bleaching, coloring, and similar work, on the hair of any woman or child by any means whatever.

2. Persons who, with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engage for compensation in any one or any combination of the following practices: Massaging, cleansing, stimulating, manipulating, exercising, manicuring, beautifying, or similar work, the scalp, face, neck, hands, arms, bust or upper part of the body, or the removing of superfluous hair by the use of electricity or otherwise, on or about the body of any woman or child. [C27, 31, 35, §2585-b1; C39, §2585.10; C46, 50, 54, §157.1]

Referred to in §157.2

**157.2 Exceptions.** Section 157.1 shall not be construed to include the following classes of persons:

1. Licensed physicians, surgeons, osteopaths, nurses, dentists, chiroprodists, optometrists, and chiropractors when exclusively engaged in the practice of their respective professions.

2. Barbers who do not practice cosmetology upon women or children in connection with their regular trade or profession; and nothing in this chapter shall be construed to prohibit barbers from cutting the hair, massaging the face and neck, or shampooing the head of any person.

3. Those who render like services in cases of emergency or occasionally administer same in the home. [C27, 31, 35, §2585-b2; C39, §2585.11; C46, 50, 54, §157.2]

**157.3 License.** No applicant shall be issued a license to practice cosmetology unless and until he shall:

1. Present to the examiners the certificate of a medical physician, showing freedom from any infectious or contagious disease.

2. Pass an examination prescribed by the cosmetology examiners, which examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method. [C27, 31, 35, §2585-b3; C39, §2585.12; C46, 50, 54, §157.3]

**157.4 Examination.** No person shall be eligible to take the examination prescribed by the cosmetology examiners unless and until said person presents a diploma, or other like evidence, issued to the applicant by any school of cosmetology approved by the cosmetology examiners and licensed by the department, showing that said applicant has completed the

course of study in said school prescribed by the board of cosmetology examiners. [C27, 31, 35,§2585-b4; C39,§2585.13; C46, 50, 54,§157.4]

**157.5 Electrolysis.** If an applicant desires a license authorizing him to remove superfluous hair by the use of the electric needle, he shall present a diploma, as evidence of having completed such a course in a school recognized by the board of cosmetology examiners which teaches a special course in the practice of the use of the electric needle. The board of cosmetology examiners shall give to such applicant an examination in the use of the electric needle for which the applicant shall pay a fee of ten dollars to the department. [C27, 31, 35,§2585-b5; C39,§2585.14; C46, 50, 54, §157.5]

**157.6 Rules—practice in home.** The state department of health shall prescribe such sanitary rules for shops and schools as it may deem necessary, with particular reference to the conditions under which the practice of cosmetology shall be carried on and the precautions necessary to be employed to prevent the creating and spreading of infectious and contagious diseases. Cosmetology may be practiced in the home providing a room, other than the living rooms, be fitted up for that purpose. The department of health shall have power to enforce the provisions of this section and to make all necessary inspections in connection therewith. [C27, 31, 35,§2585-b6; C39,§2585.15; C46, 50, 54,§157.6]

**157.7 Present practitioners.** All persons who, on April 9, 1927, are in the actual practice of cosmetology in the state of Iowa, as defined herein, shall be entitled to a license under this chapter, without examination, provided that application therefor, accompanied by the physician's certificate and the required annual license fee, is filed with the cosmetology examiners within ninety days after said date. [C27, 31, 35,§2585-b7; C39,§2585.16; C46, 50, 54,§157.7]

**157.8 Assistants.** The commissioner of public health, with the approval of the cosmetology examiners, shall appoint such inspectors and clerical assistants and incur such other expense as may be necessary to properly administer and enforce the provisions of law relating to the practice of cosmetology. The amount of compensation of such appointees shall be fixed by the executive council. There is hereby annually appropriated out of the cosmetology fund in the state treasury a sum sufficient to pay the compensation and the expenses of said examiners, inspectors and clerical assistants, and other necessary expense. Provided however that the entire cost of the administration and enforcement of the provisions of law relating to the practice of cosmetology shall not exceed in any one year, the receipts under such laws for such year together with the balance held by the treasurer of state in the cosmetology fund from preceding years. [C27, 31, 35,§2585-b9; C39,§2585.17; C46, 50, 54,§157.8]

Referred to in §157.14

**157.9 Accredited schools.** No school shall be approved by the board of cosmetology examiners unless and until such school shall have made a verified application to the department for a license to teach cosmetology. Such application shall be accompanied by the annual license fee, shall state the name and location of said school, and such other additional information as the board of cosmetology examiners may require. When such application shall have been approved by the board of cosmetology examiners the department shall issue to the applicant a license to conduct such school of cosmetology for one year. Subject to the approval of the board of cosmetology examiners any such license may be annually renewed upon the receipt of the annual license fee.

No application for annual renewal of license shall be refused by the board except following hearing before the board at least ten days following written notice to the applicant, which notice shall set forth a statement of the charges and the date and place of hearing. Said notice shall be served as provided for the service of original notices under the rules of civil procedure.

If the board shall enter an order refusing to renew any such license the applicant may within thirty days thereafter appeal therefrom by a writ of certiorari to the district court where upon such appeal the hearing shall be de novo and all legal evidence pertaining to the matter of whether or not such license should be renewed may be submitted, including any new or other evidence not submitted to the board. [C31, 35,§2585-c9; C39,§2585.18; C46, 50, 54,§157.9]

**157.10 Conflicting statutes.** No provision of law in conflict with any provision of this chapter shall have any effect thereon or upon the rights of any person licensed hereunder. [C27, 31, 35,§2585-b10; C39,§2585.19; C46, 50, 54,§157.10]

**157.11 Temporary permits.** Any person having completed the prescribed course in, and having obtained a diploma from a school of cosmetology approved by the board of cosmetology examiners and licensed by the department, and having made application to take the next succeeding examination in cosmetology, shall be known as an apprentice and upon payment of the required fee to the department and the submission of evidence of his eligibility to the board of cosmetology examiners, shall be issued a permit by the department which shall entitle such person to work as a cosmetology operator from the date of such graduation to the date of the next succeeding state examination in cosmetology. Only one permit may be issued to any person. [C31, 35,§2585-c10; C39, §2585.20; C46, 50, 54,§157.11]

**157.12 Managers—license required.** Managers of shops or other places where cosmetology is practiced, who directly or indirectly supervise the work of operators, shall be licensed cosmetologists. [C31, 35,§2585-c11; C39,§2585.21; C46, 50, 54,§157.12]

**157.13 Employment restricted.** No person, firm or corporation shall employ, use or hire any person as a practitioner of cosmetology unless such person is a licensed cosmetologist, or an apprentice as defined by this chapter. [C31, 35,§2585-c12; C39,§2585.22; C46, 50, 54, §157.13]

**157.14 Fees.** All fees provided for by this chapter and all other fees paid to the department by practitioners of cosmetology shall be paid by the department to and receipted for by the treasurer of state, who shall keep such fees in a separate fund to be known as the cosmetology fund. Such fund shall be continued from year to year and the treasurer shall keep

a separate account thereof showing receipts and disbursements as authorized by section 157.8, and the balance therein; and no part of such fund shall be used for any other purpose than the administration and enforcement of the laws relating to the practice of cosmetology. [C31, 35,§2585-c13; C39,§2585.23; C46, 50, 54,§157.14]

**157.15 Penalty.** Any person found guilty of violating any of the provisions of this chapter shall be fined not to exceed one hundred dollars or be imprisoned in the county jail for not more than thirty days. [C35,§2522; C39,§2585.24; C46, 50, 54,§157.15]

## CHAPTER 158

### BARBERING

Enforcement, §§147.87, 147.90, 147.92

- 158.1 "Barbering" defined.
- 158.2 Exceptions.
- 158.3 License.
- 158.4 Examinations.
- 158.5 Charges prohibited.
- 158.6 Closing shop.

- 158.7 Sanitary rules.
- 158.8 Board.
- 158.9 Inspectors and assistants.
- 158.10 Conflicting statutes.
- 158.11 Barber shops.
- 158.12 Penalty.

**158.1 "Barbering" defined.** For the purposes of this chapter all persons who, for compensation, engage in any one or any combination of the following practices performed upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, are engaged in the practice of barbering:

1. Shaving or trimming the beard or cutting the hair.
2. Giving facial or scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances.
3. Singeing, shampooing or dyeing the hair or applying hair tonic.
4. Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body. [C27, 31, 35,§2585-b11; C39,§2585.25; C46, 50, 54,§158.1]

Referred to in §158.2

**158.2 Exceptions.** Section 158.1 shall not be construed to include the following classes of persons:

1. Licensed physicians, surgeons, osteopaths, nurses, dentists, optometrists, chiropractors, cosmetologists or chiropodists.
2. Apprentices who are in good faith pursuing the study of barbering under the direct supervision and tutelage of a licensed practitioner of barbering, provided they are only assisting the licensed practitioner under whom they are pursuing such course of study or students attending schools approved by the barber examiners.
3. Those who, without compensation, render

like services in cases of emergency or occasionally administer same in the home.

The provisions of this section shall not be construed as to permit any person other than a licensed barber or students in a barber school approved by the board of barber examiners or registered barber apprentice while pursuing a regular course of study of barbering to shave or trim the beard or cut the hair of any person for cosmetic purposes, except that licensed cosmetologists may cut the hair of any female person and of any male person under twelve years of age. [C27, 31, 35,§2585-b12; C39,§2585.26; C46, 50, 54,§158.2]

Referred to in §158.11

**158.3 License.** No applicant shall be issued a license to practice barbering unless and until he shall:

1. Present to the examiners the certificate of a medical physician, showing freedom from any infectious or contagious disease.
2. Present a certificate showing that the applicant has successfully completed the eighth grade of the public schools, or furnish a satisfactory showing to the board that said applicant has the equivalent thereof.
3. Pass an examination prescribed by the barber examiners, which examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method.
4. Present to the barber examiners satisfactory evidence that he is a citizen of the United States, or has made application for citizenship.

[C27, 31, 35, §2585-b13; C39, §2585.27; C46, 50, 54, §158.3]

Referred to in §158.4

**158.4 Examinations.** Whenever any person has successfully completed a six months course both of theory and practice in any school of barbering approved by the barber examiners board, and has furnished the necessary certificates and complied with the requirements of section 158.3, he may take an examination for registration as a barber's apprentice, said examination to be given by the board at the same time as the regular examination for barber's license. If any such applicant successfully passes the examination, he shall be given an apprentice's certificate which certificate will entitle him to pursue a clinic or practice course under the direct supervision and tutelage of a licensed practitioner of barbering for a period of eighteen months from the date of issuance thereof. At the end of said period of eighteen months, upon furnishing to the board satisfactory proof that he has faithfully pursued a course of study as apprentice under the supervision and tutelage of a licensed barber in this state for said period of time, he shall be permitted by said board to take the regular examination for a license to practice barbering. Provided, however, that any person who has practiced barbering in the state of Iowa for a period of more than five years prior to the taking effect of the barbers license law, or any person who has practiced barbering in any other state for a period of more than five years, shall, upon furnishing satisfactory proof thereof to the examining board, be permitted to take the examination for a license to practice barbering in this state. [C27, 31, 35, §2585-b14; C39, §2585.28; C46, 50, 54, §158.4]

Approved schools, §147.82

**158.5 Charges prohibited.** No barber school, nor any barber student therein shall be permitted to charge any fee to any patron or person for work done at said barber school or college by a student during the first three months of his course. [C31, 35, §2585-d1; C39, §2585.29; C46, 50, 54, §158.5]

**158.6 Closing shop.** If the proprietor or person in charge of any barber shop fails to comply with the sanitary rules prescribed by the state department of health as provided in section 158.7, or fails to maintain said barber shop as required by said rules, the state department of health may notify said person of such failure in writing, and if said rules and regulations are not complied with within five days after receiving such written notice, the department shall in writing order such shop closed and it shall remain closed until the department is satisfied that the rules have been or will be complied with. Any person who practices barbering in any shop while such shop is ordered closed, as herein provided, shall be guilty of a misdemeanor. It shall be the duty of the county attorney in each county to assist and aid the state department or any of its inspectors, in enforcing the provisions of this

and section 158.7. [C31, 35, §2585-c14; C39, §2585.30; C46, 50, 54, §158.6]

Punishment, §687.7

**158.7 Sanitary rules.** The state department of health shall prescribe such sanitary rules as it may deem necessary, with particular reference to the conditions under which the practice of barbering shall be carried on and the precautions necessary to be employed to prevent the creating and spreading of infectious and contagious diseases. Barbering shall not be practiced in the living quarters of any person. The department of health shall have power to enforce the provisions of this section and to make all necessary inspections in connection therewith. [C27, 31, 35, §2585-b15; C39, §2585.31; C46, 50, 54, §158.7]

Referred to in §158.6

**158.8 Board.** The board of barber examiners shall be appointed by the governor and shall be composed of three members. Each member shall serve for a term of three years and until his successor has been appointed and has qualified.

Each member shall have been a practical barber, who has been a practical barber for at least five years prior to his appointment to the board, engaged in the practice in this state. [C27, 31, 35, §2585-b17; C39, §2585.32; C46, 50, 54, §158.8]

**158.9 Inspectors and assistants.** The commissioner of public health, with the approval of the barber examiners, shall appoint such necessary inspectors and clerical assistants as may be necessary to properly administer and enforce the provisions of this chapter. The compensation of such inspectors and clerical assistants shall be paid from the appropriation made in section 147.25, provided, however, that such appointments and the amount of compensation of such appointees shall be approved by the executive council, and provided further that the entire cost of the administration and enforcement of this chapter shall not exceed in any year the receipts by virtue of this chapter for such year. [C27, 31, 35, §2585-b18; C39, §2585.33; C46, 50, 54, §158.9]

**158.10 Conflicting statutes.** No provision of law in conflict with any provision of this chapter shall have any effect thereon or upon the rights of any person licensed hereunder. [C27, 31, 35, §2585-b19; C39, §2585.34; C46, 50, 54, §158.10]

**158.11 Barber shops.**

1. For the purpose of this chapter, a barber shop shall mean an establishment or place of business where one or more persons engage in the practice of barbering as defined in section 158.1.

2. A barber school or college shall mean an establishment operated by any person, or partnership for the teaching of barbering as defined in section 158.2.

No person or partnership shall maintain or operate a barber school or a barber shop until he or they shall have obtained a license for

that purpose from the state department of health. Each such license shall expire at the same time and shall be renewed in the same manner as an individual barber license. Any such license may be suspended, revoked, or renewal thereof denied by the board of barber examiners for violation of any provision of statute or rule of the department of health pertaining to the operation of barber shops or barber schools, after finding following due notice and hearing before the board of barber examiners.

Every application for a license to maintain or operate a barber shop or a barber school shall be made on a form furnished by the state department of health and shall contain such information relative to ownership, management, location, sanitation, and other data concerning said business as may be required by the department.

The state department of health shall collect,

in addition to the annual individual license fee required by section 147.80, an inspection fee of ten dollars for every barber shop or barber school hereafter opened and every barber shop or barber school changing ownership before it may open for business or before the new owner assumes the control and management of the same. The remodeling and reopening of a barber shop on the same site as an existing shop and under the same ownership shall not for the purpose of this section be considered as a new shop. [C46, 50, 54, §158.11]

*Exemptions to members of armed forces, 51GA, ch 89, §1*

**158.12 Penalty.** Any person found guilty of violating any of the provisions of this chapter or the license provisions of chapter 147, relating to barbering, barber shops, and barber schools, shall be fined not to exceed one hundred dollars or be imprisoned in the county jail for not more than thirty days. [C35, §2522; C39, §2585.24; C46, §157.15; C50, 54, §158.12]



# TITLE IX

## AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

### CHAPTER 159

#### DEPARTMENT OF AGRICULTURE

Identification and use of publicly owned automobiles, etc., §740.20 et seq

159.1	Definitions.	159.11	Assessor.
159.2	Object of department.	159.12	Returns by assessor.
159.3	Co-operation.	159.13	Seal.
159.4	Location.	159.14	Bonds.
159.5	Powers and duties.	159.15	Biennial report.
159.6	Additional duties.	159.16	Duty of peace officers.
159.7	Notice of adoption of rules.	159.17	Interference with department.
159.8	Time rules take effect.	159.18	State farmers institute.
159.9	Publication and distribution of rules.	159.19	Salary.
159.10	Iowa book of agriculture.		

**159.1 Definitions.** For the purposes of this title, unless otherwise provided:

1. "Secretary" shall mean the secretary of agriculture.

2. "Department" shall mean the Iowa department of agriculture and wherever such department is required or authorized to do an act, unless otherwise provided, it shall be construed as authorizing performance by an officer, regular assistant, or duly authorized agent of such department.

3. "Person" shall include an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this title. [S13,1657-b; C24, 27, 31, 35, 39,§2586; C46, 50, 54,§159.1]

**159.2 Object of department.** The object of the department of agriculture shall be:

1. To encourage, promote, and advance the interests of agriculture, including horticulture, livestock industry, dairying, cheese making, poultry raising, beekeeping, production of wool, and other kindred and allied industries.

2. To promote and devise methods of conducting said industries with the view of increasing production and facilitating an adequate distribution of the same at the least cost to the producer.

3. To administer efficiently and impartially the inspection service of the state as is now or may hereafter be placed under its supervision. [S13,§§1657-b,g; C24, 27, 31, 35, 39,§2587; C46, 50, 54,§159.2]

**159.3 Co-operation.** The department of agriculture and the Iowa state college of agriculture and mechanic arts shall co-operate in all ways that may be beneficial to the agricultural interests of the state, but without duplicating research or educational work conducted by said college. Nothing herein contained shall be construed to subordinate either the department or the college in their several spheres of action.

The department of agriculture is hereby authorized to co-operate with the United States department of agriculture as the Iowa department may deem wise and just. [C97,§1677; S13, §1657-g; C24, 27, 31, 35, 39,§2588; C46, 50, 54, §159.3]

**159.4 Location.** The department of agriculture shall be located at the seat of government. [C97,§1678; SS15,§2507; C24, 27, 31, 35, 39,§2589; C46, 50, 54,§159.4]

**159.5 Powers and duties.** The secretary of agriculture shall be the head of the department of agriculture which shall:

1. Carry out the objects for which the department is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.

4. Maintain a weather division which shall, in co-operation with the United States weather bureau, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phen-

ology and climatology of the state. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture, and shall be an officer of the United States weather bureau, if one be detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in co-operation with the United States bureau of agricultural economics, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. Such statistics, when published, shall constitute official agricultural statistics for the state of Iowa. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture and who shall be an officer of the United States bureau of agricultural economics, if one be detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department of agriculture which shall, in co-operation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced and handled in the state. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one be detailed for that purpose by the federal government. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of twenty thousand dollars annually, or so much thereof as may be necessary to pay the annual expense of operating the marketing news service division authorized by this subsection. Said funds to be drawn and expended upon the order of the director with the approval of the secretary of agriculture.

9. Inspect and supervise all cold storage plants and food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

1. [C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

2. [S13, §1657-g; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

3. [C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

4. [C97, §§1677, 1678; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

5. [C97, §§1679, 1680; S13, §1679; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

6. [C97, §1679; S13, §1679; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

7. [C97, §1680; S13, §1363; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

8. [C46, 50, 54, §159.5]

9. [S13, §§2528-d5, 4527-m; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

10. [S13, §2528-d10; C24, 27, 31, 35, 39, §2590; C46, 50, 54, §159.5]

Referred to in §159.6

**159.6 Additional duties.** In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 161.

2. Registration of animals, chapter 162.

3. Infectious and contagious diseases among animals, chapter 163.

4. Eradication of bovine tuberculosis, chapter 165.

5. Hog-cholera virus and serum, chapter 166.

6. Use and disposal of dead animals, chapter 167.

7. Practice of veterinary medicine and surgery, chapter 169.

8. Hotels, restaurants, and food establishments, chapter 170.

9. Cold storage, chapter 171.

10. Regulation and inspection of foods, drugs, and other articles, title X, but chapters 203, 204 and 205 of said title shall be enforced as therein provided.

11. State aid received by certain associations as provided in chapters 175 to 186, inclusive. [C24, 27, 31, 35, 39, §2591; C46, 50, 54, §159.6]

State aid, see biennial appropriation act  
New chapters added within this title: 164, eradication of Bang's disease; 168, baby chicks; 179, dairy industry; and 185, state sheep association.

**159.7 Notice of adoption of rules.** Immediately after the adoption of any rule, the department shall forward a certified copy thereof to the auditor of each county. When any rule is amended, notice of such amendment shall be given in the same manner. [C24, 27, 31, 35, 39, §2592; C46, 50, 54, §159.7]

**159.8 Time rules take effect.** The rules of the department shall take effect and be in force in the respective counties from and after the

date stated in the certified copies of said rules which are forwarded to the county auditors. [C24, 27, 31, 35, 39, §2593; C46, 50, 54, §159.8]

**159.9 Publication and distribution of rules.** A sufficient number of the rules of the department shall be published from time to time to supply the various needs for the same. A copy of the rules shall be furnished to any resident of the state upon request. [C24, 27, 31, 35, 39, §2594; C46, 50, 54, §159.9]

**159.10 Iowa book of agriculture.** The Iowa book of agriculture shall contain such information and data as in the discretion of the secretary concern the agricultural interests of the state, including data relative to or the reports of:

1. The state fair board, the county and district fair societies, the farmers institutes and short courses, and the farm aid associations.
2. The state horticultural society, the state dairy association, the beef cattle producers association, the crop improvement association, and the poultry associations.
3. Other agricultural, horticultural, and livestock associations in the state organized for the promotion of agriculture.

Any section of such book may, on the order of the secretary, be published in pamphlet or book form for separate distribution. [R60, §1703; C73, §1107; C97, §1656; S13, §1657-k; C24, 27, 31, 35, 39, §2595; C46, 50, 54, §159.10]

**159.11 Assessor.** Agricultural statistics shall be collected each year by the assessors under the supervision of the department, which shall design and distribute blank forms and instructions therefor. [C97, §1363; S13, §1363; C24, 27, 31, 35, 39, §2596; C46, 50, 54, §159.11]

**159.12 Returns by assessor.** The assessor shall require each person whose property is listed, to make answers to such inquiries as may be necessary to enable him to return the foregoing statistics, carefully footed and summarized, to the department on or before the fifteenth day of April of each year. [C97, §1363; S13, §1363; C24, 27, 31, 35, 39, §2597; C46, 50, 54, §159.12]

**159.13 Seal.** The department shall have an official seal, and every commission, license, order, or other paper executed by or under the authority of the department may be attested with such seal. [S13, §4999-a31b; C24, 27, 31, 35, 39, §2598; C46, 50, 54, §159.13]

**159.14 Bonds.** The secretary shall require every inspector or employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and

signed by sufficient sureties, in a sum to be fixed by the secretary, which bond shall be approved by him and filed in the office of the secretary of state. This section shall not apply to the deputy secretary of agriculture. The state shall pay the reasonable cost of the bonds required by this section. [C97, §2503; SS15, §§2503, 2514-p; C24, 27, 31, 35, 39, §2599; C46, 50, 54, §159.14]

**Bond of deputy, §§27.1, 64.15**

**159.15 Biennial report.** The secretary shall make a report to the governor in each even-numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, and such information and statistics concerning the enforcement of the several laws administered by the department as may be thought useful, not otherwise available in printed form, with such suggestions as to legislation as may be deemed advisable. [C97, §§1680, 2515; S13, §1657-g; SS15, §§2509-a, 2515; C24, 27, 31, 35, 39, §2600; C46, 50, 54, §159.15]

**Time of making report, §17.3**

**159.16 Duty of peace officers.** All peace officers of the state when called upon by the secretary or any officer or authorized agent of the department shall enforce its rules and execute its lawful orders within their respective jurisdictions, and upon the request of the secretary such officers shall make such inspections as directed by the secretary and report the results thereof to him. [C24, 27, 31, 35, 39, §2601; C46, 50, 54, §159.16]

**159.17 Interference with department.** Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [C97, §2526; S13, §§2528-c, -f3, 4999-a25, -a39, 5077-a23; SS15, §3009-r; C24, 27, 31, 35, 39, §2602; C46, 50, 54, §159.17]

**Punishment, §687.7**

**159.18 State farmers institute.** In connection with the annual convention to elect members of the state fair board, either preceding or following the day on which the officers are elected, the secretary may hold a state farmers institute, for the discussion of practical and scientific topics relating to the various branches of agriculture, the substance of which may be published in the Iowa year book of agriculture. [S13, §1657-f; C24, 27, 31, 35, 39, §2603; C46, 50, 54, §159.18]

**159.19 Salary.** The salary of the secretary of agriculture shall be five thousand dollars per annum. [C31, 35, §2603-c1; C39, §2603.01; C46, 50, 54, §159.19]

**See biennial salary Act.**

## CHAPTER 160

### SOIL CONSERVATION

[This chapter, Code 1946, moved to chapter 467A]

## CHAPTER 161

## FRUIT-TREE AND FOREST RESERVATIONS

Referred to in §159.6

- |                               |                                |
|-------------------------------|--------------------------------|
| 161.1 Tax exemption.          | 161.8 Fruit trees.             |
| 161.2 Reservations.           | 161.9 Replacing trees.         |
| 161.3 Forest reservation.     | 161.10 Restraint of livestock. |
| 161.4 Removal of trees.       | 161.11 Penalty.                |
| 161.5 Forest trees.           | 161.12 Assessor.               |
| 161.6 Groves.                 | 161.13 County auditor.         |
| 161.7 Fruit-tree reservation. |                                |

**161.1 Tax exemption.** Any person who establishes a forest or fruit-tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law. [C24, 27, 31, 35, 39, §2605; C46, 50, 54, §161.1]

Referred to in §441.14

**161.2 Reservations.** On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law. [S13, §1400-c; C24, 27, 31, 35, 39, §2606; C46, 50, 54, §161.2]

Referred to in §441.14

**161.3 Forest reservation.** A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under the provisions of this chapter. If the area selected is a forest containing less than two hundred forest trees to the acre, or if it is a grove or an area to be planted to trees, the owner or owners thereof shall have planted, cultivated, and otherwise properly cared for the number of forest trees necessary to bring the total number of growing trees to not less than two hundred on each acre, during a period of not more than two years, after it has been accepted as a forest reservation within the meaning of this chapter. No ground upon which any farm buildings stand shall be recognized as part of any such reservation. [S13, §1400-d; C24, 27, 31, 35, 39, §2607; C46, 50, 54, §161.3]

Referred to in §441.14

**161.4 Removal of trees.** Not more than one-fifth of the total number of trees in any forest reservation may be removed in any one year, excepting in cases where the trees die naturally. [S13, §1400-e; C24, 27, 31, 35, 39, §2608; C46, 50, 54, §161.4]

Referred to in §441.14

**161.5 Forest trees.** The ash, black cherry, black walnut, butternut, catalpa, coffee tree, the elms, hackberry, the hickories, honey locust, Norway and Carolina poplars, mulberry, the oaks, sugar maple, cottonwood, soft maple, osage orange, basswood, black locust, Euro-

pean larch and other coniferous trees, and all other forest trees introduced into the state for experimental purposes, shall be considered forest trees within the meaning of this chapter. In forest reservations which are artificial groves, the willows, box elder, and other poplars shall be included among forest trees for the purposes of this chapter when they are used as protecting borders not exceeding two rows in width around a forest reservation, or when they are used as nurse trees for forest trees in such forest reservation, the number of such nurse trees not to exceed one hundred on each acre; provided that only box elder shall be used as nurse trees. [S13, §1400-f; C24, 27, 31, 35, 39, §2609; C46, 50, 54, §161.5]

Referred to in §441.14

**161.6 Groves.** The trees of a forest reservation shall be in groves not less than four rods wide except when the trees are growing or are planted in or along a gully or ditch to control erosion in which case any width will qualify provided the area meets the size requirement of two acres. [S13, §1400-g; C24, 27, 31, 35, 39, §2610; C46, 50, 54, §161.6]

Referred to in §441.14

**161.7 Fruit-tree reservation.** A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. Such reservation may be claimed as such, under this chapter, for a period of eight years after planting. [S13, §1400-h; C24, 27, 31, 35, 39, §2611; C46, 50, 54, §161.7]

Referred to in §441.14

**161.8 Fruit trees.** The cultivated varieties of apples, crabs, plums, cherries, peaches, and pears shall be considered fruit trees within the meaning of this chapter. [S13, §1400-i; C24, 27, 31, 35, 39, §2612; C46, 50, 54, §161.8]

Referred to in §441.14

**161.9 Replacing trees.** When any tree or trees on a fruit-tree or forest reservation shall be removed or die, the owner or owners of such reservation shall, within one year, plant and care for other fruit or forest trees, in order that the number of such trees may not fall below that required by this chapter. [S13, §1400-j; C24, 27, 31, 35, 39, §2613; C46, 50, 54, §161.9]

Referred to in §441.14

**161.10 Restraint of livestock.** Cattle, horses, mules, sheep, goats, and hogs shall not be per-

mitted upon a fruit-tree or forest reservation. [S13,§1400-k; C24, 27, 31, 35, 39,§2614; C46, 50, 54,§161.10]

Referred to in §441.14

**161.11 Penalty.** If the owner or owners of a fruit-tree or forest reservation violate any provision of this chapter within the two years preceding the making of an assessment, the assessor shall not list any tract belonging to such owner or owners, as a reservation within the meaning of this chapter, for the ensuing two years. [S13,§1400-m; C24, 27, 31, 35, 39, §2615; C46, 50, 54,§161.11]

Referred to in §441.14

**161.12 Assessor.** It shall be the duty of the assessor to secure the facts relative to

fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter. [S13, §1400-n; C24, 27, 31, 35, 39,§2616; C46, 50, 54, §161.12]

Referred to in §441.14  
Assessment of reservations, §441.14

**161.13 County auditor.** It shall be the duty of the county auditor in every county to keep a record of all forest and fruit-tree reservations within his county; and to make a report of the same to the state conservation commission on or before June 15 of each year. [S13,§1400-o; C24, 27, 31, 35, 39,§2617; C46, 50, 54,§161.13]

Referred to in §441.14

## CHAPTER 162

### REGISTRATION OF ANIMALS

Referred to in §159.6

162.1 Services of stallion.

162.2 Services of jack.

162.3 Registered animals.

162.4 Unregistered jacks.

162.5 Certificate for purebred.

162.6 Certificate for grade jack.

162.7 Animals subject to enrollment.

162.8 Diseases which disqualify.

162.9 Defects which do not disqualify.

162.10 Certificate when animal defective.

162.11 Issuance of certificate.

162.12 Posting certificate.

162.13 Examination on complaint.

162.14 Department to appoint examiners.

162.15 Decision of board.

162.16 Revocation.

162.17 Expense.

162.18 Blindness.

162.19 Certificate of soundness.

162.20 Renewal without examination.

162.21 Fee.

162.22 Transfer of certificate.

162.23 False affidavit.

162.24 Violations.

162.25 Prior certificates of soundness.

**162.1 Services of stallion.** No person shall offer for public service any stallion unless he shall have had said animal enrolled with the department of agriculture as a registered animal, and shall have procured from the department a certificate of soundness. [S13,§2341-f; C24, 27, 31, 35, 39,§2618; C46, 50, 54,§162.1]

**162.2 Services of jack.** No person shall offer for public service any jack unless he has procured from the department a certificate of soundness. Such certificate shall state whether the animal is registered or unregistered. [S13, §2341-f; SS15,§2341-i; C24, 27, 31, 35, 39,§2619; C46, 50, 54,§162.2]

**162.3 Registered animals.** No person shall offer for sale, transfer, or exchange any stallion or jack over two years old as registered unless he shall have had said animal enrolled with the department as a registered animal, and shall have procured from the department a certificate of soundness. [S13,§2341-f; C24, 27, 31, 35, 39,§2620; C46, 50, 54,§162.3]

**162.4 Unregistered jacks.** No person shall offer for sale, transfer, or exchange for public service any unregistered jack over two years old unless he shall have procured from the department a certificate of soundness. [SS15,

§2341-i; C24, 27, 31, 35, 39,§2621; C46, 50, 54, §162.4]

**162.5 Certificate for purebred.** Every application for enrollment as a registered animal shall set forth, under oath, the name, age, color, and ownership of the animal, and be accompanied by a certificate of registry and an affidavit of an Iowa licensed veterinarian that such animal has been examined by him and is free from any unsoundness or any hereditary, infectious, or contagious disease. [S13,§2341-f; SS15,§2341-g; C24, 27, 31, 35, 39,§2622; C46, 50, 54,§162.5]

Referred to in §162.6

**162.6 Certificate for grade jack.** Every application for a certificate of soundness for an unregistered jack shall be made in the same manner and form, except as to the certificate of pedigree, as provided in section 162.5. [SS15, §2341-g; C24, 27, 31, 35, 39,§2623; C46, 50, 54, §162.6]

**162.7 Animals subject to enrollment.** No animal shall be subject to enrollment as a registered animal unless he has been recorded in some stud book recognized by the department. [S13,§2341-f; C24, 27, 31, 35, 39,§2624; C46, 50, 54, §162.7]

**162.8 Diseases which disqualify.** No certificate of soundness shall be granted for an animal affected with glanders, farcy, maladie du coit (dourine), coital exanthema, urethral gleet, mange, melanosis, blindness, cataract or periodic ophthalmia (moon blindness). [SS15, §2341-h; C24, 27, 31, 35, 39, §2625; C46, 50, 54, §162.8]

**162.9 Defects which do not disqualify.** A certificate of soundness may be granted when an animal is affected with any of the following defects, unless such defects appear to be aggravated, or in a serious form: Amaurosis, laryngeal hemiplegia (roaring or whistling), pulmonary emphysema (heaves, broken wind), bog spavin, bone spavin, ringbone, sidebone, navicular disease, curb, with curby formation of hock, chorea (St. Vitus's dance), crampiness, shivering, stringhalt. [SS15, §2341-h; C24, 27, 31, 35, 39, §2626; C46, 50, 54, §162.9]

Referred to in §162.10

**162.10 Certificate when animal defective.** Certificates of soundness issued under section 162.9 shall distinctly specify the defect with which the animal is affected. All advertisements of an animal so affected shall enumerate in large type, or prominent writing, the defect with which the animal is affected. [SS15, §2341-h; C24, 27, 31, 35, 39, §2627; C46, 50, 54, §162.10]

**162.11 Issuance of certificate.** Upon receipt of an application for enrollment as a registered animal, the department shall, if satisfied that the same is reliable and that the animal is purebred, make such enrollment and issue to the applicant a certificate of soundness. Upon receipt of an application for a certificate of soundness for an unregistered jack the department shall also issue the proper certificate. [C24, 27, 31, 35, 39, §2628; C46, 50, 54, §162.11]

**162.12 Posting certificate.** Every certificate of soundness, or a true copy thereof, shall be kept posted upon the door or stall of the stable where the animal for which it was issued is usually kept, and, when such animal is advertised, each advertisement shall contain a copy of such certificate or the substance thereof. [SS15, §2341-i; C24, 27, 31, 35, 39, §2629; C46, 50, 54, §162.12]

**162.13 Examination on complaint.** Complaint may be made to the department that a stallion or jack is diseased. The department shall determine whether an examination of said animal is reasonably necessary. If it is so determined the owner shall be notified accordingly, and an examination shall be made by a board of three licensed veterinarians, one member to be selected by the department, one member to be selected by the owner of the animal, and the third member to be selected by the other two members so selected. [S13, §2341-j; C24, 27, 31, 35, 39, §2630; C46, 50, 54, §162.13]

**162.14 Department to appoint examiners.** If the owner neglects for ten days after being so notified to appoint a veterinarian to act for

him, the department shall appoint such veterinarian, who shall proceed as though appointed by the owner. [C24, 27, 31, 35, 39, §2631; C46, 50, 54, §162.14]

**162.15 Decision of board.** The board shall determine whether said animal is:

1. Affected with a disease which would prevent the issuance of a certificate of soundness.
2. Affected with any other disease or defect in such a serious or aggravated form as to render the animal unfit for breeding.
3. Transmitting any disease or defect enumerated in this chapter as not disqualifying him for a certificate of soundness.

A decision by a majority of the board shall be certified to the department and shall be final. [S13, §2341-j; SS15, §2341-h; C24, 27, 31, 35, 39, §2632; C46, 50, 54, §162.15]

Referred to in §162.16

Defects which do not disqualify, §162.9

**162.16 Revocation.** If the decision is to the effect that such animal is affected as specified in section 162.15, the department shall not issue a certificate of soundness, and if one has been issued the department shall immediately revoke the same and notify the owner accordingly. [S13, §2341-j; C24, 27, 31, 35, 39, §2633; C46, 50, 54, §162.16]

**162.17 Expense.** If the board finds that said animal is eligible to receive or retain a certificate of soundness, the reasonable costs of the examination shall be paid from any funds in the state treasury not otherwise appropriated; otherwise such costs shall be collected from the owner. [S13, §2341-j; C24, 27, 31, 35, 39, §2634; C46, 50, 54, §162.17]

**162.18 Blindness.** The owner of any blind stallion or jack otherwise entitled to a certificate of soundness may, upon application to the department, have the same examined at his own expense by a board of three licensed veterinarians, one member to be selected by the department, one member to be selected by the owner of the animal, and the third member to be selected by the two members so selected. If upon examination and proof furnished, a majority of said board declare that such blindness was caused by accident or disease not transmissible, then upon affidavit of a majority of said board, the department shall issue a state certificate of soundness. [S13, §2341-p; C24, 27, 31, 35, 39, §2635; C46, 50, 54, §162.18]

**162.19 Certificate of soundness.** If an animal for which a certificate of soundness has been issued is retained for sale, transfer, or exchange, or for public service, such certificate shall be renewed between January 1 and April 1 of each year. Such renewal shall be obtained by presenting an affidavit of soundness to the department as hereinbefore provided. [SS15, §2341-g; C24, 27, 31, 35, 39, §2636; C46, 50, 54, §162.19]

Affidavit of soundness, §§162.5, 162.6

**162.20 Renewal without examination.** The owner of every stallion or jack which has successfully passed the veterinary examination provided in this chapter for two consecutive years shall be entitled to a renewal of the certificate of soundness thereafter without further examination, provided application for such renewal is made in every year following the last examination. [SS15,§2341-o; C24, 27, 31, 35, 39,§2637; C46, 50, 54,§162.20]

**162.21 Fee.** The department shall collect a fee of one dollar for each certificate of soundness and for each annual renewal thereof. [S13,§2341-f; C24, 27, 31, 35, 39,§2638; C46, 50, 54,§162.21]

**162.22 Transfer of certificate.** When the holder of a certificate of soundness sells or otherwise transfers the title to such animal, he shall indorse on the certificate a transfer thereof to the new owner, and file the certificate, accompanied by a fee of fifty cents, with the department, which shall thereupon issue a certificate to the new owner. [SS15,§2341-k; C24, 27, 31, 35, 39,§2639; C46, 50, 54,§162.22]

**162.23 False affidavit.** Any veterinarian who knowingly makes a false affidavit as to the disease or freedom from disease, or soundness or unsoundness, of any animal examined by him or who fails to file with the department a report of his findings in accordance with the provisions of this chapter, shall be guilty of a misdemeanor and punished accordingly and

his license to practice shall be revoked. [SS15, §2341-g; C24, 27, 31, 35, 39,§2640; C46, 50, 54, §162.23]

Punishment, §687.7  
Revocation of licenses, §169.36

**162.24 Violations.** Any person who shall commit any of the following acts shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days:

1. Fraudulently represents any animal to be registered.

2. Fraudulently posts or publishes any false pedigree or certificate of soundness.

3. Uses any stallion or jack for public service, or sells any such animal over two years old, representing him to be registered, without first having obtained a certificate of soundness as provided in this chapter.

4. Violates any of the provisions of this chapter in any manner. [C97,§2341, 2342; SS15, §2341-q; C24, 27, 31, 35, 39,§2641; C46, 50, 54, §162.24]

Certificate of soundness, §§162.5, 162.6

**162.25 Prior certificates of soundness.** Where a permanent certificate of soundness for a registered animal has heretofore been issued by the former state board of agriculture an additional state certificate shall not be required, but a renewal of the same shall be secured as herein provided. [SS15,§2341-i; C24, 27, 31, 35, 39,§2642; C46, 50, 54,§162.25]

## CHAPTER 163

### INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

Referred to in §159.6

163.1 Powers of department.  
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#### FEEDING GARBAGE TO ANIMALS

163.26 Definitions.  
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**163.1 Powers of department.** In the enforcement of this chapter the department of agriculture shall have power to:

1. Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state.

2. Provide for quarantining animals affected with infectious or contagious diseases, or that

have been exposed to such diseases, whether within or without the state.

3. Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals.

4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals.

5. Provide for the disinfection of suspected yards, buildings, and articles, and the destruction of such animals as may be deemed necessary.

6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease; and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost.

8. Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state.

9. Co-operate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter. [S13,§2538-s; C24, 27, 31, 35, 39,§2643; C46, 50, 54,§163.1]

**163.2 Infectious and contagious diseases.**

For the purpose of this chapter, infectious and contagious diseases shall be deemed to embrace glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, infectious enteritis, tuberculosis, Bang's disease, swine erysipelas, vesicular exanthema, scrapie, rinderpest, or any other communicable disease so designated by the department after it has been determined that the same is one specified to be a communicable disease by the United States department of agriculture. [C24, 27, 31, 35, 39,§2644; C46, 50, 54,§163.2]

Referred to in §163.15

**163.3 Veterinary assistants.** The department may appoint one or more licensed veterinarians in each county as assistant veterinarians. It may also appoint such special assistants as may be necessary in cases of emergency. [C24, 27, 31, 35, 39,§2645; C46, 50, 54,§163.3]

**163.4 Powers of assistants.** Such assistant veterinarians shall have power, under the direction of the department, to perform all acts necessary to carry out the provisions of law relating to infectious and contagious diseases among animals, and shall be furnished by the department with the necessary supplies and materials which shall be paid for out of the appropriation for the eradication of infectious and contagious diseases among animals. [C24, 27, 31, 35, 39,§2646; C46, 50, 54,§163.4]

**163.5 Oaths.** Such assistant veterinarians shall have power to administer oaths and affirmations to appraisers acting under this and the following chapters of this title. [C24, 27, 31, 35, 39,§2647; C46, 50, 54,§163.5]

Analogous provision, §78.2  
Chapters 164, 168, 179, 185 were enacted later than this section.

**163.6 Adoption of rules.** All rules adopted by the department under this chapter, in addition to the other requirements concerning promulgation of rules by the department, shall be published at least one week prior to their taking effect in at least two daily papers of general circulation within the state, except in such cases as require immediate action. [S13, §2538-s; C24, 27, 31, 35, 39,§2648; C46, 50, 54, §163.6]

**163.7 State and federal rules.** The rules adopted by the department regarding interstate shipments of animals shall not be in conflict with the rules of the federal department of agriculture, unless there is an outbreak of a malignant contagious disease in any locality, state, or territory, in which event the department shall have the right to place an embargo on such locality, state, or territory. [C24, 27, 31, 35, 39,§2649; C46, 50, 54,§163.7]

**163.8 Enforcement of rules.** The assistant veterinarians appointed under this chapter shall enforce all rules of the department, and in so doing may call to their assistance any peace officer. [S13,§2538-s; C24, 27, 31, 35, 39, §2650; C46, 50, 54,§163.8]

**163.9 Division at Ames to assist.** The dean of the veterinary division of the Iowa state college of agriculture and mechanic arts is authorized to use the equipment and facilities of the division in assisting the department in carrying out the provisions of this chapter. [C24, 27, 31, 35, 39,§2651; C46, 50, 54,§163.9]

**163.10 Quarantining or killing animals.** The department may quarantine or condemn any animal which is infected with any contagious or infectious disease, but no cattle infected with tuberculosis shall be killed without the owner's consent, unless there shall be sufficient funds to pay for such cattle, in the allotment made for that purpose from the appropriation for the eradication of infectious and contagious diseases among animals as provided in this chapter. [C24, 27, 31, 35, 39,§2652; C46, 50, 54,§163.10]

Allotment, §§163.22, 165.30

**163.11 Imported animals.** No person shall bring into this state, except to public livestock markets where federal inspection of livestock is maintained, any animal for work, breeding, or dairy purposes, unless such animal has been examined and found free from all contagious or infectious diseases.

No person shall bring in any manner into this state any cattle for dairy or breeding purposes unless such cattle have been tested within thirty days prior to date of importation by the agglutination test for contagious abortion or abortion disease, and shown to be free from such disease.

Animals for feeding purposes, however, may be brought into the state without inspection, under such regulations as the depart-



ment may prescribe. [C24, 27, 31, 35, 39, §2653; C46, 50, 54, §163.11]

Referred to in §163.12  
Additional provision, §165.36

**163.12 Freedom from disease.** Freedom from disease as specified in section 163.11 shall be established by a certificate of health signed by a veterinarian acting under either the authority of the federal department of agriculture, or of the state department of agriculture. [C24, 27, 31, 35, 39, §2654; C46, 50, 54, §163.12]

**163.13 Certificate attached to bill of lading.** A copy of such certificate shall be attached to the waybill accompanying the shipment, and a copy thereof shall be mailed to the department. [C24, 27, 31, 35, 39, §2655; C46, 50, 54, §163.13]

**163.14 Intrastate shipments.** All animals, except those intended for immediate slaughter, shall be inspected when required by the department, and accompanied by the aforesaid certificate when shipped from a public stockyard in this state to another point within the state where federal inspection is not maintained. [C24, 27, 31, 35, 39, §2656; C46, 50, 54, §163.14]

**163.15 Indemnifying owner.** Whenever any animal is found to be infected with one of the contagious diseases enumerated in section 163.2 or one which has been designated by the department thereunder, if there be no other provisions for indemnifying the owner in case the same be condemned and ordered by the department to be killed, and the secretary of agriculture determines that the existence of said communicable disease constitutes a threat to the general welfare or the public health of the inhabitants of the state, he shall formulate a program of eradication including therein the condemnation and killing of the infected animals; provided however, that said program shall not be put into effect as hereinafter provided until the same has been approved by the executive council.

Any animal killed under such a program shall be appraised by three competent and disinterested persons, one to be appointed by the state department of agriculture, one by the owner, and the third by the other two, and it shall be their duty to appraise and report their appraisal under oath to the department of agriculture, and they shall receive such compensation and expenses as shall be provided for in the program. Any claim for indemnity filed by the owner of such animal or animals so appraised shall not exceed the amount agreed upon by the majority of the appraisers based on current market prices except in the case of registered purebred stock, then the amount payable for indemnity may exceed market prices by not more than fifty percent less any indemnity which he might be allowed from the United States department of agriculture. No indemnity shall be allowed for infected animals if it is determined by the department of agriculture that such animals

have been fed raw garbage. Claims for indemnity and those filed by the appraisers for compensation and expenses shall be filed with the secretary of agriculture and submitted by him to the executive council for its approval or disapproval. There is appropriated from any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section. [SS15, §§2538-1a-8a; C24, 27, 31, 35, 39, §2657; C46, 50, 54, §163.15]

Referred to in §163.16

**163.16 Limitation on right to receive pay.** Unless an animal was examined at the time of importation into the state and found free from contagious or infectious diseases as provided in this chapter, no person importing the same and no transferee who receives such animal knowing that the provisions of this chapter have been violated shall receive any compensation under section 163.15 for the destruction of such animal by the department. [C24, 27, 31, 35, 39, §2658; C46, 50, 54, §163.16]

Inspection of imported animals, §163.11

**163.17 Local boards of health.** All local boards of health shall assist the department in the prevention, suppression, control, and eradication of contagious and infectious diseases among animals, whenever requested to do so. [C24, 27, 31, 35, 39, §2659; C46, 50, 54, §163.17]

Local board of health, ch 137

**163.18 False representation.** Any person who knowingly makes any false representation as to the purpose for which a shipment of animals is being or will be made, with intent to avoid or prevent an inspection of such animals for the purpose of determining whether the animals are free from disease, shall be guilty of a misdemeanor and punished as provided in this chapter. [C24, 27, 31, 35, 39, §2660; C46, 50, 54, §163.18]

**163.19 Sale or exposure of infected animals.** No owner or person having charge of any animal, knowing the same to have any infectious or contagious disease, shall sell or barter the same for breeding, dairy, work, or feeding purposes, or permit such animal to run at large or come in contact with any other animal. [C97, §5018; C24, 27, 31, 35, 39, §2661; C46, 50, 54, §163.19]

**163.20 Glanders.** No owner or person having charge of any animal, knowing the same to be affected with glanders, shall permit such animal to be driven upon any highway, and no keeper of a public barn shall knowingly permit any animal having such disease to be stabled in such barn. [C24, 27, 31, 35, 39, §2662; C46, 50, 54, §163.20]

**163.21 Penalties.** Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year. [C24, 27, 31, 35, 39, §2663; C46, 50, 54, §163.21]

**163.22 Annual estimate.** The department of agriculture shall each year make an estimate of expenditures to be made from the annual appropriation for the eradication of contagious and infectious diseases among animals. Such estimate shall set aside:

1. A sufficient sum for the general administration of this chapter.

2. A sufficient sum for the inspection of herds for tuberculosis under chapter 165, except herds in counties which have been enrolled under the county area plan of eradication.

3. The remainder of said appropriation for allotment among the counties in accordance with the number of breeding cattle owned therein for the eradication of bovine tuberculosis in such counties. [C24, 27, 31, 35, 39, §2664; C46, 50, 54, §163.22]

**163.23 False certificates of health—penalty.** Any veterinarian issuing a certificate of health for an animal knowing that the animal described therein was not the animal from which the tests were made as a basis for the certificate or who otherwise falsifies any such certificate shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, §163.23]

**163.24 Using false certificate.** Any person, firm, or corporation importing, exporting, or transporting within this state or selling or offering for sale any animal for which a certificate of health has been issued and who uses such certificate in connection with any of said transactions knowing that the animal described in said certificate was not the animal from which the tests were made as a basis for the certificate or who knowingly uses any altered or otherwise false certificate in connection with any of said transactions shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, §163.24]

**163.25 Altering certificate.** Any person, firm, or corporation removing or altering on any animal, tested or being tested for disease, any tag or mark of identification authorized by the department or inserted by any qualified veterinarian or altering any certificate of vaccination by one authorized to vaccinate animals shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, §163.25; 57GA, ch 97, §1]

**FEEDING GARBAGE TO ANIMALS**

**163.26 Definitions.** For the purposes of this division, the following words shall have the meaning ascribed to them in this section:

1. "Department" shall mean the department of agriculture, and wherever said department is required or authorized to do an act, it shall

be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

2. "Secretary" shall mean the secretary of agriculture.

3. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods including animal carcasses or parts thereof, and shall include all waste material, by-products of a kitchen, restaurant, stockyards, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise. [C54, §163.26]

**163.27 Boiling garbage.** It shall be unlawful for any person, firm, partnership, or corporation to feed garbage to animals unless such garbage has been heated to a temperature of two hundred twelve degrees Fahrenheit for thirty minutes, or other acceptable method, as provided by rules and regulations promulgated by the department, provided this requirement shall not apply to an individual who feeds to his own animals only the garbage obtained from his own household. [C54, §163.27]

Referred to in §§163.23, 163.29

**163.28 Licenses.** Before any person shall process any public or commercial garbage for swine, application for a license shall be made to the department setting forth the name and address of the applicant's proposed place of business, and the method used to process such garbage as outlined in section 163.27.

On receipt of such application, the secretary or his authorized agent shall at once inspect the premises on which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, he shall so certify in writing to the department.

On receipt of such certificate, the department shall issue a license to said applicant to conduct such business at the place specified until the first day of September following date of issue.

The license fee for each processing plant shall be fifty dollars, except that the first license fee may be prorated on a monthly basis as prescribed by the department. [C54, §163.28]

**163.29 Penalty.** Any person, firm, partnership, or corporation violating the provisions of this division shall, upon conviction thereof, be fined not less than one hundred dollars and not to exceed five hundred dollars. Each day the provisions of section 163.27, or any rule or regulation made pursuant thereto, is violated shall be a separate offense. [C54, §163.29]

## CHAPTER 164

## ERADICATION OF BANG'S DISEASE

See §§159.6, 163.2

- 164.1 Definitions.
- 164.2 Rules and regulations.
- 164.3 Inspection and tests at request of owner.
- 164.4 Expense of inspection and tests.
- 164.5 Certificate showing freedom from disease.
- 164.6 Failure by owner to comply with regulations.
- 164.7 Retest.
- 164.8 Report on tests.
- 164.9 Marking stock to be tested.
- 164.10 Marking condemned cattle.
- 164.11 Conditions precedent to sale — exceptions.
- 164.12 Exposure of stock to disease.
- 164.13 Slaughter or removal of condemned stock without permission.
- 164.14 Slaughter of condemned cattle.
- 164.15 Purchase or sale of condemned cattle.
- 164.16 Issuance of quarantine orders.
- 164.17 Co-operation with local or federal authorities—petition by owners.
- 164.18 Appraisal.
- 164.19 Amount of indemnity.
- 164.20 Appropriation.
- 164.21 Eradication fund.
- 164.22 Collection.
- 164.23 Report by auditor.
- 164.24 Levy omitted.
- 164.25 Exhaustion of county fund.
- 164.26 Certification of claims.
- 164.27 Reciprocity.
- 164.28 Unlawful sales or shipment.

**164.1 Definitions.** As used in this chapter: "Department" means the department of agriculture.

"Condemned" applies to cattle reacting to a test applied for Bang's disease.

"Official test" for Bang's disease includes all tests under the supervision of or authorization from the department.

"Owner" includes any person, firm, copartnership, association or corporation owning or leasing from another any livestock.

"Registered purebred" shall include cattle with a certificate from herdbooks where registered.

"Official calfhood vaccination" shall mean the vaccination of any calf between the ages of four months and eight months with brucella abortus vaccine strain number nineteen or such other vaccine as may hereafter be approved by U. S. bureau of animal industry, which calf shall have been vaccinated by a licensed accredited veterinarian according to the rules and regulations established by the secretary of agriculture. The officially vaccinated animal shall also be identified by a tattoo mark or brand and such tattoo mark or brand shall be described in a certificate furnished by the attending veterinarian.

Within thirty days following such vaccination, the attending veterinarian shall supply the owner with a certificate of vaccination. The veterinarian shall retain a copy of same and forward a copy to the local office of the U.S. bureau of animal industry and also a copy to the Iowa department of agriculture. The veterinarian's certificate covering the official vaccination shall entitle the vaccinated animal to be consigned to sales and exhibited at shows within the state at any time during the period of two years following the date of vaccination. [C46, 50, 54, §164.1; 57GA, ch. 99, §2]

**164.2 Rules and regulations.** The department may make rules and regulations respecting the official testing of cattle, the disposal by segregation and quarantine or slaughter of condemned livestock, the disinfection of the premises, the introduction into the herd of other cattle, the control and eradication of Bang's disease, the prevention of the spread thereof to the cattle of this state, and the proper enforcement of this chapter. [C46, 50, 54, §164.2]

Referred to in §164.4

**164.3 Inspection and tests at request of owner.** Whenever the owner of cattle shall request the department to make an inspection of his cattle for Bang's disease, the department may designate a veterinarian to make an inspection and, if authorized by the department, conduct a plate or tube agglutination test by the method or methods adopted and approved by the department. [C46, 50, 54, §164.3; 57GA, ch. 99, §3]

**164.4 Expense of inspection and tests.** If the owner shall agree to comply with and carry out the rules and regulations made by the department under section 164.2, the expense of such inspection and test shall be borne by the United States department of agriculture, or by the department, or county Bang's disease eradication fund or any combination thereof. [C46, 50, 54, §164.4; 57GA, ch. 98, §3]

**164.5 Certificate showing freedom from disease.** Whenever an official test of any cattle is made by a veterinarian authorized by the department, and such cattle are found to be free from Bang's disease, a certificate, setting forth this fact, shall be issued by said veterinarian or the department, providing all rules and regulations under the plan adopted by the department for the control and eradication of

Bang's disease in cattle have been complied with. Official vaccinates shall not be considered infected unless reacting in dilutions of one to one hundred or more. [C46, 50, 54, §164.5; 57GA, ch 99, §4]

Referred to in §164.6

**164.6 Failure by owner to comply with regulations.** Whenever, on proof or report of examining veterinarian, the department is satisfied that any owner has failed to comply with any rule or regulation made by the department under the provisions of this chapter, the owner shall be so notified in writing by the department, and such owner shall immediately lose all rights or interest acquired, if any, under the provisions of section 164.5. [C46, 50, 54, §164.6]

**164.7 Retest.** The department may order a retest of any dairy or breeding cattle at any time, when in their opinion, it is necessary. In the case of reactors, a retest shall be granted the owner of the cattle by the department upon the request of the owner or owner's veterinarian. Such retest shall be at the owner's expense. [C46, 50, 54, §164.7; 57GA, ch 98, §2]

**164.8 Report on tests.** A report of such tests shall be made in writing to the chief of the bureau within seven days immediately following the completion of the tests, upon blanks furnished by the department and signed by the director of the laboratory or the person making the test. [C46, 50, 54, §164.8]

**164.9 Marking stock to be tested.** All cattle subjected to an official test under the department shall be plainly and permanently marked for identification in a manner authorized by the department. All native grade cattle carrying the calfhood vaccination and all calves vaccinated after importation from other states shall be branded with the letter "V" on the right jaw. All purebred registered cattle must be tattooed in the ear and the same shall be evidenced on the official certificate of vaccination. [C46, 50, 54, §164.9; 57GA, ch 99, §5]

**164.10 Marking condemned cattle.** All cattle condemned as a result of a test for Bang's disease shall be plainly and permanently marked for identification by any qualified veterinarian making test in a manner authorized by the department. [C46, 50, 54, §164.10]

**164.11 Conditions precedent to sale—exceptions.** It shall be unlawful for any person to sell or transfer ownership of any bovine animal unless it is accompanied by a negative brucellosis test report issued by an accredited veterinarian, conducted within thirty days. The provisions of this section do not apply to the following:

1. Calves under eight months of age, spayed heifers, and steers.

2. Official vaccinates under thirty months of age if accompanied by official calfhood vaccination certificates.

3. Animals consigned directly to slaughter.

4. Animals under thirty months of age which are moved for exhibition purposes when accompanied by an official calfhood vaccination certificate or by a report of a negative brucellosis test conducted within seventy-five days.

5. Animals from a herd certified to be free of brucellosis.

6. Animals from a herd composed entirely of official vaccinates.

7. *a.* Female cattle under eighteen months of age, which cattle may enter the state for feeding or grazing purposes under quarantine for a period not to exceed twelve months. An owner may upon written request receive an extension of quarantine not to exceed one hundred twenty days.

Calves under eight months of age officially vaccinated within thirty days after date of importation may be released from such quarantine for brucellosis.

*b.* Cattle of recognized beef type over eighteen months of age if shipped into the state for feeding purposes under feeder quarantine for a period not to exceed one hundred twenty days, provided, however, that this provision shall not apply to springer heifers and springer cows, or heifers and cows with calves, said animals being classified as breeding cattle.

*c.* Native Iowa cattle of recognized beef type if transferred between owners for feeding purposes only, but they shall be subject to the same quarantine provisions, including age and right to release as calves vaccinated within thirty days following date of purchase, as cattle imported into the state. It shall be the responsibility of the seller and any selling agency or agent handling such transaction to furnish evidence of the sale and acceptance of the quarantine by the buyer by the immediate completion of the feeders agreement declaration and delivery of it to the Iowa division of animal industry, Iowa department of agriculture. [C54, §164.11; 57GA, ch 99, §1]

**164.12 Exposure of stock to disease.** No cattle shall be brought in contact with any condemned cattle held in quarantine. If any untested cattle are added to the quarantined lot, said cattle shall become a part of the lot and held subject to the same rules and regulations. [C46, 50, 54, §164.12]

**164.13 Slaughter or removal of condemned stock without permission.** No condemned cattle shall be slaughtered, have their location changed, or be moved from quarantine except by official written permit by the department or by a licensed veterinarian authorized by the department. [C46, 50, 54, §164.13; 57GA, ch 99, §6]

**164.14 Slaughter of condemned cattle.** When a written order has been issued by the department or its authorized representative for the removal of condemned cattle to slaughter, such cattle within thirty days shall be moved and

slaughtered under the direct supervision of a duly authorized agent or representative of the United States department of agriculture at a time and place designated by the department. [C46, 50, 54,§164.14]

**164.15 Purchase or sale of condemned cattle.** No person shall sell, offer for sale, or purchase any cattle condemned as a result of an official test, except under regulations issued by the department. [C46, 50, 54,§164.15]

**164.16 Issuance of quarantine orders.** The department may issue any quarantine orders deemed necessary for the control and eradication of Bang's disease and the proper enforcement of this chapter. [C46, 50, 54,§164.16]

**164.17 Co-operation with local or federal authorities—petition by owners.** The department may co-operate with any township or county for the control and eradication of Bang's disease within the state or with the United States department of agriculture for the prevention of the spread and the control of Bang's disease in cattle and its eradication in the United States.

Whenever petitions signed by seventy-five percent of the resident owners of breeding cattle residing in a county representing seventy-five percent or more of the breeding cattle therein owned by residents of that area, as disclosed by the last assessment rolls of such area, shall be presented to the department asking that all breeding cattle herds in said county be tested for brucellosis, the department is hereby authorized to make such tests without expense to the owners, to the extent of the funds available therefor. Each of the petitions shall be upon forms prepared by the department which forms shall include a space for a statement of the number of breeding cattle owned by each signer. The circulator thereof shall make a statement under oath on each petition that he is the person who circulated the petition, that each of the petitioners signed his name thereto in his presence and that to the best of his knowledge each petitioner is a resident of the county wherein the petitions were circulated. When such a petition has been duly presented the state department of agriculture shall promulgate regulations for the carrying out of this work which will be known as area testing. The provisions of this subsection do not apply to herds composed entirely of official vaccines. [C46, 50, 54,§164.17; 57GA, ch 98,§1]

**164.18 Appraisal.** Before being slaughtered, such cattle shall be appraised at their cash value for dairy and breeding purposes by the owner and a representative of the state department of agriculture, or a representative of the United States department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the state department of agriculture, one by

the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. [C46, 50, 54,§164.18]

**164.19 Amount of indemnity.** The department shall certify the claim of the owner for each animal slaughtered in accordance with this chapter for not more than one-third of the difference between the appraised value of such animal and the net salvage value thereof, but in no case more than twelve dollars and fifty cents for a grade animal or not more than twenty-five dollars for a registered pure-bred animal, but in no case shall the department pay indemnity on cattle not eligible to receive a like amount from the United States department of agriculture.

No indemnity shall be paid:

1. On animals diseased at the time of arrival in this state.
2. On animals which the owner or claimant knew to be diseased, or had notice thereof at the time they came into his possession.
3. Whenever the owner or agent in possession of said animal has not complied with the rules and regulations of the department.
4. When the condemned animals are not destroyed within thirty days after completion of test.
5. On animals owned by the state of Iowa. [C46, 50, 54,§164.19; 57GA, ch 98,§4]

Referred to in §164.21

**164.20 Appropriation.** All funds appropriated by the state for carrying out the provisions of this chapter shall be administered by the department for the payment of indemnity, salaries, and other necessary expenses. [C46, 50, 54,§164.20]

**164.21 Eradication fund.** In each county in the state, the board of supervisors shall each year, when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity, as set out in section 164.19 above, and other expenses provided in this chapter, and such levy shall not exceed one-half mill in any year upon the taxable value of all the property in the county. [C46, 50, 54,§164.21; 57GA, ch 98,§5]

**164.22 Collection.** Such levy shall be placed upon the tax list by the county auditor and collected by the county treasurer in the same manner and at the same time as other taxes of the county. The money derived from such levy shall be placed in a fund to be known as the "County Bang's Disease Eradication Fund", and the same shall only be used for the payment of claims as provided in this chapter. [C46, 50, 54,§164.22]

**164.23 Report by auditor.** The county auditor of each county shall, not later than July 15 of each year, certify to the secretary of agriculture a report showing the amount in the Bang's disease eradication fund on July 1 of each year. [C46, 50, 54,§164.23]

**164.24 Levy omitted.** Should it appear to the secretary of agriculture that the balance in such fund is sufficient, with the county's allotment of state and federal funds available, to carry on the work in such county for the ensuing year, he shall so certify to the county auditor, and, when such certification has been made, the board shall make no levy for such Bang's disease eradication fund for such year. [C46, 50, 54,§164.24]

**164.25 Exhaustion of county fund.** Whenever the balance of such fund becomes less than twenty-five hundred dollars, the county auditor shall notify the department in writing of such fact, and no expense shall be incurred on such account in excess of the cash available in such fund. [C46, 50, 54,§164.25]

**164.26 Certification of claims.** All claims presented under authority of this chapter shall be certified by the department and filed with the county auditor, who shall present them to the board of supervisors, and such board shall allow and pay the same as other claims against the county. [C46, 50, 54,§164.26]

**164.27 Reciprocity.** The secretary of agriculture of the state of Iowa is hereby author-

ized and directed to enter into reciprocal agreements with other states to the end that cattle which are covered by certificates of vaccination in the state of Iowa and other states may be transported and sold in interstate commerce between the state of Iowa and such other states which enter into reciprocal agreements. [C50, 54,§164.27]

**164.28 Unlawful sales or shipment.** After July 1, 1960, it shall be unlawful to sell or transfer any bovine female animal within the state of Iowa unless it is accompanied by a certificate of official vaccination, is properly branded or tattooed, or shows a negative brucellosis test. Further, it shall be unlawful to ship any bovine female animal into the state of Iowa unless it has been calfhood vaccinated, approved by the state animal health authorities of the state of origin, or shows a negative brucellosis test according to the rules and regulations of the United States department of agriculture governing interstate shipments of cattle.

Any cattle covered by a feeder quarantine are exempted from the provisions of this section. [C54,§164.11; 57GA, ch 99,§7]

## CHAPTER 165

### ERADICATION OF BOVINE TUBERCULOSIS

Referred to in §§159.6, 163.22

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**165.1 Co-operation.** The state department of agriculture is hereby authorized to co-operate with the federal department of agriculture for the purpose of eradicating tuberculosis from the dairy and beef breeds of cattle in the state. [C24, 27, 31, 35, 39,§2665; C46, 50, 54,§165.1]

**165.2 State as accredited area.** The state of Iowa is hereby declared to be and is hereby established as an accredited area for the eradication of bovine tuberculosis from the dairy and breeding cattle of the state. It shall be the duty of the department of agriculture to eradicate bovine tuberculosis in all of the counties of the state in the manner provided

by law as it appears in this chapter. Said department shall proceed with the examination, including the tuberculin test, of all such cattle as rapidly as practicable and as is consistent with efficient work, and as funds are available for paying the indemnities as provided by law.

It shall be the duty of each and every owner of dairy or breeding cattle in the state to conform to and abide by the rules laid down by the state and federal departments of agriculture and follow their instructions designed to suppress the disease, prevent its spread, and avoid reinfection of the herd. [C24, 27, 31, 35, 39,§2666; C46, 50, 54,§165.2]

**165.3 Appraisal.** Before being tested, such animals shall be appraised at their cash value for breeding, dairy, or beef purposes by the owner and a representative of the state department of agriculture, or a representative of the federal department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the state department of agriculture, one by the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. Every appraisal shall be under oath or affirmation and the expense of the same shall be paid by the state, except as provided in this chapter. [C24, 27, 31, 35, 39, §2668; C46, 50, 54, §165.3]

**165.4 Presence of tuberculosis.** If, after such examination, tubercular animals are found, the department shall have authority to order such disposition of them as it considers most desirable and economical. If the department deems that a due regard for the public health warrants it, it may enter into a written agreement with the owner, subject to such conditions as it may prescribe, for the separation and quarantine of such diseased animals. Subject to such conditions, the diseased animals may continue to be used for breeding purposes. [C24, 27, 31, 35, 39, §2669; C46, 50, 54, §165.4]

Referred to in §165.5

**165.5 Nonright to receive compensation.** Any animal retained, under section 165.4, by the owner for ninety days after it has been adjudged infected with tuberculosis shall not be made the basis of any claim for compensation against the state. [C24, 27, 31, 35, 39, §2670; C46, 50, 54, §165.5]

**165.6 Amount of indemnity.** When breeding animals are slaughtered following any test, there shall be deducted from their appraised value the proceeds from the sale of salvage. The owner shall be paid by the state one-third of the sum remaining after the above deduction is made, but the state shall in no case pay to such owner a sum in excess of seventy-five dollars for any registered purebred animal or fifty dollars for any grade animal. [C24, 27, 31, 35, 39, §2671; C46, 50, 54, §165.6]

**165.7 Pedigree.** The pedigree of purebred cattle shall be proved by a certificate of registry from the herdbooks where registered. [C24, 27, 31, 35, 39, §2672; C46, 50, 54, §165.7]

**165.8 Right to receive pay.** No compensation shall be paid to any person for an animal condemned for tuberculosis unless said animal, if produced in, or imported into, the state has been owned by such owner for at least six months prior to condemnation or was raised by such person. [C24, 27, 31, 35, 39, §2673; C46, 50, 54, §165.8]

**165.9 Preference in examinations.** The department in making examinations of cattle

shall give priority to applications by owners for the testing of dairy cattle from which are sold, or are offered for sale, in cities and towns, milk or milk products in liquid or condensed form. [C24, 27, 31, 35, 39, §2674; C46, 50, 54, §165.9]

**165.10 Examination by department.** The department may at any time, on its own motion, make an examination of any herd, and in case animals are destroyed, the appraisement and payment shall be made as provided in this chapter. [C24, 27, 31, 35, 39, §2675; C46, 50, 54, §165.10]

**165.11 Records public.** All records pertaining to animals infected with tuberculosis shall be open for public inspection and the department shall furnish such information relative thereto as may be requested. [C24, 27, 31, 35, 39, §2676; C46, 50, 54, §165.11]

**165.12 Tuberculosis-free herds.** The department shall establish rules for determining when a herd of cattle, tested and maintained under the provisions of this chapter, the laws of the United States, and the rules of the state and federal departments of agriculture, shall be considered as tuberculosis-free. When any herd meets such requirements the owner shall be entitled to a certificate from the department showing that the herd is a tuberculosis-free accredited herd. Such certificate shall be revoked whenever the herd no longer meets the necessary requirements for an accredited herd, but the herd may be reinstated as an accredited herd upon subsequent compliance with such requirements. [C24, 27, 31, 35, 39, §2677; C46, 50, 54, §165.12]

**165.13 Tuberculin.** The department shall have control of the sale, distribution, and use of all tuberculin in the state, and shall formulate rules for its distribution and use. Only a licensed veterinarian shall apply a tuberculin test to cattle within this state. [C24, 27, 31, 35, 39, §2678; C46, 50, 54, §165.13]

**165.14 Inspectors and assistants.** The department may appoint one or more accredited veterinarians as inspectors for each county and one or more persons as assistants to such inspectors. Such inspectors, with the assistance of such person or persons, shall test the breeding cattle subject to test, as provided in this chapter, and shall be subject to the direction of the department in making such tests. [C24, 27, 31, 35, 39, §2679; C46, 50, 54, §165.14]

**165.15 Accredited veterinarian.** An accredited veterinarian is one who has successfully passed an examination set by the state and federal departments of agriculture and is authorized to make tuberculin tests of accredited herds of cattle under the uniform methods and rules governing accredited herd work which are approved by the United States department of agriculture. [C24, 27, 31, 35, 39, §2680; C46, 50, 54, §165.15]

**165.16 Equipment for inspector.** The department may furnish each inspector with the necessary tuberculin and other material, not including instruments and utensils, necessary to make the tests provided for in this chapter. [C24, 27, 31, 35, 39, §2681; C46, 50, 54, §165.16]

**165.17 Compensation.** An inspector shall receive compensation at the rate of forty cents per head for cattle tested and, in addition thereto, compensation of one dollar upon the completion of the test of each herd. Unless such compensation is fixed in the biennial salary act it shall be approved by the budget and financial control committee. [C24, 27, 31, 35, 39, §2682; C46, 50, 54, §165.17; 56GA, ch 103, §1]

Budget and financial control committee, §2.41 et seq.  
See §79.9 et seq.

**165.18 Eradication fund.** In each county in the state, the board of supervisors shall each year when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity and other expenses provided in this chapter, except as provided herein, but such levy shall not exceed three-fourths mill in any year upon the taxable value of all the property in the county. [C24, 27, 31, 35, 39, §2686; C46, 50, 54, §165.18]

40ExGA, HF 68, §68, editorially divided  
Time of levy, §444.9

**165.19 Collection.** Such levy shall be placed upon the tax list by the county auditor and collected by the county treasurer in the same manner and at the same time as other taxes of the county. The money derived from such levy shall be placed in a fund to be known as the county tuberculosis eradication fund, and the same shall only be used for the payment of claims as provided in this chapter. [C24, 27, 31, 35, 39, §2687; C46, 50, 54, §165.19]

Collection of taxes, ch 445 et seq.

**165.20 Report by auditor.** The county auditor of each county shall, not later than July 15 of each year, certify to the secretary of agriculture a report showing the amount in the tuberculosis eradication fund on July 1 of each year. [C24, 27, 31, 35, 39, §2688; C46, 50, 54, §165.20]

**165.21 Levy omitted.** Should it appear to the secretary of agriculture that the balance in such fund is sufficient, with the county's allotment of state and federal funds available, to carry on the work in such county for the ensuing year, he shall so certify to the county auditor and when such certification has been made the board shall make no levy for such tuberculosis eradication fund for such year. [C24, 27, 31, 35, 39, §2689; C46, 50, 54, §165.21]

**165.22 Availability of county fund.** After the amount allotted in any year by the department to any county has been expended or contracted in said county, or at any time that there ceases to be available for such county any federal funds for the eradication of bovine tuberculosis, the county eradication fund provided in this chapter shall become available as a substitute for either or both such funds for the pay-

ment of materials, indemnities, inspectors, and assistants as herein provided. [C24, 27, 31, 35, 39, §2690; C46, 50, 54, §165.22]

40ExGA, HF 68, §70, editorially divided  
Referred to in §165.25

**165.23 Exhaustion of state allotment.** As soon as the allotment to the county has been spent or contracted, the department shall certify such fact to the county auditor, which certificate shall be full authority for the board of supervisors to pay claims as presented to the board by the department of agriculture out of the county eradication fund. [C24, 27, 31, 35, 39, §2691; C46, 50, 54, §165.23]

**165.24 Exhaustion of county fund.** Whenever the balance in such fund becomes less than twenty-five hundred dollars the county auditor shall notify the department in writing of such fact and no expense shall be incurred on such account in excess of the cash available in such fund. [C24, 27, 31, 35, 39, §2692; C46, 50, 54, §165.24]

**165.25 Certification of claims.** All claims presented under section 165.22 shall be certified by the department and filed with the county auditor who shall present them to the board of supervisors and such board shall allow and pay the same as other claims against the county. [C24, 27, 31, 35, 39, §2693; C46, 50, 54, §165.25]

Payment in general, §331.21

**165.26 Permitting test.** Every owner of dairy or breeding cattle in the state shall permit his cattle to be tested for tuberculosis as provided in this chapter, and shall confine his cattle in a proper place so that the examination and test can be applied. If he refuses to so confine his cattle the department may employ sufficient help to properly confine them and the expense of such help shall be paid by the owner or deducted from the indemnity if any is paid. Such owner shall comply with all the requirements for the establishment and maintenance of a tuberculosis-free accredited herd. [C24, 27, 31, 35, 39, §2699; C46, 50, 54, §165.26]

**165.27 Penalty.** Any owner of dairy or breeding cattle in the state who prevents, hinders, obstructs, or refuses to allow a veterinarian authorized by the department of agriculture to conduct such tests for tuberculosis on his cattle, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, nor less than twenty-five dollars. [S13, §2538-s; C24, 27, 31, 35, 39, §2700; C46, 50, 54, §165.27]

Referred to in §165.29

**165.28 Preventing test.** The cattle owned by any owner who violates the provisions of this chapter, or which have reacted to the tuberculin test, shall be quarantined by the department until the law is complied with. When such quarantine is established no beef or dairy products shall be sold from cattle under quarantine until the test has been applied or the quarantine released.



The accredited veterinarians appointed under this chapter shall enforce this quarantine and all of the rules of the department of agriculture of the state of Iowa and of the provisions of this chapter, and in so doing may call to their assistance any peace officer of the state. [C24, 27, 31, 35, 39, §2701; C46, 50, 54, §165.28]

**165.29 Notice.** Before any action is commenced under section 165.27, upon request of the secretary of agriculture, the board of supervisors of any county shall cause such owner to be served with a written notice of the provisions of this chapter, at least fifteen days before the commencement of the action. [C24, 27, 31, 35, 39, §2702; C46, 50, 54, §165.29]

**165.30 Allotment of funds.** The department shall allot, on or before November 1 of each year, among the counties of the state in proportion to the number of breeding cattle owned in each county as shown by the last assessors books, the amount of the state funds estimated to be available for the testing of cattle for tuberculosis. The department shall also attempt to secure a similar allotment each year of the available federal funds by the federal department of agriculture. [C24, 27, 31, 35, 39, §2703; C46, 50, 54, §165.30]

**165.31 Transfer of funds.** The amount of state funds allotted to each county shall be expended therein, but the department, whenever such moneys are not needed in any county, may transfer the same to any other county. [C24, 27, 31, 35, 39, §2704; C46, 50, 54, §165.31]

**165.32 Retest.** The secretary of agriculture may order a retest of any dairy or breeding cattle at any time when, in his opinion, it is necessary to do so, and shall, once in three years, order the tuberculin testing of any cattle to conform to and comply with the regulations of the federal bureau of animal industry in any county where the percentage of bovine tuberculosis has been reduced to one-half of one percent or less, subject to the provisions of this chapter with reference to the disposition or slaughtering of animals found to be reactors when given a tuberculin test. Such county shall be a modified accredited county, and it shall be unlawful for any person to transport any dairy or breeding cattle into such county unless they have been examined for tuberculosis as provided in this chapter. [C27, 31, 35, §2704-b1; C39, §2704.1; C46, 50, 54, §165.32]

Referred to in §165.33

**165.33 Penalty.** Any person found guilty of violating the provisions of section 165.32 shall be deemed guilty of a misdemeanor and pun-

ished by a fine of not to exceed one hundred dollars nor less than twenty-five dollars. [C31, 35, §2704-c1; C39, §2704.2; C46, 50, 54, §165.33]

**165.34 Duty to levy tax.** The board of supervisors shall use whatever tuberculosis eradication funds may be on hand in said county, and shall levy the tax provided in this chapter, each year for the purpose of paying the expenses of such testing and the indemnities provided for herein if the state and federal funds are not sufficient to pay the cost thereof and the indemnities for such animals. [C27, 31, 35, §2704-b2; C39, §2704.3; C46, 50, 54, §165.34]

43GA, ch 75, §11, editorially divided

**165.35 Township animal board of health.** The township trustees in such county are hereby constituted the animal board of health in their respective townships and they shall by April 1 of each year and at such other times as they shall deem advisable, make a survey and report to the state department of agriculture all breeding cattle brought into their respective townships from outside of the county. [C27, 31, 35, §2704-b3; C39, §2704.4; C46, 50, 54, §165.35]

**165.36 Importation of cattle.** No dairy or breeding cattle shall be shipped, driven on foot, or transported, into the state of Iowa, except upon one of the following conditions:

1. That such cattle come from a herd which has been officially accredited as a tuberculosis-free accredited herd by the state from which such cattle come or by the department of agriculture of the United States; or

2. That such cattle come from an area officially declared as a modified accredited area by such state or the department of agriculture of the United States, and the herd from which they originate, if previously infected, has passed two tests free from tuberculosis; or

3. That such cattle are brought into the state of Iowa under quarantine to be tuberculin tested for tuberculosis and fully examined in not less than sixty days nor more than ninety days, such test to be applied by a veterinarian accredited by the department of agriculture of the state of Iowa and at the expense of the owners. Such cattle brought in under quarantine shall be accompanied by an official certificate issued by a veterinarian accredited by the state from which the cattle come or by the department of agriculture of the United States showing them to be free from tuberculosis. The quarantine thus provided for shall be established by the department of agriculture of the state of Iowa and shall not be released until the examination has been made and such cattle found free from tuberculosis. [C31, 35, §2704-c2; C39, §2704.5; C46, 50, 54, §165.36]

Additional provision, §168.11

## CHAPTER 166

## HOG-CHOLERA VIRUS AND SERUM

Referred to in §§155.2, 159.6  
See §266.24 et seq. re serum laboratory

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**166.1 Definitions.** When used in this chapter:

1. The words "biological products" shall include and be deemed to embrace only anti-hog-cholera serum and viruses which are either virulent or nonvirulent, alive or dead.

2. "Manufacturer" includes every person engaged in the preparation, at any stage of the process, of biological products, except those engaged in such preparation in the biological laboratory in the Iowa state college of agriculture and mechanic arts, or in any other state or governmental institution.

3. "Dealer" includes every person who, for profit, sells, dispenses, or distributes, or offers to do so, either as principal or agent, biological products, except:

a. A manufacturer selling direct to any person licensed under this chapter to sell, dispense, or distribute such biological products.

b. A regularly licensed veterinarian who uses such biological products in his professional practice and does not use it for sale or distribution to any other person.

4. "Place of business" is construed to mean each place or premises where biological products are sold, or where biological products are stored or kept for the purpose of sale, dispensation or distribution, or where biological products are offered for sale, dispensation or distribution. [SS15,§2538-w12; C24, 27, 31, 35, 39,§2705; C46, 50, 54,§166.1]

**166.2 Rules.** The department shall have power to make such rules governing the manufacture, sale, and distribution of biological products as it deems necessary to maintain their potency and purity. [SS15, §2538-w3; C24, 27, 31, 35, 39,§2706; C46, 50, 54, §166.2]

**166.3 Permit to manufacture or sell.** Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department of agriculture a permit for that purpose and shall be required to have a separate permit for each place of business. [SS15,§2538-w3; C24, 27, 31, 35, 39, §2707; C46, 50, 54,§166.3]

**166.4 Application for permit.** Every application for such a permit shall be made on a form provided by the department, which form shall call for such information as the department shall deem necessary, including the name and place of business of the applicant. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2708; C46, 50, 54,§166.4]

**166.5 Manufacturer's permit.** An application for a permit to manufacture biological products shall be accompanied by evidence satisfactory to the department that the applicant is the holder of a valid, unrevoked, United States department of agriculture license for the manufacture and sale of such biological products. [C24, 27, 31, 35, 39,§2709; C46, 50, 54,§166.5]

**166.6 Dealer's permit.** An application for a permit to deal in biological products shall be accompanied by a separate bond for each place of business, with sureties to be approved by the department, in the sum of one thousand dollars for each place of business, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal

and is damaged by the negligence of the principal, or any of his agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2710; C46, 50, 54, §166.6]

See §166.13

**166.7 Liability on bond.** The principal on such bond shall be liable to every person for any damage caused by the negligence of the principal or of his agents, notwithstanding the execution of the bond. [C24, 27, 31, 35, 39, §2711; C46, 50, 54, §166.7]

**166.8 New or additional bond.** When judgment is rendered on such bond, the principal shall immediately execute and file with the department a new or additional bond, conditioned as the original bond, and in an amount to be fixed by the department, which will furnish the same amount of security that was furnished before the original bond was impaired. [C24, 27, 31, 35, 39, §2712; C46, 50, 54, §166.8]

**166.9 Liability of manufacturer.** A manufacturer shall be liable to an injured person for all damages which occur:

1. By reason of the negligence of the manufacturer or his employees in the manufacture, warehousing, handling, or distribution of biological products.

2. By reason of the failure of the manufacturer, or his employees, to discharge any duty imposed by law, or by the rules of the department. [C24, 27, 31, 35, 39, §2713; C46, 50, 54, §166.9]

**166.10 Fees.** Fees for permits shall be paid by the manufacturer or dealer to the department when the application for such permit is made and shall be:

1. In case of a manufacturer, twenty-five dollars for each plant at which it is proposed to manufacture biological products.

2. In case of a dealer, one dollar for each place of business, warehouse or distributing agency of the dealer. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2714; C46, 50, 54, §166.10]

**166.11 Inspection of premises.** The premises upon which the business authorized by such permit is carried on shall be subject at all times to inspection by the department. Before issuing an original permit, the department may cause the proposed premises to be inspected, and shall make such requirements regarding the physical conditions and sanitation of said premises as it may deem necessary to secure and maintain the potency and purity of the biological products. If such requirements are not complied with and maintained, the permit shall be refused or revoked as the case may be. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2715; C46, 50, 54, §166.11]

**166.12 Manufacturer's or dealer's permit.** Every permit issued to a manufacturer or

dealer shall expire one year from the date of issuance. A renewal of the same shall be subject to all the conditions, including fees, that are required in the case of an original permit. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2716; C46, 50, 54, §166.12]

**166.13 Revocation of permit.** Such a permit shall be automatically revoked:

1. In case of a dealer, by his failure to execute and file with the department a new and approved bond when required by law, or by his failure to obtain a separate permit and to file a separate bond in the amount of five thousand dollars for each place of business.

2. In case of a manufacturer, by his ceasing to be the holder of a United States department of agriculture license for the manufacture and sale of biological products.

3. In case of either a manufacturer or dealer, for discrimination in the price at which such biological products are sold, and such permit shall not in such case be renewed for one year. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2717; C46, 50, 54, §166.13]

See §166.6

**166.14 Revocation by department.** Such a permit may also be revoked by the department at any time after a reasonable notice and hearing:

1. For violation of the terms, conditions, and requirements on which it was issued.

2. For violation of any law, or of any rule of the department, relating to the business authorized by such permit.

3. In case of a dealer's permit, when a judgment has been rendered on the bond, or when the security of such bond has become impaired in any other way and no new bond is given as required by the department. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2718; C46, 50, 54, §166.14]

**166.15 Prohibited sales.** No biological products shall be sold, offered for sale, distributed, or used, unless produced at a plant which, at the time of producing, held a United States department of agriculture license for the manufacture of such biological products. [SS15, §2538-w3; C24, 27, 31, 35, 39, §2719; C46, 50, 54, §166.15]

**166.16 Sales—limitation.** No person shall sell, distribute, or offer to sell or distribute, virulent blood or virus from cholera-infected hogs except to persons who are holders of valid, unrevoked, written permits to administer the same. [SS15, §2538-w5; C24, 27, 31, 35, 39, §2720; C46, 50, 54, §166.16]

Referred to in §166.40

**166.17 Permits to administer.** No person shall administer hog-cholera virus unless he is the holder of a permit issued by the department for that purpose or is the holder of a license to practice veterinary medicine. [SS15, §2538-w5; C24, 27, 31, 35, 39, §2721; C46, 50, 54, §166.17]

Referred to in §166.40

**166.18 County school of instruction.** Provision shall be made by the extension division of the state college of agriculture and mechanic arts for instruction in each county in the use of anti-hog-cholera serum and virus. Whenever there are ten applicants in any county for such instruction, said division shall make the necessary arrangements, including a sufficient number of competent instructors, at a convenient time and place, which shall be within thirty days after the filing of the requisite number of applications. [C24, 27, 31, 35, 39, §2722; C46, 50, 54, §166.18]

Referred to in §166.40

**166.19 Application for instruction.** Applications for such school shall be made to the county agent, or in the event there is no county agent, to some other person appointed by the board of supervisors to receive such applications. When there are sufficient applications to authorize a school, said agent or person, shall forward the applications to the extension division. At the time and place such school is conducted said agent or person shall collect the sum of three dollars from each applicant, provided a total of not over thirty dollars is collected from the entire number attending. If over ten applicants attend, the total of thirty dollars collected shall be prorated equally among them. [C24, 27, 31, 35, 39, §2723; C46, 50, 54, §166.19]

Referred to in §166.40

**166.20 Instruction and examinations.** Said school shall be conducted in one day and shall consist of necessary instruction in the use and administration of anti-hog-cholera serum and virus, and, if reasonably possible, of actual demonstrations. Examinations shall be conducted on the same day and in such manner as will, in the opinion of the instructor, best test the applicant's understanding of the instructions, and his ability to practically apply them. [C24, 27, 31, 35, 39, §2724; C46, 50, 54, §166.20]

Referred to in §166.40

**166.21 Report.** The instructor shall within five days report to the extension division the names and post-office addresses of those persons who are found by him to be competent to use and administer hog-cholera virus. The names and addresses shall within ten days be certified by the extension division to the department of agriculture. [C24, 27, 31, 35, 39, §2725; C46, 50, 54, §166.21]

Referred to in §166.40

**166.22 Permits.** Upon receipt of such names the department shall within five days issue and forward to each person a permit to administer hog-cholera virus. [SS15, §2538-w5; C24, 27, 31, 35, 39, §2726; C46, 50, 54, §166.22]

Referred to in §166.40

**166.23 Fees.** The names of the successful and unsuccessful applicants for a permit from each county shall also be certified by the extension division to the county agent of their respective counties. In the event there is no

county agent, such certification shall be made to the person appointed by the board of supervisors to receive the applications and fees for instruction. Upon receipt of such list the county agent, or the person in possession of such fees, shall forthwith forward the fees received from the successful applicants to the extension division and refund the fee received from each unsuccessful applicant to him. [C24, 27, 31, 35, 39, §2727; C46, 50, 54, §166.23]

Referred to in §166.40

**166.24 Duration of virus permit.** A permit to administer hog-cholera virus shall continue in force until revoked by the department on a showing that the holder has become incompetent to administer such virus. [SS15, §2538-w5; C24, 27, 31, 35, 39, §2728; C46, 50, 54, §166.24]

Referred to in §166.40

**166.25 Right of holder of virus permit.** The person to whom a permit to administer hog-cholera virus has been issued is authorized only to administer such virus to hogs owned by the holder of the permit, and the permit shall so state. [C24, 27, 31, 35, 39, §2729; C46, 50, 54, §166.25]

Referred to in §166.40

**166.26 Compensation and expenses.** The compensation of the instructors and other expenses connected with the instruction of applicants for permits shall be paid as far as possible out of the fees collected from such applicants, and any surplus shall be paid into the state treasury on July 1 of each year. [C24, 27, 31, 35, 39, §2730; C46, 50, 54, §166.26]

Referred to in §166.40

**166.27 Schools of instruction at Ames.** The state college of agriculture and mechanic arts may hold a school for the purpose of giving instruction in the method of administering anti-hog-cholera serum and virus at any time when there are at least ten applicants for such instruction. [C24, 27, 31, 35, 39, §2731; C46, 50, 54, §166.27]

Referred to in §166.40

**166.28 Conducting school.** Schools of instruction held at said college shall be conducted substantially in the same manner as county schools. Permits to administer virus shall be issued to all applicants who are found to be competent upon the same condition and in the same manner as those taking instruction in county schools. [C24, 27, 31, 35, 39, §2732; C46, 50, 54, §166.28]

Referred to in §166.40

**166.29 Reports by manufacturers and dealers.** A person holding a permit as manufacturer or dealer shall make such written reports to the department relative to biological products as it may from time to time require. [SS15, §2538-w5; C24, 27, 31, 35, 39, §2733; C46, 50, 54, §166.29]

**166.30 Reports by permit holder.** Every holder of a permit to administer hog-cholera virus shall, upon request of the department,

make a report to the department giving such information as the department may require. Such information shall be on a form furnished by the department. [C24, 27, 31, 35, 39, §2734; C46, 50, 54, §166.30]

Referred to in §§166.31, 166.40

**166.31 Delivery of report.** Within ten days after being requested in writing by the department such report shall be delivered or sent by certified mail to the department by the permit holder. The department may suspend the permit of any holder who fails to make such report until he has complied with section 166.30. [C24, 27, 31, 35, 39, §2735; C46, 50, 54, §166.31; 57GA, ch 267, §29]

Referred to in §166.40

**166.32 Lists of manufacturers and dealers.** The department shall, without additional charge, and when it issues a permit to administer hog-cholera virus, inclose with such permit a complete list of every manufacturer and dealer licensed to manufacture or distribute biological products. A similar list shall also be sent to every county agent, and any necessary corrections or changes shall be sent to such agent at least once every three months. [C24, 27, 31, 35, 39, §2736; C46, 50, 54, §166.32]

Referred to in §166.40

**166.33 Lists of virus permit holders.** The department shall also upon the request of any manufacturer, dealer, or other person furnish a complete list of the names and addresses of the holders of unrevoked permits to administer virus within ten days after the issuance of such permits. A sufficient charge shall be made for such list as will cover the cost of preparation and distribution. [C24, 27, 31, 35, 39, §2737; C46, 50, 54, §166.33]

Referred to in §166.40

**166.34 Seizure of samples.** The department may seize, at any time or place, for examination, samples of biological products manufactured or kept for use or sale within the state. [S13, §2538-w6; C24, 27, 31, 35, 39, §2738; C46, 50, 54, §166.34]

**166.35 Condemnation and destruction.** The department shall have power to condemn and destroy any biological products which it deems

unsafe. [S13, §2538-w6; C24, 27, 31, 35, 39, §2739; C46, 50, 54, §166.35]

**166.36 Defacing labels.** No person shall remove or deface any label upon the bottles or packages containing any biological products or change the contents from the original container except for immediate use. [SS15, §2538-w8; C24, 27, 31, 35, 39, §2740; C46, 50, 54, §166.36]

**166.37 Price of virus.** Persons holding permits, either as manufacturers or dealers, shall sell all biological products at a uniform price to all persons to whom sales are made. No rebate on said price shall be given, either directly or indirectly, in any manner whatsoever. [C24, 27, 31, 35, 39, §2741; C46, 50, 54, §166.37]

**166.38 Compensation.** No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than his charges for administering the same, unless he makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall forfeit his license to practice and the same shall not be renewed for a period of one year. [C24, 27, 31, 35, 39, §2742; C46, 50, 54, §166.38]

Revocation of license, §169.36

**166.39 Violations.** Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of his duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars. [S13, §2538-w7; C24, 27, 31, 35, 39, §2743; C46, 50, 54, §166.39]

**166.40 When permit not needed.** None of the provisions of this chapter as contained in sections 166.16 to 166.28 inclusive, and sections 166.30 to 166.33 inclusive, relative to schools of instruction and permits to purchase and administer virus shall be of any force or effect where either a modified live virus of the non-virulent type or dead virus vaccine is to be purchased and administered. [C54, §166.40]

## CHAPTER 167

## USE AND DISPOSAL OF DEAD ANIMALS

Referred to in §159.6

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| <p>167.1 Scope.</p> <p>167.2 Disposal of dead animals.</p> <p>167.3 "Disposing" defined.</p> <p>167.4 Application for license.</p> <p>167.5 Inspection of place.</p> <p>167.6 License.</p> <p>167.7 Record of licenses.</p> <p>167.8 Inspection revealing unsuitable place.</p> <p>167.9 Return of fee.</p> <p>167.10 Renewal of license.</p> | <p>167.11 Disposal plants—specifications.</p> <p>167.12 Disposing of bodies.</p> <p>167.13 Rules.</p> <p>167.14 Annual inspection.</p> <p>167.15 Transportation of dead animals.</p> <p>167.16 Driving upon premises of another.</p> <p>167.17 Disinfecting outfit.</p> <p>167.18 Duty to dispose of dead bodies.</p> <p>167.19 Penalty.</p> <p>167.20 Appropriation.</p> |
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**167.1 Scope.** This chapter shall not apply to licensed slaughterhouses, or to the disposal, by licensed slaughterhouses, of the bodies of animals, or any part thereof, slaughtered for human food. [C24, 27, 31, 35, 39,§2744; C46, 50, 54,§167.1; 56GA, ch 104,§1]

**167.2 Disposal of dead animals.** No person shall engage in the business of disposing of the bodies of dead animals without first obtaining a license for that purpose from the department of agriculture. [C24, 27, 31, 35, 39,§2745; C46, 50, 54,§167.2]

**167.3 "Disposing" defined.** Any person who shall receive from any other person the body of any dead animal for the purpose of obtaining the hide, skin, or grease from such animal, in any way whatsoever, or any part thereof, for the purpose of transporting the same upon the highways of this state, shall be deemed to be engaged in the business of disposing of the bodies of dead animals, and must be the operator or employee of a licensed disposal plant. [C24, 27, 31, 35, 39,§2746; C46, 50, 54,§167.3; 56GA, ch 104,§2]

**167.4 Application for license.** Application for such license shall be made to the department on forms provided by it, which application shall set forth the name and residence of the applicant, his proposed place of business, and the particular method which he intends to employ in disposing of such dead bodies, and such other information as the department may require. Said application shall be accompanied by a fee of one hundred dollars. [C24, 27, 31, 35, 39,§2747; C46, 50, 54,§167.4]

**167.5 Inspection of place.** On receipt of such application, the secretary of agriculture or some person appointed by him, shall at once inspect the building in which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, he shall so certify in writing to such specific findings, and forward the same to the department. [C24, 27, 31, 35, 39,§2748; C46, 50, 54,§167.5]

**167.6 License.** On the receipt of the foregoing certificate, and the additional payment of one hundred dollars, the department shall issue a license to the applicant to conduct such business, at the place specified in the application, for one calendar year, but the department shall not issue license for disposal plant not located within the boundaries of the state of Iowa. [C24, 27, 31, 35, 39,§2749; C46, 50, 54,§167.6]

**167.7 Record of licenses.** The department shall keep a record of all licenses applied for or issued, which shall show the date of application and by whom made, the cause of all rejections, the date of issue, to whom issued, the date of expiration, and the location of the licensed business. [C24, 27, 31, 35, 39,§2750; C46, 50, 54,§167.7]

**167.8 Inspection revealing unsuitable place.** If the inspector finds that said building does not comply with the requirements of this chapter or with the rules of the department, he shall notify the applicant wherein the same fails to so comply. If within a reasonable time thereafter, to be fixed by the inspector, the specified defects are remedied, the department shall make a second inspection, and proceed therewith as in case of an original inspection. Not more than two inspections need be made under one application. [C24, 27, 31, 35, 39,§2751; C46, 50, 54,§167.8]

**167.9 Return of fee.** In case such applicant is refused a license, no part of the fees paid by him shall be refunded. [C24, 27, 31, 35, 39,§2752; C46, 50, 54,§167.9]

**167.10 Renewal of license.** An original license shall be renewed for each subsequent calendar year on the payment of one hundred dollars, provided the holder, in the opinion of the department, remains responsible and suitable to carry on said business, and the place of business continues to comply with this chapter and the rules of the department, as they then exist. [C24, 27, 31, 35, 39,§2753; C46, 50, 54,§167.10]

**167.11 Disposal plants—specifications.** Each place for the carrying on of said business shall,

to the satisfaction of the department, be provided with floors constructed of concrete, or some other nonabsorbent material, adequate drainage, be thoroughly sanitary, and adapted to carrying on the business. [C24, 27, 31, 35, 39,§2754; C46, 50, 54,§167.11]

**167.12 Disposing of bodies.** The following requirements shall be observed in the disposal of such bodies:

1. Cooking vats or tanks shall be airtight, except proper escapes for live steam.

2. Steam shall be so disposed of as not to cause unnecessary annoyance or create a nuisance.

3. The skinning and dismembering of bodies shall be done within said building.

4. The building shall be so situated and arranged, and the business therein so conducted, as not to interfere with the comfortable enjoyment of life and property.

5. Such portions of bodies as are not entirely consumed by cooking or burning shall be disposed of by burying as hereafter provided, or in such manner as the department may direct.

6. In case of disposal by burying, the burial shall be to such depth that no part of such body shall be nearer than four feet to the natural surface of the ground, and every part of such body shall be covered with quicklime, and by at least four feet of earth.

7. All bodies shall be disposed of within twenty-four hours after death. [C24, 27, 31, 35, 39,§2755; C46, 50, 54,§167.12]

**167.13 Rules.** The department shall make such reasonable rules for the carrying on and conducting of such business as it may deem advisable, and all persons engaging in such business shall comply therewith. [C24, 27, 31, 35, 39,§2756; C46, 50, 54,§167.13]

**167.14 Annual inspection.** The department shall inspect each place licensed under this chapter at least once each year, and as often as it deems necessary, and shall see that the licensee conducts the business in conformity to this chapter and the rules made by the department. For a failure or refusal by any licensee to obey the provisions of this chapter or said rules, the department shall suspend or revoke the license held by such licensee. [C24, 27, 31, 35, 39,§2757; C46, 50, 54,§167.14]

**167.15 Transportation of dead animals.** Any person holding a license under the provisions of this chapter may haul and transport the carcasses of animals that have died from disease, except those prohibited by the department, in a covered wagon bed or tank which is watertight, and is so constructed that no

drippings or seepings from such carcasses can escape from such wagon bed or tank, and said carcasses shall not be moved from said wagon bed or tank except at the place of final disposal. The department may prescribe additional requirements governing the construction of such vehicles and such transportation not inconsistent with the above. [C24, 27, 31, 35, 39,§2758; C46, 50, 54,§167.15]

**167.16 Driving upon premises of another.** Vehicles when loaded with the carcass of an animal which has died of disease shall be driven directly to the place of disposal, except that the driver in so driving may stop on the highway for other like carcasses, but he shall not drive into the yard or upon the premises of any person unless he first obtains the permission of the person to do so. [C24, 27, 31, 35, 39,§2759; C46, 50, 54,§167.16]

**167.17 Disinfecting outfit.** The driver or owner of a vehicle used in conveying animals which said driver or owner has reason to believe died of disease, shall, immediately after unloading said animals, cause the wagon box, tank, or other vehicle, the wheels thereof, all canvas and covers, the feet of the animals drawing said conveyance, and the outer clothing of all persons who have handled said carcasses to be disinfected with a solution of at least one part of cresol dip to four parts of water, or with some other equally effective disinfectant. [C24, 27, 31, 35, 39,§2760; C46, 50, 54,§167.17]

**167.18 Duty to dispose of dead bodies.** No person caring for or owning any animal that has died shall allow the carcass to lie about his premises. Such carcass shall be disposed of within twenty-four hours after death by cooking, burying, or burning, as provided in this chapter, or by disposing of it, within said time, to a person licensed to so dispose of it, but the carcass of an animal which has not died of a contagious disease may be fed to hogs. [C24, 27, 31, 35, 39,§2761; C46, 50, 54, §167.18]

**167.19 Penalty.** The violation of any of the provisions of this chapter or any rule adopted thereunder by the department shall be punishable by a fine of not less than five dollars nor more than one hundred dollars or by imprisonment in the county jail not more than thirty days. [C97,§5019; C24, 27, 31, 35, 39,§2762; C46, 50, 54,§167.19]

**167.20 Appropriation.** The expense attending the inspection provided for in this chapter shall be paid from any unappropriated funds in the state treasury. [C24, 27, 31, 35, 39,§2763; C46, 50, 54,§167.20]

## CHAPTER 168

## BABY CHICKS

See §§159.6, 163.5

168.1 Definitions.

168.2 License of dealers.

168.3 Term and fee.

168.4 Disposal of fees.

168.5 Requirements of dealers.

168.6 Inspection.

168.7 Administration of chapter.

168.8 Punishment.

**168.1 Definitions.** For the purpose of this chapter:

1. "Baby chicks" shall mean all domestic fowls six weeks of age or under.

2. "Department" or "department of agriculture" shall mean Iowa department of agriculture.

3. "Person" shall include an individual, partnership, a corporation, company, firm, society, association, community sales, public sale pavilions, or other holders of public auctions any place in the state, operating in the state, but the term "person" shall not be construed to include any person who hatches for sale one thousand chicks per year or less; and the act, omission, or conduct of any officer, agent or other person acting in a representative capacity may be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this chapter. [C46, 50, 54,§168.1]

**168.2 License of dealers.** Every person engaged in the business of custom hatching, producing baby chicks for sale in this state, or of selling or offering for sale baby chicks from any place located in this state shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. [C46, 50, 54,§168.2]

**168.3 Term and fee.** The license fee shall be ten dollars per annum, and each license shall expire on July 1 after date of issue. [C46, 50, 54,§168.3]

**168.4 Disposal of fees.** All fees collected under the provisions of this chapter shall be paid into the state treasury. [C46, 50, 54,§168.4]

**168.5 Requirements of dealers.** All establishments licensed under this chapter shall:

1. Before baby chicks are delivered for sale, determine that the same are in a healthy condition.

2. Provide ample facilities for the proper care and handling of baby chicks on the premises.

3. Maintain sanitary measures such as will properly suppress and prevent the spread of contagious and infectious diseases of baby chicks.

4. When selling or delivering baby chicks to a purchaser in the state, place the same in a box, crate, coop, or other sanitary container for delivery. Each such box, crate, coop, or other container shall be plainly labeled with the name of seller and description of contents. Such description of contents shall include name of breed and variety, percent of guarantee if chicks are sold as sexed chicks, date of hatch, number of chicks, and any tests made on parent stock. [C46, 50, 54,§168.5]

Referred to in §168.6

**168.6 Inspection.** All establishments licensed under this chapter shall be subject to inspection by the department to determine that the requirements of section 168.5 are fully met. The failure to comply with section 168.5 or any of the provisions thereof shall constitute a violation of this chapter. [C46, 50, 54,§168.6]

**168.7 Administration of chapter.** The secretary of agriculture shall be charged with administration and enforcement of this chapter. [C46, 50, 54,§168.7]

**168.8 Punishment.** Any person, partnership, corporation, company, firm, society, or association who violates any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. [C46, 50, 54,§168.8]



## CHAPTER 169

## VETERINARY MEDICINE AND SURGERY

Referred to in §§155.3, 159.6, 581.1

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**169.1 Persons engaged in practice.** For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of veterinary medicine:

1. Persons practicing veterinary medicine, surgery, or dentistry, or any of the branches thereof.
2. Persons who profess to be veterinarians, or who profess to assume the duties incident to the practice of veterinary medicine.
3. Persons who make a practice of prescribing or who do prescribe and furnish medicine for the ailments of animals.

4. Persons who act as representatives of licensed veterinarians in doing any of the things mentioned in this section. [C24, 27, 31, 35, 39,§2764; C46, 50, 54,§169.1; 56GA, ch 105,§1]

Referred to in §169.2

**169.2 Persons not engaged in practice.** Section 169.1 shall not be construed to include the following classes of persons:

1. Veterinarians of the United States army, navy, or in the service of the federal department of agriculture, not engaged in private practice.
2. Persons who dehorn cattle or castrate animals.
3. Persons who treat diseased or injured animals gratuitously.
4. Persons who advertise or sell patent or proprietary medicines. [S13,§2538-m; C24, 27, 31, 35, 39,§2765; C46, 50, 54,§169.2; 56GA, ch 105, §2]

**169.3 License.** No person shall engage in the practice of veterinary medicine unless he

shall have obtained from the department of agriculture a license for that purpose. [S13, §2538-a; C24, 27, 31, 35, 39,§2766; C46, 50, 54, §169.3]

**169.4 Form.** Every license to practice veterinary medicine shall be in the form of a certificate under the seal of the department, and signed by the secretary. The number of the book and page containing the entry of the license in the office of the department shall be noted on the face of the license. [S13,§2538-i; C24, 27, 31, 35, 39,§2767; C46, 50, 54,§169.4]

**169.5 Display.** Every person licensed under this chapter shall keep his license displayed in the place in which he maintains an office. [C24, 27, 31, 35, 39,§2768; C46, 50, 54,§169.5]

**169.6 Renewal.** Every license issued under this chapter shall expire on the thirtieth day of June following the date of issuance, and shall be renewed annually upon application by the licensee, without examination. Application for such renewal shall be made in writing to the department of agriculture, accompanied by the legal fee, at least thirty days prior to the expiration of such license. Any licensee failing to pay his license fee before the thirtieth day of June each year, in addition to the delinquent fee, shall pay to the department of agriculture the sum of five dollars before said license shall be renewed; provided, that in the event said license fee is not paid within ninety days after the thirtieth day of June of any year, then and in that event the board may revoke said license to practice veterinary medicine in the state of Iowa. The department shall notify each

licensee by mail of the expiration of his license. Every renewal shall be displayed in connection with the original license. A licensed veterinarian of the state of Iowa who is called into military duty for the United States government is exempt from paying the one dollar renewal fee for such license but said license must be renewed within one year from date of discharge or the license shall be revoked. [S13,§2538-j; C24, 27, 31, 35, 39,§2769, 2769.1; C46, 50, 54, §§169.6, 169.7; 56GA, ch 105,§§3-5]

**169.7** Repealed by 56GA, ch 105,§5.

**169.8 Prima-facie evidence.** The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device, or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice, shall be prima-facie evidence of engaging in the practice of veterinary medicine. [C24, 27, 31, 35, 39,§2770; C46, 50, 54, §169.8]

**169.9 Unlawful use of degree.** No person shall use any veterinary degree or abbreviation for the same unless such degree has been conferred upon him by an institution of learning recognized by the state board of education. [S13,§2538-n; C24, 27, 31, 35, 39,§2771; C46, 50, 54,§169.9]

**169.10 Requirement for license.** Each applicant for a license to practice veterinary medicine, surgery, and dentistry shall:

1. Present satisfactory evidence that he is at least twenty-one years of age, and of good character.
2. Present a diploma showing that he is a graduate of a recognized school of veterinary medicine.
3. Pass satisfactorily an examination in veterinary medicine, surgery, and dentistry. [S13, §2538-i; C24, 27, 31, 35, 39,§2772; C46, 50, 54, §169.10]

**169.11 Fees.** The following fees shall be collected by the department of agriculture:

1. For a license to practice veterinary medicine, issued upon an examination given by the examining board, twenty-five dollars, which shall be paid in advance to the department of agriculture.
2. For a license to practice veterinary medicine, issued upon the basis of a license issued in another state, fifty dollars.
3. For the renewal of a license to practice veterinary medicine, one dollar.
4. For a certified statement that a licensee is licensed in this state, five dollars.
5. For the issuance of a duplicate license in case the original has been lost or destroyed, five dollars. [S13,§2538-h,-i,-j; C24, 27, 31, 35, 39,§2773; C46, 50, 54,§169.11]

**169.12 Re-examinations.** In case an applicant fails in his examination, he shall be permitted to take a subsequent examination

within any period not exceeding twelve months thereafter without paying any additional fee. After the expiration of twelve months such applicant shall pay the regular fee. [S13,§2538-o; C24, 27, 31, 35, 39,§2774; C46, 50, 54,§169.12]

**169.13 Record of licenses.** The name, age, nativity, location, number of years of practice of the person to whom a license is issued, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department of agriculture, to be known as the registry book, and the same shall be open to public inspection. [S13,§2538-i,-j; C24, 27, 31, 35, 39,§2775; C46, 50, 54,§169.13]

**169.14 Change of residence.** When any person licensed to practice under this chapter changes his residence, he shall notify the department of agriculture and such change shall be noted in the registry book. [C24, 27, 31, 35, 39,§2776; C46, 50, 54,§169.14]

**169.15 Examining board.** For the purpose of giving examinations to applicants for license to practice veterinary medicine, the department of agriculture shall appoint a board of three examiners, who shall be licensed veterinarians. [S13,§2538-t; C24, 27, 31, 35, 39, §2777; C46, 50, 54,§169.15]

Referred to in §§169.36, 169.37

**169.16 Term.** The members of the examining board shall be appointed for a term of three years. The term of each examiner shall commence on July 1 in the year of appointment and the terms of the members of the board shall be rotated in such a manner that one examiner shall retire each year and a successor be appointed to take his place. [C24, 27, 31, 35, 39,§2778; C46, 50, 54,§169.16]

**169.17 Vacancies.** Any vacancy in the membership of the examining board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments. [C24, 27, 31, 35, 39,§2779; C46, 50, 54,§169.17]

**169.18 Compensation.** Each member of the examining board shall receive ten dollars a day for each day actually engaged in the discharge of his duties, including compensation for a reasonable number of days for the preparation of examination questions and the reading of papers in addition to the time actually spent in conducting examinations, but if any member of the examining board is in the full-time employ of the department he shall not receive any compensation as a member of such board other than his regular salary. Each member of the board shall also receive five cents per mile for the number of miles actually traveled in the discharge of his duties. [C24, 27, 31, 35, 39,§2780; C46, 50, 54,§169.18]

**169.19 Supplies.** The department of agriculture shall furnish the examining board with all articles and supplies required for the public

use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the same shall be considered and accounted for as if obtained for the use of said department. [C24, 27, 31, 35, 39, §2782; C46, 50, 54, §169.19]

**169.20 Quarters.** The executive council shall furnish the examining board with suitable quarters in which to conduct the examinations held by said board. [C24, 27, 31, 35, 39, §2783; C46, 50, 54, §169.20]

**169.21 Meetings.** The board shall meet at least once a year, and oftener if necessary, at the capitol, for the purpose of holding examinations. A majority shall constitute a quorum. [S13, §2538-f; C24, 27, 31, 35, 39, §2784; C46, 50, 54, §169.21]

**169.22 Representation at national meetings.** The department may designate one of the members of the examining board to attend either:

1. The annual meeting of the regular national association or society of the veterinary profession, or

2. The annual meeting of the national organization of state examining boards for such profession. [C24, 27, 31, 35, 39, §2785; C46, 50, 54, §169.22]

**169.23 Applications.** Any person desiring to take the examination for a license to practice veterinary medicine shall make application to the department of agriculture, on a form provided by the department, at least fifteen days before the examination. Such application shall be accompanied by the license fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the department and shall be signed and verified by the oath of the applicant. [S13, §2538-e; C24, 27, 31, 35, 39, §2786; C46, 50, 54, §169.23]

**169.24 Accredited colleges.** The department of agriculture shall prepare and keep up to date a list of accredited colleges in which is taught the science of veterinary medicine, surgery, and dentistry. [C24, 27, 31, 35, 39, §2787; C46, 50, 54, §169.24]

**169.25 Professional schools.** As a basis for such action on the part of the department the registrar of the state college of agriculture and mechanic arts and the dean of the division of veterinary medicine of said college shall supply such data relative to any veterinary school as the department may request. [C24, 27, 31, 35, 39, §2788; C46, 50, 54, §169.25]

**169.26 Eligible candidates.** Prior to each examination the department of agriculture shall transmit to the examining board the list of candidates who are eligible to take such

examination. In making up such list, the department may call upon the examining board, or any member thereof, for information relative to the eligibility of any applicant. [C24, 27, 31, 35, 39, §2789; C46, 50, 54, §169.26]

**169.27 Rules relative to examinations.** The examining board shall establish rules for:

1. The conducting of examinations.

2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [S13, §2538-e; C24, 27, 31, 35, 39, §2790; C46, 50, 54, §169.27]

**169.28 Identity of candidate concealed.** All examinations shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. [C24, 27, 31, 35, 39, §2791; C46, 50, 54, §169.28]

**169.29 Successful applicants.** Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the members of said board. After each examination, the examining board shall certify the names of the successful applicants to the department of agriculture, in the manner prescribed by said department, which shall issue the proper license and make the required entry in the registry book. [S13, §2538-f; C24, 27, 31, 35, 39, §2792; C46, 50, 54, §169.29]

**169.30 Records.** All matters connected with each examination for license shall be filed with the department of agriculture and preserved for five years as a part of the records of the department, during which time said records shall be open to public inspection. [C24, 27, 31, 35, 39, §2793; C46, 50, 54, §169.30]

**169.31 Reciprocal agreements.** For the purpose of recognizing licenses to practice veterinary medicine which have been issued in other states, the department of agriculture, upon recommendation of the examining board, is authorized to establish reciprocal relations with the duly constituted and proper authorities of such other states. [S13, §2538-i; C24, 27, 31, 35, 39, §2794; C46, 50, 54, §169.31]

**169.32 Reciprocal disabilities.** When the laws of such other states or the rules of such authorities place any requirement or disability upon a person licensed under this chapter or on any person holding a diploma from the division of veterinary medicine of the college of agriculture and mechanic arts of this state which affects the rights of said persons to be licensed or to practice in said other states, then the same requirement or disability shall be placed upon any person licensed in said state or holding a diploma from any veterinary college situated therein, when applying for a license to practice in this state. [S13, §2538-11; C24, 27, 31, 35, 39, §2795; C46, 50, 54, §169.32]

**169.33 Foreign licenses.** After reciprocal relations are entered into, the department may, in lieu of the examination herein provided for, issue a license to practice veterinary medicine, on the basis of a certificate of registration or license issued by the duly constituted and proper authorities of another state with which such reciprocal relations exist, provided such certificate of registration or license has been issued by such other state on requirements substantially equivalent to those required in this state at the time of the issuance of such certificate of registration or license. [S13, §2538-i; C24, 27, 31, 35, 39, §2796; C46, 50, 54, §169.33]

**169.34 Termination of reciprocal agreements.** When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis for granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the examining board and certified to the department of agriculture for its guidance in enforcing the provisions of this section. [C24, 27, 31, 35, 39, §2797; C46, 50, 54, §169.34]

**169.35 Change of residence.** Any licensee who is desirous of changing his residence to another state or territory shall, upon application to the department of agriculture and payment of the legal fee, receive a certified statement that he is a duly licensed practitioner in this state. [C24, 27, 31, 35, 39, §2798; C46, 50, 54, §169.35]

**169.36 Revocation of license.** A license to practice under this chapter shall be revoked or suspended by the secretary of agriculture of the state of Iowa and the examining board provided for in section 169.15, when the licensee is found guilty of any of the following acts or offenses:

1. Fraud in procuring the license.
2. Incompetency in the practice of the profession.
3. Immoral, unprofessional, or dishonorable conduct.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of an offense involving turpitude.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements, publicity material, or interviews having a tendency to deceive and defraud the public.
8. Distribution of alcohol or drugs for any other than legitimate purposes.
9. Willful or repeated violations of this title,

the title on "Public Health", or the rules of the department of agriculture.

10. Employing directly or indirectly a caper, solicitor, or drummer to secure patients, or obtaining a fee for the assurance that an incurable disease can be cured.

11. Having professional connections or lending one's name to any illegal practitioner of veterinary medicine or the various branches thereof.

12. Any division of fees or charges or any agreement or arrangement to share fees or charges.

13. The revocation by a sister state or territory of a license or certificate by virtue of which one is licensed to practice veterinary medicine in that state or territory.

14. Fraud or dishonesty in applying, treating or reporting on biologics, tuberculin or serological tests.

15. Failing to report, as required by law, or making false report of any contagious or infectious disease.

16. Issuing a certificate of health for an animal knowing that the animal described therein was not the animal from which the tests were made as a basis for the certificate, or otherwise falsifying any such certificate. [S13, §2538-e; C24, 27, 31, 35, 39, §2799; C46, 50, 54, §169.36; 56GA, ch 105, §§6, 7; 57GA, ch 100, §1]

Distribution of alcohol, ch 125 et seq.  
Distribution of drugs, chs 203, 204, 205  
Public health, ch 135 et seq.

**169.37 Proceeding by attorney general.** The attorney general may, on his own motion, or when directed by the department of agriculture shall, file in the office of the department of agriculture a petition against any licensee to whom has been granted a license to practice veterinary medicine. The attorney general shall, on behalf of the state, prosecute said action before the secretary of agriculture and the examining board provided for in section 169.15. At said hearing the secretary of agriculture shall act as chairman. [C31, 35, §2799-d1; C39, §2799.1; C46, 50, 54, §169.37]

**169.38 Petition.** The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.
2. Charges against licensee shall be stated in full.
3. Amendments may be filed with the consent of the secretary of agriculture.
4. All allegations shall be deemed denied, but the licensee may plead thereto if he desires. [C31, 35, §2799-d2; C39, §2799.2; C46, 50, 54, §169.38]

**169.39 Hearing on order.** Upon the presentation of the petition, the secretary of agriculture shall make an order fixing the time and place of hearing which shall not be less than ten nor more than ninety days thereafter. Said hearing shall be held at the office of the secretary of agriculture, but the secretary of agriculture may, if he deems best, hold said

hearing at some suitable place in the county of the residence of the licensee. [C31, 35,§2799-d3; C39,§2799.3; C46, 50, 54,§169.39]

**169.40 Notice.** Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing, in the manner required for the service of notice of the commencement of an ordinary action. [C31, 35, §2799-d4; C39,§2799.4; C46, 50, 54,§169.40]

Manner of service, R.C.P. 56(a)

**169.41 Power of secretary.** The secretary of agriculture shall have power to subpoena witnesses, administer oaths to such witnesses, and compel witnesses to produce books, letters, documents, papers, and all other articles essential to the hearing. [C31, 35,§2799-d5; C39, §2799.5; C46, 50, 54,§169.41]

44GA, ch 56,§7, editorially divided

**169.42 Fees and costs.** Witnesses attending said hearing shall receive the same fees and mileage as are allowed witnesses in the district court. Members of the examining board shall each receive ten dollars per day for each day actively engaged in said hearing. If the license is suspended or revoked, the cost of said hearing shall be paid by the licensee. If the license is not suspended or revoked, the cost of said hearing shall be paid by the state. [C31, 35, §2799-d6; C39,§2799.6; C46, 50, 54,§169.42]

Witness fees, §622.69

**169.43 Forgeries.** Any person who shall file or attempt to file with the department of agriculture any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [C24, 27, 31, 35, 39,§2803; C46, 50, 54,§169.43]

Forgery, §718.1

**169.44 Fraud.** Any person who shall present to the department of agriculture a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been granted by said department, shall be punished as provided in section 169.45. [C24, 27, 31, 35, 39,§2804; C46, 50, 54,§169.44]

**169.45 Penalty.** Any person who violates any provision of this chapter shall be guilty of a misdemeanor. [S13,§2538-1; C24, 27, 31, 35, 39, §2805; C46, 50, 54,§169.45]

Referred to in §169.44  
Punishment, §687.7

**169.46 Enforcement.** The department of agriculture shall enforce the provisions of this chapter and for that purpose shall make necessary investigations relative thereto. Every licensee and member of the examining board shall furnish said department such evidence as he may have relative to any alleged violation which is being investigated. [C24, 27, 31, 35, 39, §2806; C46, 50, 54,§169.46]

**169.47 Duty of county attorney.** The county attorney of the county in which any violation of this chapter occurs shall conduct the necessary prosecution for such violation. [S13,§2538-1; C24, 27, 31, 35, 39,§2807; C46, 50, 54,§169.47]

**169.48 Practice without license—injunction.** Any person engaging in the practice of veterinary medicine as defined in this chapter without possessing a license therefor may be restrained by permanent injunction in an action to be instituted in the name of the state of Iowa on the information of the secretary of agriculture. [56GA, ch 105,§8]

### CHAPTER 170

#### HOTELS, RESTAURANTS, AND FOOD ESTABLISHMENTS

Referred to in §159.6

##### 170.1 Definitions.

###### LICENSES

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- 170.3 Application for license.
- 170.4 Operation without license.
- 170.5 License fees.
- 170.6 Inspection fee.
- 170.7 Restaurant fund.
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###### SANITARY CONSTRUCTION

- 170.9 Plumbing in buildings.
- 170.10 Buildings not connected with sewers.
- 170.11 Restaurants exempted.
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- 170.14 Screens.
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###### SANITATION IN CONDUCTING BUSINESS

- 170.18 Lighting and ventilation.
- 170.19 Sanitary regulations.
- 170.20 Requirements for slaughterhouses.
- 170.21 Towels.
- 170.22 Drinking cups—glasses sterilized.
- 170.23 Tableware.
- 170.24 Expectorating.
- 170.25 Use as living room.
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###### SPECIAL SANITATION AND FIRE PROVISIONS IN RE HOTELS, ETC.

- 170.29 Bedding.
- 170.30 Vermin.
- 170.31 Towels.
- 170.32 Ventilation.
- 170.33 Sleeping apartments in new hotels.
- 170.34 Free use of locked toilets.

- 170.35 Outside water closets.
- 170.36 List of rooms and rates to be posted.
- 170.37 Increase of rates.
- 170.38 Fire protection regulations.
- 170.39 to 170.45 Repealed by 57GA, ch 75,§13.

INSPECTION

- 170.46 Annual inspection.

- 170.47 Inspection upon complaint.
- 170.48 Repealed by 57GA, ch 75,§13.

ENFORCEMENT

- 170.49 Penalty.
- 170.50 Injunction.
- 170.51 Duty of county attorney.

**170.1 Definitions.** For the purpose of this chapter:

1. "Hotel" shall mean any building or structure, equipped, used, advertised as, or held out to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished transient guests for hire, whether with or without meals.

2. "Guest room" shall mean office, parlor, dining room, kitchen, and sleeping apartment of a hotel, whether for transient or permanent guests.

3. "Sleeping apartment" shall mean bedroom or other sleeping quarters in a hotel.

4. "Restaurant" shall mean any building or structure equipped, used, advertised as, or held out to the public to be a restaurant, cafe, cafeteria, dining hall, lunch counter, lunch wagon, or other like place where food is served for pay, except hotels and such places as are used by churches, fraternal societies, and civic organizations which do not regularly engage in the serving of food as a business.

5. "Food" shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound.

6. "Food establishment" shall include any building, room, basement, or other place, used as a bakery, confectionery, cannery, packing-house, slaughterhouse, dairy, creamery, cheese factory, restaurant or hotel kitchen, retail grocery, meat market, or other place in which food is kept, produced, prepared, or distributed for commercial purposes.

7. "Slaughterhouse" shall mean a food establishment in which animals or poultry are killed or dressed for food.

1. [S13,§2514-h; C24, 27, 31, 35, 39,§2808; C46, 50, 54,§170.1]

2, 3, 4. [C24, 27, 31, 35, 39,§2808; C46, 50, 54, §170.1]

5, 6. [S13,§2527-a; C24, 27, 31, 35, 39,§2808; C46, 50, 54,§170.1]

7. [S13,§2527-i; C24, 27, 31, 35, 39,§2808; C46, 50, 54,§170.1]

LICENSES

**170.2 License required.** No person shall maintain a food establishment until he has obtained a license from the department of agriculture. However, cigar stores, drug stores, egg, cream or poultry buying stations, or any other establishment selling or offering for sale only candy, gum or similar products, schools

selling or offering for sale refreshments at athletic contests, band festivals, or similar events, and children selling or offering for sale kool-ade, lemonade or other soft drinks, and candy, gum or similar products on lawns, curbsings, sidewalks, or any other property shall not be required to obtain a license.

This section shall not be construed to require the licensing of establishments or persons involved in a hot-lunch program in the public or parochial schools of the state of Iowa. [S13, §2527-l; C24, 27, 31, 35, 39,§2809; C46, 50, 54, §170.2; 57GA, ch 101,§§1, 3]

Referred to in §§170.6, 368.8  
City or town license, §368.6

**170.3 Application for license.** Every application for a license under this chapter shall be made upon a blank furnished by the department and shall contain the items required by it as to ownership, management, location, buildings, equipment, rates, and other data concerning the business for which a license is desired. An application for a license to operate an existing business shall be made at least thirty days before the expiration of the existing license. [S13,§2527-l; C24, 27, 31, 35, 39, §2810; C46, 50, 54,§170.3]

**170.4 Operation without license.** After application has been made for a license, accompanied by the legal fee, as provided in this chapter, the applicant may operate his business without a license until his application has been denied. [C24, 27, 31, 35, 39,§2811; C46, 50, 54,§170.4]

**170.5 License fees.** The department shall collect the following fees for licenses:

1. For a hotel containing fifteen guest rooms or less, four dollars.

2. For a hotel containing more than fifteen or less than thirty-one guest rooms, six dollars.

3. For a hotel containing more than thirty and less than seventy-six guest rooms, eight dollars.

4. For a hotel containing more than seventy-five and less than one hundred fifty guest rooms, ten dollars.

5. For a hotel containing one hundred fifty or more guest rooms, fifteen dollars.

6. For a food establishment, three dollars.

7. For transient or movable lunch stands to be operated only at fairs, street fairs, and carnivals, three dollars for each location, or ten dollars per year, at the option of the applicant; provided, however, that no fee shall be re

quired for any church or other charitable or nonprofit organizations. [S13,§2527-1; C24, 27, 31, 35, 39,§2812; C46, 50, 54,§170.5; 57GA, ch 101,§2]

Referred to in §170.6

**170.6 Inspection fee.** In addition to the annual license fee required by sections 170.2 and 170.5, each restaurant hereafter opened and each restaurant hereafter changing ownership shall, before it opens for business or before the new owner assumes the management and control of same, pay to the department an inspection fee of fifteen dollars. This section shall not apply to any temporary restaurant. [C35,§2812-f1; C39,§2812.1; C46, 50, 54,§170.6]

Referred to in §170.7

**170.7 Restaurant fund.** All inspection fees required by section 170.6 shall upon receipt thereof by the department be paid to and receipted for by the treasurer of state and shall be kept by him in a separate fund to be known as the "restaurant fund". Such restaurant fund shall be continued from year to year and the treasurer shall keep a separate account thereof showing receipts and disbursements as authorized by law. No part of such fund shall be used for any other purpose than the administration and enforcement of the laws relating to restaurants; provided, however, if on July 1 of any year there is a balance remaining in said restaurant fund which, in the opinion of the secretary of agriculture, is greater than is necessary for the proper administration of such laws, the treasurer of state is hereby authorized, on the recommendation and with the approval of the secretary of agriculture, to transfer to the general fund of the state such portion of said restaurant fund as the secretary of agriculture shall deem advisable to so transfer. [C35,§2812-f2; C39, §2812.2; C46, 50, 54,§170.7]

**170.8 Revocation.** Any license issued under this chapter may be revoked by the department for violation by the licensee of any provision of this chapter or any rules of the department. [S13,§§2514-w, 2527-1; C24, 27, 31, 35, 39,§2813; C46, 50, 54,§170.8]

#### SANITARY CONSTRUCTION

**170.9 Plumbing in buildings.** Every hotel, restaurant, or food establishment located in a city or town having a sewerage system shall be constructed and drained according to an approved sanitary system and maintained in a sanitary condition free from any gas or offensive odors arising from any sewer, drain, privy, or other source within the control of the owner or person in charge. [S13,§§2514-m, 2527-a; C24, 27, 31, 35, 39,§2814; C46, 50, 54, §170.9]

Referred to in §170.11

**170.10 Buildings not connected with sewers.** Every hotel, restaurant, or food establishment located in a city or town not having a sewerage system shall be constructed and drained in the same manner and the drain shall be connected with an approved cesspool. Such cesspools

shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S13,§§2514-m, 2527-a; C24, 27, 31, 35, 39,§2815; C46, 50, 54,§170.10]

Referred to in §170.11

**170.11 Restaurants exempted.** Sections 170.9 and 170.10 shall not apply to restaurants temporary in character and location. [C24, 27, 31, 35, 39,§2816; C46, 50, 54,§170.11]

**170.12 Floors.** The floors in every food establishment shall be made of some suitable nonabsorbent and impermeable material, approved by the department, which can be flushed and washed clean with water. All new slaughterhouses shall be constructed with cement, vitrified brick, tile, or other impervious material floors and killing beds. [S13, §§2527-c,-i; C24, 27, 31, 35, 39,§2817; C46, 50, 54,§170.12]

**170.13 Interior finish.** The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, slaughterhouse, and restaurant or hotel kitchen, shall be made of some suitable material approved by the department, and shall be either oil painted so that they can be washed clean, or they shall be kept well limewashed. [S13,§§2527-c,-i; C24, 27, 31, 35, 39, §2818; C46, 50, 54,§170.13]

**170.14 Screens.** The doors, windows, and other openings of every hotel, restaurant, and food establishment during the fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen mesh wire gauze. [S13,§§2527-d,-i; C24, 27, 31, 35, 39,§2819; C46, 50, 54,§170.14]

Referred to in §170.15

**170.15 Places exempted.** Section 170.14 shall not apply to sheds used for husking corn, nor to warehouses or storerooms used for the storage or handling of the finished product when sealed in original packages. [S13,§2527-d; C24, 27, 31, 35, 39,§2820; C46, 50, 54,§170.15]

**170.16 Toilet rooms.** Food establishments shall have convenient toilet rooms and urinals separate from other rooms with floors as prescribed for such establishments, with separate ventilating flues discharging into soil pipes, or on the outside of the building. [S13,§2527-e; C24, 27, 31, 35, 39,§2821; C46, 50, 54,§170.16]

**170.17 Lavatories.** The lavatories in food establishments shall be adjacent to toilet rooms and shall be supplied with soap, running water, and clean towels, and shall be maintained in a sanitary condition. [S13,§2527-e; C24, 27, 31, 35, 39,§2822; C46, 50, 54,§170.17]

#### SANITATION IN CONDUCTING BUSINESS

**170.18 Lighting and ventilation.** Every food establishment shall be properly lighted, ventilated, and conducted with strict regard to the influence of such conditions upon the food handled therein. [S13,§2527-a; C24, 27, 31, 35, 39,§2823; C46, 50, 54,§170.18]

**170.19 Sanitary regulations.** The following sanitary regulations shall be complied with in every hotel, restaurant, and food establishment:

1. The floors, walls, ceilings, woodwork, utensils, machinery, and other equipment, and all vehicles and equipment used in the transportation of food shall be kept in a thoroughly clean condition.

2. Food shall be at all times adequately protected from flies, dirt, and contamination from any source.

3. Dirt, refuse, and waste products subject to decomposition or fermentation shall be removed daily.

4. The clothing of all persons employed shall be kept clean, and those who handle food shall keep themselves clean and wash their hands and arms before beginning work and after visiting the toilet. [S13, §§2527-b, c, e, i, k; C24, 27, 31, 35, 39, §2824; C46, 50, 54, §170.19]

Referred to in §170.20

**170.20 Requirements for slaughterhouses.** In addition to the requirements of section 170.19 the following regulations shall also be complied with in the operation of slaughterhouses:

1. The building and yard shall be properly drained so as to prevent accumulations of water or mud.

2. The dressing room shall be supplied with pure and wholesome water.

3. In case a slaughterhouse is not in continuous use the refuse and waste products shall be removed within twenty-four hours after each using.

4. No blood pit, dung pit, offal pit, or privy well shall be maintained upon the premises, and refuse and waste products shall be burned or buried.

5. The premises shall be kept free from maggots and foul odors.

6. Swine shall not be kept or fed within fifty feet of the slaughterhouse.

7. Dead animals shall not be used for feeding purposes without first being thoroughly cooked.

8. Carcasses shall be covered with clean white cloths before being transported, and shall be kept only in sanitary refrigerators or storage rooms. [S13, §2527-i; C24, 27, 31, 35, 39, §2825; C46, 50, 54, §170.20]

**170.21 Towels.** No roller or common towel shall be kept or used in the toilet room or wash room of any hotel, restaurant, or food establishment, but individual sanitary paper towels may be provided for use in said places. [C24, 27, 31, 35, 39, §2826; C46, 50, 54, §170.21]

**170.22 Drinking cups—glasses sterilized.** No common drinking cup shall be kept or used in any place or room in any hotel, restaurant, or food establishment. In all food establishments where beverages are dispensed, all glasses and drinking utensils intended for repeated use in

dispensing beverages shall be sterilized before each use by the use of a chemical sterilizer or other methods approved by the secretary of agriculture. Any person who desires to use a method which has not been approved by the secretary of agriculture shall apply to the secretary of agriculture who upon application being made shall approve any method proven to be an effective bactericidal process. [C24, 27, 31, 35, 39, §2827; C46, 50, 54, §170.22]

**170.23 Tableware.** No soiled or insanitary tableware, tablecloths, napkins, or other table linen, shall be used in any hotel or restaurant. [C24, 27, 31, 35, 39, §2828; C46, 50, 54, §170.23]

**170.24 Expectorating.** No person shall expectorate within any food establishment except into cuspidors which shall be provided when necessary. Said cuspidors shall be emptied and thoroughly washed daily with some disinfectant solution, five ounces of which shall be left in each cuspidor while in use. [S13, §2527-f; C24, 27, 31, 35, 39, §2829; C46, 50, 54, §170.24]

**170.25 Use as living room.** No person shall be allowed to use as a dwelling, or sleep in, any workroom of any bakeshop, kitchen, or dining room where food is prepared for commercial purposes, confectionery, creamery, ice cream factory, cheese factory, cream station, meat market, or any other place where, in the opinion of the department, food will be contaminated thereby. [S13, §2527-g; C24, 27, 31, 35, 39, §2830; C46, 50, 54, §170.25]

**170.26 Employment of diseased persons.** No person infected with any communicable disease as defined in chapter 139 shall work in any food establishment nor shall any employer permit any such person to work at any such establishment. [S13, §2527-h; C24, 27, 31, 35, 39, §2831; C46, 50, 54, §170.26]

**170.27 Street display of food.** No person shall make any sidewalk or street display of any meat products; but other food products may be so displayed if they are inclosed in a show case or similar device which shall protect the same from flies, dust, or other contamination, and in such display the bottom of the display case shall be at least two feet above the surface of the sidewalk. [S13, §§2527-j, k; C24, 27, 31, 35, 39, §2832; C46, 50, 54, §170.27]

**170.28 Polishing fruit.** No person shall polish fruit or any other food product by any insanitary or unclean process. [S13, §2527-j; C24, 27, 31, 35, 39, §2833; C46, 50, 54, §170.28]

**SPECIAL SANITATION AND FIRE PROVISIONS  
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**170.29 Bedding.** Every bed, bunk, cot, or other sleeping place in a hotel shall be supplied with white cotton or linen under sheets, top sheets, and pillow slips. The sheets shall be ninety-six inches in length and of sufficient width to completely cover the mattress and springs. The pillow slips and sheets after being used by any guest shall be washed and ironed, and a clean set furnished each suc-



ceeding guest. The other bedding shall be thoroughly aired and kept clean at all times. All mattresses, quilts, blankets, pillows, sheets, comforts, and other bedding which have become worn or insanitary so as to be unfit for use shall be condemned by the inspector, and shall not be again used after such condemnation. [S13,§2514-m; C24, 27, 31, 35, 39,§2834; C46, 50, 54,§170.29]

**170.30 Vermin.** Every room or article in any hotel which has become infested with bedbugs or other vermin shall be renovated until the same are exterminated. [S13,§2514-m; C24, 27, 31, 35, 39,§2835; C46, 50, 54,§170.30]

**170.31 Towels.** Individual towels shall be provided for the use of each guest in a hotel, so that two or more guests will not be required to use the same towel. [C24, 27, 31, 35, 39, §2836; C46, 50, 54,§170.31]

**170.32 Ventilation.** Every hotel shall be properly ventilated and each sleeping apartment shall be provided with at least one window or ventilating skylight equal in area to at least one-eighth of the floor space of the room, and the same shall open onto the outside of the building or court. No room the floor of which is three feet below the average level of the ground shall be used as a sleeping apartment. Where storm windows are used the same shall be constructed so that proper ventilation may be had by the guest and hung in such a manner that they may be readily opened to insure safe exit in case of fire. [C24, 27, 31, 35, 39,§2837; C46, 50, 54,§170.32]

Referred to in §170.33

**170.33 Sleeping apartments in new hotels.** Every hotel hereafter constructed and every building remodeled for the purpose of use as a hotel, in addition to the requirements of section 170.32 shall have sufficient ventilation in the door or doorway of each sleeping apartment, or some equivalent improvement. [C24, 27, 31, 35, 39,§2838; C46, 50, 54,§170.33]

**170.34 Free use of locked toilets.** When a hotel is equipped with locked sanitary toilets accessible to guests, they shall be furnished with slugs for admittance to the same without expense. [C24, 27, 31, 35, 39,§2839; C46, 50, 54, §170.34]

**170.35 Outside water closets.** Outside water closets for guests of a hotel shall be properly screened from flies and separated for the use of males and females and shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S13, §2514-m; C24, 27, 31, 35, 39,§2840; C46, 50, 54, §170.35]

**170.36 List of rooms and rates to be posted.** A complete list of rooms by number, together with the number of the floor and the rate per diem per person for each room, shall be kept continuously and conspicuously posted on the wall near the office in the lobby of every hotel in such a way as to be accessible to the public

without request to the management. The rate per diem per person for each room shall also be posted in the same manner in the respective rooms. No greater charge than the one thus posted shall be made. [C24, 27, 31, 35, 39,§2841; C46, 50, 54,§170.36]

Referred to in §170.37

**170.37 Increase of rates.** The rate posted under section 170.36 shall not be increased until sixty days notice of the proposed increase has been given to the department. [C24, 27, 31, 35, 39,§2842; C46, 50, 54,§170.37]

**170.38 Fire protection regulations.** The state fire marshal shall adopt, amend, promulgate, and enforce such rules, regulations and standards relating to fire protection and fire safety in hotels, restaurants and food establishments, but such regulations shall be promulgated only after public hearing and approval thereof by the attorney general. Any person, firm or corporation violating any of said rules and regulations of said fire marshal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and each day of a continuing violation after conviction shall be considered a separate offense.

All rules, regulations and standards adopted for nursing homes and custodial homes shall be subject to regulations of chapter 135C. [S13, §§2514-j,-k,-l; SS15,§§2514-i,-n,-o; C24, 27, 31, 35, 39,§§2843-2850; C46, 50, 54,§§170.38-170.45; 57GA, ch 75,§§13, 15]

Sections 170.38 to 170.45, inclusive, Code 1954, repealed by 57GA, ch 75,§13

#### INSPECTION

**170.46 Annual inspection.** The department shall cause to be inspected at least once each calendar year, every hotel, restaurant, and food establishment in the state, and any inspector of said department may enter any such place at any reasonable hour to make such inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete examination. [S13,§§2514-q, 2527-m, 2528-d5; C24, 27, 31, 35, 39,§2851; C46, 50, 54,§170.46]

**170.47 Inspection upon complaint.** Upon receipt of a verified complaint, signed by any patron of any hotel, restaurant, or food establishment, stating facts showing such place to be in an insanitary condition, the department shall cause an examination to be made. If the complaint is found to be justifiable, the actual expenses necessarily incurred in making such inspection shall be charged and collected from the person conducting such place; but if such complaint is found to be without reasonable grounds, the actual expense necessarily incurred in making such inspection shall be collected from the person or persons making the complaint. [SS15,§2514-s; C24, 27, 31, 35, 39, §2852; C46, 50, 54,§170.47; 57GA, ch 75,§14]

**170.48** Repealed by 57GA, ch 75,§13

ENFORCEMENT

**170.49 Penalty.** Any person who shall violate any provision of this chapter shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C97,§2527; S13,§§2514-w, 2527-m,n; C24, 27, 31, 35, 39,§2854; C46, 50, 54,§170.49]

**170.50 Injunction.** Any person conducting a hotel, restaurant, or food establishment, in violation of any provision of this chapter, may be restrained by injunction from operating

such place of business. No injunction shall issue until after the defendant has had at least five days notice of the application therefor, and the time fixed for hearing thereon. [S13, §2514-x; C24, 27, 31, 35, 39,§2855; C46, 50, 54, §170.50]

Injunctions, ch 664

**170.51 Duty of county attorney.** The county attorney in each county shall assist in the enforcement of the provisions of this chapter. [S13,§2514-x; C24, 27, 31, 35, 39,§2856; C46, 50, 54,§170.51]

CHAPTER 171

COLD STORAGE

Referred to in §§159.6, 172.5

- 171.1 Definitions.
- 171.2 License.
- 171.3 Examination of plant.
- 171.4 License fee.
- 171.5 Receipt and withdrawal of food.
- 171.6 Reports by licensee.
- 171.7 Storing of impure food.
- 171.8 Revocation of license.

- 171.9 Food not intended for human consumption.
- 171.10 Date of deposit and withdrawal.
- 171.11 Period for storage.
- 171.12 Application for extension of period.
- 171.13 Report of extensions of storage period.
- 171.14 Notice of sale of cold storage goods.
- 171.15 Return of goods to cold storage.
- 171.16 Penalties.

**171.1 Definitions.** For the purposes of this chapter:

1. "Food" shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same whether simple, blended, mixed, or compound.

2. "Cold storage plant" shall mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below, in which food is kept, but it shall not include a like place in a private home, hotel, or restaurant, or a refrigerator car.

3. "Cold-stored" shall mean the keeping of articles of food in a cold storage plant or plants for a period exceeding thirty days, and food which has been so kept shall be deemed to be cold storage food, but this subsection shall not be construed as applying to meat or meat products in the process of manufacture. [S13,§2528-d; C24, 27, 31, 35, 39,§2857; C46, 50, 54,§171.1]

**171.2 License.** Every person engaged in the business of operating a cold storage plant and who charges a fee for the service rendered shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. [S13,§2528-d1; C24, 27, 31, 35, 39,§2858; C46, 50, 54,§171.2]

License applicable to locker plants, §172.5

**171.3 Examination of plant.** Before issuing a license to operate a cold storage plant the department shall make an examination of the

proposed plant to ascertain if the proper sanitary conditions and equipment have been provided. [S13,§2528-d1; C24, 27, 31, 35, 39,§2859; C46, 50, 54,§171.3]

**171.4 License fee.** The license fee shall be twenty-five dollars per annum, and all licenses shall expire on December 31 following the date of issue. [S13,§2528-d1; C24, 27, 31, 35, 39,§2860; C46, 50, 54,§171.4]

**171.5 Receipt and withdrawal of food.** Every licensee shall keep an accurate record of the receipt and the withdrawal of all food which is cold-stored, and said record shall be open to inspection by the department at all reasonable times. [S13,§2528-d3; C24, 27, 31, 35, 39,§2861; C46, 50, 54,§171.5]

**171.6 Reports by licensee.** Every licensee shall quarterly, or at such times as may be required by the department, report upon blanks furnished by the department in itemized particulars the quantity of food which is being cold-stored in his plant. Quarterly reports shall be filed not later than the sixth day of January, April, July, and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. [S13,§2528-d3; C24, 27, 31, 35, 39,§2862; C46, 50, 54,§171.6]

**171.7 Storing of impure food.** No article of food shall be cold-stored unless it is in a proper condition for storage and meets all the requirements of the pure food and food sanitation laws and such rules as may be established by the department for the sanitary preparation of food products which are to be cold-stored. [S13,

§2528-d4; C24, 27, 31, 35, 39, §2863; C46, 50, 54, §171.7]

Pure food, chs 190, 191; food sanitation, ch 170

**171.8 Revocation of license.** Every cold storage plant shall be maintained in a sanitary condition and conducted with strict regard to the influence of such condition upon the food handled therein. If any licensee under this chapter fails to comply with this section the department shall revoke his license. [S13, §2528-d2; C24, 27, 31, 35, 39, §2864; C46, 50, 54, §171.8]

**171.9 Food not intended for human consumption.** Every article of food not intended for human consumption, before being placed in a cold storage plant shall be so marked by the owner in accordance with the rules established by the department. [S13, §2528-d4; C24, 27, 31, 35, 39, §2865; C46, 50, 54, §171.9]

**171.10 Date of deposit and withdrawal.** Each article of food when deposited in a cold storage plant shall have marked upon the package, container, or article the date of deposit, and when removed said article shall be marked in like manner with the date of removal. Said markings shall be in accordance with the rules established by the department. [S13, §2528-d6; C24, 27, 31, 35, 39, §2866; C46, 50, 54, §171.10]

**171.11 Period for storage.** No person shall keep in a cold storage plant any article of food for a longer period than twelve calendar months, except with the consent of the department. [S13, §2528-d7; C24, 27, 31, 35, 39, §2867; C46, 50, 54, §171.11]

**171.12 Application for extension of period.** Upon application the department shall grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found upon examination to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting such permission. [S13, §2528-d7; C24, 27, 31, 35, 39, §2868; C46, 50, 54, §171.12]

**171.13 Report of extensions of storage period.** A report on each case in which such ex-

ension of storage is permitted, including the reason for such action, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the department. [S13, §2528-d7; C24, 27, 31, 35, 39, §2869; C46, 50, 54, §171.13]

**171.14 Notice of sale of cold storage goods.** No person shall represent or advertise as fresh goods articles of food which have been cold-stored, and every person who sells or offers or exposes for sale, uncooked articles of cold storage food shall display at all times in a conspicuous place a placard with only the words "Cold Storage Goods Sold Here" printed in black roman letters not less than three inches high and two inches wide upon a white card fifteen by twenty-five inches in dimensions. [S13, §2528-d8; C24, 27, 31, 35, 39, §2870; C46, 50, 54, §171.14]

**171.15 Return of goods to cold storage.** No article of food which has once been cold-stored and placed on the market for sale to consumers shall again be placed in a cold storage plant, but transfers of goods from one cold storage plant to another may be made if not for the purpose of evading the provisions of this chapter. The operator of a cold storage plant shall label all goods with the date when stored, which date shall not be removed when goods are removed, and in determining whether goods are "cold-stored" the time same have been stored in different plants shall be added together and the aggregate shall be the time stored and shall be so marked when sold. [S13, §2528-d9; C24, 27, 31, 35, 39, §2871; C46, 50, 54, §171.15]

**171.16 Penalties.** Any person violating any of the provisions of this chapter shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for the second offense by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. [S13, §2528-d11; C24, 27, 31, 35, 39, §2872; C46, 50, 54, §171.16]

## CHAPTER 172

### FROZEN FOOD LOCKER PLANTS

Lien, see ch 578

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**172.1 Definitions.** For the purpose of this chapter:

1. "Food" shall include any article used by man for food, drink, confectionery or condi-

ment, or which enters into the composition of the same whether simple, blended, mixed or compounded.

2. "Frozen food locker plant" shall mean a location or establishment in which space in individual lockers is rented to persons for storage of frozen food and is equipped with a chill room, sharp freezing facilities and facilities for cutting, preparing, wrapping and packaging meats and meat products, fruits and vegetables.

"Branch frozen food locker plant" shall mean a location or establishment in which space in individual lockers is rented to persons for storage of frozen food after preparation for storage at a frozen food locker plant.

3. "Sharp frozen" shall mean the freezing of food in a room in which the temperature is zero or below.

4. "Department" shall mean the department of agriculture. [C39,§2872.01; C46, 50, 54,§172.1]

**172.2 License.** No person shall engage in the operation of a frozen food locker plant or a branch frozen food locker plant until he has obtained a separate license from the department for each such location or establishment. Application for such license or licenses shall be made upon forms furnished by the department and shall contain the items required by it as to ownership, management, location, equipment, and other data concerning the business for which each license is desired. [C39,§2872.02; C46, 50, 54,§172.2]

**172.3 Examination of plant.** Upon receipt of an application for a license for a new plant accompanied by the required fee, the department shall inspect within thirty days the plant or branch plant, its equipment, facilities, surrounding premises, and if its operations comply with provisions of law and the authorized rules and regulations of the department applicable to such plants, the department shall issue such license. [C39,§2872.03; C46, 50, 54,§172.3]

**172.4 License fee.** The license fee for each such plant or branch plant shall be ten dollars for two hundred or less individual lockers with an additional two dollars for each additional one hundred individual lockers or major fraction thereof in either a frozen food locker plant or branch frozen food locker plant. Each such license shall expire on December 31 of each year following the date of issue and no such license shall be transferable. [C39, §2872.04; C46, 50, 54,§172.4]

**172.5 Other license coverage.** Individuals or corporations licensed exclusively under the provisions of chapter 171 shall not be required to pay the license fee provided herein. [C39, §2872.05; C46, 50, 54,§172.5]

**172.6 Storing of impure food.** No article of food shall be stored in any frozen food locker plant unless it is in a proper condition for storage and meets all the requirements of the pure food and food sanitation laws and such rules as may be established by the department for the sanitary preparation of food products which are to be stored. [C39,§2872.06; C46, 50, 54,§172.6]

**172.7 Revocation of license.** Every frozen food locker plant shall be maintained in a sanitary condition and conducted with strict regard to the influence of such conditions upon the food handled therein and any licensee under this chapter who fails to comply with any provision of this chapter shall suffer a revocation of his license. [C39,§2872.07; C46, 50, 54, §172.7]

**172.8 Goods not intended for human consumption.** Goods not intended for human consumption shall not be stored in a frozen food locker plant except such items of animal or vegetable matter which may have been inspected and approved by the United States government. [C39,§2872.08; C46, 50, 54,§172.8]

**172.9 Food must be sharp frozen before storage.** All food must be sharp frozen before it shall be placed in a frozen food locker, and shall be kept at a temperature of ten degrees Fahrenheit or lower during the period it is kept therein. [C39,§2872.09; C46, 50, 54,§172.9]

**172.10 Operators or owners not warehousemen.** Persons who own or operate frozen food locker plants or branch plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. [C39,§2872.10; C46, 50, 54,§172.10]

Lien, see ch 578

**172.11 Penalties.** Any person who shall violate any provision of this chapter shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [C46, 50, 54,§172.11]

## CHAPTER 173

## STATE FAIR AND EXPOSITION

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**173.1 State fair board.** The Iowa state fair board shall consist of:

1. The governor of the state, the state secretary of agriculture, and the president of the state college of agriculture and mechanic arts.
2. A president and vice-president, and one director from each congressional district, to be elected at a convention as hereinafter provided.
3. A secretary and a treasurer to be elected by the state fair board. [S13,§1657-c; C24, 27, 31, 35, 39,§2873; C46, 50, 54,§173.1]

**173.2 Convention.** A convention shall be held at the capitol, on the second Wednesday of December of each year, to elect members of the state fair board. The convention shall be composed of:

1. The members of the state fair board as then organized.
2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.
3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the state fair board in the manner provided by law as a basis for state aid. The board shall promptly report such failure to the county auditor.
4. The president, or an accredited representative, of each farmers institute organized under chapter 175 which is entitled to receive aid from the state.
5. The president, or an accredited representative, of the Iowa state horticultural society.
6. The president, or an accredited representative, of the Iowa state dairy association.
7. The president, or an accredited representative, of the Iowa beef cattle producers association.
8. The president, or an accredited representative, of the Iowa crop improvement association.
9. The president, or an accredited representative, of the Iowa swine producers association.
10. The president, or an accredited represent-

ative, of the Iowa horse and mule breeders association.

11. The president, or an accredited representative, of the Iowa sheep association. [R60, §§1701, 1704; C73, §§1103, 1112; C97, §§1653, 1661; S13, §1657-d; SS15, §1661-a; C24, 27, 31, 35, 39, §2874; C46, 50, 54, §173.2]

Referred to in §173.3

**173.3 Certification of state aid associations.** On or before November 15 of each year the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 175 to 178, 180 to 184, inclusive, and 186, and which are entitled to representation in the convention as provided in section 173.2. [C24, 27, 31, 35, 39, §2875; C46, 50, 54, §173.3]

State aid, see biennial appropriation act

**173.4 Voting power.** On all questions arising for determination by the convention, each member present shall be entitled to but one vote, and no proxies shall be recognized by the convention. [S13, §1657-d; C24, 27, 31, 35, 39, §2876; C46, 50, 54, §173.4]

**173.5 Elections to be made.** The convention shall elect:

1. A president and a vice-president of the state fair board.
2. A successor to each congressional district director on the board whose term expires at noon on the day following the adjournment of the convention. [R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §2877; C46, 50, 54, §173.5]

**173.6 Terms of office.** The term of the president and vice-president of the board shall be one year and that of a director two years. Such term shall begin at noon on the day following the adjournment of the convention at which such officer or director was elected and shall continue until a successor is elected and qualifies as provided in this chapter. [R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §2878; C46, 50, 54, §173.6]

**173.7 Vacancies.** If, after the adjournment of the convention, a vacancy occurs in the

office of any member of the board elected by the convention the board shall fill the same, and the member so elected shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which his predecessor was elected, said convention shall elect a member to serve out the unexpired portion of such term. The member so elected shall qualify at the same time as other members elected by the convention. [S13, §1657-e; C24, 27, 31, 35, 39, §2879; C46, 50, 54, §173.7]

**173.8 Elective members—compensation.** The members of the board elected at the annual convention shall be allowed ten dollars a day and necessary traveling and hotel expenses for attending the meetings of the board and for services rendered in carrying on the state fair. [S13, §1657-p; C24, 27, 31, 35, 39, §2880; C46, 50, 54, §173.8]

**173.9 Secretary.** The board shall elect a secretary who shall hold office for one year, and he shall:

1. Keep a complete record of the annual convention and of all meetings of the board.
2. Draw all warrants on the treasurer of the board and keep a correct account thereof.
3. Perform such other duties as the board may direct. [R60, §§1700, 1703; C73, §§1104, 1107; C97, §§1654, 1656; S13, §1657-k; C24, 27, 31, 35, 39, §2881; C46, 50, 54, §173.9]

**173.10 Salary of secretary.** The secretary shall receive such compensation for his services as the board may fix, but said salary shall in no event be more than five thousand dollars a year. [S13, §1657-n; C24, 27, 31, 35, 39, §2882; C46, 50, 54, §173.10]

**173.11 Treasurer.** The board shall elect a treasurer who shall hold office for one year, and he shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.
2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.
3. Execute and file with the secretary of the board a bond, to be approved by the board, for the faithful performance of his duties. [R60, §1700; C73, §1104; C97, §1654; S13, §1657-o; C24, 27, 31, 35, 39, §2883; C46, 50, 54, §173.11; 57GA, ch 51, §4]

Power of auditor of state, §§11.5, 173.19

**173.12 Salary of treasurer.** The treasurer shall receive such compensation for his services as the board may fix, not to exceed five hundred dollars a year, and necessary traveling and hotel expenses. [S13, §1657-o; C24, 27, 31, 35, 39, §2884; C46, 50, 54, §173.12]

**173.13 Executive committee—meetings.** The president, vice-president, and secretary shall constitute an executive committee, which shall

transact such business as may be delegated to it by the board. The president may call meetings of the board or executive committee when the interests of the work require it. [R60, §1104; C73, §1700; C97, §1654; S13, §1657-h; C24, 27, 31, 35, 39, §2885; C46, 50, 54, §173.13]

**173.14 Powers and duties of board.** The state fair board shall have the custody and control of the state fair grounds, including the buildings and equipment thereon belonging to the state, and shall have power to:

1. Erect and repair buildings on said grounds and make other necessary improvements thereon.
2. Regulate the construction of street railways within said grounds and determine the motive power by which the same shall be propelled.
3. Hold an annual fair and exposition on said grounds.
4. Prepare premium lists and establish rules of exhibition for such fair which shall be published by the board not later than the first day of June in each year.

5. Take and hold property by gift, devise, or bequest for fair purposes, and the president, secretary, and treasurer of the board shall have charge and control of the same, subject to the action of the board. Such officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.

6. The state fair board may grant a written permit to such persons as it deems proper to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board may prescribe.

7. The president of the state fair board may appoint such number of special police as he may deem necessary and such officers are hereby vested with the powers and charged with the duties of peace officers.

8. Adopt all necessary rules in the discharge of its duties and in the exercise of the powers herein conferred. [R60, §1702; C73, §1106; C97, §1655; S13, §§1657-i, j, r; C24, 27, 31, 35, 39, §2886; C46, 50, 54, §173.14]

**173.15 Management of state fair.** The board may delegate the management of the state fair to the executive committee and two or more additional members of the board; and in carrying on such fair it may employ such assistance as may be deemed necessary. [S13, §1657-i; C24, 27, 31, 35, 39, §2887; C46, 50, 54, §173.15]

**173.16 Maintenance of state fair.** All expenses incurred in maintaining the state fair grounds and in conducting the annual fair thereon, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for such purpose, but in the absence of any such appropriation the state shall not be

liable for any expenses or liabilities incurred by the board. [S13,§§1657-i,-t; C24, 27, 31, 35, 39,§2888; C46, 50, 54,§173.16]

**173.17 Claims.** The board shall prescribe rules for the presentation and payment of claims out of the state fair receipts and other funds of the board and no claim shall be allowed which does not comply therewith. [C24, 27, 31, 35, 39,§2889; C46, 50, 54,§173.17]

**173.18 Warrants.** No claim shall be paid by the treasurer except upon a warrant signed by the president and secretary of the board, but this section shall not apply to the payment of state fair premiums. [S13,§1657-o; C24, 27, 31, 35, 39,§2890; C46, 50, 54,§173.18]

**173.19 Auditing of accounts.** Prior to the annual convention, the auditor of state shall examine and report to the executive council upon all financial affairs of the board. [S13, §1657-q; C24, 27, 31, 35, 39,§2891; C46, 50, 54, §173.19]

**173.20 Report.** The board shall file each year with the department of agriculture, at such time as the department may specify, a report containing such information relative to the state fair and exposition and the district and county fairs as the department may require. [C24, 27, 31, 35, 39,§2892; C46, 50, 54, §173.20]

**173.21 Annual report to governor.** The state fair board shall each year at the time provided by law make a report to the governor containing:

1. A complete account of the annual state fair and exposition.
2. The proceedings of the annual state agricultural convention.
3. The proceedings of the annual county and district fair managers convention. [R60,§1703; C73,§1107; C97,§1656; S13,§1657-k; C24, 27, 31, 35, 39,§2893; C46, 50, 54,§173.21]

Time of report, §17.4

## CHAPTER 174 COUNTY AND DISTRICT FAIRS

Referred to in §175.6

- 174.1 Terms defined.
- 174.2 Powers of society.
- 174.3 Control of grounds.
- 174.4 Permits to sell articles.
- 174.5 Appointment of police.
- 174.6 Removal of obstructions.
- 174.7 Refusal to remove obstructions.
- 174.8 Publication of financial statement.
- 174.9 State aid.
- 174.10 Appropriation—availability.
- 174.11 Amount allowed as state aid.
- 174.12 Payment of state aid.
- 174.13 County aid.

- 174.14 Additional county aid.
- 174.15 Purchase and management.
- 174.16 Termination of rights of society.
- 174.17 Tax aid.
- 174.18 Expenditure of fund.
- 174.19 Report to supervisors.
- 174.20 Fraudulent entries of horses.
- 174.21 Violations—penalty.
- 174.22 Entry under changed name.
- 174.23 Class determined.
- 174.24 Title in county to fairgrounds.
- 174.25 Selling fairgrounds.
- 174.26 Liability for costs.

**174.1 Terms defined.** For the purposes of this chapter:

1. “Fair” shall mean a bona fide exhibition of agricultural, dairy, and kindred products, livestock, and farm implements.

2. “Society” shall mean a county or district fair or agricultural society incorporated under the laws of this state for the purpose of holding such fair, and which owns or leases at least ten acres of ground and owns buildings and improvements situated on said ground of a value of at least eight thousand dollars, or any incorporated farm organization authorized to hold an agricultural fair which owns or leases buildings and grounds especially constructed for fair purposes of the value of one hundred and fifty thousand dollars in a county where no other agricultural fair receiving state aid is held.

3. “Management” shall mean president, vice-president, secretary, or treasurer of the so-

ciety. [C24, 27, 31, 35, 39,§2894; C46, 50, 54, §174.1]

Referred to in §174.10  
See 50GA, ch 116

**174.2 Powers of society.** Each society may hold annually a fair to further interest in agriculture and to encourage the improvement of agricultural products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted herein the society shall possess the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of such fairs.

No salary or compensation of any kind shall be paid to the president, vice-president, treasurer, or to any director of the association

for such duties. [R60,§1697; C73,§1109; C97, §1658; S13,§1658; C24, 27, 31, 35, 39,§2895; C46, 50, 54,§174.2]

**174.3 Control of grounds.** During the time a fair is being held, no ordinance or resolution of any city or town shall in any way impair the authority of the society, but it shall have sole and exclusive control over and management of such fair. [C73,§1116; C97,§1664; C24, 27, 31, 35, 39,§2896; C46, 50, 54,§174.3]

**174.4 Permits to sell articles.** The management of any society may grant a written permit to such persons as it thinks proper, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board of directors may prescribe. [C73,§1115; C97,§1663; C24, 27, 31, 35, 39,§2897; C46, 50, 54, §174.4]

**174.5 Appointment of police.** The management of any society may appoint such number of special police as it may deem necessary. Such officers are hereby vested with the powers and charged with the duties of peace officers. [C97,§1664; C24, 27, 31, 35, 39,§2898; C46, 50, 54,§174.5]

**174.6 Removal of obstructions.** All shows, swings, booths, tents, vehicles, or any other thing that may obstruct the grounds of any society or the driveways thereof may be removed from the grounds on the order of the management. [C73,§1116; C97,§1664; C24, 27, 31, 35, 39, §2899; C46, 50, 54,§174.6]

**174.7 Refusal to remove obstructions.** Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the management shall be liable to a fine of not less than five dollars nor more than one hundred dollars for each such offense. [C73,§1116; C97,§1664; C24, 27, 31, 35, 39,§2900; C46, 50, 54,§174.7]

**174.8 Publication of financial statement.** Each society shall annually publish in one newspaper of the county a financial statement of receipts and disbursements for the current year. [R60,§1698; C73,§1110; C97,§1659; S13, §1659; C24, 27, 31, 35, 39,§2901; C46, 50, 54,§174.8]

**174.9 State aid.** Each society shall be entitled to receive aid from the state if it files with the state fair board on or before November 1 of each year, a sworn statement which shall show:

1. The actual amount paid by it in cash premiums at its fair for the current year, which statement must correspond with its published offer of premiums.
2. That no part of said amount was paid for speed events, or to secure games or amusements.
3. A full and accurate statement of the receipts and expenditures of the society for the current year and other statistical data relative to exhibits and attendance for the year.
4. A copy of the published financial state-

ment published as required by law, together with proof of such publication and a certified statement showing an itemized list of premiums awarded, and such other information as the state fair board may require. [R60, §§1698, 1704; C73,§§1110, 1112; C97,§§1659, 1661; S13,§1659; SS15,§1661-a; C24, 27, 31, 35, 39,§2902; C46, 50, 54,§174.9]

**174.10 Appropriation—availability.** The appropriation which is made biennially for state aid to the foregoing societies shall be available and applicable to incorporated societies of a purely agricultural nature which were entitled to draw eight hundred fifty dollars or more state aid in 1926, or societies located in counties that have no other fair or agricultural society, and which were in existence and drew state aid in 1926, except that in a county where there are two definitely separate county extension offices, two agricultural societies may receive state aid. The provisions of section 174.1 as to ownership of property shall not apply to societies under this section. [R60, §§1698, 1704; C73,§§1110, 1112; C97,§1661; S13, §1659; SS15,§1661-a; C24, 27,§2902; C31, 35,§2902-d1; C39,§2902.1; C46, 50, 54,§174.10; 56GA, ch 106,§1]

**174.11 Amount allowed as state aid.** The amount allowed to any society as state aid shall be a sum equal to eighty percent of the first one thousand dollars, seventy percent of the second one thousand dollars, and sixty percent of the third one thousand dollars paid in cash by the society for premiums at its annual fair for the current year, but the total aid shall not in any one year exceed two thousand dollars to any one agricultural society. Provided, however, in counties having more than one fair entitled to state aid, except in counties where there are two definitely separate county extension offices, the state aid available for the county shall be prorated to said fairs, which have been in existence for ten years or more, on the basis of cash premiums paid by said fairs. [R60,§1704; C73,§1112; C97,§1661; SS15,§1661-a; C24, 27, 31, 35, 39,§2903; C46, 50, 54,§174.11; 56GA, ch 106,§2]

**174.12 Payment of state aid.** The state comptroller shall issue his warrant to any society for the amount due as state aid, less one hundred dollars, provided the secretary of the state fair board certifies to the comptroller that such society has complied with the law relative thereto and that a named amount is due the society. The comptroller shall issue a like warrant for one hundred dollars provided the secretary of the state fair board certifies that such society had an accredited delegate in attendance at the annual convention for the election of members of the state fair board. [R60,§1698; C73,§1110; C97, §1659; S13,§1659; C24, 27, 31, 35, 39,§2904; C46, 50, 54,§174.12]

**174.13 County aid.** The board of supervisors of the county in which any such society is located may levy a tax of not to exceed one-



quarter mill upon all the taxable property of the county, the funds realized therefrom to be known as the fair ground fund, and to be used for the purpose of fitting up or purchasing fair grounds for the society, or for the purpose of aiding boys and girls 4-H Club work and payment of agricultural and livestock premiums in connection with said fair, provided such society shall be the owner in fee simple, or the lessee of at least ten acres of land for fair ground purposes, and shall own or lease buildings and improvements thereon of at least eight thousand dollars in value. [C73, §1111; C97, §1660; SS15, §1660; C24, 27, 31, 35, 39, §2905; C46, 50, 54, §174.13]

**174.14 Additional county aid.** The board of supervisors may upon a petition signed by twenty-five percent of the qualified voters of the county as shown by the pollbooks of the last preceding general election, submit to the voters of the county, at a general election, the proposition to purchase or accept as a gift, for county or district fair purposes, real estate exceeding one thousand dollars in value. Notice of such election shall be published in the official newspapers of the county for four weeks previous to such election. [SS15, §1660; C24, 27, 31, 35, 39, §2906; C46, 50, 54, §174.14]

**174.15 Purchase and management.** If a majority of the votes cast are in favor of such proposition, the board shall make the authorized purchase and pay for the same out of the general fund, or accept as a gift from the owner a county or district fair ground already in existence. Title shall be taken in the name of the county, but the board of supervisors shall place such real estate under the control and management of an incorporated county or district fair society. Such society is authorized to act as agent for said county in the erection of buildings, maintenance of grounds and buildings or any improvements constructed on such grounds. Title to new buildings or improvements shall be taken in the name of the county but the county shall not be liable for such improvements or expenditures therefor. [SS15, §1660; C24, 27, 31, 35, 39, §2907; C46, 50, 54, §174.15]

**174.16 Termination of rights of society.** The right of such society to the control and management of said real estate may be terminated by the board of supervisors whenever well conducted agricultural fairs are not annually held thereon by such society. [SS15, §1660; C24, 27, 31, 35, 39, §2908; C46, 50, 54, §174.16]

**174.17 Tax aid.** The board of supervisors of any county which has acquired real estate for county or district fair purposes and which has a society using said real estate, may levy a tax of not to exceed one-quarter mill upon all the taxable property of the county, the funds realized therefrom to be known as the fair ground fund.

In any county having a population of between thirty-five thousand and forty thousand

as shown by the last federal census and having an incompleated structure valued at fifteen thousand dollars or more, the board of supervisors shall levy a tax of two mills upon all the taxable property of the county which levy shall be made over a two year period only, providing such levy has first been approved by a majority of the electors of said county at a general election. Notice of such election shall be published in the official newspapers of the county for four weeks previous to such election. The funds realized therefrom shall be known as the fair ground special construction fund. [C24, 27, 31, 35, 39, §2909; C46, 50, 54, §174.17]

**174.18 Expenditure of fund.** The fair ground fund shall be expended only for the erection and repair of buildings or other permanent improvements on said real estate, or for the payment of debts contracted in such erection or repair and payment of agricultural and livestock premiums. [SS15, §1660; C24, 27, 31, 35, 39, §2910; C46, 50, 54, §174.18]

**174.19 Report to supervisors.** Each society receiving an appropriation from the county shall, through its secretary, make to the board of supervisors a detailed statement, accompanied with vouchers, showing the legal disbursement of all moneys so received. [C73, §1113; C97, §1662; C24, 27, 31, 35, 39, §2911; C46, 50, 54, §174.19]

**174.20 Fraudulent entries of horses.** No person, partnership, company, or corporation shall knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any agricultural or other society, association, person, or persons in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweepstake is to be decided by a contest of speed. [C97, §1665; C24, 27, 31, 35, 39, §2912; C46, 50, 54, §174.20]

Referred to in §174.21

**174.21 Violations—penalty.** Any person convicted of a violation of section 174.20 shall be imprisoned in the penitentiary for a period of not more than three years, or in the county jail for not more than one year, and be fined in a sum not exceeding one thousand dollars. [C97, §1666; C24, 27, 31, 35, 39, §2913; C46, 50, 54, §174.21]

**174.22 Entry under changed name.** The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted, unless the former name is given. [C97, §1667; C24, 27, 31, 35, 39, §2914; C46, 50, 54, §174.22]

**174.23 Class determined.** The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the society or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest. [C97,§1668; C24, 27, 31, 35, 39,§2915; C46, 50, 54,§174.23]

**174.24 Title in county to fairgrounds.** The board of supervisors of any county may accept legal title to land in the name of the county, free and clear of all liens and encumbrances, to be used for fair purposes. [C54,§174.24]

**174.25 Selling fairgrounds.** In the event that a new fairground site is acquired by any county, the board of supervisors of such county may sell any existing fairground site to which the county has title and such board may sell any structure located on the old fair-

ground site, that it is not practicable to move or transfer to the new fairground site, at public or private sale for the best price obtainable. The net proceeds from the sale of fairground sites and structures on such sites shall be placed in the "fairground fund" to be expended for the erection of permanent buildings on the new fairground site, or for the payment of debts contracted in the removal, transporting, erection or repair of structures moved from the old fairground site to the new fairground site. [C54,§174.25]

**174.26 Liability for costs.** The board of supervisors is hereby authorized and empowered to take such action as may be necessary to carry out and perform the authority hereinbefore provided, but the said county shall not be liable for any costs or expenses in carrying out and performing the authority hereinbefore provided. [C54,§174.26]

CHAPTER 175

FARMERS INSTITUTES AND SHORT COURSES

Referred to in §§159.6, 173.2, 173.3

- 175.1 State aid to farmers institutes.
- 175.2 Certification by department.
- 175.3 Comptroller to draw warrant.
- 175.4 Farmers institute fund.

- 175.5 Division of fund.
- 175.6 State aid for short courses in agriculture.
- 175.7 Certification by department.
- 175.8 Payment of state aid.

**175.1 State aid to farmers institutes.** A farmers institute shall be entitled to state aid only under the following conditions:

1. The institute must be organized by at least forty farmers of the county and have a president, secretary, treasurer, and executive committee of not less than three members other than said officers.

2. It must hold, for not less than two days each year, an institute devoted to farm and kindred subjects.

3. The association shall notify the department of agriculture on or before the second Wednesday in December, of its intention of holding a farmers institute.

4. It must file with the department of agriculture on or before the first day of June of each year a sworn, itemized report of such institute, which report must show the organization of such institute, the fact that such institute was held, the purposes for which held and for which the money used by it was expended, and such other information as the department may require. [C97,§1675; S13,§§1657-d, 1675; C24, 27, 31, 35, 39,§2916; C46, 50, 54,§175.1]

State aid, see biennial appropriation Act

**175.2 Certification by department.** The department, on receipt of such report, if the same is sufficient and filed within the time named, shall certify to the state comptroller that all of said conditions have been complied with by such institute and that a named amount is due it as state aid. Such amount

shall not exceed the amount shown to have been legally expended. [C97,§1675; S13,§1675; C24, 27, 31, 35, 39,§2917; C46, 50, 54,§175.2]

**175.3 Comptroller to draw warrant.** The state comptroller, on receipt of such certificate, shall draw a warrant in favor of the president, secretary or treasurer of said organization for the amount specified in said certificate, but the amount drawn shall not in any case exceed seventy-five dollars for any one year. [C97, §1675; S13,§1675; C24, 27, 31, 35, 39,§2918; C46, 50, 54,§175.3]

**175.4 Farmers institute fund.** Such money shall be kept by the county treasurer as a farmers institute fund, and no warrant shall be drawn thereon except on a written order signed by a majority of the members of the executive committee of said institute. No officer of any such institute shall receive any part of said fund as compensation for services as such officer. [C97,§§1675, 1676; S13,§1675; C24, 27, 31, 35, 39,§2919; C46, 50, 54,§175.4]

**175.5 Division of fund.** If there be, in a county, two or more institutes claiming right to such fund under this chapter, the state aid available for the county shall be equally divided among such institutes as may be legally entitled thereto, but in no case shall more than three institutes be held in one year in any county under the provisions of this chapter. [C97,§1676; C24, 27, 31, 35, 39,§2920; C46, 50, 54, §175.5]

**175.6 State aid for short courses in agriculture.** An organization for the purpose of holding a short course in agriculture and domestic science shall be entitled to state aid under the following conditions:

- 1. The organization must be formed by at least one hundred citizens of a county which has no county or district fair receiving state aid as provided in chapter 174, or in which a county fair is not held in the year in question, provided however, that any county having two farm aid associations, organized under chapter 176, and where the district court is held in two places, may receive state aid for both a county fair and for a short course in agriculture and domestic science and in any year in which a county fair is not held in said county then said county will be entitled to aid for two agricultural short courses.
- 2. The membership of the organization must be open to all citizens on an equal basis, with a minimum membership fee of twenty-five cents, or a maximum fee not exceeding one dollar.
- 3. The organization shall notify the department by November 1 of each year, of its intentions to hold such short course.
- 4. It must have a president, secretary, treasurer, and an executive committee of not less than five members.
- 5. It must hold a short course consisting of a session of two or more days at some place within the county and give a program designed

to promote agriculture and domestic science.

6. It must, on or before June 1 of each year, through one of said named officers, file a sworn statement with the department of agriculture, setting forth the facts showing compliance with all the foregoing conditions, an itemized list of cash premiums paid by it at said short course, and such other information as the department may require. [S13,§1661-a1; C24, 27, 31, 35, 39,§2921; C46, 50, 54,§175.6]

Referred to in §§175.7, 175.8

**175.7 Certification by department.** The department of agriculture, on receipt of such statement, shall, if it complies with section 175.6, certify to the comptroller that said organization has fully complied with the required conditions and that a named amount is due it as state aid. [S13,§1661-a1; C24, 27, 31, 35, 39,§2922; C46, 50, 54,§175.7]

**175.8 Payment of state aid.** The comptroller, on receipt of such certificate, shall draw a warrant in favor of the president, secretary, or treasurer of said organization for a sum equal to eighty percent of the amount paid in premiums by it, but in no case shall the amount exceed six hundred dollars in any county. In all counties where no regular farmers institute is held and where a short course is held, the money appropriated for such farmers institute shall be payable on account of such short course upon proof being made as provided in section 175.6. [S13,§§1661-a1-a2; C24, 27, 31, 35, 39,§2923; C46, 50, 54,§175.8]

### CHAPTER 176

#### FARM AID ASSOCIATIONS

Referred to in §§159.6, 173.3, 175.6

- 176.1 Incorporation authorized.
- 176.2 Method of incorporation.
- 176.3 Articles of incorporation.
- 176.4 Amendments to articles.
- 176.5 Additional provisions.
- 176.6 Private property exempt from debts—seal.

- 176.7 Powers of association.
- 176.8 to 176.12, inc. Repealed by 56GA, ch 107,§21.
- 176.13 Compensation.
- 176.14 Dividends—diversion of funds.
- 176.15 and 176.16. Repealed by 56GA, ch 107, §21.

**176.1 Incorporation authorized.** For the purpose of improving and advancing agriculture, domestic science, animal husbandry, and horticulture, a body corporate may be organized in each county of the state. [SS15,§1683-a; C24, 27, 31, 35, 39,§2924; C46, 50, 54,§176.1]

**176.2 Method of incorporation.** Such body corporate may be formed by the acknowledging and filing articles of incorporation with the county recorder, signed by at least ten farmers, landowners, or other business men of the county. [S13,§1683-b; C24, 27, 31, 35, 39,§2925; C46, 50, 54,§176.2]

**176.3 Articles of incorporation.** Such articles of incorporation shall be substantially as follows:

We, the undersigned farmers, landowners, and business men of.....county, Iowa, do hereby adopt the following articles of incorporation:

Article 1. The objects of this corporation shall be to advance and improve, in..... county, Iowa, agriculture, domestic science, horticulture, animal husbandry, and the marketing of farm products.

Article 2. The name of this corporation shall be ..... (the name of the county of which the incorporators are residents shall appear as part of the name of the corporation).

Article 3. The affairs of this corporation shall be conducted by a president, a vice-president, a secretary, and a treasurer, who shall perform

the duties usually pertaining to such positions, and by a board of not less than nine directors, which shall include the president, vice-president, secretary, and treasurer as members thereof.

Such officers and directors shall be elected by the members of the corporation at an annual meeting held at such time and place in the county each year, as the board of directors shall by resolution fix and determine and provided further that the members shall be given not less than ten days notice of such meeting by mailing notice thereof to the members, at their last known address, as shown by the records of the association.

Article 4. This corporation shall endure until terminated by operation of law. [SS15, §1683-c; C24, 27, 31, 35, 39, §2926; C46, 50, 54, §176.3; 56GA, ch 107, §19]

**176.4 Amendments to articles.** The articles of incorporation of such farm aid associations may be amended to conform to the provisions of this act\* at any regular annual meeting, or at any special meeting of the members of such corporation called for that purpose. Notice of such meeting shall be sufficient if published in at least two regular issues of a daily or weekly newspaper of general circulation published in the county in which the meeting is to be held, or by notice mailed to each member at his last known address, at least five days prior to such meeting. [C27, 31, 35, §2926-b1; C39, §2926.1; C46, 50, 54, §176.4]

\*43GA, ch 80, effective date, April 11, 1929

**176.5 Additional provisions.** Such articles may include other provisions which are not inconsistent with the provisions of this chapter and shall be recorded by the county recorder without fee. [S13, §1683-f; C24, 27, 31, 35, 39, §2927; C46, 50, 54, §176.5]

**176.6 Private property exempt from debts—seal.** Such association may sue and be sued, but the private property of the members shall be exempt from corporate debts. It may have a seal which it may alter at pleasure. [S13, §1683-d; C24, 27, 31, 35, 39, §2928; C46, 50, 54, §176.6]

**176.7 Powers of association.** Such association shall have power to:

1. Adopt bylaws.
2. Take by gift, purchase, devise, or bequest, real or personal property.
3. Do all things necessary, appropriate, and convenient for the successful carrying out of the objects of the association. [SS15, §1683-e; C24, 27, 31, 35, 39, §2929; C46, 50, 54, §176.7; 56GA, ch 107, §20]

**176.8 to 176.12, inc.** Repealed by 56GA, ch 107, §21

**176.13 Compensation.** No salary or compensation of any kind shall be paid to the president, vice-president, treasurer, or to any director of the association. [S13, §1683-g; C24, 27, 31, 35, 39, §2935; C46, 50, 54, §176.13]

**176.14 Dividends—diversion of funds.** No dividend shall ever be declared by the association and any diversion of the funds or property of such organization to any other purpose than that for which such organization was incorporated shall constitute larceny and be punished accordingly. [S13, §§1683-h, o; C24, 27, 31, 35, 39, §2936; C46, 50, 54, §176.14]

Punishment, §709.2

**176.15 and 176.16.** Repealed by 56GA, ch 107, §21.

## CHAPTER 176A

### COUNTY AGRICULTURAL EXTENSION LAW

- 176A.1 Short title.
- 176A.2 Declaration of policy.
- 176A.3 Definition of terms.
- 176A.4 Establishment—body corporate—county agricultural extension districts.
- 176A.5 County agricultural extension council.
- 176A.6 Annual elections.
- 176A.7 County agricultural extension council—meetings.
- 176A.8 Powers and duties of county agricultural extension council.

- 176A.9 Limitation on powers and activities of extension council.
- 176A.10 County agricultural extension education tax.
- 176A.11 Annual levy by board of supervisors.
- 176A.12 County agricultural extension education fund.
- 176A.13 Co-operation extension council—extension service.
- 176A.14 Extension council officers—duties.

**176A.1 Short title.** This chapter may be known and cited as the "County Agricultural Extension Law." [56GA, ch 107, §1]

**176A.2 Declaration of policy.** It is hereby declared to be the policy of the legislature to provide for aid in disseminating among the people of Iowa useful and practical informa-

tion on subjects relating to agriculture, home economics and rural and community life, and to encourage the application of the same in the several counties of the state through extension work to be carried on in co-operation with Iowa state college of agriculture and mechanic arts and the United States department of agriculture as provided in the Act of Con-

gress May 8, 1914, as amended by Public Law 83 of the Eighty-third Congress. [56GA, ch 107,§2]

**176A.3 Definition of terms.** Whenever used or referred to in this chapter unless a different meaning clearly appears from the context (1) "county agricultural extension district" hereinafter referred to as "extension district" means a governmental subdivision of this state, and a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth; (2) "county agricultural extension council" hereinafter referred to as "extension council" means the agency created and constituted as provided in section 176A.5; (3) "Iowa state college" means the "Iowa state college of agriculture and mechanic arts," and shall hereinafter be referred to as "Iowa state college"; (4) "extension service" means the "co-operative extension service in agriculture and home economics of Iowa state college," and shall hereinafter be referred to as "extension service"; (5) "director of extension" means the "director of Iowa state college of agriculture and mechanic arts extension service," and shall hereinafter be referred to as "director of extension." [56GA, ch 107,§3]

**176A.4 Establishment — body corporate — county agricultural extension districts.** Each county, except Pottawattamie, is constituted and established as a "county agricultural extension district" and shall be a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions hereinafter set forth. Pottawattamie county shall be divided into and constitute two districts with one district to be known as "East Pottawattamie" which shall include the following townships: Pleasant, Layton, Knox, James, Valley, Lincoln, Washington, Belknap, Center, Wright, Carson, Macedonia, Grove, Waveland; and the other "West Pottawattamie" which shall include the following townships: Rockford, Boomer, Neola, Minden, Hazel Dell, York, Crescent, Norwalk, Lake, Garner, Hardin, Kane, Lewis, Keg Creek, Silver Creek. [C24, 27, 31, 35, 39, §2930; C46, 50, 54, §176.8; 56GA, ch 107, §§4, 21]

**176A.5 County agricultural extension council.** There shall be elected in each extension district an "extension council" consisting of one elected resident member from each of the townships. The members of the extension council shall be qualified by being a resident qualified voter of the township. The resident qualified voters in each of the townships of a district shall meet annually during the period November 1 to December 31, upon a date and at a time and place determined and fixed by the extension council, except as herein otherwise provided. [56GA, ch 107,§5]

Referred to in §176A.3

For temporary provisions of first organizational elections and meetings, see 56GA, ch 107, §§6, 7, 8

**176A.6 Annual elections.** In the year in each of the townships of each of the extension districts in which the term of office of the member of the extension council elected from the township expires as of December 31 in said year there shall be held an annual township election meeting during the period November 1–December 31 for the election of a member of the extension council for a term of two years. No member of the extension council who has been elected to serve for a two-year term shall be eligible for election for more than one successive two-year term. [56GA, ch 107,§8]

**176A.7 County agricultural extension council—meetings.** The members of each of the extension councils elected from the several townships of each of the extension districts, as herein provided, shall constitute the extension council of each extension district and their term of office shall commence January 1 following the date of their election, and they shall meet annually in each of the extension districts on such date and at such time and place during the months of January and July each year, and at such other times during the year as shall be determined and fixed by the extension council. [56GA, ch 107,§9]

**176A.8 Powers and duties of county agricultural extension council.** The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually in January a chairman, vice-chairman, secretary and a treasurer who shall serve and be the officers of the extension council for a term expiring December 31 each year, and perform the functions and duties as herein in this chapter provided.

2. To and shall each year at the meeting at which the date, time, and place of the holding of township election meetings is fixed and determined, appoint from their own number one member whose term does not expire as of December 31 following said meeting to act as temporary chairman of the first meeting of the extension council to be held in January following his appointment, and one to act as temporary secretary of said extension council meeting.

3. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

4. To and shall fix the date, time and place in each of the townships of the extension district for the holding of township election meetings during the period provided for the holding of them for the election of members of the extension council, and call the township election meetings in each of the townships of the extension district for the election of the members of the extension council and cause notice of said election to be published

once at least one week but not more than three weeks prior to the date fixed for the holding of such meetings in a newspaper having general circulation in each extension district, and the cost of publishing said notice shall be paid by the extension council.

5. To and shall prior to the date of the holding of a township election meeting, designate two resident qualified voters in each of the several townships in which an election meeting is to be held, one to act as chairman, one to act as secretary of said meeting, which said meeting shall be conducted in accordance with Robert's Rules of Order. The minutes of each township election meeting shall be recorded by the secretary, signed and certified by the chairman and secretary and delivered by the secretary to the office of the extension council of the several extension districts on or before the date fixed for the next meeting of the extension council.

6. To and shall prior to the date fixed for the holding of the election meetings in the several townships of the district, appoint in each of the townships in which a township election meeting is to be held a nominating committee consisting of three members and designate the chairman thereof, which nominating committee shall nominate at least two resident qualified voters as candidates for election to membership in the extension council, which committee shall certify the names of the nominees and deliver said certificate to the person designated as chairman of the township election meeting on or before the date fixed for the holding thereof.

7. To enter into a Memorandum of Understanding with the extension service setting forth the co-operative relationship between the extension service and the extension district.

8. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in co-operation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

9. To prepare annually on or before July 31 a budget for the fiscal year beginning January 1 and ending December 31 in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

10. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in co-operation with the extension

service in accordance with the Memorandum of Understanding with said extension service.

11. To make and adopt such rules and regulations not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

12. To fill all vacancies in its membership to serve for the unexpired term of the member creating such vacancy by electing a resident qualified voter from the township of the residence of the member creating such vacancy. If for any reason a township election meeting is not held pursuant to call and published notice and no one is elected from said township as a member of the extension council of the district, there shall be a vacancy in such membership on the extension council.

13. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairman and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers, of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

14. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairman and secretary and approved by the extension council and recorded in its minutes.

15. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm co-operative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned and/or occupied by a farm organization or farm co-operative.

16. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer provided however that the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from said fund

In the previous year shall be paid over to the county treasurer who shall transfer such funds to the general fund of the county.

17. To file with the county auditor and to publish in two newspapers of general circulation in the district before February 1 full and detailed reports under oath of all receipts and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year. [S13,§1683-j,m; C24, 27, 31, 35, 39,§§2930, 2933, 2938; C46, 50, 54,§§176.8, 176.11, 176.16; 56GA, ch 107,§§10, 21]

**176A.9 Limitation on powers and activities of extension council.** 1. The extension council shall have for its sole purpose the dissemination of information, the giving of instruction and practical demonstrations on subjects relating to agriculture, home economics, rural and community life and the encouragement of the application of the same to and by all persons in the extension district, and the imparting to such persons of information on said subjects through field demonstrations, publications, or other media.

2. The extension district, its council, or a member or an employee as a representative of either one or the other shall not engage in commercial or other private enterprises, legislative programs, nor attempt in any manner by the adoption of resolutions or otherwise to influence legislation, either state or national, or other activities not authorized by this chapter.

3. The extension council or a member or employee thereof as a representative of either the extension district or the extension council shall not give preferred services to any individual, group or organization or sponsor the programs of any group, organization or private agency other than as herein provided by this chapter.

4. The extension council may collect reasonable fees for specific services which require special equipment or personnel, such as soil testing services, seed testing services, or other educational services, but it shall not collect dues for or pay dues to any state or national organization or agency, nor shall it accept contributions or gifts for the extension district, or the extension council.

5. The extension council and its employed personnel may co-operate with, give information and advice to organized and unorganized groups, but shall not promote, sponsor or engage in the organization of any group for any purpose except the promoting, organization and the development of the programs of 4-H clubs. Nothing in this chapter shall prevent the county extension council or extension agents employed by it from using or seeking opportunities to reach an audience of persons interested in agricultural extension work through the help of interested farm organizations, civic organizations or any other group: Provided, that in using or seeking such opportunities, the county extension council or

agents employed by it shall make available to all groups and organizations in the county equal opportunity to co-operate in the educational extension program.

6. No member of the extension council shall be paid any compensation or be reimbursed for expenses incurred in connection with or for services rendered as a member of the extension council or as an employee of the extension district or extension council. [SS15, §1683-e; C24, 27, 31, 35, 39,§§2929, 2931; C46, 50, 54,§§176.7, 176.9; 56GA, ch 107,§§11, 21]

**176A.10 County agricultural extension education tax.** The extension council of each extension district shall, at a regular or special meeting held in July in each year, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The amount so estimated shall not exceed the amount of money which the following millage rate will produce, based on the assessed value of the taxable property in the extension district: For the "county agricultural extension education fund" annually not to exceed one-half mill on the dollar of assessed valuation, provided, however, that no extension council in an extension district shall make an estimate or certify an amount in any one year in excess of twenty thousand dollars in districts having a population of sixty thousand or more, seventeen thousand five hundred dollars in districts having a population of sixteen thousand or more but less than sixty thousand, and fifteen thousand dollars in districts having a population of less than sixteen thousand, which shall be the maximum amount that any such extension district shall be entitled to receive annually from the county. The extension council in every extension district shall in every respect comply with chapter 24. [C24, 27, 31, 35, 39,§2930; C46, 50, 54,§176.8; 56GA, ch 107,§§12, 21]

**176A.11 Annual levy by board of supervisors.** The board of supervisors of each county shall annually, at the time of levying taxes for county purposes, levy the taxes necessary to raise the county agricultural extension education fund and certified to it by the extension council as provided in this chapter, but if the amount certified for such fund is in excess of the amount authorized by this chapter it shall levy only so much thereof as is authorized by this chapter. [C24, 27, 31, 35, 39,§2930; C46, 50, 54,§176.8; 56GA, ch 107,§§13, 21]

**176A.12 County agricultural extension education fund.** There shall be established in each county a "county agricultural extension education fund" and the county treasurer of each county shall keep the amount of tax levied for such fund, as herein in this act authorized, in said fund. Before the fifteenth day of each month in each year the county treasurer of each county shall give notice to the chairman of the extension council of his county of the amount collected for the "county agricultural

extension education fund" to the first day of such month, and the chairman of the extension council shall draw his draft therefor, countersigned by the secretary upon the county treasurer who shall pay such taxes to the treasurer of the extension council only on such draft. [SS15,§1683-e; C24, 27, 31, 35, 39, §2929; C46, 50, 54,§176.7; 56GA, ch 107,§§14, 21]

**176A.13 Co-operation extension council—extension service.** The extension council is specifically authorized to co-operate with the extension service and the United States department of agriculture in the accomplishment of the county agricultural extension education program contemplated by this chapter, to the end that the federal funds allocated to the extension service and the county agricultural extension education fund of each district may be more efficiently used by the extension service and the extension council. The director of extension shall co-ordinate the county agricultural extension education program in the several extension districts. [S13,§1683-p; C24, 27, 31, 35, 39,§§2931, 2932; C46, 50, 54,§§176.9, 176.10; 56GA, ch 107,§§15, 21]

**176A.14 Extension council officers—duties.**

1. The chairman of the extension council shall preside at all meetings of the extension council, have authority to call special meetings of said council upon such notice as shall be fixed and determined by the extension council, and shall call special meetings of the extension council upon the written request of a majority of the members of said council, and in addition to the duties imposed upon him in this chapter perform and exercise the usual duties performed and exercised by a chairman or president of a board of directors of a corporation.

2. The vice-chairman, in the absence or disability of the chairman, or his refusal to act, shall perform the duties imposed upon the chairman and act in his stead.

3. The secretary shall perform the duties usually incident to this office. He shall keep the minutes of all meetings of the extension council. He shall sign such instruments and papers as are required to be signed by him

as such in this chapter, and by the extension council from time to time.

4. The treasurer shall receive, deposit and have charge of all of the funds of the extension council and pay and disburse the same as in this chapter required, and as may be from time to time required by the extension council. He shall keep an accurate record of receipts and disbursements and submit a report thereof at such times as may be required by the extension council.

Each of the officers of the extension council shall perform and carry out the duties herein in this section imposed upon them and perform and carry out such other duties as shall be imposed upon them in the rules and regulations adopted by the extension council from time to time as in this chapter authorized. The members of the extension council, within fifteen days after their election as such, shall take and sign the usual oath of public officers and the same shall be filed in the office of the county auditor of the county of the extension district. The treasurer of the extension council, within ten days after his election as treasurer and before entering upon the duties of his office as treasurer, shall execute to the extension council a corporate surety bond of one hundred twenty-five percent of the amount, as near as can be ascertained, that shall be in his hands as treasurer at any one time. All such bonds shall be continued to the faithful discharge of the duties of the office of treasurer. The amount and sufficiency of all bonds shall be determined by the county treasurer of the county of the extension district and upon his approval indorsed on the bond shall be filed with the county auditor of the county of the extension district who shall notify the chairman of the extension council of the approval by the county treasurer and of the filing thereof in his office. The cost of any corporate surety bond so furnished by a treasurer shall be paid for by the extension council. [S13, §§1683-i,-j,-m; C24, 27, 31, 35, 39,§§2933, 2934, 2938; C46, 50, 54,§§176.11, 176.12, 176.16; 56GA, ch 107,§§16, 21]

Transfer of farm bureau funds, 56GA, ch 107, §17  
Constitutionality, 56GA, ch 107, §22

CHAPTER 177

CROP IMPROVEMENT ASSOCIATION

Referred to in §§159.6, 173.3

- 177.1 Recognition of organization.
- 177.2 Duties and objects of association.
- 177.3 Board of directors.

- 177.4 Employees of committee.
- 177.5 Expenses of officers.

**177.1 Recognition of organization.** The organization now existing in and incorporated under the laws of this state and known as the Iowa crop improvement association, shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization and of the names of its president, vice-president, secretary, and treasurer, and that five hundred

persons are bona fide members of the association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§2939; C46, 50, 54,§177.1]

State aid, see biennial appropriation act

**177.2 Duties and objects of association.** The purposes and objectives of the Iowa crop improvement association shall be:



1. To encourage the use of good agricultural practices in crop production and to conserve, maintain and improve soil productivity.

2. To encourage the production of high quality pure seed of varieties having proved adaptation and performance as determined by experimental trials.

3. To encourage the more wide-spread use of superior seeds by such means as may be designated by its members or board of directors.

4. To co-operate with the agricultural experiment station of the Iowa state college of agriculture and mechanic arts in conducting tests to determine the adaptation and performance of crop hybrids, crop varieties, and new crops of potential value in Iowa.

5. Promote in such other ways as the association may deem advisable the objects as set out in this section.

6. Hold an annual meeting.

7. Submit an annual report of the proceedings, receipts and expenditures to the Iowa state secretary of agriculture. [C24, 27, 31, 35, 39,§2940; C46, 50, 54,§177.2]

**177.3 Board of directors.** The business of the association shall be transacted by a board of directors which shall consist of:

1. The director of the agricultural experiment station of the Iowa state college of agriculture and mechanic arts.

2. The head of farm crops in the Iowa agricultural experiment station.

3. The secretary of the state department of agriculture.

4. Six persons who shall be elected from its membership. [C24, 27, 31, 35, 39,§2941; C46, 50, 54,§177.3]

**177.4 Employees of committee.** The directors may employ one or more competent persons who shall devote their entire time, while employed by the association, to carrying out the provisions of this chapter. Such persons shall receive such compensation as the directors may fix and their necessary expenses incurred while engaged in such work. [C24, 27, 31, 35, 39,§2942; C46, 50, 54,§177.4]

**177.5 Expenses of officers.** The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39,§2943; C46, 50, 54, §177.5]

## CHAPTER 178

### STATE DAIRY ASSOCIATION

Referred to in §§159.6, 173.3

178.1 Recognition of organization.

178.2 Duties and objects of association.

178.3 Executive committee.

178.4 Employees of committee.

178.5 Expenses of officers.

**178.1 Recognition of organization.** The organization known as the Iowa state dairy association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, the names of its president, vice-president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§2944; C46, 50, 54,§178.1]

State aid, see biennial appropriation act

**178.2 Duties and objects of association.** The Iowa state dairy association shall:

1. Cause inspection to be made of dairy products, farms, cattle, barns, and other buildings, appliances, and methods used or employed in connection with the dairy industry of the state.

2. Promote dairy test associations, shows, and sales.

3. Publish a breeders directory.

4. Furnish such general instruction and assistance, either by institutes or otherwise, as

it may deem proper, to advance the general interests of the dairy industry.

5. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C24, 27, 31, 35, 39,§2945; C46, 50, 54, §178.2]

**178.3 Executive committee.** The association shall conduct its business through an executive committee which shall consist of:

1. The president and the secretary of the association.

2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts.

3. A member of the faculty of said college engaged in the teaching of dairying to be designated by said dean.

4. The secretary of agriculture. [C24, 27, 31, 35, 39,§2946; C46, 50, 54,§178.3]

**178.4 Employees of committee.** The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the executive committee, in carrying out the provisions of

this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and such persons shall hold office at the pleasure of the executive committee. [C24, 27, 31, 35, 39, §2947; C46, 50, 54, §178.4]

**178.5 Expenses of officers.** The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39, §2948; C46, 50, 54, §178.5]

## CHAPTER 179

### DAIRY INDUSTRY COMMISSION

See §§159.6, 163.5

179.1 Definitions.  
179.2 Commission created.  
179.3 Powers and duties.  
179.4 Advertising campaign.  
179.5 Excise tax.  
179.6 Producers' records.

179.7 Returns filed with commission.  
179.8 Payment of expenses.  
179.9 Investigations by commission.  
179.10 Report.  
179.11 Penalties.  
179.12 Salaries—approval.

**179.1 Definitions.** As used in this chapter:

1. The term "commission" shall mean the Iowa dairy industry commission.

2. The term "person" shall mean individuals, corporations, partnerships, trusts, associations, co-operatives, and any and all other business units.

3. The term "producer" shall mean and include every person who produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products.

4. The term "dealer" shall mean and include any person who buys, sells, manufactures, processes or ships dairy products, or who acts as sales or purchasing agent, broker or factor of dairy products. [C46, 50, 54, §179.1]

**179.2 Commission created.** There is hereby created an "Iowa Dairy Industry Commission" to be thus known and designated.

This commission shall be composed of the head of the dairy husbandry department of Iowa state college, the head of the dairy industry department of Iowa state college, and the chief of the dairy and food division of the department of agriculture and in addition thereto nine members appointed by the secretary of agriculture of the state as immediately hereinafter provided.

The board of directors of the Iowa state dairy association shall on or before the fifteenth day of May of each odd-numbered year nominate for the office of commissioners three persons from each congressional district within the state, as constituted January 1, 1941, all of whom shall be actual milk or cream producers, which list shall on or before the first day of June following, be certified to the secretary of agriculture of the state by the president and secretary of the Iowa state dairy association and the said secretary of agriculture shall, on or before the second Tuesday in June of each odd-numbered calendar year, appoint one of said nominees so certified from each of said districts as a member of Iowa dairy industry commission who shall serve for

a period of two years from July 1 following his appointment and until his successor is duly appointed and qualified. Any vacancy occurring in said Iowa dairy industry commission shall be filled by the said secretary of agriculture from nominations made by the board of directors of the Iowa state dairy association in the manner heretofore provided. The appointive members of the commission shall receive the sum of five dollars per day for each day spent in actual attendance on meetings of the commission not exceeding one hundred dollars per annum, together with actual necessary expenses and mileage at the rate of five cents per mile. [C46, 50, 54, §179.2]

**179.3 Powers and duties.** The powers and duties of the commission shall include the following:

1. To elect a chairman, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules, regulations and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health,

food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be open to inspection and audit by the board of directors of the Iowa state dairy association or its representatives, and shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products. [C46, 50, 54, §179.3; 57GA, ch 102, §1]

**179.4 Advertising campaign.** The commission shall plan and conduct a campaign for commodity advertising, publicity and sales promotion, research and educational campaigns to increase the consumption of dairy products, and may contract for any advertising, publicity, and sales promotion, research and educational service. To accomplish such purpose the commission shall have power and it shall be the duty of the commission to disseminate information as follows:

1. Relating to dairy products and the importance thereof in preserving the public health, the economy thereof in the diet of the people, and the importance thereof in the nutrition of children.

2. Relating to the manner, method, and means used and employed in the production, processing, and marketing of dairy products in order to comply with the laws of the state and nation regulating and safeguarding such production and marketing to insure a pure and wholesome product.

3. Relating to the method of the producer and dealer in producing and handling dairy products in order to meet the standards imposed by the state and federal government to insure a pure and nutritious product.

4. Relating to the harmful effect on the public health that would result from a breakdown of the dairy industry.

5. Relating to the reasons why producers should receive a reasonable return on their labor investment.

6. Relating to the problem of furnishing the consumer at all times with an abundant supply of high quality dairy products at reasonable prices.

7. Relating to the factors of instability peculiar to the dairy industry, such as unbalanced production, influence of consumer purchasing power, and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and

increasing consumer demand may be stimulated.

8. Relating to the possibilities of increasing consumption of dairy products.

9. Relating to such other, further and additional information as shall tend to promote increased consumption of dairy products, and as may foster a better understanding and more efficient co-operation between producers and the consuming public. [C46, 50, 54, §179.4]

#### **179.5 Excise tax.**

1. There is hereby levied and imposed an excise tax of one cent per pound or fraction thereof upon all butterfat sold in the state during the period beginning May 1 and terminating June 30, inclusive, annually; provided, however, that the provisions of this section shall not apply to butterfat in milk and cream produced outside the state. For the purpose of computing the tax in markets where butterfat tests are not available, or the butterfat content not definitely known, the amount of butterfat in milk and cream shall be computed on the basis of four percent in the case of milk, and thirty-two percent in the case of cream.

2. All taxes levied and imposed under this chapter shall be deducted from the price charged by the producer and shall be collected by the first dealer; provided, however, that:

a. Where the producer produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products, directly to the consumer the taxes aforesaid shall be held by such producer.

b. Where the producer sells milk, cream or other dairy products to any dealer outside the state the taxes aforesaid shall be due and payable by such producer before the shipment is made, except that the commission may make such agreements with extra state dealers for the keeping of records and the collection of the taxes aforesaid as are necessary to secure the payment of the said taxes within the time fixed by this chapter.

All taxes levied and imposed under this chapter and any voluntary contributions made to the dairy industry commission, shall be paid to and collected by the secretary of the commission who shall remit to the treasurer of the state, quarterly, and at the same time render to the state comptroller an itemized and verified report showing the source from which said taxes and voluntary contributions were obtained. All such taxes and voluntary contributions received, collected and remitted shall be placed in a special fund by the treasurer of state, and the state comptroller, to be known as the "Dairy Industry Fund" to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative thereto.

Any person from whom the excise tax provided in this chapter is collected may, by application filed with this commission within

thirty days after the collection from him of said tax, have said tax remitted to him by the commission. [C46, 50, 54,§179.5; 57GA, ch 102,§2]

Referred to in §§179.3, 179.7

**179.6 Producers' records.** Every producer shipping milk, cream and/or other dairy products to any dealer outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first dealer within the state and every producer distributing milk, cream, or other dairy products directly to the consumer, shall keep a complete and accurate record of all butterfat taxed by this chapter in milk or cream produced, bottled, processed, or distributed by him during the period of May 1 to June 30, inclusive, of each year. Such records shall be in such form and contain such information as the commission shall by rule or regulation prescribe and shall be preserved by the person charged with their making for a period of two years and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee. [C46, 50, 54, §179.6]

**179.7 Returns filed with commission.** Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at such times as the commission may by rule or regulation require, file with the commission a return on forms to be prescribed and furnished by the commission stating the quantity of dairy products produced, bottled, processed, or distributed, and butterfat content of all milk or cream produced by, delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the period of time prescribed in subsection 1 of section 179.5. Such return shall contain such other information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, and one copy available at the office of such person, for the use of his patrons, and the original filed with the commission. [C46, 50, 54,§179.7]

**179.8 Payment of expenses.** No part of the expense incurred by the commission shall be paid out of any funds in the state treasury except said dairy industry fund which shall be

subject at all times to the warrant of the state comptroller, drawn upon written requisition of the chairman of the commission and attested by the secretary for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter, but in no event shall the total expenses therefor exceed the total taxes collected and deposited to the credit of said fund. [C46, 50, 54,§179.8]

**179.9 Investigations by commission.** The commission shall have the power to cause its authorized agents to enter upon the premises of any person charged by this chapter or by agreement with the commission with the collection of the excise tax imposed by this chapter, and to cause to be examined by any such agent any books, records, documents, or other instruments bearing upon the amount of such tax collected or to be collected by such person; provided that the commission has reasonable ground to believe that all the tax herein levied has not been collected, or if it has not been fully accounted for as herein provided. [C46, 50, 54,§179.9]

**179.10 Report.** The commission shall on or before the first day of March of each year make a full and complete report of its doings for the previous calendar year to the board of directors of the Iowa state dairy association, which report shall show the amount of money received and the expenditures thereof, and shall be printed in the annual agricultural year book issued by the secretary of agriculture of the state. [C46, 50, 54,§179.10]

**179.11 Penalties.** Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state. [C46, 50, 54, §179.11]

**179.12 Salaries—approval.** All salaries and compensation provided for by this chapter shall be subject to the approval of the governor and the comptroller. [C46, 50, 54,§179.12]

Constitutionality, 51GA, ch 105,§12  
Rule of construction, 51GA, ch 105,§12

## CHAPTER 180

## DAIRY CALF CLUB EXPOSITION

Referred to in §§159.6, 173.3

- 180.1 4-H dairy calf club exposition.  
 180.2 "Exposition" defined.  
 180.3 Statement of expenditures.

- 180.4 Certification by department.  
 180.5 Payment of state aid.

**180.1 4-H dairy calf club exposition.** The Iowa state dairy association is hereby empowered, authorized and directed to hold annually at such time and place in Iowa as said association may select an exposition of 4-H dairy calves and contests. [C35,§2948-g1; C39,§2948.1; C46, 50, 54,§180.1]

**180.2 "Exposition" defined.** For the purpose of this chapter, 4-H dairy calf club exposition is interpreted to include the exhibits of dairy club heifers and the holding of judging contests, demonstration contests, record-book contests, and production contests for 4-H dairy club members. [C35,§2948-g2; C39,§2948.2; C46, 50, 54,§180.2]

**180.3 Statement of expenditures.** After each exposition the president and secretary of said association shall file with the state secretary of agriculture a sworn statement of the actual amount of cash premiums paid at such

exposition for the current season which must correspond with the published offer of premiums by said association. [C35,§2948-g3; C39, §2948.3; C46, 50, 54,§180.3]

Referred to in §180.4

**180.4 Certification by department.** The department of agriculture on receipt of such statement shall, if it complies with section 180.3, certify to the state comptroller that a named amount is due said association as state aid. [C35,§2948-g4; C39,§2948.4; C46, 50, 54,§180.4]

State aid, see biennial appropriation act

**180.5 Payment of state aid.** The state comptroller on receipt of such certificate shall draw a warrant in favor of the secretary or treasurer of said association for a sum equal to eighty percent of the amount paid in premiums by it, but in no case shall the amount exceed two thousand dollars in any one year. [C35,§2948-g5; C39,§2948.5; C46, 50, 54,§180.5]

## CHAPTER 181

## BEEF CATTLE PRODUCERS ASSOCIATION

Referred to in §§159.6, 173.3

- 181.1 Recognition of organization.  
 181.2 Duties and objects of association.  
 181.3 Executive committee.

- 181.4 Employees of committee.  
 181.5 Expenses of officers.

**181.1 Recognition of organization.** The Iowa beef cattle producers association now existing in and incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing, each year, with the department of agriculture, verified proof of the names of its president, vice-president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§2949; C46, 50, 54,§181.1]

State aid, see biennial appropriation act

**181.2 Duties and objects of association.** The Iowa beef cattle producers association shall:

1. Aid in the promotion of the beef cattle industry of the state.
2. Provide for practical and scientific instruction in the breeding and raising of beef cattle.
3. Provide for the inspection of herds, premises, appliances, methods, and feedstuffs used in the raising of beef cattle.

4. Make demonstrations in the feeding of beef cattle and publish suggestions beneficial to such business.

5. Aid and promote beef cattle feeding contests, shows, and sales.

6. Publish a breeders directory.

7. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C24, 27, 31, 35, 39,§2950; C46, 50, 54, §181.2]

**181.3 Executive committee.** The association shall act through an executive committee which shall consist of:

1. The president and the secretary of the association.

2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts.

3. A member of the faculty of said college engaged in the teaching of animal husbandry to be designated by said dean.

4. The secretary of agriculture. [C24, 27, 31, 35, 39,§2951; C46, 50, 54,§181.3]

**181.4 Employees of committee.** The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and such persons shall hold office at the pleas-

ure of the executive committee. [C24, 27, 31, 35, 39,§2952; C46, 50, 54,§181.4]

**181.5 Expenses of officers.** The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39,§2953; C46, 50, 54, §181.5]

CHAPTER 182

IOWA HORSE AND MULE BREEDERS ASSOCIATION

Referred to in §§159.6, 173.3

182.1 Recognition of organization.

182.3 Executive committee.

182.2 Duties and objects of the association.

182.4 Expenses of officers.

**182.1 Recognition of organization.** The organization known as the Iowa horse and mule breeders association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, the names of its president, vice-president, secretary, and treasurer, containing five hundred bona fide members, together with such other information as the department of agriculture may require. [C27, 31, 35,§2953-b1; C39,§2953.1; C46, 50, 54,§182.1]

5. Publish a breeders directory.

6. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C27, 31, 35,§2953-b2; C39,§2953.2; C46, 50, 54,§182.2]

**182.2 Duties and objects of the association.** The Iowa horse and mule breeders association shall:

**182.3 Executive committee.** The association shall act by and through an executive committee consisting of:

1. Aid in the promotion of the horse and mule industry of the state.
2. Provide for practical and scientific instruction in breeding, growing, and feeding of horses and mules.
3. Make demonstrations in the feeding and care of horses and mules and publish suggestions beneficial to such industry.
4. Aid and promote horse and mule contests and shows.

1. The president and the secretary of the association.

2. The dean of the college of agriculture and mechanic arts, and the head of the department of animal husbandry.

3. The secretary of agriculture. [C27, 31, 35,§2953-b3; C39,§2953.3; C46, 50, 54,§182.3]

**182.4 Expenses of officers.** The officers of the association shall serve without compensation but shall receive their necessary expenses while transacting the business of the association. [C27, 31, 35,§2953-b4; C39,§2953.4; C46, 50, 54,§182.4]

CHAPTER 183

SWINE PRODUCERS ASSOCIATION

Referred to in §§159.6, 173.3

183.1 Recognition of association.

183.4 Employees of committee.

183.2 Duties and objects of association.

183.5 Expenses of officers.

183.3 Executive committee.

**183.1 Recognition of association.** The organization known as the Iowa swine producers association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proof of its organization, the names of its president, vice-president, secretary, and treasurer and that five hundred persons are bona fide members, together with such other information as the

department of agriculture may require. [C39, §2953.5; C46, 50, 54,§183.1]

State aid, see biennial appropriation act

**183.2 Duties and objects of association.** The duties and objects of the Iowa swine producers association shall be:

1. To promote the welfare of the swine industry in Iowa.

2. To aid in the orderly marketing of swine.
3. To carry on educational work to increase consumption and improve the processing of pork and its products.
4. To make an annual report of the proceedings and expenditures to the secretary of agriculture. [C39,§2953.6; C46, 50, 54,§183.2]

**183.3 Executive committee.** The association shall act by and through an executive committee which shall consist of:

1. The president, the secretary, and the treasurer of the association.
2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts, or a member of the faculty of said college engaged in the teaching of swine husbandry to be designated by said dean.

3. The secretary of agriculture of the state of Iowa. [C39,§2953.7; C46, 50, 54,§183.3]

**183.4 Employees of committee.** The executive committee may employ one or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. Such persons shall hold office at the pleasure of the committee. [C39,§2953.8; C46, 50, 54, §183.4]

**183.5 Expenses of officers.** The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C39,§2953.9; C46, 50, 54,§183.5]

## CHAPTER 184

### POULTRY ASSOCIATIONS

Referred to in §§159.6, 178.3

#### COUNTY SHOW

- 184.1 State aid.
- 184.2 Certification by department.
- 184.3 Payment of state aid.
- 184.4 Division of state aid.

#### STATE SHOW

- 184.5 State-wide show—management.
- 184.6 Location of state-wide poultry show.

- 184.7 Statement of expenditures.
- 184.8 Required income, etc.
- 184.9 Certification by department.
- 184.10 Payment of state aid.

#### DISTRICT SHOW

- 184.11 Affiliated county associations.
- 184.12 District show management.
- 184.13 Showing required.
- 184.14 State aid.

#### COUNTY SHOW

**184.1 State aid.** Every poultry association which complies with the following conditions shall be entitled to the aid herein provided:

1. The association shall be composed of at least fifteen bona fide poultry raisers or dealers in poultry, residing in any one county.
2. The membership of the association must be open to all persons on an equal basis, with a minimum membership fee of twenty-five cents, or a maximum fee not exceeding one dollar.
3. The association shall have a president, vice-president, secretary, treasurer, and a board of directors of at least three persons other than said officers.
4. The annual income in cash of the association, exclusive of state aid, shall be at least one hundred dollars, and the total expenditures in cash shall be one hundred dollars, in addition to the state aid.
5. The association shall hold a bona fide poultry show, each year, of not less than two working days.
6. The association shall notify the department on or before October 1 of its intention of holding a poultry show.
7. The association shall, on or before June 1 of each year, file with the department of agriculture a sworn statement showing com-

pliance with the foregoing conditions, and, in detail, the manner in which its funds for the preceding twelve months have been expended, together with such other information as the department may require. [C24, 27, 31, 35, 39, §2954; C46, 50, 54,§184.1]

Referred to in §184.2  
State aid, see biennial appropriation act

**184.2 Certification by department.** The department of agriculture shall on receipt of such statement, if it complies with section 184.1, and the expenditures listed therein appear to be bona fide, certify to the state comptroller after the time for filing such statement has expired, that the association has complied with all conditions imposed by this chapter and is entitled to the state aid herein provided. [C24, 27, 31, 35, 39,§2955; C46, 50, 54,§184.2]

**184.3 Payment of state aid.** The comptroller, on receipt of such statement, shall issue his warrant to the treasurer of such association for one hundred dollars. [C24, 27, 31, 35, 39,§2956; C46, 50, 54,§184.3]

**184.4 Division of state aid.** If more than one such association from the same county is entitled to state aid, the one hundred dollars shall be equally divided among such associations and the comptroller shall draw the warrants accordingly. [C24, 27, 31, 35, 39,§2957; C46, 50, 54,§184.4]

## STATE SHOW

**184.5 State-wide show—management.** An annual state-wide poultry show is hereby authorized. Such show shall be conducted or managed by the officers of the local poultry association of the place at which such show is held. [C24, 27, 31, 35, 39, §2958; C46, 50, 54, §184.5]

**184.6 Location of state-wide poultry show.** At each state poultry show, a convention shall be held to determine the place of holding the next state show, but such show shall not be held oftener than once in three years in the same city or town. Each association that has complied with the provisions of this chapter, for state aid, shall be entitled to send one delegate, who shall have one vote on all questions that arise. The officers of the local association conducting the show shall officiate at the convention. [C24, 27, 31, 35, 39, §2959; C46, 50, 54, §184.6]

**184.7 Statement of expenditures.** Such local poultry association, through its treasurer, shall, upon the adjournment of the state-wide poultry show, file with the department of agriculture a sworn statement which shall show the time and place of holding such show and an itemized statement of all expenditures on account thereof, and the specific purposes for which the same were expended, together with such other information as the department may require. [C24, 27, 31, 35, 39, §2960; C46, 50, 54, §184.7]

**184.8 Required income, etc.** The annual income in cash, exclusive of state aid, shall be five hundred dollars, and the total expenditures in cash shall be five hundred dollars, in addition to the state aid. [C27, 31, 35, §2960-a1; C39, §2960.1; C46, 50, 54, §184.8]

**184.9 Certification by department.** The department of agriculture, on receipt of such statement, if the same is, in its judgment, sufficient, and the expenditures bona fide, shall certify to the state comptroller that such state-wide poultry show has been held under the management of such local association. Said certificate shall show the amount of the bona fide expenditures on account of such convention. [C24, 27, 31, 35, 39, §2961; C46, 50, 54, §184.9]

**184.10 Payment of state aid.** The comptroller, on receipt of such certificate, shall

issue his warrant to the treasurer of such association for the amount of said expenditures, but in no case shall such warrant exceed five hundred dollars in any one year. [C24, 27, 31, 35, 39, §2962; C46, 50, 54, §184.10]

## DISTRICT SHOW

**184.11 Affiliated county associations.** Poultry associations in counties where no local poultry show is held, may affiliate with associations in adjacent counties and hold a district poultry show at some location that is mutually satisfactory. [C31, 35, §2962-d1; C39, §2962.1; C46, 50, 54, §184.11]

44GA, ch 61, §2, editorially divided

**184.12 District show management.** Each county poultry association affiliating with a district show shall form a county association as set forth in this chapter, and notify the department, on or before October 1, of its intentions of affiliating with other counties in the holding of a district poultry show. The president, vice-president, secretary and treasurer of such affiliating county poultry associations shall meet and elect officers who shall manage and conduct the district poultry show. [C31, 35, §2962-d2; C39, §2962.2; C46, 50, 54, §184.12]

**184.13 Showing required.** The officers of a district poultry show shall, on or before June 1 of each year, file with the department of agriculture a sworn statement showing compliance with all of the foregoing conditions and in detail the manner in which its funds have been expended, together with such other information as the department may require. The annual income in cash, exclusive of state aid, shall be at least one hundred dollars per county that is affiliated with a district organization, and the total expenditures in cash shall be one hundred dollars per county affiliated, in addition to the state aid. The total amount of state aid which will be available for such district show shall be the amount that would otherwise be available to the respective county poultry associations. [C31, 35, §2962-d3; C39, §2962.3; C46, 50, 54, §184.13]

**184.14 State aid.** Said state aid shall be payable to the treasurer of said district poultry show under substantially the same procedure as governs the payment of such aid in case of a state-wide poultry show. [C31, 35, §2962-d4; C39, §2962.4; C46, 50, 54, §184.14]

## CHAPTER 185

## STATE SHEEP ASSOCIATION

See §§159.6, 163.5

185.1 Recognition of association.  
185.2 Duties and objects of association.  
185.3 Executive committee.

185.4 Employees of committee.  
185.5 Expenses of officers.

**185.1 Recognition of association.** The organization known as the Iowa state sheep association shall be entitled to the benefits of this

chapter by filing each year with the department of agriculture verified proof of its organization, the names of its president, vice-



president, secretary-treasurer, and that five hundred persons are bona fide members, together with such other information as the department of agriculture may require. [C46, 50, 54,§185.1]

**185.2 Duties and objects of association.** The duties and objects of the Iowa state sheep association shall be:

1. To promote the welfare of the sheep industry in Iowa.
2. To provide for practical and scientific instruction in the breeding, growing, and feeding of sheep.
3. To make demonstrations in the feeding and care of sheep, and publish subjects beneficial to the sheep industry.
4. To aid in the orderly marketing of sheep and wool.
5. To promote the consumption of lamb and mutton and the use of wool.
6. To publish a breeders directory.
7. To aid and promote sheep-feeding contests, shows, and sales.
8. To make an annual report of the pro-

ceedings and expenditures to the secretary of agriculture. [C46, 50, 54,§185.2]

**185.3 Executive committee.** The association shall act by and through an executive committee consisting of:

1. The president, vice-president, and secretary-treasurer of the association.
2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts, or a member of the faculty of said college to be designated by the said dean.
3. The secretary of agriculture of the state of Iowa. [C46, 50, 54,§185.3]

**185.4 Employees of committee.** The executive committee may employ one or more competent persons who shall carry out the provisions of this chapter under the direction of the committee. Such persons shall hold office at the pleasure of the committee. [C46, 50, 54, §185.4]

**185.5 Expenses of officers.** The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C46, 50, 54,§185.5]

## CHAPTER 186

### STATE HORTICULTURAL SOCIETY

Referred to in §§159.6, 173.3

186.1 Meetings and organization of society.  
186.2 Horticultural exposition.  
186.3 Affiliation with allied societies.

186.4 Annual report.  
186.5 Appropriations.

**186.1 Meetings and organization of society.** The state horticultural society shall hold meetings each year, at such times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term. [C73,§1117; C97,§1669; C24, 27, 31, 35, 39,§2963; C46, 50, 54, §186.1]

**186.2 Horticultural exposition.** The society is authorized to hold, at such time and in such place in Iowa as it may select, a horticultural exposition, including honey products and manufactured plant products, with practical and scientific demonstrations of approved methods of crop production, grading, packing, marketing, and establishment of standard market grades pertaining to horticulture. It may delegate to its executive committee the duty and power to make and execute all plans for the holding of such an exposition. (C24, 27, 31, 35, 39,§2964; C46, 50, 54,§186.2)

**186.3 Affiliation with allied societies.** The society shall encourage the affiliation with itself of societies organized for the purpose of furthering the horticultural, honey bee, or forestry interests of the state. [C73,§1118; C97, §1670; C24, 27, 31, 35, 39,§2965; C46, 50, 54, §186.3]

**186.4 Annual report.** The secretary shall make an annual report to the department of agriculture at such time as the department may require. Such report shall contain the proceedings of the society, an account of the exposition, a summarized statement of the expenditures for the year, the general condition of horticultural, honey bee, and forestry interests throughout the state, together with such additional information as the department may require. [C73,§1119; C97,§1671; C24, 27, 31, 35, 39,§2966; C46, 50, 54,§186.4]

**186.5 Appropriations.** All money appropriated by the state for the use of the state horticultural society shall be paid on the warrant of the state comptroller, upon the order of the president and secretary of said society, in such sums and at such times as may be for the interests of said society. All expenditures

from state funds for the use of the state horticultural society are to be approved by the secretary of the state department of agricul-

ture. [C27, 31, 35,§2966-a1; C39,§2966.1; C46, 50, 54,§186.5]

State aid, see biennial appropriation act

CHAPTER 187

MARKING AND BRANDING OF ANIMALS

187.1 Repealed by 56GA, ch 108,§1.  
187.2 Record.

187.3 Mark previously recorded.

**187.1 Repealed by 56GA, ch 108,§1.**

Township clerks' books transferred to county recorder, 56 GA, ch 108,§4

**187.2 Record.** Any person wishing to mark or brand his domestic animals with any distinguishing mark may adopt his own mark, and have a description thereof recorded by the recorder of the county in which the owner resides for which the recorder shall receive a

fee of one dollar. [C51,§§921, 923; R60,§§1556, 1558; C73,§§1480, 3809; C97,§2335; C24, 27, 31, 35, 39,§2977; C46, 50, 54,§187.2; 56GA, ch 108,§2]

**187.3 Mark previously recorded.** No person shall adopt a mark or brand previously recorded to another person residing in the same county. [C51,§922; R60,§1557; C73,§1481; C97, §2336; C24, 27, 31, 35, 39,§2978; C46, 50, 54,§187.3; 56GA, ch 108,§3]

CHAPTER 188

ESTRAYS AND TRESPASSING ANIMALS

- 188.1 Definition of terms.
- 188.2 Restraint of animals.
- 188.3 Trespass on lawfully fenced land.
- 188.4 Neglect to maintain partition fence.
- 188.5 Trespass on unfenced land.
- 188.6 Trespass on highway.
- 188.7 Animals under control.
- 188.8 Action in lieu of distraint.
- 188.9 Action when stock is released or has escaped.
- 188.10 Release on payment of ratable share.
- 188.11 Procedure on distraint.
- 188.12 Appointee in lieu of trustee.
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- 188.14 Assessment of damages.
- 188.15 Failure to pay damages.
- 188.16 Escape or release.
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- 188.19 Appeal—time.
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- 188.21 Appeal by claimant—effect.
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- 188.24 Transcript—clerk to file.
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- 188.26 Taking up estray.
- 188.27 Procedure on taking up estray.
- 188.28 Proof of service.
- 188.29 Justice record.
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- 188.31 Publication.
- 188.32 Fees and expenses.
- 188.33 Two or more estrays—procedure.
- 188.34 Property vests when.
- 188.35 Recovery by owner.
- 188.36 Former owner—rights after vesting of title.
- 188.37 Lawful use of estray.
- 188.38 Unlawful use of estray.
- 188.39 Nonliability of taker-up.
- 188.40 Penalty against finder.
- 188.41 Transfer of estrays.
- 188.42 Sale of estrays.
- 188.43 Notice.
- 188.44 Assessment of damages and costs.
- 188.45 Owner discovered.
- 188.46 Penalty.
- 188.47 Bond to release.
- 188.48 Compensation and fees.
- 188.49 Neglected animals.
- 188.50 Disabled animals killed.

**188.1 Definition of terms.** As used in this chapter:

1. "Owner" when used with reference to animals, means any person in possession or entitled to the present possession thereof, or having care or charge of them, or holding the legal title to them.
2. "Owner" when used with reference to lands, means the person having title thereto, or the lessee or occupant thereof.
3. "Animal" or "animals" when used in this

chapter shall include and embrace horses, cattle, swine, sheep, goats, mules, and asses.

4. "Estray" shall mean any animal unlawfully running at large the ownership of which cannot, with reasonable inquiry in the neighborhood, be ascertained, or any animal which has been abandoned by its owner.
5. "Trespassing animals" means those unlawfully upon land, or running at large contrary to law or police regulations. [C97,§2311; C24, 27, 31, 35, 39,§2979; C46, 50, 54,§188.1]

**188.2 Restraint of animals.** All animals shall be restrained by the owners thereof from running at large. [C51,§114; R60,§§250, 287, 1522; C73,§§309, 1446, 1447, 1457, 1461-1463; C97, §§444, 445, 2312, 2314; C24, 27, 31, 35, 39,§2980; C46, 50, 54,§188.2]

**188.3 Trespass on lawfully fenced land.** Any animal trespassing upon land, fenced as provided by law, may be distrained by the owner of such land, and held for all damages done thereon by it, unless it escaped from adjoining land in consequence of the neglect of such landowner to maintain his part of a lawful partition fence. [C51,§§913, 914; R60,§§1548, 1549; C73,§§1448, 1449; C97,§2313; C24, 27, 31, 35, 39, §2981; C46, 50, 54,§188.3]

Fences, ch 118

**188.4 Neglect to maintain partition fence.** The owner of the land from which such animal escaped shall also be liable for such damages if it escaped therefrom in consequence of his neglect to maintain his part of a lawful partition fence, or if the trespassing animal was not lawfully upon his land, and he had knowledge thereof. [C51,§§913, 914; R60,§§1548, 1549; C73,§§1446, 1448, 1449, 1452; C97,§§2313, 2314; C24, 27, 31, 35, 39,§2982; C46, 50, 54,§188.4]

Fences, ch 118

**188.5 Trespass on unfenced land.** If there be no lawful partition fence, and the line thereof has not been assigned either by the fence viewers or by agreement of the parties, any animal trespassing across such partition line shall not be distrained, nor shall there be any liability therefor. [C97,§2313; C24, 27, 31, 35, 39,§2983; C46, 50, 54,§188.5]

**188.6 Trespass on highway.** Animals which are unlawfully running at large on the highway may be distrained by the owner of the adjoining land and held for damages done by them and for the costs provided in this chapter. [R60,§287; C73,§§1446, 1448, 1452; C97,§2314; C24, 27, 31, 35, 39,§2984; C46, 50, 54,§188.6]

**188.7 Animals under control.** An animal shall not be considered as running at large so long as it is under the reasonable care and control of the owner upon the public road for driving or travel thereon. [C97,§2314; C24, 27, 31, 35, 39,§2985; C46, 50, 54,§188.7]

**188.8 Action in lieu of distraint.** Instead of distraining trespassing animals, the injured person may recover all damages caused thereby in an action against the owner thereof, and may join therein the owner of the land from which it escaped, if he is liable therefor, and all or any of the different owners of the animals who have not paid their proportion of the damages or costs. [C97,§§2315, 2316; C24, 27, 31, 35, 39,§2986; C46, 50, 54,§188.8]

**188.9 Action when stock is released or has escaped.** If distrained animals escape or are released without the consent of the distraining party, he may recover his damages as above provided, with costs, and the costs of distraint

made prior to such escape or release. [C97, §2315; C24, 27, 31, 35, 39,§2987; C46, 50, 54,§188.9]

**188.10 Release on payment of ratable share.** If there is more than one owner of distrained animals, each may pay his ratable share of the damages and costs, and release his animals. [C73,§1447; C97,§§2312, 2316; C24, 27, 31, 35, 39, §2988; C46, 50, 54,§188.10]

**188.11 Procedure on distraint.** The person distraining animals shall, within twenty-four hours after such distraint, Sunday not included, notify the owner of the animals of such distraint and of the actual amount of damages and costs caused by such animals. If the said owner fails to satisfy such damages and costs within twenty-four hours after such notification, the person distraining shall immediately notify the township trustees and demand that they appear upon the premises where the damages occurred and assess the damages. The trustees shall immediately fix a time for the assessment of such damages and notify the owner of the animal accordingly. [C51,§919; R60,§§1552, 1554; C73,§§1447, 1454; C97,§§2312, 2317; C24, 27, 31, 35, 39,§2989; C46, 50, 54,§188.11]

**188.12 Appointee in lieu of trustee.** If for any reason one or more trustees shall be unable to act, the trustees present shall appoint one or more disinterested citizens in place of such trustees. [C51,§916; R60,§1551; C73,§1454; C97,§2317; C24, 27, 31, 35, 39,§2990; C46, 50, 54, §188.12]

**188.13 Tender.** The owner of the animals may tender to the person suffering damage an amount less than that demanded by claimant, as damages and costs, and if such tender be refused, and the final assessment of damages be no more than such tender, then all costs, and compensation for keeping the animals accruing after such tender, shall be paid by the person distraining the animals. [C24, 27, 31, 35, 39,§2991; C46, 50, 54,§188.13]

Tender in general, ch 538

**188.14 Assessment of damages.** The trustees, or a majority thereof, shall meet on the premises where the damages occurred at the time fixed and assess the damages and costs and file their written report with the township clerk, who shall record the same. Said assessment shall be final unless appealed from. [C73, §§1454, 1455; C97,§§2317-2319; C24, 27, 31, 35, 39, §2992; C46, 50, 54,§188.14]

**188.15 Failure to pay damages.** If the owner of the distrained animals neglects for two days after such assessment to pay the amount thereof, the township clerk shall at once post up in three conspicuous places in the township a notice of the time and place at which he will sell said animals, describing them. The place of sale shall be at the place of distraint. The sale shall be between the hours of one and three o'clock p.m. and on a day not less than five nor more than ten days after the posting. [C73,§1454; C97,§2317; C24, 27, 31, 35, 39,§2993; C46, 50, 54,§188.15]

**188.16 Escape or release.** If any distrained animal escapes, or is unlawfully released, the injured person may recapture the same. If the recapture is effected before the day of sale as already fixed in the notice, the sale shall proceed under such notice. If the recapture is effected after the day of sale has passed, the township clerk shall issue new notices of sale and proceed anew. [C97,§2319; C24, 27, 31, 35, 39,§2994; C46, 50, 54,§188.16]

**188.17 Sale.** The clerk shall, at the time and place named in said notice, sell the animals at public sale to the highest bidder for cash, but only such number of animals shall be sold as is necessary to satisfy the damages and costs. Animals unsold shall be at once returned to the owner, and also the surplus remaining, if any, out of any sold. [C51,§918; R60,§1553; C73, §§1447, 1454; C97, §§2312, 2317; C24, 27, 31, 35, 39, §2995; C46, 50, 54, §188.17]

40ExGA, HF 71,§18, editorially divided

**188.18 Unknown owner.** Should the owner of the surplus be unknown the same shall be paid to the county treasurer, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor. The owner of said animal, on filing a claim therefor within twelve months after payment to the treasurer, shall be entitled to receive said surplus from the county. [C51,§918; R60,§1553; C73, §§1447, 1454; C97, §§2312, 2317; C24, 27, 31, 35, 39, §2996; C46, 50, 54, §188.18]

**188.19 Appeal—time.** Any person aggrieved by the assessment made by the trustees may appeal to the district court by filing with the township clerk, within four days after the report of the trustees is filed with such clerk an appeal bond with sureties to be approved by said clerk and conditioned to pay all damages and costs. [C73, §1455; C97, §2318; C24, 27, 31, 35, 39, §2997; C46, 50, 54, §188.19]

Presumption of approval of bond, §682.10

**188.20 Appeal bonds—amount.** Appeal bonds shall be in the following amounts:

1. When the appeal is taken by the person distraining the animals, twice the value of the animals, as fixed by the clerk.

2. When the appeal is taken by the owner of the distrained animals, twice the value of the animals, so fixed, or twice the amount of damages and costs in those cases where the value of the animals exceeds the amount of the damages claimed. [C73, §1455; C97, §2318; C24, 27, 31, 35, 39, §2998; C46, 50, 54, §188.20]

**188.21 Appeal by claimant—effect.** When an appeal is thus taken by the person distraining such animals the animals shall be held for the satisfaction of such judgment as may be rendered on appeal, except as provided in section 188.22. [C97, §2318; C24, 27, 31, 35, 39, §2999; C46, 50, 54, §188.21]

**188.22 Release pending appeal.** The owner of said animals may secure the release of the

same at any time before judgment by filing with the township clerk before the appeal is certified, or with the clerk of the district court thereafter, a bond with sufficient sureties to be approved by the clerk with whom filed, conditioned to pay all damages and costs recovered in said cause on appeal. The clerk receiving such bond shall file the same, and forthwith certify the fact to the person having charge of the distrained animals, who shall thereupon release the same to the owner. [C97, §2318; C24, 27, 31, 35, 39, §3000; C46, 50, 54, §188.22]

Referred to in §188.21

**188.23 Appeal by owner—effect.** Where the owner appeals and files a bond, as herein provided, it shall operate as a supersedeas, and the distrained animals shall be released to him. [C73, §1455; C97, §2318; C24, 27, 31, 35, 39, §3001; C46, 50, 54, §188.23]

**188.24 Transcript—clerk to file.** Within five days after the taking of the appeal, the township clerk shall make out a certified transcript of the record of the finding of the trustees, and file the same, together with the notice of appeal, if in writing, and the bond, with the clerk of the district court. [C97, §2318; C24, 27, 31, 35, 39, §3002; C46, 50, 54, §188.24]

**188.25 Unlawful release.** Any person who releases any animal, distrained as provided in this chapter, without the consent of the person distraining the same, shall be guilty of a misdemeanor. [C97, §2320; C24, 27, 31, 35, 39, §3003; C46, 50, 54, §188.25]

Punishment, §687.7

**188.26 Taking up estray.** Any resident of a county may take up an estray when the same is on his premises. He may also take up an estray which is upon the premises of any other person when such other person had knowledge that such estray was on his premises and fails for five days to take up such estray. [R60, §§1511–1513; C73, §§1464, 1465; C97, §§2321, 2322; C24, 27, 31, 35, 39, §3004; C46, 50, 54, §188.26]

**188.27 Procedure on taking up estray.** A person taking up an estray shall, within five days thereafter, post up, for ten days, a written notice in three of the most public places in the township, which notice shall be signed by him and shall embrace:

1. A full description of said animal.
2. The time and place of taking up such estray. [R60, §§1511–1513; C73, §1466; C97, §2323; C24, 27, 31, 35, 39, §3005; C46, 50, 54, §188.27]

**188.28 Proof of service.** Immediately after the expiration of said ten days of posting, the person taking up the estray shall, unless such estray has been previously claimed by the owner, file with a justice of the peace in the township in which the estray was taken up, or, in case there is no justice in the township, then with the next nearest justice in the county, his affidavit which shall show:

1. The time and place of taking up such estray.

2. The time and places of posting said notice, together with a copy of said notice.

3. That said animal remains unclaimed.

4. Whether the marks or brands of said animal have been altered to his knowledge, either before or after the same was taken up. [R60, §§1511-1513; C73, §§1465, 1466; C97, §§2322, 2323; C24, 27, 31, 35, 39, §3006; C46, 50, 54, §188.28]

**188.29 Justice record.** The justice shall record such return in his docket and at once forward the same to the county auditor, together with the fees due to such auditor in order to enable him to perform his duty. [R60, §§1511-1513; C73, §§1465, 1466; C97, §§2323, 2324, 27, 31, 35, 39, §3007; C46, 50, 54, §188.29]

**188.30 Record and posting by county auditor.** The county auditor shall record the affidavit in the estray book in his office and cause a copy thereof to be posted at the door of the courthouse. [R60, §§1511-1513; C73, §§1465, 1466; C97, §§2323, 2324, 27, 31, 35, 39, §3008; C46, 50, 54, §188.30]

**188.31 Publication.** The auditor shall cause the affidavit to be published once each week for three weeks in some newspaper in the county. [R60, §§1511-1513; C73, §1468; C97, §§2324, 2325, 27, 31, 35, 39, §3009; C46, 50, 54, §188.31]

**188.32 Fees and expenses.** The person taking up an estray shall pay to the justice of the peace, with whom the affidavit is filed, the legal fees due the said justice, and the legal fees due to the county auditor for entering said affidavit in the estray book, and posting and publishing the same, which amounts, together with the compensation provided by law, shall be refunded to the person taking up such estray by the owner thereof in case the animal is restored to the owner. [R60, §1520; C73, §§3822, 3823; C97, §§2325, 2326, 27, 31, 35, 39, §3010; C46, 50, 54, §188.32]

**188.33 Two or more estrays—procedure.** If two or more estrays are taken up at the same time by the same person, they shall be included in one notice and affidavit and but one fee shall be paid therefor, and if fewer than the whole number of animals thus included are restored to the owner, a proportionate amount of such fees and expenses shall be refunded. [R60, §1520; C73, §§3822, 3823; C97, §§2325, 2326, 27, 31, 35, 39, §3011; C46, 50, 54, §188.33]

**188.34 Property vests when.** If the estray be not claimed by the owner within six months from the time it is taken up, the property therein shall vest in the taker-up, if he has complied with the provisions of this chapter. [R60, §1515; C73, §§1471, 1472; C97, §§2326, 2327, 31, 35, 39, §3012; C46, 50, 54, §188.34]

**188.35 Recovery by owner.** At any time before the property in the estray vests in the person who has taken it up, the owner shall be entitled to recover possession of it on paying to the person who has taken it up:

1. The compensation to which he is entitled by law.

2. The fees and expenses which the taker-up has paid in advance.

3. Any reward which has been offered by the owner.

4. A reasonable allowance for the expenses of keeping such estray, taking into account the use which the person taking up has had of it, which latter allowance shall be made by the court before whom a proceeding to recover the animal shall be brought in the event the owner and the taker-up cannot agree with reference thereto. [C73, §1474; C97, §§2327, 2328, 27, 31, 35, 39, §3013; C46, 50, 54, §188.35]

Referred to in §188.36

**188.36 Former owner—rights after vesting of title.** At any time within six months after the property in an estray has vested in the taker-up, the former owner shall be entitled to receive from the taker-up, on demand, the value of the estray, not including any increased value which has accrued since it was taken up, after deducting therefrom the compensation, reward, fees, and expenses referred to in section 188.35; or the taker-up may, at his option, elect to surrender the estray, if still in his possession, in which case the owner must pay such compensation, reward, fees, and expenses. [C73, §1475; C97, §§2328, 2329, 27, 31, 35, 39, §3014; C46, 50, 54, §188.36]

**188.37 Lawful use of estray.** Any person legally taking up an estray may use or work it, if he does so with care and moderation, and does not abuse or injure it. Estrays adapted thereto may be milked by the taker-up. [C73, §1473; C97, §§2329, 2330, 27, 31, 35, 39, §3015; C46, 50, 54, §188.37]

**188.38 Unlawful use of estray.** Any person who unlawfully takes up any estray, or takes up any estray and fails to comply with any of the provisions of this chapter, or uses or works it in any manner contrary to this chapter, or works it before having it appraised, or keeps it out of the county for more than five days at any one time before he acquires a title to it, shall be liable to the owner of the estray for double the amount of any injury to the estray. [C73, §1473; C97, §§2329, 2330, 27, 31, 35, 39, §3016; C46, 50, 54, §188.38]

**188.39 Nonliability of taker-up.** If any estray, legally taken up, escape from the finder or die without any fault on his part, he shall not be liable for the loss. [C73, §1476; C97, §§2330, 2331, 27, 31, 35, 39, §3017; C46, 50, 54, §188.39]

**188.40 Penalty against finder.** If any person shall sell, trade, or take out of the state any estray before the legal title shall have vested in him, he shall forfeit to the owner double its value, and shall also be guilty of a misdemeanor. [C73, §1477; C97, §§2331, 2332, 27, 31, 35, 39, §3018; C46, 50, 54, §188.40]

Punishment, §687.7

**188.41 Transfer of estrays.** The personal representatives of a taker-up shall succeed to all the rights of such taker-up. The county auditor may authorize the taker-up or his personal representative to transfer an estray to another person who shall take the place of his predecessor. [C97,§2331; C24, 27, 31, 35, 39, §3019; C46, 50, 54,§188.41]

**188.42 Sale of estrays.** When an estray has damaged property and is taken up by the owner of such property, such owner, instead of proceeding against said animal as an estray as hereinbefore provided, may proceed against it as provided for the distraint and sale of animals, the ownership of which is known. [C24, 27, 31, 35, 39,§3020; C46, 50, 54,§188.42]

Referred to in §188.43

**188.43 Notice.** In cases contemplated by section 188.42, a notice of the taking up and the amount of the claim for damages shall be served on the unknown owner by two publications of a notice in at least two of the official newspapers of the county, which notice shall:

1. Be signed by the taker-up, with his post-office address.
2. Be addressed to the unknown owner.
3. Contain a full description of the animal, including all marks or brands thereon.
4. Specify the time and place of the taking up, and the amount of damages and costs claimed.
5. Notify the unknown owner that unless he appears within six months and pays said damages and all legal costs, said taker-up will apply to the township clerk for an assessment of damages caused by said animal and costs, and will take proceedings for the sale of such animal for the payment thereof. [C24, 27, 31, 35, 39,§3021; C46, 50, 54,§188.43]

**188.44 Assessment of damages and costs.** At any time after six months from the date of the last publication, or at any time after the owner appears and fails to pay said damages and costs, the taker-up may apply to the township clerk for an assessment of his damages and costs, and all subsequent proceedings shall be as provided in case of distraint of animals, the ownership of which is known. The legal fees for publishing said notice shall be included in the assessment of costs. [C24, 27, 31, 35, 39, §3022; C46, 50, 54,§188.44]

Referred to in §188.45  
Fees for publication, §618.11

**188.45 Owner discovered.** Should the taker-up mentioned in section 188.44 discover the owner of said animal prior to the expiration of said six months, he shall immediately serve written notice upon such owner of the taking up of said animal and of the amount of his said claim, and unless the owner discharges said claim within twenty-four hours such taker-up shall proceed in the same manner as provided in case of the distraint of animals the owner-

ship of which is known. [C24, 27, 31, 35, 39, §3023; C46, 50, 54,§188.45]

**188.46 Penalty.** Any officer who fails to perform the duties enjoined upon him in this chapter in relation to estrays, shall be fined not less than five dollars nor more than fifty dollars. C73,§1478; C97,§2332; C24, 27, 31, 35, 39,§3024; C46, 50, 54,§188.46]

**188.47 Bond to release.** Before any property held under this chapter is sold under distraint, or before the title to an estray vests in the taker-up, it may be released at once upon the owner giving to the distrainer or taker-up a bond, with sureties, to be approved by the township clerk, justice of the peace or county auditor, before whom the matter is then pending, conditioned to pay to the holder of the property, within twenty days after such approval, all costs, damages, and compensation to which he is entitled. In case the obligee in said bond is compelled to begin action on such bond, the court may tax a reasonable attorney's fee in favor of such obligee. [C73,§1486; C97,§2333; C24, 27, 31, 35, 39,§3025; C46, 50, 54, §188.47]

**188.48 Compensation and fees.** The compensation for services under this chapter shall be as follows:

1. For distraining all animals except as otherwise provided, fifty cents for each head not exceeding two, and twenty-five cents for each additional head taken on one distraint.
2. For distraining each stallion, jack, bull, boar, or buck, one dollar.
3. For keeping horses, cattle, mules, and asses, fifty cents a day, from the time the same is taken up.
4. For keeping any other animals, twenty-five cents a day from the time the same is taken up.
5. For posting notices and selling animals, the same fees as are allowed constables for like services upon execution.
6. For taking up as an estray one head, fifty cents, and twenty-five cents for each additional head at one time.
7. To the justice of the peace, for all services in each case of taking up estrays, fifty cents.
8. To the county auditor, for all services in each case of estrays, including posting and publishing notice, but not including the fee of the printer, fifty cents.
9. To the township clerk, for posting notices, twenty-five cents, and services not otherwise provided for, the same fees as are allowed in assessing damages done by trespassing animals, with ten cents mileage each way.
10. To the township clerk, ten cents per each hundred words entered of record, the same fees for a copy thereof, and in addition twenty-five cents for his certificate thereto, and fifty cents for filing and approving any bond. [C51,§893;

R60,§1520; C73,§§3821, 3822; C97,§2349; C24, 27, 31, 35, 39,§3026; C46, 50, 54,§188.48]

Fees of constable, §601.129

**188.49 Neglected animals.** Any person may take charge of any animal when the owner fails to properly take care and provide for it, and may furnish the same with proper care, either on his own premises or on the premises of the owner, and shall have a lien on the animal for the same, and the reasonable value of

such care may be collected by him from the said owner. [C73,§§1482, 1483; C97,§§2337, 2338; C24, 27, 31, 35, 39,§3027; C46, 50, 54,§188.49]

**188.50 Disabled animals killed.** The sheriff, constable, peace officer, officer of any society for the prevention of cruelty to animals, or any magistrate, shall destroy any stray animal disabled and unfit for further use. [C73, §1484; C97,§2339; C24, 27, 31, 35, 39,§3028; C46, 50, 54,§188.50]

# TITLE X

## REGULATION AND INSPECTION OF FOODS, DRUGS, AND OTHER ARTICLES

Referred to in §§159.6, 208A.11

### CHAPTER 189

#### GENERAL PROVISIONS

Referred to in §§198.10, 205.10, 205.11, 205.13, 214.5, 214.8, 215.6, 215.7  
General penalty, §189.19

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**189.1 Definitions.** For the purpose of this title:

1. "Article" shall include food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this title.

2. "Department" shall mean the department of agriculture, and, wherever said department is required or authorized to do an act, it shall be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

3. "Secretary" shall mean the secretary of agriculture.

4. "Package" or "container", unless otherwise defined, shall include wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and wherever the expression "offered or exposed for sale or sold in package or wrapped form" is used it shall mean the offering or exposing for sale, or selling of an article which

is contained in a package or container as herein defined.

5. "Person" shall include a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in said capacity shall also be liable for violations of this title.

6. "Rules" shall include regulations and orders by the department of agriculture.

7. "United States Pharmacopoeia" or "National Formulary" shall mean the latest revision of said publications official at the time of any transaction which may be in question. [S13, §§2510-0, 3009-a; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3029; C46, 50, 54, §189.1]

**189.2 Duties.** The department of agriculture shall:

1. Execute and enforce the provisions of this title, except chapters 203, 204 and 205, which shall be executed and enforced by the pharmacy examiners.



2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.

3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the state printing board and shall be distributed to the newspapers of the state and to all interested persons.

1. [C97,§2515; S13,§§2510-g,-t,-v4, 2528-f2, 3009-a, 4999-a31b, 5077-a22; SS15,§2515; C24, 27, 31, 35, 39,§3030; C46, 50,§189.2]

2. [S13,§§4999-a18, 5077-a22; C24, 27, 31, 35, 39, §3030; C46, 50,§189.2]

3. [C97,§2515; SS15,§2515; C24, 27, 31, 35, 39, §3030; C46, 50,§189.2]

4. [S13,§§2510-g,-t,-v4, 2528-f2, 3009-s, 4999-a26, -a37, 5077-a11; C24, 27, 31, 35, 39,§3030; C46, 50, 54,§189.2]

Additional duties, chs 193, 194, 195, 196, 197, 201, 211

#### INSPECTION—SAMPLES

**189.3 Procuring samples.** The department shall, for the purpose of examination or analysis, procure from time to time, or whenever said department has occasion to believe any of the provisions of this title are being violated, samples of the articles dealt with in this title which have been shipped into this state, offered or exposed for sale, or sold in the state. [C97,§§2521, 2524; S13,§§2528-f2, 4999-a18, 5077-a11,-a22; C24, 27, 31, 35, 39,§3031; C46, 50, 54,§189.3]

**189.4 Access to factories and buildings.** The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this title. [C97,§2505; S13,§§2528-a, 5077-a22; SS15, §§2505, 2510-4a, 3009-n; C24, 27, 31, 35, 39,§3032; C46, 50, 54,§189.4]

**189.5 Dealer to furnish samples.** Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this title shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department. [S13, §§4999-a24, 5077-a11; C24, 27, 31, 35, 39,§3033; C46, 50, 54,§189.5]

**189.6 Taking of samples.** The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which

it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this title, in order to secure a sample for analysis or examination, and said sample and damage to container shall be paid for at the current market price out of the contingent fund of the department. [C97,§§2521, 2526; S13, §§2528-b,-f2, 5077-a11,-a22; C24, 27, 31, 35, 39, §3034; C46, 50, 54,§189.6]

**189.7 Preservation of sample.** After the sample is taken it shall be carefully sealed with the seal of the department and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department. [C97,§2521; S13,§§4999-a24, 5077-a11,-a22; C24, 27, 31, 35, 39,§3035; C46, 50, 54, §189.7]

**189.8 Witnesses.** In the enforcement of the provisions of this title the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. Such witnesses shall be allowed the same fees as witnesses in justice of the peace courts. Said fees shall be paid out of the contingent fund of the department. [C97, §2515; SS15,§2515; C24, 27, 31, 35, 39,§3036; C46, 50, 54,§189.8]

Contempts, ch 665  
Witness fees, §622.69 et seq.

#### LABELING—ADULTERATIONS

**189.9 Labeling.** All articles in package or wrapped form which are required by this title to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight-point heavy gothic caps on the principal label with the following items:

1. The true name, brand, or trade-mark of the article.

2. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.

3. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed. [C73,§4042; C97, §§2517, 4989-4991, 5070; S13,§§2510-d,-g,-r,-v1,-v2, 2515-b-d, 2528-f, 4999-a35, 5070-a, 5077-a6; SS15,

§4999-a31c; C24, 27, 31, 35, 39, §3037; C46, 50, 54, §189.9]

Referred to in §§189.10, 189.11, 191.1, 191.2, 203.3, 206.2, 207.2, 207.3, 207.4, 210.12, 210.18  
 Agricultural seeds, §§199.3, 199.5-199.8  
 Bread, §210.20  
 Commercial feeds, §§198.2, 198.6  
 Commercial fertilizer, §§200.4, 200.5  
 Drugs, §§203.3-203.5  
 Foods, §§191.1, 191.2, 191.4  
 Ice milk, §190.1(36)  
 Insecticides and fungicides, §§206.2, 206.3  
 Oils, §§207.3, 207.4  
 Oleomargarine, §191.2  
 Paints, §207.2  
 Petroleum products, §208.2 et seq.

**189.10 Packages excepted.** In case the size of the package or container will not permit the use of the type specified in section 189.9, the same may be reduced in size proportionately in accordance with the rules of the department. [S13, §4999-a35; C24, 27, 31, 35, 39, §3038; C46, 50, 54, §189.10]

Referred to in §§191.1, 191.2, 203.3, 206.2, 207.2, 207.4, 210.18

**189.11 Labeling of mixtures—federal requirements.** In addition to the requirements of section 189.9, unless otherwise provided, articles which are mixtures, compounds, combinations, blends, or imitations shall be marked as such and immediately followed, without any intervening matter and in the same size and style of type, by the names of all the ingredients contained therein, beginning with the one present in the largest proportion.

Notwithstanding any other requirements of this chapter, foods and food products labeled in conformance with the labeling requirements of the government of the United States shall be deemed to be labeled in conformance with the laws of the state of Iowa. [S13, §§2510-d, r, v2, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3039; C46, 50, 54, §189.11; 56GA, ch 109, §1]

Referred to in §§189.12, 190.1(36), 191.1, 191.2, 206.2, 207.2, 207.4, 210.18

Agricultural lime, §201.5  
 Agricultural seed, §199.3  
 Bread, §210.20  
 Commercial feeds, §§198.2, 198.3, 198.5, 198.6  
 Commercial fertilizer, §§200.4, 200.5  
 Drugs, §§203.3-203.5  
 Foods, §§191.1, 191.2  
 Ice milk, §190.1(36)  
 Insecticides and fungicides, §§206.2, 206.3  
 Oils, §§207.3, 207.4  
 Oleomargarine, §191.2  
 Paints, §207.2  
 See 56GA, ch 109

**189.12 Trade formulas.** Nothing in section 189.11 shall be construed as requiring the printing of a patented or proprietary trade formula on a label. [S13, §5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3040; C46, 50, 54, §189.12]

Referred to in §§191.1, 191.2, 207.2, 207.4, 210.18

**189.13 False labels—defacement.** No person shall use any label required by this title which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this title. [C73, §4042; C97, §§2517, 4989-4991; S13, §§2510-s, v3, 2515-b-d,

4999-a35, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3041; C46, 50, 54, §189.13]

Referred to in §210.18

**189.14 Misabeled articles.** No person shall knowingly introduce into this state, solicit orders for, deliver, transport, or have in his possession with intent to sell, any article which is labeled in any other manner than that prescribed by this title for the label of said article when offered or exposed for sale, or sold in package or wrapped form in this state. [C73, §4042; C97, §§2516, 2517, 2519, 4989-4991, 5070; S13, §§2510-b, q, r, v1, v2, 2515-b-d, 2528-f, 4999-a20, 5070-a; SS15, §4999-a32; C24, 27, 31, 35, 39, §3042; C46, 50, 54, §189.14]

Referred to in §210.18

**189.15 Adulterated articles.** No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in his possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this title. [C73, §§3901, 4042; C97, §§2508, 2516, 4989-4991; S13, §§2508, 2510-q, r, v1, v2, 2515-b-d, 4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39, §3043; C46, 50, 54, §189.15]

Referred to in §210.18

**189.16 Possession.** Any person having in his possession or under his control any article which is adulterated or which is improperly labeled according to the provisions of this title shall be presumed to know its true character and name, and such possession shall be prima-facie evidence of having the same in possession with intent to violate the provisions of this title. [C97, §§2519, 2521; S13, §§4999-a24, a40; C24, 27, 31, 35, 39, §3044; C46, 50, 54, §189.16]

Referred to in §210.18

LICENSES

**189.17 Licenses.** The following regulations shall apply to all licenses issued or authorized under this title:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for a violation of any provision of this title, or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue. [C97, §2525; S13, §§2515-a; SS15, §§2515-f, 3009-m; C24, 27, 31, 35, 39, §3045; C46, 50, 54, §189.17]

**189.18 Injunction.** Any person engaging in any business for which a license is required by this title, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such proce-

dure. [C24, 27, 31, 35, 39,§3046; C46, 50, 54, §189.18]

Injunctions, ch 664

#### OFFENSES—PENALTIES

**189.19 Penalty.** Unless otherwise provided, any person violating any provision of this title, or any rule made by the department and promulgated under the authority of said department, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days, and on a third conviction for the same offense may be restrained by injunction from operating such place of business. [C73,§§2068, 3901; C97, §§2508, 2527, 2592, 2594, 3029, 5070; S13,§§2508, 2510-2a,-h,-j,-u,-v5, 2515-g, 2522, 2528-c,-f3, 2596-b, 4989-b, 4999-a25,-a39, 5070-a, 5077-a23; SS15, §§2505, 2506, 3009-j,-r; C24, 27, 31, 35, 39,§3047; C46, 50, 54,§189.19]

Agricultural lime, §201.6  
Bread, §210.21  
Butter, §193.6  
Drugs, §204.22  
Livestock, §211.2  
Oleomargarine, §191.3  
Motor vehicle antifreeze, §208A.11  
Poultry and domestic fowls, §197.6  
Seeds, §199.13  
See also §196.18

**189.20 May charge more than one offense.** In any criminal proceeding brought for violation of this title an information or indictment may charge as many offenses as it appears have been committed and the defendant may be convicted of any or all of said offenses. [C24, 27, 31, 35, 39,§3048; C46, 50, 54,§189.20]

**189.21 Common carrier.** None of the penalties provided in this title shall be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this title when the same was received by said carrier for transportation in the ordinary course of its business and without actual knowledge of its true character. [C97,§2516; S13,§4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39,§3049; C46, 50, 54, §189.21]

#### ENFORCEMENT

**189.22 Report of violations.** When it shall appear that any of the provisions of this title have been violated, the department shall at once certify the facts to the proper county attorney, with a copy of the results of any analysis, examination, or inspection said department may have made, duly authenticated by the proper person under oath, and with

any additional evidence which may be in possession of said department. [C97,§4998; S13, §4999-a19; C24, 27, 31, 35, 39,§3050; C46, 50, 54, §189.22]

**189.23 County attorney.** The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this title for such violations. [C97, §4998; S13,§§2596-c, 4999-a19; C24, 27, 31, 35, 39, §3051; C46, 50, 54,§189.23]

**189.24 Refusal to act.** If the county attorney refuses to act, the governor may, in his discretion, appoint an attorney to represent the state. [S13,§4999-a19; C24, 27, 31, 35, 39, §3052; C46, 50, 54,§189.24]

**189.25 Institution of proceedings.** In any case when it appears that any of the provisions of this title have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party. [C24, 27, 31, 35, 39,§3053; C46, 50, 54,§189.25]

#### MISCELLANEOUS

**189.26 Goods for sale in other states.** Any person may keep articles specifically set apart in his stock for sale in other states which do not comply with the provisions of this title as to standards, purity, or labeling. [S13,§§4999-a20,-a40; C24, 27, 31, 35, 39,§3054; C46, 50, 54, §189.26]

Referred to in §196.19

**189.27 Reports by dealers.** Every person who deals in or manufactures any of the articles dealt with in this title shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by said department and certify to the correctness of the same. [C97,§2522; S13,§2522; C24, 27, 31, 35, 39,§3055; C46, 50, 54,§189.27]

**189.28 Contracts invalid.** No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this title by one who was knowingly a party thereto. [C97,§2520; C24, 27, 31, 35, 39,§3056; C46, 50, 54,§189.28]

**189.29 Fees paid into state treasury.** All fees collected under the provisions of this title shall be paid into the state treasury. [C97, §2507; SS15,§§2507, 2515-f, 3009-m; C24, 27, 31, 35, 39,§3057; C46, 50, 54,§189.29]

See also §200.15  
Time of payment, §12.10

## CHAPTER 190

### ADULTERATION OF FOODS

Referred to in §§191.4, 198.1  
General penalty, §189.19

<p>190.1 Definitions and standards. 190.2 Additional standards. 190.3 Food adulterations. 190.4 Adulterations of dairy products. 190.5 Adulteration with fats and oils.</p>	<p>190.6 Coloring imitation cheese. 190.7 Coloring vinegar. 190.8 Adulteration of candies. 190.9 Sale by false name. 190.10 Artificial sweetening—labeling.</p>
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**190.1 Definitions and standards.** For the purpose of this chapter the following definitions and standards of food are established:

1. *Butter.* Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.

2. *Oleomargarine.* Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

3. *Renovated butter.* Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and reurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

4. *Cheese—whole milk or cream.* Whole milk or cream cheese is the sound, ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without the addition of ripening ferments, seasonings, or color, and containing at least thirty percent of milk fat.

5. *Imitation cheese.* Imitation cheese is a product containing any substance other than that produced from milk or cream, as provided in subsection 4 above, and made in the appearance of or designed to be used for any of the purposes for which cheese produced from milk or cream is used.

6. *Skimmed milk cheese.* Skimmed milk cheese is a product made from skimmed milk by one of the processes by which whole milk or cream cheese is made, and containing less than thirty percent of milk fat.

7. *Cream.* Cream is the fresh portion of milk containing at least sixteen percent of milk fat, which rises to the surface of milk on standing or is separated from it by centrifugal force.

8. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles

derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

9. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

10. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

11. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

12. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

13. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.

14. *Clove extract.* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

15. *Ginger extract.* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

16. *Lemon extract.* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

17. *Terpeneless extract of lemon.* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

18. *Nutmeg extract.* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

19. *Orange extract.* Orange extract is the

flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

20. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

21. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

22. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

23. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

24. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

25. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

26. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

27. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

28. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

29. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

30. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

31. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil

of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

32. *Food.* Food shall include any article used by man or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "blended" shall be construed to mean a mixture of like substances.

33. *Ice cream mix.* Ice cream mix is a pure clean product made from a combination of milk products and one or more of the following: sugar, dextrose and glucose; and may contain one or more of the following ingredients: eggs, egg products, harmless coloring, salt and wholesome stabilizer.

It may not contain more than one-half of one percent by weight of stabilizer. It may contain not less than twelve percent by weight of milk fat nor less than twenty percent by weight of total milk solids. The acidity and the salt balance of the ice cream may be standardized by the use of a harmless alkali, an amount not to exceed one-half of one percent calculated as lactic acid. In no case shall the bacteria count of ice cream mix exceed one hundred thousand to the cubic centimeter.

34. *Ice cream.* Ice cream is a pure clean frozen product made from ice cream mix and a harmless flavoring. It shall contain not less than twelve percent by weight of milk fat and not less than twenty percent by weight of total milk solids, except where fruit, fruit juice, or both fruit and fruit juice, nuts, cocoa or chocolate, or cocoa and chocolate syrup, maple syrup, cakes or confections are used for the purpose of flavoring; then it shall contain not less than ten percent by weight of milk fat and not less than sixteen percent by weight of total milk solids.

In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon nor shall the bacteria count exceed one hundred thousand to the cubic centimeter.

A quart of ice cream in factory filled packages shall weigh not less than eighteen ounces.

### 35. *Flavored ice cream.*

a. Fruit ice cream is ice cream flavored exclusively with fruit and shall be labeled "Fruit Ice Cream" preceded by the name of the fruit.

b. Fruit flavored ice cream is ice cream flavored with fruit and fruit juice, or with fruit juice, and shall be labeled "Ice Cream" preceded by the name of the fruit.

c. Nut ice cream is ice cream flavored exclusively with nut meats and shall be labeled "Nut Ice Cream" preceded by the name of the nut used.

d. Nut flavored ice cream is ice cream flavored with a combination of nut meats and one or both of the following: Juice of nut meats or true nut extract and shall be labeled "Ice Cream" preceded by the name of the nut.

e. Any ice cream bearing the name of a fruit or nut flavor but flavored with artificial flavor

shall be labeled "Ice Cream" preceded by the name of the fruit or nut and followed by the words "artificially flavored," in the same size type. Such ice cream shall contain not less than twelve percent by weight of total milk fat and not less than twenty percent by weight of total milk solids.

f. Any ice cream flavored with confections, cakes, bread or pastry products, cereals or vegetables, the ice cream shall be labeled "Ice Cream" preceded by the name of the product imparting the flavor.

g. Frozen custard, French ice cream, French custard ice cream is a frozen product which shall contain not less than five dozen clean wholesome egg yolks, or one and five-tenths pounds of wholesome dry egg yolks or three pounds wholesome frozen egg yolks for each ninety pounds of the product and shall conform in all other respects to the definition and standard of identity of ice cream prescribed previously.

36. a. *Ice milk.* Ice milk is a pure, clean frozen or semifrozen product made from a combination of milk products and one or more of the following ingredients: Sugar, dextrose, glucose, corn syrup in liquid or dry form, with harmless flavoring or coloring or both, either natural or artificial, and with or without wholesome stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of wholesome stabilizer, and shall contain not less than three and one-fourth percent and not more than six percent by weight of milk fat; and not less than eleven percent by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and five-tenths pounds per gallon. It shall not contain fats other than milk fat. Every particle of mix shall be pasteurized at temperature of not less than one hundred fifty-five degrees Fahrenheit for not less than thirty minutes or to a temperature of not less than one hundred seventy-five degrees Fahrenheit for not less than twenty-five seconds in approved and properly operated equipment. Provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and is approved by the state department of agriculture. It shall contain not more than fifty thousand bacteria per cubic centimeter in the manufacturer's package.

Ice milk sold at retail in the manufacturer's package or wrapper shall be labeled on a contrasting background in plain legible eight-point type with the words, "Ice Milk", provided that: When flavored exclusively with fruit it shall be labeled, "Fruit Ice Milk", preceded by the name of the fruit. When flavored with fruit and fruit juice, or with fruit juice, it shall be labeled, "Ice Milk", preceded by the name of the fruit. When bearing the name of a fruit or nut flavor but flavored with artificial flavor, it shall be labeled, "Ice Milk", preceded

by the name of the nut or fruit and followed by the words "artificially flavored" in the same size type. When flavored with cocoa or chocolate, or cocoa and chocolate syrup, maple syrup, or confections, it shall be labeled, "Ice Milk", preceded by the name of the product imparting the flavor.

Notwithstanding any other labeling provision of the Code, ice milk of any flavor may be dispensed into and sold at retail in edible containers subject to the single labeling requirement that such edible container shall have embossed on the outside thereof the words, "Ice Milk", in letters not less than five-sixteenths of an inch high.

Notwithstanding any other labeling provision of the Code, ice milk of any flavor may be dispensed into and sold at retail as a part of malted milks and milk shakes, subject only to the labeling requirement that the sales container, package or wrapper be labeled on a contrasting background in plain legible eight-point type with the words, "Ice Milk".

Ice milk shall not be dispensed and sold at retail in any form or manner other than as provided herein, unless it is neither flavored with any of the optional ingredients listed herein, nor colored.

A sign shall be posted in every retail establishment where ice milk is sold, on a white card not less than twelve by twenty-two inches in dimensions with letters not less than three inches in height and two inches in width containing the words, "Ice Milk Sold Here"; such a sign shall at all times be within plain view of, and at an easily readable distance from the customer.

The provisions of section 189.11 shall not be applicable to ice milk.

b. *Substandard frozen dessert.* The minimum standard for substandard frozen dessert shall be the same as that of ice milk, except that the milk fat content thereof shall be more than six percent and less than ten percent.

Substandard frozen dessert shall be sold only in the manufacturer's package or wrapper and shall be labeled on a contrasting background in plain legible eight-point type with the words, "Substandard Frozen Dessert".

The posting provisions as to ice milk shall apply in the case of substandard frozen dessert, except that the sign to be posted shall contain the words, "Substandard Frozen Dessert Sold Here".

c. *Low fat content ice milk.* The minimum standard for low fat content ice milk shall be the same as that of ice milk, except that the milk fat content thereof shall be less than three point two five percent.

Low fat content ice milk shall be sold only in the manufacturer's package or wrapper and shall be labeled on a contrasting background in plain legible eight-point type with the words, "Low Fat Content Ice Milk".

The posting provisions as to ice milk shall apply in the case of low fat content ice milk, except that the sign to be posted shall contain

the words, "Low Fat Content Ice Milk Sold Here".

**37. Milk sherbet.**

*a.* Milk sherbet is the pure clean frozen product made from a combination of milk products and one or more of the following ingredients: sugar, sucrose, dextrose, harmless coloring and stabilizer composed of wholesome edible material, flavoring derived from fruit, fruit juice and lactic, citric, or tartaric acid and with not less than thirty-five hundredths of one percent of acid as determined by titrating with standard alkali and expressed as lactic acid.

It shall contain not less than four percent by weight of milk solids. It shall be identified by its common or usual flavor name.

*b.* Ices or fruit ices shall conform in all respects to the definition and standard of identity for milk sherbet, except that it shall contain no milk solids.

**38. Frozen malted milk.** "Frozen malted milk" means the pure, clean, frozen or semi-frozen product made from the combination of milk products, malted milk and one or more of the following ingredients: Eggs, sugar, dextrose, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of edible gelatin or vegetable stabilizer, not less than seven percent by weight of milk fat, not less than fourteen percent by weight of total milk solids, and not less than three percent by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Provided however, products complying with the above definition except that they contain less than seven percent by weight of milk fat, shall be sold only in the manufacturer's original package or wrapper and must be labeled in plain legible eight-point type with the words "Imitation Frozen Malted Milk".

**39. Milk.** Milk is the fresh lacteal secretion obtained by the complete milking of one or more cows, which contains at least three and twenty-five hundredths percent of milk fat and eleven and one-half percent of milk solids.

**40. Skimmed milk.** Skimmed milk is milk from which the cream has been removed or which is poor in fat, containing less than three percent of milk fat or less than eleven and one-half percent of milk solids.

**41. Oysters.** Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

**42. Vinegar.** Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled

it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

**43. Cider or apple vinegar.** Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

**44. Corn sugar vinegar.** Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

**45. Malt vinegar.** Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

**46. Sugar vinegar.** Sugar vinegar is a similar product made by the same process solely from sucrose.

**47. Lard.** Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

**48. Rendered pork fat.** Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin and/or hardened lard and/or rendered pork fat stearin and/or hardened rendered pork fat.

**49. Substitute for sugar.** Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: dextrose (corn sugar) or corn syrup. [C73,§4042; C97,§§2516, 2518, 4989-4991; S13,§§2515-b,-d; SS15,§§4999-a31, -a31c; C24, 27, 31, 35, 39,§3058; C46, 50, 54,§190.1]

Referred to in §191.6

**190.2 Additional standards.** The department may establish and publish standards for foods when such standards are not fixed by law, but the same shall conform with those proclaimed by the secretary of agriculture of the United States. [S13,§4999-a18; C24, 27, 31, 35, 39,§3059; C46, 50, 54,§190.2]

**190.3 Food adulterations.** For the purposes of this chapter any food shall be deemed to be adulterated:

1. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.

2. If any substance has been substituted to any extent.

3. If any valuable constituent has been removed to any extent.

4. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.

5. If it contains formaldehyde, sulphites or boron compound, or any poisonous or other ingredients injurious to health.

6. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.

7. If it consists to any extent of an animal that has died otherwise than by slaughter.

8. If it is the product of or obtained from a diseased or infected animal.

9. If it has been damaged by freezing.

10. If it does not conform to the standards established by law or by the department. [C73, §4042; C97, §§4989, 4990; S13, §§2515-b, d; SS15, §4999-a31e; C24, 27, 31, 35, 39, §3060; C46, 50, 54, §190.3]

Referred to in §§190.4, 190.8, 206.4

**190.4 Adulterations of dairy products.** In addition to the adulterations enumerated in section 190.3, milk, cream, or skimmed milk shall be deemed to be adulterated:

1. If it contains visible dirt or is kept or placed at any time in an unclean container.

2. If obtained from a cow within fifteen days before or five days after calving.

3. If obtained from a cow stabled in an unhealthful place, or fed upon any substance in a state of putrefaction or of unhealthful nature. [C97, §§4989, 4990; S13, §§2515-b, d; C24, 27, 31, 35, 39, §3061; C46, 50, 54, §190.4]

**190.5 Adulteration with fats and oils.** No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, powdered or desiccated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or

other designation of any kind. [C24, 27, 31, 35, 39, §3062; C46, 50, 54, §190.5]

**190.6 Coloring imitation cheese.** No imitation cheese shall be colored with any substance and no such imitation cheese shall be made by mixing animal fats, vegetable oils, or other substances for the purpose or with the effect of imparting to the mixture the color of yellow cheese. [C97, §2518; C24, 27, 31, 35, 39, §3063; C46, 50, 54, §190.6]

**190.7 Coloring vinegar.** Vinegar shall not be colored with coloring matter and distilled vinegar shall not have a brown color in imitation of cider vinegar. [SS15, §4999-a31; C24, 27, 31, 35, 39, §3064; C46, 50, 54, §190.7]

**190.8 Adulteration of candies.** In addition to the adulterations enumerated in section 190.3, candy shall be deemed to be adulterated if it contains terra alba, barytes, talc, paraffin, chrome yellow, or other mineral substance. [SS15, §4999-a31e; C24, 27, 31, 35, 39, §3065; C46, 50, 54, §190.8]

**190.9 Sale by false name.** No person shall offer or expose for sale, sell, or deliver any article of food which is defined in this chapter under any other name than the one herein specified or offer or expose for sale, sell, or deliver any article of food which is not defined in this chapter under any other name than its true name, trade name, or trade-mark name. [C24, 27, 31, 35, 39, §3066; C46, 50, 54, §190.9]

"Person" defined, §191.4

**190.10 Artificial sweetening — labeling.** Where any approved artificial sweetening product such as saccharine or sulfamate is used by any person in the manufacture or sale of any article of food intended for human consumption, the container in which any such food or beverage is sold or offered for sale to the public shall be clearly, legibly and noticeably labeled with the name of the sweetening product used. The portion of the store, display counter, shelving, or other place where such food or beverage is displayed or offered for sale, shall be clearly and plainly identified by an appropriate sign reading "FOR DIETARY PURPOSES." [C54, §190.10]

## CHAPTER 191

### LABELING FOODS

Referred to in §191.4  
General penalty, §189.19

- 191.1 Label requirements.
- 191.2 Dairy products and imitations.
- 191.3 Sale of imitation products—notice to public—penalties.
- 191.4 "Person" defined.

- 191.5 Advertising oleomargarine—restrictions.
- 191.6 Standards for oleomargarine.
- 191.7 Enforcement of oleomargarine law.
- 191.8 Baking powder and vinegar.

**191.1 Label requirements.** All food offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9

to 189.12, inclusive, unless otherwise provided in this chapter. [C97, §§2517, 2519, 4989; S13, §§2515-b, c; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3067; C46, 50, 54, §191.1]



**191.2 Dairy products and imitations.** The products enumerated below shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 189.9 to 189.12, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:

1. *Skimmed milk.* Skimmed milk shall be labeled with the words "Skimmed Milk"; but if in bottles it shall be deemed properly marked if the required words are printed on the cap of each bottle in letters not smaller than twelve-point gothic caps.

2. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the container as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

3. No person shall sell or offer for sale, colored oleo, oleomargarine or margarine unless—such oleo, oleomargarine or margarine is packaged; the net weight of the contents of any package sold in a retail establishment is one pound or less; there appears on the label of the package the word "oleo", "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and a full and accurate statement of all the ingredients contained in such oleo, oleomargarine or margarine; and each part of the contents of the package is contained in a wrapper which bears the word "oleo", "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

There shall be four readily legible imprints made by the manufacturer of the word "oleo" on the product equally distributed on one of the greater sides of each one-quarter pound, one-half pound, or pound.

For the purposes of this chapter the term "oleo", "oleomargarine" or "margarine" includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, and all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. For the purposes of this chapter colored oleo, oleomargarine or margarine is oleo, oleomargarine or margarine to which any color has been added.

Whenever coloring of any kind has been added it shall be clearly stated on both inside wrapper and the outside package. The ingredients of oleo, oleomargarine or margarine shall be listed on both the inside wrapper and outside package in the order of the amounts of ingredients in the package.

Such oleo, oleomargarine or margarine shall

contain vitamin A in such quantity that the finished oleo, oleomargarine or margarine contains not less than fifteen thousand United States Pharmacopoeia units of vitamin A per pound, as determined by the method prescribed in the Pharmacopoeia of the United States for the total biological vitamin A activity.

Each one pound package of oleo, oleomargarine or margarine shall be approximately four and three-quarter inches by four and three-quarter inches in its greater dimensions commonly known as the "Eastern pack".

Oleo, oleomargarine, or margarine may be manufactured within the state of Iowa for sale in Iowa under the provisions of this section and it may be manufactured or stored in Iowa in any shape or form for shipment in interstate commerce only.

4. *Skimmed milk cheese.* Skimmed milk cheese shall be labeled with the words "Skimmed Milk Cheese" on the cheese and on the package.

5. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese" on the cheese and on the package. [C97, §§2517, 4989; S13, §§2515-b, c; C24, 27, 31, 35, 39, §3068; C46, 50, 54, §191.2]

**191.3 Sale of imitation products—notice to public—penalties.** Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation cheese, as in this title defined, shall display at all times opposite each table or place of service a placard for such imitation, with the words "Imitation . . . . . served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions.

No person shall possess in a form ready for serving colored oleo, oleomargarine or margarine at a public eating place unless a notice that oleo, oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleo, oleomargarine or margarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleo, oleomargarine or margarine, or each separate serving thereof is triangular in shape.

Any person violating any provision of this section shall upon conviction or plea of guilty be punished, for the first offense by a fine of one hundred dollars; for the second offense by a fine of three hundred dollars; for the third offense by a fine of five hundred dollars and

the suspension for one year of all licenses issued by the state of Iowa for the public eating place in which said violation occurred. [C97,§2517; C24, 27, 31, 35, 39,§3069; C46, 50, 54, §191.3]

**191.4 "Person" defined.** The word "person" as used in chapters 190, 191, and 192 shall mean every natural person, firm, copartnership, association or corporation. [C54,§191.4]

**191.5 Advertising oleomargarine — restrictions.** No person, by himself, or agent, shall, by any means whatever, directly or indirectly, advertise or represent by statement, printing, writing, circular, poster, design, device, grade designation, advertisement, symbol, sound, or any combination thereof, that oleo, oleomargarine or margarine, or any brand of oleo, oleomargarine or margarine, is a dairy product for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase for consumption of oleo, oleomargarine or margarine, or any brand thereof. Whoever shall violate this provision shall be deemed guilty of a misdemeanor. [C54,§191.5]

**191.6 Standards for oleomargarine.** The department of agriculture may prescribe and establish standards for oleo, oleomargarine or margarine manufactured or sold in this state

and may adopt the standards set up by now existing regulations of the federal security administration or agency as found in 1949, Code of Federal Regulations, Title 21, Part 45, section 45.0, or any amendments thereto. Any standards so established shall not be contrary to or inconsistent with the provisions of section 190.1, subsection 2 entitled "Oleo, oleomargarine or margarine." [C54,§191.6]

**191.7 Enforcement of oleomargarine law.** It shall be the duty of the secretary of agriculture and his agents to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with him in the enforcement of this chapter. [C54, §191.7]

Oleomargarine provisions made a part of Title X, 56GA, ch 97,§9

**191.8 Baking powder and vinegar.** Baking powder and distilled vinegar shall show on the label the name of each ingredient from which made. Distilled vinegar shall be marked as such; and cider vinegar which, having been in excess of the standard of acidity, has been reduced to the standard, shall have that fact indicated on the label. [SS15,§§4999-a31,-a31c; C24, 27, 31, 35, 39,§3070; C46, 50,§191.4; C54, §191.8]

Constitutionality, 56GA, ch 97,§11

## CHAPTER 192

### PRODUCTION AND SALE OF DAIRY PRODUCTS

Referred to in §191.4  
General penalty, §189.19

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**192.1 Milk license.** Every person engaging in the sale of milk or cream at retail, in any city or town, shall obtain a milk dealer's license from the department. [C97,§2525; S13, §2515-a; C24, 27, 31, 35, 39,§3071; C46, 50, 54, §192.1]

Referred to in §192.2  
"Person" defined, §191.4

**192.2 Exemptions.** Section 192.1 shall not apply:

1. To persons who supply milk or cream to establishments engaged in the manufacture of dairy products.

2. To persons who do not sell milk or cream from a store or vehicle. [S13,§2515-a; C24, 27, 31, 35, 39,§3072; C46, 50, 54,§192.2]

**192.3 Fee.** The fee for said license shall be one dollar for each place and for each vehicle from which sales are made. The license shall expire on July 4 after the date of issue and shall not be transferable. [C97,§2525; S13, §2515-a; C24, 27, 31, 35, 39,§3073; C46, 50, 54, §192.3]

**192.4 Contents of license.** Such license shall be issued only to the person owning or leasing the vehicle or place from which sales are to be made; and each license shall contain the name, residence, and place of business of the licensee. [C97,§2525; S13,§2515-a; C24, 27, 31, 35, 39,§3074; C46, 50, 54,§192.4]

**192.5 Milk wagons.** The name of the dairy or the name of the person to whom such license is issued shall appear on both sides of each vehicle from which sales are made, in letters not less than two inches in height and there shall be such contrast between the color of the letters and the background as shall render the letters plainly legible. [S13,§2515-a; C24, 27, 31, 35, 39,§3075; C46, 50, 54,§192.5]

**192.6 Pasteurization.** Every owner, manager, or operator, of a creamery or ice cream factory shall before delivering to any person any skimmed milk, ice cream or buttermilk, cause such skimmed milk and the cream or milk from which such ice cream or buttermilk is derived to be pasteurized and in addition cream or milk used shall be procured from cows that have been tuberculin tested at least once a year and found free from tuberculosis and the production of which milk and cream has been supervised and certified to by the Iowa department of agriculture as having been produced and handled under proper sanitary conditions. [S13,§4989-a; C24, 27, 31, 35, 39, §3076; C46, 50, 54,§192.6]

41GA, ch 60,§1, and 42GA, ch 257,§1, editorially divided  
Referred to in §192.9

**192.7 Pasteurization defined.** The terms "pasteurization", "pasteurized" and similar terms as they may be applied to milk or milk products shall be taken to refer to the process of heating every particle of milk or milk products to at least one hundred forty-three degrees Fahrenheit and holding continuously at such temperature for at least thirty minutes; or to at least one hundred sixty degrees Fahrenheit, and holding at such temperature continuously for at least fifteen seconds, in approved and properly operated equipment; provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and is approved by the department. [S13,§4989-a; C24,§3076; C27, 31, 35, §3076-b1; C39,§3076.1; C46, 50, 54,§192.7]

Referred to in §192.9

**192.8 Record.** Every owner, manager or operator of a milk plant, creamery, or ice cream factory, shall equip each vat or pasteurizer used in pasteurizing milk, cream or dairy

products with an accurate recording thermometer and an accurate indication thermometer. Each temperature chart from such recording thermometer shall be identified with the date, the identification of material pasteurized and be initialed by the person responsible for the pasteurization and be kept on file for six months for the inspection of the department. [C27, 31, 35,§3076-b2; C39,§3076.2; C46, 50, 54, §192.8]

Referred to in §192.9

**192.9 Injunction.** Any owner, manager, or operator of a creamery, or ice cream factory, violating any of the provisions of sections 192.6 to 192.8, inclusive, may be restrained by injunction from operating any such business. No injunction shall issue until after the defendant has had at least five days notice of the application therefor and the time fixed for hearing thereon. [C27, 31, 35,§3076-b3; C39,§3076.3; C46, 50, 54,§192.9]

Injunction, ch 664

**192.10 Purity.** No wholesaler or retailer of milk or cream, except the producer, shall offer or expose for sale any milk or cream unless the same is produced from cows known to be free from tuberculosis, as evidenced by a certificate issued within one year by a licensed veterinarian, and unless the same shall have been pasteurized according to the established regulations of the department of agriculture.

No milk dealer, as defined in this chapter, shall sell or offer for sale at retail, in any city or town any milk or cream unless same has been fully pasteurized as defined in this chapter, except that Grade "A" raw milk need not be pasteurized.

1. *Raw milk.* Grade "A" raw milk, to be bottled or sold as such is milk coming from healthy cows; which cows have been subjected to an annual test for both tuberculosis and brucellosis by an accredited veterinarian and found negative; that has been kept at the proper temperature and has been handled in a sanitary manner, is wholesome, unadulterated and otherwise fit for human consumption; the bacteria count of which does not exceed fifty thousand bacteria per milliliter, standard plate count, as determined by the logarithmic averages of four consecutive tests of milk samples taken on separate days and produced under the following conditions:

a. Milking barn or milking parlor shall be of a type that can be readily cleaned and be kept clean.

b. Cow's flanks and udders shall be clipped. Udders and teats shall be washed and disinfected before milking is begun.

c. A milk house, or milk room, shall be used and it shall be equipped to care for all milking equipment, the straining and cooling of all milk.

d. All milking equipment and containers shall be effectively cleaned, treated with a bactericidal solution and be stored where protected from contamination.

e. Bottling and capping shall be done only by mechanical equipment. Bottle lips shall be covered.

f. All milk must be effectively cooled.

g. The water supply must meet state health department requirements.

Milk that is to be used for pasteurized grade "A" shall meet the production requirements as set forth for grade "A" raw milk excepting the bacteria plate count or direct microscopic clump count, as delivered from the farm, does not exceed two hundred thousand per milliliter, or a methylene blue reduction time which is not less than five and one-half hours, or the resazurin reduction time of which to P seven-fourths is not less than two and three-fourths hours.

Provided, further that the composite raw milk, at no time between dumping and pasteurization, has a bacteria plate count, or a direct microscopic clump count exceeding four hundred thousand per milliliter or a methylene blue reduction time of less than four and three-fourths hours or a resazurin reduction time to P seven-fourths of less than two and one-half hours.

Excepting further that cows furnishing milk which subsequently will be pasteurized for grade "A" pasteurized milk shall be exempted from the annual test for brucellosis but shall by January 1, 1955 be from herds certified by the United States bureau of animal industry and the Iowa department of agriculture as following one of the three following plans of control:

Plan A. Test annually all cattle more than eight months of age except steers and official calfhood vaccinates until thirty-six months following date of vaccination. Slaughter all reactors, with indemnity payments as provided by state and federal regulations. Official calfhood vaccination to be optional with the herd owner.

Plan B. Test annually all cattle more than eight months of age except steers and official calfhood vaccinates until thirty-six months following date of vaccination. All reactors are to be identified and quarantined on farm provided that the owner may at his option retain such cattle for breeding purposes in accordance with the rules and regulations of the department. If a calfhood official vaccinate reacts, the animal may be quarantined on the farm and retested within sixty days at the owner's expense. Official vaccination of all female calves between the ages of four and eight months.

Plan C. Official vaccination of all female calves between the ages of four and eight months. The herd must be composed entirely of official vaccinates.

Nothing contained herein relating to said plans of control shall invalidate ordinances or regulations of any municipal corporation, providing for control of brucellosis by procedures other than the foregoing three plans of control so long as said ordinance or regulation shall

embody plans and procedures approved by the United States bureau of animal industry and the Iowa department of agriculture.

2. *Pasteurized milk—grade "A"*. Grade "A" pasteurized milk is grade "A" raw milk for pasteurization which has been pasteurized, cooled, and placed in the final container in a milk plant approved by the secretary of agriculture which in all cases shows efficient pasteurization as evidenced by satisfactory phosphatase tests, and which at no time after pasteurization and until final delivery exceeds thirty thousand bacteria per milliliter, standard plate count or a coliform count exceeding ten per milliliter, as determined by the logarithmic averages of four consecutive tests of milk samples taken on separate days.

Provided, that the composite raw milk, at no time between dumping and pasteurization, has a bacteria plate count, or a direct microscopic clump count exceeding four hundred thousand per milliliter, or a methylene blue reduction time of less than four and three-fourth hours or a resazurin reduction time of P seven-fourths of less than two and one-half hours and processed in plants complying with the following:

a. Processing room must be separated from rooms used for other purposes.

b. The plant must be kept in a sanitary condition.

c. All equipment must be of a recognized standard type; have adequate drip protection.

d. All milk must be carried between equipment in sanitary lines. Drip and overflow milk must be discarded.

e. All equipment must be disassembled daily and thoroughly cleaned and after reassembling must be subjected to bactericidal treatment before use by approved methods, unless other methods are approved by the department.

f. Toilets must be conveniently located and meet sanitary standards.

g. Hand-washing facilities of approved type, having hot water, soap and individual towels must be provided convenient to the processing room.

h. The water supply must meet state health department requirements.

3. *Pasteurized milk—grade not declared*. Milk coming from healthy cows, that has been kept at the proper temperature and handled in a sanitary manner, is wholesome, unadulterated and otherwise fit for human consumption. The bacteria standard plate count or direct microscopic clump count, as delivered from the farm, must not exceed five hundred thousand per milliliter or a methylene blue reduction time which is not less than three and one-half hours or a resazurin reduction time to seven-fourths of less than two hours; which shows efficient pasteurization; and which at no time after pasteurization and until final delivery exceeds seventy-five thousand bacteria per milliliter, standard plate count, as determined by the logarithmic averages of

four consecutive tests of milk samples taken on separate days.

The secretary of agriculture shall make needed regulations to promulgate production, processing and distribution standards for grade "A" pasteurized, pasteurized (grade not declared) and grade "A" raw milk which shall conform to United States Public Health Service Recommended Milk Ordinance and Code, 1953 Edition. Nothing contained in this chapter shall invalidate ordinances or regulations of any municipal corporation providing inspections or imposing requirements higher than the minimum requirements provided in this chapter, provided, however, that no such municipal ordinance or regulation shall impose standards in conflict with those imposed by said United States Public Health Service Recommended Milk Ordinance and Code, 1953 Edition.

Nothing in this section shall be construed to mean compulsory grading of milk; such grades shall apply only to pasteurized and raw milk on which the grade is declared on the label. The state department of health shall annually survey and certify all milk labeled grade "A" pasteurized, and grade "A" raw, and, in the event a survey shows that the requirements for the production, processing and distribution of such grades are not being complied with, the fact thereof shall be certified by the state department of health to the secretary of agriculture, who shall withdraw the grade declared on the label. [C24, 27, 31, 35, 39, §3077; C46, 50, 54, §192.10; 56GA, ch 110, §1]

**192.11 Sanitary regulations.** Every person who deals in or manufactures dairy products or imitations thereof shall maintain his premises, utensils, wagons, and equipment in a clean and hygienic condition. [C97, §2522; S13, §2522; C24, 27, 31, 35, 39, §3078; C46, 50, 54, §192.11]

**192.12 Bacteriologists.** The state department of agriculture may employ dairy specialists or bacteriologists who shall devote their full time to the improvement of sanitation in the production, processing and marketing of dairy products. Said dairy specialists and bacteriologists shall have qualifications as to education and experience and such other requirements as the secretary may require. [C46, 50, 54, §192.12]

**192.13 Duties.** Said dairy specialists and bacteriologists employed by the department shall co-operate with the dairy and food inspectors of the department and with the health departments of cities and towns for sanitary control of the production, processing, and marketing of dairy products. The department shall provide adequate laboratory facilities for the efficient performance of their duties. [C46, 50, 54, §192.13]

**192.14 Testing milk or cream.** Every person testing cream or milk to determine the percent of milk fat as a basis for fixing the purchase price shall secure a milk tester's license from the department and shall make tests only by

such process as has been approved by said department. Each composite sample taken shall cover a period of not more than sixteen days and all such composite samples shall cover the same period of time. [SS15, §2515-f; C24, 27, 31, 35, 39, §3079; C46, 50, 54, §192.14; 56GA, ch 111, §1]

**192.15 Examination.** Each applicant for such a license shall be required to submit to examination and by actual demonstration show that he is competent to test cream and milk according to an approved process. [SS15, §2515-f; C24, 27, 31, 35, 39, §3080; C46, 50, 54, §192.15]

**192.16 Supplying standard measures.** The department shall furnish each licensee one standard test bottle and one standard pipette adapted to the use of the testing machine approved for the licensee. Said bottle and pipette shall be certified to by the department as standard and shall bear the official stamp of the department. Any person not a licensee may secure test bottles and pipettes from the department at the legal price. [C97, §2515; SS15, §2515; C24, 27, 31, 35, 39, §3081; C46, 50, 54, §192.16]

**192.17 Fees.** The fee for each license shall be two dollars and fifty cents, and standard test bottles and pipettes shall be furnished at actual cost. [C97, §2515; SS15, §2515-f; C24, 27, 31, 35, 39, §3082; C46, 50, 54, §192.17]

**192.18 Bottles and pipettes.** The standard bottle and pipette received from the department shall be used by the licensee in verifying test tubes and pipettes used by him in making tests; and the same shall be subject to inspection by the owner or vendor of the cream or milk which is the subject of the test. [C97, §2523; C24, 27, 31, 35, 39, §3083; C46, 50, 54, §192.18]

**192.19 Substitute tester.** With the approval of the department any licensee may for valid reasons appoint a person to act for him, not to exceed a period of fourteen days. [SS15, §2515-f; C24, 27, 31, 35, 39, §3084; C46, 50, 54, §192.19]

**192.20 False tests.** No person shall falsely manipulate or misread the Babcock test or any other milk or cream testing apparatus. The writing of a check or payment of money for cream or milk at any given test shall constitute prima-facie evidence that such test was made. [S13, §2515-e; C24, 27, 31, 35, 39, §3085; C46, 50, 54, §192.20]

**192.21 Tests by unlicensed person.** The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense. [SS15, §2515-f; C24, 27, 31, 35, 39, §3086; C46, 50, 54, §192.21]

**192.22 Actions for purchase price—proof.** In an action by the vendor for the purchase price of cream or milk, sold on test to be made by the vendee, the burden of establishing the proper use of an approved test shall be upon the vendee. [C97, §2523; C24, 27, 31, 35, 39, §3087; C46, 50, 54, §192.22]

**192.23 State trade-mark.** The Iowa trade-mark for butter manufactured in this state shall consist of the words "Iowa Butter" printed within an outline map of Iowa. Above said map shall be printed the words "First Quality, License No. ...." and below, the words "State Butter Control". Said map and printed matter shall be circumscribed by a double circle, the outer circle being printed with a heavier line than the inner circle. [SS15, §2515-f; C24, 27, 31, 35, 39, §3088; C46, 50, 54, §192.23]

**192.24 Iowa butter control board.** There is hereby created the Iowa butter control board composed of the president of the Iowa state dairy association, the president of the Iowa state creamery operators association, the dean of agriculture of the Iowa state college of agriculture and mechanic arts, the head of the department of the dairy industry of the same institution, and the secretary of agriculture, which board shall see that the requirements of the law are met on all butter manufactured in the state of Iowa for sale under the Iowa butter trade-mark and that the standards required by law are maintained by every creamery desiring to be classified and known as an Iowa trade-mark creamery, and the board shall make rules and regulations for the enforcement of sections 192.24 to 192.30, inclusive. [SS15, §2515-f1; C24, 27, 31, §3089, 3090; C35, §3092-f1; C39, §3092.1; C46, 50, 54, §192.24]

45ExGA, ch 33, §1, editorially divided

**192.25 Iowa trade-mark creameries.** Any creamery meeting the standards and requirements fixed by law shall be entitled to be classified and known as an "Iowa trade-mark creamery" and no other creamery shall use said name. [SS15, §2515-f1; C24, 27, 31, §3091; C35, §3092-f2; C39, §3092.2; C46, 50, 54, §192.25]

Referred to in §192.24

**192.26 Requirements.** Any creamery desiring to be classified and known as an Iowa trade-mark creamery shall meet the requirements of the sanitary and dairy laws of Iowa and must comply with the Iowa state and federal standards as to butterfat and moisture contents.

All butter sold under said trade-mark shall be manufactured from cream containing not more than two-tenths of one percent acidity and shall have been pasteurized in accordance with the pasteurization laws of Iowa.

All butter sold under the Iowa trade-mark must score at least ninety-three and be inspected at frequent intervals. All scoring and inspection is to be made by the Iowa butter control board or its duly authorized representatives. [SS15, §2515-f1; C24, 27, 31, §3091; C35, §3092-f3; C39, §3092.3; C46, 50, 54, §192.26]

Referred to in §192.24

**192.27 Certification of qualification.** Whenever a creamery qualifies as an Iowa trade-mark creamery the board shall issue to said creamery a certificate to that effect, which certificate shall be subject to revocation by the

board for failure to maintain the standards and requirements fixed by law. [C35, §3092-f4; C39, §3092.4; C46, 50, 54, §192.27]

Referred to in §192.24

**192.28 Membership in association.** Any creamery holding the classification of an Iowa trade-mark creamery must become a member of the Iowa trade-mark butter association, which shall be a nontrading, nonprofit-sharing association of the creameries classified as Iowa trade-mark creameries and which association shall own and regulate the use of the Iowa butter trade-mark. [C35, §3092-f5; C39, §3092.5; C46, 50, 54, §192.28]

Referred to in §192.24

**192.29 Ownership of trade-mark.** The ownership of the Iowa butter trade-mark is hereby vested and lodged in the Iowa trade-mark butter association and said association may own and hold said trade-mark for the benefit of its members. The Iowa butter control board shall retain all supervision and control over the manufacture and sale of all butter to be sold under said trade-mark. [SS15, §2215-f1; C24, 27, 31, §3092; C35, §3092-f6; C39, §3092.6; C46, 50, 54, §192.29]

Referred to in §192.24

**192.30 Meetings.** The Iowa butter control board shall hold regular semiannual meetings at the dairy industry building of the Iowa state college of agriculture and mechanic arts in conjunction with the executive committee of the Iowa trade-mark association, which latter body shall act as an advisory body only at said meetings. [C35, §3092-f7; C39, §3092.7; C46, 50, 54, §192.30]

Referred to in §192.24

**192.31 Imitation butter.** Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the word "butter", "creamery", or "dairy", or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter. [C97, §2517; C24, 27, 31, 35, 39, §3093; C46, 50, 54, §192.31]

**192.32 Butter score required.** All butter carrying AA, AB and C grades shall score in conformity with U. S. D. A. standards. [56GA, ch 112, §1]

**192.33 Container.** The term "container" used in the following sections of this chapter shall mean cans, bottles, casks, kegs, barrels, and other receptacles of like nature. [C24, 27, 31, 35, 39, §3094; C46, 50, 54, §192.33]

**192.34 Milk bottles to be marked.** Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or trade-mark of the manufacturer. The designating number shall be furnished by the depart-

ment on request. [S13,§3009-k; C24, 27, 31, 35, 39,§3095; C46, 50, 54,§192.34]

**192.35 Adoption of brand.** With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by him, and the same may be registered with the department. [C24, 27, 31, 35, 39,§3096; C46, 50, 54,§192.35]

**192.36 Retention of marked container.** No person shall, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier shall be prima-facie evidence that such container was returned. [C24, 27, 31, 35, 39,§3097; C46, 50, 54,§192.36]

**192.37 Return of bottles.** Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or his agent in person or by leaving them where they may be picked up by the owner. [C24, 27, 31, 35, 39,§3098; C46, 50, 54,§192.37]

**192.38 Stray containers.** When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address he does not know, he shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department he shall at once forward the container by a common carrier, collect, to the address furnished him. Milk or cream bottles need not be returned when the cost of return is greater than the market value

of the bottles. [C24, 27, 31, 35, 39,§3099; C46, 50, 54,§192.38]

**192.39 Registered mark.** No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner. [C24, 27, 31, 35, 39,§3100; C46, 50, 54,§192.39]

**192.40 Certified laboratories.** To insure uniformity in the tests and reporting the bacteriological laboratory of the department shall certify all laboratories doing work in the sanitary quality of milk and dairy products for public report. Such approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture and such reports may be used by the department. [C54,§192.40]

**192.41 Coloring rejected milk.** It shall be the duty of the milk or cream grader to thoroughly mix with all rejected milk or cream, a harmless coloring matter as will prevent all such rejected milk from being offered for sale. [C54,§192.41]

**192.42 Transportation.** Every vehicle used to transport milk from producers to any dairy plant shall be in a sanitary condition. Every vehicle so used shall be enclosed to protect the milk from extreme heat or cold and from dust or other contamination; provided, however, that this provision shall not be applied to producers delivering their own milk when such milk is otherwise protected from extreme heat or cold and from dust or other contamination. [C54,§192.42]

## CHAPTER 193

### OVERRUN IN MANUFACTURE OF BUTTER

General penalty, §189.19

193.1 Defined.  
193.2 Limit.  
193.3 Records.

193.4 Records not open to public inspection.  
193.5 Reports as evidence.  
193.6 Penalty.

**193.1 Defined.** For the purpose of this chapter "overrun" is the difference between the weight of any given amount of pure butterfat and the weight of the butter manufactured therefrom, and this difference, ascertained in any case, divided by the given amount of pure butterfat in such case and multiplied by one hundred, is the "percentage of overrun", in the manufacture of butter. [C31, 35,§3100-c1; C39,§3100.01; C46, 50, 54,§193.1]

**193.2 Limit.** It shall be and hereby is declared to be unlawful for any person to have or permit a percentage of overrun in excess of twenty-four and one-half percent in butter manufactured by him. [C31, 35,§3100-c2; C39, §3100.02; C46, 50, 54,§193.2]

**193.3 Records.** Every person engaged in the purchase, manufacture, or sale of dairy products, and all owners of skimming stations or other places engaged in the business of purchasing milk or cream, and operators of condenseries, creameries, milk factories, and cheese factories, shall keep in proper books true and full records of all milk, cream, butterfat, and other dairy products purchased, received, shipped, stored, or handled by them, the amount of salted butter and unsalted butter manufactured therefrom, and the amounts of butterfat used in the form of cream, ice cream, milk, or any other products. [C31, 35, §3100-c3; C39,§3100.03; C46, 50, 54,§193.3]

Referred to in §193.4

**193.4 Records not open to public inspection.** The books and records, or a certified copy of same, of all persons, owners, and operators coming within the provisions of section 193.3 shall be kept within this state and shall be open for the inspection of the secretary of agriculture and his deputies or employees at all times, who shall make such examination thereof as is desired or deemed necessary by the secretary of agriculture. Any statement, report, or information required by this chapter to be made or furnished by any person, corporation, or association, shall be for the information of the secretary of agriculture, the attorney general, or any public official who may be interested in an official way in receiving such statement, report, or information, but such statement, report, or information shall not be open to public inspection, nor shall it be published or used for private purposes, but may be used in an official, legitimate way in the enforcement of this chapter. [C31, 35, §3100-c4; C39, §3100.04; C46, 50, 54, §193.4]

**193.5 Reports as evidence.** The reports required by law to be made and which are made to the secretary of agriculture by persons en-

gaged in the manufacture of butter shall be competent evidence in any prosecution under this chapter against the person making the same, whenever such reports, received in evidence upon the trial, show that during a period of one month or more the person on trial and charged with a violation of this chapter, alleged to have been committed on a certain date within said period, has had or permitted an average percentage of overrun in excess of twenty-four and one-half percent in the salted butter manufactured by him during said period, such showing shall be a violation of this chapter by the person so charged, committed as to the date alleged. [C31, 35, §3100-c5; C39, §3100.05; C46, 50, 54, §193.5]

**193.6 Penalty.** Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment in the county jail not to exceed thirty days, and on third violation of the same may be restrained by injunction from operating such a business. [C31, 35, §3100-c6; C39, §3100.06; C46, 50, 54, §193.6]

CHAPTER 194

TAX ON OLEOMARGARINE

Repealed by 55GA, ch 103, §1

CHAPTER 195

CREAM GRADING LAW

General penalty, §189.19

- 195.1 Title.
- 195.2 Enforcement.
- 195.3 Definitions.
- 195.4 Basis of purchase.
- 195.5 Price differential.
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- 195.7 Licensed graders.
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- 195.11 Treatment of graded cream.
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- 195.21 Separate rooms.
- 195.22 Transportation.
- 195.23 Empty cans.
- 195.24 Inspection.
- 195.25 Samples.
- 195.26 Prohibited acts.
- 195.27 Penalties.

**195.1 Title.** This chapter may be cited as "The Cream Grading Law" and is an amendment to this title. [C35, §3100-g1; C39, §3100.20; C46, 50, 54, §195.1]

**195.2 Enforcement.** The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations, not inconsistent herewith, as may appear necessary. [C35, §3100-g2; C39, §3100.21; C46, 50, 54, §195.2]

**195.3 Definitions.** For the purposes of this chapter:

1. "Secretary" means the secretary of the department of agriculture.
2. "Person" includes individuals, partnerships, corporations, and associations.
3. "Creamery" means an establishment to which milk or cream of divers producers is delivered and where said products are manufactured into butter or cheese for commercial purposes.
4. "Cream station" means a place, other than a creamery, where deliveries of cream are weighed, sampled, graded or tested for purchase on a butterfat basis.



5. "Cream route" means any method used in gathering or transporting cream for hire from two or more producers to a cream station or creamery, except common carriers.

6. "Sweet cream" shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "A" or United States department of agriculture ninety-two score. It shall be fresh and clean to the taste and its acidity shall at no time exceed two-tenths of one percent calculated as lactic acid. It may have a slight feed flavor. It shall be free from extraneous matter.

7. "Grade one cream" shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "B" or United States department of agriculture ninety score. It shall be free from flavors resulting from decomposition or age. It may have smothered, slight utensil, or feed flavors and its acidity shall at no time exceed six-tenths of one percent calculated as lactic acid. It shall be free from extraneous matter.

8. "Grade two cream" shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "C" or United States department of agriculture eighty-nine score. It shall be free from flavors resulting from decomposition or age. It may have off-flavors to a limited degree and its acidity may exceed six-tenths of one percent calculated as lactic acid. It shall be free from extraneous matter.

9. "Unlawful cream" shall be cream which has such flavors as stale, rancid, cheesy, yeasty, metallic, oily, putrid, or other objectionable flavors or which shows evidence of decomposition and age. Unlawful cream shall also be cream containing excessive extraneous matter as set forth in section 195.14, regardless of other quality characteristics. [C35,§3100-g3; C39,§3100.22; C46, 50, 54,§195.3; 56GA, ch 113,§1]

**195.4 Basis of purchase.** All purchases of cream shall be made on the basis of sweet cream, first grade cream and second grade cream. [C35,§3100-g4; C39,§3100.23; C46, 50, 54, §195.4]

**195.5 Price differential.** Every person owning or operating a creamery, or cream station, or cream vehicle route and engaged in the business of buying two or more grades of cream shall maintain a price differential between said grades of not less than one cent per pound of butterfat. [C35,§3100-g5; C39, §3100.24; C46, 50, 54,§195.5]

**195.6** Repealed by 56GA, ch 113,§2.

**195.7 Licensed graders.** A grader of milk or cream, duly licensed as herein provided, shall be maintained in every creamery and cream station; also in every vehicle when cream is not gathered in individual containers. [C35,§3100-g7; C39,§3100.26; C46, 50, 54, §195.7]

**195.8 License granted.** Such license shall be issued by the secretary to persons who shall have passed a satisfactory examination as to their qualifications to grade cream and who confirm their qualifications by an actual demonstration. Said license shall not be transferable. [C35,§3100-g8; C39,§3100.27; C46, 50, 54, §195.8]

**195.9 Tenure—fee.** Each license shall, unless sooner revoked, be valid until July 1 after date of issuance. The fee therefor shall be one dollar which shall be paid before the license is issued. [C35,§3100-g9; C39,§3100.28; C46, 50, 54, §195.9]

**195.10 Duty of grader.** Each licensed grader of milk or cream shall immediately grade each lot of milk or cream delivered to or received by him. Wherever a particular lot of milk or cream is graded whether at the creamery, at the cream station, or at the vehicle used for transportation, the grader shall forthwith make and preserve a true record of said particular lot, which record shall show:

1. Name of the producer or owner.
2. Date of delivery.
3. Quantity delivered.
4. Grade or grades assigned.
5. Price paid.

[C35,§3100-g10; C39,§3100.29; C46, 50, 54,§195.10; 56GA, ch 113,§3]

**195.11 Treatment of graded cream.** As soon as cream is graded, it shall be placed forthwith in a clean container. Each container containing graded cream shall have a label or tag firmly attached thereto showing in a legible and conspicuous manner the grade of the cream therein and the date when said cream was graded. The grader of said cream shall see that this section is complied with. [C35, §3100-g11; C39,§3100.30; C46, 50, 54,§195.11]

**195.12 Treatment of unlawful milk or cream.** It is hereby made the duty of each licensed grader of milk or cream to thoroughly mix with any unlawful milk or cream whenever and wherever discovered by him such harmless coloring matter as will prevent such unlawful milk or cream from being used for human consumption. [C35,§3100-g12; C39, §3100.31; C46, 50, 54,§195.12; 56GA, ch 113,§4]

**195.13 Extraneous matter test.** A test for the purpose of determining the amount and nature of extraneous matter in milk or cream shall always be made by the grader on the first purchase of milk or cream from a customer. At least two tests for extraneous matter shall be made each month on the milk or cream sold by each customer. But the grader shall make such test whenever he has reason to believe that such test is advisable. [C35, §§3100-g6,-g13; C39, §§3100.25, 3100.32; C46, 50, 54, §§195.6, 195.13; 56GA, ch 113, §§2, 5]

**195.14 Details of test.** The secretary of agriculture shall determine and promulgate the standards and methods of testing milk or

cream for extraneous matter. These standards and methods shall be no less than the minimum requirements of the United States public health service standards. [C35,§3100-g14; C39,§3100.33; C46, 50, 54,§195.14; 56GA, ch 113,§6]

Referred to in §195.3

**195.15 Operating license.** No creamery or cream station or vehicle for the collection of cream shall be operated unless the owner or operator shall have first obtained from the secretary a license for each creamery, each cream station, and each vehicle so owned or operated. [C35,§3100-g15; C39,§3100.34; C46, 50, 54,§195.15]

**195.16 Issuance of license.** The license to operate as aforesaid shall be issued by the secretary and shall specify the particular creamery or cream station, the operation of which is authorized; also, in a general way, the route over which the vehicle is authorized to operate. [C35,§3100-g16; C39,§3100.35; C46, 50, 54,§195.16]

**195.17 Tenure—fees.** Such license, unless sooner revoked, shall be valid for one year from the date of issuance. The fee therefor, payable to the secretary before its issuance, shall be:

1. For each creamery, three dollars.
2. For each cream station, one dollar.
3. For each vehicle, one dollar.

[C35,§3100-g17; C39,§3100.36; C46, 50, 54,§195.17]

**195.18 Posting.** The holder of said license shall keep said license continuously posted in some conspicuous place inside said creamery, or cream station, or inside the driver's compartment of the said vehicle, as the case may be. [C35,§3100-g18; C39,§3100.37; C46, 50, 54,§195.18]

**195.19 Revocation of license.** Any license issued under this chapter may be revoked by the secretary for any violation of this chapter or for violation of any standard of sanitation prescribed by any other statute applicable to the holder of such license, but only after the holder of the license has been given reasonable notice of the intention to revoke the license and reasonable opportunity to be heard, provided that when a licensee is convicted of a willful violation of any requirement of this chapter, the secretary shall summarily suspend said license for a period of thirty days and provided that upon a second such conviction the secretary shall summarily and permanently revoke said license. [C35,§3100-g19; C39,§3100.38; C46, 50, 54,§195.19]

**195.20 Sanitation.** No creamery or cream station or vehicle used on a route for the collection of cream shall be operated or permitted to be operated in an unclean or insanitary condition. [C35,§3100-g20; C39,§3100.39; C46, 50, 54,§195.20]

**195.21 Separate rooms.** The owner or operator of a creamery or cream station shall maintain a separate room or rooms for the handling and sorting of cream and dairy products,

which room or rooms shall be constructed and maintained in the same sanitary condition now required by statute for the construction and maintenance of creameries generally, be well lighted and ventilated, and be provided with proper cooling facilities and an adequate supply of hot and cold water. [C35,§3100-g21; C39,§3100.40; C46, 50, 54,§195.21]

**195.22 Transportation.** Every vehicle used to transport milk or cream from producers to any dairy plant shall be maintained in a sanitary condition. Every vehicle so used shall be enclosed to protect the milk or cream from extreme heat or cold and from dust or other contamination; provided, however, that this provision shall not be applied to producers delivering their own milk or cream when such milk or cream is otherwise protected from extreme heat or cold and from dust or other contamination. [C35,§§3100-g6, g22; C39,§§3100.25, 3100.41; C46, 50, 54,§§195.6, 195.22; 56GA, ch 113, §2, 7]

**195.23 Empty cans.** Empty cream cans shall be thoroughly washed and kept in a sanitary condition, stored, and protected from the weather. [C35,§3100-g23; C39,§3100.42; C46, 50, 54,§195.23]

**195.24 Inspection.** The secretary and all his authorized agents shall have access, at all reasonable times, to all creameries and cream stations and other places, including vehicles for transportation, where milk or cream is produced, received, tested, purchased, transported, or used for the manufacture of butter. [C35,§3100-g24; C39,§3100.43; C46, 50, 54,§195.24]

**195.25 Samples.** The secretary, and all such authorized agents on showing their authority and upon paying or offering to pay the value thereof, may take from any producer, handler, receiver, or seller of milk or cream, or from any manufacturer of butter, whether principal, agent, or employee, samples of milk, cream or butter for purposes of inspection and analysis. [C35,§3100-g25; C39,§3100.44; C46, 50, 54,§195.25]

**195.26 Prohibited acts.** The following acts or omissions are prohibited:

1. The purchase or receipt of cream except on the basis of grades as herein provided.
2. The failure to provide a price differential as herein provided.
3. The grading by an unlicensed grader of any lot of cream.
4. The improper or incorrect grading by a licensed grader of any lot of cream.
5. Knowingly offering or exposing for sale of unlawful cream for any human consumption.
6. The purchase, possession or acceptance of unlawful cream for human consumption.
7. The failure of a licensed grader of cream to make and keep such records as are herein required of him.

8. The possession by the owner or operator of a creamery or of a cream station, or of a cream route vehicle of any graded cream which is unlabeled or falsely labeled.

9. The maintenance of a creamery or cream station or cream route vehicle in an insanitary condition.

10. The conducting or maintaining of a creamery, or cream station, or cream route vehicle in such a manner that cream may be contaminated.

11. The act of obstructing or hindering any official inspection by the secretary or by any of his authorized agents.

12. The removal or defacement of any tag or tags as herein required which have been attached to a receptacle containing cream.

13. The handling or transportation of cream contrary to the provisions of this chapter.

14. The operation of a creamery, or cream station, or cream route vehicle without obtaining a license as herein provided.

This enumeration of prohibited acts shall not be construed to exempt the violator of any other provision of this chapter from criminal responsibility. [C35,§3100-g26; C39,§3100.45; C46, 50, 54,§195.26]

**195.27 Penalties.** Any person who, by himself or by his agent or employee, willfully violates any requirement of this chapter shall be fined not less than twenty-five dollars nor more than one hundred dollars. [C35,§3100-g27; C39,§3100.46; C46, 50, 54,§195.27]

Constitutionality, 46GA, ch 29,§28

## CHAPTER 196

### PRODUCTION AND SALE OF EGGS

General penalty, §189.19

- 196.1 Title.
- 196.2 Enforcement.
- 196.3 Definitions.
- 196.4 License.
- 196.5 Producers and hatcheries exempted.
- 196.6 Fee.
- 196.7 Candler's license.
- 196.8 Temporary candlers and graders.
- 196.9 Retailers exempted.
- 196.10 Sale of eggs unfit for human food.

- 196.11 Candling.
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- 196.13 Candling and grading room.
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- 196.15 Records required.
- 196.16 Certificate.
- 196.17 Deduction to be determined by candling.
- 196.18 Penalty.
- 196.19 Sales in other states.
- 196.20 Transportation of eggs.

**196.1 Title.** This chapter may be cited as the egg candling and grading law. [56GA, ch 114,§1]

**196.2 Enforcement.** The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations, not inconsistent herewith, as may appear necessary. [C24, 27, 31, 35, 39,§3111; C46, 50, 54,§196.11; 56GA, ch 114, §2]

**196.3 Definitions.** For the purposes of this chapter:

“Department” means the department of agriculture.

“Secretary” means the secretary of agriculture.

“Person” includes individuals, partnerships, corporations, and associations.

“Retailer” means a person who sells eggs direct to consumers.

“Dealer” means a person who buys, sells, handles, and merchandises eggs.

“Processor” means a person who stores or converts shell eggs to liquid, frozen or dried form.

“Eggs unfit for human food” means any egg deemed unfit for human food as defined by the United States standards and grades of eggs. [56GA, ch 114,§3]

**196.4 License.** Every person engaged in the business of buying, selling, receiving, or dealing in eggs shall obtain a license. [C24, 27, 31, 35, 39,§3101; C46, 50, 54,§196.1; 56GA, ch 114,§4]

**196.5 Producers and hatcheries exempted.** Producers who sell only eggs produced exclusively by their own flocks, and sold direct to consumers, shall not be required to procure a license.

Hatcheries shall obtain a license for eggs purchased over and above the eggs used for hatching purposes. Eggs to be used for hatching are exempt from the candling and grading provisions of this chapter. All cases of eggs shall be properly labeled and clearly identified in such manner as the department of agriculture may prescribe. [C24, 27, 31, 35, 39,§3102; C46, 50, 54,§196.2; 56GA, ch 114,§5]

**196.6 Fee.** The annual license fee for retailers shall be two dollars. The annual license fee for dealers and processors shall be determined on the basis of cases of eggs purchased or handled, and shall be computed on the number of cases purchased or handled during the month of April of each year, providing that if said dealer or processor is not operating during the month of April, the department shall estimate the volume of purchases or volume handled, and may revise the fee after

three months of operation. For the purpose of determining fees, a case shall be one of thirty dozen capacity.

The schedule of fees for dealers and processors shall be as follows:

Less than one hundred twenty-five cases—twelve dollars fifty cents.

More than one hundred twenty-five cases and less than two hundred fifty cases—twenty-five dollars.

More than two hundred fifty cases and less than one thousand cases—thirty-seven dollars fifty cents.

More than one thousand cases—fifty dollars.

Each license shall expire on April 1 after the date of issue. [C24, 27, 31, 35, 39, §3103; C46, 50, 54, §196.3; 56GA, ch 114, §6]

**196.7 Candler's license.** All candlers and graders of eggs shall obtain a license from the department of agriculture. The license fee for each candler and grader shall be two dollars per annum. Before such license is issued, each individual candler and grader shall demonstrate to the satisfaction of the department his capability as a candler and grader. [C24, 27, 31, 35, 39, §3109; C46, 50, 54, §196.9; 56GA, ch 114, §7]

**196.8 Temporary candlers and graders.** With the approval of the department, candlers and graders may for valid reasons be appointed for a period not to exceed fourteen days pending licensing by the department, provided that during this period the employer of said temporary candler and grader shall be responsible for his work while acting in the capacity of candler and grader. [56GA, ch 114, §8]

**196.9 Retailers exempted.** Retailers who buy direct from dealers licensed under this chapter, and who do not sell in lots greater than one case, thirty dozen capacity, shall not be required to furnish bond. [C24, 27, 31, 35, 39, §3102; C46, 50, 54, §196.2; 56GA, ch 114, §9]

**196.10 Sale of eggs unfit for human food.** No person shall sell, offer or expose for sale, or have in his possession for sale any egg unfit for human food unless the same is denatured so that it cannot be used for human food. [C24, 27, 31, 35, 39, §3104, 3105, 3108; C46, 50, 54, §196.4, 196.5, 196.8; 56GA, ch 114, §10]

**196.11 Candling.** The term "candling" as used in this chapter shall mean the careful examination of the whole egg. The apparatus and method employed shall be approved by the department. [C24, 27, 31, 35, 39, §3107; C46, 50, 54, §196.7; 56GA, ch 114, §11]

**196.12 Candling and grading required.** Every person buying eggs from producers for resale shall candle and grade all eggs according to the United States standards for quality for individual eggs, or cause to be candled and graded within the state of Iowa or within fifty miles outside the state boundary, all eggs offered to him, and shall refuse to buy all eggs

unfit for human food. Such candling and grading shall be done in the presence of the producer if requested. [C24, §3108; C27, 31, 35, §§3108, 3112-b1; C39, §3112.1; C46, 50, 54, §§196.8, 196.13; 56GA, ch 114, §12]

**196.13 Candling and grading room.** Before a license is issued to an establishment candling eggs, the department shall make a careful survey of the premises and determine that the dealer has proper facilities for candling and grading. [C24, 27, 31, 35, 39, §3109; C46, 50, 54, §§196.6, 196.9; 56GA, ch 114, §13]

**196.14 Grades.** All eggs for resale or retail must be candled, graded and labeled, and no eggs shall be sold as "ungraded", "nest run", "current receipts", or any other name which might be misleading. Maximum tolerance of twenty percent may be allowed in grading.

All eggs sold at retail must be no lower than United States department of agriculture consumer grade "B". The secretary is authorized to establish standards of grade requirements which must comply with the minimum standards as established by the United States department of agriculture as consumer grades. All eggs offered for sale at retail must be held at a temperature not to exceed sixty degrees Fahrenheit. [C27, 31, 35, §3112-b1; C39, §3112.1; C46, 50, 54, §196.13; 56GA, ch 114, §14]

**196.15 Records required.** Producer's eggs must not lose their identity until candled and graded. The person candling the eggs for the first licensed buyer is required to keep such records as may be required by the department for a period of six months, which records shall be furnished to the first licensed buyer and one copy to the producer.

The first licensed buyer shall also keep and maintain such records as are required by the secretary for a period of six months. [C24, 27, 31, 35, 39, §3109; C46, 50, 54, §196.9; 56GA, ch 114, §15]

**196.16 Certificate.** There shall be placed on the top layer of each case of candled and graded eggs a certificate showing date of candling and grading, grade, the name or names of persons doing the candling and grading, the name of the state, and the license number of the person for whom the eggs are candled and graded, which certificate shall be printed on sheets not smaller than three and three-eighths by four and one-fourth inches, or a proper label or identification of the owner or shipper on the case that would properly identify the grade of eggs. [C24, 27, 31, 35, 39, §3110; C46, 50, 54, §196.10; 56GA, ch 114, §16]

**196.17 Deduction to be determined by candling.** No person shall, in buying or selling eggs, take or give a greater or less deduction for eggs rejected as unfit for food than the actual loss which has been determined by the careful examination of the same. [C24, 27, 31, 35, 39, §3112; C46, 50, 54, §196.12; 56GA, ch 114, §17]

**196.18 Penalty.** Any person found guilty of any violation of this chapter shall, upon conviction for the first offense, be fined twenty-five dollars; for the second offense, he shall be fined one hundred dollars; and for the third and subsequent offenses, he shall be fined two hundred dollars. In addition to such fines, the court for the second offense shall suspend his license for thirty days; and for the third and any subsequent offense, such person's license shall be revoked for a period of one year. [56GA, ch 114,§18]

See §189.19

**196.19 Sales in other states.** The provisions of section 189.26 shall not apply to eggs. [56GA, ch 114,§19]

**196.20 Transportation of eggs.** Every vehicle used to transport eggs from a producer to any dealer or processing plant shall be maintained in sanitary condition and shall be enclosed to protect eggs from extreme heat or cold; provided, however this provision shall not be applied to producers delivering their own eggs. [56GA, ch 114,§20]

Constitutionality, 56 GA, ch 114,§21

## CHAPTER 197

### POULTRY AND DOMESTIC FOWLS

General penalty, §189.19

197.1 License.  
197.2 Fee.  
197.3 Record.

197.4 Inspection of.  
197.5 Enforcement.  
197.6 Violations.

**197.1 License.** Every person, partnership, or corporation engaged in the business of buying for the market, poultry or domestic fowls from the producer thereof, shall obtain a license from the department of agriculture for each establishment at which said business is conducted.

The word "producer" as herein used shall include anyone not a licensed dealer who has acquired such poultry or domestic fowls other than through a licensed dealer. [C27, 31, 35, §3112-b2; C39,§3112.2; C46, 50, 54,§197.1]

**197.2 Fee.** The license fee shall be one dollar per annum, and each license shall expire on March 1 after the date of issue. [C27, 31, 35,§3112-b3; C39,§3112.3; C46, 50, 54,§197.2]

**197.3 Record.** Each licensee shall keep such records as the department of agriculture shall require, as to date of purchase, name and residence of seller and number and description

of such poultry or domestic fowls purchased from the producer. [C27, 31, 35,§3112-b4; C39, §3112.4; C46, 50, 54,§197.3]

**197.4 Inspection of.** Such records as are required by the department of agriculture to be kept by such licensee shall be open to inspection by any peace officer at any reasonable time. [C27, 31, 35,§3112-b5; C39,§3112.5; C46, 50, 54,§197.4]

**197.5 Enforcement.** The department of agriculture shall be charged with the duty of the enforcement of this chapter. [C27, 31, 35,§3112-b6; C39,§3112.6; C46, 50, 54,§197.5]

**197.6 Violations.** Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a misdemeanor and punishable as such. [C27, 31, 35, §3112-b7; C39,§3112.7; C46, 50, 54,§197.6]

Punishment, §687.7

## CHAPTER 198

### COMMERCIAL FEEDS

Referred to in §§155.2, 205.8

General penalty, §189.19

198.1 Definitions.  
198.2 Labeling—analysis.  
198.3 Shells.  
198.4 Weeds prohibited.  
198.5 Stock tonic—labeling.  
198.6 Written labels permitted.  
198.7 Registration fee.

198.8 Inspection fee—report under oath.  
198.9 Commercial feed fund.  
198.10 Fee for stock tonic.  
198.11 Feeds not subject to fee.  
198.12 Retailers exempted.  
198.13 Poisonous substances.  
198.14 Analyses of feeds—fee.

**198.1 Definitions.** For the purpose of this chapter:

1. "Commercial feed" shall mean "food" as defined in the chapter relative to the adulteration of foods, except that it shall only include

food in concentrated form, and mineral mixtures, intended for feeding to domestic animals, and it shall not include hay, straw, whole seeds, unmixed meals made from entire grains of wheat, rye, barley, oats, Indian corn,

buckwheat, or broom corn; nor shall it include wheat flour or other flours fit for human consumption.

2. "Stock tonic" shall mean a class of commercial feed such as medicated stock or poultry foods, including such preparations as are composed wholly of drugs which contain any substance claimed to possess medicinal, conditional, or nutritive properties. [S13,§5077-a8; C24, 27, 31, 35, 39,§3113; C46, 50, 54,§198.1]

Referred to in §203.8  
Adulteration of foods, ch 190

**198.2 Labeling—analysis.** All manufacturers, importers, jobbers, firms, associations, corporations, or persons, before selling, offering or exposing for sale or distributing in this state any brand of commercial feed, shall have printed on, or attached to each bag, package, and/or carton, in a conspicuous place, or delivered with each bulk lot, a label which shall contain a legible statement, printed in the English language, clearly and truly setting out:

1. The net weight of the contents of the package, bag, carton, or bulk lot.
2. The brand or trade name of the feed.
3. The name and principal address of the manufacturer or person responsible for placing the commodity on the market.
4. The minimum percentage of crude protein.
5. The minimum percentage of crude fat.
6. The maximum percentage of crude fiber.
7. The name of each ingredient used in its manufacture; provided that the official names of all materials which have been so defined by the association of American feed control officials shall be used in the declaration of the names of ingredients.
8. The minimum percentage of phosphorus (P) and of iodine (I), and the maximum percentage of calcium (Ca) and of salt (NaCl), if the same be present in mixed feeds containing more than a total of five percent of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purpose of supplying mineral elements in rations for animals, birds, or poultry and containing mineral elements generally regarded as dietary factors essential for normal nutrition; provided that if no nutritional properties other than those of a mineral nature be claimed for a mineral feed product, the percentages of crude protein, crude fat, and crude fiber may be omitted.

The methods of analysis shall be those in effect at the time by the association of official agricultural chemists of North America. [S15, §§5077-a6,-a7; C24, 27, 31, 35, 39,§3114; C46, 50, 54,§198.2]

Referred to in §198.5

**198.3 Shells.** Poultry shells or poultry limestone shall be classified as commercial feed, and shall be labeled to show the kind of shells

or ingredients of which they are composed and the percent of calcium carbonate. [C31, 35, §3114-d1; C39,§3114.1; C46, 50, 54,§198.3]

**198.4 Weeds prohibited.** Screenings and inert matter containing noxious weed seed shall not be used as an ingredient in the manufacture of commercial feed. Any grain or forage containing noxious weed seed shall not be used as an ingredient in the manufacture of commercial feed unless the feed is so finely ground or otherwise treated so that the weed seed will not germinate and any commercial feed containing viable noxious weed seed shall be prohibited from sale. [C31, 35,§3114-d2; C39, §3114.2; C46, 50, 54,§198.4; 56GA, ch 115,§1]

**198.5 Stock tonic—labeling.** In the case of stock tonic, in addition to the requirements of section 198.2, the label shall state the English name of each drug and the total percentage of all drugs and the actual percentage of salt, charcoal, and sulphur, and the actual percentage and name of any other ingredient contained in such stock tonic. [S13,§5077-a7; C24, 27, 31, 35, 39,§3115; C46, 50, 54,§198.5]

**198.6 Written labels permitted.** Labels on packages or containers of commercial feeds may be written instead of being printed; but when written, the writing must be plain and legible. [S13,§5077-a6; C24, 27, 31, 35, 39,§3116; C46, 50, 54,§198.6]

**198.7 Registration fee.** Before any commercial feed is offered or exposed for sale, or sold, the person who desires to offer or expose it for sale, or sell it, shall pay the department annually a registration fee of fifty cents accompanied by an affidavit containing the items required by this chapter to be printed on the label of such feed. Said affidavit shall comply with the latest uniform registration form approved by the association of American feed control officials. Upon request a sealed container holding not less than one pound of said feed shall accompany the registration fee and affidavit. [S13,§5077-a9; C24, 27, 31, 35, 39, §3117; C46, 50, 54,§198.7]

**198.8 Inspection fee—report under oath.** For the purpose of defraying the expenses connected with the sampling, inspection, and analysis of commercial feeds sold or offered for sale within this state and for other items incident to carrying out the provisions of this chapter, all corporations, firms or persons engaged in the manufacture of commercial feeds sold in this state shall, on or before the fifteenth day of January and the fifteenth day of July of each year, make statement under oath, in due form of law, which shall be filed with the department and which shall set forth the number of net tons of such commercial feeds sold or distributed in this state during the six preceding calendar months; and upon such statement shall pay to the department the sum of ten cents per net ton of two thousand pounds. Each applicant for a certificate of registration shall include in such application a

permit granting to the department permission to verify from applicant's records such applicant's statement of tonnage. [S13,§5077-a10; C24, 27, 31, 35, 39,§3118; C46, 50, 54,§198.8]

Referred to in §§198.9, 198.10

**198.9 Commercial feed fund.** All inspection fees required by section 198.8 shall, upon receipt thereof by the department, be paid to and receipted for by the treasurer of state and shall be kept by him in a separate fund to be known as the "Commercial Feed Fund." Such commercial feed fund shall be continued from year to year and the treasurer shall keep a separate account thereof showing receipts and disbursements as authorized by law. No part of such fund shall be used for any other purpose than the administration and enforcement of the laws relating to commercial feeds; provided, however, if on July 1 of any year there is a balance remaining in said commercial feed fund which, in the opinion of the governor, state comptroller and secretary of agriculture, is greater than is necessary for the proper administration of such laws, the treasurer of state is hereby authorized, on the recommendation and with the approval of the governor, state comptroller and secretary of agriculture, to transfer to the general fund of the state such portion of said commercial feed fund as the governor, state comptroller and secretary of agriculture shall deem advisable to so transfer. [C46, 50, 54,§198.9]

**198.10 Fee for stock tonic.** Before any person shall solicit orders for, deliver, offer or expose for sale, or sell any stock tonic, he shall, in lieu of the inspection fee provided

in section 198.8, pay to the department, on or before the fifteenth day of July each year, a general inspection fee of six dollars per annum for each product manufactured. Inspections shall be made as provided in chapter 189. [S13,§5077-a10; C24, 27, 31, 35, 39,§3119; C46, 50, 54,§198.10]

**198.11 Feeds not subject to fee.** Unadulterated wheat, rye, and buckwheat bran; wheat, rye, and buckwheat middlings; or wheat, rye, and buckwheat shorts manufactured in this state shall not be subject to any inspection fee required by this chapter. [S13,§5077-a10; C24, 27, 31, 35, 39,§3120; C46, 50, 54,§198.11]

**198.12 Retailers exempted.** Payment of any inspection fee provided in this chapter by the manufacturer or importer of any commercial feed or stock tonic shall exempt all other persons from such payment upon said products. [S13,§5077-a10; C24, 27, 31, 35, 39,§3121; C46, 50, 54,§198.12]

**198.13 Poisonous substances.** No person shall sell in ground form wheat or rye screenings containing cockle or other poisonous or deleterious substances. [S13,§5077-a13; C24, 27, 31, 35, 39,§3126; C46, 50, 54,§198.13]

**198.14 Analyses of feeds—fee.** Any person purchasing any commercial feed in this state for his own use may submit fair samples of said feed to the department, accompanied by an analysis fee of one dollar for each sample, and a proper analysis of the same shall be made and furnished. [S13,§5077-a12; C24, 27, 31, 35, 39,§3126; C46, 50, 54,§198.14]

## CHAPTER 199

### AGRICULTURAL SEEDS

#### General penalty, §189.19

199.1 Definitions.  
199.2 Botanist as advisor.  
199.3 Labeling of seeds.  
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199.5 Hybrid corn.  
199.6 Inoculant for legumes.  
199.7 Certified seed.  
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**199.1 Definitions.** For the purpose of this chapter:

1. The term "person" includes an individual, a partnership, corporation, company, society, or association.

2. The term "agricultural seeds" shall mean the seeds of Canada or Kentucky bluegrass, brome grass, fescues, millet, tall meadow oat grass, orchard grass, redtop, Italian, perennial, or western rye grass, slender, western, or crested wheat grass, reed canary grass, Kaffir corn, sorghum or cane, Sudan grass, timothy, alfalfa, alsike, crimson, mammoth or sapling,

red, sweet, or white clover, Canada field peas, cowpeas, soybeans, vetches, and other grasses and forage plants, buckwheat, flax, rape, barley, field corn, oats, rye, wheat, and other cereals, and such other field crop seeds as the secretary of agriculture may list in the rules and regulations provided for in this chapter.

3. The term "weed seed" shall mean seeds of all noxious weeds listed herein and other plants commonly designated as weeds in this state.

4. Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and

"secondary noxious weed seeds" which are defined in *a* and *b* of this subsection; provided that the secretary of agriculture, upon recommendation of the state botanist, may add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such additions or subtractions are within the respective definitions.

*a.* Primary noxious weed seeds are the seeds of perennial weeds such as those that not only reproduce by seed but also by underground roots or stems and which when established are highly destructive and difficult to control in this state by ordinary good cultural practices. Primary noxious weeds in this state are the seeds of:

- (1) Quack grass—*Agropyron repens*
- (2) Canada thistle—*Cirsium arvense*
- (3) Perennial sow thistle—*Sonchus arvensis*
- (4) Perennial pepper grass—*Lepidium draba*
- (5) European morning glory (field bindweed)—*Convolvulus arvensis*
- (6) Horse nettle—*Solanum carolinense*
- (7) Leafy spurge—*Euphorbia esula*
- (8) Russian knapweed—*Centaurea repens*

*b.* Secondary noxious weed seeds are the seeds of such weeds as are very objectionable in fields, lawns, or gardens in this state but can be controlled by good cultural practices. The secondary noxious weed seeds in this state are the seeds of:

- (1) Wild carrot—*Daucus carota*
- (2) Sour dock—*Rumex crispus*
- (3) Smooth dock—*Rumex altissimus*
- (4) Sheep sorrel—*Rumex acetosella*
- (5) Butterprint—*Abutilon theophrasti*
- (6) Mustards—*Brassica* species
- (7) Cocklebur—*Xanthium commune*
- (8) Buckhorn—*Plantago lanceolata*
- (9) Dodders—*Cuscuta* species

5. "Purity" of agricultural seed shall mean freedom from inert matter, and from other agricultural or weed seed distinguishable by their appearance.

6. "Tolerance" means the allowable deviation from any figure used on a label to designate the percentage of any fraction in the lot in question. It is based on the law of normal variation from a mean. The secretary of agriculture shall prepare tables of maximum tolerances allowable in the enforcement of this chapter and may be guided in such preparation by the rules and regulations under the federal seed act.

7. "Treated seed" shall mean agricultural seed to which a fungicide has been added or applied for the purpose of controlling pathogens that cause crop diseases.

8. "Inoculant for leguminous plants" shall mean any bacterial culture, or material containing bacteria, that is represented as causing the formation of nodules and aiding the

growth of leguminous plants by the fixation of nitrogen.

9. The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

10. The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter. [S13, §§5077-a14-a17; C24, 27, 31, 35, 39, §§3127, 3128; C46, 50, 54, §199.1]

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**199.2 Botanist as advisor.** The state botanist shall be the technical advisor to the secretary in the administration of this chapter. [C46, 50, 54, §199.2]

**199.3 Labeling of seeds.** Agricultural seeds shall be labeled according to the following schedule:

1. Each container of agricultural seed which is sold, offered for sale, or exposed for sale, within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

*a.* Commonly accepted name of (1) kind, or (2) kind and variety or (3) kind and type of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each in the order of its preponderance.

*b.* Lot number or other lot identification.

*c.* Origin, if known, of alfalfa, red clover. If the origin is unknown, that fact shall be stated.

*d.* Percentage by weight of all weed seeds.

*e.* The name and approximate number of each kind of secondary noxious weed seed, per ounce in groups (1), (2), and (3), and per pound in group (4), when present singly or collectively in excess of:

(1) Five seeds or bulblets per ounce of *Agrostis* species, *Poa* species, Bermuda grass, timothy, orchard grass, fescues (except meadow fescue), alsike and white clover, reed canary grass, and other agricultural seeds of similar size and weight, or mixtures within this group;

(2) Three seeds or bulblets per ounce of rye grass, meadow fescue, foxtail millet, alfalfa, red clover, sweet clover, lespedeza, smooth brome, crimson clover, *Brassica* species, flax, *Agropyron* species, and other agricultural seeds of similar size and weight, or mixtures within this group or of this group with (1);

(3) One seed or bulblet per ounce of proso, Sudan grass and other agricultural seeds of similar size and weight, or mixtures not specified in (1), (2), or (4);

(4) Five seeds or bulblets per pound of wheat, oats, rye, barley, buckwheat, sorghum (except Sudan grass), vetches, soybeans, and



other agricultural seeds of a size and weight similar to or greater than those within this group.

All determinations of noxious weed seeds are subject to tolerances and methods of determination prescribed in the rules and regulations under this chapter.

f. Percentage by weight of agricultural seeds other than those required to be named on the label.

g. Percentage by weight of inert matter.

h. For each named agricultural seed (1) percentage of germination exclusive of hard seed, (2) percentage of hard seed, if present, and (3) the calendar month and year the test was completed to determine such percentages. Following (1) and (2) the additional statement "total germination and hard seed" may be stated as such, if desired.

i. Warning as to danger from poisoning in the case of treated seed if compound is used which is poisonous to man or farm animals.

j. Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

2. Seed sold by the grower on his farm either in bulk or in containers may be exempt from the detailed labeling provision of this section provided that either a placard is displayed or a written or printed statement is supplied to the purchaser with the following information:

a. The percentage germination of the seed being sold together with the calendar month and year said seed was tested to determine the percentage.

b. The kind and number per ounce or pound of all secondary noxious weed seeds in the lot, if in excess of the amounts stated in subsection 1, paragraph e of this section.

c. A guarantee that no primary noxious weed seeds are present as provided under section 199.8, subsection 1, paragraph d. [S13, §§5077-a6, a18, a19, a21; C24, 27, 31, 35, 39, §§3129, 3130, 3131, 3132; C46, 50, 54, §199.3]

Referred to in §§199.4, 199.8, 199.9

**199.4 Sales from bulk.** In case agricultural seed is offered or exposed for sale in bulk or sold from bulk, the information required under section 199.3, subsection 1, may be supplied by (1) a placard conspicuously displayed with the several required items thereon or (2) a printed or written statement to be furnished to any purchaser of said seed.

If sold by the grower on his farm the requirements for labeling under section 199.3, subsection 2, may apply instead of those in this section. [S13, §§5077-a6; C24, 27, 31, 35, 39, §§3133; C46, 50, 54, §199.4]

**199.5 Hybrid corn.** It shall be unlawful for any person to sell, offer or expose for sale, or falsely mark or tag, within the state any seed corn as hybrid unless it represents the first generation of a cross between strains of different parentage and involving inbred lines of corn and (or) their combinations. Any corn

sold as "hybrid" shall have plainly printed or marked on the label or container in which such corn is sold the identifying symbols or numbers, clearly indicating the specific combination. The cross mentioned above shall be produced by cross-fertilization, controlled either by hand or detasseling at the proper time. [C35, §3137-e1; C39, §3137.1; C46, 50, 54, §199.5]

**199.6 Inoculant for legumes.** The container of any inoculant for leguminous plants which is sold, offered for sale, or exposed for sale within the state shall bear a label giving in the English language in legible letters the following information:

1. The kind or kinds of leguminous plants for which the contents are to be used.

2. The quantity of seed to which the contents are to be applied.

3. An expiry date after which the inoculant might be ineffective.

4. The name and place of business of the manufacturer or laboratory of origin, or alternately of the vendor only, if he accepts responsibility for the accuracy of the declarations made in subsections 1, 2, and 3 of this section. [C46, 50, 54, §199.6]

**199.7 Certified seed.** It shall be unlawful for any person to sell, offer for sale or expose for sale in the state:

1. Any agricultural seed, including seed potatoes with a blue tag attached unless same is certified.

2. Any agricultural seed, including seed potatoes, as "Certified" unless:

a. Each container bears a label blue in color with the word "certified" thereon.

b. Such seed has been certified by a duly constituted state authority or state association in the state in which the seed was produced; said state authority or association to be recognized by the Iowa secretary of agriculture. [C35, §§3137-g1, g2; C39, §§3137.3, 3137.4; C46, 50, 54, §199.7]

**199.8 Prohibited acts.** It shall be unlawful for any person to sell, offer for sale, or expose for sale within this state:

1. Any agricultural seed—

a. Unless the test to determine the percentage of germination required by section 199.3 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

b. Not labeled in accordance with the provisions of this chapter, or having a false or misleading labeling.

c. Pertaining to which there has been a false or misleading advertisement.

d. Containing any primary noxious weed seeds. In the enforcement of this subsection, the department shall employ accepted tolerances adopted by the federal seed Act.

Determination of freedom from primary noxious weed seeds shall be based on an examination of not less than—

- (1) One ounce of *Agrostis* species, *Poa* species, Bermuda grass.
- (2) Two ounces of all other grasses except Sudan grass, all clovers, alfalfa, lespedeza, fox-tail millet, flax, and *Brassica* species.
- (3) Five ounces of Proso, Sudan grass.
- (4) Ten ounces of sorghum, buckwheat.
- (5) One pound of cereals, vetches, cowpeas, field peas, soybeans.

e. Containing more than one and one-half percent of weed seeds by weight subject to tolerances prescribed in the rules and regulations.

2. Screenings of any agricultural seed subject to this chapter, unless it is stated on the label, if in containers, or on the invoice, if in bulk, that they are not intended for seeding purposes. For the purpose of this subsection "screenings" shall include chaff, empty forets, immature seed, weed seed, inert matter, and other materials removed in any way from any agricultural seeds subject to the provisions of this chapter, in any kind of cleaning or processing, and which contain less than twenty-five percent of viable agricultural seeds.

It shall further be unlawful for any person within this state:

a. To detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations made and promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this chapter.

b. To disseminate any false or misleading advertisement concerning agricultural seed in any manner or by any means.

c. To hinder or obstruct in any way any authorized person in the performance of his duties under this chapter.

d. To fail to comply with a "stop sale" order. [S13,§5077-a15; C24, 27, 31, 35, 39,§3137; C46, 50, 54,§199.8]

Referred to in §§199.3, 199.9, 199.12

**199.9 Exemptions.**

1. The provisions of sections 199.3 and 199.8, do not apply—

a. To seed or grain not intended for sowing purposes.

b. To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing; provided that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this chapter.

2. No person shall be subject to the penalties of this chapter, for having sold, offered or exposed for sale in this state any agricultural seeds, which were incorrectly labeled or represented as to kind, variety, type, or origin which seeds cannot be identified by examination thereof, unless he has failed to obtain an in-

voice or grower's declaration giving kind, or kind and variety, or kind and type, and origin, if required and to take such other precautions as shown by the records of purchase. [S13, §5077-a20; C24, 27, 31, 35, 39,§3136; C46, 50, 54, §199.9]

**199.10 Co-operation of facilities — samples for purity analysis and germination tests.** The Iowa state college and the state department of agriculture, in order to furnish farmers and dealers with information as to seed quality and to guide them in the proper labeling of seeds for sale, shall:

1. Confer for the purpose of integrating the seed testing by the college seed laboratory which is essential to its educational and research program with the testing of samples by the state department of agriculture in such a way as to avoid unnecessary duplication of personnel and equipment.

2. Co-operate in the exchange of information which will be mutually beneficial to both agencies in matters pertaining to agricultural seed.

3. Agree upon such techniques and methods of analyzing seed as shall promote uniformity in seed testing in this state; said techniques and methods to be in general accord with (a) the rules for seed testing promulgated by the United States department of agriculture for the enforcement of the federal seed act and (b) new methods arising from research in seed technology.

Any resident of this state may submit samples of seed for purity analysis and germination tests.

Charges for each of the first five samples submitted during any one year shall be as follows:

Nonmixtures—

Purity analysis (including noxious weed check) ..... \$1.00  
Germination test ..... 1.00

Mixtures of two or three kinds of agricultural crop seeds—

Purity analysis (including noxious weed check) ..... \$2.00  
Germination test ..... 2.00

Mixtures of more than three kinds of agricultural crop seeds—

Purity analysis (including noxious weed check) ..... \$5.00  
Germination test ..... 5.00

Charges for samples in excess of five during any one year. . . Commercial rates.

[S13,§5077-a12; C24, 27, 31, 35, 39,§3135; C46, 50, 54,§199.10]

**199.11 Authority of secretary of agriculture.** For the purpose of carrying out the provisions of this chapter, the state secretary of agriculture who may act through his authorized agents is hereby authorized and directed:

1. To sample, inspect, make analysis of, and test agricultural seeds transported, sold, offered or exposed for sale within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine

whether said agricultural seeds are in compliance with the provisions of this chapter, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation.

2. To prescribe and, after public hearing following due public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests, and examination of agricultural seed, and the tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce under the federal seed act and such other rules and regulations as may be necessary to secure the efficient enforcement of this chapter.

Further, for the purpose of carrying out the provisions of this chapter, the state secretary of agriculture, individually or through his authorized agents, is authorized and directed:

3. To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this chapter and the rules and regulations thereunder.

4. To issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the state secretary of agriculture or his authorized agents believe is in violation of any of the provisions of this chapter which shall prohibit further sale of such seed until such officer has evidence that the law has been complied with; provided, that the owner or custodian of such seed shall be permitted to remove said seed from a salesroom open to the public; provided further, that in respect to seeds which have been denied sale as provided in this subsection, the owner or custodian of such seeds shall have the right to appeal from such order to a court of competent jurisdiction where the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this chapter.

5. To establish and maintain or make provision for seed testing facilities essential to the enforcement of this chapter, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions.

6. To co-operate with the United States department of agriculture in seed law enforcement. [C46, 50, 54, §199.11]

**199.12 Seizure of unlawful seed.** Upon the recommendation of the state secretary of agriculture or his duly authorized agents, the court of competent jurisdiction in the area in which the seed is located shall cause the seizure and subsequent denaturing, processing, or destruction to prevent the use for sowing purposes of any lot of agricultural seed found to be prohibited from sale as set forth in section 199.8,

subsection 1, paragraphs *d* and *e*, and subsection 2; provided, that in no instance shall the denaturing, processing, or destruction be ordered without first having given the claimant of said seed an opportunity to apply to said court for the release of said seed. [C35, §3137-g3; C39, §3137.5; C46, 50, 54, §199.12]

**199.13 Penalty.** Every violation of the provisions of this chapter shall be deemed a misdemeanor, punishable by a fine of not more than two hundred fifty dollars. The department of agriculture through its duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction to enforce the provisions of this chapter. [C35, §3137-e2; C39, §3137.2; C46, 50, 54, §199.13]

**199.14 Enforcement.** It shall be the duty of the secretary of agriculture, and his agents, to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with him in the enforcement of this chapter. [C35, §3137-g4; C39, §3137.6; C46, 50, 54, §199.14]

Constitutionality, 49GA, ch 130, §15

**199.15 Permit number—fee—fraud.** No person shall sell, distribute, solicit orders for, offer or expose for sale, any agricultural seed without first obtaining from the department a permit number to engage in such business, which permit number shall be affixed to each bag or container of such agricultural seed. No permit number shall be required of persons selling seeds, including seed corn, which has been packed and distributed by a seedsman holding and having in force a permit number as herein provided. No permit number shall be required of persons selling, offering or exposing for sale seed of their own production, provided that such seed is stored or delivered to purchaser only on or from the farm or premises where grown. The fee for each permit number shall be five dollars per annum, and all permit numbers shall expire on the first day of July following date of issue. After due notice given at least ten days prior to a date of hearing fixed by the secretary of agriculture, the department may revoke or refuse to renew any permit issued under the authority of this section, if intent to defraud is established. The failure to fulfill any contract to repurchase the seed crop produced from any agricultural seed, other than hybrid seed corn, if the same meets the requirements set forth in the contract and the standards specified in this chapter, shall be prima-facie evidence of intent to defraud the purchaser at the time of entering into the contract. [C54, §199.15; 56GA, ch 116, §§1, 2]

**199.16 Permit holder's bond.** It shall be unlawful for the holder of any permit to enter into a contract with a purchaser of any agricultural seed other than hybrid seed corn, whereby the permit holder agrees to repurchase the seed crop produced therefrom at a price in excess of the current market price at time of delivery, unless the permit holder shall have on file with the department of agri-

culture a bond, in a penal sum of ten thousand dollars running to the state of Iowa, with sureties approved by the secretary of agriculture, for the use and benefit of any purchaser of seed holding such a contract who might have a cause of action of any nature arising from or out of such purchase or agreement, provided, however, that the aggregate liability of the surety to all such purchasers shall, in no event, exceed the sum of such bond; and provided, further, however, that any permit holder may, upon the filing of a notarized and

detailed financial statement, request that such showing be accepted in lieu of the bond and ask to be exonerated from the filing of the bond herein required. If, after considering the financial statement and any other evidence submitted, the secretary of agriculture finds that the applicant permit holder is accountable for the performance of such contract obligations the notarized financial statement shall be filed in lieu of the bond and applicant shall be so advised by registered mail. [56GA, ch 116,§3]

CHAPTER 200

FERTILIZERS AND SOIL AMENDMENTS

Chapter 200, Code 1954, repealed by 57GA, ch 103,§23  
 General penalty, §189.19

- 200.1 Title.
- 200.2 Enforcing official.
- 200.3 Definitions of words and terms.
- 200.4 Registration.
- 200.5 Labeling.
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- 200.7 Fertilizer-pesticide mixtures.
- 200.8 Inspection fees.
- 200.9 Deposit in general fund.
- 200.10 Grade list.
- 200.11 Inspection, sampling, analysis.

- 200.12 Filler material.
- 200.13 False or misleading statements.
- 200.14 Reports and publications.
- 200.15 Rules and regulations.
- 200.16 Cancellation of registrations and licenses.
- 200.17 "Stop sale" orders.
- 200.18 Seizure, condemnation, and sale.
- 200.19 Violations.
- 200.20 Exchanges between manufacturers.
- 200.21 Analysis of commercial fertilizers—fee.

**200.1 Title.** This chapter shall be known and may be cited by the short title of the "Iowa Fertilizer Law". [C46, 50, 54,§200.1; 57GA, ch 103,§1]

**200.2 Enforcing official.** This chapter shall be administered by the secretary of agriculture of the state of Iowa, hereinafter referred to as the secretary. [C46, 50, 54,§200.2; 57GA, ch 103,§2]

**200.3 Definitions of words and terms.** When used in this chapter:

1. The term "fertilizer material" means any substance containing nitrogen, phosphorus, potassium, or any recognized plant nutrient element or compound which is used for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures, lime, limestone, marl, and unground bones.
2. The term "unmanipulated manures" means any substances composed primarily of excreta, plant remains, or mixtures of such substances which have not been processed in any manner.
3. The term "mixed fertilizer" means any combination or mixture of fertilizer material designed for use or claimed to have value in promoting plant growth.
4. The term "commercial fertilizer" includes mixed fertilizer and fertilizer materials and fertilizer-pesticide mixtures.
5. The term "specialty fertilizer" means commercial fertilizer distributed primarily for

use on crops grown for noncommercial purposes such as home gardens and lawns.

6. The term "bulk fertilizer" shall mean commercial fertilizer delivered to the purchaser in the solid, liquid, or gaseous state, in a non-packaged form to which a label cannot be attached.

7. The term "pesticide" as used in this chapter means insecticides, miticides, and nematocides.

8. A "soil amendment" is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or recognized pesticides which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.

9. The term "brand" means a term design or trade-mark used in connection with one or several grades of commercial fertilizer.

10. The term "grade" means the percentages of total nitrogen, available phosphorous or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis".

11. *Guaranteed analysis:*

a. The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) .....—per cent

Available Phosphoric

Acid ( $P_2O_5$ ) .....per cent  
Soluble Potash ( $K_2O$ ).....per cent

b. The term "guaranteed analysis", in the form specified in paragraph *a* includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or phosphoric acid and the degree of fineness. For bone tankage and other organic phosphatic materials, total phosphorus or phosphoric acid.

(2) When any such additional plant nutrient elements are claimed they shall be included in the guarantee, expressed as the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the association of official agricultural chemists.

12. The term "official sample" means any sample of commercial fertilizer taken by the secretary or his agent.

13. The term "ton" means a net weight of two thousand pounds avoirdupois.

14. The term "percent" or "percentage" means the percentage by weight.

15. The term "person" includes individual, partnership, association, firm, and corporation.

16. The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes.

17. The term "sell" or "sale" includes exchange.

18. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular. [C46, 50, 54, §200.3; 56GA, ch 117,§1; 57GA, ch 103,§3]

Referred to in §§200.11, 200.21

#### 200.4 Registration.

1. Each brand and grade of commercial fertilizer and each soil amendment shall be registered by the manufacturer before being offered for sale, sold, or distributed in this state. The application for registration shall be submitted to the secretary on forms furnished by the secretary and shall be accompanied by a fee of one dollar for each grade per brand of commercial fertilizer and for each soil amendment. Upon approval by the secretary, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 each year. The application shall include the following information in the following order:

- a. The net weight.
- b. The name and address of the registrant.
- c. The brand.
- d. The grade.
- e. The guaranteed analysis.

2. In addition to the information required in paragraphs *a*, *b*, *c*, *d*, and *e* in subsection 1 of this section, applications for registration of soil amendments must include the name or

chemical designation and content of the active ingredients.

3. A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under this chapter by another person. [S13, §§2528-f, f1; C24, 27, 31, 35, 39, §§3139-3141; C46, 50, 54, §200.4; 56GA, ch 117,§2; 57GA, ch 103,§4]

Referred to in §§200.5, 200.7, 200.9, 200.14

#### 200.5 Labeling.

1. Any commercial fertilizer offered for sale or sold or distributed in this state in bags, or other containers, shall have placed on or affixed to the container in legibly written or printed form the information required by paragraphs *a*, *b*, *c*, and *d*; or *a*, *b*, *c*, and *e* of subsection 1 of section 200.4; either on tags affixed to the end of the package between the ears or on the sewed end or directly on the package.

2. If distributed in bulk, a written or printed statement of the weight and the information required by paragraphs *a*, *b*, *c*, and *d*; or *a*, *b*, *c*, and *e* of subsection 1 of section 200.4 shall accompany delivery and be supplied to the purchaser.

3. Soil amendments shall be labeled in accordance with subsections 1 and 2 of this section and in addition shall show the name or chemical designation and content of the active ingredients. [S13, §2528-f; C24, 27, 31, 35, 39, §3142; C46, 50, 54, §200.5; 56GA, ch 117,§3; 57GA, ch 103,§5]

Referred to in §§200.7, 200.14

#### 200.6 Licenses.

1. Any person who manufactures, mixes, or mixes to customer's order any fertilizer material or soil amendment offered for sale, sold, or distributed in Iowa must first obtain a license from the secretary of agriculture.

2. Said licensee shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizer materials are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

3. In lieu of the guaranteed analysis, the person who mixes to the customer's order must furnish to the purchaser and consumer an invoice or delivery ticket showing the weight and guaranteed analysis of each of the fertilizer materials or soil amendments used in the intimate mixture or delivered in each of the separate compartments in the load.

4. Any licensee required to be licensed under subsection 1 hereof who sells only registered grades shall pay a ten dollar license fee as well as a registration fee, and all other licensees shall pay a twenty-dollar license fee. Said license fee shall be paid annually on July 1. [C46, 50, 54, §§200.2, 200.4, 200.6; 57GA, ch 103,§6]

Referred to in §§200.7, 200.9

**200.7 Fertilizer-pesticide mixtures.** Only those persons licensed under section 200.6 shall

be permitted to add insecticides or pesticides to commercial fertilizers. These persons shall at all times produce a uniform mixture of fertilizer and pesticide.

Each grade of fertilizer-pesticide mixture shall be registered separately and all registrations shall expire on June 30. The secretary or his agent, upon advice or recommendation of the director of the Iowa agricultural experiment station, shall prior to June 30 of each year, or as early thereafter as practicable, promulgate a list of fertilizer-pesticide mixtures adequate to meet the agricultural needs of the state. Such list is only for the guidance of manufacturers, distributors and users, and additional fertilizer-pesticide mixtures may be submitted to the secretary for approval, and upon approval, shall be included in the list.

In addition to the information required for registration as a commercial fertilizer, such mixtures shall comply with the provisions of section 200.4, as well as the insecticide and fungicide act, chapter 206 and the label or invoice if sold in bulk further shall state the common name and the pounds of active ingredients of pesticides per ton of fertilizer mixture and adequate directions for its use.

All items required in section 200.5 shall appear on the label. [C46, 50, 54, §200.7, 200.11; 57GA, ch 103, §7]

#### 200.8 Inspection fees.

1. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil amendments sold, or distributed in this state, an inspection fee at the rate of ten cents per ton: Provided, that sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms, or corporations from the payment thereof.

2. Every licensee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil amendments distributed in this state by grade for each county during the preceding six months period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section.

b. If the tonnage report is not filed and the payment of inspection fees is not made within ten days after the date due, a penalty amounting to ten percent, minimum fifty dollars, of the amount due shall be assessed against the licensee and the amount of fees due plus penalty shall constitute a debt and become the basis of a judgment against the licensee. [C46, 50, 54, §200.15; 57GA, ch 103, §8]

Referred to in §200.9

**200.9 Deposit in general fund.** Fees collected for registration, licenses, inspection and analysis under sections 200.4, 200.6, 200.8 and

200.21 of this chapter received by the secretary, shall be remitted to the treasurer of state upon receipt, and all such fees collected and remitted shall be placed in the general fund by the treasurer of state. [C46, 50, 54, §200.15; 57GA, ch 103, §9]

**200.10 Grade list.** The secretary, upon advice or recommendation by the director of the Iowa agricultural experiment station, shall, prior to June 30 of each year, or as early thereafter as practicable, promulgate a list of grades of mixed fertilizers adequate to meet the agricultural needs of the state. Such list is only for the guidance of manufacturers, distributors and users and additional fertilizer mixtures may be submitted to the secretary for approval and upon approval shall be included in the list. [C46, 50, 54, §200.7; 57GA, ch 103, §10]

#### 200.11 Inspection, sampling, analysis.

1. It shall be the duty of the secretary, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers or soil amendments distributed within this state at time and place and to such an extent as he may deem necessary, to determine whether such commercial fertilizers and soil amendments are in compliance with the provisions of this chapter. In the performance of the foregoing duty, the secretary shall counsel with the director of the Iowa agricultural experimental station in respect to the time, place and extent of sampling. The secretary, individually or through his agent, is authorized to enter upon any public or private premises or conveyances during regular business hours in order to have access to commercial fertilizers or soil amendments subject to the provisions of this chapter and the rules and regulations pertaining thereto. It shall be the duty of the secretary to maintain a laboratory with the necessary equipment and to employ such employees as may be necessary to aid in the administration and enforcement of this chapter.

2. The official methods of sampling and analysis prescribed by the association of official agricultural chemists shall be followed in making the chemical analysis provided for in this section and the secretary shall from time to time publish as a part of the regulations under this chapter, any changes that may hereafter be made in such official methods and thereafter such methods shall be followed in connection with the administration of this chapter in lieu of those previously enforced.

The findings of the state chemist or his deputy, as shown by the sworn statement of the results of analysis of official samples of any brand of commercial fertilizer, fertilizer material or soil amendment, shall constitute prima-facie evidence of their correctness in the courts of this state, as to the particular lots sampled and analyzed.

3. The secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, or soil amendment deficient in guaranteed active

ingredients, shall be guided solely by the official sample as defined in subsection 12 of section 200.3, and obtained and analyzed as provided for in subsection 2 of this section.

4. The results of official analysis of any commercial fertilizer or soil amendment which has been found to be in violation of any provision of this chapter, shall be forwarded by the secretary to the registrant. Upon request, the secretary shall furnish to the registrant a portion of any such sample. [C46, 50, 54, §§200.8, 200.9; 57GA, ch 103,§11]

**200.12 Filler material.** It shall be unlawful for any person to manufacture, offer for sale or sell in this state, any commercial fertilizer, fertilizer material or soil amendment containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such commercial fertilizer, fertilizer material or soil amendment as a filler any substance that contains inert plant food material for the purpose or with the effect of deceiving or defrauding the purchaser. [C46, 50, 54,§200.10; 57GA, ch 103,§12]

**200.13 False or misleading statements.** A commercial fertilizer or soil amendment is misbranded if it carries any false or misleading statement upon or attached to the container or stated on the invoice or delivery ticket, or if false or misleading statements concerning its agricultural value are made on the container or on the invoice or delivery ticket, or in any advertising matter whatsoever connected with accompanying or associated with the commercial fertilizer or soil amendment. It shall be unlawful to distribute a misbranded commercial fertilizer or soil amendment. [C46, 50, 54,§200.11; 57GA, ch 103,§13]

**200.14 Reports and publications.** The secretary shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable. The secretary shall report semiannually by counties the results of the analysis based on official samples taken of commercial fertilizers sold within the state as compared with the analyses guaranteed under section 200.4 and section 200.5 together with name and address of the manufacturer, and name and address of the owner or custodian of such commercial fertilizer at the time the official sample was taken. A copy of this semiannual report by individual counties will be mailed by the secretary to each corresponding county extension director in the state. [C46, 50, 54, §200.13; 57GA, ch 103,§14]

**200.15 Rules and regulations.** For the enforcement of this chapter, the secretary is authorized to prepare and issue such rules and regulations relating to the manufacture and the distribution of commercial fertilizers and soil amendments as he may find necessary to carry into effect the full intent and meaning of

this chapter. [C46, 50, 54,§200.13; 57GA, ch 103, §15]

**200.16 Cancellation of registrations and licenses.** The secretary is authorized and empowered to cancel the registration of any brand of commercial fertilizer or soil amendment or license or to refuse to register any brand of commercial fertilizer or soil amendment or refuse to license any applicant as herein provided, upon satisfactory evidence that the registrant or licensee has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this chapter or any rules and regulations promulgated thereunder: Provided, that no registration or license shall be revoked or refused until the registrant or licensee shall have been given the opportunity to appear for a hearing by the secretary. [C46, 50, 54,§200.11; 57GA, ch 103,§16]

**200.17 "Stop sale" orders.** The secretary may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil amendment, and to hold at a designated place when the secretary finds said commercial fertilizer or soil amendment is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and said commercial fertilizer or soil amendment is released in writing by the secretary or said violation has been otherwise legally disposed of by written authority, and all costs and expenses incurred in connection with the withdrawal have been paid. [57GA, ch 103, §17]

**200.18 Seizure, condemnation, and sale.** Any lot of commercial fertilizer or soil amendment not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the county or adjoining county in which said commercial fertilizer or soil amendment is located. In the event the court finds the said commercial fertilizer or soil amendment to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil amendment, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil amendment and the laws of the state: Provided, that in no instance shall the disposition of said commercial fertilizer or soil amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil amendment or for permission to reprocess or relabel said commercial fertilizer or soil amendment to bring it into compliance with this chapter. [57GA, ch 103,§18]

**200.19 Violations.**

1. If it shall appear from the examination of any commercial fertilizer or soil amendment that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause

notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars.

3. Nothing in this chapter shall be construed as requiring the secretary or his representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when he believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued

without bond. [C46, 50, 54,§§200.11, 200.14; 57GA, ch 103,§19]

See §189.19

**200.20 Exchanges between manufacturers.** Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendment to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter. [C46, 50, 54, §§200.5, 200.12; 56GA, ch 117,§3; 57GA, ch 103, §20]

**200.21 Analysis of commercial fertilizers—fee.** Any person purchasing any commercial fertilizers in this state for his own use may submit without charge, two fair samples of said commercial fertilizers stating the guaranteed analysis as set forth in section 200.3, subsection 11, paragraph *a*, within any six-month period to the secretary with any additional samples accompanied by an analysis fee for each sample of:

1. One dollar for total nitrogen.
2. Two dollars for available phosphoric acid or phosphorous.
3. Two dollars for soluble potash or potassium. A proper analysis of the same shall be made and furnished in writing as to said guaranteed analysis as set forth in section 200.3, subsection 11, paragraph *a*. [C46, 50, 54, §200.3; 56GA, ch 117,§1; 57GA, ch 103,§21]

Referred to in §200.9  
Constitutionality, 57GA, ch 103, §22  
Omnibus repeal, 57GA, ch 103, §24

CHAPTER 201  
AGRICULTURAL LIME

General penalty, §189.19

- 201.1 Application for license.
- 201.2 Issuance of license.
- 201.3 Fees.
- 201.4 Definitions.
- 201.5 Analysis on label.
- 201.6 Penal offenses.
- 201.7 Analysis by department.

- 201.8 Samples submitted.
- 201.9 Samples undamaged.
- 201.10 Rules and regulations.
- 201.11 Report of secretary.
- 201.12 Statement.
- 201.13 Penalties.

**201.1 Application for license.** Before any person shall sell, offer for sale, or dispose of in this state any agricultural lime to be used for the correction of soil acidity, such person shall file with the secretary of agriculture an acceptable application for a license to sell, together with the license fee, which application shall be sworn to before a notary public, or other proper official, stating the name of the manufacturer, or shipper, the location of the principal office of the manufacturer or shipper, the name, brand, or trade-mark under which the agricultural lime will be sold, on or before the thirty-first day of January in each year,

and the net tons sold during the previous year. [C46, 50, 54,§201.1]

**201.2 Issuance of license.** Upon the acceptance of the above application and the proper fees, the secretary of agriculture shall issue a license for the current year. The payment of such license fee shall exempt an agent or dealer of said licensee therein from the requirements of this section. All licenses shall expire on the thirty-first day of January in each year. [C46, 50, 54,§201.2]

**201.3 Fees.** The annual license fee shall be computed as follows: For an anticipated sale of



five hundred tons, five dollars; for a total anticipated sale of one thousand five hundred tons, fifteen dollars; for a total anticipated sale of two thousand five hundred or more tons, twenty-five dollars. In case of doubt on the part of the secretary of agriculture that any person, firm, or corporation engaged in the sale of agricultural lime has failed\* to secure an adequate license for the actual tonnage of such agricultural lime sold by said person during the previous year, the secretary of agriculture, or his legal representative, shall have access to and audit the books of said person, firm, or corporation. In case a shortage in tonnage is shown by such audit, the secretary of agriculture may bring prosecution as provided in section 201.6. [C46, 50, 54, §201.3]

Referred to in §201.6

\*According to enrolled act.

**201.4 Definitions.** The term "agricultural lime" or "limestone" as herein used, shall include all calcium and magnesium products sold for agricultural purposes in the oxide, hydrate, or carbonate form; such form being designated as quicklime, hydrated lime, carbonate of lime, and ground limestone. [C46, 50, 54, §201.4]

**201.5 Analysis on label.** Any person who shall sell, offer or expose for sale any agricultural lime in this state shall affix, or cause to be affixed, to every package or sample of such agricultural lime in a conspicuous place on the outside thereof a tag, label, or waybill which shall be accepted as a guarantee of the manufacturer, importer, dealer, agent or person, and which shall have plainly printed thereon in the English language the number of net pounds of agricultural lime in the package or lot, the name, brand, or trade-mark under which the agricultural lime is sold, the name of the manufacturer or shipper, the location of the principal office of the manufacturer and the guaranteed analysis of the total neutralizing power in terms of calcium carbonate equivalent, and the percent of the total material that will pass through a number fifty mesh sieve, and the percent of the total material that will pass through a number eight mesh sieve, and the percent of the total material that will pass through a number four mesh sieve. By a "number four", "number eight", and "number fifty" mesh sieve are meant four, eight, and fifty meshes respectively per linear inch, according to the specifications of the American Society for Testing Materials. When agricultural lime is sold in bulk, a tag or waybill as hereinbefore described shall be delivered to the consumer. In case of agricultural lime sold at factory or shipped in bulk, or delivered in wagon or truck loads or other conveyances, it shall be accompanied by at least one such statement as above required. No other form of analysis, and no duplication of terms or the equivalent thereof in other terms shall be used, and no percentage higher than actually guaranteed shall be applied to a package or lot, or branded upon the bag, or used in printed matter descriptive of such material, and no false or misleading name, brand, or

trade-mark shall be used in designating it. Five percent tolerance shall be allowed on grades of fineness and on calcium carbonate equivalent. [C27, 31, 35, §3142-b1; C39, §3142.01; C46, 50, 54, §201.5]

**201.6 Penal offenses.** Whoever sells, offers for sale or exposes for sale or distribution any package or sample or any quantity of agricultural lime or limestone without complying with the provisions of this chapter relating to agricultural lime to be used for the correction of soil acidity, or permits any claim or guarantee to accompany or be printed or stamped on any parcel or waybill, lot or container, stating that the contents contain a higher percent of calcium carbonate equivalent than it does in fact contain, or who shall adulterate any agricultural lime with foreign mineral matter or other foreign substances without plainly stating on the guarantee as described in section 201.3 the kind and amount of such mixture, or who shall adulterate the same with any substance injurious to the growth of plants, or make any false report, shall be deemed guilty of a misdemeanor. On conviction thereof he shall be fined not less than fifty dollars nor more than one hundred dollars, and the secretary of agriculture may revoke his license. In all litigation arising from the purchase or sale or disposal of any agricultural lime in which the composition of the same may be involved, a certified copy of the official analysis signed by an official chemist shall be accepted as prima-facie evidence of the composition of such agricultural lime. The possession of agricultural lime, except by a person who has the same for his private use, without complying with the provisions of this chapter relative to agricultural lime, in any building, room, railroad equipment, store, storeroom, warehouse, truck, or other place within this state shall be prima-facie evidence of keeping the same for the purpose of selling or disposal. In all prosecutions under this chapter a justice of the peace, police judge, or mayor, shall have jurisdiction with the right of appeal to the district court by certiorari. It shall be the duty of the secretary of agriculture or his deputized representative to bring prosecution for all violations under the provisions of this chapter, or action may be commenced by the attorney general when requested to do so by the said secretary. A person authorized by law to prosecute a case under the provisions of this chapter shall not be required to advance or secure costs therein. If the defendant be acquitted or discharged from custody, or if he be convicted and committed in default of the payment of fine and costs, such costs shall be certified under oath by the court to the county auditor who shall, when verified, issue a warrant on the county treasurer payable to the person or persons entitled thereto. The secretary of agriculture shall rest his prosecution under this chapter on samples collected as provided in section 201.7. [C27, 31, 35, §3142-b8; C39, §3142.08; C46, 50, 54, §201.6]

Referred to in §201.3  
Penalties, §201.13

**201.7 Analysis by department.** The secretary of agriculture shall annually analyze, or cause to be analyzed, at least one sample of agricultural lime exposed for sale or disposal or offered for sale within the state under the provisions of this chapter, if found exposed for sale upon the markets of the state. The secretary of agriculture is hereby authorized either in person or by deputies to collect a representative sample for said analysis from any lot or package of agricultural lime which may be in the possession of any purchaser, manufacturer, shipper, employer, agent, or dealer therein, or any transportation agency in the state. The result of the analysis of the sample or samples so procured, together with such additional information as circumstances advise or suggest, shall be set out in reports or bulletins issued from time to time, and also be a basis upon which prosecution may be brought. [C46, 50, 54,§201.7]

Referred to in §201.6

**201.8 Samples submitted.** Any producer of limestone or person purchasing any agricultural lime in this state for his own use may submit fair samples of said lime to the department, accompanied by an analysis fee of one dollar for each sample, and a proper analysis of the same shall be made and furnished. [C27, 31, 35,§3142-b5; C39,§3142.05; C46, 50, 54,§201.8]

**201.9 Samples undamaged.** All samples of agricultural lime to be used for analysis by or under the direction of the secretary of agriculture shall be from goods that have not been damaged while in transit or storage. [C46, 50, 54,§201.9]

**201.10 Rules and regulations.** The secretary of agriculture is hereby empowered to pre-

scribe and enforce such rules and regulations relating to agricultural lime as may be deemed necessary to carry into effect the full intent and meaning of this chapter, and to refuse the registration of any agricultural lime under a name or claim which would be misleading. [C46, 50, 54,§201.10]

**201.11 Report of secretary.** The moneys received under the provisions of this chapter shall be paid into the state treasury. The secretary of agriculture shall in his report made from time to time include a detailed statement of the samples taken, analysis claimed by the person or persons offering to sell agricultural lime or sending samples of same and the analysis made by the secretary of agriculture. [C46, 50, 54,§201.11]

**201.12 Statement.** The secretary of agriculture shall include in all reports published under this chapter a statement of moneys received from license fees for the sale of agricultural lime and of fines collected from prosecutions in the enforcement of this chapter. [C46, 50, 54,§201.12]

**201.13 Penalties.** Any person who shall obstruct the secretary of agriculture or his agents or representatives when in the discharge of any duty or duties prescribed by this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than thirty days in jail, or by both such fine and imprisonment. [C46, 50, 54,§201.13]

Constitutionality, 51GA, ch 111,§14  
See also §201.b

## CHAPTER 202

### COUNTY LIMESTONE QUARRIES

- 202.1 Board may establish.
- 202.2 Equipment to operate.
- 202.3 Petition by farm owners.
- 202.4 Assessment lien.
- 202.5 Interest on installments.
- 202.6 Anticipatory warrants.

- 202.7 Contents of warrants.
- 202.8 Registration—call.
- 202.9 Price of lime.
- 202.10 Cost calculated.
- 202.11 Relief labor.

**202.1 Board may establish.** The board of supervisors of any county where there is no privately owned quarry, or when a privately owned quarry is unable to supply limestone in the same amount and at the same price and terms, shall have the jurisdiction, power and authority, at any regular, special or adjourned session to establish, locate, acquire by purchase, condemnation or lease for the county use, any limestone quarry not at that time being operated by private individuals, corporations or associations, suitable for agricultural purposes. Such quarry shall not be so established, located, acquired, or leased unless and until the board has determined by actual investigation that the county can produce by

such method lime at less cost than lime of the same quality may be purchased by the county and delivered in the county from other sources. [C39,§3142.09; C46, 50, 54,§202.1]

**202.2 Equipment to operate.** The board of supervisors shall have the authority and power to acquire such equipment as it shall deem necessary for the operation of any limestone quarry acquired for the production of agricultural lime. [C39,§3142.10; C46, 50, 54,§202.2]

**202.3 Petition by farm owners.** When a petition signed by fifty or more owners of farms within the county requesting the board of supervisors to sell lime to them under this

chapter is filed with the board of supervisors, or when a petition signed by any number of owners of farms within the county requesting the board of supervisors to sell to them under this chapter an amount of lime aggregating not less than five thousand ton, is filed with the board of supervisors, said board may provide for and sell, under the provisions of this chapter, such lime as is requested to the said farm owners signing the petition and to any others requesting such sale of lime. [C39,§3142.11; C46, 50, 54,§202.3]

**202.4 Assessment lien.** The board shall have full power and authority to quarry, pulverize and sell or to purchase and resell to said farm owners in their respective counties, limestone for their use on their farms and may either sell same for cash, or on application of any farm owner in the county, written notice having been first given to the mortgage or lien holder and consent of said lien holders having been obtained in writing, which consent shall be filed in the office of the county auditor, provide agricultural lime, and deliver same to farm of applicant, payment for same to be provided for by a special assessment tax levy against the real estate so benefited in the amount of the sales value and transportation of said agricultural lime, which assessment shall be payable at the option of the owner of the farm or his legal heirs or assignees in its entirety on or before December 1 following the receipt of said lime or may be paid in five equal annual installments payable on March 1 of each succeeding year with the ordinary taxes until said special assessment is fully paid. The special assessment shall, by consent, be a lien prior to any lien or liens upon said real estate. [C39,§3142.12; C46, 50, 54,§202.4]

Referred to in §202.5

**202.5 Interest on installments.** All unpaid installments of the special assessment tax levied against the property described in section 202.4 shall bear interest at the rate of six percent and all delinquent installments shall be subject to the same penalties as are now applied to delinquent general taxes. [C39,§3142.13; C46, 50, 54,§202.5]

**202.6 Anticipatory warrants.** The board shall have the authority for the purpose of financing and carrying out the provisions of this chapter to issue anticipatory warrants drawn on the county, in denominations of one hundred dollars, five hundred dollars and one thousand dollars, which anticipatory warrants shall draw interest at not more than three and one-half percent per annum; and shall not be a general obligation on the county and be secured only by the special assessment tax levy as herein provided. [C39,§3142.14; C46, 50, 54,§202.6]

**202.7 Contents of warrants.** All such anticipatory warrants shall be signed by the chairman of the board of supervisors and attested by the county auditor with his official seal attached thereto, and dated as of the date of sale, and shall not be sold for less than par value. Said bonds may be drawn and sold from time to time as the need for funds to carry out the purpose of this chapter arises. [C39, §3142.15; C46, 50, 54,§202.7]

**202.8 Registration — call.** All anticipatory warrants drawn under the provisions of this chapter, shall be numbered consecutively, and be registered in the office of the county treasurer and be subject to call in numerical order at any time when sufficient money derived from the sale of such limestone or the payment of a special assessment levied therefor, is in the hands of the county treasurer to retire any of said warrants together with accrued interest thereon. [C39,§3142.16; C46, 50, 54,§202.8]

**202.9 Price of lime.** The cost price of this agricultural lime shall be fixed by the board of supervisors, at not less than the actual cost of production at the quarry with ten percent added to provide for the cost of and depreciation on the equipment used in the production of said agricultural lime, together with any cost in transportation of the lime from the quarry to the farm of applicant. [C39,§3142.17; C46, 50, 54,§202.9]

Referred to in §202.10

**202.10 Cost calculated.** In calculating the cost price of the agricultural lime to the county as referred to in section 202.9, all elements of the cost of the operations, including the amortization of the purchase price of any quarries, lands, or equipment over the period during which any bonds, warrants or other obligations incurred by the county therefor shall mature, cost of all labor, proportionate and actual administrative overhead of county officials and other county executive employees in administering said chapter and conducting said business, repairs to plant machinery and equipment, wages of all employees and all other costs of production shall be kept in a separate system of accounts, and all books and records with respect to the cost of said agricultural limestone and the methods of book-keeping and all records in connection with the production, disposal and sale of said agricultural limestone shall be open to the inspection of the public at all times. [C39,§3142.18; C46, 50, 54,§202.10]

**202.11 Relief labor.** The board is specifically authorized to use relief labor in the production of agricultural lime as provided for in this chapter, but shall pay the prevailing labor scale for that type of work, customary in that vicinity. [C39,§3142.19; C46, 50, 54,§202.11]

## CHAPTER 203

## ADULTERATION AND LABELING OF DRUGS

Referred to in §§147.99, 155.3, 155.13, 159.6, 189.2, 205.11, 205.12, 205.13  
General penalty, §189.19

203.1 Defined.

203.2 "Adulteration" defined.

203.3 Labeling of drugs.

203.4 Curative or therapeutic mislabeling.

203.5 Certain drugs exempted.

203.6 "Itinerant vendor of drugs" defined.

203.7 License required of itinerant—fee.

203.8 Commercial foods excepted.

203.9 Pharmacopoeia and National Formulary.

**203.1 Defined.** For the purposes of this chapter "drug" shall include all substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary and any substances or mixture of substances intended to be used for the cure, mitigation, or prevention of diseases of either man or animal. [S13,§4999-a33; C24, 27, 31, 35, 39,§3143; C46, 50, 54,§203.1]

Similar statute, §155.3

**203.2 "Adulteration" defined.** For the purposes of this chapter a drug shall be deemed to be adulterated:

1. If it is sold by a name recognized in the United States Pharmacopoeia or National Formulary and it differs from the standard of strength, quality, or purity as determined by the test laid down therein.

2. If its strength, quality, or purity falls below the standard under which sold. [S13, §4999-a34; C24, 27, 31, 35, 39,§3144; C46, 50, 54, §203.2]

**203.3 Labeling of drugs.** Every drug offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9 and 189.10, except that the quantity of the contents need not be stated; and in addition thereto shall have printed on the label the name and the exact quantity or proportion of any alcohol, morphine, opium, heroin, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained in said drug. In case the principal package or container is inclosed in an outside wrapper or carton, the same label prescribed by this section for the package or container shall also be printed upon said wrapper or carton. [S13,§4999-a35; C24, 27, 31, 35, 39, §3145; C46, 50, 54,§203.3]

Referred to in §§203.4, 203.5

**203.4 Curative or therapeutic mislabeling.** In addition to the requirements of section 203.3 a drug shall also be deemed to be improperly labeled if the package or container or printed matter accompanying it bears or contains any representation regarding the curative or therapeutic effect of such drug or any of the ingredients contained therein which is false and fraudulent. [S13,§4999-a35; C24, 27, 31, 35, 39, §3146; C46, 50, 54,§203.4]

**203.5 Certain drugs exempted.** Nothing in section 203.3 shall be construed to apply:

1. To any drug specified in the United States Pharmacopoeia or National Formulary, which is in accordance therewith, and which is sold under the name given therein.

2. To the filling of prescriptions furnished by licensed physicians, dentists, or veterinarians, the originals of which are retained and filed by the pharmacist filling the same.

3. To any drug or medicine personally dispensed by any licensed physician, dentist, or veterinarian in the course of his practice. [S13, §4999-a35; C24, 27, 31, 35, 39,§3147; C46, 50, 54, §203.5]

**203.6 "Itinerant vendor of drugs" defined.** "Itinerant vendor of drugs" shall mean any person who goes from place to place, or from house to house, and sells, offers or exposes for sale any drug as defined in this chapter. [C97, §2594; S13,§2594; C24, 27, 31, 35, 39,§3148; C46, 50, 54,§203.6]

Referred to in §81.1, subsection 2(c)

**203.7 License required of itinerant — fee.** Every itinerant vendor of drugs or medicines shall procure an annual license from the pharmacy examiners. The fee for such license shall be fifty dollars; such license may be transferred by the licensee upon the payment of a fee of one dollar to the pharmacy examiners. No license fee shall be required from any person who exclusively takes bona fide orders for transmission to the company and where such orders are shipped direct to the customer by or through a common carrier. [C97,§2594; S13, §2594; C24, 27, 31, 35, 39,§3149; C46, 50, 54, §203.7]

Referred to in §81.1, subsection 2(c)

**203.8 Commercial foods excepted.** Nothing in this chapter shall be construed as applying to commercial foods so defined in subsection 1 of section 198.1. [C35,§3149-e1; C39,§3149.1; C46, 50, 54,§203.8]

**203.9 Pharmacopoeia and National Formulary.** There shall be kept in every place in which drugs or medicines are compounded, a copy of the latest revision of the United States Pharmacopoeia and the National Formulary, which books shall be subject at all times to the inspection of the pharmacy examiners. [C24, 27, 31, 35, 39,§3150; C46, 50, 54,§203.9]

## CHAPTER 203A

## IOWA DRUG AND COSMETIC ACT

Referred to in §155.13

203A.1	Intent of law.	203A.11	Application to sell new drugs.
203A.2	Definitions.	203A.12	Adulterated cosmetics.
203A.3	Prohibited acts.	203A.13	Misbranded cosmetics.
203A.4	Injunction.	203A.14	False advertising.
203A.5	Penalties.	203A.15	Regulations by board.
203A.6	Detained or embargoed articles.	203A.16	Authority of board.
203A.7	Prosecution.	203A.17	Dissemination of information.
203A.8	Minor violations.	203A.18	Analysis by state chemist.
203A.9	What deemed adulterated.	203A.19	Exception to chapter.
203A.10	What deemed misbranded.		

**203A.1 Intent of law.** This chapter may be cited as the Iowa Drug and Cosmetic Act. The legislative intent is hereby declared to be the enactment of a law which, in its essential provisions, shall be uniform with the Federal Drug and Cosmetic Act and the laws of those states which make similar enactments, and which, through the adoption of regulations conforming to those from time to time promulgated under the said federal Act, will maintain uniformity therewith and insure co-ordination of the enforcement hereof with that of the said federal Act. [C50, 54, §203A.1]

**203A.2 Definitions.** For the purpose of this chapter:

1. The term "board" means the board of pharmacy examiners provided for in chapter 147.

2. The term "person" includes individual, partnership, corporation, and association.

3. The term "drug" means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man; and (c) articles (other than food) intended to affect the structure or any function of the body of man; and (d) articles intended for use as a component of any article specified in clause a, b, or c; but does not include devices or their components, parts, or accessories.

4. The term "device" (except when used in subsection 10 of this section and section 203A.3 subsection 7, and section 203A.10 subsection 2, and section 203A.13 subsection 3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man; or (b) to affect the structure or any function of the body of man.

5. The term "cosmetic" means (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (b)

articles intended for use as a component of any such articles, except that such term shall not include soap.

6. The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

7. The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

8. The term "immediate container" does not include package liners.

9. The term "labeling" means all labels and other written, printed, or graphic matter (a) upon an article or any of its containers or wrappers, or (b) accompanying such article.

10. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things), not only representations made or suggested by statement, words, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

11. The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

12. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involved prolonged contact with the body.

13. The term "new drug" means (a) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (b) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

14. The term "contaminated with filth" applies to any drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

15. The provisions of this chapter regarding the selling of drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such articles in the conduct of any drug, or cosmetic establishment.

16. The term "federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.). [C50, 54, §203A.2]

**203A.3 Prohibited acts.** The following acts and the causing thereof within the state of Iowa are hereby prohibited:

1. The manufacture, sale, or delivery, holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic.

3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 203A.11.

5. The dissemination of any false advertisement.

6. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 203A.16.

7. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of Iowa from whom he

received in good faith the drug, device, or cosmetic.

8. The removal or disposal of a detained or embargoed article in violation of section 203A.6.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling, of or the doing of any other act with respect to a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

10. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter.

11. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 203A.11, or that such drug complies with the provisions of such section. [C50, 54, §203A.3]

Referred to in §203A.2, subsection 4

**203A.4 Injunction.** In addition to the remedies hereinafter provided the board is hereby authorized to apply to the court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provisions of this chapter; irrespective of whether or not there exists an adequate remedy at law. [C50, 54, §203A.4]

**203A.5 Penalties.** 1. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months in the county jail or a fine of not more than five hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year in the county jail, or a fine of not more than one thousand dollars, or both such imprisonment and fine.

2. No person shall be subject to the penalties of subsection 1 of this section, for having violated provisions of this chapter if he establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in the state of Iowa from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

3. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the board

to furnish the board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Iowa, who cause him to disseminate such advertisement. [C50, 54,§203A.5]

#### **203A.6 Detained or embargoed articles.**

1. Whenever a duly authorized agent of the board finds or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

2. When an article detained or embargoed under subsection 1 has been found by such agent to be adulterated or misbranded, he shall petition the judge of the municipal, or district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

3. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling, or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the board. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid. [C50, 54,§203A.6]

Referred to in §203A.3

**203A.7 Prosecution.** It shall be the duty of each attorney general, or county attorney to whom the board reports any violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to any such attorney for the insti-

tution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the board or its designated agent; either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding. [C50, 54,§203A.7]

**203A.8 Minor violations.** Nothing in this chapter shall be construed as requiring the board to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [C50, 54,§203A.8]

**203A.9 What deemed adulterated.** A drug or device shall be deemed to be adulterated:

1. (a) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (b) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (c) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (d) if it is a drug and it bears or contains, for the purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the federal Act.

2. If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity thereof set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it will be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

3. If it is not subject to the provisions of paragraph 2 of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

4. If it is a drug and any substance has been

(a) mixed or packed therewith so as to reduce its quality or strength; or (b) substituted wholly or in part therefor. [C50, 54,§203A.9]

**203A.10 What deemed misbranded.** A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause a of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board.

3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or any chemical derivative of such substance, which derivative has been by the board after investigation, found to be, and by regulations under this chapter, designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

5. If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (a) the common or usual name of the drug, if such there be; and (b) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidid, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis and digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause a of this subsection is impracticable, exemptions shall be established by regulations promulgated by the board.

6. Unless its labeling bears (a) adequate directions for use; and (b) such adequate warnings against use in those pathological condi-

tions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application in such manner and form, as are necessary for the protection of users; provided that where any requirement of clause a of this subsection, applied to any drug or device, is not necessary for the protection of the public health, the board shall promulgate regulations exempting such drug from such requirements.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

8. If it is found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

9. (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or (b) if it is an imitation of another drug; or (c) if it is offered for sale under the name of another drug.

10. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

11. If (a) it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, pituitary, thyroid, or their derivatives, or (b) it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a doctor, dentist or veterinarian; unless it is sold on a written prescription signed by a doctor, dentist or veterinarian who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of the doctor, dentist or veterinarian.

12. A drug sold on a written prescription signed by a doctor, dentist or veterinarian (except a drug sold in the course of the conduct of a business of selling drugs pursuant to



diagnosis by mail) shall be exempt from the requirements of this section if:

a. Such doctor, dentist or veterinarian is licensed by law to administer such drug, and

b. Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of the doctor, dentist or veterinarian.

13. If it is a drug for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substances, or such substances as are dangerous and habit forming drugs which derivative or substances have been by the board after investigation found to be and by regulation under this chapter designated as dangerous and habit forming drugs, and the sale or dispensation (except on written prescriptions to be filled by pharmacists) of said drugs, derivatives, or substances is made by doctors or dentists incident to their practice, unless the doctor or dentist keeps a dated record of the name, and address of the patient, and amount and name of the drugs, substances or derivatives sold and dispensed each time, and the said sale or dispensation has not been delegated to any person, nurse or attendant. [C50, 54, §203A.10]

Referred to in §§203A.2, subsection 4; 203A.15

#### 203A.11 Application to sell new drugs.

1. No person shall sell, deliver, offer for sale, have for sale or give away any new drug unless (a) an application with respect thereto has become effective under section 505 of the federal Act, or (b) when not subject to the federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the board an application setting forth (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; and (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug. The application shall be accompanied by such samples of such drug and of the articles used as components thereof as the board may require, specimens of the labeling proposed to be used for such drug, and a fee of fifty dollars.

2. An application provided for in subsection 1 part b shall become effective on the sixtieth day after the filing thereof, except that if the board finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or sug-

gested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

3. This section shall not apply:

a. To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs, provided the drug is plainly labeled "For investigational use only"; or

b. To a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal Act; or

c. To any drug which is licensed under the virus, serum and toxin Act of July 1, 1902 (U.S.C. 1934 ed. title 42, Chap. 4).

4. An order refusing to permit an application under this section to become effective may be revoked by the board. [C50, 54, §203A.11]

Referred to in §203A.3

**203A.12 Adulterated cosmetics.** A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph five the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

2. If it consists in whole or in part of any filthy, putrid, or decomposed substance.

3. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

4. If its container is composed, in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

5. If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal Act. [C50, 54, §203A.12]

**203A.13 Misbranded cosmetics.** A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing (a) the name and place of business

of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause b of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board.

3. If any word, statement or other information required by or under authority of this chapter, to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If its container is so made, formed, or filled as to be misleading.

5. If it contains any poisonous or deleterious substance and is intended to be used in liquid, powdered or paste form and the label or container does not warn that the contents are dangerous to human life if taken internally. [C50, 54,§203A.13]

Referred to in §203A.2

**203A.14 False advertising.** 1. An advertisement of a drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

2. For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis-media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinis infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection 1 shall be deemed to be false under this subsection if it is disseminated only to doctors, dentists or veterinarians, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health; provided, that this subsection shall not be construed as indicating that self-medication for

disease other than those named herein is safe or efficacious. [C50, 54,§203A.14]

Referred to in §203A.15

**203A.15 Regulations by board.** 1. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the board. The board is hereby authorized to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal Act.

2. Hearings authorized or required by this chapter shall be conducted by the board or such officer, agent or employee as the board may designate for the purpose.

3. Before promulgating any regulations contemplated by section 203A.10 subsections 2, 4, 5, 6, 7, 8, 11 and 13, or section 203A.14 subsection 2, the board shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board (which date shall not be prior to thirty days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date. [C50, 54,§203A.15]

**203A.16 Authority of board.** The board or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment, in which drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such drugs, devices, or cosmetics in commerce, for the purpose:

1. Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

2. To secure samples of any drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated. [C50, 54,§203A.16]

Referred to in §203A.3

**203A.17 Dissemination of information.**

1. The board may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

2. The board may also cause to be disseminated such information regarding drugs, devices, and cosmetics as the board deems neces-

sary in the interest of the public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board. [C50, 54, §203A.17]

**203A.18 Analysis by state chemist.** Any analysis of drugs, devices, or cosmetics deemed necessary by the board in the enforcement of

this chapter shall be made by the state chemist when requested by said board. [C50, 54, §203A.18]

**203A.19 Exception to chapter.** The provisions of this chapter shall not apply to any person, firm or corporation subject to the federal Food, Drug and Cosmetics Act. [C50, 54, §203A.19]

Constitutionality, 53GA, ch 90, §20

## CHAPTER 204

### UNIFORM NARCOTIC DRUG ACT

Referred to in §§147.99, 155.13, 159.6, 189.2, 205.3, 205.11, 205.12, 205.13  
General penalty, §189.19

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**204.1 Definitions.** The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

1. "Person" includes any corporation, association, copartnership, or one or more individuals.
2. "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.
3. "Dentist" means a person authorized by law to practice dentistry in this state.
4. "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.
5. "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescriptions.
6. "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.
7. "Pharmacist" means a registered pharmacist of this state.
8. "Pharmacy owner" means the owner of a

store or other place of business where narcotic drugs are compounded or dispensed by a registered pharmacist; but nothing in this chapter contained shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.

9. "Hospital" means an institution for the care and treatment of sick and injured, approved by the Iowa pharmacy examiners as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

10. "Laboratory" means a laboratory approved by the Iowa pharmacy examiners, as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

11. "Sale" includes barter, exchange, gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

12. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

13. "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

14. "Cannabis" includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

15. "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, amidone, isoamidone, keto-bemidone, alphaprodine hydrochloride, and every other substance neither chemically nor physically distinguishable from them or any other drugs to which the federal laws relating to narcotic drugs may now apply.

16. "Federal narcotic laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

17. "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law and if no such order form is provided, then on an official form provided for that purpose by the Iowa pharmacy examiners.

18. "Dispense" includes "distribute", "leave with", "give away", "dispose of", or "deliver".

19. "Registry number" means the number assigned to each person registered under the federal narcotic laws.

20. "Isonipecaine" means the substance identified chemically as 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name identified.

21. "Amidone" means any substance identified chemically as 4, 4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof, by whatever trade name designated.

22. "Isoamidone" means any substance identified chemically as 4, 4-diphenyl-5-methyl-6-dimethylamino-hexanone-3, or any salt thereof, by whatever trade name designated.

23. "Keto-bemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

24. "Alphaprodine hydrochloride" means any substance identified chemically as dl-alpha-1, 3-dimethyl-4-phenyl-4-propionoxy-piperidine hydrochloride, or any derivative thereof, by whatever trade name designated. [C51,§2728; R60, §4374; C73,§4038; C97,§2593; S13,§§2593, 2596-a;

C24, 27, 31, 35,§3151; C39,§3169.01; C46, 50, 54, §204.1; 57GA, ch 104,§1]

Referred to in §204.14

**204.2 Acts prohibited.** It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter. [C51,§2728; R60,§4374; C73,§4038; C97,§2593; S13,§§2593, 2596-a; C24, 27, 31, 35,§3152; C39,§3169.02; C46, 50, 54, §204.2]

**204.3 License to manufacture—exception as to cannabis.** No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license to do so from the Iowa pharmacy examiners. The fee for such license shall be five dollars. Every license shall expire on the thirtieth day of June following the date of issuance of such license and shall be renewed annually. The renewal fee shall be two dollars. Provided, however, that this section shall not apply to pharmacists, physicians, dentists, and veterinarians in the regular course of their legitimate professional activities.

Any person, firm, or corporation engaged in growing cannabis for the purpose of obtaining therefrom seed or fiber or engaged in the processing of hemp for either of such purposes under contract and holding a federal license therefor shall be exempt from the provisions of this section. [C39,§3169.03; C46, 50, 54, §204.3]

Referred to in §204.4

**204.4 Licenses—qualifications, denial, revocation.** No license shall be issued under section 204.3 unless and until the applicant therefor has furnished proof satisfactory to the Iowa pharmacy examiners:

1. That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

2. That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The Iowa pharmacy examiners may suspend or revoke any license for cause. [C39,§3169.04; C46, 50, 54,§204.4]

**204.5 Sale on written orders.**

1. A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written order:

a. To a manufacturer, wholesaler, pharmacist, or pharmacy owner;

b. To a physician, dentist, or veterinarian;  
 c. To a person in charge of a hospital, but only for use by or in that hospital;

d. To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

2. A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

a. On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties;

b. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft, when not in port, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States army, navy, or public health service employed upon such ship or aircraft; provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or to the physician, surgeon, or retired commissioned medical officer of the United States army, navy, or public health service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service;

c. To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

3. An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms.

4. Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if obtained in the regular course of business, occupation, profession, employment, or duty of the possessor.

5. A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician

is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or a retired commissioned medical officer of the United States army, navy, or public health service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense nor otherwise use such drugs, within this state, except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this chapter. [C24, 27, 31, 35, §§3154, 3155; C39, §3169.05; C46, 50, 54, §204.5]

Referred to in §204.11

#### 204.6 Sales by pharmacists.

1. A pharmacist, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, provided it is properly executed, dated and signed in indelible pencil or ink by the person prescribing, on the day when issued or the following day, and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

2. The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist, or pharmacy owner, but only on an official written order.

3. A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the complete solution, to be used for medical purposes. [C39, §3169.06; C46, 50, 54, §204.6]

#### 204.7 Professional use of narcotic drugs.

1. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe on a written prescription, administer or dispense narcotic drugs or may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when

issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

2. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe on a written prescription, administer or dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

3. Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian, shall return to such physician, dentist or veterinarian any unused portion of such drug, when it is no longer required by the patient. [C39,§3169.07; C46, 50, 54,§204.7]

**204.8 Preparations exempted.** Except as otherwise in this chapter specifically provided, this chapter shall not apply to the following cases:

Administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, not more than one grain of codeine or of any of its salts.

The exemption authorized by this section shall be subject to the following conditions:

1. That the medicinal preparation administered, dispensed, or sold shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and

2. That such preparation shall be administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Nothing in this section shall be construed to permit any person to prescribe, administer, compound, dispense, or sell any of the preparations included herein, except those persons duly qualified under this chapter to engage in the distribution of narcotics. [C39,§3169.08; C46, 50, 54,§204.8]

Referred to in §§204.9, 204.18

#### **204.9 Record to be kept.**

1. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

2. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them in accordance with the provisions of subsection 5 of this section.

3. Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

4. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 204.8, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

5. The record of narcotic drugs received shall in every case show the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any; the kind and quantity of such drugs and

the date of the discovery of such loss, destruction or theft.

6. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 687.7. [C39,§3169.09; C46, 50, 54,§204.9]

#### **204.10 Labels.**

1. Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except a pharmacist for the purpose of filling a prescription under this chapter, shall alter, deface, or remove any label so affixed.

2. Whenever a pharmacist or pharmacy owner sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the pharmacist for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed as long as any of the original contents remain.

3. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 687.7. [C39,§3169.10; C46, 50, 54,§204.10]

**204.11 Authorized possession of narcotic drugs by individuals.** A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed, by a physician, dentist or pharmacist or other person authorized under the provisions of section 204.5, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [C39,§3169.11; C46, 50, 54,§204.11]

**204.12 Persons and corporations exempted.** The provisions of this chapter restricting the possession and control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by em-

ployees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. [C24, 27, 31, 35,§3155; C39,§3169.12; C46, 50, 54,§204.12]

**204.13 Common nuisances.** Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such common nuisance. [C97,§5003; C24, 27, 31, 35,§§3161, 3163; C39,§3169.13; C46, 50, 54,§204.13]

**204.14 Forfeiture of conveyance.** Any automobile or other vehicle used, or intended to be used, to conceal, convey, carry, or transport in violation of this chapter any of the drugs defined in section 204.1, or any automobile or vehicle in which any of the drugs defined in said section are unlawfully possessed by an occupant with the knowledge of the owner thereof, shall be forfeited to the state, under the provisions of chapter 127. [C46, 50, 54, §204.14]

**204.15 Narcotic drugs—disposal.** All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

1. Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroyed them.

2. Upon written application by the state commissioner of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said state commissioner of health, for distribution or destruction, as hereinafter provided.

3. Upon application by any hospital within this state, not operated for private gain, the state commissioner of health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The state commissioner of health may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

4. The state commissioner of health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and

to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal or destruction; which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws. [C39, §3169.14; C46, 50, 54, §204.15]

**204.16 Notice of conviction to be sent to licensing board.** On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration. [C39, §3169.15; C46, 50, 54, §204.16]

**204.17 Records confidential.** Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county, and municipal officers whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. [C39, §3169.16; C46, 50, 54, §204.17]

**204.18 Fraud or deceit.**

1. No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

2. Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

3. No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

4. No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, phy-

sician, dentist, veterinarian, or other authorized person.

5. No person shall make or utter any false or forged prescription or written order.

6. No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

7. The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 204.8, in the same way as they apply to transactions under all other sections. [C39, §3169.17; C46, 50, 54, §204.18]

**204.19 Burden of proof.** In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. [C24, 27, 31, 35, §3156; C39, §3169.18; C46, 50, 54, §204.19]

Negating exceptions, §§126.7, 773.23

**204.20 Enforcement and co-operation—peace officers.** It is hereby made the duty of the Iowa pharmacy examiners, its officers, agents, inspectors and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to co-operate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs. Officers, agents, inspectors and representatives of the Iowa pharmacy examiners shall have the powers of and status as peace officers when enforcing the provisions of this chapter. [C39, §3169.19; C46, 50, 54, §204.20; 57GA, ch 104, §3]

See also §147.99

**204.21 Search warrant.** Any narcotic drugs kept, manufactured or dispensed in violation of the laws of the United States or of this chapter, or any instrument, container, or other equipment used or intended to be used in manufacturing, keeping or dispensing such drug, may be seized, confiscated and disposed of under a search warrant proceeding and the procedure shall be the same as provided under chapter 751. [C24, 27, 31, 35, §§3159, 3162; C39, §3169.20; C46, 50, 54, §204.21]

**204.22 Penalties.**

1. Any person violating any provision of this chapter, except as otherwise provided, shall upon conviction be fined not more than two thousand dollars and shall be imprisoned in the state penitentiary not less than two or more than five years. For a second offense, or if, in case of a first conviction of violation of any provision of this chapter, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be fined not more than two thousand



dollars and be imprisoned in the state penitentiary not less than five or more than ten years. For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be fined not more than two thousand dollars and be imprisoned in the state penitentiary not less than ten or more than twenty years.

2. Any person violating any provision of this chapter, by selling, prescribing, or administering any narcotic drug to a minor shall upon conviction thereof, be punished, by imprisonment in the state penitentiary for not less than five or more than twenty years.

3. Any person who takes, steals, or carries away any narcotic drugs the property of any person who is duly authorized by law to engage in administering, dispensing, or selling of narcotic drugs shall be guilty of a felony and upon conviction be fined and imprisoned as provided in subsection one of this section for any person violating any other provisions of this chapter.

4. For violation of the provisions of this chapter the imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum

imprisonment herein provided for the offense shall have been served. [C97,§5003; C24, 27, 31, 35,§§3168, 3169; C39,§3169.21; C46, 50, 54,§204.22]

**204.23 Effect of acquittal or conviction under federal narcotic laws.** No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this chapter. [C39,§3169.22; C46, 50, 54,§204.23]

Constitutionality, 47GA, ch 114,§23

**204.24 Interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it. [C24, 27, 31, 35, §3167; C39,§3169.23; C46, 50, 54,§204.24]

**204.25 Name of act.** This chapter may be cited as the "Uniform Narcotic Drug Act." [C39,§3169.24; C46, 50, 54,§204.25]

**204.26 Rules and regulations.** The Iowa pharmacy examiners shall have power to adopt, amend, promulgate and enforce such reasonable rules, regulations and standards as may be required to accomplish the purposes of this chapter. Such rules, regulations and standards shall not be inconsistent with the rules and regulations of the federal commissioner of narcotics. [57GA, ch 104,§2]

## CHAPTER 205

### SALE AND DISTRIBUTION OF POISONS

Referred to in §§147.99, 159.6, 189.2  
General penalty, §189.19

205.1 Sale of abortifacients.

205.2 Exception.

205.3 Prescriptions.

205.4 Wood or denatured alcohol.

205.5 Regulations as to sales of certain poisons.

205.6 Poison register.

205.7 Labeling poisons.

205.8 Certain sales excepted.

205.9 Prohibited sales.

205.10 False representations.

205.11 Enforcement.

205.12 Chemical analysis of drugs.

205.13 Applicability of other statutes.

**205.1 Sale of abortifacients.** No person shall sell, offer or expose for sale, deliver, give away, or have in his possession with intent to sell, except upon the original written prescription of a licensed physician, dentist, or veterinarian, any cotton root, ergot, oil of tansy, oil of savin, or derivatives of any of said drugs. [C51,§2728; R60,§4374; C73,§4038; C97,§2593; S13, §§2593, 2596-a; C24, 27, 31, 35, 39,§3170; C46, 50, 54,§205.1]

Referred to in §205.2

**205.2 Exception.** The requirements of section 205.1 that certain drugs shall be furnished only upon written prescription, shall not apply to the sale of such drugs to persons who wholesale or retail the same, nor to any licensed physician, dentist, or veterinarian for use in the practice of his profession. [S13,§2596-a; C24, 27, 31, 35, 39,§3171; C46, 50, 54,§205.2]

**205.3 Prescriptions.** No person shall fill any prescriptions calling for any of the drugs required by chapter 204 or this chapter to be furnished only upon written prescription unless the same be for medical, dental, or veterinary purposes only, and unless the physician, dentist, or veterinarian prescribing the same be personally known to such person, and no such prescription shall be refilled. [S13,§2596-a; C24, 27, 31, 35, 39,§3172; C46, 50, 54,§205.3]

**205.4 Wood or denatured alcohol.** No person shall have in his possession or dispose of in any manner any article intended for use of man or domestic animals, for internal or external use, for cosmetic purposes, for inhalation, or for perfumes, which contains methyl (wood) alcohol, crude or refined, or completely denatured alcohol. Nothing in this section shall be construed to apply to specially de-

natured alcohols the formula of which has been approved and the manufacture and use regulated by the federal government. [S13, §4999-a36; C24, 27, 31, 35, 39, §3173; C46, 50, 54, §205.4]

**205.5 Regulations as to sales of certain poisons.** It shall be unlawful for any person except a licensed pharmacist to sell at retail any of the poisons enumerated in this section: ammoniated mercury, mercury bichloride, red mercuric iodide, and other poisonous salts and compounds of mercury; salts and compounds of arsenic; salts of antimony; salts of barium except the sulphate; salts of thallium; hydrocyanic acid and its salts; chromic, glacial acetic, and picric acids; chloral hydrate, croton oil, cresol, chloroform, dinitrophenol, ether, oil of bitter almonds, phenol, phosphorus and sodium fluoride; aconitine, arecoline, atrophine, brucine, homatropine, hyoscyamine, nicotine, strychnine, and the salts of these alkaloids; aconite, belladonna, cantharides, digitalis, nuxvomica, veratrum, and the preparations of these poisonous drugs. [C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3174; C46, 50, 54, §205.5]

Referred to in §§205.6, 205.7, 205.8, 205.9, 205.10, 206.3

**205.6 Poison register.** It shall be unlawful for any pharmacist to sell at retail any of the poisons enumerated in section 205.5 unless he ascertains that the purchaser is aware of the character of the drug and the purchaser represents that it is to be used for a proper purpose and every sale of any poison enumerated in section 205.5 shall be entered in a book kept for that purpose, to be known as a "Poison Register" and the same shall show the date of the sale, the name and address of the purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the natural person making the sale, which book or books shall be open for inspection by the pharmacy examiners, or any magistrate or peace officer of this state, and preserved for at least five years after the date of the last sale therein recorded. [C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3175; C46, 50, 54, §205.6]

Referred to in §§205.8, 205.9

**205.7 Labeling poisons.** Except as otherwise provided, it shall be unlawful to vend, sell, dispense, or give away any poison enumerated in section 205.5, or/and sodium chlorate or/and crude carbolic acid, or any other potent poisons, without affixing to the bottle, box, vessel, or package containing the same, a label containing the name of the poison either printed or plainly written, and the word "Poison" printed in red ink, and the name and place of business of the distributor, manufacturer, wholesaler or dealer; and every package or container which contains ammonia water, concentrated lye, denatured alcohol, formaldehyde, benzol, carbon tetrachloride, commercial hydrochloric, nitric, sulphuric or oxalic acids, shall be labeled with the name of the poison, which label shall bear the name and place of business of the distributor, manufacturer,

wholesaler, or dealer, the most available antidote and the word "Poison" printed in red ink in a conspicuous place thereon. [C51, §2728; R60, §4374; C73, §4038; C97, §§2588, 2593, 4976; S13, §2593; SS15, §2588; C24, 27, 31, 35, 39, §3176; C46, 50, 54, §205.7; 57GA, ch 105, §1]

Referred to in §205.8

**205.8 Certain sales excepted.** Nothing in sections 205.5 to 205.7, inclusive, shall apply:

1. To proprietary medicines, provided they are not in themselves poisonous and are sold in original unbroken packages.

2. To the filling of prescriptions from or the sale to licensed physicians, dentists, or veterinarians or sales to another pharmacist or to hospitals; or to drugs dispensed by licensed physicians, dentists, or veterinarians, as an incident to the practice of their professions.

3. To insecticides and fungicides as defined in chapter 206 and commercial feeds as defined in chapter 198, provided same be labeled in accordance with said chapter and sold in original unbroken packages, provided, however, that stock dips and fly sprays may be sold in bulk or otherwise and the vessel or container need not have printed on the label the most available antidote.

4. To any proprietary preparation intended for use in destroying mice, rats, gophers or other lower animals, provided same is sold in original unbroken packages and bears the word "Poison", the most available antidote, and the name of the manufacturer. [C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3177; C46, 50, 54, §205.8]

**205.9 Prohibited sales.** It shall be unlawful for any person in this state to sell or deliver any poison to any person known to be of unsound mind or under the influence of intoxicants, and it shall likewise be unlawful for any person in this state to sell or deliver any poison enumerated in section 205.5 to any minor under sixteen years of age except upon a written order signed by some responsible person known to the person selling or delivering the same, which said written order shall contain all of the information required to be entered in the poison register under the provisions of section 205.6. [C27, 31, 35, §3177-b1; C39, §3177.1; C46, 50, 54, §205.9]

**205.10 False representations.** Any person who obtains any poison enumerated in section 205.5 under a false name or statement shall be guilty of a misdemeanor and punished as provided in chapter 189. [C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3178; C46, 50, 54, §205.10]

General penalty, §189.19

**205.11 Enforcement.** The provisions of this chapter and chapters 203 and 204 shall be administered and enforced by the pharmacy examiners. In discharging any duty or exercising any power under said chapters, the pharmacy examiners shall be governed by all

the provisions of chapter 189, which govern the department of agriculture when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this title. [C24, 27, 31, 35, 39, §3179; C46, 50, 54, §205.11]

**205.12 Chemical analysis of drugs.** Any chemical analysis deemed necessary by the pharmacy examiners in the enforcement of this chapter and chapters 203 and 204 shall be made by the department of agriculture when

requested by said examiners. [C24, 27, 31, 35, 39, §3180; C46, 50, 54, §205.12]

**205.13 Applicability of other statutes.** Insofar as applicable the provisions of chapter 189, shall apply to the articles dealt with in this chapter and chapters 203 and 204. The powers vested in the department of agriculture by said chapter shall be deemed for the purpose of this chapter and chapters 203 and 204 to be vested in the pharmacy examiners. [C24, 27, 31, 35, 39, §3181; C46, 50, 54, §205.13]

## CHAPTER 206

### INSECTICIDES AND FUNGICIDES

Referred to in §§200.7, 205.8

General penalty, §189.19

206.1 Definitions.

206.2 Labeling.

206.3 Special requirements.

206.4 Adulteration.

206.5 Lime and sulphur liquid.

**206.1 Definitions.** For the purpose of this chapter:

1. "Insecticide" shall include paris green, lead arsenate, and any other substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insect which may infest vegetation, man, animals, households, or other environment.

2. "Paris green" shall include the product sold in commerce as paris green and chemically known as aceto-arsenite of copper.

3. "Lead arsenate" shall include the product sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid ( $H_3AsO_4$ ) by replacing one or more hydrogen atoms by lead.

4. "Fungicide" shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi which may infest vegetation or be present in any environment. [C24, 27, 31, 35, 39, §3182; C46, 50, 54, §206.1]

**206.2 Labeling.** All insecticides and fungicides offered or exposed for sale, or sold in package or wrapped form, shall be labeled on each package or container as provided in sections 189.9 to 189.11, inclusive. [C24, 27, 31, 35, 39, §3183; C46, 50, 54, §206.2]

Referred to in §206.3

**206.3 Special requirements.** In addition to the requirement of section 206.2, the following regulations shall also govern in labeling insecticides and fungicides:

1. When composed of any poison enumerated in section 205.5, the word "poison" and its antidote shall appear on the label in a conspicuous manner.

2. When composed of arsenic in combination or elemental form, the total amount of arsenic present and the amount of arsenic in water-soluble form—both expressed in percent of metallic arsenic—shall also be stated on the

label in the same manner prescribed for other items.

3. When composed partially or completely of an inert substance which does not effectively prevent, destroy, repel, or mitigate insects or fungi, the names and percentage amounts of each inert ingredient and the fact that they are inert, or the names and percentage amounts of each ingredient of the insecticide or fungicide having insecticidal or fungicidal properties without mention of the inert ingredients, except to state the total percentage of inert ingredients present, shall also appear upon the label in the same manner prescribed for other items.

4. Spray solution known as a lime and sulphur liquid shall also have stated on the label the strength of the solution and its gravity test, showing a guaranteed strength of lime and sulphur combined in solution as sulphates and sulphides, and the label shall contain a direction as to the proportions of water to be used to produce a mixture containing a four percent solution by weight of lime and sulphur combined as sulphates and sulphides. The printing of said label shall be in black-faced type, in letters not less than one-half inch in height. [C97, §2588; SS15, §2588; C24, 27, 31, 35, 39, §3184; C46, 50, 54, §206.3]

**206.4 Adulteration.** In addition to the adulterations specified in subsections 1 to 3 of section 190.3 the following products shall be deemed to be adulterated:

1. In the case of paris green:

a. If it does not contain at least fifty percent of arsenious oxide.

b. If it contains arsenic in water-soluble forms equivalent to more than three and one-half percent of arsenious oxide.

2. In the case of lead arsenate:

a. If it contains more than fifty percent of water.

b. If it contains total arsenic equivalent to less than twelve and one-half percent of arsenic oxide ( $\text{As}_2\text{O}_5$ ).

c. If it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths of one percent arsenic oxide ( $\text{As}_2\text{O}_5$ ).

3. In the case of an insecticide or fungicide other than paris green and lead arsenate:

a. If its strength or purity falls below the professed standard or quality under which it is sold.

b. If it is intended for use on vegetation and contains any substance which, although preventing, destroying, repelling, or mitigating insects or fungi, shall be injurious to such vegetation when used as recommended by the manufacturer. [C24, 27, 31, 35, 39, §3185; C46, 50, 54, §206.4]

**206.5 Lime and sulphur liquid.** Spray solution known as a lime and sulphur liquid shall be not less than seventy percent by weight of sulphur. [C24, 27, 31, 35, 39, §3186; C46, 50, 54, §206.5]

## CHAPTER 207

### PAINTS AND OILS

General penalty, §189.19

207.1 Definitions and standards.

207.2 Labeling paints.

207.3 Labeling oils.

207.4 Labeling substitutes.

**207.1 Definitions and standards.** For the purposes of this chapter:

1. *Raw linseed oil.* "Raw linseed oil" shall be obtained wholly from the seeds of the flax plant (*linum usitatissimum*) and shall comply with all the requirements of the United States Pharmacopoeia.

2. *Boiled linseed oil.* "Boiled linseed oil" or "boiled oil" shall be prepared by heating pure raw linseed oil to a temperature of at least one hundred seven degrees centigrade, and if desired incorporating not to exceed three percent by weight of dryer, and it shall fulfill the following requirements:

a. Its specific gravity at 20/20 degrees centigrade must be not less than nine hundred thirty-five thousandths and not greater than nine hundred forty-five thousandths.

b. Its saponification number must not be less than one hundred eighty-six.

c. Its iodine absorption number must not be less than one hundred sixty.

d. Its acid value must not exceed ten.

e. The volatile matter expelled at one hundred degrees centigrade must not exceed one-half of one percent.

f. No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods, must not exceed two percent.

g. The film left after flowing the oil over glass and allowing it to drain in a vertical position, must dry free from tackiness in not to exceed twenty hours, at a temperature of about twenty degrees centigrade.

3. *Oil of turpentine.* "Oil of turpentine", "spirits of turpentine", "turpentine", or "turps" shall consist wholly of the volatile portion obtained by distillation of the oleoresinous exudation from various species of coniferous trees and shall fulfill the following requirements:

a. Its specific gravity at 20/20 degrees centi-

grade must be not less than eight hundred sixty thousandths and not greater than eight hundred seventy-five thousandths.

b. Its index of refraction at twenty degrees centigrade must not be less than one and four hundred sixty-eight thousandths and not greater than one and four thousand seven hundred twenty-five ten thousandths.

c. Its iodine absorption number must not be less than three hundred forty.

d. The undissolved (unpolymerized) residue on treatment of ten cubic centimeters with forty cubic centimeters of a sulphuric acid containing twenty percent of the fuming acid must not exceed ten percent by volume of the sample.

e. The initial boiling point must not be lower than one hundred fifty degrees centigrade under ordinary atmospheric pressure, and ninety-five percent by volume must distill below one hundred sixty-six degrees centigrade.

f. The residue left after evaporation over a steam bath must not exceed two percent.

g. Mineral oil must not be present.

4. *Paint.* "Paint" shall include white lead in oil or any compound intended for the same use, paste or semipaste, and liquid or mixed paint ready for use, or any compound intended for the same purpose. [S13, §§2510-c, n, p, v; C24, 27, 31, 35, 39, §3187; C46, 50, 54, §207.1]

**207.2 Labeling paints.** All paint, including paint transported into and delivered in this state, offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 189.9 to 189.12, inclusive, except that in listing the ingredients and the percentage of each in the total contents of any paint, all substances other than coloring matter may be treated as one hundred percent in which case the description or trade name of such coloring

matter, with its chemical analysis, shall appear on the label in the same manner as provided in said sections. [S13, §§2510-b,-d; C24, 27, 31, 35, 39, §3188; C46, 50, 54, §207.2]

**207.3 Labeling oils.** All linseed oil or oil of turpentine offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in section 189.9, except that the label shall be printed with ordinary bold-faced type in capital letters not less than five-line pica in size. [S13, §§2510-q,-v1; C24, 27, 31, 35, 39, §3189; C46, 50, 54, §207.3]

**207.4 Labeling substitutes.** Any compound or mixture consisting of linseed oil (raw or boiled) and any other product, or any compound or mixture consisting of oil of turpentine and any other product, or any product

which is intended to be used as a substitute for linseed oil (raw or boiled) or for oil of turpentine, which is offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 189.9 to 189.12, inclusive, except that the label shall be printed with ordinary bold-faced type in capital letters not less than five-line pica in size and the words "substitute for linseed oil" or "substitute for oil of turpentine", as the case may be, shall also appear upon the label in the same manner prescribed for other items. Every storage receptacle containing any such product shall be labeled in the manner herein prescribed for the labeling of the package or container in which such product is offered or exposed for sale, or sold. [S13, §§2510-r,-v2; C24, 27, 31, 35, 39, §3190; C46, 50, 54, §207.4]

## CHAPTER 208

### PETROLEUM PRODUCTS

General penalty, §189.19

208.1 Definitions.

208.2 Illuminating oil tested.

208.3 Sampling.

208.4 Method of testing.

208.5 Records of department.

208.6 Gasoline receptacles.

208.7 Commingled products.

208.8 Fees for inspection.

**208.1 Definitions.** As used in this chapter:

1. The term "illuminating oil" shall mean all products known or sold as kerosene and any petroleum product sold for use in atmospheric pressure wickfed illuminating apparatus.

2. The term "department" shall mean the department of agriculture of the state of Iowa and shall include the authorized agents of such department. [C24, 27, 31, 35, 39, §3191; C46, 50, 54, §208.1]

**208.2 Illuminating oil tested.** It shall be unlawful for any person to sell, offer for sale or use any illuminating oil in this state unless it has first been sampled for testing by the department as hereinafter provided, nor if the same, upon being tested by the department as hereinafter prescribed, emits a combustible vapor at a temperature of less than one hundred degrees Fahrenheit. [C73, §3901; C97, §§2505, 2508; S13, §2508; SS15, §2505; C24, 27, 31, 35, 39, §§3197, 3202; C46, §§208.7, 208.12; C50, 54, §208.2]

**208.3 Sampling.** Illuminating oil stored in any tank at or adjacent to a refinery or marine or pipe-line terminal in this state, from which same is withdrawn for sale or use in this state or for distribution to destinations in this state, shall be sampled for testing by the department whenever the stock in such tank is replenished. After replenishment of any such stock, no withdrawals shall be made therefrom for sale or use in this state or for shipment or delivery to points in this state, until a true sample of not less than sixteen fluid ounces is

taken therefrom as hereinafter prescribed. Every person storing illuminating oil in such tanks shall notify the department of each consignment by which the stock in such tanks will be replenished. Illuminating oil imported into this state (other than that placed in storage at refineries or marine or pipe-line terminals in this state) shall not be unloaded or emptied from its original container or sold or offered for sale or used in this state until a sample of not less than sixteen fluid ounces is taken therefrom as hereinafter prescribed; provided that if such illuminating oil has been previously sampled or tested by the department, the same may be unloaded, emptied, sold, offered for sale or used. Every person receiving or about to receive illuminating oil so imported into this state which has not been previously sampled or tested as hereinafter provided for shall notify the department of the receipt or anticipated receipt of each consignment thereof.

If such replenishment or receipt of illuminating oil occurs during the usual business hours of any regular business day notice thereof (unless previously given stating the approximate date of anticipated replenishment or receipt) shall be given to the department forthwith. If such replenishment or receipt occurs outside usual business hours, such notice shall be given during the first usual business hour thereafter. For the purposes of this chapter, usual business hours shall be between 8 a. m. and 5 p. m. on any regular business day except Saturday and between 8 a. m. and 12 noon on Saturday. Sundays and legal

holidays shall not be considered regular business days.

If, after the stock of illuminating oil has been replenished in any tank at a refinery or marine or pipe-line terminal in this state, such replenished stock has not been sampled by the department prior to the time the first withdrawal therefrom is made, the custodian of such oil shall take a true sample thereof, of not less than sixteen fluid ounces, for testing by the department. If illuminating oil brought into this state (other than that imported by boat, barge, or pipe line for storage at a marine or pipe-line terminal in this state) has not been sampled by the department prior to the time the same is ready for unloading in this state, the receiver thereof shall take a true sample therefrom, of not less than sixteen fluid ounces, for testing by the department. All such samples shall be immediately placed in a clean container and sealed. Suitable containers and seals shall be furnished by the department. The person taking such sample or custodian shall record upon or with the seal thereon the date and the identity of the conveyance or container, from which the sample was taken, and the kind of product sampled, together with such other information as the department may reasonably require for the proper identification of such sample and the making of a proper inspection certificate. Such sample thus taken shall be mailed or held for delivery to the department as the department shall prescribe. After such sample is taken, such illuminating oil may be withdrawn, unloaded, sold, offered for sale, or used, the same as if sampled by the department.

The department may, upon agreement with the operator of any refinery or marine or pipe-line terminal outside this state, provide an inspector or appoint an agent to sample or to make tests of illuminating oil at such refinery or terminal for shipment or delivery into this state in which case the procedures prescribed in this chapter may be performed thereat in the same manner and with the same force and effect as if such refinery or terminal was within this state. [C97, §§2504-2506; S13, §§2504, 2505, 2510-3a; SS15, §§2505, 2506; C24, 27, 31, 35, 39, §§3193, 3198, 3199, 3208, 3209; C46, §§208.3, 208.8, 208.9, 208.18, 208.19; C50, 54, §208.3]

**208.4 Method of testing.** All tests provided for in this chapter shall be conducted in accordance with the methods outlined by the American Society for Testing Materials—Method D-56 (A.S.T.M.) or with the Foster cup or Foster automatic oil tester. If Foster cup or Foster automatic oil tester is used, it shall be used in accordance with the following directions:

1. Remove the thermometer with its mountings from the oil cup.
2. Lift off the oil cup containing the flashing taper and fill open water bath with water to the mark upon the inside.
3. Take the wick holder from the oil cup, and fill this vessel with the oil to be tested,

pouring in the oil at the place of the wick holder and noting the gauge mark at the thermometer hole, pouring very gradually as the surface approaches the gauge mark. The gauge mark consists of a small pendant shelf and the oil cup is properly filled when the upper surface of the oil just adheres to the lower surface of the gauge mark. Too much care cannot be taken at this point. Having ceased pouring, tip the cup so that the oil flows away from the gauge, then gradually restore it to the horizontal, and if the surface does not again adhere, add a little more oil.

4. Adjust the wick to the flashing taper to give a flame that does not exceed one-quarter of an inch in height and that exhibits as much blue at its base as yellow at its top.

5. Set the oil cup on top and into the water bath, return the flashing taper to its place, inverting the conical thimble around it, and return the thermometer to its place upon the cup. In doing this be sure that the casing of the latter is pushed down upon the cup as far as it will go.

6. Fill the lamp beneath half full of alcohol, light and place it beneath the water bath. Note the rate of increase in temperature as shown by the thermometer and adjust the wick to raise the temperature at the rate of two degrees per minute. When the temperature has reached eighty-five degrees, light the flashing taper and observe it closely. As soon as the oil under test has reached its "flashing point", the flame of this taper will be extinguished by the first "flash", and the point of attention is the temperature at the instant the flame of the taper is extinguished. This "flashing point" is the point of temperature at which the oil emits a combustible vapor.

The department shall determine which of the methods set out above shall be used in the inspection of kerosene, and shall by regulation prescribe the one method which shall be uniform in all kerosene inspections. [C97, §2504; S13, §2504; SS15, §2505; C24, 27, 31, 35, 39, §3198; C46, §208.8; C50, 54, §208.4]

**208.5 Records of department.** The department shall keep such records as may be necessary for the purposes of this chapter of all tests made by it of illuminating oil. Such records shall be open at all reasonable times to public inspection. The department shall furnish to the person for whom such tests are made a certificate of inspection covering each sample tested showing the date of such test, the identity of the conveyance or container from which the sample was taken, the kind of illuminating oil therein, the result of the test and inspection. [C97, §§2505, 2506; S13, §§2505, 2506; SS15, §§2505, 2506; C24, 27, 31, 35, 39, §§3199, 3215; C46, §§208.9, 208.25; C50, 54, §208.5]

**208.6 Gasoline receptacles.** No person shall place gasoline or any other petroleum product having a flash point below one hundred degrees Fahrenheit into any bottle, can, cask, barrel or other similar receptacle having a

capacity in excess of one pint unless the same is painted bright red and is plainly marked with the word "gasoline" or with the warning "flammable—keep fire away" in red lettering of a height equal to at least one-tenth of the smallest dimension of such container. The foregoing shall not apply to vehicle cargo or supply tanks nor to underground storage nor to storage tanks from which such liquids are withdrawn for manufacturing purposes or are loaded into vehicle cargo tanks, but all outlet faucets or valves from such excepted containers shall be painted bright red and suitably tagged to indicate the nature of the product to be withdrawn therefrom. No person shall place illuminating oil in any container which is painted red nor shall illuminating oil be loaded or withdrawn through any piping which is used or designated as aforesaid for products having a flash point below one hundred degrees Fahrenheit. [C97,§2505; S13, §§2510-1a,-2a,-j,-k; SS15,§2505; C24, 27, 31, 35, 39, §§3194-3196; C46, §§208.4-208.6; C50, 54, §208.6]

**208.7 Commingled products.** If any illuminating oil is commingled with any other product the entire commingled products shall be deemed uninspected and untested, and it shall be unlawful for any person to sell, offer for sale, or use any such commingled product for illuminating purposes within this state unless and until the same has been inspected and approved for sale or use by the department. [C73, §3901; C97, §§2505, 2508; S13, §2508; SS15, §2505; C24, 27, 31, 35, 39, §§3201-3203; C46, §§208.11-208.13; C50, 54, §208.7]

**208.8 Fees for inspection.** Illuminating oil inspections provided for in this chapter shall be deemed to be made for, and fees therefor at the rate of one cent per barrel (fifty gallons) on all illuminating oil received shall be paid by, the person who first received such illuminating oil in this state.

For the purposes of computing such fees, il-

luminating oil shall be deemed to be received in this state as follows:

1. If placed in storage at or adjacent to a refinery or a marine or pipe-line terminal in this state the same shall be deemed to be received when withdrawn from such storage for sale or use in this state or for transportation to destinations in this state other than for transfer to other refineries or marine or pipe-line terminals in this state and not before. When so withdrawn, such oil shall be deemed to be received by the person who was the owner thereof just prior to withdrawal. Provided that if such oil so withdrawn is shipped or delivered to a person engaged in the storage and distribution thereof by tank car or tank truck, such oil when so withdrawn shall be deemed to be received by such distributor.

2. If imported into this state (other than to a refinery or marine or pipe-line terminal in this state) the same shall be deemed to be received by the person who is the owner thereof immediately after the same is unloaded in this state.

On or before the last day of each calendar month, every person receiving illuminating oil in this state shall file with the department a report in such form and containing such information as the department shall prescribe as to each receipt or the total receipts of illuminating oil by such person in this state during the preceding calendar month and at the same time shall remit to the department the inspection fees thereon. Providing, however, that only one-half of the inspection fees shall be remitted on illuminating oil received and thereafter shipped or sold in rail tank car or motor transport lots directly to the federal government or on illuminating oil received and thereafter exported from this state, and if remitted in full, one-half said fees shall be refunded or credit therefor shall be allowed on subsequent reports. [C97, §§2505, 2506; S13, §2505; SS15, §§2505, 2506; C24, 27, 31, 35, 39, §§3209, 3210, 3213, 3214; C46, §§208.19, 208.20, 208.23, 208.24; C50, 54, §208.8]

## CHAPTER 208A

### MOTOR VEHICLE ANTIFREEZE ACT

General penalty, §§ 189.19, 208A.11

208A.1 Definitions.

208A.2 What deemed adulterated.

208A.3 What deemed misbranded.

208A.4 Inspection by department.

208A.5 Samples—analysis.

208A.6 Rules and regulations.

208A.7 List of approved brands.

208A.8 Advertising restricted.

208A.9 Prosecution.

208A.10 Fees remitted.

208A.11 Penalty.

208A.12 Citation of chapter.

**208A.1 Definitions.** As used in this chapter, unless the context or subject matter otherwise requires: (1) "Antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the

cooling liquid or to lower its freezing point; and (2) "person" shall include individuals, partnerships, corporations, companies and associations. [C50, 54, §208A.1]

**208A.2 What deemed adulterated.** An anti-freeze shall be deemed to be adulterated: (1)

If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or (2) if its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold. [C50, 54,§208A.2]

**208A.3 What deemed misbranded.** An antifreeze shall be deemed to be misbranded: (1) If its labeling is false or misleading in any particular; or (2) if in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package. [C50, 54,§208A.3]

**208A.4 Inspection by department.** Before any antifreeze shall be sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected by the department of agriculture. Upon application of the manufacturer, packer, seller or distributor and the payment of a fee of twenty dollars for each brand of antifreeze submitted, the department shall inspect the antifreeze submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards of the department, and is not in violation of this chapter, the department shall give the applicant a written permit authorizing the sale of such antifreeze in this state until the formula or labeling of the antifreeze is changed in any manner.

If the department shall at a later date find that the product to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, a change has been made in the name, brand or trade-mark under which the antifreeze is sold, or it violates the provisions of this chapter, the department shall notify the applicant and the permit shall be canceled forthwith. [C50, 54,§208A.4]

**208A.5 Samples—analysis.** The department of agriculture shall enforce the provisions of this chapter by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in the state or intended for sale in the state or the department through its agents may call upon the manufacturer or distributor applying for an inspection of an antifreeze to supply such samples thereof for analysis. The department, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture,

transportation, sale or storage of any antifreeze, and it may open by legal means any box, carton, parcel, or package, containing or supposed to contain any antifreeze and may take therefrom samples for analysis. [C50, 54, §208A.5]

**208A.6 Rules and regulations.** The department of agriculture shall have authority to promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of this chapter. [C50, 54,§208A.6]

**208A.7 List of approved brands.** The department of agriculture may furnish upon request a list of the brands and trade-marks of antifreeze inspected by the department during the calendar year which have been found to be in accord with this chapter. [C50, 54, §208A.7]

**208A.8 Advertising restricted.** No advertising literature relating to any antifreeze sold or to be sold in this state shall contain any statement that the antifreeze advertised for sale has met the requirements of the department of agriculture until such antifreeze has been given the laboratory test and inspection of the department, and found to meet all the standard requirements and not to be in violation of this chapter. Then such statement may be contained in any advertising literature where such brand or trade-mark of antifreeze is being advertised for sale, and such statement may be used on all regular containers of such antifreeze. [C50, 54,§208A.8]

**208A.9 Prosecution.** Whenever the department of agriculture shall discover any antifreeze is being sold or has been sold in violation of this chapter, the facts shall be furnished to the attorney general who shall institute proper proceedings. [C50, 54,§208A.9]

**208A.10 Fees remitted.** All fees provided for in this chapter shall be collected by the secretary of the department of agriculture and remitted to the state treasury. [C50, 54, §208A.10]

**208A.11 Penalty.** If any person, partnership, corporation, or association shall violate the provisions of this chapter, such person, partnership, corporation or association shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished according to the general provisions of title X and the department may after due hearing cancel registration. [C50, 54,§208A.11]

**208A.12 Citation of chapter.** This chapter may be cited as the "Iowa Antifreeze Act." [C50, 54,§208A.12]



## CHAPTER 209

## MATTRESSES AND COMFORTS

General penalty, §189.19

209.1 Definitions.  
 209.2 Materials used.  
 209.3 Labeling.  
 209.4 Form of label.

209.5 Registration of manufacturers.  
 209.6 Factory inspection—fees.  
 209.7 Prima-facie evidence.  
 209.8 Exceptions—remade mattresses.

**209.1 Definitions.** For the purpose of this chapter:

1. A mattress shall include what is commonly known as a bed mattress, and also any other article for use as a bed pad, consisting of an outer covering of cloth, ticking, or other fabric, and stuffed or filled with hair, wool, moss, cotton, excelsior, or any other material.

2. A comfort shall include what is commonly known as a bed comfort, and also any other article for use as a bed cover, consisting of an outer covering of cloth, or any other fabric, with wool, cotton, or other material between. [C24, 27, 31, 35, 39, §3219; C46, 50, 54, §209.1]

**209.2 Materials used.** No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale any mattress or comfort which is made from any infectious, insanitary, or unhealthful material, or any material which has been previously used, except sterilized feathers. [C24, 27, 31, 35, 39, §3220; C46, 50, 54, §209.2]

**209.3 Labeling.** Every mattress and comfort offered or exposed for sale shall have attached upon the outside thereof, a cloth, or cloth-lined label, not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less than one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient. [C24, 27, 31, 35, 39, §3221; C46, 50, 54, §209.3]

Referred to in §209.4

**209.4 Form of label.** The label provided in section 209.3 shall be in substantially the following form, but may contain thereon additional statements or information:

## OFFICIAL STATEMENT

Manufactured of New Material.

(Here describe kind and character of filling.)

This article is made in compliance with chapter 209 of the Code of Iowa.

(Here state manufacturer's name and address)

Factory Number .....

[C24, 27, 31, 35, 39, §3222; C46, 50, 54, §209.4]

Referred to in §209.5

**209.5 Registration of manufacturers.** Every manufacturer of mattresses or comforts shall register with the department of agriculture and be assigned by it a factory number, which shall show on each label as required by section 209.4. [C24, 27, 31, 35, 39, §3223; C46, 50, 54, §209.5]

**209.6 Factory inspection—fees.** Each factory in the state, where mattresses or comforts are made, shall be inspected at least once each year, for which inspection a fee of ten dollars shall be paid to the state by the owner of the factory inspected, but no owner shall be required to pay fees in excess of twenty dollars for any one calendar year. [C24, 27, 31, 35, 39, §3224; C46, 50, 54, §209.6]

**209.7 Prima-facie evidence.** The finding of any infectious, insanitary, unhealthful, or second-hand material in that part of any factory devoted to the manufacture of mattresses or comforts shall be prima-facie evidence that such material has been and is being used in violation of this chapter. [C24, 27, 31, 35, 39, §3225; C46, 50, 54, §209.7]

**209.8 Exceptions—remade mattresses.** This chapter shall not apply to any mattress or comfort made by any person for his individual or family use, nor to the remaking of any mattress or comfort not thereafter to be sold or offered for sale.

A remade mattress or comfort shall have attached thereto a label of the kind hereinbefore provided, except that such label shall bear the words "Remade from Used Material" in lieu of the words "Manufactured of New Material". [C24, 27, 31, 35, 39, §3226; C46, 50, 54, §209.8]

CHAPTER 210

STANDARD WEIGHTS AND MEASURES

General penalty, §189.19

- 210.1 Standard established.
- 210.2 Length and surface measure.
- 210.3 Land measure.
- 210.4 Weight.
- 210.5 Liquids.
- 210.6 Dry measure.
- 210.7 Bottomless measure.
- 210.8 Sales of dry commodities.
- 210.9 Drugs and section comb honey exempted.
- 210.10 Bushel measure.
- 210.11 Sale of fruits and vegetables by dry measure.
- 210.12 Sale of fruits and vegetables in baskets.
- 210.13 Berry boxes and climax baskets.

- 210.14 Hop boxes.
- 210.15 Milk bottles or containers.
- 210.16 Flour.
- 210.17 Mason work or stone.
- 210.18 Sales to be by standard weight or measure—labeling.

BREAD

- 210.19 Standard weight.
- 210.20 Wrapper.
- 210.21 Violations.
- 210.22 "Person" defined.
- 210.23 Exception.
- 210.24 Enforcement—rules and regulations.
- 210.25 Weighing.

**210.1 Standard established.** The weights and measures which have been presented by the department to the federal bureau of standards and approved, standardized, and certified by said bureau in accordance with the laws of the congress of the United States shall be the standard weights and measures throughout the state. [C51,§937; R60,§1775; C73,§2037; C97,§3009; S13,§3009-c; C24, 27, 31, 35, 39,§3227; C46, 50, 54,§210.1]

Referred to in §§210.2, 210.4, 210.5, 210.6  
See §189.1

**210.2 Length and surface measure.** The unit or standard measure of length and surface from which all other measures of extension shall be derived and ascertained, whether they be lineal, superficial, or solid, shall be the standard yard secured in accordance with the provisions of section 210.1. It shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches, and for the measure of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole, or perch shall contain five and one-half such yards, and the mile, one thousand seven hundred sixty such yards. [C51,§937; R60,§1775; C73,§§2038-2040; C97, §3010; S13,§3009-d; C24, 27, 31, 35, 39,§3228; C46, 50, 54,§210.2]

**210.3 Land measure.** The acre for land measure shall be measured horizontally and contain ten square chains and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth, six hundred and forty such acres being contained in a square mile. The chain for measuring land shall be twenty-two yards long, and be divided into one hundred equal parts, called links. [C73,§2041; C97, §3011; S13,§3009-d; C24, 27, 31, 35, 39,§3229; C46, 50, 54,§210.3]

**210.4 Weight.** The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights secured in ac-

cordance with the provisions of section 210.1. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred sixty, shall be divided into sixteen equal parts called ounces; the hundred-weight shall consist of one hundred avoirdupois pounds, and twenty hundred-weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. [C51,§938; R60,§1776; C73,§§2042, 2043; C97,§3012; S13,§3009-e; C24, 27, 31, 35, 39,§3230; C46, 50, 54,§210.4]

**210.5 Liquids.** The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascertained shall be the standard gallon secured in accordance with the provisions of section 210.1. The gallon shall be divided by continual division by the number two so as to make half-gallons, quarts, pints, half-pints, and gills. The barrel shall consist of thirty-one and one-half gallons, and two barrels shall constitute a hogshead. [C73,§§2044, 2045; C97,§3013; S13, §3009-g; C24, 27, 31, 35, 39,§3231; C46, 50, 54, §210.5]

**210.6 Dry measure.** The unit or standard measure of capacity for substances not liquids from which all other measures of such substances shall be derived and ascertained shall be the standard half-bushel secured in accordance with the provisions of section 210.1. The peck, half-peck, quarter-peck, quart, pint, and half-pint measures for measuring commodities which are not liquids, shall be derived from the half-bushel by successively dividing the cubic inch capacity of that measure by two. [C73,§§2046, 2047; C97,§3014; S13,§3009-f; C24, 27, 31, 35, 39,§3232; C46, 50, 54,§210.6]

**210.7 Bottomless measure.** Bottomless dry measures shall not be used unless they conform in shape to the United States standard dry measures. [SS15,§3009-j; C24, 27, 31, 35, 39, §3233; C46, 50, 54,§210.7]

**210.8 Sales of dry commodities.** All dry commodities unless bought or sold in package

or wrapped form shall be bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in sections 210.9 to 210.12, inclusive. [SS15,§3009-j; C24, 27, 31, 35, 39,§3234; C46, 50, 54,§210.8]

Referred to in §210.9

**210.9 Drugs and section comb honey exempted.** The requirements of section 210.8 shall not apply to drugs or section comb honey. [SS15,§3009-j; C24, 27, 31, 35, 39,§3235; C46, 50, 54,§210.9]

Referred to in §210.8

**210.10 Bushel measure.** When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold in a United States standard container or as provided in sections 210.11 and 210.12, the measure shall be determined by avoirdupois weight and shall be computed as follows:

<i>Commodities</i>	<i>Pounds</i>
Apples .....	48
Apples, dried .....	24
Alfalfa seed .....	60
Barley .....	48
Beans, green, unshelled .....	56
Beans, dried .....	60
Beans, lima .....	56
Beets .....	56
Blue grass seed .....	14
Bran .....	20
Bromus inermis .....	14
Broom corn seed .....	50
Buckwheat .....	48
Carrots .....	50
Castor beans, shelled .....	50
Charcoal .....	20
Cherries .....	40
Clover seed .....	60
Coal .....	80
Coke .....	40
Corn on the cob (field) .....	70
Corn in the ear, unhusked (field) ..	75
Corn, shelled (field) .....	56
Corn meal .....	48
Cucumbers .....	48
Emmer .....	40
Flaxseed .....	56
Grapefruit .....	48
Grapes, with stems .....	40
Hempseed .....	44
Hickory nuts, hulled .....	50
Hungarian grass seed .....	50
Kaffir corn .....	56
Lemons .....	48
Lime .....	80
Millet seed .....	50
Oats .....	32
Onions .....	52
Onion top sets .....	28
Onion bottom sets .....	32
Oranges .....	48
Orchard grass seed .....	14
Osage orange seed .....	32
Parsnips .....	45

<i>Commodities</i>	<i>Pounds</i>
Peaches .....	48
Peaches, dried .....	33
Peanuts .....	22
Pears .....	45
Peas, green, unshelled .....	50
Peas, dried .....	60
Plums .....	48
Popcorn, on the cob .....	70
Popcorn, shelled .....	56
Potatoes .....	60
Quinces .....	48
Rape seed .....	50
Redtop seed .....	14
Rutabagas .....	60
Rye .....	56
Salt .....	80
Sand .....	130
Shorts .....	20
Sorghum saccharatum seed .....	50
Soybeans .....	60
Spelt .....	40
Sweet corn .....	50
Sweet potatoes .....	50
Timothy seed .....	45
Tomatoes .....	50
Turnips .....	55
Walnuts, hulled .....	50
Wheat .....	60
All root crops not specified above..	50

[C51,§940; R60,§§1778, 1781-1784; C73,§2049; C97,§3016; S13,§3009-h; C24, 27, 31, 35, 39,§3236; C46, 50, 54,§210.10]

Referred to in §210.8

**210.11 Sale of fruits and vegetables by dry measure.** Blackberries, blueberries, cranberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries, also onion sets in quantities of one peck or less, may be sold by the quart, pint, or half-pint, dry measure. [SS15,§3009-i; C24, 27, 31, 35, 39, §3237; C46, 50, 54,§210.11]

Referred to in §§210.8, 210.10

**210.12 Sale of fruits and vegetables in baskets.** Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accordance with the provisions of section 189.9, all the provisions of the chapter relative to labeling foods shall be deemed to have been complied with. [C24, 27, 31, 35, 39,§3238; C46, 50, 54,§210.12]

Referred to in §§210.8, 210.10

**210.13 Berry boxes and climax baskets.** Berry boxes sold, used, or offered or exposed for sale shall have an interior capacity of one quart, pint, or half-pint dry measure. Climax baskets sold, used, or offered or exposed for sale shall be of the standard size fixed below:

1. Two-quart basket: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven

inches, and width five inches, outside measurement; basket to have a cover five by eleven inches, when a cover is used.

2. Four-quart basket: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement; basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

3. Twelve-quart basket: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch, outside measurement; top of basket, length nineteen inches, height of basket, seven and one-sixteenth inches, width nine inches, outside measurement; basket to have cover nine inches by nineteen inches, when cover is used. [SS15, §3009-i; C24, 27, 31, 35, 39,§3239; C46, 50, 54, §210.13]

**210.14 Hop boxes.** The standard box used in packing hops shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measurement. [C73,§2051; C97,§3018; C24, 27, 31, 35, 39,§3240; C46, 50, 54,§210.14]

**210.15 Milk bottles or containers.** The standard bottle or container used for the sale of milk and cream shall be of a capacity of one gallon, one-half gallon, three pints, one quart, one pint, one-half pint, one-third quart, one gill, filled full to the bottom of the lip. [S13, §3009-k; C24, 27, 31, 35, 39,§3241; C46, 50, 54, §210.15; 56GA, ch 118,§1]

**210.16 Flour.** The standard weights of flour when sold in package form shall be as follows: Two, five, ten, twenty-five, fifty, or one hundred pounds. [C24, 27, 31, 35, 39,§3242; C46, 50, 54,§210.16]

**210.17 Mason work or stone.** The perch of mason work or stone shall consist of twenty-five feet, cubic measure. [C51,§939; R60,§1777; C73,§2050; C97,§3017; C24, 27, 31, 35, 39,§3243; C46, 50, 54,§210.17]

**210.18 Sales to be by standard weight or measure—labeling.** All commodities bought or sold by weight or measure shall be bought or sold only by the standards established by this chapter, unless the vendor and vendee otherwise agree. Sales by weight shall be by avoirdupois weight unless troy weight is agreed upon by the vendor and vendee.

All commodities bought or sold in package form shall be labeled in compliance with the general provisions for labeling provided for in sections 189.9 to 189.16, inclusive, unless otherwise provided for in this chapter. [SS15, §3009-j; C24, 27, 31, 35, 39,§3244; C46, 50, 54, §210.18]

## BREAD

**210.19 Standard weight.** The standard loaf of bread shall weigh one pound, avoirdupois weight. All bread manufactured, procured, made or kept for the purpose of sale, offered or exposed for sale, or sold in the form of loaves, shall be one of the following standard weights and no other, namely: Three-quarters pound, one pound, one and one-quarter pound, one and one-half pound, or multiples of one pound, avoirdupois weight; and provided further, that the provisions of this section shall not apply to biscuits, buns, crackers, rolls or to what is commonly known as "stale" bread and sold as such, in case the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is "stale" bread. In case of twin or multiple loaves, the weight specified in this section shall apply to the combined weight of the two units. [C27, 31, 35,§3244-b1; C39,§3244.01; C46, 50, 54,§210.19]

Referred to in §§210.21, 210.23, 210.24

**210.20 Wrapper.** There shall be printed upon the wrapper of each loaf of bread in plain conspicuous type, the name and address of the manufacturer and the weight of the loaf in terms of one of the standard weights herein specified. [C27, 31, 35,§3244-b2; C39,§3244.02; C46, 50, 54,§210.20]

Referred to in §§210.21, 210.23, 210.24

**210.21 Violations.** It shall be unlawful for any person to manufacture, procure, or keep for the purpose of sale, offer or expose for sale, or sell bread in the form of loaves which are not of one of the weights specified in section 210.19 or violate the rules of the secretary of agriculture pertaining thereto. Any person who, by himself or by his servant, or agent, or as the servant or agent of another, shall violate any of the provisions of sections 210.19 to 210.25, inclusive, shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars upon conviction in any court of competent jurisdiction, or by imprisonment for not more than thirty days, in the discretion of the court. [C27, 31, 35,§3244-b3; C39,§3244.03; C46, 50, 54,§210.21]

Referred to in §§210.22-210.24

**210.22 "Person" defined.** The word "person" as used in section 210.21 shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. [C27, 31, 35,§3244-b4; C39,§3244.04; C46, 50, 54,§210.22]

Referred to in §§210.21, 210.23, 210.24

**210.23 Exception.** Any woman engaged in home baking is exempt from the provisions of sections 210.19 to 210.22. [C27, 31, 35,§3244-b5; C39,§3244.05; C46, 50, 54,§210.23]

Referred to in §§210.21, 210.24

**210.24 Enforcement—rules and regulations.** The secretary of agriculture shall enforce the provisions of sections 210.19 to 210.25, inclusive. He shall make rules and regulations for the

enforcement of the provisions of said sections not inconsistent therewith, and such rules and regulations shall include reasonable variations and tolerances. [C27, 31, 35, §3244-b6; C39, §3244.06; C46, 50, 54, §210.24]

Referred to in §210.21

**210.25 Weighing.** Bread when weighed for inspection shall be weighed in the manufacturer's plant when said bread is wrapped ready for delivery, and bread coming into the state

from an adjoining state when weighed for inspection shall be weighed in the packages, containers, vehicles, or trucks of the manufacturer at the time when said bread crosses the state line, or at the first point of stop for sale or delivery of said bread after crossing the Iowa state line, and the weight shall be determined by averaging the weight of not less than fifteen loaves picked at random from any given lot. [C35, §3244-f1; C39, §3244.07; C46, 50, 54, §210.25]

Referred to in §§210.21, 210.24

## CHAPTER 211

### SALE OF LIVESTOCK

General penalty, §189.19

211.1 Report as to purchase.

211.2 Violations.

**211.1 Report as to purchase.** Any person or corporation engaged in the business of buying livestock for the market or for slaughter shall keep such records regarding time of purchase, name and residence of seller and description of the livestock purchased, as may be determined by the department of agriculture. Such records shall be open to inspection of peace officers at reasonable times. [C31, 35, §3244-d1; C39, §3244.08; C46, 50, 54, §211.1]

**211.2 Violations.** Any person or corporation failing to keep such record or refusing to offer the same for inspection when requested at a reasonable time by the peace officer, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars. [C31, 35, §3244-d2; C39, §3244.09; C46, 50, 54, §211.2]

## CHAPTER 212

### SALES OF CERTAIN COMMODITIES FROM BULK

General penalty, §189.19

212.1 Coal, charcoal, and coke.

212.2 Delivery tickets required.

212.3 Disposition of delivery tickets.

212.4 Sales without delivery.

212.5 Hay or straw by bale.

212.6 Inspection of vehicles.

**212.1 Coal, charcoal, and coke.** No person shall sell, offer or expose for sale any coal, charcoal, or coke in any other manner than by weight, or represent any of said commodities as being the product of any county, state, or territory, except that in which mined or produced, or represent that said commodities contain more British thermal units than are present therein. [S13, §3009-l; C24, 27, 31, 35, 39, §3245; C46, 50, 54, §212.1]

**212.2 Delivery tickets required.** No person shall deliver any bulk commodities, other than liquids, by vehicle unless otherwise provided for without each such delivery being accompanied by duplicate delivery tickets, on each of which shall be written in ink or other indelible substance the actual weight distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, and the net amount in weight of the commodity, with the names of the purchaser and the dealer from whom purchased. [S13, §3009-l; C21, 27, 31, 35, 39, §3246; C46, 50, 54, §212.2]

**212.3 Disposition of delivery tickets.** One of said duplicate tickets shall be delivered to

the vendee and the other one shall be returned to the vendor. Upon demand of the department the person in charge of the load shall surrender one of said duplicate tickets to the person making such demand. If said ticket is retained an official weight slip shall be delivered by said department to the vendee or his agent. [S13, §3009-l; C24, 27, 31, 35, 39, §3247; C46, 50, 54, §212.3]

**212.4 Sales without delivery.** When the vendee carries away the commodity purchased, a delivery ticket, showing the actual number of pounds received by him, shall be issued to him by the vendor. [S13, §3009-l; C24, 27, 31, 35, 39, §3248; C46, 50, 54, §212.4]

**212.5 Hay or straw by bale.** No person shall sell, offer or expose for sale any bales of hay or straw without first attaching thereto a plain and conspicuous statement of the minimum net weight contained in such bales; but nothing in this section shall be construed to require a statement of weight on each bale where hay or straw is sold by the ton and a ticket showing the gross, tare, and net weight

accompanies the delivery. [C24, 27, 31, 35, 39, §3249; C46, 50, 54, §212.5]

**212.6 Inspection of vehicles.** The department may stop any wagon, auto truck, or other vehicle loaded with any commodity being bought, offered or exposed for sale, or sold,

and compel the person having charge of the same to bring the load to a scale designated by said department and weighed for the purpose of determining the true net weight of the commodity. [S13, §3009-l; SS15, §3009-n; C24, 27, 31, 35, 39, §3250; C46, 50, 54, §212.6]

CHAPTER 213

STATE AND CITY SEALERS

General penalty, §189.19

- 213.1 State sealer.
- 213.2 Preservation of standards.
- 213.3 Testing weights and measures.
- 213.4 Sealing milk bottles.

- 213.5 Sealer for cities and towns.
- 213.6 Duties.
- 213.7 Expenses.

**213.1 State sealer.** The department shall designate one of its assistants to act as state sealer of weights and measures. All weights and measures sealed by him shall be impressed with the word "Iowa". [C73, §§2053-2055; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §3251; C46, 50, 54, §213.1]

**213.2 Preservation of standards.** The department shall maintain the state standards in good order, shall take all necessary precautions for their safekeeping, and shall submit them once in ten years to the national bureau of standards for certification. [C73, §§2053, 2054; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §3252; C46, 50, 54, §213.2]

**213.3 Testing weights and measures.** Upon written request of any citizen, firm, or corporation, city, town, or county, or educational institution of the state made to the department, a test or calibration of any weights, measures, weighing or measuring devices, and instruments or apparatus to be used as standards shall be made. [S13, §3009-b; C24, 27, 31, 35, 39, §3253; C46, 50, 54, §213.3]

**213.4 Sealing milk bottles.** The state sealer shall not be required to seal bottles for milk or cream, but they shall be inspected from

time to time in order to ascertain whether they are standard. [S13, §3009-k; C24, 27, 31, 35, 39, §3254; C46, 50, 54, §213.4]

**213.5 Sealer for cities and towns.** A sealer of weights and measures may be appointed in any city or town by the council, who shall hold his office during its pleasure, and may obtain from the department such standard weights and measures as the council may deem necessary. [C73, §§2059, 2060; C97, §3023; C24, 27, 31, 35, 39, §3255; C46, 50, 54, §213.5]

**213.6 Duties.** Each sealer in cities and towns shall take charge of and provide for the safekeeping of the town or city standards, and see that the weights, measures, and all apparatus used for determining the quantity of commodities used throughout the town or city, agree with the standards in his possession. [C73, §§2059, 2060; C97, §3023; C24, 27, 31, 35, 39, §3256; C46, 50, 54, §213.6]

**213.7 Expenses.** All expenses directly incurred in furnishing the several cities and towns with standards, or in comparing those that may be in their possession, shall be borne by said cities and towns. [C73, §2061; C97, §3024; C24, 27, 31, 35, 39, §3257; C46, 50, 54, §213.7]

Referred to in §404.6(5)

CHAPTER 214

PUBLIC SCALES AND GASOLINE PUMPS

General penalty, §189.19

- 214.1 Definitions.
- 214.2 License.
- 214.3 Fee.
- 214.4 Form of license.

- 214.5 License to be displayed.
- 214.6 Oath of weighmasters.
- 214.7 Registers.
- 214.8 Penalty.

**214.1 Definitions.** For the purpose of this chapter:

1. "Public scale" shall mean any scale or weighing device for the use of which a charge is made or compensation is derived.

2. "Gasoline pump" shall mean any pump, meter, or similar measuring device used for

measuring gasoline. [C73, §2065; C97, §3027; SS15, §3009-m; C24, 27, 31, 35, 39, §3258; C46, 50, 54, §214.1]

**214.2 License.** Every person who shall use or display for use any public scale, pump or meter used in measuring the quantity of gasoline or fuel oil sold to consumer customers

shall secure a license for said scale, pump or meter from the department. [SS15,§3009-m; C24, 27, 31, 35, 39,§3259; C46, 50, 54,§214.2]

**214.3 Fee.** The license for a public scale shall expire on December 31 of each year, and for a gasoline pump or meter on June 30 of each year.

A fee for each said license shall be three dollars per annum provided, however, that the fee for gasoline pumps and meters shall be one dollar and fifty cents per annum if paid within one month from the date said license is due.

A license fee on every gasoline pump and meter is due the day any such pump or meter is placed in operation. [SS15,§3009-m; C24, 27, 31, 35, 39,§3260; C46, 50, 54,§214.3]

**214.4 Form of license.** The license shall be in the form of a label bearing the words "Licensed by the State of Iowa, No....." Each label shall be numbered consecutively and bear the year for which the license is granted. [SS15,§3009-m; C24, 27, 31, 35, 39, §3261; C46, 50, 54,§214.4]

**214.5 License to be displayed.** The license plate shall be displayed prominently on the front of the scale or pump, and the defacing or wrongful removal of such plate shall be punished as provided in chapter 189. Absence of license plate shall be prima-facie evidence

that the weighing or measuring device is being operated contrary to law. [SS15,§3009-m; C24, 27, 31, 35, 39,§3262; C46, 50, 54,§214.5]

**214.6 Oath of weighmasters.** All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer oaths, to keep their scales correctly balanced, to make true weights, and to render a correct account to the person having weighing done. [C73,§2065; C97,§3027; C24, 27, 31, 35, 39,§3263; C46, 50, 54,§214.6]

Referred to in §214.8

**214.7 Registers.** Weighmasters are required to make true weights and keep a correct register of all weighing done by them, giving the amount of each weight, date thereof, and the name of the person or persons for whom done, and give, upon demand, to any person having weighing done, a certificate showing the weight, date, and for whom weighed. [C73, §2066, 2067; C97,§3028; C24, 27, 31, 35, 39,§3264; C46, 50, 54,§214.7]

Referred to in §214.8

**214.8 Penalty.** Any weighmaster violating any of the provisions of sections 214.6 and 214.7, shall be guilty of a misdemeanor, and punished as provided in chapter 189 and be liable to the person injured for all damages sustained. [C73, §2068; C97,§3029; C24, 27, 31, 35, 39,§3265; C46, 50, 54,§214.8]

## CHAPTER 215

### INSPECTION OF WEIGHTS AND MEASURES

#### General penalty, §189.19

- 215.1 Duty to inspect.
- 215.2 Fees.
- 215.3 Payment by party complaining.
- 215.4 Limitation on inspections.
- 215.5 Confiscation of scales.
- 215.6 False weights or measures.
- 215.7 Transactions by false weights or measures.
- 215.8 Reasonable variations.
- 215.9 Power of cities and towns limited.

- 215.10 Installation of new scales.
- 215.11 Dial visible to public.
- 215.12 Bond of scale repairers.
- 215.13 Graduations on beam.
- 215.14 Approval by department.
- 215.15 Scale pit.
- 215.16 Weighing beyond capacity.
- 215.17 Test weights to be used.
- 215.18 Specifications and tolerances.

**215.1 Duty to inspect.** The department shall make an inspection of all weights and measures wherever the same are kept for use in connection with the sale of any commodity sold by weight or measurement, or where the price to be paid for producing any commodity is based upon the weight or measurement thereof; and when complaint is made to the department that any false or incorrect weights or measures are being made under said conditions, said department shall have the same inspected. [S13,§3009-o; SS15,§3009-n; C24, 27, 31, 35, 39,§3266; C46, 50, 54,§215.1]

**215.2 Fees.** An inspection fee shall be charged the person owning or operating the scale so inspected in accordance with the following schedule:

Railroad track scales, ten dollars each.

All hopper and automatic scales, three dollars each.

Platform scales,  
500 to 1,000 pounds beam capacity, one dollar each;  
1,001 to 30,000 pounds capacity, three dollars each;  
30,001 to 50,000 pounds capacity, five dollars each;  
50,001 pounds capacity and up, seven dollars each.

[SS15,§3009-n; C24, 27, 31, 35, 39,§3267; C46, 50, 54,§215.2]

**215.3 Payment by party complaining.** When such inspection shall be made upon the com-

plaint of any person other than the owner of the scale, and upon examination the scale is found by the department to be accurate for weighing, the inspection fee for such inspection shall be paid by the person making complaint. [SS15,§3009-n; C24, 27, 31, 35, 39,§3268; C46, 50, 54,§215.3]

**215.4 Limitation on inspections.** No person shall be required to pay more than two inspection fees for any one scale in any one year unless additional inspections are made at the request of the owner of said scale. [SS15, §3009-n; C24, 27, 31, 35, 39,§3269; C46, 50, 54, §215.4]

**215.5 Confiscation of scales.** The department may seize without warrant and confiscate any incorrect scales, weights, or measures, or any weighing apparatus or part thereof which do not conform to the state standards or upon which the license fee has not been paid. If any weighing or measuring apparatus or part thereof be found out of order the same may be tagged by the department "Condemned until repaired", which tag shall not be altered or removed until said apparatus is properly repaired. [S13,§3009-q; C24, 27, 31, 35, 39,§3270; C46, 50, 54,§215.5]

**215.6 False weights or measures.** If any person engaged in the purchase or sale of any commodity by weight or measurement, or in the employment of labor where the price thereof is to be determined by weight or measurement of the articles upon which such labor is bestowed, has in his possession any inaccurate scales, weights, or measures, or other apparatus for determining the quantity of any commodity, which do not conform to the standard weights and measures, he shall be punished as provided in chapter 189. [SS15, §3009-p; C24, 27, 31, 35, 39,§3271; C46, 50, 54, §215.6]

**215.7 Transactions by false weights or measures.** Any person shall be deemed to have violated the provisions of this chapter and shall be punished as provided in chapter 189:

1. If such person sell, trade, deliver, charge for or claim to have delivered to a purchaser an amount of any commodity which is less in weight or measure than that which is asked for, agreed upon, claimed to have been delivered, or noted on the delivery ticket.

2. If such person make settlement for or enter credit, based upon any false weight or measurement, for any commodity purchased.

3. If such person make settlement for or enter credit, based upon any false weight or measurement, for any labor where the price of producing or mining is determined by weight or measure.

4. If such person record a false weight or measurement upon the weight ticket or book. [SS15,§3009-j; C24, 27, 31, 35, 39,§3272; C46, 50, 54,§215.7]

Referred to in §215.8

**215.8 Reasonable variations.** In enforcing the provisions of section 215.7 reasonable variations shall be permitted and exemptions as to small packages shall be established by rules of the department. [SS15,§3009-j; C24, 27, 31, 35, 39,§3273; C46, 50, 54,§215.8]

**215.9 Power of cities and towns limited.** Commodities weighed upon any scale bearing the inspection card, issued by the department, shall not be required to be reweighed by any ordinance of any city or town, nor shall their sale, at the weights so ascertained, and because thereof, be, by such ordinance, prohibited or restricted. [SS15,§3009-m; C24, 27, 31, 35, 39, §3274; C46, 50, 54,§215.9]

**215.10 Installation of new scales.** It shall be unlawful to install a livestock or truck scale or a hopperscale, used for commercial purposes in this state, unless said scale is so installed that the same is easily accessible for inspection and testing by equipment of the state department of agriculture and with due regard to size and capacity thereof. Every scale manufacturer or dealer shall, upon selling a scale of the above types in Iowa, submit to the department of agriculture upon forms provided by said department, the make, capacity of the scale, the date of sale, and the date and location of its installation. [C50, 54, §215.10]

53GA, ch 93,§4 editorially divided

**215.11 Dial visible to public.** The weight indicating dial or beams on counter scales used to weigh articles sold at retail shall be so located that the reading dial indicating the weight shall at all times be visible to the public. [C50, 54,§215.11]

**215.12 Bond of scale repairers.** Any person, firm, or corporation engaging in any scale repair work for hire in this state shall first file with the department of agriculture a bond of the form required by chapter 61 in the sum of one thousand dollars conditioned to guarantee the workmanship and faithful performance of the assumed task and providing for liquidated damages for failure to perform such conditions. Such person, firm, or corporation, on depositing with the department of agriculture a bond in the amount of one thousand dollars shall be furnished a certificate authorizing them to do what is known as scale repair work, or installation of new scales in the state of Iowa. This certificate shall be valid until revoked by the secretary of agriculture. [C50, 54,§215.12]

**215.13 Graduations on beam.** All new weigh beams or dials on what is known as livestock scales used for determining the weight in buying or selling livestock shall be in not over five pound graduations. [C50, 54, §215.13]

**215.14 Approval by department.** No scale known in the commercial field as a truck or livestock scale shall be installed in the state of Iowa without first being approved by the



state department of agriculture. Said approval being based upon the recommendations of the U. S. bureau of standards. All motor truck scales, livestock scales, and grain dump scales, hereafter installed and regardless of capacity shall have a clearance of not less than four feet from the finished floor line of scale pit to the bottom of the "I" beam of the scale bridge. [C50, 54,§215.14]

**215.15 Scale pit.** Scale pit shall have proper room for inspector or service man to repair or inspect scale. Scale pit shall remain dry at all times and adequate drainage shall be provided for the purpose of inspecting and cleaning. [C50, 54,§215.15]

**215.16 Weighing beyond capacity.** It shall be unlawful for any person, firm, or corporation to use such a scale for weighing commodities the gross weight of which is greater than the factory rated scale capacity. The capacity of the scale shall be stamped by the manufacturer on each weigh beam or dial. The capacity of the scale shall be posted so as to be visible to the public. [C50, 54,§215.16]

**215.17 Test weights to be used.** Any person, firm or corporation engaged in scale repair work for hire shall use only test weights sealed by the state department of agriculture in determining the effectiveness of his repair work and said test weights shall be sealed as to their accuracy once each year. Provided, however, that it shall be unlawful for such person to hold himself out as an official scale inspector or to use said test weights except to determine the accuracy of scale repair work done by him and he shall be entitled to no fee for their use. A fee shall be charged and collected at time of inspection for the inspection of such weights as follows:

All weights up to and including 25 pounds .....\$ .75 each  
 All weights up to and including 50 pounds ..... 1.50 each

Over 50 pounds capacity, up to and including 100 pounds .....\$2.00 each  
 Over 100 pounds capacity, up to and including 500 pounds ..... 3.00 each  
 Over 500 pounds capacity, up to and including 1000 pounds ..... 5.00 each

The fee for all tank calibrations shall be as follows:

100 gallons up to and including 300 gallons .....\$ 3.00  
 301 gallons up to and including 500 gallons ..... 5.00  
 501 gallons up to and including 1,000 gallons ..... 7.50  
 1,001 gallons up to and including 2,000 gallons ..... 10.00  
 2,001 gallons up to and including 3,000 gallons ..... 12.00  
 3,001 gallons up to and including 4,000 gallons ..... 14.00  
 4,001 gallons up to and including 5,000 gallons ..... 16.00  
 5,001 gallons up to and including 6,000 gallons ..... 18.00  
 6,001 gallons up to and including 7,000 gallons ..... 20.00  
 7,001 gallons and up..... 25.00

No calibration will be required of any tank which is not used for the purpose of measuring, or which is equipped with a meter, nor shall vehicle tanks loaded from meters and carrying a printed ticket showing gallonage be required to be calibrated. [C50, 54,§215.17]

**215.18 Specifications and tolerances.** The secretary of agriculture may after consultation and with the advice of U. S. bureau of standards establish specifications and tolerances for weights and measures and weighing and measuring devices, and said specifications and tolerances shall be legal specifications and tolerances in this state, and shall be observed in all inspections and tests. [C50, 54,§215.18]

CHAPTER 216

PRISON-MADE GOODS

General penalty, §189.19

216.1 Branding, labeling and marking.

216.2 Penalty—effectiveness of Act.

**216.1 Branding, labeling and marking.** Beginning January 19, 1934, all goods, wares, and merchandise made by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed in the state, and all such goods, wares, and merchandise so made by convict labor in any penitentiary, prison, reformatory or any institution outside the state of Iowa in which convict labor is so employed, and which is imported, brought or introduced into this state shall, before being exposed for sale, be branded,

labeled or marked as herein provided, and shall not be exposed for sale in this state without such brand, label or mark. Such brand, label or mark shall contain at the head or top thereof the words, "prison-made" followed by the year and name of the penitentiary, prison, reformatory or other establishment in which it was made, in plain English lettering, of the style and size known as great primer roman condensed capitals. The brand or mark shall in all cases, where the nature of the article will permit, be placed upon the same, and only

where such branding or marking is impossible shall a label be used, and where a label is used it shall be in the form of a paper tag, which shall be attached by wire to each article, where the nature of the article will permit, and placed securely upon the box, crate or other covering in which such goods, wares or merchandise may be packed, shipped or exposed for sale. Said brand, mark or label shall be placed upon the outside of and upon the most conspicuous part of the finished article and its box, crate or covering. [C35,§3274-e1; C39,§3274.1; C46, 50, 54,§216.1]

**216.2 Penalty—effectiveness of Act.** A person knowingly having in his possession for

the purpose of sale or offering for sale any prison-made goods, wares or merchandise manufactured in any state without the brand, mark or label required by law, or who removes or defaces such brand, mark or label shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. Provided, however, that the provision of this chapter shall not be effective unless and until the Hawes-Cooper Act\* [49USC,§60] becomes effective. [C35, §3274-e2; C39,§3274.2; C46, 50, 54,§216.2]

\*Effective January 19, 1934

# TITLE XI

## SOCIAL WELFARE AND REHABILITATION

### CHAPTER 217

#### BOARD OF CONTROL OF STATE INSTITUTIONS

Identification and use of publicly owned automobiles, etc., §740.20 et seq

217.1 How constituted—tenure.  
217.2 Appointment.  
217.3 Vacancies.  
217.4 Removal.  
217.5 Political activity.  
217.6 Disqualification.

217.7 Organization.  
217.8 Official seal.  
217.9 Expenses.  
217.10 Trips to other states.  
217.11 Biennial report.  
217.12 Repealed by 53GA, ch 96,§9

**217.1 How constituted—tenure.** The board of control of state institutions shall be composed of three electors of the state, not more than two of whom shall belong to the same political party, and no two of whom shall, at the time of appointment, reside in the same congressional district. Each member shall devote his entire time to the duties of his office, and hold office for a period of six years, commencing on July 1 of the year of appointment. The term of office of one member shall expire in each odd-numbered year. [S13,§2727-a1; C24, 27, 31, 35, 39,§3275; C46, 50, 54,§217.1]

**217.2 Appointment.** The governor shall, within sixty days following the organization of each regular session of the general assembly, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to the member on said board whose term of office will expire on July 1 following. [S13,§2727-a1; C24, 27, 31, 35, 39,§3276; C46, 50, 54,§217.2]

Confirmation procedure, §2.40

**217.3 Vacancies.** Vacancies on said board that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term.

Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S13,§2727-a1; C24, 27, 31, 35, 39,§3277; C46, 50, 54,§217.3]

**217.4 Removal.** The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the board for malfeasance or nonfeasance in

office, or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal when so made shall be final.

In addition to the foregoing provisions the governor may, when the general assembly is not in session, remove any member for the causes and in the manner provided for in chapter 66. [S13,§2727-a1; C24, 27, 31, 35, 39, §3278; C46, 50, 54,§217.4]

Removal by court or executive council, §§66.1, 66.26

**217.5 Political activity.** No member, officer, or employee of the board, or of any of the institutions under the control of the board, shall, directly or indirectly, exert his influence to induce other officers or employees of the state to adopt his political views, or to favor any particular candidate for office, nor shall such member, officer, or employee contribute in any manner, money or other thing of value to any person for election purposes. Any person violating this section shall be removed from his office or position. [S13,§2727-a35; C24, 27, 31, 35, 39,§3279; C46, 50, 54,§217.5]

**217.6 Disqualification.** No member of the board shall be eligible to any other lucrative office, elective or appointive, in the state during his term of service. [S13,§2727-a2; C24, 27, 31, 35, 39,§3280; C46, 50, 54,§217.6]

**217.7 Organization.** The member whose term first expires shall be the chairman of the board for each biennial period. The board shall employ a competent secretary and such other assistants as may be necessary. In the absence or disability of the secretary, the board may, by order entered of record, appoint a member of the board as acting secretary during such absence or disability, who shall at such time have the powers of the secretary of the board. No additional compensation shall be paid because of the service of such acting secretary. [S13,§2727-a1; SS15,§2727-a3; C24, 27, 31, 35, 39,§3281; C46, 50, 54,§217.7]

**217.8 Official seal.** The board shall have an official seal, and every commission, order, or other paper executed by the board may, under its direction, be attested with its seal. [S13,§2727-a7; C24, 27, 31, 35, 39,§3282; C46, 50, 54,§217.8]

**217.9 Expenses.** The members of said board, its secretary, and employees, shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route, when engaged in the state in the performance of official business. [S13,§2727-a5; C24, 27, 31, 35, 39,§3283; C46, 50, 54,§217.9]

**217.10 Trips to other states.** No authority shall be granted to any person to make a trip to another state at the expense of the state, except by resolution, which shall state the purpose of the trip and why the same is necessary, adopted by the board, entered of record, and approved in writing by the governor prior to the making of such trip. [S13,§2727-a5; C24, 27, 31, 35, 39,§3284; C46, 50, 54,§217.10]

Referred to in §8.13

**217.11 Biennial report.** The board shall, in each even-numbered year, at the time provided by law, make a report to the governor and

general assembly, and cover therein the biennial period ending with June 30 preceding, which report shall embrace:

1. An itemized statement of its expenditures concerning each institution under its control.

2. A detailed statement of the management of all said institutions.

3. A statement of all visits made to said institutions and when and by whom made.

4. The observations and conclusions of the board relative to said institutions.

5. Such recommendations as to changes in the laws relative to such institutions as the board may deem advisable.

6. The name and salary of every officer or employee of said board, and of the various institutions controlled by the board.

7. The annual reports made to the board by the executive officers of the several institutions.

8. Such other matters as the governor may direct. [S13,§§2727-a9,-a12,-a16,-a34; SS15,§2727-a3; C24, 27, 31, 35, 39,§3285; C46, 50, 54,§217.11]

Time of report, §17.3

**217.12** Repealed by 53GA, ch 96,§9. See §218.85.

## CHAPTER 218

### GOVERNMENT OF INSTITUTIONS

- 218.1 Institutions controlled.
- 218.2 Powers of governor.
- 218.3 Report of abuses.
- 218.4 Rules—fire—additional duties.
- 218.5 Fire protection contracts.
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- 218.9 Executive officers—tenure—removal.
- 218.10 Subordinate officers and employees.
- 218.11 Repealed by 52GA, ch 113,§2.
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- 218.66 Property of small value.
- 218.67 When no administration granted.
- 218.68 Money deposited with treasurer of state.
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- 218.74 Directors employed.
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- 218.79 Qualifications for child welfare.
- 218.80 Powers and duties of director of child welfare.
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- 218.82 Powers and duties of director of industries.
- 218.83 Co-operation.
- 218.84 Comptroller's duties transferred.
- 218.85 Uniform system of accounts.
- 218.86 Abstract of claims.
- 218.87 Warrants issued by comptroller.
- 218.88 Institutional payrolls.
- 218.89 Abstracts of payrolls.
- 218.90 Transfer of prisoners.

**218.1 Institutions controlled.** The board of control shall have full power to contract for, manage, control, and govern, subject only to the limitations imposed by law, the following institutions:

1. Soldiers Home.
2. Glenwood State School.
3. Woodward State Hospital and School.
4. Mental Health Institute, Cherokee, Iowa.
5. Mental Health Institute, Clarinda, Iowa.
6. Mental Health Institute, Independence, Iowa.
7. Mental Health Institute, Mount Pleasant, Iowa.
8. Training School for Boys.
9. Training School for Girls.
10. Juvenile Home.
11. The Iowa Annie Wittenmyer Home.
12. Women's Reformatory.
13. Men's Reformatory.
14. State Penitentiary.

[S13, §§2727-a8, -a77; SS15, §§2713-n2, 2727-a96; C24, 27, 31, 35, 39, §3287; C46, 50, 54, §218.1]

Referred to in §§218.2, 218.4  
See §§145.1, 226.1

**218.2 Powers of governor.** Nothing contained in section 218.1 shall limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or legally vested by him in any committee appointed by him. [S13, §2727-a9; C24, 27, 31, 35, 39, §3288; C46, 50, 54, §218.2]

**218.3 Report of abuses.** The board shall report, in writing, to the governor any abuses found to exist in any of the said institutions. [S13, §2727-a18; C24, 27, 31, 35, 39, §3289; C46, 50, 54, §218.3]

**218.4 Rules—fire—additional duties.** The board shall prescribe such rules, not inconsistent with law, as it may deem necessary for the discharge of its duties, the management of each of said institutions, the admission of inmates thereto, and the treatment, care, custody, education, and discharge of inmates. It is made the particular duty of the board to establish rules by which danger to life and property from fire will be minimized.

In the discharge of its duties and in the enforcement of its rules it may require any of its appointees to perform duties in addition to those required by statute.

Such rules when prescribed or approved by the board shall be uniform, and shall apply to all institutions where insane are kept including county or private hospitals, and to all other institutions under the jurisdiction or supervision of the board of control, but they shall not interfere with proper medical treatment administered patients by competent physicians. Annually, signed copies of said rules shall be sent to the chief executive officer of each such institution or hospital as well as to the clerk of each district court, the chairman of the board of supervisors of each county, and to the officer in charge of institutions or hospitals caring for the insane in each county, who shall be responsible for seeing that the same is posted in said institution or hospital in a prominent place. Said rules shall be kept current to meet the public need and shall be revised and published annually.

The state fire marshal shall cause to be made an annual inspection of all of the institutions listed in section 218.1 and shall make written report thereof to the board of control. [S13, §§2727-a30, -a48, 5718-a3; SS15, §§2727-a50, -a96; C24, 27, 31, 35, 39, §3290; C46, 50, 54, §218.4]

**218.5 Fire protection contracts.** The board of control shall have power to enter into contracts with the governing body of any city, town, or other municipal corporation for the protection from fire of any property under the control of the board, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon. [C31, 35, §3290-d1; C39, §3290.1; C46, 50, 54, §218.5]

**218.6 Business managers.** The superintendent or executive officer of each of the institutions under the board of control shall appoint a business manager with the approval of the board and such appointed person shall hold no other office and shall act in no other capacity at the institution to which he has been appointed, nor shall he be eligible to any other lucrative office, elective or appointive, in the state during his term of service but he shall

devote his time entirely to his duties as business manager of the institution to which he is appointed. He shall receive such compensation as ordered by the board of control and shall hold office at the pleasure of said board. [C39, §3291.1; C46, 50, 54, §218.6; 57GA, ch 106, §1]

**218.7 Accounting and reports.** The business manager shall be responsible to the board of control and shall file such accounting and other statistical reports and statements with the auditor of state, as the auditor may designate by written request to the secretary of the board of control, at such times and periods as the auditor might require. [C39, §3291.2; C46, 50, 54, §218.7]

**218.8 Duties and prohibitions.** Subject to the orders and direction of the board of control and to the written requests of the auditor of state to the secretary of the board of control, such business manager shall have the following powers, duties and responsibilities:

1. He shall be the general business manager of the institution to which he has been appointed and shall have complete charge and supervision over all business matters and financial affairs relating to such institution, including the general institution, farms and gardens and all industries engaged in at such institution.

2. He shall replace the steward at the institution and shall have all the powers and be charged with all the duties and responsibilities vested in the steward as provided for in section 218.39.

3. Under the direction and supervision of the secretary of the board of control, he shall have complete charge of all of the accounting and all other statistical records and keep same in a manner and as directed by the secretary of the board of control which manner, method, system and form shall be approved by the auditor of state.

4. He shall have complete control and be charged with the full accountability of all property and moneys of the institution to which he has been appointed.

5. He shall have complete charge and supervision over the condition and repair of all buildings, improvements, equipment and/or property of such institution to which he has been appointed, subject however, to the approval of the superintendent in instances where such equipment is used directly in the medical, mental, moral and/or therapeutic treatment or care of the patients or inmates.

6. He shall have charge and be accountable for all of the livestock at the institution to which he has been appointed, but he shall not be permitted to exhibit any such livestock at state and county fairs or livestock shows.

7. He shall have the power to appoint, direct and discharge all employees excepting doctors, nurses, ward attendants, laboratory technicians or assistants and all other personnel charged with the medical, mental or

therapeutical treatment and/or care of any patient or inmate of said institution, which personnel shall be appointed, directed and discharged by the superintendent. However, he shall be charged with the keeping of all records relating to the entire personnel of the institution as provided for in section 218.10.

8. He shall exercise no control or direction whatsoever over the medical, mental, moral or therapeutical care or treatment of any patient or inmate of said institution, or over the doctors, orderlies, nurses, ward attendants, laboratory technicians and all other personnel directly charged with the medical, mental or therapeutical care or treatment of any patient or inmate, employed by the superintendent, but will report all violations to the superintendent. Likewise, the control and direction of employees, by the superintendent, is hereby confined to the doctors, orderlies, nurses, ward attendants, laboratory and all other personnel directly charged with the medical, mental, moral or therapeutical care or treatment of any patient or inmate of said institution. [C39, §3291.3; C46, 50, 54, §218.8]

**218.9 Executive officers—tenure—removal.** The board shall appoint a superintendent, warden, or other chief executive officer of each institution under its control who shall have the immediate custody and control, subject to the orders of the board, of all property used in connection with the institution, except as provided in this chapter. The tenure of office of said officers shall be at the pleasure of the board, but they may be removed by the board for inability or refusal to properly perform the duties of the office, but such removal shall be had only after an opportunity is given such person to be heard before such board upon preferred written charges. Such removal, when made, shall be final. [S13, §2727-a24; C24, 27, 31, 35, 39, §3292; C46, 50, 54, §218.9]

See also §219.7

**218.10 Subordinate officers and employees.** The board shall determine the number and compensation of subordinate officers and employees for each institution. Subject to the provisions of this chapter, such officers and employees shall be appointed and discharged by the chief executive officer or business manager. Such officer shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons therefor. All of these employees, except physicians and surgeons, shall be bona fide residents and citizens of the state of Iowa at the time of employment. An exception to this provision of residence may be granted by the board for the sole purpose of securing professional and/or scientific services which are unavailable from among the citizens of the state of Iowa. [S13, §2727-a37; SS15, §§2713-n2. 2727-a96; C24, 27, 31, 35, 39, §3293; C46, 50, 54, §218.10]

Referred to in §218.8, subsection 7

**218.11** Repealed by 52GA, ch 113, §2.

**218.12 Bonds.** The board shall require its secretary and each officer and employee of said board, and of every institution under its control who may be charged with the custody or control of any money or property belonging to the state, to give an official bond, properly conditioned, and signed by sufficient sureties, in a sum to be fixed by the board, which bond shall be approved by the board, and filed in the office of secretary of state. It may require bonds of other officers and employees not enumerated above. [S13,§2727-a31; C24, 27, 31, 35, 39,§3295; C46, 50, 54,§218.12]

**218.13 Salaries.** The board shall, annually, fix the annual or monthly salaries of all officers and employees for the year beginning July 1 of said year, except such salaries as are fixed by the general assembly. The board shall classify the officers and employees into grades and the salary and wages to be paid in each grade shall be uniform in similar institutions. [S13,§2727-a38; C24, 27, 31, 35, 39,§3296; C46, 50, 54,§218.13]

**218.14 Dwelling house and provisions.** The board shall furnish the executive head of each of said institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu thereof, and, from supplies purchased for the institution, the necessary household provisions for himself, wife, and minor children. [S13,§2727-a38; SS15,§§2713-n2, 2727-a96; C24, 27, 31, 35, 39,§3297; C46, 50, 54,§218.14]

Referred to in §219.9

**218.15 Salaries—how paid.** The salaries and wages shall be included in the monthly payrolls and paid in the same manner as other expenses of the several institutions. [S13, §2727-a38; C24, 27, 31, 35, 39,§3298; C46, 50, 54, §218.15]

**218.16** Repealed by 55GA, ch 106,§1.

**218.17 Authority for vacation.** Vacations and sick leave with pay as authorized in section 79.1 shall only be taken at such times as the executive officer or the business manager in charge of said officer or employee, as the case may be, may direct, and only after written authorization by him, and for the number of days specified therein. A copy of such permit shall be attached to the payroll of the institution for the month during which the vacation was taken, and the payroll shall show the number of days the person was absent under the permit. [S13,§§2727-a74c, a74d; C24, 27, 31, 35, 39,§3300; C46, 50, 54,§218.17]

**218.18 Record of employees and inmates.** The board shall require the proper officer of each institution to keep in a book prepared for the purpose, a record, to be made each day, of the number of hours of service of each employee. The monthly payroll shall be made from such time book, and shall be in accord therewith. When an appropriation is based on the number of inmates in or persons at an institution the board shall require a daily record to be kept of the persons actually residing

at and domiciled in such institution. [S13, §2727-a34; C24, 27, 31, 35, 39,§3301; C46, 50, 54, §218.18]

**218.19 Districts.** The board shall, from time to time, divide the state into districts from which the several institutions may receive inmates. It shall promptly notify the proper county or judicial officers of all changes in such districts. [S13,§2727-a21; C24, 27, 31, 35, 39,§3302; C46, 50, 54,§218.19]

**218.20 Place of commitments — transfers.** Commitments, unless otherwise permitted by the board, shall be to the institution located in the district embracing the county from which the commitment is issued. The board may, at the expense of the state, transfer an inmate of one institution to another like institution. [S13,§2727-a26; C24, 27, 31, 35, 39,§3303; C46, 50, 54,§218.20]

*Power of the board to transfer inmates, §§222.19, 222.46, 223.8, 223.11, 224.5, 226.30, 227.6, 227.10, 227.11, 232.29, 244.5, 245.10, 245.12, 246.12–246.16*

*Transfers for medical treatment, §255.28*

**218.21 Record of inmates.** The board shall, as to every person committed to any of said institutions, keep the following record: Name, residence, sex, age, nativity, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge was final, condition of the person when discharged, the name of the institutions from which and to which such person has been transferred, and, if dead, the date, and cause of death. [S13, §2727-a22; C24, 27, 31, 35, 39,§3304; C46, 50, 54, §218.21]

Referred to in §218.22

**218.22 Record privileged.** Except with the consent of the board, or on an order of a judge or court of record, the record provided in section 218.21 shall be accessible only to the members, secretary, and proper clerks of the board. [S13,§2727-a22; C24, 27, 31, 35, 39,§3305; C46, 50, 54,§218.22]

**218.23 Reports to board.** The managing officer of each institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of his entrance record to be made and forwarded to the board. When a patient or inmate leaves, or is discharged, or transferred, or dies in any institution, the superintendent or person in charge shall within ten days thereafter send such information to the office of the board on forms which the board may prescribe. [S13,§2727-a22; C24, 27, 31, 35, 39,§3306; C46, 50, 54,§218.23]

**218.24 Questionable commitment.** The superintendent is required to immediately notify the board if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said board, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises. [S13,§2727-a29; C24, 27, 31, 35, 39,§3307; C46, 50, 54,§218.24]

**218.25 Religious beliefs.** The chief executive officer, receiving a person committed to any of said institutions, shall inquire of such person as to his religious preference and enter the same in the book kept for the purpose, and cause said person to sign the same. [S13, §5718-a1; C24, 27, 31, 35, 39, §3308; C46, 50, 54, §218.25]

**218.26 Religious worship.** Any such inmate, during the time of his detention, shall be allowed, for at least one hour on each Sunday and in times of extreme sickness, and at such other suitable and reasonable times as is consistent with proper discipline in said institution, to receive spiritual advice, instruction, and ministrations from any recognized clergyman of the church or denomination which represents his religious belief. [S13, §5718-a1, -a2; C24, 27, 31, 35, 39, §3309; C46, 50, 54, §218.26]

**218.27 Religious belief of minors.** In case such inmate is a minor and has formed no choice, his preference may, at any time, be expressed by himself with the approval of parents or guardian, if he has any such. [S13, §5718-a3; C24, 27, 31, 35, 39, §3310; C46, 50, 54, §218.27]

**218.28 Investigation.** The board, or an employee thereof, shall visit, and minutely examine, at least once in six months, and oftener if necessary or required by law, the institutions named, and the financial condition and management thereof. [S13, §2727-a10, -a19; C24, 27, 31, 35, 39, §3311; C46, 50, 54, §218.28]

**218.29 Scope of investigation.** The board or such employee shall, during such investigation and as far as possible, see every inmate of each institution, especially those admitted since the preceding visit, and shall give such inmates as may require it, suitable opportunity to converse with them apart from the officers and attendants. [S13, §2727-a19; C24, 27, 31, 35, 39, §3312; C46, 50, 54, §218.29]

**218.30 Investigation of other institutions.** Said board, or any member thereof, may investigate charges of abuse, neglect, or mismanagement on the part of any officer or employee of any county home in which insane persons are kept, and of any private institution which is subject to the supervision of said board. [S13, §2727-a74b; C24, 27, 31, 35, 39, §3313; C46, 50, 54, §218.30]

**218.31 Witnesses.** In aid of any investigation the board shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which any member thereof shall have power to administer; to have access to all books, papers, and property material to such investigation, and to order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. [S13, §2727-a10; C24, 27, 31, 35, 39, §3314; C46, 50, 54, §218.31]

Referred to in §218.32  
Witness fees, §622.69 et seq.

**218.32 Contempt.** Any person failing or refusing to obey the orders of the board issued under section 218.31, or to give or produce evidence when required, shall be reported by the board to the district court in the county where the offense occurs or any judge thereof, and shall be dealt with by the court or judge as for contempt of court. [S13, §2727-a10; C24, 27, 31, 35, 39, §3315; C46, 50, 54, §218.32]

Contempts, ch 665

**218.33 Transcript of testimony.** The board shall cause the testimony taken at such investigation to be transcribed and filed in its office at the seat of government within ten days after the same is taken, or as soon thereafter as practicable, and when so filed the same shall be open for the inspection of any person. [S13, §2727-a10; C24, 27, 31, 35, 39, §3316; C46, 50, 54, §218.33]

**218.34 State agents.** The board may appoint, and discharge at its pleasure, such number of persons as may be authorized by law to act as state agents for the soldiers' orphans home, the two training schools, the juvenile home, and the women's reformatory. [SS15, §2692-a; C24, 27, 31, 35, 39, §3317; C46, 50, 54, §218.34]

**218.35 Rooms and supplies.** The board shall furnish such agents office rooms and all necessary supplies in the same manner supplies are furnished other officers of the board. Such agents, while stopping at any of said institutions, may be furnished with rooms, board, and facilities therein, free of cost. [SS15, §2692-a; C24, 27, 31, 35, 39, §3318; C46, 50, 54, §218.35]

**218.36 Duties of agents.** Said agents shall:

1. Perform such duties as may be required by law or by said board.
2. Find suitable homes and employment for inmates of said institutions who are to be or who have been released.
3. Inspect such homes.
4. Exercise supervision over such discharged or released persons and examine into their conduct and environment.
5. Return to the institution from which released, all inmates who have been conditionally released and whose conduct has been bad, or in violation of their release.
6. Obtain new homes or new employment for released inmates when their environment is bad.
7. Keep records of their acts as agents and make all reports called for by the board. [S13, §2692-b; C24, 27, 31, 35, 39, §3319; C46, 50, 54, §218.36]

**218.37 Advancing expense fund.** The board of control may cause to be advanced to each agent, from time to time, from the funds appropriated for such purpose, sums to be used in defraying the official expenses of such agent. The aggregate amount of money so advanced and not expended at any time shall not exceed the sum of two hundred fifty dollars.



The agent shall give security, to be approved by the board, for the proper use and accounting each month of all money so advanced. [SS15,§2692-c; C24, 27, 31, 35, 39,§3320; C46, 50, 54,§218.37]

**218.38 Expenses.** Said agents shall receive their actual and necessary expenses incurred in the discharge of their duties. [SS15,§2692-c; C24, 27, 31, 35, 39,§3321; C46, 50, 54,§218.38]

**218.39 Receiving officers—duties.** The stewards of the hospitals for the insane, the clerks of the prisons, and the proper officers, who shall be designated by the board, of the other institutions, shall each:

1. Have charge of and be accountable for all supplies and stores of such institution and be chargeable therewith, at their invoice value.

2. Issue stores and supplies upon requisition approved by the superintendent or other officer designated by the board, which requisition shall be his voucher therefor.

3. Present, monthly, to the board an abstract of all expenditures, together with the accounts and payrolls for the preceding month.

4. Examine and register all goods delivered, as to their amount and quality, and certify to the correctness of the bills therefor, if the goods correspond to the samples, are in good order, and correct in prices.

5. Take an invoice, quarterly, of the subsistence supplies and stock in his possession and control, and transmit a copy thereof, duly verified by him, to the board.

6. Make to the board, at the close of the biennial period, a consolidated report of all purchases and transactions of his department.

7. Pay into the state treasury, from time to time, such amount as the board may determine is necessary to reimburse the state for his negligent loss of such stores or supplies, and shall so do within sixty days of such determination by the board. If default be made in such payment, he shall be discharged and suit shall be brought on his bond. [S13,§2727-a46; C24, 27, 31, 35, 39,§3322; C46, 50, 54,§218.39]

Referred to in §218.3  
Business manager as steward, §218.8

**218.40 Services required.** Inmates of said institutions subject to the provisions herein-after provided, may be required to render any proper and reasonable service either in the institutions proper or in the industries established in connection therewith. [S13,§2727-a51; SS15,§5718-a11; C24, 27, 31, 35, 39,§3323; C46, 50, 54,§218.40]

**218.41 Custody.** When an inmate of an institution is so working outside the institution proper, he shall be deemed at all times in the actual custody of the head of the institution. [SS15,§5718-a11; C24, 27, 31, 35, 39,§3324; C46, 50, 54,§218.41]

**218.42 Wages of inmates.** When an inmate performs services for the state at an institution, the board of control may, when it deems

such course practicable, pay such inmate such wage as it deems proper in view of the circumstances, and in view of the cost attending the maintenance of such inmate. In no case shall such wage exceed the amount paid to free labor for a like service or its equivalent. [SS15,§5718-a11a; C24, 27, 31, 35, 39,§3325; C46, 50, 54,§218.42]

**218.43 Deduction to pay court costs.** If such wage be paid, the board may deduct therefrom an amount sufficient to pay all or a part of the costs taxed to such inmate by reason of his commitment to said institution. In such case the amount so deducted shall be forwarded to the clerk of the district court or proper official. [SS15,§5718-a11a; C24, 27, 31, 35, 39,§3326; C46, 50, 54,§218.43]

**218.44 Wages paid to dependent—deposits.** If such wage be paid, the board may pay all or any part of the same directly to any dependent of such inmate, or may deposit such wage to the account of such inmate, or may so deposit part thereof and allow the inmate a portion for his own personal use. All deposits shall be on the best attainable terms. [SS15,§5718-a11a; C24, 27, 31, 35, 39,§3327; C46, 50, 54,§218.44]

**218.45 Conferences.** Quarterly conferences of the chief executive officers of said institutions shall be held with the board at Des Moines, for the consideration of all matters relative to the management of said institutions. Full minutes of such meetings shall be preserved in the records of the board. The board may cause papers to be prepared and read, at such conferences, on appropriate subjects. [S13,§2727-a20; C24, 27, 31, 35, 39,§3328; C46, 50,54,§218.45]

**218.46 Scientific investigation.**

1. The board shall encourage the scientific investigation, on the part of the executive heads and medical staffs of the various institutions, as to the most successful methods of managing such institutions and treating the persons committed thereto, shall procure and furnish to such heads and staffs information relative to such management and treatment, and, from time to time, publish bulletins and reports of scientific and clinical work done in said institutions.

2. The board of control is authorized to provide services and facilities for the scientific observation, rechecking and treatment of mentally ill persons within the state. Application by, or on behalf of, any person for such services and facilities shall be made to the board of control on forms furnished by the board. The time and place of admission of any person to out-patient or clinical services and facilities for scientific observation, rechecking and treatment and the use of such services and facilities for the benefit of persons who have already been committed as insane shall be in accordance with rules and regulations adopted by the board of control. [S13,§2727-a27; C24, 27, 31, 35, 39,§3329; C46, 50, 54,§218.46]

**218.47 Monthly report.** The chief executive officer of each institution, or business manager of institutions having the same, shall, on the first day of each month, account to the board for all state funds received during the preceding month, and, at said time, remit the same to the treasurer of state. [S13,§2727-a40; C24, 27, 31, 35, 39,§3330; C46, 50, 54,§218.47]

**218.48 Annual reports.** The executive head or business manager of each institution shall make an annual report to the board and embrace therein a minute and accurate inventory of the stock and supplies on hand, and the amount and value thereof, under the following heads: Livestock, farm produce on hand, vehicles, agricultural implements, machinery, mechanical fixtures, real estate, furniture, and bedding in inmates' department, state property in superintendent's department, clothing, dry goods, provisions and groceries, drugs and medicine, fuel, library, and all other state property under appropriate heads to be determined by the board. [S13,§§2705-b, 2727-a32; C24, 27, 31, 35, 39,§3331; C46, 50, 54,§218.48]

**218.49 Contingent fund.** The board may permit the executive head, which shall include the business manager as provided in this chapter, of each institution to retain a stated amount of funds in his possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the board on a cash basis, salaries, and bills granting discount for cash. [SS15,§2727-a44; C24, 27, 31, 35, 39,§3332; C46, 50, 54,§218.49]

**218.50 Requisition for contingent fund.** If necessary, the board shall make proper requisition upon the state comptroller for a warrant on the state treasurer to secure the said contingent fund for each institution. [SS15, §2727-a44; C24, 27, 31, 35, 39,§3333; C46, 50, 54, §218.50]

**218.51 Monthly reports of contingent fund.** A full, minute, and itemized statement of every expenditure made during the month from such contingent fund shall be submitted by the proper officer of said institution to the board under such rules as said board may establish. [SS15,§2727-a44; C24, 27, 31, 35, 39, §3334; C46, 50, 54,§218.51]

**218.52 Supplies—competition.** The board shall, in the purchase of supplies, afford all reasonable opportunity for competition, and shall give preference to local dealers and Iowa producers when such can be done without loss to the state. [S13,§2727-a46; SS15,§2727-a50; C24, 27, 31, 35, 39,§3335; C46, 50, 54,§218.52]

Preference to Iowa products, §73.1 et seq.

**218.53 Dealers may file addresses.** Jobbers or others desirous of selling supplies shall, by filing with the board a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of supplies, under such rules as the board may

prescribe. [SS15,§2727-a50; C24, 27, 31, 35, 39, §3336; C46, 50, 54,§218.53]

**218.54 Samples preserved.** When purchases are made by sample, the same shall be properly marked and retained for six months after the delivery of such purchase. [SS15,§2727-a50; C24, 27, 31, 35, 39,§3337; C46, 50, 54,§218.54]

**218.55 Purchase from an institution.** The board may purchase supplies of any institution under its control, for use in any other such institution, and reasonable payment therefor shall be made as in case of other purchases. [S13,§2727-a47; C24, 27, 31, 35, 39, §3338; C46, 50, 54,§218.55]

**218.56 Purchase of supplies.** The board shall, from time to time, adopt and make of record, rules and regulations governing the purchase of all articles and supplies needed at the various institutions, and the form, verification, and audit of vouchers for such purchases. [S13,§§2727-a41,-a42,-a49; C24, 27, 31, 35, 39,§3339; C46, 50, 54,§218.56]

**218.57 Combining appropriations.** The state comptroller is authorized to combine the balances carried in all specific appropriations into a special account for each institution under the control of the board of control, except that the support fund for each institution shall be carried as a separate account. [S13,§2727-a43; C24, 27, 31, 35, 39,§3344; C46, 50, 54,§218.57]

**218.58 State architect.** Said board may employ a competent architect, and such draftsmen as may be authorized by law. Said architect shall, in addition to salary, be reimbursed for his actual and necessary expenses within the state while engaged in official business. In cases of sufficient magnitude the board may secure the advice of a consulting architect, or may secure plans and specifications from other architects, at a cost not exceeding one thousand five hundred dollars in any year, unless a larger amount is approved by the budget and financial control committee. [S13, §2727-a23; C24, 27, 31, 35, 39,§3345; C46, 50, 54, §218.58]

**218.59 Plans and specifications.** Said board shall cause plans and specifications to be prepared for all improvements authorized and costing over five thousand dollars. No appropriation for any improvement shall be expended until the adoption of suitable plans and specifications, prepared by a competent architect, and accompanied by a detailed statement of the amount, quality, and description of all material and labor required for the completion of such improvement.

No plans shall be adopted, and no improvement shall be constructed, which contemplates an expenditure of money in excess of the appropriation. [S13,§2727-a17; C24, 27, 31, 35, 39,§3346; C46, 50, 54,§218.59; 56GA, ch 119,§1]

**218.60 Letting of contracts—repairs or alterations.** The board shall, in writing, let all con-

tracts for authorized improvements costing in excess of five thousand dollars to the lowest responsible bidder, after such advertisement for bids as the board may deem proper in order to secure full competition. The board may reject all bids and readvertise. Provided, however, if the improvement be the repair or alteration of any building or grounds and is not new construction and the estimated cost thereof does not exceed twenty-five thousand dollars, the board with the approval of the budget and financial control committee may proceed with such repairs or alterations under a negotiated contract on such terms as the board and the budget and financial control committee may determine to be for the best interests of the state. [S13,§2727-a51; C24, 27, 31, 35, 39,§3347; C46, 50, 54,§218.60; 56GA, ch 119,§§2, 3]

**218.61 Preliminary deposit.** A preliminary deposit of money, or certified check upon a solvent bank in such amount as the board may prescribe, shall be required as an evidence of good faith, upon all proposals for the construction of said improvements, which deposit or certified check shall be held under the direction of the board. [S13,§2727-a51; C24, 27, 31, 35, 39,§3348; C46, 50, 54,§218.61]

**218.62 Improvements by day labor.** Authorized improvements costing five thousand dollars or less may, under authorization of the board, be made by the executive head of any institution by day labor subject to the approval of the board. [S13,§2727-a51; C24, 27, 31, 35, 39,§3349; C46, 50, 54,§218.62; 56GA, ch 119,§4]

**218.63 Improvements at institutions.** Contracts shall not be required as to improvements at any state institution where the labor of inmates may be utilized on the particular work to be done, to the advantage of the inmates or of the state. [S13,§2727-a51; C24, 27, 31, 35, 39,§3350; C46, 50, 54,§218.63; 56GA, ch 119,§5]

**218.64 Payment for improvements.** No payment shall be authorized for construction purposes until satisfactory proof has been furnished to the board of control, by the proper officer or supervising architect, that the contract has been complied with by the parties; and all payments shall be made in a manner similar to that in which the current expenses of the several institutions are paid. [S13,§2727-a51; C24, 27, 31, 35, 39,§3351; C46, 50, 54,§218.64]

**218.65 Property of deceased inmate.** The chief executive officer or business manager of each institution shall, upon the death of any inmate or patient, immediately take possession of all property of the deceased left at said institution, and deliver the same to the duly appointed and qualified representative of the deceased. [S13,§2727-a72; C24, 27, 31, 35, 39,§3352; C46, 50, 54,§218.65]

**218.66 Property of small value.** If administration be not granted within one year from the date of the death of the decedent, and the

value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property left by the decedent may be made to the surviving spouse and heirs of the decedent. [S13,§2727-a72; C24, 27, 31, 35, 39,§3353; C46, 50, 54,§218.66]

**218.67 When no administration granted.** If administration be not granted within one year from the death of decedent, and no surviving spouse or heir is known, said executive officer may convert all said property into money and in so doing he shall have the powers possessed by a general administrator. [S13,§2727-a72; C24, 27, 31, 35, 39,§3354; C46, 50, 54,§218.67]

**218.68 Money deposited with treasurer of state.** Said money shall be transmitted to the treasurer of state as soon after one year after the death of the intestate as practicable, and be credited to the support fund of the institution of which the intestate was an inmate. [S13,§2727-a72; C24, 27, 31, 35, 39,§3355; C46, 50, 54,§218.68]

**218.69 Permanent record.** A complete permanent record of the money so sent, showing by whom and with whom it was left, its amount, the date of the death of the owner, his reputed place of residence before he became an inmate of the institution, the date on which it was sent to the state treasurer and any other facts which may tend to identify the intestate and explain the case, shall be kept by the chief executive officer of the institution or business manager, as the case may be, and a transcript thereof shall be sent to, and kept by, the treasurer of state. [S13,§2727-a72; C24, 27, 31, 35, 39,§3356; C46, 50, 54,§218.69]

**218.70 Payment to party entitled.** Said money shall be paid, at any time within ten years from the death of the intestate, to any person who is shown to be entitled thereto. Payment shall be made from the state treasury out of the support fund of such institution in the manner provided for the payment of other claims from that fund. [S13,§§2727-a73,-a74; C24, 27, 31, 35, 39,§3357; C46, 50, 54,§218.70]

**218.71 Special policemen.** The board may, by order entered of record, commission one or more of the employees at each of said institutions as special police. Such police shall, on the premises of the institution of which they are employees, and in taking an inmate into custody, have and exercise the powers of regular peace officers. No additional salary shall be granted by reason of such appointment. [S13,§2727-a71; C24, 27, 31, 35, 39,§3358; C46, 50, 54,§218.71]

Powers, ch 754 et seq.

**218.72 Temporary quarters in emergency.** In case the buildings at any institution under the management of the board of control are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the inmates cannot be

there confined and cared for, said board shall make temporary provision for the confinement and care of the inmates at some other place in the state. Like provision may be made in case any pestilence breaks out among the inmates. The reasonable cost of the change, including transfer of inmates, shall be paid from any money in the state treasury not otherwise appropriated. [C51,§3143; R60,§5156; C73,§4795; C97,§5693; SS15,§2713-n18; C24, 27, 31, 35, 39, §3359; C46, 50, 54,§218.72]

**218.73 Industries.** The board may establish such industries as it may deem advisable at or in connection with any of said institutions. [SS15,§5718-a11; C24, 27, 31, 35, 39,§3360; C46, 50, 54,§218.73]

**218.74 Directors employed.** The board of control shall employ a director of mental institutions, a director of corrective institutions, a director of child welfare, and a director of industries, who shall serve during the pleasure of the board and receive an annual salary to be fixed by said board. [C50, 54,§218.74]

**218.75 Qualifications of director.** The director of mental institutions shall be a reputable physician and psychiatrist. He shall be admitted to the practice of medicine in this state and shall have at least five years actual experience in the care and treatment of persons afflicted with mental disease. [C50, 54, §218.75]

**218.76 Powers and duties of director of mental institutions.** The director of mental institutions under the direction of the board of control shall have the following powers, duties and responsibilities:

1. Assist the board of control in exercising its powers and duties under the law relating to the state mental hospitals.
2. Examine or cause to be examined by an assistant, all public and private institutions receiving and caring for the insane, mental defectives and epileptics to determine their efficiency for adequate care and treatment of their patients.
3. See that the purposes of mental hospitals are carried into effect and to that end shall have all necessary powers not inconsistent with law.
4. Establish and supervise suitable standards of treatment and care of patients in all state mental, feeble-minded and epileptic hospitals.
5. Inquire into and determine the qualifications of all officers, physicians, nurses, attendants and other employees responsible for the care and treatment of patients.
6. Prepare a budget for the board of control which will provide for the adequate care of the patients in all state mental hospitals. [C50, 54,§218.76]

**218.77 Qualifications at corrective institutions.** The director of corrective institutions shall be qualified in reformatory and prison

management with special training in sociology and psychology. He shall also have practical experience in the field of criminology and discipline and in the supervision of inmates of corrective and penal institutions. [C50, 54, §218.77]

**218.78 Powers and duties of director of corrective institutions.** The director of corrective institutions under the direction of the board of control shall have the following powers, duties and responsibilities:

1. Assist the board of control in exercising its powers and duties under the law relating to the state penal, reformatory and corrective institutions.
2. Assist in carrying into effect the purposes of the penal, reformatory and corrective institutions.
3. Have direct supervision and control over all state agents provided for in this chapter, excepting those under the child welfare division.
4. Establish and maintain acceptable standards of treatment, training and education in the various state penal and corrective institutions.
5. Examine all state institutions which are penal, reformatory or corrective to determine their efficiency for adequate care, custody and training of their inmates, and report same to the board of control. He shall inquire into and determine the qualifications of wardens, matrons, superintendents, officers, attendants, guards and other employees responsible for the care, custody, training and discipline of inmates, and make recommendations to the board of control regarding same.
6. Develop a program in corrective institutions for juveniles designed to rehabilitate the inmates and patients, and institute a program of placement and parole supervision for all parolees of said corrective institutions for juveniles.
7. Prepare a budget for the board of control which will provide for the execution of the above program. [C50, 54,§218.78]

**218.79 Qualifications for child welfare.** The director of child welfare shall be qualified by training, experience and education in the field of child welfare. [C50, 54,§218.79]

**218.80 Powers and duties of director of child welfare.** The director of child welfare under the direction of the board of control shall have the following duties, powers and responsibilities:

1. Assist the board of control in exercising its powers and duties under the law relating to the juvenile home at Toledo, and The Iowa Annie Wittenmyer Home at Davenport.
2. Develop a program of basic education, recreation, vocational training and guidance, and social adjustment.
3. Assist the board of control in child place-

ment, employment and supervision of state wards.

4. Co-operate as requested in child welfare functions in other board of control institutions.

5. Prepare a budget for the board of control which will provide for the accomplishment of the purposes herein provided. [C50, 54, §218.80]

**218.81 Qualifications for industrial director.** The director of industries shall be a reputable citizen with actual experience in management and operation of industries. [C50, 54, §218.81]

**218.82 Powers and duties of director of industries.** The director of industries under the direction of the board of control shall have the following duties, powers and responsibilities:

1. Assist the board of control in exercising its powers and duties under the law relating to the industries in any of the state institutions under its control.

2. Survey all institutions under the board of control to determine the need for existing and new industries.

3. Take into consideration any program of education, rehabilitation and vocational training for inmates of state institutions in order to prepare them to resume the duties of citizens upon their discharge.

4. Supervise all shops, industries, and farm work in state board of control institutions.

5. Develop and improve manufacturing methods in the state institutions, and be responsible for the upkeep of all machinery and equipment used therein.

6. Supervise and direct the sale and distribution of products made by such industries.

7. Have direct supervision and control over all business managers provided for in this chapter. [C50, 54, §218.82]

**218.83 Co-operation.** The board is directed to co-operate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions of the state board. [C50, 54, §218.83]

Constitutionality, 52GA, ch 116, §10  
Omnibus repeal, 52GA, ch 116, §11

**218.84 Comptroller's duties transferred.** All duties of the state comptroller, with regard to institutions under the state board of control, in respect to abstracting and certifying claims for payment and the keeping of a central system of accounts are hereby transferred to said board. [C50, 54, §218.84]

45GA, ch 4, §5 (7) repealed by 53GA, ch 96, §8

**218.85 Uniform system of accounts.** The board of control shall prescribe and install in all state institutions under its supervision the most modern, complete, and uniform system of accounts, records, and reports possible,

which system, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases. [S13, §2727-a13; C24, 27, 31, 35, 39, §3286; C46, §217.12; C50, 54, §218.85]

Requirement of auditor of state, §11.5

**218.86 Abstract of claims.** When vouchers for expenditures other than salaries have been duly audited as provided for in section 8.6 the secretary of the state board of control shall prepare in duplicate, an abstract showing the name, residence, and amount due each claimant and the institution and fund thereof on account of which the payment is made. The correctness of said abstracts shall, under seal of the board, be certified by said secretary and by at least one member of the board. The original abstract shall be delivered to the state comptroller. The duplicate shall be retained in the office of the board of control. [C50, 54, §218.86]

**218.87 Warrants issued by comptroller.** Upon such certificate the state comptroller shall, if the institution named has sufficient funds, issue his warrants upon the state treasurer, for the amounts and to the claimants indicated thereon. The comptroller shall deliver the warrants thus issued to the board, who will cause same to be transmitted to the payees thereof. [C50, 54, §218.87]

**218.88 Institutional payrolls.** At the close of each month, the chief executive officer of each institution or business manager of each institution having the same, shall prepare and forward to the board a monthly payroll which shall show the name of each officer and employee, the monthly pay, time paid for, the amount of pay, and any deductions. In no event shall a substitute be permitted to receive compensation in the name of the employee for whom he is acting. [C50, 54, §218.88]

**218.89 Abstracts of payrolls.** After said payroll has been audited as provided for in section 8.6 and approved by the board, abstracts thereof shall be prepared, certified to, and filed with the state comptroller and in the records of the board and warrants issued thereon as provided in case of disbursements other than salaries, except that the comptroller shall draw one warrant in favor of the executive head of the institution or business manager of each institution having the same for the sum total of said payroll. [C50, 54, §218.89]

**218.90 Transfer of prisoners.** The board of control may transfer any prisoner under its jurisdiction from any institution supervised by the board of control to any other institution under said board of control and may transfer any prisoner to any other institution for mental or physical examination and treatment, retaining jurisdiction over said prisoner when so transferred. [57GA, ch 107, §1]

CHAPTER 219

SOLDIERS HOME

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|---|---|
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**219.1 For whom maintained.** The Iowa soldiers home, located in Marshalltown, shall be maintained for honorably discharged soldiers, sailors, marines and nurses who have served the United States in any of its wars, including the Korean conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, and who do not have sufficient means or ability to support themselves, and for the dependent widows and wives of such soldiers, sailors or marines.

For the purposes of this section World War II shall be from December 7, 1941, to September 2, 1945, both dates inclusive. [C97, §§2601, 2602, 2606; S13, §§2601, 2602, 2606; SS15, §2606; C24, 27, 31, 35, §§3366, 3367; C39, §3384.01; C46, 50, 54, §219.1; 57GA, ch 60, §3; ch 63, §3]

Referred to in §219.2

**219.2 Right to admission.** All persons named in section 219.1 who do not have sufficient means for their own support, or who are disabled by disease, wounds, old age or otherwise, or who are unable to earn a livelihood, and who have been residents and citizens of the state of Iowa for the three years immediately preceding the date of the application and who are residents of the state of Iowa at the time of the application, may be admitted to the home as members thereof under such rules and regulations as may be adopted by the board of control. [C97, §2602; S13, §§2602, 2606; SS15, §2606; C24, 27, 31, 35, §3366; C39, §3384.02; C46, 50, 54, §219.2]

**219.3 Eligibility — rules — general management.** The board of control shall have power to determine the eligibility of applicants for admission to the home in accordance with the provision of this chapter, and shall adopt all the necessary rules and regulations for the preservation of order and enforcement of discipline, the promotion of health and well-being of all the members and for the management and control of the home and the grounds thereof. [C97, §2602; C24, 27, 31, 35, §3367; C39, §3384.03; C46, 50, 54, §219.3]

**219.4 Married couples.** When a married man is or becomes a member of the home, his wife, if she has been married to him for ten

years and is otherwise eligible under this chapter, may be admitted as a member of the home subject to all the rules and regulations of said home. Husband and wife may be permitted to occupy, together, cottages or other quarters on the grounds of the home. [C97, §2606; S13, §2606; SS15, §2606; C24, 27, 31, 35, §3366, 3368; C39, §3384.04; C46, 50, 54, §219.4]

**219.5 Widows of veterans.** If any deceased soldier, sailor or marine, who would be entitled to admission to the home if he were living, has left a widow surviving him, such widow shall be entitled to admission to the home with the same rights, privileges and benefits as though her soldier, sailor or marine husband were living and a member of the home, provided, however, that such widow has been the wife of said veteran for at least ten years immediately prior to his death, and has reached the age of fifty years or is found by the commandant to be totally and permanently disabled and she does not have sufficient means or is unable to support and maintain herself, and provided further that she has been for the ten years preceding the date of her application, a resident of the state of Iowa, and that she has not married at any time since the death of her veteran husband except to a member of the home. [C97, §2606; S13, §2606; C24, 27, 31, 35, §3366; C39, §3384.05; C46, 50, 54, §219.5; 57GA, ch 108, §1]

**219.6 Certificate of eligibility.** Before admission, each applicant shall file with the commandant an affidavit signed by two members of the soldiers relief commission of the county in which such person resides, stating that such person to the best of their knowledge and belief is a resident of such county as required under this chapter and that such person is unable to earn a livelihood and his income is less than twelve hundred dollars per annum exclusive of pension, compensation, war risk insurance payments, or pensions or annuities under the social security Act and the railroad retirement Acts. Such affidavit shall be conclusive evidence of the residence of such persons and prima-facie only in all other matters affecting the eligibility of the applicant and the liability of the county with respect to

the expense of any such person for which the county may be liable. All records of admission shall show the residence of the applicant. [C97,§2602; S13,§2602; C24, 27, 31, 35,§3369; C39, §3384.06; C46, 50, 54,§219.6; 57GA, ch 108,§2]

**219.7 Commandant.** The board of control shall appoint a commandant who shall serve as the chief executive of the home and who shall have the immediate custody and control, subject to the orders of the board, of all property used in connection with the home. [C97, §2604; S13,§2604; SS15,§2604; C39,§3384.07; C46, 50, 54,§219.7]

See also §218.9

**219.8 Qualifications of commandant.** The commandant shall be a resident of the state of Iowa who has an honorable discharge from the United States army, navy or marine corps and who has served in the military or naval forces of the United States in any war, including the Korean conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive. [C97,§2604; S13,§2604; SS15,§2604; C24, 27, 31, 35,§3374; C39,§3384.08; C46, 50, 54, §219.8; 57GA, ch 63,§4]

**219.9 Salary.** The commandant shall receive such annual salary as the board of control may determine. In addition to said salary, the board of control shall furnish said commandant with a dwelling house or with appropriate quarters in lieu thereof and such additional allowances as are provided in section 218.14 for executive heads of state institutions. [C97,§2604; S13,§2604; SS15,§2604; C24, 27, 31, 35,§3373; C39,§3384.09; C46, 50, 54,§219.9]

**219.10 Officers.** The commandant, subject to the approval of the board, shall appoint an adjutant, a quartermaster, a chief surgeon, and a chaplain, each of whom shall have the same qualifications as the commandant. [C97, §2604; SS15,§2604; C24, 27, 31, 35,§3375; C39, §3384.10; C46, 50, 54,§219.10]

**219.11 Employees' and officers' compensation.** The board shall determine the number and fix the compensation of all subordinate officers and employees. The employees shall be appointed by the commandant who shall keep in the record of each officer and employee, the date of employment, the compensation, and the date of discharge and the reasons therefor. The commandant shall have the power to discharge any officer or employee for insubordination or neglect of duty or other good cause and his acts and decisions shall be reviewable only by the board of control whose decision shall be final. [C97,§2604; S13,§2604; SS15,§2604; C39,§3384.11; C46, 50, 54,§219.11]

**219.12 House and supplies.** The adjutant, quartermaster, chief surgeon and chaplain shall be furnished, without charge, the use of the houses erected by the state and now occupied by such officers, together with electricity, heat, fuel, and water. [S13,§2604; SS15,

§2604; C24, 27, 31, 35,§3376; C39,§3384.12; C46, 50, 54,§219.12]

**219.13 Insane and intemperate persons.** No person shall be received or retained in the home who is insane, is an inebriate, or is addicted to the use of drugs. When a member of the home is discharged therefrom, or voluntarily leaves the home, or is adjudged insane after admittance, his or her residence shall be that of the county in which he or she was residing at the time of his or her admittance to the home. [C97,§2605; C24, 27, 31, 35,§3370; C39,§3384.13; C46, 50, 54,§219.13]

**219.14 Contributing to own support.** Every member of the home who receives pension, compensation or gratuity from the United States government, or income from any source of more than twenty dollars per month, shall contribute to his or her maintenance or support while a member of the home. The amount of such contribution shall be determined by the board of control but in no case to exceed the actual cost of keeping and maintaining such person in said home. The board may require every member of the home to render such assistance in the care of the home and grounds as the physical condition of any such member will permit. [S13,§2602-a, 2606-a; C24, 27, 31, 35,§3377; C39,§3384.14; C46, 50, 54,§219.14]

**219.15 Payment to dependents.** Each member of the home who receives a pension or compensation and who has a dependent wife or minor children shall deposit with the commandant forthwith on receipt of his pension or compensation check one-half of the amount thereof, which shall be sent at once to the wife if she be dependent upon her own labor or others for support, or, if there be no wife, to the guardian of the minor children if dependent upon others for support. The commandant, if satisfied that the wife has deserted her husband, or is of bad character, or is not dependent upon others for support, may pay the money deposited as herein provided to the guardian of the dependent minor children. [S13,§2606-c; C24, 27, 31, 35,§3379, 3384; C39, §3384.15; C46, 50, 54,§219.15]

Referred to in §219.20

**219.16 Conditional admittance.** The board may, if there is room for all dependent applicants and members, admit and allow to remain in the home, persons who have sufficient means for their own support, but are otherwise eligible to become members of the home, on payment of the cost of their support, which cost shall be fixed from time to time by the board of control. [S13,§2606-a; C24, 27, 31, 35, §3371; C39,§3384.16; C46, 50, 54,§219.16]

**219.17 Remittance to treasurer.** All sums paid to and received by the commandant under this chapter, for the support of members in the home, shall be paid quarterly by him to the treasurer of the state and credited to the support fund of the home. [S13,§2602-a; C24, 27, 31, 35,§3372; C39,§3384.17; C46, 50, 54, §219.17]

**219.18 Rules enforced—power to dismiss.** The commandant shall administer and enforce all rules and regulations adopted by the board of control, including rules of discipline, and shall have power to dismiss any member from the home for infraction of such rules and regulations subject to the approval of the board. [C39,§3384.18; C46, 50, 54,§219.18]

**219.19 Dual conviction — probation.** Any person who, while a member of the home, is twice convicted of an offense against the statutes of the state, or twice found guilty by the commandant or a court martial of intoxication or other infraction of the rules of the home, shall be required to deposit all of his pension money with the commandant immediately upon receipt of his pension check or warrant. In lieu of trial by the commandant the member may demand a court martial. Such pension money shall be deposited by the commandant in a separate account for and in behalf of such pensioner and the commandant shall, under such rules as the board of control may provide, pay the same out with the consent of the pensioner in such manner and for such purposes as the board of control may approve. If, after a period of six months, the pensioner shall conduct himself in an orderly and sober manner, said deposit shall be returned to him. If the pensioner be discharged from the home the balance of such deposit shall be paid to said pensioner within thirty days after his discharge. [S13,2606-b; C24, 27,

31, 35,§§3378, 3380, 3381, 3382; C39,§3384.19; C46, 50, 54,§219.19]

Referred to in §219.20

**219.20 Assignment of deposit.** Pension money deposited with the commandant shall not be assignable for any purpose except as provided in sections 219.15 and 219.19. [S13, §2606-b; C24, 27, 31, 35,§3383; C39,§3384.20; C46, 50, 54,§219.20]

Assignments in general, ch 539  
Exemption of pension money, §627.8

**219.21 Report by board of control.** The board of control shall, biennially, on or before October 1, prior to the meeting of the general assembly, make a full and detailed report to the governor showing the condition of the home, the number of members in the home, the order and discipline enforced, and the needs of the home financially and otherwise, together with an itemized statement of all receipts and disbursements and any and all other matters of importance in the management and control of the home. [C39,§3384.21; C46, 50, 54,§219.21]

Time for filing report, §17.3

**219.22 Present members excepted.** The provisions of this chapter relating to eligibility for admission shall not apply to the present\* members of the home. [C39,§3384.22; C46, 50, 54,§219.22]

\*Chapter effective July 4, 1939  
Constitutionality, 48GA, ch 94,§24

## CHAPTER 220

### STATE SANATORIUM

This chapter as it appeared in the 1946 code transferred and now appears as chapter 271

## CHAPTER 221

### GLENWOOD STATE SCHOOL

Repealed by 52GA, ch 122,§10, see chapter 223

## CHAPTER 222

### GUARDIANSHIP AND CUSTODY OF FEEBLE-MINDED

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 222.54 Admission of voluntary patients.  
 222.55 Escapees from other states.

**222.1 “Feeble-minded” defined.** The words “feeble-minded person” in this chapter shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of controlling himself and his affairs and requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and who is not classifiable as an “insane person” within the meaning of the provisions of the chapters of this title relating to the insane. [C97,§2699; C24, 27, 31, 35, 39,§3411; C46, 50, 54,§222.1]

**222.2 Duty of county attorney.** The county attorney shall, if requested, appear on behalf of any petitioner for the appointment of a guardian or commitment of an alleged feeble-minded person, under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties herein imposed upon them. [C24, 27, 31, 35, 39, §3412; C46, 50, 54,§222.2]

**222.3 Petition.** A petition for the adjudication of the feeble-mindedness of a person within the meaning of this chapter may, with the permission of the court, or judge, be filed, without fee, against such person, with the clerk of the district, superior, or municipal court of the county or city in which such alleged feeble-minded person resides or is found, by any relative of such person, or by his or her guardian, or by any reputable citizen of the county of such residence or of such place of finding. [C24, 27, 31, 35, 39,§3413; C46, 50, 54,§222.3]

**222.4 Sufficiency of petition.** Said petition shall be verified by affidavit, may be on information or belief, and shall state:

1. That such person is feeble-minded within the meaning of this chapter.
2. That it is dangerous to the welfare of the community for such person to be at large without care or control and the facts tending to show such danger.
3. The name and residence of all persons, so far as known, supervising, caring for, or supporting such person, or assuming, or under obligations, to do so.
4. The name and residence, if known, of the parents of such person, and of all other persons legally chargeable with the supervision, care, or support of such person.

5. Whether such person has been examined by a qualified physician with a view of determining his mental condition. [C24, 27, 31, 35, 39,§3414; C46, 50, 54,§222.4]

**222.5 Names of witnesses.** There shall be indorsed on the petition the names of all obtainable witnesses known to the petitioner by which the allegations of the petition may be established. [C24, 27, 31, 35, 39,§3415; C46, 50, 54,§222.5]

**222.6 Additional parties.** The following persons, in addition to the alleged feeble-minded person, shall be made party defendants if they reside in this state and their names and residences are known:

1. The parent or parents of said principal defendant.
2. The person with whom said principal defendant is living.
3. The person or persons assuming to give the principal defendant care and attention.
4. The guardian, if there be such, of the person or property of the principal defendant. [C24, 27, 31, 35, 39,§3416; C46, 50, 54,§222.6]

**222.7 Notice.** Notice of the pendency of said petition and of the time and place of hearing thereon shall be served upon all defendants who are residents of the county in which the petition is filed, in the manner in which original notices are served. The court or judge shall, by written order, direct the manner and time of service on all other parties. No notice need be served on those who are personally before the court. Said notice shall require the defendants to bring said alleged feeble-minded person into court at the time and place named. [C24, 27, 31, 35, 39,§3417; C46, 50, 54,§222.7]

Manner of service, R.C.P. 56(a)

**222.8 Time of appearance.** The time of appearance shall not be less than five days after completed service, unless the court or judge orders otherwise. [C24, 27, 31, 35, 39,§3418; C46, 50, 54,§222.8]

**222.9 Hearing—default.** The hearing may be had in term time or in vacation. The petition shall be taken as confessed by all defendants, except the principal defendant, who are duly served and who do not appear at the time required by the notice. [C24, 27, 31, 35, 39, §3419; C46, 50, 54,§222.9]

**222.10 Custody pending hearing.** Pending final hearing, the court may, at any time after the filing of the petition, and on satisfactory showing that it is for the best interest of the alleged feeble-minded person and of the community that such person be at once taken into custody, or that service of notice will be ineffectual if he is not taken into custody, issue a warrant for the immediate production of such person before the court. In such case the court or judge may make any proper order for the custody or confinement of such person as will protect the defendant and the community and insure the presence of such person at the hearing. Such person shall not be confined with those accused or convicted of crime. [C24, 27, 31, 35, 39, §3420; C46, 50, 54, §222.10]

**222.11 Interrogatories.** The court may require the petitioner to answer under oath such interrogatories as may be propounded by said court. [C24, 27, 31, 35, 39, §3421; C46, 50, 54, §222.11]

**222.12 Pleadings—trial.** Answers need not be, but may be, filed. The hearing on the allegations of the petition shall be as in equitable proceedings. [C24, 27, 31, 35, 39, §3422; C46, 50, 54, §222.12]

*How issues tried, R.C.P. 177 et seq.*

**222.13 Trial.** Trials shall be public, unless otherwise requested by the parent, guardian, or other person having the custody of the feeble-minded person. [C24, 27, 31, 35, 39, §3423; C46, 50, 54, §222.13]

**222.14 Commission to examine.** The court shall, at or prior to the final hearing, appoint a commission of two qualified physicians, or of one qualified physician and one qualified psychologist, each of whom shall be residents of the county, who shall make a personal examination of the alleged feeble-minded person for the purpose of determining his mental condition. [C24, 27, 31, 35, 39, §3424; C46, 50, 54, §222.14]

**222.15 Report of commission.** Said commission shall report in writing to the court the facts attending the mental condition of said person and its conclusion based thereon and its recommendations concerning such person. It shall also report to the court sworn answers to such questions as may be required by the court. Such reports shall be filed with the clerk of the court. [C24, 27, 31, 35, 39, §3425; C46, 50, 54, §222.15]

**222.16 Ruling on report.** No objections or exceptions need be made to said report. The court may set the report aside, and may order a new examination by the same or by a new commission, or may make such findings of fact in lieu of said report as may be justified by the evidence before the court. [C24, 27, 31, 35, 39, §3426; C46, 50, 54, §222.16]

**222.17 Commission omitted.** No commission need be appointed in those cases where the feeble-mindedness of the person is mani-

fest to the court or judge. [C24, 27, 31, 35, 39, §3427; C46, 50, 54, §222.17]

**222.18 Guardianship or commitment.** If it be found that said person is feeble-minded, and that it will be conducive to the welfare of such person and to the community to place such person under guardianship, or to commit such person to some proper institution for treatment, the court or judge shall, by proper order:

1. Appoint a guardian of the person of such person, provided no such guardian has already been appointed.

2. Commit such person to any state institution for the feeble-minded.

3. Commit such person to a private institution of this state, duly incorporated for the care of such persons, and approved by the board of control, provided such institution is willing to receive such person. [C24, 27, 31, 35, 39, §3428; C46, 50, 54, §222.18]

**222.19 Jurisdiction over commitment.** The person committed to any private institution shall remain under the jurisdiction of the court and the order of commitment may at any time be set aside or modified by changing the place of or terminating the commitment, and appointing a guardian in lieu thereof; but this section shall not deprive the board of power to transfer committed patients from one institution to another. [C24, 27, 31, 35, 39, §3429; C46, 50, 54, §222.19]

*Power to transfer, §218.20*

**222.20 Powers of guardian.** A guardian appointed hereunder shall have the same power over the person of his ward as possessed by a parent over a minor child, but shall be subordinate to any duly appointed guardian of the property of such ward. [C24, 27, 31, 35, 39, §3430; C46, 50, 54, §222.20]

*Guardianship generally, ch 668*

**222.21 Jurisdiction of court — removal.** Guardianship proceedings shall remain under the jurisdiction of the court. The court or judge may at any time, on application of any reputable person, terminate such guardianship, or remove the guardian and appoint a new guardian, or may order that such feeble-minded person be removed from the custody of the guardian and committed to an institution of the class heretofore specified. [C24, 27, 31, 35, 39, §3431; C46, 50, 54, §222.21]

**222.22 Modification of order.** No order shall be made discharging or varying a prior order placing the feeble-minded person under guardianship without giving one or more of the relatives or a friend of the feeble-minded person, his guardian, or the board of control, notice and an opportunity to be heard. [C24, 27, 31, 35, 39, §3432; C46, 50, 54, §222.22]

**222.23 Inability to receive patient.** If the state institution is unable forthwith to receive such person, the superintendent shall notify the court or judge of the time when such person will be received and in the meantime the

said person shall be restrained and cared for under such order as the court may enter [C24, 27, 31, 35, 39,§3433; C46, 50, 54,§222.23]

**222.24 Warrant of commitment.** Upon the entry of an order of commitment, the clerk shall deliver to any suitable person designated by the court or judge, a warrant of commitment, and a duplicate thereof, commanding such person forthwith to deliver the committed person to the institution designated by the court. [C24, 27, 31, 35, 39,§3434; C46, 50, 54,§222.24]

**222.25 Assistants.** The judge may, for the purpose of committing said person, direct the clerk to authorize the employment of one or more assistants. No feeble-minded female shall be taken to the institution by any male person not her husband, father, brother, or son, without the attendance of some woman of good character and mature age. [C24, 27, 31, 35, 39,§3435; C46, 50, 54,§222.25]

**222.26 Receipt for patient.** The superintendent shall, on the warrant of commitment, receipt for said person. The duplicate warrant shall be left with the superintendent and shall be his sufficient authority to restrain and care for said committed person. [C24, 27, 31, 35, 39, §3436; C46, 50, 54,§222.26]

**222.27 Return on warrant.** The person executing said warrant shall make due return thereon of his doings and forthwith file the same with the clerk. [C24, 27, 31, 35, 39,§3437; C46, 50, 54,§222.27]

**222.28 Discharge—habeas corpus.** No person committed hereunder shall be discharged from the institution except as herein provided, except that nothing herein shall abridge the right of petition for a writ of habeas corpus. [C24, 27, 31, 35, 39,§3438; C46, 50, 54,§222.28]

Constitutional provision, Art. I,§13  
Habeas corpus, ch 663

**222.29 Petition for discharge.** A petition for the discharge of a person who has been committed to an institution under this chapter, or to vary such order of commitment, may at any time after six months from the date of such commitment be filed by the person committed or by any reputable person. If the commitment be to a private institution, the petition shall be filed with the court or judge ordering such commitment. If the commitment be to a state institution, the petition shall be filed in the proper court of the county where the institution is situated. [C24, 27, 31, 35, 39,§3439; C46, 50, 54,§222.29]

**222.30 Discharge—modifications of orders.** Discharges and modifications of orders may be made on any of the following grounds:

1. That the person adjudged to be feeble-minded is not feeble-minded.
2. That said person has so far improved as to be capable of caring for himself.
3. That the relatives or friends of the feeble-minded person are able and willing to support

and care for him and request his discharge, and in the judgment of the superintendent of the institution having the person in charge, no evil consequences are likely to follow such discharge.

4. That, for any other cause, said discharge should be made or such modification should be entered. [C24, 27, 31, 35, 39,§3440; C46, 50, 54,§222.30]

**222.31 Notice of application.** Notice of the hearing shall be served on the superintendent of the institution and on such parties as the court or judge may find from the record are interested. [C24, 27, 31, 35, 39,§3441; C46, 50, 54,§222.31]

**222.32 Discharge or modification of order.** On the hearing, the court may discharge the feeble-minded person from all supervision, control, and care, or may place him under guardianship, or may transfer him from a public institution to a private institution, or vice versa, as the court thinks fit under all the circumstances. [C24, 27, 31, 35, 39,§3442; C46, 50, 54,§222.32]

**222.33 Adjudication.** The denial of one petition for discharge or modification shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court. [C24, 27, 31, 35, 39,§3443; C46, 50, 54, §222.33]

**222.34 Examination of patient.** When a person is committed to an institution, the superintendent, under regulations of the board of control, shall cause the person to be examined, touching his mental condition, and if, on such examination, it is found that the person is not feeble-minded, it shall be the duty of the superintendent to petition the court immediately for his discharge or a modification of the order sending such person to the institution. [C24, 27, 31, 35, 39,§3444; C46, 50, 54, §222.34]

**222.35 Communications.** Persons admitted to any such institution shall have all reasonable opportunity and facility for communication with their friends. They shall be permitted to write and send letters, provided they contain nothing of an offensive character. Letters written by any inmate to any member of the board of control, or to any state or county official, shall be forwarded unopened. [C24, 27, 31, 35, 39,§3445; C46, 50, 54,§222.35]

**222.36 Leave of absence or parole.** No leave of absence or parole from any such institution shall be granted to any inmate except upon the recommendation of the superintendent and approval of the board of control, who shall take appropriate measures to secure for the feeble-minded person proper supervision, control, and care during such leave of absence or parole. Said parole shall be for a period not to exceed one year under such conditions as are prescribed by the board of control. [C24, 27, 31, 35, 39,§3446; C46, 50, 54,§222.36]

**222.37 Inquest.** In the event of a sudden or mysterious death of an inmate of any public or private institution for the feeble-minded, a coroner's inquest shall be held. Notice of the death of such person, and the cause thereof, shall in all cases be sent to the judge of the court having jurisdiction over such person, and the fact of the death, with the time, place, and alleged cause shall be entered upon the docket. [C24, 27, 31, 35, 39,§3447; C46, 50, 54, §222.37]

**222.38 Penalties.** Any person who shall seek to have any person adjudged feeble-minded, knowing that such person is not feeble-minded, shall be fined not exceeding one thousand dollars, or imprisoned not exceeding one year in the county jail. [C24, 27, 31, 35, 39,§3448; C46, 50, 54,§222.38]

**222.39 Witness fees.** The fees for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar service in other cases. For service as commissioner, the sum of five dollars a day and the actual and necessary traveling expenses shall be allowed. [C24, 27, 31, 35, 39, §3449; C46, 50, 54,§222.39]

Fees, §§337.11, 622.69

**222.40 Costs.** The costs of proceedings shall be defrayed from the county treasury, unless otherwise ordered by the court. When the person alleged to be feeble-minded is found not to be feeble-minded, the court may render judgment against the person filing the petition, except when the petition is filed by order of court. [C24, 27, 31, 35, 39,§3450; C46, 50, 54, §222.40]

**222.41 Foreign county liable.** When the proceedings are instituted in a county in which the alleged feeble-minded person was found, but of which he is not a resident, and the costs are not taxed to the petitioner, the county of which such feeble-minded person is a resident shall, on presentation of a properly itemized bill for such costs, repay the same to the former county. [C24, 27, 31, 35, 39,§3451; C46, 50, 54,§222.41]

**222.42 Persons liable for costs and maintenance.** Costs incident to guardianship and to the trial and commitment of a feeble-minded person to such institution, including the cost of maintenance therein, may be collected of such feeble-minded person and of all persons legally chargeable with the support of such feeble-minded person. [C24, 27, 31, 35, 39,§3452; C46, 50, 54,§222.42]

**222.43 Juvenile court — delinquent child.** When in proceedings against an alleged delinquent or dependent child, the court or judge is satisfied from any evidence that such child is probably feeble-minded, the court or judge may order a continuance of such proceeding, and may direct an officer of court or other proper person to file a petition against said child under this chapter, and, pending hearing, may, by order, provide proper custody for

such child. [C24, 27, 31, 35, 39,§3453; C46, 50, 54,§222.43]

Referred to in §§222.44, 222.45

**222.44 Suspending criminal proceeding.** If, on the conviction in the district, superior, or municipal court of any person for any crime, or for any violation of any municipal ordinance, or if, on the conviction in said courts of a child for dependency or delinquency, it appears to the court or judge before sentence, from any evidence, that such convicted person is probably feeble-minded within the meaning of this chapter, the court or judge may suspend sentence or order, and may order any officer of the court or other proper person to file a petition under this chapter against said person and pending hearing thereon shall provide for the custody of said person as directed in section 222.43. [C24, 27, 31, 35, 39, §3454; C46, 50, 54,§222.44]

Referred to in 222.45

**222.45 Passing sentence.** Should it be found, under sections 222.43 and 222.44, that said person is not feeble-minded, the court shall proceed with the original proceedings as though no petition had been filed. [C24, 27, 31, 35, 39, §3455; C46, 50, 54,§222.45]

**222.46 Transfers.** The board of control may at any time transfer any patient from the institution for the feeble-minded to the hospitals for the insane, and vice versa. [C24, 27, 31, 35, 39,§3456; C46, 50, 54,§222.46]

**222.47 Inquest as to sanity.** If it appears at any time that a person has been, under the provisions of this chapter, placed under guardianship or committed to a private institution and ought to be committed to a hospital for the insane, he may be proceeded against under the chapters relating to the insane. [C24, 27, 31, 35, 39,§3457; C46, 50, 54,§222.47]

Commitment of insane, ch 229

**222.48 Inmates in private asylums.** When the mental condition of a person in a private institution for the insane is found to be such that such patient ought to be transferred to an institution for the feeble-minded, or placed under guardianship, such person may be proceeded against under this chapter. [C24, 27, 31, 35, 39,§3458; C46, 50, 54,§222.48]

**222.49 Clothing and money on discharge.** All persons discharged from a state institution for the feeble-minded shall, unless otherwise supplied, be furnished at state expense with suitable clothing and money, not exceeding twenty dollars, sufficient to defray his expenses home. Said expense shall be charged to the county of the person's residence and collected as in case of clothing furnished to inmates while in the custody of the institution. [C24, 27, 31, 35, 39,§3459; C46, 50, 54, §222.49]

**222.50 Escape.** If any feeble-minded person shall escape from an institution for the feeble-minded, or is removed therefrom with-

out the written order of the board of control, it shall be the duty of the superintendent of the institution and his assistants, and all peace officers of any county in which such inmate may be found, to take and detain him without a warrant and at once report such detention to the superintendent, who shall immediately provide for the return of said inmate to the institution. [C24, 27, 31, 35, 39, §3460; C46, 50, 54, §222.50]

**222.51 Expense of capture.** All actual and necessary expenses incurred in the capture, restraint, and return of the inmates to the hospital shall be paid on itemized vouchers, sworn to by the claimants and approved by the superintendent and the board of control, from any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39, §3461; C46, 50, 54, §222.51]

Referred to in §222.55

**222.52 Court docket.** Each court having jurisdiction under this chapter shall keep a separate docket of proceedings in which shall be made such entries as will, together with the papers filed, preserve a complete and perfect record of each case. The original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. [C24, 27, 31, 35, 39, §3462; C46, 50, 54, §222.52]

**222.53 Record by board of control.** The board of control shall keep a record of all per-

sons adjudged to be feeble-minded, and of the orders respecting them by the courts throughout the state, copies of which orders shall be furnished by the clerk of the court without the board's application therefor. [C24, 27, 31, 35, 39, §3463; C46, 50, 54, §222.53]

**222.54 Admission of voluntary patients.** Nothing in this chapter shall be construed to prevent the reception at the institution for the feeble-minded, or at the hospital for epileptics and school for feeble-minded, of voluntary patients under such rules as the board of control may prescribe. [C24, 27, 31, 35, 39, §3464; C46, 50, 54, §222.54]

**222.55 Escapees from other states.** When any feeble-minded person escapes from an institution in another state and is found in this state, any peace officer in any county in which such escapee is found may take and detain him without warrant and shall report such detention to the board of control which shall provide for the return of such escapee to the authorities in the state where the escape was made. Pending such return such escapee may be detained temporarily at one of the institutions of this state governed by the board of control. Expenses incurred under this section shall be paid as provided in section 222.51.

The provisions of this section relating to the board of control shall also apply to the return of other nonresident feeble-minded persons having legal settlement outside the state of Iowa. [57GA, ch 109, §1]

## CHAPTER 223

### WOODWARD STATE HOSPITAL AND SCHOOL AND GLENWOOD STATE SCHOOL

- 223.1 Objects.
- 223.2 Superintendents—salaries.
- 223.3 Duties.
- 223.4 Admission.
- 223.5 Compensation for private patients.
- 223.6 Voluntary patients rendered custodial patients.
- 223.7 Statutes applicable.
- 223.8 Transfer of inmates.
- 223.9 Discharge.
- 223.10 Districting state.
- 223.11 Transfers.

**223.1 Objects.** The hospital for epileptics and schools for feeble-minded, hereinafter in this chapter referred to as "hospitals", shall be maintained for the purpose of securing humane, curative, and scientific care and treatment of epileptics, and for the training, instruction, care, and support of feeble-minded residents of this state. [S13, §2727-a93; SS15, §§2727-a93, a96; C24, 27, 31, 35, 39, §3465; C46, 50, 54, §223.1]

**223.2 Superintendents—salaries.** The board of control shall appoint superintendents for the hospitals who shall receive such salaries as the board shall determine. [SS15, §2727-a96; C24,

- 223.12 Repealed by 52GA, ch 122, §6.
- 223.13 Approval of voluntary commitments.
- 223.14 Liability of county for support.
- 223.15 Payment of charges.
- 223.16 Support statutes applicable.
- 223.17 Compromise by board.
- 223.18 Cost paid from institution fund.
- 223.19 Inmate returned to parent or guardian.
- 223.20 Adult patients—percentage of care recoverable.
- 223.21 Clothing and transportation.

27, 31, 35, 39, §3466; C46, 50, 54, §223.2; 57GA, ch 110, §1]

**223.3 Duties.** The superintendents shall:

1. Perform all duties required by law, and by the board of control, not inconsistent with law.

2. Oversee and secure the individual treatment and professional care of each patient in said hospitals.

3. Keep a full and complete record of the condition of each patient.

4. Have the custody of, and restrain and discipline all patients in such manner as they

may deem best, subject to the regulations of the board. [SS15,§2727-a96; C24, 27, 31, 35, 39, §3467; C46, 50, 54,§223.3]

**223.4 Admission.** All adults afflicted with epilepsy who have been residents of Iowa for at least one year preceding the application for admission, and all children so afflicted whose parents or guardians have been residents of Iowa for a like period, shall be eligible for admission to the Woodward state hospital and school. [S13,§2727-a95; C24, 27, 31, 35, 39,§3468; C46, 50, 54,§223.4]

Commitments, see chapter 222

**223.5 Compensation for private patients.** The board shall fix and enforce the rate of compensation to be paid in said hospitals by private patients so afflicted. All money paid under the provisions of this section shall be received by the chief executive officer of the institution and remitted each month to the treasurer of state and placed to the credit of the general fund of the state. [SS15,§2727-a96; C24, 27, 31, 35, 39,§3469; C46, 50, 54,§223.5]

Referred to in §223.13

**223.6 Voluntary patients rendered custodial patients.** When a sane patient has voluntarily entered said hospitals, either through his own action or through the action of the parent or guardian, and afterward, while in the hospital, becomes violent or insane, the board of control, on written complaint, may, after due hearing, commit said patient to said hospitals as an insane epileptic. Such order of commitment shall be noted upon the records of the hospitals, and shall have the same force and effect as an order of commitment by the commissioners of insanity, and with the same right of appeal. [SS15,§2727-a96; C24, 27, 31, 35, 39,§3470; C46, 50, 54,§223.6]

**223.7 Statutes applicable.** All laws relating to the commitment of insane persons to the hospitals for the insane, insofar as applicable, shall apply to commitments of epileptics to said hospitals and schools. [SS15,§2727-a96; C24, 27, 31, 35, 39,§3471; C46, 50, 54,§223.7]

Commitment of insane, ch 229

**223.8 Transfer of inmates.** The board shall have power to transfer epileptics from any other institution under its control to said hospitals and schools, to transfer insane epileptics from the said hospitals for epileptics to other state institutions, and to retransfer such epileptics if deemed expedient. [SS15,§2727-a96; C24, 27, 31, 35, 39,§3472; C46, 50, 54,§223.8]

**223.9 Discharge.** Any person who has voluntarily entered said hospitals as an epileptic patient and is sane, may at any time obtain his discharge by giving at least ten days written notice of his desire for discharge. The parent or guardian of a minor child, which child has been voluntarily placed in said hospitals as an epileptic patient and who is sane, may obtain the discharge of such child by giving such notice. A patient discharged under this section may not be again admitted except

under a warrant of commitment. [SS15,§2727-a96; C24, 27, 31, 35, 39,§3473; C46, 50, 54,§223.9]

**223.10 Districting state.** At its discretion the board of control shall district the state into two districts and in such manner that the Glenwood state school and the Woodward state hospital and school shall each be located within one of such districts. Such districts may from time to time be changed. After such districts have been established, the board of control shall notify all county attorneys and all committing officers of its action, and thereafter, unless for good cause the board otherwise orders, all commitments of feeble-minded from a district shall be to the institution located within such district. Until the state is so districted, commitments shall be made to either of said institutions as the board of control may direct. [C24, 27, 31, 35, 39,§3476; C46, 50, 54,§223.10]

**223.11 Transfers.** Inmates of the Glenwood state school may be transferred by the board to the hospital and school at Woodward or from the latter institution to the former. [C24, 27, 31, 35, 39,§3477; C46, 50, 54,§223.11]

**223.12** Repealed by 52GA, ch 122,§6.

**223.13 Approval of voluntary commitments.** Voluntary commitments or admissions to the hospitals must be with the approval of the board of supervisors of the county of legal settlement, except those private patients received under section 223.5. [C39,§3477.2; C46, 50, 54,§223.13]

**223.14 Liability of county for support.** Each county shall be liable to the state for the support of all patients from that county in the hospitals and schools. The amounts due shall be certified by the superintendent to the state comptroller who shall collect the same from the counties liable, at the times and in the manner required for the certification and collection of money from counties for the support of inmates of hospitals for the insane. [C39,§3477.3; C46, 50, 54,§223.14]

Collection, §230.20 et seq.

**223.15 Payment of charges.** Sections 230.21 and 230.22 are hereby made applicable to this chapter and shall apply to the payment of charges for the support of patients in these hospitals. [C39,§3477.4; C46, 50, 54,§223.15]

**223.16 Support statutes applicable.** All laws now existing, or hereafter made, creating liability, pertaining to liens and providing for the collection of amounts paid by counties from patients in the hospital for the insane and those legally bound for their support, and those defining persons legally bound for support, shall apply to this chapter. A patient in these hospitals and those legally bound for his support shall be liable to the county to the same degree and in the same manner as though such patient were an inmate of a hospital for the insane, provided that no charge or lien shall be imposed upon the property of

any patient under twenty-one years of age or upon the property of persons legally bound for the support of any such minor patient, for the cost of his support and treatment in these institutions. [C39,§3477.5; C46, 50, 54,§223.16; 56GA, ch 120,§1]

Support of insane, ch 230

**223.17 Compromise by board.** The board of supervisors is empowered to compromise any liability to the county created hereby when such compromise is deemed for the best interests of the county. [C39,§3477.6; C46, 50, 54, §223.17]

**223.18 Cost paid from institution fund.** All expenses required to be paid by counties for the support, cost of commitment and transportation of patients in these hospitals, shall be paid by the board of supervisors from the state institution fund. [C39,§3477.7; C46, 50, 54, §223.18]

**223.19 Inmate returned to parent or guardian.** The board of control may at any time return any inmate to its parent or guardian even though committed by a court, but shall notify the clerk of the district court of the

county to which such inmate is to be paroled, and if the parole or release is for one year or permanent such notice shall be sent to said clerk thirty days before the release of such patient. [C97,§2698; C24, 27, 31, 35, 39,§3405; C46,§221.4; C50, 54,§223.19]

**223.20 Adult patients—percentage of care recoverable.** The charge or lien imposed upon the property of any patient over twenty-one years of age and under thirty-one years of age or upon the property of persons legally bound for the support of any such patient for the cost of his support and treatment in these institutions shall be limited to seventy-five percent of the cost thereof. For patients over thirty-one years of age and under fifty years of age such charge or lien shall be limited to fifty percent of the cost and for patients over fifty years of age no such charge or lien shall be imposed. [56GA, ch 120,§2]

**223.21 Clothing and transportation.** The provisions of sections 270.4 to 270.7, inclusive are hereby made applicable to the Glenwood state school and the Woodward state hospital. [56GA, ch 120,§3]

## CHAPTER 224

### DRUG ADDICTS

224.1 Commitment.

224.2 Statutes applicable.

224.3 Term of commitment—parole.

224.4 Places of commitment.

224.5 Insanity of narcotic addicts.

**224.1 Commitment.** Persons addicted to the excessive use of intoxicating liquors, morphine, cocaine, or other narcotic drugs may be committed by the commissioners of insanity of each county to such institutions as the board of control may designate. [S13,§§2310-a6-a8, -a10-a22, -a24, -a28-a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§3478; C46, 50, 54,§224.1]

Referred to in §224.3

Voluntary admission of alcoholics, §226.35 et seq.

**224.2 Statutes applicable.** All statutes governing the commitment, custody, treatment, and maintenance of the insane shall, so far as applicable, govern the commitment, custody, treatment, and maintenance of those addicted to the excessive use of such drugs and intoxicating liquors. [S13,§§2310-a6-a8, -a10-a22, -a24, -a28-a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§3479; C46, 50, 54,§224.2]

Referred to in §224.3

Commitment of insane, ch 228 et seq.

**224.3 Term of commitment—parole.** Persons committed under sections 224.1 and 224.2 shall be retained in custody until cured, except that such inmates may be paroled under such conditions as the board of control may prescribe. [S13,§§2310-a6-a8, -a10-a22, -a24, -a28-a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§3480; C46, 50, 54,§224.3]

**224.4 Places of commitment.** The board of control shall designate the institutions to which commitments may be made under this chapter, and to that end may divide the state into districts, and shall promptly notify each clerk of the district court of such designation and all changes therein. [S13,§§2310-a6-a8, -a10-a22, -a24, -a28-a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§3481; C46, 50, 54,§224.4]

**224.5 Insanity of narcotic addicts.** Should a person, committed because of his excessive use of narcotic drugs or intoxicating liquors, become insane, the board of control, on complaint of the superintendent having the custody of such person, and on due hearing, may order such person committed to a hospital for the insane. Such order shall have the same force and effect as though entered by the commissioners of insanity of the county of the patient's residence, and such person may appeal from such order in the same manner in which appeals are allowed from the orders of the commissioners of insanity. [S13,§§2310-a6-a8, -a10-a22, -a24, -a28-a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§3482; C46, 50, 54,§224.5]

Manner of appeal, §229.17

## CHAPTER 225

## PSYCHOPATHIC HOSPITAL

## GENERAL PROVISIONS

- 225.1 Establishment.
- 225.2 Name—location.
- 225.3 Under control state board of regents.
- 225.4 Medical director.
- 225.5 Co-operation of hospitals.
- 225.6 Duties of director.
- 225.7 Classes of patients.
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- 225.21 Vouchers.
- 225.22 Liability of private patients—payment.
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## GENERAL PROVISIONS

**225.1 Establishment.** There shall be established a state psychopathic hospital, especially designed, kept, and administered for the care, observation, and treatment of those persons who are afflicted with abnormal mental conditions. [C24, 27, 31, 35,§3954; C39,§3482.01; C46, 50, 54,§225.1]

**225.2 Name—location.** It shall be known as the state psychopathic hospital, and shall be located at Iowa City, and integrated with the college of medicine and hospital of the state university of Iowa. [C24, 27, 31, 35, §3955; C39,§3482.02; C46, 50, 54,§225.2]

**225.3 Under control state board of regents.** The state board of regents shall have full power to manage, control, and govern the said hospital the same as other institutions already under its control. [C24, 27, 31, 35,§3957; C39, §3482.03; C46, 50, 54,§225.3; 56GA, ch 131,§15]

**225.4 Medical director.** The state board of regents shall appoint a medical director of the said hospital, who shall serve as professor of psychiatry in the college of medicine of the state university. [C24, 27, 31, 35,§3958; C39,§3482.04; C46, 50, 54,§225.4; 56GA, ch 131,§16]

**225.5 Co-operation of hospitals.** The medical director of the said hospital shall seek to bring about systematic co-operation between the several state hospitals for the insane and the said state psychopathic hospital. [C24, 27, 31, 35,§3959; C39,§3482.05; C46, 50, 54,§225.5]

38GA, ch 235,§6, editorially divided

**225.6 Duties of director.** He shall be the director and in sole charge of the clinical and

- 225.25 Commitment of private patient as public.
- 225.26 Private patients—disposition of funds.
- 225.27 Discharge—transfer.
- 225.28 Appropriation.
- 225.29 Minimum appropriation.
- 225.30 Blanks—audit.
- 225.31 Duplicate reports by physician.
- 225.32 Report and order to accompany patient.
- 225.33 Death of patient—disposal of body.
- 225.34 Appropriation.
- 225.35 Expense collected.

## TRANSFER OF INCURABLES

- 225.36 Application for commitment to insane hospital.
- 225.37 Special commission.
- 225.38 Secretary—records—certification.
- 225.39 Appeal—procedure—custody of patient.
- 225.40 Jurisdiction of board after appeal.
- 225.41 Accompanying patients—payment.
- 225.42 Special officers—female patients.
- 225.43 Mental health research fund.
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- 225.45 Approval of use by board of regents.

pathological work of the said hospital. He shall, from time to time, visit the state hospitals for the insane, upon the request of the superintendents thereof, or upon the request of the board of control of state institutions, and may advise the medical officers of such state hospitals for the insane, or the said board of control, in subjects relating to the phenomena of insanity. [C24, 27, 31, 35,§3960; C39,§3482.06; C46, 50, 54,§225.6]

**225.7 Classes of patients.** Patients admitted to the said state psychopathic hospital shall be divided into four classes:

1. Voluntary private patients.
2. Committed private patients.
3. Voluntary public patients.
4. Committed public patients. [C24, 27, 31, 35,§3961; C39,§3482.07; C46, 50, 54,§225.7]

38GA, ch 235,§7, editorially divided

**225.8 Maintenance.** All voluntary private patients and committed private patients shall be kept and maintained without expense to the state, and the voluntary public patients and committed public patients shall be kept and maintained by the state. [C24, 27, 31, 35, §3962; C39,§3482.08; C46, 50, 54,§225.8]

**225.9 Voluntary private patients.** Voluntary private patients may be admitted in accordance with the regulations to be established by the state board of regents, and their care, nursing, observation, treatment, medicine, and maintenance shall be without expense to the state. However, the charge for such care, nursing, observation, treatment, medicine, and



maintenance shall not exceed the cost of the same to the state. [C24, 27, 31, 35,§3963; C39, §3482.09; C46, 50, 54,§225.9; 56GA, ch 131,§59]

**225.10 Application for admission.** Persons suffering from mental diseases may be admitted as committed public patients as follows: Any physician authorized to practice his profession in the state of Iowa or any citizen of the state may file information with any district or superior court of the state or with any judge thereof, alleging that the person named therein is suffering from some abnormal mental condition that can probably be remedied by observation, treatment, and hospital care; and that he is, of himself or through those legally responsible for him, unable to provide the means for such observation and hospital care. [C24, 27, 31, 35,§3964; C39,§3482.10; C46, 50, 54,§225.10]

38GA, ch 235,§9, editorially divided

**225.11 Medical examiner.** Said judge of the district or superior court may, upon his own motion or upon the information contained in such report filed as aforesaid, appoint some physician who shall personally examine said person with respect to his mental condition. [C24, 27, 31, 35,§3965; C39,§3482.11; C46, 50, 54, §225.11]

**225.12 Examination and report.** Said physician shall make a written report to the said judge, giving such a history of the case as will be likely to aid in the observation, treatment, and hospital care of said person and describing the same, all in detail, and stating whether or not, in his opinion, the said person would probably be helped by observation, treatment, and hospital care in said state psychopathic hospital. Such report shall be made within such time as may be fixed by the court. [C24, 27, 31, 35,§3966; C39,§3482.12; C46, 50, 54, §225.12]

Referred to in §225.16

**225.13 Financial condition.** It shall be the duty of the said judge to have a thorough investigation made by the county attorney of the county in which the said person resides, regarding his financial condition and the financial condition of those legally responsible for him. [C24, 27, 31, 35,§3967; C39,§3482.13; C46, 50, 54,§225.13]

**225.14 Notice—trial and order.** Upon the filing of such report or reports, said judge of the district or superior court as aforesaid shall fix a day for the hearing upon the complaint and shall cause the person or those legally responsible for him to be served with a notice of the hearing; and he shall also notify the county attorney, who shall appear and conduct the proceedings, and upon such complaint evidence may be introduced. Upon such hearing the person against whom the complaint is made shall be entitled to a trial by jury. If the judge or jury finds that the said person is suffering from an abnormal mental condition which can probably be remedied by observa-

tion, medical or surgical treatment, and hospital care, and that he, or those legally responsible for him, are unable to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a committed public patient. [C24, 27, 31, 35,§3968; C39,§3482.14; C46, 50, 54,§225.14]

Referred to in §§225.16, 225.17

**225.15 Examination and treatment.** When the patient arrives at said hospital it shall be the duty of the director, or of some physician acting for him, to examine the said patient and determine whether or not, in his judgment, he is a fit subject for such observation, treatment, and hospital care. If, upon said examination, he decides that such patient should be admitted to the said hospital, the medical director shall provide him with a proper bed in said hospital; and the physician or surgeon who shall have charge of said patient shall proceed with such observation, medical or surgical treatment, and hospital care as in his judgment are proper and necessary.

A proper and competent nurse shall also be assigned to look after and care for such patient during such observation, treatment, and care as aforesaid. [C24, 27, 31, 35,§3969; C39,§3482.15; C46, 50, 54,§225.15]

Referred to in §§225.16, 225.17, 225.36

**225.16 Voluntary public patients—commitment.** If the said judge of the district or superior court, as aforesaid, finds from the physician's report which was filed under the provisions of section 225.12, that the said person is suffering from an abnormal mental condition which can probably be remedied by observation, medical or surgical treatment, and hospital care, and the report of the county attorney shows that he, or those legally responsible for him, are unable to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a voluntary public patient; provided that the said person, or those legally responsible for him, request the said court or judge to commit said person without the hearing which is required under the provisions of section 225.14.

When the said patient arrives at the said hospital, he shall receive the same treatment as is provided for committed public patients in section 225.15. [C24, 27, 31, 35,§3970; C39, §3482.16; C46, 50, 54,§225.16]

**225.17 Committed private patients—treatment.** If the said judge of the district or superior court, as aforesaid, finds in the hearing as provided for under the provisions of section 225.14 that the said person is suffering from an abnormal mental condition which can probably be remedied by observation, medical or surgical treatment, and hospital care, and that he, or those legally responsible for him, are

able to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a committed private patient.

When the said patient arrives at the said hospital, he shall receive the same treatment as is provided for committed public patients in section 225.15. [C24, 27, 31, 35,§3971; C39, §3482.17; C46, 50, 54,§225.17]

**225.18 Attendants.** The court may, in his discretion, appoint some person to accompany said committed public patient or said voluntary public patient or said committed private patient from the place where he may be to the state psychopathic hospital of the state university at Iowa City, or to accompany such patient from the said hospital to such place as may be designated by the court. If the patient be a female, the person appointed to accompany her must be a woman. [C24, 27, 31, 35,§3974; C39,§3482.18; C46, 50, 54,§225.18]

38GA, ch 235,§15, editorially divided

**225.19 Compensation for attendant.** Any person appointed by the court or judge to accompany said person to or from the hospital or to make an investigation and report on any question involved in the complaint, other than the physician making the examination, shall receive the sum of three dollars per day for the time actually spent in making such investigation (except in cases where the person appointed therefor receives a fixed salary or compensation) and his actual necessary expenses incurred in making such investigation or trip. [C24, 27, 31, 35,§3975; C39,§3482.19; C46, 50, 54,§225.19]

**225.20 Compensation for physician.** The physician appointed to make the examination and report shall receive the sum of five dollars for each and every examination and report so made, and his actual necessary expenses incurred in making such investigation, in conformity with the requirements of this chapter. [C24, 27, 31, 35,§3976; C39,§3482.20; C46, 50, 54, §225.20]

**225.21 Vouchers.** The person making claim to such compensation shall present to the court or judge an itemized sworn statement thereof, and when such claim for compensation has been approved by the court or judge, the same shall be filed in the office of the county auditor and shall be allowed by the board of supervisors and paid from the state institution fund. [C24, 27, 31, 35,§3977; C39,§3482.21; C46, 50, 54, §225.21]

Referred to in §225.24

**225.22 Liability of private patients—payment.** Every committed private patient, if he has an estate sufficient for that purpose, or if those legally responsible for his support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care,

nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the state comptroller in the same manner as those of committed and voluntary public patients as hereinafter provided, unless said patient or those legally responsible for him make such settlement with the medical director of said state psychopathic hospital. [C24, 27, 31, 35,§3978; C39,§3482.22; C46, 50, 54,§225.22]

38GA, ch 235,§16, editorially divided

**225.23 Collection for treatment.** If the bills for such patient are paid by the state, it shall be the duty of the medical director of the said state psychopathic hospital to file a certified copy of the claim which has been so paid, with the auditor of the proper county, who shall proceed to collect the same by action, if necessary, in the name of the state psychopathic hospital, and when collected pay the same to the state comptroller. The said medical director shall also, at the same time, forward a duplicate of the account to the state comptroller. [C24, 27, 31, 35,§3979; C39,§3482.23; C46, 50, 54,§225.23]

Referred to in §225.35

**225.24 Collection of preliminary expense.** Unless said committed private patient or those legally responsible for him offer to make such settlement, it shall also be the duty of the county auditor of the proper county as aforesaid to proceed to collect, by action if necessary, in the name of the said county, the amount of all claims for per diem and expenses that have been approved by the said court or judge and paid by the county treasurer of said county as provided for under the provisions of section 225.21, and when collected to pay the same into the county treasury. [C24, 27, 31, 35,§3980; C39,§3482.24; C46, 50, 54,§225.24]

Referred to in §225.35

**225.25 Commitment of private patient as public.** If any patient be admitted to the state psychopathic hospital and thereafter an order of commitment of said patient as a public patient be made by the court or judge having jurisdiction thereof, the expense of keeping and maintaining said patient from the date of the filing of the information upon which said order is made shall be paid by the state. [C24, 27, 31, 35,§3981; C39,§3482.25; C46, 50, 54,§225.25]

**225.26 Private patients — disposition of funds.** All moneys collected from private patients shall be used for the support of the said hospital. [C24, 27, 31, 35,§3982; C39,§3482.26; C46, 50, 54,§225.26]

**225.27 Discharge — transfer.** The medical director of the state psychopathic hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefited by further treatment, and upon said discharge said director shall notify the committing judge or court thereof; and the said court or judge shall appoint some person to accompany said discharged patient from the said state psychopathic hospital to such place as he may designate, or authorize the said

medical director to appoint such attendant. [C24, 27, 31, 35, §3983; C39, §3482.27; C46, 50, 54, §225.27]

**225.28 Appropriation.** The state shall pay to the state psychopathic hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of said hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of said hospital for said public patients. The bills for said expenses shall be rendered monthly in accordance with rules agreed upon by the state comptroller and the finance committee of the state board of regents. [C24, 27, 31, 35, §3984; C39, §3482.28; C46, 50, 54, §225.28; 56GA, ch 131, §17]

38GA, ch 235, §19, editorially divided  
Referred to in §225.34

**225.29 Minimum appropriation.** Until such time as the said hospital is actually treating and caring for one hundred patients, the sum of nine thousand dollars per month, or as much thereof as may be necessary, is hereby appropriated, out of any money in the state treasury not otherwise appropriated, for the support and maintenance of said hospital. [C24, 27, 31, 35, §3985; C39, §3482.29; C46, 50, 54, §225.29]

**225.30 Blanks—audit.** The medical faculty of the hospital of the college of medicine of the state university shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines the patient under order of court; and such blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district and superior court of the state. The state comptroller shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid. [C24, 27, 31, 35, §3986; C39, §3482.30; C46, 50, 54, §225.30]

38GA, ch 235, §20, editorially divided

**225.31 Duplicate reports by physician.** The physician making such examination shall make his report to the court in duplicate on said blanks, answering the questions contained therein and setting forth the information required thereby. [C24, 27, 31, 35, §3987; C39, §3482.31; C46, 50, 54, §225.31]

**225.32 Report and order to accompany patient.** One of said duplicate reports shall be sent to the state psychopathic hospital with the patient, together with a certified copy of the order of the court. [C24, 27, 31, 35, §3988; C39, §3482.32; C46, 50, 54, §225.32]

**225.33 Death of patient—disposal of body.** In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychopathic hospital or at the general hospital of the college of medicine of the state university, the medical director of the said

state psychopathic hospital is hereby authorized and directed to have the body prepared for shipment in accordance with the rules and regulations prescribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of regents to make arrangements for the embalming and such other preparation as may be necessary to comply with said rules and regulations, and for the purchase of suitable caskets. [C24, 27, 31, 35, §3989; C39, §3482.33; C46, 50, 54, §225.33; 56GA, ch 131, §18]

39GA, ch 245, §6, editorially divided  
Disposal of dead bodies, ch 141

**225.34 Appropriation.** The state shall pay, to the state psychopathic hospital, out of any money in the state treasury not otherwise appropriated, the cost of the casket, the embalming, and all other expenses incurred in preparing the body for shipment, and, in addition thereto, the cost of transportation from Iowa City to the place where the said patient lived at the time when he was committed or taken to the said state psychopathic hospital; said expenses to be paid in accordance with the provisions of section 225.28. [C24, 27, 31, 35, §3990; C39, §3482.34; C46, 50, 54, §225.34]

**225.35 Expense collected.** In the event that the said person is a committed private patient, it shall be the duty of the county auditor of the proper county to proceed to collect all of such expenses, in accordance with the provisions of sections 225.23 and 225.24. [C24, 27, 31, 35, §3991; C39, §3482.35; C46, 50, 54, §225.35]

#### TRANSFER OF INCURABLES

**225.36 Application for commitment to insane hospital.** If, upon the examination provided for in section 225.15, or at any time thereafter, the medical director, or, in his absence, the assistant medical director, shall be of the opinion that such patient, or any patient in said state psychopathic hospital, is a fit subject for care, observation, and treatment in a state hospital for the insane, he shall file an application, substantially as provided in section 229.1, with the commissioner of insanity hereinafter created. [C24, 27, 31, 35, §3992; C39, §3482.36; C46, 50, 54, §225.36]

39GA, ch 245, §1, editorially divided

**225.37 Special commission.** The medical director, the assistant medical director, and one other member of the medical staff of the state psychopathic hospital shall constitute a commission of insanity; and said commission is hereby vested with all the rights, powers, duties, and obligations of the commission of insanity as now constituted by law, except as herein provided, with full power to receive and act upon all applications filed hereunder, as fully as the commission of insanity is empowered and authorized by law to do. The procedure of the commission hereby created shall be the same as now provided by law, except as herein modified. [C24, 27, 31, 35, §3993; C39, §3482.37; C46, 50, 54, §225.37]

County commission of insanity, chs 228, 229

**225.38 Secretary — records — certification.** Said board shall elect one of its members secretary, who shall keep a record, in a book provided for that purpose, of all the proceedings of said board and certify a copy thereof forthwith to the clerk of the district court of the county of the legal residence of the person against whom said proceedings were had. Said clerk of the district court shall file and record said proceedings in the records of his office the same as if said proceedings had been before the commission of insanity of said county. [C24, 27, 31, 35,§3994; C39,§3482.38; C46, 50, 54,§225.38]

**225.39 Appeal—procedure—custody of patient.** Any person found to be insane under the provisions herein authorized may appeal from such finding to the district court of the county of the legal residence of such person. Said appeal and proceedings thereon shall be the same as if said finding appealed from had been made by the commission of insanity of said county; except that a copy of the notice of appeal served, or to be served, upon the clerk of said district court shall be served on a member of the commission of insanity hereby created, and if, at the time the copy of said notice of appeal is served on a member of said board, the patient is still in the actual custody of said board and not en route to a hospital for the insane, the said board hereby created shall cause said patient to be conducted, by its appointee or appointees, to the county of the legal residence of said patient in which said appeal was taken and delivered to the custody of the sheriff of said county, and thereafter the said patient shall be cared for and disposed of as if the proceedings appealed from had been had by the commission of insanity of said county. [C24, 27, 31, 35,§3995; C39, §3482.39; C46, 50, 54,§225.39]

Appeals in proceedings in insanity, §§229.17, 229.18

**225.40 Jurisdiction of board after appeal.** In the case of an appeal as herein provided, the jurisdiction of the commission hereby created shall immediately cease, except as herein otherwise specially provided. [C24, 27, 31, 35,§3996; C39,§3482.40; C46, 50, 54,§225.40]

**225.41 Accompanying patients — payment.** Whenever the commission hereby created shall designate any person, or persons, to accompany any patient from said state psychopathic hospital to any state hospital for the insane, or to the county of the legal residence of the patient, the pay of such person, or persons, for performing such duty shall not exceed three dollars per day for the time thus necessarily employed, and the actual, reasonable, and necessary expenses incurred in accompanying said patient and in returning home

therefrom. Said per diem and expenses shall be itemized, verified, presented, and allowed in connection with the bills for maintenance as herein provided. If the party accompanying said patient is a parent or other relative, or an officer or employee receiving other compensation, the said person shall receive no per diem, but only his actual, reasonable, and necessary traveling expenses. [C24, 27, 31, 35,§3997; C39,§3482.41; C46, 50, 54,§225.41]

**225.42 Special officers—female patients.** All duties imposed by law upon the sheriff, or his deputy, relating to the attendance and commitment of insane patients may, by order of said commission hereby created, be performed by such person or persons as said commission may designate. If the patient be a female, she shall be accompanied to the state hospital for the insane, or to the county of her legal residence, as the case may be, by at least one woman. [C24, 27, 31, 35,§3998; C39,§3482.42; C46, 50, 54,§225.42]

**225.43 Mental health research fund.** There is hereby created as a permanent fund in the office of the treasurer of state to be known as the mental health research fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1957, there is appropriated thereto from funds in the general fund, not otherwise appropriated, the sum of seventy-five thousand dollars. Any balance in said fund on June 30 of the second fiscal year shall revert to the general fund. [57GA, ch 111,§1]

**225.44 Purpose of fund.** The purpose of the said mental health research fund is to provide for improvement in the care, diagnosis and treatment of adults and children afflicted with mental or emotional illness or mental retardation, and for the prevention thereof, through research and study at the state psychopathic hospital, the mental health institutes, hospital for epileptics and schools for feeble-minded. [57GA, ch 111,§2]

**225.45 Approval of use by board of regents.** Money from the mental health research fund shall be requisitioned for research projects by the medical director of the state psychopathic hospital after consultation with the professional co-ordination board and any special research study committee that the said director appoints or employs to evaluate any given research project or activity. Such requisitions shall be filed by the director with the state board of regents. Approval of such requisitions by the state board of regents shall be authority upon the state comptroller to issue a warrant upon the mental health research fund payable to the agency or agencies conducting the research. [57GA, ch 111,§3]

## CHAPTER 225A

## CRIMINAL SEXUAL PSYCHOPATHS

225A.1 Definition.  
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**225A.1 Definition.** All persons charged with a public offense, who are suffering from a mental disorder and are not a proper subject for the schools for the feeble-minded or for commitment as an insane person, having criminal propensities toward the commission of sex offenses, and who may be considered dangerous to others, are hereby declared to be "criminal sexual psychopaths". [56GA, ch 121, §1]

**225A.2 Petition for commitment.** When any person is charged with a public offense and it shall appear to the county attorney of the county wherein such person is so charged that such person is a criminal sexual psychopath, or when any reputable person having knowledge that an individual who is charged with a public offense is a criminal sexual psychopath as defined in this chapter, or that any such individual has committed an act or acts which indicated that he may be a criminal sexual psychopath, and so informs the county attorney of the county where the act or acts charged were committed, and the county attorney is satisfied that the allegations have merit, are based on actual knowledge of the informant, and are capable of proof, he shall prepare a petition verified upon his information and belief, in sufficient detail so that the person complained against will be reasonably informed of the charges against him, which petition shall be filed with the clerk of the district court in the county wherein such persons stand charged with a public offense. [56GA, ch 121, §2]

**225A.3 Bail ordered.** Upon filing of such petition, the court in which the public offense is charged may order that the bail furnished be released and that additional bail be ordered. [56GA, ch 121, §3]

**225A.4 Notice of hearing.** After the petition charging criminal sexual psychopathy has been filed and docketed, notice in writing, including a copy of the petition shall be served on said named defendant in the manner prescribed for serving an original notice setting forth that a hearing thereon will be held by the court on a date and at a time specified in said notice, said date of hearing to be not less than five days later than the date of the service of said notice upon him. At said hearing the court shall determine whether he shall be medically examined, if so, by whom such examination shall be conducted, and the time and place thereof. [56GA, ch 121, §4]

**225A.5 Counsel—evidence—appeal.** The person charged shall have counsel at every stage of the proceedings and shall have the right to present evidence in his behalf and shall have full rights of appeal, and if the named defendant has not employed counsel, the court shall appoint a competent attorney to represent him and a reasonable attorney fee shall be charged as part of the costs in the proceedings. [56GA, ch 121, §5]

**225A.6 Compensation of physicians.** Upon application the court shall allow reasonable compensation to the examining physicians and shall order such allowances to be taxed as costs in the proceedings. [56GA, ch 121, §6]

**225A.7 Report of examination.** In the event a medical examination is ordered, the court shall continue the hearing until such time as the examination can be completed. Report of such examination shall be in writing and such report shall be filed in court as part of its record but shall not be open to public inspection. A copy thereof shall be furnished without cost by the clerk of the court to the person examined or his attorney of record, upon request. [56GA, ch 121, §7]

**225A.8 Dismissal or trial ordered.** After the filing of the report of the medical examination, if sufficient proof be not made to the court of the criminal propensities to the commission of sex offenses of the person charged with criminal sexual psychopathy, or if the report of the examining physician or physicians does not establish the fact of a mental disorder to which such propensities are attributable in the person examined, the court shall dismiss the petition. If sufficient proof be made to the court of the criminal propensities to the commission of sex offenses of the person so charged, and if the report of the examining physicians does establish the fact of a mental disorder to which such propensities are attributable in the person examined, the court shall order that a final hearing pursuant to the order of continuance be held on the petition setting the time and place of such hearing. [56GA, ch 121, §8]

**225A.9 Trial.** The action shall be tried as a special proceeding and the defendant shall be entitled to a jury trial. The judge may, at the request of the person charged in the petition, provide for the final determination of the issue of criminal sexual psychopathy by the court

without jury. The court may order the public excluded from such proceedings. [56GA, ch 121,§9]

**225A.10 Evidence admissible.** At the final hearing, the examining physicians appointed or designated by the court may testify as to their examination or examinations of the person charged and the results thereof, but their report or reports filed in court as herein provided shall not be admissible in evidence against the person charged. Evidence of past acts of sexual deviation by the person charged shall be admissible at the hearing. [56GA, ch 121,§10]

**225A.11 Commitment.** If the person is found to be a criminal sexual psychopath the court may commit him to a state hospital for the insane, where he shall be detained and treated until released in accordance with the provisions of this chapter or may order such person to be tried upon the criminal charges against him, as the interests of substantial justice may require. The hospital staff shall make periodic examinations of any such person committed, with the view of determining the progress of treatment, and shall report to the court not less than once a year. [56GA, ch 121, §11]

**225A.12 Application for release.** At any time after commitment, an application in writing setting forth facts showing that such criminal psychopath has improved to the extent that his release will not be incompatible

with the welfare of society may be filed with the committing court. Whereupon the court shall issue an order which will return the person to the jurisdiction of said court for a hearing. This hearing shall in all respects be like the original hearing to determine the mental condition of the defendant. Following such hearing, the court shall issue an order which shall cause the defendant either to be (1) placed on probation for a minimum of three (3) years, or (2) returned to the hospital, provided that upon the expiration of said probationary period the said person may be discharged. [56GA, ch 121,§12]

**225A.13 Effect of finding.** Nothing in this chapter shall be construed as changing in meaning any portion of the criminal code, nor shall a finding of criminal sexual psychopathy, under the provisions of this chapter, constitute a defense in any criminal action. [56GA, ch 121,§13]

**225A.14 Support and maintenance.** The support and maintenance of any person committed to the state hospital under the provisions of this chapter shall be charged and paid in accordance with the law as now provided for in the case of inmates of state hospitals for the insane. [56GA, ch 121,§14]

**225A.15 Other laws applicable.** All laws now in force not in conflict with this chapter relating to the admission of insane persons to state hospitals shall apply to criminal sexual psychopaths. [56GA, ch 121,§15]

Constitutionality, 56GA, ch 121,§16

## CHAPTER 226

### STATE MENTAL HEALTH INSTITUTES

Referred to in §§229.38, 229.39

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#### REHABILITATION OF ALCOHOLICS

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**226.1 Official designation.** The hospitals for the insane shall be designated as follows:

1. Mental Health Institute, Mount Pleasant, Iowa.

2. Mental Health Institute, Independence, Iowa.

3. Mental Health Institute, Clarinda, Iowa.

4. Mental Health Institute, Cherokee, Iowa.

[R60,§1471; C73,§1383; C97,§2253; S13,§2253-a; C24, 27, 31, 35, 39,§3483; C46, 50, 54,§226.1]

See §§145.1, 218.1

**226.2 Qualifications of superintendent.** The superintendent of each hospital shall be a physician of acknowledged skill and ability in his profession and authorized to practice medicine in this state. The same person shall not hold the office of superintendent and steward. [R60,§§1430, 1474; C73,§§1386, 1391; C97,§§2255, 2258; C24, 27, 31, 35, 39,§3484; C46, 50, 54,§226.2]

**226.3 Assistant physicians.** The assistant physicians shall be of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his absence or inability to act. [R60,§1432; C73,§1394; C97,§2260; C24, 27, 31, 35, 39,§3485; C46, 50, 54, §226.3]

**226.4 Salary of superintendent.** The salary of the superintendent of each hospital shall be determined by the board of control. [R60, §§1469, 1496; C97,§2258; C24, 27, 31, 35, 39, §3486; C46, 50, 54,§226.4]

**226.5 Superintendent as witness.** The superintendents and assistant physicians of said hospitals, when called as witnesses in any court, shall be paid the same mileage which other witnesses are paid and in addition thereto shall be paid a fee of twenty-five dollars per day, said fee to revert to the support fund of the hospital he serves. [C73,§1429; C97,§2293; C24, 27, 31, 35, 39,§3487; C46, 50, 54,§226.5]

Mileage, §622.69

**226.6 Duties of superintendent.** The superintendent shall:

1. Have the control of the medical, mental, moral, and dietetic treatment of the patients in his custody subject to the approval of the board of control.

2. Require all subordinate officers and employees to perform their respective duties.

3. Have an official seal with the name of the hospital and the word "Iowa" thereon and affix the same to all notices, orders of discharge, or other papers required to be given by him.

4. Keep proper books in which shall be entered all moneys and supplies received on account of any patient and a detailed account of the disposition of the same.

5. Report, in December of each year, to each county, the mental and physical condition of each patient from said county and the probable safety of removing any such patient to the county hospital. [R60,§§1430, 1431; C73, §§1391, 1393, 1430; C97,§§2258, 2294; C24, 27, 31, 35, 39,§3488; C46, 50, 54,§226.6]

**226.7 Order of receiving patients.** Preference in the reception of patients into said hospitals shall be exercised in the following order:

1. Cases of less duration than one year.
2. Chronic cases, where the disease is of

more than one year's duration, presenting the most favorable prospect for recovery.

3. Those for whom application has been longest on file, other things being equal.

Where cases are equally meritorious in all other respects, the indigent shall have the preference. [R60,§1438; C73,§1422; C97,§2286; C24, 27, 31, 35, 39,§3489; C46, 50, 54,§226.7]

**226.8 Idiots not receivable.** No idiot shall be admitted to a state hospital for the insane. The term "idiot" is restricted to persons foolish from birth, supposed to be naturally without mind. [R60,§§1468, 1491; C73,§1434; C97, §2298; C24, 27, 31, 35, 39,§3490; C46, 50, 54,§226.8]

**226.9 Custody of patient.** The superintendent, upon the receipt of a duly executed warrant of commitment of a patient into the hospital for the insane, accompanied by the physician's certificate provided by law, shall take such patient into custody and restrain him as provided by law and the rules of the board of control, without liability on the part of such superintendent and all other officers of the hospital to prosecution of any kind on account thereof, but no person shall be detained in the hospital who is found by the superintendent to be sane. [C73,§1411; C97, §2278; C24, 27, 31, 35, 39,§3491; C46, 50, 54,§226.9]

Warrant of commitment, §229.10

**226.10 Equal treatment.** The several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care. [C73,§1420; C97,§2284; C24, 27, 31, 35, 39, §3492; C46, 50, 54,§226.10]

**226.11 Special care permitted.** Patients may have such special care as may be agreed upon with the superintendent, if the friends or relatives of the patient will pay the expense thereof. Charges for such special care and attendance shall be paid quarterly in advance. [C73,§§1420, 1421; C97,§§2284, 2285; C24, 27, 31, 35, 39,§3493; C46, 50, 54,§226.11]

**226.12 Monthly visitation—women inspectors.** The board or its secretary shall make monthly and thorough examinations of each hospital. It may appoint a woman to make examinations of any hospital and to make written report thereof to the board. [C73, §§1435, 1441; C97,§2299; SS15,§2727-a11; C24, 27, 31, 35, 39,§3494; C46, 50, 54,§226.12]

**226.13 Inmates allowed to write.** The names of the members of the board and their post-office addresses shall be kept posted in every ward in each hospital. Every inmate shall be allowed to write once a week what he pleases to said board and to any other person. The superintendent may send letters addressed to other parties to the board of control for inspection before forwarding them to the individual addressed. [C73,§1436; C97,§2300; C24, 27, 31, 35, 39,§3495; C46, 50, 54,§226.13]

**226.14 Writing material.** Every inmate shall be furnished by the superintendent or party

having charge of such person, at least once in each week, with suitable materials for writing, inclosing, sealing, and mailing letters, if he requests and uses the same. [C73,§1437; C97,§2301; C24, 27, 31, 35, 39,§3496; C46, 50, 54, §226.14]

**226.15 Letters to members of board.** The superintendent or other officer in charge of an inmate shall, without reading the same, receive all letters addressed to members of the board, if so requested, and shall properly mail the same, and deliver to such inmate all letters or other writings addressed to him. Letters written to the person so confined may be examined by the superintendent, and if, in his opinion, the delivery of such letters would be injurious to the person so confined, he shall return the letters to the writer with his reasons for not delivering them. [C73,§1438; C97, §2302; C24, 27, 31, 35, 39,§3497; C46, 50, 54, §226.15]

**226.16 Escape and recapture.** It shall be the duty of the superintendent and of all other officers and employees of any of said hospitals, in case of the escape of any patient, to exercise all due diligence to recapture and return said patient to the hospital. A notification by the superintendent of such escape to any peace officer of the state or to any private person shall be sufficient authority to such officer or person to take and return such patient to the hospital. [R60,§1445; C73,§1423; C97,§2287; S13,§2287; C24, 27, 31, 35, 39,§3498; C46, 50, 54,§226.16]

**226.17 Expense attending recapture.** All actual and necessary expenses incurred in the capture, restraint, and return to the hospital of the patient shall be paid on itemized vouchers, sworn to by the claimants and approved by the business manager and the board of control, from any money in the state treasury not otherwise appropriated. [R60,§1445; C73, §1423; C97,§2287; S13,§2287; C24, 27, 31, 35, 39, §3499; C46, 50, 54,§226.17]

**226.18 Investigation as to sanity.** The board may investigate the mental condition of any inmate and shall discharge any person, if, in its opinion, such person is not insane, or can be cared for after such discharge without danger to others, and with benefit to the patient; but in determining whether such patient shall be discharged, the recommendation of the superintendent shall be secured. The power to investigate the mental condition of an inmate is merely permissive, and does not repeal or alter any statute respecting the discharge or commitment of inmates of the state hospitals. [S13,§2727-a25; C24, 27, 31, 35, 39,§3500; C46, 50, 54,§226.18]

**226.19 Discharge—certificate.** All patients shall be discharged immediately on regaining their sanity, and the superintendent shall issue duplicate certificates of full recovery, one of which he shall deliver to the recovered patient, and the other of which he shall forward

to the clerk of the district court of the county from which the patient was committed. [R60, §1485; C73,§1424; C97,§2288; C24, 27, 31, 35, 39, §3501; C46, 50, 54,§226.19]

**226.20 Duty of clerk.** The said clerk shall, immediately on receipt of such certificate, record the same at length in the record of the proceedings against said party as an insane person. [C97,§2288; C24, 27, 31, 35, 39,§3502; C46, 50, 54,§226.20]

**226.21 Certificate and record as evidence.** Either of said certificates or the record thereof shall be presumptive evidence of the recovery of such person, and shall restore him to all his civil rights. [C97,§2288; C24, 27, 31, 35, 39,§3503; C46, 50, 54,§226.21]

**226.22 Clothing furnished.** Upon such discharge the business manager shall furnish such person, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital. [R60,§1485; C73,§1424; C97,§2288; C24, 27, 31, 35, 39,§3504; C46, 50, 54,§226.22]

**226.23 Parole of patients.** Upon the recommendation of the superintendent and the written consent of the commissioners of insanity of the county which is the legal settlement of a patient, the board of control may parole said patient for a period not to exceed one year, under such conditions as are prescribed by said board. [C73,§1424; C97,§2288; C24, 27, 31, 35, 39,§3505; C46, 50, 54,§226.23]

**226.24 Certificate covering subsequent recovery.** When a patient is discharged at a time when he has not fully recovered his sanity, he may at any time, under such rules as the board of control may prescribe, apply to the superintendent of the hospital where he was confined for a certificate of recovery. The superintendent, under like rules, shall examine such person or cause such examination to be made and if satisfied that such person has regained his sanity, shall issue duplicate certificates showing such recovery. [C24, 27, 31, 35, 39,§3506; C46, 50, 54,§226.24]

Referred to in §226.25

**226.25 Certificate and effect thereof.** The duplicate certificates mentioned in section 226.24 shall be delivered as in case of a discharge when cured, and the same record shall be made with the same effect. [C24, 27, 31, 35, 39,§3507; C46, 50, 54,§226.25]

**226.26 Dangerous incurables.** The board of control, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release such patient when fully satisfied that such relatives or friends will provide and maintain all necessary supervision, care, and restraint over such patient. [R60,§1482; C73,§1408; C97,§2276; C24, 27, 31, 35, 39,§3508; C46, 50, 54,§226.26]



**226.27 Patient accused of crime.** When an inmate of any state hospital who was committed to such hospital at a time when he was formally accused of crime in any county of the state, regains his reason, the superintendent shall thereupon issue his warrant for the return of such person to the jail of the county in which such charge is pending and notify the sheriff of such county accordingly who shall proceed to such hospital and execute such warrant. [R60,§1460; C73,§1413; C97,§2280; C24, 27, 31, 35, 39,§3509; C46, 50, 54,§226.27]

**226.28 Return by sheriff.** The sheriff shall in writing make his return of service on said warrant and deliver such warrant and return to the clerk of the district court of his county. Said clerk shall forthwith make a copy of the warrant and return and mail the same to the said superintendent who shall file and preserve it. [C97,§2280; C24, 27, 31, 35, 39,§3510; C46, 50, 54,§226.28]

**226.29 Discharge of criminal insane.** No patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county. [R60,§1482; C73,§1408; C97,§2276; C24, 27, 31, 35, 39,§3511; C46, 50, 54,§226.29]

**226.30 Transfer of dangerous inmates.** When an inmate of any hospital for insane becomes incorrigible, and unmanageable to such an extent that he is dangerous to the safety of others in the hospital, the board may apply in writing to the district court or to any judge thereof, of the county in which such hospital is situated, for an order to transfer said inmate to the department for the insane in the men's reformatory and if such order be granted such inmate shall be so transferred. The county attorney of said county shall appear in support of such application on behalf of the board. [C24, 27, 31, 35, 39,§3512; C46, 50, 54,§226.30]

Referred to in §226.31

**226.31 Examination by court—notice.** Before granting the order authorized in section 226.30 the court or judge shall investigate the allegations of the petition and before proceeding to a hearing thereon shall require notice to be served on any relative, friend, or guardian of the person in question of the filing of said application. On such hearing the court or judge shall appoint a guardian ad litem for said person, if it deems such action necessary to protect the rights of such person. [C24, 27, 31, 35, 39,§3513; C46, 50, 54,§226.31]

**226.32 Overcrowded conditions.** The board shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases, and shall notify the auditor of the county interested at least ten days in advance of the day of actual discharge. [R60,§1483; C73, §1425; C97,§2289; C24, 27, 31, 35, 39,§3514; C46, 50, 54,§226.32]

**226.33 Notice to commissioners.** When a patient who has not fully recovered is discharged from the hospital without application therefor, notice of the order shall at once be sent to the commissioners of insanity of the county of which the patient is a resident, and the commissioners shall forthwith cause the patient to be removed, and shall at once provide for his care in the county as in other cases. [R60,§1484; C73,§1426; C97,§2290; C24, 27, 31, 35, 39,§3515; C46, 50, 54,§226.33]

**226.34 Inquest.** A coroner's inquest shall be held in those cases where a death shall occur suddenly and without apparent cause, or a patient die and his relatives so request, but in the latter case the relatives making the request shall be liable for the expense of the same, and payment therefor may be required in advance. [C73,§1439; C97,§2303; C24, 27, 31, 35, 39,§3516; C46, 50, 54,§226.34]

#### REHABILITATION OF ALCOHOLICS

**226.35 Application for admission.** Any resident of the state may apply for voluntary admission for the treatment of alcoholism to Mental Health Institute, Cherokee, Iowa; Mental Health Institute, Independence, Iowa; Mental Health Institute, Clarinda, Iowa, or Mental Health Institute, Mt. Pleasant, Iowa, the state hospital serving the district in which he resides. This application shall be made on forms provided by the board of control and under such regulations as the board may prescribe. If the superintendent shall be satisfied, after examination of the applicant by the staff, that he is in need of hospital treatment and will be benefited thereby, the superintendent may receive and care for the applicant in the state hospital for such a period of time as he shall deem necessary for the treatment, improvement or recovery of said patient.

Chapter 230 shall apply so far as applicable in connection with the payment of the costs, expenses and maintenance of the applicant in any of said institutions. [C54,§226.35]

Referred to in §226.38

**226.36 Segregation.** The board of control is directed to segregate and set aside such accommodations as may be necessary which shall be used exclusively for the treatment of patients received under this chapter. [C54, §226.36]

Referred to in §226.38

**226.37 Discharge.** The discharge of patients from the state hospitals who voluntarily entered the hospital shall be only by order of the superintendent, but he shall be guided in his decisions by the physicians attending such patient. [C54,§226.37]

Referred to in §226.38

**226.38 Demand for release—liability.** Neither the superintendent nor any other official or employee of the state hospital shall be liable for the detention of any person voluntarily admitted in such state hospital under the

provisions herein until thirty days after the patient has made demand in writing for his release from detention, and then only if it be established that such detention was unreasonable and arbitrary. Nothing in sections 226.35 to 226.39, inclusive, however, shall in any way restrict the right of any patient to secure, or attempt to secure, his freedom by habeas corpus proceedings as now provided by law. [C54,§226.38]

Habeas corpus, ch 668

**226.39 Request for commitment.** Upon receipt of such a demand for discharge the superintendent may immediately request a writ of commitment from the district court in which the hospital is located. Such request shall be accompanied by a statement of attending physician that further treatment is necessary in the best interests of the patient and

the public. The court shall set said request for immediate hearing before the court and prescribe the notice to be given therefor. If it appears that the patient is not represented by counsel, the court shall appoint one to appear and defend said patient and who shall receive such compensation as the court shall fix, which shall be taxed as costs. The board of control shall pay the costs of such proceedings. Such hearing shall be private and all records made thereof shall be confidential. If upon such hearing which shall be in presence of the patient the court shall find the patient to be an alcoholic and in further need of treatment, he shall issue a writ of commitment to the state hospital for a period not to exceed ninety days. [C54,§226.39]

Referred to in §226.38  
Severability of Act, 64GA, ch 85, §6  
Commitment by insanity commissioners, ch 224

## CHAPTER 227

### COUNTY AND PRIVATE HOSPITALS FOR INSANE

Referred to in §§229.38, 229.39

- 227.1 Supervision.
- 227.2 Inspection.
- 227.3 Patients to have hearing.
- 227.4 Repealed by 52GA, ch 126, §2.
- 227.5 Repealed by 52GA, ch 126, §3.
- 227.6 Removal of patients.
- 227.7 Cost—collection from county.
- 227.8 Notification to guardians.
- 227.9 Investigating sanity.

- 227.10 Transfers from county or private institutions.
- 227.11 Transfers from state hospitals.
- 227.12 Difference of opinion.
- 227.13 Discharge of transferred patient.
- 227.14 Caring for insane of other counties.
- 227.15 Authority to confine in hospital.
- 227.16 State aid.
- 227.17 State mental aid fund.
- 227.18 Claims filed quarterly.

**227.1 Supervision.** All county and private institutions wherein insane persons are kept shall be under the supervision of the board of control of state institutions. [S13,§2727-a58; C24, 27, 31, 35, 39,§3517; C46, 50, 54,§227.1]

**227.2 Inspection.** Said board shall make, or cause to be made, at least two inspections each year of every private and county institution wherein insane persons are kept. Such inspection shall be made by the members of the board or by some competent and disinterested person appointed by it. Inspectors shall be persons who are acquainted with and interested in the handling and care of mental patients and shall be required to consult and advise with the county authorities on plans and practices that will improve the care given patients and shall make such recommendations to the board for co-ordinating and improving the relationships between the stewards of county homes, the board, the superintendents of hospitals and other co-operating agencies, as will make for improved and more satisfactory care of patients. Written report as to such inspections shall be filed with the board and shall embrace:

1. The capacity of said institution for the care of patients.

2. The number and sex of the inmates kept therein.

3. The arrangement, method of construction, and adaptability of buildings for the purposes intended.

4. The condition of buildings as to sewerage, ventilation, light, heat, cleanliness, means of water supply, fire escapes, and fire protection.

5. The care of patients, their food, clothing, medical treatment, and employment.

6. The number, kind, sex, duties, and salaries of all employees.

7. The cost to the state or county of maintaining insane patients therein, separate from the cost of maintaining sane paupers.

8. The recommendations given to and received from county authorities on methods and practices that will improve the conditions under which the county home is operated.

9. Such other matters as the board of control may require.

In addition to the aforesaid inspections, the board shall make or cause to be made an inspection of each county home where mental patients are kept at least once each year by a competent psychiatrist employed by the state hospital in the hospital district where the

county home is located. Such inspection shall include an examination of each mental patient which shall reveal the patient's condition of health and the likelihood of improvement or discharge and such other recommendations concerning the care of patients as the inspector deems pertinent. One copy of said inspection report shall be filed with the board, one copy mailed to the county board of supervisors and one copy mailed to the steward of the home inspected. [S13,§2727-a59; C24, 27, 31, 35, 39, §3518; C46, 50, 54,§227.2]

**227.3 Patients to have hearing.** The inspector shall give each patient an opportunity to converse with him out of the hearing of any officer or employee of the institution, and shall fully investigate all complaints and report the result thereof in writing to said board. The board before acting on said report adversely to the institution, shall give the persons in charge thereof a copy of such report and an opportunity to be heard. [S13,§2727-a60; C24, 27, 31, 35, 39,§3519; C46, 50, 54,§227.3]

**227.4** Repealed by 52GA, ch 126,§2.

**227.5** Repealed by 52GA, ch 126,§3.

**227.6 Removal of patients.** Said board, in case of failure to comply with its rules, is authorized to remove all said insane persons kept in such institutions at public expense, to the proper state hospital, or to some private or county institution or hospital for the care of the insane that has complied with the rules prescribed by said board, such removal of patients, if to a state hospital, to be made by an attendant or attendants sent from the state hospital. If a female is removed under the provisions of this section, at least one attendant shall be a female. [S13,§2727-a63; C24, 27, 31, 35, 39,§3522; C46, 50, 54,§227.6]

**227.7 Cost—collection from county.** The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the state comptroller, who shall draw his warrant upon the treasurer of state for said sum, which shall be credited to the support fund of said hospital and charged against the general revenues of the state and collected by the comptroller from the county which sent said patient to said institution. [S13,§2727-a63; C24, 27, 31, 35, 39,§3523; C46, 50, 54,§227.7]

Referred to in §227.10

**227.8 Notification to guardians.** The board of control shall notify the guardian, or one or more of the relatives, of patients kept at private expense, of all violations of said rules by said private or county institutions, and of the action of the board as to all other patients. [S13,§2727-a63; C24, 27, 31, 35, 39,§3524; C46, 50, 54,§227.8]

**227.9 Investigating sanity.** Should the board believe that any person in any such county or

private institution is sane, or illegally restrained of liberty, it shall institute and prosecute proceedings in the name of the state, before the proper officer, board, or court, for the discharge of such person. [S13,§2727-a63; C24, 27, 31, 35, 39,§3525; C46, 50, 54,§227.9]

**227.10 Transfers from county or private institutions.** Patients who are suffering from acute insanity, and who are violent, and confined at public expense in any such institution, may be removed by the board of control to the proper state hospital for the insane when, on competent medical testimony, the board finds that said patient can be better cared for and with better hope of recovery in the state hospital. Such removal shall be at the expense of the proper county. Said expense shall be recovered as provided in section 227.7. [S13,§2727-a64; C24, 27, 31, 35, 39, §3526; C46, 50, 54,§227.10]

**227.11 Transfers from state hospitals.** A county chargeable with the expense of a patient in a state hospital for the insane shall remove such patient to a county or private institution for the insane which has complied with the aforesaid rules when the board so orders on a finding that said patient is suffering from chronic insanity or from senility and will receive equal benefit by being so transferred. A county shall remove to its county home any patient in a state hospital for the insane upon a finding by a commission, consisting of the superintendent of the state hospital in which the patient is confined and a physician or physicians chosen by the board of supervisors of the county of the patient's residence, said physician or physicians to be paid by the county of the patient's residence, that such patient can be properly cared for in the county home; and the finding of the commission, after its approval by the board of supervisors of the county of the patient's residence, shall be complete authority for such removal. In no case shall a patient be thus transferred except upon the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital. [S13,§2727-a64; C24, 27, 31, 35,§§3527, 3528; C39,§3527; C46, 50, 54, §227.11]

Referred to in §227.16

**227.12 Difference of opinion.** When a difference of opinion exists between the board of control and the authorities in charge of any private or county asylum in regard to the removal of a patient or patients as herein provided, the matter shall be submitted to the district court, or judge thereof, of the county in which such asylum is situated and shall be summarily tried as an equitable action, and the judgment of the district court or judge shall be final. [S13,§2727-a68; C24, 27, 31, 35, 39, §3529; C46, 50, 54,§227.12]

How issues tried, R.C.P. 177 et seq.

**227.13 Discharge of transferred patient.** Patients transferred from a state hospital to

such county or private institutions shall not be discharged, when not cured, without the consent of the board of control. [S13,§2727-a64; C24, 27, 31, 35, 39,§3530; C46, 50, 54,§227.13]

**227.14 Caring for insane of other counties.** Boards of supervisors of counties having no proper facilities for caring for the insane, may, with the consent of the board of control, provide for such care at the expense of the county in any convenient and proper county or private institution for the insane which is willing to receive them. [S13,§2727-a65; C24, 27, 31, 35, 39,§3531; C46, 50, 54,§227.14]

**227.15 Authority to confine in hospital.** No person shall be confined and restrained in any private institution or hospital or county hospital or other general hospital with psychiatric ward for the care or treatment of the insane, except upon the certificate of the commission of insanity of the county in which such person resides, or of two reputable physicians, at least one of whom shall be a bona fide resident of this state, who shall certify that such person is a fit subject for treatment and restraint in said institution or hospital, which certificate shall be the authority of the owners and officers of said hospital or institution for receiving and confining said patient or person therein. [S13,§2727-a66; C24, 27, 31, 35, 39,§3532; C46, 50, 54,§227.15]

**227.16 State aid.** For each patient heretofore or hereafter received on transfer from a

state hospital for the insane under the provisions of section 227.11, or committed to a county home by a commission of insanity the county shall be entitled to receive the amount of three dollars per week for each patient from the state mental aid fund hereinafter provided for. [C50, 54,§227.16]

**227.17 State mental aid fund.** There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the state mental aid fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1949, there is appropriated thereto from funds in the general fund, not otherwise appropriated, the sum of five hundred thousand dollars. Any balance in said fund on June 30 of the second fiscal year shall revert to the general fund. [C50, 54,§227.17]

**227.18 Claims filed quarterly.** The state aid herein provided for shall be paid to the claimant county upon a verified claim being filed quarterly with the board of control setting forth the total of weekly patient care furnished to transferees in county or private institutions from the county fund for the insane. Approval of said verified claim by the board of control shall be authority for the state comptroller to issue a warrant upon the state mental aid fund payable to the claimant county which shall be credited by that county to the county fund for the insane levied under the provisions of section 230.24. [C50, 54,§227.18]

## CHAPTER 228 COMMISSION OF INSANITY

Referred to in §§229.38, 229.39, 783.5

- 228.1 Number of members.
- 228.2 Personnel of commission.
- 228.3 Appointment and term.
- 228.4 Organization.
- 228.5 Temporary vacancy.
- 228.6 Duty of clerk.

- 228.7 Service of notice—reports.
- 228.8 Jurisdiction—holding under criminal charge.
- 228.9 Compensation and expenses.
- 228.10 Costs—how paid.
- 228.11 Transportation expenses.

**228.1 Number of members.** In each county there shall be a commission of insanity which shall be composed of three members. In counties having two places where district court is held there shall be one such commission at each place. [C73,§1395; C97,§2261; C24, 27, 31, 35, 39,§3533; C46, 50, 54,§228.1]

**228.2 Personnel of commission.** Said commission shall consist of the clerk of the district court, one reputable physician in actual practice, and one reputable attorney in actual practice. Said two latter members shall reside as near as may be convenient to the place where the district court is held. In the absence or inability of the clerk to act in any case, his deputy may act. [C73,§1395; C97,§2261; C24, 27, 31, 35, 39,§3534; C46, 50, 54,§228.2]

**228.3 Appointment and term.** Said commission shall be appointed by the district court or judges thereof. If made in vacation the appointment shall be by written order, signed by the judges and recorded by the clerk. Appointments shall be for two years and be so arranged that the term of one member shall expire each year. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent. [C73,§1395; C97,§2261; C24, 27, 31, 35, 39,§3535; C46, 50, 54,§228.3]

**228.4 Organization.** The members shall organize by choosing one of their number president. The clerk of the district court or his deputy shall be clerk of the commission. The commission shall hold its meetings at the office

of the clerk, unless for good reasons it shall fix on some other place, and shall also meet on notice from the clerk or his deputy. [C73, §1396; C97, §2261; C24, 27, 31, 35, 39, §3536; C46, 50, 54, §228.4]

**228.5 Temporary vacancy.** In the temporary absence or inability of two members to act, the member present may call to his aid, temporarily, a person possessed of the qualifications required for a member, who, after qualifying as in other cases, may act in the same capacity. If one of the absent members is a clerk, his deputy shall act. The record in such cases must show the facts. [C73, §1395; C97, §2261; C24, 27, 31, 35, 39, §3537; C46, 50, 54, §228.5]

**228.6 Duty of clerk.** The clerk of said commission shall:

1. Issue all processes required to be given by the commission, and affix thereto his seal as clerk of the court.

2. File and preserve in his office all papers and records connected with any inquest by the commission.

3. Keep separate books of the proceedings of the commission with entries sufficiently full to show, with the papers filed, a complete record of its findings, orders, and proceedings. [C73, §1397; C97, §2262; C24, 27, 31, 35, 39, §3538; C46, 50, 54, §228.6]

**228.7 Service of notice—reports.** The notices, reports, and communications required to be given or made by said commission may be sent by mail, unless otherwise expressed, and the facts and date of such sending and their reception must be noted on the proper record. [C73, §1397; C97, §2262; C24, 27, 31, 35, 39, §3539; C46, 50, 54, §228.7]

**228.8 Jurisdiction—holding under criminal charge.** Said commission shall, except as otherwise provided, have jurisdiction of all applications for the commitment to the state hospitals for the insane, or for the otherwise safekeeping, of insane persons within its county, unless the application is filed with the commission at a time when the alleged insane person is being held in custody under an indictment returned by the grand jury or under a trial information filed by the county attorney. [R60, §§1458, 1459; C73, §§1398, 1412; C97, §§2263, 2279; C24, 27, 31, 35, 39, §3540; C46, 50, 54, §228.8]

Drug addicts, ch 224

**228.9 Compensation and expenses.** Compensation and expenses shall be allowed as follows:

1. The compensation and expenses of the commissioners of insanity shall be as follows: To the member of the commission serving as physician, seven dollars and fifty cents for each commitment or release of any person brought before said commission for each actual hearing, and to the member of the commission serving as attorney, seven dollars and fifty cents for each commitment or release of any person brought before said commission for each actual hearing.

2. To the examining physician, when not a member of the commission, the same fees as a member and in addition mileage of five cents per mile each way.

3. To witnesses the same fees as witnesses in the district court.

4. Fees on appeal shall be the same as in ordinary actions. [C73, §§1410, 3825; C97, §2309; C24, 27, 31, 35, 39, §3541; C46, 50, 54, §228.9]

Fees and costs, §622.69 et seq.; ch 625

**228.10 Costs—how paid.** The compensation and expenses provided for above, and the fees of the sheriff provided for in such cases, shall be allowed and paid out of the county treasury in the usual manner. [C73, §§1410, 3825; C97, §2309; C24, 27, 31, 35, 39, §3542; C46, 50, 54, §228.10]

Sheriff's fees, §337.11

**228.11 Transportation expenses.** When funds to pay the expenses of transporting a patient to a hospital are needed in advance, the commission shall estimate the probable expense, including the necessary assistance, and not including the compensation allowed the sheriff, and on such estimate, certified by the clerk, the auditor of the county shall issue a county warrant for the amount, as estimated, in favor of the sheriff or other person intrusted with the execution of such warrant of commitment. The sheriff or other person executing such warrant shall accompany his return with a statement of the expenses incurred, and the excess or deficiency may be deducted from or added to his compensation, as the case may be. If funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the return of the warrant. When the commission orders the return of a patient, compensation and expenses shall be in like manner allowed. [C73, §§1410, 3825; C97, §2309; C24, 27, 31, 35, 39, §3543; C46, 50, 54, §228.11]

## CHAPTER 229

## COMMITMENT AND DISCHARGE OF INSANE

Referred to in §783.5

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**229.1 Form of information—temporary observation.** Applications for admission to the hospitals for the insane shall be by sworn information which shall allege and show:

1. That the person in whose behalf the application is made is believed to be insane, and a fit subject for custody and treatment in the hospital.
2. That such person has been found in the county.
3. The place of residence of such person or where it is believed to be, or that such residence is not known.

Provided, however, that application for admission may be made on behalf of a person by his attending physician and another physician experienced in the treatment of mental diseases, for a temporary admission for observation, examination, diagnosis and treatment, which admission shall not be for a period of more than thirty days and only after the written consent of said person. The application shall be made to the superintendent of the state hospital in the district in which the county of his residence is located. Said application shall not be accepted by the superintendent if by doing so it will result in an over-crowded condition or if adequate facilities are not available. At the expiration of the admission period, the superintendent shall make a certified report of the findings as to the mental illness of said applicant, one copy of which shall be sent to the attending physician filing the application and, if said report finds that said person is insane and in need of treatment, a copy shall be sent to the commission of insanity of the county in which the applicant is a resident.

If the certification of the patient's condition to his attending physician by the hospital superintendent states that a further period of observation and treatment is indicated without commitment of the person as insane, the attending physician may authorize a further period of such observation and treatment as recommended. During such extended period of observation, if the patient is not discharged a recommendation for commitment as insane may be filed with the commission. If the commission does not issue a commitment as insane after recommendation by the superintendent within five days following receipt of such recommendation, the superintendent may, upon authority of the board of control, discharge such patient from the hospital, and the hospital and board of control, after discharge of such patient, shall be absolved of further responsibility in connection with the case until such time as the same person may be committed.

The cost of hospitalization of persons committed temporarily under the provisions of this section shall be paid for in the same way as persons committed otherwise as insane. [R60,§1480; C73,§1399; C97,§2264; C24, 27, 31, 35, 39,§3544; C46, 50, 54,§229.1]

Referred to in §225.36

**229.2 Hearing—custody.** On the filing of such information, the commission, if satisfied that there is reasonable cause therefor, may require the alleged insane person to be brought before it and, to this end, may issue its warrant to any peace officer of the county. The commission may provide for the custody of such person until its investigation is concluded. [R60,§1480; C73,§1400; C97,§2265; C24, 27, 31, 35, 39,§3545; C46, 50, 54,§229.2]

**229.3 Subpoenas and oaths.** The commission shall have power to issue subpoenas. Each member of the commission shall have power to administer oaths to witnesses. In case a witness fails to appear or refuses to testify, the commission shall, in writing, report such refusal to the district court or to a judge thereof, and said court or judge shall proceed as though such refusal occurred in a legal proceeding before said court or judge. [C73,§1398; C97,§2263; C24, 27, 31, 35, 39,§3546; C46, 50, 54,§229.3]

Contempts, ch 665

**229.4 Hearings.** Hearings shall be had in the presence of such person unless the commission finds that such course would probably be injurious to such person or attended with no advantage. [R60,§1480; C73,§1400; C97,§2265; C24, 27, 31, 35, 39,§3547; C46, 50, 54,§229.4]

**229.5 Appearance—right to counsel.** Appearance on behalf of such alleged insane person may be made by any citizen of the county, or by any relative, either in person or by counsel.

If at said hearing such person appears without counsel or appearance is made in his behalf without counsel, the commission, before proceeding further, shall inform such person or persons appearing for him of his right to legal counsel, then if no counsel is employed, the district court shall assign him counsel. An attorney so assigned shall receive such compensation as the district court shall fix to be paid in the first instance by the county. [C73,§1400; C97,§2265; C24, 27, 31, 35, 39,§3548; C46, 50, 54, §229.5]

**229.6 Examining physician.** The commission shall, in all cases, appoint, either from, or outside, its own membership, some regular practicing physician of the county to make a personal examination of the person in question for the purpose of determining his mental and physical condition. Said physician shall certify to the commission whether said person is sane or insane. [C73,§1400; C97,§2265; C24, 27, 31, 35, 39,§3549; C46, 50, 54,§229.6]

**229.7 Answers to interrogatories.** The examining physician shall accompany his certificate with correct answers to the following questions so far as correct answers can be obtained:

1. Name of patient? Age? Married or single?
2. Number of children? Age of youngest child?
3. Place of birth?
4. Residence?
5. Past occupation?
6. Present occupation?
7. Is this the first attack?
8. If there were other attacks when did they occur?
9. Duration of other attacks?

10. When were the first symptoms of the present attack manifested? In what way were they manifested?

11. Is disease increasing, decreasing, or stationary?

12. Is the disease variable?

13. Are there rational intervals?

14. Do rational intervals occur at regular periods?

15. State fully on what subjects or in what way is derangement now manifested?

16. Disposition to injure others?

17. Has suicide ever been attempted? If so, in what way? Is the propensity to suicide now active?

18. Is there a disposition to filthy habits, destruction of clothing, breaking of glass, etc.?

19. What relatives, including grandparents and cousins, have been insane?

20. Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits before the accession of the disease? Any predominant passion, religious impressions, etc.?

21. Was the patient ever addicted to intemperance in any form?

22. Has the patient been subject to epilepsy? Suppressed eruptions? Discharge of sores?

23. Other bodily diseases suffered by patient? If so, name them.

24. Has patient ever had any injury of the head? If so, explain nature of injury.

25. Has restraint or confinement been employed? If so, what kind, and how long?

26. What is supposed to be the cause of the disease?

27. What treatment has been pursued for the relief of the patient? Mention particulars and effects.

28. State any other matter supposed to have a bearing on the case. [R60,§1490; C73,§1407; C97,§2275; C24, 27, 31, 35, 39,§3550; C46, 50, 54, §229.7]

**229.8 Correction of answers.** If the commission on further examination after the answers are given finds that any of said answers are incorrect, it shall correct the same. [C73, §1407; C97,§2275; C24, 27, 31, 35, 39,§3551; C46, 50, 54,§229.8]

**229.9 Findings and order—screening center.** If the commission finds from the evidence that said person is insane and a fit subject for custody and treatment in the state hospital, it shall order first his observation and treatment at the screening center located at the hospital in the district nearest to the county in which the hearing is conducted and no order of commitment shall issue until the superintendent of the hospital at which said screening center is located shall find and recommend that such order should be issued and, in the event that such recommendation of commitment is made, the commission shall order his commitment to the hospital in the district in

which the county is situated and in connection with such finding and order shall determine and enter of record the county which is the legal settlement of such person. If such settlement is unknown the record shall show such fact.

No person shall be ordered committed or delivered to a state hospital until the commission has first communicated with the superintendent of said hospital, and has been advised that adequate facilities are available. A person ordered to screening center for observation and treatment shall have the same right to appeal from the order as from the order of commitment finding him insane as provided in sections 229.17 to 229.19, inclusive. [R60,§1479; C73,§1401; C97,§2266; C24, 27, 31, 35, 39,§3552; C46, 50, 54,§229.9]

**229.10 Warrant.** Unless an appeal is taken, the commission shall issue its warrant of commitment and a duplicate thereof, stating such finding, with the settlement of the person, if found, and, if not found, its information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep him as a patient therein. [C73,§1401; C97, §2266; C24, 27, 31, 35, 39,§3553; C46, 50, 54, §229.10]

**229.11 Service.** Said warrant and duplicate, with the certificate and finding of the physician, shall be delivered to the person's attending physician or some one designated by said physician, who shall execute the same by conveying such person to the hospital, and delivering him, with such duplicate and physician's certificate and finding, to the superintendent, who shall, over his official signature, acknowledge such delivery on the original warrant, which said physician shall return to the clerk of the commission, with his costs and expenses indorsed thereon. [R60, §§1458, 1459, 1479; C73, §§1401, 1412; C97, §§2266, 2279; C24, 27, 31, 35, 39, §§3554, 3556; C46, §§229.11, 229.13; C50, 54, §229.11]

**229.12 Record and commitment of one accused.** If, after the commission has acquired jurisdiction over a person under a charge of insanity, the district court also acquires jurisdiction over such person under a formal charge of crime, the findings of the commission and the warrant of commitment, if any, shall state the fact of jurisdiction in the district court, and the name of the criminal charge. [R60, §1459; C73, §1412; C97, §2279; C24, 27, 31, 35, 39, §3555; C46, 50, 54, §229.12]

**229.13** Repealed by 52GA, ch 129, §6. See §229.11.

**229.14 Assistants—females.** The person's attending physician or some one designated by said physician, or any person appointed, may call to his aid such assistants as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female or some relative. The superintendent, in his acknowledgment of delivery, must state whether there

was any such person in attendance, and give the name or names, if any. [C73, §1401; C97, §2266; C24, 27, 31, 35, 39, §3557; C46, 50, 51, §229.14]

**229.15 Preference in executing warrant.** If any relative or immediate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of executing such warrant, in preference to the sheriff or any other person, without taking such oath, and for so doing shall be entitled to his necessary expenses, but no fees. [C73, §1401; C97, §2266; C24, 27, 31, 35, 39, §3558; C46, 50, 54, §229.15]

**229.16 Confinement of insane—females.** No person who shall be found to be insane shall, during investigation or after such finding, and pending commitment to the hospital, or when on the way there, be confined in any jail, prison, or place of solitary confinement, except in cases of extreme violence, when it may be necessary for the safety of such person or of the public; and if such person be so confined, there shall, at all times during its continuance, be some suitable person or persons in attendance in charge of such person; but at no time shall any female be placed in such confinement without at least one female attendant remaining in charge of her. [C97, §2266; C24, 27, 31, 35, 39, §3559; C46, 50, 54, §229.16]

**229.17 Appeal.** Any person found to be insane, or his next friend, may appeal from such finding to the district court by giving the clerk thereof, within thirty days after such finding has been made, notice in writing that an appeal is taken, which may be signed by the party, his agent, next friend, guardian, or attorney, and, when thus appealed, it shall stand for trial anew. Upon appeal it shall be the duty of the county attorney, without additional compensation, to prosecute the action on behalf of the informant. Such person shall have the right to have the appeal decided by a jury under the rules and statutes relating to jury trials in civil cases. [C97, §2267; S13, §2267; C24, 27, 31, 35, 39, §3560; C46, 50, 54, §229.17]

Referred to in §229.9

**229.18 Custody pending appeal.** The appellant, pending the appeal, shall be discharged from custody, unless the commission finds that he cannot with safety be allowed to go at large, in which case it shall require him to be suitably provided for in the manner hereinafter specified. [C97, §2268; C24, 27, 31, 35, 39, §3561; C46, 50, 54, §229.18]

Referred to in §229.9

**229.19 Final order.** If, upon the trial of the appeal, such person is found insane, and a fit subject for custody and treatment in the hospital, an order of commitment shall be entered, and the clerk shall issue a warrant therefor, and the proceedings thereunder shall be as provided in cases before the commission. [C97, §2269; C24, 27, 31, 35, 39, §3562; C46, 50, 54, §229.19]

Referred to in §229.9  
Warrant of commitment, §229.10



**229.20 Beneficiaries of veterans bureau.**

1. Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this section shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any facility of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this section are so conditioned.

2. The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection 1 of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans administration, or of any institution operated in this state by any

other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

3. Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

4. Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [C27, 31, 35, §3562-b1; C39, §3562.1; C46, 50, 54, §229.20]

**229.21 Transfer from state hospital.** A veteran of any war committed to any state hospital may, with the approval of the board of control, be transferred to and placed in the custody of any hospital maintained for war veterans within the state of Iowa on being notified by the authorities of such veterans hospital that the veteran is acceptable for hospitalization, provided no charge for his care and support is made against the state of Iowa or the county from which committed. [C39, §3562.2; C46, 50, 54, §229.21]

**229.22 Commitment continues.** The transfer of a veteran from one hospital to another shall in no way invalidate the original commitment and such commitment together with all such laws and rules of the board of control pertaining to parole or discharge shall remain in full force and effect as the original commitment. [C39, §3562.3; C46, 50, 54, §229.22]

**229.23 Blanks.** The board of control shall furnish the commissions of insanity of the counties with such forms for blanks for warrants, certificates, and other papers as will enable them with regularity and facility to comply with the provisions of this chapter, and also with copies of the regulations of the hospital, when printed. [C73, §1431; C97, §2295; C24, 27, 31, 35, 39, §3563; C46, 50, 54, §229.23]

**229.24 Temporary custody in certain cases.** If any person found to be insane cannot at once be admitted to the hospital, or, in case of appeal from the finding of the commission, if

such person cannot with safety be allowed to go at liberty, the commission of insanity shall require that such person shall be suitably provided for either in the county home or otherwise until such admission can be had, or until the occasion therefor no longer exists. [R60, §1436; C73, §1403; C97, §2271; S13, §2271; C24, 27, 31, 35, 39, §3564; C46, 50, 54, §229.24]

**229.25 Care by relatives or friends.** Such patients may be cared for as private patients when relatives or friends will obligate themselves to provide such care without public charge. In such case the commission shall in writing appoint some suitable person special custodian who shall have authority and shall in all suitable ways restrain, protect, and care for such patient, in such manner as to best secure his safety and comfort, and to best protect the persons and property of others. [C73, §1403; C97, §2271; S13, §2271; C24, 27, 31, 35, 39, §3565; C46, 50, 54, §229.25]

Referred to in §229.26

**229.26 Care by county.** If care and custody of the patient is not provided as authorized in section 229.25 the commission shall require that he be restrained and cared for by the board of supervisors, at the expense of the county, at the county home or some other suitable place, and the commission of insanity shall issue its mandate to the board of supervisors, which shall forthwith comply therewith. [R60, §1436; C73, §1403; C97, §2271; S13, §2271; C24, 27, 31, 35, 39, §3566; C46, 50, 54, §229.26]

**229.27 Custody outside state hospitals.** The commission of insanity may grant applications, made in substantially the form provided in this title, for the restraint, protection and care, within the county and outside the state hospitals, of alleged insane persons, either as public or private patients, but all patients so cared for shall be reported to the board of control. [R60, §1437; C73, §1404; C97, §2272; C24, 27, 31, 35, 39, §3567; C46, 50, 54, §229.27]

**229.28 Neglected insane.** On information laid before the commission of insanity of any county that an insane person in the county is suffering for want of proper care, it shall forthwith inquire into the matter, and, if it finds that such information is true, it shall make all needful provisions for the care of such person as provided in other cases. [R60, §1467; C73, §1405; C97, §2273; C24, 27, 31, 35, 39, §3568; C46, 50, 54, §229.28]

**229.29 Transfers from county and private asylums.** Insane persons who have been under care, either as public or private patients, outside of the hospital, by authority of the commission of insanity may, on application, be transferred to the state hospital, whenever they can be admitted thereto. Such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commission shall think

further inquest advisable. [C73, §1406; C97, §2274; C24, 27, 31, 35, 39, §3569; C46, 50, 54, §229.29]

**229.30 Discharge from custody.** When it shall be shown to the satisfaction of the commission of insanity that cause no longer exists for the care within the county of any person as an insane patient, it shall, with the approval of the board of control, order his immediate discharge, and shall find if such person is sane or insane at the time of such discharge, which finding shall be entered of record by the clerk of the commission of insanity. [C73, §1409; C97, §2277; C24, 27, 31, 35, 39, §3570; C46, 50, 54, §229.30]

**229.31 Commission of inquiry.** A sworn complaint, alleging that a named person is not insane and is unjustly deprived of his liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, or of the county in which such named person has a legal settlement, and thereupon a judge of said court shall appoint a commission of not more than three persons to inquire into the truth of said allegations. One of said commissioners shall be a physician and if additional commissioners are appointed, one of such commissioners shall be a lawyer. [C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3571; C46, 50, 54, §229.31]

Referred to in §229.36

**229.32 Duty of commission.** Said commission shall at once proceed to the place where said person is confined and make a thorough and discreet examination for the purpose of determining the truth of said allegations and shall promptly report its findings to said judge in writing. Said report shall be accompanied by a written statement of the case signed by the superintendent. [C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3572; C46, 50, 54, §229.32]

Referred to in §229.36

**229.33 Hearing.** If, on such report and statement, and the hearing of testimony if any is offered, the judge shall find that such person is sane, he shall order his discharge; if the contrary, he shall so state, and authorize his continued detention. [C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3573; C46, 50, 54, §229.33]

Referred to in §229.36

**229.34 Finding and order filed.** The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court where the complaint was filed. Said clerk shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. [C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3574; C46, 50, 54, §229.34]

Referred to in §229.36

**229.35 Compensation—payment.** Said commissioners shall be entitled to their necessary

expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the state comptroller who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause. [C73,§1442; C97,§2304; C24, 27, 31, 35, 39,§3575; C46, 50, 54,§229.35]

Referred to in §229.36

**229.36 Limitation on proceedings.** The proceeding authorized in sections 229.31 to 229.35, inclusive, shall not be had oftener than once in six months regarding the same person; nor regarding any patient within six months after his admission to the hospital. [C73,§1443; C97, §2305; C24, 27, 31, 35, 39,§3576; C46, 50, 54,§229.36]

**229.37 Habeas corpus.** All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing. If the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason. [R60,§1441; C73,§1444; C97, §2306; C24, 27, 31, 35, 39,§3577; C46, 50, 54, §229.37]

Constitutional provision, Art. I,§18  
Habeas corpus, ch 663

**229.38 Cruelty or official misconduct.** If any person having the care of an insane person, and restraining him, whether in a hospital or elsewhere, with or without authority, shall treat him with unnecessary severity, harshness, or cruelty, or in any way abuse him, or if any officer required by the provisions of this and chapters 226 to 228, inclusive, to perform any act shall willfully refuse or neglect to perform the same, he shall, unless otherwise provided, be fined not to exceed five hundred dollars, or be imprisoned in the county jail not to exceed three months, and pay the costs of prosecution, or be both fined and imprisoned at the discretion of the court. [C73,§§1415, 1416, 1440, 1445; C97,§2307; C24, 27, 31, 35, 39, §3578; C46, 50, 54,§229.38]

**229.39 Failure to furnish writing material.** If any member of the visiting committee, superintendent of the hospital, or other person in charge of an insane person confined in the hospital, shall knowingly and willfully violate any provision of this and chapters 226 to 228, inclusive, by failing and refusing to furnish material for writing, failing or refusing to allow a party to write letters, to mail letters written, to receive and deliver letters written as provided herein to such person so confined, or in any other way, he shall be

guilty of a misdemeanor. [C97,§2307; C24, 27, 31, 35, 39,§3579; C46, 50, 54,§229.39]

Punishment, §687.7

**229.40 "Insane" defined.** The term "insane" as used in this chapter includes every species of insanity or mental derangement. [R60, §1468; C73,§1434; C97,§2298; C24, 27, 31, 35, 39, §3580; C46, 50, 54,§229.40]

**229.41 Voluntary admission.** Any citizen of the state may make a voluntary personal application for admission to a state hospital for the purpose of securing observation, examination, diagnosis, and treatment for mental illness. Such application shall be made in writing on forms prepared under the direction of the board of control and shall include an agreement by the applicant that he will abide by the rules and regulations of the hospital and will give three days notice in writing before demanding his discharge. No applicant shall be accepted if the hospital does not have adequate facilities available or if the acceptance would result in an over-crowded condition. The applicant may apply for his discharge by giving or causing to be given three days notice in writing of his desire to be discharged, and not later than three days after said notice is given, the superintendent shall discharge said applicant unless otherwise directed by lawful proceedings.

Persons making application directly to the superintendent and received for observation and treatment on such application, shall be required to pay the costs of hospitalization, which costs may be collected weekly in advance and shall be payable at the business office of the hospital. Such costs shall be the same as for regularly committed patients, and the treatment shall be the same as for other patients. [C50, 54,§229.41]

Referred to in §229.42

**229.42 Costs paid by county.** If a person wishing to make application for voluntary admission to the hospital is unable to pay the costs of hospitalization or those responsible for such person are unable to pay such costs, application for voluntary admission must be made to the insane commission of the county in which said person is a resident and the commission, after satisfying itself that the person is in need of observation and treatment in the state hospital, may on forms prescribed by the board of control, authorize such person's admission as a voluntary case, the costs of hospitalization of such case to be paid in the same way as regularly committed cases. Persons admitted under this section shall be released on application in writing to the superintendent in the same way as voluntary patients are released as provided for in section 229.41. [C50, 54,§229.42]

CHAPTER 230  
SUPPORT OF INSANE

Referred to in §§226.35, 783.5

Applicable to epileptics and feeble-minded, see §223 16

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| <p>230.1 Liability of county and state.<br/>230.2 Finding of legal settlement.<br/>230.3 Certification of settlement.<br/>230.4 Certification to debtor county.<br/>230.5 Nonresidents.<br/>230.6 Determination by board.<br/>230.7 Removal of nonresidents.<br/>230.8 Transfers of insane persons—expenses.<br/>230.9 Subsequent discovery of residence.<br/>230.10 Preliminary payment of costs.<br/>230.11 Recovery of costs from state.<br/>230.12 Action to determine legal settlement.<br/>230.13 Judgment when settlement found within state.<br/>230.14 Order when nonresidence or unknown settlement appears.<br/>230.15 Personal liability.<br/>230.16 Presumption.</p> | <p>230.17 Board may compromise lien.<br/>230.18 Expense in county or private hospitals.<br/>230.19 Nonresidents liable to state—presumption.<br/>230.20 Expenses certified to counties.<br/>230.21 Duty of county auditor and treasurer.<br/>230.22 Penalty.<br/>230.23 Cost paid from institution fund.<br/>230.24 County fund for insane—psychiatric treatment.<br/>230.25 Lien of assistance.<br/>230.26 Auditor to keep record.<br/>230.27 Board and county attorney to collect.<br/>230.28 Closing estates—homestead.<br/>230.29 Releasing lien.<br/>230.30 Claim against estate.<br/>230.31 Escapees from other states.</p> |
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**230.1 Liability of county and state.** The necessary and legal costs and expenses attending the arrest, care, investigation, commitment, and support of an insane person committed to a state hospital shall be paid:

1. By the county in which such person has a legal settlement, or
2. By the state when such person has no legal settlement in this state, or when such settlement is unknown.

The residence of any person found insane who is an inmate of any state institution shall be that existing at the time of admission thereto. [C73,§1402; C97,§2270; S13,§2270; C24, 27, 31, 35, 39,§3581; C46, 50, 54,§230.1]

**230.2 Finding of legal settlement.** The commission of insanity shall, when a person is found to be insane, or as soon thereafter as it obtains the proper information, determine and enter of record whether the legal settlement of said person is:

1. In the county of the residence of said commissioners;
2. In some other county of the state;
3. In some foreign state or country; or
4. Unknown.

[C24, 27, 31, 35, 39,§3582; C46, 50, 54,§230.2]

**230.3 Certification of settlement.** If such legal settlement is found to be in another county of this state, the commission shall, as soon as said determination is made, certify such finding to the superintendent of the hospital to which said patient is committed, and thereupon said superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of such patient, to the county so certified until said settlement shall be otherwise determined as hereinafter provided. [C73,§1417; C97,§2281; C24, 27, 31, 35, 39,§3583; C46, 50, 54,§230.3]

**230.4 Certification to debtor county.** Said finding of legal settlement shall also be certified by the commission to the county auditor of the county of such legal settlement. Such auditor shall lay such notification before the board of supervisors of his county, and it shall be conclusively presumed that such person has a legal settlement in said notified county unless said county shall, within six months, in writing filed with the commission of insanity giving said notice, dispute such legal settlement. [C73,§1402; C97,§2270; S13,§2270; C24, 27, 31, 35, 39,§3584; C46, 50, 54,§230.4]

**230.5 Nonresidents.** If such legal settlement is found by the commission to be in some foreign state or country, or unknown, it shall, without entering an order of commitment to the state hospital, immediately notify the board of control of such finding and furnish the board of control with a copy of the evidence taken on the question of legal settlement, and hold said patient for investigation by said board of control. [C73,§1402; C97,§2270; S13,§2270, 2727-a28a; C24, 27, 31, 35, 39,§3585; C46, 50, 54,§230.5]

**230.6 Determination by board.** The board of control shall immediately investigate the legal settlement of said patient and proceed as follows:

1. If the board of control finds that the decision of the commission of insanity as to legal settlement is correct, the board of control shall cause said patient either to be transferred to a state hospital for the insane and there maintained at the expense of the state, or to be transferred to the place of foreign settlement.

2. If the board of control finds that the decision of the commission of insanity is not correct, the board of control shall order said patient transferred to a state hospital for the

insane and there maintained at the expense of the county of legal settlement in this state. [S13,§2727-a28a; C24, 27, 31, 35, 39,§3586; C46, 50, 54,§230.6]

Expenses certified to counties, §230.20

**230.7 Removal of nonresidents.** If at any time the board of control discovers that an insane patient in a state hospital was, at the time of commitment, a nonresident of this state, it may cause said patient to be conveyed to his place of residence if his condition permits of such transfer and other reasons do not render such transfer inadvisable. [C73, §1419; C97,§2283; S13,§§2283, 2727-a28a; C24, 27, 31, 35, 39,§3587; C46, 50, 54,§230.7]

**230.8 Transfers of insane persons — expenses.** The transfer to state hospitals or to the places of their legal settlement of insane persons who have no legal settlement in this state or whose legal settlement is unknown, shall be made according to the directions of the board of control, and when practicable by employees of state hospitals, and the actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the board of control, from any funds in the state treasury not otherwise appropriated. [S13,§§2308-a, 2727-a28b; C24, 27, 31, 35, 39,§3588; C46, 50, 54, §230.8]

Referred to in §230.31

**230.9 Subsequent discovery of residence.** If, after a patient has been received into a state hospital for the insane as a patient whose legal settlement is supposed to be outside this state or unknown, the board of control finds that the legal settlement of said patient was, at the time of commitment, in a county of this state, said board shall charge all legal costs and expenses pertaining to the commitment and support of said patient to the county of such legal settlement, and the same shall be collected as provided by law in other cases. [S13,§2727-a28a; C24, 27, 31, 35, 39,§3589; C46, 50, 54,§230.9]

Collection, §230.20

**230.10 Preliminary payment of costs.** All legal costs and expenses attending the arrest, care, investigation, and commitment of a person to a state hospital for the insane under a finding that such person has a legal settlement in another county of this state, shall, in the first instance, be paid by the county of commitment. The county of such legal settlement shall reimburse the county so paying for all such payments, with interest. [S13,§2308-a; C24, 27, 31, 35, 39,§3590; C46, 50, 54,§230.10]

**230.11 Recovery of costs from state.** Costs and expenses attending the arrest, care, and investigation of a person who has been committed to a state hospital for the insane and who has no legal settlement in this state or whose legal settlement is unknown, including cost of commitment, if any, shall be paid out of any money in the state treasury not other-

wise appropriated, on itemized vouchers executed by the auditor of the county which has paid them, and approved by the board of control. [S13,§2308-a; C24, 27, 31, 35, 39,§3591; C46, 50, 54,§230.11]

**230.12 Action to determine legal settlement.** When a dispute arises between different counties or between the board of control and a county as to the legal settlement of a person committed to a state hospital for the insane, the attorney general, at the request of the board of control, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine such legal settlement. Said action may be brought at any time when it appears that said dispute cannot be amicably settled. All counties which may be the place of such legal settlement, so far as known, shall be made defendants and the allegation of such settlement may be in the alternative. Said action shall be tried as in equity. [C73,§1418; C97,§§2270, 2282; S13,§2270; C24, 27, 31, 35, 39,§3592; C46, 50, 54,§230.12]

How issues tried, R.C.P. 177 et seq.

**230.13 Judgment when settlement found within state.** The court shall determine whether the legal settlement of said insane person, at the time of the commitment, was in one of the defendant counties. If the court so find, judgment shall be entered against the county of such settlement in favor of any other county for all legal costs and expenses arising out of said proceedings in insanity, and paid by said other county. If any such costs have not been paid, judgment shall be rendered against the county of settlement in favor of the parties, including the state, to whom said costs or expenses may be due. [C73,§1418; C97,§2282; S13,§2308-a; C24, 27, 31, 35, 39,§3593; C46, 50, 54,§230.13]

**230.14 Order when nonresidence or unknown settlement appears.** If the court finds that the legal settlement of said insane person, at the time of commitment, was in a foreign state or country, or was unknown, an order shall be entered that said insane person shall be maintained in the hospital for the insane at the expense of the state. In such case the state shall refund to any county, with interest, all legal costs and expenses arising out of said proceedings in insanity and paid by said county. Any decision by the court shall be final. [C73,§1402; C97,§2270; S13,§2270; C24, 27, 31, 35, 39,§3594; C46, 50, 54,§230.14]

**230.15 Personal liability.** Insane persons and persons legally liable for their support shall remain liable for the support of such insane. Persons legally liable for the support of an insane or idiotic person shall include the spouse, father, mother, and adult children of such insane or idiotic person, and any person, firm, or corporation bound by contract hereafter made for support. The county auditor, subject to the direction of the board of super-

visors, shall enforce the obligation herein created as to all sums advanced by the county. [R60,§1488; C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§3595; C46, 50, 54,§230.15]

Referred to in §230.16  
Statutes made applicable, §224.2

**230.16 Presumption.** In actions to enforce the liability imposed by section 230.15, the certificate from the superintendent to the county auditor stating the sums charged in such cases, shall be presumptively correct. [R60,§1488; C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§3596; C46, 50, 54,§230.16]

**230.17 Board may compromise lien.** The board of supervisors is hereby empowered to compromise any and all liabilities to the county, created by this chapter, when such compromise is deemed to be for the best interests of the county. [C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§3597; C46, 50, 54,§230.17]

**230.18 Expense in county or private hospitals.** The estates of insane or idiotic persons who may be treated or confined in any county asylum or home, or in any private hospital or sanatorium, and the estates of persons legally bound for their support, shall be liable to the county for the reasonable cost of such support. [R60,§1488; C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§3598; C46, 50, 54,§230.18]

**230.19 Nonresidents liable to state — presumption.** The estates of all nonresident patients provided for and treated in state hospitals for the insane in this state, and all persons legally bound for the support of such patients, shall be liable to the state for the reasonable value of the care, maintenance, and treatment of such patients while in such hospitals. The certificate of the superintendent of the state hospital in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of the care, maintenance, and treatment furnished such patient. [S13,§2297-a; C24, 27, 31, 35, 39,§3599; C46, 50, 54,§230.19]

**230.20 Expenses certified to counties.** Each superintendent of a state hospital where insane patients are cared for shall certify to the state comptroller on the first days of January, April, July, and October, the amount not previously certified by him due the state from the several counties having patients chargeable thereto, and the comptroller shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. This section shall apply to all superintendents of all institutions having patients chargeable to counties. [R60,§1487; C73, §1428; C97,§2292; S13,§2292; C24, 27, 31, 35, 39, §3600; C46, 50, 54,§230.20]

Similar provisions, §§244.14, 271.14

**230.21 Duty of county auditor and treasurer.** The county auditor, upon receipt of such certificate, shall thereupon enter the same to the credit of the state in his ledger of state accounts, and at once issue a notice to his county treasurer, authorizing him to transfer the amount from the state institution fund to the general state revenue, which notice shall be filed by the treasurer as his authority for making such transfer, and shall include the amount so transferred in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs. [R60, §1487; C73,§1428; C97,§2292; S13,§2292; C24, 27, 31, 35, 39,§3601; C46, 50, 54,§230.21]

Referred to in §223.15  
Similar provisions, §244.14

**230.22 Penalty.** Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the state comptroller shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. [C97,§2292; S13,§2292; C24, 27, 31, 35 39,§3602; C46, 50, 54,§230.22]

Referred to in §223.15

**230.23 Cost paid from institution fund.** All expenses required to be paid by counties for the care, commitment, and transportation of insane patients in state hospitals shall be paid by the board of supervisors from the state institution fund. [C97,§2292; S13,§2292; C24, 27, 31, 35, 39,§3603; C46, 50, 54,§230.23]

**230.24 County fund for insane—psychiatric treatment.** The board of supervisors shall, annually, levy a tax of three-eighths mill or less, as may be necessary, for the purpose of raising a fund for the support of such insane persons as are cared for and supported by the county in the insane ward of the county home, or elsewhere outside of any state hospital for the insane, which shall be known as the county fund for the insane, and shall be used for no other purpose than the support of such insane persons and for the purpose of making such additions and improvements as may be necessary to properly care for such patients as are ordered committed to the county home.

The county board of supervisors are authorized to expend from the county insane fund as provided in this section funds for psychiatric examination and treatment of persons in need thereof in each county where they have facilities available for such treatment, and any county not having such facilities may contract through its board of supervisors with any other county, which has facilities for psychiatric examination and treatment, for the use thereof. Any county now or hereafter expending funds from the county insane fund for the psychiatric examination and treatment of persons in a community mental health center may levy an additional tax of not to exceed three-eighths mill. [C97,§2308; S13,§2308; C24, 27, 31, 35, 39,§3604; C46, 50, 54,§230.24; 57GA, ch 112,§1]

Referred to in §227.18

**230.25 Lien of assistance.** Any assistance furnished under this chapter shall be and constitute a lien on any real estate owned by the person committed to such institution or owned by either the husband or the wife of such person. [C39,§3604.1; C46, 50, 54,§230.25]

48GA, ch 98,§4, editorially divided

**230.26 Auditor to keep record.** The auditor of each county shall keep an accurate account of the cost of the maintenance of any patient kept in any institution as provided for in this chapter and keep an index of the names of the persons committed from such county and the indexing and the record of the account of such patient in the office of the county auditor shall constitute notice of such lien. [C39, §3604.2; C46, 50, 54,§230.26]

**230.27 Board and county attorney to collect.** It shall be the duty of the board of supervisors to collect said claims and direct the county attorney to proceed with the collection of said claims as a part of the duties of his office. [C39,§3604.3; C46, 50, 54,§230.27]

**230.28 Closing estates—homestead.** In the case of the death of either the husband or wife the estate of the deceased shall not be settled or the homestead sold until the surviving spouse shall die or cease to occupy the homestead as such or while it is occupied by the minor children of such persons. Provided, however, no lien shall be enforced against any homestead so long as it be occupied by such

person, his or her spouse or minor children. [C39,§3604.4; C46, 50, 54,§230.28]

**230.29 Releasing lien.** The board of supervisors of the county shall release liens accruing under the provisions of this chapter when fully paid or when compromised and settled by the board of supervisors or when the estate of which the real estate affected by this chapter is a part has been probated and the proceeds allowable have been applied on such liens. [C39,§3604.5; C46, 50, 54,§230.29]

**230.30 Claim against estate.** On the death of a person receiving or who has received assistance under the provisions of this chapter, the total amount paid for their care shall be allowed as a claim of the second class against the estate of such decedent. [C39,§3604.6; C46, 50, 54,§230.30]

**230.31 Escapees from other states.** When any insane person escapes from an institution in another state and is found in this state, any peace officer in any county in which such escapee is found may take and detain him without warrant and shall report such detention to the board of control which shall provide for the return of such escapee to the authorities of the state where the escape was made. Pending such return such escapee may be detained temporarily at one of the institutions of this state governed by the board of control. Expenses incurred under this section shall be paid in the same manner as is provided for transfers in section 230.8. [57GA, ch 109,§2]

## CHAPTER 231

### JUVENILE COURT

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**231.1 Jurisdiction.** There is hereby established in each county a juvenile court, which, and the judges thereof, shall have and exercise the jurisdiction and powers provided by law. [S13,§254-a13; C24, 27, 31, 35, 39,§3605; C46, 50, 54 §231.1]

**231.2 How constituted.** The juvenile court of each county shall be constituted as follows:

1. Of the judges of the district court.
2. In counties wherein there is a superior or municipal court, of the judges thereof, respectively, when designated as judges of the juvenile court by the judges of the district court. [S13,§254-a13; C24, 27, 31, 35, 39,§3606; C46, 50, 54,§231.2]

**231.3 Designation of judge.** The judges of the district court may designate one of their

number to act as judge of the juvenile court in any county or counties, and may designate a superior or municipal court judge to act as judge of the juvenile court in cases arising in any city in which any such court is organized and in cases arising in any part of any county convenient thereto. In counties having a population of one hundred thousand or over, unless said district judges designate a superior or municipal court judge to act as juvenile judge, they shall after each election, designate one of their number to act as juvenile judge for the ensuing four years. [C24, 27, 31, 35, 39,§3607; C46, 50, 54,§231.3]

**231.4 Effect.** The designation of any judge to hold the juvenile court shall not deprive him of other judicial functions, nor the other judges of the power to act as judges of the juvenile court during the absence, inability to

act, or upon request, of the regularly designated juvenile judge. [C24, 27, 31, 35, 39, §3608; C46, 50, 54, §231.4]

**231.5 Courts always open.** Juvenile courts shall always be open for the transaction of business, but the hearing of any matter requiring notice shall be had only at such time and place as the judge may fix. [S13, §254-a13; C24, 27, 31, 35, 39, §3609; C46, 50, 54, §231.5]

**231.6 Records of court.** The juvenile court shall be a court of record, and the proceedings, orders, findings, and decisions thereof shall be entered in books kept for that purpose and designated as the juvenile court records. [S13, §254-a13; C24, 27, 31, 35, 39, §3610; C46, 50, 54, §231.6]

**231.7 Clerk.** The clerk of the court whose judge acts as the juvenile court shall act as clerk of the juvenile court. [C24, 27, 31, 35, 39, §3611; C46, 50, 54, §231.7]

**231.8 Probation officers — salaries.** The judge designated as juvenile judge in each county, or where there is more than one judge designated such judges acting jointly, shall appoint probation officers and shall fix their compensation as hereinafter provided. Women may be appointed as probation officers and in counties where more than one officer is appointed at least one of such officers shall be a woman.

1. In any county having a population of less than thirty thousand, one or more probation officers may be appointed to serve either part or full time. Such appointees may be paid twelve dollars per day or one dollar and a half per hour for services actually rendered but shall receive not more than thirty-four hundred dollars in salary in any one year.

2. In counties wherein there is an educational institution under the control of the state board of regents, with a student enrollment of at least six thousand, and in counties having a population of more than thirty thousand and less than fifty thousand, a chief probation officer may be appointed at a salary not to exceed forty-nine hundred dollars per year and such deputy probation officers may be appointed as may be necessary to carry out the work of the court. Such deputies shall be paid not to exceed thirty-eight hundred twenty dollars per year.

3. In counties having a population of more than fifty thousand and less than one hundred twenty-five thousand, a chief probation officer may be appointed at a salary not to exceed fifty-four hundred dollars per year and such deputy probation officers may be appointed as may be necessary to carry out the work of the court. Such deputies shall be paid not to exceed forty-four hundred twenty dollars per year.

4. In counties having a population in excess of one hundred twenty-five thousand, a chief probation officer may be appointed at a salary

not to exceed sixty-three hundred dollars per year and such deputy probation officers may be appointed as may be necessary to carry out the work of the court. Such deputies shall be paid not to exceed forty-eight hundred twenty dollars per year.

5. The judge of the juvenile court may appoint such secretarial help as may be needed by said court. If the population of the area served by the court is less than one hundred twenty-five thousand such secretaries may be paid not to exceed twenty-seven hundred dollars per year. If the population of said area is over one hundred twenty-five thousand such secretaries may be paid not to exceed thirty-two hundred dollars per year.

6. A probation officer may be appointed to serve two or more counties. The salary of such officer, and deputies, if any, shall be fixed by the judges of the judicial district and shall not exceed seventy-five percent of the aggregate of the salaries permissible by law for the individual counties served. Such salary and the reasonable expense of such office shall be prorated among the counties served in such proportion as may be determined by the judges of the district court of such district who shall, in making such determination, consider the volume of work in such counties. The salary of such probation officers shall not exceed fifty-one hundred dollars per annum. [S13, §254-a18; C24, 27, 31, 35, 39, §3612; C46, 50, 54, §231.8; 56GA, ch 131, §59; ch 173, §7; 57GA, ch 175, §5]

**231.9 Physicians and nurses.** In any county having a population of one hundred twenty-five thousand or more, the judge or judges of the juvenile court may appoint a competent physician at a salary of not more than one hundred dollars per month, and a visiting nurse, who shall be a trained graduate, at a salary of not more than two hundred dollars per month, and prescribe their duties. [C24, 27, 31, 35, 39, §3613; C46, 50, 54, §231.9; 56GA, ch 122, §1]

**231.10 Powers and duties—office and supplies.** Probation officers, in the discharge of their duties as such, shall possess the powers of peace officers. They shall be furnished by the county with a proper office and all necessary blanks, books, and stationery. It shall be the duty of said probation officers to make such investigation as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish to the court such information and assistance as the judge may require, and to take such charge of any child before and after trial as may be directed by the court. [S13, §254-a18; C24, 27, 31, 35, 39, §3614; C46, 50, 54, §231.10]

**231.11 Duties of clerk.** The clerk of court shall, if practicable, notify a convenient probation officer in advance when any child is to be brought before the said court. [S13, §254-a18; C24, 27, 31, 35, 39, §3615; C46, 50, 54, §231.11]



**231.12 Salaries—expenses—how paid.** The judges making the appointments shall fix the salaries of all appointees at not exceeding the amount authorized by law. All appointees shall serve during the pleasure of such judges, and in addition to salaries shall receive their necessary and actual expenses incurred while performing their duties. For use of an automobile in the discharge of their duties within the particular county or counties for which they are appointed such officers may receive the mileage rate provided by law, or, in lieu thereof, they may receive a monthly allowance in such amounts as the judge or judges of the juvenile court may determine and order. For use of an automobile outside the county or counties for which they have been ap-

pointed such officers shall be paid the regular mileage rate. All salaries and expenses shall be paid by the county either from the general county fund or from the court expense fund. [S13,§254-a18; C24, 27, 31, 35, 39,§3616; C46, 50, 54,§231.12]

**231.13 Salaries and expenses in certain counties.** The salaries and expenses of probation officers and deputies in counties which contain an educational institution under the control of the state board of education with a student enrollment of at least forty-two hundred, may be paid either from the general county fund or from the court expense fund. [C27, 31, 35,§3616-b1; C39,§3616.1; C46, 50, 54, §231.13]

## CHAPTER 232

### CARE OF NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN

Referred to in §§233.1, 238.32, 240.1, 242.5, 244.4, 321.482

232.1 Applicable to certain children.  
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 232.4 "Child", "parent", and "institution" defined.  
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 232.38 Reports by court and institutions.  
 232.39 Statutes construed liberally.

**232.1 Applicable to certain children.** This chapter shall not apply to any child who is accused of an offense which is punishable by life imprisonment or death, but shall otherwise apply to all children who are not feeble-minded and who are under eighteen years of age and who are not inmates of any state institution. [S13,§254-a14; C24, 27, 31, 35, 39,§3617; C46, 50, 54,§232.1; 57GA, ch 113,§1]

**232.2 "Dependent and neglected child" defined.** The term "dependent child" or "neglected child" shall mean any child who, for any reason:

1. Is destitute, or homeless, or abandoned.
2. Is dependent upon the public for support.
3. Is without proper parental care or guardianship, or habitually begs or receives alms.
4. If under ten years of age, is engaged in

giving any public entertainment in public places for pecuniary gain for himself or for another, or who accompanies, or is used in aid of, any person so doing.

5. Is found living in any house of ill fame, or with any vicious or disreputable person.

6. Is living in a home which is unfit for such child; or is living in a home wherein because of carelessness or neglect of a person or persons having a transmissible disease of a serious nature as determined by the local board of health, local health officer or the state department of health, the health of said child may be in danger.

7. Is living under such other unfit surroundings as bring such child, in the opinion of the court, within the spirit of this chapter. [S13,§254-a14; C24, 27, 31, 35, 39,§3618; C46, 50, 54,§232.2]

Referred to in §§233.1, 233.5

**232.3 "Delinquent child" defined.** The term "delinquent child" means any child:

1. Who violates any law of this state punishable as a felony or indictable misdemeanor, or habitually violates any other state law or any town or city ordinance.
2. Who is incorrigible.
3. Who knowingly associates with thieves, or vicious or immoral persons.
4. Who is growing up in idleness or crime.
5. Who knowingly frequents a house of ill fame.
6. Who patronizes any policy shop or place where any gaming device is located.
7. Who habitually wanders about any railroad yards or tracks, gets upon any moving train, or enters any car or engine without lawful authority. [SS13,§254-a14; C24, 27, 31, 35, 39,§3619; C46, 50, 54,§232.3; 57GA, ch 113,§§2, 3]

**232.4 "Child", "parent", and "institution" defined.** The word "child" or "children" may mean one or more children, and shall include any person under eighteen years of age. The word "parent" or "parents" may mean one or both parents when consistent with the intent of this chapter. The word "institution" shall include any corporation which includes in its purposes the care or disposition of children coming within the meaning of this chapter. [SS13,§254-a14; C24, 27, 31, 35, 39,§3620; C46, 50, 54,§232.4]

**232.5 Petitions—prior investigation.** Petitions, sworn to on information and belief, setting forth the facts which render a child, found in the county, dependent, neglected, or delinquent within the meaning of this chapter, may be filed, without payment of filing fee, with the clerk of the juvenile court, by any reputable resident of the county, provided, however, that prior to the filing of such petition, the probation officer or the county attorney shall make such investigation as he may deem necessary, and no petition shall be filed without the approval of such probation officer, or county attorney, except by order of the judge of the juvenile court. [SS15,§254-a15; C24, 27, 31, 35, 39,§3621; C46, 50, 54,§232.5]

Feeble-mindedness—effect, §222.43

**232.6 Petition may embrace several children.** Complaint with reference to more than one child may be embraced in one count of the petition, subject to being later divided on order of the juvenile court if such order appears advisable. [C24, 27, 31, 35, 39,§3622; C46, 50, 54,§232.6]

**232.7 Time and place of hearing—notice.** Upon the filing of the petition, the court or judge shall fix a time for the hearing and a place within the district convenient to the parties, and cause notice to issue as herein-after provided. [SS15,§254-a16; C24, 27, 31, 35, 39,§3623; C46, 50, 54,§232.7]

**232.8 Notice.** Said notice shall apprise all parties entitled to notice of the filing of said

petition, and of the time and place of hearing thereon, and shall require the custodian of said child to appear with said child at said time and place. A copy of the petition shall be attached to said notice. [SS15,§254-a16; C24, 27, 31, 35, 39,§3624; C46, 50, 54,§232.8]

**232.9 Manner of service.** The court or judge may, in all cases, specify the particular manner in which said notice shall be served. [C24, 27, 31, 35, 39,§3625; C46, 50, 54,§232.9]

**232.10 Service of notice.** Said notice shall be served on the custodian of said child or on the person with whom such child is living, and on all other persons entitled to notice, at least five days before the day of hearing. No further service shall be required than on the parent when the parent is the custodian or guardian of said child or children. If the said custodian is not the parent or guardian, then additional service shall be made in the following order:

1. On the parents if their residence in this state is known.
2. On the guardian if his residence in this state is known.
3. On some relative if his residence in this state is known. [SS15,§254-a16; C24, 27, 31, 35, 39,§3626; C46, 50, 54,§232.10]

**232.11 Refusal to surrender child.** If the person summoned as herein provided shall fail to appear or bring the child, without reasonable cause, and abide the order of the court, he may be proceeded against as in case of contempt of court in addition to any criminal proceedings authorized by law. [SS15, §254-a16; C24, 27, 31, 35, 39,§3627; C46, 50, 54, §232.11]

Contempt, ch 665

**232.12 Warrant of arrest.** In case the notice cannot be served, or the party served fails to obey the same, or when it shall be made to appear to the court that such notice will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or custodian, or against the child himself. [SS15,§254-a16; C24, 27, 31, 35, 39,§3628; C46, 50, 54,§232.12]

Approval of warrant and expenses, §§79.12, 79.13

**232.13 Hearing—continuance.** On the day set for hearing, the court shall, if the required notice has been given, or at any time if the parties entitled to such notice are in court, proceed to try the cause in equity unless a continuance appears advisable in the interest of justice. [SS15,§254-a16; C24, 27, 31, 35, 39, §3629; C46, 50, 54,§232.13]

How issues tried, R.C.P. 177 et seq.

**232.14 Custody of child.** When, in the opinion of the court, an emergency exists, temporary provision may be made for the custody of the child pending further hearing. [SS15, §254-a16; C24, 27, 31, 35, 39,§3630; C46, 50, 54, §232.14]

**232.15 Appointment to represent child.** The court may, at any time after the filing of the petition, appoint an attorney or other suitable person to represent and appear for said child. [SS15,§254-a16; C24, 27, 31, 35, 39,§3631; C46, 50, 54,§232.15]

**232.16 Information charging crime.** In any case after an investigation of the facts and circumstances, the court may, in its discretion, cause the child to be charged with either:

1. An indictable offense, in which case the court shall proceed to hold a preliminary examination, and shall exercise the powers of other magistrates; or

2. An offense not triable on indictment, in which case the court may order any peace officer to file forthwith an information against such child and proceed to try the case before a jury of twelve.

When no regular jury is in attendance at the district, superior, or municipal court, as the case may be, the judge shall cause to be issued by the clerk and served by any peace officer a summons for such number of persons qualified to act as jurors as in his judgment are necessary to secure an impartial jury, allowing to the state and the defendant, each, three peremptory challenges. [SS15,§254-a16; C24, 27, 31, 35, 39,§3632; C46, 50, 54,§232.16]

**232.17 Commitment of child.** If a child is unable to furnish a required bail pending the final disposition of the case, he may be committed to the care of a probation or peace officer, or other person, who shall keep such child in some suitable place provided by the city or county, outside the inclosure of any jail or police station. No child shall be confined in the same yard or inclosure with adult convicts. [S13,§254-a24; SS15,§254-a16; C24, 27, 31, 35, 39,§3633; C46, 50, 54,§232.17]

**232.18 Prosecutions transferred.** Any child, taken before any justice of the peace or police court, charged with a public offense shall, together with the case, be at once transferred by said court to the juvenile court. [S13,§254-a24; C24, 27, 31, 35, 39,§3634; C46, 50, 54,§232.18]

Exception—motor vehicle prosecutions, §321.482

**232.19 Exclusion from courtroom.** The judge of the juvenile court shall fix a time and place for the hearing of cases transferred thereto, which shall be disposed of in the same manner as cases originally brought before said court. During his examination into or trial of the case as a court of equity, the court may exclude from the courtroom any and all persons who, in his opinion, are not necessary for the hearing of the case. [S13, §254-a19; C24, 27, 31, 35, 39,§3635; C46, 50, 54, §232.19]

**232.20 Indictment or conviction of crime—alternative procedure.** When there is an indictment or a conviction in the district court of any delinquent child of an indictable offense, the district court may, before judgment, if the

punishment be not imprisonment for life, or death, transfer the cause to the juvenile court. The juvenile court shall have power to proceed with such child under the alternative or mandatory commitments provided in this chapter; but if the results, in the opinion of the court, be not conducive to the public interest and the welfare of the child, it may at any time revoke such orders of commitment and enter such judgment of conviction as the district court might have entered. [S13,§254-a17; C24, 27, 31, 35, 39,§3636; C46, 50, 54,§232.20; 56GA, ch 123,§§1–3]

**232.21 Alternative commitments.** The juvenile court, in the case of any neglected, dependent, or delinquent child, may:

1. Continue the proceedings from time to time and commit said child to the care and custody of a probation officer or other discreet person.

2. Commit said child to some suitable family home or allow it to remain in its own home.

3. Commit said child to any institution in the state, incorporated and maintained for the purpose of caring for such children.

4. Cause the child to be placed in a public or state hospital for treatment or special care, or in a private hospital which will receive it for such purpose, when such course seems necessary for the welfare of the child.

5. At any time, terminate the proceedings and order the child released from the control of the court. [S13,§254-a20, -a23; C24, 27, 31, 35, 39,§3637; C46, 50, 54,§232.21; 57GA, ch 114,§1]

Referred to in §232.23

Authorized institutions, §238.32

**232.22 Guardianship and adoption.** In case the court commits said child to the custody of some proper person or institution, such person or institution shall, by virtue of such custody, be the legal guardian of the person of such child and may be made a party to any proceeding for the legal adoption of such child, but any such adoption shall be approved by the court. [S13,§254-a21; C24, 27, 31, 35, 39, §3638; C46, 50, 54,§232.22]

Adoption in general, ch 600

**232.23 Conditions attending commitment.** In any case contemplated by section 232.21, the court may, from time to time, incorporate in its order such conditions and restrictions as it may deem advisable for the welfare of the child, and the jurisdiction of the court over said proceedings and said child shall continue until the child is legally adopted, or until the child is committed to a state institution, or until the court shall order the proceedings terminated and the child released from its control. [S13,§254-a23; C24, 27, 31, 35, 39,§3639; C46, 50, 54,§232.23; 57GA, ch 114,§2]

**232.24 Religious belief.** The court, in committing children, shall place them, as far as practicable, in the care and custody of some individual holding the same religious belief as the parents of said child, or with some institu-

tion which is controlled by persons of like religious faith with the parents of said child. [S13, §§254-a27, 3260-g; C24, 27, 31, 35, 39, §3640; C46, 50, 54, §232.24]

**232.25 Compelling support by parent.** The court, in any proceeding hereunder relative to a neglected or dependent child, shall have jurisdiction, on reasonable notice to the parents of said child, to inquire into the ability of said parents to support said child and make all proper orders in reference thereto. The court may require such parent to enter into a bond, with or without surety, and in a reasonable sum, conditioned for the proper care, support, and supervision of such child. If it finds that the parent is able to support such child in any reasonable degree, it may require such parent to pay a reasonable amount of money into court at such times as it may provide, which sum shall be applied to the care of said child. Orders for the payment of money may be enforced by execution and in such case the parent ordered to make payment shall not be entitled to hold any property as exempt from such execution. All orders may be enforced by process of contempt until such orders are complied with. [S13, §§254-a25, -a31-a45, -a47; C24, 27, 31, 35, 39, §3644; C46, 50, 54, §232.25]

Referred to in §232.26  
Contempt, ch 665  
Enforcement of judgment and orders, §626.1  
Similar provision, §627.12

**232.26 Action on bond.** In case of the breach of a bond given as required in section 232.25, the amount thereof shall be deemed liquidated damages, which, when collected, shall, under the orders of the court, be applied to the care of said child. The county attorney shall, on the order of the court, prosecute all actions on such bonds. [S13, §§254-a25, -a31-a45, -a47; C24, 27, 31, 35, 39, §3645; C46, 50, 54, §232.26]

**232.27 Mandatory commitments.** If commitment of any child is not made under the foregoing provisions of this chapter, or if made thereunder and the results, in the opinion of the court, are not conducive to the welfare of the child, the court shall proceed as follows:

1. If the child is neglected or dependent and is not delinquent, it shall be committed either to The Iowa Annie Wittenmyer home or to the Iowa juvenile home; provided, however, that any child not mentally normal, or who is incorrigible or who has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of the children therein, shall not be committed to said homes.

2. If the child is over the age of ten years and, in the opinion of the court or judge is seriously delinquent or so disposed, it shall be committed to the state training school for boys or for girls, as the case may be; but married women, prostitutes, and girls who are pregnant shall not be committed to the training school. [C73, §§1653-1659; C97, §§2708, 2709;

S13, §§254-a20, -a23, 2708, 2709; C24, 27, 31, 35, 39, §3646; C46, 50, 54, §232.27]

Referred to in §232.28

**232.28 Interpretative clause.** It is the intent of section 232.27 to so classify commitments that the merely neglected and dependent child will not be associated with the delinquent, and that delinquent children will be so segregated that the least delinquent will not suffer by association with those of greater delinquency. [C24, 27, 31, 35, 39, §3647; C46, 50, 54, §232.28]

**232.29 Right to transfer.** The board of control, at any time, for the purpose of effecting, as nearly as practicable, the declared intent of this chapter, may transfer an inmate of any of said three state institutions to any other of said institutions. It may also transfer any feeble-minded child from said institutions to the institution for feeble-minded or to the hospital for epileptics and school for feeble-minded. The expense of such transfers shall be charged to the support fund of the institution from which the transfers are made. [C24, 27, 31, 35, 39, §3648; C46, 50, 54, §232.29]

**232.30 Term of commitment — warrant.** Commitments shall be until the child attains the age of twenty-one years, but the board of control may release or discharge the child at any time after it has attained the age of eighteen years if such action will, in the judgment of the board, be best for the child.

A warrant of commitment shall consist of a copy of the order of commitment, certified to by the clerk, and shall be in duplicate, one of which shall be delivered to the executive head of the receiving institution and shall constitute sufficient authority to hold in custody the party committed. [C73, §§1653-1658; C97, §2708; S13, §§254-a23, 2708; C24, 27, 31, 35, 39, §3649; C46, 50, 54, §232.30]

**232.31 Notice of discharge.** When application, written or otherwise, is made to the board of control for the final discharge of any delinquent child under twenty-one years of age who has been committed by a juvenile court to any state institution, such board shall at once, by letter, give written notice of such application to the county attorney of the county from which commitment was made, and such child shall not be finally discharged in less than thirty days after such notice has been given. [C24, 27, 31, 35, 39, §3650; C46, 50, 54, §232.31]

Referred to in §232.32

**232.32 Exceptions.** The provisions of section 232.31 requiring notice shall not apply to any case where it is proposed simply to parole any such delinquent child; and the board of control may at any time parole such a delinquent or cause him to be removed from any state institution and placed in the custody of a reputable citizen of the state whom the

board may believe to be qualified to have such custody. [C27, 31, 35, §3650-a1; C39, §3650.1; C46, 50, 54, §232.32]

**232.33 Record of discharge.** The board shall keep a full record of the discharge by it of all delinquent children which record shall among other matters show the reasons therefor and whether the discharge was on application or on the motion of the board. [C24, 27, 31, 35, 39, §3651; C46, 50, 54, §232.33]

**232.34 Statement to superintendent.** In case of a commitment to a state institution, the judge shall forward to the superintendent a statement of the nature of the complaint, and such other particulars as he may be able to ascertain, including the date of birth of the child, its habits and environments, the number of times it has been arrested and the cause therefor, the influence of the parent or custodian on such child, and the substance of the evidence introduced on the hearing. [C73, §1657; C97, §2708; S13, §2708; C24, 27, 31, 35, 39, §3652; C46, 50, 54, §232.34]

**232.35 Detention home and school in certain counties.** In counties having a population of more than forty thousand, the board of supervisors shall, and in counties of over thirty thousand, said board may provide and maintain, separate, apart, and outside the inclosure of any jail or police station, a suitable detention home and school for dependent, neglected, and delinquent children. [S13, §254-a29; C24, 27, 31, 35, 39, §3653; C46, 50, 54, §232.35]

**232.36 Tax.** The board of supervisors may annually levy a tax of not to exceed one-fourth mill for the purpose of maintaining such home, and paying the salaries and expenses of all appointees authorized by this chapter, providing however that the board of supervisors in counties having a population of more than one hundred fifty thousand may annually levy a tax of not to exceed one-half mill for the above purposes. [S13, §254-a30; C24, 27, 31, 35, 39, §3654; C46, 50, 54, §232.36]

**232.37 Approval of institutions.** The state board of social welfare shall designate and approve the institutions to which such children may be legally committed and shall have supervision and right of visitation and inspection at all times over all such institutions. [S13, §§254-a20, -a26; C24, 27, 31, 35, 39, §3655; C46, 50, 54, §232.37]

**232.38 Reports by court and institutions.** The juvenile court, and all institutions receiving such children, shall, between the first and fifteenth day of January of each year, make report to the state board of social welfare. The report shall embrace the number of children of each sex brought before the court during the past year, the number for whom homes have been provided, the number sent to state institutions, and the number in charge of each institution. [S13, §254-a26; C24, 27, 31, 35, 39, §3656; C46, 50, 54, §232.38]

**232.39 Statutes construed liberally.** This chapter shall be liberally construed to the end that its purpose may be carried out. [S13, §254-a28; C24, 27, 31, 35, 39, §3657; C46, 50, 54, §232.39]

## CHAPTER 233

### CONTRIBUTING TO JUVENILE DELINQUENCY

233.1 Contributing to delinquency.

233.2 Penalty—bar.

233.3 Suspension of sentence.

233.4 Preliminary examination.

233.5 Interpretative clause.

**233.1 Contributing to delinquency.** It shall be unlawful to:

1. Encourage any child under eighteen years of age to commit any act of delinquency defined in chapter 232 of this title.

2. Send, or cause to be sent, any such child to a house of prostitution or to any place where intoxicating liquors are unlawfully sold or unlawfully kept for sale, or to any policy shop, or to any gambling place, or to any public poolroom where beer is sold, or to induce any such child to go to any such places, knowing them to be such.

3. Knowingly encourage, contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city or town.

4. Knowingly permit, encourage, or cause such child to be guilty of any vicious or immoral conduct,

5. Knowingly contribute to the dependency of a child as defined in section 232.2.

[C24, 27, 31, 35, 39, §3658; C46, 50, 54, §233.1; 57GA, ch 273, §2]

Referred to in §233.2  
See §233.5

**233.2 Penalty—bar.** A violation of section 233.1 shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. Said conviction shall not bar a prosecution of such convicted person for an indictable offense when the acts which caused or contributed to the delinquency or dependency of such child are indictable. [C24, 27, 31, 35, 39, §3659; C46, 50, 54, §233.2]

See §233.5

**233.3 Suspension of sentence.** Upon said conviction being had, the court may, for a pe-

riod not exceeding two years, suspend sentence under such conditions as to good behavior as it may prescribe. Should said conditions be fulfilled, the court may at any time enter an order setting said conviction aside and wholly releasing the defendant therefrom. Should said condition be not fulfilled to the satisfaction of the court, an order of sentence may at any time be entered which shall be effective from the date thereof. [C24, 27, 31, 35, 39, §3660; C46, 50, 54, §233.3]

**233.4 Preliminary examination.** If, in proceedings in juvenile court, it appears probable that an indictable offense has been committed and that the commission thereof caused, or contributed to, the delinquency or dependency

of such a child, said court may order the issuance of a warrant for the arrest of such suspected person, and on the appearance of such person said court may proceed to hold a preliminary examination, and in so doing shall exercise all the powers of a committing magistrate. [C24, 27, 31, 35, 39, §3661; C46, 50, 54, §233.4]

Approval of warrant and expenses, §§79.12, 79.13

**233.5 Interpretative clause.** For the purposes of this act\* the word "dependency" shall mean all the conditions as enumerated in section 232.2. [C31, 35, §3661-c1; C39, §3661.001; C46, 50, 54, §233.5]

\*48GA, ch 99

CHAPTER 234

SOCIAL WELFARE DEPARTMENT

Referred to in §249.1

Aid for the blind, see ch 241; Child-placing agencies, see ch 238; Child welfare, see ch 235; Children's boarding homes, see ch 237; Emergency relief administration, see ch 251; Maternity hospitals, see ch 236; Old-age assistance, see ch 249; Private institutions for neglected, dependent and delinquent children, see ch 240

- 234.1 Definitions.
- 234.2 State department of social welfare.
- 234.3 State board of social welfare.
- 234.4 Vacancies.
- 234.5 Removal—compensation.
- 234.6 Powers and duties of the state board.
- 234.7 Secretary.
- 234.8 State board employees.
- 234.9 County board of social welfare.
- 234.10 Compensation of county board members.
- 234.11 Duties of the county board.

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- 234.15 Agency.
- 234.16 Agreements.
- 234.17 Assets.
- 234.18 Powers.
- 234.19 Delegation of authority.
- 234.20 Liability.

**234.1 Definitions.** As used in this chapter: "state department" means the state department of social welfare; "state board" means the state board of social welfare; "county board" means the county board of social welfare. [C39, §3661.002; C46, 50, 54, §234.1]

Referred to in §§235.1, 241.1

**234.2 State department of social welfare.** There is hereby created a state department of social welfare which shall consist of a state board of social welfare, and such other officers and employees as may be hereafter provided. [C39, §3661.003; C46, 50, 54, §234.2]

Referred to in §239.1

**234.3 State board of social welfare.** The state board of social welfare shall consist of three members, one of whom shall be a woman, not more than two of whom shall be from the same political party, to be appointed by the governor with the approval of a two-thirds vote of the members of the senate in executive session.

The members of the board shall devote their full time to the board's work and shall hold no other private or public position or office.

Each member shall serve for a term of six years, or until his successor is appointed and qualifies.

Within sixty days after the convening of the general assembly, the governor shall appoint a successor to the member whose term expires on the following June 30. [C39, §3661.004; C46, 50, 54, §234.3]

48GA, ch 139, §1, editorially divided  
Referred to in §239.1

**234.4 Vacancies.** Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made. Vacancies occurring while the general assembly is not in session shall be filled by the governor and shall be approved by the executive council, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. [C39, §3661.005; C46, 50, 54, §234.4]

**234.5 Removal—compensation.** Members of the board may be removed by the governor with the approval of the executive council and shall receive as compensation the sum of five

thousand five hundred dollars per annum, payable monthly.

No member shall be removed without cause being assigned for removal and without a public hearing before the executive council. [C39,§3661.006; C46, 50, 54,§234.5; 56GA, ch 1,§47]

**234.6 Powers and duties of the state board.** The state board shall be vested with the authority to administer old-age assistance, aid to the blind, aid to dependent children, child welfare, and emergency relief, and any other form of public welfare assistance that may hereafter be placed under its administration. It shall perform such duties, formulate and make such rules and regulations as may be necessary; shall outline such policies, dictate such procedure and delegate such powers as may be necessary for competent and efficient administration. It shall have power to abolish, alter, consolidate or establish divisions and may abolish or change offices created in connection therewith. It may employ necessary personnel and fix their compensation. It may allocate or reallocate functions and duties among any divisions now existing or hereafter established by the state board. It may promulgate rules and regulations relating to the employment of investigators and the allocation of their functions and duties among the various divisions as competent and efficient administration may require.

The state board shall:

1. Within ninety days after the close of each fiscal year, prepare and print for said year a report to the governor which shall include a full account of the operation of the acts under its control, adequate and complete statistical reports by counties and for the state as a whole concerning all payments made under its administration, and such other information as it may deem advisable, or which may be requested by the governor or by the general assembly.

2. Co-operate with the federal social security board created by title VII of the social security act, 42 U.S.C. 901, enacted by the 74th congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

3. Exercise general supervision over the county boards of social welfare and their employees.

4. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the state board.

5. With the approval of the governor and comptroller, set up from the funds under their

control and management an administrative fund and from said administrative fund to pay the expenses of operating the state department. [C39,§3661.007; C46, 50, 54,§234.6]

**234.7 Secretary.** The state board shall appoint a secretary who shall serve at its pleasure and shall perform such duties as it may require. He shall receive a salary not in excess of three thousand dollars per year. [C39,§3661.008; C46, 50, 54,§234.7]

**234.8 State board employees.** All employees of the state board shall have been residents of the state of Iowa for at least two years immediately preceding their employment and shall be selected from among those who have successfully qualified in an examination given by the state board or under its direction, covering character, general training, and experience. Such examinations shall be open to all persons, and persons taking such examinations, upon successfully qualifying, shall be classified according to the fields of work for which said persons are fitted, all in accordance with rules and regulations of the state board adopted and published by the state board. [C39,§3661.009; C46, 50, 54,§234.8]

Referred to in §239.16  
Assistant attorney general assigned, §13.6

**234.9 County board of social welfare.** The board of supervisors of each county shall appoint a county board of social welfare, which shall consist of three members in counties of less than thirty-three thousand population, not more than two of whom shall belong to the same political party, and at least one of whom shall be a woman; and which shall consist of five members in counties of more than thirty-three thousand population, not more than three of whom shall belong to the same political party, and at least one of whom shall be a woman. At the discretion of the board of supervisors one or more of said members may be chosen from the membership of said board of supervisors. Within thirty days after the effective date of this chapter\* the board of supervisors shall appoint the members of the county board, which members shall serve until their successors are appointed as hereinafter provided. Commencing with the year 1938, and annually thereafter, the board of supervisors shall appoint the members of the county board who shall serve for one year and until their successors are appointed. If a vacancy shall occur in the membership of the county board, other than by the expiration of a term, a member shall be appointed to fill such vacancy for the unexpired term. All appointments, made as herein provided, shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and with the secretary of the state board. [C39,§3661.010; C46, 50, 54,§234.9]

\*Effective date, May 28, 1937  
Referred to in §239.1

**234.10 Compensation of county board members.** All members of the county board shall

be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties. They shall also receive compensation for services at the rate of three dollars per diem, but such compensation shall not exceed a total of ninety dollars in any one year in counties of less than thirty-three thousand population, or one hundred twenty dollars in counties of more than thirty-three thousand population. The expenses and compensation of county board members shall be paid from the general fund of the county; provided, however, that members of the board of supervisors serving on said county board of social welfare shall not be paid compensation as members of said county board of social welfare for any day on which they are paid for their official work as members of the board of supervisors. [C39,§3661.011; C46, 50, 54,§234.10]

**234.11 Duties of the county board.** The county board shall be vested with the authority to direct in the county old-age assistance, aid to the blind, aid to dependent children and emergency relief with only such powers and duties as are prescribed in the laws relating thereto. [C39,§3661.012; C46, 50, 54,§234.11]

**234.12 County board employees.** The county board shall employ a county director and such other personnel as is necessary for the performance of its duties. The number of employees shall be subject to the approval of the state board. The county director and all employees shall be selected solely on the basis of the fitness for the work to be performed, with due regard to experience and training, but graduation from college shall not be made a prerequisite of any such appointment. It shall be a prerequisite to obtaining an appointment that the applicant shall have been a legal resident of Iowa for at least two years prior to the time of making said application.

Any appointment made by the county board, other than clerical or stenographic help, shall be subject to review by the state board in this respect, that if any appointee is not properly carrying out the duties for which he is appointed, or if any appointee is not qualified or capable of handling the duties for which he is appointed, and the state board so finds, it shall certify a copy of such finding to the county board and the county board shall then discharge the said employee and shall fill the vacancy. [C39,§3661.013; C46, 50, 54,§234.12]

Referred to in §241.4

**234.13 Compensation of county board employees.** The compensation of county board employees shall be fixed by the county board of social welfare and shall be paid by the state board from funds made available for that purpose. However, the compensation of all employees shall be subject to the approval of the state board and the county board of supervisors. [C39,§3661.014; C46, 50, 54,§234.13]

**234.14 Federal grants.** The state treasurer is hereby authorized to receive such federal

funds as may be made available for carrying out any of the activities and functions of the state department, and all such funds are hereby appropriated for expenditure upon authorization of the state board. [C39,§3661.015; C46, 50, 54,§234.14]

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**234.15 Agency.** The state department of social welfare is hereby designated as the state agency to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, Eighty-first Congress, approved May 3, 1950, all of the trust assets held by the United States in trust for the Iowa Rural Rehabilitation Corporation now dissolved. [C54,§234.15]

Referred to in §234.17

**234.16 Agreements.** The state department of social welfare is authorized, in its discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid Act of Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States, or such federal agency as may be designated by him, to accept, administer, expend and use in the state of Iowa all or any part of such trust assets or any other funds in the state of Iowa which may be appropriated for such use in carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [C54, §234.16]

Referred to in §§234.17, 234.19

**234.17 Assets.** Except as to such of the assets as may be authorized to be administered by the secretary of agriculture of the United States under the provisions of section 234.16, the trust assets other than cash shall be taken on proper transfer or assignment in the name of the state department of social welfare and administered by it as hereinafter provided and the future proceeds therefrom together with the cash items received under the application made pursuant to section 234.15 shall be deposited with the treasurer of state for the use of the state department of social welfare in carrying out such of the rural rehabilitation purposes permissible under the charter of the now dissolved Iowa Rural Rehabilitation Corporation as may from time to time be agreed upon by the state department of social welfare and the secretary of agriculture of the United States as required by section 2(c), Public Law 499, Eighty-first Congress. [C54,§234.17]

Referred to in §234.18

**234.18 Powers.** In addition to the express and necessarily implied powers enumerated in the charter of the Iowa Rural Rehabilitation



Corporation now dissolved, appearing of record in book 7253, page 143 in the office of the county recorder of Polk county, Iowa, the state department of social welfare is specifically authorized and empowered to:

1. Receive written applications for loans, lend or advance moneys and execute all necessary written instruments in connection therewith needed in carrying out such of the rural rehabilitation purposes permissible and agreed upon as provided for in section 234.17.

2. Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this division or under any mortgage, lease, contract or agreement entered into or administered pursuant to this division and, if in its judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

3. Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which it has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebted-

ness owing to or acquired by it under this division, and

4. Accept title to any property so purchased or acquired; operate or lease such property for such period as may be deemed necessary to protect the investment therein and sell or otherwise dispose of such property in a manner consistent with the provisions of this division. [C54,§234.18]

Referred to in §234.19

**234.19 Delegation of authority.** The authority conferred upon the state department of social welfare by section 234.18 may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to section 234.16. [C54,§234.19]

**234.20 Liability.** The United States and the secretary of agriculture thereof shall be held free from liability by virtue of the transfer of the assets to the state department of social welfare of the state of Iowa pursuant to this division. [C54,§234.20]

## CHAPTER 235

### CHILD WELFARE

Referred to in §135B.17

Social welfare department, see ch 234

235.1 Definitions.

235.2 Powers and duties of state department.

235.3 Powers and duties of state board.

235.4 Duties of county departments.

235.5 Licenses.

235.6 Short title.

**235.1 Definitions.** The terms "state department", "state board", "county department" and "county board" are used in this chapter and chapters 236, 237, and 238 as said terms are defined in section 234.1.

"Child welfare services" means social welfare services for the protection and care of children who are homeless, dependent or neglected, or in danger of becoming delinquent. [C39,§3661.016; C46, 50, 54,§235.1]

**235.2 Powers and duties of state department.** The state department, in addition to all other powers and duties given it by law, shall:

1. Administer and enforce the provisions of this chapter.

2. Join and co-operate with the government of the United States through its appropriate agency or instrumentality or with any other officer or agency of the federal government in planning, establishing, extending and strengthening public and private child welfare services within the state.

3. Make such investigations and to obtain such information as will permit the state board to determine the need for public child welfare services within the state and within the several county departments thereof.

4. Apply for and receive any funds which are or may be allotted to the state by the United States or any agency thereof for the purpose of developing child welfare services.

5. Make such reports and budget estimates to the governor and to the general assembly as are required by law or such as are necessary and proper to obtain the appropriation of state funds for child welfare services within the state and for all the purposes of this chapter.

6. Co-operate with the several county departments within the state, and all county boards of supervisors and other public or private agencies charged with the protection and care of children, in the development of child welfare services.

7. Aid in the enforcement of all laws of the state for the protection and care of children.

8. Co-operate with the juvenile courts of the state, and with the board of control of state institutions in its management and control of state institutions and the inmates thereof. [C39,§3661.017; C46, 50, 54,§235.2]

Report to governor, §17.8

**235.3 Powers and duties of state board.** The state board shall:

1. Plan and supervise all public child welfare services and activities within the state as provided by this chapter.

2. Make such reports and obtain and furnish such information from time to time as may be necessary to permit co-operation by the state department with the United States children's bureau, the social security board, or any other federal agency which is now or may hereafter be charged with any duty regarding child care or child welfare services.

3. Make such rules and regulations as may be necessary or advisable for the supervision of the private child-caring agencies or officers thereof which the state board is empowered to license, inspect and supervise, which rules and regulations shall provide that in dealing with any child, any officer, employee or agency so dealing shall take into consideration the religious faith or affiliations of the child or its parents, and that in placing such child it shall be, as far as practicable, placed in the home or the care and custody of some person holding the same religious faith as the parents of such child, or with or through some agency or institution controlled by persons of like religious faith with the parents of said child.

4. Supervise and inspect private institutions for the care of dependent, neglected and delinquent children, and to make reports regarding the same.

5. Designate and approve the private and county institutions within the state to which neglected, dependent and delinquent children may be legally committed and to have supervision of the care of children committed thereto, and the right of visitation and inspection of said institutions at all times.

6. Receive and keep on file annual reports from the juvenile courts of the state, and from all institutions to which neglected, dependent and delinquent children are committed; compile statistics regarding juvenile delinquency, make reports regarding the same and study prevention and cure of juvenile delinquency.

7. Require and receive from the clerks of

the courts of record within the state duplicates of the findings of the courts upon petitions for adoption, and keep records and compile statistics regarding adoptions.

8. License and inspect maternity hospitals, private boarding homes for children, and private child-placing agencies; make reports regarding the same and revoke such licenses. [C27, 31, 35,§§3661-a1,-a2; C39,§3661.018; C46, 50, 54,§235.3]

**235.4 Duties of county departments.** County departments are hereby charged with the duty of co-operating with the state department in carrying out the provisions of this chapter. They shall, upon request, make to the state department such reports regarding child welfare services, or the need thereof, within the respective counties. They shall also, when requested by the state department, make reports upon maternity hospitals, private boarding homes for children, private child-placing agencies and private institutions for the care of neglected, dependent or delinquent children which are located within the respective counties. For this purpose they shall act, if so designated, as agents of the state department. [C27, 31, 35,§3661-a1; C39, §3661.019; C46, 50, 54,§235.4]

**235.5 Licenses.** Licenses issued to maternity hospitals, private boarding homes for children, and private child-placing agencies by the state board of control of state institutions, shall remain in effect for the period for which issued, unless sooner revoked according to law. Thereafter it shall be the duty of each of such agencies to apply to the state board of social welfare for a new license, and to submit to such rules regarding the same as the state board may prescribe. [C39,§3661.020; C46, 50, 54,§235.5]

Constitutionality, 47GA, ch 118,§13

**235.6 Short title.** This chapter shall be known and may be cited as "The Child Welfare Act of 1937." [C39,§3661.021; C46, 50, 54, §235.6]

## CHAPTER 236

## MATERNITY HOSPITALS

Referred to in §§185B.17, 235.1. Social welfare department, see ch 234

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|---------------------------------------|---|
| 236.1 "Person" defined.               | 236.19 Record of licenses.                      |
| 236.2 "Maternity hospital" defined.   | 236.20 Notice of license.                       |
| 236.3 Prohibited location.            | 236.21 Revocation of license.                   |
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| 236.5 Power to license.               | 236.23 Attending physician.                     |
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| 236.16 Form of license.               | 236.34 Penalty.                                 |
| 236.17 Posting of license.            |   |
| 236.18 Prohibited acts.               |   |

**236.1 "Person" defined.** The word "person" where used in this chapter shall include individuals, partnerships, voluntary associations, and corporations. [C27, 31, 35, §3661-a8; C39, §3661.022; C46, 50, 54, §236.1]

41GA, ch 79, §1, editorially divided

**236.2 "Maternity hospital" defined.** Any person who receives for care and treatment during pregnancy or during delivery or within ten days after delivery more than one woman within a period of six months, except women related to him by blood or marriage, shall be deemed to maintain a maternity hospital. This definition shall not be construed to include nurses who care for women during confinement in the homes of the patients, nor any institution under the management of the state board of regents or state board of control, nor any general hospital. [S13, §2575-a20; C24, §§2365, 2366; C27, 31, 35, §3661-a9; C39, §3661.023; C46, 50, 54, §236.2; 56GA, ch 131, §19]

**236.3 Prohibited location.** No maternity hospital shall be operated within two hundred feet of any church building, school, educational institution, or public park, or in a building situated within fifty feet of building owned by another. [S13, §2575-a20; C24, §2368; C27, 31, 35, §3661-a10; C39, §3661.024; C46, 50, 54, §236.3]

**236.4 License required.** No maternity hospital shall receive a woman for care therein or solicit or receive money for its maintenance unless it has an unrevoked license issued by the state board of social welfare in accordance with this chapter within the preceding twelve months to conduct such hospital. [S13, §2575-a20; C24, §2367; C27, 31, 35, §3661-a11; C39, §3661.025; C46, 50, 54, §236.4]

41GA, ch 79, §3, editorially divided

**236.5 Power to license.** The state board of social welfare is hereby empowered to grant

a license for one year for the conduct of any maternity hospital that is for the public good, that is legally located, that is conducted by a reputable and responsible person, and whose staff and equipment are adequate for the work which it undertakes. [S13, §2575-a22; C24, §2370; C27, 31, 35, §3661-a12; C39, §3661.026; C46, 50, 54, §236.5]

**236.6 Conditions to granting license.** No such license shall be issued unless the premises shall have been inspected and such license approved by the state department of health. [S13, §2575-a22; C24, §2371; C27, 31, 35, §3661-a13; C39, §3661.027; C46, 50, 54, §236.6]

**236.7 Unlicensed hospital nuisance.** Any maternity hospital operated in violation of the terms of this chapter shall be deemed a nuisance and may be abated by injunction proceedings. [S13, §2575-a27; C24, §2382; C27, 31, 35, §3661-a14; C39, §3661.028; C46, 50, 54, §236.7]

Injunctions, ch 664

**236.8 Applications for license.** Every application for a license to operate a maternity hospital shall be made in writing to the state board of social welfare, accompanied by the legal inspection fee, and said application shall contain the name and address of the person to whom the license is to be issued, and a description of the location of the place to be used. [S13, §2575-a22; C24, §2369; C27, 31, 35, §3661-a15; C39, §3661.029; C46, 50, 54, §236.8]

41GA, ch 79, §4, editorially divided

**236.9 Removal of hospital — inspection.** When the hospital desires to remove to a new location no new license fee shall be required; only the inspection fee of five dollars shall be charged. [C27, 31, 35, §3661-a16; C39, §3661.030; C46, 50, 54, §236.9]

**236.10 Fees.** The initial inspection fee for a proposed maternity hospital shall be five

dollars, and the license fee for operating such hospital shall be twenty-five dollars. [S13, §2575-a22; C24, §2373; C27, 31, 35, §3661-a17; C39, §3661.031; C46, 50, 54, §236.10]

41GA, ch 79, §5, editorially divided  
Referred to in §236.12

**236.11 Renewal of license.** The state board of social welfare may renew any license upon payment of a renewal fee of five dollars if the licensee continues to be eligible. [S13, §2575-a22; C24, §2373; C27, 31, 35, §3661-a18; C39, §3661.032; C46, 50, 54, §236.11]

Referred to in §236.12

**236.12 Exceptions.** No fee provided for in sections 236.10 and 236.11 shall be required of any charitable institution operating a maternity hospital, or any institution which holds a hospital license under any other general hospital licensure law. [S13, §2575-a22; C24, §2373; C27, 31, 35, §3661-a19; C39, §3661.033; C46, 50, 54, §236.12]

**236.13 Tenure of license.** Each license shall expire one year from the date of issue unless sooner revoked. [S13, §2575-a22; C24, §2373; C27, 31, 35, §3661-a20; C39, §3661.034; C46, 50, 54, §236.13]

**236.14 Tenure of license.** Licenses granted under this chapter shall be valid for one year from the date of issuance thereof unless revoked in accordance with the provisions of this chapter. [S13, §2575-a22; C24, §2373; C27, 31, 35, §3661-a21; C39, §3661.035; C46, 50, 54, §236.14]

41GA, ch 79, §8, editorially divided

**236.15 Rules and regulations.** It shall be the duty of the state board of social welfare to satisfy itself as to compliance with the conditions required for the issuance of such license and to prescribe such general regulations and rules as to licenses and for the conduct of all such hospitals as shall be necessary to effect the purposes of this chapter and of all other laws of the state relating to children so far as the same are applicable and to safeguard the well-being of all infants born therein and the health, morality, and best interests of the women and children who are inmates therein. [C27, 31, 35, §3661-a22; C39, §3661.036; C46, 50, 54, §236.15]

**236.16 Form of license.** The license shall state the name of the licensee and designate the premises in which the business may be carried on, and the number of women that may properly be treated or cared for therein at any one time. [S13, §§2575-a21, -a22; C24, §2372; C27, 31, 35, §3661-a23; C39, §3661.037; C46, 50, 54, §236.16]

41GA, ch 79, §7, editorially divided

**236.17 Posting of license.** Such license shall be kept posted in a conspicuous place on the licensed premises. [C27, 31, 35, §3661-a24; C39, §3661.038; C46, 50, 54, §236.17]

**236.18 Prohibited acts.** No greater number of women shall be kept at any one time on the premises for which the license is issued than is authorized by the license and no woman shall be kept in a building not designated in the license. [C27, 31, 35, §3661-a25; C39, §3661.039; C46, 50, 54, §236.18]

**236.19 Record of licenses.** A record of the licenses so issued shall be kept by the state board of social welfare. [C27, 31, 35, §3661-a26; C39, §3661.040; C46, 50, 54, §236.19]

**236.20 Notice of license.** The state board of social welfare shall forthwith give notice to the state department of health and to the local board of health of the city, village, or town in which the licensee resides of the granting of such license and the conditions thereof. [C27, 31, 35, §3661-a27; C39, §3661.041; C46, 50, 54, §236.20]

**236.21 Revocation of license.** The state board of social welfare may revoke any such license under the conditions and by the procedure specified for the revocation of licenses of child-placing agencies. [S13, §2575-a26; C24, §2374; C27, 31, 35, §3661-a28; C39, §3661.042; C46, 50, 54, §236.21]

Procedure, §§238.10-238.15

**236.22 Child placements by maternity hospitals.** No person, as an inducement to a woman to go to any maternity hospital during confinement, shall in any way offer to dispose of any child or advertise that he will give children for adoption or hold himself out as being able to dispose of children in any manner. [C27, 31, 35, §3661-a29; C39, §3661.043; C46, 50, 54, §236.22]

**236.23 Attending physician.** Every birth occurring in a maternity hospital shall be attended by a legally qualified physician. [C27, 31, 35, §3661-a30; C39, §3661.044; C46, 50, 54, §236.23]

41GA, ch 79, §10, editorially divided

**236.24 Reports as to births.** The licensee owning or conducting such hospital shall (in addition to the report required to be filed with the registrar of vital statistics) within twenty-four hours after a birth occurs therein, make a written report thereof, to the state board of social welfare, giving the information required in the official birth report and such additional information as shall be within the knowledge of the licensee and as may be required by the state board. [S13, §§2575-a23, -a24; C24, §§2375, 2376; C27, 31, 35, §3661-a31; C39, §3661.045; C46, 50, 54, §236.24]

Referred to in §236.26  
Birth certificate, §144.13

**236.25 Reports as to deaths.** The licensee owning or conducting any such hospital shall immediately after the death in a maternity hospital of a woman or an infant born therein or brought thereto, cause notice thereof to be

given to the state board of social welfare with such details as the state board may require. [S13, §§2575-a23, -a24; C24, §§2375, 2376; C27, 31, 35, §3661-a32; C39, §3661.046; C46, 50, 54, §236.25]

Referred to in §236.26

**236.26 Inspection of reports.** All reports received by the state department under sections 236.24 and 236.25 shall be kept of record and shall be accessible to the state board of social welfare and authorized employees thereof, the attorney general, and any county attorney, but said reports shall not be accessible to any other person except on the order of a court of record. [S13, §§2575-a23; C24, §2378; C27, 31, 35, §3661-a33; C39, §3661.047; C46, 50, 54, §236.26]

**236.27 Records and inspection.** The state board of social welfare shall have the same right and duties with respect to maternity hospitals relative to prescribing record forms, requiring reports, and making inspections as are provided in connection with the licensing of child-placing agencies. [C27, 31, 35, §3661-a34; C39, §3661.048; C46, 50, 54, §236.27]

41GA, ch 79, §12, editorially divided  
Forms prescribed, §238.17

**236.28 Reports and information confidential.** Reports and information acquired through the operation of this chapter shall be confidential under the same conditions provided by law in connection with child-placing agencies. [S13, §§2575-a23; C24, §2378; C27, 31, 35, §3661-a35; C39, §3661.049; C46, 50, 54, §236.28]

Information confidential—conditions, §238.24

**236.29 Inspections.** Officers and authorized agents of the state board of social welfare may inspect the premises and conditions of such agencies at any time and examine every part thereof, and interview the inmates, and may inquire into all matters concerning such hospitals and the women and children in the care

thereof. [S13, §§2575-a25; C24, §2380; C27, 31, 35, §3661-a36; C39, §3661.050; C46, 50, 54, §236.29]

**236.30 Minimum inspection.** Said officers or authorized agents of the state board of social welfare shall visit and inspect the premises of licensed maternity hospitals at least once every six months and preserve written reports of the conditions found therein. [C27, 31, 35, §3661-a37; C39, §3661.051; C46, 50, 54, §236.30]

**236.31 Sanitary inspection.** Officers and authorized agents of the state department of health and local board of health in the city, village, or town where a licensed maternity hospital is located may make sanitary inspections at any time. [S13, §§2575-a25; C24, §§2380, 2381; C27, 31, 35, §3661-a38; C39, §3661.052; C46, 50, 54, §236.31]

**236.32 Licensee to grant assistance.** The licensee shall give all reasonable information to such inspectors and afford them every reasonable facility for the performance of the duties mentioned. [C27, 31, 35, §3661-a39; C39, §3661.053; C46, 50, 54, §236.32]

**236.33 Burden of proof.** In a prosecution under the provisions of this law or any penal law relating thereto a defendant who relies for defense upon the relationship of any woman or infant to himself shall have the burden of proof. [C27, 31, 35, §3661-a40; C39, §3661.054; C46, 50, 54, §236.33]

**236.34 Penalty.** Every person who violates any of the provisions of this chapter or who shall intentionally make any false statements or reports to the state board of social welfare with reference to the matters contained herein, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed three hundred dollars or imprisoned for a term not to exceed one year. [S13, §§2575-a27; C24, §2383; C27, 31, 35, §3661-a41; C39, §3661.055; C46, 50, 54, §236.34]

## CHAPTER 237

### CHILDREN'S BOARDING HOMES

Referred to in §235.1. Social welfare department, see ch 234

237.1 "Person" or "agency" defined.  
237.2 "Children's boarding home" defined.  
237.3 Power to license.  
237.4 Conditions to granting.  
237.5 Form of license.  
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237.7 Notice of granting.  
237.8 License essential.

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237.12 Tenure of license.  
237.13 Revocation of license.  
237.14 Records and inspection.  
237.15 Burden of proof.  
237.16 Penalty—injunction.

**237.1 "Person" or "agency" defined.** The words "person" or "agency" where used in this chapter shall include individuals, institutions, partnerships, voluntary associations, and corporations other than institutions under the management of the state board of control or its

officers or agents. [C27, 31, 35, §3661-a42; C39, §3661.056; C46, 50, 54, §237.1]

41GA, ch 78, §1, editorially divided

**237.2 "Children's boarding home" defined.** Any person who receives for care and treat-

ment or has in his custody at any one time more than two children under the age of fourteen years unattended by parent or guardian, for the purpose of providing them with food, care, and lodging, except children related to him by blood or marriage, and except children received by him with the intent of adopting them into his own family, shall be deemed to maintain a children's boarding home. This definition shall not include any person who, without compensation, is caring for children for a temporary period. [C27, 31, 35,§3661-a43; C39,§3661.057; C46, 50, 54,§237.2]

**237.3 Power to license.** The state board of social welfare is hereby empowered to grant a license for one year for the conduct of any children's boarding home that is for the public good, that has adequate equipment for the work which it undertakes, and that is conducted by a reputable and responsible person. [C27, 31, 35,§3661-a44; C39,§3661.058; C46, 50, 54,§237.3]

41GA, ch 78,§2, editorially divided

**237.4 Conditions to granting.** No such license shall be issued unless the premises are in a fit sanitary condition, and the application for such license shall have been approved by the state department of health. [C27, 31, 35, §3661-a45; C39,§3661.059; C46, 50, 54,§237.4]

**237.5 Form of license.** The license shall state the name of the licensee, the particular premises in which the business may be carried on, and the number of children that may be properly boarded or cared for therein at any one time. [C27, 31, 35,§3661-a46; C39,§3661.060; C46, 50, 54,§237.5]

**237.6 Record of license.** A record of the licenses so issued shall be kept by the state board of social welfare. [C27, 31, 35,§3661-a47; C39,§3661.061; C46, 50, 54,§237.6]

**237.7 Notice of granting.** The state board of social welfare shall forthwith give notice to the state department of health and to the local board of health of the city, village, or town in which the licensed premises are located of the granting of such license and the conditions thereof. [C27, 31, 35,§3661-a48; C39,§3661.062; C46, 50, 54,§237.7]

**237.8 License essential.** No person shall receive a child for care in any such home or solicit or receive funds for its support unless it has an unrevoked license issued by the state board of social welfare within twelve months preceding to conduct such home. [C27, 31, 35, §3661-a49; C39,§3661.063; C46, 50, 54,§237.8]

**237.9 Prohibited acts.** No greater number of children shall be kept at any one time on the licensed premises than is authorized by

the license and no child shall be kept in a building or place not designated in the license. [C27, 31, 35,§3661-a50; C39,§3661.064; C46, 50, 54, §237.9]

**237.10 Posting of license.** Such license shall be kept posted in a conspicuous place on the licensed premises. [C27, 31, 35,§3661-a51; C39, §3661.065; C46, 50, 54,§237.10]

**237.11 Rules and regulations.** It shall be the duty of the state board of social welfare to provide such general regulations and rules for the conduct of all such homes as shall be necessary to effect the purpose of this and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of all children kept therein. [C27, 31, 35,§3661-a52; C39,§3661.066; C46, 50, 54,§237.11]

**237.12 Tenure of license.** Licenses granted under this chapter shall be valid for one year from the date of issuance thereof unless revoked in accordance with the provisions of this chapter. [C27, 31, 35,§3661-a53; C39,§3661.067; C46, 50, 54,§237.12]

41GA, ch 78,§3, editorially divided

**237.13 Revocation of license.** The state board of social welfare may revoke any such license under the conditions and by the procedure specified for the revocation of licenses of child-placing agencies. [C27, 31, 35,§3661-a54; C39,§3661.068; C46, 50, 54,§237.13]

Procedure, §§238.10-238.15

**237.14 Records and inspection.** The state board of social welfare shall have the same rights and duties relative to records, reports, and inspections of children's boarding homes as are provided for in connection with maternity hospitals. [C27, 31, 35,§3661-a55; C39, §3661.069; C46, 50, 54,§237.14]

Records, reports,, inspections, §§236.27, 238.17, 238.19

**237.15 Burden of proof.** In a prosecution under the provisions of this law or any penal law relating thereto a defendant who relies for defense upon the relationship of any child to himself shall have the burden of proof. [C27, 31, 35,§3661-a56; C39,§3661.070; C46, 50, 54, §237.15]

**237.16 Penalty—injunction.** Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the state board of social welfare with reference to the matters contained herein, shall be guilty of a misdemeanor. Any person who fails to comply with the provisions of this chapter may be restrained by temporary injunction from operating or maintaining a children's boarding home until they have complied with the provisions of this chapter. [C27, 31, 35,§3661-a57; C39, §3661.071; C46, 50, 54,§237.16; 57GA, ch 115.§1]

Punishment, §687.7

## CHAPTER 238

## CHILD-PLACING AGENCIES

Referred to in §§235.1, 600.1. Social welfare department, see ch 234

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| 238.21 Other inspecting agencies.                      | 238.42 Burden of proof.                     |
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**238.1 "Person" or "agency" defined.** The words "person" or "agency" where used in this chapter shall include individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management of the board of control or its officers or agents. [C27, 31, 35,§3661-a58; C39, §3661.072; C46, 50, 54,§238.1]

41GA, ch 80,§1, editorially divided

**238.2 "Child-placing agency" defined.** Any agency, public, semipublic, or private, which represents itself as placing children permanently or temporarily in private family homes or as receiving children for such placement, or which actually engages, for gain or otherwise, in such placement, shall be deemed to operate a child-placing agency. [C27, 31, 35,§3661-a59; C39,§3661.073; C46, 50, 54,§238.2]

Referred to in §238.17

**238.3 Power to license.** The state board of social welfare is hereby empowered to grant a license for one year for the conduct of any child-placing agency that is for the public good, and is conducted by a reputable and responsible person. [C27, 31, 35,§3661-a60; C39,§3661.074; C46, 50, 54,§238.3]

41GA, ch 80,§2, editorially divided

**238.4 Granting of license conditional.** No such license shall be issued unless the person applying shall have shown that he and his agents are properly equipped by training and experience to find and select suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children

placed by them shall be properly safeguarded. [C27, 31, 35,§3661-a61; C39,§3661.075; C46, 50, 54, §238.4]

**238.5 License required.** No person shall conduct a child-placing agency or solicit or receive funds for its support without an unrevoked license issued by the state board of social welfare within the twelve months preceding to conduct such agency. [C27, 31, 35,§3661-a62; C39,§3661.076; C46, 50, 54,§238.5]

**238.6 Form of license.** The license shall state the name of the licensee and the particular premises in which the business may be carried on. [C27, 31, 35,§3661-a63; C39,§3661.077; C46, 50, 54,§238.6]

**238.7 Posting of license.** Such license shall be kept posted in a conspicuous place on the licensed premises. [C27, 31, 35,§3661-a64; C39, §3661.078; C46, 50, 54,§238.7]

**238.8 Record of license.** A record of the licenses so issued shall be kept by the state board of social welfare. [C27, 31, 35,§3661-a65; C39,§3661.079; C46, 50, 54,§238.8]

**238.9 Tenure of license.** Licenses granted under this chapter shall be valid for one year from the date of issuance thereof unless revoked in accordance with the provisions hereof. [C27, 31, 35,§3661-a66; C39,§3661.080; C46, 50, 54,§238.9]

41GA, ch 80,§3, editorially divided

**238.10 Revocation of license.** The state board of social welfare may, after due notice and hearing, revoke the license:

1. In case the person to whom the same is issued violates any provision of this chapter.

2. When in the opinion of the state board such agency is maintained in such a way as to waste or misuse funds contributed by the public or without due regard to sanitation or hygiene or to the health, comfort, or well-being of the child cared for or placed by the agency.

3. In case of violation by the licensee or his agents of any law of the state in a manner disclosing moral turpitude or unfitness to maintain such agency.

4. In case any such agency is conducted by a person of ill repute or bad moral character.

5. In case said agency operates in persistent violation of the reasonable regulations of the state board governing such agencies. [S13, §3260-k; C24, §3663; C27, 31, 35, §3661-a67; C39, §3661.081; C46, 50, 54, §238.10]

**238.11 Written charges — findings — notice.** Written charges against the licensee shall be served upon him at least ten days before hearing shall be had thereon and a written copy of the findings and decisions of the state board of social welfare upon hearing shall be served upon the licensee in the matter prescribed for the service of original notice in civil actions. [C27, 31, 35, §3661-a68; C39, §3661.082; C46, 50, 54, §238.11]

Service of notice, R.C.P. 56(a)

**238.12 Appeal.** Any licensee feeling himself aggrieved by any decision of the state board of social welfare revoking his license may appeal to the district court by serving on the state board and filing with the clerk of the district court in the county where his agency is situated, within ten days after written notice of such decision, a written notice of appeal specifying the grounds upon which the appeal is taken. [C27, 31, 35, §3661-a69; C39, §3661.083; C46, 50, 54, §238.12]

**238.13 Pleadings on appeal.** The written notice and decisions shall be treated as the pleadings in the case and may be amended in the discretion of the court. [C27, 31, 35, §3661-a70; C39, §3661.084; C46, 50, 54, §238.13]

**238.14 Hearing on appeal.** The appeal may be brought on for hearing in a summary manner by either party by an order obtained from the court to show cause why the decision of the state board of social welfare should not be confirmed, amended, or set aside. [C27, 31, 35, §3661-a71; C39, §3661.085; C46, 50, 54, §238.14]

**238.15 Trial on appeal.** The issues shall be tried anew by the court as an equitable proceeding and decree rendered. [C27, 31, 35, §3661-a72; C39, §3661.086; C46, 50, 54, §238.15]

How issues tried, R.C.P. 177 et seq.

**238.16 Rules and regulations.** It shall be the duty of the state board of social welfare to provide such general regulations and rules for the conduct of all such agencies as shall be

necessary to effect the purposes of this chapter and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of children placed or cared for by such agencies. [C27, 31, 35, §3661-a73; C39, §3661.087; C46, 50, 54, §238.16]

**238.17 Forms for registration and record—preservation.** The state board of social welfare shall prescribe forms for the registration and record of persons cared for by any child-placing agency licensed under this chapter and for reports required by said state board from the agencies.

If, for any reason, a child-placing agency as defined by section 238.2 shall cease to exist, all records of registration and placement and all other records of any kind and character kept by such child-placing agency shall be turned over to the state board of social welfare, for preservation, to be kept by the said state board of social welfare as a permanent record. [C27, 31, 35, §3661-a74; C39, §3661.088; C46, 50, 54, §238.17]

41GA, ch 80, §4, editorially divided  
Referred to in §238.24

**238.18 Duty of licensee.** The licensee shall keep a record and make reports in the form to be prescribed by said state board. [C27, 31, 35, §3661-a75; C39, §3661.089; C46, 50, 54, §238.18]

Referred to in §238.24

**238.19 Inspection generally.** Officers and authorized agents of the state board of social welfare may inspect the premises and conditions of such agency at any time and examine every part thereof; and may inquire into all matters concerning such agencies and the children in the care thereof. [S13, §3260-j; C24, §3669, 3684; C27, 31, 35, §3661-a76; C39, §3661.090; C46, 50, 54, §238.19]

41GA, ch 80, §6, editorially divided  
Referred to in §238.24

**238.20 Minimum inspection — record.** Said officers and authorized agents of the state board of social welfare shall visit and inspect the premises of licensed child-placing agencies at least once every six months and make and preserve written reports of the conditions found. [C27, 31, 35, §3661-a77; C39, §3661.091; C46, 50, 54, §238.20]

Referred to in §238.24

**238.21 Other inspecting agencies.** Authorized agents of the state department of health and of the local board of health of the city, village, or town in which a licensed child-placing agency is located may make inspection of the premises. [C27, 31, 35, §3661-a78; C39, §3661.092; C46, 50, 54, §238.21]

Referred to in §238.24

**238.22 Licensee to aid inspection.** The licensee shall give all reasonable information to such inspectors and afford them every reasonable facility for obtaining pertinent information. [C27, 31, 35, §3661-a79; C39, §3661.093; C46, 50, 54, §238.22]

Referred to in §238.24



**238.23 Annual report.** Every such agency shall file with the state board of social welfare, during the month of January of each year, an annual written or printed report, which shall show:

1. The number of children cared for during the preceding year.
2. The number of children received for the first time and the number returned from families.
3. The number placed in homes.
4. The number deceased.
5. The number placed in state institutions.
6. The number returned to friends.
7. The number and names and number of months of each of those attending school.
8. A statement showing the receipts and disbursements of such agency.
9. The amount expended for salaries and other expenses, specifying the same.
10. The amount expended for lands, buildings, and other investments.
11. Such other information as the state board may require. [S13,§3260-j; C24,§3670; C27, 31, 35,§3661-a80; C39,§3661.094; C46, 50, 54,§238.23]

Referred to in §238.24

**238.24 Information confidential.** No individual who acquires through the operation of the provisions of sections 238.17 to 238.23, inclusive, or from the records provided for in this chapter, information relative to any agency or relative to any person cared for by such agency or relative to any relative of any such person, shall directly or indirectly disclose such information except upon inquiry before a court of law, in a coroner's inquest, or before some other tribunal, or for the information of the governor, general assembly, state board of social welfare, state department of health, or the local board of health where such agency is located.

Nothing herein shall prohibit the state board from disclosing such facts to such proper persons as may be in the interest of a child cared for by such agency or in the interest of the child's parents or foster parents and not inimical to the child, or as may be necessary to protect the interests of the child's prospective foster parents.

Nothing herein shall prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter or the publication of the results of such analysis in such manner as will not disclose confidential information. [C27, 31, 35,§3661-a81; C39,§3661.095; C46, 50, 54,§238.24]

**238.25 Assumption of care and custody.** No person other than the parents or relatives of the child within the fourth degree may assume the permanent care and custody of a child under fourteen years of age except in accordance with the provisions of this chapter. [C27, 31, 35,§3661-a82; C39,§3661.096; C46, 50, 54,§238.25]

41GA, ch 80,§8, editorially divided  
Adoption, ch 600

**238.26 Relinquishment of rights and duties.** No person may assign, relinquish, or otherwise transfer to another his rights, or duties with respect to the permanent care or custody of a child under fourteen years of age unless specifically authorized or required so to do by an order or decree of court, or unless the parent or parents sign a written release attested by two witnesses, of the permanent care and custody of the child to an agency licensed by the state board of social welfare. [S13,§3260-c; C24, §3665; C27, 31, 35,§3661-a83; C39,§3661.097; C46, 50, 54,§238.26]

**238.27 Relinquishment by one parent.** Neither parent may sign such release without the written consent of the other unless the other is dead or hopelessly insane, or for one year immediately preceding has been under indictment for abandoning the family, or is imprisoned for crime, or is an inmate or keeper of a house of ill fame, or has been deprived of the custody of the child by judicial procedure because of unfitness to be its guardian, or unless the parents are not married to each other. [S13,§3260-c; C24,§3665; C27, 31, 35,§3661-a84; C39,§3661.098; C46, 50, 54,§238.27]

**238.28 Relinquishment, parents not married.** If the parents are not married to each other, the parent having the care and providing for the wants of the child may sign the release. [S13,§3260-c; C24,§3665; C27, 31, 35,§3661-a85; C39,§3661.099; C46, 50, 54,§238.28]

**238.29 Recovery after relinquishment.** Children so surrendered may not be recovered by the parents except through decree of court based upon proof that the child is neglected by its foster parent, guardian, or custodian, as neglect is defined by the statute relating to neglected children. [C27, 31, 35,§3661-a86; C39, §3661.100; C46, 50, 54,§238.29]

Neglected child defined, §232.2

**238.30 Reports as to placements.** Every month every child-placing agency licensed by the state board of social welfare shall report to the state board the names of all children placed out by the agency since its preceding monthly report, together with the name and address of the person with whom each child has been placed, and such other information regarding the child and its foster home as may be required by the state board. [C27, 31, 35,§3661-a87; C39,§3661.101; C46, 50, 54,§238.30]

41GA, ch 80,§9, editorially divided

**238.31 Inspection of foster homes.** The state board of social welfare shall satisfy itself that each licensed child-placing agency is maintaining proper standards in its work, and said state board may at any time cause the child and home in which he has been placed to be visited by its agents for the purpose of ascertaining whether the home is a suitable one for the child, and may continue to visit and inspect the foster home and the conditions therein as they affect said child. [C27, 31, 35,§3661-a88; C39,§3661.102; C46, 50, 54,§238.31]

**238.32 Authority to agencies.** Any institution incorporated under the laws of this state or maintained for the purpose of caring for, placing out for adoption, or otherwise improving the condition of unfortunate children may, under the conditions specified in this chapter and when licensed in accordance with the provisions of this chapter:

1. Receive neglected, dependent, or delinquent children who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of chapter 232.

2. Receive neglected, dependent, and delinquent children under twenty-one and over eighteen years of age, under commitment from the juvenile court, and control and dispose of them as in this chapter provided.

3. Receive, control, and dispose of all minor children voluntarily surrendered to such institutions. [S13, §§254-a22, 3260-b; C24, §3662; C27, 31, 35, §3661-a89; C39, §3661.103; C46, 50, 54, §238.32]

Referred to in §240.1  
Commitment of adults, §240.6  
Juvenile commitments, §§232.21, 240.1

**238.33 Importation of children.** No agency shall bring into the state any child for the purpose of placing him out or procuring his adoption without first obtaining the consent of the state board of social welfare, and such agency shall conform to the rules of the state board. [S13, §3260-l; C24, §3672; C27, 31, 35, §3661-a90; C39, §3661.104; C46, 50, 54, §238.33]

41GA, ch 80, §11, editorially divided  
Referred to in §238.39

**238.34 Bond—conditions.** It shall file with the state board of social welfare a bond to the state, approved by the state board, in the penal sum of one thousand dollars, conditioned that it will not knowingly send or bring into the state any child who has a contagious or incurable disease or who is deformed, feeble-minded, or of vicious character; that it will remove any such child who, in the opinion of the state board, becomes a public charge, or who, in the opinion of the state board, becomes a menace to the community prior to his adoption or within five years after being brought into the state, or who, in the opinion of the state board, has been placed in an unsuitable home; that it will place the child under a written contract approved by the state board that the person with whom the child is placed shall be responsible for his proper care and training. [S13, §3260-l; C24, §§3672, 3673; C27, 31, 35, §3661-a91; C39, §3661.105; C46, 50, 54, §238.34]

**238.35 Liquidated damages.** In the case of a breach of said bond a conclusive presumption shall prevail that the amount of said bond was intended to constitute liquidated damages. [C24, §3674; C27, 31, 35, §3661-a92; C39, §3661.106; C46, 50, 54, §238.35]

**238.36 Notice of intent to import child.** Before any child shall be brought or sent into the state for the purpose of placing him in a

foster home, the agency so bringing or sending such child shall first notify the state board of social welfare of its intention so to do, which notification shall state the name, age, and personal description of the child and the name and address of the person with whom the child is to be placed, and such other information as may be required by the state board. [S13, §3260-l; C24, §3672; C27, 31, 35, §3661-a93; C39, §3661.107; C46, 50, 54, §238.36]

Referred to in §238.39

**238.37 Reports as to imported child.** The person bringing or sending the child into the state shall report at least once a year and at such other times as the state board of social welfare shall direct, as to the location and well-being of the child so long as he shall remain within the state and until he shall have reached the age of eighteen or shall have been legally adopted. [C27, 31, 35, §3661-a94; C39, §3661.108; C46, 50, 54, §238.37]

**238.38 Exception.** Nothing herein shall be deemed to prohibit a resident of this state from bringing into the state a child for adoption into his own family. [S13, §3260-l; C24, §3675; C27, 31, 35, §3661-a95; C39, §3661.109; C46, 50, 54, §238.38]

**238.39 Exportation of children.** Before any child is taken out or sent out of the state for the purpose of placing him in a foster home, otherwise than by parent or guardian, the person or agency so taking or sending him shall give the state board of social welfare such notice and information and procure such consent as is specified in sections 238.33 and 238.36, and thereafter shall report to the state board at least once each year, and at such other times as the state board shall direct, as to the location and well-being of the child until he shall have reached the age of eighteen years or shall have been legally adopted. [C27, 31, 35, §3661-a96; C39, §3661.110; C46, 50, 54, §238.39]

**238.40 Agreement in child placements.** Every agency placing a child in a foster home shall enter into a written agreement with the person taking the child, which agreement shall provide that the agency placing the child shall have access at all reasonable times to such child and to the home in which he is living, and for the return of the child by the person taking him whenever, in the opinion of the agency placing such child, or in the opinion of the state board of social welfare, the best interests of the child shall require it. [C27, 31, 35, §3661-a97; C39, §3661.111; C46, 50, 54, §238.40]

41GA, ch 80, §13, editorially divided  
Referred to in §238.41

**238.41 Exceptions.** The provisions of section 238.40 shall not apply to children who have been legally adopted. [C27, 31, 35, §3661-a98; C39, §3661.112; C46, 50, 54, §238.41]

**238.42 Burden of proof.** In a prosecution under the provisions of this chapter or any penal law relating thereto, a defendant who relies for defense upon the relationship of any

woman or child to himself shall have the burden of proof. [C27, 31, 35, §3661-a99; C39, §3661.113; C46, 50, 54, §238.42]

**238.43 Penalty.** Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements

or reports to the state board of social welfare with reference to the matters contained herein, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly. [C27, 31, 35, §3661-a100; C39, §3661.114; C46, 50, 54, §238.43]

Punishment, §687.7

## CHAPTER 239

### AID TO DEPENDENT CHILDREN

Referred to in §§241.25, 249.44

- 239.1 Definitions.
- 239.2 Eligibility for aid to dependent children.
- 239.3 Application for assistance.
- 239.4 Investigation of application.
- 239.5 Granting of assistance and amount of assistance—co-operation of parent.
- 239.6 Periodic reconsideration, changes, and termination of grants.
- 239.7 Appeal.
- 239.8 Removal from county.
- 239.9 Funeral expenses.

- 239.10 Records—report of recipients.
- 239.11 County appropriations.
- 239.12 Fund for aid to dependent children—reimbursement to state.
- 239.13 Assistance not assignable.
- 239.14 Fraudulent acts.
- 239.15 Grant accepted without condition.
- 239.16 Merit rating for employees.
- 239.17 Recovery of assistance obtained by fraudulent act.
- 239.18 State control exclusive.

#### **239.1 Definitions.** As used in this chapter:

1. "State department" means the state department of social welfare provided for in section 234.2.

2. "State board" means the state board of social welfare provided for in section 234.3.

3. "County board" means the county board of social welfare provided for in section 234.9.

4. A "dependent child" means a needy child under the age of sixteen years, or under the age of eighteen years found to be regularly attending school, who has been deprived of parental support and care by reason of death, continued absence from home, or physical or mental incapacity or unfitness of either parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their home.

5. "Assistance" means money payments to, or in behalf of, a needy, dependent child or children.

6. "Recipient" is the person to whom the assistance grant is made. [C39, §§3661.002, 3661.016; C46, 50, 54, §239.1; 57GA, ch 116, §§1, 2]

Referred to in §§239.2, 239.5

**239.2 Eligibility for aid to dependent children.** Assistance shall be granted under this chapter to any needy dependent child who:

1. Is living in a suitable family home maintained by one or more of the persons referred to in subsection 4 of section 239.1.

2. Has resided in the state for one year immediately preceding the application for such assistance; or was born within the state within one year immediately preceding the applica-

tion, if the mother has resided in the state for one year immediately preceding the birth of said child, without regard to the residence of the person or persons with whom said child is living.

3. Is not in a public institution and because of a physical or mental condition, in need of continued care therein. [C46, 50, 54, §239.2]

**239.3 Application for assistance.** Application for assistance under this chapter shall be made to the county board of the county in which the dependent child resides or will reside in the event assistance is granted. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state board. Such application shall be made by an adult person with whom the dependent child resides or will reside, and shall contain such information as may be required by said application form. One application may be made for several children of the same family if they reside or will reside with the same person. [C46, 50, 54, §239.3]

**239.4 Investigation of application.** Whenever a county board receives a notification of the dependency of a child or an application for assistance, an investigation and record of the circumstances shall promptly be made in order to ascertain the dependency of the child and the facts supporting the application.

The investigations shall include visits to the home of the child and of the person with whom the child will live during the time assistance is granted.

In cases involving physical or mental incapacity or unfitness of either parent, the county board of social welfare may require as a condition for granting assistance hereunder that such incapacity or unfitness be de-

terminated by a board of doctors which shall be selected by the county board of social welfare. [C46, 50, 54, §239.4; 56GA, ch 6, §3]

**239.5 Granting of assistance and amount of assistance—co-operation of parent.** Upon the completion of an investigation the county board shall decide whether the child is eligible for assistance under the provisions of this chapter and determine the amount of such assistance. The county board shall, within thirty days, notify the person with whom the child is living or will be living, of the decision made. The county board may require, as a condition of granting assistance, that a legal guardianship be established over any recipient, or any child or children and in such cases the assistance payments shall be made to such guardian, when appointed, but a guardian of a child or children only shall not be allowed to receive any assistance payments for any dependent child or children unless such guardian shall bear a relationship to the child or children embraced by subsection 4, section 239.1. In addition to the assistance granted as provided under this chapter, an amount not to exceed ten dollars per case per month may be allowed for guardian's fees when authorized by appropriate court order. The dependent child for whom the grant is made shall be originally charged to the county in which such child resides when application is made.

The county board shall, on the basis of actual need, fix the amount of assistance necessary for any dependent child, subject to the approval of the state department, with due regard to the necessary expenditures of the family and the conditions existing in each case, taking into consideration any other income or resources of any child claiming assistance under this chapter and any private resources found to be available to such child. Such assistance when granted shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health; provided, however, that no family shall receive a grant hereunder in excess of one hundred seventy-five dollars per month. Assistance, when granted, shall be paid monthly to an adult person within the specified degrees of relationship and with whom the child is living, from the fund for aid to dependent children established by this chapter, upon the order of the state department.

No payment for aid to dependent children shall be made unless and until the county board of social welfare, with the advice of the county attorney shall certify that the parent receiving the aid for the children is cooperating in legal actions and other efforts to obtain support money for said children from the persons legally responsible for said support. [C46, 50, 54, §239.5; 56 GA, ch 6, §4]

See *Collins v. Board*, 248 Iowa —.

**239.6 Periodic reconsideration, changes, and termination of grants.** Any or all assistance grants made under this chapter shall be subject to reconsideration at any time the county

board deems necessary and shall be reinvestigated and reconsidered by the county board as frequently as may be required. After any such further investigation, the county board shall make further report to the state department. Upon such report, assistance may be continued, renewed, suspended, changed in amount, or entirely withdrawn, as the findings of such reports warrant. [C46, 50, 54, §239.6]

**239.7 Appeal.** If an application is not acted upon by the county board or the state department within a reasonable time after such application is made, if it is denied in whole or in part, or if any award of assistance is modified, suspended, or canceled under any provision of this chapter, the applicant or recipient may appeal to the state board. The state board shall, upon receipt of such appeal, give appellant reasonable notice and opportunity for a fair hearing before the state board or its duly authorized representative or representatives.

An applicant whose application for assistance has been rejected, or a recipient whose certificate for assistance has been canceled or modified, after a review hearing hereinabove provided, within thirty days after notice of such action is given, may appeal from the decision of the state board to the district court of the county in which the applicant or recipient resides, by serving a ten days notice of such appeal upon any member of the state board, in the manner required for the service of an original notice in any civil action. Upon the service of such notice, the state board shall furnish the applicant with a copy of the application and all supporting papers, a transcript of the testimony taken in a hearing, if any, and a copy of its decision. The district court shall act as an appellate court to review the decision of the state board to determine whether or not it has therein committed fraud or abused its discretion. The costs may be taxed to appellant where the appeal is affirmed or may be remitted. [C46, 50, 54, §239.7]

**239.8 Removal from county.** When any child for whose benefit a grant of assistance has been made removes or is removed from the county giving assistance, it shall be the duty of the recipient to immediately notify the county board of the county giving assistance of the fact of such removal and of the city or town (or the nearest city or town) and of the county to which the child has removed. If the removal is into another county in the state, the county which has been giving assistance shall continue the assistance for a period of six months after the date of removal, but if the removal is out of the state assistance shall immediately cease. Thereafter any assistance can be granted only in the manner provided for herein as to obtaining assistance, and can be only in and from the county in which the child is then living. [C46, 50, 54, §239.8]

**239.9 Funeral expenses.** Upon the death of any child for whose benefit assistance pay-

ments are being made or have been authorized, a reasonable funeral expense for the burial of such child may be paid by the state department, provided such expenses do not exceed one hundred fifty dollars, and the estate of the deceased or any life insurance or payments by any death or funeral benefit association or society paid by reason of the death of such child to the child's estate or to any person legally liable for his support, are insufficient to defray such funeral expenses. The person to whom such funeral expenses are paid as above provided is hereby prohibited from soliciting, accepting, or contracting to receive any further compensation for services rendered or articles furnished in connection with such funeral except on written approval of the county board of the county to which the assistance is chargeable and subject to such rules and regulations as the state board shall prescribe. [C46, 50, 54, §239.9]

**239.10 Records—report of recipients.** All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter.

Provided, however, that the county board of social welfare shall prepare and file in its office on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter and chapters 241 and 249. The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the respective county boards of social welfare. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a misdemeanor punishable by a fine of not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year or by both such fine and imprisonment. [C46, 50, 54, §239.10]

**239.11 County appropriations.** The county board of supervisors in each county in this state shall appropriate annually, and pay in the manner hereinafter specified from the county poor fund, such sum as shall result in the payment by such county of that portion of all assistance and benefits payable with respect to dependent children chargeable to the county under this chapter, which shall equal one-half of all such assistance and benefits chargeable to the county exclusive of such receipts and contributions to such fund other than state or county funds, as may from time to time be legally received from any source and credited to the state department and shall include in the tax levy for such county the sum or sums so appropriated for that purpose. The sums necessary as above provided shall be originally determined upon the basis of an annual budget prepared by the county board and approved by the state department. Should the sum so appropriated, however, be expended or exhausted during the year for which it was appropriated, such additional sum shall be appropriated by the board of supervisors from the county poor fund as shall be sufficient to meet the obligation of the county to pay its share as heretofore provided of all assistance and benefits with respect to dependent children chargeable to the county. The appropriation provided in this section shall not exceed statutory tax limitations now or hereafter provided, except that in counties having a population of sixty thousand, or more, the board of supervisors may levy annually an additional tax not to exceed one-fourth mill to carry out the provisions of this chapter; and in counties having a population of over thirty-five thousand and less than sixty thousand, the board of supervisors may levy annually an additional tax not to exceed one-eighth mill to carry out the provisions of this chapter.

The share of any county for assistance and benefits payable to dependent Indian children living on an Indian reservation in said county shall be paid by the state, from the fund for aid to dependent children. [C46, 50, 54, §239.11]

**239.12 Fund for aid to dependent children—reimbursement to state.** There is hereby established in the state treasury a fund to be known as the "Fund for Aid to Dependent Children" to which shall be credited all funds appropriated by the state for the payment of administrative expenses, assistance and benefits under this chapter, all moneys received at any time for such purposes, and all funds paid by counties to the state department as provided by this chapter. All assistance and benefits under this chapter, and the administrative expenses incident thereto, except compensation and expenses paid to the county board members, shall be paid from said fund. The state department shall report to the county board quarterly the total amount of assistance and benefits paid during the preceding quarter to recipients chargeable to the county. The county board shall promptly report the same to the county board of supervisors which shall then order

paid from the county poor fund a sum representing the county's share thereof determined in the manner heretofore provided, which payment shall be credited to the fund for aid to dependent children.

Any unexpended balance of the fund appropriated or allocated by the state which remains in the fund for aid to dependent children at the end of each biennium shall not revert to the general fund of the state, any law to the contrary notwithstanding. [C46, 50, 54, §239.12]

**239.13 Assistance not assignable.** Assistance granted under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [C46, 50, 54, §239.13]

**239.14 Fraudulent acts.** Whoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation, or any fraudulent device, any assistance under this chapter to which the recipient is not entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by fine, not exceeding five hundred dollars or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. [C46, 50, 54, §239.14]

**239.15 Grant accepted without condition.** No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than that it be used for assistance to dependent children as provided in this chapter.

If any contribution or grant has been accepted, and thereafter the same is discontinued or rejected, the county tax levy for the purpose of this chapter shall not be increased more than one-half mill and the state appropriation

shall not be increased more than seven hundred fifty thousand dollars in any one fiscal year by reason of such discontinuance or rejection of any such contribution or grant. [C46, 50, 54, §239.15]

**239.16 Merit rating for employees.** The selection of all persons as employees of the state board in the administration of this chapter shall be governed by the provisions of section 234.8. [C46, 50, 54, §239.16]

**239.17 Recovery of assistance obtained by fraudulent act.** Whosoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation or any fraudulent device, any assistance as defined in this chapter to which the recipient is not entitled, shall be personally liable for the amount of assistance thus obtained. Such amount may be recovered from the offender or his estate in an action brought or by claim filed in the name of the state, and upon recovery the state shall pay the county a portion thereof equal to the amount paid by the county with respect to such assistance and return the balance of such recovery to the fund for aid to dependent children. [C46, 50, 54, §239.17]

**239.18 State control exclusive.** Questions of policy and control respecting administration of this chapter shall vest and remain in the state agency of the state of Iowa for the purposes of administering all provisions of this chapter. In order to provide a uniform state-wide program for aid to dependent children, the state board shall promulgate such rules and regulations as may be necessary to make the provisions of this chapter uniform in all of the counties of this state. [C46, 50, 54, §239.18]

Constitutionality, 50GA, ch 130, §19  
Omnibus repeal, 50GA, ch 130, §22

CHAPTER 240

PRIVATE INSTITUTIONS FOR NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN

Social welfare department, see ch 234

- 240.1 Children over eighteen years old.
- 240.2 School facilities.
- 240.3 Revocation of commitment.
- 240.4 Commitments prohibited.
- 240.5 Monthly allowance.
- 240.6 Commitments in lieu of jail sentence.

- 240.7 Commitment subsequent to sentence.
- 240.8 Surrender of female.
- 240.9 Release on bond.
- 240.10 Custody and control—labor.
- 240.11 "Institution" defined.
- 240.12 Supervision.

**240.1 Children over eighteen years old.** Any reputable citizen of the county may file a petition with the juvenile court as provided in chapter 232, against any neglected, dependent, or delinquent minor child who is over the age of eighteen years and therein ask that said child be committed to any institution named in section 238.32, or otherwise dealt with as may appear best for the welfare of said child, and in such case the procedure shall, so far

as applicable, be as provided in said chapter, except that such child shall not be committed thereunder to any state institution. [C24, 27, 31, 35, 39, §3666; C46, 50, 54, §240.1]

Children under 18, see §232.21, subsection 3

**240.2 School facilities.** All children in such institutions, over seven years and under fourteen years of age, shall be kept in school during the school sessions of the district in which

such child is kept, or in some parochial school for a like period. [S13,§3260-d; C24, 27, 31, 35, 39,§3667; C46, 50, 54,§240.2]

**240.3 Revocation of commitment.** The juvenile court of the county in which an institution is located may at any time revoke a commitment to such institution when it is made to appear that the trust imposed has been abused, or that the welfare of the child requires such revocation. [S13,§3260-k; C24, 27, 31, 35, 39, §3668; C46, 50, 54,§240.3]

**240.4 Commitments prohibited.** No child shall be committed to the care of any such institution which shall fail to file with the state board of social welfare a satisfactory report for the calendar year last preceding, unless it be an institution organized within the current year. [S13,§3260-j; C24, 27, 31, 35, 39, §3671; C46, 50, 54,§240.4]

**240.5 Monthly allowance.** The institution receiving and caring for a child under eighteen years of age and under commitment from the juvenile court, shall receive, from the county of the legal settlement of such child, a monthly allowance for the welfare of said child in such an amount as the board of supervisors in their judgment and discretion may determine. [S13, §2713-3a; C24, 27, 31, 35, 39,§3676; C46, 50, 54, §240.5]

**240.6 Commitments in lieu of jail sentence.** When any court may pronounce sentence committing any female to any jail, such female may be committed to any institution as herein provided, if such institution is willing to receive her, without expense to the state, but such commitment shall not exceed the maximum jail sentence. [S13,§5442-a; C24, 27, 31, 35, 39,§3677; C46, 50, 54,§240.6]

Referred to in §240.11

**240.7 Commitment subsequent to sentence.** If the court has already committed such female to a jail and thereafter it appears that any such institution is willing to receive her under a commitment, and under the conditions herein imposed, the court may make an additional order, releasing her from such jail and ordering her committed to such institution for the unexpired time of the original commitment.

[S13,§5442-a; C24, 27, 31, 35, 39,§3678; C46, 50, 54,§240.7]

Referred to in §240.11

**240.8 Surrender of female.** Any such female may be surrendered at any time to the court, judge, or presiding magistrate making the original order, which court, judge, or magistrate may make a further order committing the accused to a proper jail for the unexpired term of the original commitment. [S13,§5442-a; C24, 27, 31, 35, 39,§3679; C46, 50, 54,§240.8]

Referred to in §240.11

**240.9 Release on bond.** If, after any female is so committed to such institution, a bond is given under which such female is entitled to a release from such commitment, such female shall be released by an order issued by the officer approving said bond. [S13,§5442-b; C24, 27, 31, 35, 39,§3680; C46, 50, 54,§240.9]

Referred to in §240.11

**240.10 Custody and control—labor.** Any such female committed to an institution as herein provided shall be in the legal custody and control of the immediate managing head, and such female, whether the commitment so provides or not, shall, while being held under such commitment, perform such reasonable, fit, and proper labor as such managing head may direct, which labor shall be the sole compensation to such institution for the keep of such female. [S13,§5442-c; C24, 27, 31, 35, 39, §3681; C46, 50, 54,§240.10]

Referred to in §240.11

**240.11 "Institution" defined.** The term "institution" as used in sections 240.6 to 240.10, inclusive, shall embrace any institution having for its object, in whole or in part, the furnishing of relief, care, and assistance to the poor, destitute, needy, or unfortunate, or any other charitable or benevolent object. [S13,§5442-c; C24, 27, 31, 35, 39,§3682; C46, 50, 54,§240.11]

**240.12 Supervision.** Any institution having any such female in its custody shall be subject to supervision and inspection by the state board of social welfare to the same extent as the other institutions named in this chapter. [S13,§5442-d; C24, 27, 31, 35, 39,§3683; C46, 50, 54,§240.12]

CHAPTER 241

AID FOR THE BLIND

Referred to in §§239.10, 249.44

Commission for blind, see ch 93. Social welfare department, see ch 234

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**241.1 Definitions.** The terms “state board”, and “county board”, are used in this chapter as said terms are defined in section 234.1; and as used in this chapter:

“Applicant” means a person who has applied for assistance under this chapter.

“Recipient” means a person who has received assistance under this chapter.

“Assistance” means money payments to, or in behalf of, a needy blind person.

A “blind person” within the meaning of this chapter shall be one who has no vision, or whose vision with corrective glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. [C39,§3684.01; C46, 50, 54,§241.1; 57GA, ch 116,§3]

**241.2 Eligibility for assistance to the needy blind.** Assistance shall be granted under the provisions of this chapter to any blind person who:

1. Is eighteen years of age or over.
2. Is a citizen of the United States, or has made application for citizenship.
3. Has resided in the state of Iowa for at least five years during the nine years immediately preceding the date of the application for assistance under the provisions of this chapter, and has resided therein one year immediately preceding the application for assistance. If, however, such person has become blind while a resident of the state or is blind and a resident of the state at the time of the passage of this chapter, he is eligible even though he has not resided for five years within the state.
4. Is not an inmate of a public institution. An inmate of such an institution may, however, make application for such assistance, but the assistance, if granted, shall not begin until after he ceases to be an inmate.
5. Is not soliciting alms in any part of the state.
6. Is not receiving old-age assistance.

7. Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter.

8. Has not sufficient income or other resources to provide a reasonable standard of living consistent with decency and health. [SS15,§§2722-i,j,k; C24, 27, 31, 35,§5379; C39, §3684.02; C46, 50, 54,§241.2]

**241.3 Amount of assistance.** The amount of assistance shall be fixed with due regard to the condition of the individual, including all resources available to the applicant or recipient, household situation and community in each instance, together with the essential need due to the individual’s mental or physical condition, subject to the rules, regulations and standards adopted by the state board; provided, however, that in determining the eligibility of an individual claiming aid to the blind, or in determining the amount of such aid, the first fifty dollars per month of earned income of such individual shall be disregarded. [SS15,§2722-j; C24, 27, 31, 35,§5379; C39,§3684.03; C46, 50, 54,§241.3]

**241.4 Powers and duties of state board.** The state board shall:

1. Be the responsible authority for the efficient and impartial administration of this chapter. To this end the state board shall formulate and establish such rules and regulations, outline such policies, prescribe such procedure, and delegate such powers as may be necessary to carry out the provisions and purposes of this chapter.
2. Prescribe, for the guidance of county boards, the qualifications and capabilities required of county board employees, consistent with the provisions of section 234.12.
3. Designate the procedure to be followed in securing a competent examination for the purpose of determining blindness and the cause of blindness in the individual applicant for as-



sistance; designate a suitable number of ophthalmologists to examine applicants and recipients of assistance to the blind; fix the fees to be paid to ophthalmologists for examination of applicants, such fees to be paid from administration funds.

4. Co-operate with the federal social security board, created under title VII of the social security act, approved August 14, 1935, or any other agency of the federal government, in any reasonable manner as may be necessary to qualify for federal aid and assistance to the needy blind and in conformity with the provisions of this chapter; including the making of such reports in such form and containing such information as the federal social security board, or any other agency of the federal government, may from time to time find necessary to assure the correctness and verification of such reports.

5. Co-operate with other agencies in developing measures for the prevention of blindness, the restoration of eyesight and the vocational adjustment of blind persons. [C39,§3684.04; C46, 50, 54,§241.4]

**241.5 Duties of the county boards.** The county boards shall:

1. Perform such services and duties as are prescribed by this chapter and by the rules and regulations of the state board.

2. Report to the state board at such time and in such manner and form as the state board may from time to time direct.

3. Submit to the county board of supervisors, after approval by the state board, a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter in the county. [C39,§3684.05; C46, 50, 54,§241.5]

**241.6 Application for assistance.** Application for assistance under this chapter shall be filed with the county board of the county in which the applicant resides. The application shall be in writing upon the form prescribed by the state board. Such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all sources and amounts of income which he may have, either in existence or expectancy, at the time of the filing of the application, and such other information as may be required by the state board. [SS15, §2722-n; C24, 27, 31, 35,§5382; C39,§3684.06; C46, 50, 54,§241.6]

**241.7 Investigation of applications.** Whenever the county board receives an application for assistance under this chapter, an investigation and record shall promptly be made of the circumstances of the applicant in order to ascertain the facts supporting the application and in order to obtain such other information as may be required by the rules of the state board. [C39,§3684.07; C46, 50, 54,§241.7]

**241.8 Examination by ophthalmologist.** No application shall be approved until the appli-

cant has been examined by an ophthalmologist designated or approved by the state board to make such examinations. The examining ophthalmologist shall certify to the county board in writing upon forms provided by the state board the findings of the examination, which findings shall be transmitted to the state board. [SS15,§§2722-l,m; C24, 27, 31, 35,§§5380, 5381; C39,§3684.08; C46, 50, 54,§241.8]

Referred to in §241.14

**241.9 Granting of assistance.** Upon the completion of such investigation the county board shall make findings of fact as to the eligibility of the applicant for assistance under the provisions of this chapter and shall recommend in accordance with the rules and regulations of the state board the amount of assistance which should be granted. This report, together with a copy of the report of the ophthalmologist, shall be forwarded to the state board. The state board may make such further investigation as it may deem desirable and, upon the basis of such reports and investigation, shall determine whether the applicant is eligible for assistance under the terms of this chapter, and, if eligible, the amount of such assistance and the date on which such assistance shall begin. The state board shall notify the county board of its decision, and the county board shall promptly notify the applicant thereof. Such assistance shall be paid monthly to the applicant upon the order of the state board, from the fund for the aid of the blind established by this chapter. [SS15, §2722-p; C24, 27, 31, 35,§5384; C39,§3684.09; C46, 50, 54,§241.9]

**241.10 Assistance not assignable.** Assistance granted under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [C39,§3684.10; C46, 50, 54, §241.10]

**241.11 Appeal to the state board.** If an application is not acted upon by the county board within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provision of this chapter, the applicant or recipient may appeal to the state board in the manner of form prescribed by the state board. The state board shall, upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing before the state board or its duly authorized representative or representatives. [C39,§3684.11; C46, 50, 54,§241.11]

**241.12 Periodic reconsideration—changes in amount of assistance.** All assistance grants made under this chapter shall be reconsidered by the county board as frequently as may be required by the rules of the state board. After such further investigation as the county board

may deem necessary or the state board may require, the county board shall make further report to the state board and the amount of assistance may be changed or assistance may be entirely withdrawn if the state board finds that the recipient's circumstances have altered sufficiently to warrant such action. [C39, §3684.12; C46, 50, 54, §241.12]

**241.13 Re-examination as to eyesight.** A recipient shall submit to a re-examination as to his eyesight when required to do so by the county board or state board. He shall also furnish any information required by the county board or the state board. [C39, §3684.13; C46, 50, 54, §241.13]

**241.14 Expenses for treatment.** On the basis of the finding of the ophthalmologist's examination as provided in section 241.8, remedial services may be provided by the state board to any person who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is a blind person as defined in this chapter, whether or not he is an applicant for or recipient of old-age assistance or blind assistance, or whether or not he is eighteen years of age or over, if he is otherwise qualified for assistance under this chapter, provided such person is unable to assume such expenses for remedial services. The remedial services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the state board. [C39, §3684.14; C46, 50, 54, §241.14]

**241.15 Guardianship.** When in the opinion of the county board the recipient of assistance under the provisions of this chapter is for any cause unable to use the assistance judiciously, the county board shall request the district court to appoint a guardian to administer such assistance for the benefit of the recipient. All guardianship proceedings in the case of an applicant or recipient shall be carried out without fee or other expense including all court costs when, in the opinion of the court, the blind person is unable to assume said expense. At the discretion of the court, such a guardian may give bond without sureties. [C24, 27, 31, 35, §5384; C39, §3684.15; C46, 50, 54, §241.15]

**241.16 Recovery from recipient.** If at any time during the continuance of assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application provided for in this chapter, it shall be the duty of the recipient immediately to notify the county board of the receipt or possession of such property or income and the county board shall, in its judgment the circumstances so require, recommend to the state board the immediate suspension of assistance payments and, after investigation, shall recommend to the state board that such assistance be continued, modified, or canceled, as the circumstances may require. Any assistance paid after the recipient has come into

possession of such property or income in excess of his need shall be recoverable by the state as a debt due, and upon recovery the state shall repay to the county that portion of the amount so recovered which is equal to the amount paid by the county for such assistance. [C39, §3684.16; C46, 50, 54, §241.16]

**241.17 Funeral expenses.** On the death of any person receiving aid under the provisions of this chapter, the reasonable funeral expenses for his burial may be paid by the state board; provided, such expenses do not exceed one hundred fifty dollars and the estate of the deceased or any life insurance or death or funeral benefit association or society payment, made by reason of the death of such person, payable to his estate or the spouse or any relative responsible under sections 252.2, 252.5, and 600.6, is insufficient to defray the same. The person to whom such funeral expense is paid as above provided is hereby prohibited from soliciting, accepting or contracting to receive any further compensation for services rendered in connection with such burial except on written approval of the county board and subject to such rules and regulations as the state board shall prescribe. [C39, §3684.17; C46, 50, 54, §241.17]

**241.18 Reimbursement from estate.** Whenever it appears, after the death of any person who has received aid under the provisions of this chapter, that his estate, after deducting the exemptions now allowed by law, has property over and above a sufficient amount to pay the expenses of his burial and last sickness, such property shall be charged with the amount paid under this chapter to such person during his lifetime, or for his burial. The amount so paid shall be allowed as a claim against his estate in favor of the state, and upon recovery the state shall repay to the county its proportionate share of the amount paid for such assistance and funeral expenses. An action may be brought in the name of the state to recover the same at any time within five years after the death of the person receiving aid as above provided. [C27, 31, 35, §5384-a1; C39, §3684.18; C46, 50, 54, §241.18]

**241.19 Misdemeanor.** Any person who shall obtain aid under this chapter by misrepresentation or failure with fraudulent intent, to bring forth all the facts required of an applicant for aid under the provisions of this chapter, or any person who shall knowingly make false statements concerning the applicant's eligibility for aid under the provisions of this chapter, shall be guilty of a misdemeanor, punishable as such. [C39, §3684.19; C46, 50, 54, §241.19]

Punishment, §687.7

**241.20 County appropriation.** The county board of supervisors in each county in this state shall appropriate annually, and pay in the manner hereinafter specified from the county poor fund, such sum as will result in the payment by such county of one-fourth of

all administrative expenses within the county incident to aid to the blind, as determined and certified by the state board, other than compensation of members of the county board and their expenses, and one-fourth of all assistance and benefits payable to blind persons resident within the county under this chapter, and shall include in the tax levy for such county the sum or sums so appropriated for that purpose. The sums necessary as above provided shall be determined upon the basis of an annual budget prepared by the county board and approved by the state board. Should the sum so appropriated, however, be expended or exhausted during the year for which it was appropriated, such additional sums shall be appropriated by the board of supervisors from the county poor fund as shall be sufficient to meet the obligation of the county to pay one-fourth of all assistance and benefits to the blind within the county and one-fourth of the administrative expenses as above provided. The tax levy provided for in this section shall not exceed statutory tax limitations now or hereafter provided. [C39, §3684.20; C46, 50, 54, §241.20]

**241.21 Fund for aid to the blind—reimbursement to state.** There is hereby established in the state treasury a fund to be known as the "fund for aid to the blind" to which shall be credited all funds appropriated by the state for the payment of administrative expenses, assistance, and benefits under this chapter, all moneys received from the federal government for such purpose and all funds paid by the counties to the state board as provided by this section. All assistance and benefits under this chapter, and the administrative expenses incident thereto, so far as the same are payable by the state board, shall be paid from said fund. The state board shall report to the county board each month the total amount of assistance and benefits paid during the preceding month to recipients residing within the county, and the amount of the administrative expenses paid by the state which are incident thereto. The county board shall promptly report the same to the county board of supervisors which shall then order paid to the state board from the county poor fund an amount equal to twenty-five percent of the total, which payment shall be credited to the fund for aid to the blind.

Any unexpended balance of the funds appropriated or allocated by the state which remains in the fund for aid to the blind at the end of each biennium shall not revert to the general fund of the state, any law to the contrary notwithstanding. [C39, §3684.21; C46, 50, 54, §241.21]

**241.22 Removal to another county.** When any recipient moves to another county he shall be entitled to continue to receive assistance which shall be chargeable to the county from

which he has removed, for a period of six months and shall thereafter be charged to the county in which he then resides. [C39, §3684.22; C46, 50, 54, §241.22]

**241.23 Other dependents.** This chapter shall not be so construed as to exclude the spouse, minor children or other dependents of a recipient under the provisions of this chapter from receiving other forms of relief, aid or assistance, paid through any agency of the state or any of its political subdivisions. [C39, §3684.23; C46, 50, 54, §241.23]

Constitutionality, 47GA, ch 144, §25

**241.24 Short title.** This chapter may be cited as "Aid to the Needy Blind Act of 1937." [C39, §3684.24; C46, 50, 54, §241.24]

**241.25 Records—report of recipients.** All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter.

Provided, however, that the county board of social welfare shall prepare and file in its office on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter and chapters 239 and 249. The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the respective county boards of social welfare. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation, or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a misdemeanor punishable by a fine of not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year or by both such fine and imprisonment. [C46, 50, 54, §241.25]

Punishment, §687.7

## CHAPTER 242

### TRAINING SCHOOLS

242.1 Official designation.  
 242.2 Superintendent—powers and duties.  
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 242.4 Instruction and employment.  
 242.5 Procedure to commit.  
 242.6 Conviction for crime.  
 242.7 Placing in families.

242.8 Articles of agreement.  
 242.9 Resuming custody of child.  
 242.10 Unlawful interference.  
 242.11 County attorney to appear for child.  
 242.12 Discharge or parole.  
 242.13 Binding out or discharge.

**242.1 Official designation.** The state training school at Eldora shall be known as the "Iowa Training School for Boys". The state training school at Mitchellville shall be known as the "Iowa Training School for Girls". [C73, §2701-a; C24, 27, 31, 35, 39, §3685; C46, 50, 54, §242.1]

**242.2 Superintendent—powers and duties.** The superintendent shall have charge and custody of the inmates of the school. He shall discipline, govern, instruct, employ, and use his best endeavors to reform the pupils in his care, so that, while preserving their health, he may promote, as far as possible, moral, religious, and industrious habits, and regular, thorough, and progressive improvement in their studies, trade, and employment. [C73, §§1651, 1652; C97, §2707; S13, §2707; C24, 27, 31, 35, 39, §3686; C46, 50, 54, §242.2]

**242.3 Salary.** The salaries of the superintendents of the training schools shall be determined by the board of control. [S13, §2727-3a; C24, 27, 31, 35, 39, §3687; C46, 50, 54, §242.3]

**242.4 Instruction and employment.** The board of control shall cause the boys and girls in said schools to be instructed in piety and morality, in such instruction on the constitutions of the United States and of this state as is required in the common schools, and in such branches of useful knowledge as are adapted to their age and capacity, including the effect of alcoholic liquors, stimulants, and narcotics on the human system, and in some regular course of labor, either mechanical, agricultural, or manufacturing, as is best suited to their age, strength, disposition, capacity, reformation, and well-being. [C73, §1648; C97, §2706; C24, 27, 31, 35, 39, §3688; C46, 50, 54, §242.4]

**242.5 Procedure to commit.** The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in chapter 232. [C73, §§1653-1659; C97, §§2708, 2709; S13, §§2708, 2709; C24, 27, 31, 35, 39, §3689; C46, 50, 54, §242.5]

**242.6 Conviction for crime.** When a boy or girl over ten and under eighteen years of age, of sound mind, is found guilty in the district court of any crime except murder, the court may order the child sent to the state training school for boys, or for girls, as the case may be. [C73, §§1653, 1654; C97, §2708; S13, §2708; C24, 27, 31, 35, 39, §3690; C46, 50, 54, §242.6]

**242.7 Placing in families.** All children committed to and received in the training schools may, with the written approval of the board of control, be placed by the superintendent with any persons or in families of good standing and character where they will be properly cared for and educated. [C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3691; C46, 50, 54, §242.7]

Referred to in §242.11

**242.8 Articles of agreement.** Such children shall be so placed under articles of agreement, approved by the board of control and signed by the person or persons taking them and by the superintendent. Said articles shall provide for the custody, care, education, maintenance, and earnings of said children for a time to be fixed in said articles, which shall not extend beyond the time when the persons bound shall attain the age of twenty-one years. [C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3692; C46, 50, 54, §242.8]

Referred to in §242.11

**242.9 Resuming custody of child.** In case a child so placed be not given the care, education, treatment, and maintenance required by such agreement, the board of control may cause the child to be taken from the person with whom placed and returned to the institution, or may replace, release, or finally discharge him as may seem best. [C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3693; C46, 50, 54, §242.9]

Referred to in §242.11

**242.10 Unlawful interference.** It shall be unlawful for any parent or other person not a party to such placing of a child to interfere in any manner or assume or exercise any control over such child or his earnings. Said earnings shall be used, held, or otherwise applied for the exclusive benefit of such child. [S13, §2704; C24, 27, 31, 35, 39, §3694; C46, 50, 54, §242.10]

Referred to in §242.11

**242.11 County attorney to appear for child.** In case legal proceedings are necessary to enforce any right conferred on any child by sections 242.7 to 242.10, inclusive, the county attorney of the county in which such proceedings should be instituted shall, on request of the superintendent, approved by the board of control, institute and carry on, in the name of the superintendent, the proceedings in behalf of the superintendent. [S13, §2704; C24, 27, 31, 35, 39, §3695; C46, 50, 54, §242.11]

**242.12 Discharge or parole.** The board of control may at any time after one year's service order the discharge or parole of any inmate as a reward for good conduct, and may, in exceptional cases, discharge or parole inmates without regard to the length of their service or conduct, when satisfied that the reasons therefor are urgent and sufficient. If paroled upon satisfactory evidence of reformation, the order may remain in effect or terminate under such rules as the board may prescribe. [C73,

§§1660, 1661; C97,§2711; S13,§2711; C24, 27, 31, 35, 39,§3696; C46, 50, 54,§242.12]

**242.13 Binding out or discharge.** The binding out or the discharge of an inmate as reformed, or having arrived at the age of twenty-one years, shall be a complete release from all penalties incurred by the conviction for the offense upon which the child was committed to the school. [C73,§1661; C97,§2711; S13,§2711; C24, 27, 31, 35, 39,§3697; C46, 50, 54,§242.13]

## CHAPTER 243

### IOWA JUVENILE HOME

Repealed by 52GA, ch 139,§8. See chapter 244

## CHAPTER 244

### IOWA JUVENILE HOME AND THE IOWA ANNIE WITTENMYER HOME

244.1 Objects.

244.2 Salaries.

244.3 Admissions.

244.4 Procedure.

244.5 Transfers.

244.6 Profits and earnings.

244.7 Regulations.

244.8 Enumeration of soldiers' orphans.

244.9 Adoption.

244.10 Placing child under contract.

244.11 Recovery of possession.

244.12 Recovery of child—duty of county attorney.

244.13 Interference with child.

244.14 Counties liable.

**244.1 Objects.** The Iowa juvenile home and The Iowa Annie Wittenmeyer home shall be maintained for the purpose of providing care, custody and education of such children as are committed thereto. Such children shall be wards of the state. Their education shall embrace instruction in the common school branches and in such other higher branches as may be practical and will enable said children to gain useful and self-sustaining employment. The board of control and the superintendents of the homes shall assist all discharged children in securing suitable homes and proper employment. [C97,§2689; C24, 27, 31, 35, 39,§§3698, 3706; C46,§§243.1, 244.1; C50, 54,§244.1]

**244.2 Salaries.** The salaries of the superintendents of said homes shall be determined by the board of control. [S13,§2727-3a; C24, 27, 31, 35, 39,§3707; C46, 50, 54,§244.2]

**244.3 Admissions.** Admission to said homes shall be granted to resident children of the state under eighteen years of age, as follows, giving preference in the order named:

1. Destitute children, and orphans unable to care for themselves, of soldiers, sailors, or marines.

2. Neglected, dependent or delinquent children committed thereto by the juvenile court.

3. Other destitute children. [C97,§2685; S13, §2685; C24, 27, 31, 35, 39,§§3699, 3708; C46, §§243.2, 244.3; C50, 54,§244.3]

**244.4 Procedure.** The procedure for commitment to said homes shall be the same as provided by chapter 232, but admission may be granted on voluntary applications signed by the legal custodian of the child and approved by a judge of a court of record, or by the board of supervisors, of the county of the child's residence. Such applications shall be subject to the approval of the board of control and shall be in such form as it may prescribe. Any child not mentally normal, or who is incorrigible, or who has any vicious habits, or whose presence in the homes would be inimical to the moral or physical welfare of normal children therein, shall be denied voluntary admission to said homes. [C97,§2685; S13,§2685; C24, 27, 31, 35, 39,§3709; C46, 50, 54,§244.4]

**244.5 Transfers.** The board of control may transfer to the homes minor wards of the state from any institution under its charge; but no person shall be so transferred who is not mentally normal, or who is incorrigible, or has any vicious habits, or whose presence in the homes would be inimical to the moral or physical welfare of normal children therein, and any such child in the homes may be transferred to the proper state institution. [C24, 27, 31, 35, 39,§3710; C46, 50, 54,§244.5]

**244.6 Profits and earnings.** Any profits arising from labor at the homes shall be placed at interest in some savings bank, and each child paid, when discharged, in proportion as his labor contributed to the fund. The

earnings of a child who is placed with others under contract shall be used, held, or otherwise applied for the exclusive benefit of said child. [C97,§2689; S13,§2690-d; C24, 27, 31, 35, 39,§3711; C46, 50, 54,§244.6]

**244.7 Regulations.** All children admitted or committed to the home shall be wards of the state and subject to the rules of the home. Subject to the approval of the board, any child received under voluntary application may be expelled by the superintendent for disobedience and refusal to submit to proper discipline. Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves. [C73,§1634; C97,§§2685, 2688; S13, §§2685, 2688, 2690-b; C24, 27, 31, 35, 39,§3712; C46, 50, 54,§244.7]

**244.8 Enumeration of soldiers' orphans.** The assessor in each odd-numbered year shall take an enumeration of the children of deceased soldiers who were in the military service of the government, naming the company or organization to which the soldiers belonged, with the age and sex of the children. The lists so returned shall be revised from time to time, as may be necessary, by the board of supervisors, and a record made of such action. [C73,§§1635-1637; C97,§2686; C24, 27, 31, 35, 39,§3713; C46, 50, 54,§244.8]

**244.9 Adoption.** Children in said homes may be adopted as provided in chapter 600. [C73,§1634; C97,§2690; S13,§2690-a; C24, 27, 31, §§3714, 3715; C35,§3715-g1; C39,§3715.1; C46, 50, 54,§244.9]

**244.10 Placing child under contract.** Any child received in said homes, unless adopted, may, under written contract approved by the board, be placed by the superintendent in the custody and care of any proper person or family. Such contract shall provide for the custody, care, education, maintenance, and earnings of the child for a fixed time which shall not extend beyond the age of majority.

Such contract shall be signed by the superintendent and by the person taking the child. [S13,§2690-b; C24, 27, 31, 35, 39,§3716; C46, 50, 54,§244.10]

**244.11 Recovery of possession.** In case of a violation of the terms of such contract, the board may cause the child to be taken from the person or persons with whom placed, and may make such other disposition of him as shall seem to be for his best interests. [S13, §2690-c; C24, 27, 31, 35, 39,§3717; C46, 50, 54, §244.11]

**244.12 Recovery of child—duty of county attorney.** In case legal proceedings are necessary to recover the possession of such child, they may be instituted and carried on in the name of the superintendent, and the county attorney of the county in which the child is placed shall, if requested by the superintendent, act as his attorney in the proceedings. [S13,§2690-c; C24, 27, 31, 35, 39,§3718; C46, 50, 54,§244.12]

**244.13 Interference with child.** It shall be unlawful for any parent or other person not a party to the placing of a child for a term of years, to interfere in any manner with or to assume or exercise any control over such child or his earnings while such contract is in force. [S13,§2690-d; C24, 27, 31, 35, 39,§3719; C46, 50, 54,§244.13]

**244.14 Counties liable.** Each county shall be liable for sums paid by the home in support of all its children, other than the children of soldiers, to the extent of a sum equal to one-half of the net cost of the support and maintenance of its children. The sums for which each county is so liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the county from the state institution fund at the same time state taxes are paid. [C97,§2692; SS15, §2692; C24, 27, 31, 35, 39,§3720; C46, 50, 54,§244.14]

Similar provisions, §§230.20, 230.21, 271.14

## CHAPTER 245

### WOMEN'S REFORMATORY

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**245.1 Objects.** The women's reformatory shall be maintained for the purpose of preparing the inmates to lead orderly and virtuous lives and to become self-supporting and useful

members of society, and to this end to instruct them in the common school and other branches of learning, in morality, physical culture, domestic science, mechanical arts, and

such other branches of industry as may be practicable. [SS15,§§2713-n1, n11; C24, 27, 31, 35, 39,§3723; C46, 50, 54,§245.1]

**245.2 Superintendent—salary.** The superintendent of the women's reformatory shall be a female and shall receive a salary as determined by the board of control. [SS15,§2713-n2; C24, 27, 31, 35, 39,§3724; C46, 50, 54,§245.2]

**245.3 Service required.** The superintendent may, with the approval of the board of control, require any inmate to perform any service suited to her strength and attainments and which may be needed for the benefit of the reformatory or for the welfare of such inmate. [SS15,§2713-n11; C24, 27, 31, 35, 39, §3725; C46, 50, 54,§245.3]

**245.4 Commitments generally.** All females over eighteen years of age, and married females under eighteen years of age, who are convicted in the district court of offenses punishable by imprisonment in excess of thirty days, shall, if imprisonment be imposed, be committed to the women's reformatory. [S13, §5718-a27; C24, 27, 31, 35, 39,§3726; C46, 50, 54, §245.4]

**245.5 Optional commitments for life.** Any unmarried female over ten and under eighteen years of age convicted of an offense punishable by life imprisonment may be committed either to the Iowa training school for girls or to the women's reformatory. [SS15,§2713-n7; C24, 27, 31, 35, 39,§3727; C46, 50, 54,§245.5]

**245.6 Commitment on appeal.** A female over eighteen years of age, convicted on appeal from a conviction of a nonindictable offense, may, if imprisonment be imposed, be committed to the women's reformatory for an indeterminate period not exceeding ninety days. [SS15,§2713-n8; C24, 27, 31, 35, 39,§3728; C46, 50, 54,§245.6]

**245.7 Term of commitments.** A female convicted of a felony shall not be detained in said reformatory under one commitment for a period longer than the maximum term of imprisonment provided by law for said felony. A female convicted of a crime less than felony shall not be detained therein longer than five years under one commitment. [SS15,§2713-n12; C24, 27, 31, 35, 39,§3729; C46, 50, 54,§245.7]

**245.8 Manner of committing females.** Females committed to said reformatory shall be taken thereto by some woman, or by some peace officer accompanied by some woman, appointed by the court. [SS15,§2713-n9; C24, 27, 31, 35, 39,§3730; C46, 50, 54,§245.8]

**245.9 Costs of commitment.** The costs and expenses allowed for taking females to the reformatory shall be the same as those allowed by law for taking girls to the training school, and shall be audited and paid in like manner by the counties from which they are sent. [SS15,§2713-n9; C24, 27, 31, 35, 39,§3731; C46, 50, 54,§245.9]

Costs of commitment, §337.11, subsections 10, 14

**245.10 Transfer of inmates—costs.** The board of control may transfer inmates from the said reformatory to the training school for girls, and from such training school to such reformatory, whenever such course will be conducive to the welfare of the institution or of the other inmates therein, or of the inmates so transferred. The costs of such transfer shall be paid from the funds of the institution from which the transfer is made. [SS15,§2713-n10; C24, 27, 31, 35, 39,§3732; C46, 50, 54,§245.10]

Referred to in §245.11

**245.11 Effect of transfer.** After a transfer to either institution is made, under section 245.10, the person transferred shall be subject to all the provisions of law and regulations of the institution to which she is transferred the same as though she had originally been committed thereto. [SS15,§2713-n10; C24, 27, 31, 35, 39,§3733; C46, 50, 54,§245.11]

**245.12 Transfer of insane.** The said board may cause any woman committed to said reformatory and suspected of being insane to be examined in the manner in which convicts in the penitentiary are examined in similar cases, and if such woman is found to be insane, said board may order such woman transferred to a state hospital for the insane where she shall thereafter be maintained and treated at the expense of the state until such time as she regains her sanity when she shall be returned to said reformatory. The cost of such transfer and return shall be paid as heretofore provided for other transfers. [C27, 31, 35,§3733-b1; C39, §3733.1; C46, 50, 54,§245.12]

Examination, §246.16

**245.13 Employment for discharged inmate.** It shall be the duty of the superintendent, so far as is practicable, to obtain for each inmate before she is paroled or discharged a home and suitable employment if they are not otherwise provided. [SS15,§2713-n14; C24, 27, 31, 35, 39, §3736; C46, 50, 54,§245.13]

**245.14 Clothing, transportation, and money.** The superintendent may, with the consent of the board, furnish a discharged or paroled inmate with proper clothing, and a receptacle therefor, and transportation to her place of employment, or home, or other place not more distant than the place of commitment, and a sum of money not exceeding twenty-five dollars. [SS15,§2713-n14; C24, 27, 31, 35, 39,§3737; C46, 50, 54,§245.14]

**245.15 Escape—reward.** Any inmate of said reformatory who shall escape therefrom may be arrested and returned to said reformatory, by an officer or employee thereof without any other authority than this chapter, and by any peace officer or other person on the request in writing of the superintendent or board of control. For the apprehension and delivery of any such inmate, the superintendent may offer a reward, not to exceed fifty dollars, to

be paid by the state in the same manner as provided for the payment of rewards for escaped convicts. [SS15,§2713-n15; C24, 27, 31, 35, 39,§3738; C46, 50, 54,§245.15]

Manner of payment, see §246.35

**245.16 Costs of returning inmate.** The costs attending the return of escaped or paroled inmates shall be paid from the funds of the institution. [SS15,§2713-n15; C24, 27, 31, 35, 39, §3739; C46, 50, 54,§245.16]

CHAPTER 246

PENITENTIARY AND MEN'S REFORMATORY

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**246.1 Duty of wardens.** The wardens of the penitentiary and of the men's reformatory shall live within the precincts of said institutions, respectively, and shall devote their entire time to the duties of their positions. [C51, §3128; R60,§5142; C73,§4748; C97,§5663; S13,§5663; C24, 27, 31, 35, 39,§3740; C46, 50, 54,§246.1]

**246.2 Salaries.** The warden, deputy warden, assistant deputy warden, chief clerk, chaplain, additional chaplain, physician, storekeeper, record clerk, and receiving officer of the penitentiary and men's reformatory shall receive such salaries as shall be determined by the board of control. [R60,§§5190, 5191, 5193; C73, §§4783, 4784; C97,§5716; SS15,§5716; C24, 27, 31, 35, 39,§3741; C46, 50, 54,§246.2]

**246.3 Salary of guards.** Captains, inspectors, turnkeys, guards first class, guards second class, and guards third class shall receive such compensation as shall be determined by the board of control and in addition shall receive a midshift meal when on duty. [R60, §5192; C73,§4783; C97,§5716; SS15,§5716; C24, 27, 31, 35, 39,§3742; C46, 50, 54,§246.3]

**246.4 Eight-hour day.** Eight hours shall constitute a day's work for the receiving clerk, record clerk, all captains, turnkeys, and guards, and all necessary time in excess there-

of shall be paid for at not less than pro rata pay. [C24, 27, 31, 35, 39,§3743; C46, 50, 54,§246.4]

**246.5 How salaries paid.** All salaries shall be paid out of any money in the state treasury not otherwise appropriated. [R60,§§5190-5193; C73,§§4783, 4784; C97,§5716; SS15,§5716; C24, 27, 31, 35, 39,§3744; C46, 50, 54,§246.5]

**246.6 Household and domestic service.** The wardens of the penitentiary and the men's reformatory shall be entitled to receive the labor of prisoners, not exceeding three at one time, for household and domestic service in their own families. [R60,§5168; C73,§4767; C97,§5717; SS15,§5717; C24, 27, 31, 35, 39,§3745; C46, 50, 54,§246.6]

**246.7 Dwellings.** Each deputy warden shall be furnished with a dwelling house by the board of control, or house rent, and also furnished with water, heat, ice, and lights, and domestic service in his family by not more than one prisoner at one time. [SS15,§5717; C24, 27, 31, 35, 39,§3746; C46, 50, 54,§246.7]

**246.8 Punishment and records thereof.** Disobedience by the convicts of the disciplinary rules of the institution shall be punished by the infliction of such penalties as are provided by law and the rules which are pre-



scribed for the government of said institution. The warden shall keep a register of all punishments inflicted on any convict, and the cause for which they were inflicted. [R60, §5179; C73, §4751; C97, §5666; C24, 27, 31, 35, 39, §3747; C46, 50, 54, §246.8]

**246.9 According prohibited privileges.** If any officer or other person employed in either of said institutions or its precincts, negligently suffer any convict confined therein to be at large without its precincts, or out of the cell or apartment assigned to him, or to be conversed with, relieved, or comforted contrary to law or the rules of the institution, he shall be punished by a fine not exceeding five hundred dollars. [C51, §3144; R60, §5157; C73, §4796; C97, §5694; C24, 27, 31, 35, 39, §3748; C46, 50, 54, §246.9]

**246.10 Failure to perform duty.** Any person required to perform any duty relative to either of said institutions who willfully fails to perform the same, shall be punished by a fine not exceeding one thousand dollars, and shall forfeit his office. Should such failure result in the escape of any of the convicts, or in loss of any of the funds appropriated to the use and benefit of the said institution, exceeding twenty dollars, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years. [R60, §5196; C73, §4805; C97, §5701; C24, 27, 31, 35, 39, §3749; C46, 50, 54, §246.10]

**246.11 Federal prisoners.** Convicts sentenced for any term at hard labor by any court of the United States may be received by the warden into the penitentiary or the men's reformatory and there kept in pursuance of their sentences. [C51, §3119; R60, §5138; C73, §4771; C97, §5676; C24, 27, 31, 35, 39, §3750; C46, 50, 54, §246.11]

**246.12 Transfers from penitentiary.** The board of control may transfer first term and promising prisoners from the penitentiary to unoccupied rooms in the men's reformatory whenever the number of inmates in the penitentiary exceeds the number of cells therein. It may also transfer to the men's reformatory other prisoners when satisfied that such transfer will be to the best interest of the institutions and of the prisoners. [S13, §5718-a10; C24, 27, 31, 35, 39, §3751; C46, 50, 54, §246.12]

**246.13 Permissive transfers.** The board of control may transfer prisoners from the men's reformatory to the penitentiary:

1. When the prisoner has been guilty of insubordination or of repeated violations of the rules of the reformatory.

2. When the prisoner is not a hopeful subject for reformatory treatment. [S13, §5718-a7; C24, 27, 31, 35, 39, §3752; C46, 50, 54, §246.13]

**246.14 Mandatory transfers.** Said board shall transfer a prisoner from the men's reformatory to the penitentiary when, after his

commitment to the reformatory, it is discovered that he is over thirty years of age, or that he has, prior to his last conviction, been convicted in any court of any felony; but such transfer shall not be made unless there are suitable accommodations at the penitentiary to care for such prisoner. [S13, §5718-a8; C24, 27, 31, 35, 39, §3753; C46, 50, 54, §246.14]

**246.15 Department for insane.** There shall be maintained in the men's reformatory a department in which all insane convicts shall be confined and treated. [SS15, §5709-a; C24, 27, 31, 35, 39, §3754; C46, 50, 54, §246.15]

**246.16 Transfer of insane.** When the said board has cause to believe that a prisoner in the penitentiary is insane, it shall cause such prisoner to be examined by one of the superintendents of the hospitals for the insane and if such prisoner be found to be insane, said board shall cause him to be transferred to the department for insane at the men's reformatory, where he shall be confined until the expiration of his sentence, or until pronounced sane, in which latter event he shall be returned to the penitentiary, or held in the reformatory until the expiration of his sentence. [SS15, §5709-b, e; C24, 27, 31, 35, 39, §3755; C46, 50, 54, §246.16]

Analogous provision, §245.12

**246.17 Discharge of insane.** When the board has reason to believe that a prisoner in the penitentiary or said reformatory, whose sentence has expired, is insane, it shall cause examination to be made of such prisoner by competent physicians who shall certify to the board whether such prisoner is sane or insane. The board may make further investigation and if satisfied that he is insane, it may cause him to be transferred to one of the hospitals for the insane, or may order him to be confined in the department for the insane at the reformatory. [C97, §5710; C24, 27, 31, 35, 39, §3756; C46, 50, 54, §246.17]

**246.18 Employment of prisoners — institutions and parks.** Prisoners in the penitentiary or men's reformatory shall be employed only on state account in the maintenance of the institutions, in the erection, repair, or operation of buildings and works used in connection with said institutions, and in such industries as may be established and maintained in connection therewith by the board of control. The board of control may detail prisoners, classed as trustees, from the state penitentiary or reformatory to perform services for the conservation commission within the state parks. The conservation commission shall provide proper supervision, housing and maintenance for said prisoners but the surveillance of said prisoners shall remain under employees of the board of control. [S13, §5702-a; SS15, §5718-a11; C24, 27, 31, 35, 39, §3757; C46, 50, 54, §246.18; 56GA, ch 124, §1]

**246.19 Erections or repairs at other institutions.** The board may temporarily detail, un-

der proper surveillance, trustworthy prisoners to perform services in the construction or repair of any work imposed on the board at any institution under their control. [C24, 27, 31, 35, 39,§3758; C46, 50, 54,§246.19]

**246.20** Repealed by 52GA, ch 140,§1.

**246.21 Price lists to public officials.** The board of control shall, from time to time, prepare classified and itemized price lists of articles and things manufactured at the state institutions controlled by it, and furnish such lists to all boards of supervisors, boards of school directors, city and town councils and commissions, township trustees, and all other departments and officials of the state, county, cities, and towns empowered to make purchase of supplies for public purposes. [C24, 27, 31, 35, 39,§3760; C46, 50, 54,§246.21]

**246.22** Repealed by 52GA, ch 140,§1.

**246.23 Purchase mandatory.** No articles or supplies so listed, except in case of emergency, shall be purchased for public use by the aforesaid public officials, bodies, and departments from any private source unless the board of control is unable to promptly furnish such articles or supplies. Any public officer who willfully refuses or willfully neglects to comply with this section shall be punished by a fine of not more than one hundred dollars. [C24, 27, 31, 35, 39,§3762; C46, 50, 54,§246.23]

**246.24 Selling price.** Such supplies, material, and articles manufactured by convict labor within the state shall be furnished by the board of control to the state, its institutions and political subdivisions, at a price not greater than that obtaining for similar products in the open market. [C24, 27, 31, 35, 39, §3763; C46, 50, 54,§246.24]

**246.25 Limitation on contract.** The board of control or the warden of the state penitentiary or the warden of the reformatory shall not, nor shall any other person employed by the state, make any contract by which the labor or time of any prisoner or inmate in such penitentiary or reformatory shall be contracted, let, farmed out, given, or sold to any person, firm, association, or corporation. [S13, §§2727-a51, 5718-a28a; C24, 27, 31, 35, 39,§3764; C46, 50, 54,§246.25]

**246.26 Industry revolving funds.** There shall be created and established at the state penitentiary at Fort Madison and also at the state reformatory at Anamosa, respectively, an establishing and maintaining industries revolving fund, which fund shall be permanent and composed of the receipts from the sales of articles and products manufactured and produced, from the sale of obsolete and discarded property belonging to the various industrial departments, and from the funds now in the establishing and maintaining industry funds for each of said institutions. [C27, 31, 35,§3764-b1; C39,§3764.1; C46, 50, 54,§246.26]

Referred to in §§246.27, 246.28

**246.27 Use of funds.** The funds created and described in section 246.26 shall be used only for establishing and maintaining industries for the employment of the inmates at the respective institutions named, and payments from said funds shall be made in the same manner as are payments from the appropriations, salaries, support and maintenance of the institutions under the jurisdiction of the board of control. [C27, 31, 35,§3764-b2; C39,§3764.2; C46, 50, 54,§246.27]

Referred to in §246.28

**246.28 Funds permanent.** The funds provided in sections 246.26 and 246.27 shall not revert to the general fund at the end of any annual or biennial period. [C27, 31, 35,§3764-b3; C39,§3764.3; C46, 50, 54,§246.28]

**246.29 and 246.30** Repealed by 52GA, ch 140, §3.

**246.31 Hard labor and solitary imprisonment.** All commitments to either of said institutions must be at hard labor. Solitary imprisonment of prisoners shall not be employed except for the purpose of discipline. [C51, §3118; R60,§5137; C73,§4770; C97,§5675; C24, 27, 31, 35, 39,§3767; C46, 50, 54,§246.31]

**246.32 Enforcing obedience to orders.** Any officer of said institutions and his assistants shall, in case a prisoner resists his lawful authority, or refuses to obey his lawful command, enforce immediate obedience by the use of such weapons or other aids as may be effectual, and if, in so doing, such convict is wounded or killed, such officer and his assistants shall be justified. [C51,§3145; R60,§5158; C73,§4797; C97,§5695; C24, 27, 31, 35, 39,§3768; C46, 50, 54,§246.32]

**246.33 Insurrection.** Every officer and citizen of the state within reach shall, by every means within their power, suppress and aid in suppressing any insurrection among the convicts in said institutions, and prevent and aid in preventing the escape or rescue of any convict therefrom, or from any legal confinement, or from any person in whose custody a convict may be. If in the performance of this duty or in arresting or assisting to arrest a convict who has escaped or been rescued, such officer or person wound or kill the convict, or a person aiding or assisting him, the same shall be held justifiable. [C51,§3146; R60, §5159; C73,§4798; C97,§5696; C24, 27, 31, 35, 39, §3769; C46, 50, 54,§246.33]

**246.34 Escape of prisoner.** If a convict escapes from the penitentiary or the men's reformatory, the warden shall take all proper measures for his apprehension; and for that purpose he may offer a reward, not exceeding fifty dollars, to be paid by the state, for the apprehension and delivery of such convict. [C51,§3147; R60,§5160; C73,§4776; C97,§5681; C24, 27, 31, 35, 39,§3770; C46, 50, 54,§246.34]

**246.35 Payment of reward—appropriation.** The state comptroller shall issue warrants in

payment of such reward upon filing of vouchers. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, a sum sufficient for the payment of such claims. [C27, 31, 35, §3770-a1; C39, §3770.1; C46, 50, 54, §246.35]

**246.36 Classification of prisoners.** The wardens shall, so far as practicable, prevent prisoners under eighteen years of age from associating with other prisoners. [C97, §5693; C24, 27, 31, 35, 39, §3771; C46, 50, 54, §246.36]

**246.37 Property of convict.** The warden shall receive and care for any property any convict may have on his person upon entering, and, if convenient, place the same, if money, at interest for the owner's use, keeping an account thereof, and on the discharge of the convict, return, and if money, repay the same with the interest so earned, to him or his legal representatives, unless in the meantime it has been previously disposed of according to law. [C51, §3149; R60, §5162; C73, §4778; C97, §5683; C24, 27, 31, 35, 39, §3772; C46, 50, 54, §246.37]

**246.38 Time to be served.** No convict shall be discharged from the penitentiary or the men's reformatory until he has served the full term for which he was sentenced, less good time earned and not forfeited, unless he be pardoned or otherwise legally released. He shall be deemed to be serving his sentence from the day on which he is received into the institution, but not while in solitary confinement for violation of the rules of the institution. [C51, §3148; R60, §5161; C73, §4777; C97, §5682; C24, 27, 31, 35, 39, §3773; C46, 50, 54, §246.38]

**246.39 Reduction of sentence.** Each prisoner who shall have no infraction of the rules of discipline of the penitentiary or the men's or women's reformatory or laws of the state, recorded against him, and who performs in a faithful manner the duties assigned to him, shall be entitled to a reduction of sentence as follows, and if the sentence be for less than a year, then the pro rata part thereof:

1. On the first year, one month.
  2. On the second year, two months.
  3. On the third year, three months.
  4. On the fourth year, four months.
  5. On the fifth year, five months.
  6. On each year subsequent to the fifth year, six months.
- [C97, §5703; C24, 27, 31, 35, 39, §3774; C46, 50, 54, §246.39]

**246.40 Records of prisoners.** The board of control shall cause to be kept at each of said institutions the following permanent records:

1. A record of each infraction, by a prisoner, of the published rules of discipline.
2. Such other records for the use of the board of parole as may be approved by the executive council. [C97, §5703; S13, §5718-a12; C24, 27, 31, 35, 39, §3775; C46, 50, 54, §246.40]

**246.41 Forfeiture of reduction.** A prisoner who violates any of such rules shall forfeit the reduction of sentence earned by him, as follows:

1. For the first violation, two days.
2. For the second violation, four days.
3. For the third violation, eight days.
4. For the fourth violation, sixteen days and, in addition, whatever number of days more than one that he is in punishment.

5. For the fifth and each subsequent violation, or for an escape, or attempt to escape, the warden shall have the power, with the approval of the board of control, to deprive the prisoner of any portion or all of the good time that the convict may have earned, but not less than as provided for the fourth offense. [C97, §5704; C24, 27, 31, 35, 39, §3776; C46, 50, 54, §246.41]

**246.42 Separate sentences.** When a convict is committed under several convictions with separate sentences, they shall be construed as one continuous sentence in the granting or forfeiting of good time. [C97, §5705; C24, 27, 31, 35, 39, §3777; C46, 50, 54, §246.42]

**246.43 Special reduction.** Any prisoner in either of said institutions who may be employed in any service outside the walls of the institution, or who may be listed as a trusty, may, with the approval of the board of control, be granted a special reduction of sentence, in addition to the reduction heretofore authorized, at the rate of ten days for each month so served. [SS15, §5718-a11b; C24, 27, 31, 35, 39, §3778; C46, 50, 54, §246.43]

**246.44 Discharge — transportation, clothing, and money.** When a prisoner is discharged the warden shall furnish him, at the expense of the state, with a railroad ticket to the point in the state nearest his home or to any point of a like distance without the state, a suit of common clothing, and not more than twenty-five dollars, an account of which shall be kept by the warden. [C51, §3150; R60, §5163; C73, §4779; C97, §5684; C24, 27, 31, 35, 39, §3779; C46, 50, 54, §246.44]

Analogous provision, §247.16

**246.45 Visitors — admission fee.** The wardens shall charge each adult visitor to the institution an admission fee of twenty-five cents, of which he shall render an account each month to the board of control. The board shall cause said fund to be expended for the benefit of the prisoners in the purchase of furnishings for a library, reading matter therein, and musical instruments and entertainments for the prisoners. This section shall not apply to state officers, and others exempt by law, nor to relatives of a prisoner. [C51, §3151; R60, §5164; C73, §4780; C97, §5685; S13, §5685-a; C24, 27, 31, 35, 39, §3780; C46, 50, 54, §246.45]

**246.46 Who may visit.** The following persons are authorized to visit said institutions at

pleasure: The governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, members of the general assembly, judges of the supreme, district, superior, and municipal courts, county attorneys, and

all regular officiating ministers of the gospel. No other person shall be granted admission except by permission of the warden. [C51, §3152; R60,§5165; C73,§4781; C97,§5686; C24, 27, 31, 35, 39,§3781; C46, 50, 54,§246.46]

CHAPTER 247

PAROLES

Referred to in §248.1

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**247.1 Qualifications—term—vacancy—chair-  
man.** The board of parole shall consist of three electors of the state. Not more than two members shall belong to the same political party. One member shall be a practicing attorney at law at the time of his appointment. Each member shall serve for six years from July 1 of the year of his appointment, except appointees to fill vacancies who shall serve for the balance of the unexpired term. The chairman of the board shall be the member whose term first expires. [S13,§5718-a14; C24, 27, 31, 35, 39,§3782; C46, 50, 54,§247.1]

**247.2 Appointment—vacancies.** The governor shall, during each regular session of the general assembly and within sixty days after the convening thereof, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to that member of the board whose term will expire on July 1 following. Appointments may be made when the general assembly is not in session, to fill vacancies, but such appointments shall be subject to the approval of two-thirds of the members of the senate in executive session when next in session. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S13,§5718-a14; C24, 27, 31, 35, 39,§3783; C46, 50, 54,§247.2]

Confirmation, §2.40

**247.3 Expenses.** Each member of the board, the secretary, and all other employees shall,

in addition to salary, be entitled to receive their necessary traveling expenses by the nearest traveled route while engaged in official business. [S13,§5718-a16; C24, 27, 31, 35, 39, §3784; C46, 50, 54,§247.3]

**247.4 Trips to other states.** No traveling expenses to other states shall be allowed unless the trip is authorized by the board by a written resolution which shall state the purpose and declare the necessity for the trip prior to the actual making thereof, but emergency trips may be made on written order of the chairman which shall be reported to the board at its next meeting. [S13,§5718-a16; C24, 27, 31, 35, 39, §3785; C46, 50, 54,§247.4]

**247.5 Power to parole after commitment—  
detainers.** The board of parole shall, except as to prisoners serving life terms, or under sentence of death, or infected with venereal disease in communicable stage, have power to parole persons convicted of crime and committed to either the penitentiary or the men's or women's reformatory; provided, however, after any person has served fifteen years of a life term, the board of parole shall review the case and interview personally all such persons and make such recommendations as they see fit to the governor, and shall make similar interviews in each such case at least every three years thereafter.

The parole may be to a place outside the state when the board of parole shall determine it to be to the best interest of the state and the prisoner, under such rules and regulations as the board of parole may impose.

Prisoners against whom detainers have been filed, may, after serving a portion of their sentence, be released by parole to the institution or authorities filing the detainer.

Any detainer filed against a prisoner must within six months be supported by a grand jury indictment or county attorney's information. In the event such indictment is returned or information is filed, the prisoner shall have the right to demand immediate trial at the next term of court where the charge is filed. The prosecuting agency shall pay all costs of transportation, necessary expenses incurred by the prisoner and such guards and other safety measures as the warden shall deem necessary for the prisoner to appear at his trial.

In the event a detainer is not supported within six months by a county attorney's information or grand jury indictment, or in the event the prosecuting agency refuses or fails to give the prisoner immediate trial, or refuses or fails to furnish transportation and pay all other necessary and related costs incident to the prisoner appearing at his trial, the detainer shall be held to be invalid and the parole board shall disregard such detainer in considering a prisoner for parole. [S13,§5718-a18; C24, 27, 31, 35, 39,§3786; C46, 50, 54,§247.5; 56GA, ch 125,§1; 57GA, ch 117,§1]

**247.6 Rules.** Said board shall have power to establish and enforce the rules and conditions under which paroles may be granted. [S13,§5718-a18; C24, 27, 31, 35, 39,§3787; C46, 50, 54,§247.6]

**247.7 Parole before commitment.** Said board may, on the recommendation of the trial judge and prosecuting attorney, and when it appears that the good of society will not suffer thereby, parole, after sentence for less than life imprisonment and before commitment, prisoners who have not been previously convicted of a felony. [S13,§5718-a18; C24, 27, 31, 35, 39, §3788; C46, 50, 54,§247.7]

**247.8 Employment for paroled prisoners.** No person shall be released on parole until the board of parole shall have satisfactory evidence that arrangements have been made for his employment or maintenance. Said board may render assistance to prisoners about to be paroled in procuring employment and the necessary expense incident thereto shall be paid as other expenses of the board are paid. [S13, §§5718-a18, a26; C24, 27, 31, 35, 39,§3789; C46, 50, 54,§247.8; 57GA, ch 118,§1]

**247.9 Legal custody of paroled prisoners.** All paroled prisoners shall remain, while on parole, in the legal custody of the warden or superintendent and under the control of said board, and shall be subject, at any time, to be taken into custody and returned to the institution from which they were paroled.

During such time as the United States is at war the board of parole may relinquish the

legal custody of a paroled prisoner to a military or naval authority for the period of service by the prisoner in the armed forces of the United States. [S13,§5718-a18; C24, 27, 31, 35, 39,§3790; C46, 50, 54,§247.9]

**247.10 Reciprocal agreements with other states.** The governor of the state of Iowa is hereby authorized and empowered to enter into compacts and agreements with other states, through their duly constituted authorities, in reference to reciprocal supervision of persons on parole or probation and for the reciprocal return of such persons to the contracting states for violation of the terms of their parole or probation. [C39,§3790.1; C46, 50, 54,§247.10]

**247.11 Order for recommitment—fees.** The written order of said board, certified to by the secretary of said board, that a prisoner on parole shall be taken into custody and returned to the institution from which paroled, shall be served by any peace officer or other person to whom it may be delivered for service, and such officer or person shall receive the same fees for serving such order as sheriffs receive for like service. [S13,§5718-a18; C24, 27, 31, 35, 39, §3791; C46, 50, 54,§247.11]

Fees, §337.11

**247.12 Parole time not counted.** The time when a prisoner is on parole or absent from the institution shall not be held to apply upon the sentence against the parolee if the parole be violated. [S13,§5718-a18; C24, 27, 31, 35, 39, §3792; C46, 50, 54,§247.12]

**247.13 Investigations.** Said board shall have power to make any investigation which it may deem necessary in order to determine the facts relative to matters coming before it, but shall not receive, unsolicited by them, any petition or communication or argument in regard to application for parole, pardon, or discharge unless provided for in their adopted rules. Every public officer to whom inquiry may be addressed by the board of parole concerning any prisoner shall give said board all information possessed by or accessible to him which may throw light upon the question of the fitness of a prisoner to receive the benefits of parole. [S13,§§5718-a19, a26; C24, 27, 31, 35, 39, §3793; C46, 50, 54,§247.13]

**247.14 Duty of clerk of district court.** The clerk of the district court shall, as to each commitment to said institutions, furnish the board of parole with a copy of the indictment, the minutes of testimony attached thereto, the name and residence of the trial judge, of the prosecuting attorneys, and of the jurors and witnesses sworn at the trial. [S13,§5718-a25; C24, 27, 31, 35, 39,§3794; C46, 50, 54,§247.14]

**247.15 Duty of trial judge and prosecutor.** The trial judge and the prosecuting attorney shall, when requested by the board, furnish it with a full statement of the facts and circum-

stances attending the commission of the offense so far as known or believed by them. [S13,§5718-a25; C24, 27, 31, 35, 39,§3795; C46, 50, 54,§247.15]

**247.16 Clothing, transportation, and money.** When a prisoner is paroled, he shall be furnished, by the warden, with such clothing, transportation, and money as is provided for prisoners when discharged at the termination of their sentence, but no further allowance shall be made if final discharge is granted while on parole. [S13,§5718-a22; C24, 27, 31, 35, 39,§3796; C46, 50, 54,§247.16]

Analogous provision, §246.44

**247.17 Parole relief fund.** There is hereby established, from any unappropriated funds in the state treasury, a fund of twelve hundred fifty dollars which shall be known as the parole relief fund. The treasurer of state shall continue to maintain said fund in said amount. [C24, 27, 31, 35, 39,§3797; C46, 50, 54,§247.17]

**247.18 Disbursement and repayment.** Said fund may be used for the relief of paroled prisoners who are in distress because of illness, loss of employment, or conditions creating personal need. In no instance shall the total amount advanced to a prisoner exceed twenty-five dollars. The prisoner, at the time of receiving an advancement, shall execute and deliver to the board his written obligation to repay the same during the period of the parole. When so paid, the amount shall be deposited with the treasurer of state and credited to the fund from which drawn. [C24, 27, 31, 35, 39, §3798; C46, 50, 54,§247.18]

**247.19 Vouchers.** Said fund shall be drawn on vouchers executed by the chairman and secretary of the board in favor of said needy person. Each voucher shall show that the advancement was ordered by said board. [C24, 27, 31, 35, 39,§3799; C46, 50, 54,§247.19]

**247.20 Parole by court.** The trial court before which a person has been convicted of any crime except treason, murder, rape, robbery, arson, second or subsequent violation of any provision of title VI, or of the laws amendatory thereof, may, by record entry, suspend the sentence and parole said person during good behavior for such period as the court may set. Upon expiration of such period the court may grant such paroled person a final discharge from the sentence:

1. If said person has not previously served time in a state penitentiary or a reformatory.
2. If said person is shown to be free from venereal disease.

3. If said person, if an adult and able to labor, has obtained apparently permanent employment for a reasonable time. [S13,§5447-a; C24, 27, 31, 35, 39,§3800; C46, 50, 54,§247.20; 57GA, ch 119,§§1, 2]

Referred to in §§247.21, 321.218

**247.21 Custody of court parolee—record to board.** When a parole is granted under section

247.20, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident of this state; or
2. Of the board of parole. The board of parole shall not, however, accept the custody, care and supervision of any person paroled from a sentence to a term in a county jail.

In each case wherein the court shall order said person committed to the custody, care, and supervision of the board of parole, the clerk of the district court shall at once furnish the board of parole with certified copies of the indictment or information, the minutes of testimony attached thereto, the judgment entry, the original mittimus. The county attorney shall at once advise the board of parole, by letter, that the defendant has been placed under the board's supervision and give to the board a detailed statement of the facts and circumstances surrounding the crime committed and the record and history of the defendant as may be known to him. If the defendant is confined in the county jail at the time of sentence, the court may order him so held until arrangements are made by the board of parole for his employment and he will have signed the necessary parole papers. If the defendant is not confined in the county jail at the time of sentence, the court may order him to remain in the county wherein he has been convicted and sentenced and report to the sheriff as to his whereabouts. [S13,§5447-a; C24, 27, 31, 35, 39, §3801; C46, 50, 54,§247.21]

**247.22 Powers of board.** The board of parole shall have and exercise over said parolee all the powers possessed by said board over prisoners paroled by it. [C24, 27, 31, 35, 39, §3802; C46, 50, 54,§247.22]

**247.23 Expense.** Any necessary expense contracted by the board in the care of a person committed to it under a parole by the court shall be paid from the appropriation for the general expenditures of said board, except costs connected with the delivery of a person so paroled to the institution to which sentenced upon revocation of the parole. [C24, 27, 31, 35, 39,§3803; C46, 50, 54,§247.23]

**247.24 Parole agent as peace officer.** Any agent or investigator appointed by the board of parole for the purpose of making investigations and of apprehending and returning paroled persons under the jurisdiction of the board to any institution, shall, while engaged in such duty or work, have all the powers of peace officers. [C31, 35,§3803-c1; C39,§3803.1; C46, 50, 54,§247.24]

**247.25 Report by custodian.** The person having the custody of such paroled person under order of court, shall, each thirty days, or oftener if required by the court, make written report to the judge as to the conduct of such paroled person. [S13,§5447-a; C24, 27, 31, 35, 39,§3804; C46, 50, 54,§247.25]

**247.26 Revocation of parole.** A suspension of a sentence by the court as herein provided

may be revoked at any time, without notice, by the court or judge, and the defendant committed in obedience to such judgment. [S13, §5447-b; C24, 27, 31, 35, 39, §3805; C46, 50, 54, §247.26]

**247.27 Violation of court parole.** If the suspended sentence be an order for commitment to the training school, the fact that the defendant first violated his or her parole after reaching the age of eighteen years, and before reaching the age of twenty-one years, shall not prevent the enforcement of such sentence. [C24, 27, 31, 35, 39, §3806; C46, 50, 54, §247.27]

**247.28 Violation of board parole.** Whoever, while on parole, shall violate any condition of his parole, or any rule or regulation of the board granting the parole, shall be deemed guilty of a felony, and shall be punished by imprisonment in the institution from which he had been paroled, for a term of not more than five years, his sentence under such conviction to take effect upon the completion of his previous sentence. [C24, 27, 31, 35, 39, §3807; C46, 50, 54, §247.28]

**247.29 Criminal statistics.** The clerk of the district court shall, on or before July 15 each year, report to the board of parole:

1. The number of convictions of all offenses in that court, in his county, for the year ending June 30 preceding, the character of each offense, the sentence imposed, occupation of the offender, and whether such offender can read or write.

2. Number of acquittals.

3. Number of dismissals by the court without trial, and the nature of the charges so dismissed.

4. The expenses of the county for criminal prosecutions during said year. [C51, §148; R60, §349; C73, §203; C97, §293; S13, §293; C24, 27, 31, 35, 39, §3808; C46, 50, 54, §247.29]

Referred to in §247.30

**247.30 Itemization of statistics.** The fourth item required by section 247.29 shall be itemized as follows:

1. Jury fees in criminal cases.

2. Meals for jurors in criminal cases.

3. Bailiff's fee for service while attending criminal cases.

4. Expense of taking prisoners to prison.

5. Attorney fees under appointment to defend.

6. Grand jury fees.

7. Witness fees paid in criminal cases.

8. Reporters' fees for reporting and transcribing testimony in criminal cases at expense of county.

9. Grand jury witness fees paid.

10. Compensation to clerk of grand jury.

11. Compensation to bailiff of grand jury.

12. Fees and expenses paid sheriff and other officers by the county in connection with the grand jury.

13. Expense of jail, not including board of prisoners.

14. Board of prisoners.

15. Compensation and expense of county attorney and his assistants in criminal cases.

16. All jurors' fees, jurors' meals, witness fees, constables' fees, and justice fees paid by the county in all criminal cases before a justice of the peace, magistrate, or police court. [C51, §148; R60, §349; C73, §203; C97, §293; S13, §293; C24, 27, 31, 35, 39, §3809; C46, 50, 54, §247.30]

**247.31 Auditor to report statistics to clerk.** The county auditor shall report to the clerk of the district court, on or before July 5 of each year, the expenses of the county in criminal prosecutions during the year ending June 30 preceding, including but distinguishing the compensation of the county attorney. Such report shall include all the items of criminal expenses which appear in the records of his office and which are required to be reported by the clerk of the district court to the board of parole. The clerk of the district court shall furnish to the auditor the blanks to be used in making such report. [C97, §475; S13, §475; C24, 27, 31, 35, 39, §3810; C46, 50, 54, §247.31]

**247.32 Biennial report.** The board of parole shall, biennially, at the time provided by law, report to the governor a summary of paroles granted and releases recommended, the names of all prisoners who have violated their paroles, and such other information concerning its operation as may be deemed advisable, including an abstract for each year of the returns relative to criminal matters. [C24, 27, 31, 35, 39, §3811; C46, 50, 54, §247.32]

Time of filing report, §17.3

## CHAPTER 248

PARDONS, COMMUTATIONS, REMISSION OF FINES AND FORFEITURES,  
AND RESTORATION TO CITIZENSHIP

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**248.1 Reprieves and pardons.** Nothing in chapter 247 shall be construed as impairing the power of the governor under the constitution, to grant a reprieve, pardon, or commutation of sentence in any case. [S13,§5718-a21; C24, 27, 31, 35, 39,§3812; C46, 50, 54,§248.1]

**248.2 Pardon.** A person whose sentence has been suspended may be pardoned by the governor at any time after such suspension on such conditions as he may think proper. [S13, §5447-a; C24, 27, 31, 35, 39,§3813; C46, 50, 54, §248.2]

**248.3 Recommendation for pardon.** The board of parole shall recommend to the governor the discharge or pardon of such prisoners committed to the penitentiary or the men's or women's reformatory as have acceptably served not less than twelve months of their parole and who have, by their conduct, given satisfactory evidence that they will continue to be law-abiding citizens. [S13,§5718-a20; C24, 27, 31, 35, 39,§3814; C46, 50, 54,§248.3]

**248.4 Soldiers, sailors, and marines.** Said board shall also recommend to the governor the pardon of a paroled prisoner who, during parole, and during any war, entered the military, naval, or nursing service of the United States or of any of the countries with which the United States may have been allied or associated in such war, and who has been honorably discharged from such service or who has died in such service. [C24, 27, 31, 35, 39, §3815; C46, 50, 54,§248.4]

**248.5 Record.** All recommendations of the board shall be entered in the proper records of the board. [S13,§5718-a20; C24, 27, 31, 35, 39, §3816; C46, 50, 54,§248.5]

**248.6 Conditions prerequisite to a pardon.** After conviction for a felony, no pardon or commutation of sentence shall be granted by the governor until he shall have presented the matter to, and obtained the advice of, the board of parole, but he may commute a death sentence to imprisonment in the penitentiary for life, without making such reference or obtaining such advice. [C51,§§3278, 3281; R60, §5116; C73,§4712; C97,§5626; S13,§5626; C24, 27, 31, 35, 39,§3817; C46, 50, 54,§248.6]

**248.7 Publication.** Before presenting an application for pardon to the board for its action, where the sentence is death or imprisonment for life, the governor shall cause a notice containing the reasons assigned for granting the pardon to be published in two newspapers of general circulation, one of which shall be published at the capital and the other in the county where the conviction was had, once each week for four successive weeks, the last publication to be at least twenty days prior to the time of presenting such application to such board. [C73,§4712; C97,§5626; S13,§5626; C24, 27, 31, 35, 39,§3818; C46, 50, 54,§248.7]

**248.8 Investigation.** The board shall, under the direction of the governor, take charge of all correspondence in reference to the pardon of persons convicted of crimes and carefully investigate each application, and file its recommendation with the governor with its reasons for the same. [S13,§5718-a23; C24, 27, 31, 35, 39, §3819; C46, 50, 54,§248.8]

**248.9 Information relative to applications.** When an application is made to the governor for a pardon, reprieve, or commutation, or for the remission of a fine or forfeiture, he may require the judge of the court, or the county attorney or attorney general by whom the action was prosecuted, or the clerk of such court, to furnish him without delay a copy of the minutes of the evidence taken on the trial, and of any other facts having reference to the propriety of his exercise of his powers in the premises. [R60,§5120; C73,§4713; C97,§5627; C24, 27, 31, 35, 39,§3820; C46, 50, 54,§248.9]

**248.10 Governor may take testimony.** The governor may also take such testimony, bearing upon applications, as he may deem advisable. Any person who, in giving such testimony, swears falsely, and any person who shall knowingly and corruptly make any false statements in an affidavit intended to be used in connection with an application for pardon, or for remission of fine or forfeiture, shall be guilty of perjury, and be punished accordingly. [R60,§5120; C73,§4713; C97,§5627; C24, 27, 31, 35, 39,§3821; C46, 50, 54,§248.10]

Perjury, §721.1

**248.11 Files in matters of pardon.** All papers and documents relating to the pardon



of any person shall, upon the granting of such pardon, become a part of the files of the governor's office. [S13,§5718-a20; C24, 27, 31, 35, 39, §3822; C46, 50, 54,§248.11]

**248.12 Restoration to citizenship.** The governor shall have the right to grant any convict, whom he shall think worthy thereof, a certificate of restoration to all his rights of citizenship. The warden or superintendent, upon request of the governor, shall, in case of application for such restoration, furnish him with a statement of the convict's deportment during his imprisonment, and may at all times make such recommendations to the governor as he shall think proper respecting such restoration. [C97,§5706; C24, 27, 31, 35, 39,§3823; C46, 50, 54,§248.12]

**248.13 Fines and forfeitures.** The governor shall have power to remit fines and forfeitures upon such conditions as he may think proper. [C51,§3280; R60,§5116; C73,§4712; C97,§5626; S13, §5626; C24, 27, 31, 35, 39,§3824; C46, 50, 54, §248.13]

**248.14 Copies of pardons, reprieves, and other papers.** Pardons, commutations of sentences, remissions of fines and forfeitures, and restorations of rights of citizenship shall, when issued, be in duplicate. Reprieves shall be in triplicate. [C24, 27, 31, 35, 39,§3825; C46, 50, 54, §248.14]

**248.15 Copies when accused in custody.** Pardons, reprieves, and commutations of sentences

shall be forwarded to the officer having custody of the party in question. Said officer shall retain one copy and make record in the books of his office, and act in accordance therewith. On one copy, said officer shall make such written return as the governor may require, and forward said copy and return to the clerk of the court wherein the judgment is of record. In case of reprieves, the third copy shall, in all cases, be delivered to the person whose sentence is reprieved. [C51,§3279; R60,§5121; C73, §4714; C97,§5628; S13,§5718-a20; C24, 27, 31, 35, 39,§3826; C46, 50, 54,§248.15]

**248.16 Copies when accused not in custody.** In case the party in question is not in custody, and in case of remissions of fines and forfeitures and restorations of rights of citizenship, one copy shall be delivered to said party and one copy to the clerk aforesaid. [C51,§3279; R60, §5121; C73,§4714; C97,§5628; S13,§5718-a20; C24, 27, 31, 35, 39,§3827; C46, 50, 54,§248.16]

**248.17 Duty of clerk.** Said clerk shall, upon receipt of any of said executive instruments, immediately file and preserve the same in his office and note such filing on the judgment docket of the case in question, except that remissions of fines and forfeitures shall be spread at length on the record books of the court, and indexed in the same manner as the original case. [C51,§3279; R60,§5121; C73,§4714; C97,§5628; C24, 27, 31, 35, 39,§3828; C46, 50, 54, §248.17]

## CHAPTER 249

### OLD-AGE ASSISTANCE

Referred to in §§78.2, 142.1, 239.10, 241.25, 425.2. Social welfare department, see ch 234

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**249.1 Definitions.** When used herein.

1. The term "state department" shall mean the state department of social welfare created by chapter 234.

2. The term "state board" shall mean the state board of social welfare created by chapter 234.

3. The term "board" and "county board" shall mean the county board of social welfare created by chapter 234.

4. The term "investigator" shall mean the employee of the county board of social welfare assigned to perform the duties specified under the provisions of this chapter.

5. The term "domicile" shall mean the fixed permanent residence of the applicant or recipient of old-age assistance, to which, when absent, he has the intention of returning.

6. The term "residence" shall mean the place of dwelling of the applicant or recipient of old-age assistance, whether permanent or temporary, and such dwelling place may or may not be the domicile of such person.

7. The term "income" shall mean that gain, or recurrent benefit, or both, accruing to the applicant for or the recipient of old-age assistance because of his own labor, business or property or because of the reasonable legal or contractual liability of another person, trustee, or legal entity, or gratuity received from whatever source, whether in the form of money, goods or services of whatever nature and from whatever source, upon which a monetary value can be placed.

8. The term "property" shall mean those things in which a person has legal title or owns, whether in lands, goods, investments, stocks, bonds, securities, notes, money or money on deposit, insurance on his life, or intangible rights such as patents, copyrights, or anything of value which may be alienated.

9. The term "assistance" shall mean money payments to, or in behalf of, a needy, aged person.

10. The term "recipient" shall mean a needy, aged person who has been approved for assistance.

11. The singular shall include the plural and the masculine shall include the feminine. [C35, §5296-f1; C39, §3828.001; C46, 50, 54, §249.1; 57GA, ch 116, §4]

**249.2 Powers and duties of the state board.** The state board shall be the responsible authority for the efficient and impartial administration of this chapter. To this end the state board shall formulate and make such rules and regulations, outline such policies, dictate such procedures and delegate such powers as may be necessary to carry out the provisions and purposes of this chapter.

The state board shall:

1. Co-operate with the federal social security board, created by title VII of the social security act, Public No. 271, enacted by the 74th congress of the United States and approved August

14, 1935, in such reasonable manner as may be necessary to qualify for federal aid for old-age assistance, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as said federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint aged persons and the public generally with the old-age assistance system of this state.

3. Fix the salaries of the personnel of the department. [C35, §5296-f4, -f36; C39, §3828.003; C46, 50, 54, §249.2]

**249.3 Party officials barred.** No person who is a precinct, county or state committeeman of any political party shall be eligible to be appointed to any office or to hold any position provided for under any of the provisions of this chapter during the time he shall hold such office, and any person appointed or employed under the provisions of this chapter who becomes a precinct, county or state committeeman of any political party shall be disqualified from the further holding of any position created under the provisions of this chapter and shall be forthwith removed from such position. [C39, §3828.004; C46, 50, 54, §249.3]

**249.4 Old-age assistance investigators.** The county board shall employ one or more old-age assistance investigators whose duty shall be to make such investigations or reinvestigations as are necessary to furnish the information required by the county board and the state department, and in such manner and form as may be prescribed in the rules and regulations of the state board relating to the state department. [C35, §5296-f7; C39, §3828.006; C46, 50, 54, §249.4]

**249.5 Persons entitled to assistance.** Subject to the provisions and under the restrictions contained in this chapter, every aged person who has not an income of three hundred dollars a year, while residing in the state, shall be entitled to assistance in old age. [C35, §5296-f9; C39, §3828.007; C46, 50, 54, §249.5]

**249.6 To whom granted.** Old-age assistance may be granted and paid only to a person who:

1. Has residence or domicile in the state of Iowa.

2. Has attained the age of sixty-five years.

3. Is a citizen of the United States or has been a continuous resident of the United States for at least twenty-five years.

4. Has a domicile in this state and has had such domicile continuously for at least nine years immediately preceding the date of application, but such domicile shall not be deemed continuous if interrupted by periods of absence totaling more than four years, except as otherwise provided elsewhere in this chapter; or has had at least five years residence in the state

during the nine years immediately preceding the date of application, one of said five years having been continuous and immediately preceding such date. Furthermore, absence from the state in the service of the state or the United States shall not be deemed to have interrupted such continuous residence, if domicile has not been acquired outside the state.

5. Is not at the date of making claim or receiving assistance, an inmate of any prison, jail, insane asylum, or any other public reform or correctional institution.

6. Has not deserted his wife, if a husband, or, without just cause failed to support her and his children under the age of fifteen years, for a period of six months or more during the ten years preceding the date of application; has not deserted her husband, if a wife, or without just cause failed to support such of her children as were under the age of fifteen years, during the period set out above.

7. Has no spouse, child, other person, municipality, association, society or corporation legally or contractually responsible under the law of this state and found by the state department able to support him.

8. Is found by the state department to be unable regularly to earn an income of at least three hundred dollars a year, on account of age, infirmity or inability to procure suitable employment.

9. Is not, because of physical or mental condition, in need of continued institutional care, and such care is reasonably available to him in one of the institutions provided by the United States, the state of Iowa, or one of its political subdivisions. [C35,§5296-f12; C39,§3828.008; C46, 50, 54,§249.6]

Referred to in §249.25  
Child's liability, §§249.26, 249.27

**249.7 Amount of assistance.** The amount of assistance shall be fixed with due regard to the condition of the individual, including all resources available to the applicant or recipient, household situation and community in each instance, together with the essential need due to the individual's mental and/or physical condition, subject to the rules, regulations, and standards adopted by the state board. [C35, §5296-f10; C39,§3828.009; C46, 50, 54,§249.7]

**249.8 Income considered.** The income of the applicant shall be his income for the twelve months preceding the date on which his application is made; provided that, if the applicant shows to the state department's satisfaction a decrease of income, the amount of such decrease may be deducted from the income of the preceding twelve months in determining the amount of assistance to be allowed. However, in calculating the income of the claimant, occasional gifts, or earnings through personal labor, not to exceed one hundred twenty dollars in the aforesaid twelve-month period may be disregarded. [C35,§5296-f11; C39,§3828.010; C46, 50, 54,§249.8]

**249.9 Property exclusions.** No person shall receive old-age assistance if the assessed value of his real property, less recorded liens, exceeds two thousand dollars, or if married and not separated from the spouse, if the net assessed value of his real property together with that of such spouse, less recorded liens, exceeds three thousand dollars.

No person shall receive old-age assistance if he has more than three hundred dollars, or if married and not separated from the spouse, if he and his spouse have more than four hundred fifty dollars in cash, on deposit in a bank, in postal savings, or if the immediate cash value, as determined by the board and subject to review by the state department, of his holdings of bonds, stocks, mortgages, other securities or investments, except real estate, exceeds three hundred dollars, or if married and not separated from the spouse, if he and his spouse have more than four hundred fifty dollars. At the discretion of the state department, however, where such immediate sale, for cash, of such securities or investments necessitates an undue financial sacrifice, the applicant, when in immediate need of assistance, shall assign such securities and investments to the state to be held in trust by the state board to reimburse the old-age assistance revolving fund for the amount paid from the old-age assistance fund and the old-age assistance revolving fund in assistance or other benefits in behalf of said applicant.

No person shall be allowed assistance if the claimant has deprived himself, directly or indirectly, of any property for the purpose of qualifying for old-age assistance, or if the claimant or the husband or wife conveys or encumbers any real estate or other property owned by them or by either of them for the purpose of preventing the state from reimbursing itself for assistance granted or to be granted hereunder.

A sworn statement by both the vendor and vendee of the reasons and/or considerations of any transfer of real and/or personal property within the five years immediately preceding the date of application for old-age assistance may be required by the board or state department to be made in such manner and on such forms as the state board may direct; provided, however, that no sworn statement need be made for any transfer prior to January 1, 1934, unless the state department so directs. Provided, however, that no person shall be denied assistance because of the fact that the claimant has made prior arrangements for funeral expenses in an amount not to exceed five hundred dollars. [C35,§5296-f13; C39,§3828.012; C46, 50, 54,§249.9; 57GA, ch 120,§1]

**249.10 Applicants.** An applicant for assistance shall deliver his claim, in writing, to the board of the county in which he resides, in the manner and form prescribed by the state board.

All statements in the application shall be sworn to or affirmed by the applicant setting

forth that all facts are true in every material point. [C35,§5296-f17; C39,§3828.013; C46, 50, 54, §249.10]

**249.11 Procedure with application.** When an application is made for old-age assistance, the county board shall promptly send it to the state department. Within sixty days, the county board shall make an investigation of the applicant's claim through an investigator, and make, in addition, such direct investigation as it deems advisable. After hearing the applicant, if he so requests, if it approves the claim, the county board shall make a recommendation of the amount of assistance to be allowed; or, if it disapprove, make a recommendation that no assistance be allowed. Within ninety days from the date of the application, the county board shall send its recommendation and the reason for such recommendation to the state department with such supporting papers as the state board may require, unless for reasons beyond the county board's control which reasons shall be reported.

Upon receipt of the application and supporting papers, the state department may make such additional investigation as it deems necessary. Should the state department disagree with the county board in the latter's recommendation regarding eligibility it shall neither approve nor disapprove said application without a further review to clarify the points of disagreement between the county board and state department. In any event, the state department shall make its decision within sixty days of the receipt of the supporting papers, properly prepared and executed, and either approve and fix an amount of assistance or reject the claim of the applicant; and shall give written notice to the applicant as to the action taken.

If an application is not acted upon by the county board within ninety days after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provision of this chapter, the applicant or recipient may appeal to the state board in the manner and form prescribed by the state board. The state board shall, upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing before the state board or its duly authorized representative or representatives. Following such hearing the state board shall take its final action and notify the applicant in writing.

An applicant whose application for assistance has been rejected, or a recipient whose certificate for assistance has been canceled, after a review hearing hereinabove provided, within thirty days after notice of such action is given, may appeal from the decision of the state board to the district court of the county in which the applicant or recipient resides, by serving a ten days notice of such appeal upon the state department or upon any member of the state board, in the manner required for the service of an original notice in any civil action. Upon the service of such notice, the

state board shall furnish the applicant with a copy of the application and all supporting papers, a transcript of the testimony taken in a hearing, if any, and a copy of its decision.

The district court shall act as an appellate court to review the decision of the state board to determine whether or not it has therein committed fraud or abused its discretion. The costs may be taxed to appellant where the appeal is affirmed or may be remitted. [C35, §5296-f18; C39,§3828.014; C46, 50, 54,§249.11]

Referred to in §249.16  
Service of original notice, R.C.P. 56(a)

**249.12 Witnesses.** For the purpose of any such investigation, the state board and the county board shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers. All witnesses shall be examined on oath, and any member of the state board or of the county board may administer said oath. The costs incurred in connection with any such hearing or examination shall be paid by the state board or county board, whichever issues the subpoenas; and the witnesses shall be entitled to claim a two-dollar fee and mileage expense at a rate of five cents per mile, except that responsible relatives as defined in sections 252.2, 252.5 and 600.6 shall not be entitled to claim witness fees and mileage expense. [C35, §5296-f19; C39,§3828.015; C46, 50, 54,§249.12]

**249.13 Assistance certificate.** The state department shall issue to each applicant to whom assistance is allowed a certificate stating the amount of each installment, which may be monthly or quarterly, as the state department may decide; and, on written order of the state department, the state comptroller shall issue his warrant, or warrant check to be forwarded by the state department, to such recipient in payment of each installment. The amount of assistance granted under this chapter shall be subject to review at any time by the state department and the amount received by the recipient may be increased, decreased, or discontinued. [C35,§5296-f20; C39, §3828.016; C46, 50, 54,§249.13]

**249.14 Fingerprint indorsement.** Whenever the payee of an old-age assistance warrant is unable to indorse said warrant in writing as his name appears on the face of said warrant, the indorsement shall be made by the payee's fingerprint, which act shall be witnessed by at least two persons who shall sign as witnesses, also giving their address. [C39,§3828.017; C46, 50, 54,§249.14]

**249.15 Renewal of certificate.** The general provisions as to the eligibility of applicants for assistance shall apply to recipients whose certificates are subject to review for the issuance of renewal certificates of assistance, with the following exceptions as to residence:

Provided, that he does not establish a domicile outside this state, a person may, while receiving assistance and with the approval of the

state department, retain his rights under the provisions of this chapter and section, even though he takes up residence outside the state in the household of a relative or friend for reasons of the infirmities of age, health or economic necessity. [C35,§5296-f21; C39, §3828.018; C46, 50, 54,§249.15]

**249.16 Assistance certificate improperly obtained.** If at any time the state department has reason to believe that an assistance certificate has been improperly obtained, it shall cause special inquiry to be made by the board, and may suspend payment of any installment pending the inquiry. It shall also notify the board of such suspension and it shall also promptly notify the recipient in writing of such suspension stating in such notice the reason for such suspension and such recipient shall be entitled to a hearing, as provided by section 249.11, to show cause why such suspension should not be made permanent. If on inquiry it appears that the certificate was improperly obtained, it shall be canceled by the state department, but if it appears that the certificate was properly obtained, the suspended installments shall be payable in due course. [C35, §5296-f30; C39, §3828.019; C46, 50, 54, §249.16]

**249.17 When assistance commences.** The assistance, if allowed, shall commence on the date named in the certificate, which shall be the day fixed by the state board for payments to recipients in the county from which the applicant applied and within the calendar month following that on which the application is approved by the state department. [C35, §5296-f22; C39, §3828.020; C46, 50, 54, §249.17]

**249.18 Funeral expenses.** On the death of any person to whom a certificate of old-age assistance has been issued, such reasonable funeral expenses shall be paid from the old-age assistance fund to such person as the county board directs, in an amount of not to exceed one hundred seventy-five dollars; provided:

1. That the total expense of such funeral does not exceed three hundred fifty dollars.
2. That the decedent does not leave an estate which may be probated, subject to the provisions of section 249.19, with sufficient proceeds to allow a funeral claim of at least three hundred fifty dollars, as provided by section 635.65.
3. That any payment which is due the decedent's estate, spouse, children, father, mother, brother, or sister by reason of the liability of any life insurance or death or funeral benefit company, association or society to be made in the event of the death of such decedent who was a recipient of old-age assistance may be deducted from the state department's liability of one hundred seventy-five dollars.
4. That in the event the total funeral expenses exceed the department's liability of one hundred seventy-five dollars, as provided under 1, 2, and 3 above, the additional expenses shall

accrue only when there is an extraordinary expense or when the family or next best friend of the decedent specify the use of a steel or concrete outside burial vault. Provided that said additional expense shall not be paid by the state. However, if the county board directs that a burial lot, grave opening, or clothing be furnished for the decedent, the expense thereof shall be paid by the state in a total amount not to exceed fifty dollars, to such person or persons as the county board directs, and such expense shall be allowed in addition to the one hundred seventy-five dollar limit provided in this section, provided further, however, that in such cases no extraordinary expense shall be permitted nor will the family or next best friend of the decedent be permitted to specify the use of a steel or concrete outside burial vault.

Any funeral expenses thus paid by the state department shall become a part of the claim and lien for assistance paid the individual recipient of old-age assistance and shall be collectible under the provisions of sections 249.19 and 249.20.

When no claim is filed, or, whenever a claim is filed and disallowed, for the payment of funeral expenses, as provided for by this chapter and section, and the person furnishing such services and merchandise, in connection with the funeral of a deceased recipient of old-age assistance, files a claim against the decedent's estate, as provided for by chapter 635, such claim shall not be allowed in an amount exceeding three hundred fifty dollars.

Where a person has been receiving old-age assistance under the provisions of this chapter and while receiving such assistance is committed or admitted to any tax supported institution for any cause and is not receiving old-age assistance at the time of his death, he shall, notwithstanding such facts, be qualified to receive his burial expense as provided in this section. [C35, §5296-f25; C39, §3828.021; C46, 50, 54, §249.18; 56GA, ch 126, §1; 57GA, ch 121, §§1, 2]

Referred to in §§249.23, 635.65

**249.19 Deduction from estate.** On the death of a person receiving or who has received assistance under this chapter or of the survivor of a married couple, either or both of whom were so assisted, the total amount paid as assistance, shall be allowed as a lien against the real estate in the estate of the decedent and as a claim of the second class against the personal estate of such decedent, in the event the estate is admitted to probate. Neither the homestead nor the proceeds therefrom of such decedent or his survivor, shall be exempt from the payment of said lien or claim, any act or statute to the contrary notwithstanding. The filing of its claim against the estate shall not constitute a waiver of the right of the state board, in behalf of the state, to maintain an action by equitable proceedings to foreclose upon its lien against a homestead left by the deceased as well as any other real estate situated within the state of Iowa, and belonging to the estate of the deceased. The proceeds

of such claim or lien shall be paid into the old-age assistance revolving fund. In case of the death of either husband or wife, either or both of whom have been receiving or have received assistance under this chapter, the homestead shall not be sold until the surviving spouse shall die or cease to occupy the homestead as such. Furthermore, no such claim shall be enforced against any real estate of the recipient, or the real estate of a person who has been a recipient, while it is occupied by the recipient's surviving spouse, if the latter, at the time of marriage to the recipient, was not more than fifteen years younger than the recipient, and does not marry again. [C35, §5296-f15; C39, §3828.022; C46, 50, 54, §249.19]

Referred to in §§249.18, 249.20, 249.21, 515.102

**249.20 Transfer of property to the state.** In any event, the assistance furnished under this chapter shall be and constitute a lien on any real estate owned either by the husband or wife for assistance and funeral benefit furnished to either of such persons. Whenever an order is made for such assistance to any person, a copy of such order shall be indexed and recorded in the manner provided for the indexing of real-estate mortgages in the office of the county recorder of the county in which the recipient lives and in which the real estate belonging to the recipient or the spouse of such recipient is situated, and such recording and indexing shall constitute notice of such lien. The county recorder shall not charge a fee for such recording and indexing or for releasing said lien.

Assistance furnished under this chapter shall not constitute a lien on any real estate owned by the Indian tribes residing in this state. This is the sole exception to the provisions of this and section 249.19.

Any action to enforce an old-age assistance lien shall be by equitable proceedings.

The statute of limitations shall not begin to run against any lien or cause of action, belonging to the state under the provisions of this section or chapter, until the death of the recipient, former recipient, or the surviving spouse, if any.

The state board shall release liens created or existing under this chapter when the amount thereof is fully paid, or when an estate, of which real estate affected by this chapter is a part, has been probated and the proceeds allowable through such probate have been applied on such liens. The board may also, in its discretion, at any time, order the release of any lien in full, or the release of any specific parcel of land from the lien, upon such compromise, settlement, substitution of other security, or other consideration as the board shall determine to be fair and adequate under the peculiar circumstances affecting the property subject to the lien or its ownership. Such release shall be executed and acknowledged by the secretary of the state board of social welfare; and such release when recorded shall be conclusive in favor of any third person

dealing with or concerning the land thus released in reliance on such record.

If the state board deems it necessary to protect the interest of the state, it may require, as a condition to the grant of assistance, the absolute conveyance or assignment of all, or any part, of the property of an applicant for assistance to the state board; upon the taking of such deed or assignment the state department shall pay any delinquent taxes against said property and said deed shall reserve to the grantor and his spouse a life estate in said property and an option to the grantor and his heirs to purchase said property by repayment of the total amount paid for the benefit of the recipient. Said option insofar as the heirs are concerned shall be for six months from the date of the death of the grantor or the grantor's surviving spouse, if any.

Title to any real estate may be taken in the name of the state board of social welfare.

Such property shall be managed by the state department which shall credit the net income to the account of the person or persons entitled thereto. The state board shall have power to sell, lease, assign or convey such property or defend and prosecute all suits concerning it, and to pay all just claims against it, and to do all other things necessary for the protection, preservation and management of the property.

Upon the death of the recipient, or person who has received assistance, and the surviving spouse of such person, which spouse meets the requirements set out in section 249.19, and the expiration of the option to the heirs, the property shall be disposed of at public auction after notice by publication in some newspaper in the county where located, once each week for two consecutive weeks, before the day of sale and so much of the proceeds as is necessary for the repayment of the amount of assistance and other benefits paid to the grantor and/or his spouse and repayment of amount expended for the preservation of the property shall be transferred to the old-age assistance revolving fund. The balance, if any, shall be paid through the old-age assistance revolving fund to the heirs.

The state board and state department shall be entitled to an assignment of the certificate of tax sale of said property upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption.

The attorney general, at the request of the state board, shall take the necessary proceedings, and represent and advise the state board in respect to any matters arising under this section. [C35, §5296-f16; C39, §3828.023; C46, 50, 54, §249.20; 56GA, ch 127, §§1-3]

Referred to in §§249.18, 249.21, 515.102  
Attorney general, §13.6

**249.21 Executor responsible.** Any transfer of any property or interest therein made by an applicant or recipient of old-age assistance to any person without adequate consideration therefor or with intent to deprive the state of its interest therein shall be void.

All administrators, executors, referees and trustees of estates subject to liens provided for by this chapter shall when such lien as provided in sections 249.19 and 249.20, is filed or a claim is filed in the estate or against said estate or established by other legal proceedings as provided by law, pay said lien or claim when so ordered by the court. [C35, §5296-g1; C39, §3828.024; C46, 50, 54, §249.21]

**249.22 Compromise by state.** The state board and state department, when considering a compromise settlement of the state's interest in any property or the estate of a recipient and/or the recipient's spouse, may recognize such equitable interest as may be established by another person or legal entity. [C39, §3828.025; C46, 50, 54, §249.22]

**249.23 Assignment of insurance.** Any person, who has been granted a certificate of old-age assistance and is receiving payments of assistance from the old-age pension fund, may petition the state board to accept an assignment of any assignable death benefits, loan value, or cash surrender value, of any life insurance policy, death or funeral benefit of any association, society or organization, requiring further payment of premiums or assessments which such person believes he is unable to pay. The state board may accept such assignment if it deems such action advisable and in the best interests of such person and the state. Upon the payment of such death benefit, the state department shall first deduct the amount of the funeral expenses, incurred under the provisions of section 249.18, the amount of the premiums or assessments paid by the state department to keep the insurance or benefit in force, and the amount of assistance paid to such person, all of which shall accrue to the old-age assistance revolving fund, and pay the balance received, if any, to such person as was the beneficiary last specified upon the policy.

Any recipient of old-age assistance may assign any such insurance policy or benefit certificate for the purpose stated in this section, and when such assignment has been received by the company, association, society, or other organization, issuing same, the state board and state department shall have a vested interest therein for the purpose and to the extent as is contemplated in this section, and the contract so made between such insured person and the state board and state department, shall be valid, and binding upon such insured person, company, association, society or other organization, any other statute to the contrary notwithstanding.

When proceeds are received from any insurance policy or benefit certificate which was not assigned to the state board and which states the beneficiary to be the administrator, or legal representatives or estate of the insured, such proceeds shall be subject to the claim against said estate for any old-age assistance payments to or on behalf of such insured person or for any funeral claims paid and said

claim shall be prior to the claim of the heirs thereto. [C35, §5296-g2; C39, §3828.026; C46, 50, 54, §249.23]

**249.24 Board notified of increase of property or income.** If at any time during the currency or continuance of an old-age assistance certificate the recipient, or the wife or husband of the recipient, becomes possessed of any property or income in excess of the amount allowed by this chapter in respect of the amount of assistance granted, it shall be the duty of the recipient immediately to notify the board of the receipt and possession of any such property or income. The board shall inform the state department of such change and make its recommendation for further action by the state department. The state department thereupon shall cancel the certificate or lower the amount of assistance for the remaining period of the certificate and notify the recipient of the reason for such change. Any excess assistance paid shall be returned to the state, and recoverable as a debt due the state. [C35, §5296-f23; C39, §3828.027; C46, 50, 54, §249.24]

Referred to in §249.35

**249.25 Recovery from responsible relatives.** If at any time under this chapter the state board and state department or county board finds that any person, municipality, association, society or corporation, as specified under subsection 7 of section 249.6, is or was at the time any assistance was paid reasonably able to contribute to the necessary care and support of any recipient without undue hardship, during the continuance of any certificate of assistance, and such person, municipality, association, society or corporation fails or has failed or refused to do so, then, after notice to such person, municipality, association, society, or corporation, there shall exist a cause of action against such person, municipality, association, society or corporation for the recovery by the state board and state department, for the state, of double such amount of assistance furnished as was or is in excess of the amount allowed by this chapter. [C39, §3828.028; C46, 50, 54, §249.25]

**249.26 When child's liability begins.** The state board or the court in determining the responsibility of a child for funeral expenses or the support of a claimant or recipient, shall deem liability to begin when said child is receiving a net income from whatever source, commensurate with that upon which he would make an income tax payment to this state. [C39, §3828.029; C46, 50, 54, §249.26]

**249.27 County attorney's duties—equity action.** It shall be the duty of the county attorney of each and every county, upon application of the state board of social welfare, to institute and conduct the prosecution of any suit for the support of an applicant for or recipient of assistance by any person or legal entity legally or contractually liable therefor, and

any action brought for the violation of any of the provisions of this chapter, within the county.

In the event that a child or other responsible relative neglects or refuses to contribute to the support of a claimant or recipient, an action in equity may be commenced in the district court of the county in which a responsible relative resides and there may be joined as defendants in said action any or all other responsible relatives. The court may decree the amount of contribution, if any, to be made by each child or other responsible relative with due regard to their separate incomes, financial ability and obligations. [C39, §3828.030; C46, 50, 54, §249.27]

**249.28 Cancellation when county evades responsibility.** The state board may cancel the certificate of any recipient who is found by the state board to be acting in agreement with the authorities of any county charged with the duty of providing for the support of the poor if it shall appear to the state board that such agreement is with the intent to shift or would have the effect of shifting the responsibility of any such county or to evade the provisions of sections 249.29 and 249.34. [C39, §3828.031; C46, 50, 54, §249.28]

**249.29 Recipient not to receive other assistance.** No person receiving assistance under this chapter shall at the same time receive any other assistance from the state, or from any political subdivision thereof, except for fuel, dental, nursing, osteopathic, chiropractic, medical and surgical assistance, and hospitalization.

This section shall not be construed to exclude the spouse, minor children or other dependents of the recipient of old-age assistance, or the members of the same family or household as said recipient from receiving relief, assistance or pensions handled or paid through the state or any of its political subdivisions. In administering old-age assistance or relief, the officials of this state and its political subdivisions shall assume old-age assistance payments to be made for the sole benefit of the aged person to whom the certificate of assistance has been issued. [C35, §5296-f27; C39, §3828.032; C46, 50, 54, §249.29]

Referred to in §249.28

**249.30 No assistance during imprisonment.** If any person receiving assistance is convicted of any crime or offense and punished by imprisonment for one month or longer, the board shall direct that payments shall not be made during the period of imprisonment. [C35, §5296-f33; C39, §3828.033; C46, 50, 54, §249.30]

**249.31 Resident in institution.** Any recipient who is a resident in any charitable, benevolent, or fraternal institution, not tax-supported, may expend a part of the assistance paid him under the provisions of this chapter toward defraying the actual expenses of his residence in such institution, provided, that the state board has approved and that it and its agents are permitted freely to visit and inspect such institu-

tion and, provided, the charge shall not be so much as to deprive said recipient and inmate of such cash as he needs for necessities and incidentals not furnished by said institution. [C35, §5296-f26; C39, §3828.034; C46, 50, 54, §249.31]

**249.32 Incapacity of applicant or recipient.** If the person applying for or receiving assistance, on the testimony of reputable witnesses, is thought to be incapable of taking care of himself or his money, the board shall complete the investigation, as provided elsewhere in this chapter, and send such application, investigation, and supporting papers to the state department. When notified by the state department of the conditional approval of said application or the renewal or continuance of a certificate, contingent upon the appointment of a legal guardian, the board shall direct the county attorney to petition the court for such appointment and shall forward the court record to the state department as notice of the person to whom assistance payments shall be made.

The application of a person who has been adjudged an incompetent shall be honored only when made by a legally appointed guardian as provided for under the provisions of section 670.2. Upon subsequent investigations all affidavits shall be affirmed by said legal guardian and the person or persons supplying the required information in behalf of said incompetent person.

All guardianship proceedings in the case of an applicant or recipient shall be carried out without fee or other expense including all court costs when, in the opinion of the court, the aged person is unable to assume said expense. At the discretion of the court, such a guardian may serve without bond. [C35, §5296-f28; C39, §3828.035; C46, 50, 54, §249.32]

**249.33 Unlawful to charge for cashing warrant.** It shall be unlawful for any person, firm or corporation to charge a fee, service charge or exchange for the cashing of a warrant issued on the old-age assistance fund, or to discount or pay less than the face value of any warrant drawn on the old-age assistance fund when cashing the same or accepting it in the payment of the purchase price of goods or merchandise, services, rent, taxes, or indebtedness. [C35, §5296-g4; C39, §3828.036; C46, 50, 54, §249.33]

**249.34 Assistance to be inalienable.** All rights to old-age assistance shall be absolutely inalienable by any assignment, sale, execution or otherwise, and, in the case of bankruptcy, the assistance shall not pass to or through any trustees or other persons acting on behalf of creditors. [C35, §5296-f29; C39, §3828.037; C46, 50, 54, §249.34]

Referred to in §249.28

**249.35 Recovery of excess assistance.** When it is found that any person who is receiving or has received old-age assistance has failed to notify the board, as provided in sec-



tion 249.24, that he is or was possessed of property or income in excess of the amount allowed by this chapter, then his certificate shall be canceled and double the amount of assistance paid, in excess of that to which the recipient was entitled, may be recovered from him, while living, as a debt due the state; upon his death as a preferred claim against his estate. The amount so received shall be transferred to the old-age assistance revolving fund of the state. [C35,§5296-f24; C39,§3828.038; C46, 50, 54,§249.35]

**249.36 Assistance fund created.** There is hereby created a fund to be known as the old-age assistance fund to be administered by the state board and state department, the proceeds of which shall be used to pay the expenditures incurred under this chapter. To provide money for said fund, there is hereby levied on all persons residing in this state and who are citizens of the United States and of twenty-one years of age and upwards, except inmates of state and county institutions, an annual tax of two dollars, to and including December 31, 1936. From the list certified to the county treasurer under the provisions of section 5296-f35 [Code 1935], it shall be the duty of such county treasurer to place the names of all persons subject to said tax on a tax list as specified by the auditor of state, and the said annual tax levied by the provisions of this section and chapter shall be collected in 1935, and 1936, by the county treasurer as of January 1, with a delinquency date of July 1, after which latter date a penalty of one percent for each month or fractional month of delinquency, and the county treasurer shall make remittance thereof to the treasurer of state who shall credit same to the old-age assistance fund. In any subsequent year to that in which any tax is due and payable, the county treasurer shall charge any unpaid tax and/or penalty against the property owned by the person by whom said tax is payable; or said county treasurer, when such delinquent person is not the owner of real estate, shall cause to be served a notice, which shall be served in the same manner as an original notice, upon the delinquent taxpayer's spouse or employer, if either, of the amount of the tax and penalties due and costs of collection and said spouse or employer shall pay the same, and thereupon the employer may subsequently withhold the amount thus paid in tax, penalty and cost of collection from any wages or salary then or in the future due said employee but costs of collection shall not be chargeable unless the tax and penalties are collected.

Any person, firm, association or corporation, including municipal corporations, having in their employ continuously for a period of thirty days or more any resident of this state and who is a citizen of the United States, and to whom this chapter applies and who has not paid the tax provided for in this section, shall deduct said tax from the earn-

ings of such employee and deliver to such employee a receipt for said collection and remit same to the treasurer of state, together with a report showing the amount and name of the person from whom collected; and the treasurer of state shall credit said tax as other taxes provided for in this section and chapter, and report to the county treasurer of the county from which such remittance was received, giving the name of the employee and the amount of such tax collected; and when said report has been received by the county treasurer, he shall credit such person on his books with said payment. Any employer failing to collect and so report said tax shall be liable therefor. As a condition for obtaining assistance under this chapter and from this fund, satisfactory proof shall be furnished to the board or state department that the applicant has paid all taxes due to said fund.

The officer of each department, division, or bureau of the state government, including state educational institutions, whose duty it is to make out a payroll and to certify the same, shall be liable, personally and under his bond, for the failure of any state employee, under his jurisdiction, to pay the per capita tax levied under the provisions of this section. Such officer is hereby authorized to act in the same manner in withholding the tax from the salary or wages of a state employee as is granted a private employer and a municipal employer under the provisions of this section and chapter.

The penalties accruing under the provisions of this section shall accompany the tax and be credited to the old-age assistance fund.

All taxes collected under the provisions of this section and chapter shall be deposited to the credit of the old-age assistance fund, and shall be kept separate from the general fund of the state. On receipt of written order from the state department, the state comptroller shall draw warrants, or warrant checks against the old-age assistance fund for any and all old-age assistance payments and other expenditures provided for in this chapter. [C35, §§5296-f34, 6943-f63; C39,§§3828.039, 6943.100; C46,§§249.36, 422.69; C50, 54,§249.36; 56GA. ch 6,§5]

Referred to in §§249.37, 249.39

**249.37 Refund of tax.** Whenever any tax, as provided for in section 249.36, has been erroneously paid or has been paid or collected more than once for the same year, the taxpayer by whom the tax was erroneously paid shall have the amount of said tax or duplicated tax refunded to him upon application to the county treasurer and the submission of satisfactory proof that the tax has been erroneously paid or paid more than once for any year. Such refund shall be from any old-age assistance funds then in the hands of such county treasurer. [C35,§5296-g5; C39,§3828.040; C46, 50, 54,§249.37]

**249.38 Mandamus proceedings.** In the event that any county auditor or treasurer, or both,

of any county fails to do his or their duty in the matter of listing taxable persons, or the collection of the taxes levied, or the proper recording of said collections, or the making of a proper and timely return of the money so collected to the treasurer of state, or to otherwise comply with the provisions of this chapter, mandamus shall lie and proceedings shall be instituted by the auditor of state and the state board against such county auditor or treasurer or both, to comply therewith. [C39, §3828.041; C46, 50, 54, §249.38]

**249.39 Revolving fund created.** There is hereby created a fund, to be known as the "old-age assistance revolving fund," to be used for the purpose of protecting the interests of the recipients of old-age assistance and such interests of the state and the old-age assistance fund as arise under the provisions of this chapter.

To establish the old-age assistance revolving fund, there is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of twenty-five thousand dollars. The state comptroller shall set aside from the appropriation, herein made, the amount necessary to be used by the state board and state department. Upon orders by the state board or state department the comptroller shall draw warrants from this fund, if he so approve, for the purposes herein described.

All moneys received or recovered by the state board and state department, from whatever source, except those specifically appropriated to the old-age assistance fund, shall be credited to the old-age assistance revolving fund, which together with the appropriation made hereunder, shall constitute said fund. At the end of each quarter of each fiscal year if the old-age assistance revolving fund shall have a cash balance in excess of two hundred thousand dollars, the state comptroller shall transfer such excess to the old-age assistance fund and shall notify the state board of such transfer. The amounts thus transferred shall supplement other allocations to the old-age assistance fund and may be expended for the purposes and in the manner referred to in section 249.36. [C35, §5296-g7; C39, §3828.042; C46, 50, 54, §249.39]

**249.40 Authority to accept gifts.** The state board and state department are authorized to accept in behalf of the state any gifts, deeds, or bequests of money or property the proceeds of which shall accrue to the benefit of the old-age assistance revolving fund. In the making of such gifts or contributions the donor shall attach no conditions, whatsoever. The management and disposition of any property so received will be in the state department but such management and disposition shall be subject to the approval of the state board. [C35, §5296-g6; C39, §3828.043; C46, 50, 54, §249.40]

**249.41 Cancellation of warrants.** The state comptroller, as of January, April, July and

October 1 of each year, shall stop payment on and issue duplicates of all old-age assistance warrants or checks which have been outstanding and unredeemed by the state treasurer for six months or longer. No bond of indemnity shall be required for the issuance of such duplicate warrants which shall be canceled immediately by the state comptroller. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and certification by the state department. [C39, §3828.044; C46, 50, 54, §249.41]

**249.42 Payments to the United States.** Whenever any amount shall be recovered from any source for assistance furnished under the provisions of this chapter and paid into the old-age assistance revolving fund, upon order of the state board and state department the state comptroller shall pay from said fund to the United States the amount which shall be required under the terms of title I of the federal social security act. [C39, §3828.045; C46, 50, 54, §249.42]

**249.43 Receipts and disbursements.** There shall be kept on file in the state comptroller's office an itemized record of all receipts and disbursements showing the money received from each county and the assistance granted to each county. A summary of the said record shall be compiled and published at the end of the tax year. [C35, §5296-f37; C39, §3828.046; C46, 50, 54, §249.43]

**249.44 Records—report of recipients.** All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter.

Provided, however, that the county board of social welfare shall prepare and file in its office on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter and chapters 239 and 241. The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the respective county boards of social welfare. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other

agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a misdemeanor punishable by a fine of not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year or by both such fine and imprisonment. [C39,§3828.047; C46, 50, 54, §249.44]

**249.45 Assistance subject to future statute.** Every assistance granted under the provisions of this chapter shall be deemed to be granted and shall be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient under this chapter shall have any claims for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. [C35,§5296-f39; C39,§3828.048; C46, 50, 54,§249.45]

**249.46 Violations.** Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device obtains, or attempts to obtain, or aids or abets any person to obtain:

1. An assistance certificate to which he is not entitled; or
2. A larger amount of assistance than that to which he is justly entitled; or

3. Payment of any forfeited installment grant; or

4. Who aids or abets in the selling or buying, or in any way disposing of the property of any recipient, or his spouse, or both, with intent to defraud the state of Iowa; or

5. Who aids or abets in the selling or buying, or in any way disposing of or concealing the property of any person or his spouse, or both, for the purpose of qualifying or attempting to qualify such person or persons for old-age assistance, with intent to defraud the state of Iowa, shall be guilty of a misdemeanor and the person guilty thereof, in addition to the punishment for his misdemeanor, shall be liable for double that part of the assistance paid which is in excess of the amount allowed by this chapter. [C35,§5296-f31; C39,§3828.049; C46, 50, 54,§249.46]

**249.47 Penalty.** Any person who violates any provision of this chapter for which no penalty is specifically provided shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both. Where a person receiving assistance is convicted of an offense under this section the state department shall cancel the certificate. [C35,§5296-f32; C39,§3828.050; C46, 50, 54,§249.47]

Citation of amendatory act, 47GA, ch 137,§42  
Constitutionality, 45ExGA, ch 19,§41; 47GA, ch 137,§41;  
48GA, ch 140,§28; 49GA, ch 146,§16  
Rules of construction, 45ExGA, ch 19,§41; 48GA, ch 140,§6

## CHAPTER 250

### RELIEF FOR SOLDIERS, SAILORS, AND MARINES

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**250.1 Tax.** A tax not exceeding one mill on the dollar may be levied by the board of supervisors upon all taxable property within the county, to be collected at the same time and in the same manner as other taxes, to create a fund for the relief of, and to pay the funeral expenses of honorably discharged, indigent men and women of the United States who served in the military or naval forces of the United States in any war including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, and their indigent wives, widows and minor children not over eighteen years of age, having a legal residence in the county. [C97,§430; SS15,§430;

C24, 27, 31, 35,§5385; C39,§3828.051; C46, 50, 54, §250.1; 57GA, ch 63,§5]

Referred to in §250.5

**250.2 Control of fund.** Said fund shall be expended for the purposes aforesaid by the joint action and control of the board of supervisors and the relief commission hereinafter provided for. [SS15,§430; C24, 27, 31, 35,§5386; C39,§3828.052; C46, 50, 54,§250.2]

**250.3 Relief commission.** The soldiers relief commission shall consist of three persons, all of whom shall be honorably discharged men or women of the United States who served in the

military or naval forces of the United States in any war, including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive. Said membership shall at all times, as near as possible, be equally divided among the men and women who served in the Spanish American War, World War I and World War II. [C97,§431; C24, 27, 31, 35, §5387; C39,§3828.053; C46, 50, 54,§250.3; 56GA, ch 128,§1; 57GA, ch 63,§6]

**250.4 Appointment—vacancies.** Members of said commission shall be appointed by said board at the regular meeting in June, and the first appointees shall hold their office for one, two, and three years, respectively, and until their successors shall be appointed and qualify, and thereafter one shall be appointed each year for a term of three years. Any appointee may be removed at any time by said board for neglect of duty or maladministration. Vacancies shall be filled by appointment by the board. [C97,§431; C24, 27, 31, 35,§5388; C39,§3828.054; C46, 50, 54,§250.4]

**250.5 Compensation.** The members of said commission shall be paid for their services the sum of two dollars per day for each day actually employed in the work of said commission, and also the same mileage that is paid to the members of the board of supervisors. Said per diem and mileage shall be paid out of the taxes raised under the provisions of section 250.1. In the event the commission has employed administrative or clerical help, the members of the commission shall receive compensation for attendance at the annual and monthly meetings only. [C27, 31, 35,§5388-b1; C39,§3828.055; C46, 50, 54,§250.5]

Mileage, §321.22

**250.6 Qualification — organization.** They shall qualify by taking the usual oath of office, and give bond in the sum of five hundred dollars each, conditioned for the faithful discharge of their duties with sureties to be approved by the county auditor. The commission shall organize by the selection of one of their number as chairman, and one as secretary. The commission, subject to the approval of the board of supervisors, shall have power to employ necessary administrative or clerical assistants when needed, the compensation of such employees to be fixed by the board of supervisors, but no member of the commission shall be so employed. The commission with the approval of the board of supervisors shall appoint one of the deputies of the county auditor to serve as administrative assistant to the commission, to serve without additional compensation, unless for good reasons shown, this arrangement is not feasible. [C97,§431; C24, 27, 31, 35,§5389; C39,§3828.056; C46, 50, 54, §250.6; 56GA, ch 128,§2, 6]

Oath, §63.10

**250.7 Meetings—report—budget.** The commission shall meet monthly on the first Monday and at such other times as may be neces-

sary. At the monthly meeting it shall determine who are entitled to relief and the probable amount required to be expended therefor. The commission shall meet annually on the second Monday in June. At such annual meeting it shall prepare an estimated budget for all expenditures to be made in the next fiscal year and certify said budget to the board of supervisors, who shall have the power and authority to approve or reduce said budget for valid reasons shown and entered of record and such decision shall be final. [C97,§432; S13, §432; C24, 27, 31, 35,§5390; C39,§3828.057; C46, 50, 54,§250.7; 56GA, ch 128,§3]

**250.8 Accounting system.** The state auditor shall prepare sample copies of a system of accounting and case records for the use of all county soldiers relief commissions, and this uniform system of accounting and case records shall be used by the several counties. [C46, 50, 54,§250.8]

**250.9 Names certified—relief changed.** At each regular meeting the commission shall submit to the board of supervisors a certified list of those persons to whom relief has been authorized and the amounts so awarded. The amount awarded to any person may be increased, decreased, or discontinued by the commission at any meeting. New names may be added and certified thereat. [C97,§432; S13, §432; C24, 27, 31, 35,§5391; C39,§3828.058; C46, 50, 54,§250.9; 56GA, ch 128,§4]

**250.10 Disbursements—inspection of records.** On the first Monday in each month, all claims certified shall be reviewed by the board of supervisors and the county auditor shall issue his warrants in payment of same drawn upon the soldiers' relief fund. All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter. Provided, however, that the county soldiers' relief commission shall prepare and file in the office of the county auditor on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter.

The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the county auditor. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information

gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a misdemeanor punishable by a fine of not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment. [C97,§432; S13,§432; C24, 27, 31, 35,§5392; C39,§3828.059; C46, 50, 54,§250.10; 56GA, ch 128,§5]

**250.11 Data furnished bonus board.** The soldiers relief commission of each county shall obtain for and transmit to the state bonus board, created by chapter 35, at such time and in such manner as the board shall specify, such information as said board may request concerning any person having or claiming to have any right to award from the additional bonus and disability fund created by said chapter. [C27, 31, 35,§5392-b1; C39,§3828.060; C46, 50, 54,§250.11]

**250.12 Relief information confidential.** It shall be unlawful for the board of supervisors of any county or the soldiers relief commission of any county to place the administration of the duties of the soldiers relief commission under any other relief agency of any county, or to publish the names of the veterans or their families who receive relief under the provisions of this chapter. [C46, 50, 54,§250.12]

**250.13 Burial—expenses.** The board shall designate some suitable person in each township to cause to be decently interred in a suitable cemetery and not in any cemetery or part thereof used exclusively for the burial of the pauper dead, the body of any honorably discharged man or woman of the United States, who served in the military or naval forces of the United States during any war, including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, or his wife, widow, or child, if any such person has died without leaving sufficient means to defray the funeral expenses. The commission shall pay such expenses in a sum not exceeding two hundred dollars in any case. [C97,§433; S13,§433; C24, 27, 31, 35,§5393; C39,§3828.061; C46, 50, 54,§250.13; 56GA, ch 128,§7; 57GA, ch 63,§7]

**250.14 Headstone.** The grave of each soldier, sailor, marine, or nurse shall be marked by a headstone, showing his name and the organization to which he belonged or in which he served. The headstone shall be of such design and material as may be approved by the board of supervisors, and shall cost not more than fifteen dollars. If, however, a headstone of the above general description shall be provided by the national government or if a

tombstone shall be furnished by private persons for such grave, the headstone herein provided for need not be provided at county expense. [C97,§434; C24, 27, 31, 35,§5394; C39, §3828.062; C46, 50, 54,§250.14]

**250.15 Expenses and audit thereof.** The expenses of such burial and headstone shall be paid by the county in which such person died. If such person is a resident of a different county at the time of death, the latter county shall reimburse the county wherein he died for the cost of such burial and headstone. In either case, the board of supervisors of such respective counties shall audit the account and pay the same from the funds provided for in this chapter in such manner as other claims are audited and paid. [C97,§434; C24, 27, 31, 35, §5395; C39,§3828.063; C46, 50, 54,§250.15]

**250.16 Markers for graves.** The soldiers relief commission in any county shall, upon the petition of five reputable freeholders of any township or municipality in their county, procure for and furnish to said petitioners some suitable and appropriate metal marker, at a cost not exceeding two and one-half dollars each, for the grave of each honorably discharged man or woman of the United States, who served in the military or naval forces of the United States during any war, including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, who is buried within the limits of said township or municipality, to be placed at his grave to permanently mark and designate said grave for memorial purposes. The expenses thereof shall be paid from any funds raised as provided in this chapter. [SS15,§434-a; C24, 27, 31, 35, §5396; C39,§3828.064; C46, 50, 54,§250.16; 57GA, ch 63,§8]

**250.17 Maintenance of graves.** The board of supervisors of the several counties in this state shall each year, out of the general fund of their respective counties, appropriate and pay to the owners of, or to the public board or officers having control of cemeteries within the state in which any such deceased service man or woman of the United States is buried, a sum sufficient to pay for the care and maintenance of the lots on which they are so buried, in any and all cases in which provision for such care is not otherwise made. [C27, 31, 35, §5396-a1; C39,§3828.065; C46, 50, 54,§250.17]

41GA, ch 94,§1, editorially divided

**250.18 Payment—how made.** Such payment shall be made at the rate charged for like care and maintenance of other lots of similar size in the same cemetery, upon the affidavit of the superintendent or other person in charge of such cemetery, that the same has not been otherwise paid or provided for. [C27, 31, 35, §5396-a2; C39,§3828.066; C46, 50, 54,§250.18]

**250.19 Burial records.** The soldiers relief commission of each county shall be charged with securing the information requested by the adjutant general's office of every person

having a service record buried in that county. Such information shall be secured from the undertaker in charge of the burial and shall be transmitted by him to the soldiers relief commission of the county where burial is made and shall be recorded alphabetically and by description of location in the cemetery where buried, in a book as prescribed by the adjutant general and kept for that purpose in the office of the commission. [C46, 50, 54, §250.19]

**250.20 Commission emergency fund.** At the annual meeting there shall be established by the commission and the board of supervisors a commission emergency fund of ten percent of

the annual budget, subject to the direction and control of the commission, and at each regular meeting, if warrants of the commission are drawn thereon during the preceding month, a complete report of said payments, together with signed receipts for same, shall be filed at the regular meeting and after review by the board of supervisors, the county auditor shall be directed to issue a warrant to reimburse said commission emergency fund. [56GA, ch 128,§8]

**250.21 World War II dates.** For the purposes of this chapter, World War II shall be from December 7, 1941, to September 2, 1945, both dates inclusive. [57GA, ch 60,§4]

## CHAPTER 251

### EMERGENCY RELIEF ADMINISTRATION

Social welfare department, see ch 234

- 251.1 Administration of emergency relief.
- 251.2 Powers and duties.
- 251.3 Grants from state funds to counties.
- 251.4 Duties of the county board of social welfare.

- 251.5 County supervisors to determine relief and work projects.
- 251.6 County directors to act as executive officers.

**251.1 Administration of emergency relief.** The state department of social welfare, in addition to all other powers and duties given it by law, shall be charged with the supervision and administration of all funds coming into the hands of the state now or hereafter provided for emergency relief. [C39,§3828.067; C46, 50, 54,§251.1]

such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities. [C39,§3828.068; C46, 50, 54,§251.2]

Report to governor, §17.3

**251.2 Powers and duties.** The state board shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon it in the administration of emergency relief, and to make such rules and regulations as it deems necessary or advisable covering its activities and those of the county boards.

2. Join and co-operate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties' financial inability to provide such relief from county funds. The state board may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish

**251.3 Grants from state funds to counties.** The state department shall have the authority to require as a condition of making available state assistance to counties for emergency relief purposes, that the county boards of supervisors shall make maximum tax levies for relief and establish such budgets as are needed in respect to the relief situation in the counties. The state department shall also have the authority to require as a condition of grants of state aid to the counties that the county board of supervisors shall make no transfers from the county poor fund or charges against the county poor fund for purposes other than that for which the county poor fund is established by law, and it is hereby made mandatory upon the county board of supervisors, that taxes levied and collected for the county poor fund shall be expended only for the purposes levied. [C39,§3828.069; C46, 50, 54,§251.3]

**251.4 Duties of the county board of social welfare.** The county board, in addition to all of the powers and duties given it by law, shall have the following duties:

1. Co-operate with the county board of supervisors in all matters pertaining to administration of relief.

2. At the request of the county board of supervisors, prepare requests for grants of state funds.

3. At the request of the county board of supervisors, administer county relief funds.

4. In counties receiving grants of state funds upon approval of the comptroller, administer both state and county relief funds.

5. Perform such other duties as may be prescribed by the state board and the county board of supervisors. [C39,§3828.070; C46, 50, 54,§251.4]

**251.5 County supervisors to determine relief and work projects.** The local county board of supervisors shall ascertain all necessary details concerning those seeking relief, shall determine the minimum amount of relief required for each such person or family, and shall ascertain which of such persons are employable.

The board of supervisors may require that all employables contribute as many hours of

his or her labor as that employable's requirements, as estimated by the board, will buy at the prevailing rate of compensation for that class of labor in that community.

The board of supervisors may determine on what projects of county-wide or community-wide nature such relief labor may be used. It may, however, delegate to its political subdivisions such authority as it deems advisable for administrative expediency.

To the board of supervisors is reserved all authority not expressly otherwise set out previously. [C39,§3828.071; C46, 50, 54,§251.5]

**251.6 County directors to act as executive officers.** The county director shall be the executive officer of the county board in all matters pertaining to relief. [C39,§3828.072; C46, 50, 54,§251.6]

## CHAPTER 252

### SUPPORT OF THE POOR

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 252.39 Medical and dental service.  
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 252.41 Employment.  
 252.42 Co-operation on work-relief projects.  
 252.43 Poor tax.

**252.1 "Poor person" defined.** The words "poor" and "poor person" as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public. [C97,§2252; C24, 27, 31, 35,§5297; C39,§3828.073; C46, 50, 54,§252.1]

**252.2 Parents and children liable.** The father, mother, and children of any poor person, who is unable to maintain himself or herself by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the township trustees of the township where such person has a resi-

dence or may be, they may direct. [C51,§787; R60,§1355; C73,§1330; C97,§2216; C24, 27, 31, 35, §5298; C39,§3828.074; C46, 50, 54,§252.2]

Referred to in §§241.17, 249.12

**252.3 Putative father.** The word "father" in this chapter includes the putative father of an illegitimate child, and the question of parentage may be tried in any proceeding to recover for or compel the support of such a child, and like proceedings may be prosecuted against the mother independently of or jointly with the alleged father. [C51,§788; R60,§1356; C73, §1332; C97,§2250; C24, 27, 31, 35,§5299; C39, §3828.075; C46, 50, 54,§252.3]

Obligation of parent, ch 675

**252.4 Who deemed trustee.** The word "trustees" in this chapter shall be construed to include and mean any person or officer of

any county or city charged with the oversight of the poor. [C51,§789; R60,§1357; C73,§1333; C97,§2251; C24, 27, 31, 35,§5300; C39,§3828.076; C46, 50, 54,§252.4]

**252.5 Remote relatives.** In the absence or inability of nearer relatives, the same liability shall extend to grandparents, if of ability without personal labor, and to the male grandchildren who are of ability by personal labor or otherwise. [C51,§787; R60,§1355; C73,§1331; C97,§2217; C24, 27, 31, 35,§5301; C39,§3828.077; C46, 50, 54,§252.5]

Referred to in §§241.17, 249.12

**252.6 Enforcement of liability.** Upon the failure of such relatives so to relieve or maintain a poor person who has made application for relief, the township trustees, county social welfare board, or state division of old-age assistance may apply to the district court of the county where such poor person resides or may be, for an order to compel the same. [C51, §789; R60,§1357; C73,§1333; C97,§2218; C24, 27, 31, 35,§5302; C39,§3828.078; C46, 50, 54,§252.6]

**252.7 Notice—hearing.** At least ten days notice in writing of the application shall be given to the parties sought to be charged, service thereof to be made as of an original notice, in which proceedings the county shall be plaintiff and the parties served defendants. No order shall be made affecting a person not served, but, as to such, notice may be given at any stage of the proceedings. The court may proceed in a summary manner to hear all the allegations and proofs of the parties, and order any one or more of the relatives who shall be able, to relieve or maintain him or her, charging them as far as practicable in the order above named, and for that purpose may bring in new parties when necessary. [C51,§§790-792; R60,§§1358-1360; C73,§§1334-1336; C97,§2219; C24, 27, 31, 35,§5303; C39,§3828.079; C46, 50, 54, §252.7]

Manner of service, R.C.P. 56(a)

**252.8 Scope of order.** The order may be for the entire or partial support of the applicant, may be for the payment of money or the taking of the applicant to a relative's house, or may assign him or her for a certain time to one and for another period to another, as may be just and right, taking into view the means of the several relatives liable, but no such assignment shall be made to one who is willing to pay the amount necessary for support. If the order be for relief in any other form than money, it shall state the extent and value thereof per week, and the time such relief shall continue; or the order may make the time of continuance indefinite, and it may be varied from time to time by a new order, as circumstances may require, upon application to the court by the trustees, the poor person, or the relative affected, ten days notice thereof being given to the party or parties concerned. [C51, §§793-795; R60,§§1361-1363; C73,§§1337-1339;

C97,§2219; C24, 27, 31, 35,§5304; C39,§3828.080; C46, 50, 54,§252.8]

**252.9 Judgment—appeal.** When money is ordered to be paid, it shall be paid to such person as the court may direct. If support be not rendered as ordered, the court upon such fact being shown by the affidavit of one or more of the proper trustees, may render judgment and order execution for the amount due, rating any support ordered in kind at the valuation previously made. An appeal may be taken from the judgment rendered to the supreme court. Support for later periods under the same order may be, as it becomes due, applied for and obtained in the same manner. [C51,§§796-798; R60,§§1364-1366; C73,§§1340-1342; C97,§2219; C24, 27, 31, 35,§5305; C39,§3828.081; C46, 50, 54, §252.9]

**252.10 Abandonment—order as to property.** When father or mother abandons any child, husband his wife, or wife her husband, leaving them a public charge or likely to become such, the trustees of the township, upon application to them, may make complaint to the district court or judge thereof in the county in which such abandoned person resides, or in which any property of such father, mother, husband, or wife is situated, for an order to seize such property, and, upon proof of the necessary facts, the court or judge shall issue an order, directed to the sheriff of the county, to take and hold possession of said property, subject to the further orders of the court, which order shall be executed by taking possession of chattel property wherever found, and shall entitle the officer serving the same to collect and hold the rents accruing upon real property. [C51,§§799, 800; R60,§§1367, 1368; C73, §§1343, 1344; C97,§2220; C24, 27, 31, 35,§5306; C39,§3828.082; C46, 50, 54,§252.10]

**252.11 Preservation and release of lien.** Statement of the issuance of the order and a description of any real estate sought to be affected thereby, shall be entered in the encumbrance book, and from the date thereof shall be superior in right to any conveyance or lien created by the owner thereafter, and return shall be made of said order to the proper court, where the order of seizure, upon investigation, may be discharged or continued; if continued, the entire matter shall be subject to the control of the court, and it shall from time to time make such orders as to the disposition of the personal property seized, and the application of it or the proceeds thereof, as it may deem proper, and of the disposition of the rents and profits of the real estate. Should the party against whom the order issued thereafter resume his or her support of the person abandoned, or give bond with sureties, to be approved by the clerk, conditioned that such person shall not become chargeable to the county, the order shall be by the clerk discharged and the property remaining restored. [C51,§§801-804; R60,§§1369-1372; C73,§§1345-



1348; C97,§2220; C24, 27, 31, 35,§5307; C39, §3828.083; C46, 50, 54,§252.11]

**252.12 Trial by jury.** In all cases the party sought to be charged with the support of another may demand a jury trial upon the question of his obligation and ability to render such support, the alleged abandonment, and the liability of the person abandoned to become a public charge; such trial to be had upon demand, which may be made at the time of the hearing of the application for the order, or at such other time as may be directed by the court, upon notice to the defendant. [C51,§805; R60,§1373; C73,§1349; C97,§2221; C24, 27, 31, 35, §5308; C39,§3828.084; C46, 50, 54,§252.12]

**252.13 Recovery by county.** Any county having expended any money for the relief or support of a poor person, under the provisions of this chapter, may recover the same from any of his kindred mentioned herein, from such poor person should he become able, or from his estate; from relatives by action brought within two years from the payment of such expenses, from such poor person by action brought within two years after becoming able, and from such person's estate by filing the claim as provided by law. [C51,§806; R60,§1374; C73,§1350; C97,§2222; C24, 27, 31, 35,§5309; C39, §3828.085; C46, 50, 54,§252.13]

Referred to in §252.14  
Claims against estate, §6 15 53 et seq.

**252.14 Homestead—when liable.** When expenditures have been made for and on behalf of a poor person and his family, as contemplated by section 252.13, the homestead of such poor person is liable for such expenditures when such poor person dies without leaving a surviving husband or wife, or minor children. [C31, 35,§5309-c1; C39,§3828.086; C46, 50, 54, §252.14]

**252.15 Recovery by relative.** A more distant relation, who may have been compelled to aid a poor person, may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others in the same degree, and a recovery may be had against the poor person or his estate, if, after such aid or support has been given, the person aided or supported becomes able to repay the same; but proceedings to recover therefor must be brought within two years from the time a cause of action accrues. [C51,§807; R60,§1375; C73,§1351; C97,§2223; C24, 27, 31, 35,§5310; C39,§3828.087; C46, 50, 54,§252.15]

**252.16 Settlement—how acquired.** A legal settlement in this state may be acquired as follows:

1. Any person continuously residing in any one county of this state for a period of two years without being warned to depart as provided in this chapter acquires a settlement in that county, but if such person has been warned to depart as provided in this chapter, then such settlement can only be acquired after such person has resided in any one

county without being warned to depart as provided in this chapter for a continuous period of two years from and after such time as such person shall have filed with the board of supervisors of such county an affidavit stating that such person is no longer a pauper and intends to acquire a settlement in that county.

2. Any person having acquired a settlement in any county of this state shall not acquire a settlement in any other county until such person shall have continuously resided in said county for a period of two years without being warned to depart as provided in this chapter.

3. Any such person who is an inmate of or is supported by any institution whether organized for pecuniary profit or not or any institution supported by charitable or public funds in any county in this state or any person who is being supported by public funds shall not acquire a settlement in said county unless such person before becoming an inmate thereof or being supported thereby has a settlement in said county.

4. A married woman has the settlement of her husband, if he has one in this state; if not, or if she lives apart from or is abandoned by him, she may acquire a settlement as if she were unmarried. Any settlement which the wife had at the time of her marriage may at her election be resumed upon the death of her husband, or if she be divorced or abandoned by him, if both settlements were in this state.

5. Legitimate minor children take the settlement of their father, if there be one, if not, then that of the mother.

6. Illegitimate children take the settlement of their mother, or, if she has none, then that of their putative father.

7. Any person with settlement in this state who enlists in or is inducted into the military or naval service of the United States shall retain such settlement during the period of his military or naval service. Any person without settlement in this state who is serving in said military or naval service within the borders of this state shall not acquire a settlement during the period of such service.

8. The provisions of subsections 1, 2 and 3 of this section shall not apply to any blind person who is receiving assistance under the laws of this state. Any such person who has resided in any one county of this state for a period of six months shall have acquired legal settlement for support as provided in this chapter. [C51,§808; R60,§1376; C73,§1352; C97, §2224; C24, 27, 31, 35,§5311; C39,§3828.088; C46, 50, 54,§252.16; 57GA, ch 122,§1]

Referred to in §§252.20, 347.16

**252.17 Settlement continues.** A legal settlement once acquired shall so remain until such person has removed from this state for more than one year or has acquired a legal settlement in some other county or state. [C51,§809; R60,§1377; C73,§1353; C97,§2224; C24, 27, 31, 35, §5312; C39,§3828.089; C46, 50, 54,§252.17]

**252.18 Foreign paupers.**

1. Any person who is a county charge or likely to become such, coming from another state and not having acquired a settlement in any county of this state or any such person having acquired a settlement in any county of this state who removes to another county, may be removed from this state or from the county into which such person has moved, as the case may be, at the expense of the county wherein said person is found, upon the petition of said county to the district or superior court of that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, he shall be deemed and declared in contempt of court and may be punished accordingly; or the judge may order the sheriff of the county seeking the removal to return such person to the state or county of his legal settlement. [C51,§811; R60,§1379; C73,§1354; C97,§2225; C24, 27, 31, 35, §5313; C39,§3828.090; C46, 50, 54,§252.18]

Contempts, ch 665

**252.19 Importation prohibited.** If any person knowingly bring within this state or any county from another county in this state any pauper or poor person, with the intent of making him a charge on any of the townships or counties therein, he shall be fined not exceeding five hundred dollars, and be charged with his support. [C51,§2736; R60,§4379; C73,§4045; C97,§5009; C24, 27, 31, 35,§5314; C39,§3828.091; C46, 50, 54,§252.19]

**252.20 Notice to depart.** Persons coming into the state, or going from one county to another, who are county charges or are likely to become such, may be prevented from acquiring a settlement by the authorities of the county, township, or city in which such persons are found warning them that their continued residence in the county will not result in their acquiring legal settlement rendering them eligible to receive poor relief from the funds of the county. Such warning shall state that its purpose is to prevent eligibility to receive poor relief from the funds of the county, and in no way affects any other legal right of the person on whom the warning is served. After such warning, such persons cannot acquire a settlement except by the requisite residence of two years after the filing of the affidavit as provided in subsection 1 of section 252.16. [C51, §812; R60,§1380; C73,§1355; C97,§2226; C24, 27, 31, 35,§5315; C39,§3828.092; C46, 50, 54,§252.20]

**252.21 Service of notice.** Such warning shall be in writing, and may be served upon the order of the trustees of the township, or of the board of supervisors, by any person; and such person shall make a return of his doings thereon to the board of supervisors,

which, if not made by a sworn officer, must be verified by affidavit.

In the event such person cannot be found within the county, any person attempting to make such service shall file with the board of supervisors an affidavit that diligent search has been made and that such persons cannot be found within the county and the same shall constitute sufficient service of warning as provided herein. [C51,§813; R60,§1381; C73,§1356; C97,§2227; C24, 27, 31, 35,§5316; C39,§3828.093; C46, 50, 54,§252.21]

**252.22 Contest between counties.** When relief is granted to a poor person having a settlement in another county, the auditor shall at once by mail notify the auditor of the county of his settlement of such fact, and, within fifteen days after receipt of such notice, such auditor shall inform the auditor of the county granting relief if the claim of settlement is disputed. If it is not, the poor person, if able, may be removed to the county of his settlement, or, at the request of the auditor or board of supervisors of the county of his settlement, he may be maintained where he then is at the expense of such county, and without affecting his legal settlement.

All laws relating to the support of the poor as provided by this chapter shall be applicable to care, treatment, and hospitalization provided by county public hospitals. [C51,§814, 816, 817; R60,§§1382, 1384, 1385; C73,§§1357, 1359, 1360; C97,§2228; C24, 27, 31, 35,§5317; C39, §3828.094; C46, 50, 54,§252.22]

**252.23 Trial.** If the alleged settlement is disputed, then, within thirty days after notice thereof as above provided, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county affording the relief shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the relief or making the removal. [C51,§§816, 817; R60,§§1384, 1385; C73,§§1359, 1360; C97,§2228; C24, 27, 31, 35,§5318; C39,§3828.095; C46, 50, 54,§252.23]

**252.24 County of settlement liable.** The county where the settlement is shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person, and for the charges of removal and expenses of support incurred.

When relief as herein provided is furnished by any governmental agency of the county, township or city, such relief shall be deemed to have been furnished by the county in which such agency is located and the agency furnishing such relief shall certify the correctness of the costs of such relief to the board of supervisors of said county and said county shall collect from the county of such person's settlement. The amounts herein collected by said county shall be paid to the agency furnishing such relief. This statute as herein amended

shall apply to services and supplies furnished as provided in section 139.30. [C51,§815; R60, §1383; C73,§1358; C97,§2229; C24, 27, 31, 35,§5319; C39,§3828.096; C46, 50, 54,§252.24]

**252.25 Relief by trustees.** The township trustees of each township, subject to general rules that may be adopted by the board of supervisors, shall provide for the relief of such poor persons in their respective townships as should not, in their judgment, be sent to the county home. [C73,§1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5320; C39,§3828.097; C46, 50, 54, §252.25]

Referred to in §252.31

**252.26 Overseer of poor.** The board of supervisors in any county in the state may appoint an overseer of the poor for any part, or all of the county, who shall have within said county, or any part thereof, all the powers and duties conferred by this chapter on the township trustees. Said overseer shall receive as compensation an amount to be determined by the county board and may be paid either from the general or poor fund of the county. [C73, §1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5321; C39,§3828.098; C46, 50, 54,§252.26]

Referred to in §252.31

**252.27 Form of relief—condition.** The relief may be either in the form of food, rent or clothing, fuel and lights, medical attendance, or in money. The amount of assistance issued to meet the needs of the person shall be determined by standards of assistance established by the county boards of supervisors. They may require any able-bodied person to labor faithfully on the streets or highways at the prevailing local rate per hour in payment for and as a condition of granting relief; said labor shall be performed under the direction of the officers having charge of working streets and highways. [C73,§1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5322; C39,§3828.099; C46, 50, 54, §252.27; 57GA, ch 123,§1]

Referred to in §252.31

**252.28 Medical services.** When medical services are rendered by order of the trustees or overseers of the poor, no more shall be charged or paid therefor than is usually charged for like services in the neighborhood where such services are rendered. [C73,§1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5323; C39, §3828.100; C46, 50, 54,§252.28]

40ExGA, HF 140,§12, editorially divided  
Referred to in §252.31

**252.29 Interest prohibited.** No supervisor, trustee, or employee of the county, shall be directly or indirectly interested in any supplies furnished the poor. [C97,§2230; S13,§2230; C24, 27, 31, 35,§5324; C39,§3828.101; C46, 50, 54, §252.29]

Referred to in §252.31  
Similar provisions, §§15.3, 18.4, 86.7, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11

**252.30 Special privileges to soldiers and others.** No person who has served in the army

or navy of the United States, or their widows or families, requiring public relief shall be sent to the county home when they can and prefer to be relieved to the extent above provided, and other persons and families may, at the discretion of the board, also be so relieved. [C73, §1362; C97,§2231; S13,§2231; C24, 27, 31, 35,§5325; C39,§3828.102; C46, 50, 54,§252.30]

Referred to in §252.31

**252.31 County expense.** All moneys expended as contemplated in sections 252.25 to 252.30, inclusive, shall be paid out of the county treasury, after the proper account rendered thereof shall have been approved by the boards of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties. But the board may limit the amount thus to be furnished. [C73, §1363; C97,§2232; C24, 27, 31, 35,§5326; C39, §3828.103; C46, 50, 54,§252.31]

**252.32 Township trustees—duty.** The trustees in each township, in counties where there is no county home, have the oversight and care of all poor persons in their township, and shall see that they receive proper care until provided for by the board of supervisors. [C51,§819; R60,§1387; C73,§1364; C97,§2233; S13,§2233; C24, 27, 31, 35,§5327; C39,§3828.104; C46, 50, 54,§252.32]

**252.33 Application for relief.** The poor may make application for relief to a member of the board of supervisors, or to the overseer of the poor, or to the trustees of the township where they may be. If application be made to the township trustees and they are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may afford such temporary relief, subject to the approval of the board of supervisors, as the necessities of the person require and shall report the case forthwith to the board of supervisors, who may continue or deny relief, as they find cause. [C51,§820; R60,§1388; C73, §1365; C97,§2234; S13,§2234; C24, 27, 31, 35,§5328; C39,§3828.105; C46, 50, 54,§252.33]

Referred to in §252.34

**252.34 Allowance by board.** The board of supervisors may examine into all claims, including claims for medical attendance, allowed by the township trustees for the support of the poor, and if they find the amount allowed by said trustees to be unreasonable, exorbitant, or for any goods or services other than for the necessities of life, they may reject or diminish the claim as in their judgment would be right and just. This section shall apply to all counties in the state, whether there are county homes established in the same or not. This and section 252.33 shall apply to acts of overseers of poor in cities as well as to township trustees. [C51,§820; R60,§1388; C73,§1365; C97, §2234; S13,§2234; C24, 27, 31, 35,§5329; C39, §3828.106; C46, 50, 54,§252.34]

**252.35 Payment of claims.** All claims and bills for the care and support of the poor shall be certified to be correct by the proper trustees

and presented to the board of supervisors, and, if they are satisfied that they are reasonable and proper, they shall be paid out of the county treasury. [C51,§821; R60,§1389; C73,§1366; C97, §2235; C24, 27, 31, 35,§5330; C39,§3828.107; C46, 50, 54,§252.35]

Referred to in §347.16

**252.36 Annual allowance.** If a poor person of mature years and sound mind is likely to become a charge, the board may pay him such an annual allowance as will not exceed the cost of maintenance in the ordinary way. [C51, §822; R60,§1390; C73,§1367; C97,§2236; C24, 27, 31, 35,§5332; C39,§3828.108; C46, 50, 54,§252.36]

**252.37 Appeal to supervisors.** If any poor person, on application to the trustees, be refused the required relief, he may apply to the board of supervisors, who, upon examination into the matter, may direct the trustees to afford relief, or it may direct specific relief. [C51,§823; R60,§1391; C73,§1368; C97,§2237; C24, 27, 31, 35,§5333; C39,§3828.109; C46, 50, 54,§252.37]

**252.38 Contracts for support.** The board of supervisors may make contracts with the lowest responsible bidder for furnishing any or all supplies required for the poor, for a term not exceeding one year, or it may enter into a contract with the lowest responsible bidder, through proposals opened and examined at a regular session of the board, for the support of any or all the poor of the county for one year at a time, and may make all requisite orders to that effect, and shall require all such contractors to give bonds in such sum as it believes sufficient to secure the faithful performance of the same. [C51,§825; R60,§1393; C73,§1369; C97,§2238; C24, 27, 31, 35,§5334; C39, §3828.110; C46, 50, 54,§252.38]

**252.39 Medical and dental service.** The board of supervisors may make contracts with any reputable and responsible person licensed to practice medicine or dentistry in this state to furnish medical or dental attendance or services required for the poor, for any term not exceeding one year, and shall require all such contractors to give bonds in a company authorized to do business in this state in such sum as it believes sufficient to secure the faithful performance of such contracts. [C31, 35, §5334-c1; C39,§3828.111; C46, 50, 54,§252.39]

See also §150.9

**252.40 Supervision.** When a contract is made for the support of any or all the poor, the board shall, from time to time, appoint some person to examine and report upon the manner the poor are kept and treated, which shall be

done without notice to the person contracting for their support, and if upon due notice and inquiry the board find that the poor are not reasonably and properly supported and cared for, it may, at a regular or special session, set aside the contract, making proper allowances for the time it has been in force. [C51,§826; R60,§1394; C73,§1370; C97,§2239; C24, 27, 31, 35, §5335; C39,§3828.112; C46, 50, 54,§252.40]

**252.41 Employment.** Any such contractor may employ a poor person in any work for which he is physically able, subject to the control of the board of supervisors, who may place said contractor under the supervision of the township trustees. [C51,§827; R60,§1395; C73,§1371; C97,§2240; C24, 27, 31, 35,§5336; C39, §3828.113; C46, 50, 54,§252.41]

**252.42 Co-operation on work-relief projects.** Notwithstanding the provisions of any laws to the contrary, the county board of supervisors shall have the power to use the poor fund to join and co-operate with the United States government, and/or cities and towns within their boundaries, or both the United States government and cities and towns within their boundaries, in sponsoring work projects, provided that the money used from the poor fund for such purposes does not exceed the cost per month of supplying relief to the certified persons working on projects who would be receiving direct relief if they were not employed on said work projects. [C46, 50, 54,§252.42]

**252.43 Poor tax.** The expense of supporting the poor shall be paid out of the county treasury in the same manner as other disbursements for county purposes; and in case the ordinary revenue of the county proves insufficient for the support of the poor, the board may levy a poor tax, not exceeding one and one-half mills on the dollar, to be entered on the tax list and collected as the ordinary county tax.

Should the one and one-half mill levy fail to provide adequate funds to take care of the poor, then the board of supervisors, with the approval of the state comptroller, shall levy an additional tax of not to exceed three mills, to be entered on the tax list and collected as the ordinary county tax. Before any such additional levy is made, a showing of the necessity for such additional levy shall be made to the state comptroller and no such additional levy shall be made unless it shall be approved in writing by the comptroller. [C51,§844; R60, §1412; C73,§1381; C97,§2247; S13,§2247; C24, 27, 31, 35,§5337; C39,§3828.114; C46, 50, 54,§252.43]

Excess expenditures legalized, 45GA, ch 170  
Transfers to poor fund, §24.22

## CHAPTER 252A

## UNIFORM SUPPORT OF DEPENDENTS LAW

252A.1 Title and purpose.

252A.2 Definitions.

252A.3 Husband liable for support.

252A.4 Jurisdiction.

252A.5 When proceeding may be maintained.

252A.6 How commenced—trial.

252A.7 Petitioner's representatives to appear.

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252A.9 Construction.

252A.10 Costs advanced.

252A.11 Custody of respondent.

252A.12 Exchange lists of courts.

**252A.1 Title and purpose.** This chapter may be cited and referred to as the uniform support of dependents law.

The purpose of this uniform chapter is to secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support. [C50, 54, §252A.1]

**252A.2 Definitions.** As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. "State" shall mean and include any state, territory or possession of the United States and the District of Columbia.

2. "Court" shall mean and include a family court, domestic relations court, children's court, municipal court and any other court, by whatever name known, in any state having reciprocal laws or laws substantially similar to this chapter upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

3. "Child" includes a stepchild, foster child or legally adopted child and means a child actually or apparently under seventeen years of age, and a child over seventeen years of age who is unable to maintain himself and is likely to become a public charge.

4. "Dependent" shall mean and include a wife, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

5. "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

6. "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

7. "Petitioner's representative" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this chapter or under the laws of the state or states wherein the petitioner and the respondent reside.

8. "Summons" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this chapter.

9. "Initiating state" shall mean the state of domicile or residence of the petitioner.

10. "Responding state" shall mean the state wherein the respondent resides or is domiciled or found. [C50, 54, §252A.2]

**252A.3 Husband liable for support.** For the purpose of this chapter:

1. A husband in one state is hereby declared to be liable for the support of his wife and any child or children under seventeen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

2. A mother in one state is hereby declared to be liable for the support of her child or children under seventeen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if she is possessed of sufficient means or able to earn such means, she may be required to pay for the support of such child or children a fair and reasonable sum according to her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

3. The parents in one state are hereby declared to be severally liable for the support of a child seventeen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain himself and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legiti-

mate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A woman who was or is held out as his wife by a man by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate wife of such man.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from his wife or a decree dissolving his marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown. [C50, 54,§252A.3; 56GA, ch 129,§1]

**252A.4 Jurisdiction.** For the purposes of this chapter:

1. The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

2. The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

3. The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner. [C50, 54,§252A.4]

**252A.5 When proceeding may be maintained.** A proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent

are residents of or domiciled or found in the same state.

2. Where the petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

3. Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

4. Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this chapter and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

5. Whenever the state or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures and consent of the dependent shall not be required in order to institute proceedings under this chapter. [C50, 54, §252A.5; 56GA, ch 129,§2]

**252A.6 How commenced—trial.**

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the state wherein he resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he is in need of and is entitled to support from the respondent, giving his name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his finger prints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain

jurisdiction of the respondent or his property, it shall so certify and shall cause three copies of (a) the petition (b) its certificate and (c) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the respondent. If a court of the state, acting as a responding state, is unable to obtain jurisdiction of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, he shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof, or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. An exemplified copy of such order shall be transmitted by the court to the court in the initiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as

a responding state shall have the following duties which may be carried out through the clerk of the court: upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof. [C50, 54,§252A.6; 56GA, ch 129,§§3-10]

**252A.7 Petitioner's representatives to appear.** It shall be the duty of all petitioner's representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this chapter, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state. [C50, 54,§252A.7]

**252A.8 Additional remedies.** This chapter shall be construed to furnish an additional or

alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter. [C50, 54,§252A.8]

**252A.9 Construction.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [C50, 54,§252A.9]  
Constitutionality, 53GA, ch 103,§10

**252A.10 Costs advanced.** Actual costs incurred in this state incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency unless otherwise ordered by the court. Where the action is brought by an agency of the state or county there shall be no filing fee. [56GA, ch 129,§11]

**252A.11 Custody of respondent.** When the court of this state, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction it may as an initiating state request in its certificate that the court of the responding state obtain the body of the respondent by appropriate process if that be permissible under the law of the responding state; or, it may as a responding state, obtain the body of the respondent by appropriate process. [56GA, ch 129,§12]

**252A.12 Exchange lists of courts.** The state department of social welfare is hereby designated as the state information agency under this chapter, and it shall be its duty to compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar act and to maintain a register of such lists received from other states. [56GA, ch 129,§13]

## CHAPTER 253

### COUNTY HOMES

Referred to in §135B.18

Exemption from hospital licenses, §135B.18

253.1 Establishment—submission to vote.  
253.2 Management.  
253.3 Annual published report.  
253.4 Steward.  
253.5 Admission—labor required.  
253.6 Order for admission.

253.7 Discharge.  
253.8 Visitation and inspection.  
253.9 Education of children.  
253.10 Letting out.  
253.11 Joint care by two counties.

**253.1 Establishment—submission to vote.** The board of supervisors of each county may order the establishment of a county home in such county whenever it is deemed advisable, and may make the requisite contracts and carry such order into effect, provided the cost of said county home, if in excess of fifteen thousand dollars, shall be first estimated by said board and approved by vote of the people.

[C51,§828; R60,§1396; C73,§1372; C97,§2241; SS15, §2241; C24, 27, 31, 35,§5338; C39,§3828.115; C46, 50, 54,§253.1]

Submission of question, §345.1

**253.2 Management.** The board of supervisors, or any committee appointed by it for that purpose, may make all contracts and purchases requisite for the county farm and home and



may prescribe rules or regulations for the management and government of the same, and for the sobriety, morality, and industry of its occupants. [C51,§833; R60,§1401; C73,§1373; C97, §2242; S13,§2242; C24, 27, 31, 35,§5339; C39, §3828.116; C46, 50, 54,§253.2]

**253.3 Annual published report.** The board of supervisors shall, during the month of January of each year, publish in the official papers of the county as part of its proceedings, a financial statement of the receipts of the county home, or county farm, itemizing the same and stating the source thereof, which report shall also set forth the total expenditures thereof and the value of the property on hand on January 1 of the year for which the report is made and a comparison with the inventory of the previous year. [C24, 27, 31, 35,§5340; C39,§3828.117; C46, 50, 54,§253.3]

**253.4 Steward.** The board may appoint a steward of the county home, who shall be governed in all respects by the rules and regulations of the board and its committees, and may be removed by the board at pleasure, and who shall receive such compensation, perform such duties, and give such security for his faithful performance as the board may direct. [C51,§834; R60,§1402; C73,§1374; C97,§2243; S13, §2243; C24, 27, 31, 35,§5341; C39,§3828.118; C46, 50, 54,§253.4]

Removal under preference law, §70.6

**253.5 Admission—labor required.** The steward shall receive into the county home any person producing an order as hereafter provided, and enter in a book to be kept for that purpose, the name, age, and date of his reception, and may require of persons so admitted such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which, together with the receipts of the poor farm, shall be appropriated to the use of the county home in such manner as the board may determine. [C51,§835, 836; R60, §§1403, 1404; C73,§§1375, 1376; C97,§2244; S13, §2244; C24, 27, 31, 35,§5342; C39,§3828.119; C46, 50, 54,§253.5]

**253.6 Order for admission.** No person shall be admitted to the county home except upon the written order of a township trustee or member of the board of supervisors, and relief shall be furnished in the county home only, when the person is able to be taken there, except as hereinbefore otherwise provided. [C51,§837; R60,§1405; C73,§1377; C97,§2244; S13,

§2244; C24, 27, 31, 35,§5343; C39,§3828.120; C46, 50, 54,§253.6]

**253.7 Discharge.** When any inmate of the county home becomes able to support himself, the board must order his discharge. [C51,§840; R60,§1408; C73,§1379; C97,§2245; S13,§2245; C24, 27, 31, 35,§5344; C39,§3828.121; C46, 50, 54,§253.7]

**253.8 Visitation and inspection.** The board shall cause the county home to be visited at least once a month by one of its body, who shall carefully examine the condition of the inmates and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the steward, and look into all matters pertaining to the county home and its inmates, and report to the board. [C51,§842; R60,§1410; C73, §1380; C97,§2246; S13,§2246; C24, 27, 31, 35,§5345; C39,§3828.122; C46, 50, 54,§253.8]

**253.9 Education of children.** Poor children, when cared for at the county home, shall attend the district school for the district in which such home is situated, and a ratable proportion of the cost of the school, based upon the attendance of such poor children to the total number of days attendance thereat, shall be paid by the county into the treasury of such school district, and charged as part of the expense of supporting the county home. [C51, §844; R60,§1412; C73,§1381; C97,§2249; S13,§2249; C24, 27, 31, 35,§5346; C39,§3828.123; C46, 50, 54, §253.9]

**253.10 Letting out.** The board is invested with authority to let out the support of the poor, with the use and occupancy of the county home and farm, for a period not exceeding three years. [C51,§847; R60,§1415; C73,§1382; C97,§2248; S13,§2248; C24, 27, 31, 35,§5347; C39, §3828.124; C46, 50, 54,§253.10]

**253.11 Joint care by two counties.** The board may, at its discretion and in the interests of efficiency and economy in the care of its poor, enter into an agreement with the board of any adjoining county for the transfer of the inmates of the county home of one of said counties to that of the other and for the mutual support and maintenance of said inmates by said counties. The cost of maintaining and supporting said inmates shall be divided between the two counties upon an equitable basis to be mutually agreed upon by the joint boards of the contracting counties. [C46, 50, 54, §253.11]

## CHAPTER 254

## TUBERCULOUS PATIENTS

Referred to in §§135B.31, 271.10, 271.15, 347.16, 347.17, 444.14

- 254.1 Care and treatment.  
 254.2 Separate buildings.  
 254.3 Appropriation for construction.  
 254.4 Allowance for support.  
 254.5 Inspection by department of health.

- 254.6 Refractory tuberculous patients.  
 254.7 Segregation and forcible detention.  
 254.8 Free treatment to any resident.  
 254.9 Failure or refusal to continue.  
 254.10 Donations and insurance payments.

**254.1 Care and treatment.** The board of supervisors of each county shall provide suitable care and treatment for persons suffering from tuberculosis, and where no other suitable provision has been made, they may contract for such care and treatment with the board of trustees of any hospital, not maintained for pecuniary profit. [S13,§409-s; SS15, §409-t2; C24, 27, 31, 35,§5369; C39,§3828.125; C46, 50, 54,§254.1]

Referred to in §347.16

**254.2 Separate buildings.** Said board of supervisors may construct, or otherwise provide, and equip suitable buildings in connection with any hospital in the county for the segregation, care, and treatment of patients afflicted with tuberculosis.

No institution, hospital, or building for the care and treatment of persons afflicted with tuberculosis shall be established at any county home. [SS15,§409-t3; C24, 27, 31, 35,§5370; C39, §3828.126; C46, 50, 54,§254.2]

**254.3 Appropriation for construction.** The board may, in counties having a population of over fifteen thousand and under sixty-seven thousand, appropriate a sum not exceeding five thousand dollars, and in counties of less than fifteen thousand, a sum not to exceed two thousand dollars for acquiring, constructing, and equipping sites and buildings, without submitting the question to a vote. [SS15,§409-t4; C24, 27, 31, 35,§5371; C39,§3828.127; C46, 50, 54,§254.3]

**254.4 Allowance for support.** The board of supervisors may allow, from the state institution fund of the county, for the care and support of each tuberculous patient cared for in any such institution, a sum not exceeding the average per patient per day cost of treatment in any such institution. [SS15,§409-t4; C24, 27, 31, 35,§5372; C39,§3828.128; C46, 50, 54,§254.4]

**254.5 Inspection by department of health.** Any such department shall be inspected and approved by the state department of health, which department shall have the power to require alterations in buildings and equipment, and such changes in treatment as may be necessary in order to make the institution and treatment conform to modern and accepted methods for the treatment of tuberculosis. [SS15,§409-t3; C24, 27, 31, 35,§5373; C39,§3828.129; C46, 50, 54,§254.5]

**254.6 Refractory tuberculous patients.** Any person suffering from tuberculosis, who shall

persistently refuse to obey or comply with the rules of any institution for the care of tuberculous patients, may, by order of the district court of the county in which such institution is located, be committed to the state sanatorium, subject to the rules of admission at said institution, or to any county sanatorium or other institution where tuberculous patients are treated. [C24, 27, 31, 35,§5374; C39,§3828.130; C46, 50, 54,§254.6]

**254.7 Segregation and forcible detention.** If any patient being treated for tuberculosis at the state sanatorium, or any county sanatorium or other institution where tuberculosis is cared for, shall refuse to comply with the laws of the state or rules for the government of the institutions named herein, and shall persistently, or carelessly, or maliciously violate such laws or rules so as to menace the welfare of said institution or to interfere with the administration, order, or peace of said institution, then upon complaint of the superintendent of any institution herein designated, such person may, by order of the district court, be segregated and forcibly detained in a ward or room, for such purpose, and for such period of time as may be deemed advisable by the court, to the end that such person may be properly treated, and the population of such institution may be protected and the decorum maintained. [S13,§409-q; C24, 27, 31, 35,§5375; C39,§3828.131; C46, 50, 54,§254.7]

**254.8 Free treatment to any resident.** Treatments shall be supplied free to any legal resident of Iowa suffering from tuberculosis upon the signed certificate of his county director of social welfare, or the overseer of the poor, as the board of supervisors may direct, or in case of a county maintaining a separate public tuberculosis hospital, his board of hospital trustees, that such person has applied for such treatment and agreed to remain under treatment until discharged by the sanatorium, as no longer having tuberculosis in a communicable stage and is not possessed of sufficient income or estate to enable him to make payment of the costs of such treatment in whole or in part without affecting his reasonable economic security or support, in light of his resources, obligations and responsibilities to dependents; and expenditures of public funds for treatment of tuberculosis shall be considered expenditures for the protection of the public health and not as moneys advanced in the nature of welfare or relief. The state department of health shall promulgate rules and regu-

lations for the uniform administration of the provisions of this section, which shall govern the county directors of social welfare, overseers of the poor, and boards of hospital trustees in the issuance of such certificates. Any applicant who is denied a certificate by the county director of social welfare, overseer of the poor or the board of hospital trustees, may apply to a judge of the district court of his county of residence, either in term or on vacation, for a review thereof and hearing thereon which shall be de novo. The district judge shall promptly hear such application and shall render final decision thereon and enter an order accordingly. The director, overseer and board of hospital trustees shall file a copy of such certificates issued by them and the clerk of the court shall file a copy of any order entered by the district judge with the county auditor of the county of legal settlement of the applicant. [C50, 54,§254.8]

Referred to in §347.16

**254.9 Failure or refusal to continue.** Any person receiving free treatment under the provisions of this chapter who shall fail or refuse to continue the same until the disease is no longer in a communicable stage, may be or-

dered rehospitalized, by the district court of any county in which such person is found, in the same or any other sanatorium until such person no longer has tuberculosis in a communicable stage. Said order shall be issued only after complaint by any local or state health officer to such court and after hearing pursuant to notice to said person as prescribed by said court. Process shall issue to any peace officer for the enforcement of any such order of court. [C50, 54,§254.9]

**254.10 Donations and insurance payments.** The county through the board of supervisors, or in case of a county maintaining a separate public tuberculosis hospital, through the board of hospital trustees, may receive any contributions or donations of money or property from patients or other persons. Money payable under the terms of an insurance contract covering costs of hospitalization of tuberculous patients shall be paid to the board of supervisors, or in case of a county maintaining a separate public tuberculosis hospital, to the board of hospital trustees, of the county of the patient's residence, if the insured is receiving free care under the provisions of this chapter. [C50, 54,§254.10]

## CHAPTER 255

### MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

Referred to in §135B.31

255.1 Complaint.  
 255.2 Duty of public officers and others.  
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 255.4 Examination by physician.  
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 255.8 Hearing—order—emergency cases—cancellation of commitments.  
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 255.24 Record and report of expenses.  
 255.25 Audit of accounts of hospital.  
 255.26 Expenses — how paid — action to reimburse county.  
 255.27 Faculty to prepare blanks—printing.  
 255.28 Transfer of patients from state institutions.

**255.1 Complaint.** Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor. [SS15,§254-b; C24, 27, 31, 35,§4005; C39,§3828.132; C46, 50, 54, §255.1]

**255.2 Duty of public officers and others.** It shall be the duty of physicians, public health

nurses, members of boards of supervisors and township trustees, overseers of the poor, sheriffs, policemen, and public school teachers, having knowledge of persons suffering from any such malady or deformity, to file or cause such complaint to be filed. [SS15,§254-b; C24, 27, 31, 35,§4006; C39,§3828.133; C46, 50, 54, §255.2]

**255.3 "Patient" defined.** The word "patient" as used in this chapter means the person against whom the complaint is filed. [C24, 27, 31, 35,§4007; C39,§3828.134; C46, 50, 54,§255.3]

**255.4 Examination by physician.** Upon the filing of such complaint, the clerk shall num-

ber and index the same and shall appoint a competent physician and surgeon, living in the vicinity of the patient, who shall personally examine the patient with respect to said pregnancy, malady, or deformity. The clerk may, after the expiration of five years from the filing of a complaint, destroy it and all papers or records in connection therewith. [SS15,§254-b; C24, 27, 31, 35,§4008; C39,§3828.135; C46, 50, 54,§255.4]

**255.5 Report by physician.** Such physician shall make a report in duplicate on blanks furnished as hereinafter provided, answering the questions contained therein and setting forth the information required thereby, giving such history of the case as will be likely to aid the medical or surgical treatment or hospital care of such patient, describing the pregnancy, deformity, or malady in detail, and stating whether or not in his opinion the same can probably be improved or cured or advantageously treated, which report shall be filed in the office of the clerk within such time as the clerk may fix. [SS15,§254-b,-j; C24, 27, 31, 35, §4009; C39,§3828.136; C46, 50, 54,§255.5]

**255.6 Investigation and report.** When such complaint is filed, the clerk shall furnish the county attorney and board of supervisors with a copy thereof and said board shall, by the overseer of the poor or such other agent as it may select, make a thorough investigation of facts as to the legal residence of the patient, and the ability of the patient or others chargeable with his support to pay the expense of such treatment and care; and shall file a report of such investigation in the office of the clerk, at or before the time of hearing. [SS15,§254-b; C24, 27, 31, 35,§4010; C39,§3828.137; C46, 50, 54, §255.6]

**255.7 Notice of hearing—duty of county attorney.** When the physician's report has been filed, the clerk shall, with the consent of the court or judge, fix a time and place for hearing of the matter by the court, and the county attorney shall cause such patient and the parent or parents, guardian, or person having the legal custody of said patient, if under legal disability, to be served with such notice of the time and place of the hearing as the judge or clerk may prescribe. [SS15,§254-c; C24, 27, 31, 35,§4011; C39,§3828.138; C46, 50, 54, §255.7]

**255.8 Hearing—order—emergency cases—cancellation of commitments.** The county attorney and the overseer of the poor, or other agent of the board of supervisors of the county where the hearing is held, shall appear thereat. The complainant, the county attorney, the overseer of the poor or other agent of the board of supervisors, and the patient, or any person representing him, or her, may introduce evidence and be heard. If the court finds that said patient is a legal resident of Iowa and is pregnant or is suffering from a malady or deformity which can probably be improved or

cured or advantageously treated by medical or surgical treatment or hospital care, and that neither the patient nor any person legally chargeable with his or her support is able to pay the expenses thereof, then the clerk of court, except in obstetrical cases and cases of crippled children, shall immediately ascertain from the admitting physician at the university hospital whether such person can be received as a patient within a period of thirty days, and if the patient can be so received, the court shall then enter an order directing that said patient be sent to the university hospital for proper medical and surgical treatment and hospital care. If the court ascertain, excepting in obstetrical cases and orthopedic cases, that a person of the age or sex of the patient, or afflicted by the complaint, disease or deformity with which such person is affected cannot be received as a patient at the said university hospital within the period of thirty days, then he shall enter an order directing the board of supervisors of the county to provide adequate treatment at county expense for said patient at home or in a hospital. Obstetrical cases and orthopedic cases may be committed to the university hospital without regard to the limiting period of thirty days hereinbefore stated.

In any case of emergency the court without previous inquiry may at its discretion order the patient to be immediately taken to and accepted by the university hospital for the necessary care as provided in section 255.11, but if such a patient cannot be immediately accepted at the university hospital as ascertained by telephone if necessary, the court may enter an order as in certain cases above set forth directing the board of supervisors to provide adequate treatment at county expense for the said patient at home or in a hospital. [SS15, §254-c; C24, 27, 31, 35,§4012; C39,§3828.139; C46, 50, 54,§255.8]

Referred to in §§255.9, 255.14

**255.9 Treatment for infant.** Whenever a woman who is pregnant is committed to the hospital under the provisions of section 255.8, the said commitment shall authorize the hospital to provide proper medical or surgical treatment and hospital care for the infant. [C31, 35,§4012-d1; C39,§3828.140; C46, 50, 54, §255.9]

**255.10 Religious belief—denial of order.** The court in its discretion may refuse to make such order in any case where the court finds the patient or his parent, parents, or guardian are members of a religious denomination whose tenets preclude dependence on the practice of medicine or surgery and desire in good faith to rely upon the practice of their religion for relief from disease or disorder. [C24, 27, 31, 35,§4013; C39,§3828.141; C46, 50, 54,§255.10]

**255.11 Order in case of emergency.** In cases of great emergency, when the court or judge is satisfied that delay would be seriously injurious to the patient, he may make such order with the consent of the patient, if adult, or of the parent or parents, guardian, or person hav-

ing the legal custody of said patient, if a minor or incompetent, without examination, report, notice, or hearing. [SS15,§254-c; C24, 27, 31, 35, §4014; C39,§3828.142; C46, 50, 54,§255.11]

Referred to in §255.8

**255.12 Certified copy of order.** The clerk shall prepare a certified copy of said order, which, together with a copy of the physician's report, shall be delivered to the admitting physician of said hospital at or before the time of the reception of the patient into the hospital. [SS15,§254-j; C24, 27, 31, 35,§4015; C39,§3828.143; C46, 50, 54,§255.12]

**255.13 Attendant — physician — compensation.** If the physician appointed to examine the patient shall certify that an attendant to accompany the patient to the said hospital is necessary, and the university hospital attendant and ambulance service is not available, then the court or judge may appoint an attendant who shall receive not exceeding two dollars per day for the time thus necessarily employed and actual necessary traveling expenses by the most feasible route to said hospital whether by ambulance, train or automobile; but if such appointee is a relative of the patient or a member of his immediate family, or receives a salary or other compensation from the public for his services, no such per diem compensation shall be paid him. The physician appointed by the court to make the examination and report shall receive therefor three dollars for each examination and report so made and his actual necessary expenses incurred in making such examination, but if said physician receives a salary or other compensation from the public for his full-time services, then no such examination fee shall be paid. The actual, necessary expenses of transporting and caring for the patient shall be paid as hereinafter provided. [SS15,§254-h; C24, 27, 31, 35,§4016; C39,§3828.144; C46, 50, 54,§255.13]

Referred to in §255.14

**255.14 Expenses—how paid.** An itemized, verified statement of all charges provided for in sections 255.8 and 255.13, in cases where the patient is admitted or accepted for treatment at the university hospital shall be filed with the superintendent of the university hospital, and upon his recommendation when approved by the judge under whose order the same were incurred, they shall be charged on the regular bill for the maintenance, transportation and treatment of the patient, and be audited and paid in the manner as hereinafter provided. [SS15,§254-h; C24, 27, 31, 35,§4017; C39,§3828.145; C46, 50, 54,§255.14]

**255.15 Duty of admitting physician at hospital.** The authorities in control of the medical college shall designate some physician to pass upon the admission of such patient, and it shall be his duty to receive such patient into the hospital and to provide for him, if available, a cot, bed, or room in said hospital, and to assign him to the appropriate clinic and for treatment

by the proper physician, unless, in his judgment, the presence of the patient in the hospital would be dangerous to other patients, or there is no reasonable probability that he may be benefited by the proposed treatment or hospital care. If the admitting physician shall deny admission to the patient, he shall make a report in duplicate of his reasons therefor. [SS15,§254-d; C24, 27, 31, 35,§4018; C39,§3828.146; C46, 50, 54,§255.15]

Referred to in §255.18

**255.16 County quotas.** Subject to subsequent qualifications in this section, there shall be treated at the university hospital during each fiscal year a number of committed indigent patients from each county which shall bear the same relation to the total number of committed indigent patients admitted during the year as the population of such county shall bear to the total population of the state according to the last preceding official census. This standard shall apply to indigent patients, the expenses of whose commitment, transportation, care and treatment shall be borne by appropriated funds and shall not govern the admission of either obstetrical or orthopedic patients. If the number of patients admitted from any county shall exceed by more than ten percent the county quota as fixed and ascertained under the first sentence of this section, the charges and expenses of the care and treatment of such patients in excess of ten percent of the quota shall be paid from the funds of such county at actual cost; but if the number of excess patients from any county shall not exceed ten percent, all costs, expenses, and charges incurred in their behalf shall be paid from the appropriation for the support of the hospital. [C35,4018-f1; C39,§3828.147; C46, 50, 54,§255.16]

**255.17 Report of physician in charge of clinic.** If the physician or surgeon in charge of said clinic, or to whom such patient has been assigned for treatment, declines to treat such patient, he shall make a report in duplicate of his examination of such patient, and state therein his reasons for declining such treatment. [SS15,§254-d; C24, 27, 31, 35,§4019; C39, §3828.148; C46, 50, 54,§255.17]

Referred to in §255.18

**255.18 Reports.** One duplicate of each of the reports named in sections 255.15 and 255.17 shall be preserved in the records of said hospital, and the other transmitted to the clerk of the court where said order committing the patient to said hospital was entered, and by the clerk filed and preserved among the records in the cause. [SS15,§254-d; C24, 27, 31, 35, §4020; C39,§3828.149; C46, 50, 54,§255.18]

**255.19 Treatment of other patients.** The university hospital authorities may at their discretion receive into the hospital for medical, obstetrical or surgical treatment or hospital care, patients not committed thereto under the provisions of this chapter; but the treat-

ment or care of such patients shall not in any way interfere with the proper medical or surgical treatment or hospital care of committed patients.

All of the provisions of this chapter except as to commitment of patients shall apply to such patients. The university hospital authorities shall collect from the person or persons liable for the support of such patients reasonable charges for hospital care and service and deposit the same with the treasurer of the university for the use and benefit of the university hospital. Earnings of the hospital whether from private patients, cost patients, or indigents shall be administered so as to increase as much as possible, the service available for indigents. [C24, 27, 31, 35, §4021; C39, §3828.150; C46, 50, 54, §255.19]

**255.20 Hospital treatment.** When any patient has been admitted to the hospital for treatment, the physician or surgeon in charge of the case shall proceed with due care and diligence to perform such operation or bestow such treatment upon such patient as in his judgment shall be necessary and proper. Adequate nursing and hospital care shall be provided for said patient during such treatment. [SS15, §254-d; C24, 27, 31, 35, §4022; C39, §3828.151; C46, 50, 54, §255.20]

**255.21 Treatment outside hospital—attendant.** If, in the judgment of the physician or surgeon to whom the patient has been assigned for treatment, continuous residence of the patient in the hospital is unnecessary, such patient may, by the hospital authorities, be sent to his home or other appropriate place, and be required to return to the hospital when and for such length of time as may be for his benefit. The hospital authorities may, if necessary, appoint an attendant to accompany such patient and discharged patients, and the compensation of such attendant shall be fixed by the state board of regents and charged by the hospital as part of the costs of transporting patients. The compensation paid to and the expenses of the attendant shall be audited and paid in the same manner as is provided by law for the compensation of an attendant appointed by the court. [SS15, §§254-h, -i; C24, 27, 31, 35, §4023; C39, §3828.152; C46, 50, 54, §255.21; 56GA, ch 131, §59]

**255.22 Treatment authorized.** No minor or incompetent person shall be treated for any malady or deformity except such as is reasonably well described in the order of court or the report of the examining physician, unless permission for such treatment is provided for in the order of court, or is granted by his parents or guardian; but the physician in charge may administer such treatment or perform such surgical operations as are usually required in cases of emergency. [SS15, §254-i; C24, 27, 31, 35, §4024; C39, §3828.153; C46, 50, 54, §255.22]

**255.23 Treatment gratuitous—exception.** No physician, surgeon, or nurse who shall treat

or care for such patient shall charge or receive any compensation therefor except the salary or compensation fixed by the state board of regents to be paid from the hospital funds. If the physician, surgeon, or nurse is not in the regular employ of the state board of regents, his or her compensation shall be paid by the county upon approval of the board of supervisors. [SS15, §254-e; C24, 27, 31, 35, §4025; C39, §3828.154; C46, 50, 54, §255.23; 56GA, ch 131, §20]

**255.24 Record and report of expenses.** The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the state comptroller an itemized, sworn statement of all expenses thereof incurred in said hospital. But he shall render separate bills showing the actual cost of all appliances, instruments, X-ray and other special services used in connection with such treatment, commitments, and transportation to and from the said university hospital, including the expenses of attendants and escorts.

All purchases of materials, appliances, instruments and supplies by said university hospital, in cases where more than one hundred dollars is to be expended, and where the prices of the commodity or commodities to be purchased are subject to competition, shall be upon open competitive quotations, and all contracts therefor shall be subject to the provisions of chapter 72. [SS15, §254-f; C24, 27, 31, 35, §4026; C39, §3828.155; C46, 50, 54, §255.24]

**255.25 Audit of accounts of hospital.** To arrive at a proper basis for the payment of said bills for treatment, care, and maintenance, the state board of regents shall cause to be made annually an audit of the accounts of the university hospital, and determine the average cost per day for the care and maintenance of each patient therein, exclusive of the salaries of the members of the faculty of said university college of medicine, and said bills shall be allowed at such average cost. All accounts shall be so adjusted and paid as to reimburse the funds of the hospital used for the purposes of this chapter. [C24, 27, 31, 35, §4027; C39, §3828.156; C46, 50, 54, §255.25; 56GA, ch 131, §59]

Referred to in §255.26

**255.26 Expenses—how paid—action to reimburse county.** Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the state comptroller to the treasurer of the state university, and the same shall be by him placed to the credit of the funds which are set aside for the support of said hospital. The superintendent of the said university hospital shall certify to the auditor of state on the first day of January, April, July and October of each year, the amount as herein provided not previously certified by him due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to

the auditor of each county having patients chargeable thereto.

The county auditor, upon receipt of such certificate, shall thereupon enter the same to the credit of the state in his ledger of state accounts, and at once issue a notice to his county treasurer authorizing him to transfer the amount from the poor or county fund to the general state revenue, which notice shall be filed by the treasurer as his authority for making such transfer; and he shall include the amount so transferred in his next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment, transportation and caring for each indigent patient under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for his or her care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost shall cause the balance to be paid into the state treasury to reimburse the university hospital fund. [SS15,§254-g; C24, 27, 31, 35,§4028; C39,§3828.157; C46, 50, 54,§255.26]

**255.27 Faculty to prepare blanks—printing.** The medical faculty of the state university hospital shall from time to time prepare blanks containing such questions and requiring such information as may, in its judgment, be necessary and proper to be obtained by the physician who examines such patient under order of court. Such blanks shall be printed by the state, and a sufficient supply thereof shall be furnished by the state board of printing to the clerk of each juvenile court in the state. The cost of printing said blanks shall be audited, allowed, and paid in the same manner as other bills for public printing. [SS15, §254-j; C24, 27, 31, 35,§4029; C39,§3828.158; C46, 50, 54,§255.27]

**255.28 Transfer of patients from state institutions.** The board of control of state institutions, and the board in control of the Iowa braille and sight-saving school, the school for the deaf, The Iowa Annie Wittenmyer Home, and the juvenile home, may, respectively, send any inmate of any of said institutions, or any person committed or applying for admission thereto, to the hospital of the medical college of the state university for treatment and care as provided in this chapter, without securing the order of court required in other cases. Said boards shall respectively pay the traveling expenses of any patient thus committed, and when necessary the traveling expenses of an attendant for such patient, out of funds appropriated for the use of the institution from which he is sent. [SS15,§254-k; C24, 27, 31, 35, §4030; C39,§3828.159; C46, 50, 54,§255.28]

## CHAPTER 256

### DETENTION HOSPITAL FOR CONTAGIOUS DISEASES

256.1 Establishment.  
256.2 Bonds—tax levy.

256.3 Management and control.

**256.1 Establishment.** When the board of supervisors of any county shall be presented with a petition signed by three hundred resident freeholders of the county, of whom two hundred shall be residents of the city, town, or village where it is proposed to establish and equip a hospital for the detention of persons suffering from any infectious or contagious disease, the board, when authorized by the vote of the people at an election called and held as provided in the chapter relating to county public hospitals, shall order the erection and equipment of such hospital, at a cost of not more than the amount voted, which shall in no event exceed the sum of one hundred thousand dollars. [C24, 27, 31, 35,§5376; C39,§3828.160; C46, 50, 54,§256.1]

County public hospitals, ch 347  
Vote required to authorize bonds, §75.1

**256.2 Bonds—tax levy.** The board of supervisors shall issue the bonds of the county covering the cost of the erection and equipment of said hospital, which bonds shall be payable at the option of the county at any time within fifteen years, and shall draw interest at the rate of not more than five percent per annum, payable annually. The board shall make such levy as will pay the said bonds and interest thereon as they become due. Such funds shall be used for no other purpose. [C24, 27, 31, 35,§5377; C39,§3828.161; C46, 50, 54,§256.2]

Maturity and payment, ch 76

**256.3 Management and control.** The establishment, maintenance, and control of such hospital shall be in accordance with the provisions of the chapter relating to county public hospitals, so far as applicable. [C24, 27, 31, 35, §5378; C39,§3828.162; C46, 50, 54,§256.3]

County public hospitals, ch 347

# TITLE XII

## EDUCATION

### CHAPTER 257

#### DEPARTMENT OF PUBLIC INSTRUCTION

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**257.1 State board established.** There is hereby established a state board of public instruction for the state of Iowa. The state board of public instruction, hereinafter called the state board, shall consist of nine members. [C54,§257.1]

**257.2 Qualifications of members.** The members of the state board shall be qualified electors of the state, shall hold no other elective or appointive public office, and in order to preserve the lay character of the board, no person, the major portion of whose time is engaged in professional education or who derives a major portion of his income from any business or activity connected with education, shall be eligible for membership on the state board. [C54,§257.2]

**257.3 Terms—districts.** The terms of members of the state board shall be for six years beginning on the second secular day in January following their election or appointment. No member who is either appointed or elected for a six year term will be permitted to succeed himself.

The state is hereby divided into state board of public instruction districts the boundaries of which shall be conterminous with the eight congressional districts as they exist on January 1, 1953, and there shall be one member of the board elected from each such district.

One member of the board shall be appointed by the governor from the electors of the state at large, subject to confirmation by two-thirds of the senate in executive session.

At the first meeting of the board in each even-numbered year the board shall elect a

president and vice-president who shall serve for two years. [C54,§257.3]

**257.4 Oath—vacancies.** The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. Vacancies occurring on the state board in the elected membership shall be filled by the remainder of the state board by appointment. A vacancy in the office of the member at large shall be filled by appointment by the governor.

Appointees to fill vacancies in the elected membership on the board shall hold office until the second secular day in January of the next even-numbered year, unless the vacancy occurred after May 31 in an odd-numbered year, not the last year of a regular term, in which event the appointee shall serve until two years from the second secular day of the next January. [C54,§257.4]

**257.5 Election of members.** The election of members of the state board shall be conducted in the following manner:

1. In each county of the state board of public instruction district where an election is to be held for a member of the state board, the county board of education shall nominate and elect delegates and alternates to the district convention provided for in this section and the board of education of each independent or consolidated school district within such state board of public instruction district maintaining a four-year high school and containing a city of five thousand or more population shall elect delegates and alternates to said convention.



a. The number of delegates to be elected by each such board of a consolidated or independent district maintaining a four-year high school and having a city of five thousand or more population shall be as follows:

(1) In the event the population of the city in such school district as shown at the last federal census is twenty thousand or less one delegate shall be elected.

(2) In the event the population of the city in such school district is over twenty thousand one delegate shall be elected for each twenty thousand of population or major fraction thereof.

b. The number of delegates to be elected by each county board of education shall be determined as follows:

(1) When the population of any county is twenty-two thousand five hundred or less the county board shall elect one delegate unless there is no independent or consolidated school district within the county maintaining a four-year high school and containing a city having a population of at least five thousand in which event the county board shall elect two delegates.

(2) If the population of the county is in excess of twenty-two thousand five hundred the county board shall elect two delegates. In no case shall a county have less than two delegates. Said election shall be held on the second Monday in July of odd-numbered years when necessary to elect members to the state board for unexpired terms where vacancies have been filled by appointment or choose successors for members whose terms will expire in the following January. The names of those chosen as delegates and alternates shall be certified to the secretary of state by the county board of education and boards of education of said school districts within the district within ten days after the election.

2. Not later than ten days before the third Monday in August, each odd-numbered year, the secretary of state shall call a convention in the most conveniently located county seat as determined by him in each of the state board districts holding an election for board member, designating the date, time, and place of meeting, and designating the county superintendent of the county in which the convention is held to act as chairman of the nominating convention. He shall supply the chairman of each district convention with a list of delegates and alternates previously certified to him by each county board of education and boards of education of said school districts within the district and shall notify each delegate and alternate in writing of the time and place of the convention. This official list shall constitute the list of those eligible to participate in the district convention. At the designated time and place the county superintendent so appointed shall convene the meeting, cause a secretary to be elected, and the convention shall then proceed to the election of a person known to them to be interested in

education as a member of the state board from that district by a majority vote of those present. A quorum shall constitute sixty percent of those eligible to attend. The nominations shall be from the floor and voting by ballot. The county superintendent in charge shall certify to the secretary of state the name of the board member elected. The successful candidates for election to the state board shall be issued certificates of election as prescribed in the statutes.

3. The cost of conducting the district convention shall be borne by each county board of education and the boards of education of said school districts sending delegates to said convention, to be paid from county board of education funds, and by boards of education of independent or consolidated districts sending delegates to said convention, to be paid from the general fund, and shall be based upon the actual expense incurred by such delegates. [C54, §257.5]

**257.6 Per diem of members.** The members of the state board shall be allowed a per diem of fifteen dollars and their necessary travel and expense while engaged in their official duties. [C54, §257.6]

**257.7 Place of meeting.** The place of office of the state board shall be in the office of the department of public instruction in the capitol of the state. [C54, §257.7]

**257.8 Regular and special meetings.** The state board shall hold at least six regular meetings each year, the first of which shall be on the second secular day of January. Special meetings of the state board may be called by the president or by any five members of the board on five days' notice given to each member. All meetings shall be held at the office of the department of public instruction unless a different place within the state of Iowa is designated by the state board or in the notice of the meeting. [C54, §257.8]

**257.9 General powers and duties of board.** The state board shall exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of public education.

2. Adopt necessary rules and regulations for the proper enforcement and execution of the provisions of the school laws.

3. Adopt and prescribe any minimum standards for carrying out the provisions of the school laws.

4. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of public education in carrying out the purposes and objectives of the school laws. [C54, §257.9]

**257.10 Specific powers and duties.** It shall be the responsibility of the state board to

exercise the following specific powers and perform the following duties:

1. Employ adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

2. Direct the distribution of all moneys under the provisions of the law for the distribution of various state and federal aids to schools, when the amounts of the same have been computed by the superintendent of public instruction according to formulae provided by law and rules of the state board.

3. Adopt and transmit to the state comptroller as provided by law, on blanks provided by him for that purpose, on or before September 1 prior to the meeting of each regular session of the general assembly, estimates of expenditure requirements for all functions and services, including the department of public instruction, under the supervision of the state board, when the same have been prepared and submitted to the state board by the superintendent of public instruction, except as otherwise provided by law, for each fiscal year of the ensuing biennium.

4. Advise and counsel with the state superintendent of public instruction and other school officials and citizens concerning the school laws and the rules and regulations adopted pursuant thereto; and to review the record and decision of the superintendent of public instruction in all appeals heard and decided by said superintendent, whereupon it shall approve same or may direct a rehearing before said superintendent.

5. Authorize, approve, and require to be used such forms as are needed to promote uniformity, accuracy, and completeness in executing contracts, keeping records, and in pupil and cost accounting, making reports, and to require such reports to be made in such manner as may be recommended by the state superintendent of public instruction.

6. Approve plans when submitted by the state superintendent of public instruction for co-operating with the federal government whenever it may find it desirable to do so, and provide for the acceptance and the administration of funds, subject to the approval of the legislature, which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system and for the acceptance of surplus commodities for distribution when made available by any government agency.

7. Approve plans submitted by the state superintendent for co-operating with all other agencies, federal, state, county and municipal, in the development of regulations and in the enforcement of laws for which the state board and such agencies are jointly responsible and approve plans for co-operating with other proper agencies in the improvement of conditions relating to the state system of public education.

8. Adopt a long-range program for the state

system of public education based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the state superintendent of public instruction.

9. Constitute a continuing research commission as to public school matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

10. Constitute the state board for vocational education, and have and exercise all the powers and perform all the duties imposed upon said board under the provisions of chapters 258 and 259, including both vocational education and vocational rehabilitation.

11. Constitute the board for the certification of administrative, supervisory and instructional personnel for the public school systems of the state; prescribe types and classes of certificates to be issued, the subjects and fields and positions which such certificates shall cover and determine the requirements for certificates; establish standards for the acceptance of degrees, credits, courses, and other evidences of training and preparation from institutions of higher learning, junior colleges, normal schools, or other training institutions, both public and private, within or without the state, for the certification of their students. The state board shall have and exercise all the powers and perform all the duties imposed upon the board of educational examiners under the provisions of chapter 260.

12. Prescribe such minimum standards and rules and regulations as are required by law or recommended by the state superintendent of public instruction in accordance with law, and as it may find desirable to aid in carrying out the provisions of the Iowa school laws. [C54,§257.10]

**257.11 Superintendent appointed.** The state board shall appoint, effective January 1, 1955, and each four years thereafter, with the approval of two-thirds of the members of the senate in executive session, a superintendent of public instruction. [C54,§257.11]

**257.12 Qualifications of superintendent.** The superintendent shall hold a master's degree in education or some related field; he shall have had at least five years' experience in educational administration. He shall hold or be eligible to hold a regular Iowa superintendent's certificate based upon training. Assistant superintendents shall have the same qualifications. [S13,§2627-b; C24, 27, 31, 35, 39,§3829; C46, 50,§257.1; C54,§257.12]

**257.13 Oath.** The superintendent and assistant superintendents shall take the oath of office prescribed by section 63.10. [C54,§257.13]

**257.14 Bond.** The superintendent and any members of his staff designated by the state board shall give bond as provided in section 64.6. [C54,§257.14]

**257.15 Office in capitol.** The superintendent shall maintain his office in the department of public instruction in the capitol of the state. [C51,§1078; C73,§1578; C97,§2621; S13,§§2627-c,d; C24, 27, 31, 35, 39,§3830; C46, 50,§257.2; C54, §257.15]

**257.16 Executive officer.** The superintendent shall be the executive officer of the state board. [C54,§257.16]

**257.17 Powers of superintendent.** The superintendent shall have the following powers:

1. Exercise general supervision over the state system of public education, including the public elementary and secondary schools, the junior colleges, and shall have educational supervision over the elementary and secondary schools under the control of the state board of control, and nonpublic schools to the extent that is necessary to ascertain compliance with the provisions of the Iowa school laws.

2. Advise and counsel with the state board on all matters pertaining to education, recommend to the state board such matters as in his judgment are necessary to be acted upon, and when approved, to execute or provide for the execution of the same when so directed by the state board.

3. Recommend to the state board for adoption such policies pertaining to the state system of public education as he may consider necessary for its more efficient operation.

4. Carry out all orders of the state board not inconsistent with state law.

5. Organize, staff and administer the state department so as to render the greatest service to public education in the state. [C51,§1081; C73,§1577; C97,§2622; S13,§2627-c; C24, 27, 31, 35, 39,§3831; C46, 50,§257.3; C54,§257.17]

**257.18 Responsibilities of superintendent.** It shall be the responsibility of the state superintendent of public instruction to exercise all powers and perform all duties hereinafter listed; provided, in those categories where policies are to be initiated by the superintendent and approved by the state board, such policies are to be executed by the superintendent only after having been approved by the state board.

1. Attend all meetings of the state board, except executive sessions of the state board, as may be requested by the state board, and call such special meetings of the board as he may be authorized to call by the president or by written request of five members of the board.

2. Keep such records of the proceedings of the board, including complete minutes, as are necessary to locate and identify the actions of the state board.

3. Act as custodian of a seal for his office with which, together with his signature, he shall authenticate all true copies of decisions, acts, or documents.

4. Act as the executive officer of the state board in all matters pertaining to vocational education and vocational rehabilitation.

5. Recommend to the state board the personnel of such committees as are required by law, and to appoint such other committees as may be deemed desirable by him or the state board for carrying out the provisions of the Iowa school laws.

6. Apportion to the respective school districts of the state all moneys provided by law according to the provisions of the various state and federal aid laws.

7. Provide the same educational supervision for the schools maintained by the state board of control as is provided for the public schools of the state and make recommendations to the board of control for the improvement of the educational program in such institutions.

8. Recommend ways and means of co-operating with the federal government in carrying out any or all phases of the educational program relating to the state system of public education in which, in the discretion of the board, co-operation is desirable. Recommend policies for administering funds which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system, and execute such plans as adopted by the state board.

9. Recommend to the state board policies and ways and means of co-operating with other agencies, federal, state, county and municipal, for carrying out those phases of the program in which co-operation is required by law, or in the discretion of the state board, it is deemed desirable and co-operate with such agencies in planning and bringing about improvements in the educational program.

10. Advise and counsel concerning the interpretation and meaning of the school laws and the rules and regulations adopted pursuant thereto; and, when practicable, amicably adjust and settle such controversies arising thereunder as may be submitted to him, directly or by appeal, by all persons directly concerned, to hear and decide appeals as provided by law.

11. Prepare for the approval of the state board, such forms and procedures as are deemed necessary to be used by county boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, the preparation of budgets, and the submission of reports; furnish, when deemed advisable by him and approved by the state board, those forms which can more economically and efficiently be provided in that manner; and notify the county board, or district board, or school authorities, in any case when any report has not been

filed in the manner or on the dates prescribed by law or by regulation of the state board that the school be not approved until the report has been properly filed.

12. Ascertain by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of his department and make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of such schools, and recommend to the state board the need for a state audit of the accounts of any school district, county school system, school official, or any school employee handling school funds when it is apparent that such audit should be made. If deemed advisable the state board may call upon the state auditor to make such an audit and he shall proceed to do so as soon as practicable.

13. Formulate standards, regulations, and rules, subject to the approval of the state board, for the approval of all schools and public junior colleges under his supervision; subject to the approval of the board remove for cause, after due investigation and notice, any such school failing to comply with such approval standards, rules, and regulations from the approved list; which removal shall, during the period of noncompliance, make such school ineligible for participation in the state distributive funds, and the collection of tuition from nonresidents from other districts which do not maintain approved high schools.

14. Preserve all reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions by any citizen of the state.

15. Keep a record of the business transacted by him.

16. Endeavor to promote among the people of the state an interest in education.

17. Classify and define the various schools under the supervision of his department, formulate suitable courses of study therefor, and publish and distribute such classifications and courses of study and promote their use.

18. Report to the state comptroller on the first day of January of each year the number of persons of school age in each county.

*Referred to in §302.13*

19. Report biennially to the governor, at the time provided by law, the condition of the schools under his supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed or plans matured for the improvement of the public schools, such financial and statistical information as may be of public importance, and such general information relating to educational affairs and conditions within the state or elsewhere.

20. Appoint at least one, and not more than two county or multiple county educational meetings or institutes to be held in each county or combination of counties each year and designate the time and place for holding the same. The program therefor and the instructors and lecturers therein shall be subject to his approval.

21. Prepare and supply such questions as are deemed necessary for the examination of pupils completing the eighth grade in the rural schools and fix the time of such examinations.

22. Cause to be printed in book form, during the months of June and July in the year 1955 and every four years thereafter, if deemed necessary, all school laws then in force with such forms, rulings, and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to the county superintendent of each county to supply therein school officers, directors, superintendents, and others in such numbers as may be reasonably requested.

23. Cause to be printed in pamphlet form after each session of the general assembly any amendments or changes in the school laws with necessary notes and suggestions to be distributed as prescribed in subsection 22 of this section.

24. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

**1-9.** [C54,§257.18]

**10.** [C73,§1577; C97,§2623; S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**11, 12.** [S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**13.** [C54,§257.18]

**14, 15.** [C51,§1078; C73,§1578; C97,§2621; S13, §2627-d; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**16, 17.** [S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**18.** [C73,§1583; C97,§2625; S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

*Referred to in §302.13*

**19.** [C51,§1086; C73,§1583; C97,§2625; S13, §2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**20.** [C73,§1577; C97,§2622; S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**21.** [S13,§2627-c; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**22.** [C51,§§1083, 1085; C73,§1579; C97,§2624; S13,§§2627-e, 2823-j; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**23.** [C73,§1579; C97,§2624; S13,§2627-e; C24, 27, 31, 35, 39,§**3832**; C46, 50,§257.4; C54,§257.18]

**24.** [C51,§1081; C73,§1577; C97,§2622; S13,

§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54,§257.18]

Biennial report, §17.3

**257.19 Department of public instruction established.** There is hereby established a department of public instruction to act as an administrative, supervisory, and consultative agency under the direction of the superintendent of public instruction and the state board. The state department shall be located in the office of the state superintendent, and shall assist the state superintendent in providing professional leadership and guidance and in carrying out such policies, procedures, and duties authorized by law or by the regulations of the state board, as are found necessary to attain the purposes and objectives of the school laws of Iowa. [C54,§257.19]

**257.20 Divisions of department.** The state department of public instruction shall be organized into such divisions, branches or sections as may be found desirable and necessary by the state superintendent, subject to the approval of the state board, to perform all the proper functions and render maximum services relating to the operation and improvement of the state system of public education; provided that the organization shall be such as to promote co-ordination of functions and services relating to administration and financial services on the one hand and the improvement of instruction on the other hand. [C54, §257.20]

**257.21 Employees of department.** The state superintendent shall appoint all employees, with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties. If deemed advisable, the state superintendent may for cause effect the removal of any employee in the state department of public instruction. The total amount of compensation for employees shall be subject to the limitation of the appropriation and other funds available for the maintenance of the department. The appointment, promotion, demotion, change in salary status or removal for cause of any employee shall be subject to the approval of the state board. [C54,§257.21]

**257.22 Assistant superintendents.** The state superintendent may appoint not more than two assistant superintendents subject to the approval of the state board, whose duties shall be directed by the superintendent of public instruction. The qualifications for assistant superintendent shall be the same as required for the superintendent. The assistant superintendent designated by the state board shall, in the absence or inability of the superintendent, perform the duties of that office. [C73,§§766, 767, 770; C97,§2621; S13,§2627-g; C24, 27, 31, 35, 39, §3835; C46, 50,§257.8; C54,§257.22]

Referred to in §257.24

**257.23 Travel expenses.** The superintendent of public instruction, his assistants, and the employees of his department shall receive their necessary travel expenses incurred in the performance of their official duties. [C51,§1087; C73,§§1580, 3760; C97,§2627; S13,§2627-h; C24, 27, 31, 35, 39,§3836; C46, 50,§257.9; C54,§257.23]

**257.24 Salaries of superintendent and assistants.** The salary of the superintendent of public instruction shall be fixed by the state board, but not to exceed ten thousand dollars per year. The salaries of the assistant or assistants provided for in section 257.22 shall be fixed by the state board but not to exceed three-fourths of the salary of the superintendent. All appointments to the professional staff of the department of public instruction shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability and proper qualifications for the particular position. The professional staff, including the state superintendent, shall serve at the discretion of the state board; provided, however, that no such person shall be dismissed for cause without at least ninety days notice, except in cases of conviction of a felony or cases involving moral turpitude. In cases of procedure for dismissal, the accused shall have the same right to notice and hearing as teachers in the public school systems as provided in section 279.24, or as much thereof as may be applicable. [C54,§257.24]

Constitutionality, 55GA, ch 114,§43  
Omnibus repeal, 55GA, ch 114,§44

CHAPTER 258

VOCATIONAL EDUCATION

Referred to in §257.10

- 258.1 Federal Act accepted.
- 258.2 State board for vocational education.
- 258.3 Personnel.
- 258.4 Duties of board.
- 258.5 Federal aid—conditions.
- 258.6 Definitions.
- 258.7 Advisory committee—qualifications—tenure—meetings.
- 258.8 Vocational education aid fund—appropriation.
- 258.9 Local advisory committee.
- 258.10 Powers of district boards.
- 258.11 Salary and expenses.
- 258.12 Custodian of funds—reports.
- 258.13 Biennial report.

**258.1 Federal Act accepted.** The provisions of the Act of Congress entitled “An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and in the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure”, approved February 23, 1917, and all amendments thereto and the benefit of all funds appropriated under said Act and all other Acts pertaining to vocational education, are accepted. [C24, 27, 31, 35, 39,§3837; C46, 50, 54,§258.1; 57GA, ch 124,§1]

**258.2 State board for vocational education.** The state board of public instruction shall constitute the board for vocational education. [C24, 27, 31, 35, 39,§3838; C46, 50, 54,§258.2]

See 55GA, ch 114,§§25, 40

**258.3 Personnel.** The superintendent of public instruction as executive officer of the state board of public instruction shall, with its approval, appoint, and direct the work of such personnel as may be necessary to carry out the provisions of this chapter. [C24, 27, 31, 35, 39,§3839; C46, 50, 54,§258.3]

See 55GA, ch 114,§§25, 40

**258.4 Duties of board.** The board shall:

1. Co-operate with the federal board for vocational education in the administration of said act of congress.
2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.
3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in such subjects.
4. Co-operate with local communities in the maintenance of such schools, departments, and classes.
5. Establish standards for teachers of such subjects in approved schools, departments, and classes.
6. Co-operate in the maintenance of teachers training schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of such subjects.

7. Establish standards for, and annually inspect as a basis of approval, all schools, departments, and classes, and all teachers training schools, departments, and classes, applying for federal and state moneys under the provisions of this chapter. [C24, 27, 31, 35, 39,§3840; C46, 50, 54,§258.4]

Part-time schools, ch 289

**258.5 Federal aid — conditions.** Whenever a school district maintains an approved vocational school, department, or classes in accordance with the rules and regulations established by the state board and the state plan for vocational education, adopted by that board and approved by the United States office of education or other federal agency to which its functions are assigned, the state board shall reimburse such school district at the end of the fiscal year for its expenditures for salaries and authorized travel of vocational teachers from federal and state funds: Provided, that no school district shall receive from federal and state funds a larger amount than one-half the sum which has been expended by the school district for that particular type of program; further, provided that in the event federal and state funds are not sufficient to make such reimbursement to the extent herein provided, the state board shall prorate the respective amounts available to the districts entitled to such reimbursement.

The state board shall have the authority to use federal funds to reimburse approved teacher training schools, departments, or classes for the training of teachers of agriculture, home economics, trades and industrial education, distributive education, and for the training of guidance counselors. [C24, 27, 31, 35, 39,§§3841, 3844; C46, 50,§§258.5, 258.8; C54, §258.5]

**258.6 Definitions.** “Approved school, department, or class” shall mean a school, department, or class approved by said board as entitled under the provisions of this chapter to federal and state moneys for the salaries and authorized travel of teachers of vocational subjects. “Approved teachers training school, department, or class” shall mean a school, department, or class approved by the board as entitled under the provisions of this chapter to federal moneys for the training of teachers of vocational subjects. [C24, 27, 31, 35, 39, §3842; C46, 50, 54,§258.6]

**258.7 Advisory committee—qualifications—tenure—meetings.** The board shall appoint a state advisory committee for vocational education, consisting of nine members. The term of each member shall be for three years. The terms of three members shall expire on the first day of July each year. The committee shall consist of three educators, one member experienced in agriculture, one an employer, one a representative of labor, one experienced in business and commerce, one experienced in social work, and one woman experienced in women's work. The committee shall meet in conference with the board at least twice a year, and at such other times as the board shall deem advisable. [C24, 27, 31, 35, 39,§3843; C46, 50, 54,§258.7]

**258.8 Vocational education aid fund — appropriation.** There is hereby created as a permanent fund in the office of the state board for vocational education a fund to be known as the vocational education aid fund to be used for reimbursement to local districts for programs of vocational education conducted in accordance with the provisions of this chapter, and for the purpose of establishing and maintaining such fund for each fiscal year beginning July 1, 1951, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of two hundred thousand dollars, or so much thereof as may be necessary. [C54,§258.8]

**258.9 Local advisory committee.** The board of directors of any school district having a population of more than five thousand persons, maintaining a school, department, or class receiving the benefit of federal moneys under the provisions of this chapter shall, as a condition of approval by such state board as herein provided, appoint a local advisory committee for vocational education, consisting of persons of experience in agriculture, industry, home economics, and business, to give advice and assistance to such board of directors in the establishment and maintenance of such

schools, departments, and classes. The state board may require the board of directors of any school district that maintains an approved school, department, or class, to appoint such an advisory committee. Members of such advisory committee shall serve without compensation. [C24, 27, 31, 35, 39,§3845; C46, 50, 54,§258.9]

**258.10 Powers of district boards.** The board of directors of any school district is authorized to carry on prevocational and vocational instruction in subjects relating to agriculture, commerce, industry, and home economics, and to pay the expense of such instruction in the same way as the expenses for other subjects in the public schools are now paid. [C24, 27, 31, 35, 39,§3846; C46, 50, 54,§258.10]

**258.11 Salary and expenses.** The board is authorized to make such expenditures for salaries of assistants, actual expenses of the board and the state advisory committee incurred in the discharge of their duties, and such other expenses as in the judgment of the board are necessary to the proper administration of this chapter. [C24, 27, 31, 35, 39,§3847; C46, 50, 54,§258.11]

**258.12 Custodian of funds — reports.** The treasurer of state shall be custodian of the funds paid to the state from the appropriations made under said act of congress, and shall disburse the same on vouchers audited as provided by law. He shall report the receipts and disbursements of said funds to the general assembly at each biennial session. [C24, 27, 31, 35, 39,§3848; C46, 50, 54,§258.12]

**258.13 Biennial report.** The superintendent of public instruction shall embrace in his biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value. [C24, 27, 31, 35, 39,§3849; C46, 50, 54,§258.13]

Biennial and special reports to the governor, §§17.3, 259.4, 259.8

## CHAPTER 259

### VOCATIONAL REHABILITATION

Referred to in §§93.7, 257.10

259.1 Acceptance of federal act.  
259.2 Custodian of funds.  
259.3 State agency.  
259.4 Duties of state board.

259.5 Plan of co-operation.  
259.6 Gifts and donations.  
259.7 Fund.  
259.8 Report of gifts.

**259.1 Acceptance of federal act.** The state of Iowa does hereby, through its legislative authority, accept the provisions and benefits of the Act of Congress, entitled "The federal vocational rehabilitation Act (29 U.S.C. ch. 4) approved August 3, 1954, (P. L. 565, 83d Congress) as amended", and will observe and comply with all the requirements of such Act.

[C24, 27, 31, 35, 39,§3850; C46, 50, 54,§259.1; 57GA, ch 125,§1]

**259.2 Custodian of funds.** The treasurer of state is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation

of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursement therefrom upon the requisition of the state board for vocational education.

The treasurer of state is hereby designated and appointed custodian of all moneys paid by the federal government to the state for the purpose of carrying out the agreement relative to making determinations of disability under title II of the federal social security Act as amended and is authorized to receive the same and make disbursements therefrom upon the requisition of the state board for vocational education. [C24, 27, 31, 35, 39,§3851; C46, 50, 54, §259.2; 56GA, ch 130,§2]

**259.3 State agency.** The state board of public instruction constituting the state board for vocational education is hereby designated as the state board for the purpose of co-operating with the secretary of health, education, and welfare in carrying out the provisions and the purposes of said federal Act providing for the vocational rehabilitation of persons disabled in industry or otherwise and is hereby designated to discharge the duties and exercise the powers hereinafter set forth. [C24, 27, 31, 35, 39,§3852; C46, 50, 54,§259.3; 57GA, ch 125,§2]

**259.4 Duties of state board.** The state board for vocational education is hereby empowered and directed to:

1. Co-operate with the secretary of health, education, and welfare in the administration of said Act of Congress.
2. Administer any legislation pursuant thereto enacted by this state, and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.
3. Appoint such assistants as may be necessary to administer the provisions of this chapter and said Act of Congress in this state and fix the compensation of such persons.
4. Study and make investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment and to formulate plans for the vocational rehabilitation of such persons.
5. Make such surveys with the co-operation of the state commissioner of labor and the state industrial commissioner as will assist in the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.
6. Maintain a record of all such persons together with all measures taken for their rehabilitation.
7. Utilize in the rehabilitation of persons disabled in industry or otherwise such existing educational and other facilities as may be advisable and practicable, including public and private educational institutions, public or pri-

vate establishments, plants, factories, and the services of individuals specially qualified for the instruction and vocational rehabilitation of handicapped persons.

8. Promote the establishment and assist in the development of training agencies for the vocational rehabilitation of persons disabled in industry or otherwise.

9. Supervise the training of such persons and confer with their relatives and others concerning their vocational rehabilitation.

10. Make every possible endeavor looking to the placement of vocationally rehabilitated persons in suitable remunerative occupations, including supervision for a reasonable time after return to civil employment.

11. Utilize the facilities of such agencies, both public and private, as may be practicable in securing employment for such persons; and any such public agency is hereby authorized and directed to co-operate with the state board for vocational education for the purpose stated.

12. Co-operate with any agency of the federal government or of the state, or of any county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

13. Make such rules and regulations as may be necessary for the administration of this chapter and said Act of Congress within this state.

14. Do all things necessary to secure the rehabilitation of those entitled to the benefits of this chapter.

15. Report on call or biennially to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

16. Enter into an agreement with the secretary of the United States department of health, education and welfare relating to the matter of making determinations of disability under title II of the federal social security Act as amended.

17. Provide services as may be desirable and practicable for the vocational rehabilitation of severely handicapped persons and others entitled to the benefits of this chapter, including the establishment and operation of rehabilitation facilities and workshops.

18. Provide rehabilitation services to homebound and other handicapped individuals who as a result thereof can wholly or substantially achieve such ability of self help as to dispense or largely dispense with the need of an attendant. [C24, 27, 31, 35, 39,§3853; C46, 50, 54,§259.4; 56GA, ch 130,§1; 57GA, ch 125,§3]

Biennial and special reports to the governor, §§17.3, 258.13, 259.8

**259.5 Plan of co-operation.** It shall be the duty of the state board for vocational educa-



tion and the state labor commissioner and the state industrial commissioner as administrator of the workmen's compensation law to formulate a plan of co-operation in accordance with the provisions of this chapter and said Act of Congress, such plan to become effective when approved by the governor of the state. [C24, 27, 31, 35, 39,§3854; C46, 50, 54,§259.5]

**259.6 Gifts and donations.** The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this chapter. [C24, 27, 31, 35, 39,§3855; C46, 50, 54,§259.6]

39GA, ch 14,§6, editorially divided

**259.7 Fund.** All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board in carrying out the provisions of this chapter or for purposes related thereto. [C24, 27, 31, 35, 39,§3856; C46, 50, 54,§259.7]

**259.8 Report of gifts.** A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted at call or biennially to the governor of the state by said state board. [C24, 27, 31, 35, 39,§3857; C46, 50, 54,§259.8]

Biennial and special reports to the governor, §§17.3, 258.13, 259.4

## CHAPTER 260

### BOARD OF EDUCATIONAL EXAMINERS

Referred to in §257.10

260.1 Members.  
260.2 Powers.  
260.3 Personnel.  
260.4 Repealed by 55GA, ch 114,§26.  
260.5 Definition of fields.  
260.6 Classes of certificates.  
260.7 Elementary certificates.  
260.8 Secondary certificates.  
260.9 Administrative and supervisory certificates.  
260.10 Certificate to applicants from other states or countries.  
260.11 Tenure of certificates.  
260.12 Renewal of certificates.  
260.13 Renewal for life.  
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260.15 Applications—disbursement of fees.  
260.16 Interpretative clause.  
260.17 Special certificates.  
260.18 Emergency certificates.  
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260.20 Registration of certificates and diplomas.  
260.21 Renewal of former certificates.  
260.22 Certificates—where valid.  
260.23 Revocation by board.  
260.24 Revocation by county superintendent.  
260.25 Trial—order.  
260.26 Appeal.  
260.27 Expenditures.  
260.28 Accounts.  
260.29 Printing.

**260.1 Members.** The state board of public instruction shall constitute the board of educational examiners. [C97,§2628; C24, 27, 31, 35, 39,§3858; C46, 50, 54,§260.1]

See 55GA, ch 114,§§25, 40

**260.2 Powers.** The board of educational examiners shall have authority to issue certificates to applicants who are eighteen years of age or over, physically competent and morally fit to teach, and who have the qualifications and training hereinafter prescribed. [C97,§2629; S13,§2629; C24, 27, 31,§3863; C35,§3858-e1; C39,§3858.1; C46, 50, 54,§260.2]

**260.3 Personnel.** The state superintendent shall with the approval of the state board direct the work of such personnel as may be necessary to carry out the provisions of this chapter. [C97,§2634; S13,§2634-a; SS15,§2634-a; C24, 27, 31, 35, 39,§3859; C46, 50, 54,§260.3]

See 55GA, ch 114,§§25, 40

**260.4** Repealed by 55GA, ch 114,§26.

**260.5 Definition of fields.** For the purposes of this Act\* the elementary school field shall be construed to include the kindergarten and grades one to eight, inclusive; the secondary school field shall be construed to include the junior high school, the senior high school, and the four-year high school; and the administrative and supervisory field shall be construed to include all administrative and supervisory positions in the public schools. [C35, §3872-e1; C39,§3872.01; C46, 50, 54,§260.5]

\*45GA, ch 51

**260.6 Classes of certificates.** The board of educational examiners is hereby authorized to issue six classes of regular certificates as follows:

1. Elementary teachers' certificates.
2. Secondary teachers' certificates.

3. Administrative and supervisory teachers' certificates.
4. Special teachers' certificates.
5. Emergency teachers' certificates.
6. Substitute teachers' certificates.

Every person employed as an administrator, supervisor, or teacher in the public schools shall hold a certificate valid for the type of position in which he is employed. [C97,§2630; S13,§2630-b; C24, 27, 31,§3865; C35,§3872-e2; C39,§3872.02; C46, 50, 54,§260.6]

**260.7 Elementary certificates.** The elementary teachers' certificates shall include the advanced elementary certificate, the standard elementary certificate and limited elementary certificate and shall specify the division or divisions of the elementary school field for which the holders are especially trained.

1. *Advanced.* The advanced elementary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

2. *Standard.* The standard elementary certificate shall be issued to the holder of a diploma or an official statement from an Iowa college accredited by the board of educational examiners certifying to the completion of a two-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

3. *Limited elementary certificate.* On and after September 1, 1946, the limited elementary certificate shall be issued to a person who has graduated from an approved four-year high school or has had equivalent academic training and who is the holder of official statements certifying to the completion of standard college work in an institution or institutions approved by the board of educational examiners for this purpose. The amount of such standard work shall be as follows: After September 1, 1946, ten semester hours; after September 1, 1948, thirty semester hours; after September 1, 1950, and up to August 31, 1952, forty-five semester hours. From and after August 31, 1952, no limited elementary certificates shall be issued except in renewal of a certificate previously issued as provided in section 260.12.

The limited elementary certificates shall be valid for teaching only in the elementary school field. [C35,§3872-e3; C39,§3872.03; C46, 50, 54,§260.7]

**260.8 Secondary certificates.** The secondary teachers' certificates shall include the advanced secondary certificate and the standard second-

ary certificate and shall specify the subjects or subject groups in the secondary school field for which the holders are especially trained.

1. *Advanced.* The advanced secondary certificate shall be issued to an applicant who has met the requirements for a standard secondary certificate and who is the holder of a standard master's degree. It shall be valid for teaching in the seventh and eighth grades, in a high school, and in a public junior college.

2. *Standard.* The standard secondary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching two or more secondary school subjects as the board shall prescribe. It shall be valid for teaching in the seventh and eighth grades and in a high school. [C35,§3872-e4; C39,§3872.04; C46, 50, 54,§260.8]

**260.9 Administrative and supervisory certificates.** The administrative and supervisory certificates shall include the superintendent's certificate, the principal's certificate, and the supervisor's certificate.

1. *Superintendent's certificate.* The superintendent's certificate shall be issued to an applicant who has met the requirements for an advanced elementary certificate or an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as county superintendent, or as superintendent, principal, or teacher in any elementary or secondary school.

2. *Principal's certificate.* The principal's certificate shall include the secondary principal's certificate and the elementary principal's certificate.

a. The secondary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in a high school.

b. The elementary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard elementary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in an elementary school and, when so designated on the certificate, in a junior high school.

3. *Supervisor's certificate.* The supervisor's certificate shall be issued to an applicant who has met the requirements for a standard elementary or a standard secondary certificate

valid for teaching the subject or subjects over which supervision is to be exercised by the applicant and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for teaching and for supervision of instruction in the subjects specified on the certificate in the elementary or the secondary school fields, or, when so designated on the certificate, in both the elementary and the secondary school fields. [C35,§3872-e5; C39,§3872.05; C46, 50, 54,§260.9]

**260.10 Certificate to applicants from other states or countries.** The board of educational examiners may, at its discretion, issue any teacher's certificate provided for in this act\* to an applicant from another state or country who files with the board evidence of the possession of the required qualifications or the equivalent thereof. The board of educational examiners is hereby authorized to enter into reciprocity agreement with any other state or country for the certification of teachers on an equitable basis of mutual exchange, when such action is in conformity with law. [S13,§2634-f1; C24, 27, 31,§3867; C35,§3872-e6; C39,§3872.06; C46, 50, 54,§260.10]

\*45GA, ch 51

**260.11 Tenure of certificates.** The superintendent's certificate, the principal's certificate, the supervisor's certificate, the advanced secondary certificate, the standard secondary certificate, the advance elementary certificate, and the standard elementary certificate shall be valid for terms of five years. The special certificates shall be valid for terms of one to five years at the discretion of the board of educational examiners. The limited elementary certificate shall be valid for a term of three years. The expiration date of each original or renewed certificate shall be June 30 and this expiration date shall be determined by counting each fraction of a year during the term of such certificate following the date of issuance as one full year. [S13,§2634-g; C24, 27, 31,§3868; C35,§3872-e7; C39,§3872.07; C46, 50, 54,§260.11]

**260.12 Renewal of certificates.** Certificates authorized by this act\* shall be subject to renewal for terms as follows:

1. *Five-year certificates.* Any five-year certificate issued under this act shall be subject to renewal at expiration for a term of five years upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and successful experience in administration, supervision, or teaching during the term for which the certificate was issued. The board of educational examiners may, at its discretion, accept credit earned in an approved college or graduate school in lieu of the teaching experience required for the renewal of five-year certificates.

2. *Special certificates.* The special certificate shall be subject to renewal under such conditions as the board of educational examiners shall prescribe.

3. *Limited elementary certificate.* The limited elementary certificate shall be subject at expiration to one renewal for a term of three years upon the filing with the board of educational examiners of such evidence as the board may require showing professional spirit, physical and moral fitness for work in the schools and successful teaching experience, except that the board of educational examiners may accept credit earned in an approved college in lieu of teaching experience. [C35,§3872-e8; C39,§3872.08; C46, 50, 54,§260.12]

\*45GA, ch 51  
Referred to in §260.7

**260.13 Renewal for life.** Any five-year certificate issued under this act\* may be renewed for life upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and five years of successful experience in administration, supervision, or teaching; provided that two years of this experience shall have occurred during the term of the certificate offered for life renewal. A certificate renewed for life shall lapse if the holder thereof shall cease to be employed in school work for any period of five consecutive years. [S13,§§2634-h,-h1,-h2; C24, 27, 31,§§3870-3872; C35,§3872-e9; C39,§3872.09; C46, 50, 54,§260.13]

\*45GA, ch 51

**260.14 Fees for renewal.** The fee for the issuance or the term renewal of any certificate shall be two dollars. The fee for life renewal shall be five dollars. [S13,§2634-h1; C24, 27, 31,§3871; C35,§3872-e10; C39,§3872.10; C46, 50, 54,§260.14]

**260.15 Applications—disbursement of fees.** Applications for the issuance or renewal of all teachers' certificates shall be made to the superintendent of public instruction. All fees for the issuance or renewal of such certificates shall be paid to the superintendent of public instruction who shall deposit each fee received from these sources with the treasurer of state to be credited to the general revenue fund. In the event that an application for the issuance or renewal of a certificate is not approved, the state superintendent of public instruction shall remit such fee or fees to the applicant by a state comptroller's warrant issued by him on the general revenue fund not otherwise appropriated upon certification of the state superintendent of public instruction that such fee or fees have not been earned. [C35,§3872-e11; C39,§3872.11; C46, 50, 54,§260.15]

**260.16 Interpretative clause.** No provision of this act\* shall affect or impair the validity of any certificate in force or renewable June 30, 1933. [C35,§3872-e12; C39,§3872.12; C46, 50, 54,§260.16]

\*45GA, ch 51

**260.17 Special certificates.** The special certificate shall be issued to any applicant meeting the requirements prescribed by the board of educational examiners. It shall be valid for teaching the subject or subjects specified in the field or fields designated on the certificate and, when so designated on the certificate, for supervision of instruction in these subjects. [S13,§§2630-b, 2734-e; C24, 27, 31, 35, 39,§3878; C46, 50, 54,§260.17]

**260.18 Emergency certificates.** Whenever a sufficient number of certificated teachers cannot be secured to supply the schools of any county, the board of educational examiners may, upon request of the county superintendent, issue emergency teachers' certificates to applicants meeting the requirements prescribed by said board. Such emergency certificates shall be valid for teaching the subject or subjects specified in the field or fields designated on the certificate for a term of one year and shall be subject to renewal of one year under such conditions as shall be prescribed by the board of educational examiners. [C46, 50, 54,§260.18]

**260.19 Substitute teachers' certificates.** A substitute teacher's certificate may be issued to persons who have at some previous time held a valid Iowa teacher's certificate, upon presentation of such evidence and under such conditions as the board of educational examiners may require. Such certificate shall be valid for substitute teaching in the type of school, subjects or grades in which the holder was previously qualified to teach and for which the holder has at some time been granted approval by the department of public instruction. Such certificates shall be valid for two years and may be renewed at expiration without any additional training. [C97,§2737; S13,§2734-g; C24, 27, 31, 35, 39,§3879; C46, 50, 54,§260.19]

**260.20 Registration of certificates and diplomas.** All diplomas and certificates shall be valid in any county when registered therein, and no person shall teach in any public school whose certificate has not been registered with the county superintendent of the county in which the school is located, provided that whenever there is a sufficient number of holders of advanced and standard elementary certificates available to supply the elementary schools in any county it shall not be incumbent upon the county superintendent to register limited elementary certificates. [S13,§§2734-q, -t; C24, 27, 31, 35, 39,§3888; C46, 50, 54,§260.20]

**260.21 Renewal of former certificates.** Uniform county certificates and normal training high school certificates in force or renewable at the dates when the respective repeals affecting them become effective, shall be subject to term renewals upon the filing with the board of educational examiners of such evidence as the board may require, showing professional

spirit, physical and moral fitness for work in the schools, and successful experience in administration, supervision or teaching during the term for which the certificate was issued. The board may, at its discretion, accept credit in an approved college or graduate school in lieu of the teaching experience required for renewal of certificates. [C46, 50, 54,§260.21]

**260.22 Certificates—where valid.** All certificates issued as provided by law shall be valid in any county within the state, when registered in such county. [R60,§2070; C73,§1771; C97,§2737; S13,§2734-t; C24, 27, 31, 35, 39,§3891; C46, 50, 54,§260.22]

**260.23 Revocation by board.** Any diploma or certificate issued by the board may be revoked by it for any cause which would have authorized or required a refusal to grant the same, and the holder shall have ten days notice by registered mail and be allowed to be present and make defense. [C97,§2631; S13,§2734-t; C24, 27, 31, 35, 39,§3892; C46, 50, 54,§260.23]

**260.24 Revocation by county superintendent.** When in the judgment of the county superintendent there is probable cause for the revocation of a certificate or diploma held by any teacher employed in his county, or when complaint is filed, supported by affidavits, charging incompetency, immorality, intemperance, cruelty, or general neglect of the business of the school, the county superintendent shall within ten days transmit to such person a written statement of the charges preferred and set the time, not less than ten days thereafter, and place for the hearing of the same at which trial the teacher may be present and make defense. [R60,§2070; C73,§1771; C97,§2737; S13,§2734-u; C24, 27, 31, 35, 39,§3893; C46, 50, 54, §260.24]

**260.25 Trial—order.** The trial and making and preservation of the record shall be, so far as applicable, in conformity with the provisions of the law relating to the trial of civil actions in the district court. If upon the trial it appears to the county superintendent that there is sufficient ground for the revocation of the diploma or certificate, he shall at once issue in triplicate an order revoking the diploma or certificate, and the same shall become effective, unless an appeal is taken, fifteen days thereafter. One copy of the order shall be filed and recorded in his office, one mailed to the superintendent of public instruction, and the other sent by registered mail to the holder of the certificate. [S13,§2734-u; C24, 27, 31, 35, 39,§3894; C46, 50, 54,§260.25]

**260.26 Appeal.** The person aggrieved by such order shall have the right of appeal to the superintendent of public instruction within ten days from the date of such mailing, and in case of appeal the revocation shall not be effective until the same is affirmed, after full hearing, by the superintendent of public in-

struction. In the case of life state certificates the revocation shall not be effective until affirmed by the board of educational examiners after full hearing and review by said board. [S13,§2734-u; C24, 27, 31, 35, 39,§3895; C46, 50, 54,§260.26]

**260.27 Expenditures.** All expenditures authorized to be made by the board of educational examiners shall be certified by the superintendent of public instruction to the state comptroller, and if found correct, he shall approve the same and draw warrants therefor upon the treasurer of state from the funds appropriated for that purpose. [C97,§2634; S13, §2734-o; SS15,§2634-a; C24, 27, 31, 35, 39,§3896; C46, 50, 54,§260.27]

**260.28 Accounts.** The board shall keep an accurate and detailed account of all money received and expended, which, with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report. [C97,§§2630, 2631, 2633; S13,§§2630-b, 2631, 2734-p; C24, 27, 31, 35, 39,§3897; C46, 50, 54,§260.28]

Time for filing annual reports, §17.4

**260.29 Printing.** The board of educational examiners shall have authority to obtain all the necessary printing for the performance of their duties, as required by law, in the same manner as the printing is provided for state officers. [S13,§2634-a1; C24, 27, 31, 35, 39,§3898; C46, 50, 54,§260.29]

## CHAPTER 261

### NORMAL TRAINING OF TEACHERS

This chapter (§§261.1 to 261.13, inc.) repealed by 51GA, ch 126

## CHAPTER 262

### STATE BOARD OF REGENTS

Identification and use of publicly owned automobiles, etc , §740.20 et seq

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**262.1 Membership.** The state board of regents shall consist of nine members, who shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. Not more than five members shall be of the same political party. Not more than one alumnus of each of the institutions of higher learning, the state university, the college of agriculture and mechanic arts, and the Iowa state teachers col-

lege, shall be members of said board at one time. [S13,§§2682-c-d; C24, 27, 31, 35, 39,§3912; C46, 50, 54,§262.1; 56GA, ch 131,§21]

**262.2 Term of office.** The term of each member of said board shall be for six years. The terms of three members of the board shall expire on the first day of July of each odd-numbered year. [S13,§2682-d; C24, 27, 31, 35, 39,§3913; C46, 50, 54,§262.2]

**262.3 Appointment.** During each regular session of the legislature, the governor shall appoint, with the approval of two-thirds of the members of the senate in executive session, three members of said board to succeed those whose terms expire on the first day of July next thereafter. [S13,§2682-d; C24, 27, 31, 35, 39,§3914; C46, 50, 54,§262.3]

Confirmation, §2.40

**262.4 Removals.** The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or for any cause which would render him ineligible for appointment or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. [S13, §2682-d; C24, 27, 31, 35, 39,§3916; C46, 50, 54, §262.4]

**262.5 Suspension.** When the general assembly is not in session, the governor may suspend any member so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session. [S13,§2682-d; C24, 27, 31, 35, 39,§3917; C46, 50, 54,§262.5]

**262.6 Vacancies.** All vacancies on said board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made. [S13,§2682-d; C24, 27, 31, 35, 39,§3918; C46, 50, 54,§262.6]

**262.7 Institutions governed.** The state board of regents shall govern the following institutions:

1. The state university of Iowa.
2. The college of agriculture and mechanic arts, including the agricultural experiment station.
3. The Iowa state teachers college.
4. The Iowa braille and sight-saving school.
5. The state school for the deaf.
6. The state sanatorium.
7. The state hospital-school. [R60,§§2157, 2158; C73,§§1685, 1686; C97,§2723; S13,§2682-c; C24, 27, 31, 35, 39,§3919; C46, 50, 54,§262.7; 56GA, ch 131,§22]

**262.8 Meetings.** The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof. [S13, §2682-e; C24, 27, 31, 35, 39,§3920; C46, 50, 54, §262.8]

**262.9 Powers and duties.** The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall

serve for two years and until his successor is elected and qualified.

2. Elect a president of each of said institutions of higher learning; a superintendent of each of said other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation.

3. Make rules for admission to and for the government of said institutions, not inconsistent with law.

4. Manage and control the property, both real and personal, belonging to said institutions.

5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. All transfers shall be by state patent in the manner provided by law.

6. Accept and administer trusts deemed by it beneficial to and perform obligations of the institutions.

7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the state college of agriculture and mechanic arts, nor the permanent funds of the university derived under acts of congress, be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

11. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it and the finance committee.

1. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

2. [R60,§§1739, 2157, 2158, 2162; C73,§§1614, 1685, 1686, 1690; C97,§§2654, 2676, 2723; S13,

§2682-f; C24, 27, 31, 35, 39,§3921, C46, 50, 54, §262.9]

3. [C97,§2676; S13,§2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54,§262.9]

4. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

5. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

6. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

7. [C51,§§1017, 1018; R60,§1938; C73,§§1599, 1617; C97,§§2638, 2666; S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

8. [C24, 27, 31, 35, 39,§3921; C46, 50, 54, §262.9]

9. [S13,§2682-j; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

10. [C35, 39,§3921; C46, 50, 54,§262.9]

11. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54,§262.9]

**262.10 Purchases—prohibitions.** No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or finance committee nor any officer of any institution, shall be directly or indirectly interested in such purchase or sale. [C24, 27, 31, 35, 39,§3922; C46, 50, 54,§262.10]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11.

**262.11 Record.** All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition. [S13,§2682-h; C24, 27, 31, 35, 39,§3923; C46, 50, 54,§262.11]

**262.12 Finance committee—organization—duties.** The board shall appoint a finance committee of three from outside its membership and shall designate one of such committee as chairman and one as secretary. Not more than two of its members shall be of the same political party, and its members shall hold office for a term of three years, unless sooner removed by a vote of two-thirds of the members of the board. In addition to the duties imposed upon the finance committee by law, the committee and members thereof shall make such investigations and reports and perform such ministerial duties as the board by resolution may direct, and the committee may make such recommendations to the board at it may deem proper. [S13,§2682-h; C24, 27, 31, 35, 39,§3924; C46, 50, 54,§262.12]

**262.13 Secretary of board and committee—duties.** The secretary shall be secretary of the board and of the committee, and shall separately keep and carefully preserve complete

files of documents and records of the proceedings of the board and the committee. [S13, 2682-h; C24, 27, 31, 35, 39,§3925; C46, 50, 54, §262.13]

**262.14 Loans—conditions.** The finance committee may invest funds belonging to said institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. Any portion of said funds may be invested by the finance committee in bonds of the United States; in notes, bonds, and certificates of indebtedness the payment of which is guaranteed by the United States; also in bonds of this state, and of counties, cities, and school districts in Iowa.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, the finance committee, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the secretary of said committee, and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

1. [C51,§1018; R60,§1938; C73,§1599; C97,§2638; S13,§2682-s; C24, 27, 31, 35, 39,§3926; C46, 50, 54, §262.14]

2. [S13,§2682-s; C24, 27, 31, 35, 39,§3926; C46, 50, 54,§262.14]

3. [R60,§1938; C73,§§1599, 1617; C97,§§2638, 2666; C24, 27, 31, 35, 39,§3926; C46, 50, 54,§262.14]

4. [C31, 35, 39,§3926; C46, 50, 54,§262.14; 56GA, ch 131,§23]

5. [S13,§2682-s; C24, 27, 31, 35, 39,§3926; C46, 50, 54,§262.14]

6. [C46, 50, 54,§262.14]

**262.15 Foreclosures and collections.** The finance committee shall have charge of the foreclosure of all mortgages and of all collections from delinquent debtors to said institutions. All actions shall be in the name of the state board of regents, for the use and benefit of the appropriate institution. [SS15,§2682-t; C24, 27, 31, 35, 39,§3927; C46, 50, 54,§262.15; 56GA, ch 131,§24]

**262.16 Satisfaction of mortgages.** When loans are paid, the finance committee shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the chairman or secretary of said committee, which shall be recorded in the office of the recorder of the county where said mortgage is of record; or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the chairman or secretary of the committee. [SS15,§2682-t; C24, 27, 31, 35, 39, §3928; C46, 50, 54,§262.16]

**262.17 Bidding in property.** In case of a sale upon execution, the premises may be bid off in the name of the board of regents, for the benefit of the institution to which the loan belongs. [SS15,§2682-t; C24, 27, 31, 35, 39,§3929; C46, 50, 54,§262.17; 56GA, ch 131,§25]

**262.18 Deeds in trust.** Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands. [SS15,§2682-t; C24, 27, 31, 35, 39,§3930; C46, 50, 54,§262.18]

**262.19 Actions not barred.** No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution. [C97, §2637; C24, 27, 31, 35, 39,§3931; C46, 50, 54, §262.19]

**262.20 Business offices—visitation.** A business office shall be maintained at each of the institutions of higher learning. The committee shall, once each month, attend each of the institutions for the purpose of transacting any business that may properly come before it, and the performance of its duties. [S13,§2682-k; C24, 27, 31, 35, 39,§3932; C46, 50, 54,§262.20]

**262.21 Expenses—official residences.** The members of the finance committee shall devote their entire time to the work of said institutions. The members of the finance committee and other employees shall maintain their official residences at the places designated by the board, and shall be entitled to their necessary traveling expenses therefrom by the nearest traveled and practicable route incurred in visiting the different institutions and other places and returning therefrom when on official business, and such other expenses as are actually and necessarily incurred in the performance of their official duties. [S13,§2682-m; C24, 27, 31, 35, 39,§3933; C46, 50, 54,§262.21]

**262.22 Comptroller's report.** The state comptroller shall include in his report to the governor the amount paid for such services and expenses and to whom paid. [S13,§2682-q; C24, 27, 31, 35, 39,§3934; C46, 50, 54,§262.22]

Time for filing report, §17.3

**262.23 Duties of treasurer.** The treasurer of each of said institutions shall:

1. Receive all appropriations made by the

general assembly for said institution, and all other funds from all other sources, belonging to said institution.

2. Pay out said funds on order of the board of regents, or of the finance committee, on bills duly audited in accordance with the rules prescribed by said board.

3. Retain all bills, so paid by him, with receipts for their payment as his vouchers.

4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.

5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail. [R60,§§1739, 1937; C73,§§1593, 1614; C97,§§2637, 2654; C24, 27, 31, 35, 39,§3935; C46, 50, 54,§262.23; 56GA, ch 131,§26; 57GA, ch 51,§3]

**262.24 Reports of executive officers.** The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in his judgment are for the benefit of the institution, and also his recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium. [R60,§§1939, 2149, 2161; C73,§§1600, 1601, 1677, 1694; C97,§§2641, 2717, 2725; S13,§§2641, 2717; C24, 27, 31, 35, 39,§3936; C46, 50, 54,§262.24]

**262.25 Reports of secretarial officers.** The secretarial officer shall, for the institution of which he acts as secretary, on or before August 1 of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.

2. Interest on endowment and other funds, tuition, state appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institution.

3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.

4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.

5. The amount of unexpended balances of departments remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on June 30 of each year.

The report for the state college of agriculture and mechanic arts shall also show the receipts of the experiment station from all sources for



each fiscal year, and how the same were expended. [S13,§2682-b; C24, 27, 31, 35, 39,§3937; C46, 50, 54,§262.25]

**262.26 Report of board.** The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board and finance committee, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements. [R60,§1939; C73,§§1600, 1601; C97, §§2641, 2680; S13,§§2641, 2680, 2682-u; C24, 27, 31, 35, 39,§3938; C46, 50, 54,§262.26]

Time for filing report, §17.3

**262.27 Colonel of cadets.** The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution. [S13,§2644-c; C24, 27, 31, 35, 39,§3939; C46, 50, 54,§262.27]

**262.28 Appropriations — monthly installments.** All appropriations made payable annually to each of the institutions under the control of the board of regents shall be paid in twelve equal monthly installments on the last day of each month on order of said board. [S13,§2682-y; C24, 27, 31, 35, 39,§3940; C46, 50, 54,§262.28; 56GA, ch 131,§27]

**262.29 Expenses — filing and audit.** All claims for the actual necessary expenses of the board and of the finance committee and of their assistants shall be filed with and allowed by the state comptroller in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers. [S13,§2682-l; C24, 27, 31, 35, 39,§3941; C46, 50, 54,§262.29]

**262.30 Contracts for training teachers.** The board of directors of any school district in the state of Iowa may enter into contract with the state board of regents for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the Iowa state teachers college, state university of Iowa, and college of agriculture and mechanic arts as training schools for teachers. [C24, 27, 31, 35, 39,§3942; C46, 50, 54,§262.30; 56GA, ch 131,§28]

**262.31 Payment.** The contract for such instruction shall authorize the payment for such

service furnished the school district or for such service furnished the state, the amount to be agreed upon by the state board of regents and the board of the school district thus cooperating. [C24, 27, 31, 35, 39,§3943; C46, 50, 54,§262.31; 56GA, ch 131,§29]

**262.32 Contract—time limit.** Such contracts shall be in writing and shall extend over a period of not to exceed two years, and a copy thereof shall be filed in the office of the superintendent of schools of the county. [C24, 27, 31, 35, 39,§3944; C46, 50, 54,§262.32]

**262.33 Fire protection contracts.** The state board of regents shall have power to enter into contracts with the governing body of any city, town, or other municipal corporation for the protection from fire of any property under the control of the board, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon. [C31, 35,§3944-d1; C39,§3944.1; C46, 50, 54,§262.33; 56GA, ch 131,§30]

**262.34 Improvements — advertisement for bids.** When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of regents shall exceed ten thousand dollars, the said board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder; provided, however, if in the judgment of the board bids received be not acceptable, the said board may reject all bids and proceed with the construction, repair, or improvement by such method as the board may determine. All plans and specifications for repairs or construction, together with bids thereon, shall be filed by the board and be open for public inspection. All bids submitted under the provisions of this section shall be accompanied by a deposit of money or a certified check in such amount as the board may prescribe. [C24, 27, 31, 35, 39,§3945; C46, 50, 54,§262.34; 56GA, ch 131, §31]

#### DORMITORIES

**262.35 Dormitories at state educational institutions.** The state board of regents is authorized to:

1. Erect from time to time at any of the institutions under its control such dormitories as may be required for the good of the institutions.

2. Rent the rooms in such dormitories to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable return upon the investment.

3. Exercise full control and complete management over such dormitories. [C27, 31, 35, §3945-a1; C39,§3945.1; C46, 50, 54,§262.35; 56GA, ch 131,§32]

**262.36 Purchase or condemnation of property.** The erection of such dormitories is a public necessity and said board is vested with full power to purchase or condemn at said in-

stitutions, or convenient thereto, all real estate necessary to carry out the powers herein granted. [C27, 31, 35,§3945-a2; C39,§3945.2; C46, 50, 54,§262.36]

**262.37 Title to property.** The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state. [C27, 31, 35,§3945-a3; C39, §3945.3; C46, 50, 54,§262.37]

**262.38 Borrowing money and mortgaging property.** In carrying out the above powers, said board may:

1. Borrow money.
2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.
3. Pledge the rents, profits, and income received from any such property for the discharge of mortgages so executed. [C27, 31, 35, §3945-a4; C39,§3945.4; C46, 50, 54,§262.38]

**262.39 Nature of obligation—discharge.** No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged,
2. From the net rents, profits, and income which has not been pledged for other purposes arising from any other dormitory or like improvement under the control and management of said board, or
3. From the income derived from gifts and

bequests made to the institutions under the control of said board for dormitory purposes. [C27, 31, 35,§3945-a5; C39,§3945.5; C46, 50, 54, §262.39]

Referred to in §262.40

**262.40 Limitation on discharging obligations.** In discharging obligations under section 262.39 the dormitories at each of said institutions shall be considered as a unit and the rents, profits, and income available for dormitory purposes at one institution shall not be used to discharge obligations created for dormitories at another institution. [C27, 31, 35,§3945-a6; C39,§3945.6; C46, 50, 54,§262.40]

**262.41 Exemption from taxation.** All obligations created hereunder shall be exempt from taxation. [C27, 31, 35,§3945-a7; C39, §3945.7; C46, 50, 54,§262.41]

**262.42 Limitation on funds.** No state funds shall be loaned or used for this purpose. This shall not apply to funds derived from the net earnings of dormitories now or hereafter owned by the state. [C27, 31, 35,§3945-a8; C39, §3945.8; C46, 50, 54,§262.42]

TUITION TO LOCAL SCHOOLS

**262.43 Students residing on state-owned land.** The state board of regents shall pay to the local school boards the tuition payments for the elementary or high school education of students residing on land owned by the state and under the control of the state board of regents. Such payments shall be made from funds of the respective institutions other than state appropriations. [C54,§262.43; 56GA. ch 131,§33]

CHAPTER 263

STATE UNIVERSITY

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HOSPITAL-SCHOOL FOR HANDICAPPED

- 263.9 Establishment and objectives.
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**263.1 Objects—departments.** The university shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient means of imparting to men and women, upon equal terms, a liberal education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of regents may determine from time to

time. If a teachers training course is established by the board it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools. [C51,§1020; R60,§§1927, 1930, 1933; C73,§§1585, 1586, 1589; C97,§2640; C24, 27, 31, 35, 39,§3946; C46, 50, 54,§263.1; 56GA, ch 131, §34]

**263.2 Degrees.** No one shall be admitted to courses of instruction in the university who has not completed the elementary instruction

in such branches as are taught in the common schools throughout the state. Graduates shall receive degrees or diplomas, or other evidences of distinction such as are usually conferred and granted by universities and are authorized by the state board of regents. [R60,§1933; C73, §§1585, 1589; C97,§2640; C24, 27, 31, 35, 39,§3947; C46, 50, 54,§263.2; 56GA, ch 131,§35]

**263.3 Cabinet of natural history.** For the purpose of supplying a cabinet of natural history, all geological and mineralogical specimens which are collected by the state geologists, or by others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the university, under the charge of the professors of those departments. [R60,§§1931, 1935; C73,§§1597, 1598; C97,§2639; C24, 27, 31, 35, 39, §3948; C46, 50, 54,§263.3]

**263.4 Homeopathic materia medica and therapeutics.** The state board of regents is hereby authorized and directed to establish and maintain a department of homeopathic materia medica and therapeutics in the college of medicine of the state university of Iowa, with suitable and sufficient hours and rooms for said department. The use of the university homeopathic hospital shall be left to the discretion of the board. [S13,§2640-a; C24, 27, 31, 35, 39,§3949; C46, 50, 54,§263.4; 56GA, ch 131, §36]

**263.5 Iowa child welfare research station.** The state board of regents is hereby authorized to establish and maintain at Iowa City as an integral part of the state university the Iowa child welfare research station, having as its objects the investigation of the best scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields. [C24, 27, 31, 35, 39,§3950; C46, 50, 54, §263.5; 56GA, ch 131,§37]

**263.6 Management.** The management and control of such station shall be vested in a director appointed by the said board of regents and an advisory board of seven members to be appointed by the president of the university from the faculty of the graduate college of said university. [C24, 27, 31, 35, 39, §3951; C46, 50, 54,§263.6; 56GA, ch 131,§38]

**263.7 Bacteriological laboratory—investigations.** The bacteriological laboratory shall be a permanent part of the medical college of the university. It shall make or cause to be made bacteriological and chemical examinations of water, and necessary investigations by both laboratory and field work to determine the source of epidemics of disease, and to suggest methods of overcoming and preventing the recurrence of the same, whenever requested to do so by any state institution or by any citizen, school, or municipality when in the judgment of the local board of health the same is neces-

sary in the interests of the public health and for the purpose of preventing epidemics of disease. [S13,§2575-a8; SS15,§2575-a7; C24, 27, 31, 35, 39,§3952; C46, 50, 54,§263.7]

**263.8 Reports — tests.** Such examination shall be made without charge, except for transportation and actual cost of examination, not to exceed two dollars for each. A copy of the report of each epidemiological examination and investigation shall be promptly sent to the state department of health.

In addition to its regular work, the laboratory shall perform without charge all bacteriological, serological, and epidemiological examinations and investigations which may be required by the state department of health, and said department shall establish rules therefor. [S13,§2575-a8; SS15,§§2575-a7,-a9; C24, 27, 31, 35, 39,§3953; C46, 50, 54,§263.8]

Duties of department of health, §135.11

#### HOSPITAL-SCHOOL FOR HANDICAPPED

**263.9 Establishment and objectives.** The state board of regents is hereby authorized to establish and maintain in reasonable proximity to Iowa City and in conjunction with the state university and the university hospital, a hospital-school having as its objects the education and treatment of severely handicapped children. Such hospital-schools shall be conducted in conjunction with the activities of the university of Iowa children's hospital. Insofar as is practicable, the facilities of the university children's hospital shall be utilized. [C50, 54,§263.9; 56GA, ch 131,§39]

**263.10 Persons admitted.** Every resident of the state who is not more than twenty-one years of age, who is so severely handicapped as to be unable to acquire an education in the common schools, and every such person who is twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education, care, and training in the institution, and nonresidents similarly situated may be entitled to an education and care therein upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. Residents and persons under the care and control of the board of control who are severely handicapped may be transferred to the hospital-school upon such terms as may be agreed upon by the state board of regents and the state board of control. [C50, 54,§263.10; 56GA, ch 131,§40; ch 132,§1]

**263.11 Definitions.** The term "severely handicapped" shall be interpreted for the purpose of this division as the following:

1. Persons who are educable but severely physically and educationally handicapped as a result of cerebral palsy, muscular dystrophy, spina bifida, arthritis, poliomyelitis, or other severe physically handicapping conditions, and

2. Persons who are not eligible for admission to the schools already established for the deaf, blind, epileptic, or feeble-minded. [C50, 54,§263.11]

**263.12 Payment by counties.** The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the state hospital-school. [C50, 54,§263.12]

**263.13 Gifts accepted.** The board of regents is authorized to accept, for the benefit of such hospital-schools, gifts, devises, or bequests of

property, real or personal including grants from the federal government. Said board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which made. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than it be used for aid to such hospital-schools as provided in this division. [C50, 54,§263.13; 56GA, ch 131, §41]

## CHAPTER 264

### PERPETUATION OF COLLEGE CREDITS

264.1 Mandatory transfer of record of credits.  
264.2 Central depository.  
264.3 Duty of depository.  
264.4 Transcripts.

264.5 Fees.  
264.6 Penalty.  
264.7 Records of prior defunct institutions.

**264.1 Mandatory transfer of record of credits.** The trustees or officers of any institution of higher learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution must transfer to the office of the registrar of the state university of Iowa complete records of all grades attained by its students. [C35,§3953-e1; C39,§3953.1; C46, 50, 54,§264.1]

evidence for all purposes the same as the original would be. [C35,§3953-e4; C39,§3953.4; C46, 50, 54,§264.4]

**264.2 Central depository.** The office of the registrar of the state university is hereby designated the central depository for the scholastic records of those educational institutions in this state which may hereafter cease to exist. [C35,§3953-e2; C39,§3953.2; C46, 50, 54, §264.2]

**264.5 Fees.** For the preparation of each of such transcripts the state university may charge a nominal fee, not to exceed five dollars, to compensate the institution for the actual labor of recording the credits, preparing a transcript, postage, etc. [C35,§3953-e5; C39, §3953.5; C46, 50, 54,§264.5]

**264.3 Duty of depository.** The office of the registrar of the state university shall proceed to collect the scholastic records of those educational institutions which may become extinct, and he shall have the supervision, care, custody, and control of said records. [C35, §3953-e3; C39,§3953.3; C46, 50, 54,§264.3]

**264.6 Penalty.** The members of the board of trustees and the officers of an institution of higher learning who do not file, in accordance with the provisions of this chapter, the record of grades in the office of the registrar of the state university within twelve months after the said institution has been closed or has ceased to function as an educational institution, may be fined an amount not to exceed five hundred dollars. [C35,§3953-e6; C39,§3953.6; C46, 50, 54,§264.6]

**264.4 Transcripts.** The registrar of the state university shall prepare transcripts of such scholastic records and when requested to do so he must furnish a copy of the said transcript to a former student. Whenever such transcript is made and after it has been compared with the original it shall be certified by the registrar of the state university, and thereafter it shall be considered and accepted as

**264.7 Records of prior defunct institutions.** The office of the registrar of the state university is hereby designated the central depository for the records of any institution of higher learning which prior to the passage of this chapter may have ceased to exist, provided the custodian of the said records or former officials of the institution may wish to take advantage of the provisions of this chapter. [C35,§3953-e7; C39,§3953.7; C46, 50, 54, §264.7]

## CHAPTER 265

### FEDERAL MATERNITY AND INFANCY ACT

Repealed by 53GA, ch 107

## CHAPTER 266

## STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS

## GENERAL PROVISIONS

- 266.1 Grants accepted.
- 266.2 Courses of study.
- 266.3 Investigation of mineral resources.
- 266.4 Co-operative agricultural extension work.
- 266.5 State agency.
- 266.6 Purnell act.
- 266.7 Receiving agent.

## STATE APIARIST

- 266.8 Appointment—tenure.
- 266.9 Who appointed—responsibility.
- 266.10 Duties.
- 266.11 Right to enter premises.
- 266.12 Examinations.
- 266.13 Instructions—hives—imported bees.
- 266.14 Notice to treat or destroy.

## GENERAL PROVISIONS

**266.1 Grants accepted.** Legislative assent is given to the purposes of the various congressional grants to the state for the endowment and support of a college of agriculture and mechanic arts, and an agricultural experiment station as a department thereof, upon the terms, conditions, and restrictions contained in all acts of congress relating thereto, and the state assumes the duties, obligations, and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said college located at Ames. [R60, §1714; C73, §1604; C97, §2645; C24, 27, 31, 35, 39, §4031; C46, 50, 54, §266.1]

**266.2 Courses of study.** There shall be adopted and taught at said college practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a teachers training course is established it shall include the subject of physical education. [R60, §1728; C73, §1621; C97, §2648; S13, §2674-d; C24, 27, 31, 35, 39, §4032; C46, 50, 54, §266.2]

**266.3 Investigation of mineral resources.** The said college shall provide, as a part of its engineering experiment station work, for the investigation of clays, cement materials, fuels, and other mineral resources of the state with especial reference to their economic uses, and for the publication and dissemination of information useful to such industries, and for the testing of the products thereof. [S13, §2674-e; C24, 27, 31, 35, 39, §4033; C46, 50, 54, §266.3]

- 266.15 Apiarist to treat or destroy—costs.
- 266.16 Costs certified—collected as tax.
- 266.17 Regulations authorized.
- 266.18 Prohibitory orders.
- 266.19 Effect of regulations and orders.
- 266.20 Duty of county treasurer.
- 266.21 Annual report.
- 266.22 Sale or disposition of diseased bees.
- 266.23 Appropriation by county.

## HOG-CHOLERA SERUM LABORATORY

- 266.24 Directors—assistants—salary.
- 266.25 Sale of serum.
- 266.26 Receipts—how deposited—expenses.

## CAPPER-KETCHAM ACT

- 266.27 Act accepted.
- 266.28 Receipt of funds—work authorized.

**266.4 Co-operative agricultural extension work.** The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of an Act of Congress approved May 8, 1914, providing for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the Act of Congress approved July 2, 1862, and amendments thereto. [SS15, §2682-y1; C24, 27, 31, 35, 39, §4034; C46, 50, 54, §266.4]

SS15, §2682-y1, editorially divided

**266.5 State agency.** The state board of regents is hereby authorized and empowered to receive the grants of money appropriated under said Act and to organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the state college of agriculture and mechanic arts in accordance with the terms and conditions expressed in the Act of Congress aforesaid. [SS15, §2682-y1; C24, 27, 31, 35, 39, §4035; C46, 50, 54, §266.5; 56GA, ch 131, §42]

**266.6 Purnell Act.** The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional Act approved February 24, 1925, commonly known as the Purnell Act; and that, in accordance with the requirements thereof, the state agrees to devote the moneys thus received to the more complete endowment and maintenance of the agricultural experiment station of the Iowa state college of agriculture and mechanic arts as provided in said Act. [C27, 31, 35, §4035-b1; C39, §4035.1; C46, 50, 54, §266.6]

**266.7 Receiving agent.** The treasurer of the Iowa state college of agriculture and mechanic arts is hereby authorized and empowered to receive the grants of money appropriated under the said Act. [C27, 31, 35, §4035-b2; C39, §4035.2; C46, 50, 54, §266.7]

STATE APIARIST

**266.8 Appointment—tenure.** The state board of regents is authorized and directed to appoint a state apiarist, who shall work in connection with and under the supervision of the director of agricultural extension of the state college of agriculture and mechanic arts, the term of said state apiarist to continue during the pleasure of said state board of regents. [C24, 27, 31, 35, 39, §4036; C46, 50, 54, §266.8; 56GA, ch 131, §443, 59]

**266.9 Who appointed—responsibility.** The extension apiarist of the Iowa agricultural extension service is hereby constituted the state apiarist who is the executive officer of this act.\* The state apiarist shall be responsible to and under the authority of the secretary of agriculture in the issuance of all rules and regulations, in the establishment of quarantines, and in other official acts. He shall be provided with a suitable office at the college of agriculture and mechanic arts, where his records shall be kept. [C46, 50, 54, §266.9]

\*49GA, ch 154

**266.10 Duties.** It shall be the duty of the said apiarist to give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey. [C24, 27, 31, 35, 39, §4037; C46, 50, 54, §266.10]

37GA, ch 289, §2, editorially divided  
Referred to in §266.20

**266.11 Right to enter premises.** In the performance of his duties, the state apiarist or his assistants shall have the right to enter any premises, inclosure, or buildings containing bees or bee supplies. [C27, 31, 35, §4037-a1; C39, §4037.1; C46, 50, 54, §266.11]

Referred to in §266.20

**266.12 Examinations.** Upon the written request of one or more beekeepers in any county of the state, said apiarist shall examine the bees in that locality suspected of being affected with foulbrood or any other contagious or infectious disease common to bees. [C24, 27, 31, 35, 39, §4038; C46, 50, 54, §266.12]

Referred to in §266.20

**266.13 Instructions—hives—imported bees.** If upon examination the said apiarist finds said bees to be diseased, he shall furnish the owner or person in charge of said apiary with full written instructions as to the nature of the disease and the best methods of treating same, which information shall be furnished without cost to the owner.

It shall be unlawful to keep bees in any containers except hives with movable frames permitting ready examination in those counties where area clean-up inspection is in progress as may be proclaimed in official regulation.

All bees and combs, used hives or other used apiary appliances brought into this state from

any other state must be accompanied by a valid certificate of inspection of the state of origin or a permit issued by the state apiarist of Iowa. [C24, 27, 31, 35, 39, §4039; C46, 50, 54, §266.13]

Referred to in §266.20  
Misdemeanor, punishment, §687.7

**266.14 Notice to treat or destroy.** A notice shall be issued by the state apiarist in writing to any owner of bees or bee supplies to complete treatment or destruction within ten days. [C27, 31, 35, §4039-a1; C39, §4039.1; C46, 50, 54, §266.14]

41GA, ch 63, §2, editorially divided  
Referred to in §266.20

**266.15 Apiarist to treat or destroy—costs.** If the owner fails to comply with said notice, the state apiarist or his assistants shall carry out such treatment or destruction, and shall keep an account of the cost thereof. [C27, 31, 35, §4039-a2; C39, §4039.2; C46, 50, 54, §266.15]

Referred to in §266.20

**266.16 Costs certified—collected as tax.** He shall certify the amount of such cost to the owner and if the same is not paid to him within sixty days, the amount shall be certified to the county auditor of the county in which the premises are located, who shall spread the same upon the tax books which shall be a lien upon the property of the bee owner and be collected as other taxes are collected. [C27, 31, 35, §4039-a3; C39, §4039.3; C46, 50, 54, §266.16]

Referred to in §266.20  
Collection of taxes, ch 445

**266.17 Regulations authorized.** The state apiarist shall issue regulations prohibiting the transportation without his permit of any bees, combs, or used beekeeping appliances, into any area in which clean-up work is being conducted or which has been declared free of any diseases of bees. [C27, 31, 35, §4039-a4; C39, §4039.4; C46, 50, 54, §266.17]

Referred to in §266.20

**266.18 Prohibitory orders.** When any area is found to be infected with diseases of bees, he shall issue an order prohibiting the movement of bees and used beekeeping appliances out of such area, but shall except from the order bees shipped without honey or feed containing honey and honey sold in tight containers for commercial purposes other than with bees or as food for bees. [C27, 31, 35, §4039-a5; C39, §4039.5; C46, 50, 54, §266.18]

Referred to in §266.20

**266.19 Effect of regulations and orders.** Said regulations and orders shall have the full effect of law. [C27, 31, 35, §4039-a6; C39, §4039.6; C46, 50, 54, §266.19]

Referred to in §266.20

**266.20 Duty of county treasurer.** The county treasurer shall turn said money over to the state treasurer to become a part of the fund for the enforcement of sections 266.10 to 266.19, inclusive. [C27, 31, 35, §4039-a7; C39, §4039.7; C46, 50, 54, §266.20]

**266.21 Annual report.** Said apiarist shall also make an annual report to the governor, stating the number of apiaries visited, number of demonstrations held, number of lectures given, the number of examinations made upon request of the beekeepers, together with such other matters of general interest concerning the business of beekeeping as in his judgment shall be of value to the public. [C24, 27, 31, 35, 39, §4040; C46, 50, 54, §266.21]

Time for filing report, §17.4

**266.22 Sale or disposition of diseased bees.** Anyone who knowingly sells, barter, or gives away, moves or allows to be moved, a diseased colony or colonies of bees, without the consent of the state apiarist, or exposes any infected honey or infected appliances to the bees, or who willfully fails or neglects to give proper treatment to diseased colonies, or who interferes with the state apiarist or his assistants in the performance of their duties or who refuses to permit the examination of bees or their destruction as provided in this act\* or violates any other provision of the act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county shall be fined not exceeding the sum of fifty dollars or imprisoned in the county jail not exceeding thirty days. [C24, 27, 31, 35, 39, §4041; C46, 50, 54, §266.22]

\*41GA, ch 63

**266.23 Appropriation by county.** The board of supervisors of any county, when petitioned by not less than fifteen beekeepers of that county, may appropriate funds not to exceed six hundred dollars per annum from the general fund for the purpose of eradicating diseases among bees. Such work of eradication shall be done in such county under the supervision of the state apiarist. [C31, 35, §4041-c1; C39, §4041.1; C46, 50, 54, §266.23]

#### HOG-CHOLERA SERUM LABORATORY

**266.24 Directors — assistants — salary.** The state board of regents is hereby authorized to maintain at Ames, in connection with the state college of agriculture and mechanic arts, a laboratory for the manufacture and distribution of hog-cholera serum, toxines, vaccines, and biological products and for such other work as the said state board of regents may, from time to time, deem advisable in the veterinary division, and to provide the necessary equipment therefor. The president of said college shall appoint the director of said laboratory and such assistants as are deemed necessary to efficiently carry on said work; and he shall, with the approval of said board, fix the salaries of said assistants. [SS15,

§2538-w; C24, 27, 31, 35, 39, §4042; C46, 50, 54, §266.24; 56GA, ch 131, §44]

General regulations, ch 166

**266.25 Sale of serum.** The director of said laboratory may, when an emergency is declared to exist by the state board of regents, furnish said serum to any person, together with specific instructions for the use of same, at the approximate cost of manufacture, and such cost shall be stated on the package. The director of the serum laboratory is authorized to purchase serum or other biological products which he deems reliable, and he may sell the same at approximate cost in the same manner as products of the laboratory are sold. [SS15, §2538-w1; C24, 27, 31, 35, 39, §4043; C46, 50, 54, §266.25; 56GA, ch 131, §45]

**266.26 Receipts—how deposited—expenses.** The director shall deposit all funds with the treasurer of the college, which treasurer shall be responsible on his bond for the same. Upon receipt of said moneys, the said treasurer shall issue duplicate receipts therefor, one of which he shall deliver to the director and the other to the secretary of the state board of regents. Said moneys shall be kept by said treasurer in a separate fund to be known as the serum fund; and he shall pay out from said fund, as other college funds are expended, but only for expenses directly connected with the maintenance and development of said laboratory and for grounds and buildings. Said grounds and buildings shall be used, when so authorized by the board of regents, for any purpose in connection with the study, control, or treatment of animal diseases. [SS15, §2538-w2; C24, 27, 31, 35, 39, §4044; C46, 50, 54, §266.26; 56GA, ch 131, §46]

#### CAPPER-KETCHAM ACT

**266.27 Act accepted.** The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional act approved May 22, 1928, commonly known as the Capper-Ketcham Act. [C31, 35, §4044-c1; C39, §4044.1; C46, 50, 54, §266.27]

**266.28 Receipt of funds—work authorized.** The Iowa state board of regents is hereby authorized and empowered to receive the grants of money appropriated under the said act; and to organize and conduct agricultural extension work which shall be carried on in connection with the Iowa state college of agriculture and mechanic arts, in accordance with the terms and conditions expressed in the act of congress aforesaid. [C31, 35, §4044-c2; C39, §4044.2; C46, 50, 54, §266.28; 56GA, ch 131, §47]

CHAPTER 267

IOWA CROP PEST ACT

- 267.1 Short title.
- 267.2 Definitions.
- 267.3 State entomologist.
- 267.4 Employees—expenses.
- 267.5 Duties—public nuisances.
- 267.6 Rules and regulations.
- 267.7 Infection—eradication—notice.
- 267.8 Importation—regulations.
- 267.9 Inspection—certificate—fees.
- 267.10 Report of violations.
- 267.11 Quarantine—general powers.

- 267.12 Federal quarantine—seizures.
- 267.13 Quarantines—seizure and destruction.
- 267.14 Right of access.
- 267.15 Right to hearing.
- 267.16 Violations.
- 267.17 Duty of owner—assessment of costs.
- 267.18 Violations.
- 267.19 Harmful barberry.
- 267.20 Liability of principal.
- 267.21 Party plaintiff.
- 267.22 Construction.

**267.1 Short title.** This chapter shall be known by the short title of "The Iowa Crop Pest Act." [C27, 31, 35, §4062-b1; C39, §4062.01; C46, 50, 54, §267.1]

**267.2 Definitions.** For the purposes of this chapter, the following terms shall be construed, respectively, to mean:

"Insect pests and diseases." Insect pests and diseases injurious to plants and plant products, including any of the stages of development of such insect pests and diseases.

"Plants and plant products." Trees, shrubs, vines, berry plants, greenhouse plants and all other nursery plants; forage and cereal plants, and all other parts of plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products.

"Places." Vessels, cars, boats, trucks, automobiles, aircraft, wagons and other vehicles or carriers, whether air, land or water, buildings, docks, nurseries, greenhouses, orchards, fields, gardens, and other premises or any container where plants and plant products are grown, kept or handled. [C27, 31, 35, §4062-b2; C39, §4062.02; C46, 50, 54, §267.2]

Diseased hop roots, ch 733

**267.3 State entomologist.** There is hereby created and established within the department of agriculture the office of state entomologist. The entomologist of the Iowa agricultural experiment station is hereby constituted the state entomologist who is the executive officer of this chapter. The state entomologist shall be responsible to and under the authority of the secretary of agriculture in the issuance of all rules, regulations, the establishment of quarantines and other official acts. He shall be provided with a suitable office at the college of agriculture and mechanic arts, where his records shall be kept. [S13, §2575-a47; C24, §4045; C27, 31, 35, §4062-b3; C39, §4062.03; C46, 50, 54, §267.3]

**267.4 Employees—expenses.** For the purpose of carrying out the provisions of this chapter, the state entomologist with the approval of the secretary of agriculture shall employ, prescribe the duties of, and fix the compensation of, such inspectors, and other employees as needed and incur such expenses

as may be necessary, within the limits of appropriations made by law. He shall co-operate with other departments, boards and officers of the state and of the United States as far as practicable. [S13, §2575-a47; C24, §4046; C27, 31, 35, §4062-b4; C39, §4062.04; C46, 50, 54, §267.4]

**267.5 Duties — public nuisances.** The state entomologist shall keep himself informed as to known species and varieties of insect pests and diseases, the origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication. In the rules and regulations made pursuant to this chapter the state entomologist shall list the dangerously injurious insect pests and diseases which he shall find should be prevented from being introduced into, or disseminated within, this state in order to safeguard the plants and plant products likely to become infested or infected with such insect pests and diseases. Every such insect pest and disease listed, and every plant product infested or infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence in or upon any place of any insect pest or disease so listed, shall immediately report the fact and location to the state entomologist, or the assistant state entomologist, giving such detailed information relative thereto as he may have. Every person who deals in or engages in the sale of plants and plant products shall furnish to the state entomologist or his inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where he purchased or obtained such plants and plant products. [S13, §2575-a47; C24, §4047; C27, 31, 35, §4062-b5; C39, §4062.05; C46, 50, 54, §267.5]

Referred to in §267.19

**267.6 Rules and regulations.** The state entomologist shall, from time to time, make rules and regulations for carrying out the provisions and requirements of this chapter, including rules and regulations under which the inspectors and other employees shall:

1. Inspect places, plants and plant products, and things and substances used or connected therewith,
2. Investigate, control, eradicate and prevent



the dissemination of insect pests and diseases, and

3. Supervise or cause the treatment, cutting and destruction of plants and plant products infested or infected therewith.

The state entomologist, his inspectors, employees, or other authorized agents shall have authority to enforce these rules and regulations which shall be published in the same manner as are the other rules and regulations of the department of agriculture. [S13,§2575-a48; C24, §§4050, 4051, 4054; C27, 31, 35, §4062-b6; C39, §4062.06; C46, 50, 54, §267.6]

Referred to in §267.19

**267.7 Infection—eradication—notice.** Whenever inspection discloses that any places, or plants or plant products, or things and substances used or connected therewith, are infested or infected with any dangerously injurious insect pest or disease listed as a public nuisance, written notice thereof shall be given the owner or person in possession or control of the place where found, who shall proceed to control, eradicate or prevent the dissemination of such insect pest or disease, and to remove, cut or destroy infested and infected plants and plant products, or things and substances used or connected therewith, as prescribed in the notice or the rules and regulations. Whenever such owner or person in possession cannot be found, or shall fail, neglect or refuse to obey the requirements of the notice and the rules and regulations, such requirements shall be carried out by the state entomologist, as required by section 267.17. [S13,§2575-a48; C24, §§4050, 4052, 4053, 4055; C27, 31, 35, §4062-b7; C39, §4062.07; C46, 50, 54, §267.7]

Referred to in §267.19

**267.8 Importation—regulations.** It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product listed in the rules and regulations, unless there be plainly and legibly marked thereon or affixed thereto, or on or to the carrier, or the bundle, package, or container, in a conspicuous place, a statement or tag or device showing the names and addresses of the consignors or shippers and the consignees or persons to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown, together with a certificate of inspection of the proper official of the state, territory, district, or country from which it was brought or shipped, showing that such plant or plant product was found or believed to be free from dangerously injurious insect pests and diseases, and giving any other information required by the state entomologist. [S13,§2575-a50; C24, §4058; C27, 31, 35, §4062-b8; C39, §4062.08; C46, 50, 54, §267.8]

Referred to in §§267.9, 267.10, 267.19

**267.9 Inspection—certificate—fees.** It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed in the rules and regulations,

unless such plants or plant products have been officially inspected and a certificate issued by an inspector of the state entomologist's office stating that such plants or plant products have been inspected and found to be apparently free from dangerously injurious insect pests and diseases, and giving any other facts provided for in the rules and regulations. For the issuance of such certificate, the state entomologist may require the payment of a reasonable fee to cover the expense of such inspection and certification. Provided, that if such plants or plant products were brought into this state in compliance with section 267.8, the certificate required by that section may be accepted in lieu of the inspection and certificate required by this section, in such cases as shall be provided for in the rules and regulations. If it shall be found at any time that a certificate of inspection, issued or accepted under the provisions of this section, is being used in connection with plants and plant products which are infested or infected with dangerously injurious insect pests or diseases or in connection with uninspected plants, its further use may be prohibited, subject to such inspection and disposition of the plants and plant products involved as may be provided for by the state entomologist. All moneys collected under the provisions of this chapter shall be turned over to the secretary who shall deposit them in the state treasury.

A fee of not less than five dollars nor more than sixty-five dollars per annum, according to the amount of stock inspected, shall be paid at the time of inspection or before a certificate is granted. Such certificate shall be valid for one year from date of issue, unless sooner revoked by the state entomologist. The inspection of nurseries shall take place between May 1 and October 30 of each year and at such other times as may be necessary to make effective the provisions of this chapter and the rules and regulations made pursuant thereto. [S13, §§2575-a47, -a49; C24, §§4047, 4048, 4057; C27, 31, 35, §4062-b9; C39, §4062.09; C46, 50, 54, §267.9]

Referred to in §§267.10, 267.19

**267.10 Report of violations.** Any person who receives from without the state any plant or plant product without section 267.8 having been complied with, or who receives any plant or plant product sold, given away, carried, shipped, or delivered for carriage or shipment within this state without section 267.9 having been complied with, shall immediately inform the state entomologist or one of his inspectors of such facts and isolate and hold the plant or plant product unopened or unused, subject to such inspection and disposition as may be provided for by the state entomologist. [S13, §2575-a49; C24, §4057; C27, 31, 35, §4062-b10; C39, §4062.10; C46, 50, 54, §267.10]

Referred to in §267.19

**267.11 Quarantine—general powers.** Whenever the state entomologist shall find that there exists outside of this state any insect pest or disease, and that its introduction into

this state should be prevented in order to safeguard plants and plant products in this state, the state entomologist is authorized to quarantine and promulgate quarantine restrictions covering areas within the states affected by the pest and may adopt, issue, and enforce rules and regulations supplemental to such quarantines for the control of the pest. Under such quarantines, the state entomologist or his authorized agents may prohibit and prevent the movement within the state without inspection, or the shipment or transportation within the state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, vehicles or carriers or any container, material, or substance believed or known to be carrying the insect pest or plant disease in any living state of its development in violation of said quarantines or of the rules or regulations issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the rules and regulations. [S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b11; C39, §4062.11; C46, 50, 54, §267.11]

Referred to in §267.19

#### 267.12 Federal quarantine—seizures.

1. Until the secretary of agriculture of the United States shall have made a determination that a federal quarantine is necessary, and has duly established the same with reference to any dangerous plant disease or insect infestation, the state entomologist of this state is authorized to promulgate and enforce quarantine regulations prohibiting or restricting the transportation of any class of plant material or product or article into this state from any state, territory or district of the United States, when he shall have information that a dangerous plant disease or insect infestation exists in such state, territory, district, or portion thereof.

2. The state entomologist, his inspectors or duly authorized agents are authorized to seize, destroy, or return to the point of origin any material received in this state in violation of any state quarantine established under the authority of subsection 1 hereof, or in violation of any federal quarantine established under the authority of the act of August 20, 1912, [37 Stat. L. ch 308] or any amendment thereto. [C27, 31, 35, §4062-b12; C39, §4062.12; C46, 50, 54, §267.12]

Referred to in §267.19

**267.13 Quarantines—seizure and destruction.** Whenever the state entomologist shall find that there exists in this state, or any part thereof, any dangerously injurious insect pest

or plant disease, and that its dissemination should be controlled or prevented, he may institute quarantines and promulgate quarantine restrictions covering areas within the state affected by such pest or disease, and may adopt, issue and enforce rules and regulations supplemental to such quarantines for the control of this pest. Under such quarantines, the state entomologist, his inspectors or authorized agents may prohibit and prevent the movement within the state without inspection or the shipment or transportation within this state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, or other vehicles or carriers of any kind or character, whether air, land, or water, or any container or material believed or known to be carrying such insect pest or plant disease in any living state of its development or any such material, in violation of said quarantine or of the rules or regulations issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the said rules and regulations.

The state entomologist shall give public notice of such quarantines, specifying the plants and plant products infested or infected, or likely to become infested or infected; and the movement, planting or other use of any such plant or plant product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest or disease, except under such conditions as shall be prescribed as to inspection, treatment and disposition, shall be prohibited within such area as he may designate. When the state entomologist shall find that the danger of the dissemination of such insect pest or disease has ceased to exist, he shall give public notice that the quarantine is raised. [S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b13; C39, §4062.13; C46, 50, 54, §267.13]

Referred to in §267.19

**267.14 Right of access.** The state entomologist and his authorized inspectors, employees, and agents shall have free access within reasonable hours to any farm, field, orchard, nursery, greenhouse, garden, elevator, seedhouse, warehouse, building, cellar, freight or express office or car, freight yard, truck, automobile, aircraft, wagon, vehicle, carrier, vessel, boat, container or any place which it may be necessary or desirable for such authorized agents to enter in carrying out the provisions of this chapter. It shall be unlawful to deny such access to such authorized agents or to hinder, thwart, or defeat such inspection or entrance by misrepresentation or concealment of facts or conditions, or otherwise. [S13, §2575-a48;

C24,§4049; C27, 31, 35,§4062-b14; C39,§4062.14; C46, 50, 54,§267.14]

Referred to in §267.19

**267.15 Right to hearing.** Any person affected by any rule or regulation made or notice given may have a review thereof by the secretary of agriculture for the purpose of having such rule, regulation or notice modified, suspended or withdrawn. [C27, 31, 35, §4062-b15; C39,§4062.15; C46, 50, 54,§267.15]

Referred to in §267.19

**267.16 Violations.** Any person, copartnership, association or corporation, or any combination of individuals, violating any provision of a quarantine promulgated under the authority of this chapter, or of any rules and regulations issued supplemental thereto, shall be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment in the county jail not exceeding thirty days or by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. [S13,§2575-a50; C24,§4059; C27, 31, 35, §4062-b16; C39,§4062.16; C46, 50, 54,§267.16]

Referred to in §267.19

**267.17 Duty of owner—assessment of costs.** Whenever treatment or destruction of any agricultural or horticultural plant or product, in field, feed lot, place of assemblage or storage, or elsewhere, or whenever any special type of plowing or any other agricultural or horticultural operation is required under the rules and regulations, the owner or person having charge of such plants, plant products or places, upon due notice from the state entomologist or his authorized agents, shall take the action required within the time and in the manner designated by such notice. In case the owner or person in charge shall refuse or neglect to obey the notice, the secretary of agriculture, or his authorized agents, may do what is required, and the expense thereof the secretary shall assess to the owner after giving him legal notice and a hearing. Provided that no expense other than such as is incidental to normal and usual farm operations shall be so assessed. If the assessment is not paid, the secretary shall certify it to the treasurer of the proper county who shall enter it on the tax books and collect it as ordinary taxes are collected and remit it to the secretary.

The said secretary is hereby authorized to refund to the federal department of agriculture all moneys so assessed and collected which represent expenditures made on such premises by the United States in accordance with the provisions of the act of congress enacted by the sixty-ninth congress, approved February 23, 1927, and entitled, "An act to provide for the eradication or control of the European corn borer." [S13,§2575-a48; C24, §§4055, 4056; C27, 31, 35,§4062-b17; C39,§4062.17; C46, 50, 54,§267.17]

Referred to in §§267.7, 267.19

**267.18 Violations.** Any person who shall violate any provision or requirement of this chapter, or of the rules and regulations made or of any notice given pursuant thereto, or who shall forge, counterfeit, deface, destroy, or wrongfully use, any certificate provided for in this chapter, or in the rules and regulations made pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars or by imprisonment for not more than thirty days. [S13,§2575-a50; C24,§4059; C27, 31, 35, §4062-b18; C39,§4062.18; C46, 50, 54,§267.18]

Referred to in §267.19

**267.19 Harmful barberry.**

1. No person, firm, or corporation shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant, or permit to exist on his or its premises any plant of the harmful barberry, or any plant of a species that shall be designated by the state entomologist in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

2. The state entomologist and his inspectors, and his authorized agents, are hereby empowered to eradicate any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice, the expense of such eradication shall be assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected and enforced.

3. The term "harmful barberry" shall be interpreted to consist of any species of *Berberis* or *Mahonia* susceptible to infection by *Puccinia graminis*, commonly called black stem rust of grain, but not including Japanese barberry (*B. thunbergii*), which does not propagate the rust.

4. The penalties provided in section 267.17 and all other applicable provisions of sections 267.5 to 267.18, inclusive, shall govern and apply to the enforcement of this section. [C24, §4053; C27, 31, 35,§4062-b19; C39,§4062.19; C46, 50, 54,§267.19]

**267.20 Liability of principal.** In construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by an association, partnership or corporation within the scope of his authority shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [C27, 31, 35,§4062-b20; C39,§4062.20; C46, 50, 54,§267.20]

**267.21 Party plaintiff.** The secretary of agriculture, the state entomologist, or any of their inspectors or authorized agents shall be a proper party plaintiff in any action in any court of equity brought for the purpose of carrying out any of the provisions of this chapter. [C27, 31, 35,§4062-b21; C39,§4062.21; C46, 50, 54,§267.21]

**267.22 Construction.** This chapter shall not be so construed or enforced as to conflict in any way with any act of congress regulating the movement of plants and plant products in

interstate or foreign commerce. [C27, 31, 35, §4062-b22; C39, §4062.22; C46, 50, 54, §267.22]

Constitutionality, 42GA, ch 68, §23  
Omnibus repeal, 42GA, ch 68, §24

## CHAPTER 268

### IOWA STATE TEACHERS COLLEGE

268.1 Official designation.

268.2 Branches of study.

268.3 Contract with school districts.

**268.1 Official designation.** The normal school at Cedar Falls, for the special instruction and training of teachers for the common schools, shall be officially designated and known as the "Iowa State Teachers College". [C97, §2675; S13, §2675; C24, 27, 31, 35, 39, §4063; C46, 50, 54, §268.1]

**268.2 Branches of study.** Physical education, including physiology and hygiene, shall be included in the branches of study regularly taught to and studied by all pupils in the college, and special reference shall be made to the effect of alcoholic drinks, stimulants, and narcotics upon the human system. [C97, §2677; C24, 27, 31, 35, 39, §4064; C46, 50, 54, §268.2]

**268.3 Contract with school districts.** The state board of regents may contract in writing with the board of directors of the school dis-

trict in which the college is situated and those contiguous thereto, for a period not exceeding two years at a time, to receive the pupils thereof into the state teachers college and furnish them with instruction; and payment thereof shall be made out of the general funds of such districts, but shall not exceed the average cost of instruction in Iowa public schools for the preceding year as determined by the state department of public instruction. A copy of such contract shall be filed with the county superintendent, and all reports required by law to be made to the board of directors of such townships or schools and the county superintendent by the teachers thereof shall be made by the president of the college. All sums received for tuition shall be placed to the credit of the general fund of the college. [C97, §§2678, 2679; C24, 27, 31, 35, 39, §4065; C46, 50, 54, §268.3; 56GA, ch 131, §48; ch 133, §1]

## CHAPTER 269

### IOWA BRAILLE AND SIGHT-SAVING SCHOOL

269.1 Admission.

269.2 Expenses—residence of indigents.

**269.1 Admission.** All blind persons and persons whose vision is so defective that they cannot be properly instructed in the common schools, who are residents of the state and of suitable age and capacity, shall be entitled to an education in the Iowa braille and sight-saving school at the expense of the state. Nonresidents also may be admitted to the Iowa braille and sight-saving school if their presence would not be prejudicial to the interests of residents, upon such terms as may be fixed by the state

board of regents. [R60, §§2147, 2148; C73, §§1672, 1680; C97, §2715; S13, §2715; C24, 27, 31, 35, 39, §4066; C46, 50, 54, § 269.1; 56GA, ch 131, §49]

Report as to blind, §273.18, subsection 28

**269.2 Expenses—residence of indigents.** The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the Iowa braille and sight-saving school. [C73, §1678; C97, §2716; C24, 27, 31, 35, 39, §4067; C46, 50, 54, §269.2]

## CHAPTER 270

### SCHOOL FOR THE DEAF

270.1 Superintendent.

270.2 Labor of pupils.

270.3 Admission.

270.4 Clothing and transportation.

270.5 Certification to state comptroller.

270.6 Certification to auditor—collection.

270.7 Payment by county.

270.8 Residence during vacation.

**270.1 Superintendent.** The superintendent of the school for the deaf shall be a trained and experienced educator of the deaf. His salary may include residence in the institution and board from the funds or supplies thereof,

but no such allowance shall be made except by express contract in advance. [C97, §2723; S13, §2727-3a; C24, 27, 31, 35, 39, §4068; C46, 50, 54, §270.1]

40GA, ch 242, §1, editorially divided

**270.2 Labor of pupils.** The board may utilize the labor of any pupil of the institution on the farm, in the workshops, in erection of buildings for the institution, or in domestic service, so far as practicable, without interference with their proper education. [C97,§2723; C24, 27, 31, 35, 39,§4069; C46, 50, 54,§270.2]

**270.3 Admission.** Every resident of the state who is not less than five nor more than twenty-one years of age, who is deaf and dumb, or so deaf as to be unable to acquire an education in the common schools, and every such person who is over twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education in the institution at the expense of the state. Nonresidents similarly situated may be entitled to an education therein upon such terms as may be fixed by the state board of regents. Nonresidents who are both deaf and blind shall be considered as nonresidents, for the purposes of this chapter, when less than two years residence has been completed by the applicants for admission. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. [R60,§§2156, 2160; C73,§§1688, 1689; C97,§2724; S13,§2724; C24, 27, 31, 35, 39,§4070; C46, 50, 54,§270.3; 56GA, ch 131, §§50, 59; ch 134,§1]

Report as to deaf, §273.18, subsection 28

**270.4 Clothing and transportation.** When pupils are not supplied with clothing, or transportation, it shall be furnished by the superintendent, who shall make out an account therefor against the parent or guardian, if the pupil be a minor, and against the pupil if he have no parent or guardian, or has attained the age of majority, which bill shall be certified by him to be correct, and shall be presumptive evidence thereof in all courts. [C73, §1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39, §4071; C46, 50, 54,§270.4]

S13,§2726, editorially divided  
Referred to in §§223.21, 263.12, 269.2

**270.5 Certification to state comptroller.** The superintendent shall, on the first days of June and December of each year, certify to the state comptroller the amounts due from the several counties, and the comptroller shall thereupon pass the same to the credit of the institution, and charge the amount to the proper county. [C73,§1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39,§4072; C46, 50, 54,§270.5]

Referred to in §§223.21, 263.12, 269.2

**270.6 Certification to auditor — collection.** The superintendent shall, at the time of sending certificate to the state comptroller, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury. [C73,§1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39,§4073; C46, 50, 54,§270.6]

Referred to in §§223.21, 263.12, 269.2

**270.7 Payment by county.** The county auditor shall, upon receipt of said certificate, pass the same to the credit of the state, and thereupon issue a notice to the county treasurer authorizing him to transfer the amount from the state institution fund to the general state revenue, which shall be filed by the treasurer as his authority for making such transfer, and shall include the amount in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs. [C73, §1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39, §4074; C46, 50, 54,§270.7]

Referred to in §§223.21, 263.12, 269.2

**270.8 Residence during vacation.** The residence of indigent or homeless children may, by order of the state board of regents, be continued during vacation months. [S13,§2727-a; C24, 27, 31, 35, 39,§4075; C46, 50, 54,§270.8; 56 GA, ch 131,§51]

Referred to in §§263.12, 269.2

## CHAPTER 271 STATE SANATORIUM

271.1 Designation.  
271.2 Object and purposes.  
271.3 Qualifications of superintendent.  
271.4 Duties.  
271.5 Admission.  
271.6 Additional showing.  
271.7 Waiting list.  
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271.9 Transfers.  
271.10 Indigent patients.  
271.11 Advancing transportation expense.  
271.12 Certificates as to number of inmates.  
271.13 Certificate of monthly allowance.  
271.14 Liability of county.  
271.15 Liability of patients and others.  
271.16 Patients and others liable.

**271.1 Designation.** The state sanatorium for the treatment of tuberculosis shall hereafter be known as the state sanatorium. [S13, §2727-a75; C24, 27, 31, 35, 39,§3385; C46,§220.1; C50, 54,§271.1]

**271.2 Object and purposes.** The state sanatorium shall be devoted solely to the care and

treatment of pulmonary tuberculosis, both in its incipient and advanced stages, of residents of this state. [S13,§2727-a75; C24, 27, 31, 35, 39, §3386; C46,§220.2; C50, 54,§271.2]

**271.3 Qualifications of superintendent.** The superintendent shall be a well-educated physician of at least five years practical experience

in the field of tuberculosis. He shall reside at the sanatorium. [S13,§§2727-a76,-a81; C24, 27, 31, 35, 39,§3387; C46,§220.3; C50, 54,§271.3]

Section 220.4, Code 1946, repealed by 52GA, ch 110,§3

**271.4 Duties.** Said superintendent shall:

1. Perform such duties as may be provided by law or by the state board of regents.
2. Oversee and secure the individual treatment and professional care of each patient.
3. Prescribe rules, subject to the approval of said board, for the application, examination, reception, discharge, and government of patients.
4. Keep a full record of the condition of each patient.
5. Encourage and assist in the establishment of hospitals throughout the state, especially in cities, for the treatment of tuberculosis.
6. Furnish to each applicant for admission proper blanks on which to make the application. [S13,§2727-a81; C24, 27, 31, 35, 39,§3389; C46,§220.5; C50, 54,§271.4; 56GA, ch 131,§52]

**271.5 Admission.** An applicant for admission to the sanatorium shall first secure a thorough examination of his condition by a physician licensed to practice medicine in this state, for the purpose of determining whether said applicant is afflicted with pulmonary tuberculosis. Said examining physician shall, as accurately as possible, fill out the blanks furnished for that purpose, and at once mail the same to the superintendent. [S13,§2727-a82; C24, 27, 31, 35, 39,§3390; C46,§220.6; C50, 54, §271.5]

**271.6 Additional showing.** The superintendent, in addition to the record of said examination, may demand of the applicant further showing as to his eligibility for admission. In case of doubt, the superintendent shall personally examine said applicant in case the applicant presents himself at the institution. If the applicant appears to be a bona fide resident of this state and is otherwise eligible for admission, he shall be received at the institution, provided there is room for him. [S13, §2727-a82; C24, 27, 31, 35, 39,§3391; C46,§220.7; C50, 54,§271.6]

**271.7 Waiting list.** If, at the time admission is granted, the applicant cannot, for any reason, be then received, his name shall be regularly entered on a waiting list and applicants shall be admitted in that order. [S13,§2727-a82; C24, 27, 31, 35, 39,§3392; C46,§220.8; C50, 54, §271.7]

**271.8 Department for advanced stages.** The superintendent shall create a separate department for persons afflicted with pulmonary tuberculosis in advanced stages. If it be impossible to receive all such patients, preference shall be given to those most in need of treatment, and those whose condition is most dangerous to the public. [S13,§2727-a91; C24, 27, 31, 35, 39,§3393; C46,§220.9; C50, 54,§271.8]

**271.9 Transfers.** Patients may be transferred from the department for incipient cases to the department for advanced cases and vice versa. [S13,§2727-a91; C24, 27, 31, 35, 39,§3394; C46,§220.10; C50, 54,§271.9]

**271.10 Indigent patients.** The state shall, on certificate of the finance committee of the board of regents, pay, out of any money in the state treasury not otherwise appropriated, the actual and necessary expense attending the transportation of an accepted applicant for admission, to and from the sanatorium, and the expense of treating said applicant at said institution, if said applicant is entitled to free treatment under chapter 254. [S13,§2727-a84; C24, 27, 31, 35, 39,§3395; C46,§220.11; C50, 54,§271.10; 56GA, ch 131,§53]

Referred to in §271.11

**271.11 Advancing transportation expense.** In cases contemplated by section 271.10, the finance committee shall certify an itemized estimate of the expense attending such transportation, which certificate shall be filed with the state comptroller who shall thereupon issue his warrant to the finance committee for said amount. Within thirty days thereafter the finance committee shall file with said comptroller, an itemized and verified statement, approved by the board, of the actual and necessary expense attending said transportation, together with the receipt of the treasurer of state for any part of said warrant not expended. If said warrant prove insufficient, said certificate shall show the amount of such deficiency, and the comptroller shall at once issue his warrant therefor. [C24, 27, 31, 35, 39, §3396; C46,§220.12; C50, 54,§271.11]

**271.12 Certificates as to number of inmates.** The superintendent, on the first day of each month, shall certify to the board the average number of inmates supported by the state in said institution for the preceding month. [S13, §2727-a85; C24, 27, 31, 35, 39,§3397; C46,§220.13; C50, 54,§271.12]

**271.13 Certificate of monthly allowance.** Upon receipt of such certificate, the board shall, on the basis of the per capita allowance as fixed by it, certify to the comptroller and treasurer of state the total amount payable for the care, treatment, and maintenance of the patients supported by the state for the preceding month, and the comptroller and treasurer of state shall credit said institution with said amount. The amount so credited shall be drawn from the state treasury. [S13,§2727-a85; C24, 27, 31, 35, 39,§3398; C46,§220.14; C50, 54, §271.13]

**271.14 Liability of county.** Each county shall be liable to the state for the support in the state sanatorium of all patients having a legal settlement in that county, and the state shall be liable for such support when such patients have no legal settlement in this state,

or when such settlement is unknown. The amounts due shall be certified by the superintendent to the state comptroller, who shall collect the same from the counties liable, at the times and in the manner required for the certification and collection of money from counties for the support of insane patients. [S13,§2727-a86; C24, 27, 31, 35, 39,§3399; C46, §220.15; C50, 54,§271.14]

Manner of collection, §230.20 et seq.  
See also §244.14

**271.15 Liability of patients and others.** Patients in the sanatorium and persons legally bound for their support shall be liable for the

maintenance of patients in the sanatorium, except as provided in chapter 254. [S13,§2727-a86; C24, 27, 31, 35, 39,§3400; C46,§220.16; C50, 54,§271.15]

**271.16 Patients and others liable.** The provisions of law for the collection by boards of supervisors of amounts paid by their respective counties from the estates of insane patients and from persons legally bound for their support shall apply in cases of patients cared for in the sanatorium. [S13,§2727-a86; C24, 27, 31, 35, 39,§3401; C46,§220.17; C50, 54,§271.16]

Statutes applicable, §230.15 et seq.  
See §224.2

## CHAPTER 272

### PROFESSIONAL TEACHERS MEETINGS, DEMONSTRATION TEACHING, AND FIELD WORK

272.1 Improvement of instruction.  
272.2 Plans approved by state superintendent.  
272.3 Adjournment of schools.  
272.4 Certificate of attendance.

272.5 Funds.  
272.6 Use of fund.  
272.7 Disbursement requirements.  
272.8 Itemized account of funds.

**272.1 Improvement of instruction.** The county superintendent shall arrange for such professional teachers meetings, demonstration teaching or other field work for the improvement of instruction as may best fit the needs of the public schools in his county and as directed by the superintendent of public instruction. [C31, 35,§4118-d1; C39,§4118.1; C46, 50, 54, §272.1]

**272.2 Plans approved by state superintendent.** All arrangements concerning plans for said improvement of instruction shall be subject to the final approval by the superintendent of public instruction. [C31, 35,§4118-d2; C39,§4118.2; C46, 50, 54,§272.2]

**272.3 Adjournment of schools.** The school board of every school district shall allow its teachers to attend said meetings or to participate in such work for not more than one day in each school year without loss of salary. [C31, 35,§4118-d3; C39,§4118.3; C46, 50, 54,§272.3]

**272.4 Certificate of attendance.** The county superintendent shall notify the secretary of the school boards as to the co-operation and attendance of its teachers in said meetings and any teacher failing to attend when requested by the county superintendent to do so, shall forfeit his average daily salary for that day of nonattendance, except when excused by the county superintendent for physical disability to perform his duties in the schoolroom. [C31, 35,§4118-d4; C39,§4118.4; C46, 50, 54,§272.4]

**272.5 Funds.** The fund for carrying out the purpose of this chapter shall consist of:

1. Fifty dollars annually, which is hereby appropriated.

2. One-half of all examination fees collected in the county.

3. One hundred fifty dollars from the general county fund in any county having a population of thirty thousand or less, which amount shall be appropriated by the board of supervisors of such county at the January session of each year. Two hundred dollars from the general county fund in any county having a population of over thirty thousand, to be appropriated by the board of supervisors in like manner.

4. Such reasonable sum as may be appropriated by the board from the general fund of any city independent district. [C31, 35,§4118-d5; C39,§4118.5; C46, 50, 54,§272.5]

**272.6 Use of fund.** No part of this improvement of instruction fund may be used for any other purpose than to pay the expenses of the plans formed and approved for this work. [C31, 35,§4118-d6; C39,§4118.6; C46, 50, 54,§272.6]

**272.7 Disbursement requirements.** All disbursements from the fund provided by this chapter shall be by warrants drawn by the county auditor upon the written order of the county superintendent, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection therewith, which bill must be signed and sworn to by the party in whose favor the order is made and must be verified by the county superintendent. All said orders and bills shall be kept on file in the auditor's office until the final settlement of the county superintendent with the board of supervisors at the close of his term of office. No warrant shall be drawn by the auditor in excess of the amount then in the county treasury. [C31, 35,§4118-d7; C39,§4118.7; C46, 50, 54,§272.7]

**272.8 Itemized account of funds.** The county superintendent shall furnish to the county

board of supervisors a certified itemized account of all receipts and disbursements for the improvement of instruction. They shall examine and audit the account and publish a summary thereof with the proceedings of the

regular June meeting of the board. The county superintendent shall also make such reports to the superintendent of public instruction as required by him. [C31, 35, §4118-d8; C39, §4118.8; C46, 50, 54, §272.8]

## CHAPTER 273 COUNTY SCHOOL SYSTEM

Referred to in §275.1

273.1 System created.  
273.2 Schools included.  
273.3 Election areas.  
273.4 County board—election.  
273.5 Nomination papers.  
273.6 Ballots.  
273.7 Canvass.  
273.8 Oath—expenses.  
273.9 Organization.  
273.10 Regular meetings.  
273.11 Office space.

273.12 Powers and duties—general.  
273.13 Specific duties.  
273.14 County superintendent—joint action of county boards.  
273.15 Qualifications of superintendent.  
273.16 Oath and bond.  
273.17 Vacancies filled.  
273.18 Powers and duties of superintendent.  
273.19 Application limited.  
273.20 Federal co-operation.  
273.21 Penalty.

**273.1 System created.** There is hereby created in each of the several counties of the state, a county school system which shall be a part of the public school system of the state. [C50, 54, §273.1]

**273.2 Schools included.** The county school system shall embrace all the public schools of the county, except independent and consolidated school districts that maintain four-year high schools and shall be under the direction of the county board of education as provided in this chapter. Any independent school district or consolidated school district may become a part of the county school system upon approval by the voters of the district in the manner provided in chapter 278, and notifying the county superintendent, the superintendent of public instruction and the county auditor, in which case the district shall become a part of the county school system on the first secular day of July next following. The county board of education shall effect no change in the operation of the schools in said district coming into the county school system prior to the first of July following its becoming a part of the county school system.

An independent or consolidated school district joining the county school system by such vote, situated in more than one county shall be a part of the county school system of the county in which the building is located.

In the event an independent school district or consolidated school district is proposed to be formed from one or more school districts within the county school system, the new district shall be a part of the county school system unless composed in part of an independent or consolidated district maintaining an approved four-year high school not in the county school system. [C50, 54, §273.2]

**273.3 Election areas.** The territory of the entire county shall be divided into four elec-

tion areas, as nearly as possible of equal size and contiguous territory, to be designated as the first, the second, the third and the fourth election areas. Where districts have territory in more than one county, the district will belong to the election area of the county where the school buildings are located. In the event of changes in the limits of school districts, the county board of education shall make any such adjustments as may be necessary to equalize the territorial size of the election areas, provided that no such change shall be made less than sixty days prior to the date of the annual school election. [C50, 54, §273.3]

When division made, see 52GA, ch 147, §4

**273.4 County board—election.** The county board of education shall consist of five members, electors of the county, one member to be elected from each of the four election areas by the electors of the respective areas, one member to be elected at large from the area of the county school system by the electors thereof. Their terms of office shall commence on the first Monday in April following their election.

All the members of the county board of education shall be first elected at the regular school election to be held on the second Monday in March 1948, and at the first regular meeting of the board on the following first Monday in April, the term of office of each of the five members shall be determined by lot, one member to serve for one year, two members to serve for three years and two members to serve for five years, and the result of such determination showing the name of each member, the area from which elected, and the term so determined shall be entered of record on the minutes of the board and shall be conclusive as to the term of the members.

Elections to the county board of education shall be held at the annual school elections in odd-numbered years for members whose terms expire on the first Monday in April fol-



lowing said elections and their term of office shall be for six years. Vacancies on said board shall be filled at the next regular meeting of the board by appointment by the remaining members of the board until the next odd-numbered year election at which election a member shall be elected to fill the vacancy for the balance of the unexpired term. A vacancy shall be defined as in section 277.29. [C24, 27, 31, 35, 39, §4119; C46, §273.1; C50, 54, §273.4]

**273.5 Nomination papers.** Nomination papers in behalf of a candidate for member of the county board of education shall be filed with the county superintendent of schools not more than forty-five days, nor less than twenty days prior to the election at which a member is to be elected. Each candidate shall be nominated by a petition signed by not less than twenty-five qualified electors of the area from which a member is to be elected, which petition shall state the name of the area from which a member is to be elected, the office to which he is to be elected, the name of the candidate and that he is a resident and elector in the named area. Signers of the petition shall, in addition to signing their names, show their residence, including street and number, if any, the school district in which they reside, and the date of signing, and each nomination paper shall have appended to it an affidavit of an elector other than the candidate in substantially the form provided in section 43.17 except as to the party affiliation. [C50, 54, §273.5]

**273.6 Ballots.** The county board of education shall cause to be printed the ballots for the election of members of the county board of education, and not later than five days before the election shall deliver to the secretaries of the respective school districts a sufficient number of ballots for use of the electors in the respective districts. The ballots shall be printed and shall contain the names of all nominees for each particular election area arranged in alphabetical order by surname under the heading of the particular election area in which the vacancy occurs.

The board shall likewise provide a sufficient number of forms on which the judges and clerks of election shall make returns to respective secretaries of the school districts, and upon which secretaries shall make returns to the county board of education. [C50, 54, §273.6]

**273.7 Canvass.** The ballots cast at any election for membership on the board shall be counted by the judges of election and return thereof shall be made by the judges on forms provided therefor to the secretary of the school district within forty hours after the closing of the polls. Within five days following the election, the secretary of each school district shall make return of the votes cast in said district to the county board of education on forms provided therefor, which board shall meet at ten o'clock a.m. on the last Monday in

March, and canvass the vote and issue certificates of election. [C24, 27, 31, 35, 39, §4119; C46, §273.1; C50, 54, §273.7]

**273.8 Oath—expenses.** The members of the board shall qualify by taking the oath required of county officers but shall not be required to give bond. They shall serve without compensation, but shall be paid their actual and necessary expenses including travel, in performing their duties. All such claims shall be audited by the board and paid from the county board of education fund. [C24, 27, 31, 35, 39, §4120; C46, §273.2; C50, 54, §273.8]

**273.9 Organization.** The county board of education shall meet and organize on the first Monday in April in each odd-numbered year, at ten o'clock a.m. by electing a president for a term of two years. [C50, 54, §273.9]

**273.10 Regular meetings.** The board shall meet regularly four times each year according to a schedule adopted at the organization meeting and shall meet in special session upon call of the president or upon call of the secretary when a request is filed with the secretary signed by two members of the board. [C97, §2833; C24, 27, 31, 35, 39, §4121; C46, §273.3; C50, 54, §273.10]

**273.11 Office space.** The board of supervisors shall furnish at the county seat, suitable space for the office of the county superintendent and for the officers of the county board of education, together with adequate storage space. [C50, 54, §273.11]

**273.12 Powers and duties—general.** The county board shall exercise such powers as are specifically assigned to it by law. In general their powers and duties shall relate to matters affecting the county school system as a whole rather than specific details relating to individual schools or districts. It shall be the duty of the county board after considering the recommendations of the county superintendent to exercise the following general powers:

1. The county board shall determine and adopt such policies as are deemed necessary by it for the efficient operation and general improvement of the county school system.

2. The county board shall adopt such rules and regulations as in its opinion will contribute to the more orderly and efficient operation of the county school system.

3. The county board shall adopt such minimum standards as are considered desirable by it for improving the county school system.

4. The county board shall have the power to perform those duties and exercise those responsibilities which are assigned to it by law and which are not in conflict with the powers and duties assigned to the local board by law, in order to improve the county school system and carry out the objectives and purposes of the school laws of Iowa. [C24, 27, 31, 35, 39, §4122; C46, §273.4; C50, 54, §273.12]

**273.13 Specific duties.** The county board of education shall:

1. Appoint a county superintendent of schools provided in this chapter and fix his salary. The board shall also fix traveling expense of the superintendent. Upon the recommendation of the county superintendent, the county board may appoint an assistant county superintendent and such other supervisory, and clerical assistants, as are deemed necessary and fix their salaries and duties. During the absence or disability of the superintendent the assistant superintendent shall perform all the duties of the county superintendent.

2. Select a county attendance officer, if deemed expedient, on recommendation of the county superintendent, either on a part or full-time basis; and fix his duties and salary within limits prescribed by law.

3. Approve the curriculum as recommended by the county superintendent in conformity with the course of study prescribed by the state department of public instruction.

4. Adopt textbooks and other instructional aids for rural school districts under the administration of the county superintendent, and purchase, sell, rent or loan them as provided in sections 301.15 to 301.28, inclusive, and serve as a central depository and purchasing agent of such books and instructional aids for school districts under its jurisdiction, and make proper accounting for same or the county board of education may, with its own funds, buy such books and instructional aids for the school districts under its jurisdiction and rent them to the pupils of the various districts, and make proper accounting for same.

5. Purchase and provide such general school supplies, school board supplies, and other materials as are necessary to the conduct of its office.

6. Adopt rules and regulations, where deemed expedient, and make provisions for establishment and maintenance of county school libraries, in conformity with the provision of chapter 292.

7. Enforce all laws, and rules and regulations of the department of public instruction for the transportation of pupils to and from public school in all school districts of the county.

8. Act with the county superintendent as an appeal board in and for all school districts of the county, in all matters properly brought before it as provided by law.

9. Co-operate with federal, state, county and municipal agencies, and with local school officers in territory adjacent to, but outside the county, in all matters relating to the improvement of the educational program, when deemed expedient.

10. At the regular or a special meeting held between July 1 and July 15, consider the budget as submitted by the county superintendent, and certify to the board of supervisors the estimates of the amounts needed. Such estimates shall follow the budget procedure under

chapter 24. The board of supervisors shall then levy a tax on all the taxable property in the county for the amount certified, and the money so raised shall go into a fund hereinafter called the county board of education fund.

11. At each meeting of the board, audit all bills and claims which upon approval shall be paid by warrants of the county auditor, upon the written order of the secretary, countersigned by the president, from the county board of education fund. All regular employees of the board shall be paid monthly by warrants drawn on the above fund by the county auditor.

12. With the assistance of the county superintendent and the co-operation of the boards of the districts within the county, plan and supervise the orderly reorganization of districts, by union, merger or centralization, into larger and more efficient attendance and administrative units. No reorganization shall be submitted to a vote of the people of the district until the plan of reorganization has been referred to and approved by the county board of education.

13. Cause to be published annually in the official newspapers of the county a list of the bills and claims allowed, with the name of each individual receiving such payment, the amount thereof, and the reason therefor. [C51, §417; R60, §§648, 2074; C73, §§771, 1776; C97, §§2742, 2831, 2832; S13, §§2742, 2831, 2832; SS15, §2734-b; C24, 27, 31, 35, 39, §§4456-4458, 5232-5234; C46, §§301.12-301.14, 340.13-340.15; C50, 54, §273.13; 57GA, ch 126, §1]

Referred to in §§301.15, 467B.14

Payments from federal funds allocated, §467B.14

**273.14 County superintendent—joint action of county boards.** In each county of the state, the county board of education shall appoint a county superintendent whose term of office shall be for three years, from the first secular day in August following his election and until his successor is elected and qualified. The first regular term under the provisions of this chapter shall begin the first secular day in August in 1948. The president of the board shall certify the appointment to the county auditor and to the state superintendent of public instruction; provided, however, that county boards of education may, in any two or more adjacent counties, by mutual agreement act as a joint board to appoint one county superintendent for all such counties, to employ professional and clerical assistants, and to provide such services as can be carried on jointly and will operate to their mutual benefit. Such agreement shall be written and entered in their respective minutes. Prior to the adoption of any such agreement it shall be approved by the state department of public instruction. The superintendent appointed under such an agreement shall be the official county superintendent for each of the respective boards and shall be appointed for a term of years, one to three, but in no event longer than the period of time that the mutual agreement between the boards

is to be in effect. The written agreement providing for joint action by the boards shall provide for the determination of the cost of such joint program and the manner of allocation of such cost to each board for inclusion in the respective budgets. For payment of salaries and other costs of such joint program, the boards by mutual agreement shall designate one board to make such payments and be reimbursed by the other board or boards pursuant to their joint agreement. Such boards are hereby authorized to meet together for the transaction of joint business and at such joint meetings the individual boards may also separately transact their own business. [R60,§2063; C73,§589; C97,§1072; S13,§§1072, 2734-b1; C24, 27, 31, 35, 39,§4096; C46,§271.1; C50, 54,§273.14; 57GA, ch 127,§1]

**273.15 Qualifications of superintendent.** The county superintendent may be of either sex, shall be a graduate of an accredited university or college, or a four-year course above the secondary level in an accredited normal school, the holder of a superintendent's certificate, and shall have had at least five years experience in administrative or supervisory work or in teaching; provided that anyone serving as a legally qualified county superintendent on the first Monday in April, 1948, shall be deemed qualified to fill the office of county superintendent.

The qualifications of an assistant county superintendent shall be the same as for the county superintendent. [C97,§2734; SS15,§2734-b; C24, 27, 31, 35, 39,§4097; C46,§271.2; C50, 54, §273.15]

**273.16 Oath and bond.** The county superintendent shall qualify by subscribing to the oath required of county officers and filing a bond as provided in section 64.8. [C24, 27, 31, 35, 39,§4120; C46,§273.2; C50, 54,§273.16]

**273.17 Vacancies filled.** Vacancies in the office of county superintendent shall be filled for the unexpired term by the county board of education in the same manner in which the county superintendent is regularly appointed for the unexpired term. If a vacancy is not filled by the county board within forty days the superintendent of public instruction, subject to the approval of the state board of public instruction, shall appoint a county superintendent who shall serve until the next regular election and until his successor is elected and qualified. [S13,§2734-b1; C24, 27, 31, 35, 39,§4103; C46,§271.8; C50, 54,§273.17]

**273.18 Powers and duties of superintendent.** The county superintendent shall, under the direction of the board, exercise the following powers and duties:

1. Act as secretary, ex officio, and executive officer of the board.

2. Preside at the organization meeting of the county board on the first Monday in April in the odd-numbered year of each biennium, and

transmit to the state superintendent within two weeks following such meeting a certified copy of the proceedings of organization, including the schedule of regular meetings and the names and addresses of all county school officials.

3. Attend all regular and special meetings of the county board, and advise the board on all questions under consideration.

4. Provide for keeping the minutes of all meetings of the board, recording all proceedings and official actions and keeping such other records as may be necessary for complete information regarding the schools under his administration and supervision.

5. Act for the county board as custodian of records, reports, documents, correspondence, or other school property that may be placed in his charge by the board.

6. Advise and counsel local boards of education concerning their immediate problems and the general development of a long-time plan of education.

7. Supervise, or arrange for supervision of, instruction in the schools of the county system.

8. Conduct teachers' meetings, institutes, demonstrations and other professional meetings for the in-service training of teachers as provided by law, and in accordance with the regulations of the department of public instruction.

9. Endeavor to promote through meetings and conferences with school officers, teachers, parents and the public generally, and by the distribution of pamphlets and bulletins, an active interest in all desirable types of public school education and to suggest needed changes and improvements in the public schools of the county.

10. Submit to the county board for its approval plans for the proper accounting of all children of school age, for the attendance and control of pupils at school and for the proper attention to health, safety and other matters which will best promote the welfare of the children of the county; provided that such pupil accounting practices shall be in keeping with the system established by the state department of public instruction.

11. Establish rules and regulations for admitting, classifying, promoting and graduating pupils to or from the various rural schools in the county school system within the limits prescribed by law.

12. Recommend for the adoption of the board, plans and procedures for the enforcement of compulsory attendance laws and for the appointment of qualified attendance officers when the board deems the same to be necessary or desirable and supervise the work of the same, if and when appointed.

13. Recommend plans and supervise arrangements for the periodic physical and dental examination of all children of the county school system and for the general promotion of health throughout the county.

14. Recommend plans for the establishment and maintenance of such school libraries and school library services, including the use of the state traveling library, as are needed for the proper operation of the schools of the county.

15. Co-operate with the county board of education in developing an adequate, efficient, safe and economical system of pupil transportation in the county.

16. Prepare and submit a detailed itemized budget, for approval of the county board of education prior to the first day of July of each year.

17. Assist all district school boards upon request, in making budgets, certifying tax levies, and maintaining uniform accounting procedures.

18. Recommend to the board of educational examiners the revocation of any teacher's certificate for any good cause in the manner provided by law.

19. Assist the county board of education in handling, in the manner prescribed by law, all appeal cases that may come to it.

20. Serve, under the direction of the superintendent of public instruction, as a means of communication between the department of public instruction and the various school officers and teachers in the county, and transmit or deliver to them all books, papers, circulars and communications designed for them, when so requested by the superintendent of public instruction.

21. Visit each public school in the county at least once during each school year; and when requested to do so by a majority of the directors of any school corporation, visit the schools therein.

22. Visit and report upon, at the request of the state superintendent of public instruction, such schools as may be designated.

23. See that all provisions of the school law, so far as they relate to the schools, or school officers, within his county, are observed and enforced, and to this end he may require the assistance of the county attorney, who shall at his request bring any action necessary to enforce the law or recover penalties incurred.

24. Order to be closed, any public school or school room taught by any teacher not certified as required by law. If his order is not immediately obeyed, he shall enforce the same against the teacher and the school board by an action for a mandatory injunction in a court of competent jurisdiction.

25. When any school corporation is organized or reorganized according to law, and no director has been elected, or any director elected has not qualified, or has qualified and resigned, so that the matter of the completion of the organization or reorganization of such school corporation is prevented, and the objects of its organization are thereby defeated, appoint a director or board of directors of such corporation, who shall act as such until their

successors have been elected and qualified, and designate which term or terms each director appointed shall fill. In consolidated districts situated in more than one county, such appointments shall be made by the county superintendent of the county in which the school-house is located or is to be located.

26. Report annually to the superintendent of public instruction, at times designated by the latter, giving a full abstract of the several reports made to him by the secretaries and treasurers of school boards, stating the manner in and extent to which the requirements of the law regarding instruction in physiology and hygiene are observed, and such other matters as he may be directed by the state superintendent to include therein, or he may think important in showing the actual condition of the schools in his county. He shall file a duplicate of such report with the county board of education.

27. Keep accurate school census records for the county and file annually, on or before the last secular day in July, with the county auditor, a statement of the number of persons of school age in each township and independent district in the county and make such other reports thereon as may be required by law.

28. Report on or before August 1 of each year, to the superintendent of the school for the blind, the name, age, residence, and post-office address of every person resident of the county, without regard to age, so blind as to be unable to acquire an education in the common schools; to the superintendents of the school for the deaf, with corresponding detail, persons under the age of thirty-five, whose faculties with respect to speech and hearing are so deficient as to prevent them from obtaining an education in the common schools; and to the institution for the feeble-minded all persons of school age, who, because of mental defects are entitled to admission therein.

29. Recommend to the rural boards of education in the county school system, teachers to be employed by them.

30. Have power to administer the oath of office to any school officer.

31. The county superintendent shall exercise any or all of the foregoing powers and duties and provide any or all of the foregoing services for any or all public schools not in the county system when they indicate by board action the need for such services. [C51, §1148; R60, §§2066-2068, 2071, 2073; C73, §§1766-1768, 1770, 1772, 1774, 1775; C97, §§2734-2740; S13, §§2734-f, -l, -m, -p, 2738, 2739; SS15, §§2734-b, -c; C24, 27, 31, 35, 39, §4106; C46, §271.11; C50, 54, §273.18]

**273.19 Application limited.** The powers and duties of the county board and the county superintendent heretofore enumerated shall be construed to apply only to the county school system except as otherwise specified. [C50, 54, §273.19]

**273.20 Federal co-operation.** The county board of education or a school board in a

county wherein is located an Indian reservation shall have power to enter into a contract with the United States government to operate and maintain a school or schools to be operated as a public school approved as provided for by the laws of this state for the purpose of educating Indian children. The expense of such operation and maintenance shall be paid by the United States government. [C31, 35, §4122-cl; C39, §4122.1; C46, §273.5; C50, 54, §273.20]

**273.21 Penalty.** Should the county superintendent fail to make any report required of him by law to the superintendent of public instruction or the county auditor, he shall forfeit to the school fund of his county the sum of fifty dollars, to be recovered in an action brought by the county for the use of the school fund, and in addition shall be liable for all damages occasioned thereby. [R60, §2072; C73, §1773; C97, §2741; C24, 27, 31, 35, 39, §4107; C46, §271.12; C50, 54, §273.21]

## CHAPTER 274

### SCHOOL DISTRICTS IN GENERAL

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- 274.45 Expense audited and paid.
- 274.46 Reimbursement for loss of taxes.

**274.1 Powers and jurisdiction.** Each school district now existing shall continue a body politic as a school corporation, unless hereafter changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained. [C51, §1108; R60, §§2022, 2026; C73, §§1713, 1716; C97, §2743; C24, 27, 31, 35, 39, §4123; C46, 50, 54, §274.1]

Right to bid under execution sale, §569.2

**274.2 General applicability.** The provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation. [C97, §2823; C24, 27, 31, 35, §4190; C39, §4123.1; C46, 50, 54, §274.2]

Vote required to authorize bonds, see §75 1

**274.3 Minimum size of school districts.** No new school district shall be formed, nor shall the boundary lines of any existing school district be so changed as to make it contain an area less than four government sections of land; but nothing herein shall be construed to prevent the boundary lines of an existing

school district from being changed so that it shall be included in and consolidated with other districts, or joined to another district to form a single school district, nor shall it be construed to permit the formation of a consolidated district with an area of less than sixteen government sections of land or to permit the reduction of an existing consolidated district below an area of sixteen government sections of land. [C35, §4123-g1; C39, §4123.2; C46, 50, 54, §274.3]

See §275.5; 246 Iowa 1060

**274.4 Record of reorganization filed.** When an election on the proposition of organizing, reorganizing, enlarging, or changing the boundaries of any school corporation carries by the required statutory margin or any area of less than four sections is attached to any school corporation by order of a county board of education, the county superintendent, or the secretary of said school corporation, shall file a written description of the new boundaries of the school corporation in the office of the county auditor of each county in which any portion of the school corporation lies. [C24, 27, 31, 35, §4193; C39, §4123.4; C46, 50, 54, §274.5; 56GA, ch 135, §1]

Referred to in §275 23

**274.5 Action to test reorganization.** No action shall be brought questioning the legality of the organization, reorganization, enlarge-

ment, or change in the boundaries of any school corporation in this state unless brought within six months after the date of the filing of said written description in the office of said county auditor or county auditors. [C24, 27, 31, 35, §4192; C39, §4123.3; C46, 50, 54, §274.4; 56GA, ch 135, §2]

Actions excepted, 56GA, ch 135, §3

**274.6 Names.** School corporations composed of subdistricts shall be called school townships, and shall be designated as the school township of (naming civil township), in the county of (naming county), state of Iowa.

If there are two or more school corporations composed of subdistricts in any civil township, in addition to the foregoing they should be designated by number.

Other school corporations shall be designated as follows: The independent school district of (naming city, town, township, or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the rural independent school district of (some appropriate name or number), township of (naming township), in the county of (naming county), state of Iowa; or, the consolidated school district of (some appropriate name or number), in the county of (naming county), state of Iowa; or, the community school district of (some appropriate name), in the county (or counties) of (naming county or counties), state of Iowa; or, the (some appropriate name) community school district, in the county (or counties) of (naming county or counties), state of Iowa. [C51, §1108; R60, §2026; C73, §1716; C97, §2744; S13, §2744; C24, 27, 31, 35, 39, §4124; C46, 50, 54, §274.6; 56GA, ch 136, §1]

**274.7 Directors.** The affairs of each school corporation shall be conducted by a board of directors, the members of which in all independent school districts shall be chosen for a term of three years, except that in independent school districts which embrace a city and which have a population of one hundred twenty-five thousand or more, the term of directors shall be six years, and in all subdistricts of school townships for a term of one year. [C97, §2745; C21, 27, 31, 35, 39, §4125; C46, 50, 54, §274.7]

Similar provision, §277.24

**274.8 Division of school township—alterations.** The board of any school township may, by a vote of a majority of all the members thereof, at the regular meeting in July, or at any special meeting called thereafter for that purpose, divide the school township into subdistricts such as justice, equity, and the interests of the people require, and may make such alterations of the boundaries of subdistricts heretofore formed as may be deemed necessary. [R60, §2038; C73, §§1725, 1738, 1796; C97, §2801; S13, §2801; C24, 27, 31, 35, 39, §4126; C46, 50, 54, §274.8]

S13, §2801, editorially divided  
Referred to in §274.11

**274.9 Plat and record — filing.** The board shall designate such subdistricts and all subsequent alterations in a distinct and legible manner upon a plat of the school township provided for that purpose, and shall cause a written description of the same to be recorded in the records of the school township, a copy of which shall be delivered by the secretary to the county treasurer and also to the county auditor, who shall record the same in his office. [C73, §1796; C97, §2801; S13, §2801; C24, 27, 31, 35, 39, §4127; C46, 50, 54, §274.9]

Referred to in §274.11

**274.10 Boundaries.** The boundaries of subdistricts shall conform to the lines of congressional divisions of land. [C73, §1796; C97, §2801; S13, §2801; C24, 27, 31, 35, 39, §4128; C46, 50, 54, §274.10]

Referred to in §274.11

**274.11 Order—when effective.** The formation or alteration of subdistricts as contemplated in sections 274.8 to 274.10, inclusive, shall not take effect until the next regular election thereafter, at which time a director shall be elected for any subdistrict newly formed. [C73, §1796; C97, §2801; S13, §2801; C24, 27, 31, 35, 39, §4129; C46, 50, 54, §274.11]

**274.12 New township — election — notice.** When a new civil township is formed, the same shall constitute a school township, which shall go into effect at the next regular election following the completed organization of the civil township. The notices of the first election shall be given by the county superintendent, and at such election a board of three directors shall be chosen. [R60, §2022; C73, §1713; C97, §2790; C24, 27, 31, 35, 39, §4130; C46, 50, 54, §274.12]

**274.13 Attaching territory to adjoining corporation.** In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the county superintendent cannot with reasonable facility attend school in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section. [C73, §1797; C97, §2791; C24, 27, 31, 35, 39, §4131; C46, 50, 54, §274.13]

Referred to in §274.14

**274.14 Restoration.** When the natural obstacles by reason of which territory has been set off by the county superintendent from one school district and attached to another in the same or an adjoining county, as provided in section 274.13, have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of

two-thirds of the electors residing upon the territory so set off together with the concurrence of the county superintendent and the board of the school district from which such territory was originally set off by the county superintendent. [C24, 27, 31, 35, 39,§4132; C46, 50, 54, §274.14]

**274.15 Contracts with other districts.** Any school district by record action taken by its board of directors and approved by the county board of education may discontinue any or all of its educational facilities and contract with any school district maintaining approved schools to furnish such facilities, provided it is determined by the district and the county board of education that the per pupil cost of tuition and transportation to be contracted for does not exceed the per pupil cost of maintaining its own educational facilities. In the event the total per pupil cost of tuition and transportation proposed to be contracted for exceeds the total per pupil cost of maintaining like facilities in its own schools, the district may nevertheless contract with another district, maintaining approved schools, to furnish such facilities provided the parents or the persons standing in loco parentis to the pupils involved will agree to share the pro rata amount of such excess cost. Contracts made under the provisions hereof shall not be made for a period to exceed one school year. [C46, 50, 54,§274.15]

**274.16 to 274.34, inclusive.** Repealed by 55GA, ch 117,§36.

**274.35 School township divided.** At any time before the first day of August, upon the written request of one-third of the legal voters in each subdistrict of any school township, the board shall call an election in the subdistricts, giving at least thirty days notice thereof by posting three notices in each subdistrict in each school township, at which election the voters shall vote by ballot for or against rural independent district organization. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization, then each subdistrict shall become a rural independent district, and the board of the school township shall then call an election in each rural independent district for the choice of three directors, to serve one, two, and three years, respectively, and the organization of the said rural independent district shall be completed. [C97,§2797; C24, 27, 31, 35, 39,§4150; C46, 50, 54,§274.35]

**274.36 Rural independent districts united.** A township which has been divided into rural independent districts may be erected into a school township by a vote of the electors, to be taken upon the written request of one-third of the legal voters residing in such civil township.

Upon presentation of such written request to the county superintendent, he shall call a special election at the usual place or places of holding the township election, upon giving at least ten days notice thereof by posting three written notices in each rural independent dis-

trict in the township, and by publication in a newspaper, if one be published in such township, at which election the said electors shall vote by ballot for or against a school township organization.

If a majority of the votes cast at such election be in favor of such organization, each rural independent district shall become a subdistrict of the school township, and within thirty days thereafter shall hold a special election in the manner and for the purpose provided by law for regular subdistrict elections in school townships divided into an even or an odd number of subdistricts as the case may be, except that the required notices shall be posted by the secretary of each of the rural independent districts. The officers first elected shall qualify on or before their organization as a board of directors of the school township, which organization shall be within thirty days next following their election and shall serve until the third Monday in March.

The board of each of the rural independent districts with its secretary and treasurer shall meet at the time of the organization of the newly elected school township board, examine the books of and settle with its secretary and treasurer, turn over the assets and liabilities of the district to the school township board and make such reports as are required by law; for these purposes they shall continue to serve until the organization of the school township board at which time their terms of office shall terminate. Thereafter all elections shall be as provided in chapter 277 and the organization of the board shall be as provided in section 279.1. [C73,§§1815-1820; C97,§2800; S13,§2800; C24, 27, 31, 35, 39,§4151; C46, 50, 54,§274.36]

**274.37** Repealed by 55GA, ch 117,§36.

**274.38** Repealed by 55GA, ch 117,§36.

#### NATIONAL DEFENSE PROJECTS

**274.39 Sale of land to government.** Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by school districts is required, the board of directors of such school districts by resolution is hereby authorized to sell and convey such property at a price and upon terms as may be agreed upon, any such instruments of conveyance to be executed on behalf of such school districts by the president of such district. [C46, 50, 54,§274.39]

Referred to in §§274.40, 274.41

**274.40 Vesting of powers to convey.** Whenever a majority of the directors of any school district affected as in section 274.39 have moved from such district and have ceased to be resi-

dents thereof thereby creating vacancies on the school board and reducing it to less than a quorum, the powers vested by said section in the board of directors shall vest in the county board of education and the instrument of conveyance shall be executed on behalf of such school district by the chairman of the county board of education. [C46, 50, 54, §274.40; 56 GA, ch 137, §1]

Referred to in §§274.41, 274.42

**274.41 Application of proceeds of sale.** The proceeds of the sale of the property of a school district under the authority granted in sections 274.39 and 274.40 shall be deposited with the treasurer of the county and applied so far as necessary to the payment of the outstanding indebtedness of such school district. [C46, 50, 54, §274.41; 56GA, ch 137, §2]

**274.42 Adjusting of district boundaries.** Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such plant or project shall have heretofore determined or shall hereafter determine, that certain real property making up a portion of a school district is required, the county board of education of the county wherein such district lies, shall have the power by resolution to adjust the boundaries of school districts wherein the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of said districts. A copy of such resolution shall be promptly filed with the board of directors of such adjoining school district or districts and with the board of directors of such school district wherein the federally owned property is located unless such board has been reduced below a quorum in the manner contemplated in section 274.40, in which event such resolution shall be posted in two public places within the altered district.

In any case where any school district affected by any project relating to national defense or

flood control includes territory in more than one county, or where it is deemed advisable to incorporate in another county, the county boards of education of all counties involved shall meet jointly for the purpose of taking action as provided in this section. [C46, 50, 54, §274.42; 56GA, ch 137, §3]

Referred to in §§274.45, 274.46

**274.43 Relinquishing funds.** The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the county board of education shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct. [C46, 50, 54, §274.43]

Referred to in §§274.45, 274.46

**274.44 Determination final.** The determination of the county board of education of such county wherein such school districts are located, in matters herein committed to it, shall be final. [C46, 50, 54, §274.44]

Referred to in §§274.45, 274.46

**274.45 Expense audited and paid.** The expense of the county board of education in respect to the carrying out of the provisions of sections 274.42 to 274.44, inclusive, shall be audited and allowed by the county board of supervisors and paid from the general fund of the county. [C46, 50, 54, §274.45]

**274.46 Reimbursement for loss of taxes.** When any school district is enlarged or modified under the provisions of sections 274.42 to 274.44, inclusive, such district shall be entitled to receive reimbursement for loss of taxes as provided by chapter 284. The county board of education shall, when enlarging, modifying or reorganizing any school district as provided under the provisions of sections 274.42 to 274.44, inclusive, designate which lands each district, as enlarged, modified or reorganized, shall be entitled to make application for reimbursement for loss of taxes as provided by chapter 284. [C50, 54, §274.46]

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

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**275.1 Declaration of policy—surveys.** It is hereby declared to be the policy of the state to encourage the reorganization of school districts into such units as are necessary, economical and efficient and which will insure an equal opportunity to all children of the state. In conformity to the county administration law, chapter 273, the county board of education in each county of the state shall initiate detailed studies and surveys of the school districts within the county and territory adjacent thereto for the purpose of promoting such reorganization of districts by unions, mergers, reorganizations or centralization as will effect more economical operation and the attainment of higher standards of education in the schools.

It is further declared to be the policy of the state that all counties in the state of Iowa shall have completed the survey and plans provided for in sections 275.1 to 275.4 by July 1, 1958. If any county of the state has not completed said survey and plan by July 1, 1958, it shall be the duty of the state board of public instruction to complete said survey and plan on or before January 1, 1959. All information regarding such proposed reorganization plan shall be available in the office of county superintendent to all residents of all area involved.

It is further declared to be the policy of the state that all the area of the state shall be in a district maintaining twelve grades by July 1, 1962. If any area of the state is not in such a district by July 1, 1962, it shall be attached by the county board of education to some such district, provided, however, that such attachment has the approval of the state board of public instruction before becoming effective and the full payment of the agriculture land tax credit as provided for in chapter 426, has been made for at least one year prior to July 1, 1962. Any such district or part thereof attached by the county board of education, with the approval of the state board of public instruction, shall have the right to appeal this attachment to a court of record in the county in which said district or part thereof is located within twenty days after the date of the approval by the state board of public instruction.

It is further declared to be the policy of the state that no existing district or part thereof shall be included in such twelve-grade district prior to July 1, 1962 without the electors of such existing district or part thereof having an opportunity to vote the proposition to in-

clude such existing district or part thereof in said twelve-grade district. [C97,§2798; SS15, §2794-a; C24, 27, 31, 35, 39, §§4152, 4154; C46, 50, §§274.37, 275.1, 276.1; C54, §275.1; 57GA, ch 128, §§1, 4]

Referred to in §§275.4, 275.5, 275.9

**275.2 Scope of surveys.** The scope of such studies and surveys shall include the following matters in the various districts in the county: the adequacy of the educational program, average daily attendance of pupils, property valuations, existing buildings and equipment, natural community areas, road conditions, transportation, economic factors, and such other matters that may bear on educational programs meeting minimum standards required by law. [C46, 50, 54, §275.2]

Referred to in §§275.1, 275.4, 275.5, 275.9

**275.3 Minimum standards.** No new school district shall be planned by a county board of education nor shall any proposal for creation or enlargement of any school district be approved by a county board of education or submitted to electors unless there reside within the proposed limits of such district at least three hundred persons of school age who were enrolled in public schools in the preceding school year. Provided, however, that the state superintendent of public instruction shall have authority to grant permission to a county board to approve the formation or enlargement of a school district containing a lower school population than above provided on the written request of such county board of education if such request is accompanied by evidence tending to show that sparsity of population, natural barriers or other good reason makes it impracticable to meet said school population requirement. [R60, §2105; C73, §§1800, 1801; C97, §2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, 39, §§4143, 4161, 4173; C46, 50, §§274.25, 275.3, 276.8, 276.20; C54, §275.3]

Referred to in §§275.1, 275.5, 275.9

**275.4 Hearings.** In making the studies and surveys required by sections 275.1 and 275.2 the board in each county shall consult with the officials of affected districts and other citizens, and shall from time to time hold public hearings, and may employ such research and other assistance as it may determine reasonably necessary in order to properly carry on its survey and prepare definite plans of reorganization.

Upon the written request of the county boards of education in adopting reorganization plans which conform to the state-wide plan of education and to state laws, the state superintendent of public instruction, subject to the approval of the state board of public instruction, shall cause reorganization plans and suggestions to be prepared and forwarded to the county superintendents of schools together with such recommendations as may promote the purposes set forth in section 275.1. [C24, 27, 31, 35, 39, §4158; C46, 50, §§275.1-275.3, 276.5; C54, §275.4]

Referred to in §§275.5, 275.9

**275.5 Tentative plans.** Pending completion of the final plans provided for in sections 275.1 to 275.4 hereof, the county board of education shall prepare and approve tentative plans for reorganization of school districts within the county after consultation with the boards of the various districts in the county and the state department of public instruction. Within ten days after the county board has approved their tentative plan they shall file such plan with the state department of public instruction. Any proposal for merger, consolidation or boundary change shall first be submitted to the county board of education for approval before being submitted at an election. The county board of education shall adopt and file a tentative county plan with the state department of public instruction no later than sixty days after a proposal for merger or consolidation has been presented to them for their approval under this section. Such proposals may provide for reducing an existing school district to less than four government sections and where such proposal is put into effect by election by the method hereinafter provided the county board shall attach such remaining portions of less than four sections to another school district or districts as provided for in their county plan. [C97, §2793; S13, §2793; SS15, §2794-a; C24, 27, 31, 35, 39, §§4133, 4173; C46, 50, §§274.16, 274.20, 275.1, 275.3, 275.4; C54, §275.5; 57GA, ch 129, §17]

Referred to in §275.9

**275.6 Progressive program.** It is the intent of this chapter that the county board shall carry on the program of reorganization progressively and shall, insofar as is possible, authorize submission of proposals to the electors as they are developed and approved. [R60, §§2097, 2105; C73, §§1800, 1801; S13, §§2820-e, f; SS15, §2794-a; C24, 27, 31, 35, 39, §§4141, 4188; C46, 50, §§274.23, 275.8, 276.35; C54, §275.6]

**275.7 Budget.** The county board of education shall include in the budget submitted each year such sums as it deems necessary to carry on its reorganization work under this chapter. [SS15, §2794-a; C24, 27, 31, 35, 39, §§4139, 4177; C46, 50, §§274.21, 275.9, 276.24; C54, §275.7]

**275.8 Co-operation of state department—planning joint districts.** The state department

of public instruction shall co-operate with the several county boards of education in making the studies and surveys required hereunder. In the case of controversy over the planning of joint districts, the matter shall be submitted to the state board of public instruction and its decision may be appealed to a court of record in one of the counties involved, by an aggrieved party to the controversy, within thirty days after the decision of the state board of public instruction. Joint districts shall mean districts that lie in two or more adjacent counties. An aggrieved party is hereby defined as the board of directors of a school district whose directors are elected at large, or, if said board is elected from director districts, then that membership of the board of directors whose districts are included in the proposed reorganized area, or a county board of education.

For purposes of this chapter the planning of joint districts is defined to include all of the following acts:

1. Preparation of a written joint plan in which contiguous territory in two or more counties is considered as a part of a potential school district in the county on behalf of which such county plan is filed with the state department of public instruction by the county board of education in and for such county.

2. Adoption of such plan at a joint session of the several county boards of education in whose counties such territory is situated.

3. Filing said plan with the state department of public instruction.

For purposes of subsection 1 hereof, joint planning shall be evidenced by filing the following items with the state department of public instruction:

a. A plat of the entire area of such potential district.

b. A statement of the number of pupils residing within the area of said potential district enrolled in public schools in the preceding school year.

c. A statement of the assessed valuation of taxable property located within such potential district.

d. An affidavit signed on behalf of each of said county boards of education by a member of such board stating the boundaries as shown on such plat have been agreed upon by the respective boards as a part of the over-all county plan of school district reorganization of each such school. [C46, 50, §§275.10, 276.4; C54, §275.8; 57GA, ch 129, §11]

Referred to in §§275.16, 275.34

**275.9 Methods of effectuating reorganization plans.** When any school district is enlarged, reorganized, or changes its boundaries pursuant to the plans hereinabove provided for, such enlargement, reorganization, or boundary change shall be accomplished by the method hereinafter provided.

The provisions of sections 275.1 to 275.5, inclusive relating to studies, surveys, hearings,

and adoption of county plans shall constitute a mandatory prerequisite to the effectuation of any proposal for district boundary change. It shall be the mandatory duty of the county board or joint county boards to dismiss the petition if the above provisions are not complied with fully. [C46, 50,§275.11; C54,§275.9; 57GA, ch 129,§1]

**275.10** Repealed by 57GA, ch 129,§2

**275.11 Proposals involving two or more districts.** Subject to the approval of the county board of education contiguous territory located in two or more school districts may be united into a single district in the manner provided in sections 275.12 to 275.23 hereof. [SS15,§2794-a; C24, 27, 31, 35, 39,§4166; C46, 50, §276.13; C54,§275.11; 57GA, ch 129,§3]

Temporary provisions, see 57GA, ch 41,§1

**275.12 Petition—method of election.**

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to county plan or the petition shall request change of the county plan, shall be filed with the superintendent of schools of the county in which the greatest number of electors reside. Such petition shall be signed by voters in each existing school district affected or portion thereof equal in number to at least twenty percent of the number of eligible voters or four hundred voters, whichever is the smaller number. School districts affected or portion thereof shall be defined to mean that area to be included in the plan of the proposed new school district.

2. Such petition shall also state the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical subdistricts, to be known as director districts, each of which director districts shall be represented on the school board by one director who shall be a resident of such director district but who shall be elected by the vote of the electors of the entire school district. The school district shall be divided into the same number of director districts as the number of school directors the district is authorized by law. The boundaries of such director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. In so far as may be practicable, the boundaries of such districts shall follow established political or natural geographic divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated director

districts into which the entire school district shall be divided. In such case, all directors shall be elected by the electors of the entire school district.

d. Division of the entire school district into designated geographical subdistricts, to be known as director districts, each of which director districts shall be represented on the school board by one director who shall be a resident of such director district and who shall be elected by the voters of said director district. Place of voting in such director districts shall be designated by the county board.

3. If the petition proposes the division of the school district into director districts, the boundaries of such proposed director districts shall be described in the petition.

4. The county board or boards of education in reviewing such petition as provided in sections 275.15, 275.16, and 275.17\* shall review the proposed method of election of school directors and shall have the duty and authority to change or amend such plan in any manner, including the changing of boundaries of director districts if proposed, or to specify a different method of electing school directors on the basis of area, school population, or assessed valuation as may be required by law, justice, equity, and the interest of the people. In such action the county board or boards shall follow the same procedure as is required by sections 275.15, 275.16, and 275.17\* for other action on the petition by the county board or boards. [R60,§§2097, 2105; C73,§§1800, 1801, 1811; C97, §§2794, 2799; S13,§§2793, 2820-e,-f; SS15,§§2793, 2794, 2794-a; C24, 27, 31, 35, 39,§§4133, 4134, 4141, 4153, 4155, 4174; C46, 50,§§274.16, 274.17, 274.23, 274.38, 276.2, 276.21; C54,§§275.10, 275.12; 57GA, ch 129,§§2, 12; ch 130,§1]

\*Repealed by 57GA, ch 129,§4  
Referred to in §275.11

**275.13 Affidavit — presumption.** Such petition shall be accompanied by an affidavit showing the number of qualified electors living in each affected district or portion thereof described in the petition and signed by a qualified elector residing in the territory, and if parts of the territory described in the petition are situated in different counties, the affidavit shall show separately as to each county, the number of qualified electors in the part of the county included in the territory described. The affidavit shall be taken as true, unless objections to it are filed on or before the time fixed for filing objections as provided in section 275.14 hereof. [C24, 27, 31, 35, 39,§4156; C46, 50,§276.3; C54,§275.13; 57GA, ch 129,§13]

Referred to in §§275.11, 275.36

**275.14 Objection — time of filing — notice.** Within ten days after the petition is filed, the county superintendent shall fix a final date for filing objections to the petition in the office of the county superintendent, and give notice for at least ten days, by one publication in a newspaper published within the territory described in the petition, or if none is published therein, in a newspaper published in the coun-

ty where the petition is filed, and of general circulation in the territory described. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the change petitioned for and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections. [SS15,§2794-a; C24, 27, 31, 35, 39, §§4157, 4166, 4170; C46, 50 §§276.4, 276.6, 276.17; C54,§275.14]

Referred to in §§275.11, 275.13

**275.15 Hearing — decision — publication of order.** On the final day fixed for filing objections, interested parties may present evidence and arguments, and the county board of education shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing such boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts or dismiss the petition. The county superintendent shall at once publish this order in the same newspaper in which the original notice was published and file any amendments to the county plan in the same manner as hereinabove provided for the original or tentative county plan. Within twenty days after the publication thereof the decision rendered by the county board of education may be appealed to a court of record in the county involved by any school district affected. [C24, 27, 31, 35, 39, §§4158-4160; C46, 50, §§276.5-276.7; C54, §275.15; 57GA. ch 129, §14]

Referred to in §§275.11, 275.12, 275.16

**275.16 Hearing when territory in different counties.** If the territory described in the petition for the proposed corporation lies in more than one county, the county superintendent with whom the petition is filed shall fix the time and place and call a joint meeting of the members of all the county boards of education of the counties in which any territory of the proposed school corporation lies, to act as a single board for the hearing of the said objections, and a majority of all members of the county boards of education of the different counties in which any part of the proposed corporation lies, shall constitute a quorum. The joint boards acting as a single board shall determine whether the petition conforms to county plans or, if the petition requests a change in county plans, whether such change should be made, and shall have the authority to change the plans of any or all the county boards affected by the petition, and it shall determine and fix boundaries for the proposed corporation as provided in section 275.15 or dismiss the petition. The county superintendent shall at once publish this decision in the same newspaper in which the original notice was published.

In case a controversy arises from such meeting, the county board or boards or any school

district aggrieved may bring the controversy to the state department of public instruction, as provided in section 275.8, within twenty days from the publication of this order, and if said controversy is taken to the state department of public instruction, a ten-day notice in writing shall be given to all county boards and school districts affected or portions thereof. The state department shall have the authority to affirm the action of the joint boards, to vacate, to dismiss all proceedings or to make such modification of the action of the joint boards as in their judgment would serve the best interest of all the counties. This decision may be appealed to a court of record in one of the counties by any aggrieved party to the controversy as defined in section 275.8, within thirty days after the decision of the state department of public instruction.

The court on appeal shall have the same authority as is granted in this section to the state department of public instruction. [C24, 27, 31, 35, 39, §4162; C46, 50, §276.9; C54, §275.16; 57GA, ch 129, §15]

Referred to in §§275.11, 275.12

**275.17 Repealed by 57GA, ch 129, §4**

**275.18 Special election called—time.** When the boundaries of the territory to be included in a proposed school corporation and the method of the election of the school directors of such proposed school corporation have been determined as herein provided, the county superintendent with whom such petition is filed shall call a special election in such proposed school corporation within thirty days from the date of the final determination of such boundaries, by giving notice by one publication in the same newspaper as previous notices concerning it have been published, and in addition thereto, if more than one county is involved, by one publication in a legal newspaper in each county other than that of the first publication, which publication shall be not less than ten nor more than fifteen days prior to the election. In the case of joint districts, no notice for an election shall be published until the time for appeal, which shall be the same as that provided in section 285.12, has expired; and in the event of an appeal, not until the same has been disposed of. [R60, §§2097, 2105; C73, §§1800, 1801; C97, §2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, 39, §§4142, 4164; C46, 50, §§274.24, 275.4, 276.11; C54, §275.18; 57GA, ch 130, §2]

Referred to in §275.11

**275.19 Judges of election.** The county superintendent shall appoint the judges of such election and such judges shall be qualified electors of the territory of the proposed school corporation as determined by the county superintendent or board of education, and they shall serve without pay. If any judge fails to appear at the proper time, his place shall be filled by the judge or judges present, or if no judge appears, any three qualified electors may organize the election board. [C24, 27, 31, 35, 39, §4165; C46, 50, §276.12; C54, §275.19]

Referred to in §275.11

**275.20 Separate vote in existing districts.**

The voters shall vote separately in each existing school district affected or portion thereof upon the proposition to create such new school corporation. School districts affected or portion thereof shall be defined to mean that area included within the boundaries of the proposed new school corporation, except that where a portion of an existing school district operating a high school, or a rural independent school district of eight sections or more operating a school formed prior to May 10, 1957, is included within the boundaries of the proposed new school corporation, that affected school district shall be defined as that existing district within and without the proposed new school corporation, and in such districts the entire district shall vote. If the proposition receives a majority of the votes cast in each of at least seventy-five percent of the said districts, and also a majority of the total number of votes cast in all of said districts, the proposition shall be deemed carried. Provided, however, that if two or more of the school districts affected have a resident average daily attendance in public schools of three hundred or more pupils who were enrolled in public schools in the preceding school year, the proposition must also receive a majority of the votes cast in each of said districts in order to be deemed carried, and in such districts the entire existing district shall vote. [R60, §§2097, 2105; C73, §§1800, 1801; C97, §2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, §§4142, 4166, 4167, 4191; C39, §§4142, 4144.1, 4166, 4167; C46, 50, §§274.24, 274.27, 276.13; C54, §§275.20, 275.21; 57GA, ch 128, §5; ch 129, §§5, 6; ch 130, §7]

Referred to in §§275.11, 275.23  
Temporary provisions, see 57GA, ch 41, §1

**275.21 Repealed by 57GA, ch 129, §6.**

Referred to in §275.11

**275.22 Separate ballot boxes.** The judges of election shall provide separate ballot boxes in which shall be deposited the votes cast by the qualified electors from their respective territories. [R60, §§2097, 2105; C73, §§1800, 1801; C97, §2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, 39, §§4142, 4168; C46, 50, §§274.24, 276.15; C54, §275.22]

Referred to in §275.11

**275.23 Canvass and return.** The judges of election shall count the ballots, make return to and deposit the ballots with the county superintendent, who shall enter the return of record in his office. If the majority of the votes cast by the qualified electors are in favor of the proposition, as provided in section 275.20, a new school corporation shall be organized. The county superintendent shall file a written description of the boundaries as provided in section 274.4. [S13, §2820-f; SS15, §2794-a; C24, 27, 31, 35, 39, §§4144, 4169; C46, 50, §§274.26, 275.5, 275.7, 276.16; C54, §275.23; 57GA, ch 129, §7]

Referred to in §275.11

**275.24 Effective date of change.** When any school district is enlarged, reorganized, or changes its boundary by the method herein-

above provided, the effective date of such change shall be July 1 following the election of the new board. [C54, §275.24; 57GA, ch 129, §8]

**275.25 Election of directors.** If the proposition to establish a new corporation carries under the method hereinabove provided a special election shall be called by the county superintendent by giving notice by one publication in the same newspaper in which the former notices were published and he shall appoint judges who shall serve without pay. At such election, two directors shall be elected to serve until the next regular election, two until the second, and one until the third regular election thereafter, except in districts which include all or part of a city of fifteen thousand or more population, three directors shall be elected to serve until the third regular election thereafter, all of whom to serve until such time as their successors are elected and qualified. Provided, however, that in all community school districts which include a city of fifteen thousand or more population and which became effective prior to July 4, 1955, and in all community school districts containing a city which has attained a population of fifteen thousand or more as shown by the most recent decennial federal census, the board of directors shall consist of seven members. Where it becomes necessary to increase the membership of any such board under the provisions hereof, new directors shall be elected at the next regular school election for such initial terms as will conform to the staggered terms hereinabove provided for directors in newly formed districts. The judges of election shall make return to the county superintendent who shall enter the return of record in his office and notify the persons who are elected directors. The new board shall organize between July 1 and July 15 following their election upon call of the county superintendent.

Provided, however, in cases involving two districts only, where the population of the new district does not exceed the population of the more populous of said districts by more than twenty-five percent, the incumbent board members of said more populous district shall continue to hold office as director of the new district for the remainder of their elective terms. Vacancies on any board caused by change in boundaries shall be filled in the manner provided in sections 279.6 and 279.7. [R60, §§2099, 2100, 2106; C73, §1801; C97, §2795; S13, §2820-f; SS15, §2794-a; C24, §§4144, 4145, 4148; C27, 31, 35, §§4144-a1, 4145, 4148; C39, §§4144.2, 4144.3, 4145, 4148; C46, 50, §§274.28-274.30, 275.5, 276.18; C54, §275.25; 56GA, ch 138, §§1, 2; ch 139, §1; 57GA, ch 129, §9; ch 131, §1]

**275.26 Payment of expenses.** If a district is established or changes its boundaries it shall pay all expenses incurred by the superintendent and the board of education in connection with the proceedings, including the election of the first board of directors. If the proposition is dismissed or defeated at the election all ex-

penses shall be apportioned among the several districts in proportion to the assessed valuation of property therein.

If the proposed district or boundary change embraces territory in more than one county such expenses shall be certified to and, if necessary, apportioned among the several districts by the joint board of education. If in only one county the certification shall be made by the county superintendent.

The respective boards to which such expenses are certified shall audit and order the same paid from the general fund. In the event of failure of any board to so audit and pay the expenses certified to it, the county superintendent shall certify the expenses to the county auditor in the same manner as is provided for tuition claims in section 282.21 and the funds shall be transferred by the county treasurer from the debtor district to the county board of education for payment of said expenses. [S13,§2820-h; C24, 27, 31, 35, 39, §§4147, 4172; C46, 50,§§274.32, 275.6, 276.19; C54, §275.26; 57GA, ch 129,§10]

**275.27 Names.** School districts created or enlarged under the provisions of this chapter shall be known as community school districts and shall be part of the county school system and all provisions of the law applicable to the common schools generally shall be applicable to such districts in addition to the powers and privileges conferred by this chapter. [C73, §1715; C97,§2802; S13,§2802; SS15,§2794-a; C24, 27, 31, 35, 39,§4136; C46, 50,§274.18; C54,§275.27]

**275.28 Plan of division of assets and liabilities.** A plan of reorganization in addition to setting up the territory to comprise the reorganized districts may provide for a division of assets and liabilities of the old districts between reorganized districts. If no provision is made in the plan for division of assets and liabilities, such division shall be made under the provisions of sections 275.29 to 275.31, inclusive, hereof. [C46, 50,§275.7; C54,§275.28]

**275.29 Division of assets and liabilities after reorganization.** Within twenty days after the organization of the new boards, they shall meet jointly with the several boards of directors whose districts have been affected by the organization of the new corporation or corporations and all of said boards acting jointly shall recommend to the several boards an equitable division of the assets of the several school corporations or parts thereof and an equitable distribution of the liabilities of such school corporations or parts thereof among the new school corporations. [C73,§1715; C97, §2802; S13,§§2802, 2820-g; C24, 27, 31, 35, 39, §4137; C46, 50,§274.19; C54,§275.29]

Referred to in §275.28

**275.30 Arbitration.** If the boards cannot agree on such division and distribution, the matters on which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if

the number thus selected is even, then one shall be added by the county superintendent. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and any party to the proceedings may appeal therefrom to the district court by serving notice thereof on such secretary within twenty days after the decision is filed. Such appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes. [C73,§1715; C97,§2802; S13,§§2802, 2820-g; C24, 27, 31, 35, 39,§4138; C46, 50,§274.20; C54,§275.30]

Referred to in §275.28

**275.31 Taxes to effect equalization.** If necessary to equalize such division and distribution, the board or boards may provide for the levy of additional taxes upon the property of any corporation or part of corporation and for the distribution of the same so as to effect such equalization. [S13,§2820-g; SS15,§2794-a; C24, 27, 31, 35, 39,§§4139, 4175; C46, 50,§§274.21, 276.22; C54,§275.31]

Referred to in §275.28

**275.32 School buildings—tax levy.** The board of any school corporation shall establish attendance centers and provide suitable buildings for each school in the district, and may at the regular or a special meeting call a special election to submit to the qualified electors of the district the question of voting a tax or authorizing the board to issue bonds, or both, for any or all of the following purposes:

1. To secure sites, build, purchase, or equip school buildings.
2. To build or purchase a superintendent's or teacher's house or houses.
3. To repair or improve any school building or grounds, or superintendent's or teacher's house or houses, when the cost will exceed five thousand dollars.

All moneys received for such purposes shall be placed in the schoolhouse fund of said corporation and shall be used only for the purpose for which voted. [C73,§1804; C97,§2796; SS15, §2794-a; C24, 27, 31, 35, 39,§§4149, 4178; C46, 50, §§274.34, 275.9, 276.24; C54,§275.32]

**275.33 Contracts not affected.** The terms of employment of superintendents, principals, and teachers, for any current school year shall not be affected by the formation of the new district. [S13,§2820-f; C24, 27, 31, 35, 39,§§4146, 4176; C46, 50,§§274.31, 275.12, 276.23; C54,§275.33]

See 57GA, ch 129,§18

**275.34 Who shall initiate appeal.** The aggrieved party, as defined in section 275.8, shall initiate the appeal or appeals to a court of record, as provided for in this chapter. Nothing herein shall be construed as affecting the rights of any school district, person or persons from bringing or engaging in any ac-

tion in law or equity now granted or preserved to such school district, person or persons. [57GA, ch 129,§16]

**275.35 Change of method of elections.** Any existing or hereafter created or enlarged school district may change its method of election of school directors to any method authorized by section 275.12 by submission of a proposal, stating the proposed new method of election and describing the boundaries of the proposed director districts if any, by the school board of such district to the electors at any regular school election. The school board shall give notice of the submission of such proposal to the voters by one publication at least ten days prior to such election of such proposal in a newspaper published within the school district, or if none is published therein, in a newspaper published in the county where the school district is located, and of general circulation in the territory described. Such proposal shall be adopted:

1. If, in a district where the existing method of election of school directors is by election at large, it is approved by a majority of the votes cast on the proposition;

2. If, in a district which is subdivided into director districts for the election of all or part of the school directors, it is approved by a majority of the votes cast in each director district on the proposition. [57GA, ch 130,§3]

Referred to in §275.37

**275.36 Submission of change to electors.** If a petition for a change in the method of election of school directors, describing the boundaries of the proposed director districts,

if any, signed by at least one-third of the voters residing within the school district and accompanied by affidavit as required by section 275.13 be filed with the school board of a school district, not earlier than six months and not later than two months before a regular school election, the school board shall submit such proposition to the voters at such election. [57GA, ch 130,§4]

**275.37 Special election.** If change in the method of the election of school directors is approved at a regular school election by the voters of a school district, the school board shall, by notice in one publication in the same newspaper which the notice of election required by section 275.35 was published, call a special election to be held on or before the tenth day of June next following, for the election of new school directors under the newly adopted method of election. The school directors elected at such election shall meet and organize on the first Monday in July following their election. [57GA, ch 130,§5]

**275.38 Terms of directors.** In a school district, either newly organized or previously established, at the first election under a method of electing school directors whereby the district is divided into director districts, the two directors elected with the fewest number of votes in their favor shall serve the terms until the next regular election; the two directors elected with the next fewest number of votes shall serve the terms until the second next regular election, and the remaining director or directors elected shall serve until the third next regular election. [57GA, ch 130,§6]

## CHAPTER 276

### CONSOLIDATED SCHOOL DISTRICTS

Repealed by 55GA, ch 117,§35, see chapter 275 of this Code

## CHAPTER 277

### SCHOOL ELECTIONS

Referred to in §274.36

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**277.1 Regular election.** The regular election shall be held annually on the second Monday in March in each school corporation and in each subdistrict for the purpose of submitting to the voters thereof any matter authorized by law, except that in all independent school districts which embrace a city and which have a population of one hundred twenty-five thousand or more such election shall be held biennially on the second Monday in March of odd-numbered years. [C51,§§1111, 1114; R60,§§2027, 2030, 2031; C73,§§1717-1719; C97,§§2746, 2751; C24,§§4194, 4211; C27,§§4194, 4211, 4216-b1; C31, 35,§4216-c1; C39,§4216.01; C46, 50, 54,§277.1]

**277.2 Special election.** The board of directors in any school corporation may call a special election at which election the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of a schoolhouse tax or indebtedness, as provided by law, for the purchase of a site and the construction of a necessary schoolhouse, and for obtaining roads thereto. [C97,§2750; S13,§2750; C24, 27,§4197; C31, 35,§4216-c2; C39,§4216.02; C46, 50, 54,§277.2]

**277.3 Notice of election.** There shall be a written notice of all regular or special elections, which notice shall be given not less than ten days next preceding the day of the election, except as otherwise provided in this section, and shall contain the date, the polling place, the hours during which the polls will be open, the number of directors or officers to be elected and the terms thereof, and such propositions as will be submitted to and be determined by the voters.

In those corporations where registration is not required and in which only one voting precinct has been established said notice shall be posted by the secretary of the board in five public places in the corporation.

In those corporations in which registration of voters is required or in which more than one voting precinct has been established the secretary shall post the notice in each precinct, and also publish it once each week for two consecutive weeks preceding the election in some newspaper published in the county and of general circulation in the corporation.

In subdistricts said notice shall be posted by the subdirector in three public places within the subdistrict, one of which shall be on the front of the school building. If the subdirector fails to post the required notice not less than ten days next preceding the day of the election, or if there be no subdirector, then any other voter in the subdistrict may secure from the county superintendent the proper form for the required number of notices filled out in the manner provided in this section and such notices, if signed by the county superintendent and said voter and posted as required in this section not less than five days next preceding the day of the election, shall constitute due and legal notice of said election. [C51,§1110; R60, §§2027, 2030; C73,§§1718, 1719; C97,§§2746, 2750,

2751, 2755; S13,§§2750, 2755; C24,§§4195, 4197, 4208; C27,§§4195, 4197, 4208, 4211-b1, 4216-b3; C31, 35,§4216-c3; C39,§4216.03; C46, 50, 54,§277.3]

Referred to in §409.47

**277.4 Nominations required.** Nomination papers for all candidates for election to office in each independent city, town, or consolidated district shall be filed with the secretary of the school board not earlier than thirty days nor later than noon of the tenth day prior to said election. Each candidate shall be nominated by a petition signed by not less than ten qualified electors of the district, except that in city independent districts where the regular election is held biennially such petition shall be signed by not less than fifty qualified electors of the district. To each such petition shall be attached the affidavit of a qualified elector of the district that all the signers thereof are electors of such district and that the signatures thereto are genuine. [S13,§2754; C24,§4201; C27, §§4201, 4216-b4, -b5; C31, 35,§4216-c4; C39,§4216.04; C46, 50, 54,§277.4]

**277.5 Precincts for voting.** School corporations other than city, town, or village independent districts shall constitute a voting precinct, but the voting precincts at all school elections in corporations in whole or in part in cities, towns, and villages shall be the same as for the last general state election except that the board may consolidate two or more such precincts into one unless there shall be filed with the secretary of the board at least twenty days before the election, a petition signed by twenty-five or more electors of any precinct requesting that such precinct shall not be consolidated with any other precinct. To such petition shall be attached the affidavit of a qualified elector of the precinct that all the signers thereof are electors of such precinct, and that the signatures thereon are genuine.

In subdistrict elections the subdistrict shall constitute a single voting precinct. [C97,§2755; S13,§2755; C24,§4205; C27,§§4205, 4216-b2; C31, 35, §4216-c5; C39,§4216.05; C46, 50, 54,§277.5]

**277.6 Territory outside city or town.** If there is within a school corporation any territory not within the limits of a city or town the board may divide the territory which lies outside the city but within the school district into additional precincts, or may attach the various parts thereof to such contiguous city precincts as will best serve the convenience of the electors of said outside territory in voting on school matters, but the voters within such territory shall not be required to register. [C24, §§4205, 4207; C27,§§4205, 4207, 4216-b2; C31, 35, §4216-c6; C39,§4216.06; C46, 50, 54,§277.6]

**277.7 Polling place.** In all school corporations the board shall determine a suitable polling place in each precinct, which polling place shall be, when practicable, the same place used by the last city or state election.

In subdistricts a suitable polling place shall be selected by the person authorized by law to post the notices of such elections. [C97,§2755;



S13,§2755; C24, 27,§4205; C31, 35,§4216-c7; C39, §4216.07; C46, 50, 54,§277.7]

**277.8 Printed ballots required.** In school corporations where nomination of candidates for election to office is required the secretary shall cause to be printed and delivered at the several polling places a sufficient number of ballots printed on plain, substantial paper of uniform quality, with no party designation or mark thereon. Such ballots shall contain in alphabetical order the names of all candidates for each office, filed as provided by law, and a blank line for each such officer to be elected. There shall be at the left of each name and each blank line a square, and there shall also be a direction to the voter as to the number of candidates to be voted for at said school election. [S13,§2754; C24, 27,§4203; C31, 35,§4216-c8; C39,§4216.08; C46, 50, 54,§277.8]

**277.9 Opening polls.** In all school corporations in which registration of voters is required the polls shall open at seven o'clock a. m. and close at seven o'clock p. m.; in school corporations where registration of voters is not required composed in whole or in part of cities, towns, or in consolidated school districts, the polls shall open at twelve o'clock m. and close at seven o'clock p. m., except that in districts where the board has combined voting precincts the board may order the polls to open at seven o'clock a. m. and to close at seven o'clock p. m.; in all other independent school districts and school townships the polls shall open at one o'clock p. m. and remain open not less than two hours; in subdistricts the polls shall open not earlier than nine o'clock a. m. nor later than seven o'clock p. m., but shall remain open not less than two hours. [C97,§§2751, 2754, 2756; S13,§§2754, 2756; C24, 27,§§4202, 4211; C31, 35, §4216-c9; C39,§4216.09; C46, 50, 54,§277.9]

**277.10 Judges of election.** In corporations consisting of one voting precinct the president and the secretary of the board, with one of the directors shall act as judges of the election. If any such judge of election is absent or refuses to serve, the voters present at the polls shall appoint one of their number to act in his stead.

In corporations consisting of more than one precinct the board in such district shall appoint three voters of the precinct as judges of the election and one voter of the precinct as clerk thereof. Not more than one member of the board shall act as such judge at any one voting precinct. If any person so appointed is absent or fails to qualify the judge or judges attending shall fill the place by appointment of any voter present. Should all of the appointees fail to qualify their places shall be filled by the voters from those in attendance.

In subdistrict elections the judges shall consist of the subdirector and two qualified electors selected by the voters present at the polling place. If the subdirector is absent or refuses to serve as such judge, or if an elector selected as judge refuses to serve, the voters present shall select a judge to take his place.

[C51,§1111; R60,§§2027, 2030, 2031; C73,§§1717, 1719; C97,§§2746, 2751, 2756; S13,§2756; C24, §§4195, 4209, 4211; C27,§§4195, 4209, 4211-b2; C31, 35,§4216-c10; C39,§4216.10; C46, 50, 54,§277.10]

**277.11 Oath required of judges and clerks.** All judges or clerks of election shall qualify before opening of polls by taking the oath as provided for in sections 49.75 and 49.76. [C97, §2756; S13,§2756; C24, 27,§4209; C31, 35,§4216-c11; C39,§4216.11; C46, 50, 54,§277.11]

**277.12 Right to vote.** To have the right to vote at a school election a person shall have the same qualifications as for voting at a general election and must have been for ten days prior to such school election an actual resident of the corporation and precinct or subdistrict in which he offers to vote. [C97,§2747; C24, 27,§4196; C31, 35,§4216-c12; C39,§4216.12; C46, 50, 54,§277.12]

**277.13 Method of voting.** Voting at all school elections shall be by ballot or by voting machines. [C73,§1808; C97,§2754; S13,§2754; C24, 27,§4198; C31, 35,§4216-c13; C39,§4216.13; C46, 50, 54,§277.13]

**277.14 Ballot box — voting machines — poll-books.** The board shall provide the necessary ballot box or voting machine and pollbooks for each precinct. [C97,§2756; S13,§2756; C24, 27,§4209; C31, 35,§4216-c14; C39,§4216.14; C46, 50, 54,§277.14]

**277.15 Voting machines.** Voting machines may be used for all school elections in all precincts where the same are in use at general elections and the names of the candidates and the propositions to be voted upon shall be arranged thereon as by law provided. The state and county, or either, as the case may be, shall without charge permit the use for school elections of voting machines used at the general elections, and the same shall be used according to the general election law so far as applicable. [S13,§2754; C24, 27,§4203; C31, 35, §4216-c15; C39,§4216.15; C46, 50, 54,§277.15]

**277.16 Precincts for registration.** In corporations where registration is required, except in those corporations where permanent registration is otherwise provided for by statute, the board may consolidate precincts into registration districts as provided by law applicable to registration for general elections and shall designate suitable and convenient places for such registration. [C97,§2755; S13,§2755; C24, 27,§4206; C31, 35,§4216-c16; C39,§4216.16; C46, 50, 54,§277.16]

**277.17 Registrars appointed.** The board of directors of school corporations where registration is required at general elections, except where permanent registration is required, shall, not less than ten days prior to the school election, appoint two registrars in each of the registration districts of such school corporation for the registration of voters therein who shall have the same qualifications as registrars appointed for general elections and shall

qualify in the same manner and receive the same compensation to be paid by the school corporation. The person in custody of the registration books, records, and pollbooks for the general election shall furnish the same to the board of directors which shall distribute them to the proper registrars and judges and they shall be used for registration for school elections the same as the general elections, and shall, within ten days after the school election, be returned to the proper custodian. [C97, §§2755, 2756; S13,§2755; C24, 27,§4207; C31, 35, §4216-c17; C39,§4216.17; C46, 50, 54,§277.17]

Permanent registration, ch 48

**277.18 Registration days.** The registrars shall meet and remain in session on election day only and during the time the polls are open. In all respects except as in this chapter provided the general registration laws shall apply to registration for school elections wherein registration is required for general elections, except that administrative and clerical duties imposed thereby on the mayor and city clerk shall be performed by the president and secretary of the board respectively. [C97,§2756; S13,§§2755, 2756; C24, 27,§4207; C31, 35,§4216-c18; C39,§4216.18; C46, 50, 54,§277.18]

See §282.24 for maximum tuition rates

**277.19 Canvassing the votes.** In school corporations consisting of one precinct the judges of election shall canvass the vote and shall issue certificates to all officers elected and make a record of the propositions adopted.

In corporations consisting of more than one precinct the judges shall canvass the vote and make and certify a return to the secretary of the corporation of the votes cast for officers and upon each question submitted.

In a subdistrict the judges shall canvass the vote for subdirector and issue a certificate of election to the person receiving the highest number of votes, and shall immediately notify the secretary in writing of the subdirector elected and the votes for and against all propositions voted upon. They shall also canvass the vote for director-at-large in those subdistricts where a director-at-large is voted for and forthwith make certified returns thereof in a sealed envelope to the secretary of the school township.

In all school corporations it shall be the duty of the secretary to cause a permanent record to be made of the vote on each officer and on each proposition submitted to the electors. [C51,§1111; R60,§2031; C73,§§1719, 1720; C97, §§2746, 2751, 2756; S13,§§2752, 2756; C24,§§4195, 4209, 4211; C27,§§4195, 4209, 4211-b4, b5; C31, 35,§4216-c19; C39,§4216.19; C46, 50, 54,§277.19]

**277.20 Canvassing returns.** On the next Monday after the election in each corporation consisting of more than one precinct and in each school township having an even number of subdistricts the board shall canvass the returns made to the secretary, ascertain the result of the voting with regard to every matter voted upon, declare the same, cause a record

to be made thereof, and at once issue a certificate to each person elected. [C97,§2756; S13, §2756; C24,§4210; C27,§§4210, 4211-b6; C31, 35, §4216-c20; C39,§4216.20; C46, 50, 54,§277.20]

**277.21 Tie vote.** If there is a tie vote for any elective school office in any school corporation or subdistrict the judges of election or the board canvassing the returns, as the case may be, shall decide the election by lot substantially as provided in section 50.44. [C97, §2754; S13,§2754; C24,§4204; C27,§§4204, 4211-b8; C31, 35,§4216-c21; C39,§4216.21; C46, 50, 54, §277.21]

**277.22 Contested elections.** School elections may be contested as provided by law for the contesting of other elections. [C24, 27,§4209; C31, 35,§4216-c22; C39,§4216.22; C46, 50, 54, §277.22]

Contesting elections, ch 57 et seq.

**277.23 Directors—number.** In any district including all or part of a city of fifteen thousand or more population the board shall consist of seven members; in all other independent city or town districts, in consolidated districts, and in rural and village independent districts having a population of over five hundred, the board shall consist of five members; in all other rural and village independent districts having a population of five hundred or less and in school townships not divided into subdistricts the board shall consist of three members; in school townships divided into subdistricts the board shall consist of one subdirector from each subdistrict with a director-at-large in those school townships that are divided into an even number of subdistricts. [C51,§1112; R60,§§2031, 2035, 2075; C73,§§1720, 1721, 1808; C97,§§2752, 2754; S13,§§2752, 2754; C24,§§4198, 4212; C27,§§4198, 4211-b3, b5; C31, 35,§4216-c23; C39,§4216.23; C46, 50, 54,§277.23]

**277.24 Term of office.** Members of the board in all independent districts and undivided school townships shall be chosen at the regular election for a term of three years to succeed those whose terms expire at the organization of the board the third Monday in March immediately following and shall hold office for the term for which elected and until their successors are elected or appointed and qualified, except that in those independent districts which embrace a city and which have a population of one hundred and twenty-five thousand or more the term shall be six years. In school townships divided into subdistricts the subdirector and the director-at-large where one is required shall be elected at the regular election for a term of one year and until his successor is elected, or appointed, and qualified.

In all school corporations and subdistricts the term of office shall begin at the organization of the board on the third Monday of March. [C51,§1112; R60,§§2030, 2075; C73, §§1721, 1808; C97,§2754; S13,§2754; C24,§§4198,

4212; C27, §§4198, 4211-b7; C31, 35, §4216-c24; C39, §4216.24; C46, 50, 54, §277.24]

Similar provision, §274.7

**277.25 Directors in new districts.** At the first election in newly organized districts the directors shall be elected as follows:

1. In districts having three directors, one director shall be elected for one year, one for two years, and one for three years.

2. In districts having five directors, two shall be elected for one year, two for two years, and one for three years.

3. In districts having seven directors, two shall be elected for one year, two for two years, and three for three years. [C73, §1802; C97, §2754; S13, §2754; C24, 27, §4199; C31, 35, §4216-c25; C39, §4216.25; C46, 50, 54, §277.25; 57GA, ch 130, §8]

**277.26 Treasurer.** In districts composed in whole or in part of cities or towns a treasurer shall be chosen at the regular election. He shall serve without pay and his term shall begin on the first secular day of July and continue for two years and until his successor is elected or appointed and qualified. [C97, §2754; S13, §2754; C24, 27, §4200; C31, 35, §4216-c26; C39, §4216.26; C46, 50, 54, §277.26]

**277.27 Qualification.** A school officer or member of the board shall, at the time of election or appointment, be a qualified voter of the corporation or subdistrict. [C97, §2748; C24, 27, §4213; C31, 35, §4216-c27; C39, §4216.27; C46, 50, 54, §277.27]

**277.28 Oath required.** Each director or subdirector elected at a regular district or subdistrict election, as the case may be, shall qualify by taking the oath of office on or before the time set for the organization meeting of the board the third Monday in March, and his election and qualification entered of record by the secretary. The oath may be administered by any qualified member of the board, the secretary of the board, or the county superintendent of schools, and may be taken in substantially the following form:

"Do you solemnly swear that you will support the constitution of the United States and the constitution of the state of Iowa and that you will faithfully and impartially to the best of your ability discharge the duties of the office of . . . . . (naming the office) in . . . . . (naming the district) as now or hereafter required by law?"

If the oath of office is taken elsewhere than in the presence of the board in session it may be administered by any officer listed in sections 78.1 and 78.2 and shall be subscribed to by the person taking it in substantially the following form:

"I, . . . . ., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa and that I will faithfully and impartially to the best of my ability discharge the duties of

the office of . . . . . (naming the office) in . . . . . (naming the district) as now or hereafter required by law."

Such oath shall be properly verified by the administering officer and filed with the secretary of the board.

The treasurer elected at a regular election in city and town districts shall qualify by taking the oath of office in the manner herein required and filing a bond as required by section 291.2 within ten days after the first secular day in July following his election. [C51, §§1113, 1120; R60, §§2032, 2079; C73, §§1752, 1790; C97, §2758; S13, §2758; C24, 27, §4214; C31, 35, §4216-c28; C39, §4216.28; C46, 50, 54, §277.28]

Referred to in §§279.3, 279.6, 279.7

**277.29 Vacancies.** Failure to elect at the proper election or to appoint within the time fixed by law or the failure of the officer elected or appointed to qualify within the time prescribed by law; the incumbent ceasing to be a resident of the district or subdistrict; the resignation or death of incumbent or of the officer-elect; the removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant; the conviction of incumbent of an infamous crime or of any public offense involving the violation of his oath of office, shall constitute a vacancy. [C31, 35, §4216-c29; C39, §4216.29; C46, 50, 54, §277.29]

Referred to in §273.4

**277.30 Vacancies filled by election.** When vacancies are to be filled at a regular election, the election shall be for the number of years required to fill the vacancy and until a successor is elected, or appointed, and qualified. [C73, §1802; C97, §2754; S13, §2754; C24, 27, §4199; C31, 35, §4216-c30; C39, §4216.30; C46, 50, 54, §277.30]

**277.31 Surrendering office.** Each school officer or member of the board upon the termination of his term of office shall immediately surrender to his successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor. [R60, §2080; C73, §1791; C97, §2770; C24, 27, §4215; C31, 35, §4216-c31; C39, §4216.31; C46, 50, 54, §277.31]

**277.32 Penalties.** Any school officer willfully violating any law relative to common schools, or willfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein. [C51, §1137; R60, §§2047, 2081; C73, §§1746, 1786; C97, §2822; C24, 27, §4216; C31, 35, §4216-c32; C39, §4216.32; C46, 50, 54, §277.32]

**277.33 Application of general election laws.** So far as applicable all laws relating to the conduct of general elections and voting thereat and the violation of such laws shall, except

as otherwise in this chapter provided, apply to and govern all school elections. [C97,§2754; S13,§2754; C24, 27,§4204; C31, 35,§4216-c33; C39, §4216.33; C46, 50, 54,§277.33]

**277.34 Absent voters law.** In the application of the absent voters law as provided for in section 53.1 the secretary of the board shall

perform the duties therein imposed upon the county auditor or clerk of the city or town. In independent districts in cities of the first class the board shall have power to appoint such deputies as are necessary to enable him properly to perform the duties imposed by this section. [S13,§2754; C24, 27,§4204; C31, 35, §4216-c34; C39,§4216.34; C46, 50, 54,§277.34]

CHAPTER 278  
POWERS OF ELECTORS

Referred to in §273.2

278.1 Enumeration.

278.2 Submission of proposition.

278.3 Special subdistrict schoolhouse tax.

**278.1 Enumeration.** The voters at the regular election shall have power to:

1. Direct a change of textbooks regularly adopted.

2. Direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof, provided, however, that nothing herein shall be construed to prevent the sale or lease of real or other property by the board of directors without an election to the extent authorized in section 297.22.

3. Determine upon additional branches that shall be taught.

4. Instruct the board that school buildings may or may not be used for meetings of public interest.

5. Direct the transfer of any surplus in the schoolhouse fund to the general fund.

6. Authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses.

7. Vote a schoolhouse tax, not exceeding two and one-half mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted for the erection of schoolhouses, not including interest on bonds, procuring libraries for and opening roads to schoolhouses.

8. Authorize the establishment and maintenance in each district of one or more schools of a higher order than an approved four-year high school course. [C51,§1115; R60,§§2028, 2033; C73,§§1717, 1807; C97,§2749; C24, 27, 31, 35, 39,§4217; C46, 50, 54,§278.1; 56GA, ch 140,§1]

Referred to in §297.25

**278.2 Submission of proposition.** The board may, and upon the written request of five voters of any school township or rural independent or consolidated district, or of twenty-five voters of any city or town independent district having a population of five thousand or less, or of fifty voters of any other city independent district or of any district in which registration of any of the voters is required, shall provide in the notice for the regular election for submitting any proposition authorized by law to the voters. All propositions shall be voted upon by ballot, or by voting machine where required, in substantially the form indicated in sections 49.45 and 49.47; and the voter shall indicate his vote in the manner designated in section 49.46, or indicate it on the voting machine, as the case may be. [R60, §2028; C97,§2749; C24, 27, 31, 35, 39,§4218; C46, 50, 54,§278.2]

**278.3 Special subdistrict schoolhouse tax.** At the regular subdistrict election or at a special subdistrict election called for that purpose, the voters may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township, ten days previous notice having been given, but the amount so voted, including the amount voted by the school township, shall not exceed in the aggregate the sum of three and three-fourths mills on the dollar. The sum thus voted shall be certified forthwith by the secretary of said subdistrict election to the secretary of the school township, and shall be levied by the board of supervisors only on the property within the subdistrict. [R60,§§2033, 2034, 2037, 2088; C73,§1778; C97,§2753; C24, 27, 31, 35, 39,§4219; C46, 50, 54,§278.3]

CHAPTER 279

DIRECTORS—POWERS AND DUTIES

279.1 Organization.

279.2 Special meetings.

279.3 Appointment of secretary and treasurer.

279.4 Quorum.

279.5 Temporary officers.

279.6 Vacancies filled by board—qualification—tenure.

279.7 Vacancies filled by special election—qualification—tenure.

279.8 General rules—bonds of employees.

279.9 Use of tobacco.  
 279.10 School year.  
 279.11 Number of schools—attendance—terms.  
 279.12 Contracts—election of teachers.  
 279.13 Contracts with teachers—automatic continuation—exchange of teachers.  
 279.14 Superintendent—term.  
 279.15 Nonemployment of teacher—when.  
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 279.17 County superintendent—duties.  
 279.18 Tuition.  
 279.19 Repealed by 53GA, ch 116,§18.  
 279.20 Repealed by 53GA, ch 116,§18.  
 279.21 Delegating authority to subdirector.  
 279.22 School census.  
 279.23 Visiting schools.  
 279.24 Discharge of teacher.

279.25 Insurance—supplies—textbooks.  
 279.26 Claims.  
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 279.28 Settlement with treasurer.  
 279.29 Compensation of officers.  
 279.30 Annual settlements.  
 279.31 Transfer of funds.  
 279.32 Financial statement—publication.  
 279.33 Other districts—filing statement.  
 279.34 Summary of warrants published.  
 279.35 Employment of counsel.  
 279.36 Industrial exposition.  
 279.37 Water closets.  
 279.38 Shade trees.  
 279.39 Bird day.  
 279.40 Sick leave.

**279.1 Organization.** The board of directors of each school corporation shall meet and organize at two o'clock p. m., or at seven-thirty o'clock p. m., if so ordered by the president of the board, on the third Monday in March each year at some suitable place to be designated by the secretary. Notice of the place and hour of such meeting shall be given by the secretary to each member and each member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member. [C51,§1119; R60,§2036; C73,§§1721, 1722; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39, §4220; C46, 50, 54,§279.1]

40ExGA, SF 101,§17, editorially divided  
 Referred to in §274.36

**279.2 Special meetings.** Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, or by registered letter, but attendance shall be a waiver of notice. [C51,§1121; R60,§2036; C73,§1722; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39,§4221; C46, 50, 54, §279.2]

**279.3 Appointment of secretary and treasurer.** At the meeting of the board the first secular day in July the board shall appoint a secretary who shall not be a teacher or other employee of the board. It shall also, except in districts composed in whole or in part of a city or town, appoint a treasurer. Such officers shall be appointed from outside the membership of the board for terms of one year beginning with the first secular day in July which appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following their appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and shall hold office until their successors are appointed and qualified. [C51,§1119; R60,§2035; C73,§1721; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39,§4222; C46, 50, 54,§279.3]

**279.4 Quorum.** A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [C51,§1120; R60,§§2037, 2038, 2079; C73, §§1730, 1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24, 27, 31, 35, 39,§4223; C46, 50, 54, §279.4]

42GA, ch 87,§1, editorially divided

**279.5 Temporary officers.** The board shall appoint a temporary president or secretary, in the absence of the regular officers. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730, 1738; C97, §§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24, §4223; C27, 31, 35,§4223-a1; C39,§4223.1; C46, 50, 54,§279.5]

**279.6 Vacancies filled by board—qualification—tenure.** Vacancies occurring among the officers or members of a school board shall be filled by the board by appointment. A person so appointed to fill a vacancy in an elective office shall hold until the organization of the board the third Monday in March immediately following the next regular election and until his successor is elected and qualified. A person appointed to fill a vacancy in an appointive office shall hold such office for the residue of the unexpired term and until his successor is appointed and qualified. Any person so appointed shall qualify within ten days thereafter in the manner required by section 277.28. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730, 1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24,§4223; C27, 31, 35,§4223-a2; C39,§4223.2; C46, 50, 54,§279.6]

Referred to in §275.25

**279.7 Vacancies filled by special election—qualification—tenure.** In any case where a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of such board have not filled such vacancy within ten days after the occurrence thereof, or when the board is reduced below a quorum for any cause, the secretary of the board, or if there be no secretary, the county superintendent of schools shall call a special election in the district, subdistrict, or subdistricts, as the case may be, to fill such

vacancy or vacancies, giving the notices required by law for such special elections, which election shall be held not sooner than ten days nor later than fourteen days thereafter. In any case where the secretary fails for more than three days to call such election, the county superintendent shall call it by giving the notices required by law for special elections.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 277.28 and shall hold office for the residue of the unexpired term and until his successor is elected, or appointed, and qualified. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730, 1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24,§4223; C27, 31, 35,§4223-b1; C39,§4223.3; C46, 50, 54,§279.7]

Referred to in §275.25

**279.8 General rules—bonds of employees.**

The board shall make rules for its own government and that of the directors, officers, teachers, and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and aid in the enforcement of the same, and require the performance of duties by said persons imposed by law and the rules.

Employees of a school corporation maintaining a high school who have the custody of funds belonging to the corporation or funds derived from extracurricular activities and other sources in the conduct of their duties, shall be required to furnish suitable bond indemnifying the corporation or any activity group connected with the school against loss, and employees who have the custody of property belonging to the corporation or any activity group connected with the school may be required to furnish such bond. Said bond or bonds may be in such form and penalty as the board may approve and the premiums on same shall be paid from the general fund of the corporation. [R60,§2037; C97,§2772; S13,§2772; C24, 27, 31, 35, 39,§4224; C46, 50, 54,§279.8]

<sup>4)</sup>ExGA, SF 101,§21, editorially divided

**279.9 Use of tobacco.** Such rules shall prohibit the use of tobacco and other narcotics in any form by any student of such schools and the board may suspend or expel any student for any violation of such rule. [S13,§2772; C24, 27, 31, 35, 39,§4225; C46, 50, 54,§279.9]

**279.10 School year.** The school year shall begin on the first of July and each school regularly established shall continue for at least thirty-six weeks of five school days each and

may be maintained during the entire calendar year. [R60,§§2023, 2037; C73,§§1724, 1727; C97,§2773; S13,§2773; C24, 27, 31, 35, 39,§4226; C46, 50, 54,§279.10]

**279.11 Number of schools—attendance—terms.** The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law. [R60,§§2023, 2037; C73,§§1724, 1727; C97,§2773; S13,§2773; C24, 27, 31, 35, 39,§4227; C46, 50, 54,§279.11]

**279.12 Contracts—election of teachers.** The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, but the board may authorize any subdirector to employ teachers for the school in his subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond his term of office. [C73,§§1723, 1757; C97,§2778; SS15,§2778; C24, 27, 31, 35, 39,§4228; C46, 50, 54,§279.12]

**279.13 Contracts with teachers—automatic continuation—exchange of teachers.** Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days, or month of four weeks, and that the same shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time, until such contract shall have been released, and such other matters as may be agreed upon, which may include employment for a term not exceeding the ensuing school year, except as otherwise authorized, and payment by the calendar or school month, signed by the president and teacher, and shall be filed with the secretary before the teacher enters upon performance of the contract but no such contract shall be entered into with any teacher for the ensuing year or any part thereof until after the organization of the board.

Boards of school directors shall have power to arrange for an exchange of teachers in the public schools under their jurisdiction with other public school corporations either within or without the state or the United States on such terms and conditions as are approved by the state superintendent of public instruction and when so arranged and approved the board may continue to pay the salary of the teacher exchanged as provided in the contract between said teacher and the board for a period of one year, and such teacher shall not lose any privileges of tenure, old-age and survivors' insurance, or certification as a result of such exchange. Said contract

may be renewed each year as determined by the employing school board provided that the visiting exchange teacher is paid in full for the service rendered by the school authorities with whom his contract is made. Such exchange teachers must have qualifications equivalent to the regular teacher employed by the board and who is serving as the exchange teacher and must secure a special certificate covering the subjects designated for him to teach in the public schools in which the instruction is given. The state superintendent of public instruction is hereby authorized to formulate, establish, and enforce any reasonable regulation necessary to govern the exchange of teachers as provided in this paragraph, including the waiver of Iowa certification requirements for teachers who are regularly certificated or licensed in the jurisdiction from which they come.

Said contract shall remain in force and effect for the period stated in the contract and thereafter shall be automatically continued in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the teacher, until terminated as hereinafter provided. On or before April 15, of each year the teacher may file his written resignation with the secretary of the board of directors, or the board may by a majority vote of the elected membership of the board, cause said contract to be terminated by written notification of termination, by a certified letter mailed to the teacher not later than the tenth day of April; in event of such termination, it shall take effect at the close of the school year in which the contract is terminated by either of said methods. The teacher shall have the right to protest the action of the board, and to a hearing thereon, by notifying the president or secretary of the board in writing of such protest within twenty days of the receipt by him of the notice to terminate, in which event the board shall hold a public hearing on such protest at the next regular meeting of the board, or at a special meeting called by the president of the board for that purpose, and shall give notice in writing to the teacher of the time of the hearing on the protest. Upon the conclusion of the hearing the board shall determine the question of continuance or discontinuance of the contract by a roll call vote entered in the minutes of the board, and the action of the board shall be final. The foregoing provisions for termination shall not affect the power of the board of directors to discharge a teacher for cause under the provisions of section 279.24. [R60,§2055; C73,§1757; C97,§2778; SS15,§2778; C24, 27, 31, 35, 39,§4229; C46, 50, 54,§279.13; 57GA, ch 267,§30]

**279.14 Superintendent—term.** The board of directors of any independent school district or school township where there is a township high school shall have power to employ a superintendent of schools for one year. After serving at least seven months, he may be employed for a term of not to exceed three

years, but such re-election or re-employment shall not be prior to the organization of the board of the year during which an existing contract expires. He shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section. [R60,§2037; C73,§1726; C97,§2776; SS15,§2778; C24, 27, 31, 35, 39,§4230; C46, 50, 54, §279.14]

**279.15 Nonemployment of teacher—when.** No contract shall be entered into with any teacher to teach an elementary school when the average daily attendance of elementary pupils in such school the last preceding term therein was less than eight such pupils of school age, resident of the district or subdistrict, as the case may be, nor shall any contract be entered into with any teacher to teach an elementary school for the next ensuing term when it is apparent that the average daily attendance of elementary pupils in such school will be less than eight or the enrollment less than ten such pupils of school age, resident of the district or subdistrict, as the case may be, regardless of the average daily attendance in such school during the last preceding term, unless the parents or guardians of ten or more such elementary children subscribe to a written statement sworn to before the county superintendent or a notary public certifying that such children will enroll in and will attend such elementary school if opened and secure from the county superintendent written permission authorizing the board to contract with a teacher for such school for a stated period of time not to exceed three months.

When natural obstacles to transportation of pupils to another school in the same or in another corporation or other conditions make it clearly inadvisable that such elementary school be closed, the county superintendent may authorize the board in writing to contract with a teacher for such school for a stated period of time not to exceed three months.

Any contract with any teacher which is made in violation of the provisions of this section shall be null and void from its inception and no compensation shall be due or paid to any teacher who enters into a contract in violation of the provisions of this section.

When any school board persists in operating its school in violation of the provisions of this section it shall be the duty of the county attorney to bring action for injunction on request of the county superintendent. [C24, 27, 31, 35, 39,§4231; C46, 50, 54,§279.15; 57GA, ch 132,§1]

Amendments effectual for school year 1958-1959

**279.16 School privileges when school closed.** If a school is closed for lack of pupils, the board of directors of such school corporation shall designate an approved public school or schools for attendance and shall see that necessary arrangements are made with the desig-

nated school or schools for school facilities and transportation. The resident district shall be responsible for the tuition and for transportation as required by law for all pupils attending the designated school. Immediately, on the closing of the school, the secretary of the board of education shall notify the parents of the school designated for attendance. Designations shall be made as provided in chapter 285. [C24, 27, 31, §§4232, 4233; C35, §§4233-e1, -e4; C39, §§4233.1, 4233.4; C46, §§279.16, 279.19; C50, 54, §279.16]

Referred to in §279.17

**279.17 County superintendent — duties.** Where a school has been closed and the board has failed to arrange for school facilities, as provided in section 279.16, at least twenty days before the time the school would otherwise begin, it shall be the duty of the county superintendent to notify the president of the board of such corporation of such failure, and if the board does not arrange for school facilities within ten days thereafter, it shall then become the duty of the county superintendent to make such arrangements. [C35, §4233-e2; C39, §4233.2; C46, 50, 54, §279.17]

**279.18 Tuition.** The tuition cost to be mutually agreed upon by the respective boards shall be paid by the home district and shall be equal to the average cost per elementary child (including both resident and tuition students) in average daily attendance in the tuition-receiving district for the preceding year. Such tuition rates shall include expenditures from the general fund for general control, instruction, auxiliary agencies except transportation costs, co-ordinate activities, operation of plant, maintenance of plant, fixed charges including insurance on buildings and contents, capital, interest paid for debt service from the general fund, interest paid for debt service and retirement of bonds from the schoolhouse fund. A pro rata charge for depreciation on buildings shall be made at the rate of two percent per annum on the appraised value, less bonded indebtedness thereon, of all buildings owned by the school corporation and used for elementary school purposes, but not exceeding the maximum tuition rate as determined by the state superintendent of public instruction as prescribed in section 282.24. No depreciation charge shall be made for the portion of the initial cost of buildings and equipment purchased with federal grants. On or before July 15, 1953, the board in each school corporation accepting tuition pupils shall cause its buildings to be appraised and an itemized statement of the results of the appraisal filed with the county superintendent. Such statement shall constitute the basis for the hereinabove provided depreciation charge. Such appraisal shall be made by a board comprised of the county or city assessor and one member appointed by the local school corporation and one member appointed by the county board of education.

The tuition rates and the computation there-

of shall be filed with the county board of education not later than July 30 for its review and approval. Receiving districts cannot receive tuition until approval is granted by the county board of education. The right of appeal shall be as provided in section 285.13. [C35, §4233-e3; C39, §4233.3; C46, 50, 54, §279.18]

Referred to in §§282.7, 285.1

**279.19 and 279.20** Repealed by 53GA, ch 116, §18. See §§279.16, 285.1.

**279.21 Delegating authority to subdirector.** The board of directors of a school township may authorize the director of each subdistrict, subject to its regulations, to make contracts for the purchase of fuel, the repairing or furnishing of schoolhouses, and all other matters necessary for the convenience and prosperity of the schools in his subdistrict. Such contracts shall be binding upon the school township only when approved by the president of the board, and must be reported to the board. The powers specified in this section cannot be exercised by individual directors of independent districts. [C51, §1142; R60, §2053; C73, §1753; C97, §2785; S13, §2785; C24, 27, 31, 35, 39, §4234; C46, 50, 51, §279.21]

S13, §2785, editorially divided

**279.22 School census.** Each subdirector shall, between the first and fifteenth days of June in each even-numbered year, make a list, on blanks prepared for that purpose by the superintendent of public instruction, showing, as of June 1, the following:

1. The name and post-office address of parents and guardians in his subdistrict with the name, sex, and age of all children or wards residing in the subdistrict who are between five and twenty-one years of age.
2. The name, age, and post-office address of every person resident of the subdistrict without regard to age so blind as to be unable to acquire an education in the common schools.
3. The name, age, and post-office address of every person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools.
4. The name, sex, age, and disability of every physically handicapped or feeble-minded person of school age, with the name and post-office address of the parent or guardian.

By the twentieth day of said month, the subdirector shall send this list to the secretary of the school township who shall make full record thereof as required by law. [C51, §1142; R60, §2052; C73, §§1754, 1755; C97, §2785; S13, §2785; C24, 27, 31, 35, 39, §4235; C46, 50, 54, §279.22]

Similar provisions, §291.9  
See also §§299.16, 299.17

**279.23 Visiting schools.** The board shall provide for visiting the schools of the district by one or more of its members and aid the teachers in the government thereof, and in



enforcing the rules and regulations of the board. [C51,§1147; R60,§2037; C73,§1734; C97, §2782; C24, 27, 31, 35, 39,§4236; C46, 50, 54, §279.23]

C97,§2782, editorially divided

**279.24 Discharge of teacher.** The board may, by a majority vote, discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor. [C73,§1734; C97,§2782; C24, 27, 31, 35, 39, §4237; C46, 50, 54,§279.24]

Referred to in §§257.24, 279.13

**279.25 Insurance—supplies —textbooks.** It may provide and pay out of the general fund to insure school property such sum as may be necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools thereof to an amount not exceeding two hundred dollars in any one year for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided. [C73,§1729; C97,§2783; S13, §2783; C24, 27, 31, 35, 39,§4238; C46, 50, 54, §279.25]

**279.26 Claims.** The board shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed. In any district in which the board consists of five or more members, an audit made by one or more members of the board designated by the board or by a certified public accountant employed by the board, and certified to the board by such member or members of the board or by such accountant, shall satisfy the requirements of this section with respect to the audit of a claim. [C51,§§1146, 1149; R60,§§2037, 2038; C73,§§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24, 27, 31, 35, 39, §4239; C46, 50, 54,§279.26; 57GA, ch 133,§1]

Exceptions, §11.21

**279.27 Exceptions.** Each warrant shall be made payable to the person entitled to receive such money. The board of directors of any school district may, however, by resolution of record authorize the secretary to issue warrants when said board of directors is not in session in payment of freight, drayage, express, postage, printing, water, light, and telephone rents, but only upon duly verified bills for same filed with the secretary, and for the payment of salaries pursuant to the terms of a written contract and said secretary shall either deliver in person or mail said warrants to the payee. Each such warrant shall be made payable only to the person performing the service or furnishing the supplies for which said warrant makes payment, and shall state the

purpose for which said warrant is issued. All bills and salaries for which warrants are issued prior to audit and allowance by the board as provided herein shall be passed upon by the board of directors at the first meeting thereafter and shall be entered of record in the regular minutes of the secretary. [C35,§4239-g1; C39,§4239.1; C46, 50, 54,§279.27]

**279.28 Settlement with treasurer.** The board shall from time to time examine the accounts of the treasurer and make settlements with him. [C51,§§1146, 1149; R60,§§2037, 2038; C73, §§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24,§4239; C27, 31, 35,§4239-a1; C39,§4239.2; C46, 50, 54,§279.28]

**279.29 Compensation of officers.** The board shall fix the compensation to be paid the secretary. No member of the board or treasurer shall receive compensation for official services, except that in school townships, rural or village independent districts, and in consolidated districts that contain a city or town having a population less than one thousand, the board may pay a legally qualified school treasurer a reasonable compensation. [C51, §§1146, 1149; R60,§§2037, 2038; C73,§§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24,§4239; C27, 31, 35,§4239-a3; C39,§4239.3; C46, 50, 54,§279.29]

**279.30 Annual settlements.** On the first secular day in July, the board of each school township and with it the members of the board who retired in the preceding March, and the board of each independent school corporation, shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the thirtieth day of June preceding, and transact such other business as may properly come before it. The treasurer at the time of such settlement shall furnish the board with a sworn statement from each depository showing the balance then on deposit in such depository. Should the secretary or treasurer fail to make proper reports for such settlement, the board shall take action to secure the same. [SS15,§2757; C24, 27, 31, 35, 39,§4240; C46, 50, 54,§279.30]

40ExGA, SF 101,§18, editorially divided

**279.31 Transfer of funds.** If after the annual settlement it shall appear that there is a surplus in the general fund, the board may, in its discretion, transfer any or all of such surplus to the schoolhouse fund. [C24, 27, 31, 35, 39,§4241; C46, 50, 54,§279.31]

**279.32 Financial statement—publication.** In each consolidated district and in each independent city or town school district, the board shall, during the first week of July of each year, publish by one insertion in at least one newspaper, if there is a newspaper published in said district, a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds for the preceding school year. In all such districts of more than one hundred

twenty-five thousand population, the statement of disbursements is to show the names of the persons, firms, or corporations, and the total amount paid to each during the school year. [C51,§1146; R60,§2037; C73,§1732; C97,§2781; C24, 27, 31, 35, 39,§4242; C46, 50, 54,§279.32]

**279.33 Other districts—filing statement.** In every other school district, and in every school district wherein no newspaper is published, the president and secretary of the board of directors thereof shall file the above statement with the county superintendent of schools during the first week of July of each year and shall post copies thereof in three conspicuous places in the district. [C27, 31, 35,§4242-b1; C39, §4242.1; C46, 50, 54,§279.33]

**279.34 Summary of warrants published.** In each consolidated district and in each independent city or town school district, except districts of over one hundred twenty-five thousand population, the board shall quarterly publish by one insertion in at least one newspaper published in the district, if there is a newspaper published in the district, a statement verified by affidavit of the secretary of the board showing a summary of the proceedings of the board pertaining to financial matters or expenses to the district for the previous quarter, including the list of all warrants issued by the board, the names of the persons, firms or corporations receiving same, the amount thereof and the reason therefor; except that warrants issued to persons regularly employed by the school district for services regularly performed by them need be listed not oftener than annually. The fee for publication of the statement provided for herein shall not exceed one-half of the legal publication fee provided by statute for the publication of legal notices. [C46, 50, 54,§279.34]

**279.35 Employment of counsel.** In all cases where actions may be instituted by or against any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable. [R60, §2040; C73,§1740; C97,§2759; C24, 27, 31, 35, 39, §4245; C46, 50, 54,§279.35]

C97,§2759, editorially divided

**279.36 Industrial exposition.** The board of any school corporation, or the director of any subdistrict deeming it expedient, may, under the direction of the county superintendent, hold and maintain an industrial exposition in connection with the schools of such district, such exposition to consist in the exhibit of useful articles invented, made, or raised by the pupils, by sample or otherwise, in any of the departments of mechanics, manufacture, art, science, agriculture, and the kitchen, such exposition to be held in the schoolroom, on a school day, as often as once during a term, and not oftener than once a month, at which the pupils participating therein shall be required to explain, demonstrate, or present the kind and plan of the article exhibited, or give its method of culture; and work in these

several departments shall be encouraged, and patrons of the school invited to be present at each exhibition. [C97,§2786; C24, 27, 31, 35, 39, §4246; C46, 50, 54,§279.36]

**279.37 Water closets.** It shall give special attention to the matter of convenient water closets or privies, and provide on every schoolhouse site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the schoolhouse, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts, where it is inconvenient or undesirable to erect two separate outhouses, several closets may be included under one roof, and if outside the schoolhouse each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length. [C97, §2784; C24, 27, 31, 35, 39,§4247; C46, 50, 54, §279.37]

**279.38 Shade trees.** The board of each school corporation shall cause to be set out and properly protected twelve or more shade trees on each schoolhouse site where such trees are not growing. The county superintendent, in visiting the several schools of his county, shall call the attention of any board neglecting to comply with the requirements of this section to any failure to carry out its provisions. [C97, §2787; C24, 27, 31, 35, 39,§4248; C46, 50, 54, §279.38]

**279.39 Bird day.** The twenty-first day of March of each year is hereby set apart and designated as bird day. It shall be the duty of all public schools to observe said day by devoting a part thereof to a special study of birds, their habits, usefulness, and the best means of protection. Should such date fall on other than a school day, such day shall be observed on the next regular school day. [C24, 27, 31, 35, 39,§4249; C46, 50, 54,§279.39]

**279.40 Sick leave.** Public school employees are granted leave of absence for personal illness or injury with full pay in the following minimum amounts:

1. The first year of employment. . . . 5 days.
2. The second year of employment. . . 6 days.
3. The third year of employment. . . . 7 days.
4. The fourth year of employment. . . 8 days.
5. The fifth and subsequent years of employment . . . . . 9 days.

The above amounts shall apply only to consecutive years of employment in the same school district and unused portions shall be cumulative to a maximum of thirty-five days. The school board shall, in each instance, require such reasonable evidence as it may desire confirming the necessity for such leave of absence. [C50, 54,§279.40]

CHAPTER 280  
COURSES OF STUDY

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**280.1 Right to prescribe.** The board shall prescribe courses of study for the schools of the corporation. [R60,§2037; C97,§2772; S13, §2772; C24, 27, 31, 35, 39,§4250; C46, 50, 54,§280.1]

**280.2 Definitions.** The expression "public school" means any school maintained in whole or in part by taxation; the expression "private school" means any other school. [C24, 27, 31, 35, 39,§4251; C46, 50, 54,§280.2]

**280.3 Common school studies.** Reading, writing, spelling, arithmetic, grammar, geography, physiology, United States history, history of Iowa, and the principles of American government shall be taught in all such schools. [S13,§2823-a; C24, 27, 31, 35, 39,§4252; C46, 50, 54,§280.3]

40ExGA, SF 111,§1, editorially divided

**280.4 Display of United States flag.** The board of directors of each public school corporation and the authorities in charge of each private school shall provide and maintain a suitable flagstaff on each school site under its control, and a suitable United States flag therefor, which shall be raised on all school days when weather conditions are suitable. [S13, §2804-a, b; C24, 27, 31, 35, 39,§4253; C46, 50, 54, §280.4]

Display of flag on public buildings, §31.3

**280.5 Medium of instruction.** The medium of instruction in all secular subjects taught in all of the schools, public and private, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; but nothing herein shall prohibit the teaching and studying of foreign languages, as such, as a part of the regular school course in any such school. Any person violating any of the provisions of this section shall be fined not less than twenty-five dollars nor more than one hundred dollars. [C24, 27, 31, 35, 39,§4254; C46, 50, 54, §280.5]

**280.6 American citizenship.** Each public and private school located within the state shall be required to teach the subject of American citizenship in all grades. [C24, 27, 31, 35, 39,§4255; C46, 50, 54,§280.6]

**280.7 Constitution of United States and state.** In all public and private schools located

within the state there shall be given regular courses of instruction in the constitution of the United States and in the constitution of the state of Iowa. Such instruction shall begin not later than the opening of the eighth grade, and shall continue in the high school course to an extent to be determined by the superintendent of public instruction. [C24, 27, 31, 35, 39,§4256; C46, 50, 54,§280.7]

**280.8 American history and civics.** Public and private high schools, academies, and other institutions ranking as secondary schools which maintain three-year or longer courses of instruction shall offer, and all students shall be required to take, a minimum of instruction in American history and civics of the state and nation to the extent of two semesters, and schools of this class which have four-year or longer courses shall offer in addition one semester in social problems and economics. [C24, 27, 31, 35, 39,§4257; C46, 50, 54, §280.8]

**280.9 Bible.** The Bible shall not be excluded from any public school or institution in the state, nor shall any child be required to read it contrary to the wishes of his parent or guardian. [R60,§2119; C73,§1764; C97,§2805; C24, 27, 31, 35, 39,§4258; C46, 50, 54,§280.9]

**280.10 Stimulants, narcotics, and poisons.** The board shall require all teachers to give and all scholars to receive instruction in physiology and hygiene, which study in every division of the subject shall include the effects upon the human system of alcoholic stimulants, narcotics, and poisonous substances. The instruction in this branch shall of its kind be as direct and specific as that given in other essential branches, and each scholar shall be required to complete the part of such study in his class or grade before being advanced to the next higher, and before being credited with having completed the study of the subject. [C97,§2775; C24, 27, 31, 35, 39,§4259; C46, 50, 54,§280.10]

**280.11 Dental clinics.** Boards of school directors in all school districts containing one thousand or more inhabitants are hereby authorized to establish and maintain in connection with the schools of such districts, a dental clinic for children attending such schools, and

to offer courses of instruction on mouth hygiene. Said boards are hereby empowered to employ such legally qualified dentists and dental hygienists as may be necessary to accomplish the purpose of this section, and pay the expense of the same out of the general fund. [C24, 27, 31, 35, 39,§4260; C46, 50, 54, §280.11]

**280.12 Music.** The elements of vocal music, including, when practical, the singing of simple music by note, shall be taught in all of the public schools, and all teachers teaching in schools where such instruction is not given by special teachers shall be required to satisfy the county superintendent of their ability to teach the elements of vocal music in a proper manner; provided, however, that no teacher shall be refused a certificate or have the grade of his or her certificate lowered on account of lack of ability to sing. [S13,§2823-s; C24, 27, 31, 35, 39,§4262; C46, 50, 54,§280.12]

**280.13 Physical education.** The teaching of physical education exclusive of interscholastic athletics, including effective health supervision and health instruction, of both sexes, shall be required in every public elementary and secondary school of the state. Modified courses of instruction shall be provided for those pupils physically or mentally unable to take the courses provided for normal children. Said subject shall be taught in the manner prescribed by the state superintendent of public instruction. [C24, 27, 31, 35, 39,§4263; C46, 50, 54,§280.13]

**280.14 Length of course.** The course of physical education shall occupy periods each week totaling not less than fifty minutes, exclusive of recesses, throughout each school term. The conduct and attainment of the pupils in such course shall be marked as in other subjects and it shall form part of the requirements for promotion or graduation of every pupil in attendance, but no pupil shall be required to take such instruction whose parents or guardian shall file a written statement with the school principal or teacher that such course conflicts with his religious belief. [C24, 27, 31, 35, 39,§4264; C46, 50, 54,§280.14]

**280.15 Physical education course.** Every high school, state college, university, or normal school giving teacher-training courses shall provide a course or courses in physical education. [C24, 27, 31, 35, 39,§4265; C46, 50, 54, §280.15]

**280.16 Kindergarten department.** The board of any independent school district upon the petition of the parents or guardians of twenty-five or more children of kindergarten age, may establish and maintain such a kindergarten in said district. No petition shall be effective unless the school in connection with which

such kindergarten is desired is named in the petition and all persons who shall be qualified to sign such petitions shall be residents of the section or neighborhood served by that school. The board of education shall be the judge of the sufficiency of the petition. Any kindergarten teacher shall hold a certificate certifying that the holder thereof has been examined upon kindergarten principles and methods, and is qualified to teach in kindergartens. [C97,§2777; C24, 27, 31, 35, 39,§4266; C46, 50, 54, §280.16]

**280.17 Higher and graded schools.** The board may establish graded and high schools and determine what branches shall be taught therein, but the course of study shall be subject to the approval of the state board of public instruction. Whenever the board in a school township establishes a high school, such high school can be discontinued only by an affirmative vote of a majority of the votes cast for and against such proposition at an election which may be called by the county superintendent of schools upon a petition for such election being presented signed by twenty-five percent of the electors in such township. [R60,§2037; C73, §1726; C97,§2776; C24, 27, 31, 35, 39,§4267; C46, 50, 54,§280.17]

**280.18 Junior colleges.** The board, upon approval of the state superintendent of public instruction, and when duly authorized by the voters, shall have power to establish and maintain in each district one or more schools of higher order than an approved four-year high school course. Said schools of higher order shall be known as public junior colleges and may include courses of study covering one or two years of work in advance of that offered by an accredited four-year high school. The state superintendent of public instruction, subject to the approval of the state board of public instruction, shall prepare and publish from time to time standards for junior colleges, provide adequate inspection for junior colleges, and recommend for accrediting such courses of study offered by junior colleges as may meet the standards determined.

Provided, however, that when a proposition to authorize the establishment of a junior college is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election.

No public junior college shall be established in any school district having a population of less than five thousand.

Nothing in this section shall prohibit any school district that now has a junior college from temporarily discontinuing the same and starting it again at some future time. [C27, 31, 35,§4267-b1; C39,§4267.1; C46, 50, 54,§280.18]

## CHAPTER 281

## EDUCATION OF HANDICAPPED CHILDREN

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| 281.1 Division of education created.         | 281.7 Examinations of children.                    |
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**281.1 Division of education created.** There is created within the state department of public instruction a division of special education for the promotion, direction, and supervision of special education for handicapped children in the schools under the supervision and control of the department. The state superintendent, subject to the approval of the state board of public instruction, is authorized to organize the division and to employ the necessary qualified personnel to carry out the provisions of this chapter. [C46, 50, 54, §281.1]

**281.2 Definition.** The term "handicapped children" shall be interpreted for the purpose of this chapter as either of the following:

1. Children under twenty-one years of age who are crippled or have defective sight or are hard of hearing or have an impediment in speech or heart disease or tuberculosis, or who by reason of physical defects cannot attend the regular public school classes with normal children.

2. Children under twenty-one years who are certified by a practicing physician to be emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

Provided, that the term "handicapped children" shall not include the blind, the deaf, and other physically and mentally handicapped children attending special schools or institutions provided by the state. [C46, 50, 54, §281.2; 56GA, ch 141, §1]

**281.3 Powers and duties of state department.** The division of special education, subject to the approval of the state board, shall have the following duties and powers:

1. To aid in the organization of special schools, classes and instructional facilities for handicapped children, and to supervise the system of special education for handicapped children.

2. To establish standards for teachers to be employed under the provisions of this chapter, to give examinations for teachers to qualify to teach handicapped children, and to issue certificates to teachers who qualify for such teaching.

3. To adopt plans for equitable reimbursement, in whole or in part, for costs of carrying out programs of special instruction, as provided for herein.

4. To adopt plans for the establishment and maintenance of day classes, schools, home in-

struction, and other methods of special education for handicapped children.

5. To purchase and otherwise acquire special equipment, appliances, and other aids for use in special education, and to loan or lease same under such rules and regulations as the department may prescribe.

6. To prescribe courses of study, and curricula for special schools, special classes and special instruction of handicapped children, including physical and psychological examinations, and to prescribe minimum requirements for handicapped children to be admitted to any such special schools, classes or instruction.

7. To provide for certification by competent medical and psychological authorities of the eligibility of handicapped children for admission to, or discharge from, special schools, classes or instruction.

8. To initiate the establishment of classes for handicapped children in hospitals and convalescent homes, in co-operation with the management thereof and local school districts or county boards of education.

9. To co-operate with school districts or county boards of education in arranging for any handicapped child to attend school in a district other than the one in which he resides when there is no available special school, class, or instruction in the districts in which he resides.

10. To co-operate with existing agencies such as the state department of social welfare, the state department of public health, the state school for the deaf, the Iowa braille and sight-saving school, the state tuberculosis sanatorium, the children's hospitals, or other agencies concerned with the welfare and health of handicapped children in the co-ordination of their educational activities for such children.

11. To investigate and study the needs, methods and costs of special education for handicapped children.

12. To make rules and regulations to carry out the foregoing powers and duties. [C46, 50, 54, §281.3; 56GA, ch 141, §2]

**281.4 Powers of board of directors.** The board of directors of any school district or any county board of education, with the approval of the state department of public instruction, may provide transportation and may establish and organize one or more suitable special classes, or provide for instruction in regular classes or in the home, and may provide spe-

cial facilities and equipment for special classes and special schools or home instruction as a part of the local or county school system for such handicapped children as required for their effective education, a type of instruction different from that ordinarily given as classroom instruction. In the event that there are not enough children of any special type in any school district to warrant the establishment of a special class, such children may be instructed in any nearby school district in which such special classes have been established, by mutual agreement of the board of directors of the school district affected, and by payment of regular tuition, or the county board of education may establish such special classes in co-operation with local boards. The local board of directors of a school district or county board of education with approval by the state department of public instruction may prescribe the use of such other aids to special education as physical therapy, corrective gymnastics, rest periods, warm lunches, social counseling, and vocational counseling and training.

The board of directors of each school district or county board of education in each county providing for handicapped children shall employ qualified teachers certified by the authority provided by law as teachers for children requiring such special education. The maximum number of pupils per teacher shall be determined by the board of directors in accordance with the rules and regulations of the state department of public instruction. [C46, 50, 54, §281.4; 56GA, ch 141, §3]

**281.5 Secretary's report.** In order that the state board of public instruction may estimate the financial requirements for the program of state aid for education of handicapped children, it shall be the duty of the secretary of each school district in connection with the annual school census to file a report with the county superintendent each year in July on blanks prepared for that purpose by the state division of special education listing the names, sex, age, post-office address, and disability of every physically handicapped or mentally handicapped person of school age, together with the name and post-office address of his parent or guardian, and such other pertinent information which the division may require. Copies of these reports shall in turn be sent by the county superintendent to the division of special education on or before August 1.

The state department of public health shall from time to time as requested furnish to the state division of special education information obtained from birth certificates relative to the name, address, and disability of any case of congenital deformity or physical defect. The state crippled children's service shall from time to time as required furnish to the state division of special education the name, address, and disability of all children of their register. [C46, 50, 54, §281.5]

**281.6 Parent's or guardian's duties.** When the school district or county board of education has provided special education facilities as provided herein for any handicapped child, either by admission to a special class or by special instruction, it shall be the duty of the parent or guardian to enroll said child for instruction in such special classes or instruction as may be established, except in the event a doctor's certificate is filed with the secretary of the school district showing that it is inadvisable for the handicapped child to receive the special education provided; all the provisions and conditions of chapter 299 and amendments thereto shall be applicable to this section, and any violations shall be punishable as provided in said chapter. [C46, 50, 54, §281.6; 56GA, ch 141, §4]

**281.7 Examinations of children.** In order to render proper instruction to each handicapped child, the school districts shall certify handicapped children for special instruction in accordance with the requirements set up by the division of special education and shall provide examinations for children preliminary to making certification. The examinations necessary for the certification of handicapped children shall be conducted by a physician licensed to practice medicine by the state board of medical examiners, and whenever available, by a competent psychologist or other person qualified by training to make psychometric examinations. Final decision in case of disagreement or appeal shall be the responsibility of the director\* of the state superintendent of public instruction, who may secure the advice of competent medical and educational authorities including the state department of health, the university hospitals, the state department of social welfare, the superintendent of the state school for the deaf, the superintendent of the Iowa braille and sight-saving school, and the superintendent of the state tuberculosis sanatorium. [C46, 50, 54, §281.7]

\*According to enrolled Act

**281.8 Exceptions to attendance.** It shall not be incumbent upon the school districts or county boards of education to keep a handicapped child in regular instruction when the child cannot sufficiently profit from the work of the regular class room, nor to keep such handicapped child in the special class or instruction for handicapped children when it is determined that the child can no longer benefit therefrom, or needs more specialized instruction which is available in special state schools.

In the case of any person who, by reason of congenital factors, accident or prolonged illness, has not been able to finish the special education by his or her twenty-first birthday, the period of special education may be continued for not exceeding three years thereafter.

No provision of this chapter shall be construed to require or compel any person who is a member of a well-recognized church or religious denomination and whose religious

convictions, in accordance with the tenets or principles of his or her church or religious denomination, are opposed to medical or surgical treatment for disease to take or follow a course of physical therapy, or submit to medical treatment, nor shall any parent or guardian who is a member of such church or religious denomination and who has such religious convictions be required to enroll a child in any course or instruction which utilizes medical or surgical treatment for disease. [C46, 50, 54, §281.8; 56 GA, ch 141, §5]

**281.9 Reimbursement to districts or county boards.** Any school district or county board of education which has maintained an approved program of special education for handicapped children during any school year shall be entitled to and receive reimbursement from the state for the excess cost of instruction of the children in said program of special education above the cost of instruction of pupils in the regular curriculum of the district or, in the event the program of special education is established by the county board of education, the average cost of the instruction of pupils in the participating districts, which shall be determined in the following manner. The cost of instruction of all pupils exclusive of those in special education shall be determined on a per pupil basis and the total cost of instruction of all pupils in special education shall be determined on a per pupil basis. The excess of cost per pupil in special education shall be the

difference between the cost per pupil of all children exclusive of those in special education, and the cost per pupil in special education; the excess per pupil cost in special education multiplied by the yearly average unit of pupils in special education in the district or county program shall be the amount to which the district or county board shall be entitled and receive by way of reimbursement from the state. The cost per pupil, both as to pupils in special education and in the regular curriculum, shall be based on the following elements: General administration costs, instructional costs, health service, attendance officers, plant operation, plant maintenance, including equipment, transportation and insurance. [C46, 50, 54, §281.9; 56GA, ch 141, §6]

**281.10 Report to state department.** On or before the twentieth of June of each year, each school district or county board of education which has during that year maintained an approved program of special education, shall report to the division of special education on forms provided by it such information as the division may require in order to determine the amount to which the district or county board shall be entitled by way of reimbursement of costs as provided in this chapter. The division may require additional information and upon determining the amount to which the district or county board is entitled shall make its requisition on the state comptroller for warrant therefor. [C46, 50, 54, §281.10; 56GA, ch 141, §7]

## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

- 282.1 School age—nonresidents.
- 282.2 Offsetting tax.
- 282.3 Admission and exclusion of pupils.
- 282.4 Majority vote—suspension.
- 282.5 Readmission of pupil.
- 282.6 Tuition.
- 282.7 Attending in another corporation—payment.
- 282.8 Attending school outside state.
- 282.9 to 282.16, inc. Repealed by 53GA, ch 116, §18.

#### ATTENDANCE OUTSIDE OF HOME DISTRICT

- 282.17 High school outside home district.
- 282.18 Children from charitable institution
- 282.19 Requirements for admission.
- 282.20 Tuition fees—payment.
- 282.21 Collection of tuition fees.
- 282.22 Tuition in charitable institutions.
- 282.23 Tuition when in boarding home.
- 282.24 Tuition rates determined by superintendent.

**282.1 School age — nonresidents.** Persons between five and twenty-one years of age shall be of school age. A board may establish and maintain evening schools for all residents of the corporation regardless of age and for which no tuition need be charged. Nonresident children and those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine. [C73, §1795; C97, §2804; C24, 27, 31, 35, 39, §4268; C46, 50, 54, §282.1]

C97, §2804, editorially divided  
Evening schools, §288.1

**282.2 Offsetting tax.** The parent or guardian whose child or ward attends school in any independent district of which he is not a resi-

dent shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid. [C97, §2804; C24, 27, 31, 35, 39, §4269; C46, 50, 54, §282.2]

#### **282.3 Admission and exclusion of pupils.**

1. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by attendance, or any incorrigible child or any child who in its judgment is so abnormal that his attendance at school will be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school.

2. On and after July 1, 1952, the conditions of admission to public schools for work in the school year immediately preceding the first grade and in the first grade shall be as follows:

No child under the age of six years on the fifteenth of November of the current school year shall be admitted to any public school unless the board of directors of the school (or the county board of education) shall have adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of public instruction and shall have employed a teacher or teachers for this work with standards of training approved by the department of public instruction.

3. No child shall be admitted to school work for the year immediately preceding the first grade unless he is five years of age on or before the fifteenth of November of the current school year.

4. No child shall be admitted to the first grade unless he is six years of age on or before the fifteenth of November of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of public instruction, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of public instruction, may be admitted to first grade at any time before December 31.

5. Nothing in subsections 2, 3, or 4 shall prohibit a school board from requiring the attainment of a greater age than the age requirements herein set forth. [C97,§2782; C24, 27, 31, 35, 39,§4270; C46, 50, 54,§282.3]

**282.4 Majority vote—suspension.** The board may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board. [C73,§§1735, 1756; C97,§2782; C24, 27, 31, 35, 39,§4271; C46, 50, 54,§282.4]

**282.5 Readmission of pupil.** When a scholar is dismissed by the teacher, principal, or superintendent, as above provided, he may be readmitted by such teacher, principal, or superintendent, but when expelled by the board he may be readmitted only by the board or in the manner prescribed by it. [R60,§2054; C73,§§1735, 1756; C97,§2782; C24, 27, 31, 35, 39, §4272; C46, 50, 54,§282.5]

**282.6 Tuition.** Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-

one years of age as they have spent in the military or naval service of the United States before they became twenty-one. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person. [C73,§§1724, 1727; C97,§2773; S13,§2773; C24, 27, 31, 35, 39,§4273; C46, 50, 54,§282.6]

**282.7 Attending in another corporation—payment.** The board of directors in any school district may by record action discontinue any or all of its school facilities. When such action has been taken, the board shall designate an appropriate approved public school or schools for attendance. Tuition shall be paid by the resident district as required in section 279.18 and section 282.20 for all pupils attending designated school, except that high school pupils may attend school of choice and be entitled to tuition, but must attend school designated for attendance to qualify for transportation. Designations shall be made as provided in chapter 285. [C51,§1143; R60,§2024; C73,§1793; C97,§2803; C24, 27, 31, 35, 39,§4274; C46, 50, 54, §282.7]

See §282.24 for maximum tuition rates.

**282.8 Attending school outside state.** The board of directors of school districts located near the state boundaries may designate a school or schools of equivalent standing across the state line for attendance of both elementary and high school pupils when the public school in the adjoining state is nearer than any appropriate public school in his district of residence or in Iowa, as provided in section 282.17. Arrangements shall be subject to reciprocal agreements made between the state superintendent of public instruction of the respective states subject to statutory limitations as to tuition and transportation. A person attending school in another state shall continue to be treated as a pupil of the district of his residence in the apportionment of the current school fund and the payment of state aid. [C31, 35,§§4274-c1,-c2; C39,§§4274.01, 4274.02; C46,§§282.8, 282.9; C50, 54,§282.8; 57GA, ch 128, §2]

**282.9 to 282.16, inc.** Repealed by 53GA, ch 116,§18. See §§282.8, 285.4.

#### ATTENDANCE OUTSIDE OF HOME DISTRICT

**282.17 High school outside home district.** Any person of school age who is a resident of a school corporation which does not offer a four-year high school course, and who has completed the course as approved by the department of public instruction for such corporation, shall be permitted to attend any public high school in the state approved in like manner that will receive him, or may attend any public high school of equivalent standing in an adjoining state, if said school in the adjoining state be nearer to the pupil's residence than any approved public high school in the



state of Iowa, but no board shall pay tuition to a high school outside the state for pupils whose actual residence is nearer to an approved high school in Iowa when measured by the nearest traveled public road. [SS15, §2733-1a; C24, 27, 31, 35, 39, §4275; C46, 50, 54, §282.17]

Referred to in §§282.8, 282.19

**282.18 Children from charitable institution.**

Children who are residents of a charitable institution organized under the laws of this state or residents of the Iowa juvenile home or the Iowa Annie Wittenmyer home and who have completed a course of study for the eighth grade as required by section 282.19 shall be permitted to enter any approved public high school in Iowa that will receive them and the tuition and transportation when required by law shall be paid by the treasurer of state from any money in his hands not otherwise appropriated and upon warrants drawn and signed by the state comptroller on requisition issued by the superintendent of public instruction. The superintendent of public instruction is hereby empowered to require such reports, from such institution and from the high school such pupils attend, as are necessary properly to carry out the provisions of this section. [C39, §4275.1; C46, 50, 54, §282.18; 56GA, ch 142, §1]

Omnibus repeal, 48GA, ch 104, §2

**282.19 Requirements for admission.** Any person applying for admission to any high school under the provisions of section 282.17 shall present to the officials thereof the affidavit of his parent or guardian, or if he have neither, his next friend, that such applicant is entitled to attend the public schools, and a resident of a school district of this state, specifying the district. He shall also present a certificate signed by the county superintendent showing proficiency in the common school branches, reading, orthography, arithmetic, physiology, grammar, civics of Iowa, geography, United States history, penmanship, and music.

No such certificate or affidavit shall be required for admission to the high school in any school corporation when he has finished the common school branches in the same corporation. [SS15, §2733-1a; C24, 27, 31, 35, 39, §4276; C46, 50, 54, §282.19]

Referred to in §282.18

**282.20 Tuition fees—payment.** The school corporation in which such student resides shall pay from the general fund to the secretary of the corporation in which he shall be permitted to enter a tuition fee sufficient to cover the average cost per high school child (including both resident and tuition students) in average daily attendance in the tuition-receiving district in the preceding year. Such tuition rates shall include expenditures from the general fund for general control, instruction, auxiliary agencies except transportation costs, co-ordinate activities, operation of plant, maintenance

of plant, fixed charges including insurance on buildings and contents, capital, interest paid for debt service from the general fund, interest paid for debt service and retirement of bonds from the schoolhouse fund. A pro rata charge for depreciation on buildings shall be made at the rate of two per cent per annum on the appraised value, less bonded indebtedness thereon, of all buildings owned by the school corporation and used for high school purposes, but not exceeding the maximum tuition rate as determined by the state superintendent of public instruction as prescribed in section 282.24. No depreciation charge shall be made for the portion of the initial cost of buildings and equipment purchased with federal grants. On or before July 15, 1953, the board in each school corporation accepting tuition pupils shall cause its buildings to be appraised and an itemized statement of the results of the appraisal filed with the county superintendent. Such statement shall constitute the basis for the hereinabove provided depreciation charge. Such appraisal shall be made by a board comprised of the county or city assessor and one member appointed by the local school corporation and one member appointed by the county board of education.

Tuition charges for regularly established junior high schools not extending below the seventh grade shall be computed in the same manner as prescribed above for high schools, using the costs applicable to junior high schools.

The tuition rates and the computation thereof shall be filed with the county board of education not later than July 30 for its review and approval. Receiving districts cannot receive tuition until approval is granted by the county board of education. The right of appeal shall be as provided in section 285.13.

It shall be unlawful for any school district to rebate to any pupils or their parents, directly or indirectly, any portion of the tuition collected or to be collected or to authorize or permit such pupils to receive at the expense of the district, directly or indirectly, any special compensation, benefit, privilege, or other thing of value that is not and cannot legally be made available to all other pupils enrolled in its schools. Any superintendent or board members responsible for such unlawful act shall each be personally liable to a fine of not to exceed one hundred dollars. Action to recover such penalty or action to enjoin such unlawful act may be instituted by the board of any school district or by a taxpayer in any school district.

On or before February 15 and June 15 of each year the secretary of the creditor district shall deliver to the secretary of the debtor district an itemized statement of such tuition fees. [SS15, §2733-1a; C24, 27, 31, 35, 39, §4277; C46, 50, 54, §282.20; 56GA, ch 143, §1]

Referred to in §§282.7, 285.1

**282.21 Collection of tuition fees.** If payment is not made, the board of the creditor corporation shall file with the auditor of the county

of the pupil's residence a statement certified by its president specifying the amount due for tuition, and the time for which the same is claimed. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, and he shall pay the same accordingly. [SS15,§2733-1a; C24, 27, 31, 35, 39,§4278; C46, 50, 54,§282.21]

Referred to in §275.26

**282.22 Tuition in charitable institutions.** When any child is cared for in any charitable institution in this state which does not maintain a school providing secular instruction, and which institution is organized and operating under the laws of Iowa, and the domicile of the child is in another school district than that wherein the institution is situated, then such child shall be entitled to attend school in the district where such institution is located. In such case the cost of the tuition and transportation, when required by law, shall be paid by the treasurer of the state as provided in section 282.23. [C24, 27, 31, 35, 39,§4283; C46, 50, 54,§282.22]

**282.23 Tuition when in boarding home.** When any child of school age has become a public charge and is being cared for in a children's boarding home licensed by the state, and the domicile of such child at the time it became a public charge was in another school district than the one wherein such boarding home is located, then, such child shall be entitled to attend public school in the school district in which such boarding home is located, or if such district does not maintain a school offering instruction in the grade in which such child is properly classified, then such child may attend upon such instruction in any approved public school in the state that will receive it. The tuition and transportation when required of such a child, at the rates established by law, shall be paid by the treasurer of state from any funds in the state treasury not otherwise appropriated, and upon warrants drawn by the state comptroller upon the requisition of the superintendent of public

instruction. If such child was in the district at the time the regular biennial school census was taken, the semiannual apportionments shall be deducted from the tuition due the district under the provisions of this section. The superintendent of public instruction is hereby empowered to require such reports as are necessary properly to carry out the provisions of this section. [C39,§4283.01; C46, 50, 54, §282.23]

Referred to in §282.22

**282.24 Tuition rates determined by superintendent.** The superintendent of public instruction shall determine a maximum tuition rate to be charged for students, elementary or high school, residing within another school district or corporation. This maximum tuition rate shall be determined in the following manner: Classify all schools, elementary and secondary, located in school districts or corporations with populations of one thousand to fourteen thousand nine hundred ninety-nine, inclusive, according to monthly per pupil costs. In such classification the school that falls within the eighty-fifth percentile of the monthly per pupil cost shall form the basis. Using this figure the elementary and high school tuition rates for the succeeding year shall be determined so that the rate for the high school student is one and seventy-five hundredths times the rate for the elementary student. The junior high school rate shall be one and fifty hundredths times the elementary rate.

The superintendent of public instruction shall, after July 1 but before September 1 of each year, notify every school in the state, affected by this section, what the computed maximum tuition rate shall be for the ensuing year.

Nothing in this section shall prevent the corporation or district in which the student resides from paying a tuition in excess of the maximum computed tuition rates, if the actual per pupil cost of the preceding year so warrants, but in no case may the receiving district or corporation demand more than the maximum rate. [C50, 54,§282.24; 56GA, ch 143,§2]

Referred to in §§279.18, 282.20

## CHAPTER 283

### DISTRIBUTION OF FEDERAL FUNDS

- 283.1 Definitions.
- 283.2 Duty of superintendent.
- 283.3 Fund created.
- 283.4 Apportionment.
- 283.5 Requisition on fund.

- 283.6 Warrants drawn.
- 283.7 Deposit of funds.
- 283.8 Refund on nonresident tuition.
- 283.9 Rules and regulations.

**283.1 Definitions.** The following terms shall, for the purpose of this chapter, have the following meanings:

1. "Aggregate attendance" means the sum determined by adding together the total number of school days during which each pupil in

the grades in question attended a regular day school conducted by the particular public school corporation during the regular school year, excluding summer school.

2. "Average daily attendance" means the quotient arising from dividing aggregate at-

tendance by the total number of days school was in session during the regular school year, excluding summer school. Said quotient shall be carried to such number of decimal places, fixed by the superintendent, as is reasonably necessary to secure equitable distribution.

3. "Superintendent" means the superintendent of public instruction of the state of Iowa. [C39,§4283.02; C46, 50, 54,§283.1]

**283.2 Duty of superintendent.** It shall be the duty of the superintendent to keep such records and accounts, to cause such audits to be made, and to make such applications and reports to the United States commissioner of education, or other authorized federal officer, as shall be necessary to qualify this state to receive, and to continue to receive, such federal funds as may be allotted to this state under and by virtue of an act of the seventy-fifth congress of the United States, first session, now or hereafter enacted, entitled "A bill to promote the general welfare through the appropriation of funds to assist the states and territories in providing more effective programs of public education", and such other acts of congress, now or hereafter enacted, as may make federal funds available to this state for the purpose of providing more effective programs of general public education. For such purposes, the superintendent is hereby designated as the "chief educational authority" to represent this state. [C39,§4283.03; C46, 50, 54,§283.2]

Referred to in §283.3

**283.3 Fund created.** There is hereby created in the treasury of the state of Iowa a special fund, to which shall be credited such federal funds as are received pursuant to the acts of congress designated in section 283.2. The treasurer of state shall keep such accounts and records of the expenditure of such funds as may be prescribed by the United States commissioner of education, or other federal officer, pursuant to the law authorizing such distribution of federal funds. [C39,§4283.04; C46, 50, 54,§283.3]

Referred to in §283.5

**283.4 Apportionment.** The funds credited to such special fund shall be distributed each school year, in October and April, to the several public school corporations of the state in the proportion which the total number of teacher units for each such school corporation for the preceding school year bears to the total number of teacher units for the state for such school year. Such teacher units shall be determined for each public school corporation in the following manner:

1. Teacher units in grades one to eight inclusive, and kindergarten, shall be fixed as follows: (a) For each school in which only one teacher is employed, one teacher unit; and (b) if the total average daily attendance does not exceed forty in all schools in which more than one teacher is employed, two additional

teacher units; or (c) if the total average daily attendance exceeds forty in all such schools, one additional teacher unit for the first fifteen and one additional teacher unit for each additional twenty-seven, or major fraction thereof, in average daily attendance; provided that the teacher units so determined for each school corporation shall not exceed the actual number of teachers employed in grades one to eight inclusive, and kindergarten.

2. Teacher units in grades nine to twelve inclusive shall be determined by allowing one and one-half teacher units for each high school unit, determined as follows: (a) If the total average daily attendance in grades nine to twelve in all schools is less than sixteen, one high school unit; or (b) if such total average daily attendance is more than fifteen and less than twenty-six, two high school units; or (c) if such total average daily attendance is more than twenty-five and less than forty-one, three high school units; or (d) if such total average daily attendance is more than forty, three high school units for the first forty and one additional high school unit for each additional twenty-two, or major fraction thereof, in average daily attendance; provided that the high school units so determined for each school corporation shall not exceed the actual number of teachers employed in teaching grades nine to twelve inclusive.

3. Both resident and nonresident pupils shall be included in determining the number of teacher units allowed to each school corporation. [C39,§4283.05; C46, 50, 54,§283.4]

**283.5 Requisition on fund.** The treasurer shall, upon request, certify to the superintendent at any time the amount in the special fund created in section 283.3. On the first day of October and the first day of April of each year, or as soon thereafter as possible, the superintendent shall determine the amount due each of the several school corporations in the state under the provisions of this chapter, and shall file with the state comptroller a requisition on which shall appear the amounts due each of such school corporations. [C39,§4283.06; C46, 50, 54,§283.5]

**283.6 Warrants drawn.** The state comptroller, upon receipt of such requisition from the superintendent of public instruction, shall draw a warrant or warrants on the treasurer of state, payable to the school corporations entitled thereto in accordance with said requisition, and shall deliver said warrant or warrants to the superintendent of public instruction, who shall make a record thereof and transmit the same to the secretary of each of said school corporations. [C39,§4283.07; C46, 50, 54,§283.6]

**283.7 Deposit of funds.** Upon receipt of any such warrant, the secretary of the school corporation shall cause it to be deposited to the credit of the general fund of the said school corporation. [C39,§4283.08; C46, 50, 54,§283.7]

**283.8 Refund on nonresident tuition.** Each public school corporation in the state which, pursuant to statutory requirements, receives tuition from another public school corporation for nonresident pupils shall, within thirty days after receiving such warrant on the treasurer of state, refund to the public school corporation paying such tuition an amount for each such nonresident pupil determined as follows:

1. The amount so received from the treasurer of state for teacher units in grades one to eight inclusive, and kindergarten, shall be divided by the total average daily attendance in such grades for the school year for which such teacher units were fixed. The result so obtained shall constitute the amount of refund for each pupil in such grades for whom tuition was received for such school year.

2. The amount so received from the treasurer of state for teacher units in grades nine

to twelve inclusive shall be divided by the total average daily attendance in such grades for the school year for which such teacher units were fixed. The result so obtained shall constitute the amount of refund for each pupil in such grades for whom tuition was received for such school year.

3. Provided that if tuition was paid for any such pupil for less than the full school year the amount of refund shall bear the same proportion to the amount so determined as the period for which tuition was paid bears to the full school year. [C39,§4283.09; C46, 50, 54, §283.8]

**283.9 Rules and regulations.** The superintendent of public instruction is hereby authorized to adopt such rules and regulations, consistent with the provisions of this chapter, as are necessary and proper for the administration thereof. [C39,§4283.10; C46, 50, 54,§283.9]  
Constitutionality, 47GA, ch 126,§10

CHAPTER 283A

SCHOOL LUNCH PROGRAMS

283A.1 Definitions.

283A.2 School boards.

283A.3 Expenditure of federal funds.

283A.4 Administration of program.

283A.5 Accounts, records, reports, and operations.

**283A.1 Definitions.** For the purpose of this chapter:

1. "School board" means a board of school directors regularly elected by the qualified voters of a school corporation or district of the state of Iowa.

2. "School" means a public school of high school grade or under.

3. "School lunch program" means a program under which lunches are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the congress of the United States. [C54,§283A.1]

**283A.2 School boards.** School boards shall have power to operate or provide for the operation of school lunch programs in schools under their jurisdiction, and may use therefor funds disbursed to them under the provisions of this act, gifts, funds received from sale of school lunches under such programs, and any other funds legally available. [C54,§283A.2]

**283A.3 Expenditure of federal funds.** The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by any act of Congress and appropriated to the state of Iowa for use in connection with school lunch programs. The superintendent of public instruction shall deposit all such funds with the treasurer of the state of Iowa, who shall make

disbursements therefrom upon the direction of the superintendent of public instruction. [C54, §283A.3]

**283A.4 Administration of program.** The superintendent of public instruction may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The superintendent of public instruction may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training such personnel engaged in the operation of such program. The superintendent of public instruction and any school board may accept any gift for use in connection with any school lunch program. [C54,§283A.4]

**283A.5 Accounts, records, reports, and operations.** The superintendent of public instruction shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school boards. Such accounts and records shall at all times be available for inspection and audit

by authorized officials and shall be preserved for such period of time, not in excess of five years, as the superintendent of public instruction may lawfully prescribe. The superintendent of public instruction shall conduct or cause to be conducted such audits and inspections

with respect to school lunch programs as may be necessary to determine whether its agreement with school boards and regulations made pursuant to this act are being complied with, and to insure that school lunch programs are effectively administered. [C54,§283A.5]

## CHAPTER 284

### REIMBURSEMENT OF SCHOOL DISTRICTS FOR LOSS OF TAXES

Referred to in §274.46

284.1 Reimbursement—by whom computed.  
284.2 Basis of computation—limitation.  
284.3 Certification of amount.  
284.4 Payment to district.

284.5 Secretary to file statement.  
284.6 Auditor to deduct reimbursement.  
284.7 Commission to prepare forms.

**284.1 Reimbursement—by whom computed.** When unplatted lands within the boundaries of a school district are owned by the government of the United States, by the state, by a county, or by a municipal corporation located wholly outside said school district, and such lands have been removed from taxation for school purposes, said school district shall be reimbursed, as hereinafter provided, in an amount which shall be computed by the county board of supervisors in the county in which such lands are located, which computation shall be made on or before the first day of September in the year in which said deductions are to be made. [C31,§4283-c9; C35,§4283-e1; C39,§4283.11; C46, 50, 54,§284.1]

Referred to in §§284.2, 284.3

**284.2 Basis of computation—limitation.** The computation provided for in section 284.1 shall be made: (1) On the basis of the proportion that the assessable value of the total number of acres owned by the government of the United States, by the state, by the county, or by the municipal corporation, as the case may be, in such school district bears to the assessable value of the total number of acres in said school district. The average assessable value per acre of the lands so owned within the school district shall, for the purposes of the computation provided for in this chapter, not exceed the average assessable value per acre of the taxable lands in said district, or (2), if said land or any part thereof is being operated by a municipal corporation for veterans or public housing purposes, and said municipal corporation does not furnish school facilities for tenants' children of school age, then the municipal corporation shall be obligated to provide its proportionate share of the education and building costs of the school district in which said project is located and the computation provided for in section 284.1 shall be made on the basis of the proportion the number of pupils attending said school district from said land bears to the total number of pupils attending said school district. The use of either computation provided for in this sec-

tion shall be determined on the basis of whichever is the greater. [C31,§4283-c10; C35,§4283-e2; C39,§4283.12; C46, 50, 54,§284.2]

Referred to in §284.3

**284.3 Certification of amount.** When the county board of supervisors shall have computed the amount due a school district, as provided in sections 284.1 and 284.2, it shall forthwith certify the same to the county auditor of the proper county or to the secretary of the executive council, if the lands upon which computed belong to the government of the United States or to the state, or to the council of the proper municipal corporation, if they belong to a municipal corporation, except, that where the lands belong to a municipal corporation and the computation provided for in section 284.2, subsection 2 applies, it shall be the duty of the county board of supervisors to compute the amount due a school district, as provided in said section 284.2, subsections 1 and 2, and forthwith certify the computed amount to the council of the proper municipal corporation, and the amounts due shall be payable as follows, to wit: The municipal corporation shall pay the amount shown by the computation provided under section 284.2, subsection 1, and shall in addition pay the amount in excess thereof as computed under section 284.2, subsection 2, which certificate shall be filed with the secretary of the executive council not later than April 1 of each succeeding year. [C35,§4283-e3; C39,§4283.13; C46, 50, 54, §284.3]

Referred to in §284.4

**284.4 Payment to district.** Upon receipt of the certificate provided for in section 284.3, it shall become the duty of the council of such municipal corporation or the county auditor of such county, as the case may be, to cause a warrant in said amount to be drawn on the general fund of such county or such municipal corporation and delivered to the secretary of said school district.

When the computed amount is based upon lands belonging to the state or to the govern-

ment of the United States, as provided herein, it shall then become the duty of the secretary of the executive council of the state to certify the amount to the state comptroller, who shall draw his warrant to the secretary of said school district and the treasurer of state shall pay the same from any funds of the state not otherwise appropriated.

If the computed reimbursement to a school district on state or government-owned land within the district is not sufficient to cover the tuition such district is required to pay because of children of employees of the state or federal government who reside on such land and attend a public school outside the district in which such land is located, then the county board of supervisors shall add to the computed reimbursement to such district the difference between the computed reimbursement and the tuition such district is required by law to pay because of the children of such employees, and certify the total to the secretary of the executive council for payment by the state as provided by law. [C31, §§4283-c3, c12; C35, §4283-e4; C39, §4283.14; C46, 50, 54, §284.4]

**284.5 Secretary to file statement.** It shall be the duty of the secretary of said school district when certifying the taxes to file a certified statement with the county auditor of the proper county showing the amount of such tax-free land, its description, and the branch of government by which owned.

It shall also be the duty of the secretary of such school district at the time of certifying the taxes to file with the county auditor a certified statement showing the names of employees of the state or federal government who live on state or government-owned land within the district whose children attend a public school outside the home district as provided by law, by whom employed, the capacity of their employment, the names of their children for whom tuition is to be paid, the name of the outside school district in which their children attend, the total period of attendance, and the amount of tuition the district is required to pay for each of such children. [C31, §4283-c3; C35, §4283-e5; C39, §4283.15; C46, 50, 54, §284.5]

**284.6 Auditor to deduct reimbursement.** When levying the school tax certified by the secretary of the school board against the taxable property of such school district, the county auditor shall deduct therefrom the amount computed by the county board of supervisors and levy the remainder against the taxable property of said district. [C31, §4283-c11; C35, §4283-e6; C39, §4283.16; C46, 50, 54, §284.6]

**284.7 Commission to prepare forms.** The forms necessary for carrying out the purposes of this chapter shall be prepared by the state tax commission. [C35, §4283-e7; C39, §4283.17; C46, 50, 54, §284.7]

CHAPTER 285

STATE AID FOR TRANSPORTATION

Referred to in §§279.16, 282.7

- 285.1 When entitled to state aid.
- 285.2 Basis of reimbursement.
- 285.3 Report by secretary of district.
- 285.4 Pupils sent to another district.
- 285.5 Contracts for transportation.
- 285.6 Director in state department.
- 285.7 Powers and duties shared.
- 285.8 Powers and duties of state department.

- 285.9 Powers and duties of county boards.
- 285.10 Powers and duties of local boards.
- 285.11 Bus routes—basis of operation.
- 285.12 Disputes—hearings and appeals.
- 285.13 Disagreements between boards.
- 285.14 Nonstandard busses—penalties.
- 285.15 Forfeiture of reimbursement rights.

**285.1 When entitled to state aid.** 1. The board of directors in every school district shall provide transportation or the costs thereof for all resident pupils attending public school, kindergarten through twelfth grade, who reside more than one mile from the school designated by the board for attendance, except as hereinafter provided:

a. Elementary pupils residing in a district wherein is located a village, town or city under twenty thousand population wherein the designated school is located must live more than two miles from the school designated for attendance to be entitled to transportation.

b. Elementary pupils residing in a district wherein is located a city of twenty thousand or more in population must live more than two

miles from the public school designated for attendance to be entitled to transportation.

c. Elementary pupils residing in a rural independent district, a rural township district, or a consolidated district not operating a central school, when the school in the district or subdistrict is in operation, must live more than two miles from the school in their own district or subdistrict to be entitled to transportation.

Boards at their discretion may provide transportation for resident elementary children attending public school who live less than the distance at which transportation is required.

d. High school pupils residing in a district containing a village, town, or city under twenty thousand population wherein a high school is located and outside the limits of the

village, town, or city shall be entitled to transportation as provided in this section.

e. High school pupils residing in a district containing a city of twenty thousand population or over must live more than three miles from high school designated for attendance to be entitled to transportation thereto.

Boards at their discretion may provide transportation for all high school pupils residing inside the corporate limits of any town, village, or city, and more than two miles from designated high school.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In any district where transportation by school bus is impracticable or where school bus service is not available, the board may require the parents or guardian to transport their children to the school designated for attendance. The parent or guardian shall be reimbursed for such transportation service for elementary pupils by the board of resident district for the distance one way from the pupil's residence to the school designated for attendance at the rate of twenty-eight cents per mile per day irrespective of number of children transported. For high school pupils, the parent or guardian shall be reimbursed forty dollars per pupil per year for such service, provided however no family shall receive more than eighty dollars per year for transporting the members of the family who attend high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parent or guardian to transport their children up to two miles to connect with a vehicle of transportation. The parent or guardian shall be reimbursed for such transportation by the board of resident district at the rate of twenty-eight cents per mile per day, one way, per family for the distance from pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the state superintendent of public instruction. The cost shall be the actual cost of service not to exceed forty dollars per pupil per year.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the county board of education.

7. If a board closes either elementary or high school facilities and is approved by the

county board of education to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the busses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the county board of education, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating busses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school busses. It shall include one-seventh of the original net cost of the bus and such other items as shall be determined and approved by the superintendent of public instruction but no part of the capital outlay cost for school busses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of any school bus used in transporting pupils to and from extra curricular activities shall be included in determining said pro rata cost. In any district where because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the state director of school transportation. Capital outlay for school busses and transportation equipment shall be excluded from the capital outlay in determining tuition costs as provided in section 279.18, and section 282.20.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the county board of education specifying the amount due. The county board of educa-

tion shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. The state superintendent of public instruction may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

15. Every school district required by law to provide transportation shall be reimbursed by the state for transportation costs incurred in amount and manner as provided in this chapter. However, no state reimbursement shall be made to school districts to cover costs incurred in transporting pupils from home to a bus route, or any others not entitled to free transportation, but who are transported at the expense of the home district or the parents. [S13, §§2794-b, c, d, e; SS15, §§2794-a, g; C24, 27, 31, §§4179-4181, 4184, 4186; C35, §§4179-4181, 4184, 4186, 4233-e5; C39, §§4179-4181, 4184, 4186, 4233.5; C46, §§276.26, 276.28, 276.29, 276.32, 276.34, 279.20, 285.1, 285.5; C50, 54, §285.1; 57GA, ch 128, §3]

**285.2 Basis of reimbursement.** Reimbursement shall be for the school year preceding that in which it is made on the basis of thirty dollars per pupil per annum in a district (1) transporting an average of one hundred twenty-five pupils per day, (2) its vehicles traveling one hundred sixty miles per pupil per year, and (3) having a road condition index of 1.40. To determine the amount of reimbursement to which any district shall be entitled and shall receive, adjustments from the foregoing standard shall be made and the amount determined in the following manner, to wit:

1. Adjustments for number of pupils transported:

a. An increase of two cents for each reduction of one in the average number of pupils transported below one hundred twenty-five, until thirty dollars and fifty cents is reached for each of one hundred pupils.

b. An increase of four cents for each reduction of one pupil in the average number of pupils transported below one hundred, until thirty dollars and fifty cents has increased to thirty-one dollars and fifty cents for each seventy-five pupils.

c. An increase of six cents for each reduction of one in the average number of pupils transported below seventy-five, until thirty-one dollars and fifty cents has increased to thirty-three dollars for each fifty pupils, or less.

d. A decrease of two cents for each addition of one in the average number of pupils transported above one hundred twenty-five, until thirty dollars is reached for each of one hundred seventy-five pupils.

e. A decrease of one cent for each addition of one in the average number of pupils transported above one hundred seventy-five, until

twenty-nine dollars and fifty cents is reached for each of two hundred twenty-five or more pupils.

2. Adjustments for mileage:

a. An increase of the base of thirty dollars by three cents per year for each mile of vehicular travel in excess of one hundred sixty miles per pupil per year.

b. A decrease of the base of thirty dollars by three cents per year for each mile of vehicular travel less than one hundred sixty miles per pupil per year.

3. Adjustment for road conditions:

An increase or decrease, as the case may be, of the base rate of thirty dollars by the percentage by which the road condition index is greater or less than 1.40.

The road condition index for any district shall be obtained by (a) multiplying the miles of hard surfaced (including back top), gravel, and unsurfaced roads over which the school busses travel by 1.00, 1.39, and 1.55 respectively; (b) adding the amounts thus obtained, and (c) dividing by the total bus mileage.

The three computations provided for in subsections 1, 2 and 3, immediately preceding, shall be added together and divided by three and the amount so obtained shall be the amount to be paid to the district per pupil transported, by way of reimbursement. In school districts where transportation by school bus is not practicable or available, and approved special transportation arrangements are made, the distribution formula shall be waived and the reimbursement from the state for such costs shall be twenty-three dollars per pupil per school year, except that in no event shall any district be reimbursed in any amount in excess of the actual cost per pupil per year.

Reimbursement from the state for transportation costs incurred shall be paid to:

a. Districts for transportation provided to its own school for all pupils entitled to free transportation.

b. Districts for transportation provided to another school for all pupils entitled to free transportation.

c. Districts for transportation provided to pupils residing in one district and who are entitled to transportation but are transported to a school other than to the school which is operating the transportation equipment.

When the pupils from the sending district are transported by the receiving district the reimbursement will be made to the receiving district and shall constitute a credit to the sending district on the cost of transportation. The receiving district in billing the sending district shall bill only for the difference between the state reimbursement and the actual approved cost of transportation.

The appropriation for transportation shall be used to reimburse school districts for cost incurred in the amount and manner as are provided in this chapter. In the event the balance is insufficient to reimburse the district



in full for the approved claims, the amount available shall be prorated to the several districts in ratio to amount earned. [C46, 50, 54, §285.2]

**285.3 Report by secretary of district.** The secretary of each district entitled to transportation aid shall, on or before the first day of July of each year, report to the state department of public instruction on blanks furnished by the latter, such information as it may require for determining the amount the district shall be reimbursed for transportation of pupils. The state department may require further supporting data and information, and from the said reports, data and information it shall determine and compute the amount to which each district is entitled to reimbursement, and shall certify same for payment to the state comptroller who shall draw warrants upon such certification and cause same to be delivered to the districts so entitled. [C46, 50, 54, §285.3]

**285.4 Pupils sent to another district.** On or before July 8, 1949, the board in districts not maintaining high school facilities shall by record action designate the school or schools for attendance of all high school pupils from their respective districts. In making designations, the local board shall give consideration to the wishes of the majority of the patrons, the adequacy of the facilities and curricular offerings and available bus service to avoid duplication of transportation facilities to different receiving schools.

When a board closes its elementary school facilities for lack of pupils or by action of the board, it shall, if there is a school bus service available in the area, designate for attendance the school operating the busses, provided the board of such school is willing to receive them and the facilities and curricular offerings are adequate. The board of the district where the pupils reside may with the approval of the county board of education, subject to legal limitations and established uniform standards, designate another rural school and provide their own transportation if the transportation costs will be less than to use the established bus service.

All designations must be submitted to the county board of education on or before July 15, for review and approval. The county board of education shall after due investigation alter or change designations to make them conform to legal requirements and established uniform standards for making designations and for locating and establishing bus routes. After designations are made, they will remain the same from year to year except that on or before July 15, of each year, the rural board or parents may petition the county board for a change of designation to another school. Appeals from the decision of the county board on designations may be made by either the parents or board to the state superintendent of public instruction as provided in section 285.12 and section 285.13. [C35, §§4274-e1, -e3, -e4, -e6; C39,

§§4274.03, 4274.05, 4274.06, 4274.08; C46, §§282.10, 282.12, 282.13, 282.15, 285.4; C50, 54, §285.4]

### 285.5 Contracts for transportation.

1. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school. Such contracts shall define the route, the length of time, service contracted for, the compensation, the vehicle to be used. The contract shall prescribe the duties of the contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

The contract shall provide that the contractor will sell the equipment to the board should he desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle himself or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The state superintendent of public instruction shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated busses shall be made with someone outside the board except where no other transportation service is available, a board member may transport his own children.

8. Private busses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned busses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The superintendent of public instruction shall prepare a uniform contract containing provision not in conflict with this chapter which

shall be used by all school boards in contracting with drivers of school-owned vehicles. [SS15,§2794-a; C24, 27, 31, 35, 39,§§4182, 4183; C46,§§276.30, 276.31; C50, 54,§285.5]

**285.6 Director in state department.** The state superintendent, subject to the approval of the state board of public instruction, is authorized to organize and staff the division and to employ the necessary qualified personnel to carry out the provisions of this chapter. The appropriation provided by this chapter may be expended in part for the direction and supervision provided by the chapter which shall include salaries and all necessary traveling expense incurred by the director and his assistants in the performance of their official duties. [C46, 50, 54,§285.6]

See 55GA, ch 114,§40

**285.7 Powers and duties shared.** Regulatory powers and duties necessary to assure the state that its transportation moneys will be spent with the best results will be shared by the state department of public instruction, county boards of education and boards of education of the local school districts. [C46, 50, 54,§285.7]

**285.8 Powers and duties of state department.** The powers and duties of the state department shall be to:

1. Exercise general supervision over the school transportation system in the state.
2. Review and establish the location of bus routes which are located in more than one county when the county boards of education of the affected counties after formal action do not approve.
3. Establish uniform standards for locating and operating bus routes and for the protection of the health and safety of pupils transported.
4. Inspect or cause to be inspected all vehicles used as school busses to transport school children to determine if such vehicles meet all legal and established standards of construction and can be operated with safety, comfort, and economy. When it is determined that further use of such vehicles is dangerous to the pupils transported and to the safety and welfare of the traveling public, the department of public instruction shall order such vehicle to be withdrawn from further use on a specified date. School busses which do not conform to the requirements of the department of public instruction may be issued a temporary certificate of operation provided that such school busses can be operated with safety, and provided further that no such certificate shall be issued for a period in excess of one year. All equipment can be required to be altered, or safety equipment added in order to make vehicles reasonably safe for operation. New busses after initial inspection and approval shall be issued a seal of inspection. After each annual inspection a seal of inspection and approval shall be issued. Said seals shall be

mounted on the lower right hand corner of the windshield.

5. Aid in the enforcement of the motor vehicle laws relating to the transportation of school children.

6. Prescribe uniform standards and regulations:

- a. For the efficient operation and maintenance of school transportation equipment and for the protection of the health and safety of children transported.
- b. For locating and establishing bus routes.
- c. For procedures and requirements in making designations.
- d. For standard of safety in construction of school transportation equipment.
- e. For procedures for purchase of busses.
- f. For qualification of school bus drivers.
- g. As deemed necessary for the efficient administration of this chapter.

7. Review all transportation arrangements when deemed necessary and shall disapprove any arrangements that are not in conformity with the law and established standards and require the same to be altered or changed so that they do conform.

8. Conduct schools of instruction for transportation personnel as needed or requested. [C46, 50, 54,§285.8]

**285.9 Powers and duties of county boards.** The powers and duties of the respective county boards of education shall be to:

1. Enforce all laws and all rules and regulations of the state department of public instruction relating to transportation.
2. Review and approve all transportation arrangements between districts in the county and in all districts in the county not operating high schools. If such transportation arrangements, designations, and contracts are not in conformity to law or established uniform standards for the locating and operating of bus routes, the county board shall, after receiving all facts, make such alterations or changes as necessary to make the arrangements, designations, and contracts conform to the legal and established requirements and shall notify local board of such action.
3. Approve all bus routes outside the boundary of the district of the school operating busses.
4. When a local board fails to make designations and other necessary arrangements for transportation as required by law, the county board shall, after due notice to the local board, make necessary arrangements in conformity with law and established requirements. Notice shall be given to the local board of the arrangements as made. The arrangements shall be binding on the local board which shall pay the costs for service as arranged. [C35, §§4274-e1,-e2; C39,§§4274.03, 4274.04; C46,§§282.10, 282.11, 285.9; C50, 54,§285.9]

**285.10 Powers and duties of local boards.** The powers and duties of the local school boards shall be to:

1. Provide transportation for each pupil who attends public school, and who is entitled to transportation under the laws of this state.
2. Establish, maintain and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.
3. Purchase or lease busses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.
4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.
5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.
6. May purchase liability insurance or such other coverage as deemed necessary to protect the driver or any authorized employee from liability incurred by said driver or employee as a result of operating the bus and for damages or accident resulting in injury or death to the pupils or employees being legally transported.
7. When a school qualifies to purchase busses, they may be purchased as follows:
  - a. From such funds as may be available in the general fund.
  - b. May purchase busses and enter into contract to pay for such busses over a five-year period as follows: One-fourth of the cost when bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed four percent simple interest. The bus shall serve as security for balance due. Bus bodies and chassis shall be purchased on separate contracts.
8. A board shall be eligible to purchase busses as follows:
  - a. Boards in consolidated and independent districts, who have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment, may purchase busses needed to provide such transportation.
  - b. Boards in rural township districts desiring to close schools and transport children to schools outside district may apply to the county board of education for approval of bus routes and for approval to purchase bus. If approved, they may purchase the busses needed to provide transportation. Once approved, to purchase busses, the board may purchase replacements without approval of the county board. Additional equipment must be approved by county board of education.
  - c. Boards in independent and consolidated districts who propose to establish transportation service for nonresident pupils must obtain

approval from the county board of education for establishing of bus routes and for the purchasing of additional busses to provide service as approved. Such approval shall be granted only when such schools have sufficient pupils to transport to guarantee near capacity utilization of the busses. Replacement of equipment to operate on approved routes may be purchased without county board approval. [C46, 50, 54, §285.10]

**285.11 Bus routes—basis of operation.** The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations:

1. Each bus route shall be planned and adjusted to utilize the normal seating capacity of each bus insofar as it is possible to do so.
2. Each bus route shall serve regularly only pupils whose homes are beyond the statutory walking distance to the nearest appropriate school. It is provided, however, that in areas of any county having a population of over one hundred and fifty thousand, where, in the opinion of the board, the volume of traffic is such that the pupils' safety depends upon transportation, regular transportation may be provided for pupils living less than the statutory walking distance from the designated school.
3. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities.
4. A route shall not be extended for the purpose of accommodating pupils whose homes are nearer another bus route.
5. Special contracts for transportation of pupils entitled to transportation shall be entered into only when it is more economical to make such special provision than to provide same by regular bus route, or when by reason of physical or mental handicap of the pupil such pupil cannot be transported with safety by bus.
6. The boards shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available.
7. The use of school busses shall be restricted to transporting pupils to and from school and to and from extra curricular activities sponsored by the school when such extra curricular activity is under the direction of a qualified member of the faculty and a part of the regular school program. School employees of districts operating busses may be transported to and from school and approved activities which they are required to attend as a result of their responsibilities. Provided, however, nothing in this subsection shall prohibit the use of school busses in transporting a school teacher going to and from her school when such school is on an established school bus route and such teacher makes arrangements with the district operating such school bus.
8. No bus shall leave the public highway to receive or discharge pupils.

9. Bus routes shall be established only to give service to properly designated pupils.

10. Bus drivers for school busses must present a certificate of physical fitness each year before being permitted to operate any vehicles transporting children to and from school.

11. Bus drivers must hold a regular or special chauffeur's license and in addition, a special school bus driver permit issued by the department of public instruction. [C39,§4179.1; C46,§§276.27, 285.11; C50, 54,§285.11; 56GA, ch 144,§1]

**285.12 Disputes—hearings and appeals.** In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal the same to the county board of education, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the county board of education within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the county board of education which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the county board to the state superintendent of public instruction by notifying the opposite party and the county superintendent of schools in writing within five days after receipt of notice of the decision of the county board of education and shall file with the state superintendent of public instruction an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement. The county superintendent of schools shall, within ten days of said notice, file with the state superintendent of public instruction all records and papers pertaining to the case, including action of the county board of education. The state superintendent of public instruction shall hear the appeal within fifteen days of the filing of the records in his office, notifying all parties and the county superintendent of schools of the time of hearing. The state superintendent of public instruction shall forthwith decide the same and notify all parties of his decision and return all papers with a copy of the decision to the county superintendent of schools. The decision of the state superintendent of public instruction shall be subject to appeal to the district court. Any order of the district court

shall be subject to appeal to the supreme court in accord with the statutes respecting appeals to that court. Pending final order made by the state superintendent of public instruction, or the district court, or the supreme court, as the case may be, upon any appeal prosecuted to such superintendent or to such courts, the order of the county board of education from which the appeal is taken shall be operative and be in full force and effect. [C46, 50, 54,§285.12]

Referred to in §§275.18, 285.4, 285.13

**285.13 Disagreements between boards.** In the event of a disagreement between the board of a school district and the county board of education, the board of the school district may appeal to the state superintendent of public instruction and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the state superintendent of public instruction shall be subject to appeal to the courts as provided for in section 285.12. [C46, 50, 54,§285.13]

Referred to in §§279.18, 282.20, 285.4

**285.14 Nonstandard busses—penalties.** Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the state department of public instruction, or for which there is not a valid temporary certificate for operation, shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C46, 50, 54,§285.14]

**285.15 Forfeiture of reimbursement rights.** The failure of any local district to comply with the provisions of this chapter or any other laws relating to the transportation of pupils, or any rules or regulations made by the state department of public instruction under this chapter or the final decisions of the county board of education, or the final decisions of the state department of public instruction shall cause such district to forfeit any rights to reimbursement for any transportation costs incurred during the period such failure to comply existed and the rights to collect transportation costs from school or parents while operating in such illegal manner. Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any school transportation law shall be deemed guilty of a misdemeanor. [C46, 50, 54,§285.15]

Constitutionality, 51GA, ch 133,§17

## CHAPTER 286

## SUPPLEMENTARY AID TO SCHOOL DISTRICTS

286.1 Right of districts to financial aid.

286.2 Definitions.

286.3 Aid to qualified districts.

286.4 Conditions and requirements—mandatory tax levy.

286.5 Basis of aid.

286.6 Determination of total aid.

286.7 Information furnished by school district.

**286.1 Right of districts to financial aid.** For the purpose of equalizing educational opportunity in the school districts throughout the state, the several school districts in the state shall be entitled to and receive financial aid from the state in the manner and amount as provided in this chapter. The aid provided for in this chapter is supplementary aid. Supplementary aid is that aid which is available to districts which qualify under the provisions of this chapter. [C46, 50, 54, §286.1]

**286.2 Definitions.** For the purposes of this chapter an elementary pupil is a pupil of school age attending public school who has not entered the ninth grade, and a high school pupil is a pupil of school age attending public school in any of the grades ninth to twelfth inclusive. [C46, 50, 54, §286.2]

**286.3 Aid to qualified districts.** Supplementary aid shall be paid by the state to those districts which qualify, as hereinafter provided. [C46, 50, 54, §286.3]

**286.4 Conditions and requirements—mandatory tax levy.** Supplementary aid shall be paid under the following conditions and requirements:

1. Supplementary aid shall be paid to a district only when the funds described in subsection 2 of this section are insufficient to meet an educational cost of one hundred twenty dollars per elementary child and one hundred seventy dollars per high school child in average daily attendance, and then only to the extent of this deficiency.

2. The funds which shall be considered available to any district to meet the educational cost described in subsection 1 of this section, shall include: (a) The estimated proceeds of a standard local tax rate (exclusive of the rate for the schoolhouse fund) of fifteen mills for all districts with high schools and ten mills for elementary districts.

3. No school district shall receive financial aid under the provisions of this chapter for reimbursement for any year in which a school tax levy for the general fund of at least fifteen mills was not made in such district. [C46, 50, 54, §286.4; 56GA, ch 9, §1; 57GA, ch 134, §1]

Referred to in §286.5

**286.5 Basis of aid.** Supplementary aid shall be on the basis of per school census child and shall be computed and determined as follows:

1. Multiply one hundred twenty dollars by the combined number of nontuition elementary students in average daily attendance and average number of elementary students for which the district pays tuition to another district.

2. Multiply one hundred seventy dollars by the combined number of nontuition high school students in average daily attendance and average number of high school students for which the district pays tuition to another district.

3. Take the sum of the amounts found in subsections 1 and 2 of this section.

4. From this sum, subtract the receipts in the general fund, which are described in subsection 2 of section 286.4. [C46, 50, 54, §286.5; 57GA, ch 134, §2]

**286.6 Determination of total aid.** The amount of supplementary aid per census child to which the district is entitled, if any, shall be multiplied by the school census to obtain the total state aid to which the district is entitled. [C46, 50, 54, §286.6]

**286.7 Information furnished by school district.** The supplementary aid shall take the form of reimbursement to the school district for its educational program of the preceding year. At the close of each school year, but not later than June 30, the local district shall supply to the state department of public instruction the information required for calculation of the amount reimbursable to the district. Forms for this purpose shall be supplied by the state department to each school district at the beginning of each school year. After the claim has been calculated and validated for accuracy, the department of public instruction shall immediately certify to the state comptroller the amount of reimbursement due to each school district, and in no event shall the process of certification, calculation and validation extend more than sixty days beyond the time when a given district has submitted its data for the preceding year. In event that the amount appropriated for reimbursement of the school districts is insufficient to pay in full the amounts to each of the school districts, then the amount of each payment shall be reduced by the state comptroller in the ratio that the total funds appropriated and available bears to the total amount certified for reimbursement. [C46, 50, 54, §286.7]

CHAPTER 286A

GENERAL AID TO SCHOOLS

- 286A.1 Right of districts to general aid—mandatory tax levy.
- 286A.2 Definitions.
- 286A.3 Basis of aid—standards for junior colleges.

- 286A.4 Determination.
- 286A.5 Information furnished by school district.
- 286A.6 Rules and regulations.
- 286A.7 Funds.

**286A.1 Right of districts to general aid—mandatory tax levy.** The several school districts in the state of Iowa shall be entitled to and receive financial aid from the state in the manner and amount as provided in this chapter.

No school district shall receive financial aid under the provisions of this chapter in the event a school tax levy for the general fund of at least fifteen mills was not made in such district for the preceding year. [C50, 54, §286A.1; 56GA, ch 11,§1; 57GA, ch 10,§1]

**286A.2 Definitions.** For the purposes of this chapter an elementary pupil is a pupil of school age attending public school who has not entered the ninth grade, and a high school pupil is a pupil of school age attending public school in any of the grades ninth to twelfth inclusive. [C50, 54,§286A.2]

**286A.3 Basis of aid—standards for junior colleges.** General school aid distributed under this chapter shall be on the basis of seventeen cents per day per elementary pupil and twenty cents per day per high school pupil for every day that such pupils actually attend school, and one dollar per day for each junior college student carrying twelve or more semester hours of college work.

Approval standards for public junior colleges shall be established and approved by the state board of public instruction, and the state board of regents, acting jointly, with said standards to be issued and enforced by the state department of public instruction, subject to the approval of the state board of public instruction. Eligibility for receipt of state aid for public junior colleges shall be determined by the above two boards. Junior college aid will not be paid unless such standards are met. In the development of said standards, the association of public junior colleges shall serve in the advisory capacity to the afore-mentioned boards. [C50, 54,§286A.3; 57GA, ch 10,§§2, 4]

**286A.4 Determination.** The general school aid funds allocated to each district shall be determined as follows:

1. Multiply seventeen cents by the combined number of nontuition elementary students in average daily attendance and average number of elementary students for which the district pays tuition to another district. Multiply this product by the actual number of days school was officially in session, not to exceed one hundred eighty days.

2. Multiply twenty cents by the combined number of nontuition high school students in

average daily attendance and average number of high school students for which the district pays tuition to another district. Multiply this product by the actual number of days school was officially in session, not to exceed one hundred eighty days.

3. Multiply one dollar by the average daily enrollment of junior college students carrying twelve or more semester hours of college work. Multiply this product by the actual number of days school was officially in session, not to exceed one hundred eighty days.

4. Take the sum of the amounts found in subsections 1, 2, and 3 of this section, this being the amount to which the district is entitled for general school aid under this chapter. [C50, 54,§286A.4; 57GA, ch 10,§3]

**286A.5 Information furnished by school district.** At the close of each school year, but not later than July 5, the local district shall supply to the state department of public instruction the information required for calculation of the amount reimbursable to the district. Forms for this purpose shall be supplied by the state department to each school district not later than June 1. After all claims have been calculated and validated for accuracy, the department of public instruction shall certify the same to the state comptroller for payment as soon as possible. In event that the amount appropriated for reimbursement of the school districts is insufficient to pay in full the amounts to each of the school districts, then the amount of each payment shall be reduced by the state comptroller in the ratio that the total funds appropriated and available bears to the total amount certified for reimbursement. All funds received or to be received under the provisions of this chapter shall be taken into account and considered by each school district when estimating the amount required for the general fund. [C50, 54,§286A.5]

**286A.6 Rules and regulations.** The superintendent of public instruction, subject to the approval of the state board of public instruction, is hereby authorized to adopt such rules and regulations and definitions of terms as are necessary and proper for the administration of this chapter. The necessary expenses incurred by the department of public instruction in the administration of this chapter may be paid from the appropriation therefor. When such conditions as unnatural weather hazards, bad roads, epidemics, and the like, occur to such an extent as to penalize any district, the superintendent of public instruction can adjust the

formula by taking the average of several months attendance in lieu of the months affected by such epidemics or hazards. [C50, 54,§286A.6]

**286A.7 Funds.** For the purpose of carrying out the provisions of this chapter for the distribution of general aid the funds of each school district, except schoolhouse funds, shall be designated as a general fund and a special courses fund.

All general aid moneys distributed to a public school district shall be placed in said school district in the said general fund of said district which fund shall be used only for the following purposes:

The cost of operating and maintaining the school and the cost of instruction and supervision occasioned by the teaching of the basic curriculum hereinafter described.

The special courses fund shall consist of moneys raised by levy against the taxable property of the school district for the cost of instruction and supervision in teaching courses other than those included in the basic curriculum.

For the purposes of this chapter, there is hereby established in each public school a basic curriculum which shall consist of the following subjects:

1. In the elementary school, the following: Kindergarten courses, reading, writing, arithmetic, spelling, grammar, including written and oral language and speech, geography, United States history, history of Iowa, elementary principles of American government, music, health and sanitation, physiology and hygiene including the teaching of the effects of

alcohol, narcotics and poisons upon the human system, physical education, elementary sciences, art, and other courses expressly authorized by law.

2. In the junior and senior high school the following: Principles of American government, constitutions of the United States and Iowa, history, economics, sociology, physical education, music, industrial arts, English, mathematics, science, language, business education, home economics, agriculture, vocational education, and other courses expressly authorized by law.

3. Any additional subjects which may be required to be taught by law.

The board of directors of each school district shall prepare a budget as required by law setting out the amount of money proposed to be expended from the general fund and from the special courses fund. The board shall include all state funds distributed to the district under the provisions of this chapter in the anticipated income to be received by the general fund, and the amount to be raised by taxation for general fund purposes shall be fixed after deducting the amount to be received from this chapter and any other funds received from the state of Iowa, from the budget requirements. The board shall include in its budget as a separate item any proposed expenditures from the special courses fund and the amount to be raised by taxation for such purposes shall be separate and distinct from the levy for general fund purposes.

No transfer of funds shall be made to the special courses fund from the general fund, any provisions of the law to the contrary notwithstanding. [C50, 54,§286A.7]

## CHAPTER 287

### SOCIETIES AND FRATERNITIES

287.1 Secret societies and fraternities.  
287.2 Enforcement.

287.3 Suspension or dismissal.  
287.4 "Rushing" prohibited.

**287.1 Secret societies and fraternities.** It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any fraternity or society wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools. [S13,§2782-a; C24, 27, 31, 35, 39,§4284; C46, 50, 54,§287.1]

Referred to in §§287.2, 287.3

**287.2 Enforcement.** The directors of all schools shall enforce the provisions of section 287.1 and shall have full power and au-

thority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of section 287.1. [S13,§2782-b; C24, 27, 31, 35, 39,§4285; C46, 50, 54,§287.2]

**287.3 Suspension or dismissal.** The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 287.1, or are guilty of violating any rule, rules, or regulations adopted by such

directors for the purpose of governing such schools or enforcing said section. [S13,§2782-c; C24, 27, 31, 35, 39,§4286; C46, 50, 54,§287.3]

**287.4 “Rushing” prohibited.** No person shall go upon school grounds or enter any school building for the purpose of “rushing” or soliciting, while there, any pupil of such school to join any fraternity, society, or organization outside of said school. Persons violating the

provisions of this section shall be fined not less than two dollars nor more than ten dollars, and on failure to pay such fine shall be imprisoned in the county jail for not more than ten days. Fines collected shall be paid to the county treasurer, and be by him added to the school fund of the district in which the offense was committed. [S13,§2782-d; C24, 27, 31, 35, 39,§4287; C46, 50, 54,§287.4]

CHAPTER 288

EVENING SCHOOLS

288.1 Evening schools authorized.  
288.2 When establishment mandatory.

288.3 Supervision—who admitted.

**288.1 Evening schools authorized.** The board of any school corporation may establish and maintain public evening schools as a branch of the public schools when deemed advisable for the public convenience and welfare. [C24, 27, 31, 35, 39,§4288; C46, 50, 54,§288.1]  
Additional provision, §282.1

**288.2 When establishment mandatory.** When ten or more persons over sixteen years of age residing in any school corporation shall, in writing, express a desire for instruction in the common branches at an evening school, the school board shall establish and maintain an evening school for such instruction for not less than two hours each evening for at least two

evenings each week during the period of not less than three months of each school year. [C24, 27, 31, 35, 39,§4289; C46, 50, 54,§288.2]

**288.3 Supervision—who admitted.** If such evening school is a branch of a city or town school, the same shall be under the supervision of the superintendent of such city or town school; if not, the same shall be under the supervision of the county superintendent. Such evening school shall be available to all persons over sixteen years of age who for any cause are unable to attend the public day schools of such school corporation. [C24, 27, 31, 35, 39,§4290; C46, 50, 54,§288.3]

CHAPTER 289

PART-TIME SCHOOLS

289.1 Authorization.  
289.2 Support.  
289.3 Standards—time of instruction.  
289.4 District reimbursed.

289.5 Powers state vocational board.  
289.6 Violations.  
289.7 Enforcement.

**289.1 Authorization.** The board of directors in any independent school district situated in whole or in part in any city having a population of twelve thousand or over, in which there shall reside or be employed, or both, fifteen or more children over fourteen years of age and under sixteen years of age, who are not in regular attendance in a full-time day school and who have not graduated from a four-year approved high school, shall establish and maintain part-time schools, departments, or classes for such children. In districts situated in whole or in part in cities having less than twelve thousand population, the board may establish and maintain such schools. When such part-time schools have been established, all persons having custody of such children shall cause them to attend the same. [C24, 27, 31, 35, 39,§4291; C46, 50, 54,§289.1]

in the same manner in which it is authorized to raise and expend funds for other school purposes. [C24, 27, 31, 35, 39,§4292; C46, 50, 54, §289.2]

**289.3 Standards—time of instruction.** Such part-time schools, departments, or classes, for the attendance of children over fourteen and under sixteen years of age, shall be organized in accordance with standards established by the state board for vocational education, and shall provide for not less than eight hours of instruction per week during the length of term for which public schools are established in the district. Such part-time schools, departments, or classes shall be held between the hours of eight o'clock a.m. and six o'clock p. m. [C24, 27, 31, 35, 39,§4293; C46, 50, 54,§289.3]

Board for vocational education, ch 258

**289.2 Support.** The board of directors may raise and expend money for the support of such part-time schools, departments, or classes

**289.4 District reimbursed.** Whenever any such part-time school or class shall have been approved by the state board for vocational



education, the board of directors shall be entitled to reimbursement on account of expenditure made for the salaries of teachers in such part-time schools, departments, or classes from any federal and state funds appropriated in aid of vocational education, as provided in the statutes governing such appropriations. [C24, 27, 31, 35, 39, §4294; C46, 50, 54, §289.4]

**289.5 Powers state vocational board.** The state board for vocational education is hereby authorized to fix standards for the establishment of part-time schools, departments, or classes; to fix the requirements of teachers, and to approve courses of study for such part-time schools, departments, or classes. [C24, 27, 31, 35, 39, §4295; C46, 50, 54, §289.5]

**289.6 Violations.** When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provi-

sions of this chapter, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or any person unlawfully employing any such minor shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days. [C24, 27, 31, 35, 39, §4296; C46, 50, 54, §289.6]

**289.7 Enforcement.** The enforcement of this chapter shall rest with the school board in the district in which such part-time school, department, or class shall have been established, and the state department of public instruction through its inspectors and the state board for vocational education through its supervisors of vocational education, in conjunction with the county superintendent of schools, are empowered to require enforcement of the same on the part of school boards. [C24, 27, 31, 35, 39, §4297; C46, 50, 54, §289.7]

## CHAPTER 290

### APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

290.1 Appeal to county superintendent.

290.2 Notice—transcript—hearing.

290.3 Hearing—shorthand reporter—decision.

290.4 Witnesses—fees—collection.

290.5 Appeal to state board.

290.6 Money judgment.

**290.1 Appeal to county superintendent.** Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county; the basis of the proceedings shall be an affidavit filed with the county superintendent by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner. [R60, §§2133–2135; C73, §§1829–1831; C97, §2818; C24, 27, 31, 35, 39, §4298; C46, 50, 54, §290.1]

**290.2 Notice — transcript — hearing.** The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper school corporation in writing of the taking of such appeal, who shall, within ten days after being thus notified, file in the office of the county superintendent a complete certified transcript of the record and proceedings relating to the decision appealed from. Thereupon, the county superintendent shall notify in writing all persons adversely interested of the time when and place where the matter of appeal will be heard by him. [R60, §§2136, 2137; C73, §§1832–1834; C97, §2819; C24, 27, 31, 35, 39, §4299; C46, 50, 54, §290.2]

**290.3 Hearing — shorthand reporter — decision.** At the time fixed for the hearing, he shall hear testimony for either party, and may cause the same to be taken down and transcribed by a shorthand reporter, whose fees shall be fixed by the county superintendent and be taxed as a part of the costs in the case, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided. [C97, §2819; C24, 27, 31, 35, 39, §4300; C46, 50, 54, §290.3]

**290.4 Witnesses — fees — collection.** The county superintendent in all matters triable before him shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the general fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and

tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments. [C97,§2821; C24, 27, 31, 35, 39,§4301; C46, 50, 54,§290.4]

Contempts, ch 665  
Fees for serving subpoenas, §§337.11, 601.129  
Witnesses, §622.69 et seq.

**290.5 Appeal to state board.** An appeal may be taken from the decision of the county superintendent to the state board of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days notice of the appeal shall be given

by the appellant to the county superintendent, and also to the adverse party. The decision when made shall be final. [R60,§2139; C73, §1835; C97,§2820; C24, 27, 31, 35, 39,§4302; C46, 50, 54,§290.5]

C97,§2820, editorially divided

**290.6 Money judgment.** Nothing in this chapter shall be so construed as to authorize either the county superintendent or state board of public instruction to render judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved. [R60,§2140; C73,§1836; C97,§2820; C24, 27, 31, 35, 39,§4303; C46, 50, 54, §290.6]

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

- 291.1 President—duties.
- 291.2 Bonds of secretary and treasurer.
- 291.3 Cost of bond.
- 291.4 Oath.
- 291.5 Action on bond.
- 291.6 Duties of secretary.
- 291.7 Monthly receipts, disbursements, and balances.
- 291.8 Warrants.

- 291.9 School census.
- 291.10 Reports by secretary.
- 291.11 Officers reported.
- 291.12 Duties of treasurer—payment of warrants.
- 291.13 General and schoolhouse funds.
- 291.14 Financial statement.
- 291.15 Annual report.

**291.1 President—duties.** The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. [C51,§§1122, 1123, 1125; R60,§§2039, 2040; C73,§§1739, 1740; C97,§2759; C24, 27, 31, 35, 39,§4304; C46, 50, 54, §291.1]

**291.2 Bonds of secretary and treasurer.** The secretary and treasurer shall each give bond to the school corporation in such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars. [C51, §1144; R60,§2037; C73,§1731; C97,§2760; C24, 27, 31, 35, 39,§4305; C46, 50, 54,§291.2]

C97,§2760, editorially divided  
Referred to in §§277.28, 279.3

**291.3 Cost of bond.** If the bond of an association or corporation as surety is furnished, the reasonable cost of such bond may be paid by the school corporation. [C27, 31, 35,§4305-a1; C39,§4305.1; C46, 50, 54,§291.3]

**291.4 Oath.** Each shall take the oath required of civil officers, which shall be indorsed

upon the bond, and shall complete his qualification within ten days. [C97,§2760; C21, 27, 31, 35, 39,§4306; C46, 50, 54,§291.4]

Oath of office, §63.10

**291.5 Action on bond.** In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation. [C51,§1144; R60,§2037; C73,§1731; C97,§2760; C24, 27, 31, 35, 39,§4307; C46, 50, 54,§291.5]

**291.6 Duties of secretary.** The secretary shall:

1. *Preservation of records.* File and preserve copies of all reports made to the county superintendent, and all papers transmitted to him pertaining to the business of the corporation.

2. *Minutes.* Keep a complete record of all the proceedings of the meetings of the board and of all regular or special elections in the corporation in separate books.

3. *Account with treasurer.* Keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund.

4. *Claims.* Keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment.

5. *Pollbook.* Record at all school elections, in a book provided for that purpose, the names of all persons voting thereat, the number of

votes cast for each candidate, and for and against each proposition submitted. [C51, §§1126, 1128; R60, §§2041, 2042; C73, §§1741, 1743; C97, §2761; S13, §2761; C24, 27, 31, 35, 39, §4308; C46, 50, 54, §291.6]

S13, §2761, editorially divided

**291.7 Monthly receipts, disbursements, and balances.** The secretary of each independent town or city district shall file monthly, on or before the tenth day of each month, with the board of directors, a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by said statement, which monthly statements shall be open to public inspection. [S13, §2761; C24, 27, 31, 35, 39, §4309; C46, 50, 54, §291.7]

**291.8 Warrants.** He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the same. [C51, §§1122, 1123, 1126; R60, §§2039, 2041, 2061; C73, §§1739, 1741, 1782; C97, §2762; S13, §2762; C24, 27, 31, 35, 39, §4310; C46, 50, 54, §291.8]

**291.9 School census.** He shall, between the first day of June and the first day of July of each even-numbered year, enter in a book prepared by the superintendent of public instruction for that purpose the following, taken as of June 1:

1. The name and post-office address of parents and guardians in his district with the name, sex, and age of all children or wards residing in the district who are between five and twenty-one years of age.

2. The name, age, and post-office address of every person resident of the district without regard to age so blind as to be unable to acquire an education in the common schools.

3. The name, age, and post-office address of every person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools.

4. The name, sex, age, and disability of every physically handicapped or feeble-minded person of school age, with the name and post-office address of the parent or guardian. [C97, §2764; S13, §2764; C24, 27, 31, 35, 39, §4312; C46, 50, 54, §291.9]

Similar provisions, §279.22  
See also §§299.16, 299.17

**291.10 Reports by secretary.** He shall notify the county superintendent when each school is to begin and its length of term, and, ten days after the regular July meeting in each

year, file with the county superintendent a report, on blanks prepared for that purpose by the superintendent of public instruction, showing:

1. The number, as shown by the last preceding school census, of persons of school age in the corporation, distinguishing the sexes.

2. The number of schools and branches taught.

3. The number of scholars enrolled and the average attendance in each school.

4. The number of teachers employed and the average compensation paid per month, distinguishing the sexes.

5. The length of school in days.

6. The average cost of tuition per month for each scholar.

7. The textbooks used.

8. The number of volumes in library.

9. The value of apparatus belonging to the corporation.

10. The number of schoolhouses and their estimated value.

11. The name, age, and post-office address of each person resident of the corporation, without regard to age, so blind as to be unable to acquire an education in the common schools, and of each person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools, and the name, sex, age, and disability of every physically handicapped or feeble-minded person of school age, with the name and post-office address of the parent or guardian. [C51, §1127; R60, §2046; C73, §§1744, 1745; C97, §2765; S13, §2765; C24, 27, 31, 35, 39, §4313; C46, 50, 54, §291.10]

**291.11 Officers reported.** He shall report to the county superintendent, auditor, and treasurer the name and post-office address of the president, treasurer, and secretary of the board as soon as practicable after the qualification of each. [C73, §1736; C97, §2766; C24, 27, 31, 35, 39, §4314; C46, 50, 54, §291.11]

**291.12 Duties of treasurer—payment of warrants.** The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount. [C51, §§1138–1140; R60, §§2048–2050; C73, §§1747–1750; C97, §2768; S13, §2768; C24, 27, 31, 35, 39, §4316; C46, 50, 54, §291.12]

**291.13 General and schoolhouse funds.** The money collected by a tax authorized by the electors or the proceeds of the sale of bonds authorized by law or the proceeds of a tax estimated and certified by the board for the

purpose of paying interest and principal on lawful bonded indebtedness or for the purchase of sites as authorized by law, shall be called the schoolhouse fund and, except when authorized by the electors, may be used only for the purpose for which originally authorized or certified. All other moneys received for any other purpose shall be called the general fund.\* The treasurer shall keep a separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied. [C51, §1139; R60, §2049; C73, §1748; C97, §2768; C24, 27, 31, 35, 39, §4317; C46, 50, 54, §291.13]

Deposits in general, ch 453  
Library fund, §292.1  
\*Special courses fund, §286A.7

**291.14 Financial statement.** He shall render a statement of the finances of the corporation whenever required by the board, and his books shall always be open for inspection. [C51, §1141; R60, §2051; C73, §1751; C97, §2769; S13, §2769; C24, 27, 31, 35, 39, §4320; C46, 50, 54, §291.14]

S13, §2769, editorially divided

**291.15 Annual report.** He shall make an annual report to the board at its regular July meeting, which shall show the amount of the general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the county superintendent. [C97, §2769; S13, §2769; C24, 27, 31, 35, 39, §4321; C46, 50, 54, §291.15]

## CHAPTER 292

### COMMON SCHOOL LIBRARIES

Referred to in §273.13

- 292.1 Library fund.
- 292.2 Purchase of books—distribution.
- 292.3 Closed schools—funds used.
- 292.4 Lists of books.

- 292.5 Record of books.
- 292.6 Librarian.
- 292.7 Custody of library.
- 292.8 Board to supervise.

**292.1 Library fund.** The auditor of each county in this state shall withhold annually the money received from the semiannual apportionment of the interest of the permanent school fund for the several school districts for the purchase of books, as hereinafter provided. [S13, §2823-n; C24, 27, 31, 35, 39, §4322; C46, 50, 54, §292.1]

Referred to in §§292.2, 292.3

**292.2 Purchase of books—distribution.** Between the first Monday of July and the first day of October in each year, the county board of education shall expend all money withheld by the auditor, as provided in section 292.1, in the purchase of books for the use of the school district. The county board of education may distribute the books thus purchased to the librarians of the several school districts in the proportion that the number of persons of school age living in the school district bears to the number of such persons living in the county, or may entrust the custody of such books to the county superintendent of schools to be loaned by him to schools of the county in the manner of a circulating library; provided that if the circulating library method is adopted, in whole or in part, any independent district or any consolidated district maintaining a high school shall, upon request of its board of directors, be excluded therefrom and be allowed its distributive share of such books on the basis first above mentioned in this section.

Directors of the school districts having permanent libraries shall, upon approval by the county superintendent of schools, be permitted to make temporary and permanent exchanges

of books between school districts or to turn books over to the county superintendent of schools to become a part of the circulating library. The county superintendent shall keep a record of all books in his custody. [S13, §2823-o; C24, 27, 31, 35, 39, §4323; C46, 50, 54, §292.2]

**292.3 Closed schools—funds used.** The county board of education is hereby authorized and empowered to expend any or all of the library fund created by section 292.1, to be apportioned to schools that have been or may be closed hereafter for library books to be loaned to the schools of the county that remain open as directed by the county board of education. The county superintendent of schools shall be the custodian of such books and shall keep a record of them in a book provided for that purpose. [C39, §4323.1; C46, 50, 54, §292.3]

**292.4 Lists of books.** The state board of educational examiners shall prepare annually lists of books suitable for use in school district libraries, and furnish copies of such lists to each county superintendent and to each member of each county board of education. [S13, §2823-p; C24, 27, 31, 35, 39, §4324; C46, 50, 54, §292.4]

**292.5 Record of books.** It shall be the duty of each secretary to keep in a record book, furnished by the board of directors, a complete record of the books purchased and distributed by him. [S13, §2823-q; C24, 27, 31, 35, 39, §4325; C46, 50, 54, §292.5]

**292.6 Librarian.** Unless the board of directors shall elect some other person, the secre-

tary in independent districts and director in subdistricts in school townships shall act as librarian and shall receive and have the care and custody of the books, and shall loan them to teachers, pupils, and other residents of the district, in accordance with the rules and regulations prescribed by the state board of educational examiners and board of directors. Each librarian shall keep a complete record of the books in a record book furnished by the board of directors. [S13,§2823-r; C24, 27, 31, 35, 39, §4326; C46, 50, 54,§292.6]

S13,§2823-r, editorially divided

**292.7 Custody of library.** During the periods that the school is in session the library shall be placed in the schoolhouse, and the teacher shall be responsible to the district for its proper care and protection. [S13,§2823-r; C24, 27, 31, 35, 39,§4327; C46, 50, 54,§292.7]

**292.8 Board to supervise.** The board of directors shall have supervision of all books, and shall make an equitable distribution thereof among the schools of the corporation. [S13, §2823-r; C24, 27, 31, 35, 39,§4328; C46, 50, 54, §292.8]

## CHAPTER 293

### STANDARDIZATION AND STATE AID

293.1 Standard schools—maintenance.  
293.2 Minimum requirements.  
293.3 County superintendent—reports.  
293.4 State aid.

293.5 Minimum standard.  
293.6 Door plate.  
293.7 State aid—how obtained and expended.

**293.1 Standard schools—maintenance.** Any school located in a district, other than a city independent or consolidated district, not maintaining a high school, which has complied with the provisions of this chapter, shall be known as a standard school. Every standard school, before it may be designated as such, shall have been maintained for eight school months during the previous year. It shall during the previous school year:

1. Have a suitable schoolhouse, grounds, and outbuildings in proper condition and repair.
2. Be equipped with needful apparatus, textbooks, supplies, and an adequate system of heating and ventilation.
3. Have done efficient work.
4. Have complied with such requirements as shall be specified by the superintendent of public instruction. [C24, 27, 31, 35, 39,§4329; C46, 50, 54,§293.1]

**293.2 Minimum requirements.** The superintendent of public instruction shall prescribe for standard schools the minimum requirements of teaching, general equipment, heating, ventilation, lighting, seating, water supply, library, care of grounds, fire protection, and such other requirements as he may deem necessary. [C24, 27, 31, 35, 39,§4330; C46, 50, 54, §293.2]

Experience in teaching recognized, §294.2

**293.3 County superintendent—reports.** On or before June 30 of each year, and at such other times as the superintendent of public instruction may direct, the county superintendent of schools shall make reports and furnish such other data in regard to said schools as the department of public instruction may desire on blanks to be furnished by the superintendent of public instruction. [C24, 27, 31, 35, 39, §4331; C46, 50, 54,§293.3]

**293.4 State aid.** State aid shall be given to rural districts maintaining one or more standard schools to the amount of six dollars for each pupil who has attended said schools in said district at least six months of the previous year. [C24, 27, 31, 35, 39,§4332; C46, 50, 54,§293.4]

**293.5 Minimum standard.** No school shall be deemed a standard school unless the teacher is the holder of a first-class county certificate or its equivalent, has contracted for the entire school year, and unless such school shall have maintained an average daily attendance of at least ten pupils, during the previous school year. [C24, 27, 31, 35, 39,§4333; C46, 50, 54, §293.5]

Experience of teacher recognized, §294.2

**293.6 Door plate.** Each standard school shall be furnished by the superintendent of public instruction with a suitable door plate or mark of identification, and the expense of the same shall be paid from the fund created for the promotion of standard schools. [C24, 27, 31, 35, 39,§4334; C46, 50, 54,§293.6]

**293.7 State aid—how obtained and expended.** Upon receiving from the county superintendent a satisfactory report showing that any rural school has fulfilled the requirements of a standard school, the superintendent of public instruction shall issue a requisition upon the state comptroller for the amount due any rural school district entitled to state aid for the school year just past; whereupon the comptroller shall draw a warrant on the treasurer of state payable to the secretary of the school corporation entitled thereto and forward to the secretary of said school corporation, who shall cause the same to be deposited with the other funds of the district. The money shall be expended in the district or districts maintaining standard schools in amounts propor-

tionate to the number of pupils upon which state aid was granted. The money shall be expended with the approval of the county superintendent in making improvements and in

purchasing necessary apparatus, but no part thereof shall be paid to any teacher for compensation. [C24, 27, 31, 35, 39,§4335; C46, 50, 54,§293.7]

CHAPTER 294

TEACHERS

- 294.1 Qualifications—compensation prohibited.
- 294.2 Experience in teaching recognized.
- 294.3 State aid and tuition.
- 294.4 Daily register.
- 294.5 Reports.
- 294.6 Minimum teachers' wage.
- 294.7 Temporary suspension.
- 294.8 Pension system.

- 294.9 Fund.
- 294.10 Management.

TERMINATION IN CITIES

- 294.11 Resolution adopted.
- 294.12 Pension fund held for survivors.
- 294.13 General fund replacements.
- 294.14 Estimate of funds needed—levy.
- 294.15 State teachers' pension.

**294.1 Qualifications—compensation prohibited.** No person shall be employed as a teacher in a common school which is to receive its distributive share of the school fund without having a certificate of qualification given by the county superintendent of the county in which the school is situated, or a certificate or diploma issued by some other officer duly authorized by law.

No compensation shall be recovered by a teacher for services rendered while without such certificate or diploma. [R60,§2062; C73, §1758; C97,§2788; C24, 27, 31, 35, 39,§4336; C46, 50, 54,§294.1]

**294.2 Experience in teaching recognized.** No regulations or orders by the state superintendent of public instruction or the board of educational examiners with reference to the qualifications of teachers, in regard to having taken certain high school or collegiate courses or teachers training courses, shall be retroactive so as to apply to any teacher who has had at least three years successful experience in teaching; and no teacher once approved for teaching in any kind of school shall be prevented by such regulations or orders from continuing to teach in the same kind of school for which he has previously been approved; provided, however, that this section shall not be construed as limiting the duties or powers of any school board in the selection of teachers, or in the dismissal of teachers for inefficiency or for any legal cause. [C24, 27, 31, 35, 39, §4337; C46, 50, 54,§294.2]

Referred to in §294.3

**294.3 State aid and tuition.** No school shall be deprived of its right to be approved for state aid or approved for tuition by reason of the employment of any teacher as authorized under section 294.2. [C24, 27, 31, 35, 39,§4338; C46, 50, 54,§294.3]

**294.4 Daily register.** Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the

day of the week, month, year, and the name, age, and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall, immediately at the close of the school, be filed by the teacher in the office of the secretary of the board. [R60,§2062; C73, §1759, 1760; C97,§2789; C24, 27, 31, 35, 39,§4339; C46, 50, 54,§294.4]

C97,§2789, editorially divided

**294.5 Reports.** The teacher shall file with the county superintendent such reports and in such manner as he may require. [C97,§2789; C24, 27, 31, 35, 39,§4340; C46, 50, 54,§294.5]

**294.6 Minimum teachers' wage.**

1. Any teacher holding a valid certificate shall be paid a minimum wage of not less than seventy dollars per month.

2. A teacher holding a limited elementary certificate who has completed at least fifteen semester hours of standard college work shall be paid a minimum wage of not less than seventy-five dollars per month.

3. A teacher holding a limited elementary certificate who has completed at least thirty semester hours of standard college work shall be paid a minimum wage of not less than eighty dollars per month.

4. A teacher holding a limited elementary certificate who has completed at least forty-five semester hours of standard college work shall be paid a minimum wage of not less than eighty-five dollars per month.

5. A teacher holding a limited elementary certificate who has completed sixty or more semester hours of standard college work or who holds a certificate requiring sixty hours or more of standard college work shall be paid a minimum wage of not less than ninety dollars per month.

Provided, that nothing herein shall be construed as limiting the right of a school board to make a contract for a higher wage than herein specified as a minimum. [S13,§2778-a; C24, 27, 31, 35, 39,§4341; C46, 50, 54,§294.6]

**294.7 Temporary suspension.** The county board of education may temporarily suspend the provisions hereof if, in its judgment, the financial conditions in any district warrant such action. [C35,§4341-e1; C39,§4341.1; C46, 50, 54,§294.7]

**294.8 Pension system.** Any independent school district located in whole or in part within a city having a population of twenty-five thousand one hundred or more may establish a pension and annuity retirement system for the public school teachers of such district provided said system, in cities having a population less than seventy-five thousand, be ratified by a vote of the people at a general election. [C24, 27, 31, 35, 39,§4345; C46, 50, 54,§294.8]

Referred to in §§294.11, 294.12, 294.14

**294.9 Fund.** The fund for such retirement system shall be created from the following sources:

1. From the proceeds of an assessment of teachers in the school district not exceeding one percent of their salaries in a given school year, or such greater percentage as the board of directors of such school district may authorize and a majority of such teachers shall, at the time of such authorization by the board, agree to pay.

2. From the proceeds of an annual tax levy, not exceeding the amount produced in the current school year by the assessment of teachers as provided in the preceding paragraph of this section.

3. From the interest on any permanent fund which may be created by gift, bequest, or otherwise. [C24, 27, 31, 35, 39,§4346; C46, 50, 54, §294.9]

Referred to in §294.11

**294.10 Management.** The board of directors of the independent school district shall constitute the board of trustees and shall formulate the plan of the retirement; and shall make all necessary rules and regulations for the operation of said retirement system. [C24, 27, 31, 35, 39,§4347; C46, 50, 54,§294.10]

Referred to in §294.11

#### TERMINATION IN CITIES

**294.11 Resolution adopted.** Any independent school district which has in operation the pension and annuity retirement system created pursuant to sections 294.8 to 294.10, inclusive, may terminate such system by the adoption by the board of directors of such district, of a resolution declaring such system terminated as of a date specified therein. [C50, 54,§294.11]

**294.12 Pension fund held for survivors.** In the event of such termination, all assessments of teachers shall cease upon such date of termination, or upon such earlier date as may be prescribed in such resolution, and no additional taxes shall be levied or assessed for the operation of such system, save as in section 294.13. All undisposed of funds and accumulations de-

rived from the operation of said system, including the proceeds, when collected, of any annual tax heretofore levied for the operation of said system, and including the proceeds of any annual tax levied hereafter pursuant to the provisions of section 294.13, shall constitute a retirement liquidation fund. Such liquidation fund shall be held for the benefit of those surviving beneficiaries under such system as of said date of termination, and of members of such system as of date of termination. There shall be set aside from such retirement liquidation fund an amount sufficient to provide for the payment of all surviving beneficiaries who shall be entitled to receive benefits under such system as of said date of termination, providing an actuarial computation has been made of the amount required to meet such benefit payments, providing the amount in the retirement liquidation fund is sufficient for this purpose, and the amount set aside shall be used for no other purpose than for the payment of claims to such beneficiaries. Any amount in excess of the actuarial equivalent of the sum required to pay such benefit payments shall be apportioned to persons who were as of the effective date of the termination of the system, members of such system, in proportion to the amount which the accumulated contribution of each such person bears to the total funds of such retirement system subject to such apportionment. Any member of such system as of the date of termination thereof, may, in lieu of receiving the cash refund of his share of the liquidation fund, elect to come under the coverage of any new pension and annuity retirement system established by the district, to which he is eligible, with credits toward future benefits in consideration of his prior contributions and length of service, and may direct the transfer of the amount payable to him to the assets of the new pension and annuity retirement system. In any case where the board of directors of a school district including a teachers retirement system established under the provisions of section 294.8, whose members were not under coverage of the Iowa old-age and survivors' insurance system prior to May 1, 1953, the board of directors may authorize the payment from funds in excess of the actuarial amount estimated as required for the payment of benefits to persons entitled to them, and for the purpose of obtaining retroactive social security coverage from January 1, 1951 until the effective date of federal coverage of Iowa public employees as provided by chapter 97C. Each surviving beneficiary entitled to receive retirement benefits of the date of termination of the system will be entitled to receive retirement benefits at the time and in the amount in effect with respect to such beneficiary immediately prior to the date of termination. [C50, 54,§294.12]

Referred to in §294.14

**294.13 General fund replacements.** The board of directors of said district shall each year at the meeting at which it estimates the

amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries, which amount shall be levied by the board of supervisors in accordance with the provisions of section 298.8. Upon the death of the last beneficiary to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district. [C50, 54, §294.13]

Referred to in §294.12

**294.14 Estimate of funds needed—levy.** The board of directors of said district shall annually, for a period of five years after the effective date of the termination of its pension system, at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount if any necessary to pay to participants in the pension system who are not entitled to receive benefits under such system at the date of termination thereof, one-fifth of the amount paid into said pension fund by such participants therein, without interest, which amount shall be levied by the board of supervisors, in accordance with provisions of section 298.8 and, in addition thereto, the board of directors of said district shall each year at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries of said pension system, as defined in section 294.12, which amount shall be levied by the

board of supervisors, in accordance with the provisions of section 298.8. Upon the death of the last beneficiary, as defined in section 294.12, to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district. [C54, §294.14]

**294.15 State teachers' pension.** Any person having attained the age of sixty-five who shall have been an employee, holding a valid teaching certificate, in the public schools of this state with a record of service of twenty-five years or more, including a maximum of five years out-of-state service followed by at least ten years service in this state prior to retirement and who shall have retired prior to July 4, 1953, shall be entitled to receive retirement allowance payments from the state of Iowa of not less than seventy-five dollars per month. Such sums as are necessary to meet this minimum requirement shall be added to the retirement allowance payments, if any, now being received from the state of Iowa by individuals covered by the provisions of this section.

Application for such retirement allowance payments shall be made to the employment security commission under such rules and regulations as the commission may prescribe. Eligible persons shall be entitled to receive such retirement allowance payments effective from the date of application to the commission, provided such application is approved, and such payments shall be continued on the first day of each month thereafter during the lifetime of any such person. [57GA, ch 135, §1]

Appropriation, see biennial Acts of general assembly

## CHAPTER 295

### INSTRUCTION OF DEAF

295.1 Instructors authorized.  
 295.2 State aid—amount.  
 295.3 State board of regents to supervise.

295.4 State aid—payment.  
 295.5 Appropriation.

**295.1 Instructors authorized.** Any school corporation within the state having residing therein deaf children of school age may provide one or more special instructors for such deaf children, the instruction given under such special instructors to be substantially equivalent to that given other children of corresponding age in the graded schools. [C24, 27, 31, 35, 39, §4348; C46, 50, 54, §295.1]

child not more than sixteen years of age is instructed under the provisions of this chapter.

No child more than sixteen years of age shall be admitted to such instruction. [C24, 27, 31, 35, 39, §4349; C46, 50, 54, §295.2]

**295.2 State aid—amount.** To any school corporation providing such instruction and complying with all of the provisions of this chapter there shall be granted and paid as hereinafter provided state aid in an amount to be computed at twenty dollars for each month that each

**295.3 State board of regents to supervise.** When any school corporation shall elect to proceed under the provisions of this chapter, it shall, through its proper officers, communicate that fact to the state board of regents, and the state board of regents shall have general supervision of all matters arising under this chapter, and no instructor shall be appointed hereunder and no courses or methods of instruction shall be installed hereunder



without the approval of such state board of regents. [C24, 27, 31, 35, 39,§4350; C46, 50, 54, §295.3; 56GA, ch 131,§54]

**295.4 State aid—payment.** The state aid herein provided for shall be paid annually at the end of the school year upon properly authenticated and verified claim in form as may be required by the state board of regents, and when such claim is approved by the state

board of regents the state comptroller shall draw warrant accordingly. [C24, 27, 31, 35, 39, §4351; C46, 50, 54,§295.4; 56GA, ch 131,§55]

**295.5 Appropriation.** For the purpose of paying the state aid granted under this chapter there is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient therefor. [C24, 27, 31, 35, 39,§4352; C46, 50, 54,§295.5]

## CHAPTER 296

### INDEBTEDNESS OF SCHOOL DISTRICTS

Referred to in §407.15

296.1 Indebtedness authorized.  
296.2 Petition for election.  
296.3 Election called.

296.4 Notice—ballots.  
296.5 Date of election.  
296.6 Bonds.

**296.1 Indebtedness authorized.** Any school corporation shall be allowed to become indebted for the purpose of building and furnishing a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or for the purpose of purchasing land to add to a site already owned, or for the purpose of procuring and improving a site for an athletic field or improving a site already owned for an athletic field, to an amount not to exceed in the aggregate, including all other indebtedness, five percent of the actual value of the taxable property within such school corporation, such value to be ascertained by the last county tax list previous to the incurring of such indebtedness, anything contained in section 407.1 to the contrary notwithstanding. [S13,§2820-d1; C24, 27, 31, 35, 39,§4353; C46, 50, 54,§296.1]

Limitation on indebtedness, §§407.1, 407.2

**296.2 Petition for election.** Before such indebtedness can be contracted in excess of one and one-quarter percent of the assessed value of the taxable property, a petition signed by a number equal to twenty-five percent of those voting at the last regular school election shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose for which the indebtedness is to be created, and that the necessary schoolhouse or schoolhouses cannot be built and equipped, or that sufficient land cannot be purchased to add to a site already owned, within the limit of one and one-quarter percent of the valuation. [S13,§2820-d2; C24, 27, 31, 35, 39,§4354; C46, 50, 54,§296.2]

**296.3 Election called.** The president of the board of directors on receipt of such petition shall, within ten days, call a meeting of the board which shall call such election, fixing the time and place thereof, which may be at the time and place of holding the regular school election. [S13,§2820-d3; C24, 27, 31, 35, 39,§4355; C46, 50, 54,§296.3]

**296.4 Notice—ballots.** Notice of such election shall be given by publication once each week for four weeks in some newspaper published in the district, or, if there is none, in some newspaper published in the county and of general circulation in the district. The notice shall state the date of the election, the hours of opening and closing the polls and the exact location thereof, and the questions to be submitted, and shall be in lieu of any other notice, any other statute to the contrary notwithstanding. At such election the ballot shall be prepared and used in substantially the form for submitting special questions at general elections. [S13,§2820-d3; C24, 27, 31, 35, 39, §4356; C46, 50, 54,§296.4]

Form of ballot, §49.43 et seq.; also §345.6

**296.5 Date of election.** The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. [C24, 27, 31, 35, 39,§4357; C46, 50, 54, §296.5]

**296.6 Bonds.** If a majority of the qualified voters voting at such election vote in favor of the issuance of such bonds, the board of directors shall issue the same and make provision for the payment thereof. [S13,§2820-d4; C24, 27, 31, 35, 39,§4358; C46, 50, 54,§296.6]

Vote required to authorize bonds, §75.1

CHAPTER 297

SCHOOLHOUSES AND SCHOOLHOUSE SITES

Public square transferred for school purposes, §§409.46, 409.47

- 297.1 Location.
- 297.2 Ten-acre limitation.
- 297.3 Thirty-acre limitation.
- 297.4 Ten-acre limitation.
- 297.5 Tax.
- 297.6 Condemnation.
- 297.7 Erection or repair of schoolhouse.
- 297.8 Emergency repairs.
- 297.9 Use for other than school purposes.
- 297.10 Compensation.
- 297.11 Use forbidden.
- 297.12 Renting schoolroom.
- 297.13 Fence around schoolhouse sites.
- 297.14 Barbed wire.
- 297.15 Reversion of schoolhouse site.
- 297.16 Appraisers.
- 297.17 Notice.
- 297.18 Appraisalment.

- 297.19 Public sale.
- 297.20 Sale of improvements.
- 297.21 Sale of unnecessary schoolhouse sites.

SALE OR LEASE IN CERTAIN DISTRICTS

- 297.22 Power to sell or lease.
- 297.23 Advertisement for bids.
- 297.24 Acceptance of bids.
- 297.25 Rule of construction.

MINING CAMP SCHOOLS

- 297.26 Sale by executive council.
- 297.27 Preference to owner of tract.
- 297.28 Appraisers.
- 297.29 Report filed.
- 297.30 Public sale.
- 297.31 Improvements.
- 297.32 Equipment and supplies.

**297.1 Location.** The board of each school corporation may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities, towns, and villages, not less than thirty rods from the residence of any landowner who objects thereto.

In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school corporation and the geographical location and convenience of any proposed site. [R60,§2037; C73,§§1724, 1825, 1826; C97,§§2773, 2814; S13,§§2773, 2814; C24, 27, 31, 35, 39,§4359; C46, 50, 54, §297.1]

Public squares transferred for school purposes, §§409.46, 409.47

**297.2 Ten-acre limitation.** Except as hereinafter provided, any school corporation may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed ten acres exclusive of public highway. [C73,§1825; C97,§2814; S13,§2814; C24, 27, 31, 35, 39,§4360; C46, 50, 54,§297.2]

**297.3 Thirty-acre limitation.** Any school corporation including a city, town, or village, may take and hold an area equal to two blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding thirty acres for school playground, stadium, or field house, or other purposes for each such site. [C97,§2814; S13,§2814; C24, 27, 31, 35, 39,§4361; C46, 50, 54, §297.3]

**297.4 Ten-acre limitation.** Consolidated districts may take and hold not to exceed ten acres for any one site, and any school corporation may acquire additional ground by donation. [S13,§2814; C24, 27, 31, 35, 39,§4362; C46, 50, 54, §297.4]

**297.5 Tax.** The directors in any independent district whose territory is composed wholly or in part of territory occupied by any city may, at their regular meeting in July, or at a special meeting called for that purpose between the time designated for such regular meeting and the third Monday in August, certify an amount not exceeding one mill to the board of supervisors, who shall levy the amount so certified, and the tax so levied shall be placed in the schoolhouse fund and used only for the purchase of sites in and for said school district. [C24, 27, 31, 35, 39,§4363; C46, 50, 54,§297.5]

**297.6 Condemnation.** If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate may be taken under condemnation proceedings in accordance with the provisions of chapter 472. [C73,§1827; C97,§2815; C24, 27, 31, 35, 39, §4364; C46, 50, 54,§297.6]

**297.7 Erection or repair of schoolhouse.** Before erecting a schoolhouse, the board of directors shall consult with the county superintendent as to the most approved plan for such building, and secure his approval of the plan submitted. Before any one-room schoolhouse shall be erected or repaired at a cost exceeding five hundred dollars, or before any schoolhouse containing more than one room shall be erected or repaired at a cost exceeding twenty-five hundred dollars, proposals therefor shall be invited by advertisement published once each week for two consecutive weeks in some newspaper published in the county in which the work is to be done, and the contract shall be let to the lowest responsible bidder

but the board may reject any and all bids and advertise for new bids. After any bid is accepted, a written contract shall be entered into, and the contractor shall furnish bonds with sureties for the faithful performance of the contract. [R60,§2037; C73,§1723; C97,§2779; C24, 27, 31, 35, 39,§4370; C46, 50, 54,§297.7; 56GA, ch 146,§1]

**297.8 Emergency repairs.** When emergency repairs costing more than twenty-five hundred dollars are necessary in order to prevent the closing of any school, the provisions of the act with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids; provided, however, that before such emergency repairs can be made to any schoolhouse, it shall be necessary to procure a certificate from the county superintendent that such emergency repairs are necessary to prevent the closing of such school. [C31, 35,§4370-c1; C39,§4370.1; C46, 50, 54,§297.8; 56GA, ch 146,§2]

See §297.7

**297.9 Use for other than school purposes.** The board of directors of any school corporation may authorize the use of any schoolhouse and its grounds within such corporation for the purpose of meetings of granges, lodges, agricultural societies, and similar rural secret orders and societies, for parent-teacher associations, for community recreational activities, for public forums and similar community purposes; provided, however, that the board may not grant such permission to any organization known or believed to hold views that are in conflict with the republican form of government as set forth in the constitution of the United States; and for election purposes, and for other meetings of public interest; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils. [C24, 27, 31, 35, 39,§4371; C46, 50, 54,§297.9]

37GA, ch 229,§1, editorially divided  
Rights in existence before July 4, 1941, preserved, 49GA, ch 166,§2  
Schoolhouses as polling places, §49.24  
Use by county conservation board, §111A.8

**297.10 Compensation.** Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor. [C24, 27, 31, 35, 39,§4372; C46, 50, 54,§297.10]

**297.11 Use forbidden.** If at any time the voters of such corporation at a regular election forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at a regular election, or at a special election called for that purpose. [C24, 27, 31, 35, 39,§4373; C46, 50, 54,§297.11]

**297.12 Renting schoolroom.** The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse. [C73, §1725; C97,§2774; C24, 27, 31, 35, 39,§4374; C46, 50, 54,§297.12]

**297.13 Fence around schoolhouse sites.** Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on his land with the fence around the school grounds, but he shall not be liable to contribute to the maintenance of such fence. [S13,§§2745-a,-b; C24, 27, 31, 35, 39,§4377; C46, 50, 54,§297.13]

Referred to in §297.14  
Lawful fence, §113.18

**297.14 Barbed wire.** No fence provided for in section 297.13 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be punished by a fine not exceeding twenty-five dollars. [C97,§2817; C24, 27, 31, 35, 39,§4378; C46, 50, 54,§297.14]

**297.15 Reversion of schoolhouse site.** Any real estate, situated wholly outside of a city or town, owned by a school corporation and not adjacent thereto, and heretofore used as a schoolhouse site, and which, for a period of two years continuously has not been used for any school purpose, shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school corporation. [C73,§1828; C97,§2816; S13,§2816; C24, 27, 31, 35, 39,§4379; C46, 50, 54,§297.15; 56GA, ch 145,§1]

39GA, ch 183,§1, editorially divided  
Referred to in §§297.21, 297.22

**297.16 Appraisers.** In case the school corporation and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the county superintendent of the county in which the greater part of such school corporation is situated, shall, on the written application of either party, appoint three disinterested voters of the county to appraise said site. [C97,§2816; S13,§2816; C24, 27, 31, 35, 39,§4380; C46, 50, 54,§297.16]

Referred to in §§297.21, 297.22

**297.17 Notice.** The county superintendent shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. [C24, 27, 31, 35, 39, §4381; C46, 50, 54,§297.17]

Referred to in §§297.21, 297.22  
Time and manner of service, R.C.P. 53 and 56(a)

**297.18 Appraisement.** Such appraisers shall inspect the premises and, at the time and place

designated in the notice, appraise said site in writing, which appraisal, after being duly verified, shall be filed with the county superintendent. [C24, 27, 31, 35, 39,§4382; C46, 50, 54, §297.18]

Referred to in §§297.21, 297.22

**297.19 Public sale.** If the owner of the tract from which said site was taken fails to pay the amount of such appraisal to such school corporation within twenty days after the filing of same with the county superintendent, the school corporation may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder. [C24, 27, 31, 35, 39,§4383; C46, 50, 54, §297.19]

Referred to in §§297.21, 297.22

**297.20 Sale of improvements.** If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately. [C97,§2816; S13, §2816; C24, 27, 31, 35, 39,§4384; C46, 50, 54,§297.20]

Referred to in §§297.21, 297.22

**297.21 Sale of unnecessary schoolhouse sites.** Schoolhouses and school sites no longer necessary for school purposes, because of being located in consolidated school districts, may be sold immediately after the organization of such consolidated school districts, in the manner above provided.

During the use of such premises, no person owning a right of reversion shall have any interest in or control over the premises.

This and sections 297.15 to 297.20, inclusive, shall not apply to cases where schools have been temporarily closed by law on account of small attendance. [C73,§1828; C97,§2816; S13, §2816; C24, 27, 31, 35, 39,§4385; C46, 50, 54,§297.21]

SALE OR LEASE IN CERTAIN DISTRICTS

**297.22 Power to sell or lease.** The board of directors of an independent district composed wholly or in part of a city acting under a special charter and having a population of fifty thousand or more may lease, or by a unanimous vote pass a resolution to sell any schoolhouse, school site, or other property acquired for school purposes when in the opinion of said board such sale is for the benefit of the district.

The board of directors of other school corporations may sell, lease, or dispose of, in whole or in part, any schoolhouse or site or other property belonging to the corporation of a value not to exceed the following amounts:

1. Twenty-five hundred dollars in school districts which maintain a high school and in which the average daily attendance in the preceding year was two hundred or less.

2. Five thousand dollars in school districts which maintain a high school and in which the average daily attendance in the preceding year was more than two hundred but less than five hundred.

3. Ten thousand dollars in school districts which maintain a high school and in which

the average daily attendance in the preceding year was five hundred or more.

4. Five hundred dollars in any school district which does not maintain a high school.

Proceeds from the sale, lease or disposition of real property shall be placed in the schoolhouse fund and proceeds from the sale, lease or disposition of property other than real property shall be placed in the general fund.

Before the board of directors may sell, lease or dispose of any property belonging to the school corporation it shall comply with the requirements set forth in sections 297.15 to 297.20, inclusive and sections 297.23 and 297.24. Any real estate proposed to be sold shall be appraised by three disinterested freeholders residing in the school district and appointed by the county superintendent of schools of the county in which said real estate is located. [C27, 31, 35,§4385-a1; C39,§4385.1; C46, 50, 54, §297.22; 56GA, ch 140,§2]

Referred to in §§278.1, 297.25

Sale for defense projects, §§274.39 to 274.41, inclusive

**297.23 Advertisement for bids.** Before making a sale, the board shall advertise for bids for said property. Such advertisement shall definitely describe said property and be published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the district. [C27, 31, 35,§4385-a2; C39,§4385.2; C46, 50, 54,§297.23]

Referred to in §§297.22, 297.25

**297.24 Acceptance of bids.** The board shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The board may accept only the best bid received prior to acceptance. The board may decline to sell if all the bids received are deemed inadequate. [C27, 31, 35,§4385-a3; C39,§4385.3; C46, 50, 54,§297.24]

Referred to in §§297.22, 297.25

**297.25 Rule of construction.** Sections 297.22 to 297.24, inclusive, shall be construed as independent of the power vested in the electors by section 278.1, and as additional thereto. [C27, 31, 35,§4385-a4; C39,§4385.4; C46, 50, 54,§297.25]

MINING CAMP SCHOOLS

**297.26 Sale by executive council.** Any school building or any school site, the title of which is vested in the state of Iowa by reason of it having been provided by state mining camp funds for schools in mining camps, shall be sold by the state executive council when the state board of public instruction certifies the same to the executive council in writing as being no longer needed for school purposes. [C50, 54,§297.26]

**297.27 Preference to owner of tract.** When such buildings or sites are sold by the executive council, the then owners of the tract from which the same was originally taken shall have first option on the purchase of the same. [C50, 54,§297.27]

**297.28 Appraisers.** In case the executive council and said owner of the tract from which such school site was taken, do not agree as to the value of such site or building, the county superintendent of the county in which the greater part of such school site is situated, shall, on the written application of either party, appoint three disinterested voters of the county to appraise such site. The county superintendent shall give notice to both parties of the time and place of making such appraisal, which notice shall be served in the same manner and for the same time as for the commencement of an action in the district court. [C50, 54,§297.28]

**297.29 Report filed.** Such appraisers shall inspect the premises and at the time and place designated in the notice, appraise such site or building in writing, which appraisal, after being duly verified, shall be filed with the county superintendent. [C50, 54,§297.29]

**297.30 Public sale.** If the owner of the tract from which said site was taken fails to pay the

amount of such appraisal to such executive council within thirty days after the filing of the same with the county superintendent, the executive council may sell said site or building to any other person at the appraised value, or may sell the same at public sale to the highest bidder and the proceeds of such sale are to be added to the permanent school fund of the state. [C50, 54,§297.30]

**297.31 Improvements.** If there are improvements on said site the same may at the request of either party be appraised and sold separately. [C50, 54,§297.31]

**297.32 Equipment and supplies.** If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the superintendent of public instruction may remove the same and divert their use to other public school corporations. [C50, 54,§297.32]

## CHAPTER 298

### SCHOOL TAXES AND BONDS

298.1 School taxes.  
 298.2 Emergency increase—approval.  
 298.3 Additional taxes.  
 298.4 Transportation fund—tax for free textbooks.  
 298.5 Taxes estimated in mills.  
 298.6 Apportionment of taxes.  
 298.7 Contract for use of library.  
 298.8 Levy by board of supervisors.  
 298.9 Special levies.  
 298.10 General school levy.  
 298.11 Apportionment of school funds.  
 298.12 County auditor to report.

298.13 Monthly payment of taxes.  
 298.14 Schoolhouse tax.  
 298.15 Payment of judgment.  
 298.16 Judgment tax.  
 298.17 Judgment levy.  
 298.18 Bond tax.  
 298.19 Levy.  
 298.20 Funding or refunding bonds.  
 298.21 School bonds.  
 298.22 Form—rate of interest—where registered.  
 298.23 Redemption.  
 298.24 Record of bond buyers.

**298.1 School taxes.** The board of each school corporation shall at its regular meeting in July, or at a special meeting called between the time for the regular meeting and the twenty-fifth day of July, estimate the amount required to be raised by taxation for the general fund. The amount so estimated shall not exceed the following sum for each person of school age:

1. All school corporations having a school enumeration of twelve hundred or more, one hundred forty dollars.

2. All school corporations having a school enumeration of less than twelve hundred and exceeding two hundred fifty, one hundred sixty dollars.

3. All other school corporations, one hundred seventy-five dollars except corporations not maintaining an approved high school, two hundred dollars, and such additional amount as will be necessary to pay the cost of tuition for pupils attending high schools; provided, how-

ever, that compliance with chapter 24 shall be observed. [C51,§1152; R60,§§2033, 2034, 2037, 2038, 2044, 2088; C73,§§1777, 1778; C97,§2806; S13,§2806; SS15,§2794-a; C24, 27, 31, 35, 39,§4386; C46, 50, 54,§298.1]

Referred to in §§294.13, 294.14, 298.2, 298.4

**298.2 Emergency increase—approval.** In all school districts where the maximum statutory allowances provided in section 298.1 are not sufficient to meet the budget requirements, upon proper showing by any such school district the state comptroller may authorize such district to levy an additional amount above the said maximum statutory allowance for each person of school age in the district, up to but not in excess of thirty-five percent; provided that the comptroller may, upon recommendation of the county board of education, or the county board of supervisors of the county in which the school is located, authorize such district to levy an amount in excess of thirty-five percent. [C46, 50, 54,§298.2]

**298.3 Additional taxes.** If the amount so estimated in any school corporation does not equal one thousand dollars for each school thereof, the corporation may estimate not to exceed one thousand dollars for each school in the corporation. [C73,§§1777, 1778; C97,§2806; S13,§2806; C24, 27, 31, 35, 39,§4387; C46, 50, 54, §298.3]

Referred to in §298.4

**298.4 Transportation fund — tax for free textbooks.** In addition to the amounts authorized by sections 298.1 and 298.3, school boards may include in their estimates not to exceed five dollars for each person of school age for transporting children to and from school, when authorized by law; also the additional sum authorized by section 301.4. [C97,§2806; S13, §2806; C24, 27, 31, 35, 39,§4388; C46, 50, 54, §298.4]

**298.5 Taxes estimated in mills.** School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in mills. [C97,§2806; S13,§2806; C24, 27, 31, 35, 39,§4389; C46, 50, 54,§298.5]

**298.6 Apportionment of taxes.** The boards of school townships shall apportion any tax voted by the electors for schoolhouse fund among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of said fund. [R60,§2037; C73,§1778; C97,§2806; S13,§2806; C24, 27, 31, 35, 39,§4390; C46, 50, 54,§298.6]

**298.7 Contract for use of library.** The board of directors of any school corporation in which there is no free public library may contract with any free public library for the free use of such library by the residents of such school district, and pay such library the amount agreed therefor as provided by law. During the existence of such contract, the board shall certify annually a tax sufficient to pay such library the consideration agreed upon, not exceeding one-fourth mill on the dollar of the taxable property of such district. During the existence of such contract, the school corporation shall be relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence. [S13,§2806; C24, 27, 31, 35, 39,§4391; C46, 50, 54,§298.7]

Withholding funds, ch 292

**298.8 Levy by board of supervisors.** The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it by law, but if the amount certified for any such fund is in excess of the amount authorized by law, it shall levy only so much thereof as is authorized by law. [R60,§2059; C73,§§1779, 1780; C97,§2807; SS15,

§1303; C24, 27, 31, 35, 39,§4393; C46, 50, 54, §298.8]

SS15,§1303, editorially divided  
Referred to in §§294.13, 294.14

**298.9 Special levies.** If a schoolhouse tax is voted at a special election and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes. [C97,§2807; SS15,§1303; C24, 27, 31, 35, 39, §4394; C46, 50, 54,§298.9]

**298.10 General school levy.** The board may also levy a tax for the support of the schools within the county of not less than one-fourth nor more than three-fourths mill on the dollar on the assessed value of all the taxable property within the county. [R60,§2059; C73,§1779; C97,§2807; SS15,§1303; C24, 27, 31, 35, 39,§4395; C46, 50, 54,§298.10; 57GA, ch 136,§1]

**298.11 Apportionment of school funds.** The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with the interest of the permanent school fund and rents on unsold school lands to which the county is entitled as shown in notice from the state comptroller, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment, among the several corporations therein, in proportion to the number of persons of school age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is authorized to pay other school moneys to the treasurers of the several school districts. [R60,§§1966, 2060, 2061, C73,§§1781, 1782, 1841; C97,§2808; S13,§2808; C24, 27, 31, 35, 39,§4396; C46, 50, 54,§298.11]

**298.12 County auditor to report.** On the first day of January of each year the county auditor shall report to the state comptroller in such form as he may prescribe, giving the amount of permanent school funds held by the county, and the amount of interest due prior to January 1, still remaining unpaid. [C73,§1783; C97,§2809; S13,§2809; C24, 27, 31, 35, 39,§4397; C46, 50, 54,§298.12]

**298.13 Monthly payment of taxes.** Before the fifteenth day of each month in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary, upon the county treasurer, who shall pay such taxes

to the treasurers of the several school boards only on such draft. [C73, §§1784, 1785; C97, §2810; C24, 27, 31, 35, 39, §4398; C46, 50, 54, §298.13]

C97, §2810, editorially divided

**298.14 Schoolhouse tax.** He shall also keep the amount of tax levied for schoolhouse purposes separate in each subdistrict where such levy has been made directly upon the property of the subdistrict, and shall pay over the same monthly to the treasurer of the school township for the benefit of such subdistrict. [C73, §1784; C97, §2810; C24, 27, 31, 35, 39, §4399; C46, 50, 54, §298.14]

**298.15 Payment of judgment.** When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose. [R60, §2095; C73, §1787; C97, §2811; C24, 27, 31, 35, 39, §4400; C46, 50, 54, §298.15]

C97, §2811, editorially divided

**298.16 Judgment tax.** If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their regular election vote a sufficient tax for the purpose. [R60, §2095; C73, §1787; C97, §2811; C24, 27, 31, 35, 39, §4401; C46, 50, 54, §298.16]

**298.17 Judgment levy.** In case of failure or neglect to vote such tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same. [C97, §2811; C24, 27, 31, 35, 39, §4402; C46, 50, 54, §298.17]

**298.18 Bond tax.** The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the schoolhouse fund the amount required to pay interest due or that may become due for the year beginning January 1 thereafter, upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed seven mills on the dollar of the assessed valuation of the taxable property of the school corporation. Provided that when because of reduced valuation a seven-mill tax is not sufficient to produce the amount required to pay the interest and one-twentieth of the principal of the original issue of bonds legally issued prior to the year 1934, the board may certify such amount and the county auditor shall compute and apply such tax rate for such purposes as may be necessary to raise the amount so certified and the funds so raised shall be used only for the purpose of paying interest and principal on such bonds and shall not be subject to transfer.

Provided further that the tax limitation contained in this section shall not operate to restrict or prevent a school district in the issuance of refunding bonds to pay interest or principal of bonds outstanding on March 31, 1934. [C73, §1823; C97, §2813; S13, §2813; C24, 27, 31, 35, 39, §4403; C46, 50, 54, §298.18]

Referred to in §298.19

Maturity and payment of bonds, ch 76

**298.19 Levy.** The board of supervisors of the county to which the certificate is addressed within the contemplation of section 298.18 shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of said section which levy shall be made as other taxes for school purposes. [S13, §2813-a; C24, 27, 31, 35, 39, §4404; C46, 50, 54, §298.19]

**298.20 Funding or refunding bonds.** For the purpose of providing for the payment of any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the negotiation of such funding or refunding bonds shall be applied in payment of such indebtedness; or said funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par. [S13, §2812-c; C24, 27, 31, 35, 39, §4405; C46, 50, 54, §298.20]

Bonds to refund indebtedness, see 49GA, ch 220, §18

**298.21 School bonds.** The board of directors of any school corporation when authorized by the voters at the regular election or at a special election called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings. [S13, §2812-d; C24, 27, 31, 35, 39, §4406; C46, 50, 54, §298.21]

Vote required to authorize bonds, §75.1

**298.22 Form—rate of interest—where registered.** All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty years, and may be sooner paid if so nominated in the bond; be in denomination of not more than one thousand dollars or less than one hundred dollars each; bear a rate of interest not exceeding five percent per annum, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides.

All of said bonds shall be registered in the office of the county auditor.

The expenses of engraving and printing of bonds may be paid out of the general fund. [SS15,§2812-e; C24, 27, 31, 35, 39,§4407; C46, 50, 54,§298.22]

Form of county bonds, §346.3

**298.23 Redemption.** Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, he shall give the owner of said bonds thirty days written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within

thirty days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented. [S13, §2812-f; C24, 27, 31, 35, 39,§4408; C46, 50, 54, §298.23]

S13,§2812-f, editorially divided

**298.24 Record of bond buyers.** All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their post-office addresses, and notice mailed to the address as shown by such record shall be sufficient. [S13,§2812-f; C24, 27, 31, 35, 39,§4409; C46, 50, 54,§298.24]

## CHAPTER 299

### COMPULSORY EDUCATION

Referred to in §281.6

- 299.1 Attendance requirement.
- 299.2 Exceptions.
- 299.3 Reports from private schools.
- 299.4 Reports as to private instruction.
- 299.5 Proof of abnormality.
- 299.6 Violations.
- 299.7 Custody of records.
- 299.8 "Truant" defined.
- 299.9 Truant schools—rules for punishment.
- 299.10 Truancy officers — appointment — compensation.
- 299.11 Duties of truancy officer.
- 299.12 Neglect by truancy officer.

- 299.13 Incurrigibles.
- 299.14 Discharge from truant school.
- 299.15 Reports by school officers and employees.
- 299.16 Census by school officer.
- 299.17 Blind, deaf, and severely handicapped persons—assessor to record.
- 299.18 Education—state school.
- 299.19 Proceeding against parent.
- 299.20 Order.
- 299.21 Contempt.
- 299.22 When deaf and blind children excused.
- 299.23 Agent of state board of regents.

**299.1 Attendance requirement.** Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere. [S13,§2823-a; C24, 27, 31, 35, 39,§4410; C46, 50, 54,§299.1]

Referred to in §§299.2, 299.6  
See also §281.6

**299.2 Exceptions.** Section 299.1 shall not apply to any child:

1. Who is over the age of fourteen and is regularly employed.
2. Whose educational qualifications are equal to those of pupils who have completed the eighth grade.

3. Who is excused for sufficient reason by any court of record or judge.

4. While attending religious services or receiving religious instructions. [S13,§2823-a; C24, 27, 31, 35, 39,§4411; C46, 50, 54,§299.2]

Referred to in §299.6

**299.3 Reports from private schools.** Within ten days from receipt of notice from the secretary of the school corporation within which any private school is conducted, the principal of such school shall, once during each school year, and at any time when requested in individual cases, furnish to such secretary a certificate and report in duplicate of the names, ages, and number of days attendance of each pupil of such school over seven and under sixteen years of age, the course of study pursued by each such child, the texts used, and the names of the teachers, during the preceding year and from the time of the last preceding report to the time at which a report is required. The secretary shall retain one of the reports and file the other in the office of the county superintendent. [S13,§2823-b; C24, 27, 31, 35, 39,§4412; C46, 50, 54,§299.3]

Referred to in §299.6

**299.4 Reports as to private instruction.** Any person having the control of any child over



seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school corporation, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor. [S13,§2823-b; C24, 27, 31, 35, 39, §4413; C46, 50, 54,§299.4]

Referred to in §299.6

**299.5 Proof of abnormality.** Any person having the control of any child over seven and under sixteen years of age, who is physically or mentally unable to attend school, shall furnish proofs by affidavit as to the physical or mental condition of such child. [S13,§2823-b; C24, 27, 31, 35, 39,§4414; C46, 50, 54,§299.5]

Referred to in §299.6

**299.6 Violations.** Any person who shall violate any of the provisions of sections 299.1 to 299.5, inclusive, shall be fined not less than five dollars nor more than twenty dollars for each offense. [S13,§2823-a; C24, 27, 31, 35, 39, §4415; C46, 50, 54,§299.6]

**299.7 Custody of records.** All such certificates, reports, and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of his office, and he shall furnish certified copies thereof to any person requesting the same. [S13,§§2823-b,-c; C24, 27, 31, 35, 39,§4416; C46, 50, 54,§299.7]

**299.8 "Truant" defined.** Any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, who fails to attend school regularly as provided in this chapter, without reasonable excuse for his absence, shall be deemed to be a truant. [S13,§2823-e; C24, 27, 31, 35, 39,§4417; C46, 50, 54,§299.8]

**299.9 Truant schools—rules for punishment.** The board of directors may provide for the confinement, maintenance, and instruction of truant children and may for that purpose establish truant schools or set apart separate rooms in any public school building; and it shall prescribe reasonable rules for the punishment of truants. [S13,§§2823-d,-h; C24, 27, 31, 35, 39, §4418; C46, 50, 54,§299.9]

**299.10 Truancy officers—appointment—compensation.** The board of each school corporation may, and in school corporations having a population of twenty thousand shall, appoint a truancy officer who may be the school nurse.

In districts having therein a city or town, the board may appoint a member of the police force or marshal as such officer, and other districts may appoint a constable or other suitable person.

Such officers shall be paid a reasonable compensation by the board, but where a police

officer of a city under twenty thousand or a town is employed, he shall be paid not to exceed five dollars per month for his services. [S13,§2823-e; C24, 27, 31, 35, 39,§4419; C46, 50, 54,§299.10]

**299.11 Duties of truancy officer.** The truancy officer shall take into custody without warrant any apparently truant child and place him in the charge of the teacher in charge of the public school designated by the board of directors of the school corporation in which said child resides, or of any private school designated by the person having legal control of the child; but if it is other than a public school, the instruction and maintenance of the child therein shall be without expense to the school corporation.

The truancy officer shall promptly institute criminal proceedings against any person violating any of the provisions of the truancy law. [S13,§§2823-e,-f; C24, 27, 31, 35, 39,§4420; C46, 50, 54,§299.11]

**299.12 Neglect by truancy officer.** Any truancy officer or any director neglecting his duty to enforce the truancy law after written notice so to do served upon him by any citizen of the county or by the county superintendent shall be liable to a fine not exceeding twenty-five dollars and be removed from such office. The county attorney shall prosecute such persons upon request of the county superintendent. [S13,§2823-f; C24, 27, 31, 35, 39,§4421; C46, 50, 54,§299.12]

**299.13 Incurrigibles.** If the child is placed in a school other than a public school and does not properly conduct himself, the board may cause his removal to a public or to a truant school. If a truant placed in a public school fails to attend or properly conduct himself, he may be placed in a truant school, or the person in charge of the school may file information in the juvenile court, which may commit said child to a suitable state institution. [S13,§§2823-d,-e; C24, 27, 31, 35, 39,§4422; C46, 50, 54,§299.13]

**299.14 Discharge from truant school.** Any child placed in a truant school may be discharged therefrom at the discretion of the board under such rules as it may prescribe. [S13,§2823-g; C24, 27, 31, 35, 39,§4423; C46, 50, 54,§299.14]

**299.15 Reports by school officers and employees.** All school officers and employees shall promptly report to the secretary of the school corporation any violations of the truancy law of which they have knowledge, and he shall inform the president of the board of directors who shall, if necessary, call a meeting of the board to take such action thereon as the facts justify. [S13,§2823-g; C24, 27, 31, 35, 39,§4424; C46, 50, 54,§299.15]

**299.16 Census by school officer.** All school officers empowered to take the school census shall ascertain the number of children over

seven and under sixteen years of age, in their respective districts, the number of such children who do not attend school, and so far as possible the cause of the failure to attend. [S13,§2823-i; C24, 27, 31, 35, 39,§4425; C46, 50, 54, §299.16]

School census, §§279.22, 291.9

**299.17 Blind, deaf, and severely handicapped persons—assessor to record.** The assessor shall at the time of making assessment, record on suitable blanks furnished to him for that purpose, by the secretary of the state board of education, the names, ages, sex and post-office addresses of all deaf or blind or severely handicapped persons within the county. The county or city assessor shall forward to the secretary of the state board of regents such returns within thirty days after the same are completed. [S13,§§1354-a-c; C24, 27, 31, 35, 39,§4426; C46, 50, 54,§299.17; 56GA, ch 131,§56]

See also §§279.22, 291.9

**299.18 Education—state school.** Children over seven and under nineteen years of age who are so deaf or blind or severely handicapped as to be unable to obtain an education in the common schools shall be sent to the proper state school therefor, unless exempted, and any person having such a child under his control or custody shall see that such child attends such school during the scholastic year. [S13,§2718-c; C24, 27, 31, 35, 39,§4427; C46, 50, 54, §299.18]

Referred to in §§299.19, 299.20

**299.19 Proceeding against parent.** Upon the failure of any person having the custody and control of such child to require its attendance as provided in section 299.18, the state board of regents may make application to the district court or the juvenile court of the county in which such person resides for an order requiring such person to compel the attendance of such child at the proper state institution. [S13,§§2718-d,e; C24, 27, 31, 35, 39,§4428; C46, 50, 54,§299.19; 56GA, ch 131,§57]

Referred to in §299.20

**299.20 Order.** Upon the filing of the application mentioned in section 299.19, the time of

hearing shall be determined by the juvenile court or the district court. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state school under section 299.18, the court shall make an order requiring such person to keep such child in attendance at such school. [C24, 27, 31, 35, 39,§4429; C46, 50, 54,§299.20]

**299.21 Contempt.** A failure to comply with the order of the court shall subject the person against whom the order is made to punishment the same as in ordinary contempt cases. [C24, 27, 31, 35, 39,§4430; C46, 50, 54,§299.21]

Contempts, ch 665

**299.22 When deaf and blind children excused.** Attendance at the state institution may be excused when the superintendent thereof is satisfied:

1. That the child is in such bodily or mental condition as to prevent or render futile attendance at the school.
2. That the child is so diseased or possesses such habits as to render his presence a menace to the health or morals of other pupils.
3. That the child is efficiently taught for the scholastic year in a private or other school devoted to such instruction or by a private tutor, in the branches taught in public schools. [S13, §2718-f; C24, 27, 31, 35, 39,§4431; C46, 50, 54, §299.22]

**299.23 Agent of state board of regents.** The state board of regents may employ an agent to aid in the enforcement of law relative to the education of deaf and blind children. The agent shall seek out children who should be in attendance at the state schools but who are not, and require such attendance. He shall institute proceedings against persons who violate the provisions of said law. The agent shall be allowed compensation at a rate fixed by the board of regents, and his necessary traveling and hotel expenses while away from home in the performance of his duty. [C24, 27, 31, 35, 39,§4432; C46, 50, 54,§299.23; 56GA, ch 131,§58]

## CHAPTER 300

### PUBLIC RECREATION AND PLAYGROUNDS

- 300.1 Establishment — maintenance — supervision.
- 300.2 Tax levy—petition—submission.
- 300.3 Levy—collection—limitation.

- 300.4 Duties of school treasurer.
- 300.5 Annual levy.
- 300.6 Discontinuance of levy.
- 300.7 Appropriation by city.

**300.1 Establishment—maintenance—supervision.** Boards of school directors in school districts containing or contained in any city are hereby authorized to establish and maintain for children in the public school buildings and on the public school grounds under the custody and management of such boards, pub-

lic recreation places and playgrounds and necessary accommodations for same, without charge to the residents of said school district; also to co-operate with the commissioners or boards having the custody and management in such cities of public parks and public buildings and grounds of whatever sort, and, by

making arrangements satisfactory to such boards controlling public parks and grounds, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, as described in this section in buildings and upon grounds in the custody and under the management of such commissioners or boards having charge of public parks and public buildings on grounds of whatever sort, in such cities. [S13,§2823-u; C24, 27, 31, 35, 39,§4433; C46, 50, 54,§300.1]

Referred to in §§300.6, 300.7

**300.2 Tax levy—petition—submission.** The board of directors of any school district containing, or contained in, any city may, and upon petition to that effect signed by legally qualified voters aggregating not less than twenty-five percent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of levying a tax as provided in section 300.3; and if a majority of the votes cast upon such proposition be in favor thereof, then the board of school directors shall proceed to organize the work as authorized in this chapter, and levy a tax therefor at the time and in the manner provided in section 300.3. If at the time of filing said petition it shall be more than three months till the next regular school election, then the board of school directors shall submit said question at a special election within sixty days. [S13,§2823-u1; C24, 27, 31, 35, 39,§4434; C46, 50, 54,§300.2]

Referred to in §§300.6, 300.7

**300.3 Levy—collection—limitation.** Boards of school directors in such districts shall fix and certify to the board of supervisors on or before the first Monday of September the amount of money required for the next fiscal year for the support of the aforementioned activities, in the same manner as the amount of necessary taxes for other school purposes is certified, and said board of supervisors shall levy and collect a tax upon all the property subject to taxation in said school district at the same time and in the same manner as other taxes are levied and collected by law, which shall be equal to the amount of money so required for such purposes by the said board of school directors; provided that the tax so levied upon each dollar of the assessed valuation of all property, real and personal, in said district, subject to taxation, shall not in any one year exceed one-half mill for the purpose of the activities hereinbefore mentioned. The said tax shall not be used or appropriated directly or indirectly for any other purpose than provided in this chapter. [S13,§2823-u2; C24, 27, 31, 35, 39,§4435; C46, 50, 54,§300.3]

Referred to in §§300.2, 300.4, 300.6, 300.7

**300.4 Duties of school treasurer.** All moneys received by or raised in such city for the

aforementioned purpose shall be paid over to the treasurer of the school district, to be disbursed by him on orders of such board of school directors in such district in the same manner as other funds of said district are disbursed by him, but the tax provided in section 300.3 shall not be levied or collected nor shall the board have authority to certify the amount of taxes necessary for this purpose until after the question of the levy of such tax shall have been authorized by a majority vote at a regular or special election. [S13,§2823-u3; C24, 27, 31, 35, 39,§4436; C46, 50, 54,§300.4]

Referred to in §§300.6, 300.7

**300.5 Annual levy.** After the question of the levy of such special tax has been submitted to and approved by the voters, the authority shall remain, and such tax shall be levied and collected annually until such time as the voters of the school district of such city shall by majority vote order the discontinuance of the levy and collection of such tax. [S13,§2823-u4; C24, 27, 31, 35, 39,§4437; C46, 50, 54,§300.5]

Referred to in §§300.6, 300.7

**300.6 Discontinuance of levy.** The board of school directors in any district governed by sections 300.1 to 300.5, inclusive, may, and on petition to that effect signed by legally qualified voters aggregating not less than twenty-five percent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of discontinuing the levying of such tax as may have been previously authorized under the said provisions, and if a majority of the votes cast upon such proposition be in favor thereof, then the levying of such tax shall be discontinued and shall not be resumed unless again authorized under the provisions of section 300.2. [S13,§2823-u5; C24, 27, 31, 35, 39, §4438; C46, 50, 54,§300.6]

Referred to in §300.7

**300.7 Appropriation by city.** The board of school directors in any district governed by sections 300.1 to 300.6, inclusive, of this chapter is also empowered to receive and expend for the purpose thereof any sums of money appropriated and turned over to them by the city council or commissioners of such city for such purposes; and the city council, or commissioners of such city, shall have authority to appropriate and turn over to the board of school directors of the school district containing or contained in such city any reasonable sums of money which the said council or commissioners may desire to appropriate out of the recreation fund of such city and turn over to the said board of school directors for the purposes herein set forth. [S13,§2823-u6; C24, 27, 31, 35, 39,§4439; C46, 50, 54,§300.7]

## CHAPTER 301

## TEXTBOOKS

## DISTRICT UNIFORMITY

- 301.1 Adoption—purchase and sale.
- 301.2 Custodian—bond.
- 301.3 Annual settlement by board of directors.
- 301.4 Payment—additional tax.
- 301.5 Purchase—exchange.
- 301.6 Suit on bond.
- 301.7 Bids—advertisement.
- 301.8 Awarding contract.
- 301.9 Change—election.
- 301.10 Samples and lists.
- 301.11 Bond.

## COUNTY UNIFORMITY

- 301.12 to 301.14, inc. Repealed by 52GA, ch 147,§21.
- 301.15 Use mandatory.
- 301.16 Bond—sale of books.

## DISTRICT UNIFORMITY

**301.1 Adoption—purchase and sale.** The board of directors of each and every school corporation is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund. [C97,§2824; C24, 27, 31, 35, 39,§4446; C46, 50, 54,§301.1]

C97,§2824, editorially divided  
Referred to in §301.19

**301.2 Custodian—bond.** The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies as the depository agent of the board under such rules and regulations as the board shall adopt. The board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable, the reasonable cost of which, if a bond of an association or corporation as surety is furnished, shall be paid by the district. The board shall adopt rules and regulations to provide that no textbook in any branch determined by the board to be taught in the schools under its charge, shall be sold or rented by such depository agent to the pupils in such schools as a textbook other than those textbooks authorized by said board for use by the pupils in such schools; to provide that no such textbook shall be sold or rented by such depository agent at a price or fee higher than that fixed by the said board; and to provide such other measures not in conflict with law as are necessary properly to govern said depos-

- 301.17 Purchase and sale.
- 301.18 Annual settlement by county board of education.
- 301.19 Rental or free textbooks under county uniformity.
- 301.20 Responsibility of pupils and parents—rules and regulations.
- 301.21 Custody and accounting.
- 301.22 Reports required.
- 301.23 City schools.

## FREE TEXTBOOKS

- 301.24 Petition—election.
- 301.25 Loaning books.
- 301.26 General regulations.
- 301.27 Discontinuance of loaning.
- 301.28 Officers and teachers as agents for books and supplies.

itory agents and safeguard the said books and moneys. [C97,§2824; C24, 27, 31, 35, 39,§4447; C46, 50, 54,§301.2]

Referred to in §301.19

**301.3 Annual settlement by board of directors.** At the close of each school year the board of directors in each school corporation shall cause a complete settlement to be made with each depository agent. A complete inventory of the textbooks on hand, with a statement itemized to show the expenses authorized and paid by the board, and the amount of money collected from each such depository agent during the year from the sale or rental of textbooks, shall be made in duplicate, signed by the secretary of the board and the depository agent and one copy filed with the secretary and one with the depository agent. [C39, §4447.1; C46, 50, 54,§301.3]

Referred to in §301.19

**301.4 Payment—additional tax.** All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the general fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the general fund of said district to pay for such books and supplies. Such additional amount shall not exceed in any one year the sum of one dollar and fifty cents for each pupil residing in the school corporation, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose. [C97,§2825; C24, 27, 31, 35, 39, §4448; C46, 50, 54,§301.4]

Referred to in §298.4

**301.5 Purchase—exchange.** In the purchasing of textbooks it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and

they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted. [C97, §2826; C24, 27, 31, 35, 39, §4449; C46, 50, 54, §301.5]

**301.6 Suit on bond.** If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors or county board of education may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher. [C97, §2827; C24, 27, 31, 35, 39, §4450; C46, 50, 54, §301.6]

Referred to in §301.9

**301.7 Bids—advertisement.** Before purchasing textbooks under the provisions of this chapter, it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice once each week for two consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which textbooks and other necessary supplies are to be bought, and the approximate quantity needed. [C97, §2828; S13, §2828; C24, 27, 31, 35, 39, §4451; C46, 50, 54, §301.7]

S13, §2828, editorially divided

**301.8 Awarding contract.** Said board shall award the contract for said textbooks and supplies to any responsible bidder or bidders offering suitable textbooks and supplies at the lowest prices, taking into consideration the quality of material used, illustrations, binding, and all other things that go to make up a desirable textbook; and may, to the end that they may be fully advised, consult with the county superintendent, or, in case of city independent districts, with the city superintendent or other competent person, with reference to the selection of textbooks. The board may reject any and all bids, or any part thereof, and readvertise therefor as above provided. [C97, §2828; S13, §2828; C24, 27, 31, 35, 39, §4452; C46, 50, 54, §301.8]

**301.9 Change—election.** It shall be unlawful for any board of directors or county board of education, except as provided in section 301.6, to displace or change any textbook that has been regularly adopted or readopted under the provisions of this chapter, before the expiration of five years from the date of such adoption or readoption, unless authorized to do so by a majority of the electors present and voting at the regular election, due notice of said proposition to change or displace said textbooks having been included in the notice for the said regular election. [C73, §1728; C97,

§2829; C24, 27, 31, 35, 39, §4453; C46, 50, 54, §301.9]

**301.10 Samples and lists.** Any person or firm desiring to furnish books or supplies under this chapter in any county shall, at or before the time of filing his bid hereunder, deposit in the office of the county superintendent samples of all textbooks included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. Said samples and lists shall remain in the county superintendent's office, and shall be delivered by him to his successor in office and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons, and school teachers as may desire to examine the same and compare them with others, for the purpose of use in the public schools. [C97, §2830; C24, 27, 31, 35, 39, §4454; C46, 50, 54, §301.10]

C97, §2830, editorially divided

**301.11 Bond.** The board of directors and county board of education mentioned shall require any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors or county board of education, for the faithful performance of any such contract. Bonds of surety companies duly authorized under the laws of Iowa shall be accepted. [C97, §2830; C24, 27, 31, 35, 39, §4455; C46, 50, 54, §301.11]

#### COUNTY UNIFORMITY

**301.12 to 301.14, inc.** Repealed by 52GA, ch 147, §21, see §273.13.

**301.15 Use mandatory.** When a list of textbooks has been so selected [section 273.13, subsection 4] they shall be used by all the public schools of said county school system, except as hereinafter provided, and the board of education may arrange for such depositories as it may deem best. [C97, §2832; S13, §2832; C24, 27, 31, 35, 39, §4459; C46, 50, 54, §301.15]

Referred to in §§273.13, 301.17, 301.23

**301.16 Bond—sale of books.** The county board of education shall require of each such depository agent so appointed, a bond in such sum as may appear to said board to be sufficient, the reasonable cost of which, if the bond of an association or corporation as surety is furnished, shall be paid by the county superintendent and deducted from the amount to be returned to the county funds as hereinafter provided. The county board of education shall also adopt rules and regulations to provide that no textbook in any branch determined by the board of any school district to be taught in the schools under its charge, shall be sold by such depository agent to the pupils in such school districts as a textbook other than those textbooks authorized by the said county board of education for use by the pupils in such

county; to provide that no such textbooks shall be sold by such depository agent at a price or fee higher than that fixed by the said county board of education; and to provide such other measures not in conflict with law as are necessary properly to govern said depository agents and safeguard the said books and moneys. [C39,§4459.1; C46, 50, 54,§301.16]

Referred to in §§273.13, 301.17, 301.23

**301.17 Purchase and sale.** The county board of supervisors upon requisition by the county board of education and the presentation of properly attested invoices shall pay for said textbooks out of the county funds, and the county board of education shall sell them to the pupils of the district through depositories established as provided in sections 301.15 and 301.16. The money received from such sales shall be collected from such depositories by the county superintendent at such times as the county board of education shall direct, but not less frequently than three times during the school year. The money collected shall be returned to the county funds after deducting the actual expenses authorized by the county board of education, with a complete inventory of the books on hand and a statement itemized to show the amount received from the sale of books, the actual expenses, and a receipt signed by the depository agent for his compensation. [C97,§2832; S13,§2832; C24, 27, 31, 35,§4460; C39,§4460.1; C46, 50, 54, §301.17]

Referred to in §§273.13, 301.23

**301.18 Annual settlement by county board of education.** At the close of each school year it shall be the duty of the county board of education in each county where county uniformity of textbooks has been authorized as provided in this chapter, to cause a complete settlement to be made with each depository agent appointed by said board. A complete inventory of the textbooks on hand, and a statement showing the amount of money collected from each such depository agent during the year shall be made in duplicate and signed by the county superintendent and the depository agent, one copy to be filed with the county superintendent and one with the depository agent. [C39,§4460.2; C46, 50, 54,§301.18]

Referred to in §§273.13, 301.23

**301.19 Rental or free textbooks under county uniformity.** The board of directors of each and every school corporation that is a part of the county school system shall have authority to purchase through the county board of education at the regular contract price textbooks adopted by the county board of education and pay for the same from the general fund of the school district and loan them free or rent such textbooks to the pupils of their respective schools in the manner provided in sections 301.1, 301.2, and 301.3. The money so received shall be returned to the general fund of such district at the end

of each calendar month. [C39,§4460.3; C46, 50, 54,§301.19]

Referred to in §§273.13, 301.23

**301.20 Responsibility of pupils and parents—rules and regulations.** The board of directors in any school district that has adopted the plan provided herein for renting textbooks to the pupils of the district or loaning them free shall hold the pupils and their parents responsible for the loss of or failure to return any textbooks so loaned or furnished and for any damage other than regular depreciation of such textbooks and shall make such rules and regulations as are necessary properly to safeguard such textbooks. [C39,§4460.4; C46, 50, 54,§301.20]

Referred to in §§273.13, 301.23

**301.21 Custody and accounting.** Unless otherwise ordered by the board of education, the county superintendent shall have charge of such textbooks and of the distribution thereof among the depositories selected by the board; he shall render to the board at each meeting thereof itemized accounts of his doings, and shall be liable on his official bond therefor. [S13,§2832; C24, 27, 31, 35, 39,§4461; C46, 50, 54, §301.21]

Referred to in §§273.13, 301.23

**301.22 Reports required.** A list of textbooks so selected, with their contract prices, shall be reported to the state superintendent with the regular annual report of the county superintendent. [C97,§2833; C24, 27, 31, 35, 39, §4462; C46, 50, 54,§301.22]

Referred to in §§273.13, 301.23

**301.23 City schools.** The provisions of sections 301.15 to 301.22, inclusive, shall not apply to school corporations which are not included in the county school system; but nothing herein shall be so construed as to prevent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide. [C97,§2835; C24, 27, 31, 35, 39,§4463; C46, 50, 54,§301.23]

Referred to in §273.13

#### FREE TEXTBOOKS

**301.24 Petition—election.** Whenever a petition signed by ten percent of the qualified voters, to be determined by the school board of any school corporation, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, he shall cause notice of such proposition to be given in the notice of such election. [C97, §2836; C24, 27, 31, 35, 39,§4464; C46, 50, 54, §301.24]

Referred to in §§273.13, 301.27

**301.25 Loaning books.** If, at such election, a majority of the legal voters present and

voting by ballot thereon shall authorize the board of directors of said school corporation to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils. [C97,§2837; C24, 27, 31, 35, 39,§4465; C46, 50, 54,§301.25]

C97, §2837, editorially divided  
Referred to in §273.13

**301.26 General regulations.** The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any textbook used in the school at cost. No pupil already supplied with textbooks shall be supplied with others without charge until needed. [C97,§2837; C24, 27, 31, 35, 39,§4466; C46, 50, 54,§301.26]

Referred to in §273.13

**301.27 Discontinuance of loaning.** The electors may, at any election called as provided in section 301.24, direct the board to discontinue the loaning of textbooks to pupils. [C97,§2837; C24, 27, 31, 35, 39,§4467; C46, 50, 54,§301.27]

Referred to in §273.13

**301.28 Officers and teachers as agents for books and supplies.** It shall be unlawful for any school director, teacher, or member of the county board of education to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, teacher, or member of the county board of education who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution. [C97,§2834; C24, 27, 31, 35, 39,§4468; C46, 50, 54,§301.28]

Referred to in §273.13

## CHAPTER 302

### SCHOOL FUNDS

- 302.1 Permanent fund.
- 302.2 Lands and escheats.
- 302.3 Temporary fund.
- 302.4 Division and appraisalment.
- 302.5 Notice—sale.
- 302.6 Sale without appraisalment.
- 302.7 Sale on credit—taxation—waste.
- 302.8 Sale of lands bid in.
- 302.9 Cash or collateral security.
- 302.10 Uniform interest date.
- 302.11 School fund accounts—audit of losses.
- 302.12 Bonds to cover losses.
- 302.13 Apportionment of interest.
- 302.14 Repealed by 54GA, ch 101,§5.
- 302.15 Management.
- 302.16 Actions.
- 302.17 Liability of county.
- 302.18 Exemption of county.
- 302.19 Loans.
- 302.20 Investment in federal, state, and municipal bonds.
- 302.21 to 302.23, inc. Repealed by 54GA, ch 101,§10.

- 302.24 Redemption of prior lien—assignments.
- 302.25 Repealed by 54GA, ch 101,§10.
- 302.26 Repealed by 54GA, ch 101,§10.
- 302.27 Repealed by 54GA, ch 101,§10.
- 302.28 Statute of limitation.
- 302.29 Payments.
- 302.30 Release of mortgage.
- 302.31 School fund account—settlement.
- 302.32 Notice of default.
- 302.33 Suit—attorney fee.
- 302.34 Bid at execution sale.
- 302.35 Sheriff's deed to state.
- 302.36 Resale by state.
- 302.37 Proceeds on resale.
- 302.38 Excess—loss borne by county.
- 302.39 Report as to sales—interest.
- 302.40 Interest charged to counties.
- 302.41 Uncollected interest.
- 302.42 Report as to rents.
- 302.43 Repealed by 54GA, ch 101,§10.
- 302.44 Penalty against county auditor.

**302.1 Permanent fund.** The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five percent of the net proceeds of the public lands of the state, which shall be paid to the state treasurer and be apportioned by the state comptroller among the several counties.

2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an act of Congress passed September 4, 1841, entitled: "An act to

appropriate the proceeds of all sales of public lands, and to grant pre-emption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof. [R60,§§1962, 1964; C73,§§1837, 1839; C97,§2838; C24, 27, 31, 35, 39,§4469; C46, 50, 54, §302.1]

C97, §2838, editorially divided  
Escheat, §636.50 et seq.

**302.2 Lands and escheats.** The proceeds of all lands sold, and all sums due from escheats,

shall be payable to the treasurer of the county in which the lands or escheated estates are situated or found, and the county treasurer shall pay the proceeds to the state treasurer once each month. [R60,§1965; C73,§1840; C97, §2838; C24, 27, 31, 35, 39,§4470; C46, 50, 54, §302.2]

**302.3 Temporary fund.** The temporary school fund, which shall be received and appropriated annually in the same manner as the interest of the permanent fund, shall consist of:

1. All forfeitures which are authorized to be made for the benefit of the school fund.
2. The proceeds of all fines collected for violation of the penal laws, and for the nonperformance of military duty.
3. The proceeds of the sale of lost goods and estrays.

These several funds shall be payable to the county treasurer of the several counties in which they arise, accounted for to the board of supervisors, and apportioned by it among the several school townships and independent districts of the county as provided by law. [R60,§§1963, 1966; C73,§§1838, 1841; C97,§2839; C24, 27, 31, 35, 39,§4471; C46, 50, 54,§302.3]

**302.4 Division and appraisal.** The board of supervisors may, at such time as it may fix, and as preliminary to a sale, authorize the trustees of any township, where the sixteenth section or land selected in lieu thereof has not been sold, to lay out the same into such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal subdivisions of the United States surveys, and appraise each tract at what they believe to be its true value, and certify to said board the divisions and appraisements made by them. Said division and appraisal shall be approved or disapproved by said board at its first meeting after such report, and in case it disapproves the same it may at once order another division and appraisal. If the board of supervisors approves, the county auditor shall make and keep a record of such division, appraisal, and approval; but no school lands of any kind shall be sold for less than the appraised value per acre, except as hereinafter provided; nor shall any member of the board of supervisors, county auditor, township trustee, or any person who was engaged in the division and appraisal of said land, be directly or indirectly interested in the purchase thereof; and any sale made, where such parties or any of them are so interested, shall be void. [R60,§§1970, 1971; C73,§§1845-1847; C97,§2840; C24, 27, 31, 35, 39,§4472; C46, 50, 54, §302.4]

**302.5 Notice — sale.** When the board of supervisors shall offer for sale the sixteenth section or lands selected in lieu thereof, or any portion of the same, or any part of the five-hundred-thousand-acre grant, the county audi-

tor shall give at least forty days notice, by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated, and also publish a notice of said sale once each week for two weeks preceding the same in a newspaper published in the county, describing the land to be sold and the time and place of such sale. At such time and place, or at such other time and place as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and sell, either for cash or one-third cash and the balance on a credit not exceeding ten years, with interest on the same at the rate of not less than three and one-half percent per annum, to be paid at the office of the county treasurer of said county on the first day of January in each year, delinquent interest to bear the same rate as the principal. Such county treasurer shall pay to the state treasurer on the first day of February all interest collected. [R60,§1971; C73,§1846; C97,§2841; S13, §2841; C24, 27, 31, 35, 39,§4473; C46, 50, 54,§302.5]

**302.6 Sale without appraisal.** When the board of supervisors of any county has once offered for sale any school lands in compliance with the requirements of this chapter, and they remain unsold, and it is unable to obtain therefor the appraised value thereof, and in the opinion of said board it is for the best interests of the school fund that the same be sold for a less price, it may instruct the auditor to transmit to the secretary of state a certified copy of its proceedings in relation to the order of sale thereof and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which the land had been appraised, which transcript the secretary of state shall submit to the executive council; and if it approves of a sale at a less sum it shall certify such approval to the auditor of the county from which said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors, and thereupon said land may again be offered and sold to the highest bidder, after notice given as in case of sales in the first instance, without being again appraised. [C73,§1849; C97,§2842; C24, 27, 31, 35, 39,§4474; C46, 50, 54,§302.6]

**302.7 Sale on credit — taxation — waste.** When lands are sold upon a partial credit, the contract therefor shall be at once reduced to writing, signed by the proper parties, recorded in the county where the land is situated, and immediately thereafter filed in the office of the county auditor. Any purchaser or his assigns may at any time pay the full amount for lands with accrued interest, and receive from the county auditor a certificate of purchase, which shall be at once transmitted to the secretary of state and will entitle the holder to a patent for the lands, to be issued by the secretary of state and the governor. All school lands sold in pursuance of law shall be subject to taxation from and after the execution and delivery of a con-



tract of purchase. All sales made, where the full price is not paid, shall be subject to the law relative to the prevention or punishment of waste, and in all such cases the township trustees in each township are charged with the duty of preventing the commission of waste upon any school lands lying in their township, and, if attempted, they shall apply by petition for an injunction to stay the same, and if granted the writ shall issue without bond, and the court issuing it may make such order in the premises as shall be equitable and best calculated to prevent threatened injury, and may adjudge damages for any injury done, the costs to abide the event of the action, and the damages adjudged shall be paid to the county treasurer and the county treasurer shall forthwith pay the same to the state treasurer which shall become a part of the permanent school fund. [R60,§§1972, 1973, 1976-1978; C73,§§1851, 1852, 1856-1858; C97,§2843; C24, 27, 31, 35, 39, §4475; C46, 50, 54,§302.7]

**302.8 Sale of lands bid in.** When lands have been sold and bid in by the state in behalf of the school fund upon a judgment in favor of such fund, the land may be sold in like manner as other school lands, and when lands have been conveyed to the counties in which they are situated for the use of the school fund, instead of to the state, such conveyance shall be valid and binding, and upon proper certificates of sales patents shall issue in like manner as in cases where the conveyances were properly made to the state. [C73,§1850; C97, §2844; C24, 27, 31, 35, 39,§4476; C46, 50, 54,§302.8]

**302.9 Cash or collateral security.** When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may in its discretion exact the whole of the purchase money in advance; or if it sells such land upon a partial credit, as hereinbefore prescribed, it shall require good collateral security for the payment of the part upon which credit is given. [R60,§1974; C73,§1853; C97,§2845; C24, 27, 31, 35, 39,§4477; C46, 50, 54,§302.9]

**302.10 Uniform interest date.** In all cases where money is due to the school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months thereafter, the entire amount of both principal and interest shall become due, and the county auditor shall make a report thereof to the county attorney, who shall immediately commence action for the collection of the amount reported to him as due, and this section is hereby declared to be a part of any contract made by virtue of this chapter, whether expressed therein or not. [R60,§§1975, 1979; C73,§§1854, 1855; C97,§2846; C24, 27, 31, 35, 39,§4478; C46, 50, 54,§302.10]

**302.11 School fund accounts — audit of losses.** The state comptroller shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit all losses to the permanent school or university fund which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the same, and for this purpose shall prescribe such regulations for those officers as may be necessary to ascertain such losses. [R60,§1969; C73,§1842; C97,§2847; C24, 27, 31, 35, 39,§4479; C46, 50, 54,§302.11]

C97,§2847, editorially divided

**302.12 Bonds to cover losses.** When any sum not less than one thousand dollars shall be so audited and so become a debt of the state to the fund, as provided by the constitution, the auditor of state shall issue the bond or bonds of the state in favor of the fund, bearing six percent interest, payable semiannually on the first day of January and July after issuance, and the amount to pay the interest as it becomes due is appropriated out of any funds in the state treasury. [C73,§1843; C97, §2847; C24, 27, 31, 35, 39,§4480; C46, 50, 51, §302.12]

Constitution, Art. VII,§3

**302.13 Apportionment of interest.** On the first Monday of March annually, the state comptroller shall apportion the interest of the permanent school fund among the several counties, in proportion to the number of persons of school age in each county, as shown by the report of the superintendent of public instruction, as provided by section 257.18, subsection 18. [R60,§1969; C73,§1844; C97,§2847; C24, 27, 31, 35, 39,§§4481, 4482; C46, 50,§§302.13, 302.14; C54,§302.13]

See §8.6, subsection 9

**302.14 Repealed** by 54GA, ch 101,§5, see §302.13.

**302.15 Management.** All property and money hereafter accrued to the school fund shall be managed and controlled by the state treasurer, and he shall be responsible for the safekeeping, investment, reinvestment and disbursement of the same. [R60,§1980; C73,§§1859, 1860; C97,§2848; C24, 27, 31, 35, 39,§4483; C46, 50, 54,§302.15]

C97,§2848, editorially divided

**302.16 Actions.** All actions for and in behalf of said fund may be brought in the name of the state for the use of the school fund, by the attorney general. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§4484; C46, 50, 54,§302.16]

**302.17 Liability of county.** Each county shall be liable for all losses upon loans of the school fund, principal or interest, made in such county, unless the loss was not occasioned by reason of any default of its officers or by taking insufficient or imperfect securities, or from

a failure to bid at an execution sale the full amount of the judgment and costs. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§4485; C46, 50, 54, §302.17]

**302.18 Exemption of county.** All claims for exemption from liability on account of losses shall be examined into and adjusted by the state comptroller, upon proof submitted to him in writing in behalf of the county within three months after the county auditor shall be advised by the comptroller of his readiness to receive the proof. In the absence of evidence, or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the comptroller shall present the facts in his report to the next general assembly. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§4486; C46, 50, 54,§302.18]

**302.19 Loans.** The permanent school fund shall be loaned out by the state treasurer as it comes into his hands. [R60,§1981; C73,§1861; C97,§2849; S13,§2849; C24, 27, 31, 35, 39,§4487; C46, 50, 54,§302.19]

S13,§2849, editorially divided

**302.20 Investment in federal, state, and municipal bonds.** The permanent school fund which is, at any time, in the custody of the state treasurer, shall be invested as follows:

1. In bonds, notes, certificates and other valid obligations of the United States.
2. In bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States.
3. In bonds, notes, certificates and other valid obligations of the state of Iowa or of any county, township, city, town or other political subdivision of the state of Iowa which are issued pursuant to law. [C39,§4487.1; C46, 50, 54,§302.20]

**302.21 to 302.23, inc.** Repealed by 54GA, ch 101,§10.

**302.24 Redemption of prior lien—assignments.** If it shall happen that a loan is made upon real estate which is in fact encumbered other than for taxes, the board of supervisors may, when necessary for the safety of the loan, appropriate out of any school fund on hand, if such encumbrance does not exceed one-half of the real value of the lands, so much as may be needed to take up and purchase the same, and may also at any meeting, by resolution, assign without recourse, upon payment of the amount due, any school fund note and mortgage to one holding a subsequent lien upon the mortgaged real estate. [C73,§§1868, 1869; C97,§2850; SS15,§2850; C24, 27, 31, 35, 39,§4491; C46, 50, 54,§302.24]

Collection of mortgages, surrender of bonds, etc., 54GA, ch 101,§11

**302.25 to 302.27, inc.** Repealed by 54GA, ch 101,§10.

**302.28 Statute of limitation.** Lapse of time shall in no case be a bar to any action to recover any part of the school fund, nor shall it prevent the introduction of evidence in such an action, any provision in this code to the contrary notwithstanding. [C73,§§1880, 2542; C97,§2852; C24, 27, 31, 35, 39,§4495; C46, 50, 54,§302.28]

**302.29 Payments.** All payments to the school fund upon contracts, or loans of any other nature, shall be made to the treasurer of the county upon a certificate from the auditor showing the amount due. [R60,§1986; C73, §1867; C97,§2853; C24, 27, 31, 35, 39,§4496; C46, 50, 54,§302.29]

C97,§2853, editorially divided

**302.30 Release of mortgage.** The auditor shall, when the debt is paid, release any mortgage or issue a certificate of purchase, as the case may be, and report the same to the board of supervisors at its next meeting, which report shall be carried into the records of the board. [R60,§1986; C73,§1867; C97,§2853; C24, 27, 31, 35, 39,§4497; C46, 50, 54,§302.30]

**302.31 School fund account—settlement.** The auditor shall also keep in his office, in books to be provided for that purpose, an account to be known as the school fund account, in which a memorandum of all notes, mortgages, bonds, money, and assets of every kind and description which may come into his hands and those of the treasurer shall be entered, and separate accounts of principal and interest be kept; and the county treasurer shall keep a like account and record of all school funds coming into his hands. Settlements of such account shall be made with the board of supervisors at its January and June sessions, which settlements shall be recorded with the proceedings of the board. [R60,§§1990, 1991; C73,§§1876, 1877; C97,§2853; C24, 27, 31, 35, 39, §4498; C46, 50, 54,§302.31]

**302.32 Notice of default.** When outstanding contracts for the sale of school lands or notes for money of the school fund loaned, or interest thereon, are due, the auditor shall by mail at once notify the debtor to make payment thereof within three months. [C73,§§1872, 1873; C97,§2854; C24, 27, 31, 35, 39,§4499; C46, 50, 54,§302.32]

C97,§2854, editorially divided

**302.33 Suit—attorney fee.** If such debtor shall neglect to comply with such notice, the auditor shall report the same to the county attorney, who shall bring an action to recover the same, and an injunction may issue for cause, without bond when so prayed, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a reasonable sum as compensation to plaintiff's attorney, not exceeding the amount as provided by law for attorneys' fees. [C73,§1873; C97,§2854; C24, 27, 31, 35, 39,§4500; C46, 50, 54, §302.33]

Attorney fees, §625.22

**302.34 Bid at execution sale.** Upon a sale of lands under an execution founded upon a school fund claim or right, the auditor shall bid such sum as the interests of the fund require, and, if struck off to the state, it shall be thereafter treated in all respects the same as other lands belonging to said fund. [C73, §1874; C97, §2854; C24, 27, 31, 35, 39, §4501; C46, 50, 54, §302.34]

**302.35 Sheriff's deed to state.** When lands have been bid in by the county for the state under foreclosure of school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall file the said deed for record in the office of the county recorder who shall record the same without fee and return the same when recorded to the county auditor who shall then forward the same to the secretary of state. The secretary of state shall record the said deed in his records and then file the same with the state comptroller. [C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4502; C46, 50, 54, §302.35]

**302.36 Resale by state.** All lands now acquired under permanent school fund foreclosure proceedings shall be resold within ten years from January 1, 1939, and lands acquired after such date shall be resold within six years from date of foreclosure. Such land shall be appraised, advertised, and sold in the manner provided for the appraisement, advertisement, sale and conveyance of the sixteenth section or lands selected in lieu thereof. [S13, §2855; C24, 27, 31, 35, 39, §4503; C46, 50, 54, §302.36]

Appraisement, §302.4

**302.37 Proceeds on resale.** When a resale is made, the county auditor shall notify the state comptroller, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time when the right of redemption has expired, not to exceed three years. [C73, §§1881, 1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4504; C46, 50, 54, §302.37]

**302.38 Excess—loss borne by county.** Any excess over the amount of the unpaid portion of the principal, costs of foreclosure, and interest on the principal as above provided, shall inure to the county and be credited to the general county fund. If the lands shall be sold for a less amount than the unpaid portion of the principal, the loss shall be sustained by the county, and the board of supervisors shall at once order the amount of such loss transferred from the general fund or temporary school fund of the county to the permanent school

fund account. [C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4505; C46, 50, 54, §302.38]

**302.39 Report as to sales—interest.** County auditors shall, on or before the first day of January of each year, report to the state comptroller the amount of all sales and resales made during the year previous, of the sixteenth section, five-hundred-thousand-acre grant, escheat estates, and lands taken under foreclosure of school fund mortgages, and the comptroller shall charge the same to the counties with interest from the date of such sale or resale to January 1, at the rate of three percent per annum. [C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4506; C46, 50, 54, §302.39]

**302.40 Interest charged to counties.** The state comptroller shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of three percent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the three percent charged by the state shall be transferred to the general county fund. [C73, §1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4507; C46, 50, 54, §302.40]

**302.41 Uncollected interest.** If any county fails or refuses to collect the amount of interest due the state, the deficiency shall be paid to the state from the general county fund. Any county delinquent in the payment of interest due the state shall be charged one percent per month on the amount delinquent until paid. [C73, §1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4508; C46, 50, 54, §302.41]

**302.42 Report as to rents.** County auditors shall, upon the first day of January of each year, report to the state comptroller the amount of rents collected during the preceding year on unsold school lands and lands taken under foreclosure of school fund mortgages then in the hands of the county treasurer, and the comptroller shall include the amount so reported in his semiannual apportionment of interest. [C73, §1884; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §4509; C46, 50, 54, §302.42]

**302.43** Repealed by 54GA, ch 101, §10.

**302.44 Penalty against county auditor.** Any county auditor failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen, and the proceeds to go to the school fund. [R60, §1992; C73, §1878; C97, §2857; C24, 27, 31, 35, 39, §4511; C46, 50, 54, §302.44]

## CHAPTER 303

LAW AND MEDICAL LIBRARIES, DEPARTMENT OF HISTORY  
AND ARCHIVES AND STATE TRAVELING LIBRARY

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| <p>303.1 State libraries—historical and archives department.</p> <p>303.2 Board of trustees.</p> <p>303.3 Powers and duties of the board.</p> <p>303.4 Acceptance and use of money grants.</p> <p>303.5 Duties of the state law librarian.</p> <p>303.6 Duties of the curator of the department of history and archives.</p> <p>303.7 Gifts.</p> <p>303.8 Investments.</p> <p>303.9 Archives.</p> <p>303.10 Records delivered—classified list—disposal of useless documents.</p> <p>303.11 Removal of original.</p> | <p>303.12 Certified copies—fees.</p> <p>303.13 Duties of the state medical librarian.</p> <p>303.14 Repealed by 56GA, ch 147,§13.</p> <p>303.15 Public libraries not affected.</p> |
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## STATE TRAVELING LIBRARY

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**303.1 State libraries—historical and archives department.** There is established:

1. The Iowa state department of history and archives.
2. The Iowa state law library.
3. The Iowa state medical library. [S13, §2888-d; C24, 27, 31, 35, §§4512, 4513, 4535; C39, §4541.01; C46, 50, 54, §303.1; 56GA, ch 147, §9]

**303.2 Board of trustees.** The Iowa state department of history and archives, the Iowa state law library, and the Iowa state medical library shall be under the control of a board of trustees consisting of the governor, a member of the supreme court to be designated from time to time by the court, and the superintendent of public instruction. [C51, §§445, 447, 452; R60, §§690, 692, 703; C73, §§1885, 1886, 1890; C97, §2858; S13, §§2881-a, 2888-a; C24, 27, 31, 35, §§4514, 4533; C39, §4541.02; C46, 50, 54, §303.2; 56GA, ch 147, §10]

**303.3 Powers and duties of the board.** The board of trustees shall:

1. Make and enforce rules for the keeping of the records and for the management and care of the property of the Iowa state department of history and archives, the Iowa state law library, and the Iowa state medical library.
2. Appoint a qualified curator of the Iowa state department of history and archives whose regular term of office shall be for six years and who may be removed only for cause by a two-thirds vote of the board of trustees. Such appointment shall be made solely upon merit and with no consideration given to the political affiliations of the person appointed.
3. Appoint a state law librarian who shall be a graduate of an approved law school and who shall have special competence in the organization and administration of a law library and training in the science of bill drafting. Such appointment shall be made for a term of six years and the state law librarian shall be removed only for cause by a two-thirds vote of the board of trustees. Such appointment shall be made solely upon merit and with no consid-

eration given to the political affiliations of the person appointed.

4. Appoint a state medical librarian, who shall be a graduate of a recognized school of medicine and who shall have special competence in the organization and administration of a medical library. Such appointment shall be made for a term of six years and the state medical librarian shall be removed only for cause upon a two-thirds vote of the board of trustees. Such appointment shall be made solely upon merit and with no consideration given to the political affiliations of the person appointed.

5. Appoint, after consultation with the curator, the librarian of the state law library, and the state medical librarian, such qualified assistants as the board may deem necessary to carry on the work of the department of history and archives, the state traveling library\*, the state law library, and the state medical library.

\*See §303.17

6. Meet at least three times during the year at the call of the chairman of the board of trustees, who shall be elected from among their own number.

7. Have control of the historical building and assign space therein to be occupied by the department of history and archives, the Iowa state traveling library\*, and the Iowa state medical library.

\*See §303.16 et seq.

8. Adopt rules providing for the loaning of books in the Iowa state law library and the Iowa state medical library.

9. Adopt reasonable rules providing penalties for injuring, defacing, destroying, or losing books in the Iowa state law library and the Iowa state medical library. All fines, penalties, and forfeitures imposed by the rules of the board for any violation may be recovered in an action in the name of the state and applied to the use of the libraries, under the direction of the board.

10. It may develop and adopt plans to provide more adequate library service for all residents of the state.

11. Operate libraries and circulate books under their control, or subsequently acquired, within the state to libraries, schools, colleges, universities, library associations, farmers institutes, granges, study clubs, charitable and penal institutions, and individuals, free of cost except for transportation.

12. Report in writing to the governor semi-annually all matters pertaining to the Iowa state law library, the Iowa state department of history and archives, and the Iowa state medical library. [C51, §§445, 451, 452; R60, §§690, 695, 696, 702, 703, 707; C73, §§1886-1888, 1890, 1895, 1896; C97, §§2858-2860, 2864, 2865, 2875; S13, §§2881-a, b, d, 2888-d, e; C24, 27, 31, 35, §§4515-4517, 4521-4524, 4535-4537; C39, §4541.03; C46, 50, 54, §303.3; 56GA, ch 147, §11]

Biennial report, §17.3

**303.4 Acceptance and use of money grants.** The board of trustees is hereby authorized and empowered to receive, accept, and administer any money or moneys appropriated or granted to it, separate and apart from the general library fund:

1. By the federal government, and
2. By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the board of trustees, which body shall frame bylaws, rules, and regulations for the allocation and administration of this fund.

The fund shall be used to increase, improve, stimulate, and equalize library service to the people of the whole state, and for adult education and shall be allocated among the cities, counties, and regions of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other facts as may affect the state program of library service.

Any gift or grant from the federal government or other sources shall become a part of said fund, to be used as part of the state fund, or may be invested in such securities in which the state sinking fund may be invested as in the discretion of the board of trustees may be deemed advisable, the income to be used for the promotion of libraries aforesaid. [C39, §4541.04; C46, 50, 54, §303.4; 56GA, ch 147, §12]

State sinking fund, ch 454

**303.5 Duties of the state law librarian.** The state law librarian shall:

1. Have general charge of the Iowa state law library, which shall be maintained in the capitol or elsewhere in rooms convenient to the supreme court and which shall always be available for free use by the residents of Iowa under such reasonable rules as the board may adopt.

2. Organize as an integral part of the Iowa state law library a legislative reference bureau in which he shall provide the reports of the various officers and boards of this state, and as far as may be, of the other states, and such other material, periodicals, or books as will furnish the fullest information practicable

upon all matters pertaining to current or proposed legislation and to legislative and administrative problems, prepare and submit digests of such information and material upon the request of any legislative committee, member of the general assembly, or head of any department of state government.

3. Arrange to make exchanges of all printed material published by the several states and the government of the United States.

4. Report in writing to the board semiannually, or oftener if required, all matters pertaining to the state law library.

5. Perform such other duties as may be imposed upon him by law or by the rules of the board. [S13, §2881-b; C24, 27, 31, 35, §§4518, 4520; C39, §4541.05; C46, 50, 54, §303.5]

Exchange of legal publications, §16.29

**303.6 Duties of the curator of the department of history and archives.** The curator shall:

1. *Custody of historical building.* Under the direction of the board, be custodian of the historical building and collections therein, and shall keep the rooms assigned to the department and the collections open for inspection by the public during such hours of each day as the board may direct, but the curator shall cause the same to be kept open on Sunday afternoons during the sessions of the general assembly.

2. *Custody, display, and publication of material.* Under the direction of the board, collect, preserve, organize, arrange, and classify works of art, books, maps, charts, public documents, manuscripts, newspapers, and other objects and materials illustrative of the natural and political history of the territory and state and of the central west, and of the traditions and history of the Indian tribes and prior occupants of the region, and publish such matter and display such material as may be of value and interest to the public.

3. *Collection of memorials and mementos.* With the approval of the board, collect memorials and mementos of the pioneers of Iowa and the soldiers of all our wars, including portraits, specimens of arms, clothing, army letters, commissions of officers, and other military papers and documents.

4. *Ethnology and archaeology.* Receive and arrange in cases, objects illustrative of the ethnology and prehistoric archaeology of this and surrounding states.

5. *Inventory of property.* As soon as practicable, prepare a classified index and inventory of all the property belonging to the museum or in its custody, and determine through the aid of experts the money value thereof, so far as practicable, and when done a summary of the same shall be included in his report, and thereafter such reports shall set forth all additions thereto with their money value, if any, and give a list of items lost or dropped from the collections. His report shall also contain a separate statement

of materials obtained by gift and by purchase during each biennium.

6. *Newspapers.* The curator shall subscribe for such newspapers as in his judgment are necessary to preserve for historical purposes. The list of papers so selected shall be submitted to the board of trustees for its approval. The curator shall bind every two years such newspapers as are received for historical purposes.

7. *Custodian of works of art.* Except as otherwise specifically provided, be custodian of and care for and preserve the monuments, memorials, and works of art on the grounds and in the buildings at the seat of government, and report from time to time to the proper officer or board the condition and his recommendations in respect thereto.

8. *Report to board.* Report to the board semiannually or oftener as required, all matters pertaining to the condition of the Iowa state memorial museum of art and history.

9. *Other duties.* Perform such other duties as may be imposed upon him by law or prescribed by the rules of the board. [C97, §§2875-2878; S13, §2881-b; C24, 27, 31, 35, §4525; C39, §4541.06; C46, 50, 54, §303.6]

**303.7 Gifts.** The curator is hereby authorized and empowered, as trustee for the state, to accept gifts of property, real, personal, or mixed, for the benefit or endowment of the Iowa state department of history and archives, or for the commemoration of the lives of worthy citizens, or for the purpose of perpetuating records of historic events, or for scientific purposes. Any gift accepted shall be immediately reported to the board of trustees; but any gift imposing unusual monetary obligations on the department shall be approved by the board before acceptance. [C24, 27, 31, 35, §4526; C39, §4541.07; C46, 50, 54, §303.7]

Referred to in §303.8

**303.8 Investments.** The curator and the board of trustees shall have authority and power to invest, in accordance with the provisions of the trust, any such gifts or endowments, and establish and enforce rules for the purpose of governing and maintaining such endowments or memorials as may be created or established under and pursuant to section 303.7. [C24, 27, 31, 35, §4527; C39, §4541.08; C46, 50, 54, §303.8]

### 303.9 Archives.

1. *Definition.* The term "archives" shall mean those manuscripts, documents, records, and materials originating under or passing through the hands of public officers in the regular course and performance of their legal duties which the chief executive of the office that has present custody of said manuscripts, documents, records, and materials shall deem not to be necessary for use in the conduct of the regular current business of his office, or which he shall consider to be in such physical condition that they cannot be used without

risk of damage to them, or for which, in his opinion, he is unable to provide adequate or safe storage.

2. *Custody of archives.* The curator shall be the trustee and custodian of the archives of Iowa, except that such custody shall not be construed to include county or municipal archives unless they are voluntarily deposited with the curator and with his written consent. The curator shall prescribe such rules and regulations as are necessary to see that such archives are systematically arranged in suitable containers properly labeled to show their contents and order of filing, before they may be transferred to his custody. [SS15, §2881-p; C24, 27, 31, 35, §4528; C39, §4541.09; C46, 50, 54, §303.9]

Referred to in §303.10

**303.10 Records delivered—classified list—disposal of useless documents.** The several state, executive, and administrative departments, officers or offices, councils, boards, bureaus, and commissioners, are hereby authorized and directed to transfer and deliver to the Iowa state department of history and archives such of the public archives as are designated in section 303.9, and take the curator's receipt therefor. Before transferring such archives, the office of present custody shall file with the curator a classified list of the same made in such detail as the curator shall prescribe. If the curator, on receipt of such a list, and after consultation with the chief executive of the office filing the same or with a representative designated by such executive, shall find that certain classifications of the archives listed are not of sufficient historical, legal, or administrative value to justify permanent preservation, he shall file a list thereof with the board of trustees with such recommendations for their disposal as he shall see fit to make.

The curator shall not be required to preserve permanently, canceled or redeemed state warrants or duplicate warrant registers, respectively, of the state comptroller and the treasurer of state, but is hereby empowered to destroy by burning any such warrants, having no historical value, that have been in his custody for a period of ten years, and likewise to destroy by burning any duplicate warrant registers after having been in his custody for a period of five years. [SS15, §§2881-q,r; C24, 27, 31, 35, §4529; C39, §4541.10; C46, 50, 54, §303.10]

**303.11 Removal of original.** After any public archives have been received into the division of public archives by the curator, they shall not be removed from his custody without his consent except in obedience to a subpoena of a court of record or a written order of the state executive council.

The curator shall annually submit to the trustees a list of papers and documents which have no further value, and upon approval of said trustees such items may be destroyed. [SS15, §2881-t; C24, 27, 31, 35, §4530; C39, §4541.11; C46, 50, 54, §303.11]

**303.12 Certified copies—fees.** Upon request of any person, the curator shall make a certified copy of any document, manuscript, or record contained in said archives, and when such copy is properly authenticated by him it shall have the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. Such copy may be made in writing, or by any suitable photographic process. Said curator shall charge and collect for such copies the fees allowed by law to the official in whose office the document originates for such certified copies, and all such fees shall be turned into the state treasury. [SS15,§2881-t; C24, 27, 31, 35,§4531; C39,§4541.12; C46, 50, 54,§303.12]

**303.13 Duties of the state medical librarian.** The state medical librarian shall:

1. Have general charge of the state medical library which shall always be available for free use by the residents of Iowa under such reasonable rules as the board may adopt.

2. Report to the board in writing semi-annually, or oftener if required, all matters pertaining to the state medical library.

3. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school without discrimination.

4. Perform such other duties as may be imposed upon him by law or prescribed by the rules of the board. [C24, 27, 31, 35,§§4518, 4519; C39,§4541.13; C46, 50, 54,§303.13]

**303.14** Repealed by 56GA, ch 147,§13.

**303.15 Public libraries not affected.** Nothing contained in this chapter shall be construed as repealing or superseding chapter 378, or any section of said chapter. [C39,§4541.15; C46, 50, 54,§303.15]

Similar statute, §303.23

#### STATE TRAVELING LIBRARY

**303.16 Traveling library established.** There is hereby established the Iowa state traveling library. [S13,§2888-a; C24, 27, 31, 35,§4535; C39, §4541.03; C46, 50, 54,§303.3; 56GA, ch 147,§§1, 11]

**303.17 Board of trustees.** The Iowa state traveling library shall be under the control of a board of trustees of the state traveling library, herein referred to as the board, consisting of five members, none of whom shall be practicing librarians, to be appointed by the governor, three of whom may be from a list of six nominations submitted by the Iowa library association and one chosen from a list of three nominations submitted by the superintendent of public instruction. The first members appointed by the governor shall be appointed for terms of one, two, three, four and five years, and all subsequent appointments shall be for terms of five years. Vacancies shall be filled in like manner for the remaining term. The board shall meet at least once in each quarter of each fiscal year to transact

business and shall at the first meeting of the new year elect a chairman from said board. [56GA, ch 147,§2]

**303.18 Powers and duties of board.** The powers and duties of the board shall be:

1. To make and enforce rules for the keeping of the records and for the management and care of the property of the Iowa state traveling library.

2. To give advice and counsel to all public libraries in the state and to all political subdivisions which may propose to establish libraries.

3. To print such lists and circulars of information and instruction as it shall deem necessary.

4. To continuously survey the needs of libraries throughout the state, and to ascertain the requirements for additional libraries and for improving existing libraries to provide adequate service to all residents of the state.

5. To obtain from all public libraries reports showing the condition, growth, development and manner of conducting said libraries; and to obtain reports from other libraries in the state at its discretion, and to make known these facts to the citizens of Iowa in such form as the board may determine.

6. To encourage the implementation of the county library law, and of county-wide library service through contracts with the boards of supervisors, chapter 378.

7. To adopt rules providing for the loaning of books and for providing penalties for injuring, defacing, destroying or losing books of the Iowa state traveling library. All fines, penalties and forfeitures imposed by the rules of the board for any violation may be recovered in an action in the name of the state and applied to the use of the library under the direction of the board.

8. To take custody of the property of the present state traveling library and continue to make available through loan the books thus acquired or subsequently acquired to libraries, schools, colleges, universities, library associations, farmers' institutes, granges, study clubs, charitable or penal institutions, and individuals, free of cost except for transportation, under such conditions and rules as shall protect the interests of the state and best increase the efficiency of the service it is expected to render to the public.

9. To report in writing to the governor biennially all matters pertaining to the Iowa state traveling library.

10. To appoint for a term of four years a director of the state traveling library from outside the membership of the board who shall be a trained, experienced librarian holding a degree from a college or university of recognized standing, having also completed the required graduate course covered in a graduate school of library service accredited by the American library association and having had

at least two years experience as an administrative librarian or director of a state or public library, and who shall be removed only for cause by a four-fifths vote of the board of trustees. [S13, §§2888-c, -d, -f, -g; C24, 27, 31, 35, §§4534, 4535, 4539, 4540; C39, §4541.14; C46, 50, 54, §303.14; 56GA, ch 147, §§3, 13]

**303.19 Acceptance and use of money grants.**

The board of trustees is hereby authorized and empowered to receive, accept, and administer any money or moneys appropriated or granted to it, separate and apart from the general library fund, for providing and equalizing public library service in Iowa:

1. By the federal government, and
2. By any other agencies, private or otherwise.

The fund herein provided for shall be administered by the board of trustees, which body shall frame bylaws, rules, and regulations for the allocation and administration of the fund which shall be used to increase, improve, stimulate, and equalize library service to the people of the whole state, and for adult education. The fund shall be allocated among the cities, counties, and regions of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other facts as may affect the state program of library service.

Any gift or grant from the federal government or other sources shall become a part of said fund, to be used as part of the said fund, or may be invested in such securities as those which the state sinking fund may be invested at the discretion of the board of trustees,

the income to be used for the promotion of libraries aforesaid. [56GA, ch 147, §4]

**303.20 Compensation and expenses.** All members of the board shall be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties, and the same shall be paid in the same manner as other expenses incurred by the board. They shall receive no compensation for services. [56GA, ch 147, §5]

**303.21 Duties of the director.** It shall be the duty of said director to keep a record of the proceedings of the board of trustees, to keep accurate accounts of its financial transactions, and to act under the direction of the board of trustees in supervising the work of the state traveling library, in organizing new libraries and improving those already established, and in general to perform such other library duties as may be assigned to him by the board of trustees. [S13, §§2888-c, -d, -f, -g; C24, 27, 31, 35, §§4534, 4535, 4539, 4540; C39, §4541.14; C46, 50, 54, §303.14; 56GA, ch 147, §6]

**303.22 Compensation of board employees.** The compensation of the director and board employees shall be fixed by the director of state personnel as provided in section 8.5 and shall be paid in the same manner as other expenses incurred by the board. [56GA, ch 147, §7]

**303.23 Public libraries not affected.** Nothing contained in this chapter shall be construed as repealing or superseding chapter 378, or any section of said chapter. [56GA, ch 147, §8]

Similar statute, §303.15

CHAPTER 304

STATE HISTORICAL SOCIETY

- 304.1 Objects and purposes.
- 304.2 Board of curators—meetings.
- 304.3 Members.
- 304.4 Officers—compensation.

- 304.5 President.
- 304.6 Executive board.
- 304.7 Reports and documents furnished.

**304.1 Objects and purposes.** The state historical society shall be maintained in connection with and under the auspices of the state university, for carrying out the work of collecting and preserving materials relating to the history of Iowa and illustrative of the progress and development of the state; for maintaining a library and collections, and conducting historical studies and researches; for issuing publications, and for providing public lectures of historical character, and otherwise disseminating a knowledge of the history of Iowa among the people of the state. [R60, §1959; C73, §1900; C97, §2882; S13, §2882-a; C24, 27, 31, 35, 39, §4542; C46, 50, 54, §304.1]

**304.2 Board of curators—meetings.** The board of curators of the society shall consist of eighteen persons, nine of whom shall be appointed by the governor, and nine elected

by members of the society. Their term of office shall be two years, and they shall receive no compensation. The governor shall make his appointments on or before the last Wednesday in June in each even-numbered year, and the terms of the persons appointed shall commence on that day; and, at the annual meeting of the society in each odd-numbered year, the others shall be elected by ballot from the members of the society, for the term next ensuing, which annual meeting shall be held at Iowa City on the Monday preceding the last Wednesday in June. [C73, §§1901, 1903; C97, §2883; C24, 27, 31, 35, 39, §4543; C46, 50, 54, §304.2]

**304.3 Members.** Members may be admitted to the society at any time under such rules as may be adopted by the board of curators. [C73, §1902; C97, §2884; C24, 27, 31, 35, 39, §4544; C46, 50, 54, §304.3]



**304.4 Officers — compensation.** The board shall appoint annually, or oftener if need be, a corresponding secretary, recording secretary, treasurer, and librarian from the members of the society outside of their own number, who shall hold office for one year, unless sooner removed by a majority vote of the board. Said officers shall hold the same position in the society as upon the board of curators, and their respective duties shall be determined by said board. No officer of the society or board shall receive any compensation from the state appropriation thereto. [C73, §1904; C97, §2885; C24, 27, 31, 35, 39, §4545; C46, 50, 54, §304.4]

**304.5 President.** It shall also appoint from its members a president, who shall be the executive head of the board, and hold office for one year and until his successor is elected. [C73, §1905; C97, §2886; C24, 27, 31, 35, 39, §4546; C46, 50, 54, §304.5]

**304.6 Executive board.** The curators, a majority of whom shall reside in the vicinity of the university, and five of whom shall constitute a quorum, shall be the executive board of the society, and have full power to manage its affairs. It shall keep a full and complete account of all of its doings, and of the receipt and expenditure of all funds collected or granted for the purposes of the society, and shall biennially report the same to the governor. [R60, §1960; C73, §1906; C97, §2887; C24, 27, 31, 35, 39, §4547; C46, 50, 54, §304.6]

Time of filing report and period covered, §17.3

**304.7 Reports and documents furnished.** Five copies of the reports of the supreme court and twenty copies of all other books and documents published by the state or upon its order shall be delivered to the society for the purpose of effecting exchanges with similar societies in other states and countries, and for preservation in its library, or other purposes of the society. [R60, §1961; C73, §1907; C97, §2888; C24, 27, 31, 35, 39, §4548; C46, 50, 54, §304.7]

## CHAPTER 305 GEOLOGICAL SURVEY

305.1 Board.  
305.2 State geologist and assistants.  
305.3 Survey.  
305.4 Investigations—collection.  
305.5 Authority to enter lands.  
305.6 Detailed reports.

305.7 Annual report.  
305.8 Co-operation.  
305.9 Publication of reports.  
305.10 Distribution and sale of reports.  
305.11 Expenses.

**305.1 Board.** The geological survey of the state shall be under the direction of the geological board, consisting of the governor, the auditor of state, and the presidents of the agricultural college, the state university, and the Iowa academy of science. [C97, §2497; C24, 27, 31, 35, 39, §4549; C46, 50, 54, §305.1]

**305.2 State geologist and assistants.** Such board shall appoint and fix the salaries of a state geologist, and such expert assistants and other employees, recommended by him, as may be necessary. [R60, §§180, 181; C97, §2498; C24, 27, 31, 35, 39, §4550; C46, 50, 54, §305.2]

**305.3 Survey.** The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful,

with particular regard to the value thereof for commercial purposes and their accessibility. [R60, §182; C97, §2499; C24, 27, 31, 35, 39, §4551; C46, 50, 54, §305.3]

**305.4 Investigations—collection.** The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes; the growth of timber, the animal and plant life of the state, the streams and water power, and other scientific and natural history matters that may be of practical importance and interest. A complete cabinet collection may, at the option of the board, be made to illustrate the natural products of the state, and the board may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection. [R60, §§182, 185, 187; C97, §2499; C24, 27, 31, 35, 39, §4552; C46, 50, 54, §305.4]

**305.5 Authority to enter lands.** For the purpose of carrying on the aforesaid investigations the state geologist and his assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property. [C24, 27, 31, 35, 39, §4553; C46, 50, 54, §305.5]

**305.6 Detailed reports.** The state geologist and his assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are necessary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams. [R60,§184; C97,§2500; S13,§2500; C24, 27, 31, 35, 39,§4554; C46, 50, 54,§305.6]

40ExGA, HF 116,§6, editorially divided

**305.7 Annual report.** The state geologist shall, annually, at the time provided by law, make to the governor a full report, approved by the board, of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication. [R60,§184; C97,§§2498, 2500; S13,§2500; C24, 27, 31, 35, 39, §4555; C46, 50, 54,§305.7]

Time of filing report and period covered, §17.4

**305.8 Co-operation.** The state geologist shall co-operate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the geological board, such co-operation will result in profit to the state. [S13,§2500; C24, 27, 31, 35, 39,§4556; C46, 50, 54,§305.8]

**305.9 Publication of reports.** The board may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people. [C97,§2501; S13, §2501; C24, 27, 31, 35, 39,§4557; C46, 50, 54,§305.9]

**305.10 Distribution and sale of reports.** All publications of the geological survey shall be distributed by the state as are other published reports of state officers when no special provision is made. When such distribution has been made the board shall retain a sufficient number of copies to supply probable future demands and any copies in excess of such number shall be sold to persons making application therefor at the cost price of publication, the money thus accruing to be turned into the treasury of the state. [C97,§2501; S13,§2501; C24, 27, 31, 35, 39,§4558; C46, 50, 54,§305.10]

**305.11 Expenses.** The members of the board shall serve without compensation, but the state geologist and such board and its assistants shall be allowed their actual and necessary expenses incurred in the performance of their duties. [C97,§2502; S13,§2502; C24, 27, 31, 35, 39,§4559; C46, 50, 54,§305.11]

See biennial appropriation Act

# TITLE XIII

## HIGHWAYS, MOTOR VEHICLES, AND AERONAUTICS

### CHAPTER 306

#### ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

Referred to in §§306A.3, 306A.4, 306A.5, 306A.6, 306A.7, 306A.8

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| 306.1 Classification of highways.                          | 306.18 Conditions.  |
| 306.2 Definition of road systems.                          | 306.19 Execution of conveyance.                                   |
| 306.3 Jurisdiction—control.                                | 306.20 Payment of damages and right of way cost—proceeds of sale. |
| 306.4 Power to establish, alter or vacate.                 |   |
| 306.5 Hearing—place—date.                                  |   |
| 306.6 Notice—service.                                      |   |
| 306.7 Notice—requirements.                                 |   |
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| 306.9 Purchase and sale of property.                       |   |
| 306.10 Final order.  |   |
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| 306.13 Purchase or condemnation of right of way—procedure. |   |
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| 306.15 Plat and field notes.                               |   |
| 306.16 Sale of unused right of way.                        |   |
| 306.17 Notice—preference of sale.                          |   |

#### CHANGES IN ROADS, STREAMS, OR DRY RUNS

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| 306.21 Changes for safety, economy, and utility. |
| 306.22 Appraisers.                               |
| 306.23 Notice.                                   |
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| 306.28 Hearing on claims for damages.            |
| 306.29 Appeals.                                  |
| 306.30 Damages on appeal—rescission of order.    |
| 306.31 Tender of damages.                        |

**306.1 Classification of highways.** The highways of the state are hereby classified into four systems, to wit: the primary road system, the institutional road system, the secondary road system, and the state park road system.

The secondary road system is subdivided into farm-to-market roads and local secondary roads. [C54,§306.1; 57GA, ch 137,§§1-4]

See also §313.2

**306.2 Definition of road systems.** The following words and phrases when used in this chapter or in any chapter of the Code relating to highways shall respectively have the following meaning:

1. *Primary roads.* The term “primary roads” or “primary road system” shall include those main market roads and highway traffic arteries, outside of cities and towns, which have been designated as primary roads under section 313.2 or which may hereafter be so designated as the law may provide.

See Code 1924,§4689; also 37GA, ch 249,§2

2. *Institutional roads.* The term “institutional roads” shall include those highways, either inside or outside of cities and towns, upon or adjacent to land belonging to the state at any state institution.

3. *Secondary roads.* The term “secondary roads” or “secondary road system” shall include all public highways, outside of cities and

towns, except primary roads and state park and institutional roads.

4. *Farm-to-market roads.* The term “farm-to-market roads” or “farm-to-market road system” shall include those main secondary roads which have been designated as farm-to-market roads under section 310.10 or which may hereafter be so designated as the law may provide.

5. *Local secondary roads.* The term “local secondary roads” or “local secondary road system” shall include all those secondary roads which are not now, or may not hereafter be, included in the farm-to-market road system.

6. *State park roads.* The term “state park roads” shall include all those highways and roads, either inside or outside of cities and towns, upon land belonging to the state at any state park. [C24, 27,§4636; C31, 35,§4644-c2; C39,§4644.02; C46, 50,§309.2; C54,§306.2; 57GA, ch 137,§§5-8]

Referred to in §308.4

**306.3 Jurisdiction—control.** Jurisdiction and control over the highways of the state are hereby vested in and imposed on (1) the state highway commission as to primary roads; (2) the county board of supervisors as to secondary roads within their respective counties; and (3) the board or commission in control of any state park or institution as to any state park or institutional road at such state park or state institution. Provided however, that as to any

state park road which is an extension of either a primary or secondary highway which both enters and exits from the state park at separate points, the state highway commission in the case of a primary road, and the county board of supervisors in the case of secondary roads, shall have concurrent jurisdiction with the state conservation commission over such roads, and the state highway commission in the case of a primary road and the board of supervisors in the case of a secondary road, may expend the moneys available for such roads in the same manner as they expend such funds on other roads over which they exercise jurisdiction and control. The parties exercising concurrent jurisdiction shall enter into agreements with each other as to the kind and type of construction or maintenance and the division of cost thereof, but in the absence of such agreement the jurisdiction and control of said road shall remain under the conservation commission. [C51,§514; R60,§819; C73,§920; C97,§1482; C24, 27,§§4560, 4635-4677, 4780-4812; C31, 35, §§4560, 4644-c1; C39,§§4560, 4644.01; C46, 50, §§306.1, 309.1; C54,§306.3; 57GA, ch 137,§9]

**306.4 Power to establish, alter or vacate.** In the construction, improvement, operation or maintenance of any highway, or highway system, the board or commission which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said board or commission has jurisdiction and control. [C73,§§937, 954; C97,§§1496, 1509; S13,§1509; C24,§§4577, 4593, 4732; C27, 31,§§4577, 4593, 4755-b27, 4755-d2; C35,§§4577, 4593, 4631-e1, 4755-b27, 4755-d2; C39,§§4577, 4593, 4631.1, 4755.23, 4755.37; C46, 50,§§306.18, 306.34, 308.2, 313.25, 313.46; C54, §306.4]

**306.5 Hearing—place—date.** In proceeding to the vacation and closing of any road, part thereof, or railroad crossing, the board or commission in control of said road, or road system, shall fix a date for a hearing thereon in the county where said road, or part thereof, or crossing, is located, and if located in more than one county, then in a county wherein any part of such road or crossing is located. If the road to be vacated or changed is a secondary road located in more than one county, the boards of supervisors of such counties, acting jointly, shall fix a date for a hearing thereon in either or any of the counties where such road, or part thereof, is located. [C31, 35,§§4755-d2, 4755-d3; C39,§§4755.37, 4755.38; C46, 50,§§313.46, 313.47; C54,§306.5]

**306.6 Notice—service.** Notice of such hearing shall be published in some newspaper of general circulation in the county or counties where such road is located, at least twenty days prior to the date of hearing. The board

or commission which instituted said proceedings and is holding such hearing, shall notify the state highway commission, the board or boards of supervisors, or board or commission in control of affected state lands, as the case may be, of the time and place of such hearing, by certified mail addressed to the state highway commission, the county auditor, or the board or commission in control of affected state lands, as the case may be. [SS15,§1527-r7; C24, 27,§4621; C31, 35,§§4621, 4755-d4; C39,§§4621, 4755.39; C46, 50,§§306.62, 313.48; C54,§306.6; 57 GA, ch 267,§31]

**306.7 Notice—requirements.** Said notice shall state the time and place of such hearing, the location of the particular road, or part thereof, or crossing, the vacation and closing of which is to be considered, and such other data as may be deemed pertinent. [C31, 35, §4755-d5; C39,§4755.40; C46, 50,§313.49; C54, §306.7]

**306.8 Objections—claims for damages.** At such hearing, the state highway commission, the board of supervisors, or the board or commission in control of affected state lands, as the case may be, and any interested person, may appear and object and be heard. Any person owning land abutting on a road which it is proposed to vacate and close, shall have the right to file, in writing, a claim for damages at any time on or before the date fixed for hearing. [C31, 35,§4755-d6; C39,§4755.41; C46, 50, §313.50; C54,§306.8]

**306.9 Purchase and sale of property.** If as to any one or more properties affected by the proposed vacation and closing of any secondary road, it should appear to the board of supervisors to be in the interest of economy or public welfare, the board may purchase or condemn, by proceeding as this chapter provides, the said entire property or properties, and make payment therefor out of the secondary road fund. After the road has been vacated and closed the board shall sell such property or properties at the best attainable price, and credit the proceeds of such sale to the secondary road fund. [C31, 35,§4755-d7; C39,§4755.42; C46, 50,§313.51; C54,§306.9]

**306.10 Final order.** After such hearing, the commission, board or boards which instituted such proceedings and conducted such hearing, shall enter an order. Said commission or board may dismiss the proceedings, or it may vacate and close such road, part thereof, or crossing, in which event it shall determine and state in the order the amount of the damages allowed to each claimant. Said order thus entered shall be final except as to the amount of the damages. A copy of such order shall be filed with the county auditor of the county or counties in which the road, part thereof, or crossing, is located and with the state highway commission and the board or commission in control of any affected state land. [C31, 35,§4755-d7; C39,§4755.42; C46, 50,§313.51; C54,§306.10]

**306.11 Appeal.** Any claimant for damages may, by serving, within twenty days after the said final order has been issued, a written notice upon the commission, board or boards which instituted and conducted such proceedings, appeal as to the amount of damages, to the district court of the county in which the land is located, in the manner and form prescribed in chapter 472 with reference to appeals from condemnation, and such proceedings shall thereafter likewise conform to the applicable provisions of said chapter. [R60, §873; C73, §959; C97, §1513; C24, 27, §4597; C31, 35, §4597, 4755-d8; C39, §§4597, 4755.43; C46, 50, §§306.38, 313.52; C54, §306.11]

**306.12 Establishment.** In the establishment of any road, the board or commission in control of such road or road system need not cause a hearing to be held thereon or notice to be published thereof, but may do so. [C51, §535, 536; R60, §§840, 841; C73, §934; C97, §1493; C24, 27, 31, 35, 39, §4573; C46, 50, §306.14; C54, §306.12]

**306.13 Purchase or condemnation of right of way—procedure.** In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities and towns, the commission or board having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right of way therefor. Such board or commission shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, for weighing stations, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access thereto. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 471 and chapter 472 or as said chapters may be amended. Provided that, in the condemnation of right of way for secondary roads, the board of supervisors may proceed as provided in sections 306.22 to 306.31, both inclusive. [C24, §4732; C27, 31, 35, §4755-b27; C39, §§4658, 4683.23, 4755.23; C46, 50, §§309.64, 310.23, 313.25; C54, §306.13]

**306.14 Cemeteries and corners.** No road shall be established through any cemetery or burying ground without the consent of all the parties affected by the same, nor shall any ground be taken for the rounding of a corner where the dwelling house, lawn and ornamental trees connected therewith are located at such corner, except by consent of the owner thereof. [C51, §525; R60, §830; C73, §925; C97, §1487; SS15, §1527-r4; C24, §§4566, 4732; C27, 31, 35, §§4566, 4755-b27; C39, §§4566, 4755.23; C46, 50, §§306.7, 313.25; C54, §306.14]

**306.15 Plat and field notes.** After any road has been finally established or altered, a plat

and field notes thereon must be filed by the commission or board having control and jurisdiction over said road, with and recorded by the county auditor. [C51, §§533, 550; R60, §§838, 855; C73, §§933, 949; C97, §§1492, 1504; C24, 27, §§4571, 4589; C31, 35, §§4571, 4589, 4755-c1; C39, §§4571, 4589, 4619, 4686.24, 4755.24; C46, 50, §§306.12, 306.30, 306.60, 310.24, 313.26; C54, §306.15]

**306.16 Sale of unused right of way.** When title to any tract or parcel of land has been or may hereafter be acquired for the improvement of any highway, and when in the judgment of the board or commission in control of said highway, said tract or parcel of land, or part thereof, is not now and will not hereafter be used in connection with or for the improvement, maintenance, or use of said highway, the board or commission in control of such highway may sell said tract, parcel, or piece of land, or any part thereof, for cash. If such tract, parcel, or piece of land or part thereof is held or used in connection with any primary road, or state park or institutional road, such sale shall be subject to approval of the executive council of the state of Iowa.

In the event any such tract or parcel of land is sold, such sale shall be subject to the right of a utility association, company or corporation to continue in possession of a right of way in use at the time of such sale. [C35, §4755-f1; C39, §4755.44; C46, 50, §313.53; C54, §306.16]

**306.17 Notice—preference of sale.** Notice of intention to sell such tract, parcel, or piece of land, or part thereof, must, not less than ten days prior to the sale thereof, be sent by certified mail, by the board or commission in control of such land, to the last known address of the present owner of adjacent land from which said tract, parcel, piece of land or part thereof, was originally bought or condemned for highway purposes, and if located in a city or town, to the mayor thereof. Said notice shall give an opportunity to the present owner of adjacent property to be heard and make offers for the tract, parcel or piece of land to be sold, and if such offer is equal to or exceeds in amount any other offer received, it shall be given preference by the board in control of said land. Neglect or failure for any reason, to comply with the provisions of said notice, shall in no way prevent the giving of a clear title to the purchaser of said tract, parcel or piece of land. [C35, §4755-f2; C39, §4755.45; C46, 50, §313.54; C54, §306.17; 57GA, ch 267, §32]

**306.18 Conditions.** Any sale of land as herein authorized shall be upon the conditions that the tract, parcel, or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner. [C35, §4755-f3; C39, §4755.46; C46, 50, §313.55; C54, §306.18]

**306.19 Execution of conveyance.** Where a sale of land in connection with any primary road or state park or institutional road has been authorized as herein provided, written conveyances containing the conditions as prescribed by the executive council shall be made in the name of the state and signed by the governor and secretary of state, and the great seal of the state of Iowa attached thereto. Where a sale of land in connection with any secondary road has been authorized by the board of supervisors as herein provided, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairman of the board of supervisors and the county auditor. [C35,§4755-f4; C39,§4755.47; C46, 50,§313.56; C54,§306.19]

**306.20 Payment of damages and right of way cost—proceeds of sale.** Damages allowed on account of the vacation of any highway and costs incident thereto, right of way or land purchased or condemned for or on account of any highway and costs incident thereto, and the funds received from the sale of any highway right of way or land, shall be paid from or credited to, as the case may be, the road fund or funds applicable to said highway or highway system. [C51,§546; R60,§851; C73,§946; C97,§1501; C24, 27,§4586; C31, 35,§§4586, 4755-d8,-f5; C39,§§4586, 4755.43, 4755.48; C46, 50,§§306.27, 313.52, 313.57; C54,§306.20]

Constitutionality, 54GA, ch 103,§25

CHANGES IN ROADS, STREAMS, OR DRY RUNS

**306.21 Changes for safety, economy, and utility.** Boards of supervisors on their own motion may change the course of any part of any secondary road or stream, watercourse, or dry run, within any county in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten any secondary road, or to cut off dangerous corners, turns, or intersections on the highway, or to widen any secondary road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon such highway. [C97,§427; SS15,§1527-r1; C24, 27, 31, 35, 39, §4607; C46, 50,§306.48; C54,§306.21]

**306.22 Appraisers.** If the board is unable, by agreement with the owner, to acquire the necessary right of way to effect such change, three freeholders shall be selected to appraise the damages consequent on the taking of the right of way. The board of supervisors shall select one of said appraisers. The owner or owners of the land sought to be taken shall select one of said appraisers. The two appraisers so selected shall choose the third appraiser. In case the owners do not exercise their said right or in case they are unable to agree as to an appraiser, or in case their appointee fails to appear and qualify, the said board of supervisors shall appoint two appraisers and said two appointees shall choose the third appraiser.

If the two appraisers selected shall fail within ten days to select a third, or the third appraiser so selected shall fail to serve, then the board of supervisors shall select the third appraiser. [SS15,§§1527-r1,-r2; C24, 27, 31, 35, 39,§4610; C46, 50,§306.51; C54,§306.22]

Referred to in §306.13

**306.23 Notice.** The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right of way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of ..... county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right of way, and the tract or tracts from which such right of way will be taken.) The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may, on or before the .... day of ....., appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law. All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisement to the said board of supervisors and that said latter board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

.....  
County Auditor.

[SS15,§§1527-r2,-r3,-r6; C24, 27, 31, 35, 39,§4611; C46, 50,§306.52; C54,§306.23]

Referred to in §306.13

**306.24 Service of notice.** Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice in one of the official newspapers of the county, once each week for two weeks, and also by mailing by certified mail a copy of such notice to such owner and mortgagee of record addressed to his last known address, and the county auditor shall furnish

to the board of supervisors his affidavit that such notice has been sent, which affidavit shall be conclusive evidence of the mailing of such notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised his right to select an appraiser. [SS15, §§1527-r2,-r3; C24, 27, 31, 35, 39, §4612; C46, 50, §306.53; C54, §306.24; 57GA, ch 267, §33]

Referred to in §306.13

Time and manner of service, R.C.P. 53 and 56(a)

**306.25 Qualification and assessment.** Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors. [SS15, §1527-r2; C24, 27, 31, 35, 39, §4613; C46, 50, §306.54; C54, §306.25]

Referred to in §306.13

**306.26 Hearing—adjournment.** The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners. [SS15, §1527-r3; C24, 27, 31, 35, 39, §4614; C46, 50, §306.55; C54, §306.26]

Referred to in §306.13

**306.27 Hearing on objections.** The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure serv-

ice on additional parties. [SS15, §1527-r3; C24, 27, 31, 35, 39, §4615; C46, 50, §306.56; C54, §306.27]

Referred to in §306.13

**306.28 Hearing on claims for damages.** When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change. [SS15, §1527-r3; C24, 27, 31, 35, 39, §4616; C46, 50, §306.57; C54, §306.28]

Referred to in §306.13

**306.29 Appeals.** Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally. [C97, §428; SS15, §1527-r3; C24, 27, 31, 35, 39, §4617; C46, 50, §306.58; C54, §306.29]

Referred to in §306.13

**306.30 Damages on appeal—rescission of order.** If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change. [SS15, §1527-r3; C24, 27, 31, 35, 39, §4618; C46, 50, §306.59; C54, §306.30]

Referred to in §306.13

**306.31 Tender of damages.** No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession. [SS15, §1527-r3; C24, 27, 31, 35, 39, §4620; C46, 50, §306.61; C54, §306.31]

Referred to in §306.13

## CHAPTER 306A

### CONTROLLED-ACCESS HIGHWAYS

Referred to in §362.37

306A.1 Declaration of policy.

306A.2 Definition of a controlled-access facility.

306A.3 Authority to establish controlled-access facilities.

306A.4 Design of controlled-access facility.

306A.5 Acquisition of property and property rights.

306A.6 New and existing facilities—grade-crossing eliminations.

306A.7 Authority of local units to consent.

306A.8 Local service roads.

306A.9 Unlawful use of controlled-access facilities—penalties.

**306A.1 Declaration of policy.** The legislature hereby finds, determines, and declares that this chapter is necessary for the immed-

iate preservation of the public peace, health, and safety, and for the promotion of the general welfare. [56GA, ch 148, §1]

**306A.2 Definition of a controlled-access facility.** For the purposes of this chapter, a controlled-access facility is defined as a highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, busses, and other commercial vehicles shall be excluded. [56GA, ch 148,§2]

Referred to in §306A.3

**306A.3 Authority to establish controlled-access facilities.** Cities, towns, and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, acting alone or in co-operation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within cities and towns such authority shall be subject to such municipal consent as may be provided by law. Said cities, towns, and highway authorities, in addition to the specific powers granted in this chapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said cities, towns and highway authorities may regulate, restrict, or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with section 306A.2. [56GA, ch 148,§3]

**306A.4 Design of controlled-access facility.** Cities, towns, and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection such cities, towns, and highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be per-

mitted, upon such terms and conditions as may be specified from time to time. [56GA, ch 148,§4]

**306A.5 Acquisition of property and property rights.** For the purposes of this chapter, cities, towns, and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of this chapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the said cities, towns and highway authorities, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper. [56GA, ch 148,§5]

**306A.6 New and existing facilities—grade-crossing eliminations.** Cities, towns and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 may designate and establish an existing street or highway as included within a controlled-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and city or town or village streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city, town, or village street, county or state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the highway authority in the state, county, city, town or village having jurisdiction over such controlled-access facility. Such consent and approval shall be given only if the public interest shall be served thereby. [56GA, ch 148,§6]

**306A.7 Authority of local units to consent.** Cities, towns and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other



public ways in their respective jurisdictions, to facilitate the purposes of this chapter. [56GA, ch 148,§7]

**306A.8 Local service roads.** In connection with the development of any controlled-access facility cities, towns and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority. [56GA, ch 148,§8]

**306A.9 Unlawful use of controlled-access facilities—penalties.** It is unlawful for any

person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled-access facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper line provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled-access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility property. Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon arrest and conviction therefor, shall be punished by a fine of not less than five dollars, nor more than one hundred dollars, or by imprisonment in the city or county jail for not less than five days nor more than ninety days, or by both such fine and imprisonment. [56GA, ch 148,§9]

Constitutionality, 56GA, ch 148,§10  
Omnibus repeal, 56GA, ch 148,§10

## CHAPTER 307

### STATE HIGHWAY COMMISSION

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

307.1 Members — qualifications — term — location.  
307.2 Appointments.  
307.3 Vacancies.  
307.4 Compensation.

307.5 Duties.  
307.6 Federal donations.  
307.7 Federal appropriations.  
307.8 Counsel.  
307.9 Special counsel.

**307.1 Members — qualifications — term — location.** The state highway commission shall be composed of five appointive members, not more than three of whom shall be from the same political party, and each commissioner shall serve for four years from July 1 of the year of his appointment. The office of said commission shall be located in the city of Ames, Iowa. [SS15,§1527-s; C24, 27, 31, 35, 39, §4622; C46, 50, 54,§307.1]

**307.2 Appointments.** Within sixty days after the convening of the general assembly in regular session in 1929, and each two years thereafter, the governor shall appoint, with the approval of two-thirds of the senate in executive session, a successor or successors to the member or members of said commission whose terms expire on July 1 following. [SS15, §1527-s; C24, 27, 31, 35, 39,§4623; C46, 50, 54, §307.2]

Confirmation by senate, §2 40

**307.3 Vacancies.** Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as

full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. Vacancies shall be filled from the same political party from which the vacancy occurs. [SS15,§1527-s; C24, 27, 31, 35, 39,§4624; C46, 50, 54,§307.3]

**307.4 Compensation.** Each member of the state highway commission shall receive a salary of forty-five hundred dollars per annum for necessary service. Each member shall receive his actual necessary expenses incurred in the performance of his duties. [SS15,§1527-s1; C24, 27, 31, 35, 39,§4625; C46, 50, 54,§307.4]

**307.5 Duties.** Said commission shall:

1. Devise and adopt standard plans of highway construction and maintenance, and furnish the same to the counties.
2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construc-

tion and maintenance and the reasonable cost thereof.

3. Appoint all assistants necessary to carry on the work of the commission, define their duties, fix their compensation, and provide for necessary bonds and the amounts thereof. The term of employment of all such assistants may be terminated by the commission, at any time and for any cause.

4. Investigate highway conditions in any county, and report all violations of duty to the attorney general.

5. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local, and railroad officials, and with the Iowa state commerce commission with reference to such elimination.

6. Assist the board of supervisors and the attorney general in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

7. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board in control of said lands.

8. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

9. Incur no expense to the state by sending out road lecturers.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

11. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection. [SS15, §§1527-s1, -s2; C24, 27, 31, 35, 39, §4626; C46, 50, 54, §307.5]

40ExGA, SF 119, §8, editorially divided  
Analogous provision, §474.11  
Restricting weight of vehicles on highways, §321.474  
Time of filing report and period covered, §17.9

**307.6 Federal donations.** Should the government of the United States provide for free distribution among the states of machinery or other equipment, suitable for use in road improvement, the state highway commission is empowered to receive and receipt for such machinery and equipment, and to take such

action as will secure to the state the benefit of any such tenders by the federal authorities. Said commission is further authorized, in the event of such distribution to the states by the federal authorities, to make such apportionment of said machinery or other equipment among the counties of the state as in its judgment will best facilitate work in progress or contemplated by any county or counties, but the title and right of possession of such property so received from the federal government shall at all times rest in the state highway commission for the use and benefit of the state. [C24, §4739; C27, 31, 35, §4626-a1; C39, §4626.1; C46, 50, 54, §307.6]

**307.7 Federal appropriations.** Where funds have been allotted or appropriated or may hereafter be allotted or appropriated by the government of the United States for the improvement of streets and highways in this state, and the federal statutes or the rules and regulations of the federal government provide or contemplate that such work shall be under the supervision of the state highway commission, said commission is hereby authorized and empowered to let the necessary contracts for such construction work, to supervise and direct such construction work, to comply with the federal statutes, rules and regulations, and to co-operate with the federal government in the expenditures of said federal funds.

In order to avoid delays, payment for such street and highway projects or improvements constructed in co-operation with the federal government may be advanced from the primary road fund. When payments on said project or improvement are received by the state from the federal government, the funds so received shall be credited to the fund from which the advance expenditure was made, either to the primary road fund or to the engineering and administrative fund of the highway commission, as the case may be. The highway commission shall advise the treasurer of state as to the amount to be credited to the primary road fund or to the engineering and administrative fund of the highway commission. [C35, §4626-f1; C39, §4626.2; C46, 50, 54, §307.7; 57GA, ch 138, §1]

**307.8 Counsel.** The attorney general shall act as attorney for said commission on all matters pertaining to their duties, and take such action as may be deemed advisable by him in order to correct violations of the laws relative to highway matters. [SS15, §§1527-s, -s2; C24, 27, 31, 35, 39, §4630; C46, 50, 54, §307.8]

**307.9 Special counsel.** The highway commission may request of the attorney general, the assistance of a special attorney to look after the legal work of the highway commission, and in such event, the attorney general shall appoint a special assistant attorney general who shall be satisfactory to the commission. The salary of such special assistant

attorney general shall be fixed by the state highway commission subject to the approval of the attorney general, which, together with his necessary traveling expenses shall be paid from the primary road fund. The commission

shall provide and furnish a suitable office for such special assistant attorney general upon request of the attorney general. [C31, 35, §4630-c1; C39, §4630.1; C46, 50, 54, §307.9]

## CHAPTER 308

### PARK AND INSTITUTIONAL ROADS

Use of maintenance equipment of other governmental bodies, §111.58

308.1 Separate districts.

308.2 Repealed by 54GA, ch 103, §22.

308.3 Supervisor.

308.4 Maintenance and improvement.

308.5 Improvement by city or county.

**308.1 Separate districts.** Highways on lands of the state and highways on which such lands abut shall constitute a separate road district for each state institution, in connection with which such lands are used, and shall be under the jurisdiction of the board in control thereof. [C97, §1532; S13, §1532; C24, 27, 31, 35, 39, §4631; C46, 50, 54, §308.1; 57GA, ch 137, §10]

**308.2** Repealed by 54GA, ch 103, §22. See §306.4.

**308.3 Supervisor.** The chief engineer of the state highway commission shall be ex officio general supervisor of said several road districts, and be under the direction of the board in control thereof, and shall have general charge of the maintenance and improvement of said roads, and perform such other duties and make such reports in reference thereto as may be required by said board. Said board may appoint a local supervisor for each district. [S13, §1532; C24, 27, 31, 35, 39, §4632; C46, 50, 54, §308.3]

**308.4 Maintenance and improvement.** The roads, bridges and culverts within or adjacent to any such district and roads included in the

state park system as defined in section 306.2 shall be maintained, repaired, and improved under the direction of the board which is in control of said lands, provided said board shall not pave or hard surface such roads unless authorized so to do by the executive council. The costs shall be paid only after certificate of detailed amount due shall have been filed by the said board with the state comptroller, and duly audited as provided by law. This section shall not be construed as preventing the paving or hard surfacing of any such roads under any other proceeding authorized by law. [S13, §1532; C24, 27, 31, 35, 39, §4633; C46, 50, 54, §308.4; 57GA, ch 137, §11]

**308.5 Improvement by city or county.** When a city, town, or county shall drain, oil, pave, or hard surface a road which extends through or abuts upon lands owned by the state, the state, through the executive council, shall pay such portion of the cost of making said improvement through or along such lands as would be legally assessable against said lands were said lands privately owned, which amount shall be determined by said council, or board. When payments are to be made by the state executive council they shall be from any funds of the state not otherwise appropriated. [S13, §170-k; C24, 27, 31, 35, 39, §4634; C46, 50, 54, §308.5]

## CHAPTER 309

### SECONDARY ROADS

#### SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

309.1, 309.2 Repealed by 54GA, ch 103, §22, see §§306.2 and 306.3.

309.3 Secondary bridge system.

309.4 to 309.6, inc. Repealed by 57GA, ch 139, §1.

309.7 Levy for construction and maintenance.

309.8 Secondary road fund.

309.9 General pledge.

309.10 Consultation with township trustees.

309.11 Systems abolished.

309.12 Construction of terms.

309.13 to 309.15, inc. Repealed by 57GA, ch 139, §1.

309.16 Duty of highway commission.

#### COUNTY ENGINEER

309.17 Engineer—term.

309.18 Compensation.

309.19 Duties—bonds.

309.20 Engineers—itemized account.

309.21 Supervision of construction and maintenance work.

#### CONSTRUCTION PROGRAM

309.22 Construction program or project—progress report by engineer.

309.23 Repealed by 57GA, ch 139, §1.

309.24 Uniform and unified plan required.

309.25 Material considerations for farm-to-market roads.

309.26 Provisional selection of roads.

- 309.27 Report of engineer.
- 309.28 Recommendations.
- 309.29 Map required.
- 309.30 Additional estimates.
- 309.31 to 309.33, inc. Repealed by 57GA, ch 139, §1.
- 309.34 Record required.
- 309.35 Surveys required.
- 309.36 Nature of survey.
- 309.37 Details of survey.
- 309.38 Existing surveys.
- 309.39 Contracts and specifications.
- 309.40 Advertisement and letting.
- 309.41 Optional advertisement and letting.
- 309.42 Approval of road contracts.
- 309.43 Record of bids.
- 309.44 Repealed by 53GA, ch 125,§8, see §314.7.
- 309.45 Repealed by 53GA, ch 125,§6, see §314.5.

ANTICIPATION OF FUNDS

- 309.46 Construction fund anticipated.
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SECONDARY ROAD AND BRIDGE SYSTEMS  
IN GENERAL

**309.1 and 309.2** Repealed by 54GA, ch 103, §22, see §§306.2 and 306.3.

**309.3 Secondary bridge system.** The secondary bridge system of a county shall embrace all bridges and culverts on all public highways within the county except on primary roads and on highways within cities which control their own bridge levies, except that culverts which are thirty-six inches or less in diameter shall be constructed and maintained by the city or town in which they are located. [C24, 27,§§4664, 4665; C31, 35,§4644-c3; C39,§4644.03; C46, 50, 54,§309.3]

**309.4 to 309.6, inc.** Repealed by 57GA, ch 139,§1.

**309.7 Levy for construction and maintenance.** The board of supervisors may annually,

at its September session, levy for secondary road construction and maintenance purposes:

1. A tax of not to exceed two and one-half mills on the dollar on all taxable property in the county except on property within cities and towns which control their own bridge levies.

2. A tax of not to exceed eight and five-eighths mills on the dollar on all property in the county, except on property within cities and towns, provided, that no county shall be required, as a condition precedent to being eligible, to receive farm-to-market road funds on an equalization basis, to levy in excess of five mills.

3. A tax not to exceed five-eighths mills on the dollar on all taxable property in the county. [C24, 27,§§4635, 4795; C31, 35,§§4644-c6,-c7; C39,§§4644.06, 4644.07; C46, 50, 54,§§309.6, 309.7; 57GA, ch 139,§§1, 2]

Section 309.7, Code 1954 repealed by 57GA, ch 139,§1  
Levies before May 27, 1955, legalized, see §592.8

**309.8 Secondary road fund.** There is hereby created a secondary road fund which fund shall consist of:

1. All funds derived from the secondary road tax levies.
2. All funds allotted to the county from the state road use tax fund.
3. All funds provided by individuals for the improvement of any secondary road from their own contributions.
4. All other funds which may by law be dedicated to said fund. [C24, 27, §4635; C31, 35, §4644-c8; C39, §4644.08; C46, 50, 54, §309.8; 57GA, ch 139, §§1, 3]

Section 309.8, Code 1954, repealed by 57GA, ch 139, §1  
Allocation of funds, §312.2  
Payments from federal funds, §467B.13  
See §311.7

**309.9 General pledge.** The secondary road fund is hereby pledged to and shall be used for any or all of the following purposes at the option of the board of supervisors:

1. Construction and reconstruction of secondary roads and costs incident thereto.
2. Maintenance and repair of secondary roads and costs incident thereto.
3. Payment of all or part of the cost of construction and maintenance of bridges in cities and towns having a population of eight thousand, or less and all or part of the cost of construction of roads located within an incorporated town, of less than four hundred, population, which lead to state parks.
4. Special drainage assessments levied on account of benefits to secondary roads.
5. Payment of interest on and principal of any bonds of the county issued on account of secondary roads, bridges or culverts constructed by the county.
6. Any legal obligation or contract in connection with secondary roads and bridges which is required by law to be taken over and assumed by the county, and
7. Secondary road equipment, materials, supplies and garages or sheds for the storage, repair and servicing thereof.

8. For the assignment or designation of names or numbers to roads in the county and to erect, construct or maintain guide posts or signs at the intersections thereof. [C24, §§4635, 4795, 4798, 4800, 4801; C27, §§4635-b1, 9795, 4795-b1, 4797, 4798, 4800, 4801; C31, 35, §§4644-c9, -c10, -c11, -c13, -c14, -c17; C39, §§4644.09-4644.13, 4644.15; C46, 50, 54, §§309.9-309.13, 309.15; 56GA, ch 149, §§1, 2; 57GA, ch 139, §§1, 4]

Section 309.9, Code 1954, repealed by 57GA, ch 139, §1

**309.10 Consultation with township trustees.** In the preparation of the county secondary road program required by section 309.22 the board of supervisors shall meet and consult with the township trustees as to the improvements needed for the secondary roads in the various townships. [C24, 27, §§4635, 4795; C31,

35, §§4644-c11, 4644-c15; C39, §§4644.11, 4644.14; C46, 50, 54, §§309.11, 309.14; 57GA, ch 139, §§1, 6]  
Section 309.10, Code 1954, repealed by 57GA, ch 139, §1

**309.11 Systems abolished.** The classification of secondary roads into "county trunk roads" and "local county roads" is hereby abolished. Wherever in any statute the words, "county trunkroads", "county road" or "local county road" appear, they shall be construed to mean "secondary road". [C31, 35, §5079-d1; C39, §5029.11; C46, 50, 54, §321.351; 57GA, ch 139, §§1, 17]

Section 309.11, Code 1954, repealed by 57GA, ch 139, §1

**309.12 Construction of terms.** The classification of county road funds into "secondary road construction funds" and "secondary road maintenance funds" is hereby abolished. Wherever in any statute the words, "secondary road construction fund" or "secondary road maintenance fund" appear; they shall be construed to mean, "secondary road fund". [C24, 27, §§4635, 4797; C31, 35, §4644-c13; C39, §4644.12; C46, 50, 54, §309.12; 57GA, ch 139, §§1, 18]

Section 309.12, Code 1954, repealed by 57GA, ch 139, §1

**309.13 to 309.15, inc., Code 1954, repealed by 57GA, ch 139, §1.**

**309.16 Duty of highway commission.** The state highway commission shall when requested by the board of supervisors advise with said board as to the manner of constructing and maintaining the secondary roads. [C31, 35, §4644-c18; C39, §4644.16; C46, 50, 54, §309.16]

#### COUNTY ENGINEER

**309.17 Engineer—term.** The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board. [C24, 27, §4641; C31, 35, §4644-c19; C39, §4644.17; C46, 50, 54, §309.17]

**309.18 Compensation.** The board shall fix the compensation of said engineer or engineers, and pay the same, together with all engineering costs, from the general county fund, or from the secondary road construction fund or from the secondary road maintenance fund, or from any or all of said funds. [C24, 27, §4641; C31, 35, §4644-c20; C39, §4644.18; C46, 50, 54, §309.18]

**309.19 Duties—bonds.** Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than two thousand nor more than five thousand dollars, to be approved by the board. [C24, 27, §4641; C31, 35, §4644-c21; C39, §4644.19; C46, 50, 54, §309.19]

**309.20 Engineers — itemized account.** All county engineers and their assistants shall, for all work done or expenses made, file an itemized and verified account, with the board of supervisors, stating the time actually employed each day, the place where such work was done, the character of the work done, and also file with such account vouchers for any expense. In computing the said expense, mileage at the rate of seven cents per mile for distance actually traveled may be included. [C24, 27, §4642; C31, 35, §4644-c22; C39, §4644.20; C46, 50, 54, §309.20]

**309.21 Supervision of construction and maintenance work.** All construction and maintenance work shall be performed under the direct and immediate supervision of the county engineer who shall be deemed responsible for the efficient, economical and good-faith performance of said work. [C31, 35, §4644-c23; C39, §4644.21; C46, 50, 54, §309.21]

CONSTRUCTION PROGRAM

**309.22 Construction program or project—progress report by engineer.** On or before the first day of November of each year the board of supervisors shall, subject to the approval of the state highway commission, adopt a comprehensive program for the next calendar year based upon the construction funds estimated to be available for such year.

At the close of each year, the county engineer as a part of his annual report to the state highway commission shall include a statement of the progress made toward the completion of each project contained in the approved program, a statement of the total amount expended on each such project during the year, and a statement of what portion of the work on each such project was done on contract and the amount so expended on each contract for each such project. [C31, 35, §§4644-c24, -c25; C39, §§4644.22, 4644.23; C46, 50, 54, §§309.22, 309.23; 57GA, ch 139, §§1, 5; ch 140, §1]

Referred to in §309.10

**309.23** Repealed by 57GA, ch 139, §1.

**309.24 Uniform and unified plan required.** Said program or project shall be planned on the basis of one general, uniform, and unified plan for the complete and permanent construction of the roads embraced therein as to bridge, culvert, tile, and grading or other improvements. [C31, 35, §4644-c26; C39, §4644.24; C46, 50, 54, §309.24]

**309.25 Material considerations for farm-to-market roads.** In planning and in adopting said program or project by the board of supervisors, said board and the county engineer shall give due and careful consideration, (1) to the location of primary roads, and of roads heretofore improved as county roads, (2) to the market centers and main roads leading thereto, and (3) to rural mail and school bus routes, it being the intent of this

chapter that said program or project will, when finally executed, afford the highest possible systematic, intracounty and intercounty connections of all roads of the county. [C31, 35, §4644-c27; C39, §4644.25; C46, 50, 54, §309.25]

Farm-to-market roads, ch 310

**309.26 Provisional selection of roads.** The board after due consultation with the county engineer, shall first select in a provisional way the roads which they then consider advisable to embrace in said program, and direct said engineer to make a reconnaissance survey and estimate of all said roads, or of such part thereof as, in view of the public necessity and convenience, present the most urgent need and necessity for early construction. [C24, 27, §4643; C31, 35, §4644-c28; C39, §4644.26; C46, 50, 54, §309.26]

**309.27 Report of engineer.** In addition to the foregoing, the engineer, when so ordered by the board, shall make written report to the board and shall designate therein in their order of importance the roads which, in his judgment, are most urgently in need of construction. [C24, 27, §4643; C31, 35, §4644-c29; C39, §4644.27; C46, 50, 54, §309.27]

**309.28 Recommendations.** The engineer may in his report recommend that certain definitely described roads or parts thereof be omitted from the provisional program or project, or that certain definitely described roads or parts thereof be added thereto, and in such case he shall clearly enter on his report the reasons therefor. [C31, 35, §4644-c30; C39, §4644.28; C46, 50, 54, §309.28]

**309.29 Map required.** A map of the county showing the location of the proposed program or project shall accompany the report of the engineer. [C24, 27, §4644; C31, 35, §4644-c31; C39, §4644.29; C46, 50, 54, §309.29]

**309.30 Additional estimates.** Additional reconnaissance surveys and estimates may be ordered by the board when it deems the same necessary or advisable. [C31, 35, §4644-c32; C39, §4644.30; C46, 50, 54, §309.30]

**309.31 to 309.33, inc.** Repealed by 57GA, ch 139, §1.

**309.34 Record required.** After the construction program or project is finally determined, the county auditor shall record the same at length in a county road book. [C24, 27, §4646; C31, 35, §4644-c36; C39, §4644.34; C46, 50, 54, §309.34]

**309.35 Surveys required.** Before proceeding to the construction of any road or roads included in said program where the grading, exclusive of bridges and culverts, is estimated to cost over three thousand dollars per mile, the county engineer shall cause detailed surveys and plans for said road or roads to be prepared. [C24, 27, §4643; C31, 35, §4644-c37; C39, §4644.35; C46, 50, 54, §309.35]

**309.36 Nature of survey.** The engineer's survey shall be on the basis of the permanent improvement of said roads, as to bridge, culvert, tile, and road work. [C24, 27,§4644; C31, 35,§4644-c38; C39,§4644.36; C46, 50, 54,§309.36]

**309.37 Details of survey.** Said survey shall show:

1. A division into sections of all of the roads embraced in said provisional program, a designation of each section by some appropriate number, name, or letter, the starting point and terminus of each section, and the mileage of each section.

2. An accurate plan and profile of the roads surveyed, showing (a) cuts and fills, (b) outline of grades, (c) all existing permanent bridges, culverts and grades, and (d) proper bench marks on each bridge and culvert.

3. The drainage, both surface and subdrainage, necessary to prepare said roads for complete construction.

4. The location of all lines of tile and size thereof.

5. All necessary bridges and culverts, their length, height, and width and foundation soundings.

6. An estimate of the watershed having relation to each bridge and culvert.

7. An estimate of the construction cost of said roads on the basis of permanent bridges, culverts, tile, and road work. [C24, 27,§4644; C31, 35,§4644-c39; C39,§4644.37; C46, 50, 54, §309.37]

**309.38 Existing surveys.** The engineer may adopt any existing survey of any road or part thereof which is embraced in said program or project, provided such existing survey substantially complies, or is made to comply, with the requirements of this chapter. [C31, 35, §4644-c40; C39,§4644.38; C46, 50, 54,§309.38]

Additional provision as to surveys and reports, §309.56

**309.39 Contracts and specifications.** The various contracts for the carrying out of said construction program or project in the most efficient, practicable and economical manner shall, as far as possible, be accompanied by standard specifications, and no traveled roadway shall be less than twenty-two feet from shoulder to shoulder. [C31, 35,§4644-c41; C39, §4644.39; C46, 50, 54,§309.39]

The second paragraph of this section, Code 1954, has been recodified as §14.1 (Par. 1)

**309.40 Advertisement and letting.** All contracts for road or bridge construction work and materials therefor of which the engineer's estimate exceeds five thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting. [C24, 27,§4647; C31, 35,§4644-c42; C39,§4644.40; C46, 50, 54,§309.40]

Referred to in §309.41

**309.41 Optional advertisement and letting.** Contracts not embraced within the provisions

of section 309.40 may be advertised and let at a public letting, or may be let privately at a cost not to exceed the engineer's estimate, or may be built by day labor. [C24, 27,§4648; C31, 35,§4644-c43; C39,§4644.41; C46, 50, 54,§309.41]

**309.42 Approval of road contracts.** Contracts for road construction work which, according to the engineer's estimate, involve a cost of two thousand dollars or more per mile, or more than five thousand dollars in the aggregate shall be first approved by the state highway commission before the same shall be effective as a contract. [C31, 35,§4644-c44; C39, §4644.42; C46, 50, 54,§309.42]

**309.43 Record of bids.** All bids received shall be publicly opened, at the time and place specified in the advertisement, and shall be recorded in detail, in the road book, by the county auditor; and the county engineer shall in all instances of day labor, private or public contracts, file a detailed cost accounting sheet with the county auditor; said book and cost sheets shall at all times be open to public inspection. [C24, 27,§4649; C31, 35,§4644-c45; C39,§4644.43; C46, 50, 54,§309.43]

**309.44** Repealed by 53GA, ch 125,§8, see §314.7.

**309.45** Repealed by 53GA, ch 125,§6, see §314.5.

#### ANTICIPATION OF FUNDS

**309.46 Construction fund anticipated.** The board before issuing anticipatory certificates shall seek the advice of the state highway commission and issue said certificates to an amount not exceeding fifty percent of the estimated funds which will accrue to the secondary road fund during any stated period of from one to two years. [C31, 35,§4644-c48; C39, §4644.46; C46, 50, 54,§309.46; 57GA, ch 139,§8]

**309.47 Anticipatory resolution.** Such certificates shall be authorized by a duly adopted resolution which shall specify:

1. The secondary road funds, specifying the year or years, which are to be anticipated.
2. The amount of certificates authorized.
3. The denomination of each certificate.
4. The rate of interest which each certificate shall bear which shall not exceed five percent per annum, payable annually.

5. The authorization of the chairman of the board of supervisors and of the county auditor, respectively, to sign and countersign such certificates. [C31, 35,§4644-c49; C39,§4644.47; C46, 50, 54,§309.47; 57GA, ch 139,§9]

**309.48 Recitals.** Each certificate shall recite:

1. The annual accruing secondary road funds (naming the year) of which the certificate is anticipatory.
2. That said certificate shall be payable on or before December 31 of said year.

3. That said certificate is payable solely from said accruing secondary road funds. [C31, 35, §4644-c50; C39, §4644.48; C46, 50, 54, §309.48; 57GA, ch 139, §10]

**309.49 Consecutive numbering and payment.** The series of certificates which anticipate the accruing of funds during a given year shall be numbered consecutively and paid in the order of said numbering. [C31, 35, §4644-c51; C39, §4644.49; C46, 50, 54, §309.49]

**309.50 Execution.** Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to such latter officer, who shall be responsible therefor on his bond. [C31, 35, §4644-c52; C39, §4644.50; C46, 50, 54, §309.50]

**309.51 Taxation.** Said certificates shall be exempt from taxation. [C31, 35, §4644-c53; C39, §4644.51; C46, 50, 54, §309.51]

**309.52 Duty of treasurer.** The treasurer shall sell said certificates in accordance with the provisions of chapter 75, and shall credit the amount received to said secondary road fund, or if unable to sell said certificates for par plus accrued interest, the treasurer may apply said certificates at par plus accrued interest in payment of any warrants duly authorized and issued for secondary road work. [C31, 35, §4644-c54; C39, §4644.52; C46, 50, 54, §309.52; 57GA, ch 139, §11]

**309.53 Registration of certificate holders.** The county treasurer shall enter on a record to be kept by him the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. [C31, 35, §4644-c55; C39, §4644.53; C46, 50, 54, §309.53]

**309.54 Registration of new holder.** Any subsequent holder may present his certificates to the county treasurer and cause his name and post-office address to be entered in lieu of that of such former holder. [C31, 35, §4644-c56; C39, §4644.54; C46, 50, 54, §309.54]

**309.55 Terminating interest.** When the accruing funds in the hands of the county treasurer, for a year covered by anticipatory certificates, are sufficient to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact, and thirty days from and after the mailing of such letter all interest on such certificate shall cease. [C31, 35, §4644-c57; C39, §4644.55; C46, 50, 54, §309.55]

**MISCELLANEOUS PROVISIONS**

**309.56 Surveys and reports.** The survey and report of each section, as soon as com-

pleted and approved by the board of supervisors, shall be submitted to the state highway commission, and the board of supervisors may designate to the said commission what sections, in their estimation, should be first passed upon by said state highway commission. The said commission shall pass on such reports and plans, and in so doing, shall take into consideration the thoroughness, feasibility, and practicability of such plans, and may approve or modify the same. [SS15, §§1527-s8, -s21a; C24, 27, 31, 35, 39, §4645; C46, 50, 54, §309.56]

Existing surveys, §309.38

**309.57** Repealed by 53GA, ch 125, §2, see §314.1.

**309.58 Action on bond—limitation.** No provision in a contract shall be valid which seeks to limit the time to less than five years in which an action may be brought upon the bond covering concrete work nor to less than one year upon the bond covering other work. [S13, §1527-s18; C24, 27, 31, 35, 39, §4652; C46, 50, 54, §309.58]

**309.59** Repealed by 53GA, ch 125, §4, see §314.3.

**309.60** Repealed by 53GA, ch 125, §5, see §314.4.

**309.61 Advance payment of payrolls.** The board of supervisors may authorize the county auditor to draw warrants for the amount of payrolls for labor furnished under the day labor system, when said payrolls are certified to by the engineer in charge of the work. Said bills shall be passed on by the board at the first meeting following said payment. [SS15, §1527-s11; C24, 27, 31, 35, 39, §4655; C46, 50, 54, §309.61]

**309.62** Repealed by 53GA, ch 125, §9, see §314.8.

**309.63 Gravel beds.** The board of supervisors of any county may, within the limits of such county and without the limits of any city or town, purchase or condemn any lands for the purpose of obtaining gravel or other suitable material with which to improve the secondary highways of such county, including a sufficient roadway to such land by the most reasonable route, or the board may purchase such material outside the limits of their county, and in either case pay for the same out of the secondary road funds. [S13, §4024-i; C24, 27, 31, 35, 39, §4657; C46, 50, 54, §309.63]

**309.64** Repealed by 54GA, ch 103, §22, see §306.13.

**309.65** Repealed by 53GA, ch 125, §10, see §314.9.

**309.66 Use of gravel beds.** The board of supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any



street or highway in the county, but it shall be a misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways. [S13, §§2024-i1, i2; C24, 27, 31, 35, 39, §4659; C46, 50, 54, §309.66]

Punishment, §687.7

**309.67 Repair and dragging.** The county board of supervisors and the engineer are charged with the duty of causing the secondary road system to be so repaired and dragged as to keep same in proper condition, and shall adopt such methods as are necessary to maintain continuously, in the best condition practicable, the entire mileage of said system.

In addition to the above they shall specifically:

1. Keep all sluices, culverts, and bridges, and the openings thereof, and all side ditches of the road, free from obstructions.
2. Provide such side ditches with ample outlets.
3. Remove loose stones and other impediments from the traveled part of the highway.
4. Fill depressions and keep the road free from ruts, water pockets, and mud holes.
5. Repair the approaches to bridges and culverts and keep such approaches smooth and free from obstruction. [S13, §1527-s15; C24, 27, 31, 35, §4660; C39, §§4660, 4778; C46, 50, 54, §309.67]

Duty to remove obstructions, ch 319

**309.68 Intercounty highways.** Boards of supervisors of adjoining counties in this state shall, subject to the approval of the state highway commission:

1. Make proper connections between roads which cross county lines and which afford continuous lines of travel.
2. Adopt plans and specifications for road, bridge, and culvert construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between said counties of the cost and work attending the execution of such plans and specifications. [C24, 27, 31, 35, 39, §4661; C46, 50, 54, §309.68]

**309.69 Enforcement of duty.** In case such boards fail to perform such duty, the state highway commission may, on its own motion, or in case said boards are unable to agree and one of said boards appeals to said commission, said commission shall notify the auditors of the interested counties that it will, on a day not less than ten days hence, at a named time and place within any of said counties, hold a hearing to determine all matters relating to such duty. At said hearing the commission shall fully investigate all questions pertaining to said matters, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and said boards shall forthwith comply with said order in the

same manner as though such work was located wholly within the county. [C24, 27, 31, 35, 39, §4662; C46, 50, 54, §309.69]

**309.70 Construction by commission.** If the said boards or either of them, should, for a period of sixty days, fail to comply with said decision, the said commission shall proceed to locate, construct, alter, or improve said road, bridge, or culvert in accordance with said decision. [C27, 31, 35, §4662-a1; C39, §4662.1; C46, 50, 54, §309.70]

**309.71 Payment.** If said road be a secondary road or if the improvement be a bridge or culvert on a secondary road, bills therefor duly audited by said commission in accordance with said decision shall be forwarded to the auditors of the respective counties, and said auditors shall forthwith draw warrants for the amounts so audited, and the county treasurers shall pay the same as other county warrants. [C27, 31, 35, §4662-a3; C39, §4662.2; C46, 50, 54, §309.71]

**309.72** Repealed by 53GA, ch 125, §11, see §314.10.

**309.73 Bridges and culverts on city boundary line.** Bridges and culverts on highways or on parts thereof, which are located along the corporate limits of cities which control their own bridge funds and which are partly within and partly without such limits and which highways are in whole or in part secondary roads, shall be constructed under plans and specifications, jointly agreed on by the city council and board of supervisors, and approved by the highway commission. The city and county shall share equally in the cost. All matters in dispute between such city and county relative to such bridges and culverts shall be referred to the highway commission and its decision shall be final and binding on both the city and county. [SS15, §1527-s3; C24, 27, 31, 35, 39, §4666; C46, 50, 54, §309.73]

**309.74 Width of bridges and culverts.** All culverts shall have a clear width of roadway of at least twenty feet. Bridges shall have a clear width of roadway of at least sixteen feet. [C51, §517; R60, §822; C73, §1001; C97, §1572; S13, §1527-s7; C24, 27, 31, 35, 39, §4667; C46, 50, 54, §309.74]

**309.75 Definitions.** The term "culvert" shall include all waterway structures having a total clear span of twelve feet or less, except that such term shall not include tile crossing the road, or intakes thereto, where such tile are a part of a tile line or system designed to aid subsurface drainage.

The term "bridge" shall include all waterway structures having a clear span in excess of twelve feet. [C24, 27, 31, 35, 39, §4668; C46, 50, 54, §309.75]

**309.76 Intracounty bridge.** The board of supervisors may, without authorization from

the voters, appropriate, for the substructure, superstructure, and approaches of any one bridge within the county, a sum not exceeding fifty thousand dollars. [C73,§303; C97,§424; C24, 27, 31, 35, 39,§4669; C46, 50, 54,§309.76]

Referred to in §309.78

**309.77 Intercounty and state bridge.** The board of supervisors of any county may, without authorization from the voters, appropriate, for the substructure, superstructure, and approaches of any one bridge on a road between such county and another county of this state or on a road between such county and another state, a sum not exceeding twenty-five thousand dollars. [C73,§303; C97,§424; C24, 27, 31, 35, 39,§4670; C46, 50, 54,§309.77]

Referred to in §309.78

**309.78 Election required.** No appropriation for a bridge in excess of the authorization contained in sections 309.76 and 309.77 shall be made until the question of making such appropriation is first submitted to the electors. Such submission shall be made as provided in chapter 345. [C27, 31, 35,§4670-b1; C39,§4670.1; C46, 50, 54,§309.78]

**309.79 Bridge specifications.** Standard specifications for all bridges and culverts, railroad overhead crossings, or subways, shall be furnished without cost to the counties and railroad companies by the state highway commission, and work shall be done in accordance therewith. [SS15,§1527-s11; C24, 27, 31, 35, 39, §4671; C46, 50, 54,§309.79]

**309.80 Approval of contract.** Any proposed contract which shall exceed the sum of two thousand dollars for any one bridge or culvert, or repairs thereon, shall be first approved by the state highway commission before the same shall be effective as a contract. [SS15,§1527-s11; C24, 27, 31, 35, 39,§4672; C46, 50, 54,§309.80]

**309.81 Record of plans.** Before beginning the construction of any permanent bridge or culvert by day labor or by contract, the plans, specifications, estimate of drainage area, estimates of cost, and specific designation of the location of the bridge or culvert shall be filed in the county auditor's office by the engineer. [SS15,§1527-s11; C24, 27, 31, 35, 39,§4673; C46, 50, 54,§309.81]

**309.82 Record of final cost.** On completion of any bridge or culvert, a detailed statement of cost, and of any additions or alterations to the plans shall be filed by the engineer and recorded by the auditor in connection with the records of bids, all of which shall be retained in the county auditor's office as permanent records, and when said work is completed and approved, a duplicate statement of the costs thereof shall be filed with the state highway commission by the county auditor. [SS15, §1527-s11; C24, 27, 31, 35, 39,§4674; C46, 50, 54, §309.82]

**309.83 Bridges over ditches.** Bridges erected over drainage ditches shall when necessary be so constructed as to allow the superstructure to be removed for cleaning said ditches with as little damage to the removable and permanent parts of said bridge as possible. [SS15,§1527-s11; C24, 27, 31, 35, 39,§4676; C46, 50, 54,§309.83]

**309.84 Bridges on county line roads.** Bridges on county line roads may, under joint agreement between the boards of the adjoining counties, be located, constructed, and maintained wholly within one county in order to secure a proper site or in order to avoid unnecessary expense. The resulting work and expense shall be carried on and shared in such proportion as said boards may determine. [C97,§426; C24, 27, 31, 35, 39,§4677; C46, 50, 54, §309.84]

**309.85 Bridges over state boundary line streams.** Ten percent of the legal voters, as shown by the returns of the last general election, of any county bordering upon a stream of water which forms the boundary line of this state, may petition the board of supervisors to submit to the voters the question whether such county shall be authorized to construct and maintain a foot and wagon bridge extending from such county across such boundary line river. Said petition shall state the amount to be expended for said purpose. [S13,§§424-a,-b; C24, 27, 31, 35, 39,§4678; C46, 50, 54,§309.85]

**309.86 Submission of question.** The board shall submit such question at the first general election occurring not less than sixty days after the filing of said petition. [S13,§424-b; C24, 27, 31, 35, 39,§4679; C46, 50, 54,§309.86]

**309.87 Notice.** Notice of the submission of such question shall be published for two consecutive weeks in at least three newspapers published and of general circulation in the county, except in counties having less than three newspapers, said notices shall be published in all of the newspapers, the last of which publications shall be at least three days and not more than ten days before the holding of such election. [S13,§424-b; C24, 27, 31, 35, 39,§4680; C46, 50, 54,§309.87]

**309.88 Construction and maintenance.** If a majority of the voters vote in favor of such authorization, the board shall have authority to construct and maintain said bridge, and may agree with the adjoining state, or with any other municipal division thereof, as to what part of said bridge said county will construct and maintain, or as to what percentage of the cost of construction and maintenance said county shall pay, and such county shall be under no greater liability than as evidenced by such agreement. [S13,§§424-b,-c; C24, 27, 31, 35, 39,§4681; C46, 50, 54,§309.88]

**309.89 Levy—bond.** In order to build and maintain such bridge, the board may, from

year to year and on all the property in the county, levy an annual tax of not to exceed one-fourth mill. The board may, in the manner provided for funding outstanding county indebtedness, issue the bonds of the county in the amount of the authorized expenditure. The maturity of such bonds may be distributed through a period of twenty years. In case bonds are so issued, the board shall maintain sufficient levies to meet the principal and interest as in other cases of bonds issued for outstanding county indebtedness. [S13,§424-b; C24, 27, 31, 35, 39,§4682; C46, 50, 54,§309.89]

County funding bonds, ch 346  
Maturity and payment of bonds, ch 76  
Sale of bonds, ch 75  
Certain bonds legalized, 52GA, ch 321

**309.90** Repealed by 53GA, ch 125,§12, see §314.11.

**309.91 Maintenance.** Where there is a contract for joint maintenance of the entire structure, the county's liability for such maintenance shall only extend to that part or portion which is within the boundary line of this state. [S13,§424-d; C24, 27, 31, 35, 39,§4684; C46, 50, 54,§309.91]

**309.92** Repealed by 53GA, ch 125,§3, see §314.2.

#### COUNTY SECONDARY ROAD BUDGETS

**309.93 Itemized statement.** On or before November 1 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the state highway commission for approval the county secondary road budget for the next calendar year. The budget shall include an itemized statement of:

1. Estimated revenues to be raised by property taxation for secondary road purposes.
2. Estimated revenues to be received from the state road use tax fund.
3. Estimates of revenues from all other sources for secondary road purposes.
4. The proposed expenditures from each road fund during the next calendar year. The estimates of such proposed expenditures shall be itemized and classified in a manner which the state highway commission shall prescribe.
5. The actual expenditures for the last two prior years and the estimated expenditures for the current year. These shall be itemized and classified in the same manner as proposed expenditures.
6. The cash balance of each road fund at the end of the last prior year, an estimate of the cash balance at the end of the current year, and an estimate of the cash balance at the end of the next calendar year. [C31, 35,§§4633-c33, c34, c35; C39,§§4644.31-4644.33; C46, 50, 54, §§309.31-309.33; 57GA, ch 139,§1; ch 141,§1]

**309.94 Review by highway commission.** The state highway commission shall have the power to approve or disapprove the budget

adopted by the board of supervisors. If the budget is not approved, the state highway commission shall list the disapproved expenditures and shall state the reasons for disapproval when the budget is returned to the county. The commission shall act upon a budget and return the budget to the county within forty-five days after the budget is received by the commission. Upon disapproval of any proposed expenditure in a budget, the county may submit a revised budget to the commission for approval. The commission shall act upon such a revised budget within ten days. [C24, 27, §§4636, 4637, 4780; C31, 35,§§4644-c4, c5; C39, §§4644.04, 4644.05; C46, 50, 54,§§309.4, 309.5; 57GA, ch 139,§1; ch 141,§2]

**309.95 Amendments.** The budget shall be binding except that should bona fide unforeseen or emergency conditions arise, the board of supervisors may amend such budget during the year for which it was adopted. Such amendments shall be submitted to the state highway commission for approval with a statement of the reasons necessitating the amendment. The state highway commission shall approve or disapprove such amendments in the same manner as original budget estimates except that the highway commission shall act upon and return such amendments within fifteen days after their receipt by the commission. The state highway commission acting upon budget amendments is directed to approve only such amendments as are actually necessitated by emergency conditions. [57GA, ch 141,§3]

**309.96 Operation of budgeted program. 1.** No county shall expend from a secondary road fund for any purpose, funds in excess of the amount provided for such purpose in the budget or amended budget as adopted by the board of supervisors, whether such budget is approved or disapproved by the highway commission.

2. In the event that a county secondary road budget or amended budget thereto is disapproved by the highway commission, the county may elect either to revise such budget or amended budget so as to receive approval or the county may elect to operate with such disapproved budget or amended budget. In the event the county secondary road budget is disapproved in whole or in part, within twenty days after receipt of the highway commission's report, the board of supervisors shall cause to be published in the official newspapers of the county, notice of a public hearing to be held within ten days of said publication, on the highway commission's recommendations, and at said hearing the board of supervisors shall amend or adopt their original budget. [57GA, ch 141,§4]

**309.97 Construction of law.** Nothing in sections 309.93 to 309.96, inclusive, shall contravene or affect the provisions of chapter 24. [57GA, ch 141,§6]

## CHAPTER 310

## FARM-TO-MARKET ROADS

- 310.1 Definitions.
- 310.2 Supervisors agreement.
- 310.3 Funds.
- 310.4 Use of fund.
- 310.5 Repealed by 53GA, ch 122,§11, see §312.5.
- 310.6 Accounts by highway commission.
- 310.7 Treasurer's monthly statement.
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- 310.10 System designated—additions.
- 310.11 Nonparticipating county—funds reserved.
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- 310.14 Bids—highway commission or county supervisors.
- 310.15 Repealed by 53GA, ch 125,§2, see §314.1.
- 310.16 Claims charged to county allotment.
- 310.17 Repealed by 53GA, ch 125,§4, see §314.3.
- 310.18 Partial payments during construction.
- 310.19 Supervision and inspection of work.
- 310.20 Supervisors resolution to state treasurer.
- 310.21 Repealed by 53GA, ch 125,§6, see §314.5.
- 310.22 Right of way—how acquired.
- 310.23 and 310.24 Repealed by 54GA, ch 103, §22, see §§306.13, 306.15.
- 310.25 Repealed by 53GA, ch 125,§7, see §314.6.
- 310.26 Repealed by 53GA, ch 127,§5, see §312.7.
- 310.27 Period of allocation—reversion.
- 310.28 Engineering and other expense.
- 310.29 Maintenance by county.
- 310.30 Repealed by 53GA, ch 127,§5.
- 310.31 Repealed by 53GA, ch 122,§14.
- 310.32 Widening roads—prohibition.
- 310.33 Repealed by 52GA, ch 162,§4.
- 310.34 Secondary road research fund.
- 310.35 Use of fund.
- 310.36 Report to governor.

**310.1 Definitions.** As used in this chapter, the following words, terms or phrases shall be construed or defined as follows:

1. "County's allotment of road use tax fund" or "allotment of road use tax fund" shall mean that part of the road use tax fund allotted to any county by the treasurer of state from the portion of the state road use tax fund which he has credited to the secondary road construction fund of the counties.

2. "Federal aid" or "federal aid secondary road fund" shall mean funds allotted to the state of Iowa by the federal government to aid in the construction of secondary roads and which funds must be matched with funds under the control of the state highway commission. [C39,§4686.01; C46, 50, 54,§310.1]

**310.2 Supervisors agreement.** The county board of supervisors of any county is empowered, on behalf of the county, to enter into any arrangement or agreement with or required by the duly constituted federal or state authorities in order to secure the full co-operation of the government of the United States and of the state of Iowa, and the benefit of all present and future federal or state allotments in aid of secondary road construction, reconstruction or improvement. [C39,§4686.02; C46, 50, 54,§310.2]

**310.3 Funds.** There is hereby created a fund which shall be known as the farm-to-market road fund which shall be made up as follows:

1. All federal aid secondary road funds received by the state.
2. All road use tax funds by law credited to the farm-to-market road fund.
3. All other funds which may, under the provisions of this chapter or any other law,

be credited or appropriated for the use of the farm-to-market road fund. [C39,§4686.03; C46, 50, 54,§310.3]

Allocation of funds, §312.2

**310.4 Use of fund.** Said farm-to-market road fund is hereby appropriated for and shall be used in the establishment, construction, reconstruction or improvement of the farm-to-market road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination, protection, or improvement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of said farm-to-market road system under this chapter. [C39, §4686.04; C46, 50, 54,§310.4]

Referred to in §310.34

**310.5** Repealed by 53GA, ch 122,§11, see §312.5.

**310.6 Accounts by highway commission.** The state highway commission shall keep accounts in relation to the farm-to-market road fund and each county's allotment thereof, crediting each fund with all amounts by law creditable thereto, and charging each with all duly and finally approved vouchers for claims properly chargeable thereto. [C39,§4686.06; C46, 50, 54,§310.6]

**310.7 Treasurer's monthly statement.** The account of the farm-to-market road fund, kept by the state comptroller and the state treasurer, shall deal with said fund as a single fund with all credits thereto and disbursements therefrom. [C39,§4686.07; C46, 50, 54, §310.7]

See treasurer's report to highway commission, §312.4

**310.8 Quarterly statement to county engineer.** The state highway commission shall,

quarterly, advise each county engineer of the condition of said county's allotment of the farm-to-market road fund. Said statement shall show the balance in said county's allotment at the beginning of said period, the amount or amounts allotted to said county during said period, the amount disbursed from said county's allotment during said period, and the balance in said county's allotment at the end of said period. Said statement shall also show the estimated outstanding obligations against the said county's allotment at the date of said statement. [C39,§4686.08; C46, 50, 54,§310.8]

**310.9 Projects approved by commission.** Before approving any farm-to-market road project the state highway commission shall satisfy itself that the county engineer's office in that county is organized, equipped and financed to discharge satisfactorily the duties herein required. Before any county can receive any portion of the farm-to-market road fund allotted on an equalization basis, such county must have made every reasonable effort by the levy of local taxes and otherwise to provide funds for the improvement of its secondary road system. [C39,§4686.09; C46, 50, 54, §310.9]

Referred to in §310.10

**310.10 System designated—additions.** The farm-to-market road system shall embrace those main secondary roads (not including roads within cities and towns) which connect rural areas with each other and with the towns, cities, and primary roads, and which have heretofore been designated as farm-to-market roads under section 310.9, as amended, and section 310.10, Code 1946. Said road system may, with consent of the state highway commission, be changed and modified by the board of supervisors.

When all farm-to-market roads in any county have been built to established grade, bridged and surfaced in a manner suited to the traffic thereon, additional mileage may be added to the farm-to-market road system in said county. [C39,§4686.10; C46, 50, 54,§310.10]

Referred to in §306.2

**310.11 Nonparticipating county — funds reserved.** Any county having complied with the provisions of this chapter may by its board of supervisors submit to the state highway commission for its approval project statements for the construction, reconstruction, or improvement of farm-to-market roads. [C39, §4686.11; C46, 50, 54,§310.11]

**310.12** Repealed by 53GA, ch 127,§5.

**310.13 Surveys, plans and estimates.** If the state highway commission approves a project submitted by the board of supervisors, the county engineer shall proceed to make or cause to be made, the surveys, plans and estimates for said project, and submit the same to the board of supervisors and the highway commission for approval. The construction

work on said project shall be done in accordance with said approved plans, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter. [C39,§4686.13; C46, 50, 54,§310.13]

**310.14 Bids—highway commission or county supervisors.** When the approved plans and specifications for any farm-to-market road project are filed with the state highway commission, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids and make recommended award of contract. Said recommended award of contract shall be submitted to the board of supervisors of the county in which said project is located for its concurrence. Upon receiving the concurrence of the county board on said recommended contract award, the state highway commission shall take final action awarding said contract. Provided, that the state highway commission shall determine and advise the county board as to any approved farm-to-market road project which is to be financed without the use of federal funds. On such project the above procedure shall be reversed. The county board shall advertise for bids, and, subject to concurrence by the state highway commission, award contract for the construction work. [C39,§4686.14; C46, 50, 54,§310.14]

See §314.2

**310.15** Repealed by 53GA, ch 125,§2, see §314.1.

**310.16 Claims charged to county allotment.** All claims for improving farm-to-market roads hereunder shall be paid from the farm-to-market road fund and charged to the allotment of said fund for the county in which said project is located. [C39,§4686.16; C46, 50, 54,§310.16]

**310.17** Repealed by 53GA, ch 125,§4, see §314.3.

**310.18 Partial payments during construction.** Partial payments may be made on the work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claims by the board of supervisors or by the state highway commission may be evidenced by the signature of the chairman of said board or commission, or a majority of the members of the board or commission, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract. [C39,§4686.18; C46, 50, 54,§310.18]

**310.19 Supervision and inspection of work.** The county engineer is charged with the duty of supervision, inspection and direction of the work of construction of farm-to-market road projects under this chapter. In such capacity, the county engineer shall be under the supervision of the commission. [C39,§4686.19; C46, 50, 54,§310.19]

**310.20 Supervisors resolution to state treasurer.** Any county may, in any year, by resolution of its board of supervisors, make available for improvement or construction of farm-to-market roads within the county any portion of its allotment of road use tax funds. Upon certification of such a resolution, the state treasurer shall place in the county's allotment of the farm-to-market road fund the amount authorized by such resolution. [C39,§4686.20; C46, 50, 54,§310.20]

Referred to in §312.5

**310.21** Repealed by 53GA, ch 125,§6, see §314.5.

**310.22 Right of way—how acquired.** Right of way for farm-to-market road projects under this chapter may be acquired by the county. However, the county board may request the state highway commission to acquire such right of way and in either event such right of way may be paid for out of the county's allotment of the farm-to-market road fund.

Should the board of supervisors request the state highway commission to acquire the right of way on any farm-to-market road project, the said commission shall proceed to the acquisition of said right of way under the same laws and in the same manner as though said project were a primary road project. [C39,§4686.22; C46, 50, 54,§310.22]

**310.23 and 310.24** Repealed by 54GA, ch 103, §22, see §§306.13 and 306.15.

**310.25** Repealed by 53GA, ch 125,§7, see §314.6.

**310.26** Repealed by 53GA, ch 127,§5, see §312.7.

**310.27 Period of allocation—reversion.** The farm-to-market road fund allotted to any county as provided in this chapter shall remain available for expenditure in said county for three years after the close of the calendar year during which said sums respectively were allocated. Any sum remaining unexpended at the end of the period during which it is available for expenditure, shall be reapportioned among all the counties as provided in section 312.5 for original allocations.

For the purposes of this section, any sums of the farm-to-market road fund allotted to any county shall be presumed to have been "expended" when a contract shall have been let by the state highway commission obligating said sums. [C39,§4686.27; C46, 50, 54,§310.27]

**310.28 Engineering and other expense.** Engineering, inspection and administration expense in connection with any farm-to-market road project may be paid from said county's allotment of the farm-to-market road fund. Any such expense incurred by the state highway commission may in the first instance be advanced out of the primary road fund, said amounts later being reimbursed to said funds out of the farm-to-market road fund.

Provided, that no part of the salary or expense of the county engineer, any member of the county board of supervisors, any member of the state highway commission, the chief engineer, or any department head or district engineer of the commission shall be paid out of the farm-to-market road fund. [C39,§4686.28; C46, 50, 54,§310.28]

**310.29 Maintenance by county.** Any farm-to-market road constructed under the provisions of this chapter shall be maintained by the county in a manner satisfactory to the federal authorities and to the state highway commission. Should any county fail to so maintain any such road, the state highway commission shall give the board of supervisors notice of that fact. If within sixty days after receipt of such notice the said highway has not been placed in proper condition of maintenance the commission shall proceed immediately to have such highway placed in proper condition of maintenance and charge the cost thereof against said county's allotment of the farm-to-market road fund. The amount so expended for maintenance work by the highway commission shall be reimbursed to said county's allotment of the farm-to-market road fund, from said county's secondary road maintenance fund, before any more farm-to-market road projects in said county are approved by the commission. [C39,§4686.29; C46, 50, 54,§310.29]

**310.30** Repealed by 53GA, ch 127,§5.

**310.31** Repealed by 53GA, ch 122,§14.

**310.32 Widening roads — prohibition.** The highway commission shall not compel the widening of any of the farm-to-market roads in any county over sixty-six feet without the consent of the county board of supervisors. [C39,§4686.32; C46, 50, 54,§310.32]

**310.33** Repealed by 52GA, ch 162,§4.

**310.34 Secondary road research fund.** Notwithstanding the provisions of section 310.4, the state highway commission is hereby authorized to set aside each year not to exceed one and one-half percent of the receipts in the farm-to-market road fund in a fund to be known as the secondary road research fund. [C50, 54,§310.34]

**310.35 Use of fund.** The secondary road research fund shall be used by the state highway commission solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of secondary roads, including bridges and culverts located thereon. [C50, 54,§310.35]

Referred to in §310.36

**310.36 Report to governor.** The research projects and engineering studies authorized

herein shall be conducted in co-operation with the county engineers. Once each year the highway commission shall file a report with the governor and county engineers showing the work accomplished and projects undertaken under section 310.35, and copies of a biennial

report of the same for the use and benefit of the general assembly shall be filed with the chief clerk of the house of representatives and the secretary of the senate on or before January 31 of each odd-numbered year. [C50, 54,§310.36]

## CHAPTER 311

### SECONDARY ROAD ASSESSMENT DISTRICTS

- 311.1 Power to establish.
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- 311.28 Certificates anticipating assessments.
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- 311.30 Certificates registered—payment.
- 311.31 Previous assessments not invalidated.

**311.1 Power to establish.** In order to provide for the graveling, oiling, or other suitable surfacing of secondary roads, the board of supervisors shall have power, on petition, to establish secondary road assessment districts. [C24, 27, 31, 35, 39,§4746; C46,§311.3; C50, 54, §311.1]

**311.2 Width of district.** Any such secondary road assessment district shall be not more than one-half mile wide on each side of the road or roads to be improved by said district. [C24, 27, 31, 35, 39,§4746; C46,§311.3; C50, 54,§311.2]

**311.3 Amount of assessment.** Special assessments in the aggregate amount of not less than twenty-five percent of the total estimated cost of surfacing any road included in a secondary road assessment district project shall be apportioned and levied on the lands included in said secondary road assessment district. [C24, 27, 31, 35, 39,§4753; C46,§311.10; C50, 54,§311.3]

**311.4 County line road.** Whenever it is desired to surface a secondary road on a county line, as a secondary road assessment district project, the board of supervisors of any county concerned may establish an assessment district in its county, and levy and collect special assessments for the payment of that portion of the estimated cost of such project assessable against lands in that county. Each county shall pay its share of the cost of said project as provided in this chapter, in the same manner as

though the project were located wholly within that county. [C24, 27, 31, 35, 39,§4746; C46, §311.3; C50, 54,§311.4]

**311.5 Project in city or town.** Any road or street which is a continuation of a secondary road within any city or town and which the county board desires to improve by graveling, oiling, or other suitable surfacing, may by resolution of the county board and concurrence by the council of the city or town be improved as a secondary road assessment district project or part thereof as herein provided. The lands within such city or town abutting on or adjacent to such street or road may be included within such secondary road assessment district and assessed on account of such improvement upon the same basis and in the same manner as though such lands were located outside of a city or town. [C24,§4754; C27, 31, 35,§4745-a1; C39,§4745.1; C46,§311.2; C50, 54,§311.5]

**311.6 Petition—information required.** The petition for a secondary road assessment district proposing to establish such district shall intelligently describe the road or roads proposed to be improved, the nature of the proposed improvement, the percentage of the estimated cost of the surfacing of said road proposed to be assessed against the property in the said district and the lands proposed to be included in such district.

Such petition shall be signed by thirty-five percent of the owners of the lands within such proposed district, or by thirty-five percent of the owners of the land within such proposed district who reside within said county. [C24, 27, 31, 35, 39, §4746; C46, §311.3; C50, 54, §311.6]

**311.7 Improvement by private funds.** When any owner or group of owners of not less than seventy-five percent of the lands adjacent to, or abutting upon any secondary road or roads shall, on or before July 1 of any year petition the board of supervisors of their county for the improving by graveling or other suitable surfacing, of said road or roads, and for the assessment of not less than fifty percent (or such greater portion as may be provided in said petition) of the cost of such improving, by graveling or other suitable surfacing, to the lands adjacent to, or abutting upon said road or roads, the board of supervisors shall, in the order in which such petitions were filed with it, include and give preference to said project or projects in the secondary road construction program of said county for the ensuing year. When a proper petition is filed, it shall retain its preference in succeeding years.

The board of supervisors shall proceed during the ensuing year with the construction and completion of said project under the same procedure as is prescribed generally for the improvement of secondary roads by assessment, and shall, as the law may provide, establish a special secondary road assessment district and assess against the lands included therein not less than fifty percent (or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project against all the lands adjacent to or abutting upon the said road or roads.

Provided, that should the owner or owners of all the lands included in any special secondary road assessment district under this section, subscribe and deposit with the county treasurer an amount not less than fifty percent (or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project, the board of supervisors shall not establish such special assessment district as herein provided, but shall accept the said donations in lieu of an assessment, and shall otherwise proceed to the improvement of said road or roads as herein provided.

Provided further, that the total expenditure of secondary road funds of the county in any year for or on account of special secondary road assessment district projects on local secondary roads under this section shall not exceed the total secondary road funds legally expendable for construction on local secondary roads in said county in said year, and the expenditure of secondary road funds of the county, in any township in any three-year period, for or on account of special secondary road assessment district projects on local sec-

ondary roads under this section, shall not exceed said township's pro rata share, on the area basis, of the total secondary road funds legally expendable for construction on local secondary roads in said county in said three-year period, unless there be a township or townships from which there are no petitions filed during the first two years of said three-year period.

If the engineer's estimated cost of the grading, bridges, culverts, and draining of the road proposed to be included in any special assessment district project under this section, exceeds an average of seven thousand dollars per mile, the board of supervisors of said county may appeal to the state highway commission as to whether the county shall proceed with the construction of said project. The state highway commission shall hold a hearing on said matter, at a time and place of which the petitioners and the county board shall be duly notified, and shall have an opportunity to appear and be heard. After such hearing the state highway commission shall determine whether the county shall proceed with said project, which determination shall be final.

Upon the completion of such road or roads, and the satisfaction of all claims in relation thereto, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by such sponsors have been fulfilled.

Any road or roads so improved by graveling or other suitable surfacing under the provisions of this section shall be maintained by the county from the secondary road fund. [C24, 27, 31, 35, 39, §§4747, 4753; C46, §§311.4, 311.10; C50, 54, §311.7; 57GA, ch 139, §7; ch 141, §5]

See §309.8

**311.8 County engineer's report.** Upon the filing of such petition with the county auditor proposing the establishment of such secondary road assessment district, the county engineer shall file a report thereon with the county auditor, which report shall include:

1. An estimate of the cost of the surfacing proposed on the road or roads included in such proposed district.

2. A plat of said proposed district which plat shall show the road or roads proposed to be improved, the various tracts and parcels of real estate included in said proposed district, and the ownership of such lands.

3. An approximately equitable apportionment of not less than twenty-five percent of the estimated cost of said improvement among the tracts and parcels of real estate included in such proposed district.

4. A statement whether all of the secondary roads to be surfaced in said proposed secondary road assessment district project have been built to permanent grade and properly drained.



5. Any information the county engineer may deem pertinent. [C24, 27, 31, 35, 39, §§4746, 4748; C46, §§311.3, 311.5; C50, 54, §311.8]

**311.9 Publicly owned real estate.** In making said apportionment, real estate owned by the state, county or any city or town, shall be treated as other real estate, but no other publicly owned real estate shall be included. In apportioning benefits to real estate owned by a town, city, the county or the state, no consideration shall be given to the buildings thereon. [C24, §4707; C27, 31, 35, §4753-a1; C39, §4753.01; C46, §311.11; C50, 54, §311.9]

**311.10 Estimate and apportionment — presumption.** Said estimated cost shall carry the presumption, in the absence of a contrary showing, that the same correctly represents the probable cost of said project as nearly as can be determined in advance of the actual doing and completion of the work. Said apportionment shall carry the presumption, in the absence of a contrary showing, that the same is fair, just, equitable, and in proportion to the benefits and not in excess thereof. [C24, §4707; C27, 31, 35, §4753-a1; C39, §4753.01; C46, §311.11; C50, 54, §311.10]

**311.11 Hearing—notice.** The board of supervisors shall fix a time for hearing on the proposal for the establishment of said secondary road assessment district and on the apportionment of not less than twenty-five percent of the estimated cost of the proposed improvement, and shall cause the county auditor to publish notice of said hearing. Said notice shall state:

1. The time and place of hearing,
2. The road or roads proposed to be improved,
3. The type of surfacing proposed,
4. The estimated cost of the proposed improvement,
5. A description of the lands lying within said proposed district,
6. The ownership of said lands as shown by the transfer books in the auditor's office,
7. A statement of the amount apportioned to each tract or parcel of real estate as shown by the engineer's report,
8. That at said hearing the amount apportioned to any tract or parcel of land may be increased or decreased without further notice,
9. That all objections to the establishment of said district, to the said apportionment report, or to the proceedings relating thereto must be specifically made in writing and filed with the county auditor on or before noon of the day set for such hearing, and
10. That a failure to make and file such objections will be deemed a conclusive waiver of all such objections. [C24, §§4707, 4750, 4751; C27, 31, 35, §§4750, 4751, 4753-a1; C39, §§4750, 4751, 4753.01; C46, §§311.7, 311.8, 311.11; C50, 54, §311.11]

**311.12 Publication of notice.** Such notice shall be published once each week for two successive weeks in some newspaper published in the county as near as practicable to said district. The last publication shall be not less than five days previous to said hearing. Proof of such publication shall be made by the publisher by affidavit filed with the county auditor. [C24, §4707; C27, 31, 35, §4753-a1; C39, §4753.01; C46, §311.11; C50, 54, §311.12]

**311.13 Errors in notice or apportionment report.** Any omission or error in said apportionment report or notice with respect to any tract or parcel of real estate or the description thereof, or the name of the owner, or the amount of the assessment apportioned thereto, shall work no loss of jurisdiction on the part of the board over such proceeding. Such omission or error shall only affect the particular tract of real estate or person in question. If, before or after the board has entered its final order in the establishment of the said district or in the apportionment proceedings, such omission or error is discovered, the board shall fix a time for a hearing as to such party or real estate and shall cause service of notice to be made upon them, either by publication as in this chapter provided, or by personal service in the time and manner required for service of original notices in the district court. After such hearing the board shall proceed as to such person or land as though such omission or error had not occurred. [C24, §4707; C27, 31, 35, §4753-a1; C39, §4753.01; C46, §311.11; C50, 54, §311.13]

**311.14 Appearance.** The appearance of any interested party, either in writing or personally, or by authorized agent, before the board of supervisors at any stage of the pending proceedings for a secondary road assessment district shall be deemed a full appearance. Only interested parties shall have the right to appear in such proceedings. All persons so appearing shall state for whom they appear. The clerk of the board shall make definite entry accordingly in the minutes of the board. [C24, §4707; C27, 31, 35, §4753-a1; C39, §4753.01; C46, §311.11; C50, 54, §311.14]

**311.15 Hearing—adjournment—order.** Hearings on the proposed establishment of said district may be adjourned from time to time without loss of jurisdiction by the board. On final hearing the board shall proceed to a determination of said matters. It may reject, approve, or modify and approve said proposal. The board may exclude lands from the district or may add lands thereto or otherwise modify the proposal.

Should the proposal be approved in whole or in part, the board shall establish such district. The order of the board establishing such district shall state the road or roads to be improved, the type of improvement, and the lands included in said district. Said order shall

be final. No lands shall thereafter be added to or excluded from said district. [C24,§4709; C27, 31, 35,§4753-a2; C39,§4753.02; C46,§311.12; C50, 54, §311.15]

**311.16 Final hearing—assessment levied.** On final hearing the board shall hear and determine all objections filed. The board may increase, diminish, annul, or affirm the apportionment made in said report, or any part thereof, as may appear to the board to be just and equitable.

On the final determination the board shall levy such assessments and all installments thereof upon the real estate within said district as finally established. The entire amount of said assessment shall be then due and payable, and bear interest at six percent per annum commencing twenty days from the date of said levy, and shall be collected at the next succeeding March semiannual payment of ordinary taxes. [C24,§4710; C27, 31, 35,§4753-a3; C39, §4753.03; C46,§311.13; C50, 54,§311.16]

**311.17 Assessments over ten dollars—waiver.** If any owner other than the state or a county, city or town, of any tracts of land on which the assessment is more than ten dollars, shall, within twenty days from the date of said assessment, agree in writing filed in the office of the county auditor, that in consideration of his having the right to pay his assessment in installments, he will not make any objection of illegality or irregularity as to said assessment upon his said real estate, and will pay the same with six percent interest thereon, then and in that case said assessment shall be payable in ten equal installments. The first installment shall be payable on the date of such agreement. The other installments with interest on the whole amount unpaid shall be paid annually thereafter at the same time and in the same manner as the March semiannual payment of ordinary taxes.

An owner of land who has availed himself of said ten-year option may at any time discharge his assessment by paying the balance then due on all unpaid installments, with interest on the entire amount of the unpaid installments for thirty days in advance. [C24, §4710; C27, 31, 35,§4753-a3; C39,§4753.03; C46, §311.13; C50, 54,§311.17]

**311.18 Assessment delinquent — penalties.** All such taxes shall become delinquent on the first day of March next after their maturity, shall bear the same interest, the same penalties, and be attended with the same rights and remedies for collection, as ordinary taxes. [C24, §4710; C27, 31, 35,§4753-a3; C39,§4753.03; C46, §311.13; C50, 54,§311.18]

**311.19 Assessment ten dollars or less.** Assessments of ten dollars or less against any tract of land, and assessments against lands owned by the state, county, city or town, shall be due and payable from the date of levy by the board of supervisors, or in the case of

any appeal, from the date of final confirmation of the levy by the court.

In case of assessments on lands owned by the county, the same shall be paid from the county general fund. In case of assessments on lands owned by the state, the same shall be paid out of any funds in the state treasury not otherwise appropriated. In case of assessments on lands owned by a city or town, the same shall be paid from the city or town street fund. [C24,§4710; C27, 31, 35,§4753-a3; C39, §4753.03; C46,§311.13; C50, 54,§311.19]

**311.20 Variation between estimated and actual cost.** Any variation between the engineer's estimated cost and the actual cost of a secondary road assessment district project shall in no way affect the validity of the assessment. It is the intent of this chapter that the assessment shall be based on the estimated cost and not on the actual cost. [C24,§4711; C27, 31, 35, §4753-a4; C39,§4753.04; C46,§311.14; C50, 54, §311.20]

**311.21 Procedures.** The preparation and approval of plans and specifications, the advertising for bids, the award and approval of contract, the supervision and inspection of construction work, and the approval and payment of claims on any secondary road assessment district project, shall be conducted in the manner provided in the laws for secondary road construction work generally. [C24, 27, 31, 35, 39,§§4749, 4752; C46,§§311.6, 311.9; C50, 54, §311.21]

**311.22 Road graded and drained.** Any such secondary road shall be built to permanent grade and drained in a manner approved by the county engineer before being surfaced, as provided in this chapter. [C27, 31, 35, 39,§4746; C46,§311.3; C50, 54,§311.22]

**311.23 Payment of construction costs.** The total cost of any secondary road assessment district project shall in the first instance be paid out of the secondary road fund of said county. Any assessments which are paid in cash and in anticipation of which assessments no certificates have been issued, shall be transferred to the secondary road fund.

If no special assessment certificates are issued and sold on account of any particular secondary road assessment district, the special assessments on lands included in that district, and the interest on such assessments when collected, shall be transferred to the secondary road fund of said county. If certificates are issued and sold in anticipation of the special assessments levied on any such district as herein provided, the proceeds of such certificates shall be credited to the secondary road fund of said county. In that event, the special assessments in anticipation of which certificates have been issued, and the interest on such assessments shall, when collected, be used to retire such certificates. [C24, 27, 31, 35, 39, §4752; C46,§311.9; C50, 54,§311.23]

**311.24 Appeal from assessment.** Any owner of land in a secondary road assessment district may appeal to the district court from the order of the board of supervisors in levying the assessment against his real estate, by filing with the county auditor within fifteen days of the date of such levy, a bond conditioned to pay all costs in case the appeal is not sustained, and a written notice of appeal wherein he shall, with particularity, point out the specific objection which he desires to lodge against such levy. The appearance term shall be the trial term. Said appeal shall have precedence over all other business of the term except criminal matters. The appeal shall be heard as in equity. The court may raise or lower the assessment in question and make an equitable assessment in the judgment of the court. The clerk of the district court shall, upon the entry of the final order of the court, certify such final order to the county auditor. The board of supervisors shall at once so adjust the assessments as to comply with the final order of the court. [C24,§4713; C27, 31, 35,§4753-a5; C39, §4753.05; C46,§311.15; C50, 54,§311.24]

**311.25 Appeal docketed.** When an appeal is taken, the county auditor shall at once make a transcript of the notice of appeal and appeal bond and transmit the same to the district court. The appellant shall, on or before the first day of the first term of the court, after taking said appeal, docket said appeal and file a petition setting forth the order or decision of the board of supervisors appealed from, and his specific objections thereto. A failure to comply with either of these requirements shall be deemed a conclusive waiver of the appeal and in such case the court shall dismiss the same. Appellee need not file answer, but may do so. [C24,§4714; C27, 31, 35,§4753-a6; C39, §4753.06; C46,§311.16; C50, 54,§311.25]

**311.26 Assessments certified to county treasurer.** When the board of supervisors has entered its final order as to the amounts of all special assessments on a given improvement, the county auditor shall at once certify a list of such assessments and a list of real estate upon which each assessment has been levied, with the specific designation of the district embracing such real estate, to the county treasurer, who shall enter each assessment on the tax books and continue such entry until such assessment is paid.

Each special assessment and all installments thereof shall be a lien upon the real estate upon which it is levied from the date of such certificate by the county auditor to the same extent and in the same manner as taxes levied for state and county purposes. Changes in the amount of any special assessment by reason of any ruling of the district court on appeals shall be likewise certified and the county treasurer shall make the proper correction on his books. [C24,§4715; C27, 31, 35,§4753-a7; C39, §4753.07; C46,§311.17; C50, 54,§311.26]

**311.27 Each district separate unit.** Each assessment district shall be considered a unit and all funds received by the county treasurer for or on behalf of such unit shall be carried as a distinct and separate account and under the same specific name as that used by the board in establishing such unit. [C24,§4716; C27, 31, 35,§4753-a8; C39,§4753.08; C46,§311.18; C50, 54,§311.27]

**311.28 Certificates anticipating assessments.** In order to render immediately available that amount of the estimated cost of an improvement which has been specially assessed, the board may issue road certificates in the name of the county in an aggregate amount not exceeding the then unpaid amount of the special assessment levied in said district. Each issue of certificates shall be under, and in accordance with, a duly adopted resolution of the board and which shall recite (1) the name or designation of the road district on account of which the certificates are issued; (2) that a stated amount (naming the amount) has been specially assessed against the lands within said district; (3) that a stated amount of said aggregate special assessment has not yet been paid (naming the unpaid amount); (4) that it is necessary to render such unpaid amount immediately available; (5) the number of road certificates authorized and the specific amount of each certificate; (6) the specific numbering or designation of such certificates; (7) the rate of interest which each certificate shall bear from date, to wit, not to exceed six percent per annum; (8) the fact that said certificates are payable solely from the proceeds of the special assessments which have been levied on the lands within said districts; (9) that each certificate shall be payable on or before the first day of January of the first year following the maturity of the last installment of such special assessments, and that interest thereon shall be paid annually; (10) the authorization to the chairman of the board, and to the county auditor, respectively, to sign and countersign each of said certificates. [C24,§4717; C27, 31, 35,§4753-a9; C39,§4753.09; C46,§311.19; C50, 54,§311.28]

**311.29 Sale of certificates.** Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to the latter officer, who shall be responsible therefor on his bond. The treasurer may apply said certificates in payment of any warrants duly authorized and issued for surfacing the roads within said district, or he may sell the same for the best attainable price and for not less than par, plus accrued interest, and credit the proceeds to the secondary road fund. Such certificates shall be retired in the order of the consecutive numbering thereof. [C24, §4717; C27, 31, 35,§4753-a9; C39,§4753.09; C46, §311.19; C50, 54,§311.29]

**311.30 Certificates registered — payment.** The county treasurer shall, in connection with the road account for said district, enter the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. Any subsequent holder may present his certificate to the county treasurer and cause his name and post-office address to be entered in lieu of that of such former holder. Whenever the fund for such particular district has money to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact and that from and after ten days after the mailing of such letter all interest on such certificates will cease. [C24, §4717; C27, 31, 35, §4753-a9; C39, §4753.09; C46, §311.19; C50, 54, §311.30]

**311.31 Previous assessments not invalidated.** The passage of this chapter, the provisions hereof, and the repeal of sections hereby repealed, shall not in manner affect or invalidate any secondary road district assessments levied before this chapter became effective, or any certificate in anticipation of such assessments issued before or after this chapter becomes effective.

Said assessments and taxes shall be collected and applied to the purpose for which they were levied. Certificates in anticipation of such assessments may be issued. The proceeds of such certificates shall be applied to the purpose intended, and such certificates issued before or after this chapter becomes effective shall be paid in conformance with the provisions of this chapter. [C50, 54, §311.31]

Effective July 4, 1949

CHAPTER 312

ROAD USE TAX FUND

- 312.1 Fund created.
- 312.2 Allocations from fund.
- 312.3 Apportionment to counties, cities and towns.
- 312.4 Treasurer's report to highway commission.

- 312.5 Division of farm-to-market road funds.
- 312.6 Limitation on use of funds.
- 312.7 Balance maintained in fund.
- 312.8 Amana colonies.
- 312.9 Applicability of chapter.

**312.1 Fund created.** There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.
2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 324.
3. All of the net proceeds of the compensation tax on motor vehicle certificated carriers under chapter 326.
4. All revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7.
5. Revenues derived from the sales tax, under chapter 422 in an amount equal to ten percent of the net revenues collected under division IV of said chapter.
6. Any other funds which may by law be credited to the road use tax fund. [C50, §308A.1; C54, §312.1]

See §§321.145, 321.146, 326.13, 422.62, 423.24

**312.2 Allocations from fund.** The treasurer of the state shall, on the first day of each month, credit all road tax use funds which have come into his hands, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities and incorporated towns, respectively, in the following manner and amounts:

1. To the primary road fund, forty-two percent.
2. To the secondary road fund of the counties, thirty-five percent.
3. To the farm-to-market road fund, fifteen percent.
4. To the street construction fund of the cities and incorporated towns of the state, eight percent. [C50, §308A.2; C54, §312.2; 57GA, ch 139, §§12, 18]

See §312.6, street fund  
See §§309.8, 309.10, 310.3, 310.20, 313.3

**312.3 Apportionment to counties, cities and towns.** The treasurer of state shall, on the first day of each month:

1. Apportion among the counties of the state, in the ratio that the area of each county bears to the total area of the state, the thirty-five percent of the road use tax funds which he has credited to the secondary road fund of the counties, and shall remit to the treasurer of each county the amount so apportioned to said county.
2. Apportion among the cities and incorporated towns of the state, in the ratio which the population of each city or town, as shown by the latest available federal census, bears to the total population of all such cities and towns in the state, the eight percent of the road use tax funds which he has credited to the street fund of the cities and towns, and shall remit to the city clerk of each such city or town the amount so apportioned to such city or town.

3. In any case where a city or town has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city or town as of the date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this certificate for any period after said corporation has been dissolved. [C50,§308A.3; C54,§312.3; 57GA, ch 139,§13]

Referred to in §312.8  
See §310.1

**312.4 Treasurer's report to highway commission.** The treasurer of state shall, each month, certify to the state highway commission:

1. The amount which he has received and credited to the road use tax fund from each source of revenue creditable to the said road use tax fund.

2. The amount of the road use tax fund which he has credited to (a) the primary road fund, (b) the secondary road fund of the counties, (c) the farm-to-market road fund, and (d) the street fund of the cities and incorporated towns.

3. The amount of the federal aid primary and urban funds which he has received from the federal government and credited to the primary road fund.

4. The amount of federal aid secondary road funds which he has received from the federal government and credited to the farm-to-market road fund. [C24,§4693; C27, 31, 35,§4755-b7; C39, §§4686.07, 4755.07; C46,§§310.7, 313.7; C50, §308A.4; C54,§312.4; 57GA, ch 139,§14]

**312.5 Division of farm-to-market road funds.** The road use tax funds credited to the farm-to-market road fund by the treasurer of state, are hereby divided as follows, and are to be known respectively as:

1. Area allotment farm-to-market road funds, sixty percent; and

2. Equalization farm-to-market road funds, forty percent.

3. All such funds distributed on need basis, shall be reported to each county auditor of the state by January 1 of each year, setting forth all amounts distributed to each county in the state on the need basis.

All farm-to-market road funds, except funds which under section 310.20 come from any county's allotment of the road use tax funds, shall be allotted among the counties by the state highway commission. Area allotment farm-to-market road funds and federal aid secondary road funds received by the state, shall be allotted among all the counties of the state in the ratio that the area of each county bears to the total area of the whole state.

The equalization farm-to-market road fund shall be used for such construction and recon-

struction of farm-to-market roads and bridges as is necessary to accomplish a uniformity of relief for the improvement of such roads and bridges among the counties of the state. Each county seeking relief from the equalization farm-to-market road fund shall make application to the state highway commission on or before July 1 each year, showing cause for need of such relief. The state highway commission shall take into consideration all costs such as the cost of grading, bridges, culverts, drainage, surface material and labor required to complete said farm-to-market roads in all counties. In allotting equalization farm-to-market road funds among counties, the state highway commission shall also take into consideration existing unobligated credit balances in each county's farm-to-market road fund at the time such allotments are made. Allotments of equalization road funds shall be made to the counties in the ratio that each county's requirements bears to the requirements of the state as a whole. The state highway commission shall make such allotments as are required to carry out the objects of this section. [C39,§4686.05; C46,§310.5; C50,§308A.5; C54, §312.5]

Referred to in §310.27

**312.6 Limitation on use of funds.** Funds received by municipal corporations from the road use tax fund shall be used solely for the construction, reconstruction, repair, and maintenance of roads and streets, and for the construction of storm sewers and other drains necessary to control and provide adequate drainage for surface waters originating within or flowing upon the right of ways of newly constructed or reconstructed roads or streets within municipal corporations. Such funds shall not be used for the purchase of machinery or equipment, except as provided in subsection 12 of section 404.7. [C39,§§4686.21, 4686.25; C46,§§310.21, 310.25; C50,§308A.6; C54, §312.6]

**312.7 Balance maintained in fund.** The treasurer of state shall maintain in the road use tax fund in the state treasury, of the funds collected as provided in chapter 321 or as said chapter may be amended, a cash balance sufficient, when added to the cash balance of receipts in the road use tax fund from other sources, to pay the anticipated expenditures from the road use tax fund for the ensuing month.

When necessary to restore the balance in the road use tax fund in the state treasury, he shall draw upon the treasurer of each county of the state in proportion to the amounts in their possession, respectively, of the funds collected under the provisions of chapter 321 or as said chapter may be amended, and credited to the road use tax fund, a sum sufficient in the aggregate to restore the cash balance in the road use tax fund. Such drafts shall be honored by the treasurer of each county upon presentation. [C24, 27, 31, 35,§§4772, 5003; C39,

§§4686.26, 4772, 5010.03; C46, §§310.26, 316.17, 321.147; C50, §308A.7; C54, §312.7]

**312.8 Amana colonies.** Where a tract of land is owned by a corporation organized under the provisions of chapter 491 with assets of the value of one million dollars or more, and owned by individuals owning not more than one share each of the voting stock of the corporation and having one or more platted villages located within the territorial limits of said tract of land, all of the territory within the plats of said villages with their addition or subdivisions shall, for the purposes of this chapter, be deemed to be one incorporated town. All funds to become due to said villages so consolidated shall be paid to the county auditor of the county in which said tract of land and said villages are situated. Said fund shall, thereupon, be administered and expended by the county board of supervisors of

said county for the construction, reconstruction, repair, and maintenance of roads and streets within the plats of such villages in the same manner and with the same powers and duties as city or town councils in cities and incorporated towns. In the event the population of such villages shall not have been separately enumerated in the federal census, then said county board of supervisors shall cause a census of said villages to be taken as soon as may be after this chapter becomes effective, which census shall be used in lieu of the federal census provided for in section 312.3 subsection 2. [C50, §308A.8; C54, §312.8]

**312.9 Applicability of chapter.** This chapter shall not apply to revenue collected previous to July 1, 1949. It shall apply to revenue collected on and after July 1, 1949. [C50, §308A.9; C54, §312.9]

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

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**313.1 Federal and state co-operation.** The state highway commission is empowered on behalf of the state to enter into any arrangement or contract with and required by the duly constituted federal authorities, in order to secure the full co-operation of the government of the United States, and the benefit of all present and future federal allotments in aid of highway construction, reconstruction,

improvement or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States government for such year, and to maintain the roads constructed with said funds. [C24, §4688; C27, 31, 35, §4755-b1; C39, §4755.01; C46, 50, 54, §313.1]

**313.2 "Road systems" defined — roadside parks.** The highways of the state are, for the purposes of this chapter divided into two systems, to wit: the primary road system and the secondary road system. The primary road system shall embrace those main market roads (not including roads within cities and towns) which connect all county seat towns and cities and main market centers, and which have already been designated as primary roads under chapter 241, Code of 1924; provided, that the said designation of roads shall be, with the consent of the federal authorities, subject to revision by the state highway commission. Any portion of said primary system so eliminated by any changes shall revert to and become a part of the secondary road system provided however that the state highway commission shall first allocate sufficient funds to put the road in good repair or assume responsibility for all necessary repairs. The state highway commission may, for the purpose of affording access to cities, towns or state parks, or for the purpose of shortening the direct line of travel on important routes or to effect connections with interstate roads at the state line, add such road or roads to the primary road system, but no other increase shall be made in the mileage of the primary roads until the present primary road mileage has been completed as this chapter provides.

The state highway commission shall have the authority to utilize any land acquired incidental to the acquisition of land for highway right of way, and to also accept by gift, lands not exceeding two acres in area, for roadside parks and parking areas, provided, however, that the upkeep and maintenance of said roadside parks and parking areas shall involve only minor maintenance expense. The commission shall also have authority to accept by gift, equipment or other installations incidental to the use of said parks and parking areas. Said parks and parking areas shall be a part of the primary road system and the commission may at its discretion sell or otherwise dispose of said lands. [C24,§4689; C27, 31, 35,§4755-b2; C39, §4755.02; C46, 50, 54,§313.2; 56GA, ch 150,§1]

Referred to in §306.2  
See §306.1

**313.3 Primary road fund.** There is hereby created a primary road fund which shall include and embrace:

1. All road use tax funds which are by law credited to the primary road fund.
2. All federal aid primary and urban road funds received by the state.
3. All other funds which may by law be credited to the primary road fund.
4. All revenue accrued or accruing to the state of Iowa on or after January 26, 1949, from the sale of public lands within the state, under Acts of Congress approved March 3, 1845, supplemental to the Act for the admission of the states of Iowa and Florida into the Union, chapters 75 and 76 (Fifth Statutes,

pages 788 and 790), shall be placed in the primary road fund. [C24,§4690; C27, 31, 35,§4755-b3; C39,§4755.03; C46, 50, 54,§313.3]

Allocation of funds, §312.2

**313.4 Disbursement of fund.** Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right of way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the state highway commission. [C24,§4690; C27, 31, 35,§4755-b4; C39,§4755.04; C46, 50, 54,§313.4]

Referred to in §313.5

**313.5 Biennial appropriation—budget.** After June 30, 1939, expenditures by the state highway commission under section 313.4 for the support of the commission and for engineering and administration of highway work and maintenance of the primary road system shall be only on authorization by the general assembly.

The highway commission shall biennially on or before September 1 of even-numbered years submit to the comptroller for transmission to the general assembly a detailed estimate of the amount required by the highway commission during the succeeding biennium for the support of the commission and for engineering and administration of highway work and maintenance of the primary road system. Such estimate shall be in the same general form and detail as may be required by law in estimates submitted by other state departments.

Any unexpended balance at the end of any year in the amount so authorized for said year shall revert to the primary road fund. If the amount authorized by the general assembly for any year shall prove to be not sufficient to meet the commission's needs during said year, the executive council may on proper showing by the commission authorize such additional amount for said year as may appear to the council necessary to meet the commission's needs for the remainder of said year. [C39,§4755.05; C46, 50, 54,§313.5]

See biennial appropriation Act

**313.6 Accounts and records required.** The state highway commission shall keep accounts in relation to the primary road fund, crediting said fund with all amounts by law creditable thereto and charging said fund with the amount of all duly and finally approved vouchers for claims properly chargeable thereto. [C24,§4692; C27, 31, 35,§4755-b6; C39,§4755.06; C46, 50, 54,§313.6]

**313.7 Monthly certification of funds.** The account of the primary road fund kept by the state comptroller and the state treasurer shall show the amount of the primary road fund

with all credits thereto and disbursements therefrom. [C24,§4693; C27, 31, 35,§4755-b7; C39, §4755.07; C46, 50, 54,§313.7]

**313.8 Improvement of primary system.** The state highway commission shall proceed to the improvement of the primary road system as rapidly as funds become available therefor until the entire mileage of the primary road system is built to established grade, bridged, and surfaced with pavement or other surface suited to the traffic on such road. Improvements shall be made and carried out in such manner as to equalize the condition of the primary roads, as nearly as possible, in all sections of the state.

The state highway commission shall not purchase right of way and construct a new system of diagonal highways radiating from any city with a population over one hundred thousand. [C27, 31, 35,§4755-b8; C39,§4755.08; C46, 50, 54,§313.8]

**313.9 Surveys, plans, and specifications.** Before proceeding with the improvement of any primary road, the commission shall cause suitable surveys, plans and specifications for said proposed work to be prepared and filed in its office, and the work shall be done in accordance therewith, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter. [C24,§4699; C27, 31, 35,§4755-b9; C39,§4755.09; C46, 50, 54,§313.9]

**313.10 Bids.** As soon as the approved plans and specifications for any primary road construction project are filed with the state highway commission, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids for the construction of said improvement. [C24,§4700; C27, 31, 35,§4755-b10; C39,§4755.10; C46, 50, 54,§313.10]

See §314.2

**313.11** Repealed by 53GA, ch 125,§2, see §314.1.

**313.12 Supervision and inspection.** The state highway commission is expressly charged with the duty of supervision, inspection and direction of the work of construction of primary roads on behalf of the state, and of supervising the expenditure of all funds paid on account of such work by the state or the county on the primary system and it shall do and perform all other matters and things necessary to the faithful completion of the work herein authorized. [C24,§4701; C27, 31, 35,§4755-b12; C39,§4755.12; C46, 50, 54,§313.12]

**313.13 Engineers—bonds.** All engineers having responsible charge of any improvements, shall give bonds for the faithful performance of their duties and for like accounting for all property entrusted to their custody. All bonds given by such engineers in the employ of the state highway commission shall be deemed to

embrace any and all improvements of which they may be in charge. [C24,§4701; C27, 31, 35, §4755-b13; C39,§4755.13; C46, 50, 54,§313.13]

**313.14 Claims.** All claims for improving and maintaining the primary road system shall be paid from the primary road fund. [C24, §4702; C27, 31, 35,§4755-b14; C39,§4755.14; C46, 50, 54,§313.14]

**313.15** Repealed by 53GA, ch 125,§4, see §314.3.

**313.16** Repealed by 53GA, ch 125,§5, see §314.4.

**313.17 Contingent fund.** The state treasurer is hereby directed to set aside from the primary road fund the sum of five hundred thousand dollars to be known as the primary road contingent fund. [C24,§4703; C27, 31, 35, §4755-b17; C39,§4755.17; C46, 50, 54,§313.17; 56GA, ch 151,§1]

**313.18 Use of contingent fund.** When claims for labor, freight, or other items which must be paid promptly and which are payable from the primary road fund are presented to the said commission for payment, the said commission may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants when so drawn and signed by the auditor of the state highway commission, shall be honored by the state treasurer for payment from said contingent fund. [C24,§4704; C27, 31, 35,§4755-b18; C39,§4755.18; C46, 50, 54,§313.18]

**313.19 Audit of contingent claims.** The claims in payment of which warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims, the state comptroller shall draw warrants therefor payable to the treasurer of state and forward the same to the state highway commission for record. When such warrants have been recorded in the office of the said commission, they shall be forwarded to the state treasurer who shall redeem the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof. [C24,§4705; C27, 31, 35,§4755-b19; C39,§4755.19; C46, 50, 54, §313.19]

**313.20 Auditor — appointment — bond — duties.** The state comptroller shall appoint the auditor of the state highway commission who shall give bond in the sum of fifty thousand dollars for the faithful performance of his duties. The premium on said bond shall be paid by the state highway commission from the primary road fund. Said auditor shall check and audit all claims against the commission before such claims are approved by the commission, and shall keep all records and accounts relating to the expenditures of



the commission. He shall, in the checking and auditing of claims against the commission, and keeping the records and accounts of the commission, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The state highway commission shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The said auditor may be removed by the state comptroller. [C24,§4706; C27, 31, 35,§4755-b20; C39,§4755.20; C46, 50, 54,§313.20]

**313.21 Improvements in cities and towns.** The state highway commission is hereby given authority, subject to the approval of the council, to construct, reconstruct, improve and maintain extensions of the primary road system within any city or town including the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, provided that such improvement, exclusive of storm sewers, shall not exceed in width that of the primary road system and the amount of funds expended in any one year shall not exceed twenty-five percent of the primary road construction fund.

The phrase "subject to approval of the council", as it appears in this section, shall be construed as authorizing the council to consider said proposed improvements in its relationship to municipal improvements (such as sewers, water lines, sidewalks and other public improvements, and the establishment or re-establishment of street grades). The location of said primary road extensions shall be determined by the state highway commission. [C24,§4731; C27, 31, 35,§4755-b26; C39,§4755.21; C46, 50, 54,§313.21; 57GA, ch 142,§1]

Referred to in §391A.37  
See §313.36

**313.22 Paving of whole street by commission.** Any city or town and the state highway commission may enter into an agreement with respect to any project for the paving of any portion of a primary road extension, and for the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, within such city or town. Said agreement shall specify that the city or town shall pay for that portion of the cost of said project which is not payable out of primary road funds, and may authorize the state highway commission to advertise for bids, let contracts, and supervise the construction of that portion of said project to be paid for by the city or town. Such agreement shall be a valid and binding obligation on the parties thereto. [C46, 50, 54,§313.22; 57GA, ch 142,§2]

Referred to in §391A.37

**313.23 Reimbursement by city or town.** Payment for the work, including the city's or the town's portion thereof, may in the first instance be made out of the primary road fund. Upon completion of the project, the city or

town shall reimburse the state highway commission for the amount so advanced out of the primary road fund, including the city's or town's portion of the engineering and inspection costs. [C46, 50, 54,§313.23]

Referred to in §391A.37

**313.24 Separated cities or towns.** The state highway commission shall designate the street or streets which shall constitute the primary road extensions in any city or town of the state, which city or town is separated from the remainder of the state by a river more than five hundred feet in width from bank to bank. The laws of this state relating to the construction, reconstruction or maintenance of the extensions of primary roads in cities and towns, and to the purchase or condemnation of right of way therefor, and to the expenditure of primary road funds thereon, shall apply to the roads or streets designated hereunder, the same as though said community were not so separated from the rest of the state. [C39,§4755.22; C46, 50, 54,§313.24]

**313.25** Repealed by 54GA, ch 103,§22, see §§306.4, 306.13, 306.14.

**313.26** Repealed by 54GA, ch 103,§22, see §306.15.

**313.27 Bridges, viaducts, etc., on municipal primary extensions.** The state highway commission may construct or aid in the construction, and may maintain bridges, viaducts, and railroad grade crossing eliminations on primary road extensions in cities and towns. [C31, 35,§4755-d1; C39,§4755.25; C46, 50, 54, §313.27]

See §313.36

**313.28 to 313.34, inc.,** Code 1946, transferred to sections 313.59 to 313.65 inclusive.

**313.35** Repealed by 53GA, ch 125,§7, see §314.6.

**313.36 Maintenance — limitation in cities and towns.** Primary roads shall be maintained by the state highway commission and the cost thereof paid out of the primary road fund. Extensions of primary roads in cities and towns may be maintained by the state highway commission and the cost thereof paid out of the primary road fund.

The total amount of funds expended in any one year on extensions of primary roads in cities and towns shall not exceed twenty-five percent of the primary road fund. [C24,§4736; C27, 31, 35,§4755-b29; C39,§4755.27; C46, 50, 54, §313.36]

See also §§306.4 and 313.21

**313.37 Road equipment.** The state highway commission is authorized to purchase road material or road machinery required in the improvement or maintenance of the primary roads, after receiving competitive bids, and to pay for the same out of the primary road fund, and is directed to purchase, rent or lease any

machinery or other articles necessary for the use and most economical operation of the field engineering work, the testing of materials, the preparation of plans, and for all allied purposes, in order to enable the commission to carry out the provisions of this chapter. [C24, §4738; C27, 31, 35, §4755-b30; C39, §4755.28; C46, 50, 54, §313.37]

**313.38 to 313.40, inc.** Repealed by 54GA, ch 107, §9.

**313.41** Repealed by 54GA, ch 165, §26, see §420.41.

**313.42** Repealed by 54GA, ch 103, §22.

**MARKINGS FOR MUNICIPALITIES**

**313.43 Lateral or detour routes in cities and towns.** Any city or town located on the primary road system and in which the primary road extension as officially designated does not pass through the main part or business district of such city or town, may designate and mark a lateral or detour route in order to facilitate such primary road traffic as may desire to get into and out of such business district. [C31, 35, §4755-c2; C39, §4755.34; C46, 50, 54, §313.43]

**313.44 Standard markings required.** Such lateral or detour routes shall be marked with standard markings adopted by the state highway commission therefor, which markings shall clearly indicate that such lateral route is not the official primary road extension but is in fact a lateral or detour extending to the business district. [C31, 35, §4755-c3; C39, §4755.35; C46, 50, 54, §313.44]

**313.45 Cost.** The cost of such markings shall be without expense to the state. [C31, 35, §4755-c4; C39, §4755.36; C46, 50, 54, §313.45]

**313.46 to 313.52, inc.** Repealed by 54GA, ch 103, §22, see §§306.4 to 306.11, inc. and 306.20.

**313.53 to 313.57, inc.** Repealed by 54GA, ch 103, §22, see §§306.16 to 306.20, inc.

**313.58 Special designations for highways.** All of U. S. highway number six as it is now, or may hereafter be located in this state shall be known and designated as "Grand Army of the Republic Highway". The state highway commission is hereby directed to place suitable markers along said route at such points as they shall deem appropriate. [C50, 54, §313.58]

Blue star highway, see resolution by 53GA, ch 313

**INTERSTATE BRIDGES—GIFT OR PURCHASE**

**313.59 Gift of bridge to state—acceptance.** Should the owner of any bridge, for highway traffic, over the Mississippi river or the Missouri river, on the boundary of the state of Iowa, and which bridge is a connecting link between a primary road or primary road extension in a city or town of this state and a corresponding road or extension thereof in an adjoining state, offer to give such bridge and approaches thereto, or any part thereof, to the

state, the state highway commission is hereby authorized, in its discretion, to accept such offer in the name of the state of Iowa, and to enter into written agreements evidencing such acceptance. [C46, §313.28; C50, 54, §313.59]

Referred to in §§313.64, 313.65

**313.60 Indebtedness paid.** When all outstanding indebtedness or other obligations against such bridge and approaches thereto have been paid and discharged the state highway commission shall accept transfer of title thereof to the state and is thereafter authorized to take possession of, operate and maintain such bridge and approaches, or any part thereof, free of tolls, as a part of the primary road system. [C46, §313.29; C50, 54, §313.60]

Referred to in §§313.64, 313.65

**313.61 Taxes forgiven.** Any such bridge and approaches, which has been offered to the state highway commission and with respect to which the commission has entered into a written agreement accepting such offer, shall after the date of such agreement, be free from state and local property and income taxes in this state. [C46, §313.30; C50, 54, §313.61]

Referred to in §§313.64, 313.65

**313.62 Highway commission authority.** The authority herein given to the state highway commission to enter into agreements for, accept, take over, operate and maintain such bridges may be exercised by the commission independently or in co-operation with other governmental agencies within this state or in adjoining states. [C46, §313.31; C50, 54, §313.62]

Referred to in §§313.64, 313.65

**313.63 Action by adjoining state.** The state highway commission shall not enter into an agreement of acceptance until the adjoining state enters into an agreement to accept ownership of that portion of the bridge being within such adjoining state, and agrees to pay the cost of maintaining such portion of the bridge or its proportionate share of the total cost of maintaining the bridge. [C46, §313.32; C50, 54, §313.63]

Referred to in §§313.64, 313.65

**313.64 Financial statement annually.** Should the state highway commission accept the offer of any bridge over a boundary stream and enter into a written agreement in relation thereto as provided in sections 313.59 to 313.65, inclusive, the owner or operator of such bridge shall thereafter and until all indebtedness or other obligations against such bridge have been paid and discharged annually file with the commission a sworn statement of its financial condition. Such statement shall show funds on hand and indebtedness at the beginning and end of the year, receipts, disbursements, indebtedness retired during the year and any other information required by the commission to show the true and complete condition of the finances with respect to such bridge and approaches thereto.

The annual budget of authorized operating and other expenditures for or on behalf of such bridge and approaches shall be approved by the commission before becoming effective. Expenditures during the year shall not exceed the approved budget unless an increase in the annual budget be likewise approved by the commission. [C46,§313.33; C50, 54,§313.64]

Referred to in §313.65

**313.65 Approval of taxing bodies.** Before any bridge owned by any individual or private corporation shall be accepted by the state highway commission under the provisions of sections 313.59 to 313.64, inclusive, the said proposal and acceptance shall first be approved by the following tax levying and tax certifying bodies located in the said tax district: The board of supervisors, the city councils and the school board or boards. [C46, §313.34; C50, 54,§313.65]

Constitutionality, 51GA, ch 138,§8

**313.66 Mississippi bridges purchased.**

1. The state highway commission may purchase one-half of any bridge and its approaches for highway traffic over the Mississippi river on the boundary of the state and which is in receivership and is a connecting link between a primary road or primary road extension in a city or town of the state and a corresponding

road or extension thereof in an adjoining state, providing proper approval is granted by the court having jurisdiction of such receivership.

2. The Iowa highway commission is authorized to make payment for any such bridge and its approaches from the primary road fund provided however, that in no event shall the amount of such payment be more than one hundred thousand dollars for any one bridge and approaches thereto, and provided further that such purchase shall not be completed or payment made therefor until the adjoining state shall either have purchased or agreed to purchase ownership of the remaining one-half of said bridge and approaches, and agrees to pay the costs of repairing or maintaining such portion of the bridge and all approaches.

3. The Iowa highway commission, after the purchase of any such bridge, is authorized to take possession thereof and maintain such portion of the bridge and its approaches thereto free of tolls as a part of the primary road system.

4. Before the purchase of any such bridge shall be completed by the state highway commission under the provisions of this section, the purchase thereof shall first be approved by the following tax levying and tax certifying bodies located in said district: The board of supervisors, the city councils, and the school board or boards. [C50, 54,§313.66]

## CHAPTER 314

### GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.1 Bidders' statements of qualifications—basis for awarding contracts.

314.2 Interest in contract prohibited.

314.3 Claims—approval and payment.

314.4 Partial payments.

314.5 Extensions in certain cities and in towns.

314.6 Highways along city or town limits.

314.7 Trees—ingress or egress—drainage.

314.8 Government markers preserved.

314.9 Prospecting for gravel.

314.10 State-line highways.

314.11 Use of bridges by utility companies.

**314.1 Bidders' statements of qualifications—basis for awarding contracts.** The board or commission having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, repair, or maintenance of any highway, may require, for any highway contract letting, that each bidder shall file with said board or commission a statement showing his financial standing, his equipment, and his experience in the execution of like or similar work. Said statements shall be on standard forms prepared by the state highway commission and shall be filed with said board or commission previous to the letting at which such bidder expects to bid. The board or commission may, in advance of the letting, notify the bidder as to the amount and the nature of the work for which he is deemed qualified to bid.

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the board or commission having charge of awarding such

contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The board or commission may reject any or all bids, or may let by private contract or build by day labor, at a cost not in excess of the lowest bid received. Upon the completion of any contract or project on either the farm-to-market or secondary road system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that said work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law. [S13,§1527-s18; C24,§§4651, 4700; C27, 31, 35,§§4644-c41, 4651, 4755-b11; C39,§§4644.39, 4651, 4686.15, 4755.11; C46,§§309.57, 310.15, 313.11; C50, §§308A.10, 309.39; C54,§§309.39, 314.1]

The first paragraph of this section has been transferred from section 309.39 where it appeared in the 1954 Code.

**314.2 Interest in contract prohibited.** No state or county official or employee, elective or appointive shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement or maintenance of any highway, bridge or culvert, or the furnishing of materials therefor. The letting of a contract in violation of the foregoing provisions shall invalidate the contract and such violation shall be a complete defense to any action to recover any consideration due or earned under the contract at the time of its termination. [S13,§1527-s15; C24,§§4685, 4700; C27, 31, 35,§§4685, 4755-b10; C39,§§4685, 4686.14, 4755.10; C46,§§309.92, 310.14, 313.10; C50,§308A.11; C54, §314.2]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11

**314.3 Claims—approval and payment.** All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, sworn to by the claimants, certified to by the engineer in charge, and then forwarded to the board or commission in control of that highway for final audit and approval. Claims payable from the farm-to-market road fund shall be approved by both the board of supervisors and the state highway commission. Upon approval by the highway commission of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the state comptroller, who shall draw warrants therefor, and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the board or commission approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, he shall be liable on his bond for the amount of such claim. [SS15, §1527-s10; C24,§§4653, 4702; C27, 31, 35,§§4653, 4755-b15; C39,§§4653, 4686.17, 4755.15; C46, §§309.59, 310.17, 313.15; C50,§308A.12; C54,§314.3]

**314.4 Partial payments.** Partial payments may be made on highway contract work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claim by the board or commission in control of the work, or highway on which the work is located, may be evidenced by the signature of the chairman of said board or commission, or of a majority of the members of said board or commission, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract. [SS15,§1527-s10; C24, §§4654, 4702; C27, 31, 35,§§4654, 4755-b16; C39, §§4654, 4755.16; C46,§§309.60, 313.16; C50, §308A.13; C54,§314.4]

**314.5 Extensions in certain cities and in towns.** The board or commission in control of any secondary road or any primary road is authorized, subject to approval of the council, to eliminate danger at railroad crossings and to construct, reconstruct, improve, repair, and maintain any road or street which is an extension of such road within any town or city. Provided, that this authority shall not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase "subject to the approval of the council" as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the board or commission in control of such road or road system. [C31, 35,§4644-c47; C39, §§4644.45, 4686.21; C46,§§309.45, 310.21; C50, §308A.14; C54,§314.5]

**314.6 Highways along city or town limits.** Whenever any public highway located along the corporate line of any town or city is an extension of a farm-to-market road, or of a primary road, it may be included in the farm-to-market road system or the primary road system, as the case may be, and may be constructed, reconstructed, improved, repaired, and maintained as a part of said road system. [C24,§4735; C27, 31, 35,§4755-b28; C39,§§4686.25, 4755.26; C46,§§310.25, 313.35; C50,§308A.15; C54, §314.6]

**314.7 Trees — ingress or egress — drainage.** Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any town lot, farmyard orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonable ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water. [C24, 27,§4791; C31, 35, §4644-c46; C39,§4644.44; C46,§309.44; C50, §308A.16; C54,§314.7]

See §§318.1, 318.2

**314.8 Government markers preserved.** Whenever it may become necessary in grading the highways to make a cut which will disturb, or fill which will cover up, a government or

other established corner or land monument, it shall be the duty of the engineer to establish permanent witness corners or monuments, and make a record of the same, which shall show the distance and direction the witness corner is from the corner disturbed or covered up. When said construction work is completed the engineer shall permanently re-establish said corner or monument. A failure to perform said duties shall subject the engineer to a fine of not less than ten dollars nor more than fifty dollars to be collected on his bond. [S13,§1527-s7; C24, 27, 31, 35, 39,§4656; C46,§309.62; C50, §308A.17; C54,§314.8]

**314.9 Prospecting for gravel.** The board or commission in control of any highway or highway system, or the engineer or any other person employed by said board or commission, may after written notice to the owner and to the occupant, enter upon private land and make surveys, borings and excavations thereon, for the purpose of determining whether gravel or other material exists on said land of suitable quality and in sufficient quantity, to warrant the purchase or condemnation of said land or part thereof and roadway thereto to secure such material for the improvement or maintenance of such highway or highway system. Any damage caused by such entry, survey, borings and excavations shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for highway purposes. No such prospecting shall be done within twenty rods

of the dwelling house or buildings on said land without written consent of the owner. [C27, 31, 35,§4658-a1; C39,§4658.1; C46,§309.65; C50, §308A.18; C54,§314.9]

**314.10 State-line highways.** The board or commission in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the board or official of such border state, or subdivision of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge. [S13,§1570-a; SS15,§1527-s3; C24, 27, 31, 35, 39,§4663; C46,§309.72; C50,§308A.19; C54, §314.10]

**314.11 Use of bridges by utility companies.** Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the boards, commissions, or officials jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes. [S13,§424-e; C24, 27, 31, 35, 39,§4683; C46,§309.90; C50,§308A.20; C54,§314.11]

## CHAPTER 315

### FLIGHT STRIPS

315.1 Definition.

315.2 Construction and maintenance by commission.

315.3 Federal government to pay cost.

315.4 State to advance funds.

315.5 Condemnation of right of way and gravel pits.

**315.1 Definition.** The term "flight strip" as used in this chapter is construed and defined to mean a field or area of various width and length, but usually about five hundred feet wide and about one mile long, and containing one runway for the landing and take-off of aircraft. The runway itself is usually about one hundred fifty feet wide and about one mile long. The excess width of the field or area over and above the width of the runway itself is used for parking motor vehicles, grounded planes, and for other necessary ground facilities. [C46, 50, 54,§315.1]

**315.2 Construction and maintenance by commission.** In order to facilitate the war effort, the state highway commission, upon request of the commissioner of public roads of the United States, is hereby authorized to co-operate with the public roads administration of the United States in the location, construction, and maintenance of flight strips in

this state. To that end the state highway commission may make surveys, plans, specifications, and estimates, acquire right of way for, and construct and maintain such flight strips.

The state highway commission may enter into contracts in any manner approved by the commissioner of public roads for the construction and maintenance of any such flight strips, or may perform such construction and maintenance work by force account, and may comply with the rules, regulations, and instructions of the commissioner of public roads in the construction and maintenance of such flight strips. [C46, 50, 54,§315.2]

**315.3 Federal government to pay cost.** The entire cost of the right of way, surveys, preliminary engineering costs, construction, and maintenance of such flight strips shall be paid by the federal government or some agency other than the state of Iowa. None of the cost of the right of way, construction, or

maintenance of any such flight strips shall be paid by the state of Iowa. [C46, 50, 54,§315.3]

**315.4 State to advance funds.** In order to avoid delays, payment for right of way and for work on flight strips constructed or maintained by the state highway commission in co-operation with the United States public roads administration, may be advanced from the primary road fund. When payment for such right of way or work on such flight strips is received by the state of Iowa from the federal government, the funds so received shall be credited to the primary road fund. [C46, 50, 54,§315.4]

**315.5 Condemnation of right of way and gravel pits.** The state highway commission shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right of way for flight strips and for the condemnation of land, including a sufficient roadway to such land by the most reasonable route, for the purpose of obtaining gravel or other suitable material with which to construct, improve, or maintain such flight strips.

All the provisions of the law relating to the condemnation of land for public state purposes shall apply to the provisions hereof. [C46, 50, 54,§315.5]

## CHAPTER 316

### IMPROVEMENT OF COUNTY AND PRIMARY ROADS

Repealed by 53GA, ch 130,§1, see §312.7

## CHAPTER 317

### WEEDS

- 317.1 Noxious weeds.
- 317.2 State botanist.
- 317.3 Weed commissioner.
- 317.4 Direction and control.
- 317.5 Weeds in abandoned cemeteries.
- 317.6 Entering land to destroy weeds—notice.
- 317.7 Report to board.
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- 317.9 Duty of board to enforce.
- 317.10 Duty of owner or tenant.
- 317.11 Weeds on roads or highways.
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- 317.13 Program of control.
- 317.14 Notice of program.
- 317.15 Loss or damage to crops.
- 317.16 Failure to comply.
- 317.17 Additional noxious weeds.
- 317.18 Order for destruction on roads.
- 317.19 Road clearing fund.
- 317.20 Levy for equipment and materials—use on private property.
- 317.21 Cost of such destruction.
- 317.22 Duty of highway maintenance men.
- 317.23 Duty of county attorney.
- 317.24 Punishment of officer.

**317.1 Noxious weeds.** The following weeds are hereby declared to be noxious and shall be divided into two classes, namely:

1. Primary noxious weeds, which shall include quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium lanceolatum*), European morning glory or field bindweed (*Convolvulus arvensis*), horse nettle (*Solanum carolinense*), leafy spurge (*Euphorbia esula*), perennial pepper-grass (*Lepidium draba*), Russian knapweed (*Centaurea repens*), buckthorn (*Rhamnus*).

2. Secondary noxious weeds, which shall include butterprint (*Abutilon theophrasti*) annual, cocklebur (*Xanthium commune*) annual, wild mustard (*Brassica arvensis*) annual, wild carrot (*Daucus carota*) biennial, buckhorn (*Plantago lanceolata*) perennial, sheep sorrel (*Rumex acetosella*) perennial, sour dock (*Rumex crispus*) perennial, smooth dock (*Rumex altissimus*) perennial, puncture vine (*Tribulus terrestris*) annual. [S13,§1565-b; C24, 27, 31, 35,§4818; C39,§4829.01; C46, 50, 54,§317.1; 56GA, ch 153,§1]

**317.2 State botanist.** The secretary of agriculture shall appoint as state botanist the head of the botany and plant pathology section of the Iowa agricultural experiment station whose duty shall be to co-operate in developing a constructive weed eradication program. [C39,§4829.02; C46, 50, 54,§317.2]

**317.3 Weed commissioner.** The board of supervisors of each county shall annually appoint a county weed commissioner who shall be a person not otherwise employed by the county and one who is familiar with the various types of weeds and the recognized methods for their control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and continue for a term of one year unless he is sooner removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, appoint a deputy or such number of deputies as are necessary to carry out the purposes of this chapter. The name and address of the person appointed as county weed commissioner shall, within ten days of the making of the appointment, be cer-

tified to the county auditor and to the secretary of agriculture. The board of supervisors shall fix the compensation of the county weed commissioner and his deputies, if any, and in addition to said compensation, they shall be paid their necessary travel expense; said compensation and expense shall be paid from the county general fund.

Notwithstanding the provisions of this section as to time of hiring the county weed commissioner, the board of supervisors shall prescribe the time per year he shall work which may be during the part of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay per employment time. [S13, §§1565-c, d, f; C24, 27, §4817; C31, 35, §§4817, 4817-d1; C39, §4829.03; C46, 50, 54, §317.3]

**317.4 Direction and control.** Whenever, in this chapter, powers and duties are imposed upon a "commissioner", or "commissioners", such powers and duties shall apply to the county weed commissioners and their deputies within their respective counties. Each commissioner shall, subject to direction and control by the county board of supervisors, have supervision over the control and the destruction of all noxious weeds in his county, including those growing within the limits of incorporated towns and cities, and within the confines of abandoned cemeteries, and of any other weeds growing along streets and highways unless otherwise provided and shall have the authority at any time to enter upon any land in his county for the performance of his duties, and shall hire the labor and equipment necessary for the performance of his duties subject to the approval of the board of supervisors, which shall be paid for in the same manner as the weed commissioner's compensation. [S13, §§1565-c, d, f; C24, 27, 31, 35, §4817; C39, §4829.04; C46, 50, 54, §317.4; 57GA, ch 144, §1]

**317.5 Weeds in abandoned cemeteries.** The commissioner shall spray the weeds growing in abandoned cemeteries in the county as often as needed to keep said weeds under control. [57GA, ch 144, §3]

**317.6 Entering land to destroy weeds—notice.** In case of a substantial failure by the owner or person in possession or control of any land to comply with any order of destruction pursuant to the provisions of this chapter, the county weed commissioner, his deputies and employees acting under his direction shall have full power and authority to enter upon any land within their county for the purpose of destroying noxious weeds. Such entry may be made without the consent of the landowner or person in possession or control of the land but actual work of destruction shall not be commenced until five days after the service of a notice in writing on the land-

owner and on the person in possession or in control of the land. The notice shall state the facts as to failure of compliance with the county program of weed destruction order or orders made by the board of supervisors and shall be served in the same manner as an original notice except as hereinafter provided. The notice may be served by the weed commissioner, his deputies or any person designated in writing by the weed commissioner and filed in the office of the county auditor. Provided, however, that service on persons living temporarily or permanently outside of the county may be made by sending the written notice of noncompliance by certified mail to said person at the last known address to be ascertained, if necessary, from the last tax list in the county treasurer's office. Where any person, firm or corporation owning land within the county has filed a written instrument in the office of the county auditor designating the name and address of its agent, the notice herein provided may be served on that agent. In computing time hereunder it shall be from the date of service as evidenced on the return or if made by certified mail, from the date of mailing as evidenced by the certified mail book at the postoffice where mailed. [S13, §§1565-c, d, f; C24, §4817; C27, 31, 35, §§4817, 4823-b1; C39, §§4829.05, 4829.06; C46, §§317.5, 317.6; C50, 54, §317.6; 57GA, ch 267, §34]

Referred to in §317.16

**317.7 Report to board.** Each weed commissioner shall for the territory under his jurisdiction on or before the first day of November of each year make a written report to the board of supervisors. Said report shall state:

1. The name and location of all primary noxious weeds, and any new weed which appears to be a serious pest.

2. A detailed statement of the treatment used, and future plans, for eradication of weeds on each infested tract on which he has attempted to exterminate weeds, together with the costs and results obtained.

3. A summary of the weed situation within his jurisdiction, together with suggestions and recommendations which may be proper and useful, a copy of which shall be forwarded to the state secretary of agriculture. [S13, §§1565-c, d, f; C24, 27, 31, 35, §4817; C39, §4829.07; C46, 50, 54, §317.7]

**317.8 Duty of secretary of agriculture.** The secretary of agriculture shall be vested with the following duties, powers and responsibilities:

1. He shall serve as state weed commissioner, and shall co-operate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.

2. He may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.

3. He shall aid the supervisors in the inter-

pretation of the weed law, and make suggestions to promote extermination of noxious weeds. [S13, §§1565-c, d, f; C24, 27, 31, 35, §4817; C39, §4829.08; C46, 50, 54, §317.8]

**317.9 Duty of board to enforce.** The responsibility for the enforcement of the provisions of this chapter shall be vested in the board of supervisors as to all farm lands, railroad lands, abandoned cemeteries, state lands and state parks, primary and secondary roads; roads, streets and other lands within cities and towns unless otherwise provided. [S13, §§1565-c, d, f; C24, 27, 31, 35, §4817; C39, §4829.09; C46, 50, 54, §317.9; 57GA, ch 144, §2]

**317.10 Duty of owner or tenant.** Each owner and each person in the possession or control of any lands shall cut, burn, or otherwise destroy, in whatever manner may be prescribed by the board of supervisors, all noxious weeds thereon as defined in this chapter at such times in each year and in such manner as shall be prescribed in the program of weed destruction order or orders made by the board of supervisors, and shall keep said lands free from such growth of any other weeds, as shall render the streets or highways adjoining said land unsafe for public travel. [SS15, §1565-a; C24, 27, 31, 35, §4819; C39, §4829.10; C46, 50, 54, §317.10]

**317.11 Weeds on roads or highways.** The board of supervisors shall destroy noxious weeds growing in county, trunk, and local county roads, and the highway commission shall destroy noxious weeds growing on primary roads. Nothing herein shall prevent the landowner from harvesting, in proper season, the grass grown on the road along his land. [S13, §§1565-c, d, f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §4829.11; C46, 50, 54, §317.11]

**317.12 Weeds on railroad or public lands and gravel pits.** All noxious weeds on railroad lands, public lands and within incorporated cities and towns shall be treated in such manner, approved by the board of supervisors, as shall prevent seed production and either destroy or prevent the spread of noxious weeds to adjoining lands. Gravel pits infested with noxious weeds shall not be used as sources of gravel for public highways without previous treatment approved by board of supervisors. [S13, §§1565-c, d, f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §4829.12; C46, 50, 54, §317.12]

**317.13 Program of control.** The board of supervisors of each county shall each year, upon recommendation of the county weed commissioner, or commissioners, by resolution prescribe and order a program of weed destruction to be followed by landowners or tenants or both, which may be expected to destroy and immediately keep under control any areas infested with any noxious weeds on farm land, and shall designate the destruction dates to prevent seed production of all varieties of noxious weeds. Quack grass in pasture land,

rough timbered land or on the highways, railway rights of way and public lands, when acting as soil binder, may be exempt from such order if approved by the supervisors. [S13, §§1565-c, d; C24, 27, 31, 35, §4821; C39, §4829.13; C46, 50, 54, §317.13]

Referred to in §317.14

**317.14 Notice of program.** Notice of any order made pursuant to section 317.13 shall be given by one publication in the official newspapers of the county and shall be directed to all property owners.

Said notice shall state:

1. The time for destruction.
2. The manner of destruction, if other than cutting above the surface of the ground.
3. That unless said order is complied with the weed commissioner shall cause said weeds to be destroyed and the cost thereof will be taxed against the real estate on which the noxious weeds are destroyed. [S13, §§1565-c, d; C24, 27, 31, 35, §4822; C39, §4829.14; C46, 50, 54, §317.14]

**317.15 Loss or damage to crops.** The loss or damage to crops or property incurred by reason of such destruction shall be borne by the titleholder of said real estate, unless said real estate shall be sold under contract whereby possession has been delivered to the purchaser, in which event such purchaser shall bear such loss or damage, excepting where a contract has been entered into providing a different adjustment for such loss or damage. [S13, §§1565-c, d; C24, 27, 31, 35, §4822; C39, §4829.15; C46, 50, 54, §317.15]

**317.16 Failure to comply.** In case of a substantial failure to comply by the date prescribed in any order of destruction of weeds made pursuant to the provisions of this chapter, the weed commissioner or his deputies shall, subsequent to the time after service of the notice provided for in section 317.6 enter upon the land and cause such weeds to be destroyed. The actual cost and expense of such cutting, burning or otherwise destroying of said weeds, the cost of serving notice and special meetings or proceedings, if any, shall be paid from the county general fund and, together with the additional assessment to apply toward costs of supervision and administration, be recovered by an assessment against the tract of real estate on which the weeds were growing, as provided in section 317.21. [S13, §§1565-c, d; C24, 27, 31, 35, §4823; C39, §4829.16; C46, 50, 54, §317.16]

Referred to in §317.21

**317.17 Additional noxious weeds.** The board of supervisors shall order the weed commissioner, or commissioners, to destroy or cause to be destroyed any new weeds declared to be noxious by the secretary of agriculture, the cost of which shall be borne by the county. [C39, §4829.17; C46, 50, 54, §317.17]



**317.18 Order for destruction on roads.** The board of supervisors shall order all weeds other than noxious weeds, on all county trunk and local county roads and between the fence lines thereof to be cut, burned or otherwise destroyed to prevent seed production thereof, either upon its own motion or upon receipt of written notice requesting such action from any residents of the township in which such roads are located, or any person regularly using said roads. Said order shall define the roads along which said weeds are required to be cut, burned or otherwise destroyed and shall require said weeds to be cut, burned or otherwise destroyed within thirty days after the publication of said order in the official newspapers of said county. If the adjoining owner fails to cut, burn or otherwise destroy said weeds as required in said order the county commissioner shall have same cut, burned or otherwise destroyed and the cost thereof shall be paid from the general county fund, and recovered later by an assessment against the adjoining property owners as provided in section 317.21. [C39,§4829.18; C46, 50, 54,§317.18]

Referred to in §317.21

**317.19 Road clearing fund.** The board of supervisors in any county may levy against all the taxable property, other than incorporated cities and towns, in said county not to exceed three-fourths mill, the proceeds of which said levy shall be known as the "road-clearing fund" and shall be used for no purpose except to cut, burn or otherwise destroy all weeds, second or undergrowth brush on said county trunk and local county roads between the fence rows of such roads thereof in time to prevent reseeding.

Out of said fund so provided for in this section the board of supervisors shall have the power to purchase or hire necessary equipment or to contract with the adjoining landowner to carry out the purposes of this section. [C46, 50, 54,§317.19]

**317.20 Levy for equipment and materials—use on private property.** An additional one-fourth mill may be levied by the county board of supervisors for the purpose of purchasing weed eradicating equipment and materials to carry out the duties of the county weed commissioner for use on all lands in the county, public or private. Whenever equipment or materials so purchased are used on private property within the corporate limits of cities or towns by the weed commissioner, the cost of materials used and an amount to be fixed by the board of supervisors for the use of said equipment shall be returned to this one-fourth mill fund by the county treasurer upon the collection of the special assessment taxed against said property. In the certification to the county auditor and the county treasurer by the clerk of the board of supervisors this apportionment shall be designated along with the special tax assessed under the provisions of section 317.21. Such equipment and its use

shall be subject to the authorization and direction of the county board of supervisors. [C50, 54,§317.20]

**317.21 Cost of such destruction.** When the commissioner, or commissioners, destroy any weeds under the authority of sections 317.16 or 317.18, after failure of the landowner responsible therefor to destroy such weeds pursuant to the order of the board of supervisors, the cost of such destruction shall be assessed against the land and collected from the landowner responsible in the following manner:

1. Annually, after the weed commissioner has completed his program of destruction of weeds by reason of noncompliance by persons responsible therefor, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning or otherwise destroying said weeds, the cost of serving notice and special meetings or proceedings, if any. To the total of all such sums expended, they shall add an amount equal to twenty-five percent thereof to compensate for the cost of supervision and administration and assess the resulting sum against said tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, together with interest and penalty after due, in the same manner as other unpaid taxes. Such tax shall be due on March 1 after such assessment, and shall be delinquent after March 31. When collected, said funds shall be paid into the fund from which said costs were originally paid.

2. Before making any such assessment, the board of supervisors shall prepare a plat or schedule showing the several lots, tracts of land or parcels of ground to be assessed which shall be in accord with the assessor's records and the amount proposed to be assessed against each of the same for destroying or controlling weeds during the calendar year.

3. Such board shall thereupon fix a time for the hearing on such proposed assessments, which time shall not be later than December 15 of the year, and at least twenty days prior to the time thus fixed for such hearing shall give notice thereof to all concerned that such plat or schedule is on file, and that the amounts as shown therein will be assessed against the several lots, tracts of land or parcels of ground described in said plat or schedule at the time fixed for such hearing, unless objection is made thereto. Notice of such hearing shall be given by one publication in official county newspapers in the county in which the property to be assessed is situated; or by posting a copy of such notice on the premises affected and by mailing a copy by certified mail to the last known address of the person owning or controlling said premises. At such time and place the owner of said premises or anyone liable to pay such assessment, may appear with the same rights given

by law before boards of review, in reference to assessments for general taxation. [S13, §§1565-c,d; C24, 27, 31, 35, §§4824, 4825; C31, 35, §§4825-c1,-c2; C39, §4829.19; C46, §317.20; C50, 54, §317.21; 57GA, ch 267, §35]

Referred to in §§317.16, 317.18, 317.20

**317.22 Duty of highway maintenance men.** It shall be the duty of all officers directly responsible for the care of public highways to make complaint to the weed commissioners or board of supervisors, whenever it shall appear that the provisions of this chapter may not be complied with in time to prevent the blooming and maturity of noxious weeds or the unlawful growth of weeds, whether in the streets or highways for which they are responsible or upon lands adjacent to the same. [S13, §§1565-c,e; C24, 27, 31, 35, §4826; C39, §4829.20; C46, §317.21; C50, 54, §317.22]

**317.23 Duty of county attorney.** It shall be the duty of the county attorney upon complaint of any citizen that any officer charged with the enforcement of the provisions of this chapter has neglected or failed to perform his duty, to enforce the performance of such duty. [C24, 27, 31, 35, §4828; C39, §4829.21; C46, §317.22; C50, 54, §317.23]

**317.24 Punishment of officer.** Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon him under the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [S13, §1565-i; C24, 27, 31, 35, §4829; C39, §4829.22; C46, §317.23; C50, 54, §317.24]

*Constitutionality, 47GA, ch 131*

## CHAPTER 318

### HEDGES ALONG HIGHWAYS

318.1 Hedges and windbreaks—trimming.  
318.2 Destruction by supervisors—tax.  
318.3 Expenses.

318.4 Sale of wood—costs—balance.  
318.5 Exceptions.

**318.1 Hedges and windbreaks—trimming.** The owners of osage orange and hedges of shrubbery other than trees along the public highway shall keep the same trimmed by cutting back within five feet of the ground at least once in every two years, and burn or remove the trimmings from off the road. With the exception of osage orange hedge fences, no trees or shrubbery, except as hereinafter provided, shall be permitted on the line or within the limits of the highway, unless the same shall be used as a windbreak for residences, orchards or feed lot, and no windbreak shall exceed forty rods in length, such forty rods to be determined by the owner within one day when requested by the board of supervisors; and in case he neglect or refuse to designate the forty rods of windbreak he desires, the board of supervisors shall select such forty rods of hedge. [C73, §999; C97, §1570; S13, §1570; C24, 27, 31, 35, 39, §4830; C46, 50, 54, §318.1]

See §314.7

**318.2 Destruction by supervisors—tax.** The board of supervisors shall have the authority to enforce the provisions of this chapter and destroy or cut back the hedges or trees, as specified above, upon the failure of any owner of the hedge or fence so to do. The board of supervisors shall cause notice in writing to be served upon any owner of any hedge or trees described above, to destroy or trim the same, and upon complaint of any resident of the county the board of supervisors must serve such notice and destroy said trees or trim said hedge; and if the owner of the hedge or trees shall fail to destroy or cut back and trim them as herein required, within sixty

days after receiving notice so to do, the board of supervisors shall cause the destruction or trimming of such hedge or trees to be done, as herein provided, and the cost thereof shall be certified by the said board to the county auditor and the same shall be assessed as taxes against the land upon which the said hedge or trees were destroyed or trimmed, which tax shall be collected by the county treasurer in the manner other taxes are collected. [C73, §999; C97, §1570; S13, §1570; C24, 27, 31, 35, 39, §4831; C46, 50, 54, §318.2]

See §314.7

**318.3 Expenses.** The expense of such destruction including costs of serving said notice and the costs if any of any special meetings may be advanced from the secondary road funds, which fund shall be reimbursed when the tax aforesaid is collected. [C27, 31, 35, §4831-b1; C39, §4831.1; C46, 50, 54, §318.3]

**318.4 Sale of wood—costs—balance.** In case the wood left from the cutting or trimming of said hedge or trees shall, in the judgment of the board of supervisors, more than pay for the cost of advertising and selling the same, the same shall be sold at public auction after giving ten days notice thereof in the local newspaper nearest the hedge or trees destroyed, and the proceeds of the sale above the cost of trimming, cutting or destroying, selling and advertising for sale, shall be turned over to the owner of the hedge or trees. [C24, 27, 31, 35, 39, §4832; C46, 50, 54, §318.4]

**318.5 Exceptions.** This chapter shall not apply to evergreen trees, walnut trees, oak or maple trees, or other hardwood trees which

in the judgment of the board of supervisors should be let stand, nor shall it apply to trees along the highway which are a part of a grove or forest that extends more than five rods from the road line; nor to any single tree or

group of trees (not exceeding ten in number) which by reason of their age or beauty the board of supervisors in its judgment believes should not be cut down. [C24, 27, 31, 35, 39, §4833; C46, 50, 54, §318.5]

## CHAPTER 319 OBSTRUCTIONS IN HIGHWAYS

319.1 Removal.  
319.2 Fences and electric transmission poles.  
319.3 Notice.  
319.4 Refusal to remove.  
319.5 New lines.  
319.6 Cost of removal—liability.  
319.7 Duty of road officers.

319.8 Nuisance.  
319.9 Injunction to restrain obstructions.  
319.10 Billboards and signs.  
319.11 Enforcement.  
319.12 Billboards and signs prohibited.  
319.13 Right and duty to remove.

**319.1 Removal.** The state highway commission and the board of supervisors shall cause all obstructions in highways, under their respective jurisdictions, to be removed. [C51, §594; R60, §905; C73, §993; C97, §1560; S13, §§1527-s17, 1560; C24, 27, 31, 35, 39, §4834; C46, 50, 54, §319.1]

there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said location. [S13, §1527-s17; C24, 27, 31, 35, 39, §4838; C46, 50, 54, §319.5]

**319.2 Fences and electric transmission poles.** Poles used for telephone, telegraph, or other transmission purposes, shall not be removed until notice, in writing, of not less than thirty days, has been given to the owner or company operating such lines, and in case of fences, notice in writing of not less than sixty days has been given to the owner, occupant, or agent of the land inclosed by said fence. [C51, §594; R60, §905; C73, §993; C97, §1560; S13, §§1527-s17, 1560; C24, 27, 31, 35, 39, §4835; C46, 50, 54, §319.2]

**319.6 Cost of removal—liability.** Any removal made in compliance with the foregoing sections shall be at the expense of the owners of said fences or poles. All removals shall be without liability on the part of any officer ordering or effecting such removal. [S13, §1527-s17; C24, 27, 31, 35, 39, §4839; C46, 50, 54, §319.6]

**319.3 Notice.** Said notice shall, with reasonable certainty, specify the line to which such fences or poles shall be removed, and shall be served in the same manner that original notices are required to be served. [S13, §1527-s17; C24, 27, 31, 35, 39, §4836; C46, 50, 54, §319.3]

**319.7 Duty of road officers.** It shall be the duty of all officers responsible for the care of public highways, outside cities and towns, to remove from the traveled portion of the highways within their several jurisdictions, all open ditches, water breaks, and like obstructions, and to employ labor for this purpose in the same manner as for the repair of highways. [S13, §§1560-b, e; C24, 27, 31, 35, 39, §4840; C46, 50, 54, §319.7]

Manner of service, R.C.P. 56(a)

Referred to in §319.8

**319.4 Refusal to remove.** All such fences and poles shall, within the time named, be removed to such line on the highway as the state highway engineer or county engineer may designate, as the case may be. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said line. If not so removed, the public authorities may forthwith remove them. [S13, §1527; C24, 27, 31, 35, 39, §4837; C46, 50, 54, §319.4]

**319.8 Nuisance.** Any person, partnership or corporation who makes, or causes to be made, any obstruction mentioned in section 319.7, in such traveled way, and any officer responsible for the care of such highway who knowingly fails to remove said obstructions, shall be deemed to have created a public nuisance and be punished accordingly. [S13, §§1560-a, c; C24, 27, 31, 35, 39, §4841; C46, 50, 54, §319.8]

Nuisances in general, ch 657

**319.5 New lines.** New lines, or parts of lines hereafter constructed, shall, in case of secondary roads, be located by the county engineer upon written application filed with the county auditor, and in case of primary roads, by the state highway engineer upon written application filed with the state highway commission, and shall thereafter be removable according to the provisions of this chapter. If

**319.9 Injunction to restrain obstructions.** The state highway commission, and the board of supervisors may, as to roads under their respective jurisdictions, maintain suits in equity aided by injunction to restrain obstruction in such highways, and, in such actions, may cause the legal boundary lines of such highway to be adjudicated provided all interested parties are impleaded. [C24, 27, 31, 35, 39, §4842; C46, 50, 54, §319.9]

**319.10 Billboards and signs.** Billboards and advertising signs, whether on public or private property, which so obstruct the view of any portion of a public highway or of a railway track as to render dangerous the use of

a public highway are public nuisances and may be abated, and the person or persons responsible for the erection and maintenance may be punished, as provided in the chapter on nuisances. [C24, 27, 31, 35, 39,§4844; C46, 50, 54,§319.10]

Referred to in §319.11  
Nuisances in general, ch 657

**319.11 Enforcement.** Boards of supervisors and county attorneys as to secondary roads, and the state highway commission and the attorney general as to primary roads, shall enforce section 319.10 by appropriate civil or criminal proceeding or by both such proceedings. [C24, 27, 31, 35, 39,§4845; C46, 50, 54, §319.11]

**319.12 Billboards and signs prohibited.** Billboards and advertising signs shall not hereafter be placed or erected within the boundary lines of the public highways. [C24, 27, 31, 35, 39,§4846; C46, 50, 54,§319.12]

**319.13 Right and duty to remove.** All billboards and advertising signs now placed or erected within the boundary lines of public highways shall, without liability in damages, be removable:

1. By the state highway commission, in case of primary roads.

2. By the board of supervisors, in case of secondary roads. [C24, 27, 31, 35, 39,§4847; C46, 50, 54,§319.13]

## CHAPTER 320

### USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

- 320.1 Construction of sidewalks in certain school districts.
- 320.2 Assessment of costs.
- 320.3 Repairs.
- 320.4 Water and gas mains, sidewalks, and cattleways.

- 320.5 Term of grant.
- 320.6 Conditions—damages.
- 320.7 Failure to maintain.
- 320.8 Penalty.

**320.1 Construction of sidewalks in certain school districts.** Where an independent school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city or town, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five percent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse. [C27, 31, 35,§4857-b1; C39, §4857.1; C46, 50, 54,§320.1]

42GA, ch 95,§1, editorially divided

**320.2 Assessment of costs.** Said work shall be undertaken and consummated and the cost thereof assessed to the abutting property in the manner and method and with the same effect as provided for the construction of sidewalks and the assessment of the costs thereof against benefited property by city councils within the limits of a city or town. [C27, 31, 35,§4857-b2; C39,§4857.2; C46, 50, 54,§320.2]

**320.3 Repairs.** After the construction of such sidewalk the board of supervisors shall keep the same in repair and assess and certify the cost thereof in the same manner and to the same extent in which like repairs are assessed and certified by city councils. [C27, 31, 35, §4857-b3; C39,§4857.3; C46, 50, 54,§320.3]

**320.4 Water and gas mains, sidewalks, and cattleways.** The state highway commission in

case of primary roads, and the board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired, may grant permission:

1. To lay gas and water mains in highways outside cities and towns to local municipal distributing plants or companies, but not to pipe-line companies. This section shall not apply to or include pipe-line companies required to obtain a license from the Iowa state commerce commission.

2. To construct and maintain cattleways over or under such highways.

3. To construct sidewalks on and along such highways. [C97,§1524; S13,§1527-e; SS15,§1527-b; C24, 27, 31, 35, 39,§4858; C46, 50, 54,§320.4]

**320.5 Term of grant.** Such grants shall be on such reasonable conditions as the board may exact, and on such as the general assembly may hereafter prescribe. Grants for gas or water mains shall not exceed twenty years. [C97,§1524; S13,§1527-e; C24, 27, 31, 35, 39,§4859; C46, 50, 54,§320.5]

**320.6 Conditions — damages.** Such mains, pipes, and cattleways shall be so erected and maintained as not to interfere with public travel or with the future improvement of the highway. The owner of such mains, pipes, and cattleways shall be responsible for all damages arising from the laying, maintenance, or erection of the same or from the same not being kept in a proper state of repair.

The location of such mains or pipes shall be changed, on reasonable notice, when such

change shall be necessary in the improvement or maintenance of the highway. [C97, §1524; S13, §1527-e; SS15, §1527-b; C24, 27, 31, 35, 39, §4860; C46, 50, 54, §320.6]

**320.7 Failure to maintain.** Failure of the grantee to comply with the terms of the grant shall be ground for forfeiture of the grant. [C24, 27, 31, 35, 39, §4861; C46, 50, 54, §320.7]

**320.8 Penalty.** Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying

of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. It shall be the duty of the state highway commission and of the board of supervisors, as regards the highways under their respective jurisdictions, to enforce the provisions of this section and the laws relating thereto. [S13, §1527-d; C24, 27, 31, 35, 39, §4862; C46, 50, 54, §320.8]

## **MOTOR VEHICLES**

## CHAPTER 321

## MOTOR VEHICLES AND LAW OF ROAD

Referred to in §§81.3, 135D.10, 312.1, 312.7, 322.9, 322.25, 326.2, 327A.6

Civil liability as to city police and firemen, see §321.495 et seq.

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#### DEFINITIONS

**321.1 Definitions of words and phrases.** The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or

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used exclusively upon stationary rails or tracks.

2. "Motor vehicle" means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The terms "car" or "automobile" shall be synonymous with the term "motor vehicle".  
 "Used motor vehicle" or "second-hand motor

vehicle" means any motor vehicle of a type subject to registration under the laws of this state which have been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

3. "Motorcycle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter and a bicycle with motor attached but excluding a tractor.

4. "Motor truck" means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over seven persons as passengers.

5. "Light delivery truck," "panel delivery truck" or "pickup" means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

6. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

7. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

8. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

9. "Trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

10. "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word "trailer" is used in this chapter, same shall be construed to also include "semitrailer".

A "semitrailer" shall be considered in this chapter separately from its power unit.

11. "Trailer coach" means either a trailer or semitrailer designed for carrying persons.

12. "Specially constructed vehicle" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

13. "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

14. "Essential parts" mean all integral and body parts of a vehicle of a type required to

be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

15. "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

16. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations and shall include portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of his agricultural operations, provided however, that such chutes are not used as a vehicle on the highway for the purpose of transporting property. It shall also include equipment of any kind for the storage, transportation, application, or any combination thereof, of anhydrous ammonia or other liquid commercial fertilizer used by owners of agricultural operations or dealers and distributors in delivering to, and supplying such owners.

17. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery and ditch-digging apparatus. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subsection; provided that nothing contained in this section shall be construed to include portable mills or cornshellers mounted upon a motor vehicle or semitrailer.

18. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

19. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

20. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

21. "Where a vehicle is kept" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

22. "Garage" means every place of business where motor vehicles are received for housing, storage, or repair, for compensation.

23. "Combination" or "combination of vehicles" shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the

purpose of being moved on the highways as a unit.

24. "Gross weight" shall mean the empty weight of a vehicle plus the maximum load to be carried thereon. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

25. "Combined gross weight" shall mean the gross weight of a motor vehicle plus the gross weight of a trailer or semitrailer to be drawn thereby.

26. "Authorized emergency vehicle" means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality therein, and such privately owned ambulances, rescue or disaster vehicles as are designated or authorized by the commissioner.

27. "School bus" means every vehicle operated for the transportation of children to or from school, except privately owned vehicles, not operated for compensation, or used exclusively in the transportation of the children in the immediate family of the driver.

28. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

29. "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

30. "Streetcar" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

31. "Explosives" mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that on ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

32. "Flammable liquid" means any liquid which has a flash point of seventy degrees F. or less, as determined by a Tagliabue or equivalent closed cup test device.

33. "Commissioner" means the commissioner of public safety of the state.

34. "Department" means the motor vehicle department under the commissioner of public safety.

35. "Person" means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall

include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesman, or otherwise.

See also §321.499

36. "Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

37. "Nonresident" means every person who is not a resident of this state.

38. "Dealer" means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

39. "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

40. "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

41. "Established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

42. "Operator" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

43. "Chauffeur" means any person who operates a motor vehicle in the transportation of persons, including school busses, for wages, compensation or hire, or any person who operates a truck tractor, road tractor or any motor truck which is required to be registered at a gross weight classification exceeding five tons, or any such motor vehicle exempt from registration which would be within such gross weight classification if not so exempt except when such operation by the owner or operator is occasional and merely incidental to his principal business.

Subject to the provisions of section 321.179, a farmer or his hired help shall not be deemed a chauffeur, when operating a truck owned by him, and used exclusively in connection with the transportation of his own products or property.

44. "Driver" means every person who drives or is in actual physical control of a vehicle.

45. "Peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 748.3.

46. "Local authorities" mean every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.

47. "Pedestrian" means any person afoot.

48. "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

49. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

50. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

51. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

52. "Laned highway" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

53. "Through (or thru) highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a police officer or traffic-control signal. The term "arterial" shall be synonymous with "through" or "thru" when applied to highways of this state.

54. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

55. "Crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or,

Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

56. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

57. "Business district" means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon

for a distance of three hundred feet or more is occupied by buildings in use for business.

58. "Residence district" means the territory within a city or town contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

59. "School district" means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city or town.

60. "Suburban district" means all other parts of a city or town not included in the business, school or residence districts.

61. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building", and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

62. "Official traffic control devices" mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

63. "Official traffic control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

64. "Railroad sign" or "signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

65. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

66. "Right of way" means the privilege of the immediate use of the highway.

67. "Alley" means a thoroughfare laid out, established and platted as such, by constituted authority. [S13, §§1571-m1, -m20; C24, 27, §§4863, 5030, 13012; C31, 35, §§4863, 4960-d1, 5030, 13012; C39, §5000.01; C46, 50, 54, §321.1; 56GA, ch 154, §1; ch 155, §1; 57GA, ch 145, §1]

Referred to in §§321.285, 556.1

#### DEPARTMENT OF MOTOR VEHICLES

**321.2 What constitutes department.** The department of public safety, under the commissioner thereof, shall constitute the motor vehicle department for the administration and enforcement of this chapter. [C24, 27, 31, 35, §4863; C39, §5000.02; C46, 50, 54, §321.2]

**321.3 Powers and duties of commissioner.** The commissioner is hereby vested with the power and is charged with the duty of observ-

ing, administering, and enforcing the provisions of this chapter. [C39,§5000.03; C46, 50, 54,§321.3]

**321.4 Rules and regulations.** The commissioner is hereby authorized to adopt and enforce such departmental rules and regulations governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the department. [C24, 27, 31, 35,§5004; C39,§5000.04; C46, 50, 54,§321.4]

**321.5 Duty to obey.** All local officials charged with the administration and enforcement of this chapter shall be governed in their official acts by the rules promulgated by the department. [C24, 27, 31, 35,§5005; C39,§5000.05; C46, 50, 54,§321.5]

**321.6 Reciprocal enforcement—patrol beats in towns.** There shall be reciprocal co-operation between the members of the state department of public safety and local authorities in the enforcing of local and state traffic laws and in making inspections, although this shall not be construed to give the state department of public safety any right to establish regular patrol beats inside municipal limits unless requested for a special occasion or emergency by the mayor of such city or town or the sheriff of the county. [C24, 27, 31, 35,§5017; C39,§5000.06; C46, 50, 54,§321.6]

**321.7 Seal of department.** The department may adopt an official seal. [C39,§5000.07; C46, 50, 54,§321.7]

**321.8 Commissioner to prescribe forms.** The commissioner shall prescribe and provide suitable forms of applications, registration cards, certificates of title and all other forms requisite or deemed necessary to carry out the provisions of this chapter and any other laws, the enforcement and administration of which are vested in the department except manufacturer's or importer's certificates. [C39, §5000.08; C46, 50, 54,§321.8]

**321.9 Authority to administer oaths.** Officers and employees of the department designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee. [C39, §5000.09; C46, 50, 54,§321.9]

**321.10 Certified copies of records.** The commissioner and such officers of the department as he may designate are hereby authorized to prepare under the seal of the department and deliver upon request a certified copy of any record of the department, charging a fee of fifty cents for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof. [C39,§5000.10; C46, 50, 54,§321.10]

**321.11 Records of department.** All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours. [C39,§5000.11; C46, 50, 54, §321.11]

**321.12 Obsolete records destroyed.** The commissioner may destroy any records of the department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the department. [C39, §5000.12; C46, 50, 54,§321.12]

**321.13 Authority to grant or refuse applications.** The department shall examine and determine the genuineness, regularity, and legality of every application lawfully made to the department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. [C39,§5000.13; C46, 50, 54,§321.13]

**321.14 Seizure of documents and plates.** The department is hereby authorized to take possession of any registration card, certificate of title, permit, or registration plate upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued. [C39,§5000.14; C46, 50, 54,§321.14]

**321.15 Publication of law.** The department shall issue such parts of this chapter in pamphlet form, together with such rules, instructions, and explanatory matter as may seem advisable. Copies of such pamphlet shall be given as wide distribution as the department shall determine and a supply shall be furnished each county treasurer. [C24, 27, 31, 35,§5018; C39,§5000.15; C46, 50, 54,§321.15]

**321.16 Giving of notices.** Whenever the department is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notices is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by restricted certified mail addressed to such person at his address as shown by the records of the department. Return acknowledgment is required to prove such latter service.

Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. [C39,§5000.16; C46, 50, 54,§321.16; 57GA, ch 267,§36]

**ORIGINAL AND RENEWAL OF REGISTRATION AND CERTIFICATE OF TITLE**

Title Act effective October 1, 1958, see 55GA, ch 127,§39

**321.17 Misdemeanor to violate registration provisions.** It is a misdemeanor punishable as provided in section 321.482, for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered, or for which the appropriate fee has not been paid when and as required hereunder. [C24, 27, 31, 35,§5085; C39,§5001.01; C46, 50, 54,§321.17]

**321.18 Vehicles subject to registration—exception.** Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by sections 321.53 and 321.56, or under a temporary registration permit issued by the department as hereinafter authorized.

2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

3. Any implement of husbandry.

4. Any special mobile equipment as herein defined.

5. Any vehicle which is used exclusively for interplant purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.

6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. [C24, 27, 31, 35, §4864; C39,§5001.02; C46, 50, 54,§321.18]

**321.19 General exemptions.** All vehicles owned by the government and used in the transaction of official business by the representatives of foreign powers or by officers, boards, or departments of the government of the United States, and by the state of Iowa, counties, municipalities and other subdivisions of government, and such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight, and all fire trucks, providing they are not owned and operated for a pecuniary profit, are hereby exempted from the payment of the fees in this chapter prescribed, but shall not be exempt from the penalties herein provided. The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates shall bear the word

“official”, and the department shall keep a separate record thereof. Provided that the executive council may order the issuance of regular registration plates, for any such exempted vehicle, used by peace officers in the enforcement of the law and persons enforcing the drug and narcotic laws. [C24, 27, 31, 35, §§4867, 4922; C39,§5001.03; C46, 50, 54,§321.19; 56GA, ch 156,§1]

Referred to in §§321.39, 321.166

**321.20 Application for registration and certificate of title.** Except as otherwise provided in this chapter, every owner of a vehicle subject to registration hereunder shall make application to the county treasurer, of the county of his residence, or to the department, if a non-resident, for the registration and issuance of a certificate of title thereof upon the appropriate form or forms furnished by the department, accompanied by a fee of seventy-five cents, and every such application shall bear the signature of the owner written with pen and ink and said signature shall be acknowledged by the owner before a person authorized to administer oaths and said application shall contain:

1. The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation.

2. A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45. [S13, SS15,§1571-m2; C24, 27, 31, 35,§§4869, 5008, 5009; C39,§5001.04; C46, 50, 54,§321.20; 56GA, ch 157,§1]

Referred to in §§321.29, 321.40

**321.21** Repealed by 55GA, ch 127,§4.

**321.22** Repealed by 55GA, ch 127,§5.

**321.23 Titles to specially constructed and foreign vehicles.**

1. In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application. A fee of seventy-five cents shall be paid by the person making such application upon issuance of a certificate of title by the county treasurer. With reference to every



specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing such motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application therefor by the owner thereof, to determine whether such motor vehicle is in a safe operating condition and that the integral component parts thereof are properly identified and that the rightful ownership is established before issuing such owner the authority to have the motor vehicle registered and titled as herein provided. With reference to every foreign vehicle which has been registered heretofore outside of this state the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if vehicle to be registered is from a nontitle state, such evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2 hereof.

2. Where in the course of operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidence of such foreign registration and the treasurer upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

3. In the event an applicant for registration of a foreign vehicle for which a certificate of title has been issued is able to furnish evidence of being the registered owner of the vehicle to the county treasurer of his residence, although unable to surrender such certificate of title, the county treasurer may issue a registration receipt and plates upon receipt of the required registration fee but shall not issue a certificate of title thereto. Upon surrender of the certificate of title from the foreign state, the county treasurer shall issue a certificate of title to the owner, or person entitled thereto, of such vehicle as provided in this chapter. [C39, §5001.07; C46, 50, 54, §321.23]

Referred to in §§321.30, 321.67

**321.24 Issuance of registration and certificate of title.** Upon receipt of the application for title and payment of the required fees for motor vehicle, trailer\*, or semitrailer, the county treasurer shall, when satisfied as to the genuineness and regularity thereof, issue a registration receipt and certificate of title and shall file the application, the manufacturer's or importer's certificate, certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon the face thereof the date issued, the name and address of the owner, the registration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid

and such description of the vehicle as determined by the department and upon the reverse side a form for notice of transfer of the vehicle. One copy of the registration receipt shall be retained by the county treasurer in a registration number file and said file shall be open for public inspection during reasonable business hours. Two copies shall be mailed to the department on date of issuance. The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration receipt and such information shall be so placed on the title form as to permit the county treasurer to prepare the certificate of title simultaneously with the registration receipt. In addition thereto, the certificate of title shall contain a statement of the owner's title, name and address of previous owner, and a statement of all liens and encumbrances as shown in the application, upon the vehicle therein described including the nature of the lien or liens, amount, date of notation and name and address of lienholder or lienholders. Said certificate shall bear thereon the seal of the county treasurer, his signature or that of his deputy, and shall provide space for the signature of the owner. The owner shall write his name in the space provided with pen and ink upon receipt of certificate of title. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty thereof by the owner, for reassignments by a licensed dealer and for application for a new certificate of title by the transferee as provided in this chapter. All certificates of title shall be typewritten and shall be issued in triplicate. The original certificate of title shall be delivered to the owner in the event no lien or encumbrance appears thereon. Otherwise the certificate of title shall be delivered by the county treasurer to the person holding the first lien or encumbrance as shown in the certificate. One copy of the certificate shall be retained by the county treasurer in a title number file in the manner prescribed by the department and shall remain in the file of the county issuing the title until notification of cancellation or that a new title has been issued as provided in this chapter. One copy shall be mailed to the department on the date of issuance. The department shall designate a uniform system of title numbers so as to indicate the county of issuance. [C24, 27, 31, 35, §4873; C39, §5001.08; C46, 50, 54, §321.24]

Referred to in §321.46

\*Certain trailers exempt, see §321.123

**321.25 Application for registration and title—cards attached.** Upon the sale of a motor vehicle by a manufacturer or dealer, the vendee shall at once make application by mail or otherwise, for registration and certificate of title thereof, after which he may operate the same upon the public highway without its individual number plate thereon for a period of not more than five days, provided that during such period the motor vehicle shall have

attached thereto, in accordance with the provisions hereof, on the rear of such vehicle, a pasteboard card bearing the words, "registration applied for" and the registration number of the dealer from whom the vehicle was purchased together with the date of purchase plainly stamped or stenciled thereon. [S13, §1571-m10; C24, 27, 31, 35, §4880; C39, §5001.09; C46, 50, 54, §321.25]

**321.26 Card issued conditionally.** No manufacturer or dealer shall permit the use of such card until an application for a registration and certificate of title has been made, as herein provided, and receipt issued to the user of the card by such manufacturer or dealer showing the fee paid by the person making the application, the county treasurer, or proper county or state official if purchaser is from a foreign state, to whom fee was mailed or delivered and the date of mailing or delivery of fee. [S13, §1571-m10; C24, 27, 31, 35, §4881; C39, §5001.10; C46, 50, 54, §321.26]

**321.27 Cards furnished.** The department shall, upon the application of any manufacturer or dealer, furnish "registration applied for" cards free of charge. No cards shall be used except those furnished by the department. [C24, 27, 31, 35, §4885; C39, §5001.11; C46, 50, 54, §321.27]

**321.28 Failure to register.** The treasurer shall withhold the registration of any vehicle the owner of which shall have failed to register the same under the provisions of this chapter, for any previous period or periods for which it appears that registration should have been made, until the fee for such previous period or periods shall be paid. [C24, 27, 31, 35, §4870; C39, §5001.12; C46, 50, 54, §321.28]

**321.29 Renewal not permitted.** Any vehicle once registered in the state and by removal no longer subject to registration in this state, shall upon being returned to this state and subject to registration be again registered in accordance with section 321.20. [C24, 27, 31, 35, §4876; C39, §5001.13; C46, 50, 54, §321.29]

**321.30 Grounds for refusing registration or title.** The treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required sales tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23. [C39, §5001.14; C46, 50, 54, §321.30]

**321.31 Files required.** The department shall install and maintain a numerical file which shall contain the following information, viz: name and address of owner, previous registration number, make, factory number, model, style, engine number, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The department shall also install and maintain an alphabetical file under the name of the owner for the state at large and not for individual counties. Such file shall consist of a copy of the certificate of title including the notations of all liens recorded and released and such other information as the department deems necessary. The information to be kept in such file shall be entered therein within forty-eight hours after receipt insofar as is practical. The department shall also install and maintain a file by motor number, or other identifying number of the vehicle, which shall contain a full description of the vehicle as described on the certificate of title and the name and address of the previous owner. This file shall constitute the permanent history record of ownership of each vehicle titled under the laws of this state. [S13, §1571-m2; C24, 27, 31, 35, §5010; C39, §5001.15; C46, 50, 54, §321.31]

**321.32 Registration card signed, carried, and exhibited.** Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers and shall be displayed in the container furnished by the department. Such certificate container shall be attached to the vehicle in the driver's

compartment so that same may be plainly seen without entering the car. [S13,§1571-m11; C24, 27, 31, 35,§4879; C39,§5001.16; C46, 50, 54,§321.32]

**321.33 Exception.** The provisions requiring that a registration card be carried in the vehicle to which it refers shall not apply when such card is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle. [C39, §5001.17; C46, 50, 54,§321.33]

**321.34 Plates or emblems furnished.** The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, or semi-trailer and two registration plates for every other motor vehicle.

In lieu of issuing new registration plates each year for a vehicle renewing registration, the department may reassign the registration plates previously issued to such vehicle and may adopt and prescribe a distinctive type of emblem indicating payment of registration fee, which emblem shall be displayed in the upper right-hand corner of the windshield of the vehicle for which it is issued or it may prescribe corner plates to be attached to said registration plates bearing the numerals indicating the year for which the original plates are validated. [SS15,§1571-m5; C24, 27, 31, 35, §4874; C39,§5001.18; C46, 50, 54,§321.34]

Referred to in §321.167

**321.35 Numbers on plates.** Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof. [S13,§§1571-m12,-m13; C24, 27, 31, 35,§4978; C39,§5001.19; C46, 50, 54,§321.35]

**321.36 Size of numbers.** Such registration plate and the required letters and numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight. [S13,§§1571-m12,-m13; C24, 27, 31, 35,§4978; C39,§5001.20; C46, 50, 54,§321.36]

**321.37 Display of plates.** Registration plates issued for a motor vehicle other than a motorcycle shall be attached thereto, one in the front and the other in the rear. The registration plate issued for a motorcycle or other vehicle required to be registered hereunder shall be attached to the rear thereof. [S13,§1571-m11; C24, 27, 31, 35,§4877; C39,§5001.21; C46, 50, 54, §321.37]

Referred to in §321.57

**321.38 Plates, method of attaching.** Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be main-

tained free from foreign materials or imitation plate or plates imitating or purporting to imitate the official license plate of any other state or territory of the United States or of any foreign government and in a condition to be clearly legible. [S13,§1571-m11; C24, 27, 31, 35,§4877; C39,§5001.22; C46, 50, 54,§321.38]

Referred to in §321.57

**321.39 Expiration of registration.** Every vehicle registration under this chapter and every registration card and registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year. The provisions of this section shall not apply to any vehicle which is registered without the payment of fees as provided in section 321.19, but the registration plate or plates issued for such vehicle shall remain valid until suspended or revoked or canceled by the department, or until the title or ownership of such vehicle has been transferred. [S13,§1571-m16; C24, 27, 31, 35,§4868; C39,§5001.23; C46, 50, 54,§321.39]

**321.40 Application for renewal—titles to older vehicles.** Application for renewal of a vehicle registration shall be made on or after December 1 of the year for which it is registered by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means and shall be prepared in triplicate. The original registration receipt shall be issued to the applicant, one copy retained in the county treasurer's file and one copy shall be forwarded to the department.

No registration of a vehicle shall be renewed for the year 1958 unless the owner thereof shall have obtained a certificate of title therefor prior to such renewal. Any owner of a vehicle registered in this state prior to October 1, 1953 and for which a certificate of title has not previously been issued may apply for a certificate of title for such vehicle as provided in section 321.20 as amended by this Act with the exception that the current registration receipt only need accompany the application. A fee of seventy-five cents shall accompany such application. [S13,§1571-m6; C24, 27, 31, 35,§4875; C39,§5001.24; C46, 50, 54, §321.40]

**321.41 Change of address or name.** Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the county treasurer of the county in which the registration of said vehicle is of record, in writing of his old and new addresses.

Whenever the name of any person who has made application for or obtained the registra-

tion of a vehicle is thereafter changed by marriage or otherwise such person shall within ten days notify the county treasurer of the county in which the title of said vehicle is of record, of such former and new name. [C39, §5001.25; C46, 50, 54, §321.41]

**321.42 Lost or damaged certificates, cards, and plates.** In the event any registration card or registration plate is lost, mutilated, or becomes illegible the owner shall immediately make application for and may obtain a duplicate upon the applicant furnishing information satisfactory to the department together with the payment of a fee of fifty cents for each such plate or registration card.

In the event of any lost or destroyed certificate of title, application shall be made to the department by the owner of such vehicle, or the holder of a lien thereon, for a certified copy of the same upon a form prescribed by the department and accompanied by a fee of two dollars. Such application shall be signed and sworn to by the person making the same. Thereupon the department shall mail a certified copy to the person entitled to receive the certificate of title as indicated by the records of the department at his most recent address shown by such records. Such certified copy shall clearly be marked "duplicate" and shall be identical in every respect to the original to include notation upon the face thereon of liens or encumbrances disclosed by the records of the department. Upon issuance of title the previous certificate last issued shall be void. The new purchaser or transferee shall be entitled to receive an original title upon presentation of the assigned duplicate copy to the county treasurer of the county where such new purchaser or transferee resides. Any purchaser of such vehicle may, at the time of purchase, require the seller of same to indemnify him and all subsequent purchasers of such vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the original certificate. Any person recovering an original certificate of title for which a duplicate has been issued shall forthwith surrender the same to a county treasurer or the department. [SS15, §1571-m5; C24, 27, 31, 35, §4886; C39, §5001.26; C46, 50, 54, §321.42]

**321.43 New identifying numbers.** The department is authorized to assign a distinguishing number to a vehicle whenever the serial number thereon is destroyed or obliterated and to issue to the owner a special plate bearing such distinguishing number which shall be affixed to the vehicle in a position to be determined by the commissioner. Such vehicle shall be registered and titled under such distinguishing number in lieu of the former serial number. [C27, 31, 35, §5083-b4; C39, §5001.27; C46, 50, 54, §321.43]

**321.44 Regulations governing change of motors.** The commissioner is authorized to adopt and enforce such registration rules and regula-

tions as may be deemed necessary and compatible with the public interest with respect to the change or substitution of one engine in place of another in any motor vehicle. [C39, §5001.28; C46, 50, 54, §321.44]

#### TRANSFERS OF TITLE OR INTEREST

**321.45 Title must be transferred with vehicle.**

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

2. Except as provided in section 321.50 and except for the purpose of section 321.493 no person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to him for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to him for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration. Except as provided in section 321.50 and except for the purpose of section 321.493, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall indorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, which statement shall be verified under oath by the owner, and he shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner, except as otherwise provided in this chapter, shall also sign the reverse side of the registration card

issued for such vehicle indicating the name and address of the transferee and the date of the transfer. [S13,§1571-m9; C24, 27, 31, 35, §4961; C39,§5002.01; C46, 50, 54,§321.45; 56GA, ch 157,§2; ch 159,§1]

Referred to in §§321.20, 321.67  
Referred to in §321.493

**321.46 New title upon transfer of registration.** The purchaser or transferee shall immediately apply for and obtain from the county treasurer of his residence a transfer of registration and a new certificate of title for such vehicle except as provided in section 321.48. The purchaser or transferee shall present with the application the certificate of title indorsed and assigned by the previous owner and the signed registration card.

Upon filing the application for a registration transfer and a new title, the applicant shall pay a fee of seventy-five cents. The county treasurer, if satisfied of the genuineness and regularity of the application and that applicant has complied with all the requirements of this chapter, shall forthwith issue a new certificate of title and registration card to the purchaser or transferee and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24. [S13,§1571-m9; C24, 27, 31, 35,§4962; C39,§5002.02; C46, 50, 54,§321.46]

**321.47 Transfers by operation of law.** In the event of the transfer of ownership of any vehicle by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, or whenever the engine of a motor vehicle is replaced by another engine, or whenever a vehicle is sold to satisfy an artisan's lien as provided in chapter 577, or is sold to satisfy a landlord's lien as provided in chapter 570, or a storage lien as provided in chapter 579, or repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract or other like agreement, the treasurer of the county in which the last certificate of title to any such vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to such vehicle and upon payment of a fee of seventy-five cents and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for such vehicle and a certificate of title thereto. The person or persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing said affidavit, and that there has been no administration of the said decedent's estate, which instrument shall also contain an agreement to indemnify any creditors of the decedent who would be enti-

tled to levy execution upon said motor vehicle to the extent of the value of said motor vehicle, shall be entitled upon fulfilling the other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in such vehicle and a certificate of title thereto. No requirement of either chapter 450 or 451 shall be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any lien or liens on such vehicle, such certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a chattel mortgage was foreclosed as provided in chapter 652, or stating that repossession was had upon default in performance of a conditional sales contract and that the vehicle was sold or the rights of the conditional vendee thereunder forfeited not less than ten days after notice of sale or forfeiture was mailed by certified mail to each holder of a lien at his address shown on the prior certificate of title or on the records in the office of the county treasurer. [S13,§1571-m9; C24, 27, 31, 35,§4963; C39,§5002.03; C46, 50, 54,§321.47; 56GA, ch 157,§3; 57GA, ch 267,§94]

**321.48 Vehicles acquired for resale.**

1. When the transferee or purchaser of a vehicle is a dealer who holds the same for resale and operates the same only for purposes incident to a resale and displays thereon the registration plates issued for such vehicle, or displays his dealer plates thereon or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain transfer of registration or a new certificate of title but upon transferring his title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to him and deliver the same to the person to whom such transfer is made. The dealer shall also sign the reverse side of the registration card for such vehicle indicating the name and address of the new purchaser.

2. Any foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title thereto by the county treasurer of the dealer's residence upon proper application therefor as provided in this chapter and upon payment of a fee of seventy-five cents and such dealer shall be exempt from the payment of any and all registration fees for such vehicle. Such application for certificate of title shall be made within forty-eight hours after said vehicle comes within the border of the state.

3. Whenever a dealer purchases or otherwise acquires a vehicle registered in this state he shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner and the registration num-

ber of the vehicle purchased or acquired. The original receipt shall be delivered to the owner on the date of purchase or acquisition and two copies shall be mailed or delivered by the dealer to the county treasurer of his residence within forty-eight hours after purchase or acquisition. The county treasurer shall forward one copy to the department. Forms for such receipts shall be furnished by the department.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title and transfer of registration in the same manner as other purchasers. [C24, 27, 31, 35, §4965; C39, §5002.04; C46, 50, 54, §321.48; 56GA, ch 159, §§2, 3.]

Referred to in §§321.30, 321.46, 322.9

#### **321.49 Time limit—power of attorney.**

1. If an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of purchaser or transferee within five days of the date of assignment or transfer of title, a penalty of five dollars shall accrue against said vehicle, and no registration card or certificate of title shall thereafter be issued until penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title. [C24, 27, 31, 35, §4966; C39, §5002.05; C46, 50, 54, §321.49; 56GA, ch 157, §9]

**321.50 Lien provisions.** The provisions of chapter 556 shall never be construed to apply to or permit or require the deposit, filing or other record whatsoever, of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument, or any copy of the same covering a vehicle subject to registration under the laws of this state, except trailers subject to a registration fee of ten dollars or less. Provided, the inclusion of a motor vehicle in a chattel mortgage describing other property as security shall not deprive said chattel mortgage of eligibility for filing or recording in the office of the county recorder. Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract or similar instrument covering such vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of said instrument or, in the case of the certificate of title, if a notation of same has been made by the county treasurer on the face thereof, shall be valid as against the creditors of the mortgagor, whether armed with process or not, and subsequent purchasers, mortgagees and other lienholders or claimants, but otherwise shall not be valid against them. The county treasurer shall note upon the certificate of title all liens shown in the application for such certificate of title, upon the payment

of a fee of one dollar for each lien appearing on such application. All liens, mortgages and encumbrances, noted on a certificate of title, shall take priority according to the order of time in which the same are noted thereon by the county treasurer. Exposure for sale of any such vehicle by the owner thereof, with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against subsequent purchasers or the creditors of such owner or holder of subsequent liens, mortgages or encumbrances upon such motor vehicle or trailer. The holder of a chattel mortgage, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument or certified true copy thereof, to the treasurer of the county where such certificate of title was issued, together with the certificate of title and a fee of one dollar, may have a notation of such lien made on the face of such certificate of title. The county treasurer shall enter said notation and the date thereof over the signature of such officer or deputy and the seal of office, and he shall also note such lien and the date thereof on the duplicate of same on file, and on that day shall notify the department on forms provided by the department, which shall note such liens on the duplicate title in its file. The county treasurer shall also indicate by appropriate notation on such instrument itself or certified true copy thereof, the fact that such lien has been noted on the certificate of title. The county treasurer upon receipt of a lien duly executed in the manner prescribed by law governing such lien instruments, together with the fee prescribed for notation of lien, shall mail a notification to the first lienholder at the address of such first lienholder as indicated by records of the county treasurer, to deliver to the county treasurer, within fifteen days from the date of notice, the certificate of title to permit notation of such junior lien. After such notation of lien, the county treasurer shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer for the purpose of showing the junior lien on such certificate of title within fifteen days from the date when notified to do so by the county treasurer, shall be liable for damages to such junior lienholder for the amount of damages such junior lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the said certificate of title. When a lien is discharged, the holder thereof shall execute a notarized release within twenty days after payment is received, such release to contain the certificate of title number, the amount of the lien and the date of the notation thereof. The holder shall also note a cancellation of same on the face of the certificate of title over his, her or its signature, and deliver the release and certificate of title to the county treasurer where title was issued who shall note the cancellation of said lien on the face of the certificate of title and on the

duplicate of same on file in his office, and on the same day shall notify the department, which shall note such release on the duplicate title in its file. The county treasurer shall then deliver the certificate of title to the then first lienholder, or, if there is no such person, to the owner, or as otherwise directed by the owner. Said cancellation of lien shall be noted on the certificate of title by the county treasurer without charge. The provisions of chapter 556 shall continue to apply to the deposit, filing, refiling or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made prior to October 1, 1953, and covering a motor vehicle, semitrailer or trailer. [C24, 27, 31, 35, §4967; C39, §5002.06; C46, 50, 54, §321.50; 56GA, ch 157, §4]

Referred to in §321.46

**321.51** Repealed by 56GA, ch 157, §5, see §321.493.

**321.52 Dismantled or destroyed vehicles.**

1. When a vehicle is permanently dismantled or destroyed so that it can no longer be used on the public highway or is sold by the owner, dealer or otherwise, for junk, the owner shall detach the registration plates and registration card and surrender same along with the certificate of title to the county treasurer who shall cancel same on his records and forward the certificate of title to the department. The certificate of title surrendered by the owner shall have noted thereon the purpose of cancellation and the name of the purchaser if sold for junk and such notation shall be duly signed by the owner. The department shall notify the title issuing county, if other than the county where title was surrendered, authorizing the treasurer to cancel and destroy all records pertaining to the particular vehicle. The department is not authorized to make a refund of license fees on a dismantled, destroyed or junked vehicle unless and until the certificate of title thereto has been surrendered.

2. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, thereof, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over his signature. The owner shall surrender the plates and registration card to the county treasurer who shall cancel his records and shall destroy the plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle except the motor file. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless and until it receives the registration card completed as herein provided. [C24, 27, 31, 35, §4887; C39, §5002.08; C46, 50, 54, §321.52]

Referred to in §321.126

**PERMITS TO NONRESIDENT OWNERS**

**321.53 Nonresident owners of passenger vehicles.** A nonresident owner, except as provided in sections 321.54 to 321.56, inclusive, of a private passenger motor vehicle, not operated for hire, may operate or permit the operation of such vehicle within this state without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration plate or plates issued for such vehicle in the place of residence of such owner. A nonresident who leases a vehicle from a resident owner shall not be considered a nonresident owner of such vehicle for the purpose of exemption under this section. This section shall be operative to the extent that under the laws of the foreign country, state, territory, or federal district of such nonresident owner's residence like exemptions and privileges are granted to vehicles registered under the laws, and owned by residents, of this state. [S13, §1571-m16; C24, 27, 31, 35, §4865; C39, §5003.01; C46, 50, 54, §321.53]

Referred to in §321.18

**321.54 Registration required of certain nonresident carriers.** Nonresident owners of foreign vehicles operated within this state for the intrastate transportation of persons or property for compensation or for the intrastate transportation of merchandise shall register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state.

The term intrastate transportation as used herein shall mean the transportation for compensation of persons or property originating at any point or place in the state of Iowa and destined to any other point or place in said state irrespective of the route or highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation. [C39, §5003.02; C46, 50, 54, §321.54]

Referred to in §§321.53, 321.55

**321.55 Registration required of other nonresidents.** Every nonresident, in addition to those mentioned in section 321.54, but not including a person commuting from his residence in another state or whose employment is seasonal or temporary, engaged in remunerative employment or carrying on business within this state and owning and operating any motor vehicle, trailer, or semitrailer within this state, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. [C39, §5003.03; C46, 50, 54, §321.55]

Referred to in §321.53

**321.56 Reciprocity board—agreements.** 1. A board, to be known as the reciprocity board, is hereby established to be located at the seat of government. The board shall have



three members who shall be: A member of the state highway commission, to be designated by the state highway commission; a member of the state commerce commission, to be designated by the state commerce commission; and the commissioner of public safety. Each member of the board may appoint from the officials of his department a deputy member who shall, in the absence of such member, act as a member of the board with the full powers, authority and responsibility of such member. The duties of the members of the board and their deputies shall be in addition to their regular duties and they shall receive no additional compensation. The board shall maintain no staff, but shall use the staff, facilities, and personnel of the public safety department and the highway and commerce commissions. The attorney general or any assistant attorney general designated by him shall give legal counsel and assistance to the motor vehicle reciprocity board.

2. The motor vehicle reciprocity board shall have authority to make reciprocity agreements with the duly authorized representatives of any county, state, territory or federal district exempting the residents of such county, state, territory or federal district using the highways of this state from the registration requirements of this chapter with such restrictions, conditions, and privileges or lack of them as such board may deem advisable provided the residents of this state when using the highways of such other state shall receive exemptions of a similar kind to a like degree. Such agreements may provide for the denial of registration exemption to one or more particular nonresidents at any time if in the opinion of the board such nonresidents should not be granted exemption privileges. Notwithstanding any provisions of this chapter to the contrary or inconsistent herewith such agreements may provide with respect to resident or nonresident fleets of two or more commercial vehicles which are engaged in interstate movement, that the registrations of such fleets be apportioned between this state and the other states in which such fleets operate. The percentage of miles such fleets operate in this state, as related to the total miles such fleets operate in all states, shall be used by the board to determine what percentage of the total number of vehicles in such fleets are to be registered in this state. When a vehicle has been licensed in one of the reciprocating states under an agreement as provided herein, such vehicle shall not be subject to licensing in the other reciprocating state.

3. The board may require fleet owners to submit under oath such information as the board deems necessary for the proper carrying out of the provisions of this section and the board's determination of the number of vehicles in fleets subject to this section to be registered in this state shall be final.

4. Any nonresident motor vehicle, trailer, or semitrailer shall be subject to all laws, rules and regulations governing the operation of

such vehicles on the highways of this state, and violations of such laws, rules or regulations by any carrier may be a ground for denial of registration exemption to such carrier. The registration number plates assigned and furnished to any foreign-licensed motor vehicle, trailer, or semitrailer for the current registration year by another state where the same is licensed shall be displayed on such motor vehicle, trailer, or semitrailer substantially as provided in this chapter for vehicles registered pursuant to the provisions thereof.

5. Nothing herein contained shall authorize the waiving of the registration requirements of this chapter relating to motor vehicles operated within this state in intrastate commerce. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§5003.04; C46, 50, 54,§321.56; 57GA, ch 169,§2]

Referred to in §§326.2, 327.10

#### SPECIAL PLATES TO MANUFACTURERS, TRANSPORTERS, AND DEALERS

**321.57 Operation under special plates.** A manufacturer or dealer owning any vehicle of a type otherwise required to be registered hereunder may operate or move the same upon the highways solely for purposes of transporting, testing, demonstrating, or use in the ordinary course and conduct of his business as a dealer or manufacturer, or selling the same without registering each such vehicle upon condition that any such vehicle display thereon in the manner prescribed in sections 321.37 and 321.38 a special plate or plates issued to such owner as provided in sections 321.58 to 321.62, inclusive.

Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to him as provided in these sections.

The provisions of this section and sections 321.58 to 321.62, inclusive, shall not apply to work or service vehicles owned by a manufacturer, transporter, or dealer. [SS15,§1571-m14; C24, 27, 31, 35,§4888, 4894, 4895; C39,§5004.01; C46, 50, 54,§321.57]

Referred to in §§321.69, 321.809

**321.58 Application.** Any manufacturer, transporter, or dealer may, upon payment of a fee of twenty-five dollars, make application to the department upon the appropriate form for a certificate containing a general distinguishing number and for one or more pairs of special plates or single special plates as appropriate to various types of vehicles subject to registration hereunder. The applicant shall also submit proof of his status as a bona fide manufacturer, transporter, or dealer as may reasonably be required by the department. Dealers in new vehicles shall furnish satisfactory evidence of a valid franchise with the manufacturer of such vehicles authorizing such dealership. [SS15,§1571-m14; C24, 27, 31, 35,§4888; C39,§5004.02; C46, 50, 54,§321.58]

Referred to in §§321.57, 321.809

**321.59 Issuance of certificate.** The department, upon granting any such application,



shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. [SS15,§1571-m14; C24, 27, 31, 35, §4890, 4891; C39,§5004.03; C46, 50, 54,§321.59]

Referred to in §321.57

**321.60 Issuance of special plates.** The department shall also issue special plates as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate or pair of plates so issued shall also contain a number or symbol identifying the same from every other plate or pair of plates bearing the same general distinguishing number. The fee for each pair of special plates shall be three dollars. [SS15, §1571-m14; C24, 27, 31, 35, §4892; C39, §5004.04; C46, 50, 54, §321.60]

Referred to in §321.57

**321.61 Expiration of special plates.** Every special plate issued hereunder shall expire at midnight on the thirty-first day of December of each year, and a new plate or plates for the ensuing year may be obtained by the person to whom any such expired plate or plates was issued upon application to the department and payment of the fee provided by law. [S13, §1571-m16; C24, 27, 31, 35, §4868; C39, §5004.05; C46, 50, 54, §321.61]

Referred to in §321.57

**321.62 Records required.** Every manufacturer, transporter, or dealer shall keep a written record of the vehicles upon which such special plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department. [C39, §5004.06; C46, 50, 54, §321.62]

Referred to in §321.57

**321.63 Different places of business.** If a manufacturer, transporter, or dealer has an established place of business in more than one city or town, he shall secure a separate and distinct certificate of registration and number plates for each such place of business. [SS15, §1571-m14; C24, 27, 31, 35, §4889; C39, §5004.07; C46, 50, 54, §321.63]

**321.64 Scope of registration.** The foregoing provision relative to the right of a manufacturer, transporter, or dealer to have a general registration of all motor vehicles owned or controlled by him shall not apply to a motor vehicle operated by him for private use or hire, but said vehicle shall be individually registered as provided in this chapter. [SS15, §1571-m14; C24, 27, 31, 35, §4893; C39, §5004.08; C46, 50, 54, §321.64]

**321.65 Garage record.** Every person or corporation operating a public garage shall keep for public inspection a record of the registration number and engine or factory serial number of every motor vehicle offered for sale or taken in for repairs in said garage. [C24, 27, §4988-4990; C31, 35, §4990-c1; C39, §5004.09; C46, 50, 54, §321.65]

**321.66 Duty to hold vehicles.** The proprietor of a garage and his employees upon discovering that the engine number of a motor vehicle has been altered or obliterated shall immediately notify some member of the state department of public safety or peace officer of the county in which the garage is located, and hold said vehicle for a period of twenty-four hours or until investigation shall have been made by such peace officer. [C24, 27, 31, 35, §4991; C39, §5004.10; C46, 50, 54, §321.66]

#### USED MOTOR VEHICLES

##### **321.67 Certificate of title must be executed.**

1. No person, except as provided in sections 321.23 and 321.45 shall sell or otherwise dispose of a registered vehicle or a vehicle subject to registration without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser.

2. No person shall purchase or otherwise acquire or bring into this state a registered vehicle or a vehicle subject to registration without obtaining a certificate of title thereto except for temporary use or as provided in sections 321.23 and 321.45. [C24, 27, 31, 35, §4898; C39, §5005.01; C46, 50, 54, §321.67]

**321.68 Sale in bulk.** It shall be unlawful for any dealer in this state to sell and transfer his stock of used motor vehicles in bulk unless he complies with the following requirements:

1. The vendor shall file with the county treasurer and the department, duplicate inventories of all used motor vehicles proposed to be transferred, giving the factory number, last registration number, if any, and description of each such used motor vehicle and the name and address of proposed vendee, with a certification signed by both the vendee and the vendor that the certificates of title pertaining to all the used motor vehicles listed on the inventory have been duly assigned to the vendee as prescribed in this chapter.

2. The vendee shall, if he has not already secured a dealer's registration, immediately secure such registration from the department.

Upon the completion of such requirements the department shall certify to the county treasurer that such used motor vehicles are, from and after a date to be set by the department, the property of the vendee. [C24, 27, 31, 35, §4899; C39, §5005.02; C46, 50, 54, §321.68]

**321.69 Right to operate.** Registered car dealers having on hand February 1 of any year for sale or trade, used motor vehicles upon which registration in Iowa for the previous year has been paid, as hereinafter provided, may operate such motor vehicles as provided by section 321.57. [C24, 27, 31, 35, §4900; C39, §5005.03; C46, 50, 54, §321.69]

**321.70 Dealer to list vehicles.** Dealers registered under the provisions of this chapter must, on or before February 5 of each year, furnish the county treasurer and department with a list of all used motor vehicles held by

them for sale or trade, and upon which the registration fee for the current year is not paid, giving registration number, initials of state issuing registration plates, the year, together with the factory number, description, and previous ownership at the time such motor vehicle was transferred to the dealer.

Dealers registered under the provisions of this chapter shall, on or before July 5 of each year, furnish the county treasurer and the department with a list of all used trucks, truck tractors, road tractors, trailers and semitrailers held by them for sale or trade, and on which the second installment of the current annual registration fee has not been paid, and the payment of the second installment shall then be waived, subject to the reregistration of such vehicle under the provisions of section 321.106 at such time as a dealer ceases to hold any such vehicle for sale or trade. [C24, 27, 31, 35,§4901; C39,§5005.04; C46, 50, 54,§321.70]

Referred to in §321.136

**321.71** Repealed by 55GA, ch 127,§26.

#### SPECIAL ANTITHEFT LAW

**321.72 Report of stolen and recovered motor vehicles.** Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the department unless prior thereto information has been received of the recovery of such vehicle. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the local sheriff's office or police department and to the department. [C27, 31, 35,§13417-a1; C39,§5006.01; C46, 50, 54,§321.72]

**321.73 Reports by owners.** The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

Every owner or other person who has given any such notice must notify the department of a recovery of such vehicle. [C39,§5006.02; C46, 50, 54,§321.73]

**321.74 Action by department.** The department upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered. [C39,§5006.03; C46, 50, 54,§321.74]

**321.75 Bulletin of stolen vehicles.** The department shall at least once each week compile and publish a list of motor vehicles reported stolen and all motor vehicles recovered,

and shall send a copy thereof to each chief of police and sheriff in the state, and to the motor vehicle departments of each of the several states and also maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding week and such lists shall be open to inspection by any peace officer or other person interested in any such vehicle. [C27, 31, 35,§13417-a2; C39,§5006.04; C46, 50, 54,§321.75]

**321.76 Operating without consent.** If any chauffeur or other person shall without the consent of the owner take, or cause to be taken, any automobile or motor vehicle, and operate or drive, or cause the same to be operated or driven, he shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [S13,§4823; C24, 27, 31, 35,§13092; C39,§5006.05; C46, 50, 54,§321.76]

**321.77 Receiving or transferring stolen vehicle.** Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives, or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony and shall be punished as provided in section 321.483. [C24, 27, 31, 35,§5092; C39,§5006.06; C46, 50, 54,§321.77]

Referred to in §322.6

**321.78 Injuring or tampering with vehicle.** Any person who either individually or in association with one or more other persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor punishable as provided in section 321.482. [C39,§5006.07; C46, 50, 54,§321.78]

Referred to in §322.6

**321.79 Intent to injure.** Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a misdemeanor punishable as provided in section 321.482. [C39,§5006.08; C46, 50, 54,§321.79]

**321.80 Vehicles without manufacturers' numbers.** Any person who knowingly buys, receives, disposes of, sells, offers for sale, or has in his possession any motor vehicle, or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or

other distinguishing number or identification mark or number placed thereon under assignment from the department has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor punishable as provided in section 321.482. [SS15,§1571-m12a; C24, 27, 31, 35,§5080; C39,§5006.09; C46, 50, 54,§321.80]

Referred to in §322.6  
Similar provisions, §§321.92, 714.12

**321.81 Presumptive evidence.** Whoever shall conceal, barter, sell, or dispose of any motor vehicle which has been stolen, or shall disguise, alter, or change such motor vehicle or the factory or serial number thereof, or remove or change the registration plate thereon, or do any act designed to prevent identification of such motor vehicle, shall be presumed to have knowledge that such motor vehicle had been stolen. [C24, 27, 31, 35,§5093; C39, §5006.10; C46, 50, 54,§321.81]

Referred to in §322.6

**321.82 Larceny of motor vehicle.** If any person steal, take and carry away, irrespective of value, any motor vehicle, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine of not more than one thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35,§13011; C39, §5006.11; C46, 50, 54,§321.82]

**321.83 Jurisdiction.** Jurisdiction of such offense may be in the county where such motor vehicle was stolen, or through or into which it was taken, carried, or transported by the person or persons who committed the theft, or by any person or persons confederated with him or them in such theft. [C24, 27, 31, 35, §13013; C39,§5006.12; C46, 50, 54,§321.83]

**321.84 Seizure of vehicles.** It shall be the duty of any peace officer who finds a motor vehicle, the serial or engine number of which has been altered, defaced, or tampered with, and who has reasonable cause to believe that the possessor of such motor vehicle wrongfully holds the same, to forthwith seize the same, either with or without warrant, and deliver the same to the sheriff of the county in which it is seized. [C27, 31, 35,§5083-b1; C39,§5006.13; C46, 50, 54,§321.84]

Referred to in §321.85

**321.85 Stolen or abandoned vehicles.** Whenever any motor vehicle is seized under section 321.84 or whenever any motor vehicle is stolen or embezzled, and is not claimed by the owner before the date on which the person charged with the stealing or embezzling of same is convicted, or if the motor vehicle be abandoned and is not claimed by the owner within three days, then the officer having same in his custody must, on such date by certified mail, notify the department that he has such a motor vehicle in his possession, giving a full and complete description of same, including all marks of identification, factory and serial numbers.

[C24,§12222; C27, 31, 35,§5083-b2, 12222; C39, §5006.14; C46, 50, 54,§321.85; 57GA, ch 267,§37]

**321.86 Notice by commissioner.** The commissioner shall, if the owner appears of record in his office, notify such owner of the fact that such motor vehicle is in the custody of such officer, and if not of record in his office, said commissioner shall mail such description to the county treasurer of each county. [C24, 27, 31, 35,§12223; C39,§5006.15; C46, 50, 54,§321.86]

**321.87 Delivery to owner.** If, within forty days thereafter, the owner of such motor vehicle appears and properly identifies same, the officer having said motor vehicle in his custody shall deliver same to such owner upon payment by him of the costs incurred incident to the apprehension of said motor vehicle and the location of such owner. [C24,§12224; C27, 31, 35,§5083-b3, 12224; C39,§5006.16; C46, 50, 54, §321.87]

**321.88 Advertisement.** If the owner does not appear within that time, the officer having possession of same shall advertise said motor vehicle for sale in a newspaper published within the county at least once each week for two consecutive weeks. [C24,§12225; C27, 31, 35, §5083-b3, 12225; C39,§5006.17; C46, 50, 54,§321.88]

Referred to in §321.89

**321.89 Sale.** Said motor vehicle shall be sold at public auction to the highest cash bidder therefor and said sale must be held within one week following the date of the last publication of the notice as provided in section 321.88. [C24,§12226; C27, 31, 35,§5083-b3, 12226; C39,§5006.18; C46, 50, 54,§321.89]

**321.90 Proceeds—costs.** After deducting the costs incident thereto, such officer shall pay all remaining money to the treasurer of state, of the county, or of the municipality, under which authority the vehicle was seized and sold for the use and benefit of the general fund. [C24,§12227; C27, 31, 35,§5083-b3, 12227; C39, §5006.19; C46, 50, 54,§321.90]

**321.91 Reimbursement after sale.** If, within six months from the date of sale, the owner of any motor vehicle sold under the provisions hereof makes a showing satisfactory to the executive council, board of supervisors, or municipal governing authority having control of said fund that he is the owner of such motor vehicle, then said council, board, or authority may direct the drawing of a warrant payable to such owner for the amount such vehicle was sold for, less costs, and direct the treasurer to pay same out of the general fund. [C24, 27, 31, 35,§12228; C39,§5006.20; C46, 50, 54,§321.91]

**321.92 Altering or changing numbers.** No person shall with fraudulent intent, deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle nor shall any person place or stamp any serial, engine, or other number or mark upon a motor

vehicle, except one assigned thereto by the department. Any violation of this provision is a felony punishable as provided in section 321.483.

This section shall not prohibit the restoration by an owner of an original serial, engine, or other number or mark when such restoration is made under permit issued by the department, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon motor vehicles or parts thereof. [SS15,§1571-m12a; C24, 27, 31, 35, §5080; C39,§5006.21; C46, 50, 54,§321.92]

Referred to in §322.6

Similar provisions, §§321.80, 714.12

**321.93 Defense.** Under a charge of possessing a motor vehicle, the serial or engine number of which is defaced, altered, or tampered with, it shall be a complete defense that the accused at the time of such possession had in his possession a certificate of title from the officer whose duty it is to register motor vehicles in the state in which said motor vehicle is registered, showing good and sufficient reason why numbers are defaced, changed, or tampered with, the original serial or engine number, and the ownership of said motor vehicle. [C24, 27, 31, 35,§5083; C39,§5006.22; C46, 50, 54,§321.93]

**321.94 Test to determine true number.** Where it appears that a factory, serial or motor number has been altered, defaced or tampered with, any sheriff, state agent or peace officer of the department of justice, or inspector employed by the motor vehicle department, or any other person acting under their direction, may apply any recognized process or test to the part containing such number for the purpose of determining the true number. [C27, 31, 35, §5083-b5; C39,§5006.23; C46, 50, 54,§321.94]

**321.95 Right of inspection.** Peace officers and examiners employed in the department are hereby given authority to inspect any motor vehicle found upon the public highway or in any public garage or inclosure in which motor vehicles are kept for sale, storage, hire or repair and for that purpose may enter any such public garage or inclosure. [C27, 31, 35, §5083-b6; C39,§5006.24; C46, 50, 54,§321.95]

**321.96 Prohibited plates — certificates — badges.** No person shall display or cause or permit to be displayed, or have in his possession, any canceled, revoked, altered, or fictitious registration number plates, registration receipt, certificate of title, chauffeur's license certificate, or chauffeur's badge, as the same are respectively provided for in this chapter. [C24, 27, 31, 35,§5084; C39,§5006.25; C46, 50, 54, §321.96]

#### OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION

**321.97 Fraudulent applications.** Any person who fraudulently uses a false or fictitious name in any application for the registration of, or certificate of title to, a vehicle or knowingly

makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application, shall upon conviction be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year or both. [S13,§1571-m26; C24, 27, 31, 35,§5088; C39,§5007.01; C46, 50, 54, §321.97]

Referred to in §322.6

**321.98 Operation without registration.** No person shall operate, nor shall an owner knowingly permit to be operated upon any highway any vehicle required to be registered and titled hereunder unless there shall be attached thereto and displayed thereon when and as required by this chapter a valid registration card and registration plate or plates issued therefor for the current registration year and unless a certificate of title has been issued for such vehicle except as otherwise expressly permitted in this chapter. Any violation of this section is a misdemeanor punishable as provided in section 321.482. [C24, 27, 31, 35,§5085; C39,§5007.02; C46, 50, 54,§321.98]

Referred to in §322.6

**321.99 Improper use of registration.** No person shall lend to another any registration card, registration plate, special plate, or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plate or permit not issued for such vehicle or not otherwise lawfully used thereon under this chapter. Any violation of this section is a misdemeanor punishable as provided in section 321.482. [SS15,§1571-m12a; C24, 27, 31, 35, §§4878, 5080; C39,§5007.03; C46, 50, 54,§321.99]

Referred to in §322.6

**321.100 False evidences of registration.** It is a felony, punishable as provided in section 321.483, for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, or permit issued by the department.

2. To forge or counterfeit any such document or plate purporting to have been issued by the department.

3. To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified. [SS15,§1571-m12a; C24, 27, 31, 35,§5080; C39,§5007.04; C46, 50, 54,§321.100]

Referred to in §322.6

**321.101 Suspension or revocation of registration or certificate of title.** The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any nonresident or other permit in any of the following events:

1. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

2. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

3. When a registered vehicle has been dismantled or wrecked.

4. When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand.

5. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

6. When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.

7. When the department is so authorized under any other provision of law.

8. The department is hereby authorized, and it shall be its duty, to cancel a certificate of title that appears to have been improperly issued or fraudulently obtained. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued the same, who shall forthwith enter the cancellation upon his records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. [C24, 27, 31, 35, §5090; C39, §5007.05; C46, 50, 54, §321.101]

**321.102 Suspending or revoking special registration.** The department is also authorized to suspend or revoke a certificate or the special plates issued to a manufacturer, transporter, or dealer upon determining that any said person is not lawfully entitled thereto or has made or knowingly permitted any illegal use of such plates or has committed fraud in the registration of vehicles or failed to give notices of transfer when and as required by this chapter. [C39, §5007.06; C46, 50, 54, §321.102]

**321.103 Owner to return evidences of registration and title.** Whenever the department as authorized hereunder cancels, suspends, or revokes the registration of a vehicle, or certificate of title, or registration card, or registration plate or plates, or any nonresident or other permit or the registration of any dealer, the owner or person in possession of the same shall immediately return the evidences of registration, certificate of title, or plates so canceled, suspended, or revoked to the department. [C39, §5007.07; C46, 50, 54, §321.103]

**321.104 Penal offenses against title law.** It is a misdemeanor, punishable as provided in section 321.482 for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of

registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. Any person who shall fail to surrender any certificate of title or registration card or license plates upon cancellation, suspension or revocation of the same by the department and notice thereof as prescribed in this chapter.

4. Any person whoever shall purport to sell or transfer a motor vehicle, trailer or semi-trailer without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in this chapter.

5. Any person whoever shall violate any of the other provisions of this chapter or any lawful rules or regulation promulgated pursuant to the provisions of this chapter. [S13, §1571-m24; C24, 27, 31, 35, §5086; C39, §5007.08; C46, 50, 54, §321.104]

#### REGISTRATION FEES

**321.105 Annual fee required.** An annual registration fee shall be paid for each motor vehicle or trailer operated upon the public highways of this state unless said vehicle is specifically exempted under the provisions of this chapter.

Said registration fee shall be paid to the county treasurer at the same time the application is made for the registration or reregistration of said motor vehicle or trailer. [SS15, §1571-m7; C24, 27, 31, 35, §4904; C39, §5008.01; C46, 50, 54, §321.105]

Referred to in §417.54

**321.106 Fractional part of year.** Where there is no delinquency and the registration is made in February or in succeeding months to and including November, the fees shall be computed on the basis of one-twelfth of the annual registration fee as provided herein multiplied by the number of the unexpired months of the year. Whenever any such fee so computed contains a fractional part of a dollar, it shall be computed as of the nearest fractional quarter dollar thereto, and said amount shall be the fee which shall be collected. For the purposes of this chapter, the fee so computed for an original registration in this state shall be deemed the annual registration fee for that year.

No fee shall be required for the month of December for a new car in good faith delivered during that month. [SS15, §1571-m7; C24, 27, 31, 35, §4905; C39, §5008.02; C46, 50, 54, §321.106]

Referred to in §321.70

**321.107 Sworn statement.** Such reduction in the registration fee shall not be allowed

until the applicant first file with the county treasurer an affidavit stating the date on which the vehicle first came into his possession or control in connection with his purchase or prospective purchase thereof, and the name and address of the party from whom purchased. [C24, 27, 31, 35, §4906; C39, §5008.03; C46, 50, 54, §321.107]

**321.108 Perjury.** Any person who shall willfully make a false statement in such affidavit shall be deemed guilty of perjury and punished accordingly. [C24, 27, 31, 35, §4907; C39, §5008.04; C46, 50, 54, §321.108]

Punishment, §721.1

**321.109 Motor vehicle fee—transit fee.** The annual fee for all motor vehicles including vehicles designated by manufacturers as station wagons, except motor trucks, hearses, motorcycles, and motor bicycles, shall be equal to one percent of the value as fixed by the department plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the department. The weight of a motor vehicle, fixed by the department for registration purposes, shall include the weight of a battery, heater, bumpers, spare tire, and wheel. Provided, however, that for any new motor vehicle purchased in this state by a nonresident for removal to his state of residence the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of five dollars shall be paid. And provided, however, that for any used motor vehicle held by a registered dealer and not currently registered in this state, when purchased in this state by a nonresident for removal to his state of residence, the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of three dollars shall be paid. The county treasurer shall issue a nontransferable certificate of registration for which no refund shall be allowed; and the transit plates shall be void thirty days after issuance. Such purchaser may apply for a certificate of title by surrendering the manufacturer's or importer's certificate or certificate of title, duly assigned as provided in this chapter. In this event, the treasurer in the county of purchase shall, when satisfied with the genuineness and regularity of the application, and upon payment of a fee of seventy-five cents, issue a certificate of title in the name and address of such nonresident purchaser delivering the same to the person entitled thereto as provided in this chapter. The person in whose name the title to said motor vehicle is registered may execute or acknowledge existence of a lien thereon without the signature of his spouse, the provisions of section 556.1, notwithstanding. [C24, 27, 31, 35, §4908; C39, §5008.05; C46, 50, 54, §321.109; 56 GA, ch 157, §6]

Referred to in §§321.110, 417.54

**321.110 Rejecting fractional dollars.** When the registration fee, computed according to

section 321.109, totals a fraction over a certain number of dollars the fraction of a dollar shall not be computed in arriving at the fee. [C27, 31, 35, §4908-a1; C39, §5008.06; C46, 50, 54, §321.110]

**321.111 Conversion of car—effect.** Any motor vehicle originally registered as a passenger car and thereafter converted into a truck with a loading capacity of less than one thousand pounds, shall be registered as a passenger car. [C35, §4908-g1; C39, §5008.07; C46, 50, 54, §321.111]

**321.112 Minimum motor vehicle fee.** No motor vehicle, regardless of age, except as provided in section 321.115 shall be registered for a full year for less than ten dollars. [C24, 27, 31, 35, §4909; C39, §5008.08; C46, 50, 54, §321.112]

**321.113 Automatic reduction.** After said motor vehicle has been registered five times, that part of the registration fee which is based on the value of the vehicle shall be:

Seventy-five percent of the rate as fixed when new;

After six times, fifty percent;

After eight times, that part of the registration fee based on the value of said vehicle shall be ten percent. Where the ninth registration fee for a motor vehicle has been computed and fixed by the department prior to July 4, 1949, there shall be added to such registration fee, in lieu of the ten percent provided for herein, one dollar if such registration fee has been computed and fixed at fifteen dollars or less and two dollars if such registration fee has been computed and fixed at more than fifteen dollars. [SS15, §1571-m7; C24, 27, 31, 35, §4910; C39, §5008.09; C46, 50, 54, §321.113]

**321.114 Proof of registration.** The sworn statement of the registrant as to the number of times such motor vehicle has been registered shall be conclusive evidence of that fact. [C24, 27, 31, 35, §4911; C39, §5008.10; C46, 50, 54, §321.114]

**321.115 Antiquated vehicles.** Any motor vehicle fifteen years old, or older, whose owner desires to use said motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where said motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registration permitting the driving of said motor vehicle upon the public roads to and from said fair or other place of entertainment or education for a registration fee of one dollar per annum. [C35, §4911-f1; C39, §5008.11; C46, 50, 54, §321.115]

Referred to in §321.112

**321.116 Electric automobiles.** For all electric motor vehicles the annual fee shall be twenty-five dollars. When any electric motor vehicle has been registered five times the annual registration fee shall be fifteen dollars. [C27, 31, 35, §4911-b1; C39, §5008.12; C46, 50, 54, §321.116]

Referred to in §417.54

**321.117 Motorcycle and hearse fees.** For all motorcycles the annual fee shall be five dollars. When said motorcycle has been registered five times, the annual registration fee shall be one-half the rate when new. The annual registration fee for hearses shall be thirty dollars. Passenger car plates shall be issued for hearses. [C24, 27, 31, 35, §4912; C39, §5008.13; C46, 50, 54, §321.117]

**321.118 Corn shellers and feed grinders.** For trucks on which a corn sheller is mounted the annual registration fee shall be forty dollars. For trucks on which a portable mill is mounted the annual registration fee shall be forty dollars. The payment of the registration fee herein shall exempt the truck from property tax. [C39, §5008.14; C46, 50, 54, §321.118]

Registration fees, §§321.118-321.123

**321.119 Trucks with pneumatic tires.** For motor trucks equipped with pneumatic tires, the annual registration fee shall be:

For a gross weight of three tons or less, twenty-five dollars.

For a gross weight exceeding three tons and not exceeding five tons, forty dollars.

For a gross weight exceeding five tons and not exceeding six tons, seventy dollars.

For a gross weight exceeding six tons and not exceeding seven tons, ninety-five dollars.

For a gross weight exceeding seven tons and not exceeding eight tons, one hundred twenty dollars.

For a gross weight exceeding eight tons and not exceeding nine tons, one hundred fifty-five dollars.

For a gross weight exceeding nine tons and not exceeding ten tons, one hundred ninety dollars.

For a gross weight exceeding ten tons and not exceeding eleven tons, two hundred twenty-five dollars.

For a gross weight exceeding eleven tons and not exceeding twelve tons, two hundred sixty-five dollars. [C24, 27, 31, 35, §4913; C39, §5008.15; C46, 50, 54, §321.119]

Referred to in §§321.134, 417.54

See also 57GA, ch 43, §8, as to urban transit companies

**321.120 Trucks with solid rubber tires.** For motor trucks equipped with two or more solid rubber tires, the annual registration fee shall be the fee for motor trucks of the same gross weight equipped with pneumatic tires, plus twenty-five percent thereof. [C24, 27, 31, 35, §4914; C39, §5008.16; C46, 50, 54, §321.120]

Referred to in §§321.134, 417.54

**321.121 Trucks exceeding twelve tons gross weight.** The annual registration fee for all motor trucks with pneumatic tires and a gross weight in excess of twelve tons, shall be the fee for a truck having a gross weight of twelve tons, and in addition thereto, twenty-five dollars for each ton of gross weight over twelve tons. [C24, 27, 31, 35, §4916; C39, §5008.17; C46, 50, 54, §321.121]

Referred to in §§321.134, 417.54

**321.122 Truck tractors, road tractors, and semitrailers.**

1. The annual registration fee for a truck tractor or road tractor drawing or designed to draw a semitrailer, or trailer, shall be based on the combined gross weight of such combination, and the amount of such annual registration fee shall be:

For a combined gross weight of six tons or less, forty dollars.

For a combined gross weight exceeding six tons and not exceeding seven tons, sixty-five dollars.

For a combined gross weight exceeding seven tons and not exceeding eight tons, ninety dollars.

For a combined gross weight exceeding eight tons and not exceeding nine tons, one hundred twenty-five dollars.

For a combined gross weight exceeding nine tons and not exceeding ten tons, one hundred sixty dollars.

For a combined gross weight exceeding ten tons and not exceeding eleven tons, one hundred ninety-five dollars.

For a combined gross weight exceeding eleven tons and not exceeding twelve tons, two hundred thirty-five dollars.

For a combined gross weight exceeding twelve tons; the fee for a combined gross weight of twelve tons and in addition thereto twenty-five dollars for each ton over twelve tons.

2. For semitrailers the annual registration fee shall be:

For each semitrailer drawn by a truck, road tractor or truck tractor, with a combined gross weight of twelve tons or less, thirty dollars.

For each semitrailer drawn by a truck, road tractor or truck tractor, with a combined gross weight exceeding twelve tons, sixty dollars.

3. For truck tractors or road tractors equipped with two or more solid rubber tires, the annual registration fee shall be the fee for truck tractors or road tractors with pneumatic tires and of the same combined gross weight, plus twenty-five percent thereof.

4. Nothing herein shall be construed to require a license for the operation of a rubber-tired farm tractor not for hire upon the public highways. [C31, 35, §4919-d1; C39, §5008.18; C46, 50, 54, §321.122]

Referred to in §321.134

**321.123 Trailers.** All trailers except those defined as semitrailers shall be subject to a registration fee to be fixed in accordance with the following schedule, provided, however, trailers subject to a registration fee of ten dollars or less shall be exempt from the certificate of title and lien provisions of this chapter:

1. When equipped with pneumatic tires:

Wagon box trailers used by a farmer in transporting produce, farm products or supplies hauled to and from market, five dollars.

Trailers with a gross weight of one thousand pounds or less, three dollars.

Trailers with a gross weight exceeding one

thousand pounds and not exceeding two thousand pounds, ten dollars.

Trailers with a gross weight exceeding one ton and not exceeding two tons, twenty dollars.

Trailers with a gross weight exceeding two tons and not exceeding four tons, thirty dollars.

Trailers with a gross weight exceeding four tons and not exceeding six tons, forty dollars.

Trailers with a gross weight exceeding six tons and not exceeding eight tons, fifty dollars.

Trailers with a gross weight exceeding eight tons and not exceeding ten tons, sixty dollars.

Trailers with a gross weight exceeding ten tons and not exceeding twelve tons, seventy dollars.

Trailers with a gross weight exceeding twelve tons and not exceeding fourteen tons, eighty dollars.

2. When equipped with two or more solid rubber tires:

Trailers with a gross weight exceeding one ton and not exceeding two tons, thirty dollars.

Trailers with a gross weight exceeding two tons and not exceeding four tons, forty dollars.

Trailers with a gross weight exceeding four tons and not exceeding six tons, fifty dollars.

Trailers with a gross weight exceeding six tons and not exceeding eight tons, sixty dollars.

Trailers with a gross weight exceeding eight tons and not exceeding ten tons, seventy dollars.

Trailers with a gross weight exceeding ten tons and not exceeding twelve tons, eighty dollars.

Trailers with a gross weight exceeding twelve tons and not exceeding fourteen tons, ninety dollars. [C24, 27, 31, 35, §4920; C39, §5008.19; C46, 50, 54, §321.123]

Referred to in §321.134  
Exemptions, see §321.176

**321.124 Well-drilling equipment.** A trailer equipped with solid rubber or pneumatic tires, upon which is mounted well-drilling equipment, including a truck or semitrailer equipped with well drills and well-boring apparatus, and not exceeding in combined weight ten thousand pounds shall be registered at an annual rate of ten dollars, such combination when in excess of above weight or of the motor vehicle laws relating to length and width shall be permitted to operate upon the highways of the state only upon issuance of a special permit by the department. [C35, §4920-e1; C39, §5008.20; C46, 50, 54, §321.124]

**321.125 Effect of exemption.** The exemption of a motor vehicle from a registration fee shall not exempt the operator of such vehicle from the performance of any other duty imposed on him by this chapter. [C24, 27, 31, 35, §4923; C39, §5008.21; C46, 50, 54, §321.125]

**321.126 Refunds of fees.** If during the year for which a motor vehicle was registered and the required registration fee paid therefor:

1. Such vehicle is destroyed by fire or accident, or junked and its identity as a motor ve-

hicle entirely eliminated or removed and continuously used beyond the boundaries of the state, then the owner in whose name it was registered at the time of such destruction, dismantling or removal from the state, shall return the plates to the county treasurer and within thirty days thereafter make affidavit of such destruction, dismantling or removal and make claim for refund. With reference to the destruction or dismantling of a vehicle, the affidavit shall be accompanied by the certificate of title as provided in section 321.52. With reference to the removal of a vehicle from this state as provided herein, the affidavit shall contain a statement indicating the foreign registration number of such vehicle, the name and address of the official of the foreign state to whom the Iowa certificate of title has been surrendered and the number of the foreign certificate of title issued for such vehicle, if registered in a title law state.

2. Such vehicle is sold to a person, either individual, firm or corporation, whose residence or place of business is without the state, the owner who made the sale and gave notice in accordance with the provisions of section 321.52 shall return the plates to the county treasurer and within thirty days thereafter make affidavit of such sale and make claim for refund.

3. Such vehicle is stolen the owner shall give notice of such theft to the county treasurer within five days, who in turn shall notify the department, and if it be not recovered by the owner before December 1 of the year for which the registration fee was paid he shall make affidavit of such theft and make claim for refund.

4. Such vehicle is placed in storage by the owner upon his entering the military service of the United States, then said owner shall return the plates to the county treasurer and make affidavit regarding such storage and military service and make claim for refund. Whenever the owner of a vehicle so placed in storage desires to reregister such vehicle the county treasurer shall register such vehicle and shall compute and collect the fees for such registration on the basis of one-twelfth of the annual registration fee as provided in this chapter multiplied by the number of unexpired months in the year. Whenever any such fee so computed contains a fractional part of a dollar, it shall be computed as of the nearest fractional quarter dollar thereto. [C24, 27, 31, 35, §4924; C39, §5008.22; C46, 50, 54, §321.126]

Referred to in §321.129

**321.127 Amount of refund.** For December and each succeeding month the refund shall be computed on the basis of one-fourth of the annual registration fee multiplied by the number of remaining quarters of the year from date of the return of the vehicle's plates to the county treasurer, computed to the nearest quarter dollar. The department shall make refund on or before the fifteenth day of the



quarter following the quarter in which the claim is filed with the department. [C24, 27, 31, 35,§4924; C39,§5008.23; C46, 50, 54,§321.127]

**321.128 Payment authorized.** The department is hereby authorized to make such payments according to the above provisions, when sufficient proof of such destruction by accident, or the junking and entire elimination of identity as a motor vehicle, sale to a person whose residence or place of business is without the state, theft, storage by an owner entering the military service of the United States in time of war, or removal for continuous use beyond the boundaries of the state, is properly certified, approved by the county treasurer, and filed with the department.

The decision of the department shall be final. [C24, 27, 31, 35,§4925; C39,§5008.24; C46, 50, 54, §321.128]

Referred to in §321.129

**321.129 Reimbursement fund.** The county treasurer shall remit to the department one percent of all fees and penalties collected each year, to be used as a fund to cover refunds of motor vehicle fees as provided in sections 321.126 and 321.128. [C24, 27, 31, 35,§4926; C39, §5008.25; C46, 50, 54,§321.129]

**321.130 Fees in lieu of taxes.** The registration fees imposed by this chapter upon private passenger motor vehicles or house trailers or semitrailers shall be in lieu of all taxes, general or local, to which motor vehicles or house trailers or semitrailers may be subject, and if a motor vehicle or house trailer or semitrailer shall have been registered at any time under this chapter it shall not thereafter be subject to a personal property tax unless such motor vehicle or house trailer or semitrailer shall have been in storage continuously as an unregistered motor vehicle or house trailer or semitrailer during the preceding registration year or unless the same is actually being used for dwelling purposes for more than six months during each calendar year. This section shall not apply to occupied mobile homes. [S13, §1571-m8; C24, 27, 31, 35,§4927; C39,§5008.26; C46, 50, 54,§321.130]

**321.131 Lien of fee.** All registration or other fees provided for in this chapter shall be and continue a lien against the vehicle for which said fees are payable until such time as they are paid as provided by law, with any accrued penalties. [S13,§1571-m21; SS15,§1571-m7; C24, 27, 31, 35,§4928; C39,§5008.27; C46, 50, 54,§321.131]

**321.132 When lien attaches.** The lien of the original registration fee shall attach, at the time the same is first payable, as provided by law, and the lien of all renewals of registration shall attach on January 1 of each year thereafter. [C24, 27, 31, 35,§4929; C39,§5008.28; C46, 50, 54,§321.132]

#### PENALTIES, COSTS, AND COLLECTIONS

**321.133 Methods of collection.** The collection of all fees and penalties may be enforced

against any vehicle or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the county treasurer and the department or until such time as said vehicle ceases to be in use and all fees and penalties to such date shall be paid. [S13,§1571-m21; C24, 27, 31, 35,§4930; C39, §5009.01; C46, 50, 54,§321.133]

**321.134 Monthly penalty.** On February 1 of each year, a penalty of five percent of the annual registration fee shall be added to all fees not paid by that date, and five percent of the annual registration fee shall be added to such fees on the first of each month thereafter that the same remains unpaid, until paid, provided that said penalty in no case shall be less than one dollar, and provided that the owner of a vehicle who, before February 1 of any year, surrenders all registration plates for said vehicle to the county treasurer of the county in which said plates are of record, shall have the right to register said vehicle at any later period of said year by paying the full yearly registration fee without said penalty. Provided, however, that the annual registration fee for trucks, truck tractors, road tractors, trailers and semitrailers, as provided in sections 321.119 to 321.123, inclusive, when said annual registration fee is in excess of seventy dollars, may be payable in two equal semiannual installments.

The penalties provided in the preceding paragraph shall be computed on the amount of the first installment only, and on August 1 of each year and on the first day of each month thereafter the same rate of penalty shall be added to the amount of the second installment, until the same is paid. [SS15,§1571-m7; C24, 27, 31, 35, §4931; C39,§5009.02; C46, 50, 54,§321.134]

**321.135 When fees delinquent.** Such delinquencies shall begin and penalty accrue the first of the month following the purchase of a new vehicle, and the first of the month following the date cars are brought into the state, except as herein otherwise provided. [C24, 27, 31, 35,§4932; C39,§5009.03; C46, 50, 54,§321.135]

**321.136 List of delinquents.** In the first week in March of each year the county treasurer shall cause to be made a list of all motor vehicles owned within his county upon which the registration fee was not paid before March 1 of that year, except motor vehicles held by registered dealers and listed by them with the county treasurer and department, as provided in section 321.70 and except those motor vehicles the plates of which have been surrendered to said treasurer on or prior to February 1 of said year. Such list shall show the factory number, engine number, make and model of such vehicle, together with the name and post-office address of the owner thereof, as shown by the records of his office, and the amount of registration fee and penalties due against said vehicle as of March 1. [S13,§1571-m15; C24, 27, 31, 35,§4933; C39,§5009.04; C46, 50, 54,§321.136]

**321.137 Sheriff furnished list.** The county treasurer shall on or before March 15 thereafter deliver to the sheriff of his county a certified copy of said list of such delinquents as shown. [C24, 27, 31, 35,§4936; C39,§5009.05; C46, 50, 54,§321.137]

**321.138 Collection by sheriff.** The sheriff shall forthwith proceed to the collection of the unpaid fees and penalties, as certified to him by the county treasurer, by taking possession of the motor vehicle described in said certified list and proceed to advertise and sell same for the purpose of collecting fees, penalties, and costs. Said certified list shall for all purposes be a sufficient warrant therefor. [SS15,§1571-m7; C24, 27, 31, 35,§4937; C39,§5009.06; C46, 50, 54, §321.138]

**321.139 Notice.** The sheriff shall give ten days notice of the time, place, and hour of said sale:

1. By publishing said notice in one issue of one of the official newspapers of the county, and

2. By posting written notice thereof, in three places in the county; one of said places shall be at a main entrance door of the courthouse, one at some other public place in the county, and one at or as near as practicable to the place where said vehicle was seized. [C24, 27, 31, 35,§4938; C39,§5009.07; C46, 50, 54,§321.139]

**321.140 Warrant to foreign county.** Should a motor vehicle on which the fee is delinquent be removed from the county in which it was originally registered, either by transfer or removal by owner to another county, without having notified the county treasurer or department of such removal, the sheriff may forward the warrant to the sheriff of the county where such motor vehicle is at that time and said latter sheriff shall proceed to collect the same as though the vehicle had been originally registered in his county, and make return to the county treasurer of the county from which he received the warrant. [C24, 27, 31, 35,§4939; C39,§5009.08; C46, 50, 54,§321.140]

**321.141 Fees and mileage.** The sheriff shall be entitled to receive as costs the sum of two dollars for serving the writ or warrant of seizure and five cents for each mile actually traveled by him in collecting the fee and penalties, which shall be collected from the owner of such delinquent motor vehicle, and shall be retained by him in full for his services. He shall also collect from said owner the sum of fifty cents per day for care of the motor vehicle while in his possession which sum shall be accounted for by the sheriff as fees are accounted for, as provided in chapter 342. [C24, 27, 31, 35, §4940; C39,§5009.09; C46, 50, 54,§321.141]

**321.142 Remittance — issuance of plates.** When the fee and penalties have been collected the same shall forthwith be returned to the county treasurer, together with a report showing the name and address of the owner

and description of car upon which such fee was collected. Thereupon the county treasurer may issue to the owner number plates and a receipt showing payment of fees and penalties. [C24, 27, 31, 35,§4941; C39,§5009.10; C46, 50, 54, §321.142]

**321.143 Balance of proceeds.** The sheriff, after deducting from the total receipts of the sale all fees, penalties, and costs, shall pay any balance to the owner of the vehicle. [C24, 27, 31, 35,§4942; C39,§5009.11; C46, 50, 54,§321.143]

**321.144 Junking in lieu of sale.** In the event the vehicle is in such condition that, in the opinion of the sheriff, it cannot be sold for enough to pay the fees and penalties and defray the cost of the procedure hereinabove provided, and the owner waives the right to said sale, then it may be scrapped, dismantled, or otherwise destroyed by said owner, so that it can no longer be used upon the highways, and no registration shall thereafter be issued for such vehicle. [C39,§5009.12; C46, 50, 54, §321.144]

#### FUNDS

**321.145 Disposition.** The money, except fines and forfeitures, and except operator's and chauffeur's license fees, collected pursuant to the provisions of this chapter shall be credited by the treasurer of state to the following funds:

1. Three percent of the gross fees and penalties thereon, to the general fund of the state.

2. The balance of said money, less the collection fee of fifty cents retained by the county treasurer on each registration, and less the one percent received by the department as a reimbursement fund from which to pay refunds, to the road use tax fund. [SS15,§1571-m32; C24, 27, 31, 35,§4999; C39,§5010.01; C46, 50, 54,§321.145; 57GA, ch 146,§1; ch 1,§56]

Referred to in §§321.163, 417.54  
Road use tax fund, §312.1

**321.146 Unexpended balances.** The treasurer of state shall at the end of said fiscal year ascertain the cost of maintenance of the motor vehicle department and transfer to the road use tax fund the ascertained difference between the amount retained in the general fund under the provision of this chapter and the maintenance cost of said department, together with any unexpended balance in the reimbursement fund. [SS15,§1571-m32; C24, 27, 31, 35,§5002; C39,§5010.02; C46, 50, 54,§321.146; 57GA, ch 146,§2; ch 1,§56]

Road use tax fund, §312.1

**321.147 Repealed by 53GA, ch 122,§17. See §312.7.**

**321.148 Monthly estimate.** The auditor of the state highway commission shall, on the first day of each month, furnish an estimate in writing to the treasurer of state of the amount of expenditures to be made by the highway commission during that month. [C31, 35,§5003-c1; C39,§5010.04; C46, 50, 54,§321.148]

**321.149 Blanks.** The department shall not later than November 15 of each year prepare and furnish the treasurer of each county all blank books, blank forms, and all supplies required for the administration of this chapter, including applications for registration and transfer of vehicles, quadruple receipts, and original remittance sheets to be used in remitting fees to the department, in such form as the department may prescribe. Contracts for such blank books, blank forms, and supplies shall be awarded by the state printing board to persons, firms, partnerships, or corporations engaged in the business of printing in Iowa unless, or through them, such persons, firms, partnerships or corporations cannot provide the required printing set forth in this section. In lieu of purchasing under competitive bids the state printing board shall have authority to arrange with the board of control to furnish such supplies as can be made in the state institutions. [S13,§1571-m2; C24, 27, 31, 35,§5006; C39, §5010.05; C46, 50, 54,§321.149]

**321.150 Time limit.** Blanks or forms for listing used motor vehicles shall be placed in the hands of county treasurers not later than December 15 of any year. [C24, 27, 31, 35,§5007; C39,§5010.06; C46, 50, 54,§321.150]

**321.151 Duty and liability of treasurer.** The county treasurer shall collect the registration fee and penalties on each vehicle registered by him and shall be responsible on his bond for such amount. He shall remit such amount to the treasurer of state as herein provided. [C24, 27, 31, 35,§5011; C39,§5010.07; C46, 50, 54, §321.151]

**321.152 Fee for county.** Each county treasurer shall be allowed to retain, for the use and benefit of the county general fund, fifty cents for each vehicle registration issued by him out of money collected in each year for the registration of such vehicles and forty cents for each certificate of title and sixty-five cents for each notation of a lien or encumbrance when a fee therefor is prescribed by the provisions of this chapter, the same to be deducted, and reported to the department, when the county treasurer transfers the money collected under the provisions of this chapter; provided, however, that no such deduction shall be lawful unless the county treasurer has complied with the provisions of sections 321.24 and 321.153. [C24, 27, 31, 35,§5012; C39,§5010.08; C46, 50, 54, §321.152; 56GA, ch 157,§7]

**321.153 Treasurer's report to department.** The county treasurer shall on the tenth day of each month report under oath to the department, on forms furnished by it, giving a full and complete statement of all fees and penalties so received by him during the preceding calendar month, and shall forward to the treasurer of state a duplicate of such report. [C24, 27, 31, 35,§5013; C39,§5010.09; C46, 50, 54,§321.153]

Referred to in §321.152

**321.154 Reports by department.** The department, immediately upon receiving said report, shall also report to the treasurer of state the amount so collected by such county treasurer. [C24, 27, 31, 35,§5014; C39,§5010.10; C46, 50, 54, §321.154]

**321.155 Duty of treasurer of state.** The treasurer of state shall keep proper books of account for the purposes specified herein and shall report to the department each remittance from the county treasurer, when said remittance is received. [C24, 27, 31, 35,§5015; C39, §5010.11; C46, 50, 54,§321.155]

**321.156 Audit by department.** The department shall check and audit all fees and penalties collected, and shall effect a settlement with the county treasurer annually. [C24, 27, 31, 35, §5016; C39,§5010.12; C46, 50, 54,§321.156]

#### VALUE AND WEIGHT OF VEHICLES

**321.157 Schedule of prices and weights.** Every manufacturer of a motor vehicle sold or offered for sale within this state, either by the manufacturer, distributor, dealer, or any other person, shall, on or before the first day of August, annually, file in the office of the department a sworn statement showing the various models manufactured by him, and the retail list price and weight of each model as of August 1 of that year. He shall also make the same report on subsequent new models manufactured prior to August 1 of the following year. [C24, 27, 31, 35,§4968; C39,§5011.01; C46, 50, 54,§321.157]

**321.158 Registration dependent on schedule.** No motor vehicle shall be registered in this state unless the manufacturer thereof has furnished to the department the sworn statement herein provided, giving the list price and weight of the model of the motor vehicle that is offered for registration, except as provided in section 321.159. [C24, 27, 31, 35,§4970; C39, §5011.02; C46, 50, 54,§321.158]

**321.159 Exceptional cases.** The department shall have the power to fix the registration fee on all makes and models of cars which are not now being furnished or upon which the statement from the factory cannot be obtained. [C24, 27, 31, 35,§4971; C39,§5011.03; C46, 50, 54, §321.159]

Referred to in §321.158

**321.160 Department to prepare statement.** The department shall prepare, annually, a statement showing all the different makes and models of motor vehicles previously registered in the department, and all the different makes and models of motor vehicles, statements of which have been filed in the office by the manufacturers as heretofore provided, together with the retail list price and weight of the same.

The statement prepared by the department shall also include the load capacities of the various makes and models of motor trucks and

trailers and the proper fee to be paid for the registration.

Copies of such statement shall be furnished each county treasurer and additional copies may be sold by the department to other persons, at a price to be set by the department, covering the approximate cost of same and service involved. All funds received shall be forwarded by the department to the treasurer of state. [C24, 27, 31, 35,§4972; C39,§5011.04; C46, 50, 54,§321.160]

**321.161 Department to fix values and weight.** The department shall, on or before the first day of August, annually, and at such other times as new makes or models of motor vehicles are offered for sale or sold in this state, fix the value and weight of each of the different makes and models of motor vehicles which are sold or offered for sale within the state. [C24, 27, 31, 35,§4973; C39,§5011.05; C46, 50, 54,§321.161]

**321.162 Method of fixing value and weight.** The value shall be fixed at the next even one hundred dollars above the retail list price f.o.b. the factory, and the weight shall be fixed at the next even one hundred pounds above the manufacturer's shipping weight or the actual weight of the vehicle fully equipped. [C24, 27, 31, 35,§4974; C39,§5011.06; C46, 50, 54, §321.162]

#### PLATES, CONTAINERS, AND SUPPLIES

**321.163 Contracts for plates.** The commissioner shall, subject to the approval of the executive council, purchase all number plates, containers, and other supplies required by this chapter, except printing and except expenditures of less than one hundred dollars, after receiving competitive bids under open specifications. The bidders shall be required to furnish samples of such supplies and in awarding the contract the commissioner may consider the quality and suitability of the samples submitted as well as the price quoted. A record of all bids submitted shall be kept and the samples submitted shall be preserved until the next subsequent letting.

There is hereby appropriated from moneys, credited to the general fund of the state by section 321.145, the sum of three hundred thousand dollars, annually, or so much thereof as may be necessary, to the motor vehicle registration division of the department of public safety to defray the cost of said number plates. [SS15,§1571-m5; C24, 27, 31, 35,§4975; C39, §5012.01; C46, 50, 54,§321.163; 57GA, ch 1,§55]

**321.164 Bond.** The successful bidder shall be required to execute to the state a good and sufficient bond in such amount as the commissioner shall require, conditioned upon the plates furnished being in accordance with the samples and specifications, and providing for liquidated damages for failure to deliver plates at the time specified in the contract. [SS15, §1571-m5; C24, 27, 31, 35,§4976; C39,§5012.02; C46, 50, 54,§321.164]

**321.165 Manufacture by state.** In lieu of purchasing under competitive bids the commissioner shall have authority to arrange with the board of control to furnish such supplies as may be made at the state institutions. [C24, 27, 31, 35,§4977; C39,§5012.03; C46, 50, 54, §321.165]

**321.166 Specifications.** Such number plates shall be of metal, and of a size not to exceed six inches in width by fifteen inches in length, on which there shall be the word "Iowa", and numerals indicating the year for which it is issued. They shall be of a distinctively different color each year. There shall be at all times a marked contrast between the colors of the number plates and of the numerals or letters thereon, said colors to be designated by the department.

Number plates issued for use on a vehicle in accordance with the provisions of section 321.19 need not indicate the year for which issued nor be of a distinctively different color each year.

Number plates for vehicles on which the annual registration fee is payable in two installments shall prior to the payment of the second installment be of a distinctively different color than the plates used for other motor vehicles during the same year.

The distinctive number assigned to the vehicle shall be set forth in numerals which shall not exceed a length of four inches nor a stroke exceeding five-eighths of an inch in width.

In case of a motor vehicle registered by a manufacturer or dealer, there shall be on such plate, in addition to the foregoing, the letter "D", each stroke of such letter to be not to exceed four inches long and not to exceed five-eighths of an inch in width.

The number plates for use on a motor bicycle or a motorcycle shall be substantially one-half the dimensions above stated. [S13,§§1571-m12.-m13; C24, 27, 31, 35,§4978; C39,§5012.04; C46, 50, 54,§321.166]

**321.167 Delivery of plates or emblems.** On or before the first day of December of each year, the department shall deliver or cause to be delivered to the county treasurer of each county, approximately as many duplicate number plates and certificate containers as there are motor vehicles registered in such county during the preceding year, the plates so delivered to each county treasurer to be in numerical sequence.

In lieu of plates, the department may furnish the county treasurers appropriate distinguishing emblems as provided in section 321.34. [C24, 27, 31, 35,§4979; C39,§5012.05; C46, 50, 54, §321.167]

**321.168 Additional deliveries.** Thereafter, during the year, the department, upon requisition of the county treasurer, shall deliver additional number plates and certificate containers. [C24, 27, 31, 35,§4980; C39,§5012.06; C46, 50, 54, §321.168]

**321.169 Account of plates.** The department shall keep an accurate record of all number plates issued to each county, and shall also keep a record showing the assignment thereof by the county treasurer to motor vehicles. [C24, 27, 31, 35, §4981; C39, §5012.07; C46, 50, 54, §321.169]

**321.170 Plates for exempt vehicles.** The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles exempted from a registration fee and shall keep a separate record thereof. [C24, 27, 31, 35, §4982; C39, §5012.08; C46, 50, 54, §321.170]

**321.171 Title of plates.** All number plates issued shall be and remain the property of the state. [C24, 27, 31, 35, §4983; C39, §5012.09; C46, 50, 54, §321.171]

**321.172 Certificate containers.** The commissioner shall approve devices for holding and displaying the certificate of registration, and may require such devices so to receive and hold such certificate that when the certificate is removed from the holder the certificate will be destroyed or mutilated so it cannot be used on other vehicles. [C24, 27, 31, 35, §4984; C39, §5012.10; C46, 50, 54, §321.172]

**321.173 When fees returnable.** Whenever any application to the department is accompanied by any fee as required by law and such application is refused or rejected said fee shall be returned to said applicant.

Whenever the department through error collects any fee not required to be paid hereunder the same shall be refunded, from the refund account, to the person paying the same upon application therefor made within six months after the date of such payment. [C39, §5012.11; C46, 50, 54, §321.173]

#### OPERATORS' AND CHAUFFEURS' LICENSES

**321.174 Operators and chauffeurs licensed.** No person, except those hereinafter expressly exempted shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur issued by the department of public safety. No person shall operate a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. [C31, 35, §4960-d2; C39, §5013.01; C46, 50, 54, §321.174]

Referred to in §321.282

**321.175 Chauffeurs exempted as operators.** Any person holding a valid chauffeur's license hereunder need not procure an operator's license. [C31, 35, §4960-d21; C39, §5013.02; C46, 50, 54, §321.175]

**321.176 Persons exempt.** The following persons are exempt from license hereunder:

1. Any person while operating a motor vehicle in the service of the army, navy, or marine corps of the United States.

2. Any person while operating a farm tractor or implement of husbandry to or from the home farm buildings to any adjacent or near-

by farm land for the exclusive purpose of conducting farm operations.

3. A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

4. A nonresident who is at least eighteen years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state.

5. Any nonresident who is at least eighteen years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident. [C31, 35, §§4960-d3, d4; C39, §5013.03; C46, 50, 54, §321.176]

**321.177 Persons not to be licensed.** The department shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen years, except that the department may issue a restricted license as provided in section 321.194 or an instruction permit as provided in section 321.180 to any person who is at least fourteen years of age.

2. To any person, as a chauffeur, who is under the age of eighteen years, except that the department may issue to any person over the age of sixteen years a license to operate a light delivery truck, panel delivery truck or pickup.

3. To any person, as an operator or chauffeur whose license or driving privilege has been suspended during such suspension or to any person whose license, or driving privilege, has been revoked, until the expiration of one year after such revocation.

4. To any person, as an operator or chauffeur, who is a habitual drunkard, or is addicted to the use of narcotic drugs.

5. To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law. Provided, however, that the department may issue such license when said mentally-ill person is placed on parole or convalescent leave, when advised in writing that the medical staff and superintendent of the institution in which the person has been hospitalized recommend the issuance of said license.

6. To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

7. To any person when the commissioner has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways. [C31, 35, §§4960-d5-4960-d9; C39, §5013.04; C46, 50, 54, §321.177; 57GA, ch 147, §1]

Referred to in §§321.178, 321.281, 321.376

**321.178 Chauffeurs' age exception.** Notwithstanding the provisions of subsection 2 of section 321.177, the department is hereby authorized to issue to a person seventeen years of age a license to operate a motor vehicle as a chauffeur, upon application showing the information and signatures required in section 321.184. [C46, 50, 54, §321.178]

**321.179 Special restrictions on chauffeurs.** No person who is under the age of twenty-one years shall drive any motor vehicle while in use as a carrier of flammables or combustibles, or as a public or common carrier of persons, except a school bus. [C31, 35, §4960-d10; C39, §5013.05; C46, 50, 54, §321.179]

Referred to in §321.1  
School bus drivers, §321.375

**321.180 Instruction permits.** Any person who is at least fourteen years of age and who except for his lack of instructions in operating a motor vehicle would otherwise be qualified to obtain an operator's license under this chapter, may apply for a temporary instruction permit, and upon the applicant meeting the requirements of section 321.186 other than driving demonstration, and paying the required fee, the department shall issue such permit, entitling the applicant while having such permit in his immediate possession to drive a motor vehicle upon the highways for a period of six months when accompanied by a licensed operator or chauffeur who is at least twenty-one years of age, and who is actually occupying a seat beside the driver, except that any instruction permit issued to a person who is less than sixteen years of age shall be valid until his sixteenth birthday and shall entitle such permittee to drive a motor vehicle upon the highways only when accompanied by a parent or guardian, who is a holder of a valid operator's or chauffeur's license, and who is actually occupying a seat beside the driver. The department, upon receiving proper application, may in its discretion issue without charge a restricted instruction permit effective for a period of not to exceed six months, if such applicant is at least fourteen years of age and is enrolled in a driver training program approved by the department. Such instruction permit shall entitle the permit holder when he has such a permit in his immediate possession to operate a motor vehicle only when an instructor approved by the department is occupying a seat beside the permit holder. Each applicant applying for an instruction permit under an approved driver training program shall furnish a certificate of eligibility and such certificate shall be

valid only when signed by an approved instructor. [C31, 35, §4960-d23; C39, §5013.06; C46, 50, 54, §321.180]

Referred to in §321.177

**321.181 Temporary permit.** The department may, in its discretion, issue a temporary driver's permit to an applicant for an operator's or chauffeur's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused. [C39, §5013.07; C46, 50, 54, §321.181]

**321.182 Application for license or permit.** Every application for an instruction permit or for an operator's or chauffeur's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the department are hereby authorized to administer such oaths without charge. The applicant shall write his usual signature with pen and ink upon the application in the space provided for signature. [C31, 35, §4960-d12; C39, §5013.08; C46, 50, 54, §321.182]

**321.183 Contents of application.** Every said application shall state the full name, date of birth, occupation, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal. [C31, 35, §4960-d12; C39, §5013.09; C46, 50, 54, §321.183]

**321.184 Applications of minors.** The application of any person under the age of eighteen years for an instruction permit, operator's license, or permit issued under section 321.194 shall be signed and verified before a person authorized to administer oaths by both the father and mother of the applicant, if both are living and have custody of him, or in the event neither parent is living then by the person or guardian having such custody or by an employer of such minor. [C31, 35, §4960-d13; C39, §5013.10; C46, 50, 54, §321.184]

Referred to in §321.178

**321.185 Death of person signing application—effect.** The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision

shall not apply in the event the minor has attained the age of eighteen years. [C39, §5013.11; C46, 50, 54, §321.185]

**321.186 Examination of new or incompetent operators.** The department may examine every new applicant for an operator's or chauffeur's license or any person holding a valid operator's or chauffeur's license when the department has reason to believe that such person may be physically or mentally incompetent to operate a motor vehicle, or whose driving record appears to the department to justify such an examination. Such examinations shall be held in every county within periods not to exceed fifteen days. It shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and such further physical and mental examinations as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. [C31, 35, §4960-d14; C39, §5013.12; C46, 50, 54, §321.186]

Referred to in §321.180

**321.187 Appointment of examiners.** The department is hereby authorized to appoint persons from the highway patrol or may designate the county sheriff for the purpose of examining applicants for operators' and chauffeurs' licenses. It shall be the duty of any such person so appointed to conduct examinations of applicants for operators' and chauffeurs' licenses under the provisions of this chapter to make a written report of findings and recommendations upon such examination to the department. Examiners appointed by the department shall have the authority of peace officers for the purpose of enforcing the laws relating to motor vehicles and the operation thereof, and when on duty shall wear a uniform and proper identifying badge or badges as prescribed by the commissioner which shall be purchased by the department and paid for from the department maintenance fund. [C31, 35, §4960-d17; C39, §5013.13; C46, 50, 54, §321.187]

**321.188 Sheriff may issue temporary license.** When a department uniformed examiner is not available, the county sheriff may in his discretion accept from a person holding a valid operator's license of this state or a valid chauffeur's license of another state, application to the department for a chauffeur's license accompanied by the regular fee therefor, and is hereby authorized to issue a license to operate a motor vehicle as a chauffeur, using forms provided by the department, to expire fifteen days from issuance. The entire fee and application shall be turned over to the department examiner on or before the date of expiration of such license and if the applicant does not appear within the calendar year for examination the

license fee shall be considered an earned fee, but if upon examination the application is denied, the fee shall be returned to applicant by the department. No such license shall be issued to any person who has within the same calendar year been issued a license as herein provided or to any person previously denied any license by the department. [C46, 50, 54, §321.188]

**321.189 Licenses issued.** The department shall upon payment of the required fee, issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, occupation, sex, residence address, a brief description of the licensee, and the usual signature of the licensee. No license shall be valid unless it bears the signature of the licensee. [C31, 35, §4960-d19, -d20, -d22, -d28; C39, §5013.14; C46, 50, 54, §321.189]

**321.190 Carried and exhibited.** Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a justice of peace, a peace officer, or a field deputy or examiner of the department. However, no person charged with violating this section shall be convicted if he produces in court, within a reasonable time, an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest. [C31, 35, §4960-d29; C39, §5013.15; C46, 50, 54, §321.190]

**321.191 Fee.** The fee for an operator's license or instruction permit shall be three dollars. The fee for a chauffeur's license shall be four dollars. [C31, 35, §4960-d26; C39, §5013.16; C46, 50, 54, §321.191; 57GA, ch 148, §§1, 2]

**321.192 Disposal of fees.** Such license fees shall be forwarded by the department to the treasurer of state who shall place same in the general fund of the state, provided that for each operator's license issued by a county sheriff for which a license fee is paid, the sheriff issuing the same shall be entitled to retain the sum of fifteen cents and for each chauffeur's license, the sum of fifty cents, which shall be credited to the county general fund. [C31, 35, §4960-d25; C39, §5013.17; C46, 50, 54, §321.192]

**321.193 Restricted licenses.** The department upon issuing an operator's or chauffeur's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of vehicle or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee, including licenses issued under section 321.194, as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

The department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

The department may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

It is a misdemeanor, punishable as provided in section 321.482, for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him. [C39,§5013.18; C46, 50, 54, §321.193]

**321.194 Minors' school licenses.** Whenever the necessity therefor is shown, a restricted license may be issued to any person between the ages of fourteen and sixteen years which license shall entitle the holder thereof, while having such license in his immediate possession, to operate a motor vehicle during the hours of 7 a. m. to 6 p. m. over the most direct and accessible route between the licensee's residence and his school of enrollment for the purpose of attending duly scheduled courses of instruction at such school or at any time when accompanied by a parent or guardian who is a holder of a valid operator's or chauffeur's license, and who is actually occupying a seat beside the driver. Such license shall expire on the licensee's sixteenth birthday. For the purpose of establishing a need for the license provided for in this section, each application shall be accompanied by an affidavit from the school board or superintendent of the applicant's school which affidavit shall be upon a form provided by the department and shall state the facts deemed to justify the issuance of a license to the applicant. Neither such affidavit nor the inability to obtain the same shall be binding on the department but may be considered by the department in its determining of whether or not to grant the application. The fact that the applicant resides at a distance less than one mile from his school shall be prima-facie evidence of the nonexistence of any necessity for the issuance of such a license. A license issued hereunder is subject to suspension or revocation in like manner as any other license or permit issued under any law of this state and in addition thereto the department may suspend such license upon receiving satisfactory evidence that the licensee has violated the restrictions of such license or has been involved in two or more accidents chargeable to such licensee and the department shall revoke any license issued hereunder upon receiving a record of such licensee's conviction for two or more violations of any law of this state or city ordinance, other than parking regulations, regulating the operation of motor vehicles on highways and after revoking a license hereunder the department shall not grant application for any new license or permit until the expiration of one year or until the licensee attains his sixteenth birth-

day whichever is the longer period. [C31, 35, §4960-d5; C39,§5013.19; C46, 50, 54,§321.194]

Referred to in §§321.177, 321.184, 321.193

**321.195 Duplicate certificates.** In the event that an instruction permit or operator's or chauffeur's license or extension certificate issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon payment of a fee of fifty cents for a chauffeur's license or twenty-five cents for an operator's license, or extension certificate, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such permit, license, or extension certificate has been lost or destroyed. [C31, 35,§4960-d27; C39,§5013.20; C46, 50, 54, §321.195]

**321.196 Expiration of operator's license—renewal—vision test mandatory.** Each operator's license issued after July 5, 1948 shall expire two years from the licensee's birthday anniversary occurring in the year of issuance. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. All applications for renewal of operators' licenses made after July 5, 1948 shall be made under the direct supervision of a uniformed member of the department and shall be approved by such uniformed member. The commissioner may, in his discretion, authorize the renewal of a valid license upon application without an examination provided that, a person holding such license has not more than three convictions of moving traffic violations during the previous two years and, provided that such person satisfactorily passes a vision test as prescribed by the department.

The commissioner shall be authorized to assign not to exceed ten percent of the total number of Iowa highway safety patrolmen authorized by law for the purposes of carrying out the provisions of this section. [C31, 35, §§4960-d15,-d30; C39,§5013.21; C46, 50, 54, §321.196]

**321.197 Expiration of chauffeur's license.** Every chauffeur's license issued hereunder shall expire annually on the licensee's date of birth. Persons whose birthdays occur on February 29 shall be deemed to occur on March 1, for the purpose of this section. Any chauffeur's license issued to be valid for the calendar year 1949, shall be extended to the next birthday of the licensee in the year 1950, and shall be renewed on or before that date upon payment of the license fees required by law. The department in its discretion may waive the examination of any such applicant previously licensed as a chauffeur under this chapter, provided that such person satisfactorily passes a vision test as prescribed by the department. All applications for the renewal of a chauffeur's license made after January 1, 1950, shall be made under the direct supervision of a uniformed member of the department and shall be approved by such uniformed member. [C31, 35,§4960-d31; C39,§5013.22; C46, 50, 54,§321.197]



**321.198 Military service exception.** The effective date of a valid operator's license and of a valid chauffeur's license to the extent that it permits the operation of a motor vehicle as an operator, issued under the laws of this state, held by any person at the time of entering the military service of the United States or of the state of Iowa subsequent to September 19, 1940, notwithstanding the expiration of such license according to its terms, is hereby extended without fee until six months following the discharge of such person from the military service, provided such discharge is honorable and such person is not suffering from such physical disabilities as to impair his competency as an operator and provided further that such licensee shall upon demand of any peace officer furnish satisfactory evidence of his military service. However, no person entitled to the benefits of this section, charged with operating a motor vehicle without an operator's license, shall be convicted if he produces in court, within a reasonable time, a valid operator's or chauffeur's license theretofore issued to him along with evidence of his military service as above mentioned.

The department is hereby authorized to renew any operator's license falling within the provisions and limitations of the preceding paragraph, without examination, upon application and payment of fee made within six months following discharge from the military service. [C46, 50, 54, §321.198]

**321.199 Records.** The department shall file every application for a license received by it and shall maintain suitable indexes containing, in alphabetical order:

1. All applications denied and on each thereof note the reasons for such denial.
2. All applications granted.
3. The name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action. [C31, 35, §4960-d18; C39, §5013.23; C46, 50, 54, §321.199]

**321.200 Conviction and accident file.** The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times. [C39, §5013.24; C46, 50, 54, §321.200]

#### CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES

**321.201 Authority to cancel license.** The department is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that said

licensee failed to give the required or correct information in his application or committed any fraud in making such application. [C31, 35, §4960-d33; C39, §5014.01; C46, 50, 54, §321.201]

**321.202 Surrender of license.** Upon such cancellation, the licensee must surrender the license so canceled to the department. [C39, §5014.02; C46, 50, 54, §321.202]

**321.203 Suspending privileges of nonresidents.** The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked. [C31, 35, §4960-d37; C39, §5014.03; C46, 50, 54, §321.203]

**321.204 Certification of conviction.** The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. [C31, 35, §4960-d41; C39, §5014.04; C46, 50, 54, §321.204]

**321.205 Conviction in another state.** The department is authorized to suspend or revoke the license of any resident of this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur. [C31, 35, §4960-d39; C39, §5014.05; C46, 50, 54, §321.205]

**321.206 Surrender of license—duty of court.** Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the department. [C31, 35, §4960-d32; C39, §5014.06; C46, 50, 54, §321.206]

**321.207 Record forwarded.** Every court having jurisdiction over offenses committed under this chapter, or any other law of this state or any city traffic ordinances, other than parking regulations, regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted, and the department shall thereupon consider and act upon such recommendation in such manner as may seem to it best.

The judge of said court shall also immediately enter upon the reverse side of the operator's or chauffeur's license of the convicted person,

the date of said conviction, the code section violated and add his signature, which shall remain on said license until renewal unless ordered removed after a subsequent acquittal on appeal. [C31, 35,§4960-d32; C39,§5014.07; C46, 50, 54,§321.207]

**321.208 "Conviction" defined.** For the purposes of this chapter the term "conviction" shall mean a final conviction. Also for the purposes of this chapter a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. [C39,§5014.08; C46, 50, 54,§321.208]

**321.209 Mandatory revocation.** The department shall forthwith revoke the license of any operator or chauffeur, or driving privilege, upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle.
2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.
3. Any felony in the commission of which a motor vehicle is used.
4. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.
5. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles.
6. Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving.
7. Conviction, or forfeiture of bail not vacated, upon three charges of any speed restriction violation under the provisions of sections 321.285 to 321.287, inclusive, committed within a period of twelve months. [C31, 35,§§4960-d33, 5027-d1; C39,§5014.09; C46, 50, 54,§321.209; 56GA, ch 160,§§1, 2]

Referred to in §§321.212, 321.282

**321.210 Authority to suspend.** The department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction.
2. Is an habitually reckless or negligent driver of a motor vehicle.
3. Is an habitual violator of the traffic laws.
4. Is incompetent to drive a motor vehicle.
5. Has permitted an unlawful or fraudulent use of such license.
6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation. [C31, 35,§4960-d35; C39,§5014.10; C46, 50, 54,§321.210]

**321.211 Notice and hearing.** Upon suspending the license of any person as hereinbefore authorized the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing before the commissioner or his duly authorized agent as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. [C31, 35, §4960-d36; C39,§5014.11; C46, 50, 54,§321.211]

**321.212 Period of suspension or revocation.** The department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder thereof is competent to operate a motor vehicle and a refusal to reinstate shall constitute a denial of license within the provisions of section 321.215; upon revoking a license the department shall not in any event grant application for a new license until the expiration of one year after such revocation.

The department shall not suspend a license under the provisions of subsections 6 and 7 of section 321.209 for more than thirty days nor less than five days as recommended by the trial court. [C31, 35,§§4960-d40,-d45; C39, §5014.12; C46, 50, 54,§321.212; 56GA, ch 160,§3]

Referred to in §321.281

**321.213 Surrender of license.** The department upon suspending or revoking a license shall require that such license be surrendered to and be retained by the department except that at the end of the period of suspension such license so surrendered shall be returned to the licensee. [C31, 35,§4960-d42; C39,§5014.13; C46, 50, 54,§321.213]

**321.214 No operation under foreign license.** Any resident or nonresident whose operator's or chauffeur's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other state or country or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter. [C31, 35,§4960-d38; C39,§5014.14; C46, 50, 54,§321.214]

**321.215 Appeal.** Any person denied a license or whose license has been canceled, suspended, or revoked by the department except

where such cancellation or revocation is mandatory under the provisions of this chapter shall have the right to file a petition within thirty days thereafter for a hearing in the matter in a court of record in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty days written notice to the commissioner, and thereupon the court shall hear and determine the matter as an original proceeding upon a transcript of all the proceedings before the commissioner, and upon additional evidence and other pleadings as the court may require. The decision of the court shall be final. [C31, 35, §§4960-d43, d44; C39, §5014.15; C46, 50, 54, §321.215]

Referred to in §321.212

#### VIOLATION OF LICENSE PROVISIONS

**321.216 Unlawful use of license.** It is a misdemeanor, punishable as provided in section 321.482 unless another punishment is otherwise provided, for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious or fraudulently altered operator's or chauffeur's license.

2. To lend his operator's or chauffeur's license to any other person or knowingly permit the use thereof by another.

3. To display or represent as one's own any operator's or chauffeur's license not issued to him.

4. To fail or refuse to surrender to the department upon its lawful demand any operator's or chauffeur's license which has been suspended, revoked, or canceled.

5. To use a false or fictitious name in any application for an operator's or chauffeur's license or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

6. To permit any unlawful use of an operator's or chauffeur's license issued to him. [C31, 35, §§4960-d46, d52; C39, §5015.01; C46, 50, 54, §321.216]

**321.217 Perjury.** Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable. [C31, 35, §4960-d47; C39, §5015.02; C46, 50, 54, §321.217]

Perjury, §721.1

**321.218 Driving while license denied, suspended, or revoked.** Any person whose operator's or chauffeur's license, or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied, canceled, suspended, or revoked, is

guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two days or more than thirty days. The sentence imposed under this section shall not be suspended by the court, notwithstanding the provisions of section 247.20 or any other provision of statute. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was suspended or revoked, shall extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during such additional period. [C31, 35, §§4960-d34, d51; C39, §5015.03; C46, 50, 54, §321.218]

**321.219 Permitting unauthorized minor to drive.** No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter. [C31, 35, §4960-d48; C39, §5015.04; C46, 50, 54, §321.219]

**321.220 Permitting unauthorized person to drive.** No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter. [C31, 35, §4960-d50; C39, §5015.05; C46, 50, 54, §321.220]

**321.221 Employing unlicensed chauffeur.** No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter. [C31, 35, §4960-d49; C39, §5015.06; C46, 50, 54, §321.221]

**321.222 Renting motor vehicle to another.** No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed. [C39, §5015.07; C46, 50, 54, §321.222]

**321.223 License inspected.** No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence. [C39, §5015.08; C46, 50, 54, §321.223]

**321.224 Record kept.** Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the department. [C39, §5015.09; C46, 50, 54, §321.224]

HOURS OF OPERATION

**321.225 Maximum mechanical operation.** No person shall operate a commercial vehicle for hire for more than a period of twelve hours out of any period of twenty-four hours upon the highways of this state without being relieved from duty for ten consecutive hours and where a driver puts in twelve hours of driving out of any period of twenty-four hours, though not consecutive he must be given at least eight hours off duty. [C31, 35,§5079-d8; C39,§5016.01; C46, 50, 54,§321.225]

Referred to in §§321.226, 321.227

**321.226 Maximum operation by employee.** No person, firm, partnership, association, or corporation shall require or permit any employee or person to drive or operate any commercial motor vehicle upon the public highways of this state in violation of the provisions of section 321.225. [C31, 35,§5079-d9; C39, §5016.02; C46, 50, 54,§321.226]

Referred to in §321.227

**321.227 Violations.** Any person, firm, partnership, association or corporation violating any of the provisions of sections 321.225 and 321.226 shall be guilty of a misdemeanor and, upon conviction, may be fined not less than twenty-five dollars, nor more than one hundred dollars. [C31, 35,§5079-d10; C39,§5016.03; C46, 50, 54,§321.227]

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

**321.228 Provisions refer to highways—exceptions.** The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of sections 321.261 to 321.274, inclusive, and sections 321.280 to 321.284, inclusive, shall apply upon highways and elsewhere throughout the state. [C39, §5017.01; C46, 50, 54,§321.228]

**321.229 Obedience to police officers.** No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic. [S13,§1571-m18; C24, 27, 31, 35,§5064; C39,§5017.02; C46, 50, 54, §321.229]

**321.230 Public officers not exempt.** The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles. [C39,§5017.03; C46, 50, 54,§321.230]

**321.231 Emergency vehicles.** The driver of any authorized emergency vehicle when responding to an emergency call upon approach-

ing a red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past such red or stop sign or signal. At other times drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal. [C39,§5017.04; C46, 50, 54, §321.231]

See also §321.324

**321.232 Special privilege restricted.** No driver of any authorized emergency vehicle shall assume any special privilege under this chapter except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. [C39,§5017.05; C46, 50, 54, §321.232]

**321.233 Road workers exempted.** The provisions of this chapter shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work. [C39,§5017.06; C46, 50, 54, §321.233]

**321.234 Bicycles or animal-drawn vehicles.** Every person riding a bicycle or an animal or driving any animal drawing a vehicle upon a roadway shall be subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application. [C39,§5017.07; C46, 50, 54,§321.234]

**321.235 Provisions uniform.** The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter. [C39,§5017.08; C46, 50, 54,§321.235]

Highway patrol, see ch 80

POWERS OF LOCAL AUTHORITIES

**321.236 Powers of local authorities.** Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.
2. Regulating traffic by means of police officers or traffic-control signals.
3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473, inclusive.

9. Regulating or prohibiting the turning of vehicles at intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee. [S13,§§1571-m18,m20; C24, 27, 31, 35, §§4992, 4995, 4997; C39,§5018.01; C46, 50, 54, §321.236]

Referred to in §321.237

**321.237 Posting signs.** No ordinance or regulation enacted under subsections 4, 5, 6 or 8 of section 321.236 shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate and shall be erected at the expense of such municipality. [C39,§5018.02; C46, 50, 54,§321.237]

**321.238 Testing stations.** All cities and towns shall have the power to acquire, establish, erect, equip, operate, and maintain motor vehicle testing stations therein and to pay for the same out of the allocations from the public safety fund. [C35,§4992; C39,§5018.03; C46, 50, 54,§321.238]

**321.239 Fees.** They shall have the power to fix the amount of fees, not exceeding fifty cents per test and not more than one dollar per year, for the inspection of any motor vehicle or truck for any defect prohibited by law upon any motor vehicle operated upon the streets, alleys, or thoroughfares of cities and towns. They shall pay all fees so collected into the public safety fund. [C35,§4992; C39,§5018.04; C46, 50, 54,§321.239]

**321.240 Compliance.** The right to use the streets, alleys and thoroughfares of any city or town so passing any such ordinance shall be dependent upon compliance with the terms of any such ordinance and with the laws of the state relating to motor vehicles and the parking or use thereof on the streets, roads, or public highways of such city or town. [C35,§4992; C39, §5018.05; C46, 50, 54,§321.240]

**321.241 Stickers.** The department of public safety shall prescribe the shape, size, color and inscription of a sticker to be placed, by any such city or town so operating a motor vehicle

testing station hereunder, upon the windshield of any motor vehicle so passing the tests herein provided. Said city or town shall insert the name thereof and the date said sticker was issued.

Said sticker when so prepared, issued, and placed shall exempt the owner and driver of the automobile so passing said test from any other tests hereunder at any place in the state for the period for which said sticker was issued. [C35,§4992; C39,§5018.06; C46, 50, 54, §321.241]

**321.242 Traffic council.** Any city which has set up a traffic safety council, or other body, by ordinance, for the construction, operation, and maintenance of any such testing station, shall continue to so operate, maintain, supervise, and control said station through said traffic safety council. [C35,§4992; C39,§5018.07; C46, 50, 54,§321.242]

**321.243 Penalty.** Cities and towns shall have the power to enforce any such ordinance by fine, not exceeding twenty-five dollars, or imprisonment, not exceeding seven days, in default of payment, which said fine or imprisonment may be imposed upon either the owner or operator of any such vehicle. [C35,§4992; C39,§5018.08; C46, 50, 54,§321.243]

**321.244 Scope.** Cities and towns may provide for the inspection of motor vehicles and trucks operated upon the streets, alleys, or thoroughfares thereof when owned or operated by residents, or by persons gainfully employed, in any such city or town where so operated. [C35,§4992; C39,§5018.09; C46, 50, 54, §321.244]

**321.245 Control by department.** The department of public safety shall have supervision and control over the type of tests and the facilities therefor in any such motor vehicle testing station, and any such city or town desiring to establish any such station shall first procure the approval thereof by the department of public safety. [C35,§4992; C39,§5018.10; C46, 50, 54,§321.245]

**321.246 Payment from earnings.** Cities and towns shall have additional powers to pay for any such testing station or stations and the equipment, maintenance and operation thereof from allocations of the public safety fund. [C35, §4992; C39,§5018.11; C46, 50, 54,§321.246]

**321.247 Ordinances.** All ordinances, rules and regulations which may have been or which may be hereafter enacted in pursuance of the above enumerated powers, shall remain in full force and effect. [S13,§1571-m20; C24, 27, 31, 35, §4993; C39,§5018.12; C46, 50, 54,§321.247]

**321.248 Parks and cemeteries.** Local authorities may by general rule, ordinance, or regulation exclude vehicles from any cemetery or ground used for the burial of the dead, or exclude vehicles used solely or principally for commercial purposes, from any park or part

of a park system where such general rule, ordinance, or regulation is applicable equally and generally to all other vehicles used for the same purpose, if, at the entrance, or at each entrance if there be more than one, to such cemetery or park from which vehicles are so excluded, there shall have been posted a sign plainly legible from the middle of the public highway on which such cemetery or park opens, plainly indicating such exclusion and prohibition. [S13,§1571-m20; C24, 27, 31, 35, §4994; C39,§5018.13; C46, 50, 54,§321.248]

**321.249 School zones.** Cities, towns and counties shall have the power to establish school zones and provide for the stopping of all motor vehicles approaching said zones, when movable stop signs have been placed in the streets in such cities and towns and highways in counties at the limits of the zones, this notwithstanding the provisions of any statute to the contrary. [C31, 35,§4997-d1; C39, §5018.14; C46, 50, 54,§321.249]

**321.250 Discriminations.** When the local authorities of other states shall, by the adoption of rules and regulations or otherwise, prohibit motor vehicles registered under the laws of this state from operating upon highways in any subdivision of such other state, the local authorities of this state may, by ordinance or otherwise, require the motor vehicles of the subdivisions of such other state while operating by their own power in this state to be registered under the laws of this state. [C24, 27, 31, 35,§4998; C39,§5018.15; C46, 50, 54,§321.250]

**321.251 Rights of owners of real property.** Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner. [C39,§5018.16; C46, 50, 54, §321.251]

#### TRAFFIC SIGNS, SIGNALS, AND MARKINGS

**321.252 Highway commission to adopt sign manual.** The state highway commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials. [C24, 27,§4627; C31, 35,§§4627, 5079-d7; C39,§5019.01; C46, 50, 54,§321.252]

**321.253 Highway commission to erect signs.** The state highway commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all primary highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide

traffic. Whenever practical, said devices or signs shall be purchased from the board of control. [C24, 27,§4627; C31, 35,§§4627, 5079-d7; C39,§5019.02; C46, 50, 54,§321.253]

Analogous provision, §321.346

**321.254 Local authorities restricted.** No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the state highway commission except by the latter's permission. [C39, §5019.03; C46, 50, 54,§321.254]

**321.255 Local traffic-control devices.** Local authorities in their respective jurisdiction shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications. [C39,§5019.04; C46, 50, 54, §321.255]

**321.256 Obedience to official traffic-control devices.** No driver of a vehicle or motorman of a streetcar shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a police officer. [C39,§5019.05; C46, 50, 54, §321.256]

**321.257 Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution" or "Stop" or exhibiting different colored lights successively one at a time the following colors only shall be used and said terms and lights shall indicate as follows:

1. *Green alone or "Go".*

Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

2. *Yellow alone or "Caution"* when shown following the green or "Go" signal.

Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety a vehicle may be driven cautiously through the intersection.

Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

3. *Red alone or "Stop".*

Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection or at such other point as may be indicated by a clearly visible line and shall

remain standing until green or "Go" is shown alone.

No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

**4. Red with green arrow.**

Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

The motorman of any streetcar shall obey all the above signals as applicable to vehicles. [C39,§5019.06; C46, 50, 54,§321.257]

**321.258 Flashing signals.** Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

1. *Flashing red* (Stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. *Flashing yellow* (Caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. [C39,§5019.07; C46, 50, 54,§321.258]

**321.259 Unauthorized signs, signals, or markings.** No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official parking sign, curb or other marking, traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information of a type that cannot be mistaken for official signs.

Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. [C39,§5019.08; C46, 50, 54,§321.259]

**321.260 Interference with devices, signs, or signals.** No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal

or any inscription, shield, or insignia thereon, or any other part thereof. [C39,§5019.09; C46, 50, 54,§321.260]

ACCIDENTS

**321.261 Death or personal injuries.** The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

The commissioner shall revoke the operator's or chauffeur's license of the person so convicted. [S13,§1571-m23; C24, 27, 31, 35,§§5072, 5074; C39,§5020.01; C46, 50, 54,§321.261]

Referred to in §321.228

**321.262 Damage to vehicle.** The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and punished as provided in section 321.482. [S13,§1571-m23; C24, 27, 31, 35,§5079; C39,§5020.02; C46, 50, 54, §321.262]

Referred to in §321.228

**321.263 Information and aid.** The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. [S13,§1571-m23; C24, 27, 31, 35,§§5072, 5079; C39,§5020.03; C46, 50, 54, §321.263]

Referred to in §§321.228, 321.261, 321.262

**321.264 Striking unattended vehicle.** The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. [C24, 27, 31, 35, §5079; C39, §5020.04; C46, 50, 54, §321.264]

Referred to in §321.228

**321.265 Striking fixtures upon a highway.** The driver of any vehicle involved in an accident resulting only in damage to property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in section 321.266. [C24, 27, 31, 35, §5079; C39, §5020.05; C46, 50, 54, §321.265]

Referred to in §321.228

**321.266 Reporting accidents.** The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa highway safety patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

The driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of fifty dollars or more shall also, within twenty-four hours after such accident, forward a written report of such accident to the department.

Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department. [S13, §1571-m23; C24, §§5073, 5075, 5104; C27, 31, 35, §§5073, 5075, 5105-a35, 5105-c21; C39, §5020.06; C46, 50, 54, §321.266]

Referred to in §§321.228, 321.265, 321.267

**321.267 Supplemental reports.** The department may require any driver of a vehicle involved in an accident of which report must be made as provided in section 321.266 to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents

to render reports to the department. [C39, §5020.07; C46, 50, 54, §321.267]

Referred to in §321.228

**321.268 Driver unable to report.** Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report. [C39, §5020.08; C46, 50, 54, §321.268]

Referred to in §321.228

**321.269 Accident report forms.** The department shall prepare and upon request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals, forms for accident reports required hereunder, which reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, condition then existing, and the persons and vehicles involved.

Every required accident report shall be made on a form approved by the department if said form is available. [C39, §5020.09; C46, 50, 54, §321.269]

Referred to in §321.228

**321.270 Coroners to report.** Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accident. [C39, §5020.10; C46, 50, 54, §321.270]

Referred to in §321.228

**321.271 Reports confidential—without prejudice.** All accident reports shall be in writing and the written report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in an accident, or the attorney for such person, the department shall disclose the identity of the person involved in the accident and his address. A written report filed with the department shall not be admissible in or used in evidence in any civil case arising out of the facts on which the report is based. [C39, §5020.11; C46, 50, 54, §321.271]

Referred to in §§321.228, 321.273

**321.272 Tabulation of reports.** The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents. [C39, §5020.12; C46, 50, 54, §321.272]

Referred to in §321.228

**321.273 City may require reports.** Any incorporated city, town, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of



such accident or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of section 321.271. [C39,§5020.13; C46, 50, 54,§321.273]

Referred to in §321.228

**321.274 Accidents in cities over 15,000.** When the accident occurs within the corporate limits of any city of fifteen thousand or more population, the accident and all information in connection therewith, as required in this chapter, shall be reported at the office of the chief of police and when reported elsewhere shall not constitute a compliance with the provisions of this section. [S13,§1571-m23; C24, 27, 31, 35, §5073; C39,§5020.14; C46, 50, 54,§321.274]

Referred to in §321.228

**321.275 to 321.279, inc.** Repealed by 52GA, ch 172,§35. See §§321A.5, 321A.14-321A.17, 321A.31, 321A.32. See also note following §321A.35.

#### DRIVING WHILE INTOXICATED AND RECKLESS DRIVING

**321.280 Assaults and homicide.** A conviction of the violation of any of the provisions of this chapter shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating motor vehicles. [S13,§1571-m30; C24, 27, 31, 35,§5091; C39, §5022.01; C46, 50, 54,§321.280]

Referred to in §321.228.

**321.281 Operating while intoxicated or drugged—forfeiture of liquor permit.** Whoever, while in an intoxicated condition or under influence of narcotic and/or hypnotic drugs or a combination of such drugs and alcohol, operates a motor vehicle upon the public highways of this state, shall, upon conviction or a plea of guilty, be punished, for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense and each offense thereafter by imprisonment in the penitentiary for any term of years not less than one nor more than five, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding.

The court in pronouncing sentence may provide as to the period during which a new license to operate a motor vehicle shall not be issued to the defendant, provided said period shall be not less than sixty days nor more than one year from the date of revocation; and the clerk of court shall forthwith certify to the department a true copy of the judgment sentencing the defendant under this section. The department may receive an application for and

shall grant a new license at the expiration of the period provided in the judgment of the court notwithstanding the provisions of sections 321.177 and 321.212.

The court shall also in pronouncing sentence provide for the immediate surrender of the defendant's liquor permit issued under chapter 123, which chapter is identified as the "Iowa Liquor Control Act". The sentence shall further provide that a true copy of the judgment sentencing the defendant shall be forthwith certified by the clerk of court to the Iowa liquor control commission. The liquor control commission shall not thereafter issue the defendant a liquor permit until such time as the court or judge of the court having original jurisdiction of the defendant for good cause shown shall so certify to the Iowa liquor control commission.

This section shall not apply to a person operating a motor vehicle while under the influence of narcotic or hypnotic drugs if such drugs were prescribed for such person and have been taken under such prescription and in accordance with the directions of a reputable doctor of medicine, provided however there is no evidence of the consumption of alcohol and further provided said doctor of medicine has not directed such person to refrain from operating a motor vehicle. [S13,§1571-m23; C24, 27, 31, 35,§5027; C39,§5022.02; C46, 50, 54,§321.281; 57GA, ch 149,§1]

Referred to in §321.228

**321.282 Violations.** If any person who has been convicted or pleaded guilty to driving or operating a motor vehicle upon the public highways of this state while in an intoxicated condition is found driving or operating any motor vehicle in violation of the provisions of sections 321.174 and 321.209 he shall, without regard to any other punishment provided by law, be imprisoned in the county jail for a period of not to exceed thirty days. [C31, 35,§5027-d2; C39,§5022.03; C46, 50, 54,§321.282]

Referred to in §321.228

**321.283 Reckless driving.** Any person who drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving. [C73,§4071; C97,§5039; S13, §1571-m19; C24, 27, 31, 35,§5028; C39,§5022.04; C46, 50, 54,§321.283]

Referred to in §321.228

**321.284 Punishment.** Every person convicted of reckless driving shall be punished upon a conviction by imprisonment for a period of not more than thirty days, or by fine of not less than twenty-five dollars, nor more than one hundred dollars. [C73,§4071; C97,§5039; S13, §1571-m19; C24, 27, 31, 35,§5028; C39,§5022.05; C46, 50, 54,§321.284]

Referred to in §321.228

#### SPEED RESTRICTIONS

**321.285 Speed restrictions.** Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not

greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as hereinbefore or hereinafter modified, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.

2. Twenty-five miles per hour in any residence or school district.

3. Forty miles per hour for any motor vehicle drawing another vehicle.

4. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 59 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the state highway commission and placed on the highway at the limits of such school district.

5. Sixty miles per hour from sunset to sunrise. [S13, §§1571-m19, m20; C24, 27, 31, 35, §§5029, 5030; C39, §5023.01; C46, 50, 54, §321.285; 57GA, ch 150, §1]

Referred to in §§321.209, 321.291, 321.292, 321.293

**321.286 Truck speed limits.** It shall be unlawful for the driver of a freight-carrying vehicle, with a gross weight of over five thousand pounds, to drive the same at a speed exceeding the following:

1. Fifty miles per hour for any freight-carrying vehicle which is equipped with pneumatic tires.

2. Twenty miles per hour for any freight-carrying vehicle equipped with solid rubber tires, if the weight of the vehicle and load is less than six tons, and twelve miles per hour for any freight-carrying vehicle equipped with solid rubber tires, if the weight of the vehicle and load is more than six tons. [S13, §§1571-m19, m20; C24, 27, 31, 35, §5029; C39, §5023.02; C46, 50, 54, §321.286]

Referred to in §§321.209, 321.291, 321.292

**321.287 Bus speed limits.** No passenger-carrying motor vehicle used as a common carrier, except school busses, shall be driven upon the highways at a greater rate of speed than fifty-five miles per hour during the daytime or at a greater rate of speed than fifty miles per hour during the nighttime. "Nighttime" means from one-half hour after sunset to one-half hour before sunrise, except at any other hour or any time when due to weather or other conditions there is not sufficient light to make persons and vehicles clearly discernible at a distance of more than five hundred feet. No school bus shall be operated in violation of

section 321.377. [C24, §5104; C27, 31, 35, §5105-a34; C39, §5023.03; C46, 50, 54, §321.287]

Referred to in §§321.209, 321.291, 321.292

**321.288 Control of vehicle.** The person operating a motor vehicle or motorcycle shall have the same under control and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, or a sharp turn, or a curve, or a steep descent, in a public highway.

4. When approaching and passing a fusee, flares, red reflector electric lanterns, red reflectors or red flags displayed in accordance with section 321.448. [S13, §1571-m18; C24, 27, 31, 35, §5031; C39, §5023.04; C46, 50, 54, §321.288]

**321.289 Speed signs—duty to install.** The state highway commission shall furnish and place on primary roads or on extensions of primary roads within any city or town suitable standard signs showing the points at which the rate of speed changes and the maximum rate of speed in the district which the vehicle is entering. On all other main highways the city or town shall furnish and erect suitable signs giving similar information to traffic on such highways. [S13, §1571-m20; C24, §5030; C27, 31, 35, §5030-b2; C39, §5023.05; C46, 50, 54, §321.289]

**321.290 Special restrictions.** Whenever the state highway commission shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway. [C39, §5023.06; C46, 50, 54, §321.290]

**321.291 Information or notice.** In every charge of violation of sections 321.285 to 321.287, inclusive, the information, also the notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed limit applicable within the district or at the location. [C39, §5023.07; C46, 50, 54, §321.291]

**321.292 Civil action unaffected.** The foregoing provisions of sections 321.285 to 321.287, inclusive, the information, also the notice to plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident. [C39, §5023.08; C46, 50, 54, §321.292]

**321.293 Local authorities may alter limits.** Local authorities in their respective jurisdic-

tion may in their discretion authorize by ordinance higher speeds than those stated in section 321.285 upon through highways or upon highways or portions thereof where stop signs have been erected at the entrances thereto provided signs are erected giving notice of the authorized speed, but local authorities shall not have authority to authorize by ordinance a speed in excess of fifty-five miles per hour. [C39,§5023.09; C46, 50, 54,§321.293]

**321.294 Minimum speed regulation.** No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. Peace officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a misdemeanor, and be punished as provided in section 321.482. [C31, 35,§5021-c1; C39,§5023.10; C46, 50, 54,§321.294]

See also §321.382

**321.295 Limitation on elevated structures.** No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is sign-posted as provided in this section.

The state highway commission upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of two hundred feet before each end of such structure.

Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said commission and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure. [C39, §5023.11; C46, 50, 54,§321.295]

**321.296 Emergency vehicles — speed.** The speed limitations set forth in this chapter shall not apply to authorized emergency vehicles when responding to emergency calls and the drivers thereof sound audible signal by bell, siren, or exhaust whistle. This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the

streets, nor shall it protect the driver of any such vehicle from the consequence of his negligence. [C39,§5023.12; C46, 50, 54,§321.296]

**DRIVING ON RIGHT SIDE OF ROADWAY—  
OVERTAKING AND PASSING, ETC.**

**321.297 Traveling on right-hand side.** The operator of a motor vehicle, in cities and towns, shall at all times travel on the right-hand side of the center of the street. [S13, §1571-m18; C24, 27, 31, 35,§5019; C39,§5024.01; C46, 50, 54,§321.297]

**321.298 Meeting and turning to right.** Persons on horseback, or in vehicles, including motor vehicles, meeting each other on the public highway, shall give one-half of the traveled way thereof by turning to the right. [R60, §908; C73,§1000; C97,§1569; S13,§1569; C24, 27, 31, 35,§5020; C39,§5024.02; C46, 50, 54,§321.298]

**321.299 Overtaking a vehicle.** The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. [S13,§§1569, 1571-m18; C24, 27, 31, 35, §5021, 5022; C39,§5024.03; C46, 50, 54,§321.299]

Passing on right, §321.302

**321.300 Failure to recognize signal.** Any driver of a vehicle that is overtaken by a faster moving vehicle who fails to heed the signal of the overtaking vehicle when it is given under such circumstances that he could, by the exercise of ordinary care and observation and precaution, hear such signal and who fails to yield that part of the traveled way as herein provided, shall be guilty of a misdemeanor punishable as provided in section 321.482. [C24, 27, 31, 35,§5023; C39,§5024.04; C46, 50, 54,§321.300]

Referred to in §321.301

**321.301 Burden of proof.** Upon proof that a signal was given as contemplated by section 321.300, the burden shall rest upon the accused to prove that he did not hear said signal. [C24, 27, 31, 35,§5024; C39,§5024.05; C46, 50, 54, §321.301]

**321.302 Overtaking on the right.** The driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either

upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four or more lines of moving traffic when such movement can be made in safety. No person shall drive off the pavement or upon the shoulder of the roadway in overtaking or passing on the right. [C39,§5024.06; C46, 50, 54,§321.302]

**321.303 Limitations on overtaking on the left.** No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction. [C39, §5024.07; C46, 50, 54,§321.303]

**321.304 Prohibited passing.** No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed for a distance of approximately seven hundred feet.

2. When approaching within one hundred feet of any narrow bridge, viaduct, or tunnel, when so signposted, or when approaching within one hundred feet of or traversing any intersection or railroad grade crossing.

3. Where official signs are in place directing that traffic keep to the right or a distinctive center line or off-center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the state highway commission. [C35,§5024-e1; C39, §5024.08; C46, 50, 54,§321.304]

**321.305 One-way roadways and rotary traffic islands.** Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

A vehicle passing around a rotary traffic island shall be driven only to the right of such island. [C39,§5024.09; C46, 50, 54,§321.305]

**321.306 Roadways laned for traffic.** Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Upon a roadway which is divided into three lanes a vehicle shall not be driven in the cen-

ter lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign. [C39, §5024.10; C46, 50, 54,§321.306]

**321.307 Following too closely.** The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway. [C39,§5024.11; C46, 50, 54, §321.307]

**321.308 Motor trucks and towed vehicles—distance requirements.** The driver of any motor truck, or of a motor vehicle drawing another vehicle, when traveling upon a roadway, outside of a business or residence district shall not follow within three hundred feet of another motor truck, or of a motor vehicle drawing another vehicle. The provisions of this section shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks. [C31, 35,§5067-d9; C39, §5024.12; C46, 50, 54,§321.308]

See sec. 321.309 for convoys or caravans

**321.309 Towing — convoys — drawbars.** No person shall pull or tow by motor vehicle, for hire, another motor vehicle over any highway outside the limits of any incorporated city or town, except in case of temporary movement of a disabled motor vehicle to the place where repairs will be made, unless such person has complied with the provisions of sections 321.57 and 321.58. Provided, however, if such person is a nonresident of the state of Iowa and has complied with the laws of the state of his residence governing licensing and registration as a transporter of motor vehicles he shall not be required to pay the fee provided in section 321.58 but only to submit proof of his status as a bona fide manufacturer or transporter as may reasonably be required by the department.

Every person pulling or towing by motor vehicle another motor vehicle in convoy or caravan shall maintain a distance of at least five hundred feet between the units of said convoy or caravan.

The drawbar or towing arm between a motor vehicle pulling or towing another motor vehicle shall be of a type approved by the commissioner, except in case of the temporary movement of a disabled vehicle in an emergency situation. [C31, 35,§5067-d9; C39,§5024.13; C46, 50, 54,§321.309; 57GA, ch 151,§1]

47GA, ch 134,§339-a1, editorially divided

**321.310 Four-wheel trailers behind trucks prohibited.** No truck shall, after January 1, 1939, pull or tow any four-wheeled trailer, and no semitrailer shall pull or tow any additional trailer over any of the highways in this state, except in case of temporary movement for repair or emergency, and then only to the nearest town or city where the necessary repairs may be made.

Nothing in this section shall prohibit any utility or company operating a pipe line into or through this state from moving on such highways a two-axle truck with a four-wheel trailer attached upon which trailer is mounted a portable pumping unit necessary for emergency use during repairs to such pipe line, provided that the gross weight of such trailer and the pumping equipment mounted thereon shall not exceed fifteen thousand pounds and that the combined length, height or weight of such truck and trailer combination does not exceed the length, height or weight limits prescribed by law for combinations of motor vehicles. Any such trailer when so moved shall be subject to registration in this state or entitled to reciprocal operating privileges upon the same conditions as are applicable to motor vehicles generally, and when subject to registration in this state the fee therefor shall be the same as prescribed by law for a trailer upon which well drilling equipment is mounted.

This section shall not be applicable to a truck operating under an "A" registration commonly known as a pickup truck or light delivery truck hauling less than two thousand pounds on said truck nor to a farm tractor pulling or towing a four-wheeled trailer. [C39, §5024.14; C46, 50, 54, §321.310]

#### TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

**321.311 Turning at intersections.** The driver of a vehicle intending to turn at an intersection shall do so as follows:

Both the approach for a right turn and right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the center line of the roadway being entered.

Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be

traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs. [S13, §1571-m18; C24, 27, 31, 35, §5033; C39, §5025.01; C46, 50, 54, §321.311]

**321.312 Turning on curve or crest of grade.** No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade or hill, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet. [C39, §5025.02; C46, 50, 54, §321.312]

**321.313 Starting parked vehicle.** No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. [C39, §5025.03; C46, 50, 54, §321.313]

**321.314 When signal required.** No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner hereinafter provided in the event any other vehicle may be affected by such movement. [S13, §1571-m18; C24, 27, 31, 35, §5032; C39, §5025.04; C46, 50, 54, §321.314]

**321.315 Signal continuous.** A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. [C39, §5025.05; C46, 50, 54, §321.315]

**321.316 Stopping.** No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. [S13, §1571-m18; C24, 27, 31, 35, §5032; C39, §5025.06; C46, 50, 54, §321.316]

**321.317 Signals by hand and arm or signal device.**

1. The signals required under the provisions of this chapter may be given either by means of the hand and arm as provided in section 321.318, or by a mechanical or electrical directional signal device or light of a type approved by the department and conforming to the provisions of this chapter relating thereto.

2. Directional signal devices shall be designed with a white, yellow or amber lamp or lamps to be displayed on the front of vehicles and with a lamp or lamps of red, yellow or amber to be displayed on the rear of vehicles. Such devices shall be capable of clearly indicating any intention to turn either to the right or to the left and shall be visible and understandable during both daylight and darkness

from a distance of at least one hundred feet from the front and rear of a vehicle equipped therewith.

3. After the thirty-first day of December, 1953, it shall be unlawful for any person to sell or offer for sale or operate on the highways of the state of Iowa any vehicle subject to registration under the provisions of this chapter which has never been registered in this or any other state prior to January 1, 1954, unless such vehicle is equipped with a directional signal device of a type approved by the department and is in compliance with the provisions of subsection 2 of this section. Motorcycles, motor scooters, bicycles with motor attached and semitrailers and trailers less than forty inches in width are exempt from the provisions of this section.

4. When a vehicle is equipped with a directional signal device, such device shall at all times be maintained in good working condition. No directional signal device shall project a glaring or dazzling light. All directional signal devices shall be self-illuminated when in use while other lamps on the vehicle are lighted.

5. Whenever any vehicle or combination of vehicles is disabled or for other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing during the hours of darkness, the operator of such vehicles may display on such vehicle or combination of vehicles four directional signals of a type complying with the provisions of this section relating to directional signal devices in simultaneous operation. The provisions of this subsection shall not be construed to exempt any vehicle or combination of vehicles from compliance with the provisions of sections 321.447 and 321.448. [S13,§1571-m18; C24, 27, 31, 35,§5032; C39,§5025.07; C46, 50, 54, §321.317; 57GA, ch 155,§2]

Referred to in §327A.13

**321.318 Method of giving hand and arm signals.** All signals herein required which may be given by hand and arm shall when so given be given from the left side of the vehicle and the following manner and interpretation thereof is suggested:

1. Left turn.—Hand and arm extended horizontally.

2. Right turn.—Hand and arm extended upward.

3. Stop or decrease of speed.—Hand and arm extended downward. [C39,§5025.08; C46, 50, 54,§321.318]

Referred to in §321.317

**RIGHT OF WAY**

**321.319 Approaching or entering intersections.** Where two vehicles are approaching on any public street or highway so that their paths will intersect and there is danger of collision, the vehicle approaching the other from the right shall have the right of way.

The foregoing rule is modified at through

highways and otherwise as hereinafter stated in this chapter. [S13,§1571-m18; C24, 27, 31, 35, §5035; C39,§5026.01; C46, 50, 54,§321.319]

**321.320 Turning left at intersection.** The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right of way to the vehicle making the left turn. [S13,§1571-m18; C24, 27, 31, 35,§5035; C39,§5026.02; C46, 50, 54,§321.320]

**321.321 Entering through highways.** The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute a hazard, but said driver having so yielded may proceed cautiously and with due care enter said through highway. [C27, §§5079-b2,-b3; C31, 35,§§5079-b2,-b3,-d2,-d3; C39, §5026.03; C46, 50, 54,§321.321]

**321.322 Entering stop intersection.** The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute a hazard, but may then proceed. [C27,§§5079-b2,-b3; C31, 35,§§5079-b2,-b3,-d2,-d3; C39,§5026.04; C46, 50, 54,§321.322]

**321.323** Repealed by 52GA, ch 175,§1.

See §321.353

**321.324 Operation on approach of emergency vehicles.** Upon the immediate approach of an authorized emergency vehicle with any lamp or device displaying a red light or flashing red light from directly in front thereof, or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency

vehicle has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. [C39, §5026.06; C46, 50, 54, §321.324]

See also §§321.231, 321.232

#### PEDESTRIANS RIGHTS AND DUTIES

**321.325 Pedestrians subject to signals.** Pedestrians shall be subject to traffic-control signals at intersections as heretofore declared in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in sections 321.327 to 321.331, inclusive. [C39, §5027.01; C46, 50, 54, §321.325]

**321.326 Pedestrians on left.** Pedestrians shall at all times when walking on or along a highway, walk on the left side of such highway. [C39, §5027.02; C46, 50, 54, §321.326]

**321.327 Pedestrians right of way.** Where traffic-control signals are not in place or in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter. [C39, §5027.03; C46, 50, 54, §321.327]

Referred to in §321.325

**321.328 Crossing at other than crosswalk.** Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway except that cities and towns may restrict such a crossing by ordinance.

Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

Where traffic-control signals are in operation at any place not an intersection pedestrians shall not cross at any place except in a marked crosswalk. [C39, §5027.04; C46, 50, 54, §321.328]

Referred to in §§321.325, 321.329

**321.329 Duty of driver.** Notwithstanding the provisions of section 321.328 every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise due care upon observing any child or any confused or incapacitated person upon a roadway. [C39, §5027.05; C46, 50, 54, §321.329]

Referred to in §321.325

**321.330 Use of crosswalks.** Pedestrians shall move, whenever practicable, upon the right half of crosswalks. [C39, §5027.06; C46, 50, 54, §321.330]

Referred to in §321.325

**321.331 Pedestrians soliciting rides.** No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

Nothing in this section or this chapter shall be construed so as to prevent any pedestrian from standing on that portion of the highway or roadway, not ordinarily used for vehicular traffic, for the purpose of soliciting a ride from the driver of any vehicle. [C39, §5027.07; C46, 50, 54, §321.331]

Referred to in §321.325

**321.332 White canes restricted to blind persons.** For the purpose of guarding against accidents in traffic on the public thoroughfares, it shall be unlawful for any person except persons wholly or partially blind to carry or use on the streets, highways, and public places of the state any white canes or walking sticks which are white in color or white tipped with red. [C46, 50, 54, §321.332]

Referred to in §321.334

**321.333 Duty of drivers.** Any driver of a vehicle or operator of a motor-driven vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog wearing a harness and walking on either side of or slightly in front of said blind person, shall immediately come to a complete stop, and take such precautions as may be necessary to avoid accident or injury to the person carrying a cane or walking stick white in color or white tipped with red or being led by a guide dog. [C46, 50, 54, §321.333; 56GA, ch 161, §1]

**321.334 Penalties.** Any person who shall carry a cane or walking stick such as prescribed in section 321.332 contrary to the provisions hereof, or who shall fail to heed the approach of a person lawfully so carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog, or who shall fail to immediately come to a complete stop, and take such precautions against accident or injury to such person, shall be fined not less than one dollar nor more than one hundred dollars for each offense. [C46, 50, 54, §321.334; 56GA, ch 161, §2]

#### STREETCARS AND SAFETY ZONES

**321.335 Passing streetcar on left.** The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any streetcar proceeding in the same direction, whether such streetcar is actually in motion or temporarily at rest, except:

1. When so directed by a police officer.
2. When upon a one-way street.

3. When upon a street where the tracks are so located as to prevent compliance with this section. [S13, §§1569, 1571-m18; C24, 27, 31, 35, §5022; C39, §5028.01; C46, 50, 54, §321.335]

**321.336 Caution when passing.** The driver of any vehicle when permitted to overtake and pass upon the left of a streetcar which has

stopped for the purpose of receiving or discharging any passenger shall reduce speed and may proceed only upon exercising due caution for pedestrians and shall accord pedestrians the right of way when required by other sections of this chapter. [C39,§5028.02; C46, 50, 54, §321.336]

**321.337 Stopping at street cars.** The driver of a vehicle overtaking upon the right any streetcar stopped or about to stop for the purpose of receiving or discharging any passenger shall stop such vehicle at least five feet to the rear of the nearest running board or door of such streetcar and thereupon remain standing until all passengers have boarded such car or upon alighting have reached a place of safety, except that where a safety zone has been established a vehicle need not be brought to a stop before passing any such streetcar but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians. [S13,§1571-m18; C24, 27, 31, 35,§5037; C39,§5028.03; C46, 50, 54, §321.337]

**321.338 Driving on streetcar tracks.** The driver of any vehicle proceeding upon any streetcar track in front of a streetcar upon a street shall remove such vehicle from the track as soon as practical after signal from the operator of said streetcar. [C39,§5028.04; C46, 50, 54, §321.338]

**321.339 Driving in front of streetcar.** When a streetcar has started to cross an intersection, no driver of a vehicle shall drive upon or cross the car tracks within the intersection in front of the streetcar. [C39,§5028.05; C46, 50, 54, §321.339]

**321.340 Driving through safety zone.** No vehicle shall at any time be driven through or within a safety zone. [C39,§5028.06; C46, 50, 54, §321.340]

#### SPECIAL STOPS REQUIRED

**321.341 Obedience to signal of train.** Whenever any person driving a vehicle approaches a railroad grade crossing and warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a train, the driver of such vehicle shall stop within fifty feet but not less than ten feet from the nearest track of such railroad and shall not proceed until he can do so safely.

The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train. [C39,§5029.01; C46, 50, 54,§321.341]

**321.342 Stop at certain railroad crossings.** The state highway commission with reference to primary highways and local authorities with reference to other highways under their jurisdiction are each hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the

driver of any vehicle shall stop within fifty feet but not less than ten feet from the nearest track of such grade crossing and shall proceed only upon exercising due care. [C39,§5029.02; C46, 50, 54,§321.342]

**321.343 Certain vehicles must stop.** The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than ten feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as herein-after provided, and shall not proceed until he can do so safely.

No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

This section shall not apply at street railway grade crossings within a business or residence district. [C27, 31, 35,§5105-a33; C39,§5029.03; C46, 50, 54,§321.343]

**321.344 Heavy equipment at crossing.** No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

Notice of any such intended crossing shall be given to a superintendent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than ten feet nor more than fifty feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. [C39, §5029.04; C46, 50, 54,§321.344]

**321.345 Stop at through highways.** The state highway commission with reference to primary highways, and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

Every said sign shall bear the word "Stop" in letters not less than six inches in height.



Every stop sign shall be located as near as practical at the property line of the highway at the entrance to which the stop must be made, or at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

Every driver of a vehicle and every motor-man of a streetcar shall stop at such sign or at a clearly marked stop line before entering an intersection except when directed to proceed by a police officer or traffic-control signal. [C27, §§5079-b3, b4; C31, 35, §§5079-b3, b4, d3, d4; C39, §5029.05; C46, 50, 54, §321.345]

Analogous provision, §321.253

**321.346 Cost of signs.** The cost of such signs on primary highways shall be paid out of the primary road fund. The cost of such signs on secondary roads shall be paid out of the county secondary road fund. [C27, §5079-b4; C31, 35, §§5079-b4, d4; C39, §5029.06; C46, 50, 54, §321.346; 57GA, ch 139, §15]

**321.347 Exceptions.** Provided that at intersections of such through highways with boulevards or heavy traffic streets in cities and towns, the council, subject to the approval of the state highway commission, may determine that the through highway traffic shall come to a stop, or may erect traffic-control signals, or may adopt such other means of handling the traffic as may be deemed practical and proper. [C31, 35, §5079-c1; C39, §5029.07; C46, 50, 54, §321.347]

Referred to in §321.349

**321.348 Limitations on cities and towns.** It shall be unlawful for any city or town to close or obstruct any street or highway which is used as the extension of a primary road within such city or town, except at times of fires or for the purpose of doing construction or repair work on such street or highway, or for other reasons with the consent of the highway commission, and it shall also be unlawful for any city or town to erect or cause to be erected or maintained any traffic sign or signal inconsistent with the provisions of this chapter. [C31, 35, §5079-c2; C39, §5029.08; C46, 50, 54, §321.348]

Referred to in §321.349

**321.349 Exceptions.** The provisions of sections 321.347 and 321.348 as concerns the erection and maintenance of "stop" and "go" signals shall not apply to cities with a population of four thousand or over where said signals are situated within business districts of said city. [C31, 35, §5079-c3; C39, §5029.09; C46, 50, 54, §321.349]

**321.350 Primary roads as through highways.** Primary roads, and extensions of primary roads within cities and towns are hereby designated as through highways. [C27, 31, 35, §5079-b1; C39, §5029.10; C46, 50, 54, §321.350]

**321.351** Repealed by 57GA, ch 139, §1.

See §309.11

**321.352 Additional signs—cost.** The county board of supervisors shall, at places deemed by

them unusually dangerous on the local county roads, furnish and erect suitable warning signs. The cost of such signs shall be paid out of the county road maintenance or construction fund. [C31, 35, §5079-d5; C39, §5029.12; C46, 50, 54, §321.352]

**321.353 Stop before crossing sidewalk—right of way.** The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter he shall proceed into the sidewalk area only when he can do so without danger to pedestrian traffic and he shall yield the right of way to any vehicular traffic on the street into which his vehicle is entering.

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall stop such vehicle immediately prior to driving on said highway and shall yield the right of way to all vehicles approaching on said highway. [S13, §1571-m18; C24, 27, 31, 35, §5035; C39, §§5026.05, 5029.13; C46, §§321.323, 321.353; C50, 54, §321.353]

#### STOPPING, STANDING, AND PARKING

**321.354 Stopping on traveled way.** Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event a clear and unobstructed width of at least twenty feet of such part of the highway opposite such standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle be available from a distance of two hundred feet in each direction upon such highway; provided, however, school busses may stop on highway for receiving and discharging pupils and all other vehicles shall stop for school busses which are stopped to receive or discharge pupils, as provided in section 321.372. [C24, 27, 31, 35, §5066; C39, §5030.01; C46, 50, 54, §321.354]

Referred to in §§321.355, 321.356

**321.355 Disabled vehicle.** Section 321.354 shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. [C39, §5030.02; C46, 50, 54, §321.355]

Referred to in §321.356

**321.356 Officers authorized to remove.** Whenever any peace officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of sections 321.354 and 321.355 such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway. [C39, §5030.03; C46, 50, 54, §321.356]

**321.357 Removed from bridge.** Whenever any peace officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety. [C39, §5030.04; C46, 50, 54, §321.357]

**321.358 Stopping, standing, or parking.** No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five feet of a fire hydrant.
5. On a crosswalk.
6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.
7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city or town indicates a different length by signs or markings.
8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.
10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
12. Upon any bridge or other elevated structure upon a highway outside of cities or towns or within a highway tunnel.
13. At any place where official signs prohibit stopping or parking. [S13, §1571-m18; C24, 27, 31, 35, §§5057, 5058, 5060; C39, §5030.05; C46, 50, 54, §321.358]

**321.359 Moving other vehicle.** No person shall move a vehicle not owned by such person into any such prohibited area or away from a curb such distance as is unlawful. [C39, §5030.06; C46, 50, 54, §321.359]

**321.360 Theaters, hotels, and auditoriums.** A space of not to exceed fifty feet is hereby reserved at the side of the street in front of any theater, auditorium, hotel having more than twenty-five sleeping rooms, or other buildings where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked, or stopped except in taking on or discharging passengers or freight, and

then only for such length of time as is necessary for such purpose. [S13, §1571-m18; C24, 27, 31, 35, §5059; C39, §5030.07; C46, 50, 54, §321.360; 56GA, ch 162, §1]

**321.361 Additional parking regulations.** Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

Local authorities may by ordinance permit angle or center parking on any roadway under their jurisdiction. [S13, §1571-m18; C24, 27, 31, 35, §§4997, 5056; C39, §5030.08; C46, 50, 54, §321.361]

#### MISCELLANEOUS RULES

**321.362 Unattended motor vehicle.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway. [S13, §1571-m18; C24, 27, 31, 35, §5038; C39, §5031.01; C46, 50, 54, §321.362]

**321.363 Obstruction to driver's view.** No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. [C39, §5031.02; C46, 50, 54, §321.363]

**321.364 Control of vehicle — signals.** The driver of a motor vehicle traveling through defiles or on approaching the crest of a hill or grade shall have such motor vehicle under control and on the right-hand side of the roadway and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle. [S13, §1571-m18; C24, 27, 31, 35, §§5031, 5043; C39, §5031.03; C46, 50, 54, §321.364]

**321.365 Coasting prohibited.** The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral. [C39, §5031.04; C46, 50, 54, §321.365]

**321.366 Disengaging clutch.** The driver of a commercial motor vehicle when traveling upon a downgrade shall not coast with the clutch disengaged. [C39, §5031.05; C46, 50, 54, §321.366]

**321.367 Following fire apparatus.** The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. [C39, §5031.06; C46, 50, 54, §321.367]

**321.368 Crossing fire hose.** No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command. [C39, §5031.07; C46, 50, 54, §321.368]

**321.369 Putting glass, etc., on highway.** No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris. No substance likely to injure any person, animal or vehicle upon such highway shall be thrown or deposited by any person upon any highway. Any person who violates any provision of this section or section 321.370 shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished as provided in section 321.482. [S13, §§4808-a, b; C24, 27, 31, 35, §13118; C39, §5031.08; C46, 50, 54, §321.369; 56GA, ch 163, §1; 57GA, ch 152, §1]

Referred to in §321.370

**321.370 Removing injurious material.** Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material and other material as defined in section 321.369 shall immediately remove the same or cause it to be removed. [C39, §5031.09; C46, 50, 54, §321.370]

Referred to in §321.369

**321.371 Clearing up wrecks.** Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. [C39, §5031.10; C46, 50, 54, §321.371]

#### SCHOOL BUSES

##### **321.372 Discharging pupils — regulations.**

1. The driver of any school bus used to transport children to and from a public or private school shall, when stopping to receive or discharge pupils, turn on the flashing stop warning signal lights at a distance of not less than three hundred feet, nor more than five hundred feet from the point where said pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils the driver of the bus shall bring bus to a stop and extend the stoparm. After receiving or discharging pupils, the bus driver shall turn off the flashing stop warning lights, retract the stoparm and then proceed on the route. No school bus shall stop to load or unload pupils unless there is at least three hundred feet of clear vision in each direction.

2. All pupils shall be received and discharged from the right front entrance of every

school bus and if said pupils must cross the highway, they shall be required to pass in front of the bus, look in both directions, and proceed to cross the highway only on signal from the bus driver.

3. The driver of any vehicle when meeting a school bus on which the stop warning signal lights are flashing shall reduce the speed of said vehicle to not more than twenty miles per hour, and shall bring said vehicle to a complete stop when school bus stops and stop signal arm is extended and said vehicle shall remain stopped until stoparm is retracted after which driver may proceed with due caution.

The driver of any vehicle overtaking a school bus shall not pass a school bus when flashing stop warning signal lights are flashing and shall bring said vehicle to a complete stop not closer than fifteen feet of the school bus when it is stopped and stoparm is extended, and shall remain stopped until the stoparm is retracted and school bus resumes motion, or until signalled by the driver to proceed.

This section shall not apply to "business" and "residence" districts but shall apply in suburban districts of cities and towns. [C31, 35, §§5079-c8, -c10, -c11; C39, §§5032.01, 5032.03; C46, §§321.372, 321.374; C50, 54, §321.372; 57GA, ch 153, §1]

Referred to in §§321.354, 321.373, 321.378, 321.380

**321.373 Required construction.** Every school bus except private passenger vehicles used as school busses shall be constructed and equipped to meet the following standards:

1. All structural parts of the school bus body shall be all steel, or of other metal with a strength equivalent to all steel, as certified by bus body manufacturers. Suitable insulation materials shall be used. The bus body shall be of sufficient strength to support the entire weight of a fully loaded bus on its top or side if overturned.

2. The body shall be painted national school bus chrome.

3. There shall be but one compartment with seats arranged on each side of the bus body with an aisle at least twelve inches wide between said seats. The aisle shall not be blocked by placing seats or other obstructions therein, nor shall any seat or obstruction be permitted at any time across the emergency exit.

4. A service door at least twenty-four inches wide and forty-eight inches high, the lower and upper panels of which shall be composed of safety glass, shall be placed on the front right side, opposite the driver.

5. The front door or doors shall be under the control of, and operated by the driver.

6. There shall be an emergency door in the center of the rear end of the body, at least twenty-four inches wide and forty-eight inches high provided with an easily operated safety catch not controlled from the driver's seat, but protected from accidental release. The emergency door in pusher and transit type school busses shall be located as provided in the

“standards of construction” established for such vehicles.

7. There shall be ample windows on each side.

8. There shall be ample roof ventilators.

9. It shall be equipped with an approved fresh air, hot water or combustion type heater of sufficient capacity to adequately heat the bus.

10. There shall be a comfortable seat for each child.

11. The fuel tank shall be located, filled, drained, and vented outside the bus body.

12. Bumpers both front and rear shall be fastened directly to the chassis.

13. Each bus shall carry the words “School Bus” in black letters at least eight inches high on front of the bus above the windshield and rear of bus above the windows or emergency door.

14. Each school bus shall be equipped with a stop signal arm at least twenty inches long mounted on the left side of bus. The sign shall have the word “stop” printed on both sides in black letters at least five inches high on national school bus chrome background.

15. All school busses shall be equipped with four flashing stop warning signal lights with a visible lens area of not less than twenty-eight square inches and of sufficient intensity to be visible at least five hundred feet in bright sunlight. The lights in front shall display an amber light. The lights on the rear shall display a red light. The two amber flashing stop warning lights shall be mounted on the front of the bus body with the center line of the lamps not less than two feet to the right or left of the center line of the bus and above the top line of the windshield. The two red flashing stop warning lights shall be mounted on the rear of the bus body with the center line of the lamps not less than two feet to the right or left of the center line of the bus above the top line of the rear windows or emergency door. The top of the flashing stop warning lights shall be kept below the top line of the bus roof. The lights shall be actuated manually with a switch mounted on the steering column.

16. A vehicle designed as a passenger car and any other vehicle designed to haul eight pupils or less when being used as a school bus shall be equipped with a sign bearing the words “School Bus” in at least six inch black letters on national school bus chrome background and shall meet only such other requirements of this section and of established standards for construction as are deemed necessary by the superintendent of public instruction.

17. Vehicles owned by private parties, used as school busses, must reverse or cover the words “School Bus” when vehicle is not in use as a school bus and flashing stop warning signals shall be used only as provided in section 321.372. [C31, 35, §§5079-c9, c10, c11; C39, §5032.02; C46, 50, 54, §321.373]

Referred to in §§321.378, 321.379, 321.380

**321.374 Inspection—seal of approval.** No vehicle shall be put into service as a school bus until it is given an original inspection to determine if it meets all legal and established uniform standards of construction for the protection of the health and safety of children to be transported. Vehicles which are approved shall be issued a seal of approval by the superintendent of public instruction. All vehicles used as school busses shall be given a safety inspection at least once a year. Busses passing the inspection shall be issued an inspection seal of approval by the superintendent of public instruction. The seal of original inspection and the annual seal of inspection shall be affixed to the lower right hand corner of the windshield. [C50, 54, §321.374]

Referred to in §§321.378, 321.380  
Use of front entrance, see §321.372

**321.375 Drivers.** The drivers of school busses must: (1) be at least sixteen years of age, (2) be physically and mentally competent, (3) not possess personal or moral habits which would be detrimental to the best interests of safety and welfare of the children transported, (4) have an annual physical examination and meet all established requirements for physical fitness.

Use of alcoholic beverages or immoral conduct on the part of the driver shall automatically cancel his contract and his re-employment for the balance of the year is hereby prohibited. [C31, 35, §4960-d10; C39, §5032.04; C46, 50, 54, §321.375]

Referred to in §§321.378, 321.380

**321.376 License and written permission.** The driver of every school bus shall have a regular or special chauffeur’s license issued by the department of public safety, and in addition thereto, must hold a school bus driver’s permit issued by the department of public instruction.

Notwithstanding the provision of subsection 2 of section 321.177, the department of public safety is hereby authorized to issue a special chauffeur’s license to a person sixteen years of age to operate a school bus on request of local school board and recommendation of the state superintendent of public instruction. [C39, §5032.05; C46, 50, 54, §321.376]

Referred to in §§321.378, 321.380  
Chauffeurs’ licenses, §321.174 et seq.

**321.377 Speed of school bus.** No motor vehicle in use as a school bus shall be operated at a speed in excess of forty-five miles per hour, except that when used for purposes of an educational trip or for transporting pupils to and from any extracurricular activity a school bus may be operated at a speed not exceeding fifty miles per hour. Any violation of this section, by a driver, shall be deemed sufficient cause for canceling his contract. [C39, §5032.06; C46, 50, 54, §321.377; 56GA, ch 164, §1.2]

Referred to in §§321.287, 321.378, 321.380

**321.378 Applicability.** The provisions of sections 321.372 to 321.380, inclusive, shall apply to any and all types of school districts where

children are transported to and from public schools. [C39,§5032.07; C46, 50, 54,§321.378]

Referred to in §321.380

**321.379 Violations.** No school board, individual, or organization shall purchase, construct, or contract for use, to transport pupils to or from school, any school bus which does not comply with the minimum requirements of section 321.373 and any individual, or any member or officer of such board or organization who authorizes, the purchase, construction, or contract for any such bus not complying with these minimum requirements shall be guilty of a misdemeanor punishable as provided in section 321.482. [C31, 35,§§5079-c9,-c10,-c11; C39, §5032.08; C46, 50, 54,§321.379]

Referred to in §§321.378, 321.380

**321.380 Enforcement.** It shall be the duty of all peace officers and of the highway safety patrol to enforce the provisions of sections 321.372 to 321.379, inclusive. [C39,§5032.09; C46, 50, 54,§321.380]

Referred to in §321.378

#### SAFETY STANDARDS

**321.381 Scope and effect of regulations.** It is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter. [C39,§5033.01; C46, 50, 54, §321.381]

47GA, ch 134,§407, editorially divided

**321.382 Upgrade pulls—minimum speed.** No motor vehicle or combination of vehicles, which cannot proceed up a three percent grade, on dry concrete pavement, at a minimum speed of twenty miles per hour, shall be operated, after January 1, 1938, upon the highways of this state. [C39,§5033.02; C46, 50, 54,§321.382]

**321.383 Exceptions.** The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable. [C39, §5033.03; C46, 50, 54,§321.383]

Referred to in §321.398

#### LIGHTING EQUIPMENT

##### 321.384 When lighted lamps required.

1. Every motor vehicle upon a highway within the state, at any time from one-half hour after sunset to one-half hour before sunrise, and at such other times when conditions such as fog, snow, sleet, or rain provide insufficient lighting to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps as provided in section 321.415, sub-

ject to exceptions with respect to parked vehicles as hereinafter stated.

2. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection 1 of this section upon a straight level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated. [S13, §1571-m17; C24, 27, 31, 35,§5044; C39,§5033.04; C46, 50, 54,§321.384; 56GA, ch 165,§1]

Referred to in §§321.392, 321.394, 321.395, 321.397, 321.398, 321.405, 321.415, 321.418, 321.419

##### 321.385 Head lamps on motor vehicles.

Every motor vehicle other than a motorcycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter. [S13,§1571-m17; C24, 27, 31, 35,§5044; C39,§5033.05; C46, 50, 54,§321.385]

**321.386 Head lamps on motorcycles.** Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this chapter. [S13,§1571-m17; C24, 27, 31, 35, §5047; C39,§5033.06; C46, 50, 54,§321.386]

**321.387 Rear lamps and reflectors.** Every motor vehicle and every vehicle which is being drawn at the end of a train of vehicles shall be equipped with a lighted rear lamp, exhibiting a red light plainly visible from a distance of five hundred feet to the rear. [S13,§1571-m17; C24, 27, 31, 35,§§5045, 5046; C39,§5033.07; C46, 50, 54,§321.387]

**321.388 Illuminating plates.** Either such rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. When the rear license plate is illuminated by an electric lamp other than the required rear lamp, said two lamps shall be turned on or off only by the same control switch at all times whenever head lamps are lighted. [S13,§1571-m17; C24, 27, 31, 35,§5045; C39,§5033.08; C46, 50, 54,§321.388]

**321.389 Reflectors additional.** Every new motor vehicle, trailer, or semitrailer hereafter sold and every commercial vehicle hereafter operated on a highway shall also carry at the rear, either as a part of the rear lamp or separately, a red reflector meeting the requirements of this chapter. [C39,§5033.09; C46, 50, 54,§321.389]

**321.390 Reflector requirements.** Whenever a red reflector is required or permitted to be used in substitution of lamps upon a vehicle under any one of the provisions of this chapter, such reflector shall be mounted upon the vehicle at a height not to exceed forty-two inches nor less than twenty-four inches above the ground upon which the vehicle stands, and

every such reflector shall be so designed and maintained as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle, except that on a commercial vehicle the reflector shall be visible from all distances within five hundred feet to fifty feet from such vehicle when directly in front of a motor vehicle displaying lawfully lighted head lamps as provided in section 321.409. [C31, 35, §4863; C39, §5033.10; C46, 50, 54, §321.390]

**321.391 Approval of reflectors.** No reflector as required by this chapter shall be used except of a type approved by the department and the department is hereby authorized to approve or disapprove types of reflectors submitted and to publish a list of such approved types by trade name or otherwise. [C39, §5033.11; C46, 50, 54, §321.391]

**321.392 Clearance and identification lights.** Every motor truck, and every trailer or semi-trailer of over three thousand pounds gross weight, shall be equipped with the following lighting devices and reflectors in addition to other requirements of this chapter, and such devices shall be lighted at the times mentioned in section 321.384.

1. Every motor truck, whatever its size shall have the following:

On each side, one reflector, at or near the rear; and

On the rear, two reflectors, one at each side.

2. Every motor truck, eighty inches or more in width shall have the following in addition to the requirements of subsection 1:

a. If thirty feet or less in over-all length—

On the front, two clearance lamps, one at each side; and

On the rear, two clearance lamps, one at each side.

b. If more than thirty feet in over-all length—

On the front, two clearance lamps, one at each side;

On each side, two side-marker lamps, one at or near the front, and one at or near the rear, and an additional reflector at or near the front; and

On the rear, two clearance lamps, one at each side.

3. Every truck tractor or road tractor shall have the following:

On the front, two clearance lamps one at each side if the tractor cab is as wide as, or wider than, the widest part of the vehicle or vehicles towed;

On each side, one side-marker lamp at or near the front; and

On the rear, one tail lamp.

4. Every trailer or semitrailer having a gross weight in excess of three thousand pounds shall have the following:

On the front, two clearance lamps, one at each side, if the trailer is wider in its widest part than the cab of the vehicle towing it;

On each side, one side-marker lamp at or near

the rear; two reflectors, one at or near the front and one at or near the rear; and

On the rear, two clearance lamps, one at each side; one stop light; one tail lamp; and two reflectors, one at each side.

5. Every motor truck or combination of motor truck and trailer having a length in excess of thirty feet or a width in excess of eighty inches shall be equipped with three identification lights on both front and rear. Each such group shall be evenly spaced not less than six nor more than twelve inches apart along a horizontal line near the top of the vehicle. [C31, 35, §§5044-d1, -d2, 5105-c19; C39, §5034.01; C46, 50, 54, §321.392]

**321.393 Color and mounting.** No lighting device or reflector, when mounted on or near the front of any motor truck or trailer, shall display any other color than white, yellow, or amber; provided that installations heretofore in place and otherwise complying with the law may display a green light until replacements are made.

No lighting device or reflector, when mounted on or near the rear of any motor truck or trailer, shall display any other color than red, except that the stop light may be red, yellow, or amber.

Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate the extreme width of the vehicle or its load.

The provisions of this section shall not prohibit the use of a lighting device or reflector displaying a blue light when such lighting device or reflector is mounted on a motor truck or trailer owned by this state, or any political subdivision of this state, or any municipality therein, and such motor truck or trailer is equipped with a snow removal or sanding device and is being used for the express purpose of removing snow or sanding on any public street or highway. [C39, §5034.02; C46, 50, 54, §321.393]

**321.394 Lamp or flag on projecting load.** Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section 321.384, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square. [C39, §5034.03; C46, 50, 54, §321.394]

**321.395 Lamps on parked vehicles.** Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, outside of a business district whether attended or unattended during the times mentioned in section 321.384, such vehicle shall be equipped with one or more lamps which shall exhibit a white

light on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. [C24, 27, 31, 35, §5054; C39, §5034.04; C46, 50, 54, §321.395]

Referred to in §§321.396, 321.448

**321.396 Exception.** Section 321.395 shall not apply when an accident extinguishes said light and renders a vehicle incapable of use, and when the person in control of the vehicle erects, at the earliest opportunity after the accident, such proper light at or near the vehicle as will give warning of the presence of said vehicle. [C24, 27, 31, 35, §5055; C39, §5034.05; C46, 50, 54, §321.396]

**321.397 Lamps on bicycles.** Every bicycle shall be equipped with a lamp on the front exhibiting a white light, at the times specified in section 321.384 visible from a distance of at least three hundred feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of three hundred feet to the rear; except that a red reflector meeting the requirements of this chapter may be used in lieu of a rear light. [C31, 35, §5045-d1; C39, §5034.06; C46, 50, 54, §321.397]

**321.398 Lamps on other vehicles and equipment.** All vehicles, including animal-drawn vehicles and including those referred to in section 321.383 not hereinbefore specifically required to be equipped with lamps, shall at the times specified in section 321.384 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear. [C31, 35, §5045-d1; C39, §5034.07; C46, 50, 54, §321.398]

**321.399 Road machinery—lights required.** No tractor, road grader, road drag, or other piece of road machinery operated by motor fuel, kerosene, or coal shall be used upon any public highway in this state which is open to traffic by the public, unless there is carried at least two red danger signal lanterns or lights, each capable of remaining continuously lighted for at least sixteen hours. [C27, 31, 35, §5055-b1; C39, §5034.08; C46, 50, 54, §321.399]

Referred to in §§321.400, 321.401

**321.400 Number of lights—duty to maintain.** It shall be the duty of each person charged with the operation of any tractor, road grader, road drag, or other piece of road machinery which is required by section 321.399 to carry red danger signal lights, to place and maintain

in a lighted condition at least one signal light upon the front and one upon the rear of any such tractor, grader, drag, or other piece of road machinery from the time the sun sets until the time the sun rises the following day, whenever the same is being operated or stationed upon any public highway open to traffic by the public. [C27, 31, 35, §5055-b2; C39, §5034.09; C46, 50, 54, §321.400]

Referred to in §321.401

**321.401 Duty to enforce.** It shall be the duty of the highway commission, the board of supervisors of each county, and each road patrolman to enforce the provisions of sections 321.399 and 321.400 as to any such tractor, grader, drag, or other piece of road machinery under their direction and control, respectively. [C27, 31, 35, §5055-b3; C39, §5034.10; C46, 50, 54, §321.401]

**321.402 Spot lamps.** Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. [C24, 27, 31, 35, §5051; C39, §5034.11; C46, 50, 54, §321.402]

**321.403 Auxiliary driving lamps.** Any motor vehicle may be equipped with not to exceed three auxiliary driving lamps mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in this chapter. [C24, 27, 31, 35, §5050; C39, §5034.12; C46, 50, 54, §321.403]

**321.404 Signal lamps and signal devices.** Every motor vehicle shall be equipped with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, which signal shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the rear but shall not project a glaring or dazzling light. [C39, §5034.13; C46, 50, 54, §321.404]

**321.405 Self-illumination.** All mechanical signal devices shall be self-illuminated when in use at the times mentioned in section 321.384. [C39, §5034.14; C46, 50, 54, §321.405]

**321.406 Cowl lamps.** Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare. [C24, 27, 31, 35, §5050; C39, §5034.15; C46, 50, 54, §321.406]

**321.407 Courtesy lamps.** Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof

which shall emit a white or amber light without glare. [C24, 27, 31, 35,§5050; C39,§5034.16; C46, 50, 54,§321.407]

**321.408 Back-up lamps.** Any motor vehicle may be equipped with a back-up lamp either separately or in combination with another lamp; except that no such back-up lamp shall be continuously lighted when the motor vehicle is in forward motion. [C24, 27, 31, 35,§5050; C39,§5034.17; C46, 50, 54,§321.408]

**321.409 Mandatory lighting equipment.** Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

1. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions.

2. There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. Every new motor vehicle, other than a motorcycle or motor driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. [C24, 27, 31, 35,§§5049, 5052; C39,§§5034.18-5034.22; C46, 50, 54,§§321.409-321.413; 56GA, ch 166,§§1,2]

Section 321.409, Code 1954, repealed by 56GA, ch 166,§1  
Referred to in §§321.415, 321.418

**321.410** Repealed by 56GA, ch 166,§1.

**321.411** Repealed by 56GA, ch 166,§1.

**321.412** Repealed by 56GA, ch 166,§1.

**321.413** Repealed by 56GA, ch 166,§1.

**321.414** Repealed by 56GA, ch 166,§1.

**321.415 Required usage of lighting devices.** Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 321.384, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the

vehicle, subject to the following requirements and limitations:

Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in subsection 2 of section 321.409 shall be deemed to avoid glare at all times, regardless of road contour and loading.

Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subsection 1 of section 321.409. [C39,§§5034.23-5034.25; C46, 50, 54, §§321.414-321.416; 56GA, ch 166,§§1, 3]

Section 321.415, Code 1954, repealed by 56GA, ch 166,§1  
Referred to in §§321.384, 321.418

**321.416** Repealed by 56GA, ch 166,§1.

**321.417 Single-beam road-lighting equipment.** Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to July 1, 1938, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations.

The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet. [C24, 27, 31, 35,§5049; C39, §5034.26; C46, 50, 54,§321.417]

Referred to in §321.418

**321.418 Alternate road-lighting equipment.** Any motor vehicle may be operated under the conditions specified in section 321.384 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in sections 321.409 and 321.415, or section 321.417, provided, however, that at no time shall it be operated at a speed in excess of twenty miles per hour. [C39, §5034.27; C46, 50, 54,§321.418]

**321.419 Number of driving lamps required or permitted.** At all times specified in section 321.384 at least two lighted lamps, except where one only is permitted, shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles. [C39,§5034.28; C46, 50, 54,§321.419]



**321.420 Number of lamps lighted.** Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway. [C39,§5034.29; C46, 50, 54,§321.420]

**321.421 Special restrictions on lamps.** Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, or auxiliary driving lamps which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle. [C39,§5034.30; C46, 50, 54,§321.421]

**321.422 Red light in front.** No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying or reflecting a red light visible from directly in front thereof. This section shall not apply to authorized emergency vehicles. No person shall display any color of light other than red on the rear of any vehicle, except that stop lights and directional signals may be red, yellow, or amber. [C39,§5034.31; C46, 50, 54,§321.422]

**321.423 Flashing lights.**

1. Except as otherwise provided, flashing lights are prohibited on motor vehicles, except on authorized emergency vehicles or as a means for indicating a right or left turn, or intention of stopping, and except that rural mail carriers may use flashing white or amber, or any shade of color between white and amber, dome lights on the roof of their vehicles outside of the corporation limits of cities and towns when stopping on or near the highway in the process of delivering mail.

2. A motor vehicle operated by a member of an organized volunteer fire department may be equipped with a lamp or device thereon displaying a flashing blue light visible from directly in front of such motor vehicle when such motor vehicle is duly authorized as hereinafter provided and while such motor vehicle is in actual use for fire or other emergency service.

3. No volunteer fireman shall be permitted to display a flashing blue light upon a motor vehicle as hereinbefore provided except while actually enroute to the scene of a fire or other emergency requiring his services as a volunteer fireman and unless he shall be an active member of an organized volunteer fire department and shall have been authorized in writing to so display a flashing blue light by the commissioner.

4. The commissioner is hereby empowered to authorize the display of a flashing blue light

upon a privately owned light delivery truck, panel delivery truck, pickup, station wagon, or passenger type motor vehicle except a motorcycle or motor bicycle, owned or usually operated by a volunteer fireman, and to issue a certificate of authorization therefor, upon written request being made on forms provided by the department and showing necessity for such authorization. Such written request shall be accompanied by a statement in writing by the chief of the volunteer fire department of which the applicant is a member certifying that the applicant is an active member in good standing in said volunteer fire department and recommending that such authorization be granted. Such certificate of authorization issued by the commissioner shall be at all times carried with the certificate of registration of the vehicle to which it refers and shall expire at midnight on the thirty-first day of December in the year in which it was issued. The commissioner may at any time revoke such certificate of authorization upon a showing of abuse thereof or upon notification by the certifying fire chief that applicant has ceased to be an active member of the volunteer fire department.

5. The provisions of subsection 1 of this section shall not apply to the use of a flashing blue light on a motor vehicle so authorized by the commissioner, but such flashing blue light shall not be used except when such motor vehicle is actually enroute to the scene of a fire or other emergency requiring the services of a volunteer fireman. [C39,§5034.32; C46, 50, 54,§321.423; 57GA, ch 154,§1, ch 155,§1; ch 171,§14]

**321.424 Sale of lights—approval.** On and after July 4, 1955, no person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any headlamp, auxiliary, or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the commissioner and approved by him.

The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section which has been approved by the commissioner unless such lamp or device bears thereon the trade-mark or name under which it is approved so as to be legible when installed.

No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the commissioner. [C24, 27, 31, 35,

§§4986, 5087; C39,§§5034.33-5034.36; C46, 50, 54, §§321.424-321.427; 56GA, ch 166,§§1, 4]

Section 321.424, Code 1964, repealed by 56GA, ch 166,§1

**321.425** Repealed by 56GA, ch 166,§1.

**321.426** Repealed by 56GA, ch 166,§1.

**321.427** Repealed by 56GA, ch 166,§1.

**321.428 Approval by commissioner.** The commissioner is hereby authorized to approve or disapprove lighting devices and to issue and enforce regulations establishing standards and specifications for the approval of such lighting devices, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such regulations shall correlate with and, so far as practicable, conform to the then current standards and specifications of the society of automotive engineers applicable to such equipment.

1. The commissioner is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter, within a reasonable time after such device has been submitted.

2. The commissioner is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

3. The commissioner upon approving any such lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by him.

4. The commissioner shall publish lists of all lamps and devices by name and type which have been approved by him. [C24, 27, 31, 35, §§4985, 4987; C39,§5034.37; C46, 50, 54,§321.428; 56GA, ch 166,§§1, 5]

Section 321.428, Code 1964, repealed by 56GA, ch 166,§1

**321.429 Revocation of certificate.** When the commissioner has reason to believe that an approved device as being sold commercially does not comply with the requirements of this chapter, he may, after giving thirty days previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the commissioner shall determine whether said approved device meets the requirements of this chapter. If said device does not meet the requirements of this chapter he shall give notice to the person holding the certificate of approval for such device in this state.

If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the commissioner that said approved device as thereafter to be sold meets the requirements of this chapter, the commissioner shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter, and may require that all said devices sold since the notification following the hearing be re-

placed with devices that do comply with the requirements of this chapter. The commissioner may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this chapter, the commissioner may refuse to renew the certificate of approval of such device. [C39, §5034.38; C46, 50, 54,§321.429]

**BRAKES**

**321.430 Brake requirements.**

1. Every motor vehicle, other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

2. Every motorcycle, and bicycle with motor attached, when operated upon a highway shall be equipped with at least one brake, which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand pounds or more, and every trailer coach intended for use for human habitation, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall, after January 1, 1939, be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied. Every semitrailer of a gross weight of three thousand pounds or more shall be equipped with a separate, auxiliary means of applying the brakes on the semitrailer from the cab of the towing vehicle.

4. Except as otherwise provided in this chapter, every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle with the following exceptions:

a. Any motorcycle.

b. Any trailer or semitrailer of less than three thousand pounds gross weight need not be equipped with brakes.

c. Trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that such vehicles equipped with two or more front axles shall be equipped with brakes on at least one of such axles; provided that the service brakes of such vehicle comply with the performance requirements of section 321.431.

d. Only such brakes on the vehicle or vehicles being towed in a driveway-towaway op-

eration need be operative as may be necessary to insure compliance by the combination of vehicles with the performance requirements of section 321.431. The term "driveaway-towaway" operation as used in this subsection means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation, whether or not any such motor vehicle furnishes the motive power. [S13,§1571-m17; C24, 27, 31, 35,§5039; C39,§5034.39; C46, 50, 54,§321.430; 57GA, ch 156, §§1, 2]

Referred to in §321.464

### 321.431 Performance ability.

1. The service brakes upon any motor vehicle or combination of motor vehicles, when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one percent, when traveling twenty miles an hour shall be adequate:

a. To stop such vehicle or vehicles having a gross weight of less than five thousand pounds within a distance of thirty feet.

b. To stop such vehicle or vehicles having a gross weight in excess of five thousand pounds within a distance of forty-five feet.

2. Under the above conditions the hand brake shall be adequate to hold such vehicle or vehicles stationary on any grade upon which operated.

3. Under the above conditions the service brakes upon a motor vehicle equipped with two-wheel brakes only, and when permitted hereunder, shall be adequate to stop the vehicle within a distance of forty-five feet and the hand brake adequate to stop the vehicle within a distance of fifty-five feet.

4. All braking distances specified in this section shall apply to all vehicles mentioned, whether such vehicles are not loaded or are loaded to the maximum capacity permitted under this chapter.

5. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. [S13,§1571-m17; C24, 27, 31, 35,§5039; C39, §5034.40; C46, 50, 54,§321.431]

Referred to in §§321.430, 321.464

### MISCELLANEOUS EQUIPMENT

**321.432 Horns and warning devices.** Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not

otherwise use such horn when upon a highway. [S13,§1571-m17; C24, 27, 31, 35,§§5040, 5041; C39,§5034.41; C46, 50, 54,§321.432]

**321.433 Sirens and bells prohibited.** No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when necessary to warn pedestrians and other drivers of the approach thereof. [C39, §5034.42; C46, 50, 54,§321.433]

**321.434 Bicycle sirens or whistles.** No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle. [C39,§5034.43; C46, 50, 54,§321.434]

**321.435 Loud signaling at night.** Loud signaling devices shall not be used during the period of from one hour after sunset to one hour before sunrise, unless absolutely necessary to avoid accidents. [C24, 27, 31, 35,§5042; C39,§5034.44; C46, 50, 54,§321.435]

**321.436 Mufflers, prevention of noise.** Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, by-pass or similar device upon a motor vehicle on a highway. [S13,§1571-m18; C24, 27, 31, 35,§§5061-5063; C39,§5034.45; C46, 50, 54,§321.436]

**321.437 Mirrors.** Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Any motor vehicle so loaded, or towing another vehicle in such manner, as to obstruct the view in a rear view mirror located in the driver's compartment shall be equipped with a side mirror so located that the view to the rear will not be obstructed. [C31, 35,§5105-c20; C39,§5034.46; C46, 50, 54, §321.437]

**321.438 Windshields and windows.** No person shall drive any motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision. [C39,§5034.47; C46, 50, 54,§321.438]

**321.439 Windshield wipers.** The windshield on every motor vehicle shall be equipped with

a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. [C39,§5034.48; C46, 50, 54,§321.439]

**321.440 Restrictions as to tire equipment.** Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. No pneumatic tire shall be used on a motor vehicle when such tire is worn to the extent that more than two layers of fabric or cords are exposed on the entire traction surface. [C31, 35,§5065-c1; C39, §5034.49; C46, 50, 54,§321.440]

**321.441 Metal tires prohibited.** No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway. [C24, 27, 31, 35,§§4918, 4919; C39,§5034.50; C46, 50, 54,§321.441]

**321.442 Projections on wheels.** No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. [S13,§1571-1a; C24, 27, 31, 35,§§5068, 5070; C39,§5034.51; C46, 50, 54, §321.442]

**321.443 Exceptions.** The state highway commission and local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter. [C24, 27, 31, 35,§5069; C39,§5034.52; C46, 50, 54,§321.443]

**321.444 Safety glass.** No person shall sell any new motor vehicle nor shall any motor vehicle, manufactured since July 1, 1935, be registered, or operated unless such vehicle is equipped with safety glass wherever glass is used in doors, windows, and windshields. Replacements of glass in doors, windows, or windshields shall be of safety glass. [C35, §§4991-f1, -f2; C39,§5034.53; C46, 50, 54,§321.444]

Referred to in §321.446

**321.445 Definition.** The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other

or similar product as may be approved by the commissioner. [C35,§4991-f3; C39,§5034.54; C46, 50, 54,§321.445]

Referred to in §321.446

**321.446 List approved.** The commissioner shall compile and publish a list of types of glass by name approved by him as meeting the requirements of section 321.445, and the commissioner shall not register any motor vehicle which is subject to the provisions of section 321.444 unless it is equipped with an approved type of safety glass, and he shall suspend the registration of any motor vehicle so subject to said section which he finds is not so equipped until it is made to conform to the requirements of said section. [C35,§4991-f4; C39,§5034.55; C46, 50, 54,§321.446]

**321.447 Trucks to carry flares.** No person shall operate any motor truck or truck tractor upon a highway outside of a business or residence district at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle a sufficient number, not less than three, of flares, red reflector electric lanterns, red reflectors or other signals capable of continuously producing three warning lights each visible from a distance of at least five hundred feet for a period of at least eight hours, except that a motor vehicle transporting flammables shall carry red reflectors or red reflector electric lanterns in place of the other signals above mentioned, and during daylight hours every truck shall carry a sufficient number of red flags, not less than three.

Every such flare, lantern, signal, or reflector shall be of a type approved by the commissioner and he shall publish lists of those devices which he has approved as adequate for the purposes of this section. [C35,§5067-e1; C39, §5034.56; C46, 50, 54,§321.447]

Referred to in §§321.317, 327A.13

**321.448 Display of flares or lanterns.** Whenever a motor truck, or a truck tractor, a trailer or a semitrailer drawn by a motor truck or a truck tractor is stopped upon or immediately adjacent to the main traveled portion of a highway outside of a business or residence district, during the times when lighted lamps must be displayed, then the driver or other person in charge of such vehicle shall, in addition to the requirements of section 321.395, cause a lighted fusee to be immediately placed on the roadway at the traffic side of such vehicle; as soon thereafter as possible, and in any case within the burning period of the fusee, three lighted flares, or three red reflector electric lanterns or three red reflectors shall be placed on the roadway, one at a distance of not less than one hundred feet in advance of such vehicle, one at a distance of not less than one hundred feet to the rear of such vehicle, and the third upon the traffic side of such vehicle; provided that if such vehicle is stopped within three hundred feet of a curve, crest of a hill, or other obstruction to view, the flare, red

reflector electric lanterns or red reflectors, in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than one hundred feet from such vehicle. When such flares are taken up, during the times when lighted lamps must be displayed, a lighted fusee shall be placed at the traffic side of such vehicle.

In the event such vehicle is used in the transportation of flammable liquids or gases, whether loaded or empty, no open burning flares or fusees shall be used and red reflector electric lanterns or red reflectors shall be used in lieu thereof.

During the times lighted lamps are not required, red flags shall be used in place of flares or red reflector electric lanterns or red reflectors, provided that if such parking continues into the period when lighted lamps are required, flares or red reflector electric lanterns or red reflectors shall be placed as above provided. Each of the red flags required under this section shall be not less than sixteen inches square. [C35,§5067-e1; C39,§5034.57; C46, 50, 54,§321.448]

Referred to in §§321.317, 321.449, 327A.13

**321.449 Explosives.** No person shall at any time operate a motor truck or truck tractor transporting explosives as a cargo or part of a cargo upon a highway unless it carries flares or electric lanterns as herein required, but such flares or electric lanterns must be capable of producing a red light and shall be displayed upon the roadway when and as required in section 321.448. [C39,§5034.58; C46, 50, 54, §321.449]

**321.450 Vehicles transporting explosives.** Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used. [C39, §5034.59; C46, 50, 54,§321.450]

**321.451 Emergency vehicles — certificate of designation.** The commissioner is hereby authorized to designate a privately owned ambulance, rescue or disaster vehicle as an authorized emergency vehicle, and issue certificate of designation therefor, upon written request being made on forms provided by the department and showing necessity for such designation. Such certificate shall at all times be carried with the certificate of registration of the vehicle to which it refers and may be revoked by the commissioner upon showing of abuse thereof. [C46, 50, 54,§321.451]

#### SIZE, WEIGHT, AND LOAD

**321.452 Scope and effect.** Except for offenses punishable under the provisions of section 321.463 it is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter. [C39,§5035.01; C46, 50, 54,§321.452]

**321.453 Exceptions.** The provisions of this chapter governing size, weight, and load shall not apply to fire apparatus, road machinery, or to implements of husbandry temporarily moved upon a highway, or to a vehicle operated under the terms of a special permit issued as provided in sections 321.467 to 321.470, inclusive. [C39,§5035.02; C46, 50, 54,§321.453]

**321.454 Width of vehicles.** The total outside width of any vehicle or the load thereon, except loose hay or straw, shall not exceed eight feet. [C24,§§5067, 5104; C27,§§5067, 5105-a32; C31, 35,§§5067, 5105-a32, 5105-c18; C39,§5035.03; C46, 50, 54,§321.454]

**321.455 Projecting loads on passenger vehicles.** No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. [C31, 35, §5067-d1; C39,§5035.04; C46, 50, 54,§321.455]

**321.456 Height of vehicles.** No vehicle unladen or with load shall exceed a height of twelve feet, six inches; provided, however, that a vehicle used exclusively for the transportation of motor vehicles may be of a total height, unladen or with load, of thirteen feet six inches. Nothing herein contained shall be construed to require the public authorities to provide sufficient vertical clearance to permit the operation of such vehicle upon the highways of this state. Any damage to highways, highway structures or underpasses caused by the increase in height of any vehicle provided for by this section shall be borne by the operator or owner of such vehicle. [C31, 35,§5067-d2; C39,§5035.05; C46, 50, 54,§321.456]

**321.457 Maximum length.** The maximum length of any motor vehicle or combination of vehicles, except fire fighting apparatus and vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered readily when required for emergency repair of public service facilities or properties, and such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of

public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load, at which time, a member of the state highway patrol shall be notified prior to the operation of such vehicle, shall be as follows:

1. No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of thirty-five feet.

2. No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet, provided that a bus in excess of thirty-five feet in overall length shall not have less than three axles.

3. No combination of truck tractor and semitrailer, nor any other combination of vehicles coupled together, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of fifty feet.

4. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided, however, that the mobile home and its towing unit shall not be in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or "pickup" shall not be construed to be a motor truck. Further providing that a portable live stock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that such vehicle or combination of vehicles drawing such loading chute is not in excess of the legal length provided for such vehicles or combinations. [C31, 35,§5067-d4; C39,§5035.06; C46, 50, 54,§321.457; 56GA, ch 167,§§1,2; 57GA, ch 157,§1]

**321.458 Loading beyond front.** The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper. [C39,§5035.07; C46, 50, 54, §321.458]

**321.459 Dual axle requirement.** No motor vehicle, trailer, or semitrailer having axles less than forty inches apart center to center, shall be operated on the highways of this state. [C31, 35,§5067-d3; C39,§5035.08; C46, 50, 54,§321.459]

**321.460 Spilling loads on highways.** No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. [C39,§5035.09; C46, 50, 54,§321.460]

**321.461 Trailers and towed vehicles.** When one vehicle is towing another the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered. [C39,§5035.10; C46, 50, 54,§321.461]

**321.462 Drawbars and safety chains.** When one vehicle is towing or pulling another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and shall be fastened to the frame of the towing vehicle in such manner as to prevent sidesway, and in addition to such principal connection there shall be a safety chain which shall be so fastened as to be capable of holding the towed vehicle should the principal connection for any reason fail.

The connection between a truck tractor and a semitrailer with a gross weight of three thousand pounds or more shall be of a type approved by the commissioner, and the commissioner is hereby given authority to approve or disapprove such types of connection submitted to him. [C39,§5035.11; C46, 50, 54, §321.462]

**321.463 Axle—maximum gross weight.** An axle may be divided into two or more parts, provided, however, that all parts in the same vertical transverse plane shall be considered as one axle.

The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed eighteen thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires.

No vehicle or combination of vehicles shall be operated with a total gross weight in pounds in excess of the amount given in the following table corresponding to the distance in feet between the extreme axles of the said vehicle or combination of vehicles measured longitudinally to the nearest foot or fraction thereof.

No group of axles of any vehicle, or any combination of vehicles, shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group measured longitudinally to the nearest foot or fraction thereof:

Distance in feet between the extremes of any group of axles or the extreme axles of the vehicle or combination.	Maximum load in pounds carried on any group of axles or the vehicle or combination.
4 .....	32,000
5 .....	32,000
6 .....	32,000
7 .....	32,000
8 .....	32,610
9 .....	33,580

10	34,930
11	36,235
12	38,293
13	39,291
14	40,278
15	41,265
16	42,241
17	43,218
18	44,184
19	45,139
20	46,095
21	47,040
22	47,985
23	48,919
24	49,843
25	50,767
26	51,681
27	52,594
28	53,497
29	54,390
30	55,282
31	56,164
32	57,046
33	57,918
34	58,779
35	59,640
36	60,490
37	61,341
38	62,181
39	63,010
40	63,840
41	64,659
42 or more	65,478

A tolerance above the maximum legal weight of any axle or vehicle or combination of vehicles may be allowed as follows:

Three percent on any axle, including tandem axles.

Eight percent of the gross weight on any particular group of axles.

Eight percent on the total gross weight of a vehicle or combination of vehicles.

The weight on any one axle of a vehicle which is transporting livestock may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such group of axles.

Any person who operates any vehicle in violation of the provisions of this section, and any owner, or any other person, employing or otherwise directing the operator of any vehicle who requires or knowingly permits the operation of any vehicle in violation of the provisions of this section shall upon conviction or a plea of guilty be punished in accordance with the following schedule:

Percentage of Overload	Amount of Fine Per Hundred Pounds
Up to and including 8%	\$1.00
Over 8% to and including 10%	1.25
Over 10% to and including 12%	1.75
Over 12% to and including 14%	2.50
Over 14% to and including 16%	3.50
Over 16% to and including 18%	5.00
Over 18% to and including 20%	6.50
Over 20%	8.00

**GROSS OR GROUP OF AXLES WEIGHT VIOLATIONS**

Percentage of Overload	Amount of Fine Per Hundred Pounds
Up to and including 10%	\$1.00
Over 10% to and including 12%	1.50
Over 12% to and including 14%	2.50
Over 14% to and including 16%	4.00
Over 16% to and including 18%	5.00
Over 18% to and including 20%	6.00
Over 20%	8.00

No fine shall be assessed if the overload does not exceed the tolerance specified in this section. If the overload does exceed the tolerance specified in this section, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section without allowance of any tolerance.

Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

The penalties herein provided shall not be construed to be in lieu of any other penalties provided for violations of other provisions of this chapter.

Any person who issues or executes, or causes to be issued or executed, any bill of lading, manifest, or shipping document of any kind which states the false weight of the cargo set forth on such bill, manifest or document, to be less than the actual weight of such cargo, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [C24, 27, 31, 35, §5065; C39, §5035.12; C46, 50, 54, §321.463; 57GA, ch 157, §2]

Referred to in §§321.452, 321.467

**321.464 Investigation as to safety.** The commissioner upon registering any vehicle under the laws of this state which vehicle is designed and used primarily for the transportation of property or for the transportation of ten or more persons, may require such information and may make such investigation or test as necessary to enable him to determine whether such vehicle may safely be operated upon the highways in compliance with all the provisions of this chapter. He shall register every such vehicle for a permissible gross weight not exceeding the limitations set forth in this chapter. Every such vehicle shall meet the following requirements:

1. It shall be equipped with brakes as required in sections 321.430 and 321.431.

2. Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel at a reasonable speed such vehicle and any load thereon or to be drawn thereby. [C39, §5035.13; C46, 50, 54, §321.464]

**321.465 Weighing vehicles and removal of excess.** Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same

either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales.

Whenever an officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor and punished as provided in section 321.482.

Upon weighing a vehicle and load, as above provided, if such load is a sealed load, the weight officer shall issue a certificate setting forth the weights as determined by him and the seal number or numbers, if requested by the operator. [C31, 35,§4921-d1; C39,§5035.14; C46, 50, 54,§321.465]

**321.466 Increased loading capacity—reregistration.** An increased gross weight registration may be obtained for any vehicle by payment of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered.

With respect to a vehicle held by a dealer for sale or trade, an increased gross weight registration may be obtained for any such vehicle on or after April 10 of each year upon change of ownership by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered, multiplied by the number of unexpired months of the year.

On or after July 1 of each year, the owner of a motor truck, truck tractor, road tractor, semitrailer or trailer may, if his operation thereof has not resulted in a conviction under this section or an action then pending against him for violation of the same, increase the gross load of any such vehicle to a higher gross weight classification by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered, multiplied by the number of unexpired months of the year.

Upon conversion of a truck to a truck tractor or a truck tractor to a truck, an increased gross weight registration of the proper type may be obtained for any such vehicle by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the annual fee for the gross weight at which it is registered, multiplied by

the number of unexpired months of the year from the date of such conversion.

It shall be unlawful for any person to operate a motor truck, trailer, truck tractor, road tractor, semitrailer or combination thereof, on the public highways with a gross weight exceeding that for which it is registered by more than five percent of the gross weight for which it is registered, provided, however, that any vehicle or vehicle combination referred to herein, while carrying a load of raw farm products, soil fertilizers, including ground limestone, raw dairy products or livestock, live poultry, eggs, may be operated with a gross weight of twenty-five percent in excess of the gross weight for which it is registered. [C24, 27,§4921; C31, 35,§4921-c1,-c2; C39,§5035.15; C46, 50, 54,§321.466]

**321.467 Permits for excess size and weight.**

The state highway commission with respect to highways under its jurisdiction and local authorities with respect to highways under their jurisdiction may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move for a distance not exceeding twenty-five miles a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which said party is responsible, provided, however, that the state highway commission or such local authorities may in their discretion issue a special permit for the movement of construction machinery, equipment or material, or agricultural machinery, equipment or material for a distance exceeding twenty-five miles on a vehicle or combination of vehicles, not including mobile homes or house trailers, of a size or weight of vehicle or load exceeding the maximum specified in this chapter, or otherwise not in conformity with the provisions of this chapter, upon any highway under the jurisdiction of the party granting such permit, except on any part of the completed interstate highway system, if the gross weight on any axle of any such vehicle, or combination of vehicles, does not exceed the maximum axle load as prescribed in section 321.463, and if such machinery, equipment or material is to be moved to or from construction projects, or agricultural projects in this state or is manufactured or assembled within this state. Provided further that, in an emergency, or very special or unusual cases, or as a means of co-operating with national defense officials, the state highway commission may grant permits for moving oversize or overweight vehicles or objects over the highways for a distance exceeding twenty-five miles, if in the judgment of the commission, such special, unusual, emergency or defense movement is essential. Provided further that the state highway commission



may issue annual permits for vehicles used exclusively for the transportation of motor vehicles, granting a tolerance of two feet in length on the load carried by such vehicles, the said two-foot load tolerance being in addition to the overall vehicle length of forty-five feet, it being a condition of such permits that the combined length of the transporting vehicles shall not exceed forty-five feet and that the combined length of the transporting vehicles and load with the two-foot load tolerance shall not exceed forty-seven feet, and that only four automobiles may be transported in any single unit which transported only four automobiles per unit prior to January 3, 1955. The state highway commission may issue annual permits to a retail farm implement dealer to transport, on his own regular delivery vehicle, farm machines from his nearest branch house or distribution point to the retailer's place of business and from the retail dealer to the customer's farm within the county of the retailer's place of business or counties adjoining the retail dealer's place of business and shall determine and fix a tolerance of width and length on the load carried. In no event, however, is the gross weight on any axle to exceed the maximum axle load as prescribed in section 321.463 hereof; provided, however, that the highway commission and local authorities with respect to highways, roads and streets under their jurisdiction may issue annual permits to any manufacturer of construction machinery or equipment manufactured or assembled in Iowa, authorizing the movement of said machinery or any such equipment to a storage area, shipping point, proving ground, experimental area, weighing station, or between manufacturing plants or any area thereof, provided, further that such machinery and equipment shall be mounted for the movement on pneumatic tires and said movement shall be for a distance not to exceed a radius of fifteen miles from the place of assembly or manufacture and shall be at a speed not greater than twenty miles per hour over the route approved by the highway commission and local authorities with respect to highways, roads and streets under their jurisdiction and that during such movement red warning flags shall be displayed and the permit authorizing such movement affixed thereto; and provided further, that such construction equipment or machinery shall not be transported between the hours of sunset and sunrise or on Saturday, Sunday or holidays; and provided further that no such permit shall be granted for use on any part of the interstate highway system.

The state highway commission as to primary roads, and the county board of supervisors as to secondary roads may, in their discretion, grant permits for the operation of electric trolley busses, or trackless trolley busses, on such roads in any township adjacent to any city of over one hundred fifty thousand population, and which township has

an unincorporated population of over seven thousand five hundred, all according to the latest available federal census.

Such permit shall require that the person or company operating such busses shall, for the use of such highways, quarterly report and pay to the state highway commission for the benefit of the primary road fund, and to the county board of supervisors for the benefit of the secondary road fund of said county, an amount equal to two and three-fourths percent of the total gross revenue derived from the operation of such trackless trolley busses on such roads in such township, divided according to the mileage of roads so used. [C31, 35, §§5067-d7, -d8; C39, §5035.16; C46, 50, 54, §321.467; 56GA, ch 168, §1, 2; 57GA, ch 158, §1; ch 159, §1]

Referred to in §321.453

**321.468 Application.** The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous operation. [C39, §5035.17; C46, 50, 54, §321.468]

Referred to in §321.453

**321.469 Issuance.** The state highway commission or local authority is authorized to issue or withhold such permit at its discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure. [C39, §5035.18; C46, 50, 54, §321.469]

Referred to in §321.453

**321.470 Carried in vehicle.** Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms or conditions of such special permit. [C39, §5035.19; C46, 50, 54, §321.470]

Referred to in §321.453

**321.471 Local authorities may restrict.** Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed

unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. [C24, 27,§4996; C31, 35,§§4686-c1, 4996; C39, §5035.20; C46, 50, 54,§321.471]

Referred to in §321.236

**321.472 Signs posted.** The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained. [C31, 35,§4686-c1; C39,§5035.21; C46, 50, 54,§321.472]

Referred to in §321.236

**321.473 Limiting trucks.** Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. [C39,§5035.22; C46, 50, 54,§321.473]

Referred to in §321.236

**321.474 Highway commission may restrict.** The state highway commission shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said commission and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution. [C24, 27, 31, 35,§5066; C39,§5035.23; C46, 50, 54,§321.474]

**321.475 Liability for damage.** Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this chapter.

Whenever such driver is not the owner of such vehicle, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure. [C39, §5035.24; C46, 50, 54,§321.475]

**321.476 Weighing vehicles by highway commission.** Authority is hereby given to the state highway commission to stop any motor vehicle or trailer on the highways for the purposes of

weighing and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers.

Authority is also hereby granted to subject to weighing and inspection, vehicles which have moved from a highway onto private property under circumstances which indicate that the load of the vehicle, if any, is substantially the same as the load which the vehicle carried before moving onto the private property.

Any person who prevents or in any manner obstructs an officer attempting to carry out the provisions of this section is guilty of a misdemeanor and shall be punished as provided in section 321.482. [C46, 50, 54,§321.476; 57GA, ch 160,§1]

Referred to in §§321.480, 321.481

**321.477 Employees as peace officers.** The state highway commission may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to control and direct traffic and weigh vehicles, and to make arrests for violations of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers. [C46, 50, 54, §321.477; 57GA, ch 160,§2]

Referred to in §§321.480, 321.481

**321.478 Bond.** Prior to entering upon the discharge of his duties as such peace officer, each of said designated employees shall furnish to the commission a surety bond to the state in the sum of five hundred dollars, conditioned upon the faithful discharge of his duties. [C46, 50, 54,§321.478]

Referred to in §§321.480, 321.481

**321.479 Badge of authority.** The highway commission shall supply each of said employees so designated with a badge of authority, bearing a serial number, which shall be conspicuously displayed by the employee while in the performance of his duties as such peace officer. [C46, 50, 54,§321.479]

Referred to in §§321.480, 321.481

**321.480 Limitation on expense.** For the purposes of sections 321.476 to 321.481, inclusive, and the enforcement of the provisions of the motor vehicle laws relating to the size, weight, and load of motor vehicles and trailers the state highway commission is hereby authorized to expend from the primary road fund not more than two hundred fifty thousand dollars in any year. [C46, 50, 54,§321.480]

Referred to in §321.481

**321.481 No impairment of other authority.** Nothing in sections 321.476 to 321.480, inclusive, shall be so construed as to limit or impair the authority or duties of other peace officers in the enforcement of the motor vehicle laws or any portion thereof. [C46, 50, 54,§321.481]

Referred to in §321.480

## CRIMINAL RESPONSIBILITY

**321.482 Penalties for misdemeanor.** It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required by any of the provisions of this chapter unless any such violation is by this chapter or other law of this state declared to be a felony. Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter which are punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days.

Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [S13, §§1569, 1571-2a, m21, m22, m26, m27, m29, 4808-b; SS15, §1571-m12a; C24, §§4903, 5081, 5089, 13119; C27, §§4903, 5055-b4, 5081, 5089, 13119; C31, §§4686-c2, 4903, 5055-b4, 5079-d6, 5081, 5089, 13119; C35, §§4686-c2, 4903, 4991-f5, 5024-e3, 5055-b4, 5067-e2, 5079-d6, 5081, 5089, 13119; C39, §5036.01; C46, 50, 54, §321.482; 57GA, ch 113, §4]

Referred to in §§80.6, 321.17, 321.78, 321.79, 321.80, 321.98, 321.99, 321.104, 321.193, 321.216, 321.262, 321.294, 321.300, 321.369, 321.379, 321.381, 321.462, 321.466, 321.476, 321.487

**321.483 Penalty for felony.** Any person who is convicted of a violation of any of the provisions of this chapter herein declared to constitute a felony, and for which another punishment is not otherwise provided, shall be punished by imprisonment for a term of not more than five years, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35, §5081; C39, §5036.02; C46, 50, 54, §321.483]

Referred to in §§321.77, 321.92, 321.100

**321.484 Offenses by owners.** It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law. [C24, 27, 31, 35, §5085; C39, §5037.01; C46, 50, 54, §321.484]

**321.485 Notice to appear.** Whenever a peace officer has reasonable cause to believe that a person has violated any provision of this chapter punishable as a misdemeanor, such officer may:

1. Immediately arrest such person and take him before a magistrate of the county in which the apparent violation occurred; or

2. Without arresting the person, either

a. Prepare in triplicate a written summons to appear in court containing the name and address of such person, the operator or chauffeur license number if any, the registration number if any of his vehicle, the offense charged, and the time when and place where such person shall appear in court, which shall be within the county in which the offense charged is alleged to have been committed; or

b. Prepare in triplicate a memorandum of the alleged traffic violation containing the name and address of such person, the registration number if any of his vehicle, the offense alleged to have been committed, and such other information as may be prescribed by the commissioner. [C24, 27, 31, 35, §5082; C39, §5037.02; C46, 50, 54, §321.485]

Referred to in §321.486

**321.486 Promise to appear.** In lieu of bail the magistrate may release the arraigned person upon his written promise to appear in court for trial at time and place designated by such magistrate.

If the officer prepares either a summons or a memorandum as provided in section 321.485, the alleged offender shall be requested to sign the same in triplicate, and if he does sign may be released without arrest. In case a summons is issued, the signing shall constitute a written promise to appear as stated in said summons. The duplicate summons shall be presented to the person named therein. If memorandum is prepared, the original shall be retained by the officer, the duplicate sent to the department, and the triplicate presented to the person named therein. [C39, §5037.03; C46, 50, 54, §321.486]

**321.487 Violation of promise to appear.** Any person willfully violating a summons to appear in court given as provided in this chapter, is guilty of a misdemeanor, punishable as provided in section 321.482 regardless of the disposition of the charge upon which he was summoned.

An appearance in response to such summons may be made either in person or by counsel. [C39, §5037.04; C46, 50, 54, §321.487]

**321.488 Procedure not exclusive.** The foregoing provisions of this chapter shall govern all peace officers in making arrests without a warrant for violations of this chapter for offenses committed in their presence, but the procedure prescribed herein shall not be exclusive of any other method prescribed by law for the arrest and prosecution of a person. [C39, §5037.05; C46, 50, 54, §321.488]

**321.489 Record inadmissible in a civil action.** No record of the conviction of any person for any violation of this chapter shall be admissible as evidence in any court in any civil action. [C39, §5037.06; C46, 50, 54, §321.489]

**321.490 Conviction not to affect credibility.** The conviction of a person upon a charge of violating any provision of this chapter or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding. [C39, §5037.07; C46, 50, 54, §321.490]

**321.491 Convictions to be reported.** Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this chapter or

of any other law regulating the operation of vehicles on highways.

Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law regulating the operation of vehicles on highways every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

Said abstract must be made upon a form furnished by the department and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

Every clerk of a court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure, refusal, or neglect of any such officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be ground for removal therefrom.

The department shall keep all abstracts received hereunder at its main office and the same shall be open to public inspection during reasonable business hours. [S13,§1571-m23; C24, 27, 31, 35,§§5076-5078; C39,§5037.08; C46, 50, 54,§321.491]

**321.492 Peace officers' authority.** Any peace officer is authorized to stop any vehicle to require exhibition of the driver's operator or chauffeur license, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, bills of lading or other manifest of employment, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle. [C46, 50, 54, §321.492]

#### CIVIL LIABILITY

**321.493 Liability for damages.** In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.

A person who has made a bona fide sale or transfer of his right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another, but the purchaser or transferee to whom possession was

delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability hereunder, whether such sale or transfer was made. [C24, 27, 31, 35,§§4964, 5026; C39,§§5002.07, 5037.09; C46, 50, 54,§§321.51, 321.493; 56GA, ch 157,§§5, 8]

Referred to in §321.45

**321.494 Guest statute.** The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire unless damage is caused as a result of the driver of said motor vehicle being under the influence of intoxicating liquor or because of the reckless operation by him of such motor vehicle. [C27, 31, 35,§5026-b1; C39, §5037.10; C46, 50, 54,§321.494]

**321.495 Drivers of emergency vehicles indemnified.** Every city, township or town maintaining a police and/or fire department is hereby required to defend, in the name and on behalf of, the members of the police and/or fire departments in any suits brought against them to enforce a claim for bodily injuries, death, or property damage arising out of and resulting from their operation of motor or other vehicles while in the performance of their duties, and to indemnify such members against liability, loss, or expense by reason of such claim, and such city or town is hereby authorized to compromise and settle any such damage or suit, and to pay from the public safety fund the amount of such settlement or compromise or judgment rendered against such members on any such claim without first requiring said members to pay the same. [C46, 50, 54,§321.495; 57GA, ch 161,§1]

Referred to in §§321.496, 321.497

**321.496 Amounts.** The maximum amount for which any city, township or town shall be liable under section 321.495 for damages arising out of a single accident shall be limited to one thousand dollars for property damage and five thousand dollars for injury or death to one person and ten thousand dollars for injury or death to more than one person, provided, however, that any city, township or town maintaining a police or fire department, or both, may, in its discretion, pay the premiums on liability insurance policies insuring individuals or groups of members referred to in section 321.495, against liability for damages arising out of a single accident in maximum amount of ten thousand dollars for property damage and fifty thousand dollars for injury or death to one person and, subject to said limit for one person, one hundred thousand dollars for injury or death to more than one person. Premiums on such policies are hereby authorized to be paid from the public safety fund in cities and towns and from the proceeds of the levy provided in section 359.43 in the case of townships. [C46, 50, 54,§321.496; 57GA, ch 161,§§2, 3]

**321.497 Insurance.** Said city or town or township maintaining a police and/or fire department may, in its discretion, pay the premiums on liability insurance policies insuring individuals or groups of members referred to in section 321.495. [C46, 50, 54, §321.497; 57GA, ch 161, §4]

Referred to in §404.8(6)  
Constitutionality, 49GA, ch 222, §5  
Omnibus repeal, 49GA, ch 222, §6  
Rule of construction, 49GA, ch 222, §7

**ACTIONS AGAINST NONRESIDENTS**

**321.498 Legal effect of use and operation.** The acceptance by any nonresident of this state of the privileges extended by the laws of this state to nonresident operators or owners of operating a motor vehicle, or having the same operated, within this state shall be deemed:

1. An agreement by him that he shall be subject to the jurisdiction of the district court of this state over all civil actions and proceedings against him for damages to person or property growing or arising out of such use and operation, and

2. An appointment by such nonresident of the commissioner of the public safety department of this state as his lawful attorney upon whom may be served all original notices of suit pertaining to such actions and proceedings, and

3. An agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on him in this state.

4. The term "nonresident" shall include any person who was, at the time of the accident or event, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings. [C31, 35, §5079-d11; C39, §5038.01; C46, 50, 54, §321.498]

Referred to in §321.499

**321.499 "Person" defined.** The term "person", as used in section 321.498 shall mean:

1. The owner of the vehicle whether it is being used and operated personally by said owner, or by his agent.

2. An agent using and operating the vehicle for his principal.

3. Any person who is in charge of the vehicle and of the use and operation thereof with the express or implied consent of the owner. [C31, 35, §5079-d12; C39, §5038.02; C46, 50, 54, §321.499]

See also §321.1, subsection 35  
See §321.512

**321.500 Original notice—form.** The original notice of suit filed with the commissioner shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"and unless you appear thereto and defend in the district court of Iowa in and for.....

county at the courthouse in.....Iowa before noon of the sixtieth day following the filing of this notice with the commissioner of the public safety department of this state, default will be entered and judgment rendered against you by the court if then in session in said county, and if the court is not then in session said default will be entered and judgment rendered by the court on the first day of the first succeeding term or as soon thereafter as the same may be reached." [C31, 35, §5079-d13; C39, §5038.03; C46, 50, 54, §321.500]

**321.501 Manner of service.** Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said commissioner, together with a fee of two dollars, and

2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the commissioner, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the commissioner. [C31, 35, §5079-d14; C39, §5038.04; C46, 50, 54, §321.501; 57GA, ch 267, §38]

Referred to in §321.502

**321.502 Notification to nonresident—form.** The notification, provided for in section 321.501, shall be in substantially the following form, to wit:

"To ..... (Here insert the name of each defendant and his residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, on filing a copy of said notice on the ..... day of ....., 19...., with the commissioner of the public safety department of the state of Iowa.

Dated at ....., Iowa, this ..... day of ....., 19....

.....  
Plaintiff.

By .....  
Attorney for plaintiff."

[C31, 35, §5079-d15; C39, §5038.05; C46, 50, 54, §321.502]

**321.503** Repealed by 57GA, ch 267, §39.

**321.504 Optional notification.** In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery. [C31, 35, §5079-d17; C39, §5038.07; C46, 50, 54, §321.504]

**321.505 Proof of service.** Proof of the filing of a copy of said original notice of suit with the commissioner, and proof of the mailing or personal delivery of said notification to said

nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be indorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court. [C31, 35,§5079-d18; C39,§5038.08; C46, 50, 54,§321.505; 57GA, ch 267,§40]

**321.506 Actual service within this state.** The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form and under the conditions provided for service on residents. [C31, 35,§5079-d19; C39,§5038.09; C46, 50, 54,§321.506]

**321.507 Venue of actions.** Actions against nonresidents as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received, or damage done. [C31, 35,§5079-d20; C39,§5038.10; C46, 50, 54,§321.507]

**321.508 Continuances.** The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action. [C31, 35,§5079-d21; C39, §5038.11; C46, 50, 54,§321.508]

**321.509 Duty of commissioner.** The commissioner shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an

order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant. [C31, 35,§5079-d22; C39,§5038.12; C46, 50, 54, §321.509]

**321.510 Expenses and attorney fees.** If judgment is rendered against the plaintiff, upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and his attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause. [C31, 35,§5079-d23; C39, §5038.13; C46, 50, 54,§321.510]

**321.511 Dismissal — effect.** The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized, shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state. [C31, 35,§5079-d24; C39, §5038.14; C46, 50, 54,§321.511]

Constitutionality, 47GA, ch 134,§553

**321.512 Action against insurance.** Any contract insuring the liability of a nonresident motorist in Iowa shall, in the event of the death of said nonresident, be considered an asset of his estate having a situs in Iowa in any civil action arising out of a motor vehicle accident in which said nonresident may be liable. [C54,§321.512]

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

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WORDS AND PHRASES DEFINED

**321A.1 Definitions.** The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *Commissioner.* The commissioner of public safety of this state.

2. *Judgment.* Any judgment which shall have become final by expiration without appeal during the time within which an appeal might have been perfected, or any judgment if an appeal from such judgment has been perfected, which has not been stayed by the execution, filing and approval of a bond as provided in rule 337 (a) of the rules of civil procedure, or any judgment which shall have become final by affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

3. *License.* Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

4. *Motor vehicle.* "Motor vehicle" means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The terms "car" or "automobile" shall be synonymous with the term "motor vehicle".

5. *Nonresident.* Every person who is not a resident of this state.

6. *Nonresident operating privilege.* The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

7. *Operator.* Every person who is in actual physical control of a motor vehicle whether or not licensed as an operator or chauffeur under the laws of this state.

8. *Owner.* A person who holds the legal title of a motor vehicle, or in the event a motor

321A.32 Other violations—penalties.

GENERAL PROVISIONS

- 321A.33 Exceptions.  
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vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this chapter.

9. *Person.* Every natural person, firm, co-partnership, association, or corporation.

10. *Proof of financial responsibility.* Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident.

11. *Registration.* Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

12. *State.* Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. [C50, 54, §321A.1; 57GA, ch 162, §1]

Referred to in §321A.24

ADMINISTRATION

**321A.2 Commissioner to administer chapter—appeal to court.**

1. The commissioner shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the commissioner under the provisions of sections 321A.4 to 321A.11, inclusive.

Such hearings shall be held before the commissioner or his duly authorized agent as early as practicable within not to exceed twenty days after receipt of such request in the county wherein the requesting person resides unless the commissioner and such person agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer

oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination under oath of the person requesting such hearing.

2. Any persons aggrieved by an order or act of the commissioner, under the provisions of this chapter, may, within ten days after notice thereof, file a petition in the district court of the county of his residence for a trial de novo to determine whether such order or act is lawful and reasonable. The filing of such a petition shall not suspend the order or act of the commissioner unless a stay thereof shall be allowed by a judge of said court pending final determination of the matter. The court shall summarily hear the petition and may make any appropriate order or decree. [C50, 54,§321A.2]

**321A.3 Commissioner to furnish operating record—fees to be charged and disposition of fees.** The commissioner shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the commissioner shall so certify. A fee of one dollar shall be paid for each such abstract except by state, county, city, town or court officials. Such fees shall be used by the department for administering this chapter. Such abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident. [C50, 54,§321A.3]

#### SECURITY FOLLOWING ACCIDENT

**321A.4 Effect of failure to report accidents.** The commissioner shall suspend the license or any nonresident's operating privilege of any person who willfully fails, refuses, or neglects to make reports of a traffic accident as required by the laws of this state. [C50, 54,§321A.4]

Referred to in §§321A.2, 321A.8 to 321A.11, inclusive, and 321A.33

**321A.5 Security required following accident—exceptions.**

1. The commissioner shall, immediately or within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of fifty dollars, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which shall be

sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such operator or owner; provided notice of such suspension shall be sent by the commissioner to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security.

2. This section shall not apply under the conditions stated in section 321A.6 or to any of the following:

a. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

b. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

c. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond; or

d. To such owner if such owner is at the time of such accident qualified as a self-insurer under section 321A.34, or to any such operator operating such motor vehicle for such self-insurer.

3. No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident.

Upon receipt of a report of a motor vehicle accident and information that an automobile liability policy or surety bond meeting the requirements of this chapter was in effect at the time of this accident covering liability for damages resulting from such accident, the



commissioner shall forward by regular mail to the insurance carrier or surety carrier which issued such policy or bond a copy of such information concerning insurance or bond coverage, and it shall be presumed that such policy or bond was in effect and provided coverage to both the operator and the owner of the motor vehicle involved in such accident unless the insurance carrier or surety carrier shall notify the commissioner otherwise within fifteen days from the mailing of such information to such carrier; provided, however, that in the event the commissioner shall later ascertain that erroneous information had been given him in respect to the insurance or bond coverage of the operator or owner of a motor vehicle involved in such accident, he shall take such action as he is otherwise authorized to do under this chapter within sixty days after the receipt by him of correct information with respect to such coverage. [C31, 35,§5079-c4; C39, §5021.01; C46,§321.275; C50, 54,§321A.5; 57GA, ch 162,§2]

Referred to in §§321A.2, 321A.6 to 321A.11, inclusive, and 321A.32

**321A.6 Exceptions to requirement of security.** The requirements as to security and suspension in section 321A.5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in any accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner.

2. To the operator or the owner of a motor vehicle if at the time of the accident the vehicle was stopped, standing, or parked, whether attended or unattended, except that the requirements of this chapter shall apply in the event the commissioner determines that any such stopping, standing, or parking of the vehicle was illegal or that the vehicle was not equipped with lighted lamps or illuminating devices or flags when and as required by the laws of this state and that any such violation contributed to the accident.

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission.

4. If, prior to the date that the commissioner would otherwise suspend license and registration or nonresident's operating privilege under section 321A.5, there shall be filed with the commissioner evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident; provided, however, in the event there shall be

any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

a. Such person deposits and thereafter maintains security as required under section 321A.5 in such amount as the commissioner may then determine; or

b. One year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state. [C50, 54,§321A.6]

Referred to in §§321A.2, 321A.5, 321A.7 to 321A.11, inclusive

**321A.7 Duration of suspension.** The license and registration and nonresident's operating privilege suspended as provided in section 321A.5 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit or there shall be deposited on his behalf the security required under section 321A.5; or

2. One year shall have elapsed following the date of such accident and evidence satisfactory to the commissioner has been filed with him that during such period no action for damages arising out of such accident has been instituted; or

3. Evidence satisfactory to the commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with subsection 4 of section 321A.6; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until (a) such person deposits and there-

after maintains security as required under section 321A.5 in such amount as the commissioner may then determine, or (b) one year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state. [C50, 54,§321A.7]

Referred to in §§321A.2, 321A.8 to 321A.11, inclusive

**321A.8 Application to nonresidents, unlicensed drivers, and unregistered motor vehicles.** In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of sections 321A.4 to 321A.11, inclusive, to the same extent that would be necessary if, at the time of the accident, he had held a license and registration. [C50, 54,§321A.8]

Referred to in §§321A.2, 321A.9 to 321A.11, inclusive

**321A.9 Form and amount of security.**

1. The security required under sections 321A.4 to 321A.11, inclusive, shall be in such form and in such amount as the commissioner may require but in no case in excess of the limits specified in section 321A.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the commissioner or state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

2. The commissioner may reduce the amount of security ordered in any case within six months after the date of the accident if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 321A.10. [C50, 54,§321A.9]

Referred to in §§321A.2, 321A.8 to 321A.11, inclusive

**321A.10 Custody, disposition, and return of security.** Security deposited in compliance with the requirements of sections 321A.4 to 321A.11, inclusive, shall be placed by the commissioner in the custody of the state treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, and such deposit or any balance

thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with subsection 4 of section 321A.6, or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, the commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. [C50, 54,§321A.10]

Referred to in §§321A.2, 321A.8 to 321A.11, inclusive

**321A.11 Matters not to be evidence in civil suits.** Neither the report required by section 321A.4, the action taken by the commissioner pursuant to sections 321A.4 to 321A.10, inclusive, and this section, the findings, if any, of the commissioner upon which action is based, nor the security filed as provided in said sections shall be referred to in any way, or be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. [C50, 54,§321A.11]

Referred to in §§321A.2, 321A.8 to 321A.10, inclusive

**PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE**

**321A.12 Courts to report nonpayment of judgments.**

1. Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commissioner immediately after the expiration of said sixty days, a certified copy of such judgment.

2. If the defendant named in any certified copy of a judgment reported to the commissioner is a nonresident, the commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident. [C50, 54, §321A.12]

Referred to in §§321A.13, 321A.14

**321A.13 Suspension for nonpayment of judgments—exceptions.**

1. The commissioner upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 321A.16.

2. If the judgment creditor consents in writing, in such form as the commissioner may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commissioner, in his discretion, for six

months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 321A.16, provided the judgment debtor furnishes proof of financial responsibility.

3. Any person whose license, registration, or nonresident's operating privilege has been suspended or is about to be suspended or shall become subject to suspension under the provisions of sections 321A.12 to 321A.29, inclusive, may be relieved from the effect of such judgment as hereinbefore\* prescribed in said sections by filing with the commissioner an affidavit stating that at the time of the accident upon which such judgment has been rendered the affiant was insured, that the insurer is liable to pay such judgment, and the reason, if known, why such insurance company has not paid such judgment. Such a person shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the commissioner may require to show that the loss, injury, or damage for which such judgment was rendered, was covered by such policy of insurance. If the commissioner is satisfied from such papers that such insurer was authorized to issue such policy of insurance at the time and place of issuing such policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts required in this chapter, the commissioner shall not suspend such license or registration or nonresident's operating privilege, or if already suspended shall reinstate them. [C50, 54, §321A.13]

Referred to in §321A.14  
\*According to enrolled act

#### **321A.14 Suspension to continue until judgments paid and proof given.**

1. Such license, registration, and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 321A.13 and 321A.16.

2. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of sections 321A.12 to 321A.29, inclusive. [C31, 35, §5079-c4; C39, §5021.01; C46, §321.275; C50, 54, §321A.14]

Referred to in §321A.13

#### **321A.15 Payments sufficient to satisfy requirements.**

1. Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied:

a. When ten thousand dollars has been credited upon any judgment or judgments ren-

dered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

b. When, subject to such limit of ten thousand dollars because of bodily injury to or death of one person, the sum of twenty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

c. When five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

2. Provided, however, payments made in settlements of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. [C31, 35, §5079-c4; C39, §5021.02; C46, §321.276; C50, 54, §321A.15; 57GA, ch 162, §3]

Referred to in §§321A.13, 321A.14

#### **321A.16 Installment payment of judgments—default.**

1. A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

2. The commissioner shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

3. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commissioner shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. [C31, 35, §5079-c4; C39, §5021.02; C46, §321.276; C50, 54, §321A.16]

Referred to in §§321A.13, 321A.14

#### **321A.17 Proof required upon certain convictions.**

1. Whenever the commissioner, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the commissioner shall also suspend the registration for all motor vehicles registered in the name of such person, except that he shall not suspend such registration, unless otherwise re-

quired by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

4. Whenever the commissioner suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility. [C31, 35, §§5079-c5, c6; C39, §§5021.03, 5021.04; C46, §§321.277, 321.278; C50, 54, §321A.17]

Referred to in §§321A.13, 321A.14

**321A.18 Alternate methods of giving proof.** Proof of financial responsibility when required under this chapter may be given by filing:

1. A certificate of insurance as provided in section 321A.19 or section 321A.20; or

2. A bond as provided in section 321A.24; or

3. A certificate of deposit of money or securities as provided in section 321A.25. [C50, 54, §321A.18]

Referred to in §§321A.13, 321A.14

**321A.19 Certificate of insurance as proof.**

1. Proof of financial responsibility may be furnished by filing with the commissioner the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

2. No motor vehicle shall be or continue to be registered in the name of any person re-

quired to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate. [C50, 54, §321A.19]

Referred to in §§321A.13, 321A.14, 321A.18, 321A.21, 321A.22

**321A.20 Certificate furnished by nonresident as proof.**

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle, or motor vehicles, described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms with the provisions of this chapter, and the commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

a. Said insurance carrier shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

b. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. [C50, 54, §321A.20]

Referred to in §§321A.13, 321A.14, 321A.18, 321A.21, 321A.22

**321A.21 "Motor vehicle liability policy" defined.**

1. A "motor vehicle liability policy" as said term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in section 321A.19 or section 321A.20 as proof of financial responsibility, and issued, except as otherwise provided in section 321A.20, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

2. Such owner's policy of liability insurance:

a. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

b. Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the owner-

ship, maintenance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars because of injury to or destruction of property of others in any one accident.

3. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

4. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

5. Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

a. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

b. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

c. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the

amount thereof shall be deductible from the limits of liability specified in paragraph *b* of subsection 2 of this section.

d. The policy, the written application therefor, if any, and any rider or indorsement which does not conflict with the provisions of the chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

10. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

11. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy. [C50, 54,§321A.21; 57GA, ch 162,§4]

Referred to in §§321A.13, 321A.14

**321A.22 Notice of cancellation or termination of certified policy.** When an insurance carrier has certified a motor vehicle liability policy under section 321A.19 or section 321A.20, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the commissioner, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates. [C50, 54,§321A.22]

Referred to in §§321A.13, 321A.14

**321A.23 Chapter not to affect other policies.**

1. This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are indorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

2. This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting

from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured. [C50, 54, §321A.23]

Referred to in §§321A.13, 321A.14

### **321A.24 Bond as proof.**

1. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge or clerk of a court of record, which said bond shall be conditioned for payment of the amounts specified in subsection 10 of section 321A.1. Such bond shall be filed with the commissioner and shall not be cancelable except after ten days written notice to the commissioner. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the commissioner in the office of the proper clerk of court of the county where such real estate shall be located. Any individual surety so scheduling real estate security shall furnish satisfactory evidence of title thereto and the nature and extent of all encumbrances thereon and the value of the surety's interest therein, in such manner as the judge or clerk of the court of record approving the bond may require. The notice filed by the commissioner shall, in addition to any other matters by him deemed to be pertinent, contain a legal description of the real estate so scheduled, the name of the holder of the record title, the amount for which it stands as security, and the name of the person in whose behalf proof is so being made. Upon the filing of such notice the clerk of the court of such county shall retain the same as part of the records of such court and enter upon the encumbrance book the date and hour of filing, the name of the surety, the name of the record titleholder, the description of the real estate, and the further notation that a lien is charged on such real estate pursuant to the notice filed hereunder. From and after the entry of the foregoing upon the encumbrance book all persons whomsoever shall be charged with notice thereof.

2. If such a judgment, rendered against the principal on such bond shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use

and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. An action to foreclose any lien upon real estate scheduled by any surety under the provisions of this chapter shall be by equitable proceeding in the same manner as is provided for the foreclosure of real estate mortgages. [C50, 54, §321A.24]

Referred to in §§321A.13, 321A.14, 321A.18

### **321A.25 Money or securities as proof.**

1. Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him twenty-five thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of twenty-five thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

2. Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. [C50, 54, §321A.25; 57GA, ch 162, §5]

Referred to in §§321A.13, 321A.14, 321A.18

### **321A.26 Owner may give proof for others.**

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the commissioner shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided or has qualified as a self-insurer under section 321A.34. The commissioner shall designate the restrictions imposed by this section on the face of such person's license. [C50, 54, §321A.26]

Referred to in §§321A.13, 321A.14, 321A.33

**321A.27 Substitution of proof.** The commissioner shall consent to the cancellation of any bond or certificate of insurance or the commissioner shall direct and the state treasurer

shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. [C50, 54,§321A.27]

Referred to in §§321A.13, 321A.14

**321A.28 Other proof may be required.** Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the commissioner shall for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof. [C50, 54,§321A.28]

Referred to in §§321A.13, 321A.14

**321A.29 Duration of proof—when proof may be canceled or returned.**

1. The commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the commissioner shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the commissioner shall waive the requirement of filing proof, in any of the following events:

a. At any time after three years from the date such proof was required when, during the three-year period preceding the request, the commissioner has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished; or

b. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

c. In the event the person who has given proof surrenders his license and registration to the commissioner;

2. Provided, however, that the commissioner shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the commissioner.

3. Whenever any person whose proof has been canceled or returned under paragraph c of subsection 1 of this section applies for a license or registration within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such three-year period. [C50, 54,§321A.29]

Referred to in §§321A.13, 321A.14

#### VIOLETIONS OF PROVISIONS OF CHAPTER— PENALTIES

**321A.30 Transfer of registration to defeat purpose of chapter prohibited.** This chapter shall not prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of such motor vehicle to another person whose rights or privileges are not suspended under this chapter nor prevent the registration of such motor vehicle by such transferee. This chapter shall not in any wise affect the rights of any conditional vendor, chattel mortgagee, or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter. [C50, 54,§321A.30]

**321A.31 Surrender of license and registration.** Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the commissioner shall immediately return his license and registration to the commissioner. If any person shall fail to return to the commissioner the license or registration as provided herein, the commissioner shall forthwith direct any peace officer to secure possession thereof and to return the same to the commissioner. [C31, 35,§5079-c4; C39,§5021.01; C46,§321.275; C50, 54,§321A.31]

Referred to in §321A.32

**321A.32 Other violations—penalties.**

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be fined not more than five hundred dollars or imprisoned not exceeding six months, or both.

2. Any person willfully failing to return license or registration as required in section 321A.31 shall be fined not more than five hundred dollars or imprisoned not to exceed thirty days, or both.

3. Any person who shall forge or, without authority, sign any notice provided for under

section 321A.5 that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

4. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. [C31, 35, §5079-c7; C39, §5021.05; C46, §321.279; C50, 54, §321A.32]

GENERAL PROVISIONS

**321A.33 Exceptions.** This chapter shall not apply with respect to any motor vehicle owned by the United States, this state, or any political subdivision of this state, or any municipality therein, nor to any operator, except for section 321A.4, while on official duty operating such motor vehicle; nor, except for section 321A.4 and section 321A.26, with respect to any motor vehicle which is subject to the requirements of section 325.26, and section 327.15. [C50, 54, §321A.33]

**321A.34 Self-insurers.**

1. Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner as provided in subsection 2 of this section.

2. The commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person for damages arising out of the ownership, maintenance, or use of any vehicle owned by such person.

3. Upon not less than five days notice and a hearing pursuant to such notice, the commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment for damages arising out of the ownership, maintenance, or use of any vehicle owned by such self-insurer within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. [C50, 54, §321A.34]

Referred to in §§321A.5, 321A.26

**321A.35 Past application of chapter.** This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this state, occurring prior to October 1, 1947. Any person who has before October 1, 1947, had his operator's license suspended or has had his

motor vehicle registration plates suspended or who has been refused registration or license to operate a motor vehicle upon the highways of the state of Iowa, under the provisions of sections of the Code in effect before October 1, 1947, and has not had such suspension removed, as therein provided, shall not be issued an operator's license nor be entitled to registration of a motor vehicle in this state until proof is filed with the county treasurer and the department of public safety that the judgment against him rendered by the court has been stayed, satisfied or otherwise discharged of record. [C50, 54, §321A.35]

**321A.36 Chapter not to prevent other process.** Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. [C50, 54, §321A.36]

**321A.37 Uniformity of interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. [C50, 54, §321A.37]

**321A.38 Title of chapter.** This chapter may be cited as the "motor vehicle financial and safety responsibility act." [C50, 54, §321A.38]

Effective October 1, 1947; See 52GA, ch 172, §41  
Constitutionality, 52GA, ch 172, §39

**321A.39 Liability insurance — statement.** Whenever any dealer licensed under chapter 322 sells a motor vehicle at retail and the transaction does not include the sale of liability insurance coverage which will protect the purchaser under the Iowa motor vehicle financial and safety responsibility Act the purchase order or invoice evidencing the transaction shall contain a statement in the following form:

"I understand that liability insurance coverage which would protect me under the Iowa Motor Vehicle Financial and Safety Responsibility Act is NOT INCLUDED in my purchase of the herein described motor vehicle. I have received a copy of this statement.

.....  
(Purchaser's signature)"

The seller shall print or stamp said statement on the purchase order or invoice in distinctive color ink and with clearly visible letters. Said statement shall be signed by the purchaser in the space provided therein on or before the date of delivery of the motor vehicle described in the purchase order or invoice and a copy thereof shall be given to the purchaser by the seller.

No civil liability shall arise on account of the failure of any person to comply with the provisions of this section.

Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars. [C54, §321A.39]



## CHAPTER 322

## MOTOR VEHICLE DEALERS

Referred to in §§321.1, 321A.39

322.1 Administration.	322.14 Penalties.
322.2 Definitions.	322.15 Liberal construction.
322.3 Prohibited acts.	322.16 Repealed by 56GA, ch 169,§2.
322.4 Application for license.	322.17 Copy of contract to buyer.
322.5 License fee.	322.18 Dual-interest insurance.
322.6 Denial of license.	322.19 Finance charges.
322.7 License of motor vehicle dealer.	322.20 Extension of time.
322.8 Supplemental statements.	322.21 Purchase of contract.
322.9 Revocation of license.	322.22 Waivers prohibited.
322.10 Appeals.	322.23 Complaints.
322.11 Injunctions.	322.24 Hearing.
322.12 Motor vehicle dealers license fee fund.	322.25 Required equipment.
322.13 Rules and regulations.	322.26 Short title.

**322.1 Administration.** The administration of this chapter shall be vested in the commissioner of public safety. The commissioner may employ such employees as are necessary for the administration of this chapter, provided the amount expended in any one year shall not exceed the revenue derived from the provisions of this chapter. [C39,§5039.01; C46, 50, 54,§322.1]

**322.2 Definitions.** As used in this chapter and unless a different meaning appears from the context:

1. "Person" includes any individual, firm, corporation, copartnership, joint adventure, or association, and the plural as well as the singular number.

2. "Department" means the department of public safety.

3. "Selling" includes bartering, exchanging, or otherwise dealing in.

4. "At retail" means to dispose of a motor vehicle to a person who may devote it to a consumer use.

5. "Place of business" means a designated location wherein proper and adequate facilities shall be maintained for displaying, reconditioning, and repairing either new or used cars.

6. "Used motor vehicle" or "second-hand motor vehicle" means any motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in this chapter and previously registered in this or any other state.

7. "Motor vehicle" means any vehicle subject to registration under the laws of this state.

8. "Retail installment transaction" means any sale evidenced by a retail installment contract between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from a retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits, if a separate charge is made therefor, official fees and finance charge, shall together constitute the time price.

9. "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

10. "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer.

11. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller.

12. "Cash sale price" means the cash price stated in a retail installment contract at which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale were a sale for cash instead of a retail installment transaction. The cash sale price may include any taxes, registration, certificate of title, license and other fees, and charges for accessories and their installation and for delivery, servicing, repairing, or improving the motor vehicle.

13. "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment transaction.

14. "Finance charge" means that part of the time price by which the latter exceeds the aggregate of the cash sale price, the amount, if any, separately included for insurance and other benefits, official fees and other costs necessary or incidental to the retail install-

ment transaction to be included in the retail installment contract.

15. "Down payment" means all partial payments whether made in cash or in the stated value of property otherwise received, by or for the benefit of the seller, prior to or substantially contemporaneous with either the execution of the retail installment contract or the delivery of the motor vehicle sold thereunder, whichever occurs later.

16. "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

17. The "holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

18. Nothing contained herein shall be construed to require the licensing or to apply to any bank, credit union or trust company in Iowa. [C39, §5039.02; C46, 50, 54, §322.2; 56GA, ch 154, §2; 57GA, ch 163, §1]

Referred to in §322.3

**322.3 Prohibited acts.**

1. No person shall engage in this state in the business of selling at retail new motor vehicles of any make or represent or advertise that he is engaged or intends to engage in such business in this state unless he is authorized by a contract in writing between himself and the manufacturer or distributor of such make of new motor vehicles to so dispose thereof in this state and unless the department has licensed the person as a motor vehicle dealer in this state in motor vehicles of such make and has issued to the person a license in writing as in this chapter provided.

2. No person, other than a licensed dealer in new motor vehicles, shall engage in this state in the business of selling at retail used motor vehicles or represent or advertise that he is engaged or intends to engage in such business in this state unless and until the department has licensed such person as a used motor vehicle dealer in the state and has issued to the person a license in writing as in this chapter provided.

3. Nothing contained in subsections 1 and 2 hereof shall be construed as requiring the separate licensing of persons employed as salesmen of motor vehicles by a licensee hereunder, but the department is hereby authorized and empowered to make, publish, and promulgate such reasonable rules and regulations as it may deem necessary for the proper identification of persons so employed as salesmen by any such licensee.

4. No person, who is engaged in the business of selling at retail motor vehicles, shall enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of any such motor vehicles that he will sell, assign, or transfer any retail installment contracts arising from the retail installment sale of such motor vehicles or any one or more thereof only to a designated person or class of persons. Any such condition, agreement, or understanding between any manufacturer or distributor and a motor vehicle dealer in this state is hereby declared to be against the public policy of this state and to be unlawful and void.

5. No manufacturer or distributor of motor vehicles or any agent of such manufacturer or distributor, shall terminate or threaten to terminate, or fail to renew any contract, agreement, or understanding for the sale of new motor vehicles to any motor vehicle dealer in this state without just, reasonable and lawful cause therefor or because such motor vehicle dealer failed to sell, assign, or transfer any retail installment contract arising from the retail sale of such motor vehicles or any one or more of them to a person or a class of persons designated by such manufacturer or distributor. Provided, however, that the provisions of this subsection relating to "failure to renew" shall not apply to any contract, agreement, or understanding, which is for a term of five or more years.

6. No person, who is engaged in the business of selling at retail motor vehicles, shall make and enter into a retail installment contract unless such contract meets the following requirements:

a. Every retail installment contract shall be in writing, shall be signed by both the buyer and the seller and shall be completed as to all essential provisions prior to the signing of the contract by the buyer except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution.

b. The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain, directly above the buyer's signature, and in a size equal to at least ten point bold type:

(1) The following notice: "Notice to the Buyer: Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign."

(2) An acknowledgment by the buyer of delivery of a copy of the contract.

c. The retail installment contract shall contain the following items:

(1) The cash sale price of the motor vehicle which is the subject matter of the retail installment transaction;

(2) The amount of the buyer's down payment, whether made in money or goods, or partly in money and partly in goods;

(3) The difference between items one and two;

(4) The amount, if any, separately included for insurance and other benefits specifying the types of coverage and benefits;

(5) Official fees as defined in subsection 13 of section 322.2;

(6) Principal balance, which is the sum of item three, item four and item five;

(7) The amount of the finance charge;

(8) The balance, which is the sum of items six and seven, owed by the buyer to the seller and the number of installments required and the amount and date of each payment necessary finally to pay such balance; provided, however, the amount and date of each payment need not be separately listed if the payments are specified in terms of a series of payments of specified amounts, payable at specified intervals of time from an initial date.

The above items need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated time price to be paid by the buyer.

*d.* The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the commissioner of insurance.

*e.* The retail installment contract shall provide that any buyer may pay in full at any time before maturity the debt of such contract and in so paying such debt shall receive for such anticipation of payments a refund credit in an amount which shall represent at least as great a proportion of the finance charge after first deducting from such finance charge an acquisition cost of twenty-five dollars, as the sum of the periodic time balances after the month in which prepayment is made, bears to the sum of all the periodic time balances under the schedule of payments in the original contract; provided, however, that if the amount of the credit is less than one dollar no refund need be made.

7. Nothing contained herein shall be construed to require that a place of business as defined in this chapter shall be maintained by a person selling motor vehicles at retail solely for the purpose of disposing of motor vehicles acquired or repossessed by such person in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations.

8. No manufacturer or distributor of motor vehicles or agent of such manufacturer or distributor shall coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts, or accessories thereof, or any other commodity or commod-

ities which shall not have been ordered by such dealer. [C39,§5039.03; C46, 50, 54,§322.3; 57GA, ch 163,§§2-5]

Referred to in §§322.6, 322.14, 322.19, 322.21, 322.22

**322.4 Application for license.** Each person before engaging in this state in the business of selling at retail motor vehicles or representing or advertising that he is engaged or intends to engage in such business in this state shall file in the office of the department an application for license as a motor vehicle dealer in the state in such form as the department may prescribe, duly verified by oath, which application shall include the following:

1. The name of the applicant and his principal place of business wherever situated.

*a.* If the applicant is an individual—the name or style under which he intends to engage in such business.

*b.* If the applicant is a copartnership—the name or style under which such copartnership intends to engage in such business and the name and post-office address of each partner.

*c.* If the applicant is a corporation—the state of incorporation and the name and post-office address of each officer and director thereof.

2. The make or makes of new motor vehicles, if any, which the applicant will offer for sale to retail in this state.

3. The location of each place of business within this state to be used by the applicant for the conduct of his business.

4. If the applicant is a party to any contract or agreement or understanding with any manufacturer or distributor of motor vehicles or is about to become a party to such a contract, agreement, or understanding, the applicant shall state the name of each such manufacturer and distributor and the make or makes of new motor vehicles, if any, which are the subject matter of each such contract.

5. A statement of the previous history, record, and association of the applicant and if the applicant is a copartnership, of each partner thereof and if the applicant is a corporation, of each officer and director thereof, which statement shall be sufficient to establish to the department the reputation in business of the applicant.

6. A description of the general plan and method of doing business in this state, which the applicant will follow if the license applied for in such application is granted.

7. A financial statement of the applicant showing his true financial condition as of a date not more than six months prior to the date of such application.

8. Such other information touching the business of the applicant as the department may require.

For the purpose of investigating the matters contained in such application the department may withhold the granting of a license for a period not exceeding thirty days. [C29,§5039.04; C46, 50, 54,§322.4]

**322.5 License fee.** The license fee for a motor vehicle dealer for each calendar year or part thereof shall be the sum of twenty dollars for the licensee's principal place of business in each city or town and an additional five dollars for each used-car lot which is in the city or town wherein said place of business is located and which is not adjacent to such place, to be paid to the department at the time a license is applied for. In case the application is denied, the department shall refund the amount of such fee to the applicant. [C39, §5039.05; C46, 50, 54, §322.5; 57GA, ch 163, §6]

**322.6 Denial of license.** The department shall deny the application of any person for a license as a motor vehicle dealer and refuse to issue a license to him as such, if, after reasonable notice and a hearing, the department determines that such applicant:

1. Has made a material false statement in his application for the license; or
2. Has not complied with the provisions of this chapter or any rules or regulations promulgated by the department thereunder except as otherwise provided; or
3. Is of bad business repute; or
4. Has been guilty of a fraudulent act in connection with selling, bartering, or otherwise dealing in motor vehicles; or
5. Is about to engage in any practice in connection with the sale, barter, or otherwise dealing in motor vehicles, which is fraudulent or in violation of the law; or
6. Has entered into contract or agreement or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles which is contrary to any provision of this chapter; or
7. Has a contract or agreement with any manufacturer or distributor of motor vehicles or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles, who without just, reasonable, and lawful cause therefor, has terminated within ninety days from the date of application a contract or agreement with a motor vehicle dealer in any county of the state in which the applicant proposes to engage in business;
8. Does not have a place of business within the meaning of this chapter unless applicant is a person referred to in subsection 7 of section 322.3;
9. Has violated any of the provisions of sections 321.77, 321.78, 321.80, 321.81, 321.92, 321.97, 321.98, 321.99, 321.100, 539.4 and 713.24.

It shall be sufficient cause for refusal or revocation of a license as a motor vehicle dealer in the case of a partnership or corporation if any member of the partnership or any officer or director of the corporation has committed any act or omission which would be cause for refusing or revoking a license to such person as an individual.

In considering whether or not a contract or agreement between a motor vehicle dealer and a manufacturer or distributor of motor vehicles has been terminated by such manufacturer or distributor without just and reasonable cause therefor, the department shall take into consideration the circumstances existing at the time of such termination, including the amount of business transacted by the motor vehicle dealer pursuant to the contract or agreement and prior to such termination; the investment necessarily made and the obligation necessarily incurred by the motor vehicle dealer in the performance of his part of such contract; the permanency of such investment; the reasons for such termination by such manufacturer or distributor and the fact that it is injurious to the public welfare for the business of a motor vehicle dealer to be disrupted by termination of such contract without just and reasonable cause.

Whenever the department determines to deny the application of any person for a license as a motor vehicle dealer and refuses to issue a license to him as such, the department shall enter a final order thereof with its findings relating thereto within thirty days from the date of the hearing thereon. [C39, §5039.06; C46, 50, 54, §322.6; 57GA, ch 163, §7]

Referred to in §322.9

### **322.7 License of motor vehicle dealer.**

1. If the department grants the application of any person for a license as a motor vehicle dealer, it shall evidence the granting thereof by a final order and shall issue to the person a license in such form as may be prescribed by the department, which license shall include the following:

- a. The name of the person licensed.
- b. If the applicant is an individual or a partnership—the name or style under which the licensee will engage in such business and if a copartnership, the name and address of each partner.
- c. The principal place of business of the licensee and location therein of each place wherein the licensee is licensed to carry on such business.
- d. The make or makes of new motor vehicles which the licensee is licensed to sell.

2. The instrument evidencing the license or a certified copy thereof provided by the department shall be kept posted conspicuously in the principal office of the licensee and in each place of business maintained and operated by the applicant pursuant to the license in this state.

3. The license of a motor vehicle dealer shall expire and terminate, unless sooner revoked or suspended, at the end of the calendar year in which it is granted.

4. The license provided for in this chapter shall be renewed annually in the same manner and on payment of the same fee as in the case

of the original license. Such renewal shall take effect on the first day of January of each year. [C39,§5039.07; C46, 50, 54,§322.7]

**322.8 Supplemental statements.** Each licensee shall promptly file with the department from time to time during the period of the license, statements supplemental to the statements contained in his application for license whenever any change shall occur in his personnel or in his plan or method of doing business or in the location of his place or places of business, so that the statements made in the application do, after such change, properly disclose the licensee's status and method and plan of doing business. The supplemental statement shall be in the form prescribed by the department and shall disclose such information as would have been required by this chapter if such changes had occurred prior to the licensee making application for a license.

If the department finds that the changes set forth in the supplemental statement do not violate the provisions of this chapter and it grants to the licensee the privilege of doing business in the manner set forth therein, it shall upon surrender to it of the license of the motor vehicle dealer, issue to him a new license appropriate to the dealer's original application as modified by such supplemental statement. [C39,§5039.08; C46, 50, 54,§322.8]

**322.9 Revocation of license.** The department is hereby authorized to revoke or suspend the license of any licensee if, after notice and hearing, it finds that such licensee has been guilty of any act which would have been a ground for the denial of a license under section 322.6.

The department is further authorized to revoke or suspend the license of any licensee if, after notice and hearing, it finds that such licensee has been convicted or has forfeited bail on three charges of:

1. Failing upon the sale or transfer of a vehicle to deliver to the purchaser or transferee of the vehicle sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

2. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a manufacturer's or importer's certificate, or a certificate of title duly assigned as provided in chapter 321.

3. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a new certificate of title to such vehicle when and where required in chapter 321.

4. Failing to mail or deliver to the treasurer of the county of such licensee's residence two copies of the signed purchase receipt within forty-eight hours after purchase or acquisition of a vehicle registered in this state as provided in section 321.48. [C39,§5039.09; C46,§322.9; C50, 54,§§322.9, 322.16; 56GA, ch 169,§§1, 2]

### 322.10 Appeals.

1. An appeal may be taken by any person interested from any final order of the department to the district court of the county in which he resides or in which his principal place of business is located, within thirty days after he shall have received notice from the department of such order.

2. The appeal shall be taken by a written notice to the department and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said district court, and docketed as other cases, with the appellant as plaintiff and the department as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk and in an amount fixed by him, provided in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

3. The court shall hear the appeal in equity, determine anew all questions submitted to it on appeal from the order of the department, and render its decree thereon. An appeal to the supreme court of this state may be taken as in other equitable actions. [C39,§5039.10; C46, 50, 54,§322.10]

**322.11 Injunctions.** Whenever the department shall believe from evidence satisfactory to it that any person has or is now violating any provision of this chapter, the department may, in addition to any other remedy, bring an action in the name and on behalf of the state of Iowa against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of this chapter, to enjoin such person and said other person from continuing the same. In any such action, the department may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant, his agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or practices or things complained of in such application for injunction. In said action an order or judgment may be entered, awarding such preliminary or final injunctions as may be proper. [C39,§5039.11; C46, 50, 54,§322.11]

**322.12 Motor vehicle dealers license fee fund.** All fees and funds of whatever character accruing from the administration of this chapter shall be accounted for and paid by the department into the state treasury monthly and shall constitute a separate and distinct fund which shall be known as the "Motor Vehicle Dealers License Fee Fund". All expenses incurred and all compensation paid by the department in the administration of this chapter shall be paid out of said fund in the same manner as other state expenses and compensation

are paid. Any amount in such fund in excess of ten thousand dollars at the end of any fiscal year shall be credited to the state general fund.

In connection with the enforcement of this chapter, it is hereby made the duty of the attorney general of the state of Iowa to render all necessary assistance to the department upon its request in the enforcement thereof and to that end, the attorney general shall employ such additional legal counsel as shall be necessary to adequately and fully perform such service under the direction of the department as the demands of such department shall require and any expenses so incurred by the attorney general for additional legal counsel as aforesaid shall be chargeable against and paid out of the fund herein provided. [C39, §5039.12; C46, 50, 54, §322.12]

### 322.13. Rules and regulations.

1. The department shall have full authority to prescribe reasonable rules and regulations for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules and regulations shall be filed and entered by the department in its office in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. Whenever a new rule or regulation is adopted by the department, a copy of the same shall be mailed by it to each licensee hereunder, and published in an Iowa newspaper having a general circulation in this state.

2. The department shall have power to prescribe the forms to be used in connection with the licensing of motor vehicle dealers as herein provided. [C39, §5039.13; C46, 50, 54, §322.13]

**322.14 Penalties.** Any person violating any of the provisions of this chapter where a penalty is not specifically provided for shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or thirty days in jail.

For the violation of any provision of subsection 5 of section 322.3, by a fine in any sum not exceeding five thousand dollars or by imprisonment in the county jail for any determinate period not exceeding one year, or by both such fine and imprisonment. Any person who shall willfully and intentionally violate the provisions of subsection 6 of section 322.3 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars. [C39, §5039.14; C46, 50, 54, §322.14; 57GA, ch 163, §8]

**322.15 Liberal construction.** All provisions of this chapter shall be liberally construed to the end that the practice or commission of fraud in the sale, barter, or disposition of motor vehicles at retail in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in motor vehicles at retail in this state and reliable

persons may be encouraged to engage in the business of selling, bartering, and otherwise dealing in motor vehicles at retail in this state. [C39, §5039.15; C46, 50, 54, §322.15]

Constitutionality, 47GA, ch 135, §17

**322.16** Repealed by 56GA, ch 169, §2, see §322.9.

**322.17 Copy of contract to buyer.** A copy of every retail installment contract shall be furnished to the buyer at the time of the execution of the contract. An acknowledgment by the buyer contained in the body of the retail installment contract of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract. [57GA, ch 163, §9(1)]

**322.18 Dual-interest insurance.** If dual-interest insurance on the motor vehicle is purchased by the holder it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the coverages. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder; but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller. If any insurance is canceled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them. [57GA, ch 163, §9(2)]

### 322.19 Finance charges.

1. *Amount.* Notwithstanding the provisions of any other existing law, a retail installment transaction may include a finance charge not in excess of the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, an amount equivalent to one and one-fourth percent per month simple interest on the declining balance.

Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, an amount equivalent to one and three-fourths percent per month simple interest on the declining balance.

Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, an amount equivalent to two and one-fourth per-

cent per month simple interest on the declining balance.

Class 4. Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made, an amount equivalent to two and one-fourth percent per month simple interest on the declining balance, plus a flat charge of one dollar per month for the number of months from the date of the contract to the maturity date of the last installment thereunder, but in no event in excess of twelve dollars.

2. *Computation of charge.* Such finance charge shall be computed in advance on the principal balance as determined under paragraph *c* of subsection 6 of section 322.3 on contracts payable in successive monthly payments substantially equal in amount extending for a period of one year. On contracts providing for installment payments extending for a period less than or greater than one year, the finance charge shall be computed proportionately. Such finance charge may be computed on the basis of a full month for any fractional month period in excess of ten days. A minimum finance charge of twenty-five dollars may be charged on any contract in which the finance charge computed at the authorized rates results in a total charge of less than this amount.

3. *Unequal or irregular payments.* When a retail installment contract provides for unequal or irregular installment payments, the finance charge may be an amount computed in advance on the basis of the effective rates permitted in subsection 1 hereof, having due regard for the schedule of payments. [57GA, ch 163,§9(3)]

**322.20 Extension of time.** If the holder of a retail installment contract, at the request of the buyer, extends the scheduled due date of all or any part of any installment or installments, the holder may restate the amount of the installments and the time schedule therefor, and collect for such extension not more than one percent per month simple interest on the respective declining balances computed on the amount and for the period of such extension or renewal. [57GA, ch 163,§9(4)]

**322.21 Purchase of contract.** Any retail installment contract which meets the requirements of subsection 6 of section 322.3 may be purchased or acquired by any sales finance company from a retail seller on such terms and conditions and for such price as may be agreed upon between them. [57GA, ch 163, §9(5)]

**322.22 Waivers prohibited.** Any waiver of the provisions of subsection 6 of section 322.3 shall be unenforceable and void. [57GA, ch 163,§9(6)]

**322.23 Complaints.** Any retail buyer having reason to believe that the provisions of this chapter relating to his installment contract have been violated may file with the department a written complaint setting forth the details of such alleged violation and the department, upon the receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee or other person relating to such specific complaint. [57GA, ch 163,§9(7)]

**322.24 Hearing.** The commissioner of public safety shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this chapter.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the said court, for the witness to appear before the commissioner and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed to appear at the time and place therein designated. [57GA, ch 163,§9(8)]

**322.25 Required equipment.** No person licensed under this chapter shall have for sale, sell, or offer for sale at retail any motor vehicle, trailer, or semitrailer which does not contain those parts or is not at all times equipped with such lamps and brakes and other equipment in proper condition and adjustment as required in chapter 321 or which is equipped in any manner in violation of such chapter; provided, however, that the violation of this section shall not constitute a ground for denial, suspension or revocation of the license of such person. [57GA, ch 163,§10]

*Constitutionality, 57GA, ch 163,§11*

**322.26 Short title.** This chapter may be cited as the "Motor Vehicle Dealers Licensing Act." [C39,§5039.16; C46,§322.16; C50, 54,§322.17]

## CHAPTER 323

## MOTOR VEHICLE FUEL

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**323.1 Definitions.** The following definitions shall apply to the various terms used in this chapter:

1. "Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose. The products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel, shall be exempt from the provisions of this chapter.

2. "Department" wherever used throughout this chapter shall be construed to mean the department of agriculture.

3. "Retail dealer" shall mean and include any person, firm, partnership, association, or corporation who operates, maintains, or conducts, either by himself or itself, or by any agent, employee, or servant, any place of business, filling station, pump station, or tank wagon, from which any motor vehicle fuel, as defined herein, is sold or offered for sale, at retail, or to the final or ultimate consumer.

4. "Wholesale dealer" shall mean and include any person, firm, partnership, association, or corporation, other than retail dealers as defined in subsection 3 of this section, who sells, keeps, or holds, for sale, or purchase for the purpose of sale within this state, any motor vehicle fuel. [C31, 35, §5093-d1; C39, §5095.01; C46, 50, 54, §323.1]

**323.2 Tests and standards.** Any motor vehicle fuel known or sold as motor gasoline or sold or offered for sale as a substitute for or as having the properties of motor gasoline shall conform to the following tests and specifications:

Gasoline shall be free from water and suspended matter.

*Corrosion test.* A. S. T. M. D-130 latest revision. A clean, freshly polished copper strip shall not be darker than A. S. T. M. Standard 1 when submerged in the gasoline for three hours at 122° F.

*Distillation range.* A. S. T. M. D-86 latest revision. When ten percent is evaporated, the thermometer shall not read more than 167° F.

When fifty percent is evaporated the thermometer shall not read more than 284° F.

When ninety percent is evaporated the thermometer shall not read more than 392° F.

The end point shall not be more than 437° F.

At least ninety-five percent shall be recovered as distillate in the receiver from distillation.

Residue on distillation shall not be more than two percent.

Sulfur A. S. T. M. D-90 latest revision.

The sulfur shall not exceed zero point twenty-five percent.

*Vapor pressure.* A. S. T. M. D-323 latest revision.

The vapor pressure at 100° F. shall not be more than:

Fifteen pounds per square inch during the months of November, December, January and February.

Twelve pounds per square inch during the months of March, April, May, September and October.

Ten pounds per square inch during the months of June, July and August.

Octane number A. S. T. M. D-908 latest revision.

Octane number for regular grade gasoline shall follow the latest specifications of A. S. T. M. and not less than seventy-eight.

Octane number for premium grade gasoline shall follow latest specification of A. S. T. M. and be not less than eighty-six. [C31, 35, §5093-d2; C39, §5095.02; C46, 50, 54, §323.2; 56GA, ch 170, §1]

Referred to in §§323.4, 323.6, 323.7, 323.9

**323.3 False representations.** No person for purposes of selling shall falsely represent the quality or kind of any motor vehicle fuel or add coloring matter thereto for the purpose of misleading the public as to its quality. [C31, 35, §5093-d3; C39, §5095.03; C46, 50, 54, §323.3]

**323.4 Interstate shipments.** No wholesale dealer or retail dealer shall receive or sell or hold for sale, within this state, any motor vehicle fuel for which specifications are prescribed in this chapter, unless he first secures from the refiner or producer of such motor vehicle fuel, a statement, verified by the oath of a competent chemist, employed by or representing such refiner or producer, showing the true standards and tests of such motor vehicle fuel, obtained by the methods referred to in section 323.2 hereof. Such verified tests shall be required and must accompany the bill of lading or shipping documents representing the



shipment of such motor vehicle fuel into this state before such shipment can be received and unloaded. [C31, 35,§5093-d4; C39,§5095.04; C46, 50, 54,§323.4; 56GA, ch 170,§2]

**323.5 Sales slip on demand.** Each wholesale dealer or retail dealer in this state shall, when making a sale of motor vehicle fuel, give to each purchaser upon demand a sales slip upon which must be printed the words "This motor vehicle fuel conforms to the standard of specifications required by the state of Iowa." [C31, 35,§5093-d5; C39,§5095.05; C46, 50, 54,§323.5]

**323.6 Department tests—fee.** Any wholesale dealer or retail dealer may, at his option, forward to the department for testing a sample taken in the manner here prescribed. He shall draw from such original container, in the presence of some reputable person, into a clean receptacle, suitable for shipping, a sample of such motor vehicle fuel, not less than eight fluid ounces, and shall carefully seal such receptacle and affix thereto a written label showing the car number or other identifying marks upon such original container from which such sample was taken, all in the presence of such reputable person, and such wholesale dealer or retail dealer and such reputable person shall make a statement, under oath, that such sample was taken in the manner provided for herein, referring to the identifying marks upon such label. At the same time such sworn statement, together with a fee of two dollars for the making of such test, shall be forwarded to the department. The department shall test such sample by the methods provided for in section 323.2 and shall forward to such wholesale dealer or retail dealer a certified copy of the results of such test. [C31, 35,§5093-d6; C39, §5095.06; C46, 50, 54,§323.6]

**323.7 Department inspection—samples tested.** The department of agriculture, its agents or employees, shall, from time to time, make or cause to be made tests of any motor vehicle fuel which is being sold, or held or offered for sale within this state, and for such purposes such inspectors shall have the right to enter upon the premises of any wholesale dealer or retail dealer in motor vehicle fuels within this state, and to take from any container a sample of such motor vehicle fuel, not to exceed eight fluid ounces, which sample shall be sealed and appropriately marked or labeled by such inspector and delivered to the department. The department shall make, or cause to be made, complete analyses or tests of such motor vehicle fuel by the methods specified in section 323.2, and shall furnish to such wholesale dealer or retail dealer a certified copy of the results of such tests. [C31, 35,§5093-d7; C39, §5095.07; C46, 50, 54,§323.7]

**323.8 Prohibition.** No retail or wholesale dealer defined in this chapter shall sell any motor vehicle fuel in the state that fails to meet the standards and specifications applicable thereto as set out in this chapter. [C31, 35, §5093-d8; C39,§5095.08; C46, 50, 54,§323.8; 56GA, ch 170,§3]

**323.9 Poster showing analysis.** Any retail dealer who sells or holds for sale motor vehicle fuel, as defined in section 323.2 hereof, may post upon any container or pump from which such motor vehicle fuel is being sold, a statement or notice in form to be prescribed by the department, showing the results of the tests of such motor vehicle fuel then being sold from such pumps or other containers. [C31, 35,§5093-d9; C39,§5095.09; C46, 50, 54,§323.9]

**323.10 Transfer pipes.** No wholesale dealer, retail dealer, or other person shall, within this state, use the same pipe line, for transferring gasoline and similar motor vehicle fuel from one container to another, as that used for transferring kerosene or other inflammable product used for open flame illuminating or heating purposes. [C31, 35,§5093-d10; C39, §5095.10; C46, 50, 54,§323.10; 56GA, ch 170,§4]

**323.11 Violations.** Any person violating the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. [C31, 35,§5093-d11; C39,§5095.11; C46, 50, 54,§323.11]

**323.12 Industrial petroleum—permits.** Any wholesale dealer as herein defined may apply to the department for a permit to make importations of petroleum products for industrial use only and not intended to be used for internal combustion engines, on a form to be supplied by the department, and upon receiving such permission may make importations of petroleum products for industrial use only, exempt from the specifications of this chapter. [C31, 35,§5093-d12; C39,§5095.12; C46, 50, 54, §323.12]

**323.13 Chemists—employment of.** The secretary of agriculture shall, subject to the approval of the executive council, employ one or more chemists and incur such other expense as shall be necessary for the purpose of carrying into effect the provisions of this chapter. [C31, 35,§5093-d13; C39,§5095.13; C46, 50, 54, §323.13]

**323.14 Appropriation.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated funds sufficient to pay the expenses incurred as authorized by this chapter. [C31, 35,§5093-d14; C39,§5095.14; C46, 50, 54,§323.14]

## CHAPTER 324

## MOTOR VEHICLE FUEL TAX LAW

Referred to in §§312.1, 327A.1, 327A.15, 422.52

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## DIVISION I

## MOTOR FUEL TAX

**324.1 Short title.** This division, plus applicable provisions of division IV of this chapter and any amendments to either shall be known and may be cited as the "Motor Fuel Tax Law", and as so constituted is hereinafter referred to as this division. [C35,§5093-f40; C39,§5093.39; C46, 50, 54,§324.66; 57GA, ch 164]

Similar provisions, §§324.31, 324.50

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- 324.72 Embezzlement of fuel tax money—penalty.
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**324.2 Definitions.** As employed in this division:

1. "Motor fuel" shall mean (a) all products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses; and (b) any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to dis-

tillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation D-86), show not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade); provided, that the term "motor fuel" shall not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, nor naphthas and solvents as hereinafter defined unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within (b) above, in which event the resulting product shall be deemed to be motor fuel.

2. "Distributor" shall mean and include any person who first receives motor fuel within this state (within the meaning of the word "received" as hereinafter defined), and any person now or hereafter engaged in the business of selling motor fuel to a dealer in this state for resale, provided that a person may bring into this state not to exceed twenty gallons of motor fuel in the fuel supply tank, or any other container, directly connected to the motor of a motor vehicle without becoming a distributor.

3. "Licensee" shall mean and include any person holding an uncanceled distributor's license issued by the treasurer under this division or any prior motor fuel tax law.

4. "Dealer" shall mean and include any person (except distributors as herein defined) now or hereafter engaged in the business of selling motor fuel in this state.

5. "Motor fuel deemed received." a. Motor fuel refined at a refinery in this state and placed in tanks thereat, and motor fuel transferred from a refinery or a marine or pipe-line terminal in this state or from points outside this state to a refinery or a marine or pipe-line terminal in this state and placed in tanks thereat, shall be deemed received, for the purposes of this division, at the time withdrawn from such refinery or terminal storage for sale or use in this state or for transportation to destinations in this state other than refineries or marine or pipe-line terminals and not before.

When withdrawn from refinery or terminal storage as aforesaid, the motor fuel shall be deemed received by the person who was the owner thereof immediately prior to withdrawal, unless (1) the motor fuel is withdrawn for shipment or delivery to a licensee, in which case the motor fuel shall be deemed received by the licensee to whom shipped or delivered or (2) the motor fuel is withdrawn for shipment or delivery to a nonlicensee for the account of a licensee in which case the motor fuel shall be deemed received by the licensee

for whose account the shipment or delivery to the nonlicensee is made.

b. Motor fuel imported into this state, other than that placed in storage at refineries or terminals as set out in paragraph (a) above, shall be deemed received at the time unloaded in this state and by the person who is the owner thereof immediately after it is unloaded in this state, except that if motor fuel so imported is used in this state directly from the transportation equipment by which imported then the motor fuel shall be deemed received at the time it is brought into this state and by the person using the motor fuel within this state; provided, however, that if motor fuel shipped or brought into this state by a licensee is sold and delivered directly to a nonlicensee in this state, then the gallonage so delivered shall be deemed received by the licensee shipping or bringing the motor fuel into this state.

c. Motor fuel produced, compounded, or blended in this state other than at a refinery, marine or pipe-line terminal, shall be deemed to be received at the time and by the person who is the owner thereof when the same is so produced, compounded or blended.

d. Motor fuel acquired in this state by any person, other than as set out in paragraphs (a), (b), or (c) above, shall, unless the person from whom the same is acquired has paid or incurred liability with respect thereto for the tax herein imposed, or unless the same be exempt under this division, be deemed to be received by the person so acquiring the same at the time so acquired.

Except as hereinbefore set forth, the word "received" shall be given its usual and customary meaning.

6. "Naphthas and solvents" shall mean and include those liquids which come within the distillations specifications for motor fuel set out under (b) of subsection 1 of this section, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles. [C27, 31, §5093-a2; C35, §5093-f2; C39, §5093.02; C46, 50, 54, §324.1; 57GA, ch 164]

See §§324.33, 324.57

**324.3 Levy of excise tax—exemptions—credits.** For the privilege of operating motor vehicles in this state an excise tax of four cents a gallon is hereby imposed upon the use of all motor fuel used for any purpose except as otherwise provided in this division. The tax shall be paid in the first instance by the distributor upon the invoiced gallonage of all motor fuel received by him in this state, within the meaning of the word "received" as defined in this division, less the deductions hereinafter authorized. Thereafter, except as otherwise provided, the per gallon amount of such tax shall be added to the selling price of each and every gallon of such motor fuel sold in this state and collected from the purchaser to the end that the ultimate consumer shall bear the burden of such tax; provided, however, that no tax shall be imposed or collected

under this division with respect to the following:

1. Motor fuel sold for export or exported from this state to any other state, territory, or foreign country.

2. Motor fuel sold to the United States or any agency or instrumentality thereof.

3. Motor fuel sold to any post exchange or other concessionaire on any federal reservation within this state; but the tax on motor fuel so sold, to the extent permitted by federal law, shall be collected by the post exchange or concessionaire, reported and paid the treasurer.

4. Motor fuel sold to the state of Iowa or any of its agencies, but this exemption shall not apply to political subdivisions of this state. [C27, 31, §§4755-b38, 5093-a1; C35, §§5093-f3, -f4; C39, §§5093.03, 5093.04; C46, 50, 54, §§324.2, 324.3; 56GA, ch 44, §1; ch 171, §1; 57GA, ch 44, §1; ch 164]

Referred to in §324.8

Temporary tax provisions, ch 57, ch 44, §§1.2; ch 164, §3(5)

See §324.35

See also 57GA, ch 43, §3 as to urban transit companies

**324.4 Distributor's license.** It shall be unlawful for any person to receive motor fuel within this state or to otherwise act as a distributor unless he holds an uncanceled distributor's license issued by the treasurer. To procure a license a distributor shall file with the treasurer an application signed under penalty for false certificate and in such form as the treasurer may prescribe, setting forth:

1. The name under which the distributor will transact business in the state of Iowa.

2. The location, with street number address, of the principal office or place of business of the distributor within this state.

3. The name and complete residence address of the owner or the names and addresses of the partners, if the distributor is a partnership, or the names and addresses of the principal officers, if the distributor is a corporation or association.

Concurrently with the filing of an application for a license, every distributor shall file with the treasurer a bond of the character and in the amount provided for in this division. No license shall be issued unless application is accompanied by the bond, nor, if the applicant is a foreign corporation, unless it is at the time properly qualified under the laws of this state to do business therein.

If (a) any application for a license to transact business as a distributor in this state shall be filed by any person whose license shall have been canceled for cause at any time theretofore under the provisions of the chapter or any prior motor fuel tax law, or (b) the treasurer shall be of the opinion that such application is not filed in good faith, or (c) the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause under the provisions of this chapter or any prior motor fuel tax law, the

treasurer, after a hearing of which the applicant shall have been given fifteen days notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, shall have and is hereby given the right and authority to refuse to issue to the applicant a distributor's license.

Upon the filing of the application, a filing fee of ten dollars shall be paid to the treasurer.

The application in proper form having been accepted for filing, the filing fee paid, the bond having been accepted and approved and the other conditions and requirements of this section having been complied with, the treasurer shall issue to the applicant a license to transact business as a distributor in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

The license shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of the distributor in this state.

The treasurer shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees. [C31, §5093-c2; C35, §§5093-f5, -f6, -f7; C39, §§5093.05-5093.07; C46, 50, 54, §§324.5, 324.6, 324.8-324.10; 57GA, ch 164]

Referred to in §324.5

**324.5 Permissive licensing of bulk storers as distributors.** Any person other than a distributor as hereinabove defined having bulk storage in this state for rail tank car or four thousand gallon or more transport loads of motor fuel for use or for distribution in bulk by tank truck or tank car, or both, may, subject to and upon compliance with the provisions of section 324.4, also be licensed as a distributor and thereupon for all purposes of this division shall be deemed to be the distributor with respect to any motor fuel "received" by him while the license remains in effect. [C27, 31, §§5093-a3, -a4; C39, §§5093.04, 5093.05; C46, 50, 54, §§324.4, 324.6-324.8; 57GA, ch 164]

**324.6 Continuance of existing distributor license.** Motor fuel distributor licenses issued under any prior\* motor fuel tax law and in good standing as of the effective date of this division shall be continued in effect until canceled as hereinafter provided. [57GA, ch 164]

\*July 4, 1957

**324.7 Security required of licensed distributor.**

1. Every distributor shall file with the treasurer a bond:

a. In an amount to be determined by the treasurer not less than two thousand dollars nor more than fifty thousand dollars on a form to be approved by the treasurer.

b. With a surety company approved by the treasurer as surety thereon.

c. Upon which the distributor shall be the principal obligor and the state of Iowa shall be the obligee.

d. Conditioned upon the prompt filing of true reports and the payment by the distributor to the treasurer of any and all motor fuel excise taxes which are now or which hereafter may be levied or imposed by the state of Iowa, together with any and all penalties and interest thereon, or either, and generally upon faithful compliance with the provisions of this division.

2. The treasurer shall contract annually with the lowest responsible bidder licensed to do business in Iowa for surety bonds to be filed by distributors. The premiums on the surety bonds contracted for by the treasurer shall be paid from the funds appropriated by section 324.76.

3. In the event that liability upon the bond thus filed by a distributor shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the treasurer any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the treasurer may require the distributor to file a new bond meeting the requirements in subsection 1. If the new bond is not filed within ten days after demand therefor, the treasurer shall forthwith cancel the license of the distributor. If a new bond shall be furnished by the distributor as above provided, the treasurer shall release in writing the surety under the old bond from any liability accruing after the effective date of the new bond.

4. In the event that upon hearing, of which the distributor shall be given five days notice in writing, the treasurer shall decide that the amount of the existing bond is insufficient to insure payment to the state of Iowa of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor shall forthwith, upon the written demand of the treasurer, file a new bond meeting the requirements in subsection 1 and in such amount, not to exceed in total fifty thousand dollars, as is determined by the treasurer to be necessary to secure at all times the required reports and payments. If the new bond is not filed within ten days after demand therefor, the treasurer shall forthwith cancel the license of the distributor.

5. Any surety on bond furnished by distributor shall be released and discharged from any and all liability to the state of Iowa accruing on the bond after the expiration of sixty days from the date upon which such surety shall have lodged with the treasurer written request to be released and discharged; provided, however, that the request shall not operate to relieve, release or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period. The treasurer shall promptly on receipt of notice of the request notify the distributor who furnished the bond, and unless the distributor shall on or before expiration of the sixty-day period file with the treasurer a new bond with a surety company satisfactory

to the treasurer in the amount and form hereinbefore in this section provided, the treasurer shall forthwith cancel the license of said distributor.

6. In lieu of a surety bond in excess of the minimum amount the treasurer may accept a financial statement of the distributor showing ability to make any and all payments that may be due from the distributor under this division. [C31,§5093-c2; C35,§§5093-f7,-f10,-f11; C39,§§5093.07, 5093.10, 5093.11; C46, 50, 54, §§324.10, 324.18, 324.19; 57GA, ch 164]

Referred to in §324.36

**324.8 Tax reports—computation and payment of tax—credits.** For the purpose of determining the amount of his liability for the tax herein imposed, each distributor shall, not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, file with the treasurer a monthly report, signed under penalty for false certificate, which shall include the following:

1. A statement of the number of invoiced gallons of motor fuel received (within the meaning of the term "received" as defined in this division) by the distributor within this state during the next preceding calendar month in such detail as is prescribed by the treasurer and as may be necessary for the proper administration of this division.

2. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as is prescribed by the treasurer and as may be for proper administration of this division.

3. Such other information as the treasurer may require for the enforcement of this chapter.

At the time of filing each monthly report, each distributor shall pay to the treasurer the full amount of the motor fuel tax due from the distributor for the next preceding calendar month computed as follows:

4. From the total number of invoiced gallons of motor fuel "received" by the distributor within the state during the next preceding calendar month shall be made the following deductions:

First, the gallonage of motor fuel received and thereafter sold within the exemptions provided for in section 324.3; and second, the number of gallons of motor fuel equal to three per centum of the net number of invoiced gallons of motor fuel received by the distributor within this state during the next preceding calendar month, this percentage being a flat allowance to cover evaporation, shrinkage, and losses, other than those provided for in section 324.3, and the distributor's expenses and losses in collection, accounting for, and paying over the motor fuel tax.

5. The number of invoiced gallons remaining after the deductions hereinabove set forth shall be multiplied by the per gallon motor

fuel tax rate and resulting figure shall be the amount of motor fuel tax in dollars and cents due from the distributor for the next preceding calendar month. Any outstanding credit memoranda issued by the treasurer to the distributor may be applied against the amount due. [C27, 31, §§5093-a5, b1; C35, §5093-f9; C39, §5093.09; C46, 50, 54, §§324.13-324.15, 324.17, 324.29; 57GA, ch 164]

**324.9 Report from persons not licensed as distributors.** Every person other than a licensed distributor, who shall purchase, bring into this state or otherwise acquire within this state motor fuel, not otherwise exempted, with respect to which such person has knowingly not paid or incurred liability to pay either to a licensee or to a dealer the motor fuel tax shall be subject with respect to the motor fuel to all the provisions of this division that apply to distributors on motor fuel received by them in this state and shall make the same reports and tax payments thereon and be subject to the same penalties for delinquent or nonreporting or delinquent or nonpayment as apply to distributors. [C31, §5093-c2; C35, §5093-f6; C39, §5093.06; C46, 50, 54, §§324.8, 324.9; 57GA, ch 164]

**324.10 Required distributor and dealer records.** Each motor fuel distributor shall maintain and keep for a period of three years, such records of all transactions by which he receives, uses, sells, delivers or otherwise disposes of motor fuel within this state, together with invoices, bills of lading and other pertinent records and papers as may reasonably be required by the treasurer for the administration of this division.

If in the normal conduct of a distributor's business his records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the treasurer at the office outside Iowa, but such audit and examination outside Iowa shall be without expense to the state.

Each dealer handling motor fuel in this state shall maintain and keep for a period of two years records of all motor fuel purchased or otherwise acquired by him, together with delivery tickets, invoices, and bills of lading, and such other pertinent records as the treasurer shall require.

The treasurer, after an audit and examination of the records of a distributor or dealer may authorize their disposal, the authorization to be in writing after request by the distributor or dealer. [C27, 31, §§5093-a4, a5; C35, §§5093-f5, -f8; C39, §§5093.05, 5093.08; C46, 50, 54, §§324.7, 324.11; 57GA, ch 164]

**324.11 Registration of carrier transportation equipment and identification of all highway transportation equipment.**

1. Any person operating as a common or contract carrier and any distributor who is also engaged in transportation within this state of motor fuel for others, shall register with the treasurer on or before the first day of the third

calendar month which begins after the effective date of this division and currently thereafter as additional equipment is put to use, each vehicle used in aforesaid transportation in this state, except railroad, water-vessel or pipe-line equipment. The registration shall be on forms furnished by and shall contain such information as may reasonably be required by the treasurer. A fee of one dollar shall be paid to the treasurer for original registration of each vehicle. The treasurer shall furnish to the registrant for each vehicle registered suitable identification which shall be permanently attached to the vehicle and shall be available for inspection at all times. Currently as any vehicle is retired or its use for the transportation of motor fuel for others is discontinued, the registrant shall notify the treasurer or at the direction of the treasurer shall either surrender to the treasurer or destroy the vehicle identification issued under this section. Annually on or before the first day of July of each year, each carrier as aforesaid shall file with the treasurer a statement showing each vehicle then in use for transportation of motor fuel for others and thereupon the treasurer shall issue to the registrant at a fee of twenty-five cents a renewal identification for each vehicle for the ensuing year.

2. Each vehicle used by a carrier, distributor or any person in the transportation on the highways in this state of fuels for motor vehicles shall be identified by having shown thereon, in lettering at least six inches in height made with a stroke of not less than three-fourths inch in width and of a color contrasting to that of the background upon which the lettering is placed, the name and address of the person transporting the fuel. The identification shall be placed on both sides of the vehicle; provided, that, transportation equipment operated by a licensee shall be identified with his distributor's license number in which case the trade or produce name or insignia generally used in identifying the highway transportation equipment of the licensee and well known and recognized throughout the area in which the transportation equipment is operated, may be shown in lieu of the name and address of the licensee.

3. The treasurer shall have the power to refuse to register a vehicle owned or used by any person, either directly or indirectly, who has had a license revoked for cause which license was issued under the provisions of this chapter or any prior motor fuel tax law. [C27, 31, §5093-b1; C35, §§5093-f19, -f25; C39, §§5093.19, 5093.25; C46, 50, 54, §§324.12, 324.33, 324.36, 324.46; 57GA, ch 164]

**324.12 Loading and delivery evidence on transportation equipment.**

1. There shall be carried on every vehicle, while in use in transportation service requiring that it be registered under the preceding section, a serially numbered manifest in form satisfactory to the treasurer on which shall be entered the following information as to the

cargo of motor fuel being moved in the vehicle: The date and place of loading, the place to be unloaded, the person for whom it is to be delivered, the nature and kind of product, and the amount thereof and such other information as is called for in the forms prescribed or approved by the treasurer. The manifest covering each load transported upon consummation of the delivery shall be completed showing the date and place of actual delivery and the person to whom actually delivered and shall be kept as a permanent record for a period of three years, provided, however, that the record of the manifest of past cargoes need not be carried on the conveyance but must be preserved by the carrier for the inspection of the treasurer or his representatives. A carrier subject to this subsection may with the approval of the treasurer when distributing for a licensee substitute the loading and delivery evidence required in subsection 2 of this section.

2. Every distributor or other person while transporting motor fuel from a refinery or marine or pipe-line terminal in this state or from a point outside this state via the highways of this state in service other than that covered in subsection 1 of this section shall carry in the vehicle a loading invoice showing the true name and address of the seller or consignor, the date and place of loading and the kind and quantity of motor fuel loaded, together with invoices showing the kind and quantity of each delivery therefrom, and the name and address of each purchaser or consignee. [C35,§5093-f19; C39,§5093.19; C46, 50, 54, §§324.33-324.35, 324.37; 57GA, ch 164]

**324.13 Evidence produced upon request.** The operator of any vehicle transporting motor fuel as covered in the preceding section shall, at the request of any sheriff, deputy sheriff or other peace officer or person authorized by law to inquire into or investigate said matters, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the officer to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the covering evidence or if, when produced, it fails to contain the required information and if it appears that there is an attempt to evade payment of the motor fuel tax, then the officer or other person authorized to make the inquiry may take and impound the motor fuel together with the conveying vehicle until the tax on the motor fuel together with penalty, if an attempt to evade payment of the motor fuel is involved, amounting to one hundred percent of the tax have been paid. In case the tax and penalty found to be due are not paid within forty-eight hours after the taking of the property, the treasurer may proceed to sell the vehicle and its cargo in the manner provided by law for the sale of personal property by the sheriff under execution. [C35,§5093-f19; C39,§5093.19; C46, 50, 54,§324.35; 57GA, ch 164]

**324.14 Penalty for operating unregistered transport.** It shall be unlawful for any person to transport motor fuel in bulk upon the highways of this state in a conveyance the registration of which is required without the evidence of registration provided for and any person found guilty of the unlawful act shall be fined not to exceed one hundred dollars or imprisoned in the county jail not more than thirty days, and each cargo so transported shall be considered a separate offense. This penalty shall be in addition to penalties imposed under other provisions of this chapter. Persons transporting motor fuel in bulk upon the highways of this state in an amount of not to exceed four thousand gallons shall not be regarded as transporting in bulk. [C35,§5093-f20; C39,§5093.20; C46, 50, 54,§324.38; 57GA, ch 164]

**324.15 Transportation reports—refinery and pipe-line and marine terminal reports.**

1. Every railroad and common or contract motor carrier transporting motor fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel by whatever manner from a point outside this state to any point in this state shall, subject to penalties for false certificate, report to the treasurer on forms prescribed by the treasurer all deliveries of motor fuel to points within this state other than refineries or marine or pipe-line terminals. If any distributor or dealer is also engaged in the transportation of motor fuel for others, he shall make the same reports as required of common and contract carriers.

The reports shall cover monthly periods and shall show as to each delivery:

a. The name and address of the person to whom actually and in fact made.

b. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.

c. The point of origin, the point of delivery, and the date of delivery.

d. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.

e. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.

f. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.

g. The manner, if delivered by other means, in which the delivery is made.

h. Such additional information relative to shipments of motor fuel as the treasurer may require.

If any person required under this section to file transportation reports is a licensee under this division and if the information required in his transportation report is contained in any other report rendered by him under this division no separate transportation report of that information shall be required.

2. Every person operating storage facilities at a refinery or at a marine or pipe-line terminal in this state shall monthly make an accounting to the treasurer on forms prescribed by the treasurer of all motor fuel withdrawn from the refinery storage and all motor fuel delivered into, withdrawn from and on hand in the terminal storage.

3. The reports required in this section shall be for information purposes only and the treasurer may in his discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the treasurer within the time allowed for filing of distributors' reports of motor fuel received. [C27, 31, §§5093-a6, -b1; C35, §§5093-f25, -f26, -f27; C39, §§5093.25-5093.27; C46, 50, 54, §§324.46-324.48; 57GA, ch 164]

**324.16 Credit to licensee—nonmotor vehicle use — casualty losses — nontaxable products — refunds.** A licensee having received motor fuel which thereafter (1) he uses for any purpose other than as fuel for propelling motor vehicles or (2) while owned by him is lost or destroyed through accountable leakage or through fire, accident, lightning, flood, storm, act of war or public enemy or other like cause, shall upon application to the treasurer supported by proof as the treasurer may reasonably require, be entitled to a memorandum of credit which he may apply against subsequent liability under this chapter, or, if an applicant having paid the tax on the gallonage covered in the application is no longer engaged in activity for which his license was issued, the treasurer shall refund the appropriate amount to the applicant. [C27, 31, §5093-a8; C35, §5093-f29; C39, §5093.29; C46, 50, 54, §§324.50, 324.56; 57GA, ch 164; ch 166, §§1, 5, 6]

Memorandum of credit of former tax paid, 57GA, ch 164, §324.16(2)

**324.17 Refund to nonlicensee—fuel used other than in motor vehicles.** Any person other than a licensee who shall use motor fuel for the purpose of operating or propelling farm tractors, stationary gas engines, aircraft or boats, for cleaning or dyeing or for any purpose other than in motor vehicles operated or intended to be operated upon the public highways and having paid the motor fuel tax on the fuel either directly to the treasurer or by having the tax added to the price of the fuel, and who has a refund permit shall, upon presentation to and approval by the treasurer of a claim for refund be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used. Every claim filed subsequent to July 4, 1957 shall be subject to the following conditions:

1. The claim shall be on a form prescribed by the treasurer and be certified by the claimant under penalty for false certificate.

2. The claim shall have attached thereto the original invoice or invoices showing the pur-

chase of the motor fuel on which a refund is claimed.

3. No invoice shall be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel, prepared by the seller on a form approved by the treasurer with double faced carbon paper under the original; nor unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of motor fuel, the gallonage in words and figures, the per gallon price of the motor fuel, the per gallon rate of any tax added to the product price, the total purchase price including the Iowa motor fuel tax and that the total purchase price including tax has been paid; provided, that as to refund invoices made on a billing machine the treasurer may waive any of the requirements of this subsection.

4. The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in motor vehicles, the manner in which the motor fuel was used or will be used and the equipment in which it was used or will be used.

5. The claim shall also state whether or not the claimant used fuel for motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed.

6. No refund will be paid with respect to any motor fuel taken out of this state in fuel supply tanks of motor vehicles.

7. No refund shall be paid with respect to motor fuel purchased more than three calendar months prior to the date the claim was filed with the treasurer.

8. No refund shall be paid with respect to motor fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel tax subject to refund.

9. If an original invoice is lost or destroyed the treasurer may in his discretion approve a refund supported by a copy identified and certified by the seller as being a true copy of the original.

10. The right of a person to a refund under this section shall not be assignable. Claim shall be made by and the amount of the refund when determined by the treasurer shall be paid to the person who purchased the motor fuel as shown in the supporting invoice.

11. In order to verify the validity of a claim for refund the treasurer shall have the right to require the claimant to furnish such additional proof of validity as the treasurer may determine and by himself or his representative to examine the books and records of the claimant. Failure of a claimant to furnish his books and records for examination shall constitute



a waiver of all rights to refund related to the transaction in question. [C27, 31, §5093-a8; C35, §§5093-f29, -f30, -f36; C39, §§5093.29, 5093.30, 5093.36; C46, 50, 54, §§324.50, 324.52-324.57, 324.64; 57GA, ch 164; ch 166, §§1, 2, 5, 6]

Referred to in §324.18

**324.18 Refund permit.** No person may claim a refund under section 324.17 until he shall have obtained a refund permit from the treasurer and paid the fee therefor. Application for a refund permit shall be made to the treasurer on a form provided by the treasurer, shall be certified by the applicant under penalty for false certificate and shall contain among other things, the name, the address and occupation of the applicant, the nature of his business and a sufficient description for identification of the machines and equipment in which is to be used motor fuel for which refund may be claimed under the permit. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The treasurer shall keep a permanent record of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A fee of one dollar shall be collected by the treasurer from each person to whom a refund permit is issued. A refund permit shall continue in effect until revoked as hereinafter provided or until the claimant shall have moved from the county with which his refund permit is identified. [C27, 31, §5093-a8; C35, §§5093-f29, -f30; C39, §§5093.29, 5093.30; C46, 50, 54, §§324.52, 324.57; 57GA, ch 164; ch 166, §2]

Referred to in §324.19

**324.19 Revocation of refund permit.** Any refund permit issued under this chapter may be revoked by the treasurer for any of the following violations, but only after the holder of the permit has been given reasonable notice of the intention to revoke the permit and reasonable opportunity to be heard:

1. Using in support of a refund claim a false or altered invoice.
2. Making a false statement in a claim for refund or in response to an investigation by the treasurer of a claim for refund.
3. Refusal to submit his books and records for examination by the treasurer or his authorized representative.

A person whose refund permit is revoked for cause (except nonuse) may not obtain another refund permit for a period of one year after the revocation. A refund permit under which no refund is claimed for a period of one year from date of issuance or a refund permit whose holder has moved from the county wherein he resided at the time of application for said permit shall be revoked by the treasurer subject to reinstatement or issuance of a new permit upon application as provided in section 324.18. [C27, 31, §§5093-a4, -a6, -a7, -a8; C35, §§5093-f22, -f31; C39, §§5093.22, 5093.31; C46, 50, 54, §§324.43, 324.58, 324.59; 57GA, ch 164; ch 166, §§2-4]

Referred to in §324.73  
See 57GA, ch 166, §3

**324.20 Posting price and discounts.** Every distributor and other person selling motor fuel in this state for resale to dealers in this state, shall keep posted in a conspicuous place most accessible to the public at their place or places of business, including bulk plants, a placard showing in legible words and figures the same height and size, the price per gallon of each grade of motor fuel offered for sale, the amount of state excise tax per gallon thereon, the federal excise tax per gallon thereon, and the total thereof. If any rebate, discount, commission, or other concession is granted by distributors or persons engaged in the sale of motor fuel for resale to dealers of such nature as will reduce the cost or price to any purchaser or dealer in such products, the conditions, quantity, and amount of such rebate, discount, commission or other concession shall be posted as a part of the posted price. All price placards shall be subject to the approval of the treasurer. Any distributor or person failing to post or keep posted the placard required by this section, or who posts placards not approved by the treasurer as provided in this section, or who sells any motor fuel for resale at a price which directly or indirectly, by any means or device, deviates from the posted price set forth on the price placard approved by the treasurer, shall be guilty of a misdemeanor and shall be punished by a fine of one hundred dollars or imprisonment in the county jail for thirty days. Nothing contained herein shall prohibit or restrict the distribution of earnings to the members of any distributor or person, nor to the distribution to consumers of road maps, publicity and other advertising media carrying the name of the distributor, person, or produce. Each day the required placard remains unposted or an unauthorized placard remains posted, or each deviation from the posted price, shall be considered a separate offense. In the event of a second conviction for the violation of any of the provisions of this section, the state treasurer may revoke the license of such distributor or person so convicted. [C27, 31, §§5093-a3, -a4, -a6, -a7, -a8, -b1; C35, §§5093-f4, -f15, -f17, -f25, -f31; C39, §§5093.04, 5093.15, 5093.17, 5093.25, 5093.31; C46, 50, 54, §§324.4, 324.30, 324.31, 324.47, 324.58, 324.59; 57GA, ch 164; ch 166, §4]

Sections 324.21 to 324.30, inclusive, reserved for use in future Codes.

#### DIVISION II SPECIAL FUEL TAX

**324.31 Short title.** This division, applicable provisions of division IV of this chapter and any amendments to either shall be known, and may be cited, as the "Special Fuel Tax Law," and as so constituted is hereinafter referred to as this division. [C35, §5093-f40; C39, §5093.39; C46, 50, 54, §324.66; 57GA, ch 164]

Similar provisions, §§324.1, 324.50

**324.32 Purpose.** The purpose of this division is to supplement division I of this chapter, by imposing an excise tax upon the receipt, delivery or placing into the fuel supply tanks of motor vehicles which are within this state, of all fuels not taxed under division I. [C27, 31,

§§4755-b38, 5093-a1; C35,§5093-f3; C39,§5093.03; C46, 50, 54,§324.2; 56GA, ch 44,§3; ch 171,§1; 57GA, ch 164]

See §324.51

**324.33 Definitions.** As used in this division:

1. "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles also any substance used for that purpose, except that it does not include motor fuel as defined in the motor fuel tax law.

2. "Use" means the receipt, delivery or placing of special fuels by a special fuel user into a supply fuel tank of a motor vehicle while the vehicle is in this state.

3. "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into a fuel supply tank of any motor vehicle not then owned or controlled by him.

4. "Special fuel user" means the owner or other person responsible for the operation of a motor vehicle at the time special fuel is placed in a fuel supply tank thereof while the vehicle is in this state.

5. "Licensee" shall mean and include any person who holds an uncanceled special fuel dealer license or special fuel user license, issued pursuant to this division. [C27, 31, §5093-a2; C35,§5093-f2; C39,§5093.02; C46, 50, 54, §324.1; 57GA, ch 164]

Referred to in §324.34  
See §§324.2, 324.57

**324.34 Tax imposed.** For the privilege of operating motor vehicles in this state, there is hereby levied and imposed an excise tax on the use (as defined herein) of special fuel in any motor vehicle. The rate of tax on special (diesel engine) fuel shall be seven cents per gallon. On all other special fuel the per gallon rate shall be the same as the motor fuel tax. The tax, with respect to all special fuel delivered by a special fuel dealer for use in this state as defined by section 324.33, shall attach at the time of the delivery and shall be collected by the dealer from the special fuel user and shall be paid over to the treasurer as hereinafter provided. The tax, with respect to special fuel acquired by a special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the use (as herein defined) of the fuel and shall be paid over to the treasurer by the user as hereinafter provided.

The treasurer shall make reasonable rules and regulations governing the dispensing of special fuel at retail service stations and may require that special fuel delivered into the fuel supply tank of any motor vehicle shall be dispensed through a metered pump. [C27, 31,§4755-b38; C35,§§5093-a1, 5093-f3, 5093-f36; C39,§§5093.03, 5093.36; C46, 50, 54,§§324.2, 324.64; 56GA, ch 44,§3; ch 171,§1; 57GA, ch 164]

**324.35 Exemptions.** No tax is imposed under this division on special fuel used by the

United States or any of its agencies or instrumentalities, but the tax on special fuel used or delivered into fuel supply tanks of motor vehicles by any post exchange or concessionaire on any federal reservation in this state, to the extent permitted by federal law, shall be collected by the post exchange or concessionaire and paid to the treasurer.

No tax is imposed under this division on special fuel used by the state of Iowa or any of its agencies, but this exemption shall not apply to political subdivisions of this state. [57GA, ch 165,§1]

Exemptions under Division I, §324.3  
See §324.80, for refund of federal tax

**324.36 Special fuel dealers' and special fuel users' licenses.**

1. *Required.* It shall be unlawful for any person to act as a special fuel dealer in this state unless he holds an uncanceled special fuel dealer's license issued to him by the treasurer. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, the use (as herein defined) of special fuel in this state by any person shall be unlawful unless he holds an uncanceled special fuel user's license issued to him by the treasurer.

2. *Application.* Application for a special fuel dealer's license or a special fuel user's license shall be made to the treasurer. A special fuel dealer's license or a special fuel user's license, whichever is applicable, shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle. Provided, that, if a special fuel dealer also operates one or more bulk plants from which the distribution of special fuel is primarily by tank vehicle, he need not obtain a separate license for any of these plants not provided with fixed equipment designed for fueling vehicles.

3. *Form of application.* The application shall be filed upon a form prepared and furnished by the treasurer and shall contain such information as the treasurer deems necessary.

4. *Bond.* No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless he has on file with the treasurer a surety bond in such form and amount as the treasurer may require, but not less than five hundred dollars, nor more than five thousand dollars, to secure his compliance with this division, and the payment of any and all taxes, interest and penalties due and to become due hereunder. The provisions of subsections 1, 2, 3 and 4 of section 324.7 with respect to distributors' bonds, except the amount of bond, shall apply to bonds furnished by licensees under this division. A special fuel dealer or special fuel user who is also a licensed distributor under division I of this chapter may have his obligation under this section and under section 324.7 covered by one bond.

5. *Issuance.* Upon receipt of the application

and bond in proper form, the treasurer shall issue to the applicant a license to act as a special fuel dealer or a special fuel user; provided, however, the treasurer may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (a) who formerly held either type of license and which has been revoked for cause; or (b) who is a subterfuge for the real party in interest whose license has been revoked for cause; or (c) upon other sufficient cause being shown. Before refusal, the treasurer shall grant the applicant a hearing and give him at least fifteen days' written notice of the time and place thereof.

6. *Expiration of license.* Each special fuel dealer's license and special fuel user's license shall be valid until suspended or revoked for cause or otherwise canceled.

7. *Assignment forbidden.* No special fuel dealer's license or special fuel user's license shall be transferable. [C24,§3259; C27, 31, §5093-a5; C35,§§5093-f8,-f21; C39,§§5093.08, 5093.21; C46, 50, 54,§§324.11, 324.28, 324.39, 324.40; 57GA, ch 164]

**324.37 Special fuel dealers' and special fuel users' records.** For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle, the special fuel dealer or user making the delivery shall prepare and maintain for a period of three years such records as the treasurer may reasonably require with respect to all these deliveries, and with respect to inventories, receipts, purchases, and sales or other dispositions of special fuel. [C27, 31,§5093-a8; C35,§5093-f14; C39,§5093.14; C46, 50, 54,§§324.25-324.29; 57GA, ch 164]

**324.38 Monthly returns and tax payments.**

1. *Returns.* For the purpose of determining the amount of his liability for special fuel tax each special fuel dealer and each special fuel user shall file with the treasurer not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certificate. The return shall show, with reference to each location at which special fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, such information as the treasurer may reasonably require for the proper administration and enforcement of this division; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, the monthly return to the treasurer covering the location need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

2. *Computation.* The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons

of special fuel delivered or placed by the special fuel dealer or user into supply tanks of motor vehicles.

3. *Payments.* The return shall be accompanied by remittance in the amount of the tax due for the month in which the special fuel was placed in the fuel tanks of motor vehicles.

4. *Reporting exemption for authorized tax-paid purchases.* Any special fuel dealer or user licensed under this division may upon application in writing to the treasurer be authorized, subject to regulations prescribed by the treasurer, to purchase on a tax-paid basis from any supplier licensed as a distributor under division I of this chapter all special fuel acquired by the dealer or user for subsequent delivery into the fuel supply tanks of motor vehicles. Every supplier so licensed who sells or delivers special fuel on a tax-paid basis to special fuel users or special fuel dealers authorized as aforesaid shall make a return of these tax-paid sales to the treasurer accompanied by payment of the special fuel tax on the tax-paid gallonage so sold or delivered. The return and payment shall be made at the same time as the supplier's motor fuel tax return or special fuel tax return for the month in which the covered sales or deliveries were made. A special fuel dealer or user shall be exempt from making any return or tax payment to the treasurer on special fuel which, under authority from the treasurer, he acquires on a tax-paid basis from a supplier licensed as aforesaid.

5. *Exemption for fueling by licensed dealers.* No return need be made by any special fuel user, not licensed as a special fuel dealer, whose entire use of special fuels in this state is limited solely to special fuels delivered into the fuel supply tank of the user's motor vehicles by special fuel dealers.

6. *Presumption.* For purposes of this section there shall be a prima-facie presumption that all special fuel received by a special dealer or special fuel user into storage and dispensing equipment designed to fuel motor vehicles is to be delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles. [C27, 31,§§5093-a5,-b1; C35, §5093-f9,-f11; C39,§§5093.09, 5093.11; C46, 50, 54, §§324.13-324.17, 324.20; 57GA, ch 164]

Sections 324.39 to 324.49, inclusive, reserved for use in future Codes

DIVISION III

MOTOR FUEL AND SPECIAL FUEL USE TAX FOR INTERSTATE MOTOR VEHICLE OPERATIONS

**324.50 Short title.** This division and applicable provisions of division IV of this chapter and any amendments to either shall be known and may be cited as the "Interstate Fuel Use Tax Law," and as so constituted is hereinafter referred to as this division. [C35,§5093-f40; C39, §5093.39; C46, 50, 54,§324.66; 57GA, ch 164]

Similar provision, §§324.1, 324.81

**324.51 Purpose.** The purpose of this division is to provide an additional method of collecting fuel taxes from interstate motor

vehicle operators commensurate with their operations on Iowa highways; and to permit the treasurer to suspend this collection as to transportation entering Iowa from any other state where it appears that Iowa highway fuel tax revenue and interstate highway transportation moving out of Iowa will not be unduly prejudiced thereby. [C27, 31, §§4755-b38, 5093-a1; C35, §§5093-f3; C39, §§5093.03; C46, 50, 54, §§324.2; 57GA, ch 164]

**324.52 Fuels imported in supply tanks of motor vehicles.** No person shall bring into this state in the fuel supply tanks of a motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless he has paid or made arrangements in advance with the treasurer for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this division shall not apply to a private passenger automobile.

Any person who brings into the state in the fuel supply tanks of a motor vehicle more than twenty gallons of motor fuel or special fuel in violation of the provisions of the preceding paragraph is guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or shall be imprisoned in the county jail not more than thirty days. [C35, §§5093-f19; C39, §§5093.19; C46, 50, 54, §§324.34, 324.37; 57GA, ch 164]

**324.53 Permit—bond.** The advance arrangements referred to in the preceding section shall include the procuring of a permit and may in the discretion of the treasurer include the posting of a suitable indemnity bond in a sum to be fixed by the treasurer to assure the required reporting, tax payments and the keeping of required records.

Permit may be obtained upon application to the treasurer. The treasurer shall charge a fee of one dollar for each permit issued. The holder of a permit under this division shall have the privilege of bringing into this state in the fuel supply tanks of motor vehicles any amount of motor fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Iowa motor fuel or special fuel taxes as provided in section 324.54.

Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on each vehicle a duplicate or evidence of the permit required in this section. A fee not to exceed twenty-five cents shall be charged by the treasurer for each duplicate or other evidence of permit issued by him. [C35, §§5093-f19, -f20; C39, §§5093.19, 5093.20; C46, 50, 54, §§324.34, 324.38; 57GA, ch 164]

**324.54 Fuel tax computation, reporting and payment.** Fuel tax liability under this division shall be computed on the total number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa of

motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable thereto if taxed under divisions I or II of this chapter. Credit against the tax liability so computed shall be allowed in the amount of fuel taxes paid under divisions I or II of this chapter on motor fuel and special fuel used in motor vehicles the operation of which is subject to this division, but no amount so paid on fuel in excess of that consumed in this state shall be refunded.

To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the treasurer may require reports on forms prescribed by the treasurer and fuel tax payments in the same manner and at the same time as required in this chapter for reporting and payment by distributors. These reports and tax payments may be required covering actual operation and fuel consumption in Iowa for vehicles the operation of which is subject to this division or on a basis of their average consumption of fuel in Iowa determined by taking that proportion of the total gallons consumed everywhere in these vehicles that their mileage in Iowa is to their total mileage everywhere. [C27, 31, §5093-b1; C35, §§5093-f18, -f25; C39, §§5093.18, 5093.25; C46, 50, 54, §§324.32, 324.46; 57GA, ch 164]

Referred to in §324.53

**324.55 Records.** Every person operating within the purview of this division shall make and keep for a period of three years such records as may reasonably be required by the treasurer for the administration of this division. If in the normal conduct of the business, the required records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the treasurer at the office outside Iowa, but such audit and examination shall be without expense to the state of Iowa. [C27, 31, §5093-a8; C35, §§5093-f14, -f21; C39, §§5093.14, 5093.21; C46, 50, 54, §§324.27, 324.28, 324.40, 324.41; 57GA, ch 164]

**324.56 Not applicable to distributors.** The provisions of this division shall not apply to distributors licensed under division I of this chapter. Distributors so licensed shall report and pay the tax on motor fuel and special fuel consumed in propelling vehicles on the public highways of this state as provided for respectively in divisions I and II. [57GA, ch 164]

See §§324.3, 324.4, 324.32, 324.34

**DIVISION IV**

**PROVISIONS COMMON TO TAXES IMPOSED UNDER DIVISIONS I, II AND III**

**324.57 Definitions.**

1. "Fuel taxes" means and includes the per gallon excise taxes imposed under divisions I, II and III of this chapter with respect to motor fuel and special fuel.

2. "Motor vehicle" shall mean and include all vehicles (except those operated on rails) which are propelled by internal combustion

engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment or produce shall not be deemed to be a motor vehicle. "Motor vehicle" shall not include "mobile machinery and equipment" as hereinafter defined.

3. "Mobile machinery and equipment" shall mean and include vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway such as ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. The foregoing enumeration shall not operate to exclude other vehicles which are within the general terms of this definition. "Mobile machinery and equipment" shall not however include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck mounted transit mixers, cranes, shovels, welders, air compressors, well boring apparatus, corn shellers, lime spreaders or feed grinders, has been attached.

4. "Public highways" shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

5. "Person" shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

6. "Treasurer" shall mean the treasurer of the state of Iowa. [C27, 31,§5093-a2; C35, §5093-f2; C39,§5093.02; C46, 50, 54,§324.1; 57GA, ch 164]

See §§324.2, 324.83

**324.58 Administrative rules and regulations.** The treasurer is authorized and empowered to make such reasonable rules and regulations relating to the administration and enforcement of this chapter as he may deem needful. These rules and regulations shall be effective when the provisions of chapter 17A have been complied with. [C35,§§5093-f18,-f21,-f36; C39, §5093.18, 5093.21, 5093.36; C46, 50, 54,§§324.32, 324.40, 324.64; 57GA, ch 164]

See chapter 17A

**324.59 Forms of report, refund claim and records.** The treasurer shall prescribe and furnish all forms upon which reports and applications shall be made and claims for refund presented under this chapter and may pre-

scribe forms of record to be kept by motor fuel distributors, motor fuel dealers, motor fuel carriers, special fuel dealers, special fuel users, and interstate motor vehicle operators.

Whenever in this chapter the treasurer is authorized to prescribe the form of record to be kept, he may in lieu thereof approve the form of record being kept, and shall approve the form of record where it furnishes in reasonably accessible form the information which the treasurer requires, and substantially complies with the prescribed form. [C35,§§5093-f21,-f23; C39,§§5093.21, 5093.23; C46, 50, 54,§§324.42, 324.44; 57GA, ch 164]

**324.60 Timely filing of reports—extension.** The reports and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday or legal holiday the next secular or business day shall be the final filing date.

The treasurer upon application may grant a reasonable extension of time for the filing of any required report or tax payment, or both. [C27, 31,§§5093-a5,-b1; C35,§§5093-f9,-f21,-f25; C39,§§5093.09, 5093.21, 5093.25; C46, 50, 54, §§324.13, 324.41, 324.46; 57GA, ch 164]

**324.61 Inspection of records.** The treasurer or any deputy, employee or agent authorized by him is hereby given the authority within the time prescribed for keeping records (1) to examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of (a) any distributor, dealer, purchaser, or common, contract or other carrier, pertaining to motor fuel received, used, sold, delivered, or otherwise disposed of, or (b) of any special fuel dealer, special fuel user or person supplying special fuel to any dealer therein or user thereof and (c) of any interstate operator of motor vehicles to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the taxes imposed by this chapter have been paid; and (2) to examine the records, books, papers, receipts, and invoices of any distributor, special fuel dealer or special fuel user to determine financial responsibility for the payment of the taxes imposed by this chapter.

If any person within the purview of this section shall refuse access to pertinent records, books, papers, receipts, invoices, storage tanks or any other equipment, then the said treasurer shall certify the names and facts to any court of competent jurisdiction, and the said court shall enter such order in the premises as the enforcement of this act and justice shall require. [C27, 31,§5093-a6; C35,§§5093-f27, 5093-f29; C39,§§5093.27, 5093.29; C46, 50, 54,§§324.48, 324.52; 57GA, ch 164]

**324.62 Information confidential.** All information obtained by the treasurer or his representatives, agents or employees from the

examining of reports or records required to be filed or kept under the provisions of this chapter shall be treated as confidential and shall not be divulged except to a member or members of the general assembly or any duly appointed committee of either or both houses thereof or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under the provisions of this chapter; provided, however, that the treasurer shall make available for public information on or before the last day of the month following the month in which the tax is required to be paid the names of the distributors and as to each of them the total gallons received in the state and separately, the received gallons (1) exported or sold for export, (2) sold tax-free in the state to entities that are exempt from the tax, and (3) sold tax-free in the state to entities required to report and account for the tax thereon. The treasurer shall also make available to the public information with respect to special fuel dealers and users and as to each of them the gallonage used and taxes paid. The treasurer, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to such officials any pertinent information which he may have relative to motor fuel and special fuel provided the officials of the other state furnish to the treasurer like information.

Any person violating the provisions of this section, and disclosing the contents of any records or reports required to be kept or made under the provisions of this chapter, except as hereinabove provided, shall upon conviction be fined not less than one hundred dollars nor more than one thousand dollars or be confined in the county jail not less than thirty days nor more than six months. [C27, 31,§5093-a6; C35,§5093-f27; C39,§5093.27; C46, 50, 54, §324.48; 57GA, ch 164]

**324.63 Treasurer may estimate taxable gallonage.** If any person fails to make and file a report required of him or files an incorrect report, the treasurer shall after investigation determine the gallonage with respect to which the person incurred liability for fuel taxes under this chapter in any month or months and fix the amount of taxes thereon. If the treasurer should at any time receive complaints or reports from any source that a licensee or other person is suspected of evading fuel taxes imposed by this chapter or has failed to report all the gallonage the reporting of which is required under this chapter, or is suspected of acting as a distributor or special fuel dealer or user without a license or of withholding payment of fuel taxes, the treasurer, upon five days notice to the person complained against of the nature of the complaint or report and of the time and place of a hearing thereon, may proceed to hold the hearing and determine the amount of fuel taxes, if any, due from that person. The treasurer may adjourn the hearing from time to time

until the completion thereof. He may use any information available in determining the amount, if any, of fuel taxes for which the person is liable. Upon determining the amount thereof he shall add the penalties and interest provided for in section 324.65 and make an assessment for the amount of the unpaid taxes, penalties and interest, shall furnish a copy thereof to the person against whom the assessment is made and his surety and shall certify the same for collection or other appropriate action by the proper public official. The findings of the treasurer as to the amount of fuel taxes due from any person shall be presumed to be the correct amount and in any litigation which may follow, the certificate of the treasurer shall be admitted in evidence, shall constitute a prima-facie case, shall impose upon the other party the burden of showing any error in the treasurer's finding and the extent thereof or that the finding was contrary to law. [C35,§§5093-f11,-f12; C39,§§5093.11, 5093.12; C46, 50, 54,§§324.19, 324.20, 324.21; 57GA, ch 164]

**324.64 Penalty for failure to promptly report or pay fuel taxes.** If a licensee or other person fails to file a required report with the treasurer on or before the time fixed for the filing thereof or if a licensee or other person fails to pay to the treasurer an amount of fuel taxes when due, a penalty of ten per cent of the tax unpaid and due shall be added, the unpaid tax and penalty shall immediately accrue and thereafter shall bear interest at the rate of one-half of one percent per month until paid. The treasurer shall not remit any part of a penalty for delinquent payment where the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. Provided, further, that if it appears as a result of investigation by the treasurer or from a preponderance of the evidence adduced at a hearing before the treasurer that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of one hundred percent of the tax, the evasion of which was attempted, and the tax and penalty shall immediately accrue and shall thereafter bear interest at the rate of one-half of one percent per month until paid. [C27, 31,§5093-a5; C35,§§5093-f9,-f11; C39, §§5093.09, 5093.11; C46, 50, 54,§§324.16, 324.19; 57 GA, ch 164]

**324.65 Lien of fuel taxes—priority.**

1. The amount of fuel taxes imposed by this chapter, including interest and penalty and costs that may accrue, shall be a lien in favor of the state upon franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by a person liable for the payment of the fuel taxes from the date the taxes are due and payable as provided in this chapter and until the

amount of the lien is paid or the property sold in payment thereof. Fuel tax liens shall have priority over any lien or encumbrance whatsoever except the lien of other state taxes having priority by law, and except that a fuel tax lien shall not have priority over any bona fide mortgagee, pledgee, attaching creditor or purchaser whose right shall have attached prior to the time the treasurer shall have filed his certificate in the office of the clerk of the court.

2. The certificate of the treasurer assessing the amount of fuel taxes and penalty due from a licensee or other person, ascertained in accordance with the provisions of this chapter or from a report of the person may be filed in the office of the clerk of the district court in the county in which the place of business of the licensee or other person is located. The clerk of the district court upon receipt of the certificate shall, without requiring payment of any fee, file and index the same in manner now provided for judgments. The treasurer may in like manner, file a duplicate of the certificate in any other county where it shall be indexed in a like manner. The claim of the state of Iowa as shown by the certificate or duplicate so filed shall be a lien on the real estate of the person named therein as owing fuel taxes and located in the county where the certificate or duplicate is recorded, for the amount shown by the certificate to be due including penalty and interest from the date of filing to the same extent as a mortgage lien.

3. The treasurer may give notice of the amount of fuel taxes and penalty due as ascertained by him by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to a licensee or other person or to any person owing any debts to the licensee or other person. Thereafter the person notified shall neither transfer nor make any other disposition of credit or other personal property or debts until thirty days shall have elapsed from and after the receipt of the notice unless the treasurer of state shall give his consent to a previous transfer or other disposition. At the expiration of the thirty-day period, the property shall be released, unless in the meantime it shall have been attached by process of court or the holder thereof garnished. All persons so notified, must, within five days after receipt of the notice, advise the treasurer of state of any and all credits or personal property or debts in their possession or under their control belonging or owed to the licensee or other person from whom the fuel taxes are due.

4. When the property of a licensee is seized upon any mesne or final process of any court of this state or of the United States, or when the business of a licensee shall be suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, or when a petition in voluntary or involuntary bankruptcy has been filed by or against a licensee, then and in all such cases, all fuel

taxes collected by the licensee under the provisions of this chapter or due and owing to the state shall be considered and treated as preferred claims, and the state shall be a preferred creditor and shall be paid in full.

5. No sheriff, receiver, assignee, master or other officer shall sell the property or franchises of any licensee without first filing with the treasurer a statement containing the following information: name or names of the plaintiff or party at whose instance or upon whose account the sale is made; name of the person whose property or franchise is to be sold; the time and place of sale; and the nature of the property and the location of the same. It shall be the duty of the treasurer, after receiving notice as aforesaid, to furnish to the sheriff, receiver, trustee, assignee, master or other officer, having charge of the sale, a certified copy or copies of all assessments for fuel taxes, penalties, and interest on file in the office of the treasurer as liens against such person, and in the event there are no such liens a certificate showing that fact, which certified copy or copies of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

6. It shall be the duty of the treasurer to furnish to any person applying therefor a certificate showing the amount of all liens for fuel taxes, penalties, and interest that may be of record in the files of the treasurer against any person under the provisions of this chapter.

7. It shall be the duty of the treasurer, upon receipt of notice of the opening of the administration of an estate of any individual who was a licensee, to file a claim as a preferred creditor for all fuel taxes, penalties and interest due the state of Iowa, if any, in the court having jurisdiction over the administration of said estate. [C35,§5093-f13; C39,§5093.13; C46, 50, 54, §§324.22-324.24; 57GA, ch 164; ch 267,§41]

Referred to in §324.63

#### **324.66 Procedure when tax payment in default.**

1. It shall be unlawful for any distributor to sell or offer for sale motor fuel or for any special fuel dealer or user to dispense or offer to dispense special fuel into a fuel supply tank of a motor vehicle, while in default of or delinquent in the payment or the whole or any part of fuel taxes imposed under this chapter, and in the event of the failure or refusal to pay the whole of any of these taxes after assessment and notice thereof by the treasurer, the delinquent fuel taxes, together with penalties and interest provided for shall be recovered by and in the name of the state of Iowa and the attorney general of the state of Iowa or the county attorney of any county in which the distributor, dealer or user resides or is engaged in business is hereby authorized and directed to institute suit therefor in any court of competent jurisdiction against the



distributor or special fuel dealer or user or his surety or sureties, if any, or both.

2. A fuel tax lien filed in the office of the clerk of the district court of any county may be foreclosed in the same manner as real estate mortgage liens are foreclosed, and the court in the proceedings shall enter judgment against the licensee or other person for the amount found by the court to be due to the state, with interest and the penalty as assessed by the treasurer, and may in the same proceedings foreclose on any security which the treasurer may hold for the payment of the fuel taxes, and may in the same proceedings entertain suit on any bond filed as security for the payment of the fuel taxes.

3. In the event suit is instituted upon application made by the attorney general or other proper public official the court may issue a writ of injunction, without requiring bond, enjoining and restraining the defendant from engaging in any or all activities covered in subsection 1 of this section until any judgment and costs recovered in the suit or attached have been paid, and the court shall, upon application therefor by the attorney general or other proper public official appoint a receiver of the property and business of the delinquent defendant, for the purpose of impounding the same as security for any judgment recovered. The delinquent fuel taxes, penalties and interest shall also be collectible and enforceable by a writ of attachment brought by the attorney general or other proper public officials in the name of the state of Iowa against the lands, goods, chattels, credits and other personal property of the defendant. No attachment bond shall be required, nor shall an indemnity bond be required or demanded by any officer serving the writ of attachment, and no officer shall be liable in damages on account of levying the attachment when acting under the direction of the attorney general or other proper public official. The serving officer shall also summon the persons named in the writ as garnishees, and all other persons within his county whom the attorney general or other proper public officials shall designate as having any property, effects, choses in action, or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to the defendant, the same as if their names had been inserted in the writ. The persons so summoned shall be considered as garnishees, and the officer shall state, in his return, the names of all persons so summoned, and the date of service on each. All proceedings and hearings, civil or criminal, arising under this chapter shall have precedence over all other cases in any court where the same shall be brought excepting criminal or other cases in which the public is a moving party.

4. No action or other proceeding shall be maintained to enforce collection of any amount of fuel tax, penalty, or interest over and above the amount shown to be due by reports filed by a licensee except upon an assessment by the

treasurer as authorized in this chapter or unless brought within one year after the date of the assessment. No assessment shall be made covering any period beyond three years prior to the date of assessment. [C35, §§5093-f11, -f13; C39, §§5093.11, 5093.13; C46, 50, 54, §§324.19, 324.22-324.24; 57GA, ch 164; ch 267, §41]

#### **324.67 Power of treasurer to cancel licenses.**

If a licensee shall at any time file a false monthly report of the data or information required by this chapter, or shall fail, refuse, or neglect to file a monthly report required by this chapter, or to pay the full amount of fuel tax as required by this chapter, then after ten days written notice by registered mail directed to the last known address of the licensee setting a time and place at which he may appear and show cause why his license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown by a preponderance of the evidence that the failure to correctly report or pay was with intent to evade the tax, the treasurer may cancel the license and shall notify the licensee of the cancellation by registered mail to his last known address.

Upon receipt of written request from any licensee the treasurer shall cancel the license of the licensee effective sixty days from the date of receipt of the request but no such license shall be canceled upon request unless and until the licensee shall, prior to the date of cancellation, have paid to the treasurer all fuel taxes payable under this chapter, together with any and all penalties, interest and fines appertaining thereto. If, upon investigation, the treasurer shall find that a licensee is no longer engaged in the activities for which a license was issued to him and has not been so engaged for a period of six months, the treasurer shall cancel the license and give sixty days' notice of the cancellation mailed to the last known address of the licensee. [C27, 31, §5093-a5; C35, §§5093-f10, -f18, -f37; C39, §§5093.10, 5093.18, 5093.37; C46, 50, 54, §§324.18, 324.32, 324.65; 57GA, ch 164]

**324.68 Hearings before treasurer.** Hearings before the treasurer authorized under the provisions of this chapter may be held at the seat of government in Des Moines or elsewhere in the state as the treasurer may direct. Any power granted to the treasurer in this chapter may be exercised by his deputy, and the treasurer is hereby authorized to appoint special deputies for the purpose of conducting hearings. The treasurer, his deputy or special deputy shall have the power to issue subpoenas including subpoenas duces tecum and to require the attendance of witnesses and the production of books, records and papers. In the event any person shall refuse to obey subpoena, or after appearing refuses to testify, the treasurer, his deputy or special deputy shall certify the name of the person to the district court of the county where the hearing is being held or to any judge thereof, and the court or judge shall proceed with the witness



in the same manner as if the refusal had occurred in open court. [C27, 31,§5093-a5; C35, §§5093-f10,-f11,-f12; C39,§§5093.10, 5093.11, 5093.12; C46, 50, 54,§§324.18-324.21; 57GA, ch 164; ch 166,§4]

**324.69 Discontinuance of licensed activity—liability for taxes and penalties.** If a licensee ceases to engage in the state in activities for which his license was issued or discontinued, sells, or transfers the business in which he has carried on that activity he shall notify the treasurer in writing at least ten days prior to the time the cessation, discontinuance, sale or transfer takes effect. The notice shall give the date of proposed cessation or discontinuance, and, in the event of a proposed sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All fuel taxes, penalties and interest under this chapter, not yet due and payable shall, together with any and all interest accruing or penalties imposed under this chapter, notwithstanding any provisions thereof becomes due and payable concurrently with the cessation, discontinuances, sale or transfer, and thereupon it shall be the duty of the licensee to make a report and pay all the fuel taxes, interest, and penalties within ten days. [C27, 31,§5093-a5; C35,§5093-f10; C39, §5093.10; C46, 50, 54,§324.18; 57GA, ch 164]

**324.70 Refunds to persons other than distributors.** Any person other than a distributor who has paid or has had charged to his account with a distributor, dealer or special fuel dealer fuel taxes imposed under this chapter with respect to motor fuel or special fuel in excess of one hundred gallons, which is subsequently lost or destroyed, while he shall be the owner thereof, through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation, shrinkage, or unknown causes, shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, he shall notify the treasurer in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, he shall file with the treasurer an affidavit sworn to by the person having immediate custody of the motor fuel or special fuel at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information with respect thereto as the treasurer may require. [C27, 31,§5093-a5; C35,§5093-f9; C39,§5093.09; C46, 50, 54,§§324.14, 324.15; 57GA, ch 164]

**324.71 Refund or credit for fuel taxes erroneously or illegally collected.** In the event that any fuel taxes, penalties, or interest have been erroneously or illegally collected from a licensee, the treasurer may permit the licensee to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment or, shall certify the amount thereof to the comptroller of this state, who shall

thereupon draw his warrant for the certified amount on the treasurer of state payable to the licensee. The refund shall be paid to the licensee forthwith.

No refund shall be made under the provisions of this section unless a written claim therefor setting forth the circumstances by reason of which the refund should be allowed, nor unless the claim is filed with the treasurer within one year from the date of the payment of the taxes erroneously or illegally collected. [C27, 31,§§5093-a5,-b1; C35,§5093-f9; C39, §5093.09; C46, 50, 54,§§324.13, 324.15; 57GA, ch 164]

**324.72 Embezzlement of fuel tax money—penalty.** Every sale of motor fuel in this state and every sale of special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the treasurer of state on or before time required shall be guilty of embezzlement of public funds and upon conviction shall be subjected to the penalty provided by law for that offense. [C27, 31,§5093-a5; C35, §§5093-f9-f13; C39,§§5093.09-5093.13; C46, 50, 54, §§324.16-324.22; 57GA, ch 164]

Embezzlement, chapter 710

**324.73 Unlawful acts—penalty.**

It shall be unlawful:

1. For any person to knowingly fail, neglect or refuse to make any required return or statement or pay over fuel taxes as herein required.

2. For any person to knowingly make any false, incorrect or materially incomplete record required to be kept or made under the provisions of this chapter, to refuse to offer his books and records to the treasurer or his representatives for inspection on demand or to refuse to permit the treasurer to examine his motor fuel or special fuel storage tanks and handling or dispensing equipment.

3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or special fuel.

4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or not, provided, however, if claimant's refund permit shall have been revoked for cause as provided in section 324.19 such revocation shall be a bar to prosecution for violation of this subsection.

5. For any person to act as a motor fuel distributor, special fuel dealer or special fuel user without the required license.

6. For any person to display or attempt to use any license issued or authorized under this chapter after the license has been canceled.

7. For any person employed or engaged in the sale or distribution of motor fuel, either directly or indirectly, to prepare for or on behalf of purchasers of motor fuel, any application for a refund permit, or any claim for refund of tax on account of other than motor vehicle use of motor fuel.

8. For any person to use motor fuel or special fuel with respect to which he knowingly has not paid or had charged to his account with a distributor or dealer, or with respect to which does not within the time required in this chapter report and pay the applicable fuel tax.

9. For any special fuel dealer to dispense special fuel into the fuel supply tank of any motor vehicle without collecting the fuel tax.

Any person found guilty of any of the foregoing illegal acts shall for the first offense be fined not more than one hundred dollars or be imprisoned in the county jail for not more than thirty days and for subsequent offenses shall be fined not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail not less than thirty days nor more than six months or both such fine and imprisonment in the discretion of the court. [C27, 31, §§5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §5093.31; C46, 50, 54, §324.58; 57GA, ch 164]

See §§324.14, 324.19

**324.74 Penalty for false certificate.** Any person who makes a false certificate in any report, return, application or claim required or provided for by this chapter or under any rule or regulation made by the treasurer shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for such term as the court may determine, not exceeding six months, or by a fine of not more than two thousand dollars, or by such combination of either imprisonment and fine as the court may determine. [C27, 31, §§5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §5093.31; C46, 50, 54, §§324.58, 324.59; 57GA, ch 164; ch 166, §4]

**324.75. Enforcement authority.** Authority is hereby given to the treasurer to enforce the provisions of this chapter and employees of the treasurer designated as enforcement officers shall have the power of peace officers in the performance of such duties.

It is hereby made the duty of all sheriffs, deputy sheriffs, constables, and all other peace officers to see that the provisions of this chapter are not violated, and to respond to the call of the treasurer to make investigations in their respective counties and report to the treasurer or his representatives and said officers are authorized to stop conveyance suspected to be illegally transporting motor fuel on the highways, and to investigate the cargo

for that purpose and to seize and impound said cargo and conveyance where it appears that said conveyance is being operated in violation of the provisions of this chapter. [C35, §§5093-f18, -f32; C39, §§5093.18, 5093.32; C46, 50, 54, §§324.32, 324.60; 57GA, ch 164]

**324.76 Treasurer to employ necessary help.** The treasurer is hereby empowered to employ such inspectors, auditors and other help as he may deem necessary for the effective enforcement of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay the help of the treasurer's office in administering and enforcing this chapter, the premiums on bonds contracted for by the treasurer, such refunds as are provided for in this chapter, and the cost of postage, equipment, supplies and printing used by the treasurer in administering this chapter. [C27, 31, §5093-a11; C35, §5093-f33; C39, §5093.33; C46, 50, 54, §324.61; 57 GA, ch 164]

Referred to in §324.7

**324.77 Other remedies available.** The special remedies provided under the provisions of this chapter to enable the state to collect motor vehicle fuel excise tax shall not be construed as depriving the state of any other remedy it might have either at law or in equity independent of this chapter. The state shall have the right to maintain an action at law for the collection of said taxes required to be paid herein and in connection therewith shall be entitled to a writ of attachment without bond. [C35, §5093-f34; C39, §5093.34; C46, 50, 54, §324.62; 57GA, ch 164]

**324.78 Use of revenue.** The net proceeds of seven cents per gallon excise tax on the diesel special fuel and four cents per gallon excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund. [C27, 31, §§4755-b38, 5093-a9; C35, §5093-f35; C39, §5093.35; C46, 50, 54, §324.63; 57GA, ch 164]

Temporary allocation of revenue, 57GA, ch 164, §78  
Former temporary provisions, see 56 GA, ch 44, §2, 57GA, ch 44, §2

**324.79 Microfilm or photographic copies—originals destroyed.** The treasurer shall have the power and authority to record, copy or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original of any forms or records pertaining to motor fuel tax or special fuel tax, or any paper or document with respect to refund of such tax, and when such forms and records shall have been so reproduced, the treasurer shall have the power to destroy the originals and such reproductions shall be competent

evidence in any court in accordance with the provision of section 622.30. [C35,§5093-f36; C39,§5093.36; C46, 50, 54,§324.64; 57GA, ch 164]

Rights and obligations preserved, 57GA, ch 164,§80  
Constitutionality, 57GA, ch 164,§81

### 324.80 Agreement for refund of federal tax.

1. The treasurer is hereby authorized to enter into and empowered to carry out the provisions of agreements with any duly authorized agent or department of the United States government for joint or co-operative action by the state and the United States government in the making of refunds of the federal tax on gasoline. Such agreements may provide that the treasurer may receive applications for and make refunds of the federal tax on gasoline as an agent of the United States. Such agreements shall provide that the United States shall provide the treasurer with sufficient funds in advance to pay all costs to the state in the performance of such agree-

ments and in the making of such refunds. In the event such an agreement is concluded, the treasurer is hereby designated, appointed and empowered, through the motor vehicle fuel tax division of his office, to, as an agent of the United States government, accept applications for refunds of the federal tax on gasoline and to make such refunds from such moneys provided him in advance by the federal government.

2. All moneys that may be paid in advance by the United States to the state to pay the cost to the state of performing such agreements and the cost of making such refunds are hereby appropriated to the treasurer for such purposes. Neither the state nor the treasurer shall be liable in any manner for the actions of the treasurer or his employees in the receipt, administration, and expenditure of such federal funds including the making of refunds. [57GA, ch 165,§1]

See exemptions, §324.3(2,3)

## CHAPTER 325

### MOTOR VEHICLE CERTIFICATED CARRIERS

Referred to in §§327.1, 327A.4, 327A.5

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**325.1 Definitions.** When used in this chapter:

1. The term "motor vehicle", shall mean any automobile, automobile truck, motorbus, or other self-propelled vehicle, including any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic, or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools.

2. The term "motor carrier" shall mean any person operating any motor vehicle upon any highway in this state.

3. The term "highway" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. The term "commission" shall mean the Iowa state commerce commission. [C24,§5094; C27, 31, 35,§5105-a1; C39,§5100.01; C46, 50, 54, §325.1]

**325.2 Special powers of commission.** The commission is hereby vested with power and authority, and it shall be its duty to:

1. Fix or approve the rates, fares, charges, classifications, and rules and regulations pertaining thereto, of each motor carrier.

2. Regulate and supervise the accounts, schedules, and service of each motor carrier.

3. Prescribe a uniform system and classification of accounts to be used, which among

other things shall provide for the setting up of adequate depreciation charges, and after such accounting system shall have been promulgated, motor carriers shall use no other.

4. Require the filing of annual and other reports.

5. Supervise and regulate motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. [C24,§5095; C27, 31, 35,§5105-a2; C39,§5100.02; C46, 50, 54,§325.2]

41GA, ch 5,§2, editorially divided

**325.3 General powers.** The commission shall also have power and authority by general order or otherwise to prescribe rules and regulations applicable to any and all motor carriers. The state department of public safety is hereby authorized and empowered to prescribe and enforce safety regulations in the operation of motor carriers, require a periodic inspection of the equipment of every motor carrier from the standpoint of enforcement of safety regulations, and such equipment shall be at all times subject to inspection by properly authorized representatives of the department of public safety. [C24,§§5095, 5104; C27, 31, 35,§5105-a3; C39,§5100.03; C46, 50, 54,§325.3]

**325.4 Statutes applicable.** All control, power, and authority over railroads and railroad companies now vested in the commission, insofar as the same is applicable, are hereby specifically extended to include motor carriers. [C27, 31, 35,§5105-a4; C39,§5100.04; C46, 50, 54, §325.4]

Powers of commerce commission, ch 474 et seq.

**325.5 Rates.** All charges made by any motor carrier for any service rendered or to be rendered in the public transportation of passengers or property, or in connection therewith, shall be just, reasonable and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [C24,§5096; C27, 31, 35,§5105-a5; C39, §5100.05; C46, 50, 54,§325.5]

**325.6 Certificate of convenience and necessity.** It is hereby declared unlawful for any motor carrier to transport over a regular route or between fixed termini any person or property, for compensation, from any point or place in the state of Iowa to another point or place in said state irrespective of the route, highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. [C24,§5097; C27, 31, 35, §5105-a6; C39,§5100.06; C46, 50, 54,§325.6]

**325.7 When certificate to be issued.** Before a certificate shall be issued, the commission shall, after a public hearing, make a finding that the service proposed to be rendered will

promote the public convenience and necessity. If such finding be made, it shall be its duty to issue a certificate. [C24,§5097; C27, 31, 35, §5105-a7; C39,§5100.07; C46, 50, 54,§325.7]

41GA, ch 5,§6, editorially divided  
Referred to in §327A.3

**325.8 Financial ability of applicant.** No certificate of convenience and necessity shall be issued until the applicant has made a satisfactory showing as to his financial ability to carry out the terms and conditions imposed. [C27, 31, 35,§5105-a8; C39,§5100.08; C46, 50, 54, §325.8]

Referred to in §327A.3

**325.9 Conditions.** When the certificate is granted, the commission may attach to the exercise of the rights therein conferred such terms and conditions as in its judgment the public convenience and necessity may require, which shall include the right and duty to transport newspapers. [C24,§5097; C27, 31, 35, §5105-a9; C39,§5100.09; C46, 50, 54,§325.9]

Referred to in §327A.3

**325.10 Amendment or revocation.** For just cause, the commission may at any time alter, amend, or revoke any certificate issued. [C24, §5097; C27, 31, 35,§5105-a10; C39,§5100.10; C46, 50, 54,§325.10]

Referred to in §327A.3

**325.11 Rules of procedure.** The commission shall adopt rules governing the procedure to be followed in the filing of applications and in the conduct of hearings. [C24,§5097; C27, 31, 35,§5105-a11; C39,§5100.11; C46, 50, 54,§325.11]

41GA, ch 5,§6, editorially divided  
Referred to in §327A.3

**325.12 Application for certificate.** All applications shall be in writing and, in addition to the other information required, shall contain the following:

1. The name of the individual, firm, or corporation making the application.
2. The principal office or place of business of applicant.
3. A complete description of the route over which the applicant proposes to operate.
4. A schedule setting forth in detail the service which the applicant proposes to furnish.
5. A complete description of the equipment which the applicant proposes to use in furnishing the service.
6. A financial statement from which the commission can determine whether or not the applicant is able to engage in the undertaking proposed in the application. [C24,§5097; C27, 31, 35,§5105-a12; C39,§5100.12; C46, 50, 54,§325.12]

Referred to in §327A.3

**325.13 Time of hearing—notice.** Upon the filing of the application, the commission shall fix a date for hearing thereon and cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered, to be published in some news-

paper of general circulation in each county, once each week for two consecutive weeks. [C24,§5097; C27, 31, 35,§5105-a13; C39,§5100.13; C46, 50, 54,§325.13]

41GA, ch 5,§7, editorially divided  
Referred to in §327A.3

**325.14 Service of notice—place of hearing.** Said hearing shall not be held less than ten days from the date of the last publication and at the office of the commission unless a different place is specified in the notice. [C24,§5097; C27, 31, 35,§5105-a14; C39,§5100.14; C46, 50, 54, §325.14]

Referred to in §327A.3

**325.15 Objections to application.** Any person, firm, corporation, city, town, or county whose rights or interests may be affected shall have the right to make written objections to the proposed application. [C27, 31, 35,§5105-a15; C39,§5100.15; C46, 50, 54,§325.15]

41GA, ch 5,§8, editorially divided  
Referred to in §327A.3

**325.16 Filing of objections.** All such objections shall be on file with the commission at least five days before the date fixed for said hearing. The commission may permit objections to be filed later, in which event the applicant shall be given reasonable time to meet such objections. [C27, 31, 35,§5105-a16; C39,§5100.16; C46, 50, 54,§325.16]

Referred to in §327A.3

**325.17 Testimony receivable.** It shall consider the application and any objections filed thereto and may hear testimony to aid it in determining the propriety of granting the application. [C27, 31, 35,§5105-a17; C39,§5100.17; C46, 50, 54,§325.17]

Referred to in §327A.3

**325.18 Granting application.** It may grant the application in whole or in part upon such terms, conditions, and restrictions and with such modifications as to schedule and route as may seem to it just and proper. The actual operation of such motor vehicles or vehicle shall not begin without a written statement of approval from the department of public safety to the effect that the safety provisions have been complied with. [C24,§5097; C27, 31, 35, §5105-a18; C39,§5100.18; C46, 50, 54,§325.18]

Referred to in §327A.3

**325.19 Expense of hearing.** The applicant shall pay all the costs and expenses of the hearing and necessary preliminary investigation in connection therewith before his application shall be granted. [C27, 31, 35,§5105-a19; C39,§5100.19; C46, 50, 54,§325.19]

41GA, ch 5,§9, editorially divided  
Referred to in §327A.3

**325.20 Deposit to cover expense.** The commission shall have the right to require the applicant to deposit with it at the time the application is filed, an amount of money to be determined by the commission to secure the payment of the said costs and expenses. [C27,

31, 35,§5105-a20; C39,§5100.20; C46, 50, 54, §325.20]

Referred to in §327A.3

**325.21 Appeal.** Appeal may be taken from the decision of the commission by the applicant or any party who appeared in opposition to the application, to the district court of any county in which is located any portion of the route proposed in the application, within thirty days from the time the decision was rendered, by giving at least ten days notice to the commission to be served on its chairman or secretary in the same manner as original notices are now served, and by filing with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars. [C24,§5098; C27, 31, 35,§5105-a21; C39,§5100.21; C46, 50, 54, §325.21]

41GA, ch 5,§10, editorially divided  
Manner of service, R.C.P. 56(a)  
Presumption of approval of bond, §682.10  
Referred to in §327A.3

**325.22 Transcript on appeal.** Upon appeal being taken, the secretary of the commission shall make and certify a transcript of all papers, records, and proceedings in connection with such application and hearing and file the same with the clerk of said court on or before the first day of the next term thereof following the taking of such appeal. [C24,§5098; C27, 31, 35,§5105-a22; C39,§5100.22; C46, 50, 54, §325.22]

Referred to in §327A.3

**325.23 Trial on appeal.** The appeal shall be submitted upon the transcript of the evidence and the record made before the commission and the district court shall either affirm or reverse the order of the commission. [C24, §5098; C27, 31, 35,§5105-a23; C39,§5100.23; C46, 50, 54,§325.23]

Referred to in §327A.3

**325.24 Appeal to supreme court.** An appeal may be taken from the judgment of the district court to the supreme court as from other judgments. [C24,§5098; C27, 31, 35,§5105-a24; C39, §5100.24; C46, 50, 54,§325.24]

Appeals generally, ch 686  
Referred to in §327A.3

**325.25 Transfer of certificate.** No certificate of convenience and necessity shall be sold, transferred, leased, or assigned until the motor carrier shall have operated thereunder for at least ninety days continuous service, nor shall any contract or agreement with reference to or affecting any such certificate be made except with the written approval of the commission. Nor shall any person be permitted to take over any such certificate unless he or it shall possess all the qualifications of and meet all the requirements and assume all the obligations imposed upon an original applicant. [C24, §5099; C27, 31, 35,§5105-a25; C39,§5100.25; C46, 50, 54,§325.25]

**325.26 Liability insurance and bond—proof of solvency.** No certificate shall be issued until

and after the applicant shall have filed with the commission an insurance policy, policies, surety bond, or certificate of insurance, in form to be approved by the commission, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state. The minimum limits of liability of any policies or surety bond shall, for each motor vehicle thereby covered, be as follows:

1. *Passenger motor carriers.*

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, twenty-five thousand dollars for any recovery by one person and subject to said limit for one person one hundred fifty thousand dollars for more than one person.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property of passengers as a result of any one accident or any other cause, one thousand dollars.

d. Any common carrier of passengers coming under the provisions of this chapter, furnishing satisfactory proofs to the commission of such carrier's solvency and financial ability to cover the assured's legal liability as provided for herein and make payments to such persons as may be entitled thereto as a result of such legal liability, or when such common carrier deposits with the commission, surety satisfactory to it as to guarantee for such payments, such common carrier will be relieved of the provisions of this section requiring liability insurance, surety bond or certificate of insurance; but such common carrier shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by the commission.

2. *Freight motor carriers.*

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom, as a result of any one accident or other cause twenty-five thousand dollars for any recovery by one person and subject to said limit for one person fifty thousand dollars for more than one person.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause ten thousand dollars.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the

obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor carrier and for which such motor carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such motor carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the motor carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. No other or additional policies, bonds, or certificates shall be required of any motor carrier by any city, town or other agency of the state. [C24,§5103; C27, 31, 35,§5105-a26; C39,§5100.26; C46, 50, 54, §325.26; 57GA, ch 167,§1]

Referred to in §321A.33  
Similar provision, §327.15

**325.27 Powers of cities and towns.** Cities and towns shall have power by ordinance to adopt general rules of operation, and to designate the streets or routes over which motor carriers shall travel; provided, however, that the exercise of the power granted in this section shall be reasonable and fair. Nothing in this chapter shall be construed as repealing chapter 388. Motor vehicles operating or proposing to operate between cities and towns, the corporate limits of which are not more than one mile apart, shall be considered as coming within the purview of the chapter referred to in this section. [C24,§5101; C27, 31, 35,§5105-a28; C39,§5100.27; C46, 50, 54,§325.27]

**325.28 Safe and sanitary condition of vehicle.** Every motor vehicle and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times, subject to inspection by the members of the department of public safety. [C24,§5104; C27, 31, 35,§5105-a29; C39,§5100.28; C46, 50, 54,§325.28]

41GA, ch 5,§15, editorially divided

**325.29 Driver of vehicle.** Every driver employed by a motor carrier shall be at least twenty-one years of age; in good physical condition; of good moral character; shall be fully competent to operate the motor vehicle under his charge, and shall hold a regular chauffeur's license from the department of public safety. [C24,§5104; C27, 31, 35,§5105-a30; C39,§5100.29; C46, 50, 54,§325.29]

**325.30 Riding on running board, etc.** On passenger-carrying motor vehicles passengers shall not be permitted to ride on the running boards, fenders, or on any other outside part of the vehicle. [C24,§5104; C27, 31, 35,§5105-a31; C39,§5100.30; C46, 50, 54,§325.30]

**325.31 Distinctive markings on vehicle.** There shall be attached to each motor vehicle such distinctive markings or tags as shall be prescribed by the commission. [C24,§5104; C27, 31, 35,§5105-a36; C39,§5100.31; C46, 50, 54,§325.31]

**325.32 Additional rules.** The commission shall promulgate such other safety rules and regulations as it may deem necessary to govern and control the operation of motor vehicles upon the highways and the maintenance and inspection thereof. [C24,§5104; C27, 31, 35, §5105-a37; C39,§5100.32; C46, 50, 54,§325.32]

**325.33 Cancellation of certificate.** For violation of any provision of this chapter or of any rule or regulation promulgated thereunder by any motor carrier, the commission may, in addition to other penalties herein provided, revoke and cancel the certificate of such motor-carrier. In the event of any flagrant and persistent violation of safety regulations by the holder of a certificate or his agent, upon the request of the commissioner of public safety the state commerce commission shall suspend such certificate of necessity until the safety regulations prescribed by the department of public safety are complied with or the commission may revoke the certificate at its discretion. [C24,§5104; C27, 31, 35,§5105-a38; C39, §5100.33; C46, 50, 54,§325.33]

**325.34 Misdemeanor—penalty.** Every owner, officer, agent, or employee of any motor carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this

chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C24,§5105; C27, 31, 35,§5105-a39; C39,§5100.34; C46, 50, 54,§325.34]

**325.35 Certificate conditioned on fee.** No certificate of convenience and necessity shall be issued nor continued in force until the holder thereof shall have paid to the commission for the administration of this chapter an annual certificate fee for each motor vehicle operated thereunder in the amount of five dollars. [57GA, ch 168,§1]

**325.36 Use of fees.** All moneys received under the provisions of this chapter, or so much thereof as may be necessary, shall be used for the administration and enforcement of the provisions of this chapter and the regulation of certificated motor carriers, and shall be paid to the commission by warrant drawn from time to time by the state comptroller upon the treasurer of state. Unexpended balances on June 30 of each year shall be credited to the general fund of the state by December 31 following. [57GA, ch 168,§2]

## CHAPTER 326

### TAXATION OF MOTOR VEHICLE CERTIFICATED CARRIERS

Referred to in §312.1

326.1 Definitions.  
326.2 Compensation tax.  
326.3 Payment of tax.  
326.4 Penalties.  
326.5 Rebate—fractional tax.  
326.6 Plates.  
326.7 Lien.

326.8 Sale of property.  
326.9 Duty to collect—procedure.  
326.10 Travel orders.  
326.11 Penalties.  
326.12 Accounting by commission.  
326.13 Disposition of proceeds.  
326.14 Repealed by 53GA, ch 122,§21.

**326.1 Definitions.** When used in this chapter:

1. The term "motor vehicle" shall mean any automobile, automobile truck, motorbus, combination of tractor and semitrailer, trailer when propelled by other motor vehicle, or other self-propelled vehicle, not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic or irregular departures from such termini or route; except those buses owned by school corporations or used exclusively in

conveying school children to and from schools or school activities, but such use shall be only in connection with the school business or activities of that particular school district.

2. The term "motor carrier" shall mean any person operating any motor vehicle upon any highway in this state.

3. The term "highway" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. The term "commission" shall mean the Iowa state commerce commission. [C24,§5094; C27, 31, 35,§5105-a40; C39,§5103.01; C46, 50, 54, §326.1]

**326.2 Compensation tax.** There shall be assessed against and collected from every motor carrier the following tax as compensation for the use of the highways to carry on business and for the repair and maintenance of the highways:

For each motor vehicle or combination of tractor and semitrailer or trailer with a gross weight in excess of sixteen tons, two hundred fifty dollars.

For each motor vehicle or combination of tractor and semitrailer or trailer with a gross weight in excess of twelve tons and not to exceed sixteen tons, two hundred dollars.

For each motor vehicle or combination of tractor and semitrailer or trailer with a gross weight in excess of eight tons and not to exceed twelve tons, one hundred fifty dollars.

For each motor vehicle or combination of tractor and semitrailer or trailer with a gross weight of eight tons or less, seventy-five dollars.

"Gross weight" shall mean the registered weight of a motor vehicle, including any combination of tractor and semitrailer, and any trailer when propelled by other motor vehicles; except in the case of motor vehicles not registered in this state, the gross weight shall mean the empty weight of the motor vehicle plus the actual weight of the load carried thereon.

None of the motor vehicles of any motor carrier shall be subject to the payment of the compensation tax, if the motor carrier registers, either voluntarily or because such registration is required by law, in Iowa under the provisions of chapter 321, either all of his motor vehicles using the highways of this state or such portion thereof as corresponds to or exceeds the ratio of the number of miles such motor vehicles operate in Iowa to the total number of miles such motor vehicles operate in all states. In addition to the authority granted the reciprocity board by section 321.56 to enter into agreements for such apportionment of motor vehicle registration with the duly authorized representatives of any county, state, territory, or federal district, the reciprocity board is hereby authorized to enter into prorating arrangements with individual interstate motor carriers operating motor vehicles as defined in this chapter. The reciprocity board may require motor carriers to submit under oath such information as the board deems necessary for the execution of this section. The board's determination of the number and type of vehicles subject to be registered in Iowa shall be final. In determining the total number of motor vehicles of a non-resident motor carrier that shall be registered in Iowa, fractions of a motor vehicle of one-half or less shall not be included. The commissioner of public safety shall provide suitable identification for each motor vehicle operated by a motor carrier who registers a portion of his fleet in Iowa under this section. This identification shall be displayed at all times in the manner prescribed by the commissioner of

public safety. [C24,§5102; C27, 31, 35,§5105-a41; C39,§5103.02; C46, 50, 54,§326.2; 57GA, ch 169,§1]

Referred to in §417.54  
Travel orders, see §326.10  
See also 57GA, ch 43,§3, as to urban transit companies

**326.3 Payment of tax.** The annual compensation tax shall be paid on or before the first day of January in each year; provided, however, the same may be paid in equal quarterly installments which shall be due on the first day of January, April, July, and October of each year. [C24,§5102; C27, 31, 35,§5105-a48; C39,§5103.03; C46, 50, 54,§326.3]

Referred to in §326.5

**326.4 Penalties.** If payment of compensation tax is not made on or before the date upon which it is due, it shall become delinquent and there shall be added as a penalty a sum equal to one-tenth of the amount of the original tax for each month or fraction thereof that the tax remains delinquent. [C24,§5102; C27, 31, 35, §5105-a49; C39,§5103.04; C46, 50, 54,§326.4]

**326.5 Rebate—fractional tax.** If during any year a motor vehicle ceases to be used for compensation the operator thereof, upon satisfactory proof to the commission of cessation of such use, shall be exempted from the payment of the quarterly installments of the annual tax thereafter and shall be entitled to a refund of any subsequent quarterly installments previously paid. Such refunds shall be made by the commission out of the money collected under the provisions of this chapter before such money is distributed as provided for by section 326.13. The tax to be assessed on any motor vehicle placed in service for compensation after January 31 shall be computed on the basis of one-twelfth of the annual tax multiplied by the number of unexpired months in the current quarter, and in succeeding quarters shall be computed on the basis of the regular quarterly payment as provided in section 326.3. [C39,§5103.05; C46, 50, 54,§326.5]

Referred to in §§326.12, 326.13

**326.6 Plates.** The commission shall issue a distinguishing identification plate for each motor vehicle, including any combination of tractor and semitrailer or trailer when propelled by other motor vehicle, for which the compensation tax has been paid, and the motor carrier shall affix such plate to the vehicle in a conspicuous place and if the commission shall so prescribe, in such place as may be prescribed by the commission. [C39,§5103.06; C46, 50, 54, §326.6]

Referred to in §§326.11, 326.13

**326.7 Lien.** Taxes and penalties imposed by this chapter shall be a first lien upon all property of the motor carrier. [C24,§5102; C27, 31, 35,§5105-a50; C39,§5103.07; C46, 50, 54,§326.7]

**326.8 Sale of property.** If payment is not made on or before sixty days after the date when the tax became delinquent, the property of the motor carrier, or so much thereof as may



be necessary, may be sold to satisfy the said taxes and penalties, interest and costs of sale. [C24,§5102; C27, 31, 35,§5105-a51; C39,§5103.08; C46, 50, 54,§326.8]

**326.9 Duty to collect—procedure.** All taxes and penalties imposed by this chapter shall be paid to the commission, and it shall be the duty of the commission to enforce the collection of all taxes and penalties, and notice of sale, and procedure thereunder shall, so far as may be, accord with the provisions of the law for the collection of taxes upon general property. [C24,§5102; C27, 31, 35,§5105-a52; C39,§5103.09; C46, 50, 54,§326.9]

Collection of taxes, ch 445

**326.10 Travel orders.** A motor carrier shall be exempt from the compensation tax provided for by this chapter as to such motor vehicles as he uses only occasionally in motor carrier service, upon obtaining from the commission a travel order for each twenty-four hour period in which the motor vehicle is to be used in motor carrier service, and displaying the travel order on the vehicle in the manner prescribed by the commission, while the motor vehicle is being so operated. The commission shall issue such orders to motor carriers upon application therefor and upon payment to the commission of the sum of three dollars for each travel order for motor vehicles with a gross weight of twelve tons or less and five dollars for each travel order for motor vehicles with a gross weight in excess of twelve tons. Such order shall be conspicuously displayed in the manner prescribed by the commission on such vehicle at all times while such vehicle is being operated thereunder. The commission may issue travel orders for such twenty-four hour periods as may appear to it to be advisable. [C39, §5103.10; C46, 50, 54,§326.10]

Referred to in §826.11

**326.11 Penalties.** Every owner of a motor vehicle registered within the state of Iowa and

every motor carrier within the meaning of this chapter, who operates or permits the operation of such motor vehicle upon the highways of this state, without the distinguishing identifying plates attached to said motor vehicle and displayed as provided in section 326.6 or who operates or permits to be operated on the highways of the state a motor vehicle as described in section 326.10 without first obtaining a travel order from the commission and causing the same to be displayed as provided by said section shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars, or imprisoned in the county jail for a period not to exceed thirty days.

Nothing in this section shall be held to apply in a case where a number has been lost or destroyed without fault of the owner, until such owner of the motor vehicle has had a reasonable opportunity to replace the same. [C46, 50, 54,§326.11]

**326.12 Accounting by commission.** The commission shall remit to the treasurer of state all moneys collected under this chapter. The commission shall, on or before fifteen days after the close of each quarterly period of each calendar year, remit to the treasurer of state all moneys collected under this chapter during the preceding quarter, except such moneys as shall have been repaid as provided by section 326.5. [C27, 31, 35,§5105-a53; C39,§5103.11; C46, 50, 54,§326.12]

**326.13 Disposition of proceeds.** All of the moneys received under the provisions of this chapter, except such amount as may be necessary to make refunds as provided for in section 326.5 and to pay for the identification plate provided for in section 326.6, shall be credited to the road use tax fund. [C24,§5102; C27, 31, 35, §5105-a54; C39,§5103.12; C46, 50, 54,§326.13]

Referred to in §326.5  
Road use tax fund, §312.1

**326.14** Repealed by 53GA, ch 122,§21.

## CHAPTER 327

### MOTOR VEHICLE TRUCK OPERATORS

327.1 Definitions.  
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327.21 Violations—effect.  
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327.23 Stone and road materials carriers.

**327.1 Definitions.** When used in this chapter:

1. The term "motor truck" shall mean any automobile, automobile truck, or other self-

propelled vehicle, including any trailer, semi-trailer, or other device used in connection therewith, not operated upon fixed rails or track, used for the public transportation of

freight for compensation, not operating between fixed termini, nor over a regular route, or used in connection with the transportation of property for compensation under an individual written contract.

2. The term "truck operator" shall mean any person operating any motor truck or motor trucks upon any highway in this state.

3. The term "highway" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. The term "commission" shall mean the Iowa state commerce commission.

5. The term "contract carrier" shall mean any person who does not hold out to the general public to serve it indiscriminately and who, for compensation, engages in the business of transportation of property by motor truck under individual written contracts, thereby providing a special and individual service required by the peculiar needs of a particular shipper, but does not include, (1) a motor carrier as defined in chapter 325, (2) a truck operator, or (3) a person whose transportation by motor vehicle is in furtherance of a private enterprise other than the business of transportation for others for compensation.

The term "individual written contract" shall mean an agreement in writing between a contract carrier and a shipper, effective for a duration of at least three months, imposing mutual obligations to tender freight and perform transportation, and specifying the charges. The presence of goods originating from more than five shippers on one vehicle at any one time shall be prima-facie evidence that the carrier is a motor carrier and not a contract carrier. [C31, 35,§5105-c1; C39,§5105.01; C46, 50, 54,§327.1; 57GA, ch 170,§§1, 2]

**327.2 Jurisdiction.** The commission is hereby vested with power and authority and it shall be its duty to:

1. Fix or approve the rates, charges, classifications, and rules and regulations pertaining thereto, of each truck operator, after complaint has been filed in accordance with rules established by the commission.

2. Regulate and supervise the service of each truck operator, provided that only the department of public safety shall prescribe and enforce safety regulations which it is hereby empowered to do.

3. Require the filing of annual and such other reports as it may deem necessary.

4. Supervise and regulate truck operators in all other matters affecting the relationship between such truck operators and the traveling and shipping public. [C31, 35,§5105-c2; C39, §5105.02; C46, 50, 54,§327.2]

**327.3 Rules and regulations.** The commission shall also have power and authority by general or special order to prescribe rules and regulations applicable to any and all truck operators and contract carriers, provided that only the department of public safety shall

prescribe and enforce safety regulations. [C31, 35,§5105-c3; C39,§5105.03; C46, 50, 54,§327.3]

**327.4 Powers.** All control, power, and authority over railroads and railroad companies, motor vehicles and motor carriers now vested in the commission, insofar as the same are applicable, are hereby specifically extended to include truck operators and contract carriers. [C31, 35,§5105-c4; C39,§5105.04; C46, 50, 54, §327.4]

**327.5 Charges.** All charges made by any truck operator for any service rendered or to be rendered in the public transportation of property, or in connection therewith, shall be just, reasonable, and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [C31, 35, §5105-c5; C39,§5105.05; C46, 50, 54,§327.5]

**327.6 Permit.** It is hereby declared unlawful for any truck operator or contract carrier to operate or furnish public service within this state without first having obtained from the commission a permit as hereinafter defined. Providing, however, that any person, firm, or corporation whose truck operator or contract carrier permit has been revoked for a willful violation shall be required to pay a fee of one hundred dollars in addition to the other fees required by this section before such person, firm or corporation shall be granted a new permit. And providing, further, that any person, firm or corporation whose permit has been revoked shall not operate as a truck operator or contract carrier until such person, firm, or corporation shall have applied for and received a new permit from the commission. [C31, 35,§5105-c6; C39,§5105.06; C46, 50, 54, §327.6]

**327.7 Application.** Before a permit shall be issued, the person seeking the same shall file an application therefor. All such applications shall be in writing, and in addition to other information required, shall contain the following:

1. The name of the individual, firm or corporation making the application.

2. The principal office or place of business of the applicant.

3. A general description of the territory in which the applicant proposes to operate and a general description of the service proposed to be rendered.

4. A complete description of the equipment which the applicant proposes to use in furnishing the service. [C31, 35,§5105-c7; C39,§5105.07; C46, 50, 54,§327.7]

**327.8 Issuance.** Upon the filing of the application and if the applicant shall otherwise comply with the terms and conditions of this chapter, the commission shall issue to the applicant a permit as herein defined. The actual operation of such motor vehicle or vehicles shall not begin without the written

approval of the state department of public safety, stating that the applicant has complied with the prescribed safety regulations. [C31, 35, §5105-c8; C39, §5105.08; C46, 50, 54, §327.8]

**327.9 Fee.** No permit shall be issued nor continued in force until the holder thereof shall have paid to the commission for the administration of this chapter an annual permit fee for each motor truck operated thereunder in the amount of five dollars. [C31, 35, §5105-c9; C39, §5105.09; C46, 50, 54, §327.9]

Referred to in §327.10

**327.10 Nonresidents—reciprocal waiver of fee.** The reciprocity board established under the provisions of section 321.56 shall be empowered to waive the fee provided for in section 327.9, provided said motor truck is owned by a nonresident of this state and is operated upon the highways thereof only in the conduct of business in interstate commerce and provided further that the owner of said motor truck has complied with the registration requirements of the state of his or its residence, and said board shall do all things necessary or required to negotiate and perfect reciprocal agreements between the various states and the state of Iowa, waiving the fee provided for in section 327.9 for the purpose of securing exemptions and privileges for citizens of this state operating motor vehicles in other states. [C39, §5105.10; C46, 50, 54, §327.10; 57GA, ch 169, §3]

**327.11 Payment of fee.** It shall be the duty of the commission to collect all permit fees provided in this chapter, and failure to pay any such permit fee within thirty days after the time the same shall become due shall be cause for revocation of the permit of the truck operator in arrears. [C31, 35, §5105-c10; C39, §5105.11; C46, 50, 54, §327.11]

**327.12 Accounting.** The commission shall, on the last day of each month, remit to the treasurer of state all moneys collected under this chapter during such month. [C31, 35, §5105-c11; C39, §5105.12; C46, 50, 54, §327.12]

**327.13 Expenditure of funds.** All moneys received under the provisions of this chapter or so much thereof as may be necessary shall be used for the administration and enforcement of the provisions of this chapter and the regulation of truck operators, and shall be paid to the commission by warrant drawn from time to time by the state comptroller upon the treasurer of state. Unexpended balances on June 30 of each year shall be credited to the general fund of the state by December 31 following. [C31, 35, §5105-c12; C39, §5105.13; C46, 50, 54, §327.13]

**327.14 Permit—nature of.** Permits issued hereunder shall be personal property and may be sold, transferred, leased, or assigned under such reasonable rules and regulations as may be fixed by the commission. [C31, 35, §5105-c13; C39, §5105.14; C46, 50, 54, §327.14]

**327.15 Insurance or bond.** No permit shall be issued until and after the applicant shall have filed with the commission an insurance policy, policies, surety bond or certificate of insurance in form to be approved by the commission issued by some insurance carrier or bonding company authorized to do business in this state. The minimum limits of liability of any policy, policies or surety bond shall, for each motor truck thereby covered, be as follows:

1. To cover the assured's legal liability as a truck operator or contract carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, twenty-five thousand dollars for any recovery by one person, and subject to said limit for one person fifty thousand dollars for more than one person.

2. To cover the assured's legal liability as a truck operator or contract carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars.

3. To cover the assured's legal liability as a truck operator for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured, as a result of any one accident or any other cause, two thousand dollars for each motor truck, except a combination of truck tractor and semitrailer for which such minimum limit shall be five thousand dollars. Such insurance policy, policies or surety bond shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor truck and for which such truck operator would be legally liable. Such insurance policy, policies or surety bond shall also provide that any person, firm, association or corporation having a right of action against such truck operator for injuries to persons or loss of or damage to property, may bring action for recovery directly upon such insurance policy, policies or surety bond against such insurance carrier or bonding company when service cannot be obtained on the truck operator within this state. No other or additional policies or bond shall be required of any truck operator by any city, town, or other agency in the state. Failure to keep such insurance in force at all times shall cause the permit of the truck operator to be revoked. [C31, 35, §5105-c14; C39, §5105.15; C46, 50, 54, §327.15]

Referred to in §§321A.33, 327.23  
Similar provision, §325.26

**327.16 Revocation of permit.** For just cause, after due hearing, the commission may at any time alter, amend or revoke any permit issued. If the holder of the permit or his agent persists in a violation of any safety regulation prescribed by the department of public safety, the

latter may recommend to the commission revocation of said permit and such violation shall be grounds for such revocation. [C31, 35,§5105-c15; C39,§5105.16; C46, 50, 54,§327.16]

**327.17 Equipment—inspection.** Every motor truck and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the department of public safety. [C31, 35,§5105-c16; C39,§5105.17; C46, 50, 54, §327.17]

**327.18 Drivers—conditions.** Every person driving a motor truck as defined in this chapter shall be at least eighteen years of age; in good physical condition; of good moral character; shall be fully competent to operate the motor truck under his charge and shall hold a regular chauffeur's license from the department of public safety. [C31, 35,§5105-c17; C39,§5105.18; C46, 50, 54,§327.18]

**327.19 Required marking.** There shall be attached to each motor truck such distinctive markings or tags as shall be prescribed by the commission. [C31, 35,§5105-c22; C39,§5105.19; C46, 50, 54,§327.19]

**327.20 Rules for operation.** The commissioner of public safety shall promulgate such other safety rules and regulations as he may deem necessary to govern and control the operation of motor trucks upon the highways and the maintenance and inspection thereof. [C31, 35,§5105-c23; C39,§5105.20; C46, 50, 54,§327.20]

**327.21 Violations—effect.** For violation by any truck operator of any provision of this chapter or of any rule or regulation promulgated thereunder, the commission may, in addition to other penalties herein provided, suspend or revoke and cancel the permit of such truck operator. [C31, 35,§5105-c24; C39,§5105.21; C46, 50, 54,§327.21]

**327.22 Violations—punishment.** Every owner, officer, agent, or employee of any truck operator, and every other person who violates

or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or the commissioner of public safety, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C31, 35,§5105-c25; C39,§5105.22; C46, 50, 54,§327.22]

Constitutionality, 48GA, ch 129,§27

**327.23 Stone and road materials carriers.** Any person, firm, or corporation may obtain a permit to engage as a contract carrier in this state in the transportation of agricultural limestone, aggregates such as sand, gravel, crushed or broken stone, and all other materials for road or bridge construction or reconstruction projects, by filing with the Iowa state commerce commission an application therefor. No proof of need for service, nor public convenience or necessity shall be required of such applicant; there shall be no limitation on the number of individual contracts, oral or written, permitted and no tariff or schedule of rates or charges shall be required. The commission shall issue such permit when the applicant has paid all fees required by this chapter, and complied with the provisions of section 327.15 relating to insurance protection. The holder of such permit shall in all cases comply with the safety rules and regulations provided for by this chapter and shall pay all annual permit fees required of other contract carriers and such permits shall, after due hearing, be subject to revocation for violation thereof. [C31, 35,§5105-c1; C39,§5105.01; C46, 50, 54,§327.1; 57GA, ch 170, §3]

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

- 327A.1 Definitions of words and phrases.
- 327A.2 Certificate required.
- 327A.3 Applicable sections of law.
- 327A.4 Disposal certificate.
- 327A.5 Insurance required.
- 327A.6 All motor vehicle law applicable.
- 327A.7 Drivers requirements.
- 327A.8 Markings on vehicles.

- 327A.9 Cancellation or suspension.
- 327A.10 Hours of operation.
- 327A.11 Rest period.
- 327A.12 Records kept.
- 327A.13 Disabled vehicles.
- 327A.14 Prior service.
- 327A.15 Vehicles excepted.
- 327A.16 Dairy products exempt.

**327A.1 Definitions of words and phrases.** The following words and phrases, when used in this chapter, will for the purpose of this chapter, have the following meanings respectively ascribed to them.

- 1. "Liquid transport carrier" shall mean any

person engaged in the transportation, for compensation, of liquid products in bulk upon any highway in this state.

- 2. "Person" shall mean any individual, association, partnership, firm or corporation.

- 3. "Vehicle" shall mean any self-propelled

vehicle, any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or tracks, equipped with one or more cargo tanks, or between fixed termini or over a regular route and used for the transportation of liquid products in bulk.

4. "Transportation for compensation" shall, in addition to all public transportation, also include transportation primarily for others by a person, not a distributor licensed under chapter 324, even though as an incident thereto he buys the liquids at the point where the transportation originates and sells it at a delivered price at destination and, except as otherwise provided, shall include transportation for others by a distributor licensed under chapter 324 or liquid products not owned by the distributor.

5. "Commission" shall mean the Iowa state commerce commission. [57GA, ch 171,§1]

Referred to in §327A.15

**327A.2 Certificate required.** Except as otherwise provided, it is hereby declared unlawful for any liquid transport carrier to transport liquid products in bulk, for compensation from any point or place in the state of Iowa to another point or place in said state without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. [57GA, ch 171,§2]

Referred to in §327A.15

**327A.3 Applicable sections of law.** The provisions of sections 325.7 to section 325.24, inclusive, insofar as applicable are hereby extended to include liquid transport carriers in relation to hearing on an application for the aforesaid certificate of convenience and necessity. [57GA, ch 171,§3]

Referred to in §327A.15

**327A.4 Disposal of certificate.** Whenever any person shall file with the commission an application for authority to sell, transfer, lease or assign a certificate of convenience and necessity issued under the provisions of this chapter, the commission shall fix a date for hearing thereon and cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered to be published in some newspaper of general circulation in each such county, once each week for two consecutive weeks, and shall notify each liquid transport carrier holding a certificate, issued by the commission, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing, and the provisions of chapter 325, inclusive of this chapter shall, insofar as appropriate be applicable to the said hearing. [57GA, ch 171,§4]

Referred to in §§327A.14, 327A.15

**327A.5 Insurance required.** No certificate shall be issued until and after an applicant shall have filed with the commission an insurance policy, policies, surety bond or certifi-

cate of insurance, in form to be approved by the commission, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state.

The minimum limit of liability of any policy or surety bond shall, for each vehicle thereby covered, be as follows:

1. To cover the assured's legal liability as a liquid transport carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, one hundred thousand dollars for any recovery by one person, and subject to said limit for one person, one hundred thousand dollars, for more than one person.

2. To cover the assured's legal liability as a liquid transport carrier for damages to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause one hundred thousand dollars.

3. To cover the assured's legal liability as a liquid transport carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment and loss to or damage to property resulting from the operation of such liquid transport carrier and for which such liquid transport carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such liquid transport carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the liquid transport carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. Except as required in this chapter and in chapter 325 and except for ordinary registration of motor vehicles, no other or additional policies, bonds or certificates shall be required by any city, town or other agency of this state for any liquid transport vehicle. [57GA, ch 171,§5]

Referred to in §327A.15

**327A.6 All motor vehicle law applicable.** Every vehicle operated by a liquid transport carrier and all parts thereof shall comply with all of the provisions of chapter 321 applicable thereto and shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the members of the department of public safety. [57GA, ch 171,§6]

Referred to in §327A.15

**327A.7 Drivers requirements.** Every driver employed by a liquid transport carrier shall be at least twenty-one years of age; in good physical condition; of good moral character; shall be fully competent to operate the vehicle under his charge, and shall hold a regular chauffeur's license from the department of public safety. [57GA, ch 171,§7]

Referred to in §327A.15

**327A.8 Markings on vehicles.** There shall be attached to each vehicle such distinctive markings or tags as shall be prescribed by the commission. [57GA, ch 171,§8]

Referred to in §327A.15

**327A.9 Cancellation or suspension.** For violation of any of the provisions of this chapter or of any rule or regulation promulgated hereunder by any liquid transport carrier, the commission may revoke and cancel the certificate of such liquid transport carrier. In the event of any flagrant and persistent violation of safety laws or regulations by the holder of a certificate or his agent, upon the request of the commissioner of public safety, the state commerce commission shall suspend such certificate of necessity until the safety laws or regulations prescribed by the department of public safety are complied with or the commission may revoke the certificate at its discretion. [57GA, ch 171,§9]

Referred to in §327A.15

**327A.10 Hours of operation.** No person shall operate a vehicle on the highways of this state when operation of such vehicle would result in more than twelve hours of continuous driving operation by such person. [57GA, ch 171,§10]

Referred to in §327A.15

**327A.11 Rest period.** No person shall operate a vehicle on the highways of this state for a period of eight hours following twelve consecutive driving hours of operation of any vehicle. [57GA, ch 171,§11]

Referred to in §327A.15

**327A.12 Records kept.** Every liquid transport carrier shall keep or cause to be kept a record accurately setting forth the hours of vehicle operation of each person operating a vehicle or vehicles owned or leased by such carrier. The commissioner of public safety or the commission may require any liquid transport carrier to submit such records for inspection. [57GA, ch 171,§12]

Referred to in §327A.15

**327A.13 Disabled vehicles.** All vehicles or combination of vehicles shall be equipped with direction signal devices of a type complying with the provisions of section 321.317 relating to such devices and whenever, during hours of darkness, any vehicle is disabled or for any other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing the operator of such vehicle shall display such directional signals on such vehicle or combination of vehicles in simultaneous operation. The provisions of this section shall not be construed to be in lieu of the provisions of sections 321.447 and 321.448 and the provisions of the said sections shall be fully applicable as provided therein. [57GA, ch 171,§13]

Referred to in §327A.15

**327A.14 Prior service.** Any liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957 shall be issued a certificate of convenience and necessity covering all points in this state to all other points in this state, and all routes and areas in this state, provided that application therefor shall be made within sixty days after May 17, 1957. No rights so granted may be sold, leased, transferred or assigned, except such rights as are actively being exercised at the time of sale, lease, transfer or assignment. Before any rights may be sold, leased, transferred or assigned, application therefor shall be filed with the commission, which shall fix a date for hearing thereon, and the provisions of section 327A.4 shall be applicable thereto. [57GA, ch 171,§15]

Referred to in §327A.15

**327A.15 Vehicles excepted.** Sections 327A.1 through 327A.14 shall not apply to (1) transportation in bulk by vehicle having a total cargo tank shell capacity of two thousand gallons or less, (2) transportation by a distributor licensed under chapter 324 incidental to and in the regular course of his business as a distributor of petroleum products, or (3) reciprocal exchange between distributors licensed under chapter 324 of transportation pursuant to an exchange of products between distributors so licensed. [57GA, ch 171,§16]

**327A.16 Dairy products exempt.** The provisions of this chapter shall not apply to the transportation of dairy products. [57GA, ch 171,§17]

## CHAPTER 328

## AERONAUTICS COMMISSION

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| 328.27 | Issuance of certificates.   |        |  |

**328.1 Definitions.** The following words, terms, and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. "Aeronautics" means transportation by aircraft, the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes, the design, establishment, construction, extension, operation, improvement, repair, or maintenance of landing areas, or other air navigation facilities, and air instruction.

2. "Aeronautics instructor" means any individual giving or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward.

3. "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both.

4. "Air instruction" means the imparting of aeronautical information, by any aeronautics instructor, or in or by any air school or flying club.

5. "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and any

individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, aircraft appliances, or parachutes; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator. It shall not include individuals engaged in aeronautics as an employee of the United States or any state or foreign country and any individuals employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

6. "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon any landing area within this state.

7. "Air navigation facility" means any facility, other than one owned or controlled by the federal government, used, available for use, or designed for use, in aid of air navigation, including landing areas, and any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

8. "Airport" means any landing area used regularly by aircraft for receiving or discharging passengers or cargo, and all appurtenant

areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

9. "Air school" means any person engaged in giving, or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, and who employs other persons for such purposes. It does not include any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

10. "Civil aircraft" means any aircraft other than a public aircraft.

11. "Commission" means the Iowa aeronautics commission; "state" or "this state" means the state of Iowa; and "director" means the director of aeronautics of this state.

12. "Landing area" means any locality, either of land or water, including intermediate landing fields, which is used or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo; it does not include any intermediate landing field established or maintained by the federal government as a part of any civil airway.

13. "Municipality" means any county, city, village, town or township, of this state, and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate landing areas and other air navigation facilities.

14. "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft and shall embrace any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise).

15. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

16. "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

17. "Operation for hire" shall mean hire to the general public or members or classes thereof, and shall not include such operations as are incidental to the carrying on of the general business of an aircraft owner engaged in business other than aeronautics.

18. The singular shall include the plural, and the plural the singular. [C31, 35,§8338-c1; C39, §8338.14; C46, 50, 54,§328.1]

**328.2 Aeronautics commission — creation — membership.** There is hereby created and established an aeronautics commission to be known as the "Iowa Aeronautics Commission", to consist of five members, only three of whom shall be members of the same political party, and who shall be appointed by the governor with the approval of the senate in executive session. [C35,§8338-f1; C39,§8338.01; C46, 50, 54, §328.2]

**328.3 Tenure.** The members of said commission shall hold office for six years. Each member shall serve until the appointment and qualification of his successor. [C35,§8338-f2; C39,§8338.02; C46, 50, 54,§328.3]

For terms of first appointees, see 51GA, ch 148,§3

**328.4 Vacancies.** Vacancies on the commission shall be filled by appointment by the governor, for the balance of the unexpired term. [C35,§8338-f3; C39,§8338.03; C46, 50, 54,§328.4]

**328.5 Qualifications.** All members of the commission shall be electors of the state, and at least three members must hold at the time of their appointment valid federal airman certificates in the grade of private pilot or higher. [C46, 50, 54,§328.5]

**328.6 Compensation.** No member of the commission shall receive any salary for his services, but each shall be reimbursed for necessary expenses incurred by him in the performance of his duties, and each shall be paid, in addition to said expenses, the sum of nine dollars per diem, or part thereof, spent in attending to his duties as commissioner, provided such per diem compensation shall not exceed four hundred fifty dollars for each fiscal year. [C35,§8338-f4; C39,§8338.04; C46, 50, 54,§328.6]

**328.7 Organization.** The commission shall, within thirty days after its appointment, meet and organize. At such meeting it shall elect from among its members a chairman, a vice-chairman, and a secretary, to serve for one year, and annually thereafter shall elect such officers; all to serve until their successors are elected and qualified. [C46, 50, 54,§328.7]

**328.8 Qualifications of chairman.** The member elected as chairman shall have no personal financial interest in any commercial aeronautics enterprise, and acquisition of such interest subsequent to his election shall disqualify him from further service as chairman. [C46, 50, 54,§328.8]

**328.9 Meetings.** It shall at its initial meeting fix the date and place for its regular meetings. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called upon notice, as provided by its rules and regulations. All commission meetings shall be open to the public. Regular meetings shall be held at its office, but whenever the convenience of the public or of the parties



may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it. [C35,§8338-f5; C39,§8338.05; C46, 50, 54,§328.9]

**328.10 Reports.** It shall report in writing to the governor on or about December 1 of each year, a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and expenditures, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. [C46, 50, 54,§328.10]

**328.11 Office and expenses.** Suitable offices and other equipment shall be provided by the state for the commission in the city of Des Moines and it may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this chapter and the general promotion of aeronautics within the state. The commission may employ such clerical, technical, and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries, subject to the approval of the governor and comptroller. [C35,§8338-f4; C39,§8338.04; C46, 50, 54,§328.11]

**328.12 Powers and duties.** The commission shall have the following powers and duties:

1. *Promotion of aeronautics.* It is empowered and directed to encourage, foster and assist in the general development and promotion of aeronautics in this state, and to make disbursements from the state aviation fund for such purposes.

2. *Rules and regulations.* It shall have power to make such reasonable rules and regulations, consistent with the provisions of this chapter, as may be deemed by the commission to be necessary and expedient for the administration of the affairs of the commission, and the administration and enforcement of this chapter, and to amend said rules and regulations at any time.

3. *Filing of rules.* It shall keep on file at the office of the commission, for public inspection, a copy of all its rules and regulations with all amendments thereto, and mail copy thereof to all registered landing areas in this state. All rules shall take effect thirty days after such mailing.

4. *Technical services available.* It shall, insofar as is reasonably possible, make available the engineering and other technical services of the commission, without charge, in connection with aeronautics.

5. *Intervention.* It may participate as party plaintiff or defendant, or as intervenor, complainant or movant, on behalf of the state or any municipality or citizen thereof, in any proceeding having to do with aeronautics; provided, however, that in any application before

the civil aeronautics board the commission shall take no position as between applicants or municipalities.

6. *Enforcement of aeronautics laws.* It shall be the duty of the commission, its members and employees, and the director of aeronautics, to enforce and assist in the enforcement of this chapter and of all rules and regulations issued pursuant thereto, and of all other laws of this state relating to aeronautics; and, in the aid of such enforcement and within the scope of such duties general powers of peace officers are hereby conferred upon the commission, each of its members, the director of aeronautics, and such of the officers and employees of the commission as may be designated by it to exercise such powers. The commission is further authorized, in the name of this state, to enforce the provisions of this chapter and the rules and regulations issued pursuant thereto by injunction in the courts of this state.

7. *Use of existing facilities.* The commission, in the discharge of all functions prescribed by this chapter, law enforcement, technical, and other, to every feasible extent shall use the facilities of other agencies of the state, and such agencies are authorized and directed to make available to the commission such facilities and services.

8. *Investigations.* The commission, any member thereof, the director of aeronautics, or any officer or employee of the commission designated by it, when acting for, and with the authority of the commission, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of this chapter and orders, rules, and regulations of the commission. In any such inquiry, investigation, or hearing, the person acting for the commission shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books, and documents.

9. *Reports of investigations—limitations on use.* The reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any civil suit, growing out of any matter referred to in said investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted in behalf of the commission or this state under the provisions of this chapter and other laws of this state relating to aeronautics.

10. *Authority to contract.* It may enter into any contracts necessary to the execution of the powers granted it by this chapter.

11. *No exclusive rights granted.* It shall grant no exclusive right for the use of any airway, airport, landing area, or other air navigation facility under its jurisdiction. [C35, §§8338-f5,-f6,-f8,-f9,-f10,-f13; C39, §§8338.05, 8338.06, 8338.08, 8338.09, 8338.10, 8338.13; C46, 50, 54, §328.12]

**328.13 Co-operation with federal government.** The commission is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditures of federal moneys upon such airports and other navigation facilities; provided, however, that no matching of federal funds by state funds may be made unless such federal moneys have been accepted by the general assembly. [C46, 50, 54,§328.13]

**328.14 Authority to receive federal moneys for state and municipalities.** It is authorized to accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state, or any municipality thereof, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and it is authorized to act as agent of any municipality of this state, upon the request of such municipality, in accepting, receiving, and receipting for such moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys, and the governing body of any such municipality is authorized to designate the commission as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with this chapter. Such moneys as are paid over by the United States government shall be retained by the state, or paid over to said municipalities, under such terms and conditions as may be imposed by the United States government in making such grants. [C46, 50, 54,§328.14]

**328.15 Contracts—law governing.** All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the commission, either as the agent of this state or of any municipality or made by any such municipality itself, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where such undertaking is financed wholly or partially with federal moneys, the commission, as such agent, or the municipality acting for itself, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, not-

withstanding any other state law to the contrary. [C46, 50, 54,§328.15]

**328.16 Disposition of federal funds.** All moneys accepted for disbursement by the commission pursuant to section 328.14 shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this chapter. The commission is authorized, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement. [C46, 50, 54,§328.16]

**328.17 Director of aeronautics.** A director of aeronautics shall be appointed by the commission, to serve for an indefinite term at the pleasure of the commission. He shall hold, at the time of his appointment and for the duration of his tenure, valid federal airman certificate in the grade of private pilot or higher, and shall have had at least two years practical experience in aeronautics. He shall devote his entire time to the duties of his office as required and prescribed by this chapter and shall not be actively engaged or employed in any other business, vocation, or employment, nor shall he have any pecuniary interest of any kind in any civil aeronautics enterprise. He shall receive such compensation as the commission may determine, subject to the approval of the executive council, and shall be reimbursed for all expenses actually and necessarily incurred by him in the discharge of his official duties. [C46, 50, 54,§328.17]

**328.18 Powers and duties of director.** The director shall be the executive officer of the commission, but shall not be a member thereof. He shall be in charge of the office of the commission and responsible to the commission. At the direction of the commission he shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized, and perform such duties as may be prescribed by the commission. [C46, 50, 54,§328.18]

**328.19 Registration.** Every airman, aeronautics instructor, landing area, and air school, shall register annually with the aeronautics commission.

There shall be paid to the commission, at the time of such registrations, the following annual registration fees:

1. Airmen and aeronautics instructors, one dollar.
2. Air school, twenty dollars for the first

registration and ten dollars for each annual renewal thereof.

The commission shall collect no fee for the registration of landing areas. [C31, 35, §8338-c2; C39, §8338.15; C46, 50, 54, §328.19]

Referred to in §§328.26, 328.35

**328.20 Registration of aircraft.** Every civil aircraft owned either wholly or in part by persons residing in this state, unless specifically excepted under the provisions of this chapter, shall be registered annually with the commission, by the owner thereof. [C31, 35, §8338-c2; C39, §8338.15; C46, 50, 54, §328.20]

Referred to in §§328.26, 328.35

**328.21 Aircraft registration fees.** There shall be paid to the commission at the time of such registration an annual registration fee for each such aircraft, to be computed as follows:

1. For the first registration, a sum equal to one and one-half percent of the manufacturer's list price of the aircraft.

2. After said aircraft has been registered once the registration fee shall be seventy-five percent of the rate as fixed for the first registration; after two times fifty percent; and after three times twenty-five percent; provided, however, that no aircraft shall be registered for a registration fee of less than ten dollars.

3. Where there is no delinquency and the registration is made in August or succeeding months to and including May, the fee shall be computed on the basis of one-twelfth of the annual registration fee multiplied by the number of the unexpired months of the year and said amount shall be the fee collected. No fee shall be required for the month of June for a new aircraft, in good faith delivered in that month, providing said aircraft is registered at the time of purchase for the following year.

4. The registration fee for an aircraft operated in scheduled interstate airline operation, owned by an Iowa person and operated part time within this state shall be a fee of ten dollars each for the first two years of registration and thereafter a sum equal to a percentage of the aircraft registration fee hereinbefore provided for in subsections 2 and 3 of this section, which percentage shall be computed by dividing the total number of hours during which said aircraft is operated within this state by the total number of hours during which said aircraft is operated in scheduled interstate airline operation. The full registration fee shall be paid at the beginning of the registration period and adjustment and refund shall be made by the commission following the close of the registration period upon application therefor by the person in whose name the aircraft was registered, said application to be supported by such records as the commission shall prescribe.

5. Should the commission find and determine that no established manufacturer's list price exists for any such aircraft the commission is

hereby authorized and empowered to thereupon determine and fix the fair value of such aircraft which fair value shall be used in lieu of a manufacturers' list price in computing the registration fee for each such aircraft as otherwise provided by this section.

When the fee as so computed results in a fractional part of a dollar, it shall be computed to the nearest quarter of a dollar. [C46, 50, 54, §328.21]

Referred to in §§328.26, 328.35

**328.22 Used aircraft.** When an aircraft other than new is registered in Iowa the age of the aircraft in years calculated to the nearest anniversary of the date of manufacture shall be construed as the number of times previously registered, and reduction of the registration fee computed accordingly. [C46, 50, 54, §328.22]

Referred to in §328.26

**328.23 Credit on registration fees.** There shall be credited upon the registration fee due for the registration of any aircraft pursuant to the provisions of this chapter, any tax, registration fee, or license fee levied upon or charged for said aircraft and paid to any other state, and the registration fee due and to be collected pursuant to the provisions of this chapter, shall be reduced by the amount of said tax, registration fee or license fee, upon the presentation of the official receipt therefor with the application for registration. [C46, 50, 54, §328.23]

**328.24 Refunds of fees.** If, during the year for which an aircraft was registered and the required fee paid therefor, such aircraft is destroyed by fire or accident or junked, and its identity as an aircraft entirely eliminated, or it is removed and continuously used beyond the boundaries of the state, then the owner in whose name it was registered at the time of such destruction, dismantling, or removal from the state shall return the certificate of registration to the commission within ten days and make affidavit of such destruction, dismantling, or removal and make claim for such refund.

The registration fee for the unexpired portion of the year shall thereupon be refunded pro rata to the nearest full calendar month. [C46, 50, 54, §328.24]

**328.25 Fees in lieu of taxes.** The registration fees imposed by this chapter upon aircraft shall be in lieu of all taxes, general or local, except state sales or use tax, to which aircraft might otherwise be subject. [C46, 50, 54, §328.25]

**328.26 Application for registration.** Every application for registration pursuant to sections 328.19 to 328.22, inclusive, shall be made upon such forms, and shall contain such information, as the commission may prescribe, and every application shall be accompanied by the full amount of the registration fee. [C46, 50, 54, §328.26]

**328.27 Issuance of certificates.** The commission shall forthwith cause to be issued, upon receipt of proper application and fee for registration, a certificate of registration which shall be numbered and recorded by the commission, shall state the name and address of the person to whom it is issued, shall be entitled with the designation of the class of registrant covered thereby and shall contain such other information as the commission may prescribe including, in the case of aircraft, a description thereof. Every certificate of registration or special certificate issued hereunder shall expire at midnight on the thirtieth day of June of each year. [C46, 50, 54,§328.27]

**328.28 Operation under special certificate.** A manufacturer or dealer owning any aircraft otherwise required to be registered hereunder may operate the same for purposes of transporting, testing, demonstrating, or selling the same without registering each such aircraft, upon condition that any such aircraft display therein a special certificate issued to such owner as provided in this section and sections 328.29 to 328.33, inclusive.

A transporter may operate any such aircraft solely for the purpose of delivery upon likewise displaying therein, a special certificate issued to him as provided in these sections.

The provisions of this section and sections 328.29 to 328.33, inclusive, shall not apply to aircraft owned by manufacturer, transporter, or dealer, which are used for hire or principally for transportation of persons and property, aside from the transporting of the aircraft itself, or testing or demonstrating thereof. [C46, 50, 54,§328.28]

**328.29 Application.** Any manufacturer, transporter, or dealer, may, upon payment of a fee of twenty-five dollars make application to the commission upon such forms as the commission may prescribe for a special certificate containing a general distinguishing number and for one or more duplicate special certificates hereunder. The applicant shall also submit such reasonable proof of his status as a bona fide manufacturer, transporter, or dealer as the commission may require. Dealers in new aircraft shall furnish satisfactory evidence of a valid franchise with manufacturer or distributor of such aircraft authorizing such dealership. [C46, 50, 54,§328.29]

Referred to in §328.28

**328.30 Issuance of special certificates.** The commission upon granting any such application shall issue to the applicant a special certificate containing the applicant's name and address, and the general distinguishing number assigned to the applicant, and such other information as the commission may prescribe. [C46, 50, 54,§328.30]

Referred to in §328.28

**328.31 Issuance of duplicate special certificates.** The commission shall also issue duplicate special certificates as applied for which

shall have displayed thereon the general distinguishing number assigned to the applicant. Each duplicate special certificate so issued shall also contain a number or symbol identifying the same from every other duplicate special certificate bearing the same general distinguishing number. The fee for each additional such duplicate special certificate shall be three dollars. [C46, 50, 54,§328.31]

Referred to in §328.28

**328.32 Expiration of special certificate.** Every special certificate issued hereunder shall expire at midnight on the thirtieth day of June of each year, and a new special certificate for the ensuing year may be obtained by the person to whom any such expired special certificate was issued, upon application to the commission, and payment of the fee provided by law. [C46, 50, 54,§328.32]

Referred to in §328.28

**328.33 Records required.** Every manufacturer, transporter, or dealer shall keep a written record of the aircraft upon which such special certificates are used, which records shall be open to inspection of any police officer, or any officer or employee of the commission. [C46, 50, 54,§328.33]

Referred to in §328.28

**328.34 Grounds for refusing, revoking or suspending certificates.** The commission may refuse to issue, or may revoke or suspend a certificate of registration or special certificate for any one, or any combination, of the following reasons:

1. That the application contains any false or fraudulent material statement, or that the applicant has failed to furnish required information or reasonable additional information, requested, or that the applicant is not entitled to registration of the aircraft under this chapter.

2. That the commission has reasonable ground to believe that the aircraft is a stolen or embezzled aircraft, or that granting of registration would constitute a fraud against the rightful owner.

3. That the required fee has not been paid.

4. That the commission has reasonable ground to believe that fraudulent use, against the state or any municipality or citizen thereof, is being made of such certificate of registration or special certificate.

5. That the person making application for, or holding, the certificate is not certificated or licensed by the government of the United States or any authorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder, to do the acts for which he has been, or seeks to be, registered as performing, or to perform, pursuant to the provisions of this chapter.

6. That the aircraft registered, or for which application for registration is made, is not certificated or licensed for operation by the government of the United States or any au-

thorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder. [C46, 50, 54,§328.34]

**328.35 Exceptions to registration requirements.** The provisions of sections 328.19 and 328.20 hereof shall not apply to:

1. An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft.

2. An aircraft which is owned by a resident of this state but which is continuously located and operated beyond the boundaries of the state.

3. An aircraft engaged principally in commercially flying in interstate or foreign commerce, except as provided in subsection 4 of section 328.21.

4. An airman operating military or public aircraft or any aircraft licensed as provided in subsection 1 of this section.

5. Persons operating model aircraft nor to any person piloting an aircraft which is equipped with fully functioning dual controls when an appropriately registered pilot is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

6. A nonresident airman operating aircraft in this state who is lawfully entitled to operate aircraft in the state of his residence.

7. An airman while operating or taking part in the operation of an aircraft engaged principally in commercially flying in interstate or foreign commerce.

8. Any airport, landing area, or other air navigation facility owned or operated by the federal government within this state.

9. Any landing areas created or maintained solely for personal use and not for hire. [C46, 50, 54,§328.35]

Referred to in §328.87

**328.36 State aviation fund.** There is hereby created a fund to be known as the state aviation fund, which shall consist of all moneys received by the commission, together with all moneys appropriated to said fund by the state. [C46, 50, 54,§328.36]

Transfer to general fund, see 53GA, ch 149,§2

**328.37 Operations unlawful without certificate.** Except as provided in section 328.35, it shall be unlawful for any person to operate, or cause or authorize to be operated, any civil aircraft, airport, landing area, or other air navigation facility, or air school, or to engage in aeronautics as an airman or aeronautics instructor in this state, unless there has been issued therefor or thereto an appropriate certificate of registration or special certificate by the commission and such certificate is in force and effect. [C46, 50, 54,§328.37]

**328.38 Exhibition of certificates.** The certificate of registration or special certificate issued

by the commission or any agency of another state (unless the requirement therefor is excepted by the provisions of this chapter) shall, as to an airman or aeronautics instructor, be kept in his personal possession whenever engaging in aeronautics; as to an aircraft be conspicuously displayed therein; as to a landing area be conspicuously displayed in the office of the person in charge thereof; as to an air school be conspicuously displayed in the principal office thereof; and as to a navigation facility be conspicuously displayed in the office of the person responsible for the operation thereof; and must be presented for inspection upon demand of any passenger, peace officer, authorized member, official, or employee of the commission or any official, manager, or person in charge of any landing area in this state where landing is made. [C31, 35,§§8338-c3,-c5; C39,§§8338.16, 8338.18; C46, 50, 54,§328.38]

**328.39 Order of commission—review.** In any case where the commission refuses to issue a certificate of registration or special certificate, or in any case where it shall issue any order requiring certain things to be done, or revoking or suspending any certificate, it shall set forth its reasons therefor and shall state the requirements to be met before such certificate will be issued or such order will be modified or changed. Any order made by the commission pursuant to the provisions of this chapter shall be served upon the interested persons by registered mail or in person.

Any order of the commission or any refusal to issue, revocation or suspension of any certificate shall be subject to review by the district courts of this state. [C46, 50, 54,§328.39]

**328.40 Penalties.** Any person who violates any of the provisions of this chapter, or who makes any material false statement or representation in any application or statement filed with the commission as required by this chapter or any of the rules and regulations issued pursuant thereto shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. [C31, 35,§8338-c8; C39, §8338.21; C46, 50, 54,§328.40]

**328.41 Operating recklessly or while intoxicated.** It shall be unlawful for any person to operate an aircraft in the air space above this state or on the ground or water within this state, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another.

Any person who operates an aircraft in a careless or reckless manner in violation of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished accordingly.

Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty,

be punished for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense by imprisonment in the penitentiary for a period not to exceed three years.

The court, in pronouncing sentence, shall provide for the immediate surrender of any liquor permit issued to the defendant under chapter 123 which chapter is identified as the "Iowa Liquor Control Act". The sentence shall further provide that a true copy of the judgment sentencing the defendant shall be forthwith certified by the clerk of court to the Iowa liquor control commission. The liquor control commission shall not thereafter issue to the defendant a liquor permit until such time as the court or judge of the court having original jurisdiction of the defendant for good cause shown shall so certify to the Iowa liquor control commission. [C50, 54,§328.41]

**328.42 Nonresident registration.** Nonresident owners of aircraft operated within this state for the intrastate transportation of persons or property for compensation or the furnishing of services for compensation or for the intrastate transportation of merchandise, shall register each such aircraft and pay the same fees therefor as is required with reference to like aircraft owned by residents of this state. [C50, 54,§328.42]

53GA, ch 148,§5, editorially divided

**328.43 Transfer notice.** Upon the transfer of ownership of any registered aircraft, the owner shall immediately give notice to the commission upon the form on the reverse side of the certificate of registration, stating the date of such transfer, the name and post-office address with street number, if in a city, of the person to whom transferred, the number of the registration certificate and such other information as the commission may require. [C50, 54, §328.43]

**328.44 Application by new owner.** The purchaser of the aircraft shall join in the notice of transfer to the commission and shall, at the same time, make application for a new certificate of registration. [C50, 54,§328.44]

**328.45 New registration upon transfer.** The commission, if satisfied of the genuineness and regularity of such transfer, shall register said aircraft in the name of the transferee and issue a new certificate of registration as provided in this chapter. [C50, 54,§328.45]

**328.46 Penalty for delay.** If a transfer of ownership of an aircraft subject to registration is not completed, as herein provided, within five days of the actual change of possession, a penalty of five dollars shall accrue against said aircraft and no certificate of registration therefor shall thereafter issue until said penalty is paid. [C50, 54,§328.46]

**328.47 Lien of fees.** All registration fees provided for in this chapter shall be and continue a lien against the aircraft for which said fees are payable until such time as they are paid as provided by law, with any accrued penalties. [C50, 54,§328.47]

**328.48 Attachment of lien.** The lien of the original registration fee shall attach at the time the same is first payable as provided by law and the lien of all renewals of registration shall attach on July 1, of each year thereafter. [C50, 54,§328.48]

**328.49 Collection of fees.** The collection of all fees and penalties provided for in the chapter may be enforced against any aircraft or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the commission or until such time as the identity of such aircraft as an aircraft has been entirely eliminated and all fees and penalties to such date shall be paid. [C50, 54,§328.49]

**328.50 Penalty on delinquent registration.** On August 1 of each year, a penalty of five percent of the annual registration fee shall be added to all fees not paid by that date, and five percent of the annual registration fee shall be added to such fees on the first day of each month thereafter, that the same remains unpaid until paid, provided that said penalty in no case shall be less than one dollar. [C50, 54,§328.50]

**328.51 Accrual of penalty.** Such delinquency shall begin and penalty accrue the first of the month following the purchase of a new aircraft and the first of the month following the date aircraft are brought into the state, except as herein otherwise provided. [C50, 54,§328.51]

**328.52 Waiver.** The commission, if it finds that a delinquency in registration was excusable and upon making a record of such finding and the reasons for such delinquency, shall have the power to waive or reduce any of the penalties provided for delinquent registrations. [C50, 54,§328.52]

**328.53 Short title.** This chapter may be cited as the "State Aeronautics Act." [C46, §328.41; C50, 54,§328.53]

Constitutionality, 51GA, ch 148,§43

## CHAPTER 329 AIRPORT ZONING

Validity of previous actions, 52GA, ch 182, §6

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- 329.2 Airport hazards contrary to public interest.
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**329.1 Definitions.** The following words, terms, and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meaning herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. "Airport" means any area of land or water designed and set aside for the landing and take-off of aircraft and utilized, or to be utilized, in the interest of the public for such purposes.

2. "Airport hazard" means any structure or tree, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off of aircraft.

3. "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided by this chapter.

4. "Municipality" means any county, city, village, or town of this state.

5. "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

6. "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the same.

7. "Tree" means any object of natural growth.

8. "Obstruction" means any tangible, inanimate physical object, natural or artificial, protruding above the surface of the ground.

9. "Commission" means the Iowa aeronautics commission; "state" or "this state" means the state of Iowa.

10. The singular shall include the plural, and the plural the singular. [C46, 50, 54, §329.1]

**329.2 Airport hazards contrary to public interest.** It is hereby found that an airport hazard endangers the lives and property of

users of the airport and of occupants of land and other persons in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

2. That it is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented; and

3. That this should be accomplished, to the extent legally possible, by proper exercise of the police power.

4. That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein. [C46, 50, 54, §329.2]

See §657.2, subsection 9

**329.3 Zoning regulations—powers granted.** Every municipality having an airport hazard area within its territorial limits may adopt, administer, and enforce in the manner and upon the conditions prescribed by this chapter, zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted, and regulate and restrict, for the purpose of preventing airport hazards, the height to which structures and trees may be erected or permitted to grow. [C46, 50, 54, §329.3]

Referred to in §§329.4, 329.6

**329.4 Extra-territorial airport hazard areas.** When any airport hazard area appertaining to an airport owned or controlled by a municipality is located outside the territorial limits of said municipality:

1. *Ordinances or resolutions.* The municipality owning or controlling the airport, and the municipality within which the airport hazard area is located, may by duly adopted ordinance or resolution, as may be appropriate, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question.

Referred to in §329.6

2. *Petition to district court.* If the municipality within which is located such airport hazard area has failed or refused, within sixty days after demand has been made upon it by any municipality owning or controlling the airport, to adopt reasonably adequate airport zoning regulations under section 329.3, or to join in adopting joint airport zoning regulations as authorized in subsection 1 of this section, the municipality owning or controlling the airport may, upon a resolution of necessity therefor duly adopted by its governing body, petition the district court of the county in which such airport hazard area or any part thereof is located, in the name of the municipality owning or controlling the affected airport, praying that zoning regulations be established for the airport hazard area in question.

3. *Petition—contents.* Such petition shall allege all essential facts showing the necessity for bringing such action, the relief sought including proposed zoning regulations, and the necessity therefor.

4. *Parties.* The parties defendant in such action shall be the municipality in which such airport hazard area is located, and all persons having an apparent or contingent interest in the property located within such area, who may be joined in said action generally as a class.

5. *Procedure.* The action shall be triable in equity and in accordance with general rules of civil procedure, except that such action shall have precedence over any other business of the court except criminal cases, and the court shall set said petition for hearing not less than sixty days nor more than one hundred twenty days from the date it is filed with the clerk of said court.

6. *Notice.* The original notice in such action shall be served upon the municipality in which such airport hazard area is located, and in the same manner as original notice of any other action but not less than thirty days prior to the date set for trial; and upon all other defendants by the publication of said notice in some newspaper or newspapers of general circulation within the area described in the petition, or as near thereto as possible, which publication shall be in the same manner as provided for the publication of other original notices, provided however that the last publication thereof shall be not less than thirty days prior to the date set for trial.

7. *Decree and modification.* Upon trial the court may enter decree establishing such zoning regulations as it shall find reasonable and necessary. The court having once taken juris-

dition of such matter shall retain continuing jurisdiction thereof for such subsequent modification as it may deem advisable, upon proper application of interested parties, and due showing made thereunder after such notice to possible adverse parties as the court shall prescribe.

8. *Appeal.* Any person or municipality adversely affected or aggrieved by any findings of the court may appeal therefrom as in other civil actions.

9. *Enforcement.* Following the entry of any final decree by the district court, and unless appeal has been taken therefrom, the zoning regulations established by such decree may be enforced, and violations thereof punished, as provided by section 329.14. [C46, 50, 54, §329.4]

Referred to in §329.6

**329.5 Prevention of airport hazards.** Any municipality owning or controlling an airport may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to said airport, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter for any area whether within or without the territorial limits of said municipality. [C46, 50, 54, §329.5]

See §657.2, subsection 9

**329.6 Zoning powers—aeronautics commission.** If any municipality owning or controlling an airport adjacent to which there is an airport hazard area shall fail or refuse, within sixty days after demand made upon it by the aeronautics commission of the state, to adopt reasonably adequate airport zoning regulations under section 329.3, or to proceed as provided in section 329.4, the aeronautics commission of the state may petition the district court of the county in which such airport hazard area, or any part thereof, is located, in the name of the state, praying that zoning regulations be established for the airport hazard area in question, and the provisions of subsections 3 to 9, inclusive, of section 329.4 shall apply to such actions provided, however, that such municipality shall be joined as a party defendant in any such action.

The aeronautics commission of the state may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to any airport within the state, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter. [C46, 50, 54, §329.6]

**329.7 Relation to comprehensive zoning regulations.** Any municipality which has adopted, or hereafter adopts, zoning ordinances under the provisions of chapter 414, is hereby empowered to incorporate therein such airport hazard area zoning regulations as are provided for by this chapter, and to administer and enforce the same as herein provided. [C46, 50, 54, §329.7]



**329.8 Conflicting regulations.** In the event of any conflict between any airport zoning regulations adopted or established under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail. [C46, 50, 54, §329.8]

**329.9 Procedure for adopting zoning regulations—zoning commission.** In adopting, amending, and repealing airport zoning regulations under this chapter the governing body of the municipality shall follow the procedure as provided in sections 414.4 and 414.6. Any action taken on the part of any county under this chapter shall be by resolution of the board of supervisors thereof and no such action shall be taken without a majority of the board of supervisors voting therefor and consenting thereto. The commission so appointed shall be known as the airport zoning commission. The airport zoning commission shall consist of two members from each municipality selected by the governing body thereof and one additional member to act as chairman and to be selected by a majority vote of the members selected by the municipality. The terms of the members of the airport zoning commission shall be for six years excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. Members may be removed for cause by the appointing authority upon written charges after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. [C46, 50, 54, §329.9]

**329.10 Airport zoning requirements.**

1. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter.

2. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree, or interfere with any use, not conforming to the regulations when adopted or amended, except that they may require the owner thereof to permit the municipality at its own expense to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard.

3. All such regulations shall provide that no pre-existing nonconforming structure, tree, or use, shall be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when such airport zoning regulations or amendments thereto were adopted. [C46, 50, 54, §329.10]

**329.11 Variances.** Any person desiring to erect or increase the height of any structure,

or to permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, however, that any such variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter, including the reservation of the right of the municipality, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard. [C46, 50, 54, §329.11]

**329.12 Board of adjustment—creation—powers—duties.** The governing body of any municipality availing or seeking to avail itself of the powers by this chapter conferred shall, by ordinance or resolution duly adopted, provide for the appointment of a board of adjustment, as provided in section 414.7. Such board of adjustment shall have the same powers and duties, and its procedure, and appeals thereto and therefrom, in all respects shall be governed by and subject to the same provisions established in sections 414.9 to 414.19, inclusive.

The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any regulations adopted pursuant to this chapter or to effect any variance therefrom.

The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairman and to be selected by a majority vote of the members selected by the municipality. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. The terms of the members of the board of adjustment shall be for five years, excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. [C46, 50, 54, §329.12]

Actions begun before July 4, 1947, see 52GA, ch 182, §5

**329.13 Administration of airport zoning regulations.** All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency

(which may be an agency created by such regulations), or by any official, board, or other existing agency of the municipality adopting the regulations, or of one or both of the municipalities which participated therein, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall not include any of the powers herein delegated to the board of adjustment. [C46, 50, 54,§329.13]

**329.14 Enforcement and remedies.** Each violation of this chapter or of any regulations,

order, or rules promulgated pursuant to this chapter, shall constitute a misdemeanor, and the perpetrator thereof, upon conviction, shall be punished accordingly; and each day a violation continues to exist shall constitute a separate offense. [C46, 50, 54,§329.14]

Referred to in §329.4

**329.15 Short title.** This chapter shall be known and may be cited as the "Airport Zoning Act." [C46, 50, 54,§329.15]

Constitutionality, 51GA, ch 149,§15  
Omnibus repeal, 51GA, ch 149,§16

## CHAPTER 330

### AIRPORTS

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**330.1 Definition.** The word "airport" as used in this chapter, shall include landing field, airdrome, aviation field, or other similar term used in connection with aerial traffic. [C31, 35,§5903-c1; C39,§5903.01; C46, 50, 54,§330.1]

**330.2 Powers.** Cities and towns shall have the right to acquire, establish, improve, maintain and operate airports, either within or without their corporate limits, and either within or without the territorial limits of this state. [C31, 35,§5903-c2; C39,§5903.02; C46, 50, 54, §330.2]

Similar power, §397.1

**330.3 Powers extended.** All powers herein conferred upon and granted to cities and towns are hereby specifically extended and granted to and conferred upon all other political subdivisions within this state, including villages, townships, and counties. [C46, 50, 54,§330.3]

**330.4 Joint exercise of powers.** Any Iowa political subdivision, villages, towns, cities, townships, and counties may, by duly adopted ordinance or resolution as may be appropriate, enter into agreements providing for collaboration with any other one or more such political subdivisions, within or without the state of Iowa, in exercising jointly any of the powers granted by this chapter, to the same extent as such powers can be exercised by any such political subdivision individually. Concurrent action by the governing bodies of the political subdivision participating shall constitute joint action. Such agreements may provide for the

creation and establishment of a joint airport commission which, when so created or established, shall function in accordance with the provisions of sections 330.17 to 330.24, inclusive, insofar as provided by said agreements. [C46, 50, 54,§330.4]

**330.5 Acquisition.** Any such city or town is hereby authorized and empowered to acquire by purchase, gift, condemnation, lease or otherwise, either within or without its corporate limits, and either within or without the territorial limits of this state, real estate and personal property for airport purposes; and in like manner to acquire or cause to be moved, removed, abated, eliminated, mitigated, or altered any structure or object protruding above the surface of the ground, or any use of land obstructing the airspace necessary for the safe and efficient flight of aircraft in landing or taking off at any airport, or otherwise constituting a hazard to such landing or taking off. [C31, 35,§5903-c3; C39,§5903.03; C46, 50, 54, §330.5]

Gifts, see §565.6

**330.6 Improvements.** Any such city or town may erect on any land so acquired, or owned by it, such buildings and equipment, and make such improvements as may be necessary for the purpose of adapting such property to the use of aerial traffic. [C31, 35,§5903-c4; C39, §5903.04; C46, 50, 54,§330.6]

**330.7 General bonds—election—levy of tax.** Cities and towns are hereby authorized to con-

tract indebtedness and to issue general obligation bonds to provide funds to pay the cost of establishing, acquiring and equipping a municipally owned airport and for improving the same.

No such indebtedness to pay the cost of the establishment of a municipally owned airport shall be incurred until approved by the electors of such city or town in accordance with the provisions of chapter 407 which election proceedings may be instituted by the city or town council.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years and bear interest at a rate not exceeding five percent per annum and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes. [C31, 35,§5903-c5; C39,§5903.05; C46, 50,§§330.7, 330.8; C54,§330.7]

Referred to in §§330.10, 330.16, 404.10(8)

**330.8** Repealed by 55GA, ch 149,§1, see §330.7.

**330.9 Plans and specifications.** Before an airport is acquired by any such city or town the plans and specifications therefor shall be submitted to the Iowa state aeronautics commission which shall require that they show:

The legal description and plat of the site; distance from the nearest post office and railroad station; location and type of highways; location and type of obstructions on and near the site; kind of soil and subsoil; costs and details of grading and draining; location of proposed runways, hangars, buildings, and other structures.

And they shall furthermore require that the plans and specifications be in substantial accord with the regulations of the U. S. department of commerce or other department of the federal government having general supervision of air navigation as it relates to plans and specifications for airports. And if so found they shall approve such plans and specifications. [C31, 35,§5903-c7; C39,§5903.07; C46, 50, 54, §330.9]

**330.10 Costs.** The cost of preparing the plans and specifications shall be paid from any of the funds provided in section 330.7. [C31, 35,§5903-c8; C39,§5903.08; C46, 50, 54,§330.10]

**330.11 Ordinances and rules.** Such cities and towns shall have the power to make and enforce ordinances, rules and regulations for control, supervision, and operation of airports. This power shall extend to the space above the lands and waters included within the limits of any city or town, and to any airport owned,

controlled, maintained, or operated by any city or town outside its limits, and to the space above the same. In addition thereto, all powers granted to and exercised by cities and towns within their corporate limits are extended to municipal airports located outside said limits, but within the state of Iowa. Provided, however, that no such ordinance, rule or regulation, shall be in conflict with state law or regulation, or in conflict with federal law or regulation. [C31, 35,§5903-c9; C39,§5903.09; C46, 50, 54,§330.11; 56GA, ch 172,§1]

Referred to in §330.23

**330.12 Charges.** Any such city or town may from time to time fix, establish, and collect a schedule of charges for the use of such property or any part thereof, which charges shall be used in connection with the maintenance and operation of such airport. When the public needs will not be injured thereby, any such city or town may lease all or any portion of such property, for a period of years not exceeding twenty or sell any equipment no longer required. Real estate may be sold only by unanimous vote of all members of the council. [C31, 35,§5903-c10; C39,§5903.10; C46, 50, 54, §330.12]

**330.13 Federal aid.** Any subdivision of government is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities. [C46, 50, 54, §330.13]

**330.14 Payment from earnings.** All political subdivisions authorized by this chapter to acquire, establish, improve, maintain, and operate airports may, in connection therewith, purchase or construct, or contract for the construction of, and maintain and operate, hangars, administration and office buildings and other aeronautical and commercial facilities for which fees are charged, and pay for the same solely and only out of the earnings thereof. Such political subdivisions are authorized to borrow money for the purpose of purchasing or constructing the improvements herein authorized, and as evidence of such money borrowed to issue their bonds payable solely and only from the revenues derived from such improvements. Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of construction and operation of such improvement, including engineering and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this section are declared to be negotiable instruments. The principal and interest of said bonds shall be payable solely and only from the special

fund herein provided for such payments, and said bonds shall not in any respect be a general obligation of such political subdivision, nor shall they be payable in any manner by taxation. All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance or resolution duly adopted by the governing body of such political subdivision, which may pledge the property purchased or constructed, and the net earnings thereof, to the payment of said bonds and the interest thereon, and provide that the net earnings thereof shall be set apart as a sinking fund for that purpose. Such political subdivision is authorized and directed to charge the users of such improvements at rates which at all time, shall be sufficient to pay the principal and interest on the bonds issued under the provisions of this chapter, and the cost of operation and maintenance, and to provide an adequate depreciation fund. This section shall be construed as granting additional power, without limiting the power already existing in political subdivisions. [C46, 50, 54, §330.14]

**330.15 Deemed as public use.** Any property acquired, owned, controlled, or occupied for the purposes enumerated in this chapter, shall be and is hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public need, and the liability of any city or town in connection therewith shall be no greater than that imposed upon municipalities in the maintenance and operation of public parks. [C31, 35, §5903-c11; C39, §5903.11; C46, 50, 54, §330.15]

General liability, §368.1

**330.16 Additional levy—election—bonds issued.** Any municipality which has heretofore or may hereafter establish a municipal airport pursuant to the provisions of this chapter or of any other provision of law, is hereby authorized without approval at an election, to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of equipping, improving and enlarging such airport provided, however, that if at any time before the date fixed for taking action for the issuance of such bonds a petition is filed with the clerk or recorder of the municipality signed by qualified electors of the city or town equal in number to two percent of those who voted for the office of governor at the last preceding general election as shown by the election registers or poll lists, asking that the question of issuing such bonds be submitted to the legal voters of the municipality, the governing body thereof shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall call a special election to vote upon the question of issuing the bonds.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years and bear interest at a rate not exceeding five percent per annum and shall be of such form as the city or town council shall by resolution

provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

Section 330.7 and this section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of said sections shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [C46, 50, 54, §330.16]

Referred to in §404.10(8)  
Alternate levy, see §404.10(8)

**330.17 Airport commission—election.** The council of any city or town which owns or otherwise acquires an airport or airports may, and upon petition of ten percent of the number of qualified electors who voted at the last city election shall, at any city election if one is to be held within sixty days from the filing of said petition, or special election called for that purpose, submit to the voters the question as to whether the management and control of such airport, or airports, shall be placed in an airport commission.

Whenever an airport, or airports, of any city or town has been placed under the management and control of an airport commission, upon petition of ten percent of the number of qualified electors who voted at the last city election the council of any such city or town shall, at a city election if one is to be held within sixty days from the filing of said petition or at a special election called for such purpose, submit to the voters the question as to whether the management and control of such airport, or airports, shall be continued in the airport commission, and if a majority of the votes cast upon said proposition at the election shall be against the continuance of such airport commission, said commission shall stand abolished sixty days from and after the date of such election, and the power to maintain and operate such airport, or airports, as provided in this chapter, shall revert to such city or town. [C46, 50, 54, §330.17; 57GA, ch 172, §1]

Referred to in §§330.4, 330.24

**330.18 Notice of election.** Notice of such election shall be given by publication in one newspaper in said city or town in one publication, and the election shall be held not less than seven nor more than fourteen days after the completion of such published notice. If no newspaper is published in such city or town notices may be given by posting notices in five public places in such city or town for three weeks prior to said election. [C46, 50, 54, §330.18]

Referred to in §§330.4, 330.24

**330.19 Form of question.** The question to be submitted shall be in the following form:

"Shall the City (or Town) of..... place (or continue) the management and control of its airport (or airports) in an Airport Commission?" [C46, 50, 54,§330.19; 57GA, ch 172,§2]

Referred to in §§330.4, 330.24

**330.20 Appointment of commission.** When a majority of the votes cast upon said proposition at such election shall have declared in favor of the proposition of airport control and management by a commission, the mayor shall, within ten days thereafter, appoint an airport commission of not more than five resident voters of said city or town, which appointments shall be approved by the council. In case of a commission of three members the first appointees shall hold office, one for two years, one for four years, and one for six years. In case of a commission of five members the first appointees shall hold office, one for two years, one for three years, one for four years, one for five years, and one for six years. All subsequent appointments shall be for a term of six years. Vacancies shall be filled as original appointments are made. Members of the airport commission shall serve without compensation. Each commissioner shall execute and furnish a bond in an amount fixed by the council, to be approved by the mayor and filed with the city clerk. The cost of such bond shall be paid from the general fund of the city. The commission shall elect from their own members a chairman and a secretary who shall serve for such term as the commission shall determine. [C46, 50, 54,§330.20]

Referred to in §§330.4, 330.24

**330.21 Powers—funds.** Said commission shall have and exercise all of the powers granted to cities and towns under this chapter, except powers to sell said airport or airports. The commission shall annually certify the amount of tax within the limitations of this

chapter to be levied for airport purposes, and upon such certification the city council shall include said amount in its budget.

All funds derived from taxation or otherwise for airport purposes shall be under the full and absolute control of said commission for the purposes prescribed by law, and shall be deposited with the city treasurer to the credit of the airport commission, and shall be disbursed only on the written warrants or orders of the airport commission, including the payment of all indebtedness arising from the acquisition and construction of airports and the maintenance, operation, and extension thereof. [C46, 50, 54,§330.21]

Referred to in §§330.4, 330.24

**330.22 Annual report—publishing.** The airport commission shall immediately after the close of each municipal fiscal year, file with the city clerk a detailed and audited written report of all money received and disbursed by said commission during said fiscal year, and shall publish a summary thereof in an official newspaper in said city or town. [C46, 50, 54,§330.22]

Referred to in §§330.4, 330.24

**330.23 Rules and regulations.** The power conferred on cities and towns to make and enforce rules and regulations under section 330.11 is delegated to the city airport commission. [C46, 50, 54,§330.23]

Referred to in §§330.4, 330.24

**330.24 No restrictions on former commissions.** Nothing in sections 330.17 to 330.23, inclusive, shall be interpreted as limiting or affecting airport commissions of cities in the above classification which have already been in existence and operation prior to January 1, 1941, under the provisions of this chapter. [C46, 50, 54,§330.24]

Referred to in §330.4

# TITLE XIV

## COUNTY AND TOWNSHIP GOVERNMENT

### CHAPTER 331

#### BOARD OF SUPERVISORS

Identification and use of publicly owned automobiles, etc., §740.20 et seq

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**331.1 Number of members.** The board of supervisors in each county shall consist of three persons, except where the number has been or may hereafter be increased in the manner provided by this chapter. They shall be qualified electors, and be elected by the qualified voters of their respective counties, and shall hold their office for three years. [R60, §303; C73, §§294, 299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §5106; C46, 50, 54, §331.1]

**331.2 Number increased by vote.** When petitioned to do so by one-tenth of the qualified electors of said county, the board of supervisors shall submit to the qualified electors of the county, at any regular election, one of the following propositions as may be requested in said petition, or the board may, on its own motion, by resolution, submit either of said propositions:

1. Shall the proposition to increase the number of supervisors to five be adopted?
2. Shall the proposition to increase the number of supervisors to seven be adopted?

If the majority of the votes cast shall be for the proposition so submitted, then at the next general election the requisite additional supervisors shall be elected, and one-half of the additional supervisors shall hold office for three years and one-half for two years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [R60, §303; C73, §§294, 299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §5107; C46, 50, 54, §331.2]

**331.3 Number reduced by vote.** In any county where the number of supervisors has been increased to five or seven, the board of supervisors, on the petition of one-tenth of the qualified electors of the county, shall submit to the qualified voters of the county, at any regular election, one of the following propositions, as the same may be requested in such petition:

1. Shall the proposition to reduce the number of supervisors to five be adopted?
2. Shall the proposition to reduce the number of supervisors to three be adopted?

If a majority of the votes cast shall be for the decrease, then the number of supervisors shall be reduced to the number indicated by such vote. [C73, §299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §5108; C46, 50, 54, §331.3]

**331.4 Petition in certain counties.** In counties where there is a city operating under the commission form of government, with a population of more than seventy-five thousand people, the petition shall contain ten percent of the qualified electors residing in the county and outside of the city, and then ten percent of the qualified electors residing in the city. [C35, §5108-e1; C39, §5108.1; C46, 50, 54, §331.4]

**331.5 Vote in certain counties.** When the proposition is voted upon, the qualified electors residing in the county and outside of the city, shall vote separately upon the proposition, and there shall be cast a majority vote of such electors outside of the city, and a major-

ity vote of the qualified electors of the city, before such change shall be effective. [C35, §5108-e2; C39, §5108.2; C46, 50, 54, §331.5]

**331.6 When reduction takes effect.** If the proposition to reduce the number of members of the board carries, the board shall consist of the same number of members as at the time the proposition to reduce was submitted, until the second secular day in January following the next general election, at which time the terms of all members of the board shall expire. [C73, §299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §5109; C46, 50, 54, §331.6]

**331.7 Election of new members.** At the next general election following the one at which the proposition to reduce the number of members of the board was carried there shall be elected the number of members required by such proposition.

Where such proposition reduces the board to five members, two persons shall be elected as members of the board for two years, two for three years, and one for four years.

In counties where the proposition reduces the board to three members, one person shall be elected as member of the board for two years, one for three years, and one for four years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [SS15, §410; C24, 27, 31, 35, 39, §5110; C46, 50, 54, §331.7]

**331.8 Supervisor districts.** The board of supervisors may, or shall, when petitioned by ten percent of the number of qualified electors having voted in the last previous general election for governor, at its regular meeting in January in any even-numbered year, divide its county by townships into a number of supervisor districts corresponding to the number of supervisors in such county; or, at such regular meeting, it may abolish such supervisor districts, and provide for electing supervisors for the county at large, except that when districted following petition the districts cannot be abolished except by petition of one-tenth of the qualified electors of the said county and submission of the question to the qualified electors of the county at the next general election. [C97, §416; S13, §416; C24, 27, 31, 35, 39, §5111; C46, 50, 54, §331.8]

Referred to in §331.11

**331.9 How formed.** Such districts shall be as nearly equal in population as possible, except that after the year 1950, in the division of counties now having five supervisors, and made up originally of sixteen Congressional townships with a county seat having a population over six thousand shall be divided into four districts containing four Congressional townships each the borders of which are contiguous except the area within the limits of the county seat, which shall comprise a fifth district, and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member

of such board, to be elected by the electors of said district. [C97, §417; C24, 27, 31, 35, 39, §5112; C46, 50, 54, §331.9]

Referred to in §331.11

**331.10 One member for each district.** In case such division or any subsequent division shall be found to leave any district or districts without a member of such board of supervisors, then, at the next ensuing general election, a supervisor shall be elected by and from such district having no member of such board; and if there be two such districts or more, then the new member or members of said board shall be elected by and from the district or districts having the greater population according to the last federal census, and so on, until each of said districts shall have one member of such board. [C97, §418; C24, 27, 31, 35, 39, §5113; C46, 50, 54, §331.10]

Referred to in §331.11

**331.11 Redistricting — term of office.** Any county may be redistricted, as provided by sections 331.8 to 331.10, inclusive, once in every two years, and not oftener, and nothing herein contained shall be so construed as to have the effect of lengthening or diminishing the term of office of any member of such board. [C97, §419; C24, 27, 31, 35, 39, §5114; C46, 50, 54, §331.11]

**331.12 Absence from county—vacancy.** The absence of any supervisor from the county for six months in succession shall be treated as a resignation of his office, and the board shall, at its next meeting thereafter, by resolution regularly adopted and spread upon its records, declare his seat vacant. [C73, §298; C97, §414; C24, 27, 31, 35, 39, §5115; C46, 50, 54, §331.12]

**331.13 Organization.** The board of supervisors, at its first meeting in each year, shall organize by choosing one of its members as chairman, who shall preside at all of its meetings during the year. [R60, §308; C73, §300; C97, §415; C24, 27, 31, 35, 39, §5116; C46, 50, 54, §331.13]

**331.14 Quorum.** A majority of the board of supervisors shall constitute a quorum to transact business, but should a division take place on any question when only two members of the board are in attendance, the question shall be continued until there is a full board. [R60, §308; C73, §297; C97, §413; C24, 27, 31, 35, 39, §5117; C46, 50, 54, §331.14]

**331.15 Meetings.** The members of the board of supervisors shall meet at the county seat of their respective counties on the second secular day in January and on the first Monday in April and the second Monday in June, September, and November in each year, and shall hold such special meetings as are provided by law, but in the event a quorum of said board fails to appear on a day set for a regular or an adjourned meeting the auditor of said county shall adjourn said meeting from day to day until a quorum is present. [R60, §307; C73, §296; C97, §412; S13, §412; C24, 27, 31, 35, 39, §5118; C46, 50, 54, §331.15]

**331.16 Special sessions.** Special sessions of the board of supervisors shall be held only when requested by the chairman or a majority of the board, which request shall be in writing addressed to the county auditor, shall fix the date of meeting and shall specify the objects thereof, which may include the doing of any act not required by law to be done at a regular meeting. [R60,§309; C73,§301; C97, §420; C24, 27, 31, 35, 39,§5119; C46, 50, 54,§331.16]

**331.17 Notice.** The auditor shall immediately give notice in writing or by telephone to each of the supervisors personally, or by leaving notice thereof at his residence, at least six days before the date set for such meeting, stating the time and place where the meeting will be held and the objects thereof as stated in the written request. No business shall be transacted at such session, except that stated in the request and notice. [R60,§309; C73,§301; C97,§420; C24, 27, 31, 35, 39,§5120; C46, 50, 54,§331.17]

**331.18 Acts requiring majority.** No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto. [R60,§313; C73,§305; C97,§440; C24, 27, 31, 35, 39,§5121; C46, 50, 54,§331.18]

**331.19 Books to be kept.** The board is authorized and required to keep the following books:

1. *Minute book.* A book to be known as the "minute book", in which shall be recorded all orders and decisions made by it except those relating to highways and drainage districts, and in which book, or in a separate book kept for that purpose, there shall be an alphabetical index of the proceedings of said board as shown by the minutes.

2. *Highway record.* A book to be known as the "highway record", in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways.

3. *Bridge book.* A book to be known as the "bridge book", where a record of bridges shall be kept in a numerical order in each congressional township, commencing in section one, and numbering each bridge; give location in fractional parts of sections; name the kind of material used for substructure and superstructure; give length and cost of bridge, and, when repaired, to keep a record of repairs and charge it to the bridge; and warrants drawn in payment for erection or repairs of bridges shall indicate the number of the bridge for which issued in payment.

4. *Warrant book.* A book to be known as the "warrant book", in which shall be entered, in

the order of its issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants, as directed in relation to the minute book.

5. *Claim register.* A book to be known as a "claim register", in which shall be entered a minute of all claims filed for allowance of money from the county treasury. [R60,§318; C73,§308; C97,§442; C24, 27, 31, 35, 39,§5122; C46, 50, 54,§331.19]

**331.20 Claims generally.** Claims filed shall be numbered consecutively in the order of filing, and shall be entered on the claim register alphabetically, so as to show the date of filing, the number of the claim and its general nature, the name of the claimant and the action of the board thereon, stating, if allowed, the fund upon which allowance is made. A record of the allowance of claims at each session of the board shall be entered on the minute book by reference to the numbers of the claims as entered on the claim register. [C24, 27, 31, 35, 39,§5123; C46, 50, 54,§331.20]

**331.21 Unliquidated claims.** All unliquidated claims against counties and all claims for fees or compensation, except salaries fixed by statute, shall, before being audited or paid, be so itemized as to clearly show the basis of any such claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account, and shall be duly verified by the affidavit of the claimant, filed with the county auditor for presentation to the board of supervisors; and no action shall be brought against any county upon any such claim until the same has been so filed and payment thereof refused or neglected. [C73, §2610, 3843; C97,§§1300, 3528; C24, 27, 31, 35, 39, §5124; C46, 50, 54,§331.21]

**331.22 Compensation of supervisors.** The members of the board of supervisors shall each receive twelve dollars and fifty cents per day for each day actually in session, and twelve dollars and fifty cents per day exclusive of mileage when not in session but employed on committee service, and seven cents for every mile traveled in going to and from the regular, special, and adjourned sessions thereof, and in going to and from the place of performing committee service.

When the board is in continuous session, mileage for only one trip in going to and from the session shall be allowed.

However, in counties now having or which may hereafter have, a population in excess of forty thousand and not more than sixty thousand with boards not exceeding five members in number, the county supervisors shall receive an annual salary of four thousand dollars; in counties now having or which may hereafter have a population in excess of sixty thousand, with boards not exceeding five members in number, these county supervisors shall receive an annual salary of four thousand four



hundred dollars except in those counties now having or which may hereafter have a population in excess of sixty thousand, with boards not exceeding three members in number, these county supervisors shall each receive an annual salary of five thousand four hundred dollars, and in counties now having or which may hereafter have a population in excess of one hundred fifty thousand, county supervisors shall receive an annual salary of six thousand two hundred dollars. However, in counties now having, or which may hereafter have, a population in excess of one hundred thousand, with boards not exceeding three members in number, the county supervisors shall receive an annual salary of fifty-six hundred dollars. These salaries shall be in full payment of all services rendered to the county by said supervisors except statutory mileage while actually engaged in the performance of official duties. [R60,§317; C73,§3791; C97,§469; S13,§469; C24, 27, 31, 35, 39,§5125; C46, 50, 54,§331.22; 56GA, ch 173,§4; 57GA, ch 175,§3]

Referred to in §331.23  
Additional provisions in re mileage, ch 79

**331.23 Maximum session pay.** Except as provided in sections 331.22 and 331.24, members of such board shall not receive compensation for a greater number of days of session service each year than specified in the following schedule.

In counties having a population of:

1. Ten thousand or less, thirty days.
2. More than ten thousand and less than twenty-three thousand, forty-five days.
3. Twenty-three thousand and less than forty thousand, fifty-five days.
4. Forty thousand and less than sixty thousand, sixty-five days.
5. Sixty thousand and less than eighty thousand, seventy-five days.
6. Eighty thousand and less than ninety thousand, ninety days.
7. Ninety thousand and over, one hundred days. [R60,§317; C73,§3791; C97,§469; S13,§469; C24, 27, 31, 35, 39,§5126; C46, 50, 54,§331.23]

**331.24 Drainage session pay.** The time spent by the board of supervisors as a ditch or drainage board and in considering drainage matters as a single board, or jointly with one or more other boards, shall not be counted in computing the number of days which any board has been in session, but the members of the board shall be entitled to compensation at the same rate for the time spent in ditch and drainage matters, except the drainage of highways, in addition to the compensation allowed as herebefore set forth, but in no case shall said board be allowed more than fifty days additional time in any year for time spent in drainage matters.

If on the same day, the board considers matters involving two or more drainage districts, their per diem shall be equitably apportioned by them among such districts.

If on the same day the board acts both as a county board and also for the purpose of considering drainage matters, the board shall be paid for one day only, and from the general fund or drainage fund as the board may order. [S13,§469; C24, 27, 31, 35, 39,§5127; C46, 50, 54, §331.24]

Referred to in §331.23

**331.25 Counties with five supervisors.**

1. In all counties, having twenty-four townships and having five board members elected at large, the board of supervisors at its regular meeting in January, in any even-numbered year may divide its county by townships into a number of supervisor districts corresponding to the number of supervisors in such county.

2. Such districts shall be as nearly equal in population as practicable and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member of said board to be elected by the electors of the entire county.

3. In case such division or any subsequent division does leave any district or districts without a member of such board of supervisors, then at the next ensuing general election, a supervisor shall be elected from such district having no member of such board by the electors of the entire county; and if there be two such districts or more, then the new member or members of said board shall be elected by the electors of the entire county from the district or districts having the greater population according to the last federal census, and so on, until each of said districts shall have one member of such board.

4. No member elected from such new district shall serve until a vacancy occurs in such old district having two members. [C54,§331.25]

**331.26 Counties with three supervisors.** In any county having three members of the board of supervisors elected at large, the board of supervisors, the county auditor and the clerk of the district court at the time provided for the regular meeting of the board in January in any even-numbered year may divide its county into three supervisor districts corresponding to the number of miles of road in such county. Such districts shall be as nearly equal in miles of road as practicable and shall embrace a territory as compact as is practicable considering the miles of road and the location of the roads in such districts. In the laying out of such districts corporation boundaries shall not necessarily be considered as district boundaries wherein the division board set up by this section feels the purpose of the section will be best served by not following such corporation boundaries. Each of said districts shall be entitled to one member residing therein on said board to be elected at large by the electors of the entire county. [C54,§331.26]

**331.27 Numbering new districts.** In setting out such districts the division board shall

number such districts one, two and three. Should there be a district in which no supervisors live such district shall be district number one. Should there be two districts wherein no supervisors live they shall be numbers one and two. At the next general election following the setting up of such districts there shall be a supervisor elected in each of said districts wherein no supervisor lives and no supervisor

shall be elected in a district in which there is a holdover supervisor. [C54,§331.27]

**331.28 Terms of new members.** No supervisor so elected shall serve until there is a vacancy in such district having more than one member and such vacancy shall be for the same term as the supervisor elect in such district was elected to fill. [C54,§331.28]

CHAPTER 332

POWERS AND DUTIES OF BOARD OF SUPERVISORS

- 332.1 Body corporate.
- 332.2 Concurrent jurisdiction.
- 332.3 General powers.
- 332.4 National defense projects—sale of land.
- 332.5 Veterans' newsstands.
- 332.6 County law library.
- 332.7 Contracts and bids required.
- 332.8 Bids—plans and specifications.

- 332.9 Offices furnished.
- 332.10 Supplies.
- 332.11 Insurance money.
- 332.12 Compromise authorized.
- 332.13 Conditions of compromise.
- 332.14 Disposition of funds.
- 332.15 Useless documents.
- 332.16 Neglect of duty.

**332.1 Body corporate.** Each county is a body corporate for civil and political purposes, may sue and be sued, must have a seal, may acquire and hold property, make all contracts necessary for the control, management, and improvement or disposition thereof, and do such other acts and exercise such other powers as are authorized by law. [C51,§93; R60,§221; C73,§279; C97,§394; C24, 27, 31, 35, 39,§5128; C46, 50, 54,§332.1]

Right to bid under execution sale, ch 369

**332.2 Concurrent jurisdiction.** Counties bounded by a stream or other water have concurrent jurisdiction over the whole of the waters lying between them. [C51,§95; R60,§223; C73,§280; C97,§395; C24, 27, 31, 35, 39,§5129; C46, 50, 54,§332.2]

**332.3 General powers.** The board of supervisors at any regular meeting shall have power:

1. To appoint one of its number chairman in the absence of the regular chairman, and a clerk, in the absence of the auditor and his deputy.
2. To make such rules not inconsistent with law, as it may deem necessary for its own government, the transaction of business, and the preservation of order.
3. To adjourn from time to time, as occasion may require.
4. To make such orders concerning the corporate property of the county as it may deem expedient, and not inconsistent with law.
5. To examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle, and allow all claims against the county, unless otherwise provided by law.  
Settlement with treasurer, §452.6 et seq.
6. To represent its county and have the care and management of the property and business thereof in all cases where no other provision is made.

7. To manage and control the school fund of its county, as provided by law.

School fund, ch 302

8. To require any county officer to make a report to it, under oath, on any subject connected with the duties of his office and to give such bonds as shall be necessary for the faithful performance of his duties.

9. To remove from office by a majority vote any officer who shall refuse or neglect to make any report or give any bond mentioned in the preceding subsection, within twenty days after being required so to do.

Removal from office, ch 66

10. To fix the compensation for all services of county and township officers not otherwise provided by law, and to provide for the payment of the same.

11. To cause the county buildings to be insured in the name of the county, or otherwise, for its benefit, and in case there are no county buildings, to provide suitable rooms for county purposes.

12. To purchase or acquire title or possession by lease or otherwise, for the use of the county, any real estate necessary for county purposes; to change the site of, or designate a new site for any building required to be at the county seat, when such site shall not be beyond the limits of the city or town at which the county seat is located at the time of such change; and to change the site of and designate a new site for the erection of any building for the care and support of the poor.

13. When any real estate, buildings, or other property are no longer needed for the purposes for which the same were acquired by the county, to convert the same to other county purposes\* or to sell or lease\* the same at a fair valuation.

\*Exception as to county hospital organized under ch 269, Code 1939, see 51GA, ch 158,§3

14. To make appropriations not exceeding three hundred dollars in any one year for the growing, under the direction of the board, of experimental crops on lands owned by the county.

15. To build, equip, and keep in repair the necessary buildings for the use of the county and of the courts.

16. To permit any person to use any portion of the lands owned by the county for ornamental purposes, or for the erection of any monument or fountain under such restrictions as the board may from time to time enact, when such use will not interfere with the use for which such real estate was originally acquired by the county.

17. To lease or sell real estate owned by the county and not needed for county purposes.

18. To own and operate automobiles used or needed by the county sheriff and used in the performance of the duties of that office; to operate a service garage for the purpose of servicing automobiles or other motor vehicles owned and operated by the county in the performance of its duties, and the board may own and service all motorcycles used by the county sheriff in the performance of the duties of that office. The board of supervisors may also make such contracts with the employees of the sheriff's office who use automobiles in the performance of their duties in connection with the use of such automobiles as in their judgment shall be advantageous to the county.

19. To establish, publish, and enforce rules regulating and restricting the use by the public of all county buildings and grounds. Such rules when established shall be posted in conspicuous places about said buildings and grounds. Any person violating any such rule shall be guilty of a misdemeanor and upon conviction be punished by a fine of not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

20. To purchase and pay the premiums on liability and property damage insurance covering and insuring county employees while in the performance of their duties and operating an automobile, truck, road grader, machinery, or other vehicles owned by the county, which insurance shall insure, cover and protect against individual personal liability the county employees or employee may incur. The amount of insurance a county may purchase shall not exceed five thousand dollars for property damage or five thousand dollars for personal injury or death of one person or ten thousand dollars for personal injury or death of more than one person arising out of a single accident.

1-12. [R60,§312; C73,§303; C97,§422; SS15,§422; C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3; 57GA, ch 173,§1]

13. [C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3]

14. [SS15,§422; C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3]

15. [R60,§312; C73,§303; C97,§422; SS15,§422; C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3]

16. [SS15,§422; C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3]

17. [C24, 27, 31, 35, 39,§5130; C46, 50, 54,§332.3]

18, 19. [C31, 35, 39,§5130; C46, 50, 54,§332.3]

20. [C46, 50, 54,§332.3]

**332.4 National defense projects — sale of land.** Whenever the federal government or any agency or department thereof shall have heretofore located, or shall hereafter locate, within any county an ordnance plant or other project which it shall deem desirable in the development of the national defense, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by such county is required, the board of supervisors of such county, by resolution, is hereby authorized to sell and convey such property on behalf of said county at a price and upon terms as may be agreed upon, any such instrument of conveyance to be executed on behalf of such county by the chairman of said board with the seal of said county affixed. The board of supervisors of such county is hereby authorized to apply the proceeds of such sale and conveyance to the acquisition of other property and the construction thereon of buildings and other facilities in substitution for the property thus sold and conveyed, any other law to the contrary notwithstanding. All proceedings heretofore taken by any board of supervisors with respect thereto are hereby validated and confirmed. Any proceeds thus received by any county and not so expended shall be credited to the fund or funds of such county as may be ordered by its board of supervisors. [C46, 50, 54,§332.4]

**332.5 Veterans' newsstands.** The board of supervisors of any county shall, on the application of any honorably discharged soldier, sailor, marine, or nurse of the army or navy of the United States in the late civil war, Spanish-American war, Philippine insurrection, China relief expedition, World War I, World War II, from December 7, 1941, to September 2, 1945, both dates inclusive, including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, who was disabled in said war, cause to be reserved in the courthouse of the county a reasonable amount of space in the lobby of said courthouse to be used by such applicant rent-free as a stand for the sale of news, tobaccos, and candies. Should there be more than one applicant for such reserved space, the board of supervisors shall award the same to the person in their opinion most deserving of the same. The supervisors shall prescribe the regulations by which the stands shall be operated. [C39,§5130.1; C46, 50, 54, §332.5; 57GA, ch 60,§5; ch 63,§9]

Veteran's newsstand in state capitol, §19.16

**332.6 County law library.** The county board of supervisors may, when in their discretion they shall deem it advisable, provide by pur-

chase or otherwise for the procuring, and for the maintaining of a suitable law library in the county courthouse, for the use of the judges, county attorney, county officers and their deputies, besides attorneys practicing in the courts of their respective counties, and such other persons as the supervisors may deem proper; such library shall be under the supervision and control of the judges of the district court of the county wherein the same is located. [C46, 50, 54,§332.6]

**332.7 Contracts and bids required.** No building shall be erected or repaired when the probable cost thereof will exceed two thousand dollars except under an express written contract and upon proposals therefor, invited by advertisement for three weeks in all the official newspapers of the county in which the work is to be done. [R60,§312; C73,§303; C97,§422; SS15, §422; C24, 27, 31, 35, 39,§5131; C46, 50, 54,§332.7]

Referred to in §332.8

**332.8 Bids—plans and specifications.** Contracts for buildings and repairs specified by section 332.7 shall be let to the lowest responsible bidder at a time and place which shall be distinctly stated in the advertisement. The board may on the day fixed for letting such contract adjourn the hearing to some later date and place, of which all parties shall take notice. The board may reject any and all bids and advertise for new ones. The detailed plans and specifications for such improvements shall be on file and open to public inspection in the office of the auditor of the county in which the work is to be done before advertisement for bids. [SS15,§422; C24, 27, 31, 35, 39,§5132; C46, 50, 54,§332.8]

**332.9 Offices furnished.** The board of supervisors shall furnish the clerk of the district court, sheriff, recorder, treasurer, auditor, county attorney, county superintendent, county surveyor or engineer, and county assessor, with offices at the county seat, but in no case shall any such officer, except the county attorney, be permitted to occupy an office also occupied by a practicing attorney. [C73,§3844; C97,§468; C24, 27, 31, 35, 39,§5133; C46, 50, 54, §332.9]

**332.10 Supplies.** The board of supervisors shall also furnish each of said officers with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respective offices, but nothing herein shall be construed to require said board to furnish any county attorney with law books or library. [C73,§3844; C97,§468; C24, 27, 31, 35, 39,§5134; C46, 50, 54,§332.10]

**332.11 Insurance money.** In any county in this state where any of the public buildings thereof have been or may hereafter be destroyed by fire, wind, or lightning, the board of supervisors of such county, for the purpose of reconstructing the same, may appropriate and

use, in addition to the amount now authorized by law, the amount received by way of insurance on such building or buildings so destroyed. [C97,§425; C24, 27, 31, 35, 39,§5135; C46, 50, 54,§332.11]

**332.12 Compromise authorized.** Where judgment has been or may hereafter be rendered against any county treasurer or other county officer and the sureties on his official bond, in favor of any county in this state, and remains unsatisfied, and the board of supervisors of such county are satisfied that the full amount thereof cannot be collected, such board of supervisors shall have power to compromise the said judgment, and to enter full satisfaction thereof under the terms of said compromise. [C97,§437; C24, 27, 31, 35, 39,§5136; C46, 50, 54, §332.12]

Referred to in §§332.13, 332.14

**332.13 Conditions of compromise.** In all cases referred to in section 332.12, if the principal debtor and each of the sureties on his official bond shall execute a written consent to a compromise with any one or more of said sureties, and to a release of said surety or sureties, and in such writing shall agree that such compromise or release shall not release any of the sureties who shall not compromise and be released from the payment of the unpaid judgment, then in that case, upon the filing of such written consent with the auditor of such county, the board of supervisors of such county shall have full power, and are hereby authorized, to compromise with any one or more of such sureties, and to release such surety or sureties upon the terms which may be agreed upon in such compromise. [C97, §438; C24, 27, 31, 35, 39,§5137; C46, 50, 54,§332.13]

Referred to in §332.14

**332.14 Disposition of funds.** In case of any compromise as provided in sections 332.12 and 332.13 being made, the money received by the county thereon shall be paid to the various funds of the county, in proportion to the amount that each fund is in default, as such default existed at the time the judgment was rendered, as nearly as the same can be ascertained, so that each fund shall receive its pro rata share, as the same shall be determined by the board of supervisors. [C97,§439; C24, 27, 31, 35, 39,§5138; C46, 50, 54,§332.14]

**332.15 Useless documents.** The board of supervisors is authorized to order the county auditor to destroy all duplicate tax receipts, poll tax receipts, and hunting license applications which have been on file in the office of the county treasurer or auditor for more than five years.

The board is also authorized to order the county auditor to destroy all assessors' books, assessment rolls, county vouchers and canceled county warrants which have been on file in the office of the county auditor for more than ten years. [C24, 27, 31, 35, 39,§5139; C46, 50, 54, §332.15]

**332.16 Neglect of duty.** If any supervisor shall neglect or refuse to perform any of the duties which are or shall be required of him by law as a member of the board of supervi-

sors, without just cause therefor, he shall, for each offense, forfeit one hundred dollars. [R60, §311; C73, §302; C97, §421; C24, 27, 31, 35, 39, §5140; C46, 50, 54, §332.16]

## CHAPTER 333 COUNTY AUDITOR

333.1 Duties.  
333.2 Issuance of warrants.  
333.3 Issuance of warrants without audit.  
333.4 Issuance of warrants prior to audit.  
333.5 Audit by board.  
333.6 Form of warrants.  
333.7 Erroneous certificates—liability.  
333.8 Duty as to school fund.

333.9 Collection of moneys.  
333.10 List of county officers—report.  
333.11 Financial report.  
333.12 Comparisons.  
333.13 Additional matter.  
333.14 Printing and distribution.  
333.15 Fees to be collected.

### **333.1 Duties.** The county auditor shall:

1. Record all the proceedings of the board in proper books provided for that purpose.
2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money, and for the payment of money from the county treasury.
3. Record the vote of each supervisor on any question submitted to the board, if required by any member present.
4. Sign all orders issued by the board for the payment of money, and record, in a book provided for the purpose, the reports of the county treasurer of the receipts and disbursements of the county.
5. Preserve and file all accounts acted upon by the board, with its action thereon, and perform such special duties as are or may be required of him by law.
6. Designate upon every account, on which any sum shall be allowed by the board, the amount so allowed, and the charges for which the same was allowed.
7. Deliver to any person who may demand it a certified copy of any record or account in his office, on payment of his legal fees therefor.
8. Have the general custody and control of the courthouse in each county, respectively, subject to the direction of the board of supervisors. [R60, §§319, 320; C73, §§320, 323; C97, §§470, 473; C24, 27, 31, 35, 39, §5141; C46, 50, 54, §333.1]

Duty as to forest and fruit-tree reservations, §161.13

**333.2 Issuance of warrants.** Except as otherwise provided, the auditor shall not sign or issue any county warrant, unless the board of supervisors by recorded vote or resolution shall have authorized the same, and every such warrant shall be numbered and the date, amount, and the number of the same, and the name of the person to whom issued, shall be entered in a book to be kept in his office for that purpose. [R60, §321; C73, §321; C97, §471; C24, 27, 31, 35, 39, §5142; C46, 50, 54, §333.2]

Referred to in §333.5

### **333.3 Issuance of warrants without audit.**

The county auditor is hereby authorized to issue warrants as follows before bills for same have been passed upon by the board of supervisors:

1. For jury fees and mileage on certificate of the clerk of the court upon which they were in attendance, which certificate shall be issued when the juror entitled thereto shall have been discharged or excused by the court.
2. For witness fees and mileage for attendance before the grand jury upon certificate of the county attorney and foreman of such jury.
3. For witness fees before the district court in jury trials therein in criminal cases, when such fees are payable by the county, upon certificate of the clerk of the court upon which they were in attendance.
4. The per diem of the shorthand reporter of the district court upon certificate of the judge holding said court.
5. For expense of the grand jury upon order of the judge of the district court. [R60, §321; C73, §321; C97, §471; C24, 27, 31, 35, 39, §5143; C46, 50, 54, §333.3; 57GA, ch 174, §1]

Referred to in §§333.5, 602.31  
Judicially allowed claims, §606.18  
Witnesses before county attorney, §769.22

### **333.4 Issuance of warrants prior to audit.**

The board of supervisors may, by resolution, authorize the county auditor to issue warrants when said board is not in session for the following named purposes:

1. For such fixed charges as freight, express, postage, water, light, and telephone rents, upon filing duly verified bills for same with the county auditor.
2. For salaries and pay rolls where such compensation shall have been previously fixed by the board of supervisors, upon certificate of the officer or foreman under whom such compensation shall have been earned. [C24, 27, 31, 35, 39, §5144; C46, 50, 54, §333.4]

Referred to in §333.5

**333.5 Audit by board.** All bills paid under the provisions of sections 333.2 to 333.4, inclu-

sive, shall be passed upon by the board of supervisors at the first meeting following such payment and shall be entered on the minutes as other claims allowed by the board. [C24, 27, 31, 35, 39, §5145; C46, 50, 54, §333.5]

**333.6 Form of warrants.** Each warrant issued by the auditor shall be made payable to the person performing the service or furnishing the supplies for which said warrant makes payment, and shall state the purpose for which said warrant was issued. [C24, 27, 31, 35, 39, §5146; C46, 50, 54, §333.6]

Character of county warrant, see 165 Iowa 325

**333.7 Erroneous certificates—liability.** Any officer making an erroneous certificate shall be liable on his official bond for any loss to the county thereby. [C24, 27, 31, 35, 39, §5147; C46, 50, 54, §333.7]

**333.8 Duty as to school fund.** When the auditor of any county shall receive from the state comptroller notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting. [R60, §322; C73, §322; C97, §472; C24, 27, 31, 35, 39, §5148; C46, 50, 54, §333.8]

School funds, ch 302

**333.9 Collection of moneys.** The county auditor is hereby authorized to collect and receive all money due his county, except when otherwise provided by law, and shall be responsible for all public funds received or collected by him. [C73, §323; C97, §473; C24, 27, 31, 35, 39, §5149; C46, 50, 54, §333.9]

**333.10 List of county officers—report.** The county auditor shall report to the secretary of state the name, office, and term of office of every county officer elected or appointed, within ten days after their election and qualification, and the secretary of state shall record the same in a book to be kept for that purpose in his office. [R60, §291, 292; C73, §324; C97, §474; C24, 27, 31, 35, 39, §5150; C46, 50, 54, §333.10]

**333.11 Financial report.** The county auditor shall, during the month of January of each year, compile and prepare a financial report, which shall contain schedules showing:

1. The amount of the various classes of warrants drawn on the county fund, except for court expenses, during the preceding year, including therein, among other items, the total amount paid each county officer, also their deputies and extra help, also other employees of the county, and amounts paid for rent and various other expenses, including printing and stationery, furniture and fixtures, publishing proceedings of the board of supervisors, postage allowed each county official, complete election expenses, including printing of ballots, expenses of registration, and items of like nature.

2. The amount of warrants drawn on the county fund for various court expenses, which shall include among other items the salary paid the county attorney and the amounts received by him as commission on fines and from other sources, and the amount paid to assistant counsel.

3. The amount paid jurors, witnesses and bailiffs, respectively, in district court, amount paid for shorthand reporting, amount paid for printing and stationery, amount paid for attorney fees for defending criminals, amount paid for meals for jurors, and items of like nature.

4. The expenses of the grand jury, stating amounts paid grand jurors, bailiffs, witnesses, and items of like nature.

5. The expenses of the coroner's court, stating amount paid coroner, coroner's clerk, constable fees, witness fees, and items of like nature.

6. The expenses of justice courts, stating amounts paid various justices, constables, total amount paid witnesses, jurors, attorney fees, for printing, and items of like nature.

7. The amount drawn by each member of the board of supervisors from the several funds of the county for services during the preceding year.

8. A recapitulation of the total amount of warrants drawn on the county fund, with a comparison with the amount of warrants drawn on the county fund each year for the last five years.

9. The various classes of warrants drawn on the poor fund for the preceding year, with a comparison with the total amount of warrants drawn on such fund each year for the last five years.

10. The amount of warrants drawn on the fund for the support of the insane for the preceding year, including the amounts received by each commissioner as fees and expenses, fees of witnesses, sheriff's fees and expenses, the cost of transportation, and items of like nature.

11. The total cost of maintenance of insane at county asylum, with number confined therein, and total paid the various state hospitals for the insane, with the number of patients from the county confined in such hospitals.

12. The amount paid the various state institutions during the preceding year.

13. The amounts paid the sheriff for boarding prisoners during the preceding year, together with the amount paid the sheriff as jail expenses, with a comparison with the amounts paid for boarding prisoners, and for jail expenses each year during the last five years.

14. The amounts paid for the condemning of intoxicating liquors during the preceding year, also cost of convictions, both in justice courts and in the district court, for the violation of the laws relating to the sale of intoxicating liquors, together with the amount of

finer collected for such violation and the amounts received as mulct tax, if any.

15. The amount of warrants drawn on each of the various funds of the county. [S13, §480-a; C24, 27, 31, 35, 39, §5151; C46, 50, 54, §333.11]

Referred to in §333.12

**333.12 Comparisons.** The comparisons with preceding years provided for in section 333.11 shall be as follows:

1. The first year, comparison only with the preceding year.

2. The second year, with the two preceding years.

3. The third year, with the three preceding years.

4. The fourth year, with the four preceding years.

5. The fifth year, with the five preceding years.

6. Thereafter in the same order and manner for each five-year period. [S13, §480-a; C24, 27, 31, 35, 39, §5152; C46, 50, 54, §333.12]

**333.13 Additional matter.** Said financial report shall also contain the following:

1. The report of the county auditor as required by law to be made to the superintendent of public instruction, relating to school funds and property.

2. The various reports as required by law to be made to the county board of supervisors of magistrates and other officers, including forfeited recognizances in their offices, fines, penalties, forfeitures imposed in their respective courts, and forfeited appearance bonds in criminal cases, all of which by law go into the county treasury for the benefit of the school fund.

3. The various reports made during the preceding year, by the county treasurer, auditor, recorder, sheriff, clerk of the district court, and the soldiers relief commission, as required by law.

4. The reports of the various committees that may be appointed by the board of supervisors to examine the affairs and accounts of the various county officials and employees.

5. Such other and further matters and information as the board of supervisors may direct or the auditor may deem advisable. [S13, §480-a; C24, 27, 31, 35, 39, §5153; C46, 50, 54, §333.13]

**333.14 Printing and distribution.** Said financial report shall be ordered printed by the board of supervisors in pamphlet form in such numbers as the board may direct, for distribution among the taxpayers of the county. The county auditor of each county shall, on or before April 1 of each year, furnish to the auditor of state the information contained in such financial report and any other information relative to the financial affairs of the county which he may require, upon blank forms provided by the auditor of state for this purpose. [S13, §480-b; C24, 27, 31, 35, 39, §5154; C46, 50, 54, §333.14]

**333.15 Fees to be collected.** The county auditor shall be entitled to charge and receive the following fees:

1. For transfers made in the transfer books, fifty cents for each separate parcel of real estate described in any deed, or transfer of title certified by clerks of district courts, provided, however, if several parcels are described in any one such instrument and the parcels are contiguous or separated only by public streets or highways, the fee shall not exceed two and one-half dollars. A parcel of real estate outside of the limits of cities and towns shall be all the unplatted land described in any deed or transfer of title lying within one numbered section of land.

2. For issuing certificate of redemption of land sold for taxes, fifty cents.

3. For each certificate issued by the treasurer for lands sold for nonpayment of taxes, fifty cents. [C73, §3797; C97, §478; C24, 27, 31, 35, 39, §5155; C46, 50, 54, §333.15]

## CHAPTER 334 COUNTY TREASURER

- 334.1 Duties.
- 334.2 Official seal.
- 334.3 Warrants—indorsement.
- 334.4 Breach of duty.
- 334.5 Warrants partially paid.
- 334.6 Warrant book.
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- 334.8 Funds—separate account.
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### REPLACEMENT OF LOSSES

- 334.13 Losses.
- 334.14 Auditor to determine loss.
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- 334.16 Certification.
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- 334.18 Interest.
- 334.19 Default—remedy.
- 334.20 Separate fund.
- 334.21 Comptroller to issue warrant.
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**334.1 Duties.** The treasurer shall receive all money payable to the county, and disburse the same on warrants drawn and signed by

the county auditor and sealed with the county seal, and not otherwise, and shall keep a true account of all receipts and disbursements, and

hold the same at all times ready for the inspection of the board of supervisors. [C51, §152; R60, §360; C73, §327; C97, §482; C24, 27, 31, 35, 39, §5156; C46, 50, 54, §334.1]

Authorized deposits, §§452.10, 453.1  
Restrictions, §§452.3, 452.4  
Settlement with treasurer, §452.6 et seq.

**334.2 Official seal.** The county treasurer shall be provided with an impression seal on the face of which shall appear the name of the county, the word "county", either in full or abbreviated; the word "treasurer", either in full or abbreviated; and the word "Iowa", and the impression of said seal shall be placed upon each motor vehicle registration certificate signed by the county treasurer. [C24, 27, 31, 35, 39, §5157; C46, 50, 54, §334.2]

**334.3 Warrants—indorsement.** The treasurer of every county, when he shall receive any warrant, scrip, or other evidence of its indebtedness, shall indorse thereon the date of its receipt, from whom received, and what amount he paid thereon. [R60, §2187; C73, §557; C97, §597; C24, 27, 31, 35, 39, §5158; C46, 50, 54, §334.3]

Referred to in §§334.4, 368A.16

**334.4 Breach of duty.** Any county treasurer, or any deputy or employee of such officer, who violates any of the provisions of section 334.3, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R60, §2188; C73, §558; C97, §598; C24, 27, 31, 35, 39, §5159; C46, 50, 54, §334.4]

Referred to in §368A.16

**334.5 Warrants partially paid.** When a person wishing to make a payment into the treasury presents a warrant of an amount greater than such payment, or presents for payment a warrant in excess of the funds in the treasury, the treasurer shall cancel the same and give the holder a certificate of the overplus, upon the presentation of which to the county auditor he shall file it, and issue a new warrant of that amount, and charge the treasurer therewith; and such certificate is transferable by delivery, and will entitle the holder to the new warrant, payable to his order, and containing reference to the original warrant. [C51, §§154, 490; R60, §§362, 755; C73, §329; C97, §485; C24, 27, 31, 35, 39, §5162; C46, 50, 54, §334.5]

**334.6 Warrant book.** The treasurer shall keep a record of all warrants drawn on him by the auditor and presented, in a book so ruled as to show in separate columns, as to each warrant, the number, date, principal, name of drawee, when paid, to whom paid, and amount of interest paid. [C51, §155; R60, §363; C73, §330; C97, §486; C24, 27, 31, 35, 39, §5163; C46, 50, 54, §334.6]

**334.7 Cancellation of warrants.** The warrants returned by the treasurer shall be compared with the warrant book, and the word "canceled" be written over the minute of the proper numbers in the warrant book, and the

original warrant be preserved for at least two years, and he shall make monthly returns to the auditor of the number, date, drawee's name, when paid, to whom paid, original amount, and interest. [C51, §§159, 160; R60, §§365, 366; C73, §§332, 333; C97, §488; C24, 27, 31, 35, 39, §5164; C46, 50, 54, §334.7]

Analogous provisions, §§12.6, 368A.4(2)

**334.8 Funds—separate account.** The treasurer shall, for each term of his office, keep a separate account of the several taxes for state, county, school, highway, or other purposes, and of all other funds created by law, whether regular, temporary, or special, and no moneys in any such fund shall be paid out or used for any other purpose, except as specially authorized by law. The treasurer shall charge himself with the amount of the tax or other fund and credit himself with the amounts disbursed on each and with the amount of delinquent taxes, when authorized to do so. [C51, §§156, 161; R60, §§364, 367; C73, §§331, 334; C97, §§487, 489; C24, 27, 31, 35, 39, §5165; C46, 50, 54, §334.8]

**334.9 State funds.** The treasurer of each county shall on or before the fifteenth day of each month prepare sworn statements of the amount of money in his hands on the last day of the preceding month belonging to the state treasury, and forward by mail one such statement, accompanied by his remittance therefor, to the treasurer of state, and one such statement to the state comptroller. Provided in lieu of such remittance the treasurer of the county may deposit to the credit of the treasurer of the state said amount in interest-bearing accounts in a bank, or banks, of said county designated by the treasurer of the state. [R60, §799; C73, §914; C97, §1459; C24, 27, 31, 35, 39, §5166; C46, 50, 54, §§334.9, 334.10; 57GA, ch 54, §2, 3]

**334.10 Payment to state treasurer.** The treasurer of state is hereby required to receive on all such payments the same kind of money and notes which the county treasurer is authorized and required by law to receive in payment of taxes. [R60, §799; C73, §914; C97, §1459; C24, 27, 31, 35, 39, §5167; C46, 50, 54, §334.10; 57 GA, ch 54, §3]

County responsible to state, §452.1

**334.11 Penalty.** In case the treasurer of any county shall fail to prepare and forward the aforesaid statement, or shall fail to promptly honor any draft by the treasurer of state as provided in section 12.8\*, he shall forfeit and pay for each and every failure a sum not less than one hundred dollars or more than five hundred dollars, to be recovered in an action on the treasurer's bond, brought in the name of the state comptroller or the treasurer of state. [R60, §799; C73, §914; C97, §1459; C24, 27, 31, 35, 39, §5168; C46, 50, 54, §334.11]

\*Drafts by treasurer repealed by 57GA, ch 54, §1

**334.12 Unclaimed money.** In any county of this state where any special levy has been



made to pay any claim, bond, or other indebtedness, and the same shall have remained in the treasury of the county, uncalled for, for a period of three years, the board of supervisors of such county may authorize such unclaimed fund to be transferred to the general county fund. [C97,§456; C24, 27, 31, 35, 39,§5169; C46, 50, 54,§334.12]

#### REPLACEMENT OF LOSSES

**334.13 Losses.** All losses of funds in the legal custody of a county treasurer, resulting from any act of omission or commission for which the said treasurer is legally responsible, except losses to the amount of the treasurer's bond, and except losses which are or may be occasioned by depositing said funds in authorized depositories, shall be replaced by the several counties of the state as hereinafter directed. [C27, 31, 35,§5169-a1; C39,§5169.01; C46, 50, 54,§334.13]

**334.14 Auditor to determine loss.** The amount of the loss which is to be replaced shall be determined by the auditor of state from a full and detailed examination made by him, or under his authority, of the accounts of the treasurer in question, which examination shall be reduced to writing and filed with the state comptroller. [C27, 31, 35,§5169-a2; C39,§5169.02; C46, 50, 54,§334.14]

Referred to in §334.22

**334.15 Loss to be apportioned.** When the loss which is to be replaced has been determined by said auditor, the state comptroller shall, in writing filed in his office, apportion the same to each county of the state, including the county suffering the loss, in the proportion which the taxable property of each county bears to the total taxable property of all the counties of the state. [C27, 31, 35,§5169-a3; C39,§5169.03; C46, 50, 54,§334.15]

Referred to in §334.22

**334.16 Certification.** The state comptroller shall forthwith certify to each county treasurer of the state the amount apportioned to the various counties. [C27, 31, 35,§5169-a4; C39, §5169.04; C46, 50, 54,§334.16]

Referred to in §334.22

**334.17 Counties to remit.** Upon receipt of the certificate aforesaid, the county treasurer,

except of the county suffering the loss, shall forthwith charge the general fund of his county with the amount apportioned to his county and forthwith remit said amount with interest, if any, to the state comptroller. [C27, 31, 35,§5169-a5; C39,§5169.05; C46, 50, 54,§334.17]

Referred to in §334.22

**334.18 Interest.** The amount apportioned to a county shall draw interest at the rate of one percent per month on and after thirty days from the time the treasurer is notified of the amount apportioned to his county. [C27, 31, 35,§5169-a6; C39,§5169.06; C46, 50, 54,§334.18]

Referred to in §334.22

**334.19 Default—remedy.** Should the amount apportioned to a county be not paid, the default shall be reported by the state comptroller to the state tax commission, and the said commission shall forthwith levy upon all the taxable property of the delinquent county, except moneys and credits, a tax sufficient to raise said apportionment together with a penalty of twenty-five percent thereon, and all interest. Said levy shall be transmitted to the county auditor of the delinquent county who shall enter said levy on the first ensuing tax list of the county, and said tax shall be collected and remitted to the state comptroller. [C27, 31, 35,§5169-a7; C39,§5169.07; C46, 50, 54,§334.19]

Referred to in §334.22

**334.20 Separate fund.** The funds received for the purpose of reimbursing a county shall be carried by the treasurer of state as a separate fund. [C27, 31, 35,§5169-a8; C39,§5169.08; C46, 50, 54,§334.20]

Referred to in §334.22

**334.21 Comptroller to issue warrant.** The state comptroller shall, from time to time, issue his warrant on the various reimbursement funds in favor of the county suffering the loss. [C27, 31, 35,§5169-a9; C39,§5169.09; C46, 50, 54, §334.21]

Referred to in §334.22

**334.22 Limitation.** Nothing in sections 334.14 to 334.21, inclusive, shall be construed to relieve any existing surety from any liability accruing prior to January 1, 1926. [C27, 31, 35, §5169-a10; C39,§5169.10; C46, 50, 54,§334.22]

CHAPTER 335  
COUNTY RECORDER

- |                                      |                                |
|--------------------------------------|--------------------------------|
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| 335.2 General duties.                | 335.10 Free copies.            |
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**335.1 Auditor as temporary recorder.** In case of vacancy occurring in the office of recorder, by death or otherwise, the auditor shall discharge the duties pertaining to said office until such vacancy is filled by appointment by the board of supervisors. [C97,§497; C24, 27, 31, 35, 39,§5170; C46, 50, 54,§335.1]

**335.2 General duties.** The recorder shall keep his office at the county seat, and shall record at length, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law. [C51,§150; R60,§358; C73,§335; C97,§494; S13,§494; C24, 27, 31, 35, 39,§5171; C46, 50, 54, §335.2]

S13,§494, editorially divided  
Recording articles of incorporation, §491.4  
Recording duplicate warehouse certificates, §544.37

**335.3 Error in recording—correction.** If, in the recording of any such instrument heretofore recorded or hereafter to be filed for record, the recording fee for which has once been paid, the recorder shall commit an error in making the record thereof, it shall be his duty to re-record such instrument upon the presentation of the original by the owner thereof, without further compensation; and he shall also enter upon the margin of the new record a reference to the original record, and upon the margin of the original record a reference to the new record, giving the book and page thereof. When an error has been made in indexing any instrument, it shall be the duty of the recorder to reindex the same without further compensation. [S13,§494; C24, 27, 31, 35, 39,§5172; C46, 50, 54,§335.3]

**335.4 Military personnel record.** The county recorder of each county in this state shall maintain in his office a special book or books of uniform type, kind, and form approved by the adjutant general of the state in which he shall, upon request, record without charge the discharge or discharges of any man or woman who:

1. Enlisted or was inducted from said county;
2. Resided at any time in said county, or
3. Is buried in said county.

This section shall apply to any man or woman entitled thereto who served at any time in any of the armed branches of the United States of America, including members of the merchant marine in time of war, and

including the Korean Conflict at any time between June 27, 1950, and July 27, 1953, both dates inclusive, members of the armed forces of any country allied with the United States of America, and of the armed forces of Iowa, the various states and territories. [C24, 27, 31, 35, 39,§5173; C46, 50, 54,§335.4; 57GA, ch 63,§10]

Referred to in §335.6

**335.5 Record of death in service.** Where no official discharge was issued, or where such person was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter or telegram from competent authority, including letters from the pension bureau, veterans administration, or other governmental office which shows the termination of such veteran's service. [C46, 50, 54,§335.5]

**335.6 Commissions or warrants.** Said recorder shall also record without charge for the classes indicated in section 335.4 the commissions and warrants of officers and noncommissioned officers, and all orders citing said veteran for bravery and meritorious action, and all citations and bestowals of medals from the state, federal, and foreign governments. [C46, 50, 54,§335.6]

**335.7 Veterans organizations.** In the event of the death of any veteran entitled to have his discharge or other records recorded, the same may be presented by any veterans organization for record with the same force as though tendered by the veteran himself during his or her lifetime. [C46, 50, 54,§335.7]

**335.8 Notice published by recorder.** The county recorder may from time to time by published notice, request the filing of such documents as are referred to herein for the purpose of recording. Any expense incident to such notice shall be paid as an expense of the county recorder's office upon bills filed with the board of supervisors. [C46, 50, 54, §335.8]

**335.9 Alphabetical index.** There shall be kept in connection with such record an alphabetical index referring to the name of the soldier, sailor, or marine, whose name appears in each discharge paper so recorded. [C24, 27, 31, 35, 39,§5174; C46, 50, 54,§335.9]

**335.10 Free copies.** When a certified copy or copies of any public record in the state are required to perfect the claim of any soldier,

sailor, or marine, in service or honorably discharged, or any dependent of such soldier, sailor, or marine, for a United States pension, or other claim upon the government of the United States, they shall, upon request, be furnished by the custodian of such records, without requiring any fee or compensation therefor. [C24, 27, 31, 35, 39, §5175; C46, 50, 54, §335.10]

**335.11 Federal tax liens.** The notice of a lien for any tax in favor of the government of the United States, or any release of such lien, may be filed and recorded in the office of the county recorder in any county within which the property subject to the lien is situated. Such county recorder shall file, record, and index any such notice of lien or any release of the same without fee. [C24, 27, 31, 35, 39, §5176; C46, 50, 54, §335.11]

**335.12 Social security number.** Any person who is registered under the federal social security act may have such record permanently recorded in the office of the county recorder, upon payment of a fee of twenty-five cents. [C39, §5176.1; C46, 50, 54, §335.12]

**335.13 Index.** There shall be kept in connection with such record an alphabetical index, referring to the name of the person so registered under the federal social security act. [C39, §5176.2; C46, 50, 54, §335.13]

**335.14 Fees.** The recorder shall charge and collect the following fees:

1. For recording each instrument containing four hundred words or less, one dollar.

2. For every additional hundred words or fraction thereof, twenty cents.

3. For the marginal assignment or release of any instrument (except those made by the clerk of the district court), fifty cents. [C51, §2534; R60, §4143; C73, §3792; C97, §498; S13, §498; C24, 27, 31, 35, 39, §5177; C46, 50, 54, §335.14]

Referred to in §§96.14, 386B.7, 422.26, 424.7  
Similar provision, §556.20

**335.15 Exact time of filing.** In addition to the other requirements of the law the recorder shall enter in his fee book the date of filing each instrument, the number and character thereof, and the names of the grantors and grantees therein. In numbering said instruments, he shall start with number one, immediately after the date of his settlement with the board of supervisors each year, and continue to number them consecutively till his next settlement with said board. Where not otherwise already required by law the recorder shall also enter in the index book the exact time of the filing of each instrument. [C51, §2534; R60, §4143; C73, §3792; C97, §498; S13, §498; C24, 27, 31, 35, 39, §5178; C46, 50, 54, §335.15]

## CHAPTER 336

### COUNTY ATTORNEY

336.1 Qualifications.

336.2 Duties.

336.3 Absence of county attorney—substitute—compensation.

336.4 Substitute—notice before appointment.

336.5 County attorney—prohibitions—disqualified assistants.

**336.1 Qualifications.** County attorneys shall be qualified electors of their respective counties, duly admitted to practice as attorneys and counselors in the courts of this state as provided by law. No person shall be qualified for such office while his license to practice remains revoked or suspended. [S13, §308-b; C24, 27, 31, 35, 39, §5179; C46, 50, 54, §336.1]

**336.2 Duties.** It shall be the duty of the county attorney to:

1. Diligently enforce or cause to be enforced in his county, all of the laws of the state, actions for a violation of which may be commenced or prosecuted in the name of the state of Iowa, or by him as county attorney, except as otherwise specially provided.

2. Appear for the state and county in all cases and proceedings in the courts of his county to which the state or county is a party, except cases brought on change of venue from another county, and to appear in the supreme court in all cases in which the county is a party, and also in all cases transferred on

change of venue to another county, in which his county or the state is a party.

3. Appear and prosecute all preliminary hearings before justices of the peace upon charges triable upon indictment.

4. Appear and prosecute misdemeanors before justices of the peace whenever he is not otherwise engaged in the performance of official duties.

5. Enforce all forfeited bonds and recognizances, and to prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures accruing to the state or his county, or to any school district or road district in his county; also to prosecute all suits in his county against public service corporations, which are brought in the name of the state of Iowa.

6. Commence, prosecute, and defend all actions and proceedings in which any county officer, in his official capacity, or the county, is interested, or a party.

7. Give advice or his opinion in writing,

without compensation, to the board of supervisors and other county officers and to school and township officers, when requested so to do by such board or officer, upon all matters in which the state, county, school, or township is interested, or relating to the duty of the board or officer in which the state, county, school, or township may have an interest; but he shall not appear before the board of supervisors upon any hearing in which the state or county is not interested.

8. Attend the grand jury whenever necessary for the purpose of examining witnesses before it, or of giving it legal advice, or to procure subpoenas or other process for witnesses, to prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom he shall receive money in his official capacity, and file a duplicate thereof with the county auditor.

10. Make reports relating to the duties and the administration of his office to the governor or the attorney general whenever called upon by the governor or the attorney general so to do.

11. Perform other duties enjoined upon him by law. [C97,§301; SS15,§301; C24, 27, 31, 35, 39,§5180; C46, 50, 54,§336.2]

Liquor law enforcement, §123.93

**336.3 Absence of county attorney—substitute—compensation.** In case of absence, sickness, or disability of the county attorney and his deputies, the court before whom it is his duty to appear, and in which there may be business requiring his attention, may appoint an attorney to act as county attorney, by order to be entered upon the records of the court, and he shall receive out of the compensation allowed to the county attorney, when such appearance is before a justice of the peace, such sum as the board of supervisors shall determine to be reasonable for the services rendered, and, when it is before a court of

record, such sum as the judge shall determine to be a reasonable compensation, and, while acting under said appointment, he shall have all the authority and be subject to all the responsibilities herein conferred upon county attorneys. [C97,§304; C24,§13675; C27, 31, 35, §5180-a1; C39,§5180.1; C46, 50, 54,§336.3]

**336.4 Substitute — notice before appointment.** In criminal cases less than a felony, a justice of the peace or magistrate cannot appoint an attorney at the expense of the county or county attorney; and no justice of the peace shall appoint an attorney to act as county attorney in any case wherein a felony is charged, unless reasonable notice in writing has been given the county attorney that his services will be required before such justice at a time therein named, and he has failed to appear in response thereto. [C97,§304; C24, §13676; C27, 31, 35,§5180-a2; C39,§5180.2; C46, 50, 54,§336.4]

**336.5 County attorney — prohibitions — disqualified assistants.** No county attorney shall accept any fee or reward from or on behalf of anyone for services rendered in any prosecution or the conduct of any official business, nor shall he, or any member of a firm with which he may be connected, be directly or indirectly engaged as an attorney or otherwise for any party other than the state or county in any action or proceeding pending or arising in his county, based upon substantially the same facts upon which a prosecution or proceeding has been commenced or prosecuted by him in the name of the county or state; nor shall any attorney be allowed to assist the county attorney in any criminal action, where such attorney is interested in any civil action brought or to be commenced, in which a recovery is or may be asked upon the matters and things involved in such criminal prosecution. [C97, §305; C24,§13677; C27, 31, 35,§5180-a3; C39, §5180.3; C46, 50, 54,§336.5]

## CHAPTER 337

### SHERIFF

Identification and use of publicly owned automobiles, etc., §740.20 et seq.  
Vacancy in office of sheriff or other disqualifications, see §§339.1, 339.2

- 337.1 Authority to summon aid.
- 337.2 School of instruction.
- 337.3 Execution and return of writs.
- 337.4 Investigation on order of county attorney.
- 337.5 Not relieved from duties.
- 337.6 Disobedience punished.
- 337.7 Bailiffs—appointment—duties.
- 337.8 Execution of process.
- 337.9 Delivery to successor.
- 337.10 Successor may execute process.

- 337.11 Fees.
- 337.12 Costs—when payable by county.
- 337.13 Contract in lieu of mileage.
- 337.14 Fees in addition to salary.
- 337.15 Condemnation funds.
- 337.16 Unadjudicated condemnation funds.
- 337.17 Duty and liability of treasurer.
- 337.18 Record of funds.
- 337.19 Liability of sheriff.
- 337.20 First deputy as sheriff.

**337.1 Authority to summon aid.** The sheriff, by himself or deputy, may call any person to his aid to keep the peace or prevent crime, or

to arrest any person liable thereto, or to execute process of law; and when necessary, the sheriff may summon the power of the county.

The sheriffs may use the services of the state department of public safety in the apprehension of criminals and detection of crime. [C51, §173; R60, §386; C73, §340; C97, §502; S13, §499-a; C24, 27, 31, 35, 39, §5182; C46, 50, 54, §337.1]

Referred to in §337.5

**337.2 School of instruction.** The sheriff of each county may, with the co-operation of the commissioner of public safety, annually hold a conference and school of instruction for all peace officers, including regularly organized vigilantes under his jurisdiction, within his county, at which time instruction may be given in all matters relating to the duties of peace officers. [C31, 35, §5182-d1; C39, §5182.1; C46, 50, 54, §337.2]

**337.3 Execution and return of writs.** The sheriff shall, by himself or deputy, execute and return all writs and other legal process issued by legal authority to him directed. [C51, §170; R60, §383; C73, §337; C97, §499; S13, §499-b; C24, 27, 31, 35, 39, §5183; C46, 50, 54, §337.3]

Referred to in §337.5

**337.4 Investigation on order of county attorney.** The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney. When such investigation is made the sheriff shall file with the county auditor a detailed, sworn statement of his expenses, accompanied by the written order of the county attorney, and the board shall audit and allow only so much thereof as it shall find reasonable and necessary. [S13, §499-c; C24, 27, 31, 35, 39, §5184; C46, 50, 54, §337.4]

Referred to in §337.5

**337.5 Not relieved from duties.** Nothing in sections 337.1, 337.3, and 337.4 shall be so construed as to relieve any peace officer from the full and faithful discharge of all the duties now or hereafter enjoined upon him by law. [S13, §499-d; C24, 27, 31, 35, 39, §5185; C46, 50, 54, §337.5]

**337.6 Disobedience punished.** His disobedience of the command of any such process is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further liable to action by any person injured thereby. [C51, §171; R60, §384; C73, §338; C97, §500; C24, 27, 31, 35, 39, §5186; C46, 50, 54, §337.6]

Contempts, ch 665

**337.7 Bailiffs — appointment — duties.** The sheriff shall attend upon the district court of his county, and while it remains in session he shall be allowed the assistance of such number of bailiffs as the judge may direct. They shall be appointed by the sheriff and shall be regarded as deputy sheriffs, for whose acts the sheriff shall be responsible. [C51, §174; R60, §387; C73, §341; C97, §503; C24, 27, 31, 35, 39, §5187; C46, 50, 54, §337.7]

**337.8 Execution of process.** Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office, and, in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands, and to return the same, as if the sheriff had continued in office, and he and they will remain liable therefor, under the provisions of law, as in other cases. [C51, §177; R60, §390; C73, §344; C97, §504; C24, 27, 31, 35, 39, §5188; C46, 50, 54, §337.8]

Referred to in §337.9

**337.9 Delivery to successor.** When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon, except as provided in section 337.8, and all prisoners in the jail, and take his receipts specifying the same, and such receipt shall be sufficient indemnity to the person taking it. [C51, §178; R60, §391; C73, §345; C97, §505; C24, 27, 31, 35, 39, §5189; C46, 50, 54, §337.9]

**337.10 Successor may execute process.** If the sheriff die or go out of office before the return of any process then in his hands, his successor, or other officer authorized to discharge the duties of the office, may proceed to execute and return the same in the same manner as the outgoing sheriff should have done; but nothing in this section shall be construed to exempt the outgoing sheriff and his deputies from the duty imposed on them to execute and return all process in their hands at the time the vacancy in the office of sheriff occurs. [R60, §3264; C73, §346; C97, §506; C24, 27, 31, 35, 39, §5190; C46, 50, 54, §337.10]

**337.11 Fees.** The sheriff shall charge and be entitled to collect the following fees:

1. For serving a notice and making return thereof, for the first person served, seventy-five cents, and each additional person, fifty cents.

2. For each warrant served, three dollars, and the repayment of necessary expenses incurred, in executing such warrant, as sworn to by the sheriff; if service of the warrant cannot be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve such warrant.

3. For serving and returning a subpoena, for each person served, fifty cents, and the necessary expenses incurred while serving subpoenas in criminal cases or insane process.

4. For summoning a grand or trial jury, all necessary and actual expenses incurred by him.

5. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, seven and one-half dollars per day, and necessary expenses incurred. This subsection shall not be so construed as to allow a sheriff to make separate charges for different assess-

ments, which can be made by the same jury and completed in one day of ten hours.

6. For serving an execution, attachment, or order for the delivery of personal property, injunction, or any order of court, and making return thereof, three dollars.

7. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, one and one-half dollars.

8. For the time necessarily employed in making an inventory of personal property attached or levied upon, one dollar per hour.

9. For a copy of any paper required by law, made by him, for each one hundred words or fraction thereof, twenty-five cents.

10. Mileage in all cases required by law, going and returning, nine cents per mile, provided that this subsection shall not apply where provision is made for expenses, and in no case shall the law be construed to allow both mileage and expenses for the same services and for the same trip. In case the sheriff transports by auto, one or more persons to any state institution or any other destination required by law, or in case one or more legal papers are served on the same trip, he shall be entitled to but one mileage at the rate prescribed herein, the mileage cost thereof to be prorated to the respective persons transported and also in the case of separate papers served. Provided, however, that in the serving of original notices in civil cases the sheriff shall be allowed mileage at the rate of nine cents per mile in each action wherein such original notices are served, and, he may refuse to serve original notices in civil cases until the statutory fees and mileage for service have been paid.

See also §79.9  
When mileage nontaxable, §127.19

11. For boarding a prisoner, a compensation of fifty cents for each meal, and not to exceed three meals in twenty-four consecutive hours; and fifteen cents for each night's lodging. But the amount allowed a sheriff for lodging prisoners shall in no event exceed in the aggregate the sum of two hundred fifty dollars for any calendar year. In counties where district court is held in two places and jails are maintained in two places the amount allowed a sheriff for lodging prisoners shall in no event exceed in the aggregate the sum of two hundred fifty dollars for each of said jails for any calendar year.

12. For waiting on and washing for prisoners, the sum of five cents per prisoner per day.

13. For attending sale of property, for each day, one dollar.

14. For conveying one or more persons to any state, county, or private institution by order of court, or commission, he shall be allowed his necessary expenses, for himself and such person or persons, and in addition thereto, forty cents per hour for the time necessarily employed in going to and from such institution, same to be charged and ac-

counted for as fees. Should the sheriff need any assistance in taking any person to any such institution, the same shall be furnished at the expense of the county.

15. For serving any warrant for the seizure of intoxicating liquors, one dollar; for the removal and custody of such liquor, actual and reasonable expenses; for the destruction of such liquor under the order of the court, one dollar and his actual and reasonable expenses; for posting and leaving notices in such cases, one dollar and his actual expenses. [C51,§2536; R60,§§1570, 4145; C73,§§3788, 3789, 3807; C97, §511; S13,§511; C24, 27, 31, 35, 39,§5191; C46, 50, 54,§337.11]

Referred to in §338.12  
Approval of warrant and expenses, §§79.12, 79.13

**337.12 Costs—when payable by county.** In all criminal cases where the prosecution fails, or where the money cannot be made from the person liable to pay the same, the facts being certified by the clerk or justice as far as their knowledge extends, and verified by the affidavit of the sheriff, the fees allowed by law in such cases shall be audited by the county auditor and paid out of the county treasury. The board of supervisors may pay same out of the general fund or the court fund. [C51, §2537; R60,§4146; C73,§3790; C97,§512; C24, 27, §13967; C31, 35,§5191-a; C39,§5191.1; C46, 50, 54, §337.12]

Similar provision, §§601.130, 789.20

**337.13 Contract in lieu of mileage.** In counties having a population of one hundred thousand or over, the board of supervisors may contract with the sheriff for the use of an automobile on a monthly basis in lieu of the payment of mileage, in the service of criminal processes. [C27, 31, 35,§5191-a1; C39,§5191.2; C46, 50, 54,§337.13]

**337.14 Fees in addition to salary.** The amounts allowed by law for mileage and for actual, necessary expenses paid by him, and for board, washing, and care of prisoners, may be retained by him in addition to his salary. [C51,§2536; R60,§4145; C73,§§3788, 3807; C97, §511; S13,§511; C24, 27, 31, 35, 39,§5192; C46, 50, 54,§337.14]

Referred to in §338.12

**337.15 Condemnation funds.** On or before the first day of January in each year the sheriff of each county having any condemnation funds in his possession shall make a detailed report under oath of all funds in his possession received from condemnation proceedings of any kind that have been finally adjudicated, reciting therein the names of the parties to whom said funds belong, when received, and describing the property condemned, which report shall be filed with the county treasurer, and the sum so shown due from such sheriff paid over to the county treasurer, who shall make a detailed receipt therefor. [C24, 27, 31, 35, 39,§5193; C46, 50, 54,§337.15]

Referred to in §§337.16, 337.18, 837.19

**337.16 Unadjudicated condemnation funds.** Every sheriff having any condemnation funds in his possession in cases not finally adjudicated, shall make a further report of funds received by him in such cases, in detail as called for in section 337.15, and file the same with the county auditor for examination and checking by the board of supervisors, and where any sheriff's term is expiring he shall pay such condemnation funds in cases not finally adjudicated to his successor in office, taking his receipt therefor. [C24, 27, 31, 35, 39, §5194; C46, 50, 54, §337.16]

Referred to in §§337.18, 337.19

**337.17 Duty and liability of treasurer.** The county treasurer receiving such funds shall enter the same in detail in a book kept for that purpose, listing the names of the parties to whom such funds are due, description of property condemned, and amount of each item so due, and the same shall be paid out by him to the parties to whom the same is due, upon warrants ordered by the board of supervisors and issued by the county auditor, drawn upon said condemnation fund, and shall not be payable out of any other fund. Such county treasurer and his sureties shall be liable for such funds the same as for other funds re-

ceived in his official capacity. [C24, 27, 31, 35, 39, §5195; C46, 50, 54, §337.17]

Referred to in §337.19

**337.18 Record of funds.** Any sheriff receiving funds as provided in section 337.16 shall list the same in detail in a book kept for that purpose, and pay the same to the parties entitled thereto, upon final adjudication of such cases, or if held, after final adjudication until the end of the calendar year to the county treasurer as provided in section 337.15. [C24, 27, 31, 35, 39, §5196; C46, 50, 54, §337.18]

Referred to in §337.19

**337.19 Liability of sheriff.** Nothing contained in sections 337.15 to 337.18, inclusive, shall be construed as relieving such sheriffs or the sureties on their bonds from liability for such funds so received by them until such payment has been made to the county treasurer or successor in office as herein provided. [C24, 27, 31, 35, 39, §5197; C46, 50, 54, §337.19]

**337.20 First deputy as sheriff.** Upon a vacancy in the office of sheriff the first deputy shall assume the office of sheriff upon qualifying as required by law, and shall hold said office until the vacancy is filled, as provided by law. [C50, 54, §337.20]

See §339.1

## CHAPTER 338

### CARE OF PRISONERS IN CERTAIN COUNTIES

338.1 Prisoners—duty of sheriff.  
338.2 Purchase of supplies.  
338.3 Inspection.  
338.4 Cook and assistants.  
338.5 Salaries.  
338.6 Use of trusties.

338.7 Duty of cooks and assistants.  
338.8 Washing.  
338.9 Federal prisoners.  
338.10 Wrongful use of supplies.  
338.11 Series of acts.  
338.12 Nonapplicability of statutes.

**338.1 Prisoners—duty of sheriff.** The duty of the sheriff to board, lodge, wait on, wash for and care for prisoners in his custody in the county jail in counties having a population in excess of eighty thousand shall be performed by the sheriff without compensation, reimbursement or allowance therefor except his salary as fixed by law. [C31, 35, §5197-d1; C39, §5197.01; C46, 50, 54, §338.1]

See §338.12

**338.2 Purchase of supplies.** The board of supervisors in such counties shall, in such manner and under such regulations as it may deem fit, furnish to the sheriff at the county jail and at the expense of the county all supplies, wholesome provisions, and utensils, including gas, fuel, electricity and water which in its judgment are necessary to enable the sheriff to discharge said duty. [C31, 35, §5197-d2; C39, §5197.02; C46, 50, 54, §338.2]

**338.3 Inspection.** The board shall (at all reasonable hours) have the right to full access to said jail and to said supplies in order to

inspect the same and determine whether said supplies are being used for the sole purpose herein contemplated. [C31, 35, §5197-d3; C39, §5197.03; C46, 50, 54, §338.3]

**338.4 Cook and assistants.** The sheriff may with the approval of the board of supervisors appoint a competent cook for each of the county jails of his county; also such assistants at each of said jails as said board may deem necessary. One or more of said assistants may be women. Said appointments shall be made by the board of supervisors when the sheriff fails to make them. [C31, 35, §5197-d4; C39, §5197.04; C46, 50, 54, §338.4]

**338.5 Salaries.** Said board shall fix the salaries of said cook or cooks and assistants, which salaries shall be paid as other salaries in general are paid. Said salaries may include board and lodging in the jail. [C31, 35, §5197-d5; C39, §5197.05; C46, 50, 54, §338.5]

**338.6 Use of trusties.** It shall be the duty of the sheriff of said counties to co-operate

with said board in reducing the number of assistants to the minimum, and to this end the sheriff shall assign any of the work, made necessary by this chapter, inside the jail, to such prisoners as in the judgment of the sheriff can be trusted. [C31, 35,§5197-d6; C39, §5197.06; C46, 50, 54,§338.6]

**338.7 Duty of cooks and assistants.** It shall be the duty of said cook or cooks, and of said assistants properly to prepare and serve, three times each day, the food for said prisoners, properly and adequately to wait on and care for said prisoners, and to wash the clothing of said prisoners as herein provided. When not so engaged they shall perform such work as the sheriff may direct. [C31, 35,§5197-d7; C39,§5197.07; C46, 50, 54,§338.7]

**338.8 Washing.** The shirts and other underclothing of each prisoner, and the bed sheets and pillowcases shall be washed at least once each week, and oftener if necessary to avoid an insanitary condition. All other wearing apparel, and all other bedding shall be washed at such times as may be necessary to avoid an insanitary condition. [C31, 35,§5197-d8; C39,§5197.08; C46, 50, 54,§338.8]

**338.9 Federal prisoners.** The sheriff of the counties embraced within this chapter shall account to the board of supervisors for all fees due or collected for the boarding, lodging, waiting on, washing for, and care of, every prisoner

in his custody under an order of a court of the United States. [C31, 35,§5197-d9; C39,§5197.09; C46, 50, 54,§338.9]

**338.10 Wrongful use of supplies.** Any person who willfully uses any supplies furnished by the board hereunder, for a purpose not herein authorized or contemplated, shall be guilty of a misdemeanor, but this provision shall not prevent the state from prosecuting an offender for larceny or embezzlement if the facts constitute either of such offenses. [C31, 35,§5197-d10; C39,§5107.10; C46, 50, 54,§338.10]

Referred to in §338.11

**338.11 Series of acts.** In a prosecution for larceny or embezzlement as contemplated by section 338.10, if the property is stolen, embezzled, or converted by one and the same person by a series of acts, the total value of the property so embezzled, converted, or stolen shall be considered as embezzled, converted, or stolen in one act, and the offender shall be punished accordingly. [C31, 35,§5197-d11; C39, §5197.11; C46, 50, 54,§338.11]

Larceny, ch 709; embezzlement, ch 710

**338.12 Nonapplicability of statutes.** Subsections 11 and 12 of section 337.11, also section 337.14 insofar as it refers to boarding, washing for, and care of prisoners, shall not be applicable to counties embraced in this chapter. [C31, 35,§5197-d12; C39,§5197.12; C46, 50, 54, §338.12]

Applicability of chapter, §338.1

**CHAPTER 339**

**CORONER**

- 339.1 Coroner as sheriff.
- 339.2 Temporary sheriff.
- 339.3 Inquest—jury.
- 339.4 Person killed in mine.
- 339.5 Warrant.
- 339.6 Service and return.
- 339.7 Filling vacancies—oath.
- 339.8 Witnesses and jurors.
- 339.9 Shorthand reporter.
- 339.10 Compensation.
- 339.11 Verdict.
- 339.12 Verdict kept secret.

- 339.13 Arrest.
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- 339.15 Proceedings.
- 339.16 Contents and effect of warrant.
- 339.17 Reports.
- 339.18 Violent deaths.
- 339.19 Disposition of body—expenses.
- 339.20 Disposition of property.
- 339.21 Acting coroner.
- 339.22 Physician employed—fees.
- 339.23 Compensation of witnesses and jurors.

**339.1 Coroner as sheriff.** The coroner shall perform all the duties of sheriff, when that office is vacant; where it appears from the papers that the sheriff is a party to an action or proceeding in a court of record; where, in any action commenced or about to be commenced, an affidavit is filed with the clerk of the court, showing the absence of the sheriff and his deputy from the county, and that they are not expected to return in time to perform the service needed, or showing partiality, prejudice, consanguinity, or interest upon his part, in which case the clerk shall direct process to the coroner, indorsing there-

on the reason therefor, which he shall execute in the same manner as if he were sheriff. [C51, §§183, 184; R60, §§393, 394; C73, §§349, 350; C97, §513; C24, 27, 31, 35, 39, §5198; C46, 50, 54, §339.1]

See §337.20

**339.2 Temporary sheriff.** When there is no sheriff, deputy sheriff, or coroner qualified to serve legal process, the court, or, if not in session, the clerk, may, by writing, under his hand and the seal of the court, certifying the above fact, appoint any suitable person specially in each case to execute such process, who



shall be sworn, but need not give bond, and his return shall be entitled to the same credit as the sheriff's, when the appointment is attached thereto. [C51,§185; R60,§395; C73,§351; C97,§514; C24, 27, 31, 35, 39,§5199; C46, 50, 54, §339.2]

**339.3 Inquest—jury.** The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, and in such other cases as are required by law. When he has notice of the dead body of a person, supposed to have died by unlawful means found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith three electors of the county to appear before him at the time and place named in the warrant. [C51,§186; R60,§396; C73, §352; C97,§515; C24, 27, 31, 35, 39,§5200; C46, 50, 54,§339.3]

Sudden death of inmate of state institution, §§222.37, 226.34

**339.4 Person killed in mine.** When a person shall come to his death by accident or otherwise, in any manner connected with the working of, or in, any mine, or by any explosion therein, an inquest shall be held, and the coroner shall make careful inquiry into the cause thereof, and return a copy of the verdict in said proceeding, with the minutes of all testimony taken thereat, to the state inspector of mines; and no person shall be qualified to serve as a juror at said inquest who has a personal interest in, or is employed in or about, the mine in which or at which the deceased came to his death, or by any of its proprietors. [C97, §516; C24, 27, 31, 35, 39,§5201; C46, 50, 54,§339.4]

Fee, §340.19, subsection 7

**339.5 Warrant.** The warrant may be, in substance, as follows:

State of Iowa, }  
..... County. }

To any peace officer of said county:—In the name of the state of Iowa, you are hereby required to summon forthwith three electors of your county to appear before me at (name the place), at (name the day and hour, or say forthwith), then and there to hold an inquest upon the dead body of ....., there lying, and find by what means he died. Witness my hand this.....day of ....., A. D.....

A..... B.....  
Coroner of .....County.

[C51,§187; R60,§397; C73,§353; C97,§517; C24, 27, 31, 35, 39,§5202; C46, 50, 54,§339.5]

Approval of warrant and expenses, §§79.12, 79.13

**339.6 Service and return.** The officer to whom it is delivered shall execute the warrant, and make return thereof at the time and place named. [C51,§188; R60,§398; C73,§354; C97,§518; C24, 27, 31, 35, 39,§5203; C46, 50, 54,§339.6]

**339.7 Filling vacancies—oath.** If any juror fails to appear, the coroner shall cause the

proper number to be summoned or returned from the bystanders immediately, and proceed to impanel them, and administer the following oath, in substance: "You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you." [C51, §189; R60,§399; C73,§355; C97,§519; C24, 27, 31, 35, 39,§5204; C46, 50, 54,§339.7]

**339.8 Witnesses and jurors.** The coroner shall issue subpoenas for such witnesses as have knowledge touching the manner of the death of the person whose inquest is being held, returnable at such time and place as he may direct. They shall be sworn as in other cases, and their evidence reduced to writing under the direction of the coroner, subscribed by them, and returned to the district court, with the verdict and all other papers in the case. The coroner may enforce the attendance of witnesses and jurors, and punish them for contempt in disobeying his process, in like manner as a justice of the peace may do in criminal proceedings before him. In the absence of any officer authorized to serve subpoenas or other process, the coroner may deputize some suitable person to serve the same or may himself perform such duties. [C51, §§190–192, 199; R60,§§400–402, 409; C73,§§356–358, 365; C97,§520; S13,§520; C24, 27, 31, 35, 39, §5205; C46, 50, 54,§339.8]

Contempts, ch 665

**339.9 Shorthand reporter.** For the purpose of preserving the testimony of such witnesses, and all the acts and doings of the coroner and jury, the coroner may appoint a shorthand reporter who shall, before entering upon his duties as such reporter, take an oath to be administered by the coroner, that he will faithfully take down in shorthand the evidence as it is given by the witnesses at such inquest or investigation, and that he will correctly extend the same into longhand. [S13,§520; C24, 27, 31, 35, 39,§5206; C46, 50, 54,§339.9]

**339.10 Compensation.** Such reporter shall receive compensation not to exceed fifty cents per hour for time actually employed in any inquest or investigation, and for extending the notes, and when such shorthand report is extended into longhand by the said shorthand reporter and certified to by the coroner and reporter to the effect that it contains a full, true, and complete report of all proceedings, and filed, it shall be the official record of the said inquest or investigation. [S13,§520; C24, 27, 31, 35, 39,§5207; C46, 50, 54,§339.10]

**339.11 Verdict.** The jurors, having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their verdict in writing, under their hands, in substance as follows, stating the matters in the following form suggested, as far as found:

State of Iowa, }  
 ..... County. } ss.

An inquisition holden at....., in .....county, on the ..... day of ....., A. D. 19...., before ....., coroner of the said county, upon the body of.....(or person unknown), there lying dead, by the jurors whose names are hereto subscribed.

The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident he came to his death, and whether feloniously).

In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid (which shall be attested by the coroner). [C51,§193; R60,§403; C73,§359; C97,§521; C24, 27, 31, 35, 39,§5208; C46, 50, 54,§339.11]

**339.12 Verdict kept secret.** If the jurors find that a crime has been committed on the deceased and name the person who they believe has committed it, the verdict shall not be made public until after the arrest of the person. [C51,§194; R60,§404; C73,§360; C97,§522; C24, 27, 31, 35, 39,§5209; C46, 50, 54,§339.12]

**339.13 Arrest.** If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. [C51,§195; R60,§405; C73,§361; C97, §523; C24, 27, 31, 35, 39,§5210; C46, 50, 54,§339.13]

Approval of warrant and expenses, §§79.12, 79.13

**339.14 Warrant.** If the person charged be not present, and the coroner believes he can be taken, he may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace. [C51,§196; R60,§406; C73, §362; C97,§524; C24, 27, 31, 35, 39,§5211; C46, 50, 54,§339.14]

**339.15 Proceedings.** The warrant of the coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, such justice shall cause an information to be filed against him, and the same proceedings shall be had as in other cases under information, and he shall be dealt with as a person held under an information in the usual form. [C51,§197; R60,§407; C73,§363; C97, §525; C24, 27, 31, 35, 39,§5212; C46, 50, 54,§339.15]

**339.16 Contents and effect of warrant.** The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice instead of an information. [C51,§198; R60,§408; C73, §364; C97,§526; C24, 27, 31, 35, 39,§5213; C46, 50, 54,§339.16]

40GA, ch 249,§6, editorially divided

**339.17 Reports.** The coroner shall report to the clerk of the district court all cases of death which may call for the exercise of his jurisdiction; with the cause or mode of death, in accordance with forms furnished by the state department of health. [C97,§526; C24, 27, 31, 35, 39,§5214; C46, 50, 54,§339.17]

**339.18 Violent deaths.** The coroner shall also immediately report to the state bureau of investigation, all deaths coming within his jurisdiction due to accidental or violent means, and said report shall be upon such forms as shall be prescribed and furnished by the state bureau of investigation. [C31, 35,§5214-c1; C39, §5214.1; C46, 50, 54,§339.18]

**339.19 Disposition of body—expenses.** The coroner, except as otherwise provided by law, shall cause the body of the deceased person which he is called to view to be delivered to his friends, if any there be, but if not, he shall cause him to be decently buried, and the expense to be paid from any property found with the body, or, if there be none, from the county treasury, by certifying an account of the expenses; which, being presented to the board of supervisors, shall be allowed by them, in a reasonable amount and paid as other claims on the county. [C51,§200; R60,§410; C73,§366; C97,§527; C24, 27, 31, 35, 39,§5215; C46, 50, 54, §339.19]

See also §§142.1, 142.3

**339.20 Disposition of property.** Any property or money found with or upon the person of deceased, if there be no person authorized to receive the same, shall forthwith be turned over by the coroner to the clerk of the district court, to be held until disposed of according to law. A failure to comply with this section shall be a misdemeanor. [C97,§§532, 533; C24, 27, 31, 35, 39,§5216; C46, 50, 54,§339.20]

Punishment, §687.7

**339.21 Acting coroner.** When there is no coroner, or in case of his absence or inability to act, any justice of the peace or municipal judge of the same county is authorized to perform the duties of coroner in relation to dead bodies. [C51,§201; R60,§411; C73,§367; C97, §528; C24, 27, 31, 35, 39,§5217; C46, 50, 54,§339.21]

**339.22 Physician employed—fees.** In the inquisition by a coroner or by an acting coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, who, instead of witness fees, shall receive a reasonable compensation to be allowed by the board of supervisors. If the coroner is also a physician he may make such scientific examination, and shall receive therefor the same compensation as that paid other physicians, but in no such case shall he receive any witness fee. [C51,§202; R60,§412; C73,§368; C97,§529; C24, 27, 31, 35, 39,§5218; C46, 50, 54,§339.22]

Referred to in §141.35

**339.23 Compensation of witnesses and jurors.** Witnesses and jurors shall receive for each day's service or attendance, two dollars; and for each mile traveled from residence to

the place of holding the inquest the sum of ten cents. [C51,§190; R60,§400; C73,§356; C97,§530; C24, 27, 31, 35, 39,§5219; C46, 50, 54,§339.23]

## CHAPTER 340

### COMPENSATION OF COUNTY OFFICERS, DEPUTIES, AND CLERKS

340.1 County auditor.  
 340.2 Deputy county officers.  
 340.3 County treasurer.  
 340.4 Repealed by 52GA, ch 183,§7. See §340.2.  
 340.5 County recorder.  
 340.6 Repealed by 52GA, ch 183,§7. See §340.2.  
 340.7 Sheriff.  
 340.8 Deputy sheriff.  
 340.9 County attorney.

340.10 Assistant county attorney.  
 340.11 Clerk of district court.  
 340.12 Repealed by 52GA, ch 183,§7. See §340.2.  
 340.13 to 340.15, inclusive. Repealed by 52GA, ch 147,§21; ch 187,§3. See §273.13.  
 340.16 Salaries—general fund.  
 340.17 Exception.  
 340.18 Dual county seats.  
 340.19 Coroner—fees.

**340.1 County auditor.** Each county auditor shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, four thousand dollars.
2. Ten thousand and less than fifteen thousand, four thousand one hundred fifty dollars.
3. Fifteen thousand and less than twenty thousand, four thousand three hundred dollars.
4. Twenty thousand and less than twenty-five thousand, four thousand four hundred fifty dollars.
5. Twenty-five thousand and less than thirty thousand, four thousand six hundred dollars.
6. Thirty thousand and less than thirty-five thousand, four thousand seven hundred fifty dollars.
7. Thirty-five thousand and less than forty thousand, four thousand nine hundred dollars.
8. Forty thousand and less than forty-five thousand, five thousand fifty dollars.
9. Forty-five thousand and less than fifty thousand, five thousand two hundred dollars.
10. Fifty thousand and less than sixty thousand, five thousand five hundred dollars.
11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.
12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.
13. Eighty thousand and over, six thousand four hundred dollars.
14. In counties, having two places at which the district court is held, five hundred dollars additional.
15. In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand. [C73,§3798; C97,§479; SS15,§479; C24, 27, 31, 35, 39,§5220; C46, 50, 54,§340.1; 56GA, ch 173,§1; ch 174,§1; 57GA, ch 175,§1]

**340.2 Deputy county officers.** The first deputy auditor, treasurer, recorder, and clerk, and the second such deputy if a second deputy is required, shall receive an annual salary of not more than eighty percent of the amount of the salary of his or her principal; however, in counties with a population of one hundred thousand or more, first and second deputies, and any deputy in charge of the motor vehicle registration and title department, shall receive an annual salary of eighty percent of his or her principal.

In any county in which more than two deputies are required, and such additional deputies are of equal ability, such deputies shall receive an annual salary of not more than sixty-five percent of the salary of his or her principal; however, in counties with a population of one hundred thousand or more, deputies (where more than two deputies are required) and the first assistant to the deputy in charge of the motor vehicle registration and title department, shall receive an annual salary of sixty-five percent of their principal. The board of supervisors shall fix all compensation for extra help and clerks.

In any county in which there exists a city, not the county seat, having a population of six thousand or over, the treasurer may appoint a resident deputy collector of taxes for such city and vicinity under bond as provided for other deputies, and his compensation shall be the same percentage of the treasurer's salary as the chief deputy and second deputy in such county. Such resident deputy collector shall maintain an office in such city for a period of approximately five weeks each spring and fall, such periods to terminate on April 1 and October 1 respectively or as soon thereafter as possible, and the remainder of the year he shall be on duty as a deputy in the county treasurer's office. The treasurer in such case shall prepare the necessary books and records for such deputy each year, and the board of supervisors is authorized to allow payment of incidental expenses pertaining to the operation of such office, not to exceed one hundred dollars per year. [C51,§417; R60,§648;

See 53GA, ch 198,§13  
 County assessor's salary, see §441.6

C73,§771; C97,§§298, 481, 491, 496; S13,§496; SS15, §§298, 298-a, 481, 491; C24, 27, 31, 35, 39,§§5221, 5223, 5225, 5231; C46,§§340.2, 340.4, 340.6, 340.12; C50, 54,§340.2; 56GA, ch 173,§5; 57GA, ch 175,§6]

Dual county seats—salary, §340 18

**340.3 County treasurer.** Each county treasurer shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, four thousand dollars.

2. Ten thousand and less than fifteen thousand, four thousand one hundred fifty dollars.

3. Fifteen thousand and less than twenty thousand, four thousand three hundred dollars.

4. Twenty thousand and less than twenty-five thousand, four thousand four hundred fifty dollars.

5. Twenty-five thousand and less than thirty thousand, four thousand six hundred dollars.

6. Thirty thousand and less than thirty-five thousand, four thousand seven hundred fifty dollars.

7. Thirty-five thousand and less than forty thousand, four thousand nine hundred dollars.

8. Forty thousand and less than forty-five thousand, five thousand fifty dollars.

9. Forty-five thousand and less than fifty thousand, five thousand two hundred dollars.

10. Fifty thousand and less than sixty thousand, five thousand five hundred dollars.

11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.

12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.

13. Eighty thousand and over, six thousand four hundred dollars.

14. Forty thousand or over, in which there is a city of fifteen thousand or more population, of any form of government, the board of supervisors may allow additional compensation to the county treasurer not to exceed fifty dollars per annum for each five thousand population of such cities. When such county has a city with a population of seventy-five thousand or over, the board of supervisors shall allow additional compensation in an amount not less than twenty-five dollars nor more than fifty dollars for each five thousand population of such cities, provided, however, that in no case shall such allowance exceed five hundred dollars.

15. In counties, where the district court is held in two different places, the county treasurer shall receive five hundred dollars in addition to the compensation as fixed by the above schedule in this section.

16. In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand. [C51,§211; R60,§422; C73,§3793; C97,§490; SS15,§§490, 490-a; C24, 27, 31, 35, 39,§5222; C46, 50,

54,§340.3; 56GA, ch 173,§1; ch 174,§1; 57GA, ch 175,§1]

**340.4** Repealed by 52GA, ch 183,§7. See §340.2.

**340.5 County recorder.** Each county recorder shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, four thousand dollars.

2. Ten thousand and less than fifteen thousand, four thousand one hundred fifty dollars.

3. Fifteen thousand and less than twenty thousand, four thousand three hundred dollars.

4. Twenty thousand and less than twenty-five thousand, four thousand four hundred fifty dollars.

5. Twenty-five thousand and less than thirty thousand, four thousand six hundred dollars.

6. Thirty thousand and less than thirty-five thousand, four thousand seven hundred fifty dollars.

7. Thirty-five thousand and less than forty thousand, four thousand nine hundred dollars.

8. Forty thousand and less than forty-five thousand, five thousand fifty dollars.

9. Forty-five thousand and less than fifty thousand, five thousand two hundred dollars.

10. Fifty thousand and less than sixty thousand, five thousand five hundred dollars.

11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.

12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.

13. Eighty thousand and over, six thousand four hundred dollars.

14. In counties, where the district court is held in two different places, the recorder shall receive five hundred dollars in addition to the compensation as fixed by the above schedule.

15. In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand. [C51,§§211, 213; R60,§§422, 424; C73,§3792; C97, §495; SS15,§495; C24, 27, 31, 35, 39,§5224; C46, 50, 54,§340.5; 56GA, ch 173,§§1, 8; ch 174,§1; 57GA, ch 175,§1]

**340.6** Repealed by 52GA, ch 183,§7. See §340.2.

**340.7 Sheriff.** Each sheriff shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, four thousand dollars.

2. Ten thousand and less than fifteen thousand, four thousand one hundred fifty dollars.

3. Fifteen thousand and less than twenty thousand, four thousand three hundred dollars.

4. Twenty thousand and less than twenty-five thousand, four thousand four hundred fifty dollars.

5. Twenty-five thousand and less than thirty thousand, four thousand six hundred dollars.

6. Thirty thousand and less than thirty-five thousand, four thousand seven hundred fifty dollars.

7. Thirty-five thousand and less than forty thousand, four thousand nine hundred dollars.

8. Forty thousand and less than forty-five thousand, five thousand fifty dollars.

9. Forty-five thousand and less than fifty thousand, five thousand two hundred dollars.

10. Fifty thousand and less than sixty thousand, five thousand five hundred dollars.

11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.

12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.

13. Eighty thousand and less than one hundred twenty-five thousand, six thousand six hundred dollars.

14. One hundred twenty-five thousand and over, seven thousand six hundred dollars.

15. In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand.

16. In counties, in which district court is held in two places, five hundred dollars per annum in addition to the foregoing schedule.

17. In any county where the sheriff is not furnished a residence by the county, an additional sum of six hundred dollars per annum. [C51,§2536; R60,§4145; C73,§§3788, 3789; C97,§509; SS15,§§510-a,c; C24, 27, 31, 35, 39,§5226; C46, 50, 54,§340.7; 56GA, ch 173,§2; ch 174,§1; 57GA, ch 175,§2]

**340.8 Deputy sheriff.** Each deputy sheriff shall receive as his annual salary as follows:

1. The first deputy sheriff, and the second such deputy if a second deputy sheriff is required, shall receive an annual salary of not more than eighty-five percent of the amount of the salary of the sheriff, as fixed by the board of supervisors.

2. All other deputy sheriffs shall receive an annual salary as fixed by the board of supervisors, but not to exceed the salaries of the first or second deputies.

3. In any county where district court is held in two places, for any deputy other than the chief deputy in charge of the office where such court is held outside the county seat, seventy-five percent of the amount of the salary of the sheriff but not to exceed three thousand dollars. [C51,§417; R60,§648; C73,§771; C97,§510; SS15,§510-b; C24, 27, 31, 35, 39,§5227; C46, 50, 54,§340.8]

**340.9 County attorney.** Each county attorney shall receive as his annual salary in counties having a population of:

1. Less than ten thousand, three thousand two hundred dollars.

2. Ten thousand and less than fifteen thousand, three thousand three hundred fifty dollars.

3. Fifteen thousand and less than twenty thousand, three thousand five hundred dollars.

4. Twenty thousand and less than twenty-five thousand, three thousand six hundred fifty dollars.

5. Twenty-five thousand and less than thirty thousand, three thousand eight hundred dollars.

6. Thirty thousand and less than thirty-five thousand, three thousand nine hundred fifty dollars.

7. Thirty-five thousand and less than forty thousand, four thousand one hundred dollars.

8. Forty thousand and less than forty-five thousand, four thousand two hundred fifty dollars.

9. Forty-five thousand and less than fifty thousand, four thousand four hundred dollars.

10. Fifty thousand and less than sixty thousand, four thousand seven hundred dollars.

11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.

12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.

13. Eighty thousand and less than one hundred thousand, six thousand six hundred dollars.

14. One hundred thousand and less than one hundred fifty thousand, seven thousand two hundred dollars.

15. One hundred fifty thousand and over, seven thousand six hundred dollars.

Except in counties having a population of sixty thousand or over according to the latest federal census, in addition to the salary above provided, he shall receive the fees as now allowed to attorneys for suits upon written instruments where judgment is obtained, for all fines collected where he appears for the state, but not otherwise, and school fund mortgages foreclosed, and attorney fees allowed in criminal cases.

In counties having a population of sixty thousand or over by the latest federal census, the annual salaries as herein provided shall be the full and only compensation of the county attorney, and all fees and commissions in this chapter or elsewhere by law provided which may be lawfully taxed in favor of county attorneys shall if and when taxed and collected be paid by the county attorney to the county for the benefit of the court expense fund.

In counties where district court is held in two places, he shall receive an additional sum of five hundred dollars.

The county attorney shall also receive his necessary and actual expenses incurred in at-

tending upon his official duties at a place other than his residence and the county seat, which shall be audited and allowed by the board of supervisors of the county.

In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand. [C51,§169; R60, §§380, 381; C73,§3775; C97,§308; SS15,§308; C24, 27, 31, 35, 39,§5228; C46, 50, 54, §340.9; 56GA, ch 173,§6; ch 174,§1; 57GA, ch 175,§4]

**340.10 Assistant county attorney.** Assistant county attorneys shall receive as their annual salary in counties having a population of:

1. Less than thirty-six thousand, no compensation.

2. Thirty-six thousand and over, where an assistant county attorney is required, the first assistant shall receive seventy-five percent of the amount of the salary of the county attorney.

3. Thirty-six thousand and over, where assistants in addition to the first assistant county attorney are required, fifty percent to sixty-five percent of the amount of the salary of the county attorney, as fixed by the board of supervisors.

4. In counties having a population of fifty-seven thousand or over, in which counties there is a city of less than fifteen thousand population other than the county seat of said county, which city has a population of six thousand or over, the board of supervisors may fix the salary of an assistant county attorney residing in such city, not the county seat, making said salary in any sum which the board of supervisors may determine, not in excess of two thousand dollars per annum. [C97,§303; S13,§303-a; C24, 27, 31, 35, 39,§5229; C46, 50, 54, §340.10]

**340.11 Clerk of district court.** Each clerk of the district court shall receive as his annual salary in counties having a population of:

1. Less than ten thousand, four thousand dollars.

2. Ten thousand and less than fifteen thousand, four thousand one hundred fifty dollars.

3. Fifteen thousand and less than twenty thousand, four thousand three hundred dollars.

4. Twenty thousand and less than twenty-five thousand, four thousand four hundred fifty dollars.

5. Twenty-five thousand and less than thirty thousand, four thousand six hundred dollars.

6. Thirty thousand and less than thirty-five thousand, four thousand seven hundred fifty dollars.

7. Thirty-five thousand and less than forty thousand, four thousand nine hundred dollars.

8. Forty thousand and less than forty-five thousand, five thousand fifty dollars.

9. Forty-five thousand and less than fifty thousand, five thousand two hundred dollars.

10. Fifty thousand and less than sixty thousand, five thousand five hundred dollars.

11. Sixty thousand and less than seventy thousand, five thousand eight hundred dollars.

12. Seventy thousand and less than eighty thousand, six thousand one hundred dollars.

13. Eighty thousand and over, six thousand four hundred dollars.

14. In counties where the district court is held in two places, five hundred dollars additional.

15. In any county with a land area of less than three hundred ninety square miles the above officer shall receive for his annual salary an amount equal to that received by the above officer in counties with a population of twenty thousand and less than twenty-five thousand. [C51,§211; R60,§422; C73,§3784; C97,§297; S13, §297; C24, 27, 31, 35, 39,§5230; C46, 50, 54,§340.11; 56GA, ch 173,§1; ch 174,§1; 57GA, ch 175,§1]

See §606.19

**340.12** Repealed by 52GA, ch 183,§7. See §340.2.

**340.13 to 340.15, inclusive.** Repealed by 52GA, ch 147,§21; ch 187,§3. See §273.13.

**340.16 Salaries—general fund.** The salaries fixed by the foregoing sections of this chapter shall be paid out of the general fund of the county. [C97,§308; SS15,§308; C24, 27, 31, 35, 39,§5235; C46, 50, 54,§340.16; 56GA, ch 173,§3]

Manner of payment, §79.1

**340.17 Exception.** The salaries fixed for the clerk of the district court and his deputies may be paid from the court expense fund. [C27, 31, 35,§5235-a1; C39,§5235.1; C46, 50, 54, §340.17]

Court expense fund, §444.10

**340.18 Dual county seats.** In any county having two county seats and where the district court is held in two places, the first deputy county auditor, county treasurer, county clerk and county recorder shall receive not more than seventy-five percent of the amount of the salary of his principal. Other deputies shall receive between fifty percent and seventy-five percent of the amount of the salaries of their principals as determined by the board of supervisors. [C24, 27, 31, 35, 39,§5236; C46, 50, 54,§340.18]

**340.19 Coroner—fees.** The coroner is entitled to charge and receive as his compensation the following fees, which shall be paid out of the county treasury, and the county shall be permitted to file and collect a claim against the estate of said decedent for said fees.

1. For examining each dead body upon which no inquest is held, where there is no medical attendant at death and where such examination is necessary to comply with chapter 141, the sum of five dollars.

2. For examining each dead body upon which an inquest is held or where the death occurred under such suspicious circumstances as to make advisable prompt investigation of the facts and the preservation of weapons and fingerprints, including investigating, preserving weapons, fingerprints and evidence of crime and tragic death and making a permanent memoranda of any important identification marks, evidence, conditions, suspicious circumstances and other significant facts observed by the coroner in viewing the dead body and the location where found, the sum of ten dollars.

3. For issuing each subpoena, warrant, or order for a jury, twenty-five cents.

4. For docketing each case, one dollar.

5. For each mile traveled to and returning from an examination or inquest, seven cents.

6. For taking down in writing the evidence of witnesses, when no stenographer is employed as hereinbefore provided, ten cents per one hundred words.

7. For returning a copy of the verdict with minutes of the testimony to the state inspector of mines, as provided by law, three dollars.

8. For all other services, the same fees as are allowed sheriffs in similar cases, to be paid in like manner. [C51,§2539; R60,§4148; C73,§3799; C97,§531; C24, 27, 31, 35, 39,§5237; C46, 50, 54, §340.19]

Appointment of stenographer, §339.9  
Death in mine, §389.4  
Other fees, §337.11

## CHAPTER 341

### DEPUTY OFFICERS, ASSISTANTS, AND CLERKS

341.1 Appointment.

341.2 Certificate of appointment.

341.3 Revocation of appointment.

341.4 Qualifications.

341.5 Bond or liability policy.

341.6 Powers and duties.

341.7 Temporary assistance for county attorney.

341.8 Temporary assistance for county auditor.

341.9 Repealed by 55GA, ch 152,§2.

**341.1 Appointment.** Each county auditor, treasurer, recorder, sheriff, county attorney, clerk of the district court, coroner, may, with the approval of the board of supervisors, appoint one or more deputies or assistants, respectively, not holding a county office, for whose acts he shall be responsible. The number of deputies, assistants, and clerks for each office shall be determined by the board of supervisors, and such number together with the approval of each appointment shall be by resolution made of record in the proceedings of such board. [C51,§§411, 415; R60,§§642, 646, 2069; C73,§§766, 769, 1770; C97,§§298, 303, 481, 491, 496, 510, 2734; S13,§303-a; SS15,§§298, 481, 491, 510-b; C24, 27, 31, 35, 39,§5238; C46, 50, 54,§341.1]

Deputy state officers, §27.1

**341.2 Certificate of appointment.** When any such appointment has been approved by the board of supervisors, the officer making such appointment shall issue in writing a certificate of such appointment, and file the same in the office of the auditor where it shall be kept. [C51,§411; R60,§642; C73,§766; C97,§§298, 303, 481, 491, 496, 510; S13,§§303-a, 496; SS15,§§298, 481, 491, 510-b; C24, 27, 31, 35, 39,§5239; C46, 50, 54, §341.2]

**341.3 Revocation of appointment.** Any certificate of appointment may be revoked in writing at any time by the officer making the appointment, which revocation shall be filed and kept in the office of the auditor. [C51, §411; R60,§642; C73,§766; C97,§§298, 481, 491, 496, 510; S13,§496; SS15,§§298, 481, 491, 510-b; C24, 27, 31, 35, 39,§5240; C46, 50, 54,§341.3]

**341.4 Qualifications.** Each deputy shall be required to give a bond in an amount to be fixed by the officer having the approval of the bond of his principal, with sureties to be approved by such officer. Such bond when approved shall be filed and kept in the office of the auditor. Each deputy shall take the same oath as his principal, which shall be indorsed on the certificate of appointment. [C51,§§411, 416; R60,§§642, 647; C73,§§766, 770; C97,§§298, 481, 491, 496, 510; S13,§496; SS15, §§298, 481, 491, 496, 510-b; C24, 27, 31, 35, 39, §5241; C46, 50, 54,§341.4]

Oath, approval of bond, §63.10, 64.19

**341.5 Bond or liability policy.** The bond of sheriffs' deputies shall be either a bond or liability policy as may be required by the sheriff with the approval of the board of supervisors. [C31, 35,§5241-d1; C39,§5241.1; C46, 50, 54,§341.5]

**341.6 Powers and duties.** Each deputy, assistant, and clerk shall perform such duties as may be assigned to him or her by the officer making the appointment, and during the absence or disability of his principal, the deputy or deputies shall perform the duties of such principal. [C51,§412; R60,§643; C73,§767; C97, §§298, 481, 491, 496; S13,§496; SS15,§§298, 481, 491; C24, 27, 31, 35, 39,§5242; C46, 50, 54,§341.6]

**341.7 Temporary assistance for county attorney.** The county attorney may with the approval of a judge of the district court procure such assistants in the trial of a person charged with felony as he shall deem necessary and for such assistants upon presenting to the board of supervisors a certificate of

the district judge before whom said cause was tried, certifying to the services rendered, shall be allowed a reasonable compensation therefor, to be fixed by the board of supervisors, but nothing in this chapter shall prevent the board of supervisors from employing an attorney to assist the county attorney in any cause or proceeding in which the state or county is interested. The compensation allowed to any such assistants shall be paid out of the court fund of the county. [C97,§303; S13,§303-a; C24, 27, 31, 35, 39,§5243; C46, 50, 54,§341.7]

See §340.17

**341.8 Temporary assistance for county auditor.** In case no deputy shall be appointed, but on account of the pressure of business in his office the auditor is compelled temporarily to employ assistants, he shall file the bill for such services with the board of supervisors at their next regular meeting and it shall make a reasonable allowance therefor. [C97,§481; SS15, §481; C24, 27, 31, 35, 39,§5244; C46, 50, 54,§341.8]

**341.9** Repealed by 55GA, ch 152,§2.

## CHAPTER 342

### COLLECTION AND ACCOUNTING OF FEES

Referred to in §321.141

342.1 Fees belong to county.  
342.2 Record of fees.

342.3 Quarterly reports and payments.

**342.1 Fees belong to county.** Except as otherwise provided, all fees and charges of whatever kind collected for official service by any county auditor, treasurer, recorder, sheriff, clerk of the district court, and their respective deputies or clerks, shall belong to the county. [R60,§431; C73,§3785; C97,§§299, 508; S13,§508; SS15,§§479-a, 490-a; C24, 27, 31, 35, 39,§5245; C46, 50, 54,§342.1]

at the time the service is rendered. [C51,§212; R60,§423; C73,§3796; C97,§§480, 492; S13,§498; C24, 27, 31, 35, 39,§5246; C46, 50, 54,§342.2]

**342.2 Record of fees.** Each such officer shall keep a record to be known as the "fee book" of the office to which it relates and shall be kept in such office as a part of the permanent county records. It shall be ruled in appropriate columns for the date, kind of service, for whom rendered, and the amount of fee collected, and when the charge is for recording an instrument, the names of the parties thereto. All said items shall be entered upon said record

**342.3 Quarterly reports and payments.** Each of such officers shall make itemized and verified reports quarterly to the board of supervisors showing in detail the fees collected during the preceding quarter. Each such officer shall quarterly pay into the county treasury all fees collected during the preceding quarter, take duplicate receipts therefor and file one of such receipts in the office of the auditor. Each such officer shall also enter upon the fee book of his office the date and amount of each payment into the county treasury. [R60,§431; C73,§§3785, 3796; C97,§§299, 480, 492, 495, 508; S13,§§508, 550-c; SS15,§495; C24, 27, 31, 35, 39, §5247; C46, 50, 54,§342.3]

## CHAPTER 343

### GENERAL DUTIES OF COUNTY OFFICERS

343.1 Officers to furnish information.  
343.2 Agent or attorney.  
343.3 Acting as counsel.  
343.4 Purchase of property.  
343.5 Examination of accounts—expense.  
343.6 Violations.  
343.7 Purchase of warrants.

343.8 Money for sectarian purposes.  
343.9 Violations.  
343.10 Expenditures confined to receipts.  
343.11 Exceptions.  
343.12 Unallowable claims.  
343.13 Miniature photographic copies of records.

**343.1 Officers to furnish information.** It is the duty of each county officer, whenever called upon by the governor or either house of the general assembly, to communicate to the governor or such house any information that may be in his possession as such officer, and to furnish any statistics at his command, when thus called upon. [C97,§544; C24, 27, 31, 35, 39, §5249; C46, 50, 54,§343.1]

**343.2 Agent or attorney.** No county officer shall appear as agent, attorney, or solicitor for another, in any matter pending before the board of supervisors. [C73,§326; C97,§545; C24, 27, 31, 35, 39,§5250; C46, 50, 54,§343.2]

Referred to in §343.6

Referred to in §343.6

**343.3 Acting as counsel.** No sheriff, deputy sheriff, coroner, or constable shall appear in any court as attorney or counsel for any party,



nor make any writing or process to commence any action or proceeding, or to be in any manner used in the same; and such writing or process made by any of them shall be rejected. [C51,§175; R60,§388; C73,§342; C97,§546; C24, 27, 31, 35, 39,§5251; C46, 50, 54,§343.3]

Referred to in §343.6

**343.4 Purchase of property.** No sheriff, deputy sheriff, coroner, or constable shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law; and every such purchase shall be void. [C51,§176; R60,§389; C73,§343; C97,§547; C24, 27, 31, 35, 39,§5252; C46, 50, 54,§343.4]

Referred to in §343.6

**343.5 Examination of accounts—expense.** If any officer required by law to report the fees collected by him to the board of supervisors shall neglect or refuse to make such report, it shall be the duty of the board to employ an expert accountant to examine the books, papers, and accounts of such officer, and to make said report, the expense of which shall be charged to such delinquent officer, and shall be collectible upon his official bond. [C97,§548; C24, 27, 31, 35, 39,§5253; C46, 50, 54,§343.5]

Referred to in §343.6

**343.6 Violations.** Failure on the part of any officer to perform any duty required of him by sections 343.1 to 343.5, inclusive, shall render him liable to prosecution and punishment for a misdemeanor. [C97,§550; C24, 27, 31, 35, 39, §5254; C46, 50, 54,§343.6]

Punishment, §687.7

**343.7 Purchase of warrants.** No officer of any county, nor any deputy or employee of such officer, shall, directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of its indebtedness or any demand against it, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand, with accrued interest thereon. [R60,§2186; C73,§556; C97,§596; C24, 27, 31, 35, 39,§5255; C46, 50, 54,§343.7]

Referred to in §§343.9, 368A.16

**343.8 Money for sectarian purposes.** Public money shall not be appropriated, given, or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control. [C73,§552; C97,§593; C24, 27, 31, 35, 39,§5256; C46, 50, 54,§343.8]

Referred to in §§343.9, 368A.16

**343.9 Violations.** Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 343.7 and 343.8, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor

more than five hundred dollars, for each offense. [R60,§2188; C73,§558; C97,§598; C24, 27, 31, 35, 39,§5257; C46, 50, 54,§343.9]

Referred to in §368A.16

**343.10 Expenditures confined to receipts.\*** It shall be unlawful for any county, or for any officer thereof, to allow any claim, or to issue any warrant, or to enter into any contract, which will result, during said year, in an expenditure from any county fund in excess of an amount equal to the collectible revenues in said fund for said year, plus any unexpended balance in said fund for any previous years.

Any officer allowing a claim, issuing a warrant, or making a contract contrary to the provisions of this section, shall be held personally liable for the payment of the claim or warrant, or the performance of the contract. [C24, 27, 31, 35, 39,§5258; C46, 50, 54,§343.10]

\*Tuck law

Referred to in §§343.11, 344.11, 346.19

Analogous provision, §72.1

Limitation on indebtedness, §§407.1, 407.2

**343.11 Exceptions.** Section 343.10 shall not apply to:

1. Expenditures for bridges or buildings destroyed by fire or flood or other extraordinary casualty.

2. Expenses incurred in connection with the operation of the courts.

3. Expenditures for bridges which are made necessary in any year by the construction of a public drainage improvement.

4. Expenditures for the benefit of any person entitled to receive help from public funds.

5. Expenditures authorized by vote of the electors.

6. Expenditures contracted prior to July 4, 1923, for and on account of county activities authorized by law.

7. Expenditures contracted prior to July 4, 1923, of every kind and character for the funding and refunding of legal obligations or indebtedness of the county by bonding or otherwise as provided by law.

8. Expenditures from the county funds which are to be refunded from the primary road fund.

9. Expenditures from the county general fund legally payable from that fund and contracted prior to January 1, 1924. [C24, 27, 31, 35, 39,§5259; C46, 50, 54,§343.11]

Referred to in §§24.14, 344.11, 346.19

Temporary provisions, 57GA, ch 45,§1

**343.12 Unallowable claims.** No claim shall be allowed or warrant issued or paid for the expense incurred by any county officer in attending any convention of county officials. [C24, 27, 31, 35, 39,§5260; C46, 50, 54,§343.12]

**343.13 Miniature photographic copies of records.** Any county officer may, at his discretion, make photographic, photostatic, microfilm, microcard, or other accurately reproduced copies, on a durable medium for so reproducing the original, of records, reports

and other papers either filed or recorded in his office. When such copies have been made and have been properly filed and indexed, the county officer may, on approval of a judge of the district court of the judicial district, de-

stroy the original records, reports or other papers that are more than ten years old or place them in the possession of a museum or historical society willing to accept them. [C54, §343.13]

CHAPTER 344  
COUNTY BUDGET

- 344.1 Annual itemized estimates.
- 344.2 Appropriation.
- 344.3 Contingent fund.
- 344.4 Form of resolution—limitation.
- 344.5 Contents of resolution.
- 344.6 Supplemental appropriation.

- 344.7 Report of unexpended balances.
- 344.8 Transfer of funds.
- 344.9 Transfers from other departments.
- 344.10 Expenditures exceeding appropriation.
- 344.11 Scope of statute.

**344.1 Annual itemized estimates.** On or before the thirty-first day of December of each year, each elective or appointive officer of any county having charge of any county office or department shall prepare and submit to the board of supervisors a detailed estimate itemized in the same manner that the various expenditures of such office or department are itemized on the records of the county auditor, showing the proposed expenditures of his office or department for the following calendar year. If the estimated expenditures show an increase over those for the current year, a statement in writing of the reason for such estimated increase must also be submitted. [C31, 35,§5260-c1; C39,§5260.01; C46, 50, 54,§344.1]

shall not exceed the anticipated receipts of that fund. [C31, 35,§5260-c4; C39,§5260.04; C46, 50, 54,§344.4]

**344.2 Appropriation.** On or before the thirty-first of January of every year, the board of supervisors shall appropriate, by resolution, such amounts as are deemed necessary for each of the different county officers and departments during the ensuing year, and shall specify from which of the different county funds created by law the appropriated sums shall be derived. The appropriations to each separate county office or department shall be itemized in the same manner that the accounts are itemized on the records of the county auditor. [C31, 35,§5260-c2; C39,§5260.02; C46, 50, 54, §344.2]

**344.5 Contents of resolution.** Such resolution of appropriation shall also contain an itemized statement of the anticipated receipts to each separate county fund for the current year, together with a statement of any balance carried over in any of the county funds from the preceding year. Such resolution of appropriation shall also contain in two columns and opposite each item of anticipated receipts, the actual receipts collected during each of the two preceding years. [C31, 35,§5260-c5; C39, §5260.05; C46, 50, 54,§344.5]

**344.3 Contingent fund.** The board of supervisors may also appropriate to a contingent account for one or each of the county funds, a sum which may be spent for purposes which cannot be anticipated at the beginning of the year, but said contingent appropriation together with other appropriations shall not exceed the anticipated revenues. [C31, 35,§5260-c3; C39,§5260.03; C46, 50, 54,§344.3]

**344.6 Supplemental appropriation.** If it shall have been determined during the course of any year that the actual receipts to any of the different county funds will be larger than were anticipated in the original resolution of appropriation, the board of supervisors may make a supplementary appropriation by resolution at any regular meeting, appropriating the sums in excess of the estimated receipts from any county fund augmented by larger revenues than were anticipated, to any county office or offices supported by said fund or funds. No such supplementary appropriation shall be made to any such county office or offices unless it shall be shown that a specific need therefor exists. Such supplementary appropriation shall clearly state the amount collected into such augmented county fund in excess of the amount estimated in the general resolution of appropriation. [C31, 35,§5260-c6; C39,§5260.06; C46, 50, 54,§344.6]

**344.4 Form of resolution—limitation.** Such resolution of appropriation also shall list, in three separate columns and opposite each separate appropriation item, the itemized expenditures of each county office or department for each of the two preceding years. The total amount appropriated from any county fund

**344.7 Report of unexpended balances.** On the fifteenth of April, July, and October of each year, the county auditor shall furnish to each county office or department, a statement showing the various original appropriations to each office or department, expenditures of the office or department from its different appropriation accounts during the expired portion of the year, together with a statement of the balance

of the appropriations for said office remaining unexpended. [C31, 35,§5260-c7; C39,§5260.07; C46, 50, 54,§344.7]

**344.8 Transfer of funds.** In the event that any office has exceeded, or may find it necessary to exceed, the amount of its appropriation in any particular account, the board of supervisors, by resolution, may authorize a transfer from one or more of the other appropriation accounts of said office, any portion of such unexpended appropriation balance, to any other appropriation account of said office. [C31, 35,§5260-c8; C39,§5260.08; C46, 50, 54,§344.8]

**344.9 Transfers from other departments.** In the event it shall be found necessary for any office or department to spend an amount in excess of the total of its original appropriations, the board of supervisors at a regular or special meeting may by resolution authorize a transfer of a portion of the appropriation balance of one office or department or contingent account to the account of another office or department, provided that the funds transferred are derived from the same tax fund and that

the transfer does not violate existing statutes. [C31, 35,§5260-c9; C39,§5260.09; C46, 50, 54, §344.9]

**344.10 Expenditures exceeding appropriation.** It shall be unlawful for any county official, the expenditures of whose office come under the provisions of this chapter, to authorize the expenditure of a sum for his department larger than the amount which has been appropriated by the county board of supervisors.

Any county official in charge of any department or office who violates this law shall be guilty of a misdemeanor and punished accordingly. [C31, 35,§5260-c10; C39,§5260.10; C46, 50, 54,§344.10]

Punishment, §687.7

**344.11 Scope of statute.** Nothing in this chapter shall be construed as affecting the provisions of section 343.11, and provisions of this chapter with reference to the penalty, shall be in addition to the provisions of section 343.10. [C31, 35,§5260-c11; C39,§5260.11; C46, 50, 54, §344.11]

## CHAPTER 345

### SUBMISSION OF QUESTIONS TO VOTERS

Referred to in §§309.78, 347A.2

345.1 Expenditures—when vote necessary.  
345.2 Exceptions.  
345.3 Improvements authorized.  
345.4 Questions submitted to voters.  
345.5 Depreciated warrants—tax.  
345.6 Manner of submitting questions.  
345.7 Voting of tax—when required.  
345.8 Rate of tax.

345.9 Bonds—maturity—tax.  
345.10 Tax for successive years.  
345.11 Result published.  
345.12 Rescission or diversion by subsequent vote.  
345.13 Board must submit questions.  
345.14 Regularity presumed.  
345.15 Surplus of tax.

**345.1 Expenditures—when vote necessary.** The board of supervisors shall not order the erection of, or the building of an addition or extension to, or the remodeling or reconstruction of a courthouse, jail, county hospital,\* or county home when the probable cost will exceed ten thousand dollars, or any other building, except as otherwise provided, when the probable cost will exceed ten thousand dollars, nor the purchase of real estate for county purposes exceeding ten thousand dollars in value, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all persons voting for and against such proposition at a general or special election, notice of the same being given as in other special elections. [R60,§312; C73,§303; C97,§423; SS15,§423; C24, 27, 31, 35, 39,§5261; C46, 50, 54,§345.1]

\*Exception as to county hospital organized under ch 269, Code 1939, see 51GA, ch 158,§8  
Referred to in §604.11  
Bridges, §309.78  
Funds derived from insurance, §332.11  
Submission of question of county home, §253.1

**345.2 Exceptions.** Where a courthouse has been destroyed by fire and not less than one hundred thousand dollars has been donated to the county for the purpose of erecting a courthouse, the board of supervisors may, without authorization from the voters, use the amount so donated for the construction of the courthouse and in addition thereto may appropriate from the general fund for such purpose a sum not exceeding one-half of the amount donated, provided there is in the general fund, unappropriated for other purposes, an amount sufficient to pay such appropriation. [C24, 27, 31, 35, 39,§5262; C46, 50, 54,§345.2]

**345.3 Improvements authorized.** The board of supervisors in any county having a population of forty thousand or over, with a county seat having a population of more than five thousand, may also make necessary additions to such courthouse, jail, or county home where the funds are available in the general fund, unappropriated for other purposes, without

additional tax levy and without submitting the proposition to the voters of such county, provided the cost thereof does not exceed twenty-five thousand dollars. [C31, 35, §5262.c1; C39, §5262.1; C46, 50, 54, §345.3]

Temporary provisions, 57GA, ch 46, §1

**345.4 Questions submitted to voters.** The board of supervisors may submit to the people of the county at any regular election, or at any special election called for that purpose, the question whether money may be borrowed to aid in the erection and equipment or the building of additions or extensions to, the remodeling or the reconstruction of any public buildings, or the procuring of a site or grounds for such public buildings, or for both such site and buildings, and either or both of said propositions and other local or police regulations may be submitted at the same general or special election. [C51, §114; R60, §250; C73, §309; C97, §443; C24, 27, 31, 35, 39, §5263; C46, 50, 54, §345.4]

**345.5 Depreciated warrants—tax.** When the warrants of a county are at a depreciated value, it may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied. [C51, §114; R60, §250; C73, §309; C97, §443; C24, 27, 31, 35, 39, §5264; C46, 50, 54, §345.5]

**345.6 Manner of submitting questions.** The mode of submitting questions to the people shall be the following: The whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation if there be one, shall be embraced in a notice of the election and shall be published once each week for at least four weeks in some newspaper published in the county. Such notice shall name the time when such question will be voted upon, and the form in which the question shall be submitted, and a copy of the question to be submitted shall be posted at each polling place during the day of election. [C51, §115; R60, §251; C73, §310; C97, §446; S13, §446; C24, 27, 31, 35, 39, §5265; C46, 50, 54, §345.6]

**345.7 Voting of tax—when required.** When any question submitted involves the borrowing or the expenditure of money, the same must be accompanied by a provision to levy a tax for the payment thereof, in addition to other taxes, as directed in section 345.8, and no vote adopting the question proposed will be of effect unless it adopt the tax also. [C51, §116; R60, §252; C73, §311; C97, §447; C24, 27, 31, 35, 39, §5266; C46, 50, 54, §345.7]

**345.8 Rate of tax.** The rate of such tax shall in no case be more than one-fourth of one percent on the county taxable valuation in any one year. When the object is to borrow money for the erection and equipment of public buildings, or for the procuring of sites or grounds

therefor, or for both, the rate shall be such as to pay the debt in a period not exceeding ten years; but in counties having a population of twenty-five thousand or over, or in any county where one hundred thousand dollars or more has been or is proposed to be expended, the rate of levy shall be such as to pay the debt in not exceeding twenty-five years. [C51, §117; R60, §253; C73, §312; C97, §448; SS15, §448; C24, 27, 31, 35, 39, §5267; C46, 50, 54, §345.8]

Referred to in §345.7  
See §441.10

**345.9 Bonds — maturity — tax.** In issuing bonds for such indebtedness, no bond shall be issued with a maturity date deferred more than twenty-five years from date thereof. Such bonds shall be consecutively numbered and issued and paid in the order of such numbering. The interest and principal of such bonds shall be paid as rapidly as funds for such payment are collected. When the object is to construct, or to aid in constructing, any highway or bridge, the annual rate shall not be less than one-fourth mill on the dollar of the assessed valuation; and any of the above taxes becoming delinquent shall draw the same interest as ordinary taxes. [C51, §117; R60, §253; C73, §312; C97, §448; SS15, §448; C24, 27, 31, 35, 39, §5268; C46, 50, 54, §345.9]

Maturity and payment of bonds, ch 76

**345.10 Tax for successive years.** When it is apparent that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the levy at the same rate from year to year until the amount is paid. [C51, §118; R60, §254; C73, §313; C97, §449; C24, 27, 31, 35, 39, §5269; C46, 50, 54, §345.10]

**345.11 Result published.** The board of supervisors, on finding from a canvass of the returns that a majority of the votes were cast in favor of the proposition, shall cause the result of the vote to be entered at large in the minute book, and the proposition shall take effect and be in force thereafter. Notice of such adoption shall be published for the same time and in the same manner as above provided for publishing the notice of election. [C51, §119; R60, §255; C73, §314; C97, §450; C24, 27, 31, 35, 39, §5270; C46, 50, 54, §345.11]

Vote required to authorize bonds, §75.1

**345.12 Rescission or diversion by subsequent vote.** Propositions thus adopted may be rescinded in like manner and upon like notice, by a subsequent vote taken thereon, but neither contracts made under them, nor taxes voted for carrying them into effect, can be rescinded, provided that taxes voted for carrying into effect any such proposition may be by subsequent vote of the electors allocated to another designated purpose. If upon such subsequent vote of the electors, a majority of the votes cast is adverse to the allocation proposed, then the tax fund shall revert to and become part of the county general fund. [C51, §120; R60, §256; C73, §315; C97, §451; C24, 27, 31, 35, 39, §5271; C46, 50, 54, §345.12]

**345.13 Board must submit questions.** The board shall submit the question of the adoption or rescission of such a measure or the allocation of taxes voted to another designated purpose when petitioned by one-fourth of the legal voters of the county, or by such different number as may be prescribed by law in any special case. [C51,§121; R60,§257; C73,§316; C97,§452; C24, 27, 31, 35, 39,§5272; C46, 50, 54, §345.13]

**345.14 Regularity presumed.** The record of the adoption or rescission of any such measure or the allocation of the taxes voted to another

designated purpose shall be presumptive evidence that all the proceedings necessary to give the vote validity have been regularly conducted. [C51,§122; R60,§258; C73,§317; C97,§453; C24, 27, 31, 35, 39,§5273; C46, 50, 54,§345.14]

**345.15 Surplus of tax.** In case the amount produced by the rate of tax proposed and levied exceeds the amount required for the specific object, it shall not for that reason be held invalid, but the excess shall go into the general county fund. [C51,§123; R60,§259; C73, §318; C97,§454; C24, 27, 31, 35, 39,§5274; C46, 50, 54,§345.15]

CHAPTER 346  
COUNTY BONDS

- 346.1 Funding and refunding bonds.
- 346.2 Refunding bridge bonds.
- 346.3 Rate of interest—form of bond.
- 346.4 Provisions applicable.
- 346.5 Bonds—negotiation of—duties of treasurer.
- 346.6 Proceeds—how applied.
- 346.7 Record of bonds sold and transferred.
- 346.8 Treasurer to report bonds sold.
- 346.9 Unconstitutional issue.
- 346.10 Tax for bonded indebtedness.
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- 346.12 Bond fund—separate account.
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- 346.14 Balance to particular fund.
- 346.15 Balance to general fund.
- 346.16 Registry with state tax commission.
- 346.17 State tax levied—payment.
- 346.18 Additional tax to pay interest.
- 346.19 Statutes applicable.
- 346.20 County not to become stockholder.
- 346.21 Actions on bonds—estoppel.
- 346.22 Violations.

**346.1 Funding and refunding bonds.** When the outstanding indebtedness of any county on the first day of January, April, June, or September in any year exceeds the sum of five thousand dollars, the board of supervisors, by a two-thirds vote of all its members, may fund or refund the same, and issue the bonds of the county therefor in sums not less than one hundred dollars nor more than one thousand dollars each, payable at a time stated, not more than twenty years from their date. [C73,§289; C97,§403; S13,§403; C24, 27, 31, 35, 39,§5275; C46, 50, 54,§346.1]

Referred to in §346.3  
Bonds to refund indebtedness, see 49GA, ch 220,§18  
Limitation on indebtedness, §§407.1, 407.2  
Maturity and payment of bonds, ch 76

**346.2 Refunding bridge bonds.** Indebtedness incurred by any county in making and repairing bridges may be refunded whenever such outstanding indebtedness equals or exceeds the sum of five thousand dollars, and the tax to pay such bonds and interest shall be levied as hereinafter provided, except that no part of said tax shall be levied on property within any city which is authorized by law to levy its own bridge tax. [S13,§403; C24, 27, 31, 35, 39,§5276; C46, 50, 54,§346.2]

Referred to in §346.3  
Cities controlling bridge levy, §404.7(8)

**346.3 Rate of interest—form of bond.** Said bonds shall bear interest not exceeding five percent per annum, payable semiannually, and

be substantially in the following form, but subject to changes that will conform them to the resolution of said board, to wit:

No....., Iowa, .....

The county of....., in the state of Iowa, for value received, promises to pay to bearer..... dollars, lawful money of the United States of America, on....., with interest on said sum from the date hereof until paid at the rate of .... percent per annum, payable....annually on the first days of ..... and ..... in each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest payable at.....

This bond is issued by the board of supervisors of said county pursuant to the provisions of sections 346.1 to 346.3, inclusive, of the Code of Iowa, and in conformity to a resolution of said board duly passed.

And it is hereby certified and recited that all acts, conditions, and things required by the laws and constitution of the state of Iowa to be done precedent to and in the issue of this bond have been properly done, happened and been performed in regular and due form, as required by law, and that the total indebtedness of said county, including this bond, does not exceed the constitutional or statutory limitations.

In testimony whereof, said county, by its board of supervisors, has caused this bond to be signed by the chairman of the board and

attested by the auditor, with the county seal attached, this .... day of .....

.....  
Chairman Board of Supervisors.

Attest:

.....  
County Auditor, ..... County, Iowa.  
(Form of Coupon)

The treasurer of ..... county, Iowa, will pay to bearer ..... dollars, on ....., at ....., for ..... annual interest on its ..... bond, dated .....

No. ....  
County Auditor.

[C73,§289; C97,§403; S13,§403; C24, 27, 31, 35, 39, §5277; C46, 50, 54,§346.3]

Referred to in §398.6

**346.4 Provisions applicable.** In making sale of such county bonds the county treasurer shall comply with and be governed by all the provisions of chapter 75. [C24, 27, 31, 35, 39, §5278; C46, 50, 54,§346.4]

**346.5 Bonds—negotiation of—duties of treasurer.** When bonds issued under this chapter shall be executed, numbered consecutively, and sealed, they shall be delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them, on the best available terms, for any legal indebtedness of the county outstanding on the first day of January, April, June, or September next preceding the resolution of the board authorizing their issue, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§5279; C46, 50, 54,§346.5]

**346.6 Proceeds—how applied.** If any portion of said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for warrants and other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel such evidences of indebtedness by indorsing on the face thereof the amount for which they were received, the word "canceled" and date of cancellation. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§5280; C46, 50, 54,§346.6]

**346.7 Record of bonds sold and transferred.** He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, and the name and post-office address of purchasers, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the

number of the bond transferred and his post-office address, and every such transfer shall be noted on the records. [C73,§290; C97,§404; S13, §404; C24, 27, 31, 35, 39,§5281; C46, 50, 54,§346.7]

**346.8 Treasurer to report bond sold.** The treasurer shall also report under oath to the board, at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and, when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received on bond fund, and so entered by him on his books; but such bonds shall not be exchanged for any indebtedness of the county except by the approval of the board of supervisors of said county. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§5282; C46, 50, 54, §346.8]

**346.9 Unconstitutional issue.** Any member of a board of supervisors who shall vote to order an issue of bonds under the provisions of this chapter in excess of the constitutional limit, shall be held personally liable for the excess of such issue. [C97,§405; C24, 27, 31, 35, 39,§5283; C46, 50, 54,§346.9]

Constitutional provision, Art. XI,§3

**346.10 Tax for bonded indebtedness.** The board of supervisors shall not in any one year levy a tax of more than three-fourths mill on the dollar for the payment of bonded indebtedness or judgments rendered therefor, except as provided in this chapter, unless the vote authorizing the issuance of the bonds provided for a higher rate. [C73,§840; C97,§1384; C24, 27, 31, 35, 39,§5284; C46, 50, 54,§346.10]

**346.11 Levy to pay interest and principal.** The board of supervisors shall cause to be assessed and levied each year upon the taxable property in the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that, at the end of eight years, the sum raised from such levies shall equal at least fifteen per cent of the amount of bonds issued; at the end of ten years, at least thirty percent of the amount; and at or before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest. [C73, §291; C97,§406; C24, 27, 31, 35, 39,§5285; C46, 50, 54,§346.11]

Maturity and payment of bonds, ch 76

**346.12 Bond fund—separate account.** The money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a sepa-

rate account thereof, which shall at all times show the exact condition of said bond fund. [C73,§291; C97,§406; C24, 27, 31, 35, 39,§5286; C46, 50, 54,§346.12]

**346.13 Redemption—notice—interest.** When the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds, which by their terms are subject to redemption, he shall notify the owner of such bond or bonds, in the manner hereinbefore prescribed, that he is prepared to pay the same, with all the interest accrued thereon. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bond or bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the order of their numbers. [C73,§292; C97,§407; S13,§407; C24, 27, 31, 35, 39,§5287; C46, 50, 54, §346.13]

**346.14 Balance to particular fund.** If after the payment of all bonds and interest as hereinbefore provided, there remains any money in said bond fund, the board of supervisors may by resolution transfer said funds to the particular fund or funds on account of which the indebtedness arose for which said bonds were issued. [S13,§407; C24, 27, 31, 35, 39, §5288; C46, 50, 54,§346.14]

**346.15 Balance to general fund.** The board of supervisors may, by resolution, transfer to the general fund any excess remaining from the proceeds of a county bond issue voted by the people, after the full completion of the purposes thereof. [C24, 27, 31, 35, 39,§5289; C46, 50, 54,§346.15]

**346.16 Registry with state tax commission.** If the board of supervisors of any county which has issued bonds under the provisions of this chapter shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the county treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the state tax commission, taking its receipt therefor, and the same shall be registered in the office of said commission. [C73,§293; C97, §408; C24, 27, 31, 35, 39,§5290; C46, 50, 54,§346.16]

**346.17 State tax levied—payment.** The state tax commission shall at its next session as a board of equalization, and at each annual equalization thereafter, add to the state tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due and to become due prior to the next levy upon any such registered bonds, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the credit of such county as bond tax, and shall be paid by warrant, as the payments mature, to the holder of such registered

obligations, as shown by the register in the office of the said commission, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county; but nothing in this chapter shall be construed to limit or postpone the right of any holder of any such bonds to resort to any other remedy which such holder might otherwise have. [C73,§293; C97,§408; C24, 27, 31, 35, 39,§5291; C46, 50, 54,§346.17]

Similar provision, §444.20

**346.18 Additional tax to pay interest.** In any county wherein county bonds are issued in pursuance of a vote of the people to obtain money for the erection of any public building and wherein the annual tax named in the proposition so submitted for the purpose of paying the annual interest accruing upon such bonds is insufficient to pay the same as it matures, the board of supervisors is authorized to levy for said purpose, a tax, not exceeding one-fourth mill on the dollar, until said bonds are paid; but this provision shall not prevent the levy of a greater tax than above mentioned, if any such proposition authorized such higher levy. [C97,§409; C24, 27, 31, 35, 39, §5292; C46, 50, 54,§346.18]

**346.19 Statutes applicable.** The provisions of this chapter shall not be so construed as to limit in any way the application of the provisions of sections 343.10 and 343.11. [C24, 27, 31, 35, 39,§5293; C46, 50, 54,§346.19]

**346.20 County not to become stockholder.** No county shall, in its corporate capacity, or by its supervisors or officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, plank road, turnpike, railway, or work of internal improvement; nor shall it issue any bonds, bills of credit, scrip, or other evidence of indebtedness, for any such purposes; and all such evidences of indebtedness for said purposes are hereby declared void, and no assignment of the same shall give them validity; but this section shall not be so construed as to prevent counties from lawfully erecting their necessary public buildings and bridges, laying off highways, streets, alleys, and public grounds, or other local works in which such counties may be interested. [R60,§1345, 1346; C73,§553, 554; C97,§594; C24, 27, 31, 35, 39,§5294; C46, 50, 54, §346.20]

Referred to in §346.22

**346.21 Actions on bonds—estoppel.** In all actions now pending, or hereafter brought, in any court in this state, on any bond or coupon issued, or purporting to be issued, by any county for the purposes prohibited in this chapter, a former recovery against such corporation on any one or more or any part of such bonds or coupons shall not bar or estop such corporation from setting up any defense it has made, or could have made, to such bonds or

coupons, in the action in which such former recovery was had, but the county may allege and prove any matter of defense in such action to the same extent, and with the same effect, as though no former action had been brought, or former recovery had. [C73,§555; C97,§595; C24, 27, 31, 35, 39,§5295; C46, 50, 54,§346.21]

Referred to in §346.22

**346.22 Violations.** Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 346.20 and 346.21, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R60,§2128; C73,§558; C97,§598; C24, 27, 31, 35, 39,§5296; C46, 50, 54,§346.22]

CHAPTER 347

COUNTY PUBLIC HOSPITALS

Referred to in §135B.31

See reference in §256.3

- 347.1 Petition— requirements
- 347.2 Bond election for addition.
- 347.3 Submission at general election.
- 347.4 Submission at special election.
- 347.5 Bonds.
- 347.6 Vote required at special election.
- 347.7 Tax levy.
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- 347.9 Trustees—appointment—terms of office.
- 347.10 Vacancies.
- 347.11 Organization—meetings—quorum.
- 347.12 County treasurer.

- 347.13 Powers and duties.
- 347.14 Optional powers and duties.
- 347.15 Pecuniary interest prohibited.
- 347.16 Hospital benefits—terms.
- 347.17 Accounts—collection.
- 347.18 Discrimination.
- 347.19 Compensation—expenses.
- 347.20 Municipal jurisdiction.
- 347.21 County wards in public or private hospitals—levy.
- 347.22 Occupancy of county wards.

**347.1 Petition—requirements.** When it is proposed to establish in any county a county public hospital, a petition shall be presented to the board of supervisors, signed by two hundred or more resident freeholders of such county, at least one hundred fifty of whom shall not be residents of the city, town, or village where it is proposed to locate such hospital, requesting said board to submit to the electors the proposition to issue bonds for the purpose of procuring a site, and erecting, equipping, and maintaining such hospital, and specifying the amount of bonds proposed to be issued for such purpose, which shall not exceed two hundred thousand dollars.

The fact that one election has been held under this section and that bonds have been issued which are still outstanding shall not be a bar to submission to the electors at a subsequent election under this section for authority to issue additional bonds so long as the proposed issue, together with those outstanding, does not exceed the maximum sum provided for herein. [S13,§§409-a,-f; C24, 27, 31, 35, 39, §5348; C46, 50, 54,§347.1]

**347.2 Bond election for addition.** The board of supervisors of any county in which there is already an established county public hospital, when requested by a petition therefor signed by qualified electors of the county equal in number to five percent of the votes cast at the last general election, and which petition shall have been approved by the board of hospital trustees, shall submit to the voters at the next general election or at a special election called therefor, the proposition of issuing coun-

ty public hospital bonds for the purpose of erecting and equipping hospital buildings and additions thereto, and procuring sites for such hospital buildings and additions thereto, which proposition shall state the maximum amount of bonds to be issued and the annual rate of tax to be levied for the payment of said bonds. Should the proposition carry at such election by a majority equal to at least sixty percent of all the votes cast for or against such proposition, the board of supervisors shall proceed to issue the bonds in the form provided in section 347.5, in such an amount within the total amount voted, and at such time, as the board of hospital trustees shall request, and upon the issue of such bonds the board of supervisors shall make provision for the payment of the principal and interest of the bonds out of the county public hospital fund by the levy of a tax within the limitations provided for in section 347.7. [C39,§5348.1; C46, 50, 54, §347.2]

**347.3 Submission at general election.** Upon the presentation of such petition, the board of supervisors shall submit to the voters of the county at the next general election the question of issuing bonds and levying a tax for such hospital in the form and manner required for the submission of public measures in the title on elections. [S13,§§409-a,-b; C24, 27, 31, 35, 39,§5349; C46, 50, 54,§347.3]

Submission procedure, §49.43 et seq.; also ch 345

**347.4 Submission at special election.** Should said petition so request, and the board of supervisors unanimously so order, said proposition may be submitted at a special election to be



called by said board in the manner provided by law for submitting propositions at special elections. [S13, §§409-a, b; C24, 27, 31, 35, 39, §5350; C46, 50, 54, §347.4]

Submission procedure, §49.43 et seq.; also ch 345

**347.5 Bonds.** Should a majority of all the votes cast upon the proposition at a general election be in favor of establishing such hospital, the board of supervisors shall proceed to issue bonds of the county not to exceed the amount specified in said proposition, in denominations of not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not to exceed five percent per annum, payable annually or semiannually. Said bonds shall be due and payable in twenty years from date of issuance, but at the option of the county payable at any time after five years from such date, and shall be substantially in the form provided for county bonds, and shall show on their face that they are county public hospital bonds payable only from the county public hospital fund as provided for in section 347.7. [S13, §§409-a, b, f; C24, 27, 31, 35, 39, §5351; C46, 50, 54, §347.5]

Referred to in §347.2

Maturity and payment of bonds, ch 76

**347.6 Vote required at special election.** Said proposition when presented at a special election shall not be deemed carried unless said proposition receives not less than sixty percent of the total vote cast at said election. [S13, §§409-a, b; C24, 27, 31, 35, 39, §5352; C46, 50, 54, §347.6]

**347.7 Tax levy.** If the hospital be established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed one mill; and may levy one additional mill in counties of twelve thousand population or less, in any one year for the erection and equipment thereof, and also a tax not to exceed one mill for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees; provided, however, in counties having a population of one hundred thirty-five thousand inhabitants or over, the levy for improvements and maintenance of the hospital shall not exceed three and one-half mills in any one year. The proceeds of such taxes shall constitute the county public hospital fund. Provided, however, that the board of trustees of a county hospital of said county, where funds are available in the county public hospital fund of said county which are unappropriated, may use such unappropriated funds for erecting and equipping hospital, buildings and additions thereto without authority from the voters of said county. [S13, §§409-b, j; C24, 27, 31, 35, 39, §5353; C46, 50, 54, §347.7; 56GA, ch 175, §1]

Referred to in §§347.2, 347.5, 348.5

Allocation after consolidation, §348.5

**347.8 Sale of bonds.** The county treasurer shall dispose of the bonds in the same manner as other county bonds, and the same shall not be sold for less than par with accrued interest.

Upon the issuance of the bonds as herein authorized and the sale thereof by the county treasurer the board of supervisors may direct the county treasurer to invest the proceeds from the sale of said bonds in United States government bonds which said proceeds, when so invested, and the accumulation of interest on the bonds so purchased shall be used for the purposes for which said hospital bonds were authorized; such investment when so made shall remain in said United States government bonds until such time as in the judgment of the board of supervisors it is deemed advisable to commence the construction of said county hospital. [S13, §409-f; C24, 27, 31, 35, 39, §5354; C46, 50, 54, §347.8]

Disposal of bonds, chs 75, 346

**347.9 Trustees — appointment — terms of office.** When it has been determined by the voters of a county to establish a county public hospital, the board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for such office, three of whom may be women, and not more than four of such trustees shall be residents of the city, town, or village at which such hospital is located. Such trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each, none of whom shall be physicians or licensed practitioners. [S13, §409-c; C24, 27, 31, 35, 39, §5355; C46, 50, 54, §347.9]

**347.10 Vacancies.** Vacancies in the board of trustees shall be filled in the same manner as original appointments, such appointees to hold office until the following general election. [S13, §409-e; C24, 27, 31, 35, 39, §5356; C46, 50, 54, §347.10]

**347.11 Organization — meetings — quorum.** Said trustees shall, within ten days after their appointment or election, qualify by taking the usual oath of office, but no bond shall be required of them, and organize by the election of one of their number as chairman and one as secretary. Said board shall meet at least once each month. Four members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings. [S13, §409-d; C24, 27, 31, 35, 39, §5357; C46, 50, 54, §347.11]

Oath of office, §63.10

**347.12 County treasurer.** The county treasurer shall receive and disburse all funds under the control of said board of trustees, the same to be paid out only upon warrants drawn by the county auditor by direction of the board of supervisors after the claim for which the same is drawn has been certified to be correct by the said board of trustees. [S13, §409-d; C24, 27, 31, 35, 39, §5358; C46, 50, 54, §347.12]

**347.13 Powers and duties.** Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.

2. Cause plans and specifications to be made and adopted for all hospital buildings and equipment, and advertise for bids, as required by law for other county buildings, before making any contract for the construction of any such building or the purchase of such equipment.

3. Have general supervision and care of such grounds and buildings.

4. Employ a superintendent, a matron, and necessary assistants and employees, and fix their compensation.

5. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.

6. Cause one of its members to visit and examine said hospital at least twice each month.

7. Provide a suitable room for detention and examination of persons brought before the commissioners of insanity of the county, if such hospital is located at the county seat.

8. Determine whether or not any applicant is indigent or tuberculous and entitled to free treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.

9. Fix at its regular August meeting in each year, the amount necessary for the improvement and maintenance of the hospital during the ensuing year, and cause the president and the secretary to certify the same to the county auditor before September 1 of each year.

10. File with the board of supervisors during the first week in January of each year, a report covering their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the preceding calendar year.

11. Accept property by gift, devise, bequest, or otherwise; and, if said board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of hospital trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 12 hereof or for equipment.

12. Submit to the voters at any regular or special election a proposition to sell or lease any sites and buildings, excepting those described in subsection 11 hereof, and upon such proposition being carried by a majority of the total number of votes cast at such election, may proceed to sell such property at either public or private sale, and apply the proceeds only for:

a. Retirement of bonds issued and outstanding in connection with the purchase of said property so sold;

b. Further permanent improvements as the board of hospital trustees may determine.

13. When it is determined by said board that all or a part of the facilities acquired under the provisions of this chapter and operated as a tuberculosis sanatorium are no longer needed for the uses provided or permitted under this chapter, the board may lease to the county or any political subdivision thereof for any public purpose, such facilities or such part thereof as the board deems proper. [S13, §§409-d, g, h, j, l, m, p, r; C24, 27, 31, 35, 39, §5359; C46, 50, 54, §347.13; 57GA, ch 176, §1]

Advertisement for bids, §332.7  
Powers under consolidation, §348.2

**347.14 Optional powers and duties.** The board of hospital trustees may:

1. Adopt bylaws and rules for its own guidance and for the government of the hospital.

2. Establish and maintain in connection with said hospital a training school for nurses.

3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.

4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.

5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.

6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.

7. Formulate rules and regulations for the government of tuberculous patients and for the protection of other patients, nurses, and attendants from infection.

8. In counties having a population of one hundred thirty-five thousand inhabitants or over, establish a psychiatric department in connection with said hospital to provide for temporary admission of patients for observation, examination, diagnosis and treatment, which admission shall be for a period of not more than sixty days.

9. Procure and pay premiums on any and all insurance policies required for the prudent management of the hospital, including but not limited to public liability, professional malpractice liability, workmen's compensation and vehicle liability. Said insurance may include as additional insureds the board of trustees and employees of the hospital. This subsection applies to all county hospitals whether organized under this chapter, chapter 347A, chapter 37, or otherwise established by law. [S13, §§409-d, k, o, q; C24, 27, 31, 35, 39, §5360; C46, 50, 54, §347.14; 56GA, ch 176, §1; 57GA, ch 177, §1]

**347.15 Pecuniary interest prohibited.** No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of

any commodities or supplies procured for or disposed of by said hospital. [§13,§409-d; C24, 27, 31, 35, 39,§5361; C46, 50, 54,§347.15]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 368A.22, 372.16, 403.16, 553.23, 741.8, 741.11

**347.16 Hospital benefits—terms.** Any resident of the county who is sick or injured shall be entitled to the benefits of such hospital and shall pay to the board of hospital trustees reasonable compensation for care and treatment according to the rules and regulations established by the board.

Free care and treatment in such county public hospital in counties with a population of more than one hundred and thirty-five thousand to any indigent or tuberculous persons shall be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and have been found by the board of hospital trustees to be indigent and entitled to said care, or be entitled to free care as provided in chapter 254. Provided, however, such county public hospital may provide hospital benefits to indigent persons having a legal settlement outside the county and the county of such persons' legal settlement shall pay to such county public hospital for the fair and reasonable cost of such care, treatment, and hospitalization.

Free care and treatment in such county public hospital in all other counties to any tuberculous persons may be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and are entitled to free care under the provisions of section 254.8. In cases other than tuberculosis, care and treatment in such county public hospital to any indigent persons shall likewise be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and have been found by the board of hospital trustees to be indigent and entitled to said care. In integrated counties where the board of hospital trustees have no social service department, then under the supervision of the board of hospital trustees, the overseer of the poor or the director of social welfare shall determine whether or not said persons are indigent and entitled to said care. Cost of said care shall be the liability of the county, and upon claim made therefor paid under the authority and in the manner specified by section 252.35. Provided, however, such county public hospital may provide hospital benefits to indigent persons having a legal settlement outside the county and the county of such persons legal settlement shall pay to such county public hospital for the fair and reasonable cost of such care, treatment, and hospitalization.

A county public hospital shall not be required to provide facilities for treatment of tuberculous persons. Where such facilities for treatment of tuberculous persons are not available in the county public hospital, care

and treatment shall be provided under the provisions of section 254.1.

To be entitled to hospital benefits, patients shall at all times observe the rules of conduct prescribed by the board of hospital trustees. [§13,§409-k; C24, 27, 31, 35, 39,§5362; C46, 50, 54, §347.16]

**347.17 Accounts—collection.** It shall be the duty of the trustees either by themselves or through the superintendent to make collections of all accounts for hospital services rendered for others than indigent patients or patients entitled to free care as provided in chapter 254. Such account shall be payable on presentation to the person liable therefor of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose, and if legal proceedings are required they may employ counsel, the employment in either event to be on such arrangement for compensation as the trustees deem appropriate, provided, however, that should the county attorney act as attorney for the board in any such legal proceedings he shall serve without additional compensation. [C24, 27, 31, 35, 39, §5363; C46, 50, 54,§347.17]

**347.18 Discrimination.** In the management of such hospital, no discrimination shall be made against the practitioners of any recognized school of medicine; and each patient shall have the right to employ at his expense any physician of his choice; and any such physician, when so employed by the patient, shall have exclusive charge of the care and treatment of the patient; and attending nurses shall be subject to the direction of such physician. [§13,§409-n; C24, 27, 31, 35, 39,§5364; C46, 50, 54,§347.18]

Referred to in §347A.5

Applicable to hospitals payable from revenue, ch 347A

**347.19 Compensation—expenses.** No trustee shall receive any compensation for his services performed under this chapter, but he shall be reimbursed for any cash expenditures actually made for personal expenses incurred in the performance of his duties. An itemized statement of such expenses, verified by the oath of each such trustee, shall be filed with the secretary, and the same shall only be allowed by an affirmative vote of all trustees present at the meeting of the board. [§13,§409-d; C24, 27, 31, 35, 39,§5365; C46, 50, 54,§347.19]

**347.20 Municipal jurisdiction.** When such hospital is located on land outside of, but adjacent to a city or town, the ordinances of such city or town relating to fire and police protection and control, sanitary regulations, and public utility service, shall be in force upon and over such hospital and grounds, and such city or town shall have jurisdiction to enforce such ordinances. [§13,§409-i; C24, 27, 31, 35, 39, §5366; C46, 50, 54,§347.20]

**347.21 County wards in public or private hospitals—levy.** The board of supervisors of any county in which no county hospital has been established may, in its discretion, establish one or more wards in any public or private hospital situated in the county for the use of the county under such regulations as may be agreed upon with the board having such hospital in charge. For such purpose the board of supervisors may levy a tax not to exceed one-eighth mill. [C24, 27, 31, 35, 39, §5367; C46, 50, 54,§347.21]

**347.22 Occupancy of county wards.** All questions as to the character of patients who shall occupy said wards so established and all rules regulating the occupancy thereof shall be determined by the board of supervisors in the same manner and with the same force and effect as in the case of patients assigned to the county hospital in counties having such. [C24, 27, 31, 35, 39,§5368; C46, 50, 54,§347.22]

**CHAPTER 347A**

**COUNTY HOSPITALS PAYABLE FROM REVENUE**

See §§347.14, 347.18

- 347A.1 Contracts—trustees.
- 347A.2 Bonds—authorization—payment.
- 347A.3 Tax for maintenance and operation.

- 347A.4 Independent method.
- 347A.5 Discrimination prohibited.
- 347A.6 Collection of accounts.

**347A.1 Contracts—trustees.** Any county in the state of Iowa having a population less than one hundred fifty thousand is hereby authorized and empowered to acquire, construct, equip, operate and maintain a county hospital and, for the purpose of acquiring, constructing, equipping, enlarging or improving any such county hospital and acquiring the necessary lands, rights of way and other property necessary therefor, may issue revenue bonds all as in this chapter provided. All contracts for construction work of such county hospital shall be awarded by the board of supervisors on competitive bidding following such advertisement as may be prescribed by such board. The administration and management of any county hospital acquired, constructed, equipped, enlarged or improved under this chapter shall be vested in a board of hospital trustees consisting of five members appointed by the board of supervisors from among the resident citizens of the county with reference to their fitness for such office, and not more than two of such trustees shall be residents of the same township. Such trustees shall hold office until the next succeeding election, at which time their successors shall be elected, two for a term of two years, two for a term of four years and one for a term of six years, and thereafter their successors shall be elected for regular terms of six years each. Vacancies in the board of trustees shall be filled in the same manner as original appointments to hold office until the next succeeding general election. Said trustees shall, within ten days after their appointment or election qualify by taking the usual oath of office, but no bond shall be required of them. The members of such board of hospital trustees shall receive no compensation but shall be reimbursed for all expenses incurred by them with the approval of said board in the performance of their duties. The board first appointed shall organize promptly following their appointment, and shall serve until such time as their successors are elected and

qualified; thereafter during the month of November of each year the board shall reorganize by the appointment of a chairman and a secretary. The county treasurer shall be ex officio treasurer of the board of hospital trustees. The board of hospital trustees may employ, fix the compensation and remove at pleasure professional, technical and other employees, skilled or unskilled, as it may deem necessary for the operation and maintenance of the hospital, and disbursement of funds in such operation and maintenance shall be made upon order and approval of the board of hospital trustees. A county hospital may include a nurses home and nurses training school. The board of trustees shall make all rules and regulations governing its meetings and the operation of the county hospital and shall fix rates, fees and charges for the services thereby furnished so that the revenues will be at all times sufficient in the aggregate to provide for the payment of the interest on and principal of all bonds that may be issued and outstanding under the provisions of this chapter, and for the payment of all operating and maintenance expenses of the hospital. [C50, 54,§347A.1]

**347A.2 Bonds — authorization — payment.** For the purpose of acquiring, constructing, equipping, enlarging or improving such hospital or any part thereof, any such county may, pursuant to resolution of the board of supervisors of such county, from time to time issue and dispose of its negotiable interest-bearing revenue bonds payable solely as to both principal and interest from the revenues to be derived from the operation of such hospital. All such bonds may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may bear interest at such rate or rates not exceeding five percent per annum payable semiannually, may be in such form and payable at such place or places, and may be subject to such redemption privileges as is stated on the face

thereof and as may be provided in such resolution. After a resolution authorizing such revenue bonds has been adopted the county auditor shall publish notice of such adoption in at least one newspaper of general circulation in the county at least once each week for two consecutive weeks. Such notice shall identify the resolution by the date of its adoption and shall specify the amount of bonds proposed to be issued, and if within twenty days following the date of the first publication of such notice a petition is filed with the county auditor signed by qualified voters of said county in number equal to or exceeding twenty percent of the total number of votes cast in such county for governor at the last preceding regular election whereat a governor was elected then the bonds authorized by such resolution shall not be issued unless and until the proposition to issue same shall have been submitted at an election throughout the county and approved by not less than sixty percent of the votes cast for and against the proposition. When any such petition is filed it shall be referred to the board of supervisors at its next meeting and thereupon the board of supervisors may either repeal the bond resolution or order the election which shall be called and conducted in the manner provided by chapter 345. If there be no petition filed within the time hereinbefore provided or if there be a petition filed and the proposition of issuing such bonds is approved at such election then the board of supervisors may proceed with the acquisition, construction, equipment, operation and maintenance of the county hospital and the issuance of bonds in connection therewith, all as in this chapter permitted and provided. Under no circumstances shall any bonds issued under the provisions of this chapter be or become an indebtedness of the county within the purview of any constitutional or statutory limitation or provision, and it shall be plainly stated on the face of each bond that it does not constitute such an indebtedness, but is payable solely from the revenues as aforesaid. All such bonds shall be sold in such manner and upon such terms as is prescribed by the resolution authorizing the issuance thereof, provided, that no bonds shall be sold upon terms that will result in an interest cost computed to maturity of the bonds according to standard tables of bond values of more than five percent per annum. The resolution authorizing such revenue bonds may contain such covenants as are determined by the board of supervisors to be desirable in connection with the use and application of the bond proceeds, the operation of the county hospital and the custody and application of the revenues from such operation. The sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be by mandamus in a court of com-

petent jurisdiction to compel performance and compliance therewith. [C50, 54,§347A.2]

#### **347A.3 Tax for maintenance and operation.**

If in any year, after payment of the accruing interest on and principal due of any revenue bonds issued hereunder from the revenues derived from the operation of such hospital, there be a balance of such revenues insufficient to pay the expenses of operation and maintenance of the county hospital the board of hospital trustees shall certify that fact as soon as ascertained to the board of supervisors of such county, and thereupon it shall be the duty of such board of supervisors to make the amount of such deficiency for paying the expenses of operation and maintenance of the county hospital available from other county funds or, the board of supervisors of such county shall levy a tax not to exceed four mills in any one year on all the taxable property in said county in an amount sufficient for that purpose, it being conditioned that no general county funds or the proceeds of any taxes shall ever be used or applied to the payment of the interest on or principal of any bonds issued under the provisions of this chapter, but that such general county funds or proceeds of taxes may only be used and applied to pay such expenses of operation and maintenance of the county hospital as cannot be paid from available revenue derived from such operation. [C50, 54,§347A.3]

**347A.4 Independent method.** This chapter shall be construed as providing an alternative and independent method for the acquisition, construction, equipment, enlargement, improvement, operation and maintenance of a county hospital, and for the issuance and sale of revenue bonds in connection therewith, and shall not be construed as an amendment of or subject to the provisions of any other law. [C50, 54,§347A.4]

**347A.5 Discrimination prohibited.** The provisions of section 347.18 are made applicable to this chapter. [C50, 54,§347A.5]

**347A.6 Collection of accounts.** It shall be the duty of the hospital trustees either by themselves or through the superintendent or similar person to make collections of all accounts for hospital services. Such account shall be payable on presentation to the person liable thereby of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose and, if legal proceedings are required, may employ counsel, the employment in either event to be on such arrangement for compensation as the hospital trustees deem appropriate. [56GA, ch 177,§1]

## CHAPTER 348

## CONSOLIDATION OF HOSPITAL SERVICE

- 348.1 Consolidation and powers.  
 348.2 Consolidation—powers of trustees.  
 348.3 Discrimination prohibited.

- 348.4 Sale of property after consolidation.  
 348.5 Cancellation of authority.

**348.1 Consolidation and powers.** The purpose of this chapter is to grant to hospital trustees additional powers, and to consolidate and combine under one management all of the public hospital service of the counties and cities coming within its provisions. [C27, 31, 35, §5368-a1; C39, §5368.1; C46, 50, 54, §348.1]

**348.2 Consolidation—powers of trustees.** In all counties of the state having a population of one hundred thirty-five thousand inhabitants or over, and in which there is located a city containing one hundred twenty-five thousand population or over, and consolidation of hospital service has been completed as contemplated in this chapter, said board of hospital trustees shall:

1. Have general supervision and care of all grounds and buildings in said county and city occupied and used for public hospital purposes.

2. Have control and supervision over the physicians, nurses, attendants, and patients in all such hospitals.

3. Establish, maintain, and supervise, at a convenient place in such city located in said county, an emergency station for the treatment of emergency cases, including such venereal treatment as may be necessary for the protection of the public.

4. Establish, as early as funds are available, as a department in connection with said hospital, a suitable building or place for the isolation and detention of persons afflicted with contagious diseases subject to quarantine. [C27, 31, 35, §5368-a2; C39, §5368.2; C46, 50, 54, §348.2]

**348.3 Discrimination prohibited.** In the management and control of hospitals coming

within the provisions of this chapter, no distinction or discrimination shall be made between city and county patients. [C27, 31, 35, §5368-a3; C39, §5368.3; C46, 50, 54, §348.3]

**348.4 Sale of property after consolidation.** In all cities containing a population of one hundred twenty-five thousand inhabitants or over, located in counties in which both a public county and city hospital are being conducted under separate supervision and management, such cities are hereby authorized and directed, when consolidation is completed under this chapter and upon the recommendation of the board of hospital trustees, to sell the property now owned and used by such cities for hospital purposes, both real and personal, at public or private sale, the proceeds of such sale to be used, first, for the retirement and payment of any outstanding bonds issued in connection with the purchase of such hospital property, and the remainder, if any, shall be turned into the county public hospital fund. [C27, 31, 35, §5368-a4; C39, §5368.4; C46, 50, 54, §348.4]

**348.5 Cancellation of authority.** Immediately upon the completion of the consolidation of public hospital service as herein authorized, in the counties of this state coming within the provisions of this chapter, and upon certification by the board of hospital trustees to the board of supervisors of an increased levy as provided for in section 347.7 for improvement and maintenance of such combined hospital, the authority of cities coming within the terms and provisions of this chapter to make the allocation of the municipal enterprises fund for hospital purposes shall cease. [C27, 31, 35, §5368-a5; C39, §5368.5; C46, 50, 54, §348.5]

## CHAPTER 349

## OFFICIAL NEWSPAPERS

- 349.1 Time of selection.  
 349.2 Source of selection.  
 349.3 Number.  
 349.4 Application—contest.  
 349.5 Contest—verified statements.  
 349.6 Determination of contest—evidence.  
 349.7 Subscribers—how determined.  
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- 349.11 Appeal.  
 349.12 Transcript.  
 349.13 Trial of appeal.  
 349.14 Publication pending contest.  
 349.15 Division of compensation.  
 349.16 What published.  
 349.17 Cost.  
 349.18 Supervisors' proceedings—each payee listed—publication.

**349.1 Time of selection.** The board of supervisors shall, at the January session each year, select the newspapers in which the official

proceedings shall be published for the ensuing year. [R60, §314; C73, §307; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §5397; C46, 50, 54, §349.1]

**349.2 Source of selection.** Such selection shall be from newspapers published, and having the largest number of bona fide yearly subscribers, within the county. When counties are divided into two divisions for district court purposes, each division shall be regarded as a county. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5398; C46, 50, 54,§349.2]

**349.3 Number.** The number of such newspapers to be selected shall be as follows:

1. In counties having a population of less than fifteen thousand, two such newspapers, or one, if there be but one published therein.

2. In counties having a population of more than fifty thousand, divided into two divisions for court purposes, three such newspapers in each such division, not more than two of which shall be published in the same city or town.

3. In counties having a population of less than fifty thousand, divided into two divisions for court purposes, two such newspapers in each such division.

4. In all other counties, three such newspapers, not more than two of which shall be published in the same city or town. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5399; C46, 50, 54,§349.3]

**349.4 Application—contest.** Any publisher who desires that his newspaper be so selected may make written application therefor to the board of supervisors at any time prior to the making of the selection. If more applications are filed than there are newspapers to be selected, a contest shall exist. [C24, 27, 31, 35, 39,§5400; C46, 50, 54,§349.4]

**349.5 Contest—verified statements.** In case of a contest, each applicant shall deposit with the county auditor, in a sealed envelope, a statement, verified by him, showing the names of his bona fide yearly subscribers living within the county and the place at which each such subscriber receives such newspaper, and the manner of its delivery. [C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5401; C46, 50, 54,§349.5]

**349.6 Determination of contest—evidence.** The county auditor shall, on the direction of the board while it is in session, open said envelopes. The board may receive other evidence of circulation. In counties in which two newspapers are to be selected, the two newspapers showing the largest number of bona fide yearly subscribers living within the county shall be selected as such official newspapers. In counties in which three newspapers are to be selected, the three showing the largest number of such subscribers shall be selected except when such three newspapers are all published in the same city or town, in which case the two newspapers in such city or town having the largest lists of such subscribers and the newspaper having the next largest list of such subscribers and published outside such city or town, shall be selected as such official newspapers. [C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5402; C46, 50, 54,§349.6]

**349.7 Subscribers—how determined.** The board of supervisors shall determine the bona fide yearly subscribers of a newspaper within the county, as follows:

1. Those subscribers listed by the publisher whose papers are delivered, by or for him, by mail or otherwise, upon an order or subscription for same by the subscriber, and in accordance with the postal laws and regulations, and who have been subscribers at least six consecutive months prior to date of application.

2. Those subscribers, defined as in subsection 1, whose papers are delivered by carrier regularly, or purchased from the publisher for resale and delivery by independent carriers, said independent carriers having filed with the publisher a list of their subscribers. [C39, §5402.1; C46, 50, 54,§349.7]

**349.8 Tie lists.** When newspapers are, by equality of circulation, equally entitled to such selection, the board shall, in the presence of the contestants, determine the question by lot. [C24, 27, 31, 35, 39,§5403; C46, 50, 54,§349.8]

**349.9 Fraudulent lists.** No newspaper shall be selected as an official newspaper when it is made to appear that the verified list deposited by the applicant contains the names of persons who are not bona fide subscribers within the county and that such names were knowingly and willfully entered on such list by the applicant, or at his instance, with intent to deceive the board. [SS15,§441; C24, 27, 31, 35, 39,§5404; C46, 50, 54,§349.9]

Referred to in §349.10

**349.10 New date fixed if all rejected.** If all certified statements are rejected under the provisions of section 349.9, the board shall fix a new date for the selection of official newspapers and nothing herein shall be construed to prevent the applicants so rejected from filing new certified statements. [SS15,§441; C24, 27, 31, 35, 39,§5405; C46, 50, 54,§349.10]

**349.11 Appeal.** Any applicant may, within twenty days after the selection of official newspapers, appeal to the district court from the decision of the board of supervisors as to the selection of any or all newspapers so selected by filing in the office of the county auditor a bond for costs, in a sum and with sureties to be approved by said auditor, and by serving upon each applicant, whose selection he desires to contest, and the county auditor, a notice of appeal. [SS15,§441; C24, 27, 31, 35, 39,§5406; C46, 50, 54,§349.11]

Presumption of approval of bond, §682.10

**349.12 Transcript.** The auditor shall forthwith file with the clerk of the district court a transcript of all the proceedings before the board, together with all papers filed in connection with said matter. [SS15,§441; C24, 27, 31, 35, 39,§5407; C46, 50, 54,§349.12]

**349.13 Trial of appeal.** Said appeal shall be for trial de novo as an equitable action without

formal pleadings at the first term following the filing of such transcript. [SS15,§441; C24, 27, 31, 35, 39,§5408; C46, 50, 54,§349.13]

Trial on appeal, §624.4

**349.14 Publication pending contest.** After the selection by the board of supervisors of official newspapers, no publisher shall receive pay for publishing official proceedings until the contest is finally determined, insofar as he is concerned. [C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5409; C46, 50, 54,§349.14]

**349.15 Division of compensation.** If in any county the publishers of two or more newspapers, at least one of which by reason of its location and circulation is entitled to be selected as a county official newspaper, have entered into an agreement to publish the official proceedings or have united in a request to have their publication selected for such purposes, and such agreement or request has been filed with the board of supervisors prior to the naming of the official newspapers, the board of supervisors shall designate each of them a county official newspaper, but the combined compensation of the newspapers so requesting or agreeing, added to that of the other official newspaper or newspapers, if any, shall not exceed the combined compensation allowed by law to two official newspapers in counties having a population below fifteen thousand or to three official newspapers in counties having a population of fifteen thousand or more. [SS15,§441; C24, 27, 31, 35, 39, §5410; C46, 50, 54,§349.15]

**349.16 What published.** There shall be published in each of said official newspapers at the expense of the county during the ensuing year:

1. The proceedings of the board of supervisors, excluding from the publication of said proceedings, its canvass of the various elec-

tions, as provided by law; witness fees of witnesses before the grand jury and in the district court in criminal cases; the transcripts of justices of the peace, including their proceedings and cost; the county superintendent's report.

2. The schedule of bills allowed by said board.

3. The reports of the county treasurer, including a schedule of the receipts and expenditures of the county and the current cash balance in each fund in his office together with the total of warrants outstanding against each of said funds as shown by the warrant register in the auditor's office.

4. A synopsis of the expenditures of township trustees for road purposes as provided by law. [R60,§313; C73,§304; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5411; C46, 50, 54,§349.16]

Referred to in §§349.17, 358.3

**349.17 Cost.** The cost of official publications provided for in section 349.16 shall not exceed one-half the legal fee provided by statute for the publication of legal notices. No such official publication shall be printed in type smaller than five-point. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5412; C46, 50, 54,§349.17]

**349.18 Supervisors' proceedings — each payee listed—publication.** All proceedings of each regular, adjourned, or special meeting of boards of supervisors, including the schedule of bills allowed, shall be published immediately after the adjournment of such meeting of said boards, and the publication of the schedule of the bills allowed shall show the name of each individual to whom the allowance is made and for what such bill is filed and the amount allowed thereon. The county auditor shall furnish a copy of such proceedings to be published, within one week following the adjournment of the board. [C27, 31, 35,§5412-a; C39, §5412.1; C46, 50, 54,§349.18]

## CHAPTER 350

### BOUNTIES ON WILD ANIMALS

350.1 Certain animals.  
350.2 Optional bounties.  
350.3 Additional bounties.  
350.4 Filing claims—proofs.

350.5 Showing required.  
350.6 Auditor to destroy proofs.  
350.7 False claim.  
350.8 Levy.

**350.1 Certain animals.** The board of supervisors of each county shall allow and pay from the county treasury bounties for wild animals caught and killed within the county as follows:

For each adult wolf, ten dollars.  
For each cub wolf, four dollars.  
For each lynx, fifty cents.  
For each wildcat, fifty cents.  
For each pocket gopher, five cents.  
For each red or gray fox, two dollars. [R60,

§2193; C73,§1487; C97,§2348; S13,§2348-a; C24, 27, 31, 35, 39,§5413; C46, 50, 54,§350.1]

Referred to in §350.3

**350.2 Optional bounties.** The board may by resolution adopted and entered of record authorize the payment of bounties as follows:

For each crow, ten cents.  
For each groundhog, twenty-five cents.  
For each rattlesnake, fifty cents.



For each European starling, five cents.

For each pocket gopher, an additional bounty of five cents. [S13, §§2348-d, -g, -j; C24, 27, 31, 35, 39, §5414; C46, 50, 54, §350.2]

Referred to in §350.3

**350.3 Additional bounties.** The board may determine what bounties, in addition to those named in sections 350.1 and 350.2, if any, shall be offered and paid by the county on the scalps of such wild animals taken and killed within the county as it may deem it expedient to exterminate, but no such bounty shall exceed five dollars. [C73, §303; C97, §422; SS15, §422; C24, 27, 31, 35, 39, §5415; C46, 50, 54, §350.3]

**350.4 Filing claims—proofs.** All claims for bounties shall be verified by the claimant, and filed with the county auditor, with such other proof as may be required by the board. [R60, §2195; C73, §1487; C97, §2348; S13, §§2348-b, -e; C24, 27, 31, 35, 39, §5416; C46, 50, 54, §350.4]

**350.5 Showing required.** The verified claim shall show that each animal for which bounty is claimed was caught and killed within the county within thirty days next prior to the filing of the claim, and the claimant shall exhibit before the county auditor:

1. The whole skin of each wolf, lynx, fox, or wildcat.
2. Both front feet and claws of each gopher.
3. The head and feet of each crow.
4. The head or scalp of each groundhog.

5. Two inches of the tail, with rattles attached, of each rattlesnake. [R60, §2194; C73, §1488; C97, §2348; S13, §§2348-a, -f, -h, -i, -k; C24, 27, 31, 35, 39, §5417; C46, 50, 54, §350.5]

**350.6 Auditor to destroy proofs.** The auditor shall:

1. Destroy or deface the skin of each wolf, lynx, fox, and wildcat so as to prevent their use in obtaining another bounty, and may return to the owner any such defaced skins, and the rattles of any rattlesnake.

2. Destroy the heads, scalps, feet, claws, and other portions required to be exhibited of such animals. [R60, §2194; C73, §1488; C97, §2348; S13, §§2348-f, -i; C24, 27, 31, 35, 39, §5418; C46, 50, 54, §350.6]

**350.7 False claim.** Any person who shall claim or attempt to procure any bounty provided for in this chapter upon any animal killed in another state or county, or upon any animal which has been domesticated, or who shall attempt to obtain any bounty by presenting any false claim or spurious exhibit, shall be fined not more than one hundred dollars nor less than fifty dollars for each offense. [C97, §2348; S13, §2348; C24, 27, 31, 35, 39, §5419; C46, 50, 54, §350.7]

**350.8 Levy.** The board of supervisors of each county may levy the necessary taxes to pay the claims provided for under this chapter, and such taxes shall be used for no other purposes. [C54, §350.8]

## CHAPTER 351

### DOGS AND LICENSING THEREOF

- 351.1 Annual license.
- 351.2 "Owner" defined.
- 351.3 Application by owner.
- 351.4 Subsequent application.
- 351.5 Form of application.
- 351.6 Fee.
- 351.7 Tag.
- 351.8 Use of tag.
- 351.9 Duration of license.
- 351.10 Transfer on change of ownership.
- 351.11 Transfer on change of residence.
- 351.12 Fee on transfer.
- 351.13 Tag not transferable.
- 351.14 Duplicate tag.
- 351.15 Assessors to list dogs—fees.

- 351.16 Payment to assessor.
- 351.17 Delinquency.
- 351.18 Certification of list.
- 351.19 Entry of tax.
- 351.20 Penalties.
- 351.21 Repealed by 52GA, ch 240, §50.
- 351.22 Record book.
- 351.23 Forms.
- 351.24 Taxation of dogs—municipal license.
- 351.25 Dog as property.
- 351.26 Right and duty to kill unlicensed dog.
- 351.27 Right to kill licensed dog.
- 351.28 Liability for damages.
- 351.29 Construction clause.

**351.1 Annual license.** The owners of all dogs three months old or over, except dogs kept in kennels and not allowed to run at large, shall annually obtain license therefor, as herein provided. [C97, §458; S13, §458; C24, 27, 31, 35, 39, §5420; C46, 50, 54, §351.1]

**351.2 "Owner" defined.** The term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. [C97, §457; C24, 27, 31, 35, 39, §5421; C46, 50, 54, §351.2]

**351.3 Application by owner.** The owner of a dog for which a license is required shall, on or before the first day of January of each year, apply to the auditor of the county in which he resides for a license for each dog owned by him. [C24, 27, 31, 35, 39, §5422; C46, 50, 54, §351.3]

**351.4 Subsequent application.** Such application for license may be made after January 1 and at any time for a dog which has come into the possession or ownership of the appli-

cant, or which has reached the age of three months after said date. [C24, 27, 31, 35, 39, §5423; C46, 50, 54,§351.4]

**351.5 Form of application.** Such application shall be in writing on blanks provided by the county auditor and shall state the breed, sex, age, color, markings, and name, if any, of the dog, and address of the owner and be signed by him. [C24, 27, 31, 35, 39,§5424; C46, 50, 54,§351.5]

**351.6 Fee.** The annual license fee shall be one dollar for each male, and three dollars for each female dog. Should it appear that said fees will not produce sufficient funds to pay the claims on the domestic animal fund, the board of supervisors shall have power, except as to dogs owned in cities and towns which exact a license fee on dogs, to increase the said fees to a sum not exceeding three dollars for each male, and not exceeding five dollars for each female dog. A spayed female dog shall be deemed a male. Said fee shall be sent with the application. [C97,§458; S13,§458; C24, 27, 31, 35, 39,§5425; C46, 50, 54,§351.6]

**351.7 Tag.** The county auditor shall, upon receipt of said application, deliver or mail to the applicant a license which shall be in the form of a metal tag stamped as follows:

1. The year in which issued.
2. Name of county issuing it.
3. Serial number as shown by the record book in the office of the county auditor. [C24, 27, 31, 35, 39,§5426; C46, 50, 54,§351.7]

**351.8 Use of tag.** Said tag shall be attached by the owner to a substantial collar and, during the term of the license, shall be at all times kept on the dog for which the license is issued. Upon the expiration of the license the owner shall remove said tag from the dog. [C24, 27, 31, 35, 39,§5427; C46, 50, 54,§351.8]

**351.9 Duration of license.** All licenses shall expire on January 1 of the year following the date of issuance. [C24, 27, 31, 35, 39,§5428; C46, 50, 54,§351.9]

**351.10 Transfer on change of ownership.** When the permanent ownership of a dog is transferred, the license may be transferred by the auditor by notation on the license record, giving name and address of the new owner. [C24, 27, 31, 35, 39,§5429; C46, 50, 54,§351.10]

**351.11 Transfer on change of residence.** When a dog licensed in one county is permanently transferred to another county, the owner shall surrender the original license tag to the auditor of the county to which the dog is removed. The auditor shall preserve the surrendered tag, and, without license fee, issue a new license tag. The auditor shall note on the license record the fact that the newly issued license tag is issued to effect a transfer of, and is in lieu of, such surrendered license tag. [C24, 27, 31, 35, 39,§5430; C46, 50, 54, §351.11]

**351.12 Fee on transfer.** The auditor, on making any transfer, shall collect a fee of twenty-five cents. [C24, 27, 31, 35, 39,§5431; C46, 50, 54,§351.12]

**351.13 Tag not transferable.** A license tag issued for one dog shall not be transferable to another dog. [C24, 27, 31, 35, 39,§5432; C46, 50, 54,§351.13]

**351.14 Duplicate tag.** Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag on the payment of twenty-five cents. The auditor shall enter in the license record the new number assigned. [C24, 27, 31, 35, 39, §5433; C46, 50, 54,§351.14]

**351.15 Assessors to list dogs—fees.** The assessor shall, at the time of listing property for assessment, cause to be listed and return to the county auditor the names of all persons who own or harbor dogs, and indicate on such list whether the dogs be male, female, or spayed, and the number thereof. For such service, the assessor shall receive, from the domestic animal fund, the sum of ten cents for each dog reported, which fee shall be paid in full when return is made. Such fees shall be considered as earnings of the office and shall, within ten days of the receipt thereof, be paid to the county treasurer and credited to the general fund of the county. [C97,§§457, 459; S13, §458-b; C24, 27, 31, 35, 39,§§5434, 5443; C46, §§351.15, 351.21; C50, 54,§351.15]

Referred to in §405.10

**351.16 Payment to assessor.** If the owner of any dog upon which a license fee is due so desires, he may pay such fee to the assessor and the assessor shall give his receipt therefor, showing the name of the owner, the number of dogs owned upon which the fee is paid, the sex of each such dog, and the amount of the fee for each such dog. The assessor shall forthwith pay said fees collected by him to the auditor and shall make a full report to said auditor showing the name and address of the owner, the number of dogs and the sex of each owned by him, and the fee paid on each such dog. The auditor shall forthwith mail to said owner the proper license tag or tags. [C27, 31, 35,§5434-b1; C39,§5434.1; C46, 50, 54,§351.16]

**351.17 Delinquency.** All license fees shall become delinquent on the first day of May of the year in which they are due and payable and a penalty of one dollar shall be added to each unpaid license on and after said date. [C24, 27, 31, 35, 39,§5435; C46, 50, 54,§351.17]

**351.18 Certification of list.** On or before May 15, the auditor shall certify to the county treasurer:

1. The name of the owner of each unlicensed dog.
2. The number of dogs so owned by said person and the sex thereof.

3. The amount of the unpaid license fee, plus a penalty of one dollar for each dog. [C24, 27, 31, 35, 39, §5440; C46, 50, 54, §351.18]

**351.19 Entry of tax.** On receipt of said certificate, the treasurer shall at once enter, as a tax, against each person the amount therein indicated as owing by him, and said tax shall be attended with the same consequences, and be collected in the same manner, as ordinary taxes. [C24, 27, 31, 35, 39, §5441; C46, 50, 54, §351.19]

Collection of taxes, ch 445 et seq.

**351.20 Penalties.** The violation of any of the foregoing provisions of this chapter, or the removal of a license tag from a dog prior to the expiration of the license, by any person who is not the owner thereof or the agent of such owner, shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days. [C24, 27, 31, 35, 39, §5442; C46, 50, 54, §351.20]

**351.21** Repealed by 52GA, ch 240, §50. See §351.15.

**351.22 Record book.** The county auditor shall keep a book to be known as the record of licenses which shall show:

1. The serial number and date of each application for a license.
2. The description of dog as specified in the application, together with the name of the owner of said dog.
3. The date when each license tag is issued and the serial number of such tag.
4. The amount of all fees, licenses, penalties, and costs paid to him.
5. Such other data as the law may require. [C24, 27, 31, 35, 39, §5444; C46, 50, 54, §351.22]

**351.23 Forms.** All forms for blanks and tags, including proper columns in the assessors' books in which to note the ownership of dogs, shall be prepared by the auditor. All such blanks and tags shall be furnished by the county. [S13, §458-a; C24, 27, 31, 35, 39, §5445; C46, 50, 54, §351.23]

**351.24 Taxation of dogs—municipal license.** Dogs kept in kennels and not allowed to run at

large shall be taxed as personal property. Dogs licensed as herein provided shall not be so taxed. Cities and towns may license dogs in addition to the license herein required. [C24, 27, 31, 35, 39, §5446; C46, 50, 54, §351.24]

Powers and limitations of cities and towns, §368.8

**351.25 Dog as property.** All dogs under three months of age, and all dogs over said age and wearing a collar with a valid license tag attached thereto, shall be deemed property. Dogs not so provided with license tag shall not be deemed property. [C24, 27, 31, 35, 39, §5447; C46, 50, 54, §351.25]

**351.26 Right and duty to kill unlicensed dog.** It shall be lawful for any person, and the duty of all peace officers within their respective jurisdictions, to kill any dog for which a license is required, when such dog is not wearing a collar with license tag attached as herein provided. [C24, 27, 31, 35, 39, §5448; C46, 50, 54, §351.26]

**351.27 Right to kill licensed dog.** It shall be lawful for any person to kill a dog, licensed and wearing a collar with license tag attached, when such dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal or fowl, or when such dog is attacking or attempting to bite a person. [C73, §1485; C97, §2340; S13, §2340; C24, 27, 31, 35, 39, §5449; C46, 50, 54, §351.27]

**351.28 Liability for damages.** The owner of any dog, whether licensed or unlicensed, shall be liable to the party injured for all damages done by said dog, except when the party damaged is doing an unlawful act, directly contributing to said injury. This section shall not apply to any damage done by a dog affected with hydrophobia unless the owner of such dog had reasonable grounds to know that such dog was afflicted with said malady, and by reasonable effort might have prevented the injury. [C73, §1485; C97, §2340; S13, §2340; C24, 27, 31, 35, 39, §5450; C46, 50, 54, §351.28]

**351.29 Construction clause.** A holding that one or more sections hereof are unconstitutional shall not be held to invalidate the remaining sections. [C24, 27, 31, 35, 39, §5451; C46, 50, 54, §351.29]

## CHAPTER 352

### DOMESTIC ANIMAL FUND

- 352.1 Claims.  
352.2 Forms of claims.  
352.3 Allowance of claims.

- 352.4 Warrants and payment.  
352.5 Certified list of warrants.  
352.6 Transfer of funds.

**352.1 Claims.** Any person damaged by the killing or injury of any domestic animal or fowl by wolves, or by dogs not owned by said person, may, within ten days from the time he or his agent has knowledge of such killing or injury, file with the county auditor of the

county in which such killing or injury occurred a claim for such damage. [S13, §458-c; C24, 27, 31, 35, 39, §5452; C46, 50, 54, §352.1]

**352.2 Forms of claims.** Claims aforesaid shall state the amount of damages, a detailed

statement of the facts attending the killing or injury and be verified by affidavit of at least two disinterested persons not related to claimant. [S13,§458-c; C24, 27, 31, 35, 39,§5453; C46, 50, 54,§352.2]

**352.3 Allowance of claims.** The board shall act on such claims within a reasonable time, and allow such part thereof as it may deem just. When a claim is allowed, the value of each animal or fowl killed or injured shall be entered of record. [S13,§458-c; C24, 27, 31, 35, 39,§5454; C46, 50, 54,§352.3]

**352.4 Warrants and payment.** Warrants for allowed claims shall be payable January 1 following their issuance and only from the domestic animal fund. [S13,§458-c; C24, 27, 31, 35, 39,§5455; C46, 50, 54,§352.4]

**352.5 Certified list of warrants.** The auditor shall, on January 1 of each year, certify to the treasurer an itemized list of all warrants issued during the preceding year on the domestic animal fund, except warrants issued to pay fees of assessors. If said fund be sufficient,

the treasurer shall pay said warrants on presentation. If said fund be not sufficient, said warrants shall be paid pro rata. [S13,§458-d; C24, 27, 31, 35, 39,§5456; C46, 50, 54,§352.5]

**352.6 Transfer of funds.** When the balance in the said fund, after paying the warrants aforesaid, exceeds five hundred dollars, the board of supervisors may order the excess transferred to the general fund of the county, or the board of supervisors may authorize the use of said excess or any part thereof in payment of the claim or claims of duly organized societies for the prevention of cruelty to animals within the county for the care, keep and maintenance of abandoned or injured domestic animals or fowls. If within five years following such transfer, the amount in the domestic animal fund proves insufficient in any one year to pay all duly allowed claims thereon, the board shall transfer from said general fund to the domestic animal fund an amount, not exceeding the amount originally transferred, sufficient to pay the unpaid part of said warrants. [S13,§458-d; C24, 27, 31, 35, 39,§5457; C46, 50, 54,§352.6]

CHAPTER 353

RELOCATION OF COUNTY SEATS

- 353.1 Time of application—limitation.
- 353.2 Petition.
- 353.3 Hearing.
- 353.4 Notice.
- 353.5 Remonstrances—filing.
- 353.6 Objections—evidence.
- 353.7 Rejection of petition or remonstrance.
- 353.8 Canvass.
- 353.9 Election.

- 353.10 Submission of question.
- 353.11 Notice.
- 353.12 Conduct of election—form of proposition.
- 353.13 Vote necessary.
- 353.14 Removal in certain cases.
- 353.15 Removal of records postponed.
- 353.16 Proof of service.

**353.1 Time of application—limitation.** Petitions for the relocation of a county seat shall be made to the board of supervisors at its regular June session and not oftener than once in five years. [R60,§231; C73,§§281, 288; C97, §396; C24, 27, 31, 35, 39,§5458; C46, 50, 54,§353.1]

**353.2 Petition.** Said petition may be in different parts and shall be filed with the county auditor at least sixty days before said June session, and shall:

1. Designate the city or town at which the petitioners desire to have the county seat relocated.
2. Be signed by none but legal voters of the county.
3. Contain the section, township, and range on which, or the town, precinct, or ward if in a city, in which the petitioner resides.
4. Give the age and time of residence in the county of such petitioner.
5. Be accompanied at the time of filing by affidavits of one or more residents of the county, stating:

a. That the signers of the petition were, at the time of signing, legal voters of said county.

b. The number of signers to the petition at the time the affidavit is made. [R60,§§232, 233; C73,§282; C97,§397; C24, 27, 31, 35, 39,§5459; C46, 50, 54,§353.2]

**353.3 Hearing.** Upon the filing of the petition, the county auditor shall fix a time for the hearing thereon before the board of supervisors, which time shall not be less than sixty nor more than ninety days after the first publication, or after the completed posting, of the notice hereinafter provided for. [C24, 27, 31, 35, 39,§5460; C46, 50, 54,§353.3]

**353.4 Notice.** The county auditor shall forthwith cause a notice of the filing of such petition and of the time of hearing thereon, to be published once in a newspaper published in the county; if there be no newspaper published in the county, the auditor shall cause said notice to be posted in a public place in each township in the county, and also on the door of the courthouse. [R60,§235; C73,§284; C97,

§399; S13,§399; C24, 27, 31, 35, 39,§5461; C46, 50, 54,§353.4]

**353.5 Remonstrances—filing.** Remonstrances against such relocation, signed by voters with like qualifications, and in all respects as required of petitioners, and verified in the same manner, may be filed with the auditor ten days prior to the date of hearing as stated in said notice. [R60,§239; C73,§283; C97,§398; C24, 27, 31, 35, 39,§5462; C46, 50, 54,§353.5]

**353.6 Objections—evidence.** Objections to the legal sufficiency of either the petition or remonstrance, or any part thereof, may be filed at any time before the hearing commences. The reception of such objections during the hearing shall be at the discretion of the board. The board may disregard any objection which is not specific, or may require it to be made specific. The board may receive evidence with reference to any material fact. [C24, 27, 31, 35, 39,§5463; C46, 50, 54,§353.6]

**353.7 Rejection of petition or remonstrance.** A petition which fails to distinctly state the city or town at which the petitioners desire to have the county seat relocated shall be rejected without further investigation; likewise a petition or remonstrance which is not accompanied by the required affidavits. [C24, 27, 31, 35, 39, §5464; C46, 50, 54,§353.7]

Referred to in §353.8

**353.8 Canvass.** If the petition be found to be sufficient as provided in section 353.7, the board shall proceed to canvass the same, and also the remonstrance if it be found to be sufficient. In such canvass the board shall proceed as follows:

1. It shall strike from both the petition and the remonstrance all names which do not appear therein in the form required by this chapter.

2. It shall strike from both the petition and the remonstrance the names of all persons shown not to have been legal voters of the county at the time of signing.

3. It shall also strike from the petition and remonstrance all names not placed thereon within sixty days next preceding the filing of the petition or remonstrance.

4. It shall, after the foregoing has been determined, strike from the petition all names that appear on both petition and remonstrance. [C73,§285; C97,§400; S13,§400; C24, 27, 31, 35, 39, §5465; C46, 50, 54,§353.8]

**353.9 Election.** If the petition shows, after all names have been stricken as hereinbefore required, that it has been signed by legal voters equal to at least one-half of all legal voters of the county as shown by the last federal census, and that such number of voters so signing exceeds the number of voters who have, after all names have been stricken as required, signed the remonstrance, then the board shall order the proposition submitted to a vote of

the people. [R60,§234; C73,§285; C97,§400; S13, §400; C24, 27, 31, 35, 39,§5466; C46, 50, 54,§353.9]

**353.10 Submission of question.** The proposal to relocate a county seat shall be submitted at the general election held in the year in which the order is made, if there be sufficient time in which to give the notice hereinafter required. If there be not sufficient time, and in those cases where no general election is held in the year in which the order is made, the board shall submit such proposition at a special election to be called by the board. [R60,§234; C73, §285; C97,§400; S13,§400; C24, 27, 31, 35, 39,§5467; C46, 50, 54,§353.10]

**353.11 Notice.** The county auditor shall cause notice of such election to be posted in three public places in each township, at least fifty days before the day of election, and shall also cause said notice to be published in some newspaper published in the county and of general circulation therein, if there be one published in the county, once each week for two consecutive weeks, the last of which publications shall be at least twenty days before said election. [R60,§234; C73,§285; C97,§400; S13, §400; C24, 27, 31, 35, 39,§5468; C46, 50, 54,§353.11]

**353.12 Conduct of election—form of proposition.** The election shall be conducted as elections for county officers are conducted. The question shall be submitted in the following form: Shall the proposition to change the county seat to (naming the town or city to which the change is proposed)  Yes be adopted?  No  
[R60,§§236, 237; C73,§286; C97,§401; C24, 27, 31, 35, 39,§5469; C46, 50, 54,§353.12]

**353.13 Vote necessary.** The board shall make a record of the total vote cast for and against the proposition. If a majority of all the votes cast be in favor of the proposition, the board shall, except as declared in section 353.14, declare the county seat removed accordingly, and, shall, as soon as practicable, proceed to remove the county records to the new location. [R60,§238; C73,§287; C97,§402; S13,§402; C24, 27, 31, 35, 39,§5470; C46, 50, 54,§353.13]

**353.14 Removal in certain cases.** Where a county seat has been located continuously in one city or town for forty years or more, and the proposal is to relocate such county seat in another city or town, the corporate limits of which are more than a mile from the corporate limits of the present county seat, such proposition shall not be deemed carried, and the county records shall not be removed to the new county seat unless two-thirds of all the votes cast be in favor of such proposed removal. [S13,§§400, 402; C24, 27, 31, 35, 39,§5471; C46, 50, 54,§353.14]

Referred to in §353.13

**353.15 Removal of records postponed.** If the proposition to relocate be carried, the board of supervisors may permit the county records to remain at the old county seat, and

the district court may continue to hold its sessions thereat until such time as a new courthouse is built and equipped at the new county seat. [C24, 27, 31, 35, 39,§5472; C46, 50, 54, §353.15]

**353.16 Proof of service.** Proof of the giving of notices required by this chapter shall be made as provided in case of original notices. [C24, 27, 31, 35, 39,§5473; C46, 50, 54,§353.16]

Proof of service, §§622.92, 622.94, and R.C.P. 63

CHAPTER 354

CHANGING NAMES OF VILLAGES

Changing names of cities or towns, §362.38 et seq  
Villages defined, §354.9

- 354.1 Change authorized.
- 354.2 Petition.
- 354.3 Notice.
- 354.4 Hearing.
- 354.5 Order.

- 354.6 When order effective.
- 354.7 Notice of change—proof.
- 354.8 Costs.
- 354.9 Villages.

**354.1 Change authorized.** The board of supervisors may change the names of villages within their respective counties in the manner herein prescribed. [C97,§460; C24, 27, 31, 35, 39,§5474; C46, 50, 54,§354.1]

of said village have in good faith signed said petition for change of name, then the said board shall order said name to be changed as prayed for. [C97,§464; C24, 27, 31, 35, 39,§5478; C46, 50, 54,§354.5]

**354.2 Petition.** There shall be filed in the office of the auditor of the county in which such village or the major portion thereof is situated, a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said village, setting forth its name and location and giving the name by which they desire it to be known. [C97,§461; C24, 27, 31, 35, 39,§5475; C46, 50, 54,§354.2]

**354.6 When order effective.** The order of the board shall thereupon be entered of record, giving the name of said village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter. [C97, §465; C24, 27, 31, 35, 39,§5479; C46, 50, 54,§354.6]

**354.3 Notice.** Notice of the filing and object of the petition and the time and place of hearing on the same shall be given by publication for at least four successive weeks in one of the official newspapers of the county, and the last publication shall be at least ten days prior to the regular meeting of the board at which the same is to be considered; or by posting a copy of the petition in at least three public places in the village, and on the front door of the courthouse, for at last four weeks before such meeting. [C97,§462; C24, 27, 31, 35, 39,§5476; C46, 50, 54,§354.3]

**354.7 Notice of change—proof.** Notice of said change shall be published in at least one newspaper of general circulation published in the county at least ten days prior to the date fixed for the change to take effect. Proof of such publication, by the affidavit of the publisher, shall be filed in the office of the auditor and entered of record, whereupon the change shall be complete. [C97,§§465, 466; C24, 27, 31, 35, 39,§5480; C46, 50, 54,§354.7]

**354.4 Hearing.** At the first regular meeting of said board after publication of notice is completed, it shall consider any remonstrances against the proposed change, and shall hear and determine said petition, unless the same is for good cause continued until the next meeting. [C97,§463; C24, 27, 31, 35, 39,§5477; C46, 50, 54,§354.4]

**354.8 Costs.** In cases arising under the provisions of this chapter, where there is no opposition to said petition, the petitioners shall pay all costs; in all other cases costs shall abide the result of the proceeding, and be taxed to either party, in the discretion of the board, or divided equitably between the parties. [C97,§467; C24, 27, 31, 35, 39,§5481; C46, 50, 54,§354.8]

**354.5 Order.** If on the hearing it shall appear that two-thirds of the qualified electors

**354.9 Villages.** Town sites platted and unincorporated shall be known as villages. [R60, §1016; C73,§559; C97,§638; C24, 27, 31, 35, 39, §5623; C46, 50,§363.1; C54,§354.9]

Incorporated towns, see §363.4

## CHAPTER 355

### LAND SURVEYS

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| <p>355.1 County surveyor—appointment and duties.</p> <p>355.2 Field notes of original survey.</p> <p>355.3 Corners.</p> <p>355.4 Rules to be followed.</p> <p>355.5 Record furnished—presumptive evidence.</p> <p>355.6 Record book.</p> <p>355.7 Record.</p> | <p>355.8 Chainmen.</p> <p>355.9 Witnesses—fees.</p> <p>355.10 Right to enter upon land.</p> <p>355.11 Damages—procedure.</p> <p>355.12 Tender.</p> <p>355.13 Costs.</p> <p>355.14 Federal surveys—defacement.</p> <p>355.15 Fees.</p> |
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**355.1 County surveyor—appointment and duties.** A county surveyor may be appointed by the board of supervisors and shall hold office during the pleasure of said board. Said surveyor shall make all surveys of land within his county which he may be called upon to make, and the field notes and plats made by him shall be transcribed into a well-bound book, under his supervision, at the expense of the person requesting the survey, which book shall be kept in the county auditor's office, and his surveys shall be held as presumptively correct. [C51, §§203, 204; R60, §§413, 414; C73, §§369, 370; C97, §534; SS15, §422; C24, 27, 31, 35, 39, §5482; C46, 50, 54, §355.1]

**355.2 Field notes of original survey.** Previous to making any survey, he shall procure a copy of the field notes of the original survey of the same land, if there be any in his office or in that of the auditor, and his survey shall be made in accordance therewith. [C51, §205; R60, §415; C73, §371; C97, §535; C24, 27, 31, 35, 39, §5483; C46, 50, 54, §355.2]

**355.3 Corners.** He is required to establish the corners by taking bearing trees, and noting particularly their course and distance, but if there be no trees within reasonable distance, the corners are to be marked by stones or other permanent monuments placed firmly in the earth. [C51, §206; R60, §416; C73, §372; C97, §536; C24, 27, 31, 35, 39, §5484; C46, 50, 54, §355.3]

**355.4 Rules to be followed.** In the resurvey and subdivision of land by county surveyors, their deputies or other persons, the rules prescribed by the acts of congress, and the instructions of the secretary of the interior, copies of which shall be furnished him by the county, shall be in all respects followed. [C73, §373; C97, §537; C24, 27, 31, 35, 39, §5485; C46, 50, 54, §355.4]

**355.5 Record furnished—presumptive evidence.** The county surveyor shall, when requested, furnish the person for whom the survey is made with a copy of the field notes and plat of the survey, and such copy, certified by him, and also a copy from the record, certified by the county auditor with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it.

Such field notes and plat of survey shall not, however, be presumptive evidence in any action in court as opposed to the field notes and plat of survey made by any other competent surveyor at the instance of any party not joining in the request for the survey by the county surveyor. [C51, §207; R60, §417; C73, §374; C97, §538; C24, 27, 31, 35, 39, §5486; C46, 50, 54, §355.5]

**355.6 Record book.** The board of supervisors is required to furnish a substantial, well-bound book, in which the field notes and plats made by the county surveyor shall be recorded. [C51, §208; R60, §418; C73, §375; C97, §539; C24, 27, 31, 35, 39, §5487; C46, 50, 54, §355.6]

**355.7 Record.** The plat and record shall show distinctly of what piece of land it is a survey, at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic from the true meridian stated. The surveyor shall determine the correct variation by an observation on the polestar, or some other approved method, at least once each year, and enter the same, with the date, and description of the method used, in his record. [C51, §209; R60, §419; C73, §376; C97, §540; C24, 27, 31, 35, 39, §5488; C46, 50, 54, §355.7]

**355.8 Chainmen.** The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons, and approved by the surveyor, and sworn by him to measure justly and impartially, to the best of their knowledge and ability. [C51, §210; R60, §420; C73, §377; C97, §541; C24, 27, 31, 35, 39, §5489; C46, 50, 54, §355.8]

**355.9 Witnesses—fees.** County surveyors, when engaged in the performance of official duties, may issue subpoenas for witnesses and administer oaths to them, and all fees for services of officers and attendance of witnesses shall be the same as in proceedings before justices of the peace. [C73, §378; C97, §542; C24, 27, 31, 35, 39, §5490; C46, 50, 54, §355.9]

*Service and witness fees, §§601.129, 622.69*

**355.10 Right to enter upon land.** Any person employed in the execution of any survey authorized by the congress of the United States

may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the objects of then existing laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby. [C24, 27, 31, 35, 39,§5491; C46, 50, 54,§355.10]

**355.11 Damages—procedure.** If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the district court in the county in which the land is situated, which court shall appoint a time for a hearing as soon as may be, and order at least twenty days notice to be given to all parties interested, and, with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages. [C24, 27, 31, 35, 39,§5492; C46, 50, 54,§355.11]

**355.12 Tender.** The person so entering upon land may tender to the injured party damages therefor, and if, in case of petition or complaint to the court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the prevailing party shall recover costs. [C24, 27, 31, 35, 39,§5493; C46, 50, 54,§355.12]

**355.13 Costs.** The costs to be allowed in all such cases shall be the same as allowed according to the rules of the court and provisions of

law relating thereto. [C24, 27, 31, 35, 39,§5494; C46, 50, 54,§355.13]

Costs generally, ch 625

**355.14 Federal surveys—defacement.** If any person shall willfully deface, injure or remove any signal, monument, building or other property of the United States coast and geodetic survey or the United States geological survey, constructed or used under or by virtue of the act of congress aforesaid, he shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for damages sustained by the United States in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction. [C24, 27, 31, 35, 39,§5495; C46, 50, 54, §355 14]

**355.15 Fees.** The county surveyor shall receive the following fees:

1. For each day of service actually performed and travel necessary in making a survey, such amount as may be agreed upon by said surveyor and the person requesting the survey. In case of disagreement, the amount shall be fixed by the board of supervisors.
2. For making up the record of any survey, and the plat and field notes thereof, one dollar per page.
3. For certified copy of the plat or field notes, fifty cents. [C51,§2546; R60,§4155; C73,§3800; C97,§543; C24, 27, 31, 35, 39,§5496; C46, 50, 54, §355.15]

## CHAPTER 356

### JAILS

Referred to in §746.17

- 356.1 How used.
- 356.2 Duty.
- 356.3 Minors separately confined.
- 356.4 Females.
- 356.5 Keeper's duty.
- 356.6 Sheriff's duty.
- 356.7 Calendar returned.
- 356.8 Removal.
- 356.9 Ex officio inspectors.
- 356.10 Visitation.
- 356.11 Report.
- 356.12 Right to inspect.
- 356.13 Officers examined.

- 356.14 Refractory prisoners.
- 356.15 Expenses.
- 356.16 Hard labor.
- 356.17 Labor on public works.
- 356.18 Supervision.
- 356.19 Rules—labor not to be leased.
- 356.20 Violation of city ordinance.
- 356.21 Control and punishment.
- 356.22 Credit for labor.
- 356.23 Cruel treatment.
- 356.24 Protecting prisoners.
- 356.25 Annoyance of prisoner.

**356.1 How used.** The jails in the several counties in the state shall be in charge of the respective sheriffs and used as prisons:

1. For the detention of persons charged with an offense and committed for trial or examination.
2. For the detention of persons who may be committed to secure their attendance as witnesses on the trial of a criminal cause.
3. For the confinement of persons under sentence, upon conviction for any offense, and

of all other persons committed for any cause authorized by law.

The provisions of this section extend to persons detained or committed by authority of the courts of the United States as well as of this state. [C51,§3103; R60,§5122; C73,§4723; C97, §5637; C24, 27, 31, 35, 39,§5497; C46, 50, 54,§356.1]

Cities and towns may use county jails, §368.15

**356.2 Duty.** The sheriff shall have charge and custody of the prisoners in the jail or other prisons of his county, and shall receive



those lawfully committed, and keep them until discharged by law. [C51,§172; R60,§385; C73,§339; C97,§501; C24, 27, 31, 35, 39,§5498; C46, 50, 54,§356.2]

**356.3 Minors separately confined.** Any sheriff, city marshal, or chief of police, having in his care or custody any prisoner under the age of eighteen years, shall keep such prisoner separate and apart, and prevent communication by such prisoner with prisoners above that age, while such prisoners are not under the personal supervision of such officer, if suitable buildings or jails are provided for that purpose, unless such prisoner is likely to or does exercise an immoral influence over other minors with whom he may be imprisoned. Any officer having charge of prisoners who without just cause or excuse neglects or refuses to perform the duties imposed on him by this section may be suspended or removed from office therefor. [C97,§5638; C24, 27, 31, 35, 39,§5499; C46, 50, 54,§356.3]

**356.4 Females.** All jails shall be equipped with a separate apartment for females, who shall be detained only in such apartment, and males and females shall not at the same time be allowed in the same apartment. [C97,§5639; C24, 27, 31, 35, 39,§5500; C46, 50, 54,§356.4]

**356.5 Keeper's duty.** The keeper of each jail shall:

1. See that the jail is kept in a clean and healthful condition.
2. Furnish each prisoner with necessary bedding, clothing, towels, fuel, and medical aid.
3. Serve each prisoner three times each day with an ample quantity of wholesome food.
4. Furnish each prisoner sufficient clean, fresh water for drinking purposes and for personal use.
5. Keep an accurate account of the items furnished each prisoner. [C51,§§3104, 3108; R60,§§5123, 5127; C73,§§4724, 4727; C97,§§5640, 5643; C24, 27, 31, 35, 39,§5501; C46, 50, 54,§356.5]

**356.6 Sheriff's duty.** The sheriff must keep an accurate calendar of each prisoner committed to his care, which shall contain his name, place of abode, the day and hour of commitment and discharge, the cause and term of commitment, the authority that committed him, and a description of his person, a statement of his occupation, education, and general habits. When any prisoner is discharged, such calendar must show the day and hour when and the authority by which it took place, and if a person escapes, it must state particularly the time and manner thereof. [C51,§3105; R60,§5124; C73,§4725; C97,§5641; C24, 27, 31, 35, 39,§5502; C46, 50, 54,§356.6]

**356.7 Calendar returned.** At the opening of each term of the district court within his county, the sheriff must return a copy of such calendar to the judge thereof. If a sheriff neglects or refuses so to do, he shall be punished by fine not exceeding one hundred dollars.

[C51,§3106; R60,§5125; C73,§4726; C97,§5642; C24, 27, 31, 35, 39,§5503; C46, 50, 54,§356.7]

**356.8 Removal.** When a jail or any building contiguous or near thereto is on fire, and there is reason to apprehend that the prisoners therein may be injured thereby, the sheriff or keeper must remove such prisoners to some safe and convenient place, and there confine them so long as it may be necessary to avoid such danger. [C51,§3109; R60,§5128; C73,§4728; C97,§5644; C24, 27, 31, 35, 39,§5504; C46, 50, 54,§356.8]

**356.9 Ex officio inspectors.** The clerk of the district court and county attorney are inspectors of the jails and have power from time to time to visit and inspect the same and inquire into all matters connected with the government, discipline, and police thereof. [C51,§3110; R60,§5129; C73,§4729; C97,§5645; C24, 27, 31, 35, 39,§5505; C46, 50, 54,§356.9]

**356.10 Visitation.** Such inspectors shall visit and examine such prisons twice each year, and at the next term of the district court held in their county present to such court, on the first day of its sitting, a detailed report of the condition of such prisons at the time of such inspection. [C51,§3111; R60,§5130; C73,§4730; C97,§5646; C24, 27, 31, 35, 39,§5506; C46, 50, 54,§356.10]

**356.11 Report.** Such report must state the number of persons confined, for what cause, the number usually confined in one room, the distinction, if any, observed in the treatment of prisoners, the evils found to exist in such prisons, and particularly whether any provision of this chapter has been violated or neglected, and in what respects. [C51,§3112; R60,§5131; C73,§4731; C97,§5647; C24, 27, 31, 35, 39,§5507; C46, 50, 54,§356.11]

**356.12 Right to inspect.** The keepers of prisons shall admit the inspectors or either of them into any part thereof, exhibit to them, upon demand, all the books, papers, documents, and accounts pertaining thereto, or to the prisoners confined therein, and render them every facility in their power to enable them to discharge their duties. [C51,§3113; R60,§5132; C73,§4732; C97,§5648; C24, 27, 31, 35, 39,§5508; C46, 50, 54,§356.12]

**356.13 Officers examined.** For the purpose of obtaining the necessary information to make the reports above required, the inspectors have power to examine, upon oath to be administered by either of them, any of the officers of the prison, or prisoners therein. [C51,§3114; R60,§5133; C73,§4733; C97,§5649; C24, 27, 31, 35, 39,§5509; C46, 50, 54,§356.13]

**356.14 Refractory prisoners.** If any person confined in a jail is refractory or disorderly, or willfully destroys or injures any part thereof or of its contents, the sheriff may chain or secure such person, or cause him to be kept in solitary confinement, not more than ten days

for any one offense, during which time he may be fed with bread and water only, unless other food is necessary for the preservation of his health. [C51,§3115; R60,§5134; C73,§4734; C97, §5650; C24, 27, 31, 35, 39,§5510; C46, 50, 54, §356.14]

**356.15 Expenses.** All charges and expenses for the safekeeping and maintenance of prisoners shall be allowed by the board of supervisors, except those committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county. [C51,§3116; R60,§5135; C73,§4735; C97,§5651; C24, 27, 31, 35, 39,§5511; C46, 50, 54,§356.15]

**356.16 Hard labor.** Able-bodied male persons over the age of sixteen, confined in any jail under the judgment of any tribunal authorized to imprison for the violation of any law, ordinance, bylaw or police regulation, may be required to labor during the whole or part of the time of his sentence, as hereinafter provided, and such tribunal, when passing final judgment of imprisonment, whether for non-payment of fine or otherwise, shall have the power to and shall determine whether such imprisonment shall be at hard labor or not. [C51,§3107; R60,§5126; C73,§4736; C97,§5652; S13, §5652; C24, 27, 31, 35, 39,§5512; C46, 50, 54, §356.16]

**356.17 Labor on public works.** Such labor may be on the streets or public roads, on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of the day as the person having charge of the prisoners may direct, not exceeding eight hours each day. [C73,§4737; C97,§5653; C24, 27, 31, 35, 39,§5513; C46, 50, 54,§356.17]

**356.18 Supervision.** If the sentence be for the violation of any of the statutes of the state, the sheriff of the county shall superintend the performance of the labor, and furnish the tools and materials, if necessary, to work with, at the expense of the county in which the convict is confined, and such county shall be entitled to his earnings. [C51,§3107; R60,§5126; C73, §4738; C97,§5654; C24, 27, 31, 35, 39,§5514; C46, 50, 54,§356.18]

**356.19 Rules—labor not to be leased.** Such labor shall be performed in accordance with such rules as may be made by resolution of the board of supervisors, not inconsistent with the provisions of this chapter, and such labor shall not be leased. [C97,§5651; C24, 27, 31, 35, 39, §5515; C46, 50, 54,§356.19]

**356.20 Violation of city ordinance.** When the imprisonment is under the judgment of any court, police court, police magistrate, mayor, or other tribunal of a city or town, for the violation of any ordinance, bylaw, or other regulation thereof, the marshall shall superintend the labor, and furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts. [C73,§4739; C97,§5655; C24, 27, 31, 35, 39,§5516; C46, 50, 54,§356.20]

**356.21 Control and punishment.** The officer having charge of any prisoner may use such means as are necessary to prevent his escape, and if the prisoner attempts to escape or if, being convicted, he refuses to labor, the officer having him in charge may, to secure his person or cause him to labor, deal with him as with other disorderly or refractory prisoners. Such punishment shall be inflicted within the jail or jail enclosure, and the time of such solitary confinement shall not be considered as any part of the time for which the prisoner is sentenced. [C73,§4740; C97,§5656; C24, 27, 31, 35, 39,§5517; C46, 50, 54,§356.21]

**356.22 Credit for labor.** For every day of labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against him the sum of one dollar and fifty cents. [C73, §4741; C97,§5657; C24, 27, 31, 35, 39,§5518; C46, 50, 54,§356.22]

**356.23 Cruel treatment.** If any officer or other person treat any prisoner in a cruel or inhuman manner, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. [C73,§4742; C97,§5658; C24, 27, 31, 35, 39,§5519; C46, 50, 54,§356.23]

**356.24 Protecting prisoners.** The officer having a prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and may use such means as are necessary and proper therefor. [C73,§4743; C97,§5659; C24, 27, 31, 35, 39,§5520; C46, 50, 54,§356.24]

**356.25 Annoyance of prisoner.** Any person persisting in insulting or annoying or communicating with any prisoner, after being commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days. [C73,§4743; C97,§5659; C24, 27, 31, 35, 39,§5521; C46, 50, 54,§356.25]

## CHAPTER 357

## BENEFITED WATER DISTRICTS

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**357.1 Petition.** The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited water district, grant a hearing relative to the establishment of such proposed water district; such petition shall set out the following and any other pertinent facts:

1. The need of a public water supply.
2. The approximate district to be served.
3. The approximate number of families in the district.
4. The proposed source of supply.
5. The type of service desired, whether domestic only or for fire protection and other uses.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 455.10.

In case the proposed benefited water district is located wholly within the corporate limits of any city or town, only the council of the city or town shall have the authority to establish the water district, and the provisions of this chapter referring to the board of supervisors shall be applicable to the city or town council. [C24, 27, 31, 35, §5523; C39, §5526.01; C46, 50, 54, §357.1; 56GA, ch 178, §1]

**357.2 Territory included.** The benefited water district may include part or all of any incorporated city or town, or cities and towns, together with or without surrounding territory including cemeteries and all publicly owned land. Said publicly owned property shall pay and bear its proportionate share of the cost and expense of said water system upon the same basis as privately owned property. [C39, §5526.02; C46, 50, 54, §357.2; 56GA, ch 178, §3]

**357.3 Scope of assessment.** The special assessment hereinafter provided for may be used to cover the costs of installing all the necessary elements of a water system, for both

production and distribution. [C24, 27, 31, 35, §5522; C39, §5526.03; C46, 50, 54, §357.3]

**357.4 Public hearing.** When the board of supervisors receives a petition for the establishment of a benefited water district, a public hearing shall be held within twenty days of the presentation of the petition. Notice of such hearing shall be given by posting bills in three public places within the district, or by publication in two successive issues of any paper of general circulation within the district. The last publication or posting shall be not less than one week before the proposed hearing. [C24, 27, 31, 35, §5523; C39, §5526.04; C46, 50, 54, §357.4]

**357.5 Decision at hearing.** On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited water district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing. [C24, 27, 31, 35, §5523; C39, §5526.05; C46, 50, 54, §357.5]

**357.6 Examination by engineer.** When the board of supervisors shall have established the benefited water district, they shall appoint a competent disinterested civil engineer and instruct him to examine the proposed improvement, make preliminary designs in sufficient detail to make an accurate estimate of the cost of the proposed water system. He shall also report as to the suitability of the proposed source of water supply. [C39, §5526.06; C46, 50, 54, §357.6]

**357.7 Water source without district.** When in any proposed benefited water district, it is anticipated that the source of supply will be without the district, and not under its control, the board of supervisors shall instruct the engineer who is appointed to make the preliminary design and dummy assessment, to also obtain from the corporation or municipality which controls the proposed source of supply, a statement in writing, outlining the terms

upon which water will be furnished to the district, or to the individuals within the district and on what terms in either case.

This preliminary proposal from the governing body of the source of supply shall be binding, and shall be in the nature of an option to purchase water by the district, or the individual within the same, if and when the proposed benefited water district shall have completed its construction, and is ready to use water. This proposal shall accompany and be a part of the engineer's preliminary report to the board of supervisors. [C39,§5526.07; C46, 50, 54,§357.7]

**357.8 Plat.** The said engineer shall prepare a preliminary plat showing the proper design in general outline, the size and location of the water mains, the general location of hydrants, if such are included in said petition, valves and other appurtenances, and shall show the lots and parcels of land within the proposed district as they appear on the county auditor's plat books, together with the names of the owners and the amount which it is estimated that such lot or parcel will be assessed. [C39,§5526.08; C46, 50, 54,§357.8]

**357.9 Compensation of engineer.** The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors and may be by percentage or per diem. [C39,§5526.09; C46, 50, 54,§357.9]

**357.10 Filing of report and plat.** The engineer's report, together with the dummy plat showing the tentative design and assessment, shall be filed with the county auditor within thirty days of such engineer's appointment, unless for adequate reasons it is impossible for him to do so, in which case the board of supervisors may extend the time therefor. [C39, §5526.10; C46, 50, 54,§357.10]

**357.11 Hearing on report.** On receipt of the engineer's report, the board of supervisors shall give notice in the same manner as before, of a hearing on the engineer's tentative design and dummy plat. On the day set, or within ten days thereafter, the board of supervisors shall approve or disapprove the engineer's plan and proposed assessment. If it shall appear advisable, the board of supervisors may make changes in the design and assessment, as they appear on the dummy plat. [C39,§5526.11; C46, 50, 54,§357.11]

**357.12 Election.** When the preliminary design and assessment have been approved by the board of supervisors, a date not more than thirty days after such approval shall be set for an election within the district to determine whether or not the proposed improvement shall be constructed and to choose candidates for the offices of trustee within the district. Except that where the benefited water district is wholly within the corporate limits of a city or town, the members of the city or town council shall be the trustees, and the provisions hereinafter referring to the election and

terms of trustees are not applicable. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the public hearing heretofore provided for. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any legal voter residing within the district at the time of the election shall be entitled to vote. Judges will be appointed to serve without pay, by the board of supervisors from among the qualified voters of the district who will have charge of the election. The proposition shall be deemed to have carried if a majority of those voting thereon vote in favor of the same. [C24, 27, 31, 35,§5524; C39,§5526.12; C46, 50, 54,§357.12; 56GA, ch 178,§2]

Referred to in §357.13

**357.13 Trustees—terms.** At the election provided for in section 357.12, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to serve for one year, one for two years, and one for three years, which trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district said trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors, at the option of the remaining trustees. The term of succeeding trustees shall be for three years. [C24, 27, 31, 35, §5524; C39,§5526.13; C46, 50, 54,§357.13]

**357.14 Bids for construction.** If the result of said election be in favor of said improvement, the board of supervisors shall instruct the engineer to complete the plans and specifications, ready for receiving bids for construction of the project, which he shall do within thirty days of receiving notice to do so, unless for adequate reason the board shall extend the time.

When the completed plans and specifications are on file with the county auditor, the board of supervisors shall advertise for bids and shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein the improvement is to be constructed, setting forth the location and nature of the improvement and the date and place where bids will be received by the board. The last published notice to bidders shall be at least seven days before the time set for receiving bids. Bidders will be required to submit certified checks for five percent of the amount of the bid. [C24, 27, 31, 35,§5524; C39,§5526.14; C46, 50, 54,§357.14]

**357.15 Inadequate assessment.** When bids have been received, if it is apparent that the final assessment will need to be increased more than ten percent over the preliminary assessment, the board of supervisors shall, at

its option, reject bids and readvertise for bids as provided herein, or reject bids and revise the dummy assessment. If the dummy assessment is revised, another election shall be held within the district in the same manner and with the same notices as the first, except that the candidates for trustees shall not be voted for. [C39,§5526.15; C46, 50, 54,§357.15]

**357.16 Second election.** If the majority of the votes cast at said second election be in favor of said improvement, the board of supervisors shall again advertise for bids in the same manner as before. If the bids at the second letting will not necessitate raising the second preliminary assessment more than ten percent, the board may let the contract to the lowest responsible bidder. [C24, 27, 31, 35, §5524; C39,§5526.16; C46, 50, 54,§357.16]

**357.17 Bond of contractor.** The successful bidder, when awarded a contract, shall be required to give an approved surety bond for one hundred percent of the contract price, guaranteeing completion of the work in accordance with the plans and specifications, and for maintenance, including backfilling, for one year after the final acceptance of the work.

If the contractor shall fail to complete the work as provided in his contract, or shall abandon the same, or fail to proceed in a reasonable manner toward its final completion, the board may proceed against the contractor and bondsman as provided in sections 455.114 and 455.115. [C39,§5526.17; C46, 50, 54,§357.17]

**357.18 Acceptance of work.** When in the opinion of the engineer in charge, the construction in any benefited water district has been completed in accordance with the plans, specifications, and contract, he shall certify this fact to the board of supervisors, and recommend the acceptance of the work by the said board. The board of supervisors shall proceed in accordance with sections 455.111 and 455.112. [C39,§5526.18; C46, 50, 54,§357.18]

**357.19 Completing assessment.** After the final acceptance of the work by the board of supervisors, the engineer shall complete the final assessment, which shall be made on all the property within the district, whether abutting or not, for an amount approximately ten percent greater than the total cost of the project. The assessment shall be made according to benefits and shall take into consideration the location and value of the property assessed. The final assessment on any lot or parcel of land shall not exceed the final preliminary assessment by more than ten percent, and shall in no case exceed twenty-five percent of the assessed value of the property. The board of supervisors may alter an assessment to increase or decrease it within the limits outlined above, and must approve by resolution the final assessment as made.

Notwithstanding the provisions of this section the final assessment may be but not in excess of one and one-half dollars per lineal foot

of abutting frontage for all unimproved property, and may be but not in excess of four dollars per lineal foot of abutting frontage for all improved property. Each parcel of improved property having a frontage of more than one hundred feet per unit of improvement shall be assessed as unimproved property on the frontage in excess of one hundred feet. For the purpose of this paragraph improved property shall be considered to be any property having one habitable dwelling or one business building thereon. [C24, 27, 31, 35, §5522; C39,§5526.19; C46, 50, 54,§357.19]

**357.20 Due date — bonds.** Assessments of less than ten dollars will come due at the first tax-paying date after the approval of the final assessment, and assessments of ten dollars or more may be paid in ten annual installments with interest at six percent on the unpaid balance. The board of supervisors shall issue bonds against the completed assessment in an amount equal to the total cost of the project, so that the amount of the assessment will be approximately ten percent greater than the amount of the bonds. [C24, 27, 31, 35,§5522; C39,§5526.20; C46, 50, 54,§357.20]

**357.21 Substance of bonds.** Each of such bonds shall be numbered, and have printed upon its face that it is a benefited water district bond, stating the county and the number of the district for which it is issued, and the date of maturity; that it is in pursuance of a resolution of the board of supervisors, and that it is to be paid for only from special assessment theretofore levied and taxes levied as hereinafter provided for that purpose within the said district for which the bond is issued. The provisions of sections 455.83 and 455.86 shall govern the issuance of these bonds except that the contractor will not be paid anything on the work until its completion and final acceptance. [C39,§5526.21; C46, 50, 54,§357.21]

**357.22 Lien of assessments—tax.** When the assessment has been completed and the bonds sold and the schedule of assessment shall be turned over to the county auditor, the installments due thereon shall be collected in the same manner as ordinary taxes and shall constitute a lien on the property against which they are made. If the treasurer does not receive sufficient funds to enable him to pay the interest and retire the bonds as they become due, he shall levy a three mill annual tax on all property within the district to pay such deficiency, and the county treasurer shall apply the proceeds of such levy to the payment of the bonds and the interest on the same so long as the bonds are in arrears on either interest or principal. [C24, 27, 31, 35,§5525; C39, §5526.22; C46, 50, 54,§357.22]

**357.23 Surplus.** The board of supervisors shall be required to levy such three mill annual tax so long as the bonds are in arrears. [C39,§5526.23; C46, 50, 54,§357.23]

**357.24 Fee of engineer.** The fee for engineering services shall be fixed by the board of supervisors and he may be paid either a percentage or a per diem, from proceeds of the bond sale or by cash from the contractor, if the contractor takes bonds in settlement for his work under his contract. [C39,§5526.24; C46, 50, 54,§357.24]

**357.25 Management by trustees.** After the final acceptance of the work by the board of supervisors, the management of the utility shall automatically go to the three trustees previously appointed by the board of supervisors. The trustees shall have power to levy an annual tax not to exceed one-half mill, on the district, for the maintenance of the system. This levy shall be optional with the trustees. The trustees may purchase material and employ labor to properly maintain and operate the utility. The trustees shall be allowed necessary expenses in the discharge of their duties, but shall not receive any salary. [C24, 27, 31, 35,§5526; C39,§5526.25; C46, 50, 54, §357.25]

**357.26 Duties of trustees.** It is anticipated that this law will usually be utilized to finance a distribution system where the source of supply is without the district, and not under its control, and that individuals within the district will pay water rent to a municipality or corporation without the district. It is intended that the trustees may so operate the utility as will best serve the users, and they are expressly authorized to buy and sell water, to fix the rates to consumers and make all contracts reasonable or necessary to accomplish the purpose of this chapter and to carry on all the operations incident to maintaining and operating said utility and to the procuring and furnishing of water to the consumers therein. If the development of a source of supply is within the means of the district, the trustees may install wells, tanks, meters and any other equipment properly pertaining to operate it. [C39,§5526.26; C46, 50, 54,§357.26]

**357.27 Public property in district.** Whenever property of the state of Iowa, or any political subdivision thereof, shall be included either wholly or in part within such water district and shall own facilities which may be used as a part of such water system, the executive council, board of supervisors, city or town council, as the case may be, may permit such use of said facilities for such consideration and on such terms as may be agreed upon with the board of trustees. [C39,§5526.27; C46, 50, 54,§357.27]

**357.28 Private mains — additional assessments.** Any person or persons within any water district, who may, after the initial installation of the improvement in any such district, desire to construct additional mains, and who have been assessed on the original assessment, may with the consent of the trustees, connect such lateral mains as they desire

with the original system to serve property within the district which has been assessed, provided that the entire cost thereof shall be borne by the parties so interested.

The trustees shall have power to make additional assessments on unimproved lots or parcels of land within the district when said unimproved lots or parcels are improved and ready to receive the full benefits of the district. This additional assessment shall be determined and fixed by the trustees and shall not exceed the average assessment for improved property in said districts less the original assessment on said unimproved lots or parcels. Said assessments shall be paid to the county treasurer before service pipes are laid into said improvement. The assessment shall be put in the benefited water district fund of the district of which said lots or parcels are a part and shall be used by the county treasurer for the retirement of bonds and interest. When the bonds are all retired, the trustees shall be authorized to use said fund for maintenance purposes, changing size of mains, eliminating dead ends, or extending mains for the benefit of the district. [C39,§5526.28; C46, 50, 54,§357.28]

**357.29 Subdistricts.** If the cost of the desired extensions will be as much as five thousand dollars, the interested parties may petition the board of supervisors to organize a subdistrict, and in such case the board shall proceed in the same manner as for a new district, and may take in territory not originally assessed.

The board of supervisors shall have power at any time to alter the boundaries of any district prior to the time of posting or publishing notice of the election within the district. [C24, 27, 31, 35,§5522; C39,§5526.29; C46, 50, 54,§357.29]

**357.30 Additional territory.** When the district is under the control of trustees, they are empowered to deal with parties without the district who desire to be taken into the district or to obtain water from the district and determine the amount to be assessed against said district to be taken in or connected with. The trustees shall have power in such cases to make agreements for the district, and may, with the consent of the board of supervisors, alter the district boundaries to take in additional territory. No lot or parcel of land shall be put out of a district without the consent of the owner, after it has paid any assessment to the district. [C24, 27, 31, 35,§5522; C39,§5526.30; C46, 50, 54,§357.30]

**357.31 Right of way.** The board of supervisors shall have power to condemn, in the same manner as provided for the condemnation of land, right of way through private property, sufficient for the construction and maintenance of water mains. The cost of such right of way shall constitute a part of the expense of the improvement and shall be covered by the special assessment. [C39,§5526.31; C46, 50, 54,§357.31]

**357.32 Record book.** The board of supervisors shall provide a record book which shall be in the custody of the auditor, in which shall be kept a full and complete record of the proceedings relative to water districts, so arranged and indexed, as to enable any proceedings relative to any district to be readily examined. [C24, 27, 31, 35, §5524; C39, §5526.32; C46, 50, 54, §357.32]

**357.33 Appeal procedure.** Any person aggrieved, may appeal from any final action of the board of supervisors in relation to any matter involving his rights, to the district court of the county in which the district is located. The procedure in such appeals shall be governed by the provisions of sections 455.94 to 455.109, inclusive, provided that whenever in the above sections the words "drainage district" occur, the words "benefited water district" shall be substituted. [C39, §5526.33; C46, 50, 54, §357.33]

**357.34 Conveyance of district to city or town.** Where a city or town is situated wholly

or partly within a benefited water district, the board of supervisors having jurisdiction of said benefited water district, at the request of the trustees of said benefited water district, may, by proper resolution, convey unto said city or town any and all rights which said board of supervisors may have in and to said benefited water district. Said conveyance, however, shall not become effective until all existing obligations against said district have been completely and fully discharged and such conveyance accepted and confirmed by a resolution of the council of said city or town, specially passed for such purpose.

Upon acceptance, the district, including the plant and distribution system, as well as all funds and credits shall become the property of said city or town and be operated and used by it to the same extent as if acquired under chapter 397. Also, the offices of the trustees as provided in this chapter shall be abolished upon acceptance by the city or town and their duties as such shall immediately cease. [C54, §357.34]

## CHAPTER 357A

### BENEFITED FIRE DISTRICTS

357A.1 Hearing on petition.  
357A.2 Extent of district.  
357A.3 Notice of hearing.  
357A.4 Action of board.  
357A.5 Engineer.  
357A.6 Compensation.  
357A.7 Report.

357A.8 Approval of report.  
357A.9 Election.  
357A.10 Appointment of trustees.  
357A.11 Powers of trustees.  
357A.12 Anticipation of tax.  
357A.13 Township tax discontinued.  
357A.14 Dissolution of district.

**357A.1 Hearing on petition.** The board of supervisors of any county or counties shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited fire district, grant a hearing relative to the establishment of such proposed fire district. Such petition shall set out the following and any other pertinent facts:

1. The need of co-operative fire protection.
2. The approximate district to be served.
3. The approximate number of families in the district.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 455.10. [57GA, ch 178, §1]

**357A.2 Extent of district.** The benefited fire district may include all or portions of one township and any adjoining townships or portions thereof. [57GA, ch 178, §2]

**357A.3 Notice of hearing.** When the board of supervisors receives a petition for the establishment of a benefited fire district, a public hearing shall be held within twenty days of the presentation of the petition. Notice of hearing shall be given by posting bills in three public places within the district, or by publica-

tion in two successive issues of any paper of general circulation within the district. The last publication or posting shall be not less than one week before the proposed hearing. [57GA, ch 178, §3]

**357A.4 Action of board.** On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited fire district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing. [57GA, ch 178, §4]

**357A.5 Engineer.** When the board of supervisors shall have established the benefited fire district, they shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing the proper design in general outline of the district, and shall show the lots and parcels of land within the proposed district as they appear on the county auditor's plat books, together with the names of the owners, and the assessed valuation of said lots and parcels. [57GA, ch 178, §5]

**357A.6 Compensation.** The compensation of such engineer on the preliminary investigation

shall be determined by the board of supervisors. [57GA, ch 178,§6]

**357A.7 Report.** The engineer's report shall be filed with the county auditor within thirty days of such engineer's appointment. The board of supervisors may extend the time thereon upon good cause shown. [57GA, ch 178,§7]

**357A.8 Approval of report.** On receipt of the engineer's report, the board of supervisors shall give notice in the same manner as before, of a hearing on the engineer's tentative design and dummy plat. On the day set, or within ten days thereafter, the board of supervisors shall approve or disapprove the engineer's plan. If it shall appear advisable, the board of supervisors may make changes in the boundaries as they appear on the engineer's report. [57GA, ch 178,§8]

**357A.9 Election.** When the preliminary report has been approved by the board of supervisors, a date not more than thirty days after such approval shall be set for an election within the district to approve the levy of a tax of not more than one and one-half mills on all the taxable property within the district for the purposes set out in sections 357A.11 and 357A.12, and to choose candidates for the offices of trustee within the district. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the public hearing heretofore provided for. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any legal voter residing within the district at the time of the election shall be entitled to vote. Judges shall be appointed to serve without pay by the board of supervisors from among the qualified voters of the district who will have charge of the election. The proposition shall be deemed to have carried if sixty percent of those voting thereon vote in favor of same. [57GA, ch 178,§9]

Referred to in §§357A.10, 357A.11, 357A.12

**357A.10 Appointment of trustees.** At the election provided for in section 357A.9, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to serve for one year, one for two years, and one for three years, which trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district said trustees represent. Vacancies may thereafter be filled by election, or by ap-

pointment by the board of supervisors. The term of succeeding trustees shall be for three years. [57GA, ch 178,§10]

**357A.11 Powers of trustees.** The trustees may purchase, own, rent or maintain fire apparatus or equipment and provide housing for same and furnish services in the extinguishing of fires in said benefited fire district. The trustees shall have the power after approval given by section 357A.9 to levy an annual tax not to exceed one and one-half mills outlined in section 357A.9 for the purpose of exercising the powers granted in this section. This levy shall be optional with the trustees. The trustees may purchase material and employ labor to properly maintain and operate the benefited fire district. The trustees shall be allowed necessary expenses in the discharge of the duties, but shall not receive any salary. [57GA, ch 178,§11]

Referred to in §§357A.9, 357A.12

**357A.12 Anticipation of tax.** Benefited fire districts may anticipate the collection of taxes outlined by sections 357A.9 and 357A.11 and for such purposes may issue bonds payable in not more than ten equal installments and the rate of interest thereon shall not exceed five percent per annum, payable at such place and shall be in such form as the trustees shall designate by resolution. Sections 23.12 to 23.16, inclusive, and chapter 408, so far as applicable, shall apply to such bonds. [57GA, ch 178,§12]

Referred to in §357A.9

**357A.13 Township tax discontinued.** When the boundary lines of such benefited fire district shall include an entire township, the township trustees shall no longer levy the tax provided by section 359.43; and any indebtedness incurred for the purposes of sections 359.42 to 359.45, inclusive, shall be assumed by the benefited fire district and all the assets of said township which relate to the fire-fighting operation shall be transferred to the benefited fire district. Any property in the township purchased for dual purposes shall be held jointly. [57GA, ch 178,§13]

**357A.14 Dissolution of district.** Upon petition of thirty-five percent of resident voters, the board of supervisors may dissolve the benefited fire district and dispose of any remaining property, proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. The board of supervisors shall continue to levy tax after dissolution of district not to exceed one and one-half mills on all the taxable property of the district until all outstanding obligations of the district are paid. [57GA, ch 178,§14]



## CHAPTER 358

## SANITARY DISTRICTS

Referred to in §§358.21, 391.95, 394.1, 394.6, 394.11

358.1	Incorporation.	358.14	Proof of ordinances.
358.2	Petition.	358.15	Personal interest in contracts.
358.3	Jurisdiction—decisions—records.	358.16	Power to provide for sewage disposal.
358.4	Date and notice of hearing.	358.17	Power to acquire and dispose of property.
358.5	Hearing of petition and order.	358.18	Taxes—power to levy—tax sales.
358.6	Notice of election.	358.19	Records and disbursements.
358.7	Election.	358.20	Rentals and charges.
358.8	Expenses and costs of election.	358.21	Debt limit — borrowing — bonds — purposes.
358.9	Election of trustees—term of office	358.22	Special assessments.
358.10	Trustee's bond.	358.23	Appeal to district court.
358.11	Sanitary district to be a body corporate.		
358.12	Board of trustees—powers.		
358.13	Ordinances—publication or posting—time of taking effect.		

**358.1 Incorporation.** Whenever any area of contiguous territory is so situated that the construction, maintenance and operation of a trunk sewer system and of a plant or plants for the treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated by and through such plant or plants, will be conducive to the public health, comfort, convenience or welfare, such area may be incorporated as a sanitary district in the manner set forth in this chapter. [C46, 50, 54, §358.1; 56GA, ch 158, §1]

**358.2 Petition.** Any twenty-five or more qualified voters resident within the limits of any proposed sanitary district may file a petition in the office of the county auditor of the county in which the proposed sanitary district, or the major portion thereof, is located, requesting that there be submitted to the qualified voters of such proposed district the question whether the territory within the boundaries of such proposed district shall be organized as a sanitary district under this chapter. Such petition shall be addressed to the board of supervisors of the county wherein it is filed and shall set forth:

1. An intelligible description of the boundaries of the territory to be embraced in such district.
2. The name of such proposed sanitary district.
3. That the public health, comfort, convenience or welfare will be promoted by the establishment of such sanitary district.
4. The signatures of the petitioners.

No territory shall be included within more than one sanitary district organized under this chapter, and if any proposed sanitary district shall fail to receive a majority of votes cast at any election thereon as hereinafter provided, no petition shall be filed for establishment of such a sanitary district within one year from the date of such previous election. [C46, 50, 54, §358.2]

**358.3 Jurisdiction—decisions—records.** The board of supervisors of the county in which the proposed sanitary district, or the major portion thereof, is located shall have jurisdiction of the proceedings on said petition as herein provided, and the decision of a majority of the members of said board shall be necessary for adoption. All orders of the board made hereunder shall be spread at length upon the records of the proceedings of the board of supervisors, but need not be published under section 349.16. [C46, 50, 54, §358.3]

**358.4 Date and notice of hearing.** It shall be the duty of the board of supervisors to whom said petition is addressed, at its next regular, special, or adjourned meeting, to set the time and place when it will meet for a hearing upon said petition, and it shall direct the county auditor in whose office said petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and prayer of said petition, by publication of a notice once each week for two consecutive weeks in some newspaper of general circulation published in such proposed district, the last of which publications shall not be less than twenty days prior to the date set for the hearing of said petition, and if no such newspaper is published in such proposed district, then by posting at least five copies of such notice in such proposed district at least twenty days before such hearing. Proof of giving such notice shall be made by affidavit of the publisher or affidavit of the person who posted said notices, and such proof shall be on file with the county auditor at the time the hearing begins. Said notice of hearing shall be directed to all persons it may concern, and shall state:

1. That a petition has been filed with the county auditor, of the county, naming it, for establishment of a proposed sanitary district, and the name of such proposed district.
2. An intelligible description of the boundaries of the territory to be embraced in such district.

3. The date, hour, and the place where such petition will come on for hearing before the board of supervisors of said named county.

4. That the board of supervisors will fix and determine the boundaries of such proposed district as described in the petition or otherwise, and for that purpose may alter and amend such petition, and at the said hearing all interested persons shall have an opportunity to be heard touching the location and boundaries of such proposed district and to make suggestions regarding same. [C46, 50, 54, §358.4]

Referred to in §§358.5, 358.6

**358.5 Hearing of petition and order.** The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the same in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice thereof. Proof of the residence and qualification of the petitioners as qualified voters shall be made by affidavit or otherwise as the board may direct. Said board shall have power and authority to consider the boundaries of any such proposed sanitary district, whether the same shall be as described in such petition or otherwise, and for that purpose may alter and amend such petition and limit or change the boundaries of the proposed district as stated in the petition. The boundaries of any proposed district shall not be changed to incorporate therein any property not included in the original petition and published notice until the owner or owners of said property shall be given notice thereof as on the original hearing. All persons in such proposed district shall have an opportunity to be heard touching the location and boundaries of the proposed district and to make suggestions regarding the same, and said board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of such proposed district and directing that an election be held for the purpose of submitting to the qualified voters resident within the boundaries of the proposed district the question of organization and establishment of the proposed sanitary district as determined by said board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order, establish voting precincts within the proposed district and define their boundaries and specify the polling places therein as in the board's judgment will best serve the convenience of the voters, and shall appoint from residents of the proposed district three judges and two clerks of election for each voting precinct established. [C46, 50, 54, §358.5]

**358.6 Notice of election.** In its order for such election the board of supervisors shall direct the county auditor with whom said petition is filed to cause notice of such election to be given by posting at least five copies of such notice in public places in such proposed dis-

trict at least twenty days before the date of election and by publication of such notice once each week for three consecutive weeks in some newspaper of general circulation published in such proposed district, or, if no such paper is published within the proposed district, then in such a newspaper published in the county in which the major part of such proposed district is located, the last publication to be at least twenty days prior to the date of election. Such notice shall state the time and place of holding the election and the hours when the polls will open and close, the purpose of the election, with the name of such proposed sanitary district and a description of the boundaries thereof, and shall set forth briefly the limits of each voting precinct and the location of the polling places therein. Proof of posting and publication shall be made in the manner provided in section 358.4 and filed with the county auditor. [C46, 50, 54, §358.6]

**358.7 Election.** Each qualified voter resident within such proposed sanitary district shall have the right to cast a ballot at such election and no person shall vote in any precinct but that of his or her residence. Ballots at such election shall be in substantially the following form, to wit:

For Sanitary District	
Against Sanitary District	

The election shall be conducted in the manner provided by law for general elections and the ballots so cast shall be issued, received, returned and canvassed in the same manner and by the same officers, in the county whose board of supervisors is vested with jurisdiction of the proceedings, as is provided by law in the case of ballots cast for county officers, except as herein modified. The board of supervisors shall cause a statement of the result of such election to be spread upon the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this chapter and established as conducive to the public health, comfort, convenience, and welfare. [C46, 50, 54, §358.7]

**358.8 Expenses and costs of election.** All expenses incurred in carrying out the foregoing sections of this chapter, together with the costs of the election therein provided for, as determined by the board of supervisors, shall be paid by the county whose board is vested with jurisdiction of the proceedings. [C46, 50, 54, §358.8]

**358.9 Election of trustees — term of office.** Within thirty days after the organization of a sanitary district under this chapter, the board of supervisors which had jurisdiction of the proceedings for its establishment, together with the board of supervisors of any other county, if any, in which any part of said district is located, shall order an election to be

held in the district on a date not more than sixty days after the date of the order for the purpose of electing a board of trustees, consisting of three members, except as otherwise provided in this section, for the government, control and management of the affairs and business of such sanitary district. Said board, or boards, shall cause notice of said election to be posted and published, and shall perform all other acts with reference to such election, and conduct the same, in like manner, as nearly as may be, as provided in this chapter for the election on the question of establishing such district. Each trustee shall be a citizen of the United States, not less than twenty-one years of age, and a resident within said sanitary district. Each voter at said election may write in upon the ballot the names of not more than three persons whom he desires for trustees and may cast not more than one vote for each of said three persons, and the three persons receiving the highest number of votes cast shall constitute the first board of trustees of the district. The term of office of the first board of trustees shall be for the period extending to the second secular day of January following the next regular biennial election. Three trustees to succeed the first board of trustees shall be nominated and elected at the next primary and regular biennial elections following establishment of the district, in the same manner as provided by the primary and general election laws of this state for the nomination and election for offices to be filled by the voters of any subdivision of a county. Said trustees shall be elected for terms of two, four, and six years respectively, and their terms shall commence on the second secular day of January next thereafter. At each succeeding biennial election one trustee shall be nominated and elected in the manner herein provided for a six year term to succeed the trustee whose term next expires. In all elections for trustees each qualified voter resident within the district may vote one vote for each office of trustee to be filled at the election. At all elections for trustees subsequent to the election of the first board the names of all candidates for trustees of such sanitary district shall be printed on the same ballot with candidates for other offices to be filled at such election. In case a regular election precinct includes territory lying partly within and partly without the sanitary district, it shall be the duty of the officers charged with the printing and furnishing of ballots to furnish to the election judges of such precinct two sets of official ballots, one set including the names of candidates for trustees of such sanitary district, and one set without such names. All provisions of the primary and general election laws of Iowa shall govern the nomination and election of trustees hereunder, so far as applicable, and except as modified hereby.

Vacancies in the office of trustee of a sanitary district shall be filled by the remaining members of the board for the period extending to the second secular day of January fol-

lowing the next biennial election, when a trustee shall be elected to fill such vacancy for the unexpired term.

In cases where the state of Iowa owns at least four hundred acres of land contiguous to lakes within said district, then and only then the Iowa natural resources council shall appoint two members of said board of trustees in addition to the three members hereinbefore provided in this section. The additional two members shall be qualified as follows: They shall be United States citizens, not less than twenty-one years of age, and shall be a property owner within said district. In such cases the two additional appointive members shall have equal vote and authority with other members of trustees and shall hold office at the pleasure of the Iowa natural resources council. [C46, 50, 54, §358.9; 56GA, ch 179, §§1, 2]

**358.10 Trustee's bond.** Each trustee shall, before entering upon the duties of his office, execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in such form and amount as said board of supervisors may determine, which bond shall be filed with the county auditor of said county. [C46, 50, 54, §358.10]

**358.11 Sanitary district to be a body corporate.** Each sanitary district organized under this chapter shall be a body corporate and politic, with the name and style under which it was organized, and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and exercise all the powers conferred in this chapter.

All courts of this state shall take judicial notice of the existence of sanitary districts organized hereunder. [C46, 50, 54, §358.11]

**358.12 Board of trustees—powers.** The trustees elected in pursuance of the foregoing provisions of this chapter shall constitute a board of trustees for the district by which they are elected, which board of trustees is hereby declared to be the corporate authority of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of such district. A majority of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day. Said board of trustees shall have the right to elect a president, a clerk, and a treasurer from their own number and, from without their own number, such employees as the board may deem necessary, who shall hold their employment during the pleasure of the board, and shall prescribe the duties and fix the compensation of all employees of said sanitary district and the amount of bond to be filed by the treasurer of the district and by any employee for whom they may require bond, pro-

vided, however, that the compensation of members of the board of trustees is hereby fixed at not to exceed five dollars per day for each day the board is actually in session and five dollars per day when not in session but employed on committee service, and five cents for every mile traveled in going to and from sessions of the board and in going to and from the place of performing committee service; provided further, that members of said board shall not receive compensation for more than sixty days of session and committee service each year.

Said board of trustees shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of said board of trustees and of said corporation and for carrying into effect the objects for which such sanitary district is formed. [C46, 50, 54, §358.12]

**358.13 Ordinances—publication or posting—time of taking effect.** All ordinances, resolutions, orders, rules and regulations adopted by the board shall take effect five days from and after their adoption and publication. The publication thereof shall be by one publication in a newspaper published in the district or by posting copies thereof in five public places within the district. [C46, 50, 54, §358.13]

**358.14 Proof of ordinances.** All ordinances, resolutions, orders, rules and regulations, and the date when same became effective, may be proven by the certificate of the clerk, under the seal of the corporation, if one has been adopted, and when printed in book or pamphlet form and purporting to be published by the board of trustees such book or pamphlet shall be received as evidence of the passage and legal publication or posting thereof as of the dates mentioned therein, in all courts and places, without further proof. [C46, 50, 54, §358.14]

**358.15 Personal interest in contracts.** No trustee of such district shall be directly or indirectly interested in any contract, work, or business of the district, or in the sale of any article the expense, price, or consideration of which is paid by such district; nor in the purchase of any real estate or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said district; provided, that nothing herein shall be construed as prohibiting the selection of any person as trustee because of his ownership of real estate in the district or because he is a taxpayer in the district. [C46, 50, 54, §358.15]

**358.16 Power to provide for sewage disposal.** The board of trustees of any sanitary district organized under this chapter shall have power to provide for the disposal of the sewage thereof, including the sewage and drainage of any city, town, or village within the boundaries of such district; to acquire, lay out, locate, establish, construct, maintain, and operate one or more drains, conduits, treat-

ment plants, disposal plants, pumping plants, works, ditches, channels, and outlets of such capacity and character as may be required for the treatment, carrying off, and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district; to lay out, establish, construct, maintain, and operate all such adjuncts, additions, auxiliary improvements, and works as may be necessary or proper for accomplishment of the purposes intended, and to procure supplies of water for operating, diluting, and flushing purposes; to maintain, repair, change, enlarge, and add to such facilities, improvements, and works as may be necessary or proper to meet the future requirements for the purposes aforesaid; and, when necessary for such purposes, any such facilities, improvements, and works and the maintenance and operation thereof may extend beyond the limits of such district, and the rights and powers of said board of trustees in respect thereto shall be the same as if located within said district, provided, no taxes shall be levied upon any property outside of such district; and provided further, that the district shall be liable for all damages sustained beyond its limits in consequence of any work or improvement authorized hereunder.

The board of trustees, however, may upon such petition of property owners representing at least twenty-five percent of the valuation of property not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Nothing contained herein shall be construed to authorize or empower such board of trustees to operate a system of waterworks for the purpose of furnishing water to the inhabitants of the district, or to construct, maintain, or operate local municipal sewerage facilities, or to deprive municipalities within the district of their powers to construct and operate sewers for local purposes within their limits.

The board of trustees of such sanitary district may, however, upon petition of the council or governing body of any incorporated town within the sanitary district, contract with such city or town to undertake the operation of local municipal sewage facilities as part of the functioning of the sanitary district and make an agreement with such municipality for the levying of additional sewer or sewage disposal taxes, which taxes shall be levied by the municipality as now provided by law. [C46, 50, 54, §358.16]

**358.17 Power to acquire and dispose of property.** Any sanitary district organized under this chapter may acquire by purchase, condemnation, or otherwise, any and all real and personal property, rights of way and privileges, either within or without its corporate limits, required for its corporate purposes. Condemnation proceedings shall be con-

ducted in the same manner, as near as may be, as provided for condemnation by counties under the laws of Iowa. Said sanitary districts shall have power to sell, convey, or otherwise dispose of any of the properties belonging to them when no longer required for their purposes. [C46, 50, 54, §358.17]

**358.18 Taxes—power to levy—tax sales.** The board of trustees of any sanitary district organized under this chapter shall have the power by ordinance to levy annually for the purpose of paying the administrative costs of such district, and/or for the payment of deficiencies in special assessments a tax upon property within the territorial limits of such sanitary district not exceeding two mills on the dollar of the adjusted taxable valuation of the property within such district for the preceding calendar year.

All taxes thus levied by the board shall be certified by the clerk on or before the first day of September to the county auditor of each county wherein any of the property included within the territorial limits of said sanitary district is located, and shall by said auditor or auditors be placed upon the tax list for the current year; and the county treasurer, or treasurers, of more than one county, shall collect all taxes so levied in the same manner as other taxes, and when delinquent they shall draw the same interest and penalties. All taxes so levied and collected shall be paid over by the officer collecting the same to the treasurer of the sanitary district.

Sales for delinquent taxes owing to such sanitary district shall be made at the same time and in the same manner as such sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to such sales. [C46, 50, 54, §358.18]

**358.19 Records and disbursements.** The clerk of each sanitary district shall keep a record of all the proceedings and actions of the trustees. The treasurer shall receive, collect, and disburse all moneys belonging to the district, and no claim shall be paid or disbursement made until it has been duly audited by the board of trustees. [C46, 50, 54, §358.19]

**358.20 Rentals and charges.** Any sanitary district may by ordinance establish just and equitable rates or charges or rentals for the utilities and services furnished by it to be paid to such district by every person, firm or corporation whose premises are served by a connection to such utilities and services directly or indirectly. Such rates, charges, or rentals, as near as may be in the judgment of the board of trustees of the district, shall be equitable and in proportion to the services rendered and the cost thereof, and taking into consideration in the case of each such premises the quantity of sewage produced thereby and its concentration, strength, and pollution qualities. The board of trustees may change such

rates, charges, or rentals from time to time as it may deem advisable, and by ordinance may provide for the collection thereof. The board is authorized to contract with any municipality within the district, whereby such municipality may collect or assist in collecting any of such rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and any such municipality is hereby empowered to undertake such collection and render such service. Such rates, charges, or rentals, if not paid when due, shall constitute a lien upon the property served by a connection as aforesaid and shall be collected in the same manner as other taxes.

In no case shall such rates, rentals, or charges, or the funds accruing from the collection thereof, be used to meet that part of the cost of any construction within the district which has been financed by special assessment against benefited properties. The provisions of chapter 393 shall apply to sanitary districts organized under this section insofar as they are applicable. [C46, 50, 54, §358.20]

**358.21 Debt limit—borrowing—bonds—purposes.** Any sanitary district organized hereunder may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding five percent on the value of the taxable property within such district, to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. Indebtedness within this constitutional limit shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of such sanitary district.

Subject only to this debt limitation, any such sanitary district organized hereunder shall have and it is hereby vested with all of the same powers to issue bonds, including both general obligation and revenue bonds, which cities and towns now or may hereafter have under the laws of this state. In the application of such laws to this chapter, the words used in any such laws referring to municipal corporations or to cities and towns shall be held to include sanitary districts organized under this chapter, the words "council" or "city council" shall be held to include the board of trustees of a sanitary district; the words "mayor" and "clerk" shall be held to include the president and clerk of any such board of trustees or sanitary district; and like construction shall be given to any other words in such laws where required to permit the exercise of such powers by sanitary districts.

Any and all bonds issued hereunder shall be signed by the president of the board of trustees and attested by the clerk, with the seal of the district, if any, affixed, and interest coupons attached thereto shall be attested by the signature of the clerk.

The proceeds of any bond issue made under the provisions of this section shall be used only for the purpose of acquiring, locating,

laying out, establishing and construction of drainage facilities, conduits, treatment plants, pumping plants, works, ditches, channels and outlets of such capacity and character as may be required for the treatment, carrying off and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district, or to repair, change, enlarge and add to such facilities as may be necessary or proper to meet the requirements present and future for the purposes aforesaid. Proceeds from such bond issue may also be used for the payment of\* special assessment deficiencies. Said bonds shall be payable in not more than twenty annual installments and at interest not exceeding five percent per annum, and shall be made payable at such place and be of such form as the board of trustees shall by resolution designate. Any sanitary district issuing bonds as authorized in this section is hereby granted authority to pledge the future avails of a tax levy not exceeding five mills per annum to the payment of the principal and interest of such bonds after the same come due, and the power to impose and certify said levy is hereby granted to the trustees of sanitary districts organized under the provisions of this chapter. [C46, 50, 54,§358.21]

\*"Or" in enrolled Act

**358.22 Special assessments.** The board of trustees of any sanitary district may provide for payment of all or any portion of the costs and expenses of constructing, reconstructing, or extending any drains, sewers, or laterals, and other necessary adjuncts thereto, including pumping stations, by assessing all, or any portion thereof, on abutting and adjacent property according to the benefits derived thereby, and for this purpose said board may define adjacent property as all that included within a designated benefited district or districts to be fixed by the board, which may be all of the property located within the sanitary district or any lesser portion thereof. It shall constitute no objection to any special assessment that the improvement for which the same is

levied is outside the limits of such sanitary district, but no special assessment shall be made upon property situated outside of such sanitary district. Special assessments shall be in proportion to the special benefits conferred upon the property thereby, and not in excess of such benefits, and the same shall not exceed twenty-five percent of the actual value of the property at the time of levy, and the last preceding assessment roll shall be taken as prima-facie evidence of such value.

Such assessments may be made to extend over a period of ten years, payable in as nearly equal annual installments as practicable, and certificates or bonds may be issued in anticipation thereof. Proceedings for improvements to be made and paid for, in whole or in part, by special assessments, as herein authorized shall be initiated by resolution of necessity, and said resolution and the plat, schedule, hearings, notices, objections, orders, assessments, levies, contracts, bonds, certification of assessments, liens, payment, tax sales, and appeals, and the issuance and sale of certificates, and bonds, shall correspond, as near as may be, to the provisions therefor contained in chapters 391, 391A and 396, and all provisions of said chapters shall govern such proceedings, to the extent applicable, except as modified hereby. A majority vote of the board of trustees shall be requisite and sufficient for any action required by the board under the provisions of this section. [C46, 50, 54,§358.22]

Referred to in §358.23

**358.23 Appeal to district court.** Any person aggrieved by any proceeding had by the board of supervisors or by the board of trustees as herein provided in relation to any matter involving his rights not included under the provisions of section 358.22 may appeal to the district court of the county in which the proceedings were had. Such appeals shall be governed in all respects as is provided by pertinent sections under chapter 455. [C46, 50, 54, §358.23]

CHAPTER 358A

COUNTY ZONING COMMISSION

- 358A.1 Where applicable.
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**358A.1 Where applicable.** The provisions of this chapter shall be applicable to any county of the state at the option of the board of

supervisors of any such county. [C50, 54, §358A.1; 56GA, ch 180,§1]

Referred to in §§358A.3, 358A.25

**358A.2 Farms exempt.** No regulation or ordinance adopted under the provisions of this chapter shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other buildings, structures, or erections which are adapted, by reason of nature and area, for use for agricultural purposes as a primary means of livelihood, while so used. [C50, 54, §358A.2]

Referred to in §§358A.3, 358A.25

**358A.3 Powers.** Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is hereby empowered to regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes, and to regulate, restrict and prohibit the use for residential purposes of tents, trailers and portable or potentially portable structures; provided that such powers shall be exercised only with reference to land and structures located within the county but lying outside of the corporate limits of any city or town; provided further that no restriction of industrial or commercial enterprise, buildings or structures in unincorporated areas shall become effective until approved by a majority of the real property taxpayers owning real property in the area or district in which such restriction is to be imposed, either (1) at an election held for that purpose, or (2) by their signing an appropriate document indicating their approval. [C50, 54, §358A.3; 56GA, ch 180, §2]

**358A.4 Areas and districts.** For any and all of said purposes the board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [C50, 54, §358A.4]

**358A.5 Objectives.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street or highway; to secure safety from fire, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the

peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county. [C50, 54, §358A.5]

**358A.6 Public hearings.** The board of supervisors shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in a paper of general circulation in such county. [C50, 54, §358A.6]

Referred to in §358A.7

**358A.7 Changes and amendments.** Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area included in such proposed change, or of the area immediately adjacent thereto and within five hundred feet of the boundaries thereof, such amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 358A.6 relative to public hearings and official notice shall apply equally to all changes or amendments. [C50, 54, §358A.7]

**358A.8 Commission appointed.** In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, to be known as the county zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes or modifications. [C50, 54, §358A.8]

**358A.9 Administrative officer.** The board of supervisors shall appoint an administrative officer authorized to enforce the resolutions or ordinances so adopted by the board of supervisors. Such administrative officer may be a person holding other public office in the county, or in a city or other governmental subdivision within the county, and the board of

supervisors is authorized to pay to such officer out of the general fund such compensation as it shall deem fit. [C50, 54,§358A.9]

**358A.10 Board of adjustment.** The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners. [C50, 54,§358A.10]

**358A.11 Membership of board.** The board of adjustment shall consist of five members each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. [C50, 54,§358A.11]

**358A.12 Rules and regulations.** The board shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. [C50, 54,§358A.12]

**358A.13 Appeals to board.** Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting

the record upon which the action appealed from was taken. [C50, 54,§358A.13]

**358A.14 Stay of proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. [C50, 54,§358A.14]

**358A.15 Powers of board.** The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. [C50, 54,§358A.15]

**358A.16 Decision.** In exercising the above mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. [C50, 54,§358A.16]

**358A.17 Vote required.** The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. [C50, 54,§358A.17]

**358A.18 Petition to court.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition



shall be presented to the court within thirty days after the filing of the decision in the office of the board. [C50, 54,§358A.18]

**358A.19 Review by court.** Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. [C50, 54,§358A.19]

**358A.20 Record advanced.** The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. [C50, 54,§358A.20]

**358A.21 Trial to court.** If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. [C50, 54,§358A.21]

**358A.22 Precedence.** All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings. [C50, 54,§358A.22]

**358A.23 Restraining order.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction,

reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [C50, 54,§358A.23]

**358A.24 Conflict with other regulations.** Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern. [C50, 54,§358A.24]

**358A.25 Plumbing code enforced.** Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is further authorized to adopt regulations to provide that every dwelling, whether now or hereafter erected within the county but outside the corporate limits of any city or town which shall develop a private water supply or install a pressure water system or install sanitary house drains, shall comply with the recommendations of the state department of health on minimum requirements as set out in the state plumbing code\* in regard to such development or installation. Any such regulation may be enforced in the same manner as any other regulation adopted under this chapter. [C50, 54,§358A.25]

\*See §135.11(8)

**358A.26 Penalty.** In addition to any other remedy granted herein, the violation on any regulation, restriction or boundary adopted under this chapter or the occupancy or use of any structure erected, altered or maintained in violation of this chapter shall constitute a misdemeanor. Such occupancy or use shall be deemed a continuing violation and may be the subject of repeated prosecutions if so continued. Every person convicted of a misdemeanor, by reason of violations hereinabove set forth, shall be punished by a fine of not more than one hundred dollars or by imprisonment of not more than thirty days. [C50, 54, §358A.26]

CHAPTER 358B  
COUNTY LIBRARIES

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**358B.1 Power to establish.** Counties may provide for the formation and maintenance of free public libraries open to the use of all inhabitants under proper regulations, and may purchase, erect, or rent buildings or rooms suitable for this purpose and provide for the compensation of necessary employees. [C50, 54,§358B.1]

**358B.2 Library districts formed.** A county library district may be established composed of one county or two or more adjacent counties and may include or exclude the entirety of a city or town partly within one of the counties.

Electors residing within the proposed district in a number not less than five percent of those voting for governor within said district at the last general election may petition the board of supervisors of the county or counties for the establishment of such county library district. Said petition shall clearly designate the area to be included in the district.

The board of supervisors of each county containing area within the proposed district shall submit the proposition to the electors within their respective counties at any general or primary election provided said election occurs not less than forty days after the filing of the petition.

A county library district shall be established, if a majority of the electors, voting on the proposition and residing outside of cities and towns maintaining a free public library as provided by section 378.1 favor it.

The result of the election within cities and towns maintaining a free public library under the above-mentioned provision shall be considered separately, and no such city or town shall be included within the county library district unless a majority of its electors, voting on the proposition, favor its inclusion. In such cases the boundaries of an established district may vary from those of the proposed district.

After the establishment of a county library district other areas may be included by mutual agreement of the board of trustees of the county library district and the governing body of the area sought to be included. [C50, 54, §358B.2]

**358B.3 Gifts accepted.** Counties may receive, hold and dispose of all gifts, donations,

devises, and bequests that may be made to them for the purpose of establishing, increasing, or improving any library. When the conditions thereof have been accepted by the county, their use for the county library may be enforced against the county board of supervisors by the library board by an action of mandamus or by other proper action. [C50, 54,§358B.3]

**358B.4 Library trustees.** In any county or counties in which a library district has been established a board of library trustees, consisting of five, seven, or nine electors of the library district, shall be appointed by the board or boards of supervisors of the county or counties comprising such library district. Membership on the library board shall be apportioned between the rural and city and town areas of the district in proportion to the population in each of such areas. In the event the library district is composed of two or more counties, representation on said library board shall be equitably divided between or among said counties in proportion to the population in each of such counties. [C50, 54,§358B.4]

**358B.5 Terms.** Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years, and two for six years, from the first day of July following their appointment in each case. At their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the board of supervisors. All subsequent appointments, whatever the size of the board, shall be for terms of six years each. Vacancies shall be filled for unexpired terms by the governing body of the taxing unit of the district represented by the retiring member. [C50, 54, §358B.5]

**358B.6 Removal or absence of trustee.** The board of library trustees may declare the office of a trustee vacant by his removal from the library district or his unexplained absence from six consecutive regular meetings. [C50, 54,§358B.6]

**358B.7 No compensation.** Members of said board shall receive no compensation for their services. [C50, 54,§358B.7]

**358B.8 Powers.** Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.

2. To have charge, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.

3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.

4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.

6. To authorize the use of such libraries by school corporations or by nonresidents of the area which is taxed to support such libraries and to fix charges therefor.

7. To make and adopt, amend, modify, or repeal bylaws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures of all taxes levied for library purposes as provided by law, and of the expenditures of all moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund, including fines and rentals collected under the rules of the board of trustees. Said board shall keep a record of its proceedings.

9. To accept gifts of any property, including trust funds; to take the title to said property in the name of said library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of said library. [C50, 54,§358B.8]

**358B.9 Methods of service.** Library service shall be accomplished by one or more of the following methods in whole or in part:

1. By the establishment of depositories of books or other educational materials to be loaned at stated times and places.

2. By the transportation of books or other educational materials by conveyances for lending the same at stated times and places.

3. By the establishment of branch libraries for lending books and other educational materials.

4. By contracting for library service with the trustees of a free public library of any city or town. [C50, 54,§358B.9]

**358B.10 Library fund.** All moneys received and set apart for the maintenance of such library shall be deposited in the treasury of such county to the credit of the library fund, and shall be kept by the treasurer separate and apart from all other moneys, and paid out upon the orders of the board of trustees, signed by its president and secretary.

Provided that where a free public library is maintained jointly by two or more counties, the library trustees may elect a library treasurer therefor, and it shall be the duty of the city and county treasurers to pay over to said library treasurer any and all library taxes that may be collected by them monthly.

Such library treasurer shall be required to furnish a bond conditioned as provided by section 64.2 in such amount as agreed upon by the boards of supervisors and the cost thereof shall be paid by the counties. [C50, 54,§358B.10]

**358B.11 Annual report.** The board of trustees shall, immediately after the close of each fiscal year, make to the board of supervisors a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important. [C50, 54,§358B.11]

**358B.12 Real estate acquired.** In any county in which a free library has been established, the board of library trustees may condemn real estate in the name of the county for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds thereof. [C50, 54,§358B.12]

**358B.13 Maintenance expense on proportionate basis.** The maintenance of a county library shall be on a proportionate population basis whereby each taxing unit as hereinafter defined shall bear its share in proportion to its population to the whole of said county library district. The board of library trustees shall on or before July 10 of each year make an estimate of the amount it deems necessary for the maintenance of the county library and shall transmit said estimate in dollars to the board or boards of supervisors and to the city and town councils within the district. The entire rural area of each county in the library district shall be considered as a separate taxing unit. Each city and town which is a part of the county library district shall be considered as a separate taxing unit. The board of

supervisors and the council of each city and town composing said county library district shall make the necessary millage levies accordingly for library maintenance purposes of not to exceed two mills. Any unexpended balance in the library maintenance fund at the end of the fiscal year shall remain in said fund and be available without reappropriation. [C50, 54,§358B.13]

**358B.14 Not applicable to contract service.** The provisions of this chapter pertaining to the establishment of a county library district shall not apply to any area receiving library service from any city or town library under the provisions of chapter 378, unless the petition for a county library district shall, in addition to the required signatures of electors, be signed by the governing body of the area receiving library service under contract. [C50, 54,§358B.14]

**358B.15 Existing contracts assumed.** Whenever a county library district is established the board of trustees thereof shall assume all the

obligations of the existing contracts made by cities, towns, townships, school corporations or counties to receive library service from free public libraries. [C50, 54,§358B.15]

**358B.16 Withdrawal of city or town from district.** Whenever any incorporated city or town, having maintained an association library for at least ten years prior to the establishment of a county library which has become a part of the tax supported city or town library and being a part of the county library district, and having levied a tax of its own equal to or greater than that of the county library district for the same purpose, shall decide to withdraw from the county library district, it may do so by giving notice by certified mail to the board of library trustees of said county library and the county auditor prior to July 10, by the governing body of said incorporated city or town, of its withdrawal from the county library district, and thereafter said incorporated city or town, shall cease to be a part of or included in said county library district. [C54,§358B.16; 57GA, ch 267,§42]

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

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**DIVISION, BOUNDARIES, AND CHANGE OF NAMES**

**359.1 Division authorized.** The board of supervisors shall divide the county into townships, as convenience may require, defining the boundaries thereof, and may, from time to time, make such alterations in the number

and boundaries of the townships as it may deem proper. [C51,§219; R60,§441; C73,§379; C97,§551; C24, 27, 31, 35, 39,§5527; C46, 50, 54, §359.1]

**359.2 School townships not disturbed.** The board shall not change the lines of any civil

township so as to divide any school township or district, unless a majority of the voters of said school township or district shall petition therefor, except in cases where such boundary lines are changed to conform to congressional township lines. [C51,§219; R60,§441; C73,§§379, 1799; C97,§551; C24, 27, 31, 35, 39,§5528; C46, 50, 54,§359.2]

**359.3 Boundaries conterminous with city.** Where the boundaries of any city have been changed, the board of supervisors of the county in which the same is situated shall have power to change the boundary lines of townships so as to make them conform to the boundaries of the city, and to make such other changes in township lines, and the number of townships, as it may deem necessary; but no action shall be taken affecting the boundaries or existing conditions of school districts. [C97, §552; C24, 27, 31, 35, 39,§5529; C46, 50, 54,§359.3]

**359.4 Record.** The description of the boundaries of each township, and all alterations in them, and of all new townships, shall be recorded in full in the records of the board of supervisors, and of the township. [C51,§220; R60,§442; C73,§381; C97,§553; C24, 27, 31, 35, 39, §5530; C46, 50, 54,§359.4]

**359.5 Divisions where city included.** When any township has within its limits a city or town with a population exceeding fifteen hundred, the electors of such township residing without the limits of such city or town may, at any regular session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits. [C73,§382; C97,§554; C24, 27, 31, 35, 39,§5531; C46, 50, 54,§359.5]

**359.6 Petition—remonstrance.** Such petition shall be accompanied by the affidavit of three electors, to the effect that all the signatures to such petition are genuine, and that the signers thereof are all legal voters of said township, residing outside said corporate limits. Remonstrances signed by such legal voters may also be presented at the hearing before the board of supervisors hereinafter provided for, and if the same persons petition and remonstrate, they shall be counted on the remonstrance only. [C73,§382; C97,§554; C24, 27, 31, 35, 39,§5532; C46, 50, 54,§359.6]

**359.7 Notice.** Notice of the time when such petition will be heard shall be given by posting in five public places in the township, two of which shall be without, and three within such corporate limits, at least ten days prior to such hearing. [C73,§383; C97,§555; S13,§555; C24, 27, 31, 35, 39,§5533; C46, 50, 54,§359.7]

**359.8 Division—effect.** If such petition is signed by a majority of the electors of the township residing without the corporate limits of such city or town, the board of supervisors shall divide such township into two

townships, as prayed; but, except for election purposes, including the appointment of all judges and clerks of election rendered necessary by the change, such division shall not take effect until the second secular day of January following the next general election. [C73,§384; C97,§556; C24, 27, 31, 35, 39,§5534; C46, 50, 54,§359.8]

**359.9 Restoration to former township.** When the citizens of any township so set off desire to dissolve their township organization and return again to the township from which they were taken, they may do so by the same proceedings as provided for the division thereof, except that said petition shall be signed by a majority of the electors of both townships. [C97,§556; C24, 27, 31, 35, 39,§5535; C46, 50, 54, §359.9]

**359.10 New township—first election.** When a new township is formed, in which township officers are to be elected, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election. If at any time a new township has been created in a year in which no general election is held, the board may call a special election for the election of the township officers of the new township, who shall continue in office until their successors are elected and qualified. [C51, §231; R60,§453; C73,§385; C97,§557; S13,§1074-a; C24, 27, 31, 35, 39,§5536; C46, 50, 54,§359.10]

**359.11 Officers to be elected.** At said election there shall be elected one trustee for a term of two years, one trustee for a term of three years, and one trustee for a term of four years, and other officers as provided by law. [S13,§1074-a; C24, 27, 31, 35, 39,§5537; C46, 50, 54, §359.11]

**359.12 Order for election.** The auditor shall issue an order for such first election, stating the time and place of the same, the officers to be elected, and any other business to be transacted; and no business not named in such order shall be transacted at such election. [C51,§232; R60,§454; C73,§386; C97,§558; C24, 27, 31, 35, 39,§5538; C46, 50, 54,§359.12]

**359.13 Service and return.** Such order may be directed to any constable of the county, or to any citizen of the same township, by name, and shall be served by posting copies thereof, in three of the most public places in the township, fifteen days before the day of the election; the original order shall be returned to the presiding officer of the election, to be returned to the clerk when elected, with a return thereon of the manner of service, verified by oath, if served by any other than an officer. [C51, §233; R60,§455; C73,§387; C97,§559; C24, 27, 31, 35, 39,§5539; C46, 50, 54,§359.13]

**359.14 Changing name — petition — notice.** Any township desirous of changing its name may petition the board of supervisors and, if it shall appear to said board that a majority of

the actual resident voters of such township are in favor of such change, such board shall cause notices, attested by the auditor, to be posted in three of the most public places of such township, for at least thirty days previous to the next regular session of said board, which notice shall state the fact that a petition has been presented to said board by the citizens of said township, praying for a change of the name of the same and recite the name prayed for in said petition, and that, unless those interested in the change of such name shall appear at the next regular session of said board and show cause why said name shall not be changed, there will be an order made granting such change. [C73,§412; C97, §580; C24, 27, 31, 35, 39,§5540; C46, 50, 54,§359.14]

**359.15 Hearing—order.** If, at the time fixed for the hearing of said petition, the board be satisfied that there is a majority in favor of such change of name, it shall make an order granting the same, which shall be attested by the auditor, and recorded in the office of the recorder of the county. [C73,§413; C97,§581; C24, 27, 31, 35, 39,§5541; C46, 50, 54,§359.15]

**359.16 Petition dismissed.** If it appears to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed. The cost of the proceeding in all cases shall be taxed against the petitioners. [C73,§414; C97,§582; C24, 27, 31, 35, 39,§5542; C46, 50, 54,§359.16]

**TRUSTEES**

**359.17 Trustees — duties — meetings.** The board of township trustees in each township shall consist of three qualified electors of the township. The trustees shall act as overseers of the poor and as fence viewers. The board of trustees shall meet on the first Monday in February, April, and November in each year. [C51,§221, 224; R60,§§443, 446; C73,§§389, 393, 969; C97,§§574, 1074, 1538; S13,§§1074, 1528; C24, 27, 31, 35, 39,§5543; C46, 50, 54,§359.17]

Estrays and trespassing animals, ch 188  
Fences, ch 113  
Support of the poor, ch 252

**359.18 County attorney as counsel.** In counties having a population of less than twenty-five thousand, where the trustees institute, or are made parties to, litigation in connection with the performance of their duties, as provided in this chapter, the county attorney, as a part of his official duties, shall appear in behalf of the township trustees, except in cases in which the interests of the county and those of the trustees are adverse. [S13,§564; C24, 27, 31, 35, 39,§5544; C46, 50, 54,§359.18]

Referred to in §359.19

**359.19 Employment of counsel.** When litigation shall arise in any case not covered by section 359.18, involving the right or duty of township trustees with reference to any matter within their jurisdiction, and the trustees become or are made parties to such litigation, they shall have authority to employ attorneys in behalf of said township, and to levy the

necessary tax to pay for their services, and to defray the expenses of such litigation. [C97, §564; S13,§564; C24, 27, 31, 35, 39,§5545; C46, 50, 54,§359.19]

**CLERK**

**359.20 Clerk to keep record.** The township clerk shall keep a record of all the proceedings and orders of the trustees, and of all acts done by him, including the filing of certificates of official oaths having been taken before other officers, and perform such other acts as may be required of him by law. [C51,§223, 226, 227; R60,§§445, 448, 449; C73,§§392, 395, 396; C97,§576; S13,§576; C24, 27, 31, 35, 39,§5546; C46, 50, 54, §359.20]

Branding of animals, duties, ch 187  
Clerk local board of health, §137.3  
Estrays and trespassing animals, ch 188

**359.21 Custody of funds.** Each township clerk shall receive, collect, and disburse, under the orders of the township trustees, all funds belonging to his township, including the cemetery fund, and those which are now or may hereafter be by law created or authorized. No claim shall be paid until it has been duly audited by the trustees. [S13,§576; C24, 27, 31, 35, 39,§5547; C46, 50, 54,§359.21]

Deposits in general, §§453.1, 526.37

**359.22 Notify auditor of elections.** The clerk, immediately after the election of officers in his township, shall send a written notice thereof to the county auditor, stating the names of the persons elected, and to what offices, and the time of the election, and shall enter the time of the election of each officer in the township record. [C51,§228; R60,§450; C73,§397; C97,§577; C24, 27, 31, 35, 39,§5551; C46, 50, 54,§359.22]

**359.23 Receipts and expenditures.** Each township clerk, on the morning of the day of the general election and before the hour for opening the polls, shall post, at the place where such election is to be held in his township, a statement in writing, showing all receipts of money and disbursements in his office for the preceding two years, which shall be certified as correct by the trustees of the township. [C97,§578; SS15,§578; C24, 27, 31, 35, 39,§5552; C46, 50, 54,§359.23]

**OFFICES ABOLISHED**

**359.24 Clerk and trustees abolished.** Where a town or a city, not acting under a special charter, constitutes one or more civil townships the boundary lines of which coincide throughout with the boundary lines of the town or city, the offices of township clerk and trustee are abolished. [C97,§560; S13,§560; C24, 27, 31, 35, 39,§5553; C46, 50, 54,§359.24]

Referred to in §359.27

**359.25 Clerk and council to act.** The duties required by law of the township clerk in such cities shall be performed by the city clerk, and those required of the board of trustees shall be performed by the city council. [C97,§561; C24, 27, 31, 35, 39,§5554; C46, 50, 54,§359.25]

Referred to in §359.27

**359.26 Transfer of funds.** The moneys and assets belonging to such civil township shall become the moneys and assets of the city or town in which said civil township is situated; and the township clerks shall turn such moneys and assets over to the city or town treasurer, to be disbursed by such city or town in the same manner and for the same purposes as required by law for the disposition of township funds, and such cities or towns shall assume all liabilities of a civil township to which the provisions of this section shall apply. [C97,§562; C24, 27, 31, 35, 39,§5555; C46, 50, 54,§359.26]

Referred to in §359.27

**359.27 Payment of funds.** County treasurers are hereby authorized to pay over to the city or town treasurers which come under the provisions of sections 359.24, 359.25 and 359.26 all funds which would otherwise be paid over to the township clerks of such townships. [C97, §563; C24, 27, 31, 35, 39,§5556; C46, 50, 54,§359.27]

#### PUBLIC GROUNDS OR BUILDINGS

**359.28 Condemnation.** The township trustees are hereby empowered to condemn, or purchase and pay for out of the general fund, or the specific fund voted for such purpose, and enter upon and take, any lands within the territorial limits of such township for the use of cemeteries, a community center or juvenile playgrounds, in the same manner as is now provided for cities and towns. [C97,§585; S13, §585; C24, 27, 31, 35, 39,§5558; C46, 50, 54,§359.28]

S13, §585, editorially divided  
Procedure, §368.38; also ch 472

**359.29 Gifts and donations.** Civil townships are hereby authorized and empowered to receive by gift, devise, or bequest, money or property for the purpose of establishing and maintaining libraries, township halls, cemeteries, or for any other public purpose. All such gifts, devises, or bequests shall be effectual only when accepted by resolution of the board of trustees of such township. [S13,§585; C24, 27, 31, 35, 39,§5559; C46, 50, 54,§359.29]

Referred to in §359.30  
Township halls, ch 360

**359.30 Cemetery and park tax.** They shall, at the regular meeting in April, levy a tax sufficient to pay for any lands so condemned or purchased, or for the necessary improvement and maintenance of cemeteries thus established, and for the necessary improvement and the maintenance of public parks acquired by gift, devise, or bequest under section 359.29, or for the maintenance and improvement of cemeteries so established in adjoining townships, in case they deem such action advisable. [C97, §586; SS15,§586; C24, 27, 31, 35, 39,§5560; C46, 50, 54,§359.30]

Referred to in §§359.34, 359.37

**359.31 Power and control.** They shall control any such cemeteries, or appoint trustees for the same, or sell the same to any private corporation for cemetery purposes. [C97,§586;

SS15,§586; C24, 27, 31, 35, 39,§5561; C46, 50, 54, §359.31]

40ExGA, SF 151,§20, editorially divided

**359.32 Sale of lots—gifts.** They shall have authority to provide for the sale of lots or portions thereof, in any cemetery under their control, and make rules and regulations in regard thereto, and may provide for perpetual upkeep by the establishment of a perpetual upkeep fund from the proceeds of sale of lots, and may accept gifts, devise or bequest, made to them for that purpose. [C39,§5561.1; C46, 50, 54,§359.32]

**359.33 Tax for nonowned cemetery.** They may levy a tax not to exceed one-fourth mill to improve and maintain any cemetery not owned by the township, provided the same is devoted to general public use. [C97,§586; SS15,§586; C24, 27, 31, 35, 39,§5562; C46, 50, 54,§359.33]

Referred to in §359.34

**359.34 Scope of levy.** The levy authorized in sections 359.30 and 359.33 may be extended to property within the limits of any city or town so far as same is situated within the township, unless such city or town is already maintaining a cemetery, or has levied a tax in support thereof. The said tax may be so expended for the support and maintenance of any such cemetery after the same has been abandoned and is no longer used for the purpose of interring the dead. [SS15,§586; C24, 27, 31, 35, 39,§5563; C46, 50, 54,§359.34]

**359.35 Cemetery funds—use.** Cemetery tax funds of a township may be used for the maintenance and support of cemeteries in adjoining counties and townships and in cities and towns, if such cemeteries are utilized for burial purposes by the people of the township and, when any such cemetery has been so utilized for more than twenty-five years and has been maintained by township funds, the township trustees of the township where the cemetery is located shall continue to improve and maintain the same. [C24, 27, 31, 35, 39,§5564; C46, 50, 54,§359.35]

**359.36 Joint boards.** A city or town council and the trustees of a township may join in the common purpose of improving, maintaining, and supporting a township cemetery. In such case the two official bodies shall constitute a joint cemetery board and shall have equal voting power. [C24, 27, 31, 35, 39,§5565; C46, 50, 54,§359.36]

**359.37 Regulations.** The trustees, board of directors, or other officers having the custody and control of any cemetery in this state, shall have power, subject to the bylaws and regulations of such cemetery, to inclose, improve, and adorn the ground of such cemetery; to construct avenues in the same; to erect proper buildings for the use of said cemetery; to prescribe rules for the improving or adorning the lots therein, or for the erection of monuments or other memorials of the dead upon such lots; and to prohibit any use, division, improvement

or adornment of a lot which they may deem improper.

The trustees, after such land has been advertised for sealed bids by the trustees, shall have authority to sell and dispose of any lands or parcels of lands heretofore dedicated for cemetery purposes and which are no longer necessary for such purposes, for the reason that no burials are being made in such cemetery, provided that any portion of said cemetery in which burials have been made shall be kept and maintained by said trustees. The proceeds from such sales shall be deposited in the tax fund established in accordance with section 359.30, to be used for the purposes of that fund. [C97,§587; SS15,§587; C24, 27, 31, 35, 39,§5566; C46, 50, 54,§359.37]

**359.38 Watchmen appointed.** Such trustees, directors, or other officers may appoint as many day and night watchmen of their grounds as they may think expedient, and such watchmen, and also all their sextons, superintendents, gardeners, and agents, stationed upon or near said grounds are hereby authorized to take and subscribe, before any mayor of a city or justice of the peace of the township where such cemetery is situated, an oath of office, similar to that required by law of constables. [C97,§589; C24, 27, 31, 35, 39, §5567; C46, 50, 54,§359.38]

Oath, §63.10

**359.39 Ex officio police officers.** Upon the taking of such oath, such watchmen, sextons, superintendents, gardeners, and agents shall have and exercise all powers of police officers within and adjacent to the cemetery grounds and each shall have power to arrest any and all persons engaged in violating the laws of this state, and to bring such person so offending before any justice of the peace within such township, to be dealt with according to law. [C97,§589; C24, 27, 31, 35, 39,§5568; C46, 50, 54,§359.39]

Powers, §§368A.17, 368A.18; also ch 755 et seq.

**359.40 Cemeteries—plats—records.** Where there is located in any township one or more cemeteries, the owner of the same, or any party owning an interest therein, may cause the same to be surveyed, platted, and laid out into subdivisions and lots, numbering the same by progressive numbers, giving the length and breadth, also the location with reference to known or permanent monuments to be made. The plat shall accurately describe all the subdivisions of the tract of land used, or designed to be used as a cemetery, and shall be recorded in the office of the county recorder, and filed with and recorded by the township clerk, and preserved by him among the records of his office. [C97,§583; C24, 27, 31, 35, 39,§5569; C46, 50, 54,§359.40]

**359.41 Conveyance of lots.** All conveyances of subdivisions or lots of a cemetery thus platted shall be by deed from the proper owner, which deed shall be recorded with the

township clerk in a book kept by him for that purpose, for the recording of which the said clerk shall be entitled to a fee of fifty cents for each instrument recorded, to be paid by the party desiring the record made. [C97,§584; C24, 27, 31, 35, 39,§5570; C46, 50, 54,§359.41]

**FIRE EQUIPMENT**

**359.42 Authorization.** The township trustees of any township may purchase, own, rent, or maintain fire apparatus or equipment and provide housing for same and furnish services in the extinguishing of fires in said township, independently or jointly with any adjoining township or townships, likewise authorized as herein provided, or with any city or town. [C31, 35,§5570-c1; C39,§5570.1; C46, 50, 54,§359.42]

Referred to in §§357A.13, 359.43

**359.43 Levy.** The township trustees may levy an annual tax not exceeding one and one-half mill on the taxable property in the township, without the corporate limits of any city or town which may be wholly or partially within the limits of the township, for the purpose of exercising the powers granted in section 359.42, when so authorized by an affirmative vote equal to at least sixty percent of the total vote cast for and against a proposal therefor at an election held pursuant to section 359.44. [C31, 35,§5570-c2; C39,§5570.2; C46, 50, 54,§359.43; 56GA, ch 181,§1]

Referred to in §§321.496, 357A.13, 359.44, 359.45

**359.44 Election.** Such proposal to levy the tax provided for in section 359.43 may be submitted by the township trustees at any regular election held in the township, or at a special election called for the purpose, and such township trustees shall submit the proposition when petitioned therefor by twenty-five percent of the qualified electors of said township residing without the limits of a city or town. It shall not be necessary to submit such proposal to electors residing within the limits of the city or town. Notice of said election shall be given by posting in three public places in said township, not less than ten days before the time of such election. [C31, 35,§5570-c3; C39,§5570.3; C46, 50, 54,§359.44; 56GA, ch 181,§2]

Referred to in §§357A.13, 359.45

**359.45 Anticipatory bonds.** Townships may anticipate the collection of taxes authorized by sections 359.43 and 359.44, and for such purposes may issue bonds payable in not more than ten equal annual installments and at a rate of interest not exceeding five percent per annum and payable at such place and be in such form as the board of trustees shall designate by resolution. Sections 23.12 to 23.16, inclusive, and chapter 408, so far as applicable, shall apply to such bonds. [C39,§5570.4; C46, 50, 54,§359.45]

Referred to in §357A.13

**COMPENSATION**

**359.46 Compensation of trustees.** Township trustees shall receive:



1. For each day of service of eight hours necessarily engaged in official business, to be paid out of the county treasury, four dollars each. In townships embraced entirely within the limits of special charter cities, the compensation of township trustees shall be four dollars per day.

2. For each day engaged in assessing damages done by trespassing animals, one dollar each, to be paid as other costs are in such cases.

3. When acting as fence viewers, or viewing or locating any ditch or drain, or in any other case where provision is made for their payment otherwise, they shall not be paid out of such treasury, but in all such cases their fees shall be paid in the first instance by the party requiring their services, and they shall append to the report of their proceedings a statement thereof, and therein shall direct who shall pay said fees, and in what sums respectively; and the party having so advanced any such fees may have his action therefor against the party so directed to pay the same, unless, within ten days after demand by the party entitled thereto, he shall be reimbursed therefor.

[C51,\$2548; R60,\$4156; C73,\$3808; C97,\$590; S13, \$590; C24, 27, 31, 35, 39,\$5571; C46, 50, 54,\$359.46]

**359.47 Compensation of clerk.** The township clerk shall receive:

1. For each day of eight hours necessarily engaged in official business, where no other compensation or mode of payment is provided, to be paid from the county treasury, four dollars.

2. For all money coming into his hands by virtue of his office, except from his predecessor in office, unless otherwise provided by law, one percent.

3. For filing each application for a drain or ditch, fifty cents.

4. For making out and certifying the papers in any appeal taken from an assessment by the trustees of damages done by trespassing animals, such additional compensation as the board of supervisors may allow. [C51,\$2548; R60,\$909, 911; C73,\$3809; C97,\$591; S13,\$591; C24, 27, 31, 35, 39,\$5572; C46, 50, 54,\$359.47]

Compensation for handling township hall funds, §360.2

**359.48 Repealed by 52GA, ch 240,\$50, see §405A.4.**

CHAPTER 360  
TOWNSHIP HALLS

- 360.1 Election.
- 360.2 Tax.
- 360.3 Transfer of fund.
- 360.4 Location.

- 360.5 Construction.
- 360.6 Custodian.
- 360.7 Bond.
- 360.8 Tax for repairs.

**360.1 Election.** The trustees, on a petition of a majority of the resident freeholders of any civil township, shall submit the question of building or acquiring by purchase, a public hall to the electors thereof, by posting notices of such election in four conspicuous places in the township, thirty days before election, and the form of the proposition shall be: "Shall the proposition to levy a tax of . . . . . mills on the dollar for the erection of a public hall be adopted?" [C97,\$567; C24, 27, 31, 35, 39, \$5574; C46, 50, 54,\$360.1; 57GA, ch 179,\$1]

Gifts and donations, §359.29

**360.2 Tax.** If a majority of the votes cast are in favor of the tax, the trustees shall certify such fact to the board of supervisors, and they shall thereupon levy a tax not to exceed the rate voted and not to exceed three-fourths mill on the dollar each year for a period not exceeding five years on the taxable property of the township; and when such tax is collected by the treasurer, it shall be paid to the township clerk; but said clerk shall not receive to exceed one percent for handling said money. [C97,\$568; C24, 27, 31, 35, 39,\$5575; C46, 50, 54, §360.2]

**360.3 Transfer of fund.** When there are funds in the hands of any township clerk,

raised under the provisions of this chapter, when same is not desired for the purposes for which it was raised, then said fund may be transferred to the school fund of any school district or districts pro rata wherein same was raised, when a petition is presented to the trustees, signed by a majority of the electors of said township that voted at the last regular election prior to the signing of said petition, as shown by the pollbooks of said township, said transfer of funds to be made by the township clerk upon order of the trustees after the filing of said petition with said clerk. [S13,\$592-b; C24, 27, 31, 35, 39,\$5576; C46, 50, 54,\$360.3]

**360.4 Location.** Any public hall built under the provisions of this chapter shall be located by the township trustees so as to accommodate the greatest number of the resident taxpayers, and for such purpose the trustees may purchase land not to exceed in value five hundred dollars. They shall also have the power to join with the city or town authorities of any city or town within their borders and build and equip said building as a public hall under such terms and conditions as may be mutually agreed upon. [C97,\$569; C24, 27, 31, 35, 39,\$5577; C46, 50, 54,\$360.4]

Referred to in §360.6

**360.5 Construction.** The township trustees or in case of joint ownership, in conjunction with the city or town authorities shall have charge of the building of such hall, shall receive bids, and shall let the building of the same to the lowest responsible bidder, and the township clerk shall pay out of the funds collected, only on the order of the trustees of said township for the township's share of the cost thereof. [C97,§570; C24, 27, 31, 35, 39,§5578; C46, 50, 54,§360.5]

**360.6 Custodian.** The township clerk, under the direction of the trustees, shall be the custodian of the building, and the use thereof may be permitted by the township trustees to citizens of the township for any lawful purpose; and, for the purposes of this chapter, the township clerk is hereby clothed with all the powers and duties of a constable of the township, to maintain order within and about the premises, protect the property, and enforce orders of the township trustees with respect thereto. In case of joint ownership by the township and town, the duties herein enumerated shall devolve jointly upon the township trustees and the town authorities or they may purchase a building already built with the same limitations as in said section 360.4. A

copy of this section shall be at all times kept posted in a conspicuous place in said hall. [C97,§571; C24, 27, 31, 35, 39,§5579; C46, 50, 54, §360.6]

**360.7 Bond.** When a tax is voted as provided in this chapter, the township clerk shall, before drawing any of said tax from the treasury of the county, execute a bond, with penalty double the amount of said tax, which bond shall be approved by the board of supervisors. [C97,§572; C24, 27, 31, 35, 39,§5580; C46, 50, 54, §360.7]

**360.8 Tax for repairs.** The trustees of any township where such building has been erected or acquired by purchase or by gift are hereby authorized to certify to the board of supervisors that a tax of not exceeding in any one year, one-half mill on the dollar, on the taxable property of the township, should be levied, to be used in keeping such building in repair, to furnish same with necessary furniture, and provide for the care thereof. When such certificate is filed in the auditor's office, the board of supervisors shall levy such tax. [C97,§573; C24, 27, 31, 35, 39,§5581; C46, 50, 54, §360.8; 57GA, ch 179,§§2, 3]

CHAPTER 361

TOWNSHIP LICENSES

- 361.1 License required.
- 361.2 "Roadhouse" defined.
- 361.3 Limitations and conditions.
- 361.4 Record.

- 361.5 Revocation.
- 361.6 Appeal.
- 361.7 Violations.

**361.1 License required.** No person shall, for himself or for any other person, firm, or corporation, keep or operate for hire or for profit any theater, moving picture show, pool or billiard room or table, dance hall, skating rink, club house, roadhouse, amusement park, or bowling alley, outside the limits of cities and towns without first procuring a license therefor from the township trustees.

This section shall not apply to baseball games or county fairs. [C24, 27, 31, 35, 39,§5582; C46, 50, 54,§361.1]

Referred to in §361.2  
See Central States Theatre v. Sar, 245 Iowa 1254

**361.2 "Roadhouse" defined.** A roadhouse, for the purposes of section 361.1, shall be construed to mean any building or establishment open to the public and located on or accessible to a road or public highway outside the limits of an incorporated town or city where entertainment, prepared food or drink is furnished to the public generally for hire, sale or profit. [C31, 35,§5582-c1; C39,§5582.1; C46, 50, 54,§361.2]

**361.3 Limitations and conditions.** The granting of a license shall be discretionary with the trustees; provided, however, that a license to

operate a theater or moving picture show shall not be denied in any unincorporated village having a population of one thousand or more except for good cause. Licenses shall not be granted for a less period than six months nor for a longer period than one year, shall specify the place where the business may be carried on, the date of expiration of the license, and be signed by the chairman of the board and its clerk. [C24, 27, 31, 35, 39,§5583; C46, 50, 54, §361.3]

**361.4 Record.** When a license is granted, the terms and conditions on which the place shall be operated shall be entered of record in the minutes of the board and the licensee shall stand charged with notice thereof and shall, on demand, be furnished with a copy of such terms and conditions on payment of the sum of fifty cents. Said terms and conditions shall be reasonably uniform for different licensees under like circumstances and conditions. [C24, 27, 31, 35, 39,§5584; C46, 50, 54,§361.4]

**361.5 Revocation.** The trustees may at any time, in their discretion, revoke any license issued. In case a license is revoked the licensee shall be repaid a pro rata part of the

license fee. All license fees shall be paid to the township clerk who shall in return pay the same to the county treasurer who shall issue duplicate receipts therefor, one of which shall be filed with the county auditor. Said fees shall be credited to the secondary road maintenance fund. [C24, 27, 31, 35, 39,§5585; C46, 50, 54,§361.5]

**361.6 Appeal.** Any person aggrieved by the action of the trustees in revoking a license may appeal therefrom to the district court of the county by serving a notice on the chairman

of the board of trustees within twenty days after the final decision of said board. Such appeal shall be tried de novo and in equity. [C24, 27, 31, 35, 39,§5586; C46, 50, 54,§361.6]

**361.7 Violations.** Any person who violates any of the foregoing provisions of this chapter, or who violates any of the terms or conditions under which he is permitted to operate under a license, shall be fined any sum not exceeding twenty-five dollars. [C24, 27, 31, 35, 39,§5587; C46, 50, 54,§361.7]

# TITLE XV

## CITY AND TOWN GOVERNMENT

### CHAPTER 362

#### INCORPORATION

Referred to in §§363.30, 420.293  
Applicable to all cities and towns

##### GENERAL PROVISIONS

- 362.1 Petition to incorporate—urbanized area.
- 362.2 Proof required.
- 362.3 Jurisdiction.
- 362.4 Change in territorial limits.
- 362.5 Commissioners—notice of election.
- 362.6 Election—ballots—canvass.
- 362.7 Election of officers.
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##### DISCONTINUANCE

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- 362.22 Enforcement of duty.
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##### ANNEXATION OR SEVERANCE

- 362.26 Annexing territory.
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- 362.30 Application for annexation.
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- 362.37 Rights of highway authorities.

##### CHANGE IN NAME

- 362.38 Resolution—notice.
- 362.39 Election.
- 362.40 Record filed.
- 362.41 Change complete.

##### GENERAL PROVISIONS

**362.1 Petition to incorporate — urbanized area.** When the inhabitants of part of any county, or of two or more counties lying contiguous to each other, not embraced within the limits of any city or town, desire to become incorporated as a town, they may apply to the district court of the proper county, by a petition in writing signed by not less than twenty-five of the qualified electors of the territory proposed to be embraced in such town, which petition shall describe said territory, and contain or have annexed thereto an accurate plat thereof, and shall state the name proposed for such town. All territory within three miles of the corporate limits, as the same now exist or may hereafter be established, of any city having a population of fifteen thousand or more is hereby declared to be an urbanized area. No territory within said urbanized area shall hereafter be incorporated as a city or town, and the district court shall have no jurisdiction to take any action upon a petition to

incorporate a municipality within said area. [R60,§1031; C73,§421; C97,§599; C24, 27, 31, 35, 39,§5588; C46, 50, 54,§362.1; 57GA, ch 180,§1]  
C97,§599, editorially divided

**362.2 Proof required.** Proof of the residence and qualification of the petitioners as electors shall be made by affidavit or otherwise, as directed by the court. [C73,§421; C97,§599; C24, 27, 31, 35, 39,§5589; C46, 50, 54,§362.2]

**362.3 Jurisdiction.** If the territory embraced within the limits of said proposed town lies in more than one county, the district court of either of said counties shall have jurisdiction of such proceedings, but that in which the petition for incorporation is first filed shall have exclusive jurisdiction thereafter. [C97, §599; C24, 27, 31, 35, 39,§5590; C46, 50, 54,§362.3]

**362.4 Change in territorial limits.** The court is vested with power to change or limit the territory proposed to be incorporated, before appointing the commissioners as herein pro-

vided. [C97,§600; S13,§600; C24, 27, 31, 35, 39, §5591; C46, 50, 54,§362.4]

S13,§600, editorially divided

**362.5 Commissioners — notice of election.** Upon compliance with the foregoing provisions of this chapter, the court shall at once appoint five commissioners, who shall at once give notice of an election for incorporation. Such notice shall state the time and place of holding the elections, a description of the geographical limits of the proposed municipal corporation, that a plat and description of such limits are on file in the office of the clerk of the district court, and shall be published once each week for three consecutive weeks in the manner provided by chapter 618. [R60,§1032; C73,§422; C97,§600; S13,§600; C24, 27, 31, 35, 39, §5592; C46, 50, 54,§362.5]

**362.6 Election—ballots—canvass.** The commissioners shall act as judges and clerks of the election, and shall qualify as required by law, and the proposition to be submitted thereat shall be: "Shall the proposition for incorporation be adopted?" and the commissioners shall have charge of the printing of the ballots, and shall cause the proposition to be placed upon them, and the elector shall designate his vote in the same manner provided with respect to like or similar propositions in the title on elections. The commissioners shall promptly report the result of the election to the court, or judge thereof, which may be confirmed and approved, or set aside, by said court, or judge in vacation. If it is set aside, the court or judge thereof may order a new election with the same or other commissioners. [R60,§1032; C73,§422; C97,§601; C24, 27, 31, 35, 39,§5593; C46, 50, 54,§362.6]

Designating vote, §49.46; oath, §49.75

**362.7 Election of officers.** If a majority of the ballots cast at such election be in favor of the incorporation and the result has been confirmed and approved, the court, or in vacation a judge thereof, shall order the election of a mayor, treasurer, and council. The commissioners shall cause notice of the time and place of holding the election to be published once each week for three consecutive weeks in the manner provided by chapter 618. At said election the qualified voters residing within the limits of the town shall elect the officers. The election shall be conducted, so far as practicable, in the manner of municipal elections, and the commissioners shall act as judges and clerks of election. [R60,§1037; C73,§§423, 425; C97,§602; S13,§602; C24, 27, 31, 35, 39,§5594; C46, 50, 54,§362.7]

Conduct of election, ch 49

**362.8 Report—judgment.** The commissioners shall promptly report the results of the election to the court, and it, or in vacation a judge thereof, may confirm and approve the election and report, or set the same aside and order a new election with the same or other commissioners. Upon the confirmation of the

election and report, a judgment shall be entered of record, declaring the town duly incorporated and confirming and approving the first election of officers.

Should any officer fail to qualify, the court or judge shall declare the office vacant and appoint some other person to fill the vacancy. [C97,§603; C24, 27, 31, 35, 39,§5595; C46, 50, 54, §362.8]

**362.9 Record—costs.** The clerk of the court shall enter the proceedings in the matter of the incorporation and election of officers in the complete record book and file a certified copy of the entry in the office of the secretary of state and in the office of the recorder, who shall record the same. The costs of all the proceedings for the incorporation shall be paid by the town if established, otherwise they shall be paid by the petitioners, and judgment shall be entered accordingly. [C97,§603; C24, 27, 31, 35, 39,§5596; C46, 50, 54,§362.9]

**362.10 Terms of officers.** The officers elected shall hold office until their successors are elected at the general city election held in the second March thereafter, and have qualified. [R60,§1037; C73,§§390, 425; C97,§§603, 650; S13, §602; C24, 27, 31, 35, 39,§5597; C46, 50, 54,§362.10]

#### DISCONTINUANCE

**362.11 How effected.** Upon a petition of the voters equaling twenty-five percent of the number voting at the last preceding municipal election, to the district court of the county wherein a municipal corporation is situated, for the discontinuance of the same, the court shall, thirty days prior to the next regular city or town election, cause notice to be given, that the question of discontinuing such corporation will be submitted to the legal voters thereof at the said election. Such notice shall be published once each week for three consecutive weeks in the manner provided by chapter 618. The proposition submitted shall be: "Shall the proposition to discontinue the corporation of (inserting name) be adopted?" The clerk of the city or town shall cause the proposition to be printed on the ballots. [C73,§§447, 448; C97, §604; C24, 27, 31, 35, 39,§5598; C46, 50, 54,§362.11]

**362.12 Canvass—judgment.** The vote shall be taken and canvassed in the same manner as other municipal elections, and returns thereof made to the district court. If it finds that a majority of the legal votes cast were for the discontinuance of the incorporation, then a judgment shall be entered discontinuing the same, and, upon the entry of said judgment, its corporate powers shall cease. [C73,§§449, 450; C97,§605; C24, 27, 31, 35, 39,§5599; C46, 50, 54, §362.12]

C97,§605, editorially divided  
Conduct of election and canvass, ch 49 et seq.

**362.13 Indebtedness determined.** The court shall cause notice to be given, in a manner to be prescribed by it, requiring all claims against the corporation to be filed in said court within a time fixed in the notice, not exceeding six

months, and all claims not so filed shall be forever barred. At the expiration of the time so fixed, the court shall adjudicate said claims, which shall be treated as denied. Any citizen of such town or city at the time the vote was taken may appear and defend against any claim so filed, or the court may, in its discretion, appoint some person for this purpose, in which event the proceedings shall conform as near as may be, to those prescribed for the prosecution of actions by ordinary proceedings. [C73,§449; C97,§605; C24, 27, 31, 35, 39, §5600; C46, 50, 54,§362.13]

**362.14 Indebtedness paid — surplus.** The court shall have full power to wind up the affairs of the corporation, to dispose of its property, and to make provision for the payment of all indebtedness thereof, and for the performance of its contracts and obligations, and shall order such taxes levied from time to time as may be requisite therefor, which the board of supervisors shall levy against the property within the corporation. Said taxes shall be collected by the county treasurer like other taxes, and paid out under the orders of the court, and any surplus shall be paid into the temporary school fund of the district or districts where the same is levied. [C73,§§449, 453; C97,§606; C24, 27, 31, 35, 39,§5601; C46, 50, 54,§362.14]

Collection of taxes, ch 445 et seq.

**362.15 Records deposited.** The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county auditor of the county in which the council last held its sessions, for safekeeping and reference in the future. All court records of any mayor or other officer shall be deposited with the clerk of the district court in the county where the office of the mayor or other officer is situated, and the judge of said court shall have authority to execute and complete all unfinished business standing on the same. [C73,§451; C97,§607; C24, 27, 31, 35, 39,§5602; C46, 50, 54,§362.15]

Referred to in §362.18

**362.16 Notice of discontinuance.** When the incorporation of any city or town shall have been discontinued, the clerk of the court shall cause a notice thereof to be published, once each week, for three consecutive weeks in the manner provided by chapter 618, and shall also certify the fact to the secretary of state and to the recorder of the county. [C73,§452; C97, §608; S13,§608; C24, 27, 31, 35, 39,§5603; C46, 50, 54,§362.16]

**362.17 Expenses.** All expenses of the election and of winding up the affairs of the corporation shall be paid by it. [C73,§450; C97,§609; C24, 27, 31, 35, 39,§5604; C46, 50, 54,§362.17]

**362.18 Defunct corporations.** If any municipal corporation has for a period of six years or more held no municipal election, made no tax levies for such time, nor carried on the functions of such corporation as required by law,

it shall cease to exist as a municipal corporation and shall automatically be discontinued; and the books, documents, records, papers, corporate seal, if any, shall be deposited as provided for in section 362.15. [C46, 50, 54,§362.18]

CONSOLIDATION

**362.19 How effected.** When any city or town desires to be annexed to another contiguous city or town, the council of each shall appoint three commissioners who shall meet and fix the terms upon which the proposed annexation shall be made, and make report thereof to their respective councils. If both councils approve the proposed terms, they shall by identical ordinances so declare, and therein determine whether the question shall be voted upon at a special election, fixing the date thereof, or at the next regular city election. Thereupon a copy of the ordinance, together with a statement that both councils have adopted the same, shall be published once each week for three consecutive weeks in the manner provided by chapter 618. The date of the third publication shall be not less than one week nor more than two weeks prior to the election. [R60,§1044; C73,§432; C97,§612; C24, 27, 31, 35, 39,§5605; C46, 50, 54,§362.19]

**362.20 Election—record.** The proposition to be submitted at the election shall be: "Shall the proposition for the annexation of (naming the city or town) to (naming the city or town) be adopted?" If a majority of the votes cast in each city or town is in favor of annexation, the council of each shall, by ordinance, so declare. A certified copy of the whole proceedings for the annexation shall be filed with the clerk of the city or town to which such annexation is made, who shall file a certified copy thereof with the secretary of state, and in the recorder's office of the county, who shall record the same. [R60,§1044; C73,§432; C97,§612; C24, 27, 31, 35, 39,§5606; C46, 50, 54,§362.20]

**362.21 Consolidation complete.** When certified copies of the proceedings are so filed, the annexation shall be complete, and the city or town to which the annexation is made shall have the power, and it shall be its duty, to pass such ordinance as will carry into effect such annexation, and thereafter the city or town annexed shall be a part of the city or town to which the annexation is made. [R60, §1045; C73,§433; C97,§613; C24, 27, 31, 35, 39, §5607; C46, 50, 54,§362.21]

C97,§613, editorially divided

**362.22 Enforcement of duty.** Any citizen of the annexed town or city may maintain legal proceedings to compel the city or town, and the council thereof, to which annexation is made, to execute such terms and conditions, but such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and they may be enforced as hereinafter provided. [C97, §613; C24, 27, 31, 35, 39,§5608; C46, 50, 54,§362.22]

**362.23 Debts of annexing city.** All present indebtedness of the city to which annexation

is made shall be paid by such city by a tax to be levied exclusively upon the property subject to taxation within the limits of the same as it existed prior to such annexation, and none of the real estate or property embraced within the limits of the annexed city or town shall ever be subjected, in any way, to the payment of any part of said indebtedness. [C97,§614; C24, 27, 31, 35, 39,§5609; C46, 50, 54, §362.23]

C97,§614, editorially divided

**362.24 Debts of annexed city.** The indebtedness of the city or town annexed shall be paid by such city or town; and the council of the city as it exists after annexation is authorized, and it is made its duty, to provide for the payment of such indebtedness by the levy of taxes upon the property subject to taxation within the limits of such city or town so annexed, and to continue such tax from year to year so long as the same shall be necessary; but if such city or town owns any real estate, the fair market value thereof at the time of its annexation shall be credited upon its said indebtedness, and the amount of such credit shall be assumed and paid by such city as it exists after annexation, and such property shall become the property of such city as enlarged. [C97,§614; C24, 27, 31, 35, 39,§5610; C46, 50, 54, §362.24]

**362.25 Actions.** Suits to enforce claims or demands existing at the time of annexation against the city or town annexed may be prosecuted or brought against the city or town to which annexation is made, and judgments obtained shall be paid as hereinbefore provided for the payment of the indebtedness of such annexed city or town. [C97,§614; C24, 27, 31, 35, 39,§5611; C46, 50, 54,§362.25]

#### ANNEXATION OR SEVERANCE

**362.26 Annexing territory.** Unincorporated territory adjoining any city or town may be annexed thereto and become a part thereof by proceeding as follows:

1. The clerk of the municipal corporation, on order of the council, shall cause to be published, once each week for two consecutive weeks in the manner provided by section 618.14, a notice that the council will meet at a certain date, time, and place to consider a proposed resolution for the annexation of certain described territory and to hear objectors and proponents for such annexation.

2. The council may provide at said meeting or at a subsequent meeting by resolution, adopted at least one month before any regular municipal or special election, for the annexation of territory described therein.

3. The proposition shall be submitted to the voters of said city or town at said election in the following form: "Shall the proposition to annex the territory described as follows: (here set out legal description of the territory); in the resolution adopted by the council of the city (or town) of ....., on the ..... day of ..... be approved?" Notice of the submis-

sion of said proposition shall be given by publication once each week for three consecutive weeks in the manner provided by chapter 618.

4. If the proposition is adopted by a majority of those voting thereon, the council shall cause to be filed in the district court, a suit in equity against the owners of the property proposed to be annexed, the petition therein setting forth that, under a resolution of the council, the territory therein described was authorized by the voters of said city to be annexed to the city or town.

5. The petition shall contain:

a. A description of the perimeter of the entire property proposed to be annexed and a list of each property owner therein as shown by the plat books in the office of the county auditor.

b. A statement of facts showing that the municipal corporation is capable of extending into such territory substantial municipal services and benefits not theretofore enjoyed by such territory.

c. A plat of such territory showing its relation to the corporate limits.

d. That said annexation is not sought merely for the purpose of increasing the revenues from taxation of such municipal corporation.

6. If the court finds that there is an affirmative showing that the municipal corporation is capable of extending into such territory substantial municipal services and benefits not theretofore enjoyed by such territory, so that the proposed annexation will not result merely in increasing the revenue from taxation of such municipal corporation; and if the court finds further that all of the proceedings and conditions precedent to annexation as required hereinbefore by subsections 1 through 5, inclusive, have been duly instituted and carried out as provided therein, the court shall decree the annexation. No costs shall be taxed against any defendant who fails to make a defense. [R60,§1043; C73,§§430, 431; C97,§§610, 611, 615; S13,§615; C24, 27, 31, 35, 39,§§5612-5614; C46, 50, §§362.26, 362.28, 362.29; C54,§362.26; 57GA, ch 181,§1]

Referred to in §§362.32, 362.34, 362.35

**362.27 Notice.** Notice of the filing of the petition shall be served by publication once each week for three consecutive weeks in the manner provided by chapter 618. [C27, 31, 35, §5612-b1; C39,§5612.1; C46, 50, 54,§362.27]

Referred to in §§362.32, 362.34, 362.35

**362.28 and 362.29** Repealed by 54GA, ch 144,§7.

**362.30 Application for annexation.** All the owners of any territory adjoining any city or town may make application, in writing, to the council of such city or town, attaching thereto a plat of such territory showing the situation thereof with reference to the existing limits of such city or town, and if the council thereof, by resolution, assents thereto, such territory shall thereafter be and become a part of such

city or town. [R60,§1038; C73,§426; C97,§§617, 621; C24, 27, 31, 35, 39,§5615; C46, 50, 54,§362.30]

Referred to in §§362.34, 362.36

**362.31 Petition to annex.** When ten percent of the owners of territory adjoining any city or town petition the council of such city or town for annexation such territory may be annexed by the same procedure as is provided by law for annexation proceedings initiated by the council, except that the petitioners shall be plaintiffs and the city or town and all owners of property in the territory other than petitioners shall be defendants. [R60,§1038; C73,§426; C97,§§617, 621; C24, 27, 31, 35, 39,§5616; C46, 50, 54,§362.31]

Referred to in §§362.34, 362.36

**362.32 Severance of territory.** Territory may be severed from any city or town by proceeding as follows:

1. A majority of the resident property owners of such territory or the city or town may bring suit in equity in the district court therefor and the proceedings shall so far as applicable be the same as provided in sections 362.26 and 362.27. Notice of suit shall be such as the court may direct.

2. If the court finds that such territory, or any part thereof, shall be severed from any city or town, it shall thereupon appoint three disinterested persons as commissioners to examine into the matter and the equitable distribution of the assets, and equitable distribution and assumption of the liabilities of such city or town which have accrued during the time such territory has been a part thereof, as between such city or town and the severed territory.

3. The commissioners shall receive evidence on the question from the parties interested and submit their findings to the court at the next term thereof and any interested party may file objections thereto and the court shall determine the matter by trial de novo and enter a decree in accordance with the very right of the matter. [R60,§§1048-1052; C73,§§440-444; C97,§§622-626; S13,§622; C24, 27, 31, 35, 39,§5617; C46, 50, 54,§362.32]

Referred to in §362.34

**362.33 Filing of records.** When any territory has been annexed to or severed from any city or town the clerk thereof shall make and certify a transcript of such part of the records of such city or town as shows the final action of the council and shall file the same for record in the office of the recorder of the county in which the city or town is located. And in like manner the clerk of the district court shall make and file a certified copy of the record of the final action of the court on such proceedings and when such certified copies have been filed the annexation or severance, as the case may be, shall be complete and all persons shall be bound to take notice thereof. [R60,§§1053, 1054; C73,§§445, 446; C97,§627; C24, 27, 31, 35, 39,§5618; C46, 50, 54,§362.33]

Referred to in §362.34

**362.34 Annexing state-owned land.** Territory owned by the state of Iowa and adjoining any city or town, may be annexed to such city or town by following one of the procedures as set forth in section 362.26 to section 362.33 inclusive, anything in the laws of Iowa notwithstanding. [57GA, ch 182,§1]

**362.35 Notice to state.** If the proceedings are under the provisions of sections 362.26 and 362.27, the state of Iowa shall be given notice of the pendency of the action as provided by section 613.9. [57GA, ch 182,§2]

**362.36 "Owner" defined.** Under the provisions of sections 362.30 and 362.31 the owner shall mean that branch of the government of the state of Iowa having the property under its control. [57GA, ch 182,§3]

**362.37 Rights of highway authorities.** The right of the highway authorities of the state of Iowa to control access upon any highway acquired by the state under the provisions of chapter 306A shall not be affected by the annexing of such territory or land upon which any such controlled-access highway is located. [57GA, ch 182,§4]

CHANGE IN NAME

**362.38 Resolution — notice.** The corporate name of any city or town may be changed as follows: The council may, by resolution, propose such change of name, setting forth therein the proposed new name, which shall not be the same as that of any city, town, or post office, existing in the state at the time of the passage of such resolution. The question shall then be submitted to a vote of the qualified electors at the next regular city or town election, or at a special election, as the council may provide. Notice that a change of name is to be voted on at any election shall be published in a newspaper published in said city or town; if none be so published, then in one published in the county or counties in which said city or town is situated. [C97,§628; C24, 27, 31, 35, 39, §5619; C46, 50, 54,§362.34]

Village name changes, ch 354

**362.39 Election.** The proposition to be submitted at such election shall be: "Shall the proposition to change the name of (here insert the name of the city or town) to (here insert the proposed name) be adopted?" and the proposition shall be printed and placed upon the ballots, and the election shall be conducted in the same manner as provided with respect to like or similar propositions in the title on elections. [C97,§629; C24, 27, 31, 35, 39,§5620; C46, 50, 54,§362.35]

C97,§629, editorially divided  
Election procedure, §49.44 et seq.

**362.40 Record filed.** If a majority of the votes cast is in favor of the proposed change, the clerk of the city or town shall enter upon the records thereof the result of such election, and set forth in such record the new name



adopted, as well as the original name thereof, and shall cause to be filed for record a certified copy of the entry so made in the office of the recorder of the county or counties in which such city or town is situated, and in the office of the secretary of state. [C97,§629; C24, 27, 31, 35, 39,§5621; C46, 50, 54,§362.36]

Referred to in §362.41

**362.41 Change complete.** When certified copies are made and filed as required by section 362.40, the change of name shall be complete, and the new name adopted shall be judicially recognized in all subsequent proceedings wherein said city or town may be interested. [C97,§630; C24, 27, 31, 35, 39,§5622; C46, 50, 54,§362.37]

CHAPTER 363

MUNICIPAL ORGANIZATION AND OFFICERS

Applicable to all cities and towns

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FORMS OF MUNICIPAL GOVERNMENT

**363.1 Forms enumerated.** The form of government of a municipal corporation shall be one of the following:

1. Mayor-council form.
2. Commission form.
3. Council-manager form by popular election.

[C54,§363.1]

**363.2 Applicability.** This chapter shall apply to all municipal corporations, and to all forms of municipal government, except as otherwise provided by laws relating to a particular form of government except as provided by section 43.112. [S13,§1056-a19; SS15,§1056-b9; C24, 27, 31, 35, 39,§§6567, 6678; C46, 50,§§416.92, 419.64; C54,§363.2; 56GA, ch 182,§1]

**363.3 The governing body.** The governing body of all municipal corporations shall be the mayor and council, chosen by the electorate as provided by this chapter. All legislative and other powers granted to municipal corporations shall be exercised by the council, except those conferred upon some officer by law or ordinance. All executive functions and powers shall be exercised by the mayor and other offi-

cers and boards, and neither the council nor the members thereof shall exercise any executive functions unless expressly conferred by law. [R60,§§1081, 1090, 1091, 1095; C73,§511; C97,§668; S13,§§668, 879-p, 1056-a25; C24, 27, 31, 35, 39,§§5662, 6564; C46, 50,§§363.35, 416.88; C54, §363.3]

**363.4 Classification.** Municipal corporations are divided into cities and towns.

1. Any municipal corporation which has a population of two thousand or more is a city.

2. Any municipal corporation which has a population less than two thousand is a town. [R60,§§1077, 1078; C73,§§507, 508; C97,§638; SS15, §1056-b9; C24, 27, 31, 35, 39,§§5623, 6677; C46, 50, §§363.1, 419.63; C54,§363.4]

Villages, see §354.9

**363.5 Change of class—loss of population.** Within sixty days after the publication of any federal census, the executive council shall cause a statement and list of each city or town affected thereby in its class as a corporation to be published in some newspaper at the seat of government, and in each city and town, the class of which is changed. No city shall be af-

fectured in its classification by a subsequent loss of population unless its population falls below fifteen hundred. [R60,§1079; C73,§509; C97,§639; S13,§639; C24, 27, 31, 35, 39,§5624; C46, 50,§363.2; C54,§363.5]

**363.6 Change of class—ordinances.** Before the next election in a city or town, after a change of class, the council shall make and publish such ordinances as are necessary to perfect such organization, in respect to the election, duties, and compensation of officers. All assets and property of the corporation shall be held and administered as provided by law for its new class. [R60,§§1079, 1080; C73, §§509, 510; C97,§640; C24, 27, 31, 35, 39,§5625; C46, 50,§363.3; C54,§363.6]

**363.7 Wards.** Cities may be by ordinance divided into wards, new wards created, or the boundaries changed, but in all cases the boundaries of wards shall be as far as practicable established so as to give all wards an equal population. [R60,§1092; C73,§520; C97, §641; S13,§641; C24, 27, 31, 35, 39,§5626; C46, 50, §363.4; C54,§363.7]

ELECTIONS

**363.8 When held—voting places.** Except as hereinafter provided, regular municipal elections shall be held on the Tuesday next, after the first Monday in November, of odd-numbered years, and elective officers shall be chosen biennially to succeed officers whose terms expire at noon of the second secular day in January, following said election. Voting places shall be fixed by the council, and at least one polling place provided for each precinct or ward, as the case may be. [R60, §1130; C73,§501; C97,§642; S13,§§646, 1056-a20; SS15,§1056-b3; C24, 27, 31, 35, 39,§§5627, 6488, 6626; C46, 50,§§363.5, 416.12, 419.12; C54,§363.8; 56GA, ch 183,§1]

**363.9 Terms of officers.** All elective municipal officers shall be elected for a term of office of two years except as hereinafter provided. Members of the council in cities operating under the council-manager plan by popular election shall be elected for terms of office of four years. In all municipal corporations the terms of office of any or all elective municipal officials may be changed from two-year terms to four-year terms or from four-year terms to two-year terms upon petition and election. The procedure for change in form of government provided in sections 363.31 to 363.35 shall be applicable to changes in duration of terms of office except that the number of signers of the petition need equal only ten percent of the votes cast for the candidate for any municipal office receiving the greatest number of votes at the last preceding regular municipal election. In all municipal corporations where members of the council are elected for four-year terms such terms shall be staggered so that one-half of the members of the council, as nearly as may be, are elected at each regular municipal election.

The references in section 363.10 to “longer” and “shorter” terms shall apply only to municipal corporations where members of the council are elected for four-year terms. [SS15, §1056-b3; C24, 27, 31, 35, 39,§6625; C46, 50,§419.11; C54,§363.9]

**363.10 Transition terms — councilmen.** In municipal corporations where some of the members of the council are elected by wards: members of the council, representing even-numbered wards, and one of the councilmen at large, shall be elected to the longer terms. In municipal corporations where members of the council are elected at large their length of term shall be determined by the number of votes received by each such candidate at the municipal election. Those candidates for council equal in number to one-half of the number of councilmen to be elected, or where an odd-number are to be elected a bare majority of such number, who receive the greatest number of votes shall be elected for the longer term. In the event of a tie the mayor and clerk shall determine by lot which candidate or candidates shall receive the longer term. [C54, §363.10]

Referred to in §363.9

NOMINATION OF CANDIDATES

**363.11 Candidates—filing.** Any person desiring to become a candidate for any elective municipal office shall, at least four weeks prior to the election, file with the clerk of the municipal corporation a petition signed by qualified voters equaling in number at least two percent of the greatest number of votes cast for any candidate for such office at the last regular municipal election, and in no case less than ten, requesting that his (or her) name be printed upon the official election ballot. Provided that any city having a population of ten thousand or less or any town may by ordinance provide that all candidates for all elective city or town offices shall be nominated under the provisions of chapters 44 or 45. In such event nomination for all such offices in the manner provided for in this chapter shall not be authorized. [S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§6496, 6634; C46, 50, §§416.20, 419.20; C54,§363.11; 56GA, ch 182,§2]

Nominations by political parties, §§43.112–43.114, inc.  
Referred to in §43.11

**363.12 Form of petition.** Said petition shall be in substantially the following form:

*Candidate's Petition*

The undersigned, duly qualified electors of the municipal corporation of . . . . ., and residing at the places set opposite our respective names hereto, hereby request that the name of (*name of candidate*) be placed on the ballot as a candidate for (*here specify office*) at the regular municipal election to be held in said incorporated municipality on the (*specify date of regular municipal election*).

We further state that we know the aforesaid person to be a qualified elector of said municipal corporation, a person of good moral charac-

ter, and qualified in our judgment for the duties of said office.

Name of qualified elector	Address (including street and residence num- bers, if any)
.....	.....
.....	.....

[S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39, §§6497, 6636; C46, 50, §§416.21, 419.22; C54, §363.12]

Referred to in §363B.17

**363.13 Affidavit—signer's qualifications.** The affidavit of one or more electors of the municipal corporation, as to the qualifications and address of each signer of the petition shall be indorsed on or attached to each petition. When a municipal officer is elected to represent a ward, signers of his petition must be qualified electors of that ward. [S13, §§1056-a21, -a40; SS15, §1056-b4; C24, 27, 31, 35, 39, §§6478, 6498, 6635, 6637; C46, 50, §§416.2, 416.22, 419.21, 419.23; C54, §363.13]

**363.14 Candidate's affidavit.** The candidate's petition shall be accompanied by an affidavit by said candidate in substantially the following form:

State of Iowa	}	ss.
.....County		

I, (name), being first duly sworn, say that I reside at (address, including residence and street number, if any); that I am a qualified voter therein; that I am a candidate for the office of (here specify the office) to be voted on at the regular municipal election to be held on (specify date), and I hereby request that my name be printed upon the official ballot for said election. I furthermore declare that if elected, I shall qualify for said office.

Signed.....

Subscribed and sworn to (or affirmed) before me by....., on this ..... day of ....., 19.....

.....  
Official signature of officer administering oath.

[S13, §1056-a21; C24, 27, 31, 35, 39, §6495; C46, 50, §416.19; C54, §363.14]

Referred to in §363B.17

**363.15 Population 10,000 or less—procedure.** Four weeks prior to the election, the clerk and mayor shall canvass the petitions of all candidates that have been filed with the clerk, and in all municipal corporations having a population of ten thousand or less, as shown by the latest federal census, shall find all candidates that have filed proper petitions, as herein provided, to be the nominees for the offices sought. The clerk shall then do all things necessary for conducting the election. The election shall be conducted in the manner provided by law for general elections. [SS15, §1056-b4; C24, 27, 31, 35, 39, §§6638; C46, 50, §419.24; C54, §363.15]

**363.16 Population over 10,000—procedure.** In cities having a population of more than ten

thousand, as shown by the latest federal census, the procedure shall be as follows:

If the clerk and mayor find that the number of candidates for any office, as shown by candidates' petitions filed with the clerk, be not more than twice the number of persons that may be elected to said office, said candidates shall be found to be the nominees, and for said office no primary election shall be held. For any office or offices, for which the number of candidates, as shown by the candidates' petitions filed with the clerk, is found to be more than twice the number of persons that may be elected to said office or offices, the nominees shall be determined by a municipal primary election, as hereinafter provided. The clerk and mayor shall file a written report with the council, stating the nominees for such office or offices, if any, for which no municipal primary election is required, and also stating the office, or offices, if any, for which the nominees shall be determined by a municipal primary election. Any such city, under one hundred thousand population, may by ordinance provide that all candidates for all elective city offices shall be nominated under the provisions of chapter 44 and chapter 45. In such event nomination for all such offices by primary shall not be authorized. [S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §§6492, 6638; C46, 50, §§416.16, 419.24; C54, §363.16]

**363.17 Primary election—time.** The municipal primary election shall be held on the second Tuesday prior to the regular municipal election. [S13, §1056-a21; C24, 27, 31, 35, 39, §6493; C46, 50, §416.17; C54, §363.17]

**363.18 Names on ballot.** The only persons whose name shall be printed on the municipal primary election ballots shall be the candidates for the office, or offices, for which the number of candidates is more than twice the number of persons that may be elected to said office, or offices. [S13, §1056-a21; C24, 27, 31, 35, 39, §6510; C46, 50, §416.34; C54, §363.18]

**363.19 Publication of ballot.** The clerk shall forthwith cause to be published once in a newspaper or newspapers published within the municipal corporation and of general circulation therein, in proper form, the names of persons as they are to appear upon the municipal primary ballot. No ballot shall have any party designation thereon. [S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §§6499, 6500, 6501, 6503, 6640; C46, 50, §§416.23-416.25, 416.27, 419.26; C54, §363.19]

**363.20 Primary election procedure.** In conducting municipal primary elections, the same procedure shall be followed as that provided for the conduct of general elections, except as herein modified. [R60, §1130; C73, §501; C97, §642; S13, §§646, 1056-a21; SS15, §§1056-b5, 1056-b6; C24, 27, 31, 35, 39, §§5627, 6494, 6514, 6643, 6644; C46, 50, §§363.5, 416.18, 416.38, 419.29, 419.30; C54, §363.20]

**363.21 Qualifications of voters.** Each qualified elector may vote at said municipal primary election, and at the regular municipal election which follows, who for ten days has been a resident of the precinct in which he offers to vote. Electors who are registered and otherwise qualified, and who change residence from the precinct where registered to another precinct within ten days preceding the election, may vote in the precinct where registered except at elections where councilmen are to be elected by the voters of a ward. [R60,§1130; C73,§501; C97,§642; S13,§1056-a21; SS15,§1056-b6; C24, 27, 31, 35, 39,§§5628, 6506, 6513, 6644; C46, 50,§§363.6, 416.30, 416.37, 419.30; C54,§363.21]

**363.22 Tie votes—contests.** A tie vote for nomination or election to any elective municipal office shall be determined as provided in the title on elections. The nomination or election of any person to a municipal office may be contested on the same grounds and in the same manner provided for contesting elections to county offices, so far as applicable. The mayor shall be the presiding officer of the court, but if the mayor's nomination or election is contested, the council shall elect one of its members to be the presiding officer. [C97, §678, 679; C24, 27, 31, 35, 39,§5629; C46, 50, §363.7; C54,§363.22]

**363.23 Qualifications of officers.** Every official elected by a municipality shall be a qualified voter thereof, and every official elected by the voters of any ward of a municipal corporation shall reside within the limits of said ward. [R60,§§1091, 1093; C73,§§511, 518, 521; C97, §643, 644; S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§5630, 6496, 6636; C46, 50,§§363.8, 416.19, 419.22; C54,§363.23]

**363.24 Returns canvassed.** On the day following the municipal primary election, the clerk shall publicly canvass said election returns and shall report the results thereof to the council. For municipal officers for which but one person is to be elected, the number of nominees, as determined by the municipal primary election, shall be twice the number of persons to be elected and the candidates receiving the greatest number of votes shall be the nominees. [S13,§1056-a21; SS15,§1056-b5; C24, 27, 31, 35, 39,§§6507, 6643; C46, 50,§§416.31, 419.29; C54,§363.24]

**363.25 Report to council.** The clerk's report to the council shall list the nominees for all offices to be filled at the forthcoming municipal election and shall show whether nomination was by municipal primary election, or by petition. [S13,§1056-a21; SS15,§1056-b5; C24, 27, 31, 35, 39,§§6508, 6643; C46, 50,§§416.32, 419.29; C54, §363.25]

MUNICIPAL ELECTIONS

**363.26 Municipal election procedure.** The municipal election shall be conducted in the manner provided by law for conducting general elections. [R60,§1130; C73,§501; C97,§642, 936; S13,§646, 1056-a21; SS15,§1056-b5; C24, 27,

31, 35, 39,§§5627, 6514, 6643, 6737; C46, 50,§363.5, 416.38, 419.29, 420.48; C54,§363.26]

**363.27 Officers elected at large.** In all municipal corporations, except those under the council-manager plan by popular election, the mayor shall be elected by the entire electorate. Members of the council may be elected by wards, or by the entire electorate, as hereinafter provided. [R60,§§1081, 1084, 1090, 1106; C73,§§390, 511, 514, 517, 532, 535; C97,§§647-649; S13,§§647-649; C24, 27, 31, 35, 39,§5632; C46, 50, §363.10; C54,§363.27]

**363.28 Time of taking office.** All elected municipal officers shall take office on or before noon of the second secular day of January following their election. [R60,§§1081, 1084, 1090, 1106; C73,§§390, 511, 514, 517, 532, 535; C97,§§647-649; S13,§§647-649; SS15,§1056-b3; C24, 27, 31, 35, 39,§§5632, 6626; C46, 50,§§363.10, 419.12; C54, §363.28]

**363.29 The fiscal year.** The fiscal year for all municipal corporations for which taxes are collected through the office of the county treasurer and for all departments, boards, and commissions thereof shall begin on the first day of January each year and shall end on December 31 following. [S13,§§1056-a7, 1056-a34; C24,§§5678, 6570; C27, 31, 35,§§5676-a1, 6570; C39, §5676.1, 6570; C46, 50,§§363.51, 416.95; C54, §363.29]

**363.30 Government of new corporations.** All municipalities when first incorporated under the provisions of chapter 362 shall be under the mayor-council form of government. [C54,§363.30]

**363.31 Petition for change.** Municipal corporations may change from one form of municipal government to any other form of municipal government by proceeding as follows:

Upon petition of electors equal in number to twenty-five percent of the votes cast for the candidate for any municipal office receiving the greatest number of votes at the last preceding municipal election, the mayor shall, not less than thirty days prior to the election to be held as herein provided, by proclamation submit the question of changing the form of municipal government at a special election to be held at a time specified therein and within two months after said petition is filed. [S13, §1056-a17,-a18,-a39; SS15,§1056-b1, 1056-b26; C24, 27, 31, 35, 39,§§6478, 6482, 6549, 6616, 6690; C46, 50,§§416.3, 416.6, 416.73, 419.2, 419.77; C54, §363.31]

Referred to in §363.9  
Special charter cities, §420.290

**363.32 Question submitted.** At such election, the proposition submitted shall be: "Shall the proposition to change the form of municipal government of the city (or town) of .....  
(Name of municipal corporation)  
....., to the .....  
(Name of form of municipal government proposed)

adopted?", and the election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections. [S13, §§1056-a18, 1056-a39; SS15, §§1056-b1, 1056-b26; C24, 27, 31, 35, 39, §§6483, 6549, 6617, 6687; C46, 50, §§416.7, 416.73, 419.3, 419.74; C54, §363.32]

Referred to in §363.9

### 363.33 Election of officers—time of change.

If the majority of the votes cast be in favor of the proposed change in the form of municipal government, said change shall become effective at the beginning of the year following the next regular municipal election, at which election, elective officers shall be chosen as required by law for said form of government. [S13, §§1056-a18, -a20; SS15, §1056-b1; C24, 27, 31, 35, 39, §§6484, 6485, 6491, 6623; C46, 50, §§416.3, 416.9, 416.15, 419.9; C54, §363.33]

Referred to in §363.9

### 363.34 Resubmission of question.

If the majority of votes cast be not in favor of the proposed change in the form of municipal government, the question of adopting any change in the form of municipal government shall not be again submitted to the voters of said municipal corporation within two years thereafter. [S13, §1056-a18; SS15, §1056-b1; C24, 27, 31, 35, 39, §§6487, 6620; C46, 50, §§416.11, 419.6; C54, §363.34]

Referred to in §363.9

### 363.35 Frequency of change.

No municipal corporation shall change its form of government, unless said form of government has been in effect at least six years. [S13, §1056-a39; SS15, §1056-b26; C24, 27, 31, 35, 39, §§6549, 6687; C46, 50, §§416.73, 419.74; C54, §363.35]

Referred to in §363.9

### 363.36 Vested rights on change.

When a municipal corporation changes its form of government, such change shall have no effect upon the territorial limits of said municipal corporation, nor shall it affect any property, rights, or liabilities of said municipal corporation, but shall go solely to the form of government. [S13, §1056-a19; SS15, §1056-b2; C24, 27, 31, 35, 39, §§6569, 6681, 6689; C46, 50, §§416.94, 419.68, 419.76; C54, §363.36]

### 363.37 Certification of adoption.

Immediately after such proposition has been adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county auditor, each a certificate stating that such proposition was adopted. [S13, §1056-a18; SS15, §1056-b1; C24, 27, 31, 35, 39, §§6486, 6619; C46, 50, §§416.10, 419.5; C54, §363.37]

### 363.38 Departments to continue.

All departments in any municipal corporation which has voted to change its form of government shall continue to exist and function during the interim necessary to effectuate reorganization under the new form. [S13, §1056-a20; SS15, §1056-b22; C24, 27, 31, 35, 39, §§6491, 6682; C46, 50, §§416.15, 419.69; C54, §363.38]

**363.39 Compensation of councilmen.** Councilmen in cities having a population of fifteen thousand or over shall be paid an amount prescribed by ordinance, not in excess of four hundred dollars per annum, except that councilmen in cities having a population of fifty thousand or over and which are traversed by a river, shall be paid an amount prescribed by ordinance, not in excess of five hundred dollars per annum, which shall be in full compensation of all services of such councilmen of every character connected with their official duties. In towns they shall receive not to exceed two dollars each for every regular or special meeting, and in the aggregate not exceeding one hundred dollars in any one year; in cities having a population of less than fifteen thousand they shall receive not to exceed four dollars each for every regular or special meeting, and in the aggregate not exceeding two hundred fifty dollars in any one year. [R60, §1095; C73, §505; C97, §669; S13, §669; C24, 27, 31, 35, 39, §5664; C46, 50, §363.38; C54, §363.39]

Compensation of other officers, §363A.4

### 363.40 Removal of appointive officers.

All persons appointed to office in any city or town may be removed by the officer or body making the appointment, but every such removal shall be by written order, which shall give the reasons therefor and be filed with the city clerk. [C97, §657; S13, §657; C24, 27, 31, 35, 39, §5638; C46, 50, §363.17; C54, §363.40]

Removal of officers, ch 66; also §363B.12

### 363.41 League of municipalities.

Cities and towns may pay, out of the general fund, annual dues to the league of Iowa municipalities, provided, however, that the sum total of annual dues collected by the league from municipalities shall not exceed forty-five thousand dollars. In addition they may pay, out of the general fund, the actual expenses of delegates to the annual convention of the league as follows: Less than two thousand population, two delegates; from two thousand to five thousand population, three delegates; from five thousand to twenty thousand population, four delegates; over twenty thousand population, five delegates. [S13, §694-b; C24, 27, 31, 35, 39, §5683; C46, 50, §363.60; C54, §363.41; 57GA, ch 183, §1]

### 363.42 Expense of delegates.

In no event shall the expense of such delegates exceed five cents a mile, under the limitations now provided by law, and eleven dollars a day for actual days in attendance and going to and returning from such meeting. [S13, §694-b; C24, 27, 31, 35, §5683; C39, §5683.1; C46, 50, §363.61; C54, §363.42; 56GA, ch 185, §1]

### 363.43 Accounting—reports.

The league shall keep and make such accounts and reports as shall be required by the state municipal accounting department, and the same shall be annually checked by said department and published in the volume of municipal accounts. [S13, §694-c; C24, 27, 31, 35, 39, §5684; C46, 50, §363.62; C54, §363.43]

CHAPTER 363A

MAYOR-COUNCIL FORM OF MUNICIPAL GOVERNMENT<sup>1</sup>

- 363A.1 Applicability of chapter.
- 363A.2 Councilmen—number and election.

- 363A.3 Appointment of officers.
- 363A.4 Compensation of other officers.

**363A.1 Applicability of chapter.** All incorporated cities and towns which are not under the commission or city manager by popular election forms of government shall be considered as having the mayor-council form of government and the provisions of this chapter shall be applicable. [C54,§363A.1]

**363A.2 Councilmen—number and election.** Towns operating under the mayor-council form of government shall have a council composed of five councilmen at large, elected by the entire electorate. Cities operating under the mayor-council form of government may have a council composed of five councilmen at large, or may have a council composed of two councilmen or aldermen at large, and one councilman or alderman from each ward; but if any city embraces within its limits the whole or part of two or more townships, two of which parts contain one thousand or more electors, only one councilman at large shall be chosen from any one township. "Councilmen" as used in this chapter shall include "aldermen" where members of a city council are elected and have historically been referred to by such title. [R60, §§1081, 1093; C73, §§511, 521; C97, §§645, 646, 937;

S13, §§645, 646; SS15, §937; C24, 27, 31, 35, 39, §§5631, 6691; C46, 50, §§363.9, 420.1; C54, §363A.2]

**363A.3 Appointment of officers.** The mayor shall appoint the following officers:

1. A marshal, and such other police officers, including police matrons as may be provided by ordinance.

2. Such other officers as the council may, by ordinance, direct him to appoint.

The council shall elect all other officers.

The prior civil service rights of any person appointed to any position under this section shall not be abridged by such appointment. [R60, §§1086, 1095, 1098, 1103, 1105, 1106; C73, §§515, 524, 528, 532, 534, 535; C97, §§652, 654, 655; S13, §§652, 654, 655; C24, 27, 31, 35, 39, §§5634, 5635, 5636; C46, 50, §§363.13-363.15; C54, §363A.3]

Removal of officers, §363.40

**363A.4 Compensation of other officers.** The council shall prescribe the rate of compensation of all elected or appointed officers or employees, whose compensation is not fixed by law. [R60, §§1094, 1095, 1098; C73, §§523, 524, 528; C97, §676; C24, 27, 31, 35, 39, §5671; C46, 50, §363.45; C54, §363A.4]

Compensation of councilmen, §363.39

CHAPTER 363B

COMMISSION FORM OF MUNICIPAL GOVERNMENT

Referred to in §417.71

- 363B.1 Cities of 30,000 or more population.
- 363B.2 Council—cities of less than 30,000 population.
- 363B.3 Reduction or increase in population.
- 363B.4 Departments.
- 363B.5 Department superintendents.
- 363B.6 Existing ordinances.
- 363B.7 President of council.
- 363B.8 Vice-president.
- 363B.9 Compensation of council.
- 363B.10 Increase in salary.
- 363B.11 Salaries of other officers.

- 363B.14 Amendment.
- 363B.15 Election called.
- 363B.16 Notice of election—procedure.
- 363B.17 Nominations.
- 363B.18 Incumbent as candidate.
- 363B.19 Form of ballot.
- 363B.20 Result—removal—tenure.
- 363B.21 Failure to remove—cumulative remedy.

SPECIAL ASSESSMENTS

- 363B.22 Special assessments.
- 363B.23 Repairs by street railway companies.

MEANDERED STREAMS IN CERTAIN CITIES

- 363B.24 Improvement authorized.

REMOVAL FROM OFFICE

- 363B.12 Removal by electors—petition.
- 363B.13 Examination.

**363B.1 Cities of 30,000 or more population.** Municipal corporations operating under the commission form of government, and having a population of thirty thousand or over shall be governed by a council, consisting of a mayor and four councilmen elected at large. One councilman shall be elected to preside over the department of accounts and finances. One councilman shall be elected to preside over the department of public safety. One councilman

shall be elected to preside over the department of parks and public property. One councilman shall be elected to preside over the department of streets and public improvements. [S13, §§1056-a18, a20, a24; C24, 27, 31, 35, 39, §§6484, 6488, 6489, 6520; C46, 50, §§416.8, 416.12-416.14, 416.44; C54, §363B.1]

**363B.2 Council—cities of less than 30,000 population.** Cities operating under the com-

mission form of government, and having a population of less than thirty thousand, shall be governed by a council consisting of a mayor and two councilmen elected at large. One councilman shall be elected to preside over the departments of accounts and finances and public safety. One councilman shall be elected to preside over the departments of parks and public property and streets and public improvements. [S13,§1056-a24; C24, 27, 31, 35, 39, §§6502, 6520; C46, 50, §§416.26, 416.44; C54, §363B.2]

**363B.3 Reduction or increase in population.** Whenever any city shall have been organized on the commission plan on or before July 4, 1951, no reduction or increase of the population of such city, shown by a subsequent census shall have any effect upon the organization and number of councilmen but the same shall continue, remain, and be as then by law prescribed for cities of the population such city had at the time its electors voted to adopt such plan of government as shown by the then preceding census. [S13,§1056-a17a; C24, 27, 31, 35, 39, §6480; C46, 50, §§416.4; C54, §363B.3]

**363B.4 Departments.** The executive and administrative powers, authority, and duties in such cities shall be distributed into and among five departments, as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property. [S13,§1056-a25; C24, 27, 31, 35, 39, §§6565; C46, 50, §416.90; C54, §363B.4]

**363B.5 Department superintendents.** The mayor shall be superintendent of the department of public affairs and each councilman shall be the superintendent of the particular department or combination of departments to which he was elected. [SS15,§1056-a26; C24, 27, 31, 35, 39, §§6566; C46, 50, §416.91; C54, §363B.5]

**363B.6 Existing ordinances.** All ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this chapter. [S13,§1056-a19; C24, 27, 31, 35, 39, §§6568; C46, 50, §416.93; C54, §363B.6]

**363B.7 President of council.** The mayor shall be president of the council and preside at its meetings, and shall supervise all departments and report to the council for its action all matters requiring attention in either. The mayor shall have the right to vote on all matters coming before the council. [S13, §§1056-a24, a29; C24, 27, 31, 35, 39, §§6524, 6526; C46, 50, §§416.48, 416.50; C54, §363B.7; 56GA, ch 187, §1]

**363B.8 Vice-president.** The superintendent of the department of accounts and finances

shall be vice-president of the council, and in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of mayor. [S13,§1056-a29; C24, 27, 31, 35, 39, §§6527; C46, 50, §416.51; C54, §363B.8]

**363B.9 Compensation of council.** The mayor and councilmen shall have an office in the city hall, and their total annual compensation, to be fixed by ordinance and payable in equal monthly installments, may be as follows:

1. In cities having by the last preceding federal census a population of less than fifteen thousand, for the mayor, not to exceed the sum of forty-five hundred dollars; and for each councilman, not to exceed the sum of thirty-seven hundred fifty dollars.

2. In cities having by such census a population of fifteen thousand and less than twenty-five thousand, for the mayor, not to exceed six thousand dollars, and for each councilman, not to exceed five thousand dollars.

3. In cities having by such census a population of twenty-five thousand and less than forty thousand, for the mayor, not to exceed seven thousand dollars, and for each councilman, not to exceed six thousand dollars.

4. In cities having by such census a population of forty thousand and less than sixty thousand, for the mayor, not to exceed seventy-five hundred dollars, and for each councilman, not to exceed sixty-five hundred dollars.

5. In cities having by such census a population of sixty thousand and less than one hundred thousand, for the mayor, not to exceed eighty-three hundred dollars, and for each councilman, not to exceed seven thousand dollars.

6. In cities having by such census a population of one hundred thousand or more, for the mayor, not to exceed nine thousand dollars, and for each councilman, not to exceed seventy-eight hundred dollars.

During the first term of office under the provisions of this chapter, the mayor and councilmen may by ordinance fix their salaries as herein provided. [S13,§1056-a28; C24, 27, 31, 35, 39, §§6517; C46, 50, §416.41; C54, §363B.9; 56GA, ch 188, §1]

**363B.10 Increase in salary.** Any increase in salary occasioned under the provisions of this scale by increase in population in any city shall commence with the month next after the official publication of the census showing such increase therein. [S13,§1056-a28; C24, 27, 31, 35, 39, §§6518; C46, 50, §416.42; C54, §363B.10]

**363B.11 Salaries of other officers.** Every other officer or assistant and members of the fire department and police department, shall receive such salary or compensation as the council shall by resolution provide, payable in equal monthly or semimonthly installments. The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly or at

such shorter periods as the council shall determine. [S13,§1056-a28; C24, 27, 31, 35, 39, §6519; C46, 50,§416.43; C54,§363B.11]

REMOVAL FROM OFFICE

**363B.12 Removal by electors—petition.** The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five percent of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. [S13,§1056-a36; C24, 27, 31, 35, 39,§6539; C46, 50, §416.63; C54,§363B.12]

S13,§1056-a36, editorially divided

**363B.13 Examination.** Within ten days from the date of filing such petition the city clerk shall examine and from the voters register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. [S13,§1056-a36; C24, 27, 31, 35, 39,§6540; C46, 50,§416.64; C54,§363B.13]

**363B.14 Amendment.** If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. [S13,§1056-a36; C24, 27, 31, 35, 39,§6541; C46, 50, §416.65; C54,§363B.14]

**363B.15 Election called.** If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding the said election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. [S13,§1056-a36; C24, 27, 31, 35, 39,§6542; C46, 50,§416.66; C54,§363B.15]

**363B.16 Notice of election—procedure.** The council shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other city elections. [S13,§1056-a36; C24, 27, 31, 35, 39,§6543; C46, 50,§416.67; C54,§363B.16]

**363B.17 Nominations.** So far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to vote at said special election equal in number to at least ten percent of the entire vote for all candidates for the office of mayor at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in sections 363.12 and 363.14, so far as the same are applicable, substituting the word "special" for the word "regular" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination. [S13,§1056-a36; C24, 27, 31, 35, 39,§6544; C46, 50,§416.68; C54,§363B.17]

**363B.18 Incumbent as candidate.** Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. [S13,§1056-a36; C24, 27, 31, 35, 39,§6545; C46, 50,§416.69; C54,§363B.18]

**363B.19 Form of ballot.** The ballot for such special election shall be in substantially the following form:

**OFFICIAL BALLOT**  
Special election for the balance of the unexpired term  
of ..... as .....  
for .....  
(Vote for one only)  
(Names of Candidates)  
 .....  
 .....  
(Name of present incumbent)  
Official ballot attest:  
(Signature) .....  
City Clerk.

[S13,§1056-a36; C24, 27, 31, 35, 39,§6546; C46, 50, §416.70; C54,§363B.19]

**363B.20 Result—removal—tenure.** In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant.



The successor of any officer so removed shall hold office during the unexpired term of his predecessor. [S13,§1056-a36; C24, 27, 31, 35, 39, §6547; C46, 50,§416.71; C54,§363B.20]

**363B.21 Failure to remove—cumulative remedy.** If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law. [S13,§1056-a36; C24, 27, 31, 35, 39,§6548; C46, 50,§416.72; C54,§363B.21]

Removal from office, ch 66

#### SPECIAL ASSESSMENTS

**363B.22 Special assessments.** In all cases where special assessments are authorized and no other mode of proceeding is provided by law, the assessment shall be made as nearly as practicable in the manner provided for assessing the cost of street improvements and sewers. [S13,§1056-a42; C24, 27, 31, 35, 39,§6575; C46, 50,§416.100; C54,§363B.22]

Special assessments, ch 391

**363B.23 Repairs by street railway companies.** In every such city the owner of any street railway occupying or using any bridge shall construct, reconstruct, and repair the paving or flooring on said bridge three and

one-half feet each way from the center line of the space between the rails of its tracks, the same to be ordered, done, assessed, and paid for in the manner provided for paving in sections 391.79 to 391.81, inclusive. [S13,§1056-a44; C24, 27, 31, 35, 39,§6577; C46, 50,§416.102; C54, §363B.23]

#### MEANDERED STREAMS IN CERTAIN CITIES

**363B.24 Improvement authorized.** All cities which have heretofore, or shall hereafter adopt the plan of government provided in this chapter, and which have their corporate limits divided by a meandered stream, and which have a population of thirty-five thousand or more according to the last preceding federal census, shall have power to acquire land along or adjacent to such stream as may be deemed desirable by the council of any such city for park purposes, or as sites for public buildings, or shall, by such council, be deemed necessary for the widening, straightening, and improving of the channel of such stream and the improvement of the banks thereof, by purchase, or by condemnation in the manner provided by law for the taking of private property for public use, and shall have power to improve said land for public purposes. [C24, 27, 31, 35, 39,§6601; C46, 50,§416.130; C54,§363B.24]

Condemnation procedure, ch 472

## CHAPTER 363C

### COUNCIL-MANAGER FORM OF MUNICIPAL GOVERNMENT BY ELECTION

Applicable to all cities adopting the plan of government

- 363C.1 Council—number and election—mayor pro tem.
- 363C.2 Council—compensation.
- 363C.3 Manager appointed.
- 363C.4 Qualifications of manager.
- 363C.5 Manager pro tem.
- 363C.6 Oath and bond of manager.
- 363C.7 Duties of manager.
- 363C.8 Manager accountable to council.

- 363C.9 Compensation of manager.
- 363C.10 Councilmen ineligible for office.
- 363C.11 Political activity by manager.
- 363C.12 Existing ordinances.
- 363C.13 Public emergency.
- 363C.14 Applicable statutes.
- 363C.15 Termination of minor positions.
- 363C.16 Applicable statute.

**363C.1 Council — number and election — mayor pro tem.** Municipal corporations operating under the council-manager by popular election form of municipal government shall be governed by a council elected at large. In all such municipal corporations there shall be elected five councilmen.\* At the first meeting after election the council shall elect one of their own number mayor, appoint a clerk, and, at said meeting or as soon thereafter as practicable, appoint an attorney and such number of assistant attorneys as are deemed necessary.

If, at any meeting, the mayor is not present, the members of the council may select one of their number to act as presiding officer pro tem whose acts as such presiding officer pro tem shall have the same force and legality as though performed by the regularly elected mayor, and such presiding officer pro tem shall have power to sign all resolutions or ordinances and to execute all contracts or

other documents adopted or approved at such meeting. The presiding officer of the council, whether the regularly elected presiding officer or a presiding officer pro tem, shall have the right to cast a vote as a member of the council. [SS15,§§1056-b1, b7; C24, 27, 31, 35, 39,§§6621, 6622, 6645; C46, 50,§§419.7, 419.8, 419.31; C54, §363C.1; 57GA, ch 184,§1]

\*See 57GA, ch 184,§2

**363C.2 Council—compensation.** The compensation of members of the council shall be fixed by ordinance. In cities having a population of less than five thousand, the annual compensation of each member of the council shall not exceed one hundred dollars. In cities having a population of at least five thousand but less than fifteen thousand, the annual compensation of each member of the council shall not exceed two hundred fifty dollars. In cities having a population of at least fifteen

thousand but less than thirty thousand, the annual compensation of each member of the council shall not exceed two hundred fifty dollars. In cities having a population of thirty thousand or more, the annual compensation of each member of the council shall not exceed five hundred dollars. [SS15,§1056-b9; C24, 27, 31, 35, 39,§6633; C46, 50,§419.19; C54,§363C.2]

**363C.3 Manager appointed.** At the first meeting after election, or as soon thereafter as practicable, the council shall appoint a competent person manager, who shall be the administrative head of the municipal government of the city in which he is appointed. [SS15,§1056-b12; C24, 27, 31, 35, 39,§6665; C46, 50,§419.51; C54,§363C.3]

**363C.4 Qualifications of manager.** The council in making the appointment of a manager, shall consider only the qualification and fitness of the person appointed, and he shall be appointed without regard to his political affiliation and need not be a resident of the city at the time of his appointment. [SS15,§1056-b14; C24, 27, 31, 35, 39,§6666; C46, 50,§419.52; C54, §363C.4]

**363C.5 Manager pro tem.** During the absence or disability of the manager, the council may designate some properly qualified person to perform and execute the duties of his office. [SS15,§1056-b14; C24, 27, 31, 35, 39, §6667; C46, 50,§419.53; C54,§363C.5]

**363C.6 Oath and bond of manager.** Before entering upon the duties of his office, the manager shall take an official oath that he will support the constitution of the United States, the constitution of the state of Iowa, and, without fear or favor, will, to the best of his ability, faithfully and honestly perform the duties of his office, and shall execute a bond in favor of the city, for the faithful performance of his duties, in such sum as may be fixed by the council. [SS15,§1056-b13; C24, 27, 31, 35, 39,§6668; C46, 50,§419.54; C54,§363C.6]

**363C.7 Duties of manager.** The duties of the manager shall be as follows:

1. He shall see that the laws and ordinances of the municipal corporation are faithfully enforced and executed.

2. He shall attend all meetings of the council.

3. He shall recommend to the council such measures as he may deem necessary or expedient for the good government and welfare of the city.

4. He shall have the general supervision and direction of the administration of the city government and may appoint with approval of the council such administrative assistants as shall be deemed advisable and such administrative assistants to the manager shall hold office at his pleasure.

5. He shall supervise and direct the official conduct of all officers of the city whom he has appointed and shall take active control of the

police, fire, and engineering departments of the city.

6. He shall supervise the performance of all contracts for work to be done for the city, make all purchases of material and supplies, and see that such material and supplies are received, and are of the quality and character called for by the contract.

7. He shall have power to employ, reclassify, or discharge all employees of the city, as the occasion requires, and to fix the compensation to be paid to such employees, except as otherwise herein provided, subject, however, to the provisions of chapters 70 and 365.

8. He shall have power to suspend or to discharge summarily any officer, appointee, or employee that he has power to appoint or employ, subject, however, to the provisions of chapters 70 and 365.

9. He shall supervise and manage all public improvements, works, and undertakings of the city, and all public buildings, and shall have charge of their construction, improvement, repair, and maintenance, except those designated in and which are covered by the provisions of chapters 370, 371, and 374A sections 397.29 to 397.35, inclusive, and chapter 399. Nothing herein shall be construed so as to prevent co-operation between the manager and any commission, board, trustees, or other body.

10. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, specifications, and estimates for public works or public improvements except those designated in and which are covered by the provisions of chapters 370, 371, sections 397.29 to 397.35, inclusive, and chapter 399; the cleaning, sprinkling, and lighting of streets, alleys, and public places; the collection and disposal of waste, and the preservation of tools, equipment, vehicles, and appliances belonging to the corporation.

11. He shall manage all municipal parks, airports, and cemeteries, and all municipal water, lighting, heating, or power plants, and transportation enterprises, except those operated under a board of trustees or other board or commission at the time that the council-manager form of government is or was adopted, or placed there by a subsequent election. If a board or commission is abolished or ceases to exist, management theretofore exercised by such board or commission shall thereupon vest in the manager. This exception shall also apply to permanent park boards in cities now or hereafter having a population of one hundred twenty-five thousand or more, according to the last or subsequent federal census.

12. He may, without notice, summarily cause the affairs of any department or the conduct of any officer under his supervision, or of any employee, to be investigated; and he, or any person appointed by him to examine or investigate the affairs of any department or the conduct of any officer or employee, shall have power to compel the attendance of wit-

nesses and the production of books and papers or other evidence.

13. He shall provide for the issuance and revocation of such licenses and permits as are authorized by law or ordinance and shall cause a record thereof to be kept.

14. He shall keep the council fully advised of the financial and other conditions of the city, and of its future needs.

15. He shall have power to appoint or employ persons to fill all places for which no other mode of appointment is provided, and shall have power to administer oaths.

16. He shall prepare and submit to the council an annual budget in the manner provided by chapter 24.

17. He shall, at all times, see that the business affairs of the municipal corporation of which he is manager are transacted by modern and scientific methods and in an efficient and businesslike manner, and that accurate records of all of the business affairs of the city under his management are fully and accurately kept.

18. He shall make to the council an itemized monthly report in writing, showing the receipts and disbursements for the preceding month, and such report shall be made by him not later than the tenth day of each month. Copies of said reports shall be kept available at the clerk's office for public distribution.

19. He shall perform such other and further duties as the council by ordinance shall direct.

20. He shall appoint a treasurer subject to the approval of the council. [SS15,§§1056-b3, -b15,-b16; C24, 27, 31, 35, 39,§§6631, 6669-6672; C46, 50,§§419.17, 419.55-419.58; C54,§363C.7; 56GA, ch 189,§1]

**363C.8 Manager accountable to council.** The manager shall be under the direction and supervision of the council, and shall hold office at its pleasure. [SS15,§§1056-b12,-b16; C24, 27, 31, 35, 39,§6673; C46, 50,§419.59; C54,§363C.8]

**363C.9 Compensation of manager.** The salary of the manager shall be fixed by the council, and paid monthly from the treasury of the city, upon an order signed by the presiding officer of the council and by the clerk. [SS15, §1056-b17; C24, 27, 31, 35, 39,§6674; C46, 50, §419.60; C54,§363C.9]

**363C.10 Councilmen ineligible for office.** No councilman elected under the provisions of this chapter shall be appointed by the manager to any office of the city in which he is elected, or employed in any department thereof; and any councilman or manager who shall violate the provisions of this section shall be guilty of a misdemeanor. Any councilman or manager violating the provisions of this section

may be removed from office, under the provisions of chapter 66. [SS15,§1056-b19; C24, 27, 31, 35, 39,§6675; C46, 50,§419.61; C54,§363C.10]

**363C.11 Political activity by manager.** The manager shall take no part in any election held for the purpose of electing councilmen, except that he may attend at the polls and cast his vote, if he is a qualified elector of the city, and any attempt upon his part to procure the election of any person as councilman, or to induce any elector to vote for any person for the office of councilman, shall be a misdemeanor, and he may be removed from office under the provisions of chapter 66. [SS15, §1056-b20; C24, 27, 31, 35, 39,§6676; C46, 50, §419.62; C54,§363C.11]

Punishment, §687.7

**363C.12 Existing ordinances.** All ordinances and resolutions lawfully passed and in force in any such municipal corporation under its former organization shall continue in force until altered or repealed by the council elected under the provisions of this chapter and departments shall continue to function. [SS15,§§1056-b2,-b22; C24, 27, 31, 35, 39,§§6680, 6682; C46, 50,§§419.67, 419.69; C54,§363C.12]

See also §363C.15

**363C.13 Public emergency.** The mayor may take command of the police and govern the city by proclamation in times of public danger, or during an emergency, and shall be the judge as to what constitutes such public danger or emergency. [SS15,§1056-b7; C24, 27, 31, 35, 39,§6647; C46, 50,§419.33; C54,§363C.13]

**363C.14 Applicable statutes.** Unless otherwise specifically provided by statute, all laws which are applicable by their terms to all cities and towns shall be applicable to cities under the city manager plan by popular election, and all laws applicable by their terms to cities of a certain population shall be applicable to cities of like population under the city manager plan by popular election. [C54, §363C.14]

**363C.15 Termination of minor positions.** Except the members of the library board, whose terms of office shall continue as now provided by law, the terms of office of all other officers, including park commissioners and waterworks trustees, whether elected or appointed, and of all employees of such city or incorporated town, shall be subject to the action of the council or manager. [SS15,§1056-b3; C24, 27, 31, 35, 39,§6629; C46, 50,§419.15; C54,§363C.15]

**363C.16 Applicable statute.** Section 420.46 is hereby made applicable to cities and towns organized under this chapter. [C24, 27, 31, 35, 39, §6685; C46, 50,§419.72; C54,§363C.16]

See §368.34

CHAPTER 363D

CITY MANAGER PROVIDED BY ORDINANCE

363D.1 Duties and compensation.  
 363D.2 Appointment—tenure.

363D.3 Duties imposed.  
 363D.4 Manager supersedes appointive officers.

**363D.1 Duties and compensation.** All cities and towns, except cities under the commission form of government are hereby authorized to provide by ordinance for the creation of the office of city manager and to fix likewise the duties and powers and compensation of such officer. [SS15,§679-1a; C24, 27, 31, 35, 39,§6611; C46, 50,§418.1; C54,§363D.1]

**363D.2 Appointment—tenure.** The city manager shall be appointed by a majority vote of the city or town council at a regular meeting of such body, and such manager shall hold office during the pleasure of the said body, and shall be subject to removal by a majority vote thereof. [SS15,§679-2a; C24, 27, 31, 35, 39,§6612; C46, 50,§418.2; C54,§363D.2]

**363D.3 Duties imposed.** Said city or town after having selected or appointed such city manager may by ordinance provide that the city manager shall perform any or all of the duties incumbent upon the street commission-

er, or manager of public utilities, cemetery sexton, city clerk, and superintendent of markets, and that he shall superintend and inspect all improvements and work upon the streets, alleys, sewers, and public grounds of the city or town, and perform such other and further duties as may be imposed upon him, and possess such other and further power as may, from time to time, be by ordinance conferred upon him. [SS15,§679-3a; C24, 27, 31, 35, 39, §6613; C46, 50,§418.3; C54,§363D.3]

**363D.4 Manager supersedes appointive officers.** Whenever by ordinance or resolution of the council the powers and duties heretofore vested in any other appointive municipal officer are to be wholly performed by the said city manager, then no appointment of such appointive officer shall be made, and any appointment of such officer made prior to the adoption of such ordinance or resolution shall be thereby canceled. [SS15,§679-4a; C24, 27, 31, 35, 39,§6614; C46, 50,§418.4; C54,§363D.4]

CHAPTER 364

DEPARTMENT OF PUBLICITY, DEVELOPMENT, AND GENERAL WELFARE

Applicable to all cities

364.1 Department authorized.  
 364.2 Objects.

364.3 Election.  
 364.4 Expenses—funds available.

**364.1 Department authorized.** Any city in this state shall have power to establish by ordinance, upon the terms and conditions herein-after prescribed, a department under control of the city council, said department to be known as the department of publicity, development, and general welfare, and the mayor, with the approval of the council, shall have power to appoint a superintendent of such department, and may employ such assistants as may be necessary to perform the work of said department, at such compensation as may be fixed by resolution of such city council. [S13,§679-m; C24, 27, 31, 35, 39,§5685; C46, 50, 54,§364.1]

**364.2 Objects.** Said department shall be for the purpose of collecting and distributing, by correspondence, advertising, and other means, information relating to the industrial, commercial, manufacturing, residential, educational, and other advantages and resources of such city; and for the purpose of encouraging and promoting the establishment and development of industries and manufacturing, commercial, and other interests in such cities and the increase of population thereof; and for the purpose of investigating, promoting, and doing

such things as may be for the general welfare of such city and the inhabitants thereof; provided, however, nothing in this chapter shall be construed as authorizing cities to invest any funds raised by taxation in private enterprises or to pay from such funds any bonuses for same. The duties of the superintendent and other employees of said department shall be such as may be prescribed from time to time by the city council, and they shall be at all times under the supervision and control of the mayor in performing said duties. [S13, §679-n; C24, 27, 31, 35, 39,§5686; C46, 50, 54, §364.2]

**364.3 Election.** The said department can only be established upon the approval of sixty percent of the legal voters of said city who shall vote on said question, and such question may be submitted by the council of such city at any general, city, or special election for such purpose, at which election the question submitted shall be: "Shall the city of (naming it) establish a department of publicity, development, and general welfare?" If said question shall be answered in the affirmative by not less than sixty percent of the voters voting there-

on, the said department may be established for a period of not to exceed five years from the date of such election. Within one year of the end of such period or at any time thereafter the question may be resubmitted and said department re-established for a like period, provided that not less than sixty percent of the voters thereon vote in favor thereof. [S13, §679-o; C24, 27, 31, 35, 39, §5687; C46, 50, 54, §364.3]

**364.4 Expenses—funds available.** The expenses of said department may be defrayed out of any and all funds received by such city from fines and penalties and out of any funds that may be in the treasury of said city, not derived from general taxation nor from special taxes levied for other purposes. [S13, §679-p; C24, 27, 31, 35, 39, §5688; C46, 50, 54, §364.4]

Disposal of certain fines, Constitution, Art. IX (2nd div.), §4; §302.3

## CHAPTER 365

### CIVIL SERVICE

Referred to in §§363C.7(7, 8), 374A.6(4), 386B.1, 386B.3, 386B.15, 398.13

Applicable to all cities

- 365.1 Appointment of commission.
- 365.2 Qualifications.
- 365.3 Optional appointment of commission.
- 365.4 Chairman—clerk—records.
- 365.5 Rooms and supplies.
- 365.6 Applicability—exceptions.
- 365.7 Preference by service.
- 365.8 Original entrance examination—appointments.
- 365.9 Promotional examinations—promotions.
- 365.10 Preferences.
- 365.11 Names certified — temporary appointment.
- 365.12 Seniority.
- 365.13 Chief of police and chief of fire department.
- 365.14 Civil service status of chief of police.
- 365.15 Appointing powers.

- 365.16 Qualifications.
- 365.17 Employees under civil service—qualifications.
- 365.18 Removal, demotion, or suspension.
- 365.19 Removal or discharge of subordinates.
- 365.20 Appeal.
- 365.21 Notice of appeal.
- 365.22 Charges.
- 365.23 Time and place of hearing.
- 365.24 Oaths—books and papers.
- 365.25 Contempt.
- 365.26 Public trial.
- 365.27 Jurisdiction—attorney—decision.
- 365.28 Employees—number diminished.
- 365.29 Campaign contributions.
- 365.30 Penalty.
- 365.31 Waterworks employees.

**365.1 Appointment of commission.** In cities having a population of eight thousand or over, having a paid fire department or a paid police department, the mayor, one year after each regular municipal election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after such appointment, whose successors shall be appointed for a term of six years. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5689; C46, 50, 54, §365.1]

40ExGA, SF 155, §1, editorially divided

**365.2 Qualifications.** The commissioners must be citizens of Iowa and residents of the city for more than five years next preceding their appointment, and shall serve without compensation. No person while on said commission, shall hold or be a candidate for any office of public trust. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5690; C46, 50, 54, §365.2]

**365.3 Optional appointment of commission.** In cities having a population of less than eight thousand, the city council may, by ordinance, adopt the provisions of this chapter in which case it shall either appoint such commission or provide, by ordinance, for the exercise of the powers and performance of the duties of

the commission by the council. Where the city council exercises the powers of the commission the term "commission" as used in this chapter shall mean the city council. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5691; C46, 50, 54, §365.3]

**365.4 Chairman—clerk—records.** The chairman of the commission for each biennial period shall be the member whose term first expires. In cities having a population of more than seventy-five thousand the commission shall appoint an employee in the city clerk's office who is employed under the provisions of this chapter to be clerk of the commission and his duties as such clerk shall have precedence over any additional duties of his regular employment. In all other cities the city clerk shall be clerk of the commission.

The civil service commission shall keep a record of all its meetings and also a complete individual service record of each civil service employee which record shall be permanent and kept up to date.

When duly certified by the clerk of the commission copies of all records and entries or papers pertaining to said record shall be admissible in evidence with the same force and effect as the originals. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5692; C46, 50, 54, §365.4]

**365.5 Rooms and supplies.** The council shall provide suitable rooms in which the commis-

sion may hold its meetings and supply the commission with all necessary equipment and a qualified shorthand reporter to enable it properly to perform its duties. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5693; C46, 50, 54,§365.5]

**365.6 Applicability—exceptions.**

1. The provisions of this chapter shall apply to all appointive officers and employees, including deputy clerks and deputy bailiffs of the municipal court, in cities under any form of government having a population of more than fifteen thousand except:

a. City clerk, city solicitor, assistant solicitor, assessor, treasurer, auditor, civil engineer, health physician, chief of police, market master, city manager and administrative assistants to the manager.

b. Laborers whose occupation requires no special skill or fitness.

c. Election officials.

d. Secretary to the mayor or to any commissioner.

e. Commissioners of any kind.

f. Casual employees.

2. In all other cities under any form of government, the provisions of this chapter shall apply only to members of the police and fire departments, except the following persons connected with such departments:

a. Chiefs of police.

b. Janitors, clerks, stenographers, secretaries.

c. Casual employees. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5694; C46, 50, 54,§365.6]

**365.7 Preference by service.** Any person regularly serving in or holding any position in the police or fire department, or a nonsupervisory position in any other department, which is within the scope of this chapter on April 16, 1937\* in any city, who has then five years of service in a position or positions within the scope of this chapter, shall retain his position and have full civil service rights therein.

Persons in nonsupervisory positions, appointed without competitive examination, who have served less than five years in such position or positions on said date, shall submit to examination by the commission and if successful in passing such examination they shall retain their positions in preference to all other applicants and shall have full civil service rights therein, but if they fail to pass such examination they shall be replaced by successful applicants.

Provided, that persons who have heretofore been certified by the commission as eligible for appointment to any position in which they are regularly serving on said date, and persons regularly serving on said date in any position with civil service rights by reason of long and efficient service rendered prior to October, 1924, shall retain such position and shall have full civil service rights therein without further examination. Other persons regularly serving in supervisory positions in departments other

than police or fire on April 16, 1937\* shall be eligible for appointment to said positions after qualifying in competitive examination.

Provided, further, however, that nothing in this section shall apply to any person temporarily acting in a position regularly held by another, or in a vacancy, except to establish his rights in his own regular position. [SS15, §1056-a32; C24, 27, 31, 35, 39,§5695; C46, 50, 54,§365.7]

\*47GA, ch 156

**365.8 Original entrance examination—appointments.** The commission shall, during the month of April of each year, and at such other times as shall be found necessary under such rules, including minimum and maximum age limits, as shall be prescribed and published in advance by the commission and posted in the city hall, hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to such matters as will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which he seeks appointment. Provided, however, that such physical examination of applicants for appointment to the positions of policeman, policewoman, police matron or fireman shall be held under the direction of and as specified by the boards of trustees of the fire or police retirement systems established by section 411.5.

All appointments to such positions shall be conditional upon a probation period of not to exceed six months, during which time the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5696; C46, 50, 54,§365.8]

**365.9 Promotional examinations — promotions.** The commission shall, during the month of April of each second year, and at such other times as shall be found necessary, under such rules as shall be prescribed and published in advance by the commission, and posted in the city hall, hold competitive promotional examinations for the purpose of determining the qualifications of applicants for promotion to a higher grade under civil service, which examinations shall be practical in character, and shall relate to such matters as will fairly test the ability of the applicant to discharge the duties of the position to which he seeks promotion.

Hereafter, all vacancies in the civil service grades above the lowest in each department shall be filled by promotion of subordinates when such subordinates qualify as eligible, and when so promoted, they shall hold such position with full civil service rights therein. [C31, 35,§5696-d1; C39,§5696.1; C46, 50, 54,§365.9]

**365.10 Preferences.** In all examinations and appointments under the provisions of this chapter, honorably discharged men and women from the military or naval forces of the United States in any war in which the United States was or is now\* engaged, including the Philippine insurrection, China relief expedition and the Korean Conflict at any time between June 27, 1950 and July 27, 1953, both dates inclusive, who are citizens and residents of this state, shall be given the preference, if otherwise qualified.

For the purposes of this section World War II shall be from December 7, 1941, to September 2, 1945, both dates inclusive. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5697; C46, 50, 54,§365.10; 56GA, ch 184,§1; 57GA, ch 60,§6]

Soldiers preference law, ch 70

\*Act effective July 4, 1947

**365.11 Names certified—temporary appointment.** The commission shall, within ninety days after the beginning of each competitive examination for original appointment or for promotion, certify to the city council a list of the names of the ten persons who qualify with the highest standing as a result of each examination for the position they seek to fill, or such number as may have qualified if less than ten, in the order of their standing, and all newly created offices or other vacancies in positions under civil service which shall occur before the beginning of the next examination for such positions shall be filled from said lists, or from the preferred list existing as provided for in case of diminution of employees, within thirty days. Preference for temporary service in civil service positions shall be given those on such lists.

Except where such preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion until the beginning of a new examination, but in no case shall such preference continue longer than two years following the date of certification, after which said lists shall be canceled and no promotion to such grade shall be made until a new list has been certified eligible for promotion.

When there is no such preferred list or certified eligible list, or when the eligible list shall be exhausted, the person or body having the appointing power may temporarily fill a newly created office or other vacancy only until an examination can be held and the names of qualified persons be certified by the commission, and such temporary appointments are hereby limited to ninety days for any one person in the same vacancy, but such limitation shall not apply to persons temporarily acting in positions regularly held by another. Any person temporarily filling a vacancy in a position of higher grade for twenty days or more, shall receive the salary paid in such higher grade. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5698; C46, 50, 54,§365.11]

**365.12 Seniority.** For the purpose of determining the seniority rights of civil service

employees, seniority shall be computed, beginning with the date of appointment to or employment in any positions for which they were certified or otherwise qualified and established as provided in this chapter, but shall not include any period of time exceeding sixty days in any one year during which they were absent from the service except for disability.

In the event that a civil service employee has more than one classification or grade, the length of his seniority rights shall date in the respective classifications or grades from and after the time he was appointed to or began his employment in each classification or grade. In the event that an employee has been promoted from one classification or grade to another, his civil service seniority rights shall be continuous in any department grade or classification that he formerly held.

A list of all civil service employees shall be prepared and posted in the city hall by the civil service commission on or before July 1 of each year, indicating the civil service standing of each employee as to his seniority. [C39, §5698.1; C46, 50, 54,§365.12]

Referred to in §§365.13, 365.28

**365.13 Chief of police and chief of fire department.** The chief of the fire department shall be appointed from the chief's civil service eligible list and shall hold full civil service rights as chief, and the chief of the police department shall be appointed from the active members of the department who hold civil service seniority rights as patrolmen and have had five years service in the department, but this shall not apply to any person holding the office of chief of police in any city on April 16, 1937\* in such city during his term of office as chief which may include successive reappointments thereto. Any such chief of police, having ten or more years service, shall be entitled to civil service rights as patrolman for the period of such service as chief with continuing seniority determined as provided in section 365.12.

In cities under the commission plan of government the superintendent of public safety, with the approval of the city council, shall appoint the chief of the fire department and the chief of the police department. In cities under the city manager plan the city manager shall make such appointments, and in all other cities such appointments shall be made by the mayor. [C24, 27, 31, 35, 39,§5699; C46, 50, 54, §365.13]

\*47GA, ch 156

**365.14 Civil service status of chief of police.** A police officer under civil service may be appointed chief of police without losing his civil service status, and shall retain, while holding the office of chief, the same civil service rights he may have had immediately previous to his appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon

which he may retain the position of chief. [C27, 31, 35,§5699-a1; C39,§5699.1; C46, 50, 54, §365.14]

**365.15 Appointing powers.** All appointments or promotions to positions within the scope of this chapter other than those of chief of police and chief of fire department shall be made:

In cities under the commission form of government, by the superintendents of the respective departments, with the approval of the city council; in cities under the city manager plan, by the city manager; in all other cities with the approval of the city council, and in the police and fire departments by the chiefs of the respective departments; and in the case of deputy clerks or deputy bailiffs of the municipal court, such appointments shall be made by the clerk or bailiff thereof, respectively.

All such appointments or promotions shall promptly be reported to the clerk of the commission by the appointing officer. [SS15, §1056-a32; C24, 27, 31, 35,§5698; C39,§5699.2; C46, 50, 54,§365.15]

**365.16 Qualifications.** All appointive officers and employees of cities shall be selected with reference to their qualifications and fitness and for the good of the public service, and without reference to their political faith or party allegiance. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5700; C46, 50, 54,§365.16]

**365.17 Employees under civil service—qualifications.** Except as otherwise provided, no person shall be appointed or employed in any capacity in the fire or police department, or any department which is governed by the civil service, until such person shall have passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for such appointment; provided, however, that in cases of emergency, in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, in which case the person having the appointing power may deputize additional persons, without examination, to act as peace officers until such emergency shall have passed. In no case shall any person be appointed or employed in any capacity in the fire or police department, or any department which is governed by civil service, unless such person:

1. Is a citizen of the United States and has been a resident of the city for more than one year, but such residence in the city shall not be a necessary qualification for appointment as chief of fire department.
2. Is of good moral character.
3. Is able to read and write the English language.
4. Is not a liquor or drug addict.
5. Has not been convicted of a felony.

6. Has not borne arms against the United States government.

7. Has not claimed exemption from military service on account of being a conscientious objector.

Except with respect to appointment or employment in the police or fire department, the civil service commission may waive the residence requirement as set out in subsection 1, in examinations for positions requiring technical or scientific knowledge when applicants for such positions are not available who can meet the residence requirement. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5701; C46, 50, 54,§365.17]

**365.18 Removal, demotion, or suspension.** No person holding civil service rights as provided in this chapter shall be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform his duties. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5702; C46, 50, 54,§365.18]

**365.19 Removal or discharge of subordinates.** The person having the appointing power as provided in this chapter, or the chief of police and the chief of the fire department may peremptorily suspend, demote, or discharge any subordinate then under his direction, for neglect of duty, disobedience of orders, misconduct or failure to properly perform his duties.

Chiefs of police and fire departments of cities under the commission plan shall report suspensions, demotions, or discharges made by them to the superintendent of public safety within twenty-four hours thereafter.

In cities under the manager plan, such report shall be made to the manager, unless the suspension, demotion, or discharge is made by him, in which case he shall report the same to the city council.

In other cities, the report shall be made to the mayor.

Such report shall be in writing, stating the reasons for such suspension, demotion, or discharge, and a copy thereof shall promptly be given to the clerk of the commission. The person or body to whom the report is made shall affirm or revoke such suspension, demotion, or discharge, according to the facts and merits of the case. [SS15,§1056-a32; C24, 27, 31, 35, 39, §5703; C46, 50, 54,§365.19]

**365.20 Appeal.** If there is an affirmance of the suspension, demotion, or discharge of any person holding civil service rights, he may, within twenty days thereafter, appeal therefrom to the civil service commission. If the suspension, demotion, or discharge is not affirmed within five days the person who suspended, demoted, or discharged such officer or employee may in like manner appeal. [SS15,



§1056-a32; C24, 27, 31, 35, 39, §5704; C46, 50, 54, §365.20]

**365.21 Notice of appeal.** If the appeal be taken by the person suspended, demoted, or discharged, notice thereof, signed by the appellant and specifying the ruling appealed from, shall be filed with the clerk of commission; if by the person making such suspension, demotion, or discharge, such notice shall also be served upon the person suspended, demoted, or discharged. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5705; C46, 50, 54, §365.21]

**365.22 Charges.** Within five days from the service of such notice of appeal, the person or body making the ruling appealed from shall file with the body to which the appeal is taken a written specification of the charges and grounds upon which the ruling was based. If such charges are not so filed the person suspended or discharged may present the matter to the body to whom the appeal is to be taken by affidavit, setting forth the facts, and such body shall forthwith enter an order reinstating the person suspended or discharged for want of prosecution. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5706; C46, 50, 54, §365.22]

**365.23 Time and place of hearing.** Within ten days after such specifications are filed, the commission shall fix the time, which shall be not less than five nor more than twenty days thereafter, and place for hearing the appeal and shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5707; C46, 50, 54, §365.23]

**365.24 Oaths—books and papers.** The presiding officer of the commission or the council, as the case may be, shall have power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The council or commission shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either party may designate. The subpoenas shall be signed by the chairman of the commission or mayor, as the case may be. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5708; C46, 50, 54, §365.24]

**365.25 Contempt.** In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the official body hearing the appeal shall, in writing, report such refusal to the district court of the county or to any judge thereof, and said court or judge shall proceed with said person or witness as though said refusal had occurred in a proceeding legally pending before said court or judge. [C24, 27, 31, 35, 39, §5709; C46, 50, 54, §365.25]

Contempts, ch 665

**365.26 Public trial.** The trial of all appeals shall be public, and the parties may be represented by counsel. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5710; C46, 50, 54, §365.26]

**365.27 Jurisdiction—attorney—decision.** The civil service commission shall have jurisdiction to hear and determine all matters involving the rights of civil service employees, and may affirm, modify, or reverse any case on its merits.

The city attorney or solicitor shall be the attorney for the commission or when requested by the commission shall present any matters concerning civil service employees to the commission, except the commission in cities of over one hundred thousand population may hire a counselor or an attorney on a per diem basis to represent them other than the city attorney or solicitor when in the opinion of the commission there is a conflict of interest between the commission and the city council.

If the appeal is taken by a suspended, demoted, or discharged employee and reversed, he shall be reinstated as of the date of his suspension, demotion, or discharge, and shall be entitled to such compensation as the body having jurisdiction may determine. [SS15, §1056-a32; C24, 27, 31, 35, 39, §5711; C46, 50, 54, §365.27; 56GA, ch 186, §1]

**365.28 Employees — number diminished.** Whenever the public interests may require a diminution of employees in any classification or grade under civil service, the city council, by resolution and acting in good faith, and after notifying the commission of such action, may either:

1. Abolish the office and remove the employee from his classification or grade thereunder, or
2. Reduce the number of employees in any classification or grade by suspending the necessary number.

In case it thus becomes necessary to so remove or suspend any such employees, the persons so removed or suspended shall be those having seniority of the shortest duration in the classifications or grades affected, and such seniority shall be computed as provided in section 365.12 for all persons holding seniority in the classification or grade affected, regardless of their seniority in any other classification or grade, but any such employee so removed from any classification or grade shall revert to his seniority in the next lower grade or classification; if such seniority is equal, then the one less efficient and competent as determined by the person or body having the appointing power shall be the one affected.

In case of such removal or suspension, the civil service commission shall issue to each person so affected a certificate showing his comparative seniority or length of service in each classification or grade from which he is so removed and the fact that he has been honorably so removed, and his name shall be

carried for a period of not less than three years after such suspension or removal, on a preferred list and all appointments or promotions made during said period to his former duties in such classification or grade shall be made in the order of greater seniority from such preferred lists. [S13,§679-h; C24, 27, 31, 35, 39,§5712; C46, 50, 54,§365.28]

**365.29 Campaign contributions.** No officer or employee under civil service shall, directly or indirectly, contribute any money or anything of value, to any candidate for nomination or election to any office, or to any campaign or political committee, or take any active part in any political campaign except to cast his vote and to express his personal opinion privately, nor shall any such candidate or committee solicit such contribution or active political support from any such officer or employee. Any person violating any provision of this section shall pay a fine of not less than twenty-five dollars or more than one hundred dollars, or

be imprisoned in the county jail not to exceed thirty days. [SS15,§1056-a32; C24, 27, 31, 35, 39, §5713; C46, 50, 54,§365.29]

**365.30 Penalty.** The provisions of this chapter shall be strictly carried out by each person or body having powers or duties thereunder, and any act or failure to act tending to avoid or defeat the purposes of such provisions is hereby prohibited, and shall be punishable as a misdemeanor. [C39,§5713.1;C46, 50,54,§365.30]

Constitutionality, 47GA, ch 156,§24  
Punishment, §687.7

**365.31 Waterworks employees.** In cities where board of waterworks trustees have adopted resolution placing its employees under the provisions of this chapter as to civil service, the civil service commissioner appointed and acting under said chapter shall have charge and control of the civil service procedure as to such employees and the provisions and procedure of this chapter shall apply in such cases. [C50, 54,§365.31]

**CHAPTER 365A**

**GROUP INSURANCE IN CITIES AND TOWNS**

Applicable to all cities and towns

- 365A.1 Authority in cities and towns.
- 365A.2 Sources of funds.
- 365A.3 Assessment of employees.
- 365A.4 Participation optional.
- 365A.5 Fund under control of council.
- 365A.6 Contract with insurance carrier.

- 365A.7 Employee defined.
- 365A.8 Rules and regulations.
- 365A.9 Exemption from debts.
- 365A.10 Decisions of council final.
- 365A.11 Definitions.

**365A.1 Authority in cities and towns.** The council in any city or town may establish plans for and procure group insurance, hospital or medical service for the employees of such city or town. [C50, 54,§365A.1; 57GA, ch 185,§1]

**365A.2 Sources of funds.** The funds for such plans shall be created from the following sources:

1. Contributions from employees who elect to participate in any such plan; and

2. Contributions authorized by the city council from the general fund of said city in amounts not exceeding the aggregate amounts assessed against and collected from employees who elect to participate in any such plan. The funds for each plan shall be kept separately.

3. If the policy is an accident and health insurance policy, in lieu of compliance with subsections 1 and 2 of this section the funds for the plan may be created solely from contributions from employees who elect to participate in the plan. [C50, 54,§365A.2; 57GA, ch 185,§3]

Referred to in §365A.3

**365A.3 Assessment of employees.** All employees participating in any such plan the fund of which is created under the provisions

of subsections 1 and 2 of section 365A.2 shall be assessed and required to pay an amount to be fixed by the city council not to exceed the two percent which shall be contributed by the city according to the plan adopted, and the amount so assessed shall be deducted and retained out of the wages or salaries of such employees. [C50, 54,§365A.3; 57GA, ch 185,§4]

**365A.4 Participation optional.** Participation in any such plan shall be optional with all employees eligible to the benefits thereof as provided by the rules and regulations adopted by the city council pursuant thereto. Election to participate therein shall be in writing signed by the employee and filed with the city council. [C50, 54,§365A.4]

**365A.5 Fund under control of council.** The fund for each plan shall be under the control and shall be expended under the directions of the city council and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the city council. [C50, 54,§365A.5]

**365A.6 Contract with insurance carrier.** The city council may contract with a nonprofit corporation operating under the provisions of chapter 514 or with a legal reserve life insur-

ance company with respect of a group insurance plan, which may include life, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; and may contract with a nonprofit corporation operating under and governed by the provisions of chapter 514 with respect of any hospital or medical service plan. [C50, 54, §365A.6]

**365A.7 Employee defined.** With reference to group life insurance policies, "employee" as used in this chapter is defined to be a person employed by the city on a weekly, monthly or yearly basis and who is actually performing duties under such employment, including the members or the employees in the police department, fire department and the waterworks. With reference to group accident and health insurance policies, "employee" as used in this chapter is defined to be a person employed by the city on a weekly, monthly, or yearly basis and who is actually performing duties under such employment. [C50, 54, §365A.7; 57GA, ch 185, §§5, 6]

**365A.8 Rules and regulations.** The city council of cities establishing any such plan under this chapter shall administer such plan

and formulate and establish rules and regulations for the operation thereof, not inconsistent with the provisions of this chapter. [C50, 54, §365A.8]

**365A.9 Exemption from debts.** All amounts payable to employees under and pursuant to the plan of group insurance established as herein provided shall be exempt from liability for debts of the person to or on account of whom the same is payable and shall not be subject to seizure upon execution or other process. [C50, 54, §365A.9]

**365A.10 Decisions of council final.** The decisions of the city council upon all matters upon which the said city council is empowered to act, under and pursuant to the provisions hereof, shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom nor shall such decisions of the city council, in the absence of fraud, be reviewed, enjoined or set aside by any court. [C50, 54, §365A.10]

**365A.11 Definitions.** For purposes of this chapter the following terms shall have the following meaning:

1. The word "city" shall mean "city or town".

2. The words "city council" shall mean "city or town council". [57GA, ch 185, §2]

## CHAPTER 366

### ORDINANCES

Applicable to all cities and towns

366.1 Power to pass.  
366.2 General requirements.  
366.3 Reading.  
366.4 Majority vote.  
366.5 Signing—passing over veto.  
366.6 Recording.  
366.7 Notice to public.

366.8 and 366.9 Repealed by 54GA, ch 148, §3.  
366.10 Repealed by 54GA, ch 147, §35.  
366.11 Cost of publishing.  
366.12 Certification to county recorder.  
366.13 Recordation.  
366.14 Index.  
366.15 Fees.

**366.1 Power to pass.** Municipal corporations shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this title, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof, and to enforce obedience to such ordinances by fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. [R60, §§1071-1073; C73, §482; C97, §680; C24, 27, 31, 35, 39, §5714; C46, 50, 54, §366.1]

Referred to in §388.1  
Imprisonment, §367.10  
Similar section, §420.31

**366.2 General requirements.** No ordinance shall contain more than one subject, which shall be clearly expressed in its title. An ordi-

nance revising or amending an ordinance or section thereof shall specifically repeal the ordinance or section amended or revised, and set forth in full the ordinance or section as amended or revised. When a city or town shall make a complete revision of its ordinances by rearrangement and grouping of the same under appropriate titles, parts, chapters, and sections, the enactment of said revision of ordinances, as so rearranged and grouped, shall be considered a sufficient compliance with the provisions of this section. [R60, §1122; C73, §489; C97, §681; C24, 27, 31, 35, 39, §5715; C46, 50, 54, §366.2]

Referred to in §366.7  
Similar provision, Constitution, Art. III, §29

**366.3 Reading.** Ordinances shall be fully and distinctly read on three different days, unless three-fourths of the council shall dispense with the rule. [R60, §1122; C73, §489; C97, §682; C24, 27, 31, 35, 39, §5716; C46, 50, 54, §366.3]

**366.4 Majority vote.** No resolution or ordinance, except as specifically provided by law, shall be adopted without a concurrence of a majority of the whole number of members elected to the council, by call of the yeas and nays which shall be recorded. [R60, §§1122, 1134, 1135; C73, §§466, 489, 493, 494; C97, §§683, 684, 793; S13, §§683, 693; C24, 27, 31, 35, 39, §5717; C46, 50, 54, §366.4]

**366.5 Signing—passing over veto.** The mayor shall sign every ordinance or resolution passed by the council before the same shall be in force, and, if he refuses to sign any such ordinance or resolution, he shall call a meeting of the council within fourteen days thereafter and return the same, with his reasons therefor. If he fails to call the meeting within the time fixed above, or fails to return the ordinance or resolution with his reasons as herein required, such ordinance or resolution shall become operative without such signature, and the clerk shall record it in the ordinance book, with a minute of the facts making it operative. Upon the return of any such ordinance or resolution by the mayor to the council, it may pass the same over his objections, upon a call of the yeas and nays, by not less than a two-thirds vote of the council, and the clerk shall certify on said ordinance or resolution that the same was passed by a two-thirds vote of the council, and sign it officially as clerk. [C97, §685; C24, 27, 31, 35, 39, §5718; C46, 50, 54, §366.5]

Similar provision, Constitution, Art. III, §16

**366.6 Recording.** All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signatures of the presiding officer of the council and the clerk. Immediately following the record of every ordinance, the clerk shall append a certificate, stating therein the time and manner of publication thereof, which certificate shall be presumptive evidence of the facts therein stated. [R60, §1133; C73, §492; C97, §686; C24, 27, 31, 35, 39, §5719; C46, 50, 54, §366.6]

**366.7 Notice to public.** Notice of the passage, revision, or amendment of ordinances shall be given to the public in the following manner:

1. Upon passage by the council, ordinances shall be published once in the manner provided by section 618.14 in cities and towns in which a newspaper is published, but in cities and towns in which no newspaper is published notice of the passage of ordinances shall be given by posting same in three public places within the city or town limits.

2. When an ordinance is revised or amended, such revision or amendment shall be made in the form prescribed by section 366.2 and shall be published once in the manner provided by section 618.14 in cities and towns in which a newspaper is published but in cities and towns in which no newspaper is published notice of such revision or amendment shall

be given by posting same in three public places within the city or town limits.

3. Ordinances and revisions or amendments thereof shall take effect on the date of posting or publication or at a subsequent date provided by the council.

4. Publication of its existing ordinances in a bound or loose-leaf book or pamphlet by any municipal corporation shall be prima-facie evidence of the passage, content, and legal publication of such ordinances as of the date provided or mentioned therein. Copies of such published ordinances shall be kept available at the clerk's office for public inspection and use.

5. Publication by a municipal corporation of all its ordinances in the form of a bound or loose-leaf complete municipal code, not oftener than once each ten years, shall be deemed sufficient publication and in lieu of publication in a newspaper, provided that, the council shall by resolution direct the clerk to publish notice that it is proposing to adopt a municipal code, and that a public hearing on such adoption will be held. Said notice shall be published once each week for two consecutive weeks, as provided in section 618.14, with the date of last publication not less than five nor more than ten days prior to the date of hearing. Said notice shall specify:

a. The time and place that said public hearing will be held, at which hearing the council will consider arguments for or against the proposed adoption of the municipal code.

b. That copies of the proposed municipal code may be seen or may be secured at the office of the clerk.

After said public hearing, the council may, by resolution, adopt said proposed municipal code or may amend same. If the council proposes to amend said municipal code, before adoption a public hearing on the proposed amended code shall be held in the same manner as herein provided for the code originally proposed. Following the public hearings as herein provided, the council may pass an ordinance adopting said code in its original or amended form as the case may be. Said ordinance shall recite; (a) that pursuant to published notice, a public hearing or public hearings had been duly held, and the council had determined that the proposed municipal code, in its original or amended form, as the case may be, is adopted as a municipal code of the ordinances of the municipal corporation; (b) that an official copy of the municipal code as adopted, including a certificate by the clerk as to its adoption and the effective date, is on file at the office of the city clerk; (c) copies of such bound or loose-leaf codes shall be kept available at the clerk's office for public inspection and for sale at cost to the public; (d) a copy of such municipal code shall be furnished to the state law library, the municipal library, to all newspapers of general circulation published in the municipality and all commercial radio stations situated in the municipality.

6. All ordinances passed, revised or amended subsequent to the adoption of the municipal code shall be published once in the manner provided by section 618.14, and shall be made in the form prescribed by section 366.2.

7. The procedure set forth in subsection 5 of this section shall also apply to the adoption by reference of a complete milk, traffic, fire prevention, building, plumbing and electrical code and all other complete codes relating to the construction, maintenance and operation of buildings. [R60,§1133; C73,§492; C97,§§686, 687; C24, 27, 31, 35,§§5720, 5721, 5721-a1; C39, §§5720, 5721, 5721.1; C46, 50,§§366.7-366.9; C54, §366.7; 56GA, ch 190,§1; ch 191,§§1, 2]

Fire escapes, ch 103; housing law, ch 413; zoning, ch 414  
See §368.9

**366.8 and 366.9.** Repealed by 54GA, ch 148,§3. See §366.7.

**366.10** Repealed by 54GA, ch 147,§35. See §368A.3.

**366.11 Cost of publishing.** The compensation allowed each newspaper for such publication shall not exceed three-fourths of the legal fee provided by statute for the publication of legal notices. [S13,§687-b; C24, 27, 31, 35, 39, §5723; C46, 50, 54,§366.11]

Fees for publication, §618.11

**366.12 Certification to county recorder.** Immediately after the passage by the city council of an ordinance or resolution establishing any restricted district, building lines, or fire limits, the city clerk shall certify such ordinance or resolution and plat of said district to the county recorder of the county in which the city is situated. [C24, 27, 31, 35, 39,§5724; C46, 50, 54, §366.12]

Referred to in §366.14

**366.13 Recordation.** Whenever such ordinance or resolution shall have been certified to the county recorder, then he shall record the same in the miscellaneous record or other book provided for special records. [C24, 27, 31, 35, 39,§5725; C46, 50, 54,§366.13]

**366.14 Index.** The county recorder shall index, in the appropriate records, the said ordinance or resolution and the plat filed in accordance with the provisions of section 366.12. [C24, 27, 31, 35, 39,§5726; C46, 50, 54, §366.14]

**366.15 Fees.** In no case shall it be the duty of the county recorder to make the records herein designated except and until the usual and customary fees for such work have been paid into his hands. [C24, 27, 31, 35, 39,§5727; C46, 50, 54,§366.15]

## CHAPTER 367

### MAYORS' AND POLICE COURTS

Applicable to all cities and towns

367.1 Police court.  
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367.14 Marshal as bailiff.  
367.15 Mayor's fees.

**367.1 Police court.** In cities of fifteen thousand or more population wherein there is no municipal or superior court there shall be a police court which in all criminal actions shall have the jurisdiction of a justice of the peace court and a mayor's court. It shall be a court of record, and have a seal to be provided by the council, with the name of the state in the center and the style of the court around the margin. It shall be held in suitable rooms to be provided by the city, and shall always be open for business. In cities having a population of less than fifteen thousand the council may by ordinance provide for the establishment of a police court. [R60,§§1116, 1117, 1119; C73,§§543, 545; C97,§688; SS15,§1056-a26; C24, 27, 31, 35, 39,§§5728, 6531; C46, 50,§§367.1, 416.55; C54,§367.1]

**367.2 Clerk not to act as counsel.** The clerk of the police court shall not be in any way

concerned as counsel or agent in the prosecution or defense of any person before such court. [R60,§1116; C73,§542; C97,§689; C24, 27, 31, 35, 39,§5729; C46, 50, 54,§367.2]

**367.3 Jurors.** Provisions shall be made by ordinance for selecting, summoning, and impaneling jurors in the police court, who shall have the qualifications of jurors as provided by law, and for all other matters touching said court that may tend to make it efficient. [R60, §1116, 1119; C73,§§542, 545; C97,§690; C24, 27, 31, 35, 39,§5730; C46, 50, 54,§367.3]

Qualifications, §607.1

**367.4 Jurisdiction of courts.** In cities having a superior, municipal, or police court, such court shall have exclusive jurisdiction of all actions or prosecutions for violation of city ordinances. [C97,§691; S13,§691; C24, 27, 31, 35, 39,§5731; C46, 50, 54,§367.4]

40GA, ch 257,§2, editorially divided

**367.5 Jurisdiction of mayor.** In other cities and towns, the mayor shall have exclusive jurisdiction of all actions or prosecutions for violations of city or town ordinances, and shall have, in criminal matters, the jurisdiction of a justice of the peace, coextensive with the county, and in civil cases, the jurisdiction within the city or town that a justice of the peace has within the township. [R60, §§1085, 1102, 1105; C73, §506; C97, §691; S13, §691; C24, 27, 31, 35, 39, §5732; C46, 50, 54, §367.5]

**367.6 Jurisdiction of justice of peace.** If the mayor or judge of the superior, municipal, or police court is absent or unable to act, the nearest justice of the peace shall have jurisdiction and hold court in criminal cases, and receive the statutory fees, to be paid by the city or county as the case may be. [C97, §691; S13, §691; C24, 27, 31, 35, 39, §5733; C46, 50, 54, §367.6]

Justice fees, §601.128

**367.7 Transfer of case—fees.** When an information is filed before the mayor for the violation of an ordinance of the city or town, he may, upon his own motion only, at any time before trial, transfer the case for further proceedings to any justice of the peace court within such city or town, and such justice of the peace shall have jurisdiction thereof to the same extent and with the same power as the mayor. The fees taxable after the transfer of the case, fixed by ordinance, shall be paid by the city or town to such justice. [R60, §1105; C73, §544; C97, §691; S13, §691; C24, 27, 31, 35, 39, §5734; C46, 50, 54, §367.7]

**367.8 Procedure — appeal — judicial notice.** The proceedings before a mayor or a police court shall be, as far as applicable, in accordance with the law regulating similar proceedings before a justice of the peace, unless otherwise provided; but there shall be no change of venue in actions or prosecutions under ordinances, and the trial shall be by the court without a jury, except on appeal; appeals and writs of error shall be taken from the mayor or the police court in the same time and manner, and subject to the same restrictions. If a city or town is situated in two or more counties, the appeal or writ of error shall be taken to or in the district court of the county in which the mayor's court or police court is held. On the hearing of such appeal, or writ of error, the court shall take judicial notice of the ordinances of the city or town. [R60, §§1085, 1102, 1105, 1120, 5105; C73, §§506, 546, 4707; C97, §692; C24, 27, 31, 35, 39, §5735; C46, 50, 54, §367.8]

Civil procedure in general, ch 601  
Criminal procedure in general, ch 754 et seq.

**367.9 Fines recovered by action.** Fines and penalties may in all cases, and in addition to any other mode provided, be recovered by action before a justice of the peace or other court of competent jurisdiction, in the name of the proper municipal corporation, for its use. In

any such action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be, the facts of the alleged violation. [R60, §1074; C73, §483; C97, §693; C24, 27, 31, 35, 39, §5736; C46, 50, 54, §367.9]

**367.10 Commitment.** Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may, by the court having jurisdiction of the case, be committed to jail until the fine and costs are paid, not to exceed thirty days. [R60, §1100; C73, §484; C97, §694; C24, 27, 31, 35, 39, §5737; C46, 50, 54, §367.10]

**367.11 Police judge.** The police court shall be presided over by a police judge, who shall be appointed by the council. The council may, in lieu of such appointment, provide by ordinance for the election of the police judge by the entire electorate of the city. The council may by ordinance empower the police judge to appoint a clerk of the police court, who shall be subject to removal by said judge. [R60, §1116; C73, §542; C97, §656; C24, §5637; C31, 35, §§5633-d1, 5637; C39, §§5633.1, 5637; C46, 50, §§363.12, 363.16; C54, §367.11]

**367.12 Vacancy.** During any vacancy in the office of police judge the mayor shall hold police court. [R60, §1121; C73, §547; C97, §658; S13, §658; C24, 27, 31, 35, 39, §5639(7); C46, 50, §363.18(7); C54, §367.12]

**367.13 Fees.** Police judges in criminal cases under ordinances or state laws shall receive the same fees as justices of the peace receive in similar cases. In criminal cases under ordinance, said fees shall be payable from the municipal treasury, and in criminal cases under state law, said fees shall be payable from the county treasury. The council may by ordinance provide a salary in lieu of all fees, and thereafter all fees collected shall be paid into the municipal treasury. [R60, §1118; C73, §544; C97, §671; C24, 27, 31, 35, 39, §5666; C46, 50, §363.40; C54, §367.13]

**367.14 Marshal as bailiff.** The marshal or his deputy shall attend upon the sittings of the mayor's and police courts and perform the duties of bailiff therein. The fees for such services shall be the same as constables receive for similar services in justice of the peace court. Fees shall be payable from the municipal treasury for services in connection with criminal cases under ordinances, and from the county treasury for services in connection with criminal cases under the state law. The council may by ordinance provide a salary in lieu of all fees, and thereafter all fees collected shall be paid into the municipal treasury. [R60, §§1086, 1104, 1107; C73, §§515, 533, 536, 537; C97, §§653, 662, 663, 673, 675; C24, 27, 31, 35, 39, §§5657, 5668, 5670; C46, 50, §§363.30, 363.42, 363.44; C54, §367.14]

**367.15 Mayor's fees.** For holding a mayor's or police court, or discharging the duties of a justice of the peace, the mayor shall receive in addition to his regular salary as mayor,

such fees or salary as is by law or ordinance provided for officers performing such duties. [R60, §§1091, 1121; C73, §§519, 547; C97, §670; C24, 27, 31, 35, 39, §5665; C46, 50, §363.39; C54, §367.15]

## CHAPTER 368

### GENERAL POWERS OF MUNICIPAL CORPORATIONS

Applicable to all cities and towns

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#### JOINT SWIMMING POOLS OR AIRPORTS

368.49 Two or more cities and towns—joint action.

**368.1 Applicability.** This chapter is applicable to all municipal corporations and to all forms of government thereof. [S13, §§1056-a19, 1056-a25; SS15, §§1056-b2, 1056-b9; C24, 27, 31, 35, 39, §§6564, 6567, 6678, 6679; C46, 50, §§416.88, 416.92, 419.64, 419.65; C54, §368.1]

#### **368.2 Bodies corporate — name — authority.**

Cities and towns are bodies politic and corporate, under such name and style as may be selected at the time of their organization, with the authority vested in the mayor and a common council, together with such officers as are in this title mentioned or may be created under its authority, and shall have the general powers and privileges granted, and such others as are incident to municipal corporations of like character, not inconsistent with the statutes of the state, for the protection of their property and inhabitants, and the preservation of peace and good order therein, and they may sue and be sued, contract and be contracted with, acquire, lease, and hold real and personal property, and have a common seal. [C51, §664; R60, §§1047, 1056, 1057, 1090, 1094, 1095; C73, §§454-456, 517, 523, 524;

C97, §695; C24, 27, 31, 35, 39, §5738; C46, 50, §368.1; C54, §368.2]

**368.3 Nuisances.** They shall have power to abate, restrain, or prohibit any nuisance, public or private, and provide for the assessment of the cost thereof against the property. Said power shall include the authority to abate all nuisances as defined in section 657.1 and in section 657.2 or in any other statutory enumeration. [R60, §§1057, 1096; C73, §§456, 526; C97, §696; S13, §§696, 713-b; C24, 27, 31, 35, 39, §5739; C46, 50, §368.2; C54, §368.3]

Nuisances in general, ch 657

**368.4 Collection of assessed costs.** Wherever provision is made in this Code that municipal corporations shall have power to do or cause to be done certain acts and assess the cost thereof against the property, but fails to specify the manner of collection, the clerk of such municipal corporations shall certify said cost to the county auditor and it shall then be collected with, and in the same manner as, general property taxes. [C54, §368.4]

**368.5 Power to regulate.** They shall have power to regulate:

1. *Slaughterhouses.* The operation of packing houses and slaughterhouses, renderies, tallow chandleries, soap factories, bone factories, tanneries, and manufactories of fertilizers and chemicals.

State regulation, chs 167, 170

2. *Parades.* Parades, by providing that before any association, company, society, order, exhibition, or aggregation of persons shall parade or march upon their streets, they shall first obtain from the mayor a permit, to be issued without charge, which shall state the time, manner, and condition of such parade or march.

1. [R60, §§1057, 1096; C73, §456; C97, §696; S13, §696; C24, 27, 31, 35, 39, §5742; C46, 50, §368.5]

2. [R60, §1057; C73, §456; C97, §705; C24, 27, 31, 35, 39, §5742; C46, 50, 54, §368.5]

**368.6 Power to regulate and license.** They shall have power to regulate and license:

1. *Hotels.* Hotels, restaurants, and eating houses.

State regulation, ch 170

2. *Engineers.* Engineers of stationary engines, and provide for their examination.

3. *Peddlers.* Peddlers, house movers, billposters, itinerant doctors, itinerant physicians and surgeons, junk dealers, scavengers, pawnbrokers, and persons receiving actual possession of personal property as security for loans, with or without a mortgage or bill of sale thereon.

State regulation of itinerant physicians, §147.75 et seq.  
State regulation of chattel loans, ch 536

4. *Billboards.* The construction, location, and maintenance of billboards.

State regulation, §319.10 et seq.

5. *Sales.* Sales of auctioneers, bankrupt and dollar stores, and the like, and those of transient merchants, and to define by ordinance who shall be considered transient merchants; but the exercise of such power shall not interfere with sales made by sheriffs, constables, coroners, marshals, executors, guardians, assignees of insolvent debtors or bankrupts, or any other person required by law to sell real or personal property.

1. [R60, §1063; C73, §463; C97, §700; S13, §700; C24, 27, 31, 35, 39, §5743; C46, 50, 54, §368.6]

2. [S13, §700; C24, 27, 31, 35, 39, §5743; C46, 50, 54, §368.6]

3. [C73, §462; C97, §700; S13, §700; C24, 27, 31, 35, 39, §5743; C46, 50, 54, §368.6]

4. [S13, §700-b; C24, 27, 31, 35, 39, §5743; C46, 50, 54, §368.6]

5. [R60, §1063; C73, §§462, 463; C97, §700; S13, §700; C24, 27, 31, 35, 39, §5743; C46, 50, 54, §368.6]

Referred to in §§81A.2, 546A.1, 546A.5

**368.7 Power to restrain and prohibit.** They shall have power to restrain and prohibit:

1. *Barbed wire.* The use of barbed wire to inclose land within the corporation, and provide for the removal of such wire.

2. *Tainted provisions.* The sale of tainted or

unsound meat or other provisions, and to provide for the immediate seizure and destruction thereof.

3. *Refuse, junk.* The deposit and removal of refuse, junk, offensive materials and substances and those engendering offensive odors and sights, so as to protect the public against the same.

4. *Pawnbrokers.* The purchasing or receiving by pawnbrokers and junk or second-hand dealers, of any property from minors, without the written consent of their parents or guardians, and to provide for the examination of the premises of such persons for the purpose of discovering stolen property.

5. *Animals running at large.* The running at large of cattle, horses, swine, sheep, and other animals, or fowl, within the limits of the corporation, and to authorize the distraining, impounding, and sale of the same, for the penalty incurred and the costs of the proceeding.

6. *Begging.* Begging in and on the streets and other public places.

7. *Riots.* Riots, noise, disturbance, and disorderly assemblies, and to punish any person engaged in riotous, noisy, or disorderly conduct.

8. *Gambling.* All gambling games or devices; to authorize the destruction of all instruments or devices used for the purpose of gaming or gambling.

9. *Gambling houses.* Gambling houses, bawdy houses, disorderly houses, houses of ill-fame, roadhouses where lewdness is carried on, opium or hop joints or places resorted to for the use of opium or hasheesh, and places where intoxicating liquor is illegally kept, sold, or given away, and to punish the keepers and inmates thereof, and persons resorting thereto, and persons who, knowing the character or reputation of such places, transport others to or from any of the above described places.

1. [C97, §741; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

2. [R60, §§1057, 1096; C73, §§456, 526; C97, §696; S13, §696; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

3. [R60, §1057; C73, §456; C97, §696; S13, §696; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

4. [C97, §701; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

5. [R60, §1061; C73, §459; C97, §706; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

6. [C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

7. [R60, §1057; C73, §456; C97, §705; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

8. [R60, §1057; C73, §456; C97, §702; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

9. [R60, §1057; C73, §456; C97, §704; S13, §704; C24, 27, 31, 35, 39, §5744; C46, 50, 54, §368.7]

**368.8 Power to regulate, license, or prohibit.** They shall have power to limit the number of, regulate, license, or prohibit:



1. *Public dance halls.* Public dance halls, skating rinks, swimming pools, fortune tellers, palmists, and clairvoyants. Any place open to the public where dancing is allowed shall, under this section, be considered a public dance hall notwithstanding the fact that food is served and a restaurant license held under section 170.2.

2. *Billiard halls.* Billiard halls, billiard tables, pool tables, and all other tables kept for hire, bowling alleys, and shooting galleries or places.

3. *Circuses.* Circuses, menageries, theaters, theatrical exhibitions, shows, and exhibitions of all kinds; but lectures on scientific, historical, or literary subjects shall not come within this provision.

4. *Dogs.* The running at large of dogs within their limits and to provide for the disposal thereof when found at large contrary to and in violation of the provisions of any ordinance passed pursuant to the power herein granted. All persons owning or harboring a dog, may be required to pay a city license thereon; except that all kennel dogs which are not permitted to run at large shall not be required to be licensed by the city. Kennel dogs are defined as those dogs kept or raised solely for the bona fide purpose of sale and which are kept under constant restraint.

They, in lieu of the establishment and maintenance of pounds and the employment of dog wardens or dog collectors, may contract with any incorporated society or association for the prevention of cruelty to animals, for the collection and protection of dogs, for the maintenance of a shelter or pound for unlicensed or untagged dogs, and for lost, strayed, or homeless dogs, for the destruction or other disposition of seized dogs not redeemed as provided by law or ordinance, for the disposal of dead animals and to assist in the collection of licenses upon dogs. They shall incorporate in the contract the manner in which the work shall be done and in which payments are to be made by them, thereunder, and they may also direct the disposition of all dogs seized as provided by law, and shall provide by ordinance for the cost of care or disposition.

They shall have the power to anticipate the total cost of the services, facilities and requirements so to be furnished by any such society or association and may establish a fund into which all collections and receipts herein contemplated shall be deposited and warrants drawn thereon to defray all expenses or to comply with any such contract. All such contracts shall be approved by them.

5. *Sales at auction.* Sales at auction in streets, highways, avenues, alleys, and public places.

6. *Gasoline curb pumps.* Gasoline curb pumps in streets, highways, avenues, alleys and public places.

1. [S13,§700-a; C24, 27, 31, 35, 39,§5745; C46, 50, 54,§368.8]

2. [R60,§1057; C73,§456; C97,§702; C24, 27, 31, 35, 39,§5745; C46, 50, 54,§368.8]

3. [R60,§1062; C73,§460; C97,§703; C24, 27, 31, 35, 39,§5745; C46, 50, 54,§368.8]

4. [R60,§1061; C73,§459; C97,§707; C24, 27, 31, 35, 39,§5745; C46, 50, 54,§368.8]

5. [R60,§1063; C73,§463; C97,§708; C24, 27, 31, 35, 39,§5745; C46, 50, 54,§368.8]

6. [C31, 35, 39,§5745; C46, 50, 54,§368.8]

**368.9 Buildings.** They shall have power to adopt a building code, and they may provide for the regulation and inspection of all construction, major repairs and remodeling, and the installation of electrical, heating, ventilating, air conditioning, and plumbing fixtures, apparatus, and equipment. They shall have power to provide for the removal, repair, or dismantling of any dangerous building or structure and to assess the cost thereof against the property. They shall have power to require the numbering of buildings and, in the event said requirement is not complied with, to cause the same to be done and assess the cost thereof against the property. [R60,§1058; C73,§457; C97,§§709-712; S13,§§709-a, 711, 737; SS15,§711-a; C24, 27, 31, 35, 39,§§5753, 5759-5761, 5775-5777; C46, 50,§§368.18, 368.19, 368.22-368.24, 368.44, 368.46; C54,§368.9]

Fire escapes, ch 103; housing law, ch 413; zoning law, ch 414

**368.10 Building lines.** They shall have power to establish by ordinance building lines on private or public property for the protection of public health or safety, and to prohibit any building or other structure from being erected between such line and the street or highway line, upon the following procedure:

1. Preliminary approval of a proposed ordinance by the council establishing the proposed building lines.

2. Publication of said proposed ordinance once each week for two consecutive weeks in the manner provided by section 618.14 and the time and place of a public hearing on same.

3. At such hearing the proposed ordinance may be amended but it shall not be adopted until the next regular council meeting.

4. If such ordinance is adopted the municipal corporation shall compensate owners of property for any loss of use or enjoyment caused thereby.

5. The amount of compensation to be paid by the municipal corporation shall be determined by agreement with the property owner, or in the manner provided by chapter 472. [C24, 27, 31, 35, 39,§§5757, 5758; C46, 50,§§368.20, 368.21; C54,§368.10]

Certification of building-line ordinance, §366.12 et seq.

**368.11 Fire protection.** They shall have power to provide for the protection of life and property against fire and to establish, house, equip, staff, uniform and maintain a fire department. They may establish fire limits. They may consistent with code standards promulgated by nationally recognized fire

prevention agencies regulate the storage, handling, use, and transportation of all inflammables, combustibles, and explosives, within the corporate limits, and inspect for and abate fire hazards. They may provide conditions upon which the fire department will answer calls outside the corporate limits and the corporation shall have the same governmental immunity as when operating within the corporate limits. Firemen operating equipment on calls outside the corporate limits shall be entitled to the benefits of chapters 410 or 411 when otherwise qualified. [R60, §§1057, 1058, 1096; C73, §§456, 457, 525; C97, §§711-716; S13, §711; C24, 27, §§5760, 5762-5766; C31, 35, §§5760, 5762-5766, 6600-c1; C39, §§5760, 5762-5766, 5766.1, 6600.1; C46, 50, §§368.23, 368.25-368.30, 416.129; C54, §368.11]

Certification of fire-limit ordinance, §366.12 et seq.

**368.12 Joint facilities.** They shall have the power, when authorized by a majority vote of the electors thereof at a regular or special election called for that purpose, upon notice as required by law, to own, use, or operate jointly with any other city, town or township, fire apparatus, equipment, or facilities and to provide for the purchase, rental, or maintenance of such equipment, facilities, or services. [S13, §716-c; C24, 27, §5767; C31, 35, §§5766-c1, 5767; C39, §§5766.2, 5767; C46, 50, §§368.31, 368.33; C54, §368.12]

**368.13 Short courses.** Municipal corporations may require the attendance and pay the expenses of firemen, policemen, and other employees at conferences and short courses designed to increase the efficiency of such personnel. [C39, §5766.3; C46, 50, §368.32; C54, §368.13]

**368.14 Volunteer firemen—insurance.** Municipal corporations maintaining a volunteer fire department may insure the members thereof against death or injury. Dependents of such volunteer firemen shall be the beneficiaries. [C35, §5767-f1; C39, §5767.1; C46, 50, §368.34; C54, §368.14]

**368.15 Police protection—jail—use of county jail.** They shall provide for the preservation of the peace and enforcement of law within the corporate limits, and may establish, house, equip, staff, uniform and maintain a police department, of which the marshal shall be chief. They shall have power to establish, erect, and maintain a jail, and such number of station houses as circumstances require. They shall have power, when authorized by a majority vote of the electors thereof, to maintain a joint police department with any contiguous municipal corporation. Policemen and police matrons performing duties required by the law outside the corporate limits of cities and towns, shall be entitled to the benefits of chapter 410 or 411 when otherwise qualified. Any city or town shall have the right to use the jail of the county for the confinement of such persons as may be subject to imprisonment under the ordi-

nances of such city or town, but it shall pay the county the cost of keeping such prisoners. [R60, §§1086, 1104, 1116; C73, §§485, 515, 533, 536, 542; C97, §§662, 668, 735, 5660; S13, §§652, 668; C24, 27, 31, §§5657, 5772; C35, §§5657, 5772, 6579-f1; C39, §§5657, 5772, 6579.1; C46, 50, §§363.30, 368.40, 416.107; C54, §368.15; 57GA, ch 186, §1]

**368.16 Fire department and police department bonds.** Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of equipping the fire and police departments.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property of said city or town, as shown by the last preceding assessment roll. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [C54, §368.16]

**368.17 Plumbing.** All cities having a population of six thousand or more shall, and other cities and towns may, by ordinance, adopt a set of plumbing regulations not inconsistent with state law or state administrative regulations, and provide for the inspection of plumbing installations. They shall have authority to examine and license plumbers, but such licenses shall be valid only in the municipal corporations where issued, provided, however, that any such license issuing authority may issue a license without examination to any plumber holding a license from another municipal corporation recognized by such authority as having similar licensing standards. [C97, §737; S13, §§737, 737-a; C24, 27, 31, 35, 39, §§5775-5783; C46, 50, §§368.44-368.52; C54, §368.17]

**368.18 Municipal buildings and property.**

1. They shall have power by a three-fourths majority vote of the council to acquire, erect, or purchase buildings and building sites to the extent necessary to house and carry on authorized governmental functions or purposes of the municipal corporation.

2. They shall have power to maintain and keep in repair all municipally owned buildings and property. [SS15, §§741-d, 741-g; C24, 27, 31, 35, 39, §5773; C46, §§368.41, 368.42; C50, §§368.42, 368.56; C54, §368.18]

**368.19 Joint city and county buildings.** A city or town in which a county seat is located and such county may contract one with the other for the joint purchase, acquisition, ownership and control of real and other property suitable as the site of a building or buildings for use and occupancy by such city or town and such county jointly, and any such county or city or town owning a site or any interest therein, may, upon such terms as shall appear fair and just to the board of supervisors of such county and to the council or other governing body of such city or town, contract with reference to the joint acquisition, ownership, control, improvement, use and occupancy of such property, and with reference to the construction, use and occupancy of a building or buildings thereon. Such contract shall set forth the amount of money to be contributed by the county and by the city or town toward the acquisition of such site and the improvement thereof, or the proportion of their respective contributions and the purpose or purposes for which the building or buildings to be erected thereon are to be used. Such contract may provide for the amount of money to be contributed annually by the county and by the city or town for the upkeep, maintenance, and operation of such property, and the building or buildings thereon, or it may provide for the respective proportions of such expense which the county and the city or town shall pay, and may provide for an adjustment at stated periods of the amounts or proportions to be so paid. Such contract may specify the part or parts of such property and building or buildings to be used and occupied by the county and by the city or town. All such contracts shall be made on behalf of the county only when approved by resolution of the board of supervisors thereof and on behalf of the city or town when approved by ordinance adopted by the council or other governing body of such city or town, and when made shall be binding upon such county and city or town during the period specified in such contract unless modified or abrogated by mutual consent. [C50,§368.57; C54,§368.19]

Referred to in §§368.22, 368.23, 368.49

**368.20 Bonds issued.** When such county and such city or town have agreed upon their respective portions or proportions of the cost of any such building or buildings, including the site or sites therefor, they may, for the purpose of paying their respective portions of such cost and for the purpose of equipping the portions of the building or buildings to be used and occupied by them, issue their bonds as hereinafter permitted; provided, no such bonds shall be issued by such county or city or town unless and until the proposition to issue same shall have been approved by at least a majority of the votes cast for and against the proposition at an election called and held as hereinafter provided. Such proposition may be submitted at a general, regular, or special election when ordered pursuant to a resolution of the board of supervisors of such county and

of the council or other governing body of the city or town. Notice of such election setting forth the proposition as it is to be voted upon shall be given by publication once each week for at least three consecutive weeks in a newspaper having general circulation in the county, and if the propositions of issuing bonds by the county and also by the city or town are submitted on the same date of election, then, if either or both of the elections be unfavorable the proposition may be submitted at a subsequent election or elections. To the extent not otherwise herein provided the general election laws shall be applicable to an election whereat such proposition is submitted. [C50,§368.58; C54,§368.20]

Referred to in §§368.21, 368.22, 368.23, 368.49  
See §75.1

**368.21 Interest on bonds—tax levy.** All such bonds issued pursuant to such election or elections may bear interest at a rate not exceeding four percent per annum payable semiannually and the principal thereof shall be scheduled to mature in not more than twenty years from the date of such bonds. Whenever a county or city or town has issued bonds under the provisions of section 368.20 there shall be thereafter annually levied on all of the taxable property in the county, or in the city or town, a tax sufficient to pay the interest on and principal of said bonds as the same will become due, and each such county and city or town is further authorized to levy taxes sufficient to pay their respective portions of the cost of operating, maintaining and keeping insured the building or buildings acquired or constructed under the provisions hereof. [C50, §368.59; C54,§368.21]

Referred to in §§368.22, 368.23, 368.49

**368.22 Contracts—conditions.** All contracts for the construction of any building or buildings under the provisions of sections 368.19 to 368.21, inclusive, which involve the expenditure of five thousand dollars or more shall be entered into pursuant to advertisement for bids in such manner as may be approved and authorized by both the board of supervisors of the county and the council or other governing body of the city or town. Any county and any city or town may apply for and accept federal aid in the construction of any building or buildings under the provisions of said sections, subject to such conditions and stipulations as may be imposed in connection with such federal aid and as may be approved by the board of supervisors for the county, and by the council or other governing body of the city or town. [C50,§368.60; C54,§368.22]

Referred to in §§368.23, 368.49

**368.23 Rule of construction.** Sections 368.19 to 368.22, inclusive, and this section shall be construed as a complete and independent law for providing joint county and municipal buildings and for the issuance of bonds in connection therewith. [C50,§368.61; C54,§368.23]

**368.24 Garbage disposal.** They shall have power to provide for the collection and disposal of garbage and refuse and to establish, erect or purchase garbage and refuse disposal plants and grounds and equip, operate and maintain same. [SS15, §§696-b, 1056-a61; C24, 27, 31, 35, 39, §§5746, 6592; C46, 50, §§368.9, 416.120; C54, §368.24]

**368.25 Milk inspection.** They shall have power to provide for the inspection of all milk or milk products sold for human consumption within the corporate limits, and to compel the tuberculin and other tests by an accredited veterinarian for dairy cattle supplying such milk. They may provide for the pasteurization and sanitary handling of milk and milk products sold for human consumption. However, nothing in this section shall be construed as giving municipal corporations power to provide regulations or standards in conflict with United States Public Health Service Recommended Milk Ordinance and Code, 1953 Edition. [C24, 27, 31, 35, 39, §§5747-5749; C46, 50, §§368.10-368.12; C54, §368.25; 56GA, ch 110, §2]

**368.26 Drains and sewers.**

1. They shall have power to provide drainage systems for flood and other surface waters and to regulate the connection of private drains thereto. They may order connections thereto from abutting private property when public health or safety requires such connection and in the event such orders are not complied with they may cause the work to be done and the cost thereof to be assessed against the property.

2. They shall have power to provide sewer systems and sewage disposal plants and to regulate sewer connections to private property. They may order sanitary toilet facilities to be installed by any property owner whose property abuts on a sewer line and the abandonment and removal of all other toilet facilities and in the event such order is not complied with may cause the work to be done and the cost to be assessed against the property, which assessment may be spread over a period not to exceed ten years.

3. Municipal corporations having a population of less than fifty thousand are hereby authorized to place the management of municipally owned sewage works in the hands of a board of trustees. The provisions of sections 397.27 to 397.35 shall be applicable to such boards. [R60, §1070; C73, §480; C97, §§698, 699, 737; S13, §737; C24, 27, 31, 35, 39, §§5751, 5752, 5775, 5784-5786, 6610; C46, 50, §§368.14, 368.15, 368.44, 368.53-368.55, 416.140; C54, §368.26]

Temporary veterans housing provisions, see 54GA, ch 151, §22, 55GA, ch 41, §2

**368.27 Certain proprietary functions.** They shall have power to establish and regulate markets, hospitals, public scales, wharves, docks, piers, basins, ferries, and an infirmary and to fix rates in connection therewith. [R60, §§1057, 1096, 1098, 1099, 1111; C73, §§456, 526, 528, 529, 538; C97, §§717-719, 733, 957; C27, 31,

35, §5768-a1; C24, 27, 31, 35, 39, §§5768-5771, 6742; C46, 50, §§368.35-368.39, 420.53; C54, §368.27]

Referred to in §420.166

**368.28 Burials, cemeteries — crematories.** They shall have power to regulate the burial of the dead; to provide places for the interment of the dead; to cause any body interred contrary to such regulations to be taken up and buried in accordance therewith; to exercise over all cemeteries within their limits, and those without their limits established by their authority, the powers conferred upon township trustees with reference to cemeteries; or they may, by ordinance, transfer such duties and the general management of such cemeteries to a board of trustees; and to authorize the establishment of crematories for the cremation of the dead, within or without the limits of such corporation and regulate the same. [R60, §1060; C73, §458; C97, §697; C24, 27, 31, 35, 39, §5750; C46, 50, §368.13; C54, §368.28]

See chapter 566A

**368.29 Cemetery bonds.** Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of acquiring and improving land within or without the corporate limits for cemetery purposes, including the construction, reconstruction or repair of receiving vaults, mausoleums and other cemetery facilities.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property of said city or town, as shown by the last preceding assessment roll. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [R60, §1060; C73, §458; C97, §697; C24, 27, 31, 35, 39, §5750; C46, 50, §368.13; C54, §368.29]

**368.30 Parks — recreation facilities.** They shall have power to establish, purchase, maintain, and regulate the use of swimming pools, parks and playgrounds, and to provide swimming pool, recreational and playground facilities, such as are necessary and proper in respect to the size and circumstances of the corporation. They shall have power to lease a portion of any park under their jurisdiction for such time or times not to exceed six consecutive months as the council shall deem

proper for the purpose of permitting the playing of baseball and other athletic games and contests, and under such conditions as to charging a fee for the use of same and for the attendance at same as the council shall determine. In municipal corporations having a park board or park commission such lease shall require the approval of such board or commission. [R60,§1111; C73,§538; C97,§957; C24, 27, 31, 35, 39,§6742; C46, 50,§§368.9, 420.53; C54,§368.30]

Referred to in §370.13  
Lease of city property, §368.35  
See also §389.1

**368.31 Destruction of weeds.** They shall have power by ordinance to provide for the cutting or destroying by the property owners, of all weeds, vines, brush or other growth which constitute a health, safety or fire hazard and to provide for such destruction by the city or town and for the assessment of the cost and expenses thereof to the property in the event of the owner's failure to comply after due notice. [C50,§368.62; C54,§368.31]

Also see §657.2

**368.32 Trees and shrubbery.** Municipal corporations shall have power by ordinance to assume charge, custody and control of all trees and shrubbery upon the public streets, and to plant, prune, care for, remove, and maintain all trees and shrubbery upon the public streets. They may by ordinance confer such charge, control, custody, and authority to plant, prune, care for, remove and maintain trees and shrubbery upon the park board or commission, and may further confer upon said park board or commission the exclusive charge, custody and control of all property outside the lot and property lines and inside the curb lines upon the public streets, and the right to determine the location of permanent sidewalks outside the lot or property lines and upon the public streets. They may similarly put responsibility for such maintenance upon the abutting property owner. [S13,§1056-a65; SS15,§§997-a,c; C24, 27, 31, 35, 39,§§6608, 6744, 6746; C46, 50,§§416.138, 420.55, 420.57; C54,§368.32]

**368.33 Snow, ice, and accumulations—removal.** It shall be the responsibility of the abutting property owner to promptly remove snow, ice, and accumulations from the sidewalks, but in the event that such snow, ice, or accumulations are permitted to remain on said sidewalks for more than a reasonable length of time, then the municipal corporation shall have power to remove them and to assess the actual cost thereof against the said property. [C97,§781; C24, 27, 31, 35, 39,§5950; C46, 50, §389.19; C54,§368.33]

**368.34 Notice to person liable over.** When any action is brought against a municipal corporation for personal injuries alleged to have been caused by its negligence, said municipal corporation may notify in writing any person or corporation by whose negligence it claims

the injury was caused. Said notice shall state the pendency of said action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that said municipal corporation believes that the person or corporation so notified is liable to it for any judgment rendered against said municipal corporation, and asking such person or corporation to appear and defend. Thereupon, any judgment obtained in such suit shall be conclusive in any action by the municipal corporation against any person or corporation so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the municipal corporation to the plaintiff in the first named action in consequence thereof, and as to the amount of the damage or injury occasioned thereby; and every such municipal corporation is hereby empowered to maintain an action against the person or corporation so notified to recover the amount of any such judgment together with all the expenses incurred by such municipal corporation in such suit. [C54,§368.34]

See §§363C.16 and 420.46

**368.35 Lease of municipal property.** Any municipal corporation may lease any municipal property which in the opinion of the council is not likely to be needed for municipal purposes within the term of the proposed lease, upon a two-thirds vote of the council. Provided, however, that when the period of such lease is for more than three years, the council shall cause a notice of the terms of the proposed lease to be published once in the manner provided by section 618.14, together with the date, time, and place of a public hearing at which the council will hear objectors against and proponents for the lease. If, after such hearing, the council is of the opinion that such lease is in the best interests of the public, it may, by a two-thirds vote in favor thereof, cause said lease to be executed. [S13,§1056-a47; C24, 27,§§6580, 6602; C31, 35,§§6580, 6602, 6679-cl; C39,§§6580, 6602, 6679.1; C46, 50, §§416.108, 416.131, 419.66; C54,§368.35]

Lease of park facilities, §368.30

**368.36 Purchase on execution.** Municipal corporations shall have power to acquire real estate, or any interest therein, as a purchaser at an execution sale, when judgment is entered in favor of the corporation, or when it has a lien thereon, or is otherwise interested therein. [C97,§§882, 1000; C24, 27, 31, 35, 39, §§6204, 6736; C46, 50,§§403.10, 420.47; C54,§368.36]

**368.37 Condemnation — power.** Municipal corporations shall have power to purchase or provide for the condemnation of, pay out of the general fund or the specific fund, as may be provided, enter upon and take any lands within or without the territorial limits of the corporation for such public purposes and as an incident to such other powers and duties conferred upon such corporations as make necessary or reasonable the acquisition of

such land by said municipal corporations. [R60, §1064; C73, §§464, 470; C97, §§880, 881; S13, §§729-b, 741-s; SS15, §§741-d, 879-t, 880, 881; C24, 27, 31, 35, 39, §§6195-6197, 6740; C46, §§403.1-403.3; C50, §§391A.3, 403.1-403.3, 420.51; C54, §368.37]

**368.38 Condemnation—procedure.** The procedure for the condemnation of land by municipal corporations shall be that provided by chapter 472. [R60, §§1065, 1066; C73, §§469, 476, 477; C97, §§884, 1002; S13, §§729-c, 2024-b; C24, 27, 31, 35, 39, §§6203, 6741; C46, 50, §§403.9, 420.52; C54, §368.38]

**368.39 Disposal of lands and streets.** They shall have power to dispose of the title or interest of such corporation in any real estate, or any lien thereon, or sheriff's certificate therefor, owned or held by it, including any street or portion thereof vacated or discontinued, however acquired or held, in such manner and upon such terms as the council shall direct. However, where exercise of said power deprives or restricts the abutting property owners from free access to their property, so as to decrease the value thereof, the corporation shall be liable in damages therefor. Notice of any proposal to dispose of real property under the provisions of this section shall be given by publication, once each week for two consecutive weeks in the manner provided by section 618.14. The last of said publications shall appear not less than ten days before the meeting of the council at which said proposal is to be acted on. [C73, §470; C97, §§883, 1001, 1054; C24, 27, 31, 35, 39, §§6205, 6206, 6738, 6739; C46, 50, §§403.11, 403.12, 420.49, 420.50; C54, §368.39]

**368.40 Right of appeal.** Whenever the council of any municipal corporation enters into an agreement for the sale, lease, or disposal by other means of any municipal property, any elector of such municipal corporation shall have the right to appeal from the action of the council to the district court, within thirty days of the final action thereon by the council, on the ground that such agreement is not in the public interest. All such agreements shall be voidable pending the decision of the court. [C54, §368.40]

**368.41 Garages or sheds constructed.** Any city or town is authorized to construct and maintain garages or sheds for the storage, repair and servicing of city or town motor vehicles and other equipment. [C54, §368.41]

**368.42 General law applicable to special forms of government.** Except as otherwise specifically provided, all laws heretofore or hereafter enacted which by their terms are made applicable to municipal corporations generally, shall be applicable to municipal corporations organized and operating under the commission form of government and to municipal corporations organized and operating under the council-manager form of government, and all laws heretofore or hereafter enacted which by their terms are made applicable

to municipal corporations of a specified population shall be applicable to municipal corporations organized and operating under the commission form of government of like population and to municipal corporations organized and operating under the council-manager forms of government of like population. [C54, §368.42]

#### DRAINS AND SEWERS IN CERTAIN CITIES

**368.43 Authorization.** All cities in this state having a population of one hundred thousand or over, into or through which a stream flows which furnishes drainage for any city or town farther up the stream, and whose boundary lines join, shall have the power to construct, repair, and maintain the necessary drains and sewers to preserve and protect the health of such cities. [C24, 27, 31, 35, 39, §6583; C46, 50, §416.111; C54, §368.43]

Referred to in §368.46

**368.44 Resolution of necessity—notice—objections.** When any such city located as above indicated desires to construct, repair, and maintain any such sewer or drain, the council of such city shall by resolution determine the necessity for the construction of such drains and sewers, the character and extent thereof, the method of construction, the one or more kinds and size thereof, the property to be assessed therefor, the location and terminal points thereof, and cause twenty days notice of time when said resolution will be considered by such council for passage to be given by two publications in said city in some newspaper of general circulation published therein, the last of which shall be not less than two nor more than four weeks prior to the time fixed for the consideration of said resolution, at which time the owners of the property subject to assessment for the same may appear and make objection to the contemplated improvement, sewer, or drain, and the passage of said proposed resolution, at which hearing the same may be amended and passed or passed as proposed. [C24, 27, 31, 35, 39, §6584; C46, 50, §416.112; C54, §368.44]

Referred to in §368.46

**368.45 Sewer districts—assessments.** Such city shall have power to establish sewer districts to embrace all or such portions of said cities as in the judgment of the council thereof will receive special benefits from the construction, repair, improvement, or reconstruction of such sewer or sewers, to change the boundaries of same from time to time as may become in the judgment of such council just and equitable, and to assess so much of the cost of such drains and sewers against all lots or tracts of land contained in the sewer district within which such improvements are made as shall equal and be in proportion to the special benefits conferred by said improvement and not in excess thereof. In no case shall such assessment exceed twenty-five percent of the assessed value of said lots or tracts at the time of levy thereof. [C24, 27, 31, 35, 39, §6585; C46, 50, §416.113; C54, §368.45]

Referred to in §368.46

**368.46 Construction ordered.** Whenever the resolution of necessity hereinabove provided for has been adopted and the provisions of sections 368.43 to 368.45, inclusive, complied with, the council may by ordinance or resolution order the construction, repair, improvement, or reconstruction of said drain or sewer upon a yea and nay vote entered of record, which record shall also show whether such improvement was petitioned for or made on the motion of the council. [C24, 27, 31, 35, 39, §6586; C46, 50, §416.114; C54, §368.46]

#### FEDERAL PROJECTS

**368.47 Agreement with federal government.** Whenever the government of the United States, acting through its proper agencies or instrumentalities, will undertake, in whole or in part, the original construction or planning of improvements within or adjacent to the corporate boundaries of any municipal corporation or the repair or alteration of existing improvements within or adjacent to the corporate boundaries of any municipal corporation and which improvements will benefit said municipal corporation, or which could be constructed, repaired, or altered by said municipal corporation acting by itself, said municipal corporation, when authorized by a majority vote of the electors thereof at a general, regular or special election called for that purpose as provided in section 368.48, acting through its dock board in the case of improvements referred to in chapter 384 or acting through its council in the case of all other improvements, shall have the power to enter into and to perform such agreements with the United States as may be necessary to meet federal requirements, including the giving of indemnifying agreements to the United States holding and saving the United States free from damages due to the construction and subsequent maintenance of the improvements, including the granting of easements or other interests in real estate, and including the taking over, repair, and maintenance of the improvements. Any agreement or agreements with the United

States contemplated herein may be entered into by the municipal corporation as herein provided in advance of the adoption of a final plan for such improvements, such agreement to be effective if the plan of improvement is finally adopted. [57GA, ch 187, §1]

Referred to in §368.48

**368.48 Applicable provisions.** So far as applicable the initiation of proceedings, the calling of the election, notices and submission of question referred to in section 368.47 hereof shall be in the manner prescribed by chapter 407. [57GA, ch 187, §2]

Referred to in §368.47

#### JOINT SWIMMING POOLS OR AIRPORTS

**368.49 Two or more cities and towns—joint action.** Any two or more cities or towns may contract with each other for the joint purchase, acquisition, ownership and control of real or other property suitable as the site of a swimming pool or airport and for the joint construction, erection, improvement, operation and maintenance of a swimming pool or airport upon such site. Any or all of such cities and towns for the purpose of paying its respective share of the cost under such a contract may issue bonds and levy a tax sufficient to meet the principal and interest on such bonds or otherwise pay such costs, or both. For all such purposes, such cities and towns and the councils thereof, singly or collectively, shall have all of the powers, duties, rights, authority, responsibilities and follow the same rules and procedure as authorized, granted and prescribed in sections 368.19 to 368.22 inclusive, for cities or towns and counties and the governing bodies thereof, in the acquisition of a site, and the construction and operation of joint city and county buildings.

This section and those parts of sections 368.19 to 368.22 referred to herein shall be construed as a complete and independent law for providing joint swimming pools or airports for two or more cities or towns and for the issuance of bonds in connection therewith. [57GA, ch 188, §1]

CHAPTER 368A

GENERAL POWERS AND DUTIES OF MUNICIPAL OFFICERS

Applicable to all cities and towns  
Referred to in §11.31

THE ADMINISTRATION

- 368A.1 The council.
- 368A.2 The mayor.
- 368A.3 The clerk.
- 368A.4 The treasurer.

ACCOUNTS AND ACCOUNTING OFFICERS

- 368A.5 Accounts.
- 368A.6 Separate accounts.
- 368A.7 Accounting officers—reports.
- 368A.8 Penalty.
- 368A.9 Annual reports.
- 368A.10 Enforcement of duty.
- 368A.11 Publication.
- 368A.12 Report to state auditor.
- 368A.13 Report—by whom made.

THE ADMINISTRATION

**368A.1 The council.** In all municipal corporations, except when otherwise provided by laws relating to a specific form of municipal government, the council shall:

1. *First meeting.* After taking office, assemble, organize and appoint a clerk.
2. *Meetings.* Determine the time and place of holding their meetings, which at all times shall be open to the public, and in the absence of the mayor, mayor pro tempore, or clerk appoint a temporary chairman or clerk, as the case may be, from their own number, which appointment shall be entered of record. A majority of the whole number of members to which the corporation is entitled shall be necessary to constitute a quorum.
3. *Special meetings.* Hold special meetings when called by the mayor or a majority of the members of the council. Notice thereof shall be given personally or left at the usual place of residence of each member of the council, and a record of the services of notice made by the clerk.
4. *Rules—journal.* Determine the rules of their own proceedings, and cause to be kept a journal thereof which shall be open to public inspection.
5. *Attendance of members.* Have power to compel the attendance of absent members in such manner and under such penalties as they may prescribe.
6. *Seal.* Cause to be provided a seal in the center of which shall be the name of the city or town, and around the margin the words "city seal" or "town seal", as the case may be, which shall be affixed to all transcripts, orders, or certificates which it may be necessary or proper to authenticate.
7. *Appointments.* Have power to appoint an attorney, city clerk, engineer, health officer, and such other officers, assistants and employees as are provided by ordinance and are necessary for the proper and efficient conduct of

- 368A.14 Warrants—how drawn.
- 368A.15 List of warrants.
- 368A.16 Prohibitions as to warrants.

POLICE DEPARTMENT

- 368A.17 The marshal.
- 368A.18 Policemen.
- 368A.19 Police matrons.

OTHER OFFICERS

- 368A.20 Other officers.

GENERAL RESTRICTIONS ON MUNICIPAL OFFICERS

- 368A.21 Ineligibility—change of compensation.
- 368A.22 Interest in contracts.
- 368A.23 Free passes.
- 368A.24 Utilities boards—proceedings.

the affairs of the municipal corporation, and fix the terms of employment which may include vacations, retirement plans and sick leave.

8. *Election for filling vacancies.* Elect by ballot persons to fill vacancies in offices not filled by election by the council, and the person receiving a majority of the votes of the whole number of members shall be declared elected to fill the vacancy.

See Constitution of Iowa, Art. XI, §6

9. *Terms of officers.* Fix by ordinance the terms of service, which shall not exceed two years, of all officers whose terms are not prescribed by law.

10. *Powers of officers.* Prescribe by ordinance the powers to be exercised and duties performed by officers insofar as such powers and duties are not defined by law.

11. *Defend employees.* Have power to direct the city attorney, or to employ an attorney, to defend any municipal officer or employee in any cause of action arising out of or in the course of the performance of the duties of his office or employment and to pay the costs of such defense.

12. *Liability insurance.* Have power to purchase and pay the premiums on liability and property damage insurance covering and insuring municipal employees while in the performance of their duties and operating an automobile, truck, road grader, machinery or other vehicles owned or used by the municipal corporation, which insurance shall insure, cover, and protect against any liability the municipal employee or the municipal corporation may incur.

See §§821.495–821.497

13. *Surety bond.* Have power to purchase a surety bond running to the municipal corporation and covering all municipal officers and employees for the purpose of indemnifying the municipal corporation against any loss



occasioned through embezzlement of municipal funds by any municipal officer or employee.

1. [R60,§1093; C73,§522; C97,§651; S13,§651; SS15,§§1056-a26, 1056-b18; C24, 27, 31, 35, 39, §§5633, 5663, 6528, 6651; C46, 50, §§363.11, 363.36, 416.52, 419.37; C54, §368A.1]

2, 3. [R60, §§1081, 1093, 1095; C73, §§511, 522, 524; C97, §668; S13, §668; C24, 27, 31, 35, 39, §§5663, 6525; C46, 50, §§363.36, 416.49; C54, §368A.1]

4, 5. [R60, §1093; C73, §522; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, §368A.1]

6. [R60, §§1047, 1094; C73, §§454, 523; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, §368A.1]

7. [R60, §§1086, 1093, 1103, 1105, 1134; C73, §§493, 515, 522, 532, 534; C97, §§651, 668; S13, §§651, 668, 1056-a27; SS15, §§1056-a26, 1056-b18; C24, 27, 31, 35, 39, §§5663, 6528, 6529, 6533, 6651; C46, 50, §§363.11, 363.36, 416.52, 416.53, 416.57, 419.37; C54, §368A.1]

8. [R60, §1101; C73, §§514, 524; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, §368A.1]

9, 10. [R60, §1095; C73, §524; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, §368A.1]

11, 12, 13. [C54, §368A.1]

Council acts as local board of health, ch 137

**368A.2 The mayor.** In all municipal corporations, the mayor shall have the following powers and perform the following duties except when otherwise provided by laws relating to specific forms of municipal government.

1. *Executive officer—magistrate.* He shall be a conservator of the peace, and, within the limits of the corporation, shall have all the powers conferred upon sheriffs to suppress disorders. He shall be the chief executive officer thereof, and it shall be his duty to enforce all regulations and ordinances; he may, upon view, arrest anyone guilty of a violation thereof, or of any crime under the laws of the state, and shall, upon information supported by affidavit, issue process for the arrest of any person charged with violating any ordinance of the corporation; shall supervise the conduct of all corporate officers, examine into the grounds of complaint made against them, and cause all neglect or violation of duty to be corrected, or report the same to the proper tribunal, that they may be dealt with as provided by law.

2. *Office.* He shall keep an office at some convenient place in the city or town, to be provided by the council, and provide for the keeping of the corporate seal thereof.

3. *Signature.* He shall sign all commissions, licenses, and permits granted by the authority of the council, and do such other acts as by law or ordinance may require his signature or certificate.

4. *Treasurer—appointment.* He shall appoint the treasurer and such appointment shall be subject to approval by the council. However, in lieu of such appointment, the council

may, by ordinance, provide for the election at large of the treasurer at the regular municipal election.

5. *Other duties.* He shall also perform such other duties compatible with the nature of his office as the council may from time to time require.

6. *Presiding officer—vote.* He shall be the presiding officer of the council with the right to vote only in case of a tie.

7. *Mayor pro tem.* He shall designate one member of the council as mayor pro tempore subject to the approval of a majority of the council. Said mayor pro tempore shall be vice-president of the council and give bond in the sum of five hundred dollars. In case of absence or inability of the mayor to act he shall perform all of the duties of the mayor except as otherwise herein provided. If, at any meeting of the council, the mayor is not present, the mayor pro tempore shall act as presiding officer pro tempore and his acts as presiding officer pro tempore shall have the same force and legality as though performed by the duly elected mayor and he shall have the power to sign all resolutions and ordinances and execute all contracts or other documents finally adopted or approved at such meeting. The mayor pro tempore shall have no power to employ or discharge any officer or employee that the mayor has power to appoint or employ but said mayor pro tempore shall have the right to cast a vote as member of the council. [R60, §§1082, 1085, 1091, 1102, 1105, 1121; C73, §§506, 512, 518, 519, 531, 534, 537, 547; C97, §658; S13, §658; C24, 27, 31, 35, 39, §5639; C46, 50, §§363.18, 420.9–420.11, 420.13; C54, §368A.2]

Enforcement of motor vehicle law, §321.6

**368A.3 The clerk.** In all municipal corporations the clerk shall perform the following duties:

1. Attend all meetings of the council, but in no event have the right to vote on any question before it.

2. Make an accurate record of and have custody of all proceedings had, rules and ordinances adopted by the council, and the same shall at all times be open to the public.

3. Immediately following a regular or special meeting of the city or town council, the clerk shall prepare a condensed statement of the proceedings of said council, including the total expenditure from each municipal fund, and cause the same to be published in a newspaper of general circulation in the city or town. Said statement shall include a list of all claims allowed and a summary of all receipts, providing, however, that in cities having more than one hundred fifty thousand population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies thereof to the state library, the city library, the daily newspapers of the city and to persons

who shall apply therefor at the office of the city clerk, and such pamphlet shall constitute publication as required herein. Failure by the clerk to make such publication shall constitute a misdemeanor.

4. Supply the treasurer with a statement of all warrants issued after each meeting, giving the number and amounts of each.

5. Upon order of the council, destroy all records and papers, other than proceedings, ordinances, and instruments having to do with real estate and bond issues, which are more than ten years old, or offer such of same as may be of historical interest to a historical society or public library.

6. Perform such duties as may be required by the council.

7. Perform such duties in respect to elections and other matters as are required by law. [R60, §§1082, 1093; C73, §§512, 522; C97, §§659, 687-a; C24, 27, 31, 35, 39, §§5640, 5722; C46, 50, §§363.19, 366.10, 420.13; C54, §368A.3]

Clerk of local board of health, §187.3

**368A.4 The treasurer.** In all municipal corporations the treasurer shall perform the following duties:

1. He shall receive all money payable to the corporation, and disburse same only on warrants drawn and signed by the proper officer.

2. He shall make returns monthly, or oftener if required by the council, to the officer drawing such warrants, showing the warrants paid and the amount of principal and interest paid.

3. He shall make a written report under oath to the council at its first regular meeting in each month, showing the balance in each fund of the corporation at the end of the preceding month.

4. He shall not loan or in any manner use for private purposes any funds coming into his hands as treasurer.

5. He shall give bond in such sum as is fixed by the council and the cost of said bond, not to exceed one percent per annum, shall be paid by the municipal corporation. [R60, §§1103, 1106; C73, §§532, 535; C97, §660; S13, §§660-c,d; C24, 27, 31, §§5644-5654; C35, §§5644-5654-g1; C39, §§5644-5654.1, 5655; C46, 50, §§363.23-363.28, 420.24, 420.26-420.30; C54, §368A.4]

Referred to in §380.4  
Punishment for violations, §687.6

**ACCOUNTS AND ACCOUNTING OFFICERS**

**368A.5 Accounts.** All cities and towns shall establish and keep their accounts so the same shall exhibit a true and detailed statement of all public funds collected, received, and expended on account of such municipal corporation for any purpose whatever, by any and all public officers, employees or other persons. Such accounts shall show the receipt, use, and disposition of all public property, and the income, if any, derived therefrom, and of all sources of public income and the amount due

and received from each source. All receipts, vouchers, and other documents kept, or that may be required to be kept, necessary to prove the validity of every transaction and the identity of every person having any beneficial relation thereto, shall be filed and preserved in the office of the clerk or recorder as the case may be. [S13, §741-a; C24, 27, 31, 35, 39, §§5675; C46, 50, §363.49; C54, §368A.5]

**368A.6 Separate accounts.** Separate accounts shall be kept for every appropriation, showing date and manner of each payment made out of the funds provided by such appropriation, the name and address of each person or corporation to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, or undertaking, and for each public utility owned or operated by the said municipality.

Said separate accounts for each public utility shall show the true and entire cost of the said utility and the operation thereof, the amount collected annually by general or special taxation for the services rendered to the public, and the amount and character of the services rendered therefor, and the amount collected annually from private users, if any, for the services rendered to them, and the amount and character of the services rendered therefor. [S13, §741-b; C24, 27, 31, 35, 39, §§5676; C46, 50, §363.50; C54, §368A.6]

**368A.7 Accounting officers—reports.** All accounting officers of all boards, commissions, departments, and offices within the municipal corporation receiving or disbursing public funds shall file with the auditor or clerk within thirty days from the expiration of the municipal fiscal year, a detailed report in writing showing the receipts and disbursements of all funds in the department, board, or commission in question for said fiscal year. [S13, §1056-a7; C24, §5678; C27, 31, 35, §5676-a2; C39, §5676.2; C46, 50, §363.52; C54, §368A.7]

**368A.8 Penalty.** The failure to make the said report shall constitute a misdemeanor. [S13, §1056-a7; C24, §5678; C27, 31, 35, §5676-a3; C39, §5676.3; C46, 50, §363.53; C54, §368A.8]

Punishment, §687.7

**368A.9 Annual reports.** Each city or town shall, through its chief accounting and warrant issuing officer, make an annual public report which shall contain an accurate statement in summarized form of all collections made or receipts of the municipal corporation from all sources, all accounts due the public but not collected, and all expenditures for every purpose, and, except as otherwise provided by law, a statement in detail of the cost of operation and income of each public utility operated or owned by the municipality. It shall show in detail the entire public debt of the municipality and the amount of debt which it may under the law contract for the year in which the report is made. [S13, §§741-c, 1056-a7, 1056-

a33; C24, 27, 31, 35, 39, §§5677, 6581; C46, 50, §§363.54, 416.109; C54, §368A.9]

**368A.10 Enforcement of duty.** The auditor or clerk may institute legal proceedings to enforce the making of said reports. [S13, §1056-a7; C24, §5678; C27, 31, 35, §5677-a1; C39, §5677.1; C46, 50, §363.55; C54, §368A.10]

**368A.11 Publication.** The annual report shall be published in a newspaper of general circulation in the city or town except where there is no Iowa newspaper of general circulation in the town, said annual report may be posted in three public places. [S13, §§741-c, 1056-a33; C24, 27, 31, 35, 39, §§5679, 6581; C46, 50, §363.56, 416.109; C54, §368A.11]

Cost of publication, §618.11

**368A.12 Report to state auditor.** On or before the first secular day in February of each year, the official making the report for each city or town shall forward to the auditor of state a certified copy of the annual report. If such official fails to file his report with the auditor of state within the time prescribed, the auditor may send an examiner or examiners to make the report and the expenses thereof shall be charged against the delinquent city or town. [S13, §1056-a9; C24, 27, 31, 35, 39, §5680; C46, 50, §363.57; C54, §368A.12]

**368A.13 Report—by whom made.** It shall be the duty of the auditor or clerk who served in the capacity during the time covered by the report, to prepare and file the same, and if said official has retired from office, the council shall allow him such compensation for preparing the report as may be deemed proper. [S13, §1056-a9; C24, 27, 31, 35, 39, §5681; C46, 50, §363.58; C54, §368A.13]

**368A.14 Warrants—how drawn.** The auditor, clerk, or other officer of cities and towns whose duty it is to draw the warrants thereof, shall not draw any such warrant except upon the vote of the council. [C97, §900; C24, 27, 31, 35, 39, §5641; C46, 50, §363.20; C54, §368A.14]

**368A.15 List of warrants.** The officer drawing such warrants shall, on or before the tenth day of each month, furnish the council a sworn and complete list of all warrants, and the amount thereof, drawn by him during the preceding month, which list shall state on whose account and the object and purpose for which each warrant was drawn. [C97, §901; C24, 27, 31, 35, 39, §5642; C46, 50, §363.21; C54, §368A.15]

**368A.16 Prohibitions as to warrants.** All the provisions of sections 334.3, 334.4, 343.7 to 343.9, inclusive, shall be applicable to cities and towns, their officers and employees, subject only to such modifications as may be necessary therefor. [C97, §903; C24, 27, 31, 35, 39, §5643; C46, 50, §363.22; C54, §368A.16]

#### POLICE DEPARTMENT

**368A.17 The marshal.** The marshal shall be ex officio chief of police and may appoint

one or more deputy marshals, who may perform his duties, and who, in cities of fifteen thousand or more population shall be members of the police force. He shall have the supervision and general direction of the police force, and shall be the ministerial officer of the corporation. He shall suppress all riots, disturbances, and breaches of the peace, arrest all disorderly persons in the city or town and all persons committing any offense against the ordinances thereof, and forthwith bring such persons before the proper court for examination or trial. He shall pursue and arrest any person fleeing from justice, and shall diligently enforce all laws, ordinances, and regulations for the preservation of the public welfare and good order, and shall have the same powers and duties as constables in similar cases. He shall attend upon the sittings of the mayor's and police court, and execute within the county and return all writs and other processes directed to him therefrom. [R60, §§1086, 1104, 1106, 1107; C73, §§515, 533, 536, 537; C97, §§653, 662, 663; S13, §652; C24, 27, 31, 35, 39, §5657; C46, 50, §363.30; C54, §368A.17]

Duty as peace officer, §748.4  
Power of constable, §§601.121, 601.122

**368A.18 Policemen.** The officers and members of the police force shall have such powers and perform such duties as may be provided by law or ordinance, and shall have the same powers as marshals to make arrests and suppress riots, disturbances, and breaches of the peace. [R60, §§1096, 1108; C73, §§525, 537; C97, §664; C24, 27, 31, 35, 39, §5658; C46, 50, §363.31; C54, §368A.18]

**368A.19 Police matrons — compensation.** Police matrons shall have charge of all the women and children under arrest, accompanying to court such as may require such aid. They shall be subject to the authority of the marshal and the rules and regulations prescribed by his authority, and in stations, when on duty, shall be subject to the authority of the officers in command. In cities where workhouses are established for the detention of women, or where there are houses of detention, they shall have at all times the right of entering such establishments, and shall visit them whenever in their judgment such visits may be necessary. A suitable place shall be provided for the police matrons, when not on duty, for rest and refreshment. Their compensation shall be the same as that of patrolmen of the same class in the city or town where they are employed. [C97, §665; C24, 27, 31, 35, 39, §5659; C46, 50, §363.32; C54, §368A.19; 57GA, ch 189, §1]

#### OTHER OFFICERS

**368A.20 Other officers.** The city attorney, engineer, auditor, physician, and such additional officers as may be provided for, shall have such powers and perform such duties as are prescribed by law or ordinance. [R60, §§1103, 1106; C73, §§532, 535; C97, §666; C24, 27, 31, 35, 39, §5660; C46, 50, §363.33; C54, §368A.20]

**GENERAL RESTRICTIONS ON MUNICIPAL OFFICERS**

**368A.21 Ineligibility—change of compensation.** No member of any city or town council shall, during the time for which he has been elected, be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which he was elected, nor shall the emoluments of any city or town officer be changed during the term for which he has been elected. No person who shall resign or vacate any office shall be eligible to the same during the time for which he was elected, when, during the time, the emoluments of the office have been increased. [R60, §§1091, 1122; C73, §§490, 491, 519; C97, §§668, 677; S13, §668; C24, 27, 31, 35, 39, §5672; C46, 50, §§363.46, 420.17-420.19; C54, §368A.21]

Similar provision, Constitution, Art. V, §9

**368A.22 Interest in contracts.** No officer, including members of the city council, shall be interested, directly or indirectly, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the city or town. [R60, §1122; C73, §490; C97, §943; S13, §§668, 879-q, 1056-a31; C24, 27, 31, 35, 39, §§5673, 6534, 6710; C46, 50, §§363.47, 416.58, 420.20; C54, §368A.22]

Referred to in §368A.23  
 Similar provisions, §§15.3, 18.4, 86.7, 262.29, 262.10, 314.2, 347.16, 372.16, 403.16, 553.23, 741.3, 741.11

**368A.23 Free passes.** No such officer shall accept or receive, directly or indirectly, from any person, firm, or corporation operating

within the said city or town any railway, inter-urban railway, street railway, gasworks, waterworks, electric light or power plants, telegraph line, or telephone exchange, or other business using a public franchise, any frank, free pass, or ticket, or other service upon terms more favorable than is granted to the public generally, except where, by franchise granted by the municipal corporation to any such person or corporation, any officers of said municipal corporation are granted such privileges as part of such franchise, and except that members of the police and fire departments of any city or town shall be carried without charge. Any violation of the provisions of this section or section 368A.22 shall be a misdemeanor. The provisions of this section shall not prohibit the acceptance and use of free passes under the provisions of section 479.94. [S13, §§879-q, 1056-a31; C24, 27, 31, 35, 39, §§5674, 6535; C46, 50, §§363.48, 416.59; C54, §368A.23]

Punishment, §687.7

**368A.24 Utilities boards—proceedings.** Immediately following each meeting of the trustees or governing board of each municipally owned public utility, the trustees or board members shall publish by one insertion in at least one newspaper a summary of the proceedings together with a list of warrants drawn, the names of persons, firms, or corporations to whom drawn, the amount thereof, and the reason therefor. Publication shall be made in the manner provided by section 618.14. Failure to make such publication shall constitute a misdemeanor. [C54, §368A.24]

**CHAPTER 369**

**PERSONAL SERVICE TRADES**

Applicable to all cities and towns

- 369.1 Application—"service trades" defined.
- 369.2 Application for ordinance.
- 369.3 Violations.

- 369.4 Application—contents.
- 369.5 Approval, rejection, or repeal.

**369.1 Application—"service trades" defined.** This chapter applies only to those trades where personal services are rendered upon a person or persons without the sale of merchandise as such, which are herein referred to as service trades. The fact that title to personal property may pass as an incident to rendering such service or services, does not prevent the trade in which this happens from being a service trade provided, however, that no provisions in this chapter shall apply to any trade school. [C35, §5786-g2; C39, §5786.2; C46, 50, 54, §369.1]

**369.2 Application for ordinance.** In all cities or towns under twenty-five hundred population, the owners, operators, or managers of not less than sixty-five percent, and in all cities or towns of twenty-five hundred population or over, the owners, operators, or managers of not less than seventy percent of the business establishments in any such service trade in any city or town may apply to the governing body

of such city or town for the enactment of an ordinance providing for fair competition for such trade within such city or town. The councils of the cities and towns shall have jurisdiction within such cities and towns to carry out within their respective jurisdictions the provisions of this chapter. [C35, §5786-g3; C39, §5786.3; C46, 50, 54, §369.2]

**369.3 Violations.** The violation of any provision of any ordinance adopted under the provisions of this chapter shall constitute a misdemeanor. Each and every day's continuance of such violation shall constitute a separate offense, and each offense is punishable by a fine of not more than one hundred dollars or imprisonment for not more than thirty days. [C35, §5786-g4; C39, §5786.4; C46, 50, 54, §369.3]

**369.4 Application—contents.** The application for an ordinance providing for fair competition shall state the number of business

establishments in the city or town engaged in the trade petitioning for such ordinance, and signature of only one person respectively signing on behalf of a business establishment, shall be counted in determining the percentage of establishments making application. The application shall set forth the provisions of the requested ordinance. Such ordinance may contain any other fair trade practice provisions which are not unlawful. [C35,§5786-g5; C39,§5786.5; C46, 50, 54,§369.4]

**369.5 Approval, rejection, or repeal.** At any meeting after receiving such application, the governing body of a city or town may reject

or approve, in whole or in part, the application for such ordinance. The rejection of an application shall not prejudice the filing of a new application. The governing body may enact, in whole or in part, the provisions of such ordinance, and thereafter such adopted ordinance shall regulate as to matter contained therein the conduct of every person engaged in such service trade within its jurisdiction. The governing body of a city or town may repeal in whole or in part such ordinance as provided for in this section. [C35,§5786-g6; C39,§5786.6; C46, 50, 54,§369.5]

Constitutionality, 46GA, ch 61,§8

## CHAPTER 370

### PARK COMMISSIONERS

Applicable to all cities and towns  
Referred to in §§368C.7(9, 10), 375.6  
Alternate tax levy, see §404.11(8)

- 370.1 Election—appointment.
- 370.2 Residence requirement.
- 370.3 Qualification—organization.
- 370.4 Treasurer.
- 370.5 Compensation.
- 370.6 Tax levy.
- 370.7 Park bonds and taxes.
- 370.8 and 370.9 Repealed by 55GA, ch 174,§1.  
See §370.7.
- 370.10 Park fund—how expended.
- 370.11 Acquisition of real estate.
- 370.12 General powers.
- 370.13 Leasing to organizations.
- 370.14 Annual report.

- 370.15 to 370.19, inc. Repealed by 55GA, ch 174, §1. See §370.7.
- 370.20 Jurisdiction.
- 370.21 Defacement of trees.
- 370.22 Rules and regulations.
- 370.23 City engineer—poles and wires.
- 370.24 Condemnation of property.
- 370.25 and 370.26 Repealed by 54GA, ch 159, §39. See §404.11.
- 370.27 Existing contracts and bonds.
- 370.28 Parks in certain cities—levy.
- 370.29 Lakes in public parks.
- 370.30 Tax for improvement of certain parks.
- 370.31 City halls, memorial halls and monuments—location.

**370.1 Election—appointment.** There shall be elected in all cities over thirty thousand population, three park commissioners whose terms of office shall be six years, one to be elected at each regular municipal election. At the first election following an official census enumeration wherein any city exceeds thirty thousand population three commissioners shall be elected and hold their offices respectively for two, four, and six years, their respective terms to be decided by lot, and their successors shall be elected for the full term of six years.

All other cities under thirty thousand population and towns may, by ordinance provide for the election of such park commissioners, but such ordinance shall not be in force until it has been submitted to the voters at a special or regular municipal election and approved by a majority of the votes cast at such election. In the event that such ordinance is approved by a majority of the votes cast at such election, the city council shall have the power to appoint three park commissioners to hold such office until the next regular city election.

Any city operating under the commission form of government having a department of parks and public property under a commis-

sioner elected as superintendent thereof may, in its discretion whenever its population exceeds thirty thousand, so continue without electing the park commissioners required by this chapter.

Any city having a population of eighty thousand or more and operating under the council-manager form of municipal government by election which prior thereto operated under the commission form of government having a department of parks and public property as authorized herein shall not be required to elect the commissioners required by this chapter. [C97,§850; S13,§850-a; C24, 27, 31, 35, 39,§5787; C46, 50, 54,§370.1; 56GA, ch 192,§1]

**370.2 Residence requirement.** Where any such city contains more than one organized township, at least one commissioner shall be a resident of each of said townships. [C97,§858; S13,§850-j; C24, 27, 31, 35, 39,§5788; C46, 50, 54, §370.2]

S13,§850-j, editorially divided

**370.3 Qualification—organization.** The commissioners shall, within ten days after their election, qualify by taking the oath of office and organize as a board by the election of one

of their number as chairman and one as secretary, but each commissioner, before he enters upon the duties of his office, shall give a bond with sureties to be approved by the council, in the penal sum of one thousand dollars, conditioned for the faithful discharge of his office. Park commissioners in cities of the second class and towns shall not be required to give bond. [C97, §§851, 861; S13, §850-b; C24, 27, 31, 35, 39, §5789; C46, 50, 54, §370.3]

S13, §850-b, editorially divided

**370.4 Treasurer.** The city treasurer shall be the treasurer of said board and pay out all moneys under the control of the board on orders signed by the chairman and secretary, but shall receive no compensation for his services as such treasurer. [C97, §§851, 861; S13, §850-b; C24, 27, 31, 35, 39, §5790; C46, 50, 54, §370.4]

**370.5 Compensation.** Each of the commissioners shall receive such salary as shall be fixed by the city council, not to exceed in the aggregate annually ten dollars for each thousand population or fraction thereof according to the last federal census, said compensation to be paid out of the park fund. [C97, §§851, 861; S13, §850-b; C24, 27, 31, 35, 39, §5791; C46, 50, 54, §370.5]

**370.6 Tax levy.** The board shall, on or before the first day of August of each year, determine and fix the amount or rate not exceeding one mill\* on the dollar in all cities and towns on the taxable valuation of such city or town, to be levied, collected, and appropriated for the ensuing year for general park purposes, and shall cause the same to be certified to the city council, which shall levy such tax or so much thereof as it may deem necessary to promote park interests, and certify the percent thereof to the county auditor with the other taxes for said year; provided, however, that in cities acting under special charter and in cities having a population in excess of seven thousand and less than fifteen thousand, having two hundred or more acres devoted to and set apart for park purposes, said board may in the manner herein provided, determine and fix an additional amount or rate for general park purposes not exceeding three-eighths of a mill\* on the dollar to be levied, collected, and appropriated for the ensuing year for general park purposes and the said city council, upon certification thereto by said board, may levy such additional tax or so much thereof as it may deem necessary to promote park interests and certify the total percent thereof as hereinbefore provided. [C97, §§852, 860; S13, §850-c; C24, 27, 31, 35, 39, §5792; C46, 50, 54, §370.6]

Referred to in §404.11(8)

\*Alternate levy, see §404.11(8)

**370.7 Park bonds and taxes.** Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of the acquisition and permanent improvement of real estate for park purposes within or with-

out their corporation limits, including, but not in limitation of the foregoing, the paving, macadamizing and otherwise improving the roadways, drives, avenues and walks in and through such parks.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall be not considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns. The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation.

In any city acting under special charter now or hereafter having a population of seventy thousand or more and in which an elective board of park commissioners has been or hereafter is created, as provided in this chapter, such bonds may be authorized and issued by the council on petition from the board of park commissioners, stating the amount of bonds and the purpose for which they are to be issued. [C97, §§852-855; S13, §§850-c, e, f; C24, 27, 31, 35, 39, §§5793-5795, 5800-5804; C46, 50, §§370.7-370.9, 370.15-370.19; C54, §370.7]

**370.8 and 370.9** Repealed by 55GA, ch 174, §1. See §370.7

**370.10 Park fund—how expended.** No money of this fund shall be appropriated or expended for any purpose except as provided in this chapter and when any annual tax or part thereof has been pledged for the payment of any bonds or the interest thereon, such tax or part thereof shall be devoted to no other purpose. Such fund may be used:

1. In purchasing or acquiring real estate for park purposes, including streets or highways to connect one park with another, or to connect a park with streets or highways, or for other purposes necessary and incident to the establishment and maintenance of parks and paving streets adjacent thereto.

2. For the purpose of improving and maintaining the same and defraying the necessary expenses connected therewith, including the compensation of the board, its officers, and employees.

3. For the payment of one or more park policemen to be recommended by the board and appointed by the mayor.

4. For the purpose of paying for the necessary lights as fixed by the park board and

paying for such water supply as may be necessary in such parks. [C97,§852; S13,§850-d; C24, 27, 31, 35, 39,§5796; C46, 50, 54,§370.10]

**370.11 Acquisition of real estate.** Said park board may acquire real estate within or without the city for park purposes by donation, purchase, or condemnation, and take the title to the same in the name of the board in trust for the public and hold the same exempt from taxation. [C97,§853; S13,§850-e; C24, 27, 31, 35, 39,§5797; C46, 50, 54,§370.11]

S13,§850-e, editorially divided

**370.12 General powers.** It may sell, subject to the approval of the city council, exchange, or lease any real estate acquired by it which shall in the discretion of the park commission be unfit, not desirable, unnecessary, or not required, for park purposes; shall keep a report of all transactions; except as otherwise provided in this chapter it shall have exclusive control of all parks and pleasure grounds acquired by it or of any other ground owned by the city and set apart for like purposes; and may make contracts, sue and be sued, but shall incur no indebtedness in excess of the amount of taxes already levied and available for the payment thereof, except bonds hereby authorized. [C97,§853; S13,§850-e; C24, 27, 31, 35, 39,§5798; C46, 50, 54,§370.12; 56GA, ch 192,§2]

**370.13 Leasing to organizations.** Park boards shall also have authority to lease under reasonable rules and requirements a particular park or portion thereof, under their jurisdiction, for a period not in excess of ten days, to charitable, fraternal and patriotic organizations, for the purpose of permitting such organizations to conduct celebrations, anniversaries and entertainments.

Said board shall also have the authority to lease under reasonable rules and requirements a portion of any park under their jurisdiction for such time or times, not to exceed six consecutive months, as the board shall deem proper for the purpose of permitting the playing of professional baseball or other professional games and under such conditions as to charging a fee for the use of the same as the board shall determine.

All cities and towns under thirty thousand population shall have authority to lease parks pursuant to the provisions of section 368.30. [C39,§5798.1; C46, 50, 54,§370.13]

**370.14 Annual report.** It shall make an annual detailed report to the council immediately after the close of each municipal fiscal year of the amounts of money expended and the purposes for which used, and such annual statement shall be published as part of the annual municipal report. [C97,§853; S13,§850-e; C24, 27, 31, 35, 39,§5799; C46, 50, 54,§370.14]

Fiscal year, §363.29

**370.15 to 370.19, inclusive,** repealed by 55GA, ch 174,§1. See §370.7.

**370.20 Jurisdiction.** The jurisdiction of such board shall extend over all lands used for parks within or without the corporate limits, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such parks. [C97,§862; S13,§850-g; C24, 27, 31, 35, 39,§5805; C46, 50, 54,§370.20]

S13,§850-g, editorially divided

**370.21 Defacement of trees.** Any person who shall, except by the authority of such commissioners, cut, break, or deface any tree or shrub growing in such park, or parks, or any avenue thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [C97,§862; S13,§850-g; C24, 27, 31, 35, 39,§5806; C46, 50, 54,§370.21]

**370.22 Rules and regulations.** The board may in writing prescribe rules and regulations for the government of the parks or public grounds under their control and persons resorting thereto, which rules and regulations shall be in force when entered in the record of the proceedings of the board, and a copy thereof signed by the commissioners has been posted at each gate or principal entrance to any such park or public grounds, and a willful violation thereof shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [C97,§856; S13,§850-h; C24, 27, 31, 35, 39,§5807; C46, 50, 54,§370.22]

**370.23 City engineer—poles and wires.** The board shall be entitled to the services of the city engineer, when requested, without expense to it. It shall have the power to regulate or forbid the erection of poles or the stretching of wire for electric light, street railway, or other corporations or persons in such parks or in or along streets or highways or over public places laid out or controlled by it. [C97,§857; S13,§850-i; C24, 27, 31, 35, 39,§5808; C46, 50, 54,§370.23]

**370.24 Condemnation of property.** If said board and the owners of any property desired by it for park purposes cannot agree as to the price to be paid therefor, it may cause the same to be condemned in the manner provided for taking land for municipal purposes. [C97,§858; S13,§850-j; C24, 27, 31, 35, 39,§5809; C46, 50, 54,§370.24]

Procedure, ch 472

**370.25 and 370.26** Repealed by 54GA, ch 159, §39. See §404.11.

**370.27 Existing contracts and bonds.** Nothing in this chapter shall be construed to affect any contracts heretofore entered into by any park board or any bonds issued by such boards but all such contracts shall be carried out and all such bonds shall be paid under the terms thereof. [S13,§850-m; C24, 27, 31, 35, 39,§5812; C46, 50, 54,§370.27]

**370.28 Parks in certain cities—levy.** In all cities where the board of park commissioners have, prior to January 1, 1914, made purchase of property for park purposes by means of the additional tax of one mill\* authorized by special acts of the general assembly the said board is authorized in its discretion to certify to the council each year and cause to be collected an additional tax of one mill\* each year to be used for the sole and only purpose of grading, beautifying, and otherwise improving any lands acquired for park purposes by means of the tax so authorized or other lands then owned and used for park purposes or for acquiring and improving any driveways or boulevards connecting one park with another. [C46, 50, 54, §370.28]

Referred to in §404.11(8)  
\*Alternate levy, see §404.11(8)

**370.29 Lakes in public parks.** Where any city had, prior to July 1, 1880, received a grant of the title from the United States to a meandered lake within its corporate limits, to be held and used for public uses, recreation and park purposes, and where such city has, for more than twenty years devoted the same to the public use, recreation and park purposes, its board of park commissioners is authorized, in the discretion of said board, to certify to the council and cause to be collected an additional tax of not exceeding one mill\* each year, to be used for the sole and only purpose of improving such lake by dredging or otherwise deepening the same, constructing dikes and levees for the protection of the same and for changing the form and size thereof, and for the regulation, control, and improvement of the water supply and for the improvement and beautifying of such lake, the park land surrounding the same, and for the furnishing

of suitable equipment thereof for public use and pleasure. [SS15, §850-p; C46, 50, 54, §370.29]

Referred to in §404.11(8)  
\*Alternate levy, see §404.11(8)

**370.30 Tax for improvement of certain parks.** In all cities where said board shall have, prior to January 1, 1919, acquired property for park purposes, the said board is further authorized to certify to the council in all succeeding years and cause to be collected an additional tax of one mill\* each year, to be used for the sole and only purpose of grading, road-building, building retaining walls, or riprap along watercourses and otherwise permanently improving by the construction of buildings in public parks any and all lands theretofore acquired for park purposes or improving any driveway or boulevard connecting one park with another. [S13, §850-c, f; C46, 50, 54, §370.30]

Referred to in §404.11(8)  
\*Alternate levy, see §404.11(8)

**370.31 City halls, memorial halls and monuments—location.** Any municipal corporation may locate and erect its city or town hall in any public park, public square, or public grounds within the corporate limits and the park commission shall grant permission therefor whether or not said grounds, park or square is unfit or not desirable for park purposes. Cities and towns, all forms, may by ordinance permit soldiers monuments or memorial halls, which may be erected under the provisions of chapter 37, to be located and erected in any public park or public grounds of the city or town. This section shall not apply to cities having a population of one hundred twenty-five thousand or more. [SS15, §850-o; C24, 27, 31, 35, 39, §5813; C46, 50, 54, §370.31]

## CHAPTER 371

### PERMANENT PARK BOARDS

Referred to in §§363C.7(9, 10)  
Applicable to cities over 125,000 population

- 371.1 Applicability of chapter.
- 371.2 Establishment of board.
- 371.3 Membership.
- 371.4 Vacancies.
- 371.5 Term of office—compensation.

- 371.6 Powers and duties.
- 371.7 Organization and officers.
- 371.8 Annual report.
- 371.9 Repeal.

**371.1 Applicability of chapter.** This chapter shall apply only to cities now or hereafter having a population of one hundred twenty-five thousand or more according to the last or subsequent federal census. [C31, 35, §5813-d1; C39, §5813.1; C46, 50, 54, §371.1]

**371.2 Establishment of board.** Within sixty days after the taking effect of this chapter, in all cities now having a population of one hundred twenty-five thousand or more according to the last federal census, there shall be established in accordance with the terms of this

chapter, a permanent park board for such city. [C31, 35, §5813-d2; C39, §5813.2; C46, 50, 54, §371.2]

**371.3 Membership.** Such park board shall consist of ten members. One member of the city council shall at all times be a member of such board, and if any member of the city council of such city is at the head of a department of the city government having supervision of the parks of the city, such member shall by authority of his office be the councilman who shall also be a member of said board. The other nine members of said board shall not be



members of the city council. The nine members, other than the councilman, shall be appointed by the mayor of the city from a list of eighteen names of which six shall be submitted or nominated by each of the following organizations:

1. Library board.
2. School board.
3. City planning commission. [C31, 35,§5813-d3; C39,§5813.3; C46, 50, 54,§371.3]  
44GA, ch 149,§3, editorially divided

**371.4 Vacancies.** Vacancies occurring thereafter shall be filled by the mayor from a list of twelve names, of whom four shall be nominated by each of the organizations above designated. Whenever there shall be a vacancy or vacancies on the board, the mayor shall request nominations from said three organizations and such nominations shall be certified to the mayor within fifteen days thereafter. [C31, 35, §5813-d4; C39,§5813.4; C46, 50, 54,§371.4]

**371.5 Term of office—compensation.** In the first instance, three members shall be appointed for two years, three members shall be appointed for four years, and three members shall be appointed for six years. Thereafter, the term of office of the members of said board, other than the ex officio member, shall be six years and until their successors are appointed and qualified. The members of said board shall serve without compensation and shall be chosen solely because of their character and fitness. [C31, 35,§5813-d5; C39,§5813.5; C46, 50, 54,§371.5]

**371.6 Powers and duties.** It shall be the duty of such board to plan the city's parks and cemeteries and to administer, improve, develop, conduct, and supervise the cemeteries and parks of the city. It shall control the expenditure of all funds appropriated by the city

council for cemetery and park purposes and none of the funds appropriated by the city council for said purposes shall be expended except pursuant to a resolution regularly adopted by said board. In the expenditure of funds, said board shall be governed by the ordinances of the city applicable thereto. [C31, 35,§5813-d6; C39,§5813.6; C46, 50, 54,§371.6]

**371.7 Organization and officers.** When a park board is established in the first instance, the members shall be notified of their appointment by the city clerk who shall in said notice fix the time and place for holding the first meeting; the board shall thereupon meet at said time and organize by electing one of the members thereof as president, and such other officers as the board deems advisable. The board shall adopt its own rules and regulations for the transaction of its business. It may create such committees of its members as it deems conducive to the proper performance of its duties. The president shall be elected for a term of two years. The secretary of the board shall serve during the pleasure of the board. All meetings of the board shall be open to the public. [C31, 35,§5813-d7; C39,§5813.7; C46, 50, 54,§371.7]

**371.8 Annual report.** Said board shall make an annual report to the city council, which report shall contain an accurate statement of its activities during the preceding year and such recommendations as the board may see fit to make. [C31, 35,§5813-d8; C39,§5813.8; C46, 50, 54,§371.8]

**371.9 Repeal.** All laws or parts of laws inconsistent with the provisions of this chapter are hereby repealed, but nothing herein shall be deemed to be inconsistent with chapters 373 and 377. [C31, 35,§5813-d9; C39,§5813.9; C46, 50, 54,§371.9]

## CHAPTER 372

### RIVER-FRONT IMPROVEMENT COMMISSION

Applicable to all cities  
Alternate tax levy, see §404.10(9)

- 372.1 Cities affected.
- 372.2 Petition.
- 372.3 Election.
- 372.4 Vacancies.
- 372.5 Organization—secretary—treasurer—bond.
- 372.6 Title to bed of meandered streams—lost boundary lines.
- 372.7 Streams not meandered—survey.
- 372.8 Powers.

- 372.9 Profiles and specifications—approval.
- 372.10 Additional powers—annual report—tax.
- 372.11 Bonds—mortgages.
- 372.12 Cities may aid.
- 372.13 Rules and regulations.
- 372.14 Police protection—water supply—poles.
- 372.15 Wharves—landing places.
- 372.16 What prohibited.
- 372.17 Soldiers monuments.

**372.1 Cities affected.** The provisions of this chapter shall apply only to cities. [S13,§879-0; C24, 27, 31, 35, 39,§5814; C46, 50, 54,§372.1]

**372.2 Petition.** Whenever five hundred electors of any city whose corporate limits are

divided by a meandered stream, or by a stream that is not meandered, shall, in writing, petition the governor of this state for the appointment of a commission, as provided for by this chapter, he shall, within one month thereafter, appoint three electors, residents of the city

of the said electors so petitioning, who shall constitute a body corporate, to be known as the river-front improvement commission of ..... inserting in said blank the name of the city of the said electors so applying. [S13,§879-a; C24, 27, 31, 35, 39,§5815; C46, 50, 54,§372.2]

**372.3 Election.** One commissioner shall be elected at each biennial city election to succeed one of the commissioners so appointed, whose term shall expire when his successor is elected and qualified. [S13,§879-b; C24, 27, 31, 35, 39, §5816; C46, 50, 54,§372.3]

**372.4 Vacancies.** In case vacancy arises in the commission, the governor of the state shall fill such vacancy by appointment for the unexpired portion of the term, or until the next election, as the case may be. [S13,§879-n; C24, 27, 31, 35, 39,§5817; C46, 50, 54,§372.4]

**372.5 Organization — secretary—treasurer—bond.** The commissioners shall, within ten days after their appointment, qualify by taking the oath of office, determine by lot the order of the expiration of their terms, and organize by the election of one of their number as chairman; they shall also elect a secretary, not one of their number; the city treasurer shall be the treasurer of said commission, but shall receive no compensation for his services. Each of the commissioners shall be reimbursed for the actual expenses incurred or money paid out by him in connection with the discharge of his official duties, but shall receive no compensation for his services. An itemized statement of all expenses and moneys received and paid out shall be made under oath and filed with the secretary and allowed by the commission. [S13,§879-c; C24, 27, 31, 35, 39,§5818; C46, 50, 54, §372.5]

**372.6 Title to bed of meandered streams—lost boundary lines.** When said commissioners have been so appointed and qualified, the fee simple title to the bed of the meandered stream, separating the corporate limits of the city for which they are appointed, shall immediately vest in the commission in trust for the public, and the same while held by the commission shall be exempt from taxation; but the fee title to the channel or bed of the stream to be located and preserved as hereinafter provided shall remain in the state; and the vested rights of riparian owners and owners of water powers shall not be injuriously affected by this chapter. Where the original boundary lines separating the land under the control of said commission from the land of the state or of any adjoining landowner, or the monuments marking the same have been lost, destroyed, or in dispute, said commissioners may proceed to have said boundary lines established as disputed corners and boundaries are established. [S13,§879-d; C24, 27, 31, 35, 39,§5819; C46, 50, 54, §372.6]

Disputed corners and boundaries, ch 650

**372.7 Streams not meandered — survey.** When any stream that is not meandered divides or traverses the corporate limits of a city in which such river-front improvement commission has been appointed and qualified, said commission may acquire the title in fee simple to such portion of the channel or bed thereof lying within the corporate limits of the city as it may deem advisable, by donation or purchase, or by condemnation for the public uses authorized in this chapter, in the manner provided by law for the taking of private property for public use, and shall take the title to such property in the name of the commission and its successors, in trust for the public, and shall hold the same exempt from taxation. For the purposes of this section, the limits of the channel of any such stream shall be determined and fixed by a survey made by the city engineer of such city at the request of such commission. Wherever in sections 372.8 to 372.17, the terms "stream", "such stream", or "such river" or like terms are used, such terms are intended to, and do, refer to a stream whose bed or channel is acquired pursuant to this section, as well as to meandered streams. [C39, §5819.1; C46, 50, 54,§372.7]

Referred to in §§372.9, 372.10, 372.11

**372.8 Powers.** Said commission may redeem lands between the meandered lines of any such meandered stream; redeem lands acquired by it in the channel of any stream that is not meandered; construct, regulate, and maintain dams across such stream; provide for and protect, by secure walls or banks, a channel adequate to carry flood waters of a volume equal to all reasonable expectations, based on past experience and the area drained by such stream, according to expert authority; beautify such walls or banks, and park so much thereof as public interest may require; where circumstances permit, make any part of the area redeemed and acquired suitable for sites for public buildings; and may erect thereon an armory, coliseum, city hall, fire department buildings and/or other public buildings and furnish and equip the same and finance the construction and furnishing of same under the provisions of this chapter; with full power and authority to do all things necessary and incidental thereto. The acts of said commission so far as the same may affect city parks theretofore under the jurisdiction of the park commissioners or additions acquired thereto, shall be subject to the approval of the board of park commissioners. [S13,§879-e; C24, 27, 31, 35, 39, §5820; C46, 50, 54,§372.8]

Referred to in §372.7

**372.9 Profiles and specifications—approval.** Said commission may adopt plans, profiles, and specifications for the improvement of the said river channel and banks, and the reclaiming of lands between the meandered lines of any such meandered stream within such city, or within the channel of any stream that is acquired by the commission pursuant to section 372.7, and the construction of dams; but before the begin-

ning of the execution of the same, such plans, profiles, and specifications shall be approved by the Iowa natural resources council. [S13, §879-f; C24, 27, 31, 35, 39, §5821; C46, 50, 54, §372.9; 57GA, ch 190, §1]

Referred to in §372.7

**372.10 Additional powers—annual report—tax.** Said commission may acquire real estate and riparian and other rights within such city in the vicinity of such stream by donation or purchase, or by condemnation for the public uses herein authorized in the manner provided by law for the taking of private property for public use, and shall take the title to property in the name of the commission and its successors, in trust for the public, and hold the same exempt from taxation. It may sell and convey or lease or exchange any property acquired by it, by virtue of this chapter and otherwise. It shall have exclusive control of all the lands acquired by it, and of the banks and waters of such stream for carrying out the purposes of this chapter; may make contracts, and sue and be sued. It shall keep a record of all its transactions, which shall during ordinary business hours be open to inspection by the public, and shall, immediately after the close of each municipal fiscal year, make an annual report of all moneys received and expended by it and for what general purposes, and of all moneys owing to it and by it and for what general purposes, to the city council at the regular November meeting, and publish such report in some newspaper in the city. The commission shall, subject to the approval of the city council, in each year determine and fix the amount or rate, not exceeding three-quarters of one mill\* on the dollar, on the taxable value of the taxable property of such city, to be levied, collected, and appropriated for the ensuing year for the purpose of paying for real estate, including the channel or bed of any stream acquired by the commission pursuant to section 372.7, riparian and other rights, for improvements, and for accomplishing the purposes of the creation of said commission, and to provide for the payment of interest upon bonds and to retire such bonds, if any, and to meet the necessary expenses incident to the business of said commission. Said commission shall, on or before the first Monday in September of each year, certify to the county auditor the amount or rate of taxes so fixed, to be known as river-front improvement fund, and when collected, the same is to be paid over to the city treasurer, and by him paid out on its orders, and the board of supervisors of the county in which said city is situated shall levy said tax as fixed by said commission. [S13, §879-g; C24, 27, 31, 35, 39, §5822; C46, 50, 54, §372.10]

Referred to in §§372.7, 372.11, 404.10 (9)

\*Alternate levy, see §404.10 (9)

Condemnation procedure, ch 472

Fiscal year, §363.29

**372.11 Bonds—mortgages.** For the purpose of paying for real estate, including the channel or bed of any stream acquired by the commission pursuant to section 372.7, and improve-

ments and accomplishing the purposes of its creation, said commission may issue bonds in such amounts as it may deem necessary, and may execute trust deeds or mortgages upon its property acquired by virtue of this chapter and otherwise or any part thereof to secure the payment of said bonds and interest thereon.

Before issuing such bonds the commission shall, by resolution, subject to the approval of the city council, provide for the assessment of the annual levy authorized in section 372.10, and not in excess of the millage therein authorized, sufficient to pay the principal and interest of such bonds within a period named not exceeding thirty years, which levy shall be certified to the county auditor or auditors of the county or counties in which such city is located, and the tax therein provided for shall be entered annually for collection all in the manner provided in chapter 76.

Such bonds may be sold in such manner as the commission may determine, but shall bear interest at a rate of not to exceed five percent, shall not be sold for less than the par value thereof plus accrued interest, and no commission shall be paid directly or indirectly in connection with such sale.

The provisions of section 408.15 shall apply to such bonds. [S13, §879-h; C24, 27, 31, 35, 39, §5823; C46, 50, 54, §372.11]

Referred to in §372.7

**372.12 Cities may aid.** Such city shall not be liable for any indebtedness incurred by said commission or for any bond issued by said commission. Such cities are hereby authorized to aid in making the improvements specified in this chapter by appropriating money from its general fund or from the surplus remaining at the end of the fiscal year in any special fund, except in cases where such diversion of moneys is especially prohibited by statute, and may appropriate in aid of the improvements herein provided for, the reasonable saving effected in the building of bridges and otherwise by reason of said improvements. [S13, §879-i; C24, 27, 31, 35, 39, §5824; C46, 50, 54, §372.12]

Referred to in §372.7

**372.13 Rules and regulations.** Said commission may, in writing, prescribe rules and regulations for the government of the public grounds under their control and persons resorting thereto, which rules and regulations shall be enforced when entered in the record of the proceeding of the commission, and a copy thereof signed by the commissioners has been posted at each gate or principal entrance to any such public grounds, and a willful violation thereof shall be a misdemeanor, punishable by fine not exceeding twenty-five dollars. Anyone who shall cut, break, or deface any tree or shrub growing in such public grounds, without authority, shall be guilty of a misdemeanor and be punished by fine not exceeding one hundred dollars or by imprisonment not

exceeding thirty days in jail. Any magistrate in the city shall have jurisdiction to try such offenses. [S13,§879-j; C24, 27, 31, 35, 39,§5825; C46, 50, 54,§372.13]

Referred to in §372.7

**372.14 Police protection—water supply—poles.** The mayor, on written request of the commission, shall furnish adequate police protection for such public grounds and the city shall furnish such water supply as may be necessary therefor, and properly light the same at its expense. The commission shall be entitled to the services of the city engineer, when requested, without expense to it. It shall have the power to permit or forbid the erection of poles or the stretching of wires for electric light, street railway, or other purposes by persons or corporations, in such public grounds or in or along streets or highways or over public places laid out or controlled by it. [S13,§879-k; C24, 27, 31, 35, 39,§5826; C46, 50, 54,§372.14]

Referred to in §372.7

**372.15 Wharves—landing places.** Said commission shall have power, in and over the bed and banks of such river as specified, to construct and regulate the use of wharves, landing places, bathhouses, boathouses, and other suitable structures and shall have exclusive jurisdiction over the water of such stream, within the corporate limits of such city and may maintain said stream in a suitable condi-

tion for boating, skating, and other public amusements and purposes. [S13,§879-l; C24, 27, 31, 35, 39,§5827; C46, 50, 54,§372.15]

Referred to in §372.7

**372.16 What prohibited.** No member of the commission shall, during the time for which he has been appointed or elected, or for one year thereafter, be appointed to any office in the gift of the commission which shall be created, or the emolument of which shall be increased, during the term for which he was elected, nor shall he be interested directly or indirectly in any contract for work or service to be performed for the commission or in the purchase or sale of any property sold to or by the commission. [S13,§879-m; C24, 27, 31, 35, 39,§5828; C46, 50, 54,§372.16]

Referred to in §372.7

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 847.15, 868A.22, 403.16, 553.23, 741.8, 741.11

**372.17 Soldiers monuments.** Any river-front improvement commission elected under the provisions of this chapter, may, by contract or by resolution duly entered of record, authorize and permit the location and erection of any soldiers monument or memorial hall which may be erected under the provisions of chapter 37, to be located and erected upon grounds held in trust by such commission. [SS15,§879-o1; C24, 27, 31, 35, 39,§5829; C46, 50, 54,§372.17]

Referred to in §372.7

## CHAPTER 373

### CITY PLAN COMMISSION

Referred to in §§371.9, 404.6(4)

Applicable to all cities and towns

- 373.1 Appointment.
- 373.2 Tenure.
- 373.3 Vacancies.
- 373.4 Compensation—expenses.
- 373.5 Organization.
- 373.6 Rules and regulations.
- 373.7 Annual report.
- 373.8 Assistants.
- 373.9 Powers.
- 373.10 Recommendations as to improvements.
- 373.11 Exceptions.

- 373.12 Approval of plats.
- 373.13 Approval of street or park improvement.
- 373.14 Appropriation of funds.
- 373.15 Expenditure of funds.
- 373.16 Gifts.
- 373.17 Debt-contracting powers.
- 373.18 Plan—adoption—conditions.
- 373.19 Hearings.
- 373.20 Amendment of plan.

**373.1 Appointment.** The council of each city and town may by ordinance provide for the establishment of a city plan commission for such municipality, consisting of not less than seven members, who shall be citizens of such municipality and who shall be qualified by knowledge or experience to act in matters pertaining to development of a city plan and who shall not hold any elective office in the municipal government and who shall be appointed by the mayor, subject to the approval of the council. [C27, 31, 35,§5829-a1; C39, §5829.01; C46, 50, 54,§373.1]

**373.2 Tenure.** The term of office of said members shall be five years, except that the

members first named shall hold office for such terms, not exceeding five years, that the terms of not more than one-third of the membership will expire in any one year. [C27, 31, 35,§5829-a2; C39,§5829.02; C46, 50, 54,§373.2]

41GA, ch 117,§2, editorially divided

**373.3 Vacancies.** If any vacancy shall exist on said commission caused by resignation, or otherwise, the mayor shall appoint a successor for the residue of said term. [C27, 31, 35,§5829-a3; C39,§5829.03; C46, 50, 54,§373.3]

**373.4 Compensation—expenses.** All members of the commission shall serve without compensation except their actual expenses,

which shall be subject to the approval of the council. [C27, 31, 35, §5829-a4; C39, §5829.04; C46, 50, 54, §373.4]

**373.5 Organization.** Such city plan commission shall choose, annually, at its first regular meeting, one of its members to act as chairman of the commission, and another of its members as vice-chairman, who shall perform all the duties of the chairman during his absence or disability. [C27, 31, 35, §5829-a5; C39, §5829.05; C46, 50, 54, §373.5]

41GA, ch 117, §3, editorially divided

**373.6 Rules and regulations.** The commission shall adopt such rules and regulations governing its organization and procedure as may be deemed necessary. [C27, 31, 35, §5829-a6; C39, §5829.06; C46, 50, 54, §373.6]

**373.7 Annual report.** The commission each year shall make a report to the mayor and council of its proceedings with a full statement of its receipts, disbursements, and the progress of its work for the preceding fiscal year. [C27, 31, 35, §5829-a7; C39, §5829.07; C46, 50, 54, §373.7]

Annual fiscal report, §§363.29, 368A.7

**373.8 Assistants.** Subject to the limitations contained in this chapter as to the expenditure of funds, it may appoint such assistants as it may deem necessary and prescribe and define their respective duties and fix and regulate the compensation to be paid to the several persons employed by it. [C27, 31, 35, §5829-a8; C39, §5829.08; C46, 50, 54, §373.8]

**373.9 Powers.** Such city plan commission shall have full power and authority to make or cause to be made such surveys, studies, maps, plans, or charts of the whole or any portion of such municipality and of any land outside thereof which in the opinion of such commission bears relation to a comprehensive plan, and shall bring to the attention of the council and may publish its studies and recommendations. [C27, 31, 35, §5829-a9; C39, §5829.09; C46, 50, 54, §373.9]

**373.10 Recommendations as to improvements.** No statutory, memorial, or work of art in a public place, and no public building, bridge, viaduct, street fixture, public structure or appurtenance, shall be located or erected, or site therefor obtained, nor shall any permit be issued by any department of the municipal government for the erection or location thereof, until and unless the design and proposed location of any such improvement shall have been submitted to the city plan commission and its recommendations thereon obtained. [C27, 31, 35, §5829-a10; C39, §5829.10; C46, 50, 54, §373.10]

41GA, ch 117, §5, editorially divided

**373.11 Exceptions.** Such requirement for recommendations shall not act as a stay upon action for any such improvement where such commission after thirty days written notice

requesting such recommendations shall have failed to file same.

Said recommendations shall not be necessary as to statutory, memorials, or works of art in municipalities where municipal art commissions have been established. [C27, 31, 35, §5829-a11; C39, §5829.11; C46, 50, 54, §373.11]

**373.12 Approval of plats.** Where such city plan commission exists all plans, plats, or replats of subdivisions or resubdivisions of land embraced in said municipality or adjacent thereto, laid out in lots or plats with the streets, alleys, or other portions of the same intended to be dedicated to the public in such municipality and all proposals for the vacation or partial vacation of a street, alley or public ground shall first be submitted to the city plan commission and its recommendation obtained before approval by the city council. [C27, 31, 35, §5829-a12; C39, §5829.12; C46, 50, 54, §373.12]

**373.13 Approval of street or park improvement.** No plan for any street, park, parkway, boulevard, traffic-way, river-front, or other public improvement affecting the city plan shall be finally approved by the municipality, or the character or location thereof determined, unless such proposal shall first have been submitted to the city plan commission and the latter shall have had thirty days within which to file its recommendations thereon. [C27, 31, 35, §5829-a13; C39, §5829.13; C46, 50, 54, §373.13]

**373.14 Appropriation of funds.** The council of any such municipality, when it shall have passed an ordinance creating a city plan commission, may annually appropriate a sum of money from the general funds for the payment of the expense of such commission. [C27, 31, 35, §5829-a14; C39, §5829.14; C46, 50, 54, §373.14]

41GA, ch 117, §8, editorially divided

**373.15 Expenditure of funds.** The said commission shall have full, complete, and exclusive authority to expend for and on behalf of such municipality all sums of money so appropriated. [C27, 31, 35, §5829-a15; C39, §5829.15; C46, 50, 54, §373.15]

**373.16 Gifts.** All gifts, donations, or payment whatsoever which are received by such municipality for city plan purposes shall be placed in the city plan commission fund, to be used by the said commission in the same manner as hereinbefore stated. [C27, 31, 35, §5829-a16; C39, §5829.16; C46, 50, 54, §373.16]

**373.17 Debt-contracting powers.** The said commission shall have no power to contract debts beyond the amount of its income for the current year. [C27, 31, 35, §5829-a17; C39, §5829.17; C46, 50, 54, §373.17]

**373.18 Plan—adoption—conditions.** For the purpose of making a comprehensive plan for the physical development of the municipality, the city plan commission shall make careful and comprehensive studies of present condi-

tions and future growth of the municipality and with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development. [C27, 31, 35, §5829-b1; C39, §5829.18; C46, 50, 54, §373.18]

Referred to in §373.19

**373.19 Hearings.** Before adopting the said comprehensive plan, or any part of it, or any substantial amendment thereof, the commission shall hold at least one public hearing thereon, notice of the time of which shall be given by one publication in a newspaper of general circulation in the municipality, not less than ten nor more than twenty days before the date of hearing. The adoption of the plan or part or amendment thereof shall be by resolution of the commission carried by the affirmative vote of not less than two-thirds of the

members of the commission. After adoption of said plan by the commission, an attested copy thereof shall be certified to the council of said municipality and the council may approve the same, and when said plan or any modification or amendment thereof shall receive the approval of the council, the said plan until subsequently modified or amended as authorized by this section and sections 373.18 and 373.20 shall constitute the official city plan of the said municipality. [C27, 31, 35, §5829-b2; C39, §5829.19; C46, 50, 54, §373.19]

**373.20 Amendment of plan.** When such comprehensive plan has been adopted as above provided for, no substantial amendment or modification thereof shall be made without such proposed change being first referred to the city plan commission for its recommendation. If the city plan commission disapproves the proposed change, it may be adopted by the city council only by the affirmative vote of at least three-fourths of all the membership of such council. [C27, 31, 35, §5829-b3; C39, §5829.20; C46, 50, 54, §373.20]

Referred to in §373.19

## CHAPTER 374

### COMMUNITY CENTER HOUSES AND RECREATION GROUNDS

Applicable to all cities and towns

374.1 Community center houses authorized.  
 374.2 Community center districts.  
 374.3 Managing board — superintendent — salaries.

374.4 Rules and regulations.  
 374.5 Maintenance in connection with school premises.

**374.1 Community center houses authorized.** Incorporated cities and towns shall have power to provide for the several districts in said city, or for any one of such districts, as hereinafter defined, a community center house with recreation grounds adjacent for the use, recreation, and instruction of the residents of said district, and to submit to the electors of any such district at a regular city election, or special election called for that purpose, the question of the establishment of such improvement and of the issuance of district bonds to provide the same. And in cities where buildings and grounds suitable for community center activities are owned and maintained by the city, the city council may, by resolution, establish such buildings or grounds as community centers without submitting the question of the establishment thereof to the electors. [C24, 27, 31, 35, 39, §5830; C46, 50, 54, §374.1; 56GA, ch 193, §1]

Vote required, §75.1

**374.2 Community center districts.** The city council shall, for the purpose herein contemplated, have power to divide the city into community center districts and to determine the area to be benefited and define the boundary of such districts, having regard to existing natural community centers and the probable development thereof in the future growth of

the city, the intention being to provide for such outlying districts within the city as by reason of distance, means of communication, or other causes, have or are likely to develop a distinct community life, a community center house and grounds for recreation, community meetings, instruction and entertainment, and for the general betterment and development of the life of the district affected. [C24, 27, 31, 35, 39, §5831; C46, 50, 54, §374.2]

**374.3 Managing board—superintendent—salaries.** The city council shall have charge of community centers or the council may appoint from the residents of the district, three persons specially fitted and interested in such work, who shall be known as the community center board. After its appointment, such board shall have charge of the community center improvement, subject to such direction, rules, and regulations as the city council may deem necessary; and said board shall make a report in writing to the city council immediately after the close of each municipal fiscal year as to the operation of said community center, including the expense thereof, for the preceding year.

Subject to the approval of the city council, the said community center board shall have authority to determine the character of the activities of said community center, and said

board or a majority thereof shall, promptly on their appointment, recommend to the city council the name of some person peculiarly fitted for such work, who shall be known as the community center superintendent, who shall be placed in charge of such community center and shall have such powers and perform such duties in that connection as may be directed by the board, acting under the city council. The members of said community center board shall serve without compensation, and the superintendent shall be elected for such term and upon such salary as may be fixed by the city council. The said community center board may (but only with the consent of the city council) employ such additional help as may prove necessary. All salaries shall be paid monthly. Such salaries and all other expenses incurred in the maintenance of such community center shall be paid out of the community center fund for said district, but only after being allowed and ordered paid by the city council. [C24, 27, 31, 35, 39, §5832; C46, 50, 54, §374.3]

Fiscal year, §363.29

**374.4 Rules and regulations.** The city council shall request suggestions for rules and regulations to be adopted for the government and operation of such community center improvement from the community center board and superintendent, and from such public-spirited citizens as are interested in such development and particularly in the child welfare of such city, and shall carefully consider all such suggestions, and shall thereafter determine and promulgate the rules and regulations which shall govern in the operation and management of such community center. Such rules and regulations may thereafter be modi-

fied and changed from time to time by the city council. [C24, 27, 31, 35, 39, §5833; C46, 50, 54, §374.4]

**374.5 Maintenance in connection with school premises.** The name that may be adopted for said community center district, and the location of the improvements, shall be determined by the city council; and in this connection said city council is authorized, if it shall deem it advisable, and with the consent of the school board, to locate such community center improvement in connection with, adjacent to, or as a part of public school buildings and grounds erected or to be erected and maintained within said community center district, and to co-operate with the boards having the custody and management of public school buildings or grounds within said district, and, by making arrangements satisfactory to such boards, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, and for a division between the school board and the community center district of the cost of buildings, recreation grounds, and equipment to be used in connection with such school as a community center, and of the expense of operation thereof; provided further that in case such community center shall be established or maintained in connection with a public school operated within said community center district, the city council shall have authority to arrange as it may deem best with the school board for the necessary personal supervision of such community center, other than that contemplated herein where such center is operated independently. [C24, 27, 31, 35, 39, §5834; C46, 50, 54, §374.5]

## CHAPTER 374A

### AUDITORIUM TRUSTEES IN CERTAIN CITIES

Applicable to cities over 80,000 population  
Referred to in §363C.7

374A.1 Board appointed.

374A.2 Original appointments.

374A.3 Appointments.

374A.4 Vacancies.

374A.5 Compensation.

374A.6 Powers and duties.

**374A.1 Board appointed.** In any municipal corporation having a population of eighty thousand or more and operating under any form of government in which a municipal auditorium has been established under the provisions of section 368.56\* there shall be appointed a board of auditorium trustees. [C54, §374A.1; 56GA, ch 189, §2]

\*Section 368.56 as it appeared in the Code 1950 and prior codes, repealed by 54GA, ch 151  
See also §368.18

**374A.2 Original appointments.** The council, by a majority vote of the members, shall appoint five qualified resident electors of the municipal corporation, who shall constitute the original board; one of said board members to serve for a one-year term; one to serve for a

two-year term; one to serve for a three-year term; one to serve for a four-year term; and one to serve for a five-year term. Each person originally appointed shall serve until July 1 of the year in which the period of such original appointment shall expire. [C54, §374A.2]

**374A.3 Appointments.** Each year, and on or before the first day of June, the council, by a majority vote, shall appoint one qualified elector of the municipal corporation, to serve for a five-year term as a member of the board, such term to commence on the first day of July of the year of appointment. [C54, §374A.3]

**374A.4 Vacancies.** In the event a vacancy occurs on the board by reason of death, disability, or removal from the corporate limits

of any member, such vacancy shall be filled by a majority vote of the members of the city council for the unexpired term. [C54,§374A.4]

**374A.5 Compensation.** The members of the board of auditorium trustees shall serve without compensation. [C54,§374A.5]

**374A.6 Powers and duties.** The board of auditorium trustees shall have the following powers and duties:

1. *First meeting.* To meet on the first day of July in each year, or as soon thereafter as practicable, and organize by the election of a president and secretary from their own number.

2. *Auditorium.* To have charge, control, and supervision of the municipal auditorium, its appurtenances, fixtures, and equipment, and rooms containing same, and to direct and control all affairs relating to such auditorium.

3. *Employees.* To employ a manager and such assistants and employees as may be necessary for the proper and efficient management of such auditorium and other trust property held by the board, and to fix the compensation of such personnel.

4. *Tenure.* All personnel employed by the board shall not be subject to the provisions of chapter 365. However, in all appointments made or personnel employed under the provisions of this chapter, honorably discharged men and women from the military or naval forces of the United States in any war in which the United States was or is now engaged shall be given the preference, if otherwise qualified.

5. *Purchases.* To select, purchase, and pay for furniture, fixtures, equipment, and supplies for such auditorium.

6. *Use of auditorium.* To authorize the use of such auditorium and to fix charges therefor.

7. *Rules and regulations.* To make and enforce all necessary rules and regulations governing the affairs of the board and the administration, use, and preservation of the auditorium and other property held by the

board and to provide penalties for the violation of such rules and regulations.

8. *Expenditures.* To have exclusive control of all proceeds from taxes levied or allocated by the council for auditorium purposes and of the expenditure of all moneys available by gift or otherwise and of all moneys belonging to the auditorium fund, including penalties.

9. *Gifts.* To accept gifts of real or personal property, and devises and bequests, including trust funds; to take titles to said property in the name of said board of auditorium trustees; to execute deeds and bills of sale for the conveyance of said property; to execute trusts accompanying gifts, to expend the income received from such gifts for the operation or improvement of such auditorium; to operate and manage properties received and held by the board, as aforesaid, and to receive and expend funds in connection therewith.

10. *Accounts.* To keep a current and accurate record of all proceedings of the board and of all receipts and expenditures.

11. *Contracts.* To make contracts for the use of such auditorium, provided that no lease of the premises, or any part thereof, shall be made for a term in excess of twelve months, without prior approval of the city council.

12. *Auditorium fund.* All moneys received and set apart for the operation of such auditorium shall be deposited in the municipal treasury and credited to the auditorium fund and paid out only upon recommendation of the board of trustees signed by its secretary.

13. *Annual report.* The board of trustees shall immediately, at the close of each municipal fiscal year, make to the council a report containing a statement of the condition of the auditorium, the amount of money expended, the amount of money or description and estimated value of property, real or personal, received by such board during the prior fiscal year, together with such other information as it may deem important, and such further information as the council may require. [C54, §374A.6]

Saving clause, 54GA, ch 152,§7

## CHAPTER 375

### MUNICIPAL BANDS

Applicable to all cities and towns

375.1 Levy.  
375.2 Petition.  
375.3 Election.

375.4 Duty to levy tax.  
375.5 Revocation of authority.  
375.6 Disposition of funds.

**375.1 Levy.** Cities having a population of not over forty thousand and towns may, when authorized as hereinafter provided, levy each year a tax of not to exceed one-half mill\* for the purpose of providing a fund for the maintenance or employment of a band for musical purposes; provided, however, that when there is so maintained or employed in such city or

town a band incorporated not for profit under chapter 504 for educational purposes throughout the entire year, which, as a part of such educational program, trains and maintains throughout the entire year subsidiary units of such band whereby the youth of the city or town receive instruction and training in band music, an additional tax of not to exceed one-



half mill\* may be levied for such educational purposes without further authorization by an election.

Cities having a population of over forty thousand may, when authorized as hereinafter provided, levy each year a tax of not to exceed one-eighth mill\* for the purpose of providing for the maintenance or employment of a band for musical purposes and for the continuance of musical education of children of such cities having a population of over forty thousand. [C24, 27, 31, 35, 39, §5835; C46, 50, 54, §375.1]

Referred to in §§375.6, 404.11(7)  
\*Alternate levy, see §404.11(7)

**375.2 Petition.** Said authority shall be initiated by a petition signed by ten percent of the legal voters of the city or town, as shown by the last regular municipal election. Said petition shall be filed with the council or commission and shall request that the following question be submitted to the voters, to wit: "Shall a tax of not exceeding (here insert number) mills be levied each year for the purpose of furnishing a band fund?" [C24, 27, 31, 35, 39, §5836; C46, 50, 54, §375.2]

**375.3 Election.** When such petition is filed, the council or commission shall cause said question to be submitted to the voters at the first following general municipal election. [C24, 27, 31, 35, 39, §5837; C46, 50, 54, §375.3]

**375.4 Duty to levy tax.** Said levy shall be deemed authorized if a majority of the votes cast at said election be in favor of said proposition, and the council or commission shall then levy a tax sufficient to support or employ such band, not to exceed one-half mill\* on the assessed valuation of such municipality. [C24, 27, 31, 35, 39, §5838; C46, 50, 54, §375.4]

Referred to in §404.11(7)  
\*Alternate levy, see §404.11(7)

**375.5 Revocation of authority.** A like petition may at any time be presented to the council or commission asking that the following proposition be submitted, to wit: "Shall the power to levy a tax for the maintenance or employment of a band be canceled?" Said submission shall be made at any general municipal election as heretofore provided, and if a majority of the votes cast be in favor of said question, no further levy for said purpose shall be made. [C24, 27, 31, 35, 39, §5839; C46, 50, 54, §375.5]

**375.6 Disposition of funds.** All funds derived from said levy shall be expended as set out in section 375.1 by the council or commission and in cities having a population of over forty thousand, the said fund shall be administered by the park commissioner, or park board in cities having a population of one hundred twenty-five thousand or more as provided for in chapter 370. [C24, 27, 31, 35, 39, §5840; C46, 50, 54, §375.6]

## CHAPTER 376

### COMFORT STATIONS

Applicable to all cities and towns over 1,000 population

376.1 Number.  
376.2 Requirements.

376.3 Management.  
376.4 Report.

**376.1 Number.** Any town of one thousand or more inhabitants and any city of less than twenty-five thousand inhabitants may establish and maintain one public comfort station. Any city of more than twenty-five thousand inhabitants and less than fifty thousand may establish and maintain two public comfort stations, and any city of over fifty thousand inhabitants may establish and maintain three public comfort stations. [C24, 27, 31, 35, 39, §5841; C46, 50, 54, §376.1]

**376.2 Requirements.** All public comfort stations shall have one room for men and one room for women. Such stations shall be so located within the principal business parts of the city as will best accommodate the public, and shall be of sufficient size to accommodate the patrons of such stations. They shall be furnished with suitable, adequate, and sanitary toilets and lavatories, and shall be at all times kept clean, sanitary, and properly heated dur-

ing cold weather. [C24, 27, 31, 35, 39, §5842; C46, 50, 54, §376.2]

**376.3 Management.** Each city maintaining public comfort stations shall establish and maintain a commission consisting of three persons, at least one of whom shall be a woman, appointed by the mayor, which commission shall have complete supervision over all comfort stations in that city. The members of the commission shall serve without compensation. This commission shall have power to handle all funds and employ such help as may be necessary to properly conduct such stations. [C24, 27, 31, 35, 39, §5843; C46, 50, 54, §376.3]

**376.4 Report.** Said commission shall, immediately after the close of each municipal fiscal year, make a detailed report in writing to the council of all money received and disbursed by it. [C27, 31, 35, §5843.1; C39, §5843.1; C46, 50, 54, §376.4]

Fiscal year, §363.29

CHAPTER 377

JUVENILE PLAYGROUNDS AND RECREATION CENTERS

Referred to in §371.9  
Applicable to all cities

- 377.1 Authorization.
- 377.2 Commission—appointment and duties.
- 377.3 Joint maintenance.
- 377.4 Superintendents — assistants — maintenance.
- 377.5 Co-operation—rules.

**377.1 Authorization.** Cities may, when authorized by the voters, provide one or more playgrounds and recreation centers, either on lands to be acquired, or on lands already owned or to be leased by the city. The number and location thereof shall be determined by the city council. [SS15,§879-r; C24, 27, 31, 35, 39, §5844; C46, 50, 54,§377.1]

**377.2 Commission—appointment and duties.** The council of any city which establishes any playground or recreation center as provided by law, may by ordinance create a playground and recreation commission consisting of not less than five nor more than nine members who shall be appointed by the mayor with the approval of the council, and all of whom shall be qualified electors of such city and shall serve without compensation. The full term of office of each member of the commission shall be three years, but those first appointed may be for shorter periods. The council may confer on such commission all or any part of its powers in relation to the equipment, maintenance, and conduct of playgrounds and recreation centers. [C24, 27, 31, 35, 39,§5845; C46, 50, 54,§377.2; 56GA, ch 194,§1]

**377.3 Joint maintenance.** Cities shall, so far as possible, co-operate with the school boards,

park boards and park departments within said cities in providing for joint operation and maintenance of all public playgrounds and recreation centers within said cities. [C24, 27, 31, 35, 39,§5846; C46, 50, 54,§377.3; 56GA, ch 194,§2]

**377.4 Superintendents — assistants — maintenance.** The council, or commission where one exists, shall appoint a suitable superintendent and all necessary assistants for each playground and recreation center and fix their term of employment, salaries, and duties. The superintendent shall have control of all persons using such grounds. All salaries and expenses incurred in the maintenance of such grounds shall be paid from the playground maintenance fund. [SS15,§879-v; C24, 27, 31, 35, 39,§5847; C46, 50, 54,§377.4; 56GA, ch 194,§3]

**377.5 Co-operation — rules.** The council or commission shall co-operate with the board of education, the superintendent of schools, and with public-spirited citizens interested in public welfare in the government and operation of playgrounds and recreation centers and to that end it may, from time to time, adopt and enforce such rules as it may deem advisable. [SS15,§879-w; C24, 27, 31, 35, 39,§5848; C46, 50, 54,§377.5; 56GA, ch 194,§4]

CHAPTER 378

PUBLIC LIBRARIES

Referred to in §§303.15, 303.18, 303.23, 358B.14  
Applicable to all cities and towns

- 378.1 Formation—maintenance.
- 378.2 Donations.
- 378.3 Library trustees.
- 378.4 Term of office.
- 378.5 Qualifications.
- 378.6 Vacancies.
- 378.7 “Vacancy” defined.
- 378.8 Compensation.
- 378.9 Joint libraries.
- 378.10 Powers.
- 378.11 Power to contract.
- 378.12 Method of use.
- 378.13 Rate of tax.
- 378.14 Township tax.
- 378.15 County tax.
- 378.16 Uniting with historical associations.
- 378.17 Fund—treasurer.
- 378.18 Report.

**378.1 Formation—maintenance.** Cities and towns may provide for the formation and maintenance of free public libraries open to the use of all inhabitants under proper regulations, and may purchase, erect, or rent buildings or rooms suitable for this purpose and provide for the compensation of necessary employees.

[C73,§461; C97,§727; S13,§727; C24, 27, 31, 35, 39, §5849; C46, 50, 54,§378.1]

<sup>40</sup>ExGA, HF 165,§1, editorially divided  
Referred to in §358B.2

**378.2 Donations.** Cities and towns may receive, hold, and dispose of all gifts, donations, devises, and bequests that may be made to

them for the purpose of establishing, increasing, or improving any library; and when the conditions thereof have been accepted by the city, their performance may be enforced by the library board by an action of mandamus against the council or by other proper action. The council may apply the profits accruing therefrom to best promote the prosperity and utility of the library. Cities and towns of not more than two thousand population, may also receive, hold and dispose of all devises and bequests that contain a condition thereof that one nonresident shall be a member of the board of library trustees. [C73,§461; C97,§727; S13,§727; C24, 27, 31, 35, 39,§5850; C46, 50, 54, §378.2]

Referred to in §§378.5, 378.7

**378.3 Library trustees.** In any city or town in which a free library has been established, there shall be a board of library trustees, consisting of five, seven, or nine members, to be appointed by the mayor, by and with the approval of the city council, which shall also establish by ordinance the number to be appointed. [C97,§728; SS15,§728; C24, 27, 31, 35, 39,§5851; C46, 50, 54,§378.3]

39GA, ch 265,§1, editorially divided

**378.4 Term of office.** Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years and two for six years, from the first day of July following their appointment in each case, and at their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the council. All subsequent appointments, whatever the size of the board, shall be for terms of six years each, except to fill vacancies. [C97,§728; SS15,§728; C24, 27, 31, 35, 39,§5852; C46, 50, 54,§378.4]

**378.5 Qualifications.** Bona fide citizens and residents of the city or town, except as qualified by section 378.2, male or female, over the age of twenty-one years, are alone eligible to membership. [C97,§728; SS15,§728; C24, 27, 31, 35, 39,§5853; C46, 50, 54,§378.5]

**378.6 Vacancies.** Vacancies in the board shall be filled by appointment by the mayor, by and with approval of the city council, such appointees to fill out the unexpired term for which the appointment is made. [C97,§728; SS15,§728; C24, 27, 31, 35, 39,§5854; C46, 50, 54, §378.6]

**378.7 "Vacancy" defined.** The removal of any trustee permanently from the city, or his absence from six consecutive regular meetings of the board, except in case of sickness or temporary absence from the city, and except as qualified by section 378.2, without due explanation of absence, shall render his office as trustee

vacant. [C97,§728; SS15,§728; C24, 27, 31, 35, 39,§5855; C46, 50, 54,§378.7]

**378.8 Compensation.** Members of said board shall receive no compensation for their services. [C97,§728; SS15,§728; C24, 27, 31, 35, 39, §5856; C46, 50, 54,§378.8]

**378.9 Joint libraries.** In cities and incorporated towns where a college or university is located, it shall be lawful for the city or town and such institution of learning to jointly establish and maintain a public library for their mutual benefit upon such terms and conditions as regards maintenance, control, appointment of library trustees, and other incidents of joint control as may in any lawful manner be mutually agreed upon between them; but no city or town may undertake to contribute toward the maintenance more than the amount produced by a rate of taxation therefor allowed by law, and no person shall be appointed or confirmed as library trustee other than such having the qualifications required by law. [C97,§728; SS15, §728; C24, 27, 31, 35, 39,§5857; C46, 50, 54,§378.9]

Taxation authorized, §404.10

**378.10 Powers.** Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.

2. To have charge, control, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.

3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.

4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.

6. To authorize the use of such libraries by nonresidents of such cities and towns and to fix charges therefor.

7. To make and adopt, amend, modify, or repeal bylaws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures of all portions of the municipal enterprises fund allocated for library purposes by the council, and of the expenditure of all

moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund, including fines and rentals collected under the rules of the board of trustees.

9. To accept gifts of real property, personal property, or mixed property, and devises and bequests, including trust funds; to take the title to said property in the name of said library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of said library. This subsection shall apply to cities and towns, irrespective of their form of government.

Said board shall keep a record of its proceedings. [C97,§729; S13,§729; C24, 27, 31, 35, 39, §5858; C46, 50, 54,§378.10]

**378.11 Power to contract.** Contracts may be made between the board of trustees of any free public library and any city, town, school corporation, township, or county or with the trustees of any county library district for its use by their respective residents. Townships and counties may enter into such contracts, but may only contract for the residents outside of cities and towns. Such contract by a county shall supersede all contracts between the library trustees and townships or school corporations outside of cities and towns. [S13, §§592-a, 729-a; C24, 27, 31, 35, 39,§5859; C46, 50, 54,§378.11]

Referred to in §378.15

**378.12 Method of use.** Such use shall be accomplished by one or more of the following methods in whole or in part:

1. By lending the books of such library to such residents on the same terms and conditions as to residents of the city or town in which said library is situated.

2. By the establishment of depositories of books of such library to be loaned to such residents at stated times and places.

3. By the transportation of books of such library by wagon or other conveyance for lending the same to such residents at stated times and places.

4. By the establishment of branch libraries for lending books to such residents. [S13,§729-a; C24, 27, 31, 35, 39,§5860; C46, 50, 54,§378.12]

**378.13 Rate of tax.** Such contracts shall provide for the rate of tax to be levied during the period thereof. They may, by mutual consent of the contracting parties, be terminated at any time. They may also be terminated by a majority of the electors, represented by either of the contracting parties, voting on a proposition to terminate which shall be submitted by the governing body upon a written petition of electors in a number not less than five percent of those who voted in the area for governor at the last general election.

The proposition may be submitted at any election provided by law which covers the area

of that seeking to terminate the contract. The petition shall be presented to the governing body not less than forty days before the election at which the question is to be submitted. [S13,§729-a; C24, 27, 31, 35, 39,§5861; C46, 50, 54, §378.13]

**378.14 Township tax.** The board of trustees of any township which has entered into such a contract shall at the April meeting levy a tax not exceeding one-fourth mill on the dollar on all taxable property in the township to create a fund to fulfill its obligation under the contract. [S13,§592-a; C24, 27, 31, 35, 39,§5862; C46, 50, 54,§378.14]

**378.15 County tax.** The board of supervisors, after it makes such contract, shall levy annually on the taxable property of the county outside of cities and towns, a tax of not more than one mill to create a fund to fulfill its obligation under the contract.

Electors of that part of any county residing outside of cities and towns in a number of not less than twenty-five percent of those who voted for governor at the last general election in said area may petition the board of supervisors to submit the proposition of requiring the board of supervisors to provide library service for them and their area by contract as provided by section 378.11.

Thereafter it shall be the duty of the board of supervisors to submit the proposition to the voters of the county residing outside of cities and towns at the next nearest election, primary or general, provided, however, that said petition shall have been filed not less than forty days prior to the date of the election at which the question is to be submitted.

If a majority of those voting upon the proposition favor it the board of supervisors shall within thirty days thereafter appoint a board of library trustees from residents of the petitioning area and whose number, term of office, vacancies and qualifications, other than residence, shall be the same as provided for trustees of free public libraries in cities and towns. Vacancies shall be filled by the board of supervisors.

The board of trustees is authorized to contract with trustees of any library for library use or service for the benefit of the residents and area represented by it. The contract so executed shall have all the force and effect of one executed by a board of supervisors under the provisions of section 378.11.

The board of supervisors shall thereafter levy annually on the taxable property of the county outside of cities and towns, a tax of not more than one mill to create a fund to fulfill the contract obligations of the trustees appointed by it. [SS15,§422; C24, 27, 31, 35, 39,§5863; C46, 50, 54,§378.15]

**378.16 Uniting with historical associations.** Whenever a local county historical association shall be formed in any county having a free public library, the trustees of such library are

hereby authorized to unite with such historical association and to set apart the necessary room and to care for such articles as may come into the possession of said association; said trustees are also authorized to purchase necessary receptacles and materials for the preservation and protection of such articles as are in their judgment of a historical and educational nature and pay for the same out of the library fund. [S13,§729-e; C24, 27, 31, 35, 39,§5864; C46, 50, 54,§378.16]

**378.17 Fund—treasurer.** All moneys allocated by the council for the maintenance of such library shall be deposited in the treasury of such city or town to the credit of the library fund, and shall be kept by the treasurer separate and apart from all other moneys, and paid out upon the orders of the board of trustees, signed by its president and secretary.

Provided that in any city or incorporated town where a free public library is maintained jointly by the city or town and an institution

of learning, for the support and maintenance of which both the city and the institution of learning contribute, the library trustees may elect a library treasurer therefor, and it shall be the duty of the city treasurer to pay over to said library treasurer moneys allocated by the council for library maintenance when collected. [C97,§730; S13,§730; C24, 27, 31, 35, 39, §5865; C46, 50, 54,§378.17]

**378.18 Report.** The board of trustees shall, immediately after the close of each municipal fiscal year, make to the council a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as required by the council. [C97,§731; C24, 27, 31, 35, 39,§5866; C46, 50, 54,§378.18]

Fiscal year, §363.29

## CHAPTER 379

### MUNICIPAL ART GALLERIES

Applicable to cities over 20,000 population

379.1 Authorization.

379.2 Board of trustees.

379.3 Tenure.

379.4 Casting lots for term.

379.5 Regular appointees—tenure.

379.6 Qualification.

379.7 Automatic vacancy.

379.8 Filling vacancy.

379.9 Compensation.

379.10 Use of art galleries.

379.11 Powers of board.

379.12 Record of proceedings.

379.13 Appropriation.

379.14 Separate fund kept—disbursement.

379.15 Annual report.

**379.1 Authorization.** Cities having a population of twenty thousand or more may provide for the establishment and maintenance of a municipal art gallery which, under proper regulations, shall be open to the use of the public, and may purchase, erect, or rent buildings or rooms or use any available property belonging to such city, suitable for this purpose, and provide for the compensation of necessary employees. [C27, 31, 35,§5866-a1; C39,§5866.01; C46, 50, 54,§379.1]

**379.2 Board of trustees.** In any city in which a municipal art gallery has been established, there shall be a board of art trustees consisting of five, seven, or nine members to be appointed by the mayor, by and with the approval of the city council, which shall also establish by ordinance the number to be appointed. [C27, 31, 35,§5866-a2; C39,§5866.02; C46, 50, 54,§379.2]

**379.3 Tenure.** Of such trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years,

two for four years and two for six years, from the first day of July following their appointment in each case. [C27, 31, 35,§5866-a3; C39, §5866.03; C46, 50, 54,§379.3]

41GA, ch 119,§3, editorially divided

**379.4 Casting lots for term.** At their first meeting they shall cast lots for their respective terms and report the result of such lot to the council. [C27, 31, 35,§5866-a4; C39,§5866.04; C46, 50, 54,§379.4]

**379.5 Regular appointees—tenure.** All subsequent appointments, whatever the size of the board, shall be for terms of six years each, except to fill vacancies. [C27, 31, 35,§5866-a5; C39,§5866.05; C46, 50, 54,§379.5]

**379.6 Qualification.** Only bona fide citizens and residents of the city or town, male or female, over the age of twenty-one years, shall be eligible to membership. [C27, 31, 35,§5866-a6; C39,§5866.06; C46, 50, 54,§379.6]

**379.7 Automatic vacancy.** The removal of any trustee permanently from the city, or his absence from six consecutive regular meetings of the board, except in case of sickness or temporary absence from the city, without due explanation of absence, shall render his office

as trustee vacant. [C27, 31, 35,§5866-a7; C39, §5866.07; C46, 50, 54,§379.7]

**379.8 Filling vacancy.** Vacancies in the board shall be filled by appointment by the mayor, by and with approval of the city council, such appointees to fill out the unexpired term for which the appointment is made. [C27, 31, 35,§5866-a8; C39,§5866.08; C46, 50, 54,§379.8]

**379.9 Compensation.** Members of said board shall receive no compensation for their services. [C27, 31, 35,§5866-a9; C39,§5866.09; C46, 50, 54,§379.9]

**379.10 Use of art galleries.** In any such city where there is an art institute or art school or other organization whose purpose is the teaching of art or the promotion and development of public interest in art, the board of trustees may make any contracts with such institutions for the special use of such art gallery or for the joint care of same as may in any lawful manner be mutually agreed upon between them; but no such city shall contribute any money for the support of any such private institution and no officer or employee of such private institution shall be a member of such board. [C27, 31, 35, §5866-a10; C39,§5866.10; C46, 50, 54,§379.10]

**379.11 Powers of board.** Such board of art trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers and committees as the board may deem necessary.

2. To have charge, control, and supervision of the public art gallery, its works of art, appurtenances, fixtures, and buildings or rooms containing the same, directing and controlling all the affairs of such art gallery.

3. To employ a director and such assistants and employees as may be necessary for the management of said art gallery and fix their compensation; but, prior to such employment, the compensation of such supervisor, assistants, and employees shall be fixed for the term of employment by a majority vote of such board of art trustees and such compensation shall not be increased during such period of employment.

4. To remove such director, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To accept on behalf of the city, gifts or works of art; to select and make purchases of pictures, portraits, paintings, statuary and relics, and other objects of art, in the original and in replicas or copies, books, periodicals, papers, and journals on the subject of art, furniture, fixtures, stationery, and supplies for such art gallery.

6. To receive, hold, and dispose of all gifts, donations, devises, and bequests that may be made to the city for the purpose of establishing, increasing, or improving such art gallery; but when any such gift, donation, devise, or bequest shall be conditioned upon any act of the city, the city council must first determine whether such condition can or shall be complied with.

7. To make and adopt, amend, modify, or repeal bylaws, rules, regulations, not inconsistent with law, for the care, use, government, and management of such art gallery and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures of all moneys allocated by the council for the purposes, as provided by law, and of the expenditure of all moneys available by gift, or otherwise for the erection of art buildings or for the promotion of such art galleries and of all other money belonging to the art gallery fund. [C27, 31, 35,§5866-a11; C39,§5866.11; C46, 50, 54,§379.11]

41GA, ch 119,§9, editorially divided

**379.12 Record of proceedings.** Said board shall keep a record of all of its proceedings. [C27, 31, 35,§5866-a12; C39,§5866.12; C46, 50, 54, §379.12]

**379.13 Appropriation.** The city council may allocate each year such portion of the proceeds of the recreation levy as they deem necessary for maintaining and enlarging such art gallery and for defraying the necessary expenses connected therewith, including the maintenance of the building in which such gallery is housed, water, light, heat, and power, and the salary of the director and his assistants. [C27, 31, 35, §5866-a13; C39,§5866.13; C46, 50, 54,§379.13]

**379.14 Separate fund kept—disbursement.** All moneys received and set apart for the maintenance of such art gallery shall be deposited in the treasury of such city to the credit of the recreation fund and paid out upon the orders of the board of art trustees signed by its president. [C27, 31, 35,§5866-a14; C39,§5866.14; C46, 50, 54,§379.14]

**379.15 Annual report.** Immediately after the close of each municipal fiscal year, said board shall file with the council a written report which shall cover the last preceding fiscal year and contain a statement of the condition of the art gallery, the number of pictures, portraits, paintings, statuary, or relics contained in the gallery, and all additions thereto, the amounts of fines collected, the amount of donations, devises, and bequests received during the year and the amount of money expended in the maintenance of such art gallery, together with such further information as may be required by the council. [C27, 31, 35,§5866-a15; C39,§5866.15; C46, 50, 54, §379.15]

Fiscal year. §363.29

CHAPTER 379A

SYMPHONY ORCHESTRA TAX

Applicable to cities between 75,000 and 125,000 population

- 379A.1 Tax—purposes.
- 379A.2 Petition.
- 379A.3 Question submitted.

- 379A.4 Levy.
- 379A.5 Petition to cancel levy.
- 379A.6 Use of funds.

**379A.1 Tax—purposes.** Cities having a population of over seventy-five thousand and less than one hundred twenty-five thousand may when authorized as herein provided levy each year a tax of not to exceed one-eighth of a mill\* for the purpose of providing a fund for the maintenance or employment of a symphony orchestra for musical purposes; provided, however, that where there is maintained or employed in such city a symphony orchestra, not for profit under chapter 504, for educational purposes throughout the entire year, which, as a part of such educational program trains and maintains throughout the entire year subsidiary units of such orchestra whereby the youth of the city receive instruction and training in symphony music, an additional tax of not to exceed one-eighth mill\* may be levied for such educational purposes without further authorization by an election. [C50, 54,§379A.1]

Referred to in §§379A.6, 404.11(9)  
\*Alternate levy, see §404.11(9)

**379A.2 Petition.** Said authority shall be initiated by a petition signed by ten percent of the legal voters of the city, as shown by the last municipal election. Said petition shall be filed with the council or commission and shall request that the following question be submitted to the voters at a general municipal election, to wit: "Shall a tax of not exceeding one-eighth mill be levied each year for the purpose of furnishing a symphony orchestra fund?" [C50, 54,§379A.2]

**379A.3 Question submitted.** When such petition is filed, the council or commission, shall cause such question to be submitted to the voters at the first following municipal election. [C50, 54,§379A.3]

**379A.4 Levy.** Said levy shall be deemed authorized if a majority of the votes cast at said election be in favor of said proposition, and the council or commission shall then levy a tax sufficient to support or employ such orchestra not to exceed one-eighth mill on the assessed property of such city. In lieu of the levy provided herein the council may allocate a portion of the proceeds of the recreation fund not to exceed the amount which would have been raised by the levy provided herein. [C50, 54,§379A.4]

See §379A.1

**379A.5 Petition to cancel levy.** A like petition may at any time be presented to the council or commission asking that the following proposition be submitted, to wit: "Shall the power to levy a tax for the maintenance or employment of a symphony orchestra be canceled?" Said question shall be presented at any general municipal election as heretofore provided, and if a majority of the votes is cast in favor of said question, no further levy for said purpose shall be made. [C50, 54,§379A.5]

**379A.6 Use of funds.** All funds derived from said levy shall be expended as set forth in section 379A.1 hereof by the council or commission. [C50, 54,§379A.6]

CHAPTER 380

MUNICIPAL HOSPITALS

Applicable to all cities and towns  
Referred to in §135B.31

- 380.1 Trustees.
- 380.2 Trustees in certain cities.
- 380.3 Organization.
- 380.4 Treasurer.
- 380.5 Compensation—expenses.
- 380.6 Management.
- 380.7 Jurisdiction.

- 380.8 Appropriation.

IN CERTAIN CITIES

- 380.9 Construction by pledge of net earnings of light and power plants—certificates of indebtedness.
- 380.10 Election.
- 380.11 Form of submission.

**380.1 Trustees.** Cities or towns may by ordinance provide for the election, at a general, city, town, or special election, of three hospital trustees, whose terms of office shall be six years; but at the first election, three shall be elected and hold their office, respectively, for

two, four, and six years, and they shall by lot determine their respective terms. [S13,§741-o; C24, 27, 31, 35, 39,§5867; C46, 50, 54,§380.1]

**380.2 Trustees in certain cities.** Cities having a population of fifty thousand or over

which have a hospital board of trustees consisting of three members may by ordinance increase the number of members to five and provide for the appointment of one of the additional members until the next succeeding general or city election, and for the appointment of the other additional member until the second succeeding general or city election. Thereafter, the terms of office of such additional members shall be six years. [C27, 31, 35, §5867-a1; C39, §5867.1; C46, 50, 54, §380.2]

**380.3 Organization.** The said trustees shall within ten days after their election qualify by taking the oath of office, and organize as a hospital board by the election of one of their number as chairman and one as secretary, but no bond shall be required of them. [S13, §741-p; C24, 27, 31, 35, 39, §5868; C46, 50, 54, §380.3]

S13, §741-p, editorially divided

**380.4 Treasurer.** The city or town treasurer shall be the treasurer of said board of trustees, and shall receive and disburse all funds under the control of said board as ordered by it, but shall receive no additional compensation for his services. Such treasurer shall give bond in such form and amount as may be determined by the board in its discretion in addition to the bond required of him by section 368A.4\*. [S13, §741-p; C24, 27, 31, 35, 39, §5869; C46, 50, 54, §380.4]

\*Section 363.27, Code 1950, repealed by 54GA, ch 147, §30 and section 368A.4 enacted in lieu thereof

**380.5 Compensation—expenses.** No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenses actually made for personal expenses incurred as such trustee, but an itemized statement of all such expenses and moneys paid out shall be made under oath by each of such trustees and filed with the secretary and allowed only by the affirmative vote of the full board. [S13, §741-p; C24, 27, 31, 35, 39, §5870; C46, 50, 54, §380.5]

**380.6 Management.** Said board of trustees shall be vested with authority to provide for the management, control, and government of such city or town hospital and shall provide all needed rules and regulations for the economic conduct thereof. In the management of said hospital no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state. [S13, §741-p; C24, 27, 31, 35, 39, §5871; C46, 50, 54, §380.6]

**380.7 Jurisdiction.** The jurisdiction of such cities and towns shall extend over all lands used for hospital purposes without the corporate limits if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such hospitals. [S13, §741-t; C24, 27, 31, 35, 39, §5872; C46, 50, 54, §380.7]

**380.8 Appropriation.** In a city or town maintaining a hospital the council may allo-

cate such portion of the municipal enterprises fund as the council deems necessary for its improvement and maintenance. [S13, §741-u; C24, 27, 31, 35, 39, §5873; C46, 50, 54, §380.8]

IN CERTAIN CITIES

**380.9 Construction by pledge of net earnings of light and power plants—certificates of indebtedness.** Any city having a population of five thousand and not more than six thousand, or any city of less than fifteen thousand population having within its corporate limits a state educational institution, owning and operating an electric light and power plant that is wholly paid for, and that is producing an annual income from the sale of electric current in excess of all expense of operation and reasonable depreciation charges against said plant, may, for the purpose of paying the cost of the construction of a municipal hospital, or addition thereto, borrow money, and may, for the repayment of said loan and interest thereon, pledge for a period not exceeding fifteen years, not to exceed fifty percent of the net earnings each year of said plant.

In exercising the power herein conferred, the council may issue interest-bearing certificates of indebtedness which shall be payable solely from the earnings pledged, and the certificates shall so state; and said city may bind itself to maintain said plant and to charge and collect such rates for the products of said plant as will, under said pledge, discharge said loan as it matures. [C35, §5873-e1; C39, §5873.1; C46, 50, 54, §380.9]

Referred to in §380.10

**380.10 Election.** The power granted in section 380.9 to issue certificates and to pledge said earnings for the payment thereof shall not be exercised unless a majority of the legal electors of the city voting thereon vote in favor of the exercise of such power. The council may, on its own motion, submit such question either at a general election or at a special election called for that purpose.

Upon the filing with the mayor of a petition requesting the submission of such question, signed by twenty-five legal electors of each voting precinct in the city, the mayor shall submit such question at the first general election following the filing of said petition, providing said general election occurs not less than forty nor more than ninety days after said filing. If said question cannot be submitted at a general election, as herein provided, the mayor shall submit such question at a special election which he shall forthwith call for such date as will permit the giving of the notice herein provided. Notice of said election shall be given as provided by section 397.7. [C35, §5873-e2; C39, §5873.2; C46, 50, 54, §380.10]

**380.11 Form of submission.** The question shall be submitted in substantially the following form:

“Shall the city of . . . . ., Iowa, construct a municipal hospital, and for the



payment of such construction pledge, for a period not exceeding fifteen (15) years, not to exceed fifty percent (50%) of the net earnings each year of the municipal light and power

plant and issue interest-bearing certificates of indebtedness not exceeding . . . . . dollars, as evidence of said indebtedness?" [C35,§5873-e3; C39,§5873.3; C46, 50, 54,§380.11]

## CHAPTER 381

### BRIDGES

Applicable to all cities and towns

381.1 Construction and repair.  
 381.2 Repealed by 54GA, ch 159,§54. See §§381.1, 404.7.  
 381.3 and 381.4 Repealed by 55GA, ch 176,§2. See §404.7 (8).  
 381.5 and 381.6 Repealed by 54GA, ch 159,§56. See §§381.7, 404.18.  
 381.7 Bridge bonds and taxes.  
 381.8 Repealed by 54GA, ch 159,§57. See §381.7.  
 381.9 Aiding county bridge.

381.10 Question submitted.  
 381.11 Notice—conditions.  
 381.12 Certification of tax.  
 381.13 Tax levied.  
 381.14 Collection—payment.  
 381.15 Forfeiture.  
 381.16 Contract for use of bridge.  
 381.17 Tax to purchase.  
 381.18 Question submitted.  
 381.19 Bonds or warrants—tolls.  
 381.20 Tax in cities after annexation.

**381.1 Construction and repair.** Cities shall have the care, supervision, and control of all public bridges and culverts, viaducts, underpasses, grade crossing separations and approaches thereto, not constructed or maintained by any railroad company under the provisions of chapter 387, within their corporate limits; shall cause the same to be kept open and free from nuisance, and shall construct and keep in repair all public culverts within the limits of said corporations.

They may aid in the construction of county bridges within the limits of the city, or of any bridge contiguous thereto on a highway leading to the city, or of any bridge across any unnavigable river which divides the county in which the city is located from another state by appropriating a sum not exceeding ten dollars per linear foot therefor.

Cities shall have the power within their corporate limits to construct, reconstruct, repair, enlarge and maintain, bridges, culverts, viaducts, underpasses, grade crossing separations, and approaches thereto, except those constructed and wholly maintained by any railroad company under the provisions of chapter 387. [R60,§1097; C73,§527; C97,§§757, 758, 758-a; SS15,§§758, 758-a; C24, 27, 31, 35, 39,§§5874-5876; C46, 50,§§381.1-381.3; C54,§381.1]

**381.2** Repealed by 54GA, ch 159,§54. See §§381.1, 404.7.

**381.3 and 381.4** Repealed by 55GA, ch 176,§2. See §404.7(8).

**381.5 and 381.6** Repealed by 54GA, ch 159, §56. See §§381.7, 404.18.

**381.7 Bridge bonds and taxes.** Cities are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay all or any part of the cost of the construction, reconstruction, repair or enlargement of bridges, viaducts, culverts, underpasses, grade crossing separations, and

approaches thereto, including the payment of damages caused by the making of any such improvements, not wholly constructed or maintained by any railroad company under the provisions of chapter 387 within the limits of said corporations.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city council shall by resolution provide, but no city shall become indebted in excess of five percent of the actual value of the taxable property within said city, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [S13,§1056-a43; SS15,§§758-b-e; C24, 27, 31, 35, 39,§§5878-5881, 6576; C46, 50, §§381.5-381.8, 416.101; C54,§381.7]

See ch 76

**381.8** Repealed by 54GA, ch 159,§57. See §381.7.

**381.9 Aiding county bridge.** Cities and towns may vote to aid in the construction of any county bridge, when the estimated cost of the same is not less than ten thousand dollars, to the extent of one-half the estimated cost thereof as fixed by the board of supervisors.

A city having a population of five thousand or more may vote a tax, not to exceed one-half of one percent of the assessed value of the taxable property in such city, to construct, or

aid any company which is or may be incorporated under the laws of this state in the construction of, a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in such city, suitable for use as highway, or for both highway and railway and street railway purposes. [C97,§759; C24, 27, 31, 35, 39,§5882; C46, 50, 54,§381.9]

Referred to in §§381.10, 381.15

**381.10 Question submitted.** Whenever a petition shall be presented to the council, signed by a majority of the resident freehold taxpayers thereof, asking that the question of constructing or aiding in the construction of a bridge as provided in section 381.9 be submitted to the qualified electors, it shall be its duty to immediately give notice of a special election, by publication in some newspaper published therein, and also by posting copies of such notice in five public places therein, at least ten days before such election. [C97,§760; C24, 27, 31, 35, 39,§5883; C46, 50, 54,§381.10]

Referred to in §§381.15, 381.18, 382.3

**381.11 Notice—conditions.** Such notice shall specify the time and place of holding the election, the proposed location of the bridge to be aided, the rate percent of tax to be levied, the amount which the board of supervisors is authorized to cause to be collected each year, and all the conditions in the petition.

In case of proposed aid to a private corporation, the notice shall also state its name, the amount of work required to be done on such bridge, and any other conditions which are to be performed before said tax or any part thereof shall become due and payable. Such notice may also contain terms and conditions to be performed by said corporation receiving such aid after the completion of such bridge, which terms and conditions shall be obligatory and binding upon it, its successors and assigns. [C97,§761; C24, 27, 31, 35, 39,§5884; C46, 50, 54, §381.11]

Referred to in §§381.15, 381.18, 382.3

**381.12 Certification of tax.** At such election the question of taxation shall be submitted to the electors thereof. If a majority of the votes be for taxation, the clerk of such city or town shall forthwith certify to the county auditor of the proper county the result, the rate percent of the tax voted, the year or years during which the same is to be collected, the amount to be collected each year, the terms and conditions upon which the same when collected is to be paid, and, if aid is voted to a private corporation, its name, together with a copy of the notice under which the election was held. The certificate shall be filed with the county auditor, who shall cause the same to be recorded in the office of the recorder of deeds. The expenses of the giving of the notice and holding the election shall be audited and paid out of the county treasury as other claims against the county. [C97,§762; C24, 27, 31, 35, 39,§5885; C46, 50, 54,§381.12]

Referred to in §§381.15, 381.18, 382.3

**381.13 Tax levied.** After such certificate shall have been filed and recorded, the board of supervisors shall, at the time of levying the ordinary taxes, levy each year on the taxable property of such city or town the taxes voted as shown by said certificate. [C97,§763; C24, 27, 31, 35, 39,§5886; C46, 50, 54,§381.13]

Referred to in §§381.15, 381.18, 382.3

**381.14 Collection — payment.** Said taxes shall be collected in the same manner, subject to the same penalties for nonpayment after delinquent, and to the same laws after they are collected or collectible, as other taxes, in conformity with the terms and conditions of the notice of election; when collected they shall be paid by the county treasurer, on the order of the board of supervisors, specifying the special bridge fund from which each order is payable; but in no case shall said board make such order until the conditions specified in the petition and notice have been complied with. Such taxes, when payable to the city or town, shall be paid over as other city or town taxes. When payable to a private corporation, they shall be paid over by the county treasurer to such corporation, upon the order of the president or a majority of the directors thereof, after said council shall have certified to the county treasurer that the conditions required, as set forth in the notice for the special election at which the tax was voted, have been complied with, and the council, or a majority of its members, shall make such certificate whenever such conditions shall have been so performed. [C97,§764; C24, 27, 31, 35, 39,§5887; C46, 50, 54,§381.14]

Referred to in §§381.15, 381.18, 382.3  
Collection of taxes, ch 445 et seq.

**381.15 Forfeiture.** Should any taxes levied under the provisions of sections 381.9 to 381.14 remain in the county treasury more than one year after the same shall have been collected, the right to them shall be forfeited and they shall be refunded to the taxpayers; and the board of supervisors shall cause any remaining levy to be canceled and stricken from the tax books, which cancellation shall remove all liens created thereby, and it shall make no further levies under said certificate. [C97,§765; C24, 27, 31, 35, 39,§5888; C46, 50, 54,§381.15]

**381.16 Contract for use of bridge.** Cities situated on a river wholly in the state, or one forming its boundary line, and from which to the opposite shore a bridge has been or may be constructed by any railroad company, corporation, or person, shall have power to contract with the railroad company, corporation, or person owning such bridge for the use of the same as a public highway; which contract may be for the joint use of such bridge, or for the sole use of such portion thereof as may be devoted or adapted to highway travel; and may assume the sole liability, or any portion thereof, for damages to persons or property by reason of their being on any portion of said bridge or approach to either end thereof, caused by the running of cars or locomotives

thereon by any corporation, company, or person entitled to its use, whether the damage results from the negligence of the person engaged in running said cars or locomotives or otherwise, and to indemnify the owners of said bridge, and all others entitled to use the same, from liability for damage so caused, to the extent or proportion thereof assumed in the said contract; and the city may thereafter, and during the continuance of said contract, manage and control said bridge so far as necessary to regulate the highway travel thereon, and may regulate the same as a free or toll bridge, and prescribe such rates of toll as to it from time to time shall seem proper, and make all necessary police regulations for the government of the highway travel thereon, and levy the necessary tax, not exceeding in any one year two and one-half mills on the dollar, for the purpose of carrying out the terms of such contract. [C97,§766; C24, 27, 31, 35, 39,§5889; C46, 50, 54,§381.16]

**381.17 Tax to purchase.** Any city in this state which has voted aid to any company for the construction of a highway or combination bridge across any navigable boundary river of this state, a condition of which vote, or the granting or acceptance of such aid, was that the city should have the right to purchase such bridge from the company so aided, its successors or assigns, may, at any time after such taxes voted in aid are collected, vote an additional tax of not exceeding one and one-fourth percent of the assessed value of the taxable property of such city for the purpose of securing the funds necessary to enable it to make such purchase. Such taxes shall be payable in such annual installments, not less than ten, as the electors may determine. [S13,§766-a; C24, 27, 31, 35, 39,§5890; C46, 50, 54,§381.17]

Referred to in §381.20

**381.18 Question submitted.** The question of whether or not such additional taxes shall be voted shall be submitted to the electors of such city before the city elects to make such pur-

chase, and the submission thereof shall be governed in all respects by sections 381.10 to 381.14, inclusive, so far as the same are applicable. [S13,§766-b; C24, 27, 31, 35, 39,§5891; C46, 50, 54,§381.18]

Referred to in §381.20

**381.19 Bonds or warrants—tolls.** After such taxes are voted the city may issue its bonds, warrants, or other certificates drawing such interest not exceeding five percent per annum as the city council may determine, payable from such taxes as they are collected, and from no other source, and pledging them for their payment. Such taxes shall be used for no other purpose and such bonds, warrants, or certificates shall not be sold for less than their par or face value with accrued interest. The city council shall fix the rate of tolls or charges for passing over the bridge, and such tolls shall be large enough to pay the interest upon the bonds, warrants, or certificates issued for its purchase together with the expense of maintaining and operating it. [S13,§766-c; C24, 27, 31, 35, 39,§5892; C46, 50, 54,§381.19]

Referred to in §381.20  
See ch 76

**381.20 Tax in cities after annexation.** In any case where aid has been extended and bridges erected in two separate cities, and subsequent thereto one of such cities has been annexed to the other, the electors residing in the territory which comprised either of the separate cities before annexation, may vote taxes upon the property in such territory for the purchase of such bridge, and the proceedings in such case shall be the same as provided in sections 381.17, 381.18, and 381.19, except that the petition to the city council shall be signed by a majority of the resident freehold taxpayers of the territory in which the vote is to be had, and the taxes, when voted and properly certified, shall be levied only upon the property in such territory. [S13,§766-d; C24, 27, 31, 35, 39,§5893; C46, 50, 54,§381.20]

## CHAPTER 382

### INTERSTATE BRIDGES

Applicable to all cities

382.1 Purchase of bridges.

382.2 Proceedings attending purchase.

382.3 Form of submission.

382.4 Appraisers—fees.

382.5 Tolls.

382.6 Management and maintenance.

**382.1 Purchase of bridges.** Any city in this state where a tax upon the property of said city has been voted and paid to aid any company in the construction of a highway or combination bridge across any navigable river forming part of the boundary of this state, whether it was a condition of the vote or acceptance of such tax that said city had a right to buy said bridge from the company so aided, its successors or assigns, or not, or

whether the time within which by the terms of the vote by which such option to purchase was granted to said city has expired or not, at any time after the taxes so voted in aid of such construction of such bridge have been paid over to said company, may vote an additional tax not exceeding one and one-fourth percent upon the taxable property of said city for the purpose of procuring funds with which to enable such city to purchase said bridge, such

taxes to be payable in such annual installments as the electors of said city may determine, such determination by the electors to be at an election called for that purpose, and the notice submitting such question shall state the price to be paid for such bridge, including its approaches. [C24, 27, 31, 35, 39,§5894; C46, 50, 54,§382.1]

**382.2 Proceedings attending purchase.** The mayor and city council of such city shall have power to enter into a contract with the corporation or company owning such bridge for the purchase thereof together with its franchises at a price to be agreed upon, which price shall not be greater than the value of such bridge or the cost thereof, with the taxes so voted and paid over by the authorities of said city deducted therefrom.

Unless there is an appraisalment as herein-after provided the original cost of construction shall be considered the value thereof.

No such contract shall become binding upon said city until the same has been submitted to the electors of said city and approved by them by the affirmative vote of a majority of the electors voting for or against the same; the question of the levy of such tax shall be submitted to such electors at the same election, the affirmative vote of a majority of all electors voting for or against the same being necessary to make the contract binding on said city.

If at such election the proposition to make such purchase upon the terms and at the price named in the question submitted and the proposition to vote such tax shall either of them be defeated by not receiving the affirmative vote of a majority of all electors voting for or against the same, such contract shall be considered at an end and said tax defeated. [C24, 27, 31, 35, 39,§5895; C46, 50, 54,§382.2]

**382.3 Form of submission.** The questions as to whether the said contracts shall become binding upon the said city, and the taxes levied or bonds issued by the city authorities, shall, when submitted to the electors of said city, be submitted in the form and manner provided by sections 381.10 to 381.14, inclusive, so far as the same are applicable thereto. [C24, 27, 31, 35, 39,§5896; C46, 50, 54,§382.3]

**382.4 Appraisers—fees.** In case a majority of the members of the city council of such city shall by resolution declare their wish to have

the said city purchase said bridge, its approaches and franchises, and be unable to agree with the owner of such bridge upon the value thereof, such value shall be ascertained by three appraisers named by the governor of Iowa, no one of whom shall be an officer, employee, or stockholder of such owner of said bridge, or a taxpayer or voter in the city proposing to make such purchase or in the county of the state opposite and adjoining said bridge. Such appraisers shall be paid fifteen dollars per day for the time necessarily and actually employed in making such appraisalment, together with their actual and necessary traveling expenses, the same to be paid by the city. [C24, 27, 31, 35, 39,§5897; C46, 50, 54,§382.4]

**382.5 Tolls.** If any such city shall thus become the owner of any such bridge, the city council shall have power from time to time to fix the rates of toll or charges for passing over the bridge, which tolls shall be large enough to pay for the maintenance and operating expenses, interest upon any bonds issued for its purchase, and sufficient after five years to provide a sinking fund of at least five percent of such outstanding bonds, and for their payment at maturity. [C24, 27, 31, 35, 39,§5898; C46, 50, 54,§382.5]

**382.6 Management and maintenance.** If any such city shall thus become the owner of any such bridge, it shall operate the same by officers or employees selected by the mayor and approved by the city council of said city, who shall have police powers and shall maintain order upon said bridge. One of such officers shall be superintendent and authorized to make proper inspection of the structure, see that the same is at all times kept in repair and safe for the traveling public, and that the navigation laws and regulations of the United States are observed.

The said city shall have power to prescribe and enforce proper regulations respecting the passing of stock in droves, and persons and vehicles over said bridge.

Such bridge shall be kept open for travel at all hours of the day or night unless some unavoidable accident shall make such travel for the time unsafe.

The rates of toll and copies of such regulations shall be kept posted at each end of such bridge. [C24, 27, 31, 35, 39,§5899; C46, 50, 54, §382.6]

## CHAPTER 383

## INTERSTATE BRIDGES (ADDITIONAL ACT)

## Applicable to all cities

383.1 Principal grant of power.	383.17 Acquisition of property by purchase by commission.
383.2 Joint power.	383.18 Condemnation of property by commission.
383.3 Utility franchises for use of bridge.	383.19 Removal of obstructions.
383.4 Conveyance of bridge.	383.20 Damage to property.
383.5 Power to assign rights.	383.21 Restoration of public ways and works.
383.6 Existing bridge—purchase, lease or sublease.	383.22 Dissolution of commission.
383.7 Existing bridge—condemnation.	383.23 Joint bridge commission.
383.8 Preliminary expense—tax—bonds.	383.24 Joint purchase.
383.9 Power to issue bonds.	383.25 Joint condemnation.
383.10 Revenue bonds.	383.26 Joint construction.
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383.12 Protection of bondholders.	383.28 Submission to the electors.
383.13 Tolls.	383.29 Supplementary powers granted—saving clause.
383.14 Bridge commission.	383.30 Additional powers.
383.15 Additional powers of commission.	383.31 Enlargement and reconstruction of bridges.
383.16 Record, reports, auditing, removal of members—general provisions.	

**383.1 Principal grant of power.** Any city in this state is hereby authorized and empowered to acquire by purchase, condemnation, bargain and sale, lease, sublease, gift, or otherwise, any existing bridge, including approaches and avenues, rights of way or easements of access to approaches, necessary real and personal property incident thereto and franchises, special privileges, leases and contracts in connection with such bridges, and to so acquire any bridge and aforesaid facilities; and is also authorized and empowered to construct and contract for the construction of, and to acquire by purchase, lease, sublease, gift, or otherwise, bridges, including all of aforesaid appurtenances, facilities, and property; and is also authorized and empowered thereafter to repair, maintain, extend, renew, reconstruct, replace, or enlarge and to mortgage or lease and to use and operate any such bridges as toll or free bridges, either or both from time to time, for public use and travel of all kinds by railroads, street railways, bus lines, vehicles, and pedestrians and other uses, any or all as may be determined by the governing body of the city, and to use same for public utility purposes, and to fix the rates of toll or the charges for the use of same, and to grant nonexclusive franchises for use of same for public utility purposes upon such terms and conditions as may be prescribed by ordinance, and to exercise all such powers within the city limits and five miles outside thereof within the state of Iowa, and any adjoining state, but only across any navigable or nonnavigable stream forming the boundary between such states, after having obtained any authority which may be necessary from such states and the United States, and to exercise such powers either directly through the governing body of the city or any committee thereof or through a bridge commission created as in this chapter provided, or

part any one and part any other. [C31, 35, §5899-c1; C39, §5899.01; C46, 50, 54, §383.1]

**383.2 Joint power.** Any power in this chapter granted to the city may be exercised by the city independently or in co-operation with or aid of similar action by any other city or any county in Iowa, or any city or county in an adjoining state, or the state of Iowa or any adjoining state or states, or the government of the United States where such other political unit has been authorized by law to exercise the necessary powers. Such joint action may be directly by the governing body of the city or through the medium of a joint bridge commission subject to the same conditions provided in this chapter for independent action. [C31, 35, §5899-c2; C39, §5899.02; C46, 50, 54, §383.2]

Referred to in §§383.24, 383.25, 383.26

**383.3 Utility franchises for use of bridge.** The cities specified in this chapter through the governing bodies thereof are authorized and empowered to grant franchises for the non-exclusive use of the bridges acquired under this chapter to public utilities upon such terms, conditions, and for such consideration as such cities may impose whether incident to or part of the purchase of an existing bridge and rights of utilities in connection therewith, or otherwise, and thereafter to extend the duration or to amend the terms and conditions thereof. Any such grant shall be made by the city council by ordinance and no vote of the electors of the city shall be required. In no case shall such a grant be made by any bridge commission. [C31, 35, §5899-c3; C39, §5899.03; C46, 50, 54, §383.3]

**383.4 Conveyance of bridge.** In the event that the state of Iowa, an adjoining state, the government of the United States, either, any, or all of them should agree to take over any

bridge acquired by the city under this chapter and thereafter maintain and operate same as a free public bridge at its or their expense, then such city is authorized to convey such bridge on such conditions to such party or parties. [C31, 35, §5899-c4; C39, §5899.04; C46, 50, 54, §383.4]

**383.5 Power to assign rights.** Any such city may grant the exclusive right to purchase an existing bridge or to construct a new bridge and to maintain any such bridge within a distance not exceeding one mile on each side of the bridge to be so purchased or constructed, for the period necessary to reimburse cost plus not exceeding eight percent thereof for financing charges, together with interest upon said cost and charges, but in no event to exceed ten years, subject to the conditions that at the termination of which period, such bridge shall become the sole property of the public and thereafter be maintained and operated by the city as a toll or free bridge as such city may determine from time to time in harmony with the other provisions of this chapter and the laws of the United States. Such grant shall be made in the manner and subject to the same conditions as may be provided by law for the granting of franchises. Any such grant or assignment shall by operation of law be subject to the following conditions; the number of officers and employees and the salaries, wages, or compensation thereof shall be reasonable; no person shall be permitted free use of the bridge or use at discriminatory tolls; tolls shall be both adequate to hasten payment for the bridge and reasonable to the public; financing costs shall be reasonable and the city may impose requirements and safeguards as to the conservation of funds and insurance of property; complete statements of operations and finances shall be filed with the city clerk on bond interest dates upon completion of the bridge and upon delivery of same to the city; and the city shall have power to require or itself perform audits and examine the books and call for any reports at any time. The city may enforce these obligations in any court of competent jurisdiction. In any such assignment, same shall by operation of law be subject to the conditions that the plans and specifications, the location, size, type, and method of construction, the boundaries and approaches and the estimates of cost of construction and acquisition shall be first submitted to the governing body of the city and receive its approval before any construction shall be commenced or any contract for construction or for financing construction shall be entered into. [C31, 35, §5899-c5; C39, §5899.05; C46, 50, 54, §383.5]

**383.6 Existing bridge — purchase, lease, or sublease.** If any such city shall desire to purchase, lease, or sublease any existing bridge, and shall have received any such authority as may be necessary from the government of the United States, the governing body thereof may determine the fair value thereof, including all interests of every nature therein, and may by written resolution tentatively offer the owners

thereof jointly the price so determined, and if all such owners, within ninety days thereafter, shall file with the city clerk of such city a duly authorized and properly executed written tentative acceptance of such offer, binding themselves to accept same and assign such lease or sublease or convey good and complete title by warranty deed when and if the electors of said city shall authorize such purchase and the necessary funds shall be provided therefor, then upon the filing of such acceptance, the governing body of the city may submit to the electors thereof, at a special election called for that purpose or at any general or city election, within one hundred twenty days after the filing of such acceptance, the question whether such purchase shall be made at the price stated on the ballot and the governing body of the city be authorized to issue bonds of the kind or kinds stated in the proposition and in any such amount as may be required to provide the necessary funds, and the proposition so submitted shall be carried if the majority of the electors voting on such proposition shall vote in favor thereof, and the tentative acceptance of the owners of such bridge shall then become final and binding upon them and may be enforced in any court of competent jurisdiction. Title to and possession of the bridge shall pass upon payment of the consideration therefor. Such purchase may also be made subject to existing mortgages and the assumption of outstanding bonds. If repairing, reconditioning, and reconstruction shall be necessary to place any bridge so purchased or to be purchased in safe, efficient, or convenient condition, the governing body of the city may cause the estimated cost thereof to be included as a part of the cost of such bridge in submitting the proposition of purchase to the electors, or without submitting such additional cost shall, when the purchase has been authorized by the electors, be empowered to issue additional bonds to provide funds for that purpose in an amount not to exceed fifteen percent of the purchase price of the bridge. If within ninety days after this chapter shall have become effective, the governing body of any such city shall not have made any offer to purchase an existing bridge, or shall have made an offer which shall have been rejected by the owners of such bridge, then the owners thereof shall be authorized to submit to the city an offer for the sale, lease, or sublease thereof, and such offer shall within ninety days after its filing with the city clerk and approval by the corporation counsel or city attorney, be submitted by the governing body of the city to the electors of the city at a general or city election, held within that period, or at a special election called for that purpose, provided that the owners of the bridge shall agree to pay all of the costs of such submission to the electors and shall adequately secure such payment at the time of the filing the offer with the city clerk. The form of such offer and execution thereof shall be subject to the approval of the corporation counsel or city attorney of the city

who shall also prepare the proposition to be submitted to the electors in proper legal form. The proposition submitted to the electors shall include all necessary provisions for financing such purchase, lease, or sublease, and the governing body of the city may itself determine the method of such financing and the kind of bonds to be issued in connection therewith and provide for same in the proposition to be submitted, or the governing body of the city may submit to the electors the question as to which kind of bonds shall be issued for that purpose. Such offer of the owners of such bridge shall be binding upon them, their successors and assigns and all parties in interest unless and until same has been rejected by the electors at the election herein provided for. Any question submitted at such election shall be carried if the majority of the electors voting on such question shall vote in favor thereof. Title to the bridge and the right to the possession thereof shall vest in the city upon proper legal tender of payment in accordance with the offer so submitted and authority granted by the electors. The acceptance of such offer by the electors shall carry with it the authority hereinbefore provided in this section for the provision of funds for repairs, reconditioning, or reconstruction. At any time during the period of thirty days after the form of any such offer shall have been approved by the corporation counsel or city attorney of the city, the governing body of such city shall have the right to make a counter offer to the owners of such bridge, and if within that period such offer shall be accepted as hereinafter provided in this section then the offer made by the owners of the bridge and proceedings pursuant thereto herein provided for, shall be abandoned; but if such counter offer shall not be accepted, then the governing body of the city shall proceed with the submission of the offer of the owners of the bridge. During the period of ninety days after the filing of an offer by the owners of the bridge and the approval of the form thereof, the governing body of the city is authorized to hold such public hearings as it may deem advisable, and is empowered to require the disclosure of complete information by the owners of the bridge, and to require the attendance of witnesses and take testimony under oath, and to employ experts and to investigate all matters which may assist the governing body or the electors in determining the questions presented by or growing out of the offer so made. Upon approval by the corporation counsel or city attorney of the form of offer made by the owners of the bridge, such offer shall be published by the city in an official newspaper published in said city, upon three consecutive days. After the corporation counsel or city attorney and the governing body of the city shall have approved the final form in which the offer and proposition is to be submitted to the electors, the city shall cause such proposition to be published on three consecutive days in an official newspaper published in said city to be completed not less

than ten days before the date of the election. At the same election at which an offer to sell an existing bridge made by the owners thereof shall be submitted, the governing body of the city is also authorized to submit at the expense of the owners of the bridge an alternative proposition to authorize the construction of a new bridge at an estimated cost to be stated in the proposition and the financing thereof as elsewhere provided for in this chapter for new bridges. The governing body of the city may also submit independent propositions for the construction of one or more new bridges as well as the purchase of an existing bridge at the same election and at the expense of the owners of the existing bridge. The governing body of the city may also, at the same election and at the cost of the owners of the bridge offered for sale, submit the proposition so that the construction of a new bridge shall be authorized only in the event the purchase of the existing bridge shall not be authorized by the electors or the delivery of title and possession shall be unreasonably delayed for any cause. The offer by the owners of the bridge as herein provided for may also be made in any city authorized by the act independently or jointly to such city and any other legally empowered political subdivision in this or an adjoining state, but in such event the time periods provided for in this section to govern the procedure for submission to the electors shall not so run, nor shall the obligation to submit the offer to the electors accrue unless and until the political subdivisions shall have entered into joint contract governing the conditions of purchase and subsequent control and operation in the event the offer shall be legally accepted in the manner provided by the law applicable in each such political subdivisions. The acceptance by the electors of any offer of the owners of the bridge shall by operation of law authorize the governing body of the city in its discretion to subsequently enter into contract with another properly authorized political subdivision in this or an adjoining state to share the cost and the title and control of the bridge so acquired. The owners of a bridge for which an offer is made or by whom an offer is made shall be required to disclose full information as to title and all interest therein, and in the event of the purchase of any such bridge shall be required to deliver good title by warranty deed. [C31, 35, §5899-c6; C39, §5899.06; C46, 50, 54, §383.6]

**383.7 Existing bridge — condemnation.** If any such city shall desire to acquire any existing bridge or lease thereof or all interest therein by the exercise of the power of eminent domain, and shall have received any such authority as may be necessary from the government of the United States, it may exercise such power in the following manner, or in such manner as congress may require. The governing body of the city shall in a proposed resolution declare such desire and purpose and request the appointment of commissioners of condem-

nation as herein provided and shall fix the time for consideration of the proposed resolution, at which time any person interested may appear and be heard or may file written objections to the passage of the resolution. The governing body of the city shall cause notice of the time when said resolution will be considered by it for passage to be given by two publications in some newspaper published in the city, the last of which shall be not less than two weeks nor more than four weeks prior to the day fixed for its consideration. Upon the passage of such resolution, a certified copy thereof shall be filed with the chief justice of the supreme court of the state and said chief justice shall, within ten days thereafter, fix a time for action upon said resolution and give notice to the city and the parties in possession of said bridge, by certified mail, specifying the time and place of hearing fixed by the said chief justice. When the time for hearing shall have arrived the chief justice shall proceed and appoint three competent and disinterested appraisers, at least two of whom must be residents of the state, said appraisers to act as a commission of condemnation, and shall enter an order requiring said commissioners to attend as such commission of condemnation, at the county seat of the county in which said city is located, within ten days after their appointment. Said commissioners of condemnation shall qualify by filing with the clerk of the district court in and for the county in which they are to act, a written oath that they will, to the best of their ability, perform faithfully and impartially all the duties required of them by this chapter. Said commission, when it meets to organize pursuant to the order of the said chief justice or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person or persons that any party to the proceedings desires to have joined in the proceedings and whom the commission deems necessary. The time for appearance shall be sufficiently remote to serve notice upon such parties, but if the time for appearance occurs after the proceedings are begun such proceedings may be reviewed by the commission to give all parties a full opportunity to be heard. Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, who are to be made parties to the proceedings shall be served with notice thereof and of the time and place of meeting of said commission in the manner and for the same length of time as for the service of original notice, either by personal service or by service by publication, the time so set, being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication. The commission of condemnation appointed hereunder shall have power to summon and swear witnesses, take evidence, order

the taking of depositions, require the production of books and papers, and may appoint a shorthand reporter. The commission of condemnation shall select some suitable person to act as clerk and the records kept by such clerk shall constitute the official records of the commission. In the event of a vacancy on the commission of condemnation such vacancy shall be filled in the manner in which the original appointments were made and when necessary, by reason of such vacancy, the commission may review any evidence in its record. All acts, including final report, shall be by a majority of such commission. Such commission of condemnation authorized hereby shall determine the value of such bridge, the rights thereunder sought to be appropriated, and make its report in writing, presenting its findings, within one hundred twenty days after its organization, and which report shall be filed with the clerk of the district court of the county in which such city is located. Within ninety days after the filing of the report by said commission if the said city elects to proceed further, the governing body of the city shall introduce an ordinance providing for the submission to the electors of the city the question whether such award shall be confirmed and the property be taken and bonds of the kind or kinds determined by the governing body of the city and stated upon the ballot shall be issued in the amount of said award, such proposition to be submitted within ninety days after said ordinance becomes effective at a special election called for that purpose or at any general or city election, and shall be carried if a majority of the electors voting thereon shall vote in favor thereof. If such proposition is carried, title to the property to be appropriated shall at once vest in said city, and the right to possession shall vest in said city as soon as money in the amount of said award is on deposit with the city treasurer and warrants for the disbursement thereof are available and the interested parties have been notified to that effect provided there exists no actual or legal obstacle to immediate payment. In the event of an appeal, the sum representing the award or awards involved in such appeal or appeals shall not be paid but shall be invested by the city treasurer in bonds of the United States government or in securities designated by the owner of the property taken, at their own risk, and which shall be held in trust until the final disposition of the appeal, the interest on such bonds to be in lieu of interest upon the award. The governing body of the city is authorized, without a further vote of the electors, to issue additional bonds in the amount necessary to pay interest on the award and all costs of the proceedings and any increased interest and costs upon appeal. If the proposition so submitted at the election has been carried, any or all of the persons whose property or interest has been taken may appeal from the finding of value and award within twenty days after the canvass of the election to the district court of the county in which such city is located, by



the filing of a petition for appeal with the clerk of said court and by the filing of a bond with said clerk to be approved by him, conditioned for the payment of all costs which may be incurred on any such appeal. The clerk of the district court shall immediately docket said cause and the parties shall proceed in all respects in the trial of said cause in the manner as though said action had been originally instituted in said district court. The party appealing, shall, within such time as the district court shall order, file with the clerk of said court a complete transcript of all the proceedings had before the commission of condemnation and either party may use, in the trial of said cause, any portion or all of said transcript. The costs of the proceedings before the commission of condemnation, including compensation or fees of the commissioners, shall be paid by the city. In the event of an appeal from the award on condemnation the costs shall be taxed and paid as the court may order. The district court of the county in which the proceedings are had shall have jurisdiction upon application by the commissioners to fix the amount of their compensation. Upon such appeal the court may increase or decrease the amount of the award. No such appeal shall delay the passage of the title or right of the city to possession of the property condemned. In the event the amount of such award is increased upon appeal, the amount of such increase shall be paid with interest thereon at the rate of six percent per annum from the date the city took possession of the property until paid. The governing body of the city is authorized without a further vote of the electors to issue such additional bonds as may be necessary to pay interest on the awards, costs on appeal, and any amount by which the award may be increased upon appeal. [C31, 35, §5899-c7; C39, §5899.07; C46, 50, 54, §383.7; 57GA, ch 267, §43]

Referred to in §383.25

### 383.8 Preliminary expense — tax — bonds.

Cities may levy a tax of not to exceed one-fourth mill\* on the dollar on the taxable valuation of such city, to be levied, collected, and appropriated solely to finance preliminary work, including investigation, soundings, employment of engineers and architects, securing of estimates, and any other useful work, or appropriate expense in connection with the proposed acquisition, or construction or purchase of any bridge or bridges and the preliminary financing thereof, and notwithstanding any limitation now or hereafter imposed by law upon the limit of indebtedness, except constitutional limitation, may anticipate such tax and issue bonds with interest coupons maturing in not less than five years, and the provisions of chapter 408 shall be operative as to such bonds and coupons, insofar as they may be applicable and except as set forth in this section. The amount of such bonds may be included as a part of the cost of the bridge

and may be repaid out of the proceeds of any bonds issued for permanent financing. [C31, 35, §5899-c8; C39, §5899.08; C46, 50, 54, §383.8]

Referred to in §404.7(9)

\*Alternate levy, see §404.7(9)

**383.9 Power to issue bonds.** To finance any of the purposes or powers provided for in this chapter, the city council or governing body of any such city shall in the first instance determine whether any purchase, condemnation, or construction authorized by this chapter shall be financed by bonds which are general obligations of the city and which may also be supported by a lien or mortgage on the bridge itself or upon the tolls to be derived therefrom, or both, or by revenue bonds as provided for in this chapter and which are charges solely against the revenue to be derived from such bridge through the collection of tolls, or part one kind of bonds and part the other, but shall not have authority to purchase, condemn, nor construct any bridge, nor to issue any bonds, except preliminary bonds specially authorized by this chapter, until first authorized by the majority vote of the electors voting on such proposition, which proposition shall indicate the method of acquiring the bridge and the kind or kinds of bonds, at a special election called for that purpose or at any general or city election. This grant of power to issue bonds is in addition to any other which may now have been or hereafter may be conferred upon such city, and shall be free from the restrictions now imposed on cities upon the issuance of bonds and incurring of indebtedness, and subject only to the provisions of the constitution of Iowa. At such election the proposition shall be separate as to each bridge to be acquired or constructed and the amount of bonds may be either a specific amount equal to the estimated total cost of every nature plus not to exceed twenty-five percent, or may be general and authorize the issuance of bonds in such amount as may be found necessary from time to time to complete the acquisition, construction, and equipment of the bridge and all costs incident thereto, or may be part one and part the other. For all purposes of financing, the total cost of any improvement authorized by this chapter may include every item of expense in connection with the project, and among other items shall also include the cost of acquiring every interest of every nature and of every person in any existing bridge, the cost of constructing the superstructure, roadway, and substructure of any bridge, the approaches, and avenues or rights of way of access thereto and necessary real estate in connection therewith, tollhouses and equipment thereof and of the bridge, franchises, easements, rights or damages incident to or consequent upon the complete project, expenses preliminary to construction, including investigation and expenses incident thereto, and prior to and during construction the proper traffic estimates, interest upon bonds, and all such other expenses as after the begin-

ning of operation would be properly chargeable as cost of operation, maintenance, and repairs. [C31, 35, §5899-c9; C39, §5899.09; C46, 50, 54, §383.9]

**383.10 Revenue bonds.** Cities are hereby authorized to provide funds for the purposes of this chapter by the issuance of revenue bonds of such cities, the principal and interest of which bonds shall be payable solely from the special funds herein provided for such payment and as to which, as shall be recited therein, the city shall incur no indebtedness of any kind or nature and to support which the city shall not pledge its credit nor its taxing power nor any part thereof. Such revenue bonds shall bear interest at not more than six percent per annum, payable semiannually, and shall mature in not more than twenty years from their date or dates and may be made redeemable at the option of the city issuing the same at not more than the par value thereof plus a premium of five percent under such terms and conditions as the governing body of the city may fix prior to the issuance of such bonds. The governing body of the city shall provide the form of such bonds including coupons to be attached thereto to evidence interest payments, which bonds shall be signed by the mayor and countersigned and registered by the city treasurer, under the city's seal, and which coupons shall bear the facsimile signatures of said mayor and the city clerk, and shall fix the denomination or denominations of such bonds and the place or places of payment of principal and interest thereof, which may be at the office of the city treasurer and/or any bank or trust company in the state of Iowa, or in the city of New York, state of New York. The governing body of the city may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest. Such bonds may be sold in such manner as the governing body of the city may determine to be for the best interests of the city, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and the availability of the proceeds of the bonds when required for the payment of the cost, such sale to be at not less than ninety-two cents on the dollar and accrued interest. The proceeds of such bonds shall be deposited, in the first instance, with the city treasurer and thereafter with such depositories as the bridge commission shall direct and the governing body of the city shall approve, and shall be secured in such manner and to such extent as the governing body of the city and the bridge commission shall require, and shall be used solely for the payment of the cost of the bridge or bridges and costs incident thereto as provided for in this chapter, and be drawn upon over the signatures of the chairman or vice-chairman of the bridge commission and the secretary and treasurer thereof, and under such further restrictions, if any, as the governing body of the city may provide. If the face amount of such bonds,

less any discount on the sale thereof, shall exceed such cost, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. The governing body of the city shall have the right to purchase for investment of other funds, and the bridge commission and the governing body of the city shall have the right to purchase for retirement and cancellation any of such bonds that may be outstanding at the market price, but at not exceeding one hundred and five and accrued interest nor exceeding the price, if any, at which the same shall in the same year be redeemable, but all bonds redeemed or purchased out of funds provided by the sale of bridge bonds provided for in this chapter shall forthwith be canceled and shall not again be issued. Prior to the preparation of definitive bonds the governing body of the city may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. The governing body of the city may enter into an agreement with any competent trust company as trustee for the holders of such bonds, setting forth the duties of the city and the bridge commission in respect to the construction, maintenance, operation, and insurance of any such bridge, the conservation and application of all funds, the insurance of moneys on hand or on deposit, and the rights and remedies of said trustee and the holders of such bonds, and restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds of corporations. Said trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the trustee and the bondholders as may be reasonable and proper, and also a provision for approval by the original bond purchasers of the appointment of consulting engineers and of the security given by the bridge contractors and by any bank or trust company in which the proceeds of bonds or bridge tolls or other moneys of the bridge commission shall be deposited, and may provide that no contract for construction shall be made without the approval of the consulting engineers. No such bonds shall be issued unless and until the issuance of same shall have been submitted by the governing body of the city to the electors thereof and authorized by the vote of the majority voting on such proposition at a special election called for that purpose or at any general or city election. At such election the proposition shall be separate as to the bonds for each bridge to be acquired or constructed and the amount of bonds may be either a specific amount equal to the estimated total cost of every nature plus not to exceed twenty-five percent, or may be general and authorize the issuance of bonds in such amount as may be found necessary from time to time to complete the acquisition, construction, and equipment of the bridge and all costs incident thereto, or may be part one and part the other. The bonds authorized by this section may, at the option of the governing body

of the city, be supported by mortgage and deed of trust. [C31, 35,§5899-c10; C39,§5899.10; C46, 50, 54,§383.10]

**383.11 Revenue refunding bonds.** Any city which has heretofore or shall hereafter issue revenue bonds under the provisions of this chapter, is hereby authorized to provide for the issuance of revenue refunding bonds of the city for the purpose of refunding any such revenue bonds then outstanding. It shall not be necessary to submit the proposition of issuing such revenue refunding bonds to the electors of the city. In all other respects, the issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the city and of the bridge commission, if any, in respect to the same, shall be governed by the provisions of this chapter insofar as the same may be applicable, and by the following provisions:

1. No revenue refunding bonds shall be issued, unless issued to refund revenue bonds which have matured or will mature within three months, or unless the interest rate of the revenue refunding bonds shall be at least one-fourth of one percent less than the interest rate borne by the revenue bonds to be refunded, in which event the entire bond issue may be refunded.

2. No revenue refunding bonds shall be delivered, unless delivered in exchange for revenue bonds to be refunded thereby, except in the amount necessary to provide for the payment of matured or redeemable revenue bonds or revenue bonds maturing or redeemable within three months, including any redemption premium thereon, or all revenue bonds refunded for a lower interest rate as provided in subsection 1.

3. The rates of tolls to be charged for the use of the bridge acquired or constructed from the proceeds of the revenue bonds to be refunded, shall be so fixed and adjusted as to provide a fund sufficient to pay the interest on and the principal of such revenue refunding bonds as the same shall become due, and to provide an additional fund to pay the cost of maintaining, repairing, and operating the bridge. And such tolls shall be continued until such revenue refunding bonds and the interest thereon shall be paid or provision made for their payment.

4. Notice of refunding of said bonds shall be given to the public for at least three consecutive weeks prior thereto in at least one local newspaper of general circulation in one of the communities or cities adjacent to and served by said bridge. [C39,§5899.11; C46, 50, 54,§383.11]

**383.12 Protection of bondholders.** Neither the state of Iowa nor any political subdivision thereof shall limit or restrict the rights and powers granted in this chapter to the detriment of owners of outstanding bonds authorized

hereby, nor shall such state or political subdivision authorize the construction or itself construct any competing bridge within a distance of less than one mile on either side of any bridge acquired under this chapter unless and until all of such bonds, together with the interest thereon have been fully paid and canceled, unless other adequate provision shall have been made for the protection and guaranty thereof. [C31, 35,§5899-c11; C39,§5899.12; C46, 50, 54,§383.12]

**383.13 Tolls.** The rates of tolls to be charged for the use of any bridge acquired or constructed under the provisions of this chapter shall be fixed and adjusted as may be required by any law of the United States now in force or hereafter to be enacted, and shall be so fixed and adjusted as to provide a fund sufficient to pay the interest and principal of any bonds issued under this chapter, and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge, and may also provide a reserve fund reasonably sufficient to provide for the cost of the continued operation, supervision, maintenance, and repair of said bridge or bridges for a period not to exceed twenty-five years after the removal of toll charges. After the provisions of said funds have been completed, such bridge or bridges shall thereafter be maintained and operated free of toll unless or until the charging of reasonable tolls may be continued or resumed by the governing body of the city or its commission in order to finance reconstruction, extension, enlargement, replacement, or renewal of that particular bridge or in aid of the acquisition, construction, reconstruction, extension, enlargement, replacement, or renewal of any other bridge owned in whole or in part by said city. The owners of outstanding bonds issued to finance the bridge, or the authorized trustee therefor, shall have the right to compel the fixing of adequate tolls by application to any court of competent jurisdiction. In case the city is at the same time providing for the payment of more than one bridge through the collection of tolls, the tolls upon such bridges may be maintained and adjusted so that each bridge shall assist the financing of the other. [C31, 35,§5899-c12; C39, §5899.13; C46, 50, 54,§383.13]

**383.14 Bridge commission.** When it has been determined by the city council or the governing body of any such city, by resolution or ordinance in the exercise of its discretion, that in the exercise of the powers conferred by this chapter, it is expedient to create a bridge commission, the mayor of such city, with the approval of the governing body of the city, shall appoint four persons, who with the mayor, ex officio, shall constitute a bridge commission which shall be a police body corporate and politic under the name of (insert name of city) bridge commission and shall have power to contract, to sue and be sued, and to adopt a seal and alter same at pleasure, but shall not have power to pledge the credit or taxing

power of the city. No officer or employee of said city, except the mayor thereof, whether holding a paid or unpaid office shall be eligible to hold an appointment on said commission. Such appointees shall be originally appointed for terms of four years. Upon the expiration of such terms, appointments shall be made in like manner for terms of four years. Not more than two of such appointees shall be members of the same political party. Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Said commission shall elect a chairman and a vice-chairman from its members and a secretary and treasurer who need not be a member of such commission. The members of the commission shall receive no compensation, and shall give such bond as may be required from time to time by the governing body of the city. The commission shall fix the compensation of the secretary and treasurer in its discretion. The commission shall have power to establish bylaws, rules, and regulations for its own government and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. The commission may employ engineering, architectural, and construction experts and inspectors and attorneys, and such other employees as may be necessary in its opinion, and fix their compensation, all of whom shall do such work as the commission shall direct. All salaries and compensation shall be obligations against and be paid from funds provided under the authority of this chapter. The office, records, books, and accounts of the bridge commission shall always be maintained in the city which the commission represents. Such commission may be charged by the governing body of the city with the construction of new bridges or the operation, maintenance, repair, renewal, reconstruction, replacement, extension, or enlargement of existing bridges, or bridges hereafter constructed. [C31, 35, §5899-c13; C39, §5899.14; C46, 50, 54, §383.14]

**383.15 Additional powers of commission.** The commission if and when created is hereby authorized to prepare the necessary and proper plans and specifications for the construction of such bridges as may be designated by the governing body of the city, to select the location for same, determine the size, type, and method of construction thereof, to plan and fix their boundaries and approaches, to make the necessary estimates of the probable cost of construction and the acquisition of the land and rights for the sites of the abutments and the approaches and avenues or easements of access to the bridges in a manner hereinafter provided, to enter into the necessary contracts, to build and equip the entire bridges and the approaches and accesses or easements of access thereto, to build the superstructure and substructures and all parts thereof, to obtain and exercise such consent or authority as may be necessary from the government of the United

States and the approval of the secretary of war and chief of engineers, and to cause a survey and map to be made of all lands, structures, rights of way, franchises, easements or other interests in lands, including lands under water and riparian rights owned by any person, corporation, or municipality, the acquisition of which may be deemed necessary for the construction of such bridges and to cause such map and survey to be filed in its office. The members of the commission, or its agents and employees, may enter upon such lands and structures and upon lands under water notwithstanding any interests in such lands or structures, for the purpose of making such surveys and maps; provided, however, that the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this chapter. No contract or agreement for the acquisition, construction, reconstruction, repair, enlargement, extension, renewal, replacement, or equipment of such bridges exceeding in amount the sum of twenty-five hundred dollars shall be made without advertisement for bids, which bids shall be opened publicly and an award made to the best bidder, with power in the commission to reject any or all bids. The plans and specifications, the location, size, type and method of construction, the boundaries and approaches, and the estimates of cost of construction and acquisition, hereinbefore provided for in this section, shall be first submitted to the governing body of the city and receive its approval before final adoption by the commission, which shall have no power to proceed further unless and until such approval has been had. No contract for acquisition, construction, or incidents thereto, and no liabilities in connection therewith, shall be entered into or incurred unless and until bonds to finance the project have been authorized by the electors of the city in the method provided in this chapter. The commission shall operate, manage, and control the bridges under its charge in their entirety, fix the rate of tolls, establish bylaws and rules and regulations for the use and operation of said bridges, provide for the lighting and policing thereof, and select such employees as it deems necessary and fix their compensation, and if and when authorized by the governing body of the city shall have power to renew, replace, reconstruct, extend, and enlarge bridges, but shall not have power to create liens upon or to mortgage any property unless first authorized by the governing body of the city. [C31, 35, §5899-c14; C39, §5899.15; C46, 50, 54, §383.15]

**383.16 Record, reports, auditing, removal of members — general provisions.** The bridge commission shall keep an accurate record of all its acts, the property entrusted to it, the cost of the bridge or bridges and incidents thereto, the expenditures for maintaining, repairing, and operating same and the daily tolls collected, which records shall be public records and property of the city. A semiannual statement

shall be published on each bond interest date in the official newspaper of the city. The governing body of the city shall have power to examine the accounts at any time, to call for any reports at any time in its discretion, and to require the commission and its employees to appear before it to report or testify at any time. The governing body of the city after reasonable notice and hearing may at any time remove any member of the commission or discharge any employee for good cause shown, but not arbitrarily nor for political reasons. The accounts and statements of the commission shall be audited by or under the direction of the city auditor semiannually and finally upon the completion of the work of the commission and at such other times as may be directed by the governing body of the city, the cost thereof to be charged against the funds provided for in this chapter. The governing body of the city, and in the absence of action by it, the bridge commission, shall have power to require bonds of officers and employees, to require guarantees of deposited moneys, and to insure the bridges and all property connected therewith against every manner of loss or injury. Funds under control of the commission may be invested in certificates of deposit in national banks or in bonds or other evidences of indebtedness which are general obligations of the United States, state of Iowa, or other states, or the city or the cities cooperating as in this chapter provided, but only in such manner as to be immediately available or recaptured when needed for use for the purposes authorized in this chapter. [C31, 35, §5899-c15; C39, §5899.16; C46, 50, 54, §383.16]

**383.17 Acquisition of property by purchase by commission.** The commission is hereby authorized to purchase in the state of Iowa and in any adjoining state when authorized by such state, if such authority be necessary, or the government of the United States, solely from funds provided under the authority of this chapter, such lands, structures, rights of way, franchises, easements or other interests in lands, including lands under water and riparian rights of any person, railroad or other or public or private corporation, necessary or convenient for the acquisition, construction, extension, or enlargement of said bridges and approaches thereto upon such terms, prices, or consideration as may be considered by it to be reasonable, and can be agreed upon between it and the owner or owners, title thereto to be taken in the name of and to vest in the city. [C31, 35, §5899-c16; C39, §5899.17; C46, 50, 54, §383.17]

**383.18 Condemnation of property by commission.** Whenever it shall be necessary to condemn property in the state of Iowa for the purpose of constructing, extending, or enlarging any portion of said bridges or the approaches thereto, or securing avenues of access or rights of way leading to said approaches, the commission may condemn any interests, fran-

chises, easements, rights or privileges, land or improvements which may, in its opinion, be necessary for the purpose of constructing said bridges or the approaches thereto, or necessary for rights of way or avenues of access leading to said approaches. Condemnations shall be certified to the governing body of the city for its action, and the method thereof shall be the same as that provided by statute for the condemnation for similar or appropriate municipal purposes by cities. The commission is and shall be further empowered to exercise in any adjoining state such powers of eminent domain as may be conferred upon the commission by any act of the congress of the United States now in force or which may hereafter be enacted, or as may be authorized by the law of that state. No payments of award in any condemnation proceedings or for the cost of such proceedings or the expense thereof, shall be made except from funds provided under authority of this chapter. Title to property condemned shall be taken in the name of and vest in the city. [C31, 35, §5899-c17; C39, §5899.18; C46, 50, 54, §383.18]

**383.19 Removal of obstructions.** All individuals or corporations having buildings, structures, works, conduits, mains, sewers, wires, tracks, or other physical obstructions in, over, upon, or adjacent to the public streets, lanes, alleys, highways, or in, under, over, or adjacent to the river over which the bridges are to be constructed, and which shall interfere with or impede the progress of said bridges and approaches when in progress of construction and establishment, shall upon reasonable notice from the commission temporarily so shift, adjust, accommodate, or remove the same as fully to meet the exigencies occasioning such action. Upon completion of such construction, the actual cost thereof, if reasonable, otherwise the reasonable cost thereof and other incidental damage, shall be promptly paid to such person by the commission. In case of disagreement as to reasonable cost, either party may appeal to the governing body of the city which after reasonable notice shall hear all parties and determine the proper amount and order same paid at once by the commission out of funds provided for in this chapter, persons aggrieved by such determination may appeal within twenty days thereafter by filing a petition in the district court in and for the county in which such city is located. Similar powers may be exercised in an adjoining state if and in the manner authorized by an act of congress or the law of that state. [C31, 35, §5899-c18; C39, §5899.19; C46, 50, 54, §383.19]

**383.20 Damage to property.** The governing body of the city shall have power to appraise damages to property by reason of the construction and operation of the complete bridge property and appurtenances and to pay same out of funds provided for in this chapter. Any person whose property is damaged may file claim with the governing body of the city, which after reasonable notice shall hear all interested par-

ties, determine the amount of damage and order the same paid by the commission out of funds provided for in this chapter. Persons aggrieved by such determination may appeal within twenty days thereafter by filing a petition in the district court in and for the county in which such city is located. Similar powers may be exercised in an adjoining state if and in the manner authorized by an act of congress or the law of that state. [C31, 35,§5899-c19; C39,§5899.20; C46, 50, 54,§383.20]

**383.21 Restoration of public ways and works.** Any local public ways or public works, including those of quasi-public utilities, damaged or destroyed by reason of the building of such bridges or approaches shall be restored or repaired by or at the expense of the commission and placed in their original condition as near as practicable, or at the option of the owners of such property, the same may be repaired or restored by the owner and the commission shall reimburse the owner for the reasonable cost thereof out of funds provided for in this chapter. [C31, 35,§5899-c20; C39, §5899.21; C46, 50, 54,§383.21]

**383.22 Dissolution of commission.** Any local bridge commission provided for in this chapter may be dissolved by the governing body of the city at any time after the acquisition, construction, and equipment of the complete bridge or bridges within its care have been completed and all the costs thereof have been paid from the funds provided by the bond issues provided for in this chapter, and thereupon the governing body of the city shall assume the further duties in connection with such bridge, including the operation, maintenance, and repair thereof, the administration of funds, the collection of tolls, and all other necessary or proper acts, or at any time thereafter may create a new bridge commission to effect any of the purposes or objects authorized by this chapter. [C31, 35,§5899-c21; C39, §5899.22; C46, 50, 54,§383.22]

**383.23 Joint bridge commission.** In case the governing body of any city designated in this chapter, having been authorized by the electors as required by this chapter, shall at any stage of the proceedings determine to co-operate with any properly authorized political subdivision in this or an adjoining state in the joint acquisition and operation of a bridge or bridges, a joint commission shall be created. Such joint commission shall be created and the members selected by the action of each political unit co-operating, in the same manner provided for the creation of a local commission, by the law applicable to each political unit, and, upon which representation may be proportioned to the respective contribution of funds by the political units co-operating for the purposes of such acquisition, provided that the total membership shall not exceed ten. The commission shall select a chairman and vice-chairman to represent each political subdivision co-operating in the enterprise, and shall maintain a single office at the place selected by

the commission; but for legal purposes shall be domiciled within the jurisdiction of each political unit co-operating, and shall have power to sue and be sued. This commission shall constitute a public body corporate and politic, shall select and adopt its own name, and shall be vested with such powers and subject to such conditions as may be conferred and imposed by the government of the United States and/or such powers and conditions in the state of Iowa, as are conferred and imposed in this chapter upon a local bridge commission, and such powers and subject to such conditions in an adjoining state as may be conferred and imposed by the laws of such state. The plans and specifications, the location, size, type, and the method of construction, the boundaries and approaches, and the estimates of costs of construction, acquisition of property, and financing, shall be first submitted to the governing bodies of the political units co-operating and receive their approval by resolution before final adoption by the commission, which shall not enter into contracts and shall have no power to proceed further unless and until such approval has been had. If such joint commission is created after any work has been done, any funds provided or any liabilities incurred by the governing body of the city, or by a local commission, such joint commission shall take over, succeed to, assume, and be liable therefor. The cities specified in this chapter are authorized and empowered to authorize or require said joint commission to conduct, and to complete the sale of bonds provided for in this chapter at the same time and to the same purchaser, under the best conditions obtainable, together with the bonds of the political subdivision with which it is co-operating, so that the benefits of a joint offering and sale may be obtained. The funds derived from the sale of the bonds of all political subdivisions co-operating may be mingled and shall be administered and expended by the joint commission as one common fund. As near as may be, and subject to any rules and regulations which may be adopted by the commission for that purpose, the fund shall be deposited and maintained in equitable proportions within the territory of each political subdivision, and applied to the purchase or redemption of the separate bond issues in an equitable manner. All contracts, evidences of indebtedness, and payment vouchers shall be signed by the treasurer and countersigned by each vice-chairman. Title to all real and personal property and to the completed bridge and all its appurtenances and incidents shall vest in the political subdivisions co-operating as tenants in common in the same proportions as the contributions made to the joint fund. In the event of the inability of the governing bodies of the political subdivisions co-operating or their joint commission to agree, the specific controversy may be submitted to arbitration in such manner as may be agreed upon. [C31, 35,§5899-c22; C39,§5899.23; C46, 50, 54,§383.23]

Referred to in §383.26

**383.24 Joint purchase.** Any city specified in this chapter desiring to exercise the power as granted in section 383.2 to jointly purchase by bargain and sale any existing bridge, may do so either when the electors have authorized such joint purchase or have authorized an independent purchase of such bridge. The governing body of the city is authorized to enter into joint contract with the other political unit as to all the conditions of the purchase and the conditions of subsequent reconditioning, operation, toll charges authorized by this chapter, repair, maintenance, renewal, replacement, enlargement, and extension of such bridge. Title to the bridge shall vest in the political units co-operating as tenants in common and operation shall be by the joint commission provided for in this chapter and subject to the conditions provided with reference to such commission. [C31, 35, §5899-c23; C39, §5899.24; C46, 50, 54, §383.24]

Referred to in §383.25

**383.25 Joint condemnation.** Any city specified in this chapter may acquire an existing bridge by entering into joint condemnation proceedings with other political units as authorized in section 383.2. Where the property to be condemned is situated within the jurisdiction of more than one political unit or partly in the state of Iowa and partly in an adjoining state, the political units co-operating shall first enter into contract electing in what jurisdiction and in which state a single joint proceeding to condemn the property as an entirety shall be instituted and the proceeding shall be conducted subject to the law of and in the manner provided for that jurisdiction, or such proceedings may be conducted subject to the law and in the manner provided by any act of congress governing the power of condemnation where the property to be acquired is situated in more than one state. For this purpose, cities in this state and specified in this chapter are authorized to become parties to a single proceeding in an adjoining state and to subject themselves to the laws of that state governing such proceedings. In the event of such joint proceedings in this state the method of proceedings provided in section 383.7 shall govern but shall be modified to the extent of requiring the board of appraisers to be created by the designation of three appraisers for each political unit co-operating and by releasing the restriction as to residents within the state. The contract heretofore in this section provided for shall be similar to the contract provided for in section 383.24 and also fix the proportionate contribution to be made by each political unit co-operating, and shall also provide for the creation of a joint commission to take over the operation of the property if and in the event of its acquisition subject to the conditions provided in this chapter with reference to such joint commission. Title to the property condemned shall vest in the political units co-operating as tenants in common when, if and as the approval of the electors has been had as

provided in section 383.7. [C31, 35, §5899-c24; C39, §5899.25; C46, 50, 54, §383.25]

**383.26 Joint construction.** Whenever the electors of any city specified in this chapter shall have authorized the construction of a bridge as provided in this chapter, the governing body of the city shall have power to construct such bridge independently or jointly with any state or political unit as authorized in section 383.2. Such cities are authorized to enter into any contract which may be necessary to effectuate this purpose. The title to all property acquired shall vest in the political units co-operating as tenants in common. The actual control of all construction and subsequent operation, including all property necessary to the completed bridge, and of maintenance and repair thereof, and of funds and the collection and custody of tolls shall vest in a joint bridge commission as provided in section 383.23, which commission and its control shall not be terminated until such tenancy in common shall be terminated. [C31, 35, §5899-c25; C39, §5899.26; C46, 50, 54, §383.26]

**383.27 Power of foreign cities.** Any city in an adjoining state which has been properly authorized by the law of that state and/or the United States may exercise in the state of Iowa any and all powers granted in this chapter to cities in Iowa, subject to the conditions and requirements of this chapter. [C31, 35, §5899-c26; C39, §5899.27; C46, 50, 54, §383.27]

**383.28 Submission to the electors.** Any proposition or propositions arising in connection with the exercise of any of the powers granted by this chapter, may be submitted by the governing body of the city to the electors thereof at any general or city election or at any special election called for that purpose, and any proposition shall be carried if the majority of the electors voting thereon vote in favor thereof. No bridge shall be finally or irrevocably acquired, whether by purchase or by condemnation or by construction, unless and until such action and the necessary financing shall have been approved by the majority of the electors voting on the proposition at a general or city election or at a special election called for that purpose. Two or more propositions or questions may be submitted at the same election and on the same ballot provided each is so presented that the electors may vote separately upon each proposition. A vote of the electors authorizing independent action shall by operation of law be held to also authorize joint action for the purpose so authorized, but a vote on a proposition of joint action shall not be held to authorize independent action. The governing body of the city is hereby authorized to determine what shall be included in the proposition to be stated in notices of election and upon the ballots in its full discretion except that any proposition must indicate whether the bridge shall be acquired by the purchase or by the condemnation of an existing bridge or by the construction of a new



bridge and the kind of bonds to be issued to finance the same, and the amount of such bonds may be set forth in any manner authorized in this chapter. [C31, 35,§5899-c27; C39, §5899.28; C46, 50, 54,§383.28]

**383.29 Supplementary powers granted—saving clause.** The powers hereby conferred are to be exercised without any restriction or limitation under the laws of the state except the provisions of the constitution of the state, and are supplementary and additional to powers which have been or may hereafter be conferred upon the city by law of the state. All powers granted to or provided to be conferred upon the bridge commission authorized by this chapter, are likewise granted to and conferred upon and may be exercised by the governing body of the city and the governing body of the city may delegate any or all of the powers conferred upon it by this chapter to such commissions. The sections and provisions, and parts thereof, of this chapter are separable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions, or parts thereof, are for any reason illegal, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect. [C31, 35,§5899-c28; C39,§5899.29; C46, 50, 54,§383.29]

**383.30 Additional powers.** The powers conferred by this chapter are in addition to the powers elsewhere granted by law or any other chapter in respect to interstate bridges. [C31, 35,§5899-c29; C39,§5899.30; C46, 50, 54,§383.30]

**383.31 Enlargement and reconstruction of bridges.** Any city having a bridge commission, and which heretofore has or hereafter shall have acquired or constructed a bridge and issued revenue bonds to provide funds

therefor, all pursuant to a vote of the electors under the provisions of this chapter, is hereby authorized to enlarge and reconstruct said bridge and approaches, including the construction of a separate but adjacent span with interconnections with the original span and, to provide funds therefor, issue negotiable revenue bonds payable solely from revenues of said existing bridge and as so enlarged and reconstructed and, in such event, it shall not be necessary to submit to the electors of the city the proposition to so enlarge or reconstruct said bridge and approaches nor the proposition of issuing such revenue bonds, but in all other respects, except as otherwise hereinafter provided, the issuance of such revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the city and of the bridge commission shall be governed by the provisions of this chapter insofar as the same may be applicable, the provisions of any other law to the contrary notwithstanding. Revenues from the bridge not otherwise pledged by the bridge commission may be used and applied toward the cost of such enlargement and reconstruction and prior to the issuance of such revenue bonds the bridge commission may negotiate with or without notice, and, with approval of the governing body of the city, may enter into an agreement or agreements with any bank, investment banker, trust company or insurance company or group thereof whereunder, through payment of commissions or commitment charges or both, the bonds are issued, sold and delivered in installments as the proceeds are required by the bridge commission to pay the cost of such enlargement and reconstruction. All such revenue bonds not so issued, sold and delivered shall be offered at public sale on such notices and advertisement as the bridge commission may prescribe. [C54, §383.31]

## CHAPTER 384

### DOCKS

Referred to in §§368.47, 394.10  
Applicable to all cities and towns

384.1 Department of public docks—election.  
384.2 Commissioners—appointment—qualifications—terms—organization—removal—vacancies.

384.3 Powers and duties.  
384.4 Regulations applicable—control by state officers.

**384.1 Department of public docks—election.** The city council or board of commissioners in any incorporated town or city, situated on any natural or artificial navigable waterway within or bordering upon the state of Iowa, may, when in their judgment deemed expedient, create a department known as the department of public docks, providing that before said commission may go into operation, the question shall be submitted to the qualified electors of said city or town at a regular election or a special election called for that purpose; and

provided further, that a majority of those voting at said election shall vote in favor of the creation of such department of public docks. [S13,§741-w; C24, 27, 31, 35, 39,§5900; C46, 50, 54, §384.1]

**384.2 Commissioners—appointment — qualifications — terms — organization — removal — vacancies.** The department of public docks shall be administered by a dock board consisting of three members to be known as commissioners of public docks. Within three months,



or as soon as possible after the time when this chapter shall go into effect, the council of the municipality shall appoint as members of the dock board, three commissioners of public docks, who have been residents of the municipality in which they are appointed for a period of not less than five years, and who shall not at the time of their appointment or during their term of office be interested in or be employed by any common carrier, and said board shall act without compensation. Said commissioners when first appointed shall hold office for a term of one, two, and three years respectively, and shall determine by lot among themselves which commissioners shall hold the said respective terms. Thereafter, one commissioner with the said qualifications shall be appointed annually by the council and the term of office of such commissioner shall be three years. The members of the board shall qualify by taking oath for the faithful performance of their duties. Within ten days after their appointment the commissioners shall meet and organize the dock board by the election from among their number of a president and a secretary of said board, and shall from time to time adopt rules and regulations for the government of their department and to govern their proceedings, which shall be adopted by resolution recorded in a book kept by the board and known as the book of rules and regulations, and said rules and regulations shall be in force after publication in some newspaper published and circulated in the municipality. The dock board shall maintain an office and keep a record of all of its proceedings and acts, and books of account showing all of its financial transactions, which records and books of accounts shall at all times be open to public inspection. If any commissioner shall at any time during his said incumbency cease to have the qualifications required by this section for his appointment, or shall willfully violate any of his duties under the law, such commissioner shall be removed by the council after written charges have been preferred against him and a due hearing of such charges has been had by the council upon reasonable notice to such commissioner. Vacancies occurring in the board through resignation or otherwise shall be filled by the council for the unexpired term. [S13,§741-w1; C24, 27, 31, 35, 39,§5901; C46, 50, 54,§384.2]

**384.3 Powers and duties.** The board shall have power and it shall be its duty for and in behalf of the city or town, hereinafter called the municipality, for which it is organized:

1. *General plan.* To prepare or cause to be prepared a comprehensive general plan for the improvement of its harbor and water front, making provision for the needs of commerce and shipping, and for the use of river-front property by others for industrial and manufacturing purposes to the extent deemed advisable in relation to the operation of established wharves and docks, and providing for the construction of such docks, basins, piers, quay

walls, wharves, warehouses, tunnels, belt railway connecting with all railway lines within the municipality, and such cranes, dock apparatus, and machinery equipment as it may deem necessary for the convenient and economical accommodation and handling of watercraft of all kinds and of freight and passengers, and the free interchange of traffic between the waterway and the railways and the railways and the waterway; which plan shall be filed in the office of the board and be open to public inspection, and which may from time to time be changed, altered, or amended by the board, as the requirements of shipping and commerce and the advance of knowledge and information on the subject may suggest.

2. *Purchase and condemnation of property.* To purchase or acquire by condemnation or other lawful means, such personal property, lands, or rights or interest therein, including easements, as may be necessary for use in the provision and in the construction of any publicly owned harbor, water front, dock, basin, pier, slip, quay wall, wharf, warehouse, or other structure, and in the construction of a belt railway and railway switches, and appurtenances as provided for in such plan as may be adopted by the board. If the board shall deem it proper and expedient that the municipality shall acquire possession of such wharf property, lands, or rights or interests therein, including easements, and no price can be agreed upon between the board and the owner or owners thereof, the board may direct the municipal corporation attorney to take legal proceedings to acquire same for the municipality in manner as is or may be provided by the general laws of the state in the case of corporations having the right of eminent domain. The title of all lands, property, and rights acquired by the board shall be taken in the name of the municipality it represents.

Procedure, ch 472

3. *Control of property.* The board shall have exclusive charge and control of the wharf property belonging to the municipality including belt railway located in whole or in part therein, all the wharves, piers, quay walls, bulkheads, and structures thereon and waters adjacent thereto, and all the slips, basins, docks, water fronts, the structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which are now owned or possessed by the municipality, or to which the municipality is or may become entitled, or which the municipality may acquire under the provisions hereof or otherwise, together with such other municipally owned lands or properties as the city council may designate by ordinance. The board shall have the exclusive charge and control of the building, rebuilding, alteration, repairing, operation, and leasing of said property and every part thereof, and of the cleaning, grading, filling, paving, sewerage, dredging, and deepening necessary in and about the same.

Leases of such property may be made for such purposes, including industrial and manufacturing purposes, upon such terms and conditions, and for such period of time as, in the exclusive judgment of the dock board, shall be for the best interests of the city or town in the furtherance of the general plan adopted by said board.

4. *Abutting property—jurisdiction and improvement.* The board is hereby vested with jurisdiction and authority over that part of the streets and alleys and public grounds of the municipality which abut upon or intersect its navigable waters, lying between the harbor line and the first intersecting street measuring backward from high-water mark, to the extent only that may be necessary or requisite in carrying out the powers vested in it by this chapter; and it is hereby declared that such jurisdiction and authority shall include the right to build retaining or quay walls, docks, levees, wharves, piers, warehouses, or other constructions, including belt railway and railway switches, across and upon such streets and alleys and public grounds, and to grade, fill, and pave the same to conform to the general level of the wharf, or for suitable approaches thereto; provided that such improvements shall be paid for out of funds in the hands of the board and not by assessments against abutting property, but in case the city council deems it necessary or advisable to construct street improvements or sewers on such streets and alleys, and abutting and adjacent property will receive special benefits therefrom, such improvements or sewers may be ordered constructed by said council and the cost thereof may be assessed by said council, to the extent of such benefits, and as provided in chapter 391, upon and against all lots or parcels of real estate, whether publicly or privately owned, as may be specially benefited thereby, provided that the plans and specifications of the city council for such improvements or sewers be first approved by the dock board.

5. *Control consistent with navigation laws—collect tolls.* The board is also vested with exclusive government and control of the harbor and water front consistent with the laws of the United States governing navigation, and of all wharf property, belt railway, wharves, piers, quay walls, bulheads, docks, structures, and equipment thereon, and all the slips, basins, waters adjacent thereto, and submerged lands and appurtenances belonging to the municipality, and may make reasonable rules and regulations governing the traffic thereon and the use thereof, with the right to collect reasonable dockage, wharfage, sheddage, storage, crantage fees, and tolls thereon, as hereinafter provided.

Obedience to such rules and regulations may be enforced in the name of the city or town, by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, provided the council of such city or town shall first adopt the same, in ordinance form, as ordinances of the municipality.

6. *Rules and regulations—specifications—ordinances—publication.* The board shall have power to make general rules and regulations for the carrying out of the plans prepared and adopted by it for the building, rebuilding, repairing, alteration, maintenance, and operation of all structures, erections, or artificial constructions upon or adjacent to the water front of the municipality, whether the same shall be done by the board or by others; and except as provided by the general rules of the board, no new structures or repairs upon or along said water front shall be undertaken, except upon application to the board and under permit by it and in accordance with the general plans of the board and in pursuance of specifications submitted to the board and approved by it upon such application. The general rules and regulations of the board, whenever adopted by it, shall be embodied in the form of ordinances and certified copies thereof shall, forthwith upon their passage, be transmitted to the clerk of the municipality who shall cause the same to be transcribed at length in a book kept for that purpose and the same shall be included in any compilation or publication of the ordinances of the municipality. Upon filing any such certified copy of any such ordinances, the said clerk shall forthwith cause the same to be published once in some newspaper of general circulation published in the municipality, or if none is there published, then in the next nearest newspaper published in this state, and the said ordinance shall be in force and effect from and after the date of said publication. Provided, however, that if the said ordinances are included in any book or pamphlet of ordinances published by said municipality, no other publication shall be required, and they shall be in force and effect from the date said book or pamphlet is published. The said ordinances of the board shall not be considered or construed as ordinances of said municipality except as they may be adopted as ordinances of said municipality, and the provisions of the code and statutes of the state now or hereafter enacted relative to ordinances of cities and towns shall not apply to ordinances passed by said board unless express reference be made thereto in said statutes.

7. *Tolls and charges—regulations.* The board shall have the power to fix and regulate and from time to time to alter the tolls, fees, dockage, wharfage, crantage, sheddage, storage, and other charges for all publicly owned docks, levees, belt railway, piers, quay walls, slips, basins, wharves, and their equipment, or the use of any portion of the water front of the municipality, which charges and rates shall be collectible by the board and shall be reasonable with a view only of defraying the necessary annual expenses of the board in constructing and operating the improvements and works herein authorized; a schedule of such charges and regulations shall be enacted by the board in the form of ordinances and a certified copy thereof shall be transmitted to the clerk of the municipality in like manner as other ordi-

nances of the board before the same shall go into or be in effect, and a copy of same shall be kept posted in a conspicuous place in the office of the board.

8. *Assistants — officers — ordinances.* The board shall have power to employ such assistants, employees, clerks, workmen, and laborers as may be necessary in the efficient and economical performance of the work authorized by this chapter. All officers, places, and employments in the permanent service of the board shall be provided for by ordinance duly passed by the board and the same shall be transmitted to the clerk of the municipality as provided for other ordinances of the board.

9. *Construction work plans—approval—public inspection—bids—exceptions—emergencies.* In the construction of docks, levees, wharves, and their appurtenances, or in contracting for the construction of any work or structures, including grading and filling lands under its control as authorized by this chapter, the board shall proceed only after full and complete plans (approved by the board) and specifications for said work have been prepared and submitted and filed with the board by its engineer for public inspection, and after public notice asking for bids for the construction of such work, based upon such plans and specifications, has been published in some newspaper of general circulation published within the municipality, or if none so published, then in the nearest newspaper published in this state, which publication shall be made at least thirty days before the time fixed for the opening of said bids and contracting for such work; and such contract may then be made with the lowest responsible bidder therefor, unless the board deems the bids excessive or unsuitable, in which event it may proceed to readvertise for bids, or the board may do the work directly, purchasing such materials and contracting for such labor as may be necessary without further notice or proposals for bids; except that it shall make no purchase of materials in amounts exceeding five hundred dollars except by public letting upon ten days notice, published as aforesaid, specifying the materials proposed to be purchased; provided, however, that said public letting shall not be required in case no satisfactory bids are received, or in case of an emergency where the delay of advertising and public letting might cause serious loss or injury to the work. The board shall, in all cases, have the right to reject any and all bids, and may either readvertise therefor, contract with others at a figure not exceeding the lowest bidder without further advertising, or do the work directly as hereinbefore provided.

10. *Tax levy—dock fund.* To defray the expense of exercising the powers conferred by this chapter, or any portion of such expense in excess of the income from the aforesaid rates and charges to be collected by the board, the council of the municipality shall levy a special tax upon the taxable property in the municipality, not exceeding one-half mill\* on the dollar. The board shall annually make to

the council a report of the receipts and disbursements made by or on account of said board, and shall file with the council an estimate of the amounts necessary to be raised by taxation to defray the expenses of the board. The council shall at the time of levying annual taxes levy a sufficient tax not exceeding said one-half mill\* to meet the said estimate and which shall be collected as other taxes and paid over to the treasurer of the municipality and by him credited to the fund to be known as the dock fund.

Referred to in §404.10(11)

\*Alternate levy, see §404.10(11)

11. *Bonds—limitation.* Whenever said dock board shall deem it necessary or advisable to issue bonds for the purpose of constructing any of the works or improvements herein authorized, including grading and filling of lands under its control, or purchasing property for said purpose, the said board shall petition the council of the municipality to issue either dock bonds, as herein authorized, or revenue bonds as provided by section 394.6 stating the purpose for which said bonds are requested and thereupon the council shall issue the said bonds.

If the issuance of such dock bonds would not cause the aggregate indebtedness of the municipality to exceed the constitutional debt limit and if the council does not deem it advisable to issue said bonds, the council shall submit the question of issuing said bonds to the voters of said municipality, and if the vote in favor of the issuance of said bonds is equal to at least sixty percent of the total vote cast for and against the proposition at the election, the council shall proceed to issue the bonds. The proceeds of said bonds, when issued, shall be paid to the municipal treasurer and credited to the dock fund.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose herein provided shall not be considered an indebtedness incurred for general or ordinary purposes.

If revenue bonds are issued, said bonds shall be issued and paid as provided by chapter 394.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation.

Limitation on indebtedness, §§407.1, 407.2; see also alternate levy, §404.10(11)

Vote required to authorize bonds, §75.1

12. *Funds, how disbursed—books audited.* All funds collected by the dock board, or by the municipality for dock purposes from the

proceeds of taxes, bonds, or otherwise, shall be deposited with the treasurer of the municipality and disbursed by him only upon warrants or orders duly signed by the president and countersigned by the secretary of the dock board and which shall state distinctly the consideration for which same are drawn, and a permanent record shall be kept by the board of all warrants or orders so drawn, showing the date, amount, consideration, and to whom payable. When paid the same shall be canceled and kept on file by the treasurer of the municipality. The books of the board shall from time to time be audited by the municipal auditor under the direction of the mayor, in such manner and at such times as he may direct or prescribe, and all of said books and records of the board shall at all times be open to public inspection.

13. *Additional tax.* In cities having a population of less than thirty thousand the council shall have power to levy an additional annual special tax upon the taxable property in the municipality, of not to exceed one-half mill\* on the dollar, to defray the expense of exercising

the powers conferred by this chapter, or any portion of such expense in excess of the income from the rates and charges to be collected by the dock board.

14. In cities and towns the powers vested in the dock board by this section shall be subject to such limitations and exceptions as the city council may, by ordinance, establish. [S13, §741-w2; C24, 27, 31, 35, 39, §5902; C46, 50, 54, §384.3; 57GA, ch 191, §§1, 2]

\*Alternate levy, see §404.10(11)

**384.4 Regulations applicable — control by state officers.** All state regulations for the control and operation of railroads, common carriers, and public utilities shall apply to and have full force and effect in regard to all powers, duties, and actions of the department of public docks and the same shall be subject to and under the control of the Iowa state commerce commission or the public utility commission now or hereafter established by law. [S13, §741-w4; C24, 27, 31, 35, 39, §5903; C46, 50, 54, §384.4]

## CHAPTER 385

### ARMORIES

Applicable to all cities and towns

385.1 Power granted.  
385.2 Applicable statutes.  
385.3 Fees.

385.4 Payment from earnings—bonds.  
385.5 Pledge of property.  
385.6 Mandatory income.

**385.1 Power granted.** As an emergency measure to be financed only through the federal emergency administration of public works, cities and towns shall have power to purchase, establish, construct, maintain, and operate armories, for which fees are charged, and pay for the same solely and only out of the earnings thereof. [C35, §5903-f1; C39, §5903.12; C46, 50, 54, §385.1]

**385.2 Applicable statutes.** Chapter 23 of the Code, except sections 23.12 to 23.16, inclusive, shall be applicable to contracts for the improvement herein provided for. [C35, §5903-f2; C39, §5903.13; C46, 50, 54, §385.2]

**385.3 Fees.** Such municipalities may by ordinance provide for fees to be charged for the use of the armory and may pay the cost of purchasing, establishing, constructing, maintaining, and operating the same out of the earnings thereof. [C35, §5903-f3; C39, §5903.14; C46, 50, 54, §385.3]

**385.4 Payment from earnings—bonds.** Nothing in this chapter contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely out of the funds provided under this chapter. Cities and towns are authorized to borrow money from the federal emergency administration of public

works, created by the “National Industrial Recovery Act”, [40USC, §§401–414] enacted by the congress of the United States for the purpose of constructing the improvement referred to in this chapter. As evidence of such indebtedness, such city or town may issue its bonds payable solely and only from the revenues derived from such improvement. Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of construction and operation of such improvement, including engineering and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this chapter are declared to be negotiable instruments, shall be executed by the mayor and clerk of the municipality, and shall be sealed with the corporate seal of the municipality. The principal and interest of said bonds shall be payable solely and only from the special fund herein provided for such payments, and said bonds shall not in any respect be a general obligation of such municipality, nor shall they be payable in any manner by taxation. All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance of the municipality. [C35, §5903-f4; C39, §5903.15; C46, 50, 54, §385.4]

Bonds, ch 408  
Negotiable instruments, ch 541

**385.5 Pledge of property.** The council of the municipality by ordinance may pledge the property purchased and the net earnings of the armory to the payment of said bonds and the interest thereon, and provide that the net earnings thereof shall be set apart as a sinking fund for that purpose. [C35,§5903-f5; C39, §5903.16; C46, 50, 54,§385.5]

**385.6 Mandatory income.** Such municipality is authorized and directed to charge the users of said armory at a rate which, at all times, shall be sufficient to pay the principal and interest on the bonds issued under the provisions of this chapter and the cost of operation and maintenance, and to provide an adequate depreciation fund. [C35,§5903-f6; C39,§5903.17; C46, 50, 54,§385.6]

## CHAPTER 386

### ELECTRIC UTILITIES AND MOTORBUS LINES

Applicable to all cities and towns

386.1 Regulations.  
386.2 Motorbus lines.  
386.3 Franchise—election.  
386.4 Notice.

386.5 Time of election.  
386.6 Ballots—procedure.  
386.7 Costs.

**386.1 Regulations.** Cities and towns shall have the power to authorize and regulate telegraph, district telegraph, telephone, street railway, and other electric wires, and the poles and other supports thereof, by general and uniform regulation, and to provide the manner in which, and places where, the same shall be placed upon, along, or under the streets, roads, avenues, alleys, and public places of such city or town, and may divide the city into districts for that purpose. [C97,§775; C24, 27, 31, 35, 39, §5904; C46, 50, 54,§386.1]

Referred to in §386.3

**386.2 Motorbus lines.** Cities and towns may grant franchises to operate and maintain on and over their streets bus and motor transportation lines to carry passengers for hire on a plan similar to street railways. Such franchises may be granted to individuals or private corporations and shall not be exclusive, nor shall they extend for a longer period than ten years. Provided, however, that in cities or towns in which a street railway is established and operated, before the question of granting such franchise is submitted to the electorate, the proposed franchise must first be offered to the owner of the existing street railway, and if said owner shall agree in writing within thirty days from the time said proposed franchise is offered to accept said franchise and operate a bus or motor transportation line under the terms of said franchise, the question shall be submitted to the electorate of the granting of said franchise to the owner of the street railway. If the owner of said street railway fails to agree in writing within said thirty-day period to accept said franchise and operate the bus or motor transportation line therein provided for, the city or town council may then offer said franchise to another person, firm, or corporation, and may submit to the electorate the question of the granting of the franchise to said person, firm, or corporation.

No such franchise shall be granted, extended, or renewed unless a majority of the legal electors voting thereon vote in favor of the same

at a general, city or town, or special election called for that purpose.

The granting of such franchise shall not preclude cities and towns from licensing jitney busses and motor vehicles carrying passengers for hire under the provisions of chapter 388.

The provisions of sections 388.2 to 388.9, inclusive, shall apply to busses and motor transportation lines operating under franchises granted pursuant to the provisions of this section. [C31, 35,§5904-c1; C39,§5904.1; C46, 50, 54,§386.2]

Referred to in §386.3

**386.3 Franchise — election.** No franchise shall be granted, renewed, or extended by any city or town for the use of its streets, highways, avenues, alleys, or public places, for any of the purposes named in sections 386.1 and 386.2 unless a majority of the legal electors voting thereon vote in favor of the same at a general, city or town, or special election. The council may order the question of the granting, renewal, or extension of any such franchise so submitted; or the mayor shall submit said question to such vote upon the petition of twenty-five property owners of each voting precinct in a city, or fifty property owners in any town. [C97,§776; S13,§776; C24, 27, 31, 35, 39,§5905; C46, 50, 54,§386.3]

**386.4 Notice.** Notice of such election shall be given by publication once each week for four consecutive weeks in some newspaper published in the city or town, or if none be published therein, in a newspaper published in the county and of general circulation in the city or town. [C97,§776; S13,§776; C24, 27, 31, 35, 39,§5906; C46, 50, 54,§386.4]

40ExGA, HF 168,§5, editorially divided

**386.5 Time of election.** The election shall be held on a date not less than five nor more than twenty days after the last publication of said notice. [C97,§776; S13,§776; C24, 27, 31, 35, 39,§5907; C46, 50, 54,§386.5]

**386.6 Ballots—procedure.** The clerk shall prepare the ballots, and the proposition shall be submitted as provided for in the title on elections. [C97,§776; S13,§776; C24, 27, 31, 35, 39,§5908; C46, 50, 54,§386.6]

Form of ballot, §§49.45-49.47

**386.7 Costs.** The party applying for the franchise, or a renewal or extension thereof, shall pay all expenses incurred in holding the election. [C97,§776; S13,§776; C24, 27, 31, 35, 39, §5909; C46, 50, 54,§386.7]

## CHAPTER 386A

### PUBLIC TRANSPORTATION SUBSIDY

386A.1 Petition for tax.  
386A.2 Contents of petition.  
386A.3 Filing.  
386A.4 Canvass of petition.  
386A.5 Notice of election.  
386A.6 Publication.

386A.7 Preparation of ballots.  
386A.8 Counting.  
386A.9 Canvass of returns.  
386A.10 Collection of taxes.  
386A.11 Payment to company.  
386A.12 Requirements must be met.

**386A.1 Petition for tax.** The qualified voters of any following named district may file a petition under the conditions hereinafter specified to vote taxes not exceeding one-eighth mill on the assessed value of the real and personal property within the district for aid to a public transportation company operating within said district. Said district shall be composed of all the area within the city where the principal office of the company to be aided is located plus all the area of any other city or town, through, or along all routes traveled by the vehicles of such transportation company. [56 GA, ch 195,§1]

**386A.2 Contents of petition.** The petition shall show:

1. The name and the location of the principal office of the company to be aided.
2. The rate of tax proposed and the number of years not exceeding five in which it shall be levied and paid in equal installments.
3. The location of the lines of travel of the vehicles of the company for which it is proposed to vote the tax.
4. The limits of the proposed taxing district.
5. Any other conditions which shall be performed before any part of the tax shall be payable.
6. The signatures of at least five percent of the qualified voters residing within such district. [56GA, ch 195,§2]

**386A.3 Filing.** Said petition shall be filed in the office of the clerk of said city where the principal office of such company is located. [56GA, ch 195,§3]

**386A.4 Canvass of petition.** After such petition is filed the council of such city shall arrange for a joint meeting of the councils of all cities and towns involved and the council, or joint councils, if more than one, shall canvass the petition, and if found to meet the requirements of the law, shall fix a time and places for holding a special election in the proposed district, appoint judges and clerks of such election, fix the hours when the polls

shall open and close and cause notice to be given as hereinafter provided. The date of such election shall be at least ten days after completed service of such notice. The transportation company for whose benefit such election is held shall pay the expense thereof, including publication of notice and printing of ballots. [56GA, ch 195,§4]

**386A.5 Notice of election.** The notice shall be addressed to the qualified electors of the district or territory in which the election is to be held and shall state:

1. The time and place of holding such election and the hours at which the polls will open and close.
2. The name and location of the principal office of the corporation to which it is proposed to vote the tax.
3. The purpose for which it is proposed to vote such tax.
4. The rate of such tax, the installments into which it shall be divided, the years in which it is payable, and the rate of interest on deferred payments.
5. Any other special conditions set forth in the petition. [56GA, ch 195,§5]

**386A.6 Publication.** The city clerk of the principal city shall cause such notice to be published for three consecutive weeks in the official newspapers published in said city. Proof of such publication, by affidavit of the publisher, shall be filed with the city clerk on completion of the publication. [56GA, ch 195,§6]

**386A.7 Preparation of ballots.** The clerk of the principal city shall cause to be prepared and printed the ballots for such election on which shall be plainly stated the proposition to be voted upon, placed in interrogatory form with the words "yes" and "no" so arranged as to enable the voter to clearly indicate his vote for or against such proposition, which ballots shall be delivered to the judges of election by the time the polls are open. [56GA, ch 195,§7]

**386A.8 Counting.** The judges and clerks shall count the ballots cast as soon as the polls close and certify and file the returns, with all

the ballots cast, in the office of the clerk of the principal city. [56GA, ch 195,§8]

**386A.9 Canvass of returns.** On the filing of the returns the council or joint councils shall convene and canvass the same and certify the result to the county board of supervisors. If a majority of the votes cast are in favor of such taxes, the board shall, at the time of levying the ordinary taxes next following, levy such taxes as are voted and cause the same to be placed on the proper tax lists. [56GA, ch 195,§9]

**386A.10 Collection of taxes.** Special taxes voted for the purpose aforesaid, shall be collected at the same time and in the same manner as other taxes, with the same penalties for delinquency and the same manner of enforcing collection by sale as ordinary taxes. When collected they shall be kept in a separate fund and paid out only for the purposes for which and on the terms and conditions upon which they were voted, all of which shall be shown by the records and files of each clerk's office relating thereto. [56GA, ch 195,§10]

**386A.11 Payment to company.** The moneys collected under the provisions of this chapter shall be paid out by the county treasurer to the treasurer of the transportation company for whom the same were voted, upon orders of the president or managing director thereof, at any time after the city clerk of each city and town where such taxes were assessed shall have certified to the county treasurer that the conditions required of the transportation company

and set forth in the notice of the special election have been complied with, but if the costs and expenses of holding the election have not been paid, then the treasurer shall first deduct from the moneys collected the amount thereof, and pay same to the parties entitled thereto. [56GA, ch 195,§11]

**386A.12 Requirements must be met.** Any provision of this chapter to the contrary notwithstanding, no municipal corporation shall be authorized to pay over any of the moneys above provided until the following requirements are complied with:

1. The transit company shall provide the municipal corporation with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

2. The municipal corporation shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Nothing herein shall be construed to permit the payment of funds to subsidize any losses incurred prior to the adoption of this chapter. [56GA, ch 195,§12]

Effective July 4, 1955

## CHAPTER 386B

### MUNICIPAL TRANSIT SYSTEMS

386B.1 Definitions.

386B.2 Authority to acquire transit system.

386B.3 Question submitted to voters.

386B.4 Election.

386B.5 Notice.

386B.6 Board of trustees.

386B.7 Board powers.

386B.8 Control of system.

386B.9 Contracts.

386B.10 Bonds.

386B.11 Sale of bonds.

386B.12 Deficit — transfer from enterprises fund.

386B.13 Grants and loans.

386B.14 Insurance.

386B.15 Employees transferred.

386B.16 Limitation of actions.

386B.17 Annual report.

386B.18 Election to sell system.

**386B.1 Definitions.** The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. "Municipal corporation" shall mean any city of more than twelve thousand population or any city or town lying adjacent to a city of more than twelve thousand population, regardless of form of government or manner of incorporation.

2. "Transit system" shall mean all plants, equipment, property and rights useful for transportation of passengers for hire except taxicabs and includes, without limiting the generality of the foregoing, street railways, motor vehicles, trolley busses, motor busses, and any combination thereof.

3. "Board" or "transit board" shall mean the board of transit trustees who shall not be under the provisions of chapter 365.

4. "Council" shall mean the city or town council constituting the governing body of the municipal corporation. [56GA, ch 196,§1]

**386B.2 Authority to acquire transit system.** Any municipal corporation shall have the power to establish or to acquire by purchase, construction, gift, condemnation and to equip, enlarge, extend, improve, maintain and operate a transit system operating or to be operated either within or without the corporate limits of such municipal corporation and either within or without the territorial limits of this state, including all or any part of the plant,

equipment, vehicles, property, contracts and agreements of every kind and nature, reserve funds, employees' pension or retirement funds, special funds, franchises, licenses, patents, permits and papers, documents and records, rights in property, land, easements and rights of way of such a system. All property of every kind and nature acquired under authority contained in this chapter shall be the property of the municipal corporation so acquiring the same and title thereto shall be taken in the name of such municipal corporation.

Any municipal corporation shall have the right of eminent domain to acquire private property necessary in connection with the establishment or acquisition, enlargement, extension, improvement, operation and maintenance of a transit system. In the event of the exercise of eminent domain to acquire an existing transit system, the provisions of sections 397.20 to 397.25, inclusive, shall govern so far as applicable. [56GA, ch 196,§2]

Referred to in §§386B.3, 386B.4

**386B.3 Question submitted to voters.** No such transit system shall be acquired by any municipal corporation unless the proposition of acquiring such system by any one or more of the means specified in section 386B.2 is submitted to the voters of the municipal corporation at an election as hereinafter provided and the vote in favor of such proposition at such election is equal to at least sixty percent of the legal electors voting on such proposition at such election; provided before any municipal corporation shall enter into any such contract for the purchase of a transit system, or for the extension or improvement of an existing transit system, to cost twenty thousand dollars or more, the governing body proposing to make such contract shall give thirty days notice of its intention to adopt proposed plans and specifications and the proposed form of contract therefor, by publication once each week for two consecutive weeks in some newspaper of general circulation in the municipality and also in some newspaper of general circulation in the state of Iowa, the first publication of which shall be at least thirty days prior to the time of hearing fixed in said notice. Such notice shall state as nearly as practicable the extent of the contract or of the proposed improvement. Pursuant to said notice and at such time and place as is fixed therein, the governing body shall consider the form of contract, the said plans and specifications, and offers and propositions submitted therewith, together with any objections thereto by any interested party, and at such hearing or any adjournment thereof, shall have the power to adopt such offer or offers, propositions or bids, and enter into such contracts as they shall deem to be to the best interest of the municipality. [56GA, ch 196,§3]

**386B.4 Election.** The council of any municipal corporation may order the proposition of acquiring a transit system by any one or more of the means specified in section 386B.2 sub-

mitted at a regular municipal election, or may call a special election for the purpose of voting on such proposition, and specify the approximate amount of bonds to be issued, or the council shall order said proposition submitted at an election upon the petition of twenty-five property owners of each voting precinct in said municipal corporation. [56GA, ch 196,§4]

Referred to in **§386B.10**

**386B.5 Notice.** Notice of any such election shall be given by publication once each week for four consecutive weeks in some newspaper published in the county and having a general circulation in said municipal corporation. The election shall be held on a day not less than five nor more than twenty days after the last publication of said notice. [56GA, ch 196,§5]

Referred to in **§386B.18**

**386B.6 Board of trustees.** Except as herein after otherwise provided, the administration and management of any transit system acquired under authority contained in this Act shall be vested in a board of transit trustees consisting of three members appointed by the mayor from among the resident voters of the municipal corporation with reference to their fitness for such office, which appointments shall be approved by at least a majority vote of the council. The first appointees shall hold office, one for two years, one for three years, one for four years. All subsequent appointments shall be for a term of six years. Vacancies shall be filled as original appointments are made and for the unexpired term. Members of the board shall receive compensation of not to exceed three hundred dollars per year to each member of said board. Within fifteen days after approval of his appointment and before entering upon the duties of his office, each member of the board shall take and subscribe an oath of office in the form prescribed by section 63.10 and file it in the office of the clerk of the municipal corporation. Each member of the board shall execute and furnish a bond in an amount to be fixed by the council, to be approved by the mayor and filed with the clerk of the municipal corporation. The cost of such bonds shall be paid from transit system funds. As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, elect from its own number a chairman and a secretary who shall serve for such terms as the board shall determine not exceeding their terms of office as members of the board, and adopt bylaws, rules and regulations to govern the proceedings of the board. Members of the board shall hold office until their respective successors have been appointed and have qualified. Any member may resign from his office, to take effect when his successor has been appointed and has qualified. In case of failure to qualify within the time required, or of abandonment of his office, or of change of residence to another community, or in case of death, his office shall become vacant.



Two members of the board shall constitute a quorum for the transaction of business. All action of the board shall be by resolution and the affirmative vote of at least two members shall be necessary for the adoption of any resolution. All resolutions of the board and all documents and records in its possession shall be public records and open to public inspection except such documents and records as shall be kept or prepared by the board for use in negotiations, action or proceedings to which the board is a party. [56GA, ch 196.§6]

**386B.7 Board powers.** Except as hereinafter otherwise provided, such board shall have possession, management, charge and superintendence of the transit system and shall have the power to make and enforce rules and regulations for the control, supervision, maintenance and operation of the transit system, and to buy, to sell and exchange any property, vehicles, equipment or rights for the benefit and efficient operation of said system. Such board shall also have the power to purchase equipment and may execute agreements, and equipment trust certificates in the form customarily used in such cases appropriate to effect such purchases and may dispose of such equipment trust certificates. All money required to be paid by the municipal corporation under the provisions of such agreements, and equipment trust certificates shall be paid solely from the revenue or income to be derived from the operation of the transit system and from grants and loans provided in this chapter. Payment for such equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates payable solely from such revenue or income, and title to such equipment shall not vest in the municipal corporation until the equipment trust certificates are paid.

The agreement to purchase may direct the vendor to sell and assign the equipment to a bank or trust company duly authorized to transact business in the state of Iowa, as trustee, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the equipment to the chairman or secretary of the board of transit trustees and may authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the municipal corporation.

The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds and such agreements, leases and equipment trust certificates shall be authorized by resolution of the board of transit trustees and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates solely from the revenue or income to be derived from the transit system.

The covenants, conditions and provisions of the agreements, and equipment trust certificates shall not conflict with any of the provisions of any trust agreement securing the payment of bonds of the municipal corporation issued under the terms of this chapter.

An executed copy of each such agreement and lease shall be filed in the office of the recorder of the county in which such municipal corporation is situated, and such recorder shall be entitled to a fee as provided in section 335.14 for each such copy filed with him, which filing shall constitute notice to any subsequent judgment creditors or any subsequent purchaser. Each vehicle so purchased and leased shall have the name of the owner and lessor plainly marked upon both sides thereof, followed by the words "Owner and Lessor". [56GA, ch 196, §7]

**386B.8 Control of system.** Such board of transit trustees shall also have power to employ, fix the compensation of, and remove, subject to the provisions of chapter 365, such professional, technical and other employees, but not including executive employees, skilled or unskilled, as it may be deemed necessary for the operation and maintenance of such transit system. Chapter 365, shall be applicable to all employees under the jurisdiction of the board of transit trustees, and its provisions shall govern their employment. The board may from time to time fix and establish routes and schedules and change the same whenever it is deemed advisable and shall have the power and it shall be its duty to fix, maintain, regulate and collect rates, fares or charges for the transportation of passengers and any incidental services and the rates or charges to be made for advertising in busses or any other facilities under the control of the board, so that the revenues of the system will be at all times sufficient in the aggregate to provide for the payment of the interest on and principal of all bonds and equipment trust certificates that may be issued and outstanding under the provisions of this chapter and for the payment of the operation, maintenance, depreciation and other expenses of the transit system, and for the creation of a reserve fund for the purchase of such new equipment as may reasonably be necessary for the operation of said transit system. All funds derived from taxation or otherwise for transit system purposes shall be deposited with the treasurer of the municipal corporation to the credit of said transit system and shall be withdrawn or paid out only by check or draft upon the bank signed by the chairman of the board and countersigned by the secretary thereof.

The board shall have the power to sell or otherwise dispose of any personal property which in the opinion of the board is obsolete or is no longer necessary to the operation and maintenance of the transit system. Notice of such sale or disposition of such personal property of a value of more than one thousand dollars shall be given by publication once in

one newspaper published in said municipal corporation, at least ten days before such sale or disposition. The board shall establish reasonable rules and regulations governing the sale or disposition of such property. Any revenue derived from the sale of such property shall be deposited with the treasurer of the municipal corporation to the credit of the transit system. [56GA, ch 196,§8]

Referred to in §386B.12

**386B.9 Contracts.** All contracts for the sale of property of the value of more than one thousand dollars or for any concession in or lease of property for a term of more than one year shall be awarded to the highest responsible bidder, after advertising for bids. All construction contracts, and contracts for supplies, materials, equipment and services, when the expense thereof will exceed one thousand dollars, shall be let to the lowest responsible bidder, after advertising for bids.

All contracts involving less than one thousand dollars shall be let by competitive bidding whenever possible, and in any event in a manner calculated to insure the best interests of the public.

In determining the responsibility of any bidder the board may take into account past record of dealing with the bidder, experience, adequacy of equipment, ability to complete performance within the time set, and other factors besides financial responsibility, but in no case shall any such contract be awarded to any other than the highest bidder (in case of sale, concession or lease) or the lowest bidder (in case of purchase or expenditure) unless authorized or approved by a vote of at least two members of the board, and unless such action is accompanied by a statement in writing setting forth the reasons for not awarding the contract to the highest or lowest bidder, as the case may be, which statement shall be kept on file in the office of the board and open to public inspection.

Contracts shall not be split into parts involving expenditure of less than one thousand dollars for the purpose of avoiding the provisions of this section, and all such split contracts shall be void. If any collusion occurs among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid a fixed amount or to refrain from bidding, or otherwise, the bids of such bidders shall be void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to any such agreement.

Members of the board and officers and employees thereof, and their relatives within the fourth degree by the terms of the civil law, are forbidden to be interested directly or indirectly in any contract for construction or maintenance work or for the delivery of materials, supplies or equipment.

The board shall have the right to reject all bids and to readvertise for bids.

Advertisements for bids shall be published at least twice in a newspaper having a general circulation in the municipal corporation, the last publication to be at least ten calendar days before the time for receiving bids. Such advertisements shall state the time and place for receiving and opening bids, and by reference to plans and specifications on file at the time of the first publication, or in the advertisement itself, shall describe the character of the proposed contract in sufficient detail to fully advise prospective bidders of their obligations and to insure free and open competitive bidding.

All bids in response to advertisement shall be sealed and shall be publicly opened by the board, and all bidders shall be entitled to be present in person or by representatives. Cash or a certified or satisfactory cashier's check, as a deposit of good faith, in a reasonable amount to be fixed by the board before advertising for bids, shall be required with the proposal of each bidder. Bond for faithful performance of the contract with surety or sureties satisfactory to the board and adequate insurance may be required in reasonable amounts to be fixed by the board before advertising for bids.

The contract shall be awarded as promptly as possible after the opening of bids. The bid of the successful bidder, as well as the bids of the unsuccessful bidders, shall be placed on file and be open to public inspection. All bids shall be void if any disclosure of the terms of any bid in response to an advertisement is made or permitted to be made by the board before the time fixed for opening bids. [56GA, ch 196,§9]

**386B.10 Bonds.** For the purpose of acquiring, purchasing, constructing, equipping, enlarging, extending, or improving a transit system, or any part thereof, the council of the municipal corporation may by resolution, from time to time, issue and dispose of the negotiable interest-bearing bonds and may also from time to time issue and dispose of negotiable interest-bearing bonds to refund any bonds at maturity or pursuant to redemption provisions or at any time before maturity with the consent of the holders thereof. All such bonds shall be payable solely as to both principal and interest from the revenues or income to be derived from the operation of such transit system. All such bonds shall be substantially in the form prescribed by section 397.12 and may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may bear interest at such rate or rates not exceeding five percent per annum, payable semiannually, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be made subject to redemption in such manner and upon such terms, with or without premium, as is stated on the face thereof, may be authenticated in such manner and may contain such terms and covenants, all as may be

provided in such resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that it is nonnegotiable, all such bonds shall be negotiable instruments. Pending the preparation and execution of any such bonds temporary bonds may be issued with or without interest coupons as may be provided by resolution. To secure the payment of any or all of such bonds and for the purpose of setting forth the covenants and undertakings of the municipal corporation in connection with the issuance thereof and the issuance of any additional bonds payable from such revenue or income as well as the use and application of the revenue or income to be derived from the transit system, the municipal corporation may execute and deliver a trust agreement or agreements; provided, that no lien upon any physical property of the municipal corporation shall be created thereby. A remedy for any breach or default of the terms of any such trust agreement by the municipal corporation may be by mandamus proceedings in any court of competent jurisdiction to compel performance and compliance therewith, but the trust agreement may prescribe by whom or on whose behalf such action may be instituted. Under no circumstances shall any bonds or equipment trust certificates issued by any municipal corporation or any other obligation incurred by any municipal corporation under the provisions of this chapter be or become an indebtedness of the municipal corporation within the purview of any constitutional or statutory limitation or provision, and it shall be plainly stated on the face of each bond and certificate that it does not constitute such an indebtedness or obligation but is payable solely from the revenues or income as aforesaid.

After a resolution authorizing the issuance of such bonds has been adopted, the clerk of the municipal corporation shall publish notice of such adoption in at least one newspaper of general circulation in the municipal corporation at least once each week for two consecutive weeks. Such notice shall identify the resolution by the date of its adoption and shall specify the amount of bonds proposed to be issued, and if within twenty days following the date of the first publication of such notice a petition is filed with the clerk of the municipal corporation signed by qualified voters of said municipal corporation in number equal to or exceeding two percent of the total number of those voting at the last preceding regular municipal election in said municipal corporation as shown by the election registers or polls lists asking that the question of issuing such bonds be submitted to the legal voters of the municipal corporation, then the bonds authorized by such resolution shall not be issued unless and until the proposition to issue same shall have been submitted at an election held in the municipal corporation and approved by not less than sixty percent of the votes cast for and against the proposition. When any such petition is filed, it shall be referred to the council

of the municipal corporation at its next meeting and thereupon the council may either repeal the bond resolution or order the election which shall be called and conducted in the manner provided by sections 408A.3 and 408A.4. Provided, however, if the bonds referred to shall exceed by ten percent the amount of the bonds set forth under the provisions of section 386B.4, it shall then be mandatory that the authorization for the issuance of the bonds be submitted to an election as provided under the terms of this section. If there be no petition filed within the time hereinbefore provided or if there be a petition filed and the proposition of issuing such bonds is approved at such election, then the council of the municipal corporation may proceed with the issuance of the bonds all as in this chapter permitted and provided.

The resolution authorizing the issuance of such bonds may contain such covenants as are determined by the council of the municipal corporation to be desirable in connection with the use and application of the bond proceeds, the operation of the transit system and the custody and application of the revenues from such operation. A remedy for any breach or default of the terms of any such bonds or proceedings authorizing their issuance shall be by mandamus in a court of competent jurisdiction to compel performance and compliance therewith. [56GA, ch 196,§10]

**386B.11 Sale of bonds.** Any bonds as may be authorized and issued under the provisions of this chapter shall be sold at public sale following publication of notice for two or more successive weeks in at least one newspaper published in the county, such notice to specify the time and place of sale of said bonds, the amount to be offered for sale and any other information which may be deemed pertinent; provided, however, that if no satisfactory bid is received pursuant to such notice, the council of such municipal corporation may reject all bids received and thereafter readvertise such bonds for public sale; provided, further, that the proceedings authorizing the issuance of said bonds may provide for the delivery of such bonds to the person, firm, or corporation selling to the municipal corporation such transit system, plant, equipment, vehicles, property, rights in property, land, easements or rights of way, in exchange for such transportation facilities, and the terms of such exchange, but in no event shall any payment be made for good will or going concern value of insolvent transportation facilities so exchanged and in such case the bonds shall be offered at public sale in the manner hereinbefore provided and if the best bid received at such sale is not better than the terms specified for the exchange of the bonds for such facilities, then such bid or bids shall be rejected and the bonds shall be issued in exchange for such facilities. No bonds shall be sold or exchanged upon terms of less than par plus accrued interest nor upon terms that will result in an interest cost com-

puted to the maturity of the bonds according to standard tables of bond values of more than five percent per annum. [56GA, ch 196,§11]

**386B.12 Deficit — transfer from enterprises fund.** If in any year it appears to the board that after providing for the payment of the accruing interest on and principal due of any bonds or certificates issued hereunder from the revenues derived from the operation of such transit system, there will be a balance of such revenues in such year insufficient to pay the expenses of operation and maintenance of the transit system and the creation of the reserve fund as provided in section 386B.8, the board of transit trustees shall certify the fact of such anticipated deficit as soon as ascertained to the council of the municipal corporation and thereupon it shall be the duty of such council to make the amount of such deficiency for paying the expenses of operation and maintenance and the creation of said reserve fund available from the municipal enterprises fund in an amount not exceeding a sum that may be equivalent to a two mill levy, it being conditioned that no general municipal funds or the proceeds of any taxes shall ever be used or applied to the payment of the interest on or principal of any bonds issued under the provisions of this chapter, but that such general municipal funds or proceeds of taxes may only be used and applied to pay such expenses of operation and maintenance and for the creation of the reserve fund as provided in section 386B.8 as cannot be paid from available revenue derived from such operation. [56GA, ch 196,§12]

**386B.13 Grants and loans.** The board of transit trustees shall have power to apply for and accept grants and loans from the federal government or any agency or instrumentality thereof to be used for any of the purposes of the transit system and to enter into any agreement with the federal government in relation to such grants or loans; provided such agreement does not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates issued under the provisions of this chapter. [56GA, ch 196,§13]

**386B.14 Insurance.** The board of transit trustees shall have the power to procure and enter into contracts for any type of insurance and indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employers' liability, against any act of any employee, official, or member of the board or transit system in the performance of the duties of his office or employment, or any other insurable risk. [56GA, ch 196,§14]

**386B.15 Employees transferred.** If a municipal corporation acquires a transit system then being operated by a person, firm or corpora-

tion, all of the employees in the operating and maintenance divisions of the system and all other employees except executive and administrative officers shall be transferred to and appointed as employees of said municipal transit system, subject to the rights and benefits of this chapter and of chapters 97B, 97C and 365 and these employees shall be given seniority credits in accordance with the records of the said previous owner, and if there is existing at the time said municipal corporation acquires the transit system a bargaining agreement covering the employees of the privately-owned system, said municipal corporation shall observe the terms of said bargaining agreement until said contract has expired. [56GA, ch 196,§15]

**386B.16 Limitation of actions.** No civil action shall be commenced in any court against the board of transit trustees or the municipal corporation by any person for any injury to his person or property unless it is commenced within two years from the date that the injury or damage was received or the cause of action accrued. [56GA, ch 196,§16]

**386B.17 Annual report.** The board of transit trustees shall immediately after the close of each municipal fiscal year file with the clerk or recorder of the municipal corporation a detailed and audited written report of all money received and disbursed by said board during said fiscal year, and shall publish a summary thereof in a newspaper having a general circulation within said city or town. [56GA, ch 196,§17]

Constitutionality, 56GA, ch 196, 18

**386B.18 Election to sell system.** The council of any municipal corporation owning and operating a transit system under this chapter may order the proposition of disposing or selling the system submitted to a regular municipal election or may call a special election for the purpose of voting on such proposition, or the council shall order such proposition submitted at an election upon the petition of twenty-five property owners of each voting precinct in said municipal corporation. Provided, however, that before such proposition shall be submitted to such election that all bonds and other obligations of the transit system shall have been paid or suitable provision for payment of same has been made with the bond holders or other creditors.

The form of the question submitted to the electors shall be as follows: "Shall the city or town of ..... sell and dispose of its transit system for ..... dollars and abolish its board of transit trustees?"

Notice of such election shall be given as provided for in section 386B.5. [56GA, ch 196, §19]

## CHAPTER 387

## VIADUCTS OR UNDERPASSES

Referred to in §§381.1, 381.7, 404.7(1), 478.21  
Applicable to cities over 5,000 population

387.1 Authorization.  
387.2 Limitations.  
387.3 Damages.  
387.4 Procedure.  
387.5 Payment.  
387.6 Tax permissible.  
387.7 Specifications.  
387.8 Apportionment of cost.  
387.9 Hearing.

387.10 Notice.  
387.11 Service.  
387.12 Use and compensation.  
387.13 Street railway lines.  
387.14 Apportionment of repairs.  
387.15 Mandamus.  
387.16 Contempt—optional procedure.  
387.17 Co-operation with railroad.

**387.1 Authorization.** Cities having a population of five thousand or over shall have power to require any railroad company, owning or operating any railroad tracks upon or across any public streets of such city, to erect, construct, reconstruct, complete, and maintain, to the extent hereinafter provided, any viaduct or underpass upon or along such streets, and over or under such tracks, including the approaches thereto, as may be declared by ordinances of such city necessary for the safety and protection of the public. [C97,§770; C24, 27, 31, 35, 39,§5910; C46, 50, 54,§387.1]

C97,§770, editorially divided

**387.2 Limitations.** The approaches to any such viaduct or underpass shall not exceed a total distance of eight hundred feet, but no such viaduct or underpass shall be required of the same railroad company or companies, on more than every fourth street running in the same direction, and no railroad company shall be required to build or contribute to the building of more than one such viaduct or underpass, with its approaches, in any one year; nor shall any viaduct or underpass be required until the Iowa state commerce commission shall, after examination, determine the same to be necessary for the public safety and convenience, and the plans of said viaduct or underpass, prepared as hereinafter provided, shall have been approved by said commission. [C97,§770; C24, 27, 31, 35, 39,§5911; C46, 50, 54,§387.2]

**387.3 Damages.** When a viaduct or underpass shall be by ordinance declared necessary for the safety and protection of the public, the council shall provide for appraising, assessing, and determining the damages which may be caused to any property by reason of the construction of the same and its approaches. [C97,§771; S13,§771; C24, 27, 31, 35, 39,§5912; C46, 50, 54,§387.3]

S13,§771, editorially divided

**387.4 Procedure.** The proceedings for such purpose shall be the same as are provided in case of taking private property for works of internal improvement. [C97,§771; S13,§771; C24, 27, 31, 35, 39,§5913; C46, 50, 54,§387.4]

Procedure, ch 472

**387.5 Payment.** The damages assessed shall be paid from the street fund. [C97,§771; S13, §771; C24, 27, 31, 35, 39,§5914; C46, 50, 54,§387.5]

**387.6 Tax permissible.** In cities having a population of twelve thousand or over, where a viaduct or underpass is required to be constructed and the plans therefor have been approved and there are no available funds of said city which may be legally used for the payment of such damages, such city may levy an annual tax not exceeding one-half mill\* on the dollar for the purpose of creating a fund to be known as a viaduct or underpass fund for the payment of damages caused to property by reason of the construction of such viaduct or underpass and approaches thereto. [S13,§771-a; C24, 27, 31, 35, 39,§5915; C46, 50, 54, §387.6]

\*Alternate levy, see §404.7(7)  
Referred to in §404.7(7)

**387.7 Specifications.** The width, height, and strength of any viaduct or underpass and the approaches thereto, and the material and manner of construction thereof, shall be such as may be required by the council. [C97,§772. C24, 27, 31, 35, 39,§5916; C46, 50, 54,§387.7]

**387.8 Apportionment of cost.** When two or more railroad companies own or operate separate lines of track to be crossed by a viaduct or underpass, the proportion thereof and the approaches thereto to be constructed by each, or the cost to be borne by each, shall be determined by the council. [C97,§773; S13,§773; C24, 27, 31, 35, 39,§5917; C46, 50, 54,§387.8]

S13,§773, editorially divided

**387.9 Hearing.** The council shall fix a time and place where it will consider such matters and any objections that may be made to the construction of such viaduct or underpass and the approaches thereto. [S13,§773; C24, 27, 31, 35, 39,§5918; C46, 50, 54,§387.9]

**387.10 Notice.** Not less than twenty days written notice of such hearing shall be given to the company or companies owning or operating the track or tracks over or under which it is proposed to construct such viaduct or underpass. [S13,§773; C24, 27, 31, 35, 39,§5919; C46, 50, 54,§387.10]

**387.11 Service.** Said notice may be served in the same manner and upon the same persons or officers as in the case of an original notice. [S13,§773; C24, 27, 31, 35, 39,§5920; C46, 50, 54,§387.11]

*Manner of service, R.C.P. 56(a); persons served, §617.3 et seq.*

**387.12 Use and compensation.** Such cities shall have power to regulate the use of such viaducts or underpasses and to authorize or forbid the use thereof by street railway companies and to require the payment of compensation for such use. [S13,§773; C24, 27, 31, 35, 39,§5921; C46, 50, 54,§387.12]

**387.13 Street railway lines.** After the completion thereof, any revenue derived therefrom by the crossing thereon of street railway lines shall be paid into the street fund. [C97, §773; S13,§773; C24, 27, 31, 35, 39,§5922; C46, 50, 54,§387.13]

**387.14 Apportionment of repairs.** One-half of all ordinary repairs to such viaduct or underpass or its approaches shall be paid out of such fund, or be borne by the city, and the remaining half by the railroad company; and if the track of more than one company is crossed, the costs of such repairs shall be borne by such companies in the same proportion as was the original cost of construction. [C97,§773; S13,§773; C24, 27, 31, 35, 39,§5923; C46, 50, 54,§387.14]

**387.15 Mandamus.** If any railroad company neglects or refuses, for more than thirty days after such notice as may be prescribed by ordi-

nance, to comply with the requirements of any ordinance passed under the provisions of this chapter, the city may enforce the construction, maintenance, or repair of such viaduct or underpass and approaches by proceedings in mandamus, and the court shall require the issues to be made up at the first term to which such action is brought and shall give the same precedence over other civil business. [C97, §774; S13,§774; C24, 27, 31, 35, 39,§5924; C46, 50, 54,§387.15]

*S13,§774, editorially divided  
Mandamus, ch 661*

**387.16 Contempt—optional procedure.** Refusals to comply with, or violations of, the orders of the court in such proceedings may be punished as contempts, by fine and imprisonment as provided in section 474.25, or the city may construct or repair the viaduct or underpass or approaches, or any portion thereof, which such railroad company was required to construct or maintain, and recover the cost thereof from such company. [S13,§774; C24, 27, 31, 35, 39,§5925; C46, 50, 54,§387.16]

**387.17 Co-operation with railroad.** Cities shall have power to enter into and participate in any agreement, project or plan with any railroad or railroads owning or operating any railroad tracks upon or across any public streets of such city for the elimination or separation of railroad crossings at grade, through the relocating, depressing, elevating or consolidating of existing main line or belt line trackage, and to contribute to or pay a portion of the costs thereof. [C54,§387.17]

## CHAPTER 388

### JITNEY BUSES

*Referred to in §§325.27, 386.2  
Applicable to all cities and towns*

388.1 Regulation and license.  
388.2 Excluding from streets.  
388.3 Use of street.  
388.4 Terminus—resulting right.  
388.5 Bond.  
388.6 Beneficiary.

388.7 Amount of bond.  
388.8 General insurance policy.  
388.9 Filing and fee.  
388.10 Application for license.  
388.11 Granting or rejecting.  
388.12 Violations.

**388.1 Regulation and license.** Cities and towns shall have power, under the restrictions and conditions hereinafter named, to regulate and license so-called jitney busses and all motor vehicles operating upon the streets and avenues of such cities and towns and engaged in carrying passengers for hire on a plan similar to that followed by street railway companies; to require such vehicles to be operated over reasonable routes and upon reasonable schedules; to impose penalties within the limits of section 366.1 for the violation of any ordinance enacted hereunder, not inconsistent and in conflict with this chapter. [SS15,§754-a; C24, 27, 31, 35, 39,§5926; C46, 50, 54,§388.1]

*Additional powers, §889.39*

**388.2 Excluding from streets.** The city or town council may prohibit any such jitney bus or motor vehicle from operating on that part of any such street or avenue on which there is operated a streetcar line or lines when such streetcar line is maintained and operated under a franchise granted by any such city or town. [SS15,§754-a; C24, 27, 31, 35, 39,§5927; C46, 50, 54,§388.2]

*39GA, ch 115,§2, editorially divided  
Referred to in §386.2*

**388.3 Use of street.** Such jitney or motor bus may cross such street or avenue at right angles with said streetcar line or lines, and in addition thereto said jitney or motor busses may travel over such streets and avenues so

far only as is necessary to cross bridges. [C24, 27, 31, 35, 39, §5928; C46, 50, 54, §388.3]

Referred to in §386.2

**388.4 Terminus—resulting right.** Said busses and vehicles may have a terminus in the business district of such city or town, and for the purpose of going to and from such terminus said busses and vehicles may travel over such portion only of said prohibited streets and alleys as is necessary to connect directly with the licensed route of said busses and vehicles over the streets and alleys on which there are no streetcar line or lines. [C24, 27, 31, 35, 39, §5929; C46, 50, 54, §388.4]

Referred to in §386.2

**388.5 Bond.** No such license shall be granted by any such city or town unless and until the applicant therefor shall file in the office of the clerk of the district court of the county in which said city or town may be located, an indemnity bond with sureties to be approved by the clerk of said district court, which said sureties shall qualify as provided in chapter 682. [SS15, §754-a; C24, 27, 31, 35, 39, §5930; C46, 50, 54, §388.5]

39GA, ch 115, §3, editorially divided  
Referred to in §386.2

**388.6 Beneficiary.** The said bond shall inure to the benefit of the estate of any passenger killed and to the benefit of any passenger who may suffer bodily injury or property damage by reason of negligence or misconduct on the part of the driver, owner, or operator of any such jitney bus or motor vehicle. [SS15, §754-a; C24, 27, 31, 35, 39, §5931; C46, 50, 54, §388.6]

Referred to in §386.2

**388.7 Amount of bond.** The said bond shall be in the following penal sums, to wit: If there is carried in such jitney bus or motor vehicle less than ten passengers, at least five thousand dollars; and if there is carried therein ten passengers or more, at least ten thousand dollars. [C24, 27, 31, 35, 39, §5932; C46, 50, 54, §388.7]

Referred to in §386.2

**388.8 General insurance policy.** In lieu of such bond there may be filed in such office a liability insurance policy issued by a company authorized to do business in the state in like amounts for a single claim as for the bonds above provided, and conditioned that the same shall inure to the benefit of any passenger upon such vehicle or vehicles in the same manner and way as the bonds above provided. [C24, 27, 31, 35, 39, §5933; C46, 50, 54, §388.8]

Referred to in §386.2

**388.9 Filing and fee.** When said bond or policy is approved by said clerk he shall file the same in his office for the purpose herein expressed and shall receive for filing and ap-

proving the same a fee of one dollar. [C24, 27, 31, 35, 39, §5934; C46, 50, 54, §388.9]

Referred to in §386.2

**388.10 Application for license.** No such license shall be granted by any such city or town unless and until the applicant therefor shall, after the said bond or liability insurance policy is thus approved, file in the office of the clerk of such city or town an application for such license stating:

1. The type of motorcar or jitney bus to be used.

2. The horsepower and the factory number thereof.

3. The state license number thereof.

4. The seating capacity thereof according to its trade rating.

5. The street or streets upon which it is intended to operate.

6. The age, name, and residence of the person to be in the immediate charge thereof as driver and a statement showing that such driver has attained the age of at least eighteen full years, and if more than one person is to be in the immediate charge of such jitney or motor bus, then there must be given the name, age, and residence of each said persons and a statement showing that each of said persons has attained the age of eighteen full years.

7. The qualifications and experience of the person who is to be the driver of such jitney or motor bus, and if more than one person is to drive the same, then a statement of qualification of each such person.

8. The name of the owner or owners of the bus or busses proposed to be operated.

9. That the said bond hereinabove named has been filed and approved as hereinabove provided. [C24, 27, 31, 35, 39, §5935; C46, 50, 54, §388.10]

**388.11 Granting or rejecting.** The city or town council may grant or reject the said application, and if the said application is rejected other applications may be made, and likewise the city or town council may grant or reject the same. [SS15, §754-a; C24, 27, 31, 35, 39, §5936; C46, 50, 54, §388.11]

**388.12 Violations.** It shall be unlawful for any such jitney or motor bus to thus operate upon any such streets or avenues without said license; and any person, corporation, or copartnership who shall operate any such jitney or motor bus without such license shall be held guilty of a misdemeanor and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or shall stand committed to the county jail for a period not exceeding sixty days. [SS15, §754-a; C24, 27, 31, 35, 39, §5937; C46, 50, 54, §388.12]

CHAPTER 389

STREETS AND PUBLIC GROUNDS

Applicable to all cities and towns

GENERAL POWERS

- 389.1 Establishment—improvement.
- 389.2 Acceptance of dedication.
- 389.3 Optional payments.
- 389.4 Term of assessments.
- 389.5 Acquisition of lands.
- 389.6 Plat and schedule—resolution of necessity.
- 389.7 Levy—certificates or bonds.
- 389.8 Increased award—assessment.
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- 389.17 Lighting districts.
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GRADE OF STREETS

- 389.20 Grades and grading.

- 389.21 Uniformity.
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- 389.31 Permanent sidewalks.
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USE OF STREETS

- 389.39 Conveyances—transportation.
- 389.40 Driving or riding.
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GENERAL POWERS

**389.1 Establishment—improvement.** Cities and towns shall have power to establish, lay off, open, widen, straighten, narrow, vacate, extend, improve, and repair streets, highways, avenues, alleys, public grounds, parks and playgrounds, wharves, landings, and market places within their limits. [R60, §§1064, 1097; C73, §§464, 465, 527; C97, §751; SS15, §751; C24, 27, 31, 35, 39, §5938; C46, 50, 54, §389.1]

40ExGA, HF 168, §1, editorially divided  
Referred to in §389.5

**389.2 Acceptance of dedication.** No street, avenue, highway, or alley dedicated to public use by the proprietor of the ground in any municipal corporation shall be deemed a public street, avenue, highway, or alley, or be under the use or control of such municipality, unless the dedication shall be accepted and confirmed by a resolution specially passed for such purpose. [R60, §1097; C73, §§465, 527; C97, §751; SS15, §751; C24, 27, 31, 35, 39, §5939; C46, 50, 54, §389.2]

**389.3 Optional payments.** The expenses of such extension, repairs, and improvements may be paid from the allocations of the street fund of such cities or towns, or by assessing all or any portion of the cost thereof on abutting and adjacent property according to the benefits derived from such extension, repairs, and improvements as provided in chapter 391. [R60, §1064; C73, §§465, 466; C97, §§751, 818; SS15, §751; C24, 27, 31, 35, 39, §5940; C46, 50, 54, §389.3]

40ExGA, HF 168, §2, editorially divided  
Referred to in §389.10

**389.4 Term of assessments.** Such assessments may be made to extend over a period not to exceed twenty years, payable in equal

annual installments and certificates or bonds may be issued in anticipation thereof. [C24, 27, 31, 35, 39, §5941; C46, 50, 54, §389.4]

Referred to in §389.10

**389.5 Acquisition of lands.** Whenever the cost and expense of an improvement authorized in section 389.1 is to be assessed on the property specially benefited thereby, the council shall, by resolution, designate and determine the several tracts or parcels of ground necessary to be acquired for such improvement, which acquisition may be by condemnation proceedings or otherwise. [SS15, §751; C24, §5942; C27, 31, 35, §5942-b1; C39, §5942.1; C46, 50, 54, §389.5]

Referred to in §§389.9, 389.10

**389.6 Plat and schedule — resolution of necessity.** When the cost of such acquisition shall have been ascertained, either by private negotiation or condemnation proceedings, the plat and schedule provided for in section 391.20 shall be filed with the city clerk, and the council shall, in a proposed resolution, as provided by section 391.18, declare the necessity for such improvement; and, in such resolution of necessity the property specially benefited by such improvement shall be determined and designated and the boundary lines of the benefited district established. [SS15, §751; C24, §5942; C27, 31, 35, §5942-b2; C39, §5942.2; C46, 50, 54, §389.6]

Referred to in §§389.9, 389.10

**389.7 Levy—certificates or bonds.** Following the adoption of the resolution of necessity, the council may by resolution order the improvement; and, in order to obtain funds with which to pay the cost of acquiring the property



necessary to make such improvement and the expense incident thereto, and without waiting for such improvement to be completed, levy, in accordance with section 391.48 upon and against the several lots and parcels of land situated within such benefited district, the amount of such cost and expense, and issue and sell street improvement certificates or bonds in anticipation of the collection of such assessments, the proceeds from the sale of which certificates or bonds shall be used for the payment of such cost and expense and for no other purpose. [C27, 31, 35, §5942-b3; C39, §5942.3; C46, 50, 54, §389.7]

Referred to in §§389.8-389.10

**389.8 Increased award—assessment.** If upon appeal any award shall be raised and the cost and expense of acquiring such property thereby increased, the amount of such increased cost may also be assessed upon and against the property situated within such benefited district, and if the council so elects, there may be also assessed against the property in such benefited district the cost and expense of clearing and grading the ground so acquired; and street improvement certificates or bonds issued in like manner as provided in section 389.7. If two assessments are made and two sets of certificates or bonds are issued, the first of such certificates or bonds shall be designated as "Series A" and the second as "Series B". The aggregate amount of both such assessments shall not exceed twenty-five percent of the assessed value of the property. [C27, 31, 35, §5942-b4; C39, §5942.4; C46, 50, 54, §389.8]

Referred to in §§389.9, 389.10

**389.9 Applicable provisions.** The provisions of chapter 391 relating to street improvements and special assessments, and chapter 396 relating to street improvement certificates or bonds shall be applicable hereto, insofar as the same may be necessary for the carrying out of this section and sections 389.5 to 389.8, inclusive. [C27, 31, 35, §5942-b5; C39, §5942.5; C46, 50, 54, §389.9]

Referred to in §389.10

**389.10 Interpretation.** Nothing in sections 389.3 to 389.9, inclusive, shall be construed as changing the manner of assessing abutting and adjacent property for the cost of paving, guttering, curbing, or macadamizing streets and alleys. [SS15, §751; C24, 27, 31, 35, 39, §5943; C46, 50, 54, §389.10]

**389.11 Width of street.** They shall have power to provide that the width of all streets, highways, avenues, and alleys of all additions to any city or town shall conform to the width of the existing streets, highways, avenues, and alleys of such cities and towns. [C97, §752; C24, 27, 31, 35, 39, §5944; C46, 50, 54, §389.11]

**389.12 Duty to supervise.** They shall have the care, supervision, and control of all public highways, streets, avenues, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in

repair and free from nuisances. [R60, §1097; C73, §527; C97, §753; C24, 27, 31, 35, 39, §5945; C46, 50, 54, §389.12]

Notice to person liable over, §§363C.16, 368.34, 420.46

**389.13 Duty to drag.** The councils of cities and towns, respectively, shall cause the main-traveled roads within the corporate limits leading into the city or town to be dragged at the times and in the manner provided by law for the dragging of roads outside such corporate limits. [S13, §1570-b4; C24, 27, 31, 35, 39, §5946; C46, 50, 54, §389.13]

Time and manner of dragging, §309.67

**389.14 "Roads" as streets.** Such portions of all roads as lie within the limits of any city or town shall conform to the direction and grade and be subject to all regulations of other streets in such town or city. [R60, §916; C73, §953; C97, §1508; C24, 27, 31, 35, 39, §5947; C46, 50, 54, §389.14]

**389.15 Embankments and fills.** Cities of fifteen thousand or more population shall have power to construct embankments where streets cross ravines, or where it is necessary that fills should be made for the purpose of retaining the street at grade to the full width of the remaining portions thereof. Such cities may purchase or condemn lands suitable for such purposes in the manner provided for condemning land by cities; but when the abutting property shall be brought to grade, such city shall reconvey the land so taken to the owner from whom the same was taken, or his grantees, upon the payment by him or them of the price originally paid by said city at the time said property was purchased or condemned. [C97, §784; C24, 27, 31, 35, 39, §5948; C46, 50, 54, §389.15]

Condemnation procedure, ch 472

**389.16 Lighting.** They shall have power to light streets, avenues, alleys, highways, public places, grounds, buildings, landings, market places, and wharves. [R60, §1064; C73, §464; C97, §756; C24, 27, 31, 35, 39, §5949; C46, 50, 54, §389.16]

**389.17 Lighting districts.** In any city of fifteen thousand or more population, where streets are now or may hereafter be lighted by electroliers or similar devices, the city council of such city may by ordinance divide such city into two districts for lighting purposes; one to be known as the "Metropolitan Lighting District", to embrace all of the property abutting upon streets lighted by electroliers or similar lighting devices, and the other to be known as the "General Lighting District", to embrace all of the area of such city not included in such metropolitan lighting district. [C27, 31, 35, §5949-a1; C39, §5949.1; C46, 50, 54, §389.17]

**389.18 Special lighting tax.** When any such city has been so divided into lighting districts, the city council of such city may levy a special tax upon the property embraced in such metropolitan lighting district, in addition to all other taxes provided by law, not to exceed one-half

mill\* to defray the expense in connection with the lighting of such district; such special tax to be paid at the same time and in the same manner as general taxes. [C27, 31, 35, §5949-a2; C39, §5949.2; C46, 50, 54, §389.18]

Referred to in §404.12(5)

\*Alternate levy, see §404.12(5)

**389.19** Repealed by 54GA, ch 151, §40. See §368.33.

**GRADE OF STREETS**

**389.20 Grades and grading.** They shall have power to establish grades and provide for the grading of any street, highway, avenue, alley, public ground, wharf, landing, or market place, the expense thereof to be paid from the street fund. [C73, §465; C97, §782; C24, 27, 31, 35, 39, §5951; C46, 50, 54, §389.20]

**389.21 Uniformity.** They shall have power to provide that the grading of all streets, highways, avenues, alleys, public grounds, wharves, landings, or market places of all additions to any city or town shall be done in the same manner, and conform to existing streets, avenues, highways, and alleys thereof. [C97, §783; C24, 27, 31, 35, 39, §5952; C46, 50, 54, §389.21]

**389.22 Change.** When any city or town shall have established the grade of any street or alley, and any person shall have made improvements on the same, or lots abutting thereon, according to the established grade thereof, and such grade shall thereafter be altered in such a manner as to damage, injure, or diminish the value of such property so improved, said city or town shall pay to the owner of such property the amount of such damage or injury. [C73, §469; C97, §785; C24, 27, 31, 35, 39, §5953; C46, 50, 54, §389.22]

Referred to in §§389.24, 404.7(10)

**389.23 Overhead crossings — underpasses — damages.** Whenever the Iowa state highway commission or any city or town in the state of Iowa, or both jointly, shall undertake the construction, within any city or town, of a street grade change or of a viaduct overhead crossing or underpass, in any street or alley whether the construction in fact causes a change of grade or not, the owner of any property abutting on said street or alley at the place of such construction, shall be entitled to receive from the city or town within which such construction is being made, as the case may be, damages by reason of any injury to the owner's right to ingress and egress to such property, or by reason of deprivation of light, air, or view which may be occasioned by such construction. [C73, §469; C97, §786; C24, 27, 31, 35, 39, §5954; C46, 50, 54, §389.23]

Referred to in §§389.24, 404.7(10)

**389.24 Condemnation procedure.** For the determination of the damage or injury referred to in section 389.22 and under section 389.23, the procedure set forth in and prescribed by chapter 472, as amended, relating to the condemnation of private property for works of internal improvement shall govern

and control. [C73, §469; C97, §§787-789; C24, 27, 31, 35, 39, §§5955-5958; C46, §§389.24-389.27; C50, 54, §389.24]

Referred to in §404.7(10)  
Manner of service, R.C.P. 56(a)

**389.25 Appeal.** Appeals from such awards of damage shall be allowed as provided in chapter 472, and shall be in conformity with the provisions thereof. [C73, §469; C97, §790; C24, 27, 31, 35, 39, §§5959-5961; C46, §§389.28-389.30; C50, 54, §389.25]

Referred to in §404.7(10)

**389.26 to 389.30, inc.** Repealed by 53GA, ch 165, §1.

See §§389.24, 389.25

**SIDEWALKS**

**389.31 Permanent sidewalks.** Cities and towns shall have power to provide for the construction, reconstruction, and repair of permanent sidewalks upon any street, highway, avenue, public ground, wharf, landing, or market place within the limits of such city or town; and to assess the cost thereof on the lots or parcels of land in front of which the same shall be constructed; but the construction of permanent sidewalks shall not be made until the bed of the same shall have been graded so that, when completed, such sidewalks will be at the established grade.

Unless the owners of a majority of the linear feet of the property fronting on said improvements petition the council therefor, the same shall not be made unless three-fourths of all the members of the council shall by vote order the making thereof. [C73, §466; C97, §779; S13, §779; C24, 27, 31, 35, 39, §5962; C46, 50, 54, §389.31]

Grade for streets, etc., §391.3

**389.32 Objections.** All objections to the cost of construction of permanent sidewalks, as provided by the Code, against the lots or parcels of land in front of which the same are constructed, and all objections to the prior proceedings, on account of errors, irregularities, or inequalities, must be made in writing and filed with the city clerk prior to the date fixed for said assessment; and all objections not so made shall be deemed waived, except where fraud is shown. [S13, §791-a; C24, 27, 31, 35, 39, §5963; C46, 50, 54, §389.32]

Similar provisions, §§391.19, 391.56, 395.14

**389.33 Payment under waiver.** Unless the owner of any lot or parcel of land against which an assessment for permanent sidewalk is made shall within thirty days from the date of assessment file written objections to the legality or regularity of the assessment or levy of such tax upon and against his property, such owner shall be deemed to have waived objections on these grounds, and shall have the right to pay said assessment with interest thereon not exceeding six percent per annum in seven equal annual installments, the first of which shall mature and be payable on the date of said assessment and the others, with interest on the whole amount unpaid, annually thereafter, at the same time and in the same

manner as the March semiannual payment of ordinary taxes, provided that if the aggregate of all assessments against the property of an owner is twenty-five dollars or less, such assessments shall be paid in one installment and within thirty days following the levy. [S13, §791-b; C24, 27, 31, 35, 39, §5964; C46, 50, 54, §389.33]

**389.34 Delinquent tax.** Each installment of such taxes, with interest, shall become delinquent on the first day of March next after its maturity and shall bear the same rate of interest, with the same penalties as ordinary taxes. [S13, §791-b; C24, 27, 31, 35, 39, §5965; C46, 50, 54, §389.34]

Interest and penalties, §445.39

**389.35 Certificates of levy—lien.** A certificate of levy of such special assessment, fixing the number of installments and the time when payable, certified as correct by the city clerk, shall be filed with the auditor of the county, or each of the counties, in which the city is situated and thereupon said special assessment, as shown therein, shall be placed on the tax list of the proper county and said taxes and special assessment, with all interest and penalties thereon, shall become and remain a lien upon such lot or parcel of land until the same is paid; and said lien shall have precedence over all other liens, except ordinary taxes. [S13, §791-c; C24, 27, 31, 35, 39, §5966; C46, 50, 54, §389.35]

**389.36 Certificates—effect.** Such certificate shall be the same as certificates of the levy of special assessments for street improvements, and shall create the same rights and liabilities and the same procedure shall apply thereto. [S13, §§791-d-g; C24, 27, 31, 35, 39, §5967; C46, 50, 54, §389.36]

Certification to auditor, §391.34

**389.37 Temporary sidewalks.** They shall have power to provide for the laying, relaying, and repairing of temporary sidewalks upon any street, avenue, public ground, wharf, landing, or market place within the limits of such city or town, at a cost not exceeding one dollar a linear foot, to prescribe a uniform width thereof, and to regulate the grade of the same, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid. [C73, §468; C97, §777; S13, §777; C24, 27, 31, 35, 39, §5968; C46, 50, 54, §389.37]

**389.38 Repair.** Cities and towns shall have power to repair sidewalks without notice to the property owner, and assess the expense thereof on the property in front of which such repairs are made, and the same shall be certified and collected as other taxes. [C73, §467; C97, §780; C24, 27, 31, 35, 39, §5969; C46, 50, 54, §389.38]

#### USE OF STREETS

**389.39 Conveyances — transportation.** They shall have power:

1. To regulate, license, and tax all carts, wagons, street sprinklers, drays, coaches, hacks, omnibuses, and every description of conveyance kept for hire.

2. To fix the rate and prices for the transportation of persons and property from one part of the city to another in the vehicles above named, and to require such persons to keep exposed to view, in or upon such vehicle, a printed table of the rates and prices so fixed.

3. To establish stands for hackney coaches, cabs, omnibuses, drays, and express wagons, and to enforce the observance and use thereof.

4. To prescribe the width of the tires of all vehicles habitually used in the transportation of persons or articles from one part of the city to another.

5. To require vehicles and bicycles to carry lamps giving sufficient light.

6. To require the registration and licensing of bicycles, including the requirement of a registration fee therefor. [R60, §1063; C73, §463, 537; C97, §754; C24, 27, 31, 35, 39, §5970; C46, 50, 54, §389.39]

Jitney busses, ch 388

Taxation of motor vehicles, §321.130

**389.40 Driving or riding.** Cities and towns shall have power to restrain and regulate the riding and driving of horses, livestock, vehicles, and bicycles within the limits of the corporation, and prevent and punish fast or immoderate riding or driving within such limits. [R60, §1057; C73, §456; C97, §755; C24, 27, 31, 35, 39, §5971; C46, 50, 54, §389.40]

**389.41 Flagmen and gates.** Cities and towns shall have power to compel railroad companies to place flagmen, or to erect, construct, maintain, and operate suitable mechanical signal devices or gates, upon public streets at railroad crossings, under such regulations as may from time to time be made by the council; provided that in cases where a controversy arises between the railroad company and the council as to the necessity for such flagmen, signal devices, or gates, the Iowa state commerce commission shall determine the matter of necessity, and the type of crossing protection. [C97, §769; C24, 27, 31, 35, 39, §5972; C46, 50, 54, §389.41]

39GA, ch 152, §1, editorially divided

**389.42 Speed of trains.** Cities and towns, subject to the approval of the state commerce commission, shall have power to regulate the speed of trains and locomotives on railways running over the streets or through the limits of the city or town. [C73, §456; C97, §769; C24, 27, 31, 35, 39, §5973; C46, 50, 54, §389.42]

**389.43 Gravel pits.** They shall have power to purchase or provide for the condemnation of, pay for out of the funds available for street purposes of the municipal corporation, lands within or without the territorial limits of the corporation, including a suitable roadway thereto by the most reasonable route, for the purpose of obtaining gravel, stone, or other suitable material with which to improve the streets and alleys of said city or town. [S13, §2024-j; C24, 27, 31, 35, 39, §6196; C46, 50, §403.2; C54, §389.43]

## CHAPTER 390

## MUNICIPAL PARKING LOTS

Applicable to all cities and towns

- |                                       |  |
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| 390.5 Leasing to others.              | 390.13 Off-street parking—election—bonds.      |
| 390.6 Disposal of land.               | 390.14 Taxes—limit.                            |
| 390.7 Parking meters.                 | 390.15 Construction of statutes.               |
| 390.8 Use of funds.                   |  |

**390.1 Power to establish and operate.** Cities and towns shall have additional power and authority to purchase, lease or otherwise acquire and to improve, including the erection or improvement of buildings thereon, maintain and operate parking lots or other off-street parking areas for the parking of vehicles, but before such authority is exercised the city council shall hold a public hearing to determine whether or not public convenience and necessity will be served by the establishment of such facilities. One notice of such hearing shall be published at least two weeks prior thereto and any person affected by the establishment of said parking lot or off-street parking facilities may appear at such hearing and object thereto. Cities and towns shall have additional power and authority to accept gifts or funds from any person, firm, corporation or association or co-operative organization for the establishment and operation of parking lots, if after said hearing, the establishment of such parking facilities is approved. [C46, 50, 54, §390.1]

Referred to in §§390.9, 390.13

**390.2 Payment—funds—tax.** Any such city or town is hereby authorized and empowered to acquire by purchase, gift, lease, or otherwise, real estate for parking purposes and pay the costs thereof either out of the general fund or in the event the required sum is not available in such fund, the city or town administration shall have the right to levy a tax to be known as the parking lot fund, to provide the amount required, but in no event in excess of one-half mill\* in any fiscal year. [C46, 50, 54, §390.2]

Referred to in §§390.13, 404.7(5)

\*Alternate levy, see §404.7(5)

**390.3 Eminent domain.** Any such city or town shall have the power to provide for the condemnation of, and pay for out of the general fund or parking lot fund or from funds created other than through taxation, enter upon and take any lands for such purposes in accordance with the provisions of section 368.38.\* [C46, 50, 54, §390.3]

Condemnation procedure, ch 472

\*Section 408.9, Code 1950, repealed by 54GA, ch 151, §41 and section 368.38 enacted in lieu thereof

**390.4 Rates—prohibited acts.** The city or town council shall have the power by ordinance, to establish and maintain just and

equitable rates or charges for the use of and the service to be rendered by said parking lands and provide for the collection of revenues therefrom, which lands shall be under the supervision and control of the city or town. The net revenues to be derived for the operation of said lands shall be placed in the parking lot fund and may be used to improve said lands or to acquire other lands for the same purposes, and any surplus may be transferred to the general fund of said city or town. Provided, however, that said city or town shall not sell, or offer for sale, any merchandise or supplies, including gasoline, oil, or motor vehicle supplies. [C46, 50, 54, §390.4]

**390.5 Leasing to others.** The city or town council shall have the right and authority to lease and rent such lands to other persons, firms, or corporations, to be used for such purposes and fix the rental to be charged therefor, and when such lands are so leased, to regulate the rates and charges to be exacted for such purposes. In no event shall such lease or agreement be for a period of more than twenty-five years. [C46, 50, 54, §390.5]

**390.6 Disposal of land.** The city or town council shall have the power to sell and dispose of the title or interest of such city or town in any real estate owned or held by it for parking purposes, however acquired or held, in such manner and upon such terms as such council shall direct. [C46, 50, 54, §390.6]

**390.7 Parking meters.** Cities and towns shall have additional power and authority to purchase or lease, install, maintain, repair and operate parking meters or other traffic or parking control devices. [C50, 54, §390.7]

**390.8 Use of funds.** Funds derived from the operation of parking meters shall be used for the following purposes and none other, to wit:

1. Payment of the cost of acquisition and installation of meters purchased.

2. Payment of the cost of maintenance and repair of meters, the collection of meter taxes, and the enforcement of traffic laws in the parking meter district.

3. Payment of the purchase and installation costs of other parking or traffic control devices installed on such portions of streets as are equipped with parking meters.

4. Payment of the cost of acquiring by purchase, lease or similar arrangement of parking lots or other off-street parking areas, including operation, enlargement or improvement thereof or the facilities thereof, within four-tenths of a mile of the metered portion of the streets within the meter district, and widening the streets within the meter district or within two blocks thereof to provide additional parking facilities.

5. Retirement of revenue bonds issued pursuant to the provisions of this chapter; and cities and towns may pledge such funds not required for the payment of costs under subsections 1, 2 and 3 hereof to the payment of such bonds.

Until such time as there shall have been provided adequate parking lots or other off-street parking areas in any city or town operating parking meters, all revenues derived from the operation of such parking meters or other similar devices not required for the payment of costs under subsections 1, 2 and 3 hereof shall be expended for the acquisition of such facilities, provided, however that the total expenditures for items 2 and 3 shall not exceed twenty-five percent of the total meter income and provided further that such funds may be retained and accumulated for such purpose for such length of time and in such amount as may be reasonably necessary to effectuate such program of acquisition of parking lots or other off-street parking areas. No part of the street area in any parking meter district shall be set aside or used for parking purposes at a charge less than the ordinary charge for parking throughout the parking meter district, except such part of the street area in any parking meter district set aside for the vehicles used by any person, firm, or corporation engaged in public passenger transportation which are required by law to pay a tax (for the use of the streets). [C50, 54,§390.8]

Referred to in §390.12  
Prior contracts legalized, 52GA, ch 206,§6

**390.9 Off-street parking.** Cities and towns may issue revenue bonds for the purpose of acquiring parking lots or other off-street parking areas for the parking of vehicles, as provided in section 390.1. Said revenue bonds shall be retired either from funds received from the operation of said parking lots, from funds received from the operation of parking meters or from funds received from a tax levied against a benefited district as provided in section 390.10, and said funds may be pledged as security for the payment of such bonds and the interest thereon and such bonds, excepting bonds payable from a tax levied against a benefited district, shall be a lien on the property purchased from the proceeds thereof but shall not be a general obligation of such city or town and shall not be payable in any manner by taxation nor shall the municipality be in any manner liable by reason of said funds being insufficient to pay said bonds. [C50, 54, §390.9]

**390.10 Benefited district — tax.** Wherever the free movement and parking of vehicular traffic is substantially impeded by traffic congestion in cities and towns, the council of said cities and towns may establish a benefited district for the control, regulation and parking of said vehicles. Said district shall be established by ordinance after a public hearing to determine the necessity therefor, and said cities and towns may then levy a tax not exceeding one-half mill per annum against all the privately owned business, professional, commercial and industrial property within said district, but no such tax shall be levied against private property used solely and only for private family residential purposes. Funds derived from said tax shall be used only for the purpose of retiring the revenue bonds, and then only after first applying on said retirement all funds available from the income from said parking lots or from parking meters. [C50, 54,§390.10]

Referred to in §390.9

**390.11 Sale of automotive supplies prohibited.** Any sale of automotive supplies or services other than service incidental to the mere parking of cars by the city, a les-see of the city, or by any other person, firm or corporation on any parking lot or other off-street parking area, whether such service be paid for in full or in part in money or for any other consideration, is prohibited and any such sale shall constitute a misdemeanor and be punished as such. [C50, 54,§390.11]

Referred to in §390.12  
See §420.40

**390.12 Cities under 10,000 population.** Sections 390.8 and 390.11 shall not be applicable to cities and towns having a population of less than ten thousand, however, such cities shall have power and authority to use the funds received from the operation of parking meters to pay the cost of acquiring, operating, maintaining and repairing the same, and also to pay the cost of acquiring and operating other parking and traffic control devices. Any of such funds remaining thereafter may be used either to purchase, lease or otherwise acquire parking lots or other off-street parking areas for the parking of vehicles, or said remaining funds may also be used for the retirement of revenue bonds issued for the purpose of acquiring parking lots, in the event the revenue from said parking lots is insufficient to pay the cost of retiring said bonds, or for any other lawful purpose for which the street fund may be used where reasonable off-street parking privileges have been provided. [C50, 54, §390.12]

Applicable to certain other cities, see 53GA, ch 167,§5  
Constitutionality, 53GA, ch 167,§6  
See §420.40

**390.13 Off-street parking—election—bonds.** Cities and towns when authorized by an election, to establish off-street parking facilities as provided in section 390.1, are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay

the cost of acquiring and improving real estate for off-street parking areas, including the erection or improvement of buildings thereon. Said election shall be conducted as provided for in chapter 407.

In cities and towns whenever parking lots shall have been authorized or established as provided in section 390.1 in lieu of the tax provided for in section 390.2, there may be levied a tax not exceeding one-half mill, the proceeds of which shall be credited to and known as the "parking lot fund". Such fund shall be used only to acquire or improve real estate, including the erection or improvement of buildings thereon or for any or all said purposes for the parking of vehicles, and including the payment of bonds and interest thereon issued in anticipation of the collection of such tax. Such fund shall be used to meet maturities of such bonds and interest thereon from year to year, but only to the extent that after the application of all net returns available from the income of said parking lots or parking meters, or both, as specified by law, the same shall be required to meet such maturing bonds or interest thereon. Cities and towns may anticipate the collection of taxes authorized in this section and for that purpose may issue certificates or bonds with interest coupons. If bonds are issued said bonds shall be payable in not more than twenty annual installments and at interest not exceeding five

percent per annum, and shall be payable at such place and be in such form as the council shall designate by resolution or ordinance. [C54,§390.13]

Referred to in §§390.14, 390.15

**390.14 Taxes—limit.** Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in section 390.13 and this section shall not be considered an indebtedness incurred for general or ordinary purposes. [C54, §390.14]

Referred to in §390.15

**390.15 Construction of statutes.** Sections 390.13 and 390.14 shall be construed as granting additional power without limiting the power already existing in cities and towns. The provisions of said sections shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [C54,§390.15]

## CHAPTER 391

### STREET IMPROVEMENTS, SEWERS, AND SPECIAL ASSESSMENTS

Referred to in §§358.22, 384.3 subsection 4, 389.3, 389.9, 392.3, 392.4, 396.22, 420.264

Applicable to all cities and towns

See alternate method, ch 391A

Cities over 125,000, see ch 417

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## ANNEXED CITIES AND TOWNS

391.94 Public policy in annexed cities and towns.  
 391.95 Authority of such cities and towns.

**391.1 Definitions.** The following words as used in this chapter shall have the meanings as stated:

1. The word “cities” shall include towns.
2. The word “repair” shall include reconstruct, reconstruct by widening and resurface.
3. The word “street” shall include highway, avenue, alley, and public place.
4. The word “lot” shall include tract or parcel of land.
5. The word “sewer” shall include structures designed to control streams and surface waters flowing into sewers.
6. The words “cost of construction of sewers” shall include the cost of acquisition of lands and easements for the control of such waters flowing into sewers.
7. The word “oil” shall include any asphaltic or bituminous liquids suitable for road building purposes and the word “gravel” shall include gravel, crushed rock, cinders, shale, or similar material suitable for road building purposes. [C97, §779; S13, §§779, 792-f; C24, 27, 31, 35, 39, §5974; C46, 50, 54, §391.1; 57GA, ch 192, §1]

**391.2 Street improvements.** Cities shall have power:

1. To improve any street by grading, parking, curbing, paving, oiling, oiling and graveling, chloriding, graveling, macadamizing, use of shale or other surfacing material, or guttering the same or any part thereof, or by constructing electric light fixtures along same, and to repair such improvements.
2. To establish districts, the boundaries of which may be changed as may be just and equitable, for the improvement or repair, by paving or graveling, of such streets within the corporation as in the judgment of the council constitute main-traveled ways into and out of such cities.

1. [R60, §1097; C73, §§466, 527; C97, §§779, 792; S13, §§779, 792, 792-f; C24, 27, 31, 35, 39, §5975; C46, 50, 54, §391.2]

2. [SS15, §§840-h, -i; C24, 27, 31, 35, 39, §5975; C46, 50, 54, §391.2]

Referred to in §391.71

**391.3 Grading required.** The construction of permanent parking, curbing, paving, graveling, macadamizing, or guttering shall not be done until the bed therefor shall have been graded, so that such improvement, when fully completed, will bring the street up to the established grade. [C97, §792; S13, §792; SS15, §840-q; C24, 27, 31, 35, 39, §5976; C46, 50, 54, §391.3]

40ExGA, SF 169, §2, editorially divided  
 Grade for permanent sidewalks, §389.31

**391.4 Grading cost assessable.** Only so much of the cost of the removal of the earth and other material as lies between the subgrade and the established grade shall be assessed to private property. [C97, §792; S13, §792; C24, 27, 31, 35, 39, §5977; C46, 50, 54, §391.4]

**391.5 Preparing for surfacing—cost.** The cost of preparing a street to receive oil, oil and gravel, shale, or chloride shall be paid by the city, except that portion between the rails of any railway or street railway, and one foot outside thereof. [C24, 27, 31, 35, 39, §5978; C46, 50, 54, §391.5]

**391.6 Use of old material.** Upon repaving, they may use the old material for such repair and dispose of the waste material and salvage from the old pavement as the council may by resolution direct. The value of the salvage so used or the proceeds derived from the sale thereof shall be equitably applied upon the cost of the new improvement. [S13, §§792, 792-f; C24, 27, 31, 35, 39, §5979; C46, 50, 54, §391.6]

40ExGA, SF 169, §3, editorially divided

**391.7 Sale of salvage.** No salvage may be sold until the owner of property assessed for the original construction of the paving shall have been given ten days notice in writing requiring him to elect whether he desires such salvage, which notice shall be personally served on the owner or his agent, or, if neither be found, by posting in a conspicuous place on the property. The election, if made, shall be in writing and filed with the clerk. No owner electing to take salvage shall be entitled to a pro rata distribution derived from the proceeds of sale of salvage. [C24, 27, 31, 35, 39, §5980; C46, 50, 54, §391.7]

**391.8 Gas, water, and other connections.** They shall have power to require the connections from gas, water, and steam-heating pipes, sewers, and underground electric construction, to the curb line of adjacent property, to be made before the permanent improvement of the street and, if such improvements have already been made, to regulate the making of such connections, fix the charges therefor, and make all needful rules in relation thereto, and the use thereof. If the owners of property on such streets fail to make such connections in the manner and within the time fixed by the council, it may cause the same to be made, and assess the cost thereof against the property for which they are made. [C97, §§779, 809; S13, §§779, 792-f; C24, 27, 31, 35, 39, §5981; C46, 50, 54, §391.8]

**391.9 Street improvements — waterworks connections required—notice.** When any city having a board of waterworks trustees has ordered any street permanently improved by paving, graveling, or macadamizing, the council shall at once notify the board of the passage of the resolution of necessity. The board shall report to the council the lots and names of the owners and the requirements in respect to connections from any water mains or pipes to the curb line of the abutting and adjacent property. Thereupon the council shall pass a resolution requiring the respective owners of the said abutting or adjacent property to make said connections in the manner required by the rules of the board, and fixing a time therefor. Notice thereof shall be given by one publication in some newspaper published in such city, which shall be at least ten days prior to the time fixed in said resolution. [C97, §809; S13, §§779, 792-f; C24, 27, 31, 35, 39, §5982; C46, 50, 54, §391.9]

**391.10 Installation—cost.** If the owner fail to put in the said water connections before the time fixed or within such additional time, not exceeding thirty days, as may be granted by the council, the board of waterworks trustees shall put in said connections and certify the actual cost thereof to the council. The council shall assess the same to the respective lots in the manner in which other special assessments are made. [C97, §809; S13, §§779, 792-f; C24, 27, 31, 35, 39, §5983; C46, 50, 54, §391.10]

Assessment procedure, §391.53 et seq.

**391.11 Sewers.** Cities shall have the power to construct and repair sewers and catch basins in any street within their limits. Any city may by ordinance be divided into such sewer districts as the council may determine, numbering them consecutively, or the entire city may be included in one district. [C73, §465; C97, §§791, 794; S13, §840-a; C24, 27, 31, 35, 39, §5984; C46, 50, 54, §391.11]

Referred to in §393.1

**391.12 Outlets and purifying plants.** They may construct outlets and purifying plants in connection with or as additions to sanitary sewers, and such outlets and plants may be considered as a part of the sewer system, and the cost thereof may be assessed against property benefited thereby. [SS15, §840-g; C24, 27, 31, 35, 39, §5985; C46, 50, 54, §391.12]

**391.13 Main sewer assessments.** In addition to other powers, cities shall have power to assess the whole or any part of the cost of the construction of any main sewer or system of main sewers to the respective lots as adjacent property which are included within a district to be fixed by the council, which may include all territory within the drainage area of such main sewer or main sewer system. [S13, §840-d; C24, 27, 31, 35, 39, §5986; C46, 50, 54, §391.13]

40ExGA, SF 169, §9, editorially divided

**391.14 Adjacent property and main sewer.** All such lots which may be furnished with sewer connections or drained by such main sewer or sewer system, shall be considered as adjacent property.

A main sewer shall be held to mean any sewer that is commonly referred to by any one of the following terms: "intercepting sewer", "outfall sewer", or "trunk sewer". [S13, §§840-c, -d; C24, 27, 31, 35, 39, §5987; C46, 50, 54, §391.14]

**391.15 State building.** Any city in which any state building may be situated shall permit the officers in charge thereof and the persons constructing or improving the same, to construct sewers therefor through or under any of its streets, or to connect the same with its sewer system under the same regulations that are provided for private property owners. [C97, §794; C24, 27, 31, 35, 39, §5988; C46, 50, 54, §391.15]

**391.16 Condemnation.** Cities shall have power to condemn, in the manner provided for the condemnation of land for their needs, right of way through private property sufficient for the construction and maintenance of sewers. The cost of such right of way shall constitute a part of the expense of sewers and be assessed accordingly. [C97, §§791, 795; S13, §840-a; C24, 27, 31, 35, 39, §5989; C46, 50, 54, §391.16]

Condemnation, ch 472

**391.17 Cross sewers.** They shall have power to provide the terms and conditions on which cross and lateral sewers may be connected with main sewers. In cases where sewers have been paid for in whole or in part by



special assessment, they may pay to the parties to whom the benefits have been assessed an equitable proportion of the money collected for the purpose of connecting such cross or lateral sewers. [C97, §§791, 796; S13, §840-a; C24, 27, 31, 35, 39, §5990; C46, 50, 54, §391.17]

**391.18 Resolution of necessity — contents.** When the council shall deem it necessary to construct, reconstruct, or resurface any street improvement or to construct or reconstruct any sewer, it shall, in a proposed resolution, declare such necessity, stating the kinds of material proposed to be used and method of construction, whether private property will be assessed, and, in case of sewers, the kinds and size, and what adjacent property is proposed to be assessed therefor, and in both cases designate the location and terminal points thereof. That the plat and schedule are on file in the office of the clerk shall be stated in the resolution. [C73, §§465, 466; C97, §§791, 810; SS15, §§810, 840-j; C24, 27, 31, 35, 39, §5991; C46, 50, 54, §391.18]

40ExGA, SF 169, §13, editorially divided  
Referred to in §§389.6, 391.19, 417.17  
Not applicable to joint sewers, §392.4

**391.19 Additional contents.** The council may, in addition to the requirements of section 391.18, incorporate in the resolution of necessity notice of its intention to issue certificates or bonds as the case may be, as provided in section 396.6, and may also provide that unless property owners at the time of the final consideration of said resolution have on file with the clerk objections to the amount of the proposed assessment, they shall be deemed to have waived all objections thereto. [C24, 27, 31, 35, 39, §5992; C46, 50, 54, §391.19]

40ExGA, SF 169, §13-a1, editorially divided  
Objections, §§389.32, 391.56, 395.14

**391.20 Plat and schedule.** Before the resolution of necessity is introduced, the council shall prepare and file with the clerk a plat and schedule showing:

1. The boundaries of the district, if any.
2. The streets to be improved.
3. The width of such improvement.
4. Each lot proposed to be assessed together with a valuation fixed by the council.
5. An estimate of the cost of the proposed improvement, stating the same for each different type of construction and kind of material to be used.
6. In each case the amount thereof which is estimated to be assessed against each lot. [SS15, §840-k; C24, 27, 31, 35, 39, §5993; C46, 50, 54, §391.20]

40ExGA, SF 169, §14, editorially divided  
Referred to in §§389.6, 392.5  
Not applicable to joint sewers, §392.5

**391.21 Cost of schedule.** The cost of making the plat and schedule shall be paid from the street or sanitation fund. [C24, 27, 31, 35, 39, §5994; C46, 50, 54, §391.21]

**391.22 Time of hearing — objections permitted.** The council shall fix the time for the consideration of the proposed resolution of

necessity, at which time the owners of property subject to assessment for the proposed improvement or sewer may appear and make objection to the boundaries of the proposed district, to the cost of improvement, to the amount proposed to be assessed against any lot, and to the passage of the proposed resolution. [C97, §810; SS15, §§810, 840-m; C24, 27, 31, 35, 39, §5995; C46, 50, 54, §391.22]

40ExGA, SF 169, §13, editorially divided  
Objections, §§389.32, 391.19, 391.56

**391.23 Remonstrance — vote required — amendment.** No resolution providing for the improvement of streets by paving shall be passed except by unanimous vote of the entire council, if, at the time set for its consideration, a remonstrance shall have been filed with the council signed by sixty percent of the property owners and by the owners of property subject to pay seventy-five percent of the assessable cost of the proposed improvement. At the hearing the resolution may be amended and passed, or passed as proposed. [C73, §466; C97, §810; SS15, §§810, 840-m; C24, 27, 31, 35, 39, §5996; C46, 50, 54, §391.23]

**391.24 Notice.** It shall cause notice of the time when said resolution will be considered by it for passage to be given by two publications in some newspaper published in the city, the last of which shall be not less than two nor more than four weeks prior to the day fixed for its consideration; but if there be no such newspaper, such notice shall be given by posting copies thereof in three public places within the limits of the city. [C97, §810; S13, §840-a; SS15, §§810, 840-l; C24, 27, 31, 35, 39, §5997; C46, 50, 54, §391.24]

**391.25 Improvement ordered.** After the passage of the resolution of necessity, the council by another resolution may order the construction, reconstruction, or resurfacing of the improvement or the construction or reconstruction of the sewer. [C97, §§794, 811; SS15, §840-n; C24, 27, 31, 35, 39, §5998; C46, 50, 54, §391.25]

40ExGA, SF 169, §16, editorially divided

**391.26 Record—vote required.** The record shall show whether the improvement or sewer was petitioned for or made on motion of the council. If the improvement or sewer is made on the motion of the council, such resolution of necessity shall require for passage the vote of three-fourths of all the members of the council, or, in cities under the commission form of government having but three members of the council, the vote of two members; but if petitioned for by a majority of the resident owners of property to be assessed for the construction thereof, the resolution of necessity may be passed by a majority vote of the council. [C97, §§793, 794, 811; S13, §§792-b, 793; C24, 27, 31, 35, 39, §5999; C46, 50, 54, §391.26]

**391.27 Yeas and nays.** The final vote on the resolution of necessity and the vote on the resolution ordering the improvement or sewer shall be by yeas and nays and entered of rec-

ord. [C97,§811; SS15,§840-n; C24, 27, 31, 35, 39, §6000; C46, 50, 54,§391.27]

**391.28 Contract.** When the construction or repair of any such street improvement or sewer is ordered, the council shall contract for furnishing labor and material and for the construction or repair, either of the entire work in one contract, or for parts thereof in separate and specified sections; but no work shall be done under any such contract until a properly signed contract and a duly executed and approved contractor's bond shall be filed in the office of the clerk. [C97,§§791, 812; S13, §840-a; C24, 27, 31, 35, 39,§6001; C46, 50, 54, §391.28]

40ExGA, SF 169,§17, editorially divided  
Referred to in §401.6

**391.29 Exception as to surfacing.** The city may oil, oil and gravel, shale, or chloride the streets without letting a contract therefor. [C24, 27, 31, 35, 39,§6002; C46, 50, 54,§391.29]

Referred to in §401.6

**391.30 Agreement to repair—exception.** All contracts for the construction or repair of street improvements (except graveling, oiling, oiling and graveling, shaling, chloriding, or repairs other than reconstruction or resurfacing) or sewers, shall contain a provision obligating the contractor and his bondsmen from the time of acceptance by the city to keep in good repair such street improvement for not less than four years or such sewer for not less than two years provided, that in any contract for the construction or repair of any street improvements or sewers where the cost of materials only is to be assessed and the materials to be used and the improvements when completed are to be approved and accepted by a representative of the city, such provision for keeping such improvement in good repair shall not be required. [C97,§814; S13,§814; C24, 27, 31, 35, 39,§6003; C46, 50, 54,§391.30]

Referred to in §401.6

**391.31 Bids—notice.** All contracts for the construction or repair of street improvements and for sewers shall be let in the name of the city to the lowest bidder by sealed proposals, upon giving notice by two publications in a newspaper published in said city, the first of which shall be not less than fifteen days before the date set for receiving bids, which notice shall state as nearly as practicable the extent of the work, the kinds of materials for which bids will be received, when the work shall be done, the terms of payment fixed, that each bidder must deposit with his bid a certified check in an amount equal to ten percent of his bid drawn on, and certified to, by a bank in Iowa, payable to and at the office of the treasurer of the municipality, and the time the proposals will be acted upon. If there be no such newspaper, such notice shall be given by posting the same in three public places within the limits of such city. [C97,§813; SS15,§813; C24, 27, 31, 35, 39,§6004; C46, 50, 54,§391.31]

Referred to in §401.6

**391.32 Deposit—rejection of bids.** All bids must be accompanied, in a separate envelope, by a check on an Iowa bank, certified by such bank and payable to the order of the treasurer, at his office, in a sum to be named in the notice for bids, as security that the bidder will enter into a contract for the doing of the work and will give bond as required in section 391.33. Such checks shall be returned to the respective bidders whose bids have not been accepted. All bids may be rejected and new bids ordered. [C97,§813; SS15,§813; C24, 27, 31, 35, 39,§6005; C46, 50, 54,§391.32]

Referred to in §401.6

**391.33 Bond.** Each contractor for street improvements or sewers shall give bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, in a sum equal to the contract price and suit on such bond may be brought in the county in which the council may hold its sessions. [C97,§815; S13,§840-a; C24, 27, 31, 35, 39, §6006; C46, 50, 54,§391.33]

Referred to in §§391.32, 401.6

**391.34 Certification to county auditor—record book.** After a contract has been made by any city for the construction or repair of any street improvement or sewer, the clerk shall certify as correct and file with the auditor of each county in which said city is situated, a copy of the resolution directing the construction or repair of said improvement or sewer, and a copy of the plat and schedule referred to in the resolution of necessity and on file in his office. In all counties where taxes are collected in two or more places, they shall be filed in the office of the auditor in the place where said special taxes are collected, and be preserved by him as a part of the records of his office. The auditor shall keep a book properly ruled for the purpose and enter thereon opposite each lot number the amount of the estimated assessment against the same. [C97, §816; S13,§816; C24, 27, 31, 35, 39,§6007; C46, 50, 54,§391.34]

Referred to in §395.12  
Auditor's special assessment book, see §445.11 et seq.

**391.35 Lien generally.** Thereupon all special taxes for the cost thereof, or any part of said cost, which are to be assessed and levied against real property, or any railway or street railway, together with all interest and penalties on all of said assessments, shall become and remain a lien on such property from the date of the filing of said papers with the county auditor until paid, and such liens shall have precedence over all other liens except ordinary taxes, and shall not be divested by any judicial sale. [C97,§816; S13,§§792-f, 816; C24, 27, 31, 35, 39,§6008; C46, 50, 54,§391.35]

40ExGA, SF 169,§28, editorially divided  
Referred to in §395.12

**391.36 Assessment first lien.** Any such assessment against a railway or street railway shall be a first and paramount lien upon the

track thereof within the limits of the city. [C97,§816; S13,§§792-f, 816; C24, 27, 31, 35, 39, §6009; C46, 50, 54,§391.36]

Referred to in §395.12

**391.37 Payment to release lien.** No part of the line of any railway or street railway shall be released from the lien for any part of any unpaid assessment which has been made against it for street improvements, until the whole assessment shall have been paid. [C97, §828; SS15,§840-r; C24, 27, 31, 35, 39,§6010; C46, 50, 54,§391.37]

40ExGA, SF 169,§44, editorially divided  
Referred to in §395.12

**391.38 Cost at intersection.** Except for that part for which railways or street railways are liable, the whole or any part of the cost of any street improvement or sewer at the crossings of streets may be assessed against privately owned property not exceeding one-half of such cost at spaces opposite streets intersecting but not crossing, and at spaces opposite property owned by the city or the United States, may be assessed against privately owned property. In the case of sewers, such cost may be paid from the sanitation fund. In the case of street improvements such cost may be paid from the street fund. [C97,§817; S13,§792-f; C24, 27, 31, 35, 39,§6011; C46, 50, 54,§391.38]

Referred to in §§391.39, 391.42, 420.250

**391.39 Cost of improvements.** The cost of construction, reconstruction, or resurfacing of any street improvement, except as provided in section 391.38, and except for that part for which railways or street railways are liable, shall be assessed as a special tax against all lots according to area, so as to include one-half of the privately owned property between the street improved and the next street, whether such privately owned property abut upon said street or not. In no case except where the district method of assessment is used, shall property situated more than three hundred feet from the street so improved be so assessed. Such assessment for improvements upon an alley shall be confined to privately owned property within the block or blocks improved, and if not platted into blocks, to property not more than one hundred fifty feet from the improved alley. [C73,§466; C97,§§779, 792, 818; S13,§§779, 792; SS15,§792-g; C24, 27, 31, 35, 39, §6012; C46, 50, 54,§391.39]

**391.40 Railroad right of way.** The right of way of any railroad company shall be subject to special assessment for sidewalks and street improvements as is other private property, and such assessment shall constitute a debt due personally from the railroad company owning or leasing such right of way. [S13,§791-i; C24, 27, 31, 35, 39,§6013; C46, 50, 54,§391.40]

**391.41 Cost of paved roadway.** Not more than one-half of the cost of the construction of a roadway within an assessment district may be paid by the city, and the part of the cost not so paid shall be assessed against the lots embraced in the paving district established there-

for. [SS15,§§840-i,-o,-p; C24, 27, 31, 35, 39,§6014; C46, 50, 54,§391.41]

**391.42 Cost of sewers.** The cost, or any part thereof, of the construction, reconstruction, or repairing of sewers, including that provided for in section 391.38, may be paid from the sanitation fund; and the portion thereof not so paid shall be assessed against the property abutting on such sewer in proportion to the number of linear front feet of each lot thereof, and upon adjacent property in proportion to the benefit thereto; but in estimating the benefits to result therefrom to adjacent property, each lot shall be considered as wholly unimproved. Said methods of assessment may be combined. [C97,§819; S13,§§840-a,-d; C24, 27, 31, 35, 39,§6015; C46, 50, 54,§391.42]

Omnibus repeal, 53GA, ch 169,§2

**391.43 Cost of repairs.** The cost, or any part thereof, of the repair of any street improvement may be paid from the street fund. The cost, or any part thereof, of the repair of any sewer may be paid from the sanitation fund. [C73,§465; C97,§§779, 791, 832; S13,§§779, 792-f, 840-a,-d; SS15,§840-r; C24, 27, 31, 35, 39,§6016; C46, 50, 54,§391.43]

**391.44 Deficiencies—nonassessable property.** If the special assessment which may be levied against any lot shall be insufficient to pay its proportion of the cost of constructing or repairing a street improvement or sewer, the deficiency, if for a street improvement, may be paid out of the street fund, and if for a sewer, may be paid out of the sanitation fund. If there be property against which no special assessment can be levied, the proportion of the cost of the improvement or sewer which might otherwise be assessed against such property shall be paid in like manner. [S13, §792-b; C24, 27, 31, 35, 39,§6017; C46, 50, 54, §391.44]

**391.45 Assessment.** When the construction or repair of any street improvement or sewer, or such part thereof as under the contract is to be paid for when done, shall have been completed, the council shall within thirty days thereafter accept or reject the work, and after acceptance of the work shall, within thirty days, ascertain the cost thereof, including the cost of the estimates, notices, inspection, and preparing the assessment and plat, and shall also ascertain what the proportion of such cost shall be, by law or the resolution of the council under which such improvement was made or sewer constructed, assessable upon private property, and shall within said time assess such portions upon and against such private property. [C97,§820; S13,§§779, 820, 840-a; SS15, §840-r; C24, 27, 31, 35, 39,§6018; C46, 50, 54, §391.45]

**391.46 "Privately owned property" defined.** All property except streets, property owned by the United States, and property owned by the city, shall be deemed privately owned

property. [SS15,§792-g; C24, 27, 31, 35, 39,§6019; C46, 50, 54,§391.46]

State-owned lands, §308.5

**391.47 Exemption.** The council may exempt the homestead of any honorably discharged soldier or sailor of the Mexican war or the war of the rebellion or his unmarried widow from any charge or claim on account of such special assessment, if such person is not the owner of sufficient nonexempt property to pay the special assessment. If such exemption is made, the special assessment shall be paid from the general fund. [C24, 27, 31, 35, 39, §6020; C46, 50, 54,§391.47]

**391.48 Assessment—rate.** When any city council levies any special assessment for any public improvement against any lot, such special assessment shall be in proportion to the special benefits conferred upon the property thereby and not in excess of such benefits. Such assessment shall not exceed twenty-five percent of the actual value of the lot at the time of levy, and the last preceding assessment roll shall be taken as prima-facie evidence of such value. [S13,§§792-a,-f; SS15,§§840-a,-j,-r; C24, 27, 31, 35, 39,§6021; C46, 50, 54,§391.48]

Referred to in §§389.7, 395.21, 401.10  
Similar provision, §395.11

**391.49 Additional limitation.** No special assessment against any lot shall be more than ten percent in excess of the estimated cost. [C24, 27, 31, 35, 39,§6022; C46, 50, 54,§391.49]

Referred to in §401.10

**391.50 Plat and schedule.** In assessing that part of the cost of the construction or repair of any street improvement or sewer, or completed part thereof, which is assessable against private property, the council shall cause to be prepared a plat of the streets or the parts thereof on which the same shall have been constructed or repaired, showing the separate lots, or specified portion thereof, subject to assessment for such improvement, the names of the owners thereof so far as practicable, and the amount to be assessed against each lot, and against any railway or street railway, and shall file said plat and schedule in the office of the clerk, which shall be subject to public inspection. [C97,§821; S13,§792-f; SS15,§840-r; C24, 27, 31, 35, 39,§6023; C46, 50, 54,§391.50]

Referred to in §§401.10, 420.253

**391.51 Cost of oiling streets.** Upon the completion of the oiling, oiling and graveling, shaling or chloriding of a street, the officer designated by the council to have charge thereof shall, within thirty days, file with the clerk a statement of the amount due, if the work was done by contract; or if done by the municipality, an itemized, verified statement of expenditures for materials and labor used in making such improvement. [C24, 27, 31, 35, 39,§6024; C46, 50, 54,§391.51]

Referred to in §401.10

**391.52 City engineer—duties.** The city engineer, or other person employed by the council

to discharge the duties of such office, shall, under its direction, make or assist in making all estimates for street improvements and sewers, furnish the necessary grades and lines, see that the work conforms thereto and is in accordance with the resolution of the council, and make or assist in making each required assessment, plat, and schedule. [C97,§822; S13, §792-f, 840-a; C24, 27, 31, 35, 39,§6025; C46, 50, 54,§391.52]

Referred to in §401.10

**391.53 Notice of assessment.** After filing the plat and schedule for street improvements or sewers, or the report of cost of oiling, oiling and graveling, or shaling streets, the council shall give notice by two publications in each of two newspapers published in the city, if there be that number, otherwise in one, and by hand-bills posted in conspicuous places along the line of such street improvement or sewer; but if no such newspaper is published within the limits of such city, then such notice shall be given by posting copies thereof in three public places within its limits. Said notice shall state that said plat and schedule or report are on file in the office of the clerk, and that within twenty days after the first publication all objections thereto, or to the prior proceedings, on account of errors, irregularities, or inequalities, must be made in writing and filed with the clerk. [C97,§823; S13,§823; SS15,§840-r; C24, 27, 31, 35, 39,§6026; C46, 50, 54,§391.53]

40ExGA, SF 169,§37, editorially divided  
Referred to in §§391.56, 401.10

**391.54 Notice to common carrier.** When any common carrier or railway, not including street railways, owning any land or property affected by any proposed assessment for public improvement in any city or county, shall have filed in the office of the clerk of said city, or with the auditor of said county, as the case may be, wherein such improvement is proposed, an instrument in writing giving a complete description of such land and designating the name and post-office address of its agent in said state upon whom service of notice may be made, the clerk of said city, or the county auditor of said county, shall, not less than ten days prior to the date set for the levying of assessments covering such improvement, mail a notice thereof by certified mail addressed to such person or agent so designated. Failure to give such notice shall not delay or invalidate the proceedings or assessment. [C24, 27, 31, 35, 39,§6027; C46, 50, 54, §391.54; 57GA, ch 267,§44]

Referred to in §401.10  
Similar provision, §455.22

**391.55 Hearing and decision.** The council having heard such objections and made the necessary corrections, shall then make the special assessments as shown in said plat and schedule, as corrected and approved. [C97, §823; S13,§823; C24, 27, 31, 35, 39,§6028; C46, 50, 54,§391.55]

Referred to in §401.10

**391.56 Objections waived.** All objections to errors, irregularities, or inequalities in the making of said special assessments, or in any of the prior proceedings or notices, not made before the council at the time and in the manner provided in section 391.53, shall be waived except where fraud is shown. [C97, §824; SS15, §840-r; C24, 27, 31, 35, 39, §6029; C46, 50, 54, §391.56]

Referred to in §401.10  
Similar provisions, §§389.32, 391.19, 395.14

**391.57 Levy.** The special assessments in said plat and schedule, as corrected and approved, shall be levied at one time, by resolution, against the property affected thereby [C97, §825; S13, §825; SS15, §840-r; C24, 27, 31, 35, 39, §6030; C46, 50, 54, §391.57]

40ExGA, SF 169, §40, editorially divided  
Referred to in §§395.12, 401.10

**391.58 Maturity when no waiver made.** Special assessments when levied and certified shall be payable at the office of the county treasurer within thirty days after the date of such levy, with interest at the rate of six percent per annum from the acceptance of the work until paid. [C97, §825; S13, §825; C24, 27, 31, 35, 39, §6031; C46, 50, 54, §391.58]

Referred to in §§395.12, 395.32, 401.10

**391.59 Maturity under implied waiver.** Unless the owner of any lot or railway or street railway, the assessment against which is embraced in any bond or certificate provided for by law, shall, within thirty days from the date of such assessment, file written objections to the legality or regularity of the assessment or levy of such tax upon and against his property, such owner shall be deemed to have waived objection on these grounds and shall have the right to pay said assessment, with interest thereon not exceeding six percent per annum, in ten equal annual installments. In no case shall the owner of any lot be liable for more than the value of the property included in such assessment. The cost of oiling, oiling and graveling, shaling, or chloriding the streets may not be paid in installments, except when the assessment exceeds twenty-five dollars, in which event the same shall be automatically waived and paid in three annual installments. [C97, §825; S13, §825; SS15, §840-r; C24, 27, 31, 35, 39, §6032; C46, 50, 54, §391.59]

Referred to in §§391.91, 395.12, 401.10  
Payment after appeal or objection, §391.91

**391.60 Installments — payment — delinquency.** The first installment, or total amount of assessment if less than twenty-five dollars, shall mature and be payable thirty days from the date of such levy without interest, and the other assessments, with interest, from the date of levy by the council, on the whole amount unpaid, annually thereafter at the same time and in the same manner as the March semi-annual payment of ordinary taxes. However the total assessments may be paid without interest thirty days after levy by the council.

Any or all installments not yet paid together with accrued interest thereon may be paid on the due date of any installment.

All such taxes with interest shall become delinquent on the first day of March next after their maturity, and shall bear the same interest with the same penalties as ordinary taxes, and when collected the said interest and penalties shall be credited to the same fund as the said special assessment.

Upon the payment of any installment, there shall be computed and collected interest on the whole assessment remaining unpaid up to the first day of June following. [C97, §§825, 827; S13, §§825, 840-a; SS15, §840-r; C24, 27, 31, 35, 39, §6033; C46, 50, 54, §391.60; 57GA, ch 193, §1]

Referred to in §§395.12, 395.32, 401.10  
Interest and penalties, §445.39

**391.61 Certification of levy.** A certificate of levy of such special assessment, stating the number of installments, the rate of interest, and time when payable, certified as correct by the clerk, shall be filed with the auditor of the county, or of each of the counties, in which such city is located, and thereupon said special assessment as shown therein shall be placed on the tax list of the proper county. [C97, §826; SS15, §840-r; C24, 27, 31, 35, 39, §6034; C46, 50, 54, §391.61]

Referred to in §§395.12, 395.32, 401.10  
Auditor's special assessment book, §445.11

**391.62 Right of payment.** The owner of any property against which a street improvement or sewer assessment has been levied, shall have the right to pay the same, or the unpaid installments thereof, with all interest, as the case may be, up to the time of said payment, with any penalties and the cost of any proceedings for the sale of the property for such special assessment or installments. [C97, §828; SS15, §840-r; C24, 27, 31, 35, 39, §6035; C46, 50, 54, §391.62]

Referred to in §§395.12, 395.32  
Right to pay after appeal or objection, §391.91

**391.63 Division of property.** If any owner of property subject to special assessment shall divide the same into two or more lots and if such plan of division is accepted or approved by the council, he may discharge the lien upon any one or more of them by payment of the amount unpaid, calculated by the ratio of square feet in area of such lot or lots to the area of the whole lot. [C97, §828; SS15, §840-r; C24, 27, 31, 35, 39, §6036; C46, 50, 54, §391.63]

Referred to in §§395.12, 395.32

**391.64 Tax sale.** Property against which a special assessment has been levied for street improvements or sewers may be sold for any sum of principal or interest due and delinquent at any regular or adjourned tax sale, in the same manner, with the same forfeitures, penalties, and right of redemption, and certificates and deeds on such sales shall be made in the same manner and with like effect, as in case of sales for the nonpayment of ordinary taxes. [C97, §829; SS15, §840-r; C24, 27, 31, 35, 39, §6037; C46, 50, 54, §391.64]

40ExGA, SF 169, §45, editorially divided  
Referred to in §§395.12, 395.32

**391.65 Right of purchaser.** The purchaser at such sale shall take the property charged

with the lien of the remaining unpaid installments and interest. [C97,§829; SS15,§840-r; C24, 27, 31, 35, 39,§6038; C46, 50, 54,§391.65]

Referred to in §§395.12, 395.32

**391.66 City as purchaser.** At any such sale, where bonds have been issued in anticipation of such special taxes and interest, the city may be a purchaser, and be entitled to all the rights of purchasers at tax sales. [C97,§829; SS15, §840-r; C24, 27, 31, 35, 39,§6039; C46, 50, 54, §391.66]

Referred to in §§395.12, 395.32  
Additional provisions, ch 569

**391.67 Sales by city—fund credited.** The proceeds subsequently realized from sales of any property so purchased by a city shall be covered into the street fund. [C97,§829; SS15, §840-r; C24, 27, 31, 35, 39,§6040; C46, 50, 54, §391.67]

Referred to in §§395.12, 395.32

**391.68 Assignment of certificate.** Any holder of any special assessment certificate against a lot or parcel of ground, or any holder of a bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or any city or town within which such lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, shall be entitled to an assignment of any certificate of tax sale of said property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption. [C97,§816; S13,§§792-f, 816; C24, 27, 31, 35, 39,§6041; C46, 50, 54,§391.68]

Referred to in §§395.32, 446.21

**391.69 Street fund.** When the whole or any part of the cost of the construction or repair of any street improvement shall be ordered paid from the street fund, the city shall have the power, after the completion of the work, by resolution to levy at one time such cost upon all the taxable property within such city, and determine the whole percentage of tax necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof. [C97, §830; C24, 27, 31, 35, 39,§6042; C46, 50, 54,§391.69]

**391.70** Repealed by 54GA, ch 159,§68. See §404.7.

**391.71 Payment from primary road fund.** If, in any city, extensions of primary roads are being improved or to be improved, under the provisions of subsection 2 of section 391.2, any or all of that portion of the improvement not specially assessable on the property within the assessment district and which would under the law have to be met by a tax on the city as a whole, may be paid from the primary road fund. [C24, 27, 31, 35, 39,§6044; C46, 50, 54, §391.71]

**391.72 Application for payment.** Before proceeding with such improvement for which it is proposed to make part payment from the primary road fund, the city council shall by resolution make application to the state highway commission therefor. This resolution shall specifically state:

1. The location of the improvement proposed, giving the starting point and terminus thereof.
2. The approximate length thereof.
3. The width or widths of paving proposed.
4. An estimate of the cost of the proposed improvement.
5. An estimate of the amount that can be specially assessed against the property within the proposed district.
6. A statement of the amount to be borne by the city.
7. A statement of the amount proposed to be paid from the primary road fund.

The resolution shall be accompanied by a plat on which are indicated the road or street to be improved, the primary road connecting therewith, the location of other streets or roads in the vicinity, and the approximate boundaries of the assessment district which it is proposed to establish. [C24, 27, 31, 35, 39, §6045; C46, 50, 54,§391.72]

Primary road act, ch 818

**391.73 Review by commission.** The said commission shall examine said resolution and shall within thirty days make final determination thereof. It may approve the application in whole or in part or may wholly reject the same. If the application be approved in any part, the commission shall make an appropriation in aid of said improvement from the primary road fund.

The city council shall be immediately notified of the action taken. [C24, 27, 31, 35, 39, §6047; C46, 50, 54,§391.73]

**391.74 Approval of plans—estimates—payment.** The plans and specifications for the improvement shall receive the approval of the state highway commission before the contract is let, or before it becomes effective. When the work or any substantial portion thereof is completed to the satisfaction of the state highway commission, payment of the pro rata share thereof, payable out of the primary road fund, may be made. The estimates payable from the said fund shall be prepared, approved, and paid in the usual manner for primary road bills generally, except that said bills shall be approved by the city council instead of the board of supervisors. [C24, 27, 31, 35, 39,§6048; C46, 50, 54,§391.74]

**391.75 Sewer fund.** When the whole or any part of the cost of constructing or repairing any sewer shall be ordered paid from the sanitation fund, the council may, after the completion of the work, by resolution levy at one time the whole or any part of such cost upon all the taxable real property within such sewer dis-

tract or within the city, as the case may be, and determine the whole percentage of tax necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof. [C97, §831; S13, §840-a, d; C24, 27, 31, 35, 39, §6050, C46, 50, 54, §391.75]

**391.76 Certification to county auditor.** Certificates of such levies shall be filed with the auditor of the county or counties in which the city is located, setting forth the amount or percentage and maturity of the tax, or each installment thereof, designating by reasonable description the real property upon which the tax is to be levied, certified as correct by the clerk, and thereupon the tax shall be placed upon the tax list of the proper county or counties. [C97, §830, 831; SS15, §840-r; C24, 27, 31, 35, 39, §6051; C46, 50, 54, §391.76]

Auditor's special assessment book, §445.11

**391.77 Improvements by street railways.** Street railway companies operating upon the streets, avenues, and public places of cities and towns shall provide a suitable foundation for the track of a width equal to their ties, but in no case less than the width comprised between lines lying one foot outside of each rail of the track, and shall be assessed for the construction or reconstruction of paving between the rails of their track or tracks, and for one foot outside of each rail thereof, in the amount that the cost of such pavement per yard of area exceeds the cost per yard of the remainder of the paving upon such street. In the making of assessments for paving upon streets, avenues, or public places of cities and towns along or upon which a street railway track or tracks are located, in the event that the track or tracks also are to be paved or repaved; the engineer shall make an estimate of the cost of building such improvement, and he shall, also, make an estimate of the cost of building such an improvement upon said street, avenue or public place as it would be in the event that the streetcar tracks did not there exist; and the street railway company shall be charged with the difference in said estimates of cost and shall pay the same as other special assessments are paid.

Separate bids shall be taken in case of single track upon that portion of the street between the rails and one foot outside of each rail and in case of double track upon the entire portion of the street included between lines parallel to and one foot outside of the outer rail of each track. The street railway company shall be permitted to bid upon this portion of the pavement and, if the lowest bidder thereupon, shall be awarded the contract therefor. One-third of the remaining cost of the improvement for the area between the rails of the tracks of the street railway company and one foot outside thereof shall be assessed against the street railway company, one-third thereof shall be assessed against the abutting property and

the owner thereof, and one-third thereof shall be paid for by the city from the street fund of the city.

All repairs or maintenance between and one foot outside the rails made necessary by the operation of the street railway and any other repairs or maintenance made necessary by the operation of the street railway shall be made by the street railway company and if not so made, the city shall have the power to make such repairs and assess the cost thereof to such company. All construction assessments herein provided for shall be made in the manner provided for the assessment of such costs against abutting property and the owner thereof. [C31, 35, §6051-c1; C39, §6051.1; C46, 50, 54, §391.77]

Referred to in §391.78

**391.78 "Paving" defined.** The word "paving" as used in section 391.77 shall include any kind of hard surfacing, gravel or macadamizing together with the necessary paving base. [C31, 35, §6051-c2; C39, §6051.2; C46, 50, 54, §391.78]

**391.79 Improvements by railways.** All railway companies shall be required to construct and repair all street improvements between the rails of their tracks, and one foot outside thereof, at their own expense, unless by ordinance of the city, or by virtue of the provisions or conditions of any ordinance of the city under which said railway may have been constructed or may be maintained, it may be required to improve other portions of said street, and in that case said railway shall construct and repair the improvement of that part of the street specified by such ordinance; and such improvement, or repair thereof, shall be of the material and character ordered by said city, and shall be done at the time the remainder of said improvement is constructed or repaired. [C97, §834; SS15, §840-r; C24, 27, 31, 35, 39, §6052; C46, 50, 54, §391.79]

Referred to in §363B.23

**391.80 Maintenance by railways.** When an improvement is made, said companies shall lay, in the best approved manner, such rail as the council may require. They shall keep the part of the improvement they are liable to construct or maintain up to grade. [C97, §834; SS15, §840-r; C24, 27, 31, 35, 39, §6053; C46, 50, 54, §391.80]

Referred to in §363B.23

**391.81 Construction and assessment by city.** If the owner of said railway shall fail or refuse to comply with the order of the council to construct or repair an improvement, such work may be done by the city, and the expense thereof shall be assessed upon the real estate and personal property of said railway company within said city, and against such railway company, in the manner hereinbefore provided for the assessment of such cost against private property and the owners thereof. [C97, §834; SS15, §840-r; C24, 27, 31, 35, 39, §6054; C46, 50, 54, §391.81]

Referred to in §363B.23



**391.82 Enforcing railway assessment.** Any special assessment made under this chapter against any railway or street railway shall be a debt due personally from such railway. Such special assessments and each installment thereof, and certificates issued therefor when due, may be collected by action at law, in the name of the city against such railway or street railway, or the lien thereof enforced against the property of such railway or street railway, on or against which the same has been levied, by action in equity, at the election of the plaintiff; and in any action at law where pleadings are required, it shall be sufficient to declare generally for work and labor done, or materials furnished, on the particular street, the levy of the tax and nonpayment of the same; and in any action in equity, it shall be sufficient to aver the same matters, together with a description of the property, or parts thereof, against which such lien is sought to be enforced. [R60,§1068; C73,§478; C97,§840; S13,§791-i; C24, 27, 31, 35, 39,§6055; C46, 50, 54, §391.82]

**391.83 Action by city.** Such action may be maintained by the city for the use of any person entitled thereto or any part thereof, upon filing a bond conditioned to pay all costs adjudged against the plaintiff and protect it from all liability therefrom or damages growing out of the same; the amount of the bond to be fixed by the court, or a judge thereof in vacation, and the sureties thereon to be approved by the clerk of said court. [R60,§1068; C73,§478; C97,§840; S13,§791-i; C24, 27, 31, 35, 39, §6056; C46, 50, 54,§391.83]

**391.84 Relevy.** When by reason of nonconformity to any law or resolution, or by reason of any omission, informality, or irregularity, any special tax or assessment levied is invalid or is adjudged illegal, the council shall have power to correct the same by resolution, and may reassess and relevy the same, with the same force and effect as if done at the proper time and in the manner provided by law or by the resolution relating thereto. [C97,§836; S13,§840-a; SS15,§§836, 840-r; C24, 27, 31, 35, 39, §6059; C46, 50, 54,§391.84]

Referred to in §391.87

**391.85 Reassessment in certain cases.** Whenever any such special tax or assessment, upon property not by law exempt therefrom, shall be adjudged void for any jurisdictional defect, or other reason, and the city adjudged liable to pay the same, the council shall as to such property have power, by resolution, to cause to be prepared a schedule and proposed reassessment in proportion to and not in excess of benefits, and to cause notice thereof to be given, and to hear objections thereto and make necessary corrections, and thereupon the council shall reassess and relevy such special tax or special assessment as so corrected with the same force and effect as if jurisdiction had been acquired in the first instance and all subsequent proceedings had been regularly and

legally had. [SS15,§§836, 840-r; C24, 27, 31, 35, 39,§6060; C46, 50, 54,§391.85]

Referred to in §391.87

**391.86 Correction of assessments.** When, in making any special assessment, any property is assessed too little or too much, the same may be corrected and a reassessment and relevy made in conformity therewith; and any tax collected in excess of the proper amount shall be refunded to the person paying the same. Such corrected assessments shall be a lien on the lots the same as the original, and shall be certified by the clerk to the county auditor in the same manner, and shall, so far as practicable, be collected in the same installments, draw interest at the same rate, and be enforced in the same manner as the original assessment. [C97,§837; SS15,§840-r; C24, 27, 31, 35, 39,§6061; C46, 50, 54,§391.86]

Referred to in §391.87

**391.87 "Time" or "order" — interpretation.** Any provision of law, resolution, or ordinance specifying a time when or the order in which acts shall be done in a proceeding which may result in a special assessment, shall be taken to be subject to the qualifications of sections 391.84, 391.85, and 391.86. [C97,§838; SS15,§840-r; C24, 27, 31, 35, 39,§6062; C46, 50, 54,§391.87]

**391.88 Appeal on assessment.** Any person affected by the levy of any special assessment for street improvements or sewers may appeal therefrom to the district court. The person appealing shall be designated as plaintiff and the city or town as defendant. [C97,§839; S13, §792-c-f, 840-a; SS15,§840-r; C24, 27, 31, 35, 39, §6063; C46, 50, 54,§391.88]

**391.89 Perfecting appeal.** Said appeal must be perfected:

1. By serving upon the mayor or clerk, in the manner in which original notices in ordinary actions are served, within fifteen days from the date of said levy, a written notice of appeal, signed by the plaintiff or by his agent or attorney, directed to the defendant, and designating with reasonable certainty the assessment appealed from and the property of plaintiff affected thereby, and

2. By filing within said fifteen days in the office of the clerk of the district court, an appeal bond, approved by the clerk of said court, in an amount equal to five percent of plaintiff's assessment appealed from and in no event less than two hundred fifty dollars, conditioned for the payment of all costs which may be adjudged against plaintiff, and

3. By filing in the office of the clerk of the said court on or before noon of the second day of the first term of said court convening after the serving of said notice, a petition which shall briefly state the grounds of complaint against said assessment. [C97,§839; C24, 27, 31, 35, 39,§6064; C46, 50, 54,§391.89]

Manner of service, R.C.P. 56(a)  
Presumption of approval of bond, §682.10

**391.90 Trial, judgment, and costs.** Upon appeal, all questions touching the validity of



said assessment or the amount thereof, and not waived, shall be heard and determined in equity. The court may make such assessment as should have been made, or may direct the making of such assessment by the council. Costs shall be taxed as in other actions. [C97, §839; C24, 27, 31, 35, 39, §6065; C46, 50, 54, §391.90] Costs generally, ch 625

**391.91 Payment after appeal or objection.** When any special assessment has been reduced on appeal, the property owner may, within twenty days after final determination of the appeal, pay an amount equal to the installments which would have matured under the revised assessment had objections not been filed, together with interest on the entire revised assessment from the date of the original levy and shall be entitled to pay the remaining installments as provided in section 391.59.

In case objections are filed but no appeal is taken, if such objection be withdrawn within thirty days from the date of the assessment or if said objection be overruled by the council at a hearing as in this chapter provided for, the property owner may pay the special assess-

ment in the same manner as in this section provided in case of successful appeal. [C24, 27, 31, 35, 39, §6066; C46, 50, 54, §391.91]

**391.92 and 391.93** Repealed by 54GA, ch 159, §70. See §§404.9, 404.13, 404.18.

#### ANNEXED CITIES AND TOWNS

**391.94 Public policy in annexed cities and towns.** It is hereby declared to be the public policy of this state to require adequate sanitation facilities and sewer systems for all cities or towns comprised of annexed cities or towns. [C50, 54, §391.94]

**391.95 Authority of such cities and towns.** Cities comprised of cities and towns which were annexed each to the other are hereby authorized to construct and repair sanitary sewers, and maintain any and all sewers under the provisions of either chapter 358 or this chapter, regardless of any article or articles of annexation containing provisions which might be construed to prohibit such construction of sewers by any city or town. [C50, 54, §391.95]

## CHAPTER 391A

### STREET IMPROVEMENTS AND SEWERS (ALTERNATIVE METHOD)

Applicable to all cities and towns

Cities over 125,000, see ch 417

Referred to in §358.22

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**391A.1 Definitions.** The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. "Municipality" shall mean any city or town, regardless of form of government or manner of incorporation.
2. "Council" shall mean the governing body of the municipality.
3. "Clerk" shall mean the officer performing the duties of city or town clerk.

4. "Public improvements" shall include the principal structures, works, component parts, and accessories of any of the following:

- a. Sanitary, storm and combined sewers.
- b. Drainage conduits, channels, and levees.
- c. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil, oil and gravel, and chloride.
- d. Street lighting fixtures, connections, and facilities.

e. Sewage pumping stations and disposal and treatment plants.

f. Underground gas, water, heating, sewer, and electrical connections located in streets for private property.

g. Sidewalks and pedestrian underpasses or overpasses.

h. Waterworks, water mains, and extensions.

5. "Construction" shall include all materials, labor, acts, operations, and services necessary to complete a public improvement.

6. "Repair" shall include all materials, labor, acts, operations, and services necessary for the repair, reconstruction, reconstruction by widening or resurfacing of a public improvement.

7. "Street" shall mean any public street, highway, boulevard, avenue, alley, parkway, public place, or publicly owned right of way or easement within the limits of the municipality.

8. "Lot" shall mean any lot, part of lot, tract, or parcel of land under one ownership including improvements thereon.

9. "Total cost" of a public improvement may include the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages or costs, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than six months thereafter, and printing and sale of bonds.

**Referred to in §391A.7**

10. "Gravel" shall include gravel, crushed rock, cinders, shale, and similar materials suitable for street construction or repair.

11. "Oil" shall mean any asphaltic or bituminous material suitable for street construction or repair.

12. "Sewer" shall mean structures designed, constructed, and used for the purpose of controlling or carrying off streams, surface waters, waste, or sanitary sewage.

13. "Main sewer" means any sewer which serves as an outlet for two or more lateral sewers, and which is commonly referred to as an intercepting sewer, outfall sewer, or trunk sewer.

14. "Lateral sewer" means any sewer which contributes sewage or surface or ground water from a local area to a main sewer or outlet.

15. "Sewer systems" are composed of the main sewers, sewage pumping stations, treatment and disposal plants, lateral sewers, drainage conduits or channels, and sewer connections in public streets for private property within a sewer assessment district.

16. "District" means the lots or parts of lots within boundaries established by the council for the purpose of the assessment of the cost of a public improvement.

17. "Private property" means all property within the district except streets, property

owned by the United States, and property owned by the municipality.

18. "Abutting lot" means a lot which abuts or joins the street in which the public improvement is located or which abuts the right of way of the public improvement.

19. "Adjacent lot" means any lot within the district which does not abut upon the street or right of way of the public improvement.

20. "Street improvement" means the construction, or repair of any street by grading, paving, curbing, guttering, and surfacing with oil, oil and gravel, or chloride; and street lighting fixtures, connections, and facilities.

21. "Proposal" means a legal bid on work advertised for a public improvement.

22. "Paving" means any kind of hard street surface including, but not limited to, concrete, bituminous concrete, brick, stabilized gravel, or combinations thereof, together with curb and gutter.

23. "Engineer" means a professional engineer, registered in the state of Iowa, authorized by the council to render services in connection with the public improvement.

24. "Grade" means the longitudinal reference lines, as established by the council, which designate the elevations at which a street or sidewalk is to be built.

25. "Final grade" means the grade to which the public improvement is proposed to be constructed or repaired as shown on the final plans adopted by the council.

26. "Railways" shall mean all railways except street railways.

27. "Publication" shall mean public notice given in the manner provided by section 618.14.

28. "Property owner" shall mean the owner or owners of property, as shown by the transfer books in the office of the county auditor. [C50,§§391A.1, 391A.7; C54,§391A.1; 57GA, ch 192,§2]

**391A.2 Grant of power.** Municipalities shall have the power to construct, and repair all public improvements within their limits, and main sewers, sewage pumping stations, disposal and treatment plants, waterworks, water mains, and extensions, and drainage conduits extending outside their limits, and assess the cost thereof to private property within the municipality as hereinafter provided. [C50, §§391A.2, 420.56; C54,§391A.2]

**391A.3 Limitation—paving and sidewalks.** The construction of paving, curbing, guttering, or sidewalks shall not be ordered unless such improvement, when completed, shall be to grade. [C50,§391A.2; C54,§391A.3]

**391A.4 Connections to private property.** The council may include underground gas, water, heating, sewer, or electrical connections to the street or property line for private property as a part of the public improvement; or, it may order the property owner to make, repair, or

relocate such connections by publication of a notice once each week for two consecutive weeks in the manner provided by section 618.14 and in the event that such order is not complied with at the end of thirty days after the date of the first publication cause the work to be done and assess the cost thereof against the property served by the connection. [C50, §391A.16; C54, §391A.4]

Referred to in §391A.20

**391A.5 Preliminary procedure.** When the council deems it necessary to construct or repair any public improvement under the provisions of this chapter, it shall proceed as follows:

1. Arrange for engineering services to prepare the plats, schedules, estimates of cost, plans, and specifications, as hereinafter provided, and supervise the construction of the proposed improvement.

2. Adopt a preliminary resolution, which shall require for passage the vote of a majority of all the members of the council. The preliminary resolution shall contain the following:

a. A description of the type or alternate types of improvement proposed.

b. The beginning and terminal points or general location of the proposed improvement.

c. An order to the engineer to prepare preliminary plans and specifications, and estimated total cost of the work, and a plat and schedule, and to file same with the clerk.

d. A general description of the property or a designation of the lots which the council believes would be specially benefited by the improvement.

3. The preliminary resolution may also contain the following:

a. A statement of the proportion of the total cost which the council proposes to assess against benefited property.

b. A short and convenient designation for the public improvement by which it shall be sufficient to refer to the improvement in all subsequent proceedings.

4. A preliminary resolution may include more than one improvement or class thereof only when they are so located or otherwise related as to make it advisable in the opinion of the council to carry on the work simultaneously.

5. A single improvement may be in more than one locality or street, and that portion of the street which has been improved by any railway, or which the municipality is authorized under franchise or contract with such railway to require it to improve may be excluded. [C50, §391A.4; C54, §391A.5]

**391A.6 Preliminary plans and specifications.** Preliminary plans and specifications need only be in sufficient detail to advise any person interested of the general nature, character, and type of the improvement. [C54, §391A.6]

**391A.7 Estimated total cost.** The estimated total cost of any public improvement constructed under this chapter shall include all of the items of cost listed in subsection 9 of section 391A.1, which the council proposes to include as a part of the cost of such public improvement, and in addition thereto may include an item to be known as the default fund amounting to not more than ten percent of that portion of the total cost of the improvement which the council proposes to assess against benefited property. [C50, §391A.25; C54, §391A.7]

**391A.8 Requirements of the plat.** The plat as prepared and filed by the engineer shall show the following information:

1. The boundaries of the district containing the lots proposed to be assessed.

2. The location of each lot under separate ownership within the district, including the property of all railways and utilities subject to assessment.

3. The location of the improvement within the district together with the terminal points of all major parts thereof proposed to be assessed.

4. The type and general details of the improvement. [C50, §391A.5; C54, §391A.8]

Referred to in §391A.18

**391A.9 Valuations.** Upon completion of the plat, the council shall proceed to determine the valuation of each lot within the proposed assessment district and shall report same to the engineer, who will show such valuation on the schedule before same is filed with the clerk. Said valuation shall be its present fair market value with the proposed public improvement completed. As an aid in determining said valuations the council may appoint a committee of three persons skilled in the knowledge of real estate values within the municipality to appraise the present fair market value of each lot within such district and to file a written report of its appraisals with the council. [C54, §391A.9]

**391A.10 Requirements of schedule.** The schedule, as prepared by the engineer, shall show the following information for each lot within the district:

1. A description of each lot and the name of the owners thereof as shown by the records in the office of the county auditor of the county in which the lot is located.

2. The valuation of each lot as determined by the council.

3. The total amount proposed to be assessed each lot, which shall include the assessment for the default fund, if any.

4. The amount of deficiency, if any, between the amount proposed to be assessed and the proportion of the estimated total cost of the public improvement allocated to each lot. [C50, §391A.6; C54, §391A.10]

Referred to in §391A.18

**391A.11 Plat, schedule, and estimate adopted.**

When the plat, schedule, and estimate of cost have been so filed, the council may, before adopting a proposed resolution of necessity as hereinafter provided, cause the estimate, valuation, or assessment of any lot or the boundaries of the district as reported by the engineer to be amended and adopt the same as amended or may adopt the same as filed. [C50, §391A.8; C54, §391A.11]

Referred to in §391A.18

**391A.12 Proposed resolution of necessity.**

If, upon adoption of the plat, schedule, and estimate, the council determines to proceed with all or any part of the public improvement, it shall cause a proposed resolution of necessity to be prepared and introduced. Said resolution shall describe briefly the proposed public improvement and shall state that there is on file in the office of the clerk an estimated total cost of the work, and a preliminary plat and schedule showing the amount proposed to be assessed to each lot for the improvement; and it shall state the date, time, and place the council will hear property owners subject to the assessment and interested parties for or against the improvement, its cost, the assessment thereof, or the boundaries of the district. [C50, §391A.9; C54, §391A.12]

**391A.13 Notice of hearing.** The clerk shall cause public notice of the date, time, and place of the hearing to be given by publication once each week for two consecutive weeks in the manner provided by section 618.14, the first publication of which shall be not less than fifteen nor more than twenty-five days prior to the hearing. The notice shall be in the following form:

**NOTICE TO PROPERTY OWNERS**

Notice is hereby given that there is now on file for public inspection in the office of the clerk of ....., Iowa, a proposed resolution of necessity, and estimate of cost and a plat and schedule showing the amounts proposed to be assessed against each lot and the valuation thereof within a district as approved by the ..... council of ....., Iowa, for a ..... improvement of the type and in the location as follows: .....

The council (or other governing body) will meet at ..... o'clock ..... M. on ....., 19 ....., at the ..... at which time the owners of property subject to assessment for the proposed improvement or any other person having an interest in the matter may appear and be heard for or against the making of the improvement, the boundaries of the district, the cost, the assessment against any lot, or the final adoption of a resolution of necessity.

.....  
Clerk.

The clerk shall mail a copy of the foregoing notice by ordinary mail to the owners of property, as shown by the records in the

office of the county auditor, within the bounds of the proposed improvement. Failure to receive such notice shall not constitute a defense to the special assessment. [C50, §391A.10; C54, §391A.13]

Referred to in §§391A.20, 391A.21

**391A.14 Hearing.** The council shall meet as specified in the published notice, and after hearing all objections and indorsements from the owners of property and other persons having an interest in the matter, and after causing all written objections theretofore filed to be read, may adopt or amend and adopt, the proposed resolution of necessity, or may defer action thereon until a subsequent meeting. Such resolution of the council shall require for passage the vote of three-fourths of all the members of the council, or, in municipalities having but three members of the council, the vote of two members, and where a remonstrance has been filed with the clerk, signed by the owners subject to seventy-five percent of the amount of the proposed assessment, no such resolution shall be passed except by unanimous vote of the council. However, any amendment which extends the boundaries of a district or increases the amount to be assessed against any lot shall not be effective until an amended plat, schedule, and estimate have been prepared and adopted and a notice published and hearing held in the same manner as hereinbefore provided for the original proceedings; or until all property owners affected thereby agree in writing to the change. [C50, §391A.11; C54, §391A.14]

Referred to in §391A.18

**391A.15 Order to engineer and attorney.**

After adopting a resolution of necessity, the council may, by resolution, order the engineer to prepare and file with the clerk detailed plans and specifications, and order the engineer and city attorney, or an attorney designated by the council, to prepare and file with the clerk a notice to bidders and form of contract. [C50, §391A.12; C54, §391A.15]

**391A.16 Notice to bidders.**

1. The notice to bidders shall state:
  - a. The time and place for filing sealed proposals.
  - b. The time and place such proposals will be opened and considered by the council.
  - c. The general nature and approximate extent of the work.
  - d. When the work shall be commenced and when it shall be completed.
  - e. The terms and method of payment.
  - f. That each bidder shall accompany his bid with a cashier's or certified check on an Iowa bank in an amount fixed by the council in the manner provided by subsection 3 hereof, as security that the bidder will enter into the contract for the work bid upon and will furnish a corporate surety bond acceptable to the council for the faithful performance of the contract.

2. The notice for bids may provide that bids will be received for the furnishing of all labor and materials required to complete all parts of the proposed work under one contract, or for parts thereof in separate sections.

3. Upon approval by the council of the detailed plans, specifications, notice to bidders, and form of contract, it shall by resolution fix the amount of the check to accompany each bid, which amount shall equal at least five percent, but shall not exceed ten percent, of the engineer's estimated total cost of the work, and shall order the clerk to publish the notice to bidders.

4. Publication of the notice to bidders shall be made once each week for two consecutive weeks, in the manner provided by section 618.14, the first of which publications shall be not less than twelve days before the date set for receiving bids. [C50,§391A.13; C54,§391A.16]

**391A.17 Award of contract or rejection of bids.** The council shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. They may, thereafter by resolution, award the contract to the lowest bidder, or they may reject all received proposals and may order the clerk to again publish notice to bidders, in the manner hereinbefore provided.

The check of the successful bidder shall be retained by the municipality until the approved contract form has been completed and executed and a bond filed by the bidder and approved by the council as provided in section 391A.19. If the successful bidder fails to sign the contract and furnish the required bond within ten days after the award of the contract to him, the check may be cashed and the amount thereof retained by the municipality as agreed liquidated damages. The checks of unsuccessful bidders shall be promptly returned to such bidders by the clerk and a receipt therefor obtained and placed on file in his office. [C50,§391A.14; C54,§391A.17]

Referred to in §391A.18

**391A.18 Optional court confirmation procedure.** After the receipt and consideration of bids as provided in section 391A.17 but before awarding the contract the council may elect to proceed as follows:

1. The council shall direct the city attorney to file, in the district court of the county in which the property proposed to be assessed is located, a petition praying that the acts done by said council relative to the proposed public improvement be confirmed by decree.

2. There shall be attached to said petition:

a. A copy of the resolution of necessity as adopted by the council.

b. A copy of the proposed schedule of assessments as adopted by the council under sections 391A.11 and 391A.14, which schedule shows the maximum amount that the council proposes to assess against any lot.

c. Detailed plans and specifications as prepared by the engineer.

d. A copy of the proposed contract as prepared by the city attorney.

3. Notice of the filing of such petition shall be given in the same form and manner as is provided for service of original notice by publication by the rules of civil procedure, except as follows:

a. No affidavit of inability to effect personal service within the state of Iowa as a condition precedent to the service of original notice shall be required.

b. The original notice shall name as defendants those property owners, shown by the records of the county auditor as of the date of the filing of the petition, as having an interest in the real property to be assessed as a part of this said public improvement, and said original notice shall state that a plat and schedule in form and content as specified in sections 391A.8 and 391A.10 is on file in the office of the clerk of the district court where action is pending. Publication of plat and schedule as part of original notice shall not be required nor shall reference in the original notice to specific descriptions of affected real property or the amount of proposed assessment thereon be necessary.

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4. Any such petition shall have precedence over any other business of the court, except in criminal cases, and said court shall set the said petition for hearing within thirty days from the date of final publication of notice.

5. If no person having an interest in property proposed to be assessed has entered an appearance or filed an answer within the time set for hearing on said petition the court shall immediately confirm said assessment and order the clerk to certify same to the city clerk.

6. If any person having an interest in property proposed to be assessed has entered an appearance or filed an answer to said petition, the court shall hear the cause. Said cause shall be triable as in equity.

7. Upon the hearing the court shall have power to correct any irregularities or inequalities in valuations or in the schedule of assessments, and shall consider any objections because of alleged illegal procedure or fraud.

8. The court shall render a decision upon said hearing within seven days thereafter.

9. The clerk of said court shall certify to the city clerk the final action of the court within three days from the date of the final order or judgment of said court, upon said petition, showing assessments as confirmed in the schedule of assessments.

10. An appeal from the decree of the district court shall be perfected within thirty days from the date of said decree and the abstract shall be served and filed in the office of the clerk of the supreme court within ninety days from the date of said district court decree.

11. If the aggregate of all appeals exceeds ten percent of the total assessment as confirmed by the district court, the contract may or may not be let, in the discretion of the council, until said appeals are finally determined, but said appeals shall not delay the execution of a contract for the work, if council concludes said appeals were not taken in good faith.

12. An appeal shall not, in the discretion of the council, delay the certification of an assessment or progress of an improvement, but upon decision of the appeal the assessment appealed from shall be corrected and collected in the same manner as provided by section 391A.36.

13. Corrections of assessments or valuations made by or upon the order of the district court shall be conclusive and not subject to review on appeal, or otherwise, except as provided in subsections 10 to 12 of this section. When court confirmation is obtained as herein provided there shall be no right of appeal under the provisions of section 391A.31.

14. In the event no contract is entered into within sixty days from the date of confirmation by the district court the court shall cancel said assessment, upon application of the city attorney, if no appeal is pending.

15. The cost of all court proceedings shall be a legitimate item of expense in connection with any public improvement, and shall be included within the final assessment against any property proposed to be improved. [C54, §391A.18; 56GA, ch 197,§1]

**391A.19 Bond of contractor.** Each contractor for a public improvement shall give bond to the municipality, conforming to the requirements of section 573.6, with corporate sureties approved by the council, for the faithful performance of the contract, in a sum equal to the contract price, and action upon such bond may be brought in the county where the council holds its meetings. [C50,§391A.15; C54, §391A.19]

Referred to in §391A.17

**391A.20 Underground connections — waterworks trustees.** In municipalities having a board of waterworks trustees and in which water connections are not installed by such trustees at public expense, the council shall notify such board, at the time of the adoption of a preliminary resolution, of any proposed street paving projects. Thereupon the board shall report to the council the number of connections from water mains in such streets to the curb lines of the proposed improvement necessary to serve private property dependent upon those particular mains for water supply, and the numbers of the lots to be served by such connections, and the names of the owners thereof. Notice shall be given to such property owners, at the same time and in the same manner as the notice provided in section 391A.13, to install the necessary connections within thirty days after hearing. For the purposes of such hearing, property owners

who are notified to install water connections, but whose property is not within the proposed assessment district, may appear as interested parties. If, upon hearing, the council determines to proceed with the improvement, and any property owner fails to make connections as required, the board of waterworks trustees shall cause them to be made and certify the cost thereof to the council to be assessed against the property and collected in the same manner as provided in section 391A.4 for other underground connections. [C50,§391A.17; C54, §391A.20]

**391A.21 State property and roads.** Municipalities may assess the cost of a public improvement which extends through or abuts upon, or is adjacent to lands owned by the state, and the executive council shall pay such portion of the cost of making said improvement through or along such lands as provided hereinafter. Payment of such assessments shall be made by the executive council from any funds of the state not otherwise appropriated.

When a state park or institutional road abutting on or adjacent to state lands is improved by paving, the state shall pay one-half the total assessed cost of that portion of the improvement abutting, or adjacent to such lands, lots, parts or portions thereof, but for any other type of improvement so constructed and located the state shall pay such portion of the cost as would be assessable against such lands were they privately owned.

When any portion of the cost of a public improvement is to be paid by the state under this section, the clerk shall, at the time of publications of the notice required by section 391A.13, cause a copy of such notice to be sent to the secretary of the executive council by restricted certified mail.

Municipalities in which state buildings are located shall permit sewers for such buildings to be constructed through or under the streets of the municipality, and connections to be made to the sewer system of the municipality under the same regulations as for sewer connections to private property. [C50,§391A.18; C54,§391A.21; 57GA, ch 267,§45]

**391A.22 Monthly payments to contractor.** When the specified duration of time for the performance of a public improvement construction contract exceeds sixty days, the municipality may contract to pay not to exceed ninety percent of the engineer's estimated value of the acceptable work completed during the month to the contractor at the end of each month. Payment shall be made in warrants drawn on any fund from which payment for such work may be made and such warrants, unless paid upon presentation, shall draw interest at the rate of four percent per annum from and after the date of presentation for payment. If such fund is depleted, anticipatory warrants may be issued and if the collection of taxes or special assessments, or

income from the sale of bonds applicable to the public improvement shall be after the end of the fiscal year in which the warrants are issued, said warrants shall not constitute a violation of section 404.18. [C50,§391A.19; C54, §391A.22]

Referred to in §391A.23

**391A.23 Inspection, acceptance and payment.**

1. The engineer for the municipality shall inspect all work done under this chapter, and within fifteen days of the final completion of the public improvement he shall file a certificate with the clerk stating:

- a. That he has inspected the completed work.
  - b. That such work has or has not been performed in compliance with the terms of the contract, and the particulars, if any, in which the work varies from said terms.
  - c. The total cost of the completed work.
2. Within fifteen days after the filing of the engineer's certificate, the council shall by resolution accept or reject the work.

3. Upon accepting the work, or within ten days thereafter, the council shall ascertain the total cost thereof and by resolution determine the proportion or amount of such cost to be assessed against private property within the assessment district.

4. Upon accepting the work the council may order payment of any amounts due the contractor to be made by warrants issued in the manner provided by section 391A.22. [C50, §391A.20; C54,§391A.23]

**391A.24 Final schedule — filing.** Within thirty days after the council adopts a resolution fixing the amount to be assessed against private property, the engineer shall file with the clerk an assessment schedule showing:

1. A description of each lot to be assessed.
2. The valuation of each lot as fixed by the council.
3. The amount to be assessed against each lot, which amount shall include the assessment for the default fund, if any. [C50,§391A.21; C54, §391A.24]

**391A.25 Final schedule—adoption and certification.** Within ten days after filing by the engineer, the council shall meet, consider, and adopt or amend and adopt, by resolution, the final assessment schedule. Said resolution shall:

1. Confirm and levy the assessments.
2. State the number of installments, not exceeding fifteen, into which assessments of ten dollars or more are divided.
3. Provide for interest on all unpaid installments at five percent per annum.
4. State the time when assessments are payable.
5. Direct the clerk to certify such final schedule to the auditor of the county or counties in which the assessed property is located and

publish notice thereof once each week for two consecutive weeks in the manner provided in section 618.14, the first publication of which shall be not more than fifteen days from date of filing of the final schedule.

Thereupon, the county auditor shall place on the tax list the amounts to be assessed against each lot within the assessment district as certified. [C50,§391A.22; C54,§391A.25]

**391A.26 Assessment of cost.** The total cost of a public improvement, except for that part for which railways are liable or which is to be otherwise paid, shall be assessed against all lots within the assessment district in accordance to the special benefits conferred upon the property thereby and not in excess of such benefits.

If any owner of property subject to special assessment shall divide the same into two or more lots and if such plan of division is accepted or approved by the council, he may discharge the lien upon any one or more of them by payment of the amount unpaid, calculated as determined by the council. [C50, §391A.23; C54,§391A.26]

Referred to in §391A.30

**391A.27 Limitations on assessment costs.** No special assessment against any lot, for any public improvement as defined herein, shall be in excess of the amount of such assessment as shown in the schedule confirmed by the court, or if court confirmation is not utilized then on the original plat and schedule as adopted by the council and no such assessment shall exceed twenty-five percent of the value of the lot as shown by the plat and schedule theretofore approved by the council.

Special assessments for the construction or repair of underground connections for private property for gas, water, sewers, or electricity shall be assessed to each lot for the actual cost of each connection for such lot and the twenty-five percent limitation of the preceding paragraph shall not apply. [C50,§391A.24; C54, §391A.27]

Referred to in §391A.30

**391A.28 Deficiencies.** If the special assessment which may be levied against any lot be insufficient to pay its proportion of the cost of the improvement, the deficiency may be paid from the fund or funds most logically related to the type of improvement.

If there be property against which no special assessment can be levied or collected, the portion of the cost of the public improvement which would have been assessed against such property shall be paid in like manner. [C50, §391A.25; C54,§391A.28]

**391A.29 Assessment against railway property.** The right of way of any railway company shall be subject to special assessments for all public improvements provided in this chapter and such assessments shall constitute a debt due the municipality which shall be a paramount lien upon the track of the railway

company owning or leasing such right of way within the limits of the municipality. No part of the property of any railway to which a lien for unpaid special assessments has attached shall be released from such lien until the whole assessment is paid. [C50,§391A.26; C54, §391A.29]

**391A.30 Installments — payment — delinquency.**

1. *First installment.* The first installment of each assessment, or total amount thereof if it be less than twenty-five dollars, with interest on the whole assessment from date of acceptance of the work by the council, shall become due and payable on January 1 next succeeding the date of such levy unless the assessment is filed with the county auditor less than thirty days prior to such next succeeding January 1 after the date of levy.

2. *Annual installments.* The succeeding annual installments, with interest on the whole unpaid amount, shall respectively become due on January 1 annually thereafter and shall be paid at the same time and in the same manner as the March semiannual payment of ordinary taxes.

3. *Outstanding balance—payments.* All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest to the succeeding June 1.

4. *Delinquency.* All such assessments with interest shall become delinquent after the thirty-first day of March next after their due date, and shall bear the same interest with the same penalties as ordinary taxes, and when collected the said interest and penalties shall be credited to the same fund as the said special assessment.

5. *Interest period.* Upon the payment of any assessment or installment thereof interest shall be computed and collected as aforesaid to the first day of June following the date of such payment.

6. *Lien of assessment.* All assessments shall constitute liens on the lots assessed from the date they are certified to the county auditor and such liens shall have the same preference and priorities as liens for ordinary taxes; provided, that in no case shall the owner of any lot be liable for an assessment greater than provided for in sections 391A.26 and 391A.27. [C50,§391A.27; C54,§391A.30]

**391A.31 Appeals to district court.**

1. Any person or corporation, having an interest in any property subject to special assessment under any given exercise of the powers conferred upon municipalities by this chapter, shall have the right, within twenty days after the adoption of a resolution of necessity, to test the regularity of the proceedings under such exercise of power by a petition in equity filed in the district court of the county wherein such property is located. Filing such petition shall not operate as a stay

of further proceedings on the improvement by the council unless there is also filed a bond in an amount and with security approved by the court.

2. Any person or corporation, having an interest in any property specially assessed under any exercise of the powers conferred upon municipalities by this chapter, shall have the right to appeal from the amount of such assessment at any stage of the special assessment procedure up to twenty days after the final publication of notice of filing of the final assessment schedule by petition to the district court of the county wherein such property is located, but such appeal shall go only to the amount of that assessment and shall in no event operate as a stay of further proceedings by the council on the improvement.

3. Nothing herein set forth shall be construed so as to deny any person or corporation having an interest in property subject to special assessment a right of appeal to the district court on the ground of fraud or to avail himself of such other remedies as are available by law. [C50,§391A.28; C54,§391A.31]

Referred to in §391A.18(13)

**391A.32 Payment of assessments.** Assessments levied and certified under the provisions of this chapter and installments thereof and interest thereon shall be payable at the office of the county treasurer of the county wherein the property assessed is located, and assessments may be there paid in full and without interest within thirty days after the date of certification thereof to the county auditor. [C50,§391A.29; C54,§391A.32]

**391A.33 Special assessment bonds.**

1. *Issuance.* After certification of the final assessment schedule the municipality shall, by resolution of the council, authorize and issue bonds in anticipation of the collection of unpaid special assessments, provided that the total principal amount of bonds issued for account of any public improvement shall not exceed the total amount of unpaid special assessments less the amount assessed for the default fund.

2. *Form.* All such bonds shall be negotiable and shall recite on their face that they have been issued under the provisions of this chapter and are payable as to both principal and interest from the proceeds of the special assessments levied for account of the public improvement. Such bonds shall bear interest at a rate not exceeding five percent and shall mature serially on June 1 of the years in which any of such principal is scheduled to become due and shall contain a provision that the municipality reserves the right and option of calling and redeeming any or all of the bonds on or before July 15 of each year prior to maturity upon such terms as are specified therein.

3. *Payment.* The proceeds of the special assessments and interest collected thereon shall be used and applied by the treasurer of



the municipality to the payment of the interest on the bonds and to the retirement of the principal as rapidly as such proceeds are collected.

4. *Sale—proceeds.* Said bonds shall be sold at public sale in the manner provided for by chapter 75, but shall not be sold for less than par value with accrued interest from date to the time of delivery. In the event that no bid is received at the public sale, the council may require the contractor for the public improvement to purchase same at par value for bonds bearing five percent interest. The proceeds shall be used and applied to the payment of the cost of the public improvement.

5. *Procedure.* The provisions of chapter 396 shall be applicable to bonds issued under this chapter.

6. *Surplus.* Any excess of proceeds from special assessment remaining after all of the bonds for account of a particular improvement have been paid with interest shall be credited to the fund from which deficiencies for such improvement were paid. [C50,§391A.30; C54, §391A.33]

**391A.34 Tax sale.** Property against which a special assessment has been levied for public improvements may be sold for any sum of principal or interest due and delinquent at any regular or adjourned tax sale, in the same manner, with the same forfeitures, penalties, right of redemption, certificates, and deeds as for the nonpayment of ordinary taxes. The purchaser at such sale shall take the property charged with the lien of the remaining unpaid installments and interest. At any such sale where bonds have been issued in anticipation of such special assessments and interest, the municipality may be a purchaser and be entitled to all the rights of purchasers at tax sales. The proceeds subsequently realized from sales of any property so purchased by the municipality shall be credited to the funds of the municipality from which deficiencies on such improvement were paid, or if there were no deficiencies to the general fund. [C50, §391A.31; C54,§391A.34]

**391A.35 Payment from other funds.** The whole or any part of the cost of construction or repair of any public improvement may be paid under the provisions of sections 396.22 and 396.23, or they may be paid from the fund or funds of the municipality authorized to be used for the particular type of improvement and the council shall provide that the tax authorized for purposes of such fund or funds shall be annually levied to the full extent necessary to reimburse said fund or funds for the amount paid therefrom for the construction or repair of the improvement. [C50, §391A.32; C54,§391A.35]

**391A.36 Relevy.** When by reason of non-conformity to any law or resolution, or by reason of any omission, informality, or irregularity, any special tax or assessment levied is determined by the council to be invalid or is

adjudged illegal, the council shall have power to correct the same by resolution, and may reassess and relevy the same, with the same force and effect as if done at the proper time and in the manner provided by law or by the resolution relating thereto. [C50,§391A.33; C54, §391A.36]

Referred to in §391A.18(12)

**391A.37 Joint municipal and state improvements.** The provisions of this chapter shall apply to any street improvement undertaken jointly by the municipality and the highway commission under the provisions of sections 313.21 to 313.23, inclusive, and any such municipality may assess and pay its portion of the cost of such street improvement as herein provided, but any requirement of this chapter in respect to approval of detailed plans and specifications, calling for construction bids, awarding construction contracts, and acceptance of the completed improvement shall be carried out by such municipality with the state highway commission as may be provided in any agreement entered into as permitted by section 313.22. [C50,§391A.34; C54,§391A.37]

**391A.38 Streets with tracks.** In the making of assessments for paving streets, avenues, or public places along or upon which any track of a railway or street railway company is located, the engineer shall make an estimate of the cost of building the improvement, and he shall also make an estimate of what would be the cost of such improvement if such tracks did not there exist. The railway or street railway company shall be charged with the difference between said estimates of cost and shall make payment in the same manner as other special assessments are paid. This section applies only to track within the limits of the improvement proper and nothing herein contained shall be construed as exempting such railway or street railway company from any special assessment on any other property, adjacent or abutting, within the assessment district and owned by such company, nor shall this section be construed as relieving such company from any of its duties or liabilities set forth in any other sections of the law concerning repair or construction of the strip of paving between the rails and one foot outside thereof. [C54,§391A.38]

**391A.39 Interpretation.** The provisions of this chapter shall not be construed as invalidating any special assessment proceedings or bonds issued thereunder which were undertaken under the provisions of any law which existed at the time such proceedings were initiated. [C50,§391A.35; C54,§391A.39]

**391A.40 State institutions — joint sewage control.** Cities and towns which are located nearby or adjacent to state controlled institutions, shall have power to construct, repair, alter, maintain and operate sewage disposal plants, sewage systems, catch basins and sewage lines or any part thereof in co-operation with any state controlled institution located

nearby or adjacent to such city or town, and to receive from any such state controlled institution financial grants and assistance for the construction, operation and maintenance of any such sewage utility, and to serve said state controlled institution as a customer, and to do all acts necessary for carrying out the

purposes of this section, whether said state controlled institution and the sewage utility or any part thereof lies within or without the corporate limits of any such city or town, and to finance the cost thereof by the issuance of bonds under the provisions of section 396.22. [C54,§391A.40]

## CHAPTER 392

### JOINT USE OF MUNICIPAL SEWERS

Applicable to all cities and towns

- 392.1 Authorization.
- 392.2 Construction—assessment.
- 392.3 Assessments.
- 392.4 Nonapplicable statutes.
- 392.5 Nonapplicable statute.
- 392.6 Assessment—description of property.

- 392.7 Hearing.
- 392.8 Form of notice.
- 392.9 Publication or posting of notice.
- 392.10 Appearance and protest.
- 392.11 Issuance of certificates or bonds.
- 392.12 Annual charge—how payable.

**392.1 Authorization.** When the boundary limits of cities or towns join and such cities or towns are located upon or adjacent to a river or stream which furnishes drainage for such cities or towns, or either of them, and is also the source of water supply for the inhabitants of either or all of said cities or towns, such cities or towns are authorized to contract with each other for the joint use of the sanitary sewer system of either of such cities or towns for the purpose of furnishing a joint outlet therefor and to make provision therein for the payment of an agreed consideration for such joint use including an annual charge for the same. Provided, however, that nothing herein shall prevent cities and towns adjacent to each other from contracting with each other for the joint use of the sanitary sewer system of either city or town. [C27, 31, 35,§6066-a1; C39,§6066.03; C46, 50, 54,§392.1]

**392.2 Construction—assessment.** When any two such cities or towns shall have so contracted with each other for the joint use of such sanitary sewer system for outletting purposes, the city or town obligating itself to pay a consideration for the use of the sanitary sewer system of the other city or town, shall have the authority to build the necessary line or lines of sanitary sewer to connect the sanitary sewer system of such city or town with the sanitary sewer system of such other city or town, and its council shall have authority to levy, by resolution, a special assessment against all of the property in such city or town which abuts upon any line of sanitary sewer therein or which is adjacent thereto, for the payment in whole or in part, of the cost of constructing such connecting line or lines, and the amount agreed to be paid for the use of the sanitary sewer system of such other city or town as an outlet, and costs incident thereto, hereinafter spoken of as the project cost, and its council shall have authority to establish, by resolution, a joint sewer district or districts, including therein such property within its corporate limits, as its council may determine will be bene-

fited, and its council may annually levy a tax thereon, of not to exceed five mills for a joint sewer fund, provided, that if anticipation of the collection of such tax be proposed by said council, such anticipated tax may be levied at one time for current and succeeding years not exceeding twenty, but that the levy of such tax for any such year shall not exceed said five mills. [C27, 31, 35,§6066-a2; C39,§6066.04; C46, 50, 54,§392.2]

41GA, ch 120,§2, editorially divided

**392.3 Assessments.** Said special assessments shall be in proportion to the benefits received by such property and such assessments shall be made in the same manner as provided for in chapter 391 and amendments thereto. [C27, 31, 35,§6066-a3; C39,§6066.05; C46, 50, 54,§392.3]

**392.4 Nonapplicable statutes.** The provisions of said chapter 391 as to the adoption of a resolution of necessity and the letting of contracts for street improvements or sewers shall not apply to the making of the contract for the joint use of such sanitary system for outletting purposes. [C27, 31, 35,§6066-a4; C39, §6066.06; C46, 50, 54,§392.4]

**392.5 Nonapplicable statute.** The provisions of section 391.20 relative to preliminary plat and schedule shall not apply to this chapter. [C27, 31, 35,§6066-a5; C39,§6066.07; C46, 50, 54, §392.5]

41GA, ch 120,§3, editorially divided

**392.6 Assessment—description of property.** In case the city or town council desires to pay the whole or any part of the project cost from the proceeds of special assessments, it shall, before the preparation of the plat and schedule, describe, in a proposed resolution, the property abutting upon or adjacent to any line of sanitary sewer in such city or town, which it contemplates to so specially assess, and state in said resolution the aggregate amount of such special assessments and the estimated project cost to be borne by said city or town, and if the

said city or town proposes to pay the whole or any part of the project cost from the proceeds of the sanitation fund, such city or town council shall, in such proposed resolution, state the amount to be allocated from said fund, and if it is proposed to anticipate the collection of such tax for more than one year, it shall state such fact, and state the total estimated project cost to be borne by said city or town, in said resolution. If it be proposed to pay part of the project cost from the proceeds of special assessment and part from the proceeds of the sanitation fund, it shall be so stated in said proposed resolution. [C27, 31, 35, §6066-a6; C39, §6066.08; C46, 50, 54, §392.6]

**392.7 Hearing.** Hearing shall be had upon the proposed resolution at a date fixed by the city council. Said hearing shall not be less than twenty days after the date of the completed giving of notice thereof. At such hearing or any adjournment thereof, the proposed resolution may be passed as proposed, or amended and passed. [C27, 31, 35, §6066-a7; C39, §6066.09; C46, 50, 54, §392.7]

**392.8 Form of notice.** Said notice shall describe the property proposed to be assessed, if any, and name the amount to be allocated from the sanitation fund of the city or town and the date when hearing shall be had on the proposed resolution. [C27, 31, 35, §6066-a8; C39, §6066.10; C46, 50, 54, §392.8]

**392.9 Publication or posting of notice.** Notice of said hearing shall be given by two publications in each of two newspapers published in said city or town, if there be that

number, and if there be only one newspaper published in said city or town, by two publications therein, and if there be no newspaper published in such city or town, such notice shall be published in a newspaper designated by the council, and having a general circulation in such city or town, provided, in such case, three copies of such notice be posted in three public places therein, one of which shall be at the mayor's office. [C27, 31, 35, §6066-a9; C39, §6066.11; C46, 50, 54, §392.9]

**392.10 Appearance and protest.** Any property owner whose property it is contemplated to assess may appear and protest against the passage of said resolution. [C27, 31, 35, §6066-a10; C39, §6066.12; C46, 50, 54, §392.10]

**392.11 Issuance of certificates or bonds.** Sewer certificates or sewer bonds may be issued in anticipation of the special assessments authorized herein and their issuance and sale shall be in accordance with the provisions of chapter 396. Joint sewer bonds may be issued in anticipation of the collection of the joint sewer fund tax authorized herein under the terms provided in the second paragraph of section 408.10,\* and such bonds and certificates may be sold to provide funds to meet the project cost in whole or in part. [C27, 31, 35, §6066-a11; C39, §6066.13; C46, 50, 54, §392.11]

\*Section 408.10, Code 1959, repealed by 55GA, ch 194, §1. See §408.17

**392.12 Annual charge—how payable.** The annual charge agreed upon by said cities or towns in such contract may be paid from the sanitation fund. [C27, 31, 35, §6066-a12; C39, §6066.14; C46, 50, 54, §392.12]

## CHAPTER 393

### SEWER RENTALS

Referred to in §558.20  
Applicable to all cities and towns

393.1 Rentals authorized.  
393.2 Rate.  
393.3 Lien.  
393.4 Change of rates.  
393.5 Collection.  
393.6 Metering of water supply.  
393.7 Rentals supplanting taxes.

393.8 Sewer rental fund—accounting.  
393.9 Limitation on expenditure.

#### CONTRACTS FOR SEWAGE DISPOSAL

393.10 Contracts to process sewage.  
393.11 Permission to lay sewer lines.  
393.12 Discharge of treated sewage.

**393.1 Rentals authorized.** The city or town council of any city or town which has installed or is installing sewerage, a system of sewerage, sewage pumping stations, or sewage treatment or purification works, any and all of which are hereinafter termed sanitary utilities, for public use, and which has by ordinance established one or more sewer districts in compliance with section 391.11, may by ordinance establish just and equitable rates or charges or rentals to be paid to such city or town for the use of such sanitary utilities by every person, firm or corporation whose premises are served by a connection to such sanitary utilities di-

rectly or indirectly. [C31, 35, §6066-d1; C39, §6066.15; C46, 50, 54, §393.1]

44GA, ch 157, §1, editorially divided

**393.2 Rate.** Such charges shall be as nearly as may be in the judgment of the council, equitable and in proportion to the service rendered and taking into consideration only in the case of each such premises, the quantity of sewage therein or thereby produced and its concentration, strength, or river pollution qualities in general. [C31, 35, §6066-d2; C39, §6066.16; C46, 50, 54, §393.2]

**393.3 Lien.** Such charges shall constitute a lien upon the property served by such sanitary

utility and if not paid when due as by said ordinance provided, shall be collected in the same manner as other taxes. [C31, 35, §6066-d3; C39, §6066.17; C46, 50, 54, §393.3]

**393.4 Change of rates.** The council may change the rates or charges or rentals from time to time as may seem advisable. The council may provide in said ordinance for the management of said sanitary utility and the collection of said rates, rentals or charges. [C31, 35, §6066-d4; C39, §6066.18; C46, 50, 54, §393.4]

**393.5 Collection.** Said charges may be collected at the same time, place, and in conjunction with the water rentals in any city or town owning and operating the municipal water supply and distribution system. [C31, 35, §6066-d5; C39, §6066.19; C46, 50, 54, §393.5]

**393.6 Metering of water supply.** Said ordinance may provide for the metering of private water supplies produced or operated on premises served by such sanitary utility. [C31, 35, §6066-d6; C39, §6066.20; C46, 50, 54, §393.6]

**393.7 Rentals supplanting taxes.** Said sewer rentals, charges, or rates may supplant or replace in whole or in part millage levy taxes which may have been authorized by resolution of any city or town council to meet interest, and/or principal payments on bonds legally authorized for the financing of such sanitary utilities, and when such sewer rental ordinance has been duly passed and put into effect, such prior ordinances or resolutions providing for millage taxes against real and personal property for such purpose, or the portion thereof thus replaced, may be rescinded, repealed, or rendered inactive. [C31, 35, §6066-d7; C39, §6066.21; C46, 50, 54, §393.7]

**393.8 Sewer rental fund—accounting.** Any and all funds, fees, rentals, charges, or rates collected under the provisions of this section shall be remitted or turned over to the city treasurer by the officer charged with their collection at least once each month, and all

such collections shall be kept in a separate and distinct fund to be known as the sewer rental fund, and disbursed only upon resolution of the council and used only for the purpose of paying the cost of financing the operation, maintenance, and/or construction of the sanitary utility herein defined. [C31, 35, §6066-d8; C39, §6066.22; C46, 50, 54, §393.8]

**393.9 Limitation on expenditure.** In no case shall such sewer charges, rentals, or rates or the funds accruing from the collection thereof be used to meet the cost of construction, maintenance, or operation of lateral sewers serving purely local territory, or the portion of the cost of sanitary utilities as herein defined, which have been financed by special assessment against benefited properties. [C31, 35, §6066-d9; C39, §6066.23; C46, 50, 54, §393.9]

CONTRACTS FOR SEWAGE DISPOSAL

**393.10 Contracts to process sewage.** Any city or town with a sewage disposal plant may enter into contracts with persons or firms outside the corporate limits thereof for the processing of sewage of such persons or firms provided that the rate for processing shall not be less than that charged the inhabitants of such city or town. [56GA, ch 198, §1]

**393.11 Permission to lay sewer lines.** Any city or town entering into such a contract shall have the right to lay sewer lines in highways outside such city or town upon first obtaining the permission of the state highway commission in the case of primary roads and the board of supervisors in case of secondary roads on written application designating the particular highway and part thereof, the use of which is desired. [56GA, ch 198, §2]

**393.12 Discharge of treated sewage.** Any board, as defined in section 455.4, may by contract permit any city or town to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created. [56GA, ch 198, §3]

CHAPTER 394

SELF-LIQUIDATING IMPROVEMENTS

Referred to in §384.3 (11)  
Applicable to all cities and towns

- 394.1 Sewage treatment plants—acquisition—bonds.
- 394.2 Wharves, docks or piers.
- 394.3 Supervision and control.
- 394.4 Applicable statutes.
- 394.5 Garbage disposal plants—fees.

- 394.6 Self-liquidating contracts—bonds.
- 394.7 Previous proceedings—other funds.
- 394.8 Pledge of net earnings.
- 394.9 Self-liquidating rates—lien on premises.
- 394.10 Chapter applicable to municipal docks.
- 394.11 Scope of chapter.

**394.1 Sewage treatment plants—acquisition—bonds.** Cities and towns and sanitary districts incorporated under the provisions of chapter 358 are hereby authorized and empowered to own, acquire, construct, equip, extend and improve, operate, and maintain

within and/or without the corporate limits of such city or town or sanitary districts, works and facilities useful and convenient for the collection, treatment, purification and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of any such city

or town, also swimming pools and/or golf courses, and shall have authority to acquire by gift, grant, purchase, or condemnation, or otherwise, all necessary lands, rights of way, and property therefor, within or without the said city or town or sanitary districts, and to issue revenue bonds to pay all or any part of the costs of such improvement. [C35,§6066-f1; C39,§6066.24; C46, 50, 54,§394.1]

45ExGA, ch 71,§1, editorially divided

**394.2 Wharves, docks or piers.** Cities and towns are also hereby authorized and empowered to own, acquire, construct, equip, operate, and maintain within and/or without the corporate limits of such city or town, wharves, docks, and/or piers, including the grading and filling of lands under their control, when the same are authorized by a majority of voters after the proposition of such project shall have been submitted to an election to be called and conducted as required by the statutes regulating elections relating to the authorization and issuance of bonds by cities and towns for similar purposes, provided, however, no election shall be necessary unless demanded by a petition signed by fifteen percent of the voters at the last preceding municipal election filed within sixty days following the publication of an ordinance adopted for the issuance of such bonds, and to issue revenue bonds to pay all or any part of the costs of such improvement. [C35,§6066-f2; C39,§6066.25; C46, 50, 54,§394.2]

See §75.1

**394.3 Supervision and control.** The construction, acquisition, improvement, equipment, custody, operation, and maintenance of any such works for the collection, treatment, or disposal of sewage, swimming pools, golf courses, wharves, docks, or piers, and the collection of revenues therefrom, for the service rendered thereby, shall be under the supervision and control of the city or town, or in the case of sewage treatment plants in any sanitary district by the trustees of such sanitary district; and the work of construction shall be done by hand labor so far as is practicable. [C35,§6066-f3; C39,§6066.26; C46, 50, 54, §394.3]

**394.4 Applicable statutes.** Chapter 23 of the Code, except sections 23.12 to 23.16, inclusive, shall be applicable to contracts for the improvements herein provided for. [C35,§6066-f4; C39,§6066.27; C46, 50, 54,§394.4]

**394.5 Garbage disposal plants—fees.** Cities and towns may by ordinance provide a schedule of fees to be charged for the collection and disposal of garbage and may pay the cost of construction, extending, repairing, maintaining, and operating garbage disposal plants and/or incinerating plants out of the earnings of such plant; revenue bonds, payable solely and only out of the earnings of such plant, may be issued in the manner provided in this chapter. [C35,§6066-f5; C39,§6066.28; C46, 50, 54, §394.5]

#### **394.6 Self-liquidating contracts — bonds.**

Cities and towns and sanitary districts incorporated under the provisions of chapter 358, are authorized to borrow money from the federal government or an agency thereof for the purpose of constructing and operating the improvements referred to in this chapter, including the grading and filling of lands under their control, by issuing revenue bonds, payable as hereinafter provided, and deliver such bonds to the federal government or an agency thereof; or such cities and towns and sanitary districts may borrow money by issuing revenue bonds, payable as hereinafter provided, and to deliver such bonds to the contractor or contractors in payment for the construction of any improvements referred to in this chapter; or such cities and towns and sanitary districts may sell such bonds at a public sale upon the same conditions provided by chapter 75, insofar as the provisions of said chapter 75 are otherwise applicable to bonds issued by such cities and towns and sanitary districts, and may use the proceeds from the sale of such bonds to pay all or any part of the cost of construction of said improvements. As evidence of such loan, such city or town or sanitary district may issue its bonds payable solely and only from the revenues derived from such improvement. Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of construction, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this chapter are declared to be negotiable instruments, shall be executed by the mayor and clerk of the municipality or the trustees of the sanitary district and shall be sealed with the corporate seal of the municipality or sanitary district. The principal and interest of said bonds shall be payable solely and only from the special fund herein provided for such payment, and said bonds shall not, in any respect, be a general obligation of such city or town or sanitary district, nor shall they be payable in any manner by taxation, nor shall the municipality or sanitary district be in any manner liable by reason of the earnings being insufficient to pay said bonds. All the details pertaining to the issuance of such bonds and the terms and conditions thereof, shall be determined by ordinance of the municipality or sanitary district. [C35,§6066-f6; C39,§6066.29; C46, 50, 54,§394.6; 56GA, ch 158,§2]

Referred to in §384.3(11)  
Negotiable instruments, ch 541

#### **394.7 Previous proceedings — other funds.**

This chapter shall be deemed to apply to all proceedings heretofore taken by cities and towns for the construction of any improvement provided for herein, notwithstanding that a portion of the funds for the construction of any such improvement shall have been derived from sources other than the issuance of bonds hereunder. [C39,§6066.30; C46, 50, 54, §394.7]

**394.8 Pledge of net earnings.** Before the issuance of any such bonds, the council of the municipality by ordinance shall pledge the net earnings of the works to the payment of said bonds and the interest thereon, and shall provide that the same shall be set apart as a sinking fund for that purpose. [C35,§6066-f7; C39, §6066.31; C46, 50, 54,§394.8]

**394.9 Self-liquidating rates — lien on premises.** The city or town council shall have power by ordinance, to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses such works, by or through any part of the sewage system of the city or town, or that in any way uses or is served by such works, and may change and readjust such rates or charges from time to time and to charge and collect proper rates and charges for landing, wharfage, dockage, swimming, and golfing. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, replacements, and maintenance of the works, and for the payment of the sums herein required to be paid into a sinking fund, which said fund shall be sufficient to meet the principal and interest and other charges, except rates or charges for the use of swimming

pools and golf courses, of the bonded indebtedness provided for herein. All such rates or charges if not paid as by the ordinance provided, when due, shall constitute a lien upon the premises served by such works, and shall be collected in the same manner as taxes. [C35, §6066-f8; C39,§6066.32; C46, 50, 54,§394.9]

**394.10 Chapter applicable to municipal docks.** All of the provisions of this chapter relating to the borrowing of money, and issuing revenue bonds for wharves, docks and piers, including the grading and filling of lands, and for the payment thereof, shall be applicable to chapter 384. [C50, 54,§394.10]

**394.11 Scope of chapter.** The provisions of this chapter shall be deemed to apply to the construction, equipment, operation and maintenance of any sewage treatment plant or plants, by any sanitary district operating under the provisions of chapter 358; and any such sanitary district may, in addition, use the power conferred upon it by chapter 358 to apply any of the provisions of this chapter relating to the construction, equipment, operation and maintenance of any sewage treatment plant or plants of such sanitary district, or any combination of the power relating to sewage treatment plants granted such sanitary district by the provisions of this chapter and chapter 358. [C50, 54,§394.11]

CHAPTER 395

PROTECTION FROM FLOODS

Referred to in §404.8(5)  
 Applicable to all cities and towns  
 Alternate tax levy, see §404.8(5)

- 395.1 Authorization.
- 395.2 Condemnation.
- 395.3 Petition—plat and schedule.
- 395.4 Resolution of necessity.
- 395.5 Notice—objections—amendment.
- 395.6 Bids—contract.
- 395.7 Notice—sealed proposals.
- 395.8 Deposit with bid.
- 395.9 Bond to maintain.
- 395.10 Bond to perform.
- 395.11 Assessment.
- 395.12 Statutes governing.
- 395.13 Appeal—waiver.
- 395.14 Objections waived.
- 395.15 Notice to railway companies.
- 395.16 Duty to construct.
- 395.17 Construction by city.
- 395.18 Condemnation—title.

- 395.19 Streets extended.
- 395.20 Filling abandoned channel.
- 395.21 Assessments exceeding one-fourth value.
- 395.22 Levy for deficiency.
- 395.23 Certification to county auditor.
- 395.24 Assessments and levies pledged.
- 395.25 General obligation bonds—indebtedness —taxes.
- 395.26 Federal aid.
- 395.27 Right of way.
- 395.28 Division of expense.
- 395.29 Contributions—maintenance assumed.
- 395.30 Street fund may be used.
- 395.31 Assessments.
- 395.32 Levy and collection.
- 395.33 Contract with railroad company.
- 395.34 Flood control divisions.

**395.1 Authorization.** Cities and towns are hereby empowered to establish a flood control system for the protection or reclamation of property situated within the limits of such cities or towns, from floods or highwaters and to protect property in such cities from the effects of flood water, whenever the establishment of such a flood control system shall, in the judgment of the city council, or other gov-

erning body, of such city, be conducive to public convenience and welfare, and such cities and towns may in accordance with the provisions of this chapter, deepen, widen, straighten, alter, change, divert, or otherwise improve watercourses within or without their limits, by constructing levees, embankments, structures, impounding reservoirs, or conduits, and improve, widen and establish streets, alleys,

and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such flood control activities under the terms of this chapter.

The establishment, construction and operation of a flood control system as authorized by this section is declared to be a local improvement, conferring special benefits upon property affected thereby. [SS15,§849-a; C24, 27, 31, 35, 39,§6080; C46, 50, 54,§395.1; 57GA, ch 194,§§1, 2]

Referred to in §§395.3, 395.26

**395.2 Condemnation.** Cities and towns may acquire by gift, purchase or condemn, and appropriate, private property, within or without the limits of such cities and towns, including right to cross railroad right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this chapter, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this chapter, and the cost of such property shall be included in the cost of the improvement. All provisions of the law relating to the condemnation of lands for public purposes shall apply to the provisions hereof in and so far as applicable. [C27, 31, 35,§6080-b1; C39, §6080.1; C46, 50, 54,§395.2]

Referred to in §395.26

**395.3 Petition—plat and schedule.** Upon the filing of a petition requesting the exercise of the powers mentioned in section 395.1, signed by one hundred resident taxpayers of the city or town, the council may, or on its own motion it may, direct the city engineer or other competent person to make necessary surveys, to prepare plans and specifications for doing the work, to furnish the council with an estimate of the cost, including an estimate of the damages to property, if any, and a map or plat showing the boundaries of the district which will be specially benefited by such improvement, and all property which will, in any way, be specially benefited by such improvement may be included within the boundaries of the district, a schedule showing, as nearly as may be, the ownership and value of each lot or parcel of land or other property therein as shown by the last assessment roll, and an estimate of the benefit to each lot or parcel of land and to any railway or street railway within such improvement district. The plans, specifications, estimates, maps, plats, and schedule so prepared shall be filed with the clerk. [S13, §849-b; C24, 27, 31, 35, 39,§6081; C46, 50, 54, §395.3]

**395.4 Resolution of necessity.** If the council upon receiving the said plans, specifications, estimates, maps, plats, and schedules, shall approve, or modify and approve, the same, it shall in a proposed resolution, of which the plat and schedule is made a part by reference,

declare the necessity and advisability of such improvement, describing the same in general terms, stating the estimated cost thereof, and fixing the boundaries of the territory or district specially benefited. [S13,§849-c; C24, 27, 31, 35, 39,§6082; C46, 50, 54,§395.4]

38GA, ch 285,§4, editorially divided

**395.5 Notice—objections—amendment.** The council shall cause fourteen days notice of the time when said resolution will be considered for passage to be given by two publications in some newspaper of general circulation published in the city, the last of which shall be not less than two nor more than four weeks prior to the time fixed for its consideration, at which time the owners of the property affected by such improvement may appear and make objections in writing to the contemplated improvement, to the assessment district, or to their assessments, as shown by the plat and schedule, or to the passage of such proposed resolution, at which hearing the district or the assessments may be changed, and the resolution be amended and passed, or passed as proposed. [S13,§849-c; C24, 27, 31, 35, 39,§6083; C46, 50, 54,§395.5]

**395.6 Bids—contract.** When the making of any such improvement is ordered, the council shall advertise for bids and may enter into a contract or contracts for furnishing the labor and materials for doing the work. [S13,§849-d; C24, 27, 31, 35, 39,§6084; C46, 50, 54,§395.6]

**395.7 Notice—sealed proposals.** All contracts for such improvement shall be let in the name of the city to the lowest bidder, by sealed proposals, upon giving notice for at least ten days by two publications in a newspaper published in said city, which notice shall state as nearly as practicable the extent of the work, the one or more kinds of material for which bids will be received, when the work shall be done, the terms of payment, and whether a maintenance fund shall be required, and the time the proposals will be received and acted upon. All bids may be rejected and new bids invited. [S13,§849-d; C24, 27, 31, 35, 39,§6085; C46, 50, 54,§395.7]

38GA, ch 285,§6, editorially divided

**395.8 Deposit with bid.** All bids must be accompanied, in a separate envelope, with a certified check payable to the order of the city treasurer, in the sum named in the notice for bids, as security that the bidder will, if his bid is accepted, enter into a contract for the doing of the work, and will give bond as required by this chapter. All such checks, where the bid has not been accepted, shall be returned to the respective bidders. [S13,§849-d; C24, 27, 31, 35, 39,§6086; C46, 50, 54,§395.8]

**395.9 Bond to maintain.** All contracts for making such improvement may contain a provision obligating the contractor and his bondsmen to keep the improvement in good repair for one year after the acceptance of the same

by the city, and bond shall be so conditioned as to conform to such provision. [S13,§849-d; C24, 27, 31, 35, 39,§6087; C46, 50, 54,§395.9]

**395.10 Bond to perform.** Each contractor for such improvement, or part thereof, shall give bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and suit on such bond may be brought in the county in which the council holds its sessions. [S13,§849-d; C24, 27, 31, 35, 39,§6088; C46, 50, 54,§395.10]

**395.11 Assessment.** When the work is contracted for, the council shall assess the lands and other property included within the improvement district for such part of the cost of the improvement as shall be equal and in proportion to the benefit conferred by the improvement, but not in excess of twenty-five percent of the value of said lands and other property after the improvement shall have been made. [S13,§849-e; C24, 27, 31, 35, 39,§6089; C46, 50, 54,§395.11]

Similar provision, §391.48

**395.12 Statutes governing.** The levy of the assessment, the filing of the certificate of assessment, the payment of interest on installments, the payment of the installments of assessment, and the sale of property for unpaid assessments shall all be in conformity with sections 391.34 to 391.37, inclusive, and 391.57 to 391.67, inclusive. [S13,§849-e; C24, 27, 31, 35, 39,§6090; C46, 50, 54,§395.12]

**395.13 Appeal—waiver.** Any person aggrieved by the action of the council in making any of the assessments herein provided for, may appeal therefrom to the district court of the county in which it is made, within twenty days of the date of the assessment, and have the right to review the action of the council in the said court, in the manner now provided by law. [C24, 27, 31, 35, 39,§6091; C46, 50, 54,§395.13]

38GA, ch 285,§11, editorially divided

**395.14 Objections waived.** All objections to errors, irregularities, or inequalities in the making of said special assessments, or in any of the prior proceedings or notices not made before the council at the time and in the manner herein provided, shall be waived. [C24, 27, 31, 35, 39,§6092; C46, 50, 54,§395.14]

Similar provisions, §§389.32, 391.19, 391.56

**395.15 Notice to railway companies.** If the improvement contracted for is to cross the right of way of a railroad or street railway company, the city clerk shall cause to be served upon such company, in the manner for the service of original notices, a notice in writing stating the nature of the improvement, the place where it will cross the right of way of such company, and full requirements for its complete construction across such right of way as shown by the plans, specifications, maps, and plats of the engineer, and directing such company to construct, within a time fixed by the city council, not exceeding six months from

the date of the service of the notice, in such manner as not to interfere with the construction of the diverted channel, and in such manner as not to obstruct, impede, or interfere with the free flow of water, the necessary bridge, or bridges, where the diverted channel crosses the right of way. [C24, 27, 31, 35, 39, §6093; C46, 50, 54,§395.15]

38GA, ch 285,§12, editorially divided

**395.16 Duty to construct.** Upon receiving such notice it shall be the duty of such railroad or street railway company, to provide the necessary temporary structure to carry its tracks during the constructing of the channel, and to construct the necessary permanent bridge, or bridges, within the time specified in said notice. [C24, 27, 31, 35, 39,§6094; C46, 50, 54,§395.16]

**395.17 Construction by city.** If such company shall fail, neglect, or refuse to comply with the notice within the time fixed, the temporary structure may be provided, and the bridge, or bridges, may be built, under the supervision of the engineer in charge of the channel improvement, and such railroad or street railway company, shall be liable for the cost of the construction of such structures, in addition to its liability for assessment for special benefits as other property is assessed, and the cost of such structures may be collected by the city from the company in any court having jurisdiction. [C24, 27, 31, 35, 39, §6095; C46, 50, 54,§395.17]

**395.18 Condemnation—title.** The title to all lands purchased, condemned or donated hereunder for the purposes of establishing a flood control system for the protection or reclamation of property shall be taken in the name of the city or town and if thereafter it shall be deemed advisable to sell any portion of the land purchased, condemned or otherwise acquired, the proceeds of such sale shall be placed to the credit of the flood control system and shall be applied to the cost of construction and operation of the system. Any income from any such lands, while title is held by the city or town shall be placed to the credit of the flood control system and shall be applied to the cost of the construction and operation of the system. [S13,§849-g; C24, 27, 31, 35, 39,§6096; C46, 50, 54,§395.18]

Condemnation, ch 472

**395.19 Streets extended.** A street or alley intersecting the stream or old channel may be projected across it so as to make a continuous street or alley, and the expense of filling all such streets or alleys shall be included in and paid as a part of the costs of such improvements. [S13,§849-f; C24, 27, 31, 35, 39,§6097; C46, 50, 54,§395.19]

**395.20 Filling abandoned channel.** There may be included as a part of the improvement the work of filling the old channel at other places than at the intersection of the same by a street or alley and, if included, the city engineer shall be required to furnish plans



and specifications, estimates, plats, and schedules, and the ownership and value of each lot or parcel of land in the old channel; and, when the improvement is completed, the council shall assess the cost of such filling against the lots and land or parts of lots or land in the channel wholly or partly filled. [C24, 27, 31, 35, 39, §6098; C46, 50, 54, §395.20]

40GA, ch 128, §2, editorially divided

**395.21 Assessments exceeding one-fourth value.** The limitation in section 391.48, relative to twenty-five percent of the value, shall not be applicable in the assessment of the cost of said work of filling, provided, however, that such cost shall not exceed the benefits conferred on the tract so filled. [C24, 27, 31, 35, 39, §6099; C46, 50, 54, §395.21]

**395.22 Levy for deficiency.** After the contract or contracts for making such improvement have been entered into, the council shall ascertain the cost of the work, including the cost of property purchased or condemned and appropriated, and the cost of filling the old channel as ordered by the council, and the cost of surveys, plans and specifications, estimates, notices, inspection, and supervision, and the preparing of plats and schedules of assessments, and shall thereupon by resolution levy the whole of the said cost remaining, after deducting the amount of the special assessments for benefits conferred upon the lands and other property within the improvement district, at one time as a special tax. Such tax shall be levied upon all the taxable property of the city except moneys and credits, and the levy shall not exceed in the aggregate one and one-fourth mills\* per year for all improvements made. [S13, §849-e; C24, 27, 31, 35, 39, §6100; C46, 50, 54, §395.22]

Referred to in §§395.34, 404.8(5)

\*Alternate levy, see §404.8(5)

**395.23 Certification to county auditor.** A certificate of such levies and of the special assessments for benefits conferred upon lands and property within the improvement district shall then be filed by the clerk with the auditor of the county or counties in which the city is located, and thereupon such taxes and assessments shall be placed upon the tax lists. [S13, §849-e; C24, 27, 31, 35, 39, §6101; C46, 50, 54, §395.23]

**395.24 Assessments and levies pledged.** The entire cost of constructing any improvement authorized by this chapter, and any bonds or certificates issued in anticipation thereof, shall be paid out of the special taxes and special assessments authorized by this chapter; and no part of said cost, and no part of any such bonds or certificates, shall ever be a charge upon or paid out of any other fund or the proceeds of any other assessment, tax, or levy. [S13, §849-i; C24, 27, 31, 35, 39, §6102; C46, 50, 54, §395.24]

**395.25 General obligation bonds — indebtedness—taxes.** Cities and towns are hereby authorized to contract indebtedness and to issue

general obligation bonds to provide funds for the payment of the cost of improvements contemplated by this chapter by following either of the following procedures:

Proceedings for the issuance of said bonds may be initiated by the governing body of the municipality without an election pursuant to notice and hearing as prescribed by section 23.12 or the governing body of the municipality may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal election. Notice of such election shall be given in the manner prescribed in section 37.4 and if the vote at said election in favor of the issuance of such bonds is equal to at least sixty percent of the total vote cast for and against the proposition at said election, the governing body of the municipality shall issue the bonds and make provisions for the payment thereof as hereinafter provided.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become so indebted in an amount which, together with all other indebtedness of said municipality, shall exceed five percent of the actual value of the taxable property within said city or town as shown by the last state and county tax lists previous to incurring such indebtedness. The indebtedness incurred for the purpose herein provided shall not be considered an indebtedness incurred for general or ordinary purposes within the meaning and application of section 407.1 and shall not be charged against or counted as part of the one and one-fourth percent available for general or ordinary purposes until the other three and three-fourths percent of the five percent of indebtedness permitted by statute has been exhausted.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [S13, §849-j; C24, 27, 31, 35, 39, §6103; C46, 50, 54, §395.25]

Maturity and payment, ch 76

**395.26 Federal aid.** Cities and towns may in accordance with the provisions of this chapter accept federal aid in the doing of the acts provided in section 395.1, and may assume such portion of the cost thereof not discharged by such federal aid. They shall have power of condemnation as provided in section 395.2. [C50, 54, §395.26]

Referred to in §395.28

**395.27 Right of way.** The cost of all right of way acquired by purchase or condemnation

may be borne by the city or town together with any other property rights which may be required in furtherance of such projects and the work of actual construction and the cost thereof may be borne by the federal government. [C50, 54,§395.27]

Referred to in §395.28

**395.28 Division of expense.** Sections 395.26 to 395.30, inclusive, contemplate that the actual direction of the project and the doing of the work in connection therewith is assumed by the federal government and that the city or town provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this chapter shall apply. [C50, 54,§395.28]

**395.29 Contributions—maintenance assumed.** Cities and towns in furtherance of such flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes or other construction and to do all other acts required by the federal government in maintaining the work of construction when completed. [C50, 54,§395.29]

Referred to in §395.28

**395.30 Street fund may be used.** The council shall have power to allocate a portion of the street fund for the purchase of right of way or the maintenance of the completed flood control project. [C50, 54,§395.30]

Referred to in §395.28

**395.31 Assessments.** Any city or town that shall establish a flood control system pursuant to this chapter may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area comprising the improvement district. Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area, in proportion to the benefit conferred. Such special assessment for the operation and maintenance of any flood control system authorized by this chapter shall be made in the same limitations as required by this chapter for the original special assessment for any such improvement. [C50, 54,§395.31]

**395.32 Levy and collection.** All special assessments for the purpose of providing funds for the operation and maintenance of a flood control system shall be levied at one time by resolution of the council on property affected

thereby. The provisions of section 391.61, shall apply to the certification of such levy. The provisions of sections 391.58, 391.60, and 391.62 to 391.68, inclusive, shall apply to the collection of such assessments, provided, in the case of special assessments for maintenance and operation of any flood control system, such assessments shall be due and payable within thirty days after the certification of such levy if the amount of the assessment is ten dollars or less, and the entire amount of such assessment if in excess of ten dollars shall be due and payable at the same time and in the same manner as the March semiannual payment of ordinary taxes. The provisions of sections 404.19\* and 404.21\* shall apply to special assessments as provided by this section. [C50, 54,§395.32]

\*Sections 404.22 and 404.23, Code 1950, repealed by 54GA, ch 159 and §§404.19 and 404.21 enacted in lieu thereof

**395.33 Contract with railroad company.** Any city or town may contract with any railroad company for the use of railway rights of way, and embankments, and other railroad property which can be utilized for the purpose of flood protection or control by such city, as part of its flood control system, for any period not exceeding ninety-nine years. [C50, 54,§395.33]

**395.34 Flood control divisions.** Whenever in any municipal corporation proceedings have been or shall be begun for the purpose of providing flood protection under the provisions of this chapter, the council shall have power to divide the work into parts, sections, or districts, and determine what property would be benefited by the work or improvement in each part, section, or district; to omit parts of said work or any part, section or district; and to contract for any part, section, or district separately and proceed therewith the same as if the entire work or improvement was contracted for, done, or made. Whenever the tax provided for in section 395.22 has not been levied beginning on the date fixed in the resolution of necessity and in the proposition submitted to a vote of the electors, and a part of the period in which such levy is authorized to be made by such vote has expired without such levy having been made, and no certificates or bonds have been issued or sold for the payment of the improvement as provided in this chapter, the council shall have the power to continue the levy provided for in section 395.22 and in the proposition theretofore submitted to a vote of the electors, for a period not exceeding twenty years, including the several years, if any, for which such tax has heretofore been levied. [S13,§1056-a41; C24, 27, 31, 35, 39,§6574; C46, 50,§416.99; C54,§395.34]

## CHAPTER 396

## BONDS AND CERTIFICATES FOR STREET IMPROVEMENTS AND SEWERS

Referred to in §§358.22, 389.9, 391A.33(5), 392.11, 396.11, 420.255, 420.284

Applicable to all cities and towns

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**396.1 Certificates authorized.** The council may provide by resolution for the issuance of street improvement and sewer certificates payable to the bearer or to the contractors who have constructed any street improvement or sewer or completed part thereof, in payment or part payment therefor and may negotiate the same. [C97,§841; C24, 27, 31, 35, 39,§6104; C46, 50, 54,§396.1]

40ExGA, SF 171,§1, editorially divided

**396.2 Requirements.** Each of said certificates shall state the amount of one or more assessments or the part thereof made against the property designated therein, including railways and street railways, and the owners thereof liable to assessment for the cost of the same. Said certificates shall bear interest at a rate not exceeding six percent per annum, payable annually or semiannually, as fixed by the council. [C97,§841; C24, 27, 31, 35, 39,§6105; C46, 50, 54,§396.2]

**396.3 Payment.** Said certificates may be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount paid to be applied to the payment of the certificate issued therefor. [C97,§841; C24, 27, 31, 35, 39,§6106; C46, 50, 54,§396.3]

**396.4 Rights of bearer.** Such certificate shall transfer to the bearer all of the rights and interest of the city or town in every such assessment or part thereof, described therein, and shall authorize the bearer to collect and receive every assessment embraced in the certificate by or through any of the methods provided by law for their collection as the same may mature. [C97,§841; C24, 27, 31, 35, 39, §6107; C46, 50, 54,§396.4]

40ExGA, SF 171,§2, editorially divided

**396.5 Limitation on sale.** No certificate shall be issued or negotiated by the city or town for less than its par value with accrued interest up

to the date of the delivery thereof. [C97,§841; C24, 27, 31, 35, 39,§6108; C46, 50, 54,§396.5]

**396.6 Bonds authorized.** For the purpose of providing for the payment of the assessed cost of any street improvement or sewer which is to be or has been assessed upon property subject to assessment therefor, including railways and street railways liable for the payment thereof, the council may by resolution provide for the execution and delivery of bonds for the amount of the assessed cost or any part thereof in anticipation of the deferred payment of assessments levied therefor. [C97,§842; C24, 27, 31, 35, 39,§6109; C46, 50, 54,§396.6]

40ExGA, SF 171,§3, editorially divided  
Referred to in §391.19

**396.7 Designation — amount.** Such bonds shall be called street improvement bonds or sewer bonds and be issued in amounts of one hundred dollars or multiples thereof, not exceeding one thousand dollars, except that one bond, which shall not exceed one thousand dollars, may be issued for the amount necessary to make up the exact amount of such cost. [C97,§842; C24, 27, 31, 35, 39,§6110; C46, 50, 54,§396.7]

**396.8 Bonds kept separate.** Street improvement bonds shall not include any sewer assessments, nor sewer bonds any street improvement assessments. [C97,§842; C24, 27, 31, 35, 39,§6111; C46, 50, 54,§396.8]

**396.9 Bonds — series.** Street improvement and sewer bonds, respectively, issued for any one levy shall all bear the same date and be divided into as many series as there are installment payments of said special assessment, and each series shall be as nearly equal in amount as practicable. [C97,§843; C24, 27, 31, 35, 39, §6112; C46, 50, 54,§396.9]

40ExGA, SF 171,§4, editorially divided

**396.10 Maturity—name of street—interest.** Each series of bonds shall mature on the first

day of either April, May, or June, as may be determined by the council, in the years in which the installments of said special taxes come due, shall bear the name of the street, avenue, highway, alley, or district in which said street improvement or sewer is located, and shall bear interest at a rate not exceeding five percent per annum, payable annually or semiannually, and coupons for said interest shall be attached thereto. [C97,§843; C24, 27, 31, 35, 39,§6113; C46, 50, 54,§396.10]

**396.11 Form.** Said bonds shall be signed by the mayor, countersigned by the clerk, and sealed with the corporate seal, and coupons shall be attested by the signature of the clerk, and shall be substantially in the following form, but subject to changes that will conform them to the resolution of the council, to wit:

The city (or town) of ....., in the state of Iowa, promises to pay as hereinafter stated, to the bearer hereof, on the..... day of ....., the sum of ..... dollars, with interest thereon at the rate of ..... per cent per annum, payable ..... annually, on the presentation and surrender of the interest coupons hereto attached. Both principal and interest of this bond are payable at the ..... bank in the city (or town) of ....., state of ..... This bond is issued by the city (or town) of ..... under and by virtue of chapter 396 of the Code of Iowa and the resolution of said city (or town) duly passed on the ..... day of ....., 1.....

This bond is one of a series of bonds of like tenor, date, and amount, numbered from.... to .... and issued for the purpose of defraying the cost of improving, curbing, and paving a portion of ..... street or alley (or constructing a sewer on ..... street or alley), as described in said resolution, in said city (or town) which cost is payable by the abutting and adjacent property along said improvements, and is made by law a lien on all said property. It is payable in ..... equal annual installments, with interest on all deferred payments at the rate of five percent per annum, but only out of the ..... fund created by the collection of said special tax, and said fund can be used for no other purpose.

It is hereby certified and recited that all the acts, conditions, and things required to be done, precedent to and in issuing this series of bonds, have been done, happened, and performed, in regular and due form, as required by law and said resolution, and for the assessment, collection, and payment hereon of said special tax, the full faith and diligence of said city (or town) of ..... are hereby irrevocably pledged.

In testimony whereof, the city (or town) of ....., by its council, has caused this bond to be signed by its mayor and countersigned by its city (or town) clerk, and the seal of said city (or town) to be there-

to affixed, this ..... day of ....., 1.....

City (or Town) Clerk. Mayor.  
No.....

On the ..... day of ....., the city (or town) of ....., Iowa, promises to pay to bearer, as provided in said bond, the sum of ..... dollars, at the ..... bank, in the city (or town) of....., being ..... months interest due that day on its improvement bond No. ...., dated ....., 1.....

Attested.

City (or Town) Clerk.  
[C97,§843; C24, 27, 31, 35, 39,§6114; C46, 50, 54, §396.11]

**396.12 Registration and delivery.** When such bonds have been issued they shall be delivered to the clerk, who shall register them in a book or books to be kept for that purpose, countersign them, and then deliver the same to the city treasurer or some bank selected by the council. [C97,§844; C24, 27, 31, 35, 39,§6115; C46, 50, 54,§396.12]

C97,§844, editorially divided

**396.13 Security and reports.** The council may require of the treasurer or bank such security or such additional security as it may think necessary to secure the payment in full of the proceeds thereof. The city treasurer shall report to the clerk the number of bonds delivered by him, and the amount received therefor, or for which credit has been given by the contractor. [C97,§844; C24, 27, 31, 35, 39,§6116; C46, 50, 54,§396.13]

**396.14 Sale.** The bonds shall be sold at public sale in the manner provided for by chapter 75 or by any other law in force relative to the sale of such bonds, but shall not be sold or negotiated for less than their par value with accrued interest from date to the time of delivery thereof. [C97,§845; C24, 27, 31, 35, 39, §6117; C46, 50, 54,§396.14]

C97,§845, editorially divided

**396.15 Proceeds pledged.** All the proceeds of bonds and of certificates negotiated shall be paid to the city treasurer, and shall be used only to pay for the cost of street improvements or sewers included in the assessment or assessments pledged to the payment thereof. [C97, §845; C24, 27, 31, 35, 39,§6118; C46, 50, 54,§396.15]

**396.16 Accounts required.** All money received by said treasurer as proceeds of said bonds or certificates shall be kept in the same manner and subject to all the regulations regarding other money of the city, except that he shall keep an account of each levy of such special assessments, and all interest received and paid shall be credited and charged to such fund. [C97,§845; C24, 27, 31, 35, 39,§6119; C46, 50, 54,§396.16]

**396.17 Payment regulated.** No money received by the city treasurer from the sale of

street improvement and sewer bonds or certificates shall be paid out, nor shall any certificate be issued to the contractor or sold, except upon the resolution of the council ordering the same; and no such resolution for the delivery of any bonds or certificates, or the payment of any of the proceeds of said bonds or certificates, shall be made until the certificate of the city engineer or other competent person selected has been filed, stating that the work contracted for or a completed part thereof, as the case may be, has been completed according to the terms and stipulations of the contract. [C97,§846; C24, 27, 31, 35, 39,§6120; C46, 50, 54, §396.17]

**396.18 Payment from special fund.** Such street improvement and sewer certificates, bonds, and coupons shall be payable out of funds derived from the special assessments and interest thereon pledged to the payment of the same. [C97,§847; C24, 27, 31, 35, 39,§6121; C46, 50, 54,§396.18]

C97,§847, editorially divided

**396.19 Limitation on issue.** Such certificates or bonds shall not be delivered in excess of the special assessments levied. [C97,§847; C24, 27, 31, 35, 39,§6122; C46, 50, 54,§396.19]

**396.20 Liability of city.** Such certificates, bonds, and coupons shall not make the city liable in any way, except for the proper application of said special assessments. [C97,§847; C24, 27, 31, 35, 39,§6123; C46, 50, 54,§396.20]

**396.21 Interest—temporary loan.** If any interest shall become due on any of said bonds when there is no fund from which to pay the same, the council may make a temporary loan for the payment thereof, which loan shall be repaid from the special assessments and interest pledged to secure said bonds, but in case of purchase by the city at tax sale of the property on which such tax is levied, it shall then be repaid from the street fund or sanitation fund. [C97,§847; C24, 27, 31, 35, 39,§6124; C46, 50, 54,§396.21]

**396.22 Sewer bonds authorized — form.** Cities and towns are hereby authorized to contract indebtedness and to issue bonds for the purpose of repaving, reconstruction, surfacing, resurfacing, or repairing of streets previously improved by grading or in any manner authorized by chapter 391, or building and constructing, extending and improving, sewers, sewer outlets and/or purifying plants. Said bonds shall be payable in not more than twenty annual installments and at interest not exceeding five percent per annum, and shall be made payable at such place and be of such form as the council shall by ordinance designate; but no city or town shall become indebted in excess of five percent of the actual value of the taxable property of said city or town as shown by the last preceding assessment roll. The indebtedness so incurred for repaving, reconstruction, surfacing, resurfacing, or repairing of streets previously improved by grading or

in any manner authorized by chapter 391 or building or constructing, extending and improving, sewers, sewer outlets and/or purifying plants shall not be considered an indebtedness incurred for general or ordinary purposes.

Any city or town issuing bonds to pay for street improvements as authorized in this section is hereby granted authority to allocate a fixed portion of the street fund not to exceed in any year the amount received from allocations of the road use tax fund to the payment of the principal and interest of said bonds as the same come due. [C24, 27, 31, 35, 39,§6125; C46, 50, 54,§396.22]

Referred to in §§391A.35, 391A.40, 396.23  
Special limitation in certain towns of less than 1,000 population, 52GA, ch 314,§1

**396.23 Interpretation.** Section 396.22 shall be construed as granting additional power, without limiting the power already existing, in cities and towns. [C24, 27, 31, 35, 39,§6126; C46, 50, 54,§396.23]

Referred to in §391A.35

#### REFUNDING BONDS

**396.24 Issuance—interest.** Cities and towns may issue refunding bonds to pay off and take up bonds issued in payment for street improvements and sewers, or to refund any part thereof. No such refunding bonds shall bear an interest rate in excess of that of the bonds refunded. [C27, 31, 35,§6126-a1; C39,§6126.1; C46, 50, 54,§396.24]

**396.25 Form and amount.** Bonds thus issued shall substantially conform to the provisions of this chapter, and the face amount thereof shall be limited to the amount of the unpaid special assessments with the interest thereof of the particular issue of bonds sought to be refunded. [C27, 31, 35,§6126-a2; C39, §6126.2; C46, 50, 54,§396.25]

**396.26 Limitation on proceeds.** Said refunding bonds or their proceeds shall be used only to pay street improvement or sewer bonds so taken up. [C27, 31, 35,§6126-a3; C39,§6126.3; C46, 50, 54,§396.26]

**396.27 Expense.** The expense of such refunding bonds shall be paid out of the street or sanitation funds. [C27, 31, 35,§6126-a4; C39, §6126.4; C46, 50, 54,§396.27]

**396.28 Retirement.** When refunding bonds shall be issued to pay street improvement or sewer bonds, all special assessments and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and to the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and carry special assessments and taxes, to create liens upon property, and to establish sinking funds in respect to the bonds previously issued shall continue until refunding bonds shall be paid. [C27, 31, 35,§6126-a5; C39, §6126.5; C46, 50, 54,§396.28]

**396.29 Liability of city or town.** The city or town shall collect the special assessments

out of which the said bonds are payable and hold the same special and apart in trust for the payment of said refunding bonds, but it shall be in no way liable except for the proper application of said assessment. [C27, 31, 35, §6126-a6; C39, §6126.6; C46, 50, 54, §396.29]

**396.30 Primary road extension.** Whenever the state highway commission constructs or

aids in the construction of bridges, viaducts and grade separations on extensions of primary roads in any city or town, such city or town is hereby authorized to contract indebtedness and issue bonds in the manner provided in this chapter for the payment of its portion of the cost of such construction including damages to abutting property owners. [C50, 54, §396.30]

CHAPTER 397

HEATING PLANTS, WATER OR GAS WORKS, AND ELECTRIC PLANTS

Referred to in §§367.34, 398.2, 399.3, 420.297, 420.303  
Applicable to all cities and towns

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GENERAL PROVISIONS

**397.1 Cities and towns may purchase.** Cities and towns shall have the power to purchase, establish, erect, maintain, and operate within or without their corporate limits, heating plants, waterworks, gasworks, or electric light or power plants, with all the necessary reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants, and lease or sell the same. [C73, §§471-473; C97, §720; S13, §720; C24, 27, 31, 35, 39, §6127; C46, 50, 54, §397.1]

40ExGA, HF 172, §1, editorially divided  
Referred to in §397.6  
Similar power, §330.2

**397.2 Franchise may be granted.** They may grant to individuals or private corporations the authority to erect and maintain such works or plants for a term of not more than twenty-

- 397.23 Notice—service.
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JURISDICTION, SALE OF PRODUCTS, AND RATES

- 397.26 Jurisdiction of city.
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- 397.36 Water for military reservations.
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- 397.38 Transfer of surplus earnings.
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five years, and may renew, amend, or extend the terms of the grant; but no exclusive franchise shall be granted, amended, extended, or renewed. [C73, §473; C97, §720; S13, §720; C24, 27, 31, 35, 39, §6128; C46, 50, 54, §397.2]

Referred to in §397.6

**397.3 Utilization of waste.** Cities with a population of less than ten thousand may utilize the steam and excess power of such works or plants in the manufacture of artificial ice, and may install machinery and equipment therefor. [C24, 27, 31, 35, 39, §6129; C46, 50, 54, §397.3]

Referred to in §397.6

**397.4 Purchase of utility products.** They may enter into contracts with persons, corporations, or municipalities for the purchase of heat, gas, water, or electric current for either light or power purposes, for the purpose of selling

the same either to residents of the municipality or to others, including corporations, and shall have power to erect and maintain the necessary transmission lines therefor, either within or without their corporate limits, to the same extent, in the same manner, and under the same regulations, and with the same power to establish rates and collect rents, as is provided by law for cities having municipally owned plants. [C73,§471; C97,§720; S13,§720; C24, 27, 31, 35, 39,§6130; C46, 50, 54,§397.4]

Referred to in §§397.5, 397.6

**397.5 Election required — exception.** No such works or plants shall be authorized, established, erected, purchased, leased, or sold, or franchise granted, extended, renewed, or amended, or contract of purchase provided for in section 397.4 shall be entered into unless a majority of the legal electors voting thereon vote in favor of the same; provided, however, that any city or town may, without asking or obtaining the approval of a majority of its legal electors voting thereon, contract for periods of not to exceed five years at any one time for the exchange or interchange of electric energy between the facilities of said city or town and those of any other person, firm or corporation, or for the purchase of electric energy by said city or town when the facilities thereof have become inadequate by reason of accident, emergency or any other cause to serve properly all those persons entitled to be served thereby. [C73,§471; C97,§720; S13,§720; C24, 27, 31, 35, 39,§6131; C46, 50, 54,§397.5; 56GA, ch 199,§1]

Referred to in §§397.6, 397.15  
Vote required to issue bonds, §75.1

**397.6 Question submitted.** The council may order any of the questions provided for in sections 397.1 to 397.5, inclusive, submitted to a vote at a general or municipal election or at one specially called for that purpose, or the mayor shall submit said question to such a vote upon the petition of twenty-five property owners of each voting precinct in a city, or of fifty property owners of any incorporated town. [C97,§721; S13,§721; C24, 27, 31, 35, 39,§6132; C46, 50, 54,§397.6]

40ExGA, HF 172,§4, editorially divided

**397.7 Notice—time of election—costs.** Notice of the election shall be given by publication once each week for four consecutive weeks in some newspaper published in the county and of general circulation in the city or town. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. The person asking for the granting, renewal, or extension of a franchise shall pay the costs incurred in holding the election. [C97,§721; S13,§721; C24, 27, 31, 35, 39,§6133; C46, 50, 54,§397.7]

Referred to in §380.10

**397.8 General powers granted.** They shall have power:

1. *Condemnation.* To condemn and appropriate so much private property as may be necessary for the construction and operation

of said works or plants, and for the purpose of constructing and maintaining dams across the nonnavigable waters and watercourses of the state in forming reservoirs and sources of water to supply such waterworks and plants, as provided for the condemnation of land for city purposes.

2. *Bonds.* To issue bonds for the payment of the cost of establishing the same, including the cost of land condemned on which to locate them.

3. *Delegated power.* To confer by ordinance the power to appropriate and condemn private property for such purpose upon any individual or corporation authorized to construct and operate such works or plants. [C73,§474; C97,§722; S13,§722; C24, 27, 31, 35, 39,§6134; C46, 50, 54,§397.8]

Condemnation procedure, ch 472

#### PAYMENT FROM EARNINGS

**397.9 Contract authorized.** They shall have power to pay for any such plant, improvement or extension thereof out of the past earnings of the plant and/or out of the future earnings and/or may contract for the payment of all or part of the cost of such plant, improvement, or extension out of the future earnings from such plant, and may secure such contract by the pledge of the property purchased and the net earnings of the plant. [C31, 35,§6134-d1; C39,§6134.01; C46, 50, 54,§397.9]

44GA, ch 158,§1, editorially divided  
Referred to in §§397.15, 397.16

**397.10 Bonds.** For the purpose of defraying the cost of any such plant, improvement or extension thereof, any such city or town is hereby authorized to issue negotiable, interest-bearing revenue bonds payable from and secured by the net earnings of the plant, and may also be secured by the pledge of the property purchased, which bonds shall not constitute a general obligation of such city or town or be enforceable in any manner by taxation. Such revenue bonds may be delivered to the contractor or contractors in payment for such improvement or they may be sold by the municipality and the proceeds used to pay for such improvement; and/or such bonds may be used as collateral security for money borrowed to pay the cost of such improvement, such loan to be repaid only out of the net earnings of the plant. [C35,§6134-f1; C39,§6134.02; C46, 50, 54,§397.10]

Referred to in §397.15

**397.11 Refunding bonds.** Cities and towns shall have power to refund bonds or obligations issued for the cost of any heating plants, waterworks, gasworks, or electric light or power plants, or for any improvement or extension of any such plants, when such bonds or obligations are payable from and secured by the net earnings of any such plant and which bonds or obligations do not constitute a general obligation of such city or town, and shall have the power so to refund any such bonds or obligations when the same become due and payable, or prior thereto in any case where such

bonds or obligations reserve the right to prepay the same prior to the date fixed therein.

All such refunding bonds or obligations issued as authorized in this section, shall conform to the provisions of this chapter, shall be payable only from the net earnings of the plant, and shall not constitute a general obligation of any such city or town or be enforceable in any manner by taxation.

Such refunding bonds or obligations may be exchanged for outstanding bonds or obligations issued to pay for any such plant, or for any improvement or extension of any such plant; or such refunding bonds or obligations may be sold and the proceeds used only in payment of outstanding bonds or obligations issued to pay for any such plant, or for any improvement or extension of such plant. [C39, §6134.03; C46, 50, 54,§397.11]

Referred to in §397.15

**397.12 Form of bonds.** Such revenue bonds shall be substantially in the following form, to wit:

The city (or town) of ..... in the state of Iowa, for value received promises to pay to bearer, in the manner hereinafter specified, the sum of ..... dollars, lawful money of the United States of America, on the ..... day of ..... with interest on said sum from ..... until paid at the rate of ..... percent per annum, payable ..... annually on the ..... day of ..... and ..... in each year, on presentation and surrender of the interest coupons hereto attached; both principal and interest payable at .....

This bond is issued by the city (or town) of ..... pursuant to the provisions of ..... of the Code of Iowa and in conformity to a resolution of the (council or board of trustees of ..... ) of said city (or town), duly passed on the..... day of .....

This bond is one of a series of bonds of like tenor and date, numbered from .... to ....., is issued for the purpose of defraying the cost of .....; and is not a general obligation, but is payable solely and only out of the future earnings of said .....; said property purchased and the net earnings of ..... are pledged to the payment hereof. This bond is not payable in any manner by taxation, and under no circumstances shall the city (or town) be in any manner liable by reason of the failure of the said net earnings to be sufficient for the payment hereof.

In testimony whereof said city (or town) by its council (or board of ..... trustees) has caused this bond to be signed by its mayor and attested by its clerk (or by the chairman of said board of ..... trustees and attested by the clerk of said board), with the seal of said city (or town or board of ..... trustees) attached, this ..... day of ..... Attest:

(Form of Coupon.)

The treasurer of the city (or town) of ..... , Iowa, will pay to bearer out of the future earnings of ..... , ..... dollars on ..... , at ..... for ..... annual interest on its ..... revenue bond, number ..... , dated ..... Attest: ..... (Facsimile signature.)

..... Clerk of the city (or town, or of the board of trustees).

(When such revenue bonds are offered for sale to the public, there shall be printed in bold face type across the face of the bond the following provision:

“This bond is not a general obligation bond nor payable in any manner by taxation, but is payable only from the net earnings of the ..... plant of ..... , Iowa.” [C35,§6134-f2; C39,§6134.04; C46, 50, 54,§397.12] Referred to in §§386B.10, 397.15

**397.13 Sale of bonds—interest.** Such revenue bonds shall not be sold for less than par, plus accrued interest, and shall not be negotiated on a basis to yield more than six percent per annum, computed to maturity according to the standard tables of bond values. [C35, §6134-f3; C39,§6134.05; C46, 50, 54,§397.13] Referred to in §397.15

**397.14 Nature and requirements of contract.** Such contract shall not constitute a general obligation or be payable in any manner by taxation. Such contract shall specify the maximum rate that may be charged the consumers, including the municipality, and the city shall not increase or fix any rate beyond such maximum. Under no circumstances shall the city be in any manner liable by reason of the failure of the net earnings being sufficient for the payments provided in the contract. Such contract shall also specify the rate of interest to be charged. [C31, 35,§6134-d2; C39,§6134.06; C46, 50, 54,§397.14] Referred to in §397.15

**397.15 Interpretative clause—election requirement.** Nothing contained in sections 397.9 to 397.14, inclusive, shall be construed as authorizing an establishment of a plant without an election as required by section 397.5. And such proposition when submitted to an election shall state the maximum amount which may be expended for the establishment, construction, or acquisition of such plant. [C31, 35,§6134-d3; C39,§6134.07; C46, 50, 54, §397.15]

**397.16 Notice of proposed contract—publication.** Before any municipality shall enter into any such contract as provided in section 397.9, for the establishment of a plant, or for the extension or improvement of an existing plant, to cost five thousand dollars or more, the governing body proposing to make such contract shall give thirty days notice of its intention to



adopt proposed plans and specifications and proposed form of contract therefor, by publication once each week for two consecutive weeks in some newspaper of general circulation in the municipality and also in some newspaper of general circulation in the state of Iowa, the first publication of which shall be at least thirty days prior to the time of hearing fixed in said notice. [C31, 35, §6134-d4; C39, §6134.08; C46, 50, 54, §397.16]

**397.17 Contents of notice.** Such notice shall state as nearly as practicable the extent of the work; the kind of materials for which bids will be received; when the work shall be done; the time when the proposals will be acted upon; and shall also provide for competitive bids for the furnishing of electrical energy, gas, water or heat. [C31, 35, §6134-d5; C39, §6134.09; C46, 50, 54, §397.17]

**397.18 Execution of contract.** Pursuant to said notice and at such time and place as is fixed therein the governing body shall consider the said plans and specifications, form of contract, and offers and propositions submitted in connection therewith, also any bids for the furnishing of electrical energy, gas, water, or heat, together with any objections thereto by an interested party, and at such hearing or any adjournment thereof, shall have the power to adopt such offer or offers, propositions, or bids, and enter into such contract or contracts, as they shall deem to be to the best interest of the municipality. [C31, 35, §6134-d6; C39, §6134.10; C46, 50, 54, §397.18]

**397.19 Record of proceedings.** The clerk or recorder of said municipality shall keep a written record of the proceedings which shall contain a record of the bids or propositions offered, the names of the persons submitting the same, and names of any person or persons appearing as objectors thereto, with a brief statement of such objections, and a record of all actions of the governing body with relation to such proceedings. [C31, 35, §6134-d7; C39, §6134.11; C46, 50, 54, §397.19]

#### CONDEMNATION OF EXISTING PLANTS

**397.20 Special condemnation proceedings—limitation.** When any city or town shall have voted at an election to purchase, establish, erect, maintain, and operate heating plants, waterworks, gasworks, or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds therefor, and in such city or town there shall then exist any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of which utility has expired or been surrendered, and such owner and the city or town cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of such utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more

than one utility may be so acquired when such municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property. [C73, §474; C97, §722; S13, §722; C24, 27, 31, 35, 39, §6135; C46, 50, 54, §397.20]

Referred to in §§386B.2, 397.21

**397.21 Court of condemnation.** Upon the passage of the resolution as provided in section 397.20 and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the said court or chief justice shall within five days thereafter appoint as a court of condemnation three district court judges from three judicial districts, of whom one shall be from the district wherein the city or town is located, if not a resident of the city or town, and shall enter an order requiring said judges to attend as such court of condemnation at the county seat of the county in which said city or town is located within ten days thereafter, and the said district court judges shall so attend and shall constitute a court of condemnation. [SS15, §722-a; C24, 27, 31, 35, 39, §6136; C46, 50, 54, §397.21]

Referred to in §386B.2

**397.22 Procedure.** Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person or persons that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon such parties, but if the time for appearance occurs after the proceedings are begun, such proceedings may be reviewed by the court to give all parties a full opportunity to be heard. [SS15, §722-a; C24, 27, 31, 35, 39, §6137; C46, 50, 54, §397.22]

Referred to in §386B.2

**397.23 Notice—service.** Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees, and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice thereof and of the time and place of meeting of said court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication. [SS15, §722-a; C24, 27, 31, 35, 39, §6138; C46, 50, 54, §397.23]

Referred to in §386B.2

Time and manner of service, R.C.P. 53, 56(a), and 60

**397.24 Powers of court—duty of clerk—vacancy.** The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions,

require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. Such duties and the method of procedure and condemnation, including provisions for appeal, shall, except as herein otherwise specifically provided, be, as nearly as may be, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city or town is located shall perform all of the duties required of the sheriff in such condemnation; and in case of a vacancy in the court, such vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of such vacancy, the court may review any evidence in its record. [SS15,§722-a; C24, 27, 31, 35, 39,§6139; C46, 50, 54,§397.24]

Referred to in §386B.2  
Procedure in general, ch 472

**397.25 Costs—expenses.** The costs of said proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the said district court judges of said court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case. [S13,§722-b; C24, 27, 31, 35, 39,§6140; C46, 50, 54,§397.25]

Referred to in §386B.2  
Costs generally, ch 625

**JURISDICTION, SALE OF PRODUCTS, AND RATES**

**397.26 Jurisdiction of city.** For the purpose of maintaining and protecting such works or plants from injury, and protecting the water of such waterworks from pollution, the jurisdiction of such city or town shall extend over the territory occupied by such works, and all reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken. [C73,§472; C97,§723; C24, 27, 31, 35, 39,§6141; C46, 50, 54,§397.26]

**397.27 Sale of products — rates — taxes — equipment.** They may sell the products of municipal heating plants, waterworks, gasworks, or electric light or power plants to any municipality, individual, or corporation outside the city or town limits, as well as to individuals or corporations within its limits, and may with the consent of the board having jurisdiction thereof erect in the public highway the necessary poles upon which to construct transmission lines; and shall, from time to time in such manner as they deem equitable, assess upon each tenement or other place supplied with heat, water, gas, light, or power, reasonable rents or rates fixed by ordinance, and shall levy a tax as provided by law to pay or aid in paying the expenses of running, operating, renewing, and extending such works, and the interest on any bonds issued to pay all or any part of

their construction. [C73,§475; C97,§724; S13, §724; C24, 27, 31, 35, 39,§6142; C46, 50, 54,§397.27]

Referred to in §§368.26, 399.32

**397.28 Regulation of rates and service.** They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, heat, water, light, or power, and to supply said city or town with water for fire protection, and with gas, heat, water, light, or power for other necessary public purposes and to regulate and fix the rent or rate for water, gas, heat, light, or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract. [C73,§§473, 475; C97,§725; S13,§725; C24, 27, 31, 35, 39,§6143; C46, 50, 54,§397.28]

Referred to in §§368.26, 399.32

**MANAGEMENT BY TRUSTEES**

**397.29 Management by board of trustees.** The council of any city or town which owns or may hereafter acquire waterworks, sewage disposal plant, heating plant, gasworks, or electric light or electric power plant, may, and upon petition of ten percent of the qualified electors of such city or town shall, at any general election, or at a special election called for that purpose, submit the question as to whether the management and control of such waterworks, sewage disposal plant, heating plant, gasworks, or electric light or electric power plant shall be placed in the hands of a board of trustees. [C24, 27, 31, 35, 39,§6144; C46, 50, 54,§397.29]

Referred to in §§363C.7(9, 10), 368.26

**397.30 Notice of election.** Notice of such election shall be given by publication in one newspaper published in said city or town once each week for not less than three consecutive weeks, and the election shall be held not less than seven nor more than twenty days after the completion of such publication. If no newspaper is published in such city or town, notice may be given by posting notices for three weeks in five public places in such city or town. [C24, 27, 31, 35, 39,§6145; C46, 50, 54, §397.30]

38GA, ch 85,§2, editorially divided  
Referred to in §§363C.7(9, 10), 368.26

**397.31 Form of submission.** The question to be submitted shall be in the following form:

“Shall the city (or town) of ..... place the management and control of its waterworks (or heating plant, or gasworks, or electric light or electric power plant) in the hands of a board of trustees?” [C24, 27, 31, 35, 39, §6146; C46, 50, 54,§397.31]

Referred to in §§363C.7(9, 10), 368.26

**397.32 Trustees — terms — compensation — vacancies.** If a majority of the votes cast at such election are in favor of placing the management and control of any or all of the said utilities in the hands of trustees, the mayor shall, within ten days after such election, appoint a board of three trustees, which appointment shall be approved and confirmed by the council. The first appointees shall hold office, one for two years, one for four years, and one for six years, and their successors shall be appointed for a term of six years. All vacancies occurring on said board shall be filled in the manner original appointments are made. Each trustee shall execute and furnish to the city an official bond in the sum of twenty-five hundred dollars to be approved by the mayor and filed with the city clerk. [C24, 27, 31, 35, 39, §6147; C46, 50, 54, §397.32; 57GA, ch 195, §1]

Referred to in §§363C.7(9, 10), 368.26, 420.299

**397.33 Compensation of trustees.** In towns each trustee shall receive a compensation of not more than one hundred dollars per year. In cities each trustee shall receive a compensation of not more than three hundred dollars per year. [C24, 27, 31, 35, 39, §6148; C46, 50, 54, §397.33; 57GA, ch 195, §2]

Referred to in §§363C.7(9, 10), 368.26

**397.34 Powers of trustees.** The board of trustees shall have all the power and authority in the management and control of the utilities mentioned in the question submitted to the voters at such election as is conferred upon waterworks trustees appointed as provided in chapter 398. [C24, 27, 31, 35, 39, §6149; C46, 50, 54, §397.34]

Referred to in §§363C.7(9, 10), 368.26

**397.35 Bonds.** In cities having a population in excess of twenty-five thousand and less than seventy-five thousand and which have no outstanding general city bonds issued for the purpose of purchasing or constructing heating plants, water or gas works, and electric plants or which have a sinking fund sufficient to retire such general bonds as may be outstanding, and having a board of trustees as provided by this chapter, such board of trustees may, upon resolution, issue bonds at a rate of interest not to exceed five percent per annum for the purpose of extending or improving such heating plant, water or gas works, or electric plant. Bonds issued under this section shall be first mortgage bonds against the said utility, and not general bonds of the city. No bonds shall be issued in this manner in excess of twenty-five percent of the book value of the plant as shown by the books of the city. The interest and the principal of such bonds must be paid from the net earnings of the utility against which they are issued. Bonds issued under this provision shall not be for a longer period than twenty years and shall be retired serially in equal amounts beginning not later than the third year after issuance. [C31, 35, §6149-d1; C39, §6149.1; C46, 50, 54, §397.35]

Referred to in §§363C.7(9, 10), 368.26

#### SUPPLYING MILITARY RESERVATIONS

**397.36 Water for military reservations.** All individuals or private corporations to which any city in this state has granted authority to erect and maintain waterworks with all the necessary reservoirs, mains, filters, pipes, and other appurtenances in such city shall, whenever the United States has, or may hereafter establish a military reservation within a distance of five miles from either of the boundaries of such city, be authorized to use said waterworks plant in said city and the mains now or hereafter laid in the highways of said city for the purpose of furnishing water to such military reservation, such authority to continue so long as under franchises now held or hereafter granted such individuals or corporations shall be authorized to maintain and operate such waterworks plant in such city. [S13, §742-d; C24, 27, 31, 35, 39, §6150; C46, 50, 54, §397.36]

**397.37 Mains in highways.** The board of supervisors of any county in which such military reservation is or may hereafter be located shall have the power to authorize any such individual or corporation to lay its mains in any of the highways of the county for the purpose of extending the same to any such military reservation. [S13, §742-e; C24, 27, 31, 35, 39, §6151; C46, 50, 54, §397.37]

#### SURPLUS EARNINGS

**397.38 Transfer of surplus earnings.** Where waterworks, gasworks, heating plants, or electric plants have been purchased or erected by any city or town and the original purchase bonds or bonds issued for the improvement thereof are paid, or where an adequate sinking fund has been provided for the payment of such bonds, such city or town may, upon the approval of the state comptroller, appropriate and transfer any surplus earnings in excess of the amount required for the retirement of all bonds and interest due in the current year and the succeeding year, from any municipal heating plant, waterworks, gasworks, or electric plant, for the purpose of retiring existing bonded indebtedness of said city or town which is payable by general taxation or for the purpose of making any municipal improvement authorized by law and ordered by the city council. [C27, 31, 35, §6151-b1; C39, §6151.1; C46, 50, 54, §397.38]

Referred to in §§397.40, 397.41

**397.39 General transfer.** Any city or town having a surplus earned from the operation of a municipal heating plant, waterworks, gasworks, or electric plant, and which has no bonded indebtedness against any such plant or which has sufficient funds on hand to provide for the current year's interest and principal and the succeeding year's interest and principal may on approval of the state comptroller transfer the surplus earnings of such utilities to any other fund of the municipality. [C27, 31, 35, §6151-b2; C39, §6151.2; C46, 50, 54, §397.39]

Referred to in §§397.40, 397.41

**397.40 Exceptions.** In all cities having a population of five thousand or less and in all towns, the transfer of funds as provided in sections 397.38 and 397.39 may be made without the approval of the state comptroller, on condition the amount transferred in any one fiscal year does not exceed fifty percent of the surplus in that fund at the beginning of that fiscal year, if the transfer is made upon the three-fourths vote of all the members of the council of such city or town. [C31, 35, §6151-c1; C39, §6151.3; C46, 50, 54, §397.40]

Referred to in §397.41

**397.41 Applicability of statute.** Sections 397.38 to 397.40, inclusive, shall not apply to boards of waterworks trustees, or other boards of trustees, unless said board of trustees shall by resolution concur in said appropriation or transfer. [C27, 31, 35, §6151-b3; C39, §6151.4; C46, 50, 54, §397.41]

**397.42 Acquiring property and building thereon.** Any city having a population of over forty thousand and less than fifty thousand and having a board of waterworks trustees, and having a surplus earned from the operation of a municipal waterworks plant, may, by action of and under the supervision of such board of waterworks trustees, purchase, acquire, or accept possession of the necessary property, and may erect thereon such building or buildings as may be necessary for the proper maintenance of the business of said waterworks department, and it may erect from such surplus such additional building space for use of such other city departments as it may deem advisable, and until such time as the board may desire or need such additional space for its own uses it may rent such space to other city departments for their uses. [C31, 35, §6151-d1; C39, §6151.5; C46, 50, 54, §397.42]

## CHAPTER 397A

### PURCHASE-LEASE AGREEMENTS FOR CONSTRUCTION OF FEDERAL BUILDINGS

397A.1 Ordinance for agreement.  
397A.2 Provisions of agreement.

397A.3 Bonds payable from earnings.  
397A.4 Pledge of property and earnings.

**397A.1 Ordinance for agreement.** Cities and towns shall have power to enter into lease-purchase agreements, by ordinance, with the administrator of general services of the United States, or the postmaster general of the United States, or any other agency of the federal government or any combination of said departments or agencies, under the terms and conditions and with the limitations of the Act of Congress, Public Law 519 of 1954, for the establishment, construction and maintenance of public buildings for the use of the federal government in such cities and towns. [57GA, ch 196, §1]

**397A.2 Provisions of agreement.** Such agreements shall provide for a rental sufficient to amortize:

1. The cost of improvements to be constructed plus the fair market value, on the date of the agreement, of the site, if owned by the city or town, or

2. The fair market value, on the date of the agreement, of the completed improvements together with the site thereof, or

3. A combination of the foregoing in the case of existing improvements to be remodeled by the city or town.

Such agreements shall also provide for a reasonable rate of interest on the outstanding principal and reimburse the city or town for the cost of any other obligation assumed by it under the contract. [57GA, ch 196, §2]

**397A.3 Bonds payable from earnings.** Nothing in the chapter contained shall be so

construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely out of the rentals from such buildings. Such cities and towns may issue bonds payable solely and only from the revenues derived from such improvements.

Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of construction and operation of such improvement, including engineering and other expenses, together with interest. Bonds issued under the provisions of this chapter are declared to be negotiable instruments, shall be executed by the mayor and clerk of the municipality, and shall be sealed with the corporate seal of the municipality. The principal and interest of said bonds shall be payable solely and only from the special fund herein provided for such payments, and said bonds shall not in any respect be a general obligation of such municipality, nor shall they be payable in any manner by taxation. All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance of the municipality. [57GA, ch 196, §3]

**397A.4 Pledge of property and earnings.** The council of the municipality by ordinance may pledge the property purchased and the net earnings of the improvements to the payment of said bonds and the interest thereon, and provide that the net earnings thereof shall be set apart as a sinking fund for that purpose. [57GA, ch 196, §4]

## CHAPTER 398

## PURCHASE AND CONSTRUCTION OF WATERWORKS IN CERTAIN CITIES

Referred to in §§397.34, 420.303  
Waterworks employees retirement system, ch 412  
Applicable to cities over 10,000 population

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|---|---|
| 398.1 Tax—sinking fund.                           | 398.8 Trustees — appointment — bond — removal.  |
| 398.2 Use of fund.                                | 398.9 Powers — waterworks fund — how disbursed. |
| 398.3 Investment of funds.                        | 398.10 Fixing rates.                            |
| 398.4 Sale of securities.                         | 398.11 Annual report.                           |
| 398.5 Authority granted.                          | 398.12 Rule of construction.                    |
| 398.6 Contracts — bonds — purchase of waterworks. | 398.13 Civil service for employees.             |
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**398.1 Tax—sinking fund.** Cities having a population of over ten thousand, shall have power to levy, in addition to the regular water tax authorized by law, a tax of one-half mill\* upon the dollar upon all the property within the corporate limits of said cities, excepting lots greater than ten acres in area used for horticultural or agricultural purposes, for the purpose of creating a sinking fund to be used as provided in this chapter for the purchase or erection of waterworks in such cities, or for the payment of any indebtedness incurred by such cities for waterworks now owned by the same. The proceeds of such one-half mill levy, together with such other surplus funds as may be set aside as a sinking fund by the board of waterworks trustees, shall be deposited in one or more solvent banks or trust companies of the city making such levy, at a rate of interest not less than three percent per annum, compounded semiannually, and payable, principal and interest, on demand, after sixty days notice in writing. The city treasurer depositing the proceeds of such tax shall exact from the bank or trust company wherein such money is deposited a satisfactory bond, payable to the city, to be approved by the treasurer and mayor of such city, and to be filed in the office of the city treasurer. [C97,§742; S13, §742; C24, 27, 31, 35, 39,§6152; C46, 50, 54, §398.1]

Referred to in §§398.2, 398.12, 404.12(6)  
\*Alternate levy, see §404.12(6)

**398.2 Use of fund.** Any city in which a sinking fund has been accumulated as provided in section 398.1, in which waterworks have not been purchased under this chapter, may apply such sinking fund and all accumulations thereof upon the payment of the cost of waterworks purchased or erected under the provisions of chapter 397. [S13,§742-a1; C24, 27, 31, 35, 39, §6153; C46, 50, 54,§398.2]

**398.3 Investment of funds.** Where waterworks have been purchased or erected, and the original purchase bonds or any part thereof or bonds issued for improvement of existing waterworks are outstanding, and have not matured, the sinking fund, together with such other surplus funds as they may appropriate for that purpose, may be invested by the

board of waterworks trustees in registered bonds of the United States and of the state of Iowa, county road bonds issued by any county in the state of Iowa, and United States treasury certificates, to the amount of and not exceeding the outstanding bonds. [C27, 31, 35, §6153-a1; C39,§6153.1; C46, 50, 54,§398.3]

41GA, ch 137,§2, editorially divided

**398.4 Sale of securities.** The authority hereby vested in the board of waterworks trustees to purchase the securities herein designated shall include the authority to dispose of such securities at such times and in such amounts as the outstanding obligations of the waterworks may become due. [C27, 31, 35,§6153-a2; C39,§6153.2; C46, 50, 54,§398.4]

**398.5 Authority granted.** Cities having a population of over ten thousand are hereby authorized to purchase or erect waterworks, under the provisions of this chapter, for the purpose of supplying said cities and the inhabitants thereof with water, and are authorized to continue the levy of the one-half mill tax herein provided for until the purchase price, principal and interest, or the cost incurred in the erection of said works, or the indebtedness heretofore incurred for and on account of such works, is fully paid and discharged. [C97, §744; S13,§744; C24, 27, 31, 35, 39,§6154; C46, 50, 54,§398.5]

**398.6 Contracts—bonds—purchase of waterworks.** Cities levying such sinking fund tax are hereby authorized to let a contract or contracts for the purchase or erection of waterworks, and, upon the approval and adoption of such contract or contracts as hereinafter provided, to apply such sinking fund upon the cost thereof, and cities so purchasing or constructing and those now owning such waterworks are authorized to pledge the proceeds of the continuing one-half mill levy provided for in this chapter, and the regular water levy, and the net revenues derived from the operation of the waterworks, and shall have the right to mortgage or bond such works, to secure the payment of the purchase price or the cost of constructing such waterworks, or the cost of making necessary extensions and improvements of such waterworks; and such

cities shall have the right to execute additional mortgage or mortgages or bonds upon such works for the purposes above set forth. Provided that said additional mortgage or mortgages or bonds shall bear not more than six percent interest per annum; but no part of the general fund of such city shall be applied upon such contracts, bonds, or mortgages. In the payment thereof, the city and holders of said contracts, bonds, or mortgages shall be restricted to the proceeds of the said taxes and the net revenues of the said waterworks, as hereinbefore provided; and such contract, contracts, or bonds shall not bear a higher rate of interest than five percent per annum, payable semiannually. Cities having a population of over ten thousand, which have adopted or may adopt an ordinance availing themselves of the privileges conferred herein, shall in addition thereto have and possess the following powers:

1. In addition to mortgage on the water plant to secure the bonds hereinbefore authorized, the said city may, in addition to the security of said mortgage and as a part thereof, grant a franchise to maintain and operate said plant on foreclosure sale under said mortgage, said franchise to become effective only on the passing of title under the said foreclosure sale and to continue for a period of not exceeding twenty-five years thereafter; providing that the granting of such franchise shall be approved by a majority of the electors of said city voting at an election thereon, which election shall be held as provided in section 398.7.

2. They shall have power to issue the general bonds of the city creating an indebtedness of said city to an amount which with its other existing indebtedness, shall not exceed five percent of the assessed value of the taxable property of said city as shown by the last preceding assessment, the said bonds or proceeds of sale thereof to be used in the purchase or construction of a water plant, as herein provided; provided, however, that such bonds can be issued by order of the city council of said city only after a contract for the purchase or construction of a water plant and providing for the issuance of such bonds has been approved by the majority of the electors of said city voting at an election thereon to be held in accordance with the provisions of section 398.7. Neither the said bonds nor the proceeds thereof shall be diverted to another purpose than as herein provided. Said cities may purchase or contract a water plant and pay for the same partly out of the water bonds and partly out of the general bonds herein provided, or wholly out of either class of bonds or proceeds thereof, as such city may determine. The general bonds of the city herein provided shall bear interest at not exceeding five percent per annum, payable semiannually, and shall be payable not more than twenty years after date and be in the general form of bonds provided by section 346.3, with such changes as may be necessary to conform the same to this statute and the ordinances or

contract of the city under which they are issued. [C97,§745; S13,§745; C24, 27, 31, 35, 39, §6155; C46, 50, 54,§398.6]

Referred to in §§398.12, 407.15

**398.7 Election — powers of council.** Said contract or contracts shall not be binding upon said city until the same shall have been approved by the city council at a regular meeting, or a special meeting called for such purpose, and shall have been adopted by a majority of the electors of said city voting at a city or special election, which shall have been duly called after thirty days notice by said city. The proposition to be submitted at said election, and the form of ballot, shall be: "Shall the contract or contracts approved by the city council in relation to the waterworks be adopted?" The proposition shall be printed and placed on the ballots, and the voter shall designate his choice, and the election shall be conducted, in the manner provided in the title on elections. When a majority of the electors of said city at any election shall have declared in favor of the purchase or erection of any waterworks, or shall have authorized the incurring of indebtedness or issuance of bonds for waterworks, the city council may provide by contract or otherwise without submission of same to the electors, for surveys, examinations, appraisements, estimates, plans, specifications, advertisements for bids, and all other necessary work preliminary to the making of such contract or contracts for purchase or erection of waterworks, and pay for the same and the expense of said election out of said sinking fund. [C97,§746; S13,§746; C24, 27, 31, 35, 39,§6156; C46, 50, 54,§398.7]

Referred to in §398.6

**398.8 Trustees — appointment — bond — removal.** The waterworks owned by such cities shall be managed and operated by a board of waterworks trustees, which shall be composed of three resident electors, appointed for the term of six years by the mayor of said city. Upon the approval of the contract for the purchase or erection of waterworks by cities as herein provided, the mayor thereof shall, within ten days, appoint such board, the first appointees thereto to hold office, one for two years, one for four years, and one for six years. All vacancies occurring on said board shall be filled in the same manner that original appointments are made. Each trustee shall receive a compensation of not to exceed three hundred dollars per year, and shall execute and furnish to the city an official bond in the sum of five thousand dollars to be approved by the mayor and filed with the city clerk. [C97,§747; S13,§§747-a,-b; C24, 27, 31, 35, 39,§6157; C46, 50, 54,§398.8]

**398.9 Powers—waterworks fund—how disbursed.** The said board of trustees shall have the power to carry into execution the contract or contracts for the purchase or erection of such waterworks, and to employ a superintendent and such other employees as may be neces-

sary and proper for the operation of such works, for the collection of water rentals, and for the conduct of the business incident to the operation thereof. The said board of trustees shall require of the superintendent, and of the other employees as they may deem proper, good and sufficient bonds, the amount thereof to be fixed and approved by said board, for the faithful performance of their duty, such bonds to run in the name of the city and to be filed with the city treasurer and kept in his office. All money collected by the board of waterworks trustees shall be deposited at least weekly by them, with the city treasurer; and all money so deposited and all tax money received by the city treasurer from any source, levied and collected for and on account of the waterworks, shall be kept by the city treasurer as a separate and distinct fund. The city treasurer shall be liable on his official bond for such funds the same as for other funds received by him as such treasurer. Such moneys shall be paid out by the city treasurer only on the written order of the board of waterworks trustees, who shall have full and absolute control of the application and disbursement thereof for the purposes prescribed by law, including the payment of all indebtedness arising in the construction of such works, and the maintenance, operation, and extension thereof. [C97,§748; S13,§748; C24, 27, 31, 35, 39, §6158; C46, 50, 54,§398.9]

**398.10 Fixing rates.** The board of trustees shall from time to time fix the water rentals or rates to be charged for the furnishing of water, and such rates, with the proceeds of the one and one-fourth mill water levy and the sinking fund levy of one-half mill, shall be sufficient for the maintenance and operation of such works and the proper and necessary extension thereof, for all repairs, and for the payment of the purchase price or cost, principal and interest, incurred in the purchase or erection of such works, as the same falls due, according to the tenor of the mortgage and bonds given to secure the payment of such purchase price or cost. The board shall make quarterly statements giving full and complete reports of the receipts and disbursements of the board for the first three quarters of the fiscal year. Said

reports shall be filed in the office of the city clerk on the second Monday in April, July, and October, for the quarters preceding the first day of said months. The reports shall be audited by the city council. [C97,§749; C24, 27, 31, 35, 39,§6159; C46, 50, 54,§398.10]

Sinking fund levy, §398.1

**398.11 Annual report.** Said trustees shall, immediately after the close of each municipal fiscal year, file with the city clerk, a detailed written report of all money received and disbursed by said board for said fiscal year. [C27, 31, 35,§6159-a1; C39,§6159.1; C46, 50, 54,§398.11]

Fiscal year, §363.29

**398.12 Rule of construction.** This chapter shall be construed as granting additional power and providing an alternative means of acquiring a municipal waterworks without limiting the power already existing in cities having a population of over ten thousand inhabitants. The provisions of this chapter shall apply only (1) to cities which have heretofore acquired or which may hereafter acquire a municipal waterworks under authority contained in this chapter and which have heretofore financed or which may hereafter finance the cost of acquiring such municipal waterworks in whole or in part through the levy of the special additional tax as permitted and provided for in section 398.1 hereof, and (2) to cities which have heretofore adopted or which may hereafter adopt an ordinance availing of the provisions of this chapter as referred to in section 398.6 hereof. [C97,§750; C24, 27, 31, 35, 39,§6160; C46, 50, 54,§398.12]

**398.13 Civil service for employees.** The board of trustees of the waterworks of any city having a municipal waterworks plant or securing one hereafter are hereby granted authority to adopt resolution providing that its employees shall be subject to and shall have all the rights and privileges as to civil service rights as set out and provided in chapter 365. The civil service commission in such cities shall have charge and control of the procedure with reference to such employees, all as provided and set out in chapter 365. [C50, 54,§398.13]

CHAPTER 399

PURCHASE OF WATERWORKS BY CITIES OF FIFTY THOUSAND OR OVER

Referred to in §§363C.7 (9, 10), 401.13, 420.303  
Waterworks employees retirement system, ch 412

- 399.1 Authorization—election.
- 399.2 Sale or lease of real estate.
- 399.3 Purchase—condemnation.
- 399.4 Power to bond.
- 399.5 Power to tax.
- 399.6 Power to incur debt.
- 399.7 Anticipation of tax.
- 399.8 Terms of bonds.
- 399.9 Trust fund.
- 399.10 Certificates authorized.
- 399.11 Trustees must recommend.
- 399.12 Liability of city.
- 399.13 Sinking fund.
- 399.14 Trustees—election—number—term.
- 399.15 Chairman—eligibility to office.
- 399.16 Bond.
- 399.17 Power and duties.
- 399.18 Rules — records — accounts — financial statement.
- 399.19 Audit of accounts.
- 399.20 Rates.
- 399.21 Rates for city.
- 399.22 Rates generally.
- 399.23 Tax authorized.
- 399.24 Payment by city.
- 399.25 Mortgage—restriction—interest.
- 399.26 Free or discriminatory rates.
- 399.27 Extension of mains.
- 399.28 Notice to install mains.
- 399.29 Duty to install.
- 399.30 Lease—limitation.
- 399.31 Political activity forbidden.
- 399.32 Construction of chapter.

**399.1 Authorization—election.** All cities now or hereafter having a population of fifty thousand inhabitants or over shall have the power to own, construct, erect, establish, acquire, purchase, maintain, and operate a waterworks within their corporate limits, and extensions thereto for not more than ten miles beyond such limits, with all of the necessary appurtenances, real estate, buildings, galleries, mains, pipes, power plants, or systems, and lease as lessor or sell the same or any part thereof; and such city shall also have power to acquire, own, and sell the negotiable bonds or other evidences of indebtedness of such waterworks; provided, however, no such waterworks shall be constructed or purchased, nor when once acquired be leased or sold, until the construction, purchase, leasing, or selling of such waterworks shall have been approved by a majority of the legal voters of such city voting thereon at a general election, city election, or at a special election called for that purpose, and in no event shall such waterworks when once acquired be leased by such city, as lessor, for a period longer than twenty-five years. [C24, 27, 31, 35, 39,§6161; C46, 50, 54, §399.1]

Referred to in §399.3

**399.2 Sale or lease of real estate.** The board of waterworks trustees, hereinafter provided for, may with the consent and approval of the city council of such city, lease or sell any real estate owned and held as a part of the waterworks plant when the same is no longer needed or necessary in the operation of said waterworks plant. [C27, 31, 35,§6161-a1; C39,§6161.1; C46, 50, 54,§399.2]

**399.3 Purchase—condemnation.** In the exercise of any of the powers herein granted, any such city may acquire and hold any or all necessary property of the character specified in section 399.1, including existing franchises or contracts, either by purchase or

condemnation proceedings. If by condemnation proceedings, the value of the property shall be determined by a court of condemnation as provided in chapter 397. [C24, 27, 31, 35, 39,§6162; C46, 50, 54,§399.3]

**399.4 Power to bond.** For the purpose of acquiring such waterworks either by purchase, condemnation, or construction, and from time to time making permanent extensions thereof, additions to and betterments of the same and of the power plants and equipment, including the acquisition of additional real estate, any such city may borrow money and may issue its negotiable bonds therefor. [C24, 27, 31, 35, 39,§6163; C46, 50, 54,§399.4]

38GA, ch 288,§3, editorially divided

**399.5 Power to tax.** It shall have the power to levy upon all the taxable property within the corporate limits of said city for said purposes in addition to all other taxes now provided by law a special tax not exceeding in any one year one and one-fourth mills\* on the dollar, for a period of years not exceeding fifty. [C24, 27, 31, 35, 39,§6164; C46, 50, 54,§399.5]

Referred to in §§399.7, 404.12(6)  
\*Alternate levy, see §404.12(6)

**399.6 Power to incur debt.** Such cities may for the purpose of purchasing, erecting, maintaining, and operating waterworks incur an indebtedness not exceeding in the aggregate added to all other indebtedness five percent of the assessed value of the taxable property within such city, the amount of such taxable property to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. [C24, 27, 31, 35, 39,§6165; C46, 50, 54,§399.6]

Maturity and payment of bonds, ch 76

**399.7 Anticipation of tax.** Any such city desiring to own, construct, erect, acquire, purchase, establish, and maintain such waterworks may issue bonds in anticipation of the



special tax authorized in section 399.5. Such bonds shall be known as public service bonds, and said bonds and interest thereon shall be secured by said assessment and levy and (unless otherwise paid out of the surplus income derived from the operation of the waterworks) shall be payable only out of the proceeds thereof pledged to the payment of the same, and shall be issued and sold in accordance with the provisions of chapter 408, except as herein otherwise provided. [C24, 27, 31, 35, 39, §6166; C46, 50, 54, §399.7]

38GA, ch 288, §4, editorially divided  
Referred to in §399.32

**399.8 Terms of bonds.** In issuing such bonds, the city council may cause portions of the same to become due at different definite periods, but none of such bonds so issued shall be payable more than fifty years from their date.

Said bonds shall be issued in sums of not less than one hundred dollars nor more than one thousand dollars, each running not more than fifty years, and bearing interest not exceeding five percent per annum, payable semiannually. [C24, 27, 31, 35, 39, §6167; C46, 50, 54, §399.8]

**399.9 Trust fund.** It shall be the duty of the city treasurer [to] receive said tax or such portion of the proceeds of the utilities fund as is allocated in lieu thereof by the council and to hold the same separate and apart in trust for the payment of said bonds and interest, and to apply the proceeds of said tax pledged for that purpose to the payment of said bonds and interest. [C24, 27, 31, 35, 39, §6168; C46, 50, 54, §399.9]

**399.10 Certificates authorized.** Every such city may issue interest-bearing public service certificates to provide for the acquisition, extension, or improvement of any waterworks property or equipment. Such certificates may be issued as aforesaid to an amount ten percent in excess of the cost of any such extensions, improvements, waterworks property, or equipment, on account of which such certificates are issued. [C24, 27, 31, 35, 39, §6169; C46, 50, 54, §399.10]

38GA, ch 288, §5, editorially divided  
Referred to in §399.32

**399.11 Trustees must recommend.** No ordinance providing for the issuance of such certificates shall be effective until there be filed with the city clerk, prior to the adoption of such ordinance, the recommendation of the waterworks trustees for the issuance of such certificates. [C24, 27, 31, 35, 39, §6170; C46, 50, 54, §399.11]

**399.12 Liability of city.** Such certificates shall in no case become an obligation of the city or be payable out of any general fund, but shall be payable solely out of a sinking fund representing a specific portion of the income derived from the waterworks on account of which they were issued. [C24, 27, 31, 35, 39, §6171; C46, 50, 54, §399.12]

**399.13 Sinking fund.** Every such city shall have the additional power to provide, by ordinance, for a sinking fund to be derived from the earnings of any waterworks acquired by it pursuant to the terms of any ordinance, contract, or other regulation. [C24, 27, 31, 35, 39, §6172; C46, 50, 54, §399.13]

**399.14 Trustees—election—number—term.** Whenever any such city becomes the owner of waterworks, the council shall, unless a board of trustees exists, forthwith elect, from nominations made by the mayor, trustees for such waterworks. The board of trustees shall consist of five resident voters, who shall hold office, one until the first Monday in April of the second year after his appointment, two until the first Monday in April of the fourth year after appointment, and two until the first Monday in April of the sixth year after appointment. Subsequent appointments shall be for a term of six years. Vacancies shall be filled as original appointments are made. If the waterworks are leased or sold, the term of office of each member of the board shall be held to have expired. [C24, 27, 31, 35, 39, §6173; C46, 50, 54, §399.14]

Referred to in §399.32

**399.15 Chairman—eligibility to office.** The chairman of the board shall be selected by a majority vote of the members thereof, for such term as the board may determine. No person shall be eligible for appointment on the board while he holds or is a candidate for, or has within one year held, any other salaried civil, federal, state, county, or city office or position. [C24, 27, 31, 35, 39, §6174; C46, 50, 54, §399.15]

**399.16 Bond.** A bond in the sum of five thousand dollars shall be required of each member of the board before entering upon the duties of his office, conditioned as provided by law, with sureties to be approved by the council. When so approved, said bond shall be filed in the office of the city clerk. [C24, 27, 31, 35, 39, §6175; C46, 50, 54, §399.16]

Conditions of bond, §64.2

**399.17 Power and duties.** The board of waterworks trustees shall have supervision over and be responsible for all details of administration and operation of said waterworks, the board to determine all questions of engineering, mechanical, and operating details, extensions of mains, except as otherwise specifically provided, and other improvements and betterments of said waterworks; and report to the council at such stated periods as the council may determine, all information necessary for its guidance in the issuance of bonds and the performance of such other duties as may be required of it under this chapter as amended, it being the intent and purpose of this section to give such board of waterworks trustees complete management and control of said waterworks, together with all land and property now or heretofore held and used in connection therewith, with the right to make all necessary contracts pertaining to the oper-

ation, maintenance, extensions, and improvements of the same, as well as the right to sue and be sued. [C24, 27, 31, 35, 39,§6176; C46, 50, 54,§399.17]

**399.18 Rules—records—accounts — financial statement.** The board shall immediately after its organization make and prescribe all the necessary rules for the government of the waterworks, and prescribe the form of records and the kind of accounts to be made and kept in the operation of such waterworks. It shall institute and require the keeping of a uniform and perfected system of accounts and requisitions showing the purchase, storing, and use of materials for operation, construction, and other purposes. Said accounts shall be kept distinct and separate from other city accounts, and in such manner as to show the true and complete financial results of the operation of said waterworks. The board shall at least once a year cause to be prepared and printed for public distribution a full and complete financial report covering the last preceding municipal fiscal year. [C24, 27, 31, 35, 39,§6177; C46, 50, 54,§399.18]

Fiscal year, §363.29

**399.19 Audit of accounts.** The books and accounts of such waterworks shall be audited at least once a year by a public accountant selected by the city council, and a copy of said audit shall be filed with the auditor of state. [C31, 35,§6177-c1; C39,§6177.1; C46, 50, 54,§399.19]

**399.20 Rates.** The board of waterworks trustees, in all such cities owning and operating a waterworks under this chapter, shall determine the rates to be charged for water. [C24, 27, 31, 35, 39,§6178; C46, 50, 54,§399.20]

40GA, ch 180,§2, editorially divided

**399.21 Rates for city.** In fixing the rate to be paid by the city for water for public uses the board shall take into consideration the quantity used and fix the rate accordingly, but in no event shall such rate exceed an annual rental or rate of three hundred fifty dollars for each mile of main pipe laid and in operation, including hydrant connections, and not including more than one line of pipe on the same street, and not including any pipe less than six inches in diameter laid since August 17, 1896. [C24, 27, 31, 35, 39,§6179; C46, 50, 54,§399.21]

**399.22 Rates generally.** Rates to private consumers and to the city shall be so fixed as to produce an amount which with other revenues collectible shall be sufficient to cover:

1. Interest on the entire outstanding indebtedness of said waterworks, including that portion that is a general obligation against the city.
2. The cost of all operating expenses, including insurance against legal liability and payment of judgment resulting from such liability.
3. A sufficient sum by way of a depreciation fund to cover such repairs and replacement as may properly be charged against such fund.

4. A sufficient annual provision for a sinking fund to fully pay at maturity all bonds and certificates which by their terms are payable out of the special tax provided for in this chapter, or out of the earnings of the property purchased under the powers herein granted and to pay special assessments for street improvements lawfully assessed against the waterworks property or any part thereof, and to pay for necessary extensions, improvements and additional lands in cases where bonds have not been issued therefor.

5. A surplus in addition to the requirements set out in the last four preceding subsections to be used as a working capital of not to exceed one hundred twenty-five thousand dollars; provided, however, that the board may absorb all surplus in excess of fifty thousand dollars by reducing water rates to consumers and must so absorb all such surplus in excess of one hundred twenty-five thousand dollars. [C24, 27, 31, 35, 39,§6180; C46, 50, 54,§399.22]

**399.23 Tax authorized.** If necessary to procure funds, the city is hereby authorized to allocate a portion of the proceeds of the utilities fund to pay for water used by such cities for public purposes. [C24, 27, 31, 35, 39,§6181; C46, 50, 54,§399.23; 54GA, ch 159,§85]

**399.24 Payment by city.** The sums payable by the city for water furnished as herein provided shall hereafter be paid by the city in May of each year for the last six months of the preceding year, and in November of each year for the first six months of that current year. [C24, 27, 31, 35, 39,§6182; C46, 50, 54, §399.24]

**399.25 Mortgage—restriction—interest.** In addition to all the powers hereinbefore granted, such cities shall have the right to mortgage or bond such waterworks and pledge the net revenues thereof to secure the payment of the purchase price, and the extension and improvement thereof, but no part of the general fund of such cities shall be applied upon such contracts, bonds, or mortgages. In the payment of the securities authorized to be issued by this section the city and holders thereof shall be restricted to the property mortgaged and the net revenues thereof, and such contract or bonds and all other bonds or certificates issued under this chapter shall not bear a higher rate of interest than five percent per annum, payable semiannually. [C24, 27, 31, 35, 39,§6183; C46, 50, 54,§399.25]

**399.26 Free or discriminatory rates.** It shall be unlawful for the board or any person or corporation to give or receive free water service, or to give or receive water service at a more favorable rate than that accorded to the general public except as herein provided. Any person or persons violating, either directly or indirectly, the provisions of this section shall upon conviction be punished by a fine of not less than three hundred dollars or sixty days

in jail for each and every offense. [C24, 27, 31, 35, 39, §6184; C46, 50, 54, §399.26]

**399.27 Extension of mains.** The board of waterworks trustees shall establish such rules regarding the extension of mains as in its belief will inure to the greatest benefit of the city, and shall avoid granting special favors in the extension of mains by requiring property owners when necessary to make certain guarantees or to pay certain sums to cover the cost of unprofitable extensions. [C24, 27, 31, 35, 39, §6185; C46, 50, 54, §399.27]

38GA, ch 288, §14, editorially divided

**399.28 Notice to install mains.** It shall be the duty of the city council, immediately after the passage of any ordinance or resolution ordering any street improvement or sewer upon any street or streets in which a water main should be laid or extended prior to such improvement as indicated by a majority vote of the council, to give notice in writing to the board of waterworks trustees of such action, and to forward to said board a copy of such resolution or ordinance ordering the said improvement. [C24, 27, 31, 35, 39, §6186; C46, 50, 54, §399.28]

40GA, ch 130, §4, editorially divided

**399.29 Duty to install.** On receipt of said notice, the board shall proceed without unnecessary delay to cause mains to be laid or extended in those streets affected by the resolution or ordinance. [C24, 27, 31, 35, 39, §6187; C46, 50, 54, §399.29]

**399.30 Lease—limitation.** The power to lease the waterworks or any part thereof shall be exercised by the city council only upon approval of the board of waterworks trustees. [C24, 27, 31, 35, 39, §6188; C46, 50, 54, §399.30]

**399.31 Political activity forbidden.** Any member of said board of waterworks trustees or any employee of such city who is employed in any of the departments of said waterworks who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office, or

who shall in any manner contribute money, time, labor, or other valuable thing to any person for election purposes, and any member of the city council who shall, by solicitation or otherwise, exert his influence directly or indirectly to influence said board or any member thereof in the hiring or discharging of any employee or employees of said waterworks, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months. [C24, 27, 31, 35, 39, §6189; C46, 50, 54, §399.31]

**399.32 Construction of chapter.** Nothing herein shall be held to repeal sections 397.27 and 397.28. Said sections, however, so far as the rate making power is concerned, shall not apply to the operation of waterworks constructed or purchased under the provisions of this chapter. In all other respects this chapter shall be construed as granting additional power and providing an alternative means of acquiring a municipal waterworks without limiting the power already existing in cities having a population of fifty thousand inhabitants or over. Except as hereinafter otherwise provided, the provisions of this chapter, including section 399.14 but not excluding any other section hereof, shall apply only to cities which have heretofore acquired or which may hereafter acquire a municipal waterworks under authority contained in this chapter and which have heretofore financed or which may hereafter finance the cost of acquiring, extending or improving such municipal waterworks in whole or in part through the issuance of public service bonds or public service certificates as permitted and provided for in section 399.7 or 399.10 hereof.

All proceedings including all resolutions and ordinances heretofore undertaken by or passed by the city council of any city which acquired its municipal waterworks prior to January 1, 1910, for the creation of a board of waterworks trustees under the provisions of section 399.14 hereof or for the subsequent abolishment and discontinuance of such board, are hereby validated and confirmed. [C24, 27, 31, 35, 39, §6190; C46, 50, 54, §399.32]

## CHAPTER 400

## WATERWORKS EMPLOYEES GROUP INSURANCE

Waterworks employees retirement system, ch 412  
Applicable to cities over 125,000 population

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| 400.1 "Employee" defined.                 | 400.8 Control of fund—use.                      |
| 400.2 "Board" defined.                    | 400.9 Contract with insurance carrier.          |
| 400.3 Authorization of insurance.         | 400.10 Rules and regulations.                   |
| 400.4 Sources of fund.                    | 400.11 Benefits exempt from debt and execution. |
| 400.5 Contributions as operating expense. | 400.12 Decision of board final.                 |
| 400.6 Deducting from pay.                 |   |
| 400.7 Optional participation.             |   |

**400.1 "Employee" defined.** "Employee" as used in this chapter is defined to be a person employed by the board of waterworks trustees on a weekly, monthly, or yearly basis and who is actually performing duties under such employment, or receiving a pension from such board. [C46, 50, 54,§400.1]

**400.2 "Board" defined.** "Board" as used in this chapter is defined to mean "board of waterworks trustees." [C46, 50, 54,§400.2]

**400.3 Authorization of insurance.** The board of waterworks trustees in charge of administering and operating any municipally owned waterworks system in any city now or hereafter having a population of one hundred twenty-five thousand inhabitants or more may establish a plan for and procure group insurance for the employees of any such waterworks system. [C46, 50, 54,§400.3]

**400.4 Sources of fund.** The fund for such group insurance shall be known as "Group Insurance Fund" and shall be created from the following sources:

1. Contributions from employees who elect to participate in the plan for group insurance.
2. Contributions authorized by the board of waterworks trustees from the income from the operation of such waterworks system in amounts not exceeding the aggregate amounts assessed against and collected from employees who elect to participate in such plan. [C46, 50, 54,§400.4]

**400.5 Contributions as operating expense.** Contributions to the group insurance fund by the board of waterworks trustees and expenses incurred in the operation and administering of such plan of group insurance shall be considered and are hereby declared to be operating expenses of the waterworks system and shall be considered as such by the board in determining rates to be charged for water. [C46, 50, 54,§400.5]

**400.6 Deducting from pay.** All employees participating in such group insurance shall be assessed and required to pay an amount to be fixed by the board, according to the plan adopted, and the amount so assessed shall be deducted and retained out of the wages, salary, or pension of such employees. [C46, 50, 54,§400.6]

**400.7 Optional participation.** Participation in such group insurance shall be optional with all employees eligible to the benefits thereof as provided by the rules and regulations adopted by the board pursuant hereto. Election to participate therein shall be in writing signed by the employee and filed with the board. [C46, 50, 54,§400.7]

**400.8 Control of fund—use.** The group insurance fund shall be under the control and shall be expended under the directions of the board and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the board for group insurance for such employees. [C46, 50, 54,§400.8]

**400.9 Contract with insurance carrier.** The board may contract with any legal reserve insurance company or companies authorized to do business in the state for group insurance for such employees, which may include life, health, hospitalization, and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense, unless such employee is retired on a pension at the termination of active service, in which event the expense of continuing such life insurance shall be borne by the employee and the board in the same proportions as during active service. [C46, 50, 54,§400.9]

**400.10 Rules and regulations.** The board of waterworks trustees establishing a plan for group insurance for employees under this chapter shall administer such plan and formulate and establish rules and regulations for the operation thereof, not inconsistent with the provisions of this chapter. [C46, 50, 54,§400.10]

**400.11 Benefits exempt from debt and execution.** All amounts payable to employees under and pursuant to the plan of group insurance established as herein provided shall be exempt from liability for debts of the person to or on account of whom the same is payable and shall not be subject to seizure upon execution or other process. [C46, 50, 54,§400.11]

**400.12 Decision of board final.** The decisions of the board of waterworks trustees upon all

matters upon which the said board is empowered to act, under and pursuant to the provisions hereof, shall be final and conclusive, in the absence of fraud, and no appeal shall be

allowed therefrom nor shall such decisions of the board, in the absence of fraud, be reviewed, enjoined, or set aside by any court. [C46, 50, 54,§400.12]

## CHAPTER 401

### EXTENSION OF WATER MAINS

Referred to in §420.303

Applicable to all cities and towns except those operating under chapter 399

401.1 Power to extend—assessment.  
401.2 Petition for extension.  
401.3 Jurisdiction over petition.  
401.4 Certification by board—order.  
401.5 Contract and execution thereof.  
401.6 When contract required.  
401.7 When contract optional.

401.8 Limitation on assessment.  
401.9 Certification of cost.  
401.10 Assessments—how made.  
401.11 Rebates.  
401.12 Unplatted land—repayment.  
401.13 Applicability of statute.

**401.1 Power to extend—assessment.** Cities and towns which own and operate waterworks may extend the water mains and assess the cost of such extension to abutting property as provided in this chapter. [C27, 31, 35,§6190-a1; C39,§6190.01; C46, 50, 54,§401.1]

**401.2 Petition for extension.** Such extensions and assessments for the cost thereof, may be ordered only when such extensions have been petitioned for by at least seventy-five percent of the owners of property subject to such assessment who are residents of the city wherein such petition for extensions is presented. [C27, 31, 35,§6190-a2; C39,§6190.02; C46, 50, 54,§401.2]

**401.3 Jurisdiction over petition.** The petition shall be presented to the board of waterworks trustees when such board exists, and, in such case, said board shall have exclusive jurisdiction of such petition. In other cases the petition shall be presented to the council which shall have such jurisdiction. [C27, 31, 35, §6190-a3; C39,§6190.03; C46, 50, 54,§401.3]

**401.4 Certification by board—order.** If the proposed extension is approved by the board of waterworks trustees, it shall certify said petition, together with its written approval, to the council, and the council shall then in a resolution declare the necessity for such extension, designating the streets upon which it is proposed to make the extension and the terminal points thereof, and the fact that private abutting property will be assessed for the cost thereof, and the council shall in such resolution of necessity fix the time for the consideration of the resolution, at which time the owners of property subject to assessment may appear and make objection, if they so elect to do, to the passage of the resolution; before final action upon the resolution, the council shall cause notice of the time when said resolution will be considered by it for passage to be given by two weekly publications in some newspaper published in the city or in case no newspaper is published therein in one of general circulation therein the last of which

shall be not less than two weeks, nor more than four weeks, prior to the day fixed for its consideration; if objections are filed by any property owners to the passage of the resolution, final action shall not be taken upon same by the council until notice of such objection has been given to the board of waterworks trustees when such board exists, giving it an opportunity to appear before the council in support of its approval of the petition. If such resolution is finally adopted by the council, the extension shall be made as hereinafter provided in this chapter. The city or town clerk shall certify to the board of waterworks trustees the expense of publication and same shall be included as a part of the cost of the extension. [C27, 31, 35,§6190-a4; C39,§6190.04; C46, 50, 54,§401.4]

**401.5 Contract and execution thereof.** Contracts for such extensions shall be let by and executed under the supervision of the board of waterworks trustees when such board exists, otherwise by and under the supervision of the council. [C27, 31, 35,§6190-a5; C39, §6190.05; C46, 50, 54,§401.5]

**401.6 When contract required.** If the estimated cost of such extension, not including cost of material, exceeds twenty-five hundred dollars the work shall be done under contract which shall be entered into and performed as provided in sections 391.28 to 391.33, inclusive, insofar as applicable. [C27, 31, 35,§6190-a6; C39, §6190.06; C46, 50, 54,§401.6]

**401.7 When contract optional.** If the estimated cost of such extension, not including cost of material, is twenty-five hundred dollars or less, the construction may be under contract as heretofore provided or by day labor. If the work is done by day labor, such work shall be under the control and supervision of the said board of trustees or council, as the case may be. [C27, 31, 35,§6190-a7; C39,§6190.07; C46, 50, 54,§401.7]

**401.8 Limitation on assessment.** Where a pipe in excess of six inches in diameter is used, the assessment against the abutting property

shall be limited to what would have been the cost of a six-inch pipe; and the difference between the cost of the pipe used and what would have been the cost of a pipe six inches in diameter shall be paid by the water department in cities and towns having a board of waterworks trustees, and in other cities such difference in cost shall be paid out of the water funds, and if such funds are not sufficient then out of the general funds. [C27, 31, 35, §6190-a8; C39, §6190.08; C46, 50, 54, §401.8]

**401.9 Certification of cost.** If said extension is made by or under the supervision of said board of trustees, it shall, after the work is completed, certify the cost thereof to the council, and the council shall levy the special assessments in the manner provided in this chapter. [C27, 31, 35, §6190-a9; C39, §6190.09; C46, 50, 54, §401.9]

**401.10 Assessments—how made.** Special assessments shall be made and collected in accordance with sections 391.48 to 391.61, inclusive, insofar as applicable. [C27, 31, 35, §6190-a10; C39, §6190.10; C46, 50, 54, §401.10]

**401.11 Rebates.** Each city or town may provide by ordinance that the owner of property so assessed shall be rebated annually at the rate of ten percent each year of such assessment and interest, from water dues payable by such property so assessed, until such time as the amount of such rebates equals the

amount of said assessment and interest paid by such owner, provided that after fifteen years from date of assessment all rebate rights shall be automatically canceled and any assessments not then repaid by such rebates shall not be subject to repayment; provided, however, that in any city where the waterworks is operated under a board of waterworks trustees such an ordinance shall not be adopted unless it shall be asked for and approved by the board of waterworks trustees.

The council of any city having a population in excess of seventy-five thousand shall adopt such ordinance before extending mains and assessing costs thereof as provided in this chapter. [C27, 31, 35, §6190-a11; C39, §6190.11; C46, 50, 54, §401.11]

**401.12 Unplatted land — repayment.** When an extension is carried one thousand feet or more across unplatted lands, repayment of the amount of the assessment and interest shall be made to the owner at the end of ten years from the date of the assessment, unless such owner has made connection and used the water from such mains, in which event repayment shall be made by rebates of water dues, as heretofore provided. [C27, 31, 35, §6190-a12; C39, §6190.12; C46, 50, 54, §401.12]

**401.13 Applicability of statute.** This chapter shall not apply to cities operating waterworks under chapter 399. [C27, 31, 35, §6190-a13; C39, §6190.13; C46, 50, 54, §401.13]

## CHAPTER 402

### STREET RAILWAY REGULATIONS

Applicable to all cities and towns

402.1 General powers.  
402.2 Condition precedent.

402.3 Vestibules—brakes—transparent shields.  
402.4 Penalty.

**402.1 General powers.** Cities and towns shall have the power to authorize or forbid the construction of street railways within their limits, and may define the motive power by which the cars thereon shall be propelled; and to authorize or forbid the location and laying down of tracks for railways and street railways on all streets, alleys, and public places. [R60, §1064; C73, §464; C97, §767; C24, 27, 31, 35, 39, §6191; C46, 50, 54, §402.1]

C97, §767, editorially divided

**402.2 Condition precedent.** No railway track can thus be located and laid down until after the injury to property abutting upon the street, alley, or public place upon which such railway track is proposed to be located and laid down has been ascertained and compensated for in the manner provided with reference to taking private property for works of internal improvement. [C73, §464; C97, §767; C24, 27, 31, 35, 39, §6192; C46, 50, 54, §402.2]

Condemnation procedure, ch 472

**402.3 Vestibules — brakes — transparent shields.** Every person, partnership, company, or corporation owning or operating a street railway in this state shall:

1. *Transparent shield.* Provide and maintain upon all motorcars, except trailers, used for the transportation of passengers, not required by law to have an inclosed vestibule, a transparent shield extending the full width of each car and so constructed that it will afford protection to the motormen and passengers on the platform from inclement weather.

2. *Vestibules.* From November 1 of each year to April 1 following, provide all cars used for the transportation of passengers with vestibules inclosing the front and rear platforms on all sides for the protection of employees operating such cars when, in the performance of their duties, the employees are required to remain on said vestibule the major portion of their time. Each vestibule shall be heated and shall contain a seat for the use of the motorman or conductor.

3. *Brakes.* Equip all its double truck passenger cars and single truck passenger cars over thirty-two feet in length with power brakes other than hand brakes capable of bringing such cars to a stop within a reasonable distance, together with equipment for sanding the rails. Said brake and sand equipment shall be so constructed as to be operated by the motorman on the car operated by him.

4. *Toilets.* Provide and maintain toilet facilities for the use of employees at some suitable location upon such line or run, and the running schedule of said cars and the operating thereof shall be such as will permit said employees to use said toilet facilities.

1. [S13,§768-a; C24, 27, 31, 35, 39,§6193; C46, 50, 54,§402.3]

2. [C97,§768; S13,§768; SS15,§768-h; C24, 27, 31, 35, 39,§6193; C46, 50, 54,§402.3]

3. [S13,§§768-c,-e,-f; C24, 27, 31, 35, 39,§6193; C46, 50, 54,§402.3]

4. [SS15,§768-i; C24, 27, 31, 35, 39,§6193; C46, 50, 54,§402.3]

Referred to in §402.4

**402.4 Penalty.** A violation of any of the provisions of section 402.3 shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. Every day's failure to comply with any of the provisions of said section shall be deemed a separate offense. [C97,§768; S13,§§768-b,-d,-g; SS15,§768-j; C24, 27, 31, 35, 39,§6194; C46, 50, 54,§402.4]

## CHAPTER 403

### URBAN RENEWAL LAW

Applicable to all cities and towns

- 403.1 Title.
- 403.2 Declaration of policy.
- 403.3 Municipal program.
- 403.4 Resolution of necessity.
- 403.5 Urban renewal plan.
- 403.6 Powers of municipality.
- 403.7 Condemnation of property.
- 403.8 Sale or lease of property.
- 403.9 Issuance of bonds.
- 403.10 Bonds as legal investment.

- 403.11 Exemptions from legal process.
- 403.12 Powers of municipality.
- 403.13 Presumption of title.
- 403.14 Urban renewal agency powers.
- 403.15 Agency created.
- 403.16 Personal interest prohibited.
- 403.17 Definitions.
- 403.18 Rule of construction.
- 403.19 Limitations.

**403.1 Title.** This chapter shall be known and may be cited as the "urban renewal law." [57GA, ch 197,§1]

**403.2 Declaration of policy.** 1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive proportion of state revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

2. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that fringe areas can be conserved and rehabilitated through appropriate public action as herein authorized, and through the co-operation and voluntary action of the owners and tenants of property in such areas.

3. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [57GA, ch 197,§2]

**403.3 Municipal program.** The local governing body of a municipality may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate slums and prevent the

development or spread of slums and urban blight and to encourage needed urban rehabilitation. Such workable program may include, without limitation, provisions for:

1. The prevention of the spread of blight into areas of the municipality which are free from blight, through diligent enforcement of housing, zoning and occupancy controls and standards.

2. The rehabilitation or conservation of slum or blighted areas or portions thereof by re-planning, by removing congestion, by providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures.

3. The clearance of slum and blighted areas or portions thereof.

4. The redevelopment of slum and blighted areas by approval of urban renewal plans. [57GA, ch 197,§3]

Referred to in §403.14

**403.4 Resolution of necessity.** No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that:

1. One or more slum or blighted areas exist in such municipality.

2. The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality. [57GA, ch 197,§4]

Referred to in §§403.14, 403.15

**403.5 Urban renewal plan.** 1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined such area to be a slum area or a blighted area or a combination thereof, and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4 hereof.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recom-

mendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection 3 hereof.

3. The local governing body shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

4. Following such hearing, the local governing body may approve an urban renewal project if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of



title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection 4 of this section and without regard to provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project. [57GA, ch 197,§5]

Referred to in §§403.14, 403.17

**403.6 Powers of municipality.** Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban renewal information.

2. To arrange or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree

to any conditions, that it may deem reasonable and appropriate, attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project; and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.

4. To invest any urban renewal project funds held in reserves or sinking funds, or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 403.9 at the redemption price established therein, or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required, and to enter into and carry out contracts in connection therewith. A municipality may include in any contract, for financial assistance with the federal government for an urban renewal project, such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of the chapter.

6. Within its area of operation, to make or have made all surveys and planning necessary to the carrying out of the purposes of this chapter, and to contract with any person in making and carrying out of such planning, and to adopt or approve, modify and amend such planning. Such planning may include, without limitation:

- a. A general plan for the locality as a whole;
- b. Urban renewal plans;
- c. Preliminary plans outlining urban renewal activities for neighborhoods to embrace two or more urban renewal areas;
- d. Planning for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
- e. Planning for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;
- f. Appraisals, title searches, surveys, studies, and other planning and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes.

7. To plan for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter, with an urban renewal agency vested with urban renewal project powers under section 403.14, which agreements may extend over any period, notwithstanding any provision of rule of law to the contrary.

9. To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality.

10. Within its area of operation, to organize, co-ordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas, and preventing the causes thereof, within such municipality, may be most effectively promoted and achieved; and to establish such new of-

fice or offices of the municipality, or to reorganize existing offices, in order to carry out such purpose most effectively.

11. To exercise all or any part of combination of powers herein granted.

12. To approve urban renewal plans.

13. To sell and convey real property in furtherance of an urban renewal project. [57GA, ch 197,§6]

Referred to in §403.14

**403.7 Condemnation of property.** A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 472, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent, provided further that no real property or any right or interest therein owned by any public utility company, pipe-line company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall be acquired without the consent of such company, or without first securing, after due notice to such company and after hearing, a certificate authorizing condemnation of such property from the board, commission or body having the authority to grant a certificate authorizing condemnation. [57GA, ch 197,§7]

**403.8 Sale or lease of property.**

1. A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it, and may enter into contracts for such purposes, in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and they may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any

improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to: The uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property, without the prior written consent of the municipality, until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer under the urban renewal plan, or such part or parts of such contract or plan as the municipality may determine, may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

2. A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, or as hereinafter provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation in the community, thirty days prior to the execution of any contract to sell, lease or otherwise transfer real property, and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, may invite proposals from and make available all pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making such proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as

it deems to be in the public interest and in furtherance of the purposes of this chapter: Provided, that a notification of intention to accept such proposal shall be filed with the governing body not less than thirty days prior to any such acceptance. Thereafter, the municipality may execute such contract in accordance with the provisions of subsection 1 of this section and may deliver deeds, leases and other instruments and may take all steps necessary to effectuate such contract.

3. A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property as authorized in this chapter, without regard to the provisions of subsection 1 above, for such uses and purposes as may be deemed desirable, even though not in conformity with the urban renewal plan. [57GA, ch 197,§8]

Referred to in §403.19

#### 403.9 Issuance of bonds.

1. A municipality shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and planning; and the municipality shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this chapter: Provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this chapter, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the municipality.

2. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding six per centum per annum, be in such denomination or denominations, be in such form either coupon or regis-

tered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

4. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

5. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

6. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter. [57GA, ch 197,§9]

Referred to in §§403.6, 403.12

**403.10 Bonds as legal investment.** All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter, or those issued by any urban renewal agency vested with urban renewal project powers under section 403.14: Provided, that such

bonds and other obligations shall be secured by an agreement between the issuer and the federal government, in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations, will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [57GA, ch 197,§10]

**403.11 Exemptions from legal process.**

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue against the same; nor shall judgment against a municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property. [57GA, ch 197,§11]

**403.12 Powers of municipality.** 1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or other rights or privileges therein to a municipality;

b. Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

c. Do any and all things necessary to aid or co-operate in the planning or carrying out of an urban renewal project;

d. Lend, grant or contribute funds to a municipality;

e. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project;

f. Cause public buildings and public facilities, including parks, playgrounds, and recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished;

g. Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places;

h. Plan or replan, zone or rezone any part of the public body or make exceptions from building regulations;

i. Cause administrative and other services to be furnished to the municipality.

2. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, including any agency or instrumentality of the United States, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency vested with all of the urban renewal project powers pursuant to the provisions of section 403.14.

3. Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

4. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency, a municipality may, in addition to its other powers and upon such terms, with or without consideration, as it may determine, do and perform any or all of the actions or things which, by the provisions of subsection 1 of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

5. For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality may, in addition to any authority to issue bonds pursuant to section 403.9, issue and sell

its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally. [57GA, ch 197,§12]

**403.13 Presumption of title.** Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. [57GA, ch 197,§13]

**403.14 Urban renewal agency powers.**

1. A municipality may itself exercise its urban renewal project powers, as herein defined, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its urban renewal project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers" shall include the rights, powers, functions and duties of a municipality under this chapter, including the following:

a. The power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto;

b. The power to approve urban renewal plans and modifications thereof;

c. The power to establish a general plan for the locality as a whole;

d. The power to formulate a workable program under section 403.3;

e. The power to make the determinations and findings provided for in section 403.4, and section 403.5, subsection 4;

f. The power to issue general obligation bonds;

g. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in section 403.6, subsection 8. [57GA, ch 197,§14]

Referred to in §§403.6, 403.10, 403.12, 403.15, 403.16

**403.15 Agency created.** 1. There is hereby created in each municipality a public body

corporate and politic to be known as the “urban renewal agency” of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be coterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for in-

spection during business hours in the office of the city clerk and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after he shall have been given a copy of the charges at least ten days prior to such hearing, and after he shall have had an opportunity to be heard in person or by counsel. [57GA, ch 197,§15]

Referred to in §403.17

**403.16 Personal interest prohibited.** No public official or employee of a municipality, or board or commission thereof, and no commissioner or employee of an urban renewal agency, which has been vested by a municipality with urban renewal project powers under section 403.14, shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof, or urban renewal agency affecting such property. Any disclosure required to be made by this section to the local governing body shall concurrently be made to an urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 403.14. No commissioner or other officer of any urban renewal agency, board or commission exercising powers pursuant to this chapter shall hold any other public office under the municipality, other than his commissionership or office with respect to such urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office. [57GA, ch 197,§16]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 553.23, 741.8, 741.11

**403.17 Definitions.** The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. “Agency” or “urban renewal agency” shall mean a public agency created by section 403.15.

2. "Municipality" shall mean any city or town in the state.

3. "Public body" shall mean the state or any political subdivision thereof.

4. "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

5. "Mayor" shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

6. "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

7. "Federal government" shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

8. "Slum area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: By reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, morals or welfare.

9. "Blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, that if such blighted area consists of open land, the conditions contained in the proviso in section 403.5, subsection 4, shall apply: And provided further, that any disaster area referred to in section 403.5, subsection 7, shall constitute a "blighted area".

10. "Urban renewal project" may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve

slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. Such undertakings and activities may include:

a. Acquisition of a slum area or a blighted area or portion thereof;

b. Demolition and removal of buildings and improvements;

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;

e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

g. Sale and conveyance of real property in furtherance of an urban renewal project.

11. "Urban renewal area" means a slum area or a blighted area, or a combination thereof, which the local governing body designates as appropriate for an urban renewal project.

12. "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project. The plan shall:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7;

b. Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, and to indicate zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

13. "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

14. "Bonds" shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

15. "Obligee" shall include any bondholder, agents or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

16. "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

17. "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town, unless a resolution shall have been adopted by the govern-

ing body of such other city or town declaring a need therefor.

18. "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

19. "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality. [57GA, ch 197,§17]

**403.18 Rule of construction.** Insofar as the provisions of this chapter may be inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. [57GA, ch 197,§19]

**403.19 Limitations.** Nothing in this chapter shall be construed to permit any municipalities to construct, own, lease, or operate any housing, or residential buildings of any type, except as provided in subsection 3 of section 403.8. [57GA, ch 197,§20]

Constitutionality, 57GA, ch 197, §18

## CHAPTER 404

### MUNICIPAL REVENUE

Applicable to all cities and towns

Chapter 404, Code 1950, repealed by 54GA, ch 159

- 404.1 Power to tax.
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**404.1 Power to tax.** Municipal corporations shall have power to cause to be levied, the taxes provided by this chapter, and such other taxes and special assessments as are specifically provided by law except as modified by the provisions of this chapter. [C54,§404.1]

**404.2 Functional funds — maximum levy.** Municipal corporations shall have power to establish the functional funds provided by sections 404.6 to 404.12, inclusive, and to cause taxes to be levied on all taxable property within the corporate limits according to the needs of the particular corporation for each particular function, not to exceed the maximum millage rate designated in said sections for any function, and in the aggregate not to exceed thirty mills on the dollar in any tax

year for all of said functions, and they shall also have power to establish a debt service fund, and trust or agency funds. [C54,§404.2]

Referred to in §§404.5(1), 404.25(4, 5)

**404.3 Certification of taxes and assessments.** All assessments and taxes of every kind and nature caused to be levied by the council, except taxes for the payment of bonds and the interest thereon, and except as otherwise provided by law, shall be certified by the clerk on or before the fifteenth day of August to the county auditor, and by him placed upon the tax list for the current year, and the county treasurer shall collect such assessments and taxes in the same manner as other taxes, and when delinquent they shall draw the same interest and penalties. [R60,§§1123, 1126; C73,



§§495, 498; C97,§902; S13,§902; C24, 27, 31, 35, 39, §§6227, 6871; C46, 50, §§404.21, 420.212; C54, §404.3]

**404.4 Allocation of revenue.** Municipal corporations shall, at the first meeting of the council after January 1, allocate by resolution the estimated revenue from all levies to the purposes authorized by law and shall allocate sufficient revenue to the debt service fund to pay all bonds and interest thereon as they become due. Said allocations shall also include receipts from sources other than taxation, estimated unincumbered balances from the previous year, and any contemplated transfers of funds. The books of the corporation shall reflect at all times:

1. The nature and amount of each sum received and expended in each functional fund.

2. The total amount appropriated in each functional fund.

3. The total amount appropriated in each of the divisions or accounts within each functional fund as set forth in sections 404.6 through 404.12.

4. The unexpended balance remaining in each functional fund and in each division or account within such functional fund.

5. All financial records of the corporation shall be a public record and open to public inspection during business hours. [C24, 27, 31, 35, 39, §6218; C46, 50, §§404.12, 420.21, 420.22; C54, §404.4]

Referred to in §404.5(2)

**404.5 Flexibility provisions.** Municipal corporations may fit their income to their needs in the following ways:

1. Before certification, by determining the amounts to be levied for each functional fund, as provided by section 404.2 and by proposed allocations for each particular division or account within each functional fund.

2. By allocation of estimated income to authorized purposes within each functional fund as provided in section 404.4.

3. By subsequent resolution of the council amending such allocations within any functional fund to fit actual income to the authorized purposes of such functional fund, as the need arises, provided, however, that said amendments may not increase such allocations without a two-thirds vote of the body which made the original allocation.

4. By transfers from one functional fund to another in the manner provided by chapter 24, or by creating an emergency fund in the manner provided by that chapter.

5. By transfers of surplus from the debt service fund, as provided by section 404.20, subject, however, to the approval of the state comptroller. Before such approval is given, the state comptroller shall assure himself that good business practice has been followed and that there is reasonable assurance of prompt,

regular payment of the debt in the future. [S13, §1056-a34; C24, 27, 31, 35, 39, §§6215, 6216, 6570; C46, 50, §§404.9, 404.10, 416.95, 420.23; C54, §404.5]

**404.6 General government.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the general fund a tax not to exceed seven mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be used for the following purposes:

1. General and incidental expenses.

2. Construction, purchase, or remodeling of a city or town hall and such other buildings as the size, condition, and governmental activities of the corporation make reasonable or necessary, and purchase of the necessary sites therefor.

3. Improvement, operation and maintenance of the city or town hall and other governmental buildings.

4. City planning purposes as provided in chapter 373.

5. Expenses in connection with weights and standards, as provided in section 213.7.

6. Expenses in connection with elections required or authorized by law to be paid by municipal corporations.

7. Bonds of municipal officers or employees to be paid by the municipal corporation.

8. Defense expenses of a municipal officer sought to be removed from office, when payable by the municipal corporation under the provisions of section 66.23. [R60, §1124; C73, §496; C97, §887; SS15, §741-e; C24, 27, 31, 35, 39, §§6207, 6211; C46, 50, §§404.1, 404.5; C54, §404.6]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)

**404.7 Street fund.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the street fund a tax not to exceed seven mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be spent for the following purposes:

1. Construction, reconstruction, repair, and maintenance of viaducts, underpasses, grade crossing separations, and approaches thereto, and for all drainage purposes connected therewith, except those constructed or maintained by any railroad company under the provisions of chapter 387.

2. Opening, widening, extending, constructing, maintaining, repairing, surfacing, marking, draining, and grading any street, highway, avenue, alley, public ground, or market place, and purchase of necessary equipment and machinery therefor.

3. To pay for deficiencies in assessments and for plats and schedules as provided by law, and for the construction, reconstruction, and repair of any street improvements at the intersection of streets, highways, avenues, and alleys, and for one-half of the cost of such improvements at the intersection of streets,

avenues, highways, and alleys not crossing, and for spaces opposite property owned by the municipal corporation or by the United States, and for the purchase price of property purchased by the city at tax sale and subsequent taxes assessed against such property.

4. For the removal of snow and ice from the streets.

5. In lieu of the tax provided by section 390.2 to acquire and improve real estate and to erect or improve buildings thereon for the parking of vehicles to the extent that income from parking meters or parking lots is insufficient for said purposes.

6. To pay any special assessment with interest, or any installment thereof with interest, levied against any street, alley, highway, public way, or park by the board of supervisors for drainage purposes.

7. In lieu of the tax provided by section 387.6 for the payment of damages to property caused by construction of a viaduct.

8. For all bridge purposes, except for the payment of bonds issued for bridge purposes.

9. In lieu of the tax provided by section 383.8 for preliminary expense on interstate bridges.

10. For payment of damages to property for which the municipal corporation is liable under the provisions of sections 389.22 to 389.25, inclusive.

11. To plant, prune, care for, and maintain trees and shrubbery on public streets.

12. For the purchase of necessary street equipment and machinery, provided, however, that in no fiscal year more than ten percent or twenty thousand dollars, whichever is the greater, of said fund be used for this purpose.

13. For any other purpose having to do with streets specifically authorized by law.

14. Funds received by municipal corporations from the road use tax fund shall be separately allocated for expenditure within the street fund for only the purposes authorized and permitted by law. [R60,§710; C73,§796; C97, §§758, 888, 894, 896, 1303; S13, §§792-f, 1056-a51, 1056-a65; SS15, §§758, 887-a, 894, 1303; C24, 27, 31, 35, 39, §§6208, 6209, 6211, 6221, 6599, 6608; C46, §§404.2, 404.3, 404.5, 404.15, 416.127, 416.138; C50, §§391A.25, 404.2, 404.3, 404.5, 404.15, 416.127, 416.138; C54, §404.7]

Referred to in §§312.6, 404.2, 404.4, 404.14, 404.25(4, 5)

**404.8 Public safety fund.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the public safety fund a tax not to exceed twelve mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be used for the following purposes:

1. To establish, equip, staff, and maintain a police department.

2. To establish, equip, staff, and maintain a fire department.

3. To establish, erect, and maintain a jail and such number of police and fire stations as circumstances require.

4. To pay the expenses of maintaining a municipal court.

5. To maintain and operate the improvements authorized by chapter 395 and in lieu of the taxes provided in section 395.22 relating to flood protection.

6. Liability insurance premiums authorized by section 321.497.

7. For any other purpose having to do with public safety specifically authorized by law. [S13, §§716-a, 716-b, 1056-a52, -a56; C24, 27, 31, 35, 39, §§6211, 6589, 6600; C46, 50, §§404.5, 416.117, 416.128; C54, §404.8]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)  
Municipal court building in cities over 50,000, see §602.52 et seq.

**404.9 Sanitation fund.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the sanitation fund a tax not to exceed seven mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be used for the following purposes:

1. To pay for deficiencies in special assessments for sewers as provided by law, and for the construction, reconstruction, and repair of any sewer at the intersection of streets, highways, avenues, and alleys, and for one-half of the cost of such sewer at the intersections of streets, highways, avenues, and alleys not crossing and for spaces opposite property owned by the municipal corporation or by the United States, and for the whole or any part of the construction, reconstruction, or repair of any sewer within the limits of said municipal corporation, and for the construction, reconstruction, maintenance, and operation of any sewage disposal plants.

2. To control surface waters flowing into sewers, sewer outlets, and disposal plants.

3. To construct sewer outlets and sewage purifying plants and to purchase dump grounds.

4. To pay for establishing and maintaining comfort stations.

5. To pay the cost of collection and disposal of garbage and refuse and for the sprinkling, flushing, or cleaning of streets.

6. For the construction, reconstruction, or repair of any main sewer within the municipal corporation and those extending outside the corporate limits.

7. For the purpose of carrying out the provisions of the laws relating to public health.

8. For any other purpose having to do with sanitation, specifically authorized by law. [C73, §475; C97, §§881, 884; S13, §§840-a, -b, -f, 894, 1056-a51, -a61, -a62; SS15, §§696-b, 840-g, 881, 894; C24, 27, 31, 35, 39, §§6211, 6213, 6592, 6593, 6599, 6610; C46, §§404.5, 404.7, 416.120, 416.121, 416.127, 416.140; C50, §§391A.25, 404.5, 404.7, 416.120, 416.121, 416.127, 416.140; C54, §404.9]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)

**404.10 Municipal enterprises.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the municipal enterprises fund an annual tax not to exceed ten mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be spent for the following purposes:

1. To pay for land acquired for cemetery purposes and the interest accruing on the cost thereof.

2. For the care, preservation, and adornment of any cemetery utilized for burial purposes by the people of the city or town, whether such cemetery is located within the limits of such municipality or is established by its authority outside of its corporate limits. Said fund may be used for any cemetery owned and controlled by said municipal corporation within or without the corporate limits, or for any cemetery owned and controlled by any private or incorporated cemetery association, township, or other municipality, even though situated in an adjoining county, if actually utilized for burial purposes by the people of the city or town. Said tax may be so expended for the support and maintenance of any such cemetery after it is no longer used for the purpose of interring the dead.

3. For the purchase of a library site and construction of buildings thereon, and for the purchase of a library site and construction of buildings thereof for a branch library in cities of thirty thousand or over.

4. For the maintenance of a free public library. The board of library trustees shall, on or before the first day of August in each year, make an estimate of the amount it deems necessary for the improvement, operation, and maintenance of the library and shall transmit said estimate together with a statement of the amount necessary for the purposes authorized by subsection 3 to the council. In no event shall the amount of tax allocated for maintenance purposes exceed the amount that would be derived from a three-mill levy at current valuations, nor shall the amount allocated for purposes of subsection 3 exceed the amount that would be derived from a levy of three-fourths mill at current valuations.

5. When a public library has not been established, to secure for the inhabitants of the municipal corporation the free use of a public library.

6. When a municipal hospital has been established, for the purpose of purchasing sites for hospitals or sites with buildings thereon for hospital purposes, and constructing, reconstructing, rebuilding, remodeling or enlarging buildings to be used for hospitals.

7. To improve, operate, and maintain a municipal hospital.

8. In lieu of the taxes provided by sections 330.7 and 330.16 to acquire, operate, or equip a municipal airport.

9. In lieu of the taxes provided by section 372.10 for river front improvement purposes.

10. In lieu of the taxes provided by sections 565.9 and 565.13 to provide annuities for gifts accepted by municipal corporations, but not in excess of the limits provided therein.

11. In lieu of the taxes provided by subsections 10 and 13 of section 384.3 for dock purposes.

12. In lieu of the taxes provided by sections 37.7 and 37.8 for memorial halls and monuments.

13. For any other purpose having to do with municipal enterprises, specifically authorized by law.

14. To operate and maintain a transit system and to create a reserve fund therefor. [C97, §§732, 880, 894; S13, §§732, 741-n, q, r, u, 1056-a45, -a46, -a48, -a50; SS15, §894; C24, 27, 31, §§6211, 6578, 6579, 6596-6598; C35, §§6211, 6578, 6579, 6596-6598, 6607-1; C39, §§6211, 6578, 6579, 6596-6598, 6607.1; C46, 50, §§404.5, 416.103, 416.106, 416.124-416.126, 416.137; C54, §404.10; 56GA, ch 196, §20]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)

**404.11 Recreation.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the recreation fund a tax not to exceed five mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be used for the following purposes:

1. To purchase real estate for use as a community center and construct thereon buildings with proper equipment.

2. For the development, improvement, maintenance, or operation of community centers, playgrounds, and swimming pools.

3. For the purchase, construction, maintenance, and operation of a place for the exhibition of works of art, or for the support of an established art gallery, museum, institute, or center conducted for the use and benefit of the public and not for profit.

4. To purchase real estate for park, art, or memorial purposes.

5. For the purpose of caring for and improving the parks.

6. Procuring a site and for constructing swimming pools, bathing beaches, bathhouses, exhibition halls, armories, ice rinks, dance pavilions, shelter houses, wading pools, river walls, fieldhouse, athletic or recreational facilities, and for paving, macadamizing, and otherwise improving roadways, drives, avenues, and walks in parks.

7. In lieu of the tax provided by sections 375.1 and 375.4 for band purposes.

8. In lieu of the taxes provided by sections 370.6, 370.28, 370.29, and 370.30 for park purposes.

9. In lieu of the tax provided by section 379A.1 for a symphony orchestra.

10. For any other purpose having to do with recreation, specifically authorized by law. [S13, §§741, 1056-a45; SS15, §§879-s, u; C24, 27, 31, 35, 39, §§6211, 6214, 6578, 6607; C46, 50, §§404.5, 404.8, 416.103, 416.136; C54, §404.11]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)

**404.12 Utilities.** Municipal corporations shall have power to annually cause to be levied for a fund to be known as the utilities fund a tax not to exceed five mills on the dollar on all taxable property within the corporate limits and allocate the proceeds thereof to be used for the following purposes:

1. If the authorized rates or rentals are insufficient to meet the expenses of running, operating, and repairing the waterworks, gas or electric plant, or power plant owned or operated by the municipal corporation, such amount as may be necessary to make up the deficiency.

2. In cities and towns owning and operating a light plant to pay for electricity for street lighting and other municipal purposes.

3. Payment for water furnished the corporation under contract.

4. Payment for gas, light, heat, and power furnished the corporation under contract.

5. In lieu of the tax provided by section 389.18 for street lighting.

6. In lieu of the taxes provided by sections 398.1 and 399.5 for the purchase or construction of waterworks.

7. For any other purpose relating to municipal utilities, specifically authorized by law. [C73, §475; C97, §894; SS15, §894; C24, 27, 31, 35, 39, §6211; C46, 50, §404.5; C54, §404.12]

Referred to in §§404.2, 404.4, 404.14, 404.25(4, 5)

**404.13 Debt service.** Municipal corporations shall establish a debt service fund and shall cause to be levied for said fund a tax in such number of mills on the dollar on all taxable property within the corporate limits, as is necessary for the following purposes:

1. To pay all judgments against the municipal corporation other than those specifically authorized by law to be paid from other funds.

2. To pay the interest as it becomes due and to create a sinking fund to pay the principal at maturity of all bonds issued by municipal corporations except bonds or certificates which by their terms are payable solely from assessments levied against benefited property and bonds or certificates which by their terms are payable solely from earnings derived from the operation of municipally owned revenue producing undertakings.

It shall be the duty of the council to allocate the proceeds of the tax herein provided to accomplish the purposes herein enumerated. [C97, §894; SS15, §§879-s, 894; C24, 27, 31, 35, 39, §§6211, 6603; C46, 50, §§404.5, 416.132; C54, §404.13]

**404.14 Separate allocations.** A separate allocation within each functional fund shall be made for each particular purpose enumer-

ated in the various subsections of sections 404.6 to 404.12 inclusive, and for each particular purpose within a particular subsection when they are reasonably separable. [C24, 27, 31, 35, 39, §6218; C46, 50, §404.12; C54, §404.14]

**404.15 Agricultural lands.** No land included within the limits of any municipal corporation which is not laid off into lots of ten acres or less, and which is also in good faith occupied and used for agricultural or horticultural purposes shall be taxable for any city or town purpose, except that said lands and all personal property necessary to the use and cultivation of said agricultural or horticultural lands, shall be liable to taxation, not to exceed one and one-fourth mills in any year, for municipal street purposes. [C97, §§616, 890; S13, §616; C24, 27, 31, 35, 39, §6210; C46, 50, §404.4; C54, §404.15]

**404.16 Trust and agency funds.** Municipal corporations shall have power to establish trust and agency funds for the purpose of accounting for gifts received by the corporation for a particular purpose and for the purpose of accounting for money and property received and handled by such corporations as trustee or custodian or in the capacity of an agent of any public moneys as authorized by law and to levy such taxes as are authorized by law. [C54, §404.16]

**404.17 Establishment of operating fund.** For the purpose of simplifying administrative procedure, the council may, by resolution, authorize the transfer of receipts in the general fund, the street fund, the public safety fund and the sanitation fund, to a fund to be known as the operating fund, and claims payable from any of said functional funds may be paid by warrants drawn against the operating fund. In no event, however, shall the amount disbursed from the operating fund for any purpose be in excess of the receipts to said operating fund from the applicable functional fund or in excess of the amount appropriated for said purpose or particular function, without prior approval by the state comptroller. [S13, §§1056-a57, a63, a64; C24, §§6217, 6590, 6594, 6595; C27, 31, 35, §§6217, 6578-b1, 6590, 6594, 6595; C39, §§6217, 6578.1, 6590, 6594, 6595; C46, 50, §§404.11, 416.104, 416.118, 416.122, 416.123; C54, §404.17]

**404.18 Anticipation of revenue.** Loans may be negotiated or warrants issued by any municipal corporation in anticipation of its revenues for the fiscal year in which such loans are negotiated or warrants issued, but the aggregate amount of such loans and warrants shall not exceed the estimated revenue of such corporation for the fund or purpose for which the taxes are to be collected for such fiscal year, except as provided in the law relating to special assessments of public improvements. Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost

of acquiring land for dump ground purposes. Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide. The indebtedness incurred for the purpose herein provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes. [R60,§1129; C73,§500; C97,§898; S13,§§1056-a63,-a64; C24, 27, 31,§§6223, 6594, 6595; C35,§§6223, 6578-b1, 6594, 6595; C39,§§6223, 6578.1, 6594, 6595; C46, 50, §§404.17, 416.104, 416.122, 416.123; C54,§404.18]

Referred to in §391A.22

**404.19 Taxes paid over.** Before the third Monday of each month, the county treasurer shall give written notice to the clerk of each municipal corporation in the county of the amount collected for each fund up to the first day of that month, including the amounts collected to pay bonds issued to pay the costs of public improvements for which special assessments have been levied and certified, and the clerk of each municipal corporation shall draw an order therefor in favor of the municipal treasurer, countersigned by the mayor or auditor of the municipal corporation, upon the county treasurer, who shall pay such taxes to the municipal treasurer only on such order. [R60,§§1123, 1126; C73,§§495, 498; C97,§902; S13, §902; C24, 27, 31, 35, 39,§6229; C46, 50,§404.23; C54,§404.19]

Referred to in §395.32

**404.20 Surplus of tax.** When a tax has been levied by any municipal corporation for the debt service fund, such tax shall not be held invalid if the rate of tax raises an amount in excess of that sought for specific purposes. Money so raised shall be held in the debt service fund until all debts except those evidenced by revenue bonds are discharged and any surplus remaining thereafter may be transferred to any other fund or funds as the council by resolution may direct. [C51,§§123, 124; R60,§§259, 260; C73,§§318, 319; C97,§897; C24, 27, 31, 35, 39,§6222; C46, 50,§404.16; C54, §404.20]

Referred to in §404.5(5)

**404.21 Tax sales.** Sales for delinquent assessments and taxes caused to be levied by any municipal corporation shall be made in the manner provided by chapter 446, and should there be other delinquent taxes or assessments due from the same person, and collectible by the county treasurer, the sale shall be for all such delinquent assessments and taxes. [R60,§§1123, 1126; C73,§§495, 498; C97,§902; S13,§902; C24, 27, 31, 35, 39,§6228; C46, 50,§404.22; C54,§404.21]

Referred to in §395.32

**404.22 Diversion of funds.** Any councilman or officer of a municipal corporation who shall participate in, advise, consent, or allow the

proceeds of any tax or assessment caused to be levied by such municipal corporation, or the proceeds of any source of municipal revenue other than taxation, to be diverted to any purpose not authorized by law, or who shall in any way become a party to such diversion, shall be guilty of willful maladministration. [C97,§§743, 833, 894, 904; S13,§§716-a, 741-q; SS15,§§879-u, 894; C24, 27, 31, 35, 39,§6230; C46, 50,§404.24; C54,§404.22]

**404.23 Other sources of income.** Any income to a municipal corporation not designated by law to be placed in or credited to a certain existing fund enumerated in this chapter or otherwise provided by law shall be credited to the functional fund or funds enumerated in this chapter, which are allocable to the purpose or class of purposes most nearly related to the type of transaction from which the income arose. [C54,§404.23]

**404.24 Applicability.** The provisions of this chapter shall be applicable to all municipal corporations, regardless of form of government or manner of incorporation. [C54,§404.24]

#### **404.25 Construction.**

1. The provisions of this chapter relating to the allocation of the proceeds from any tax to a particular purpose shall not be construed as superseding any provision in the law requiring an election as a prerequisite to taxation or expenditure of public funds for such purpose or to carrying out such purpose.

2. No enumeration of purposes contained in this chapter shall be construed to authorize the expenditure of funds for those purposes where the section of the Code conferring general power to carry on such purpose is limited to municipal corporations of a certain size or class unless the municipal corporation making the allocation is within such size or class.

3. When any section of the Code provides for the expenditure of funds for a purpose not designated under any of the functional funds provided in this chapter and such section also fails to specify an existing fund or funds from which such expenditure may be made, the proper fund allocable to the purpose shall be the functional fund allocable to the class of purposes which would most logically include the purpose in question.

4. Whenever a body charged by law with administering funds for any particular function, shall have been elected by the people, the corporation shall adopt the budget of said body and shall allocate sufficient funds to meet said budget. However, in no event shall levies exceed the limits prescribed in section 404.2 and in sections 404.6 to 404.12, inclusive, or exceed, for this purpose, without council approval, the levies heretofore permitted by law.

5. No other statute whether heretofore or hereafter enacted relating to the taxing power of municipal corporations, shall be construed

to increase, the limits on millage levies established in section 404.2 and sections 404.6 through 404.12, unless this chapter is amended, but nothing contained in this subsection shall be construed to limit the source of payment

of bonds issued by municipal corporations and interest thereon. In all laws hereafter enacted such amendment shall be a separate section of the act. [C97,§895; C24, 27, 31, 35, 39,§§6219, 6220; C46, 50,§§404.13, 404.14; C54,§404.25]

CHAPTER 405

ASSESSOR IN CITIES OVER 125,000 POPULATION

Referred to in §§405A.1, 405A.4, 405A.8, 409.48, 442.1

- 405.1 Examining board.
- 405.2 Removal of member.
- 405.3 Examination of applicants.
- 405.4 Choosing assessor from list.
- 405.5 Disagreement—new examination.
- 405.6 Term—filling vacancy.
- 405.7 Removal of assessor.
- 405.8 Deputies—examination.
- 405.9 Appointment of deputies.
- 405.10 Salaries—dog fee.
- 405.11 Office personnel.
- 405.12 Office space.
- 405.13 Board of review appointed.
- 405.14 Terms—vacancies.
- 405.15 Sessions of review board.
- 405.16 Compensation of review board.
- 405.17 Quarters—hours—expenses.
- 405.18 Budget.
- 405.19 Manner of conducting assessments.
- 405.20 Assessment rolls.
- 405.21 Powers of review board.
- 405.22 Protest of assessment—grounds.
- 405.23 Change of assessment—notice.
- 405.24 Appeal to district court.
- 405.25 Appeal in behalf of public.
- 405.26 Legal counsel.
- 405.27 Voluntary settlement—notice.
- 405.28 Political activity prohibited.
- 405.29 Penalty for violations.

**405.1 Examining board.** In cities having more than one hundred twenty-five thousand population, the city council, the school board and the county board of supervisors each shall appoint at a regular meeting by a majority vote of the members present, one qualified person to serve as a member of an examining board to give an examination for the positions of city assessor and deputy assessors. This examining board shall organize as soon as possible after its appointment, with a chairman and secretary. All its necessary expenditures shall be paid as hereinafter provided. Members of the board shall serve without compensation. The terms of each shall be for six years. [C46, 50, 54,§405.1]

Referred to in §405A.1

**405.2 Removal of member.** A member of this examining board may be removed by the taxing body by which he was appointed but only after specific charges have been filed and a public hearing held, if requested by the discharged member of the board. Subsequent appointments and an appointment to fill a vacancy, shall be made in the same way as the original appointment. [C46, 50, 54,§405.2]

**405.3 Examination of applicants.** The examining board shall give notice of holding an examination for assessor by posting a written notice in a conspicuous place in the city hall and at one other public place, stating that at a specified date not more than sixty days nor less than thirty days from the posting of said notice, an examination for the position of city assessor will be held at a specified place. Similar notice shall be given at the same time, by one publication of said notice in a newspaper of general circulation in the city.

This examination shall be conducted as other similar examinations, including secrecy regarding the questions prior to the examination and in accordance with such other rules as this board may prescribe. The examination shall cover the following and related subjects:

1. Laws pertaining to the assessment of property for taxation.
2. Laws on tax exemption.
3. Assessment of real estate, including fundamental principles and practices of real estate appraisal and valuation.
4. Assessment of personal property and moneys and credits.
5. The duties of the city assessor.
6. Executive ability, experience and general reputation.

Only qualified electors of the city shall be eligible to take this examination.

The board shall conduct such examination under such rules, including rules allowing credit for executive ability, experience and general reputation, as shall be prescribed by the board, allotting such grades or percentage to the subjects embraced by said examination as may be fairly designed to reflect the ability and fitness of the candidates.

Within fourteen days from the holding of such examination, it shall certify to the city council, the board of supervisors and the school board, the names of all persons who in its determination, shall have passed with a grade of not less than seventy percent in such examination. Said list shall be in force and effect for two years from the date of certification. [C46, 50, 54,§405.3]

Referred to in §§405.4, 405.6, 405A.1

**405.4 Choosing assessor from list.** Not later than seven days after receipt of this list, the mayor of the city shall by written notice, call a meeting of the members of the board of supervisors, the school board and the city council, at the city hall or other specified public place, to appoint the city assessor from this list. Such selection shall not be made unless a majority of the members of two or more of said three taxing bodies are present. The mayor shall act as chairman of the meeting. The majority vote of the members present of each separate taxing body in favor of a candidate, shall count as one vote toward the selection of the city assessor.

The assessor shall be chosen by an approving vote of not less than two out of three taxing bodies. The physical condition, general reputation of the candidates and their fitness for the position as determined by the examination provided for in section 405.3, shall be taken into consideration in making such selection. [C46, 50, 54, §405.4]

Referred to in §§405.6, 405.7, 405A.1

**405.5 Disagreement—new examination.** If a majority of the taxing bodies fail to agree upon the appointment of the city assessor from this list at said meeting or at an adjourned meeting, the examining board shall give another examination within sixty days with posted and printed notices of same, under the same rules as the original examination, to provide a new list of eligible candidates. [C46, 50, 54, §405.5]

Referred to in §405.6

**405.6 Term—filling vacancy.** The term of office of the city assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the city assessor the three taxing bodies may hold a joint meeting to determine whether or not they desire to reappoint the incumbent city assessor to a new term. The taxing bodies shall have the power to reappoint the incumbent assessor without re-examination if they see fit to do so. If the incumbent city assessor is not reappointed as above provided, then not less than sixty days before the expiration of the term of said assessor, the examining board shall give a new examination for the position.

In the event of the removal, resignation, death, or removal from the city of the said city assessor, the taxing bodies shall within thirty days at a joint meeting as provided in section 405.4, select from the list provided in section 405.3 an assessor to serve out the unexpired term; or in case of inability to agree upon a selection from this list, the new selection shall be made as provided in section 405.5. In case no list is in effect, a new one shall be prepared as provided in section 405.3. Until the vacancy is filled, the chief deputy shall act as city assessor. [C46, 50, 54, §405.6]

**405.7 Removal of assessor.** The city assessor may be removed by a majority vote of the taxing bodies, after charges of misconduct, nonfeasance, malfeasance, or misfeasance in office shall have been substantiated to the satisfaction of said taxing bodies at a public hearing, if same is demanded by the assessor by written notice served upon the mayor. Their decision shall be final. The vote for removal shall be conducted in the same manner as the vote for appointment as provided in section 405.4. [C46, 50, 54, §405.7]

**405.8 Deputies—examination.** Immediately after the appointment of the city assessor, the examining board shall cause to be given an examination for the position of deputy assessors under the same rules as those used for conducting the examination for the office of city assessor. This examination shall include questions relating to the qualifications for the duties of the position of deputy assessors, shall be practical in character and designed to reflect the ability and fitness of the candidates. Separate examinations may be given relating to the assessing of real and personal property. Only qualified electors of the city shall be eligible to take this examination. This board shall conduct such examination, allotting to each answer a certain percentage or grade as it shall by rule provide. Within fourteen days from the holding of such examination, it shall certify to the city assessor a list of the names of all persons who in its determination shall have passed with a grade of not less than seventy percent in such examination. [C46, 50, 54, §405.8]

**405.9 Appointment of deputies.** The city assessor shall appoint from such list not to exceed ten persons as deputy assessors, subject to the approval of the three taxing bodies. If for any reason the city assessor is unable to appoint from this list, some or all of the deputy assessors he requires, or in case this list contains fewer names than the number of deputy assessors he requires, he shall thereupon notify the examining board. This board shall forthwith hold another examination under the same rules as the previous ones and certify a new list to the city assessor, and all necessary appointments shall be made from the list as herein provided.

The list of persons eligible for appointment to the position of deputy assessor, shall be in effect for two years from the date of its certification.

The assessor may peremptorily suspend or discharge any deputy assessor under his direction, upon written charges, for neglect of duty, disobedience of orders, misconduct, or failure to properly perform his duties. Within five days after delivery of said written charges to such employee, he may appeal by written notice to the secretary or chairman of the examining board. Such board shall grant him a hearing within fifteen days, and a decision by a majority of said examining board shall be final.

The city assessor shall designate one of said deputies as chief deputy, and the city assessor shall assign to each deputy such duties, responsibilities, and authority, from time to time, as may be proper for the efficient conduct of his office. [C46, 50, 54, §405.9]

**405.10 Salaries—dog fee.** The city assessor, chief deputy, and all other deputies shall receive such annual salary as may be determined and fixed in the amount and manner as provided in section 405.18. The dog listing fee provided in section 351.15 shall not be retained by the city assessor but shall be a part of the assessment expense fund as provided in section 405.18. [C46, 50, 54, §405.10]

**405.11 Office personnel.** Other office personnel shall be appointed by the city assessor subject to the limitations of the annual budget as hereinafter provided. The city assessor shall select field men, so far as possible, from the eligible list of deputy assessors. Their compensation shall be fixed as provided in section 405.18. They shall serve at the pleasure of the assessor. [C46, 50, 54, §405.11]

**405.12 Office space.** The county board of supervisors shall furnish adequate quarters for the city assessor. [C46, 50, 54, §405.12]

**405.13 Board of review appointed.** The mayor by written notice, shall call a joint meeting of the members of the school board, the board of supervisors, and the city council, to appoint a local board of review of assessments, consisting of five members. Such appointment shall not be made unless a majority of the members of two or more of the three said taxing bodies are present. The mayor shall act as chairman of the meeting. The majority vote of the members present of each taxing body in favor of a candidate, shall count as one vote toward his selection. A vote of not less than two out of three of the taxing bodies, shall be necessary to select a member of this board.

As nearly as possible, this board shall consist of one licensed real estate broker, one registered architect, and three other persons, all of whom shall be resident qualified electors and freeholders. In cities embracing more than one township, the members of said board shall be selected in such number or numbers from each of said townships so as to give each of said townships the highest possible numerical representation. [C46, 50, 54, §405.13]

Referred to in §405A.3

**405.14 Terms—vacancies.** The terms of the members of this board shall be for six years each. Members of this board may be removed by the taxing bodies which appointed them, but only after a public hearing upon specified charges, if requested by such member. The vote for removal shall be conducted in the same manner as the vote for appointment. Subsequent appointments, and an appointment to fill a vacancy, shall be made in the same way as the original selection. The board shall

have the power to subpoena witnesses and administer oaths. [C46, 50, 54, §405.14]

**405.15 Sessions of review board.** The board of review shall be in session from May 1 to May 31, both inclusive, each year and shall hold as many meetings as are necessary to discharge its duties. On June 1 said board shall return all books, records and papers to the assessor except undisposed of protests and records pertaining thereto. If it has not completed its work, it may continue in session until August 1. It shall adopt its own rules of procedure, elect its own chairman from its membership, and keep minutes of its meetings. The city assessor shall be clerk of said board. It may be reconvened by the state tax commission. All undisposed protests in its hands on August 1 shall be automatically overruled and returned to the assessor together with its other records. [C46, 50, 54, §405.15]

**405.16 Compensation of review board.** The compensation of each member of the board of review shall be determined, fixed and paid as provided in section 405.18. [C46, 50, 54, §405.16]

**405.17 Quarters — hours — expenses.** The board of review of assessments shall hold meetings in quarters provided by the board of supervisors. Said board shall be in session such hours each day and shall devote such time to its duties as may be necessary to the discharge of its duties and to accomplish substantial justice. The expenses of the board shall be included in the assessor's annual budget as provided hereafter. [C46, 50, 54, §405.17]

**405.18 Budget.** All expenditures under this chapter shall be paid as hereinafter provided.

Not later than July 15 of each year the city assessor, the examining board and the local board of review shall each prepare a proposed budget of all expenses for the ensuing year. The city assessor shall include in his proposed budget the probable expenses for defending assessment appeals, and court costs taxed against the public bodies. Said budgets shall be combined by the city assessor and copies thereof forthwith filed by him with the board of supervisors, city council and school board.

Such combined budget shall contain an itemized list of the proposed salaries of the city assessor and each deputy, the amount required for field men and other personnel, their number and their compensation; the estimated amount needed for supplies, printing, mileage and other expenses necessary to operate the assessor's office, the estimated expenses of the examining board and the salary and expenses of the local board of review.

Not later than July 21 of each year, the mayor shall, by written notice, call a joint meeting of the city council, school board and county board of supervisors to consider such



proposed budget and shall fix and adopt a consolidated budget for the ensuing year.

The mayor shall act as chairman and the city assessor as secretary of such meeting. The proposed budget or any item thereof may be increased or changed in any manner at this joint meeting. The majority vote of the members present of each taxing body shall count as one vote, and no action shall be valid except by the vote of not less than two out of three taxing bodies.

At the joint meeting the three taxing bodies shall authorize:

1. The number of deputies, field men, and other personnel of the assessor's office.

2. The salaries and compensation of members of the board of review, the assessor, chief deputy, other deputies, field men, and other personnel, and determine the time and manner of payment.

3. The miscellaneous expenses of the assessor's office, the board of review and the examining board, including office equipment, records, supplies, and other required items.

4. The estimated expense of assessment appeals.

All such expense items shall be included in the budget adopted for the ensuing year.

Each of the three taxing bodies shall contribute one-third of the amount required to make the final budget and shall, on the first day of January, April and July of each year remit one-third of its share to the county treasurer to be credited by him to a separate fund to be known as "The City Assessment Expense Fund", and from which fund all expenses incurred under this chapter shall be paid.

The county auditor shall keep a complete record of said fund and shall issue warrants thereon only on requisition of the city assessor.

The city assessor shall not issue requisitions so as to increase the total expenditures budgeted for the operation of the city assessor's office. However, for purposes of promoting operational efficiency, the city assessor shall have authority, with the approval of the three taxing bodies, to transfer funds budgeted for specific items for the operation of the city assessor's office from one unexpended balance to another; such transfer shall not be made so as to increase the total amount budgeted for the operation of the office of city assessor, and no funds shall be used to increase the salary of the city assessor or the salaries of permanent deputy assessors. He shall issue requisitions for the examining board and for the board of review on order of the chairman of each board and for costs and expenses incident to assessment appeals, only on order of the city legal department.

Unexpended funds remaining in the city assessment expense fund at the end of a year shall be carried forward into the next year.

Such balance of unexpended funds shall be credited to the final payment into the fund by the respective taxing bodies for the next year on an equal basis. The treasurer shall notify such taxing bodies of any such credits to which they are entitled. [C46, 50, 54, §405.18; 56GA, ch 200, §1]

Referred to in §§405.10, 405.11, 405.16

**405.19 Manner of conducting assessments.** The city assessor in cities having a population of more than one hundred twenty-five thousand shall conduct assessments in the manner provided by chapter 441. [C46, 50, 54, §405.19]

**405.20 Assessment rolls.** The assessment shall be completed not later than April 30. If the city assessor makes any change in an assessment after it has been entered on the assessor's rolls, he shall note on said roll, together with the original assessment, the new assessment and the reason for the change, together with his signature and the date of the change. No changes shall be made on the assessment rolls after May 1 except by order of the local board of review or by decree of court. [C46, 50, 54, §405.20]

**405.21 Powers of review board.** The board of review shall have the power:

1. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, personal property or moneys and credits made by the city assessor.

2. To add to the assessment rolls any taxable property which has been omitted by the assessor.

It shall have the power to revalue and reassess real estate as provided in section 442.2.

It shall have all the powers conferred on boards of review in chapter 442 where such powers do not conflict with the provisions of this chapter; and in event of such conflict, the provisions of this chapter shall prevail. [C46, 50, 54, §405.21]

**405.22 Protest of assessment—grounds.** Any property owner or aggrieved taxpayer who is dissatisfied with his assessment may file a protest against such assessment with the local board of review on or after May 1, to and including May 20, of the year of the assessment. Said protest shall be in writing and signed by the one protesting or by his duly authorized agent. Said protest must be confined to one or more of the following grounds:

1. That said assessment is not equitable as compared with assessments of other like property in the city. When this ground is relied upon as the basis of a protest, the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

2. That his property is assessed for more than the value authorized by law, stating the specific amount which the protesting party

believes his property to be overassessed, and the amount which he considers to be its actual value and the amount he considers a fair assessment.

3. That his property is not assessable and stating the reasons therefor.

4. That there is an error in the assessment and state the specific alleged error.

5. That there is fraud in the assessment which shall be specifically stated.

In addition to the above, the property owner may protest annually to the board of review under the provisions of section 442.2, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section. [C46, 50, 54, §405.22]

Referred to in §§405 24, 442.1

**405.23 Change of assessment—notice.** All changes in assessments authorized by the local board of review, and reasons therefor, shall be entered in the minute book kept by said board and on the assessment roll. Said minute book shall be filed with the city assessor after the adjournment of the board of review and shall at all times be open to public inspection. In case the board increases any assessment or adds new property to the tax rolls, notice of such change shall be given as provided in section 442.4. [C46, 50, 54, §405.23]

**405.24 Appeal to district court.** Appeals from the local board of review and to the district court, shall be followed as provided in sections 442.6 to 442.11, inclusive. No new grounds in addition to those set out in the protest to the local board of review as provided in section 405.22, can be pleaded, but additional evidence to sustain said grounds may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body or other public officer as provided in section 442.10. [C46, 50, 54, §405.24]

Referred to in §442.1

**405.25 Appeal in behalf of public.** An appeal from an assessment on behalf of the public

shall be made as provided in section 442.10. [C46, 50, 54, §405.25]

**405.26 Legal counsel.** The city legal department shall represent the city assessor and local board of review in all litigation dealing with assessments. Any taxing body may be represented by an attorney and shall be required to appear by attorney upon written request of the city assessor to the presiding officer of any such taxing body. [C46, 50, 54, §405.26]

**405.27 Voluntary settlement—notice.** No voluntary court settlement of an assessment appeal shall be valid unless written notice thereof shall first be served upon the city council, school board, and board of supervisors. [C46, 50, 54, §405.27]

**405.28 Political activity prohibited.** Neither the city assessor nor any employee of the city assessor's office shall directly or indirectly contribute any money or anything of value to any candidate, his agent or personal representative, for nomination or election to any office, or to any campaign or political committee, or take an active part in any political campaign, except to cast his vote, or to express his personal opinion, nor shall any such candidate, person, representative, agent, or committee, solicit such contribution or active political support from any officer or employee. Any person convicted of violating any provision of this chapter shall immediately be dismissed from office or may be punished as for an indictable misdemeanor. [C46, 50, 54, §405.28]

Punishment, §687.7

**405.29 Penalty for violations.** Any person including persons engaged in the administration of this chapter, violating any provision of this chapter, shall be deemed guilty of an indictable misdemeanor and punished accordingly. [C46, 50, 54, §405.29]

Constitutionality, 49GA, ch 202, §31  
 Omnibus repeals, 49GA, ch 202, §32; 49GA, ch 203, §1  
 Punishment, §687.7

## CHAPTER 405A

### ASSESSORS IN CITIES FROM 10,000 TO 125,000 POPULATION

Referred to in §409.48

- 405A.1 Optional procedure.
- 405A.2 Terms of examining boards.
- 405A.3 Term of assessor and appointing board.
- 405A.4 Expenses.

- 405A.5 Several school districts.
- 405A.6 Appraisers employed.
- 405A.7 Tax levy.
- 405A.8 Assessment by county.

**405A.1 Optional procedure.** Any city having a population of ten thousand or more, according to the latest federal census, or which shall attain such population in the future but shall not have a population in excess of one hundred and twenty-five thousand, may by ordinance provide for the selection of a city assessor and for the assessment of property in

such cities under the provisions of chapter 405 and this chapter.

Any city desiring to provide for such assessment under the provisions of chapter 405 shall, not less than sixty days before the expiration of the term of the assessor in office, proceed with the appointment of an examining board as provided by section 405.1 which shall con-

duct an examination as provided by section 405.3 and an assessor shall be appointed as provided by section 405.4; such appointment of an assessor shall be subject to the approval of the state tax commission. [C50, 54,§405A.1]

**405A.2 Terms of examining boards.** The terms of the three members of the examining board in cities to which this chapter shall become applicable, shall be for four years, except that the term of one member of the first examining board to be appointed shall expire two years from the date of his original appointment, of a second member three years from the date of the original appointment and the third member four years from the date of the original appointment, and the length of the terms of the members initially appointed under this chapter shall be determined by lot. [C50, 54, §405A.2]

**405A.3 Term of assessor and appointing board.** The term of office of assessors in cities having a population of ten thousand or more and less than one hundred twenty-five thousand, shall be for four years from the date they assume office. On or before the date of the expiration of the term of the incumbent city assessor, a board of review shall be selected as provided by section 405.13 and the appointive board may decide in any city having a population of ten thousand or more and less than forty thousand to select a board of review of three members. In cities having boards of review of five members, the term of one member of the first board to be appointed shall expire in one year after the date of appointment, of a second member two years after the date of appointment, of a third member three years after the date of appointment and of the remaining two members four years after the date of appointment. In cities having three members of the board of review, the term of one member shall expire two years from the date of the original appointment, one member three years from the date of the original appointment and one member four years from the date of the original appointment. Thereafter the terms of all members of boards of review shall be for four years each. Terms of members originally appointed to the boards shall be determined by lot. [C50, 54,§405A.3]

**405A.4 Expenses.** All expenditures in cities selecting an assessor under this chapter shall be paid under the provisions of chapter 405. [R60,§730; C73,§§390, 3810; C97,§§592, 661, 674; S13,§§592, 661, 674; SS15,§1056-b18; C24, 27, 31, 35, 39,§§5573, 5656, 5669, 6652, 6653; C46,§§359.48, 363.29, 363.43, 419.38, 419.39; C50, 54,§405A.4]

**405A.5 Several school districts.** In cities to which this chapter becomes applicable in which there is more than one school district, said school districts jointly shall be considered as one taxing body and together shall have but one vote at all meetings of the three taxing bodies. [C50, 54,§405A.5]

**405A.6 Appraisers employed.** The taxing bodies by majority vote in any city to which this chapter is or shall become applicable shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor's office on a pro rata basis by school districts, cities and counties which constitute the taxing bodies. The county conference as created by section 442.1 may employ similar assistance for the county assessor and the cost of such shall be paid from the county assessor fund, and provisions for costs of such service shall be made in the preparation of the budget for the county assessor's office. [C50, 54, §405A.6]

**405A.7 Tax levy.** Each of the three taxing bodies of cities to which this chapter is applicable, is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter. Such tax shall be levied only on property in the city involved. [C50, 54,§405A.7]

**405A.8 Assessment by county.** Any city of ten thousand or more population and not more than one hundred twenty-five thousand population not electing to provide for its assessment under the provisions of chapter 405 as provided in this chapter, shall be assessed by the county assessor. Any county assessor shall be eligible for appointment as the assessor in any city having a population of more than ten thousand and less than one hundred twenty-five thousand but in such event the laws relating to the county assessor and a county board of review shall apply. There shall be no separate city board of review, assessment board or appointing board in any such city. Any city of ten thousand or more and less than one hundred twenty-five thousand population not desiring to provide for assessment within the provisions of chapter 405 as provided by this chapter shall so certify by resolution of the city council or other municipal governing bodies not less than sixty days before the expiration of the term of the incumbent city assessor, such resolution to be effective for a period of four years from date of passage, and certified to the state tax commission and the county board of supervisors. [C50, 54,§405A.8]

## CHAPTER 406

### ROAD POLL TAX

Chapter repealed by 54GA, ch 159,§87

CHAPTER 407

INDEBTEDNESS

Referred to in §§380.7, 390.13  
 Applicable to all cities and towns

- 407.1 Limitation.
- 407.2 Limitation.
- 407.3 Purposes.
- 407.4 Application of limitation.
- 407.5 Election required.
- 407.6 Initiation of proceedings.
- 407.7 Election called.
- 407.8 Notice.

- 407.9 Questions submitted—manner of submission.
- 407.10 Majorities required.
- 407.11 Limitation.
- 407.12 Issuance of bonds.
- 407.13 Maturity of bonds—interest.
- 407.14 Payment of bonds.
- 407.15 Construction.

**407.1 Limitation.** No county or other political or municipal corporation shall become indebted in any manner for its general or ordinary purposes to an amount exceeding in the aggregate one and one-fourth percent of the actual value of the taxable property within such corporation. The value of such property shall be ascertained by the last tax list previous to the incurring of the indebtedness. Indebtedness heretofore or hereafter incurred by a county for poor relief purposes shall not be construed or regarded as having been incurred for its general or ordinary purposes insofar as said indebtedness may be incurred solely for poor relief purposes. [S13,§1306-b; C24, 27, 31, 35, 39,§6238; C46, 50, 54,§407.1]

Referred to in §§296.1, 395.25  
 Constitutional limitation, Art. XI,§3

**407.2 Limitation.** No county, or other political or municipal corporation, shall become indebted in any manner, or for any purpose to an amount, in the aggregate, exceeding five percent of the actual value of the property within such county or corporation, to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. [C46, 50, 54,§407.2]

Constitutionality, 49GA, ch 220,§19  
 Bonds to refund indebtedness, see 49GA, ch 220,§18  
 Special limitation in certain towns of less than 1,000 population, 52GA, ch 314,§2

**407.3 Purposes.** Cities and towns when authorized to acquire the following named public utilities and other improvements may incur indebtedness for the purpose of:

1. Purchasing, erecting, extending, reconstructing, or maintaining and operating waterworks, gasworks, electric light and power plants, or the necessary transmission lines therefor, and heating plants.
2. Purchasing or erecting garbage disposal plants.
3. Erecting and equipping community center houses and recreation grounds.
4. Acquiring lands and establishing juvenile playgrounds, swimming pools, and recreation centers thereon or on lands already owned or to be leased by the city of town.
5. Constructing, purchasing, remodeling, or purchasing and remodeling city and town halls, jails, police stations, fire stations, or garages for the storage, repair and servicing of city or

town motor vehicles and other equipment and acquiring sites therefor.

6. Erecting a building or buildings for a public library.

7. Purchasing sites for hospitals or sites with a building or buildings and constructing or reconstructing buildings to be used for hospitals.

8. Purchasing or constructing dams across streams for any proper municipal purpose.

1. [S13,§1306-b; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

2. [SS15,§696-b; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

3. [C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

4. [SS15,§879-s; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

5. [SS15,§741-f; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

6. [C97,§732; S13,§732; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

7. [S13,§741-r; C24, 27, 31, 35, 39,§6239; C46, 50, 54,§407.3]

8. [C27, 31, 35, 39,§6239; C46, 50, 54,§407.3]  
 Referred to in §§407.4, 407.6, 407.9  
 Amendment by chapter 162, Acts 54GA, repealed by 55GA, ch 176,§3

**407.4 Application of limitation.** No indebtedness for the extraordinary purposes mentioned in section 407.3 shall be charged against or counted as a part of the one and one-fourth percent available for general ordinary purposes until the other three and three-fourths percent of the five percent of indebtedness permitted by statute has been exhausted. [S13,§1306-b; C24, 27, 31, 35, 39,§6240; C46, 50, 54,§407.4]

Constitutional provision, Art. XI,§3

**407.5 Election required.** No such indebtedness shall be incurred until authorized by an election. [C73,§461; C97,§727; S13,§727, 741-r; SS15,§§696-b, 741-g, 879-r; C24, 27, 31, 35, 39, §6241; C46, 50, 54,§407.5]

**407.6 Initiation of proceedings.** The proceedings to call such an election may be instituted by the council, except that before an election may be called for any of the following purposes a petition shall be filed with the council, requesting that such action be taken:

1. For any of the purposes mentioned in subsections 1, 4, and 7 of section 407.3, the petition shall be signed by qualified electors of the city or town equal in number to twenty-five percent of those who voted at the last regular municipal election.

2. For the establishment of community center houses and recreation grounds, it shall be signed by fifteen percent of the resident freeholders of the district within which the same is to be constructed.

1. [S13, §§741-v, 1306-c; SS15, §879-r; C24, 27, 31, 35, 39, §6242; C46, 50, 54, §407.6]

2. [C24, 27, 31, 35, 39, §6242; C46, 50, 54, §407.6]

**407.7 Election called.** The council on receipt of any such petition shall at the next regular meeting call a special election, fixing the time and place thereof, or may submit the proposition as a special question at the next regular municipal election. The council may reject a petition for a community center, or change the area of any district petitioned for. [S13, §1306-d; C24, 27, 31, 35, 39, §6243; C46, 50, 54, §407.7]

**407.8 Notice.** It shall give notice of any election held under the provisions of this chapter by publication once each week for three consecutive weeks in some newspaper published in the city or town, or if none be published therein, in a newspaper published in the county and of general circulation in the city or town. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. [S13, §1306-d; SS15, §741-h; C24, 27, 31, 35, 39, §6244; C46, 50, 54, §407.8]

**407.9 Questions submitted—manner of submission.** Each proposition mentioned in section 407.3 shall be submitted on a separate ballot, but more than one of such propositions may be so submitted at the same election, and as a part of each proposition so submitted there shall be stated on the ballot: The amount of indebtedness to be contracted, if any; the amount of bonds to be issued, if any; the annual rate of tax to be levied, if any, for the payment of such bonds and interest thereon. The form of the ballot shall be substantially as follows:

Shall (Here name city or town)

(Here state the particular proposition to be voted upon) and contract indebtedness for such purpose not exceeding \$..... and issue bonds for such purpose not exceeding \$..... and levy tax annually upon the taxable property in (Here name of

YES

city or town), not exceeding..... mills per annum for the payment of such bonds and the interest thereon? NO

[S13, §1306-d; SS15, §§741-h, 879-r; C24, 27, 31, 35, 39, §6245; C46, 50, 54, §407.9]

**407.10 Majorities required.** A majority of all the legal votes cast on the particular question at the election shall be sufficient to authorize the municipality to contract the indebtedness, except that if the question submitted is one in connection with waterworks, gasworks, electric light or power plants, heating plants, or the establishment of a hospital, the affirmative vote shall also be as large as a majority of all the legal votes cast at the preceding municipal election. [C97, §727; S13, §§727, 741-q-v, 1306-e; SS15, §§696-b, 741-g, 879-r; C24, 27, 31, 35, 39, §6246; C46, 50, 54, §407.10]

Vote required to authorize bonds, §75.1

**407.11 Limitation.** If a question for the establishment of community center houses or juvenile playgrounds fails to secure the requisite majority it shall not again be submitted at an election for two years. [SS15, §879-r; C24, 27, 31, 35, 39, §6247; C46, 50, 54, §407.11]

**407.12 Issuance of bonds.** If the municipality is authorized to incur the indebtedness, the council shall issue bonds and make provisions for the payment thereof with interest. [S13, §§741-r-v; SS15, §§696-b, 741-f, 879-s; C24, 27, 31, 35, 39, §6248; C46, 50, 54, §407.12]

**407.13 Maturity of bonds—interest.** Bonds issued under the provisions of this chapter shall bear interest at the rate of not more than five percent per annum and shall become due in not more than twenty years after issuance and may be issued serially. [C97, §726; S13, §§741-r, 1306-e; SS15, §726; C24, 27, 31, 35, 39, §6249; C46, 50, 54, §407.13]

Maturity and payment of bonds, ch 76

**407.14 Payment of bonds.** Bonds for garbage disposal plants shall be paid from the sanitation fund of the city or town, but other bonds shall be paid from the debt service fund. [C97, §881; S13, §741-q; SS15, §881; C24, 27, 31, 35, 39, §6250; C46, 50, 54, §407.14]

**407.15 Construction.** Nothing in this chapter shall be construed to repeal chapter 296 or as being applicable to bonds issued under section 398.6. [S13, §1306-f; C24, 27, 31, 35, 39, §6251; C46, 50, 54, §407.15]

CHAPTER 408

BONDS

Referred to in §§357A.12, 359.46, 383.8, 399.7
Applicable to all cities and towns

- 408.1 Funding.
408.2 Form.
408.3 Signing.
408.4 Resolution required.
408.5 Registration.
408.6 Monthly reports.
408.7 Sale or exchange.
408.8 Delivery—cancellation—sale—proceeds.
408.9 Taxes to pay.
408.10 to 408.14, inc. Repealed by 55GA, ch 194,§1.
408.15 Limitation of action.
408.16 Repealed by 55GA, ch 194,§2.
408.17 Street bonds and taxes.

408.1 Funding. Cities and towns may settle, adjust, renew, or extend the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, or judgments, and may fund or refund the same and issue coupon bonds therefor; but no bonds shall be issued under this section for any other purpose than is above authorized. [C97,§905; C24, 27, 31, 35, 39,§6252; C46, 50, 54,§408.1]

Bonds to refund indebtedness, see 49GA, ch 220,§18
Maturity and payment of bonds, ch 76

408.2 Form. Such bonds shall be issued in sums of not less than one hundred dollars nor more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding five percent per annum payable annually or semiannually, and shall be substantially in the following form, but subject to changes that will conform them to the resolution of the council, to wit:

The city (or town) of ..... in the state of Iowa, for value received promises to pay to bearer ..... dollars, lawful money of the United States of America, on ....., with interest on said sum from the date hereof until paid at the rate of ..... percent per annum, payable ..... annually on the first day of ..... and ..... in each year, on presentation and surrender of the interest coupons hereto attached; both principal and interest payable at .....

This bond is issued by the city (or town) of ....., pursuant to the provisions of section ....., chapter ....., of the Code of Iowa, and in conformity to a resolution of the council of said city (or town) duly passed, on the ..... day of ....., ....., And it is hereby represented and certified that all things requisite according to the laws and constitution of the state of Iowa to be done precedent to the lawful issue of this bond have been performed as required by law, and that the total indebtedness of said city, including this bond, does not exceed the constitutional or statutory limitations.

In testimony whereof said city (or town) by its council has caused this bond to be signed by its mayor and attested by its auditor (or clerk), with the seal of said city (or town) at-

tached, this ..... day of .....
Mayor of the city (or town)
of .....

Attest:

.....
Clerk of the city (or town) of .....
(Form of Coupon.)

The treasurer of the city (or town) of ....., Iowa, will pay to bearer ..... dollars, on ....., at ....., for ..... annual interest on its ..... bond, dated ..... No. ....

Attest:

.....
Clerk of the city (or town) of .....
[C97,§906; C24, 27, 31, 35, 39,§6253; C46, 50, 54, §408.2]

Referred to in §420.15s

408.3 Signing. Said bonds shall be numbered consecutively, signed by the mayor, and attested by the auditor or clerk as the case may be, with the seal of the city (or town) affixed. The interest coupons attached thereto shall be attested by the signature of the clerk, or a facsimile thereof. [C97,§907; C24, 27, 31, 35, 39,§6254; C46, 50, 54,§408.3]

408.4 Resolution required. All bonds issued under the provisions of this chapter shall be issued pursuant to, and in conformity with, a resolution adopted by the council of said city or town, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear, and whether payable annually or semiannually, the place where the principal and interest shall be payable, and when to become due, and such other provisions, not inconsistent with law, in reference thereto, as the council shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the council, and when so entered shall constitute a contract between the city or town and the purchasers or holders of said bonds. [C97, §908; C24, 27, 31, 35, 39,§6255; C46, 50, 54,§408.4]

408.5 Registration. When bonds have been executed as aforesaid, they shall be delivered to the treasurer of the city or town, and his

receipt taken therefor, who shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and, if exchanged, what evidences of debt were received therefor, which record shall at all times be open to the inspection of the citizens of said city or town. The treasurer shall thereupon certify upon the back of each bond as follows: "This bond duly and properly registered in my office this ..... day of .....

.....  
Treasurer of the city (or town) of ....." and shall stand charged on his official bond with all bonds so delivered to him, and the proceeds thereof. [C97,§909; C24, 27, 31, 35, 39, §6256; C46, 50, 54,§408.5]

C97,§909, editorially divided

**408.6 Monthly reports.** The treasurer shall report under oath to the council of said city or town, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report, and the date of such sale or exchange, and, when exchanged, a description of the indebtedness for which exchanged. [C97,§909; C24, 27, 31, 35, 39,§6257; C46, 50, 54,§408.6]

**408.7 Sale or exchange.** The council may provide by resolution for the exchange of such bonds or any part thereof, for legal indebtedness of the city or town evidenced by bonds, warrants, or judgments which were outstanding when the resolution authorizing such bonds was passed; or said council may by resolution order said bonds sold as provided by law for the sale of public bonds. [C97,§910; C24, 27, 31, 35, 39,§6258; C46, 50, 54,§408.7]

**408.8 Delivery — cancellation — sale — proceeds.** After registration, the treasurer shall deliver bonds to the purchasers thereof upon payment therefor. When bonds are exchanged for indebtedness, he shall at once cancel the warrants or bonds or secure proper credits therefor on judgments and the cancellation of such judgments as are paid. Bonds shall not be exchanged for less than par plus accrued interest. The proceeds of the sale of such bonds shall be used only for the purpose for which such bonds were issued. [C97,§910; C24, 27, 31, 35, 39,§6259; C46, 50, 54,§408.8]

**408.9 Taxes to pay.** Cities and towns issuing bonds under this chapter shall levy taxes for

the payment of the principal and interest thereof, in accordance with the provisions of the chapter relating to taxation. [C97,§911; C24, 27, 31, 35, 39,§6260; C46, 50, 54,§408.9]

Taxation, ch 404

**408.10 to 408.14, inc.** Repealed by 55GA, ch 194,§1. See §408.17.

**408.15 Limitation of action.** No action shall be brought questioning the legality of any of the bonds authorized by this chapter, waterworks bonds, gasworks bonds, or electric light or power plant bonds, from and after three months from the time the same are ordered issued by the proper authority. [C97,§913; C24, 27, 31, 35, 39,§6264; C46, 50, 54,§408.15]

Referred to in §372.11

Similar provisions, §§420.285, 461.23, 463.23, 464.12

**408.16** Repealed by 55GA, ch 194,§2. See §408.17.

**408.17 Street bonds and taxes.** Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of opening, widening, extending, grading, and draining the right of way of any street, highway, avenue, alley, public ground, or market place, and to construct, reconstruct or repair any street improvement, and to pay the cost of land needed for right of way purposes.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [C97,§912; S13,§§716-a,d,e, 840-e, 849-h, 912-a; SS15,§§840-g,p; C24, 27, 31, 35,§§6261-6263, 6265; C39,§§6261, 6261.1, 6261.2, 6262, 6263, 6265; C46, 50,§§408.10-408.14, 408.16; C54,§408.17]

CHAPTER 408A

BOND PROPOSALS—PETITION FOR ELECTION

Applicable to all cities and towns except certain special charter cities

- 408A.1 Notice of proposal to issue bonds.
- 408A.2 Petition for election on issuance.
- 408A.3 Form of question.
- 408A.4 Notice of election.
- 408A.5 Vote required.

- 408A.6 When council may proceed.
- 408A.7 Prior issues not affected.
- 408A.8 Construction.
- 408A.9 Exception.

**408A.1 Notice of proposal to issue bonds.** Any other statute notwithstanding, except where an election is required under some other statute, before any city or town shall institute proceedings for the issuance of bonds in the amounts hereinafter set forth, the governing body thereof shall cause a notice of the proposal to issue such bonds, including a statement of the amount and purpose of said bonds, together with the maximum rate of interest which said bonds are to bear, to be published at least once in a newspaper of general circulation within such municipality at least fifteen days prior to the meeting at which it is proposed to take action for the issuance of such bonds:

In cities and towns having a population of five thousand or less, ten thousand dollars, or more;

In cities and towns having a population of more than five thousand and not more than seventy-five thousand, twenty-five thousand dollars, or more;

In cities and towns having a population in excess of seventy-five thousand, seventy-five thousand dollars, or more. [C39,§6261.1; C46, 50,§408.11; C54,§408A.1]

**408A.2 Petition for election on issuance.** If at any time before the date fixed for taking action for the issuance of such bonds a petition is filed with the clerk or recorder of the municipality signed by qualified electors of the city or town equal in number to two percent of those who voted for the office of governor at the last preceding general election as shown by the election registers or poll lists, asking that the question of issuing such bonds be submitted to the legal voters of the municipality, the governing body thereof shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall call a special election to vote upon the question of issuing the bonds. [C54,§408A.2]

Referred to in §408A.3

**408A.3 Form of question.** If a petition is filed as contemplated by section 408A.2 and the governing body of the municipality calls an election to vote on the question of issuing said bonds, the proposition shall be submitted in the following form:

“Shall the city (or town) of ..... issue its bonds in the amount of \$..... for the purpose of .....?”  
[C54,§408A.3]

Referred to in §386B.10

**408A.4 Notice of election.** Notice of such election, stating the date of the election, the hours of opening and closing the polls, the precincts and polling places therefor and the question to be submitted shall be published once each week for three consecutive weeks in some newspaper published in the city or town, or if none be published therein, in a newspaper published in the county and having a general circulation in the city or town. The election shall be held on a day not less than five nor more than twenty days after the last publication of such notice. [C54,§408A.4]

Referred to in §386B.10

**408A.5 Vote required.** The proposition of issuing said bonds shall not be deemed carried or adopted unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election. [C39,§6261.2; C46, 50,§408.12; C54,§408A.5]

See §75.1

**408A.6 When council may proceed.** If no such petition is filed as aforesaid, or if a petition is filed and the proposition of issuing the bonds is approved by the voters at an election as hereinbefore provided, the council may proceed with the authorization and issuance of the bonds. [C54,§408A.6]

**408A.7 Prior issues not affected.** Nothing herein contained shall be construed to apply to bonds issued in connection with street improvements, bridges, viaducts, sewers or sewage treatment works nor to funding or refunding bonds nor to bonds that have theretofore been authorized or approved at an election required or provided to be held under any other law. [C54,§408A.7]

**408A.8 Construction.** The term “bonds” as used in this chapter shall be construed to mean bonds or other evidences of indebtedness of the city or town which are payable from and secured by ad valorem taxes levied on all the taxable property therein. [C97,§912; S13,§§716-a,-e; S515,§840-g; C24, 27, 31, 35, 39, §6263; C46, 50,§408.14; C54,§408A.8]

**408.9 Exception.** This shall not apply to special charter cities of fifty thousand or more. [C54,§408A.9]



## CHAPTER 409

## PLATS

Applicable to all cities and towns

- 409.1 Subdivisions or additions.  
 409.2 Covenant of warranty.  
 409.3 Conveyances according to plat.  
 409.4 Streets and blocks.  
 409.5 Grade of streets.  
 409.6 Alleys.  
 409.7 Filing—approval.  
 409.8 Acknowledgment.  
 409.9 Abstract of title—opinion—certificates—utility easements.  
 409.10 Encumbrances—payment—creditor's refusal.  
 409.11 Encumbrance—bond.  
 409.12 Record—filing.  
 409.13 Effect of record.  
 409.14 Approval condition to filing and recording.  
 409.15 Disapproval—appeal.  
 409.16 Void plat—action to annul.  
 409.17 Change of name of street.  
 409.18 Vacation by proprietor before sale.  
 409.19 Partial vacation by proprietor.  
 409.20 Streets, alleys, and public grounds.  
 409.21 Correction of plat.  
 409.22 Vacation by lot owners—petition—notice.  
 409.23 Time of hearing—notice.  
 409.24 Decree.  
 409.25 Public lands.  
 409.26 Replatting.  
 409.27 Plat by auditor.  
 409.28 Execution and filing—effect.  
 409.29 Costs and expenses.  
 409.30 Collection or assessment of costs.  
 409.31 Platting for assessment and taxation.  
 409.32 Appeal.  
 409.33 Insufficiency of description—plat ordered.  
 409.34 Appeal.  
 409.35 Hearing.  
 409.36 Auditor to prepare plat.  
 409.37 Requirements.  
 409.38 Resurvey of town plats.  
 409.39 Conditions—jurisdiction.  
 409.40 How resurvey made.  
 409.41 Power of surveyor.  
 409.42 Notice of resurvey.  
 409.43 Plat certified and filed—effect.  
 409.44 Contest—decree.  
 409.45 Sale or lease without plat.  
 409.46 Public squares transferred for school purposes.  
 409.47 Manner of transfer.  
 409.48 Assessment of platted lots.

**409.1 Subdivisions or additions.** Every original proprietor of any tract or parcel of land, who has subdivided, or shall hereafter subdivide the same into three or more parts, for the purpose of laying out a town or city, or addition thereto, or part thereof, or suburban lots, shall cause a plat of such subdivisions, with references to known or permanent monuments, to be made, giving the bearing and distance from some corner of a lot or block in said town or city to some corner of the congressional division of which said town, city, or addition is a part, which shall accurately describe all the subdivisions thereof, numbering the same by progressive numbers, giving their dimensions by length and breadth, and the breadth and courses of all the streets and alleys established therein. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§6266; C46, 50, 54,§409.1]

C97,§914, editorially divided  
 Referred to in §§409.2, 409.9

**409.2 Covenant of warranty.** The duty to file for record a plat as provided in section 409.1 shall attach as a covenant of warranty, in all conveyances of any part or parcel of such subdivisions, by the original proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said proprietor to file such plat. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§6267; C46, 50, 54,§409.2]

**409.3 Conveyances according to plat.** Description of lots or parcels of land in such sub-

divisions according to the number and designation thereof on said plat, in conveyances or for the purposes of taxation, shall be valid. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§6268; C46, 50, 54,§409.3]

**409.4 Streets and blocks.** The plat of any addition to any city or town or subdivision of any part or parcel of lands lying within or adjacent to any city or town shall be divided by streets into blocks, and such blocks and streets shall conform as nearly as practicable to the size of blocks and the widths of streets therein, and shall be extensions of the existing system of streets. [C73,§559; C97,§916; S13,§916; C24, 27, 31, 35, 39,§6269; C46, 50, 54,§409.4]

40ExGA, ch 78,§1, editorially divided  
 Referred to in §409.7

**409.5 Grade of streets.** The council may require the owner of the land to bring all streets to a grade acceptable to the council and may also require the installation of sidewalks, paving, sewers, water, gas, and electric utilities before the plat is approved.

The council or commission may tentatively approve such plat prior to such installation, but any such tentative approval shall be revocable. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the council or commission may accept a bond with surety to secure to the city the actual construction and installation of such improvements or utilities within a fixed time and according to specifications determined by or in accordance with the regulation

of the council or commission the city is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies. [C24, 27, 31, 35, 39, §6270; C46, 50, 54, §409.5]

Referred to in §409.7

**409.6 Alleys.** It may require alleys to be platted separating abutting lots and if so platted, the alleys shall conform as nearly as practicable to the width of alleys in the city or town and shall be extensions of the existing system of alleys. [S13, §916; C24, 27, 31, 35, 39, §6271; C46, 50, 54, §409.6]

Referred to in §409.7

**409.7 Filing—approval.** All such plats shall be filed with the clerk of the city or town and when so filed the council within a reasonable time shall consider the same, and shall, if it is found to conform to the provisions of sections 409.4, 409.5, and 409.6, by resolution approve the plat and direct the mayor and clerk to certify the resolution which shall be affixed to the plat. [C97, §916; S13, §916; C24, 27, 31, 35, 39, §6272; C46, 50, 54, §409.7]

Referred to in §409.14

**409.8 Acknowledgment.** Each plat shall be accompanied by a correct description of the land or parcel of land subdivided and by a statement to the effect that the subdivision as it appears on the plat is with the free consent and in accordance with the desire of the proprietor, signed and acknowledged by such proprietor and his spouse, if any, before some officer authorized to take the acknowledgment of deeds. [C73, §560; C97, §915; S13, §915; C24, 27, 31, 35, 39, §6273; C46, 50, 54, §409.8]

**409.9 Abstract of title—opinion—certificates—utility easements.** Every plat shall be accompanied by a complete abstract of title and an opinion from an attorney at law showing that the fee title is in the proprietor and that the land platted is free from encumbrance, or is free from encumbrance other than that secured by the bond provided for in section 409.11, and a certified statement from the treasurer of the county in which the land lies that it is free from taxes, and from the clerk of the district court that it is free from all judgments, attachments, mechanics' or other liens as appears by the record in his office, and from the recorder of the county that the title in fee is in such proprietor and that it is free from encumbrance or free from encumbrance other than that secured by the bond provided for in section 409.11, as shown by the records of his office.

Utility easements shall not be construed to be encumbrances hereunder and the location thereof with reference to the land platted may be shown by drawing on the plat described under section 409.1. Grantees of said utility easements shall not be construed to be original proprietors of the land to be platted and shall not join in platting or dedicating the platted land. [C97, §915; S13, §915; C24, 27, 31, 35, 39, §6274; C46, 50, 54, §409.9; 57GA, ch 198, §1]

**409.10 Encumbrances—payment—creditor's refusal.** If the land so platted is encumbered with a debt certain in amount and which the creditor will not accept with accrued interest to the date of proffered payment if it draws interest, or with a rebate of six percent per annum if it draws no interest, or if the creditor cannot be found, then such proprietor, and if a corporation, its proper officer or agent, may make an affidavit stating either that the proprietor offered to pay the creditor the full amount of his debt, or the debt with the rebate, as the case may be, and that he would not accept the same, or that he cannot be found. [C97, §915; S13, §915; C24, 27, 31, 35, 39, §6275; C46, 50, 54, §409.10]

**409.11 Encumbrance—bond.** The proprietor shall then execute and file with the recorder a bond in double the amount of the encumbrance, which bond shall be approved by the recorder and clerk of the district court. The bond shall run to the county and be for the benefit of purchasers of land subdivided by the plat and shall be conditioned for the payment of the encumbrance, and the cancellation thereof, of record as soon as practicable after the same becomes due and to hold all purchasers and those claiming under them forever harmless from such encumbrance. [C97, §915; S13, §915; C24, 27, 31, 35, 39, §6276; C46, 50, 54, §409.11]

Referred to in §409.9

**409.12 Record—filing.** The signed and acknowledged plat and the attorney's opinion, together with the certificates of the clerk, recorder, and treasurer, and the affidavit and bond, if any, together with the certificate of approval of the council, shall be entered of record in the proper record books in the office of the county recorder. When so entered, the plat only shall be entered of record in the office of the county auditor and shall be of no validity until so filed, in both offices. [C51, §§635, 636; R60, §§1019, 1020; C73, §560; C97, §§915, 917; S13, §915; C24, 27, 31, 35, 39, §6277; C46, 50, 54, §409.12]

40ExGA, ch 78, §7, editorially divided  
Exception as to plats filed before July 4, 1949, see 58GA, ch 181, §3

**409.13 Effect of record.** Such acknowledgment and recording shall be equivalent to a deed in fee simple of such portion of the premises platted as is set apart for streets or other public use, or as is dedicated to charitable, religious, or educational purposes. [C51, §637; R60, §1021; C73, §561; C97, §917; C24, 27, 31, 35, 39, §6278; C46, 50, 54, §409.13]

**409.14 Approval condition to filing and recording.** No county auditor or recorder shall hereafter file or record, nor permit to be filed or recorded, any plat purporting to lay out or subdivide any tract of land into lots and blocks within any city having a population by the latest federal census of twenty-five thousand or over, or, except as hereinafter provided, within one mile of the limits of such city, unless such plat has been first filed with and approved by the council of such city as provided in section 409.7, and by the city plan

commission as required by law in cities where such commission exists.

If in any case the limits of any such city are at any place less than two miles distant from the limits of any other city, then at such place jurisdiction to approve plats shall extend to a line equidistant between the limits of said cities.

For the information of the city council and the city plan commission, where such exists, and to facilitate action on proposed plats, the city council shall have authority by ordinance to prescribe reasonable rules and regulations governing the form of said plats and require such data and information to accompany same on presentation for approval as may be deemed necessary by the said council.

Said plats shall be examined by such city council, and city plan commission where such exists, with a view to ascertaining whether the same conform to the statutes relating to plats within the city and within the limits prescribed by this section, and whether streets, alleys, boulevards, parks and public places shall conform to the general plat of the city and conduce to an orderly development thereof, and not conflict or interfere with rights of way or extensions of streets or alleys already established, or otherwise interfere with the carrying out of the comprehensive city plan, in case such has been adopted by such city. If such plats shall conform to the statutes of the state and ordinances of such city, and if they shall fall within the general plan for such city and the extensions thereof, regard being had for public streets, alleys, parks, sewer connections, water service, and service of other utilities, then it shall be the duty of said council and commission to indorse their approval upon the plat submitted to it; provided that the city council may as to plats of land lying within the corporate limits require as a condition of approval of such plats that the owner of the land bring all streets to a grade acceptable to the council, and comply with such other reasonable requirements in regard to installation of public utilities, or other improvements, as the council may deem requisite for the protection of the public interest.

The approval of the city council shall be deemed an acceptance of the proposed dedication for public use, and owners and purchasers shall be deemed to have notice of the public plans, maps and reports of the council and city plan commission, if any, having charge of the design, construction and maintenance of the city streets affecting such property within the jurisdiction of such cities.

If any such plat of land is tendered for recording in the office of the county recorder or county auditor of any county in which any city of the above class may be situated, it shall be the duty of such county recorder and auditor to examine such plat, to ascertain whether the indorsement of approval by the city council, as herein provided for, shall appear thereon. If it shall, and the plat otherwise conforms to the provisions of law, said officers shall ac-

cept same for recording. If such indorsement does not appear thereon said officers shall refuse and decline to accept such plat, and any filing thereof shall be void. Any failure to observe the provisions of this section on the part of any county recorder or county auditor shall constitute a misdemeanor in office. [C27, 31, 35, §6278-b1; C39, §6278.1; C46, 50, 54, §409.14]

Referred to in §409.16

**409.15 Disapproval—appeal.** In case, on application for such approval of any plat, the city council shall fail to either approve or reject the same within sixty days from date of application, the person proposing said plat shall have the right to file the same with the county recorder and auditor. If said plat is disapproved by the council such disapproval shall point out wherein said proposed plat is objectionable. From the action of the council refusing to approve any such plat, the applicant shall have the right to appeal to the district court within twenty days after such rejection by filing written notice of appeal with the city clerk, such appeal to be docketed in the district court at the next term following service of such notice and heard de novo as an equity proceeding. [C27, 31, 35, §6278-b2; C39, §6278.2; C46, 50, 54, §409.15]

Referred to in §409.16

**409.16 Void plat—action to annul.** In case any plat shall be filed and recorded in violation of sections 409.14 and 409.15, the same shall be void, and the mayor of any city who shall be authorized so to do by resolution of the council having authority to approve such plat, may institute a suit in equity in the district court in which suit the court may order such plat expunged from the records. [C27, 31, 35, §6278-b3; C39, §6278.3; C46, 50, 54, §409.16]

**409.17 Change of name of street.** Cities and towns shall have authority to change by ordinance the name of a platted street. The mayor and city or town clerk shall certify and file the ordinance, after its passage, with the county recorder and county auditor in the county where the said city or town is located, which shall be entered of record in the recorder's office and a reference made on the margin of the original plat referring to the record of such change of name. [S13, §917-a; C24, 27, 31, 35, 39, §6279; C46, 50, 54, §409.17]

**409.18 Vacation by proprietor before sale.** Any such plat may be vacated by the proprietor thereof, with the consent of the city, at any time before the sale of any lots, by a written instrument declaring the same to be vacated, executed, acknowledged, and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to annul the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds described therein. In cases where any lots have been sold, the plat may be vacated as in this chapter provided by all the owners of lots joining in the execution of the writing aforesaid. [C73, §563; C97, §918; C24, 27, 31, 35, 39, §6280; C46, 50, 54, §409.18]

**409.19 Partial vacation by proprietor.** Any part of a plat may be thus vacated, provided it does not abridge or destroy any right or privilege of any proprietor in said plat, but nothing contained in this section shall authorize the closing or obstruction of highways. [C73,§564; C97,§919; C24, 27, 31, 35, 39,§6281; C46, 50, 54, §409.19]

C97,§919, editorially divided

**409.20 Streets, alleys, and public grounds.** When any part of a plat is vacated, the proprietors of the lots may inclose the streets, alleys, and public ground adjoining them in equal proportion, except as provided in sections 409.24 and 409.25. [C73,§565; C97,§919; C24, 27, 31, 35, 39,§6282; C46, 50, 54,§409.20]

**409.21 Correction of plat.** The recorder in whose office the plats are recorded shall write across that part of the plat so vacated the word "vacated", and make a reference on the same to the volume and page in which the instrument is recorded. [C73,§566; C97,§919; C24, 27, 31, 35, 39,§6283; C46, 50, 54,§409.21]

**409.22 Vacation by lot owners—petition—notice.** Whenever the owners of any tract of land which has been platted into town lots, and the plat of which has been recorded, shall desire to vacate the plat or a part thereof, a petition, signed by all the owners of it or the part to be vacated, shall be filed in the office of the clerk of the district court of the county in which the land is situated, returnable at the ensuing term, and notice thereof given at least four weeks, by posting notices in three conspicuous places in the town where the vacation is prayed, and one upon the door of the courthouse of the county. [C97,§920; C24, 27, 31, 35, 39,§6284; C46, 50, 54,§409.22]

C97,§920, editorially divided

**409.23 Time of hearing—notice.** At the term of court next following the filing of the petition and notice, the court shall fix a time for hearing the petition, and notice of the day so fixed shall be given by the clerk in some newspaper published in the county at least one week before the day appointed for the hearing. [C97, §920; C24, 27, 31, 35, 39,§6285; C46, 50, 54,§409.23]

**409.24 Decree.** At the hearing of the petition, if it shall appear that all the owners of lots in the plat or part thereof to be vacated desire the vacation, and there is no valid objection thereto, a decree shall be entered vacating such portion of the plat, and the streets, alleys, and avenues therein, and for all purposes of assessment such portion of the town shall be as if it had never been platted into lots; but if any street as laid out on the plat shall be needed for public use, it shall be excepted from the order of vacation and shall remain a public highway. [C97,§920; C24, 27, 31, 35, 39,§6286; C46, 50, 54,§409.24]

Referred to in §409.20

**409.25 Public lands.** Vacations made under this chapter shall not be construed to affect any lands lying within any city or town which

have been dedicated or deeded to the public for parks or other public purposes. [C97,§920; C24, 27, 31, 35, 39,§6287; C46, 50, 54,§409.25]

Referred to in §409.20

**409.26 Replatting.** The owner of any lots in a plat vacated may cause the same and a proportionate part of the adjacent streets and public grounds to be replatted and numbered by the county surveyor in the same manner as is required for platting in the first instance, and when such plat is acknowledged by such owner, and is recorded in the recorder's office of the county, such lots may be conveyed and assessed by the numbers given them on such plat. [C73,§567; C97,§921; C24, 27, 31, 35, 39,§6288; C46, 50, 54,§409.26]

**409.27 Plat by auditor.** Whenever the original proprietor of any subdivision of land located in a city having a population, by the latest federal census, of less than twelve thousand has sold or conveyed any part thereof, or invested the public with any rights therein, and has failed and neglected to execute and file for record a plat as provided in this chapter, the county auditor shall by mail or otherwise notify some or all of such owners, and demand its execution. If such owners, whether so notified or not, fail and neglect for thirty days after the issuance of such notice to execute and file said plat for record, the auditor shall cause one to be made, making any survey necessary therefor. [C73,§568; C97,§922; S13,§922; C24, 27, 31, 35, 39,§6289; C46, 50, 54,§409.27]

Referred to in §409.31

**409.28 Execution and filing—effect.** Said plat shall be signed and acknowledged by the auditor, who shall certify that he executed it by reason of the failure of the owners named to do so, and file it for record in his office and in the office of the county recorder, and when so filed it shall have the same effect as if executed, acknowledged, and recorded by the owners. [C73,§568; C97,§922; S13,§922; C24, 27, 31, 35, 39,§6290; C46, 50, 54,§409.28]

Referred to in §409.31

**409.29 Costs and expenses.** A correct statement of the costs and expenses of such plat, survey, and record, verified by oath, shall be by the auditor laid before the board of supervisors, which shall allow the same. [C73,§568; C97,§922; S13,§922; C24, 27, 31, 35, 39,§6291; C46, 50, 54,§409.29]

Referred to in §409.31

**409.30 Collection or assessment of costs.** The auditor shall at the same time assess the amount pro rata upon the several subdivisions of said tract, lot, or parcel so subdivided, and it shall be collected in the same manner as general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county to recover from the original proprietor such cost and expense. [C73,§568; C97,§922; S13,§922; C24, 27, 31, 35, 39,§6292; C46, 50, 54,§409.30]

Referred to in §409.31

**409.31 Platting for assessment and taxation.** Whenever a congressional subdivision of land of one hundred sixty acres or less, or any lot or subdivision, is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county auditor, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, he shall cause to be made and recorded in his office and the office of the county recorder a plat of such tract or lot with its several subdivisions, including and replatting in such plat such other plats or parts thereof included within the same lot or congressional subdivision of land as may seem to him to be required in accordance with the provisions of this chapter, proceeding as directed in sections 409.27 to 409.30, inclusive, and all of their provisions shall govern. No such plat of land in cities having a population of over twelve thousand by the latest federal census shall be so filed and recorded unless and until the same shall have been approved by the council of such city, and by the city plan commission as required by law in such cities where such commission exists. [C73,§569; C97,§923; S13,§923; C24, 27, 31, 35, 39, §6293; C46, 50, 54,§409.31]

Referred to in §409.36

**409.32 Appeal.** The owners of said land shall have the same right of appeal to the board of supervisors as is provided in sections 409.34 and 409.35 in the case of warranty deeds, and under the same conditions as to notice and hearing; provided, however, that parties aggrieved shall have sixty days within which to appeal. [C24, 27, 31, 35, 39,§6294; C46, 50, 54, §409.32]

**409.33 Insufficiency of description—plat ordered.** Every conveyance of land in this state shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate to enable the auditor to enter the same on the plat book required to be kept; and when there is presented for entry on the transfer book any conveyance in which the description is not sufficiently definite and accurate, the auditor shall note such fact on the deed, with that of the entry for transfer, and shall notify the person presenting it that the land therein is not sufficiently described, and must be platted within thirty days thereafter. [C73,§570; C97,§924; S13,§924; C24, 27, 31, 35, 39,§6295; C46, 50, 54,§409.33]

S13,§924, editorially divided

**409.34 Appeal.** Any person aggrieved by the opinion of the auditor may within said thirty days appeal therefrom to the board of supervisors, by giving notice thereof in writing, and thereupon no further proceeding shall be taken by the auditor. [C73,§570; C97,§924; S13, §924; C24, 27, 31, 35, 39,§6296; C46, 50, 54,§409.34]

Referred to in §409.32

**409.35 Hearing.** At its next session the board of supervisors shall determine said matter and direct whether the plat shall be exe-

cuted and filed, and within what time. [C73, §570; C97,§924; S13,§924; C24, 27, 31, 35, 39, §6297; C46, 50, 54,§409.35]

Referred to in §409.32

**409.36 Auditor to prepare plat.** If the grantor in such conveyance shall neglect for thirty days thereafter to file for record a plat thereof, and of the appropriate congressional subdivision in which the same is found, duly executed and acknowledged as required by the auditor, or, in case of appeal, as directed by the board of supervisors, then the auditor shall proceed as is provided in this chapter, and cause such plat to be made and recorded in his office and the office of the county recorder, and thereupon the same result shall follow as provided in section 409.31. [C73,§570; C97,§924; S13, §924; C24, 27, 31, 35, 39,§6298; C46, 50, 54,§409.36]

**409.37 Requirements.** Such plat shall describe said tract and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, the number of acres, and such other memoranda as is necessary; and descriptions of such lots or subdivisions according to the number and designation thereof on said plat shall be deemed sufficient for all purposes. [C73,§570; C97,§924; S13,§924; C24, 27, 31, 35, 39, §6299; C46, 50, 54,§409.37]

**409.38 Resurvey of town plats.** In all cases where the original plat of any city, town, or village, or any addition thereto, has been or may be lost or destroyed after the sale and conveyance of any subdivision, block or lot thereof by the original proprietor and before the same shall have been recorded, or the property so platted has been indefinitely located or the plat is materially defective, any three persons owning real property within the limits of such plat may have the same resurveyed and replatted, and such plat recorded as hereinafter directed. [C97,§925; C24, 27, 31, 35, 39,§6300; C46, 50, 54,§409.38]

40ExGA, ch 78,§12, editorially divided

**409.39 Conditions—jurisdiction.** In no case shall such plat or replat be made and recorded as hereinafter directed, without the consent in writing, indorsed thereon, of the original proprietor, if he be alive and known, nor before an order has been entered by the district court upon application of the parties desiring a replat to be made, that such replat is necessary. The court shall have jurisdiction of the matter upon proof of publication of notice of the application for at least two weeks in some newspaper of general circulation in the city or town. [C97, §925; C24, 27, 31, 35, 39,§6301; C46, 50, 54,§409.39]

**409.40 How resurvey made.** The county surveyor of any county in which is situated any city, town, village, or addition thereto, as contemplated in this chapter, may, and upon payment of his legal fees by any person desiring the same must, make a resurvey of such city, town, village, or addition, or any portion, and plat thereof, which plat shall conform as near

as may be with the original lines of the parcel or tract so resurveyed, and be made in all respects in accordance with the provisions of this chapter. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6302; C46, 50, 54,§409.40]

S13, §926, editorially divided

**409.41 Power of surveyor.** In making a resurvey and plat, the surveyor may summon witnesses, administer oaths, and take and hear evidence touching the original plat lines and subdivisions, whether the original proprietor is dead, and any other matter which may assist in arriving at and establishing the true lines and boundaries. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6303; C46, 50, 54,§409.41]

**409.42 Notice of resurvey.** No resurvey shall be made except upon notice to be given by the surveyor by a publication of the contemplated resurvey once each week for two consecutive weeks in some newspaper printed in the county. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6304; C46, 50, 54,§409.42]

**409.43 Plat certified and filed—effect.** When the surveyor has completed the plat, he shall attach his certificate thereto, to the effect that it is a just, true, and accurate plat of said city, town, village, or addition so surveyed by him; which shall be filed for record in the office of the recorder of the proper county, and from the date of such filing it shall be treated in all courts of this state as though the same had been made by the original proprietor thereof. [C97,§927; C24, 27, 31, 35, 39,§6305; C46, 50, 54, §409.43]

**409.44 Contest—decree.** Any person may at any time within six months from the date of its filing for record, commence an action in equity against the persons employing the surveyor, setting up his cause of complaint and asking that such record be canceled. If it appears on the trial that the city, town, village, or addition was originally laid out and platted; that the original proprietor had sold any or all of the lots thereof; that he intended to dedicate to the public the streets, alleys, or public squares therein; that the plat thereof has never been recorded, but is lost; that the plat was indefinitely located or materially defective; that the proprietor is dead or his place of residence unknown; and that the resurvey and plat for record is a substantially accurate survey and plat of the original plat of such city, town, village, or addition, then the action shall be dismissed at the cost of the complainants; otherwise the court shall set aside said plat and cancel the same of record at the cost of the defendant. [C97,§925; C24, 27, 31, 35, 39, §6306; C46, 50, 54,§409.44]

**409.45 Sale or lease without plat.** Any person who shall dispose of or offer for sale or lease any lots in any town, or addition to any town or city, until the plat thereof has been acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of,

leased, or offered for sale. [R60,§1027; C73, §572; C97,§930; C24, 27, 31, 35, 39,§6307; C46, 50, 54,§409.45]

**409.46 Public squares transferred for school purposes.** The people of any town located wholly within an independent school district, wherein is situated a public square or plat of ground deeded or dedicated to the town or public, may transfer or rededicate to said school district such square or plat for the purposes of a public school lot, to be used for the erection thereon of a public schoolhouse, or for playgrounds in connection with such schoolhouse. [C97,§931; C24, 27, 31, 35, 39, §6308; C46, 50, 54,§409.46]

Referred to in §409.47

**409.47 Manner of transfer.** When a plat or lot of the character described in section 409.46 is located in such town, and one-half of the resident voters thereof, according to the last census, shall petition the mayor and council, asking them to submit to the voters of the town, at a general or special election, the question whether or not such public plat or lot shall be transferred to such independent district and dedicated and used for school purposes, they shall submit the question to the voters of the town, in accordance with the prayer of said petition, after giving ten days notice in writing or printing thereof, in which the proposition submitted shall be clearly set forth and signed by the mayor, three of which notices shall be posted in public and conspicuous places in the town, and one published in the last two issues preceding such election of a weekly newspaper published therein, or, if there be none, then in the weekly newspaper published elsewhere in the county, having the largest circulation in said town. The notice shall also state the manner of voting, which shall be by ballot. The ballot shall contain the words: "Shall the proposition to transfer lot (or block, or square, as the case may be, describing it), for the purposes of a public schoolhouse lot, be adopted?" Such election shall be conducted as ordinary town elections are, under the supervision of the town authorities, who shall canvass the vote as provided in other cases. If it shall appear that two-thirds of the votes cast at such election are in favor thereof, then such transfer shall be complete, and the lot, block, or square may be appropriated and used for the purposes indicated by said vote, and shall be no longer held for any other purpose.

In the event that any such town shall have discontinued its organization or shall have failed to exercise its municipal powers and elect officers for a period of more than ten years, then the petition hereinbefore provided for may be presented to the board of directors within such school corporation, whereupon, if signed by one-third of the resident electors thereof, it shall be the duty of said board within ten days after the filing of the same to call an election in said district for which they shall

give the same notices as required in section 277.3, at which election the proposition submitted shall be in the same form as in the instance of a submission of such proposition in the case of a town election, and such election shall be held as provided for the holding of other school elections. If it shall appear that a majority of the votes cast at such election are in favor of such proposition, then a transfer of such public square or plat of ground shall be complete and such lot, plat, block, or square may be appropriated and used for the purposes indicated by said vote and shall be no longer held for any other purpose. [C97,§932; SS15,§932; C24, 27, 31, 35, 39,§6309; C46, 50, 54, §409.47]

**409.48 Assessment of platted lots.** When any plat is made, filed and recorded by the proprietor or owners under the provisions of this chapter, the individual lots contained therein shall, until sold, leased, or improved, be assessed for taxation at an amount equal to each individual lot's proportionate share, on an area basis, of the assessed valuation of the entire tract immediately before the platting thereof. When an individual lot has been sold, leased or improved, it shall then be assessed for taxation as provided by chapters 428 and 441, 405 or 405A.

The provisions of this section shall have no effect upon special assessment tax levies. [56GA, ch 201,§1]

## CHAPTER 410

### DISABLED AND RETIRED FIREMEN AND POLICEMEN

Referred to in §§868.11, 368.15  
Applicable to all cities and towns

- 410.1 Pension funds.
- 410.2 Boards of trustees—officers.
- 410.3 Investment of surplus.
- 410.4 Gifts, devises, or bequests.
- 410.5 Membership fee—assessments.
- 410.6 Who entitled to pension—conditions.
- 410.7 Soldiers and sailors.
- 410.8 Disability—how contracted.
- 410.9 Retired members assigned for light duty.
- 410.10 Pensions — surviving spouse — children —dependents.

- 410.11 Exemption.
- 410.12 Volunteer or call firemen.
- 410.13 Re-examination of retired members.
- 410.14 Decision of board.
- 410.15 Guarantee of pension benefits.
- 410.16 Moneys drawn—how paid—report.
- 410.17 City marshal.
- 410.18 Hospital expense.

#### HOURS OF SERVICE

- 410.19 Hours on duty limited.
- 410.20 Exceptions.

**410.1 Pension funds.** Any city or town having an organized fire department may, and all cities having an organized police department or a paid fire department shall, levy annually a tax not to exceed one-eighth mill for each such department, for the purpose of creating firemen's and policemen's pension funds.

Provided that cities having a population of more than six thousand five hundred may annually levy a tax of not more than one-half mill for each such department for such purpose. Provided, further, that cities, in which a police and/or fire retirement system based upon actuarial tables shall be established by law, shall levy for the police and/or fire pension funds a tax sufficient in amount to meet all necessary obligations and expenditures; and said obligations and expenditures shall be direct liabilities of said cities.

Whenever there is a sufficient balance in both of said funds to meet any proper or legitimate charges that may be made against the same, such city shall not be required to levy a tax for this purpose.

All moneys derived from each tax so levied, and all moneys received as membership fees and dues, and all moneys received from grants, donations, and devises for the benefit of each fund shall constitute separate funds, to be known and designated as a policemen's pension fund and a firemen's pension fund. [S13,§§932-

a,-j; C24, 27, 31, 35, 39,§6310; C46, 50, 54,§410.1; 57GA, ch 199,§1]

**410.2 Boards of trustees—officers.** The chief officer of each department, with the city treasurer and the city solicitor or attorney of such cities or towns, shall be ex officio members of and shall constitute separate boards of trustees for the management of each fund. The chief officer of the department shall be president and the city treasurer, treasurer of such boards, and the faithful performance of the duties of the treasurer shall be secured by his official bond as city treasurer. Such trustees shall not receive any compensation for their services as members of said boards. Provided, however, that in any city where contributory fire and/or police retirement systems based upon actuarial tables shall be established by this act\* for the benefit of policemen and/or firemen appointed to the force after the establishment of same, the board of trustees of each such system, respectively, shall also constitute the board of trustees for the management of each fund under this section as a separate and distinct fund in itself. [S13,§§932-a,-b,-j,-k; C24, 27, 31, 35, 39,§6311; C46, 50, 54,§410.2]

\*45ExGA, ch 75, effective date March 2, 1934

**410.3 Investment of surplus.** The boards shall have power to invest any surplus left in such funds, respectively, at the end of the fiscal

year, but no part of the funds realized from any tax levy shall be used for any purpose other than the payment of pensions. Investments shall be limited to interest-bearing bonds of the United States, of the state of Iowa, of any county, township, or municipal corporation of the state of Iowa. All such securities shall be deposited with the treasurer of the boards of trustees for safekeeping. [S13, §932-l; SS15, §932-c; C24, 27, 31, 35, 39, §6312; C46, 50, 54, §410.3]

**410.4 Gifts, devises, or bequests.** Each board may take by gift, grant, devise, or bequest, any money or property, real or personal, or other thing of value for the benefit of said funds. All rewards in moneys, fees, gifts, or emoluments of every kind or nature that may be paid or given to any police or fire department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by said departments or any member thereof, and all fines and penalties imposed upon members, shall be paid into the said pension fund and become a part thereof. [S13, §932-d,m; C24, 27, 31, 35, 39, §6313; C46, 50, 54, §410.4]

**410.5 Membership fee—assessments.** Every member of said departments shall be required to pay to the treasurer of said funds a membership fee to be fixed by the board of trustees, not exceeding five dollars, and shall also be assessed and required to pay annually an amount equal to one percent per annum upon the amount of the annual salary paid to him, which assessment shall be deducted and retained in equal monthly installments out of such salary. [S13, §932-d,m; C24, 27, 31, 35, 39, §6314; C46, 50, 54, §410.5]

**410.6 Who entitled to pension—conditions.** Any member of said departments who shall have served twenty-two years or more in such department, and shall have reached the age of fifty years; or who shall while a member of such department become mentally or physically permanently disabled from discharging his duties, shall be entitled to be retired, and upon retirement shall be paid out of the pension fund of such department a monthly pension equal to one-half the amount of salary received by him monthly at the date he actually retires from said department. If any member shall have served twenty-two years in said department, but shall not have reached the age of fifty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of fifty years. [S13, §932-e,n; C24, 27, 31, 35, 39, §6315; C46, 50, 54, §410.6]

**410.7 Soldiers and sailors.** Any member of the fire or police department, who resigned or obtained leave of absence therefrom to serve in the army, navy or marine reserve, or marine corps, of the United States, or as a member of the United States army and navy

reserve, the Spanish-American war, in the World War 1917-1918, or in World War II from December 7, 1941, to September 2, 1945, both dates inclusive, and has returned with an honorable discharge from such service, to the fire or police department, shall have the period of such service included as part of his period of service in the department. [C27, 31, 35, §6315-b1; C39, §6315.1; C46, 50, 54, §410.7; 57GA, ch 60, §8]

**410.8 Disability—how contracted.** No member who has not served five years or more in said department shall be entitled to be retired and paid a pension under the provisions of this chapter, unless such disability was contracted while engaged in the performance of his duties, or by reason of following such occupation. The question of disability shall be determined by the trustees upon the concurring report of at least two out of three physicians designated by the board of trustees to make a complete physical examination of the member. After any member shall become entitled to be retired, such right shall not be lost or forfeited by discharge or for any other reason except conviction for felony. [S13, §932-e,n; C24, 27, 31, 35, 39, §6316; C46, 50, 54, §410.8]

**410.9 Retired members assigned for light duty.** The chief of the police department and the chief of the fire department of such city may assign any member of such departments, respectively, retired by reason of mental or physical disability under the provisions of this chapter, to the performance of light duties in such department. [S13, §932-e,n; C24, 27, 31, 35, 39, §6317; C46, 50, 54, §410.9]

**410.10 Pensions—surviving spouse—children—dependents.** Upon the death of any acting or retired member of such departments, leaving a spouse or minor children, or dependent father or mother surviving, there shall be paid out of said fund as follows:

1. To the surviving spouse, so long as said spouse remains unmarried and of good moral character, a sum equal to one-fourth of the deceased member's final active duty compensation, but in no event less than seventy-five dollars per month.

2. If there be no surviving spouse, or upon the death or remarriage of such spouse, then to the dependent father and mother, if both survive, or to either dependent parent, if one survives, thirty dollars per month.

3. To the guardian of each surviving child under eighteen years of age, twenty dollars per month.

Provided, however, that the benefits provided by this section shall be subject to the following definitions: The term "spouse" shall mean only such surviving spouse of a marriage contracted prior to retirement of a deceased member from active service, or of a marriage of a retired member contracted prior to March 2, 1934.\* The terms "child" and "children" shall



mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement from active service, or by a member now retired prior to March 2, 1934.\*

This section and its provisions shall be interpreted for all purposes as including all surviving spouses.\*\* [S13, §§932-e-n; C24, 27, 31, 35, 39, §6318; C46, 50, 54, §410.10; 56GA, ch 202, §§1-3; 57GA, ch 200, §1; ch 201, §§1, 2; ch 202, §1]

\*45ExGA, ch 75

\*\*See 57GA, ch 200, §1

**410.11 Exemption.** All pensions paid under the provisions of this chapter shall be exempt from liability for debts of the person to or on account of whom the same is paid, and shall not be subject to seizure upon execution or other process. [S13, §§932-e-n; C24, 27, 31, 35, 39, §6319; C46, 50, 54, §410.11]

**410.12 Volunteer or call firemen.** The provisions of this chapter shall apply to volunteer or call members of a paid fire department, but the amount of pension to be paid to such members shall be determined by the board of trustees. [S13, §932-e; C24, 27, 31, 35, 39, §6320; C46, 50, 54, §410.12]

**410.13 Re-examination of retired members.** The board of trustees of each department shall have power, at any time, to cause any member of such department retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board of trustees to discover whether such disability yet continues and can be improved and whether such retired member should be continued on the pension roll, and shall have power to examine witnesses for the same purpose. The question of continued disability or ability to perform regular or light duty in the police or fire department shall be determined by the concurring report of at least two of the three examining physicians. Such member shall be entitled to reasonable notice that such examination will be made, and to be present at the time of the taking of any testimony, shall have the right to examine the witnesses brought before the board and to introduce evidence in his own behalf. All witnesses shall be examined under oath, which may be administered by any member of such board. [S13, §§932-g-p; C24, 27, 31, 35, 39, §6321; C46, 50, 54, §410.13]

**410.14 Decision of board.** The decision of such board upon such matters shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom. Such disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. [S13, §§932-g-p; C24, 27, 31, 35, 39, §6322; C46, 50, 54, §410.14]

**410.15 Guarantee of pension benefits.** Each city, in which contributory fire and/or police retirement systems based upon actuarial tables, shall be established by this act\* for the benefit

of firemen and/or policemen appointed to either force after the establishment of the same, is hereby bound and obligated to carry out, and authorized to enter into a written agreement evidencing the same, with each person, on retired or active service, who has heretofore contributed, or, at the time of the taking effect of this act, is contributing to the pension system now in effect in said city, in consideration of his past and/or his future payments to the pension fund of the system to which he is, or has been contributing, the present and prospective benefits provided by the pension system to which he is or has been contributing, guaranteeing that the present rate of payment by such person to said pension fund shall not be increased, also guaranteeing that the present and prospective rights and benefits provided for by said systems shall not be abridged nor lessened, and guaranteeing to all such persons so contributing all of the rights and benefits present and prospective provided in such pension system. The obligation of each such city for said rights and benefits shall be a direct charge on said city. [S13, §§932-h-q; C24, 27, 31, 35, 39, §6323; C46, 50, 54, §410.15]

\*45ExGA, ch 75, effective date, March 2, 1934

**410.16 Moneys drawn — how paid — report.** All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of each fund for the preceding fiscal year, the money on hand, and how invested. [S13, §§932-i-r; C24, 27, 31, 35, 39, §6324; C46, 50, 54, §410.16]

Fiscal year, §363.29

**410.17 City marshal.** Service by any member of the police department as city marshal shall not deprive him of any rights under this chapter. In any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the policemen's pension fund, he shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of his term as city marshal, he shall regain the rank he held in the police department at the time of his appointment as city marshal. [C24, 27, 31, 35, 39, §6325; C46, 50, 54, §410.17]

**410.18 Hospital expense.** Cities and towns shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workmen's

compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [C24, 27, 31, 35, 39,§6326; C46, 50, 54, §410.18]

HOURS OF SERVICE

**410.19 Hours on duty limited.** Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty-eight hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases

of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C27, 31, 35,§6326-a1; C39,§6326.01; C46, 50, 54,§410.19; 54GA, ch 165,§69; 57GA, ch 203,§§1-3]

Referred to in §410.20

**410.20 Exceptions.** The provisions of section 410.19 shall not apply to the chief, or other persons when in command of a fire department, nor to firemen who are employed subject to call only. [C27, 31, 35,§6326-a2; C39, §6326.02; C46, 50, 54,§410.20]

CHAPTER 411

RETIREMENT SYSTEMS FOR POLICEMEN AND FIREMEN

Referred to in §§368.11, 368.15

Applicable to policemen and firemen appointed after March 2, 1984

Applicable to all cities and towns

- 411.1 Definitions controlling.
- 411.2 Name and date of establishment.
- 411.3 Membership.
- 411.4 Service creditable.
- 411.5 Administration.
- 411.6 Benefits.
- 411.7 Management of funds.
- 411.8 Method of financing.

- 411.9 Military service exceptions.
- 411.10 Fund to pay contributions of absent members.
- 411.11 Contributions by the city.
- 411.12 Guaranty.
- 411.13 Exemption from tax and execution.
- 411.14 Protection against fraud.

**411.1 Definitions controlling.** The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" shall mean either the fire or the police retirement system of the said cities as defined in section 411.2.
2. "Policeman" or "policemen" shall mean only the members of a police department who have passed a regular mental and physical civil service examination for policeman, police-woman, or matron, and who shall have been duly appointed to such positions. Such members shall include patrolmen, patrolwomen, probationary patrolmen, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.
3. "Fireman" or "firemen" shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fireman and who shall have been duly appointed to such position. Such members shall include firemen, probationary firemen, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.
4. "Member" shall mean a member of either the police or fire retirement systems as defined by section 411.3.

5. "He", "his", and all other terms in the masculine gender shall be considered to include the feminine gender.
6. "Board of fire trustees" and "board of police trustees" shall mean the boards provided in section 411.5 to administer the fire retirement system and the police retirement system respectively.
7. "Medical board" shall mean the board of physicians provided for in section 411.5.
8. "Membership service" shall mean service as policemen or firemen rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.
9. "Beneficiary" shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.
10. "Widow" shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.
11. "Child" or "children" shall mean only surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement.
12. "Regular interest" shall mean interest at the rate of four percent per annum, compounded annually.

13. "Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund together with regular interest thereon as provided in section 411.8.

14. "Earnable compensation" or "compensation earnable" shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank or position.

15. "Amount earned" shall mean the amount of money actually earned by a beneficiary in some definite period of time.

16. "Average final compensation" shall mean the average earnable compensation of the member during his last five years of service as a policeman or fireman, or if he has had less than five years of such service, then the average earnable compensation of his entire period of service.

17. "Annuity" shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

18. "Pensions" shall mean annual payments for life derived from appropriations provided by the said cities. All pensions shall be paid in equal monthly installments.

19. "Retirement allowance" shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

20. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

See mortality tables at end of volume II

21. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

22. "Actuarial equivalent" shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the boards of trustees, and regular interest.

23. "City" and/or "cities" shall mean any city or cities in which fire and/or police retirement systems are established by this chapter.

24. "Superintendent of public safety" shall mean any elected city official who has direct jurisdiction over the fire and/or police department, or the city manager in cities under the city manager form of government. [C35,§6326-f1; C39,§6326.03; C46, 50, 54,§411.1]

Referred to in §411.3

**411.2 Name and date of establishment.** In any city in which the firemen and/or policemen are or shall be appointed under the civil

service law of this state, there are hereby created and established two separate retirement or pension systems for the purpose of providing retirement allowances only for firemen and/or policemen of said cities who shall be so appointed after the date this chapter takes effect, or benefits to their dependents. Each such system shall be under the management of a board of trustees hereinafter described, and shall be known as the "fire retirement system of .....(name of city)", and the "police retirement system .....(name of city)", and by such names all of their business shall be transacted, all funds invested, and all cash and securities and other property held. The retirement systems so created shall begin operation as of the first day of the month in which said systems are there established by this chapter. [C35,§6326-f2; C39,§6326.04; C46, 50, 54, §411.2]

Referred to in §411.1

**411.3 Membership.**

1. All persons who become policemen or firemen after the date such retirement systems are established by this chapter, shall become members thereof as a condition of their employment. Such members shall not be required to make contributions under any other pension or retirement system of city, county, or state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

3. Any deputy bailiff of municipal courts in cities having a population of one hundred twenty-five thousand or more, who after having passed the required civil service examination, and was certified and appointed as such, shall for the purpose of this chapter be deemed a member of the police department within the purview of section 411.1 and is hereby given the right, if he so desires, to become a member of the police retirement system as set forth in this chapter by first paying to the treasurer of said fund three percent of the total salary which was received by said deputy bailiff to the time of coming under the provisions of this chapter, and in addition thereto, shall be required to pay annually in monthly installments to the treasurer of said fund an amount equal to the rates provided by section 411.8 so long as said deputy bailiff shall be employed as such. [C35,§6326-f3; C39,§6326.05; C46, 50, 54, §411.3]

Referred to in §411.1  
Omnibus repeal, 53GA, ch 183,§2

**411.4 Service creditable.** The board of trustees shall fix and determine by proper rules and regulations how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service

be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay. [C35,§6326-f4; C39, §6326.06; C46, 50, 54,§411.4]

**411.5 Administration.**

1. *Boards.* The general administration and the responsibility for the proper operation of the retirement systems and for making effective the provisions of this chapter are hereby vested in a board of fire trustees to administer the system relating to firemen and a board of police trustees to administer the system relating to policemen. The said boards shall be constituted as follows:

a. The chief officer of the fire department, the city treasurer, the city solicitor or attorney, two firemen elected by ballot by the members of said department who are entitled to participate in a firemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the fire retirement system.

b. The chief officer of the police department, the city treasurer, the city solicitor or attorney, two policemen elected by ballot by the members of said department who are entitled to participate in a policemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the police retirement system.

c. The two citizens appointed by the mayor shall serve on both of said boards.

d. Upon the taking effect of this chapter, such members of each said department in said cities shall elect by ballot two active members of each such department to serve as members of said respective boards; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter each such department shall, every second year, on such date and in such manner as shall be prescribed by said board of trustees, elect by ballot one such member to serve for a term of four years.

e. Upon the taking effect of this chapter, the mayor, with the approval of the city council, shall appoint two citizens who do not hold any other public office, to serve as members of said boards of trustees; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter, every second year, one such citizen shall be so appointed for a four-year term.

f. If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

2. *Voting.* Each trustee shall be entitled to one vote on each board. Four concurring votes shall be necessary for a decision by the trustees at any meeting of either board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* Subject to the limitations of this chapter, each board of trustees shall, from time to time, establish rules and regulations for the administration of funds created by this chapter and for the transaction of its business.

5. *Employees.* Each board of trustees shall elect from its membership a chairman, and shall, by majority vote of its members, appoint a secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by each board of trustees, and all other expenses of each board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as each board of trustees shall approve.

6. *Data.* Each board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

7. *Records—reports.* Each board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall annually make a report to the city council showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

8. *Legal adviser.* The city attorney or solicitor of the said cities shall be the legal adviser of the boards of trustees.

9. *Medical board.* The board of fire trustees and the board of police trustees jointly shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter and shall report in writing to each board of trustees, respectively, its conclusions and recommendations upon all matters duly referred to it.

10. *Duties of actuary.* The actuary shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

11. *Tables—rates.* Immediately after the establishment of each retirement system, the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall

authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 12 of this section. The board of trustees shall adopt tables and certify rates of contribution to be used by the system.

See mortality tables at end of Vol. II

12. *Actuarial investigation.* In the year 1938, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the retirement system such mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the said cities in accordance with section 411.8 of this chapter.

13. *Valuation.* On the basis of such tables as the boards of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement systems created by this chapter. [C35, §6326-f5; C39, §6326.07; C46, 50, 54, §411.5]

Referred to in §§365.8, 411.1

#### 411.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by each board of trustees as follows:

a. Any member in service may retire upon his written application to the board of police or fire trustees as the case may be, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have served twenty-two years or more in said department, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of seventy years, shall be retired forthwith, provided, that upon the request of the superintendent of public safety, the respective board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the superintendent of public safety.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the city in addition to his annuity which together with his annuity shall make a total service retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the chief of the police or fire departments, respectively, any member who has had five or more years of membership service shall be retired by the respective board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with his annuity shall make a total retirement allowance equal to ninety percent of 1/70 of his average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of his average final compensation, otherwise a pension which together with his annuity shall provide a total retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13

Amendment of 56GA, ch 203, retroactive to July 4, 1953

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an accident or exposure occurring while in the actual performance of duty at some definite time and place, or occurring while acting pursuant to order, outside of the city or town by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of 66 2/3 percent of his average final compensation.

Referred to in subsection 13

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the respective board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the respective board of trustees.

a. Should any beneficiary for disability not incurred in line of duty, be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and upon his subsequent retirement he shall be credited with all his service as a member and also with the period of disability retirement, provided that during such period of disability he has not engaged in a gainful occupation from which his net earnings exceeded the difference between his disability retirement allowance and the amount he would have received for said period if his compensation at the time of disability had continued.

c. The chief of the fire department or the chief of the police department of such city may, subject to approval of the medical board, assign any former member of such department who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such department.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, there shall be paid to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees:

a. His accumulated contributions and, if the member has had one or more years of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earnable by him during the year immediately preceding his death; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs (a) and (b) shall be paid to his estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such, there shall be paid a pension which, together with the actuarial equivalent of his accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than seventy-five dollars. In addition to the benefits herein enumerated, there shall also be paid for each child of a member under the age of eighteen years the sum of twenty dollars per month;

c. To the spouse to continue so long as said party remains unmarried; or

d. If there be no spouse, or if the spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of his child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains the age of eighteen; or

e. If there be no surviving spouse or child under age eighteen, then to his dependent father and/or mother, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

Referred to in subsection 9

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member was the natural and proximate result of an accident or exposure occurring at some definite time and place while the member was in the actual performance of duty, or occurring while acting pursuant to order, outside of the city or town by which he is regularly employed, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsec-

tion 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to his spouse, children or dependent parents as provided in paragraphs (c), (d), and (e) of subsection 8 of this section. In addition to the benefits for the spouse herein enumerated, there shall also be paid for each dependent child of a member under the age of eighteen years the sum of twenty dollars per month.

c. If there be no spouse, children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph (b), in lieu of the pension provided in paragraph (b) of this subsection 9, shall be paid to his estate.

10. *Return of accumulated contributions.* Should a member cease to be a policeman or fireman except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the said cities under the provisions of any workmen's compensation or similar law to a member or to the dependents of a member on

account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the said cities under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workmen's compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the said cities under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

*Workmen's compensation, ch 85*

13. *Pension to spouse and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4, and/or 6 of this section there shall be paid a pension:

a. To the spouse to continue so long as said partner remains unmarried, equal to one-half the amount received by such deceased beneficiary, but in no instance less than seventy-five dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the spouse either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child. [C35,§6326-f6; C39,§6326.08; C46, 50, 54,§411.6; 56GA, ch 203,§1; ch 204,§§1, 2; ch 205, §§1-6; 57GA, ch 201,§3; ch 204,§§1-5; ch 205,§1]

#### 411.7 Management of funds.

1. The respective boards of trustees shall be the trustees of the several funds created by this chapter as provided in section 411.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds.

2. The investments of the several funds created by this chapter are hereby limited to interest-bearing bonds issued by the United States, by the state of Iowa, and those issued by counties, school districts, and/or general obligation or limited levy bonds issued by municipal corporations in this state as authorized by law.

*Referred to in subsection 1*

3. Each board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The

amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the respective board of trustees from interest and other earnings on the moneys and other assets of the retirement systems. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the cities and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the said cities.

4. The treasurer of the said cities shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the respective board of trustees. A duly attested copy of the resolution of the respective board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the respective board of trustees.

5. For the purpose of meeting disbursements for pensions, annuities, and other payments, there may be kept available cash not exceeding ten percent of the total amount in the several funds of the retirement system on deposit in one or more banks or trust companies in said cities, or organized under the laws of the state of Iowa, or of the United States, provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company.

6. No trustee and no employee of either board shall have any direct interest in the gains or profits of any investment made by the respective boards of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of either board of trustees shall directly or indirectly for himself or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the boards become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the respective board of trustees. [C35,§6326-f7; C39, §6326.09; C46, 50, 54,§411.7]

**411.8 Method of financing.** All the assets of each retirement system created and established by this chapter shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

**1. Annuity savings fund.**

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of

contribution payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20 .....	3.91%
21 .....	3.97%
22 .....	4.04%
23 .....	4.11%
24 .....	4.18%
25 .....	4.26%
26 .....	4.33%
27 .....	4.41%
28 .....	4.48%
29 .....	4.56%
30 .....	4.64%
31 .....	4.72%
32 .....	4.80%
33 .....	4.88%
34 .....	4.97%
35 .....	5.05%
36 .....	5.14%
37 .....	5.22%
38 .....	5.31%
39 .....	5.40%
40 .....	5.50%

Credit of excess paid before July 4, 1947, see 52GA, ch 219,§9

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The respective boards of trustees shall certify to the superintendent of public safety and the superintendent of public safety shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The superintendent of public safety shall certify to the respective boards of trustees on each and every payroll, or in such other manner as the said boards of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from



the annuity savings fund to the annuity reserve fund.

*Military service exception, §411.9*

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the said cities and from which shall be paid the lump sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the said cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be 7.9 percent.

b. On the basis of regular interest and of such mortality and other tables as shall be adopted by the boards of trustees, the actuary engaged by the said boards to make each valuation required by this chapter, shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be sufficient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of mortality and service tables adopted by the boards of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, pro-

vided, however, that the aggregate payment by the said cities shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the said cities to pay the administration expenses of the retirement system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Annually the boards of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing year to provide for the expense of operation of the retirement system. [C35,§6326-f8; C39,§6326.10; C46, 50, 54,§411.8]

Referred to in §§411.1, 411.3, 411.5, 411.7, 411.9

**411.9 Military service exceptions.** Any member who is absent while serving in the armed services of the United States or its allies and is discharged or separated therefrom under honorable conditions shall have any such period or periods of absence while serving in such armed services on other than a voluntary basis and one such period of absence, not in excess of four years, while serving in such armed forces on a voluntary basis included as part of his period of service in the department. Such member shall not be required to continue the contributions required of him under section 411.8 during such period of military service, provided that he shall, within six months after he has been discharged or separated under honorable conditions from such military service, return and resume his duties in the department, and provided further, that such member shall be declared physically capa-

ble of resuming such duties upon examination by the medical board. [C46, 50, 54,§411.9; 57GA, ch 206,§1; ch 207,§1]

Referred to in §411.10  
Resolutions before January 1, 1947, restoring to active duty legalized, 52GA, ch 319,§1

**411.10 Fund to pay contributions of absent members.** The cities which have a retirement system as provided under this chapter, shall create a fund for the purpose of paying the contributions to this fund of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such fund shall be used for the purpose of paying the contributions which are required of the members, but which under the provisions of section 411.9 are waived during periods of military service as defined by section 411.9 and six months thereafter following discharge or separation under honorable conditions. Should any member fail to return to the department within six months after his honorable discharge from the military service, the amount credited to his account in this fund by the city shall revert back to such city and such member or his representative shall not be entitled to claim any interest in the contribution so made by the city. [C46, 50, 54, §411.10; 57GA, ch 206,§2]

**411.11 Contributions by the city.**

1. On or before the first day of July in each year the respective boards of trustees shall certify to the superintendent of public safety the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be included by the superintendent of public safety in his annual budget estimate. The amounts so certified shall be appropriated by the said cities and transferred to the retirement system for the ensuing year. Said cities shall annually levy a tax sufficient in amount to cover such appropriations.

2. To cover the requirements of the respective retirement systems for the period prior to the date when the first regular appropriation is due as provided in subsection 1 of this section, such amounts as shall be necessary to cover the needs of the retirement system shall be paid into the pension accumulation fund and expense fund by special appropriations to the retirement system. [C35,§6326-f9; C39,§6326.11; C46, 50, 54,§411.11]

**411.12 Guaranty.** Regular interest charges payable, the creation and maintenance of re-

serves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement systems are hereby made direct liability obligations of the said cities. All income, interest, and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said cities. Any amounts derived therefrom, which, when combined with regular appropriations made under the provisions of this chapter, exceed the amount required to provide for the discharge of such obligations, shall be used to reduce the regular appropriations otherwise required. [C35, §6326-f10; C39,§6326.12; C46, 50, 54,§411.12]

**411.13 Exemption from tax and execution.**

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C35,§6326-f11; C39,§6326.13; C46, 50, 54,§411.13]

**411.14 Protection against fraud.** Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of such retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of this state. Should any change or errors in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the respective board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid. [C35,§6326-f12; C39, §6326.14; C46, 50, 54,§411.14]

Constitutionality, 45ExGA, ch 75,§20  
Punishment, §687.7

## CHAPTER 412

## MUNICIPAL UTILITY RETIREMENT SYSTEM

See water works employees group insurance, ch 400  
Applicable to cities over 5,000 population

- 412.1 Authority to establish system.  
412.2 Source of funds.  
412.3 Rules and regulations.

- 412.4 Legal reserve insurance.  
412.5 Public utility defined.

**412.1 Authority to establish system.** The city council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any municipally owned waterworks system, or other municipally owned and operated public utility, in cities having a population of five thousand or more may establish a pension and annuity retirement system for the employees of any such waterworks system, or other municipally owned and operated public utility. [C46, 50, 54, §412.1]

**412.2 Source of funds.** The fund for such pension and annuity retirement system shall be created from any or all of the following sources:

1. From the proceeds of the assessments on the wages and salaries of employees, of any such waterworks system, or other municipally owned and operated public utility, eligible to receive the benefits thereof.

2. From the interest on any permanent fund which may be created by gift, bequest, or otherwise.

3. From moneys derived from the operation of such waterworks, or other municipally owned and operated public utility, available and appropriated therefor by the city council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks or other municipally owned and operated public utility. Such money so expended shall consti-

tute an operating expense of such utility. [C46, 50, 54, §412.2]

Referred to in §412.4

**412.3 Rules and regulations.** The city council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks, or other municipally owned and operated public utility, may formulate and establish such pension and annuity retirement system, and may make and establish such rules and regulations for the operation thereof as may be deemed necessary or appropriate. [C46, 50, 54, §412.3]

**412.4 Legal reserve insurance.** The city council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company, authorized to conduct its business in the state, for the payment by such insurance company of the pensions and annuities provided in any such pension and annuity retirement system, and may pay the premiums accruing under such contract out of the fund provided for in section 412.2. [C46, 50, 54, §412.4]

**412.5 Public utility defined.** Public utility as that term is used in this chapter shall be limited to any waterworks, sewage works, gas, or electric light plants managed, operated, and owned by a municipality. [C46, 50, 54, §412.5]

## CHAPTER 413

## HOUSING LAW

Referred to in §§135B.7, 135B.17, 135C.14  
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Applicable to all cities and towns

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GENERAL PROVISIONS

**413.1 Applicability.** This chapter shall be known as the housing law and shall apply to every city which, by the last state or federal census, had a population of fifteen thousand or more, and to every city as its population shall reach fifteen thousand thereafter by any federal census. [C24, 27, 31, 35, 39, §6327; C46, 50, 54, §413.1]

**413.2 Cities and towns—authority.** In all other cities having a population of less than fifteen thousand, and in incorporated towns, the council may adopt ordinances for the regulation and control of any or all matters covered by the provisions of this chapter, insofar as same may be reasonably applicable, and fix penalties for the violation thereof; and fix rules and regulations not inconsistent with those

provided in this chapter for the enforcement of said ordinances. [C24, 27, 31, 35, 39, §6328; C46, 50, 54, §413.2]

**413.3 Definitions.** Certain words in this chapter are defined for the purposes thereof as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

1. *Dwelling.* A "dwelling" is any house or building or portion thereof which is occupied in whole or in part as the home or residence of one or more human beings, either permanently or transiently.

2. *Classes of dwellings.* For the purposes of this chapter dwellings are divided into the following classes: "Private dwellings", "two-family dwellings", and "multiple dwellings".

a. A private dwelling is a dwelling occupied by but one family alone.

b. A two-family dwelling is a dwelling occupied by but two families alone.

c. A multiple dwelling is a dwelling occupied by more than two families.

3. *Classes of multiple dwellings.* All multiple dwellings are for the purposes of this chapter divided into classes, viz: Class A and class B.

Class A. Multiple dwellings of class A are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites, or groups. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated or not.

Class B. Multiple dwellings of class B are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, asylums, boarding schools, convents, hospitals, jails, and all other dwellings similarly occupied whether specifically enumerated herein or not.

4. *Hotel.* A "hotel" is a multiple dwelling of class B in which persons are lodged for hire and in which there are more than twenty-five sleeping rooms.

5. *Family occupancy.* For the purposes of this chapter, a "family" is a group of persons living together, whether related to each other by birth or not, and may consist of one or more persons.

6. *Mixed occupancy.* In cases of mixed occupancy where a building is occupied only in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this chapter.

7. *Yards.* A "rear yard" is an open unoccupied space on the same lot with a dwelling, between the extreme rear line of the lot and the extreme rear line of the house. A yard between the front line of the house and the front line of the lot is a "front yard". A yard between the side line of the house and the side line of the lot which extends from the front line or front yard to the rear yard is a "side yard".

8. *Courts.* A "court" is an open unoccupied space, other than a yard, on the same lot with a dwelling. A court not extending to the street or front or rear yard is an inner court. A court extending to the street or front yard or rear yard is an outer court.

9. *Corner and interior lots.* A "corner lot" is a lot of which at least two adjacent sides abut upon a street. A lot other than a corner lot is an "interior lot". The word "lot" is any deeded parcel of land whether a full platted lot or not.

10. *Front, rear, and depth of lot.* The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In case of irregular shaped lots the mean depth shall be taken.

11. *Public hall.* A "public hall" is a hall, corridor, or passageway not within the exclusive control of one family.

12. *Stair hall.* A "stair hall" is a public hall and includes the stairs, stair landings, and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

13. *Basement, cellar, attic.* A "basement" is a story partly underground but having at least one-half of its height above the curb level, and also one-half of its height above the highest level of the adjoining ground. A basement shall be counted as a story.

A "cellar" is a story having more than one-half of its height below the curb level, or below the highest level of the adjoining ground. A cellar shall not be counted as a story for purposes of height measurement. If any part of a story is in that part the equivalent of a basement or cellar, the provisions of this chapter relative to basements and cellars shall apply to such part of said story.

In the case of private dwellings and two-family dwellings an "attic", or space in a sloping roof, if not occupied for living purposes, shall not be counted as a story; in the case of multiple dwellings an attic room shall be counted as a story if used for living purposes.

14. *Height.* The "height" of a dwelling is the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the

case of pitched roofs; the measurements in all cases to be taken through the center of the front of the house. Where a dwelling is situated on a terrace above the curb level such height shall be measured from the level of the adjoining ground. Where a dwelling is on a corner lot and there is more than one grade or level, the measurements shall be taken from the mean elevation.

15. *Curb level.* The “curb level” is the level of the established curb in front of the building measured at the center of such front. Where no curb has been established the city engineer shall establish such curb level or its equivalent for the purposes of this chapter.

16. *Occupied spaces.* Outside stairways, fire towers, porches, platforms, balconies, boiler flues, and other projections shall be considered as part of the building and not as a part of the yards or courts or unoccupied spaces. This provision shall not apply to uninclosed outside porches not exceeding two stories in height which do not extend into the front or rear yard a greater distance than ten feet from the front or rear walls of the building, nor to any such porch which does not extend into the side yard a greater distance than twelve feet from the side wall of the building nor exceed twelve feet in its other horizontal dimension, nor to an inclosed rear porch or attached garage with or without sleeping porch above and not exceeding twelve by twenty feet, nor to cornices or eaves not exceeding eighteen inches in width.

17. *Fire-resistive constructed dwelling.* A dwelling of fire-resistive construction is one with brick, stone, or concrete walls and with brick, tile, concrete, or terra cotta floors and roof. Floor and roof supports to be of brick, concrete, or metal with all metal protected by tile, concrete, or similar fire-resistant material. But this definition shall not be construed as prohibiting the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting wooden handrails or treads of hardwood not less than one inch thick.

18. *Wooden buildings.* A “wooden building” is a building of which the exterior walls or a portion thereof are of wood. Court walls are exterior walls.

19. *Nuisance.* The word “nuisance” shall be held to embrace nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health, whatever dwelling is overcrowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewerred, drained, cleaned, or lighted, in reference to its intended or actual use, and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this chapter, nuisances, and all such nuisances are hereby declared illegal.

20. *Construction of certain words.* The word “shall” is always mandatory and not directory,

and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling. Wherever the words “charter”, “ordinances”, “regulations”, “superintendent of buildings”, “health department”, “the board of health”, “health officer”, “commissioner of public safety”, “commissioner of public health”, “department charged with the enforcement of this chapter”, “corporation counsel”, “mayor”, “city treasury”, or “fire limits” occur in this chapter they shall be construed as if followed by the words “of the city in which the dwelling is situated”.

Wherever the words “health department”, “health officer”, or “duly authorized assistant”, or “board of health”, “commissioner of public safety”, or “commissioner of public health” are employed in this chapter, such words shall be deemed and construed to mean the official or officials in any city to whom is committed the charge of safeguarding the public health. The terms “superintendent of buildings”, “building department”, and “inspector of buildings” shall embrace the department and the executive head thereof specially charged with the execution of laws and ordinances relating to the construction of buildings. Wherever the words “occupied” or “used” are employed in this chapter such words shall be construed as if followed by the words “or is intended, arranged, designed, built, altered, converted to, rented, leased, let or hired out, to be occupied or used”.

Wherever the words “dwelling”, “two-family dwelling”, “multiple dwelling”, “building”, “house”, “premises”, or “lot” are used in this chapter, they shall be construed as if followed by the words “or any part thereof”. Wherever the words “city water” are used in this chapter, they shall be construed as meaning any public supply of water through street mains; and wherever the words “public sewer” are used in this chapter they shall be construed as meaning any part of a system of sewers that is used by the public or by concerted action of several users, whether or not such part was constructed at the public expense. Wherever the word “street” is used in this chapter it shall be construed as including for the purpose hereinafter stated any public alley sixteen feet or more in width, namely, for the sole purpose of determining the required open space around and the allowable height of any building abutting thereon.

“Approved fire-resistive material” means as set forth by ordinances, or if not so determined, as approved by the superintendent of buildings. [C24, 27, 31, 35, 39, §6329; C46, 50, 54, §413.3]

**413.4 Alteration—change of class.** A building not a dwelling, if hereafter converted or altered to such use, shall thereupon become subject to such provisions of this chapter relative to dwellings hereafter erected as the board of health may require. A dwelling of one class if hereafter altered or converted to another class shall thereupon become subject to such

provisions of this chapter relative to such latter class as the board of health may require. [C24, 27, 31, 35, 39, §6330; C46, 50, 54, §413.4]

**413.5 Unlawful alteration.** No dwelling hereafter erected shall at any time be altered so as to be in violation of any provision of this chapter.

No dwelling erected prior to the passage of this chapter shall at any time be altered so as to be in violation of those provisions of this chapter applicable to such dwelling.

If any dwelling or any part thereof is occupied by more families than provided in this chapter, or is erected, altered, or occupied contrary to law, such dwelling shall be deemed an unlawful structure and the health officer may cause such dwelling to be vacated. Any such dwelling shall not again be occupied until it, or its occupation, as the case may be, has been made to conform to the law. [C24, 27, 31, 35, 39, §6331; C46, 50, 54, §413.5]

**413.6 Dwelling rebuilt.** If a dwelling be damaged by fire or other cause to the extent of sixty-five percent or more of its original value, exclusive of the value of the foundations, such dwelling shall not be repaired or rebuilt except in conformity with the provisions of this chapter relative to dwellings hereafter erected; provided, however, the owner shall be permitted to rebuild a building of the same size as before, subject to such reasonable provisions regarding light, ventilation, and sanitation as the board of health may prescribe. [C24, 27, 31, 35, 39, §6332; C46, 50, 54, §413.6]

**413.7 Dwelling moved.** If any dwelling be hereafter moved from one lot to another it shall thereupon be made to conform to all the provisions of this chapter relative to dwellings hereafter erected, unless the board of health shall in a written permit for such removal certify that such dwelling is reasonably safe and sanitary. [C24, 27, 31, 35, 39, §6333; C46, 50, 54, §413.7]

**413.8 Sewer connections—water supply.** The provisions of this chapter with reference to sewer connections and water supply shall be deemed to apply only where connection with a public sewer and with public water mains is or becomes reasonably accessible. All questions of the practicability of such sewer and water connections shall be decided by the health officer or such other official as the board of health may direct. [C24, 27, 31, 35, 39, §6334; C46, 50, 54, §413.8]

Referred to in §§413.81, 413.67

**413.9 Minimum requirements—power of cities.** The provisions of this chapter shall be held to be the minimum requirements adopted for the protection of health, welfare, and safety of the community. Nothing herein contained shall be deemed to invalidate existing ordinances or regulations of any city imposing requirements higher than the minimum requirements laid down in this chapter relative to light, ventilation, sanitation, fire prevention,

egress, occupancy, maintenance, and uses for dwellings; nor be deemed to prevent any city subject to this chapter from enacting and putting in force from time to time ordinances and regulations imposing requirements higher than the minimum requirements laid down in this chapter; nor shall anything herein contained be deemed to prevent such cities from prescribing for the enforcement of such ordinances and regulations, remedies and penalties similar or additional to those prescribed herein. Every city subject to this chapter is empowered to enact such ordinances and regulations and to prescribe for their enforcement; and to enact such other ordinances pertaining to the housing of the people, not in conflict with the provisions of this chapter, as shall be deemed advisable by the city council. No ordinance, regulation, ruling, or decision of any municipal body, officer, or authority shall repeal, amend, modify, or dispense with any of the said minimum requirements laid down in this chapter, except as specifically provided herein. [C24, 27, 31, 35, 39, §6335; C46, 50, 54, §413.9]

Referred to in §413.122

**413.10 Improvements.** All improvements specifically required by this chapter upon dwellings erected prior to the date of its passage shall be made within one year from said date, unless time is extended by the health department. [C24, 27, 31, 35, 39, §6336; C46, 50, 54, §413.10]

**413.11 Application of provisions.** All the provisions of this chapter shall apply to all classes of dwellings, except that in sections where specific reference is made to one or more specific classes of dwellings such provisions shall apply only to those specific classes to which reference is made. [C24, 27, 31, 35, 39, §6337; C46, 50, 54, §413.11]

#### LIGHT AND VENTILATION

**413.12 Height of buildings.** No dwelling hereafter erected shall exceed in height one and one-half times the width of the widest street upon which it abuts, nor in any case shall it exceed one hundred feet in height. Such width of street shall be determined by measuring from the front line of the building as constructed to the street line of the opposite side of the street. The provisions of this section shall not apply to hotels. [C24, 27, 31, 35, 39, §6338; C46, 50, 54, §413.12]

**413.13 Rear yards.** Immediately behind every single and two-family dwelling hereafter erected there shall be, except as hereinafter provided, a rear yard extending across the lot, for a distance equal to at least the width of the dwelling. Such yard shall be open and unobstructed from the ground to the sky. Every part of such yard shall be directly accessible from every other part thereof. The depth of said yard shall be measured at right angles from the rear lot line to the extreme rear part of the dwelling. Such rear yard space shall in no case be less than ten feet deep, and two feet additional for each story of the dwelling on said lot above the first.

An irregular shaped lot, or lot subject to building line restrictions, may be occupied by a dwelling without complying with the provisions of this section, if the total yard space equals that required by this section.

The provisions of this section shall not apply to hotels. [C24, 27, 31, 35, 39,§6339; C46, 50, 54, §413.13]

Referred to in §§413.19, 413.47

**413.14 Building to side line of lot—side yards.** Dwellings hereafter erected may be built up to the side lot line, if the side wall is without windows, or if with windows the air and light required by this chapter are provided otherwise than by windows on the lot line, or if the side lot line abuts on a street or alley. If, however, any side yard is left, it shall be open and unobstructed from the ground to the sky, and its width shall be proportionate to the height of the dwelling, and no side yard shall be less in width in any part than as follows:

1. *Multiple dwellings.* In the case of all multiple dwellings hereafter erected, one story in height and having a side yard, the width of the side yard measured to the side lot line shall be at least four feet, and such side yard shall be increased in width by one foot for each additional story above the first.

2. *Private dwellings and two-family dwellings.* In the case of private dwellings and two-family dwellings hereafter erected, one story or two stories in height, the width of the side yard measured to the side lot line shall be at least four feet; such side yard shall be increased in width one foot for each additional story above the second.

3. *Distance between buildings on same lot.* Where more than one dwelling is erected upon the same lot, the distance between them shall not be less than eight feet in the case of dwellings of one or two stories in height, this distance to be increased two feet for each additional story above the second. [C24, 27, 31, 35, 39,§6340; C46, 50, 54,§413.14]

Referred to in §§413.19, 413.47, 413.86

**413.15 Courts—size of.** The size of all courts in dwellings hereafter erected shall be proportionate to the height of the dwelling. No court shall be less in any part than the minimum sizes prescribed in this section. The minimum width of an outer court for a one-story dwelling shall be five feet, for a two-story dwelling six feet, for a three-story dwelling seven feet, and shall increase one foot for each additional story above three stories. The least dimension of an inner court shall never be less than twice the minimum width prescribed by this section for an outer court. The width of all courts adjoining the lot line shall be measured to the lot line and not to an opposite building. [C24, 27, 31, 35, 39,§6341; C46, 50, 54,§413.15]

Referred to in §413.86

**413.16 Covered courts.** No court of a dwelling hereafter erected shall be covered by a roof or skylight. Every such court shall be at every point open from the ground to the sky

unobstructed; except that in the case of hotels, courts may start on the floor level of the lowest bedroom story, and in the case of other multiple dwellings where there are stores or shops on the lower story or stories, courts may start on the top of such lower story or stories. [C24, 27, 31, 35, 39,§6342; C46, 50, 54,§413.16]

**413.17 Air intake.** In all dwellings hereafter erected every inner court extending through more than one story shall be provided with a horizontal air intake at the bottom. [C24, 27, 31, 35, 39,§6343; C46, 50, 54,§413.17]

**413.18 Corners of courts.** Nothing contained in the foregoing sections concerning courts shall be construed as preventing the cutting off of the corners of said courts. [C24, 27, 31, 35, 39,§6344; C46, 50, 54,§413.18]

**413.19 Other buildings on same lot.** If any building is hereafter placed on the same lot with a dwelling, there shall always be maintained between the said buildings an open and unoccupied space extending upwards from the ground. If such buildings are placed at the side of each other the space between them shall conform to the provisions of section 413.14 relating to side yards, but shall be twice the minimum therein required. If such buildings are placed one at the rear of the other the space between them shall be the same as that prescribed in section 413.13 for rear yards. In all cases the height of the highest building on the lot shall regulate the dimensions.

No building of any kind shall be hereafter placed upon the same lot with a dwelling so as to decrease the minimum sizes of courts or yards hereinbefore prescribed, except that, in case of a lot less than seventy-five feet deep, a one-story garage, not more than twenty-five feet deep, measured lengthwise of the lot, nor more than twenty-five feet in the other dimension, or other one-story building, of like dimensions, used exclusively for domestic purposes and not as a dwelling or for the shelter or habitation of animals or fowls of any kind, may occupy one-third of the depth of the open space in this section prescribed.

If any dwelling is hereafter erected upon any lot upon which there is already another building, it shall comply with all the provisions of this chapter, and, in addition, the space between the said building and the said dwelling shall be of such size and arranged in such manner as is herein prescribed, the height of the highest building on the lot to regulate the dimensions. [C24, 27, 31, 35, 39, §6345; C46, 50, 54,§413.19]

**413.20 Windows.** In every dwelling hereafter erected every room shall have at least one window opening directly upon the street or a public alley or other public space at least sixteen feet in width, or upon a yard or court of the dimensions specified in this chapter, and located on the same lot, and such window shall be so located as to properly light all portions of such rooms. This provision shall not, how-



ever, apply to rooms used as art galleries, swimming pools, gymnasiums, squash courts, or for similar purposes, provided such rooms are adequately lighted and ventilated. [C24, 27, 31, 35, 39, §6346; C46, 50, 54, §413.20]

Referred to in §413.59

**413.21 Window area.** In every dwelling hereafter erected the total window area in each room shall be at least one-eighth of the superficial floor area of the room, and the total minimum window area shall be made so as to open in all its parts. [C24, 27, 31, 35, 39, §6347; C46, 50, 54, §413.21]

Referred to in §413.59

**413.22 Living and bed rooms.** In every dwelling hereafter erected all living rooms and bed rooms shall be of the following minimum sizes: Every such room shall contain at least eighty square feet of floor area, except that kitchenettes may be forty square feet in area; no such room, except kitchenette, shall be in any part less than seven feet wide. In multiple dwellings of class A, in each apartment, group, or suite of rooms there shall be at least one room containing not less than one hundred twenty square feet of floor area. [C24, 27, 31, 35, 39, §6348; C46, 50, 54, §413.22]

**413.23 Height of rooms.** No room in a private dwelling hereafter erected shall be in any part less than eight feet three inches high from the finished floor to the finished ceiling downstairs and seven feet six inches upstairs; except that an attic room used for living purposes in such private dwelling need be seven feet six inches in but one-half of its area.

No room in a two-family dwelling or multiple dwelling hereafter erected shall be in any part less than eight feet three inches high from the finished floor to the finished ceiling, except that in a two-family dwelling constructed so as to be occupied on two floors by one family, the height of the rooms on the second floor shall be the same as herein provided for a private dwelling. [C24, 27, 31, 35, 39, §6349; C46, 50, 54, §413.23]

**413.24 Partitions.** In every dwelling hereafter erected an alcove in any room intended or used for separate occupancy shall be separately lighted and ventilated as provided for rooms in the foregoing sections. No part of any room in a dwelling hereafter erected shall be inclosed or subdivided at any time, wholly or in part, by a fixed partition for permanent separate occupancy, unless such part of the room so inclosed or subdivided shall be separately lighted and ventilated as provided for rooms in the foregoing sections. [C24, 27, 31, 35, 39, §6350; C46, 50, 54, §413.24]

Referred to in §413.59

**413.25 Windows in bathrooms.** In every dwelling hereafter erected every water closet compartment and every bathroom shall have an aggregate window area of at least four square feet between stop beads opening directly upon the street, or upon a yard or court of

the dimensions specified in this chapter. Every such window shall be made so as to open in all its parts. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided, and that such water closets are supplemental to the water closet accommodations required by the provisions of section 413.32.

The above provision shall not apply to hotels or dwellings that have a system of forced ventilation so constructed as entirely to change the air in every bathroom, toilet room, or water closet compartment every seven minutes. [C24, 27, 31, 35, 39, §6351; C46, 50, 54, §413.25]

Referred to in §§413.32, 413.55

**413.26 Lighting and ventilation of halls.** Every multiple dwelling, every public hall, and stair hall shall have adequate lighting and ventilation as the board of health may require. [C24, 27, 31, 35, 39, §6352; C46, 50, 54, §413.26]

#### SANITATION

**413.27 Cellar rooms.** In dwellings hereafter erected no room in the cellar shall be occupied for living purposes. [C24, 27, 31, 35, 39, §6353; C46, 50, 54, §413.27]

**413.28 Basement rooms.** In dwellings hereafter erected no room in the basement shall be occupied for living purposes, unless in addition to the other requirements of this chapter such room shall have sufficient light and ventilation, shall be well drained and dry, and shall, in the opinion of the board of health, be fit for human habitation. [C24, 27, 31, 35, 39, §6354; C46, 50, 54, §413.28]

**413.29 Basement or cellar under entrance floor.** Every dwelling hereafter erected shall have a basement, cellar, or excavated space under the entire entrance floor, at least three feet in depth, or shall be elevated above the ground so that there will be a clear air space of at least eighteen inches between the top of the ground and the floor joists so as to insure ventilation and protection from dampness; provided, however, that cement floors may be laid on the ground level if desired. [C24, 27, 31, 35, 39, §6355; C46, 50, 54, §413.29]

**413.30 Courts and yards graded and drained.** In every dwelling hereafter erected all courts, areas, and yards shall be properly graded and drained, and when required by the health officer the courts shall be properly concreted in whole or in part as may be necessary. [C24, 27, 31, 35, 39, §6356; C46, 50, 54, §413.30]

**413.31 Sinks and washbowls.** In every dwelling hereafter erected and not exempted in section 413.8, there shall be a proper sink and washbowl with running water, exclusive of any sink in the cellar. In two-family dwellings and in multiple dwellings of class A there shall be such a sink or washbowl in each apartment, suite, or group of rooms. [C24, 27, 31, 35, 39, §6357; C46, 50, 54, §413.31]

**413.32 Water closets.** In every dwelling hereafter erected there shall be a separate water closet. Each such water closet shall be placed in a compartment completely separated from every other water closet; such compartment shall be not less than thirty inches wide, and shall be inclosed with partitions which shall extend to the ceiling. Every such compartment shall have a window opening directly upon the street or upon a yard or court of the minimum sizes prescribed by this chapter and located upon the same lot. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided and that such water closets are supplemental to the water closet accommodations required by other provisions of this section for the occupants of said house. No water closet fixture shall be incased with any woodwork. No water closet shall be placed in a cellar of a multiple dwelling except with written permit from the health officer. In two-family dwellings and in multiple dwellings of class A hereafter erected there shall be for each family a separate water closet constructed and arranged as above provided and located within each apartment, suite, or group of rooms. In multiple dwellings of class B hereafter erected there shall be provided at least one water closet for every twenty occupants or fraction thereof. Every water closet compartment hereafter placed in any dwelling shall be provided with proper means of lighting the same at night. The provisions of this section regarding windows in water closet compartments shall not apply to dwellings that have a system of forced ventilation as provided in section 413.25. [C24, 27, 31, 35, 39, §6358; C46, 50, 54, §413.32]

Referred to in §§413.25, 413.65

**413.33 Accessibility to city water and sewers.** No multiple dwelling shall hereafter be erected unless there is accessible city water and a public sewer, or a private sewer connected directly with a public sewer. No cesspool or similar means of sewage disposal shall be used in connection with any dwelling where connection with a public sewer is practicable. [C24, 27, 31, 35, 39, §6359; C46, 50, 54, §413.33]

**413.34 Plumbing fixtures.** In every dwelling hereafter erected no plumbing fixtures shall be incased, but the space underneath shall be left entirely open. Plumbing pipes shall be exposed, when so required by the health officer. All plumbing work shall be sanitary in every particular and, except as otherwise specified in this chapter, shall be in accordance with the plumbing regulations of said city. All fixtures shall be trapped. Pan, plunger, and long hopper closets will not be permitted. Wooden sinks will not be permitted. [C24, 27, 31, 35, 39, §6360; C46, 50, 54, §413.34]

Referred to in §413.55

#### FIRE PROTECTION

**413.35 Dwellings — fire-resistive materials.** No dwelling shall hereafter be erected exceeding four stories in height, unless it shall be of fire-resistive material; the building, however, may step up to follow the street grade, provided no part of it is over four stories in height. [C24, 27, 31, 35, 39, §6361; C46, 50, 54, §413.35]

Referred to in §413.121

**413.36 Egress from multiple dwellings.** Every multiple dwelling hereafter erected exceeding two stories in height shall have at least two independent ways of egress, each of which shall extend from the ground floor to the roof, and shall be located remote from each other, and each shall be arranged as provided elsewhere in this chapter. One of such ways of egress shall be a flight of stairs constructed and arranged as provided in sections 413.39 to 413.42, inclusive. In multiple dwellings of class A the second way of egress shall be directly accessible to each apartment, group, or suite of rooms without having to pass through the first way of egress. In multiple dwellings of class B the second way of egress shall be directly accessible from a public hall. The second way of egress may be any one of the following, as the owner may select:

1. A system of outside balcony fire escapes constructed and arranged so as to comply with the state fire laws.

2. An additional flight of stairs, either inside or outside, constructed and arranged as provided in sections 413.38 to 413.41, inclusive.

3. A fire tower located, constructed, and arranged as may be required by the superintendent of buildings. [C24, 27, 31, 35, 39, §6362; C46, 50, 54, §413.36]

Referred to in §§413.39, 413.121

**413.37 Flat-roofed multiple dwellings.** Every flat-roofed multiple dwelling hereafter erected exceeding one story in height shall have in the roof a bulkhead or a scuttle not less than two feet by three feet in size. Such scuttle or bulkhead shall be fireproof or covered with metal on the outside and shall be provided with stairs leading thereto and easily accessible to all occupants of the building. No scuttle or bulkhead shall be located in a closet or room, but shall be located in the ceiling of the public hall on the top floor, and access through the same shall be direct and uninterrupted. [C24, 27, 31, 35, 39, §6363; C46, 50, 54, §413.37]

Referred to in §413.121

**413.38 Stairs in two-story multiple dwellings.** Every multiple dwelling two stories or more in height hereafter erected shall have at least one flight of stairs extending from the entrance floor to the roof; and the stairs and public halls therein shall each be at least four feet wide in the clear. All stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches

wide and not less than four feet long in the clear. Winding stairs will not be permitted. [C24, 27, 31, 35, 39, §6364; C46, 50, 54, §413.38]

Referred to in §§413.36, 413.53, 413.121

**413.39 Stairs in multiple dwellings.** In multiple dwellings hereafter erected which exceed two stories in height, the stair halls shall be constructed of fire-resistive material throughout. The risers, strings, and balusters shall be of metal, concrete, or stone. The treads shall be of metal, slate, concrete, or stone, or of hardwood not less than two inches thick. Wooden handrails will be permitted if constructed of hardwood. The floors of all such stair halls shall be constructed of iron, steel, or concrete beams and fireproof filling, and no wooden flooring or sleepers shall be permitted. In multiple dwellings hereafter erected which exceed two stories in height, at least one flight of stairs shall be inclosed in fireproof walls from the cellar to the roof. [C24, 27, 31, 35, 39, §6365; C46, 50, 54, §413.39]

Referred to in §§413.36, 413.121

**413.40 Stair halls in such dwellings.** In all multiple dwellings hereafter erected which exceed two stories in height, all stair halls shall be inclosed on all sides with walls of brick or other fire-resistive material not less than eight inches thick. The doors opening from such stair halls shall be fire-resistive and self-closing fire doors of the swinging type. There shall be no transom or sash or similar opening from such stair hall to any other part of the building occupied for living purposes. [C24, 27, 31, 35, 39, §6366; C46, 50, 54, §413.40]

Referred to in §§413.36, 413.121

**413.41 Multiple dwelling of less than five stories.** In multiple dwellings hereafter erected less than five stories high, where there is but one stairway, the entrance hall shall be not less than five feet wide in the clear; and in multiple dwellings five or more stories high, the width shall be not less than six feet and the entrance hall shall have an additional width of two feet for each additional stairway served. In every multiple dwelling hereafter erected, access shall be had from the street or alley to the yard, either in a direct line or through a court. [C24, 27, 31, 35, 39, §6367; C46, 50, 54, §413.41]

Referred to in §§413.36, 413.53, 413.121

**413.42 Dumb-waiters, chutes, and shafts.** In multiple dwellings hereafter erected all dumb-waiters, chutes, ventilating and miscellaneous shafts shall be inclosed in an inclosure of fire-resistive material with self-closing fire doors at all entrances into same, including cellar entrances.

In multiple dwellings hereafter erected which shall exceed two stories in height or which are occupied by more than two families above the grade floor, elevators, if provided, shall not be permitted in well holes or in the same shaft as the stairs, but shall be in a separate shaft or inclosure of fire-resistive material such as brick not less than eight inches in thickness, reinforced concrete not less than four inches

in thickness, well burned tile or terra cotta not less than six inches in thickness.

All entrances into elevator shafts shall be protected by fire doors either self-closing or closed inside by elevator operator. [C24, 27, 31, 35, 39, §6368; C46, 50, 54, §413.42]

Referred to in §§413.36, 413.121

**413.43 Inside cellar stairs.** In multiple dwellings hereafter erected inside cellar stairs shall be in an inclosure constructed of fire-resistive walls and shall have a fire-resistive self-closing door of the swinging type at the bottom. [C24, 27, 31, 35, 39, §6369; C46, 50, 54, §413.43]

Referred to in §413.121

**413.44 Closets in multiple dwellings.** In multiple dwellings hereafter erected no closet of any kind shall be constructed under any staircase leading from the entrance story to the upper stories, but such space shall be left entirely open and kept clear and free from encumbrance. [C24, 27, 31, 35, 39, §6370; C46, 50, 54, §413.44]

Referred to in §413.121

**413.45 Cellar entrance.** In every multiple dwelling hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of said building. [C24, 27, 31, 35, 39, §6371; C46, 50, 54, §413.45]

Referred to in §413.121

**413.46 Wooden multiple dwellings.** No wooden multiple dwelling shall hereafter be erected exceeding two stories in height and no wooden building not now used as a multiple dwelling shall hereafter be altered into a multiple dwelling exceeding two stories in height. [C24, 27, 31, 35, 39, §6372; C46, 50, 54, §413.46]

Referred to in §413.121

#### ALTERATIONS

**413.47 Enlargement of dwellings.** No dwelling shall hereafter be enlarged or its lot diminished, or other building placed on the lot, so that the rear yard or side yard shall be less in size than the minimum sizes prescribed in sections 413.13 and 413.14 for dwellings hereafter erected. [C24, 27, 31, 35, 39, §6373; C46, 50, 54, §413.47]

**413.48 Inner courts.** An inner court hereafter constructed in a dwelling erected prior to the passage of this chapter, if extending only through one or two stories, shall be not less than six feet by eight feet in size; and if it extends through more than two stories, it shall be not less than eight feet by ten feet in size. All inner courts shall be opened to the sky, without skylight, or roof of any kind. [C24, 27, 31, 35, 39, §6374; C46, 50, 54, §413.48]

**413.49 Additional halls or rooms.** Any additional room or hall that is hereafter constructed or created in a dwelling shall comply in all respects with the provisions of this chapter with reference to dwellings hereafter erected, except that it may be of the same

height as the other rooms of the same story of the dwelling. [C24, 27, 31, 35, 39,§6375; C46, 50, 54,§413.49]

**413.50 Light and ventilation.** No dwelling shall be so altered or its lot diminished that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the health officer. [C24, 27, 31, 35, 39,§6376; C46, 50, 54,§413.50]

**413.51 Stairs.** No stairs leading to the roof in any multiple dwelling shall be removed or be replaced with a ladder. [C24, 27, 31, 35, 39, §6377; C46, 50, 54,§413.51]

**413.52 Bulkheads.** Every bulkhead hereafter constructed in a multiple dwelling shall be constructed of fire-resistive material or covered with metal. [C24, 27, 31, 35, 39,§6378; C46, 50, 54,§413.52]

**413.53 Public halls or stairs.** No public hall or stairs in a multiple dwelling shall be reduced in width so as to be less than the minimum width prescribed in sections 413.38 and 413.41. [C24, 27, 31, 35, 39,§6379; C46, 50, 54, §413.53]

**413.54 Dumb-waiter and elevator shafts.** All dumb-waiters and elevators hereafter constructed in multiple dwellings shall be in inclosures constructed of fire-resistive material with fire-resistive doors at all openings at each story, including the cellar. In the case of dumb-waiter shafts such doors shall be self-closing; and such shafts shall be completely separated from the stairs by walls of approved fire-resistive material inclosing the same.

This section does not apply to dumb-waiter shafts or elevator shafts which are already in existence, but only to those which may be installed after this chapter takes effect. [C24, 27, 31, 35, 39,§6380; C46, 50, 54,§413.54]

**413.55 Water closets.** Any water closet hereafter placed in a dwelling, except one provided to replace a defective or insanitary fixture in the same location, shall comply with the provisions of sections 413.25, 413.32, and 413.34, relative to water closets in dwellings hereafter erected. [C24, 27, 31, 35, 39,§6381; C46, 50, 54, §413.55]

**413.56 Height of dwellings.** No dwelling shall be increased in height so that it exceeds one and one-half times the width of the widest street on which it abuts nor in any case exceeds one hundred feet. [C24, 27, 31, 35, 39, §6382; C46, 50, 54,§413.56]

**413.57 General rule as to alterations.** Except as specified above, no dwelling shall be so altered nor shall its lot be so diminished, nor shall any building be so placed on the same lot, as to cause the dwelling to be in violation of the requirements of this chapter for dwellings hereafter erected; nor shall any room, public hall, or stairs have its light or ventila-

tion diminished in any way not approved by the health officer. [C24, 27, 31, 35, 39,§6383; C46, 50, 54,§413.57]

**413.58 Skylights—ventilators.** All new skylights hereafter placed in a multiple dwelling shall be provided with ventilators having a minimum opening of forty square inches and also with either fixed or movable louvers or with movable sashes, and shall be of such size as may be determined to be practicable by the health officer. [C24, 27, 31, 35, 39,§6384; C46, 50, 54,§413.58]

**413.59 Divided rooms—window.** No part of any room in a dwelling shall hereafter be inclosed or subdivided for separate occupancy, wholly or in part by a fixed partition, unless such part of a room so inclosed or subdivided shall contain a window as required by sections 413.20, 413.21, and 413.24 and have a floor area of not less than eighty square feet. [C24, 27, 31, 35, 39,§6385; C46, 50, 54,§413.59]

#### MAINTENANCE

**413.60 Lights.** In every multiple dwelling a proper light shall be kept burning by the owner in the public hallways near the stairs upon each floor every night from sunset to sunrise throughout the year if so required by the health officer. [C24, 27, 31, 35, 39,§6386; C46, 50, 54,§413.60]

**413.61 Water closets.** No water closet shall be maintained in the cellar of any dwelling without a permit in writing from the health officer, who shall have power to make rules and regulations governing the maintenance of such closets. Under no circumstances shall the general water closet accommodations of any multiple dwelling be permitted in the cellar or basement thereof; this provision, however, shall not be constructed so as to prohibit a general toilet room containing several water closets, provided such water closets are supplementary to those required by law. [C24, 27, 31, 35, 39,§6387; C46, 50, 54,§413.61]

**413.62 Number of water closets.** In every dwelling existing prior to the passage of this chapter, there shall be provided at least one water closet for every two apartments, groups, or suites of rooms, or fraction thereof, except that in multiple dwellings of class B there shall be provided at least one water closet for every twenty occupants or fraction thereof. [C24, 27, 31, 35, 39,§6388; C46, 50, 54,§413.62]

Referred to in §413.86

**413.63 Cellar or basement rooms.** No room in the cellar of any dwelling erected prior to the passage of this chapter shall be occupied for living purposes. And no room in the basement of any such dwelling shall be so occupied without a written permit from the health officer. No such room shall hereafter be occupied unless all the following conditions are complied with:

1. Such room shall be at least seven feet high in every part from the floor to the ceiling.
2. The ceiling of such room shall be in every

part at least three feet six inches above the surface of the street or ground outside of or adjoining the same.

3. There shall be appurtenant to such room the use of a water closet.

4. At least one of the rooms of the apartment of which such room is an integral part shall have a window or windows opening directly to the street or yard, with an aggregate of at least twelve square feet in size clear of the sash frame, and which shall open readily for purposes of ventilation.

5. The lowest floor shall be water proof and damp proof.

6. Such room shall have sufficient light and ventilation, shall be well drained and dry, and shall be fit for human habitation. [C24, 27, 31, 35, 39,§6389; C46, 50, 54,§413.63]

**413.64 Color of cellar walls.** The cellar walls and cellar ceilings of every multiple dwelling shall by the owner be thoroughly whitewashed or painted a light color and shall be so maintained by him when required by the health officer. [C24, 27, 31, 35, 39,§6390; C46, 50, 54, §413.64]

**413.65 Floor beneath water closets.** In all two-family dwellings and multiple dwellings the floor or other surface beneath and around water closets and sinks shall be maintained in good order and repair and if of wood shall be kept well painted. [C24, 27, 31, 35, 39,§6391; C46, 50, 54,§413.65]

**413.66 Repair of dwelling.** Every dwelling and all the parts thereof shall be kept in good repair by the owner, and the roof shall be kept so as not to leak, and all rain water shall be so drained and conveyed therefrom as not to cause dampness in the walls or ceilings. [C24, 27, 31, 35, 39,§6392; C46, 50, 54,§413.66]

**413.67 Water supply—sinks.** Every dwelling not exempted in section 413.8 shall have within the dwelling at least one proper sink with running water furnished in sufficient quantity at one or more places exclusive of the cellar. In two-family dwellings and multiple dwellings of class A there shall be at least one sink on every floor, accessible to each family on the floor occupied by said family without passing through any other apartment. Where city water is not available the owner shall provide proper and suitable tanks, pumps, or other appliances to receive and to distribute an adequate and sufficient supply of water at each floor in the said dwelling at all times of the year, during all hours of the day and night. But a failure in the general supply of city water shall not be construed to be a failure on the part of such owner, provided proper and suitable appliances to receive and distribute such water have been provided in said dwelling. [C24, 27, 31, 35, 39,§6393; C46, 50, 54, §413.67]

**413.68 Catch basins.** In the case of dwellings where, because of lack of city water sup-

ply or sewers, sinks with running water are not provided inside the dwellings, one or more catch basins or some other approved convenience for the disposal of waste water, if necessary in the opinion of the health officer, shall be provided in the yard or court, level with the surface thereof and at a point easy of access to the occupants of such dwelling. [C24, 27, 31, 35, 39,§6394; C46, 50, 54,§413.68]

**413.69 Accumulations of dirt.** Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage, or other matter in or on the same, or in the yards, courts, passages, areas, or alleys connected with or belonging to the same. The owner of every dwelling and in the case of a private dwelling the occupant thereof, shall thoroughly cleanse or cause to be cleansed all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, water closets, cesspools, drains, halls, cellars, roofs, and all other parts of the said dwelling, or part of the dwelling of which he is the owner or in case of a private dwelling the occupant, to the satisfaction of the health officer, shall keep the said parts of the said dwelling in a clean condition at all times. [C24, 27, 31, 35, 39,§6395; C46, 50, 54, §413.69]

**413.70 Color of walls of courts.** In multiple dwellings the walls of all courts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the health officer. [C24, 27, 31, 35, 39,§6396; C46, 50, 54,§413.70]

**413.71 Color of walls of other rooms.** In all multiple dwellings erected prior to this chapter, the health officer may require the walls and ceilings of every room that does not open directly on the street to be calcimined or painted so as to furnish adequate lighting of such room and may require this to be renewed as often as may be necessary. [C24, 27, 31, 35, 39,§6397; C46, 50, 54,§413.71]

**413.72 Garbage receptacles.** The owner of every dwelling and in the case of a private dwelling the occupant shall provide for said dwelling, keep clean and in place, proper covered receptacles of nonabsorbent material for holding garbage, refuse, rubbish, and other waste matter. Garbage chutes are prohibited. [C24, 27, 31, 35, 39,§6398; C46, 50, 54,§413.72]

**413.73 Animals.** No horse, cow, calf, swine, sheep, goat, chickens, geese, or ducks shall be kept in any dwelling or part thereof. Nor shall any such animal be kept on the same lot or premises with a dwelling except under such conditions as may be prescribed by the health officer. No such animal, except a horse, shall under any circumstances be kept on the same lot or premises with a multiple dwelling. No dwelling or the lot or premises thereof shall be

used for the storage or handling of rags or junk. [C24, 27, 31, 35, 39,§6399; C46, 50, 54, §413.73]

**413.74 Articles dangerous to life or health.** No dwelling nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping, or handling of any article dangerous or detrimental to life or health; nor of any combustible article except under such conditions as may be prescribed by the fire commissioner, or the proper official, under authority of a written permit issued by him. [C24, 27, 31, 35, 39,§6400; C46, 50, 54, §413.74]

**413.75 Openings where paint or oil is stored.** There shall be no transom, window, or door opening into a public hall from any part of a multiple dwelling where paint, oil, gasoline, or drugs are stored or kept for the purpose of sale or otherwise. This provision shall not apply to hotels. [C24, 27, 31, 35, 39,§6401; C46, 50, 54,§413.75]

**413.76 Janitors.** In any multiple dwelling in which the owner thereof does not reside, there shall be a janitor, housekeeper, or other responsible person who shall have charge of the same, if the health officer shall so require. [C24, 27, 31, 35, 39,§6402; C46, 50, 54,§413.76]

**413.77 Overcrowding of rooms.** If any room in a dwelling is overcrowded the health officer may order the number of persons sleeping or living in said room to be so reduced that there shall be not less than four hundred cubic feet of air to each adult and two hundred cubic feet of air to each child under twelve years of age occupying such room. [C24, 27, 31, 35, 39,§6403; C46, 50, 54,§413.77]

**413.78 Subletting of lodgings—eviction.** The health officer may prohibit in any multiple dwelling the letting of lodgings therein by any of the tenants occupying such multiple dwelling, and may prescribe conditions under which lodgers or boarders may be taken in multiple dwellings. It shall be the duty of the owner in the case of multiple dwellings to see that the requirements of the health officer in this regard are at all times complied with, and a failure to so comply on the part of any tenant, after due and proper notice from said owner or from the health officer, shall be deemed sufficient cause for the summary eviction of such tenant and the cancellation of his lease. The provisions of this section may be extended to private dwellings and two-family dwellings, as may be found necessary by the health officer. [C24, 27, 31, 35, 39,§6404; C46, 50, 54, §413.78]

**413.79 Dwellings unfit for habitation — eviction.** Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease or that it is unfit for human habitation, or dangerous to life or health by reason of want of repair, or of defects in the drainage, plumbing, lighting, ventilation, or the construction of the

same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, the health officer may issue an order requiring all persons therein to show cause why they should not be required to vacate such house within a time to be set by him, for the reasons to be mentioned in said order. In case such order is not complied with within the time specified, the health officer may cause said dwelling to be vacated. The health officer, whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation, may revoke said order or may extend the time within which to comply with the same. [C24, 27, 31, 35, 39,§6405; C46, 50, 54, §413.79]

**413.80 Nuisances.** Whenever any dwelling or any building, structure, excavation, business pursuit, matter, or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light, or ventilation thereof, is in the opinion of the health officer in a condition or in effect dangerous or detrimental to life or health, the health officer may after notice and failure to correct, declare that the same to the extent he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered, or otherwise improved or purified as the order shall specify. [C24, 27, 31, 35, 39,§6406; C46, 50, 54, §413.80]

**413.81 Fire escapes.** The owner of every multiple dwelling on which there are fire escapes shall keep them in good order and repair, and whenever rusty shall have them properly painted with two coats of paint. No person shall at any time place an obstruction of any kind before or upon such fire escape. [C24, 27, 31, 35, 39,§6407; C46, 50, 54,§413.81]

**413.82 Scuttles and bulkheads.** In all multiple dwellings where there are scuttles or bulkheads, they and all stairs or ladders leading thereto shall be easily accessible to all occupants of the building and shall be kept free from obstruction and ready for use at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but may be fastened on the inside by movable bolts or hooks. [C24, 27, 31, 35, 39,§6408; C46, 50, 54, §413.82]

#### IMPROVEMENTS

**413.83 Windows.** No room in a dwelling erected prior to the passage of this chapter shall hereafter be occupied for living purposes unless it shall have a window of an area of not less than eight square feet opening directly upon the street, or upon a rear yard not less than four feet deep, or above the roof of an adjoining building, or upon a court or side yard of not less than twenty-five square feet in area open to the sky without roof or skylight, unless such room is located on the top floor and is adequately lighted and ventilated by a skylight, opening directly to the outer air; except that a room which cannot be made to comply with the above provisions may be occupied if provided with a sash window of not less than

fifteen square feet in area, opening into an adjoining room in the same apartment group or suite of rooms, which latter room opens directly on the street or on a rear yard of the above dimensions. Said sash window shall be a vertically sliding pulley-hung sash not less than three feet by five feet between stop beads, both halves shall be made so as to readily open, and the lower half shall be glazed with translucent glass, and so far as possible it shall be in line with windows in the said outer room opening on the street or rear yard so as to afford a maximum of light and ventilation. [C24, 27, 31, 35, 39, §6409; C46, 50, 54, §413.83]

**413.84 Light and ventilation.** In all multiple dwellings erected prior to the passage of this chapter the public halls and stairs shall be provided with as much light and ventilation to the outer air as may be deemed practicable by the board of health who may order the cutting in of windows and skylights and such other improvements and alterations in said dwellings as in its judgment may be necessary and appropriate to accomplish this result. All new skylights hereafter placed in such dwellings shall be of such size as may be determined to be practicable by said board of health. [C24, 27, 31, 35, 39, §6410; C46, 50, 54, §413.84]

**413.85 Sinks and water closets.** In all multiple dwellings erected prior to the passage of this chapter the woodwork incasing sinks, except sinks in butler's pantries, and water closets shall be removed and the space underneath said fixtures shall be left open. The floor and wall surfaces beneath and around the said fixtures shall be put in good order and repair, and if of wood shall be kept well painted. Defective and insanitary water closet fixtures shall be replaced by proper fixtures, as defined by this chapter. [C24, 27, 31, 35, 39, §6411; C46, 50, 54, §413.85]

**413.86 Sewer connections.** Whenever a connection with a sewer is possible, all privy vaults, range closets, cesspools, or other similar receptacles used to receive fecal matter, urine, or sewerage, shall, before July 1, 1920, with their contents, be completely removed and the place where they were located properly disinfected under the direction of the health officer. Such appliances shall be replaced by individual water closets of durable nonabsorbent material, properly sewer-connected, and with individual traps and properly connected flush tanks providing an ample flush of water to thoroughly cleanse the bowl. Each such water closet shall be located inside the dwelling or other building in connection with which it is to be used in a compartment completely separated from every other water closet, and such compartment shall contain a window of not less than four square feet in area opening directly to the street or rear yard or on a side yard or court of the minimum size prescribed in sections 413.14 and 413.15. Such water closets shall be provided in such numbers as required by section 413.62. Such water closets and all plumbing in connection therewith shall be sanitary

in every respect and, except as in this chapter otherwise provided, shall be in accordance with the local ordinances and regulations in relation to plumbing and drainage. Pan, plunger, and long hopper closets will not be permitted except upon written permit of the health officer. No water closet shall be placed out-of-doors. [C24, 27, 31, 35, 39, §6412; C46, 50, 54, §413.86]

**413.87 Freedom from dampness.** The floor of the cellar or lowest floor of every dwelling shall be free from dampness, and, when necessary in the judgment of the health officer, shall be concreted with not less than two inches of concrete of good quality and with a finished surface. [C24, 27, 31, 35, 39, §6413; C46, 50, 54, §413.87]

**413.88 Access to shaft or court.** In every dwelling where there is a court or shaft of any kind, there shall be at the bottom of every such shaft and court a door giving sufficient access to such shaft or court to enable it to be properly cleaned out; provided that where there is already a window giving proper access it shall be deemed sufficient. [C24, 27, 31, 35, 39, §6414; C46, 50, 54, §413.88]

**413.89 Ways of egress.** Every multiple dwelling exceeding two stories in height shall have at least two independent ways of egress constructed and arranged as provided in section 413.36. In the case of multiple dwellings erected prior to the passage of this chapter, where it is not practicable in the judgment of the building inspector to comply in all respects with the provisions of that section, said building inspector shall make such requirements as may be appropriate to secure proper means of egress from such multiple dwellings for all the occupants thereof. No existing fire escape shall be deemed a sufficient means of egress unless the following conditions are complied with:

1. All parts of it shall be of iron, cement, or stone.

2. The fire escape shall consist of outside balconies which shall be properly connected with each other by adequate stairs or stationary ladders, with openings not less than twenty-four by twenty-eight inches.

3. All fire escapes shall have proper drop ladders or stairways from the lowest balcony of sufficient length to reach a safe landing place beneath.

4. All fire escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or alley or to the adjoining premises.

5. Prompt and ready access shall be had to all fire escapes, which shall not be obstructed by bathtubs, water closets, sinks, or other fixtures, or in any other way. [C24, 27, 31, 35, 39, §6415; C46, 50, 54, §413.89]

Referred to in §413.121  
Fire escapes, ch 103

**413.90 Additional egress.** Whenever any multiple dwelling is not provided with suffi-



cient means of egress in case of fire, the building inspector shall order such additional means of egress as may be necessary. [C24, 27, 31, 35, 39,§6416; C46, 50, 54,§413.90]

Referred to in §413.121

**413.91 Skylight—access to roof.** Unless there is a bulkhead in the roof there shall be over every inside stairway used by more than one family, a skylight or scuttle not less than two feet by three feet in size. Every flat roof multiple dwelling, exceeding one story in height, shall have at least one convenient and permanent means of access to the roof located in a public part of the building and not in a room or closet. [C24, 27, 31, 35, 39,§6417; C46, 50, 54,§413.91]

Referred to in §413.121

REQUIREMENTS AND REMEDIES

**413.92 Plans, plat, and specifications required.** Before the construction or alteration of a dwelling, or the alteration or conversion of a building for use as a dwelling is commenced and before the construction or alteration of any building or structure on the same lot with a dwelling, the owner, or his agent or architect, shall submit to the board of health a detailed statement in writing, certified by the affidavit of the person making the same, of the specifications for such dwelling or building, upon blanks or forms to be furnished by such board of health, and also full and complete copies of the plans of such work. With such statement there shall be submitted a plat of the lot showing the dimensions of the same, the location of the proposed building and all other buildings on the lot. [C24, 27, 31, 35, 39,§6418; C46, 50, 54,§413.92]

38GA, ch 123,§92, editorially divided  
Referred to in §413.104

**413.93 Detailed requirements.** Such statement shall give in full the name and residence, by street and number, of the owner or owners of such dwelling or building and the purposes for which such dwelling or building will be used. If such construction, alteration, or conversion is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such dwelling, either as owner, lessee, or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such dwelling, building, structure, lot, and proposed work. [C24, 27, 31, 35, 39,§6419; C46, 50, 54,§413.93]

Referred to in §413.104

**413.94 By whom made.** The statements and affidavits herein provided for may be made by the owner, his agent or architect, or by the person who proposes to make the construction, alteration, or conversion, or by the agent or architect of such person. [C24, 27, 31, 35, 39, §6420; C46, 50, 54,§413.94]

Referred to in §413.104

**413.95 Who deemed agent.** No one, however, shall be recognized as the agent of the owner or of such person unless he shall file with said health officer a written instrument signed by such owner or person, as the case may be, designating him as such agent. [C24, 27, 31, 35, 39,§6421; C46, 50, 54,§413.95]

Referred to in §413.104

**413.96 Perjury.** Any intentional false oath in a material point in any such affidavit shall be deemed perjury. [C24, 27, 31, 35, 39,§6422; C46, 50, 54,§413.96]

Referred to in §413.104

**413.97 Filing and preservation.** Such specifications, plans, and statements shall be filed in said health department and shall be deemed public records, but no such specifications, plans, or statements shall be removed from said health department. [C24, 27, 31, 35, 39, §6423; C46, 50, 54,§413.97]

Referred to in §413.104

**413.98 Approval.** The health officer shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this chapter they shall within five days be approved by the health officer or his duly authorized assistant, and a written certificate to that effect shall be issued by him to the person submitting the same. The health officer shall, from time to time, approve changes in any plans and specifications previously approved by him, provided the plans and specifications when so changed shall be in conformity with law. [C24, 27, 31, 35, 39,§6424; C46, 50, 54,§413.98]

Referred to in §413.104

**413.99 Construction prohibited.** The construction, alteration, or conversion of such dwelling, building, or structure, or any part thereof, shall not be commenced until the filing of such specifications, plans, and statements, and the approval thereof, as above provided. [C24, 27, 31, 35, 39,§6425; C46, 50, 54,§413.99]

Referred to in §413.104

**413.100 Certificate of health officer.** No permit shall be granted and no plan approved by the department of buildings, where such exists, for the construction or alteration of a dwelling or for the alteration or conversion of any building for use as a dwelling until there has been filed in the office of the department of buildings a certificate of the health officer issued as above provided to the effect that such dwelling conforms to the provisions of this chapter. [C24, 27, 31, 35, 39,§6426; C46, 50, 54,§413.100]

Referred to in §413.104

**413.101 Construction authorized.** The construction, alteration, or conversion of such dwelling, building, or structure shall be in accordance with such approved specifications and plans. [C24, 27, 31, 35, 39,§6427; C46, 50, 54,§413.101]

Referred to in §413.104

**413.102 Permit automatically canceled.** Any permit or approval which may be issued by the



health officer, but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. [C24, 27, 31, 35, 39, §6428; C46, 50, 54, §413.102]

Referred to in §413.104

**413.103 Revocation of permit.** The health officer or his duly authorized assistant shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this chapter, or in case any false statement or representation is made in any specifications, plans, or statements submitted or filed for such permit or approval. [C24, 27, 31, 35, 39, §6429; C46, 50, 54, §413.103]

Referred to in §413.104

**413.104 Enforcement in certain cities.** In cities of more than one hundred thousand population, as shown by the last federal census, having a department or division of building inspection in charge of a person devoting his entire time to the supervision of building construction and to the enforcement of laws and ordinances relating to building construction, repair, alteration, removal, and to related matters, the city council may by ordinance provide that said person shall be charged with the powers and duties charged in sections 413.92 to 413.103, inclusive, to the board of health and to the health officer, and that all plans, specifications, affidavits, forms, and statements, in said sections prescribed to be filed with the health officer shall be filed with such person; and that said person may issue valid permits, certificates, and orders providing, without the certificate of the health officer hereinbefore provided to be filed in the office of the department of buildings. [C24, 27, 31, 35, 39, §6430; C46, 50, 54, §413.104]

**413.105 New or altered buildings — habitation.** No part of a building hereafter constructed as or altered into a dwelling shall be occupied in whole or in part for human habitation until the issuance of a certificate by the health officer that such part of said dwelling conforms to the requirements of this chapter relative to dwellings hereafter erected. Such certificate shall be issued within three days after written application therefor if said dwelling at the date of such application shall be entitled thereto. [C24, 27, 31, 35, 39, §6431; C46, 50, 54, §413.105]

Referred to in §413.106

**413.106 Rents uncollectible.** If any building hereafter constructed as, or altered into, a dwelling be occupied in whole or in part for human habitation in violation of section 413.105, during such unlawful occupation no rent shall be recoverable by the owner or lessee of such premises for said period, and no action or special proceeding shall be maintained therefor or for possession of said premises for nonpayment of said rent, and said premises shall be deemed unfit for human

habitation and the health officer may cause them to be vacated accordingly. [C24, 27, 31, 35, 39, §6432; C46, 50, 54, §413.106]

**413.107 Violations.** Every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars or more than one hundred dollars, and in default in payment thereof, by imprisonment in the county jail for not more than thirty days. [C24, 27, 31, 35, 39, §6433; C46, 50, 54, §413.107]

38GA, ch 123, §95, editorially divided

**413.108 Civil liability.** The owner of any dwelling, or of any building or structure upon the same lot with a dwelling, or of the said lot, where any violation of this chapter, or a nuisance as herein defined, exists who has been guilty of such violation or of creating or knowingly permitting the existence of such nuisance, and any person who shall violate or assist in violating any provision of this chapter, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars to be recovered for the use of the health department in civil action brought in the name of the municipality by the health officer. Such persons and also said premises shall also be liable in such case for all costs, expenses, and disbursements paid or incurred by the health department, by any of the officers, agents, or employees thereof in the removal of any such nuisance or violation. [C24, 27, 31, 35, 39, §6434; C46, 50, 54, §413.108]

**413.109 Additional liability.** Any person who having been served with a notice or order to remove any such nuisance or violation shall fail to proceed in good faith to comply with said notice or order within five days after such service, or shall continue to violate any provisions or requirements of this chapter in the respect named in said notice or order, shall also be subject to a civil penalty of fifty dollars. [C24, 27, 31, 35, 39, §6435; C46, 50, 54, §413.109]

**413.110 Recovery.** For the recovery of any such penalties, costs, expenses, or disbursements, an action may be brought in any court of competent civil jurisdiction. [C24, 27, 31, 35, 39, §6436; C46, 50, 54, §413.110]

**413.111 Lien on property.** The existence of a nuisance in or upon such dwelling, structure on the same lot with a dwelling, or on such lot, which the owner thereof has created or permitted to exist and any violation of this chapter as to such dwelling, structure, and lot of which the owner has been guilty shall in such proceeding subject such dwelling, structure, and lot respectively to a penalty of fifty dollars, which shall be a lien thereon until paid; and any violation of an order made or a notice given by the health officer, permitted or committed by the owner of a dwelling, structure on the same lot with a dwelling, or such lot, shall in such proceeding subject

the dwelling, structure, and lot respectively to a penalty of fifty dollars, which penalty shall be a lien thereon until paid. [C24, 27, 31, 35, 39, §6437; C46, 50, 54, §413.111]

**413.112 Practice and procedure generally.** Except as herein otherwise specified, the procedure for the prevention of violations of this chapter or for the vacation of premises unlawfully occupied, or for other abatement of nuisances, or for the bringing of action therefor, shall be in accordance with the existing practice and procedure. [C24, 27, 31, 35, 39, §6438; C46, 50, 54, §413.112]

38GA, ch 123, §96, editorially divided

**413.113 Action to enjoin.** In case any dwelling, building, or structure is constructed, altered, converted, or maintained in violation of any provision of this chapter, or of any order or notice of the health officer, or in case a nuisance exists in any such dwelling, building, or structure or upon the lot on which it is situated, said health officer may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion, or maintenance, to restrain, correct, or abate such violation or nuisance, to prevent the occupation of said dwelling, building, or structure, or to prevent any illegal act, conduct, or business in or about such dwelling or lot. [C24, 27, 31, 35, 39, §6439; C46, 50, 54, §413.113]

**413.114 Injunction.** In any such action or proceeding said health officer may by petition duly verified, setting forth the facts, apply to the district, superior, or municipal court, or to any judge thereof in term time or vacation, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such dwelling, building, structure, or lot, or from occupying or using the same for any purpose until the entry of final judgment or order. [C24, 27, 31, 35, 39, §6440; C46, 50, 54, §413.114]

Referred to in §413.116  
Injunctions, ch 664

**413.115 Authority to execute.** In case any notice or order issued by said health officer is not complied with, said health officer may apply to the district, superior, or municipal court or to any judge thereof in term time or vacation for an order authorizing him to execute and carry out the provisions of said notice or order, to correct any violation specified in said notice or order, or to abate any nuisance in or about such dwelling, building, or structure or the lot upon which it is situated. [C24, 27, 31, 35, 39, §6441; C46, 50, 54, §413.115]

Referred to in §413.116

**413.116 Orders authorized.** The court or any judge thereof is hereby authorized to make any order specified in sections 413.114 and 413.115. [C24, 27, 31, 35, 39, §6442; C46, 50, 54, §413.116]

**413.117 Eviction.** If the occupant of a dwelling shall fail to comply with the provisions of this chapter after due and proper notice from

the health officer, such failure to comply shall be deemed sufficient cause for the eviction of such tenant by the owner and the cancellation of his lease. [C24, 27, 31, 35, 39, §6443; C46, 50, 54, §413.117]

**413.118 Name and address of agent filed.** Every owner, agent, or lessee of a dwelling may file in the health department a notice containing the name and address of an agent of such dwelling, for the purpose of receiving service of all notices required by this chapter, and also a description of the property by street number or otherwise as the case may be, in such manner as will enable the health department easily to find the same. The name of the owner or lessee may be filed as agent for this purpose. [C24, 27, 31, 35, 39, §6444; C46, 50, 54, §413.118]

Referred to in §§413.119, 413.120 \*

**413.119 Notices generally.** Every notice or order required by this chapter shall be served at least ten days before the time for doing the thing in relation to which it shall have been issued, unless otherwise herein provided. The posting of a copy of such notice or order in a conspicuous place in the dwelling, together with the mailing of a copy thereof on the same day that it is posted, to the owner and lessee of the dwelling affected thereby, and each person, if any, whose name has been filed with the health department in accordance with the provisions of section 413.118 at his address as filed, shall be sufficient service thereof. [C24, 27, 31, 35, 39, §6445; C46, 50, 54, §413.119]

**413.120 Notice of actions.** In any action brought by the health officer in relation to a dwelling for injunction, vacation of the premises, or abatement of nuisance, or to establish a lien thereon, or to recover a civil penalty, service of notices shall be in the manner provided by law for the service of original notices; provided that if the address of any agent whose name and address have been filed in accordance with the provisions of section 413.118 is in the county in which the dwelling is situated, then such notice may be served upon such agent. [C24, 27, 31, 35, 39, §6446; C46, 50, 54, §413.120]

Manner of service, R.C.P. 56(a)

**413.121 Enforcement generally.** The provisions of this chapter shall be enforced in each city by the health officer, except that the department of buildings, where such department exists in a city, shall enforce the provisions contained in sections 413.35 to 413.46, inclusive, and 413.89 to 413.91, inclusive. [C24, 27, 31, 35, 39, §6447; C46, 50, 54, §413.121]

**413.122 Construction.** The powers conferred by this chapter upon the public officials heretofore in this chapter mentioned shall be in addition to the powers already conferred upon said officers, and shall not be construed as in any way limiting their powers except as provided in section 413.9. [C24, 27, 31, 35, 39, §6448; C46, 50, 54, §413.122]

**413.123 Inspection of multiple dwellings.** The health officer, or such other appropriate public official as the mayor may designate, shall cause an inspection to be made of every multiple dwelling at least once a year. Such inspection shall include thorough examination of all parts of such multiple dwelling and the premises connected therewith. The health officer or such other official so designated is also hereby empowered to make similar inspections of all dwellings as frequently as may be necessary; and shall make inspection at any time on complaint of the owner, tenant, or other person concerned. [C24, 27, 31, 35, 39, §6449; C46, 50, 54, §413.123]

**413.124 Entrance and survey of buildings.** The health officer and all inspectors, officers, and employees of the board of health, and such other persons as may be authorized by the health officer, may without fee or hindrance enter, examine, make necessary records, and survey all premises, grounds, erections, struc-

tures, apartments, dwellings, buildings, and every part thereof in the city. The owner or his agent or representative and the lessee and occupant of every dwelling and every person having the care and management thereof shall at all reasonable times when required by any such officers or persons give them free access to such dwellings and premises. The owner of a dwelling and his agents and employees shall have right of access to such dwelling at reasonable times for the purpose of bringing about compliance with the provisions of this chapter or any order issued thereunder. [C24, 27, 31, 35, 39, §6450; C46, 50, 54, §413.124]

**413.125 Ordinances.** All charter provisions, regulations, and ordinances of cities are hereby superseded in so far as they do not impose requirements other than the minimum requirements of this chapter, and except in case of such higher local requirements, this chapter shall in all cases govern. [C24, 27, 31, 35, 39, §6451; C46, 50, 54, §413.125]

## CHAPTER 414

### MUNICIPAL ZONING

Referred to in §329.7  
Applicable to all cities and towns

414.1 Building restrictions—powers granted.  
414.2 Districts.  
414.3 Basis of regulations.  
414.4 Regulations and boundaries.  
414.5 Changes—hearing—notice.  
414.6 Zoning commission.  
414.7 Board of adjustment.  
414.8 Membership.  
414.9 Rules—meetings—general procedure.  
414.10 Appeals.  
414.11 Effect of appeal.  
414.12 Powers.

414.13 Decision on appeal.  
414.14 Vote required.  
414.15 Petition for certiorari.  
414.16 Writ—restraining order.  
414.17 Return.  
414.18 Trial—judgment—costs.  
414.19 Preference in trial.  
414.20 Actions to correct violations.  
414.21 Conflicting rules, ordinances, and statutes.  
414.22 Restricted residence districts.

**414.1 Building restrictions—powers granted.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, any city or town is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. [C24, 27, 31, 35, 39, §6452; C46, 50, 54, §414.1]

**414.2 Districts.** For any or all of said purposes the local legislative body, hereinafter referred to as the council, may divide the city or town into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations and restrictions shall be uniform for each class or

kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [C24, 27, 31, 35, 39, §6453; C46, 50, 54, §414.2]

Certification of restricted residence district ordinance,  
§366.12  
Restricted residence districts, ch 415

**414.3 Basis of regulations.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most

appropriate use of land throughout such city or town. [C24, 27, 31, 35, 39,§6454; C46, 50, 54, §414.3]

**414.4 Regulations and boundaries.** The council of such city or town shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in a paper of general circulation in such city or town. [C24, 27, 31, 35, 39,§6455; C46, 50, 54, §414.4]

Referred to in §§329.9, 414.5

**414.5 Changes—hearing—notice.** Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The provisions of section 414.4 relative to public hearings and official notice shall apply equally to all changes or amendments. [C24, 27, 31, 35, 39,§6456; C46, 50, 54,§414.5]

**414.6 Zoning commission.** In order to avail itself of the powers conferred by this chapter, the council shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Where a city plan commission already exists, it may be appointed as the zoning commission. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications. [C24, 27, 31, 35, 39,§6457; C46, 50, 54, §414.6]

Referred to in §329.9

**414.7 Board of adjustment.** The council shall provide for the appointment of a board of adjustment and in the regulations and re-

strictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinances in harmony with its general purpose and intent and in accordance with general or specific rules therein contained and provide that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners. [C24, 27, 31, 35, 39,§6458; C46, 50, 54,§414.7]

40GA, ch 134,§7, editorially divided  
Referred to in §329.12

**414.8 Membership.** The board of adjustment shall consist of five members each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. [C24, 27, 31, 35, 39,§6459; C46, 50, 54,§414.8]

**414.9 Rules—meetings—general procedure.** The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. [C24, 27, 31, 35, 39,§6460; C46, 50, 54,§414.9]

Referred to in §329.12

**414.10 Appeals.** Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. [C24, 27, 31, 35, 39,§6461; C46, 50, 54,§414.10]

Referred to in §329.12

**414.11 Effect of appeal.** An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. [C24, 27, 31, 35, 39, §6462; C46, 50, 54, §414.11]

Referred to in §329.12

**414.12 Powers.** The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. [C24, 27, 31, 35, 39, §6463; C46, 50, 54, §414.12]

Referred to in §329.12

**414.13 Decision on appeal.** In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. [C24, 27, 31, 35, 39, §6464; C46, 50, 54, §414.13]

Referred to in §329.12

**414.14 Vote required.** The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. [C24, 27, 31, 35, 39, §6465; C46, 50, 54, §414.14]

Referred to in §329.12

**414.15 Petition for certiorari.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part,

specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. [C24, 27, 31, 35, 39, §6466; C46, 50, 54, §414.15]

Referred to in §329.12

**414.16 Writ—restraining order.** Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. [C24, 27, 31, 35, 39, §6467; C46, 50, 54, §414.16]

Referred to in §329.12

**414.17 Return.** The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. [C24, 27, 31, 35, 39, §6468; C46, 50, 54, §414.17]

Referred to in §329.12

**414.18 Trial—judgment—costs.** If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. [C24, 27, 31, 35, 39, §6469; C46, 50, 54, §414.18]

Referred to in §329.12

**414.19 Preference in trial.** All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings. [C24, 27, 31, 35, 39, §6470; C46, 50, 54, §414.19]

Referred to in §329.12

**414.20 Actions to correct violations.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construc-

tion, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [C24, 27, 31, 35, 39,§6471; C46, 50, 54,§414.20]

**414.21 Conflicting rules, ordinances, and statutes.** Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall

govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern. [C24, 27, 31, 35, 39,§6472; C46, 50, 54, §414.21]

**414.22 Restricted residence districts.** When any city or town shall have taken advantage of and proceeded under the provisions of this chapter, then chapter 415 shall be no longer operative as to such city or town. [C24, 27, 31, 35, 39,§6473; C46, 50, 54,§414.22]

## CHAPTER 415

### RESTRICTED RESIDENCE DISTRICTS

Referred to in §414.22  
Applicable to all cities and towns

415.1 Petition.

415.2 Ordinance—scope.

415.3 Ordinance—violations.

**415.1 Petition.** Cities and towns, may, and upon petition of sixty percent of the owners of the real estate in the district sought to be affected residing in such city or town, shall designate and establish, by appropriate proceedings, restricted residence districts within its limits. [C24, 27, 31, 35, 39,§6474; C46, 50, 54, §415.1]

Referred to in §415.3  
Certification of restricted residence district ordinance,  
§366.12  
Municipal zoning, ch 414

**415.2 Ordinance—scope.** In the ordinance designating and establishing such restricted residence district, every such city or town is hereby empowered to provide and establish reasonable rules and regulations for the erection, reconstruction, altering, and repairing of buildings of all kinds, within said district, as well as the use and occupancy of such buildings; and to provide that no building or other structure, except residences, schoolhouses, churches, and other similar structures, shall

thereafter be erected, altered, or repaired, or occupied without first securing from the city or town council of such city or town, a permit therefor, such permit to be issued under such reasonable rules and regulations as may in said ordinance be provided. [C24, 27, 31, 35, 39, §6475; C46, 50, 54,§415.2]

Referred to in §415.3

**415.3 Ordinance—violations.** Any building or structure erected, altered, repaired, or used in violation of any ordinance passed under the authority of sections 415.1 and 415.2, shall be deemed a nuisance, and every such city or town is hereby empowered to provide by ordinance for the abatement of such nuisance, either by fine or imprisonment, or by action in the district or municipal court of the county in which such city or town is located, or by both; such action to be prosecuted in the name of the city or town. [C24, 27, 31, 35, 39,§6476; C46, 50, 54,§415.3]

## CHAPTER 416

### GOVERNMENT OF CITIES BY COMMISSION

All sections of this chapter, Code 1960, repealed or transferred as indicated in Code 1954

See chapter 363B

## CHAPTER 417

## STREET IMPROVEMENTS AND SEWERS IN CITIES OVER 125,000 POPULATION

Other cities and towns, see chs 391 and 391A

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| 417.2 Duty of officers.                                 | 417.39 Time for decree.                                    |
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| 417.33 Appeal bond.                                     | 417.70 General procedure.                                  |
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| 417.35 Petition—exhibits required.                      | 417.72 Terms defined.                                      |
| 417.36 Petition—procedure.                              |  |
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**417.1 Advisory committee — officers.** All cities having a population of one hundred twenty-five thousand or more, shall have the power to organize any number of their employees into an advisory committee, for the purpose of investigating and advising the council in the matter of the construction of street improvements and sewers, and assessments therefor, of which committee the city engineer shall be the presiding and executive officer. The chief clerk in the department of streets and public improvements shall be the secretary thereof and the city treasurer shall be the vice-president thereof. The corporation counsel or city solicitor may be a member of said committee. [C31, 35,§6610-c1; C39,§6610.05; C46, 50, 54,§417.1]

43GA, ch 194,§1, editorially divided  
Referred to in §417.72

**417.2 Duty of officers.** The city engineer shall advise the council as to the general utility, necessity, or efficiency of any proposed public improvement.

The city treasurer shall advise the council upon the method and manner of financing any such improvement.

The corporation counsel or solicitor shall advise the council as to proper legal procedure in ordering or constructing any such improvement and in assessing and financing the same.

The chief clerk in the department of streets and public improvements shall have general supervision of the preparation of resolutions of necessity, schedules of assessments, valuations, liens, and schedules of property subject to tax sale.

The civil engineer shall have general supervision of the preparation of plans and specifications for any public improvement, and shall have such other duties as may be prescribed by law. [C31, 35,§6610-c2; C39,§6610.06; C46, 50, 54,§417.2]

**417.3 Assessment clerk.** The council shall also employ an assessment clerk, who shall have charge of the detail work of preparing

schedules of assessments under the direction of the chief clerk. [C31, 35,§6610-c3; C39, §6610.07; C46, 50, 54,§417.3]

**417.4 Valuation committee.** The city council shall appoint three persons who shall be known as the valuation committee, who shall be appointed to serve on one or more improvement projects or for any length of time not exceeding one year, and who may be reappointed for a similar term or terms and receive such compensation as the council shall fix by ordinance, which compensation may be a proper incidental expense chargeable to any proposed improvement. Said valuation committee shall be persons skilled in the knowledge of real estate values in any such city, and possess qualifications which will justify the reception of their testimony by the district court of the county where such real estate is located, as experts upon real estate values. [C31, 35,§6610-c4; C39,§6610.08; C46, 50, 54, §417.4]

**417.5 Secretary—duties.** The chief clerk in the department of streets and public improvements shall be secretary of said valuation committee, shall attend all meetings, shall have charge of all books, papers, and records, and shall keep a record of all valuations fixed by said committee. The meetings of said committee shall be held in the office of the civil engineer in the city hall. [C31, 35,§6610-c5; C39, §6610.09; C46, 50, 54,§417.5]

**417.6 Assessment values.** The city council may accept the valuations fixed by the assessor upon property proposed to be assessed in all cases where deficits and defaults are improbable. [C31, 35,§6610-c6; C39,§6610.10; C46, 50, 54,§417.6]

**417.7 Private initiation of improvement plan.** All owners of property to be affected by any public improvement to be paid for in whole or in part by special assessment, may initiate any plan for a public improvement, by written contract to be approved by the city council and signed by all the said owners of record and record lienholders of all the property affected by the proposed assessment for said public improvement, and the contractor performing the work or furnishing material, and by any such city, but no liability shall attach to said city because of work done, material furnished, or assessment levied, other than to accommodate said property owners and contractor with the procedure of said city for the levying of the special assessment as in this chapter provided. [C31, 35,§6610-c7; C39,§6610.13; C46, 50, 54, §417.7]

**417.8 Proceedings—plans.** All resolutions of necessity, contracts, and proceedings for local improvements to be paid for wholly or in part by special assessment shall be governed by the provisions hereof and resolutions of necessity, plans, specifications, and contracts shall be approved by the civil engineer, except as herein otherwise provided, and except as to sidewalks and sewer connections and water

connections. Petitions for all such public improvements shall be addressed to the city council. The civil engineer shall have the power to recommend a plan for any local improvement, to be paid for wholly or in part by special assessment, either with or without a petition. "Local improvements", "public improvements", and "improvements", when herein referred to, shall mean street improvements or sewers payable in whole or in part by special assessments. [C31, 35,§6610-c8; C39,§6610.04; C46, 50, 54,§417.8]

**417.9 Notice—manner of service.** Notice of the time and place of public consideration or hearing by the council on any resolution of necessity and schedule of valuations and assessments, shall be given by the chief clerk of the department of streets and public improvements, by delivering written notice thereof to the occupant of said real estate, or any person over fourteen years of age in possession of said real estate affected by said special assessment, said real estate being within three hundred feet of said proposed street improvement or sewer, and in the case of any railway company, by delivering written notice to any local agent or officer thereof, at least fifteen days before said public consideration or hearing, and similar notice shall be posted upon all vacant or unoccupied real estate subject to assessment and within three hundred feet of said proposed local improvement, at least fifteen days before said public consideration or hearing, and similar written notice shall be given to all owners of property outside of said three hundred feet area and within the benefited district, by posting written notices in conspicuous places at least fifteen days before said public consideration or hearing. Vacant property shall include property, the owner and occupant of which, and the members of his family over fourteen years of age, are absent therefrom at the time service or posting is made or attempted to be made. [C31, 35,§6610-c9; C39,§6610.21; C46, 50, 54,§417.9]

43GA, ch 194,§4, editorially divided

**417.10 Contents of notice.** The foregoing notice shall be given of the time and place for said public consideration or hearing upon said proposed resolution of necessity and schedule of valuations and assessments, and said notices above required shall also notify the owners and any persons interested in said proposed local improvement that upon final passage of said resolution of necessity by the city council, the said city will petition the district court of the county where said city is located for confirmation of said schedule of valuations and assessments within ten days from the date of said final passage of said resolution of necessity by the city council. Said notice shall also describe the character of the improvement; the extent and location thereof; the total estimated cost, and that the said district court will set a date for hearing on said petition within thirty days from the date of final passage of the resolution of necessity. [C31, 35,§6610-c10; C39,§6610.22; C46, 50, 54,§417.10]



**417.11 Proof of service.** A sworn statement by the person delivering or posting any of the above-mentioned notices, giving the date when said notices are actually delivered or posted, shall be filed with the said chief clerk, and shall be presumptive evidence of valid service of notice hereunder. [C31, 35,§6610-c11; C39, §6610.24; C46, 50, 54,§417.11]

**417.12 Notice of court hearing.** After the final passage of the resolution of necessity, the chief clerk of the department of streets and public improvements shall publish a notice in some newspaper of general circulation in the city where said real estate is located, notifying the owner or persons interested in the real estate proposed to be assessed and referred to in said resolution of necessity, that the said city has filed a petition in the district court of the county where said real estate is located praying said court to confirm the valuations and assessments, and giving the date which the said district court has set for the trial upon said petition. [C31, 35,§6610-c12; C39,§6610.34; C46, 50, 54,§417.12]

**417.13 Publication of notice.** Said notice shall be published and said petition shall be on file within ten days from the date of the final passage of said resolution of necessity by the city council, and thereupon said district court shall have jurisdiction of the real estate, the real estate valuations and assessments as finally fixed by the city council as herein provided. [C31, 35,§6610-c13; C39,§6610.23; C46, 50, 54,§417.13]

**417.14 Noncompliance with procedure — effect.** The time within which publication of notice hereunder shall be given, or petition filed in district court shall not be grounds for objection unless found to be material by the district court, in which event the said court may prescribe a new notice. [C31, 35,§6610-c14; C39,§6610.25; C46, 50, 54,§417.14]

**417.15 Hearing before council.** At the time and place fixed in said notice for the public hearing, the city council shall meet and hear the complaints of any interested property owner desiring to be heard on the subject of the necessity for the proposed improvement, the nature and type thereof, the valuation or the cost as estimated, and the assessment. [C31, 35,§6610-c15; C39,§6610.26; C46, 50, 54, §417.15]

43GA, ch 194,§5, editorially divided

**417.16 Final determination.** After consideration of said proposed improvement and objections thereto, if any, or to any of the elements thereof, the city council shall adopt a resolution abandoning the said proposed plan, or adhering thereto, or approving, changing or modifying the extent, nature, kind, character, type, or estimated cost, provided such change shall not increase the estimated cost of the improvement to exceed ten percent of the same or change the district without a further public hearing thereon with notice as required for the

original hearing. Immediately after the adoption of the resolution of necessity by the city council, the city clerk shall return the checks of all bidders, except that of the lowest responsible bidder, on the improvement adopted by the city council. [C31, 35,§6610-c16; C39, §6610.28; C46, 50, 54,§417.16]

**417.17 Requirements of resolution.** The contents of such resolution of necessity shall be the same as required by section 391.18, and shall provide whether the same shall be paid for wholly or in part by special assessment, and if in part only, shall so state. The council may equalize valuations and assessments. [C31, 35,§6610-c17; C39,§6610.16; C46, 50, 54,§417.17]

**417.18 "Incidental expenses" defined.** Incidental expenses shall include all engineering costs, the expense of estimates, valuations and inspections, court expenses, clerk hire, cost incidental to notice and printing bonds, and such other costs of service and material as shall enter into the total expense of initiating and carrying to completion the particular improvement and assessment therefor. [C31, 35, §6610-c18; C39,§6610.15; C46, 50, 54,§417.18]

**417.19 Default and deficiency fund.** The assessment as prepared and as approved by the city council, and as confirmed by the court, shall include an item to be known as the default and deficiency fund not to exceed ten percent of the total estimated cost of the improvement, including all incidentals, which shall be added thereto, and which said fund shall be used to pay deficits and defaulted installments, and other unforeseen costs and expenses incidental to said improvement and assessment, including payments made by city for tax sales or redemption from tax sales. [C31, 35,§6610-c19; C39,§6610.45; C46, 50, 54, §417.19]

**417.20 Assessment basis.** Each lot, part of lot, or parcel of property shall bear its just proportion of said assessment upon the area basis, except as herein otherwise provided. [C31, 35,§6610-c20; C39,§6610.14; C46, 50, 54, §417.20]

**417.21 Excess assessment—adjustment.** If, after the completion and acceptance of any improvement by the city council, it appears that the total assessment exceeds the total cost of said improvement, including incidentals, by more than ten percent, then the city solicitor shall petition the district court to reduce and adjust said assessment to an amount not to exceed ten percent in excess of said total cost, including said incidentals, taking into account installments of assessment previously paid. [C31, 35,§6610-c21; C39,§6610.59; C46, 50, 54, §417.21]

**417.22 Repealed by 54GA, ch 159,§99.** See §404.9.

**417.23 Objections.** Any objection or remonstrance filed with the city council shall contain the signatures of the owners, legal repre-

sentatives, or their attorney, a general description of the property owned or represented, the area so owned or represented upon said local improvement or affected by a proposed special assessment therefor, but when signatures of objectors are procured and filed by a person or persons other than the owner, legal representative or attorney, said objections shall be verified by said person or persons so procuring said signatures and filing the same, and said affidavit shall set forth that said objectors are the owners, legal representatives or the attorney of the owner or legal representatives of the property described therein. [C31, 35,§6610-c23; C39,§6610.27; C46, 50, 54,§417.23]

**417.24 Plans and specifications—variance—effect.** With any such resolution of necessity presented by said civil engineer to said city council, shall be presented also the approval by the civil engineer of the plans and specifications for such improvement. The civil engineer shall select and recommend to the council the particular type of improvement approved by him. If a variance be shown in the proceedings in the court, it shall not affect the validity of the proceedings, unless the court shall deem the same willful or substantial. [C31, 35,§6610-c24; C39,§6610.19; C46, 50, 54,§417.24]

**417.25 Filing of plans and specifications.** At the time of any hearing on any proposed local improvement, the city council shall have before it the plans, specifications, and schedule of assessments, which shall accompany the resolution of necessity, and shall remain on file with the city clerk for fifteen days before final consideration by said city council. [C31, 35, §6610-c25; C39,§6610.20; C46, 50, 54,§417.25]

43GA, ch 194,§7, editorially divided

**417.26 Hearing before state comptroller—time.** Hearings on objections made to the comptroller shall be held and determined before the city solicitor shall file the petition for the confirmation by the court of the schedule of assessments. [C31, 35,§6610-c26; C39,§6610.29; C46, 50, 54,§417.26]

**417.27 Reserved powers of council.** The city council shall retain the power to deny the passage of any resolution of necessity, and shall have the power to stop the work on any local improvement in accordance with the provisions of the contract for the performance of said work. [C31, 35,§6610-c27; C39,§6610.54; C46, 50, 54,§417.27]

**417.28 Petition to district court.** Upon the passage of any resolution of necessity for a local improvement, and pursuant thereto, it shall be the duty of the city solicitor to file a petition in district court of the county where said real estate is located, in the name of such municipality, praying that steps be taken to levy a special assessment for said improvement, in accordance with the provisions of said resolution of necessity. [C31, 35,§6610-c28; C39,§6610.31; C46, 50, 54,§417.28]

43GA, ch 194,§8, editorially divided

**417.29 Jurisdiction.** The district court of the county where said local improvement is proposed to be made shall have jurisdiction of the proceedings under this chapter. Said cause shall be triable as in equity. A decree of the district court upon any such proceeding shall be final unless there shall be an appeal therefrom. [C31, 35,§6610-c29; C39,§6610.30; C46, 50, 54,§417.29]

**417.30 Condemnation proceedings.** Trials upon appeal from condemnation proceedings shall be the same as now or hereafter provided by general law. [C31, 35,§6610-c30; C39,§6610.35; C46, 50, 54,§417.30]

Procedure in civil actions, ch 686

**417.31 Appeals.** An appeal from the decree of the district court shall be perfected within thirty days from the date of said decree and the abstract shall be served and filed in the office of the clerk of the supreme court within ninety days from the date of said district court decree. [C31, 35,§6610-c31; C39,§6610.41; C46, 50, 54,§417.31]

**417.32 Awaiting outcome of appeal.** If the aggregate of all appeals exceeds ten percent of the total assessment as confirmed by the district court, the contract may or may not be let, in the discretion of the council, until said appeals are finally determined, but said appeals shall not delay the execution of a contract for the work, if the city council concludes said appeals were not taken in good faith. [C31, 35, §6610-c32; C39,§6610.44; C46, 50, 54,§417.32]

**417.33 Appeal bond.** Any person aggrieved shall file a bond on appeal to the supreme court as provided by law. [C31, 35,§6610-c33; C39,§6610.42; C46, 50, 54,§417.33]

Presumption of approval of bond, §682.10

**417.34 Effect of appeal.** An appeal shall not, in the discretion of the city council, delay the certification of an assessment or progress of an improvement, but upon decision of the appeal the assessment appealed from shall be corrected and collected as herein provided. [C31, 35,§6610-c34; C39,§6610.43; C46, 50, 54, §417.34]

**417.35 Petition—exhibits required.** There shall be attached to or filed with such petition a copy of said resolution of necessity, certified by the city clerk, and the schedule of assessments, and plans and specifications, as approved by the civil engineer and city council. The failure to file any or either of said copies shall not affect the jurisdiction of said court to proceed in said cause and to act upon said petition. But, upon objection made by any interested property owner calling the attention of the court to the failure to attach copies, the court shall permit the city solicitor to supply any missing copy or copies. [C31, 35,§6610-c35; C39,§6610.33; C46, 50, 54,§417.35]

**417.36 Petition—procedure.** Upon the filing of such petition, the city solicitor shall verify the fact that due notice has been given of the time and place of the hearing upon said peti-

tion. Any such petition shall have precedence over any other business of the court, except in criminal cases, and said court shall set the said petition for hearing within thirty days from the date that it is filed with the clerk of said court. [C31, 35,§6610-c36; C39,§6610.32; C46, 50, 54,§417.36]

43GA, ch 194,§9, editorially divided

**417.37 Power of court.** Upon the hearing upon said petition, the said court shall have power to correct any irregularities or inequalities in valuations or in the schedule of assessments, and shall consider any objections because of alleged illegal procedure or fraud in the proceedings.

The court shall inquire whether the city solicitor has omitted any property benefited, and as to whether the schedule of assessments is just and equitable as between the public and the property assessed, and between the lots or parcels of property assessed.

The court shall have the power to revise, correct, or modify the description or the cost between the properties affected, or the city solicitor shall make any corrections upon the order of the court. [C31, 35,§6610-c37; C39, §6610.36; C46, 50, 54,§417.37]

**417.38 Corrections.** Corrections of assessments or valuations made by or upon the order of the court shall be conclusive and not subject to review on appeal, or otherwise, except as herein provided. [C31, 35,§6610-c38; C39, §6610.38; C46, 50, 54,§417.38]

**417.39 Time for decree.** The court shall render a decision upon said hearing within seven days thereafter. [C31, 35,§6610-c39; C39, §6610.39; C46, 50, 54,§417.39]

**417.40 Certification of decision.** The clerk of said court shall certify to the city clerk the final action of the court within three days from the date of the final order, or judgment of said court, upon said petition, showing assessments as changed and confirmed in the schedule of assessments. [C31, 35,§6610-c40; C39,§6610.46; C46, 50, 54,§417.40]

**417.41 Interest.** Interest on special assessments or any portion thereof remaining unpaid, shall commence upon the final acceptance of the work by the city council. Immediately upon the final acceptance of said work by the city council, the city clerk shall certify to the county treasurer the date of the acceptance of said work. [C31, 35,§6610-c41; C39,§6610.61; C46, 50, 54,§417.41]

**417.42 Cancellation of assessments.** In the event no contract is entered into within sixty days from date of confirmation by the court, the court shall cancel said assessment and order return of any assessment so paid, upon application by the city solicitor, if no appeal is pending. [C31, 35,§6610-c42; C39,§6610.65; C46, 50, 54,§417.42]

**417.43 Peremptory confirmation.** If no objections are filed by the time set for the hearing

on said petition, the court shall immediately confirm said assessment and order the clerk to certify the same to the city clerk. [C31, 35, §6610-c43; C39,§6610.37; C46, 50, 54,§417.43]

**417.44 Court costs.** The cost of all court proceedings shall be a legitimate item of expense in connection with any local improvement, and shall be included within the final assessment against the property proposed to be improved. [C31, 35,§6610-c44; C39,§6610.40; C46, 50, 54,§417.44]

**417.45 Certification and lien.** The clerk of the district court shall certify to the county auditor and the city clerk the assessment as confirmed, made or approved by the district court, thereupon, the county auditor shall recertify said assessment to the county treasurer, within three days, and the treasurer shall spread the same upon the records in his office and the same shall be a lien from the date of the recertification by the auditor against any property therein described, and the treasurer shall proceed to collect installments of said assessment as by law provided. [C31, 35,§6610-c45; C39,§6610.47; C46, 50, 54,§417.45]

**417.46 Assessments—payment.** The county treasurer shall pay to the city treasurer all funds payable to the city treasurer hereunder, within fifteen days after the first of the month following their receipt. Receipts in March and September in each year shall be so payable not later than May 15 and November 15, respectively. [C31, 35,§6610-c46; C39,§6610.62; C46, 50, 54,§417.46]

**417.47 Assessment funds—transfer to city—application.** The county treasurer is hereby authorized and directed to transfer to the treasurer of any city or town issuing special assessment certificates, all moneys collected by said county treasurer on said certificates which have not been called for by the owners of said certificates and which said moneys shall have been in the possession of said county treasurer for a period of four years or more. When said moneys have been paid to the city treasurer the said city treasurer shall retain the same for the benefit of the owners of said certificates and pay the same to the said owners of any such certificates upon his demand. When a period of ten years has elapsed from the date said installments, respectively, become due and payable, and the owner of said certificates has not called for said moneys, the said moneys so uncalled for shall become the property of said city or town and shall be placed in a fund which shall be known as the general default and deficiency fund, from which any defaults and deficiencies on bond schedules may be paid.

In the interim between the date when said money shall have been received by said city or town and the expiration of said ten-year period, said city or town shall hold the same for the benefit of the owner of any such certificate, and shall pay the same to any such owner upon demand. [C35,§6610-g1; C39,§6610.63; C46, 50, 54,§417.47]

**417.48 Payment before work accepted.** Special assessments or any portion thereof remaining unpaid may be paid without interest at the office of the county treasurer prior to the final acceptance of the improvement by the city council. [C31, 35,§6610-d1; C39,§6610.64; C46, 50, 54,§417.48]

**417.49 Resolution ordering work.** Upon receipt by the city clerk of the certified copy of the order entered by the court upon the petition for any local improvement and assessment therefor, the city council shall pass a resolution ordering the work, which shall remain on file with the clerk for one week, and be finally passed by the city council. [C31, 35,§6610-c47; C39,§6610.48; C46, 50, 54,§417.49]

43GA. ch 194,§10, editorially divided

**417.50 Bids—advertisement—letting of contract.** At the time the resolution of necessity is presented to the city council and the date for the hearing is determined, the council shall order the mayor and city clerk to advertise for bids for the improvement as set out in the resolution of necessity, and said bids shall be received not later than the date set for the hearing on said proposed improvement.

Contract for said improvement shall not be awarded until after the assessments therefor have been confirmed by the district court and a resolution ordering the work finally adopted. [C31, 35,§6610-d2; C39,§6610.49; C46, 50, 54, §417.50]

**417.51 Bids.** Said bids shall be opened by the city clerk in the presence of the city council, and referred to the civil engineer, and thereupon the civil engineer shall examine the bids and recommend to the council the award of contract to the lowest responsible bidder for the particular type of improvement which the civil engineer shall recommend, or the council may order that all bids be rejected, and the council may order the rejection and cancellation of the proposed improvement and all proceedings. [C31, 35,§6610-c48; C39,§6610.50; C46, 50, 54,§417.51]

**417.52 Contract or readvertisement.** The council may award the contract, or may refuse to enter into any contract therefor. However, the city council may order readvertisement for bids upon the same types of improvements for which bids were originally requested. [C31, 35, §6610-c49; C39,§6610.51; C46, 50, 54,§417.52]

**417.53 Railways and street railways.** Nothing herein contained shall be construed to relieve railways or street railways of any obligation now or hereafter imposed by the general law of the state. [C31, 35,§6610-c50; C39,§6610.57, C46, 50, 54,§417.53]

**417.54 Trackless trolleys—fees and taxes.**

1. Every street railway or passenger carrier operating trackless-trolley passenger busses over fixed routes within cities having a population of one hundred twenty-five thousand or over shall pay into the city treasury an annual license fee or tax in quarterly installments

beginning April 1, 1940, for the purpose of paving, repaving, constructing, reconstructing, resurfacing, repairing, or maintaining the streets and roadways over which said busses are operated, and for the reconstruction, repair, servicing, and maintenance of sewers and catch basins serving said streets and roadways as follows:

For each trackless-trolley passenger bus having forty-five or less passenger seats ..... \$65.00 per annum.

For each trackless-trolley passenger bus having more than forty-five passenger seats ..... \$85.00 per annum.

The proceeds of collection of said tax or license fee and of the further license fee or tax provided for by subsection 2 hereof shall be used for no other purpose than for the paving, repaving, constructing, reconstructing, resurfacing, repairing, or maintaining the streets and roadways over which said busses are operated and for the reconstruction, repair, servicing, and maintenance of sewers and catch basins serving said streets and roadways.

2. In addition to the license fee or tax provided for by the foregoing and after a ten days' written notice has been given to the street railway or passenger carrier operating trackless-trolley passenger busses and self-propelled motor-driven passenger busses over fixed routes within such cities as are defined in subsection 1 of this section, of a hearing to be held by such city at a time and place prescribed in the notice, where representatives of said carrier may appear, and after such hearing has been held said city may assess an additional annual license fee or tax against said carrier in an amount not exceeding two and three-fourths percent of the gross passenger revenue from all motor-driven passenger busses and trackless-trolley passenger busses operating over fixed routes or parts of routes within such city. Said carrier shall pay such gross passenger-revenue tax or license fee into the city treasury within ninety days after the amount has been fixed, and notice in writing of said amount has been given by the city to said carrier.

3. The license fees or taxes hereby imposed upon street railways or passenger carriers operating trackless-trolley passenger busses and motor-driven passenger busses over fixed routes shall be in lieu of all general property taxes and property assessments upon such busses and of all special assessment taxes for the paving, repaving, constructing, reconstructing, resurfacing, repairing, or maintaining the streets and roadways over which said busses are operated or for the construction, reconstruction, repair, or maintenance of sewers servicing said streets and roadways, and of all other license fees and taxes, general or local, except motor vehicle fuel license fees and motor vehicle license fees on self-propelled motor-driven passenger busses levied by the state, to which such motor vehicles or trackless-trolley busses may be subject.

4. The money collected pursuant to the provisions hereof shall be paid into the street fund of any such city and shall be used only for the purposes herein contemplated, notwithstanding the provisions of sections 321.105, 321.109, 321.116, 321.119, 321.120, 321.121, 321.145 and 326.2.

5. The term "passenger carrier" or "carriers" shall include any railway operated as a street railway, person, firm, corporation, or association operating a line of busses between fixed termini within any such city.

6. Any such city shall have the power and authority to issue certificates and bonds in anticipation of the collection of any such taxes or license fees, in accordance with the provisions of the chapter on taxation.\* [C39, §6610.58; C46, 50, 54, §417.54; 56GA, ch 206, §1]

Omnibus repeal, 48GA, ch 160, §2

\*Chapter 404, §404.18

See also 57GA, ch 43, §3, as to urban transit companies

**417.55 Execution of contract.** All public work shall proceed under the direction of the civil engineer and contractors shall be required to proceed to timely completion of the work. [C31, 35, §6610-c51; C39, §6610.52; C46, 50, 54, §417.55]

43GA, ch 194, §13, editorially divided

**417.56 Acceptance or rejection.** Within twenty days after the completion of the work, the civil engineer shall recommend the acceptance or rejection of the work. [C31, 35, §6610-c52; C39, §6610.53; C46, 50, 54, §417.56]

**417.57 Notice of final action.** Within ten days after the completion of the work the city clerk shall publish a notice in some newspaper published in such city, addressed to the owners or persons interested in any real estate included in any assessment or street improvement or sewer project or improvement district, notifying them that unless further, legal, unadjudicated matters, or objections are made within twenty days from the date of publication of said notice, the council will take action on the recommendation of the civil engineer, and in the event no such objection is filed the property owners shall be conclusively presumed to have waived all such objections. [C31, 35, §6610-c53; C39, §6610.55; C46, 50, 54, §417.57]

**417.58 Report by engineer.** The civil engineer shall file with the city clerk a report of the completion of any public improvement. [C31, 35, §6610-c54; C39, §6610.56; C46, 50, 54, §417.58]

**417.59 Assessments increased.** No increased assessment against any property shall be in excess of twenty-five percent of the valuation confirmed by the court, nor in excess of the benefits conferred. [C31, 35, §6610-c55; C39, §6610.66; C46, 50, 54, §417.59]

**417.60 Deficiencies.** Wherever on a hearing by the court or on appeal, the amount of any assessment shall be reduced or canceled so that there shall be a deficiency in the total amount

remaining assessed in the proceeding, the court shall have the power to distribute such deficiency upon the other property abutting upon or adjacent to said improvement or in the district assessed, in such manner as the court shall find to be just and equitable, not exceeding, however, the amount said property would be benefited by said improvement, and not exceeding twenty-five percent of the value finally fixed thereon in said assessment schedule. [C31, 35, §6610-c56; C39, §6610.67; C46, 50, 54, §417.60]

43GA, ch 194, §15, editorially divided

**417.61 "Value of property" defined.** As construed by this chapter, value of property shall include the assessment for the type of proposed improvement approved by the said city council. [C31, 35, §6610-c57; C39, §6610.11; C46, 50, 54, §417.61]

**417.62 Reassessments.** If any special assessment shall hereafter be annulled or held invalid or void for any reason whatsoever, a new assessment shall be made and returned and like notice shall be given and proceedings had as herein required in relation to an original proposed assessment; and, if any local improvement has been constructed under the direction of the city council and has been accepted by it, and a special assessment levied in payment thereof has been or shall be annulled or declared invalid, then a new special assessment shall be made and returned to pay for the costs of the improvement so constructed, or to pay for the cost of such part thereof as the city council might lawfully have authorized to be constructed and paid for by special assessment. [C31, 35, §6610-c58; C39, §6610.68; C46, 50, 54, §417.62]

**417.63 Noninvalidating matters.** No special assessment shall be held invalid or void because levied for work already done, if it shall appear that such work was done under a contract which has been duly let and entered into pursuant to a resolution of necessity providing that such improvement should be constructed and paid for by special assessment, and that the work was done under the direction of the civil engineer and has been accepted by the council; nor shall it be a valid objection to the confirmation of such new assessment that the original assessment has been declared void or that the improvement as actually constructed does not conform to the description thereof as set forth in the original resolution of necessity, if the improvement so constructed is accepted by the city council. [C31, 35, §6610-c59; C39, §6610.69; C46, 50, 54, §417.63]

**417.64 Inspection of records — co-operation of employees.** City employees or any property owner or his attorney shall have access to all public records for determining assessed values, descriptions, and other information desirable for the proper performance of their work. The city council and city officials shall be entitled to the full co-operation of all public employees

without additional compensation therefor. [C31, 35,§6610-c60; C39,§6610.12; C46, 50, 54, §417.64]

43GA, ch 194,§18, editorially divided

**417.65 Schedule of unpaid assessments.** The chief clerk of the department of streets and public improvements shall prepare and have on file with the city clerk at the time the resolution of necessity is originally considered, a schedule showing the total amount of unpaid special assessments against each lot, part of lot, or parcel of real estate proposed to be further assessed, and showing all assessed properties sold at or subject to tax sale, and the same shall be exhibited to the court. [C31, 35,§6610-c61; C39,§6610.17; C46, 50, 54,§417.65]

**417.66 Rebate to property owner.** After ten years and seven months from the date of recertification of any schedule by the county auditor to the county treasurer for the collection of any assessment, if all bonds, interest, penalties, deficits, defaulted installments, and proper charges against the proceeds of the collection of any assessment for any public improvement are fully paid, then the balance remaining in said fund shall be rebated to the property owners named in the original schedule of assessments, who have paid their assessments in full, in the proportion that any assessment bears to the whole assessment. If, at the end of the eleventh year from the first day of April following the recertification of the levy of an assessment to the county treasurer, there is still a balance remaining in said fund so collected from said assessment, after allowing for the retirement of all bonds, interest, and proper charges, then said property owners so failing to collect the same shall forfeit all right and title to the same, and said fund shall be transferred to the consolidated improvement fund. [C31, 35,§6610-c62; C39,§6610.70; C46, 50, 54,§417.66]

**417.67 Payments chargeable to city.** A definite plan for the payment of the proportion of the cost of any public improvement properly chargeable to the city, shall be outlined by the city treasurer and set forth in the resolution of necessity. The city's proportion shall be included in the proposed assessment schedule, and may be payable out of the proper fund in annual installments, or otherwise as the city treasurer may indicate. [C31, 35,§6610-c63; C39, §6610.18; C46, 50, 54,§417.67]

**417.68 Bonds.** The city council shall authorize the issuance of bonds, payable only out of the proceeds received from the collection of the special assessments upon any improvement. The city treasurer shall determine whether the contractor shall be paid in cash or bonds. It shall be optional with the city council to fix the rate of interest on such bonds at any rate not exceeding six percent. Bonds shall mature June 1 in the year in which installments thereof become due.

Bonds may be sold by the city treasurer at not less than par, and proceeds equal to the contract price delivered to the contractor in full payment and satisfaction of his contract. The proceeds of bonds equal to incidentals shall be distributed as hereinafter provided. Bonds may be delivered at not less than par to the contractor in the aggregate sum of the contract price, plus incidentals, in full payment and satisfaction of said contract price, and the said contractor shall pay to the city treasurer in cash the amount represented by incidentals. The city treasurer shall promptly reimburse the funds from which the items constituting said incidentals were originally paid. Deficits and defaulted payments in installments of any special assessment shall be payable out of the funds in the hands of the city treasurer, received from any special assessment in excess of moneys paid in fulfillment of the contract and incidentals. Deficits and defaulted payments upon installments of special assessments with interest, shall not be payable from the funds in the hands of the city treasurer until ninety days after said deficits and defaulted payments become delinquent. Said bonds shall be entitled to such tax exemption privileges as may be provided by general law of the state with respect to similar obligations of any municipality. [C31, 35,§6610-c65; C39, §6610.71; C46, 50, 54,§417.68]

**417.69 Liability of city.** No person, firm, or corporation accepting the bonds as provided herein, shall have any claim or lien upon the city in any event for the payment of such bonds or the interest or penalties thereon, except from the collections of the assessment against which said bonds are issued, or from any balance remaining in the consolidated improvement fund, and a municipality shall not be liable to the holders of said bonds in case of failure to collect the same, but shall with all reasonable diligence so far as it can legally do so cause a valid special assessment to be levied and collected to pay said bonds until all bonds shall be fully paid from said assessments or the proceeds thereof. [C31, 35,§6610-c66; C39, §6610.72; C46, 50, 54,§417.69]

**417.70 General procedure.** All necessary proceedings, forms, and requirements not included in or contemplated or regulated by the provisions hereof, shall be in accordance with the provisions of the general law of the state relating to the same subject matter, including definitions and regulations relating to valuations, benefited property, estimates, assessments, plans, specifications, schedules, resolutions, protests, objections, remonstrances, maintenance, bids, deposits, contracts, bonds, or the form of improvement bonds issued in payment for any such public improvement. [C31, 35, §6610-c67; C39,§6610.02; C46, 50, 54,§417.70]

**417.71 Conflicting statutes.** In the event of conflict between any provision hereof, and any provision of any general law of the state

pertaining to the same subject matter, this chapter shall prevail, and in the event of any conflict between the provisions hereof and the provisions of chapter 363B, the provisions of this chapter shall prevail. [C31, 35, §6610-c68; C39, §6610.03; C46, 50, 54, §417.71]

**417.72 Terms defined.** The words "city" or "city council" when used herein shall be construed to refer to a city or council thereof referred to or designated in section 417.1. [C31, 35, §6610-c71; C39, §6610.01; C46, 50, 54, §417.72]  
Constitutionality, 43GA, ch 194, §26

## CHAPTER 418

### CITY MANAGER PLAN BY ORDINANCE

Transferred to chapter 363D

## CHAPTER 419

### CITY MANAGER PLAN BY POPULAR ELECTION

All sections of this chapter, Code 1950, repealed or transferred as indicated in Code 1954

See chapter 363C

## CHAPTER 420

### CITIES UNDER SPECIAL CHARTER

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- 420.1-420.13 Repealed by 54GA, ch 165, §3.
- 420.14 Compensation of aldermen.
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- 420.17-420.30 Repealed by 54GA, ch 165, §3.

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- 420.31 Ordinances—fines.
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- 420.126-420.148 Repealed by 54GA, ch 165, §4.
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- 420.204 Valuation.
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- 420.207 Taxation in general.  
 420.208 Repealed by 54GA, ch 165,§4.  
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**420.1** Repealed by 54GA, ch 145,§106; ch 165,§3. See §363A.2.

**420.2 to 420.7, inc.** Repealed by 54GA, ch 145, §106; ch 165,§3. See §§43.112 to 43.114, inc. and §69.13.

**420.8** Repealed by 54GA, ch 165,§3.

**420.9–420.11** Repealed by 54GA, ch 165,§3. See §368A.2.

**420.12** Repealed by 54GA, ch 165,§3.

**420.13** Repealed by 54GA, ch 165,§3. See §§363A.3, 368A.2, 368A.3.

**420.14 Compensation of aldermen.** Aldermen shall be paid an amount prescribed by



ordinance, not to exceed twelve hundred dollars per annum, which shall be in full compensation for all services connected with their official duties. [C97,§943; C24, 27, 31, 35, 39, §6704; C46, 50, 54,§420.14]

C97,§943, editorially divided

**420.15 Compensation of mayor.** The mayor shall receive such salary as may be provided by ordinance, not to exceed eight thousand five hundred dollars per annum, and in addition he shall receive for holding a mayor's or police court, or discharging the duties of a justice of the peace, the compensation allowed by law for similar services by such officers, to be paid in the same manner; which amount shall be in full compensation of all such services. [R60, §§1091, 1121; C73,§§519, 547; C97,§945; C24, 27, 31, 35, 39,§6705; C46, 50, 54,§420.15; 57GA, ch 208,§1]

Fees of justice, §§601.128, 601.130

**420.16 Compensation of other officers—report.** Police judges, magistrates, marshals, and police officers, in criminal cases under the ordinances, shall receive the fees allowed for similar services in criminal cases under the state law, payable out of the city treasury; and for criminal cases under the state law they shall be paid the same fees that justices and constables receive under the state law, payable from the county treasury. When such officers are paid a salary, the same shall be in lieu of all fees, and such fees, when collected, shall be paid into the city treasury. They shall make, under oath, a monthly report of such fees to the council. [R60,§§1086, 1104, 1107, 1118; C73,§§515, 533, 536, 544; C97,§946; C24, 27, 31, 35, 39,§6706; C46, 50, 54,§420.16]

Fees of justice, §§601.128, 601.130

Fees of constable, §§601.129, 601.130

**420.17 to 420.19, inc.** Repealed by 54GA, ch 165,§3. See §368A.21.

**420.20** Repealed by 54GA, ch 165,§3. See §368A.22.

**420.21 and 420.22** Repealed by 54GA, ch 165,§3. See §404.4.

**420.23** Repealed by 54GA, ch 165,§3. See §404.5.

**420.24** Repealed by 54GA, ch 165,§3. See §368A.4.

**420.25** Repealed by 54GA, ch 165,§3.

**420.26 to 420.30, inc.** Repealed by 54GA, ch 147,§40 and ch 165,§3. See §368A.4.

#### ORDINANCES

**420.31 Ordinances—fines.** Such cities shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this chapter, and the charters thereof, and such as are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such cities and the inhabit-

ants thereof; and to enforce obedience to such ordinances by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. [R60,§§1071–1073; C73,§482; C97, §947; C24, 27, 31, 35, 39,§6720; C46, 50, 54,§420.31]

Similar section, §366.1

**420.32 and 420.33** Repealed by 54GA, ch 165, §3. See ch 366.

**420.34 Jury and change of venue.** In any prosecution or proceeding for the violation of any ordinance, the defendant shall not be entitled to a trial by jury or to a change of venue, except on appeal, but shall be tried by the court or magistrate before whom the action is commenced; except in cities where a municipal court has been established, when such trials shall be governed by the law applicable to municipal courts. [C97,§948; C24, 27, 31, 35, 39, §6723; C46, 50, 54,§420.34]

Municipal court, ch 602

**420.35 Limitation on prosecutions.** All suits for the recovery of fines, and prosecutions for the commission of offenses made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered or the prosecution is commenced. [R60,§1075; C73,§486; C97,§950; C24, 27, 31, 35, 39,§6724; C46, 50, 54, §420.35]

**420.36 Commitment—executions.** Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may be committed at hard labor until the fine and costs are paid, not to exceed thirty days, and, in addition thereto, such fine and costs may be collected by the issuance of an execution on such judgment against any property of the defendant, which execution shall have the same force and effect and be executed in the same manner as provided by law for the collection of judgments in civil suits by execution. [C97,§949; C24, 27, 31, 35, 39,§6725; C46, 50, 54,§420.36]

C97,§949, editorially divided

Executions, ch 626

**420.37 Transcripts.** Transcripts of such judgments may be filed in the district court of the proper county as in civil cases, and with the same force and effect, and execution may be issued thereon from such court. [C97,§949; C24, 27, 31, 35, 39,§6726; C46, 50, 54,§420.37]

Filing transcripts, §601.69

**420.38 Action to recover.** Fines and penalties may in all cases be recovered by action before a justice of the peace or other court of competent jurisdiction, and in the name of the proper municipal corporation. In any such action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing, as near as may be, the facts of the alleged violation. [C24, 27, 31, 35, 39,§6727; C46, 50, 54, §420.38]

40ExGA, SF 182,§6a, editorially divided

**420.39 Accounting.** All fees, fines, forfeitures, costs, and expenses collected shall be turned over to the city treasurer by the officer collecting the same on or before the tenth day of each succeeding month, and the city treasurer shall forthwith pay to the county treasurer for the benefit of the school fund the portion of fines and forfeitures collected for the violation of state laws. [C24, 27, 31, 35, 39,§6728; C46, 50, 54,§420.39]

**GENERAL PROVISIONS AND POWERS**

**420.40 Powers.** Municipal corporations organized under special charter shall have all of the powers and privileges of municipal corporations of like population organized under the general law and having the mayor-council form of government. [C97,§934; C24, 27, 31, 35, 39,§6729; C46, 50, 54,§420.40]

**420.41 Applicability of provisions.**

1. Except as hereinafter in this section provided, the provisions of this Code which, by their terms, are made applicable to all municipal corporations, shall be applicable to cities organized under special charter, and the provisions of this Code, applicable by their terms to municipal corporations of a certain population, shall be applicable to cities under special charter of like population, and except as hereinafter in this section provided, said special charters shall have no further force and effect.

2. To whatever extent provisions made applicable by subsection 1 of this section to cities organized under special charter shall be inconsistent with the provisions of this chapter, the provisions so made applicable shall be construed to provide additional rights, powers and privileges to such cities or to provide alternative procedures which such cities may adopt or avail themselves of at the election of their respective governing bodies or appropriate officers, insofar as such provisions, so made applicable, are susceptible to such construction. Insofar as such provisions, so made applicable, are not susceptible to such construction the provisions of this chapter shall be controlling.

3. Notwithstanding the provisions of subsection 1 of this section, nothing herein contained shall be deemed to impair, alter or affect the provisions of any such special charter or any existing amendment thereto in any of the following respects:

a. As an act of incorporation or as evidence thereof.

b. In respect of authority to license, tax and regulate various persons, occupations, amusements, places and objects, as said general subjects of licensing, taxing and regulation are more specifically set forth in the respective charters of such cities.

c. In respect of the levy and collection of taxes for city purposes, in accordance with provisions of the respective charters of such cities and other provisions of law relating to

such levy and collections including, but without limitation, provisions relating to liens, distraint, tax sales, redemptions, tax deeds and other provisions incident to the levy and collection of taxes; provided that this paragraph shall apply only with respect to cities which prior to and currently with the taking effect of this act\* collect general city taxes directly or by or through their own officers, rather than indirectly and by or through any other public body or officer thereof.

d. In respect of the election or appointment of a clerk, treasurer, police magistrate and marshal or in respect of the authority, functions, duties or compensation of any thereof.

e. In respect of the power or authority of any such city to borrow and expend money and issue bonds or other evidences of indebtedness therefor.

f. In respect of the appropriation, condemning or taking of lands and property by any such city for public purposes and in respect of procedure and appeals in connection with any such taking.

g. In respect of the power to enact, make, adopt, amend and repeal ordinances necessary or proper in connection with any provisions referred to in paragraphs "a" to "f" inclusive, of this subsection. [C97,§933; C24,§6730; C27, 31, 35,§§4755-f35, 6730; C39,§§4755.32, 6730; C46, 50,§§313.41, 420.41, 420.62-420.117; C54,§420.41]

\*July 4, 1951

**420.42** Repealed by 54GA, ch 165,§4.

**420.43 Application of certain terms.** Whenever the words "boards of supervisors", "county auditor or recorder of deeds", and "county treasurer" are used in any section made applicable by this chapter to special charter cities, the words "city council", "city clerk" or "city recorder", and "city collector or treasurer" shall be respectively substituted.

This section shall not be construed as depriving boards of supervisors, county auditors, and county treasurers of their powers to spread tax levies and collect taxes certified by cities acting under special charter as provided in sections 420.206 and 404.3. Nothing contained herein shall be deemed to affect the procedure for the assessment of property by the city or county assessor. [C97,§§958, 1024; S13,§958; C24, 27, 31, 35, 39,§6732; C46, 50, 54,§420.43]

See also §420.41

**420.44 Unliquidated claim—limitation of action.** No suit shall be brought against any such city for any unliquidated claim or demand unless within three months from the time the same became due or cause of action accrued thereon, nor unless a written, verified statement of the general nature, cause, and amount of same is filed with the clerk or recorder thirty days before the commencement of such suit. [C97,§1050; C24, 27, 31, 35, 39,§6733; C46, 50, 54,§420.44]

**420.45 Claims for personal injury — limitation.** In all cases of personal injury or dam-

age to property resulting from defective streets or sidewalks, or from any cause originating in the neglect or failure of any municipal corporation or its officers to perform their duties. no suit shall be brought against any such city after three months from the time of the injury or damage, and not then unless a written verified statement of the amount, nature, and cause of such injury or damage, and the time when and the place where such injury occurred, and the particular defect or negligence of the city or its officers which it is claimed caused or contributed to the injury or damage, shall be presented to the council or filed with the clerk within thirty days after said alleged injury or damage was sustained. [C97,§1051; C24, 27, 31, 35, 39,§6734; C46, 50, 54,§420.45]

Similar provision, §614.1, subsection 1

**420.46 Notice to person liable over.** In case any action is brought against any such city for damages for injury to person or property claimed to have been caused by or through the negligence of said city, the city may notify in writing any person or corporation, by or in consequence of whose negligence it is claimed by said city the injury occurred or was caused, of the pendency of said suit, the name of the plaintiff and where pending, and the general nature of the claim, and that the city claims that the person or corporation so notified is liable to said city for any judgment obtained against said city, and asking such person or corporation to appear and defend; thereupon any judgment obtained in such suit shall be conclusive in any action by the city against any person or corporation so notified as to the existence of the defect or other cause of the injury or damage, and as to the liability of the city to the plaintiff in the first named suit in consequence thereof, and as to the amount of the damage or injury occasioned thereby; and every such city is hereby empowered to maintain an action against the person or corporation so notified to recover the amount of any such judgment, together with all the expenses incurred by such city in such suit. [C97, §1053; C24, 27, 31, 35, 39,§6735; C46, 50, 54, §420.46]

Referred to in §363C.16  
Applicable to cities under manager plan, §363C.16. See also §368.34

**420.47** Repealed by 54GA, ch 151,§55 and ch 165,§4. See §§368.36, 391.66.

**420.48** Repealed by 54GA, ch 145,§107 and ch 165,§4. See §363.26.

**420.49 and 420.50** Repealed by 54GA, ch 151, §56 and ch 165,§4. See §368.39.

**420.51** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.37.

**420.52** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.38.

**420.53** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §§368.27, 368.30.

**420.54** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §657.2.

**420.55** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.32.

**420.56** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §391A.2.

**420.57** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.32.

**420.58** Repealed by 54GA, ch 151,§56 and ch 165,§4. See §397.29.

**420.59 Changing watercourses — condemnation.** They shall have power to deepen, widen, straighten, wall, fill, cover, alter, or change the channel of any watercourse or part thereof flowing through the city; to construct artificial channels or covered drains sufficient to carry the water flowing in such watercourse, and divert it from the natural channel, and conduct the same through such artificial channels or covered drains, and fill old channels; and in doing such work, or in carrying off flowing water, or building main or lateral sewers through ravines or hollows, they shall have the right to pass through private property and condemn the same for such purposes; and the cost of such work, including the cost of the land condemned, shall be paid for as provided herein for the payment of the cost of constructing sewers. [C97,§960; C24, 27, 31, 35, 39, §6748; C46, 50, 54,§420.59]

**420.60 Eminent domain.** They may condemn and appropriate so much private property as shall be necessary to carry into effect the provisions of this chapter relating to the change of watercourses, and the construction of sewers and of artificial channels in the manner provided for condemning land for city purposes. [C97,§961; C24, 27, 31, 35, 39,§6749; C46, 50, 54,§420.60]

Condemnation proceedings, ch 472

**420.61 Assessment.** If a covered drain or new channel of a watercourse shall be constructed along any street or alley and used by the city as a sanitary or storm waterway, the council shall have the power to assess upon the lots or land adjacent to the line of such covered drain or new channel the whole or a portion of the cost thereof, not exceeding the sum of two dollars per linear foot, in the manner provided for the assessment of the cost of sewers. [C97,§963; C24, 27, 31, 35, 39,§6750; C46, 50, 54,§420.61]

**420.62 to 420.117, inc.** Repealed by 54GA, ch 165,§4. See §420.41.

**420.118** Repealed by 54GA, ch 165,§4. See §§395.15, 478.21.

**420.119 and 420.120** Repealed by 54GA, ch 165,§4.

**420.121 to 420.125, inc.** Repealed by 54GA, ch 151,§57 and ch 165,§4. See ch 397, also §330.2.

**420.126 to 420.148, inc.** Repealed by 54GA, ch 165,§4. See ch 397, also §420.297.

**420.149** Repealed by 54GA, ch 151,§58 and ch 165,§4. See §§370.23, 386.1.

**420.150 to 420.153, inc.** Repealed by 54GA, ch 165,§4. See chs 413 to 415, inc.

**420.154** Repealed by 54GA, ch 165,§4. See §§413.98, 415.2.

RIVER-FRONT AND LEVEE IMPROVEMENTS

**420.155 Water-front improvement — fund.** Any city acting under special charter, which is bounded in part or divided by a river, may improve said water front by constructing retaining walls, filling, grading, paving, macadamizing, or riprapping the same and may improve and beautify its water front and the river bank and nearby uplands and made and reclaimed lands in such city; and to pay for such improvements the council of such city is empowered to levy a tax of not exceeding one-fourth mill on the dollar per annum on the taxable property thereof, the same when collected to be known as the levee improvement fund. The proceeds of such fund shall be used exclusively for said purposes. [S13,§1056-a6a; C24, 27, 31, 35, 39,§6823; C46, 50, 54,§420.155]

Referred to in §420.156

**420.156 Condemning river-front land.** Any city acting under special charter shall have power to acquire, by purchase or gift, and to condemn, enter upon, and take in the manner provided by law for the taking of private property for public use, lands and interests therein, which lands lie along or near any river dividing, or in part bounding, such city, for the purpose of regularizing or rectifying the boundaries of other lands to which such city may have, or may acquire, title, which other lands lie along or near such river or on the banks or in the bed thereof, or for the purpose of making more advantageous use of any such other lands, or for the purpose of exercising any power granted by section 420.155 and further shall have power so to acquire and condemn, enter upon and take, for any of the purposes aforesaid, all riparian rights incident to ownership of any lands which lie along or near any such river and thus to bar such rights in respect to any other lands to which such city may have, or may acquire, title. Payment for any lands, interests, or rights acquired or condemned hereunder may be made out of the levee improvement fund of such city. [C39,§6823.1; C46, 50, 54,§420.156]

Eminent domain, ch 472

**420.157 Bonds.** In the event that the proceeds of such tax in any one year shall be insufficient to pay for the improvements of that year, or if the city council shall deem best to extend the payment over a number of years, then upon a majority vote of said council approving the same, said cities may borrow the money to make such improvements and issue the negotiable interest-bearing bonds of said

city to evidence said debt; provided that the total bond that may be issued under this chapter by any one city shall not exceed one percent of the assessed value of said city. [S13, §1056-a6b; C24, 27, 31, 35, 39,§6824; C46, 50, 54, §420.157]

**420.158 Form of bonds.** Said bonds shall be in amounts provided in, and conform in substance to, the requirements of section 408.2. [S13,§1056-a6c; C24, 27, 31, 35, 39,§6825; C46, 50, 54,§420.158]

**420.159** Repealed by 54GA, ch 165,§4. See ch 372.

**420.160 Levee improvement commission.** Any city acting under special charter may establish a levee improvement commission to consist of the mayor, who shall be its chairman, and not more than four other persons to be appointed by the mayor with the approval of the city council. [S13,§1056-a6d; C24, 27, 31, 35, 39,§6827; C46, 50, 54,§420.160]

S13,§1056-a6d, editorially divided

**420.161 Qualifications—compensation—term.** The appointive members shall be residents and qualified electors of the city, and shall hold no other official position in the city, and no member shall receive any salary for his services as a member of such commission. Their term of office shall be fixed by ordinance and shall not exceed six years. [S13,§1056-a6d; C24, 27, 31, 35, 39,§6828; C46, 50, 54,§420.161]

**420.162 Bond.** Before entering upon their office the appointive members shall each execute a bond in favor of the city in the penal sum of two thousand dollars, with approved fidelity company surety, for the faithful performance of their duties. The expense of this bond shall be paid out of the levee improvement fund. [S13,§1056-a6d; C24, 27, 31, 35, 39, §6829; C46, 50, 54,§420.162]

**420.163 Powers and duties.** The levee improvement commission shall have full charge and supervision of all improvements of the water front along any river within the corporate limits of the city. It shall have exclusive charge and control of the levee improvement fund and of all moneys derived from the sale of bonds issued by the city council for the purpose of carrying on the work of making water-front improvements. It shall pay out of these funds only for the purposes named. [S13, §1056-a6e; C24, 27, 31, 35, 39,§6830; C46, 50, 54, §420.163]

S13,§1056-a6e, editorially divided

**420.164 Management, sale, or lease of land.** Any such city which has established, or may establish, a levee improvement commission may, by ordinance, authorize said commission to manage all, or any part, of the lands owned by such city which lie along or near any such river or on the banks or in the bed thereof. If, at any time, in the judgment of said commission, any parts or parcels of the lands under

its management may not advantageously be put to public use, said commission may lease the same upon such terms and conditions as it may deem to be in the public interest. If, in the judgment of said commission, any parts or parcels of the lands under its management may, at any time, be sold with greater public advantage than would result from retaining the same for public use, it may certify its recommendations for disposition thereof to the city council of any such city, and such parts or parcels may thereafter be disposed of, sold and conveyed by the city by a three-fourths vote of all members of the council thereof. All moneys realized out of the lease or sale of any lands hereunder shall be paid into the levee improvement fund of such city. [C39,§6830.1; C46, 50, 54,§420.164]

**420.165 Grants of state lands — erection of structures.** With respect to any lands title to which has been or may be granted by the state to any municipal corporation of the state, acting under special charter, sections 477.3 and 477.4 shall not, after the occurrence of such grant, continue to apply, excepting only that permanent structures erected prior to such grant under authority of said section 477.3 may continue to be used, occupied, and maintained thereunder, and excepting further only that such lands may continue to be used and occupied thereunder, to the extent only that use and occupancy of such lands shall be necessary to the use and occupancy of such structures for like purposes and in like manner as before such grant; provided that nothing herein contained shall be deemed to affect riparian rights at common law. [C46, 50, 54, §420.165]

**420.166 Ferries.** In cities under special charter which have established levee improvement commissions, all of the powers enumerated in section 368.27 in regard to ferries shall be exercised by the levee improvement commission and in addition thereto in such cities the levee improvement commission shall have the exclusive power to prescribe the character, design, and type of construction of any ferry dock or landing had or used by any ferry running to or from any landing place which is on the water front along any river within the corporate limits of said city; to prescribe the amount of license to be paid by any such ferry for the privilege of having or using any such landing place; to prescribe the terms and conditions under which any such ferry may have the right to run to and from any such landing place; to prescribe the time during which any such ferry shall operate; and to make any other reasonable provisions regarding the operation of such ferry. [C24, 27, 31, 35, 39, §6831; C46, 50, 54,§420.166]

**420.167 Treasurer.** The city treasurer shall be the treasurer of the levee improvement commission. He shall keep the levee improvement funds and the moneys derived from the sale of bonds for water-front improvements in

a separate and distinct fund from which he shall pay no money except upon the order of the levee improvement commission signed by its chairman and secretary, and countersigned by at least one other member of said levee improvement commission. [S13,§1056-a6e; C24, 27, 31, 35, 39,§6832; C46, 50, 54,§420.167]

#### BOARD OF HEALTH

**420.168 Appointment.** There shall be appointed in every such city a local board of health consisting of five members, a majority of whom, including the mayor, shall be members of the city council. The mayor of the city shall be ex officio one of said members and the chairman thereof. The manner of appointment and duration of office of said board shall be determined by ordinance of said city. [C97, §1025; C24, 27, 31, 35, 39,§6833; C46, 50, 54, §420.168]

**420.169 Officers appointed — quorum.** The board of health shall appoint a physician to the board, who shall hold office during the pleasure of the board. The city clerk or recorder shall be clerk of the board, unless some other clerk may be provided by ordinance. The board of health shall appoint, with the consent of the council, all officers and agents necessary to carry their rules and orders into effect, and shall recommend the compensation or salaries to be paid such officers or agents, which shall be determined by the council. In cases of emergency, the board of health may employ persons to aid in the execution of its orders, and fix the compensation of such employees. The majority of the members of the board shall constitute a quorum for the transaction of all business and the exercise of powers conferred upon the board. [C97,§1026; C24, 27, 31, 35, 39,§6834; C46, 50, 54,§420.169]

**420.170 Physician and clerk.** It shall be the duty of such clerk and physician to report at least once a year to the department of health the proceedings of such board, and such other facts as may be required, on blanks in accordance with instructions received from the said department. They shall also make special reports whenever required so to do by the said department. [C97,§1027; C24, 27, 31, 35, 39,§6835; C46, 50, 54,§420.170]

**420.171 General powers.** The local board of health shall make such rules and regulations and orders respecting the connection of buildings and tenements with sewers, and the approval of plans for plumbing and the inspection thereof; and the inspection of milk, provisions, and of all food products sold within such city, and the condemnation and destruction of the same when impure or diseased; the collection and disposition of garbage; the condemnation of impure wells and cisterns; the prompt report of contagious or infectious diseases; nuisances, sources of filth, and cases of sickness within its jurisdiction, and on all boats in its ports and harbors, or railroad cars passing through such city; and for the preven-

tion of nuisances and the preservation of the public health, as said board may judge necessary for the public health and safety; and shall, from time to time, report to the city council ordinances for carrying such rules, regulations, and provisions into effect, and for the appointment of the proper inspectors and officers necessary to enforce the same. [C97,§1028; C24, 27, 31, 35, 39,§6836; C46, 50, 54,§420.171]

**420.172 Violation of regulations.** Such cities shall have power and may provide by ordinance for the punishment by fine and imprisonment of any person who shall knowingly violate or fail to comply with any rule, regulation, or order of such local board of health, but the fine shall not exceed one hundred dollars, nor the imprisonment thirty days. The prosecution for the violation of any rule, regulation, or order of such board of health shall be in the name of the city appointing such board, and shall be conducted in the same manner and before the same tribunals as other prosecutions for the violation of ordinances of such city. [C97,§1029; C24, 27, 31, 35, 39,§6837; C46, 50, 54,§420.172]

**420.173 Sewer connections.** The board of health shall have power to compel all property owners owning property situated on streets along which sewers have been constructed, or within two hundred fifty feet of any sewer, to make proper connections therewith, and to use the same for proper purposes; and in case such owner shall fail to make such connections within the time fixed by such board, they may cause such connections to be made and report the cost and expense thereof to the city council, which shall assess the same against the property so connected, and such assessment shall be a lien on said property which the city council can enforce by the sale of same. [C97, §1030; C24, 27, 31, 35, 39,§6838; C46, 50, 54, §420.173]

**420.174 Plumbing.** Such board shall have power to prescribe rules and regulations for all plumbing connections of buildings or tenements with any sewer, and for all plumbing, drainage, and ventilation of any building or tenement, and may prescribe the kind and size of materials to be used in any plumbing, drainage, and ventilation of buildings, and the manner in which plumbing shall be done, and compel the plans and specifications for the plumbing of any building to be submitted to and approved by said board before the same is installed, and that such work be done by a competent licensed plumber, and provide for the inspection of the work done under such plans and specifications, and have the power to appoint, with the approval of the city council, an inspector of such plumbing, and define his duties and powers. [C97,§1031; C24, 27, 31, 35, 39,§6839; C46, 50, 54,§420.174]

**420.175 Nuisances.** Such board may order the owner or occupant of any property, place, or building at his own expense to remove or

abate any nuisance, source of filth, or cause of sickness, to dispose of garbage, to destroy diseased or impure milk, provisions, or food products, to purify, fill up, or cease from using any impure well or cistern, to report to the proper officer all contagious or infectious diseases found on his property or property over which he has control, to make sewer connection, and to do such acts as may be required. The board may in its discretion specify in its notice the time and manner of compliance with such order, and if such person neglect to comply with such order he may be punished in accordance with the provisions hereof, and the board may do or cause to be done whatever is required by the order. [C97,§1032; C24, 27, 31, 35, 39,§6840; C46, 50, 54,§420.175]

**420.176 Abatement.** Whenever the owner, occupant, or person having the control or management of such property shall not be found in the city, or whenever the board may deem immediate action necessary, it may, without notice to such owner or occupant or person having the control or management of the same, immediately proceed to remove said nuisance, source of filth, or other cause of sickness, and the expense thereof shall be reported to the council and levied and assessed against the property, place, or building, and collected as a special tax, and shall be a lien upon such property, place, and building, or the same may be enforced in any court having jurisdiction, by the proper officer, in the name of the city. [C97,§1033; C24, 27, 31, 35, 39,§6841; C46, 50, 54, §420.176]

**420.177 Enjoining.** Whenever any person or persons are engaged in a work, or doing things, or threatening to do things, which, in the opinion of the board, will result in a nuisance or endanger the public health, the board may forbid the doing or continuance thereof, and in case any such person shall fail to comply with any such order, after personal service of a notice thereof, he may be proceeded against and punished under the provisions hereof. [C97,§1034; C24, 27, 31, 35, 39, §6842; C46, 50, 54,§420.177]

**420.178 Health regulations.** Whenever any such board shall make or adopt any general rules and regulations for the public health, they shall be signed by the mayor or other presiding officer and attested by the clerk of such board, and, when so signed and attested, shall be published twice in the official newspaper of such city. When such publication is completed, due proof thereof by affidavit shall be attached to said rules and regulations, and the same shall then be recorded by the clerk of such board in a book kept for such purpose, which record shall be certified to by the mayor or presiding officer and attested by the clerk; such general rules and regulations shall be in force and effect from and after the completion of such record. [C97,§1035; C24, 27, 31, 35, 39, §6843; C46, 50, 54,§420.178]

**420.179 Notices.** Any notice from the board may be served by any city officer, or by any other person whom the board of health may appoint or designate. [C97,§1036; C24, 27, 31, 35, 39,§6844; C46, 50, 54,§420.179]

**420.180 Premises unfit for habitation.** The board, when satisfied upon due examination that any cellar, room, tenement, or building in said city, occupied as a dwelling house, has become, by reason of the number of inhabitants or want of cleanliness or other cause, unfit for such habitation, and a cause of nuisance or sickness to the occupants thereof or to the public, may issue a notice to the occupants thereof or any of them, requiring the premises to be put into a proper condition as to cleanliness or health, or may require the occupants to remove from the premises, within such time as the board deems reasonable. If the persons so notified neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleaned at the expense of the owners of property, or the board may remove the occupants forcibly and close up the premises, and the same shall not again be occupied as a dwelling place until put in a sanitary condition to the satisfaction of the board. [C97,§1037; C24, 27, 31, 35, 39,§6845; C46, 50, 54,§420.180]

**420.181 Contagious diseases.** Whenever by reason of the prevalence of smallpox, or other contagious or infectious disease, in any such city or the vicinity thereof, the board may deem it dangerous to permit the congregation together of people, the board may, with the consent of the council, by public proclamation published once in some newspaper of general circulation in the city, prohibit the congregation of people in schools, churches, theaters, and in all other buildings in said city, and it shall thereupon become the duty of the principals, teachers, and other persons in charge of such places or buildings specified in said publication to keep the same closed and to prevent the congregation of people therein; and when smallpox is prevalent in said city or its vicinity, the said board of health may, with the consent of the council, by notice served upon the teachers or persons in charge of any of the public or private schools, prohibit the admission therein of any pupil until such pupil shall have proved, to the satisfaction of the board or the persons selected by it for that purpose, that such pupil has been vaccinated within five years prior thereto, or within such time as the board may designate; and said board may in like manner prevent the admission of persons not furnishing satisfactory proof of vaccination into churches, theaters, or other buildings, by notifying the persons in charge thereof not to admit such persons. [C97,§1038; C24, 27, 31, 35, 39,§6846; C46, 50, 54,§420.181]

**420.182 Warrant.** Whenever the board of health shall think it necessary for the preservation of the lives or the health of the in-

habitants to enter a place, building, or vessel within its jurisdiction, for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath, before any justice of the peace, or other judicial officer having jurisdiction to enforce the ordinances of such city, stating the facts of the case so far as he has knowledge thereof. Such officer shall thereupon issue a warrant, directed to the sheriff or any constable of the county, marshal or public officer, commanding him to take sufficient aid and, being accompanied by two or more members of said board, between the hours of sunrise and sunset, repair to the place where such nuisance, source of filth, or cause of sickness may be, and destroy, remove, or prevent the same under the direction of such members of the board. [C97,§1039; C24, 27, 31, 35, 39,§6847; C46, 50, 54,§420.182]

**420.183 Removal of diseased person.** When any person coming from abroad or residing within such city shall be infected, or lately shall have been infected, with smallpox or other sickness dangerous to the public health, the board shall make provisions in the manner by it deemed best for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without injury to his health, and by providing nurses and other assistance and supplies, which shall be charged to the person himself, his parents, or other person liable for his support, if able, otherwise to the county. [C97, §1040; C24, 27, 31, 35, 39,§6848; C46, 50, 54, §420.183]

Referred to in §420.184

**420.184 Care of such person.** If any afflicted person cannot be removed without danger to his health, the board shall make provision for him, as directed in section 420.183, in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed, and take other means as may be deemed necessary for the safety of the inhabitants. [C97,§1041; C24, 27, 31, 35, 39,§6849; C46, 50, 54,§420.184]

**420.185 Warrant.** Any justice of the peace, or tribunal having jurisdiction to enforce the ordinances of such city, on application under oath, showing cause therefor, by any member of said board, shall issue his warrant, directed to the sheriff or constable of the county or marshal or police officer, commanding him, under the directions of the board, to remove any person infected with contagious disease, or to take possession of condemned houses and lodgings, and to provide nurses and attendants and other necessaries for the care, safety, and relief of the sick. [C97,§1042; C24, 27, 31, 35, 39, §6850; C46, 50, 54,§420.185]

**420.186 Meetings—report.** Every such board shall meet for the transaction of business at

least once each month, and at such other times as occasion may require, and the clerk of the board shall transmit his annual report to the department of health within two weeks after the October meeting, and at such other time as may be required by the said department. Such report shall embrace a history of any epidemic disease which may have prevailed within the city. The failure of the clerk to make such report shall be considered a misdemeanor, for which he shall be subject to a fine of not more than twenty-five dollars. [C97, §1043; C24, 27, 31, 35, 39, §6851; C46, 50, 54, §420.186]

**420.187 Powers — assessment of expenses.** The foregoing provisions in regard to boards of health shall not in any manner limit the powers of cities acting under special charters in relation to matters affecting the public health, and the city councils of such cities shall provide by ordinance for the manner of the exercise of the powers herein conferred upon such boards, and for the enforcement of the orders, rules, and regulations thereof, and punishment for the violation of the same, as prescribed in this chapter, and shall also have power to provide and shall provide for the assessment of all expenses incurred by said board and by said cities, in consequence of the failure or neglect of any owner or occupant of property to comply with any order of such board, upon the real estate upon which such expenditures are made or expenses incurred, and it shall be a lien thereon from the time said work is done, and may be assessed, levied, and collected as other special assessments, and may be collected and the lien enforced by civil action in any court of competent jurisdiction. [C97, §1044; C24, 27, 31, 35, 39, §6852; C46, 50, 54, §420.187]

**420.188 Proceedings reported.** Boards of health shall report their doings and proceedings to the council from time to time as required by ordinance or resolution, and the council shall have supervision over the orders and proceedings of said board. [C97, §1045; C24, 27, 31, 35, 39, §6853; C46, 50, 54, §420.188]

**420.189 Construction of powers.** The provisions of this chapter in regard to the police powers, sanitary regulations, and regulations for the prevention and spread of fires and of contagious diseases, shall not be construed as a limitation of the general powers of such cities. [C97, §1046; C24, 27, 31, 35, 39, §6854; C46, 50, 54, §420.189]

**GENERAL TAXATION**

**420.190 Garbage can tax—assessment against property.** Special chartered cities which collect both rubbish and garbage by a monthly can tax shall have the power by ordinance to declare the service a benefit to the property so served and in case of failure to pay said monthly charge to assess the actual cost thereof against the property benefited. [C54, §420.190]

**420.191–420.203, inc.** Repealed by 54GA, ch 165, §4. See ch 404.

**420.204 Valuation.** The assessed or taxable value of all property except moneys and credits including moneyed capital other than moneyed capital within the meaning of section 548 of title 12 of the United States Code as amended, and the value at which it shall be listed and upon which the levy shall be made, in special charter cities, shall be provided by the city council of such city, and if the city council of such city shall fix the taxable value of property at any portion thereof except sixty\* percent of the actual value thereof as shown by the assessment, such city council, when the levy for city purposes has been determined, shall ascertain the equivalent thereof, based upon such sixty\* percent valuation and shall certify the aggregate of the levy so ascertained to the county treasurer of the county in which such city is located and the county treasurer shall pay to the treasurer of such city, such portion of the five-mill tax on moneys and credits collected within such city, as the aggregate levy so certified is of the total levy obtained by adding such certified levy to the levy for all purposes except city purposes. [S13, §1056-a5; C24, 27, 31, 35, 39, §6865; C46, 50, 54, §420.204]

\*See §441.13

**420.205 Property valued by state tax commission.** Where all property except such as is listed and valued by the state tax commission is assessed upon its full or a certain percentage of its full valuation, the levy upon all such property valued and returned by the state tax commission shall be on a like percentage of the valuation so returned. [S13, §1056-a6; C24, 27, 31, 35, 39, §6866; C46, 50, 54, §420.205]

**420.206 Levy and collection.** The council shall have power to levy and collect taxes for all general and special purposes in this chapter authorized, upon all property within the city not exempted from taxation by the general law of the state, and to fix the number of mills to be levied on the value thereof, which shall be ascertained by the assessor of said city. [C97, §1010; C24, 27, 31, 35, 39, §6867; C46, 50, 54, §420.206]

C97, §1010, editorially divided  
Referred to in §420.43

**420.207 Taxation in general.** The provisions of sections 427.1, 427.3 to 427.11, inclusive, 428.4, 428.16 to 428.23, inclusive, 429.13, 430.1 to 430.8, inclusive, 431.1, 431.2, 436.10, 436.11, 437.1, 437.3, 437.14, 441.13, 443.1 to 443.3, inclusive, 443.20, 444.2 to 444.5, inclusive, and 447.9 to 447.13, inclusive, so far as applicable, shall apply to cities acting under special charters. [S13, §1322-3a; C24, 27, 31, 35, §7007; C39, §6867.1; C46, 50, 54, §420.207]

**420.208** Repealed by 54GA, ch 165, §4. See §441.13.

**420.209 and 420.210** Repealed by 52GA, ch 240, §50. See §421.17.



**420.211 and 420.212** Repealed by 54GA, ch 165,§4. See §§404.3, 405.13.

**420.213 Collection procedure.** Such cities shall have power and shall provide by ordinance when general or special taxes and assessments shall become delinquent, and the rate of interest which they shall thereafter bear, not exceeding ten percent per annum on the whole amount thereof, including penalty, and for the sale of both real and personal property for the collection of general and special delinquent taxes and assessments, on such terms as the council may determine. [C97,§1012; C24, 27, 31, 35, 39,§6872; C46, 50, 54,§420.213]

C97,§1012, editorially divided

**420.214 Sale of real estate—notice.** In the sale of real property for taxes and assessments, the notice of the time and place of such sale shall be given by the treasurer or the collector, and shall contain the description of each separate tract to be sold, as taken from the tax list; the amount of taxes for which it is liable, delinquent for each year, and the amount of penalty, interest, and cost thereon; the name of the owner, if known, or the person, if any, to whom it is taxable; by publication in some newspaper in the city once each week for two consecutive weeks, the last of which shall be not more than two weeks before the date of such sale, and by posting a copy thereof at the door of the office of the collector or treasurer one week before the day of such sale. [C97, §1012; C24, 27, 31, 35, 39,§6873; C46, 50, 54, §420.214]

**420.215 Cost of publication.** The compensation for such publication shall not exceed thirty cents for each description, and shall be paid by the city. The amount paid therefor shall be collected as a part of the costs of sale and paid into the treasury. [C97,§1012; C24, 27, 31, 35, 39,§6874; C46, 50, 54,§420.215]

**420.216 Sufficiency of notice.** In all cases such advertisement shall be sufficient notice to the owners and persons having an interest in or claiming title to any lot or parcel of real estate, of the sale of their property for delinquent taxes. [C97,§1012; C24, 27, 31, 35, 39, §6875; C46, 50, 54,§420.216]

**420.217 Irregularities disregarded.** No irregularity or informality in the advertisement shall affect the legality of any sale or the title of any property conveyed, if it shall appear that said property was subject to taxation for the year or years for which the same was sold, and that the tax was due and unpaid at the time of sale. [C97,§1012; C24, 27, 31, 35, 39, §6876; C46, 50, 54,§420.217]

**420.218 Demand unnecessary.** A failure of the collector to make personal demand of taxes shall not affect the validity of any sale or the title of any property acquired under such sale. [C97,§1012; C24, 27, 31, 35, 39,§6877; C46, 50, 54, §420.218]

**420.219 Adjournment of sale.** Section 446.25 is made applicable to cities acting under special charters. [C97,§1013; C24, 27, 31, 35, 39,§6878; C46, 50, 54,§420.219]

**420.220 City tax sale after public bidder sale.** Anything in sections 420.263 or 420.275, or other provisions of law to the contrary notwithstanding, no property located in a city acting under special charter which collects its own taxes, shall, after sale of such property to the county for taxes, be offered or sold at any sale for taxes or special assessments collectible by any such city except in the following events:

1. In the event of redemption from sale to the county or transfer by the county of the certificate of purchase then sale may be made by the city as freely as if sections 420.220 to 420.229, inclusive, had never become law.

2. In the event that any special assessment or installment thereof levied by any such city, prior to April 22, 1941, shall be or become delinquent, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale.

3. In the event of sale or conveyance of the property by the county after issuance of tax deed to it then sale may be made for general city taxes levied after such sale or conveyance by the county.

4. In the event of levy of any special assessment against the property after purchase thereof at tax sale by the county, then sale may be made for any such special assessment or installment thereof, then delinquent.

The county auditor shall, promptly after the purchase of any real estate by the county at tax sale, certify to the city treasurer of any such city, a statement showing the tracts or parcels so purchased and the dates of purchase thereof respectively. In the event either of redemption from any such sale or transfer of the certificate of purchase, the county auditor shall promptly certify to the city treasurer a statement showing such redemption or transfer. The city treasurer shall make appropriate entries in his tax books of the facts so certified by the county auditor as well as of the matters certified by such treasurer to said auditor under the provisions of section 420.222. [C46, 50, 54,§420.220]

Referred to in §§420 224, 420.229

**420.221 Tax deed to county—city's option to purchase—city tax levies.** In the event that there shall be issued to a county a tax deed for any real estate located in a special charter city which collects its own taxes, the county auditor of any such county shall promptly certify to the city treasurer of such city a statement showing each tract or parcel of real estate conveyed by any such deed, the date of conveyance thereof and the total amount

which, immediately prior to the issuance of such deed, would have been required to be paid to make redemption from the sale to the county of each such tract or parcel as well as to pay all subsequent taxes due the county thereon. If any special assessment levied against any such parcel by any such city shall then remain uncollected in whole or part such city shall, at any time during three months next ensuing such certification, have the exclusive option to purchase from the county all its right, title, and interest in and to any such tract by paying to the county auditor the amount so certified in respect to such tract. Payment in any such case shall be made from the improvement fund of such city which fund it is hereby authorized to expend for the purposes stated. No general taxes shall be levied by any such city against real estate conveyed to the county by tax deed until the same shall have been sold or conveyed by the county. [C46, 50, 54, §420.221]

Referred to in §§420.220, 420.224, 420.229

**420.222 Unpaid city taxes certified to county auditor.** The city treasurer shall, promptly after the certification to him by the county auditor of the fact of issuance to the county of a tax deed for any real estate, certify to such auditor a statement showing all unpaid general taxes, with interest, penalties, and costs to date, due said city and levied against the tracts or parcels of real estate so conveyed by tax deed to the county and also showing whether or not there are any unpaid special assessments against such respective tracts or parcels. After such certification (and, in respect to the tracts or parcels against which there shall so be shown to be any unpaid special assessments, after expiration of the optional right of purchase thereof by the city), the management and sale of any real estate acquired by the county under any such tax deed, as well as distribution of proceeds of sale and other incidents and proceedings consequential to the issuance of such deed, shall occur and be had in like manner and with like effect as if the general taxes, penalties, and costs so certified by such city treasurer had originally been collectible by the county treasurer for the account of the city as general taxes collectible with other general taxes for the respective corresponding years. [C46, 50, 54, §420.222]

Referred to in §§420.220, 420.224, 420.229

**420.223 Purchase by city at tax sale.** In the event that any general tax or special assessment levied by any special charter city which collects its own taxes, or any installment of any such assessment, shall remain unpaid for two years or more after any delinquency in payment thereof, then such city may, at any regular sale for taxes thereafter, purchase any such real estate for the full amount of the general taxes, with interest, penalties and costs of advertising, for which the same shall be offered and for such further amount, if any, as such city may elect, not to exceed the amount of the special assessments or install-

ments thereof, with interest and penalties, for which the same may be offered. Payment to the extent of the amount of such general taxes, with interest, penalties, and costs of advertising, shall be made, without any necessity or prerequisite of appropriation therefor, by charging the respective funds to which such general taxes, interest, penalties, and costs shall be payable, in the amounts so payable, and, to the extent of any further amount, shall be made from the improvement fund of said city, which funds it is hereby authorized to expend for the purposes stated. [C46, 50, 54, §420.223]

Referred to in §§420.220, 420.224, 420.229

**420.224 Limitation on resale by city.** No property which may be sold at tax sale to any such city shall be offered at any sale for taxes or special assessments, collectible by such city, while it holds the certificate of purchase thereof or tax deed thereon except only as follows: In the event that any special assessment or installment thereof levied by any such city prior to April 22, 1941, shall be or become delinquent after purchase of such property at tax sale by the city, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale. Nothing in sections 420.220 to 420.229, inclusive, shall prevent the sale of property for any unpaid taxes collectible by the county. [C46, 50, 54, §420.224]

Referred to in §§420.220, 420.229

**420.225 City subrogated to county's rights—payment procedure.** Any such city, holding a certificate of purchase at tax sale, may, at its option, pay any unpaid taxes due the county and purchase from the county any tax sale certificate held by the county on the same real estate, making payment in the event of such purchase of the amount which would then be required to redeem from sale to the county or any lesser amount which the county may be lawfully enabled to accept. All amounts so paid shall be entered in the tax sale records of such city and added to the amount required to redeem from sale. All amounts so paid shall be payable out of the general fund. [C46, 50, 54, §420.225]

Referred to in §§420.220, 420.224, 420.229

**420.226 City clerk makes purchases.** The city clerk shall act on behalf of the city under general or specific resolutions of its city council in making the purchases at tax sale hereby authorized. [C46, 50, 54, §420.226]

Referred to in §§420.220, 420.224, 420.229

**420.227 Notice of expiration of redemption period.** After nine months from the date of such purchase at tax sale by the city and as soon as permitted by law with respect to any tax sale certificate held by such city, the city clerk shall, on behalf of the city, cause notice to be served of the expiration of the right of

redemption from such sale on persons of the same description and in like manner as in general provided by law with respect to tax sales by such city and, on expiration of ninety days from completed service of such notice, tax deed shall be issued in like manner and with like effect as provided by law with respect to such other sales. [C46, 50, 54, §420.227]

Referred to in §§420.220, 420.224, 420.229  
Publication, ch 618; 52GA, ch 288, §2

**420.228 City may compromise tax — effect.** For the purpose of collecting and realizing on account of delinquent taxes and special assessments collectible by it as fully and expeditiously as deemed possible in the judgment of its city council any such city is hereby authorized to settle, compromise, and adjust any general tax, then having been delinquent for a period of two years or more and any special assessment then having been delinquent in whole or as to any installment thereof for a period of two years or more, and, in connection with any such settlement, compromise or adjustment, to accept a conveyance of real property and extend the time for payment of any installment of any special assessment. If any special assessment shall be reduced in amount in connection with any such settlement, compromise, or adjustment, the full amount of the reduction shall thereby become an obligation of such city to the special assessment fund into which such assessment was payable. The lien or charge created by law for the payment of any special assessment certificates or bonds against any special assessment so reduced in amount or against the proceeds thereof shall remain in effect against the balance of such special assessment and the proceeds of such balance. All such settlements, compromises, and adjustments heretofore effected are hereby ratified and validated. [C46, 50, 54, §420.228]

Referred to in §§420.220, 420.224, 420.229

**420.229 Delinquent city taxes — exclusive collection procedure.** All general city taxes and special assessments which, under the provisions of sections 420.220 to 420.229, inclusive, shall not be collectible by sale or shall be collectible by sale only in events or in a manner hereby prescribed shall respectively be deemed barred or barred as to collection thereof in any other event or any other manner than so prescribed. [C46, 50, 54, §420.229]

Referred to in §§420.220, 420.224

**420.230 Tax list.** All assessments and taxes levied by the council, except as otherwise provided by law, shall be placed by the auditor, clerk, or recorder, as provided by ordinance, upon the proper tax book, to be known as the "tax list", properly ruled and headed with distinct columns to correspond with the assessment books, with a column for polls and one for payments, and he shall complete the same by carrying out the consolidated tax and all other taxes levied, and at the end of the list shall make an abstract thereof and apportion

the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each, and certify the same to the collector or treasurer at or before the regular time for the collection and payment of taxes. [R60, §§1123, 1126; C73, §§495, 498; C97, §1014; C24, 27, 31, 35, 39, §6879; C46, 50, 54, §420.230]

**420.231 Lien on real estate.** Taxes upon real estate shall be a lien thereon against all persons except the state. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which he may acquire title, which lien shall attach to real estate owned by such person on the date when such personal property taxes become delinquent and shall continue for a period of ten years only thereafter. [C97, §1015; C24, 27, 31, 35, 39, §6880; C46, 50, 54, §420.231]

C97, §1015, editorially divided  
Referred to in §420.234

**420.232 Lien between vendor and vendee.** As between vendor and vendee, such lien shall attach to real estate on the thirty-first day of December following the levy, unless otherwise provided in this chapter. [C97, §1015; C24, 27, 31, 35, 39, §6881; C46, 50, 54, §420.232]

**420.233 Stocks of goods.** Taxes upon stocks of goods and merchandise shall be a lien thereon, and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, but the property of the seller thereof shall be first exhausted for the payment. [C97, §1015; C24, 27, 31, 35, 39, §6882; C46, 50, 54, §420.233]

**420.234 When lien attaches.** All of such taxes shall remain a lien on the property aforesaid from and after the date of the levy in each year, except as provided in section 420.231, with respect to the lien of personal property taxes on real estate. [C97, §1015; C24, 27, 31, 35, 39, §6883; C46, 50, 54, §420.234]

**420.235 Tax receipt.** The collector or treasurer shall in all cases make out and deliver to the taxpayer a receipt, which receipt shall contain the description and the assessed value of each lot and parcel of real estate, and the assessed value of personal property, and in case the property has been sold for taxes and not redeemed, the date of such sale and to whom sold, also the amount of taxes, interest, and costs paid; and the collector or treasurer shall give separate receipts for each year; whereupon he shall make proper entries of such payments on the books of his office. [C97, §1016; C24, 27, 31, 35, 39, §6884; C46, 50, 54, §420.235]

C97, §1016, editorially divided  
Referred to in §420.236

**420.236 Payment refused—receipt made conclusive.** The council may provide by ordinance:

1. That no person shall be permitted to pay taxes of any one year until the taxes for the previous years shall be first paid.

2. That the receipt contemplated in section 420.235 shall be conclusive evidence that all taxes and the costs of every kind against the property described in such receipt are paid to the date of such receipt.

3. That for any failure or neglect on the part of the collector, or on the part of anyone acting as collector, he and his bondsmen shall be liable to an action on his official bond for damages sustained by any person or the city for such neglect. [C97,§1016; C24, 27, 31, 35, 39, §6885; C46, 50, 54,§420.236]

**420.237 Certificate of purchase.** The treasurer or collector of taxes, or person authorized to act as collector, shall make, sign, and deliver to the purchaser of any real property sold for the payment of any taxes or special assessments authorized by the provisions of this chapter, or by any law applicable to such cities, a certificate of purchase, which shall have the same force and effect as certificates issued by county treasurers for the sale of property for delinquent county taxes. [C97, §1017; C24, 27, 31, 35, 39,§6886; C46, 50, 54, §420.237]

County treasurer's certificate, §446.29

**420.238 Redemption—terms.** Real property sold under the provisions of this chapter, or by virtue of any power heretofore given, may be redeemed before the time of redemption expires, as hereinafter provided, by payment to the treasurer, collector, or person authorized to receive the same, to be held by him subject to the order of the purchaser on surrender of the certificate, or in case the same is lost and destroyed, on his making affidavit of such fact, and of the further fact that it was not assigned, of the amount for which the same was sold, and ten percent of such amount immediately added as a penalty, with eight percent per annum on the whole amount thus made from the day of sale, and the amount of all taxes, either general or special, with interest and costs, paid at any time by the purchaser or his assignee subsequent to the sale, and a similar penalty of ten percent added as before on the amount of the payment made at any subsequent time, with eight percent interest per annum on the whole of such amount or amounts from the day or days of payment; provided that such penalty for the nonpayment of the taxes at any subsequent time or times shall not attach, unless such subsequent tax or taxes shall have remained unpaid for thirty days after they became delinquent. [C97, §1018; C24, 27, 31, 35, 39,§6887; C46, 50, 54, §420.238]

C97,§1018, editorially divided

**420.239 Certificate of redemption.** The treasurer, collector, or person authorized to receive the same, upon application of any party to redeem real property sold as aforesaid, and being satisfied that such person has a right to

redeem the same, and on payment of the proper amount, shall issue to such party a certificate of redemption, in substance and form as provided for the redemption of property sold for state and county taxes, and shall make proper entry thereof in the sale book, which redemption shall thereupon be deemed complete without further proceedings. [C97,§1018; C24, 27, 31, 35, 39,§6888; C46, 50, 54,§420.239]

Tax redemption, ch 447

**420.240 Redemption statutes applicable.** The provisions of sections 447.7 to 447.13, inclusive, shall, so far as the same shall be applicable, and are not herein changed or modified, apply to sales of real estate for delinquent taxes herein contemplated; but where the words "auditor of the county" or "treasurer" are used in said sections the words "city clerk", "recorder", "auditor", or "person authorized to make out the tax list" and "city collector" or "city treasurer or officer authorized to receive same" shall be substituted. [C97,§1018; C24, 27, 31, 35, 39,§6889; C46, 50, 54,§420.240]

**420.241 Deed—when executed.** Immediately after the expiration of ninety days from the date of service of the notice, as prescribed by sections 447.9 to 448.1, inclusive, the treasurer, collector, or person authorized to act as collector of taxes, shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. [C97,§1019; C24, 27, 31, 35, 39,§6890; C46, 50, 54, §420.241]

C97,§1019, editorially divided

**420.242 Different parcels.** Any number of parcels of real estate bought by one person may be included in one deed, if required by the purchaser. [C97,§1019; C24, 27, 31, 35, 39,§6891; C46, 50, 54,§420.242]

**420.243 Formal execution.** Deeds executed by the city treasurer, collector, or person authorized to act as collector, may be in form substantially as provided by section 448.2, and shall be signed and acknowledged by him in his official capacity. [C97,§1019; C24, 27, 31, 35, 39,§6892; C46, 50, 54,§420.243]

**420.244 Force and effect.** All deeds and conveyances hereafter made and executed on account of any general or special tax sale shall be of the same force and effect as deeds made by the county treasurer as provided in sections 448.3 to 448.5, inclusive, for delinquent county taxes. [C97,§1019; C24, 27, 31, 35, 39,§6893; C46, 50, 54,§420.244]

**420.245 Rights and remedies.** The purchaser as well as the owner of any real property sold on account of such general or special delinquent taxes or assessments shall be entitled to all the rights and remedies which are granted and prescribed by sections 446.35, 446.36, and 448.6 to 448.14, inclusive, but wherever the words "county and county treasurer and auditor" are used, the words "city, city treasurer, city clerk, recorder, auditor, or collector or

officer authorized to act as collector", shall be substituted. [C97,§1019; C24, 27, 31, 35, 39,§6894; C46, 50, 54,§420.245]

**420.246 Tax and deed statutes applicable.** Sections 445.2, 445.47 to 445.51, inclusive, 446.3 to 446.6, inclusive, 446.16, 446.32, 446.33, 448.10 to 448.13, inclusive, are hereby made applicable to cities acting under special charters, except that, where the word "treasurer" is used, there shall be used the words "city collector or treasurer or deputy treasurer or deputy or officer authorized to collect city taxes"; and where the word "auditor" is used, there shall be substituted the words "city clerk or recorder". [C97,§1020; S13,§1020; C24, 27, 31, 35, 39,§6895; C46, 50, 54, §420.246]

**420.247 Failure to obtain deed—cancellation of sale.** After July 4, 1942, section 446.37 shall apply to cities acting under special charter which collect their own taxes, the terms "county auditor" and "county treasurer" in said section to be taken, for the purposes of this section, to refer to the persons performing their respective functions in relation to tax sales by such cities. [C46, 50, 54,§420.247]

**420.248 Penalty or interest on unpaid taxes.** Cities which act under special charters and which levy and collect their own taxes shall not collect any further penalty or interest on general taxes remaining unpaid four years or more after September 30 of the year for which such general taxes are levied. [S13,§1056-a4; C24, 27, 31, 35, 39,§6896; C46, 50, 54,§420.248]

**420.249** Repealed by 54GA, ch 165,§4.

**STREET IMPROVEMENTS AND SEWERS**  
Streets and sewers, alternate method, ch 391A

**420.250 How paid.** The cost of construction, reconstruction, or resurfacing of any street or alley improvement, except as provided in section 391.38, and except the cost of constructing electric light fixtures along any street, and except for that part for which railways or street railways are liable, shall be assessed as a special tax against all lots according to area, so as to include one-half of the privately owned property between the street improved and the next street, whether such privately owned property abut upon said street or not.

In no case except where the district method of assessment is used, shall property situated more than three hundred feet from the street so improved be so assessed.

Such assessment for improvements upon an alley shall be confined to property in the block or blocks in which such alley is located, or, where adjoining property is not platted into blocks, such assessment shall be confined to property within one hundred fifty feet of the alley so improved. [R60,§1064; C73,§§464, 465; C97,§969; C24, 27, 31, 35, 39,§6899; C46, 50, 54, §420.250]

**420.251 Lighting fixtures—assessments.** The cost of constructing and reconstructing electric

light fixtures along any street shall be assessed as a special tax against the property abutting on such street in proportion to the linear front feet thereof. [C27, 31, 35,§6899-a1; C39, §6899.1; C46, 50, 54,§420.251]

**420.252 Road districts—cost at intersections.** The council may divide the city into road districts, or may make each ward a separate road district, or make the entire city into a general district for the purpose of cleaning, sprinkling, and repairing the streets, or for any of said purposes, and provide for the manner of doing the same, and for the payment of the cost thereof out of the district road fund, and shall determine the amount necessary for such purposes in each district, and make appropriations therefor at the time and in the manner in this chapter provided for making appropriations for other purposes; but the cost of making, reconstructing, and repairing streets at the intersection of streets, and one-half of the space opposite streets intersecting and not crossing, and opposite city property in any district, shall be paid from the city improvement fund. [C97, §970; C24, 27, 31, 35, 39,§6900; C46, 50, 54, §420.252]

**420.253 Notice and levy of assessments.** After filing the plat and schedule referred to in section 391.50, the council shall direct the clerk or recorder to give ten days notice, by publishing same three times in a newspaper published in said city, that such plat and schedule are on file in the office of the clerk, fixing a time within which all objections thereto or to the prior proceedings must be made in writing; and the council, having heard the objections and made necessary corrections, shall levy the special assessment as shown in such plat and schedule. [C97,§971; S13,§971, C24, 27, 31, 35, 39,§6901; C46, 50, 54,§420.253]

Publication, ch 618

**420.254 Levy and payment as tax.** The special assessments made in said plat and schedule, as corrected and approved, shall be levied at one time, by resolution, against the property abutting upon or adjacent to such street or sewer, and, when levied and certified, shall be payable as ordinary city taxes. [C97,§972; SS15, §972; C24, 27, 31, 35, 39,§6902; C46, 50, 54, §420.254]

SS15,§972, editorially divided

**420.255 Maturity under waiver.** If the owner of any lot or parcel of land or railroad or street railway, the assessment against which is embraced in any bond or certificate provided for in chapter 396, shall, within thirty days from the date of such assessment, promise and agree in writing, indorsed on such bond or certificate, or in a separate agreement, that, in consideration of having the right to pay his assessment in installments, he will not make any objections of illegality or irregularity, or to the assessment or levy of such tax upon and against his property and will pay said assessment, with interest from the date of acceptance

of the work by the city council at a rate not exceeding six percent per annum, as shall by ordinance or resolution of the council be prescribed, then such tax so levied against the lot or parcel of land or railroad or street railway shall be payable in not less than five nor more than ten equal installments, the first of which may become due and payable, with interest from the date of acceptance of the work by the city council on the whole amount, at a time fixed in the year in which the levy is made, or in the following year, and the other installments shall be due and payable, with interest on the whole amount unpaid, at intervals of one or two years, as fixed by the resolution making the levy, and all of such installments, with interest from the date of acceptance of the work by the city council, shall mature in ten years or less from the time fixed for the payment of the first installment. [C97, §972; SS15, §972; C24, 27, 31, 35, 39, §6903; C46, 50, 54, §420.255]

**420.256 Maturity without waiver.** Where no such agreement is made, the whole of such assessment so levied shall mature at one time, and be due and payable, with interest from the date of acceptance of the work by the city council, as hereinafter provided. [C97, §972; SS15, §972; C24, 27, 31, 35, 39, §6904; C46, 50, 54, §420.256]

**420.257 Collection.** Such assessments shall be duly entered on the tax books of the city, and shall be then due and payable at the office of the collector, or other officer authorized to collect city taxes, and shall be collected, like other special taxes, as provided by ordinance. [C97, §973; C24, 27, 31, 35, 39, §6905; C46, 50, 54, §420.257]

**420.258 Interest.** Such assessment shall bear interest from the date of acceptance of the work by the city council at six percent per annum. Interest on the whole assessment unpaid shall become due and payable at the time fixed by resolution or ordinance for the payment of each installment. [C97, §974; SS15, §974; C24, 27, 31, 35, 39, §6906; C46, 50, 54, §420.258]

**420.259 When delinquent.** Such assessment, and each installment with the interest thereon, shall be paid with accrued costs, at the office of the collector or treasurer, by the owner of the property upon which it is levied, at or before the time said property is sold for taxes or interest or both, and each installment and all interest due and unpaid shall become delinquent at the time fixed by ordinance or resolution, and shall bear such interest from the time of becoming delinquent, as ordinary taxes. [R60, §1068; C73, §478; C97, §975; S13, §975; C24, 27, 31, 35, 39, §6907; C46, 50, 54, §420.259]

S13, §975, editorially divided  
Interest on taxes, §445.39

**420.260 When lien attaches.** All special assessments shall be a lien upon the property against which the same are assessed from the date of the resolution of the council levying the same and shall be prior and superior to all

other liens except ordinary taxes, and shall not be divested by any judicial sale of the property. [R60, §1068; C73, §481; C97, §975; S13, §975; C24, 27, 31, 35, 39, §6908; C46, 50, 54, §420.260]

**420.261 Tax sale.** Property against which any special assessment has been levied for street improvements or sewers may be sold for any part of the principal or interest, due and delinquent, at any regular, adjourned, or special tax sale, in the same manner and under the same forfeiture, penalty, and right of redemption; and certificates and deeds of such sale shall be made in the same manner and with like effect as in sales of property for nonpayment of ordinary taxes. [C97, §976; C24, 27, 31, 35, 39, §6909; C46, 50, 54, §420.261]

C97, §976, editorially divided  
Tax sale, ch 446

**420.262 City as purchaser.** The city may be a purchaser at any tax sale, whether such purchase be for ordinary taxes or for special assessments, and be entitled to all the rights of purchasers at tax sales, with the right to sell and dispose of the same by the council. [C97, §976; C24, 27, 31, 35, 39, §6910; C46, 50, 54, §420.262]

Municipalities as bidders, ch 569

**420.263 Right of purchaser.** The purchaser at any such tax sale shall have the same rights as purchasers at ordinary tax sales, but shall take the property charged with the lien of the remaining unpaid installments and interest. [C97, §976; C24, 27, 31, 35, 39, §6911; C46, 50, 54, §420.263]

Referred to in §420.220

**420.264 Street improvements.** Chapter 391 is applicable to special charter cities insofar as the subject matter of said chapter is not specifically provided for in this chapter. [R60, §§1068, 1069; C73, §§478, 479; C97, §§962, 966-979, 984-986; S13, §§972-e, 979; C24, 27, 31, 35, 39, §6912; C46, 50, 54, §420.264]

**420.265 Plat and estimate.** Before the council orders any street improved or sewer constructed, it shall direct the engineer to prepare a plat, showing the location and general nature of the improvement, the extent thereof, the kinds of material, or, in case of sewers, the size and kinds of material to be used, and an estimate of the cost thereof, and the amount assessable upon any railway or street railway and upon each lot or parcel of land adjacent to such improvement or sewer per square foot in area, and file such plat and estimate in the office of the clerk or recorder. [C97, §965; S13, §965; C24, 27, 31, 35, 39, §6913; C46, 50, 54, §420.265]

**420.266 Publication of notice.** Notice of its intention to make such improvement or sewer shall be published by the city clerk or recorder in three consecutive issues of a newspaper of such city, stating that such plat is on file, and, generally, the nature of the improvement, its location, the kinds of material to be used, and

the estimate of its cost, and fixing the time before which objections thereto can be filed, which time shall not be less than five days after the last publication of such notice. [C97, §965; S13, §965; C24, 27, 31, 35, 39, §6914; C46, 50, 54, §420.266]

**420.267 Passage of resolution.** The council, after considering such objections, shall determine what changes, if any, shall be made in the plan shown by such plat, and may, by resolution, order such improvement or sewer, prescribing generally the extent of the work, the kinds of material, and in case of sewers, the size and kinds of material to be used, when the work shall be completed, the terms of payment, and provide for the publication of notice asking proposals for doing such work, and the time the same will be acted upon. [C97, §965; S13, §965; C24, 27, 31, 35, 39, §6915; C46, 50, 54, §420.267]

**420.268 Remonstrance — vote required.** Whenever a remonstrance shall have been filed with the council within the time limited in its notice of intention signed by sixty percent of the property owners and by the owners of seventy-five percent of the property subject to assessment, said resolution ordering said improvement shall not be passed except by a three-fourths vote of the entire council. [C31, 35, §6915-c1; C39, §6915.1; C46, 50, 54, §420.268]

**420.269 Street improvement fund.** When the whole or any part of the cost of the making or reconstruction of any street improvement shall be ordered paid from the city improvement or grading fund, the council shall have power, after the completion of the work, by resolution, to levy at one time, the whole or any part of the cost of such improvement upon all the taxable property within such city, and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof; but no part of such cost shall be levied against any property owned by the city, county, or state. [C97, §977; C24, 27, 31, 35, 39, §6916; C46, 50, 54, §420.269]

Referred to in §420.271

**420.270 Sewer fund.** When the whole or any part of the cost of the making or reconstruction of any sewer shall be ordered paid from the district or city sewer fund, the council may, after the completion, by resolution, levy at one time the whole or any part of the cost of such sewer upon all taxable real property within such sewer district or within the city, and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment; but no part of such cost shall be levied against the

property owned by the city, county, or state. [C97, §978; C24, 27, 31, 35, 39, §6917; C46, 50, 54, §420.270]

Referred to in §420.271

**420.271 Certificates of levies.** Certificates of levies provided for in sections 420.269 and 420.270 shall be filed with the collector or treasurer, setting forth the amount or percentage and maturity of said taxes and each installment thereof, with a sufficient description of the boundaries of the particular sewer district, and of the real property of the sewer district or city upon which taxes are levied, duly certified as correct by the clerk or recorder, and thereupon said taxes shall be placed on the tax books of the city and collected as provided for the collection of other special taxes. [C97, §977, 978; C24, 27, 31, 35, 39, §6918; C46, 50, 54, §420.271]

**420.272 Repealed by 54GA, ch 165, §4.** See ch 358; also §391.12.

**420.273 Relevy.** When, by reason of non-conformity to any law or ordinance, or by reason of any omission, informality, or irregularity, any special tax or assessment is invalid, or is adjudged irregular, the council shall have power to correct the same by resolution or ordinance, including the reordering of the work and the preliminary notice, and may reassess and relevy the same with the same effect and force as if done at the proper time and in the manner provided by law or by resolution or ordinance relating thereto; and when so corrected it shall be a lien upon the property from the same time and in the same manner and to the same extent as if the original assessment and levy had been in all respects legal. [C97, §980; C24, 27, 31, 35, 39, §6920; C46, 50, 54, §420.273]

Referred to in §420.274

**420.274 Correction.** When, in making any special assessment, any property is assessed too high or too low, the same may be corrected and a reassessment and relevy made, and any taxes collected in excess of the proper amount shall be refunded. The corrected assessment shall be a lien on the lots and parcels of land the same as the original, and shall be certified by the clerk or recorder to the collector or treasurer in the same manner, and, so far as possible, be collected in the same installments, draw interest at the same rates, and be enforced in the same manner as the original assessments. Any provisions of law, resolution, or ordinance, specifying a time when or order in which acts shall be done in the proceedings which may result in any special assessment, shall be taken to be subject to the qualification of this and section 420.273. [C97, §981; C24, 27, 31, 35, 39, §6921; C46, 50, 54, §420.274]

**420.275 Certification—lien.** All special assessments, where no other provision is made, shall be levied by the council, and a copy filed with the clerk or recorder, and entered upon the tax book of the collector or treasurer, and



be a lien upon the property against which the same is assessed from the date of the levy of such assessment, and shall be prior to all other liens except ordinary taxes, and shall not be divested by any judicial or tax sale. The lien of different special assessments shall take priority in the order of their levy. [R60,§1068; C73,§478; C97,§982; C24, 27, 31, 35, 39,§6922; C46, 50, 54,§420.275]

C97,§982, editorially divided  
Referred to in §420.220

**420.276 Interest—delinquency.** Special assessments shall bear interest at the rate of six percent per annum from the date of the levy, unless otherwise provided, and shall become delinquent thirty days after the levy, and be collected in the same manner, and, when delinquent, they shall bear the same interest, with the same penalties, as ordinary taxes. [R60, §1068; C73,§481; C97,§982; C24, 27, 31, 35, 39, §6923; C46, 50, 54,§420.276]

Collection of taxes, ch 445

**420.277 Tax sale—procedure.** The property upon which any special assessment is a lien, where not otherwise provided, shall be sold for delinquent assessments and interest in the same manner, and with the same force and effect, as property sold for ordinary delinquent city taxes; and tax sale certificates, certificates of redemption from tax sales, and tax deeds shall be made in the same way and with the same force and effect as in sales for ordinary taxes. [C97,§983; C24, 27, 31, 35, 39,§6924; C46, 50, 54,§420.277]

Tax sale, ch 446

**420.278 Call for bonds or certificates.** For the purpose of providing for the payment of the assessed cost of any street improvement or sewer which has been, or is to be, assessed upon the property abutting thereon or adjacent thereto, including railways or street railways liable for the payment thereof, the council is authorized from time to time, as the work progresses or is completed, to make requisition on the mayor for the issuance of bonds or certificates, as herein provided, in such denominations as shall be deemed best, in anticipation of the deferred payment of the taxes levied or to be levied for such improvement. [C97, §987; C24, 27, 31, 35, 39,§6925; C46, 50, 54, §420.278]

C97,§987, editorially divided

**420.279 Mayor to execute bonds.** It shall be the duty of the mayor to make and execute bonds or certificates accordingly, to an amount not exceeding the cost and expense of such improvement to be actually assessed on the property liable for the payment of the same. [C97,§987; C24, 27, 31, 35, 39,§6926; C46, 50, 54, §420.279]

**420.280 Requirements of bonds.** The bonds shall bear the name of the street, place, or district improved, or in which any sewer is constructed, which street or place shall be particularly described in the resolution authoriz-

ing such issue, and such bonds shall be signed by the mayor, countersigned by the clerk or recorder, and sealed with the corporation seal, and shall bear the same date and be payable at the time fixed in said resolution, and be redeemable at any time at the option of the city, and shall bear interest at a rate not exceeding five percent per annum, payable semiannually. [C97,§987; C24, 27, 31, 35, 39, §6927; C46, 50, 54,§420.280]

**420.281 Form of bonds.** The bonds shall be substantially in the following form:

The city of . . . . ., in the state of Iowa, promises to pay, as hereinafter stated, to the bearer hereof, on the . . . . . day of . . . . ., or at any time before that date, the sum of . . . . . dollars, with interest thereon at the rate of . . . . . percent per annum, payable on the presentation and surrender of the interest coupons hereto attached. Both principal and interest of this bond are payable at the . . . . . bank in the city of . . . . ., state of . . . . . This bond is issued by the city of . . . . . pursuant to and by virtue of the laws of the state of Iowa, and the ordinance of said city passed in accordance therewith, and in accordance with a resolution of the council of said city, duly passed on the . . . . . day of . . . . ., A.D. . . . . . This bond is one of a series of bonds of like tenor, date, and amount, numbered from . . . . . to . . . . ., and issued for the purpose of defraying the cost of improving, curbing, and paving a portion of . . . . . street or streets in said city (or constructing a sewer on . . . . . street) as described in said resolution, which cost is assessable to and levied on the property along said improvements, and is made by said law a lien on all abutting or adjacent property, and payable in annual installments, with interest on all deferred payments at the rate of five percent per annum, and this bond is payable only out of the money derived from the collection of said special tax, and said money can be used for no other purpose. And it is hereby certified and recited that all the acts, conditions and things required to be done, precedent to and in the issuing of this series of bonds, have been done, happened, and performed, in regular and due form, as required by said law and ordinance; and for the assessment, collection, and payment hereon of said special tax, the full faith and diligence of said city of . . . . . are hereby irrevocably pledged.

In testimony whereof, the city of . . . . ., by its city council, has caused this bond to be signed by its mayor and countersigned by its city clerk, with the seal of said city affixed, this . . . . . day of . . . . ., A.D. . . . .

.....  
Mayor.  
.....  
City Clerk.

Coupon  
No. .... \$.....  
On the . . . . . day of . . . . . the city



of ..... , Iowa, promises to pay to bearer, as provided in said bond, the sum of ..... dollars, at the ..... bank in the city of ..... , being..... months interest due that day on its improvement bond No. .... , dated ..... A.D. ....

Mayor.

Countersigned ..... City Clerk. [C97,§987; C24, 27, 31, 35, 39,§6928; C46, 50, 54, §420.281]

**420.282 Duty to levy, collect, and apply.** It shall be the duty of the city, its council and officers, to comply with the requirements of this chapter in the issuance of said bonds or certificates, and to assess and levy upon the property liable therefor the cost and expenses of such improvement or improvements, and to collect the same, and to apply the proceeds to the redemption of such bonds and certificates, and to no other purpose. [C97,§987; C24, 27, 31, 35, 39,§6929; C46, 50, 54,§420.282]

**420.283 Trust fund—liability of city.** Said bonds and certificates shall be payable only out of the fund derived from such assessment. The city shall not be obliged to appropriate money from any other fund to the payment of such bonds or certificates or any part of the same. [C97,§987; C24, 27, 31, 35, 39,§6930; C46, 50, 54,§420.283]

**420.284 Sewer bonds and certificates.** Chapter 396 is applicable to special charter cities insofar as the subject matter of said chapter is not specifically provided for in this chapter. [C97,§§978, 988, 990; C24, 27, 31, 35, 39,§6931; C46, 50, 54,§420.284]

For rule of construction of section 396.22, see 50GA, ch 181,§§

**420.285 Limitation of action.** No action shall be brought, questioning the legality of any street improvement or sewer certificates or bonds, from and after three months from the time the issuance of such certificates or bonds is ordered by the proper authority. [C97,§989; C24, 27, 31, 35, 39,§6932; C46, 50, 54,§420.285]

Similar provisions, §§408.15, 461.23, 463.23, 464.12

AMENDMENT OF CHARTER

**420.286 Procedure.** On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city or town election. At least ten days before such election the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclama-

tion to be published in a newspaper published therein, or, if there be none, he shall cause the same to be posted in five public places in such city. On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws. [R60,§1141; C73,§548; C97, §1047; C24, 27, 31, 35, 39,§6933; C46, 50, 54, §420.286]

Public measures submitted to voters, §49.43 et seq.

**420.287 Proclamation of result.** If a majority of the votes cast be in favor of adopting said amendment, the mayor shall issue his proclamation accordingly; and the amendment shall thereafter constitute a part of said charter. [R60,§1142; C73,§549; C97,§1048; C24, 27, 31, 35, 39,§6934; C46, 50, 54,§420.287]

**420.288 Submission at special election.** The legislative body of said city may submit any amendment to the vote of the people as aforesaid at any special election, provided one-half of the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election. [R60,§1143; C73,§550; C97,§1049; C24, 27, 31, 35, 39,§6935; C46, 50, 54, §420.288]

ABANDONMENT OF CHARTER

**420.289 Abandonment authorized.** Any city or town incorporated by special charter may abandon its charter and organize under the provisions of the general law, with the same territorial limits, by pursuing the course hereinafter prescribed. [C73,§434; C97,§631; C24, 27, 31, 35, 39,§6936; C46, 50, 54,§420.289]

**420.290 Petition—election.** Upon a petition of legal voters, equaling ten percent of the number voting at the last preceding municipal election in any such city or town, to the council, praying that the question of abandoning its charter be submitted to the legal voters, the council shall immediately direct a special election to be held at which such question shall be decided, specifying at the same time the time and place of holding the same, and appointing the judges and clerks of the election. [C73,§435; C97,§632; C24, 27, 31, 35, 39, §6937; C46, 50, 54,§420.290]

**420.291 Notice.** The mayor, or, in case there is no mayor, the president of the council, shall at once issue a proclamation giving notice of such election, of the question to be submitted to the electors, and of the time and place of holding the election, which proclamation shall be published, once each week, for four consecutive weeks in some newspaper published in such city or town, and, if there is none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city or town, one of which shall be on the door of the mayor's office. [C73,§436; C97, §633; S13,§633; C24, 27, 31, 35, 39,§6938; C46, 50, 54,§420.291]

Publication, ch 618

**420.292 Submission—cavass.** At such election the proposition to be submitted shall be: "Shall the proposition to abandon the special charter of (naming the city or town) be adopted?" and the proposition shall be printed and placed upon the ballots, and the election shall be conducted in the same manner, as provided with respect to like or similar propositions in the title on elections. The abstract of votes shall be returned to the council or board of trustees, who shall canvass the same and declare the result, which shall be entered on the journal. [C73,§437; C97,§634; C24, 27, 31, 35, 39,§6939; C46, 50, 54,§420.292]

**420.293 Officers elected—ordinances—resubmission.** If a majority of the votes cast be in favor of the adoption of the proposition, the charter shall be abandoned. Prior to the holding of the next succeeding city election, the mayor shall issue his proclamation and an election shall be held and officers chosen in the city or town under the provisions of the chapter relating to the election of officers for cities or towns of the class to which the corporation will belong when the charter is abandoned. Upon the election and qualification of such officers, the charter of the city or town shall be deemed abandoned, and it shall be held organized under chapter 362. All ordinances in force at the time of the abandonment of the charter not inconsistent or in conflict with the laws of the state shall remain in force until amended or repealed. If a majority of the votes be against the abandonment of the charter, the question shall not be again submitted until after the expiration of one year from the time of such election. [C73,§438; C97,§635; C24, 27, 31, 35, 39,§6940; C46, 50, 54,§420.293]

**420.294 Delinquent taxes.** In special charter cities or towns accepting the provisions of the general incorporation laws, all delinquent taxes remaining unpaid upon the tax books thereof, except such as were levied to pay indebtedness created to take stock or aid in the building of railways, shall be certified at the time, and collected and paid over as provided in the title relating to taxation. [C73,§495; C97, §636; C24, 27, 31, 35, 39,§6941; C46, 50, 54, §420.294]

**420.295 Rights and liabilities.** All rights and property of every description which were vested in any such city or town under its former organization shall vest in the same under the organization herein contemplated, and no right or liability, either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change; but when a different remedy is given by this title, which can be made properly applicable to any right existing at the time such change is made, the same shall be cumulative to the remedies before provided, and may be used accordingly. [C73,§439; C97,§637; C24, 27, 31, 35, 39,§6942; C46, 50, 54,§420.295]

**420.296 Funds.** When a special charter city or town shall abandon its charter the funds

which it may then have on hand shall be transferred to the appropriate funds under its new organization in such proportions as the council shall determine. [C24, 27, 31, 35, 39, §6943; C46, 50, 54,§420.296]

**PUBLIC UTILITIES OWNED BY CERTAIN CITIES**

**420.297 Management.** In special charter cities having a population of less than twenty-five thousand owning two or more public utility plants and works, as provided for under chapter 397\*, such works and plants shall be managed, operated, extended and controlled by a co-ordinated board of trustees which shall be composed of five resident electors appointed for the term of five years by the mayor of said city. When once established such cities shall continue under the provisions hereof regardless of change of population. [C31, 35,§6943-c1; C39,§6943.001; C46, 50, 54,§420.297]

Referred to in §420.304  
\*Section 420.121 repealed by 54GA, ch 151,§57 and ch 165, §4 and chapter 397 made applicable by §420.41

**420.298 Appointment—term.** After the authorization of the purchase or erection of such works or plants by the electors of such city, in the manner provided by law, the mayor thereof shall thereafter appoint such board of trustees, the first appointees thereof to hold office for the following designated terms, namely:—One for one year, one for two years, one for three years, one for four years and one for five years. [C31, 35,§6943-c2; C39,§6943.002; C46, 50, 54,§420.298]

Referred to in §420.304

**420.299 Vacancies.** All vacancies occurring on said board shall be filled by the mayor as provided by section 397.32.\* [C31, 35,§6943-c3; C39,§6943.003; C46, 50, 54,§420.299]

Referred to in §420.304  
\*Section 420.144 repealed by 54GA, ch 165,§4 and chapter 397, section 397.32 made applicable by §420.41

**420.300 Compensation.** The compensation of said trustees shall not be more than six hundred dollars per annum to each member of said board. [C31, 35,§6943-c4; C39,§6943.004; C46, 50, 54,§420.300]

Referred to in §420.304

**420.301 Bonds.** Each of said trustees shall execute and furnish to the city an official bond in the penal sum of five thousand dollars to be approved by the mayor, and filed with the city clerk. The premium on such bonds, if any, shall be paid pro rata from the funds of said plants or works. [C31, 35,§6943-c5; C39, §6943.005; C46, 50, 54,§420.301]

Referred to in §420.304

**420.302 Removals.** Such trustees may be removed as provided in chapter 66.\* [C31, 35, §6943-c6; C39,§6943.006; C46, 50, 54,§420.302]

Referred to in §420.304  
\*Section 420.147 repealed by 54GA, ch 165,§4 and chapter 66 made applicable by §420.41

**420.303 Powers and duties.** The said board of trustees shall have and exercise all of the powers, duties and obligations enumerated in and conferred upon such boards by chapters

397, 398, 399, 401 and this chapter appertaining to heating plants, waterworks, gasworks, electric light or electric power plants, and said board of trustees may anticipate the revenues of such works and plants for a period not to exceed three years for the operation, extension, betterment and improvement of such works and plants. [C31, 35,§6943-c7; C39,§6943.007; C46, 50, 54,§420.303]

Referred to in §420.304

**420.304 Vacancies declared.** To effectuate the purposes and provisions of sections 420.297 to 420.303, inclusive, the mayor of said city shall declare all of the existing offices of such trustees vacant. [C31, 35,§6943-c8; C39, §6943.008; C46, 50, 54,§420.304]

Omnibus repeal, 43GA ch 192

# **TAXATION**

# TITLE XVI

## TAXATION

### CHAPTER 421

#### STATE TAX COMMISSION

- |        |                         |        |                            |
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**421.1 Creation of commission.** There is hereby created a commission composed of three members, to be designated as the state tax commission. [C31, 35,§6943-c11; C39,§6943.010; C46, 50, 54,§421.1]

Assistant attorney general assigned, §13.5

**421.2 Appointment.** The members of said commission shall be appointed by the governor with the consent of two-thirds of the senate in executive session. [C31, 35,§6943-c12; C39, §6943.011; C46, 50, 54,§421.2]

Confirmation by senate, §2.40

**421.3 Qualifications.** The persons appointed as members of said commission shall be such as possess knowledge of the subject of taxation and skill in matters pertaining thereto. Not more than two members of said commission shall belong to the same political party. [C31, 35,§6943-c13; C39,§6943.012; C46, 50, 54,§421.3]

**421.4 Prohibitions.** No person appointed as a member of said commission shall, while holding such office, hold any other office under the laws of the United States or of this state or of any other state. Each member of said commission shall devote his entire time to the duties of his office and shall not hold any position of profit, engage in any occupation or business interfering with or inconsistent with his duties, or serve on or under any committee of any political party or contribute to the campaign fund of any person or political party. [C31, 35,§6943-c14; C39,§6943.013; C46, 50, 54,§421.4]

**421.5 Tenure of office.** Each full-time member shall serve for six years from the first day

in July of the year of appointment. [C31, 35, §6943-c15; C39,§6943.014; C46, 50, 54,§421.5]

**421.6 Full-time appointment.** The governor shall, within sixty days following the organization of each regular session of the general assembly, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to the member of said commission whose term of office will expire on the first day of July next thereafter. [C31, 35,§6943-c16; C39,§6943.015; C46, 50, 54,§421.6]

**421.7 Vacancies.** In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy shall occur, with the consent of two-thirds of the members of the senate in executive session. If such appointment be made when the general assembly is not in regular session, the appointee shall hold his office until the first Monday in February during the next biennial session of the general assembly, when, if such appointment is not confirmed by the senate, the office shall become vacant, and on or before the last Monday of the same month the governor, with the consent of two-thirds of the members of the senate in executive session, shall appoint a suitable person to fill such vacancy for the unexpired term. A person appointed to fill a vacancy shall take his office immediately upon qualifying. [C31, 35,§6943-c17; C39,§6943.016; C46, 50, 54,§421.7]

**421.8 Salary.** Each member of said commission shall receive a salary of four thousand five hundred dollars a year, payable in the

same manner as the salaries of other state officers. [C31, 35,§6943-c18; C39,§6943.017; C46, 50, 54,§421.8]

See biennial salary Act

**421.9 Organization.** The commission shall elect one of its members to serve as chairman of the commission for a period of one year, who shall sign on behalf of the commission all orders, subpoenas, warrants, and other documents of like character issued by the commission. The commission may elect a vice-chairman who shall act in the absence or inability of the chairman to act. [C31, 35,§6943-c19; C39, §6943.018; C46, 50, 54,§421.9]

**421.10 Office—quorum—sessions.** Said commission shall have its office at the seat of government of this state. A majority of said commission shall constitute a quorum for the transaction of business. The commission shall be deemed to be in continuous session and open for the transaction of business every day except Sundays and legal holidays, and the session of said commission shall stand and be deemed to be adjourned from day to day without formal entry thereof on its record. [C31, 35,§6943-c20; C39,§6943.019; C46, 50, 54,§421.10]

**421.11 Meetings.** The commission may hold sessions in conducting investigations at any place within the state when deemed necessary to facilitate and render more thorough the performance of its duties, and for that purpose one member may conduct the same but shall submit a written report of proceedings in writing to the commission for its findings. [C31, 35,§6943-c21; C39,§6943.020; C46, 50, 54, §421.11]

**421.12 Secretary.** The commission may appoint a secretary, and may employ such other assistants and employees as may be included in the budget submitted by said commission to the comptroller for the payment of the compensation for which money has been provided by appropriation. [C31, 35,§6943-c22; C39, §6943.021; C46, 50, 54,§421.12]

**421.13 Duties of secretary.** The secretary shall:

1. Keep full and correct minutes of all hearings, transactions, and proceedings of said commission.
2. Keep an assessment record, wherein shall be recorded the detailed proceedings relating to valuations and assessments of properties made, taxes levied, and levies determined by said commission.
3. Certify to the several county auditors all property assessments and levies so made by the commission, when such certification is required by law.
4. When the commission is arriving at values for taxable purposes, so keep the records that they shall show the members making the various motions, the amounts such motions designate, the values undertaken to be fixed there-

by, the negative and affirmative votes thereon, and the names of the members voting.

5. Perform such other duties as may be required by said commission. [C31, 35,§6943-c23; C39,§6943.022; C46, 50, 54,§421.13]

**421.14 Rules and regulations.** The commission shall have power to establish all needful rules not inconsistent with law for the orderly and methodical performance of its duties, and to require the observance of such rules by those having business with or appearing before said commission. [C31, 35, §6943-c24; C39,§6943.023; C46, 50, 54,§421.14]

**421.15 Seal.** The commission shall have an official seal, and orders or other papers executed by it may, under its direction, be attested, with its seal affixed, by the secretary. [C31, 35,§6943-c25; C39,§6943.024; C46, 50, 54, §421.15]

**421.16 Expenses.** The members of the commission, secretary and assistants shall be entitled to receive from the state their actual necessary expenses while traveling on the business of the commission; such expenditures to be sworn to by the party who incurred the expense, and approved by a majority of the members of the commission, and allowed by the state comptroller. Provided, however, that no such expense shall be allowed the members, the secretary or employees of the commission while in the city of Des Moines or traveling between their homes and the city of Des Moines. [C31, 35,§6943-c26; C39,§6943.025; C46, 50, 54,§421.16]

**421.17 Powers and duties.** In addition to the powers and duties transferred to the state tax commission, said commission shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards of assessment and levy in the performance of their official duties, in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied thereon be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to co-operate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The state tax commission shall have the power to order the reassessment of all or part of the property in any taxing district in any year. Such reassessment shall be made by the local assessor according to law under the direction of the state tax commission and the cost thereof shall be paid in the same manner as the cost of making an original assessment.

The state tax commission shall determine the degree of uniformity of valuation as between the various taxing districts of the state and shall have the authority to employ com-

petent personnel for the purpose of performing this duty.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. It shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which it deems necessary or expedient for the use or guidance of any of the officers over which it is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Provided, that employees of the state tax commission shall not during their regular hours of employment engage in the preparation of tax returns for individuals, except in connection with a regular audit thereof.

6. To require city, town, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the commission in such form and upon such blanks as the commission may prescribe.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the commission shall have the authority to investigate or determine. Provided, however, that no bank or loan and trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or loan and trust company, and was necessary and proper to the discharge of the duty of said bank or loan and trust company in relation to such business transaction. This proviso shall be additional to other provisions

of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the commission issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the commission, and members or employees thereof, may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the state tax commission shall determine are just and necessary; to direct and order any county board of equalization to raise or lower the valuation of the property, real or personal, in any township, town, city, or taxing district, to order and direct any county board of equalization to raise or lower the valuation of any class or classes of property in any township, town, city, or taxing district, and generally to make any order or direction to any county board of equalization as to the valuation of any property, or any class of property, in any township, town, city, county, or taxing district, which in the judgment of the commission may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law.

The state tax commission shall have the power to correct errors or obvious injustices in the assessment of any individual property, but it shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and no order of the state tax commission affecting any valuation shall be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which such order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. Any increase in individual valuations ordered by the tax commission shall be subject to right of appeal to the courts under the same procedure as that provided in the case of increases made by local boards of review.

The state tax commission shall have the power to order made effective reassessments or revaluations in any taxing district as to taxes levied during the current year for collection the following year, and it may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district, such orders to be effective as to taxes levied during the

current year for collection during the following year.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in its judgment are for the best interest of the state and will eliminate the necessity of any millage levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the commission, covering the subject of assessment and taxation, the result of the investigation of the commission, its recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. To procure in such manner as the commission may determine any information pertaining to the discovery of property which is subject to taxation in this state, and which may be obtained from the records of another state, and may furnish to the board or proper officers of another state, any information pertaining to the discovery of property which is subject to taxation in such state as disclosed by the records in this state.

16. To call upon any state department or institution for technical advice and data which may be of value in connection with the work of assessment and taxation.

17. To certify to the state comptroller on January 1 of each year the aggregate of each state tax for each county for said year. [C97, §§1010, 1011; C24, 27, §§6868, 6869; C31, 35, §§6868, 6869, 6943-c27; C39, §§6868, 6869, 6943.026; C46, §§420.209, 420.210, 421.17; C50, 54, §421.17; 56GA, ch 207, §1]

Biennial report to governor, §17.3

**421.18 Duties of public officers.** It shall be the duty of all public officers of the state and of all municipalities to give to the commission information in their possession relating to taxation when required by the commission, and to co-operate with and aid the commission in its efforts to secure a fair, equitable, and just enforcement of the taxation and revenue

laws. [C31, 35, §6943-c28; C39, §6943.027; C46, 50, 54, §421.18]

**421.19 Counsel.** It shall be the duty of the attorney general and of the county attorneys in their respective counties to commence and prosecute actions, prosecutions, and complaints, when so directed by the commission and to represent the commission in any litigation in which it may become involved in the discharge of its duties. [C31, 35, §6943-c29; C39, §6943.028; C46, 50, 54, §421.19]

Assistant attorney general assigned, §13.5

**421.20 Actions.** The commission may bring actions of mandamus or injunction or any other proper actions in the district court or before any judge thereof, to compel the performance of any order made by said commission or to require any board of equalization or any other officer or person to perform any duty required by this chapter. Said commission shall select the district court in the county which is most accessible to the subject matter, and the defendant or defendants in any such action; but no removal of the question to any other county shall be had by any defendant in consequence of his not being a resident of the county where the action is brought or because the subject matter shall not be located in the county in which said action may be brought. [C31, 35, §6943-c30; C39, §6943.029; C46, 50, 54, §421.20]

Garnishment proceedings for collection of tax, §§626.29-626.31

**421.21 Administration of oaths.** Each member of the commission and each employee thereof when duly authorized by the commission shall have the power to administer all oaths authorized and required under the provisions of this chapter.

Each county treasurer, each deputy treasurer, and each automobile clerk of each county treasurer's office shall have the power to administer all oaths authorized and required by the commission in connection with the issuance in this state of an original certificate of registration for motor vehicles and trailers and concerning the collection of, or exemption from, use tax thereon. The personal signature of the person administering such an oath shall be subscribed to the jurat thereof and the seal of the county treasurer shall be affixed thereto. C31, 35, §6943-c31; C39, §6943.030; C46, 50, 54, §421.21]

**421.22 Service of orders.** Any sheriff, constable, or other person may serve any subpoena or order issued under the provisions of this chapter. [C31, 35, §6943-c32; C39, §6943.031; C46, 50, 54, §421.22]

**421.23 Fees and mileage.** The fees and mileage of witnesses attending any hearing of the commission, pursuant to any subpoena, shall be the same as those of witnesses in civil cases in district court. [C31, 35, §6943-c33; C39, §6943.032; C46, 50, 54, §421.23]

Fees and mileage, §622.69  
Omnibus repeal and constitutionality clause, 48GA, ch 205, §27



## CHAPTER 422

## INCOME, CORPORATION, AND SALES TAX

Referred to in §§78.2, 312.1, 423.4, 423.8

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## DIVISION I. INTRODUCTORY PROVISIONS

**422.1 Classification of chapter.** The provisions of this chapter are herein classified and designated as follows:

- Division I Introductory provisions.  
 Division II Personal net income tax.  
 Division III Business tax on corporations.  
 Division IV Retail sales tax.  
 Division V Administration.  
 Division VI Allocation of revenues.

[C35,§6943-f1; C39,§6943.033; C46, 50, 54,§422.1]

**422.2 Purpose or object.** This chapter shall be known as the "Property Relief Act", and

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## DIVISION VI

## ALLOCATION OF REVENUES

- 422.69 Repealed by 52GA, ch 230,§3.  
 422.70 Repealed by 53GA, ch 192,§1.

shall have for its purpose the direct replacement of taxes already levied or to be levied on property to the extent of the net revenue obtained from the taxes imposed herein, which shall be apportioned back to the credit of individual taxpayers on the basis of the assessed valuation of taxable property as provided in division VI of this chapter. [C35, §6943-f2; C39,§6943.034; C46, 50, 54,§422.2]

See §§249.36, 422.62, 425.1(1)

**422.3 Definitions controlling chapter.** For the purpose of this chapter and unless otherwise required by the context:

1. The word "commission" means the state tax commission.

2. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter. [C35,§6943-f3; C39,§6943.035; C46, 50, 54,§422.3]

#### DIVISION II. PERSONAL NET INCOME TAX

**422.4 Definitions controlling division.** For the purpose of this division and unless otherwise required by the context:

1. The words "taxable income" mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the case of estates or trusts, the words "taxable income" mean the taxable income (without a deduction for personal exemption) as computed for federal income tax purposes under the Internal Revenue Code of 1954, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing said taxable income and minus federal income taxes as provided in section 422.9.

2. The word "person" includes individuals and fiduciaries.

3. The words "income year" mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

4. The words "tax year" mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

5. The words "fiscal year" mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

7. The word "paid", for the purposes of the deductions under this division, means "paid or accrued" or "paid or incurred", and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term "received", for the purpose of the computation of net income under this division, means "received or accrued", and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

8. The word "resident" applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

9. The words "foreign country" mean any jurisdiction other than one embraced within the United States. The words "United States", when used in a geographical sense, include the states, the territories of Alaska and Hawaii,

the District of Columbia, and the possessions of the United States.

10. The word "individual" means a natural person; and where an individual is permitted to file as a corporation, under the provisions of the Internal Revenue Code of 1954, such fictional status shall not be recognized for purposes of this chapter, and such individual's taxable income shall be computed as required under the provisions of the Internal Revenue Code of 1954 relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

11. The term "head of household" shall have the same meaning as provided by the Internal Revenue Code of 1954.

12. The word "nonresident" applies only to individuals, and includes all individuals who are not "residents" within the meaning of subsection 8 hereof.

13. The term "withholding agent" means any individual, fiduciary, corporation, association, or partnership in whatever capacity acting, including all officers and employees of the state or of any municipal corporation or political subdivision of the state, that is obligated to pay or has control of paying to any nonresident any "gross income", within the meaning of section 422.8, in excess of fifteen hundred dollars in any calendar year.

14. The term "Internal Revenue Code of 1954" means Internal Revenue Code of 1954, as amended to and including December 31, 1956. [C35,§6943-f4; C39,§6943.036; C46, 50, 54, §422.4; 56GA, ch 208,§§1-3; 57GA, 209,§1; ch 210, §§1, 3]

Referred to in §422.32  
See 56GA, ch 208,§21 for effective date  
Provisions retroactive to Jan. 1, 1957, 57GA, ch 210,§4

**422.5 Tax imposed—applicable to federal employees.** A tax is hereby imposed, beginning the first day of January, 1934, upon every resident of the state, and beginning on the first day of January, 1937, upon that part of the taxable income of any nonresident which is derived from any property, trust, or other source within this state, including any business, trade, profession, or occupation carried on within this state, which tax shall be levied, collected, and paid annually upon and with respect to his entire taxable income as herein defined at rates as follows:

1. On the first one thousand dollars of taxable income, or any part thereof, three-fourths of one percent.

2. On the second thousand dollars of taxable income, or any part thereof, one and one-half percent.

3. On the third thousand dollars of taxable income, or any part thereof, two and one-fourth percent.

4. On the fourth thousand dollars of taxable income, or any part thereof, three percent.

5. On the fifth thousand dollars of taxable income, or any part thereof, three and three-fourths percent, and on all taxable income in

excess of five thousand dollars, three and three-fourths percent.

The tax herein levied shall be computed and collected as hereinafter provided.

The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein from and after January 1, 1939. [C35,§6943-f5; C39,§6943.037; C46, 50, 54, §422.5; 56GA, ch 208,§4]

Referred to in §422.6

**422.6 Income from estates or trusts.** The tax imposed by section 422.5 shall apply to and become a charge against estates and trusts with respect to their taxable income, and the rates shall be the same as those applicable to individuals. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereon. [C35,§6943-f6; C39, §6943.038; C46, 50, 54,§422.6; 56GA, ch 208,§5]

Referred to in §422.14

**422.7 "Net income"—how computed.** The term "net income" means the adjusted gross income as computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the state tax commission, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid. [C35,§6943-f7; C39, §6943.039; C46, 50, 54,§422.7; 56GA, ch 208,§6]

Referred to in §422.4

**422.8 Allocation of income earned in Iowa and other states.** Under rules and regulations prescribed by the state tax commission, net income of individuals shall be allocated as follows:

1. In the case of resident taxpayers, net income from the operation of a business in a state other than Iowa shall be allocated to such other state if a state income tax has been or will be paid on said net income to said other

state and if said other state allows a similar allocation of net income from the operation of a business outside said other state. Net income from the operation of a business, as used in this section, shall not include salaries, commissions, fees or other remuneration for personal or professional services.

2. In the case of nonresident taxpayers, if any net income is received from a business, trade, profession, or occupation carried on partly within and partly without the state of Iowa, only such portion of said net income as is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state of Iowa shall be allocated to Iowa; income from any property, trust, estate or other source within Iowa shall be allocated to Iowa, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends shall be allocated to Iowa only to the extent to which the same are derived from a business, trade, profession, or occupation carried on within the state of Iowa.

Taxable income of estates and trusts shall be allocated in the same manner. [C35,§6943-f8; C39,§6943.040; C46, 50, 54,§422.8; 56GA, ch 208, §7]

Referred to in §§422.4, 422.9

**422.9 Deductions from net income.** In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction of five percent of the net income after deduction of federal income tax, not to exceed two hundred fifty dollars.

2. The total of contributions, interest, taxes, medical expense, child-care expense, losses and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each; and provided further that where a taxpayer has used an optional standard deduction on his federal return, he shall use the optional standard deduction provided for above.

3. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

4. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa

under the rules and regulations prescribed by the state tax commission. [C35,§6943-f9; C39, §6943.041; C46, 50, 54,§422.9; 56GA, ch 208,§8]

Referred to in §422.4

**422.10 and 422.11** Repealed by 56GA, ch 208,§9.

**422.12 Deductions from computed tax.** There shall be deducted from the tax after the same shall have been computed as set forth in this division, a personal exemption as follows:

1. For a single individual, fifteen dollars.
2. For husband and wife or head of household, thirty dollars.
3. For each dependent, an additional seven dollars fifty cents. As used in this section, the term "dependent" shall have the same meaning as provided by the Internal Revenue Code of 1954.

For the purpose of this section the determination of whether an individual is married shall be made as of the close of his tax year unless his spouse dies during his tax year, in which case such determination shall be made as of the date of such death. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. [C35, §6943-f12; C39,§6943.044; C46, 50, 54,§422.12; 56GA, ch 208,§10]

**422.13 Return by individual.**

1. Every individual having a net income for the tax year from sources taxable under this division, of fifteen hundred dollars or over, if single, or if married and not living with husband or wife; or having a net income for the tax year of two thousand three hundred fifty dollars or over, if married and living with husband or wife, shall make and sign a return.
2. If husband and wife living together have an aggregate net income of two thousand dollars or over, each shall make such a return, unless the income of each is included in a single joint return.
3. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

4. A nonresident taxpayer shall file a copy of his federal income tax return for the current tax year with the return required by this section. [C35,§6943-f13; C39,§6943.045; C46, 50, 54,§422.13; 56GA, ch 208,§§11, 12]

**422.14 Return by fiduciary.**

1. Every fiduciary subject to taxation under the provisions of this division, as provided in section 422.6, shall make and sign a return for the individual, estate or trust for whom or for which he acts, if the taxable income thereof amounts to six hundred dollars or more. A nonresident fiduciary shall file a copy of the federal income tax return for the current tax year with the return required by this section.
2. Under such regulations as the commission

may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this division shall be subject to all the provisions of this division which apply to individuals. [C35,§6943-f14; C39,§6943.046; C46, 50, 54, §422.14; 56GA, ch 208,§§13, 14]

**422.15 Information at source.**

1. Every person or corporation being a resident of or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, amounting to one thousand dollars or over, paid or payable during any year to any individual, whether a resident of this state or not, shall make complete return thereof to the commission, under such regulations and in such form and manner and to such extent as may be prescribed by it.

2. Every partnership including limited partnerships organized under provisions of chapter 545, having a place of business in the state, shall make a return, stating specifically the net income and capital gains (or losses) reported on the federal partnership return, the names and addresses of the partners, and their respective shares in said amounts.

3. Every fiduciary shall make a return for the individual, estate, or trust for whom or for which he acts, and shall set forth in such return the taxable income, the names and addresses of the beneficiaries, and the amounts distributed or distributable to each as reported on the federal fiduciary income tax return. Such return may be made by one or two or more joint fiduciaries. [C35,§6943-f15; C39, §6943.047; C46, 50, 54,§422.15; 56GA, ch 208, §§15, 16]

Referred to in §§422.16, 422.38

**422.16 Withholding agents and nonresidents.**

1. Excepting as provided herein and in section 422.17, every withholding agent shall deduct and withhold in each calendar year five percent of all gross income, in excess of fifteen hundred dollars, which such withholding agent pays, including the five percent so withheld, to any nonresident during such calendar year, provided, however, that on incomes derived entirely from salaries not exceeding four thousand dollars, the amount withheld shall be two percent. In case the nonresident files with the state commission a verified statement, in such form and containing such information as the commission shall prescribe, showing that any income described therein is derived from a source upon which the net income will be less than twenty percent of the gross income, the

commission, if satisfied that such statement is correct, shall give to such nonresident a certificate directing the withholding agent to withhold only one percent of the described income. Upon receipt of such certificate, the withholding agent shall withhold only one percent of the income described in such certificate in excess of seventy-five hundred dollars; and no part of the first seventy-five hundred dollars shall be withheld.

2. Withholding agents shall make returns upon the basis of each calendar year on such forms and at such times throughout the year as the commission shall from time to time prescribe, and shall include therein such information as the commission shall require. The commission shall fix such times for the making of returns and the payment of the amounts withheld as in its judgment are necessary to insure payment of such amounts. Such returns may, in the discretion of the commission, be consolidated with the returns required by section 422.15; and in the discretion of the commission, a withholding agent may be required to make a separate withholding agent's return for every nonresident a portion of whose income is required to be withheld under subsection 1 hereof.

3. At the time of making such returns, the withholding agent shall pay to the commission the entire amount required to be withheld under subsection 1 hereof. Such amounts shall be paid to the commission in the form of remittances payable to the treasurer of state and which shall be transmitted to the state treasurer to be deposited in the state treasury to the credit of a special nonresident income tax fund, which is hereby created for such a purpose. That portion of such fund applicable to the payment of taxes pursuant to subsection 5 hereof shall from time to time be transferred by the state treasurer, upon order of the commission, to the credit of the special tax fund created by section 422.62. Any amounts in such nonresident income tax fund required by subsection 5 hereof to be paid to a nonresident shall be so paid by the state treasurer by means of a warrant drawn by the comptroller at the direction of an authorized employee of the state commission upon such fund to the order of such nonresident, without requiring the nonresident to file a claim for refund.

4. Each nonresident shall make his returns and pay his taxes upon the basis of the calendar year, unless permission is obtained from the commission to report on a different taxable year in cases when he carries on a business of such a nature as to make it impractical to report on the basis of the calendar year. That amount withheld from and paid for each nonresident by the withholding agent for any calendar year shall be credited pursuant to subsection 5 hereof upon the tax due from such nonresident for the same calendar year. In case a taxable year other than the calendar year is authorized the amount so withheld and

paid for the calendar year shall be so credited upon the income tax due for the nonresident's first taxable year ending after the end of such calendar year.

5. In addition to all other income subject to the tax herein imposed, each nonresident shall report in his return all income a portion of which is required to be withheld pursuant to this section, including the portion so withheld. Any amount of the income withheld and paid to the commission by any and all withholding agents shall be credited against the total amount of income tax required to be paid by such nonresident for such year as is provided in subsection 4 hereof. If the amount so withheld and paid to the commission is in excess of the amount of income tax due by such nonresident for such year, the excess shall be paid to the nonresident taxpayer. If the nonresident taxpayer fails to file a return within the time required by law, the commission may consider as the net income of such nonresident the entire gross income of such nonresident, as shown by the returns of all withholding agents, and may assess the tax accordingly pursuant to subsection 2 of section 422.25.

6. All of the provisions of sections 422.21, 422.22, 422.23, and 422.25 to 422.31, inclusive, shall apply to returns and payments by withholding agents and to determination and collection of amounts required to be withheld by withholding agents, and to penalties therefor, as well as to the "taxes" to which such sections expressly relate. [C39,§6943.048; C46, 50, 54, §422.16]

Referred to in §§422.17, 422.38

#### 422.17 Bonds and securities.

1. Any nonresident whose income is subject to the provisions of section 422.16 may file with the commission a bond issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in the amount hereinafter provided, conditioned upon the payment of any tax, interest, and/or penalties which may become due for a named taxable year from such nonresident under the provisions of this division. Such bond shall be made payable to the state of Iowa, and shall be for a term expiring four years after the termination of the taxable year for which it is given. In any action on said bond a certificate signed by the chairman of the commission certifying that a certain amount of taxes, interest, and/or penalties are due and owing by the principal for the taxable year fixed in the bond shall be prima-facie evidence that such amount is due, and the burden of proof shall be upon the principal and/or surety to prove that such amount is not due. The attorney general shall, upon direction of the commission, bring and prosecute actions on said bond in the name of the state of Iowa. The venue for all such actions shall be in Polk county, Iowa.

2. In lieu of such bond, the nonresident may deposit with the commission securities approved by the commission, in the amount hereinafter provided, under a deposit agreement in such form as the commission may prescribe, which agreement shall make such securities collateral security for the payment of any tax, interest and/or penalties which may become due from such nonresident under the provisions of this division and shall authorize the sale of such securities by the commission at public or private sale without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax and/or penalties due.

3. The amount of such bond or the value of such securities shall not be less than the total amount which would be required by subsection 1 of section 422.16 to be withheld from the income for which certificates are sought pursuant to subsection 4 hereof.

4. Any nonresident who has so filed with the commission such bond or securities may, upon making application in such form and containing such information as the commission shall prescribe, obtain a certificate from the commission directed to a named withholding agent authorizing such withholding agent during a specified period to pay to such nonresident without withholding any percentage thereof, any sums which may be due such nonresident not in excess of the amount fixed in such certificate. The commission shall not issue any such certificate unless the amount of the bond and/or the value of the securities deposited with the commission is not less than the total amount which would be required by subsection 1 of section 422.16 to be withheld from the aggregate income fixed in such certificate and all certificates theretofore issued. [C39,§6943.049; C46, 50, 54,§422.17]

Referred to in §§422.16, 422.38

**422.18 Credit for tax payable in state of residence.** Whenever a nonresident taxable under the provisions of this division has become liable to pay an income tax to the state where he resides upon his net income for the taxable year derived from sources within this state and subject to taxation under this division, the commission shall credit the amount of income tax payable by him under this division with such proportion of the tax so payable by him to the state wherein he resides (before deducting any credit therefrom for the income tax payable to this state) as his income subject to taxation under this division bears to his entire income upon which the tax so payable to such other state was imposed; provided that such credit shall be allowed only if the laws of said state (1) grant a substantially similar credit to residents of this state subject to income tax under such laws or (2) impose a tax upon the personal income of its residents derived from sources in this state and exempt from taxation the personal incomes of residents of this state. No credit shall be allowed against the amount of the tax on any income

taxable under this division which is exempt from taxation under the laws of such other state. [C39,§6943.050; C46, 50, 54,§422.18]

Referred to in §422.38

**422.19 Scope of nonresidents tax.** The tax herein imposed upon certain income of nonresidents shall apply to all such income actually received by such nonresident on or after January 1, 1937, regardless of when such income was earned. If the nonresident is reporting on the accrual basis it shall apply to all such income which first became available to the nonresident so that he might demand payment thereof on or after January 1, 1937, regardless of when such income was earned. The duty to withhold herein imposed upon withholding agents shall apply only to amounts paid after June 30, 1937, but all amounts paid between January 1, 1937, and the expiration of thirty days from the effective date of this act\* shall be included in calculating the fifteen hundred dollars or seventy-five hundred dollars, as the case may be, which must be paid before the duty to withhold arises. [C39, §6943.051; C46, 50, 54,§422.19]

Referred to in §422.38

\*47GA, ch 184, effective date, May 28, 1937  
Constitutionality, 47GA, ch 184,§9

**422.20** Repealed by 56GA, ch 208,§17.

**422.21 Form and time of return.** Returns shall be in such form as the commission may, from time to time, prescribe, and shall be filed with the commission on or before the last day of the fourth month after the expiration of the tax year. In case of sickness, absence, or other disability, or whenever, in its judgment, good cause exists, the commission may allow further time for filing returns. The commission shall cause to be prepared blank forms for said returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve the taxpayer from the obligations of making any return herein required. The state tax commission may as far as consistent with the provisions of the Code so draft income tax forms as to conform to the income tax forms of the internal revenue department of the United States government.

The state tax commission is hereby authorized and directed to make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the state tax commission shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were he to specifi-

cally list his allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the commission shall have the power in any case when it deems it necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The commission may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required. [C35,§6943-f17; C39, §6943.053; C46, 50, 54,§422.21; 56GA, ch 209,§1]

Referred to in §§422.16, 422.38

**422.22 Supplementary returns.** If the commission shall be of the opinion that any taxpayer required under this division to file a return has failed to file such a return or to include in a return filed, either intentionally or through error, items of taxable income, it may require from such taxpayer a return or supplementary return in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this division. If from a supplementary return, or otherwise, the commission finds that any items of income, taxable under this division, have been omitted from the original return, it may require the items so omitted to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of this division, whether or not the commission required a return or a supplementary return under this section. [C35,§6943-f18; C39, §6943.054; C46, 50, 54,§422.22]

Referred to in §§422.16, 422.38

**422.23 Return by administrator.** The return by an individual, who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from his estate. In the making of said return, the executor or administrator shall use the same method of computation, either cash or accrual, as was last used by the deceased taxpayer.

The judge of the district court in which the estate of the decedent is probated may, upon application being filed by the executor or administrator setting forth the income received by said estate, fix a time and place for hearing upon said application and prescribe the notice to be given to the state tax commission and

may upon hearing determine whether or not the said estate is subject to income tax and, if the facts warrant such a finding, enter an order relieving said executor or administrator from making an income tax report and order that the said estate is not subject to the payment of income tax. Such order shall not become final until thirty days after the same has been filed with the clerk of the district court and a copy of the order entered by the judge shall be immediately mailed to the state tax commission by said executor or administrator by registered mail and a return filed showing the mailing of the same. [C35,§6943-f19; C39, §6943.055; C46, 50, 54,§422.23]

Referred to in §422.16

**422.24 Installment payments—interest.**

1. The tax may be paid in two installments, each consisting of one-half of the total amount of the tax. The first installment shall be remitted with the return and the second installment shall be paid on or before six months after the date fixed for filing the return; provided, however, that in case the total amount of the tax shall be ten dollars or less, then, and in that case, the whole amount of the tax shall be paid at the time of filing the return.

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate of six percent per annum on one-half of the total tax, from the time when the return was originally required to be filed to the time of payment, shall be added and paid. [C35, §6943-f20; C39, §6943.056; C46, 50, 54,§422.24]

Referred to in §422.39

**422.25 Computation of tax, interest, and penalties.**

1. As soon as practicable and in any event within three years after the return is filed the commission shall examine it and determine the correct amount of tax, and the amount so determined by the commission shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years; and provided further that the period for examination and determination shall be unlimited in the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return. Notwithstanding the periods of limitation for examination and determination heretofore specified, the commission shall have six months from the date of final disposition of any controversy between the taxpayer and the internal revenue service with respect to the particular tax year to make its examination and determination. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the tax commission. If the tax found due shall be greater than the amount theretofore paid, the excess, together with interest and penalty as hereinafter provided shall be paid by the taxpayer within ten days after the

commission shall have given notice thereof to the taxpayer by certified mail.

See 56GA, ch 210,§2 for barred claims

2. In addition to the tax or additional tax as determined by the commission under the provisions of subsection 1 of this section, the taxpayer shall pay interest on such tax or additional tax so determined at the rate of six percent per annum, computed from the date the return was required by law to be filed. In case of failure to file a return, or to pay the tax required to be paid with the filing of the return, on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. In case of willful failure to file a return with intent to evade tax, in lieu of the five percent monthly penalty above provided, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax, and in case of willful filing of a false return with intent to evade tax, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax.

3. If the amount of the tax as determined by the commission shall be less than the amount theretofore paid, the excess shall be refunded with interest after sixty days from the date of payment at six percent per annum under the provisions of such regulations as may be prescribed by the commission.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due.

5. Any person required to supply any information, to pay any tax, or to make, render, or sign any return or supplemental return, who willfully makes any false or fraudulent return, or fails to pay such tax, supply such information, or make, render, or sign such return, with intent to defeat or evade the assessment required by law to be made, shall upon conviction for each such offense be punished by imprisonment in the county jail for a term not exceeding one year or in the state penitentiary for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

6. The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima-facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by

signing a waiver agreement to be provided by the state tax commission. Such agreement shall stipulate the period of extension and the year or years to which such extension applies. It shall further provide that a claim for refund may be filed by the taxpayer at any time during the period of extension. In consideration of such agreement, interest due in excess of thirty-six months on either a tax deficiency or tax refund shall be waived. [C35,§6943-f21; C39,§6943.057; C46, 50, 54,§422.25; 56GA, ch 210, §§1, 2; ch 211,§§1-4; 57GA, ch 211,§§1-6; ch 267, §46]

Referred to in §§422.16, 422.39  
Voluntary confessed omissions before April 30, 1956, see 56GA, ch 211,§4

**422.26 Lien of tax — collection — action authorized.** Whenever any taxpayer liable to pay a tax and/or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commission shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of income tax liens", so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. When satisfied.

The recorder shall indorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The commission shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the commission has filed notice with a county recorder, the commission shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction



on the notice on file in his office and indicate said fact on the index aforesaid.

The commission shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all taxes and/or penalties as soon as practicable after the same become delinquent, except that no property of the taxpayer shall be exempt from the payment of said tax.

The attorney general shall, upon the request of the commission, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and/or penalties, and in such action he shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the commission or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law. [C35,§6943-f22; C39,§6943.058; C46, 50, 54, §422.26]

Referred to in §§422.16, 422.39, 422.56  
Garnishment proceedings for collection of tax, §§626.29-626.31

#### 422.27 Final report of fiduciary—conditions.

1. No final account of a fiduciary shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this division upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the commission and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commission may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. [C35,§6943-f23; C39, §6943.059; C46, 50, 54, §422.27]

Referred to in §§422.16, 422.39  
Fiduciaries' reports, §§638.34, 682.33  
Similar provisions, §§450.58, 682.35

**422.28 Revision of tax.** A taxpayer may appeal to the commission for revision of the tax, interest, and/or penalties assessed against him at any time within ninety days from the date of the notice of the assessment of such tax, additional tax, interest, and/or penalties. The commission shall grant a hearing thereon and if, upon such hearing, it shall determine that the tax, interest, and/or penalties are excessive or incorrect, it shall revise the same according to the law and the facts and adjust the computation of the tax, interest, and/or penalties accordingly. The commission shall

notify the taxpayer by registered mail of its findings and shall refund to the taxpayer the amount, if any, paid in excess of the tax, interest, and/or penalties found by it to be due with interest after sixty days from the date of payment by the taxpayer at six percent per annum. [C35,§6943-f24; C39,§6943.060; C46, 50, 54, §422.28]

Referred to in §§422.16, 422.29, 422.41

#### 422.29 Appeals.

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the income involved was earned or derived or in Polk county, within sixty days after he shall have received notice from the commission of its determination as provided for in section 422.28.

2. The appeal shall be taken by a written notice to the chairman of the commission and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commission as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved. [C35,§6943-f25; C39,§6943.061; C46, 50, 54, §422.29]

Referred to in §§98.29, 422.16, 422.41, 430A.5

**422.30 Jeopardy assessments.** If the commission believes that the assessment or collection of taxes will be jeopardized by delay, the commission may immediately make an assessment of the estimated amount of tax due, together with all interest, additional amounts, or penalties, as provided by law, and demand payment thereof from the taxpayer. If such payment is not made, a distress warrant may be issued or a lien filed against such taxpayer immediately.

The commission shall be permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double

the amount of the tax involved, and with securities satisfactory to the commission. [C35, §6943-f26; C39, §6943.062; C46, 50, 54, §422.30]

Referred to in §§422.16, 422.41, 422.59, 423.23

**422.31 Statute applicable to personal tax.**

All the provisions of subsection 3 of section 422.36 shall be applicable to persons taxable under this division. [C35, §6943-f27; C39, §6943.063; C46, 50, 54, §422.31]

Referred to in §422.16  
 Constitutionality, 56GA, ch 208, §22  
 See 56GA, ch 208, §21 for tax years applicable

**DIVISION III. BUSINESS TAX ON CORPORATIONS**

**422.32 Definitions.** For the purpose of this division and unless otherwise required by the context:

1. The word "corporation" includes joint stock companies, and associations organized for pecuniary profit, except limited partnerships organized under chapter 545.

2. The words "domestic corporation" mean any corporation organized under the laws of this state.

3. The words "foreign corporation" mean any corporation other than a domestic corporation.

4. The term "Internal Revenue Code of 1954" means Internal Revenue Code of 1954, as amended to and including December 31, 1956.

The words, terms, and phrases defined in subsections 1, and 3 to 10, section 422.4, division II, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning. [C35, §6943-f28; C39, §6943.064; C46, 50, 54, §422.32; 57GA, ch 209, §2]

**422.33 Corporate tax imposed.** A tax is hereby imposed upon each corporation organized under the laws of this state, and upon every foreign corporation doing business in this state, annually in an amount equivalent to two percent of the net income received by such corporation during the income year.

1. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if such trade or business is carried on partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business within the state, said net income attributable to the state to be determined as follows:

a. Interest, dividends, rents, and royalties (less related expenses) received in connection with business in the state, shall be allocated to the state, and where received in connection with business outside the state, shall be allocated outside of the state.

b. Net income of the above class having been separately allocated and deducted as above provided, the remainder of the net income of the taxpayer shall be allocated and apportioned as follows:

Where income is derived from business other than the manufacture or sale of tangible personal property, such income shall be specifically allocated or equitably apportioned within and without the state under rules and regulations of the commission.

Where income is derived from the manufacture or sale of tangible personal property, the part thereof attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

The gross sales of the corporation within the state shall be taken to be the gross sales from goods sold and delivered within the state, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

2. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the commission and applied to his business, has operated or will so operate as to subject him to taxation on a greater portion of his net income than is reasonably attributable to business or sources within the state, he shall be entitled to file with the commission a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances with such detail and proof and within such time as the commission may reasonably prescribe; and if the commission shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, it shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment. [C35, §6943-f29; C39, §6943.065; C46, 50, 54, §422.33; 56GA, ch 208, §18]

Referred to in §§422.35, 422.37

**422.34 Exempted corporations and organizations.** The following organizations and corporations shall be exempt from taxation under this division:

1. All state, national, private, co-operative and savings banks, credit unions, title insurance and trust companies, building and loan associations, corporations operating under the provisions of chapter 501, insurance companies

and/or insurance associations, reciprocal or inter-insurance exchanges, fraternal beneficiary associations, now or hereafter organized or incorporated by or under the laws of this state or lawfully operating in the state.

2. Cemetery corporations, organizations and associations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

3. Business leagues, chambers of commerce, labor unions and auxiliary organizations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

4. Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

5. Clubs, organizations, or associations organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

6. Farmers associations and fruit growers associations, or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expense, on the basis of the quantity of produce furnished by them. [C35,§6943-f30; C39,§6943.066; C46, 50, 54,§422.34]

**422.35 Net income of corporation — how computed.** The term "net income" means the taxable income less the net operating loss deduction, both as computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the state tax commission, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract federal income taxes paid or accrued, as the case may be, during the tax year,

adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules and regulations prescribed by the state tax commission. [C35,§6943-f31; C39,§6943.067; C46, 50, 54,§422.35; 56GA, ch 208,§19; 57GA, ch 210,§2]

#### **422.36 Returns.**

1. Every corporation shall make a return and the same shall be signed by the president, vice-president, or other principal officer and by the treasurer or assistant treasurer. Before a corporation shall be dissolved and its assets distributed it shall make a return for any settlement of the tax for any income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the commission may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the state commission has reason to believe that any person or corporation so conducts his trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, it may require such facts as it deems necessary for the proper computation of the entire net in-

come and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the commission shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section. [C35,§6943-f32; C39,§6943.068; C46, 50, 54, §422.36; 56GA, ch 208,§20]

Referred to in §422.31

**422.37 Consolidated returns.**

1. Any corporation capable of exercising directly or indirectly substantially the entire control of the business of another corporation doing business in the United States either by ownership or control of substantially the entire capital stock of such other corporation, or otherwise, may, under regulations to be prescribed by the commission, be permitted, and upon demand of the commission shall be required, to make a consolidated return, showing the consolidated net income of all of such corporations, and such other information as the commission may require.

The commission shall compute, determine, and assess the tax upon the combined net income shown by such consolidated return and as apportioned and allocated according to section 422.33; provided that the term "taxable income" as used in this chapter shall not include income represented by dividends received by any one of such corporations from another when the income of the dividend paying corporation is reported to and subject to taxation under this chapter by the state.

2. The commission may require the filing of a consolidated return where substantially the entire control of two or more such corporations liable to taxation under this division is exercised by the same interests, or under such other circumstances as the effective administration of this chapter may require. Any corporation liable to report under this division and owned or controlled, either directly or indirectly, by another corporation, may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purpose of this division, and such other information as the commission may require.

3. In case it shall appear to the commission that any arrangement exists in such a manner as improperly to reflect the business done, the segregable assets or the entire net income earned from business done in the state, the commission is authorized and empowered, in such manner and under such rules and regulations as it may determine, equitably to adjust the tax.

4. When any corporation required to make a return under this division conducts the business, whether under arrangement or otherwise, in such manner as either directly or indirectly to benefit the members or stockholders of the

corporation, or any of them, or any person or persons directly or indirectly interested in such business, by selling its products, or the goods or commodities in which it deals, at less than a fair price which might be obtained therefrom, or where such a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires or disposes of the products of the corporation so owning the substantial portion of its capital stock in such manner as to create a loss or improper net income, the commission may require such facts as it deems necessary for the proper computation provided by this division, and may for the purpose of the division determine the amount which shall be deemed to be the entire net income of the business of such corporation for the calendar or fiscal year, and in determining such entire net income the commission shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods, or commodities. [C35, §6943-f33; C39,§6943.069; C46, 50, 54,§422.37]

**422.38 Statutes governing corporations.** All the provisions of sections 422.15 to 422.22, inclusive, of division II, insofar as the same are applicable, shall apply to corporations taxable under this division. [C35,§6943-f34; C39, §6943.070; C46, 50, 54,§422.38]

**422.39 Statutes applicable to corporation tax.** All the provisions of sections 422.24 to 422.27, inclusive, of division II, respecting payment and collection, shall apply in respect to the tax due and payable by a corporation taxable under this division. [C35,§6943-f35; C39, §6943.071; C46, 50, 54,§422.39]

**422.40 Cancellation of authority—penalty—offenses.**

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the commission may in its discretion certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state

shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him.

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the commission.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection 1, or similar provisions of prior revenue acts, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the commission that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by him under the provisions of subsection 1 or similar provisions of prior revenue acts, and shall issue his certificate entitling such corporation to exercise its rights, privileges, and franchises.

4. Any person, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this division or any lawful requirement of the commission thereunder, shall fail to pay any tax or to make, sign, or verify any return or to supply any information required by or under the provisions of this division, shall be guilty of a misdemeanor\* and punished accordingly. Any person, corporation, or any officer or employee of a corporation, or member or employee of any partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the commission thereunder, shall make, render, sign, or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, or who shall aid, abet, direct, cause, or who shall procure anyone so to do, shall be liable to a penalty of not more than five thousand dollars, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also upon conviction be punished by imprisonment in the penitentiary for a term not exceeding one year, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or both. Such penalty shall be in addition to all other penalties in this division provided. [C35, §6943-f36; C39, §6943.072; C46, 50, 54, §422.40]

\*Punishment, §687.7

**422.41 Corporations.** All the provisions of sections 422.28, 422.29, and 422.30 of division II in respect to revision, appeal, and jeopardy

assessments shall be applicable to corporations taxable under this division. [C35, §6943-f37; C39, §6943.073; C46, 50, 54, §422.41; 57GA, ch 211, §7]

#### DIVISION IV. RETAIL SALES TAX

Referred to in §312.1

See also reference in §98.26

**422.42 Definitions.** The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

2. "Sales" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale of tangible personal property and the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include commercial fertilizer or agricultural limestone or materials, but not tools or equipment, which are to be used in disease control, weed control, insect control or health promotion of plants or livestock produced as part of agricultural production for market, or electricity or steam when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that such property shall by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail, or shall be consumed as fuel in creating heat, power, or steam for processing or for generating electric current, or consumed in implements of husbandry engaged in agricultural production.

4. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

5. "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the commission it is necessary for the efficient administration of this division to regard any salesmen, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, su-

pervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the commission may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purpose allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided further, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this division, as has actually been received in cash by the retailer during each quarterly period as defined herein.

7. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

8. The word "commission" means the state tax commission.

9. The word "taxpayer" includes any person within the meaning of subsection 1 hereof, who is subject to a tax imposed by this division, whether acting for himself or as a fiduciary.

10. Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair or improvement of real property, are retail sales in whatever quantity sold.

11. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies or equipment, in the performance of construction contracts or for any other purpose except for resale or processing, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to him of the fabrication or production thereof.

12. "Place of business" shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business. [C35, §6943-f38; C39, §6943.074; C46, 50, 54, §422.42; 57GA, ch 212, §§1, 2]

Referred to in §423.1

**422.43 Tax imposed.** There is hereby imposed, beginning the first day of April, 1937, a tax of two percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water, heat, and communication service, including the gross receipts from such sales by any municipal corporation furnishing gas, electricity, water, heat, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; and a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events, except as otherwise provided in this division.

There is hereby imposed beginning with the first day of July, 1947, a tax of two percent upon the gross receipts derived from the operation of all forms of amusement devices and commercial amusement enterprises operated or conducted within the state of Iowa, such tax to be collected from the operator in the same manner as is provided for the collection of taxes upon the gross receipts of tickets or admission as provided in this section.

The tax thus imposed shall cover all receipts from the operation of musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit not specified herein, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under the provision of subsection 4 of section 422.45. Every person receiving gross receipts from the sources as defined in this section shall be subject to all provisions of this division relating to retail sales tax and such other provisions of this chapter as may be applicable.

All revenues arising under the operation of the provisions of this section shall become

part of the state general fund.

Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

The tax herein levied shall be computed and collected as hereinafter provided. [C35,§6943-f39; C39,§6943.075; C46, 50, 54,§422.43; 56GA, ch 212,§§1, 2]

**422.44 Tax on surplus war material.** Purchases of tangible personal property from the government of the United States or any of its agencies by ultimate consumers are hereby declared to be subject to the state use tax.

This section shall not apply to purchases made by counties or municipal corporations. [C46, 50, 54,§422.44]

**422.45 Exemptions.** There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

2. The gross receipts from the sales, furnishing or service of transportation service.

3. The gross receipts from sales of tickets or admissions to state, county, district and local fairs, and the gross receipts from educational, religious, or charitable activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes.

4. That part of the gross receipts from sales of tangible personal property accepted as part consideration in the sale in Iowa of other property which is not in excess of the original trade-in valuation, provided the seller keeps an accurate record of the identity of such tangible personal property so as to show the name and address of the persons from whom acquired and to whom sold and the exact trade-in and sale price. A retailer who collects sales tax on the selling price of traded-in tangible personal property in excess of the tax due from the purchaser shall be deemed to have thereby waived the right to claim the exemption provided for in this subsection and the tax so collected shall be due to the state of Iowa and remitted to the state tax commission, as provided by this chapter, and be credited to the state road tax fund.

5. The gross receipts of all sales of goods, wares or merchandise used for public purposes to any tax certifying or tax levying body of the state of Iowa or governmental subdivision thereof, except sales of goods, wares or merchandise used by or in connection with the operation of any municipally-owned public utility engaged in selling gas, electricity, or heat to the general public.

The exemption provided by this subsection shall also apply to all sales of goods, wares or merchandise used for public purposes to any

tax certifying or tax levying body of the state of Iowa or governmental subdivision thereof which are subject to use tax under the provisions of chapter 423.

6. Any tax certifying or tax levying body of the state of Iowa or governmental subdivision thereof may make application to the state tax commission for the refund of any sales or use tax upon the gross receipts of all sales of goods, wares or merchandise to any contractor, used in the fulfillment of any written contract with the state of Iowa or any political subdivision thereof, which property becomes an integral part of the project under contract and at the completion thereof becomes public property, except goods, wares or merchandise used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public.

a. Such contractor shall state under oath, on forms provided by the state tax commission, the amount of such sales of goods, wares or merchandise used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit which has made any written contract for performance by said contractor. Such forms shall be filed by the contractor with the governmental unit before final settlement is made.

b. Such governmental unit shall, not more than sixty days after the final settlement has been made, make application to the state tax commission for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, such application to be made in the manner and upon forms to be provided by the state tax commission, and the state tax commission shall forthwith audit such claim and, if approved, request the comptroller to issue his warrant to such governmental unit in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a misdemeanor and in addition thereto shall be liable for the payment of the tax with penalty and interest thereon. [C35,§6943-f40; C39, §6943.076; C46, 50, 54,§422.45]

Referred to in §§422.43, 423.4

**422.46 Credit on tax.** A credit shall be allowed against the amount of tax computed to be due and payable on the gross receipts from sales at retail of any tangible personal property upon which the state now imposes a special tax, whether in the form of a license tax, stamp tax, or otherwise, to the extent of the amount of such tax imposed and paid. This provision shall not apply to the sale of airplanes or to the sale at retail of beer and cigarettes. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes



may be credited upon a subsequent payment of the tax herein provided; provided, that if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected. [C35,§6943-f41; C39,§6943.077; C46, 50, 54,§422.46; 56GA, ch 213,§1]

#### 422.47 Credit to relief agencies.

1. A relief agency may apply to the commission for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy.

2. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

a. On forms furnished by the commission, and filed within such time as the commission shall provide by regulation, the relief agency shall report to the commission the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy.

b. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

c. The relief agency must prove to the satisfaction of the commission that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

3. If the commission is satisfied that the foregoing conditions and requirements have been complied with, it shall refund the amount claimed by the relief agency. [C35,§6943-f42; C39,§6943.078; C46, 50, 54,§422.47]

Temporary provisions, 56GA, ch 206,§3

**422.48 Adding of tax.** Retailers shall, as far as practicable, add the tax imposed under this division, or the average equivalent thereof, to the sales price or charge and when added such tax shall constitute a part of such price or charge, shall be a debt from consumer or user to retailer until paid, and shall be recoverable at law in the same manner as other debts.

Agreements between competing retailers, or the adoption of appropriate rules and regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of chapter 553, or other antitrust laws of this state. It shall be the duty of the commission to co-operate with such retailers, organizations, or associations in formulating such agreements, rules, and regulations. The commission shall have the power to adopt and promulgate rules and regulations for adding such tax, or

the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. [C35,§6943-f43; C39,§6943.079; C46, 50, 54,§422.48]

**422.49 Absorbing tax prohibited.** It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this division will be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded. [C35, §6943-f44; C39,§6943.080; C46, 50, 54,§422.49]

Referred to in §422.58

**422.50 Records required.** It shall be the duty of every retailer required to make a report and pay any tax under this division, to preserve such records of the gross proceeds of sales as the commission may require and it shall be the duty of every retailer to preserve for a period of five years all invoices and other records of goods, wares, or merchandise purchased for resale; and all such books, invoices, and other records shall be open to examination at any time by the commission or any one of its duly authorized agents, and shall be made available within this state for such examination upon reasonable notice when the commission shall deem it advisable and shall so order. [C35,§6943-f45; C39,§6943.081; C46, 50, 54,§422.50]

#### 422.51 Return of gross receipts.

1. The retailer shall, on or before the last day of the month following the close of the first quarterly period as defined in section 422.52, and on or before the last day of the month following each subsequent quarterly period of three months, make out a return for the preceding quarterly period in such form and manner as may be prescribed by the commission, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the commission may require to enable it correctly to compute and collect the tax herein levied; provided, however, that the commission may, upon request by any retailer and a proper showing of the necessity therefor, grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment as provided in section 422.52 shall be extended for the same period.

2. The commission, if it deems it necessary or advisable in order to insure the payment of the tax imposed by this division, may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 422.52 or elsewhere to the contrary notwithstanding.



3. Returns shall be signed by the retailer or his duly authorized agent, and must be duly certified by him to be correct. [C35, §6943-f46; C39, §6943.082; C46, 50, 54, §422.51; 56GA, ch 214, §§1, 2]

#### 422.52 Payment of tax—bond.

1. The tax levied hereunder shall be due and payable in quarterly installments on or before the last day of the month next succeeding each quarterly period, the first of such quarterly periods being the period commencing with April 1, 1937, and ending on the thirtieth day of June, 1937.

2. Every retailer, at the time of making the return required hereunder, shall compute and pay to the commission the tax due for the preceding period.

3. The commission may, when in its judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with it a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commission may fix, to secure the payment of any tax and/or penalties due or which may become due from such person. In lieu of such bond, securities approved by the commission, in such amount as it may prescribe, may be deposited with it, which securities shall be kept in the custody of the commission and may be sold by it at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and/or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 324 shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions he shall transfer from the motor vehicle fuel fund to the special tax fund. [C35, §6943-f47; C39, §6943.083; C46, 50, 54, §422.52; 56 GA, ch 214, §3]

Referred to in §422.51

#### 422.53 Permits—applications for.

1. Sixty days after the effective date\* of this division, it shall be unlawful for any person to engage in or transact business as a retailer within this state, unless a permit or permits shall have been issued to him as hereinafter prescribed, except as otherwise provided in subsection 7 of this section. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commission an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commission and shall set forth the name under which the applicant transacts or intends

to transact business, the location of his place or places of business, and such other information as the commission may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

2. At the time of making such application, the applicant shall pay to the commission a permit fee of fifty cents for each permit, and the applicant must have a permit for each place of business.

3. Upon the payment of the permit fee or fees herein required, the commission shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

4. Permits issued under the provisions of this division shall be valid and effective without further payment of fees until revoked by the commission.

5. Whenever the holder of a permit fails to comply with any of the provisions of this division or any orders, rules or regulations of the commission prescribed and adopted under this division, the commission upon hearing after giving ten days notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The commission shall also have the power to restore licenses after such revocation.

6. The commission shall charge a fee of one dollar for the issuance of a permit to a retailer whose permit has been previously revoked.

7. Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like, shall report and remit the tax on a nonpermit basis, under such rules as the commission shall provide for the efficient collection of the sales tax on such sales. [C35, §6943-f48; C39, §6943.084; C46, 50, 54, §422.53]

Referred to in §§422.58, 423.22  
\*Effective date, April 1, 1937

**422.54 Failure to file return—incorrect return.** If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commission, such commission shall determine the amount of tax due from such information as it may be able to obtain and, if necessary, may estimate the tax on the basis of

external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The commission shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the commission for a hearing or unless the commission of its own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the commission shall give notice of its decision to the person liable for the tax. [C35,§6943-f49; C39,§6943.085; C46, 50, 54,§422.54]

Referred to in §§422.55, 423.16

**422.55 Appeals.**

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within sixty days after he shall have received notice from the commission of its determination as provided for in section 422.54.

2. The appeal shall be taken by a written notice to the chairman of the commission and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commission as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. In such appeal, the burden of proof shall be upon the taxpayer. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved. [C35,§6943-f50; C39,§6943.086; C46, 50, 54,§422.55]

Referred to in §§423.16, 551A.11  
Filing petition on appeal, R.C.P. 368  
Service of original notice, R.C.P. 56(a)

**422.56 Statute applicable to sales tax.** All the provisions of section 422.26 shall apply in respect to the taxes and/or penalties imposed by this division, excepting that, as applied to any tax imposed by this division, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer with-

out the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this division, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the commission shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this division. The giving of such information under such circumstances shall not be deemed a violation of section 422.65 as applied to this division. [C35,§6943-f51; C39,§6943.087; C46, 50, 54, §422.56]

Referred to in §423.17

**422.57 Service of notices.**

1. Any notice, except notice of appeal, authorized or required under the provisions of this division may be given by mailing the same to the person for whom it is intended by certified mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this division, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this division by the giving of notice shall commence to run from the date of registration and posting of such notice.

2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this division. [C35,§6943-f52; C39,§6943.088; C46, 50, 54,§422.57; 57GA, ch 267,§47]

Referred to in §§423.16, 423.17

**422.58 Penalties—offenses.**

1. Any person failing to file a return or corrected return or to pay any tax within the time required by this division, shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of in the same manner as other receipts under this division. Unpaid penalties may be enforced in the same manner as the tax imposed by this division.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail in this state after his license shall

have been revoked, or without procuring a license within sixty days after the effective date of this division, as provided in section 422.53, or who shall violate the provisions of section 422.49, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days in the discretion of the court.

3. Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court.

4. The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this division, shall be prima-facie evidence thereof. [C35,§6943-f53; C39,§6943.089; C46, 50, 54,§422.58]

**422.59 Statutes applicable.** The commission and its employees shall administer the taxes imposed by this division in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.30 and sections 422.60 to 422.68, inclusive, or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein. [C39,§6943.090; C46, 50, 54,§422.59]

Constitutionality, 47GA, ch 196,§19  
Omnibus repeal, 47GA, ch 196,§20

#### DIVISION V. ADMINISTRATION

**422.60 Generally — bond — approval.** The commission shall administer the taxes imposed by this chapter. Each member of said commission shall give a bond in an amount to be fixed by the governor, which has been issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility. The reasonable cost of said bond shall be paid by the state, out of the proceeds of the taxes collected under the provisions of this chapter. [C35,§6943-f54; C39,§6943.091; C46, 50, 54,§422.60]

Referred to in §§422.59, 423.23

#### **422.61 Powers and duties.**

1. The commission shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The commission may, for administrative purposes, divide the state into districts, pro-

vided that in no case shall a county be divided in forming a district.

3. The commission shall have the power to destroy any and all useless records and all returns, reports, and communications of any taxpayer filed with or kept by the commission after such returns, records, reports, or communications shall have been in the custody of the commission for a period of not less than five years, provided, however, after the accounts of any person shall have been examined by the commission and the amount of tax and penalty due shall have been finally determined, then the commission may, in its discretion, order the destruction of any records previously filed by such taxpayer, notwithstanding the fact that such records shall have been in the custody of the commission for a period less than five years. Such records and documents shall be destroyed in such manner as shall be prescribed by the commission.

4. The commission may, at its discretion, make photostat, microfilm or other photographic copies of records, reports and other papers either filed by the taxpayer or prepared by the state tax commission. When such photostat or microfilm copies have been made, the tax commission may, at its discretion, destroy such original records in such manner as prescribed by the commission. Such photostat or microfilm copies, when no longer of use, may be destroyed as provided in subsection 3. Such photostat, microfilm, or other photographic records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control thereof. [C35,§6943-f55; C39,§6943.092; C46, 50, 54,§422.61]

Referred to in §§422.59, 423.23

**422.62 Funds.** All fees, taxes, interest, and penalties imposed under this chapter must be paid to the commission in the form of remittances payable to the treasurer of the state, and said commission shall transmit each payment daily to the state treasurer. Ten percent of the net receipts collected under division IV of this chapter shall be credited by the treasurer of state to the road use tax fund. The remainder of the proceeds of the fees, taxes, interest and penalties collected under this chapter, shall be deposited in the state treasury to the credit of the general fund of the state; provided that there is set aside from said fund the sum of fifty thousand dollars which is hereby created as the audit revolving fund to be administered by the state tax commission. All receipts from collections of personal income, corporation income, sales and use tax made as a result of the work of the field audit staff of the commission shall be credited to said audit revolving fund and there shall be paid therefrom the compensation and expenses of the field audit staff. At the end of each calendar quarter all amounts in said fund in excess of fifty thousand dollars shall

be transferred to the state general fund. The commission may, with the approval of the governor, employ such members of the field audit staff as required. [C35,§6943-f56; C39,§§6943.093, 6943.101; C46,§§422.62, 422.70; C50, 54,§422.62]

Referred to in §§422.16, 422.59, 422.64, 423.23  
Road use tax fund, §312.1

**422.63 General powers—hearings.**

1. The commission, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income and/or receipts of any taxpayer, shall have power: To examine or cause to be examined by any agent or representative designated by it, books, papers, records, or memoranda, such an examination not to include any transaction completed five years or more prior to such an examination, provided, however, that the commission may, by rules, provide for a limitation of time of any number of years less than five; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths, to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which it shall have the authority to investigate or determine.

2. Where the commission finds the taxpayer has made a fraudulent return, the costs of said hearing shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

3. The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the state shall be certified by the secretary of the commission to the state comptroller who shall issue warrant on the state treasurer for the amount of said costs, to be paid out of the proceeds of the taxes collected under this chapter.

4. In case of disobedience to a subpoena the commission may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the commission and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as a contempt thereof.

5. Testimony on hearings before the commission may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as

witnesses may be compelled to appear and testify as hereinbefore provided. [C35,§6943-f57; C39,§6943.094; C46, 50, 54,§422.63]

Referred to in §§422.59, 423.23  
Contempts, ch 665

**422.64 Assistants — salaries — expenses — bonds.**

1. The commission may appoint and remove such agents, auditors, clerks, and employees as it may deem necessary, such persons to have such duties and powers as the commission may, from time to time, prescribe.

2. The salaries of all assistants, agents, and employees, except the field audit staff provided for in section 422.62, shall be fixed by the commission in a budget to be submitted to the comptroller and approved by the legislature.

3. All such agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

4. The commission may require such of the officers, agents, and employees as it may designate to give bond for the faithful performance of the duties in such sum and with such sureties as it may determine and the state shall pay, out of the proceeds of the taxes collected under the provisions of this chapter, the premiums on such bonds.

5. The commission may utilize the office of treasurer of the various counties in order to administer this chapter and effectuate its purposes, and may appoint the treasurers of the various counties its agents to collect any or all of the taxes imposed by this chapter, provided, however, that no additional compensation shall be paid to said treasurer by reason thereof. [C35,§6943-f58; C39,§6943.095; C46, 50, 54,§422.64]

Referred to in §§422.59, 423.23

**422.65 Information deemed confidential.**

1. It shall be unlawful for the commission, or any person having an administrative duty under this chapter, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the commission may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government.

2. Any person violating the provisions of subsection 1 of this section shall be guilty of

a misdemeanor and punishable by a fine not to exceed one thousand dollars. [C35,§6943-f59; C39,§6943.096; C46, 50, 54,§422.65]

Referred to in §§422.56, 422.59, 423.23

**422.66 Correction of errors.** If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall be credited against any tax due, or to become due, under this chapter from the person who made the erroneous payment, or such amount shall be refunded to such person by the commission. No claim for refund or credit that has not been filed with the commission within five years after the tax payment upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall be allowed by the commission. [C35,§6943-f60; C39,§6943.097; C46, 50, 54, §422.66]

Referred to in §§422.59, 423.23, 424.12

**422.67 Certification of refund.** Wherever in any division of this chapter a refund is authorized, the commission shall certify the amount of the refund and the name of the payee to the

state comptroller. Upon certification from the commission, the state comptroller shall draw his warrant on the state general fund in the amount specified payable to the named payee, and the state treasurer shall pay the same. [C35,§6943-f61; C39,§6943.098; C46, 50, 54,§422.67]

Referred to in §§422.59, 423.23, 424.12

**422.68 Statistics—publication of.** The commission shall prepare and publish annually statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. [C35,§6943-f62; C39,§6943.099; C46, 50, 54, §422.68]

Referred to in §§422.59, 423.23  
Annual report, §17.4

#### DIVISION VI. ALLOCATION OF REVENUES

**422.69** Repealed by 52GA, ch 230,§3. See §§249.36 and 425.1.

**422.70** Repealed by 53GA, ch 192,§1. See §422.62.

Constitutionality, 45ExGA, ch 82,§64; 48GA, ch 178,§4;  
56GA, ch 208,§22  
Omnibus repeal, 46ExGA, ch 82,§65  
Ratio and manner of distribution, see §425.1

## CHAPTER 423

### USE TAX

Referred to in §§312.1, 422.45; refunds to governmental bodies, §422.45

- 423.1 Definitions.
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- 423.22 Revoking permits.
- 423.23 Statutes applicable.
- 423.24 Deposit of revenue.
- 423.25 Taxation in another state.

**423.1 Definitions.** The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, (b) fuel which is consumed in creating power, heat, or steam for processing or

for generating electric current, (c) industrial materials and equipment, which are not readily obtainable in Iowa, and which are directly used in the actual fabricating, compounding, manufacturing, or servicing of tangible personal property intended to be sold ultimately at retail.

2. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided that cash discounts allowed and taken on sales shall not be included.

4. "Tangible personal property" means tangible goods, wares, and merchandise, and gas,

electricity, and water when furnished or delivered to consumers or users within this state.

5. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter; provided, however, that when in the opinion of the commission it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the commission may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

6. "Retailer maintaining a place of business in this state" or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter 494.

7. "Motor vehicle" shall mean every motor vehicle, as is now or may hereafter be so defined by the motor vehicle law of this state, which is required to be registered under such motor vehicle law.

"New motor vehicle" shall mean any motor vehicle of a type subject to registration under the laws of this state which has not been previously registered in this or any other state.

"Used motor vehicle" shall mean any other motor vehicle.

8. "Person", "commission", and "taxpayer" shall have the same meaning as defined in section 422.42.

9. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered under such motor vehicle law.

10. "Readily obtainable in Iowa" shall mean kept in Iowa for sale or manufactured in Iowa for sale as distinguished from being obtainable by giving an order to an agent in Iowa for delivery from some point outside the state of Iowa.

11. "Street railways" shall mean and include urban transportation systems. [C39,§6943.102; C46, 50, 54,§423.1; 56GA, ch 154,§3]

See 53GA, ch 193,§3

**423.2 Imposition of tax.** An excise tax is hereby imposed on the use in this state of tangible personal property purchased on or

after the effective date\* of this chapter for use in this state, at the rate of two percent of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to the county treasurer, to a retailer, or to the commission as hereinafter provided. [C39,§6943.103; C46, 50, 54, §423.2]

\*47GA, ch 198, effective date, April 16, 1937  
Referred to in §423.3

**423.3 Tax on surplus war material.** Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by section 423.2. Industrial materials and equipment owned by the federal government within the state of Iowa of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use tax if such were sold outside of the state for use in Iowa.

This section shall not apply to purchases made by counties or municipal corporations. [C46, 50, 54,§423.3]

**423.4 Exemptions.** The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, and any amendments made or which may hereafter be made thereto. This exemption does not include new motor vehicles as defined herein.

2. Tangible personal property used (a) in interstate transportation or interstate commerce, or (b) for the performance of a building or construction contract executed prior to the effective date\* of this chapter.

3. Tangible personal property other than airplanes, or to the sale at retail of beer and cigarettes, upon which the state now imposes and collects a special tax, whether in the form of a license tax, stamp tax, or otherwise.

4. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for his or her use or enjoyment while within the state.

5. Tangible personal property not readily obtainable in Iowa and used in the operation of street railways.

6. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section 422.45. [C39,§6943.104; C46, 50, 54,§423.4; 56GA, ch 213,§2]

Referred to in §423.9  
\*47GA, ch 198, effective date, April 16, 1937  
Tax paid in another state, §423.25

**423.5 Evidence of use.** For the purpose of the proper administration of this chapter and to prevent evasion of the tax, evidence that

tangible personal property was sold by any person for delivery in this state shall be prima-facie evidence that such tangible personal property was sold for use in this state. [C39, §6943.105; C46, 50, 54, §423.5]

**423.6 How collected.** The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all new motor vehicles and new trailers shall be collected by the county treasurer pursuant to the provisions of section 423.7.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the commission shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the state commission, pursuant to the provisions of sections 423.9 to 423.13, inclusive.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the commission directly by any person using such property within this state, pursuant to the provisions of section 423.14. [C39, §6943.106; C46, 50, 54, §423.6]

**423.7 Motor vehicles.** The tax hereby imposed upon the use of new motor vehicles and new trailers shall be paid by the owner thereof to the county treasurer from whom the original certificate of registration for such motor vehicle or trailer is obtained. No original certificate of registration for any new motor vehicle or new trailer shall be issued until said tax has been so paid. The county treasurer shall require every applicant for an original certificate of registration for any new motor vehicle or new trailer to supply such information as he or the commission may deem necessary as to the time of purchase, the purchase price, and other information relative to the purchase of said motor vehicle or trailer. On or before the tenth day of each month the county treasurer shall remit to the commission the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the commission showing the name of each taxpayer, the make and purchase price of each motor vehicle or trailer, the amount of tax paid in each case, and such other information as the commission shall require. [C39, §6943.107; C46, 50, 54, §423.7]

Referred to in §§312.1, 423.6, 423.9, 423.24  
Motor vehicles from other states, §423.25

**423.8 Sales tax report — deduction.** Motor vehicle or trailer dealers, in making their reports and returns to the commission for the purpose of paying the retail sales tax imposed by division IV of chapter 422, shall be permitted to deduct all gross receipts from retail sales of new motor vehicles and new trailers. Gross receipts from such new motor vehicle and new trailer sales are hereby expressly exempted from the tax imposed by said division

IV, but, if required by the commission, such gross receipts shall be included in the returns made by motor vehicle or trailer dealers under said division IV, and proper deductions taken pursuant to this section. [C39, §6943.108; C46, 50, 54, §423.8]

**423.9 Collection by retailer.** Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section 423.4 nor collectible under the provisions of section 423.7, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the commission, if the commission shall, by regulation, require such receipt. Each such retailer shall list with the commission the name and address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business in this state. [C39, §6943.109; C46, 50, 54, §423.9]

Referred to in §§423.6, 423.12, 423.13, 423.15

**423.10 Foreign retailers.** The commission may, in its discretion, upon application authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the commission furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the commission shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be canceled when, at any time, the commission considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state. [C39, §6943.110; C46, 50, 54, §423.10]

Referred to in §§423.6, 423.12, 423.13, 423.15, 423.22

**423.11 Absorbing tax prohibited.** It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The commission shall have the power to adopt and promulgate rules and regulations for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within

this state shall be guilty of a misdemeanor and subject to the penalties provided in section 423.20. [C39,§6943.111; C46, 50, 54,§423.11]

Referred to in §423.6

**423.12 Tax as debt.** The tax herein required to be collected by any retailer pursuant to sections 423.9 or 423.10, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state. [C39,§6943.112; C46, 50, 54,§423.12]

Referred to in §423.6

**423.13 Payment to commission.** Each retailer required or authorized, pursuant to sections 423.9 or 423.10, to collect the tax herein imposed, shall be required to pay to the commission the amount of such tax, on or before the last day of the month next succeeding each quarterly period, the first such quarterly period being the period commencing on the first day of April, 1937, and ending on the thirtieth day of June, 1937. At such time, each such retailer shall file with the commission a return for the preceding quarterly period in such form as may be prescribed by the commission showing the sales price of any or all tangible personal property sold by the retailer during such preceding quarterly period, the use of which is subject to the tax imposed by this chapter, and such other information as the commission may deem necessary for the proper administration of this chapter. The return shall be accompanied by a remittance of the amount of such tax, for the period covered by the return, provided that where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended over a period longer than sixty days from the date of the sale thereof, the retailer may collect and remit each quarterly period that portion of the tax equal to two percent of that portion of the purchase price actually received during such quarterly period. The commission, if it deems it necessary in order to insure payment to the state of the amount of such tax, may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The commission may, upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct. [C39,§6943.113; C46, 50, 54,§423.13; 56GA, ch 214,§4]

Referred to in §§423.6, 423.14

**423.14 Liability of user.** Any person who uses any property upon which the tax herein imposed has not been paid, either to the county treasurer or to a retailer or direct to the commission as herein provided, shall be liable therefor, and shall on or before the last day of the month next succeeding each quarterly period pay the tax herein imposed upon all such property used by him during the preced-

ing quarterly period in such manner and accompanied by such returns as the commission shall prescribe. All of the provisions of section 423.13 with reference to such returns and payments shall be applicable to the returns and payments herein required. [C39,§6943.114; C46, 50, 54,§423.14; 56GA, ch 214,§5]

Referred to in §423.6

**423.15 Bond to secure payment.** The commission may, when in its judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this chapter, authorize any person subject to such tax, and any retailer required or authorized to collect such tax pursuant to the provisions of sections 423.9 and 423.10, to file with it a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commission may fix, to secure the payment of any tax, amount, and/or penalties due or which may become due from such person. In lieu of such bond, securities approved by the commission, in such amount as it may prescribe, may be deposited with it, which securities shall be kept in the custody of the commission and may be sold by it at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax and/or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities. [C39,§6943.115; C46, 50, 54,§423.15]

**423.16 Determination by commission.** If any return required by this chapter is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commission, the commission shall have the same power to determine the amount due, as is vested in the commission by sections 422.54, 422.55, and 422.57, subject to all of the provisions, and restrictions, and rights of appeal provided in said sections. [C39,§6943.116; C46, 50, 54,§423.16]

**423.17 Lien of tax—penalties.** All of the provisions of sections 422.56 and 422.57 shall apply in respect to the procedure, taxes, amounts required to be paid, and/or penalties imposed, as provided by this chapter. [C39, §6943.117; C46, 50, 54,§423.17]

**423.18 Failure to pay—penalties.** Any person failing to file a return or corrected return or to pay any tax and/or amount required to be paid by this chapter within the time required by this chapter, shall be subject to a penalty of five percent of the amount due, plus one percent of such amount for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax or amount became due; but the commission, if satisfied that the delay was excus-



able, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of in the same manner as other receipts under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter. The certificate of the commission to the effect that a tax and/or amount required to be paid by this chapter has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence thereof. [C39, §6943.118; C46, 50, 54, §423.18]

**423.19 Fraud.** Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the tax, and/or amount required to be paid by this chapter, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court. [C39, §6943.119; C46, 50, 54, §423.19]

**423.20 Penalty.** Any retailer or other person failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return or other data required by the commission, shall be guilty of a misdemeanor and subject to a fine of not to exceed one hundred dollars for each such offense, or to imprisonment for not to exceed thirty days, or to both such fine and imprisonment, in the discretion of the court. [C39, §6943.120; C46, 50, 54, §423.20]

Referred to in §423.11

**423.21 Books—examination.** Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property purchased on or after April 1, 1937, shall keep such records, receipts, invoices, and other pertinent papers as the commission shall require, in such form as the commission shall require. The commission or any of its duly authorized agents is hereby authorized to examine the books, papers, records, and equipment of any person either selling tangible personal property or liable for the tax imposed by this chapter, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount due under the provisions of this chapter. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice when the commission shall deem it advisable and shall so order. [C39, §6943.121; C46, 50, 54, §423.21]

**423.22 Revoking permits.** Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein

imposed pursuant to section 423.10, fails to comply with any of the provisions of this chapter or any orders, rules, or regulations of the commission prescribed and adopted under this chapter, the commission may, upon notice and hearing as hereinafter provided, by order revoke the permit, if any, issued to such retailer under section 422.53, or if such retailer is a corporation authorized to do business in this state under chapter 494, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules, or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the commission an order finding that such corporation has complied with its obligations under this chapter. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given ten days notice of the time, place, and purpose of such hearing. The commission shall have the power in its discretion to issue a new permit pursuant to section 422.53 after such revocation. [C39, §6943.122; C46, 50, 54, §423.22]

**423.23 Statutes applicable.** The commission is hereby charged with the enforcement of the provisions of this chapter, and the commission and its employees shall administer this chapter and the taxes imposed by this chapter in the same manner and subject to all of the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.30 and sections 422.60 to 422.68, inclusive, or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein. [C39, §6943.123; C46, 50, 54, §423.23]

**423.24 Deposit of revenue.** All revenue arising under the operation of this chapter, derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7 shall be credited to the road use tax fund. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state. [C39, §6943.124; C46, 50, 54, §423.24]

Road use tax fund, §312.1

**423.25 Taxation in another state.** If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property, or an occupation tax in respect thereto, in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax on the sale or use, or the occupation tax, was com-

puted. If such tax imposed and paid in such other state is equal to or more than the tax imposed by this title, then no tax shall be due

in this state on such personal property. [C39, §6943.125; C46, 50, 54, §423.25]  
 Constitutionality, 47GA, ch 198, §27

CHAPTER 424  
 CHAIN STORE TAX

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**424.1 Title.** This chapter shall be known as the "Chain Store Tax Act of 1935". [C35, §6943-1; C39, §6943.126; C46, 50, 54, §424.1]

**424.2 Definitions.** The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

1. The word "commission" means the state tax commission.
2. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit, and the plural as well as the singular thereof, and all firms however organized and whatever be the plan of operation.
3. "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
4. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for resale, of tangible personal property including goods, wares, and merchandise.
5. "Business" includes any merchandising activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, or advantage, either direct or indirect.
6. "Store" means any store or stores, or any merchantile or other establishment in which tangible goods, wares, or merchandise of any kind are sold or kept for sale at retail.
7. "Conducting a business by a system of chain stores" when used in this chapter shall be construed to mean and include every person, as defined in this chapter, in the business of owning, operating, or maintaining, directly or indirectly, under the same general management, supervision, control, or ownership in this state, and/or in this state and any other state, two or more stores, where goods, wares, articles, commodities, or merchandise of any kind whatsoever are sold or offered for sale at retail and where the person operating such store or stores receives the retail profit

from the commodities sold therein. Two or more stores shall, for the purpose of this chapter, be treated as being under a single or common ownership, control, supervision, or management, if directly or indirectly owned or controlled by a single person or any group of persons, or by a common interest in such stores, or if any part of the gross revenues, net revenues, or profits from such store shall, directly or indirectly, be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or group of persons having a common interest therein. Not more than one of said stores need be located in this state, if one or more of said stores of said person is located in any other state. The fact that two or more retail stores are ostensibly owned and operated by different persons, shall not defeat the application of this chapter where such stores are under the same general management, supervision, or ownership. Lease and agency, and lease and ownership agreements or contracts, or operation under a common name shall, unless shown to the contrary, be deemed to constitute operation under the same general management, supervision, or ownership. Provided, however, that leased or licensed departments, located in a store under a contract obligating such departments to pay to the store a fixed rental or a percentage of the gross receipts, shall not be deemed to be owned, operated, supervised, or managed by the store in which such departments are located.

8. "Gross receipts" when used in this chapter shall be construed to mean and include the total amount of all sales at retail valued in money, whether received in money or otherwise, provided, however, that discounts for any purpose allowed or taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either by cash or in credit be included. Provided, however, that on sales at retail valued in money when such sales are made under a conditional sales contract, or under other forms of sale wherein

the payment of the principal sum thereunder be extended over a period longer than sixty days, that only such portion of the sale amount thereof shall be accounted for, for the purpose of the imposition of the tax in this chapter as has actually been received in cash by the retailer during the taxable year as herein defined. Gross receipts as interpreted under this section shall not include any federal or state sales tax or any special taxes now or hereafter imposed by the state or federal government which special tax or taxes are added to or included in the retail selling price of any merchandise sold under this chapter. Gross receipts shall not include the consideration received by the vendor from the purchaser residing without this state unless the purchaser is present within this state at the time of such sale or purchase.

9. "Taxable year" means the year commencing on July 1 and ending on June 30 of each calendar year. [C35,§6943-g2; C39,§6943.127; C46, 50, 54,§424.2]

**424.3 Exemptions.** There are specifically exempted from the provisions of the chapter and from the computation of the amount of tax imposed by it the following:

1. Co-operative associations not organized for profit under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed.

2. Persons exclusively engaged in gardening and/or farming, selling in this state products of their own raising.

3. Persons selling at retail one or more of the following products: Coal, ice, lumber, grain, feed, agricultural seeds, (as defined in section 199.1), fertilizer, twine, building materials (not including builders and general hardware, glass, and paints) if the total retail sales of any such person or persons of such products within the state shall, during such taxable year, exceed ninety-five percent of the total retail sales of all sources within the state of any such person or persons.

4. Liquor stores, established and operated by the state liquor control commission.

5. Hotels or rooming houses, including dining rooms or cafes operated in connection therewith and by the same management. [C35, §6943-g3; C39,§6943.128; C46, 50, 54,§424.3]

**424.4 Tax imposed.** There is hereby imposed upon every person within the state of Iowa engaged in conducting a business by a system of chain stores from any of which stores are sold or otherwise disposed of at retail, tangible personal property such as goods, wares, and merchandise an annual occupation tax for each taxable year during which year or any part thereof, such person is so engaged, as follows to wit:

1. A specific amount on each person engaged in conducting a business by a system of chain stores to be determined as follows:

a. Five dollars for each store in excess of one and not in excess of ten if said business is

conducted at not in excess of ten stores within this state under a single or common ownership, supervision, or management.

b. Fifteen dollars for each store in excess of ten and not in excess of twenty if said business is conducted at in excess of ten but not in excess of twenty stores within this state under a single or common ownership, supervision, or management.

c. Thirty-five dollars for each store in excess of twenty and not in excess of thirty if said business is conducted at in excess of twenty but not in excess of thirty stores within this state under a single or common ownership, supervision, or management.

d. Sixty-five dollars for each store in excess of thirty and not in excess of forty if said business is conducted at in excess of thirty but not in excess of forty stores within this state under a single or common ownership, supervision, or management.

e. One hundred five dollars for each store in excess of forty and not in excess of fifty if said business is conducted at in excess of forty and not in excess of fifty stores within the state under a single or common ownership, supervision, or management.

f. One hundred fifty-five dollars for each store in excess of fifty if said business is conducted at in excess of fifty stores within this state under a single or common ownership, supervision, or management.

2. This subsection 2 (formerly subsection "b") invalidated by Supreme Court, 222 Iowa 908; see also 299 U. S. 32.

The tax imposed by subsection 1 hereof shall be due and payable on July 1, 1935 and on July 1 of each succeeding year thereafter; the tax imposed hereby as far as measured by subsection 1 hereof, shall be computed on the basis of the number of stores operated by any person under a system of chain stores in this state as of July 1 of each taxable year. [C35,§6943-g4; C39,§6943.129; C46, 50, 54,§424.4]

**424.5 Failure to file return—incorrect return.** If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commission, such commission shall determine the amount of tax due from such information as it may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The commission shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the commission for a hearing or unless the commission of its own motion shall reduce the same. At such hearing evidence

may be offered to support such determination or to prove that it is correct. After such hearing the commission shall give notice of its decision to the person liable for the tax. [C35, §6943-g6; C39, §6943.130; C46, 50, 54, §424.5]

Referred to in §424.6

**424.6 Appeals.**

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within sixty days after he shall have received notice from the commission of its determination as provided for in section 424.5.

2. The appeal shall be taken by a written notice to the chairman of the commission and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commission as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant and the state with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, and conditioned that the plaintiff shall pay any amount found to be due the defendant and/or the state and will perform the orders of the court.

3. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved. [C35, §6943-g7; C39, §6943.131; C46, 50, 54, §424.6]

Service of original notice, R.C.P. 56(a)

**424.7 Lien of tax—collection—action authorized.** Whenever any taxpayer liable to pay a tax and/or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the court costs that may accrue in the collection thereof, shall be a lien in favor of the state of Iowa upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commission shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of chain store tax liens" so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien when due.
6. When satisfied.

The recorder shall indorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The commission shall pay a recording fee as provided in section 335.14 for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the commission has filed notice with a county recorder, the commission shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

Upon any tax herein provided for becoming delinquent the commission may notify the county treasurer of any county in which the person owing the tax owns real or personal property of the amount of such delinquent tax with interest and penalties. Upon receiving such notification the treasurer shall spread the amount of such tax with interest and penalties upon the records in his office against the person owing the same and shall proceed to collect such amount in the manner provided for the collection of delinquent taxes under chapters 445, 446, 447, 448.

The amount realized by the method provided in this paragraph shall not discharge the lien of such tax unless the full amount owing is received. Any amount received by the treasurer shall be remitted by him to the commission.

The attorney general, shall, upon the request of the commission, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and/or penalties, and in such action he shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the commission or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law. [C35, §6943-g8; C39, §6943.132; C46, 50, 54, §424.7]

**424.8 Service of notices.** Any notice, except notice of appeal, authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended by certified mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this chapter, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of registration and posting of such notice. [C35,§6943-g9; C39,§6943.133; C46, 50, 54,§424.8; 57GA, ch 267,§48]

**424.9 Limitation on actions.** The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this chapter. [C35,§6943-g10; C39,§6943.134; C46, 50, 54,§424.9]

**424.10 Commission to enforce chapter.** The state tax commission shall administer and enforce the assessment of the tax imposed by this chapter. It may make and publish such rules and regulations, not inconsistent with this chapter, and shall distribute the same throughout the state and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this chapter. [C35,§6943-g11; C39,§6943.135; C46, 50, 54,§424.10]

**424.11 Examination of books.** For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the tax commission shall have the power to examine or cause to be examined any books, papers, records, or memoranda which are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge, or information relevant to such determinations aforementioned, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The tax commission is empowered any time and from time to time to require any owner, manager, or employee of any store in the state to file with the tax commission, a statement under oath, showing the ownership, management, and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the commission shall prescribe. [C35,§6943-g12; C39,§6943.136; C46, 50, 54,§424.11]

**424.12 Payments.** All fees, taxes, interest, and penalties imposed under this chapter must be paid to the commission in the form of remittances payable to the treasurer of the state, and said commission shall transmit each payment daily to the state treasurer, to be deposited in the state treasury to the credit of the general fund. If it shall appear that an overpayment has been made or shall have been made, then, all of the provisions, power, duties, authority and restrictions contained in sections 422.66 and 422.67 shall apply hereto. [C35,§6943-g14; C39,§6943.137; C46, 50, 54,§424.12]

**424.13 Penalties—offenses.**

1. Any person failing to file a return or corrected return or to pay any tax within the time required shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of in the same manner as other receipts under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed.

2. Any person required to make, render, sign, or verify any return or supplementary return, who makes any false or fraudulent return with the intent to defeat or evade the assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars, nor not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both fine and imprisonment, in the discretion of the court.

3. The certificate of the commission to the effect that the tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence thereof. [C35,§6943-g15; C39,§6943.138; C46, 50, 54,§424.13]

**424.14 As occupation tax.** The tax levied and collected under this chapter shall not be affected or be in lieu of the Iowa retail sales tax or any other tax levied under any other act but the taxes levied and collected hereunder are levied and collected as an occupation tax. [C35,§6943-g16; C39,§6943.139; C46, 50, 54, §424.14]

**424.15 Partial invalidity—effect.** If any section, provision or clause of this chapter should be declared invalid, such invalidity shall not be construed to affect the portions of this chapter not so held invalid. [C35,§6943-g17; C39,§6943.140; C46, 50, 54,§424.15]

**424.16 Nonapplicability of chapter.** This chapter shall not apply to any stores owned or

operated by any person, firm, or corporation when all of said stores so owned or operated are located in unincorporated villages and no store is more than eight miles distant from

every other store so owned or operated. [C35, §6943-g18; C39, §6943.141; C46, 50, 54, §424.16]

Constitutionality, 46GA, ch 75, §19  
 Omnibus repeal, 46GA, ch 75, §20

CHAPTER 425

HOMESTEAD TAX CREDIT

Referred to in §426.3

- 425.1 Ratio and manner of distribution.
- 425.2 Qualifying for credit.
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- 425.9 Credits in excess of tax—appeals—re-funds.
- 425.10 Reversal of allowed claim.
- 425.11 Definitions.
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**425.1 Ratio and manner of distribution.**

1. There is hereby appropriated annually from the general fund of the state to the state tax commission to be credited to the homestead credit fund, which fund is hereby created, an amount sufficient to carry out the provisions of this chapter.

The state tax commission shall requisition the state comptroller to issue his warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under the provisions of this chapter.

2. The homestead credit fund shall be apportioned each year as hereinafter provided so as to give a credit against the tax on each eligible homestead in the state, as defined herein; the amount of such credit to be in the same proportion that the assessed valuation of each eligible homestead in the state in an amount not to exceed twenty-five hundred dollars bears to the total assessed valuation of all eligible homesteads in the state in an amount not to exceed twenty-five hundred dollars for each homestead.

3. The revenue distributable from the homestead credit fund, as provided for in subsection 1 hereof, shall be allocated every six months to the several counties of the state in the same proportion that the assessed valuation of all eligible homesteads in each county in an amount not to exceed twenty-five hundred dollars for each homestead, bears to the total assessed valuation of all eligible homesteads in the state in an amount not to exceed twenty-five hundred dollars for each homestead. On March 25, 1938, and every six months thereafter the commission shall certify and remit to the county treasurer of each county in the state the total amount of money which has been apportioned or is then apportionable to that county.

4. On October 1, 1937, and annually thereafter, the commission shall estimate the millage credit not to exceed twenty-five mills to be given to each dollar of eligible homestead valuation based upon the estimated revenue that may be distributable from the homestead

credit fund for the ensuing year, and shall certify to the county auditor of each county such millage credit and the amount in dollars thereof. Each county auditor shall then enter such credit against the tax levied on each eligible homestead in each county and payable during the ensuing year, designating on the tax lists such credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which such eligible homesteads are located in an amount equal to the credits allowed on the taxes of such homesteads. The amount of said credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of said homesteads; provided, however, that the several taxing districts shall not be permitted to draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund. [C35, §§6943-f63,-f64; C39, §§6943.100, 6943.142; C46, §§422.69, 425.1; C50, 54, §425.1]

**425.2 Qualifying for credit.** Any person who desires to avail himself of the benefits provided hereunder shall each year on or before July 1 deliver to the assessor, on blank forms to be furnished by the assessor, a verified statement and designation of homestead as claimed by him, and the assessor shall return said statement and designation on July 2 of each year to the county auditor with his recommendation for allowance or disallowance indorsed thereon. In case the owner of the homestead is in active service in the military, naval, or air forces or nurse corps of this state or of the United States, such statement and designation may be delivered or filed by any member of the owner's family. The county old-age assistance investigator shall make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249. [C39, §6943.143; C46, 50, 54, §425.2]

**425.3 Verification by board.** The county board of supervisors in each county shall forthwith examine all such claims, delivered to the assessors as herein provided, and shall either allow or disallow said claims, and in the event of disallowance notice thereof shall be sent by certified mail to claimant at his last known address. [C39,§6943.144; C46, 50, 54,§425.3; 57 GA, ch 267,§49]

**425.4 Certification to treasurer.** All claims which have been allowed by the board of supervisors shall be certified on or before August 1, in each year, by the county auditor to the county treasurer, which certificates shall list the name of each owner, legal description of the claimed homestead, and the assessed valuation of said homestead in an amount not to exceed twenty-five hundred dollars for each homestead. The county treasurer shall forthwith certify to the state tax commission the total assessed valuation of all homesteads so certified in an amount not to exceed twenty-five hundred dollars for each homestead. [C39, §6943.145; C46, 50, 54,§425.4]

**425.5 Correcting listing.** If the assessor who last listed and valued a claimed eligible homestead did not, in the description and valuation thereof, comply with the provisions of section 428.7, he shall, if still in office, on the written request of such claimant and without expense to the claimant or to the county, correct his listing and valuations of such claimed homestead and contiguous real property originally listed and valued by him, and file such corrected listing and valuations with the county auditor, who forthwith shall certify the same to the county treasurer, and said county treasurer shall so correct his tax books; provided, that if the assessor who last listed and valued such property is not still in office, the assessor in office shall, on such written request and at the expense of the county, so correct such listing and valuations of said homestead and said contiguous real property. [C39,§6943.146; C46, 50, 54,§425.5]

**425.6 Waiver by neglect.** If any person fails to make claim for the credits provided for under this chapter as herein required, he shall be deemed to have waived the homestead credit for the year in which he failed to make claim. [C39,§6943.147; C46, 50, 54,§425.6]

**425.7 Appeals permitted.**

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county

in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. Should the state tax commission determine, upon investigation, that any claim for homestead credit has been allowed by any board of supervisors which is not justifiable under the law and not substantiated by proper facts, the commission may, at any time within one year after the receipt by the state tax commission of the certification of such credit by any county treasurer, set aside such allowance. Notice of such disallowance shall be given to the county auditor of the county in which such claim has been improperly granted and a written notice of such disallowance shall also be addressed to the claimant at his last known address. Such claimant, or the board of supervisors, may appeal from the action of the state tax commission in the same manner, and in the same time, as provided by subsection 1. Where such appeal is taken by the claimant or by the board of supervisors, the appellant shall within ten days after the filing of such appeal, notify the chairman of the state tax commission by restricted certified mail of the filing of said appeal. In any case where a claim is so disallowed by the state tax commission and no appeal is taken from such disallowance, any amounts of credits allowed and paid from the homestead credit fund shall become a lien upon the property on which said credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes and such collections shall be returned to the state tax commission and credited to the homestead credit fund. The state tax commission shall also have the authority to institute legal proceedings against a homestead credit claimant for the collection of all payments made on such disallowed credits.

Said appeals shall be tried by equitable proceedings. [C39,§6943.148; C46, 50, 54,§425.7; 57GA, ch 267,§50]

**425.8 Forms—rules.** The commission shall prescribe the form for the making of verified statement and designation of homestead, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary the commission shall forward to the county auditors of the several counties in the state such prescribed sample forms, and the county auditors shall furnish blank forms prepared in accordance therewith with the assessment rolls, books, and supplies delivered to the assessors.

The commission shall have the power and authority to prescribe rules and regulations, not inconsistent with the provisions of this

chapter, necessary to carry out and effectuate its purposes. [C39,§6943.149; C46, 50, 54,§425.8]

**425.9 Credits in excess of tax—appeals—refunds.** If the amount of credit apportioned to any homestead under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against said homestead, then such excess shall be remitted by the county treasurer to the state tax commission to be redeposited in the homestead credit fund and be reallocated the following year by the commission as provided hereunder.

In the event any claim for credit made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the same millage credit shall be allowed on the assessed valuation, not to exceed twenty-five hundred dollars in amount, of the homestead involved in said appeal, as was allowed on other homestead valuations for the year or years in question, and the state tax commission, the county auditor, and the county treasurer are hereby authorized and directed to make such millage credit and to change their books and records accordingly.

In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such homestead valuation, remittance shall be made to such taxpayer of the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the homestead credit fund provided for in the first paragraph of this section. [C39,§6943.150; C46, 50, 54,§425.9]

**425.10 Reversal of allowed claim.** In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the state tax commission, the county auditor, and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the homestead credit fund to be reallocated the following year as provided herein. [C39, §6943.151; C46, 50, 54,§425.10]

**425.11 Definitions.** For the purpose of this chapter and wherever used in this chapter:

1. The word, "homestead", shall have the following meaning:

a. The homestead must embrace the dwelling house in which the owner is living at the time of filing the application and said application must contain an affidavit of his intention to occupy said dwelling house, in good faith, as a home for six months or more in the year for which the credit is claimed, provided further, that when any person is inducted into

active service under the selective training and service act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the selective training and service act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service, and where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead

c. If within a city or town plat, it must not exceed one-half acre in extent; if, however, its assessed valuation is less than twenty-five hundred dollars, the land area may be enlarged until its assessed valuation reaches that amount.

d. If outside of a city or town, it must not contain more than forty acres.

e. It must not embrace more than one dwelling house, but where a homestead outside of a city or town has more than one dwelling house situated thereon, the millage credit provided for in this chapter shall apply to forty acres, the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant thereto situated upon said forty acres.

f. The words "dwelling house" shall embrace any building occupied wholly or in part by the claimant as a home.

2. The word, "owner", shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase where it is shown that not less than one-tenth of the purchase price named in the contract actually has been paid and which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by blood relatives, or by legally adopted children, or where the person is occupying the homestead under a deed which conveys a divided interest where the other interests are owned by blood relatives or by legally adopted children.

3. The words "assessed valuation" shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.13, without deducting therefrom the exemptions authorized in section 427.3.



Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control. [C39,§6943.152; C46, 50, 54,§425.11]

See §441.10

**425.12 Indian land.** Each forty acres of land, or fraction thereof, occupied by a member or members of the Sac and Fox Indians in Tama county, which land is held in trust by the secretary of the interior of the United States for said Indians, shall be given a homestead tax credit within the meaning and under the provisions of this chapter. Application for such homestead tax credit shall be made to the county auditor of Tama county and may be made by a representative of the tribal council. [C39,§6943.153; C46, 50, 54,§425.12]

**425.13 Conspiracy to defraud.** If any two or more persons conspire and confederate together with fraudulent intent to obtain the millage credit provided for under the terms of

this chapter by making a false deed, or a false contract of purchase, they are guilty of a conspiracy and every person who is convicted of such a conspiracy shall be imprisoned in the county jail for a period not to exceed one year, or shall be fined in a sum not to exceed one thousand dollars, or shall be imprisoned in the penitentiary not more than three years. [C39, §6943.154; C46, 50, 54,§425.13]

**425.14 False affidavits.** Any person making a false claim or affidavit for the purpose of securing a homestead tax credit, or for the purpose of aiding another to secure such homestead tax credit, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment. [C39,§6943.155; C46, 50, 54,§425.14]

Constitutionality, 47GA, ch 195,§23

## CHAPTER 426

### AGRICULTURAL LAND TAX CREDIT

Referred to in §275.1

426.1 Agricultural land credit fund.

426.2 Definition.

426.3 Where credit given.

426.4 and 426.5 Repealed by 52GA, ch 152, §§11, 12.

426.6 Computation by auditor—appeal.

426.7 Warrants drawn by comptroller.

426.8 Apportionment by auditor.

426.9 Pro rata disbursement.

426.10 Rules and regulations prescribed.

**426.1 Agricultural land credit fund.** There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1946, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of ten million five hundred thousand dollars. Any balance in said fund on June 30 shall revert to the general fund. [C39,§6943.156; C46, 50, 54,§426.1; 56GA, ch 215,§1]

**426.2 Definition.** "Agricultural lands" as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes.

Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter. [C39,§6943.165; C46, 50, 54, §426.2]

**426.3 Where credit given.** The agricultural land credit fund shall be apportioned each

year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the millage for the general school fund exceeds fifteen mills; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund fifteen mills for the previous year, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which a homestead credit, as provided by chapter 425, has been allowed for the year in which the agricultural credit is claimed. [C39,§§6943.157, 6943.164; C46, 50, 54,§426.3]

**426.4 and 426.5** Repealed by 52GA, ch 152, §§11, 12. See §426.6.

**426.6 Computation by auditor—appeal.** The agricultural land tax credit allowed each year shall be computed as follows: On or before the first of June the county auditor shall list by school districts all tracts of agricultural lands

which they are entitled to credit hereunder, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of fifteen mills he shall multiply the millage which is in excess of fifteen mills by the total taxable value of the agricultural lands entitled to credit hereunder in the district, and on or before the first of June certify the amount thereof to the state comptroller.

In the event the county auditor denies a credit upon any such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairman of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at his last known address, notice of its decision. In the event of disallowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final. [C39, §§6943.160-6943.163; C46, §§426.4-426.6; C50, 54, §426.6]

Referred to in §426.7

**426.7 Warrants drawn by comptroller.** After receiving from the several county auditors of the state the certifications provided for in section 426.6, and on or before March 15, the

state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the first of June, he shall prorate the fund to the several county treasurers and notify the several county auditors of the pro rata percentage on or before August 1. [C39, §6943.157; C46, 50, 54, §426.7]

**426.8 Apportionment by auditor.** Upon receiving the pro rata percentage from the state comptroller, the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the comptroller's warrant by the county auditor, he shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title. [C39, §6943.158; C46, 50, 54, §426.8]

**426.9 Pro rata disbursement.** If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis. [C46, 50, 54, §426.9]

**426.10 Rules and regulations prescribed.** The state comptroller shall have the power and authority to prescribe forms, rules, and regulations, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes. [C54, §426.10]

## CHAPTER 426A

### MILITARY SERVICE TAX CREDIT

- 426A.1 Military service tax credit fund.
- 426A.2 Where credit given.
- 426A.3 Computation by auditor.
- 426A.4 Certification by tax commission.
- 426A.5 Proportionate share to districts.

- 426A.6 Setting aside allowance.
- 426A.7 Forms—rules.
- 426A.8 Excess remitted—appeals.
- 426A.9 Erroneous credits.
- 426A.10 Balance in reserve.

**426A.1 Military service tax credit fund.** There is hereby appropriated from any moneys in the state treasury not otherwise appropriated, the sum of eight hundred thousand dollars to establish a fund to be known as "the military service tax credit fund", in which fund shall also be included the amounts credited to the military service tax fund provided by subsection 5 of section 123.50. [C50, 54, §426A.1]

**426A.2 Where credit given.** The military service tax credit fund shall be apportioned each year as hereinafter provided so as to replace all or a portion of the tax on property eligible for military service tax exemption in the state, were such property subject to taxation the amount of such credit to be equal to not more than twenty-five mills upon the valuation of property subject to the tax which, but for military service tax exemption, would

be payable upon such property in the taxing district to which such property is located. [C50, 54, §426A.2; 56GA, ch 216, §1]

**426A.3 Computation by auditor.** On or before August 1 of each year the county auditor shall certify to the county treasurer all claims for military service tax exemptions which have been allowed by the board of supervisors. Such certificate shall list the name of each owner and the legal description of the property upon which military service tax exemption has been granted, or the nature of the property upon which such military service tax exemption has been allowed on property other than real estate. The county treasurer shall forthwith certify to the state tax commission the amount of taxes which would be levied upon each property not in excess of twenty-five mills on each dollar of assessed valuation, at the regular property rate imposed on other real and personal property in the taxing district where such military service tax exemption has been granted, were such property subject to normal property taxation. [C50, 54, §426A.3]

**426A.4 Certification by tax commission.** Sums distributable from the military service tax credit fund shall be allocated every six months to the several counties of the state. On March 25, 1955, September 25, 1955, and every six months thereafter, the state tax commission shall certify to the comptroller the total credits claimed by each county. On or before March 25, 1955, and every six months thereafter upon receipt of the certification from the state tax commission, the comptroller shall draw warrants to the treasurer of each county payable from the military tax service credit fund in the amount claimed; provided that if the amount of money in said fund is insufficient to pay the credits claimed in full, then in that event they shall be paid on a pro rata basis. [C50, §§426A.2, 426A.4; 56GA, ch 216, §2]

**426A.5 Proportionate shares to districts.** The amount of credits received under this chapter shall then be apportioned by each county treasurer to the several taxing districts. Each taxing district shall receive its proportionate share of the military service tax credit allowed on each and every tax exemption allowed in such taxing district, in the proportion that the levy made by such taxing district upon general property bears to the total levy upon all property subject to general property taxation by all taxing districts imposing a general property tax in such taxing district. [C50, §§426A.2, 426A.4; 56GA, ch 216, §3]

**426A.6 Setting aside allowance.** Should the state tax commission determine, upon investigation, that any claim for military service tax exemption has been allowed by any board of supervisors which is not justifiable under the law and not substantiated by proper facts, the

commission may, at any time within one year after the receipt by the state tax commission of the certification of such exemption by any county treasurer, set aside such allowance. Notice of such disallowance shall be given to the county auditor of the county in which such claim has been improperly granted and a written notice of such disallowance shall also be addressed to the claimant at his last known address. Such claimant, or the board of supervisors, may appeal from the action of the state tax commission in the same manner, and in the same time, as provided for appeals from disallowance by the board of supervisors. When such appeal is taken by claimant or by the board of supervisors, the appellant shall, within ten days after the filing of such appeal, notify the chairman of the state tax commission, by restricted certified mail of the filing of said appeal. In any case, where a claim is so disallowed by the state tax commission and no appeal is taken from such disallowance, any amounts of credits allowed and paid from the military service tax credit fund shall become a lien upon the property on which said credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes and such collections shall be returned to the state tax commission and credited to the military service tax credit fund. The state tax commission shall also have the authority to institute legal proceedings against a military service tax exemption claimant for the collection of all payments made on such disallowed exemptions. Said appeals shall be tried by equitable proceedings. [C50, 54, §426A.6; 57GA, ch 267, §51]

**426A.7 Forms—rules.** The state tax commission shall prescribe the form for the making of a verified statement and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary, the commission shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The commission shall have the power and authority to prescribe rules and regulations, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes. [C50, 54, §426A.7]

**426A.8 Excess remitted—appeals.** If the amount of credit apportioned to any property eligible to military service tax exemption under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against such property eligible for military service tax exemption then such excess shall be remitted by the county treasurer to the state tax commission

to be redeposited in the military service tax credit fund and reallocated the following year by the commission as provided hereunder.

In the event any claim for exemption made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the same millage credit shall be allowed on the assessed valuation, not to exceed the amount of the military service tax exemption involved in said appeal, as was allowed on other military service tax exemption valuations for the year or years in question, and the state tax commission, the county auditor, and the county treasurer are hereby authorized and directed to make such millage credit and to change their books and records accordingly.

In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such military service tax exemption valuation, remittance shall be made to the county treasurer in the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the

military tax credit fund provided for in the first paragraph of this section. [C50, 54, §426A.8]

**426A.9 Erroneous credits.** In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the state tax commission, the county auditor and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the military service tax credit fund to be reallocated the following year as provided herein. [C50, 54, §426A.9]

**426A.10 Balance in reserve.** Any balance not required for the payment of military service tax credits in any one year from the funds appropriated shall remain in the military service tax credit fund as a reserve to be applied upon payment of future claims. [C50, 54, §426A.10]

## CHAPTER 427

### PROPERTY EXEMPT AND TAXABLE

Referred to in §§481.1, 442.16

427.1 Exemptions.

427.2 Roads and drainage rights of way.

427.3 Military service—exemptions.

427.4 Exemptions to relatives.

427.5 Reduction—discharge of record—oath.

427.6 Allowance—continuing effectiveness.

427.7 Penalty.

427.8 Petition for exemption.

427.9 Suspension of taxes.

427.10 Additional order.

427.11 Grantee or devisee to pay tax.

427.12 Suspended tax list.

427.13 What taxable.

427.14 County lands.

427.15 Interest of lessee.

**427.1 Exemptions.** The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including university, agricultural college, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the congress of the United States shall expressly authorize the taxation of such machinery and equipment.

Federal-owned lands, §1.4 et seq.  
Prior assessments by the federal government legalized, see 50GA, ch 210, §3

2. *Municipal and military property.* The property of a county, township, city, town, school district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, river-front improvement commission or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

Referred to in subsection 23

7. *Property of cemetery associations.* All grounds and buildings used by cemetery associations and societies for cemetery purposes.

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment.

Referred to in subsection 23

10. *Personal property of institutions and students.* Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9 and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township. Every educational institution claiming an exemption under the provisions of this subsection shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by the state tax commission, describing and locating the property upon which such exemption is claimed.

12. *Homes for soldiers.* The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops and products, except commercial orchards and vineyards, and all horticultural and agricultural produce harvested by or for the person assessed within one year previous to the listing, all wool shorn from his sheep within such time, all poultry, ten stands of bees, honey and beeswax produced during that time and remaining in the possession of the producer, all swine and sheep under nine months of age, and all other livestock and fur-bearing animals under one year of age.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. *Private libraries.* Private or professional libraries to the taxable value of three hundred dollars.

16. *Family equipment.* Family pictures; household furniture to the taxable value of three hundred dollars, and kitchen furniture; beds and bedding requisite for each family; all wearing apparel in actual use; all food provided for the family.

The exemptions allowed in this subsection shall not apply to hotels and boarding houses, except so far as the exempted classes of property shall be for the actual use of the family managing the same.

17. *Farm equipment — drays — tools.* The farming utensils of any person who makes his livelihood by farming, the team, wagon, and harness of the teamster or drayman who makes his living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed three hundred dollars in taxable value.

18. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

19. *Fraternal beneficiary funds.* The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 512.2, or for the payment of the expenses of such associations.

20. *Capital stock of companies.* The shares of capital stock of telegraph and telephone companies, freight line and equipment companies, transmission line companies as defined in section 437.1, express companies, corporations engaged in merchandising as defined in section 428.16, domestic corporations engaged in manufacturing as defined in section 428.20, and manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

Referred to in §§433.4, 433.12, 437.1

21. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

22. *Grain.* Grain handled, as defined under section 428.35.

23. *Statement of objects and uses filed.* Every society or organization claiming an exemption under the provisions of either subsection 6 or subsection 9 of this section shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by state tax commission, describing the nature of the property upon which such exemption is claimed and setting out in detail any

uses and income from such property derived from such rentals, leases or other uses of such property not solely for the appropriate objects of such society or organization. The assessor, in arriving at the valuation of any property of such society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased, let or rented and is used regularly for commercial purposes for a profit to any party or individual. In any case where a portion of the property is used regularly for commercial purposes no exemption shall be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. No exemption shall be granted upon any property upon or in which persistent violations of the laws of the state of Iowa are permitted. Every claimant of an exemption shall, under oath, declare that no such violations will be knowingly permitted or have been permitted on or after January 1 of the year for which a tax exemption is requested. Claims for such exemption shall be verified under oath by the president or other responsible heads of the organization.

24. *Delayed claims.* In any case where no such claim for exemption has been made to the assessor prior to the time his books are completed, such claims may be filed with the local board of review or with the county auditor not later than July 1 of the year for which such exemption from taxation is claimed, and a proper assessment shall be made either by the board of review or by the county auditor, if said property is all or in part subject to taxation.

25. *Mandatory denial.* No exemption shall be granted upon any property which is the location of a federal retail liquor sales permit or in which federally licensed devices not lawfully permitted to operate under the laws of the state of Iowa are located.

26. *Revoking exemption.* Any taxpayer or any taxing district may make application to the state tax commission for revocation for any exemption, based upon alleged violations of the provisions of this chapter. The tax commission shall also have power on its own motion to set aside any exemption which has been granted upon property for which exemption is claimed under this chapter. The tax commission shall give notice by certified mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the state tax commission, and any order made by the state tax commission revoking or modifying such exemption shall be subject to appeal to the district court having jurisdiction in the county in which such property is located, such appeal to be triable in equity, and to be made within twenty days after any order revoking such

exemption is made by the state tax commission.

27. *Tax provisions for armed forces.* If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making his livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if such person upon return from service, or in event of his death if his executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during his absence, the tax as assessed thereon shall be waived and no payment shall be required.

1. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]

2. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]

3, 4. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]

5. [SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

6. [C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

7, 8, 9, 10. [C51,§455; R60,§711; C73,§797; C97, §1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

11. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54,§427.1]

12. [C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]

13. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1; 56GA, ch 217,§1; 57GA, ch 214,§1]

14. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54,§427.1]

15, 16. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

17. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]

18. [R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

19. [SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

20. [C51,§§468, 469; R60,§§723, 724; C73,§§815, 816; C97,§§1318, 1319, 1323; S13,§§1330-g, 1342-g, 1346-g; SS15,§1346-s; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

21. [C35, 39,§6944; C46, 50, 54,§427.1]

22. [C50, 54,§427.1]

23. [C50, 54,§427.1]

24. [C50, 54,§427.1]

25. [C50, 54,§427.1]

26. [C50, 54,§427.1; 57GA, ch 267,§52]

27. [C54,§427.1]

40ExGA, SF 183,§1, editorially divided  
 Referred to in §420.207  
 Church property leased, §665.2

**427.2 Roads and drainage rights of way.** Real estate occupied as a public road, and rights of way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed. [C73,§809; C97,§1344; C24, 27, 31, 35, 39,§6945; C46, 50, 54,§427.2]

**427.3 Military service — exemptions.** The following exemptions from taxation shall be allowed:

1. The property, not to exceed three thousand dollars in taxable value, and poll tax of any honorably discharged union soldier, sailor, or marine of the Mexican war or the war of the rebellion.

2. The property, not to exceed eighteen hundred dollars in taxable value, and poll tax of any honorably discharged soldier, sailor, marine or nurse of the war with Spain, Tyler Rangers, Colorado volunteers in the war of the rebellion, 1861 to 1865, Indian wars, Chinese relief expedition or the Philippine insurrection.

3. The property, not to exceed seven hundred fifty dollars in taxable value of any honorably discharged soldier, sailor, marine, or nurse of the first World War.

4. The property, not to exceed five hundred dollars in taxable value of any honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged soldier, sailor, marine, or nurse of the second World War, army of occupation in Germany November 12, 1918 to July 11, 1923, American expeditionary forces in Siberia November 12, 1918 to April 30, 1920, second Nicaraguan campaign with the navy or marines in Nicaragua or on combatant ships 1926–1933, second Haitian suppressions of insurrections 1919–1920, navy and marine operations in China 1937–1939 and Yangtze service with navy and marines in Shanghai or in the Yangtze Valley 1926–1927 and 1930–1932 or of the Korean Conflict at any time between June 27, 1950 and July 27, 1953, both dates inclusive.

For the purposes of this section, the second World War shall be from December 7, 1941, to September 2, 1945, both dates inclusive.

5. The provisions of this section shall apply to personal property held in partnership but not in excess of the value of the veteran's share actually held. [C97,§1304; S13, SS15,§1304; C24, 27, 31, 35, 39,§6946; C46, 50, 54,§427.3; 56 GA, ch 218,§1; 57GA, ch 60,§7]

Referred to in §§420.207, 425.11, 427.4, 427.5, 427.7  
Co-operative apartments, see §499A.14

**427.4 Exemptions to relatives.** In case any person in the foregoing classifications does not claim any such exemption from taxation, it shall be allowed in the name of such person to the same extent on the property of any one of the following persons in the order named:

1. The wife, or widow remaining unmarried, of any such soldier, sailor, marine, or nurse, where they are living together or were living together at the time of the death of such person.

2. The widowed mother, remaining unmarried, of any such soldier, sailor, marine, or nurse, whether living or deceased, where such widowed mother is, or was at the time of death of the soldier, sailor, marine, or nurse, dependent on such person for support.

3. The minor child, or children owning property as tenants in common, of any such deceased soldier, sailor, marine, or nurse.

No more than one tax exemption shall be allowed under this section or section 427.3 in the name of any honorably discharged soldier, sailor, marine, or nurse. [C97,§1304; S13, SS15, §1304; C24, 27, 31, 35, 39,§6946; C46, 50, 54, §427.4]

Referred to in §§420.207, 427.7

**427.5 Reduction—discharge of record—oath.**

Any person named in section 427.3, provided he is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to his exemption, to be made from any property owned by such person and designated by him by proceeding as hereafter provided. In order to be eligible to receive said exemption or reduction the person claiming same shall have had recorded in the office of the county recorder of the county in which he shall claim exemption or reduction, the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, or order of separation from service, or honorable discharge of the person claiming or through whom is claimed said exemption; in the event said evidence of satisfactory service, separation, retirement, furlough to reserve, inactive status, or honorable discharge is lost he may record in lieu of the same, a certified copy thereof. Said person shall file with the city or county assessor, as the case may be his claim for exemption or reduction in taxes under oath, which claim shall set out the fact that he is a resident of and domiciled in the state of Iowa, and a person within the terms of section 427.3, and give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which he desires said exemption or reduction to be made, and shall further state that he is the equitable and legal owner of the property designated therein. The assessor shall tabulate and deliver or file said claims with the county auditor, having his recommendations for allowance or disallowance indorsed thereon. In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses' corps of the state or of the United States, said claim may be executed and delivered or filed by the owner's spouse, parent, child, brother, or sister, or by any person who may represent him under power of attorney. No person may claim a reduction or exemption in more than one county of the state, and

if no designation is made the exemption shall apply to the homestead, if any. [C24, 27, 31, 35, 39, §6947; C46, 50, 54, §427.5; 56GA, ch 219, §1]

Referred to in §§420.207, 427.7

**427.6 Allowance — continuing effectiveness.**

Said claim for exemption, if filed on or before July 1 of any year and allowed by the board of supervisors, shall be effective to secure an exemption only for the year in which such exemption is filed.

Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors in the district court of the county in which said claimed military service tax exemption is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors. [SS15, §1304-1a; C24, 27, 31, 35, 39, §6948; C46, 50, 54, §427.6; 56GA, ch 219, §2]

Referred to in §§420.207, 427.7

**427.7 Penalty.** Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 427.3 to 427.6, inclusive, or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a misdemeanor and upon conviction thereof fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days or be both so fined and imprisoned. [C46, 50, 54, §427.7]

Referred to in §420.207

**427.8 Petition for exemption.** Whenever a person, by reason of age or infirmity, is unable to contribute to the public revenue, such person may file a petition, duly sworn to, with the board of supervisors, stating such fact and giving a statement of property, real and personal, owned or possessed by such applicant, and such other information as the board may require. The board of supervisors may thereupon order the county treasurer to suspend the collection of the taxes assessed against such petitioner, his polls or estate, or both, for the current year, or such board may cancel and remit said taxes, provided, however, that such petition shall first have been approved by the council of the city or town in which the property of the petitioner is located, or by the township trustees of the township in which said property is located. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6950; C46, 50, 54, §427.8]

Referred to in §§420.207, 427.9, 427.10, 446.7

**427.9 Suspension of taxes.** Whenever a person has been issued a certificate of old-age assistance and is receiving monthly or quarterly payments of assistance from the old-age assistance fund, such person shall be deemed to be unable to contribute to the public revenue. The state board of social welfare shall thereupon notify the board of supervisors, of the county in which such assisted person owns

property, of the aforesaid fact, giving a statement of property, real and personal, owned, possessed, or upon which said person is paying taxes as a purchaser under contract. It shall then be the duty of the board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, to order the county treasurer to suspend the collection of all the taxes assessed against said property and remaining unpaid by such person or contractually payable by him, for such time as such person shall remain the owner or contractually prospective owner of such property, and during the period such person receives monthly or quarterly payments of assistance from the old-age assistance fund. [C35, §6950-g1; C39, §6950.1; C46, 50, 54, §427.9]

Referred to in §§420.207, 427.10, 427.12

**427.10 Additional order.** The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner referred to in section 427.8, or the public and the aged person referred to in section 427.9, cancel and remit the taxes assessed against the petitioner referred to in section 427.8, or the aged person referred to in section 427.9, his polls or estate or both, even though said taxes have previously been suspended as provided in sections 427.8 and 427.9. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6951; C46, 50, 54, §427.10]

Referred to in §420.207

**427.11 Grantee or devisee to pay tax.** In the event that the petitioner shall sell any real estate upon which the tax has been suspended in the manner above provided, or in case any property, or any part thereof, upon which said tax has been suspended, shall pass by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of such infirm person, the taxes, without any accrued penalty, that have been thus suspended shall all become due and payable, with six percent interest per annum from the date of such suspension, except that no interest on taxes shall be charged against the property or estate of a person receiving or having received monthly or quarterly payments of old-age assistance, and shall be enforceable against the property or part thereof which does not pass to such spouse or minor child. The petitioner, or any other person, shall have the right to pay the suspended taxes at any time. [C24, 27, 31, 35, 39, §6952; C46, 50, 54, §427.11]

Referred to in §420.207

**427.12 Suspended tax list.** The county treasurer shall keep and maintain in his office a book which shall be known as the "suspended tax list" and in which he shall enter the following data relative to all taxes, and polls, the collection of which have been suspended by order of the board of supervisors, to wit:

1. A governmental or platted description of the land on which the said tax has been levied or on which it is a lien.



2. The name of the owner of said land.
3. The amount, and current year, of said tax.
4. The date of the order suspending collection of said tax.

Said book shall be so prepared, ruled, and headed that all entries of taxes and polls against the land in a given section or in a given city or town plat addition, or auditor's plat shall be separate from the entry of taxes against the land in any other section, or city or town plat, addition, or auditor's plat.

The county treasurer shall, prior to January 1, 1946, enter in said book the aforesaid data as to all unpaid, uncanceled and unremitted taxes, and polls, the collection of which have been ordered suspended by the board of supervisors since July 4, 1921. The data relative to all other suspended taxes and polls shall be entered immediately following the entry of such suspension.

If a tax or poll on said book be paid, or be subsequently legally canceled and remitted, the treasurer shall enter in said book and over his official signature a satisfaction thereof.

Said suspended tax list shall be considered the only official suspended tax list of the county. When any suspension, heretofore or hereafter ordered by the board of supervisors for any reason provided by law, has been entered therein, such entry shall, on and after date of said entry, be a lien and notice thereof in accordance with the provisions of sections 427.9 and 445.10. Such entries of suspended taxes shall not be required to be entered in or carried forward to any other book or tax list, notwithstanding any provision of law to the contrary. [C31, 35, §6952-d1; C39, §6952.1; C46, 50, 54, §427.12]

**427.13 What taxable.** All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace:

1. Ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.
2. Horses, cattle, mules and asses over one year of age.
3. Sheep and swine over nine months of age.
4. Money whether in possession or on deposit.
5. Credits, including bank bills, government currency, property or labor due from solvent

debtors on contract or judgment, mortgages or other like securities, bills receivable.

6. Property situated in this state belonging to any bank or company, incorporated or otherwise, whether incorporated in this or any other state.

7. Corporation shares or stocks not otherwise assessed or excepted.

8. Public or municipal bonds, stocks or loans, except as otherwise provided.

9. Household furniture, beds and bedding made use of in hotels and boarding houses and not hereinbefore exempted.

10. Gold and silver plate, watches, jewelry, and musical instruments.

11. Every description of vehicle, including bicycles, except as otherwise provided.

12. Threshing machines.

13. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of the state or not, if owned either wholly or in part by inhabitants of this state, to the amount owned in this state. [C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §6953; C46, 50, 54, §427.13]

C97, §1308, editorially divided  
Bridges taxed, §434.20  
Motor fees in lieu of taxes, §321.130  
Pensions exempt, §411.13

**427.14 County lands.** All lands in this state which are owned or held by any other county or counties claiming title under locations with swamp land indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county. [C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §6954; C46, 50, 54, §427.14]

**427.15 Interest of lessee.** In all cases where land belonging to any state institution has been leased and the leases renewed, containing an option of purchase, the interest of the lessees therein shall be subject to assessment and taxation as real estate. The value of such interest shall be fixed by deducting from the value of the lands and improvements the amount required by the lease to acquire the title thereto, which leasehold interest so assessed and taxed may be sold for delinquent taxes and deeds issued thereunder as in other cases of tax sales, and the same rights shall accrue to the grantee therein as were held and owned by the tenant. [C97, §1351; C24, 27, 31, 35, 39, §6955; C46, 50, 54, §427.15]

CHAPTER 428

LISTING IN GENERAL

Referred to in §§409.48, 431.1, 441.16, 442.16

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- 428.32 Appellate procedure.
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- 428.35 Grain handled.

**428.1 Listing—by whom.** Every inhabitant of this state, of full age and sound mind, shall list for the assessor all property subject to taxation in the state, of which he is the owner, or has the control or management, in the manner herein directed:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married woman, by herself or husband.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.
4. The personal property of a decedent, by the executor or administrator, or if there is none, by any person interested therein.
5. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.
6. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee. [C51, §458; R60, §714; C73, §803; C97, §1312; S13, §1312; C24, 27, 31, 35, 39, §6956; C46, 50, 54, §428.1]

S13, §1312, editorially divided

**428.2 Listing property of another.** Any person required to list property belonging to another shall list it in the same county in which he would be required to list it if it were his own, except as herein otherwise directed; but he shall list it separately from his own, giving the assessor the name of the person or estate to which it belongs. [C51, §461; R60, §716; C73, §805; C97, §1316; C24, 27, 31, 35, 39, §6957; C46, 50, 54, §428.2]

**428.3 Agent personally liable.** Any person acting as the agent of another, and having in his possession or under his control or management any money, notes, and credits, or personal property belonging to such other person, with a view to investing or loaning or in any

other manner using or holding the same for pecuniary profit, for himself or the owner, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list or to swear to the same, the amount of such money, property, notes, or credits may be listed and valued according to the best knowledge and judgment of the assessor. [R60, §725; C73, §817; C97, §1320; C24, 27, 31, 35, 39, §6958; C46, 50, 54, §428.3]

**428.4 Personal property—real estate—buildings.** Property shall be taxed each year, and personal property shall be listed and assessed each year in the name of the owner thereof on the first day of January. Real estate shall be listed and valued in 1933 and every four years thereafter, and in each year in which real estate is not regularly assessed, the assessor shall list and assess any real property not included in the previous assessment, and also any buildings erected since the previous assessment, with a minute of the tract or lot of land whereon the same are situated, and the auditor shall thereupon enter the taxable value of such buildings on the tax list as a part of the real estate to be taxed; but if such buildings are erected by another than the owner of the real estate, they shall be listed and assessed to the owner as personal property, but buildings and fixtures erected on real estate held under a lease of longer than three years duration shall be assessed as real estate. [C51, §460, 465; R60, §§719, 720; C73, §812; C97, §1350; C24, 27, 31, 35, 39, §6959; C46, 50, 54, §428.4]

Referred to in §420.207  
Reassessment of real estate, §442.2

**428.5 Unknown owners.** When the name of the owner of any real estate is unknown, it shall be assessed without connecting therewith any name, but inscribing at the head of the page the words “owners unknown”, and such property, whether lands or town lots, shall be

listed as nearly as practicable in the order of the numbers thereof. [R60,§737; C73,§826; C97, §1353; C24, 27, 31, 35, 39,§6960; C46, 50, 54,§428.5]

C97,§1353, editorially divided

**428.6 Deceased owner.** The real estate of persons deceased may be listed as belonging to his estate or his heirs, without enumerating them. [C51,§461; R60,§716; C73,§805; C97,§1353; C24, 27, 31, 35, 39,§6961; C46, 50, 54,§428.6]

**428.7 Description of tracts—manner.** No one description shall comprise more than one town lot, or more than the sixteenth part of a section or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance therewith. This section shall apply to known owners and unknown owners, alike. [C97,§1353; C24, 27, 31, 35, 39, §6962; C46, 50, 54,§428.7]

Referred to in §425 5

**428.8 Place of listing.** Moneys and credits, notes, bills, bonds, and corporate shares or stocks not otherwise assessed, shall be listed and assessed where the owner lives, except as otherwise provided, and except that, if personal property not consisting of moneys, credits, corporation or other shares of stock, or bonds, has been kept in another assessment district during the greater part of the year preceding the first of January, or of the portion of that period during which it was owned by the person subject to taxation therefor, it shall be taxed where it has been so kept. [C97,§1313; C24, 27, 31, 35, 39,§6963; C46, 50, 54,§428.8]

**428.9 "Owner" defined.** Commission merchants, and all persons, other than warehousemen as defined in section 542.58 trading and dealing on commission, and assignees authorized to sell, and persons having in their possession property belonging to another subject to taxation in the assessment district where said property is found, when the owner of the goods does not reside in the county, are, for the purpose of taxation, to be deemed the owners of the property in their possession. [C51,§459; R60,§715; C73,§804; C97,§1314; C24, 27, 31, 35, 39,§6964; C46, 50, 54,§428.9]

**428.10 Ice and coal dealers.** Each ice or coal dealer shall be assessed upon the average amount of capital used by him in conducting his business. In estimating the amount of capital so used, there shall be taken into consideration the increase and decrease of the value of ice and coal held in store, and upon the value of his warehouses or ice houses situated upon lands leased from railway companies or other persons, and upon the value, if any, of such leasehold interest.

Such assessment shall be listed as personal property. In determining the average amount of capital invested the assessor shall take into consideration the entire year's business prior

to January 1, next preceding the assessment period. [C97,§1315; C24, 27, 31, 35, 39,§6965; C46, 50, 54,§428.10]

Excise tax on grain handled, §428.35

**428.11 Business in different districts.** When a person, firm, or corporation is doing business in more than one assessment district, the property and credits existing in any one of such districts, or arising from business done in such district, shall be listed and taxed in that district, and the credits not existing in or pertaining especially to the business in any district shall be listed and taxed in that district where the principal place of business may be. [C51, §463; R60,§717; C73,§806; C97,§1317; C24, 27, 31, 35, 39,§6966; C46, 50, 54,§428.11]

C97,§1317, editorially divided

**428.12 Branch banks.** The personalty, moneys and credits connected with or growing out of all business transacted directly or indirectly by or through the servants, employees or agents of any person, firm, or corporation engaged in the banking business, having an office or agency in more than one assessment district for the transaction of business, shall be taxable as provided in chapter 430, for the taxing of private banks and bankers, in the assessment district where said branch business is done. [C97,§1317; C24, 27, 31, 35, 39,§6967; C46, 50, 54,§428.12]

Branch banking prohibited, §528.51

**428.13 How assessment made.** An assessment made in such district shall be considered and proper deduction made in determining the taxable property of such person or firm, or shares of stock of such corporation, at its principal place of business. [C97,§1317; C24, 27, 31, 35, 39,§6968; C46, 50, 54,§428.13]

**428.14 Stipulation for payment.** The stipulation for the payment of obligations growing out of the business of such agency, in another district than the place where such agency is located, shall not determine where the property or credits of such parties shall be taxed. [C97,§1317; C24, 27, 31, 35, 39,§6969; C46, 50, 54, §428.14]

**428.15 Partners.** Any individual of a partnership is liable for the taxes due from the firm. [C51,§463; R60,§717; C73,§806; C97,§1317; C24, 27, 31, 35, 39,§6970; C46, 50, 54,§428.15]

**428.16 "Merchant" defined.** Any person, firm, or corporation owning or having in his possession or under his control within the state, with authority to sell the same, any personal property purchased with a view to its being sold, or which has been consigned to him from any place out of this state to be sold within the same, or to be delivered or shipped by him within or without this state, except a warehouseman as defined in section 542.58, shall be held to be a merchant for the purposes of this title. [C51,§468; R60,§723; C73, §815; C97,§1318; C24, 27, 31, 35, 39,§6971; C46, 50, 54,§428.16]

Referred to in §§420 207, 427.1, 428.18

**428.17 Stocks of merchandise.** In assessing such stocks of merchandise, the assessor shall require the production of the last inventory and enter the date thereof in the assessment roll. If, in the judgment of the assessor, the inventory is not correct, or if it was taken at such time as to render it unreliable as to the amount or value of such merchandise, he shall assess the same by personal examination. The assessment shall be made at the same ratio of the average value of the stock during the year next preceding the time of assessment, as is provided by section 441.13, and if the merchant has not been engaged in business for one year, then at a like ratio of the average value during such time as he shall have been so engaged, and if commencing on January 1, then at the same ratio of the value at that time. [C51, §468; R60, §723; C73, §815; C97, §1318; C24, 27, 31, 35, 39, §6972; C46, 50, 54, §428.17]

Referred to in §§420.207, 428.21  
See §441.13

**428.18 Warehouseman to file list.** A warehouseman as specified in section 428.16 shall, upon request, file with the assessor a written statement showing all property in his possession belonging to another subject to taxation, and the name and address of the person, firm, corporation, or estate to which it belongs. [C24, 27, 31, 35, 39, §6973; C46, 50, 54, §428.18]

46ExGA, SF 183, §7-a1, editorially divided  
Referred to in §420.207

**428.19 Warehouseman deemed owner.** If said warehouseman fails to furnish such statement all property in the possession of the warehouseman belonging to another subject to taxation, shall be deemed to be owned by the warehouseman for the purpose of taxation, and he shall be liable for taxes thereon. [C24, 27, 31, 35, 39, §6974; C46, 50, 54, §428.19]

Referred to in §420.207

**428.20 "Manufacturer" defined—duty to list.** Any person, firm, or corporation who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the same for gain or profit, shall be deemed a manufacturer for the purposes of this title, and shall list such property for taxation. [C51, §469; R60, §724; C73, §816; C97, §1319; C24, 27, 31, 35, 39, §6975; C46, 50, 54, §428.20]

40ExGA, SF 183, §9, editorially divided  
Referred to in §§420.207, 427.1, 428.23

**428.21 Assessment—how made.** Such personal property, whether in a finished or unfinished state, shall be assessed at the same ratio as provided in section 441.13 of its average value estimated upon those materials only which enter into the combination, manufacture, or pack, such average to be ascertained as in section 428.17. [C51, §469; R60, §724; C73, §816; C97, §1319; C24, 27, 31, 35, 39, §6976; C46, 50, 54, §428.21]

Referred to in §420.207  
See §441.13

**428.22 Machinery deemed real estate.** Machinery used in manufacturing establishments shall, for the purpose of taxation, be regarded as real estate. [C97, §1319; C24, 27, 31, 35, 39, §6977; C46, 50, 54, §428.22]

Referred to in §420.207

**428.23 Manufacturer to list.** Corporations organized under the laws of this state for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real estate, personal property not hereinbefore mentioned, and moneys and credits in the same manner as is required of individuals. [C97, §1319; C24, 27, 31, 35, 39, §6978; C46, 50, 54, §428.23]

Referred to in §420.207

**428.24 Public utility plants.** The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipe lines; the lands, buildings, machinery, tracks, poles, and wires belonging to individuals or corporations furnishing electric light or power; the lands, buildings, machinery, poles, wires, overhead construction, tracks, cables, conduits, and fixtures belonging to individuals or corporations operating railways by cable or electricity, or operating elevated street railways; and the lands, buildings, tracks, and fixtures of street railways operated by animal power, shall be listed and assessed by the state tax commission. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation wherein the same is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise. [C97, §1343; C24, 27, 31, 35, 39, §6979; C46, 50, 54, §428.24]

C97, §1343, editorially divided  
Referred to in §§437.12, 437.13

**428.25 Property in different districts.** Where any such property except the capital stock is situated partly within and partly without the limits of a city or town, such portions of the said plant shall be assessed separately, and the portion within the said city or town shall be assessed as above provided, and the portion without the said city or town shall be apportioned by the state tax commission to the district or districts in which it is located. [C97, §1343; C24, 27, 31, 35, 39, §6980; C46, 50, 54, §428.25]

Referred to in §§437.12, 437.13

**428.26 Personal property.** All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or water works, electric light plants, electric or cable railways, elevated street railways or street railways operated by animal power, including the rolling stock of such railways and street railways, and the animals belonging to such street railways operated by animal power, shall be listed and assessed by the state tax commission. In the making of any such assessment of waterworks plants,

the value of any interest in the property so assessed, of the municipal corporation wherein the same is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise. [C97,§1343; C24, 27, 31, 35, 39,§6981; C46, 50, 54,§428.26]

Referred to in §§437.12, 437.13

**428.27 Capital stock listed and assessed.** The actual value of the capital stock over and above that of the above listed property shall be listed and assessed as prescribed in sections 431.1 and 431.2. [C97,§1343; C24, 27, 31, 35, 39, §6982; C46, 50, 54,§428.27]

Referred to in §§437.12, 437.13

**428.28 Annual report by utility.** Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipe lines, electric light or power plant, railways operated by electricity, elevated street railways, shall, annually on or before the first day of May of each calendar year, make a report on blanks to be provided by the state commission of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city or town in the state, and give such other information as the state commission shall require. [C31, 35,§6982-d1; C39,§6982.1; C46, 50, 54,§428.28]

**428.29 Assessment and certification.** The state commission shall at its meeting on the second Monday of July of each year proceed to determine, upon the basis of the data required in such report and any other information it may obtain, the actual value of all property, subject to its jurisdiction, of said individual, copartnership, corporation, or association, and shall make assessments upon the taxable value thereof, and the taxable value shall be determined by taking sixty percent of the actual value so ascertained. The state tax commission shall, on or before the third Monday in August, certify to the county auditor of every county in the state the valuations fixed for assessment upon all such property in each and every taxing district in each county by the state commission. This valuation shall then be spread upon the books in the same manner as other valuations fixed by the state commission upon property assessed under its jurisdiction. [C31, 35,§6982-d2; C39,§6982.2; C46, 50, 54,§428.29]

Referred to in §437.13  
See §441.13

**428.30 Review.** Any taxpayer subject to assessment under the provisions of this act\* shall have the right to ask for a review of its assessment by the state commission within ten days after the date the assessment is certified to the county auditor. [C31, 35,§6982-d3; C39, §6982.3; C46, 50, 54,§428.30]

\*44GA, ch 174

**428.31 Appeal.** Appeals may be taken from the final action of the state commission with

reference to any complaint that such individual, copartnership, corporation, or association may have to the assessment made by said state commission to the district court of the county in which such individual, copartnership, corporation, or association has its principal place of business, within twenty days after the final decision on said review has been certified to the county auditor. [C31, 35, §6982-d4; C39,§6982.4; C46, 50, 54,§428.31]

**428.32 Appellate procedure.** Appeals shall be taken by written notice to that effect to the said state commission and served as an original notice. The court shall hear the appeal in equity and determine anew all questions arising before the commission which relate to the liability of the property to assessment and its decision shall be certified by the clerk of the court to the state commission who shall correct the assessment and certify the same as fixed and determined to the county auditor who shall correct the entry made on the last list either in his office or in the office of the county treasurer. [C31, 35,§6982-d5; C39,§6982.5; C46, 50, 54,§428.32]

Service of original notice, R.C.P. 56(a)

**428.33 Jurisdiction of court.** Upon the trial of any appeal from the action of the commission fixing the amount of assessment upon any property concerning which complaint is made the court may increase, decrease, or affirm the amount of the assessment appealed from. [C31, 35,§6982-d6; C39,§6982.6; C46, 50, 54,§428.33]

**428.34 Real estate of corporations.** All real estate owned by corporations, returned in their statements as part of their assets for purposes of taxation, shall be valued therein for such assessment as other real estate, except as otherwise provided, and shall not be otherwise assessed. [C97,§1327; C24, 27, 31, 35, 39,§6983; C46, 50, 54,§428.34]

#### **428.35 Grain handled.**

**1. Definitions.** "Person" as used herein means individuals, corporations, firms and associations of whatever form. "Handling or handled" as used herein means the receiving of grain at or in each elevator, warehouse, mill, processing plant or other facility in this state in which it is received for storage, accumulation, sale, processing or for any purpose whatsoever. "Grain" as used herein means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked. The term "processing" shall not include hulling, cleaning, drying, grading or polishing.

**2. Tax imposed.** An annual excise tax is hereby levied on such handling of grain in the amount hereinafter provided. All grain so handled shall be exempt from all taxation as property under the laws of this state. The

amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as herein defined so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by him in that district during the year immediately preceding, or the part thereof, during which he was engaged in handling grain; and on demand the assessor shall have the right to inspect all such person's records thereof. A form for making such statement shall be included in the blanks prescribed by the state tax commission. If such statement is not furnished as herein required, section 441.16, shall be applicable.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as he may acquire, shall ascertain the number of bushels of grain handled by each person handling grain in his district during the preceding year, or part thereof, and shall assess the amount herein

provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 of this section shall be applied to the number of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* Such specific tax, when determined as aforesaid, shall be entered in the same manner as general personal property taxes on the tax list of the taxing district, and the proceeds of the collection of such tax shall be distributed to the same taxing units and in the same proportion as the general personal property tax on the tax list of said taxing district. All provisions of the law relating to the assessment and collection of personal property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection and enforcement of personal property taxes shall apply to the assessment, collection and enforcement of the tax imposed by this section. [C50, 54, §428.35]

Referred to in §427.1(22)

## CHAPTER 429

### TAXATION OF MONEYS AND CREDITS

Referred to in §§431.1, 441.16, 442.16

429.1 "Credits" defined.

429.2 Moneys—credits—annuities—bank notes—stock.

429.3 Levy—division of money collected.

429.4 Deductions from moneys and credits.

429.5 Good-faith debt required.

429.6 Details of debt.

429.7 Suretyship.

429.8 Debts not deductible.

429.9 Stock and moneyed capital denied deduction.

429.10 Deductions to fiduciary.

429.11 Loan corporations.

429.12 Examinations—expense.

429.13 Auditor's certificate.

**429.1 "Credits" defined.** The term "credit", as used in this chapter, includes every claim or demand due or to become due for money, labor, or other valuable thing, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage, or otherwise; but pensions of the United States or any of them, or salaries, or payments expected for services to be rendered, are not included in the above term. [C51, §457; R60, §713; C73, §802; C97, §1309; C24, 27, 31, 35, 39, §6984; C46, 50, 54, §429.1]

**429.2 Moneys — credits — annuities — bank notes—stock.** Moneys, credits, and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and

corporation shares or stocks not otherwise taxed in kind, shall be assessed and, excepting shares of stock of national, state, and savings banks, and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides. [C51, §466; R60, §721; C73, §813; C97, §1310; S13, §1310; C24, 27, 31, 35, 39, §6985; C46, 50, 54, §429.2]

S13, §1310, editorially divided  
Referred to in §§429.3, 444.2, 444.3, 444.5  
Bank surplus and profits as moneys and credits, §430.7  
Corporation shares as credit, §431.1

**429.3 Levy—division of money collected.** The millage tax provided for in section 429.2 shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in each taxing district in cities and towns shall be apportioned twenty percent to the county general fund, thirty percent to the city or town general fund, and fifty percent to the general fund of the school

district, and the amount collected in each taxing district outside of cities and towns shall be apportioned fifty percent to the county general fund and fifty percent to the general fund of the school district. [S13,§1310; C24, 27, 31, 35, 39,§6986; C46, 50, 54,§429.3]

#### 429.4 Deductions from moneys and credits.

In making up the amount of moneys and credits, corporation shares or stocks which any person is required to list, to have listed or assessed, including actual value of building and loan shares, he will be entitled to deduct from the actual value thereof the gross amount of all debts in good faith owing by him, and in addition thereto an amount of five thousand dollars.

All noninterest-bearing moneys and credits and accounts receivable shall be tax exempt, but the five thousand dollar exemption as set out in this section shall not apply in the event such noninterest-bearing moneys and credits and accounts receivable exempted herein shall exceed five thousand dollars and if less than five thousand dollars then only so much thereof as shall amount to five thousand dollars when added to such noninterest-bearing moneys and credits and accounts receivable. [C51, §467; R60,§722; C73,§814; C97,§1311; S13,§1311; C24, 27, 31, 35, 39,§6988; C46, 50, 54,§429.4; 57GA, ch 213,§1]

S13,§1311, editorially divided  
Referred to in §§429.5, 429.10, 432.8, 518.38  
Debts of insurance companies, §§518.38, 518.39

**429.5 Good-faith debt required.** No acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of section 429.4. [C51,§467; R60,§722; C73,§814; C97,§1311; S13,§1311; C24, 27, 31, 35, 39,§6989; C46, 50, 54,§429.5]

Referred to in §§429.10, 432.8

**429.6 Details of debt.** No person shall be entitled to any deduction from the amount of moneys and credits assessed unless he shall, upon demand, specifically state the nature of such indebtedness and the person to whom he is indebted and any other information the assessor may require. [C31, 35,§6989-d1; C39, §6989.1; C46, 50, 54,§429.6]

Referred to in §§429.10, 432.8

**429.7 Suretyship.** So much only of any liability of such person as security for another shall be deducted as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made will be bound to contribute. [C51,§467; R60,§722; C73, §814; C97,§1311; S13,§1311; C24, 27, 31, 35, 39, §6990; C46, 50, 54,§429.7]

Referred to in §§429.10, 432.8

**429.8 Debts not deductible.** No person will be entitled to any deduction on account of:

1. Any deposit or security note given in aid of the organization of a mutual insurance company for the premiums of insurance.

2. Any unpaid subscription to any institution, society, corporation, or company.

3. Any indebtedness contracted for the purchase of United States bonds or other non-taxable property. [C51,§467; R60,§722; C73,§814; C97,§1311; S13,§1311; C24, 27, 31, 35, 39,§6991; C46, 50, 54,§429.8]

Referred to in §§429.10, 432.8

**429.9 Stock and moneyed capital denied deduction.** No deduction for debts shall be allowed from the shares of stock of any state, savings or national bank or loan and trust company, nor from moneyed capital used in competition with banks, within the meaning of section 548 of title 12 of the United States code. [S13,§1311; C24, 27, 31, 35, 39,§6992; C46, 50, 54,§429.9]

Referred to in §§429.10, 432.8

**429.10 Deductions to fiduciary.** In listing moneys and credits as provided in this chapter, any administrator, executor, trustee, or agent shall be entitled to deductions, as prescribed in sections 429.4 to 429.9, inclusive, of debts owing by the legatee, devisee, beneficiary, or principal to the same extent as such fund might be reduced if it were held by such legatee, devisee, beneficiary, or principal who may be entitled to the income on such trust or fiduciary fund. [S13,§1312; C24, 27, 31, 35, 39,§6993; C46, 50, 54, §429.10]

**429.11 Loan corporations.** Any domestic corporation engaged in the business of loaning money to deserving persons whose business or circumstances are such as to make it desirable or convenient for them to accumulate funds with which to repay such loans by paying into a fund comparatively small amounts at frequent regular intervals, which fund may be held by such corporation as collateral security for the payment of such loans on or before January 15 of each year shall file with the auditor of state a verified report and statement of its financial condition, and showing the following items:

1. Its total capital stock paid in.
2. Its net surplus and undivided profits.
3. The total amount of loans outstanding.
4. The highest rate of interest charged and collected on loans made by it.
5. Whether its loans have been made to deserving persons whose business or circumstances are such as to make it desirable or convenient for them to accumulate funds with which to repay such loans by paying into a fund comparatively small amounts at frequent regular intervals.

6. Such further information in detail as the auditor of state shall from time to time require. [C24, 27, 31, 35, 39,§6994; C46, 50, 54,§429.11]

Referred to in §§429.13, 536.20

**429.12 Examinations—expense.** The auditor of state may in his discretion examine the books, records, business, and methods of doing business of such corporation once each year, for which he shall receive his actual expenses, including the compensation per diem of his examiners. Such corporation shall also pay to the auditor an annual fee of twenty-five dollars. [C24, 27, 31, 35, 39, §6995; C46, 50, 54, §429.12]

Referred to in §536.20

**429.13 Auditor's certificate.** If the auditor of state finds from such report or said examination, or both, that such corporation has honestly and in good faith so conducted its business as to aid deserving persons in the manner provided in section 429.11, and that the corporation has not collected a usurious rate of interest from borrowers on loans, he shall issue to said corporation a certificate to that effect. [C24, 27, 31, 35, 39, §6996; C46, 50, 54, §429.13]

Referred to in §§420.207, 536.20

## CHAPTER 430

### TAXATION OF BANKS

Referred to in §§428.12, 431.1, 441.16, 442.16

- 430.1 Private banks.
- 430.2 National and state bank stock—place of assessment.
- 430.3 List of stockholders and their holdings.
- 430.4 Listing to stockholders.
- 430.5 Statement furnished.
- 430.6 Deductions on account of real estate.
- 430.7 Rule of actual and taxable value.

- 430.8 Refusal to furnish information.
- 430.9 Stock of insolvent bank—remission.
- 430.10 Moneyed capital.
- 430.11 Listing.
- 430.12 Liability of corporation for tax.
- 430.13 Liability of stockholder—lien on stock.
- 430.14 Sale of stock.
- 430.15 Notice—how given.

**430.1 Private banks.** Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement showing the assets, aside from real estate, and liabilities of such bank or banker on January 1 of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers, or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items.

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due.

3. The amount of all deposits made with them by others, and also the amount of bills payable.

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation.

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof.

The aggregate actual value of moneys and credits less the amount of deposits, the aggregate actual value of bonds and stocks less the portion thereof otherwise taxed in this state, and other property, except real estate, pertaining to the business, shall be assessed and taxed

on the same basis as bank stock. Real estate shall be listed and assessed as other real estate. [C51, §460, 465; R60, §§719, 720; C73, §812; C97, §1321; S13, §1321; C24, 27, 31, 35, 39, §6997; C46, 50, 54, §430.1]

Referred to in §§420.207, 430.5

**430.2 National and state bank stock—place of assessment.** Shares of stock of national banks and state and savings banks and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. [R60, §719; C73, §812; C97, §1322; S13, §1322; C24, 27, 31, 35, 39, §6998; C46, 50, 54, §430.2]

<sup>40</sup>ExGA, SF 183, §12, editorially divided  
Referred to in §420.207

**430.3 List of stockholders and their holdings.** At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each. [R60, §714; C73, §819; C97, §1322; S13, §1322; C24, 27, 31, 35, 39, §6999; C46, 50, 54, §430.3]

Referred to in §§420.207, 430.8

**430.4 Listing to stockholders.** The assessor shall list to each stockholder under the head of corporation stock the total value of such shares. [C97, §1322; S13, §1322; C24, 27, 31, 35, 39, §7000; C46, 50, 54, §430.4]

Referred to in §420.207

**430.5 Statement furnished.** To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section 430.1, which shall also show separately the



amount of the capital stock and the surplus and undivided earnings. [C97,§1322; S13,§1322; C24, 27, 31, 35, 39,§7001; C46, 50, 54,§430.5]

Referred to in §§420.207, 430.8

#### 430.6 Deductions on account of real estate.

In arriving at the amount of capital stock and surplus and undivided profits taxable as such, of such corporations, the amount of their capital stock together with any or all of their surplus and undivided profits that may be actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any) on or in which the bank or trust company is located, shall be deducted from the total amount of capital stock and surplus and undivided profits, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. [C97,§1322; S13,§1322; C24, 27, 31, 35, 39,§7002; C46, 50, 54,§430.6]

40ExGA, SF 183,§13, editorially divided  
Referred to in §§420.207, 430.7

**430.7 Rule of actual and taxable value.** The assessor from such statement shall fix the value of such stock based upon the capital, at the same ratio\* of assessed value to actual value as the assessed value of real estate in the taxing district where such bank is located generally bears to its actual value.

The taxable value of such shares of stock shall be the assessed value and shall be taxed as moneys and credits. The provisions hereof shall become effective beginning with the assessment on the capital stock of all of said banks as of January 1, 1934.

All surplus and undivided profits of such bank or trust company remaining after the deduction of its real estate, if any, as provided in section 430.6 shall be taxed as moneys and credits, but in no event shall the right to offset bad debts or bad loans or any other losses against the amount of said surplus and undivided profits be authorized. [C73,§§818-820; C97,§1322; S13,§§1322, 1322-1a; C24, 27, 31, 35, 39,§7003; C46, 50, 54,§430.7]

Referred to in §420.207  
\*See §441.13

**430.8 Refusal to furnish information.** A refusal to furnish the assessor with the list of stockholders and the information required by sections 430.3 and 430.5 shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars. [S13,§1322; C24, 27, 31, 35, 39,§7004; C46, 50, 54,§430.8]

Referred to in §420.207

**430.9 Stock of insolvent bank — remission.** Whenever a bank operated within the state has been heretofore or shall hereafter be closed and placed in the hands of a receiver, the board of supervisors shall remit all unpaid taxes on the capital stock, surplus, and undivided profits of said bank. [C35,§7004-g1; C39,§7004.1; C46, 50, 54,§430.9]

Similar provision, §445.62

**430.10 Moneyed capital.** All moneyed capital within the meaning of section 548 of title 12 of the United States code shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank, and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. [S13,§§1310, 1322-1a; C24, 27, 31, 35, 39,§7005; C46, 50, 54,§430.10]

**430.11 Listing.** The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used. [S13,§1310; C24, 27, 31, 35, 39, §7006; C46, 50, 54,§430.11]

**430.12 Liability of corporation for tax.** The corporations described in this chapter shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be payable by the corporation in the same manner and under the same penalties as in cases of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. [C97,§1325; C24,§7014; C27, 31, 35,§7007-a1; C39,§7007.1; C46, 50, 54, §430.12]

41GA, ch 159,§1, editorially divided  
Referred to in §431.5  
Applicable to certain corporations, §431.5

**430.13 Liability of stockholder — lien on stock.** Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. [C97,§1325; C24, §7014; C27, 31, 35,§7007-a2; C39,§7007.2; C46, 50, 54,§430.13]

Referred to in §431.5  
Applicable to certain corporations, §431.5

**430.14 Sale of stock.** If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days notice of the amount of such tax and the time and place of sale. [C97,§1325; C24, §7014; C27, 31, 35,§7007-a3; C39,§7007.3; C46, 50, 54,§430.14]

Referred to in §431.5  
Applicable to certain corporations, §431.5

**430.15 Notice—how given.** Such notice shall be by certified mail addressed to the stockholder at his post-office address as the same appears upon the books of the company, or is known by its secretary. [C97,§1325; C24,§7014; C27, 31, 35,§7007-a4; C39,§7007.4; C46, 50, 54, §430.15; 57GA, ch 267,§53]

Referred to in §431.5  
Applicable to certain corporations, §431.5

## CHAPTER 430A

## TAXATION OF LOAN AGENCIES

430A.1 Verified statement filed.

430A.2 Exemptions.

430A.3 Levy.

430A.4 Computation by assessor.

430A.5 Forms—several places of business.

430A.6 Real and personal assessment.

430A.7 Optional procedure.

**430A.1 Verified statement filed.** Every corporation not organized under the laws of Iowa and every individual, partnership or other non-incorporated agency engaged in the business of making loans or investments within the state of Iowa on other than real estate security, shall annually on or before March 1 furnish to the assessor of the taxing district in which its principal place of business is located, a verified statement showing specifically with reference to the next year preceding the first day of January then last past; (1) The total amount of money loaned or invested by such financial corporation or loaning agency on security other than real estate or upon unsecured loans outside the state of Iowa; (2) The total assets of such corporation; (3) The total indebtedness of such corporation, or loaning agency excluding indebtedness not relating to the business of loaning money upon security other than real estate, or upon unsecured loans; (4) The location of each place of business maintained within or without the state by such corporation, or loaning agency; (5) The amount of money loaned on security other than real estate or upon unsecured loans by each place of business in Iowa; and such other information as the assessor shall require in order to determine the amount of capital employed in such business within the state of Iowa. The terms "loaned" or "invested" as employed in this section shall have the same meaning and effect with respect to loans and investments outside the state of Iowa as is hereinafter provided with respect to loans and investments within the state of Iowa. [C50, 54, §430A.1]

Referred to in §430A.7

**430A.2 Exemptions.** The provisions of this chapter shall not apply to corporations or agencies which are exempt from taxation under the provisions of the constitution of the United States or federal statutes, or to insurance companies subject to tax on gross premiums, under chapter 432, or to corporations organized under the laws of the state of Iowa, except as provided in section 430A.7 hereof or to rural electrification association loans, or to regularly chartered national and state banks. [C50, 54, §430A.2]

**430A.3 Levy.** There is hereby imposed upon capital employed in the business of making loans or investments within the state of Iowa, as determined under the provisions of this chapter, a tax of five mills on each dollar of such capital; such tax to be considered a tax upon moneys and credits of such corporations and to be apportioned as provided by law to the various taxing districts, as are the proceeds

of other taxes on moneys and credits. The term "loans" as used herein shall mean the lending of money to members of the general public upon other than real estate security. The term "investments" as used herein shall mean the discounting, purchasing, or otherwise acquiring notes, mortgages, sales contracts, debentures, or any other evidences of indebtedness, based upon other than real estate security when such investments are made in connection with loans made to members of the general public in the state of Iowa or in the course of any operations having as their effect the financing of business transactions within the state of Iowa resulting in the incurring of any indebtedness based upon security other than real estate security. [C50, 54, §430A.3]

**430A.4 Computation by assessor.** The assessor shall, upon the basis of the return made to him under the provisions of this chapter, determine the amount of capital employed by the maker of the return in the business of making loans or investments within the state of Iowa on other than real estate security, and shall deduct from the amount thus determined a pro rata share of the indebtedness of such corporation, individual, partnership or other nonincorporated agency, appertaining to the loaning of money on other than real estate security, a percentage equal to that which the amount of money loaned by such financial corporation in Iowa, unsecured or upon security other than real estate, bears to the total amount loaned by such loaning agency, unsecured or upon security other than real estate outside the state of Iowa; provided that no deduction for indebtedness shall be allowed in excess of eighty percent of the amount of capital employed in the business of making loans or investments within the state of Iowa as provided by this chapter and that in the determination of the indebtedness deducted, any and all assets of the company in the form of accounts receivable, cash on hand, or other capital used or available for use in connection with loans and investments on other than real estate security which have not been included in capital, shall be deductible from any such indebtedness for which credit is claimed or allowed. The amount thus determined shall be assessed as moneys and credits. [C50, 54, §430A.4]

**430A.5 Forms—several places of business.** The state tax commission shall prescribe forms for the making of returns as provided by this chapter. Any individual, partnership or agency subject to the provisions of this chapter and which maintains more than one place of busi-

ness within the state of Iowa, may elect to make the return provided for by this chapter to the state tax commission, which shall determine the proper assessment to be made in each taxing district in which such taxpayer maintains a place of business, and the results thereof shall be by the state tax commission promptly certified to the county auditors of the respective counties in which offices are maintained, who shall add such assessments to the tax lists. In making such assessments the state tax commission shall determine the proportion of business done by such taxpayer in each taxing district in which a place of business is maintained, and shall assess in each taxing district an amount in proportion to the business done in such taxing district to the amount of business done in the entire state. The state tax commission shall have the power to require the making of a return by any corporation, individual, partnership, or agency which it deems to be subject to taxation under the provisions of this chapter and in case of failure or refusal to make such a return, the state tax commission shall make an assessment based upon the best information it is able to obtain against any such corporation, individual, partnership, or agency, and shall certify such assessment as provided by this chapter. Appeals may be taken from the action of the state tax commission in regard to assessments or orders made by it in connection with this chapter under the same procedure generally, as is provided by section 422.29. [C50, 54,§430A.5]

**430A.6 Real and personal assessment.** All real and tangible personal property of individuals, corporations or agencies subject to the provisions of this chapter and located within the state of Iowa shall be assessed in

the same manner as other real and tangible personal property. [C50, 54,§430A.6]

**430A.7 Optional procedure.** Any corporation incorporated under the laws of the state of Iowa engaged in the business referred to in section 430A.1 hereof, both within and without the state of Iowa and whose loans and investments outside of the state of Iowa, whether made directly or through a wholly owned subsidiary, exceeds fifteen percent of its total loans and investments, may by filing a statement or return elect to be assessed and taxed in the manner and to the extent provided in the foregoing sections and in each year in which it is so assessed, its shares of stock, its loans to or capital invested in wholly owned subsidiaries described in the next sentence following, and moneys and credits shall not be assessed under chapter 431 or otherwise, except as herein provided. In determining the amount of capital employed within the state of Iowa by a corporation making a return under this section, there shall not be included therein the amount of loans to or capital invested in a wholly owned subsidiary engaged in the business of making loans and investments on other than real estate security and not incorporated under the laws of Iowa; provided, however, that any capital employed by any such subsidiary in the operation of a place of business of making loans or investments within the state of Iowa as defined by this chapter shall be subject to tax as capital employed within the state of Iowa. Any corporation electing under this section shall notify the local assessor or assessors of the fact of such election on or before March 31 following. [C50, 54,§430A.7]

Referred to in §430A.2

## CHAPTER 431

### CORPORATION STOCK TAXATION

Referred to in §§430A.7, 441.16, 442.16

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|---|---|
| 431.1 Shares of stock.                          | 431.10 Amount of tax.   |
| 431.2 Statement to assessor.                    | 431.11 Apportionment of tax.  |
| 431.3 Valuation of stock.                       | 431.12 Lien.  |
| 431.4 Refusal to make statement.                | 431.13 Deductions.  |
| 431.5 Corporations liable to pay tax.           | 431.14 Taxation of real estate, furniture, and fixtures.            |
|   | 431.15 Association liable.  |
|   | 431.16 Tax exclusive.   |
|   | 431.17 Foreign company—statement required—duty of auditor of state. |
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| <b>BUILDING, SAVINGS, AND LOAN ASSOCIATIONS</b> |   |
| 431.6 Shares assessed against association.      |   |
| 431.7 Sworn statement required.                 |   |
| 431.8 Refusal.                                  |   |
| 431.9 Determination of value.                   |   |

**431.1 Shares of stock.** The shares of stock of any corporation organized under the laws of this state, except corporations otherwise provided for in chapters 427 to 439, inclusive, and except as provided in section 437.14, shall be assessed to the owners thereof as moneys and credits at the place where its principal

business is transacted. The assessment shall be on the value of such shares on the first day of January in each year. In arriving at the assessable value of the shares of stock of such corporations, the amount of their capital actually invested in real estate or tangible personal property shall be deducted from the

actual value of such shares. Such property other than moneys and credits shall be assessed as other like property. Any corporation whose shares of stock are subject to assessment under this section shall be entitled to deduct from the actual value of such shares the actual value of shares owned by it in any other corporation subject to assessment under this section, upon submitting satisfactory proof to the assessor that such shares of stock have been assessed under the provisions of this section to the corporation issuing such shares of stock. [C97,§1323; C24, 27, 31, 35, 39,§7008; C46, 50, 54,§431.1]

Referred to in §§420.207, 428.27, 431.3, 432.5

**431.2 Statement to assessor.** Every such corporation annually, on or before the twenty-fifth day of January, shall furnish to the assessor of the assessment district in which its principal place of business is located, a verified statement showing specifically, with reference to the year next preceding the first day of January then last past:

1. Total authorized capital stock and number of shares thereof.
2. Number of shares of stock issued and par value of each.
3. Amount paid into the treasury on each share and the total capital paid in.
4. Description of each tract of real estate owned by said corporation, and the amount of capital actually invested therein.
5. An itemized list of all other property owned by said corporation, except moneys and credits, together with the location thereof, and the amount of capital actually invested therein.
6. Date, rate percent, and amount of each dividend declared, and the amount of capital on which each such dividend was declared.
7. Gross and net earnings, respectively, during the year, and amount of surplus.
8. Amount of profit added to sinking fund.
9. Highest price of sales of stock between the first and tenth days of January of the current year.
10. Highest price of sales of stock during the preceding year, and average price of such sales. [C97,§1323; C24, 27, 31, 35, 39,§7009; C46, 50, 54,§431.2]

Referred to in §§420.207, 428.27, 431.3, 432.5

**431.3 Valuation of stock.** If the assessor is not satisfied with the appraisal and valuation furnished as provided in sections 431.1 and 431.2, he may make a valuation of the shares of stock based upon the facts contained in the statements above required, or upon any information within his possession, or that shall come to him, and shall, in either case, assess to the owners the stock at the valuation made by him. [C97,§1324; C24, 27, 31, 35, 39,§7010; C46, 50, 54,§431.3]

C97,§1324, editorially divided  
Referred to in §432.5

**431.4 Refusal to make statement.** If the officers of any corporation refuse or neglect

to make the statement required, the assessor shall make a valuation of the capital stock of the defaulting corporation from the best information obtainable. [C97,§1324; C24, 27, 31, 35, 39,§7011; C46, 50, 54,§431.4]

Referred to in §432.5

**431.5 Corporations liable to pay tax.** Sections 430.12 to 430.15, inclusive, shall be applicable to the corporations hereinbefore described in this chapter. [C97,§1325; C24,§§7013, 7014; C27, 31, 35, 39,§7013; C46, 50, 54,§431.5]

Referred to in §432.5

**BUILDING, SAVINGS, AND LOAN ASSOCIATIONS**

**431.6 Shares assessed against association.** The value of the shares of each mutual building and loan or savings and loan association exclusively engaged in such business shall be assessed against each association at its principal place of business. [C31, 35,§7017-d1; C39, §7017.01; C46, 50, 54,§431.6]

**431.7 Sworn statement required.** On or before the first day of February of each year every mutual building and loan or savings and loan association shall furnish to the assessor a sworn statement showing the total amount to the credit of the shareholders at the close of business on the preceding December 31; said statement shall contain the following information:

1. The total amount credited on all the shares of nonborrowing members.
2. The total amount credited on all the shares of borrowing members whose share credits are in excess of their indebtedness to the association less the amount owing to the association by such borrowing members.
3. The total amount of contingent reserve and all other funds.
4. A legal description of each tract of real estate owned by such association and the amount actually invested therein.
5. The actual value of all furniture, fixtures, and other equipment used in the conduct of the business of the association.
6. The actual value of all bonds owned by the association. [C31, 35,§7017-d2; C39,§7017.02; C46, 50, 54,§431.7]

Referred to in §§431.8, 431.9

**431.8 Refusal.** If any officer of a mutual building and loan or savings and loan association, upon demand being made, fails or refuses to furnish the assessor with the statement required in section 431.7 he shall be guilty of a misdemeanor. [C31, 35,§7017-d3; C39,§7017.03; C46, 50, 54,§431.8]

Punishment, §687.7

**431.9 Determination of value.** In arriving at the value of the shares of each mutual building and loan or savings and loan association the assessor shall allow as a deduction the total amount of indebtedness of all borrowing members to the association and shall fix and determine the value of the shares based upon

the information contained in the statement provided for in section 431.7, and upon such other information as he may secure. [C31, 35, §7017-d4; C39, §7017.04; C46, 50, 54, §431.9]

**431.10 Amount of tax.** There is hereby levied and imposed against each mutual building and loan or savings and loan association a tax of one mill on the dollar on the actual value of the shares of stock of each such association. [C31, 35, §7017-d5; C39, §7017.05; C46, 50, 54, §431.10]

44GA, ch 178, §6, editorially divided

**431.11 Apportionment of tax.** Each such association shall apportion against the owners of the shares of stock upon the value of which the said tax is so levied their pro rata share of said tax. [C31, 35, §7017-d6; C39, §7017.06; C46, 50, 54, §431.11]

**431.12 Lien.** The association shall have a lien upon the shares of each such shareholder for his portion of said tax and may deduct the same from the amount of earnings credited to such shareholder. [C31, 35, §7017-d7; C39, §7017.07; C46, 50, 54, §431.12]

**431.13 Deductions.** From the total actual value of the contingent, reserve and/or other funds of each such association there shall be deducted the actual value of the real estate, personal property and tax-exempt bonds owned by the association and the balance obtained after making the deductions herein provided for shall be taxed and assessed against such association at its principal place of business as moneys and credits. [C31, 35, §7017-d8; C39, §7017.08; C46, 50, 54, §431.13]

**431.14 Taxation of real estate, furniture and fixtures.** The real estate, furniture and fixtures of each mutual building and loan or savings and loan association shall be assessed and taxed to the association in the same manner and at the same rate as is real estate and personal property in the hands of individuals.

[C31, 35, §7017-d9; C39, §7017.09; C46, 50, 54, §431.14]

**431.15 Association liable.** Each building and loan or savings and loan association shall be liable for the payment of the taxes levied and assessed against it and such taxes shall be paid by the association and collected in the same manner and subject to the same penalties as are general taxes. [C31, 35, §7017-d10; C39, §7017.10; C46, 50, 54, §431.15]

**431.16 Tax exclusive.** Taxes herein provided for shall be in lieu of all other taxes against building and loan or savings and loan associations and against the shares of stock of such association. [C31, 35, §7017-d11; C39, §7017.11; C46, 50, 54, §431.16]

**431.17 Foreign company — statement required—duty of auditor of state.** The auditor of state shall, on or before the tenth day of February of each year, send to the county auditor of each county a statement of the name and post-office address of each stockholder of a foreign building and loan, or savings and loan association residing in their respective counties, together with the number of shares owned by each person on the first day of January preceding, and the actual value of each share of stock on said first day of January, which facts shall be reported to him by such associations under the law governing building and loan, or savings and loan associations. [C97, §1326; S13, §1326; C24, 27, 31, 35, 39, §7018; C46, 50, 54, §431.17]

S13, §1326, editorially divided

**431.18 County auditor—duty.** It shall be the duty of the county auditor to immediately furnish to each assessor in his county the name of each stockholder in any such foreign association residing in such assessor's district, together with the number of shares held by each person, and the actual value of each share on the first day of January preceding. [C97, §1326; S13, §1326; C24, 27, 31, 35, 39, §7019; C46, 50, 54, §431.18]

## CHAPTER 432

### INSURANCE COMPANIES TAXATION

Referred to in §§430A.2, 431.1, 441.16, 442.16, 515.57

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|---|-----------------------------------|
| 432.1 Tax on gross premiums.              | 432.6 Personal and real property. |
| 432.2 Repealed by 56GA, ch 235, §2.       | 432.7 Assessment.                 |
| 432.3 Receipts—certificate of authority.  | 432.8 Moneys and credits.         |
| 432.4 Deduction for debts.                | 432.9 Debts deductible.           |
| 432.5 Domestic companies—shares of stock. |                                   |

**432.1 Tax on gross premiums.** Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, county mutual associations and nonprofit hospital and medical service corporations, shall, at the time of making the annual statement as required by law, pay to

the treasurer of state as taxes, an amount equal to the following:

1. Two percent of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits

collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension plan or profit sharing plan qualified under section 23 (p) or section 165 (a) of the federal internal revenue code as now or hereafter amended and all premiums returned to policyholders and annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. Two percent of gross amount of premiums, assessments, and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state, after deducting the amounts returned upon canceled policies, certificates and rejected applications. [C51,§464; R60,§718; C73,§807; C97,§1333; S13,§1333, 1333-d; C24, 27, 31, 35, 39,§§7021, 7022, 7025; C46, 50, 54, §432.1]

Referred to in §496.19

**432.2** Repealed by 56 GA, ch 235,§2.

See §505.14

**432.3 Receipts—certificate of authority.** At the time of paying said taxes, said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not till then, the commissioner of insurance shall issue the annual certificate as provided by law. [C73,§807; C97, §1333; S13,§1333; C24, 27, 31, 35, 39,§7023; C46, 50, 54,§432.3]

Referred to in §496.19

**432.4 Deduction for debts.** No deduction or exemption from the taxes herein provided shall be allowed for or on account of any indebtedness owing by any such insurance company or association; provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state. [C97,§1333; S13,§1333; C24, 27, 31, 35, 39,§7024; C46, 50, 54,§432.4]

Referred to in §496.19

**432.5 Domestic companies—shares of stock.** The shares of stock of every insurance corporation or association having capital stock, organized under the laws of this state, shall be assessed for taxation in the manner provided for the assessment of the shares of corporate stock in sections 431.1 to 431.5, inclusive, and said

shares of stock shall not be otherwise assessed. In addition to the statement required in section 431.2, the corporation shall furnish to the assessor a copy of its annual report made to the commissioner of insurance. [S13,§1333-a; C24, 27, 31, 35, 39,§7026; C46, 50, 54,§432.5]

**432.6 Personal and real property.** Every insurance corporation or association organized under the laws of this state, not including corporations with capital stock, county mutuals, and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the twenty-sixth day of January in each year, for the purpose of assessment of its property, furnish to the assessor of the assessment district in which its principal place of business is located, a statement verified by its president, showing specifically with reference to the year next preceding the first day of January then last past:

1. A duplicate of the statement required by law to be made to the commissioner of insurance for the said year last past.

2. A detailed statement of all its property and assets of every kind and nature whatsoever, and the value of each item thereof, including surplus, guaranty, and reserve fund, and the amount of each. [S13,§1333-b; C24, 27, 31, 35, 39,§7027; C46, 50, 54,§432.6]

S13,§1333-b, editorially divided  
Referred to in §432.7

**432.7 Assessment.** It shall be the duty of the assessor, upon the receipt of said statements, and from other information acquired by him, to assess against every corporation or association referred to in section 432.6, the value of all personal property owned by such corporation or association, together with the actual value of each parcel of real estate situated in the assessment district of such assessor, and all the said property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 441.13. [S13,§1333-b; C24, 27, 31, 35, 39,§7028; C46, 50, 54,§432.7]

See §441.13

**432.8 Moneys and credits.** In assessing for taxation the moneys and credits of every insurance corporation, company, or association organized under the laws of this state, except county mutuals and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, the assessor shall ascertain the debts or liabilities, if any, of such corporation, company, or association to its shareholders or other persons, which debts and liabilities shall be deducted, as provided in sections 429.4 to 429.9, inclusive. [S13,§1333-c; C24, 27, 31, 35, 39,§7029; C46, 50, 54,§432.8]

S13,§1333-c, editorially divided

**432.9 Debts deductible.** In ascertaining the indebtedness or liability of such corporation, company, or association, a debt shall be deemed to exist on account of its liability on

the policies, certificates or other contracts of insurance issued by it equal to the amount of the surplus or other funds accumulated by any such corporation or association for the

purpose of fulfilling its policies, certificates, or other contracts of insurance, and which can be used for no other purpose. [S13,§1333-c; C24, 27, 31, 35, 39,§7030; C46, 50, 54,§432.9]

## CHAPTER 433

### TELEGRAPH AND TELEPHONE COMPANIES TAXATION

Referred to in §§431.1, 441.16, 442.16

- 433.1 Statement required.
- 433.2 Additional statement.
- 433.3 Failure to make statement.
- 433.4 Assessment.
- 433.5 Actual value per mile.
- 433.6 Taxable value.
- 433.7 Hearing.
- 433.8 Assessment in each county—how certified.

- 433.9 Entry of certificate.
- 433.10 Rate of taxation—collection.
- 433.11 Other real and personal property.
- 433.12 "Company" defined.
- 433.13 Line operated by railroad.
- 433.14 Maps required.
- 433.15 Failure to file.

**433.1 Statement required.** Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the state tax commission a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.

2. The average number of poles per mile, and the whole number of poles on its lines in this state.

3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.

4. The whole number of stations on each line, and the value of the same, including furniture.

5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.

6. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, on business originating and terminating in this state.

7. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, and not included in the statement made under subsection 6 hereof.

8. The total capital stock of said company.

9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof.

11. All real estate and other property owned by such company and subject to local taxation within this state.

12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this state and taxed as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.

13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

14. The total length of the lines of said company.

15. The total length of the lines of said company outside this state. [C97,§1328; S13,§1328; C24, 27, 31, 35, 39,§7031; C46, 50, 54,§433.1]

Referred to in §433.3

**433.2 Additional statement.** Upon the receipt of said statements from the several companies, the state tax commission shall examine said statements and if it shall deem the same insufficient and that further information is requisite, it shall require the officer making same to make such other or further statement as it may desire. [C97,§1329; S13,§1329; C24, 27, 31, 35, 39,§7032; C46, 50, 54,§433.2]

S13,§1329, editorially divided

**433.3 Failure to make statement.** In case of failure or refusal of any company to make out or deliver to the state tax commission the statements required in section 433.1, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the state tax commission, and such penalty, when collected, shall be paid into the general fund of the state. [C97,§1329; S13,§1329; C24, 27, 31, 35, 39,§7033; C46, 50, 54,§433.3]

**433.4 Assessment.** The state tax commission shall, at its meeting on the second Monday in July of each year, proceed to find the actual value of the property of such companies

in this state, taking into consideration the information obtained from the statements above required, and any further information it can obtain, using the same as a means for determining the actual cash value of the property of such companies within this state; also taking into consideration the valuation of all property of such companies, including franchises and the use of the property in connection with lines outside the state, and making such deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. Said assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by said companies in the transaction of telegraph and telephone business; and the property so included in said assessment shall not be taxed in any other manner than as provided in this chapter and section 427.1, subsection 20. [C97,§1330; S13,§1330; C24, 27, 31, 35, 39,§7034; C46, 50, 54,§433.4]

**433.5 Actual value per mile.** The state tax commission shall ascertain the value per mile of the property of each of said companies within this state by dividing the total value, as above ascertained, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state. [S13,§1330-a; C24, 27, 31, 35, 39,§7035; C46, 50, 54,§433.5]

S13,§1330-a, editorially divided

**433.6 Taxable value.** The taxable value shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.13, and the ratio between the actual value and the assessed or taxable value of the property of each of said companies shall be the same as in the case of property of private individuals. [S13,§1330-a; C24, 27, 31, 35, 39,§7036; C46, 50, 54,§433.6]

See §441.13

**433.7 Hearing.** At such meeting in July any company interested shall have the right to appear, by its officers or agents, before the state tax commission and be heard on the question of the valuation of its property for taxation. [S13,§1330-a; C24, 27, 31, 35, 39,§7037; C46, 50, 54, §433.7]

**433.8 Assessment in each county—how certified.** The state tax commission shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line of the said company extends, multiply the assessed or taxable value per mile of line of said company, as above ascertained, by the number of miles in each of said counties, and the result thereof shall be by said state commission certified to the several county auditors of the respective counties into, over, or through which said line extends. [S13,§1330-b; C24, 27, 31, 35, 39,§7038; C46, 50, 54,§433.8]

**433.9 Entry of certificate.** At the first meeting of the board of supervisors held after such statement is received by the county auditor, it shall cause such statement to be entered in its minute book, and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each city, town, township, or lesser taxing district in its county, as fixed by the state tax commission, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city, town, or township in which the lines of said company extend. [S13,§1330-c; C24, 27, 31, 35, 39,§7039; C46, 50, 54,§433.9]

**433.10 Rate of taxation—collection.** All telegraph and telephone property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, or lesser taxing districts, and the county treasurer shall collect such taxes at the same time and in the same manner as other taxes, and the same penalties for the nonpayment shall be due and collectible as for the nonpayment of individual taxes. [S13,§1330-d; C24, 27, 31, 35, 39,§7040; C46, 50, 54, §433.10]

**433.11 Other real and personal property.** Land, lots, and other real estate and personal property belonging to any telegraph company or telephone company not used exclusively in its telegraph or telephone business shall be subject to assessment and taxation on the same basis as other property of individuals in the several counties where situated. [S13, §1330-e; C24, 27, 31, 35, 39,§7041; C46, 50, 54, §433.11]

**433.12 "Company" defined.** The word "company" as used in this chapter and section 427.1, subsection 20, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that shall own or operate, or be engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere. [S13,§1330-f; C24, 27, 31, 35, 39,§7042; C46, 50, 54,§433.12]

**433.13 Line operated by railroad.** No telegraph line shall be assessed which is owned and operated by any railroad company exclusively for the transaction of its business, and which has been duly reported as such in its annual report under the laws providing for the taxation of railroad property. [C97,§1332; C24, 27, 31, 35, 39,§7043; C46, 50, 54,§433.13]

**433.14 Maps required.** On or before the first day of August, 1904, each telephone or telegraph company owning or operating a telephone or telegraph line, any part of which lies within the state of Iowa, shall file with the



several county auditors of the counties within which any part of its line is located, a map of all its lines within said county, except its line within any platted city or town, drawn to a scale of not less than one inch to four miles, on which the location of the line or lines of said company is correctly shown. The map of any line situated upon any highway or street which is the dividing line between taxing districts shall show on which side of said street or highway said line is situated and shall locate all points at which said line may cross said street or highway. A statement showing the length of pole line in each taxing district of each company shall be filed when no map of the pole lines of such company is required under the terms of this section. A telephone or telegraph company whose line is situated upon the right of way of a railway may file, in lieu of the map required to be filed by the provisions of this section, a certificate setting forth along what lines of railway said company's telephone or telegraph line extends. On or before the first day of March, 1905, and annually thereafter, like maps, statements, or certificates shall be filed with the several county auditors of counties in which any part of said lines may have been extended, constructed, relocated, or taken down entirely, during the preceding calendar year, showing the correct location of all such new or relocated lines, and the location of any part

abandoned or taken down, as the same existed on the thirty-first day of December preceding; provided county auditors of the several counties shall, upon application of any company owning or operating a telephone or telegraph line in their respective counties, furnish a map or maps accurately showing the boundaries of all taxing districts in said county, and the public highways located within such taxing districts. [S13,§1400-a; C24, 27, 31, 35, 39,§7044; C46, 50, 54,§433.14]

Referred to in §§433.15, 437.15

**433.15 Failure to file.** In the event of the failure or refusal of any telephone or telegraph company, owning or operating any telephone or telegraph line not situated upon the right of way of a railway, to file the map required under the provisions of section 433.14, at the time and according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors of the county, out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected in the same manner as county taxes and become a part of the county fund. [S13,§1400-b; C24, 27, 31, 35, 39,§7045; C46, 50, 54,§433.15]

Referred to in §437.15

## CHAPTER 434

### RAILWAY COMPANIES TAXATION

Referred to in §§431.1, 441.16, 442.16

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**434.1 When assessed — statement required.** On the second Monday in July of each year, the state tax commission shall assess all the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators; and for the purpose of making such assessment its president, vice-president, general manager, general superintendent, receiver, or such other officer as the state commission may designate, shall, on or before the first day of April in each year, furnish it a verified statement

showing in detail for the year ended December 31 next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.
2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.
3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway

company within the state not otherwise assessed.

4. The total number of ties per mile used on all its tracks within the state.

5. The weight of rails per yard in main line, double tracks, and sidetracks.

6. The number of miles of telegraph lines owned and used within the state.

7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including hand-cars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.

8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by said state commission.

9. The gross earnings of the entire road, and the gross earnings in this state.

10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state. [C73, §§810, 1317, 1318; C97, §1334; S13, §1334; C24, 27, 31, 35, 39, §7046; C46, 50, 54, §434.1]

Referred to in §§434.2, 434.14

**434.2 Real estate holdings—statement required.** Each railway or other corporation required by law to report to the state tax commission under the provisions of the law as it appears in section 434.1 shall, on or before the first day of April, 1905, make to the state tax commission a detailed statement showing the amount of real estate owned or used by it on December 31, 1904, for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, roundhouses, machine and repair shops, water tanks, turntables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the state tax commission. [S13, §1334-a; C24, 27, 31, 35, 39, §7047; C46, 50, 54, §434.2]

S13, §1334-a, editorially divided  
Referred to in §434.5

**434.3 Continuing record.** Only one such detailed statement by any corporation shall be necessary, and when received by the state commission it shall become the record of railway lands of such corporation, and be deemed as annually thereafter reported for valuation and assessment by the state tax commission. [S13, §1334-a; C24, 27, 31, 35, 39, §7048; C46, 50, 54, §434.3]

Referred to in §434.5

**434.4 Additional statements.** On or before the first day of April of each subsequent year such corporation shall in like manner report all real estate acquired for any of the railway

purposes above named during the preceding calendar year; and also a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the state commission in an appropriate column opposite to the description of said tract in the original report of the same in the record of railway land. [S13, §1334-a; C24, 27, 31, 35, 39, §7049; C46, 50, 54, §434.4]

Referred to in §434.5

**434.5 Record of railway lands.** The state tax commission shall, by some convenient method of binding, arrange the statements required to be made under the provision of sections 434.2 to 434.4, inclusive, so as to form a consolidated list of all real estate reported to it as being owned or used for railway purposes within the state, which list shall be known as the record of railway lands. [S13, §1334-b; C24, 27, 31, 35, 39, §7050; C46, 50, 54, §434.5]

**434.6 Sleeping and dining cars.** In addition to the matters required to be contained in the statement made by the company for the purposes of taxation, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, the value of each car so used, and also the number of miles each month said cars have been run or operated on such railway within the state, and the total number of miles said cars have been run or operated each month within and without the state. Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage. [C97, §1340; S13, §1340; C24, 27, 31, 35, 39, §7051; C46, 50, 54, §434.6]

Referred to in §434.16

**434.7 Gross earnings.** For the purpose of making reports to the state tax commission, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere.

It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage. [S13,§1340-a; C24, 27, 31, 35, 39,§7052; C46, 50, 54,§434.7]

Referred to in §§434.10, 434.12

**434.8 Method of accounting.** The state tax commission shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the state tax commission. [S13,§1340-b; C24, 27, 31, 35, 39,§7053; C46, 50, 54,§434.8]

Referred to in §§434.10, 434.12

**434.9 Net earnings.** The state tax commission shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner. [S13,§1340-c; C24, 27, 31, 35, 39,§7054; C46, 50, 54,§434.9]

Referred to in §§434.10, 434.12

**434.10 Reports additional.** The reports provided for in sections 434.7 to 434.9, inclusive, are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at the time and as a part of the reports already required. [S13,§1340-d; C24, 27, 31, 35, 39,§7055; C46, 50, 54,§434.10]

Referred to in §434.12

**434.11 Additional rules and regulations.** The rules, regulations, method, and requirements herein provided to be made by the state tax commission shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies from the time they are so communicated; provided, however, that the said state tax commission shall have the power to prescribe supplemental or additional rules, regulations, and requirements at any time, and communicate them to the several railway companies in the manner aforesaid, and with respect to such additional or supplemental rules, regulations, and requirements, they shall be and become binding upon the said railway companies within thirty days after they are so communicated. [S13,§1340-e; C24, 27, 31, 35, 39,§7056; C46, 50, 54,§434.11]

Referred to in §434.12

**434.12 Refusal to obey.** If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the state tax

commission under the provisions of sections 434.7 to 434.11, inclusive, or to make the reports therein provided, the state tax commission shall proceed to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year. [S13,§1340-f; C24, 27, 31, 35, 39,§7057; C46, 50, 54,§434.12]

**434.13 Operating expenses.** There shall not be included in said operating expenses any payments for interest or discount, or construction of new tracks, except needed sidings, for raising or lowering tracks above or below crossings at grade in cities or towns, for new equipment except replacements, for reducing any bonded or permanent debt, nor for any other item of operating expenses not fairly and reasonably chargeable as such in railway accounts. [C97,§1335; C24, 27, 31, 35, 39,§7058; C46, 50, 54,§434.13]

C97,§1335, editorially divided

**434.14 Amended statement.** The state commission may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 434.1, or any other items deemed by it important, to be furnished it by such railway corporation within thirty days from such demand, in such form as it may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the state commission, in writing, shall require. [C73,§1318; C97,§1335; C24, 27, 31, 35, 39,§7059; C46, 50, 54,§434.14]

**434.15 Assessment of railways.** The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and the taxable value shall be determined by taking sixty percent of the actual value so ascertained and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said state commission shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable said state commission to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, it shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state.

For the purpose of assessment of its property which is subject to property taxation,

every corporation, company or person operating a public passenger transit system in cities having a population of one hundred twenty-five thousand or over, consisting of streetcars or trackless-trolley passenger busses propelled by electric power obtained from overhead trolley wires and/or self-propelled motor driven passenger busses operated between fixed termini shall be subject to assessment in the same manner as a railway. [C73, §1319; C97, §1336; C24, 27, 31, 35, 39, §7060; C46, 50, 54, §434.15]

See §441.13  
See also 57GA, ch 43, §3, as to urban transit companies

**434.16 Assessment of sleeping and dining cars.** The state commission shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of sleeping and dining cars as provided in section 434.6 so used by such corporation each month and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under the preceding sections. [C97, §1341; C24, 27, 31, 35, 39, §7061; C46, 50, 54, §434.16]

See §441.13

**434.17 Certification to county auditors.** On or before the third Monday in August of each year, the state commission shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county, and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property. [C73, §1320; C97, §1337; S13, §1337; C24, 27, 31, 35, 39, §7062; C46, 50, 54, §434.17]

**434.18 Plats.** Every railroad company owning or operating a line of railroad within this state shall, on or before the first day of August, 1902, place on file in the office of the county auditor of each county in the state into which any part of the lines of any said company lies, a plat of the lines of said companies within said county, showing the length of their said lines and the area of the land owned or occupied by said companies in each government subdivision of land not included within the platted portion of any city or town, within each of said counties, and the length of the said lines within the platted portion of cities and towns. Companies having on file such plats of part or all of their lines, in any of said counties, shall be required to file plats only of that part of their lines not fully shown as above required on the plats now on file. On the first day of January of each year hereafter, like plats shall be filed of all new lines

or extensions of existing lines built or completed within the calendar year preceding. [S13, §1337-a; C24, 27, 31, 35, 39, §7063; C46, 50, 54, §434.18]

Referred to in §434.19

**434.19 Failure to file.** In the event of the failure or refusal of any railroad company to file the plats required under the provisions of section 434.18, at the time or according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected as county taxes and when collected be paid into the county fund. [S13, §1337-b; C24, 27, 31, 35, 39, §7064; C46, 50, 54, §434.19]

**434.20 Property assessed by local authorities.** Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, and grain elevators, shall be subject to assessment and taxation on the same basis as property of individuals in the several counties where situated. [C73, §808; C97, §1342; C24, 27, 31, 35, 39, §7065; C46, 50, 54, §434.20]

See also §427.13

**434.21 Roadbeds.** No real estate used by railway corporations for roadbeds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be the property of such companies for the purpose of taxation. [C73, §809; C97, §1344; C24, 27, 31, 35, 39, §7066; C46, 50, 54, §434.21]

**434.22 Levy and collection of tax.** At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order stating the length of the main track and the assessed value of each railway lying in each city, town, township or lesser taxing district in its county, through or into which said railway extends, as fixed by the state tax commission, which shall constitute the taxable value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council or trustees of the city, town or township. [C73, §1321; C97, §1338; C24, 27, 31, 35, 39, §7067; C46, 50, 54, §434.22]

**434.23 Rates—purposes.** All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts. [C73, §1322; C97, §1339; C24, 27, 31, 35, 39, §7068; C46, 50, 54, §434.23]

## CHAPTER 435

## FREIGHT-LINE AND EQUIPMENT COMPANIES TAXATION

Referred to in §§431.1, 441.16, 442.16

435.1 "Company" defined.

435.2 "Freight-line company" defined.

435.3 "Equipment company" defined.

435.4 Statement required.

435.5 Additional statements.

435.6 Failure to furnish.

435.7 Assessment.

435.8 Rate of tax—payment—distress and sale.

435.9 Deposit of funds.

**435.1 "Company" defined.** The word "company" as used in this chapter shall be deemed and construed to mean any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, furnishing, or leasing cars, as defined and described in sections 435.2 and 435.3, whether formed or organized under the laws of this state, or any other state or territory, or any foreign country. [S13,§1342-f; C24, 27, 31, 35, 39,§7069; C46, 50, 54,§435.1]

**435.2 "Freight-line company" defined.** Every company engaged in the business of operating cars, not otherwise listed for taxation or taxed in Iowa, for the transportation of freight, whether such freight be owned by such company, or any other person or company, over any railway line or lines, in whole or in part within this state, such line or lines, not being owned, leased, or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars, or by some other name, shall be deemed to be a freight-line company. [S13, §1342-a; C24, 27, 31, 35, 39,§7070; C46, 50, 54, §435.2]

S13,§1342-a, editorially divided  
Referred to in §§435.1, 435.4

**435.3 "Equipment company" defined.** Every company engaged in the business of furnishing or leasing cars of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being otherwise listed for taxation in Iowa shall be deemed to be an equipment company. [S13,§1342-a; C24, 27, 31, 35, 39,§7071; C46, 50, 54,§435.3]

Referred to in §§435.1, 435.4

**435.4 Statement required.** Every freight-line and every equipment company, as designated in sections 435.2 and 435.3, doing business, or owning cars which are operated in this state, shall, annually, on or before the first Monday of June in each year, make out and deliver to the state tax commission a statement, verified by oath of an officer or agent of such company making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company.
2. The nature of the company, whether a person or persons, an association, copartner-

ship, corporation, or syndicate, and under the laws of what state or county organized.

3. The location of its principal office or place of business.

4. The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager.

5. The name and post-office address of the chief officer or managing agent of the company in Iowa.

6. The aggregate number of miles traveled within the state of Iowa by its cars during the preceding calendar year.

7. The average number of miles traveled by the cars of each class of its cars during the preceding calendar year. The number of cars necessary for the mileage traveled within the state of Iowa, under the circumstances that ordinarily attend the use of such cars, and where different classes of cars are used by said company, as to the matters embraced in this and the preceding subsection, it shall furnish the required information as to each class of said cars, in the form prescribed by blanks to be furnished by the state tax commission.

8. The actual cash value, on the first day of January next preceding, of the said number of cars necessary to provide for the mileage, to be reported as required by subsection 6 of this section.

9. The real estate, personal property, structure, machinery, fixtures and appliances, owned by said company, subject to local taxation within the state, and the location and the actual value thereof in the county, township or district where the same is assessed for local taxation. [S13,§1342-b; C24, 27, 31, 35, 39, §7072; C46, 50, 54,§435.4]

Referred to in §§435.6, 435.7

**435.5 Additional statements.** Upon the filing of such statements the state tax commission shall examine each of them, and if it shall deem the same insufficient, or if they fail to fully set out the matters required to be reported, it shall require such officer or agent to make such other and further statements as to such matters as it may deem proper. [S13, §1342-c; C24, 27, 31, 35, 39,§7073; C46, 50, 54, §435.5]

S13,§1342-c, editorially divided

**435.6 Failure to furnish.** In case of the failure or refusal of any company to make and deliver to the state tax commission any statement or statements required by section 435.4,

such company shall forfeit and pay to the state of Iowa one hundred dollars each day such report is delayed beyond the first Monday of June, to be sued and recovered in any proper form of action, in the name of the state of Iowa, and such penalty when collected shall be paid into the general fund of the state. [S13,§1342-c; C24, 27, 31, 35, 39,§7074; C46, 50, 54, §435.6]

**435.7 Assessment.** At the meeting of the state tax commission on the second Monday in July of each year, it shall value and assess as the property of said company within this state, the cars of the said company necessary, under the circumstances ordinarily attending the use of such cars, for the mileage to be reported under subsections 6 and 7 of section 435.4, after examining such statements and after ascertaining the actual value of said property of such company therefrom, and from such other information as it may have or obtain. For that purpose the state tax commission may require such company, by its agents or officers, to appear before said state commission with such books, papers, or additional statements as the state commission may require, and may compel the attendance of witnesses in case said state commission shall deem it necessary to enable it to ascertain the actual value of such property. From the entire actual value of the property within the state so ascertained, there shall be deducted by the said state commission the actual value of all cars locally assessed, and sixty percent of the residue of such actual value so ascertained shall be by the state tax

commission assessed to said company. [S13, §1342-d; C24, 27, 31, 35, 39,§7075; C46, 50, 54, §435.7]

Contempts, ch 665  
See §441.13

**435.8 Rate of tax — payment — distress and sale.** The state commission shall also at said meeting determine the rate of tax to be levied and collected upon said assessments, which shall be equal, as nearly as may be, to the average rate of taxes, state, county, municipal, and local, levied throughout the state during the previous year, which rate shall be ascertained from the records and files in the auditor's office, and said tax shall be in full of all taxes except on real estate, personal property locally assessed, and special assessments, and shall become due and payable at the state tax commission on the first day of February, following the levy thereof, and if not so paid, the state tax commission shall collect the same by distress and sale of any property belonging to such company in the state in the same manner as is required of county treasurers in like cases; and the order of the state tax commission in such cases shall be sufficient authority therefor. The state tax commission may also bring garnishment proceedings for the collection of such delinquent taxes as provided by section 626.29. [S13,§1342-e; C24, 27, 31, 35, 39,§7076; C46, 50, 54,§435.8]

**435.9 Deposit of funds.** All revenues arising from the tax imposed under this chapter shall be credited to the general fund of the state. [C46, 50, 54,§435.9]

CHAPTER 436

EXPRESS COMPANIES TAXATION

Referred to in §§431.1, 441.16, 442.16

- 436.1 "Company" defined.
- 436.2 "Express company" defined.
- 436.3 Statement required.
- 436.4 Additional statements.
- 436.5 Failure to furnish.
- 436.6 Assessment—additional statements—  
hearing.

- 436.7 Actual value—how ascertained.
- 436.8 Actual value per mile—taxable value.
- 436.9 Assessment in each county—how certified.
- 436.10 Entry of certificate.
- 436.11 Levy of tax—rates.
- 436.12 Action to collect.

**436.1 "Company" defined.** The word "company", as used in this chapter, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, any express route as herein defined, whether formed or organized under the laws of this state, any other state or territory, or of any foreign country. [S13,§1346-i; C24, 27, 31, 35, 39,§7077; C46, 50, 54,§436.1]

**436.2 "Express company" defined.** Every company engaged in conveying to, from, through, in, or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, or any other article, by express,

under a contract, express or implied, with any railroad company, or the managers, lessees, agents, or receivers thereof, provided such company is not a railroad company, a freight-line company, nor an equipment company, shall be deemed and held to be an express company, within the meaning of this chapter. [C97,§1345; S13,§1346-a; C24, 27, 31, 35, 39,§7078; C46, 50, 54,§436.2]

S13,§1346-a, editorially divided

**436.3 Statement required.** Every such express company shall, annually, between the first day of February and the first day of March, make out and deliver to the state tax commission a statement verified by the oath of

an officer or agent of said company, making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company, and whether a corporation, partnership, or person, and under the laws of what state or country organized.

2. The principal place of business, and the location of its principal office, and the name and post-office address of its president, secretary, and superintendent or general manager, and the name and post-office address of its principal officers or managing agent in Iowa.

3. The total capital stock of said company; (a) authorized; (b) issued.

4. The number of shares of capital stock issued and outstanding, and the par face value of each share, and in case no shares of stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

5. The market value of said shares of stock on the first day of January next preceding, and if such shares have no market value then the actual value thereof; and in case no shares of stock have been issued state the market value, or the actual value, in case there is no market value of the capital thereof, and the manner in which the same is divided.

6. The real estate, buildings, machinery, fixtures, appliances, and personal property owned by said company and subject to local taxation within the state, and the location and actual value thereof in the county, township, or district where the same is assessed for local taxation.

7. The specific real estate, together with the improvements thereon, and all bonds, mortgages, and other personal property owned by said company, situated outside of the state, and used exclusively outside the conduct of the business, with a specific description of all bonds, mortgages, and other personal property, and the cash value thereof, the purposes for which the same are used, and where the same are kept or deposited and each piece of real estate, where located, the purpose for which the same is used, and the actual value thereof, in the locality where situated.

8. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

9. a. The total length of lines or routes over which the company transports such merchandise, freight, or express.

b. The total length of such lines or routes as are outside of the state.

c. The length of such lines or routes within each of the counties, townships, and assessment districts within the state. [C73,§811; C97,§1346; S13,§1346-a; C24, 27, 31, 35, 39,§7079; C46, 50, 54,§436.3]

Referred to in §§436.5, 436.7

**436.4 Additional statements.** Upon the filing of such statements, the state tax commission shall examine each of them, and if it shall

deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer or agent to make such other and further statements as the state tax commission may call for. [S13,§1346-b; C24, 27, 31, 35, 39,§7080; C46, 50, 54,§436.4]

S13,§1346-b, editorially divided  
Referred to in §436.5

**436.5 Failure to furnish.** In the case of the failure or refusal of any company to make out and deliver to the state tax commission any statement or statements required by sections 436.3, 436.4, and 436.6, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first Monday in March of that year, to be sued and recovered in any proper form of action in the name of the state, on the relation of the state tax commission, and such penalty when collected shall be paid into the general fund of the state. [S13,§1346-b; C24, 27, 31, 35, 39,§7081; C46, 50, 54,§436.5]

**436.6 Assessment—additional statements—hearing.** The state tax commission shall meet on the second Monday in July of each year, and it shall thereupon value and assess the property of such company, in the manner hereinafter set forth, after examining such statements, and after ascertaining the actual value of the property of such company therefrom, and from such other information as it may have or obtain. For that purpose the state tax commission may require such company, by its agents or officers, to appear before said state commission with such books, papers, or statements as the state commission may require, or it may require additional statements to be made by such company, and may compel the attendance of witnesses, in case said state commission shall deem it necessary, to enable it to ascertain the actual value of such property. Any such company interested may, upon written application, appear before the state tax commission at such meeting and be heard in the matter of the valuation of the property of such company for taxation. [S13,§1346-c; C24, 27, 31, 35, 39,§7082; C46, 50, 54,§436.6]

Referred to in §436.5  
Contempts, ch 665

**436.7 Actual value—how ascertained.** The state tax commission shall first ascertain the actual value of the entire property owned by said company, from said statements or otherwise, for that purpose taking the aggregate market value of all shares of capital stock, in case said shares have a market value, and, in case they have none, taking the actual value thereof or of the capital of said company, in whatever manner the same is divided, in case no shares of capital stock have been issued; provided, however, that in case the whole or any portion of the property of said company shall be encumbered by a mortgage or mortgages, such state commission shall ascertain the actual value of such property by adding to the market value or the aggregate shares of stock or to the value of the capital, in case

there shall be no such shares, the aggregate amount of the market or cash value of such mortgage or mortgages, and the result shall be deemed and treated as the actual value of the property of such company. The state tax commission shall, for the purpose of ascertaining the actual value of the property within the state, next ascertain from such statements or otherwise the actual value of the property, both real and personal, owned by the company, and which is used exclusively outside the general business of the company, and also the actual value of that part of its property, if any, without the state which cannot lawfully be considered in determining the mileage value of its routes; and the aggregate of such values shall be deducted from the entire actual value of the property as above ascertained. The state tax commission shall next ascertain and deduct the actual value of the sea or ocean routes of any such company, and in ascertaining the same may take into consideration the earnings, both gross and net, per mile, of such sea or ocean routes, as compared with the earnings, gross and net, of the land routes of such company, or may ascertain their value in any other practicable manner, and may require that the reports heretofore provided for shall show such earnings. Thereupon the state tax commission shall ascertain the actual value of the property of such company within the state, and for that purpose may take into consideration the proportional value of the company's property without and within the state, and shall take as a basis of valuation of the company's property in this state the proportion of the whole aggregate value of the property of said company, as above ascertained, after making the deductions above provided for which the length of the routes within the state bears to the whole length of the routes of such company other than sea or ocean routes, and such amount so ascertained shall be considered and taken to be the entire actual value of the property of such company within the state. From the entire actual value of the property within the state so ascertained, there shall be deducted by the said state commission the actual value of all the real estate, buildings, machinery, appliances, and personal property not used exclusively in the conduct of the business within the state that are subject to local taxation within the counties, townships, and other assessment districts as hereinbefore described in the sixth subsection of section 436.3. [S13, §1346-d; C24, 27, 31, 35, 39, §7083; C46, 50, 54, §436.7]

**436.8 Actual value per mile—taxable value.** The state tax commission shall thereupon ascertain the value per mile of the property within the state, by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state, by the number of miles within the state, and the result shall be deemed and held to be the actual value per mile of the property of such company within the state. The assessed or tax-

able value shall be determined by taking that percentage of the actual value so ascertained, as is provided by section 441.13, and such valuation and assessment shall be in the same ratio as that of the property of individuals. [S13, §1346-e; C24, 27, 31, 35, 39, §7084; C46, 50, 54, §436.8]

See §441.13

**436.9 Assessment in each county—how certified.** Said state tax commission shall thereupon, for the purpose of determining what amount shall be assessed by it to said company in each county of the state through, across, into, or over which the route of said company extends, multiply the value per mile, as above ascertained, by the number of miles in each of said counties, as reported in said statements, or as otherwise ascertained, and the result thereof, with the mileage and the rate of assessment per mile, shall be by said state commission certified to the auditors respectively of the several counties through, into, over, and across which the routes of said company extend. [S13, §1346-f; C24, 27, 31, 35, 39, §7085; C46, 50, 54, §436.9]

**436.10 Entry of certificate.** At the first meeting of the board of supervisors held after such certificate is received by the county auditor, it shall cause the same to be entered in its minute book, and make and enter therein an order stating the length of the routes and the assessed value of each in each city, town, township, or other taxing district in its county, through or into which said routes extend, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. [S13, §1346-g; C24, 27, 31, 35, 39, §7086; C46, 50, 54, §436.10]

Referred to in §420.207

**436.11 Levy of tax—rates.** The county auditor shall immediately thereafter transmit a copy of said order to the councils of cities, or towns, and to the trustees of each township in the county, and shall also add to the value so apportioned the assessed value of the real estate, buildings, machinery, fixtures, appliances, and personal property not used exclusively in the conduct of the business situated in any township or taxing district as returned by the assessor thereof, and extend the taxes thereon upon the tax list as in other cases. All such property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, townships, or taxing districts. The property so included in said assessment shall not be otherwise taxed. [S13, §1346-g; C24, 27, 31, 35, 39, §7087; C46, 50, 54, §436.11]

Referred to in §420.207

**436.12 Action to collect.** In case any such company shall fail or refuse to pay any taxes assessed against it in any county, township, or



assessment district in the state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state by the county attorneys of the different counties of the state, on the relation of the auditors of the different counties of the state, and judgment in such action shall include a penalty of fifty percent of the amount of the taxes so assessed and unpaid,

together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the routes of any such company shall extend, or in any county where such company shall have an officer or agent for the transaction of business. [S13,§1346-h; C24, 27, 31, 35, 39,§7088; C46, 50, 54, §436.12]

## CHAPTER 437

### ELECTRIC TRANSMISSION LINES TAXATION

Referred to in §§431.1, 441.16, 442.16

Applicable to rural electrification co-operatives, 49GA, ch 248,§2

- 437.1 "Company" defined.
- 437.2 Statement required.
- 437.3 Verification.
- 437.4 Additional statement.
- 437.5 Failure to furnish.
- 437.6 Actual value.
- 437.7 Taxable value.
- 437.8 Hearing.

- 437.9 County assessment—certification.
- 437.10 Entry of certificate.
- 437.11 Rate—purposes.
- 437.12 Assessment exclusive.
- 437.13 Local assessment.
- 437.14 Interest of co-operative members.
- 437.15 Reassessment—procedure and requirements.

**437.1 "Company" defined.** The word "company" as used in this chapter and section 427.1, subsection 20, shall be deemed and considered to mean and include any person, copartnership, association, corporation, or syndicate (except co-operative corporations or associations which are not organized or operated for profit) that shall own or operate transmission line or lines for the conducting of electric energy located within the state and wholly or partly outside cities and towns, whether formed or organized under the laws of this state or elsewhere. [SS15,§1346-r; C24, 27, 31, 35, 39,§7089; C46, 50, 54,§437.1]

40ExGA, SF 183,§17-a1, editorially divided  
Referred to in §§420.207, 427.1

**437.2 Statement required.** Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities and towns, shall, on or before the first day of May in each year, furnish to the state tax commission a verified statement as to its entire line or lines within this state, when all of said line or lines are located outside cities and towns, and as to such portion of its line or lines within this state as are located outside cities and towns, when such line or lines are located partly outside and partly inside cities and towns, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities and towns within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment, and other construction of each such division, designating

the length and portion thereof in each separate county into which each such division extends. [SS15,§1346-k; C24, 27, 31, 35, 39,§7090; C46, 50, 54,§437.2]

Referred to in §§437.5, 437.6, 437.11, 437.13, 437.15  
Blanks for reports, §428.28

**437.3 Verification.** The verification of any statement required by law shall, in the case of a person, be made by such person; in the case of a corporation, by the president or secretary thereof; and in the case of a copartnership, association, or syndicate, by some member, officer, or agent thereof having knowledge of the facts. [SS15,§1346-r; C24, 27, 31, 35, 39,§7091; C46, 50, 54,§437.3]

Referred to in §420.207

**437.4 Additional statement.** Upon receipt of said statements from the several companies, the state tax commission shall examine such statements, and if it shall deem same insufficient, and that further information is requisite, it shall require the company making same to make such other or further statement as it may desire, notifying such company thereof by certified mail. [SS15,§1346-l; C24, 27, 31, 35, 39,§7092; C46, 50, 54,§437.4; 57GA, ch 267,§54]

SS15,§1346-l, editorially divided  
Referred to in §437.5

**437.5 Failure to furnish.** In case of the total failure or refusal to make any statement required by sections 437.2 and 437.4 to be made by May 1 in any year, or of failure or refusal to make such other or further statement within thirty days from the time the certified mail notice thereof is received by said company that the same is required by the state tax commission, such company shall forfeit and pay to the state, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the said first day of May of

the year in which it is required, or in case of any such other or further report required by the state tax commission for each day the same is delayed beyond thirty days from the receipt of the notice by said company that same is required, such forfeiture to be sued for and recovered in any proper form of action in the name of the state and on relation of the state tax commission of the state, and such penalty when collected, shall be paid into the general fund. [SS15,§1346-l; C24, 27, 31, 35, 39,§7093; C46, 50, 54,§437.5; 57GA, ch 267,§55]

**437.6 Actual value.** The state tax commission shall, at its meeting on the second Monday in July of each year, proceed to find the actual value of that part of such transmission line or lines referred to in section 437.2, owned or operated by any company, that is located within this state but outside cities and towns, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities and towns, taking into consideration the information obtained from the statements required by this chapter, and any further information it can obtain, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities and towns. The state tax commission shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 437.2, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities and towns, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities and towns. [SS15,§1346-m; C24, 27, 31, 35, 39,§7094; C46, 50, 54,§437.6]

SS15,§1346-m, editorially divided  
Referred to in §437.11

**437.7 Taxable value.** The taxable value of such line or lines of which said state tax commission by this chapter is required to find the value, shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.13, and the ratio between the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of cities and towns shall be the same as in the case of the property of private individuals. [SS15,§1346-m; C24, 27, 31, 35, 39,§7095; C46, 50, 54,§437.7]

Referred to in §437.11  
See §441.13

**437.8 Hearing.** At said meeting in July, any company interested shall have the right to appear by its officers, agents, and attorneys before the state tax commission, and be heard on the question of the value of its property for taxation. [SS15,§1346-m; C24, 27, 31, 35, 39,§7096; C46, 50, 54,§437.8]

Referred to in §437.11

**437.9 County assessment—certification.** The state tax commission shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of said company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of said counties, and the result thereof shall be by said state commission certified to the several county auditors of the respective counties into, over, or through which said line or lines extend. [SS15,§1346-n; C24, 27, 31, 35, 39,§7097; C46, 50, 54,§437.9]

Referred to in §437.11

**437.10 Entry of certificate.** At the first meeting of the board of supervisors held after said statements are received by the county auditor, it shall cause such statement to be entered in its minute book and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each township or lesser taxing district in each county outside cities and towns, as fixed by the state tax commission, which shall constitute the taxable value of said property for taxing purposes. The county auditor shall transmit a copy of said order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of said company extend in the county. The taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. [SS15,§1346-o; C24, 27, 31, 35, 39, §7098; C46, 50, 54,§437.10]

**437.11 Rate—purposes.** Such portions of the transmission line or lines within the state referred to in section 437.2, as are located outside cities and towns, shall be taxable upon said assessment provided for by sections 437.6 to 437.9, inclusive, at the same rate, by the same officers and for the same purposes as property of individuals within such counties, townships or lesser taxing districts, outside cities and towns, and the county treasurer shall collect said taxes at the same time and in the same manner as other taxes, and the same penalties shall be due and collectible as for the nonpayment of individual taxes. [SS15, §1346-p; C24, 27, 31, 35, 39,§7099; C46, 50, 54, §437.11]

**437.12 Assessment exclusive.** Every transmission line or part thereof, of which the state tax commission is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to 428.27, inclusive, or under any other law of this state except as provided in this chapter. [SS15,§1346-q; C24, 27, 31, 35, 39, §7100; C46, 50, 54,§437.12]

SS15,§1346-q, editorially divided

**437.13 Local assessment.** All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construc-

tion owned or operated by any company referred to in section 437.2, and where such property is located within any city or town within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city or town belonging to individuals or corporations furnishing electric light or power, and where such property, except the capital stock, is situated partly within and partly without the limits of a city or town. All personal property of every company owning or operating any such transmission line referred to in section 437.2, used or purchased by it for the purpose of such transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 428.26, 428.27, and 428.29. [SS15,

§1346-q; C24, 27, 31, 35, 39,§7101; C46, 50, 54, §437.13]

#### 437.14 Interest of co-operative members.

The value of the interests of members in such co-operative corporations or associations which are not organized or operated for profit shall, for the purpose of taxation, be deemed real estate, and be assessed as part of the real estate served by such transmission line or lines. [C24, 27, 31, 35, 39,§7102; C46, 50, 54, §437.14]

Referred to in §§420.207, 431.1

**437.15 Reassessment — procedure and requirements.** Sections 433.14, 433.15, 439.1, and 439.2 shall apply to the property of transmission lines which are referred to in section 437.2. [SS15,§1346-t; C24, 27, 31, 35, 39,§7103; C46, 50, 54,§437.15]

## CHAPTER 438

### PIPE-LINE COMPANIES TAXATION

Referred to in §§431.1, 441.16, 442.16

- 438.1 Taxation procedure.
- 438.2 Definitions.
- 438.3 Statement required.
- 438.4 Real estate holdings.
- 438.5 Statement deemed permanent.
- 438.6 Additional corrective statements.
- 438.7 Consolidated list of real estate.
- 438.8 Gross earnings.
- 438.9 Accounts—regulation.
- 438.10 Rules and regulations—promulgation.

- 438.11 Refusal to comply—penalty.
- 438.12 Amended and explanatory statements.
- 438.13 Basis of valuation and assessment.
- 438.14 Valuation and certification thereof.
- 438.15 Assessed value in each taxing district—record.
- 438.16 Taxation procedure.
- 438.17 Collection.
- 438.18 Nonpayment of tax—effect.
- 438.19 Scope of chapter.

**438.1 Taxation procedure.** Every person, copartnership, association, corporation or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipe lines, whether such pipe lines be owned or leased, shall be taxed as herein provided. [C31, 35,§7103-d1; C39, §7103.01; C46, 50, 54,§438.1]

Referred to in §438.2

**438.2 Definitions.** The words “pipe-line company” as used in this chapter shall be deemed and construed to mean any person, copartnership, association, corporation or syndicate that may own or operate or be engaged in operating or utilizing pipe lines for the purposes described in section 438.1.

The word “commission” wherever it appears in this chapter shall mean the state tax commission. [C31, 35,§7103-d2; C39,§7103.02; C46, 50, 54,§438.2]

**438.3 Statement required.** Every pipe-line company having lines in the state of Iowa shall annually, on or before the first day of April in each year, make out and deliver to the state tax commission a statement, verified by the oath of an officer or agent of such pipe-line company making such statement,

showing in detail for the year ended December 31 next preceding:

1. The name of the company.
2. The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized.
3. The location of its principal office or place of business.
4. The name and post-office address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and post-office address of the chief officer or managing agent of the company in Iowa.
6. The whole number of miles of pipe line owned, operated or leased within the state, including a classification of the size, kind and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district.
7. A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipe-line company within the state and each lesser taxing district, not otherwise assessed.

8. The number, location, size and cost of each pressure pump or station.

9. Any and all other property owned by said pipe-line company within the state which property must be classified and scheduled in such a manner as the commission may by rule require.

10. The gross earnings of the entire company, and the gross earnings on business done within this state.

11. The operating expenses of the entire company and the operating expenses within this state.

12. The net earnings of the entire company and the net earnings within this state. [C31, 35, §7103-d3; C39, §7103.03; C46, 50, 54, §438.3]

Referred to in §438.12  
Blanks for reports, §428.28

**438.4 Real estate holdings.** Every pipe-line company required by law to report to the state tax commission under the provisions of this chapter shall, on or before the first day of April, 1932, make to the state tax commission a detailed statement showing the amount of real estate owned or used by it on December 31, 1931, for pipe-line purposes, the county in which said real estate is situated, including the rights of way, pumping or station grounds, buildings, storage or tank yards, equipment grounds for any and all purposes, with the estimated actual value thereof, in such manner as may be required by the commission. [C31, 35, §7103-d4; C39, §7103.04; C46, 50, 54, §438.4]

44GA, ch 179, §4, editorially divided  
Referred to in §438.7

**438.5 Statement deemed permanent.** Only one such detailed statement by any pipe-line company shall be necessary, and when received by the commission, it shall become the record of the pipe-line lands of such company, and be deemed as annually thereafter reported for valuation and assessment by the commission. [C31, 35, §7103-d5; C39, §7103.05; C46, 50, 54, §438.5]

Referred to in §438.7

**438.6 Additional corrective statements.** On or before the first day of April of each subsequent year, such company shall, in like manner, report all real estate acquired for any of the pipe-line purposes above named during the preceding calendar year; and also, a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the commission in an appropriate column opposite to the description of said tract in the original report of the same in the record of pipe-line land. [C31, 35, §7103-d6; C39, §7103.06; C46, 50, 54, §438.6]

Referred to in §438.7

**438.7 Consolidated list of real estate.** The commission shall, by some convenient method of binding, arrange the statements required to be made by sections 438.4 to 438.6, inclusive, so as to form a consolidated list of all real estate reported to it as being owned or

used for pipe-line purposes within the state of Iowa. [C31, 35, §7103-d7; C39, §7103.07; C46, 50, 54, §438.7]

**438.8 Gross earnings.** For the purpose of making reports to the state tax commission, the gross earnings of a pipe-line company, owning or operating a line or lines within this state, shall be computed and reported by said company upon such bases as the commission may by rule require. [C31, 35, §7103-d8; C39, §7103.08; C46, 50, 54, §438.8]

**438.9 Accounts—regulation.** The state tax commission shall have power to prescribe such rules and regulations with respect to the keeping of accounts by the pipe-line companies doing business or having property in this state as will insure the accurate division of the accounts and the information to be reported, and uniformity in reporting the same to said commission. [C31, 35, §7103-d9; C39, §7103.09; C46, 50, 54, §438.9]

**438.10 Rules and regulations—promulgation.** The rules, regulations, method and requirements herein provided to be made by the state tax commission shall be made and communicated in writing or printing to the said several pipe-line companies, and shall be and become binding upon said pipe-line companies from the time they are so communicated; provided that the said commission shall have the power to prescribe supplemental or additional rules, regulations and requirements at any time, and communicate them to the several pipe-line companies in the manner aforesaid, and with respect to such additional supplemental rules, regulations and requirements, they shall be and become binding upon the said pipe-line companies within thirty days from the time they are so communicated. [C31, 35, §7103-d10; C39, §7103.10; C46, 50, 54, §438.10]

**438.11 Refusal to comply—penalty.** If any pipe-line company shall fail or refuse to obey and conform to the rules, regulations, method and requirements so made and prescribed by the state tax commission under the provisions of this chapter, or to make the reports herein provided, the commission shall proceed to assess the property of such pipe-line company so failing or refusing, according to the best information obtainable, and shall then add to its valuation of such pipe-line company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year. [C31, 35, §7103-d11; C39, §7103.11; C46, 50, 54, §438.11]

**438.12 Amended and explanatory statements.** The commission may demand, in writing, detailed, explanatory and amended statements of any of the items mentioned in section 438.3, or any other item deemed to be important, to be furnished it by such pipe-line company within thirty days from such demand in such form as it may designate, which shall

be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the commission, in writing, shall require. [C31, 35, §7103-d12; C39, §7103.12; C46, 50, 54, §438.12]

**438.13 Basis of valuation and assessment.** The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire pipe-line property within the state, except as otherwise provided and the taxable value shall be determined by taking sixty percent of the actual value so ascertained, as is provided by section 441.13; and shall include the rights of way, easements, the pipe lines, stations, grounds, shops, buildings, pumps and all other property, real and personal exclusively used in the operation of such pipe line. In assessing said pipe-line company and its equipment, said commission shall take into consideration the gross earnings and the net earnings for the entire property, and per mile, for the year ending December 31 preceding, and any and all other matters necessary to enable said commission to make a just and equitable assessment of said pipe-line property. [C31, 35, §7103-d13; C39, §7103.13; C46, 50, 54, §438.13]

See §441.10

**438.14 Valuation and certification thereof.** The state tax commission shall on or before the third Monday in August of each year determine the value of pipe-line property located in each taxing district of the state, and in fixing said value shall take into consideration the structures, equipment, pumping stations, etc., located in said taxing district, and shall transmit to the county auditor of each such county through and into which any pipe line may extend, a statement showing the assessed value of said property in each of the taxing districts of said county. The said property shall then be taxed in said county and lesser taxing districts, based upon the valuation so certified, in the same manner as in other property. [C31, 35, §7103-d14; C39, §7103.14; C46, 50, 54, §438.14]

**438.15 Assessed value in each taxing district—record.** At the first meeting of the board

of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order describing and stating the assessed value of each pipe line lying in each city, town, township or lesser taxing district in its county, through or into which said pipe line extends, as fixed by the tax commission, which shall constitute the assessed value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council of the city or town, or the trustees of the township, as the case may be. [C31, 35, §7103-d15; C39, §7103.15; C46, 50, 54, §438.15]

44GA, ch 179, §12, editorially divided

**438.16 Taxation procedure.** All such pipe-line property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts. [C31, 35, §7103-d16; C39, §7103.16; C46, 50, 54, §438.16]

**438.17 Collection.** If said tax is not paid, the county treasurer shall collect the same by whatever method may seem proper. [C31, 35, §7103-d17; C39, §7103.17; C46, 50, 54, §438.17]

**438.18 Nonpayment of tax—effect.** If said tax is not paid within the calendar year in which the same is due, the company shall not be permitted thereafter to use the public or private property of the state of Iowa, or to operate in Iowa for any purpose. [C31, 35, §7103-d18; C39, §7103.18; C46, 50, 54, §438.18]

**438.19 Scope of chapter.** The provisions of this chapter shall not apply to a gas distributing plant or company located entirely within any city or town and not a part of a pipe-line transportation company. Such local municipal plant shall be taxed in the municipality where located. [C31, 35, §7103-d19; C39, §7103.19; C46, 50, 54, §438.19]

## CHAPTER 439

### REASSESSMENT BY STATE TAX COMMISSION

Referred to in §§431.1, 441.16, 442.16

439.1 Reassessment and relevy.

439.2 Voluntary payments.

**439.1 Reassessment and relevy.** When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the state tax commission is invalid or is adjudged illegal, the state tax commission may assess

and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under

any valid law, whether in force at the time of said levy and assessment or thereafter enacted. [S13,§1330-h; C24, 27, 31, 35, 39,§7104; C46, 50, 54,§439.1]

Referred to in §§437.15, 439.2

**439.2 Voluntary payments.** When any person, company, association, or corporation, against whom any tax has been assessed and

levied by the state tax commission and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the state tax commission shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in section 439.1. [S13,§1330-i; C24, 27, 31, 35, 39,§7105; C46, 50, 54,§439.2]

Referred to in §437.15

CHAPTER 440

ASSESSMENT OF OMITTED PROPERTY BY STATE TAX COMMISSION

Referred to in §§441.16, 442.16

- 440.1 Assessment of omitted property.
- 440.2 Notice.
- 440.3 Form of notice.
- 440.4 Service of notice.

- 440.5 Procedure—penalty.
- 440.6 Fraudulent withholding—penalty.
- 440.7 Entry on tax books.
- 440.8 Delinquency.

**440.1 Assessment of omitted property.** When the state tax commission is vested with power and duty to assess property and said assessment has, for any reason, been omitted, said state commission shall proceed to assess said property for each of the omitted years, not exceeding five years last past. [C27, 31, 35,§7105-a1; C39,§7105.1; C46, 50, 54,§440.1]

**440.2 Notice.** Notice of the intention to assess such omitted property and of the time and place of hearing shall be served on the persons, firms, or corporations holding or possessing said property. [C27, 31, 35,§7105-a2; C39,§7105.2; C46, 50, 54,§440.2]

41GA, ch 145,§2, editorially divided

**440.3 Form of notice.** Such notice shall contain a general description of said property and the year or years for which it is proposed to assess it. [C27, 31, 35,§7105-a3; C39,§7105.3; C46, 50, 54,§440.3]

**440.4 Service of notice.** Such notice shall be served in such manner and for such reasonable time prior to the hearing as the state commission may determine. [C27, 31, 35,§7105-a4; C39,§7105.4; C46, 50, 54,§440.4]

**440.5 Procedure—penalty.** If it is made to appear that said property is assessable by said state commission as omitted property, the state

commission shall proceed in the manner in which it would have proceeded had the assessment not been omitted, except that it shall find the value of such omitted property for each year during which it has been omitted and shall add ten percent to each yearly value as a penalty. [C27, 31, 35,§7105-a5; C39,§7105.5; C46, 50, 54,§440.5]

41GA, ch 145,§3, editorially divided

**440.6 Fraudulent withholding—penalty.** In case the property has been fraudulently withheld from assessment, the state commission may, in addition to said ten percent add any additional percent, not exceeding fifty percent. [C27, 31, 35,§7105-a6; C39,§7105.6; C46, 50, 54,§440.6]

**440.7 Entry on tax books.** Should an assessment be made at such time in the year that, in the opinion of the state commission, said assessment cannot conveniently be entered on the current tax books, the state commission may direct that the assessment be entered on the first ensuing tax books. [C27, 31, 35,§7105-a7; C39,§7105.7; C46, 50, 54,§440.7]

**440.8 Delinquency.** A tax based on said assessment shall be deemed delinquent from and after its entry on the tax books. [C27, 31, 35,§7105-a8; C39,§7105.8; C46, 50, 54,§440.8]

CHAPTER 441  
COUNTY ASSESSOR

Referred to in §§405.19, 409.48, 442.16

See chapters 405 and 405A for city assessors

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| 441.1 Office created.                       | 441.16 Refusal to furnish statement.       |
| 441.2 Reappointment—examination.            | 441.17 False statement.                    |
| 441.3 Vacancy in assessor's office.         | 441.18 Assessment rolls and books.         |
| 441.4 Duties of deputy.                     | 441.19 Schedules furnished.                |
| 441.5 Budget.                               | 441.20 Affidavits combined.                |
| 441.6 Bond and salary.                      | 441.21 Schedules preserved.                |
| 441.7 Office space and equipment.           | 441.22 Uniform assessment rolls.           |
| 441.8 Compensation.                         | 441.23 Plat book.                          |
| 441.9 Duties of assessor.                   | 441.24 Completion of assessment—oath.      |
| 441.10 Listing and valuation.               | 441.25 Corrected assessments.              |
| 441.11 Owner to assist.                     | 441.26 Repealed by 54GA, ch 159,§103.      |
| 441.12 Oath.                                | 441.27 Failure to perform duty.            |
| 441.13 Actual, assessed, and taxable value. | 441.28 Political contributions prohibited. |
| 441.14 Forest and fruit-tree reservations.  | 441.29 Construction.                       |
| 441.15 Notice of valuation.                 |  |

**441.1 Office created.** In every county in the state of Iowa the office of county assessor is hereby created. [C50, 54,§441.1]

See 53GA, ch 198,§1 for temporary terms

**441.2 Reappointment — examination.** Not less than ninety days before the expiration of the regular term of any county assessor, the county auditor is hereby authorized to call a meeting of a conference as provided by the provisions of section 442.1 for the purpose of determining whether or not the conference board desires to reappoint the incumbent county assessor for a new term of four years or whether or not a new examination shall be held to provide eligibles for appointment as county assessor. The conference board shall have the power to reappoint the incumbent assessor without re-examination if it sees fit to do so, and procedure for such appointment shall be similar to that provided for the appointment by the conference of members of the board of review. If such conference decides upon a reappointment of the incumbent assessor, notice of such reappointment shall be certified to the state tax commission. [C50, 54, §441.2]

Former eligibility lists voided, 53GA, ch 198,§11

**441.3 Vacancy in assessor's office.** In case of any vacancy in the office of the county assessor the county auditor shall act as temporary county assessor until such time as a new county assessor is selected. If any vacancy occurs among the full time deputies the assessor shall call for an examination for deputy assessors. Unless a reappointment has been certified to the state tax commission as provided in section 441.2, whenever a vacancy shall occur in the office of the county assessor or not later than sixty days before the expiration of the term of any county assessor, the state tax commission shall cause to be held an examination for county assessors in the county seat of said county. Notice of such examination shall be posted in a prominent

position in the court house of such county seat and notice of such examination shall be published once in at least three newspapers of general circulation in each county. In the event there are less than three newspapers of general circulation in the county, publication made in available newspapers shall be deemed sufficient. Persons desirous of taking such examination shall notify the state tax commission in writing at least twenty days before the date fixed by the tax commission for such examination. The examination shall be open to all persons residents of the county for at least one year, who desire to present themselves and who have notified the commission as above provided and who are qualified voters and residents of the county. The examination shall be conducted under rules and regulations prescribed by the state tax commission. It shall cover the general field of laws pertaining to the assessment of property taxation in Iowa; laws pertaining to tax exemption; the principles of valuation of real estate; laws pertaining to the assessment of personal property and the duties and powers in general of assessors. There shall be taken into consideration in the grading of candidates the executive ability, physical condition, experience and general reputation of the candidate.

The state tax commission shall certify as rapidly as possible to the appointive conference of the county concerned, the names of eligibles for appointment as county assessor. This list of names shall include all persons who have passed examinations at a grade of not less than seventy percent. The same provision as to examination and certification shall apply when the appointment is to be made of any full time deputy assessor by the county assessor, and the same examination may be taken by candidates either for the office of assessor or the position of full time deputy assessor.

In the event that no person taking an examination is found to be qualified by the state tax commission, a new examination shall be

called in the same manner as the original examination and in the event that no applicant is found eligible in the second examination, the conference as provided by the provisions of section 442.1 shall appoint the county assessor or full time deputy assessor as the case may be, but such appointee shall have been a resident of such county for the year preceding the date of such appointment.

Certification shall be made to the county auditor of the county for which the examination has been held, of the eligibility or ineligibility of the persons who have taken the examination. Upon receipt of such certification the county auditor shall call a conference as provided by the provisions of section 442.1 which conference shall select from the eligible list the county assessor or full time deputy assessor as the case may be. The term of any county assessor thus selected shall be for four years from the expiration of the term of his predecessor, except that in the case of any vacancy, not due to termination of a four-year term, the appointment shall be effective only for the balance of the term of the assessor who is succeeded in office, provided that when the unexpired term is less than one year, the successor shall serve for the unexpired term plus four years. Full time deputy assessors shall serve at the pleasure of the county conference. In the selection of an assessor or full time deputy assessor by the conference, the same procedure shall apply as to that for selection of members of the county boards of review. [C50, 54,§441.3]

**441.4 Duties of deputy.** A deputy assessor, or if more than one, the first deputy, in the absence or disability of the assessor, shall perform all the duties of or pertaining to the office of the assessor. [C50, 54,§441.4]

**441.5 Budget.** The provisions of chapter 24 shall apply to the preparation of budgets and the certifying of taxes for the maintenance of the county assessor's office, of the county boards of review and of the conference board. The county assessor shall prepare a proposed budget for the county assessor's office, and submit same to the county conference board which shall approve, disapprove, or adjust said budget. The county conference shall certify the tax levy required for operation of the office as provided by chapter 24 and the conference as created by the provisions of section 442.1 is hereby declared the certifying board as defined by section 24.2. Any tax for the maintenance of the office of the county assessor and other assessment procedure, shall be levied only upon taxing districts of the county which are assessed by the county assessor, and such tax levy shall not exceed one and one-half mills where the valuation upon which the tax is levied does not exceed twenty-five million dollars; one and one-quarter mills in counties where the valuation upon which the tax is levied exceeds twenty-five million dollars and does not exceed thirty million dollars; one mill in counties where the valuation upon which

the tax is levied exceeds thirty million dollars and does not exceed forty million dollars; three-fourths mill in counties where the valuation upon which the tax is levied exceeds forty million dollars; provided, however, that in counties containing a city assessing district and the valuation of the taxing districts of the county which are assessed by the county assessor exceed forty million dollars a levy of not to exceed one mill may be made, except that in any county now or hereafter having a population of more than one hundred ninety thousand whose board of supervisors has contracted or may contract for the employment of expert appraisers to assist the county assessor in determining the value of property for taxation, the board of supervisors may levy a special tax against all the taxable property in the county and appropriate and expend the same for the purpose of paying the cost of such services, or return the same to funds from which transfers were made for such purpose. [C50, 54,§441.5; 57GA, ch 215,§1]

**441.6 Bond and salary.** The county assessor shall be required to furnish such bond for performance of his duties as the board of supervisors may require, and the county shall pay for such bond.

The county conference as established by the provisions of section 442.1 shall fix the salary of the county assessor which shall not be more than that of the salary of the county auditor in each county, provided, however, that with the approval of the board of supervisors the county conference may fix such salary in excess of the salary of the county auditor. [C50, 54,§441.6]

For salary of county auditor, see §340.1

**441.7 Office space and equipment.** The county board of supervisors shall provide adequate office space for the office of county assessor, including such services as are ordinarily afforded in any county office. The cost of equipment and supplies shall be included in the budget prepared by the county conference. [C50, 54,§441.7]

**441.8 Compensation.** Compensation of deputies and assistants shall be fixed by the county conference and such deputies and assistants shall receive actual necessary expenditures as approved by the county assessor and their appointment shall be subject to the approval of the county conference. [C50, 54, §441.8]

**441.9 Duties of assessor.** The county assessor shall:

1. Devote his entire time to the duties of his office and shall not engage in any occupation or business interfering or inconsistent with such duties.

2. Cause to be assessed, in accordance with section 441.13, all the property, personal and real, in his county, except such as is exempt from taxation, or the assessment of which is otherwise provided for by law.



3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to taxation in his county, except that which is assessed by a city assessor.

4. Co-operate with the state tax commission as may be necessary or required, and he shall obey and execute all orders, directions, and instructions of the state tax commission, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever he has reason to believe that such person, firm, association or corporation has not listed his or its property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed its or his property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the cost shall be paid by the taxpayer, otherwise they shall be paid by the county. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and his property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the state tax commission, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor when the board of review has concluded its hearings and assist the auditor in the preparation of the tax lists, and as far as possible, in conducting the office of the county assessor, the county assessor shall work in conjunction with and use the facilities of the county auditor's office.

7. Submit on or before May 1 of each year completed assessment rolls to the county board of review.

8. Lay before the county board of review such information as he may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the state tax commission any information which he may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by him in his county.

10. The county assessor shall be clerk of the county conference board created by section 442.1. [R60,§736; C73,§825; C97,§§1359, 1366; S13,§1366; C24, 27, 31, 35, 39,§§7114, 7122, 7123; C46,§§441.9, 441.17, 441.18; C50, 54,§441.9]

Constitutionality, 52GA, ch 240,§51; 53GA, ch 198,§15  
Validity of former tax levies, see 53GA, ch 198,§15

**441.10 Listing and valuation.** Each assessor shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter upon the assessment rolls furnished him for that purpose the several items of property required to be entered for assessment. He shall personally affix values to all property assessed by him. [C51,§473; R60,§733; C73,§822; C97,§1352; C24, 27, 31, 35, 39,§7106; C46,§441.1; C50, 54,§441.10]

Additional duties, §244.8  
Salary, §340.1(14)

**441.11 Owner to assist.** The assessor shall list every person in his county or city and assess all the property therein, personal and real, except such as is heretofore exempted or otherwise assessed. Any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to make either of the oaths or affirmations or combinations thereof required by section 441.12, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not to exceed five hundred dollars. [C51,§477; R60,§734; C73,§823; C97,§1354; S13, §1354; C24, 27, 31, 35, 39,§7107; C46,§441.2; C50, 54,§441.11]

**441.12 Oath.** The assessor shall administer the oath or affirmation printed on the assessment rolls hereinafter prescribed, or combination thereof, to each person assessed, and require the person taking such oath to subscribe the same, and, in case anyone refuses so to do, he shall note the fact in the column of remarks opposite such person's name. [C51, §474, 475; R60,§735; C73,§824; C97,§1355; S13, §1355; C24, 27, 31, 35, 39,§7108; C46,§441.3; C50, 54,§441.12]

Referred to in §441.11

**441.13 Actual, assessed, and taxable value.** All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and shall be assessed at sixty percent of such actual value. Such assessed value shall be taken and considered as the taxable value of such property upon which the levy shall be made. The actual value in such cases shall be one and two-thirds times the assessed value as shown by the assessment rolls and may be so determined and ascertained.

In arriving at said actual value the assessor shall take into consideration its productive and earning capacity, if any, past, present, and prospective, its market value, if any, and all other matters that affect the actual value of the property; and the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, or inequitable. [C97,§1305; S13,§1305; C24, 27, 31, 35, 39,§7109; C46,§441.4; C50, 54,§441.13]

Referred to in §§420.207, 425.11, 428.17, 428.21, 432.7, 433.6, 436.8, 437.7, 438.13, 441.9  
 Omnibus repeal, 49GA, ch 249,§25

**441.14 Forest and fruit-tree reservations.** Forest reservations fulfilling the conditions of sections 161.1 to 161.13, inclusive, shall be assessed on a taxable valuation of four dollars per acre. Fruit-tree reservations shall be assessed on a taxable valuation of four dollars per acre for a period of eight years from the time of planting. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of such property because of such improvements. [S13,§1400-1; C24, 27, 31, 35, 39,§7110; C46,§441.5; C50, 54,§441.14]

**441.15 Notice of valuation.** The assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon his property, and notify him, if he feels aggrieved, to appear before the board of review and show why the assessment should be changed. [C97,§1356; C24, 27, 31, 35, 39,§7111; C46,§441.6; C50, 54,§441.15]

**441.16 Refusal to furnish statement.** If any corporation or person refuse to furnish the verified statements required in chapters 428 to 441, inclusive, or to list his property, or to take or subscribe the oath required, the state tax commission, or assessor, as the case may be, shall proceed to list and assess such property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the

valuation of such property shall be changed by any board of review, or on appeal therefrom, a like penalty shall be added to the valuation thus fixed. [C51,§475; R60,§734; C73, §§823, 1318; C97,§1357; C24, 27, 31, 35, 39,§7112; C46,§441.7; C50, 54,§441.16]

Referred to in §428.35

**441.17 False statement.** Any person making any verified statement or return, or taking any oath required by this title, who knowingly makes a false statement therein, shall be guilty of perjury. [C97,§1358; C24, 27, 31, 35, 39,§7113; C46,§441.8; C50, 54,§441.17]

Perjury, punishment, §721.1

**441.18 Assessment rolls and books.** The auditor shall procure and furnish to each assessor a supply of blank assessment rolls on which to enter, separately, the names of all persons, partnerships, corporations, or associations assessed, which rolls shall be made in duplicate, except that the oath form in the original may be omitted and the following inserted in lieu thereof: "If you are not satisfied that the foregoing assessment is correct, you can appear before the board of review, which meets at.....on the first secular day in May next. Dated.....day of..... 19....  
 .....Assessor". In assessment districts where the board of review meets at any other time than the date fixed herein, the assessor shall change the date to correspond with the date upon which the board meets. Said duplicate shall be signed by the assessor, detached from the original, and delivered to the person assessed. He shall also furnish to each assessor a supply of blanks in this chapter described as "Assessment Roll, Form No. 2", which shall be in duplicate, and subject to the same conditions as the roll above provided for. The auditor shall also furnish to the assessor one assessment book, each page of which shall be headed "Assessor's book for .....township, .....county, Iowa, independent district of.....," and shall contain columns ruled and headed for the information required by this chapter, which rolls and books shall be substantially in the following form:

ASSESSMENT ROLL

Name . . . . . Age . . . . . Address . . . . . No. Dogs . . . . . male . . . . . female . . . . .

No. road district	Name or number of school district	Part of Section or Name of Town	Section or lot	Township or block	Range	Value of new buildings	No of acres improved	No of acres unimproved	Total Number of Acres Taxable		Lands			Total taxable value of real estate	Ex-emp-tions		Description of Personal Property	Assessed value	Remarks
									Acres	100	Assessed value per acre	Assessed value	Assessed value		Lots	For roads			
																	Colts 1 year old Colts 2 years old Colts 3 years old Horses over 3 years old Stallions Mules and asses over 1 year old Heifers 1 year old Heifers 2 years old Cows Steers 1 year old Steers 2 years old Steers 3 years old or over Bulls Work oxen Sheep 9 months old or over Swine 9 months old or over Vehicles Household furniture of hotel and boarding house Moneys and credits from form No 2 Merchandise Other personal property Corporation stock Total assessed value personal Total taxable value personal Total assessed value real estate Total net taxable value real estate		

Total number of acres  
 Total assessed value of real estate  
 Total taxable value of real estate  
 Total exemptions  
 Net total value of lands and lots

Date of inventory . . . . .  
 Report name of soldier or sailor; or widow of soldier or sailor, and names of persons who by reason of age or infirmity claim to be unable to contribute to public revenue

Notice of right to appear before board of review given . . . . . A D . . . . .  
 Changes by board of review are as follows:

State of Iowa, }  
 . . . . . County. } ss.

I, . . . . . do solemnly swear (or affirm) that I am the person assessed above, that I have read the foregoing assessment roll of property listed or assessed to me, and that the same is a full, true and correct list of my taxable property, both real and personal property, subject to taxation within this district, and all property which should be listed on this assessment roll to me or by me

Subscribed and sworn to (or affirmed) this . . . . . day of . . . . . A D . . . . . before me

. . . . . Assessor.



ASSESSMENT ROLL—Form No. 2

ASSESSMENT OF MONEYS AND CREDITS

Of.....of.....township of.....state of Iowa, January 1,.....

Table with columns: Notes, Bonds and Other Evidence of Credit; Assessed Value; Liabilities. Rows include: Aggregate amount of notes, bonds, other written evidences of credit, money in bank, other money, book accounts (good/doubtful), checks/drafts/cash items, Total moneys and credits, Total amount of notes, accounts, other debts, Total amount of debts, Net amount of moneys and credits.

The party assessed need list only such of his liabilities as he may desire to have subtracted from his moneys and credits.

State of Iowa, ..... County, ss. I, ....., do solemnly swear (or affirm) that the above is a full, true and correct statement of all moneys and credits owned by me, and that the liabilities above given to be deducted therefrom are obligations in good faith actually owed by me. Signed ..... Subscribed and sworn to (or affirmed) before me by ..... this ..... day of ..... Assessor.

[C51,§§471, 473; R60,§§732, 733; C73,§821; C97, §1360; S13,§1360; C24, 27, 31, 35, 39,§7115; C46, §441.10; C50, 54,§441.18]

Referred to in §441.19 See §441.13

441.19 Schedules furnished. The assessor shall furnish to each person, partnership, corporation, or association, except those otherwise assessed as provided by law, a blank known as "Assessment Roll—Form No. 2", as provided in section 441.18, upon which such person, partnership, corporation, or association shall enter and set out all moneys and credits of whatsoever kind or nature belonging to such person, partnership, corporation, or association, and such liabilities as they claim should be deducted from the total of their moneys and credits. The assessor shall carry the aggregate moneys and credits of such persons, partnerships, corporations, or associations to the regular schedule. [C97,§1361; S13,§1361; C24, 27, 31, 35, 39,§7116; C46,§441.11; C50, 54, §441.19]

S13,§1361, editorially divided

441.20 Affidavits combined. It shall be lawful to combine the affidavit with reference to real and personal property, and the affidavit as to moneys and credits, into one affidavit. [S13,§1361; C24, 27, 31, 35, 39,§7117; C46,§441.12; C50, 54,§441.20]

441.21 Schedules preserved. The assessor shall return all schedules with the assessment books to the county auditor as is provided in

this chapter, and the county auditor shall carefully keep all schedules known and described in this chapter as "Assessment Roll—Form No. 2", for the period of five years from the time of filing of the same in his office. [C97, §1361; S13,§1361; C24, 27, 31, 35, 39,§7118; C46, §441.13; C50, 54, §441.21]

441.22 Uniform assessment rolls. The state tax commission shall from time to time prepare and certify to each county auditor such instructions as to a uniform method of making up the assessment rolls as it thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment book, which shall be printed therein. [C97,§1362; C24, 27, 31, 35, 39,§7119; C46,§441.14; C50, 54,§441.22]

441.23 Plat book. The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in his assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right of way and for roads and for rights of way for public levees and open public drainage improvements. [C51,

§181; R60,§733; C73,§821; C97,§1364; C24, 27, 31, 35, 39,§7120; C46,§441.15; C50, 54,§441.23]

**441.24 Completion of assessment—oath.** The assessment shall be completed by the first day of May, and the assessor shall attach to the assessment rolls his oath in the following form:

I, (A..... B.....), assessor of..... county of ..... and state of Iowa, do solemnly swear (or affirm) that the taxable values of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list the same, is herein truly set forth in such statement; that in every case, where I have been required to ascertain the amount or value of any property, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and as I verily believe the taxable values thereof are set forth in the annexed return; in no case have I knowingly omitted to demand of any person, of whom I was required to do so, a statement of the items of his property which he was required by law to list, nor to administer the oath to him, unless he refused to take it, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

Subscribed and sworn to (or affirmed) this ....day of ....., A. D. ...., before me.

[C51,§479; C97,§1365; C24, 27, 31, 35, 39,§7121; C46,§441.16; C50, 54,§441.24]

Legalizing act, see 44GA, ch 245

**441.25 Corrected assessments.** At any time prior to the submission of the completed assessment rolls to any board of review, the assessor may make corrections in assessments previously made by him and may change assessments when in his judgment the original assessment has been erroneous; provided, however, if the assessor increases any assessment,

he shall give notice in writing to the taxpayer, either in person or by mail, prior to the meeting of the board of review. [R60,§736; C73,§825; C97,§1366; S13,§1366; C24, 27, 31, 35, 39,§7122, 7123; C46,§441.17, 441.18; C50, 54,§441.25]

**441.26** Repealed by 54GA, ch 159,§103.

**441.27 Failure to perform duty.** If any assessor or member of any board of review shall knowingly fail or neglect to make or require the assessment of property for taxation to be of and for its taxable value as provided by law or to perform any of the duties required of him by law, at the time and in the manner specified, he shall forfeit and pay the sum of five hundred dollars, to be recovered in an action in the district court in the name of the county and for its use, and the action against the assessor shall be against him and his bondsmen. [R60, §738; C73,§827; C97,§1367; C24, 27, 31, 35, 39, §7126; C46,§441.20; C50, 54,§441.27]

**441.28 Political contributions prohibited.** Neither the county assessor nor any employee of his office shall directly or indirectly contribute any money or anything of value to any candidate, his agent or personal representative, for nomination or election to any office, or to any campaign, nor shall any candidate, person, representative, agent or committee solicit such contribution or active political support from any such officer or employer. Any person convicted of violating any provision of this chapter shall immediately be dismissed from office or may be punished as for an indictable misdemeanor. [C50, 54,§441.28]

Punishment, §687.7

**441.29 Construction.** Whenever in the laws of this state the words "assessor" or "assessors" appear, singly or in combination with other words, they shall be deemed to mean and refer to the county or city assessor, as the case may be. [C50, 54,§441.29]

CHAPTER 442

BOARDS OF REVIEW

Referred to in §§405.21, 442.16

- 442.1 County board of review.
- 442.2 Revaluation and reassessment of real estate.
- 442.3 Clerk—assessment correction.
- 442.4 Notice of assessments raised.
- 442.5 Complaint to board of review.
- 442.6 Appeal.
- 442.7 Trial on appeal.
- 442.8 Costs, fees and expenses apportioned.
- 442.9 City solicitor and other counsel.

- 442.10 Appeal on behalf of public.
- 442.11 Power of court.
- 442.12 Compensation of board of review.
- 442.13 Statutes applicable to cities.
- 442.14 Abstract to state commission.
- 442.15 State board of review.
- 442.16 Adjusting county valuations.
- 442.17 Notice of increase.
- 442.18 Adjustment by county auditor.

**442.1 County board of review.** There is hereby created a county board of review which shall constitute the board of review for all assessments made by the county assessor. The board shall meet on the first Monday of May at the office of the county assessor and

shall sit from day to day until its duties are completed, which shall not be later than the first day of June, and shall adjust assessments by raising or lowering the assessments of any person, partnership, corporation or association as to any of the items of their assessments in

such manner as to secure the listing of property at taxable value. It shall also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owner thereof. All meetings of the board shall be public and it shall keep minutes of its proceedings. The county board of review shall have all the powers provided by this chapter and appeal may be taken from any of its acts as provided by section 442.6. The provisions of sections 405.22 and 405.24 shall also apply to appeal from county boards of review.

The county board of review may, at its election, hold sessions in any incorporated city or town of the county for the purpose of receiving protests against assessments and to perform its duties as a board of equalization. The county board of review shall have no jurisdiction over assessments in cities having a city assessor as provided by chapter 405 and chapter 405A.

The board of supervisors in each county shall call a conference which shall include the mayors of all incorporated cities and towns in the county whose property is assessed by the county assessor, members of the county boards of education as now or hereafter constituted, and members of the board of supervisors. Such conference shall organize for the purpose of selecting a county board of review of not less than three members or more than five as may be deemed desirable by the conference. The members of the conference when organized shall constitute the appointive board. The board as selected shall include at least one farmer, one registered real estate broker and at least one person experienced in the building and construction field. The assessor shall be clerk of said board. No two members of the board of review shall be citizens of the same town or township and not more than two members shall be of the same profession or occupation. In selection of the members of the boards of review, and in the determination of all other matters, the county board of supervisors, the mayors and the members of the county board of education shall vote as units, each unit having a single vote, and it shall be necessary for two of the three groups to agree on the selection of any member of the board of review, and in the determination of all other matters. The county auditor shall call a new conference for the naming of an appointive board not later than sixty days before the expiration of the term of any member of the county board of review for the purpose of selecting successors to members of boards of review whose terms shall expire, and the same procedure shall be followed thereafter in the selection of boards of review as provided for the original naming of boards of review under the provisions of this section.

The terms of members of the boards of review shall be for four years, beginning with January 1 of the year following their selection but in the case of boards chosen for the first time under this section, the term of one member shall be for one year, one member for two

years, and a third member for three years and additional members for four years each, the length of the term of each member to be determined by lot, and successors of members whose terms expire each year shall be selected in similar manner at future conferences to be called by the county auditor. Vacancies in the board of review shall be filled temporarily by the board of supervisors until such time as a regular conference is called for the selection of new members. Members of boards of review may be removed for malfeasance, misfeasance or nonfeasance in office, by the appointive board. [R60,§739; C73,§§829, 830, 832; C97, §§1368, 1370, 1375, 1376; C24, 27, 31, 35, 39,§§7127, 7129, 7137, 7138; C46,§§441.21, 442.1, 442.12, 442.13; C50, 54,§442.1]

Referred to in §§405A.6, 441.2, 441.3, 441.5, 441.6, 441.9, 442.2, 442.12  
See §441.10

**442.2 Revaluation and reassessment of real estate.** In any year after the year in which an assessment has been made of all the real estate in any taxing district, it shall be the duty of the board of review to meet at the times provided in section 442.1, and where it finds the same has changed in value, to revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, it shall determine the taxable value thereof, and any aggrieved taxpayer may petition for a revaluation of his property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 442.4, provided, however, that if the assessment of all property in any taxing district is raised the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers of said county, and such published notice shall take the place of the mailed notice provided for in section 442.4, but all other provisions of said sections shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the district court within the same time and in the same manner as provided in section 442.6. [C35,§7129-e1; C39, §7129.1; C46, 50, 54, §442.2]

Referred to in §§405.21, 405.22, 442.13  
See §441.13

**442.3 Clerk—assessment correction.** The county assessor or the city assessor as the case may be, shall be clerk of the board of review and keep a record of its proceedings, and the assessor shall be present at its meeting and make upon the assessment rolls all corrections or additions directed by the board. At such meetings it shall be the duty of the assessor to read each and every taxpayer's name and assessment on the assessment rolls, and, if the assessment is approved, pass to the next name. After checking the same, the board shall then take up the unchecked names in alphabetical order, and raise or lower the

same as in their opinion will be just, checking off each taxpayer as the same is adjusted. [R60,§740; C73,§831; C97,§1371; S13,§1371; C24, 27, 31, 35, 39,§7130; C46, 50, 54,§442.3]

Referred to in §442.13

**442.4 Notice of assessments raised.** In case the value of any specific property or the entire assessment of any person, partnership, corporation, or association is raised, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the post-office address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board. [C97,§1372; S13,§1372; C24, 27, 31, 35, 39,§7131; C46, 50, 54,§442.4]

Referred to in §§405.23, 442.2, 442.5, 442.13

**442.5 Complaint to board of review.** Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has been added to the assessment rolls, as provided in section 442.4, and any member of the board of review aggrieved by any action of the board of review of which he was, at the time complained of, a member, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section. [R60,§740; C73,§831; C97,§1373; S13,§1373; C24, 27, 31, 35, 39,§7132; C46, 50, 54,§442.5]

S13,§1373, editorially divided  
Referred to in §442.13

**442.6 Appeal.** Appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. [C73,§831; C97,§1373; S13,§1373; C24, 27, 31, 35, 39,§7133; C46, 50, 54,§442.6]

Referred to in §§405.24, 442.1, 442.2, 442.13  
Manner of service, R.C.P. 56(a)

**442.7 Trial on appeal.** The court shall hear the appeal in equity and determine anew all questions arising before the board which relate

to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. [C97,§1373; S13, §1373; C24, 27, 31, 35, 39,§7134; C46, 50, 54,§442.7]

Referred to in §§405.24, 442.13, 443.11

**442.8 Costs, fees and expenses apportioned.** The clerk of the court shall likewise certify to the county treasurer the costs assessed by the court on any appeal from a local board of review to the district court, in all cases where said costs are taxed against the local board of review or any taxing body. Thereupon the county treasurer shall compute and apportion the said costs between the various taxing bodies participating in the proceeds of the collection of the taxes involved in any such appeal, and said treasurer shall so compute and apportion the various amounts which said taxing bodies are required to pay in proportion to the amount of taxes each of said taxing bodies is entitled to receive from the whole amount of taxes involved in each of such appeals. The said county treasurer shall deduct from the proceeds of all general taxes collected the amount of costs so computed and apportioned by him from the moneys due to each taxing body from general taxes collected. The amount so deducted shall be certified to each taxing body in lieu of moneys collected. Said county treasurer shall pay to the clerk of the district court the amount of said costs so computed, apportioned and collected by him in all cases now on file or hereafter filed in which said costs have not been paid upon the date this section becomes effective,\* including all cases in decree. [C39,§7134.1; C46, 50, 54,§442.8]

Referred to in §§405.24, 442.13  
\*Effective date, July 4, 1939

**442.9 City solicitor and other counsel.** The city solicitor shall represent the city assessor and local board of review in all litigation dealing with the assessments made by such city assessor. The county, school district or any other taxing body interested in the taxes derived from such assessments may be represented by an attorney and may be required to appear by attorney upon written request of the city solicitor to the presiding officer of any such taxing body. The county attorney shall represent the county assessor and county board of review in all litigation dealing with assessments made by the county assessor. [C39, §7134.2; C46, 50, 54,§442.9]

Referred to in §§405.24, 442.13

**442.10 Appeal on behalf of public.** Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, city, or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.



Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township, or school district interested and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. [S13,§1373; C24, 27, 31, 35, 39,§7135; C46, 50, 54,§442.10]

Referred to in §§405.24, 405.25

**442.11 Power of court.** Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from. [S13, §1373; C24, 27, 31, 35, 39,§7136; C46, 50, 54, §442.11]

Referred to in §§405.24, 442.13, 443.11

**442.12 Compensation of board of review.** Each member of the county board of review shall receive compensation for his services at the rate of ten dollars per day for the periods they are in session, plus mileage and actual expense incurred in carrying out their duties. Qualified members of the county conference as provided by section 442.1 shall be entitled to mileage and actual expense when away from their homes in the performance of their duties. Expenses incurred under the provisions of this section shall be paid from the general fund of the county prior to January 1, 1950, and subsequently shall be paid from the county assessor fund. [C50, 54,§442.12]

**442.13 Statutes applicable to cities.** The provisions of sections 442.2 to 442.9, inclusive, and 442.11 shall apply to the operation of county and city boards of review. [C50, 54, §442.13]

**442.14 Abstract to state commission.** Each auditor shall, on or before the third Monday in June, make out and transmit to the state commission an abstract of the real and personal property in his county, in which he shall set forth:

1. The number of acres of land and the aggregate taxable values of the same, exclusive of town lots, returned by the assessors, as corrected by the county board of review.

2. The aggregate taxable values of real estate in each township, city, and town in the county, returned as corrected by the county board of review.

3. The aggregate taxable values of personal property.

4. An abstract as to the number and value of all animals as the same are returned by the assessor, showing the aggregate taxable values and number of each kind or class, and such other facts as may be required by the state tax commission. [R60,§741; C73,§833; C97,§1377; C24, 27, 31, 35, 39,§7139; C46, 50, 54,§442.14]

See §441.13

**442.15 State board of review.** The state tax commission shall constitute the state board of review, and shall meet at the seat of government on the second Monday of July in each year. [C51,§§481, 482; R60,§742; C73,§834; C97, §1378; S13,§1378; C24, 27, 31, 35, 39,§7140; C46, 50, 54,§442.15]

**442.16 Adjusting county valuations.** It shall adjust the valuation of property in the several counties, adding to or deducting from the valuation of each kind or class of property such percentage in each case as will bring the same to its taxable value as fixed in chapters 427 to 443, inclusive. It shall also adjust the valuations as between property in any city assessed by a city assessor and property in the same county assessed by the county assessor. [C51,§§481, 482; R60,§742; C73,§834; C97,§1379; C24, 27, 31, 35, 39,§7141; C46, 50, 54,§442.16]

**442.17 Notice of increase.** Before such state tax commission shall add to the valuation of any kind or class of property any such percentage, it shall serve ten days notice by mail, on the auditor of the county whose valuation is proposed to be raised and shall hold an adjourned meeting after such ten days notice, at which time such county may appear by its board of supervisors, county attorney, or otherwise, and make written or oral protest against such proposed raise, which protest shall consist simply of a statement of the error, or errors, complained of with such facts as may lead to their correction, and at such adjourned meeting final action may be taken in reference thereto. [C24, 27, 31, 35, 39,§7142; C46, 50, 54, §442.17]

**442.18 Adjustment by county auditor.** The commission shall keep a record of its proceedings and finish its review and adjustment on or before the third Monday of August. The county auditor shall thereupon add to or deduct from the valuation of each kind or class of property in his county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all over fifty cents as one dollar. [C51,§483; R60,§743; C73,§836; C97,§1382; S13,§1382; C24, 27, 31, 35, 39,§7143; C46, 50, 54,§442.18]

CHAPTER 443

TAX LIST

Referred to in §442.16

- 443.1 Consolidated tax.
- 443.2 Tax list.
- 443.3 Correction—tax apportioned.
- 443.4 Tax list delivered—informality and delay.
- 443.5 Aggregate valuations certified.
- 443.6 Corrections by auditor.
- 443.7 Notice.
- 443.8 Right of appeal.
- 443.9 Adjustment of accounts.
- 443.10 Expense—report to supervisors.
- 443.11 Procedure on appeal.
- 443.12 Corrections by treasurer.
- 443.13 Action by treasurer—apportionment.
- 443.14 Duty of treasurer.
- 443.15 Time limit.
- 443.16 Entry by treasurer—details required.
- 443.17 Presumption of five-year ownership.
- 443.18 Real estate—duty of owner.
- 443.19 Irregularities, errors and omissions—effect.
- 443.20 Discovery of property not listed.

**443.1 Consolidated tax.** All taxes which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund. [C73,§838; C97,§1383; S13,§1383; C24, 27, 31, 35, 39,§7144; C46, 50, 54,§443.1]

40ExGA, SF 183,§20, editorially divided  
Referred to in §420.207

**443.2 Tax list.** Before the first day of January in each year, the county auditor shall transcribe the assessments of the several townships, towns, or cities into a book or record, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of town lots and value, value of personal property and each description of tax, with a column for polls and one for payments, and shall complete the same by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. [C51,§486; R60,§745; C73,§837; C97,§1383; S13,§1383; C24, 27, 31, 35, 39,§7145; C46, 50, 54,§443.2]

Referred to in §§420.207, 445.15  
Limitation on section, §445.15

**443.3 Correction—tax apportioned.** At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up to date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in his office. At the end of the list for each township, town, or city he shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each. [C97,§1383; S13,§1383; C24, 27, 31, 35, 39,§7146; C46, 50, 54,§443.3]

Referred to in §420.207

**443.4 Tax list delivered—informality and delay.** He shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on

or before the thirty-first day of December, taking his receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. No informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes. [C51, §487; R60,§748; C73,§843; C97,§1387; C24, 27, 31, 35, 39,§7147; C46, 50, 54,§443.4]

**443.5 Aggregate valuations certified.** At the time of delivering the list to the treasurer, the auditor shall furnish to the state tax commission a certified statement showing separately the aggregate taxable valuations of the real and personal property in the county, and also the aggregate amount of each separate tax as shown by the tax list. [R60,§748; C73,§844; C97, §1388; C24, 27, 31, 35, 39,§7148; C46, 50, 54, §443.5]

See §441.13

**443.6 Corrections by auditor.** The auditor may correct any error in the assessment or tax list, and the assessor or auditor may assess and list for taxation any omitted property. [R60, §747; C73,§841; C97,§1385; S13,§1385-b; C24, 27, 31, 35, 39,§7149; C46, 50, 54,§443.6]

S13,§1385-b, editorially divided

**443.7 Notice.** Before assessing and listing for taxation any omitted property, the assessor or auditor shall notify by certified mail the person, firm, corporation, or administrator or other person in whose name the property is taxed, to appear before him at his office within ten days from the time of said notice and show cause, if any there be, why such correction or assessment should not be made. [S13,§1385-b; C24, 27, 31, 35, 39,§7150; C46, 50, 54,§443.7; 57GA, ch 267,§56]

**443.8 Right of appeal.** Should such party feel aggrieved at the action of said assessor or auditor he shall have the right of appeal therefrom to the district court. [S13,§1385-b; C24, 27, 31, 35, 39,§7151; C46, 50, 54,§443.8]

Referred to in §443.11

**443.9 Adjustment of accounts.** If such correction or assessment is made after the books

or other records approved by the state auditor have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. In the event such assessment of omitted property is made by the assessor after the tax records have passed into the hands of the auditor or treasurer, such correction or assessment shall be entered on the records by the auditor or treasurer. [S13,§1385-b; C24, 27, 31, 35, 39,§7152; C46, 50, 54,§443.9]

**443.10 Expense—report to supervisors.** All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings shall be reported to the board of supervisors. [S13,§1385-b; C24, 27, 31, 35, 39,§7153; C46, 50, 54,§443.10]

**443.11 Procedure on appeal.** The appeal provided for in section 443.8 shall be taken within ten days from the time of the final action of the assessor or auditor, by a written notice to that effect to the assessor or auditor, and served as an original notice. The court on appeal shall hear and determine the rights of the parties in the same manner as appeals from the board of review, as prescribed in sections 442.7 and 442.11. [S13,§1385-c; C24, 27, 31, 35, 39,§7154; C46, 50, 54,§443.11]

Service of original notice, R.C.P. 56(a)

**443.12 Corrections by treasurer.** When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within five years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed. [C97,§1374; C24, 27, 31, 35, 39, §7155; C46, 50, 54,§443.12]

C97,§1374, editorially divided

**443.13 Action by treasurer—apportionment.** Upon failure to pay such sum within thirty days, with all accrued interest, he shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty percent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law. [C97,§1374; C24, 27, 31, 35, 39,§7156; C46, 50, 54,§443.13]

**443.14 Duty of treasurer.** The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words "by treasurer". [C51,§491; R60,§752; C73, §851; C97,§1398; C24, 27, 31, 35, 39,§7157; C46, 50, 54,§443.14]

C97,§1398, editorially divided

**443.15 Time limit.** Such assessment shall be made within four years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should have paid the tax. [C73,§851; C97,§1398; C24, 27, 31, 35, 39,§7158; C46, 50, 54,§443.15]

**443.16 Entry by treasurer—details required.** When the county treasurer makes an entry of taxes on the tax list, or an entry of the correction of a tax, he shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made. [C31, 35,§7158-d1; C39,§7158.1; C46, 50, 54,§443.16]

**443.17 Presumption of five-year ownership.** In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of his death, had been acquired and owned by such decedent more than five years before the date of his death; and the burden of proving that any such property had been acquired by such decedent less than five years before the date of his death shall be upon the heirs, legatees, and legal representatives of any such decedent. [C35,§7158-f1; C39,§7158.2; C46, 50, 54,§443.17]

**443.18 Real estate—duty of owner.** In all cases where real estate subject to taxation has not been assessed, the owner, by himself or agent, shall have the same done by the treasurer, and pay the taxes thereon; and if he fails to do so the treasurer shall assess the same and collect the tax assessed as he does other taxes. [R60,§753; C73,§852; C97,§1399; C24, 27, 31, 35, 39,§7159; C46, 50, 54,§443.18]

C97,§1399, editorially divided

**443.19 Irregularities, errors and omissions—effect.** No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this title, had the assessment of such property been in all respects regular and valid. [R60,§753; C73,§852; C97,

§1399; C24, 27, 31, 35, 39,§7160; C46, 50, 54, §443.19]

**443.20 Discovery of property not listed.** It shall be lawful for the board of supervisors of any county to employ any person, corporation, or firm for a reasonable salary or per

diem to assist the proper officers in the discovery of property not listed or assessed for taxation as required by law, and the amount allowed as compensation shall be apportioned pro rata to the funds benefited. [S13,§1407-f; C24, 27, 31, 35, 39,§7161; C46, 50, 54,§443.20]

Referred to in §420.207

CHAPTER 444

TAX LEVIES

CERTIFICATION OF TAXES

- 444.1 Basis for amount of tax.
- 444.2 Amounts certified in dollars.
- 444.3 Computation of rate.
- 444.4 Fractional rates disregarded.
- 444.5 Interpretative clause.
- 444.6 Record of rates.
- 444.7 Excessive tax prohibited.
- 444.8 Mandatory provisions.

COUNTY LEVIES

- 444.9 Annual levies.
- 444.10 Court expense.
- 444.11 County orphan fund.
- 444.12 State institution fund.

CERTIFICATION OF TAXES

**444.1 Basis for amount of tax.** In all taxing districts in the state, including townships, school districts, cities, towns, and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year. [C24, 27, 31, 35, 39,§7162; C46, 50, 54,§444.1]

Referred to in §444.8

**444.2 Amounts certified in dollars.** When any authorized tax rate within any taxing district, including townships, school districts, cities, towns, and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding calendar year (not including moneys and credits, and other moneyed capital taxed at a flat rate as provided in section 429.2), the amount of tax said rate will raise, stated in dollars, and shall certify said computed amount in dollars and not by rate, to the county auditor and board of supervisors. [C24, 27, 31, 35, 39,§7163; C46, 50, 54,§444.2]

Referred to in §§420.207, 444.8

**444.3 Computation of rate.** When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the

PEDDLERS

- 444.13 Peddlers.
- 444.14 Payment—license.
- 444.15 “Peddlers” defined.
- 444.16 Exceptions.
- 444.17 Peddling without license.

PUBLIC SHOWS AND CIRCUSES

- 444.18 Public shows—license.
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LEVIES BY STATE TAX COMMISSION

- 444.20 Levy to pay municipal bonds.
- 444.21 General fund of the state.
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- 444.23 Rate certified to county auditor.

amount required for such taxing district, and no larger amount.

Provided that the county auditor shall, in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district all of the tax to be derived from the moneys and credits and other moneyed capital taxed at a flat rate as provided in section 429.2 and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided have been made. [C24, 27, 31, 35, 39, §7164; C46, 50, 54,§444.3]

40ExGA, SF 183,§23, editorially divided  
Referred to in §§420.207, 426.6, 444.8

**444.4 Fractional rates disregarded.** If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a mill in excess of one-half of one-tenth of a mill, said fractional excess may be computed as one-tenth of a mill, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose. [C24, 27, 31, 35, 39,§7166; C46, 50, 54,§444.4]

Referred to in §§420.207, 444.8

**444.5 Interpretative clause.** Nothing herein shall be construed as interfering with the right of any taxing district to receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section 429.2. [C24, 27, 31, 35, 39, §7167; C46, 50, 54,§444.5]

Referred to in §§420.207, 444.8

**444.6 Record of rates.** On the determination by the auditor of the necessary rates as herein

directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose. [C24, 27, 31, 35, 39, §7168; C46, 50, 54, §444.6]

Referred to in §444.8

**444.7 Excessive tax prohibited.** It is hereby made a misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for any public purpose in excess of the amount certified or authorized as provided by law. The state comptroller shall prescribe and furnish the county auditors forms and instructions to aid them in determining the legality and authorized amount of tax levies. In the case of an excessive levy, it shall be the duty of the county auditor to reduce it to the maximum amount authorized by law, and in any event not in excess of the amount certified; and in case of an illegal levy the county auditor shall not enter or carry any tax on the tax lists for such levy. [C24, 27, 31, 35, 39, §7169; C46, 50, 54, §444.7]

Referred to in §444.8  
Misdemeanor, punishment, §687.7

**444.8 Mandatory provisions.** The provisions of sections 444.1 to 444.7, inclusive, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes. [C24, 27, 31, 35, 39, §7170; C46, 50, 54, §444.8]

#### COUNTY LEVIES

**444.9 Annual levies.** The board of supervisors of each county shall, annually, at its September session, levy the following taxes upon the assessed value of the taxable property in the county:

1. For state revenue, such rate of tax as shall be fixed by the state tax commission as herein-after provided.

2. For ordinary county revenue, not to exceed three and one-half mills on a dollar in counties having an assessed valuation of less than sixteen million dollars, not to exceed three mills on a dollar in counties having an assessed valuation of sixteen million dollars or more and less than twenty-six million dollars, not to exceed two and one-half mills on a dollar in counties having an assessed valuation of twenty-six million dollars or more and less than thirty-two million dollars, and not to exceed two mills on a dollar in counties having an assessed valuation of thirty-two million dollars or more.

In all counties having a population of thirty-five thousand, or more, and not more than forty thousand, and having an ordnance plant located therein owned by the United States government, the board of supervisors may, with the approval of the state comptroller, levy not to exceed two mills on a dollar under the provisions of this section. [C51, §454; R60,

§710; C73, §796; C97, §1303; SS15, §1303; C24, 27, 31, 35, 39, §7171; C46, 50, 54, §444.9]

SS15, §1303, editorially divided

**444.10 Court expense.** In any county where the rates herein fixed for ordinary county revenue are found to be insufficient to pay all expenses incident to the maintenance and operation of the courts, the board of supervisors may create an additional fund to be known as court expense fund, and may levy for such fund such rate of taxes as shall be necessary to pay all court expenses chargeable to the county. Such fund shall be used for no other purpose, and the levy therefor shall be dispensed with when the authorized levy for the ordinary county revenue is sufficient to meet the necessary county expenditures including such court expenses. Provided, further, that the levy for the purpose of providing an additional fund shall not exceed three-fourths mill on a dollar. [C97, §1303; SS15, §1303; C24, 27, 31, 35, 39, §7172; C46, 50, 54, §444.10]

Omnibus repeal, 50GA, ch 217, §3  
Legalizing act, 50GA, ch 217, §2  
Salaries payable from, §340.17

**444.11 County orphan fund.** The board of supervisors may levy a tax, not exceeding one-eighth mill on the dollar in any one year, on all the taxable property in its county, at the same time other taxes are levied, and to be collected in the same manner, to aid in and for the maintenance and education of destitute orphans. The fund thus raised shall be called the "county orphan fund", and shall be expended in such sums and manner as the exigencies of each case may demand. If there be such children who are without guardian, or, having one, are neglected, they shall be cared for through some suitable person to be appointed by the board. [C73, §§1638-1641; C97, §2687; C24, 27, 31, 35, 39, §7173; C46, 50, 54, §444.11]

**444.12 State institution fund.** The board of supervisors for each county shall establish a state institution fund and shall at the time of levying other taxes, estimate the amount necessary to meet the expense in the coming year of maintaining county patients, including cost of commitment and transportation of patients at the Mount Pleasant Mental Health Institute, Independence Mental Health Institute, Cherokee Mental Health Institute, Clarinda Mental Health Institute, the state sanatorium for the treatment of tuberculosis at Oakdale or any similar tuberculosis institution established and maintained by any county under the provisions of chapter 254, the Glenwood state school, the Woodward state hospital and school, the Iowa juvenile home at Toledo, the Iowa Annie Wittenmyer Home at Davenport, the Iowa braille and sight-saving school at Vinton, the school for the deaf at Council Bluffs, and the state psychopathic hospital at Iowa City, and shall levy a tax therefor. Cost of outpatient care of tuberculous patients administered under the supervision of a tuberculous sanatorium may be paid from the state institution fund. Said fund shall not be diverted to any

other purpose. Should any county fail to levy a tax sufficient to meet this expense the deficiency shall be paid from the county general fund, same to be transferred to the state institution fund. [C46, 50, 54,§444.12]

**PEDDLERS**

**444.13 Peddlers.** Peddlers plying their vocation in any county in this state outside of a city or incorporated town shall pay an annual county tax of twenty-five dollars for each pack peddler or hawker on foot, fifty dollars for each one-horse or two-wheeled conveyance, and seventy-five dollars for each two-horse conveyance, automobile, or any motor vehicle having attached thereto or made a part thereof a conveyance for merchandise or samples. [C51,§510; R60,§791; C73,§906; C97,§1347; S13, §1347-a; C24, 27, 31, 35, 39,§7174; C46, 50, 54, §444.13]

S13,§1347-a, editorially divided  
Referred to in §§81.12, 444.15, 444.16, 444.17

**444.14 Payment—license.** Such tax shall be paid to the county treasurer, who shall issue to the person making such payment duplicate receipts therefor and upon presentation of one of same to the county auditor, he shall issue to the person presenting such receipt a license which shall not be transferable authorizing such person to ply the vocation of a peddler in such county for the term of one year from the date thereof. The license shall be good only in the county in which issued, and shall not authorize peddling in cities and towns. [C97, §1348; S13,§§1347-a, 1348; C24, 27, 31, 35, 39,§7175; C46, 50, 54,§444.14]

S13,§1348, editorially divided  
Referred to in §§444.15, 444.16

**444.15 “Peddlers” defined.** The word “peddlers” under the provisions of sections 444.13 and 444.14, and wherever found in the Code, shall be held to include and apply to all transient merchants and itinerant vendors selling by sample or by taking orders, whether for immediate or future delivery. [S13,§1347-a; C24, 27, 31, 35, 39,§7176; C46, 50, 54,§444.15]

Referred to in §444.16

**444.16 Exceptions.** The provisions of sections 444.13 to 444.15, inclusive, shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling and distributing fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees. [C97,§1347; S13,§1347-a; C24, 27, 31, 35, 39,§7177; C46, 50, 54,§444.16]

**444.17 Peddling without license.** Any person peddling outside the limits of a city or town without such license or after the expiration thereof, shall be guilty of a misdemeanor, whether he be the owner of the goods sold or carried by him or not, and, on conviction thereof, shall forfeit and pay into the county treasury, in addition to the penalty imposed

therefor, double the amount of the tax for one year as fixed in section 444.13. [C51,§§511, 512; R60,§792; C73,§907; C97,§1348; S13,§1348; C24, 27, 31, 35, 39,§7178; C46, 50, 54,§444.17]

Punishment, §687.7

**PUBLIC SHOWS AND CIRCUSES**

**444.18 Public shows—license.** The board of supervisors shall have power to regulate or prohibit in any county, outside the limits of a city or town, the public exhibition, for any price, gain, or reward, of any traveling show, circus, rodeo, or other public display of any kind.

No person shall exhibit any traveling show, circus, rodeo, or other public display of any kind, as aforesaid, until he shall have obtained a license therefor from the county auditor, upon the payment to the county treasurer of such sum as may be fixed by the board of supervisors, not to exceed one hundred dollars for each place in the county at which such show or circus may exhibit. [C97,§1349; C24, 27, 31, 35, 39,§7179; C46, 50, 54,§444.18]

**444.19 Violations.** Any person exhibiting any such show without first having obtained such license shall be guilty of a misdemeanor, and shall also forfeit and pay to the county treasurer double the amount fixed for such license, for the benefit of the school fund. [C97, §1349; C24, 27, 31, 35, 39,§7180; C46, 50, 54, §444.19]

Punishment, §687.7

**LEVIES BY STATE TAX COMMISSION**

**444.20 Levy to pay municipal bonds.** Whenever any municipal corporation, board, or tribunal is charged with the duty of levying a tax to pay any bonds or interest thereon, and fails to make such levy, the holder thereof may, after obtaining final judgment thereon, in addition to any other remedies he may have, file a transcript thereof with the state tax commission, taking its receipt therefor, and the same shall be registered in its office, and the state tax commission at its regular annual session shall levy upon the taxable property of the county, city, town, or school district for which such bonds were issued a sufficient rate of taxation to realize the amount of interest, or principal and interest, due or to become due on the bonds so filed, prior to the next levy, and the money arising from such levy shall be known as the bond fund, and collected as a part of the state tax, paid into the state treasury, and placed to the credit of such county, city, town, or school district for the payment of said bonds and interest, and shall be paid out as the interest installments or the principal may mature, by warrants drawn by the state comptroller in favor of the holder of such bonds, as shown by the register aforesaid, until the same shall be paid; and, when paid, the bonds and coupons shall be canceled and returned to the treasurer of the county, city, town, or school district issuing the same, who shall receipt therefor. [C97,§1381; C24, 27, 31, 35, 39,§7181; C46, 50, 54,§444.20]

Similar provision, §346.17

**444.21 General fund of the state.** The amount derived from taxes levied for state general revenue purposes, and all other sources which are available for appropriations for general state purposes, and all other money in the state treasury which is not by law otherwise segregated, shall be established as a general fund of this state. [C46, 50, 54, §444.21]

**444.22 Annual levy.** In each year the state tax commission shall fix the rate in percentage to be levied upon the assessed valuation of the

taxable property of the state necessary to raise such amount for general state purposes as shall be designated by the state comptroller under the provisions of subsection 13 of section 8.6. [S13, §1380-c; C24, 27, 31, 35, 39, §7182; C46, 50, 54, §444.22]

**444.23 Rate certified to county auditor.** The state tax commission shall certify the rate so fixed to the auditor of each county. [S13, §1380-d; C24, 27, 31, 35, 39, §7183; C46, 50, 54, §444.23]

## CHAPTER 445

### COLLECTION OF TAXES

Referred to in §424.7

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| 445.26 Information as to taxes due.                    | 445.57 Monthly apportionment.   |
| 445.27 Penalty.  | 445.58 Misapplied interest or penalty.                                  |
| 445.28 Lien of taxes on real estate.                   | 445.59 Record of separate funds.  |
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**445.1 Duty of treasurer.** The treasurer, after making the entry provided in section 445.10, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books or other records approved by the state auditor of previous years, his efforts to that end to include the sending by mail of a statement to

each delinquent taxpayer not later than the first day of November of each year. [R60, §751; C73, §846; C97, §1390; C24, 27, 31, 35, 39, §7184; C46, 50, 54, §445.1]

**445.2 Resistance.** If the treasurer, his deputy, or collector is resisted or impeded in the execution of the duties of his office, he may require any person to assist him therein, and if such person refuses, he shall forfeit a sum not exceeding ten dollars, to be recovered by

civil action in the name of the county, and the person resisting shall be punished as in the case of resisting an officer in the execution of legal process. [C51,§494; R60,§758; C73,§860; C97,§1408; C24, 27, 31, 35, 39,§7185; C46, 50, 54, §445.2]

Referred to in §420.246  
Punishment, §742.1

**445.3 Actions authorized.** In addition to all other remedies and proceedings now provided by law for the collection of taxes on personal property, the county treasurer is hereby authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection of taxes from any person, persons, firm, or corporation as shown by the tax list in his office, and the same shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided by the Code for ordinary actions. [S13,§1452-a; C24, 27, 31, 35, 39,§7186; C46, 50, 54,§445.3]

Referred to in §445.4

**445.4 Statutes applicable — attachment — damages.** All the provisions of chapters 639 and 642 are hereby made applicable to any proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the county treasurer complying with the provisions of said chapters, for taxes, whether due or not due, except that no bond shall be required from the treasurer or county in such cases, but the county shall be liable for damages, only, as provided by section 639.14. [S13,§1452-b; C24, 27, 31, 35, 39,§7187; C46, 50, 54,§445.4]

**445.5 Receipt.** The treasurer shall in all cases make out and deliver to the taxpayer a receipt, stating the time of payment, the description and assessed value of each parcel of land, and the assessed value of personal property, the amount of each kind of tax, the interest on each and costs, if any, giving a separate receipt for each year; and he shall make the proper entries of such payments on the books or other records approved by the state auditor of his office. Such receipt shall be in full of the first or second half or all of such person's taxes for that year, but the treasurer shall receive the full amount of any county, state, or school tax whenever the same is tendered, and give a separate receipt therefor. [R60, §760; C73,§867; C97,§1405; C24, 27, 31, 35, 39, §7188; C46, 50, 54,§445.5]

**445.6 Distress and sale.** The treasurer shall collect all delinquent taxes by distress or sale of any personal property belonging to the person to whom such taxes are assessed, and not exempt from taxation, or any real or personal property upon which they are a lien, but he shall continue to receive the same until collected, and any owner or claimant of any real estate advertised for sale may pay to the county treasurer, at any time before the sale thereof, the taxes due thereon, with accrued

penalties, interest, and costs to the time of payment. [C51,§§495, 497; R60,§§759, 760, 769; C73, §§865, 866; C97,§1414; C24, 27, 31, 35, 39,§7189; C46, 50, 54,§445.6]

Referred to in §§96.14, 422.26  
Certain property of national guardsmen exempt, §29.41  
Garnishment proceedings by tax commission, §§626.29-626.31

**445.7 Distress warrant — form.** Distress warrants issued by the county treasurer for the collection of delinquent personal taxes shall be substantially in the following form:

State of Iowa, }  
..... County. } ss.

To the sheriff or any constable or tax collector of ..... county, Iowa.

Whereas, personal taxes have been duly assessed and levied and entered upon the tax lists in ..... county, Iowa, against ..... of ....., Iowa, in the amount and for the years ..... as follows:

Personal tax .....	\$.....
Interest .....	\$.....
Penalty .....	\$.....
Total .....	\$.....

And, whereas, said taxes and interest remain unpaid as shown by said tax list,

Now, therefore, you are hereby commanded to forthwith distrain, seize, levy upon, and sell, as provided by law, any personal property belonging to the said ..... not exempt from taxation, and any personal property upon which said taxes are a lien, sufficient to make the full amount of said taxes, interest, penalty and costs, and to make due and prompt return to my office of the taxes, interest and penalty so collected.

Witness my hand and official signature at... .., Iowa, this ..... day of ....., 19.....

Treasurer of ..... county, Iowa.  
[C31, 35,§7189-d1; C39,§7189.1; C46, 50, 54,§445.7]

Referred to in §§96.14, 422.26, 445.8  
Sale, see §§446.3-446.6

**445.8 Delinquent personal tax list—distress warrant.**

1. The treasurer shall, after October 1, and before December 31, of each year, enter in a book or other record to be kept in his office as a part of the records thereof, to be known as the delinquent personal tax list, all delinquent personal taxes and delinquent poll taxes of any preceding year which do not appear thereon; if the tax list maintained by said treasurer is such that all delinquent personal taxes and delinquent taxes of any preceding year are at all times therein recorded, then he shall not be required to keep in his office, as a part of the records thereof, a separate delinquent personal tax list.

2. The treasurer shall cause to be compiled a list of all delinquent personal property taxes for the current assessment year, as shown by the delinquent personal property tax list. Such list shall show the amount of the taxes delin-



quent when the amount of the tax is more than five dollars and the amount of penalty, interest and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, and shall be published in some newspaper in the county once each week for two consecutive weeks, the last of which shall be not more than two weeks before the first Monday in December, and by immediately posting a copy of the first publication thereof at the door of the courthouse, if there be one, if not, at the door of the place where the last term of district court was held. The provisions of sections 446.10 and 446.11 shall prevail in connection with the publication of such notice. The treasurer shall obtain a copy of the notice as published, and a certificate of the publication thereof from the printer or publisher, and file it in the office of the auditor.

3. The treasurer shall, within ten days following the final publication of such notice, issue a distress warrant in the form as prescribed in section 445.7. The publication of delinquent personal property tax lists shall include a notice that, unless such delinquent personal property taxes are paid within ten days of the date of final publication of the notice, a distress warrant will be issued for the collection thereof.

4. The distress warrant so issued shall be collectible by any sheriff or constable or tax collector in the same manner as any other warrant for the distraint and sale of personal property. The amount to be collected shall include cost of publication of the notice, as herein provided, all interest and penalties upon such tax, and the fees of the collecting officer, as prescribed by law.

5. Any taxpayer affected may at any time pay to the treasurer the amount of delinquent taxes and penalty, plus the cost of publication of the notice as shown by the personal property list, and any other costs prior to the issuance of the distress warrant herein provided. [C51,§488; R60,§750; C73,§845; C97,§1389; S13, §1389-a; C24, 27, 31, 35, 39,§7190; C46, 50, 54, §445.8; 56GA, ch 220,§§1-4]

**445.9 Record—contents.** Such entry of tax on delinquent personal tax list shall give the names of delinquents alphabetically arranged, with amounts of tax and for what year or years, and where property was located when assessed. [R60,§750; C73,§845; C97,§1389; S13, §1389-b; C24, 27, 31, 35, 39,§7191; C46, 50, 54, §445.9]

**445.10 Former delinquent real estate taxes.** The treasurer shall each year, upon receiving the tax list, enter upon the same in separate columns opposite each parcel of real estate on which the tax remains unpaid for any previous year, the amount of such unpaid tax, and unless such delinquent real estate tax is so brought forward and entered it shall cease to be a lien upon the real estate upon which the same was levied, and upon any other real estate of the owner. But to preserve such lien

it shall only be necessary to enter such tax, as aforesaid, opposite any tract upon which it was a lien. Any sale for the whole or any part of such delinquent tax not so entered shall be invalid. Nothing contained in this section shall be held to require that in order to preserve the lien of such tax and make such tax sale valid, delinquent taxes must be brought forward upon the current tax list if said tax list is received by the county treasurer less than six months preceding the date of conducting the said tax sale as provided in section 446.25 or section 446.28 if the tax list received each year by the treasurer is such that all delinquent real estate and delinquent personal taxes of any preceding year are shown against each parcel of the real estate on which the tax remains unpaid for any year and the amount of such unpaid tax is shown, the treasurer shall not be required to make any further entry. [R60,§750; C73,§845; C97,§1389; S13,§1389-d; C24, 27, 31, 35, 39,§7193; C46, 50, 54,§445.10]

Referred to in §§427.12, 445.1, 445.14, 445.15  
Limitation on section, §445.15  
See also §§448.13, 589.16

**445.11 Special assessment book.** Upon the record of the levy of any special assessment within any county coming into the hands of the county auditor, the county auditor shall, in blue or black ink, prepare in a book to be known as a special assessment book, the list of the persons owning real estate to be affected thereby, in alphabetical or numerical order, which book shall contain a description of the real estate so affected, the date of the assessment, the total amount so assessed, and the installments to be paid, together with the amounts of the respective installments if said assessment is payable in installments. [C31, 35,§7193-d1; C39,§7193.01; C46, 50, 54,§445.11]

Certification to county auditor, §§391.34, 391.61

**445.12 Additional data.** Said special assessment tax list shall also contain space for showing penalties, if any, that may be incurred, a column showing payments and amounts thereof, a column showing number of receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of said assessment, or any installment thereof. [C31, 35,§7193-d2; C39,§7193.02; C46, 50, 54, §445.12]

**445.13 Entries—delivery to treasurer—informalities.** Said county auditor shall make an entry upon the special assessment tax list showing what it is, for what county, and deliver it to the county treasurer on or before the thirty-first day of December, taking his receipt therefor; such list shall be a sufficient authority for the county treasurer to collect the taxes therein levied. No informality therein and no delay in delivering the same after the time above specified, shall affect the validity of any special assessment taxes, sales or other proceeding for the collection of such special assessment taxes. [C31, 35,§7193-d3; C39,§7193.03; C46, 50, 54,§445.13]

**445.14 Entries on general tax list.** The county treasurer shall each year, upon receiving the tax list referred to in section 445.10 enter in red ink upon the same, in separate columns opposite each parcel of real estate upon which the special assessment remains unpaid for any previous year, the book, page and line number of the special assessment tax list where such special assessment levy and the amount so levied may be found. [C31, 35, §7193-d4; C39, §7193.04; C46, 50, 54, §445.14]

**445.15 Limitations.** Nothing contained in sections 443.2 and 445.10 shall apply to special assessment levies. [C31, 35, §7193-d5; C39, §7193.05; C46, 50, 54, §445.15]

**445.16 Compromising tax.** When any property in this state has been offered by the county treasurer for sale for taxes for two consecutive years and not sold, or sold for only a portion of the delinquent taxes, then and in that event the board of supervisors of the county is hereby authorized to compromise the delinquent taxes against said property antedating any tax sale certificate; or being a part of the taxes due for the year for which such property was sold for taxes, and may enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full liquidation of all delinquent taxes included in such agreement. [C27, 31, 35, §7193-a1; C39, §7193.06; C46, 50, 54, §445.16]

41GA, ch 148, §1, editorially divided  
Referred to in §445.19

**445.17 Filing of compromise agreement.** A copy of such agreement shall be filed with the county treasurer and county auditor. [C27, 31, 35, §7193-a2; C39, §7193.07; C46, 50, 54, §445.17]

Referred to in §445.19

**445.18 Effect of compromise payment.** When payment is made, as by such agreement provided, all taxes included in such agreement shall be thereby fully satisfied and canceled and the county auditor and county treasurer shall cause their books to show such satisfaction. [C27, 31, 35, §7193-a3; C39, §7193.08; C46, 50, 54, §445.18]

Referred to in §445.19

**445.19 Compromising tax on personal property.** When personal property taxes are not a lien upon any real estate and are delinquent for one or more years, the board may, when it is evident that such tax is not collectible in the usual manner, compromise such tax as provided in sections 445.16 to 445.18, inclusive. [C27, 31, 35, §7193-b1; C39, §7193.09; C46, 50, 54, §445.19]

**445.20 Penalty and interest limited — unavailable taxes.** No penalty or interest, except for the first four years, shall be collected upon taxes remaining unpaid four years or more from the thirty-first day of December of the year in which the tax books containing the same were first placed in the hands of the county treasurer, and the board of supervisors

at the January meeting may declare such tax unavailable, and when so declared by the board, the amount shall be credited to the treasurer by the auditor as unavailable and he shall apportion such tax among the funds to which it belongs. [C97, §1391; SS15, §1391; C24, 27, 31, 35, 39, §7194; C46, 50, 54, §445.20]

SS15, §1391, editorially divided  
Referred to in §445.21

**445.21 County credited.** Any portion of such tax belonging to the state shall be reported by him in his semiannual settlement sheets to the state comptroller as unavailable, whereupon the comptroller shall credit the county with the amount so reported, but nothing in this or section 445.20 shall be construed to in any way release the county treasurer from any duty required of him in the collection of delinquent taxes, nor to release the taxpayer from his liability for the same. [SS15, §1391; C24, 27, 31, 35, 39, §7195; C46, 50, 54, §445.21]

**445.22 Subsequent collection.** Should any of such tax afterward be collected, the county treasurer shall distribute the net amount collected among the several funds the same as though it had never been declared unavailable, and the portion belonging to the state shall be credited back to the state and included in the treasurer's remittance of other state taxes to the treasurer of state and shall be reported by the county auditor in his semiannual settlement sheets to the state comptroller, who shall recharge the same to the county. [SS15, §1391; C24, 27, 31, 35, 39, §7196; C46, 50, 54, §445.22]

**445.23 Certificate of taxes due.** The county treasurer, when requested to do so by anyone having an interest therein, shall certify in writing the entire amount of taxes and assessments due upon any parcel of real estate, together with all sales of the same for unpaid taxes or assessments shown by the books or records in his office, with the amount required for redemption from the same, if still redeemable, if he is paid or tendered his fees for such certificate at the rate of one dollar for the first parcel in each township, town, or city, and twenty cents for each subsequent parcel in the same township, town, or city, and in computing such fees each description in the tax list shall be reckoned a parcel. [C73, §848; C97, §1393; C24, 27, 31, 35, 39, §7197; C46, 50, 54, §445.23]

**445.24 Effect of certificate and receipt.** Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax sales therein mentioned, shall be conclusive evidence for all purposes, and against all persons, that the parcel of real estate in said certificate and receipt described was, at the date thereof, free and clear of all taxes and assessments, and sales for taxes or assessments, except sales whereon the time of redemption had already expired and the tax purchaser had received his deed. [C73, §849;

C97,§1394; C24, 27, 31, 35, 39,§7198; C46, 50, 54, §445.24]

**445.25 Treasurer liable.** For any loss resulting to the county, or any subdivision thereof, or to any tax purchaser, or taxpayer, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond. [C73,§850; C97,§1395; C24, 27, 31, 35, 39, §7199; C46, 50, 54,§445.25]

**445.26 Information as to taxes due.** The treasurer, when applied to by letter and receiving sixty cents in postage stamps or money, and twenty cents additional for each tract of one hundred sixty acres in excess of three hundred twenty acres, in no case to exceed one dollar, shall correctly answer the same by mail, giving the amount and interest of unpaid taxes and of any tax sales thereof as the same appear upon the tax list in his office, and upon the return of the letter or a copy, before the last day of the current month, with the demand due as shown therein, he shall pay the taxes and forward to the sender a tax receipt without further charge. [C73, §3794; C97,§1396; C24, 27, 31, 35, 39,§7200; C46, 50, 54,§445.26]

Referred to in §445.27

**445.27 Penalty.** Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money or stamps inclosed as aforesaid, to answer the same fully as required in section 445.26, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned than as above provided, shall forfeit to the person aggrieved, for each offense, the sum of fifty dollars, which may be recovered in a civil action. [C73,§3795; C97,§1397; C24, 27, 31, 35, 39,§7201; C46, 50, 54,§445.27]

**445.28 Lien of taxes on real estate.** Taxes upon real estate shall be a lien thereon against all persons except the state. [C51,§495; R60, §759; C73,§§853, 865; C97,§1400; S13,§1400; C24, 27, 31, 35, 39,§7202; C46, 50, 54,§445.28]

S13,§1400, editorially divided

**445.29 Lien of personal taxes.** All poll taxes and taxes due from any person upon personal property shall, for a period of one year following December 31 of the year of levy, be a lien upon any and all real estate owned by such person or to which he may acquire title and situated in the county in which the tax is levied. From and after the expiration of said one year said taxes shall be a lien on all such real estate for an additional period of nine years provided said taxes are entered upon the delinquent personal tax list as provided by law. But in no instance shall said taxes be a lien after the expiration of ten years from December 31 of the year in which levied. This section shall apply to all poll taxes and to all taxes on personal property whether levied prior or subsequent to the time this section takes effect. Personal property taxes, together

with any interest, penalty, or costs, shall be a lien in favor of the county upon all the taxable personal property and rights to property belonging to the taxpayer whose personal property tax is delinquent. [C73,§853; C97,§1400; S13,§1400; C24, 27, 31, 35, 39,§7203; C46, 50, 54, §445.29; 56GA, ch 220,§5]

**445.30 Lien between vendor and purchaser.** As against a purchaser, such liens shall attach to real estate on and after the thirty-first day of December in each year. [C97,§1400; S13, §1400; C24, 27, 31, 35, 39,§7204; C46, 50, 54, §445.30]

**445.31 Lien follows certain personal property.** Taxes upon stocks of goods or merchandise, fixtures and furniture in hotels, restaurants, rooming houses, billiard halls, moving picture shows and theaters, shall be a lien thereon and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, and such owner, purchaser, or vendee of any of such goods, merchandise, furniture, or fixtures shall be personally liable for all taxes thereon. [C24, 27, 31, 35, 39,§7205; C46, 50, 54,§445.31]

**445.32 Lien follows building assessed as personalty.** In all cases where buildings are assessed as personal property, the taxes shall be and remain a lien on said buildings from the date of levy until paid. [S13,§1400; C24, 27, 31, 35, 39,§7206; C46, 50, 54,§445.32]

**445.33 Payment — what receivable.** The treasurer is authorized and required to receive in payment of all taxes by him collected, together with the interest and principal of the school fund, the circulating notes of national banking associations organized under and in accordance with the conditions of the act of the congress of the United States, entitled, "An act to provide a national currency secured by the pledge of the United States stocks, and to provide for the redemption thereof", approved February 25, 1863, and acts amendatory thereto, United States legal tender notes, and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency. [C73,§855; C97,§1402; C24, 27, 31, 35, 39,§7207; C46, 50, 54, §445.33]

**445.34 Certain warrants receivable.** State comptroller's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received by the treasurer of the proper county for ordinary county taxes, but money only shall be received for the school tax. [C51,§489; R60,§§754, 2057, 2059; C73,§§854, 1779; C97,§1401; C24, 27, 31, 35, 39,§7208; C46, 50, 54,§445.34]

**445.35 Warrants not receivable.** Warrants issued by any city or town shall not be received by the county treasurer in payment of the city or town taxes. [C97,§900; C24, 27, 31, 35, 39,§7209; C46, 50, 54,§445.35]

**445.36 Payment—installments.** No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, at some time between the first Monday in January and the first day of March following, and pay his taxes in full, or one-half thereof before the first day of March succeeding the levy, and the remaining half before the first day of September following. [C51,§492; R60,§756; C73,§857; C97,§1403; C24, 27, 31, 35, 39,§7210; C46, 50, 54, §445.36]

C97,§1403, editorially divided

**445.37 When delinquent.** In all cases where the half of any taxes has not been paid before the first day of April succeeding the levy, the amount thereof shall become delinquent from the first day of April after due; and in case the second installment is not paid before the first day of October succeeding its maturity, it shall become delinquent from the first day of October after due. [C97,§1403; C24, 27, 31, 35, 39, §7211; C46, 50, 54,§445.37]

**445.38 Apportionment.** In all cases where taxes are paid by installment, each of such payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions. [C97,§1403; C24, 27, 31, 35, 39,§7212; C46, 50, 54,§445.38]

**445.39 Interest as penalty.** If the first installment of taxes shall not be paid by April 1, said installment shall become due and draw interest, as a penalty, of three-fourths of one percent per month until paid, from the first day of April following the levy; and if the last half shall not be paid by October 1 following such levy, then a like interest shall be charged from the date such last half became delinquent. [C51,§§495, 497; R60,§§759, 760; C73,§865; C97, §1413; C24, 27, 31, 35, 39,§7214; C46, 50, 54, §445.39]

Property of veterans of World War II, see 52GA, ch 48

**445.40 Penalty on personal taxes.** On all personal taxes not paid on or before the first Monday in December a penalty of five percent shall be added and collected in addition to the three-fourths of one percent per month penalty herein provided; and the tax with all penalties shall be collected at the same time and in the same manner. [C73,§866; C97,§1413; C24, 27, 31, 35, 39,§7215; C46, 50, 54,§445.40]

**445.41 When interest penalty omitted.** No interest as a penalty shall be added to taxes levied by any court to pay a judgment on county, city, town, or school district indebtedness, other than the interest which such judgment may draw, nor upon taxes levied in aid of the construction of any railroad. [C73, §866; C97,§1413; C24, 27, 31, 35, 39,§7216; C46, 50, 54,§445.41]

**445.42 Assessment of migratory property of nonresident.** All personal property, the owner of which is a nonresident of the state, and

which property is by the owner thereof intended for sale or consumption at a place, or shipment to a place other than where said property is located, shall be assessed in the owner's name, if the owner is known, and if the owner is unknown or uncertain the same shall be assessed to "unknown owner", and shall be by the assessor sufficiently described so that said property may be identified. [C97, §1404; C24, 27, 31, 35, 39,§7217; C46, 50, 54, §445.42]

C97,§1404, editorially divided

**445.43 Lien on migratory personal property—maturity of tax.** A lien for the tax upon said property as herein provided shall relate back to and exist from the first day of January of the year for which it is assessed, and if anyone seeks to remove the said property from the county before the tax for said year shall be paid, the tax shall immediately become due and collectible. [C97,§1404; C24, 27, 31, 35, 39, §7218; C46, 50, 54,§445.43]

**445.44 Enforcement of lien.** It shall be the duty of the assessor to notify the county auditor if said property is being, or is about to be, removed from the county. In such event, or if the knowledge of the removal of or intent to remove said property shall come to him in any other authentic manner, the said auditor shall certify such fact to the county treasurer, with a full description of the property as the same appears on the assessor's books, giving assessment district, where located, and the amount of said assessment, and the county treasurer shall thereupon proceed by distress to restrain the removal of said property and secure the lien of the tax due or to become due. [C97, §1404; C24, 27, 31, 35, 39,§7219; C46, 50, 54, §445.44]

**445.45 Release of lien by bond.** If at the time of such distress the levy for the year is unknown, the auditor is authorized to release the lien of such tax upon a good and sufficient bond, with sureties resident in the county, being filed with said auditor, to be by him approved, which bond shall obligate all parties thereto to pay all taxes due on said property when same are payable. Upon the filing and approving of such bond, the auditor shall make a certificate releasing the said personalty from the lien of such tax. [C97,§1404; C24, 27, 31, 35, 39,§7220; C46, 50, 54,§445.45]

**445.46 Payment—effect.** The payment of said tax shall be a bar against the collection of taxes for same year on said property in any other county in this state. [C97,§1404; C24, 27, 31, 35, 39,§7221; C46, 50, 54,§445.46]

**445.47 Collectors—appointment.** Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinquent taxpayers, and for

this purpose he may appoint one or more collectors to assist him in collecting the same. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§7222; C46, 50, 54,§445.47]

S13,§1407, editorially divided  
Referred to in §420.246

**445.48 Compensation and accounting.** Each collector appointed shall receive for his services and expenses the sum of five percent on the amount of all taxes collected and paid over by him, which percentage he shall collect from the delinquent, together with the whole amount of delinquent taxes and interest; and pay the same to the treasurer at the end of each month. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§7223; C46, 50, 54,§445.48]

Referred to in §420.246

**445.49 Sheriff or constable as collector.** In the discharge of his duties as collector, should it become necessary to make the delinquent taxes by distress and sale, or should no collector be appointed, or should the collector fail to institute proceedings to collect said delinquent taxes, the treasurer shall place the same in the hands of the sheriff, or a constable, who shall proceed to collect the same, and either shall be entitled to receive the same compensation, in addition to the five percent, as constables are entitled to receive for the sale of property on execution. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§7224; C46, 50, 54,§445.49]

Referred to in §420.246

**445.50 Personal property tax collectors.** The boards of supervisors may in their discretion authorize the appointment by the treasurer of one or more collectors to assist in the collection of such delinquent personal tax as the board may designate, and may pay such collector as full compensation for all services rendered and expenses incurred a sum not to exceed ten percent of the amount collected, which sum shall in no event be paid or allowed until all such taxes collected have been paid over to the county treasurer by such collector. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§7225; C46, 50, 54,§445.50]

Referred to in §420.246

**445.51 Current taxes — when delivered for collection.** In no case shall delinquent taxes of the current year be turned over for collection, whether designated by the board or otherwise, before the first day of November. The provisions of this section shall not apply to counties having a population of eighty thousand or more. [C24, 27, 31, 35, 39,§7226; C46, 50, 54,§445.51]

Referred to in §420.246

**445.52 Interest and penalties — apportionment—compensation of collectors.** The interest and penalty on delinquent taxes collected shall be apportioned to and become a part of the general fund of the county, and the amount allowed as compensation to delinquent tax collectors shall be paid from said fund. [S13, §1407-1a; C24, 27, 31, 35, 39,§7227; C46, 50, 54, §445.52]

**445.53 Taxes certified to another county.** In all cases of delinquent taxes in any county, where the person upon whose property the same were levied shall have disposed of or removed the said property and the treasurer of the county where the taxes were levied can find no property within said county out of which said taxes can be made, the treasurer of the county where said taxes are delinquent shall make out a certified abstract thereof and forward the same to the treasurer of the county in which the delinquent resides or has property, when the treasurer transmitting the said abstract has reason to believe that said taxes can be collected thereby. [C73,§861; C97,§1409; SS15,§1409; C24, 27, 31, 35, 39,§7228; C46, 50, 54, §445.53]

**445.54 Collection in such case.** The treasurer forwarding and the one receiving said abstract shall each keep a record thereof, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of a levy of taxes in that county, and the collection of the same shall be proceeded with in the same manner as in the collection of other taxes. [C73,§862; C97,§1410; C24, 27, 31, 35, 39,§7229; C46, 50, 54,§445.54]

**445.55 Penalties collectible.** The officer collecting taxes so certified into another county shall, in addition to the penalties on delinquent taxes, assess and collect the further penalty of twenty percent on the whole amount of such taxes, inclusive of the penalties thereon. [C73, §863; C97,§1411; C24, 27, 31, 35, 39,§7230; C46, 50, 54,§445.55]

Referred to in §445.56

**445.56 Return.** The officer receiving said abstract shall, when in his opinion the taxes are uncollectible, return the same with the indorsement thereon "uncollectible", and, if collected, he shall remit the amount to the treasurer of the county where said taxes were levied, less the penalty provided by section 445.55. [C73,§864; C97,§1412; C24, 27, 31, 35, 39, §7231; C46, 50, 54,§445.56]

**445.57 Monthly apportionment.** On or before the tenth day of each month, the treasurer shall apportion all taxes collected during the preceding month among the several funds to which they belong according to the number of mills levied for each fund, and the interest and penalties thereon to the general fund, and shall enter the same upon his cash account, and report the amount of each tax and the interest and penalties collected on the same to the county auditor, who shall charge him in each fund with the same. [C73,§868; C97,§1415; S13, §1415; C24, 27, 31, 35, 39,§7232; C46, 50, 54, §445.57]

**445.58 Misapplied interest or penalty.** Any interest or penalty on delinquent taxes apportioned or transferred to any fund other than the general fund, together with a penalty of ten percent and interest at six percent on the aggregate, from the time such tax is due and

payable, may be recovered in a civil action brought against the county treasurer and his bondsmen by any person in control of the fund affected thereby. [S13,§1415; C24, 27, 31, 35, 39, §7233; C46, 50, 54,§445.58]

**445.59 Record of separate funds.** The auditor shall keep a complete account with the treasurer, with each separate fund or tax by itself, and in each account he shall charge him with the amounts in his hands at the opening of such account whether it be delinquent taxes, notes, cash, or other assets belonging to such fund, the amount of each tax for each year when the tax list is received by him, and all additions to each tax or fund whether by additional assessments, interest on delinquent taxes, amount received for licenses, or other items, and upon proper vouchers shall credit him for money disbursed for double and erroneous assessments, including all improper and illegal assessments the correction or remission of which causes a diminution of the tax, and for unavailable or uncollectible taxes, as directed by the board of supervisors. [R60, §761; C73,§869; C97,§1416; C24, 27, 31, 35, 39, §7234; C46, 50, 54,§445.59]

**445.60 Refunding erroneous tax.** The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon. [R60,§762; C73,§870; C97, §1417; C24, 27, 31, 35, 39,§7235; C46, 50, 54, §445.60]

C97,§1417, editorially divided

**445.61 Sale for erroneous tax.** In case any real estate subject to taxation shall be sold for the payment of such erroneous tax, interest or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but such correction shall not affect the validity of the sale or the right or title conveyed by a treasurer's deed, if the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, or the property redeemed from sale. [R60,§762; C73, §870; C97,§1417; C24, 27, 31, 35, 39,§7236; C46, 50, 54,§445.61]

**445.62 Remission in case of loss.** The board of supervisors shall have power to remit in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if said property has not been sold for taxes, or if said taxes have not been delinquent for thirty days at the time of the destruction. The loss for which such remission is allowed shall be such only as is not covered by insurance. The loss of capital stock in a bank operated within the state and the making and paying of a stock assessment for the year such stock was assessed for taxation shall be a destruction within the meaning of this section. [R60,§818; C73,§800; C97, §1307; C24, 27, 31, 35, 39,§7237; C46, 50, 54, §445.62]

Similar provision as to banks, §430.9

## CHAPTER 446

### TAX SALE

Referred to in §§404.21, 424.7, 447.1

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**446.1 Sale shown.** The auditor, when making up the tax list, before it is placed in the hands of the county treasurer, shall designate

each piece or parcel of real estate sold for taxes, and not redeemed, by writing opposite the same the year in which it was sold in a

column made for that purpose and headed "sold in". [C73,§842; C97,§1386; C24, 27, 31, 35, 39,§7238; C46, 50, 54,§446.1]

**446.2 Notice of previous sale.** Each county treasurer, when any person offers to pay taxes on any real estate marked "sold", shall notify him of such fact and inform him for what taxes and when the sale was made. [C73,§847; C97,§1392; C24, 27, 31, 35, 39,§7239; C46, 50, 54, §446.2]

**446.3 Sale of personal property.** If anyone neglects to pay his taxes at or before maturity, the treasurer may collect the same by distress and sale of his personal property not exempt from taxation, and the tax list alone shall be sufficient warrant therefor. When the treasurer distrains goods, and the owner refuses to give a sufficient bond for the delivery of the same on the day of sale, he may keep them at the expense of the owner. [C51,§§492, 493; R60, §§756, 757; C73,§§857, 858; C97,§1406; C24, 27, 31, 35, 39,§7240; C46, 50, 54,§446.3]

C97,§1406, editorially divided  
Referred to in §420.246

**446.4 Notice of time and place of sale.** The treasurer shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property under execution. [C51,§493; R60,§757; C73,§858; C97, §1406; C24, 27, 31, 35, 39,§7241; C46, 50, 54, §446.4]

Referred to in §420.246  
Sales by constable, §626.76

**446.5 Time of sale—adjournment.** The time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders, and, in case of adjournment, he shall post up a notice thereof at the place of sale, announcing the time to which the adjournment is ordered. [C51,§493; R60,§757; C73,§858; C97,§1406; C24, 27, 31, 35, 39, §7242; C46, 50, 54,§446.5]

Referred to in §420.246

**446.6 Surplus.** Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges. [C51,§493; R60,§757; C73,§858; C97,§1406; C24, 27, 31, 35, 39,§7243; C46, 50, 54,§446.6]

Referred to in §420.246

**446.7 Annual tax sale.** Annually, on the first Monday in December, the treasurer shall offer at his office at public sale all lands, town lots, or other real property on which taxes of any description for the preceding year or years are delinquent, which sale shall be made for the total amount of taxes, interest, and costs due and unpaid thereon, including all prior suspended taxes, provided, however, that no property, against which the county holds a

tax sale certificate, shall be offered or sold. No interest or penalty on suspended taxes shall be included in the sale price, except that six percent interest per annum from the date of suspension shall be included as to taxes suspended under the provisions of section 427.8. [C51,§496; R60,§763; C73,§871; C97,§1418; C24, 27, 31, 35, 39,§7244; C46, 50, 54,§446.7]

C97,§1418, editorially divided

**446.8 Dual county seats.** In counties having two county seats and divided into two districts for the collection of taxes, such sale may be made by the deputy treasurer and the recorder or his deputy at the county seat where the taxes for the district are collected, and the records thereof shall be kept thereat. Such deputy treasurer and the recorder or his deputy shall have all the powers conferred by law upon the treasurer and auditor in relation to the collection of the revenue, sales for delinquent taxes, redemption therefrom, the execution of tax deeds thereunder, and every other matter connected therewith. [C97,§1418; C24, 27, 31, 35, 39,§7245; C46, 50, 54,§446.8]

**446.9 Notice of sale—service.** Notice of the time and place of such sale shall be given by the treasurer, and shall contain a description of each separate tract to be sold as taken from the tax list, the amount of taxes for which it is liable delinquent for each year, and the amount of penalty, interest, and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, by publication in some newspaper in the county, once each week, for two consecutive weeks, the last of which shall be not more than two weeks before the day of sale, and by immediately posting a copy of the first publication thereof at the door of the courthouse, if there be one, if not, at the door of the place where the last term of district court was held. A description of each separate tract to be sold, as herein provided, shall be construed to permit but one description of each separate tract of real estate so to be sold, whether all of the delinquent tax, both regular and special, then existing against the same for the year in which the tax sale is held, and all property which has theretofore been advertised and remains unsold and against which there remains delinquent taxes, shall be indicated by an asterisk preceding the same. [C51,§498; R60,§764; C73,§§872-874, 3833; C97, §1419; S13,§1419; C24, 27, 31, 35, 39,§7246; C46, 50, 54,§446.9]

S13,§1419, editorially divided

**446.10 Costs.** The compensation for such publication shall not exceed forty-five cents for each description, and shall be paid by the county. Headings and other matter shall be compensated for as provided in section 618.11. The amount paid therefor shall be collected as a part of the costs of sale and paid into the county treasury. [C51,§498; R60,§764; C73, §§873, 3833; C97,§1419; S13,§1419; C24, 27, 31, 35, 39,§7247; C46, 50, 54,§446.10]

Referred to in §445.8

**446.11 Substituted service.** If the treasurer cannot procure the publication of the notice for the sum herein fixed, then the notice may be given by posting the same in four of the most public places in the county, to be selected by him, for four weeks, and filing a copy thereof with the auditor before the day of sale, with his verified statement thereon that it had been posted as and for the time herein required, and that he could not obtain a publication thereof at the legal rate. [C51,§498; R60,§764; C73,§873, 3833; C97,§1419; S13,§1419; C24, 27, 31, 35, 39, §7248; C46, 50, 54,§446.11]

Referred to in §445.8

**446.12 Certificate of publication.** The treasurer shall obtain a copy of the notice of sale, with a certificate of the publication thereof, from the printer or publisher, and file it in the office of the auditor, which certificate shall be substantially in the following form:

I, A..... B....., publisher (or printer) of the ....., a newspaper printed and published in the county of ..... and state of Iowa, do hereby certify that the foregoing notice and list were published in said newspaper once in each week for two consecutive weeks, the last of which publications was made on the ..... day of ....., A. D. ...., and that copies of each number of said paper in which said notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A..... B.....  
State of Iowa, }  
..... County } ss.

The above certificate of publication was subscribed and sworn to before me by the above named A..... B....., who is personally known to me to be the identical person described therein, on the ..... day of....., A. D.....

.....  
Auditor .....County, Iowa.

[C51,§500; R60,§771; C73,§881; C97,§1420; C24, 27, 31, 35, 39,§7249; C46, 50, 54,§446.12]

**446.13 Method of describing lands, etc.** In all entries required to be made by the auditor, treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, date, and the amount of taxes, interest, and costs. [R60, §770; C73,§880; C97,§1421; C24, 27, 31, 35, 39, §7250; C46, 50, 54,§446.13]

C97,§1421, editorially divided

**446.14 Irregularities in advertisement.** No irregularity or informality in the advertisement shall affect the legality of the sale or the title to any real estate conveyed by the treasurer's deed under this and chapters 447 and 448, and in all cases its provisions shall be sufficient notice to the owners of the sale thereof. [R60,§770; C73,§880; C97,§1421; C24, 27, 31, 35, 39,§7251; C46, 50, 54,§446.14]

**446.15 Offer for sale.** The treasurer shall, on the day of the sale, at ten o'clock in the forenoon, at his office, offer for sale, separately, each tract or parcel of real estate advertised for sale on which the taxes and costs shall not have been paid. [C51,§499; R60,§765; C73,§875; C97,§1422; C24, 27, 31, 35, 39,§7252; C46, 50, 54, §446.15]

**446.16 Bid—purchaser.** The person who offers to pay the amount of taxes which are a lien on any parcel of land or town lot for the smallest portion thereof shall be the purchaser, and when such purchaser shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes for which it may be sold, the portion thus designated shall be an undivided portion. [C51, §501; R60,§766; C73,§876; C97,§1423; C24, 27, 31, 35, 39,§7253; C46, 50, 54,§446.16]

Referred to in §420.246

**446.17 Sale continued.** The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are all paid. [C51,§499; R60,§767; C73,§877; C97,§1424; C24, 27, 31, 35, 39,§7254; C46, 50, 54,§446.17]

**446.18 "Scavenger sale" — notice.** Each treasurer shall, on the day of the regular tax sale each year or any adjournment thereof, offer and sell at public sale, to the highest bidder, all real estate which remains liable to sale for delinquent taxes, and shall have previously been advertised and offered for two years or more and remained unsold for want of bidders, general notice of such sale being given at the same time and in the same manner as that given of the regular sale. [C97,§1425; C24, 27, 31, 35, 39,§7255; C46, 50, 54,§446.18]

C97,§1425, editorially divided  
Referred to in §§446.19, 447.9

**446.19 County as purchaser.** When property is offered at a tax sale under the provisions of section 446.18, and no bid is received, or if the bid received is less than the total amount of the delinquent general taxes, interest, penalties and costs, the county in which said real estate is located, through its board of supervisors, shall bid for the said real estate a sum equal to the total amount of all delinquent general taxes, interest, penalties and costs charged against said real estate. No money shall be paid by the county or other tax-levying and tax-certifying body for said purchase, but each of the tax-levying and tax-certifying bodies having any interest in said general taxes for which said real estate is sold shall be charged with the full amount of all the said delinquent general taxes due said levying and tax-certifying bodies, as its just share of the purchase price. [C27, 31, 35,§7255-b1; C39, §7255.1; C46, 50, 54,§446.19]

Management and disposal, ch 569

**446.20** Repealed by 54GA, ch 165,§61.



**446.21 Applicable statute.** Section 391.68 shall apply to all tax sales made under the provisions of this act\*. [C35,§7255-g2; C39, §7255.3; C46, 50, 54,§446.21]

\*46GA, ch 83

**446.22 Unavailable tax — credit given.** Any taxes on such real estate, in excess of the amount for which the same was sold, shall be credited to the treasurer by the auditor as unavailable, and he shall apportion such excess among the funds to which it belongs, and if any of such excess belongs to the state, it shall be reported by him to the state comptroller as unavailable, who shall give the county credit therefor. [C97,§1425; C24, 27, 31, 35, 39,§7256; C46, 50, 54,§446.22]

**446.23 Resale.** The person purchasing any parcel or part thereof shall forthwith pay to the treasurer the amount bid, and on failure to do so the same shall at once be again offered as if no such sale had been made. Such payments may be made in the funds receivable in payment of taxes. [C51,§502; R60,§768; C73, §878; C97,§1426; C24, 27, 31, 35, 39,§7257; C46, 50, 54,§446.23]

**446.24 Record of sales.** The auditor shall attend all sales of real estate for taxes, and keep a record thereof in a book to be kept by him for that purpose, therein describing each tract of real estate on which the taxes and costs were paid by the purchaser as they are described in the copy of the notice on file in his office, stating in separate columns the amount, as obtained from the treasurer's tax list, of each kind of tax, interest, and costs for each tract, how much and what part of each parcel was sold, to whom, and date thereof. The treasurer shall also keep a book of sales in which he shall make the same record. He shall also note in the tax list, opposite the description of the property sold, the fact and date thereof. [R60,§772; C73,§882; C97,§1427; C24, 27, 31, 35, 39,§7258; C46, 50, 54,§446.24]

**446.25 Sale adjourned.** When all the real estate advertised for sale has been offered, and a part remains unsold for want of bidders, the treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time thereof, and by keeping such notice posted in a conspicuous place in his office, and no further notice shall be necessary. On the day fixed by the adjournment, the same proceedings shall be had as in the first instance. Further adjournment shall be made from time to time, not exceeding two months, and the sales thus continued until the next regular annual sale, or until all the taxes are paid. [R60,§773; C73,§883; C97,§1428; C24, 27, 31, 35, 39,§7259; C46, 50, 54,§446.25]

Referred to in §445.10: see also §§448.13, and 589.16

**446.26 Misconduct of officers.** Any treasurer or auditor failing to attend a sale of lands in person or by deputy shall forfeit and pay the

sum of one hundred dollars, to be recovered in an action in the name of the county and for its use. If such officer or deputy shall sell or assist in selling any real estate, knowing it is not subject to taxation, or that the taxes for which it is sold have been paid, or shall knowingly and willfully sell or assist in selling any real estate for taxes to defraud the owner thereof, or shall knowingly and willfully execute a deed for property so sold, he shall, upon conviction, be fined in a sum of not less than one thousand nor more than three thousand dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and shall be liable to pay the injured party all damages sustained by him on account thereof, and all such sales shall be void. [R60, §774; C73,§884; C97,§1429; C24, 27, 31, 35, 39, §7260; C46, 50, 54,§446.26]

**446.27 Fraud of officers.** If any treasurer or auditor shall be directly or indirectly concerned in the purchase of any real estate sold for the nonpayment of taxes, he and his sureties shall be liable on his official bond for all damages sustained by the owner of such property, and all such sales shall be void. In addition thereto, the officer so offending shall, upon conviction, be fined in a sum of not more than one thousand dollars. [R60,§775; C73,§885; C97,§1430; C24, 27, 31, 35, 39,§7261; C46, 50, 54, §446.27]

**446.28 Subsequent sale.** If, from neglect of officers to make returns, or other good cause, real estate cannot be advertised and offered for sale on the first Monday of December, the treasurer shall make the sale on the first Monday of the next succeeding month in which the required notice can be given. [R60,§776; C73, §886; C97,§1431; C24, 27, 31, 35, 39,§7262; C46, 50, 54,§446.28]

Referred to in §445.10; see also §§448.13, 589.16

**446.29 Certificate of purchase.** The treasurer shall prepare, sign, and deliver to the purchaser of any real estate sold for the nonpayment of taxes a certificate of purchase, describing it as shown in the record of sales, giving the part of each tract or lot sold, the amount of each kind of tax, interest, and costs for each tract or lot as described in such record, and that payment has been made therefor. Not more than one such parcel or description shall be entered upon each certificate of purchase. The treasurer shall receive one dollar for each certificate of purchase. [C51,§503; R60,§777; C73,§887; C97,§1432; S13,§1432; C24, 27, 31, 35, 39,§7263; C46, 50, 54,§446.29]

S13,§1432, editorially divided  
Recovery for waste, §658.9

**446.30 Loss of certificate.** In case of loss of said certificate of purchase, the owner thereof, as appears on record, may, by filing an affidavit of such loss or destruction with the county treasurer, receive a duplicate thereof, which shall take the place of the original certificate and have the same force and effect in

law and be subject to the same rules and regulations. [S13,§1432; C24, 27, 31, 35, 39,§7264; C46, 50, 54,§446.30]

**446.31 Assignment—presumption from deed recitals.** The certificate of purchase shall be assignable by indorsement and entry in the register of tax sales in the office of county treasurer of the county from which said certificate issued, and when such assignment is so entered, it shall vest in the assignee or his legal representatives all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. When the county acquires a certificate of purchase and has the same in its possession for one year, or more, the board of supervisors may compromise and assign the said certificate of purchase, with the written approval of all tax-levying and tax-certifying bodies having any interest in said general taxes. All money received from assignment of said certificates shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which said real estate was sold. [R60,§778; C73,§888; C97,§1433; S13,§1433; C24, 27, 31, 35, 39, §7265; C46, 50, 54,§446.31]

**446.32 Payment of subsequent taxes by purchaser.** The treasurer shall also prepare, sign, and deliver to the purchaser of any real estate sold for taxes duplicate receipts for taxes, interest, and costs paid by him after the date of his purchase for any subsequent year or years, one of which receipts shall be filed in the office of the auditor and noted on the register of sales therein. [C73,§889; C97,§1434; C24, 27, 31, 35, 39,§7266; C46, 50, 54,§446.32]

C97,§1434, editorially divided  
Referred to in §420.246

**446.33 Failure to file duplicate receipt.** If such duplicate receipt is not so filed before redemption, such tax shall not be a lien upon the land, and the person paying the tax shall not be entitled to recover it of the owner of the real estate. [C73,§889; C97,§1434; C24, 27, 31, 35, 39,§7267; C46, 50, 54,§446.33]

Referred to in §420.246

**446.34 School, agricultural college, or university land.** When any school, agricultural college, or university land sold on credit is sold

for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise encumbered to the school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land. [R60,§§810, 811; C73,§900; C97,§1435; C24, 27, 31, 35, 39,§7268; C46, 50, 54,§446.34]

**446.35 Assessment to wrong person.** No sale of real estate for taxes shall be invalid on account of its having been taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described. [R60, §787; C73,§904; C97,§1450; C24, 27, 31, 35, 39, §7269; C46, 50, 54,§446.35]

Referred to in §420.245

**446.36 Certified copies of records as evidence.** The books and records belonging to the offices of the auditor and treasurer, or copies thereof properly certified, shall be sufficient evidence to prove the sale of any real estate for taxes, the redemption thereof, or the payment of taxes thereon. [R60,§788; C73,§905; C97,§1451; C24, 27, 31, 35, 39,§7270; C46, 50, 54,§446.36]

Referred to in §420.245  
Similar provision, §622.43

**446.37 Failure to obtain deed—cancellation of sale.** After ten years have elapsed from the time of any tax sale, and no action has been taken by the holder of a certificate to obtain a deed, it shall be the duty of the county auditor and county treasurer to cancel such sales from their tax sale index and tax sale register. [C97,§1452; C24, 27, 31, 35, 39,§7271; C46, 50, 54, §446.37]

Referred to in §420.247

CHAPTER 447  
TAX REDEMPTION

Referred to in §§424.7, 446.14

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| <p>447.1 Redemption—terms.<br/>447.2 Nonallowable penalties.<br/>447.3 Agricultural college lands.<br/>447.4 Redemption from sale for part of tax.<br/>447.5 Certificate of redemption—countersigned by treasurer.<br/>447.6 Erasures prohibited.<br/>447.7 Minors and lunatics.<br/>447.8 Redemption after delivery of deed.</p> | <p>447.9 Notice of expiration of right of redemption.<br/>447.10 Service on nonresidents except mortgagees.<br/>447.11 Agent of nonresident.<br/>447.12 When service deemed complete—presumption.<br/>447.13 Cost—fee—report.</p> |
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**447.1 Redemption—terms.** Real estate sold under the provisions of this chapter and chapter 446 may be redeemed at any time before the right of redemption is cut off, by the payment to the auditor, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and four percent of such amount added as a penalty, with six percent interest per annum on the whole amount thus made from the day of sale, and the amount of all taxes, interest, and costs paid by the purchaser or his assignee for any subsequent year or years, with a similar penalty added as before on the amount of the payment for each subsequent year, and six percent per annum on the whole of such amount or amounts from the day or days of payment. [C51,§505; R60,§779; C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7272; C46, 50, 54,§447.1]

S13,§1436, editorially divided  
Referred to in §447.7

**447.2 Nonallowable penalties.** The penalty for nonpayment of taxes of any subsequent year or years shall not attach, unless the same shall have remained unpaid until the first day of April after they become due and have become delinquent, nor shall said penalties apply to taxes voted in aid of the construction of any railroad. [C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7273; C46, 50, 54,§447.2]

Referred to in §447.7

**447.3 Agricultural college lands.** In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture thereof, as provided by law, and for which proper voucher shall have been filed with the auditor, with interest thereon at eight percent per annum from date of payment, which amount shall be paid by the auditor to the holder of the certificate, and the certificate of redemption shall show the amount so paid by the party redeeming. [C51, §505; R60,§779; C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7274; C46, 50, 54,§447.3]

Referred to in §447.7

**447.4 Redemption from sale for part of tax.** In case a redemption is made of any real estate sold for a less sum than the taxes, penalty,

interest, and costs, the purchaser shall receive only the amount paid and a ratable part of such penalty, interest, and costs. In determining the interest and penalties to be paid upon redemption from such sale, the sum due on any parcel sold shall be taken to be the full amount of taxes, interest, and costs due thereon at the time of such sale, and the amount paid for any such parcel at such sale shall be apportioned ratably among the several funds to which it belongs. Real estate so sold shall be redeemable in the same manner and with the same penalties as that sold for the taxes of the preceding year. [C97,§1437; C24, 27, 31, 35, 39, §7275; C46, 50, 54,§447.4]

**447.5 Certificate of redemption — countersigned by treasurer.** The auditor shall, upon application of any party to redeem real estate sold for taxes, and being satisfied that he has a right to redeem the same upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate thereof, the date of the redemption, the amount paid, and by whom redeemed, and make the proper entries in the book of sales in his office, and immediately give notice of such redemption to the treasurer. The certificate of redemption shall then be presented to the latter, who shall countersign it, noting such fact in the sale book opposite the entry of the sale, and no certificate of redemption shall be evidence of such redemption without the signature of the treasurer. [R60,§780; C73,§891; C97,§1438; C24, 27, 31, 35, 39,§7276; C46, 50, 54, §447.5]

**447.6 Erasures prohibited.** Said entries by the auditor and treasurer shall be made in ink, and in case errors are subsequently discovered such entries shall not be erased but shall be corrected by drawing a line through the erroneous entries with ink accompanied by the initials of the person who made the alteration and the date when made. [C31, 35,§7276-c1; C39,§7276.1; C46, 50, 54,§447.6]

**447.7 Minors and lunatics.** If real property of any minor, lunatic, or person of unsound mind is sold for taxes, it may be redeemed at any time within one year after such disability is removed, in the manner specified in section

447.8, or redemption may be made by the guardian or legal representative under sections 447.1 to 447.3, inclusive, at any time before the delivery of the deed. [R60,§779; C73,§892; C97, §1439; C24, 27, 31, 35, 39,§7277; C46, 50, 54,§447.7]

Referred to in §420.240

**447.8 Redemption after delivery of deed.**

Any person entitled to redeem lands sold for taxes after the delivery of the deed shall do so by an equitable action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendants, and the court shall determine the rights, claims, and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. No person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by section 447.9 and the execution and delivery of the treasurer's deed. [C73,§893; C97,§1440; C24, 27, 31, 35, 39,§7278; C46, 50, 54,§447.8]

Referred to in §§420.240, 447.7

**447.9 Notice of expiration of right of redemption.**

After two years and nine months from the date of sale, or after nine months from the date of a sale made under the provisions of section 446.18, the holder of the certificate of purchase may cause to be served upon the person in possession of such real estate, and also upon the person in whose name the same is taxed, if such person resides in the county where the land is situated, in the manner provided for the service of original notices, a notice signed by him, his agent, or attorney, stating the date of sale, the description of the property sold, the name of the purchaser, and that the right of redemption will expire and a deed for the land be made unless redemption is made within ninety days from the completed service thereof. When said notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county auditor. Service of such notice shall also be made by certified mail on any mortgagee, or his assignee, of record, whether resident or nonresident of the county, if his address is disclosed by the recorded instrument or by a certificate showing the address of the mortgagee or assignee duly filed with the recorder, or the state of Iowa in case of an old-age assistance lien by service upon the state board of social welfare. [R60,§781; C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7279; C46, 50, 54,§447.9; 57GA, ch 267,§57]

Referred to in §§420.207, 420.240, 420.241, 447.8  
Management when county acquires deed, ch 569  
Service of original notice, R.C.P. 56(a)

**447.10 Service on nonresidents except mortgagees.** Service may be made upon nonresidents of the county, except mortgagees or their

assignees of record, by publishing the same once each week, for three consecutive weeks, in some newspaper in said county, or by personal service thereof elsewhere in the same manner as original notices may be served. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7280; C46, 50, 54,§447.10]

40ExGA, SF 183,§25, editorially divided  
Referred to in §§420.207, 420.240, 420.241

**447.11 Agent of nonresident.** Any such nonresident may in writing appoint a resident of the county in which such land is situated as agent, and file said appointment with the treasurer of said county, who shall forthwith record the same in a record kept in his office therefor, and index the same, after which personal service of said notice shall be made upon said agent. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7281; C46, 50, 54,§447.11]

Referred to in §§420.207, 420.240, 420.241

**447.12 When service deemed complete—presumption.**

Service shall be complete only after an affidavit has been filed with the treasurer, showing the making of the service, the manner thereof, the time when and place where made, and under whose direction the same was made; such affidavit to be made by the holder of the certificate or by his agent or attorney, and in either of the latter cases stating that such affiant is the agent or attorney, as the case may be, of the holder of such certificate; which affidavit shall be filed by the treasurer and entered upon the sale book opposite the entry of the sale, and said record or affidavit shall be presumptive evidence of the completed service of said notice, and the right of redemption shall not expire until ninety days after service is complete. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7282; C46, 50, 54, §447.12]

Referred to in §§420.207, 420.240, 420.241, 448.1

**447.13 Cost—fee—report.**

The cost of serving the notice and affidavit of publication shall be added to the amount necessary to redeem. The fee for serving the notice shall be the same as for service of an original notice, including copy fee and mileage. The treasurer shall, upon the filing of proof of service and statement of costs, forthwith report the same in writing to the auditor, who shall enter it on the sale book against the proper tract of real estate. The holder of the certificate of sale or his agent may report in writing to the county auditor the amount of costs incurred in giving such notice, and the auditor shall enter the same in the sale book. No redemption shall be complete until such costs are paid. [C73, §894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39, §7283; C46, 50, 54,§447.13]

Referred to in §§420.207, 420.240, 420.241, see also §589.15  
Costs of service, §§337.11, 601.129  
Legalizing act, §589.15

CHAPTER 448

TAX DEED

Referred to in §§424.7, 446.14

- 448.1 Deed executed.
- 448.2 Form.
- 448.3 Execution and effect of deed.
- 448.4 Presumptive evidence.
- 448.5 Conclusive evidence.
- 448.6 Facts necessary to defeat deed.
- 448.7 Additional facts necessary.
- 448.8 Sale made by mistake.
- 448.9 Fraudulent sale.
- 448.10 Wrongful sales—purchaser indemnified.

- 448.11 Correcting wrongful sale.
- 448.12 Limitation of actions.
- 448.13 Limitation of action on tax sales and deeds.
- 448.14 Officers de facto.
- 448.15 Affidavit by tax-title holder.
- 448.16 Claims adverse to tax title barred.
- 448.17 Indexing and recording of affidavits and claims.

**448.1 Deed executed.** Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 447.12 the treasurer then in office shall make out a deed for each lot or parcel of land sold and unredeemed, and deliver it to the purchaser upon the return of the certificate of purchase. The treasurer shall receive fifty cents for each deed made by him, and may include any number of parcels of land purchased by one person in one deed, if desired by him. [C51, §§503, 504; R60, §§781, 782; C73, §§895; C97, §1442; C24, 27, 31, 35, 39, §7284; C46, 50, 54, §448.1]

Referred to in §420.241  
Management when county acquires deed, ch 569

**448.2 Form.** Deeds executed by the treasurer shall be substantially in the following form:

KNOW ALL MEN BY THESE PRESENTS, that the following described real estate, viz.: (here follows the description), situated in the county of ..... and state of Iowa, was subject to taxation for the year (or years) A. D. ...., and the taxes assessed thereon for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and the treasurer of said county, having on the ..... day of ....., A. D. ...., by virtue of the authority in him vested by law, at (an adjournment of) the sale begun and publicly held on the first Monday of December, A. D. ...., exposed to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requirements of the statute, the real property above described, for the payment of the taxes, interest and costs then due and remaining unpaid on said property, and at the time and place aforesaid A ..... B ....., of the county of ..... and state of ....., having offered to pay the sum of ..... dollars and ..... cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to said treasurer, the property was stricken off to him at that price; and the said A..... B..... did, on the ..... day of ....., A. D. ...., duly assign the certifi-

cate of the sale of the property as aforesaid and all his right, title and interest to said property to E..... F..... of the county of ..... and state of .....; and by the affidavit of ....., filed in said treasurer's office on the .... day of ....., A. D. ...., it appears that notice has been given more than ninety days before the execution of these presents to ... and ..... of the expiration of the time of redemption allowed by law; and three years having elapsed since the date of said sale, and said property having not been redeemed therefrom:

Now, I, C..... D....., treasurer of said county, for the consideration of said sum to the treasurer paid as aforesaid and by virtue of law, have granted, bargained and sold, and by these presents do grant, bargain and sell to the said A..... B..... (or E..... F.....), his heirs and assigns, the real property hereinbefore described, to have and to hold unto him (or E..... F.....), his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C..... D....., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this .... day of ....., A. D.....

State of Iowa, }  
.....County. } ss.

I hereby certify that before me, ....., in and for said county, personally appeared the above named C..... D....., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand (and seal) this..... day of ..... A. D. ....

[R60, §783; C73, §896; C97, §1443; C24, 27, 31, 35, 39, §7285; C46, 50, 54, §448.2]

Referred to in §420.243

**448.3 Execution and effect of deed.** The deed shall be signed by the treasurer as such,

and acknowledged by him before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the property is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and all the right, title, interest, and claim of the state and county thereto. [C51,§503; R60,§784; C73,§897; C97,§1444; C24, 27, 31, 35, 39,§7286; C46, 50, 54,§448.3]

C97,§1444, editorially divided  
Referred to in §420.244

**448.4 Presumptive evidence.** The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

1. That the real property conveyed was subject to taxation for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the real property conveyed had not been redeemed from the sale at the date of the deed.
4. That the property had been listed and assessed.
5. That the taxes were levied according to law.
6. That the property was duly advertised for sale.
7. That the property was sold for taxes as stated in the deed. [C51,§503; R60,§784; C73, §897; C97,§1444; C24, 27, 31, 35, 39,§7287; C46, 50, 54,§448.4]

Referred to in §§420.244, 448.5

**448.5 Conclusive evidence.** The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.
2. That the grantee named in the deed was the purchaser.
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in section 448.4 wherein the deed shall be presumptive evidence only. [C51, §503; R60,§784; C73,§897; C97,§1444; C24, 27, 31, 35, 39,§7288; C46, 50, 54,§448.5]

Referred to in §420.244

**448.6 Facts necessary to defeat deed.** In all actions involving the title to real estate claimed and held under a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed thereby shall be required to prove, in order to defeat the title, either:

1. That the real property was not subject to taxation for the year or years named in the deed,
2. That the taxes had been paid before the sale,
3. That the property had been redeemed from the sale and that such redemption was had or made for the use and benefit of persons having the right of redemption, or
4. That there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property. [C51,§503; R60,§784; C73,§897; C97, §1445; C24, 27, 31, 35, 39,§7289; C46, 50, 54,§448.6]

C97,§1445, editorially divided  
Referred to in §420.245

**448.7 Additional facts necessary.** No person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title. [R60,§784; C73,§897; C97, §1445; C24, 27, 31, 35, 39,§7290; C46, 50, 54,§448.7]

Referred to in §420.245

**448.8 Sale made by mistake.** In any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books, or in the receipt, the land upon which the taxes were paid was afterward sold, the treasurer's deed shall not convey the title. [R60,§784; C73,§897; C97,§1445; C24, 27, 31, 35, 39,§7291; C46, 50, 54,§448.8]

Referred to in §420.245

**448.9 Fraudulent sale.** In all cases where the owner of the lands sold for taxes shall resist the validity of the tax title, he may prove fraud committed by the officer selling the same, or in the purchaser, to defeat the same, and, if fraud is established, the sale and title shall be void. [R60,§784; C73,§897; C97,§1445; C24, 27, 31, 35, 39,§7292; C46, 50, 54,§448.9]

Referred to in §420.245

**448.10 Wrongful sales—purchaser indemnified.** When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, or when land is sold in consequence of error in describing it in the tax receipt, the county shall hold the purchaser harmless by paying him the amount of principal, interest, and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his bondsmen shall be liable to the county therefor to the amount of his official bond; or the purchaser, or his

assignee, may recover the same directly of him and his bondsmen. [C51,§509; R60,§785; C73, §899; C97,§1446; C24, 27, 31, 35, 39,§7293; C46, 50, 54,§448.10]

Referred to in §§420.245, 420.246

**448.11 Correcting wrongful sale.** When it shall be made to appear to the treasurer, before the execution of a deed for real estate sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid, he shall make an entry opposite such tract or lot on the sale book that the same was erroneously sold, and such entry shall be evidence of the fact therein stated, and the purchase money shall be refunded to the purchaser. [R60,§789; C73,§901; C97,§1447; C24, 27, 31, 35, 39,§7294; C46, 50, 54,§448.11]

Referred to in §§420.245, 420.246

**448.12 Limitation of actions.** No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is, at the time of the sale, a minor, insane person, or convict in the penitentiary, in which case such action must be brought within five years after such disability is removed. [R60,§790; C73,§902; C97, §1448; C24, 27, 31, 35, 39,§7295; C46, 50, 54, §448.12]

Referred to in §§420.245, 420.246

**448.13 Limitation of action on tax sales and deeds.** From and after November 1, 1939, no action shall be brought or defense made attacking the validity of a tax sale or a deed issued pursuant thereto which said tax sale was held prior to January 1, 1936, and in accordance with section 7259 or section 7262, both of the Code, 1935, on the grounds of the failure of the county treasurer to comply with section 7193 or section 7259, both of the Code, 1935, unless the owner thereof was at the time of the said sale a minor, insane person or convict in the penitentiary; in which case such action must be brought within six months after such disability is removed. Provided, however, that nothing herein contained shall be applicable to actions brought or defenses made by a holder of a special assessment, if the same continues to remain a lien notwithstanding a tax deed now or hereafter issued pursuant to such tax sale. [C39,§7295.1; C46, 50, 54,§448.13]

Referred to in §§420.245, 420.246

**448.14 Officers de facto.** In all actions and controversies involving the question of title to real property held under a treasurer's deed, all acts of assessors, treasurers, auditors, supervisors and other officers de facto shall be of the same validity as acts of officers de jure. [R60,§786; C73,§903; C97,§1449; C24, 27, 31, 35, 39,§7296; C46, 50, 54,§448.14]

Referred to in §420.245

**448.15 Affidavit by tax-title holder.** After two years from the issuance and recording of

a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of such title or purported title may file with the county recorder of the county in which such real estate is located an affidavit substantially in the following form:

State of Iowa }  
.....County } ss.

I, ....., being first duly sworn, on oath depose and say that on.....(date) the county treasurer issued a tax deed to..... (grantee) for the following described real estate:

.....; that said tax deed was filed for record in the office of the county recorder of.....county, Iowa, on.....(date), and appears in the records of that office in.....county as recorded in Book.....Page.....of the..... Records; and that.....is now in possession of such real estate and claims title to the same by virtue of such tax deed, or such purported tax title.

Any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed referred to herein shall file a claim of the same with the recorder of the county wherein such real estate is located, within one hundred twenty days after the filing of this affidavit, such claim to set forth the nature thereof, also the time and manner in which such interest was acquired.

.....  
Subscribed and sworn to before me this.... day of....., 19.....

.....  
Notary Public in and for  
.....County, Iowa.

[C46, 50, 54,§448.15]

Referred to in §448.17

**448.16 Claims adverse to tax title barred.** When such affidavit is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed hereinabove referred to, shall file a claim of the same with the county recorder of the county in which such real estate is located within one hundred twenty days after the filing of such affidavit, which claim shall set forth the nature thereof, the time when and the manner in which such interest was acquired.

At the expiration of said period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in such real estate adverse to the tax title or purported tax title, and no action shall thereafter be brought to recover such real estate, and the then tax-title owner or owner of the purported tax title shall also have acquired title to such real estate by adverse possession. [C46, 50, 54,§448.16]

Referred to in §448.17

**448.17 Indexing and recording of affidavits and claims.** All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be indexed in

the claimant's book under the description of the real estate involved, and shall be recorded as other instruments affecting real estate. [C46, 50, 54, §448.17]

Saving clause, 49GA, ch 257, §4

CHAPTER 449

APPORTIONMENT OF TAXES

- 449.1 Application.
- 449.2 Notice.
- 449.3 Order—record.
- 449.4 Correction of books or records.

- 449.5 Effect of order.
- 449.6 Appeal.
- 449.7 Trial on appeal.
- 449.8 Interpretative clause.

**449.1 Application.** When a tract of real estate has been assessed and taxed as one item of property, and thereafter and before the tax is paid, the title to different portions of said real estate becomes vested in different parties in severalty, and the said owners are unable to agree as to what portion of the total tax each portion of the real estate should bear, any of said parties may file with the board of supervisors a written application for the apportionment of said tax. [C24, 27, 31, 35, 39, §7297; C46, 50, 54, §449.1]

certify said order of apportionment to the said treasurer who shall make said correction. [C24, 27, 31, 35, 39, §7300; C46, 50, 54, §449.4]

**449.2 Notice.** In the absence of the appearance of all interested parties, the board shall prescribe the notice which nonappearing parties shall receive, and the time and manner of the service thereof. [C24, 27, 31, 35, 39, §7298; C46, 50, 54, §449.2]

**449.5 Effect of order.** An order of apportionment, when followed by a correction of the tax book or other record in accordance therewith, shall have the same effect as though the original assessment had been made in the same manner. [C24, 27, 31, 35, 39, §7301; C46, 50, 54, §449.5]

**449.3 Order—record.** On the hearing, the board shall apportion said tax to the different portions of the real estate owned in severalty, in accordance with the values thereof. All orders and determinations of the board shall be entered of record in its minutes. An order of apportionment shall definitely identify each portion of said real estate so owned in severalty. [C24, 27, 31, 35, 39, §7299; C46, 50, 54, §449.3]

**449.6 Appeal.** A party aggrieved by an order of apportionment may appeal therefrom to the district court at any time within ten days from the date of said order, by serving written notice of said appeal on all other parties to said proceeding. Should personal service of said notice within the county be impossible as to any party, any judge of the district court may prescribe the manner of such service. [C24, 27, 31, 35, 39, §7302; C46, 50, 54, §449.6]

**449.4 Correction of books or records.** The county auditor shall, upon the making of an order of apportionment, at once correct the tax books or records in his possession, in accordance with said order, and if said books or other records have been delivered to the county treasurer, the said auditor shall at once

**449.7 Trial on appeal.** The district court shall try said appeal anew and in equity. The final order of the court shall be certified by the clerk of the district court to the county auditor and shall be treated in the same manner as though originally made by the board of supervisors. [C24, 27, 31, 35, 39, §7303; C46, 50, 54, §449.7]

**449.8 Interpretative clause.** This chapter shall not be construed as exclusive of other legal remedies. [C24, 27, 31, 35, 39, §7304; C46, 50, 54, §449.8]

CHAPTER 450

INHERITANCE TAX

Referred to in §§321.47, 451.2, 451.12

- 450.1 "Person" defined—authority of county attorney.
- 450.2 Estates taxable.
- 450.3 Property included.
- 450.4 Exemptions.
- 450.5 Liability for tax.
- 450.6 Accrual of tax—maturity—extension of time.
- 450.7 Lien of tax.

- 450.8 Transfers in contemplation of death.
- 450.9 Individual exemptions.
- 450.10 Rate of tax.
- 450.11 Alien beneficiaries.
- 450.12 Deduction of debts.
- 450.13 Inheritance tax and lien book.
- 450.14 Report required—blanks.
- 450.15 Examination by court—copy for state tax commission.



- 450.16 Entry of lien.
- 450.17 Conveyance—effect.
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- 450.19 Record of estates by commission.
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- 450.22 Administration avoided.
- 450.23 Nonresident administrator.
- 450.24 Appraisers.
- 450.25 Compensation of appraisers.
- 450.26 Mileage—sworn statement.
- 450.27 Commission to appraisers.
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- 450.29 Returns required.
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- 450.31 Objections.
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- 450.82 Conflicting claims for fees.
- 450.83 Inspection of records by court—newly discovered estates—notice—hearing.
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- 450.86 Securities and assets held by bank, etc.
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- 450.88 Corporations to report transfers.
- 450.89 Foreign estates—deduction of debts.
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- 450.91 Foreign estates—reciprocity—personal property.
- 450.92 Compromise settlement.
- 450.93 Unknown heirs.
- 450.94 Refund of tax improperly paid.
- 450.95 Appropriation.
- 450.96 Contingent estates.

**450.1 "Person" defined—authority of county attorney.** In the construction of this chapter the word "person" shall include plural as well as singular, and artificial as well as natural persons. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the state tax commission only when especially authorized by it to do so. [S13,§1481-a45; C24, 27, 31, 35, 39,§7305; C46, 50, 54,§450.1]

**450.2 Estates taxable.** The estates of all deceased persons in any property whether the decedents be inhabitants of this state or not, and whether such estates consist of real, personal, or mixed property, tangible or intangible, and any interest in, or income from, any such estate or property which estate or property is, at the death of the decedent owner within this state, or is subject to the jurisdiction of the courts of this state, or thereafter is brought within this state and becomes subject

to the jurisdiction of the courts of this state; or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state, passing in fee from the decedent owner, which shall pass in any manner herein described shall be subject to tax as herein provided. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§7306; C46, 50, 54,§450.2]

39GA, ch 33,§2, editorially divided

**450.3 Property included.** The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing:

1. By will or under the statutes of inheritance of this or any other state or country.
2. By deed, grant, sale, gift or transfer made in contemplation of the death of the grantor

or donor, and any such transfer of property made by any person within two years prior to the death of the grantor or donor shall, unless shown to the contrary, be deemed to have been made in contemplation of death.

3. By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to himself a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to himself less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. Under power of appointment hereafter exercised whether the power was created before or after the taking effect of this chapter.

5. Property which is held jointly or as tenants in the entirety by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of his estate in any manner to take effect at his death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§7307; C46, 50, 54, §450.3]

**450.4 Exemptions.** The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of one thousand dollars after deducting the debts, as defined in this chapter.

2. When the property passes in any manner to societies, institutions or associations incorporated or organized under the laws of this state for charitable, educational, or religious

purposes, and which are not operated for pecuniary profit, or to cemetery associations, including humane societies or to resident trustees for such uses within this state, or to organizations composed wholly of veterans of any war of the United States of America; provided, however, that this exemption shall also include property passing to any society, institution or association incorporated or organized under the laws of any other state for charitable, educational or religious purposes, and which are not operated for pecuniary profit or to trustees for such uses in such other state if under the laws of such state no tax would be imposed upon the passing of property to such institutions, societies or associations incorporated or organized under the laws of this state or to trustees for such uses in this state or to any organization composed wholly of veterans of any war of the United States of America.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. Bequests for the care and maintenance of the cemetery or burial lot of the decedent or his family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in his last will. [S13,§1481-a1; C24, 27, 31, 35, 39,§7308; C46, 50, 54,§450.4]

**450.5 Liability for tax.** Any person becoming beneficially entitled to any property or interest therein by any method of transfer as herein specified, and all administrators, executors, referees, and trustees of estates or transfers taxable under the provisions of this chapter, shall be respectively liable for all such taxes to be paid by them respectively. [C97, §1467; S13,§1481-a; C24, 27, 31, 35, 39,§7309; C46, 50, 54,§450.5]

**450.6 Accrual of tax — maturity—extension of time.** The tax hereby imposed shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the state tax commission within eighteen months after the death of the decedent owner except when otherwise provided in this chapter. When in the opinion of the state tax commission additional time should be granted for payment to avoid hardship, said commission may extend the period to a date not exceeding three years from date of death of decedent, but in case of any such extension the tax shall bear six per cent interest from the expiration of eighteen months from decedent's death. [S13,§1481-a; C24, 27, 31, 35, 39,§7310; C46, 50, 54,§450.6]

Interest on delinquent taxes, §450.63

**450.7 Lien of tax.** The tax shall be and remain a legal charge against and a lien upon such estate, and any and all the property thereof from the death of the decedent owner until paid subject to the limitation that inheritance taxes owing with respect to any passing of property includable in the estates of deceased persons who died on or before July 4, 1941 under any inheritance tax laws of this state shall no longer be a lien against such property except to the extent such taxes are attributable to remainder or deferred interests therein which did not finally vest in possession on or before such date. The filing in the office of the clerk of the receipt in full, or certificate of nonliability, of the state tax commission or an order of court specifically finding that the estate is exempt from tax shall release said lien as to all property reported in the estate. [C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §7311; C46, 50, 54, §450.7; 56GA, ch 221, §1; 57GA, ch 216, §1]

**450.8 Transfers in contemplation of death.** If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of his death, or intended to take effect after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth), and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of his death, shall be subject to a lien for the payment of such tax. [C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §7312; C46, 50, 54, §450.8]

**450.9 Individual exemptions.** In computing the tax on the net estate passing to the surviving spouse, heirs or beneficiaries of the deceased the following credits or exemptions shall be allowed:

1. Wife, forty thousand dollars.
2. Husband, forty thousand dollars.
3. Each son and/or daughter including legally adopted sons and/or daughters, or illegitimate sons and/or daughters entitled to inherit under the law of this state, fifteen thousand dollars.
4. Father or mother, ten thousand dollars.
5. Any other lineal descendant of the deceased, five thousand dollars. [C31, 35, §7312-d1; C39, §7312.1; C46, 50, 54, §450.9]

**450.10 Rate of tax.** The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When such property, interest, or income passes to the wife or the husband of the deceased, grantor, donor, or vendor, or to the father or mother, or to any child or lineal descendant of such decedent, grantor, donor or vendor, including a legally adopted child or illegitimate child entitled to inherit under the laws of this state, the tax imposed shall be on the individual share so passing in excess of

the exemptions herein allowed and shall be as follows:

One percent on the first ten thousand dollars.

Two percent on any amount in excess of ten thousand dollars and up to twenty-five thousand dollars.

Three percent on any amount in excess of twenty-five thousand dollars and up to fifty thousand dollars.

Four percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Five percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Six percent on any amount in excess of one hundred fifty thousand dollars and up to two hundred thousand dollars.

Seven percent on any amount in excess of two hundred thousand dollars and up to three hundred thousand dollars.

Eight percent on all sums in excess of three hundred thousand dollars.

2. When the property or any interest therein or income therefrom taxable under the provisions of this chapter passes to the brother or sister, son-in-law, or daughter-in-law, or step-children, the rate of tax imposed on the individual share so passing shall be as follows:

Five percent on any amount up to twenty-five thousand dollars.

Six percent on any amount in excess of twenty-five thousand dollars and up to fifty thousand dollars.

Seven percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Eight percent on any amount in excess of one hundred thousand dollars and up to two hundred thousand dollars.

Nine percent on any amount in excess of two hundred thousand dollars and up to three hundred thousand dollars.

Ten percent on all sums in excess of three hundred thousand dollars.

3. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes to any person not included in subsections 1 and 2 hereof, the rate of tax imposed on the individual share so passing shall be as follows:

Ten percent on any amount up to one hundred thousand dollars.

Twelve percent on any amount in excess of one hundred thousand dollars and up to two hundred thousand dollars.

Fifteen percent on all sums in excess of two hundred thousand dollars.

4. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized

under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be as follows:

Ten percent on the entire amount so passing.

5. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes to any firm, corporation, or society organized for profit either under the laws of this state or of any other state, territory, province or country, the rate of tax imposed shall be as follows:

Fifteen percent on the entire amount so passing. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§7313; C46, 50, 54,§450.10]

39GA, ch 38,§4, editorially divided  
Referred to in §450.11

**450.11 Alien beneficiaries.** When property or any interest therein shall pass to heirs, devisees, or other beneficiaries subject to the tax imposed by this chapter, who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty percent of its true value except when such foreign beneficiaries are brothers or sisters of the decedent owner or are within the class described in subsection 1 of section 450.10, when the rate of tax to be assessed and collected therefrom shall be ten percent of the value of the property or interest so passing. [C97,§1467; S13, §1481-a; C24, 27, 31, 35, 39,§7315; C46, 50, 54, §450.11]

**450.12 Deduction of debts.** There shall be deducted from the gross value of the estate as fixed by the inheritance tax appraisers appointed under the provisions of this chapter, or as fixed by the court, the debts defined as follows:

1. From the estate of such decedent who at the time of his death was domiciled within this state, there shall be deducted the debts owing by the decedent at the time of his death, the local and state taxes due from the estate in January of the year of his death, and federal taxes owing by the decedent or paid from the estate on Iowa property, a reasonable sum for funeral expenses, temporary allowance for the widow and children under fifteen years of age as granted by the probate court or judge thereof, court costs, the costs of appraisal made for the purpose of assessing the inheritance tax, the fee of executors, administrators, or trustees as allowed by order of court, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount to be approved by the court for the probate proceedings in said estate, and no other sum; provided, however, that the debt of such decedent owing for or secured by property outside of this state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted, provided that satisfactory proof of the value of the foreign

property and the amount of such debt is furnished to the state tax commission.

Said debts shall not be deducted unless the same are approved and allowed by the court within eighteen months from the death of the decedent, unless otherwise ordered by the judge or court of the proper county.

2. From the estate of such decedent who at the time of his death is domiciled outside of this state, the state commission shall deduct such debts and expenses as are chargeable to the property under the laws of this state, provided that in the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state tax commission, or with the state tax commission in case there is no administration of the estate within this state, a duly certified statement exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statement shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

3. An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an inheritance tax under this chapter was collected from such estate, and if such property is included in decedent's gross estate. [S13,§1481-a2; C24, 27, 31, 35, 39,§7317; C46, 50, 54,§450.12]

**450.13 Inheritance tax and lien book.** The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of an inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page:

1. The name, place of residence, and date of death of the decedent.

2. Whether the decedent died testate, or intestate, and, if testate, the record and page where the will was probated and recorded.

3. The name and post-office address of the executor, administrator, trustee, or grantee, with date of appointment or transfer.

4. The names, post-office addresses, and relationship, if known, of all the heirs, devisees, and grantees.

5. The appraised valuation of the personal property.

6. The amount of inheritance tax due upon said personal property.

7. A record of payment with amount and date.

8. Date of filing objections and names of objectors.

9. Blank for index and reference to all proceedings and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:

1. Real estate derived from..... (naming decedent) which is subject to the lien prescribed by the statute for inheritance tax.

2. A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.

3. The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.

4. The amount of the inheritance tax due upon each such piece.

5. A record of payments, with dates and amounts. [S13,§1481-a25; C24, 27, 31, 35, 39, §7318; C46, 50, 54,§450.13]

**450.14 Report required—blanks.** The state tax commission shall furnish the clerk of the court with blanks upon which to make the report and inventory required by section 635.1. [S13,§1481-a26; C24, 27, 31, 35, 39,§7320; C46, 50, 54,§450.14]

**450.15 Examination by court—copy for state tax commission.** Upon the filing of such report the district court shall examine the same together with the papers and files in the case, and if it finds that such estate, in whole or in part, is subject to an inheritance tax it shall indorse its finding thereon, and shall immediately forward a true copy of such report and findings to the state tax commission. [S13, §1481-a26; C24, 27, 31, 35, 39,§7321; C46, 50, 54, §450.15]

**450.16 Entry of lien.** If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax, it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated. [S13,§1481-a26; C24, 27, 31, 35, 39,§7322; C46, 50, 54,§450.16]

S13,§1481-a26, editorially divided  
Referred to in §450.18

**450.17 Conveyance—effect.** When said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien. [S13,§1481-a26; C24, 27, 31, 35, 39,§7323; C46, 50, 54,§450.17]

**450.18 Acceptance of final report.** No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless a strict compliance has been had by such person with the provision relative to the making and filing of said report, and with section 450.16. [S13,§1481-a26; C24, 27, 31, 35, 39,§7324; C46, 50, 54,§450.18]

Report required, §635.1

**450.19 Record of estates by commission.** The state tax commission shall record in a book kept in its office for that purpose, all estates reported to it as liable for a tax under the provisions of this chapter, showing:

1. The name of the decedent.

2. The place of his residence or county from which such estate was reported.

3. The date of his death.

4. The name of the administrator, executor, or trustee.

5. The appraised value of the property, or the value of any taxable pecuniary legacy.

6. The amount of indebtedness that was deducted before estimating the tax.

7. The amount of tax collected.

8. The amount of fees paid for reporting and collecting such tax.

9. The amount of tax, if any, refunded. [S13, §1481-a46; C24, 27, 31, 35, 39,§7325; C46, 50, 54, §450.19]

S13,§1481-a46, editorially divided

**450.20 Record of deferred estates.** It shall also keep a separate record of any deferred estate upon which the tax due is not paid within eighteen months from the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

2. The name of the person beneficially entitled to such estate or interest, with place of residence.

3. A description of the property or a statement of conditions upon which such deferred estate is based or limited. [S13,§1481-a46; C24, 27, 31, 35, 39,§7326; C46, 50, 54,§450.20]

**450.21 Administration on application of commission.** If, upon the death of any person leaving an estate that may be liable to a tax under the provisions of this chapter, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the state tax commission may, at any time thereafter, make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. [S13,§1481-a3; C24, 27, 31, 35, 39,§7327; C46, 50, 54,§450.21]

S13,§1481-a3, editorially divided  
Referred to in §450.22

**450.22 Administration avoided.** When the heirs or persons entitled to inherit the property of an estate subject to the tax hereby imposed, desire to avoid the appointment of an administrator as provided in section 450.21, they or one of them shall, before the expiration of eighteen months from the death of the decedent file under oath the inventories and reports and perform all the duties required by this chapter, of administrators, including the filing of the lien. Proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this chapter in other cases. [S13,§1481-a3; C24, 27, 31, 35, 39,§7328; C46, 50, 54,§450.22]

**450.23 Nonresident administrator.** A non-resident of this state shall not be appointed as executor, administrator, or trustee of any estate that may be subject to the tax imposed by this chapter, unless such nonresident first file a bond conditioned upon the payment of all tax, interest and costs for which the estate may be liable, such bond to be signed by not less than two resident freeholders or by an approved surety company and in an amount not less than twenty-five percent of the total value of the estate, or of the property within this state if the estate is a foreign estate. [S13,§1481-a3; C24, 27, 31, 35, 39,§7329; C46, 50, 54,§450.23]

**450.24 Appraisers.** In each county the court shall, annually, at the first term of the court therein, appoint three competent residents and freeholders of said county to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by appointment of the court or by a judge in vacation. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate. [S13,§1481-a4; C24, 27, 31, 35, 39,§7330; C46, 50, 54,§450.24]

**450.25 Compensation of appraisers.** Each of said appraisers shall be entitled to receive as compensation a minimum of five dollars and not to exceed ten dollars per day of eight hours each for making each such appraisal. If the claim of any appraiser in connection with the appraisal of one estate is for more than thirty dollars, it shall be itemized and verified and filed with the clerk of the district court in which the estate is pending and notice of hearing on such claim shall be given as shall be prescribed by the court. Upon hearing on any

such claim the court shall fix the amount of compensation to be allowed and enter an order therefor in the records of such estate, which allowance shall be taxed as part of the costs of probate. [C39,§7330.1; C46, 50, 54,§450.25]

**450.26 Mileage—sworn statement.** The appraisers shall also be entitled to five cents a mile for the actual and necessary distance traveled in going to and returning from the place of appraisal, but separate mileage shall not be allowed when one conveyance was or could have been used in making said appraisal nor shall any appraiser be entitled to mileage if gratuitously transported by another. The cost of said appraisal shall be a charge against the estate of the decedent, to be paid out of the property appraised or by the owner or owners thereof. The appraisers shall be required to file a sworn statement with the clerk of the district court, setting out in detail the cost of said appraisal. [C39,§7330.2; C46, 50, 54,§450.26]

Omnibus repeal, 47GA, ch 193,§3

**450.27 Commission to appraisers.** Whenever it appears that an estate or any property or interest therein, including any property or interest therein which has been transferred either in contemplation of death, or to take effect in possession or enjoyment at or after death is or may be subject to the tax imposed by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisal, except that if the only interest that is subject to such tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue such commission until the determination of such prior estate, except at the request of parties in interest who desire to remove the lien thereon. [S13,§1481-a5; C24, 27, 31, 35, 39,§7331; C46, 50, 54,§450.27]

**450.28 Notice of appraisal.** It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to forthwith give notice to the state tax commission and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, or in such other manner as the court or judge in his discretion, may prescribe upon application of any appraiser or any interested party. [S13, §1481-a6; C24, 27, 31, 35, 39,§7332; C46, 50, 54, §450.28; 57GA, ch 217,§1]

S13,§1481-a6, editorially divided  
Manner of service, R.C.P. 56(a)

**450.29 Returns required.** Upon service of such notice and the making of such appraisal, the said notice, return thereon and appraisal shall be filed with the clerk, and a copy of such appraisal shall at once be

filed by the clerk with the state tax commission. [C97,§1476; S13,§1481-a6; C24, 27, 31, 35, 39,§7333; C46, 50, 54,§450.29]

**450.30 Property in different counties.** When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole estate, or those of the several counties may serve for the property within their respective counties or other appraisers be appointed as the district court if in session, or judge thereof in vacation, may direct. [C97, §1476; S13,§1481-a6; C24, 27, 31, 35, 39,§7334; C46, 50, 54,§450.30]

**450.31 Objections.** The state tax commission or any person interested in the estate or property appraised may, within twenty days thereafter, file objections to said appraisement and give notice thereof as in beginning civil actions, to the state tax commission or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. [S13,§1481-a7; C24, 27, 31, 35, 39,§7335; C46, 50, 54,§450.31]

S13,§1481-a7, editorially divided  
Manner of service, R.C.P. 56(a)

**450.32 Hearing—order.** If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement. Upon said appraisement being set aside, the court shall fix the value of the property of said estate for inheritance tax purposes and the valuation so fixed shall be that upon which the tax shall be paid, unless an appeal is taken from the order of said court as hereinafter provided for. [S13,§1481-a7; C24, 27, 31, 35, 39,§7336; C46, 50, 54,§450.32]

**450.33 Appeal and notice.** The state tax commission or anyone interested in the property appraised may appeal to the supreme court from the order of the district court fixing the value of the property of said estate. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. [S13, §1481-a7; C24, 27, 31, 35, 39,§7337; C46, 50, 54, §450.33]

Perfecting appeal, R.C.P. 335, 336 and 338 et seq.

**450.34 Bond on appeal.** In case of appeal the appellant, if not the state tax commission, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax

for which the property may be liable with cost of appeal. [S13,§1481-a7; C24, 27, 31, 35, 39, §7338; C46, 50, 54,§450.34]

Presumption of approval, §682 10

**450.35 Cancellation of lien.** If upon the hearing of objections to the appraisement the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved. [S13,§1481-a7; C24, 27, 31, 35, 39,§7339; C46, 50, 54,§450.35]

**450.36 Appraisal of other property.** If there be an estate or property subject to said tax wherein the records in the clerk's office do not disclose that there may be a tax due under the provisions of this chapter, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. [S13,§1481-a8; C24, 27, 31, 35, 39,§7341; C46, 50, 54,§450.36]

S13,§1481-a8, editorially divided

**450.37 Market value.** The appraised value of the property shall in all cases be its market value in the ordinary course of trade, and in domestic estates the tax shall be calculated thereon after deducting the debts as defined herein. [S13,§1481-a8; C24, 27, 31, 35, 39,§7342; C46, 50, 54,§450.37]

**450.38 Deduction of debts.** The debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the state tax commission. [S13,§1481-a8; C24, 27, 31, 35, 39,§7343; C46, 50, 54,§450.38]

**450.39 Relief from appraisement.** All estates subject in whole or in part to the tax imposed by this chapter shall be appraised for the purpose of computing said tax by the regular inheritance tax appraisers; provided that estates liable for the payment of the inheritance tax upon specific legacies, annuities, bequests of money or other property the value of which may be determined without appraisement, and estates which consist of money, book accounts, bank deposits, notes, mortgages, and bonds, need not be appraised by the inheritance tax appraisers if the administrator, executor, or trustee, or the persons entitled to or claiming such property are willing to charge themselves with the full face value of such bequests or property, together with the interest, earnings,

or undivided profits which may be due on said properties, at the time of death of the testator or intestate, as the basis for the assessment of said tax. [S13,§1481-a9; C24, 27, 31, 35, 39,§7344; C46, 50, 54,§450.39]

S13,§1481-a9, editorially divided

**450.40 Nontaxability—order of court.** In all cases where the court finds that said estate is not subject to an inheritance tax he shall enter an order of such finding upon said preliminary inheritance tax report, and no appraisal for inheritance tax purposes shall be made in that estate. [S13,§1481-a9; C24, 27, 31, 35, 39, §7345; C46, 50, 54,§450.40]

**450.41 Procedure for relief.** In the event that the estate has been duly appraised under the ordinary statutes of inheritance or the property has been sold and such appraisal or selling price is accepted by the state tax commission as satisfactory for inheritance tax purposes, the court or judge thereof in vacation may, upon proper application, relieve the estate from the appraisal by the inheritance tax appraisers; but in order to obtain such relief, the administrator, executor, trustee, or other party interested must file an application for relief with the consent of the state tax commission thereto in the office of the clerk of the court before said clerk issues a commission to the inheritance tax appraisers. [S13,§1481-a9; C24, 27, 31, 35, 39,§7346; C46, 50, 54,§450.41]

**450.42 Relief on exempt estate.** The court or judge thereof in vacation may, upon application of the representatives of the estate or parties interested, relieve the estate of the appraisal for tax purposes if it be shown to said court that the market value of the entire estate will not exceed one thousand dollars; provided that prior to the application to said court or judge the written consent of the state tax commission to such relief is procured. [S13,§1481-a9; C24, 27, 31, 35, 39,§7347; C46, 50, 54,§450.42]

**450.43 Record as to relief from appraisal.** In all cases where an estate is relieved from an appraisal for inheritance tax purposes, the order granting relief shall be recorded in the clerk's office, and the fact of such relief and reasons therefor shall be duly noted in the decree or order of final settlement made by the court. [S13,§1481-a9; C24, 27, 31, 35, 39, §7348; C46, 50, 54,§450.43]

**450.44 Remainders — appraisal.** When any person, whose estate over and above the amount of his debts, as defined in this chapter, exceeds the sum of one thousand dollars, shall bequeath or devise or otherwise transfer any real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years, and the remainder to a person or persons not thus exempt, said property, upon the determination of such estate for life or years, shall be appraised at its then actual market value from

which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in section 450.46. [S13,§1481-a10; C24, 27, 31, 35, 39,§7349; C46, 50, 54,§450.44]

Referred to in §450.46

**450.45 Life and term estates—appraisal.** Whenever an estate or interest for life or term of years in real property shall be given to a party other than those especially exempt by this chapter, the clerk shall cause such property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to such estate or interest shall, within eighteen months from the death of decedent owner, pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax and interest, to be sold. [S13,§1481-a11; C24, 27, 31, 35, 39,§7350; C46, 50, 54,§450.45]

S13,§1481-a11, editorially divided

**450.46 Deferred estate—appraisal.** Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report, or upon information from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in section 450.44 and the tax upon such remainder interest shall be paid by the remainderman within one year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax and interest, to be sold. [S13, §1481-a11; C24, 27, 31, 35, 39,§7351; C46, 50, 54, §450.46]

Referred to in §450.44

**450.47 Life and term estates in personal property.** Whenever an estate or interest for life or term of years in personal property shall be given to one or more persons other than those especially exempt by this chapter and the remainder or deferred estate to others, the clerk shall cause the property so devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests so devised or conveyed shall be determined as provided in section 450.51, and the tax upon such estates or interests as are liable for the tax imposed by this



chapter shall be paid to the state tax commission from the property appraised or by the persons entitled to such estate or interest within eighteen months from the death of the testator, grantor, or donor; provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in section 450.48. [S13,§1481-a12; C24, 27, 31, 35, 39,§7352; C46, 50, 54,§450.47]

**450.48 Payment deferred—bond.** When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term, or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two-year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited, and the amount thereof forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this chapter, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this chapter upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until the tax upon such deferred estate or interest is paid. [S13,§1481-a13; C24, 27, 31, 35, 39,§7353; C46, 50, 54,§450.48]

Referred to in §450.47

**450.49 Bonds — conditions.** All bonds required by this chapter shall be payable to the state tax commission and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the commissioner of insurance to do business in this state. [S13,§1481-a14; C24, 27, 31, 35, 39,§7354; C46, 50, 54,§450.49]

Referred to in §450.50

**450.50 Removal of property from state — bond.** It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the state tax commission. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable, but in no case less than two hundred dollars, and imprisoned as the court shall direct, until the fine is paid; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof. [S13,§1481-a15; C24, 27, 31, 35, 39,§7355; C46, 50, 54,§450.50]

Duration of imprisonment, §789.17

**450.51 Annuities—life and term estates.** The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to the inheritance tax, shall be determined for the purpose of computing said tax by the rule of standards of mortality and of value commonly used in actuaries combined experience tables as now provided by law. The taxable value of annuities, life or term, deferred or future estates, shall be computed at the rate of four percent per annum of the appraised value of the property in which such estate or interest exists or is founded. [S13,§1481-a16; C24, 27, 31, 35, 39,§7356; C46, 50, 54,§450.51]

S13,§1481-a16, editorially divided  
Referred to in §450.47  
Mortality table, §512.43  
See also mortality table at end of Vol. II

**450.52 Deferred estates — removal of lien.** Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed. [S13,§1481-a16; C24, 27, 31, 35, 39,§7357; C46, 50, 54,§450.52]

**450.53 Duty of executor to pay tax.** It is hereby made the duty of all executors, administrators, trustees, or other persons charged with the management or settlement of any estate subject to the tax provided for in this chapter, to collect and pay to the state tax commission the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate, in which cases the state tax commission shall collect the same. [S13,§1481-a17; C24, 27, 31, 35, 39,§7358; C46, 50, 54,§450.53]

S13,§1481-a17, editorially divided

**450.54 Sale to pay tax.** Executors, administrators, trustees, or the state tax commission, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. [S13,§1481-a17; C24, 27, 31, 35, 39,§7359; C46, 50, 54,§450.54]

Sale of property, §635.21 et seq.

**450.55 Action to collect.** The state tax commission may bring, or cause to be brought in its name of office, suit, for the collection of said tax, interest, and costs, against the executor, administrator, or trustee, or against the person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally, and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit. [S13,§1481-a17; C24, 27, 31, 35, 39,§7360; C46, 50, 54,§450.55]

**450.56 Time of payment extended.** If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest, and costs and the application for such extension is made before the tax is delinquent. [S13,§1481-a17; C24, 27, 31, 35, 39,§7361; C46, 50, 54,§450.56]

**450.57 Tax deducted from legacy or collected.** Every executor, administrator, referee, or trustee having in charge or trust any property of an estate subject to said tax, and which is made payable by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the state tax commission, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. [S13,§1481-a18; C24, 27, 31, 35, 39,§7362; C46, 50, 54,§450.57]

**450.58 Final settlement to show payment.** No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this chapter upon any property or interest therein, that is hereby made payable by such executors, administrators, or trustees, and to be settled by said account, shall have been paid, and that the receipt of the state tax commission for such tax shall have been filed with the clerk showing such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the

tax, the clerk shall record the same upon the inheritance tax lien book in his office. [S13, §1481-a19; C24, 27, 31, 35, 39,§7363; C46, 50, 54, §450.58]

Similar provisions, §§422.27, 682.35

**450.59 Jurisdiction of court.** The district court in the county in which some part of the property is situated, of the decedent who was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered, shall have jurisdiction to hear and determine all questions regularly brought before it in relation to said tax that may arise affecting any devise, legacy, annuity, transfer, grant, gift, or inheritance, subject to appeal as in other cases.

The court may, upon satisfactory showing and on notice to the state tax commission by certified mail or personal service and on such other notice to other parties who may be affected by the release of the lien as the court may prescribe, make an order releasing any item of real estate including a deferred estate or remainder interest therein or personal property from the lien of the tax imposed by this chapter; provided that the payment of the tax as fixed by the state tax commission on the specific item of property released, or the determination by the court that other property subject to the lien of the tax to be released constitutes good and sufficient security for the payment of the tax, or an arrangement or adjustment fixed by the court which will be fair and equitable to all parties affected and which will assure the payment of the tax shall constitute a satisfactory showing. [S13,§1481-a20; C24, 27, 31, 35, 39,§7364; C46, 50, 54,§450.59; 57GA, ch 267,§58]

S13,§1481-a20, editorially divided

**450.60 Commission to represent state.** The state tax commission shall in its name of office, with all the rights and privileges of a party in interest, represent the state in any such proceedings. [S13,§1481-a20; C24, 27, 31, 35, 39, §7365; C46, 50, 54,§450.60]

**450.61 Bequests to executors or trustees.** Whenever a decedent appoints one or more executors or trustees and, in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed the statutory fees as compensation for their services, such excess shall be liable to such tax. [S13,§1481-a21; C24, 27, 31, 35, 39,§7366; C46, 50, 54,§450.61]

**450.62 Legacies charged upon real estate.** Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee, or state tax commission, and the same shall remain a charge against and be a lien upon said real

estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee, or state tax commission in his or its name of office as herein provided. [S13, §1481-a22; C24, 27, 31, 35, 39, §7367; C46, 50, 54, §450.62]

**450.63 Maturity of tax—interest.** All taxes imposed by this chapter shall be payable to the state tax commission and, except when otherwise provided in this chapter, shall be paid within eighteen months from the death of the testator or intestate. All taxes not paid within the time prescribed in this chapter shall draw interest at the rate of eight percent per annum thereafter until paid. [S13, §1481-a23; C24, 27, 31, 35, 39, §7368; C46, 50, 54, §450.63]

S13, §1481-a23, editorially divided  
Interest on extension of time, §450.6

**450.64 Clerk furnished receipt showing payment.** Upon payment of such tax the state tax commission shall forthwith transmit a duplicate receipt, to the clerk of the court of the county in which the estate is being settled, showing the payment of such tax. [S13, §1481-a23; C24, 27, 31, 35, 39, §7369; C46, 50, 54, §450.64]

**450.65 Commission to enforce collection.** It shall be the duty of the state tax commission to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto. [C24, 27, 31, 35, 39, §7370; C46, 50, 54, §450.65]

**450.66 Investigation by commission.** The state tax commission is hereby authorized and empowered to issue a citation to any person who it may believe or has reason to believe has any knowledge or information concerning any property which it believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax laws of this state, and by such citation require such person to appear before it or anyone designated by it at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within his knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the state tax commission, any books, records, accounts, or documents in the possession of or under the control of any person so cited. [C24, 27, 31, 35, 39, §7371; C46, 50, 54, §450.66]

39GA, ch 38, §15, editorially divided  
Referred to in §450.68

**450.67 Inspection of books, records, etc.** The state tax commission shall also have the power to inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by it for the proper enforcement of the inheritance tax laws of this state, and the collection

of the full amount of the tax which may be due to the state thereunder. [C24, 27, 31, 35, 39, §7372; C46, 50, 54, §450.67]

Referred to in §450.68

**450.68 Information confidential.** Any and all information acquired by the state tax commission under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held by it as confidential and shall not be disclosed by it except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state. [C24, 27, 31, 35, 39, §7373; C46, 50, 54, §450.68]

**450.69 Contempt.** Refusal of any person to attend before the state tax commission in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in his possession or under his control and submit the same to inspection of the state tax commission when so required, may, upon application of the state tax commission, be punished by any district court in the same manner as if the proceedings were pending in such court. [C24, 27, 31, 35, 39, §7374; C46, 50, 54, §450.69]

Contempts, ch 665

**450.70 Fees.** Witnesses so cited before the state tax commission, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the state comptroller and paid upon the certificate of the state tax commission out of funds not otherwise appropriated. [C24, 27, 31, 35, 39, §7375; C46, 50, 54, §450.70]

Sheriff's fees, §337.11; witness fees, §622.69

**450.71 Proof of amount of tax due.** Before issuing its receipt for the tax, the state tax commission may demand from administrators, executors, trustees, or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to said commission certified copies of wills, deeds, or other papers, or of such parts of their reports as it may demand, and upon the refusal or neglect of said parties to comply with the demand of the state tax commission, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting debts for which the estate may be liable. [S13, §1481-a24; C24, 27, 31, 35, 39, §7376; C46, 50, 54, §450.71]

**450.72 Extension of time of appraisement.** Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee, or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to

the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the inheritance appraisalment for a period not to exceed three months beyond the time fixed by this chapter. [S13,§1481-a27; C24, 27, 31, 35, 39,§7377; C46, 50, 54,§450.72]

**450.73 Heirs at law to make report.** Whenever any property passing under the intestate laws may be subject to the tax imposed by this chapter, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety days next following the death of such intestate, a report in writing embodying therein substantially the information required by section 635.1. Failure to furnish such report or to probate the will in a testate estate shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest, or other penalties imposed by this chapter. [S13,§1481-a28; C24, 27, 31, 35, 39,§7378; C46, 50, 54,§450.73]

**450.74 Taxable estates—record by clerk.** The clerk shall enter upon the inheritance tax and lien book the title of all estates subject to the inheritance tax as shown by the inventories or lists of heirs filed in his office, or as reported to him by the county attorney, state tax commission, or other person, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from any other source, as may be necessary to the collection and enforcement of the tax. He shall also immediately index in the book kept in his office for that purpose, all liens entered upon the inheritance tax and lien book. Failure to make such entries as are herein required shall not operate to relieve the estate from the lien or defeat the collection of the tax. [S13,§1481-a29; C24, 27, 31, 35, 39,§7379; C46, 50, 54,§450.74]

**450.75 Probate record.** In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record of all the proceedings, orders, reports, inventory, appraisements, and all other matters and proceedings therein. [S13, §1481-a30; C24, 27, 31, 35, 39,§7380; C46, 50, 54, §450.75]

**450.76 Clerk to report taxable estates.** It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors, and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination or from information or knowledge coming to him from any other

source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county, has, since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed or other method of conveyance, made in anticipation of or intended to take effect in possession or in enjoyment after the death of the testator, donor, or grantor, to any person other than to or for the use of the persons, societies, or organizations exempt from the tax hereby imposed, he shall make report thereof in writing to the state tax commission, embodying in such report such information as he may be able to obtain as to the name and residence of decedent, date of death, name and address of administrator, executor, or trustee, the description of any property liable to said tax and the county in which it is located, and name and relationship of all beneficiaries or heirs. [S13, §1481-a31; C24, 27, 31, 35, 39,§7381; C46, 50, 54, §450.76]

S13,§1481-a31, editorially divided

**450.77 Information by citizen.** Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith enter the estate and report the same substantially as above indicated. [S13,§1481-a31; C24, 27, 31, 35, 39,§7382; C46, 50, 54,§450.77]

**450.78 Reporting fee.** For reporting such estates or property the clerk shall receive a compensation of one dollar for each one hundred dollars or fraction thereof of tax paid, but not to exceed the sum of five dollars in any one estate, the same to be in addition to the compensation now allowed him by law. [S13,§1481-a31; C24, 27, 31, 35, 39,§7383; C46, 50, 54,§450.78]

Referred to in §450.79

**450.79 Appropriation.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.78. [C27, 31, 35,§7383-a1; C39,§7383.1; C46, 50, 54,§450.79]

**450.80 Payment of fee.** Except when this information has first been received from another source, the state tax commission, when it has issued its receipt for the tax in such estate, shall certify to the state comptroller the amount due the clerk for such service and the comptroller shall issue his warrant on the treasurer of state in favor of said clerk for the sum due as herein provided. [S13,§1481-a31; C24, 27, 31, 35, 39,§7384; C46, 50, 54,§450.80]

**450.81 Duty of recorder.** Each county recorder shall, upon the filing in his office of any deed, bill of sale, or other transfer of any description whatsoever which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the

death of the maker of such instrument, forward to the state tax commission a certified copy thereof. [C24, 27, 31, 35, 39, §7385; C46, 50, 54, §450.81]

**450.82 Conflicting claims for fees.** In the event of uncertainty or of conflicting claims as to fees due county attorneys or clerks under this chapter, the state tax commission is empowered to determine the amount of fees, to whom payable, and when the same are due and, as far as possible, such determination shall be in accord with fixed rules made by the state tax commission. [S13, §1481-a33; C24, 27, 31, 35, 39, §7386; C46, 50, 54, §450.82]

**450.83 Inspection of records by court—newly discovered estates—notice—hearing.** On the first day of each regular term, the court shall require the clerk to present for its inspection the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors, and trustees which have been filed pursuant to this chapter since the last preceding term. If, from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record directing the clerk to notify the state tax commission of such fact, and the clerk shall enter said estate on the inheritance tax book. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the clerk or by order of court, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the clerk shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. At any such hearing any person may be required to appear and answer as to his knowledge of any such estate or property, and it shall be the duty of the clerk to notify the state tax commission of the time and place of such hearing. If upon any such hearing the court is satisfied that any property of the decedent, or any property devised, granted, or donated by him is subject to the tax, the same proceeding shall be had as in other cases, so far as applicable. [S13, §1481-a34; C24, 27, 31, 35, 39, §7387; C46, 50, 54, §450.83]

**450.84 Costs charged against estate—exceptions.** In all cases where an estate or interest therein so passes as to be liable to taxation under this chapter, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order

that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the state tax commission, which shall, if said costs be correctly certified and the case has been finally terminated and the tax if any due has been paid, present the claim to the state comptroller to audit and, said claim being allowed by said comptroller, the comptroller is directed to issue a warrant on the treasurer of state in payment of such costs. [S13, §1481-a35; C24, 27, 31, 35, 39, §7388; C46, 50, 54, §450.84]

Referred to in §450.85

**450.85 Appropriation.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.84. [C27, 31, 35, §7388-a1; C39, §7388.1; C46, 50, 54, §450.85]

**450.86 Securities and assets held by bank, etc.** No safe deposit company, trust company, bank, or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent unless the tax for which such securities or assets are liable under this chapter shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the state tax commission personally, or by any person by it duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days notice of such proposed transfer upon the state tax commission or to allow such examination on the delivery of such securities or assets to such executor, administrator, or legal representative shall render such safe deposit company, trust company, bank, or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this chapter. [S13, §1481-a36; C24, 27, 31, 35, 39, §7389; C46, 50, 54, §450.86]

**450.87 Transfer of corporation stock.** If a foreign executor, administrator, or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state tax commission on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest, and costs, and it is the duty of the state tax commission to enforce the payment thereof. [S13, §1481-a37; C24, 27, 31, 35, 39, §7390; C46, 50, 54, §450.87]

**450.88 Corporations to report transfers.** Every Iowa corporation organized for pecuniary profit shall, on July 1 of each year, by its proper officers under oath, make a full and correct report to the state tax commission of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock,

when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person, together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this chapter, and the tax has not been paid, the state tax commission shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty days from the date of such notice. [S13, §1481-a38; C24, 27, 31, 35, 39, §7391; C46, 50, 54, §450.88]

**450.89 Foreign estates—deduction of debts.** Whenever any property belongs to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state tax commission, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. [S13, §1481-a39; C24, 27, 31, 35, 39, §7392; C46, 50, 54, §450.89]

Referred to in §450.90

**450.90 Property in this state belonging to foreign estate.** Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this chapter and in part subject to said tax and there is no specific devise of the property within this state to exempt persons or if it is within the authority or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to exempt persons in the payment of

debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate shall be subject to the tax imposed by this chapter, and the tax due thereon shall be assessed as provided in section 450.89 relating to the deduction of the proportionate share of indebtedness; provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this chapter, such excess shall not be subject to said tax. [S13, §1481-a40; C24, 27, 31, 35, 39, §7393; C46, 50, 54, §450.90]

**450.91 Foreign estates — reciprocity — personal property.** The tax imposed by this chapter in respect to personal property of nonresidents (other than tangible personal property having an actual situs in this state) shall not be payable (1) if the decedent at the time of his death was a resident of a state or territory of the United States which at the time of his death did not impose a transfer tax or death tax of any character in respect to personal property of residents of this state (other than tangible personal property having an actual situs in such state or territory), or (2) if the laws of the state or territory of residence of the decedent at the time of his death contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (other than tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresidents allowed a similar exemption to residents of the state or territory of residence of such decedent.

In no case shall the provisions of this section apply to the intangible personal property of nonresident decedents unless such intangible personal property shall have been subjected to a tax or submitted for purposes of taxation in the state of the decedent's residence.

This section shall apply only to estates of decedents dying subsequent to the effective date\* of this section.

For the purpose of this section the District of Columbia and possessions of the United States shall be considered territories of the United States. [C31, 35, §7393-c1; C39, §7393.1; C46, 50, 54, §450.91]

\*Effective date July 4, 1929

**450.92 Compromise settlement.** Whenever an estate charged or sought to be charged with the inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state tax commission may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the bene-

ficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. [S13,§1481-a41; C24, 27, 31, 35, 39,§7394; C46, 50, 54,§450.92]

**450.93 Unknown heirs.** Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five percent shall be paid to the state tax commission upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five percent, the amount paid, and the amount which such person should pay under the provisions of this chapter. [S13, §1481-a42; C24, 27, 31, 35, 39,§7395; C46, 50, 54, §450.93]

Alien beneficiaries, §450.11

**450.94 Refund of tax improperly paid.** When, within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which an inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the state tax commission shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto. When a certified copy of the record of such court showing the fact of nonliability of such property to the payment of such tax has been filed with the tax commission of the state, the tax commission shall, if the case has been finally determined, issue an order to the state comptroller directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days notice of the application therefor shall have been given to the state tax commission

of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices. [S13,§1481-a43; C24, 27, 31, 35, 39,§7396; C46, 50, 54,§450.94]

Referred to in §§450.95, 450.98  
Manner of service, R.C.P. 56(a)

**450.95 Appropriation.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.94. [C27, 31, 35,§7396-a1; C39,§7396.1; C46, 50, 54, §450.95]

Referred to in §450.96

**450.96 Contingent estates.** Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. When a devise, bequest, or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this chapter if no such contingency existed; provided that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in sections 450.94 and 450.95 in other cases. [S13,§1481-a44; C24, 27, 31, 35, 39, §7397; C46, 50, 54,§450.96]

## CHAPTER 451

### IOWA ESTATE TAX

Referred to in §321.47

- 451.1 Definitions.
- 451.2 Additional tax.
- 451.3 Gross and net estate.
- 451.4 Tax on net estate.
- 451.5 Duty of executor.
- 451.6 Payment of tax.
- 451.7 Disposal of tax.

- 451.8 Claim for credit or refund.
- 451.9 Appeal.
- 451.10 Effect of allowance.
- 451.11 Effect of disallowance.
- 451.12 Applicable statutes.
- 451.13 Invalidation.

**451.1 Definitions.** When used in this chapter:

1. The term "executor" means the executor

of the will or administrator of the estate of the decedent, or if there is no such executor or administrator appointed, qualified and acting,

then any person in actual or constructive possession of any property included in the gross estate of the decedent.

2. The term "gross estate" means the gross estate as determined under the provisions of section 451.3.

3. The term "net estate" means the net estate as determined under the provisions of section 451.3.

4. The term "month" means a calendar month.

5. The term "Federal Estate Tax Act" means title III of chapter 27 of the acts of the sixty-ninth congress of the United States, first session, appearing in 44 Statutes at Large, chapter 27, or any amendments thereof.

6. The term "federal estate tax" means the tax imposed by the provisions of said federal estate tax act referred to in subsection 5 of this section.

7. The term "Iowa estate tax" means the tax imposed by this chapter. [C31, 35,§7397-c1; C39, §7397.01; C46, 50, 54,§451.1]

**451.2 Additional tax.** In addition to the tax imposed by chapter 450, a tax for general state purposes to be known as the Iowa estate tax, equal to the sum of the following percentages of the value of the net estate, determined as provided in section 451.3, is hereby imposed upon the transfer of the net estate of every decedent dying after the twenty-sixth day of February, 1926, and being residents of, or owning property in, this state, except as herein otherwise provided:

1. Four-fifths of one percent of the amount of the net estate not in excess of fifty thousand dollars.

2. One and three-fifths percent of the amount by which the net estate exceeds fifty thousand dollars and does not exceed one hundred thousand dollars.

3. Two and two-fifths percent of the amount by which the net estate exceeds one hundred thousand dollars and does not exceed two hundred thousand dollars.

4. Three and one-fifth percent of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed four hundred thousand dollars.

5. Four percent of the amount by which the net estate exceeds four hundred thousand dollars and does not exceed six hundred thousand dollars.

6. Four and four-fifths percent of the amount by which the net estate exceeds six hundred thousand dollars and does not exceed eight hundred thousand dollars.

7. Five and three-fifths percent of the amount by which the net estate exceeds eight hundred thousand dollars and does not exceed one million dollars.

8. Six and two-fifths percent of the amount by which the net estate exceeds one million dollars and does not exceed one million five hundred thousand dollars.

9. Seven and one-fifth percent of the amount by which the net estate exceeds one million five hundred thousand dollars and does not exceed two million dollars.

10. Eight percent of the amount by which the net estate exceeds two million dollars and does not exceed two million five hundred thousand dollars.

11. Eight and four-fifths percent of the amount by which the net estate exceeds two million five hundred thousand dollars and does not exceed three million dollars.

12. Nine and three-fifths percent of the amount by which the net estate exceeds three million dollars and does not exceed three million five hundred thousand dollars.

13. Ten and two-fifths percent of the amount by which the net estate exceeds three million five hundred thousand dollars and does not exceed four million dollars.

14. Eleven and one-fifth percent of the amount by which the net estate exceeds four million dollars and does not exceed five million dollars.

15. Twelve percent of the amount by which the net estate exceeds five million dollars and does not exceed six million dollars.

16. Twelve and four-fifths percent of the amount by which the net estate exceeds six million dollars and does not exceed seven million dollars.

17. Thirteen and three-fifths percent of the amount by which the net estate exceeds seven million dollars and does not exceed eight million dollars.

18. Fourteen and two-fifths percent of the amount by which the net estate exceeds eight million dollars and does not exceed nine million dollars.

19. Fifteen and one-fifth percent of the amount by which the net estate exceeds nine million dollars and does not exceed ten million dollars.

20. Sixteen percent of the amount by which the net estate exceeds ten million dollars.

The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States or to the District of Columbia, in respect of any property included in the gross estate, including the amount paid to the state of Iowa as inheritance taxes under the law as it appears in chapter 450, provided that in no case shall a tax be collected hereunder, which, together with the credits allowed by this paragraph, shall exceed the maximum credits allowed by said federal estate tax act for any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States, or to the District of Columbia. [C31, 35,§7397-c2; C39,§7397.02; C46, 50, 54,§451.2]

#### 451.3 Gross and net estate.

1. a. In the case of a resident of this state, there shall be included in the value of the gross



estate the value of all property, wherever situated, (except real estate situated outside this state and tangible personal property having an actual situs outside this state), which is included in the gross estate of such decedent under the provisions of the federal estate tax act.

b. In the case of a nonresident of this state, there shall be included in the value of the gross estate the value of so much of the property of such decedent, which is included in his gross estate under the provisions of the federal estate tax act, as is, at the time of his death, situated in this state, or is subject to the jurisdiction of the courts of this state, or is thereafter brought within this state and becomes subject to the jurisdiction of the courts of this state.

2. In computing the value of the net estate of a decedent, whether a resident of this state or not, there shall be deducted from the value of the gross estate, as determined under the provisions of this chapter, all the items of expense, indebtedness, exemptions or other deductions provided for in said federal estate tax act in the proportion that the value of the gross estate, as determined under the provisions of this chapter, bears to the value of the gross estate as determined under the provisions of the federal estate tax act; provided, however, that for the purposes of this subsection, the value of real estate situated outside this state shall be excluded from the value of the gross estate as determined under the provisions of the federal estate tax act; and no indebtedness incurred for, or in respect of, or secured by, real estate situated outside this state, shall be allowed as a deduction from the value of the gross estate, as determined under the provisions of this chapter. [C31, 35,§7397-c3; C39,§7397.03; C46, 50, 54,§451.3]

Referred to in §§451.1, 451.2

**451.4 Tax on net estate.** The tax hereby imposed shall be upon the transfer of:

1. The total net estate of every decedent dying after the effective date\* of this chapter.

2. The net personal estate of every decedent dying after the twenty-sixth day of February, 1926, whose estate shall be open and pending in the courts of this state, or subject to the jurisdiction of such courts, at the effective date of this chapter, or whose estate shall or may become subject to administration in, or to the jurisdiction of, the courts of this state after the effective date of this chapter. [C31, 35, §7397-c4; C39,§7397.04; C46, 50, 54,§451.4]

\*Effective date, April 12, 1929

**451.5 Duty of executor.** It shall be the duty of the executor of every decedent whose estate may be subject to the tax imposed by this chapter, to file in the office of the state tax commission, within twelve months after the death of such decedent, duplicate copies of the estate tax return provided for in the federal estate tax act, and in like manner, duplicate copies of all supplemental or amended returns;

and the value of all items included in the gross estate, as shown by such returns, or supplemental or amended returns, shall be taken and considered as the values of such items for the purposes of this chapter; and in case of any revaluation or correction of valuation of any such items, either by such supplemental or amended returns, or by the commissioner of internal revenue, or by any appellate tribunal by which the same may be finally determined, such corrected values shall be taken and considered as the values of such items for the purposes of this chapter. [C31, 35,§7397-c5; C39,§7397.05; C46, 50, 54,§451.5]

**451.6 Payment of tax.** The tax imposed by this chapter shall be paid by the executor to the state tax commission within eighteen months from the date of the death of such decedent, or in case such decedent died more than eighteen months prior to the effective date\* of this chapter, then within six months after the effective date hereof. [C31, 35,§7397-c6; C39,§7397.06; C46, 50, 54,§451.6]

43GA, ch 204, §6, editorially divided  
\*Effective date, April 12, 1929

**451.7 Disposal of tax.** The proceeds of this tax shall be paid into the general fund of the state. [C31, 35,§7397-c7; C39,§7397.07; C46, 50, 54,§451.7]

**451.8 Claim for credit or refund.** If the executor of a resident decedent shall have paid to the treasurer of the United States or to a collector of internal revenue an estate tax under the provisions of said federal estate tax act in respect of property included in the gross estate, determined as herein provided, and shall have claimed as credits against said federal estate tax a sum less than the maximum credits allowed by the provisions of said federal estate tax act for any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States, or to the District of Columbia, it shall be his duty, with due diligence, to file in the bureau of internal revenue a claim for credit or refund for such amount, if any, as such estate shall be properly entitled to receive under the provisions of said federal estate tax act and of this chapter. [C31, 35,§7397-c8; C39,§7397.08; C46, 50, 54,§451.8]

**451.9 Appeal.** If any claim for refund or credit, or any part thereof, shall be denied or disallowed by the commissioner of internal revenue, the executor, the state tax commission, or any person having an interest in said estate which may be adversely affected by such denial or disallowance, may apply to the judge of the court having jurisdiction of such estate, for an order directing such executor to take, perfect, and prosecute an appeal from the decision of the commissioner of internal revenue to such court or tribunal as may have jurisdiction of such matter, and, upon the granting of such order, the state tax commission may, at its option, assist in the prosecution of such appeal. The judge of the court granting such

order may make a reasonable allowance for attorneys' fees for the prosecution of such appeal, and direct the manner in which the same, together with any other costs or expenses which may be allowed by said court in connection therewith, shall be paid. [C31, 35, §7397-c9; C39, §7397.09; C46, 50, 54, §451.9]

**451.10 Effect of allowance.** If any claim for credit or refund, or any part thereof, shall be finally determined in favor of such executor, any amount refunded or credited thereon shall inure to the benefit of such estate. [C31, 35, §7397-c10; C39, §7397.10; C46, 50, 54, §451.10]

43GA, ch 204, §9, editorially divided

**451.11 Effect of disallowance.** If any claim for credit or refund or any part thereof, shall be finally determined adversely to such executor, for any reason other than lack of diligence or other failure of duty on his part, the amount so denied or disallowed, or so much thereof as shall have been paid to the state tax commission under the provisions of this chapter, shall, upon a claim duly filed with, and proper showing made to, the state tax commission, be refunded by the state tax commission to such executor, and shall inure to the benefit of such estate. [C31, 35, §7397-c11; C39, §7397.11; C46, 50, 54, §451.11]

**451.12 Applicable statutes.** All the provisions of the law as it appears in chapter 450 with respect to the determination, imposition, payment and collection of the tax thereby imposed, including interest upon delinquent taxes, are hereby made applicable to the provisions of this chapter, except as the same may be in conflict with the provisions hereof. The state tax commission shall adopt and promulgate all rules and regulations necessary for the enforcement of this chapter. [C31, 35, §7397-c12; C39, §7397.12; C46, 50, 54, §451.12]

**451.13 Invalidation.** This chapter shall become void and of no effect in respect to the estates of persons who die after the effective date of the repeal of the federal estate tax act, or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding eighty percent of the tax imposed by said federal estate tax act, or after such federal estate tax act, or the eighty percent credit provision thereof, may be declared, by the supreme court of the United States, to be void by reason of any contravention of the constitution of the United States. [C31, 35, §7397-c13; C39, §7397.13; C46, 50, 54, §451.13]

Constitutionality, 43GA, ch 204, §12

## CHAPTER 452

### SECURITY OF THE REVENUE

- 452.1 County responsible to state.
- 452.2 Interest on warrants.
- 452.3 Discounting warrants.
- 452.4 Loans by county treasurer.
- 452.5 Loans by state treasurer.
- 452.6 Settlement with treasurer.
- 452.7 Settlement by retiring treasurer.
- 452.8 Supervisors to report to state auditor.
- 452.9 Correct balances.
- 452.10 Custody of public funds—investment or deposit.

- 452.11 Manner and details of settlement.
- 452.12 Duty of examining officer.
- 452.13 Report of settlement filed.
- 452.14 False statements or reports.
- 452.15 Official delinquency.
- 452.16 Refund to counties.
- 452.17 Warrant for excess.
- 452.18 Delivery to treasurer.

**452.1 County responsible to state.** Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments. [R60, §793; C73, §908; C97, §1453; C24, 27, 31, 35, 39, §7398; C46, 50, 54, §452.1]

**452.2 Interest on warrants.** When interest is due and allowed by the treasurer of state on the redemption of state warrants, or by the county treasurer on the redemption of county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the state comptroller or board of supervisors except such as is thus receipted. [R60, §795; C73, §910; C97, §1455; C24, 27, 31, 35, 39, §7400; C46, 50, 54, §452.2]

Analogous section, §74.7

**452.3 Discounting warrants.** If the state treasurer or any county treasurer, by himself or through another, discounts state comptroller's or auditor's warrants, either directly or indirectly, he shall upon conviction be fined in any sum not exceeding one thousand dollars. [R60, §796; C73, §911; C97, §1456; C24, 27, 31, 35, 39, §7401; C46, 50, 54, §452.3]

**452.4 Loans by county treasurer.** A county treasurer shall be liable to a like fine for loaning out, or in any manner using for private purposes, state, county, or other funds in his hands. [R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §7402; C46, 50, 54, §452.4]

**452.5 Loans by state treasurer.** The state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor. [R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §7403; C46, 50, 54, §452.5]

**452.6 Settlement with treasurer.** At the meetings in January and June of each year, the board of supervisors shall make a full and complete settlement with the treasurer, and shall certify to the state comptroller all credits to him for double or erroneous assessments and unavailable taxes, and all dues for state revenue, interest, or delinquent taxes, sales of land, peddlers' licenses, and other dues, the amounts collected therefor, and revenues still delinquent, each year to itself, which reports shall be forwarded by mail. [C51, §§157, 158; R60, §798; C73, §913; C97, §1458; C24, 27, 31, 35, 39, §7408; C46, 50, 54, §452.6]

**452.7 Settlement by retiring treasurer.** When a county treasurer goes out of office, he shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property pertaining to the office, to his successor, taking his receipt therefor. [R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §7409; C46, 50, 54, §452.7]

C97, §1461, editorially divided

**452.8 Supervisors to report to state auditor.** The board of supervisors shall make a statement of state dues to the auditor of state, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what account the amount so paid over belongs. [R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §7410; C46, 50, 54, §452.8]

**452.9 Correct balances.** The board of supervisors shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer-elect. [R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §7411; C46, 50, 54, §452.9]

**452.10 Custody of public funds—investment or deposit.** The state treasurer and each county treasurer shall at all times keep all funds coming into their possession as public money, in a vault or safe, to be provided for that purpose, or in some bank legally designated as a depository for such funds. However, the treasurer of state shall invest, unless otherwise provided, any of the public funds not currently needed for operating expenses in United States government bonds and certificates, providing suitable issues are available; or make time deposits of such funds in banks as provided in chapter 453 and receive time certificates of deposit therefor. With respect to any time deposits that the state treasurer may place with any depository, it shall be his policy to place with such depository an amount of demand deposits equal to at least ten percent of such time certificate of deposit money, insofar as he may be able so to do. [R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §7412; C46, 50, 54, §452.10; 57GA, ch 54, §4]

S13, §1462, editorially divided

Referred to in §§452.14, 453.1, 453.7

**452.11 Manner and details of settlement.** At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in his office, and shall produce a statement of all money or funds on deposit with any depository wherein he is authorized to deposit such funds, which statement shall be certified by one or more officers of such depository, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories. The state treasurer shall also file a statement showing the numbers, dates and amounts of all United States government bonds held as part of said public fund. [R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §7413; C46, 50, 54, §452.11]

Referred to in §452.14

**452.12 Duty of examining officer.** It shall be the duty of the officer or officers making such settlement to see that the amount of securities and money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and he shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories. [S13, §1462; C24, 27, 31, 35, 39, §7414; C46, 50, 54, §452.12]

Referred to in §452.14

**452.13 Report of settlement filed.** The report of any such settlement with the treasurer of state shall be filed in the office of the state comptroller, and the report of a settlement with a county treasurer with the auditor of the county. [S13, §1462; C24, 27, 31, 35, 39, §7415; C46, 50, 54, §452.13]

Referred to in §452.14

**452.14 False statements or reports.** Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 452.10 to 452.13, inclusive, shall be guilty of a misdemeanor and shall be liable to a fine of not less than five hundred dollars. [S13, §1462-a; C24, 27, 31, 35, 39, §7416; C46, 50, 54, §452.14]

**452.15 Official delinquency.** If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of him, such officer shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and he and his bondsmen shall be liable on his official bond for such fine, and for

the damages sustained by any person through such neglect or refusal. [R60, §§744, 749, 805; C73, §919; C97, §1463; C24, 27, 31, 35, 39, §7417; C46, 50, 54, §452.15]

**452.16 Refund to counties.** The state comptroller shall draw his warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the state from said county, excepting the state taxes. [C97, §1464; C24, 27, 31, 35, 39, §7418; C46, 50, 54, §452.16]

**452.17 Warrant for excess.** When it shall appear from the books in the office of the state comptroller that there is a balance due any county in excess of any revenue due the

state, except state taxes, he shall draw his warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to which it belongs, and charge the amount so sent to such county. [C97, §1465; C24, 27, 31, 35, 39, §7419; C46, 50, 54, §452.17]

**452.18 Delivery to treasurer.** The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of his county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the state comptroller. [C97, §1466; C24, 27, 31, 35, 39, §7420; C46, 50, 54, §452.18]

See §682.28

## CHAPTER 453

### DEPOSIT OF PUBLIC FUNDS

Referred to in §452.10

- 453.1 Deposits in general.
- 453.2 Approval—requirements.
- 453.3 Increase conditionally prohibited.
- 453.4 Location of depositories.
- 453.5 Refusal of deposits—procedure.

- 453.6 Interest rate.
- 453.7 Interest—where credited.
- 453.8 Liability of public officers.
- 453.9 Investment of sinking funds.
- 453.10 Investment of funds created by election.

**453.1 Deposits in general.** The treasurer of state, and of each county, city, town, and school corporation, and each township clerk and each county recorder, auditor, sheriff, each clerk and bailiff of the municipal court, and clerk of the district court, and each secretary of a school board shall deposit all funds in their hands in such banks as are first approved by the executive council, board of supervisors, city or town council, board of school directors, or township trustees, respectively. However, the treasurer of state shall invest or deposit as provided in section 452.10 any of the public funds not currently needed for operating expenses. The term "bank" shall embrace any corporation, firm, or individual engaged in a general banking business. [C24, 27, §§139, 4319, 5548, 5651, 7404; C31, 35, §7420-d1; C39, §7420.01; C46, 50, 54, §453.1; 57GA, ch 54, §5]

Referred to in §§453.7, 453.8

**453.2 Approval — requirements.** The approval of a bank as a depository shall be by written resolution or order which shall be entered of record in the minutes of the approving board, and which shall distinctly name each bank approved, and specify the maximum amount which may be kept on deposit in each such bank. [C24, 27, §139; C31, 35, §7420-d2; C39, §7420.02; C46, 50, 54, §453.2]

**453.3 Increase conditionally prohibited.** The maximum amount so permitted to be deposited in a named bank shall not be increased except with the approval of the treasurer of state. [C27, §1090-b2; C31, 35, §7420-d3; C39, §7420.03; C46, 50, 54, §453.3]

**453.4 Location of depositories.** Deposits by the treasurer of state shall be in banks located in this state; by a county officer, in

banks located in his county or in an adjoining county within this state; by a city or town treasurer, in banks located in the city or town, but in the event there is no bank in such city or town then in any other bank located in this state which shall be selected as such depository by the city or town council; by a school treasurer or by a school secretary in a bank within this state which shall be selected by the board of directors or the trustees of such school district; by a township clerk in a bank located within this state which shall be selected by such township clerk and approved by the trustees of such township. Provided, that deposits may be made in banks outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when such deposit is made not more than ten days before the date such principal or interest becomes due. [C24, 27, §§139, 4319, 5548, 5651, 7404; C31, 35, §7420-d4; C39, §7420.04; C46, 50, 54, §453.4]

**453.5 Refusal of deposits — procedure.** If none of the duly approved banks will accept said deposits under the conditions herein prescribed or authorized, said funds may be deposited in any approved bank or banks conveniently located within the state. [C24, 27, §5653; C31, 35, §7420-d5; C39, §7420.05; C46, 50, 54, §453.5]

**453.6 Interest rate.** Henceforth public deposits shall be deposited with reasonable promptness and shall except for time certificates of deposit be evidenced by passbook entry by the depository legally designated as depository for such funds. Time certificates of deposit for public funds shall draw interest at rates to be determined January 1 and quarterly thereafter by joint action of the superintendent

ent of banking, insurance commissioner and treasurer of state, of which a majority shall control their actions in setting such rates. Said rates shall not be less than one percent, nor more than two and one-half percent. [C24, 27, §§140, 4319, 5548, 5651, 7404; C31, 35, §7420-d6; C39, §7420.06; C46, 50, 54, §453.6; 57GA, ch 54, §6]

Referred to in §453.7

#### 453.7 Interest—where credited.

1. No bank or trust company shall, directly or indirectly, by any device whatsoever, pay any interest to any public officer on any demand deposit of public funds, and no public officer shall take or receive any interest whatsoever on demand deposits of public funds. This provision shall not apply to interest on time certificates of deposit for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 452.10, 453.1 and 453.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds. Such interest or earnings on any fund created by direct vote of the people shall be credited to the fund to retire any such indebtedness after which the fund itself shall be credited. [C31, 35, §7420-d7; C39, §7420.07; C46, 50, 54, §453.7; 57GA, ch 54, §7]

Referred to in §453.10

**453.8 Liability of public officers.** No officer referred to in section 453.1 shall be liable for loss of funds by reason of the insolvency of the depository bank when said funds have been deposited as herein provided. [C27, §1090-a20; C31, 35, §7420-d8; C39, §7420.08; C46, 50, 54, §453.8]

**453.9 Investment of sinking funds.** The governing council or board who by law are authorized to direct the depositing of funds shall be authorized to direct the treasurer to invest any fund not an active fund needed for current use and which is being accumulated as a sinking fund for a definite purpose, the interest of which is used for the same purpose, in the certificates provided by section 454.19, or in United States government bonds, or in local certificates or warrants issued by any municipality or school district within the county, or in municipal bonds which constitute a general liability, and the treasurer when so directed shall so invest such fund. [C27, 31, 35, §12775-b1; C39, §7420.43; C46, 50, 54, §454.35; 57GA, ch 54, §8]

**453.10 Investment of funds created by election.** The governing council or board, who by the law have control of any fund created by direct vote of the people, may invest any portion thereof not currently needed, in United States government bonds or make time deposits of such funds as provided in this chapter and receive time certificates of deposit therefor. Interest or earnings on such funds shall be credited as provided in subsection 2 of section 453.7. [57GA, ch 54, §9]

## CHAPTER 454

### STATE SINKING FUND FOR PUBLIC DEPOSITS

Referred to in §528.106

- 454.1 State sinking fund.
- 454.2 Purpose of fund.
- 454.3 How constituted.
- 454.4 Availability of funds.
- 454.5 Investment of funds.
- 454.6 Duty of treasurers.
- 454.7 Certification of deposits.
- 454.8 Duty of treasurer of state.
- 454.9 Assessment rate.
- 454.10 Depositories' and treasurers' duties.
- 454.11 Acceptance by depositories.
- 454.12 Liability of depository.
- 454.13 Liability of public officers.
- 454.14 Amount of deposit — determination — effect—objections.
- 454.15 Order of payment.
- 454.16 Certification of claims.
- 454.17 Warrant—payment—subrogation.
- 454.18 Bonds—subrogation.

#### ANTICIPATORY WARRANTS

- 454.19 Anticipatory warrants.
- 454.20 Interest.
- 454.21 Form of warrants.
- 454.22 Public sale—interest.
- 454.23 Advertisement.
- 454.24 Bids.
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- 454.27 Misdemeanor.
- 454.28 Construction.
- 454.29 Record of sales.
- 454.30 Change in addresses.
- 454.31 Payment.
- 454.32 Application of funds.
- 454.33 Termination of interest.
- 454.34 Applicability.
- 454.35 Repealed by 57GA, ch 54, §8. See §453.9.

**454.1 State sinking fund.** There is hereby created in the office of the treasurer of state a separate fund to be known as the state sinking fund for public deposits. [C27, §1090-a1; C31, 35, §7420-a1; C39, §7420.09; C46, 50, 54, §454.1]

41GA, ch 173, §1, editorially divided  
Referred to in §454.8

**454.2 Purpose of fund.** The purpose of said fund shall be to secure the payment of their deposits to state, county, township, municipal, and school corporations having public funds deposited in any bank in this state, when such deposits have been made by authority of and

in conformity with the direction of the local governing council or board which is by law charged with the duty of selecting depository banks for said funds. [C27,§1090-a2; C31, 35, §7420-a2; C39,§7420.10; C46, 50, 54,§454.2]

**454.3 How constituted.** There shall be paid into said sinking fund by the treasurer of state all collections either from assessments as hereinafter provided, or from receipts received from the collection of claims assigned or paid whether from security, bonds, or other sources. [C27,§1090-a3; C31, 35,§7420-a3; C39,§7420.11; C46, 50, 54,§454.3]

41GA, ch 174,§1, editorially divided

**454.4 Availability of funds.** Any sums in the sinking fund shall be available for the payment of claims. [C27,§1090-a4; C31, 35, §7420-a4; C39,§7420.12; C46, 50, 54,§454.4]

**454.5 Investment of funds.** All above a necessary working balance shall be kept invested in United States government bonds under the direction of the executive council. [C27,§1090-a5; C31, 35,§7420-a5; C39,§7420.13; C46, 50, 54, §454.5]

**454.6 Duty of treasurers.** It shall be the duty of all school treasurers, city and town treasurers, and township clerks of the county to keep on file with the county treasurer a list of such depositories. [C27,§1090-a8; C31, 35, §7420-a8; C39,§7420.14; C46, 50, 54,§454.6]

**454.7 Certification of deposits.** Whenever any such depository bank is hereafter closed and placed in the hands of a receiver or a trustee in bankruptcy or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of all or part of its assets with assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of assets of another bank, merger with another bank or banks, or in any manner authorized by sections 528.90 to 528.94, inclusive, or by sections 528.99 to 528.110, inclusive, or by the National Bank Conservation Act, [48 Stat. L. ch 1] and especially section 207 of title II thereof, and trust certificates have issued pursuant to depositors' agreements; or whenever any bank that has assumed all or part of the deposit liability of a depository bank, has heretofore or is hereafter reorganized in any manner authorized by sections 528.90 to 528.94, inclusive, or by sections 528.99 to 528.110, inclusive, or by the National Bank Conservation Act and especially section 207 of title II thereof, and trust certificates have issued pursuant to depositors' agreements, and the amount of the several deposits of public funds deposited therein by authority of and in conformity with the direction of the legal governing council or board which is by law charged with the duty of selecting depository banks for said funds and fixing the amount thereof has been ascertained and fixed by an order of court or by the treasurer of state if the matter is not pending in court, the superintendent of banking shall then certify

such list of public deposits so approved by the court to the treasurer of state and the state comptroller. [C27,§1090-a9; C31, 35,§7420-a9; C39,§7420.15; C46, 50, 54,§454.7]

41GA, ch 173,§4, editorially divided

**454.8 Duty of treasurer of state.** Every depository shall pay for the benefit of said state sinking fund, created by section 454.1, the assessments hereinafter set out. The treasurer of state, with the approval of the executive council, may and is hereby authorized to fix the assessment rate applicable to and for the purpose of providing insurance for public funds on deposit in depositories. On or before the first day of July and the first day of January in each year the state treasurer, with the approval of the executive council, shall determine and fix a fair and reasonable assessment rate to be used in determining the assessments payable by depositories during the succeeding six months period. [C27,§1090-a10; C31, 35, §7420-a10; C39,§7420.16; C46, 50, 54,§454.8]

**454.9 Assessment rate.** In fixing such rate the state treasurer shall give due regard to the amount of public funds currently on deposit and the liabilities of the state sinking fund contingent and accrued. For any six months period the assessment rate shall not be more than two percent and not less than one-half of one percent per annum on ninety percent of the collected daily balances, provided that said assessment rate shall not exceed one percent per annum on ninety percent of the daily collected balances for the months of April and October of each year. If, at the beginning of any six months period, no assessment rate on public funds has been fixed, and the amount in the state sinking fund over and above accrued and contingent liabilities does not exceed two hundred fifty thousand dollars, the assessment rate shall be one-half of one percent per annum during such period. No assessment rate shall be fixed, and no assessments paid, for any six months period after the amount in the state sinking fund over and above accrued and contingent liabilities has reached five hundred thousand dollars until the amount in said sinking fund has been reduced to less than two hundred fifty thousand dollars, in which event assessment rates shall again be fixed and assessments paid commencing at the next six months period; provided that, if in the opinion of the treasurer the amount in said sinking fund will not be adequate to meet the demands upon the sinking fund the treasurer may, with the approval of the executive council, fix an assessment rate and require the payment of assessments for the balance of any six months period after the amount in the sinking fund becomes less than two hundred fifty thousand dollars. [C27,§1090-a11; C31, 35,§7420-a11; C39,§7420.17; C46, 50, 54,§454.9]

**454.10 Depositories' and treasurers' duties.** On or before the tenth day of each month each depository shall compute, upon the basis

of the assessment rate so fixed, and shall pay to the county treasurer of the county in which the depository is located, the amount of assessment so fixed and determined for the benefit of the state sinking fund for the preceding calendar month. Such amount shall be transmitted by the county treasurer to the state treasurer on or before the twentieth day of each month, and credited by the state treasurer to the state sinking fund for public deposits. [C27,§1090-a12; C31, 35,§7420-a12; C39, §7420.18; C46, 50, 54,§454.10]

**454.11 Acceptance by depositories.** Any bank or trust company which does not desire to serve as a depository under this act\* for public funds of any public body may decline to do so by giving written notice to such public body prior to June 15, 1937. Failure to give such written notice shall constitute an acceptance of the obligations imposed by this act with regard to all public funds on deposit July 1, 1937. The acceptance by any bank or trust company of any public funds for deposit on or after July 1, 1937, shall constitute an acceptance of the obligations imposed by this act with regard to all such funds so accepted. [C39,§7420.19; C46, 50, 54,§454.11]

\*47GA, ch 194

**454.12 Liability of depository.** The failure on the part of any depository bank to pay to the county treasurer or the state treasurer any such assessments on or before the tenth day of the month same becomes due, shall render such bank liable for a ten percent penalty on the amount of assessments due and the same may be recovered by the state treasurer or the county treasurer. [C27,§1090-a13; C31, 35,§7420-a13; C39,§7420.20; C46, 50, 54,§454.12]

41GA, ch 174,§4, editorially divided

**454.13 Liability of public officers.** The fiscal governing officers of every county, township, school district, city, or town shall be personally liable to the sinking fund for any misappropriation of such assessments on public balances or for withholding the same when proper demand has been made therefor by the county treasurer or state treasurer. [C27, §1090-a14; C31, 35,§7420-a14; C39,§7420.21; C46, 50, 54,§454.13]

**454.14 Amount of deposit—determination—effect—objections.** Whenever or wherever any depository bank or any bank which has assumed the whole or any part of the deposit liability of a depository bank, has been heretofore or is hereafter closed and placed in the hands of a receiver or trustee in bankruptcy, or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of a part or all of its assets with the assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of the assets of another bank, merger with another bank or banks, or in any manner authorized by sections 528.90 to 528.94, inclusive, or by sections 528.99 to 528.110, inclusive,

or the National Bank Conservation Act [48 Stat. L. ch 1] and especially section 207 of title II thereof, and trust certificates have issued pursuant to provisions of depositors' agreements, the state of Iowa or any county, city, town, school district or township, having public funds on deposit therein, may by its governing board at such board's discretion, by written resolution or order, entered of record in the minutes of such board, or executive council, as the case may be, order and direct its treasurer or other officer to file with and furnish to the treasurer of state a statement of the amount of the deposit, a certified copy of the resolution under which the deposit was made, and any other information demanded by him. Whenever trust certificates have issued as herein provided, the statement of the amount of deposit shall include only the balance due on the trust certificate unless the bank or trust company is placed in the hands of a receiver or trustee in bankruptcy. Unless either the bank liable therefor, or claimant has paid all assessments due the state sinking fund for public deposits to the date of its reorganization, both on that part of claimant's deposit left in the bank and that part represented by the trust certificate, the treasurer of state may refuse to file the claim of such claimant.

But where deposits of state funds in national banks only for which claims are on file, the payment of interest or assessments on said deposits, as provided in this chapter, from the time of the closing of said bank to the date of its reorganization, shall not be required, and the claim may be paid without interest or assessment for that period; and all claims heretofore filed, payment of which has been denied because of failure to pay the interest or assessments for the time between the date of the closing of said bank and its reopening, as in this chapter provided, shall be reconsidered and, if approved, shall be paid without the payment of such interest or assessments.

With the advice of the attorney general, the treasurer of state shall determine the amount thereof deposited by authority of and in conformity with the direction of the legal governing council or board and send a copy of his decision by certified mail to the claimant and to the bank and deliver a copy to the superintendent of banking, which decision shall be final except as to such depositors as within ten days after the mailing of such decision make objections to such decision in writing to the treasurer of state, and shall have the same force and effect as the court order and certificate of the superintendent of banking, as provided in this chapter.

If objections are made within the time and as above provided, the same shall be forwarded to the receiver, and shall be presented and heard and determined by the court as otherwise provided. In the event a receiver or trustee in bankruptcy has not been appointed, the claimant may present the objections, if made within the manner and time provided, to

any court of competent jurisdiction by any appropriate action. If objections are not made as above provided, the decision of the treasurer of state shall be final. [C27,§1090-b1; C31, 35,§7420-b1; C39,§7420.22; C46, 50, 54,§454.14; 57GA, ch 267,§59]

**454.15 Order of payment.** It shall be the duty of the superintendent of banking to direct the order in which such deposits shall be paid. [C27,§1090-a16; C31, 35,§7420-a16; C39,§7420.23; C46, 50, 54,§454.15]

41GA, ch 173,§5, editorially divided

**454.16 Certification of claims.** As soon as the money is available in such sinking fund the superintendent of banking shall certify to the state comptroller the amount due the several depositors of public funds as shown by such certified list and showing the order in which they shall be paid. [C27,§1090-a17; C31, 35,§7420-a17; C39,§7420.24; C46, 50, 54,§454.16]

**454.17 Warrant — payment — subrogation.** Upon such certification the state comptroller shall issue his warrant upon such sinking fund in the hands of the treasurer of state payable to such depositor of public funds in the order certified by the superintendent of banking, and the same shall be paid to such depositor of public funds, and the treasurer of state shall thereupon be subrogated to all of the title, interest, and rights of the depositor in such deposit of public funds or segregated trust fund and shall share in the distribution of the assets of such bank or trust fund ratably with the other depositors and the sum received from such distribution shall be paid by the receiver or trustees to the treasurer of state and deposited in said sinking fund. Until the depositor has been paid in full from the sinking fund, it may share in the distribution of the assets of the bank or trust fund. [C27, §1090-a18; C31, 35,§7420-a18; C39,§7420.25; C46, 50, 54,§454.17]

**454.18 Bonds—subrogation.** Where public funds are secured by bond and the same are paid or advanced by the treasurer of state as herein provided, said treasurer shall be subrogated to all of the rights of the holder of such bond and is hereby authorized to enforce and collect the same and shall deposit the same in said sinking fund. However, no suit shall be maintained upon any such bond if the money was legally deposited by authority of the governing council or board, and no premium has been paid for the bond. [C27,§1090-a19; C31, 35,§7420-a19; C39,§7420.26; C46, 50, 54, §454.18]

Constitutionality, 41GA, ch 173,§12; 47GA, ch 194,§13  
Omnibus repeal, see 41GA, ch 173,§11; 47GA, ch 194,§12

**ANTICIPATORY WARRANTS**

**454.19 Anticipatory warrants.** Whenever duly allowed and certified claims are on file with the treasurer of state to the amount of fifty thousand dollars or more and the state sinking fund for public deposits contains in-

sufficient funds for immediate payment of said claims the treasurer of state with the written approval of the executive council of the state may issue anticipatory warrants for the purpose of raising funds for the immediate payment of said claims but said warrants outstanding and unpaid shall not exceed at any one time the sum of three million five hundred thousand dollars provided, however, that the treasurer of state by and with the approval of the executive council may issue such additional anticipatory warrants as may be necessary or required to refund existing warrants and the issuance of additional anticipatory warrants for the purpose of refunding anticipatory warrants shall not be considered to be a violation of the prohibition hereinbefore contained fixing the amount of said warrants to be outstanding at any one time in an amount not to exceed three million five hundred thousand dollars. [C27,§1090-b3; C31, 35, §7420-b3; C39,§7420.27; C46, 50, 54,§454.19]

Referred to in §§453.9, 454.34

**454.20 Interest.** Said warrants shall bear interest from date at a rate not to exceed four percent, which interest shall be payable at the end of each year, or for such shorter period as said warrants may remain unpaid. [C27, §1090-b4; C31, 35,§7420-b4; C39,§7420.28; C46, 50, 54,§454.20]

Referred to in §454.34  
Change in interest rate not applicable to outstanding bonds, 49GA, ch 263,§7

**454.21 Form of warrants.** Said warrants shall, subject to the foregoing limitations, be issued in such individual and gross amounts and in such form and at such rate of interest as the executive council shall approve.

Each certificate or warrant issued under the provisions of this act\* shall have printed on the face thereof the words: "This warrant is an obligation of the state sinking fund for public deposits only." [C27,§1090-b5; C31, 35, §7420-b5; C39,§7420.29; C46, 50, 54,§454.21]

Referred to in §454.34  
\*42GA, ch 92

**454.22 Public sale—interest.** Said warrants shall be offered by the treasurer of state at public sale and shall be sold at a price not less than par plus accrued interest to the date when the treasurer of state shall actually receive payment for said warrants and make delivery of the same to the purchaser. [C27,§1090-b6; C31,§7420-b6; C35,§7420-g1; C39, §7420.30; C46, 50, 54,§454.22]

Referred to in §454.34

**454.23 Advertisement.** When said anticipatory warrants are to be offered for sale, the treasurer of state shall by advertisement published for two or more successive weeks in at least two daily newspapers in the state, one of which shall be in Des Moines, give ten days notice of the time and place of the sale of said warrants which notice shall contain a statement of the amount of such warrants to be offered for sale, the time and place of



sale, and any further information which may be deemed pertinent. [C35,§7420-g2; C39, §7420.31; C46, 50, 54,§454.23]

Referred to in §454.34

**454.24 Bids.** Sealed bids may be received at any time prior to the call for open bids. After the sealed bids are on file, the executive council shall call for open bids. After all of the open bids have been received the substance of the best bid shall be recorded in the minutes of the secretary of the executive council. The secretary of the executive council shall then in the presence of the executive council open all sealed bids that may have been filed and shall note the substance of the best sealed bids. [C35,§7420-g3; C39,§7420.32; C46, 50, 54, §454.24]

Referred to in §454.34

**454.25 Private sale—preference.** Any or all bids may be rejected and the sale may be advertised anew, in the same manner, or the anticipatory warrants or any portion thereof may thereafter be sold at private sale to any one or more of such bidders or other person providing, however, that preference shall be given to individuals residing in Iowa, corporations organized under the laws of the state of Iowa and resident partnerships insofar as possible to do so. In case of a private sale, the said warrants shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [C27, §1090-b6; C31,§7420-b6; C35,§7420-g4; C39, §7420.33; C46, 50, 54,§454.25]

Referred to in §454.34

**454.26 Commission and expense.** No commission shall be paid directly or indirectly in connection with the sale of any anticipatory warrant. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such anticipatory warrants for sale. [C35,§7420-g5; C39,§7420.34; C46, 50, 54,§454.26]

Referred to in §454.34

**454.27 Misdemeanor.** Any public officer or employee who fails to perform any duty required by this act\* or who does any act prohibited by this act shall be guilty of an indictable misdemeanor. [C35,§7420-g6; C39, §7420.35; C46, 50, 54,§454.27]

\*46GA, ch 87

Referred to in §454.34  
Punishment, §687.7

**454.28 Construction.** Nothing contained in this chapter, as amended by this act,\* shall be deemed to prevent the refunding of any warrants heretofore or hereafter issued under the provisions of this chapter. [C35,§7420-g7; C39, §7420.36; C46, 50, 54,§454.28]

\*46GA, ch 87

Referred to in §454.34  
Constitutionality, 46GA, ch 87, §10  
Omnibus repeal, 46GA, ch 87, §9

**454.29 Record of sales.** Said treasurer shall make and retain in his office a complete record of all warrants sold to each purchaser and of the post-office address of such purchaser. [C27, §1090-b7; C31, 35,§7420-b7; C39,§7420.37; C46, 50, 54,§454.29]

Referred to in §454.34

**454.30 Change in addresses.** Purchasers of warrants may at any time notify said treasurer of their post-office addresses, or of any change in said addresses, and of the warrants owned or held by them, and said treasurer shall change his sale record accordingly. [C27, §1090-b8; C31, 35,§7420-b8; C39,§7420.38; C46, 50, 54,§454.30]

Referred to in §454.34

**454.31 Payment.** Said warrants and all interest thereon shall be payable by the treasurer of state solely from the funds paid into said state sinking fund for public deposits, and said funds are hereby exclusively and irrevocably pledged to such payment in the consecutive order in which said warrants are issued. [C27,§1090-b9; C31, 35,§7420-b9; C39,§7420.39; C46, 50, 54,§454.31]

Referred to in §454.34

**454.32 Application of funds.** All funds which are derived from the sale of said warrants shall be applied exclusively to the payment of the allowed and certified claims on account of which such warrants were issued. [C27,§1090-b10; C31, 35,§7420-b10; C39,§7420.40; C46, 50, 54,§454.32]

Referred to in §454.34

**454.33 Termination of interest.** After the sale of any series of warrants, the treasurer of state shall, at least by the twentieth day of each month thereafter, if he has funds in the state sinking fund for public deposits sufficient to pay one or more of said outstanding warrants, mail to the purchaser or holder of said warrant or warrants at his post-office address as shown by the record of sale, a notice that said warrant or warrants will be paid on presentation and that interest thereon will cease after the expiration of ten days from the mailing of said notice. Upon the expiration of ten days from the mailing of said notice interest shall cease on said warrant or warrants. [C27,§1090-b11; C31, 35,§7420-b11; C39,§7420.41; C46, 50, 54,§454.33]

Referred to in §454.34

**454.34 Applicability.** Sections 454.19 to 454.33, inclusive, shall apply to all unpaid claims allowed and certified either before or after said sections take effect. [C27,§1090-b12; C31, 35,§7420-b12; C39,§7420.42; C46, 50, 54, §454.34]

**454.35** Repealed by 57GA, ch 54,§8. See §453.9.

# TITLE XVII

## CERTAIN INTERNAL IMPROVEMENTS

### CHAPTER 455

#### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

Referred to in §§358.23, 455.22, 457.4, 457.14, 457.15, 457.19, 457.23, 457.28, 458.4, 460.1, 460.11, 462.30,  
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**455.1 Jurisdiction to establish.** The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience, or welfare. [C73,§1207; C97,§1939; S13,§1989-a1; C24, 27, 31, 35, 39,§7421; C46, 50, 54,§455.1]

**455.2 Presumption.** The drainage of surface waters from agricultural lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare. [S13,§1989-a1; C24, 27, 31, 35, 39,§7422; C46, 50, 54,§455.2]

**455.3 "Levee" defined—bank protection.** For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri river the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion. [C24, 27, 31, 35, 39,§7423; C46, 50, 54,§455.3]

**455.4 Definition of terms.** Within the meaning of this chapter and chapter 457, the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of inter-county levee or drainage districts, and the board of trustees in case of a district under trustee management.

The term "commissioners" shall mean the men appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

The term "appraisers" shall mean the men appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

The term, or terms, "engineer" or "civil engineer" shall mean a civil engineer as designated by chapter 114 or a registered professional drainage engineer or a registered professional drainage surveyor. [C24, 27, 31, 35, 39,§7424; C46, 50, 54,§455.4]

Omnibus repeal, 52GA, ch 243,§3  
Referred to in §393.12

**455.5 General rule for location.** The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district;

but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage. [S13,§1989-a2; C24, 27, 31, 35, 39,§7425; C46, 50, 54,§455.5]

**455.6 Location across railroad.** When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway. [S13,§1989-a2; C24, 27, 31, 35, 39,§7426; C46, 50, 54,§455.6]

**455.7 Number of petitioners required.** Two or more owners of lands named in the petition described in section 455.9, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district. [S13,§§1989-a2,-a23; C24, 27, 31, 35, 39,§§7427, 7428; C46,§§455.7, 455.8; C50, 54,§455.7]

40ExGA, HF 185,§6, editorially divided

**455.8 Request by nonpetitioners.** In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in sections 455.10 and 455.11 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district. [57GA, ch 218,§2]

**455.9 Petition.** The petition shall set forth:

1. An intelligible description, by congressional subdivision or otherwise, of the lands suggested for inclusion in the district.

2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.

4. The suggested starting point, route, terminus and lateral branches of the proposed improvements.

5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 455.45 to 455.51, inclusive, after the board has approved the report of the engineer

as a tentative plan but before the district is finally established. [S13,§§1989-a2,-a23; C24, 27, 31, 35, 39,§7429; C46, 50, 54,§455.9; 57GA, ch 218, §1]

Referred to in §455.7

**455.10 Bond.** There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established. [S13,§1989-a2; C24, 27, 31, 35, 39,§7430; C46, 50, 54,§455.10]

Referred to in §§357.1, 357A.1, 455.8

**455.11 Additional bond.** No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense. [C24, 27, 31, 35, 39,§7431; C46, 50, 54,§455.11]

Referred to in §455.8

**455.12 Engineer—bond.** The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties. [S13,§1989-a2; C24, 27, 31, 35, 39,§7432; C46, 50, 54,§455.12]

**455.13 Compensation.** Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors. [S13,§1989-a41; C24, 27, 31, 35, 39, §7433; C46, 50, 54,§455.13]

**455.14 Discharge.** The board may at any time terminate the contract with, and discharge the engineer. [S13,§1989-a2; C24, 27, 31, 35, 39,§7434; C46, 50, 54,§455.14]

**455.15 Assistants.** Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation. [S13,§1989-a42; C24, 27, 31, 35, 39,§7435; C46, 50, 54,§455.15]

40ExGA, HF 185,§12, editorially divided

**455.16 Record of work.** The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the

board, and vouchers shall be filed with the claims therefor. [S13,§1989-a42; SS15,§1527-s21b; C24, 27, 31, 35, 39,§7436; C46, 50, 54,§455.16]

**455.17 Survey.** The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare. [S13,§1989-a2; C24, 27, 31, 35, 39,§7437; C46, 50, 54,§455.17]

Referred to in §§455.19, 455.28, 460.5

**455.18 Report.** The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material.

Where the proposed district contemplates as its object flood control or soil conservation the engineer shall include in his report data describing any soil conservation or flood control improvements, the nature thereof, and such other additional data as shall be prescribed by the Iowa natural resources council. [S13,§1989-a2; C24, 27, 31, 35, 39,§7438; C46, 50, 54,§455.18]

Referred to in §§455.19, 455.28, 460.5

**455.19 Procedure on report—classification.** Upon the filing of the report of the engineer recommending the establishment of the levee

or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 455.17 and 455.18. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections 455.45 to section 455.51, inclusive, after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 455.20 shall also include the requirements of the notice of hearing provided in section 455.52 as to this classification, and the hearing on the petition provided in section 455.27 shall also include the matters to be heard as provided in section 455.53. If the board establishes the district as provided in section 455.28, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 455.56. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment. [S13, §1989-a3; C24, 27, 31, 35, 39, §7439; C46, 50, 54, §455.19; 57GA, ch 218, §3]

**455.20 Notice of hearing.** When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to each lienholder or encumbrancer of any land within the proposed district as shown by the county records, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and

the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing. [S13, §1989-a3; C24, 27, 31, 35, 39, §7440; C46, 50, 54, §455.20]

Referred to in §§455.19, 455.21, 455.135

**455.21 Service by publication—copy mailed—proof.** The notice provided in section 455.20 shall be served, except as otherwise herein-after provided, by publication thereof once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to each person named therein at his last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of such service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins. [S13, §1989-a3; C24, 27, 31, 35, 39, §7441; C46, 50, 54, §455.21; 57GA, ch 219, §1]

Referred to in §§455.55, 455.81, 455.135, 455.207, 457.15

**455.22 Service on agent.** If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under chapters 455 to 468, inclusive, shall file with the auditor an instrument in writing designating the name and post-office address of his or its agent upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by certified mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed by him in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular. [S13, §1989-a3; C24, 27, 31, 35, 39, §7442; C46, 50, 54, §455.22; 57GA, ch 267, §60]

Referred to in §§455.55, 455.135, 455.207  
 Chapters 456, 463, 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457

Similar provision, §391.54

**455.23 Personal service.** In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing. [S13, §1989-a3; C24, 27, 31, 35, 39, §7443; C46, 50, 54, §455.23]

Referred to in §§455.135, 455.207  
Time and manner of service, R.C.P. 53 and 56(a)

**455.24 Waiver of notice.** No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance. [S13, §1989-a3; C24, 27, 31, 35, 39, §7444; C46, 50, 54, §455.24]

Referred to in §§455.135, 455.207

**455.25 Waiver of objections and damages.** Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages. [S13, §1989-a4; C24, 27, 31, 35, 39, §7445; C46, 50, 54, §455.25]

Referred to in §455.207

**455.26 Adjournment for service — jurisdiction retained.** If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice. [S13, §1989-a3; C24, 27, 31, 35, 39, §7446; C46, 50, 54, §455.26]

Referred to in §455.207

**455.27 Hearing of petition — dismissal.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or

welfare, or that the cost thereof is excessive it shall dismiss the proceedings. [S13, §1989-a5; C24, 27, 31, 35, 39, §7447; C46, 50, 54, §455.27]

Referred to in §455.19

**455.28 Establishment — further investigation.** If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 455.17 and 455.18, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 455.30 to assess the value of the right of way required for open ditches or other improvements. [S13, §1989-a5; C24, 27, 31, 35, 39, §7448; C46, 50, 54, §455.28]

Referred to in §455.19

**455.29 Settling basins—purchase or lease of lands.** If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. [C27, 31, 35, §7448-a1; C39, §7448.1; C46, 50, 54, §455.29]

**455.30 Appraisers.** If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability. [S13, §1989-a5; C24, 27, 31, 35, 39, §7449; C46, 50, 54, §455.30]

Referred to in §§455.28, 455.210

**455.31 Assessment — report — adjournment — other appraisers.** The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers. [S13,§1989-a6; C24, 27, 31, 35, 39,§7450; C46, 50, 54,§455.31]

**455.32 Award by board.** At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers. [S13,§1989-a6; C24, 27, 31, 35, 39, §7451; C46, 50, 54,§455.32]

40ExGA, HF 185,§27, editorially divided  
Referred to in §455.210

**455.33 Dismissal or establishment.** The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement. [S13,§1989-a6; C24, 27, 31, 35, 39,§7452; C46, 50, 54,§455.33]

**455.34 Dismissal on remonstrance.** If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may

be, shall assess to the petitioners and their bondsmen or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district. [C24, 27, 31, 35, 39, §7453; C46, 50, 54,§455.34]

**455.35 Dissolution.** When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective. [C24, 27, 31, 35, 39,§7454; C46, 50, 54,§455.35]

**455.36 Permanent survey, plat, and profile.** When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof. [S13,§1989-a6; C24, 27, 31, 35, 39,§7455; C46, 50, 54,§455.36]

Referred to in §455.69

**455.37 Paying or securing damages.** The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor. [S13,§1989-a7; C24, 27, 31, 35, 39,§7456; C46, 50, 54,§455.37]

**455.38 Division of improvement.** After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to



the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself. [S13,§1989-a7; C24, 27, 31, 35, 39,§7457; C46, 50, 54,§455.38]

**455.39 Supervising engineer—bond.** Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties. [S13,§1989-a7; C24, 27, 31, 35, 39,§7458; C46, 50, 54,§455.39]

**455.40 Advertisement for bids.** The board shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work of construction of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on and certified by a bank in Iowa, payable to the auditor or his order, at his office, in an amount equal to ten percent of his bid, in no case to exceed ten thousand dollars. When the estimated cost of the improvement exceeds fifteen thousand dollars, the board shall make additional publication for two consecutive weeks in some contractors journal of general circulation, giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and the name and address of the county auditor. All notices shall fix the date to which bids will be received, and upon which said work will be let. [C73,§1212; C97,§1944; S13,§1944; SS15,§1989-a8; C24, 27, 31, 35, 39,§7459; C46, 50, 54,§455.40]

See §455.73

**455.41 Bids—letting of work.** The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work. [SS15,§1989-a8; C24, 27, 31, 35, 39,§7460; C46, 50, 54,§455.41]

See §455.73

**455.42 Manner of making bids—deposit.** Each bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa, payable to the auditor or his order at his office in a sum equal to ten percent of the amount of the bid, but in any event not to exceed ten thousand dollars. The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids. [SS15,§1989-a8; C24, 27, 31, 35, 39,§7461; C46, 50, 54,§455.42]

**455.43 Performance bond—return of check.** Each successful bidder shall be required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder. [SS15, §1989-a8; C24, 27, 31, 35, 39,§7462; C46, 50, 54, §455.43]

**455.44 Contracts.** All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof. [C24, 27, 31, 35, 39,§7463; C46, 50, 54,§455.44]

**455.45 Commissioners to classify and assess.** When a levee or drainage district shall have been located and finally established, and the contracts for construction let, or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of such district, or the required proceedings have been had to annex additional lands to such district, or a plan of the United States government for original construction of the improvements in such district has been heretofore or hereafter adopted by such district under the provisions of sections 455.201 to 455.216, inclusive, the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commis-

sioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any lands included in, said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7464; C46, 50, 54,§455.45; 57GA, ch 220,§1]

Referred to in §§455.9, 455.19, 455.56, 455.72, 455.135  
See §455.74

**455.46 Duties—time for performance—scale of benefits.** At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed. [SS15, §1989-a12; C24, 27, 31, 35, 39,§7465; C46, 50, 54, §455.46]

Referred to in §§455.9, 455.19

**455.47 Rules of classification.** In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves

and protects the same from damage by erosion. [S13,§1989-a13; SS15,§1989-a12; C24, 27, 31, 35, 39,§7467; C46, 50, 54,§455.47]

Referred to in §§455.9, 455.19

**455.48 Assessment for lateral ditches.** In fixing the percentages and assessment of benefits and apportionment of costs of construction on lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:

1. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

2. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement. [S13,§1989-a23; SS15,§1989-a12; C24, 27, 31, 35, 39,§7468; C46, 50, 54,§455.48]

Referred to in §§455.9, 455.19, 455.141

**455.49 Railroad property—collection.** The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district. [S13,§1989-a18; C24, 27, 31, 35, 39,§7469; C46, 50, 54,§455.49]

Referred to in §§455.9, 455.19, 455.72

**455.50 Public highways and state-owned lands.** When any public highway extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway, and the board of supervisors shall assess the same against such highway.

Such assessments against primary highways shall be paid by the state highway commission from the primary road fund on due certification of the amount by the county treasurer to said commission, and against all secondary roads, from the secondary road construction fund or from the secondary road maintenance fund, or from both of said funds.

When any state-owned lands under the jurisdiction of the state conservation commission are situated within a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands.

Such assessments against lands used by the fish and game division of the state conservation commission shall be paid by the state conservation commission from the state fish and game protection fund on due certification of the amount by the county treasurer to said commission, and against lands used by the division of lands and waters from the state conservation funds. [S13, §§1989-a19, a26; C24, 27, 31, 35, 39, §7470; C46, 50, 54, §455.50; 57GA, ch 221, §1]

Referred to in §§455.9, 455.19, 455.72

**455.51 Report of commissioners.** The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district for erosion protection or flood control.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense against each:

- a. For main ditches, and settling basins.
- b. For laterals.
- c. For levees and pumping station.

3. The aggregate amount of all assessments.

4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7471; C46, 50, 54, §455.51]

Referred to in §§455.9, 455.19  
See §455.74

**455.52 Notice of hearing.** The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7472; C46, 50, 54, §455.52]

40ExGA, HF 185, §46, editorially divided  
Referred to in §455.19

**455.53 Hearing and determination.** At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7473; C46, 50, 54, §455.53]

Referred to in §455.19

**455.54 Evidence — conclusive presumption.** At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument by himself or counsel. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7474; C46, 50, 54, §455.54]

40ExGA, HF 185, §46, editorially divided  
Similar provision, §455.102

**455.55 Notice of increased assessment.** The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring him to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section 455.21 or section 455.22, as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7475; C46, 50, 54, §455.55; 57GA, ch 219, §2]

Service of notice, R.C.P. 56(a) et seq.

**455.56 Classification as basis for future assessments.** A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes, said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next tax-paying period.

Except districts established by mutual agreement in accordance with section 455.152 in the

event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right of way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to such subdivision. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with such agreement.

In the event the parties to such subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall appoint a commission having the qualifications of commissioners, in accordance with section 455.45. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided and shall make a full, accurate and detailed report thereof and file the same with the county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear (1) for main ditches and settling basins, (2) for laterals, (3) for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this chapter provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided. [SS15,§1989-a12; C24, 27,§§7466, 7476; C31, 35, 39,§7476; C46, 50, 54,§455.56; 57GA, ch 222,§1]

Referred to in §455.19

**455.57 Levy—interest.** When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, and all assessments shall be levied at that time as a tax and shall bear interest at four percent per annum from that date, payable annually, except as hereinafter provided as to cash payments thereof within

a specified time. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7477; C46, 50, 54,§455.57]

Change in interest rate not applicable to outstanding bonds, 49GA, ch 263,§7

**455.58 Lien of tax.** Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes. [S13,§1989-a45; C24, 27, 31, 35, 39,§7478; C46, 50, 54,§455.58]

**455.59 Levy for deficiency.** If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 455.64. [S13,§1989-a26; C24, 27, 31, 35, 39,§7479; C46, 50, 54,§455.59]

**455.60 Record of drainage taxes.** All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county. [C24, 27, 31, 35, 39,§7480; C46, 50, 54,§455.60]

40ExGA, HF 185,§47, editorially divided

**455.61 Funds—disbursement—interest.** Such taxes when collected shall be kept in a separate fund known as the drainage or levee fund of the district to which they belong, and shall be paid out only for purposes properly connected with and growing out of the drainage or levee improvement of such district, and on order of the board. Interest collected by the treasurer on drainage or levee districts funds shall be credited to the drainage or levee district to which such funds belong. [S13, §1989-a13; C24, 27, 31, 35, 39,§7481; C46, 50, 54, §455.61]

**455.62 Assessments—maturity and collection.** All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales. [S13,§1989-a26; C24, 27, 31, 35, 39,§7482; C46, 50, 54,§455.62]

Collection of taxes, ch 445

**455.63 Payment before bonds or certificates issued.** All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty days after the levy of assessments, to pay his or its assessment in full without interest, and before any improvement certificate or drainage bond is issued therefor, and any certificate at any time after issue, with accrued interest. [S13, §1989-a26; C24, 27, 31, 35, 39,§7483; C46, 50, 54, §455.63]

**455.64 Installment payments — waiver.** If the owner of any premises against which a levy exceeding twenty dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing indorsed upon any improvement certificate referred to in section 455.77, or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of four percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding four percent per annum. One such installment shall be payable at the March semiannual taxpaying date in each year; provided, however, that the county treasurer shall, at the March semiannual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty.

The provisions of this section and of sections 455.65 to 455.68, inclusive, may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 455.135. [S13, §§1989-a26, a27; SS15, §1989-a12; C24, 27, 31, 35, 39, §7484; C46, 50, 54, §455.64]

Referred to in §§455.59, 455.66, 455.136  
Change in interest rate not applicable to outstanding bonds, 49GA, ch 263, §7

**455.65 Installment payments after appeal.** When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date. [C24, 27, 31, 35, 39, §7486; C46, 50, 54, §455.65]

Referred to in §§455.64, 455.136

**455.66 Notice of half and full completion.** Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 455.64, of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver. [C24, 27, 31, 35, 39, §7487; C46, 50, 54, §455.66; 57GA, ch 267, §61]

Referred to in §§455.64, 455.136

**455.67 Lien of deferred installments.** No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until the thirty-first day of December of the year next preceding that in which it is due and payable. [SS15, §1989-a12; C24, 27, 31, 35, 39, §7488; C46, 50, 54, §455.67]

Referred to in §§455.64, 455.136

**455.68 Surplus funds—application of.** When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of his proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, his proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs. [C24, 27, 31, §7489; C35, §§7488-e1, 7489; C39, §§7488.1, 7489; C46, §§455.68, 455.69; C50, 54, §455.68]

Referred to in §§455.64, 455.136

**455.69 Change of conditions — modification of plan.** If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 455.36 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 455.201, 455.205 to 455.209, inclusive, so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. [C54, §455.69]

**455.70 Subdrainage district.** After the establishment of a drainage district, any person, company, or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district. [S13, §1989-a23; C24, 27, 31, 35, 39, §7490; C46, 50, 54, §455.70]

40ExGA, HF 185, §52, editorially divided  
Referred to in §455.151

**455.71 Presumption—jurisdiction.** Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district. [S13, §1989-a23; C24, 27, 31, 35, 39, §7491; C46, 50, 54, §455.71]

**455.72 Reclassification.** When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 455.152, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right of way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 455.45 and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.
2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commis-

sioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 455.49 and 455.50.

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this chapter. [C24, 27, 31, 35, 39, §7492; C46, 50, 54, §455.72; 57GA, ch 223, §1]

Commissioners, appointment and oath, §455.45

**455.73 Bids required.** In case the board shall finally determine that any such changes shall be made involving an expenditure of five thousand dollars or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements. [C24, 27, 31, 35, 39, §7493; C46, 50, 54, §455.73]

See §§455.40, 455.41

**455.74 Procedure governing reclassification.** The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly. [C24, 27, 31, 35, 39, §7494; C46, 50, 54, §455.74]

See §§455.46, 455.51

**455.75 Drainage warrants received for assessments.** Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by indorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer there-

with. Such certificate is transferable by indorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number . . . . . ." [S13,§1989-a13; C24, 27, 31, 35, 39,§7495; C46, 50, 54,§455.75]

**455.76 Bonds received for assessments.**

Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future. [C35,§7495-e1; C39,§7495.1; C46, 50, 54,§455.76]

See §74.1 et seq.

**455.77 Improvement certificates.** The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work. [S13,§1989-a26; C24, 27, 31, 35, 39,§7499; C46, 50, 54,§455.77]

Referred to in §§455.64, 455.81

**455.78 Form, negotiability, and effect.** Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature. [S13,§1989-a26; C24, 27, 31, 35, 39,§7500; C46, 50, 54,§455.78]

Referred to in §455.81

**455.79 Interest—place of payment.** Such certificates shall bear interest not to exceed four percent per annum, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor. [S13,§1989-a26; C24, 27, 31, 35, 39,§7501; C46, 50, 54,§455.79]

Referred to in §455.81

Change in interest rate not applicable to outstanding bonds, 49GA, ch 263,§7

**455.80 Sale at par—right to pay.** Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any

time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates. [S13,§§1989-a26, a27; C24, 27, 31, 35, 39, §7502; C46, 50, 54,§455.80]

Referred to in §455.81

**455.81 Drainage bonds.** When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in sections 455.77 to 455.80, inclusive, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of twenty dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office; also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section 455.21. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be indorsed on the bonds before their issuance. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7503; C46, 50, 54,§455.81; 57GA, ch 219,§3]

**455.82 Form.** Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued. [S13,§1989-a27; C24, 27, 31, 35, 39,§7504; C46, 50, 54,§455.82]

40ExGA, HF 185,§69, editorially divided

**455.83 Amount—interest—maturity.** In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for



the payment of which they are issued, nor for a longer period of maturity than twenty years, and bear a rate of interest not to exceed five percent per annum, payable semiannually, on June 1 and December 1 of each year. [C97, §1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7505; C46, 50, 54,§455.83]

Referred to in §357.21

**455.84 Maturity — interest — highway benefits.** The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners. [S13, §1989-a27; C24, 27, 31, 35, 39,§7506; C46, 50, 54, §455.84]

**455.85** Repealed by 55GA, ch 211,§2.

**455.86 Sale or application at par—premium.** Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7508; C46, 50, 54,§455.86]

40ExGA, HF 185,§67, editorially divided  
Referred to in §357.21

**455.87 Deficiency levy—additional bonds.** If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues. [C97,§1953; S13, §1989-a27; C24, 27, 31, 35, 39,§7509; C46, 50, 54, §455.87]

**455.88 Funding or refunding indebtedness.** Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 461.13. [C27, 31, 35,§7509-a1; C39,§7509.1; C46, 50, 54,§455.88]

Additional provisions, ch 463

**455.89 Record of bonds.** A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district

upon which the tax has not been previously paid in full. [S13,§1989-a27; C24, 27, 31, 35, 39, §7510; C46, 50, 54,§455.89]

**455.90 Assessments payable in cash.** All assessments of twenty dollars and less shall be paid in cash. [C24, 27, 31, 35, 39,§7511; C46, 50, 54,§455.90]

40 ExGA, HF 185,§68, editorially divided

**455.91 Payment before bonds issued.** The board at the time of making the levy, shall fix a time within which all assessments in excess of twenty dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds. [C24, 27, 31, 35, 39, §7512; C46, 50, 54,§455.91]

**455.92 Appeals.** Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held. [S13,§§1989-a6,-a11,-a14; C24, 27, 31, 35, 39,§7513; C46, 50, 54,§455.92]

Referred to in §455.145

**455.93 Appeals in intercounty districts.** In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends. [S13,§1989-a35; C24, 27, 31, 35, 39,§7514; C46, 50, 54,§455.93]

**455.94 Time and manner.** All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court. [S13,§§1989-a6,-a14,-a35; C24, 27, 31, 35, 39,§7515; C46, 50, 54,§455.94]

Referred to in §§357.33, 455.95, 455.145, 463.8  
Presumption of approval of bond, §682.10

**455.95 Transcript.** When notice of any appeal with the bond as required by section 455.94 shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk. [S13,§1989-a14; C24, 27, 31, 35, 39,§7516; C46, 50, 54,§455.95]

Referred to in §§357.33, 455.145

**455.96 Petition — docket fee — waiver — dismissal.** On or before the first day of the next succeeding term of court, the appellant shall



file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. [S13,§1989-a14; C24, 27, 31, 35, 39,§7517; C46, 50, 54,§455.96]

40ExGA, HF 185,§76, editorially divided  
Referred to in §§357.33, 455.145  
Fee, §606.15, subsection 1

**455.97 Pleadings on appeal.** It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so. [S13, §1989-a14; C24, 27, 31, 35, 39,§7518; C46, 50, 54, §455.97]

Referred to in §§357.33, 455.145

**455.98 Proper parties—employment of counsel.** In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties. [S13,§1989-a14; C24, 27, 31, 35, 39,§7519; C46, 50, 54,§455.98]

40ExGA, HF 185,§77, editorially divided  
Referred to in §§357.33, 455.145

**455.99 Plaintiffs and defendants.** In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants. [S13,§1989-a14; C24, 27, 31, 35, 39, §7520; C46, 50, 54,§455.99]

Referred to in §357.33

**455.100 Right of board and district to sue.** In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs. [S13,§1989-a14; C24, 27, 31, 35, 39,§7521; C46, 50, 54,§455.100]

Referred to in §357.33

**455.101 Trial on appeal—consolidation.** Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. [S13, §§1989-a6, -a14, -a35; C24, 27, 31, 35, 39,§7522; C46, 50, 54,§455.101]

Referred to in §357.33

**455.102 Conclusive presumption on appeal.** On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as

established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7523; C46, 50, 54,§455.102]

Referred to in §357.33  
Similar provision, §455.54

**455.103 Order as to damages—duty of clerk.** If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant. [S13,§1989-a6; C24, 27, 31, 35, 39,§7524; C46, 50, 54,§455.103]

40ExGA, HF 185,§81, editorially divided  
Referred to in §357.33

**455.104 Costs.** Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. [S13,§1989-a6; C24, 27, 31, 35, 39,§7525; C46, 50, 54,§455.104]

Referred to in §357.33

**455.105 Decree as to establishing district or including lands.** On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court. [S13,§1989-a6; C24, 27, 31, 35, 39,§7526; C46, 50, 54,§455.105]

Referred to in §357.33

**455.106 Appeal as exclusive remedy—non-appellants.** Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies. [S13,§1989-a46; C24, 27, 31, 35, 39,§7527; C46, 50, 54,§455.106]

Referred to in §357.33

**455.107 Reversal by court—rescission by board.** In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid. [S13,§1989-a14; C24, 27, 31, 35, 39,§7528; C46, 50, 54,§455.107]

Referred to in §357.33

**455.108 Setting aside establishment—procedure.** After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts. [S13,§1989-a14; C24, 27, 31, 35, 39,§7529; C46, 50, 54,§455.108]

Referred to in §357.33

**455.109 Reassessment to cure illegality.** Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relieving the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract. [C24, 27, 31, 35, 39,§7530; C46, 50, 54, §455.109]

Referred to in §357.33

**455.110 Monthly estimate — payment.** The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be, for eighty percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of one thousand dollars.

All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction. [C97,§1944; S13, §§1944, 1989-a9; C24, 27, 31, 35, 39,§7531; C46, 50, 54,§455.110]

**455.111 Completion of work — report — notice.** When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one publication in a newspaper of general circulation published in said county and the date fixed for considering said report shall be not less than five days after the date of such publication. [S13,§1989-a9; C24, 27, 31, 35, 39, §7532; C46, 50, 54,§455.111]

Referred to in §357.18

**455.112 Objections.** Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. [C24, 27, 31, 35, 39, §7533; C46, 50, 54,§455.112]

Referred to in §357.18

**455.113 Final settlement.** If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work. [C73,§1212; C97,§1944; S13,§§1944, 1989-a9; C24, 27, 31, 35, 39,§7534; C46, 50, 54,§455.113]

Filing of claims, §573.10

**455.114 Abandonment of work.** In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office. [S13,§§1944, 1989-a10; C24, 27, 31, 35, 39,§7535; C46, 50, 54,§455.114; 57GA, ch 267,§62]

Referred to in §357.17

**455.115 New contract—suit on bond.** Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon

the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district. [C73,§1212; C97,§1944; S13,§§1944, 1989-a10; C24, 27, 31, 35, 39,§7536; C46, 50, 54,§455.115]

Referred to in §357.17

#### 455.116 Construction on or along highway.

When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon. [S13,§1989-a20; C24, 27, 31, 35, 39,§7537; C46, 50, 54,§455.116]

40ExGA, HF 185,§94, editorially divided

**455.117 Establishment of highways.** The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain. [S13,§1989-a20; C24, 27, 31, 35, 39,§7538; C46, 50, 54,§455.117]

**455.118 Bridges.** When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge, the board of supervisors when in the exercise of its sound discretion it appears that it will promote the general public welfare shall move, build, or rebuild the same, paying the costs and expenses thereof from either or both of the secondary road funds.

If the bridge be a primary road bridge, the work aforesaid shall be done by the state highway commission and paid for out of the primary road fund. [S13,§1989-a19; C24, 27, 31, 35, 39,§7539; C46, 50, 54,§455.118]

Primary and secondary roads, chs 309-314

**455.119 Construction across railroad.** When-ever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right of way,

so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it. [S13,§1989-a18; C24, 27, 31, 35, 39,§7540; C46, 50, 54,§455.119]

Referred to in §455.120  
Manner of service, R.C.P. 56(a) et seq.

**455.120 Duty to construct.** Upon receiving the notice provided in section 455.119, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified. [S13,§1989-a18; C24, 27, 31, 35, 39,§7541; C46, 50, 54,§455.120]

40ExGA, HF 185,§97, editorially divided

**455.121 Bridges at natural waterway—costs.** The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor. [S13,§1989-a18; C24, 27, 31, 35, 39,§7542; C46, 50, 54,§455.121]

**455.122 Construction when company refuses.** If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction. [S13,§1989-a18; C24, 27, 31, 35, 39,§7543; C46, 50, 54,§455.122]

40ExGA, HF 185,§98, editorially divided

**455.123 Cost of construction across railway.** The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages. [S13,§1989-a18; C24, 27, 31, 35, 39,§7544; C46, 50, 54,§455.123]

**455.124 Passing drainage equipment across railway.** It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone, and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the com-

pany shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made. [C24, 27, 31, 35, 39,§7545; C46, 50, 54,§455.124]

**455.125 Passage across other public utilities.**

The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this chapter unrestricted passage for his machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors. [C24, 27, 31, 35, 39,§7546; C46, 50, 54,§455.125]

**455.126 Failure to comply.** If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made. [C24, 27, 31, 35, 39,§7547; C46, 50, 54,§455.126]

**455.127 Expenses attending passage.** The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor. [C24, 27, 31, 35, 39,§7548; C46, 50, 54,§455.127]

**455.128 Annexation of additional lands.** After the establishment of a levee or drainage district, if the board becomes convinced that additional lands are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 455.135, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district, said report to specify the character of the benefits received. [S13,§1989-a54; C24, 27, 31, 35, 39, §7549; C46, 50, 54,§455.128; 57GA, ch 224,§1]

Referred to in §455.130

**455.129 Proceedings on report.** If such report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made), as to classification and assessment of benefits, to the same extent and in the same manner as provided in the establishment of an original district. All parties shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district. [S13,§1989-a54; C24, 27, 31, 35, 39,§7550; C46, 50, 54,§455.129]

**455.130 Levy on annexed lands.** After such annexation is made the board shall levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 455.128 was that said lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 455.128 was based on the fact that additional lands are now benefited by virtue of the repair or improvement made to said district and were not benefited by the district as originally established, then the board shall levy upon said annexed lands an assessment sufficient to pay their proportionate share of the costs of said repair or improvement which was the basis for the lands being annexed. [S13,§1989-a54; C24, 27, 31, 35, 39,§7551; C46, 50, 54,§455.130; 57GA, ch 224,§2]

**455.131 Use of former and abandoned surveys.** In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same. [S13,§1989-a16; C24, 27, 31, 35, 39,§7552; C46, 50, 54,§455.131]

**455.132 Unsuccessful procedure — re-establishment.** When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits. [S13,§§1989-a17,-a50; C24, 27, 31, 35, 39,§7553; C46, 50, 54,§455.132]

**455.133 New district including old district.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [S13,§1989-a25; C24, 27, 31, 35, 39,§7554; C46, 50, 54,§455.133]

Referred to in §465.134

**455.134 Credit for old improvement.** When such district as contemplated in section 455.133 and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts. [S13,§1989-a25; C24, 27, 31, 35, 39,§7555; C46, 50, 54,§455.134]

**455.135 Repair.**

1. When any levee or drainage district shall have been established and the improvement constructed, the same shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and

management by a board of trustees and it shall be the duty of the board to keep the same in repair. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity. In the event permanent restoration of a damaged structure is not feasible at the time, the board may order such temporary construction as it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from the engineer's report it is more economical to construct a new line than to repair the existing line, such new line may be considered to be a repair. Provided, however, if the estimated cost of repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein as defined in this section, the board shall set a date for a hearing on the matter of making such repairs, and shall give notice as provided in sections 455.20 to 455.24, inclusive. At such hearing the board shall hear objections to the feasibility of such repairs, following the hearing the board shall order made such repairs as it deems desirable and feasible. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of five hundred dollars where the board finds that the same will result in a saving to the district it may cause the same to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road maintenance fund or the weed fund from the drainage district fund thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any drainage district and assess the costs in each case against the land served by the private tile line.

4. When the board determines that improvements, which differ from the repairs referred to in the preceding paragraphs, are necessary or desirable, it may appoint an engineer to make such surveys as seem appropriate to determine the nature and extent of such improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. Such improvements may include enlarging, reopening, widening, deepening, straightening or lengthening any drain, changing its location or improving or enlarging the outlet for better service; converting all or any part of any drain from an open ditch to a closed drain; installing surface pipe for open ditches; enlarging, altering, or improving

pumping plants; leveling spoil banks, or constructing settling basins and intake and outlet ditches therefor. If the estimated cost of the improvements does not exceed twenty-five percent of the original cost of the district and subsequent improvements therein as defined in this section, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the twenty-five percent limitation herein fixed for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds twenty-five percent of the original total cost of the district and subsequent improvements therein as defined in this section, it shall set a date for a hearing on the matter of constructing such improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of such improvements, and shall give notice as provided in sections 455.20 to 455.24, inclusive. At such hearing the board shall hear objections to the feasibility of such improvements and such arguments for or against a reclassification as may be presented by or for any taxpayer of the district. Following the hearing the board shall order made such improvements as it deems desirable and feasible, and shall also determine whether there should be a reclassification of benefits for the cost of such improvement. If it is determined that such reclassification of benefits should be made the board shall proceed as provided in section 455.45. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter. Provided, however, that the provisions of this section shall not affect the procedures of section 455.142 covering the common outlet.

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 472.

Districts hereafter\* established for the straightening, widening, deepening, or changing of a natural watercourse shall acquire therefor an easement for right of way of sufficient width to accommodate reasonably anticipated erosion and meander of such stream. In existing districts where the stream has by erosion appropriated lands beyond its original

right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

7. In the event that the estimated cost of the improvements as contemplated in this section should exceed the original cost of the district plus the cost of subsequent improvements in the district, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in said district, may file a written remonstrance against said improvement, at or before the time fixed for hearing on said improvement, with the county auditor, or auditors in case the district extends into more than one county. If such remonstrance is filed, the board shall discontinue and dismiss all further proceedings on said improvement and charge the costs incurred to date for said proposed improvement to the district. This right of remonstrance shall not apply to repairs as defined in this section. [S13, §1989-a21; C24, 27, 31, 35, 39, §§7556, 7558-7561; C46, §§455.135, 455.137-455.140; C50, 54, §455.135; 56GA, ch 222, §1; 57GA, ch 225, §§1, 2; ch 226, §1]

40ExGA, HF 185, §116, editorially divided  
Referred to in §§455.64, 455.128, 455.136, 455.141, 455.142  
\*July 4, 1957

**455.136 Payment.** The costs of the repair or improvements provided for in section 455.135 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in sections 455.64 to 455.68, inclusive; provided that assessments may be collected in less than ten installments as the board may determine. [S13, §1989-a21; C24, 27, 31, 35, 39, §7557; C46, 50, 54, §455.136]

**455.137 Impounding areas.** Levee and drainage districts are empowered to construct impounding areas to protect lands of the district and drainage structures at such times as out-letting is retarded and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, and may be procured and construction undertaken either

independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision. [C54,§455.137]

**455.138 Revenues used for operation, maintenance and construction.** Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect. [C54,§455.138]

**455.139 and 455.140, inc.** Repealed by 53GA, ch 202, §§23-26. See §455.135.

**455.141 Reclassification required.** When an assessment for improvements as provided in section 455.135, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 455.48. [C24, 27, 31, 35, 39, §7562; C46, 50, 54, §455.141]

**455.142 Improvement of common outlet—notice of hearing.** When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 455.135. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. Each district shall be assessed for the cost of such work in proportion to the benefits derived. [S13, §1989-a24; C24, 27, 31, 35, 39, §7563; C46, 50, 54, §455.142; 57GA, ch 267, §63]

Referred to in §465.135

**455.143 Commissioners to apportion benefits—interest prohibited.** For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement. [C24, 27, 31, 35, 39, §7564; C46, 50, 54, §455.143; 57GA, ch 227, §1]

Referred to in §455.145

**455.144 Time of report—notice of hearing.** When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. [C24, 27, 31, 35, 39, §7565; C46, 50, 54, §455.144; 57GA, ch 267, §64]

Referred to in §455.145

**455.145 Report and review—appeal.** The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 455.143 and 455.144, of said order, and said county auditor shall notify by certified mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees, if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvement proposed or done is located.

Any such appeal shall be taken, perfected and conducted in the time and manner provided in sections 455.92, 455.94 to 455.98, inclusive, for appeals contemplated by said sections. [C24, 27, 31, 35, 39, §7566; C46, 50, 54, §455.145; 57GA, ch 267, §65]

40EXGA, HF 185, §116-a6, editorially divided

**455.146 Levy under original classification.** If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. [C24, 27, 31, 35, 39, §7567; C46, 50, 54, §455.146]



**455.147 Levy under reclassification.** If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways, and railway rights of way and property within the district, in accordance with said new classification and apportionment. [C24, 27, 31, 35, 39, §7568; C46, 50, 54, §455.147]

**455.148 Removal of obstructions.** The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district. [C24, 27, 31, 35, 39, §7569; C46, 50, 54, §455.148]

**455.149 Trees and hedges.** When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance. [C24, 27, 31, 35, 39, §7570; C46, 50, 54, §455.149]

Similar provision, §460.18

**455.150 Outlet for lateral drains—specifications.** The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection. [S13, §1989-a22; C24, 27, 31, 35, 39, §7571; C46, 50, 54, §455.150]

**455.151 Subdistricts in intercounty districts.** The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be

the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 455.70. [S13, §1989-a37; C24, 27, 31, 35, 39, §7572; C46, 50, 54, §455.151]

**455.152 District by mutual agreement—presumption.** The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility. [S13, §1989-a28; C24, 27, 31, 35, 39, §7573; C46, 50, 54, §455.152]

Referred to in §§455.56, 455.72

**455.153 What the agreement shall contain.** Such agreement shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed, including settling basins, if any.
4. The assessment of damages, if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as the board deems necessary. [S13, §1989-a28; C24, 27, 31, 35, 39, §7574; C46, 50, 54, §455.153]

**455.154 Board to establish.** When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided. [S13, §1989-a28; C24, 27, 31, 35, 39, §7575; C46, 50, 54, §455.154]



**455.155 Procedure.** The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided. [S13,§1989-a28; C24, 27, 31, 35, 39,§7576; C46, 50, 54,§455.155]

**455.156 Outlet in adjoining county.** When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way. [S13,§1989-a55; C24, 27, 31, 35, 39,§7577; C46, 50, 54,§455.156]

Condemnation procedure, ch 472

**455.157 Outlet in another state.** When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. [S13,§1989-a39; C24, 27, 31, 35, 39,§7578; C46, 50, 54,§455.157]

Referred to in §455.158

**455.158 Tax.** The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 455.157 should such levy be necessary. [C31, 35,§7578-c1; C39,§7578.1; C46, 50, 54,§455.158]

**455.159 Injuring or diverting — damages.** Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall

be liable in treble the amount of such damages. [C73,§1227; C97,§1961; C24, 27, 31, 35, 39, §7579; C46, 50, 54,§455.159]

**455.160 Obstructing or damaging.** Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a misdemeanor and punished accordingly. [C24, 27, 31, 35, 39,§7580; C46, 50, 54,§455.160]

Punishment, §687.7

**455.161 Nuisance — abatement.** Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such. [S13,§1989-a15; C24, 27, 31, 35, 39,§7581; C46, 50, 54,§455.161]

Nuisances, ch 657

**455.162 Actions — settlement — counsel.** Levee and/or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts, or on account of damages to property owned by such districts, resulting from the construction and/or operation of locks, dams and pools in the Mississippi or Missouri rivers; they may make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district.

If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund

as provided by section 682.23, in addition to the investments therein approved the court may authorize investment of said fund in interest bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district. [C39,§7581.1; C46, 50, 54,§455.162]

Membership in associations, §455.189

**455.163 Waste banks — private use.** The landowner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this chapter. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so he must preserve the berms of such open ditch without depositing any additional dirt upon them. [C24, 27, 31, 35, 39,§7582; C46, 50, 54,§455.163]

**455.164 Preliminary expenses — how paid.** If the proposed district is all in one county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said district shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners. [S13, §1989-a48; C24, 27, 31, 35, 39,§7583; C46, 50, 54, §455.164]

**455.165 Additional help for auditor.** If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor. [S13,§1989-a42; C24, 27, 31, 35, 39,§7584; C46, 50, 54,§455.165]

**455.166 Employment of counsel.** The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compen-

sation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due. [S13,§1989-a14; C24, 27, 31, 35, 39,§7585; C46, 50, 54,§455.166]

**455.167 Compensation of appraisers.** Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses. [S13,§1989-a41; C24, 27, 31, 35, 39,§7586; C46, 50, 54,§455.167]

**455.168** Repealed by 53GA, ch 202,§38.

**455.169 Payment.** All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor. [S13,§1989-a41; C24, 27, 31, 35, 39,§7588; C46, 50, 54,§455.169]

**455.170 Purchase at tax sale.** When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district. [C24, 27, 31, 35, 39,§7589; C46, 50, 54, §455.170]

40ExGA, HF 185,§141, editorially divided  
Similar provisions, ch 569

**455.171. Tax deed—sale or lease.** If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. [C24, 27, 31, 35, 39,§7590; C46, 50, 54, §455.171]

**455.172 Purchase of tax certificate.** When land in a drainage or levee district, or sub-

district, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county auditor the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict. [C31, 35, §7590-c1; C39, §7590.1; C46, 50, 54, §455.172]

Referred to in §455.178

**455.173 Terms of redemption.** Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent of the value of the land at the time of redemption he shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity. [C31, 35, §7590-c2; C39, §7590.2; C46, 50, 54, §455.173]

**455.174 Payment—assignment of certificate.** When such money is deposited with the county auditor he shall by mail notify the purchaser at said tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with him for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of said district, as the case may be, as trustee for said district. [C31, 35, §7590-c3; C39, §7590.3; C46, 50, 54, §455.174]

**455.175 Funds.** Payment to the county auditor for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at six percent per annum and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in his office and call the same for payment as soon as there is sufficient money in said fund. [C31, 35, §7590-c4; C39, §7590.4; C46, 50, 54, §455.175]

**455.176 Lease or sale of land.** If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale. [C31, 35, §7590-c5; C39, §7590.5; C46, 50, 54, §455.176]

**455.177 Duty of treasurer.** When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold for a less sum of money than the amount of delinquent taxes thereon the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be. [C31, 35, §7590-c6; C39, §7590.6; C46, 50, 54, §455.177]

**455.178 Purchase by bondholder.** In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 455.172 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for his actual outlays including his reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title he shall have a right to lease or convey said premises, upon giving thirty days written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 455.172. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district. [C35, §7590-g1; C39, §7590.7; C46, 50, 54, §455.178]

**455.179 Voting power.** In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote

for or against such proposition as the former owner would have had if he had not been divested of the title to said land. [C24, 27, 31, 35, 39,§7591; C46, 50, 54,§455.179]

**455.180 Inspection of improvements.** The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties. [S13,§1989-a44; C24, 27, 31, 35, 39, §7592; C46, 50, 54,§155.180]

**455.181 Watchmen.** When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district. [S13,§1989-a40; C24, 27, 31, 35, 39,§7593; C46, 50, 54,§455.181]

**455.182 Construction of drainage laws.** The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands. [S13,§1989-a46; C24, 27, 31, 35, 39,§7594; C46, 50, 54,§455.182]

40ExGA, HF 185,§144, editorially divided

**455.183 Technical defects.** The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein. [S13,§1989-a46; C24, 27, 31, 35, 39,§7595; C46, 50, 54,§455.183]

**455.184 Conclusive presumption of legality.** The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law. [S13,§1989-a46; C24, 27, 31, 35, 39,§7596; C46, 50, 54,§455.184]

**455.185 Drainage record.** The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily. [S13,§§1989-a14-a42; C24, 27, 31, 35, 39,§7597; C46, 50, 54,§455.185]

**455.186 Records belong to district.** All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings. [C24, 27, 31, 35, 39, §7598; C46, 50, 54,§455.186]

**DRAINAGE ASSOCIATIONS**

**455.187 Membership in National Drainage Association.** Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district. [C31, 35,§7598-c1; C39,§7598.01; C46, 50, 54,§455.187]

**455.188 Membership fee.** The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district. [C31, 35,§7598-c2; C39, §7598.02; C46, 50, 54,§455.188]

**455.189 Other associations.** Levee and/or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds. [C39,§7598.03; C46, 50, 54, §455.189]

**RECEIVERSHIP FOR DRAINAGE LANDS**

**455.190 Receiver authorized.** Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more years taxes subsequent to the tax certificate have gone delinquent, the

said governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate. [C35,§7598-e1; C39,§7598.04; C46, 50, 54,§455.190]

**455.191 Hearing and notice thereof.** Upon the filing of the petition for such appointment, the court or a judge thereof, shall fix a time and place of hearing thereon, which may be in term time or vacation, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application. [C35,§7598-e2; C39,§7598.05; C46, 50, 54,§455.191]

**455.192 Appointment—grounds.** Said application shall be heard by the court, or a judge thereof, at the time and place so designated, and after hearing thereon the court or judge may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct him to forthwith take possession of the same and to collect the rents, issues and profits therefrom. [C35,§7598-e3; C39,§7598.06; C46, 50, 54,§455.192]

45GA, ch 142,§3, editorially divided

**455.193 Bond.** The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause. [C35, §7598-e4; C39,§7598.07; C46, 50, 54,§455.193]

**455.194 Avoidance of receivership.** The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon. [C35,§7598-e5; C39,§7598.08; C46, 50, 54,§455.194]

45GA, ch 142,§4, editorially divided

**455.195 Preference in leasing.** In the event a receiver is appointed for any tract of land, the owner if he is actually in possession thereof, shall have the preference to rent the same. [C35,§7598-e6; C39,§7598.09; C46, 50, 54,§455.195]

**455.196 Rents—application of.** The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.

3. To the payment of any current special taxes against said real estate.

4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate. [C35,§7598-e7; C39,§7598.10; C46, 50, 54,§455.196]

Section numbers 455.197 to 455.200 reserved for use in future codes

#### FEDERAL FLOOD CONTROL CO-OPERATION

**455.201 Plan of improvement.** Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor, and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements. [C50, 54,§455.201]

Referred to in §§455.45, 455.69, 455.202, 455.203, 455.212

**455.202 Agreement in advance.** The agreement with the federal government contemplated in section 455.201 may be entered into by the board in advance of the filing of the plan—such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such co-operative agreement. [C50, 54,§455.202]

Referred to in §455.45

**455.203 Engineer appointed.** After the filing of the plan contemplated in section 455.201 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of his duties. [C50, 54,§455.203]

Referred to in §455.45

**455.204 Engineer's report.** The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right of way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the engineer with respect to the adoption of the plan. [C50, 54, §455.204]

Referred to in §§455.45

**455.205 Supplemental reports.** Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan. [C50, 54, §455.205]

Referred to in §§455.45, 455.69

**455.206 Notice and hearing.** If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided. [C50, 54, §455.206]

Referred to in §§455.45, 455.69

**455.207 Form of notice.** Such notice shall be captioned in the name of the district and shall

be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrancers, and to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this chapter for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in sections 455.21 to 455.26, inclusive, shall apply. [C50, 54, §455.207; 57GA, ch 219, §4]

Referred to in §§455.45, 455.69

**455.208 Amendment — new parties.** The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing. [C50, 54, §455.208]

Referred to in §§455.45, 455.69

**455.209 Entry of order—effect.** If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established is furthered thereby, they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

2. Canceling all existing awards for damages for property not appropriated for right of way or construction and rendered unnecessary by the plan so adopted.

3. Canceling all awards previously made for damages other than for right of way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

4. Canceling all unpaid assessments for benefits on lands excluded from the district by

adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment. [C50, 54,§455.209]

Referred to in §§455.45, 455.69

**455.210 Appraisalment.** The board shall thereupon appoint three appraisers of the qualifications prescribed in section 455.30, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right of way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 455.32 shall apply. [C50, 54,§455.210]

Referred to in §455.45

**455.211 Assessment of benefits.** Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this chapter except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan. [C50, 54, §455.211]

Referred to in §455.45

**455.212 Installments—warrants.** The board shall levy the costs contemplated in section

455.201 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at four percent per annum. The board may issue warrants bearing interest at four percent per annum against assessments. [C50, 54,§455.212; 57GA, ch 228,§1]

Referred to in §455.45

**455.213 Subsequent levies.** The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works. [C50, 54,§455.213]

Referred to in §455.45

**455.214 Applicable statutes.** Except as otherwise provided herein all provisions of this chapter and chapters 456 to 467, inclusive, relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply. [C50, 54,§455.214]

Referred to in §455.45

**455.215 Scope of plan.** The provisions of this division shall be applicable to districts organized or established under the provisions of chapters 457 to 462, inclusive, 466 and 467. [C50, 54,§455.215]

Referred to in §455.45

**455.216 Districts under trustees.** When a district is in the management of trustees as provided in chapter 462 the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 462.28. [C50, 54,§455.216]

Referred to in §455.45  
Constitutionality, 52GA, ch 245,§18

## CHAPTER 455A

## IOWA NATURAL RESOURCES COUNCIL

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**455A.1 Definitions.** As used in this chapter, council means “Iowa Natural Resources Council”;

“Flood plains” means the area adjoining the river or stream, which has been or may be hereafter covered by flood water;

“Floodway” means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream;

“Council floodway” means a floodway designated and established by order of the council, fixing its length and landside limits;

“Person” means any natural person, firm, partnership, association, corporation, state of Iowa, any agency of the state, municipal corporation, political subdivision of the state of Iowa, legal entity, drainage district, levee district, public body, or other district or units maintained or to be constructed by assessments, or the petitioners of a proceeding, pending in any court of the state affecting the subject matter of this chapter;

“Due notice” means a notice of not less than thirty days by one publication in an official newspaper published in each county in which the property affected is located.

“Surface water” means the water occurring on the surface of the ground;

“Ground water” means that water occurring beneath the surface of the ground;

“Diffused waters” means waters arising by precipitation and snowmelt, and not yet a part of any water course or basin and shall include capillary soil water;

“Depleting use” means the storage, diversion, conveyance, or use of any supply of water which might impair rights of lower or surrounding users, or might impair the natural resources of the state or might injure the public welfare if not controlled;

“Beneficial use” means the application of

water to a useful purpose that inures to the benefit of the water user and subject to his dominion and control but does not include the waste or pollution of water;

“Nonregulated use” means the use of water for ordinary household purposes, use of water for poultry, livestock and domestic animals, any beneficial use of surface flow from rivers bordering the state of Iowa, or use of ground water on islands or former islands situated in such rivers, existing beneficial uses of water within the territorial boundaries of municipal corporations on May 16, 1957, except that industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957, and any other beneficial use of water by any person of less than five thousand gallons per day;

“Regulated use” means any depleting use except a use specifically designated as a non-regulated use;

“Permit” means the written authorization issued by the water commissioner or council to a permittee which shall be limited as to quantity, time, place, and rate of diversion, storage or withdrawal in accordance with the declared policies and principles of beneficial use set forth in this chapter;

“Permittee” means the person who obtains a permit from the council authorizing such person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for such purpose;

“Waste” means (a) permitting ground water or surface water to flow, taking it or using it in any manner so that it is not put to its full beneficial use, (b) transporting ground water from its source to its place of use in such a



manner that there is an excessive loss in transit, (c) permitting or causing the pollution of a water bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it;

"Watercourse" means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian;

"Basin" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries;

"Established average minimum flow" means when reasonably required for the purpose of this chapter, the council shall determine and establish the average minimum flow for a given watercourse at a given point thereon. The "average minimum flow" for a given watercourse as used in this chapter shall be determined by the following factors: (a) Average of minimum daily flows occurring during the preceding years chosen by the council as more nearly representative of changing conditions and needs of a given drainage area at a particular time; (b) minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area; and (c) those minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest. Such determination shall be based upon available flow data, supplemented, when available data are incomplete, by whatever evidence is available;

"Impounded or stored water" means that water captured and stored on the land by anyone taking it pursuant to the provisions of this chapter, and the party impounding the water shall become the absolute owner thereof. [C50, 54,§455A.1; 57GA, ch 229,§1]

**455A.2 Declaration of policy.** It is hereby recognized that the protection of life and property from floods, the prevention of damage to lands therefrom and the orderly development, wise use, protection and conservation of the water resources of the state by the considered and proper use thereof, is of paramount importance to the welfare and prosperity of the people of the state, and, to realize these objectives it is hereby declared to be the policy of the state to correlate and vest the powers of the state in a single agency, the Iowa natural resources council, with the duty and authority to establish and enforce an appropriate comprehensive state-wide program for the control, utilization, and protection of the surface and ground-water resources of the state. It is hereby declared that the general welfare of the people of the state of Iowa requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use, or unreasonable methods of use, of water be prevented, and that the conservation of such water be exercised with the view to the reason-

able and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

Water occurring in any basin or in any watercourse, or other natural body of water of the state, is hereby declared to be public waters and public wealth of the people of the state of Iowa and subject to use in accordance with the provisions of this chapter, and the control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures as shall effectuate full utilization and protection of the water resources of the state of Iowa. [C50, 54,§455A.2; 57GA, ch 229,§2]

**455A.3 Creation.** There is hereby created and established an Iowa natural resources council. The council is established as an agency of the state government to promote the policies set forth in this chapter and shall represent the state of Iowa in all matters within the scope of this chapter. [C50, 54, §455A.3]

**455A.4 Appointment.** The council shall consist of nine members who shall be electors of the state of Iowa and shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of office without regard to their political affiliation. The members of the council shall be appointed by the governor with the approval of two-thirds of the members of the senate in executive session and shall be appointed for overlapping terms of six years. The terms of three members of the council shall expire on July 1 of each odd-numbered year. Within sixty days following the organization of each biennial regular session of the general assembly, appointments shall be made of successors to members of the council whose terms of office shall expire on the first of July next thereafter and of members to fill the unexpired portion of vacant terms. [C50, 54,§455A.4; 57GA, ch 229,§3]

See 57GA, ch 229,§4 for temporary provisions

**455A.5 Vacancies.** Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. [C50, 54,§455A.5]

**455A.6 Removal.** The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the council for malfeasance in office or for any cause that renders him ineligible for membership or incapable or unfit to discharge the duties of his office and his removal when so made shall be final. [C50, 54,§455A.6]

**455A.7 Compensation and expenses.** Each member of the council not otherwise in the full-time employment of any public body, shall receive the sum of twenty-five dollars for each day actually and necessarily employed in the discharge of official duties provided such compensation shall not exceed two thousand dollars for any fiscal year. In addition to the compensation hereinbefore described, each member of the council shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of any official duties, when so authorized by the council. No member of the council shall have any direct financial interest in, or profit by any of the operations of the council. [C50, 54,§455A.7; 57GA, ch 229,§5]

See biennial appropriations Act

**455A.8 Organization, meetings and rules.** The council shall organize by the election of a chairman and shall meet at the seat of government on the first Monday in the months of January, April, July and October, and at such other times and places as it may deem necessary. The chairman shall be elected annually at the meeting of the council in July. Meetings may be called by the chairman and shall be called by the chairman on the request of four members of the council. The majority of the council shall constitute a quorum and the concurrence of a majority of the council in any matter within their duties shall be required for its determination. The council shall adopt such rules and regulations as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. [C50, 54,§455A.8]

**455A.9 Director and water commissioners.**

1. The council shall choose a director who shall not be a member of the council and shall fix the compensation of such director, which shall be payable out of the funds appropriated to the council. The director shall be qualified by training and experience. The term of office of the director shall be during the pleasure of the council. The director shall serve as the executive officer of the council and shall have charge of the work of the council subject to its orders and directions.

2. The council shall choose a water commissioner who shall not be a member of the council and shall fix the compensation of such commissioner, which shall be payable out of the funds appropriated to the council. The water commissioner shall be qualified by training and experience. The term of office of the water commissioner shall be during the pleasure of the council. The water commissioner shall serve in a quasi-judicial capacity as the trier of fact questions in the processing of all applications for appropriation permits. He shall conduct hearings on any applications for permits as provided by law and the rules and regulations of the council, and he shall perform such other duties as the council may prescribe.

3. The council may choose one or more deputy water commissioners who shall not be members of the council. The council shall fix the compensation of such deputy commissioners, which shall be payable out of the funds appropriated to the council. The deputy commissioners shall be qualified by training and experience. The term of office of the deputy commissioners shall be during the pleasure of the council. A deputy commissioner shall have all of the duties, responsibilities, and powers of the water commissioner when acting in his stead. The deputy commissioners shall be assigned hearings on applications for permits by the water commissioner. [C50, 54,§455A.9; 57 GA, ch 229,§6]

See biennial appropriations Act

**455A.10 Employees.** The director, with the approval of the council is empowered to employ, discharge, and fix the salaries of such technical, clerical, stenographic and such other employees and assistants as may be required. All of such employees shall be paid from funds appropriated to the council. [C50, 54,§455A.10]

See biennial appropriations Act

**455A.11 Bonds.** The council shall provide for the execution of surety bonds for all members and employees who shall be entrusted with funds and property and the premiums on all such surety bonds shall be paid from the funds appropriated to the council. [C50, 54,§455A.11]

**455A.12 Warrants.** The comptroller is directed to draw warrants on the treasurer of the state for all disbursements authorized by this chapter upon duly itemized and verified vouchers bearing the approval of the director of the council. [C50, 54,§455A.12]

**455A.13 Reports, accounting and recommendations.** The council shall make a report to the governor of its activities for the preceding biennial period, including therein an itemized statement of all receipts and disbursements and such other information pertaining to its work as may be of value.

The council in its biennial report shall make such recommendations for amendments to this chapter, or for other legislation as it deems appropriate.

The council shall report to the governor at any time required, the results accomplished since its last report, pending plans and the status of any work or plans in progress. [C50, 54,§455A.13]

**455A.14 Departmental co-operation.** The council may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the council to properly carry out its activities and effectuate its purposes hereunder. The council shall

reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

The council, its agents and other employees may enter upon any lands or waters in the state for the purpose of making any investigation, examination, or survey contemplated by this chapter. [C50, 54,§455A.14]

**455A.15 Eminent domain.** The council shall have the right to exercise the power of eminent domain. All the provisions of law relating to condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. The executive council shall institute and maintain such proceedings.

The council may accept gifts, contributions, donations and grants, and use the same for any purpose within the scope of this chapter. [C50, 54,§455A.15]

**455A.16 Title to lands and other property.** The title to all lands, easements, or other interest therein, or other property or rights acquired by the council shall be approved by the attorney general and taken in the name of the state of Iowa. [C50, 54,§455A.16]

**455A.17 Functions and duties.** The council shall establish a comprehensive state-wide program of flood control; and a comprehensive state-wide program for the conservation, development and use of the water resources of the state. The council shall administer said programs. [C50, 54,§455A.17; 57GA, ch 229,§7]

**455A.18 Jurisdiction — diversion of water.** The council shall have jurisdiction over the public and private waters in the state and the lands adjacent thereto necessary for the purposes of carrying out the provisions of this chapter. The council shall make a comprehensive study and investigation of all pertinent conditions of the areas in the state affected by floods; determine the best method and manner of establishing flood control; adopt and establish a comprehensive plan for flood control for all the areas of the state subject to floods; and determine the best and most practical method and manner of establishing and constructing the necessary flood control works. The council may construct flood control works or any part thereof. The council is authorized to perform such duties in co-operation with other states or any agency thereof or with the United States or any agency of the United States, or with any person as defined in this chapter.

The council shall procure and obtain flood control works from and through or by co-operation with the United States, or any agency of the United States, by co-operation with and action of the cities, towns and other subdivisions of the state, under the laws of the state relating to flood control and water use, and by co-operation with and action of landowners in areas affected thereby.

The council shall make surveys and investigations of the water resources of the state

and of the problems of agriculture, industry, conservation, health, stream pollution and allied matters as they relate to flood control and water resources, and shall make and formulate plans and recommendations for the further development, protection, utilization, and preservation of the water resources of the state.

Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch or settling basin within the state of Iowa for any purpose other than a nonregulated use, the council shall cause to be made an investigation of the effect of such use upon the natural flow of such watercourse and also the effect of any such use upon the owners of any land which might be affected by such use and shall hold a hearing thereon. [C50, 54,§455A.18; 57GA, ch 229,§8]

**455A.19 Procedure to secure permit.** The procedure for securing a permit to divert, store or withdraw waters shall be as follows:

1. The application for a permit shall be made in writing to the council and shall set forth the designated beneficial use for which the permit is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters.

2. Upon receipt of an application for a permit, the water commissioner shall set a time and place for hearing. The hearing shall be in the county where the permit is sought, but may be held at any other place in the state unless objection is raised by the applicant. The hearing shall be to the water commissioner.

3. The water commissioner shall cause notice of the hearing to be published in a newspaper of general circulation in the county in which the permit is sought. Said notice shall be published once each week for two consecutive weeks, with the date of last publication not less than ten nor more than thirty days prior to the date of hearing and said notice shall be on a form provided by the council which shall specify the date, time and place of hearing and shall include a concise statement of the designated beneficial purposes for which diversion is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters, the name of the applicant and the description of the land upon which waters are to be diverted, stored or withdrawn. In addition to the foregoing, the water commissioner shall cause a copy of the notice to be sent to the director of the conservation commission, commissioner of public health, the secretary of the soil conservation committee, secretary of agriculture, director of the Iowa geological survey, the director of the Iowa development commission, and to any other person who has filed a written request for a notification of any hearings affecting a designated area, by ordinary mail, prior to the date of last publication.

4. Any interested person may appear and present evidence at the hearing, and may be

represented by counsel, who shall have the right to question others who present evidence.

5. The applicant for a permit shall pay a fee to the council in the amount of ten dollars at the time of filing his application which fee shall include the cost of publishing notice and which publication cost shall then be paid for by the council.

6. The council shall prescribe the rules of procedure for the conduct of the hearings.

7. The determination of the water commissioner on any application before him shall be in writing, filed with the council and shall set forth his findings. A copy of the determination shall be mailed to the applicant and to any person appearing who in writing requests a copy of the determination.

8. Any party aggrieved by the determination of the water commissioner may, within thirty days from the date such determination is filed, appeal therefrom to the council setting forth in general terms the determination appealed from and the grounds of the appeal. The director shall set a time and place for hearing before the council and shall then send a notice by ordinary mail to all persons who appeared at the hearing before the water commissioner.

9. The council shall adopt rules and regulations for the conduct of the hearing on appeal and shall file a determination in writing, setting forth findings. A copy of the determination shall be mailed to the applicant or to any person appearing who in writing requests a copy of the determination.

10. The water commissioner or the council at any hearing or other proceeding authorized by this chapter, shall have the power to administer oaths; take testimony; issue subpoenas and compel the attendance of witnesses, the subpoenas shall be served in the same manner as subpoenas issued by the courts of the state; and to order the taking of depositions in the same manner as depositions are taken under the Iowa Rules of Civil Procedure. [57GA, ch 229,§9]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.28

Sections 455A.19 to 455A.26, Code 1954, transferred to sections 455A.33 to 455A.39

**455A.20 Hearing—appeal.** If the water commissioner at the first hearing or the council at the hearing on appeal shall determine after due investigation that such diversion, storage or withdrawal will not be detrimental to the public interests, including drainage and levee districts, or to the interests of property owners with prior or superior rights who might be affected, the water commissioner following the first hearing, or the council following the hearing on appeal shall grant a permit for such diversion, storage or withdrawal. Any person or public body aggrieved by the granting of such permit may appeal as provided by section 455A.37. Permits may be granted for any period of time but not to exceed ten years. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. Permits may be ex-

tended by the water commissioner beyond the period for which granted without hearing if no objection is raised, but if written objection is filed by any aggrieved person shown to have an interest, a hearing shall be held thereon. Any permit granted shall remain as an appurtenance of the land described in the application unless disposed of otherwise. [57GA, ch 229, §10]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.21 Priority of permits.** In the consideration of applications for permits, priority will be given to persons in the order applications are received. However, persons who have made diversion or withdrawal of water for a beneficial use prior to May 16, 1957 will be accorded priority according to the actual date of said diversion or withdrawal. The water commissioner or the council on appeal shall exercise their judgment on the quantity of water for which a permit may be granted. The use of water for ordinary household purposes, for poultry, livestock and domestic animals shall have priority over other uses. Any person with an existing irrigation system in use prior to May 16, 1957 shall be issued a permit to continue, unless by the use thereof some other riparian user is damaged. In the consideration of applications for permits by regulated users, the declared policies and principles of beneficial use, as set forth in this chapter, shall be the standard for the determination of the disposition of the applications for said permits. Nothing in this chapter shall impair the vested right of any person. Prior orders of the council shall not be invalidated by the provisions of sections 455A.19 to 455A.32, inclusive. [57GA, ch 229,§11]

Referred to in §§455A.25, 455A.26, 455A.27

**455A.22 Permits for beneficial use.** The water commissioner and the council shall have the authority to issue a permit for beneficial use of water in a watercourse provided the established average minimum flow is preserved. [57GA, ch 229,§12]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.23 Pollution control protected.** No use of water shall be authorized that will impair the effect of pollution control laws of this state. [57GA, ch 229,§13]

Referred to in §§455A.20, 455A.21, 455A.25, 455A.26, 455A.27

**455A.24 Navigability preserved.** No permit shall be issued or continued that will impair the navigability of any navigable watercourse. [57GA, ch 229,§14]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.25 When permit required.** For the purpose of administering sections 455A.19 to 455A.32, inclusive, a permit as herein provided shall be required for the following:

1. Any municipal corporation or person supplying a municipal corporation which increases its water use in excess of one hundred thousand gallons, or three percent, whichever is the greater, per day more than its highest

per day beneficial use prior to May 16, 1957. Such corporation or person shall make reasonable provision for the storage of water at such time or times when the daily use of such water by such corporation or person is less than the amount specified herein.

2. Except for a nonregulated use, any person using in excess of five thousand gallons of water per day, diverted, stored, or withdrawn from any source of supply except a municipal water system or any other source specifically exempted under the provisions of sections 455A.19 to 455A.32, inclusive.

3. Any person who diverts water or any material from the surface directly into any underground watercourse or basin. Provided, however, that any diversion of water or material from the surface directly into any underground watercourse or basin existing upon May 16, 1957 shall not require a permit if said diversion does not create waste or pollution.

4. Industrial users of water having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957. [57GA, ch 229,§15]

Referred to in §§455A.21, 455A.26, 455A.27

**455A.26 Taking water prohibited.** No person shall take water from any natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within the state of Iowa for any purpose other than a nonregulated use except upon compliance with sections 455A.19 to 455A.32, inclusive, provided that existing uses may be continued during the period of the pendency of an application for a permit. [57GA, ch 229,§16]

Referred to in §§455A.21, 455A.25, 455A.27

**455A.27 Rights preserved.** Nothing in sections 455A.19 to 455A.32, inclusive, shall operate to deprive any person of the right to use diffused waters, or to drain land by use of tile, open ditch or surface drainage, or to construct an impoundment on said person's property or across a stream that originates on said person's property so long as provision is made for safe construction and for continued established average minimum flow, if and when such flow is required to protect the rights of water users below. [57GA, ch 229,§17]

Referred to in §§455A.21, 455A.25, 455A.26

**455A.28 Modification or cancellation of permits.** Every permit issued hereunder shall be irrevocable for the term therefor, and for any extension of such term except as follows:

1. A permit may be modified or canceled by the water commissioner, with the consent of the permittee.

2. Subject to appeal in the manner provided by section 455A.19, subsection 8, a permit may be modified or canceled by the water commissioner in case of any breach of the terms or conditions thereof or in case of any violation of the law pertaining thereto by the permittee,

his agents or servants, in case of nonuse as provided hereinafter, or in case the water commissioner finds such modification or cancellation necessary to protect the public health or safety or to protect the public interests in lands or waters, or to prevent substantial injury to persons or property in any manner, upon at least thirty days written notice mailed to the permittee at his last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard thereon.

3. By written order to the permittee, the water commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect the public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than thirty days from the date thereof, without giving the permittee at least ten days written notice of such order and an opportunity to be heard thereon. [57GA, ch 229,§18]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.29 Termination of permit.** The right of the permittee and his successors to the use of water shall terminate when he ceases for three consecutive years to use it for the specific beneficial purpose authorized in his permit and the permittee has been notified by the water commission that unless written application as set forth as follows, that the permit will cease; provided, however, that upon his written application prior to the expiration of said three-year period for extension of said permit, the council may grant such extension without loss of priority. [57GA, ch 229,§19]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.50 Disposal of permit.** A permittee may sell, transfer, or assign his permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but such permit shall not constitute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use and the orders of the council. [57GA, ch 229,§20]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.31 Power of eminent domain.** The state of Iowa, any subdivision thereof, or municipal corporation, for the purpose of carrying out any permission granted, as hereinbefore provided, shall have and exercise the power of eminent domain. [57GA, ch 229,§21]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.32 Unauthorized depleting uses.** In the event that any person shall file a complaint with the council that any other person is making a depleting use of water not expressly

exempted as a nonregulated use under the provisions of this chapter and without a permit to do so, the council shall cause an investigation to be made and if the facts stated in the complaint are verified the council shall order the discontinuance of the use. [57GA, ch 229, §24]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27

**455A.33 Unlawful acts—powers of council.**

It shall be unlawful to suffer or permit any structure, dam, obstruction, deposit or excavation to be erected, used, or maintained in or on any floodway, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, and the same are declared to be and to constitute public nuisances, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469 as amended.

The council shall have the power to commence, maintain and prosecute any appropriate action to enjoin or abate a nuisance, including any of the foregoing nuisances and any other nuisance which adversely affects flood control.

In the event any person desires to erect or make, or to suffer or permit, a structure, dam, obstruction, deposit or excavation, other than a dam, constructed and operated under the authority of chapter 469 as amended, to be erected, made, used or maintained in or on any floodway, such person shall file a verified written application with the council, setting forth the material facts, and the council on hearing, shall enter an order, determining the fact and permitting or prohibiting the same.

The council shall have the authority to maintain an action in equity to enjoin any such person from erecting or making or suffering or permitting to be made any structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter 469, for which a permit has not been granted.

The council shall have the power to remove or eliminate any structure, dam, obstruction, deposit or excavation in any floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in such proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit or excavation is lawfully in or on the floodway. [C50, 54,§455A.19; 57GA, ch 229,§22]

**455A.34 Additional powers — licensing of dams.** After April 17, 1949 the term "council", as used in chapter 469, shall be construed to refer to the Iowa natural resources council unless specifically otherwise provided. [C50, 54,§455A.20]

**455A.35 Council floodway.** The council may by order establish a floodway as a council floodway and alter, change, or revoke and terminate the same. In the order establishing the council floodway, the council shall fix the length thereof at any practical distance, and fix the width

or the landside limits thereof, so as to include portions of the flood plains adjoining the channel, which with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of such river or stream. No order establishing a council floodway shall be issued until due notice of the proposed establishment of such floodway shall have been given and public hearings afforded, and opportunity given for the presentation of all protests against the establishment of such floodway. In establishing any council floodway, the council shall avoid to the greatest possible degree the evacuation of persons residing in the area of any floodway and the removal of any residential structures occupied by such persons in the area of any floodway. All of the area within a council floodway shall be the floodway for all purposes of this chapter. [C50, 54,§455A.21]

**455A.36 Flood control works co-ordinated.**

All works of any nature for flood control in the state, which are hereafter established and constructed, shall be co-ordinated in design, construction and operation, according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. No person shall construct or install any works of any nature for flood control unless and until the proposed works and the plans and specifications therefor are approved by the council. The interested persons shall file a verified written application with the council therefor, and the council on hearing shall consider all the pertinent facts relating to the proposed works which will affect flood control in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, and shall enter an order approving or disapproving the application, plans and specifications. In the event of disapproval, the order shall set forth the objectionable features so that the proposed works and the plans and specifications therefor may be corrected or adjusted to obtain the approval of the council.

The provisions of this section shall apply to all drainage districts, soil conservation districts, projects undertaken by the state conservation commission, all public agencies including counties, cities, towns and all political subdivisions of the state and to all privately undertaken projects relating to or affecting flood control. [C50, 54,§455A.22]

**455A.37 Appeal.** Any person aggrieved by any of the acts or orders of the council shall have the right to appeal therefrom to the district court at the seat of government or the district court of any county in which the property affected is located, by filing with the council a notice of such appeal within thirty days from the date of such action or order. The notice of appeal shall state the grounds of appeal. When an appeal is taken, the council shall forthwith cause to be made a certified

transcript of all proceedings had and all orders made and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it shall be brought on for trial at any time by either party upon ten days notice to the other, and shall be tried by the court de novo. At such trial the burden of proof that any acts and orders of the council from which appeal is taken are reasonable and necessary shall be upon the council. If the court shall determine that the order appealed from is reasonable and necessary, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable or not supported by the evidence it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action.

The pendency of any such appeal shall not stay the operation of the order of the council but the district court or the supreme court in their discretion may suspend the operation of the council order pending determination of

the appeal, provided, the appellant shall file an appropriate bond approved by the court. [C50, 54, §455A.23]

**455A.38 Executive prerogatives.** The council shall have no executive prerogatives outside of its own duties and functions as set out by this chapter and shall not disturb the work, functions or authority of any of the several state or local agencies and institutions, provided the powers conferred upon the council by this chapter shall not be exercised by any other of the agencies or institutions. [C50, 54, §455A.24]

Section 455A.25, Code 1954, repealed by 57GA, ch 229, §23

**455A.39 Penalties.** Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction, shall be fined not exceeding one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [C50, 54, §455A.26; 57GA, ch 229, §25]

Constitutionality, 53GA, ch 203, §43

Constitutionality, 57GA, ch 229, §26

## CHAPTER 456

### DISSOLUTION OF DRAINAGE DISTRICTS

Referred to in §§455.22, 455.214, 460.11, 466.8, 467C.6, 468.9

- 456.1 Jurisdiction to abandon and dissolve.
- 456.2 Notice of hearing.
- 456.3 Hearing on petition.

- 456.4 Appeal.
- 456.5 Expense—refund.
- 456.6 Abandonment of rights of way.

**456.1 Jurisdiction to abandon and dissolve.** When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts. [C35, §7598-g1; C39, §7598.11; C46, 50, 54, §456.1]

**456.2 Notice of hearing.** Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district. [C35, §7598-g2; C39, §7598.12; C46, 50, 54, §456.2]

**456.3 Hearing on petition.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record. [C35, §7598-g3; C39, §7598.13; C46, 50, 54, §456.3]

**456.4 Appeal.** Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district. [C35, §7598-g4; C39, §7598.14; C46, 50, 54, §456.4]

Appeals, §455.92 et seq.

**456.5 Expense—refund.** In case there are sufficient funds on hand in such district, or



there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after

payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said proceedings shall be paid by the petitioning owners. [C35,§7598-g5; C39, §7598.15; C46, 50, 54,§456.5]

**456.6 Abandonment of rights of way.** If such a dissolution is effected, the rights of way of the district for all purposes of the district shall be deemed abandoned. [C35,§7598-g6; C39,§7598.16; C46, 50, 54,§456.6]

CHAPTER 457

INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

Referred to in §§465.4, 465.22, 465.214, 465.215, 468.1, 460.11, 466.8, 467C.6, 468.9

- 457.1 Petition and bond.
- 457.2 Commissioners.
- 457.3 Examination and report.
- 457.4 Duty of engineer.
- 457.5 Notice.
- 457.6 Contents of notice—service.
- 457.7 Claims for damages—filing—waiver.
- 457.8 Organization and procedure—adjournments.
- 457.9 Tentative adoption of plans.
- 457.10 Appraisers.
- 457.11 Duty of appraisers—procedure.
- 457.12 Meetings of joint boards.
- 457.13 Equalizing voting power.
- 457.14 Commissioners to classify and assess.

- 457.15 Notice and service thereof—objections.
- 457.16 Levies—certificates and bonds.
- 457.17 Bonds or proceeds made available.
- 457.18 Supervising engineer.
- 457.19 Duty of engineer.
- 457.20 Notice of letting work—applicable procedure.
- 457.21 Contracts.
- 457.22 Monthly estimate—payment.
- 457.23 Final settlement.
- 457.24 Failure of board to act.
- 457.25 Transfer to district court.
- 457.26 Transcript, docket, and trial.
- 457.27 Decree.
- 457.28 Law applicable.

**457.1 Petition and bond.** When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed. [S13, §1989-a29; C24, 27, 31, 35, 39,§7599; C46, 50, 54, §457.1]

Referred to in §458.1  
 Procedure for converting several intracounty districts into one intercounty district, ch 458

**457.2 Commissioners.** Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the commissioners of the several counties so appointed shall meet within thirty days thereafter and appoint a competent engineer who shall also act as a commissioner. [S13,§1989-a29; C24, 27, 31, 35, 39,§7600; C46, 50, 54,§457.2]

40ExGA, HF 185,§147, editorially divided  
 Referred to in §458.1

**457.3 Examination and report.** The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties. [S13,§1989-a29; C24, 27, 31, 35, 39,§7601; C46, 50, 54,§457.3]

**457.4 Duty of engineer.** In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by chapter 455 when the proposed district is located wholly within one county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county. [S13,§1989-a29; C24, 27, 31, 35, 39,§7602; C46, 50, 54,§457.4]

**457.5 Notice.** Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners



of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties. [S13,§1989-a29; C24, 27, 31, 35, 39,§7603; C46, 50, 54,§457.5]

40ExGA, HF 185,§149, editorially divided

**457.6 Contents of notice—service.** Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county. [S13,§1989-a29; C24, 27, 31, 35, 39,§7604; C46, 50, 54,§457.6]

Notice and service, §455.20 et seq.

**457.7 Claims for damages—filing—waiver.** Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed. [S13,§1989-a30; C24, 27, 31, 35, 39,§7605; C46, 50, 54,§457.7]

**457.8 Organization and procedure—adjournments.** At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county. [S13,§1989-a31; C24, 27, 31, 35, 39, §7606; C46, 50, 54,§457.8]

40ExGA, HF 185,§151, editorially divided

**457.9 Tentative adoption of plans.** The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district. [C24, 27, 31, 35, 39,§7607; C46, 50, 54,§457.9]

**457.10 Appraisers.** If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches and of all lands required for settling basins. [S13,§1989-a31; C24, 27, 31, 35, 39,§7608; C46, 50, 54,§457.10]

**457.11 Duty of appraisers—procedure.** The appraisers shall proceed in the same manner and make return of their findings and appraisal the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided. [S13,§1989-a31; C24, 27, 31, 35, 39,§7609; C46, 50, 54,§457.11]

Procedure, §455.30 et seq.

**457.12 Meetings of joint boards.** The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district. [S13,§1989-a37; C24, 27, 31, 35, 39,§7610; C46, 50, 54,§457.12]

**457.13 Equalizing voting power.** When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number. [S13,§1989-a29; C24, 27, 31, 35, 39,§7611; C46, 50, 54,§457.13]

**457.14 Commissioners to classify and assess.** If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions

of chapter 455 for districts wholly within one county. [S13,§1989-a32; C24, 27, 31, 35, 39,§7612; C46, 50, 54,§457.14]

**457.15 Notice and service thereof—objections.** Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter 455 in districts wholly within one county, except publication of notice as provided in section 455.21 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing. [S13,§1989-a32; C24, 27, 31, 35, 39, §7613; C46, 50, 54,§457.15; 56GA, ch 223,§1]

**457.16 Levies—certificates and bonds.** After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county. [S13,§1989-a32; C24, 27, 31, 35, 39,§7614; C46, 50, 54,§457.16]

Referred to in §457.17  
Payment, §455.63 et seq.

**457.17 Bonds or proceeds made available.** When drainage bonds are to be issued under the provisions of section 457.16 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county, and subject to the same exceptions in cases of appeals set forth in section 455.85.\* [C24, 27, 31, 35, 39, §7615; C46, 50, 54,§457.17]

\*Section 455.85, Code 1950, repealed by 55GA, ch 211,§.

**457.18 Supervising engineer.** At the time of finally establishing the district, the boards of the several counties, acting jointly, shall

employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties. [S13,§1989-a34; C24, 27, 31, 35, 39, §7616; C46, 50, 54,§457.18]

Bond, §455.39

**457.19 Duty of engineer.** The duties of the supervising engineer shall be the same in all respects as is provided by chapter 455 for districts wholly within one county. [S13,§1989-a34; C24, 27, 31, 35, 39,§7617; C46, 50, 54,§457.19]

**457.20 Notice of letting work—applicable procedure.** If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county. [S13,§1989-a33; C24, 27, 31, 35, 39,§7618; C46, 50, 54,§457.20]

**457.21 Contracts.** All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county. [S13,§1989-a33; C24, 27, 31, 35, 39,§7619; C46, 50, 54,§457.21]

**457.22 Monthly estimate—payment.** The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty percent of the amount due from his county. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines not however in amounts in excess of one thousand dollars. [S13,§1989-a34; C24, 27, 31, 35, 39,§7620; C46, 50, 54,§457.22]

**457.23 Final settlement.** When the work to be done on any contract is completed to

the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter 455 relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county. [S13,§1989-a34; C24, 27, 31, 35, 39,§7621; C46, 50, 54,§457.23]

**457.24 Failure of board to act.** When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice. [S13,§1989-a36; C24, 27, 31, 35, 39,§7622; C46, 50, 54,§457.24]

**457.25 Transfer to district court.** If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days notice, or after the failure of such boards to agree. [S13, §1989-a36; C24, 27, 31, 35, 39,§7623; C46, 50, 54, §457.25]

**457.26 Transcript, docket, and trial.** Upon the giving of such notice the auditors shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case, on or before the first day of the next succeeding term of said court. The clerk of the district court shall thereupon docket the case and the same shall be tried as in equity and the appearance term shall be the trial term. [S13, §1989-a36; C24, 27, 31, 35, 39,§7624; C46, 50, 54, §457.26]

40ExGA, HF 185,§166, editorially divided

**457.27 Decree.** The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same. [S13,§1989-a36; C24, 27, 31, 35, 39,§7625; C46, 50, 54,§457.27]

**457.28 Law applicable.** Except as otherwise stipulated in this chapter the provisions and procedure set forth in chapter 455 shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts. [S13,§1989-a37; C24, 27, 31, 35, 39, §7626; C46, 50, 54,§457.28]

## CHAPTER 458

### CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

Referred to in §§455.22, 455.214, 455.215, 460.11, 466.8, 467C.6, 468.9

458.1 Intracounty districts converted into intercounty district.  
458.2 Benefited land only included.

458.3 Appeal by landowner.  
458.4 Procedure on appeal.  
458.5 Appeal by trustees or boards.

**458.1 Intracounty districts converted into intercounty district.** Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the

trustees of any one of such districts or one or more landowners therein, in either case such petition to be accompanied by a bond as provided in section 457.1, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 457.2 and by requiring a bond as provided in section 457.1 and by proceeding as provided by chapter 457, and all

powers, duties, limitations, and provisions of this chapter and chapter 457, shall be applicable thereto. [C27, 31, 35, §7626-a1; C39, §7626.1; C46, 50, 54, §458.1]

41GA, ch 155, §1, editorially divided

**458.2 Benefited land only included.** Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district. [C27, 31, 35, §7626-a2; C39, §7626.2; C46, 50, 54, §458.2]

**458.3 Appeal by landowner.** Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where his land lies from the action of the joint boards in establishing

the new district or in including his land within it. [C27, 31, 35, §7626-a3; C39, §7626.3; C46, 50, 54, §458.3]

**458.4 Procedure on appeal.** The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in chapter 455. [C27, 31, 35, §7626-a4; C39, §7626.4; C46, 50, 54, §458.4]

**458.5 Appeal by trustees or boards.** Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new intercounty district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof. [C27, 31, 35, §7626-a5; C39, §7626.5; C46, 50, 54, §458.5]

CHAPTER 459

DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY OR TOWN

Referred to in §§455.22, 455.214, 455.215, 460.11, 466.8, 467C.6, 468.9

- 459.1 Authority to include city.
- 459.2 Inclusion of city—notice.
- 459.3 Assessments—notice.
- 459.4 Objections—appeal.
- 459.5 Assessments—interest.
- 459.6 Bonds, certificates, and waivers.

- 459.7 Funding bonds.
- 459.8 Jurisdiction relinquished.
- 459.9 Request for relinquishment.
- 459.10 Duty to relinquish.
- 459.11 Jurisdiction of municipality.
- 459.12 City council to control district.

**459.1 Authority to include city.** The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any incorporated town or city as they have to establish districts wholly outside of such cities and towns, including assessment of damages and benefits within such cities and towns, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city or town, nor in any case to establish any district for sewer purposes. [S13, §1989-a38; C24, 27, 31, 35, 39, §7627; C46, 50, 54, §459.1]

40ExGA, HF 185, §168, editorially divided

**459.2 Inclusion of city—notice.** Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city or town and directed to the town or city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city or town. [S13, §1989-a38; C24, 27, 31, 35, 39, §7628; C46, 50, 54, §459.2]

Service of notice, §455.21 et seq

**459.3 Assessments — notice.** When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any

incorporated town or city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such incorporated town or city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed. [S13, §1989-a38; C24, 27, 31, 35, 39, §7629; C46, 50, 54, §459.3]

**459.4 Objections—appeal.** The council or clerk of such town or city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city or town, and they shall have the same right to appeal from the finding of the board with reference to such assessment. [S13, §1989-a38; C24, 27, 31, 35, 39, §7630; C46, 50, 54, §459.4]

40ExGA, HF 185, §170, editorially divided  
Objections, §455.52; appeals, §455.92 et seq.

**459.5 Assessments—interest.** Such assessment as finally made shall draw interest at the

same rate and from the same time as assessment against lands. [S13,§1989-a38; C24, 27, 31, 35, 39,§7631; C46, 50, 54,§459.5]

**459.6 Bonds, certificates, and waivers.** The board of supervisors and the town or city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, and parks as is herein conferred upon the board of supervisors and the township trustees in reference to assessment for benefits to highways. [S13,§1989-a38; C24, 27, 31, 35, 39,§7632; C46, 50, 54,§459.6]

Certificates and bonds, §455.77 et seq.

**459.7 Funding bonds.** Such cities or towns may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law. [C24, 27, 31, 35, 39,§7633; C46, 50, 54,§459.7]

Funding bonds, ch 408

**459.8 Jurisdiction relinquished.** When the board of any county has heretofore established any drainage district which includes all of the platted portion of any city or town, and one-fourth or more of the total area of the said drainage district is located within the corporate limits of such city or town, and the drains thereof have been wholly or partially constructed of sewer tile and the said drain or drains are needed or used by the city or town for storm sewer and drainage purposes, said board of supervisors shall relinquish all authority or control of all of said drainage district, including the portion outside of such corporate limits, to the city or town upon request of the city or town council as provided in section 459.9. [C24, 27, 31, 35, 39, §7634; C46, 50, 54,§459.8]

**459.9 Request for relinquishment.** It is hereby made the duty of any city or town council, if it deems the same for the best interest of the said city or town, to pass, by a majority vote, a resolution requesting the board of supervisors to permit the city or

town to take over and control the drains which resolution shall be certified to the board of supervisors of the county and filed by the auditor, who shall spread the same upon the records of the drainage district. [C24, 27, 31, 35, 39,§7635; C46, 50, 54,§459.9]

Referred to in §§459.8, 459.10

**459.10 Duty to relinquish.** Upon the request of the city or town council, as provided in section 459.9, it shall be the duty of the board to pass a resolution and have the same made a part of its proceedings, relinquishing all authority and control of the drainage district to the said city or town and that whenever said jurisdiction and control has or may hereafter be relinquished that the board of supervisors shall transfer to said city or town all funds held by the county treasurer in his hands, derived from assessments in the drainage district within the corporate limits. [C24, 27, 31, 35, 39,§7636; C46, 50, 54,§459.10]

**459.11 Jurisdiction of municipality.** After the drainage district has been taken over by the city or town, it shall have complete control thereof, and may use the same for any purpose that said city or town through its city or town council deems proper and necessary for the advancement of the city or town or its health or welfare, and the city or town shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city or town. [C24, 27, 31, 35, 39, §7637; C46, 50, 54,§459.11]

**459.12 City council to control district.** The council of any city or town acting under the provisions of this chapter shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided. [C46, 50, 54,§459.12]

## CHAPTER 460

### HIGHWAY DRAINAGE DISTRICTS

Referred to in §§455.22, 455.214, 455.215, 466.8, 467C.6, 468.9

460.1 Establishment.

460.2 Powers.

460.3 Initiation without petition.

460.4 Engineer.

460.5 Survey and report.

460.6 Assessment—report.

460.7 Advanced payments.

460.8 Payment from road funds.

460.9 Dismissal—costs.

460.10 Condemnation of right of way.

460.11 Laws applicable.

460.12 Removal of trees from highway.

460.13 Trees outside of highways.

**460.1 Establishment.** Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed

without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter 455. [SS15, §§1989-b, b2-b6, b8, b12, b13; C24, 27, 31, 35, 39, §7638; C46, 50, 54,§460.1]

40ExGA, HF 186,§175-a1, editorially divided

**460.2 Powers.** Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable. [SS15, §§1989-b, b2-b6, b8, b12, b13; C24, 27, 31, 35, 39, §7639; C46, 50, 54, §460.2]

**460.3 Initiation without petition.** When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement. [SS15, §1989-b; C24, 27, 31, 35, 39, §7640; C46, 50, 54, §460.3]

**460.4 Engineer.** The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter. [SS15, §§1989-b, b11; C24, 27, 31, 35, 39, §7641; C46, 50, 54, §460.4]

**460.5 Survey and report.** The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 455.17 and 455.18 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district. [SS15, §1989-b1; C24, 27, 31, 35, 39, §7642; C46, 50, 54, §460.5]

**460.6 Assessment—report.** The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.
2. The separate amount which shall be paid by the state on account of the primary road system.
3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.
4. The amounts which shall be assessed against each forty-acre tract or less within such district. [SS15, §1989-b5; C24, 27, 31, 35, 39, §7643; C46, 50, 54, §460.6]

Primary and secondary roads, chs 309-314

**460.7 Advanced payments.** The board on construction of such improvement may ad-

vance out of the secondary road construction fund or the secondary road maintenance fund, or out of both of said funds that portion to be collected by special assessment, the amount so advanced to be replaced in said road funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed four percent interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor, when the same are collected. [SS15, §1989-b7; C24, 27, 31, 35, 39, §7644; C46, 50, 54, §460.7]

Change in interest rate not applicable to outstanding bonds, 49GA, ch 263, §7

**460.8 Payment from road funds.** The amount fixed by the final order of the board to be paid:

1. On account of the primary road system, shall be payable by the state highway commission on due certification of the amount by the county treasurer to said commission out of the primary road fund.
2. On account of the secondary road system, may be payable from the secondary road construction fund, or from the secondary road maintenance fund, or from both of said funds. [SS15, §1989-b5; C24, 27, 31, 35, 39, §7645; C46, 50, 54, §460.8]

**460.9 Dismissal—costs.** If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated. [SS15, §1989-b10; C24, 27, 31, 35, 39, §7646; C46, 50, 54, §460.9]

**460.10 Condemnation of right of way.** When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road funds. [S13, §1989-a43; C24, 27, 31, 35, 39, §7647; C46, 50, 54, §460.10]

Condemnation procedure, ch 472

**460.11 Laws applicable.** All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in chapters 455 to 459, inclusive. [C24, 27, 31, 35, 39, §7648; C46, 50, 54, §460.11]

Chapter 456 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457

**460.12 Removal of trees from highway.** When the roots of trees located within a high-

way obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils. [C24, 27, 31, 35, 39, §7649; C46, 50, 54, §460.12]

**460.13 Trees outside of highways.** When the roots of trees and hedges growing outside

a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feed lots, shall be exempt from the provisions of this section. [C24, 27, 31, 35, 39, §7650; C46, 50, 54, §460.13]

Condemnation procedure, ch 472  
Similar provision, §455.149

## CHAPTER 461

### DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

Referred to in §§455.22, 455.214, 455.215, 466.8, 467C.6, 468.9

- 461.1 Authorization.
- 461.2 Petition—procedure.
- 461.3 Additional pumping station.
- 461.4 Transfer of pumps.
- 461.5 Costs.
- 461.6 Dividing districts.
- 461.7 Notice—publication.
- 461.8 Hearing—jurisdiction of divided districts.
- 461.9 Division in other cases.
- 461.10 Assessments not affected—maintenance tax.
- 461.11 Election and apportionment of trustees.
- 461.12 Settling basin—condemnation.

- 461.13 Funding bonds.
- 461.14 Form of bonds.
- 461.15 Formal execution.
- 461.16 Resolution—requisites—record.
- 461.17 Registration.
- 461.18 Liability of treasurer—reports.
- 461.19 Sale—application of proceeds.
- 461.20 Levy.
- 461.21 Scope of act.
- 461.22 Funds available to pay bonds.
- 461.23 Limitation of actions.
- 461.24 Bankruptcy proceedings.
- 461.25 Chapter applicable to districts with pumping stations.

**461.1 Authorization.** The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts. [S13, §§1989-a49, -a52; C24, 27, 31, 35, 39, §7651; C46, 50, 54, §461.1]

**461.2 Petition — procedure.** Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto. [S13, §1989-a49; C24, 27, 31, 35, 39, §7652; C46, 50, 54, §461.2]

**461.3 Additional pumping station.** After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established. [C24, 27, 31, 35, 39, §7653; C46, 50, 54, §461.3]

40ExGA, HF 185, §178, editorially divided

**461.4 Transfer of pumps.** If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed. [C24, 27, 31, 35, 39, §7654; C46, 50, 54, §461.4]

**461.5 Costs.** The cost of the establishment of such additional pumping plant or plants

shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement. [C24, 27, 31, 35, 39, §7655; C46, 50, 54, §461.5]

**461.6 Dividing districts.** When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts. [C24, 27, 31, 35, 39, §7656; C46, 50, 54, §461.6]

40ExGA, HF 185, §179, editorially divided

**461.7 Notice—publication.** If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders. [C24, 27, 31, 35, 39, §7657; C46, 50, 54, §461.7]

**461.8 Hearing—jurisdiction of divided districts.** At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district. [C24, 27, 31, 35, 39, §7658; C46, 50, 54, §461.8]

**461.9 Division in other cases.** After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district. [C24, 27, 31, 35, 39, §7659; C46, 50, 54, §461.9]

**461.10 Assessments not affected—maintenance tax.** Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the mainte-

nance tax, if any, shall be divided in proportion to the amount paid in by each district. [C24, 27, 31, 35, 39, §7660; C46, 50, 54, §461.10]

**461.11 Election and apportionment of trustees.** If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees. [C24, 27, 31, 35, 39, §7661; C46, 50, 54, §461.11]

Election of trustees, ch 462

**461.12 Settling basin—condemnation.** If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain. [C24, 27, 31, 35, 39, §7662; C46, 50, 54, §461.12]

Condemnation procedure, ch 472

**461.13 Funding bonds.** When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose. [C24, 27, 31, 35, 39, §7663; C46, 50, 54, §461.13]

Referred to in §455.88  
Refunding bonds, ch 473  
Similar provision, §463.1

**461.14 Form of bonds.** Such bonds shall be issued in sums of not less than one hundred



dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six percent per annum, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes. [C24, 27, 31, 35, 39,§7664; C46, 50, 54, §461.14]

Form of bond, §455.82

**461.15 Formal execution.** Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner. [C24, 27, 31, 35, 39,§7665; C46, 50, 54, §461.15]

**461.16 Resolution—requisites—record.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds. [C24, 27, 31, 35, 39,§7666; C46, 50, 54,§461.16]

**461.17 Registration.** When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

“This bond duly and properly registered in my office this ..... day of ....., 19.....  
.....  
Treasurer of the County of .....”

[C24, 27, 31, 35, 39,§7667; C46, 50, 54,§461.17]

40ExGA, HF 185,§184-a5, editorially divided

**461.18 Liability of treasurer—reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a de-

scription of the indebtedness for which exchanged. [C24, 27, 31, 35, 39,§7668; C46, 50, 54, §461.18]

**461.19 Sale — application of proceeds.** He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments. [C24, 27, 31, 35, 39,§7669; C46, 50, 54,§461.19]

**461.20 Levy.** Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation. [C24, 27, 31, 35, 39,§7670; C46, 50, 54,§461.20]

**461.21 Scope of act.** Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up. [C24, 27, 31, 35, 39,§7671; C46, 50, 54,§461.21]

**461.22 Funds available to pay bonds.** When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void. [C24, 27, 31, 35, 39, §7672; C46, 50, 54,§461.22]

**461.23 Limitation of actions.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C24, 27, 31, 35, 39,§7673; C46, 50, 54,§461.23]

Similar provisions, §§408.15, 420.285, 463.23, 464.12

**461.24 Bankruptcy proceedings.** All drainage districts with pumping plant and/or levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch 345, entitled "An act to amend an act entitled 'An act to

establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and/or levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and/or levee districts, of the provisions of such acts of congress. [C35,§7673-g; C39,§7673.1; C46, 50, 54,§461.24]

**461.25 Chapter applicable to districts with pumping stations.** The provisions of this chapter so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping stations. [57GA, ch 230,§1]

CHAPTER 462

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

Referred to in §§455.22, 455.214, 455.215, 455.216, 466.8, 467C.6, 468.9

- 462.1 Trustees authorized.
- 462.2 Petition.
- 462.3 Election.
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- 462.5 Election districts.
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- 462.17 Election—canvass of votes—returns.
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- 462.23 Change of time.
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- 462.25 Bonds.
- 462.26 Organization.
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- 462.28 Costs and expenses.
- 462.29 Disbursement of funds.
- 462.30 Certificates and bonds.
- 462.31 to 462.33, inc. Repealed by 53GA, ch 205,§§4, 5.
- 462.34 Report to auditor.
- 462.35 Compensation—statements required.
- 462.36 Change to supervisor management.
- 462.37 Petition—canvass.
- 462.38 Remonstrance.
- 462.39 When change effective.
- 462.40 Final report of trustees.
- 462.41 Management by supervisors.

**462.1 Trustees authorized.** In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits. [SS15,§§1989-a52a,-a61; C24, 27, 31, 35, 39,§7674; C46, 50, 54,§462.1]

**462.2 Petition.** A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits. [S13,§1989-a52b; SS15,§1989-a52a; C24, 27, 31, 35, 39,§7675; C46, 50, 54,§462.2]

40ExGA, HF 185,§186, editorially divided

**462.3 Election.** The board, at the next regular, adjourned, or special session shall

canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. [S13,§1989-a52b; SS15,§1989-a63; C24, 27, 31, 35, 39,§7676; C46, 50, 54,§462.3]

Referred to in §462.4

**462.4 Intercounty district.** If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed

by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 462.3. [S13,§1989-a52b; SS15, §§1989-a62,-a63; C24, 27, 31, 35, 39,§7677; C46, 50, 54,§462.4]

**462.5 Election districts.** When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends into more than one county, the boards of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control. [C24, 27, 31, 35, 39,§7678; C46, 50, 54,§462.5]

Referred to in §462.6

**462.6 Record and plat of election districts.** At the time of making a division into election districts, as provided in section 462.5, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively. [C24, 27, 31, 35, 39,§7679; C46, 50, 54,§462.6]

**462.7 Eligibility of trustees.** Each trustee shall be a citizen of the United States not less than twenty-one years of age, a resident of the county, and the bona fide owner of agricultural land in the election district for which he is elected. [C24, 27, 31, 35, 39,§7680; C46, 50, 54,§462.7]

**462.8 Notice of election.** The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election. [S13,

§1989-a52b; SS15,§1989-a63; C24, 27, 31, 35, 39, §7681; C46, 50, 54,§462.8]

**462.9 Assessment to determine right to vote.** Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners. [SS15,§1989-a75; C24, 27, 31, 35, 39, §7682; C46, 50, 54,§462.9]

**462.10 New owner entitled to vote.** Any one who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing that he has title. [SS15, §1989-a75; C24, 27, 31, 35, 39,§7683; C46, 50, 54, §462.10]

**462.11 Qualifications of voters.** Each landowner over twenty-one years of age without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 462.12. [SS15, §1989-a73; C24, 27, 31, 35, 39,§7684; C46, 50, 54, §462.11]

**462.12 Votes determined by assessment.**

1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment for benefits against the land actually owned by him in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write his name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 of this Code except that the form of the applications for ballots, the voters' affidavit on the envelopes, and the indorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsections 2, 3 and 4, below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of

such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this chapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this chapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the ..... District Election on  
(Name of District)

.....  
(Date)

State of ..... }  
..... County } ss.

I, ....., do solemnly swear  
(Applicant)

that I am a landowner in the .....  
(Name of District)  
District and that I am a duly qualified voter entitled to vote in said election, and that on account of .....

(business, illness, residence outside of the county, etc.)  
I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed.....  
Date.....

Residence (street number if any) .....  
City or Town..... State.....

Subscribed and sworn to before me this... day of ..... A. D. 19.....

3. For the purpose of this chapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of ..... }  
..... County } ss.

I, ....., do solemnly swear  
(Applicant)

that I am a landowner in the .....  
(Name of District)  
District and that I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of....

.....  
(business, illness, residence outside of the county, etc.)  
and that I have marked the enclosed ballot in secret.

Signed.....

Subscribed and sworn to before me this... day of ....., A. D. 19 ....., and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....  
.....  
(Official Title)

4. For the purposes of this chapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large car-

rier envelope, securely seal the same, and indorse thereon over his official signature, the following:

a. Name of the district in which the voter is a landowner.

b. Date of the election for which the ballot is cast.

c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.

d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open. [SS15,§1989-a73; C24, 27, 31, 35, 39,§7685; C46, 50, 54,§462.12]

Referred to in §§4C2.11, 462.13

462.13 Vote by agent. Except where the provisions of section 462.12, providing for vote in proportion to assessment are invoked, any person or corporation owning land or right of way within the district and assessed for benefits may have his or its vote cast by his or its agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. [SS15,§1989-a73; C24, 27, 31, 35, 39,§7686; C46, 50, 54,§462.13]

462.14 Vote of minor or insane. The vote of any person who is a minor, insane, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, insane, or other incompetent person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, insane, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury. [C24, 27, 31, 35, 39,§7687; C46, 50, 54,§462.14]

Perjury, punishment, §721.1

462.15 Ballots. Each elector shall write or print on a blank ballot, furnished by the election board, his choice for trustee for each election district for which a trustee is to be elected. [C24, 27, 31, 35, 39,§7688; C46, 50, 54,§462.15]

40ExGA, HF 185,§198, editorially divided

462.16 Candidates voted for. Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected. [C24, 27, 31, 35, 39,§7689; C46, 50, 54,§462.16]

462.17 Election—canvass of votes—returns. On the day designated for said election the polls shall open at one o'clock p. m. and

remain open until five o'clock p. m. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district. [S13,§1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§7690; C46, 50, 54,§462.17; 56GA, ch 224,§§1, 2]

**462.18 Canvass — certificates of election.** The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such certificates. [S13,§1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§7691; C46, 50, 54,§462.18]

**462.19 Tenure of office.** The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of his office shall be for three years and until his successor has qualified. [SS15,§§1989-a52d,-a65-a67; C24, 27, 31, 35, 39,§7692; C46, 50, 54,§462.19]

**462.20 Levee and pumping station districts.** The presently acting de facto members of the boards of trustees of drainage or levee districts having pumping stations are hereby declared to be the legally constituted members of such boards; the terms of such present trustees shall expire on the fourth Saturday of January, 1958, 1959 and 1960 respectively and the length of the term of each present trustee shall be determined by lot at a meeting to be held on the third Saturday of August, 1957. Thereafter, in levee and drainage districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election. At an election to be held on the third Saturday in January, 1958 and on the third Saturday in January of each year thereafter a trustee shall be elected for a term of three years to succeed the member of the board whose term will expire on the following Saturday. At such election there shall also be elected, if necessary, a trustee or trustees to fill any vacancy or vacancies which may have occurred before such election. [S13,

§1989-a52e; SS15,§1989-a52d; C24, 27, 31, 35, 39, §7693; C46, 50, 54,§462.20; 57GA, ch 230,§2; ch 231,§1]

**462.21 Division of districts under trustees.** In all districts already under trustee management, the board of trustees shall, prior to the election of trustees in the year 1925, divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district. [C24, 27, 31, 35, 39,§7694; C46, 50, 54,§462.21]

**462.22 Elections — how conducted.** After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county. [SS15,§1989-a69; C24, 27, 31, 35, 39,§7695; C46, 50, 54,§462.22]

**462.23 Change of time.** The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees. [S13,§1989-a52e; C24, 27, 31, 35, 39,§7696; C46, 50, 54,§462.23]

**462.24 Vacancies.** If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify. [SS15,§1989-a68; C24, 27, 31, 35, 39,§7697; C46, 50, 54,§462.24]

**462.25 Bonds.** The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§7698; C46, 50, 54,§462.25]

**462.26 Organization.** As soon as the trustees have qualified, they shall organize by

electing one of their own number as chairman and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees. [SS15,§1989-a70; C24, 27, 31, 35, 39,§7699; C46, 50, 54,§462.26; 57GA, ch 232,§§1, 2]

**462.27 Powers and duties of trustees.** Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands for right of way for ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 462.28. Such authority shall extend only to the district for which they are elected. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§7700; C46, 50, 54, §462.27]

**462.28 Costs and expenses.** All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§7701; C46, 50, 54,§462.28]

40ExGA, HF 185,§209, editorially divided  
Referred to in §§455.216, 462.27

**462.29 Disbursement of funds.** Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer. [SS15,§1989-a52f; C24, 27, 31, 35, 39, §7702; C46, 50, 54,§462.29]

**462.30 Certificates and bonds.** The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter 455 for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated. [SS15,§1989-a52f; C24, 27, 31, 35, 39,§7703; C46, 50, 54,§462.30]

**462.31 to 462.33, inc.** Repealed by 53GA, ch 205,§§4, 5.

**462.34 Report to auditor.** Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the

chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district. [S13,§1989-a52g; SS15, §1989-a72; C24, 27, 31, 35, 39,§7707; C46, 50, 54, §462.34]

**462.35 Compensation—statements required.** The compensation of the trustees and the clerk of the board is hereby fixed at seven dollars per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred. [SS15,§§1989-a52f,-a74; C24, 27, 31, 35, 39,§7708; C46, 50, 54,§462.35]

**462.36 Change to supervisor management.** Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 462.37. [C24, 27, 31, 35, 39,§7709; C46, 50, 54,§462.36]

**462.37 Petition—canvass.** For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result. [C24, 27, 31, 35, 39,§7710; C46, 50, 54,§462.37]

Referred to in §462.36

**462.38 Remonstrance.** Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing. [C24, 27, 31, 35, 39,§7711; C46, 50, 54,§462.38]

**462.39 When change effective.** If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto. [C24, 27, 31, 35, 39,§7712; C46, 50, 54,§462.39]

**462.40 Final report of trustees.** On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.

4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair. [C24, 27, 31, 35, 39, §7713; C46, 50, 54, §462.40]

**462.41 Management by supervisors.** After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board. [C24, 27, 31, 35, 39, §7714; C46, 50, 54, §462.41]

## CHAPTER 463

### DRAINAGE REFUNDING BONDS

Referred to in §§455.22, 455.214, 466.8, 467C.6, 468.9

Additional provision, §465.88

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| 463.1 Refunding bonds.                      | 463.16 Sale, exchange, and cancellation.         |
| 463.2 Petition for refunding.               | 463.17 Redemption from tax sale.                 |
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| 463.12 Resolution required.                 | 463.27 Refinancing powers.                       |
| 463.13 Record of resolution.                | 463.28 Report and hearing—appeal.                |
| 463.14 Record of bonds.                     |  |
| 463.15 Liability of treasurer—reports.      |  |

**463.1 Refunding bonds.** The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided. [C27, 31, 35, §7714-b1; C39, §7714.01; C46, 50, 54, §463.1]

Similar provision, §461.13

**463.2 Petition for refunding.** Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen percent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time

of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds. [C27, 31, 35, §7714-b2; C39, §7714.02; C46, 50, 54, §463.2]

**463.3 Sufficiency of petition—hearing.** Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds. [C27, 31, 35, §7714-b3; C39, §7714.03; C46, 50, 54, §463.3]

**463.4 Notice.** The board shall give ten days notice of said meeting as required in relation to the issuance of bonds under chapter 23. [C27, 31, 35, §7714-b4; C39, §7714.04; C46, 50, 54, §463.4]

Referred to in §463.28

**463.5 Requirements of notice.** Said notice shall be directed to each person whose name

appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming him, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty-acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing, and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of said drainage refunding bonds. [C27, 31, 35,§7714-b5; C39,§7714.05; C46, 50, 54,§463.5]

Referred to in §463.28

**463.6 Extending payment of assessments.**

In case no appeal is taken to the issuance of said bonds as provided by chapter 23, the board may extend the time of payment of said unpaid assessment or any installment or installments thereof as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue such bonds in accordance with the decision of the state comptroller provided said assessments, installment or installments thereof have not been entered on the delinquent tax lists and have not been previously extended. [C27, 31, 35,§7714-b6; C39,§7714.06; C46, 50, 54, §463.6]

Referred to in §463.28

**463.7 Appeal.** Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken. [C27, 31, 35,§7714-b7; C39,§7714.07; C46, 50, 54,§463.7]

**463.8 Time and manner of appeal.** All appeals shall be taken in the manner provided in section 455.94 except that said appeal shall be taken within ten days after the date of the final action of the board. [C27, 31, 35, §7714-b8; C39,§7714.08; C46, 50, 54,§463.8]

**463.9 Maximum extension.** The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments. [C27, 31, 35,§7714-b9; C39,§7714.09; C46, 50, 54,§463.9]

**463.10 Form of bonds.** Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest not exceeding six percent per annum, payable

semiannually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this chapter. [C27, 31, 35, §7714-b10; C39,§7714.10; C46, 50, 54,§463.10]

**463.11 Numbering, signing, and attestation.** Said bonds shall be numbered consecutively, signed by the chairman of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor. [C27, 31, 35,§7714-b11; C39,§7714.11; C46, 50, 54,§463.11]

**463.12 Resolution required.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper. [C27, 31, 35, §7714-b12; C39,§7714.12; C46, 50, 54,§463.12]

**463.13 Record of resolution.** Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith. [C27, 31, 35,§7714-b13; C39,§7714.13; C46, 50, 54, §463.13]

**463.14 Record of bonds.** When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this ..... day of ....., 19.....

.....  
Treasurer of the County of ....."  
[C27, 31, 35,§7714-b14; C39,§7714.14; C46, 50, 54, §463.14]

**463.15 Liability of treasurer—reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board, at each first regular session thereof in each month, a statement of all such



bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [C27, 31, 35,§7714-b15; C39,§7714.15; C46, 50, 54,§463.15]

**463.16 Sale, exchange, and cancellation.** He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds. [C27, 31, 35, §7714-b16; C39,§7714.16; C46, 50, 54,§463.16]

**463.17 Redemption from tax sale.** In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon. [C35,§7714-f1; C39,§7714.17; C46, 50, 54,§463.17]

**463.18 Effect of extension.** The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds. [C27, 31, 35,§7714-b17; C39,§7714.18; C46, 50, 54,§463.18]

**463.19 Additional assessments.** If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency. [C27, 31, 35,§7714-b18; C39,§7714.19; C46, 50, 54,§463.19]

**463.20 Applicability of funds.** All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and

duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid. [C27, 31, 35,§7714-b19; C39,§7714.20; C46, 50, 54,§463.20]

**463.21 Trust fund.** The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds. [C27, 31, 35,§7714-b20; C39,§7714.21; C46, 50, 54,§463.21]

**463.22 Liens unimpaired.** When drainage refunding bonds are issued hereunder, nothing in this chapter shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this chapter be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C27, 31, 35,§7714-b21; C39,§7714.22; C46, 50, 54,§463.22]

**463.23 Limitation of action.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C27, 31, 35,§7714-b22; C39,§7714.23; C46, 50, 54,§463.23]

Similar provisions, §§408.15, 420.285, 461.23, 464.12

**463.24 Void bonds or assessments.** The provisions of this chapter shall not apply to bonds or assessments adjudicated to be void. [C27, 31, 35,§7714-b23; C39,§7714.24; C46, 50, 54, §463.24]

**463.25 Interpretative clause.** This chapter shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds. [C27, 31, 35,§7714-b24; C39, §7714.25; C46, 50, 54,§463.25]

**463.26 Composition with creditors—federal loans.** For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes. [C35,§7714-g1; C39,§7714.26; C46, 50, 54,§463.26]

**463.27 Refinancing powers.** In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and

to fulfill such requirements of the loaning agency as are not inconsistent with this chapter; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevy the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or composition is made, and provided further, that such new and extended assessment against such tract shall fully replace the old assessment. [C35,§7714-g2; C39, §7714.27; C46, 50, 54,§463.27]

**463.28 Report and hearing—appeal.** At the direction of the governing board of such dis-

trict, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

1. The name of the owner of each assessed tract as shown by the transfer books in his office.

2. The amount of the unpaid old assessments against each of said tracts.

3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 463.4 to 463.6, inclusive, and appeal may be made therefrom as provided in this chapter. [C35,§7714-g3; C39, §7714.28; C46, 50, 54,§463.28]

**CHAPTER 464**

**DEFAULTED DRAINAGE BONDS**

Referred to in §§455.22, 455.214, 466.8, 467C.6, 468.9

- 464.1 Extension of payment—application.
- 464.2 Petition.
- 464.3 Hearing.
- 464.4 Parties—notice—service.
- 464.5 Jurisdiction of court.
- 464.6 Conservator appointed.

- 464.7 Report—hearing thereon.
- 464.8 Adjudication on report.
- 464.9 Refunding bonds.
- 464.10 Lien.
- 464.11 Trustees as parties.
- 464.12 Limitation of action.

**464.1 Extension of payment — application.** When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this chapter. [C35,§7714-f2; C39,§7714.29; C46, 50, 54,§464.1]

Referred to in §464.2

**464.2 Petition.** Ten owners of real estate in such district, or the owners of not less than ten percent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of said district, that said bonds are in default as defined in section 464.1, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the matters herein presented be reviewed by the court, and determined as provided by this chapter. [C35, §7714-f3; C39,§7714.30; C46, 50, 54,§464.2]

**464.3 Hearing.** On the filing of such petition the judge for said court, either in session,

or in vacation, shall enter an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order. [C35,§7714-f4; C39,§7714.31; C46, 50, 54,§464.3]

**464.4 Parties—notice—service.** The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and a copy of such notice shall also be sent by ordinary mail to his last known address unless there is on file an affidavit of one of the petitioners or his attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings. [C35,§7714-f5; C39,§7714.32; C46, 50, 54,§464.4; 57GA, ch 219,§7]

Service of original notice, R.C.P. 48, 50, and 53 et seq.

**464.5 Jurisdiction of court.** The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers. [C35,§7714-f6; C39,§7714.33; C46, 50, 54,§464.5]

**464.6 Conservator appointed.** If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator", and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court, an attorney, and such assistants as may be necessary to perform the duties required by him under the law, and orders of court. [C35, §7714-f7; C39,§7714.34; C46, 50, 54,§464.6]

**464.7 Report—hearing thereon.** The conservator shall, within thirty days from the date of his appointment, prepare and file with the clerk of the district court, a full report, giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report by the conservator, the court shall set a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof. [C35, §7714-f8; C39,§7714.35; C46, 50, 54,§464.7]

**464.8 Adjudication on report.** At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to said drainage district; the amount of the indebtedness of said drainage district; to whom said indebtedness is due, and fix and determine the time, manner and priority of payment of said indebtedness; also the court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within said drainage district, and may extend the time of payment, reamortize and reallocate the said assessments upon each tract of land within said drainage district; also, if the court finds that the assessments as levied against each tract of land within said drainage

district, are not sufficient to pay the indebtedness due and owing by said drainage district, the court may order the board of supervisors of the county within which the said drainage district is located, to levy an assessment against the lands within said drainage district, in an amount to pay the deficit; provided, however, that no assessment for the payment of drainage bonds or improvement certificates shall be levied against any tract of land where the owner of said land is not delinquent in payment of any assessment and provided, further, that the amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on said land and provided, further, that no assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this chapter, shall be levied against any tract of land where the owner of said land had previously paid all of his assessment. Said assessment to be assessed and levied by the board of supervisors upon the lands within said drainage district, in the same proportion as the original assessment. A copy of said order entered by the court, shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of said drainage district as fixed and determined by the court, shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county, and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same penalties for delinquency, and the same manner of enforcing collection by tax sale. Also the court may apportion the costs between the creditors of the drainage district, and the drainage district. [C35,§7714-f9; C39, §7714.36; C46, 50, 54,§464.8]

Referred to in §464.9

**464.9 Refunding bonds.** The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 464.8, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of

the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not be less than three and one-half percent per annum, and that the bond is to be paid only from taxes assessed, levied and collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 464.8. All bonds shall be signed by the chairman of the board of supervisors and countersigned by the conservator designated as such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of indebtedness received by him in lieu of the conservator's bonds. [C35,§7714-f10; C39,§7714.37; C46, 50, 54,§464.9]

**464.10 Lien.** When conservator's drainage district bonds are issued hereunder, nothing herein, shall be construed as impairing the lien of all unpaid assessments upon the real estate within said drainage district, nor shall this chapter be construed as impairing the priority of the lien thereof, nor the right, duty and power of the officer authorized by law, to levy, collect and apply the proceeds thereof, to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C35,§7714-f11; C39,§7714.38; C46, 50, 54, §464.10]

**464.11 Trustees as parties.** Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant. [C35,§7714-f12; C39,§7714.39; C46, 50, 54,§464.11]

**464.12 Limitation of action.** No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this chapter from and after three months from the date of the order causing the said bonds to be issued. [C35,§7714-f13; C39, §7714.40; C46, 50, 54,§464.12]

Similar provisions, §§408.15, 420.285, 461.23, 463.23

## CHAPTER 465

## INDIVIDUAL DRAINAGE RIGHTS

Referred to in §§455.22, 455.214, 466.8, 467C.6, 468.9

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| 465.1 Drainage through land of others—application. | 465.18 Repairs.                                       |
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**465.1 Drainage through land of others—application.** When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right of way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, he or they may file with the township clerk of the township in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which he is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. [C73,§1217; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§7715; C46, 50, 54,§465.1]

**465.2 Notice of hearing—service.** Upon the filing of any such application, the clerk shall forthwith fix a time and place for hearing thereon before the township trustees of his township, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the township trustees, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any

station agent. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§7716; C46, 50, 54,§465.2]

Manner of service, R.C.P. 56(a)

**465.3 Service upon nonresident.** In case any such owner is a nonresident of the county he may be personally served in the manner required for original notices or, in lieu thereof, he may be given notice as provided in section 455.21. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§7717; C46, 50, 54,§465.3; 57GA, ch 219,§6]

**465.4 Service on omitted parties—adjournment.** If at the hearing it should appear that any person entitled to notice has not been served with notice, the trustees may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the trustees shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice. [S13,§1955; C24, 27, 31, 35, 39,§7718; C46, 50, 54,§465.4]

**465.5 Claims for damages—waiver.** Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the township clerk at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage. [S13,§1955; C24, 27, 31, 35, 39, §7719; C46, 50, 54,§465.5]

**465.6 Hearing—sufficiency of application—damages.** At the time set for hearing on the application, if the trustees shall find that all

necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The trustees may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days. [C73,§1219; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§7720; C46, 50, 54,§465.6]

**465.7 Shall locate when — specifications.** If the trustees find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith. [C73,§1220; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§7721; C46, 50, 54,§465.7]

**465.8 Findings—record.** The trustees shall reduce their findings, decision, and determination to writing, which shall be filed with the clerk of such township, who shall record it in the official record of the trustees proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the trustees to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in section 465.9. [C73,§1220; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§7722; C46, 50, 54,§465.8]

**465.9 Appeal — notice.** Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the clerk, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of appeal that may be assessed against him, which bond, if good and sufficient, shall be approved by the township clerk. [C73, §1223; C97,§1957; C24, 27, 31, 35, 39,§7723; C46, 50, 54,§465.9]

Referred to in §§465.8, 465.32  
Manner of service, R.C.P. 56(a)  
Presumption of approval of bond, §682.10

**465.10 Transcript.** In case of appeal, the township clerk shall certify to the district court a transcript of the proceedings before

the trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases. [C97,§1958; C24, 27, 31, 35, 39,§7724; C46, 50, 54,§465.10]

Referred to in §465.32  
Docketing appeal, R.C.P. 181 to 356

**465.11 Appeal — how tried — costs.** The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the trustees, he shall pay all the costs of appeal. [C97,§1957; C24, 27, 31, 35, 39,§7725; C46, 50, 54,§465.11]

Referred to in §465.32

**465.12 Parties — judgment — orders.** The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect. [C73,§1224; C97,§1958; C24, 27, 31, 35, 39,§7726; C46, 50, 54,§465.12]

**465.13 Costs and damages—payment.** The applicant shall pay the costs of the trustees and clerk and for the serving of notices for hearing, the fees of witnesses summoned by the trustees on said hearing, and the recording of the finding of said trustees by the county recorder. [C73,§1221; C97,§1959; S13, §1959; C24, 27, 31, 35, 39,§7727; C46, 50, 54, §465.13]

40ExGA, HF 185,§233, editorially divided  
Compensation, §§359.46, 359.47  
Recorder fee, §335.14  
Service of notice, §§337.11, 601.129  
Witness fees, §622.69 et seq.

**465.14 Construction.** Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the trustees for his use. The applicant may proceed to construct said drain in accordance with the decision of the trustees, and the taking of an appeal shall not delay such work. [C97,§1959; S13,§1959; C24, 27, 31, 35, 39,§7728; C46, 50, 54,§465.14]

**465.15 Construction through railroad property.** If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the trustees shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the trustees and recover the costs thereof as fixed by the trustees. Such railroad company before it may exercise such privilege shall file its election to that effect with the township clerk within

five days after the decision of the trustees is filed. [S13,§1959; C24, 27, 31, 35, 39,§7729; C46, 50, 54,§465.15]

40ExGA, HF 185,§234, editorially divided

**465.16 Deposit.** In case such election is filed the applicant shall within ten days thereafter pay to the township clerk, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the township clerk such cost. [S13,§1959; C24, 27, 31, 35, 39,§7730; C46, 50, 54,§465.16]

**465.17 Failure to construct.** If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the township clerk. [S13,§1959; C24, 27, 31, 35, 39,§7731; C46, 50, 54,§465.17]

**465.18 Repairs.** In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by said trustees upon application in substantially the same manner as in the original construction thereof. [C73,§1226; C97,§1960; C24, 27, 31, 35, 39,§7732; C46, 50, 54,§465.18]

**465.19 Obstruction.** Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages. [C73,§1227; C97, §1961; C24, 27, 31, 35, 39,§7733; C46, 50, 54,§465.19]

**465.20 Drains on abutting boundary lines.** When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the township trustees of the township in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said trustees shall seem just and equitable. [C97, §1962; C24, 27, 31, 35, 39,§7734; C46, 50, 54, §465.20]

Referred to in §465.21

**465.21 Boundary between two townships.** If any controversy referred to in section 465.20 relates to a boundary line between adjoining

owners which is also the boundary line between two townships, then such controversy shall be determined by the joint action of the board of trustees in said two adjoining townships, and all the proceedings shall be the same as provided in section 465.20 except that it shall be by the joint action of the boards of trustees of said two townships. [C24, 27, 31, 35, 39,§7735; C46, 50, 54,§465.21]

**465.22 Drainage in course of natural drainage.** Owners of land may drain the same in the general course of natural drainage by constructing open or covered drains, discharging the same in any natural watercourse or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor. Nothing in this section shall in any manner be construed to affect the rights or liabilities of proprietors in respect to running streams. [S13,§1989-a53; C24, 27, 31, 35, 39,§7736; C46, 50, 54,§465.22]

**465.23 Drainage connection with highway.** When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done.

If a tile line must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile drain across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected. [C97,§1963; C24, 27, 31, 35, 39,§7737; C46, 50, 54, §465.23; 57GA, ch 233,§1]

**465.24 Private drainage system — record.** Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located as is hereinafter provided. [C24, 27, 31, 35, 39,§7738; C46, 50, 54, §465.24]

**465.25 Drainage plat book.** The county recorder shall be provided with a loose leaf plat book, made to a scale not larger than sixteen inches to one mile, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats shall be made or approved only by a registered engineer. Plats so offered for record shall be drawn to scale

giving distances in feet, indicate the size of tile used, length of mains, submains, and laterals, and location with regard to boundary lines of tract or government corners and subdivisions. [C24, 27, 31, 35, 39, §7739; C46, 50, 54, §465.25]

Referred to in §465.26

**465.26 Record book and index.** The county recorder shall also be provided with a record book and index referring to the plats provided for in section 465.25, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath, and shall be certified under oath by a registered engineer as being a true and accurate record. [C24, 27, 31, 35, 39, §7740; C46, 50, 54, §465.26]

40ExGA, HF 185, §244, editorially divided

**465.27 Original plat filed.** In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same. [C24, 27, 31, 35, 39, §7741; C46, 50, 54, §465.27]

**465.28 Record not part of title.** The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstractors as a part of the record title of said lands. [C24, 27, 31, 35, 39, §7742; C46, 50, 54, §465.28]

**465.29 Fees for record and copies.** The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature. [C24, 27, 31, 35, 39, §7743; C46, 50, 54, §465.29]

Recorder fee, §335.14

**465.30 Lost records — hearing.** When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of trustees for relief. The trustees shall notify all affected parties of such petition, and set a date for a hearing on the petition. The trustees may adjourn the proceedings from day to day, but no

adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and appraisals of damages as they deem necessary. At the completion of the hearing the trustees shall re-establish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such re-establishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established. [C50, 54, §465.30]

Referred to in §465.31

**465.31 Mutual drains—establishment as district.** Whenever a landowner fails to pay the cost apportioned as provided in section 465.30, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the trustees desire, the trustees may transmit a copy of the records and procedures of such mutual drain to the board of supervisors of the county in which the mutual drain is located, together with a request that such mutual drain be established as a drainage district. Upon receipt of such transcript and request, the board of supervisors by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts. [C50, 54, §465.31]

Referred to in §465.32

**465.32 Appeal.** The decisions and actions of the trustees under section 465.31 may be appealed as provided in sections 465.9, 465.10, and 465.11. [C50, 54, §465.32]

**465.33 Record filed with established district.** When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with and as a part of, the records of such established district. [C50, 54, §465.33]

Referred to in §465.34

**465.34 Lost or incomplete records.** If the records referred to in section 465.33 are incomplete or have been lost, the board may re-establish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands. [C50, 54, §465.34]

Referred to in §465.35

**465.35 Petition to combine with established district.** Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the



owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional

information as provided in section 465.34. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects. [C50, 54,§465.35]

CHAPTER 466

DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

Referred to in §§455.22, 455.214, 455.215, 467C.6, 468.9

- 466.1 United States levees—co-operation of board.
- 466.2 Manner of co-operation.
- 466.3 Report of engineer—payment authorized.
- 466.4 Costs assessed.

- 466.5 Annual installments.
- 466.6 Collection of tax.
- 466.7 Cost of maintaining.
- 466.8 Laws applicable.

**466.1 United States levees—co-operation of board.** In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility. [C97,§1975; C24, 27, 31, 35, 39, §7744; C46, 50, 54,§466.1]

Referred to in §§466.2, 466.7

**466.2 Manner of co-operation.** Any United States government levee under the conditions mentioned in section 466.1 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility. [C97,§1975; C24, 27, 31, 35, 39,§7745; C46, 50, 54,§466.2]

Referred to in §466.7

**466.3 Report of engineer—payment authorized.** In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such co-operative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee. [C97,§1976; C24, 27, 31, 35, 39,§7746; C46, 50, 54,§466.3]

Referred to in §466.7

**466.4 Costs assessed.** If said district is established, the entire costs and expenses incurred under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land within such district, sufficient to raise the required sum; provided that where the proposed improvement is for drainage only, the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter 455. [C97,§1982; S13,§1982; C24, 27, 31, 35, 39,§7747; C46, 50, 54,§466.4]

Referred to in §§466.6, 466.7

**466.5 Annual installments.** If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed twelve and one-half mills on the dollar of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, easements, and railroads within the district. If the amount necessary to pay for the improvement exceed said sum, it shall be levied and collected in annual installments. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of ten or less. [C97,§1984; C24, 27, 31, 35, 39,§7748; C46, 50, 54,§466.5]

Referred to in §§466.6, 466.7

**466.6 Collection of tax.** The assessment required under sections 466.4 and 466.5 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the

execution and delivery of the tax deed for the same. The landowners shall take notice of and pay such assessments without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors. [C97,§1983; C24, 27, 31, 35, 39,§7749; C46, 50, 54,§466.6]

Referred to in §466.7

**466.7 Cost of maintaining.** The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 466.1 to 466.6, inclusive, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding twelve and one-half mills on the dollar on the assessable value of the lands within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work. [C97,§1986; C24, 27, 31, 35, 39,§7750; C46, 50, 54, §466.7]

**466.8 Laws applicable.** In the establishment and maintenance of levee and drainage districts in co-operation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof, and all other proceedings relating to such district shall be as provided in chapters 455 to 465, inclusive, except as otherwise in this chapter provided. [C97,§§1976-1989; S13, §§1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; C24, 27, 31, 35, 39,§7751; C46, 50, 54, §466.8]

Chapters 456, 463, and 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457

## CHAPTER 467

### INTERSTATE DRAINAGE DISTRICTS

Referred to in §§455.22, 455.214, 455.215, 467C.6, 468.9

- 467.1 Co-operation—procedure.
- 467.2 Agreement as to costs.
- 467.3 Contracts let by joint agreement.
- 467.4 Separate contracts.

- 467.5 Conditions precedent.
- 467.6 Assessments, bonds, and costs—limitation.

**467.1 Co-operation—procedure.** When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7752; C46, 50, 54,§467.1]

**467.2 Agreement as to costs.** The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state

should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7753; C46, 50, 54,§467.2]

**467.3 Contracts let by joint agreement.** When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states. [SS15,§1989-a77; C24, 27, 31, 35, 39, §7754; C46, 50, 54,§467.3]

**467.4 Separate contracts.** The contract or contracts for the construction of that portion of the improvement within this state shall be

entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7755; C46, 50, 54,§467.4]

**467.5 Conditions precedent.** No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal. [SS15,§1989-a78; C24, 27, 31, 35, 39,§7756; C46, 50, 54,§467.5]

## CHAPTER 467A

### SOIL CONSERVATION

Referred to in §467C.5

- 467A.1 Short title.
- 467A.2 Declaration of policy.
- 467A.3 Definitions.
- 467A.4 State soil conservation committee.
- 467A.5 Creation of soil conservation districts.
- 467A.6 Appointment, qualifications and tenure of commissioners.
- 467A.7 Powers of districts and commissioners.
- 467A.8 Co-operation between districts.
- 467A.9 State agencies to co-operate.
- 467A.10 Discontinuance of districts.

**467.6 Assessments, bonds, and costs—limitation.** All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter 455. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7757; C46, 50, 54,§467.6]

- 467A.11 Report to governor.
- 467A.12 Statement to comptroller.

#### SUBDISTRICTS

- 467A.13 Purpose of subdistricts.
- 467A.14 Petition to form.
- 467A.15 Notice and hearing.
- 467A.16 Publication of notice.
- 467A.17 Subdistrict in more than one district.
- 467A.18 Authentication.
- 467A.19 Governing body.
- 467A.20 Special annual tax.

**467A.1 Short title.** This chapter may be known and cited as the “Soil Conservation Districts Law”. [C39,§2603.02; C46,§160.1; C50, 54,§467A.1]

**467A.2 Declaration of policy.** It is hereby declared to be the policy of the legislature to provide for the restoration and conservation of the soil and soil resources of this state and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wild life, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state. [C39,§2603.03; C46,§160.2; C50, 54,§467A.2; 56GA, ch 225,§1]

Referred to in §§467A.5, 467A.7

**467A.3 Definitions.** Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “District” or “soil conservation district” means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the pow-

ers, and subject to the restrictions hereinafter set forth.

2. “Commissioner” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

3. “Committee” or “state soil conservation committee” means the agency created in section 467A.4.

4. “Petition” means a petition filed under the provisions of subsection 1 of section 467A.5 for the creation of a district.

5. “Nominating petition” means a petition filed under the provisions of section 467A.5 to nominate candidates for the office of commissioner of a soil conservation district.

6. “State” means the state of Iowa.

7. “Agency of this state” includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

8. “United States” or “agencies of the United States” includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States.

9. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

10. "Landowner" includes any person, firm, or corporation who shall hold title to three or more acres of land lying outside incorporated cities or towns and within a proposed district or a district organized under the provisions of this chapter.

11. "Due notice" means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. [C39, §2603.04; C46, §160.3; C50, 54, §467A.3]

**467A.4 State soil conservation committee.**

1. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter (together with such other functions as may be hereafter assigned to it from time to time by act of the legislature), the state soil conservation committee. The committee shall consist of a chairman and six members. The following shall serve as members of the committee: The director of the state agricultural extension service, the secretary of agriculture, or a member designated by him. Five members shall be appointed by the governor and confirmed by the senate. The five appointive members shall be bona fide farmers living on farms. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the above mentioned members, but in an advisory capacity only. The committee shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

2. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the committee, for the purpose of carrying out any of its functions,

the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

3. The committee shall designate its chairman, and may, from time to time, change such designation. The director of the state agricultural extension service shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. The members appointed by the governor shall serve for a period of six years, except that those first appointed shall serve for terms of two, four and six years respectively, one member being appointed every two years thereafter. The member representing the secretary of agriculture shall serve until there is a change in the personnel of the secretary of agriculture. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee, not otherwise in the employ of the state, shall receive ten dollars per diem as compensation for their services in the discharge of their duties as members of the committee. The committee shall determine the number of days for which any committee member may draw per diem compensation, but the total number of days for which per diem compensation is allowed for the entire committee shall not exceed two hundred fifty days per year. They shall also be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of such committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

a. To offer such assistance as may be appropriate to the commissioners of soil conservation districts, organized as provided hereinafter, and in the carrying out of any of their powers and programs.

b. To keep the commissioners of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.

c. To co-ordinate the programs of the sev-

eral soil conservation districts organized hereunder so far as this may be done by advice and consultation.

d. To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

f. To render financial aid and assistance to soil conservation districts organized hereunder for the purpose of carrying out the policy stated in this chapter. [C39,§2603.05; C46,§160.4; C50, 54,§467A.4]

Referred to in §467A.8

#### 467A.5 Creation of soil conservation districts.

1. Any twenty-five owners, but in no case less than twenty percent of the owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee, asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

a. The proposed name of said district.

b. That there is need, in the interest of health, safety and public welfare, for a soil conservation district to function in the territory described in the petition.

c. A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

d. A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where petitions are filed covering adjacent territory or parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

2. Within ninety days after such petition has been formally accepted by the state soil conservation committee, it shall cause due notice by publication to be given of a proposed hearing upon the question of the desirability and necessity in the interest of health, safety and public welfare, of the creation of such district, on the question of the appropriate boundaries to be assigned to each district upon the propriety of the petition and other proceedings taken under this chapter and upon all questions relative to such inquiries.

All owners of land within the limits of the territory described in the petition and of lands within any territory considered for addition to

such described territory and all other interested parties shall have the right to attend such hearings and to be heard. If it shall appear on the hearing that it shall be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given through the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need in the interest of health, safety and public welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the character of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits which such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in section 467A.2. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition.

3. After the committee has made and recorded a determination that there is need, in the interest of health, safety and public welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. It shall be the duty of the committee to hold a referendum within the proposed district upon the question of the creation of the district, and, at the same time, hold an election to elect the first commissioners of the district, and to cause due notice of such referendum and election to be given. Nomination petitions may be filed with the state soil conservation committee to nominate candidates for commissioners. Candidates for commissioners shall be nominated at least ten days prior to the date of the election, unless the committee extends the time within which nominating petitions may be

filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more landowners of such proposed district. Such landowners may sign more than one such nominating petition to nominate more than one candidate for commissioners. The referendum and election shall be held by using ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of . . . . ., . . . . ., and . . . . . ." and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of . . . . ., . . . . ., and . . . . ." shall appear, with a square before each proposition, and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated shall also appear upon the ballots, arranged in alphabetical order of the surnames, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. Only owners of land within the boundaries of the territory as determined by the state soil conservation committee shall be eligible to vote in such referendum and election. After the district is organized, the owners of land, whether living on the land or not, and operators living on farms within the district shall have the right to sign nominating petitions and to vote for election of commissioners.

4. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings, referenda and elections, and shall supervise and conduct such hearings, referenda and elections. It shall issue appropriate regulations governing the conduct of such hearings, referenda and elections, and provide for the registration, prior to the date of the referendum and election, of all eligible voters, or prescribe some other appropriate procedure for the determination of those eligible as voters in such referendum and election. No informalities in the conduct of such referendum and election or in any matters relating thereto shall invalidate said referendum and election or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum and election shall have been fairly conducted.

5. The committee shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible and shall publish the result of such referendum. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and shall deny the petition for organization of a district. If the committee shall determine that the operation of such district

is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the landowners and occupiers within the defined boundaries, and the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 467A.2; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty-five percent of the votes cast in the referendum is in favor of the creation of such district.

6. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall publish the results of the election of commissioners. The three candidates who shall have received the largest number, respectively, of the votes cast in such election shall be the elected commissioners for such district. The term of office of each commissioner shall be six years, except that the terms of the commissioners first elected shall be as follows: Six years for the commissioner receiving the highest number of votes in the election, four years for the commissioner receiving the second highest number of votes in the election, and two years for the commissioner receiving the third highest number of votes in the election. A commissioner shall hold office until his successor has been elected and has qualified. Vacancies shall be filled for the unexpired term. There shall be elected biennially one commissioner for the term of six years to succeed the commissioner whose term of office expires. The election of a successor to fill an unexpired term or for a full term shall be made under regulations of the state soil conservation committee and conducted by the commissioners of the district in the same manner as hereinabove provided; or, at the discretion of the committee, it may appoint a successor to fill the unexpired term of a commissioner, but only for a term extending to the date of the next election in the district held to elect a successor to a commissioner for that district.

Such district shall be a body corporate upon the taking of the following proceedings: The three commissioners shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals):

a. That a petition for the creation of the district was approved by the state soil conservation committee pursuant to the provisions of this chapter, and that they are the duly elected commissioners;

b. The name and official residence of each of the commissioners;

c. The name which is proposed for the district; and

d. The location of the proposed office of the commissioners of the district.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of this state to take and certify oaths. The application shall be accompanied by a statement by the state soil conservation committee which shall certify that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of health, safety and public welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district and an election held to elect commissioners for such district, if created, and that the results of such referendum showed sixty-five percent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee, and the names of the duly elected commissioners.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a body corporate. The secretary of state shall make and issue to the said commissioners a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement.

The commissioners shall also cause such certificate to be recorded in the office of the county recorder of each county in which the land of the district extends. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

7. After six months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

8. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petition to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. In referenda upon petitions for such inclusion, all landowners within the proposed area shall be eligible to vote. Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by seventy-five percent of the landowners of such area, and in such case no referendum need be held.

9. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action or proceeding, and shall be proof of the filing and contents thereof. [C39,§2603.06; C46,§160.5; C50, 54,§467A.5]

Referred to in §§467A.3, 467A.15

**467A.6 Appointment, qualifications and tenure of commissioners.** The governing body of the district shall consist of three commissioners who shall reside within the district or in cities or towns lying within the outside boundaries of the district. The commissioners shall designate a chairman and may, from time to time, change such designation.

The commissioners of the respective districts shall submit to the committee such statements, estimates, budgets, and other information at such times and in such manner as the committee may require.

A commissioner shall receive no compensation for his services but he may be paid expenses, including traveling expenses, neces-

sarily incurred in the discharge of his duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairman, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for a biennial audit of the accounts of receipts and disbursements.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [C39, §2603.08; C46, §160.6; C50, 54, §467A.6]

**467A.7 Powers of districts and commissioners.** A soil conservation district organized under the provisions of this chapter shall have the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented

and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 467A.2, on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. The approval of the Iowa natural resources council shall be required on any project which relates to or in any manner affects flood control.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. The approval of the Iowa natural resources council shall be required on any project which relates to or in any manner affects flood control.

8. To develop comprehensive plans for the conservation of soil resources and for the con-



trol and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, any provision herein contained on the contrary notwithstanding.

14. Subject to the approval of the state soil conservation committee, to change the name of such soil conservation district. [C39,§2603.09; C46,§160.7; C50, 54,§467A.7; 56GA, ch 225,§2; 57 GA, ch 235,§1]

**467A.8 Co-operation between districts.** The commissioners of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. [C39,§2603.10; C46,§160.8; C50, 54, §467A.8]

**467A.9 State agencies to co-operate.** Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may co-operate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. [C39,§2603.11; C46,§160.9; C50, 54,§467A.9]

**467A.10 Discontinuance of districts.** At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five owners of land lying within the boundaries of such district may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist in the consideration thereof. Within sixty days after such a petition has been received by the committee, it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of such district, the state soil conservation committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting forth the determination

of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years. [C39,§2603.12; C46,§160.10; C50, 54,§467A.10]

**467A.11 Report to governor.** The committee shall submit to the governor, no later than January 1 next preceding each biennial legislative session, a report which shall state the following: The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balances of funds, if any, available to the committee as to the sums needed for its administrative and other expenses, and for allocation among the several districts during the ensuing biennial fiscal period. [C46,§160.11; C50, 54,§467A.11]

Biennial report, §17.3

**467A.12 Statement to comptroller.** On or before September 1 next preceding each biennial legislative session, the state soil conservation committee shall submit to the state comptroller, on official estimate blanks furnished for such purposes, statements and estimates of the expenditure requirements for each fiscal year of the ensuing biennium, and a statement of the balance of funds, if any, available to the committee, and the estimates of the committee as to the sums needed for its administrative and other expenses. [C46,§160.12; C50, 54, §467A.12]

#### SUBDISTRICTS

**467A.13 Purpose of subdistricts.** Subdistricts of a soil conservation district may be formed as hereinafter provided for the purpose of carrying out watershed protection and flood prevention programs within the subdistrict but may not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district. [56GA, ch 225, §3(1)]

**467A.14 Petition to form.** When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil conservation district. The area must be contiguous and in the same watershed but in no event shall it include any area located within the boundaries of an incorporated city or town. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict. The petition shall contain a brief statement giving the reasons for organization, requesting that the proposed area be organized as a subdistrict and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil conservation district commissioners shall review such petition and if found adequate shall arrange for a hearing thereon. [56GA, ch 225, §3(2)]

**467A.15 Notice and hearing.** Within thirty days after such petition has been filed with the soil district commissioners, they shall fix a date, hour, and place for a hearing thereon and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and prayer of said petition and that all objections to establishment of said subdistrict for any reason must be made in writing and filed with the secretary of the soil conservation district at, or before, the time set for hearing. The soil conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties shall have a right to attend such hearing and to be heard. The soil district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil district commissioners determine that the petition meets the requirements set forth herein and in section 467A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official

minutes together with an appropriate official name, or designation for the subdistrict. [56GA, ch 225,§3(3)]

**467A.16 Publication of notice.** The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county (or district) the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with secretary of the district at the time the hearing begins. [56GA, ch 225,§3(4)]

**467A.17 Subdistrict in more than one district.** If the proposed subdistrict lies in more than one soil conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning such subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairman, vice-chairman, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the same manner and shall have the same powers and duties as a subdistrict formed in one soil conservation district. [56GA, ch 225,§3(5)]

**467A.18 Authentication.** Following the entry in the official minutes of the soil district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the state soil conservation committee. [56GA, ch 225,§3(6)]

**467A.19 Governing body.** The commissioners of a soil conservation district in which the subdistrict is formed shall be the governing body of the subdistrict. When a subdistrict lies in more than one soil conservation district, the combined board of commissioners shall be the governing body. The governing body of

the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict. [56GA, ch 225,§3(7)]

**467A.20 Special annual tax.** After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a district shall have the authority to impose a special annual tax, the proceeds of which shall be used for organization, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

On or before July 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary millage levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed four mills.

The special tax so levied shall be collected in the same manner as other taxes with the proceeds therefrom to be kept in a separate account by the appropriate county treasurer or treasurers identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairman and secretary of the governing body of the subdistrict. [56GA, ch 225,§3(8); 57GA, ch 234,§1]

## CHAPTER 467B

### FLOOD AND EROSION CONTROL

467B.1 Authority of board.

467B.2 Federal aid.

467B.3 Co-operation.

467B.4 Structures or levees.

467B.5 Maintenance cost.

467B.6 Estimate.

467B.7 Projects on private land.

467B.8 Conservation commissioners.

467B.9 Tax.

467B.10 Assumption of obligations.

467B.11 Highway law applicable.

467B.12 Payments from federal government.

467B.13 Allocation to secondary road construction fund.

467B.14 Allocation to county board of education fund.

467B.15 Taxes canceled.

**467B.1 Authority of board.** Whenever any county, soil conservation district, subdistrict of a soil conservation district, political subdivision of the state, or other local agency shall

engage or participate in any project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal

government, or any department or agency thereof, the counties in which said project shall be carried on shall have the jurisdiction, power, and authority through the board of supervisors to construct, operate and maintain said project on lands under the control or jurisdiction of the county whenever dedicated to county use, or to furnish financial and other assistance in connection with said projects. Such flood, soil erosion control, and watershed improvement projects shall be presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare. [C50, 54,§467B.1; 57GA, ch 236,§1]

**467B.2 Federal aid.** Any county may, in accordance with provisions of this chapter, accept federal funds for aid in any project for flood, or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may co-operate with the federal government or any department or agency thereof, soil conservation districts, sub-district of a soil conservation district, political subdivision of the state, or other local agency, and the county may assume such proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the same on lands under the control or jurisdiction of the county as will not be discharged by federal aid or grant. [C50, 54,§467B.2; 57 GA, ch 236,§2]

See also §467B.12

**467B.3 Co-operation.** The counties and soil conservation districts, subdistricts of soil conservation districts concerned, shall advise and consult with each other, upon the request of either party or any affected landowners, and shall be authorized to co-operate with each other or with other state subdivisions, or instrumentalities, and affected landowners, as well as with the federal government or any department or agency thereof, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use. [C50, 54,§467B.3; 57GA, ch 236,§3]

**467B.4 Structures or levees.** When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction. [C50, 54, §467B.4; 57GA, ch 236,§4]

**467B.5 Maintenance cost.** Where construction of projects has been completed by the soil conservation district, subdistricts of soil conservation districts, political subdivisions of the state, or other local agencies, or the federal government, or any department or agency thereof on private lands under the easement

granted to the county, only the cost of maintenance may be assumed by the county. [C50, 54,§467B.5; 57GA, ch 236,§5]

**467B.6 Estimate.** In the proceedings to establish such a project the government engineer shall set forth in his report separately from other items, the amount of the cost of construction on county property and on private lands, and his estimate of the cost of the maintenance of the same.

If the plan is approved by all co-operating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such co-operative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project. [C50, 54,§467B.6]

**467B.7 Projects on private land.** Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county-owned or controlled property. [C50, 54,§467B.7; 57GA, ch 236,§6]

**467B.8 Conservation commissioners.** In counties where soil conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county; shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors. [C50, 54,§467B.8]

**467B.9 Tax.** The county board of supervisors may annually levy a tax not to exceed one-quarter mill on all agricultural lands in the county, the same to be used as a maintenance fund for structures built on lands under the control or jurisdiction of the county, as provided for in this chapter. [C50, 54,§467B.9]

**467B.10 Assumption of obligations.** This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection therewith, will be assumed by the soil conservation district, subdistrict of a soil conservation district, or by the federal government and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal co-operation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties. [C50, 54,§467B.10; 57GA, ch 236,§7]

**467B.11 Highway law applicable.** The counties in maintaining the structures or improve-

ments made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any co-operative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost. [C50, 54, §467B.11]

Constitutionality, 52GA, ch 102, §12

**467B.12 Payments from federal government.**

Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due. [C50, 54, §467B.12]

See also §467B.2

**467B.13 Allocation to secondary road fund.**

Upon receipt of any such payments or payment by the county treasurer thirty percent of such amount shall be credited to the secondary road funds of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be ex-

pendent from these funds derived from the federal government on such roads. [C50, 54, §467B.13; 57GA, ch 139, §16]

**467B.14 Allocation to county board of education fund.** The remaining seventy percent of any such payments or payment received from the federal government shall be credited to the county board of education fund as created by section 273.13 and the county board of education shall determine the districts of the county which are principally affected in their activities by the federal flood control project involved and shall allocate to the general fund of each said school district the amount of such federal payments paid to the county board of education fund deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over by the county board of education to the treasurer of such school district. [C50, 54, §467B.14]

**467B.15 Taxes canceled.** The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof. [57GA, ch 237, §1]

## CHAPTER 467C

### SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

467C.1 Presumption of benefit.

467C.2 Board of supervisors to establish districts—strip coal mining.

467C.3 Combination of functions.

467C.4 Old districts combined.

467C.5 Approval of commissioners.

467C.6 Chapters made applicable.

**467C.1 Presumption of benefit.** The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state. [C50, 54, §467C.1]

**467C.2 Board of supervisors to establish districts—strip coal mining.** The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power

and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949 and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter. [C50, 54, §467C.2]

**467C.3 Combination of functions.** Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another. [C50, 54, §467C.3]

**467C.4 Old districts combined.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [C50, 54,§467C.4]

**467C.5 Approval of commissioners.** No district shall be established by any board of supervisors under this chapter unless the organization of such district is approved by the commissioners of any soil conservation district established under the provisions of chapter 467A and which is included all or in part within such district, nor shall any such district be established without the approval of the state conservation commission and the Iowa natural resources council. [C50, 54,§467C.5]

**467C.6 Chapters made applicable.** In the organization, operation and financing of districts established under this chapter, the provisions of chapters 455 and 456 to 467, inclusive, shall apply.

Wherever any of the provisions of said chapters refer to the word "drainage", the word shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control and soil erosion control. The term "drainage district" shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof, and the words "drainage certificates" or "drainage bonds" shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter; and any procedure provided by these chapters in connection with the organization, financing and operation of any drainage district shall be applicable to the organization, financing and operation of districts organized under this chapter. [C50, 54,§467C.6]

Constitutionality, 53GA, ch 204,§13

## CHAPTER 468

### DRAINAGE OF COAL AND MINERAL LANDS AND MINES

Referred to in §455.22

- 468.1 Drainage through lands of another.
- 468.2 Lead or zinc bearing lands.
- 468.3 Setting apart compensation.
- 468.4 Failure to pay compensation.
- 468.5 Notice to smelters—effect.

- 468.6 Right of way.
- 468.7 Condemnation.
- 468.8 Limitation of provisions.
- 468.9 Interpretation of codification act.

**468.1 Drainage through lands of another.** Any person or corporation owning or possessing any land underlaid with coal, who is unable to mine the same by reason of the accumulation of water in or upon it, may drain the same through, over, or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed in the manner provided in the chapter on eminent domain. [C73,§1228; C97,§1967; C24, 27, 31, 35, 39,§7758; C46, 50, 54,§468.1]

Condemnation procedure, ch 472

**468.2 Lead or zinc bearing lands.** Any person or corporation who by machinery, or by making drains or adit levels, or in any other way, shall rid any lead or zinc bearing lands or lead or zinc mines of water, thereby enabling the owners of mineral interests in said lands to make them productive and available for mining purposes, shall receive one-tenth of all the lead and zinc taken from said lands as compensation for said drainage. [C73,§1229; C97,§1968; S13,§1968; C24, 27, 31, 35, 39,§7759; C46, 50, 54,§468.2]

**468.3 Setting apart compensation.** The owners of the mineral interests in said lands, and persons mining upon and taking lead or zinc from said lands, shall jointly and severally set apart and deliver from time to time, when demanded, the said one-tenth of the mineral taken from said lands to the person or corporation entitled thereto, and the owners of the mineral interests therein shall allow the party entitled to such compensation and his agent at all times to descend into and examine said mines, and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken therefrom. [C73,§1230; C97,§1969; S13,§1969; C24, 27, 31, 35, 39,§7760; C46, 50, 54,§468.3]

Referred to in §468.4

**468.4 Failure to pay compensation.** Upon the failure or refusal of any owner of the mineral interests in said lands, or of any person taking the mineral therefrom to comply with the provisions of section 468.3, the person or corporation entitled to said compensation may recover the value of said mineral. If it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine such mines and to weigh such mineral, or concealed or secretly carried away any

mineral taken from them, the court shall render judgment for double the amount proved to be due from such defendant. [C73,§1231; C97,§1970; C24, 27, 31, 35, 39,§7761; C46, 50, 54, §468.4]

**468.5 Notice to smelters—effect.** The person or corporation entitled to said drainage compensation may at any time leave with any smelter of lead or zinc mineral in this state a written notice, stating that said person or corporation claims of the persons named in said notice the amount to which said person or corporation may be entitled, which notice shall have the effect of notices in garnishment, and also require the said smelter to retain, for the use of the person entitled thereto, the one-tenth part of the mineral taken from said land and received from the person named in said notice. The payment or delivery of the one-tenth part of the mineral taken from any of said lands by any of the persons whose duty it is hereby made to pay or deliver the same, shall discharge the parties liable jointly with him, except liability to contribute among themselves. [C73,§1232; C97,§1971; S13,§1971; C24, 27, 31, 35, 39,§7762; C46, 50, 54,§468.5]

**468.6 Right of way.** Any person or corporation engaged as aforesaid in draining such mines and lead or zinc bearing lands, when he or they shall find it necessary for the prosecution of their work, may procure the right of way upon, over, or under the surface of such mineral lands and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races, or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improve-

ments. [C73,§1233; C97,§1972; S13,§1972; C24, 27, 31, 35, 39,§7763; C46, 50, 54,§468.6]

**468.7 Condemnation.** If the said person or corporation engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary, cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed in the manner provided for the exercise of the right of eminent domain as provided in chapter 472. [C73,§1234; C97,§1973; C24, 27, 31, 35, 39,§7764; C46, 50, 54,§468.7]

**468.8 Limitation of provisions.** The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the owners. [C73,§1235; C97,§1974; C24, 27, 31, 35, 39,§7765; C46, 50, 54,§468.8]

**468.9 Interpretation of codification act.** The amendment, revision, and codification of existing law contained in this and chapters 455 to 467, inclusive, of this title (not including chapters 456, 463 and 464) shall not affect litigation pending at the time said chapters go into effect, or the validity of the establishment, construction, or organization of any district then existing, the classification then existing of all lands, the assessment and levy of drainage taxes then made, existing contracts, and vested rights or any warrants, improvement certificates, or drainage bonds outstanding or already provided for under prior existing laws. [C24, 27, 31, 35, 39,§7766; C46, 50, 54,§468.9]

Chapters 456, 463, and 464 were enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457

## CHAPTER 469

### MILLDAMS AND RACES

Referred to in §§455A.33, 455A.34

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|---|---|
| 469.1 Prohibition—permit.                 | 469.17 Condemnation—petition.                     |
| 469.2 Application for permit.             | 469.18 Precept for jury—service.                  |
| 469.3 Notice of hearing.                  | 469.19 Guardian appointed.                        |
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| 469.6 Certificate of approval.            | 469.22 Appeal.                                    |
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| 469.8 Granting or refusing.               | 469.24 Embankments—damages.                       |
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| 469.10 Construction and operation.        | 469.26 Revocation or forfeiture of permit.        |
| 469.11 Access to works.                   | 469.27 Legislative control.                       |
| 469.12 Duty to enforce statutes.          | 469.28 Repealed by 53GA, ch 203,§28. See §469.29. |
| 469.13 Violations.                        | 469.29 Permits for existing dams.                 |
| 469.14 Action to collect fees.            | 469.30 State lands.                               |
| 469.15 Unlawful combination—receivership. | 469.31 Cities and towns.                          |
| 469.16 Nuisance.                          |   |

**469.1 Prohibition—permit.** No dam shall be constructed, maintained, or operated in this state in any navigable or meandered stream

for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for

industrial purposes, unless a permit has been granted by the Iowa natural resources council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same. [R60,§1264; C73,§1188; C97,§1921; C24, 27, 31, 35, 39,§7767; C46, 50, 54,§469.1]

**469.2 Application for permit.** Any person, firm, corporation, or municipality making application for a permit to construct, maintain, or operate a dam in any of the waters, including canals, raceways, and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the Iowa natural resources council a written application, which shall contain the following information:

1. The name of the navigable, meandered, or other stream in or across which a dam is maintained or it is proposed to construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

2. The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

3. A general description of the dam, raceways, canals, and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.

4. The approximate amount of hydraulic power that the dam is capable of developing and the amount of power to be used.

5. A map or blueprint on a scale of not less than four inches to the mile, showing the lands that are or may be affected by the construction, operation, or maintenance of the dam, and the ownership of each tract of land within the affected area.

6. Such additional information as may be required by the Iowa natural resources council. [R60,§1265; C73,§§1188, 1189; C97,§1921; C24, 27, 31, 35, 39,§7768; C46, 50, 54,§469.2]

**469.3 Notice of hearing.** When any application for a permit to construct, maintain, or operate a dam from and after the passage of this chapter is received, the Iowa natural resources council shall fix a time for hearing, and it shall give notice of the time and place of such hearing by publication once each week for two successive weeks in at least one newspaper in each county in which riparian lands will be affected by the dam. [R60,§1266, 1270; C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7769; C46, 50, 54,§469.3]

40ExGA, SF 186,§3, editorially divided

**469.4 Hearing.** At the time fixed for such hearing or at any adjournment thereof, the council shall take evidence offered by the applicant and any other person, either in sup-

port of or in opposition to the proposed construction. [R60,§§1267, 1268; C73,§§1192, 1193; C97,§§1924, 1925; C24, 27, 31, 35, 39,§7770; C46, 50, 54,§469.4]

**469.5 When permit granted.** If it shall appear to the council that the construction, operation, or maintenance of the dam will not materially obstruct existing navigation, or materially affect other public rights, will not endanger life or public health, and any water taken from the stream in connection with the project, excepting water taken by a municipality for distribution in its watermains, is returned thereto at the nearest practicable place without being materially diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe. [R60,§1269; C73,§§1193, 1198; C97,§1930; C24, 27, 31, 35, 39, §7771; C46, 50, 54,§469.5; 57GA, ch 238,§1]

**469.6 Certificate of approval.** No permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the state department of health has been filed with the council showing its approval of the use of the water for the purposes specified in the application. [C24, 27, 31, 35, 39,§7772; C46, 50, 54,§469.6]

**469.7 Application for certificate.** When it is proposed to use the water for manufacturing purposes, except to develop power, or for condensation purposes, application must be made to the department of health, accompanied by a description of the proposed use of the water and what, if any, substances are to be deposited in such water and chemical changes made in the same, and such other information as the department of health may require to enable it to determine the advisability of the issuance of such certificate. [C24, 27, 31, 35, 39, §7773; C46, 50, 54,§469.7]

40ExGA, SF 186,§4, editorially divided

**469.8 Granting or refusing.** If the department of health is satisfied that the use of the water in any such project will not cause pollution of the same or render it materially unwholesome or impure, or deleterious to fish life, it may issue a certificate, and if it is not so satisfied, it shall refuse to issue same. [C24, 27, 31, 35, 39,§7774; C46, 50, 54,§469.8]

**469.9 Permit fee — annual license.** Every person, firm, or corporation, excepting a municipality, to whom a permit is granted to construct or to maintain and operate a dam already constructed in or across any stream for the purpose herein specified, shall pay to the Iowa natural resources council a permit fee of one hundred dollars and shall pay an annual inspection and license fee, to be fixed by the Iowa natural resources council, on or before the first day of January, 1925, and annually thereafter, but in no case shall the annual inspection and license fee be less than



twenty-five dollars. All fees shall be paid into the general fund of the state treasury.

The provisions of this section shall not apply to dams already constructed for power production, having less than twenty-five horsepower capacity, nor shall they apply to dams developed solely for recreational use where the recreational facilities thus created are open to the public without charge. [C24, 27, 31, 35, 39, §7775; C46, 50, 54, §469.9; 57GA, ch 238, §2]

**469.10 Construction and operation.** The Iowa natural resources council shall investigate methods of construction, reconstruction, operation, maintenance, and equipment of dams, so as to determine the best methods to conserve and protect as far as possible all public and riparian rights in the waters of the state and so as to protect the life, health, and property of the general public; and the method of construction, operation, maintenance, and equipment of any and all dams of any character or for any purpose in such waters shall be subject to the approval of the Iowa natural resources council. [C24, 27, 31, 35, 39, §7776; C46, 50, 54, §469.10]

40ExGA, SF 186, §6, editorially divided

**469.11 Access to works.** Such council or any member, agent, or employee thereof shall at all times be accorded full access to all parts of any dam and its appurtenances being constructed, operated, or maintained in such waters. [C24, 27, 31, 35, 39, §7777; C46, 50, 54, §469.11]

**469.12 Duty to enforce statutes.** It shall be the duty of the council to require that all existing statutes of the state, including the provisions of this chapter, with reference to the construction of dams, shall be enforced. [C24, 27, 31, 35, 39, §7778; C46, 50, 54, §469.12]

**469.13 Violations.** The construction, maintenance, or operation of a dam for the purpose specified herein without a permit first being issued, as in this chapter provided, shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars. [C24, 27, 31, 35, 39, §7779; C46, 50, 54, §469.13]

40ExGA, SF 186, §7, editorially divided

**469.14 Action to collect fees.** If any dam is constructed, operated, or maintained without the provisions of this chapter having been first complied with, including the payment of the permit fee and the annual inspection and license fee, the permit fee and the inspection and license fee may be recovered in an action brought in the name of the state, and in addition to the recovery of the amount due, there shall be collected a penalty of one thousand dollars. [C24, 27, 31, 35, 39, §7780; C46, 50, 54, §469.14]

**469.15 Unlawful combination—receivership.** If any dam for which a permit has been issued becomes owned, leased, trustee, possessed, or controlled in such manner as to be controlled

by any unlawful combination or trust, or forms the subject or part of the subject of any contract or agreement to limit the output of any hydraulic or hydroelectric power derived therefrom for the purpose of price fixing as to such output, the state may take possession thereof by receivership proceedings instituted by the state executive council, and such proceedings shall be conducted for the purpose of disposing of said property for lawful use and the proceeds shall be turned over to the persons found by the court to be entitled thereto, after the payment of all expenses of the receivership. [C24, 27, 31, 35, 39, §7781; C46, 50, 54, §469.15]

**469.16 Nuisance.** If any dam is constructed, maintained, or operated for any of the purposes specified herein, in waters of this state in violation of any of the provisions of this chapter or in violation of any provisions of the law, the state may, in addition to the remedies herein prescribed, have such dam abated as a nuisance. [C24, 27, 31, 35, 39, §7782; C46, 50, 54, §469.16]

Nuisances, ch 657

**469.17 Condemnation—petition.** Any person, firm, corporation, or municipality owning land on one or both sides of a watercourse, desiring to construct or heighten any dam in such watercourse or to construct or enlarge a raceway, canal, or other construction necessary for the development or utilization of the water or water power for any of the purposes specified in this chapter therefrom for the purpose of propelling any mill or machinery or developing any power by the use of the water, and to whom a permit has been granted as in this chapter provided, may file in the office of the clerk of the district court of the county in which such dam is, or is to be erected or heightened, a petition designating himself as plaintiff and the owners of the lands affected, or that will be affected, as defendants, and describing with reasonable certainty the locality where such dam is to be erected or improved, and also of the lands that will be overflowed or otherwise affected thereby. [R60, §§1264, 1265, 1274; C73, §§1188, 1189; C97, §1921; C24, 27, 31, 35, 39, §7783; C46, 50, 54, §469.17]

**469.18 Precept for jury—service.** The clerk shall thereupon issue an order, with a copy of the petition attached, directed to the sheriff, commanding him to summon a jury of twelve disinterested electors of his county to meet on a day fixed therein, and upon the lands described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices. Where the owner of any land affected is a nonresident of the state, service of the notice may be made by publication thereof once each week for three consecutive weeks in some newspaper of general circulation published in the county, the last of which publica-

tions shall be not less than twenty days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to such person at his last known mailing address unless there is on file an affidavit of the plaintiff or his attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of such service shall be by affidavit of the plaintiff or his attorney, as the case may be. Proofs of service required by this section shall be on file at the time the hearing begins. [R60,§1266; C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7784; C46, 50, 54,§469.18; 57GA, ch 219 §5]

40ExGA, SF 186,§11, editorially divided  
Time and manner of service, R.C.P. 53 and 56(a)

**469.19 Guardian appointed.** When service is made upon a minor or insane person having no guardian, the clerk at the time of issuing the order shall, by indorsement made thereon, appoint a suitable person to make defense for him. [C73,§1190; C97,§1922; C24, 27, 31, 35, 39, §7785; C46, 50, 54,§469.19]

**469.20 Lands in different counties.** If any of the lands are situated in a different county than that in which the petition is required to be filed, the proceedings shall apply thereto to the same extent as if such lands were situated in the county where it is filed. [R60,§1270; C73, §1191; C97,§1923; C24, 27, 31, 35, 39,§7786; C46, 50, 54,§469.20]

**469.21 Oath—assessment of damages—costs.** The jury shall be sworn, impartially and to the best of their skill and judgment, to view the lands described in the petition, and ascertain and appraise the damages each of the defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or raceway or heightening or enlarging the same. They may, in addition to examining the premises, examine witnesses, and shall determine the amount of damages to which each of the defendants are, in their judgment, entitled, by reason of the construction or improvement of the dam or raceway, and shall report their findings in writing, attaching the same to the order and returning it to the sheriff. All costs and fees in connection with the assessment of damages under this chapter shall be the same as in condemnation cases and shall be paid by the plaintiff. [R60,§§1267, 1273; C73,§§1192, 1193, 1203; C97,§§1924, 1925, 1935; C24, 27, 31, 35, 39, §7787; C46, 50, 54,§469.21]

Condemnation procedure, ch 472

**469.22 Appeal.** Either party may appeal from such assessment to the district court within thirty days after the assessment is made and such appeal and all further proceedings in connection with such matter, whether as to an appeal or the payment of damages and

costs, and all other matters connected with the proceedings, shall be the same as provided by law for assessment of damages in taking property for works of internal improvement. [C73, §1194; C97,§1926; C24, 27, 31, 35, 39,§7788; C46, 50, 54,§469.22]

Condemnation procedure, ch 472

**469.23 Protection of banks.** Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if he does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof. [R60,§§1275, 1276; C73,§1204; C97,§1936; C24, 27, 31, 35, 39, §7789; C46, 50, 54,§469.23]

**469.24 Embankments—damages.** If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason thereof. [R60,§1277; C73,§1205; C97,§1937; C24, 27, 31, 35, 39,§7790; C46, 50, 54, §469.24]

**469.25 Right to utilize fall.** Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change. [C73,§1206; C97,§1938; C24, 27, 31, 35, 39,§7791; C46, 50, 54,§469.25]

**469.26 Revocation or forfeiture of permit.** If the person to whom a permit is issued under the provisions of this chapter does not begin the construction or the improvement of the dam or raceway within one year from the date of the granting of the permit, his permit may be revoked by the Iowa natural resources council, and if any permit holder does not finish and have in operation the plant for which the dam is constructed within three years after the granting of the permit, unless for good cause

shown the council has extended the time for completion, such permit shall be forfeited. [R60,§1269; C73,§1199; C97,§1931; C24, 27, 31, 35, 39,§7792; C46, 50, 54,§469.26]

**469.27 Legislative control.** No permit granted or rights acquired hereunder shall be perpetual, but they shall be subject to restriction, cancellation, and regulation by legislative action, and subject to all the provisions of this chapter. [C24, 27, 31, 35, 39,§7793; C46, 50, 54, §469.27]

**469.28** Repealed by 53GA, ch 203,§28. See §469.29.

**469.29 Permits for existing dams.** All licenses and permits issued by the state executive council prior to April 17, 1949 are hereby declared to be in full force and effect and all of the powers of administration relating to licenses or permits heretofore issued are hereby

vested in the Iowa natural resources council. [C24, 27, 31, 35, 39,§§7794, 7795; C46,§§469.28, 469.29; C50, 54,§469.29]

**469.30 State lands.** Whenever the erection of any such dam will affect highways or state-owned lands, the applicant shall as a condition precedent secure a permit from the board, commission, or other official body charged with jurisdiction over and control of said highways or state-owned lands. [C24, 27, 31, 35, 39,§7796; C46, 50, 54,§469.30]

**469.31 Cities and towns.** Cities and towns shall have the authority and power, by complying with the provisions of this chapter and the statutes relating to municipalities, to construct dams for recreational purposes and to acquire lands that may be necessary in the construction thereof, which may be obtained by condemnation or otherwise. [C27, 31, 35, §7796-b1; C39,§7796.1; C46, 50, 54,§469.31]

CHAPTER 469A

HYDROELECTRIC PLANTS

469A.1 Certificate of convenience and necessity.

469A.2 Public hearing.

469A.3 Public welfare promoted.

469A.4 Rules and regulations imposed.

469A.5 Costs advanced.

469A.6 Amendment or revocation.

469A.7 Penalty.

**469A.1 Certificate of convenience and necessity.** It shall be unlawful for any person, firm, association or corporation to engage in the business of constructing, maintaining or operating within this state any hydroelectric generating plant or project without first having obtained from the executive council of Iowa a certificate of convenience and necessity declaring that the public convenience and necessity require such construction, maintenance or operation. [C50, 54,§469A.1]

Referred to in §469A.7

**469A.2 Public hearing.** No certificate of convenience and necessity shall be issued by the executive council except after a public hearing thereon. The executive council shall, upon the filing of an application for such a certificate, fix the time of the public hearing thereon and shall prescribe the notice which shall be given by the applicant. Any interested person, firm, association, corporation, municipality, state board or commission may intervene and participate in such proceeding and at such hearing. [C50, 54,§469A.2]

**469A.3 Public welfare promoted.** Before the executive council shall issue a certificate of convenience and necessity, it shall first be satisfied that the public convenience and necessity will be promoted thereby, that the applicant has the financial ability to carry out the terms and conditions imposed, and the applicant has in writing agreed to accept, abide by and comply with such reasonable terms and

conditions as the executive council may require and impose. [C50, 54,§469A.3]

**469A.4 Rules and regulations imposed.** The executive council shall prescribe such rules and regulations as it may determine necessary for the administration of the provisions of this chapter and may amend such regulations at any time. [C50, 54,§469A.4]

**469A.5 Costs advanced.** The executive council shall, upon the filing of an application, require the applicant to deposit with the secretary of the executive council such amount as the council shall determine, to pay the expenses to be incurred by the executive council in its investigations and in conducting the proceedings, and the executive council may, from time to time as it deems necessary, require the deposit of additional amounts for such purpose. [C50, 54,§469A.5]

**469A.6 Amendment or revocation.** The executive council may at any time for just cause or upon the failure of the applicant to comply with and to obey the terms and conditions attached to the issuance of any certificate, or when the public convenience and necessity demands, alter, amend or revoke any certificate issued under the provisions of this chapter. [C50, 54,§469A.6]

**469A.7 Penalty.** Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a misdemeanor and upon conviction shall be

punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and im-

prisonment. Each separate day that a violation occurs shall constitute a separate offense. [C50, 54,§469A.7]

Prior existing plants, 52GA, ch 246,§8  
Constitutionality, 52GA, ch 246,§9

CHAPTER 470

WATER-POWER IMPROVEMENTS

- 470.1 Eminent domain.
- 470.2 Use of highways.
- 470.3 Public lands.

- 470.4 Powers generally.
- 470.5 Completion of work.
- 470.6 Legislative control.

**470.1 Eminent domain.** Any person, or any corporation organized for the purpose of utilizing and improving any water power within this state, or in the streams lying upon the borders thereof, may take and hold so much real estate as may be necessary for the location, construction, and convenient use of its canals, conduits, mains, and waterways, or other means employed in the utilization of such water power, and for the construction of such buildings and their appurtenances as may be required for the purposes aforesaid. Such person or corporation may also take, remove and use, for the construction and repair of its said canals, waterways, buildings, and appurtenances, any earth, gravel, stone, timber or other materials on or from the land so taken. Compensation shall be made for the lands and materials so taken and used by such person or corporation, to the owner, in the manner provided for taking private property for works of internal improvement. [C73,§1236; C97,§1990; C24, 27, 31, 35, 39,§7797; C46, 50, 54,§470.1]

Condemnation procedure, ch 472

**470.2 Use of highways.** Such person or corporation may use, raise, or lower any road for the purpose of having its said canals, waterways, mains, and pipes pass over, along, or under the same, and in such case shall put such road, as soon as may be, in good repair and condition for the safe and convenient use of the public. Any such person or corporation may construct and carry its canals, conduits, waterways, mains, or water pipes across, over, or under any railway, canal, stream, or watercourse, when it shall be necessary for the construction or operation of the same, but shall do so in such manner as not to impede the travel, transportation, or navigation upon, or other proper use of, such railway, canal, or stream. The powers conferred in this section can only be exercised in cities and towns with the consent and under the control of the council. [C73,§1237; C97,§1991; C24, 27, 31, 35, 39, §7798; C46, 50, 54,§470.2]

**470.3 Public lands.** Such person or corporation is authorized to pass over, occupy, and enjoy any of the school, university, and saline or other lands of this state, whereof the fee

or any use, easement, or servitude therein is in the public, making compensation therefor. No more of such land shall be taken than is required for its necessary use and convenience. [C73,§1238; C97,§1992; C24, 27, 31, 35, 39, §7799; C46, 50, 54,§470.3]

**470.4 Powers generally.** Such corporation, in addition to other powers, shall have the following: To borrow money for the purpose of constructing, renewing, or repairing its works; to make, execute, and deliver contracts, bonds, notes, bills, mortgages, deeds of trust, and other conveyance charging or encumbering its property, including its franchises, or any part or parcel thereof; to erect, maintain, and operate canals, conduits, mains, waterways, mills, factories, and other buildings and machinery, including waterways, sluices, and conduits for the purpose of carrying waste water off from said premises to the stream from which the same was taken, or other convenient place; to let, lease, or sell and convey, any portion of their water supply, and any of the buildings, mills, or factories, or machinery, for such sums, prices, rents, tolls, and rates as shall be agreed upon between the parties; and to lay down, maintain, and operate such water mains, conduits, leads, and service pipes as shall be necessary to supply any building, village, town, or city with water; and the grantee of any such person or corporation, or purchaser of said property, franchise, right, and privileges under and by virtue of any judicial sale, shall take and hold the same as fully as the same were held and enjoyed by such person or corporation. [C73,§1239; C97,§1993; C24, 27, 31, 35, 39, §7800; C46, 50, 54,§470.4]

**470.5 Completion of work.** Such person or corporation shall take, hold and enjoy the privilege of utilizing and improving the water power and the rights, powers, and privileges aforesaid, and shall proceed in good faith to make the improvements and employ the powers above conferred, and shall, within two years from the date of acquiring such powers, provide the necessary capital, complete the preliminary surveys, and actually commence the work of improving and utilizing the water power and furnishing the supply of water as

contemplated; and said waterworks and canals shall be completed within five years thereafter. [C73,§1240; C97,§1994; C24, 27, 31, 35, 39, §7801; C46, 50, 54,§470.5]

C97,§1994, editorially divided

**470.6 Legislative control.** The rights, powers, and privileges conferred by this chapter shall be at all times subject to legislative control. [C73,§1240; C97,§1994; C24, 27, 31, 35, 39, §7802; C46, 50, 54,§470.6]

## CHAPTER 471

### EMINENT DOMAIN

Referred to in §806.13

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| 471.1 Exercise of power by state.                | 471.11 Lands for water stations—how set aside.  |
| 471.2 On behalf of federal government.           | 471.12 Access to water—overflow limited.        |
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| 471.4 Right conferred.                           | 471.14 Unlawful diversion prohibited.           |
| 471.5 Right to purchase.                         | 471.15 Abandonment of right of way.             |
| 471.6 Railways.                                  | 471.16 Right to condemn abandoned right of way. |
| 471.7 Cemetery lands.                            | 471.17 Procedure to condemn.                    |
| 471.8 Limitation on right of way.                | 471.18 Parties entitled to damages.             |
| 471.9 Additional purposes.                       | 471.19 Interpretative clause.                   |
| 471.10 Finding by commerce commission.           |   |

**471.1 Exercise of power by state.** Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated. [C73,§1271; C97,§2024; S13,§2024-d; C24, 27, 31, 35, 39,§7803; C46, 50, 54,§471.1]

State parks and highways connecting therewith, §§111.7, 111.8

**471.2 On behalf of federal government.** The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States. [S13,§2024-a; C24, 27, 31, 35, 39,§7804; C46, 50, 54,§471.2]

Condemnation by federal government, §1.4

**471.3 Conveyance by state to federal government.** When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein. [S13,§2024-b; C24, 27, 31, 35, 39,§7805; C46, 50, 54,§471.3]

**471.4 Right conferred.** The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for such lands as are reasonable and necessary for the erection of courthouses or jails and the construction, improvement or maintenance of highways.

2. *Agricultural societies.* Upon all incorporated county fair societies, and county or district agricultural associations, when the

property sought to be taken is necessary in order to enable such society or association to carry out the authorized purposes of its incorporation.

3. *Corporations or persons in certain cases.* Upon any corporation or person desiring to construct a canal, road, or bridge as a work of public utility, but the land taken shall not exceed one hundred feet in width.

4. *Owners of land without way thereto.* Upon the owner or lessee of lands, which have no public or private way thereto, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with some existing public road. Such condemned roadway shall be located on a division, subdivision or "forty" line (or immediately adjacent thereto), and along the line which is the nearest feasible route to an existing public road. Such road shall not interfere with buildings, orchards, or cemeteries. When passing through inclosed lands, such roads shall be fenced on both sides thereof by the condemnor.

5. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through inclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by his assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

6. *Cemetery associations.* Upon any private cemetery or cemetery association which is

incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city or town, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

1. [S13,§2024-f; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
2. [C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
3. [C51,§759; R60,§§1278-1288; C73,§1269; C97, §2023; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
4. [C97,§2028; S13,§2028; C24, 27, 31, 35, 39, §7806; C46, 50, 54,§471.4]
5. [C97,§§2028, 2031; S13,§2028; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
6. [S13,§§1644-a-e; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]

**471.5 Right to purchase.** Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation. [R60,§1317; C73,§§1244, 1247; C97,§§1999, 2002, 2014, 2029; S13,§1644-a; C24, 27, 31, 35, 39,§7807; C46, 50, 54,§471.5]

**471.6 Railways.** Any railway, incorporated under the laws of the United States or of any state thereof, may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction, and convenient use of its railway. Such acquisition shall carry the right to use for the construction and repair of said railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land so taken. [R60,§1314; C73,§1241; C97,§1995; S13, §1995; C24, 27, 31, 35, 39,§7808; C46, 50, 54,§471.6]

**471.7 Cemetery lands.** No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof. [S13,§1995; C24, 27, 31, 35, 39, §7809; C46, 50, 54,§471.7]

**471.8 Limitation on right of way.** Land taken for railway right of way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth. [R60,§1314; C73,§1241;

C97,§1995; S13,§1995; C24, 27, 31, 35, 39,§7810; C46, 50, 54,§471.8]

**471.9 Additional purposes.** Any such corporation owning, operating, or constructing a railway may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.
2. For the purpose of constructing a track or tracks to any mine, quarry, gravel pit, manufactory, warehouse, or mercantile establishment.
3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.
4. For the purpose of constructing water stations, dams or reservoirs for supplying its engines with water. [R60,§1314; C73,§§1241, 1242; C97,§§1995, 1996, 1998; S13,§§1995, 1998; C24, 27, 31, 35, 39,§7811; C46, 50, 54,§471.9]

Referred to in §471.10

**471.10 Finding by commerce commission.** The company, before instituting condemnation proceedings under section 471.9, shall apply in writing to the Iowa state commerce commission, for permission to so condemn. Said commission shall give notice to the landowner, and examine into the matter, and report by certificate to the clerk of the district court in the county in which the land is situated, the amount and description of the additional lands necessary for such purposes, present and prospective, of such company; whereupon the company shall have power to condemn the lands so certified by the commission. [C97, §1998; S13,§1998; C24, 27, 31, 35, 39,§7812; C46, 50, 54,§471.10]

**471.11 Lands for water stations—how set aside.** Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the Iowa state commerce commission. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7813; C46, 50, 54, §471.11]

**471.12 Access to water — overflow limited.** An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without his consent, of access to the water, or the use thereof, in common with the company, on his own land, nor, without his consent, shall his dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7814; C46, 50, 54,§471.12]

**471.13 Change in streams.** When a railway company would have the right to excavate a channel or ditch and thereby change and

straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right of way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel. [C97,§2014; C24, 27, 31, 35, 39,§7815; C46, 50, 54,§471.13]

Referred to in §471.14

**471.14 Unlawful diversion prohibited.** Nothing in section 471.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to divert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point. [C97,§2014; C24, 27, 31, 35, 39,§7816; C46, 50, 54, §471.14]

**471.15 Abandonment of right of way.** Where a railway constructed in whole or in part has ceased to be operated for more than five years; or where the construction of a railway has been commenced and work on the same has ceased and has not, in good faith, been resumed for more than five years, and remains unfinished; or where any portion of any such railway has not been operated for four consecutive years, and the rails and rolling stock have been wholly removed therefrom it shall be treated as abandoned. [C73,§1260; C97,§2015; C24, 27, 31, 35, 39,§7817; C46, 50, 54,§471.15]

Referred to in §§471.16, 471.17

**471.16 Right to condemn abandoned right of way.** All rights of the person or corporation which constructed or operated any such railway, as is mentioned in section 471.15,

over so much as remains unfinished or from which the rails and rolling stock have been wholly removed, may be entered upon and appropriated as provided in section 471.17. [C73, §1260; C97,§2015; C24, 27, 31, 35, 39,§7818; C46, 50, 54,§471.16]

Referred to in §471.17

**471.17 Procedure to condemn.** In case of abandonment, as provided in sections 471.15 and 471.16, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same, and the right to any unfinished work or grading found thereon, and the title thereto, by proceeding as near as may be in the manner provided for an original condemnation. [C73,§1261; C97,§2016; C24, 27, 31, 35, 39,§7819; C46, 50, 54,§471.17]

Referred to in §471.16

**471.18 Parties entitled to damages.** Parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time. The value of such roadbed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed in the condemnation proceedings for the benefit of the former company or its legal representative. [C73, §1261; C97,§2016; C24, 27, 31, 35, 39,§7820; C46, 50, 54,§471.18]

**471.19 Interpretative clause.** A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use. [C24, 27, 31, 35, 39,§7821; C46, 50, 54,§471.19]

## CHAPTER 472

### PROCEDURE UNDER POWER OF EMINENT DOMAIN

Referred to in §§297.6, 306.11, 306.13, 368.10, 368.38, 389.24, 389.25, 403.7, 455.135, 468.7

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**472.1 Procedure provided.** The procedure for the condemnation of private property for works of internal improvement, and for other public uses and purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. [C24, 27, 31, 35, 39,§7822; C46, 50, 54,§472.1]

**472.2 By whom conducted.** Such proceedings shall be conducted:

- 1. By the attorney general when the damages are payable from the state treasury.
- 2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school district.
- 3. By the city attorney, when the damages are payable from funds disbursed by the city or town.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings. [C73,§1271; C97,§2024; S13,§§2024-a,-d,-f; C24, 27, 31, 35, 39, §7823; C46, 50, 54,§472.2]

**472.3 Application for condemnation.** Such proceedings shall be instituted by a written application filed with the sheriff of the county in which the land sought to be condemned is located. Said application shall set forth:

- 1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a city or town, by the numbers of the lot and block, and plat designation.
- 2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description.
- 3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.
- 4. The purpose for which condemnation is sought.

- 5. A request for the appointment of a commission to appraise the damages. [R60,§1230; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7824; C46, 50, 54,§472.3]

**472.4 Commission to assess damages.** The sheriff shall thereupon, except as otherwise provided, appoint six resident freeholders of his county, none of whom shall be interested in the same or a like question, who shall constitute a commission to assess the damages to all real estate desired by the applicant and located in the county. [R60,§§1317, 1318; C73, §§1244, 1245; C97,§§1999, 2029; C24, 27, 31, 35, 39,§7825; C46, 50, 54,§472.4]

Referred to in §472.5

**472.5 Vacancies.** In case any appointee under section 472.4 fails to act, the sheriff shall summon some other freeholder, possessing the

required qualifications, to complete the membership. [R60,§1319; C73,§1251; C97,§2006; C24, 27, 31, 35, 39,§7826; C46, 50, 54,§472.5]

**472.6 Commission when state is applicant.** When the damages are payable out of the state treasury, the sheriff, immediately upon receipt of the application, shall notify the chief justice of the supreme court of the filing of such application. Thereupon the chief justice shall appoint six resident freeholders of the state to assess all said damages. No commissioner, so appointed, shall be interested in the same or a like question. No two members of such commission shall be residents of the same county. The names and places of residence of such commissioners shall be returned by said chief justice to, and filed with, the sheriff. The chief justice shall fill all vacancies which may occur in the commission appointed under this section. [S13,§2024-d; C24, 27, 31, 35, 39,§7827; C46, 50, 54,§472.6]

**472.7 Commissioners to qualify.** Before proceeding with the assessment all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess said damages and make written report to the sheriff. [C24, 27, 31, 35, 39,§7828; C46, 50, 54, §472.7]

**472.8 Notice of assessment.** The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, ten days notice, in writing. Such notice shall specify the day and the hour when the commissioners will view the premises, and be served in the same manner as original notices. [R60,§1318; C73,§1245; C97,§2000; C24, 27, 31, 35, 39,§7829; C46, 50, 54,§472.8]

Manner of service, R.C.P. 56(a)

**472.9 Form of notice.** Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

“To ..... (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that ..... (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)



That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the ..... day of ....., 19...., at ....o'clock ....m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

..... Applicant."

[R60,§1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7830; C46, 50, 54,§472.9]

**472.10 Signing of notice.** The notice may be signed by the applicant, by his attorney, or by any other authorized representative. [R60, §1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39, §7831; C46, 50, 54,§472.10]

**472.11 Filing of notices and return of service.** Notices, immediately after the service thereof, shall, with proper return of service indorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisalment. [C24, 27, 31, 35, 39,§7832; C46, 50, 54,§472.11]

**472.12 Notice to nonresidents.** If the owner of such lands or any person interested therein is a nonresident of this state, or if his residence is unknown, no demand for the land for the purposes sought shall be necessary, but the notice aforesaid shall be published in some newspaper of the county and of general circulation therein, once each week for at least four successive weeks prior to the day fixed for the appraisalment, which day shall be at least thirty days after the first publication of the notice. [R60,§1320; C73,§§1247, 1248; C97,§§2002, 2003; S13,§2003; C24, 27, 31, 35, 39,§7833; C46, 50, 54,§472.12]

**472.13 Service outside state.** Personal service outside the state on nonresidents in the time and manner provided for the service of original notices shall have the same force and effect as publication service within the state. [C24, 27, 31, 35, 39,§7834; C46, 50, 54,§472.13]

**472.14 Appraisalment—report.** The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the sheriff. Where the land sought to be condemned is a part of a larger tract of land, and in making such assessment at the request of the condemnee the commissioners shall divide the damages into two parts, namely, the value of the land (including improvements thereon), sought to be condemned, and the consequential damages resulting to the owner from such condemnation and appropriation. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or

attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned. [C73,§1249; C97,§§2004, 2029; C24, 27, 31, 35, 39,§7835; C46, 50, 54,§472.14; 57GA, ch 239,§1]

**472.15 Guardianship.** In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of his property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person. [C24, 27, 31, 35, 39,§7836; C46, 50, 54,§472.15]

**472.16 Power of guardian.** If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof. [R60,§1316; C73,§1246; C97, §2001; C24, 27, 31, 35, 39,§7837; C46, 50, 54,§472.16]

**472.17 When appraisalment final.** The appraisalment of damages returned by the commissioners shall be final unless appealed from. [C24, 27, 31, 35, 39,§7838; C46, 50, 54,§472.17]

**472.18 Appeal.** Any party interested may, within thirty days after the assessment is made, appeal therefrom to the district court, by giving the adverse party, his agent or attorney, and the sheriff, written notice that such appeal has been taken. [R60,§1317; C73, §1254; C97,§2009; S13,§2009; C24, 27, 31, 35, 39, §7839; C46, 50, 54,§472.18]

Referred to in §472.34

**472.19 Service of notice—highway matters.** Such notice of appeal shall be served in the same manner as an original notice. In case of condemnation proceedings instituted by the state highway commission, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the special assistant attorney general acting as counsel to said commission, or the chief engineer for said commission. When service of notice of appeal cannot be made as provided in this section, the district court of the county in which the real estate is situated, or a judge thereof, on application, shall direct what notice shall be sufficient. [C39,§7839.1; C46, 50, 54,§472.19]

Service of original notice, R.C.P. 56(a)

**472.20 Sheriff to file certified copy.** The sheriff, when an appeal is taken, shall at once file with the clerk of the district court a certified copy of so much of the assessment as applies to the part appealed from. In case of such appeal the sheriff shall, as soon as all other unappealed assessments are disposed of,

file with the clerk all papers pertaining to the proceedings and remaining in his hands. [R60, §1317; C73, §1254; C97, §2009; S13, §2009; C24, 27, 31, 35, 39, §7840; C46, 50, 54, §472.20]

**472.21 Appeals—how docketed and tried.**

The appeal shall be docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation as defendant, and be tried as in an action by ordinary proceedings. [R60, §1317; C73, §1254; C97, §2009; S13, §§2009, 2024-h; C24, 27, 31, 35, 39, §7841; C46, 50, 54, §472.21]

Docketing appeals, R.C.P. 181 to 356

**472.22 Pleadings on appeal.** A written petition shall be filed by the plaintiff on or before the first day of the term to which the appeal is taken, stating specifically the items of damage and the amount thereof. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper. [C31, 35, §7841-c1; C39, §7841.1; C46, 50, 54, §472.22]

**472.23 Question determined.** On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record. [C73, §1257; C97, §2011; C24, 27, 31, 35, 39, §7842; C46, 50, 54, §472.23]

**472.24 Reduction of damages.** If the amount of damages awarded by the commissioners is decreased on the trial of the appeal, the reduced amount only shall be paid to the landowner. [C73, §1259; C97, §2013; C24, 27, 31, 35, 39, §7843; C46, 50, 54, §472.24]

**472.25 Right to take possession of lands.** Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and thereupon the applicant shall, except as otherwise provided, have the right to take possession of the land condemned and proceed with the improvement. No appeal from said assessment shall affect such right, except as otherwise provided. [R60, §1317; C73, §§1244, 1272; C97, §§1999, 2010, 2025, 2029; S13, §§2024-e, g, h; C24, 27, 31, 35, 39, §7844; C46, 50, 54, §472.25]

**472.26 Dispossession of owner.** A landowner shall not be dispossessed, under condemnation proceedings, of his residence, dwelling house, outhouse, orchard, or garden, until the damages thereto have been finally determined and paid. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. [C24, 27, 31, 35, 39, §7845; C46, 50, 54, §472.26]

40ExGA, SF 187, §42, editorially divided

**472.27 Erection of dam—limitation.** If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as

authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal. [C73, §1250; C97, §2005; C24, 27, 31, 35, 39, §7846; C46, 50, 54, §472.27]

**472.28 Deposit pending appeal.** The sheriff shall not, after being served with notice of appeal by the applicant, pay to the claimant any deposit of damages held by the sheriff, but shall hold the same until the appeal is finally determined. [R60, §1317; C73, §1255; C97, §2010; C24, 27, 31, 35, 39, §7847; C46, 50, 54, §472.28]

**472.29 Acceptance of deposit.** An acceptance by the claimant of the damages awarded by the commissioners or of the warrant tendered by public authorities, shall bar his right to appeal. Such acceptance after an appeal has been taken by him shall abate such appeal. [R60, §1317; C73, §1256; C97, §2010; C24, 27, 31, 35, 39, §7848; C46, 50, 54, §472.29]

**472.30 Additional deposit.** If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemner shall, if he is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, he shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises. [C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §7849; C46, 50, 54, §472.30]

**472.31 Payment by public authorities.** When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto. [C73, §1272; C97, §2025; S13, §§2024-b, e, g; C24, 27, 31, 35, 39, §7850; C46, 50, 54, §472.31]

**472.32 Removal of condemner.** The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under him, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided. [C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §7851; C46, 50, 54, §472.32]

**472.33 Costs and attorney fees.** The applicant shall pay all costs of the assessment made by the commissioners. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a less amount of damages is awarded than was allowed by the tribunal from which the appeal was taken. [R60,§1317; C73,§1252; C97,§2007; C24, 27, 31, 35, 39,§7852; C46, 50, 54,§472.33; 56GA, ch 226,§1]

**472.34 Refusal to pay final award.** Should the applicant decline, at any time after an appeal is taken as provided in section 472.18, to take the property and pay the damages awarded, he shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court. [C97,§2011; C24, 27, 31, 35, 39, §7853; C46, 50, 54,§472.34; 56GA, ch 226,§2]

**472.35 Sheriff to file record.** The sheriff, in case no appeal is taken, shall, immediately after the final determination of condemnation proceedings, and after the acquiring of the property by the condemner, file, with the county recorder of the county in which the condemned land is situated, the following papers:

1. The application for condemnation.
2. All notices, together with all returns of service indorsed thereon or attached thereto.
3. The report of the commissioners.
4. All other papers filed in said proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C73,§1253; C97,§2008; C24, 27, 31, 35, 39,§7854; C46, 50, 54,§472.35]

**472.36 Clerk to file record.** The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder the records which the sheriff is required to file in case no appeal is taken, and in addition thereto the following:

1. A copy of the record entry of the court showing the amount of damages determined on appeal.

2. A written statement by the clerk of all money received by him in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C24, 27, 31, 35, 39,§7855; C46, 50, 54,§472.36]

**472.37 Form of record—certificate.** Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the same that said papers are the original files in the proceedings and that the statements accompanying the same are true. [C24, 27, 31, 35, 39,§7856; C46, 50, 54,§472.37]

**472.38 Record of proceedings.** The county recorder shall record said papers, statements, and certificate in the record of deeds, properly index the same, and carefully preserve the originals as files of his office. [C73,§1253; [C97,§2008; C24, 27, 31, 35, 39,§7857; C46, 50, 54, §472.38]

**472.39 Fee for recording.** The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record. [C24, 27, 31, 35, 39,§7858; C46, 50, 54,§472.39]

Recorder fee, §335.14

**472.40 Failure to record—liability.** Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure. [C24, 27, 31, 35, 39,§7859; C46, 50, 54,§472.40]

**472.41 Presumption.** The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned. [C73,§1253; C97, §2008; C24, 27, 31, 35, 39,§7860; C46, 50, 54, §472.41]

## CHAPTER 473

### REVERSION TO OWNERS UPON ABANDONMENT

473.1 Relocation of railway.

473.2 Failure to operate or construct railway.

473.3 and 473.4 Repealed by 54GA, ch 103,§22.

**473.1 Relocation of railway.** Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are owners of the tract from which such abandoned right of way was taken. [C24, 27, 31, 35, 39, §7861; C46, 50, 54,§473.1]

**473.2 Failure to operate or construct railway.** If a railway, or any part thereof, shall not be used or operated for a period of eight

years, or if, its construction having been commenced, work on the same has ceased and has not been in good faith resumed for eight years, the right of way, including the roadbed, shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right of way was taken. [C73,§1260; C97, §2015; C24, 27, 31, 35, 39,§7862; C46, 50, 54, §473.2]

**473.3 and 473.4** Repealed by 54GA, ch 103,§22. See ch 306 for disposal of abandoned highways.

# TITLE XVIII

## PUBLIC UTILITIES

### CHAPTER 474

#### IOWA STATE COMMERCE COMMISSION

- 474.1 Eligibility of commissioners and secretary.
- 474.2 Members—organization.
- 474.3 Proceedings.
- 474.4 Quorum—personal interest.
- 474.5 Rules, forms, and service.
- 474.6 Appearances—record of votes—public hearings.
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- 474.47 Annual reports from companies.
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- 474.49 Additional details.
- 474.50 Additional reports.
- 474.51 Uniform accounts.
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- 474.53 Report.

**474.1 Eligibility of commissioners and secretary.** No person in the employ of any common carrier, or owning any bonds, stock, or property in any railroad company, or who is in any way or manner pecuniarily interested in any railroad corporation, shall be eligible to the office of Iowa state commerce commissioner or secretary of the commission; and the entering into the employ of any common carrier, or the acquiring of any stock or other interest in any common carrier by any officer under this chapter, after his election or appointment, shall disqualify him to hold the office and to perform the duties thereof. [C97, §2111; C24, 27, 31, 35, 39, §7865; C46, 50, 54, §474.1]

**474.2 Members — organization.** The Iowa state commerce commission shall consist of three persons having the qualifications of electors. On the second Tuesday of January of each year, the commission shall organize by

electing one of its members as chairman, and appointing a secretary, who shall take the same oath as the commissioners; but this or a part of this may be done at a subsequent meeting. The commission shall have power to employ such additional clerical help as it may find necessary. [C97, §2111; C24, 27, 31, 35, 39, §7866; C46, 50, 54, §474.2]

Oath, §63.10

**474.3 Proceedings.** The commission may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice. [C97, §2142; C24, 27, 31, 35, 39, §7867; C46, 50, 54, §474.3]

C97, §2142, editorially divided

**474.4 Quorum — personal interest.** A majority of the commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing

or proceeding in which he has any pecuniary interest. [C97,§2142; C24, 27, 31, 35, 39,§7868; C46, 50, 54,§474.4]

**474.5 Rules, forms, and service.** It may from time to time make or amend such general rules or orders as may be necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state. [C97,§2142; C24, 27, 31, 35, 39,§7869; C46, 50, 54,§474.5]

Manner of commencing actions, ch 617

**474.6 Appearances—record of votes—public hearings.** Any party may appear before it and be heard in person or by attorney. Every vote and official action thereof shall be entered of record, and, upon the request of either party or person interested, its proceedings shall be public. [C97,§2142; C24, 27, 31, 35, 39,§7870; C46, 50, 54,§474.6]

**474.7 Seal.** It shall have a seal, of which courts shall take judicial notice. [C97,§2142; C24, 27, 31, 35, 39,§7871; C46, 50, 54,§474.7]

**474.8 Office—time employed—expense.** The commission shall have an office at the seat of government and each member shall devote his whole time to the duties of the office, and the members and secretary and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices. [C97, §2121; SS15,§2121; C24, 27, 31, 35, 39,§7872; C46, 50, 54,§474.8]

**474.9 Free transportation.** The commissioners, their secretary, experts, or other agents while in the performance of their official duties shall be transported free of charge by all railroad or other transportation companies operating in the state. [C97,§2151; C24, 27, 31, 35, 39,§7873; C46, 50, 54,§474.9]

**474.10 General jurisdiction.** The commission shall have general supervision of all railroads in the state, express companies, car companies, sleeping-car companies, freight and freight-line companies, interurban railway companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight by railroads, except street railroads, and also all lines for the transmission, sale, and distribution of electrical current for light, heat, or power, except in cities and towns. It shall investigate any alleged neglect or violation of law by any such common carrier, its agents, officers, or employees. [C97,§2112; S13,§2120-n; C24, 27, 31, 35, 39,§7874; C46, 50, 54,§474.10]

**474.11 Removal of interfering lights.** The commission is hereby vested with authority to order the removal or alteration of any lights erected for illuminating purposes, whether on public or private property, when such lights interfere with the easy observation of railroad

signals by those engaged in the operation of railroad trains or equipment. [C39,§7874.1; C46, 50, 54,§474.11]

Analogous provisions, §307.5

**474.12 Inspection—notice to repair.** It shall from time to time carefully examine into and inspect the condition of each railroad, its tracks, bridges, and equipment, and the manner of its conduct, operation, and management with regard to the public safety and convenience in the state. If found by it unsafe, it shall immediately notify the railroad company whose duty it is to put the same in repair, which shall be done by it within such time as the commission shall fix. If any corporation fails to perform this duty the commission may forbid and prevent it from running trains over the defective portion while unsafe. [C97,§2113; S13,§2113; C24, 27, 31, 35, 39,§7875; C46, 50, 54, §474.12]

Referred to in §474.14

**474.13 Connections and shelter.** Should any railroad or transportation company in this state fail to provide proper shelter for its patrons at stations where two or more tracks are operated, or fail or refuse to connect by proper switches or tracks with the tracks or lines of other railroad or transportation companies, the commission may require such railroad or transportation company to provide the same in such manner and upon such conditions as it may determine. [C97,§2113; S13,§2113; C24, 27, 31, 35, 39,§7876; C46, 50, 54,§474.13]

Referred to in §474.14

Station houses and connecting tracks, §§478.14, 478.17

**474.14 Changes in operation and improvements.** When, in the judgment of the commission, any railway corporation fails in any respect to comply with the terms of its charter or articles of incorporation or the laws of the state; or when in its judgment any repairs are necessary upon its road; or any addition to its rolling stock, or addition to or change in its stations or station houses, or the equipment thereof, for the health and convenience of the public, or change in its rates of fare for transporting freight or passengers, or change in the mode of operating its road or conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, the commission may make an order prescribing such improvements and changes as it finds to be proper and shall serve a notice upon such corporation, in the manner provided for the service of an original notice in a civil action, which notice shall be signed by its secretary. A report of such proceedings shall be included in its annual report to the governor. Nothing in this or sections 474.12 and 474.13 shall be so construed as relieving any railroad company from its responsibility or liability for damage to person or property. [C97,§2113; S13,§2113; C24, 27, 31, 35, 39,§7877; C46, 50, 54,§474.14]

Manner of service, R.C.P. 56 (a)

Time of filing annual report, §17.10

**474.15 Abandoning station.** It shall be unlawful for any railroad company owning or operating, or which may hereafter own or operate, any railroad in whole or in part in this state, to abandon any station in any city, town or village on its line of railroad, within this state, or to remove the depot therefrom, or to withdraw agency service therefrom, unless it shall first have filed notice of its intention with the Iowa state commerce commission and otherwise complied with the provisions of this section and sections 474.16 and 474.17. Upon the filing of such notice the commission shall designate the place or places within such town or village where notice shall be posted and the railroad company shall thereupon, at its own expense, cause to be posted at the place or places so designated, fifteen days notice of intention to abandon or discontinue such station or agency, or remove such depot, and shall file proof of such posting with the commission. The notice shall be in such form as prescribed by the commission. [C39,§7877.1; C46, 50, 54, §474.15]

Referred to in §474.16

**474.16 Objections—hearing.** Any person or persons directly affected by the proposed abandonment or discontinuance of any station or agency, or removal of any depot, may file written objections thereto with the Iowa State commerce commission, stating the grounds for such objections, within fifteen days from the time of the posting of the notice as provided in section 474.15. Upon the filing of such objections the commission shall fix the time and place for hearing thereon, which hearing shall be held within sixty days from the filing of such objections. Written notice of the time and place of such hearing shall be mailed by the commission to the railroad company and the person or persons filing objections at least ten days prior to the date fixed for such hearing. [C39,§7877.2; C46, 50, 54,§474.16]

Referred to in §474.15

**474.17 Order of commission.** Upon said hearing the Iowa state commerce commission may prohibit the abandonment or discontinuance of such station or agency, or the removal of the depot, or may make such other order as is warranted by the evidence produced at such hearing. But if no objections are filed as hereinbefore provided, the commission shall make an order permitting the railroad company to proceed with such abandonment or discontinuance, or removal of the depot. [C39,§7877.3; C46, 50, 54,§474.17]

Referred to in §474.15

**474.18 Investigation and inquiry.** The commission shall investigate and inquire into the management of the business of all common carriers subject to the jurisdiction of said commission and keep itself well informed as to the manner and method in which the same is conducted. It shall have the right to obtain from them full and complete information necessary to enable the commission to perform

its duties. It shall have power to require the attendance and testimony of witnesses, the production of all books, papers, tariff schedules, contracts, agreements, and documents, relating to any matter under investigation, and to inspect the same and to examine under oath or otherwise any officer, director, agent, or employee of any common carrier; to issue subpoenas and to enforce obedience thereto. [C97,§§2115, 2133; C24, 27, 31, 35, 39,§7878; C46, 50, 54,§474.18]

**474.19 Individual hearings.** The commission may authorize one of the members to hold hearings and take evidence in any particular case and a hearing so held shall have the same force and effect as a hearing by the commission, but any finding or order as a result of such hearing must be agreed to by a majority of the commission. [C27, 31, 35,§7878-b1; C39, §7878.1; C46, 50, 54,§474.19]

**474.20 Aid from courts.** The commission may invoke the aid of any court of record in any county where the carrier extends, in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. Any court or judge thereof having jurisdiction where any inquiry is carried on shall, in case of the refusal of any person to obey a subpoena or other process, issue an order requiring any of the officers, agents, or employees of any carrier or other person to appear before the commission and produce all books and papers required by such order and testify in relation to any matter under investigation. A failure to obey any such order of the court shall be punished as a contempt. [C97,§2133; C24, 27, 31, 35, 39,§7879; C46, 50, 54, §474.20]

Contempts, ch 665

**474.21 Hindering or obstructing commission.** Any person who shall willfully obstruct it or its members in the performance of their duties, or who shall refuse to give any information within his possession that may be required by it within the line of its duty, shall be fined not exceeding one thousand dollars, in the discretion of the court. [C97,§2115; C24, 27, 31, 35, 39,§7880; C46, 50, 54,§474.21]

**474.22 Examination of rates.** The commission shall, upon the application of the mayor and council of any city or town, or the trustees of any township, make an examination of the rate of passenger fare or freight tariff charged by any railroad company, and of the condition or operation of any railroad, any part of whose location lies within the limits of such city, town, or township; and if twenty-five or more voters in any city, town, or township shall, by written petition, request the mayor and council of such city or town, or the trustees of such township, to make the said complaint and application, and they refuse, they shall state the reason therefor in writing upon the petition, and return the same to the petitioners,

who may thereupon, within ten days from the date of such refusal and return, present the same to the Iowa state commerce commission, which shall, if it thinks the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and council of any city or town, or the trustees of any township. Before proceeding to make such examination, it shall give to the petitioners and the corporation reasonable notice, in writing, of the time and place of entering upon the same. If, upon such an examination, it shall appear to the commission that the complaint is well founded, it shall, within ten days, inform the corporation operating such railroad of its finding, and shall report its doings to the governor. [C97,§2117; C24, 27, 31, 35, 39,§7881; C46, 50, 54,§474.22]

**474.23 Cumulative remedies.** Nothing in this chapter or chapter 479 shall be construed to estop or hinder any persons or corporations from bringing action against any railway company for any violation of the laws of the state for the government of railroads. [C97,§2118; C24, 27, 31, 35, 39,§7882; C46, 50, 54,§474.23]

**474.24 Jurisdiction of courts to enforce order.** The district courts of this state shall have jurisdiction to enforce, by proper decrees, injunctions, and orders, the rulings, orders and regulations affecting public rights, made by the commission as authorized by law for the direction and observance of railroads in this state. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the commerce counsel, whenever advised by the commission that any railway corporation, or person operating a line of road in this state, is violating and refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad or person. [C97,§2119; S13,§2119; C24, 27, 31, 35, 39,§7883; C46, 50, 54,§474.24]

Referred to in §§474.30, 479.84

**474.25 Mandatory injunction—contempt.** It shall be the duty of the court in which any such cause shall be pending to require the issue to be made up at the first term of the court to which such cause is brought, which shall be the trial term, and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is neglecting and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order, or regulation by said railroad company or person, its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employees who are in any manner instrumental in such violation, guilty of contempt of court, and the court may punish such con-

tempt by a fine not exceeding one thousand dollars for each offense. Such decree shall continue and remain in effect and be enforced until the rule, order, or regulation shall be modified or vacated by the commission. [C97, §2119; S13,§2119; C24, 27, 31, 35, 39,§7884; C46, 50, 54,§474.25]

Referred to in §§387.16, 474.30, 479.84

**474.26 When order effective—violation.** All rules, orders, and regulations affecting public rights, made by the state commerce commission, as now or may hereafter be authorized for the direction and observance of railroads in this state, shall be in full force and effect from and after the date fixed by the commission. If any railroad fails, neglects, or refuses to comply with any rule, order, or regulation made by the commission within the time specified, it shall, for each day of such failure, pay a penalty of fifty dollars. [S13,§2119; C24, 27, 31, 35, 39,§7885; C46, 50, 54,§474.26]

Referred to in §§474.30, 479.84

**474.27 Time may be extended to test legality.** The time for the taking effect of any rule, order, or regulation affecting public rights, made by the commission, may, in its discretion, be extended; and said extension of time may be granted for the purpose of testing the legality thereof, upon application by any such aggrieved railroad, showing reasonable grounds therefor, and that said application is made in good faith and not for the purpose of delay. [S13,§2119; C24, 27, 31, 35, 39,§7886; C46, 50, 54, §474.27]

Referred to in §§474.30, 479.84

**474.28 Proceedings to vacate order.** Any railroad aggrieved at any rule, order, or regulation made by the commission may institute proceedings in any court of proper jurisdiction to have the same vacated. If found by the court, after due trial, not to be reasonable, equitable, or just, and if upon an appeal from any rule, order, or regulation of the commission the complaining railroad is successful in having such rule, order, or regulation vacated, the aforesaid penalty shall be set aside. [S13, §2119; C24, 27, 31, 35, 39,§7887; C46, 50, 54, §474.28]

Referred to in §§474.30, 479.84

**474.29 Remitting penalty.** When any common carrier shall fail upon appeal to secure a vacation of the order appealed from, it may apply to the court in which the appeal is finally adjudicated for an order remitting the penalty which has accrued during the pendency of the appeal. Upon a satisfactory showing that the appeal was prosecuted in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order appealed from was unreasonable or unjust or that the power of the commission to make the same was doubtful, such court may remit the penalty that has accrued during the pendency of the appeal. [S13,§2119; C24, 27, 31, 35, 39, §7888; C46, 50, 54,§474.29]

Referred to in §§474.30, 479.84

**474.30 Costs—attorney's fees.** When a decree shall be entered against a railroad company or person under sections 474.24 to 474.29, inclusive, the court shall render judgment for costs, and attorney's fees for counsel representing the state. [C97,§2120; C24, 27, 31, 35, 39, §7889; C46, 50, 54,§474.30]

**474.31 Interstate freight rates.** The commission shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as compared with those of other states, or are in violation of the laws of the United States regulating commerce, or in conflict with the rulings, orders, or regulations of the interstate commerce commission, the Iowa state commerce commission shall take the necessary steps to prevent the continuance of such rates, rules, or practices. [S13,§2120-a; C24, 27, 31, 35, 39,§7890; C46, 50, 54,§474.31]

**474.32 Application to interstate commerce commission.** When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the United States regulating commerce, or of the orders, rules, or regulations of the interstate commerce commission, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the Iowa state commerce commission shall present the material facts involved in such violations or discrimination to the interstate commerce commission and seek relief therefrom, and, if deemed necessary or expedient, the Iowa state commerce commission shall prosecute any charge growing out of such violation or discrimination, at the expense of the state, before the interstate commerce commission. [S13,§2120-b; C24, 27, 31, 35, 39,§7891; C46, 50, 54,§474.32]

**474.33 Choice of remedies.** Any person claiming damages from a common carrier on account of any violation of the provisions of chapter 479 may either make complaint to the Iowa state commerce commission, or may bring action on his own behalf for the recovery of such damages; but he shall not have the right to pursue both of said remedies at the same time. [C97,§2131; C24, 27, 31, 35, 39,§7892; C46, 50, 54,§474.33]

**474.34 Complaints.** Any person, firm, corporation, association, mercantile, agricultural, or manufacturing society, body politic, or municipal organization, may file with the commission a petition setting forth any particular in which any common carrier has violated the law to which it is subject and the amount of damages

sustained by reason thereof. The commission shall furnish to the carrier against which complaint is filed, a copy thereof, and a reasonable time shall be fixed within which such carrier shall answer the petition or satisfy the demand therein made. If such carrier fails to satisfy the complaint within the time fixed or there shall appear to be reasonable grounds for investigating the matters set forth in said petition, the commission shall hear and determine the questions involved and make such orders as it shall find to be proper. No petition so filed shall be dismissed on the grounds that the petitioner has not suffered any direct damage. When the commission ascertains or has reason to believe that any carrier is violating any of the laws to which it is subject, it may institute an investigation and cause a hearing to be made before it in relation to such matters in all respects as fully as if a petition had been filed. [C97,§2134; C24, 27, 31, 35, 39,§7893; C46, 50, 54,§474.34]

**474.35 Investigation—report.** When a hearing has been had before the commission after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations or orders as to what reparation, if any, the offending carrier shall make to any party who has suffered damage. Such finding of fact shall thereafter in all legal proceedings be prima-facie evidence of every fact found. All reports of hearings and investigations made by the commission shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. [C97,§2135; C24, 27, 31, 35, 39,§7894; C46, 50, 54,§474.35]

**474.36 Orders—compliance—release.** When the commission finds as the result of any investigation that a common carrier has violated or is violating any of the provisions of law to which it is subject, or that any complainant or other person has sustained damages by reason of such violation, the commission shall notify such carrier to cease such violation at once and shall fix a time within which it shall pay the amount of damage which has been found due to any person as a result of such violation. Upon a satisfactory showing to the commission that the carrier has complied with the notice in the time and manner required, it shall thereupon be relieved from further liability or penalty for that particular violation of law, and the commission shall enter of record such release. [C97,§2136; C24, 27, 31, 35, 39, §7895; C46, 50, 54,§474.36]

**474.37 Violation of order—petition—notice.** When any common carrier shall violate or fail to obey any lawful order or requirement of the commission, the commission shall apply in a summary way by petition in the name of the state, against such common carrier, to the district court of any county through which such carrier owns or operates a line of railroad or



in which the failure or violation of such order occurred, alleging such violation or failure to obey; the court shall hear and determine the matter set forth in said petition on reasonable notice to the common carrier, to be fixed by the court and to be served in the same manner as original notices for the commencement of action. [C97,§2137; C24, 27, 31, 35, 39,§7896; C46, 50, 54,§474.37]

Referred to in §§474.38, 474.39  
Manner of service, R.C.P. 56(a)

**474.38 Interested party may begin proceedings.** Any person, firm, or corporation interested in the matter of enforcing any order or requirement of the commission, may file a petition against such carrier, alleging the failure to comply with such order or requirement and praying summary relief to the same extent and in the same manner as the commission may do under section 474.37, and the proceedings after the filing of such petition shall be the same as in said section provided. [C97,§2137; C24, 27, 31, 35, 39,§7897; C46, 50, 54,§474.38]

Referred to in §474.39

**474.39 Duty of commerce counsel and county attorney.** When any proceeding has been instituted under sections 474.37 and 474.38, the commerce counsel shall prosecute the same, and the county attorney of the county in which such proceeding is pending shall render such assistance as the commerce counsel may require of him. [C97,§2137; C24, 27, 31, 35, 39, §7898; C46, 50, 54,§474.39]

**474.40 Hearing in equity—injunction.** All such causes shall be in equity, and the order or report of the commission in question shall be prima-facie evidence of the matters contained therein. If the court shall find that the order or requirement in question is lawful and has been violated, it shall issue an injunction or other proper process, mandatory or otherwise, to compel obedience to such order or requirement. [C97,§2137; C24, 27, 31, 35, 39, §7899; C46, 50, 54,§474.40]

**474.41 Violation of injunction.** For a violation of any injunction or other process issued in such proceeding, any common carrier or any officer, agent, or employee thereof shall be fined for contempt in a sum not exceeding one thousand dollars. In addition to any other penalty the court may fix a sum not exceeding one thousand dollars which each defaulting carrier, officer, or agent shall pay after a fixed date for each day such injunction or other process is disobeyed and render judgment for penalty which shall accrue from disobedience after the time fixed. One-half of such sums collected shall be paid into the treasury of the county where the judgment is rendered and one-half into the state treasury. [C97,§2137; C24, 27, 31, 35, 39,§7900; C46, 50, 54,§474.41]

**474.42 Appeal—effect.** An appeal to the supreme court shall not stay or supersede the order of the court or the execution of any writ or process thereon. When appeal is taken

by the commission, it shall not be required to give an appeal bond or security for costs. [C97, §2137; C24, 27, 31, 35, 39,§7901; C46, 50, 54, §474.42]

**474.43 Suits by commission.** When the commission has reason to believe that any common carrier has been guilty of extortion or unjust discrimination, it shall immediately cause actions to be commenced and prosecuted against such carrier. Such action may be brought in any county through or into which any line of railway owned or operated by such carrier may extend. No actions thus commenced shall be dismissed unless the commission and the commerce counsel consent thereto. The court in which any such action is pending may, in its discretion, give preference as to the time of trial of such action over other business, except criminal cases. [C97,§§2149, 2150; C24, 27, 31, 35, 39,§7902; C46, 50, 54,§474.43]

**474.44 Uniform gauge—inspection—order.** As often as it deems it expedient, the commission shall examine all the railroads in the state that are less than four feet eight and one-half inches gauge, and if in the judgment of the commission, it is necessary and reasonable to change the gauge of any such railroad to four feet eight and one-half inches, it shall make an order in writing, fixing a reasonable time within which such gauge shall be changed, taking into consideration the life of the rolling stock of such narrow-gauged road and all other facts and conditions bearing on the length of time required to make such change. [C24, 27, 31, 35, 39,§7903; C46, 50, 54,§474.44]

**474.45 Rights and remedies not exclusive.** Nothing in this chapter shall abridge any rights or remedies existing at common law or by statute, but shall be in addition to such remedies. [C24, 27, 31, 35, 39,§7904; C46, 50, 54,§474.45]

**474.46 Accidents—investigation of—report.** Upon the occurrence of any serious accident upon any railroad within this state, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the state commerce commission whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or neglect of the corporation on whose line the injury or loss of life occurred; but such report shall not be evidence or referred to in any case in any court. [S13,§2120-k; C24, 27, 31, 35, 39, §7905; C46, 50, 54,§474.46]

**474.47 Annual reports from companies.** The commission shall require annual reports from all common carriers subject to the provisions of chapter 479 to be made at the same time they make report to the executive council,\* to cover the same period, and prescribe the manner in which specific answers to all ques-

tions upon which it may need information shall be made. [C73,§1280; C97,§2143; C24, 27, 31, 35, 39,§7906; C46, 50, 54,§474.47]

C97,§2143, editorially divided  
 \*See §473.91

**474.48 Details of report.** Such report shall show in detail the amount of capital stock issued, the amounts paid therefor, and manner of payment; the dividends paid; surplus fund, if any; number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of locomotive engines and cars used in the state, and the number supplied with automatic safety couplers, and the kind and number of brakes used, and the number of each; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how and where expended and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss, and a complete exhibit of the financial operations thereof each year, including an annual balance sheet. [C73,§1280; C97,§2143; C24, 27, 31, 35, 39, §7907; C46, 50, 54,§474.48]

**474.49 Additional details.** Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other carriers, and other statistics of the road and its transportation, as the commission may require. [C97,§2143; C24, 27, 31, 35, 39,§7908; C46, 50, 54,§474.49]

**474.50 Additional reports.** The commission may also require of any and all common carriers subject to the provisions of chapter 479 such other reports, and fix the time for filing the same, as in its judgment shall be necessary and reasonable, which reports shall be in such form, and concerning such subjects, and be from such sources as it shall direct, except as otherwise provided herein. [C97,§2143; C24, 27, 31, 35, 39,§7909; C46, 50, 54,§474.50]

**474.51 Uniform accounts.** The commission may prescribe uniformity and methods of keeping accounts, as near as may be, and fix a time when such regulations shall take effect. [C97, §2143; C24, 27, 31, 35, 39,§7910; C46, 50, 54, §474.51]

**474.52 Violations.** Any corporation, company, or individual owning or operating a railway within the state, neglecting or refusing to make the required reports by the date fixed, or fixed by the commission, shall be subject to

a penalty of one hundred dollars for each and every day of delay in making the same after the date thus fixed. [C73,§§1281, 1282; C97, §2143; C24, 27, 31, 35, 39,§7911; C46, 50, 54, §474.52]

**474.53 Report.** The commission shall annually, on or before the first Monday in December, make a report to the governor of its doings for the preceding year, containing such facts, statements, and explanations as will disclose the working of such systems of railroad transportation in the state, and their relation to the general business and prosperity of the citizens thereof, with such suggestions and recommendations in respect thereto as may to the commission seem appropriate. Said report shall also contain, as to every railroad corporation doing business in this state:

1. The amount of its capital.
  2. The amount of its preferred stock, if any, and the condition of its preferment.
  3. The amount of its funded debt and the rate of interest.
  4. The amount of its floating debt.
  5. The cost and actual present cash value of its road equipment, including permanent way, buildings, and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.
  6. The estimated value of all other property owned by it, with a schedule of the same, not including lands granted in aid of its construction.
  7. The number of acres originally granted it by the United States or this state in aid of the construction of its road.
  8. The number of acres of such land remaining unsold.
  9. A list of its officers and directors, with their respective places of residence.
  10. Such statistics of the road and of its transportation business for the year as may, in the judgment of the commissioners, be necessary and proper for the information of the general assembly or as may be required by the governor.
  11. The average amount of tonnage that can be carried over each road in the state with an engine of given power.
- Said report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June 30. [C97,§2114; C24, 27, 31, 35, 39, §7912; C46, 50, 54,§474.53]

Time of filing report, §17.10

CHAPTER 475  
COMMERCE COUNSEL

475.1 Appointment—term.  
475.2 Vacancy.  
475.3 Disqualification.  
475.4 Political activity.

475.5 Removal.  
475.6 Office—assistants—expenses.  
475.7 Duties.

**475.1 Appointment — term.** Within sixty days after the general assembly convenes in 1927, and every four years thereafter, the state commerce commission shall appoint a competent attorney to the office of commerce counsel, subject to the approval of two-thirds of the members of the senate. His term of office shall be for four years and till his successor is appointed, and shall begin on the first day of July of the year he is appointed. [S13,§2121-h; C24, 27, 31, 35, 39,§7913; C46, 50, 54,§475.1]

**475.2 Vacancy.** A vacancy in said office occurring while the general assembly is in session, shall be filled for the unexpired term in the same manner as original appointments. If the general assembly is not in session, a vacancy shall be filled by an appointment made by the commission, which appointment shall expire thirty days from the time the next general assembly convenes. [S13,§2121-h; C24, 27, 31, 35, 39,§7914; C46, 50, 54,§475.2]

**475.3 Disqualification.** The existence of any fact which would disqualify a person from election or acting as state commerce commissioner shall disqualify such person from appointment or acting as commerce counsel. [S13,§2121-i; C24, 27, 31, 35, 39,§7915; C46, 50, 54,§475.3]

Eligibility, §474.1

**475.4 Political activity.** The commerce counsel shall devote his entire time to the duties of his office; and during his term of office he shall not be a member of any political committee or contribute to any political campaign fund or take any part in political campaigns or be a candidate for any political office. [S13,§2121-j; C24, 27, 31, 35, 39,§7916; C46, 50, 54,§475.4]

**475.5 Removal.** The commission may, with the approval of the senate, during a session of the general assembly, remove said counsel for malfeasance or nonfeasance in office, or for any cause which renders him ineligible for appointment, or incapable or unfit to discharge the duties of his office; and his removal, when so made, shall be final. [S13,§2121-h; C24, 27, 31, 35, 39,§7917; C46, 50, 54,§475.5]

General removal statutes, ch 66

**475.6 Office—assistants—expenses.** The office of commerce counsel shall be at the seat of government and he shall have free access to all the files, records, and documents in the office of the commission. The commerce counsel, his assistants and office help shall be paid their actual necessary traveling expenses and other

disbursements incurred in the discharge of official duties; such expenditures are to be approved by the state commerce commission. [S13,§2121-j; C24, 27, 31, 35, 39,§7918; C46, 50, 54, §475.6]

**475.7 Duties.** The commerce counsel shall:

1. Act as attorney for, and legal advisor of, the Iowa state commerce commission.

2. Investigate the legality of all rates, charges, tariffs, rules, regulations, and practices of all common carriers and persons under the jurisdiction of the state commission, and institute civil proceedings before the state commission or any proper court to correct any illegality on the part of any common carrier and prosecute the same to final determination.

3. Investigate the reasonableness of rates, tariffs, charges, rules, regulations, and practices of all such common carriers in interstate transportation when directed by the state commission, or when in his judgment they are unlawful, prejudicial, and discriminate against any city, town, community, business, industry, or citizen of the state, and institute before the interstate commerce commission or any other tribunal having jurisdiction and prosecute to final determination any proceeding growing out of such matters.

4. Appear on behalf of any person or persons who shall file any complaint against any common carrier before the state commission in any matter within its jurisdiction.

5. Appear for and represent the state commission, the state, and any citizen, community, city, or town or business or industry of the state in all proceedings brought by or against any common carrier before the interstate commerce commission in which any or all of such parties are interested.

6. Appear for the state commission or for the state and the citizens and industries thereof in all actions instituted in any state or federal court wherein is involved the validity of any rule, order, or regulation of said state commission, or the validity of any rule, order, or regulation of the interstate commerce commission affecting the interests of the citizens and industries of the state, and prosecute in any state or federal court in the name of the state, all actions necessary to enforce, or to restrain the violation of, any rule, order, or regulation made by the state commission or by the interstate commerce commission. [S13, §2121-l; C24, 27, 31, 35, 39,§7919; C46, 50, 54, §475.7]

## CHAPTER 476

## GENERAL POWERS OF RAILWAY CORPORATIONS

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**476.1 Change of name.** Any corporation organized under the laws of this state for the purpose of constructing and operating a railway may, with the consent of two-thirds of all the stockholders in interest, change the corporate name thereof, but no such change shall be complete until the president and secretary shall file in the office of the secretary of state a statement under oath showing the consent of the stockholders thereto and the new name adopted, with a certified copy of the proceedings in relation thereto as appears in the records thereof, and from that time the corporation by its new name shall be entitled to all the rights, powers, and franchises that it possessed under the old one, and by such new name shall be liable upon all contracts and obligations entered into by or binding upon such corporation under the old name to the same extent and in the same manner as if no change had been made. [C73,§1273; C97,§2034; C24, 27, 31, 35, 39,§7920; C46, 50, 54,§476.1]

**476.2 Effect of change.** If any railway company is organized under a corporate name, and has made contracts for payments to it upon delivery of stock in such company, and shall subsequently thereto change its name, or if the real ownership in the property, rights, and franchises has passed legally or equitably into any other company, no such contract shall be enforced until tender or delivery of stock in such last named company or corporation is made. [C73,§1302; C97,§2068; C24, 27, 31, 35, 39, §7921; C46, 50, 54,§476.2]

**476.3 Where recorded.** The secretary of state shall immediately record in the proper book in his office any document filed pertaining to said change in name, making references to the record of the articles of incorporation. [C73,§1274; C97,§2035; C24, 27, 31, 35, 39,§7922; C46, 50, 54,§476.3]

**476.4 Joinder at boundary line—consolidation.** Any such corporation may join, intersect, and unite its railway with that of any other corporation at such point upon the boundary line of this state as may be agreed upon, and, with the consent of three-fourths in interest of all the stockholders, by purchase,

sale, or otherwise, may merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one corporation, upon such terms as may be agreed upon, not in conflict with law. [R60,§1332; C73, §1275; C97,§2036; C24, 27, 31, 35, 39,§7923; C46, 50, 54,§476.4]

Referred to in §617.4

**476.5 Connections with foreign carrier.** Any such corporation which has constructed or may construct its railway so as to meet or connect with another railway in an adjoining state at the boundary line of this state, may make such contracts and agreements therewith for the transportation of freight and passengers, or the use of its railway, as the board of directors may see proper, and not inconsistent with law. [R60,§1334; C73,§1276; C97,§2037; C24, 27, 31, 35, 39,§7924; C46, 50, 54,§476.5]

**476.6 Extension into foreign state.** Any such corporation organized for the purpose of constructing a railway from a point within the state may construct or extend the same into or through any other state, under such regulations as may be prescribed by the laws of such state, and its rights and privileges over said extension in the construction and use thereof, and in controlling and applying the assets, shall be the same as if its railway was constructed wholly within the state. [R60, §1333; C73,§1277; C97,§2038; C24, 27, 31, 35, 39, §7925; C46, 50, 54,§476.6]

**476.7 Powers in other states.** Any railroad corporation organized under and by virtue of the laws of this state, and owning and operating a railroad therein, shall be authorized and empowered to exercise in any other state or territory of the United States, in which it may control or operate a connecting line or lines of railway, the powers and privileges conferred upon it by its articles of incorporation and all powers, privileges, and franchises conferred upon railroad corporations under and by virtue of the laws of Iowa or of such other state or territory, for the purposes set forth in section 476.8. [S13,§2038-a; C24, 27, 31, 35, 39,§7926; C46, 50, 54,§476.7]

**476.8 Acquisition of foreign line.** Any railroad corporation so organized under the laws of Iowa and owning and operating a railroad therein may lease, purchase, or otherwise acquire and own, control, or operate any connecting extension of its said railroad not parallel or competing therewith, in any other state or territory of the United States, and to that end may purchase and control the stock, bonds, or securities of any such extension if not contrary to the laws of such other state or territory. [S13,§2038-b; C24, 27, 31, 35, 39,§7927; C46, 50, 54,§476.8]

Referred to in §476.7

**476.9 Duties and liabilities of lessees.** All the duties and liabilities imposed by law upon corporations owning or operating railways shall apply to all lessees or other persons owning or operating such railways as fully as if they were expressly named herein; and any action which might be brought or penalty enforced against any such corporation by virtue of any provisions of law may be brought or enforced against such lessees or other persons. [C73,§1278; C97,§2039; C24, 27, 31, 35, 39,§7928; C46, 50, 54,§476.9]

**476.10 Offices—location.** The offices of secretary and treasurer or assistant treasurer and general superintendent of railway corporations organized under the laws of the state shall be where its principal place of business is or is to be, in which the original record, stock, and transfer books and all the original papers and vouchers thereof shall be kept. [C73,§1279; C97, §2040; C24, 27, 31, 35, 39,§7929; C46, 50, 54, §476.10]

C97,§2040, editorially divided

**476.11 Financial record.** Such treasurer or assistant treasurer shall keep a record of the financial condition of the corporation, which shall be open to inspection by any stockholder, or any committee appointed by the general assembly, at all reasonable times. [C73,§1279; C97,§2040; C24, 27, 31, 35, 39,§7930; C46, 50, 54, §476.11]

**476.12 Stock transfer office—residence required.** Such corporations may keep a transfer office in any other state, with a duplicate transfer book, but no transfer of shares of stock shall be legal or binding until the same is entered in the one kept in the state. The secretary and treasurer or assistant treasurer and general superintendent shall reside in this state. [C73,§1279; C97,§2040; C24, 27, 31, 35, 39, §7931; C46, 50, 54,§476.12]

**476.13 Bonds—mortgages.** Any such corporation may issue its bonds for the construction and equipment of its railway in sums of not less than fifty dollars, payable to bearer or otherwise, with interest not exceeding eight percent per annum, and making them convertible into stock, and sell the same at such prices as is thought proper. If such bonds are sold below par they shall, nevertheless, be valid, and no plea of usury shall be allowed in

any action or proceeding brought to enforce the collection thereof. Such corporation may also secure the payment of the bonds by mortgages or deeds of trust upon the whole or any part of its property and franchises. [R60,§1339; C73,§1283; C97,§2041; C24, 27, 31, 35, 39,§7932; C46, 50, 54,§476.13]

- **476.14 After-acquired property.** Such mortgages or deeds of trust may by their terms include and cover not only the property of the corporation making them, owned at the time of their date, but all property, real and personal, which may thereafter be acquired, and they shall be as valid and effectual for that purpose as if the property were in possession at the time of their execution. [R60,§1340; C73,§1284; C97,§2042; C24, 27, 31, 35, 39,§7933; C46, 50, 54, §476.14]

**476.15 Execution of mortgages.** They shall be executed in the manner the articles of incorporation or the bylaws of the corporation may provide, and be recorded in each county through which the railway of the company may be located, or in which any property mortgaged or conveyed may be situated, and when recorded shall be constructive notice of the rights of all parties thereunder; and for this purpose the rolling stock and personal property of the company belonging to the road shall be deemed a part thereof, and such mortgages and deeds so recorded shall protect the lien of the mortgagee or grantee upon the personal property to the same extent that it does upon real estate thus mortgaged or conveyed. [R60, §1341; C73,§1285; C97,§2043; C24, 27, 31, 35, 39, §7934; C46, 50, 54,§476.15]

**476.16 Bonds secured by mortgage.** Any railway corporation organized under the laws of the state may mortgage its property and franchises, in whole or in part, to secure bonds issued by it to pay or refund its indebtedness, to improve or develop its property, or for the purpose of effecting the object of its incorporation, to be issued in such amounts, run for such length of time, be payable within or without this state, and bear such rate of interest, not to exceed the legal rate in the state at the time of issue, as the company issuing the same shall determine. [C97,§2049; C24, 27, 31, 35, 39,§7935; C46, 50, 54,§476.16]

**476.17 Mortgage to secure bonds of lessee.** Any railway corporation organized under the laws of the state may mortgage its property and franchises, in whole or in part, to secure bonds issued by any other railway corporation of this or any other state, which, at the time, is operating the road of such mortgagor under lease thereof; such bonds to be issued to refund or to secure the means to pay the indebtedness of such lessor, or to improve or develop its property, for the purpose of effecting the object of its incorporation. Such bonds may be issued in such amounts, run for such length of time, be made payable within or without the state, and bear such rate of interest, not exceeding the legal rate in this state at the time

they are issued, as may be determined by and be acceptable to such lessee. The lessee may secure the bonds issued by it for any of the purposes aforesaid by a mortgage of its leasehold interest in the property and franchises of the lessor. [C97,§2050; C24, 27, 31, 35, 39, §7936; C46, 50, 54,§476.17]

**476.18 Preferred stock.** Any railway corporation may increase its capital stock by the issuance of preferred stock in one or more classes entitled to such rate or rates of preferred dividends not exceeding eight percent per annum, and to such other preferences including accumulation thereon for future payment of any dividends not earned or paid in any fiscal or corporate year, and with such other privileges and rights as may be authorized by the stockholders pursuant hereto, and may issue the same either in exchange for property upon compliance with the provisions of sections 492.5 to 492.8, inclusive, or for sale for cash at par or for the retirement of its indebtedness at the rate of par for par; no such stock increase shall be made, and no such preferred stock shall be issued, unless authorized by the vote of not less than seventy-five percent of the total amount of the capital stock of such corporation at the time outstanding, expressed at a meeting called for the purpose, upon not less than thirty days notice inserted in a newspaper published in the city or town wherein such corporation may have its principal place of business in this state, and mailed to each stockholder of record at his address appearing upon the stock books of such corporation, provided that the plan and purpose for the issuance of any preferred stock under the provisions of this section, shall first be submitted to and receive the approval of the Iowa state commerce commission. [C73,§1286; C97,§2044; C24, 27, 31, 35, 39,§7937; C46, 50, 54, §476.18]

**476.19 Conversion into common stock.** Such preferred stock and any income or mortgage bond of the corporation shall, at the option of the holder, be convertible into common stock on such terms as the board of directors may prescribe; but the aggregate amount of the common and preferred stock shall not exceed the total amount of stock which the corporation may be authorized by law, or the articles of incorporation, to issue. [C73,§1287; C97,§2045; C24, 27, 31, 35, 39,§7938; C46, 50, 54,§476.19]

**476.20 Selection of directors by bondholders.** Any railway corporation organized under any law of the state, including consolidated corporations created pursuant to the laws of this and any adjoining state, may in such manner, under such regulations, and to such an extent as may be prescribed by its board of directors, and consented to by at least two-thirds of the capital stock then outstanding, confer upon the holders of its bonds or other evidences of indebtedness, or upon the holders of any particular class of such bonds or evidences of indebtedness, the right to vote for directors

thereof, one or more of whom may be chosen from among such bondholders. [C97,§2046; C24, 27, 31, 35, 39,§7939; C46, 50, 54,§476.20]

**476.21 Corporation may own stock.** Any railway corporation organized under the law of the state, or operating a road therein under the authority of the laws thereof, may acquire, own, and hold either the whole or any part of the stock, bonds, or other securities of any other railroad company of this or any adjoining state. [C97,§2047; C24, 27, 31, 35, 39,§7940; C46, 50, 54,§476.21]

**476.22 Foreign railway companies.** Any railway corporation organized or created by or under the laws of any other state, owning and operating a line or lines of railroad in such state, may build its road or branches into this state, and shall possess all the powers and privileges, and be subject to the same liabilities, as like corporations organized and incorporated under the laws of this state, if it shall file with the secretary of state a copy of its articles of incorporation, if incorporated under a general law of such state, or a certified copy of the statute incorporating it where the charter thereof was granted by statute. [C97,§2048; C24, 27, 31, 35, 39,§7941; C46, 50, 54,§476.22]

**476.23 Sale or lease of railroad property.** Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law with, any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it. [C73,§1300; C97, §2066; C24, 27, 31, 35, 39,§7942; C46, 50, 54, §476.23]

Referred to in §§476.24, 617.4

**476.24 Mortgage of contract or lease.** Any contract, lease, or benefit derived under the authority given in section 476.23 may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation. [C73,§1301; C97, §2067; C24, 27, 31, 35, 39,§7943; C46, 50, 54, §476.24]

**476.25 Report to general assembly.** When any railway has been completed and opened for use, the corporation owning, operating, or constructing it shall report under oath to the next general assembly the total cost thereof, specifying the amount expended for construction, engines, cars, depots, and other buildings, and the amount of all other expenses, together with the length of the railway, the number of planes with their inclination to the mile, the greatest curvature, the average width of roadbed, and the number of ties per mile. [C73,§1303; C97,§2069; C24, 27, 31, 35, 39,§7944; C46, 50, 54,§476.25]

**476.26 Rights reserved.** All contracts, stipulations, and conditions regarding the right of controlling and regulating the charges for

freight and passengers upon railways, heretofore made in granting land and other property or voting taxes to aid in the construction of or franchises to railway corporations, are expressly reserved, continued, and perpetuated in full force and effect, to be exercised by the general assembly whenever the public good or the public necessity requires such exercise thereof. [C73,§1306; C97,§2070; C24, 27, 31, 35, 39,§7945; C46, 50, 54,§476.26]

**476.27 Motorbusses — aerial transportation.** Any railroad company operating a railroad in this state may own and operate over the high-

ways of this state for hire and as a common carrier of passengers, freight, mail or express, automobile busses or motor vehicles, subject to the laws of the state applicable to the use of such highways by motor vehicle carriers, and may also own and operate equipment for, and engage in aerial transportation, subject to the laws of the state applicable thereto. Any such railroad company may purchase and own capital stock and securities of a corporation organized for or engaged in the business of a motor-carrier, or of aerial transportation. [C31, 35,§7945-c1; C39,§7945.1; C46, 50, 54,§476.27]

## CHAPTER 477

### CONSTRUCTION AND OPERATION OF RAILWAYS

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**477.1 Crossing railway, canal, or watercourse.** Any railroad company may build its railway across, over, or under any other railway, canal, or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation, or navigation. It shall be liable for all damages caused by such crossing. [R60,§1325; C73,§1265; C97,§2020; C24, 27, 31, 35, 39,§7946; C46, 50, 54,§477.1]

**477.2 Maintenance of bridges — damages.** Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way,

except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section. [R60,§§1326, 1327; C73,§§1266, 1267; C97,§2021; C24, 27, 31, 35, 39,§7947; C46, 50, 54,§477.2]

**477.3 Rights of riparian owners.** All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front of their property, piers, cribs, booms, and

other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and watercraft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property. [C97,§2032; C24, 27, 31, 35, 39,§7948; C46, 50, 54,§477.3]

Referred to in §§420.165, 477.4

**477.4 Railroad on riparian land or lots.** No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in section 477.3 and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees occasioned thereby shall be first ascertained and paid in the manner provided for taking private property for works of internal improvement. [C97,§2033; C24, 27, 31, 35, 39,§7949; C46, 50, 54,§477.4]

Referred to in §420.165  
Condemnation procedure, ch 472

**477.5 Right to lay pipes.** Such railway may lay, maintain, and repair pipes through any lands adjoining its tracks for a distance not to exceed three-fourths of a mile therefrom, in order to conduct water, for its engines, from any running stream. Said pipes shall not be laid to any spring, nor be so used as to injuriously withdraw the water from any farm. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7950; C46, 50, 54,§477.5]

**477.6 Duty to restore natural surface.** It shall, without unnecessary delay after such laying or repairing, restore the surface of the land to its natural grade, and replace any fence or other improvement which it may have disturbed. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7951; C46, 50, 54,§477.6]

**477.7 Right of landowner.** The owner of the land through which any such pipes may be laid shall have the right to use the land in any manner which will not interfere with such pipes. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7952; C46, 50, 54,§477.7]

**477.8 Liability to landowner.** Said corporation shall be liable to the owner of the land for any damages occasioned by laying, maintaining, or repairing such pipes. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7953; C46, 50, 54,§477.8]

**477.9 Station telephones.** It shall be the duty of all railway companies on all lines of railway operated by them to install a telephone in each passenger or freight depot in any city or town where a telephone exchange is maintained for public service, said telephone to be connected with and for the use of the patrons of said exchange. [S13,§2077-a; C24, 27, 31, 35, 39,§7954; C46, 50, 54,§477.9]

S13,§2077-a, editorially divided  
Referred to in §477.11

**477.10 Train bulletins required.** It shall be the duty of all railway companies on all lines operated by them to keep posted in the waiting room of each passenger station a bulletin

plainly showing the time of arrival and departure at such station of all trains carrying passengers, and at all stations where a telegraph or telephone operator is maintained, such bulletin shall indicate whether said trains are late or on time, and if late, the approximate number of minutes late. If the train is less than ten minutes late, the same shall be considered on time for the purpose of this section. [S13,§2077-a; C24, 27, 31, 35, 39,§7955; C46, 50, 54,§477.10]

Referred to in §477.11

**477.11 Violations.** Any railway company violating the provisions of sections 477.9 and 477.10, and any agent, telephone or telegraph operator of such railroad company violating the provisions of section 477.10 in relation to posting bulletins in the waiting room indicating when the trains are late or on time, shall be punished by a fine of not less than five dollars nor more than fifty dollars. [S13,§2077-a; C24, 27, 31, 35, 39,§7956; C46, 50, 54,§477.11]

**477.12 Automatic couplers.** No corporation, company, or person operating a railroad and no car manufacturing or transportation company using or leasing cars shall operate upon any railroad in this state any car that is not equipped with safety automatic couplers, so constructed as to enable a person to couple and uncouple them without going between cars. [C97,§§2079, 2080; S13,§2080; C24, 27, 31, 35, 39,§7957; C46, 50, 54,§477.12]

Referred to in §§477.15, 477.16

**477.13 Driver brake on engines.** No corporation, company, or person operating any line of railroad in the state shall use any locomotive engine upon any railroad or in any railroad yard in the state that is not equipped with a proper and efficient power brake, commonly called a driver brake. [C97,§2081; C24, 27, 31, 35, 39,§7958; C46, 50, 54,§477.13]

Referred to in §§477.15, 477.16

**477.14 Power brake on cars.** No corporation, company, or person operating a line of railroad in the state shall run any train of cars that shall not have therein a sufficient number of cars with some kind of efficient automatic or power brake to enable the engineer to control the train without requiring brakemen to go between the ends or on the top of the cars to use the hand brake. [C97,§2082; C24, 27, 31, 35, 39,§7959; C46, 50, 54,§477.14]

Referred to in §§477.15, 477.16

**477.15 Violations.** Any corporation, company, or person operating a railroad in this state and using a locomotive engine, or running a train of cars, or using any freight, way, or other car contrary to the provisions of sections 477.12 to 477.14, inclusive, shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred nor more than one thousand dollars for each and every offense; but such penalties shall not apply to



companies hauling cars belonging to railroads other than those of this state which are engaged in interstate traffic. [C97,§2083; C24, 27, 31, 35, 39,§7960; C46, 50, 54,§477.15]

C97,§2088, editorially divided

**477.16 Nonassumption of risk.** Any railway employee who may be injured by the running of such engine, train, or car contrary to the provisions of sections 477.12 to 477.14, inclusive, shall not be considered as waiving his right to recover damage by continuing in the employ of the corporation, company, or person operating such engine, train, or cars. [C97,§2083; C24, 27, 31, 35, 39,§7961; C46, 50, 54,§477.16]

**477.17 Switch engines—safety devices.** It shall be unlawful for any railway or terminal transfer company, or any corporation operating locomotives in switching or yard service, to operate, or permit the same to be operated, unless said locomotives are equipped with headlight on both front and rear of engine, when operated between sunset and sunrise, and all such engines shall be equipped with a footboard of substantially uniform height, width, and length, securely fastened and firmly braced to the pilot beam in front of engine, and a similar footboard on rear of tank or tender of engines, upon which employees may stand or ride when their duties require them so to do, and that a substantial grab rail or rod be securely fastened upon said pilot beam at each end and in the center, at a convenient height for employees to reach and hold on to with their hands, said rod to extend across the full length of the said pilot beam, and also across the rear end beam of said tank or tender. [S13,§2083-c; C24, 27, 31, 35, 39,§7962; C46, 50, 54,§477.17]

S13,§2083-c, editorially divided  
Referred to in §§477.18, 477.19

**477.18 Exceptions.** The provisions of section 477.17 shall not apply to switching or yard service at stations or places where regular switch engines are not employed exclusively as switch engines, or during a period of not exceeding twelve hours, when a switch engine is being cleaned or washed out, and also switching by work trains; and where regular switch engines are disabled by accident, or in need of repairs, or there is an unusual or unexpected amount of work, switching, under such conditions, with ordinary engines, for a period of not to exceed forty-eight hours, shall not be considered a violation of this statute. [S13, §2083-c; C24, 27, 31, 35, 39,§7963; C46, 50, 54, §477.18]

**477.19 Violations.** Any person, railway company, terminal transfer, or other corporation or company who violates any of the provisions of section 477.17 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars or more than five hundred dollars for any such violation, and each day that every such engine is operated shall constitute a separate and distinct violation of said section. [S13,§2083-d; C24, 27, 31, 35, 39,§7964; C46, 50, 54,§477.19]

**477.20 Frost glass in cab windows.** Every person, partnership, company, or corporation owning or operating a railway in the state, between November 1 and April 1 of each year, shall equip the cab of all locomotive engines in use, with frost glass, of not less than eight inches in width and eighteen inches in length on either side of the cab of said engine in front of the seats of the engineer and fireman; but when a frost glass is broken or becomes out of repair, a period of not to exceed seventy-two hours is allowed to repair or replace the same. [S13,§2083-e; C24, 27, 31, 35, 39,§7965; C46, 50, 54,§477.20]

Referred to in §477.21

**477.21 Violations.** Any violation of section 477.20 shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars for each day any locomotive engine is operated in violation thereof. [S13,§2083-f; C24, 27, 31, 35, 39,§7966; C46, 50, 54,§477.21]

**477.22 Headlights.** It shall be the duty of every person, firm, or corporation owning or operating any line of railway within the state, except lines under twenty miles in length operated wholly within this state, to equip all locomotives, power vehicles, power cars, or other equipment used as the equivalent of or in place of a locomotive, when used in the transportation of passengers, employees or freight, with a headlight of sufficient candlepower, measured with a reflector, to throw a light in clear weather that will enable the operator of same to plainly discern an object the size of a man lying prone on the track at a distance of eleven hundred feet from the headlight, and thereafter to maintain and use such headlights upon every such locomotive, vehicle, car, or other equipment; provided, however, that track power cars when used during the nighttime by employees in the performance of work, shall be equipped with an electric headlight of sufficient candlepower, measured with a reflector to throw a light in clear weather that will enable the operator to see an obstruction on the track for a distance of five hundred feet. [S13,§2083-g; C24, 27, 31, 35, 39,§7967; C46, 50, 54,§477.22]

S13,§2083-g, editorially divided  
Referred to in §§477.23, 477.24

**477.23 Exceptions.** Section 477.22 shall not be construed to apply to power cars used by street railways and operated wholly within the corporate limits of any city or town, nor to engines or other equipment used exclusively for switching purposes, nor to engines or other equipment running after sunrise and before sunset. [S13,§2083-g; C24, 27, 31, 35, 39, §7968; C46, 50, 54,§477.23]

**477.24 Violations.** Any person, firm, or corporation owning such line of railway or the equipment operated thereon, who shall cause or permit any locomotive, power vehicle, power car, or other equipment used as the equivalent thereof, to be operated without being equipped with the headlight required by the provisions of section 477.22 shall be deemed

guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. [S13,§2083-h; C24, 27, 31, 35, 39,§7969; C46, 50, 54,§477.24]

S13,§2083-h, editorially divided

**477.25 Exceptions.** No punishment shall be imposed for the operation of any such locomotive or the equivalent thereof without such headlight, when such locomotive or track power work car was properly equipped with such headlight at the commencement of the trip, providing it is shown that such headlight was in good and sufficient working condition when the trip was begun and became disabled during the trip. [S13,§2083-h; C24, 27, 31, 35, 39, §7970; C46, 50, 54,§477.25]

**477.26 Standard caboose cars.** The provisions of sections 477.27 and 477.28 shall apply to any corporation or to any person or persons while engaged as common carriers in the transportation by railroads of passengers or property within this state except interurban, to which the regulative power of this state extends. [S13,§2083-i; C24, 27, 31, 35, 39,§7971; C46, 50, 54,§477.26]

Referred to in §477.28

**477.27 Minimum length — construction — equipment.** It shall be unlawful, except as otherwise provided in this chapter, for any such common carrier by railroad to use on its lines any caboose car or other car used for like purposes, unless such caboose or other car shall be at least twenty-four feet in length, exclusive of the platform, and equipped with two four-wheel trucks, and shall be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than eighteen inches in width and shall be equipped with proper guard rails, and with grab irons and hand brakes, and steps for the safety of persons getting on and off said cars; said steps shall be equipped with a suitable rod, board, or other guard at each end and at the back thereof, properly designed to prevent slipping from said step. Such caboose or other car used for like purposes shall be provided with cupola, or side bay windows, and necessary closets and windows. Each caboose car shall be equipped with an emergency air valve and air guage, which shall be placed on inside of said car; but the provisions hereof shall not apply to work trains, transfer service, or emergencies not exceeding thirty-six hours. [S13,§2083-j; C24, 27, 31, 35, 39,§7972; C46, 50, 54,§477.27]

Referred to in §§477.26, 477.28

**477.28 Violations.** Any common carrier as provided in section 477.26 violating any of the provisions of section 477.27 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. [S13,§2083-m; C24, 27, 31, 35, 39,§7973; C46, 50, 54,§477.28]

Referred to in §477.26

**477.29 Automatic firebox door.** All steam railroad companies operating steam locomotive engines on its railroad or railroads in or through this state, shall provide and equip each and every such steam locomotive engine so operated over its road or roads in this state with an automatic door to the firebox of such locomotive engine. [C27, 31, 35,§7973-a1; C39, §7973.1; C46, 50, 54,§477.29]

41GA, ch 156,§1, editorially divided  
Referred to in §§477.32, 477.33, 477.34

**477.30 Motive power.** Such automatic door shall be constructed and operated by steam, compressed air, or electricity, as deemed best and most efficient by the officers of such railroad. [C27, 31, 35,§7973-a2; C39,§7973.2; C46, 50, 54,§477.30]

Referred to in §§477.32, 477.33, 477.34

**477.31 Manner of construction.** The device for operating such door shall be so constructed that it may be operated by the fireman on said engine by means of a push button or other appliance located in the floor of the engine deck or floor of the tender at a suitable distance from such door to enable the fireman while firing such engine, by pressure with his foot to open said door for the firing of such engine. [C27, 31, 35,§7973-a3; C39,§7973.3; C46, 50, 54,§477.31]

Referred to in §§477.32, 477.33, 477.34

**477.32 Time of installation.** The equipment provided for in sections 477.29 to 477.31, inclusive, shall be installed when a locomotive undergoes general repair and the use of a locomotive before such general repairs are made shall not be regarded as a violation of said sections. [C27, 31, 35,§7973-a4; C39,§7973.4; C46, 50, 54,§477.32]

Referred to in §477.34

**477.33 Penalty.** Each and every steam railroad company failing to provide and maintain in good condition and working order an automatic firebox door as required and provided for in sections 477.29 to 477.31, inclusive, shall be guilty of a misdemeanor and shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars for each and every day such locomotive is operated in this state without such automatic door. [C27, 31, 35,§7973-a5; C39,§7973.5; C46, 50, 54,§477.33]

41GA, ch 156,§3, editorially divided  
Referred to in §477.34

**477.34 Exceptions.** The provisions of sections 477.29 to 477.33, inclusive, shall not apply to locomotive engines equipped with mechanical stokers. [C27, 31, 35,§7973-a6; C39,§7973.6; C46, 50, 54,§477.34]

**477.35 Adequate stockyards required.** Any person, firm, or corporation operating a railroad within the state shall provide at each of its stations where livestock is received for shipment, adequate stockyards, which shall be substantially provided with good gates, suitable chutes for loading livestock, suitable sheds for the protection of livestock from the inclem-

ency of the weather, suitable troughs from which livestock may be watered and an ample water supply conveniently located and supplied by pipes from wells or other water supply, the amount of such water supply to be at all times sufficient for all livestock in said yards and also for the wetting down of cars in hot weather. [C24, 27, 31, 35, 39, §7974; C46, 50, 54, §477.35]

Referred to in §477.36

**477.36 Duty to enforce.** It shall be the duty of the said Iowa state commerce commission to enforce the provisions of section 477.35, and, upon a complaint signed by five or more shippers of livestock, it shall be its duty to investigate the stockyards and loading facilities at any such station and determine their adequacy and shall have power to make such order for the improvement of said yards as shall, in its judgment, seem necessary. [C24, 27, 31, 35, 39, §7975; C46, 50, 54, §477.36]

**477.37 Depots — closets — sanitation.** At all railway stations in this state, where a depot and waiting rooms for passengers are maintained, there shall be within the same, or connected therewith, sanitary closets, including separate closets for women which, in cities or towns having a system of sewerage so located that the same can be reasonably used by the railroad property, shall be thoroughly drained, constructed, and plumbed according to approved sanitary principles and said depots and closets shall be kept in a clean and sanitary condition, free from any offensive odors. Depots in cities or towns not provided with a sewerage system, shall be provided with privies or closets properly screened and separated for the use of males and females, which shall be cleaned and disinfected as often as necessary to keep and maintain them in an approved sanitary condition. [S13, §2514-y; C24, 27, 31, 35, 39, §7976; C46, 50, 54, §477.37]

Referred to in §§477.38, 477.39, 477.40

**477.38 Enforcement.** It shall be the duty of the department of agriculture to see that the provisions of section 477.37 are fully complied with and, on complaint being filed by an employee or patron of the railway company, shall inspect the same. [S13, §2514-y1; C24, 27, 31, 35, 39, §7977; C46, 50, 54, §477.38]

**477.39 Delinquency—notice to station agent.** It shall be the duty of the department upon ascertaining by inspection or otherwise that any railroad company has not complied with the provisions of section 477.37 at any of its depots, to notify the station agent of such depot, in writing, stating in what respect it is delinquent and requiring it in a reasonable time, to be fixed by the department, to do or cause to be done the things necessary to make it comply with the law. [S13, §2514-y2; C24, 27, 31, 35, 39, §7978; C46, 50, 54, §477.39]

**477.40 Violations.** Any railroad company which after receiving said notice fails to comply, within the time fixed, with the provisions

of section 477.37, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding one hundred dollars for each offense and the inspector shall file information in such a case. [S13, §2514-y3; C24, 27, 31, 35, 39, §7979; C46, 50, 54, §477.40]

**477.41 Fee.** Such railroad companies shall pay a fee of five dollars to the person making the inspection. If there is no cause of complaint, the person complaining shall be liable for such fee. All fees shall forthwith be paid over to the state treasurer. [S13, §2514-y4; C24, 27, 31, 35, 39, §7980; C46, 50, 54, §477.41]

**477.42 Freight, passenger, express, and telegraph offices.** All railroads terminating in the state shall establish and maintain at such terminus general freight and passenger offices, and express or telegraph offices when operating an independent express or telegraph company, at localities accessible and convenient to the public, and there keep for sale tickets over their respective roads, and, in advertising, correctly set forth their true connections, starting or terminal points, timetables, and freight tariffs. [C97, §2108; C24, 27, 31, 35, 39, §7981; C46, 50, 54, §477.42]

Referred to in §477.44

**477.43 Sleeping-car tickets.** All railroad and sleeping-car companies, running or operating sleepers or sleeping cars within the state upon railroads terminating therein, shall establish, maintain, and keep open to the public, at such termini, ticket offices at accessible and convenient places, in which they shall keep a diagram of the berths and staterooms in such sleepers or sleeping cars, and shall at all times during the daytime keep them open for the sale of tickets for such berths and staterooms. [C97, §2109; C24, 27, 31, 35, 39, §7982; C46, 50, 54, §477.43]

Referred to in §477.44

**477.44 Violations.** If any officer, agent, or employee of any such company, or any lessee, engaged in operating any sleeper or sleeping-car line terminating or operated within the state, shall neglect or refuse to comply with any of the provisions of sections 477.42 and 477.43, he shall be guilty of a misdemeanor, and, upon conviction thereof, fined in a sum not exceeding five hundred dollars, and imprisoned not more than six months. [C97, §2110; C24, 27, 31, 35, 39, §7983; C46, 50, 54, §477.44]

**477.45 Employees hours of service.** It shall be unlawful for any railway company within the state, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any rolling stock, engine, or train, to remain on duty more than sixteen consecutive hours, or to require or permit any such employee who has been on duty sixteen consecutive hours to perform any further service without having at least ten hours for rest, or to require or permit any such employee to be on duty at any time to

exceed sixteen hours in any consecutive twenty-four hours. [S13,§2110-a; C24, 27, 31, 35, 39,§7984; C46, 50, 54,§477.45]

S13,§2110-a, editorially divided  
Referred to in §§477.46, 477.47, 477.48

**477.46 Exceptions.** Section 477.45 shall not apply to work performed in the protection of life or property in cases of accident, wreck, or other unavoidable casualty, or prevent train crews from taking a passenger train, or freight train loaded exclusively with livestock or perishable freight, to the next nearest division point upon such railroad; and it shall not apply to that time necessary for the trainmen to reach a resting place when an accident, wreck, washout, snow blockade, or other unavoidable cause has delayed their train; and provided further that said section shall not apply to employees of sleeping-car companies. [S13,§2110-a; C24, 27, 31, 35, 39,§7985; C46, 50, 54,§477.46]

**477.47 Violations — investigation — prosecutions.** Any superintendent, trainmaster, train dispatcher, yardmaster, or other official of any railroad in the state, violating any of the provisions of section 477.45, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars for each offense. [S13,§2110-b; C24, 27, 31, 35, 39,§7986; C46, 50, 54,§477.47]

S13,§2110-b, editorially divided

**477.48 Investigation by commission.** It shall be the duty of the Iowa state commerce commission to receive written statements of violations of section 477.45, and when so requested to hold the same without disclosure of the name of the person making such statement, and to investigate each and every complaint filed alleging such violation. [S13,§2110-b; C24, 27, 31, 35, 39,§7987; C46, 50, 54,§477.48]

**477.49 Hearing—report.** The commission in making such investigation shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers, and must file a report of such investigation in writing with a full statement of its finding to the governor. [S13,§2110-b; C24, 27, 31, 35, 39,§7988; C46, 50, 54,§477.49]

**477.50 Prosecutions.** In all cases of violation of said provisions, the state commerce commission, through the attorney general, must at once begin the prosecution of all parties against whom evidence of violation is found; but said provisions shall not be construed to prevent any other person from beginning prosecution for violation thereof. [S13, §2110-b; C24, 27, 31, 35, 39,§7989; C46, 50, 54, §477.50]

**477.51 Semimonthly payment of wages.** Every railway corporation operating or doing business in the state shall as often as semimonthly pay to every employee engaged in its business all wages or salaries earned by

such employee to a day not more than eighteen days prior to the date of such payment. Any employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter at any time upon six days demand, and any employee leaving his or her employment or discharged therefrom shall be paid in full following his or her dismissal or voluntary leaving his or her employment at any time upon six days demand. No corporation coming within the meaning of this section shall by special contract with the employees or by any other means secure exemption from the provisions of this section. Each and every employee of any corporation coming within the meaning hereof shall have his or her right of action against any such corporation for the full amount of his or her wages due on each regular pay day as herein provided in any court of competent jurisdiction of this state. [SS15, §2110-b1; C24, 27, 31, 35, 39,§7990; C46, 50, 54, §477.51]

Referred to in §477.52

**477.52 Violations.** Any corporation violating section 477.51 shall be deemed guilty of a misdemeanor and fined in a sum not less than twenty-five dollars, nor more than one hundred dollars, for each separate offense, and each and every failure or refusal to pay each employee the amount of wages due him or her at the time, or under the conditions required in section 477.51, shall constitute a separate offense. [SS15,§2110-b2; C24, 27, 31, 35, 39,§7991; C46, 50, 54,§477.52]

**477.53 Destruction of weeds.** It shall be the duty of every corporation owning or operating a railroad in this state on written notice from the owner, lessee or occupant of any land abutting upon its right of way to cut and burn, or otherwise destroy once each year during the month of July, all cockleburrs, burdock weeds, quack grass, and thistles on its right of way adjacent to said land. [S13,§2110-i; C24, 27, 31, 35, 39,§7992; C46, 50, 54,§477.53]

Referred to in §§477.54, 477.55  
Weeds, ch 817

**477.54 Violations.** Any failure to comply with the provisions of section 477.53 shall be deemed a misdemeanor and shall be punished accordingly. [S13,§2110-j; C24, 27, 31, 35, 39, §7993; C46, 50, 54,§477.54]

Referred to in §477.55  
Punishment, §687.7

**477.55 Enforcement.** It shall be the duty of the county attorneys in the respective counties to enforce the provisions of sections 477.53 and 477.54. [S13,§2110-k; C24, 27, 31, 35, 39,§7994; C46, 50, 54,§477.55]

**477.56 Profane language on trains.** Any person who shall use profane or indecent language on any passenger railway car, or on any street-car, or interurban car, in service, shall be guilty of a misdemeanor. [S13,§2461-f; C24, 27, 31, 35, 39,§7995; C46, 50, 54,§477.56]

Punishment, §687.7

**477.57 Power to eject passenger.** Any conductor of a railway train, or streetcar, or interurban car carrying passengers shall have the right to refuse to permit any person, not in the custody of an officer, to enter any passenger car on his train, or streetcar, or interurban car in his charge, who shall be in a state of intoxication; and shall have the further right to eject from his train at any station, or from his streetcar, or interurban car at any regular stop, any person found in a state of intoxication or drinking intoxicating liquors as a beverage, or using profane or indecent language, and for that purpose may call to his aid any employee of the railway or streetcar or interurban company. [S13,§2461-g; C24, 27, 31, 35, 39,§7996; C46, 50, 54,§477.57]

**477.58 Changing names of stations.** In all cases where any railway company shall fail or refuse to make the name of the railway station conform to the name of the village, incorporated town, or city within the limits of which it is situated, it shall be the duty of the state commerce commission to order a change of the name of said railway station to effect such uniformity, within sixty days after a petition in writing by the town council of said

incorporated town or city, or, in the case of a village, by the township trustees, asking for such order, is filed with said state commerce commission. [C97,§2105; C24, 27, 31, 35, 39, §7997; C46, 50, 54,§477.58]

**477.59 Notice.** When the commissioners shall order a change in the name of a railway station, they shall give the company owning or operating the same notice of such order, and if it is not complied with within thirty days from the date of service of such notice, the commissioners shall notify the attorney general thereof, who shall begin proceedings in the proper court to compel the enforcement of said order. [C97,§2106; C24, 27, 31, 35, 39,§7998; C46, 50, 54,§477.59]

**477.60 Violations.** A failure to comply with the order of the commissioners within thirty days from service of such notice shall also be a misdemeanor, for which said company shall be subject to a fine of one thousand dollars, and noncompliance for each thirty days thereafter shall constitute a separate and distinct offense, subject to a fine of one thousand dollars. [C97,§2107; C24, 27, 31, 35, 39,§7999; C46, 50, 54,§477.60]

## CHAPTER 478

### CATTLE GUARDS, FENCES, CROSSINGS, AND INTERLOCKING SWITCHES

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**478.1 Cattle guards—crossings—signs.** Every corporation constructing or operating a railway shall make proper cattle guards where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public road good, sufficient, and safe crossings and cattle guards, and erect at such points, at a sufficient elevation from such road as to admit of free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out

for trains. Any railway company neglecting or refusing to comply with the provisions of this section shall be liable for all damages sustained by reason of such refusal or neglect, and it shall only be necessary, in order to recover, for the injured party to prove such neglect or refusal. [R60,§1331; C73,§1288; C97, §2054; C24, 27, 31, 35, 39,§8000; C46, 50, 54,§478.1]

**478.2 Railway fences required.** All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side

of the right of way, so connected with cattle guards at all public road crossings as to prevent livestock getting upon the tracks. All such rights of way shall be fenced within six months after the completion of the track or any part thereof. [C97,§2057; S13,§2057; C24, 27, 31, 35, 39,§8001; C46, 50, 54,§478.2]

40ExGA, HF 190,§5, editorially divided  
Referred to in §478.3

**478.3 Exception.** Section 478.2 shall not apply to a class C line of railway through the lands of any owner who by written agreement with the company owning or operating such line waives the fencing thereof. [C97,§2057; S13,§2057; C24, 27, 31, 35, 39,§8002; C46, 50, 54, §478.3]

**478.4 Specifications.** All fences shall be not less than fifty-four inches high and may be of any of the following types:

1. Not less than five barbed wires, properly spaced.
2. Not less than three barbed wires above and not less than twenty-four inches of woven wire below.
3. Entirely of woven wire.
4. Five boards properly spaced.
5. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

Each of the above types shall be securely nailed to posts firmly set, not more than twenty feet apart for the first three types, nor more than eight feet apart for the fourth. [C97,§2057; S13,§2057; C24, 27, 31, 35, 39,§8003; C46, 50, 54,§478.4]

**478.5 Hog-tight fences.** When any person owning land abutting on the right of way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right of way, the railway company owning such right of way shall, on written request of the landowner, make such right of way fence along such inclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means. [S13,§2057; C24, 27, 31, 35, 39,§8004; C46, 50, 54,§478.5]

**478.6 Failure to fence.** Any corporation operating a railway and failing to fence its right of way against livestock running at large or to maintain proper and sufficient cattle guards at all points where the right to fence or maintain cattle guards exists, shall be liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guards for the full amount of the damages sustained by the owner, unless it was occasioned by the willful act of such owner or his agent; and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. [C73, §1289; C97,§2055; C24, 27, 31, 35, 39,§8005; C46, 50, 54,§478.6]

Referred to in §479.126

**478.7 Double damages.** If such corporation fails or neglects to pay such damages within thirty days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him. [C73,§1289; C97,§2055; C24, 27, 31, 35, 39,§8006; C46, 50, 54,§478.7]

Referred to in §479.126

**478.8 Laws and local regulations not applicable.** No law of the state or any local or police regulations of any county, township, city, or town, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway rights of way, unless specifically so stated in such law and regulation. [C73,§1289; C97,§2055; C24, 27, 31, 35, 39,§8007; C46, 50, 54, §478.8]

Referred to in §479.126

**478.9 Depot grounds—speed limit.** Upon depot grounds necessarily used by the public and the corporation, the operating of trains at a greater rate of speed than eight miles an hour where no fence is built, shall be negligence, and shall render such corporation liable for all damages occasioned thereby, in the same manner and to the same extent, except as to double damages, as in cases where the right to fence exists. [C73,§1289; C97, §2055; C24, 27, 31, 35, 39,§8008; C46, 50, 54,§478.9]

Referred to in §479.126

**478.10 Failure to fence—general penalty.** If the corporation, officer thereof or lessee owning or engaged in the operation of any railroad in the state refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracks, such corporation, officer, or lessee shall be guilty of a misdemeanor, and upon conviction fined in a sum not exceeding five hundred dollars for each offense, and every thirty days continuance of such refusal or neglect shall constitute a separate and distinct offense. [C97,§2058; C24, 27, 31, 35, 39,§8009; C46, 50, 54,§478.10]

C97,§2058, editorially divided

**478.11 Killing of stock — interpretative clause.** Nothing herein contained shall be construed to relieve the corporation from liability arising from the killing or maiming of livestock on said track or right of way by its negligence or that of its employees, nor shall anything in this chapter interfere with the right of open or private crossings, or with the right of persons to such crossings, nor in any way limit or qualify the liability of any corporation or person owning or operating a railway that fails to fence the same against livestock running at large for any stock injured or killed by reason of the want of such fence. [C97, §2058; C24, 27, 31, 35, 39,§8010; C46, 50, 54,§478.11]

**478.12 Private crossings.** When any person owns land on both sides of any railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating such railway, on request of the owner of such land or farm, shall construct and maintain a safe and adequate farm crossing or roadway across such railway and right of way at such reasonable place as the owner of the land may designate, and shall construct and maintain a cattle guard on each side of such roadway where it crosses the track, connected by wing or cross fences to the fences on each side of the right of way. [R60,§1329; C73,§1268; C97, §2022; S13,§2022; C24, 27, 31, 35, 39,§8011; C46, 50, 54,§478.12]

**478.13 Overhead, underground, or more than one crossing.** Such owner of land may serve upon such railroad company a request in writing for more than one such farm or private crossing, or for an overhead or underground crossing, accompanied by a plat of his land designating thereon the location and character of crossing desired. If the railroad company refuses or neglects for thirty days after such service to comply with such request, the owner of the land may make written application to the state commerce commission to hear and determine his rights in said respect. Such commission, after reasonable notice to the railroad company, shall hear said application and all objections thereto, and make such order as shall be reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with such order. The matter of costs shall be in the discretion of the commission. [S13,§2022; C24, 27, 31, 35, 39,§8012; C46, 50, 54,§478.13]

**478.14 Station houses at crossings.** All railway corporations shall, at all points of connection, crossings, or intersection with the roads of other corporations, unite therewith in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the state commerce commission; and shall, when ordered by it, keep such depot or passenger house warmed, lighted, and opened a reasonable time before the arrival, and until after the departure of all trains carrying passengers. [C97,§2103; C24, 27, 31, 35, 39,§8013; C46, 50, 54,§478.14]

C97,§2103, editorially divided  
Referred to in §478.18  
Proper stations required, §474.13

**478.15 Expense.** The expense of constructing and maintaining such station houses and platforms shall be paid by such corporations in such proportions as may be fixed by the commission. [C97,§2103; C24, 27, 31, 35, 39,§8014; C46, 50, 54,§478.15]

Referred to in §478.18

**478.16 Stopping of trains.** Said railway companies shall stop all trains at said depots

for the transfer of passengers, baggage, and freight when so ordered by the commission. [C97,§2103; C24, 27, 31, 35, 39,§8015; C46, 50, 54, §478.16]

Referred to in §478.18

**478.17 Connecting tracks.** Such corporations whose roads so connect or intersect shall, when ordered by the commission, so unite and connect the tracks of the several roads as to permit the transfer of cars from the track of one to that of the other. [C73,§§1292-1295; C97,§2103; C24, 27, 31, 35, 39,§8016; C46, 50, 54, §478.17]

Referred to in §478.18  
Connecting tracks required, §474.13

**478.18 Violations.** Any railway corporation or company which, after having received ninety days notice from the commissioners, shall neglect or refuse to comply with the provisions of sections 478.14 to 478.17, inclusive, shall, for every day it fails, neglects, or refuses to comply therewith, forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the state for the use of the school fund of the county wherein such crossing or intersection is situated, and the county attorney of such county shall prosecute the same. [C97,§2104; C24, 27, 31, 35, 39,§8017; C46, 50, 54,§478.18]

**478.19 Signals at road crossings.** A bell and a steam whistle shall be placed on each locomotive engine operated on any railway, which whistle shall be twice sharply sounded at least sixty rods before a road crossing is reached, and after the sounding of the whistle the bell shall be rung continuously until the crossing is passed; but at street crossings within the limits of cities or towns the sounding of the whistle may be omitted, unless required by ordinance or resolution of the council thereof; and the company shall be liable for all damages which shall be sustained by any person by reason of such neglect. [C97,§2072; C24, 27, 31, 35, 39,§8018; C46, 50, 54,§478.19]

C97,§2072, editorially divided  
Referred to in §478.20

**478.20 Violations.** Any officer or employee of any railway company violating any of the provisions of section 478.19 shall be punished by a fine not exceeding one hundred dollars for each offense. [C97,§2072; C24, 27, 31, 35, 39, §8019; C46, 50, 54,§478.20]

**478.21 Railway and highway crossing at grade.** Wherever a railway track crosses or shall hereafter cross a highway, street or alley, the railway company owning such track and the state highway commission, in the case of primary highways, the board of supervisors of the county in which such crossing is located, in the case of secondary roads, or the council of the city or town, in the case of streets and alleys located within such city or town, may agree upon the location and manner of crossing, or crossing protection, or upon a separation of grades so as to carry such high-



way over or under the railway track, and upon any change, alteration, vacation or relocation of such highway, street or alley, and upon repairs, alteration, or elimination of any crossing, and upon the expense each party shall pay for such changes, except that if flasher light or gate signals are ordered installed the maintenance thereof shall be assumed by the railroad; provided, however, nothing contained herein shall be construed to affect any of the provisions of chapter 387. [R60,§§1321, 1322; C73,§§1262, 1263; C97,§§2017, 2018; SS15,§2017; C24, 27, 31, 35, 39,§§8020, 8024, 8025; C46,§§478.21, 478.25, 478.26; C50, 54,§478.21]

**478.22 Disagreement—application—notice.** If the railway company and said highway authorities cannot agree upon the changes to be made, either party may make written application to the state commerce commission, setting forth the changes and alterations desired, and said commission shall fix a date for hearing and give the other party ten days written notice by mail of such date. [SS15,§2017; C24, 27, 31, 35, 39,§8021; C46, 50, 54,§478.22]

**478.23 Hearing—order.** The state commerce commission shall hear and determine such application, taking into consideration the necessity of such changes and the expense thereof, the location of any crossing or crossing protection and the manner in which it shall be constructed and maintained, or whether a crossing is to be eliminated and the provisions therefor, and may make such order in relation thereto as shall be equitable, including authority to condemn and take additional land for such purposes when necessary, and shall determine what portion of the expense shall be paid by any party to such controversy. [SS15, §2017; C24, 27, 31, 35, 39,§8022; C46, 50, 54, §478.23]

**478.24 Railway company to hold in trust.** Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return. [SS15,§2017; C24, 27, 31, 35, 39,§8023; C46, 50, 54,§478.24]

**478.25 and 478.26,** Repealed by 52GA, ch 247, §2. See §478.21.

**478.27 Condition after change—temporary ways.** When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions. [R60,§§1321, 1324; C73,§§1262, 1264; C97,§§2017, 2019; SS15,§2017; C24, 27, 31, 35, 39,§8026; C46, 50, 54,§478.27]

**478.28 Railway crossings near Mississippi river.** When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high-water mark in such river; but where the crossing occurs within the limits of any city or town containing six thousand or more inhabitants, the council or other governing authorities thereof may establish the crossing grade. [C73,§1290; C97, §2059; C24, 27, 31, 35, 39,§8027; C46, 50, 54, §478.28]

**478.29 Grade crossings.** The state commerce commission shall have jurisdiction over all crossings at grade of steam and interurban railways within the state. Upon the application of any interurban railway or upon its own motion, the said commission may require the trains of any steam railway to stop at any crossing of such railway tracks at grade or said commission may make such rules and regulations in relation to speed or other methods of operation at such grade crossings as in its judgment are necessary to protect the public safety. This section shall be construed as an exception to the general rule as provided by law, with reference to interurban railways being street railways within cities and towns. [C24, 27, 31, 35, 39,§8028; C46, 50, 54,§478.29]

Interurban railways, §484.2

**478.30 Duties of employees.** Wherever the tracks of an interurban railway cross the tracks of any steam railway at grade, the steam railway shall, except where required to stop by order of the state commerce commission, have the right of way and not be compelled to stop its trains and the interurban company operating its line shall cause its cars to come to a full stop not nearer than ten feet nor more than fifty feet from such crossing. Before proceeding to cross said steam railway tracks some employee of the interurban company shall first cross said track ahead of its car or cars and ascertain if the way is clear and free from danger for the passage of such interurban cars. The interurban car or cars shall not proceed to cross until signaled to do so by such person employed as aforesaid. No steam railway in the operation of its engine and cars shall obstruct the free passage of cars of an intersecting interurban railway at such crossing except in the exercise of its right of way as provided in this section. [S13,§2033-e; C24, 27, 31, 35, 39,§8029; C46, 50, 54,§478.30]

Referred to in §§478.31, 478.32

**478.31 Stopping at crossings — exceptions.** Except as otherwise in this chapter provided in relation to interlocking switches at railway grade crossings and except as otherwise provided in section 478.30, all trains run upon any steam railroad in this state which intersects and crosses any other railroad upon the same level, shall be brought to a full stop at a distance of not less than two hundred nor more



than eight hundred feet from the point of intersection or crossing, before such intersection or crossing is passed. [C97,§2073; C24, 27, 31, 35, 39,§8030; C46, 50, 54,§478.31]

Referred to in §478.32

**478.32 Violations.** Any person in charge of an interurban car or cars, who shall violate the provisions of section 478.30 and any engineer or person in charge of an engine, who shall violate the provisions of section 478.31 shall be fined for each offense not exceeding one hundred dollars; and the corporation or company on whose road such offense is committed, shall be fined not exceeding two hundred dollars for each offense. [C97,§2073; S13, §2033-e; C24, 27, 31, 35, 39,§8031; C46, 50, 54, §478.32]

**478.33 Interlocking switches.** When in any case two or more railroads cross each other at a common grade, or a railroad crosses a stream by swing or drawbridge, they may be equipped thereat with an interlocking switch system, or other suitable safety device rendering it safe for engines or trains to pass thereover without stopping. The plans for such proposed interlocking system or other safety device shall be first submitted to the state commerce commission for approval, and after the same has been installed no engines or trains shall pass over such crossings or bridges without stopping until the state commerce commission shall have inspected and issued a certificate of approval of such interlocking system or safety device. [C97,§2060; C24, 27, 31, 35, 39,§8032; C46, 50, 54,§478.33]

**478.34 Changing plan.** In the event any railroad company desires to make a change in the mechanical construction, arrangement, or location of any interlocking system or other safety device, or in any of the parts of such system or device, the plans showing specifically the nature of the changes proposed shall be filed with the state commerce commission, and such system or device as changed shall not be operated until a certificate of approval thereof has been issued by the commission. [C24, 27, 31, 35, 39,§8033; C46, 50, 54,§478.34]

**478.35 Condemnation — reconstruction.** Any interlocking system or other safety device now or hereafter constructed or operated, which may be found by the state commerce commission, after inspection, to be unsafe or dangerous, may be condemned by the said commission, and the railroad company or companies required to reconstruct the same in accordance with the rules governing the construction, operation, and maintenance of interlocking plants adopted by said state commerce commission. [C24, 27, 31, 35, 39,§8034; C46, 50, 54, §478.35]

**478.36 Compulsory establishment.** Whenever in the judgment of the state commerce commission it is necessary for the public safety, said commission may require the establishment of an interlocking system or other safety device at any railroad crossing, junction, or drawbridge. [C24, 27, 31, 35, 39,§8035; C46, 50, 54,§478.36]

## CHAPTER 479

### REGULATION OF CARRIERS

Referred to in §§474.23, 474.33, 474.47, 474.50

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## GENERAL PROVISIONS

**479.1 Applicability of chapter.** The provisions of this chapter shall apply to the transportation of passengers and property, and to the receiving, delivering, storing, and handling of property wholly within this state, and shall apply to all railroad corporations, express companies, car companies, sleeping-car companies, freight or freight-line companies, and to any common carrier engaged in this state in the transportation of passengers or property by railroad therein, and to shipments of property made from any point within the state to any point within the state, whether the transportation of the same shall be wholly

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within this state or partly within this state and partly within an adjoining state. [C97, §2122; C24, 27, 31, 35, 39, §8036; C46, 50, 54, §479.1]

Referred to in §§479.32, 479.33

**479.2 Definition of terms.** The terms "railroad" and "railway" as used in this chapter shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise.

The term "transportation" shall include all instrumentalities of shipment or carriage.

The term "railway corporation" shall mean all corporations, companies, or individuals owning or operating any railroad or carrier in whole or in part in this state, except street railways.

The term "switching service" is hereby defined to be shifting of a car or of cars between two points, both of which points are within the industrial vicinity of an industry, a group of industries, a station, a village, or a city, as such industrial vicinity may be defined by the state commerce commission. [C97,§2122; SS15,§2125; C24, 27, 31, 35, 39,§8037; C46, 50, 54, §479.2]

Referred to in §§479.32, 479.38

**479.3 Duty to furnish cars and transport freight.** Every railway corporation shall upon reasonable notice, and within a reasonable time, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road. [C97,§2116; S13,§2116; C24, 27, 31, 35, 39, §8038; C46, 50, 54,§479.3]

40ExGA, HF 196,§2, editorially divided

Referred to in §§479.6, 479.32, 479.38

**479.4 Cars of connecting roads.** It shall receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged or reloaded and returned to the road so connecting. For compensation it shall not demand or receive any greater sum than is accepted by it from any connecting railroad for a similar service. [C97,§2116; S13,§2116; C24, 27, 31, 35, 39,§8039; C46, 50, 54,§479.4]

Referred to in §§479.6, 479.32, 479.38

**479.5 Passenger service — frequency — presumption.** Every railway corporation owning or operating lines of railroad of more than seventeen miles in length within the limits of the state, shall maintain a service of not less than two passenger trains each way every twenty-four hours, over the entire length of each division of such line or lines, when so ordered by the state commerce commission. Passenger service of less than the number of trains provided herein shall be presumed to be unreasonable. [S13,§2116; C24, 27, 31, 35, 39,§8040; C46, 50, 54,§479.5]

Referred to in §§479.6, 479.32, 479.38

**479.6 Burden of proof.** In any action in court, or before the commission, brought against a railroad corporation for the purpose of enforcing rights arising under the provisions of this and sections 479.3 to 479.5, inclusive, the burden of proving that the provisions thereof have been complied with by such railroad corporation, shall be upon such railroad corporation. [S13,§2116; C24, 27, 31, 35, 39, §8041; C46, 50, 54,§479.6]

Referred to in §§479.32, 479.38

**479.7 Limitation on liability.** No contract, receipt, rule, or regulation shall exempt any railway corporation engaged in transporting persons or property from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made or entered into. [C73,§1308; C97,§2074; C24, 27, 31, 35, 39,§8042; C46, 50, 54,§479.7]

Referred to in §§479.32, 479.38

**479.8 Limitation on liability.** No contract, receipt, rule, or regulation shall exempt any corporation or person engaged in transporting persons for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made. [C73,§2184; C97,§3136; C24, 27, 31, 35, 39,§8043; C46, 50, 54,§479.8]

Referred to in §§479.32, 479.38

**479.9 Preference prohibited — exception.** It shall be unlawful for any common carrier to give any preference or advantage to, or entail any prejudice or disadvantage upon any particular person, company, firm, corporation, locality, or any class of business or traffic, by any rate, rule, regulation, or practice whatsoever. This provision shall not prevent any common carrier from giving preference as to time of shipping livestock, live poultry, uncured meats, fruits, vegetables, or other perishable property. [C97,§2125; SS15,§2125; C24, 27, 31, 35, 39,§8044; C46, 50, 54,§479.9]

Referred to in §§479.32, 479.38

**479.10 Interchange of traffic—switching and forwarding.** All common carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars, passengers, and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates, and charges between such connecting lines. Any common carrier may be required to switch and transfer cars for another, for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the state commerce commission. [C97,§2125; SS15,§2125; C24, 27, 31, 35, 39, §8045; C46, 50, 54,§479.10]

Referred to in §§479.32, 479.38

**479.11 Unjust discrimination—exceptions.** If any common carrier subject to the provisions of this chapter shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like

kind of traffic, such common carrier shall be guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; but this section shall not be construed as prohibiting a less rate per one hundred pounds in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot. [C97,§2124; C24, 27, 31, 35, 39, §8046; C46, 50, 54,§479.11]

Referred to in §§479.32, 479.38

**479.12 Reconsignment without charge.** Upon request of the consignee it shall be the duty of any common carrier of freight to reconsign, rebill, and reship from any place of destination within the state to any other place within the state any property in carload lots, whether accompanied by any person or not, brought to said place of destination over its own or other line and treat the same in all respects as an original shipment between such places, provided the charges to first place of destination are paid or secured to the satisfaction of such company. [S13,§2157-r; C24, 27, 31, 35, 39,§8047; C46, 50, 54,§479.12]

Referred to in §§479.32, 479.38

**479.13 Charges to be reasonable.** All charges made for any service rendered or to be rendered in the transportation of passengers or property in this state, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. [C97,§2123; C24, 27, 31, 35, 39,§8048; C46, 50, 54, §479.13]

Referred to in §§479.32, 479.38

**479.14 Long and short haul—fair rate.** No common carrier, subject to the provisions of this chapter, shall charge more for the transportation of persons or property to or from any point on its railroad than a fair and just rate or charge.

No such common carrier, or carriers, shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance, over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier or carriers to charge or receive as great a compensation for a shorter as for a longer distance or haul; provided that upon application to the state commerce commission such common carrier or carriers may, in special cases, after investigation, be authorized by the state commerce commission to charge less for a longer than for a shorter distance for the transportation of persons or property; and the state commerce commission may from time to time prescribe the extent to which such designated common carrier or carriers may be relieved from the operation and requirement of

this section; but, in exercising the authority conferred upon it in this proviso, the state commerce commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and, if a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points. [C97,§2126; C24, 27, 31, 35, 39,§8049; C46, 50, 54, §479.14]

Referred to in §§479.32, 479.38

**479.15 Pooling contracts.** It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be a separate offense. [C73,§§1297-1299; C97,§2127; C24, 27, 31, 35, 39,§8050; C46, 50, 54,§479.15]

Referred to in §§479.32, 479.38

**479.16 Continuous shipments.** It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or, by other means or device, the carriage of freights from being continuous from place of shipment to the place of destination in the state; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this chapter. [C97,§2129; C24, 27, 31, 35, 39,§8051; C46, 50, 54,§479.16]

Referred to in §§479.32, 479.38

**479.17 Violations—treble damages.** In case any common carrier subject to the provisions of this chapter shall do, cause, or permit to be done anything herein prohibited or declared to be unlawful, or shall omit to do anything in this chapter required to be done, it shall be liable to the person or persons injured thereby for three times the amount of damages sustained in consequence, together with costs of suit, and a reasonable attorney's fee to be fixed by the court, on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; but in all cases demand in writing

shall be made for the money damages sustained before action is brought for a recovery under this section, and no action shall be brought until the expiration of fifteen days after such demand. [C97,§2130; C24, 27, 31, 35, 39,§8052; C46, 50, 54,§479.17]

Referred to in §§479.32, 479.38

**479.18 Criminal liability.** Except as otherwise specially provided for in this chapter, and unless relieved from the consequences of a violation of the law as provided herein, any common carrier subject to the provisions hereof, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing, so directed or required by the provisions of this chapter to be done, not to be so done; or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the provisions of this chapter, or shall aid or abet therein, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five thousand nor less than five hundred dollars for each offense. [C97,§2132; C24, 27, 31, 35, 39,§8053; C46, 50, 54, §479.18]

Referred to in §§479.32, 479.38

**479.19 "Extortion" defined—penalty.** If any railway corporation or carrier subject to the provisions of this chapter shall charge, collect, demand, or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railway car upon its track or any of the branches thereof, or upon any railroad within the state which it has the right, license or permission to use, operate, or control; or shall make any unjust and unreasonable charge prohibited in this chapter, it shall be deemed guilty of extortion, and be dealt with as hereinafter provided; and if any such railroad corporation or common carrier shall be found guilty of any unjust discrimination as defined in this chapter, it shall, upon conviction thereof, be dealt with as hereinafter provided. [C97,§2144; C24, 27, 31, 35, 39,§8054; C46, 50, 54, §479.19]

Referred to in §§479.32, 479.38

**479.20 Discrimination — prima-facie evidence.** If any such railway corporation shall:

1. Charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the state, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in

the same direction of any passenger or like quantity of freight of the same class, over a greater distance of the same railway; or

2. Charge, collect, or receive at any point upon its road a higher rate of toll or compensation for receiving, handling, or delivering freight of the same class and quantity than it shall at the same time charge, collect, or receive at any other point upon the same railway; or

3. Charge, collect, or receive for the transportation of any passenger or freight of any description over its railway a greater amount as toll or compensation than shall at the same time be charged, collected, or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railway of equal distance; or

4. Charge, collect, or receive from any person a higher or greater amount of toll or compensation than it shall at the same time charge, collect, or receive from any other person for receiving, handling, or delivering freight of the same class and like quantity at the same point upon its railway; or

5. Charge, collect, or receive from any person for the transportation of any freight upon its railway a higher or greater rate of toll or compensation than it shall at the same time charge, collect, or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point in the same direction over equal distances of the same railway; or

6. Charge, collect, or receive from any person for the use and transportation of any railway car or cars upon its railroad for any distance, a greater amount of toll or compensation than is at the same time charged, collected, or received from any other person for the use and transportation of any railway car of the same class or number, for a like purpose, being transported in the same direction over a greater distance of the same railway; or

7. Charge, collect, or receive from any person for the use and transportation of any railway car or cars upon its railway a higher or greater compensation in the aggregate than it shall, at the same time, charge, collect, or receive from any other person for the use and transportation of any railway car or cars of the same class for a like purpose, being transported from the same original point in the same direction, over an equal distance of the same railway—all such discriminating rates, charges, collections, or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be received as prima-facie evidence of the unjust discriminations prohibited by this chapter. [C97,§2145; S13,§2145; C24, 27, 31, 35, 39,§8055; C46, 50, 54, §479.20]

S13,§2145, editorially divided  
Referred to in §§479.22, 479.23, 479.24, 479.25, 479.27, 479.32, 479.38

**479.21 "Competition" no defense — exceptions.** It shall not be a sufficient excuse or justification thereof on the part of said railway corporation that the station or point at which it shall charge, collect, or receive less compensation in the aggregate for the transportation of such passenger or freight, or for the use and transportation of such railway car the greater distance than for the shorter distance, is a station or point at which there exists competition with another railway or other transportation line:

Provided, however, where two or more railroads run into a city or village, one having a shorter mileage than the other from a given point through which they pass, terminate, or originate, the state commerce commission may permit the railroad or railroads having the longer mileage to meet the rate made by the shortest line at such city or village; and

Provided, further, that where an industry or any commodity now is, or may hereafter be, located within the state of Iowa, and which is competitive with an industry or commodity located without the state of Iowa, the state commerce commission may permit the railroad or railroads serving the industry within the state of Iowa to meet, individually or jointly with other railroads, the freight and passenger rates established and charged by the railroad or railroads serving the industry located as aforesaid without the state of Iowa. [C97,§2145; C24, 27, 31, 35, 39,§8056; C46, 50, 54, §479.21]

Referred to in §§479.22, 479.23, 479.24, 479.25, 479.27, 479.32, 479.38

**479.22 Other evidence.** Sections 479.20 and 479.21 shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight or passenger rates. [C97,§2145; C24, 27, 31, 35, 39,§8057; C46, 50, 54, §479.22]

Referred to in §§479.23, 479.24, 479.25, 479.27, 479.32, 479.38

**479.23 Railways included.** The provisions of sections 479.20 to 479.22, inclusive, shall apply to any railway, the branches thereof, and any road or roads which any railway corporation has the right, license or permission to use, operate or control, wholly or in part, within this state. [C97,§2145; C24, 27, 31, 35, 39,§8058; C46, 50, 54,§479.23]

Referred to in §§479.24, 479.25, 479.27, 479.32, 479.38

**479.24 Exceptions.** The provisions of sections 479.20 to 479.23, inclusive, shall not be so construed as to prevent railway corporations from issuing commutation, excursion, or thousand-mile tickets, if the same are issued alike to all applying therefor. [C97,§2145; C24, 27, 31, 35, 39,§8079; C46, 50, 54,§479.24]

Referred to in §§479.25, 479.27, 479.32, 479.38

**479.25 Switching charges.** Nothing in sections 479.20 to 479.24, inclusive, shall be so construed as to prevent railroad companies or the state commerce commission from establishing schedules of reasonable charges applicable to switching services only, and which

shall be independent of any schedule of charges which may be provided for the regular line haul freight service of common carriers. [S13, §2145; C24, 27, 31, 35, 39,§8060; C46, 50, 54, §479.25]

Referred to in §§479.27, 479.32, 479.38

**479.26 Discrimination as to quantity.** For transporting freight over the same railway for the same distance in the same direction, no common carrier shall charge, collect, demand, or receive more for transporting a car of freight than it at the same time charges, collects, demands, or receives per car for more than one car of a like class of freight; nor more for transporting a ton of freight than it charges, collects, demands, or receives per ton for more than one ton of freight but less than a carload of a like class; nor more for transporting one hundred pounds of freight than it charges, collects, demands, or receives per hundred for more than one hundred pounds of freight, but less than a ton of a like class. [C97,§2146; C24, 27, 31, 35, 39,§8061; C46, 50, 54,§479.26]

Referred to in §§479.27, 479.28, 479.32, 479.38

**479.27 New industries—limitation.** For the protection and development of any new industry, including existing coal mines and agricultural enterprises in the state, any common carrier may grant concessions or special rates on freight shipments from such new industry or such coal mines, on any agreed number of carloads or for a specified period of time, which rates and period of time, shall be fixed and approved by the state commerce commission, and a copy thereof filed in its office:

Provided that any concessions or special rates fixed and approved under the provisions of this section shall not affect or otherwise disturb existing rates on points intermediate between the origin and destination of the shipment as to which such concession or special rates shall be so fixed and approved; and

Provided further that the provisions of sections 479.20 to 479.26, inclusive, shall not apply to any concessions or special rates fixed and approved by the state commerce commission as provided in this section, and when any concessions or special rates shall be fixed and approved, as provided for herein, the provisions of this section shall apply thereto to the exclusion of all other provisions of law in real or apparent conflict therewith; and

Provided further that "new industries" as used in this section shall include any and all industries that have not been operating within this state for a period exceeding ten years, and "existing coal mines" shall mean all coal mines being operated, or now being developed, or now partially developed for operation, within this state. [C97,§2146; C24, 27, 31, 35, 39,§8062; C46, 50, 54,§179.27]

Referred to in §§479.32, 479.38

**479.28 Prima-facie evidence of violation.** Any such discriminating rates, charges, collections, or receipts whether made directly or indirectly by means of any rebate, drawback,

or other method or means, shall be prima-facie evidence of a violation of the provisions of section 479.26. [C97,§2146; C24, 27, 31, 35, 39, §8063; C46, 50, 54,§479.28]

Referred to in §§479.32, 479.38

**479.29 Penalty for discrimination.** Any such corporation guilty of extortion, or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freights, shall, upon conviction thereof, be fined in any sum not less than one thousand nor more than five thousand dollars for the first offense, and for each subsequent offense not less than five thousand nor more than ten thousand dollars,—such fine to be imposed in a criminal prosecution by indictment; or shall be subject to the liability prescribed in section 479.30, to be recovered as therein provided. [C97,§2147; C24, 27, 31, 35, 39,§8064; C46, 50, 54,§479.29]

Referred to in §§479.30, 479.32, 479.38

**479.30 Civil forfeiture.** Any such railway corporation guilty of extortion, or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freights, shall forfeit and pay to the state not less than one thousand nor more than five thousand dollars for the first offense, and not less than five thousand nor more than ten thousand dollars for each subsequent offense, to be recovered in a civil action in the name of the state; and the release from liability or penalty provided for in this chapter shall not apply to a criminal prosecution under section 479.29, or to a civil action under this section. [C97,§2148; C24, 27, 31, 35, 39,§8065; C46, 50, 54,§479.30]

Referred to in §§479.29, 479.32, 479.38

**479.31 Free or reduced freight rates permitted.** Nothing in this chapter shall apply to free or reduced rates for the transportation, storage, or handling of:

1. Property for the United States, this state, or municipal governments.
2. Materials to be used by public authorities in constructing or maintaining public highways outside of the corporate limits of cities and towns.
3. Property for charitable purposes.
4. Property for exhibition at fairs or exhibitions.
5. Private property or goods for the family use of such employees as are entitled to free passenger transportation. [C97,§2150; C24, 27, 31, 35, 39,§8066; C46, 50, 54,§479.31]

Referred to in §§479.32, 479.38

#### JOINT RATES

**479.32 Authorization.** Sections 479.1 to 479.31, inclusive, of this chapter shall not be construed to prohibit the making of rates by two or more railway companies for the transportation of property over two or more of

their respective lines within the state; and a less charge by each of said companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own line within the state shall not be considered a violation of said chapter, and shall not render such company liable to any of the penalties thereof. [C97,§2152; C24, 27, 31, 35, 39,§8067; C46, 50, 54,§479.32]

C97,§2152, editorially divided  
Referred to in §§479.33, 479.38

**479.33 Discrimination against stations.** The provisions of section 479.32 shall not be construed to permit railway companies establishing joint rates to make thereby any unjust discrimination between the different shipping points or stations upon their respective lines between which joint rates are established, and any such unjust discrimination shall be punished in the manner and by the penalties provided by this chapter. [C97,§2152; C24, 27, 31, 35, 39,§8068; C46, 50, 54,§479.33]

Referred to in §479.38

**479.34 Connecting lines.** Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars if in carload lots, and with or without change of car or cars if in less than carload lots, whenever the distance from the place of shipment to destination, both being within this state, is less over two or more connecting lines of railway than it is over a single line of railway, or where the initial line does not reach the place of destination; and it shall be the duty, upon the request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots, and with change of car or cars if it be in less than carload lots, from the place of shipment to destination, whenever the distance from the place of shipment to destination, both being within this state, is less than the distance over a single line, or when the initial line does not reach the point of destination, for a reasonable joint through rate. This section shall apply to interurban railways and their connection with ordinary steam railways. [C97,§2153; S13,§2153; C24, 27, 31, 35, 39,§8069; C46, 50, 54,§479.34]

Referred to in §479.38

**479.35 Routing intrastate shipments.** It shall be the duty of every common carrier subject to the provisions of this chapter, when shipments are tendered for transportation between points in this state, to route such shipments from shipping point to point of destination over the cheapest available route between such points except in cases where the shipper, in shipping orders or bills of lading, specif-

cally designates a particular route over which it is desired such shipments shall be moved. [C31, 35,§8069-d1; C39,§8069.1; C46, 50, 54, §479.35]

Referred to in §479.38

**479.36 Reasonable through rates.** When shipments of freight to be transported between different points within the state are required to be carried by two or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road. [C97, §2154; C24, 27, 31, 35, 39,§8070; C46, 50, 54, §479.36]

Referred to in §479.38

**479.37 Schedules of joint rates.** The state commerce commission shall make and publish a schedule of joint through railway rates for such traffic and on such routes as in its judgment the fair and reasonable conduct of business requires shall be done by carriage over two or more lines of railway, and will promote the interests of the people of this state. [C97,§2155; S13,§2155; C24, 27, 31, 35, 39,§8071; C46, 50, 54,§479.37]

S13, §2155, editorially divided  
Referred to in §§479.38, 479.45

**479.38 Matters considered.** In the making thereof, and in changing, revising, or adding to the same, the commission shall be governed as nearly as may be by sections 479.1 to 479.37, inclusive, of this chapter, and shall take into consideration, among other things, the rates established for shipments within this state for like distances over single lines, the rates charged by the railway companies operating such connecting lines for joint interstate shipments, and the increased cost, if any, of a joint through shipment as compared with a shipment over a single line for like distances. [C97,§2155; S13,§2155; C24, 27, 31, 35, 39,§8072; C46, 50, 54,§479.38]

Referred to in §479.45

**479.39 Transfer at stations.** In establishing such rates for shipments in less than carload lots, in cases where at the connecting point or points in the line of shipment the connecting railways have not and are not required to have a common station or stopping place for loading or unloading freight, the commission shall make such lawful regulations as in its judgment will be fair and just respecting the transportation of such freight from the usual unloading place of one railway to the usual loading place of the other. [S13,§2155; C24, 27, 31, 35, 39,§8073; C46, 50, 54,§479.39]

Referred to in §479.45

**479.40 When effective—presumption.** The joint through rates thus established shall be promulgated by mailing a printed copy thereof to each railway company affected thereby, and shall go into effect within ten days after they

are so promulgated; and from and after that time an official printed schedule thereof shall be prima-facie evidence, in all the courts of this state, that the rates therein fixed are just and reasonable for the joint transportation of such freight between the points and over the lines described therein. [C97,§2155; S13,§2155; C24, 27, 31, 35, 39,§8074; C46, 50, 54,§479.40]

Referred to in §479.45

**479.41 Copies.** The said commission shall deliver a printed copy of said schedule to any person making application therefor. [S13, §2155; C24, 27, 31, 35, 39,§8075; C46, 50, 54, §479.41]

Referred to in §479.45

**479.42 Share of each company—effect.** The share of any railway company of any joint through rate shall not be construed to fix the charge that it may make for transportation for a similar distance over any part of its line for any single rate shipment or the share of any other joint rate. [S13,§2155; C24, 27, 31, 35, 39,§8076; C46, 50, 54,§479.42]

Referred to in §479.45

**479.43 Revision of joint rates.** The commission, upon such reasonable notice as it may prescribe, may, upon its own motion or upon the application of any person, firm, or corporation interested therein, revise, change, or add to any joint through rates fixed or promulgated hereunder; and any such revised, changed, or added joint rates shall have the same force and effect as the rate or rates originally established. [S13,§2155; C24, 27, 31, 35, 39,§8077; C46, 50, 54,§479.43]

Referred to in §479.45

**479.44 Permissible rate for long haul.** The said commission is empowered to authorize, upon proper hearing, any railway company whose line connects the point of shipment with the point of destination but requires a longer haul than the joint haul over which a joint rate has been established, to charge the joint rate without affecting the charge upon any other part of its line, except that the charge for a like kind of property must not be greater for a shorter than for a longer distance over its railroad, all of the shorter haul being included within the longer. [S13,§2155; C24, 27, 31, 35, 39,§8078; C46, 50, 54,§479.44]

Referred to in §479.45

**479.45 Interurban railways included.** Sections 479.37 to 479.44, inclusive, shall apply to interurban railways and their connection with ordinary steam railways. [S13,§2155; C24, 27, 31, 35, 39,§8079; C46, 50, 54,§479.45]

**479.46 Division of joint rates.** Before the promulgation of such rates, the commission shall notify the railroad companies interested of the schedule of joint rates fixed, and give them a reasonable time thereafter to agree upon a division of the charges provided for therein. If such companies fail to agree upon a division, and to notify the commission there-



of, it shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it shall, in all controversies or actions between the railway companies interested, be prima-facie evidence of a just and reasonable division thereof. [C97, §2156; C24, 27, 31, 35, 39, §8080; C46, 50, 54, §479.46]

**479.47 Unreasonable charges.** Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this state is prohibited, and every company making such unreasonable and unlawful charges, or otherwise violating the provisions of this chapter, shall be punished as provided in this chapter for the making of unreasonable charges for the transportation of freight and cars over a single line of railroad by a single railway company. [C97, §2157; C24, 27, 31, 35, 39, §8081; C46, 50, 54, §479.47]

#### RATE SCHEDULES

**479.48 Definitions.** The term "commission" as employed in this chapter means the Iowa state commerce commission.

The term "rates" embraces fares, tariffs, tolls, charges, and all classifications, contracts, practices, rules, and regulations of common carriers relating to such rates.

The term "joint tariffs" embraces joint rates, tolls, contracts, classifications, and charges. [C24, 27, 31, 35, 39, §8082; C46, 50, 54, §479.48]

**479.49 Rate schedules—filing and publication.** Every common carrier, subject to the provisions of this chapter shall file with the commission and shall print and keep open to public inspection schedules showing the rates for the transportation within this state of persons and property from each point upon its route to all other points thereon and from all points upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, applicable to the through transportation. [C73, §1304; C97, §2128; C24, 27, 31, 35, 39, §8083; C46, 50, 54, §479.49]

**479.50 Detailed requirements.** The schedules aforesaid shall plainly state the places between which such property and persons will be carried, and, separately, all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect, or determine any part or the aggregate of such

rates, or the value of the various services rendered to the passenger, shipper, or consignee. [C73, §1304; C97, §2128; C24, 27, 31, 35, 39, §8084; C46, 50, 54, §479.50]

**479.51 Printing—accessible to public.** Subject to such rules and regulations as the commission may prescribe, such schedules shall be plainly printed in large type and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping car, parlor car, or other train accommodations are sold, or bills of lading or waybills or receipts for property are issued. [C73, §1304; C97, §2128; C24, 27, 31, 35, 39, §8085; C46, 50, 54, §479.51]

**479.52 Right to inspect.** Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. [C24, 27, 31, 35, 39, §8086; C46, 50, 54, §479.52]

**479.53 Notice as to schedules.** A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rate, shall be kept posted by the carrier in two public and conspicuous places in every such station or office. [C97, §2128; C24, 27, 31, 35, 39, §8087; C46, 50, 54, §479.53]

**479.54 Form of schedules.** The form of every such schedule shall be prescribed by the commission and shall conform, in the case of common carriers subject to an act of congress entitled "An Act to Regulate Commerce", approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedule prescribed by the interstate commerce commission under said act. [C24, 27, 31, 35, 39, §8088; C46, 50, 54, §479.54]

**479.55 Interstate commerce schedules.** When schedules and classifications required by the interstate commerce commission contain in whole or in part the information required by the provisions of this chapter, the posting, publishing, and filing of a copy or copies of such schedules and classifications shall be deemed a compliance with the requirements of this chapter insofar as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted, published, and filed in a supplementary schedule. [C24, 27, 31, 35, 39, §8089; C46, 50, 54, §479.55]

**479.56 Partial schedules.** In lieu of filing its entire schedule in each station or office, any common carrier may, subject to the regulations of the commission, file or keep posted at such stations or offices, schedules of such rates

as are applicable at, to, and from the places where such stations or offices are located. [C97, §2128; C24, 27, 31, 35, 39, §8090; C46, 50, 54, §479.56]

**479.57 Changes in schedules.** The commission shall have power from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this chapter as it may find expedient, and to modify the requirements of any of its orders, rules, or regulations in respect thereto. [C97, §2128; C24, 27, 31, 35, 39, §8091; C46, 50, 54, §479.57]

**479.58 Joint tariff schedules.** The names of the several common carriers which are parties to any joint tariff, shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff need be filed with the commission by only one of the parties if there is also filed with the commission, in such form as the commission may require, a concurrence in such joint tariff by each of the other parties thereto. [C97, §2128; C24, 27, 31, 35, 39, §8092; C46, 50, 54, §479.58]

**479.59 Contracts affecting rate.** Every common carrier shall file with the commission, copies of all contracts, agreements, or arrangements with other common carriers in relation to any service, affected by the provisions of this chapter, to which it may be a party, and copies of all other contracts, agreements, or arrangements with any other person or corporation affecting in the judgment of the commission the cost to such common carrier of any service. [C97, §2128; C24, 27, 31, 35, 39, §8093; C46, 50, 54, §479.59]

**479.60 Transportation prohibited.** No common carrier shall undertake to perform any service nor engage or participate in the transportation of persons or property between points within this state, until its schedule of rates shall have been filed and published as herein provided. [C24, 27, 31, 35, 39, §8094; C46, 50, 54, §479.60]

**479.61 Change in rate.** Unless the commission otherwise orders, no change shall be made by any common carrier in any rate, except after thirty days notice to the commission and to the public as herein provided. [C97, §2128; C24, 27, 31, 35, 39, §8095; C46, 50, 54, §479.61]

**479.62 Notice of change.** Such notice shall be given by filing with the commission and by keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in effect, and the time when the change or changes will go into effect. [C97, §2128; C24, 27, 31, 35, 39, §8096; C46, 50, 54, §479.62]

**479.63 Changes without notice.** The commission, for good cause shown, may allow

changes without requiring said thirty days notice by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. [C97, §2128; C24, 27, 31, 35, 39, §8097; C46, 50, 54, §479.63]

**479.64 Indicating change.** When any change is proposed in any rate, such proposed change shall be plainly indicated on the new schedule filed with the commission, by some character immediately preceding or following the item. [C97, §2128; C24, 27, 31, 35, 39, §8098; C46, 50, 54, §479.64]

**479.65 Schedule charge mandatory—refunds and discrimination.** No common carrier, except as otherwise provided, shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified except upon order of the courts or of the commission as may be now or hereafter by law provided, nor extend to any shipper or person any privilege or facility in the transportation of passengers or property except such as are specified in such schedules. [C97, §2128; C24, 27, 31, 35, 39, §8099; C46, 50, 54, §479.65]

**479.66 Power to revise rates.** Whenever there shall be filed with the commission any schedule, stating an individual or joint rate, the commission shall have power, either upon complaint or upon its own motion, at once, and, if it so orders, without answer or formal pleadings by the interested common carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate. [C24, 27, 31, 35, 39, §8100; C46, 50, 54, §479.66]

**479.67 Suspension of rates.** Pending the hearing and the decision thereon, such rate shall not go into effect; but the period of suspension of such rate shall not extend more than one hundred twenty days beyond the time when such rate would otherwise go into effect, unless the commission, in its discretion, extends the period of suspension for a further period of not exceeding thirty days. [C24, 27, 31, 35, 39, §8101; C46, 50, 54, §479.67]

**479.68 Decision.** On such hearing the commission shall establish the rates, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. [C24, 27, 31, 35, 39, §8102; C46, 50, 54, §479.68]

**479.69 When rates effective.** All such rates not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission or of such less time as the said commission may grant, go into effect and be the established and effective rates, subject

to the power of the commission after a hearing had upon its own motion or upon complaint, as herein provided, to alter or modify the same. [C24, 27, 31, 35, 39, §8103; C46, 50, 54, §479.69]

**479.70 Posting and filing of revised schedules.** After such changes have been authorized by the commission, copies of the new or revised schedules shall be posted or filed as provided in this chapter within such reasonable time as may be fixed by the commission. [C24, 27, 31, 35, 39, §8104; C46, 50, 54, §479.70]

**479.71 Commission's schedules of rates — effect.** The schedules of reasonable maximum rates of charges for the transportation of freight and cars, together with the classification of such freights now in effect, shall remain in force until changed by the commission according to law, which, in all actions brought against railway corporations, wherein there are involved the charges thereof for the transportation of any freight or cars, or any unjust discrimination in relation thereto, shall be taken as prima-facie evidence in all courts that the rates fixed therein are reasonable and just maximum rates of charge for which said schedules have been prepared. The commission shall from time to time, and as often as circumstances may require, change and revise such schedules, but the rates fixed shall not be higher than established by law. The commission shall give notice of its intention to revise or change such schedules, by publishing a notice thereof in two weekly newspapers published at the seat of government, for two consecutive weeks, and the last publication of such notice shall be at least ten days before the time fixed for considering the matter, and such notice shall contain, in general terms, a statement of the matters the commission proposes to consider, and the date when and the place where the matter will be taken up, and shall be addressed to all persons interested therein. When any schedule is thus revised the commission must cause notice thereof to be published for two successive weeks in some public newspaper printed at the seat of government, which shall state the date of the taking effect thereof, and it shall take effect at the time so stated. A printed copy of such revised schedule shall be conspicuously posted by said common carrier in each freight office and passenger depot upon all lines affected thereby, and, when certified by the commission that the same is a true copy prepared by it for the railway company or corporation therein named, and that notice thereof had been published as required by law, shall be received in evidence in all actions as prima facie the schedule of such commission. [C97, §2138, C24, 27, 31, 35, 39, §8105; C46, 50, 54, §479.71]

Referred to in §479.74

**479.72 Complaint of violation.** When any person in his own behalf, or in behalf of a class of persons similarly situated, or a firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any

body politic or municipal organization, shall make complaint to the state commerce commission that the rate charged or published by any railway company, or the maximum rates fixed by the commission in the schedule of rates made by it, or the maximum rate fixed by law, is unreasonably high or discriminating, the commission shall investigate the matter, and, if the charge appears to be well-founded, fix a day for hearing the same, giving the railway company notice of the time and place thereof by mail, directed to any division superintendent, general or assistant superintendent, general manager, president, or secretary of such company, which notice shall contain the substance of the complaint, also the person or persons complaining. [C97, §2139; C24, 27, 31, 35, 39, §8106; C46, 50, 54, §479.72]

**479.73 Hearing—evidence.** Upon the hearing the commission shall receive any evidence and listen to any arguments offered or presented by either party relevant to the matter under investigation, and the burden of proof shall not be upon the person or persons making the complaint; but it shall add to the showing made at such hearing whatever information it may then have, or can obtain from any source, including schedules of rates actually charged by any railway company for substantially the same kind of service, in this or any other state. The lowest rates published or charged by any railway company for substantially the same kind of service whether in this or another state, shall, at the instance of the person or persons complaining, be accepted as prima-facie evidence of a reasonable rate for the services under investigation; and if the railway company complained of is operating a line of railroad beyond the state, or has a traffic arrangement with any such railway company, the same shall be taken into consideration in determining what is a reasonable rate; if it be operating a line of railway beyond the state, the rate charged or established for substantially a similar or greater service by it in another state shall also be considered. [C97, §2140; C24, 27, 31, 35, 39, §8107; C46, 50, 54, §479.73]

**479.74 Determination.** After such hearing and investigation, the commission shall fix and determine the maximum charges to be thereafter made by the railroad company or common carrier complained of, which charge shall in no event exceed the one now or hereafter fixed by law; and the commission shall render its decision in writing, and shall spread the same at length in the record to be kept for that purpose; such decision shall specifically set out the sums or rate which the railroad company or common carrier so complained of may thereafter charge or receive for the service therein named, and including a classification of such freight; and the commission shall not be limited in its said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all such rates be-

tween points in this state, and whatever part of the line of railway of such company or common carrier within this state may have been fairly within the scope of such investigation; and any such decisions so made and entered on record of the commission, including any such schedules and classifications, shall, when duly authenticated, be received and held in all suits brought against any such railroad corporation or common carrier, wherein is in any way involved the charges of any such corporation or carrier mentioned in said decisions, in any of the courts of this state, as prima-facie evidence that the rates therein fixed are reasonable maximum rates, the same as the schedule made by the commission as provided in section 479.71; and the rates and classifications so established, after such hearing and investigation, shall, from time to time thereafter, upon complaint duly made, be subject to revision by the commission, the same as any other rates and classifications. [C97,§2141; C24, 27, 31, 35, 39,§8108; C46, 50, 54,§479.74]

LIVESTOCK

**479.75 Shipment—free transportation.** Common carriers of livestock, in carload lots, upon receiving, in this state, for shipment one or more carloads of horses or mules or two or more carloads of other livestock, shall upon demand of the owner of such animals offered for shipment, issue to such owner, or the actual agent or employee of such owner, without other consideration, transportation from the place of receiving such shipment to the place of destination, and return; such transportation to be limited to one person for each shipment, as is above set out. When a single shipment aggregates six cars or more, such owner shall be entitled, on demand, as is above provided, to transportation for one additional person, such additional person to be an actual agent or employee of such owner, and such common carrier shall in like manner and under similar conditions issue transportation for one person to destination of shipment only to the shipper of one carload of cattle, hogs, or sheep. The return transportation herein provided for is to be delivered, upon demand, at the office of the carrier at the place of destination, upon proper identification of the person so entitled to same, and shall be good for transportation if presented within forty-eight hours from the time of the delivery of such shipment at place of destination. [S13, §2157-a; C24, 27, 31, 35, 39,§8109; C46, 50, 54, §479.75]

Referred to in §479.77

**479.76 Violations.** Any common carrier violating the above provisions shall forfeit and pay to the owner of any shipment, as is above provided, three times the amount of the regular fare expended by such owner for himself, or his agent, in going from point of shipment to point of destination, and return, of a shipment of stock as herein provided. [S13,

§2157-b; C24, 27, 31, 35, 39,§8110; C46, 50, 54, §479.76]

Referred to in §479.77

**479.77 Misuse of transportation.** Any person other than the owner, his agent, or employees, as is described in sections 479.75 and 479.76, attempting to use, or using, the transportation therein provided for, shall be considered a trespasser upon the trains or premises of such common carrier. [S13,§2157-c; C24, 27, 31, 35, 39,§8111; C46, 50, 54,§479.77]

**479.78 Water closets in cabooses.** The cabooses or cars attached to such stock trains, and in which the holders of such transportation are required to ride when accompanying such livestock to market, shall be provided with suitable water closets for the use of such persons while in transit. [S13,§2157-d; C24, 27, 31, 35, 39,§8112; C46, 50, 54,§479.78]

Referred to in §479.79

**479.79 Violations.** Any railroad in this state engaged in the transportation of livestock, and failing or refusing to comply with the requirements of section 479.78 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars for each day's negligence or refusal to comply therewith; and all moneys so collected as fines shall be paid into the public school funds of the state. [S13,§2157-e; C24, 27, 31, 35, 39,§8113; C46, 50, 54,§479.79]

**479.80 Movement of livestock — burden of proof.** It is hereby made the duty of all common carriers of freight within this state to move cars of livestock at the highest practicable speed consistent with reasonable safety, and the reasonable movement of its general traffic. The burden of proof that cars of livestock are so moved shall be upon the carrier, and proof that such cars were moved according to schedule or timetable shall not be prima-facie evidence that they were moved at the highest practicable speed consistent with reasonable safety. [S13,§2157-s; C24, 27, 31, 35, 39, §8114; C46, 50, 54,§479.80]

Referred to in §§479.82, 479.84

**479.81 Power to prescribe speed.** The power to prescribe speed and determine conditions for the movement of cars of livestock within this state is hereby expressly conferred upon the said state commerce commission. [S13, §2157-t; C24, 27, 31, 35, 39,§8115; C46, 50, 54, §479.81]

S13,§2157-t, editorially divided

Referred to in §479.84

**479.82 Commission to prescribe speed.** In order to enforce the duty prescribed in section 479.80, the state commerce commission shall from time to time investigate the practice of the common carriers with respect to the movement of livestock; and if it ascertains at any time that the common carriers or any of them are not moving cars of livestock with the proper speed, then upon notice to any such

common carrier or carriers, the said commission shall prescribe the speed at which and the conditions under which cars of livestock shall be moved within this state by any such carrier or carriers. [S13,§2157-t; C24, 27, 31, 35, 39, §8116; C46, 50, 54,§479.82]

Referred to in §479.84

**479.83 Order—when effective.** The order shall specify the time at which it shall go into effect, which shall be as soon as, in the judgment of the commission, the carrier or carriers affected can, with reasonable diligence, readjust its or their timetables. [S13,§2157-t; C24, 27, 31, 35, 39,§8117; C46, 50, 54,§479.83]

Referred to in §479.84

**479.84 Enforcement.** Any order, ruling, or regulation made by the commission under sections 479.80 to 479.83, inclusive, shall be enforceable as provided in sections 474.24 to 474.29, inclusive. [S13,§2157-u; C24, 27, 31, 35, 39,§8118; C46, 50, 54,§479.84]

**479.85 Unloading livestock.** No railway company in this state, in the carrying or transportation of cattle, sheep, swine, or other animals, shall confine the same in cars for a longer period than twenty-eight consecutive hours, unless delayed by storm or other accidental cause, without unloading for rest, water, and feeding for a period of at least five consecutive hours; provided that upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours. [C73,§4032; C97,§4970; C24, 27, 31, 35, 39,§8119; C46, 50, 54,§479.85]

C97, §4970, editorially revised  
Referred to in §§479.86-479.88

**479.86 Estimating time.** In estimating such confinement, the time the animals have been confined without such rest on connecting railways from which they are received shall be computed, it being the intention of sections 479.85 to 479.88, inclusive, to prevent their continuous confinement beyond twenty-eight hours, except upon the contingencies before stated. [C73,§4032; C97,§4970; C24, 27, 31, 35, 39, §8120; C46, 50, 54,§479.86]

Referred to in §§479.87, 479.88

**479.87 Care of unloaded animals—lien.** Animals unloaded for rest, water, and feeding shall be properly fed, watered, and sheltered during such rest by the owners or persons in custody thereof, or, in case of their default in so doing, then by the railway company transporting them, at the expense of said owners or persons in custody thereof, and said company shall have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by sections 479.85 to 479.88, inclusive. [C73, §4032; C97,§4970; C24, 27, 31, 35, 39,§8121; C46, 50, 54,§479.87]

Referred to in §§479.86, 479.88

**479.88 When unloading not required—violations.** When such animals shall be carried in cars in which they shall and do have proper food, water, space and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. Any railway company, owner or custodian of such animals, who shall fail to comply with the provisions of sections 479.85 to 479.87, inclusive, shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars. [C73,§4032, C97,§4970; C24, 27, 31, 35, 39,§8122; C46, 50, 54,§479.88]

Referred to in §§479.86, 479.87

#### CLASSIFICATION AND PASSENGER RATES

**479.89 Classification of railroads.** All railroads of the state shall be classified in accordance with the gross amount of their several annual earnings within the state, per mile, for the preceding year, as follows:

1. Class A shall include those whose gross annual earnings per mile shall be four thousand dollars or more.

2. Class B shall include those whose gross annual earnings per mile shall be three thousand dollars or any sum in excess thereof less than four thousand dollars.

3. Class C shall include those whose gross annual earnings per mile shall be less than three thousand dollars. All steam railroads operating wholly within this state, and not to exceed twenty-five miles in length, shall be included in and classified as Class C railroads. [C97,§2076, 2077; S13,§2076, 2077; C24, 27, 31, 35, 39,§8123; C46, 50, 54,§479.89]

Referred to in §479.91

**479.90 Basis of classification.** In determining the classification of any railroad, the entire railroad property owned or operated by any company shall be considered as a single railroad, and the aggregate gross earnings of the entire railroad within the state shall be divided by the entire mileage owned or operated within the state, to ascertain the gross earnings per mile of such railroad. [S13,§2076; C24, 27, 31, 35, 39,§8124; C46, 50, 54,§479.90]

Referred to in §479.91

**479.91 Classification by executive council.** The executive council shall at its regular meeting on the second Monday in July in each year classify the different railroads, as provided by sections 479.89 and 479.90, from information as to gross earnings obtained from the annual reports of railways made to the tax commission for assessment and taxation, if it shall be satisfied of the correctness of same, or from information obtained by said executive council from any other source, and, when there shall be any change in classification, shall issue a certificate to any corporation or corporations affected by such change, certifying the class to which they are respectively assigned. Any change of rates by any corporation pursuant to any change of classification shall take effect

and be in force from and after the date of such certificate. [C97,§2078; S13,§2078; C24, 27, 31, 35, 39,§8125; C46, 50, 54,§479.91]

**479.92 Passenger rates—limitation.** All railroad corporations according to their classifications as herein prescribed shall be limited to compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred fifty pounds in weight, as follows:

1. Class A, two cents.
2. Class B, two and one-half cents.
3. Class C, three cents.
4. For children twelve years of age or under, one-half the rate above prescribed.
5. Every railroad corporation shall be entitled to charge a fare of not to exceed ten cents for the transportation of each passenger with ordinary baggage for any distance not exceeding five miles.
6. A charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train, except in those cases where a minimum of ten cents is charged for a distance of less than five miles as above provided. [C73,§1305; C97,§2077; S13,§2077; C24, 27, 31, 35, 39,§8126; C46, 50, 54,§479.92]

**479.93 Free passes and reduced passenger rates prohibited.** No common carrier of passengers shall, directly or indirectly, issue, furnish or give free or at reduced rate, any ticket, pass, or other evidence of the right or privilege of transportation to any person, except as provided in section 479.94, nor shall any person accept or use any free ticket, pass, or other evidence of the right or privilege of transportation, except as in said section provided. The words "free ticket", "free pass", or other evidence of the right or privilege of transportation as used in this section shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person, by any common carrier of passengers, for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase. [S13,§2157-f; C24, 27, 31, 35, 39,§8127; C46, 50, 54,§479.93]

Referred to in §§479.97, 479.98

**479.94 Exceptions.** The persons to whom tickets, free passes, free transportation, or discriminating reduced rates may be issued, furnished, or given, shall be as follows:

1. The Iowa state commerce commissioners, their secretary and experts or other agents, and the commerce counsel, while engaged in the performance of their respective duties.
2. The general officers of such common carrier.
3. The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers, whose chief and principal occu-

pation is to render service to common carriers of passengers, to the families of such persons, to physicians and surgeons actually employed by such common carriers to render medical service in behalf of said common carriers and to attorneys actually employed by such common carriers to render legal services in behalf of said common carriers.

4. Sleeping car and express company employees, linemen of telegraph and telephone companies operated in connection with such carriers, railway mail service employees, post-office inspectors, customs inspectors, immigration inspectors, newsboys on trains, and baggage agents.

5. Persons injured in wrecks and physicians and nurses attending such persons.

6. Persons traveling for the purpose of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation.

7. The necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding station.

8. The officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies.

9. Inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes.

10. Superannuated and pensioned employees and members of their families, widows of employees who die while in the service of such common carrier, and widows of pensioned employees.

11. Employees crippled and disabled in the service of such common carrier.

12. Mail carriers and firemen and all peace officers (except state policemen and agents of the department of justice) of any city, within the limits of such city, while wearing the insignia of their office.

13. Ministers of religion, traveling secretaries of railroad young men's christian associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work.

14. Indigent, homeless, and destitute persons, while being transported by charitable societies or hospitals, and the necessary agents or employees accompanying such persons.

15. School children to and from public, private, or parochial schools.

16. The state conservation director, his car and necessary assistants accompanying the same, when engaged in the performance of official duties.

17. The adjutant general of Iowa for the transportation of officers or enlisted men of the Iowa national guard or other military organi-

zation of the state, when traveling under the order of the commander in chief. [C97,§2150; S13,§2157-g; C24, 27, 31, 35, 39,§8128; C46, 50, 54,§479.94]

Referred to in §§368A.23, 479.93, 479.95, 479.97, 479.98

**479.95 Interchange of passes.** The provisions of section 479.94 shall not prohibit the officers of any railway from interchanging passes and tickets with other railway companies for their officers and employees, or the interchange of passes by railway companies for the persons to whom free tickets, passes, or transportation may lawfully be given or furnished, nor to invalidate any existing contract between a street railway company and a city where a condition of any franchise granted requires the furnishing of transportation to policemen, firemen, and city officers, while in the performance of their duties. [C97, §2150; S13,§2157-g; C24, 27, 31, 35, 39,§8129; C46, 50, 54,§479.95]

Referred to in §§479.97, 479.98

**479.96 Burden of proof.** In any prosecution wherein it is charged that a free ticket, pass, or transportation was wrongfully issued or given to or accepted by a physician, surgeon, attorney, agent or employee of a common carrier, the burden of proof shall be upon the defendant to prove the amount and character of the service rendered or to be rendered. [S13, §2157-g; C24, 27, 31, 35, 39,§8130; C46, 50, 54, §479.96]

Referred to in §§479.97, 479.98

**479.97 Violations.** Any common carrier, its officer, agent, or representative, violating any of the provisions of sections 479.93 to 479.96, inclusive, shall be fined in a sum not less than one hundred dollars and not more than ten hundred dollars for each offense, or in the discretion of the court shall be imprisoned in the county jail for not less than thirty and not more than ninety days; and any person other than the persons excepted in sections 479.94 and 479.95 who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state shall be subject to a like penalty. [S13,§2157-i; C24, 27, 31, 35, 39, §8131; C46, 50, 54,§479.97]

Referred to in §479.98

**479.98 Names of free pass beneficiaries reported.** Every common carrier of passengers within the provisions of sections 479.93 to 479.97, inclusive, shall, whenever so requested by the Iowa state commerce commission, file with the commission a sworn statement showing the names of all persons within this state holding, or to whom during the preceding year such carrier issued, furnished, or gave a free ticket, free pass, free transportation, or a discriminating reduced rate, except wage earners of common carriers in their ordinary employment and families of such wage earners, and disclosing such further information as will enable the commission to determine whether

the person to whom it was issued was within the exception of said provisions. [S13,§2157-j; C24, 27, 31, 35, 39,§8132; C46, 50, 54,§479.98]

**479.99 Passenger tickets—redemption—time limit.** It shall be the duty of every railroad company, corporation, person, or persons acting as common carriers of passengers in the state to provide for the redemption, at the place of purchase and at the general passenger agent's office of said carrier, of the whole or any integral part of any passenger ticket or tickets that such carrier may have sold, as the purchaser or owner has not used for passage or received transportation for which such ticket should have been surrendered; and said carrier shall there redeem the same at a rate which shall equal the difference between the price paid for the whole ticket and the cost of a ticket between the points for which said ticket has been actually used, and no carrier shall limit the time in which redemption shall be made to less than ten days from date of sale at the place of purchase and six months from date of sale at general passenger agent's office. [S13,§2128-a; C24, 27, 31, 35, 39,§8133; C46, 50, 54,§479.99]

Referred to in §§479.100-479.102

**479.100 Notice as to limitation and transferability.** No railroad company, corporation, person, or persons doing business in the state, as common carrier of passengers, whose rate of fare is regulated by statute of this state, shall sell or issue to any person, at the maximum rate allowed by law, any ticket or tickets bearing any condition of limitation as to the time of use, or as to transferability, without first providing for the redemption of said ticket, as directed by section 479.99, and also having notice of such provision and privilege of redemption conspicuously posted at each place where sales of tickets are made by such common carriers in this state. A failure to provide for the redemption of such ticket or to give notice as above provided shall make all conditions and limitations as to time of use or transferability of no force or effect. [S13, §2128-b; C24, 27, 31, 35, 39,§8134; C46, 50, 54, §479.100]

Referred to in §§479.101, 479.102

**479.101 Violations.** Any railroad company, corporation, person, or persons, who as common carriers shall sell or issue tickets as set forth in sections 479.99 and 479.100, and shall refuse or neglect to redeem the same, as by said sections provided, within ten days of date of demand, shall forfeit and pay to the owner of such ticket the purchase price of said ticket, and the further sum of one hundred dollars. [S13,§2128-c; C24, 27, 31, 35, 39, §8135; C46, 50, 54,§479.101]

Referred to in §479.102

**479.102 Mileage books.** Nothing in sections 479.99 to 479.101, inclusive, shall prohibit the sale of mileage books or tickets, at less than the maximum rates allowed by law, bearing



reasonable conditions of limitation, as to the right of use for passage. [S13,§2128-d; C24, 27, 31, 35, 39,§8136; C46, 50, 54,§479.102]

**WEIGHING OF COAL**

**479.103 Coal in car lots.** Every person, firm, or corporation engaged in operating any railroad within the state shall equip the line of its track and thereafter maintain thereon in good order, track scales of sufficient capacity to weigh all carloads of coal that may be transported over the said railroad, and shall weigh the same at the request of any owner, consignor, or consignee of such commodities, and furnish written certificates of such weights to such owner, consignor, or consignee as hereinafter provided. Such track scales shall be so installed and maintained at all division stations along the line of such railroads within the state, and at such other stations as the state commerce commission shall from time to time direct. [S13,§2157-l; C24, 27, 31, 35, 39, §8137; C46, 50, 54,§479.103]

Referred to in §§479.107, 479.108

**479.104 Where weighed — bills of lading.** Every person, firm, or corporation engaged in operating any railroad within the state over which coal in carload lots shall be transported for hire, shall weigh such coal at point where such shipment originates unless covered by weight agreement between consignor and railway company, provided such point is equipped with track scales. If not so equipped, it shall be weighed at first practicable point en route where track scales are provided. Said person, firm, or corporation shall furnish to said shipper a bill of lading showing date and place weighed, also the gross, tare, and net weights for each carload of coal so weighed. The tare weight shall be determined by using actual weight of empty car at loading station, provided track scales are maintained at such point. [S13,§2157-m; C24, 27, 31, 35, 39,§8138; C46, 50, 54,§479.104]

Referred to in §§479.107, 479.108

**479.105 Weight at destination — fee.** Such coal shall be weighed at destination upon request of consignee when there are track scales at such point. If not equipped with track scales at such point, then at nearest practicable point en route where such scales are maintained, and certificate of weight, showing actual gross, tare, and net weights, shall be furnished to consignee and settlement of freight charges based on these weights. A reasonable charge of not more than one dollar per car may be made for such weighing on request. [S13,§2157-n; C24, 27, 31, 35, 39,§8139; C46, 50, 54,§479.105]

Referred to in §§479.107, 479.108

**479.106 How weighed.** Cars when weighed on track scales shall be uncoupled, clear and unhampered at both ends, carefully weighed by competent weighmen and certificates issued upon requests of consignees, showing gross,

tare, and net weights. [S13,§2157-o; C24, 27, 31, 35, 39,§8140; C46, 50, 54,§479.106]

Referred to in §§479.107, 479.108

**479.107 Prima-facie evidence.** Certificates mentioned in sections 479.103 to 479.108, inclusive, shall be prima-facie evidence of the facts therein recited in any action arising between consignors and consignees and common carriers. [S13,§2157-p; C24, 27, 31, 35, 39,§8141; C46, 50, 54,§479.107]

Referred to in §479.108

**479.108 Violation—penalty.** Any common carrier operating in this state violating any of the provisions of sections 479.103 to 479.107, inclusive, by neglecting or refusing to weigh cars or to furnish certificates of weights as therein provided shall be guilty of a misdemeanor and shall be, upon conviction thereof, fined in the sum of not more than one hundred twenty-five dollars for each and every violation. [S13, §2157-q; C24, 27, 31, 35, 39,§8142; C46, 50, 54, §479.108]

Referred to in §479.107

**APPROPRIATION OF FUEL**

**479.109 Fuel in transit.** It shall be unlawful for any common carrier doing business in this state, or any director, officer, receiver, trustee, agent, or employee, acting for or employed by such common carrier, to take, use, divert, or appropriate, any coal, coke, or oil received for shipment, without having obtained written consent of the Iowa state commerce commission as hereinafter provided. [C24, 27, 31, 35, 39,§8143; C46, 50, 54,§479.109]

Referred to in §479.115

**479.110 Application for permission.** Whenever it appears to a corporation operating a common carrier that it does not have a sufficient supply of fuel to adequately operate its motive power for thirty days next ensuing, an application in writing, duly verified by its proper officer or employee in charge of motive power, setting forth the amount of fuel on hand, and the amount of fuel needed for that specific purpose, for the next thirty days, and that said corporation does not have sufficient fuel in transit, or is unable to obtain a sufficient supply of fuel, and that unless permitted to take fuel in transit, the operation of its motive power will be materially lessened, and to be supplemented by such other facts and showing as may be required by said Iowa state commerce commission, may in the discretion of such commission be permitted by written order to take and use such fuel in transit for the period, and in such amount as shall by such commission be deemed reasonable or adequate. [C24, 27, 31, 35, 39,§8144; C46, 50, 54,§479.110]

Referred to in §479.115

**479.111 Modification of orders.** The state commerce commission in its discretion may modify or annul any order or orders made, without notice or additional showings. [C24, 27, 31, 35, 39,§8145; C46, 50, 54,§479.111]

Referred to in §479.115



**479.112 State or public utility as consignee.** Fuel consigned to the state, or to a person, firm, or corporation operating a public utility, shall not be included in any order made by the state commerce commission. [C24, 27, 31, 35, 39,§8146; C46, 50, 54,§479.112]

Referred to in §479.115

**479.113 Notice of application.** The commission in its discretion may require notice to be served upon the owner of fuel sought to be taken by virtue hereof, the manner and form of such notice, and the time and place of the hearing, to be fixed by said commission. [C24, 27, 31, 35, 39,§8147; C46, 50, 54,§479.113]

Referred to in §479.115

**479.114 Notification of owner — payment.** Whenever a common carrier is permitted to take fuel in transit by order of the state commerce commission, it shall be the duty of the common carrier to promptly notify the owner of such taking and the owner thereof may, at his option, accept as payment therefor, the full value of such fuel, plus twenty percent of such value, to be promptly paid by such carrier; but if the owner does not so elect, nothing herein shall be construed to affect any other right or remedy. [C24, 27, 31, 35, 39,§8148; C46, 50, 54,§479.114]

Referred to in §479.115

**479.115 Violations.** Any common carrier subject to the provisions of sections 479.109 to 479.114, inclusive, or any director or officer thereof, or any receiver, trustee, lessee, agent, or employee, who alone, or with any other director, officer, receiver, trustee, lessee, agent, or employee, shall willfully take, use, divert, or appropriate, any coal, coke, or oil, or suffer or permit the same to be taken, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than five thousand dollars, nor less than five hundred dollars for each offense. [C24, 27, 31, 35, 39,§8149; C46, 50, 54, §479.115]

#### ADJUSTMENT OF CLAIMS

**479.116 Time limit for adjustment.** Every claim for loss of or damage to property while in the possession of any common carrier, or for delay in delivering freight or baggage or express, or for a charge in excess of the legal and regular charge for the service rendered, shall be adjusted and paid within forty days in case of shipments wholly within this state, and within ninety days in case of shipments from without the state after the filing of such claim with the agent or agent's carrier at the point of origin or of destination of each shipment; but no such claim shall be filed until after the arrival of the shipment or of some part thereof at the point of destination or until after the lapse of a reasonable time for the arrival thereof; and if such claim is not filed within sixty days from the time it accrues, the penalty provided in section 479.117 shall not apply. [S13,§2074-c; C24, 27, 31, 35, 39,§8150; C46, 50, 54,§479.116]

Referred to in §479.118

**479.117 Failure to adjust.** Failure to adjust and pay such claim, within the period herein prescribed shall subject the common carrier, so failing, to the penalty of a sum which in amount shall be equal to the amount of the claim originally filed; but it shall in no case be less than twenty-five dollars or more than one hundred dollars for each and every failure, to be recovered by the party aggrieved in any court of competent jurisdiction; and said claim shall be filed in proper form, including such information possessed by the claimant as will aid in establishing his claim. The penalty shall not apply unless the claimant shall recover the full amount claimed by him, nor when the claim exceeds five hundred dollars. [S13,§2074-d; C24, 27, 31, 35, 39,§8151; C46, 50, 54,§479.117]

Referred to in §§479.116, 479.118

**479.118 No division of claims.** The claimant shall not be permitted under this chapter to divide his claims arising from loss, damage, or injury to one shipment or consignment of goods, but only one claim within the meaning of this and sections 479.116 and 479.117 shall be filed for one shipment. [S13,§2074-e; C24, 27, 31, 35, 39,§8152; C46, 50, 54,§479.118]

#### TERMINATING CARRIER'S LIABILITY

**479.119 Notice of arrival of shipment.** All companies, corporations, or individuals that now, or hereafter, may own or operate any railroads, in whole or in part, in the state, and all persons, firms, or companies, and all associations of persons, whether incorporated or not, that shall do business as a common carrier upon any of the lines of railway in this state, shall be and remain liable as a common carrier upon all less than carload shipments until the consignee shall be notified of the arrival of the shipment and has reasonable time and opportunity to receive same. [SS15,§2074-f; C24, 27, 31, 35, 39,§8153; C46, 50, 54,§479.119]

SS15,§2074-f, editorially divided  
Referred to in §§479.120, 479.121

**479.120 Notice prescribed.** A deposit in the United States post office or public mailing box of a written notice addressed to the consignee at the address given upon the bill of lading will constitute service of the notice required by section 479.119, and forty-eight hours from the date of the mailing of such notice shall be a reasonable time in which to receive said shipment. [SS15,§2074-f; C24, 27, 31, 35, 39, §8154; C46, 50, 54,§479.120]

Referred to in §479.121

**479.121 Exceptions.** The provisions of sections 479.119 and 479.120 shall not apply to shipments to stations or platforms where no agent is regularly employed. [SS15,§2074-f; C24, 27, 31, 35, 39,§8155; C46, 50, 54,§479.121]

#### NEGLIGENCE OF EMPLOYEES

**479.122 Liability for negligence of employees.** Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corpora-

tion, in consequence of the neglect of the agents, or by any mismanagement of the engineers, or other employees thereof, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding. [C73,§1307; C97,§2071; S13,§2071; C24, 27, 31, 35, 39,§8156; C46, 50, 54,§479.122]

Referred to in §§479.123, 479.124

**479.123 Relief or indemnity contract.** No contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, and no acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association, shall constitute any bar or defense to any cause of action brought under the provisions of section 479.122; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received. [S13,§2071; C24, 27, 31, 35, 39,§8157; C46, 50, 54,§479.123]

**479.124 Contributory and comparative negligence.** In all actions brought against any railway corporation to recover damages for the personal injury or death of any employee under or by virtue of any of the provisions of section 479.122, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such em-

ployee. [S13,§2071; C24, 27, 31, 35, 39,§8158; C46, 50, 54,§479.124]

40ExGA, HF 194,§8, editorially divided  
Burden of proof, R.C.P. 97

**479.125 Unallowable pleas.** No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier or corporation of any statute enacted for the safety of employees contributed to the injury or death of such employee; nor shall it be any defense to such action that the employee who was injured or killed assumed the risks of his employment. [S13, §2071; C24, 27, 31, 35, 39,§8159; C46, 50, 54, §479.125]

Assumption of risk, §88.14

**479.126 Damages by fire.** Any corporation operating a railway shall be liable for all damages sustained by any person on account of loss of or injury to his property occasioned by fire set out or caused by the operation of such railway. Such damages may be recovered by the party injured in the manner set out in sections 478.6 to 478.9, inclusive, and to the same extent, save as to double damages. [C73,§1289; C97,§2056; C24, 27, 31, 35, 39,§8160; C46, 50, 54,§479.126]

**479.127 Baggage — liability.** Omnibus and transfer companies or other common carriers, and their agents, shall be liable for damages occasioned to baggage or other property belonging to travelers through careless or negligent handling while in the possession of said companies or carriers, and, in addition to the damages, the plaintiff shall be entitled to an allowance of not less than five dollars for every day's detention caused thereby, or by action brought to recover the same. [C73,§2183; C97, §3135; C24, 27, 31, 35, 39,§8161; C46, 50, 54, §479.127]

## CHAPTER 480

### RELOCATION OF LINE

- 480.1 Petition.
- 480.2 Notice.
- 480.3 Conditions.
- 480.4 Order of court.

- 480.5 Effect.
- 480.6 Notice to township trustees — vested rights.
- 480.7 Cuts and banks.

**480.1 Petition.** Any railroad desiring to change or remove the line of its road, after the same has been permanently located and constructed, may file a petition in the district court in any county wherein the change or removal is proposed to be made, describing with reasonable accuracy that portion of its line which it seeks to have changed or removed, and asking the court to grant authority to make such change or removal. All trustees, mortgagees, and other lienholders, and all townships, cities, and counties which have aided by taxation to build the road, must

be made defendants and served with notice as in other actions. [C97,§2092; C24, 27, 31, 35, 39,§8162; C46, 50, 54,§480.1]

Method of service, R.C.P. 56(a)

**480.2 Notice.** A public notice to all whom it may concern of the time of filing such petition, the object thereof, and the term of court at which the application will be made for authority to make the change, and requiring all persons desiring the repayment of money or return of property, as in this chapter provided, to appear and present their claims therefor,

must be published in a newspaper printed in each county in which the change is to be made, once each week, for a period of ten successive weeks before the term of court at which the application is to be heard. The court may order any additional notice or publication that it may think proper. [C97,§2093; S13,§2093; C24, 27, 31, 35, 39,§8163; C46, 50, 54, §480.2]

**480.3 Conditions.** No railway company shall be allowed to change or remove its line of road, after a permanent location and construction, without repaying all moneys, and restoring all property, or its value, which were donated to the company building the same exclusively in consideration of said railroads being located and constructed on such line, to the parties donating the same, their heirs, or assigns, nor without first procuring the consent of all parties having liens upon the railroad, and of any township, city, or county that by taxation or by the issuing of bonds has contributed money to aid in the construction thereof; but the consent of such township, city, or county shall be necessary only with reference to the change to be made within its own territorial limits. [C97,§2094; C24, 27, 31, 35, 39,§8164; C46, 50, 54,§480.3]

**480.4 Order of court.** If the court finds that notice has been given, and the consent of the proper parties has been obtained, it shall ascertain the amount of money or property contributed to the company by any person or party thereto or appearing therein that was so contributed exclusively in consideration that the road should be located on the line from which it is proposed to remove it, which shall

be repaid in case of money, and returned if property, or its value fixed, and in either case shall render judgment therefor, and may also enter a decree authorizing, if the public interest demands it, the removal of or change in the line of said road upon condition that all judgments above provided for be first paid or satisfied, and foreclosing all persons or parties not appearing in the action, and forever barring them from asserting any claim against such company on account of the contributions or donations herein mentioned. [C97,§2095; C24, 27, 31, 35, 39,§8165; C46, 50, 54,§480.4]

**480.5 Effect.** All mortgage liens or other encumbrances on the line of road which the company is authorized by the court to change shall attach to the line to which said road is removed, and have the same priority over other liens that they held on the original line. [C97,§2096; C24, 27, 31, 35, 39,§8166; C46, 50, 54, §480.5]

**480.6 Notice to township trustees—vested rights.** For the purpose of this chapter, the trustees of each township shall be served with notice and shall represent and act for it. No vested right of any person or persons living on and along the line of any railroad thus removed shall be defeated or affected by the removal. [C97,§2097; C24, 27, 31, 35, 39,§8167; C46, 50, 54,§480.6]

**480.7 Cuts and banks.** When any railway company shall take up its track and relocate the same under the provisions of this chapter, it shall within two years therefrom fill up the cuts and level down the banks, or cause the same to be done. [C97,§2098; C24, 27, 31, 35, 39,§8168; C46, 50, 54,§480.7]

## CHAPTER 481

### PRIVATE BUILDINGS AND SPUR TRACKS

- 481.1 Buildings on railroad lands.
- 481.2 Destruction of buildings.
- 481.3 Spur tracks.
- 481.4 Cost of construction.

- 481.5 Bond for construction.
- 481.6 Costs in excess of deposit.
- 481.7 Failure of company to act.
- 481.8 Connections with original spurs.

**481.1 Buildings on railroad lands.** When a disagreement arises between a railroad company and the owner of any building used for receiving, storing, or manufacturing any article of commerce transported or to be transported, situated on the railroad right of way or any land owned or controlled by the railroad company for railroad purposes, as to the terms and conditions on which the same is to be continued thereon or removed therefrom, or when application is made by any person, firm, or corporation for a site on such lands for the erection and maintenance of such improvements, and the railway company and the applicant cannot agree as to whether such improvement shall be placed on such

lands, or as to the character and location of the buildings to be erected and maintained thereon, or as to the terms and conditions under which the same may be placed or operated, such railway company, person, firm, or corporation may make written application to the state commerce commission and such commission shall, as speedily as possible after the filing of such application, hear and determine such controversy and make such order in relation thereto as shall be just and equitable between the parties, which order shall be enforced in the same manner as other orders of the commission. [S13,§2110-1; C24, 27, 31, 35, 39,§8169; C46, 50, 54,§481.1]

Referred to in §481.2

**481.2 Destruction of buildings.** In the event that any building referred to in section 481.1, situated on the right of way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right of way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding. [S13,§2110-m; C24, 27, 31, 35, 39,§8170; C46, 50, 54,§481.2]

**481.3 Spur tracks.** Every railroad, whether operated by steam or electricity, shall acquire the necessary rights of way for, by condemnation or purchase, and shall construct, connect, and operate and maintain a reasonably adequate and suitable spur track, whenever such spur track does not necessarily exceed three miles in length, and is required for the successful operation of any existing or proposed mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock, or other industry or enterprise, and its construction and operation is not unusually unsafe and dangerous, and is not unreasonably harmful to public interest. No such track is required to be constructed until, or if hereafter constructed need not be maintained unless, the state commerce commission, after hearing, shall have declared the same to be necessary. [C24, 27, 31, 35, 39,§8171; C46, 50, 54,§481.3]

**481.4 Cost of construction.** Such railroad company may require the person or persons, firm, corporation, or association primarily to be served thereby to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right of way for such spur track and of constructing the same as shall be determined in separate items by the state commerce commission. Except as in section 481.5 provided, the total estimated cost thereof as ascertained by said commission shall be deposited with the railroad company before it shall be required to incur any expense whatsoever therefor. [C24, 27, 31, 35, 39,§8172; C46, 50, 54,§481.4]

Referred to in §481.7

**481.5 Bond for construction.** When the total estimated cost has been ascertained by the commission such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track in a good and workmanlike manner according to plans and specifications furnished by such railroad company and ap-

proved by the commission. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right of way for such spur track as ascertained by the commission, and the total amount stated in such written election. [C24, 27, 31, 35, 39,§8173; C46, 50, 54,§481.5]

Referred to in §§481.4, 481.7

**481.6 Costs in excess of deposit.** In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the commissioners as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company. [C24, 27, 31, 35, 39,§8174; C46, 50, 54,§481.6]

Referred to in §481.7

**481.7 Failure of company to act.** In case of failure, neglect, or refusal of any railroad company to comply with any of the provisions of sections 481.4 to 481.6, inclusive, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the state commerce commission setting forth the facts upon which such grievance is based. The said commission after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said commission in other proceedings within its jurisdiction and shall be enforced in the same manner. [C24, 27, 31, 35, 39,§8175; C46, 50, 54,§481.7]

**481.8 Connections with original spurs.** Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the commission, and such person, firm, corporation, or association shall be required to pay to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right of way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the commission, upon such application and notice, to the persons, firms, corporations, or associations that have paid or contributed towards the original cost and expense of acquiring the right of way and constructing the same. [C24, 27, 31, 35, 39,§8176; C46, 50, 54,§481.8]

## CHAPTER 482

## UNION DEPOTS

482.1 Corporations authorized.  
482.2 Eminent domain.

482.3 Connecting tracks.  
482.4 Liability for damages.

**482.1 Corporations authorized.** Any number of persons or railway corporations, or both persons and railway corporations, may form a body corporate under the laws of this state relating to corporations for pecuniary profit, for the purpose of acquiring, establishing, constructing, and maintaining at any place in the state union station houses or depots for freight or passengers, or both, with necessary offices for express, baggage, or postal rooms in the same or separate buildings, and railroad tracks and other appurtenances of such depots. Any railroad company operating a road in the state, or interested therein, whether organized under its laws or elsewhere, may become a stockholder in such corporation. A copy of the bylaws, if any are adopted, shall be posted in the passenger or waiting rooms of the depot and in the office of the company. [C97,§2099; C24, 27, 31, 35, 39,§8177; C46, 50, 54,§482.1]

Referred to in §482.2

**482.2 Eminent domain.** Every corporation formed under the provisions of section 482.1 shall have power to take and hold, for the purposes therein mentioned, such real estate as may be found necessary by the state commerce commission for the location of its depot and approaches, which it may acquire by purchase or condemnation as provided for the taking of private property for works of internal improvement. [C97,§2100; C24, 27, 31, 35, 39, §8178; C46, 50, 54,§482.2]

Condemnation procedure, ch 472

**482.3 Connecting tracks.** Such corporations, with the consent of the council of any city or town in which any such depot is located, shall have the right to lay its tracks to make necessary connection with all railways desiring to use such depot, upon the streets or alleys of such city or town, and, by and with the consent of the council, may erect such depot upon or across any street or alley; but no railway track can thus be located, nor can any such depot be so erected, until after the injury to property abutting upon the streets or alleys thus appropriated has been ascertained and paid in the manner provided for taking private property for works of internal improvement. [C97,§2101; C24, 27, 31, 35, 39,§8179; C46, 50, 54,§482.3]

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**482.4 Liability for damages.** Nothing in this chapter contained, or in the articles of incorporation or bylaws of such corporation, shall release the railroad companies using such union depots, tracks, or appurtenances from the same liability for all damages on account of injuries to persons, stock, baggage, or freight, or for the loss of baggage or freight in or about such union depot grounds, as they would be under if said depot tracks and appurtenances belonged to and were operated by the railway companies using the same. [C97, §2102; C24, 27, 31, 35, 39,§8180; C46, 50, 54, §482.4]

## CHAPTER 483

## TAX AID FOR RAILROADS

483.1 Tax aid authorized.  
483.2 Requisites for petition.  
483.3 Exception—approval by commission.  
483.4 Filing of petition.  
483.5 Proceedings on petition.  
483.6 Form of notice.  
483.7 Manner of giving notice.  
483.8 Form of ballot.  
483.9 Election returns.  
483.10 Canvass of returns.  
483.11 District in more than one county.

483.12 Terms and conditions entered.  
483.13 Collection of special tax.  
483.14 Limitation.  
483.15 Money paid out—certificate.  
483.16 Certificates exchangeable for stock or bonds—exception.  
483.17 Liability of directors.  
483.18 Forfeiture of tax.  
483.19 Taxes paid in labor or supplies.  
483.20 Trolley or electric railways.

**483.1 Tax aid authorized.** The qualified voters of the following named districts may file a petition under the conditions hereinafter specified to vote taxes not exceeding one and one-fourth percent on the assessed value of the real property within the district for any of the following purposes:

1. To aid any railway incorporated under the laws of this state in constructing a projected

steam railway into, through, or along a district composed of a township, a town, or a city.

2. To aid in the construction of a projected electric railroad or in electrifying an existing steam railroad into, through, or along a district contiguous to and within five miles of such railroad.

3. To aid in the construction of a proposed railroad or in reconstruction, improvement, re-

pair, or maintenance of a railroad heretofore constructed, the operation of which has been abandoned, into, through, or along a district contiguous to and within a distance not to exceed two and one-half miles from the center line of the right of way thereof measured at right angles thereto. [C97, §§2084, 2086; S13, §§2084, 2086, 2091-b; C24, 27, 31, 35, 39, §8181; C46, 50, 54, §483.1]

Referred to in §483.2

**483.2 Requisites for petition.** The petition shall show:

1. The name and the location of the principal office of the company to be aided.
2. For which of the purposes stated in section 483.1 it is proposed to vote the taxes.
3. The rate of tax proposed and the number of years not exceeding five in which it shall be levied and paid in equal installments.
4. The location of the line of railway for which it is proposed to vote the tax.
5. The limits of the proposed district and the county or counties in which the same is located.
6. The amount of work required to be done and when and where the same shall be done before any of the tax shall be payable.
7. Any other conditions which shall be performed before any part of the tax shall be payable.
8. The signatures of a majority of the resident freehold taxpayers of the proposed district; except that in cities of any form of government having a population of twenty-five thousand or over, not more than two thousand such signatures shall be required. [C97, §2085; S13, §§2085, 2091-c; C24, 27, 31, 35, 39, §8182; C46, 50, 54, §483.2]

**483.3 Exception—approval by commission.** No tax shall be levied to aid in the electrification of any steam railway for the benefit of any person, firm, or individual, who is not the owner in fee simple of said steam railway, unless with or prior to the presentation of the petition to the board of supervisors asking for said election, the agreement between the person, firm, or corporation proposing to electrify said steam railway and the owner of said steam railway, for its electrification and use, has been presented to the state commerce commission, and its duration, terms, and conditions found suitable by said commission, and said approval made a matter of record in the proceedings of said commission, and certified to such board of supervisors. [S13, §2091-e; C24, 27, 31, 35, 39, §8183; C46, 50, 54, §483.3]

**483.4 Filing of petition.** Said petition shall be filed in the office of the auditor of the county in which the district is wholly located or of the county in which the greater acreage of the proposed district is located. [C97, §2085; S13, §§2085, 2091-c; C24, 27, 31, 35, 39, §8184; C46, 50, 54, §483.4]

**483.5 Proceedings on petition.** At its next regular adjourned or special session after such petition is filed, the board of supervisors shall canvass the petition, and if found to meet the requirements of law, it shall fix a time and place for holding a special election in the proposed district, appoint judges and clerks of such election, fix the hours when the polls shall open and close and cause notice to be given as hereinafter provided. The date of such election shall be at least ten days after completed service of such notice.

The railroad company for whose benefit such election is held shall pay the expense thereof, including publication of notice and printing of ballots. [C97, §2085; S13, §§2085, 2091-c; C24, 27, 31, 35, 39, §8185; C46, 50, 54, §483.5]

**483.6 Form of notice.** The notice shall be addressed to the qualified electors of the township, city, town, district, or territory in which the election is to be held and shall state:

1. The time and place of holding such election and the hours at which the polls will open and close.
2. The name and location of the principal office of the corporation to which it is proposed to vote the tax.
3. The purpose for which it is proposed to vote such tax.
4. The rate of such tax, the installments into which it shall be divided, the years in which it is payable, and the rate of interest on deferred payments.
5. The amount of work to be done, or any other conditions to be performed before the tax is payable.
6. From what point to what point the improvement shall extend and within what time it is to be completed.
7. Any other special conditions set forth in the petition. [C97, §2085; S13, §§2085, 2091-c; C24, 27, 31, 35, 39, §8186; C46, 50, 54, §483.6]

**483.7 Manner of giving notice.** The auditor shall cause such notice to be published for three consecutive weeks in the official newspapers of each county in which the election is to be held, and if in a district or territory extending into more than one county, then the official newspapers of each of such counties, and the last publication shall be not less than ten days before such election. Proof of such publication, by affidavit of the publisher, shall be filed with the auditor on completion of the publication.

The auditor shall also cause such notice to be posted in five public places in the proposed district, not less than ten days before the date of the election, and proof of such posting by affidavit of the parties who did or saw it done, shall be filed in the office of the auditor. [C97, §2085; S13, §§2085, 2091-c; C24, 27, 31, 35, 39, §8187; C46, 50, 54, §483.7]

**483.8 Form of ballot.** The auditor shall cause to be prepared and printed the ballots for such election on which shall be plainly

stated the proposition to be voted upon, placed in interrogatory form with the words "yes" and "no" so arranged as to enable the voter to clearly indicate his vote for or against such proposition, which ballots shall be delivered to the judges of election by the time the polls are open. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8188; C46, 50, 54,§483.8]

**483.9 Election returns.** The judges and clerks shall count the ballots cast as soon as the polls close and certify and file the returns, with all the ballots cast, in the office of the auditor. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8189; C46, 50, 54,§483.9]

**483.10 Canvass of returns.** On the filing of the returns, the board shall convene and canvass the same and certify the result to the auditor. If a majority of the votes cast are in favor of such taxes, the board shall, at the time of levying the ordinary taxes next following, levy such taxes as are voted and cause the same to be placed on the tax lists of the proper township, city, town, or district as the case may be. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8190; C46, 50, 54,§483.10]

**483.11 District in more than one county.** If the district or territory in which taxes are voted extends into more than one county, the auditor in whose office the returns are filed shall make and certify a copy of such returns and file the same in the office of the auditor of every other county into which the district extends. The board of supervisors of such other counties shall levy the tax upon the real estate in the portion of the district located in such county and cause such tax to be entered upon the tax list of such county. [C97,§2085; S13,§2085; C24, 27, 31, 35, 39,§8191; C46, 50, 54,§483.11]

**483.12 Terms and conditions entered.** In all cases where a tax has been voted and levied in aid of a railroad there shall be entered upon the tax lists of the county all the terms and conditions upon which such taxes are payable. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39, §8192; C46, 50, 54,§483.12]

**483.13 Collection of special tax.** Special taxes voted for any of the purposes aforesaid, shall be collected at the same time and in the same manner as other taxes, with the same penalties for delinquency and the same manner of enforcing collection by sale as ordinary taxes. When collected they shall be kept in a separate fund and paid out only for the purposes for which and on the terms and conditions upon which they were voted, all of which shall be shown by the records and files of the auditor's office relating thereto. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8193; C46, 50, 54,§483.13]

**483.14 Limitation.** The aggregate amount of taxes on property in aid of railroads shall not during any ten years exceed five percent

on the assessed value thereof. [C97,§2086; S13,§§2086, 2091-f; C24, 27, 31, 35, 39,§8194; C46, 50, 54,§483.14]

**483.15 Money paid out—certificate.** The moneys collected under the provisions of this chapter shall be paid out by the county treasurer to the treasurer of the railway company for whom the same was voted, upon the orders of the president or managing director thereof, at any time after the trustees of such township or council of such town or city voting the same, or a majority thereof, shall have certified to the county treasurer that the conditions required of the railway company and set forth in the notice for the special election have been complied with, which certificate said township trustees or council of such town or city shall make when conditions have been sufficiently complied with to entitle the railway company thereto, or when the conditions are fully complied with on the part of the railway company; but if the costs and expenses of holding the election and of recording the certificates have not been paid, then the treasurer shall first deduct from the moneys collected the amount thereof, and pay same to the parties entitled thereto. [C97,§2087; C24, 27, 31, 35, 39,§8195; C46, 50, 54,§483.15]

**483.16 Certificates exchangeable for stock or bonds—exception.** The county treasurer, when required, shall, in addition to a tax receipt, issue to each taxpayer, on the payment of any taxes voted under the provisions of this chapter, a certificate showing the amount of tax paid, the name of the railway company entitled thereto, and when the same was paid; and he may charge twenty-five cents for each certificate issued. Said certificates shall be assignable, and, when presented by any person holding the legal title thereto to the president, managing director, treasurer, or secretary of the railroad company receiving the taxes paid, as shown by such certificates, in sums of one hundred dollars or more of taxes, it shall issue or cause to be issued to said person the amount of stock of the company desiring the benefit from said taxes, to the amount of said certificate or certificates, and if the taxes paid as shown by said certificate or certificates amount in the aggregate to more or less than any certain number of shares of stock, then the holder thereof shall be entitled to receive the full number of shares of stock covered by said certificates, and may make up in money the balance of any share when the certificates held by him are not equal to one full share of such stock, which stock for such purpose shall be estimated at par. When it shall be proposed in the petition and notice calling an election to issue first mortgage bonds not exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, and not exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge in lieu of stock, it shall be lawful to issue bonds of the denomination of one hundred dollars in the same manner as

is provided for the issue of stock, and in such case the petition and notice shall state the amount of bonds per mile to be issued, the rate of interest, and the time of payment of the interest and principal thereof; but the provisions of this section shall not be applicable to taxes that are voted and paid in aid of the construction of railroads that are interurban in character. [C97,§2088; S13,§2088; C24, 27, 31, 35, 39,§8196; C46, 50, 54,§483.16]

**483.17 Liability of directors.** The board of directors of any railway company receiving taxes voted in aid thereof under the provisions of this chapter, or any member thereof, who shall vote to bond, mortgage, or in any manner encumber said road to an amount exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, or exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge, not including in either case any debt for ordinary operating expenses, shall be liable to the stockholders or either of them for double the amount, estimated at its par value, of the stock by him held, if the same should be rendered of less value or lost thereby. [C97,§2089; C24, 27, 31, 35, 39,§8197; C46, 50, 54,§483.17]

**483.18 Forfeiture of tax.** Should the taxes voted in aid of any railroad under the provisions of this chapter remain in the county treasury for more than one year after the same have been collected, the right to them by the railroad company shall be forfeited, and the persons who paid the same entitled to receive back from the county treasurer their pro rata shares thereof remaining; and in all cases where any taxes have been voted or levied upon the real or personal property in any township, town, or city to aid in the construction of any railroad, and the road in aid of which they were voted or levied has not been built, completed, or operated into or through such township, town, or city, it shall be the duty of the board of supervisors of the county where said taxes have been voted and levied and still remain on the tax books to give the railway company in aid of which the tax was voted at least thirty days notice in writing, to be served like original notices, of their intention to cancel such taxes, and thereupon to cause the same to be canceled and stricken from the tax books of the county, which cancellation shall remove all liens created by the levy thereof.

In all cases where the railway company to whom taxes have been voted neglects or refuses to receive such taxes, or to require or permit the same to be collected and certificates therefor to be issued, for the period of one year after they become due and collectible, and in all cases where taxes have been voted in aid of any railroad, and the conditions upon which the same were voted have not in fact

been complied with, and the time in which said conditions were to be fulfilled has expired, the same shall be forfeited, and the county officers of the county in which they have been levied and entered upon the tax books shall enter cancellation thereof upon the proper records.

In all cases where any taxes to aid in the construction of any railroad may be voted upon the inducement or promise offered on the part of said railroad company, or any duly authorized agent thereof, for any rebates or exemptions from said tax or any part thereof, or any agreed price to be paid for the stock that may be issued in lieu of said tax, or a division of said tax, or any portion or percentage thereof, with any of the voters or taxpayers as an inducement to procure said tax to be voted, all taxes so procured to be voted shall be void. [C97,§2090; C24, 27, 31, 35, 39, §8198; C46, 50, 54,§483.18]

**483.19 Taxes paid in labor or supplies.** Nothing contained in this chapter shall preclude any taxpayer who may contract with a railroad company for which taxes may be voted to pay his tax, or any part thereof, in labor upon the line of said railroad, or in material for its construction, or supplies furnished or money paid for the construction thereof, in pursuance of the terms and conditions stipulated in the notices of election, in lieu of a payment to the county treasurer. Upon presenting to the county treasurer a receipt from such railroad company or its duly authorized agent, specifying the amount of such payment, the same shall be credited by the treasurer on his tax, with the same effect as though paid to him in money, and when such receipts have been presented and credited they shall have the same validity in his settlement with the board of supervisors as the orders from the railroad company provided for in this chapter. Laborers shall have a lien upon any tax voted in aid of a railroad company for the amount due them for labor performed in the construction of said railroad. [C97,§2091; C24, 27, 31, 35, 39, §8199; C46, 50, 54,§483.19]

**483.20 Trolley or electric railways.** All of the provisions of this chapter relating to tax in aid of railways are hereby made applicable to trolley or electric railways. And wherever the word "railroad" appears in any of said provisions the same shall be held to include trolley or electric railroad; and wherever the words "railroad company" or "railway company" appear in said provisions the same shall be held to include trolley railway company, and electric railway company; no stock shall be issued by any such company except upon payment therefor of the full par value thereof in cash or its equivalent. [S13,§2091-a; C24, 27, 31, 35, 39,§8200; C46, 50, 54,§483.20]



## CHAPTER 484

## INTERURBAN RAILWAYS

- 484.1 Definition.
- 484.2 When deemed a street railway.
- 484.3 Applicable statutes.
- 484.4 On highway.
- 484.5 Narrow highways.
- 484.6 Damages.
- 484.7 Waiver—condemnation.
- 484.8 Sixty-foot highways.
- 484.9 Regulations.
- 484.10 Eminent domain.
- 484.11 Franchises.
- 484.12 Contracts and rates.
- 484.13 Terminal facilities.
- 484.14 Electric power.
- 484.15 Interurban to furnish facilities and power.

- 484.16 Compensation—disagreement—proceedings.
- 484.17 Appeal—notice—transcript.
- 484.18 Trial—bond.
- 484.19 Trackage acquired.
- 484.20 Right to furnish power.
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- 484.22 Limitations.
- 484.23 Proceedings to acquire.
- 484.24 Notice of application—expense.
- 484.25 Findings—certificate.
- 484.26 Applicable statutes.
- 484.27 Heating of passenger cars.
- 484.28 Violations.
- 484.29 Automobile railway — statutes applicable.

**484.1 Definition.** Any railway operated upon the streets of a city or town by electric or other power than steam, which extends beyond the corporate limits of such city or town to another city, town, or village, or any railway operated by electric or other power than steam, extending from one city, town, or village to another city, town, or village, shall be known as an interurban railway, and shall be a work of internal improvement. [S13,§2033-a; C24, 27, 31, 35, 39,§8201; C46, 50, 54,§484.1]

**484.2 When deemed a street railway.** Any interurban railway shall, within the corporate limits of any city or town, upon such streets as it shall use for transporting passengers, mail, baggage, and such parcels, packages, and freight as it may carry in its passenger or combination baggage cars only, be deemed a street railway, and be subject to the laws governing street railways. [S13,§2033-c; C24, 27, 31, 35, 39,§8202; C46, 50, 54,§484.2]

Exception, §478.29

**484.3 Applicable statutes.** The words "railway," "railway company," "railway corporation," "railroad," "railroad company," and "railroad corporation," as used in the Code and acts of the general assembly, now in force or hereafter enacted, are hereby declared to apply to and include all interurban railways, and all companies or corporations constructing, owning, or operating such interurban street railways, and all provisions of the Code and acts of the general assembly, now in force or hereafter enacted, affecting railways, railway companies, railway corporations, railroads, railroad companies, and railroad corporations, are hereby declared to affect and apply in full force and effect to all interurban railways, and to all interurban railway companies or railway corporations constructing, owning, or operating such interurban railways. [S13,§2033-b; C24, 27, 31, 35, 39,§8203; C46, 50, 54,§484.3]

**484.4 On highway.** Any interurban or street railway operated by any motive power other than steam, may build and operate its line

over, along, and upon any public highway which is not less than one hundred feet wide, outside the limits of any city or town. The board of supervisors may, without expense to the county, accept conveyances of real estate abutting on any highway, or any part thereof, for the purpose of increasing such highway or part thereof to the width of one hundred feet or more for said purposes. [C97,§2026; S13, §2026; C24, 27, 31, 35, 39,§8204; C46, 50, 54,§484.4]

**484.5 Narrow highways.** When the board of supervisors shall find that it is not practicable or expedient to widen a highway to one hundred feet or more for the purpose aforesaid and when there is filed with the county auditor the written consent of two-thirds of the residents of the county owning real estate abutting upon the portion of the highway upon and along which it is proposed to build and operate such railway, the board may grant the right to build and operate such line upon and along the portion of such highway to which such written consent applies. [C97,§2026; S13,§2026; C24, 27, 31, 35, 39,§8205; C46, 50, 54,§484.5]

Referred to in §484.6

**484.6 Damages.** The signing of written consent as provided in section 484.5 shall not be a waiver of any damages which may accrue to any owner of abutting land on account of the building and operation of such railway upon and along such highway, or resulting from the negligence of any officer, agent, or servant of such railway company in the building or operation of such railway. [S13,§2026; C24, 27, 31, 35, 39,§8206; C46, 50, 54,§484.6]

40ExGA, HF 200,§3, editorially divided

**484.7 Waiver — condemnation.** Unless the owners of land abutting each side of said road shall make written waiver of any damages, the railway company shall pay all damages sustained by such abutting owners caused by building said road. If the parties cannot agree, the amount of such damages shall be ascertained and paid in the same manner as is

provided for taking private property for works of internal improvement. [C97,§2027; C24, 27, 31, 35, 39,§8207; C46, 50, 54,§484.7]

Condemnation procedure, ch 472

**484.8 Sixty-foot highways.** The board of supervisors may without such written consent grant the right to such interurban or street railway company to build and operate its line for a distance not exceeding two miles outside the limits of any city or town upon and along any highway not less than sixty feet wide. [C97,§2026; S13,§2026; C24, 27, 31, 35, 39,§8208; C46, 50, 54,§484.8]

**484.9 Regulations.** All rights to build and operate any such railway upon and along any public highway shall be subject to such restrictions and regulations as shall be prescribed from time to time by the board of supervisors. The construction and operation of such railway shall be so conducted as to cause the least interference with the convenient use of such highway by the public, and such highway shall, as soon as practicable, be placed in as good condition as it was before the location of such railway thereon. [C97,§2026; S13,§2026; C24, 27, 31, 35, 39,§8209; C46, 50, 54,§484.9]

**484.10 Eminent domain.** All questions as to damages sustained by owners of land abutting on a highway along and upon which has been constructed such railway, shall be subject to proceedings relating to eminent domain. [S13,§2026; C24, 27, 31, 35, 39,§8210; C46, 50, 54,§484.10]

Eminent domain, ch 472

**484.11 Franchises.** Cities and towns under any form of government may, as provided by law, authorize or forbid the construction and operation of such railways upon, over, or along the streets, alleys, and public grounds within their limits and prescribe the conditions and regulations for such construction and operation. The right to operate as a street railway shall not be granted for a period exceeding twenty-five years. [S13,§2033-d; C24, 27, 31, 35, 39,§8211; C46, 50, 54,§484.11]

Referred to in §484.12

**484.12 Contracts and rates.** Nothing in section 484.11 shall impair the obligation of contracts of any city under any form of government or town entered into prior to April 8, 1902, nor affect any provisions of law relating to free or reduced or discriminating rates of transportation. [S13,§2033-d; C24, 27, 31, 35, 39,§8212; C46, 50, 54,§484.12]

**484.13 Terminal facilities.** Any person or corporation owning or operating an electric street railway in any city or town, shall permit the use of its tracks, poles, wires, and terminal facilities within such city or town by any interurban railway entering such city or town for interurban business only in the transportation of passengers, mail, express, and baggage in passenger or in combination

baggage cars, but shall not be required to permit the use of its car houses or barns by such interurban railway. [S13,§2110-c; C24, 27, 31, 35, 39,§8213; C46, 50, 54,§484.13]

Referred to in §484.15

**484.14 Electric power.** When the power plant of a street railway is sufficient therefor and during the hours its street cars are in operation, and to the extent it can do so without interference with its own traffic, it shall furnish power for the operation of interurban passenger and combination baggage cars on such portions of such street railway tracks as such interurban railway has the right to use. It shall have preference in the use of its own power and tracks so that its cars shall not be delayed in transit. [S13,§2110-c; C24, 27, 31, 35, 39,§8214; C46, 50, 54,§484.14]

Referred to in §484.15

**484.15 Interurban to furnish facilities and power.** Any interurban electric railway company carrying on a street railway business in a city or town shall furnish to any other interurban electric railway company entering said city or town, for interurban purposes only, the same privileges and facilities which an electric street railway is required to furnish under sections 484.13 and 484.14. [S13,§2110-f; C24, 27, 31, 35, 39,§8215; C46, 50, 54,§484.15]

**484.16 Compensation — disagreement — proceedings.** Any interurban railway company shall pay a reasonable compensation for the privileges and facilities furnished to it by a street railway company and in case of disagreement as to the facilities to be furnished or the conditions for their use or the compensation therefor, the question shall be submitted to and heard and determined by the state commerce commission, on petition of either party, and on ten days written notice of such hearing served on the opposite party. Any order made by the commission or the court on appeal shall be subject to review and modification from time to time on ten days written notice by either party setting forth the grounds of the application. [S13, §2110-c; C24, 27, 31, 35, 39,§8216; C46, 50, 54, §484.16]

**484.17 Appeal — notice — transcript.** Either party shall have the right to appeal from any order or decision of the commission to the district court of the county in which the street railway is located, within twenty days from the date of the order or decision, by serving written notice of appeal on the other party and filing the same with proof of service with the secretary of the commission. Such secretary shall forthwith make and file in the office of the clerk of said court a transcript of the petition and such other documents as are on file in said cause, including the order or decision and notice of appeal. [S13,§2110-d; C24, 27, 31, 35, 39,§8217; C46, 50, 54,§484.17]

**484.18 Trial—bond.** The appeal shall be tried in equity and have precedence over all

other civil causes. The first term after the transcript is filed shall be the trial term. No appeal shall suspend the order or decision appealed from, if the interurban company on whose behalf the order or decision is made shall file with the secretary of the commission a bond with sureties approved by the commission, conditioned for the payment of any judgment for costs and compensation and for obedience to any order or decree of the court. [S13,§2110-d; C24, 27, 31, 35, 39,§8218; C46, 50, 54,§484.18]

Presumption of approval of bond, §682.10

**484.19 Trackage acquired.** Any interurban railway company doing a street railway business on its own tracks in a city or town, may, for the purpose of completing a terminal loop for its interurban cars only, acquire under the foregoing provisions the use of so much of the track, poles, and wire of a street railway as shall be necessary for said purposes. [S13, §2110-f; C24, 27, 31, 35, 39,§8219; C46, 50, 54, §484.19]

**484.20 Right to furnish power.** Street railroad companies desiring so to do shall be authorized to furnish to interurban railway companies, power for the operation of the cars of interurban railway companies outside of cities and towns, but no street railroad company shall be required to furnish such power. [S13,§2110-e; C24, 27, 31, 35, 39,§8220; C46, 50, 54,§484.20]

**484.21 Water supply.** Any interurban railway company requiring an electric generating plant for its operation, shall have the power of eminent domain to acquire, by condemnation, the right of access to all necessary streams or other sources for the purpose of supplying its powerhouse with water, and of making the necessary changes and improvements, and to repair or renew the same from time to time, in such streams, or upon the lands from which it is to obtain said water supply, in the same manner provided by law for the taking of private property for works of internal improvement. Such company shall pay to the owner of any lands or water rights all damages arising out of the exercises of such right. [SS15,§2033-l; C24, 27, 31, 35, 39, §8221; C46, 50, 54,§484.21]

**484.22 Limitations.** In exercising such right, the owner of any water right or supply shall not be deprived of access thereto or the use thereof in common with such railway corporation, and no dwelling house or other buildings, orchard, or garden shall be overflowed or injuriously affected. [SS15,§2033-l; C24, 27, 31, 35, 39,§8222; C46, 50, 54,§484.22]

**484.23 Proceedings to acquire.** Before proceeding to condemn any property rights to acquire or reach a water supply, such railway company shall make written application to the state commerce commission, accompanied by a drawing showing in detail the land required,

the water supply to be obtained and the changes and improvements to be made, and giving the names and addresses of all persons whose rights will be affected thereby. [SS15, §2033-l; C24, 27, 31, 35, 39,§8223; C46, 50, 54, §484.23]

**484.24 Notice of application—expense.** Such commission shall forthwith give written notice to all persons whose rights will be affected by the proposed changes of the date on which a hearing will be had on said application. If upon examination into the matter the commission finds that any rights of the public will be affected by such improvements, it shall give such notice as it deems sufficient to advise the public thereof. Any person having any interest may file objections to the application. The expenses of all such notices shall be paid by the company or person making the application. [SS15,§2033-l; C24, 27, 31, 35, 39,§8224; C46, 50, 54,§484.24]

**484.25 Findings—certificate.** If the commission finds that such proposed changes or improvements are necessary and proper and the exercise of the power of eminent domain is reasonable, it shall grant the application as made, or with such modifications as shall be proper and just, and file in the office of the clerk of the district court of the county in which the improvements are to be made, a certified transcript of the proceedings and order accompanied by plans and specifications showing in reasonable detail the land and water rights to be acquired for present and prospective use of such company, whereupon such company may proceed to acquire the same by condemnation, but shall not take possession of such property and water rights till the damages awarded by the condemnation commission have been deposited with the sheriff. [SS15,§2033-l; C24, 27, 31, 35, 39,§8225; C46, 50, 54,§484.25]

**484.26 Applicable statutes.** Except as in this chapter otherwise provided, all provisions relating to eminent domain conferring upon railway companies the right to condemn land for reservoirs and to enable them to reach and acquire sources of water supply and access thereto, shall apply to interurban railway companies for reaching and acquiring water supplies for their power plants. [SS15,§§2033-l,m; C24, 27, 31, 35, 39,§8226; C46, 50, 54,§484.26]

**484.27 Heating of passenger cars.** Every person, partnership, company, or corporation owning or operating an interurban line or a street railway in a city of more than twenty thousand population in this state shall, from November 15 of each year to April 1 following, heat all cars, used for the transportation of passengers, while in service, to at least forty degrees Fahrenheit; provided that open cars may be operated during the month of November for special trips to transport heavy traffic. [C24, 27, 31, 35, 39,§8227; C46, 50, 54,§484.27]

Referred to in §484.28

**484.28 Violations.** Every person, partnership, company, or corporation owning or operating a street railway in this state who shall fail to comply with the provisions of section 484.27 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars for each offense. Any failure to comply with the provisions of section 484.27 shall be deemed a separate offense. [C24, 27, 31, 35, 39,§8228; C46, 50, 54,§484.28]

**484.29 Automobile railway—statutes applicable.** Any system of railway operating cars within the state over or upon any track other than steel or iron shall be known as an automobile railway, and shall be a work of internal improvement. The words “railway”, “railway

company”, “railway corporation”, “railroad”, “railroad company” or “railroad corporation”, as used in the Code and acts of the general assembly now in force or hereafter enacted, are hereby declared to apply to, and include, automobile railways, and all companies or corporations owning or operating such automobile railways, and all provisions of the Code and acts of the general assembly now in force or hereafter enacted affecting railways, railway companies, railway corporations, railroads, railroad companies, or railroad corporations, are hereby declared to affect and apply in full force and effect to all automobile railways and to all automobile railway companies owning or operating such automobile railways. [S13,§2033-f; C24, 27, 31, 35, 39,§8229; C46, 50, 54,§484.29]

## CHAPTER 485

### INTERURBAN RAILWAYS IN CERTAIN CITIES

- 485.1 Use of other tracks — relocation — compensation.
- 485.2 Disputes—notice—hearing—procedure—modification of orders.
- 485.3 Appeal—trial.

- 485.4 Order not suspended by appeal—bond.
- 485.5 Appliances—specifications for construction.
- 485.6 Rules—enforcement of orders.

**485.1 Use of other tracks—relocation—compensation.** When any corporation has heretofore, or hereafter shall be authorized by any city of this state having not less than thirty thousand nor more than thirty-five thousand inhabitants according to the federal census of 1910, to construct and operate an interurban railway upon any of the streets of such city, and shall desire to extend, construct and operate its said interurban railway upon other streets of said city upon which railroad track or tracks are located, and shall be authorized by the city council of said city by resolution so to do, and such streets are so occupied by railroad tracks that it is not practicable to construct and operate said interurban railway thereon, the owners, lessees and operators of said railroad tracks are authorized and required, if practicable, to relocate such of their tracks on said streets as are necessary to permit of the construction and operation of said interurban railway, and if it is not practicable to relocate said railroad tracks, then the owners, lessees and operators are authorized and required to permit said interurban railway to use such of their said tracks as are necessary for the operation and carrying on of the business of said interurban railway, and to permit to be made such alterations in, attachments to and connections with said railroad tracks and to be installed and maintained such trolley system or other construction or equipment as will permit the use in common of said railroad tracks by said interurban railway for railway purposes and by the owners, lessees or other operators thereof for ordinary steam railway purposes.

Where it is practicable to relocate said railroad tracks, and it is also practicable to operate said interurban railway over said tracks without relocating the same, the owners, lessees and operators of such railroad tracks may elect to grant the use thereof to said interurban railway and permit to be made such alterations in, attachments to, and connections with the same and to the installation and maintenance of such trolley system or other construction or equipment as will permit the use in common of said railroad tracks by said interurban railway and the said owners, lessees, and operators thereof, and signify such election in writing, filed in the proceeding before the commencement of the hearing of said proceeding on appeal in the district court as hereinafter provided, then said tracks may be so used in place of being relocated.

The owner of said interurban railway shall pay just compensation to the owners, lessees, or operators of any railroad tracks for the relocation or use and alteration of said railroad tracks, and for the exercise of such other privileges as are granted such interurban railway under the provisions of this chapter. [SS15,§2033-g; C24, 27, 31, 35, 39,§8230; C46, 50, 54,§485.1]

Referred to in §485.6

**485.2 Disputes—notice—hearing—procedure—modification of orders.** If an agreement cannot be made between the said owner of said interurban railway and the owners, lessees, and operators of such railroad tracks for the relocation or use of such railroad tracks, or as

to the alterations, attachments, and connections that shall be made therein or thereto, or as to the manner of the installation and maintenance of the trolley system or other construction or equipment such as will permit such common use of such tracks, or the terms and conditions of or the compensation to be paid for such relocation or use and the alterations or attachments to said railroad tracks and the exercise of such other privileges as are granted to such interurban railway under the provisions of this chapter, then all said matters shall be heard and determined by the state commerce commission upon petition to said commission by the owner of said interurban railway or other party to the controversy.

Upon filing of said petition said commission shall fix a time for the hearing thereof, and twenty days notice of the filing of said petition and of the time fixed for the hearing thereof shall be given by the petitioner to the opposite parties. Said notice shall be served in the manner provided by law for the service of notices of the commencement of a civil action in the district court.

The commission shall have the power and, upon the demand of any party appearing in said proceeding, shall appoint a shorthand reporter who shall take the evidence offered or introduced upon the hearing, and the commission shall have power to require any party to said hearing to produce books, records, papers, or other documents material to said inquiry, and shall have the power to subpoena and require the attendance of witnesses.

All orders of the commission or revisions or modifications of said orders shall be subject to revision or modification by the commission upon application of any party to the original proceeding, made in the same manner and under the same procedure as is provided for applications for original orders, provided that there shall be no revisions or modification of any order for the relocation of railroad tracks or of compensation if the total compensation was fixed at one definite sum; provided, further, that in the event of additional cost of construction or additional cost of maintenance occasioned by viaducts, track elevation or depression, crossing gates, or other safety appliances or the installation of more expensive types of track construction, the compensation shall be subject to revision and modification in the manner and by the method as in this chapter provided. [SS15,§2033-h; C24, 27, 31, 35, 39, §8231; C46, 50, 54,§485.2]

**485.3 Appeal—trial.** Any party to said proceeding may appeal to the district court of the county where said city is located from any order made by the state commerce commission under this chapter within twenty days from the date of the order appealed from.

Such appeal shall be taken and perfected by the party appealing by serving a notice in writing upon the other parties to said proceeding, specifying the order or part thereof appealed from, and by filing in the office of the clerk of

the district court of the county to which said appeal is taken, a petition stating the general nature of the proceeding before said state commerce commission and of the order or part thereof appealed from, and that an appeal has been taken and asking the court to determine the matter in controversy.

Such notice of appeal shall be served and proof of service thereof made in the same manner as an original notice in a civil action, and shall be filed with the secretary of the state commerce commission. Service of such notice of appeal may be made upon any attorney appearing for any party in the proceedings before the state commerce commission with the same force and effect as if served upon such party.

Such petition filed in the office of the clerk of the district court to which an appeal is taken shall be entitled in the name of the interurban railway company as plaintiff and the other parties to the appeal as defendants.

Immediately after twenty days from the date of any order appealed from, said state commerce commission shall certify to the clerk of the district court to which an appeal or appeals have been taken, a transcript of the papers and proceedings before said commission and its order thereon and all notices of appeal therefrom with proofs of service thereof.

All appeals growing out of a single order of said state commerce commission shall be consolidated and tried together, provided that if the owners, lessees, and operators of said railroad tracks have filed their election to permit the use of said tracks by said interurban railway after an appeal has been taken by any party to the proceedings as herein provided, each and all of the matters and things heard and determined by the state commerce commission shall, subject to such election, be heard and determined by the district court the same as if each of the parties to said proceeding had appealed from the entire order of said commission.

The proceedings upon appeal shall be in equity and subject to all of the rules of equity practice, except that the court shall require the issues to be made up at the first term after the petition is filed and give the proceedings precedence over other civil business and try the same thereat, if possible. The action shall be triable de novo upon said appeal; provided, however, that the question of the amount of compensation for the relocation or use of any tracks and for the other privileges granted shall be tried in the same manner and with the same effect as trials upon appeal from assessments for the taking of private property for works of internal improvement.

Upon trial to determine the amount of compensation, the court shall first determine the basis, whether as rental or otherwise, upon which compensation shall be paid, and the terms and conditions of such payment, and all questions of the amount of compensation shall, upon such appeal, be tried before

the same jury, who shall return a separate verdict fixing the amount of compensation to which each party to the proceedings is entitled, and in the event of appeal to the supreme court, the proceedings tried before a jury shall be heard and determined the same as in a law action. [SS15,§2033-i; C24, 27, 31, 35, 39,§8232; C46, 50, 54,§485.3]

**485.4 Order not suspended by appeal—bond.** The appeal shall not suspend any order appealed from, if the interurban railway company in whose behalf any order is made by the state commerce commission shall file in the office of the clerk of the district court of the county to which such appeal is taken, a bond in such amount and upon such conditions as the district court to which such appeal is taken, or a judge thereof, may, upon application of said interurban railway, require. [SS15,§2033-j; C24, 27, 31, 35, 39,§8233; C46, 50, 54,§485.4]

**485.5 Appliances — specifications for construction.** The Iowa state commerce commission is hereby authorized, directed, and empowered to inspect any and all wires and appliances authorized by this section and to condemn and order removed, or placed in safe condition, all wires and appliances erected or maintained in violation of the terms and conditions hereof.

1. No wire or cable used to conduct electricity for light and power shall be erected or maintained on any pole or appliance attached to such pole, within a less distance than thirteen inches from the center line of such pole; nor shall any wire or cable be erected or maintained in the vicinity of any pole, and unattached thereto, within the distance of thirteen inches from the center line of such pole.

2. Nor shall any wire or cable carrying less than six hundred volts of electricity be erected or maintained within a distance of forty inches from any wire or cable which carries at any time more than six hundred volts of electricity.

3. Nor shall any wire or cable which carries at any time more than six hundred volts of electricity be erected or maintained within a distance of forty inches from any wire or cable carrying less than six hundred volts of electricity.

4. Nor shall any wire be erected or maintained running parallel, crossing, or attached to same pole at a less distance than seven feet from any wire carrying thirteen thousand volts or more.

5. No wire or cable carrying more than thirteen thousand volts of electricity shall be erected or maintained across or above any wire or cable carrying less than thirteen thousand volts at point of crossing without at all times maintaining approved methods of construction to prevent falling and coming in contact with wires of lesser voltage.

6. No guy wire or guy cable attached to any pole or appliance to which is attached any wire or cable used to conduct electricity for light and power shall be erected or maintained without causing such guy wire or guy cable to be kept effectively insulated by approved insulators placed in such wire or cable not less than nine feet, nor more than eleven feet, from each end thereof; provided, however, that the lower insulator shall not be less than eight feet, perpendicularly, from the ground.

7. No wire or cable shall be erected or maintained vertically on any wooden pole, without causing such wire or cable to be at all times incased in a casing of wooden material not less than three-quarters of an inch in thickness, or of other insulating material approved by the state commerce commission; provided, however, that the provisions of this section shall not apply to any vertical wire which is more than thirteen inches from center line of pole.

8. Trolley span wires shall be insulated by not less than two approved insulators between such trolley wire and the pole or other support; such insulators shall be placed not less than two or more than four feet from point of attachment to wire or pole.

9. No pole or other structure used for the support of wires shall be erected or maintained at a less distance than six feet from the nearest rail of any steam, electric, or other railway track over which freight cars may be operated.

10. All poles must be distinctly and permanently marked with owner's name, at a point not less than five nor more than seven feet above the ground. All wooden poles of any lead must be as nearly as practicable uniformly spaced, of uniform height, and not less than forty poles to the mile.

11. Wires or cables carrying electric current for light and power must not be erected or maintained on any bracket or knob attached directly to any pole or crossarm.

12. No trolley wire authorized by this chapter shall be erected or maintained at a less distance than twenty-two feet above any track.

13. All devices and materials, insulators, and other methods of insulation of wires shall conform to specifications approved by the state commerce commission. No wire shall be stretched within four feet of any building without being attached to and insulated therefrom. No wires shall hang within a less distance than twenty-two feet of the ground at the lowest point of sag. In case of leads crossing each other, each lead must pass above or below the other, and under no circumstances shall any wire of one lead run through the other lead.

14. Primary or high potential wire must be provided with approved line cutouts on all branches, and at all transformers; and mains shall be divided into sections by approved cutouts located as directed by the state commerce commission. All wires and cutouts on same crossarm must be at least fourteen inches

apart, except pole wires, which must be twenty-six inches apart. [SS15,§2033-k; C24, 27, 31, 35, 39,§8234; C46, 50, 54,§485.5]

Referred to in §485.6

**485.6 Rules—enforcement of orders.** In any case where it is found impracticable to comply with the foregoing requirements or when to the satisfaction of the state commerce commission it is found that in the advancement of the art or trade, improved methods, appliances, fixtures, and requirements will the better conserve persons and property, including the operation of such property, the state commerce commission is hereby empowered, upon application made in writing, to allow such reasonable deviation therefrom as may be deemed reasonably safe and necessary.

It shall be unlawful for any person, firm, association, or corporation including a municipal corporation to place, construct, keep, or maintain any fixture, appliance, or other thing contrary to the terms and provisions of this and section 485.5, and the state commerce com-

mission is hereby empowered to enforce the provisions of this and section 485.5 with reference to such matter.

The state commerce commission is hereby authorized and empowered to make such other rules and regulations and fix standards of and for appliances and fixtures as may be deemed reasonably necessary from time to time for the purpose of protecting persons and property; and such order made by the commission shall be deemed reasonable and necessary and the burden of proof shall rest upon any complainant to prove the contrary.

The state commerce commission shall give reasonable notice of any order or requirement within the contemplation of this chapter and cause the same to be enforced by an action in equity.

The terms, conditions, and provisions of this and section 485.5 shall only apply to such inter-urban railway construction and conditions contemplated by section 485.1. [SS15,§2033-k; C24, 27, 31, 35, 39,§8235; C46, 50, 54,§485.6]

## CHAPTER 486

### EXPRESS COMPANIES

486.1 Regulation—statutes applicable.  
486.2 Supervision—joint rates.  
486.3 Schedule of rates.  
486.4 Presumption.  
486.5 Posting of schedules.

486.6 Excessive charges.  
486.7 Violations.  
486.8 Duty to transport.  
486.9 Damages and penalty.

**486.1 Regulation—statutes applicable.** All express companies operating and doing business in this state are declared to be common carriers, and it shall be the duty of every such express company or common carrier to transport all property, parcels, money, merchandise, packages, and other things of value which may be offered to them for transportation, at a reasonable charge or rate therefor; and all laws so far as applicable, now in force or hereafter enacted, regulating the transportation of property by railroad companies, shall apply with equal force and effect to express companies. [C97,§2165; S13,§2165-a; C24, 27, 31, 35, 39,§8236; C46, 50, 54,§486.1]

**486.2 Supervision—joint rates.** The Iowa state commerce commission shall have general supervision of all express companies operating and doing business in this state; and shall inquire into any unjust discrimination, neglect, or violation of the laws of this state governing common carriers, by any express company doing business therein, or by the officers, agents, or employees thereof; and they shall have power, and it shall be their duty, to fix and establish reasonable, fair, and just rates of charges including a schedule of maximum joint rates for each kind or class of property, money, parcels, merchandise, packages, and other things to be charged for and received by each express company or carriers by express,

separately or conjointly, on all such property, money, parcels, merchandise, packages, and other things which by the contract of carriage are to be transported separately or conjointly by such express companies, or carriers by express, doing business over the line of any railroad or other carrier between points wholly within the state, which rates or charges shall be made to apply to all such express companies or express carriers, and may be changed or modified by said commission from time to time in such manner as may become necessary. [C97,§2166; S13,§2165-b; C24, 27, 31, 35, 39,§8237; C46, 50, 54,§486.2]

**486.3 Schedule of rates.** It shall be the duty of said state commerce commission, and it is hereby directed, to prepare and make for each express company doing business in this state a schedule of reasonable maximum charges of rates for transporting property, money, parcels, merchandise, packages, and other things carried by such express company or companies between points wholly within the state. [C97,§2166; S13,§2165-c; C24, 27, 31, 35, 39,§8238; C46, 50, 54,§486.3]

S13,§2165-c, editorially divided

**486.4 Presumption.** In all actions brought against such common carriers wherein there are involved the charges thereof for the transportation of any property, or any unjust discrimination in relation thereto, the schedules

or reasonable maximum rates of charges so made by the state commerce commission shall be taken as prima-facie evidence in all courts that the rates fixed therein are reasonable and just maximum rates of charges for which said schedules have been prepared. [C97,§2166; S13,§2165-c; C24, 27, 31, 35, 39, §8239; C46, 50, 51,§486.4]

**486.5 Posting of schedules.** It shall be the duty of every such company or common carrier engaged in transporting property, money, parcels, merchandise, packages and other things, to print in clear and legible type the schedules of rates for transportation of such property, money, parcels, merchandise, packages, and other things, so made by such state commerce commission, and shall post in each of its offices or places of business where patrons visit for the purpose of making and receiving shipments, and keep displayed in each office or place of business within convenient access, and for the inspection and use of the public during customary business hours such printed schedule of rates of charges and any amendments thereto, and shall also post and display in similar manner any special rules and regulations which may be promulgated by them or said state commerce commission for the information of their patrons. [S13,§2165-d; C24, 27, 31, 35, 39,§8240; C46, 50, 54,§486.5]

**486.6 Excessive charges.** It shall be unlawful for any express company or common carrier to charge, demand, collect, or receive a greater compensation for such transportation of property, or for any service in connection therewith, between the points named in such schedules than the rates and charges which are specified in the schedules made by said state commerce commission and in effect at the time. [S13,§2165-e; C24, 27, 31, 35, 39,§8241; C46, 50, 54,§486.6]

S13,§2165-e, editorially divided

**486.7 Violations.** Any such express company or common carrier, any officer, representative, or agent of any express company, or carrier, who knowingly violates the provisions of this chapter shall forfeit to the state the sum of five hundred dollars for each offense, to be recovered as by law provided. [S13,§2165-e; C24, 27, 31, 35, 39,§8242; C46, 50, 54, §486.7]

**486.8 Duty to transport.** Each and every express company or carrier by express, as herein defined, doing business within the state, shall at all convenient times during the hours of business accept and receive for prompt transportation and shipment destined to points on their own line, or to points on the lines of other express companies operating within the state, or for points beyond said state, all property, parcels, money, merchandise, packages, and other things of value which may be offered to them, or either of them for transportation by the public. [S13,§2165-f; C24, 27, 31, 35, 39,§8243; C46, 50, 54,§486.8]

S13,§2165-f, editorially divided

**486.9 Damages and penalty.** Any express company or other common carrier refusing to transport goods as above provided taking the same in the order presented, shall be liable to the party injured for damages sustained by reason of its refusal, and in addition thereto shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done, or where the common carrier resides or has an agent, and each case of refusal shall be construed as a separate offense under this section. [S13,§2165-f; C24, 27, 31, 35, 39, §8244; C46, 50, 54,§486.9]

Similar provision, §616.8

CHAPTER 487

UNIFORM BILLS OF LADING LAW

Referred to in §554.79

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## PART I

## THE ISSUE OF BILLS OF LADING

**487.1 Bills governed.** Bills of lading issued by any common carrier shall be governed by this chapter. [S13,§3138-b; C24, 27, 31, 35, 39, §8245; C46, 50, 54,§487.1]

**487.2 Essential terms.** Every bill must embody within its written or printed terms:

1. The date of its issue.
2. The name of the person from whom the goods have been received.
3. The place where the goods have been received.
4. The place to which the goods are to be transported.
5. A statement whether the goods received will be delivered to a specified person, or to the order of a specified person.
6. A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 487.23.
7. The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. [S13,

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§3138-b1; C24, 27, 31, 35, 39,§8246; C46, 50, 54, §487.2]

**487.3 What terms may be inserted.** A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to law or public policy, or
2. In any wise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [S13,§3138-b2; C24, 27, 31, 35, 39, §8247; C46, 50, 54,§487.3]

**487.4 Nonnegotiable or straight bill.** A bill in which it is stated that the goods are consigned or destined to a specified person, is a nonnegotiable or straight bill. [S13,§3138-b3; C24, 27, 31, 35, 39,§8248; C46, 50, 54,§487.4]

**487.5 Negotiable or order bill.** A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill. Any provision in such a bill that it is nonnegotiable shall not affect its negotiability within the meaning of this chapter. [S13, §3138-b4; C24, 27, 31, 35, 39,§8249; C46, 50, 54, §487.5]

**487.6 Negotiable bills must not be issued in sets.** Negotiable bills issued in this state

for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. [S13,§3138-b5; C24, 27, 31, 35, 39,§8250; C46, 50, 54,§487.6]

**487.7 Duplicate negotiable bills must be so marked.** When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. [S13,§3138-b6; C24, 27, 31, 35, 39,§8251; C46, 50, 54,§487.7]

Referred to in §487.6

**487.8 Nonnegotiable bill shall be so marked.** A nonnegotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable". This section shall not apply, however, to memoranda or acknowledgments of an informal character. [S13,§3138-b7; C24, 27, 31, 35, 39,§8252; C46, 50, 54,§487.8]

**487.9 Insertion of name of person to be notified.** The insertion in a negotiable bill of the name of a person to be notified of the arrival of goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [S13,§3138-b8; C24, 27, 31, 35, 39,§8253; C46, 50, 54,§487.9]

**487.10 Acceptance of bill indicates assent to its terms.** Except as otherwise provided in this chapter, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. [S13, §3138-b9; C24, 27, 31, 35, 39,§8254; C46, 50, 54, §487.10]

PART II

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING

**487.11 Obligation of carrier to deliver.** A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for

the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

1. An offer in good faith to satisfy the carrier's lawful lien upon the goods,
2. An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [S13,§3138-b10; C24, 27, 31, 35, 39,§8255; C46, 50, 54,§487.11]

**487.12 Justification of carrier in delivering.** A carrier is justified, subject to the provisions of sections 487.13 to 487.15, inclusive, in delivering goods to one who is:

1. A person lawfully entitled to the possession of the goods, or
2. The consignee named in a nonnegotiable bill for the goods, or
3. A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. [S13,§3138-b11; C24, 27, 31, 35, 39,§8256; C46, 50, 54,§487.12]

Referred to in §§487.13, 487.22

**487.13 Carrier's liability for misdelivery.** Where a carrier delivers goods to one who is not lawfully entitled to the possession of them the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subsections 2 and 3 of section 487.12; and, though he delivered the goods as authorized by either of said subsections, he shall be so liable if prior to such delivery he:

1. Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or
2. Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [S13,§3138-b12; C24, 27, 31, 35, 39, §8257; C46, 50, 54,§487.13]

Referred to in §487.12

**487.14 Negotiable bill must be canceled when goods delivered.** Except as provided in

section 487.27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. [S13,§3138-b13; C24, 27, 31, 35, 39,§8258; C46, 50, 54,§487.14]

Referred to in §487.12

**487.15 Negotiable bills must be canceled or marked when part of goods delivered.** Except as provided in section 487.27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

1. To take up and cancel the bill, or

2. To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [S13,§3138-b14; C24, 27, 31, 35, 39,§8259; C46, 50, 54,§487.15]

Referred to in §487.12

**487.16 Altered bills.** Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [S13,§3138-b15; C24, 27, 31, 35, 39,§8260; C46, 50, 54,§487.16]

**487.17 Lost or destroyed bill.** Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [S13,§3138-b16; C24, 27, 31, 35, 39,§8261; C46, 50, 54,§487.17]

**487.18 Effect of duplicate bills.** A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [S13,§3138-b17; C24, 27, 31, 35, 39,§8262; C46, 50, 54,§487.18]

**487.19 Carrier cannot set up title in himself.** No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [S13, §3138-b18; C24, 27, 31, 35, 39,§8263; C46, 50, 54, §487.19]

**487.20 Interpleader of adverse claimants.** If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate. [S13,§3138-b19; C24, 27, 31, 35, 39,§8264; C46, 50, 54,§487.20]

Referred to in §487.22

**487.21 Carrier has reasonable time to determine validity of claims.** If someone other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [S13,§3138-b20; C24, 27, 31, 35, 39, §8265; C46, 50, 54,§487.21]

Referred to in §487.22

**487.22 Adverse title is no defense, except as above provided.** Except as provided in section 487.12 and in sections 487.20 and 487.21, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. [S13,§3138-b21; C24, 27, 31, 35, 39, §8266; C46, 50, 54,§487.22]

**487.23 Liability for nonreceipt or misdescription of goods.** If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

1. The consignee named in a nonnegotiable bill, or

2. The holder of a negotiable bill, who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in the bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or the condition of contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill. [S13,§3138-b22; C24, 27, 31, 35, 39,§8267; C46, 50, 54,§487.23]

Referred to in §487.2

**487.24 Attachment or levy upon goods for which a negotiable bill has been issued.** If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [S13,§3138-b23; C24, 27, 31, 35, 39,§8268; C46, 50, 54,§487.24]

**487.25 Creditor's remedies to reach negotiable bills.** A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [S13, §3138-b24; C24, 27, 31, 35, 39,§8269; C46, 50, 54, §487.25]

**487.26 Negotiable bill must state charges for which lien is claimed.** If a negotiable bill

is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage, and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [S13,§3138-b25; C24, 27, 31, 35, 39,§8270; C46, 50, 54,§487.26]

**487.27 Effect of sale.** After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. [S13,§3138-b26; C24, 27, 31, 35, 39,§8271; C46, 50, 54,§487.27]

Referred to in §§487.14, 487.15

#### PART III

#### NEGOTIATION AND TRANSFER OF BILLS

**487.28 Negotiation of negotiable bills by delivery.** A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [S13,§3138-b27; C24, 27, 31, 35, 39,§8272; C46, 50, 54,§487.28]

**487.29 Negotiation of negotiable bills by indorsement.** A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [S13, §3138-b28; C24, 27, 31, 35, 39,§8273; C46, 50, 54, §487.29]

**487.30 Transfer of bills.** A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A nonnegotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right. [S13,§3138-b29; C24, 27, 31, 35, 39, §8274; C46, 50, 54,§487.30]

Similar provisions, ch 539

**487.31 Who may negotiate a bill.** A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [S13,§3138-b30; C24, 27, 31, 35, 39,§8275; C46, 50, 54,§487.31]

**487.32 Rights of person to whom a bill has been negotiated.** A person to whom a negotiable bill has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

2. The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. [S13,§3138-b31; C24, 27, 31, 35, 39,§8276; C46, 50, 54,§487.32]

**487.33 Rights of person to whom a bill has been transferred.** A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is nonnegotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. [S13, §3138-b32; C24, 27, 31, 35, 39,§8277; C46, 50, 54, §487.33]

**487.34 Transfer of negotiable bill without indorsement.** Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [S13, §3138-b33; C24, 27, 31, 35, 39,§8278; C46, 50, 54, §487.34]

**487.35 Warranties on sale of bill.** A person who negotiates or transfers for value a bill by indorsement or delivery, including one who

assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

1. That the bill is genuine.

2. That he has a legal right to transfer it.

3. That he has knowledge of no fact which would impair the validity or worth of the bill.

4. That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. [S13,§3138-b34; C24, 27, 31, 35, 39,§8279; C46, 50, 54,§487.35]

**487.36 Indorser not a guarantor.** The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [S13,§3138-b35; C24, 27, 31, 35, 39,§8280; C46, 50, 54,§487.36]

**487.37 No warranty implied from accepting payment of a debt.** A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. [S13,§3138-b36; C24, 27, 31, 35, 39,§8281; C46, 50, 54,§487.37]

**487.38 When negotiation not impaired by fraud, accident, mistake, duress, or conversion.** The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, or conversion. [S13,§3138-b37; C24, 27, 31, 35, 39,§8282; C46, 50, 54,§487.38]

**487.39 Subsequent negotiation.** Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [S13, §3138-b38; C24, 27, 31, 35, 39,§8283; C46, 50, 54, §487.39]

**487.40 Form of the bill as indicating rights of buyer and seller.** Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

1. Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

2. Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligation under the contract.

3. Where by the bill the goods are deliverable to the order of the buyer or his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

4. Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. [S13,§3138-b39; C24, 27, 31, 35, 39,§8284; C46, 50, 54,§487.40]

**487.41 Sight draft—assumptions of buyer.** Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

1. If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter, whether such three days be termed days of grace or not, that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

2. If the draft is by its terms payable on time, extending beyond three days after de-

mand, presentation, or sight, whether such three days be termed days of grace or not, that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. [S13,§3138-b40; C24, 27, 31, 35, 39,§8285; C46, 50, 54,§487.41]

**487.42 Negotiation defeats vendor's lien.** Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [S13,§3138-b41; C24, 27, 31, 35, 39,§8286; C46, 50, 54,§487.42]

Referred to in §487.43

**487.43 When rights and remedies under mortgages and liens are not limited.** Except as provided in section 487.42, nothing in this chapter shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this chapter, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [S13,§3138-b42; C24, 27, 31, 35, 39,§8287; C46, 50, 54,§487.43]

#### PART IV CRIMINAL OFFENSES

**487.44 Issue of bill for goods not received.** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-b43; C24, 27, 31, 35, 39,§8288; C46, 50, 54,§487.44]

Referred to in §487.51

**487.45 Issue of bill containing false statement.** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S13,§3138-b44; C24, 27, 31, 35, 39,§8289; C46, 50, 54,§487.45]

Referred to in §487.51

**487.46 Issue of duplicate bills not so marked.** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 487.7 knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-b45; C24, 27, 31, 35, 39,§8290; C46, 50, 54, §487.46]

Referred to in §487.51

**487.47 Negotiation of bill for mortgaged goods.** Any person who ships goods to which he has not a title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S13,§3138-b46; C24, 27, 31, 35, 39,§8291; C46, 50, 54,§487.47]

Referred to in §487.51  
Analogous section, §710.12

**487.48 Negotiation of bill when goods are not in carrier's possession.** Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-b47; C24, 27, 31, 35, 39, §8292; C46, 50, 54,§487.48]

Referred to in §487.51

**487.49 Inducing carrier to issue bill when goods have not been received.** Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier, or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-b48; C24, 27, 31, 35, 39, §8293; C46, 50, 54,§487.49]

Referred to in §487.51

**487.50 Issue of nonnegotiable bill not so marked.** Any person who with intent to defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-b49; C24, 27, 31, 35, 39,§8294; C46, 50, 54,§487.50]

Referred to in §487.51

**487.51 Place of imprisonment.** The imprisonment referred to in sections 487.44 to 487.50, inclusive, shall be in the penitentiary or men's or women's reformatory, as the case may be. [C31, 35,§8294-d1; C39,§8294.1; C46, 50, 54,§487.51]

Not in original uniform act

#### PART V INTERPRETATION

**487.52 Rule for cases not provided for in this chapter.** In any case not provided for in this chapter, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress, or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. [S13,§3138-b50; C24, 27, 31, 35, 39,§8295; C46, 50, 54,§487.52]

**487.53 Interpretation shall give effect to purpose of uniformity.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [S13,§3138-b51; C24, 27, 31, 35, 39,§8296; C46, 50, 54,§487.53]

#### 487.54 Definitions.

1. In this chapter, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, setoff, and suit in equity.

Counterclaim generally, §614.12, and R.C.P. 29 and 30

"Bill" means bill of lading.

"Signinee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to

support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

Similar provisions, §§541.25, 542.58, 554.77

2. A thing is done "in good faith", within the meaning of this chapter, when it is in fact

done honestly, whether it be done negligently or not. [S13,§3138-b52; C24, 27, 31, 35, 39,§8297; C46, 50, 54,§487.54]

**487.55 Name of chapter.** This chapter may be cited as the "Uniform Bills of Lading Law". [S13,§3138-b56; C24, 27, 31, 35, 39,§8299; C46, 50, 54,§487.55]

**CHAPTER 488**

**TELEGRAPH AND TELEPHONE LINES AND COMPANIES**

- 488.1 Right of way.
- 488.2 Removal of lines.
- 488.3 Construction—damages.
- 488.4 Condemnation.
- 488.5 Equal facilities—delay.
- 488.6 Delay—willful error—revealing contents.
- 488.7 Mistakes and delays.
- 488.8 Negligence presumed.

- 488.9 Presentation of claim.

**RECIPROCAL SERVICE**

- 488.10 Definitions.
- 488.11 Facilities to local exchange.
- 488.12 Transmission of messages.
- 488.13 Facilities to long distance companies.
- 488.14 Violations—effect.

**488.1 Right of way.** Any person or firm, and any corporation organized for such purpose, within or without the state, may construct a telegraph or telephone line along the public roads of the state, or across the rivers or over any lands belonging to the state or any private individual, and may erect the necessary fixtures therefor. [C51,§780; R60,§1348; C73,§1324; C97,§2158; C24, 27, 31, 35, 39,§8300; C46, 50, 54,§488.1]

C97,§2158, editorially divided  
 Authorization in cities and towns, ch 386  
 Removal, ch 319

**488.2 Removal of lines.** When any road along which said line has been constructed shall be changed, the person, firm or corporation shall, upon ninety days notice in writing, remove said lines to said road as established. The notice may be served upon any agent or operator in the employ of such person, firm or corporation. [C73,§1324; C97,§2158; C24, 27, 31, 35, 39,§8301; C46, 50, 54,§488.2]

**488.3 Construction — damages.** Such fixtures shall not be so constructed as to inconvenience the public in the use of any road or the navigation of any stream; nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damage he thereby sustains. [C51, §781; R60,§1349; C73,§1325; C97,§2159; C24, 27, 31, 35, 39,§8302; C46, 50, 54,§488.3]

**488.4 Condemnation.** If the person over whose lands such telegraph or telephone line passes claims more damages therefor than the proprietor of such line is willing to pay, the amount thereof may be determined in the same manner as provided for taking private property for works of internal improvement. [C51,§782; R60,§1350; C73,§1326; C97,§2160; C24, 27, 31, 35, 39,§8303; C46, 50, 54,§488.4]

Condemnation procedure, ch 472

**488.5 Equal facilities—delay.** If the proprietor of any telegraph or telephone line with-

in the state, or the person having the control and management thereof, refuses to furnish equal facilities to the public and to all connecting lines for the transmission of communications in accordance with the nature of the business which it undertakes to carry on, or to transmit the same with fidelity and without unreasonable delay, the law in relation to limited partnerships, corporations, and to the taking of private property for works of internal improvement, shall not longer apply to them, and property taken for the use thereof without the consent of the owner may be recovered by him. [C51,§783; R60,§1351; C73,§1327; C97, §2161; C24, 27, 31, 35, 39,§8304; C46, 50, 54, §488.5]

Eminent domain, ch 471  
 Limited partnerships, ch 545

**488.6 Delay—willful error—revealing contents.** Any person employed in transmitting messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone willfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed, or his agent or attorney, or willfully and wrongfully takes or receives any telegraph or telephone message, he is guilty of a misdemeanor. [C51,§784; R60,§1352; C73,§1328; C97,§2162; C24, 27, 31, 35, 39,§8305; C46, 50, 54,§488.6]

Punishment, §687.7

**488.7 Mistakes and delays.** The proprietor of a telegraph or telephone line is liable for all mistakes in transmitting or receiving messages made by any person in his employment, or for any unreasonable delay in their transmission or delivery, and for all damages resulting from failure to perform the foregoing or any other duty required by law, the provisions of any contract to the contrary notwithstanding. [C51, §785; R60,§1353; C73,§1329; C97,§2163; C24, 27, 31, 35, 39,§8306; C46, 50, 54,§488.7]



**488.8 Negligence presumed.** In any action against any telegraph or telephone company for damages caused by erroneous transmission of a message, or by unreasonable delay in delivery of a message, negligence on the part of the telegraph or telephone company shall be presumed upon proof of erroneous transmission or of unreasonable delay in delivery, and the burden of proof that such error or delay was not due to negligence upon its part shall rest upon such company. [C97,§2164; C24, 27, 31, 35, 39,§8307; C46, 50, 54,§488.8]

C97,§2164, editorially divided

**488.9 Presentation of claim.** No action for the recovery of such damages shall be maintained unless a claim therefor is presented in writing to such company, officer or agent thereof within sixty days from time cause of action accrues. [C97,§2164; C24, 27, 31, 35, 39,§8308; C46, 50, 54,§488.9]

#### RECIPROCAL SERVICE

##### 488.10 Definitions.

1. "Local exchange", within the meaning of this act\*, shall refer to a telephone line or lines and/or to a telephone switchboard or switchboards operating by virtue of a franchise granted by a city or town furnishing telephonic communication between two or more members of the public within the same city, town, village, community, locality and/or neighborhood, which said line or lines and/or switchboard or switchboards shall be under the same management and control.

"Local exchange" within the meaning of this act shall not include or refer to privately owned or leased lines and/or switchboards, operated and used by members of the public other than telephone and/or telegraph companies as a public utility by which the public is offered telephonic service.

2. "Local exchange company" within the meaning of this act, shall refer to any one or more individuals, firms or corporations operating one or more local exchanges as herein defined.

3. "Long distance company" within the meaning of this act shall refer to and include one or more persons, firms or corporations operating connecting lines between two or more local exchanges, one or more of which local

exchanges are owned by a local telephone company other than such person, firm or corporation, over which line or lines telephonic communication is had between members of the public connected with said local exchanges. [C35,§8308-f1; C39,§8308.1; C46, 50, 54,§488.10]

\*46E×GA, ch 102

**488.11 Facilities to local exchange.** Long distance companies shall furnish equal facilities to any local exchange within the state desiring same, and to that end shall immediately make, or at the option of the long distance company, shall immediately permit to be made under its direction and at reasonably accessible places to be designated by such long distance company, the necessary connections between said local exchange and said long distance company telephone system to effect the furnishing of equal facilities to such local exchange. [C35,§8308-f2; C39,§8308.2; C46, 50, 54,§488.11]

**488.12 Transmission of messages.** After such connection has been made said long distance company shall transmit communications and messages to, from and through all local exchanges connected with its system when requested, with fidelity and equality and without discrimination or unreasonable delay. [C35,§8308-f3; C39,§8308.3; C46, 50, 54,§488.12]

**488.13 Facilities to long distance companies.** A connected local exchange company shall accept and furnish telephonic connection for all messages offered over the lines or through the system of any long distance company without discrimination or unreasonable delay, and with equality. [C35,§8308-f4; C39,§8308.4; C46, 50, 54,§488.13]

**488.14 Violations—effect.** Should any local exchange company or long distance company refuse or fail to furnish the connection or service above required, the law in relation to limited partnerships, corporations, or the taking of private property for works of internal improvement shall no longer apply to them and property taken for the use thereof without the consent of the owner may be recovered by him. [C35,§8308-f5; C39,§8308.5; C46, 50, 54, §488.14]

Eminent domain, ch 471  
Limited partnerships, ch 545

## CHAPTER 489

## ELECTRIC TRANSMISSION LINES

- 489.1 Franchise.  
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**489.1 Franchise.** No individual, company, or corporation shall erect, maintain, or operate any transmission line, wire, or cable along, over, or across any public highway or grounds outside of cities and towns for the transmission, distribution, or sale of electric current, without first procuring from the state commerce commission, or from the board of supervisors in the county or each of the respective counties in which such transmission line is to be constructed or operated, a franchise granting authority so to do as in this chapter provided. [S13,§§1527-c, 2120-n; C24, 27, 31, 35, 39,§8309; C46, 50, 54,§489.1]

Authorization in cities and towns, ch 386

**489.2 Petition for franchise.** Any person, corporation, or company authorized to transact business in the state including cities and towns may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use, and sale of electric current outside cities and towns and for such purpose to erect, use, and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.

Where the application is made to a board of supervisors the applicant shall file a copy of such petition with the state commerce commission at least ten days before the time of the hearing thereon. The state commerce commission must furnish the applicant with a certificate showing the fact with reference to the filing of such copy. [S13,§2120-n; C24, 27, 31, 35, 39,§8310; C46, 50, 54,§489.2]

**489.3 Petition—requirements.** The petition shall set forth:

1. The name of the individual, company, or corporation asking for the franchise.
2. The principal office or place of business.
3. The starting points, routes, and termini

of the proposed lines, accompanied with a map or plat showing such details.

4. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.

5. General specifications as to materials and manner of construction.

6. The maximum voltage to be carried over each line. [S13,§2120-n; C24, 27, 31, 35, 39,§8311; C46, 50, 54,§489.3]

**489.4 Notice of hearing.** Upon the filing of such petition, the board or commission shall fix a date for hearing thereon and cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in a newspaper located in each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, the date and place fixed for hearing thereon, and that all objections thereto must be filed at least five days before said date. Said hearing shall be not less than ten days from the date of the last publication and at the offices of the board or commission before which said matter is pending, unless a different place in such notice is specified. [S13,§2120-n; C24, 27, 31, 35, 39,§8312; C46, 50, 54,§489.4]

**489.5 Objections—hearing.** Any person, company, city, town, or corporation whose rights or interests may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; but all such objections shall be on file with the board or commission at least five days before the date fixed for said hearing. The board or commission may allow objections to be filed later in which event the applicant must be given reasonable time to meet such late objections. The board or commission may examine the proposed route or cause any engineer selected by it to do so. It shall consider said petition and any objections filed thereto, and may hear such testimony as may

aid it in determining the propriety of granting such franchise. It may grant such franchise in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to location and route as may seem to it just and proper. The petitioners shall pay all costs and expenses of said proceeding, including cost of publishing notice, before such franchise shall become effective. [S13,§2120-n; C24, 27, 31, 35, 39,§8313; C46, 50, 54,§489.5]

**489.6 Form of franchise.** The commerce counsel shall prepare a blank form of franchise for such purposes, which shall provide space for a general description of the improvement authorized thereby, the name and address of the person or corporation to whom granted, the general terms and conditions upon which it is granted, and such other things as may be necessary. This blank form shall be filled out and signed by the chairman of the board or commission which grants the franchise, and the official seal shall be attached. Such franchise shall be subject to such regulations and restrictions as the general assembly from time to time may prescribe, and to such rules, not inconsistent with statutes, as the state commerce commission may establish from time to time. [S13,§2120-n; C24, 27, 31, 35, 39,§8314; C46, 50, 54,§489.6]

Legislative control in general, §491.39

**489.7 Valuation of franchise.** No financial consideration shall be charged for such franchise. In fixing the value for rate-making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line. [C24, 27, 31, 35, 39,§8315; C46, 50, 54, §489.7]

**489.8 Exclusive rights—duration of franchise.** No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation, town, or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years. [C24, 27, 31, 35, 39,§8316; C46, 50, 54, §489.8]

**489.9 Franchise transferable—notice.** When any such electric transmission line or lines are sold and transferred either by voluntary or judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of such franchise is made before the improvement for which it was issued is constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file

in the office of the board or commission granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee. [C24, 27, 31, 35, 39, §8317; C46, 50, 54,§489.9]

**489.10 Record of franchises.** The board or commission granting the franchise shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the board or commission shall also make note upon its record of the date of such transfer and the name and address of the transferee.

Every person, company, or corporation which secures a franchise for transmission lines from any board of supervisors must file with the state commerce commission a copy of the order or resolution granting the franchise, certified by the county auditor. The franchise shall be effective when such copy is filed. When so filed the state commerce commission shall issue a statement showing that fact. [C24, 27, 31, 35, 39,§8318; C46, 50, 54, §489.10]

**489.11 Acceptance of franchise.** Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the commission may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners. [S13,§2120-p; C24, 27, 31, 35, 39,§8319; C46, 50, 54,§489.11]

**489.12 Extension of franchise.** Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law, desiring to acquire extensions of such franchise, may petition the board or commission in the manner provided for the granting of a franchise, and the same proceeding shall be had as on an original application. Such petition shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be hereafter enacted shall apply to its existing line or lines, franchises, and rights with the same force and effect as if such franchise had been granted or such lines had been constructed or rights had been obtained under the provisions of this chapter. [S13,§2120-o; C24, 27, 31, 35, 39,§8320; C46, 50, 54,§489.12]

**489.13 Service furnished.** Any city or town which owns or operates a system for the dis-

tribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

It shall be unlawful for the owner or operator of such light and power plant or transmission line to disconnect or discontinue such service (except during nonpayment of reasonable charges) so long as such operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

Until the municipality and the operator shall agree upon a rate or charge for such service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and if none existed then the rate before paid. This shall be without prejudice, however, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of such rate.

This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose. [C24, 27, 31, 35, 39,§8321; C46, 50, 54, §489.13]

**489.14 Eminent domain—procedure—entering on land.** Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by the board or commission, not exceeding one hundred feet in width for right of way and not exceeding one hundred sixty acres in any one location, in addition to right of way, for the location of electric power generating plants and electric substations to carry out the purposes of said franchise. A homestead site, cemetery, orchard or schoolhouse location shall not be condemned for the purpose of erecting an electric power generating plant or electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, electric power generating plants or electric substations, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Any person, company or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain and desiring to enter upon the land, which it proposes to appropriate, for the purpose of examining or surveying the same, shall first file with the Iowa state commerce commission or with the county board of supervisors in the county the land is situated, a written statement under oath setting forth the proposed routing of the line or facility including a de-

scription of the lands to be crossed, the names and addresses of owners, together with request that a permit be issued by said commission or board of supervisors authorizing said person, company or corporation or its duly appointed representative to enter upon the land for the purpose of examining and surveying and to take and use thereon any vehicle and surveying equipment necessary in making the survey. Said commission or board of supervisors shall within ten days after said request issue a permit, accompanied by such bond in such amount as the commission or board of supervisors shall approve, to the person, company or corporation making said application, if in its opinion the application is made in good faith and not for the purpose of harassing the owner of the land. If the commission or the board of supervisors is of the opinion that the application is not made in good faith or made for the purpose of harassment to the owner of said land it shall set the matter for hearing and it shall be heard not more than twenty days after filing said application. Notice of the time and place of hearing shall be given by said commission, or board of supervisors, to the owner of said land by registered mail with a return receipt requested, not less than ten days preceding date of hearing.

Any person, company or corporation that has obtained a permit in the manner herein prescribed may enter upon said land or lands, as above provided, and shall be liable for actual damages sustained in connection with such entry. An action in damages shall be the exclusive remedy. [S13,§2120-q; C24, 27, 31, 35, 39,§8322; C46, 50, 54,§489.14; 57GA, ch 240,§1]

Condemnation procedure, ch 472

**489.15 Injury to person or property.** In case of injury to any person or property by any such transmission line, negligence will be presumed on the part of the person or corporation operating said line in causing said injury, but this presumption may be rebutted by proof. Such presumption shall not exist in favor of employees of the person or corporation operating said transmission line who are charged with or engaged in the construction, reconstruction, repair, or maintenance thereof, unless otherwise provided by the employers liability and workmen's compensation laws of the state. [S13,§2120-s; C24, 27, 31, 35, 39,§8323; C46, 50, 54,§489.15]

**489.16 Access to lines—damages.** Individuals or corporations operating such transmission lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or oper-

ating such line and the owner of said land or crops with reference to the use thereof. [S13,§2120-t; C24, 27, 31, 35, 39,§8324; C46, 50, 54,§489.16]

**489.17 Supervision of construction—location.** The state commerce commission shall have power of supervision over the construction of said transmission line and over its future operation and maintenance. Said transmission line shall be constructed near and parallel to the right of way of the railways of the state or along the division lines of the lands, according to the government survey thereof, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant thereof. [S13,§2120-r; C24, 27, 31, 35, 39,§8325; C46, 50, 54,§489.17]

Removal from highway, ch 319

**489.18 Manner of construction.** Such lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. The state commerce commission shall have power to make and enforce such further and additional rules relating to location, construction, operation and maintenance of said transmission line as may be reasonable. [S13,§2120-r; C24, 27, 31, 35, 39,§8326; C46, 50, 54,§489.18]

**489.19 Distance from buildings.** No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the state commerce commission, in the construction, operation, or maintenance of such lines. [S13,§2120-r; C24, 27, 31, 35, 39,§8327; C46, 50, 54,§489.19]

**489.20 Nonuser.** Unless the improvement for which a franchise is granted is constructed in whole or in part within two years from the granting thereof, it shall be forfeited and the board or commission which granted the franchise shall cancel and revoke the same and make record thereof. [C24, 27, 31, 35, 39,§8329; C46, 50, 54,§489.20]

**489.21 Forfeiture for violations.** If any person, company, or corporation shall violate the provisions of this chapter or any rule established for the construction, maintenance, or operation of such electric transmission line, and shall fail for ninety days after notice from the board or commission to comply therewith, such board or commission shall have power to cancel and annul such franchise and order the removal of such line.

Provided, however, that if proceedings are commenced within said ninety days in any court of competent jurisdiction to determine whether the provisions of this chapter, or whether any rule established for the construction or maintenance or operation of an electrical transmission line, have been violated, or are legal and enforceable rules or provisions, no forfeiture shall be declared or become effective if within sixty days from the date of the final decree or judgment in such proceedings the said rule or provisions have been fully complied with and the cause of forfeiture removed. [C24, 27, 31, 35, 39,§8330; C46, 50, 54, §489.21]

**489.22 Prior franchises—legislative control.** Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control. [C24, 27, 31, 35, 39,§8331; C46, 50, 54,§489.22]

**489.23 Violations.** Any person, company, or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be fined in the sum of not less than one hundred dollars nor more than one thousand dollars; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the state commerce commission in relation thereto, shall be fined not exceeding one hundred dollars. [S13,§1527-d; C24, 27, 31, 35, 39,§8332; C46, 50, 54,§489.23]

**489.24 Wire crossing railroads—supervision.** The state commerce commission shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the state commerce commission prescribe a less height for any wire than twenty-two feet above the top of the rails of any railroad track. [S13,§§2120-

d,-e,-h; C24, 27, 31, 35, 39,§8333; C46, 50, 54, §489.24]

**489.25 Wires across railroad right of way at highways.** The state commerce commission shall prescribe the manner for the crossing of wires over and across railroad rights of way at highways and other places within the state. [S13,§2120-i; C24, 27, 31, 35, 39,§8334; C46, 50, 54,§489.25]

**489.26 Wires—how strung.** No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the state commerce commission. [S13,§2120-f; C24, 27, 31, 35, 39,§8335; C46, 50, 54,§489.26]

**489.27 Examination of existing wires.** The state commerce commission shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such reasonable time as it may prescribe. [S13,

§2120-g; C24, 27, 31, 35, 39,§8336; C46, 50, 54, §489.27]

**489.28 Penalty—enforcement.** Any person or corporation who shall string or maintain any wire across any railroad track in this state at a different height or in a different manner from that prescribed by the state commerce commission shall forfeit and pay to the state the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained. Such forfeiture shall be recovered in a civil action in the name of the state by the commerce counsel, or by the county attorney of the county in which such wire is situated, at the request of the state commerce commission. [S13, §2120-j; C24, 27, 31, 35, 39,§8337; C46, 50, 54, §489.28]

**489.29 Crossing highway.** Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right of way on both sides of any highway, from crossing such public highway under such rules and regulations as the state commerce commission may prescribe, and subject from time to time to legislative control as to duration and use. [C24, 27, 31, 35, 39, §8338; C46, 50, 54,§489.29]

CHAPTER 490

PIPE LINES AND UNDERGROUND GAS STORAGE

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**490.1 Purpose and policy.** It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commerce commission the power and authority to supervise the transportation or transmission of gas, gasoline, oils or motor fuels and/or inflammable fluid within or through this state by pipe line, whether specifically mentioned herein or not, and the power and authority to supervise the underground storage of gas, so as to protect the safety and welfare of the public in their use of any public and/or private highways, grounds, waters and streams of any kind in this state. [C35,§8338-f14; C39,§8338.22; C46, 50, 54,§490.1]

**490.2 Definitions.** The term “pipe line” insofar as this chapter is concerned shall include and mean any pipe, pipes or pipe lines used for the transportation or transmission of gas, gasoline, oils or motor fuels and/or inflammable fluids within or through this state.

The term “pipe-line company”, insofar as this chapter is concerned shall include and mean any person, firm, copartnership, association, corporation or syndicate engaged in or organized for the purpose of owning, operating or controlling pipe lines for the transportation or transmission of gas, gasoline, oils or motor fuels and/or inflammable fluids within or through this state.

The term "commission" when used in this chapter means the state commerce commission.

The term "underground storage" insofar as this chapter is concerned shall include and mean storage of gas in a subsurface stratum or formation of the earth. [C31,§8338-d1; C35, §8338-f15; C39,§8338.23; C46, 50, 54,§490.2]

**490.3 Conditions attending operation.** No pipe-line company shall construct, maintain or operate any pipe line or lines under, along, over or across any public and/or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter. [C31,§8338-d2; C35, §8338-f16; C39,§8338.24; C46, 50, 54,§490.3]

**490.4 Dangerous construction.** The commission is vested with power and authority and it shall be its duty to supervise all pipe lines and underground storage and pipe-line companies and shall from time to time inspect and examine the construction, maintenance and the condition of said pipe lines and underground storage facilities and whenever said commission shall determine that any pipe line and underground storage facilities or any apparatus, device or equipment used in connection therewith is unsafe and dangerous it shall immediately in writing notify said pipe-line company, constructing or operating said pipe line and underground storage facilities, device, apparatus or other equipment to repair or replace any defective or unsafe part or portion of said pipe line and underground storage facilities, device, apparatus or equipment. [C31,§8338-d29; C35,§8338-f17; C39,§8338.25; C46, 50, 54,§490.4]

**490.5 Application for permit.** Any pipe-line company engaging in its said business in this state shall file with the state commerce commission its verified petition asking for a permit to construct, maintain and operate its pipe line or lines along, over or across the public and/or private highways, grounds, waters and streams of any kind of this state. Any pipe-line company now owning or operating a pipe line in this state shall be issued a permit by the commission upon supplying the information as provided for in section 490.6.

Any pipe-line company engaging in its said business in this state and proposing to engage in underground storage of gas within this state shall file with the state commerce commission its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipe lines, and stations necessary for the construction, maintenance and operation of such gas underground storage facilities. [C31,§8338-d3; C35,§8338-f18; C39, §8338.26; C46, 50, 54,§490.5]

**490.6 Petition.** Said petition shall state:

1. The name of the individual, firm, corpora-

tion, company, or association asking for said permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of said proposed line or lines, together with a map thereof.

4. A general description of the public and/or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.

5. The specifications of material and manner of construction.

6. The maximum and normal operating pressure under which it is proposed to transport gas, gasoline, oils, or motor fuels and/or inflammable fluids.

7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public and/or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities. [C31,§8338-d4; C35, §8338-f19; C39,§8338.27; C46, 50, 54,§490.6]

Referred to in §490.5

**490.7 Hearing—notice.** Upon the filing of said petition the state commerce commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county through which said proposed line or lines or gas storage facilities will extend; said notice to be published for two consecutive weeks. [C31,§8338-d5; C35,§8338-f20; C39, §8338.28; C46, 50, 54,§490.7]

**490.8 Time and place.** Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of said state commerce commission, or such place as the commission shall designate. [C31,§8338-d6; C35, §8338-f21; C39,§8338.29; C46, 50, 54,§490.8]

**490.9 Objections.** Any person, corporation, company, city or town whose rights or interests may be affected by said pipe line or lines or gas storage facilities may file written objections to said proposed pipe line or lines or gas storage facilities or to the granting of said permit. [C31,§8338-d7; C35,§8338-f22; C39, §8338.30; C46, 50, 54,§490.9]

**490.10 Filing.** All such objections shall be on file in the office of said state commerce commission not less than five days before the date of hearing on said application but said

state commerce commission may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections. [C31,§8338-d8; C35,§8338-f23; C39,§8338.31; C46, 50, 54,§490.10]

**490.11 Examination—testimony.** The said state commerce commission may examine the proposed route of said pipe line or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said state commerce commission shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit. [C31,§8338-d9; C35,§8338-f24; C39,§8338.32; C46, 50, 54,§490.11]

**490.12 Final order—condition.** It may grant such permit in whole or in part upon such terms, conditions and restrictions as to safety requirements and as to location and route as may be determined by it to be just and proper. Provided, however, that before any permit shall be granted to any pipe-line company proposing to engage in intrastate commerce, the commission shall, after a public hearing as provided in this chapter, determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to such effect shall be a condition precedent to the granting of such permit. [C31,§8338-d10; C35,§8338-f25; C39,§8338.33; C46, 50, 54,§490.12]

**490.13 Costs and fees.** Applicant shall pay all costs and expenses of the hearing and necessary preliminary investigation in connection therewith including the cost of publishing notice of hearing and shall pay a construction inspection fee in the sum of fifty cents per mile of pipe line or fraction thereof for each inch of diameter of such pipe line located in the state. [C31,§8338-d11,-d12; C35,§8338-f26; C39,§8338.34; C46, 50, 54,§490.13]

**490.14 Inspection fee.** Every pipe-line company shall pay an annual inspection fee in the sum of twenty-five cents per mile of pipe line or fraction thereof for each inch of diameter of such pipe line located in the state and said inspection fee to be paid for the calendar year in advance and before January 1 of each year to the state commerce commission. [C31,§8338-d13; C35,§8338-f27; C39,§8338.35; C46, 50, 54,§490.14]

**490.15 Failure to pay.** It shall be the duty of the commission to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit. [C35,§8338-f28; C39,§8338.36; C46, 50, 54,§490.15]

**490.16 Accounting for fees.** The commission shall on the last day of each month remit

to the treasurer of state all moneys collected under this chapter during such month. [C31,§8338-d14; C35,§8338-f29; C39,§8338.37; C46, 50, 54,§490.16]

**490.17 Use of funds.** All moneys received under the provisions of this chapter or so much thereof as may be necessary shall be used for the administration and enforcement of the provisions of this chapter and the regulation of pipe-line companies and shall be paid to the commission by warrant drawn from time to time by the comptroller of state upon the treasurer of state. Unexpended balances on December 31 of each year shall be credited to the general fund of the state by June 30 following. [C31,§8338-d14; C35,§8338-f30; C39,§8338.38; C46, 50, 54,§490.17]

**490.18 Rules and regulations.** The said state commerce commission shall have full authority and power to promulgate such rules and regulations as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules and regulations for the enforcement of this chapter. [C31,§8338-d15; C35,§8338-f31; C39,§8338.39; C46, 50, 54,§490.18]

**490.19 Permit.** The said state commerce commission shall cause to be prepared a uniform blank form of permit which shall provide a space for a general description of the route or gas storage area authorized thereby, the name and address of the pipe-line company to whom said permit is granted and the terms and conditions upon which it is granted. The provisions of this chapter shall not be retroactive as against existing rights of property owners where pipe lines have been constructed or are in the process of construction. Said permit shall be signed by the chairman of the state commerce commission and the official seal of said commission shall be attached thereto. [C31,§8338-d16; C35,§8338-f32; C39,§8338.40; C46, 50, 54,§490.19]

**490.20 Limitation on grant.** No exclusive right shall ever be granted to any pipe-line company to construct, maintain and operate its pipe line or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years. [C31,§8338-d17; C35,§8338-f33; C39,§8338.41; C46, 50, 54,§490.20]

**490.21 Sale of permit.** No permit shall be sold until the sale is approved by the commission. [C35,§8338-f34; C39,§8338.42; C46, 50, 54,§490.21]

**490.22 Transfer of permit.** If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said state commerce commission a notice in writing stating the date of such transfer and the name and address of said transferee. [C31,



§8338-d11; C35,§8338-f35; C39,§8338.43; C46, 50, 54,§490.22]

**490.23 Records.** The state commerce commission shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipe line or lines or gas storage area covered thereby. When any transfer of such permit has been made as provided in this chapter the said commission shall also note upon its record the date of such transfer and the name and address of such transferee. [C31,§8338-d20; C35,§8338-f36; C39,§8338.44; C46, 50, 54,§490.23]

**490.24 Extension of permit.** Any pipe-line company owning a permit granted under this chapter desiring to acquire an extension of such permit may petition the commission in the same manner provided for the granting of such permit and the same proceeding shall be had as on an original application. [C31,§8338-d22; C35,§8338-f37; C39,§8338.45; C46, 50, 54, §490.24]

**490.25 Eminent domain.** Any pipe-line company having secured a permit for pipe lines as in this chapter provided shall thereupon be vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by said state commerce commission, not exceeding seventy-five feet in width for right of way and not exceeding one acre in any one location in addition to right of way for the location of pumps, pressure apparatus or other stations or equipment necessary to the proper operation of its said pipe line or lines.

Any pipe-line company having secured a permit for underground storage of gas as in this chapter provided shall be vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by said state commerce commission in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the commission shall have found to be suitable and in the public interest for the underground storage of gas, and in connection therewith may appropriate such other interests in property, as may be required adequately to examine, prepare, maintain and operate such underground gas storage facilities. The right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof.

If agreement cannot be made with the private owner of lands as to damages caused by

the construction of said pipe line and/or gas storage facilities, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Nothing in this chapter shall authorize the construction of a pipe line longitudinally on, over or under any railroad right of way or public highway, or at other than an approximate right angle to such railroad track or public highway without the consent of such railroad company, the highway commission or board of supervisors, as the case may be, nor shall any provision of this chapter authorize or give the right of condemnation or eminent domain for such purposes. [C31,§8338-d23; C35,§8338-f38; C39,§8338.46; C46, 50, 54,§490.25]

Condemnation procedure, ch 472

**490.26 Damages.** Pipe-line companies operating pipe lines and/or a gas storage area shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing or locating their pipes, pumps, pressure apparatus or other stations, wells, devices or equipment used in or upon such line or gas storage area, but shall pay to the owner of such lands for the right of entry thereon and the owner of crops thereon all damages caused by entering, using or occupying said lands for said purposes; and shall pay to the owner or owners of such lands all damages caused after the completion of construction of said pipe line on account of wash or erosion of the soil at or along the location of said pipe line by reason of the construction thereof upon said lands on account of the settling of the soil along and above said pipe line, provided, that nothing herein contained shall prevent the execution of an agreement between the pipe-line company and the owner of said land or crops with reference to the use thereof. [C31,§8338-d26; C35,§8338-f39; C39, §8338.47; C46, 50, 54,§490.26]

**490.27 Financial condition of permittee—bond.** Before any permit is granted under the provisions of this chapter the applicant must satisfy the state commerce commission that the applicant has property within this state other than pipe lines, subject to execution of a value in excess of fifty thousand dollars, or said applicant must file and maintain with said commission a surety bond in the penal sum of fifty thousand dollars with surety approved by the commission, conditioned that said applicant will pay any and all damages legally recovered against it growing out of the operation of its said pipe line and gas storage facilities in the state of Iowa. When such pipe-line company deposits with said state commerce commission security satisfactory to said commission as a guaranty for the payment of said damages, or furnishes to said commission satisfactory proofs of its solvency and financial ability to pay said damages, the said pipe-line company shall be relieved of the said provisions requiring bond. [C31,§8338-d27; C35,§8338-f40; C39,§8338.48; C46, 50, 54,§490.27]

**490.28 Venue—service of original notice.** In all cases arising under this chapter the district court of any county, through which said pipe-line company is located, shall have jurisdiction; and service of original notice on the pipe-line company therein shall be had and made upon the chairman of the state commerce commission. [C31,§8338-d28; C35,§8338-f41; C39,§8338.49; C46, 50, 54,§490.28]

**490.29 Orders—enforcement.** If said pipe-line company fails to obey an order within a time prescribed by the said state commerce commission the said commission may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipe line, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and

proper. Appeal from said decree may be taken in the same manner as in other actions. [C31, §8338-d30; C35,§8338-f42; C39,§8338.50; C46, 50, 54,§490.29]

Appeal in civil actions, ch 636

**490.30 Violation of injunction.** For a violation of any injunction or other process issued, any pipe-line company or any officer, agent, or employee thereof, shall be fined for contempt in the sum not exceeding one thousand dollars. In addition to any other penalty the court may fix a sum not exceeding one thousand dollars which each defaulting company, officer, or agent shall pay after a fixed date for each day such injunction or other process is disobeyed and render judgment for penalty which shall accrue from disobedience after the time fixed. One-half of such sums collected shall be paid into the treasury of the county where the judgment is rendered and one-half into the state treasury. [C35,§8338-f43; C39,§8338.51; C46, 50, 54,§490.30]

Constitutionality, 45ExGA, ch 105,§30

# TITLE XIX

## CORPORATIONS

Referred to in §491.39

### CHAPTER 491

#### CORPORATIONS FOR PECUNIARY PROFIT

Referred to in §§312.8, 496.4, 515.1, 515.62, 518.1, 519.2, 528.52

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**491.1 Who may incorporate.** Any number of persons may become incorporated for the transaction of any lawful business, but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided. [C51,§673; R60,§1150; C73,§1058; C97,§1607; C24, 27, 31, 35, 39,§8339; C46, 50, 54,§491.1]

**491.2 Single person.** Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he adopts the name of an individual or individuals as that of the corporation, he must add thereto the word "incorporated". [C51,§702; R60,§1179; C73,§1088; C97,§1608; C24, 27, 31, 35, 39,§8340; C46, 50, 54,§491.2]

**491.3 Powers.** Among the powers of such corporations are the following:

1. To have perpetual succession.
2. To sue and be sued by its corporate name.

3. To have a common seal, which it may alter at pleasure.

4. To render the interests of the stockholders transferable.

5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.

6. To make contracts, acquire and transfer property,—possessing the same powers in such respects as natural persons.

7. To establish bylaws, and make all rules and regulations necessary for the management of its affairs. [C51,§674; R60,§1151; C73,§1059; C97,§1609; C24, 27, 31, 35, 39,§8341; C46, 50, 54, §491.3]

**491.4 Index book.** The county recorder shall keep in his office an index book for articles of incorporation, which shall be ruled and headed substantially after the following form, and shall make entries therein in the order in which they are filed in his office.

INDEX TO ARTICLES OF INCORPORATION

Name	Place of Business	Date of Filing			Date of Inst.			Where Recorded		Capital Stock	Remarks
		Mo.	Day	Yr.	Mo.	Day	Yr.	Bk.	Pg.		

[S13,§1610; C24, 27, 31, 35, 39,§8342; C46, 50, 54, §491.4]

S13,§1610, editorially divided

**491.5 Articles adopted and recorded.** Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose. The secretary of state shall then forward said articles to the county recorder of deeds of the county where the principal place of business is to be located, there to be recorded in a book kept therefor, and the recorder shall indorse thereon the book and page where the record will be found.

Such articles shall contain:

1. Name of corporation and its principal place of business.
2. The objects for which it is formed.
3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.
4. The time of commencement and existence of the corporation.
5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.
6. Whether private property is to be exempt from corporate debts.

7. The manner in which the articles may be amended. [C51,§675; R60,§1152; C73,§1060; C97, §1610; S13,§1610; C24, 27, 31, 35, 39,§8343; C46, 50, 54,§491.5]

Referred to in §§491.10, 491.107

**491.6 Filing or refusal to file.** When articles of incorporation are presented to the secretary of state for the purpose of being filed, if he is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, he shall file them; but if he is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, he shall refuse to file them. [S13,§1610; C24, 27, 31, 35, 39,§8344; C46, 50, 54,§491.6]

Referred to in §§491.10, 491.107

**491.7 Question of legality submitted.** Should a question of doubt arise as to the legality of the articles, he shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of him. [S13, §1610; C24, 27, 31, 35, 39,§8345; C46, 50, 54, §491.7]

Referred to in §§491.10, 491.107

**491.8 Action on opinion.** If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed. [S13,§1610; C24, 27, 31, 35, 39,§8346; C46, 50, 54,§491.8]

Referred to in §§491.10, 491.107

**491.9 Submission to executive council.** Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon he shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and he shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case. [S13,§1610; C24, 27, 31, 35, 39,§8347; C46, 50, 54,§491.9]

Referred to in §§491.10, 491.107

**491.10 Interpretative clause.** Nothing in sections 491.5 to 491.9, inclusive, shall be con-

strued as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations or investment companies. [S13,§1610; C24, 27, 31, 35, 39,§8348; C46, 50, 54,§491.10]

**491.11 Incorporation fee.** Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of twenty-five dollars together with a recording fee of fifty cents per page, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Corporations organized to exist perpetually shall pay to the secretary of state, before a certificate of incorporation is issued, a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand. Should any corporation increase its capital stock, it shall pay to the secretary of state a recording fee of fifty cents per page and in addition a fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. The fees, except the recording fees, required by this section to be paid, shall not be collected from a corporation organized for the purpose of carrying into effect a plan of reorganization approved in bankruptcy proceedings under the laws of the United States or in a general equity receivership in a court of competent jurisdiction, for the period until the termination of the time for which such fees were paid by the corporation so reorganized. [C97,§1610; S13,§1610; C24, 27, 31, 35, 39,§8349; C46, 50, 54, §491.11; 56GA, ch 227,§1]

Referred to in §491.107  
Foreign corporations, §494.14  
See §491.30  
See also §491.28

**491.12 Exemption from fee.** Farmers mutual co-operative creamery associations, whose articles of incorporation provide that the business of the association be conducted on a purely mutual and co-operative plan, without capital stock, and whose patrons shall share equally in expense and profits, domestic and domestic local building and loan associations and incorporations organized for the manufacture of sugar from beets grown in the state, shall be exempt from the payment of the incorporation filing fee provided herein in excess of twenty-five dollars. [C97,§1610; S13, §1610; C24, 27, 31, 35, 39,§8350; C46, 50, 54, §491.12]

Similar provision, §491.31

**491.13 Place of business.** Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city or town then its post-office address must be given. The place of business

so designated shall not be changed except through an amendment to its articles of incorporation.

When a corporation changes its principal place of business from one county to another, an amendment for this purpose shall be filed with the secretary of state, recorded in the office of the recorder of deeds of the county of the previous place of business, and then said amendment together with the articles of incorporation and all amendments thereto shall be filed with the recorder of deeds of the county to which said corporation's principal place of business is changed. [C97,§1612; S13,§1612; C24, 27, 31, 35, 39,§8353; C46, 50, 54, §491.13]

S13,§1612, editorially divided

**491.14 Custody of office—business maintained.** Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its stockholders meetings, keep a record of its proceedings and its stock and transfer books. [C97,§1612; S13, §1612; C24, 27, 31, 35, 39,§8354; C46, 50, 54, §491.14]

**491.15 Service of original notice—secretary of state.** Any corporation organized under the laws of this state that does not maintain an office in the county of its organization may file with the secretary of state a certified copy of a resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served, or file with the secretary of state a written instrument duly signed and acknowledged authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state and consenting that service of notice or process may be made upon the secretary of state. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to him, and he shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process by certified mail to the clerk of the court in which the suit is pending, addressed by his official title, and shall also forthwith mail a copy with a copy of his acknowledgment of service written thereon, by certified mail addressed to the corporation at the address of its principal place of business as shown by the records in his office, and shall retain the second copy for his files. [C97,§1612; S13,§1612; C24, 27, 31, 35, 39,§8355, 8356; C46, 50,§491.15, 491.16; C54, §491.15; 57GA, ch 267,§66]

Similar provisions, §§494.2, 511.27, 512.22, 515.73, 520.5, 534.74

See also §502.9

**491.16** Repealed by 54GA, ch 179,§4. See §491.15.

**491.17 Notice of incorporation.** A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business.
2. The general nature of the business to be transacted.
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in.
4. The time of the commencement and existence of the corporation.

5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected.

6. Whether private property is to be exempt from corporate debts. [C51,§§677, 678; R60, §§1154, 1155; C73,§§1062, 1063; C97,§1613; S13, §1613; C24, 27, 31, 35, 39,§8357; C46, 50, 54, §491.17]

S13,§1613, editorially divided

Referred to in §§491.20, 491.32, 491.109

Legalizing acts, ch 591

**491.18 Proof of publication—filing.** Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact. [C97,§1613; S13,§1613; C24, 27, 31, 35, 39,§8358; C46, 50, 54,§491.18]

**491.19 Commencement of business.** The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a newspaper is made within three months from the date of such certificate; providing that when the notice is not published within the time herein prescribed, but is subsequently published for the required time, and proof of the publication thereof filed with the secretary of state, the acts of such corporation after such publication shall be valid. [C51, §679; R60,§1156; C73,§1064; C97,§1614; C24, 27, 31, 35, 39,§8359; C46, 50, 54,§491.19]

**491.20 Amendments—fees.** Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be, except where the amendment provides for changing the principal place of business from one county to another, in which event said amendment shall be published in both the counties of the former and new place of business. Publication shall be by notice setting out the substance of the amendment and, in the case of amended and substituted articles, said notice shall contain the matters and things required to be pub-

lished by section 491.17, relating to original incorporations. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of fifty cents per page must be paid. Where capital stock is increased the certificate fee shall be omitted but there shall be paid a recording fee of fifty cents per page and in addition a filing fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. Corporations providing for perpetual existence by amendment to its articles shall, at the time of filing such amendment, pay to the secretary of state a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized capital stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand.

Its articles of incorporation to the contrary notwithstanding, if three-fourths of the voting stock of any corporation organized under the provisions of this chapter, with assets of the value of one million dollars or more, is owned by individuals owning not more than one share each of the voting stock thereof, said articles may be amended at any regular or special meeting of stockholders, when a notice in writing of the substance of the proposed amendment has been mailed by ordinary mail to each voting stockholder of such corporation not more than ninety nor less than sixty days prior to said meeting, by the affirmative vote of two-thirds of the voting stock represented at said meeting when said amendment is approved by the affirmative vote of two-thirds of the members of the board of directors at a meeting prior to the mailing of said notice.

If such corporation is renewed under the provisions of section 491.25, the voting stock of dissenting stockholders or any portion thereof may be purchased by the corporation at its option as provided in said section. [C51, §680; R60, §1157; C73, §1065; C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §8360; C46, 50, 54, §491.20; 56GA, ch 227, §2; ch 228, §1]

S13, §1615, editorially divided  
Referred to in §§491.24, 491.26, 491.107, 591.11  
Notice of amendment legalized, §591.11

**491.21 Signing and acknowledging of amendments.** Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act. [C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §8361; C46, 50, 54, §491.21]

**491.22 Individual property liable.** A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but operators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein. [C51, §689; R60, §§1166, 1338; C73,

§1068; C97, §1616; C24, 27, 31, 35, 39, §8362; C46, 50, 54, §491.22]

**491.23 Dissolution — notice of — filing with secretary of state.** A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization; provided, however, that the notice of such dissolution shall be deemed sufficient if signed by the officers of such corporation and published as required by law. Notice thereof shall also be given by the filing in the office of the secretary of state the proof of publication of notice of dissolution and said proof shall be recorded by the secretary of state in the same manner as the recording of amendments, and a recording fee of one dollar shall apply thereto, and the secretary of state shall forward said proof of publication to the county recorder of the county wherein the corporation maintains its place of business, there to be recorded in a book kept therefor and a recording fee of one dollar shall apply thereto. [C51, §§682, 683; R60, §§1159, 1160; C73, §§1066, 1067; C97, §1617; C24, 27, 31, 35, 39, §8363; C46, 50, 54, §491.23]

Referred to in §§496.7, 496.10

**491.24 Duration.** Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, for the establishment and conduct of savings banks, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; provided, however, that in addition to the power herein granted to incorporate for a period of years, corporations hereafter organized or now existing may have perpetual existence by so providing in the articles of incorporation or by amendment thereto pursuant to section 491.20. [C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §8364; C46, 50, 54, §491.24]

S13, §1618, editorially divided  
Referred to in §494.7

**491.25 Renewal—conditions.** Corporations existing for a period of years may be renewed from time to time for the same or shorter periods, or may be renewed to exist perpetually, upon compliance with the provisions of this section and other applicable statutes.

The right of renewal is vested in the stockholders and shall be exercised by a resolution thereof adopted at any regular meeting or at any special meeting called for that purpose. Such resolution must be adopted by a majority of all the votes cast at such meeting, or by such other vote as is authorized or required in the company's existing articles of incorporation.

If the renewal instrument in proper form and the necessary fees are tendered to the sec-

retary of state for filing three months or less either prior or subsequent to the corporation's expiration date, such renewal shall take effect immediately upon the expiration of the corporation's previous period of existence, and in such case, the corporate existence shall be considered as having been extended without interruption. If the renewal is filed more than three months before or after the expiration date, such renewal shall take effect upon the date such renewal with necessary fees is accepted and filed by the secretary of state; and in cases where filed more than three months after the expiration date, shall not be in legal effect a renewal unless the procedure provided for and the additional fees provided for in section 491.28 are fully complied with and paid.

In all cases of renewal, those stockholders voting for such renewal must purchase at its real value the stock voted against such renewal, and shall have three years from the date such action for renewal was taken in which to purchase and pay for the stock voting against such renewal, which purchase price shall bear interest at the rate of five percent per annum from the date of such renewal action until paid. [C51,§681; R60,§1158; C73, §1069; C97,§1618; S13,§1618; C24, 27, 31, 35, 39, §§8365, 8366; C46, 50, §§491.25, 491.26; C54, §491.25; 56GA, ch 229,§1]

Referred to in §491.26

**491.26 Stock of dissenting holders.** The provisions of section 491.25 shall not apply to any renewal voted before July 4, 1951 but all rights of any corporation described or referred to in the last two paragraphs of section 491.20 to purchase stock of dissenting stockholders or any portion thereof are preserved to said corporation both before and after this section becomes operative. [S13,§1618; C24, 27, 31, 35, 39, §§8366; C46, 50, §491.26]

**491.27 Execution of renewal — record required.** After the said action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in such renewal, sworn to by the president and secretary of the corporation, or by such other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed with the secretary of state and be by him recorded in a book kept for that purpose. The secretary of state shall then forward said renewal articles to the recorder of deeds of the county where the principal place of business is located, and the recorder shall record said renewal articles and indorse thereon the book and page where the record will be found. [S13,§1618; C24, 27, 31, 35, 39, §§8367; C46, 50, 54, §491.27]

**491.28 Filing with secretary of state—fees—certificate of renewal.** Upon filing with the secretary of state the said certificate and articles of incorporation, and upon the payment to the secretary of state of the fees prescribed by

section 491.11 for newly organized corporations, the secretary of state shall issue a proper certificate for the renewal of the corporation.

Whenever, after timely notice has been received that its articles of incorporation will expire and the corporate existence of any corporation has expired and not been renewed within the period prescribed by statute, said corporation thereafter files with the secretary of state amended and substituted articles of incorporation for the purpose of renewing and extending its corporate existence, the secretary of state shall cause said corporation to file satisfactory proof that no judgments against said corporation or the stockholders thereof are outstanding which may be liens against said corporation and that there is no pending litigation involving said corporation or the corporate existence of said corporation. Upon the filing of said proof the secretary of state may acknowledge and file for record the amended and substituted articles of said corporation and issue a certificate of renewal upon the payment of the renewal fees required by statute, however the secretary of state shall charge and collect an additional ten percent of said renewal fees for each month or major fraction thereof said corporation was delinquent in renewal of its corporate existence as a penalty, but in no instance shall such additional delinquency fee be less than one hundred dollars and not more than one thousand dollars. Said certificate of renewal when issued shall have the same force and effect as though issued upon proper and timely application by said corporation and it shall date from the expiration of the corporate period which it succeeds. [S13,§1618; C24, 27, 31, 35, 39, §§8368; C46, 50, 54, §491.28; 56GA, ch 230,§1]

Referred to in §§491.25, 491.31, 491.35  
See 57GA, ch 47, for temporary provisions

**491.29 Erroneous certificate—correction.** In all cases wherein the secretary of state has heretofore\* issued to a corporation organized or purporting to have been organized under the laws of this state a certificate renewing and extending its corporate existence from an erroneous date and/or for a period of time in excess of that provided by law, the secretary of state shall, upon the surrender of such certificate, issue to such corporation a new certificate, extending and renewing the corporate existence thereof from the correct date and/or for the period of time provided by law. [C31, 35, §§8368-d1; C39, §§8368.1; C46, 50, 54, §491.29]

\*Act effective April 10, 1931  
Pending litigation excepted, 44GA, ch 192

**491.30 Perpetual corporations—periodic fees.** Corporations having the right of perpetual existence shall periodically pay the fees herein provided. Fifty years from the date of incorporation or last renewal of such corporations for the construction and operation, or the operation alone, of steam railways, interurban railways and street railways, for the establishment and conduct of savings banks, or for the



transaction of the business of life insurance, and each fifty years thereafter, and twenty years from the date of incorporation or last renewal of such corporations for other purposes, and each twenty years thereafter, there shall be paid to the secretary of state a fee of one hundred dollars and an additional fee of one dollar ten cents per thousand for all authorized stock in excess of ten thousand dollars; and upon such payment being made the secretary of state shall issue a certificate showing such payment. The period of existence of any such corporation failing to pay such fees at the time they are due shall thereupon terminate, provided, however, that any such corporation may be renewed at any time within three months thereafter. [C46, 50, 54, §491.30]

Constitutionality, 50GA, ch 225,§9

**491.31 Exemption from fee.** Farmers mutual co-operative creamery associations, domestic and domestic local building and loan associations, and corporations organized for the manufacture of sugar from beets grown in the state of Iowa, shall be exempt from the payment of the incorporation fee, provided in section 491.28, in excess of twenty-five dollars. [S13,§1618; C24, 27, 31, 35, 39,§8369; C46, 50, 54, §491.31]

Similar provision, §491.12

**491.32 Notice of renewal—publication.** Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary of state, and shall contain the matters and things required to be published by section 491.17, relating to original incorporations. [S13,§1618; C24, 27, 31, 35, 39,§8370; C46, 50, 54,§491.32]

Referred to in §591.10

Notice of renewal legalized, §591.10

**491.33 Renewal of banks—conditions.** The corporate existence of any state or savings bank may be renewed or extended, from time to time, for a period not longer than the time for which such banks may organize, by an affirmative vote of two-thirds of the shareholders thereof, at a stockholders meeting held for that purpose, within three months before or after the time of the expiration of its charter as shown by its certificate of incorporation issued by the secretary of state. [S13,§1618-a; C24, 27, 31, 35, 39,§8371; C46, 50, 54,§491.33]

S13,§1618-a, editorially divided

Referred to in §§496.13, 532.19

**491.34 Meeting and notice thereof.** Such meeting shall be called upon a notice signed by at least two of the officers of the bank and by a majority of its directors, specifying the object of the meeting, and the time and place thereof, published once a week for four consecutive weeks before the time at which the

same is to be held, in some newspaper in the county wherein the bank is located. [S13, §1618-a; C24, 27, 31, 35, 39,§8372; C46, 50, 54, §491.34]

Referred to in §§496.13, 532.19

**491.35 Execution of renewal—record and fees.** If at such meeting the required vote is given, a certificate of the proceedings showing compliance with the foregoing provisions and the time to which the corporate period is to be continued, shall be signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the board of directors, and together with the articles of incorporation, as they exist at the date of the meeting, and such amendments as may be deemed necessary shall be submitted to the superintendent of banking for approval, filed, recorded, and fees paid, as provided in section 491.28, and shall be by the secretary of state certified to the superintendent of banking. [S13,§1618-a; C24, 27, 31, 35, 39,§8373, 8374; C46,§§491.35, 491.36; C50, 54,§491.35]

Referred to in §§496.13, 532.19

Similar provision, §524.11

**491.36** Repealed by 52GA, ch 251,§2. See §491.35.

**491.37 Certificate of renewal—notice.** When the above has been complied with, the superintendent of banking shall issue to such bank a certificate as provided in section 526.6, notice of which shall be published as required by the provisions of said section. [S13,§1618-a; C24, 27, 31, 35, 39,§8375; C46, 50, 54,§491.37]

Referred to in §§496.13, 532.19

**491.38 Consolidation of interstate bridge companies.** Any corporation heretofore or hereafter organized under the laws of this state for the purpose of constructing and/or operating a bridge, one extremity of which shall rest in an adjacent state, may merge and/or consolidate the stock, property, rights, franchises, privileges, assets and liabilities of such corporation with the stock, property, rights, franchises, privileges, assets and liabilities of a corporation organized for a similar purpose under the laws of such adjacent state, upon such terms not in conflict with law as may be mutually agreed upon, and thereafter such merged and/or consolidated corporations shall be one corporation with such name as may be agreed upon, and shall have all of the property, rights, privileges, assets and franchises, and be subject to all of the liabilities, of the merging or consolidating corporations. [C31, 35,§8375-d1; C39,§8375.1; C46, 50, 54, §491.38]

**491.39 Legislative control.** The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of either title XIX, XX, XXI, or XXII or whose organization may be adopted or amended thereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by

law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. [C73,§1090; C97, §1619; C24, 27, 31, 35, 39,§8376; C46, 50, 54, §491.39]

Constitution, Iowa, Art. I,§21; Art. VIII,§12  
 Constitution, U. S., Art. I,§10

**491.40 Fraud — penalty for.** Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud. [C51,§686; R60, §1163; C73,§1071; C97,§1620; C24, 27, 31, 35, 39, §8377; C46, 50, 54,§491.40]

Referred to in §§491.41, 491.42  
 Punishment, §687.7

**491.41 Diversion of funds — unlawful dividends.** The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of section 491.40; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section. [C51,§§687, 688; R60,§§1164, 1165; C73,§§1072, 1073; C97,§1621; C24, 27, 31, 35, 39,§8378; C46, 50, 54,§491.41]

Referred to in §491.42

**491.42 Forfeiture.** Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of sections 491.40 and 491.41 shall work a forfeiture of the corporate privileges, to be enforced as provided by law. [C51,§690; R60,§1167; C73, §1074; C97,§1622; C24, 27, 31, 35, 39,§8379; C46, 50, 54,§491.42]

**491.43 Keeping false accounts.** The intentional keeping of false books or accounts shall be a misdemeanor on the part of any officer, agent, or employee of the corporation guilty

thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept. [C51,§691; R60,§1168; C73,§1075; C97,§1623; C24, 27, 31, 35, 39,§8381; C46, 50, 54,§491.43]

Punishment, §687.7  
 Similar criminal provision, §713.26

**491.44 and 491.45** Repealed by 54GA, ch 180,§1.

**491.46 Books to show names of stockholders.** The books of the corporation shall be kept to show the amount of capital stock actually paid in, the number of shares of stock issued, the original stockholders, and all transfers of shares of stock, and there shall be entered upon the books of the corporation the name of the person by and to whom stock is transferred, the numbers or other designations of the shares of stock and the date of transfer. Nothing herein contained shall create any rights or impose any duties inconsistent with the provisions of chapter 493A. [C51,§692; R60,§1169; C73,§1078; C97,§1626; C24, 27, 31, 35, 39,§8385; C46, 50,§491.47; C54,§491.46]

Referred to in §491.50  
 Section 491.46, Code 1950, repealed by 54GA, ch 181. See §491.47

**491.47 Names exhibited at meetings.** It shall be the duty of the officer or agent of any corporation organized under the laws of the state of Iowa, or any foreign corporation qualified to do business in the state of Iowa and holding a meeting of its stockholders in the state of Iowa, who has charge of the stock records of such corporation to prepare and make, at least ten days before the holding of such meeting, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order. Such list shall be open and available at the place where said meeting is to be held for said ten days to the examination of any stockholder, and shall be kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present at said meeting. The original or duplicate stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the transfer books who shall fail to prepare the list of stockholders, or keep the same on file for a period of ten days, or produce and keep the same open for inspection at the meeting, as provided in this section, shall be liable to any stockholder suffering damage on account of such failure, to the extent of such damage. [C24, 27, 31, 35, 39, §8384; C46, 50,§491.46; C54,§491.47]

Referred to in §491.50  
 Section 491.47, Code 1950, repealed by 54GA, ch 181. See §491.46

**491.48 Stock certificates—signing.** A corporation organized and existing under the laws,

either general or special, of this state, may designate in its articles or bylaws the officer or officers who shall be empowered to sign stock certificates issued by the corporation. If the articles or bylaws provide for the signature of a registrar or the signature or counter-signature of a transfer agent on stock certificates issued by it, the corporation may likewise provide in the articles or bylaws that in lieu of the actual signature of the officer or officers authorized to sign stock certificates, the facsimile thereof may be either engraved or printed thereon. [C31, 35,§8385-d1; C39, §8385.1; C46, 50, 54,§491.48]

**491.49 Noninvalidating fact.** The fact that at the time of the actual issue or delivery of a stock certificate, the officer whose signature either actual or facsimile, appears on such stock certificate, shall prior thereto have ceased to be such officer, shall not invalidate the signature, nor such certificate. [C31, 35, §8385-d2; C39,§8385.2; C46, 50, 54,§491.49]

**491.50 Examination by stockholder.** Any person who shall be a stockholder of record of any corporation organized under the laws of the state of Iowa or any foreign corporation authorized to transact business in the state of Iowa and maintaining its books and records in the state of Iowa shall have the right to examine in person or by duly authorized agent or attorney at any reasonable time or times and for any proper purpose the stock records, minutes and records of stockholders' meetings, and the books and records of account and to make extracts therefrom.

The provisions of sections 491.46 and 491.47 and this section shall not apply to building and loan associations, savings and loan associations, deposit, loan and investment records of banks and trust companies, or insurance companies organized under the laws of the state of Iowa, and to whom the provisions of this chapter would otherwise be applicable. [C51,§692; R60,§1169; C73,§1078; C97,§1626; C24, 27, 31, 35, 39,§§8385, 8386; C46, 50,§§491.47, 491.50; C54,§491.50]

**491.51 Transfer of shares as collateral.** When any shares of stock shall be transferred to any person, firm, or corporation as collateral security, such person, firm, or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice, and until written notice that said stock shall have ceased to be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock, without any actual transfer on the books of such corporation of such stock. [C97,§1626; C24, 27, 31, 35, 39,§8387; C46, 50, 54,§491.51]

**491.52 Release of shares held as collateral.** In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security, at once

upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. [C97,§1626; C24, 27, 31, 35, 39, §8388; C46, 50, 54,§491.52]

**491.53 Record of transfers as collateral.** The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral. [C97,§1626; C24, 27, 31, 35, 39,§8389; C46, 50, 54,§491.53]

**491.54 Liability of collateral holder.** No holder of stock as collateral security shall be liable for assessments on the same. [C97,§1626; C24, 27, 31, 35, 39,§8390; C46, 50, 54,§491.54]

**491.55 Right to vote stock — attachment.** Every executor, administrator, guardian, or trustee shall represent the stock in his hands at all corporate meetings, and may vote the same as a stockholder.

Every person who shall pledge his stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly.

The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as he shall have been divested of his title thereto by execution sale.

Nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the bylaws of the corporation issuing the stock. [S13,§1641-a; C24, 27, 31, 35, 39,§8391; C46, 50, 54,§491.55]

Similar provision, §26.18

**491.56 Expiration and closing of business.** Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs. [C51,§694; R60,§1171; C73,§1080; C97,§1629; C24, 27, 31, 35, 39,§8392; C46, 50, 54,§491.56]

**491.57 Sinking fund and loaning thereof.** For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor. [C51, §699; R60,§1176; C73,§1081; C97,§1630; C24, 27, 31, 35, 39,§8393; C46, 50, 54,§491.57]

**491.58 Liability of stockholders.** Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. The foregoing provisions shall not apply to building and loan associations, and savings and loan associations. [C51,§695; R60,§1172; C73,§1082; C97,§1631; C24, 27, 31, 35, 39,§8394; C46, 50, 54,§491.58]

C97,§1631, editorially divided

**491.59 Levy on private property.** In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. [C97,§1631; C24, 27, 31, 35, 39,§8395; C46, 50, 54, §491.59]

Referred to in §491.61

**491.60 Suit by creditor—measure of recovery.** In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof. [C97,§1631; C24, 27, 31, 35, 39,§8396; C46, 50, 54,§491.60]

**491.61 Corporate property exhausted.** Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in section 491.59, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion. [C51,§§696, 697; R60,§§1173, 1174; C73,§§1083, 1084; C97,§1632; C24, 27, 31, 35, 39,§8397; C46, 50, 54,§491.61]

**491.62 Indemnity—contribution.** When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution. [C51,§698; R60,§1175; C73,§1085; C97,§1633; C24, 27, 31, 35, 39,§8398; C46, 50, 54,§491.62]

**491.63 Franchise sold on execution.** The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisalment. [C51,§700; R60,§1177; C73,§1086; C97,§1634; C24, 27, 31, 35, 39,§8399; C46, 50, 54,§491.63]

**491.64 Production of books.** In proceedings by or against a corporation or a stockholder to charge his private property, or the dividends received by him, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation. [C51,§701; R60,§1178; C73, §1087; C97,§1635; C24, 27, 31, 35, 39,§8400; C46, 50, 54,§491.64]

Similar provision, R.C.P. 129 et seq.

**491.65 Estoppel.** No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. [C51, §704; R60,§1181; C73,§1089; C97,§1636; C24, 27, 31, 35, 39,§8401; C46, 50, 54,§491.65]

**491.66 Dissolution—receivership.** Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them. [C97,§1640; C24, 27, 31, 35, 39,§8402; C46, 50, 54, §491.66]

**491.67 Ownership of alien property.** Corporations organized in any foreign country or corporations organized in this country, the stock of which is owned in whole or in part by nonresident aliens, shall have the same rights, powers, and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section 567.2. [C97,§1641; S13,§1641; C24, 27, 31, 35, 39,§8403; C46, 50, 54,§491.67]

**491.68 False statements or pretenses.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not to exceed one year, or by imprisonment in the county jail not to exceed six months or a fine not exceeding five hundred dollars. [S13,

§1641-g; C24, 27, 31, 35, 39,§8404; C46, 50, 54, §491.68]

**491.69 Political contributions prohibited.** It shall be unlawful for any corporation doing business within the state, or any officer, agent, or representative thereof acting for such corporation, to give or contribute any money, property, labor, or thing of value, directly or indirectly, to any member of any political committee, political party, or employee or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership, or corporation for the purpose of influencing or causing such person, partnership, or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action, but nothing in this section shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers, or political questions. [S13,§1641-h; C24, 27, 31, 35, 39,§8405; C46, 50, 54,§491.69]

Referred to in §491.71

**491.70 Solicitation from corporations.** It shall be unlawful for any member of any political committee, political party, or employee or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request, or knowingly receive from any corporation or any officer, agent, or representative thereof, any money, property, or thing of value belonging to such corporation, for campaign expenses or for any political purpose whatsoever. [S13,§1641-i; C24, 27, 31, 35, 39,§8406; C46, 50, 54,§491.70]

Referred to in §491.71

**491.71 Violations.** Any person convicted of a violation of any of the provisions of sections 491.69 and 491.70 shall be punished by imprisonment in the county jail not less than six months or more than one year and, in the discretion of the court, by fine not exceeding ten hundred dollars. [S13,§1641-k; C24, 27, 31, 35, 39,§8407; C46, 50, 54,§491.71]

Section numbers 491.72 to 491.100 reserved for use in future codes.

#### CORPORATION MERGER OR CONSOLIDATION

##### 491.101 Definitions.

1. "Merger" means the uniting of two or more corporations into one corporation in such manner that the corporation resulting from the merger retains its corporate existence and absorbs the other constituent corporation or corporations which thereby lose their or its corporate existence.

2. "Consolidation" means the uniting of two or more corporations into a single new corporation, all of the constituent corporations thereby ceasing to exist as separate entities. [C50, 54,§491.101]

**491.102 Procedure for merger.** Any two or more corporations whether heretofore or hereafter organized may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

4. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

5. Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [C50, 54,§491.102]

**491.103 Procedure for consolidation.** Any two or more corporations whether heretofore or hereafter organized may consolidate into a new corporation in the following manner:

The board of directors of each corporation, shall by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

4. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

5. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [C50, 54,§491.103]

##### 491.104 Meetings of shareholders.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case

may be, shall be included in or enclosed with such notice. [C50, 54,§491.104]

**491.105 Approval by shareholders.** At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporations is entitled to vote as a class in respect thereof in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such class of shares entitled to vote as a class in respect thereof and two-thirds of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class. [C50, 54,§491.105]

**491.106 Articles of merger or consolidation.** Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president, and verified by him, attested by its secretary or an assistant secretary, and shall be acknowledged and shall set forth:

1. The plan of merger or the plan of consolidation.
2. As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote.
3. As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively. [C50, 54,§491.106]

**491.107 Filing articles of merger or consolidation.** A duly executed and acknowledged copy of the articles of merger or consolidation shall be forwarded to the secretary of state for filing and recording as provided in section 491.5, and if a new corporation is created under the provisions of this chapter as the result of consolidation or if an existing Iowa corporation becomes the survivor corporation as the result of a merger the secretary of state shall then forward said articles to the county recorder of deeds of the county where the principal place of business of the new corporation or the existing Iowa corporation is located as provided in section 491.5.

The procedure set forth in sections 491.6 to 491.9, inclusive, of this chapter shall be applicable to the filing of articles of consolidation or merger.

If as the result of a consolidation a new Iowa corporation is formed then the fees provided for in section 491.11 shall be applicable. If as the result of a merger an existing Iowa corporation becomes the survivor the articles of merger shall be deemed an amendment to its articles of incorporation and section 491.20 shall be applicable. [C50, 54,§491.107]

**491.108 Effective date of merger or consolidation.** Upon the payment of all fees and charges and upon the filing of the articles of consolidation or merger with the secretary of state the secretary of state shall issue to the corporation or its representative a certificate of consolidation or a certificate of merger and upon the issuance of said certificate the merger or consolidation shall be effected. [C50, 54, §491.108]

**491.109 Notice.** Notice of the articles of consolidation or merger shall be given as provided in section 491.17. [C50, 54,§491.109]

**491.110 Effect of merger or consolidation.** When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.
2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.
3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.
4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.
5. Such surviving or new corporation shall thenceforth be responsible and liable for all

the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. [C50, 54,§491.110]

**491.111 Merger or consolidation of domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

b. The appointment of a resident agent as provided for in subsection 6 of section 494.2.

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this division with respect to the rights of dissenting shareholders.

Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise. [C50, 54,§491.111]

**491.112 Rights of dissenting shareholders.**

If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and judicial subdivision thereof in which the registered office or the principal place of business of the surviving or new corporation

is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the merger or consolidation and shall be bound by the terms thereof.

The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to the payment of judgment entered therefor as in this section provided may be held and disposed of by the corporation as it shall see fit. [C50, 54, §491.112]

**491.113 Issuance of stock.** All stock issued in connection with such merger or consolidation shall be issued pursuant to the provisions of chapter 492 and nothing in this amendment shall be construed as eliminating the requirements of said chapter. [C50, 54, §491.113]

Constitutionality, 52GA, ch 249, §14

**491.114 Amana stock.** Anything contained in this chapter and chapters 492, 501, and 502

to the contrary notwithstanding, any corporation organized under the laws of the state of Iowa having assets of the value of one million dollars or more, the articles of the corporation of which provide that no individual may vote more than one share of the common voting shares of stock of said corporation, the articles of incorporation of which give to children of the owner or owners of shares of the common voting stock of such corporations the right to purchase one common voting share of stock therein upon attaining majority or within a fixed period thereafter and the articles of incorporation of which whether now in effect or hereafter adopted, authorize the issuance, sale and delivery of not to exceed one share of said common voting stock to any one individual, shall have the power to issue, sell and deliver its shares of common voting stock, whether held by it as treasury stock or whether issued as an original issue, for the following considerations and upon the following terms and conditions, and with the following limitations:

1. Such common voting stock may be issued, sold and delivered by the corporation either for cash or upon credit or time payments or installment payments or for a consideration evidenced in part or in whole by the written agreement of the purchaser thereof to pay for the same, payment of said purchase price to be secured by a lien on said stock.

2. No such stock shall be issued, sold and delivered for a price less than the par value thereof at the time of such issuance, sale and delivery.

3. Not more than one share of said stock shall be so issued, sold and delivered to any one individual, but when issued, sold and delivered, said stock may be voted by the owner thereof, if the articles of incorporation or bylaws of such corporation, whether now in effect or hereafter adopted or amended, so provide, although a part or all of the price to be paid therefor may be owing to the corporation under said written agreement of the purchaser to pay for the same. [C54, §491.114]

## CHAPTER 492

### CAPITAL STOCK

Referred to in §§491.113, 491.114, 515.62

492.1 Indorsement of amount paid.

492.2 Effect of violation.

492.3 Penalties.

492.4 Certain corporations excepted.

492.5 Par value required.

492.6 Payment in property other than cash.

492.7 Executive council to fix amount.

492.8 Elements considered in fixing amount.

492.9 Certificate of issuance of stock.

492.10 Cancellation of stock—reimbursement.

492.11 Dissolution—distribution of assets.

492.12 Violations.

**492.1 Indorsement of amount paid.** No certificate or shares of stock shall be issued, delivered, or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares without having indorsed on the face thereof what amount or

portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. [C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §408; C46, 50, 54, §492.1]

40ExGA, HF 202, §1, editorially divided  
Referred to in §§492.2, 492.3, 492.4



**492.2 Effect of violation.** Any certificate of stock issued, delivered, or transferred in violation of section 492.1 when the corporation has not received payment therefor at par in money or property at a valuation approved by the executive council, shall be void, and the issuance, delivery, or transfer of each certificate shall be considered a separate transaction. [C24, 27, 31, 35, 39, §8409; C46, 50, 54, §492.2]

Referred to in §§492.3, 492.4

**492.3 Penalties.** Any person violating the provisions of sections 492.1 and 492.2, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. [C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §8410; C46, 50, 54, §492.3]

Referred to in §492.4  
Duration of imprisonment, §789.17

**492.4 Certain corporations excepted.** Sections 492.1 to 492.3, inclusive, shall not apply to railway or quasi-public corporations organized before October 1, 1897. [S13, §1627; C24, 27, 31, 35, 39, §8411; C46, 50, 54, §492.4]

**492.5 Par value required.** No corporation organized under the laws of this state, except building and loan associations, shall issue any certificate of a share of capital stock, or any substitute therefor, until the corporation has received the par value thereof. [S13, §1641-b; C24, 27, 31, 35, 39, §8412; C46, 50, 54, §492.5]

Referred to in §§476.18, 492.10, 492.11, 492.12, 495.1

**492.6 Payment in property other than cash.** If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply to the executive council of the state for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the property or other thing to be received in payment for such stock, providing that the foregoing provision shall not apply to banks or trust companies or insurance companies organized under the laws of this state.

Any bank or trust company proposing to issue capital stock for property or any thing other than money, before issuing the capital stock in any form, shall apply to the superintendent of banking for leave so to do. Any insurance company proposing to issue capital stock for property or any thing other than money, before issuing the capital stock in any form, shall apply to the commissioner of insurance for leave so to do. Such application to the superintendent of banking or to the commissioner of insurance shall state the amount of capital stock proposed to be issued for a consideration other than money and set forth specifically the property or other thing to be received in payment for such stock.

[S13, §1641-b; C24, 27, 31, 35, 39, §8413; C46, 50, 54, §492.6]

Referred to in §§476.18, 492.10, 492.11, 492.12, 493.4, 495.1, 499.25  
Legalizing stock issued, 56GA, ch 231, §1; 57GA, ch 48, §1

**492.7 Executive council to fix amount.** The executive council, the superintendent of banking or the commissioner of insurance as the case may be, shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed. [S13, §1641-b; C24, 27, 31, 35, 39, §8414; C46, 50, 54, §492.7]

Referred to in §§476.18, 492.10, 492.11, 492.12, 493.4, 495.1, 499.25

**492.8 Elements considered in fixing amount.** For the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration by said council as elements of value in fixing the amount of capital stock that may be issued. [S13, §1641-b; C24, 27, 31, 35, 39, §8415; C46, 50, 54, §492.8]

Referred to in §§476.18, 492.10, 492.11, 492.12, 493.4, 495.1

**492.9 Certificate of issuance of stock.** It shall be the duty of every corporation, except corporations qualified under chapter 494 or chapter 534, to file a certificate under oath with the secretary of state, within thirty days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. If the corporation fails to file said certificate of issuance of stock within the thirty-day period herein provided, it may thereafter file the same upon first paying to the secretary of state a penalty of ten dollars when the said certificate is offered for filing. Provided further that the penalty herein provided for is first paid and provided the said report contains the specific information required by this section as to the issuance of any capital stock not previously reported, then the first annual report filed by such corporation following such failure to comply with the provisions of this section, shall be received by the secretary of state as a compliance with this section. [S13, §1641-c; C24, 27, 31, 35, 39, §8416; C46, 50, 54, §492.9]

Referred to in §§495.1, 591.14

**492.10 Cancellation of stock — reimbursement.** The capital stock of any corporation issued in violation of the terms and provisions of sections 492.5 to 492.8, inclusive, shall be

void, and in a suit brought by the attorney general on behalf of the state in any court having jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said stock, such money or thing of value shall be returned to the individual, firm, company, or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor. [S13,§1641-d; C24, 27, 31, 35, 39,§8417; C46, 50, 54,§492.10]

**492.11 Dissolution — distribution of assets.** Any corporation violating the provisions of sections 492.5 to 492.8, inclusive, shall, upon the

application of the attorney general, in behalf of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued. [S13,§1641-e; C24, 27, 31, 35, 39,§8418; C46, 50, 54,§492.11]

**492.12 Violations.** Any officer, agent or representative of a corporation who violates any of the provisions of sections 492.5 to 492.8, inclusive, shall, upon conviction, be fined not less than two hundred dollars nor more than ten hundred dollars, and be imprisoned in the county jail for not less than thirty days nor more than six months. [S13,§1641-f; C24, 27, 31, 35, 39,§8419; C46, 50, 54,§492.12]

## CHAPTER 493

### CORPORATION STOCK WITHOUT PAR VALUE

493.1 Authorization.

493.2 Par value—method of stating.

493.3 Amount of stock.

493.4 Sale value.

493.5 Liability of holder.

493.6 Status of stock.

493.7 Certificates of stock.

493.8 Number of shares.

493.9 Change in stock.

493.10 Convertibility.

493.11 Incorporation fee—computation.

493.12 Applicability of statutes.

**493.1 Authorization.** Any corporation, heretofore or hereafter organized for pecuniary profit under the laws of this state, except banks, savings banks, trust companies, building and loan associations and insurance companies, may create one or more classes of stock without any nominal or par value, with such rights, preferences, privileges, voting powers, limitations, restrictions and qualifications thereon not inconsistent with law as shall be expressed in its articles of incorporation, or any amendment thereto. Stock without par value which is preferred as to dividends, or as to its distributive share of the assets of the corporation upon dissolution, may be made subject to redemption at such times and prices as may be determined in such articles of incorporation, or any amendment thereto. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the articles of incorporation, or any amendment thereto. [C31, 35,§8419-c1; C39,§8419.01; C46, 50, 54,§493.1]

**493.2 Par value—method of stating.** In any case in which the par value of the shares of stock of a corporation shall be required to be stated in the articles of incorporation, or any amendment thereto, or in any other place, it shall be stated in respect to shares without par value that such shares are without par value, and when the amount of such stock authorized, issued or outstanding shall be required to be stated, the number of shares thereof authorized, issued or outstanding, as the case may

be, shall be stated, and it shall also be stated that such shares are without par value. [C31, 35,§8419-c2; C39,§8419.02; C46, 50, 54,§493.2]

**493.3 Amount of stock.** For the purpose of any rule of law or of any statutory provision relating to the amount of capital stock issued and represented by shares of stock without par value except as otherwise provided in this chapter such amounts shall be taken to be the amount of money or the actual value of the consideration, as fixed by the directors or otherwise, in accordance with law, as the case may be, for which such shares of stock shall have been issued. In any such case in which stock having a par value shall have been issued with stock without par value for a specified combined consideration, in determining the amount of the capital stock issued and represented by shares of stock without par value the then book value of such stock having a par value shall first be deducted from the amount of the money or actual value of the consideration determined as aforesaid, and the excess thereof, if any, shall be taken to be the amount of capital stock represented by the shares of stock without par value so issued. [C31, 35,§8419-c3; C39,§8419.03; C46, 50, 54,§493.3]

**493.4 Sale value.** Subject to any limitations and restrictions set forth in the articles of incorporation, or amendment thereto, any such corporation may issue its authorized capital stock without par value for such consideration as may be prescribed in the articles of incorporation, or amendment thereto, or, if not prescribed, then for such consideration as may be

fixed by resolution passed by the stockholders of such corporation at any annual meeting thereof, or at any special meeting thereof duly called for that purpose, or by the board of directors acting under authority of such stockholders given in like manner. In the absence of fraud in the transaction, the judgment of the board of directors in fixing and determining such sale value shall be conclusive as to the creditors and stockholders. Nothing in this chapter shall be so construed as to repeal the law as it now appears in sections 492.6, 492.7, and 492.8. [C31, 35, §8419-c4; C39, §8419.04; C46, 50, 54, §493.4]

Referred to in §493.5

**493.5 Liability of holder.** Any and all shares without par value issued for the consideration as prescribed or fixed in section 493.4 shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto. [C31, 35, §8419-c5; C39, §8419.05; C46, 50, 54, §493.5]

**493.6 Status of stock.** Except as to any preferences, rights, limitations, privileges and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same and equal to every other share of stock of the same class. [C31, 35, §8419-c6; C39, §8419.06; C46, 50, 54, §493.6]

**493.7 Certificates of stock.** Each stock certificate issued for shares without nominal or par value shall have plainly written or printed upon its face the number of shares which it represents, and the number of such shares the corporation is authorized to issue, and no such certificate shall state any nominal or par value of such shares or express any rate of dividend to which it shall be entitled in terms of percentage of any par or other value. [C31, 35, §8419-c7; C39, §8419.07; C46, 50, 54, §493.7]

**493.8 Number of shares.** The number of authorized shares of stock without par value may be increased or reduced in the manner and subject to the conditions provided by law for the increase or reduction of the capital stock of a similar corporation having shares with par value. All other statutory provisions relating to stock having a par value shall also apply to stock without par value, so far as the same may be legally, necessarily or

practically applicable to, and not inconsistent with, the provisions of this chapter. [C31, 35, §8419-c8; C39, §8419.08; C46, 50, 54, §493.8]

**493.9 Change in stock.** Any such corporation may, by appropriate amendments to its articles of incorporation, adopted by a two-third affirmative vote of each class of stock then issued and outstanding and affected by such amendment, change its stock (common or preferred) having a par value to an equal, greater or less number of shares of stock having no par value, and, in connection therewith, may fix the amount of capital represented by such shares of stock without par value. [C31, 35, §8419-c9; C39, §8419.09; C46, 50, 54, §493.9]

**493.10 Convertibility.** The articles of incorporation, or any amendment thereto, of any such corporation may provide that shares of stock of any class shall be convertible into shares of stock of any other class upon such terms and conditions as may be therein stated. [C31, 35, §8419-c10; C39, §8419.10; C46, 50, 54, §493.10]

**493.11 Incorporation fee—computation.** For the purpose of computing the statutory fee for incorporating or for any other statutory provision based on the par value of shares of stock, but for no other purpose, each share of stock without par value shall be considered equivalent to a share having a nominal or par value of one hundred dollars. [C31, 35, §8419-c11; C39, §8419.11; C46, 50, 54, §493.11]

**493.12 Applicability of statutes.** Except as otherwise provided by this chapter, such corporations issuing shares without par value, under the provisions hereof, shall be and remain subject to the laws of this state, now or hereafter in force, relating to the formation, regulation, consolidation, or merger, rights, powers and privileges of corporations organized for pecuniary profit, and all other laws applicable thereto.

All acts or parts of acts providing for the incorporation, organization, administration and management of the affairs of corporations organized for pecuniary profit and having shares of stock with a par value are hereby made applicable to corporations having shares of stock without par value, except where the same are inconsistent with the provisions of this chapter. [C31, 35, §8419-c12; C39, §8419.12; C46, 50, 54, §493.12]

## CHAPTER 493A

## UNIFORM STOCK TRANSFER ACT

Referred to in §491.46

- |         |                                    |         |  |
|---------|------------------------------------|---------|--|
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**493A.1 How transferred.** Title to a certificate and to the shares represented thereby can be transferred only, (1) by delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or (2) by delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. [C50, 54, §493A.1]

Referred to in §493A.5

**493A.2 Persons under disability.** Nothing in this chapter shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. [C50, 54, §493A.2]

**493A.3 No impairment of certain powers.** Nothing in this chapter shall be construed as forbidding a corporation, (1) to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or (2) to hold liable for calls and assessments a person registered on its books as the owner of shares. [C50, 54, §493A.3]

**493A.4 Third person purchaser.** The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of

the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. [C50, 54, §493A.4]

**493A.5 One having no right of possession.** The delivery of a certificate to transfer title in accordance with the provisions of section 493A.1, is effectual, except as provided in section 493A.7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. [C50, 54, §493A.5]

**493A.6 Indorsement effectual.** The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 493A.7, though the indorser or transferor, (1) was induced by fraud, duress or mistake, to make the indorsement or delivery, or (2) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or (3) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or (4) has received no consideration. [C50, 54, §493A.6]

**493A.7 When transfer rescinded.** If the indorsement or delivery of certificate, (1) was procured by fraud or duress, or (2) was made under such mistake as to make the indorsement or delivery inequitable; or if the delivery of a certificate was made (3) without authority from the owner, or (4) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

a. The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

b. The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. [C50, 51,§493A.7]

Referred to in §§493A.5, 493A.6

**493A.8 Subsequent transfer.** Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. [C50, 54,§493A.8]

**493A.9 Transfer without indorsement.** The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [C50, 54,§493A.9]

**493A.10 Transfer without delivery.** An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. [C50, 54,§493A.10]

**493A.11 Warranty.** A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants: (1) That the certificate is genuine, (2) that he has legal right to transfer it, and (3) that he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. [C50, 54,§493A.11]

**493A.12 Mortgagee not guarantor.** A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such

certificate, or the value of the shares represented thereby. [C50, 54,§493A.12]

**493A.13 Attachment or levy.** No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. [C50, 54,§493A.13]

**493A.14 Other legal process.** A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. [C50, 54,§493A.14]

**493A.15 No lien or restriction by corporation.** There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. [C50, 54,§493A.15]

**493A.16 Alteration of certificate—effect.** The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. [C50, 54,§493A.16]

**493A.17 Lost certificates.** Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable cost and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original cer-

tificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. [C50, 54, §493A.17]

**493A.18 Other statutes applicable.** In any case not provided for by this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. [C50, 54, §493A.18]

**493A.19 Interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C50, 54, §493A.19]

**493A.20 How indorsement made.** A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. [C50, 54, §493A.20]

**493A.21 "Owner" defined.** The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements

may be made with like effect. [C50, 54, §493A.21]

**493A.22 Definitions.**

1. In this chapter, unless the context or subject matter otherwise requires:

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this chapter.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this chapter.

"State" includes state, territory, district and insular possessions of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

2. A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. [C50, 54, §493A.22]

**493A.23 Effective date.** The provisions of this chapter apply only to certificates issued after February 21, 1947. [C50, 54, §493A.23]

**493A.24 Title of act.** This chapter may be cited as the "Uniform Stock Transfer Act". [C50, 54, §493A.24]

CHAPTER 494

PERMITS TO FOREIGN CORPORATIONS

Referred to in §§36.36, 428.1, 428.22, 492.9, 496.4, 499.54

- 494.1 Application for permit.
- 494.2 Details of application—secretary of state as process agent.
- 494.3 Secretary of state to determine values.
- 494.4 Fees.
- 494.5 Increase or decrease of capital—fees.
- 494.6 Exemption.
- 494.7 Issuance of permit—effect.

- 494.8 Foreign corporations—requalification.
- 494.9 Denial of right to sue.
- 494.10 Alphabetical records required.
- 494.11 Powers denied.
- 494.12 Violations by corporation.
- 494.13 Violations by officers.
- 494.14 Status of corporation and officers.

**494.1 Application for permit.** Any corporation for pecuniary profit organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since September 1, 1886, or desires hereafter to transact business in this state, and which has

not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested by the secretary of state or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof,

and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. The secretary of state may accept duly certified restated articles, substituted articles, and articles or certificates of merger, or similar instruments which purport to be a complete restatement of the corporate articles in lieu of the original articles and amendments which they purport to supersede, if satisfied that such instruments in fact contain a complete restatement to the date thereof of all articles and amendments. [C97,§1637; S13, §1637; C24, 27, 31, 35, 39,§8420; C46, 50, 54,§494.1]

40ExGA ch 6,§6, editorially divided  
Referred to in §§494.7, 495.1

**494.2 Details of application—secretary of state as process agent.** Said application shall also contain a statement subscribed and sworn to by at least two of the principal officers of the corporation, setting forth the following facts, to wit:

1. The total authorized capital of the corporation.
2. The total paid up capital of the corporation.
3. The total value of all assets of the corporation, including money and property other than money represented by capital, surplus, undivided profits, bonds, promissory notes, certificates of indebtedness or other designation, whether carried as money on hand or in bank, real estate or personal property of any description.
4. The total value of money and all other property the corporation has in use or held as investment in the state, at the time the statement is made (if any).
5. The total value of money and all other property the corporation proposes or expects to make use of in the state, during the ensuing year.
6. Certified copy of the resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to him, and on the original of which he shall accept service on behalf of said corporation, retain one copy for his files and send the other by certified mail to the corporation at the address of its home office as shown by the records in his office, which service shall have the same force and effect as if lawfully made upon said corporation within the county where such civil suit could be maintained against it under the laws of this state. [S13,§1637; C24,

27, 31, 35, 39,§8421; C46, 50, 54,§494.2; 57GA, ch 267,§67]

Referred to in §§491.111, 494.7, 495.1  
Similar provisions, §§491.15, 511.27, 512.22, 515.73, 520.5, 534.74

**494.3 Secretary of state to determine values.** The secretary of state can make such independent and further investigation as to the property within this state owned by any such corporation as he may desire, and upon the true facts determine the value thereof, and fix the fee to be paid by such company. [S13, §1637; C24, 27, 31, 35, 39,§8422; C46, 50, 54,§494.3]

Referred to in §§494.7, 495.1

**494.4 Fees.** Before a permit is issued authorizing such corporation to transact business in the state, said corporation shall file with the secretary of state a certified copy of the articles, with resolution and statement as previously set forth, and pay a filing fee of twenty-five dollars upon ten thousand dollars or less of money and property of such company actually within the state, and of one dollar for each one thousand dollars of such money or property within this state in excess of ten thousand dollars if said corporation has existence for a period of years. If the corporation has perpetual existence under its articles or charter it shall make the filings as hereinbefore provided for and shall pay a filing fee of one hundred dollars and a further fee of one dollar and ten cents for each one thousand dollars of such money or property within this state in excess of ten thousand dollars, and thereafter shall periodically pay the said fee as follows: In the case of a corporation for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, or for the establishment and conduct of savings banks, every fifty years from the date of qualification and in the case of all other corporations, every twenty years from the date of qualification, and upon the failure to make such payments within three months from the date same are due, the secretary of state shall cancel the permit of said corporation. The fees required by this section to be paid shall not be collected from a corporation organized for the purpose of carrying into effect a plan of reorganization approved in bankruptcy proceedings under the laws of the United States or in a general equity receivership in a court of competent jurisdiction, until the period of time for which a permit to transact business within this state has previously been issued to the corporation so reorganized has elapsed. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8423; C46, 50, 54,§494.4]

Referred to in §§494.6, 494.7, 494.8, 495.1, 499.54

**494.5 Increase or decrease of capital—fees.** If from time to time the amount of money or other property in use in the state by said foreign corporation is increased, said corporation shall at the time of said increase, or at the time of making annual report to the secretary of state, in July of each year, file with

the secretary of state a sworn statement showing the amount of such increase, and shall pay a filing fee thereon of one dollar for each one thousand dollars or fraction thereof of such increase if such corporation has duration in its home state for a period of years; if said corporation has a perpetual duration in its home state, said filing fee thereon shall be one dollar and ten cents for each one thousand dollars or fraction thereof of such increase. The secretary of state shall upon request furnish a blank upon which to make report of such increase of capital in use within the state.

If said foreign corporation amends its articles of incorporation or files with the corporation official in the state of its incorporation any certificate of increase or decrease in its capital stock, or any instrument which affects its articles of incorporation, said corporation shall file with the secretary of state a copy of said amendment, certificate, or other instrument, certified by the official of the state of incorporation with whom it is filed. The fee for filing such copies shall be one dollar for each instrument separately certified by the official of the state of incorporation. The secretary of state shall issue to said corporation a certificate for each such instrument, stating that said instrument has been filed with him. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8424; C46, 50, 54,§494.5]

Referred to in §§494.6, 494.7, 495.1  
Chapter 267, Acts 49GA, repealed by 50GA, ch 227,§1

**494.6 Exemption.** Any corporation transacting business in this state prior to September 1, 1886, shall be exempt from the payment of the fees required under the provisions of sections 494.4 and 494.5. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8425; C46, 50, 54,§494.6]

Referred to in §495.1

**494.7 Issuance of permit—effect.** Upon complying with the provisions of sections 494.1 to 494.5, inclusive, the secretary of state shall issue to such corporation a permit in such form as he may prescribe, for the transaction of the business of such corporation within the state which permit shall authorize the transaction of business in the state from the date thereof for the period that is permitted by the provisions of section 491.24 unless by the terms of its articles or charter its corporate life expires prior thereto, in which case the permit shall expire with the life of the corporation. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8426; C46, 50, 54,§494.7]

Referred to in §495.1

**494.8 Foreign corporations—requalification.** A foreign corporation which has a permit under this chapter may requalify or renew its permit hereunder by fully completing the proceedings therefor at any time within three months before or after the date upon which its permit expires by filing a list duly attested to by the secretary of state of the home state of the corporate documents filed therein together with the dates of said filing accom-

panied by a resolution of its board of directors or stockholders authorizing the filing thereof and by paying fees as set forth in section 494.4. The renewal papers shall include a duly certified copy of any corporate document on file in the home state as indicated by the above list which is not already on file in the office of the secretary of state. The permit of a foreign corporation shall not be canceled by the secretary of state for failure to renew or requalify until three months after the expiration date of its permit and no penalty or forfeiture under the provisions of sections 494.12 and 494.13 shall be effected or collected for any business transacted by the corporation, its agents, officers, or employees, during the three-month period following the expiration date of its permit. [C46, 50, 54, §494.8]

Referred to in §495.1  
For temporary provisions, see 57GA, ch 47,§3

**494.9 Denial of right to sue.** No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such permit. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee of such foreign corporation or under either of them. [C24, 27, 31, 35, 39,§8427; C46, 50, 54,§494.9]

Referred to in §495.1

**494.10 Alphabetical records required.** The secretary of state shall number consecutively all such certified copies heretofore and hereafter filed in his office and shall maintain a card index thereof alphabetically arranged and shall preserve the same and the originals of said certified copies as permanent records of his office. [C24, 27, 31, 35, 39,§8428; C46, 50, 54,§494.10]

Referred to in §495.1

**494.11 Powers denied.** No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit. [C97,§1638; C24, 27, 31, 35, 39,§8429; C46, 50, 54,§494.11]

**494.12 Violations by corporation.** Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the state of Iowa, by its officers, agents, or otherwise, without having complied with the preceding sections of this chapter and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction. [C97,§1639; C24, 27, 31, 35, 39,§8430; C46, 50, 51,§494.12]

C97,§1639, editorially divided  
Referred to in §§494.8, 495.5



**494.13 Violations by officers.** Any agent, officer, or employee who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment, and pay all costs of prosecution. [C97,§1639; C24, 27, 31, 35, 39,§8431; C46, 50, 54,§494.13]

Referred to in §§494.8, 495.5

**494.14 Status of corporation and officers.** Nothing contained in this chapter shall relieve

any person, company, corporation, association, or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this state shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. [C97,§1639; C24, 27, 31, 35, 39,§8432; C46, 50, 54,§494.14]

Referred to in §495.5

## CHAPTER 495

### FOREIGN PUBLIC UTILITY CORPORATIONS

495.1 Capital stock and permit.  
495.2 Holding companies.  
495.3 Annual report—fee.

495.4 Sale of capital stock.  
495.5 Violations—stock void.  
495.6 Dissolution—receiver.

**495.1 Capital stock and permit.** Sections 492.5 to 492.9, inclusive, and 494.1 to 494.10, inclusive, are hereby made applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls, or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of said works, plants, interurban or street railways or the business carried on by said works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation, or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of the provisions of this chapter is hereby declared to be unlawful. [S13,§1641-l; C24, 27, 31, 35, 39,§8433; C46, 50, 54,§495.1]

**495.2 Holding companies.** The provisions of this chapter are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations

owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates, or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state, or the business carried on by such works or plants. [S13,§1641-m; C24, 27, 31, 35, 39,§8434; C46, 50, 54,§495.2]

**495.3 Annual report—fee.** All corporations subject to the provisions of this chapter are hereby required to pay the annual fee and to make the annual report in the form and manner and at the time as specified in chapter 496. [S13,§1641-n; C24, 27, 31, 35, 39,§8435; C46, 50, 54,§495.3]

**495.4 Sale of capital stock.** The provisions of this chapter are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this chapter, whether said capital stock has been heretofore issued by said corporation or not, including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this chapter, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation. [S13, §1641-o; C24, 27, 31, 35, 39,§8436; C46, 50, 54, §495.4]

**495.5 Violations—stock void.** Shares of capital stock of any corporation owned or controlled in violation of the provisions of this chapter shall be void and the holder thereof shall not be entitled to exercise the powers of a shareholder of said corporation or permitted to participate in or be entitled to any of the

benefits accruing to shareholders of said corporation, and sections 494.12 to 494.14, inclusive, are hereby made applicable to violations of the provisions of this chapter; and courts and juries shall construe this chapter so as to prevent evasion and to accomplish the intents and purposes thereof. [S13,§1641-p; C24, 27, 31, 35, 39,§8437; C46, 50, 54,§495.5]

**495.6 Dissolution—receiver.** Courts of equity shall have full power to dissolve, close up, or dispose of any business or property owned, operated, or controlled in violation of the provisions of this chapter; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this chapter and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this chapter, it is

necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this chapter, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation which has violated the provisions thereof or of the corporation issuing the stock which is held in violation thereof. Any action to enforce the provisions of this chapter may be instituted by the attorney general in the name of the state of Iowa or by a citizen in the name of the state of Iowa at his own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this chapter all rights possessed by them. [S13,§1641-q; C24, 27, 31, 35, 39,§8438; C46, 50, 54, §495.6]

## CHAPTER 496

### ANNUAL REPORTS OF CORPORATIONS

Referred to in §495.3

- 496.1 Time of report—requirements.
- 496.2 Signature and oath.
- 496.3 Exemption.
- 496.4 Annual fee.
- 496.5 Schedule of penalties.
- 496.6 Collection.
- 496.7 Dissolution—effect.
- 496.8 Forfeiture of right to do business.
- 496.9 Notice of delinquency—recommendation of attorney general.

- 496.10 Notice of recommendations.
- 496.11 Service of notice.
- 496.12 Forfeiture of right to do business.
- 496.13 Compromise.
- 496.14 Effect of forfeiture.
- 496.15 Corporate rights canceled.
- 496.16 Lien.
- 496.17 Annual notice of requirements.
- 496.18 Service of notice.
- 496.19 Corporations exempted.

**496.1 Time of report—requirements.** Any corporation, organized under the laws of this state or under the laws of any other state, territory, or any foreign country, which has complied with the laws of this state relating to the organization of corporations and secured a certificate of incorporation or permit to transact business in this state, and any corporation that may hereafter organize and become incorporated under the laws of this state, and shall secure a certificate of incorporation or permit to transact business in this state, and any foreign corporation that may hereafter comply with the laws of this state relating to foreign corporations and secure a permit to transact business within this state, shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe, upon a blank to be prepared by him for that purpose, and such report shall contain the following information:

1. Name and post-office address of the corporation.
2. The amount of capital stock authorized.
3. The amount of capital stock actually issued and outstanding.
4. Par value of such stock, designating

whether preferred or common stock, and the amount of each kind.

5. The names and post-office addresses of its officers and directors and whether any change of place of business has been made during the year previous to making said report. [S13, §1614-c; C24, 27, 31, 35, 39,§8439; C46, 50, 54, §496.1]

Referred to in §§496.2, 496.5

**496.2 Signature and oath.** The report required by section 496.1 shall be signed and sworn to by an officer of the corporation and when filed with the secretary of state shall be accompanied by the fee required in section 496.4. [S13,§1614-d; C24, 27, 31, 35, 39,§8440; C46, 50, 54,§496.2]

S13,§1614-d, editorially divided

**496.3 Exemption.** Any corporation organized under the laws of this state, and any foreign corporation filing a certified copy of its articles of incorporation after the first day of April of any year, shall be exempt from the provisions of this chapter, for the period ending one year from the first day of July following, after which it shall be subject to all the provisions of this chapter. [S13,§1614-d; C24, 27, 31, 35, 39,§8441; C46, 50, 54,§496.3]

**496.4 Annual fee.** Every corporation whose corporate period has not expired, which has heretofore obtained, or may hereafter obtain, a certificate of incorporation or permit under the provisions of chapters 491 or 494, to transact business in this state as a corporation, whether the same be a domestic or a foreign corporation, shall pay to the secretary of state an annual fee in the sum of one dollar. [S13, §1614-e; C24, 27, 31, 35, 39, §8442; C46, 50, 54, §496.4]

Referred to in §496.2

**496.5 Schedule of penalties.** Any corporation organized under the laws of this state, and any foreign corporation authorized to do business in this state, which shall fail to make the report and pay the annual fee provided for in this chapter, and within the time required in section 496.1, shall, in addition to the annual fee of one dollar required, incur the following penalties beginning with the month of September and dating from the first day thereof, to wit: For the month of September the sum of one dollar, for the month of October the sum of two dollars, for the month of November the sum of three dollars, for the month of December the sum of four dollars, and for each month thereafter the sum of five dollars. [S13, §1614-f; C24, 27, 31, 35, 39, §8443; C46, 50, 54, §496.5]

S13, §1614-f, editorially divided  
Referred to in §496.9

**496.6 Collection.** If on the first day of January following, such corporation shall not have filed the annual report and paid the annual fee, together with all monthly penalties due at the time of filing said report and paying said fee, the secretary of state shall furnish to the attorney general a list of delinquent domestic corporations and he may direct the county attorney of the county in which the corporation has its principal place of business to bring suit for the collection of the fee and penalties then due, or may bring such action himself. [S13, §1614-f; C24, 27, 31, 35, 39, §8444; C46, 50, 54, §496.6]

**496.7 Dissolution—effect.** Any domestic corporation may, prior to the first day of February of any subsequent year, escape the payment of fee and penalty by dissolving the corporation in the manner provided by section 491.23 and filing with the secretary of state a proof of publication of notice of dissolution. [S13, §1614-f; C24, 27, 31, 35, 39, §8445; C46, 50, 54, §496.7]

**496.8 Forfeiture of right to do business.** Any foreign corporation that shall fail to make the annual report and pay the annual fee and penalties that may be due shall thereby forfeit its right to do business within this state. [S13, §1614-f; C24, 27, 31, 35, 39, §8446; C46, 50, 54, §496.8]

**496.9 Notice of delinquency—recommendation of attorney general.** During the month of August of each year the secretary of state shall prepare a list of all delinquent corpora-

tions and file the same in his office, and on or before the first day of September he shall send by certified mail to each delinquent a notice of such delinquency and of the penalties provided in section 496.5 and if the annual report required is not filed and the annual fee paid, together with penalties due, on or before the last day of January, on the first day of February following, notice of such delinquency will be filed with the attorney general, who may cause action to be brought for the collection of the fee and penalties due the state; or, at his discretion, the attorney general may recommend that the secretary of state cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records, and when so canceled by the secretary of state the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [S13, §1614-g; C24, 27, 31, 35, 39, §8447; C46, 50, 54, §496.9; 57GA, ch 267, §68]

38GA, ch 205, §2, editorially divided  
Referred to in §§496.10, 496.15

**496.10 Notice of recommendations.** The secretary of state shall forward to such corporation, a written notice of the recommendations of the attorney general, such notice to state that unless said corporation shall within sixty days of the date of such notice fully comply with the provisions of section 496.9 by filing in the office of the secretary of state any report that may be due and pay all fees and penalties that have accrued, or, in lieu thereof file a proof of publication of notice of dissolution as required by section 491.23, a declaration of forfeiture and cancellation will be entered on the records of his office. [C24, 27, 31, 35, 39, §8448; C46, 50, 54, §496.10]

Referred to in §496.11

**496.11 Service of notice.** The notice herein provided for, when inclosed in a sealed envelope with legal postage affixed thereon, and addressed to the corporation, shall constitute a legal notice for the purpose of section 496.10. [C24, 27, 31, 35, 39, §8449; C46, 50, 54, §496.11]

**496.12 Forfeiture of right to do business.** After such declaration and forfeiture shall have been entered by the secretary of state on the records of his office such corporation shall not be entitled to exercise the rights of a corporate body, except, it may be allowed a reasonable time to close up its business and wind up its affairs, but no new business shall be transacted. [C24, 27, 31, 35, 39, §8450; C46, 50, 54, §496.12]

**496.13 Compromise.** Any corporation whose corporate rights shall have been canceled and forfeited in the manner provided herein, or any stockholders or creditor of such corporation may, however, make an application to the secretary of state for a compromise of the claim of the state for the fee and penalties that may have accrued under the provisions of this

chapter, and upon payment to the secretary of state the fee or fees that may have accrued, and such amount in addition thereto as penalties as may be fixed by the secretary of state, and also, upon filing such annual reports as may be delinquent, the secretary of state shall reinstate said corporation and the decree of cancellation and forfeiture previously entered shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period, as fixed by its articles of incorporation and the limitations prescribed by law, with the right of renewal under sections 491.33 to 491.37, inclusive. [C24, 27, 31, 35, 39,§8451; C46, 50, 54, §496.13]

**496.14 Effect of forfeiture.** No corporation shall be permitted to waive any duty or obligation required of corporations or the payment of any just claim or claims by reason of such cancellation, forfeiture, and reinstatement as herein provided. [C24, 27, 31, 35, 39, §8452; C46, 50, 54,§496.14]

**496.15 Corporate rights canceled.** On the first day of February following the date of the notice provided for in section 496.9, all foreign corporations that have not complied with the provisions of this chapter shall forfeit the right to transact business in this state and a declaration of forfeiture and cancellation shall be entered upon the margin of the record of the certified copy of the articles of incorporation of such company in the office of the secretary of state or in such other record as the secretary of state may provide. [S13,§1614-h; C24, 27, 31, 35, 39,§8453; C46, 50, 54,§496.15]

**496.16 Lien.** The fees and penalty provided for in this chapter shall be a prior lien on any

property of the corporation against all persons, whether said property is in the possession of said corporation or otherwise. [C24, 27, 31, 35, 39,§8454; C46, 50, 54,§496.16]

**496.17 Annual notice of requirements.** It shall be the duty of the secretary of state between the first day of May and the first day of July of each year to notify all corporations whose corporate period has not expired, or that have not dissolved according to law, that are subject to the provisions of this chapter, of the requirements herein made, inclosing therewith a blank form of report and application as provided. [S13,§1614-k; C24, 27, 31, 35, 39,§8455; C46, 50, 54,§496.17]

S13,§1614-k, editorially divided

**496.18 Service of notice.** The mailing of said notice at Des Moines, Iowa, addressed to the corporation at its post-office address as shown by the records of his office shall be deemed a full, complete, and legal notice for the purpose of this chapter. [S13,§1614-k; C24, 27, 31, 35, 39,§8456; C46, 50, 54,§496.18]

**496.19 Corporations exempted.** Nothing in this chapter shall be construed as imposing an annual fee or requiring a report from any corporation organized for religious, educational, scientific, or charitable purposes or other corporations not organized for pecuniary profit, or from any corporation engaged in the banking or loan and trust business, nor from insurance companies or associations who have paid or have been exempted from the taxes provided in sections 432.1 to 432.4, inclusive, and received a certificate of authority from the commissioner of insurance. [S13,§1614-i; SS15,§1920-u4; C24, 27, 31, 35, 39,§8458; C46, 50, 54,§496.19]

## CHAPTER 497

### CO-OPERATIVE ASSOCIATIONS

Referred to in §§498.32, 499.60, 500.3, 503.2

Applicable only to associations originally chartered before July 4, 1935. See ch 499

Permissible reorganization under later law, §499.43

- 497.1 Plan authorized.
- 497.2 Articles of incorporation.
- 497.3 Filing—certificate of incorporation.
- 497.4 Fee.
- 497.5 Board of directors.
- 497.6 Removal.
- 497.7 Officers.
- 497.8 Amending articles.
- 497.9 Record of amendments.
- 497.10 Powers.
- 497.11 Ownership of shares and voting power limited.
- 497.12 Stockholding.
- 497.13 Issue of shares as payment.
- 497.14 May act as trustee.
- 497.15 Paid-up stock—right to vote.
- 497.16 Voting by mail.

- 497.17 Reserve fund.
- 497.18 Educational fund—dividends.
- 497.19 Additional dividends.
- 497.20 When dividends distributed.
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- 497.22 Annual report—penalty.
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- 497.24 List of delinquents.
- 497.25 Notice to delinquents.
- 497.26 Cancellation.
- 497.27 Effect of cancellation.
- 497.28 Reinstatement of corporation.
- 497.29 Chapter extended to former companies.
- 497.30 Use of term “co-operative” restricted.
- 497.31 Use of funds.
- 497.32 Private property exempt.

**497.1 Plan authorized.** Any number of persons, not less than five, may associate themselves as a co-operative association, society,

company or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical busi-

ness on the co-operative plan. For the purposes of this chapter, the words "association", "company", "corporation", "exchange", "society", or "union", shall be construed to mean the same. [SS15,§1641-r1; C24, 27, 31, 35, 39,§8459; C46, 50, 54,§497.1]

Referred to in §497.3

**497.2 Articles of incorporation.** They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association, and shall designate the city, town, or village where its principal place of business shall be located. Such articles shall also state the amount of capital stock, the number of shares, and the par value of each. [SS15,§1641-r2; C24, 27, 31, 35, 39,§8460; C46, 50, 54,§497.2]

Referred to in §497.3

**497.3 Filing—certificate of incorporation.** The original articles of incorporation of associations organized under this chapter shall be filed with the secretary of state, and be by him recorded in a book kept for that purpose; and if such articles comply with the provisions of sections 497.1 and 497.2, he shall issue a certificate of incorporation to the association. The secretary of state shall then forward said articles of incorporation to the recorder of deeds of the county where the principal place of business is to be located, and the same shall be there recorded by such recorder who shall indorse thereon the book and page where the record will be found and the date of the record. No publication of notice of the incorporation of such an association shall be required. [SS15, §1641-r3; C24, 27, 31, 35, 39,§8461; C46, 50, 54, §497.3]

**497.4 Fee.** For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. In all cases there shall be paid a recording fee of fifty cents per page. For recording copy of such articles, the recorder of deeds shall receive the usual fee for recording. [SS15,§1641-r4; C24, 27, 31, 35, 39,§8462; C46, 50, 54,§497.4; 56GA, ch 227,§3]

Recorder's fee, §335.14

**497.5 Board of directors.** Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the bylaws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify. [SS15,§1641-r5; C24, 27, 31, 35, 39,§8463; C46, 50, 54,§497.5]

SS15,§1641-r5, editorially divided

**497.6 Removal.** A majority of the stockholders shall have the power at any regular or special stockholders meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be a director or officer of said corporation. [SS15, §1641-r5; C24, 27, 31, 35, 39,§8464; C46, 50, 54, §497.6]

**497.7 Officers.** The officers of every such association shall be a president, one or more vice-presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. [SS15,§1641-r5; C24, 27, 31, 35, 39,§8465; C46, 50, 54,§497.7]

**497.8 Amending articles.** The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders meeting, or at any special stockholders meeting called for that purpose, on ten days notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted. [SS15, §1641-r6; C24, 27, 31, 35, 39,§8466; C46, 50, 54, §497.8]

SS15,§1641-r6, editorially divided

**497.9 Record of amendments.** Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the recorder of deeds of the county where its principal place of business is located. [SS15,§1641-r6; C24, 27, 31, 35, 39,§8467; C46, 50, 54,§497.9]

**497.10 Powers.** An association created under this chapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the co-operative plan, and may buy, sell, and deal in the products of any other co-operative company heretofore or hereafter organized under the provisions hereof. [SS15,§1641-r7; C24, 27, 31, 35, 39,§8468; C46, 50, 54,§497.10]

**497.11 Ownership of shares and voting power limited.** No stockholder in any such association shall own shares of a greater aggregate par value than five thousand dollars, except as hereinafter provided, nor shall he be entitled to more than one vote. [SS15,§1641-r8; C24, 27, 31, 35, 39,§8469; C46, 50, 54,§497.11]

**497.12 Stockholding.** At any regular meeting, or any regularly called special meeting, at which at least a majority of all its stockholders shall be present, or represented, an association organized under this chapter, may by

a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five percent of its capital, in the capital stock of any other co-operative association. [SS15, §1641-r9; C24, 27, 31, 35, 39, §8470; C46, 50, 54, §497.12]

**497.13 Issue of shares as payment.** Whenever an association created under this chapter shall purchase the business of another association, person, or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the executive council, would equal the fair market value of the business so purchased as determined by the executive council as in cases of other corporations. [SS15, §1641-r10; C24, 27, 31, 35, 39, §8471; C46, 50, 54, §497.13]

Payment in property other than money, §492.6 et seq.

**497.14 May act as trustee.** In case the cash value of such purchased business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business. [SS15, §1641-r11; C24, 27, 31, 35, 39, §8472; C46, 50, 54, §497.14]

40ExGA, SF §12, §1, editorially divided

**497.15 Paid-up stock—right to vote.** Certificates of stock shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as stockholders; provided part of the stock subscribed for has been paid in cash. [SS15, §1641-r11; C24, 27, 31, 35, 39, §8473; C46, 50, 54, §497.15]

**497.16 Voting by mail.** At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders so signing; provided he has been previously notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. [SS15, §1641-r12; C24, 27, 31, 35, 39, §8474; C46, 50, 54, §497.16]

**497.17 Reserve fund.** The board of directors, subject to revision by the association at any general or special meeting, shall each year set aside not less than ten percent of the net profits for a reserve fund, until an amount has accumulated therein equal to fifty percent of the paid-up capital stock. [SS15, §1641-r13; C24, 27, 31, 35, 39, §8475; C46, 50, 54, §497.17]

**497.18 Educational fund—dividends.** The board may each year, out of remaining net

profits, subject to the approval of the association at any general or special meeting:

1. Provide an educational fund to be used in teaching co-operation, not exceeding five percent of the net profits.

2. Declare and pay a dividend on the stock, not exceeding ten percent. [SS15, §1641-r13; C24, 27, 31, 35, 39, §8476; C46, 50, 54, §497.18]

**497.19 Additional dividends.** The remainder of said net profits shall be distributed by uniform dividends upon the amount of purchases of shareholders, and upon the wages and salaries of employees. In producing associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a producing concern, the dividends may be on both raw material delivered and goods purchased by patrons. [SS15, §1641-r13; C24, 27, 31, 35, 39, §8477; C46, 50, 54, §497.19]

**497.20 When dividends distributed.** The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the bylaws shall prescribe, which shall be as often as once in twelve months. [SS15, §1641-r14; C24, 27, 31, 35, 39, §8478; C46, 50, 54, §497.20]

SS15, §1641-r14, editorially divided

**497.21 Dissolution.** If such association, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. [SS15, §1641-r14; C24, 27, 31, 35, 39, §8479; C46, 50, 54, §497.21]

**497.22 Annual report—penalty.** Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of stockholders, total expense of operation, amount of indebtedness for liabilities, and its profits and losses. Such reports shall be for the calendar or fiscal year immediately preceding the said first day of March, provided that a calendar or fiscal year has been completed upon said date.

Failure to comply with this section before the first day of April shall subject the delinquent association to a penalty of ten dollars. [SS15, §1641-r15; C24, 27, 31, 35, 39, §8480; C46, 50, 54, §497.22]

Referred to in §§497.23, 497.25

**497.23 Exemption from report.** Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 497.22 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section. [C27, 31, 35, §8480-a1; C39, §8480.1; C46, 50, 54, §497.23]

**497.24 List of delinquents.** In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office. [C27, 31, 35, §8480-a2; C39, §8480.2; C46, 50, 54, §497.24]

41GA, ch 160, §2, editorially divided

**497.25 Notice to delinquents.** On or before the first day of May he shall send by registered mail to each delinquent and to each of its officers, as may be disclosed by the latest records on file in the office of the secretary of state, a notice of such delinquency and of the penalties provided in section 497.22. [C27, 31, 35, §8480-a3; C39, §8480.3; C46, 50, 54, §497.25]

**497.26 Cancellation.** If the annual report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records. [C27, 31, 35, §8480-a4; C39, §8480.4; C46, 50, 54, §497.26]

**497.27 Effect of cancellation.** When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [C27, 31, 35, §8480-a5; C39, §8480.5; C46, 50, 54, §497.27]

**497.28 Reinstatement of corporation.** Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report he shall, upon the filing of such report and the payment of the penalty, reinstate said corporations and the decree of cancellation shall be annulled

and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law. [C27, 31, 35, §8480-a6; C39, §8480.6; C46, 50, 54, §497.28]

**497.29 Chapter extended to former companies.** All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state and the county recorder of the county in which the principal place of business is located, amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration, signed and sworn to by the president and secretary to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions hereof. [SS15, §1641-r16; C24, 27, 31, 35, 39, §8481; C46, 50, 54, §497.29]

**497.30 Use of term "co-operative" restricted.** No corporation or association organized after July 4, 1915, shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter, and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [SS15, §1641-r17; C24, 27, 31, 35, 39, §8482; C46, 50, 54, §497.30]

**497.31 Use of funds.** None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any promotion; as commissions, salaries or expenses of any kind, character, or nature whatsoever. [SS15, §1641-r18; C24, 27, 31, 35, 39, §8483; C46, 50, 54, §497.31]

**497.32 Private property exempt.** The private property of the stockholders shall be exempt from execution for the debts of the corporation. [SS15, §1641-r19; C24, 27, 31, 35, 39, §8484; C46, 50, 54, §497.32]

CHAPTER 498

NONPROFIT-SHARING CO-OPERATIVE ASSOCIATIONS

Referred to in §§499.60, 503.2

Applicable only to associations originally chartered before July 4, 1935. See ch 499

Permissible reorganization under later law, §499.43

- 498.1 Nature.
- 498.2 Organization.
- 498.3 Terms defined—products of nonmembers.
- 498.4 Articles—personal liability.
- 498.5 Filing—certificate of incorporation.
- 498.6 Fees.
- 498.7 Amendments.
- 498.8 Board of directors—removals.
- 498.9 Officers.
- 498.10 Admission of members.
- 498.11 Membership certificates.
- 498.12 Certificates nontransferable—surrender.
- 498.13 Automatic cancellation—revocation.
- 498.14 Conditions printed on certificates.
- 498.15 Combinations of local associations.
- 498.16 Powers of central associations.
- 498.17 Voting power.
- 498.18 Proxies—voting by mail.
- 498.19 Power to compel sales and purchases—liquidated damages.
- 498.20 Financial power.
- 498.21 Personal liability.
- 498.22 Cost of service—dues, etc.
- 498.23 Reserve and educational funds—patronage dividends.
- 498.24 Annual report—penalty.
- 498.25 Exemption from report.
- 498.26 List of delinquents.
- 498.27 Notice to delinquents.
- 498.28 Cancellation.
- 498.29 Effect of cancellation.
- 498.30 Reinstatement of corporation.
- 498.31 Chapter extended to former associations.
- 498.32 Use of term “co-operative”—injunction.
- 498.33 Use of funds—promotion expenses.
- 498.34 Duration of incorporation—renewal.

**498.1 Nature.** Associations organized under the provisions of this chapter are declared to be not for pecuniary profit. [C27, 31, 35, §8485-b1; C39, §8485.1; C46, 50, 54, §498.1]

42GA, ch 192, §2, editorially divided

**498.2 Organization.** Any number of persons, not less than five, may associate themselves as a co-operative association, without capital stock, for the purpose of conducting any agricultural, livestock, horticultural, dairy, mercantile, mining, manufacturing, or mechanical business, or the constructing and operating of telephone and high tension electric transmission lines on the co-operative plan and of acting as a co-operative selling agency. Co-operative livestock shipping associations organized under this chapter shall do business with members only. [C24, 27, 31, 35, 39, §8486; C46, 50, 54, §498.2]

**498.3 Terms defined—products of nonmembers.** For the purpose of this chapter, the words “association”, “exchange”, “society”, or “union”, shall be construed to mean the same and are defined to mean a corporate body composed of actual producers or consumers of the given commodity handled by the association, whose business is conducted for the mutual benefit of its members and not for the profit of stockholders, and control of which is vested in its members upon the basis of one vote to each member. Associations shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [C24, 27, 31, 35, 39, §8487; C46, 50, 54, §498.3]

**498.4 Articles — personal liability.** They shall sign and acknowledge written articles, which shall contain the name of the association and the names and residences of the in-

corporators. Such articles shall also contain a statement of the purposes of the association, the amount of the membership fee, and shall designate the city, town, or village where its principal place of business shall be located, and the manner in which such articles may be amended, and any limitation which the members propose to place upon their personal liability for the debts of the association. [C24, 27, 31, 35, 39, §8488; C46, 50, 54, §498.4]

**498.5 Filing — certificate of incorporation.** The original articles of incorporation shall be filed for record with the secretary of state. Upon approval of such articles, the secretary of state shall issue a certificate of incorporation. [C24, 27, 31, 35, 39, §8489; C46, 50, 54, §498.5]

**498.6 Fees.** For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state five dollars, and for the filing of an amendment to such articles, two dollars. In all cases there shall be paid a recording fee of fifty cents per page. [C24, 27, 31, 35, 39, §8490; C46, 50, 54, §498.6; 56GA, ch 227, §4]

**498.7 Amendments.** Within thirty days after the adoption of any amendment to its articles of incorporation, the association shall cause a copy of such amendment to be recorded in the office of the secretary of state. [C24, 27, 31, 35, 39, §8491; C46, 50, 54, §498.7]

**498.8 Board of directors—removals.** Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the members at such time and for such term of office as the articles may prescribe. They shall hold office until their successors are elected and qualify; but a



majority of the members shall have the power at any regular or special meeting of the association legally called, to remove any director or officer for cause, and fill the vacancy. [C24, 27, 31, 35, 39, §8492; C46, 50, 54, §498.8]

**498.9 Officers.** The officers of every such association shall be a president, one or more vice-presidents, a secretary, and treasurer, who shall be elected annually by the directors, from amongst their own number. The offices of secretary and treasurer may be held by the same person. [C24, 27, 31, 35, 39, §8493; C46, 50, 54, §498.9]

**498.10 Admission of members.** Under the terms and conditions prescribed in its bylaws, an association may admit as members persons engaged in the production of the products, or in the use or consumption of the supplies, to be handled by or through the association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises. [C24, 27, 31, 35, 39, §8494; C46, 50, 54, §498.10]

39GA, ch 122, §9, editorially divided

**498.11 Membership certificates.** Membership certificates in due form shall be issued to all charter members and to such others as shall subsequently be admitted by the association in accordance with its articles and bylaws. [C24, 27, 31, 35, 39, §8495; C46, 50, 54, §498.11]

**498.12 Certificates nontransferable — surrender.** No such certificate shall be transferable by the member to any other person, but shall be surrendered to the association in case of his voluntary withdrawal. [C24, 27, 31, 35, 39, §8496; C46, 50, 54, §498.12]

Referred to in §498.14

**498.13 Automatic cancellation—revocation.** It shall become void upon his death, or may be revoked by the directors upon proof duly made that he has ceased to be a producer of products handled by or through the association, in the case of producing or selling associations or has ceased to be the user of products handled by or through the association in case of stores and supply associations, or for failure to observe its bylaws or his contractual obligations to it. [C24, 27, 31, 35, 39, §8497; C46, 50, 54, §498.13]

Referred to in §498.14

**498.14 Conditions printed on certificates.** The conditions of membership specified in sections 498.12 and 498.13 shall be printed upon the face of every membership certificate. [C24, 27, 31, 35, 39, §8498; C46, 50, 54, §498.14]

**498.15 Combinations of local associations.** Likewise, associations may be formed under this chapter whose membership shall consist of other associations formed under the provisions of this chapter, the purpose being to federate local associations into central co-operative associations for the more economical and

efficient performance of their marketing or other operations. [C24, 27, 31, 35, 39, §8499; C46, 50, 54, §498.15]

**498.16 Powers of central associations.** Such central associations may enter into contracts, agreements, and arrangements with their member associations. Each member association in such federated associations shall have an official representative chosen by its own board of directors, who shall cast one vote and no more at all business meetings of the federated association. [C24, 27, 31, 35, 39, §8500; C46, 50, 54, §498.16]

**498.17 Voting power.** Each member of an association shall be entitled to one vote and no more upon all questions affecting the control and management of the affairs of the association and in the selection of its board of directors. [C24, 27, 31, 35, 39, §8501; C46, 50, 54, §498.17]

39GA, ch 122, §10, editorially divided

**498.18 Proxies—voting by mail.** No vote by proxy shall be permitted, but a written vote received by mail from any absent member, and signed by him, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member. [C24, 27, 31, 35, 39, §8502; C46, 50, 54, §498.18]

**498.19 Power to compel sales and purchases—liquidated damages.** The association may require members to sell all or a stipulated part of their specifically enumerated products exclusively through the association or to buy specifically enumerated supplies exclusively through the association, but in such case, a reasonable period during each year shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. Where it is desired to enter into the exclusive arrangement provided in this section, the association shall execute a contract with each such member setting forth what goods or wares are to be handled and upon what terms. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, the association may stipulate that some regular charge shall be paid by the member for each unit of goods covered by such contract whether actually handled by the association or not, and in order to reimburse the association for any loss or damage which it or its members may sustain through the member's failure to deliver his products to or to procure his supplies from the association.

In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such a contract, the association and the member may agree upon a sum to be paid as liquidated

damages for the breach of his contract, said amount to be stated in the contract. [C24, 27, 31, 35, 39,§8503; C46, 50, 54,§498.19]

**498.20 Financial power.** Every association may borrow money necessary for the conduct of its business, and may issue notes, bonds, or debentures therefor, and may give security in the form of mortgage or otherwise for the repayment thereof. [C24, 27, 31, 35, 39,§8504; C46, 50, 54,§498.20]

**498.21 Personal liability.** Members of such association may limit their personal liability to the amount of their membership fee as provided in their articles of incorporation. [C24, 27, 31, 35, 39,§8505; C46, 50, 54,§498.21]

**498.22 Cost of service—dues, etc.** Associations formed under this chapter shall perform services on a basis of the lowest practicable cost, and may provide for meeting the cost thereof through dues, assessments, or service charges, which shall be prescribed in the by-laws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital. [C24, 27, 31, 35, 39,§8506; C46, 50, 54,§498.22]

39GA, ch 122,§14, editorially divided

**498.23 Reserve and educational funds—patronage dividends.** Out of any surplus remaining in any given year, the directors shall each year set aside not less than ten percent of such savings for the accumulation of a reserve fund until such reserve shall equal at least forty percent of the invested capital of the association, not less than one percent nor more than five percent for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching co-operation, and the remainder to be returned to the members as a patronage dividend prorated on a uniform basis to each member upon the value of business done by him through the association. [C24, 27, 31, 35, 39,§8507; C46, 50, 54,§498.23]

**498.24 Annual report—penalty.** Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, number of members, total expense of operation, amount of indebtedness, and its profits or losses. Such reports shall be for the calendar or fiscal year immediately preceding the said first day of March, provided that a calendar or fiscal year has been completed upon said date.

Failure to comply with this section before April 1 of each year shall subject the delinquent association to a penalty of ten dollars. [C24, 27, 31, 35, 39,§8508; C46, 50, 54,§498.24]

Referred to in §§498.25, 498.27

**498.25 Exemption from report.** Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 498.24 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section. [C27, 31, 35,§8508-a1; C39, §8508.1; C46, 50, 54,§498.25]

**498.26 List of delinquents.** In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office. [C27, 31, 35, §8508-a2; C39,§8508.2; C46, 50, 54,§498.26]

41GA, ch 160,§4, editorially divided

**498.27 Notice to delinquents.** On or before the first day of May he shall send by certified mail to each delinquent and to each of its officers, as may be disclosed by the latest records on file in the office of the secretary of state, a notice of such delinquency and of the penalties provided in section 498.24. [C27, 31, 35, §8508-a3; C39,§8508.3; C46, 50, 54,§498.27; 57GA, ch 267,§69]

**498.28 Cancellation.** If the annual report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records. [C27, 31, 35,§8508-a4; C39,§8508.4; C46, 50, 54,§498.28]

**498.29 Effect of cancellation.** When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [C27, 31, 35,§8508-a5; C39,§8508.5; C46, 50, 54, §498.29]

**498.30 Reinstatement of corporation.** Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report he shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law. [C27, 31, 35,§8508-a6; C39, §8508.6; C46, 50, 54,§498.30]

**498.31 Chapter extended to former associations.** All corporations, or associations heretofore organized and doing business under prior statutes, or which have attempted so to organize and do business co-operatively, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state amended and substituted articles of incorporation drawn in accordance with the

provisions of this chapter and a written declaration signed and sworn to by the president and secretary, to the effect that said company or association has, by a majority vote of its stockholders, decided to accept the benefits of and to be bound by the provisions of this chapter. [C24, 27, 31, 35, 39, §8509; C46, 50, 54, §498.31]

**498.32 Use of term "co-operative"—injunction.** No corporation or association hereafter organized shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter or of chapter 497, and any corporation or association violating the provisions of this chapter may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [C24, 27, 31, 35, 39, §8510; C46, 50, 54, §498.32]

**498.33 Use of funds — promotion expenses.** None of the funds of any association shall be

used for purposes of any promotion as commissions, salaries, or expenses of any kind, character, or nature whatsoever, except that in the case of associations operating in more than one county, if the par value of securities to be sold is in excess of one hundred thousand dollars, a sum not to exceed five percent of the par value of bonds or debentures sold may be used by committees elected by the members for selling or soliciting for the sale of such securities or for hiring responsible salaried solicitors for that purpose. [C24, 27, 31, 35, 39, §8511; C46, 50, 54, §498.33]

**498.34 Duration of incorporation—renewal.** Associations formed under the provisions of this chapter shall continue for a period of twenty-five years, unless earlier dissolved by order of its members or by other processes as by law provided, and the term of its existence may be renewed by the filing of new articles of association, as by law provided. [C24, 27, 31, 35, 39, §8512; C46, 50, 54, §498.34]

## CHAPTER 499

### CO-OPERATIVE ASSOCIATIONS (ORGANIZED AFTER JULY 4, 1935)

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**499.1 Applicable.** This chapter applies only to co-operative associations as defined in section 499.2. All such associations hereafter\* formed must be organized under this chapter. [C35, §8512-g1; C39, §8512.01; C46, 50, 54, §499.1]

\*Effective July 4, 1935

**499.2 Definitions.** A "co-operative association" is one which, in serving some purpose enumerated in section 499.6, deals with or functions for its members at least to the extent required by section 499.3, and which distributes its net earnings among its members in

proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.

"Association" means a corporation formed under this chapter.

"Agricultural products" include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.

"Agricultural associations" are those formed for a purpose specified in subsection 2, section 499.6.

"Member" refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates. [C35,§8512-g2; C39,§8512.02; C46, 50, 54,§499.2]

Referred to in §499.1

**499.3 Dealing with nonmembers.** A nonstock livestock shipping association shall not handle livestock of any nonmembers.

Any association may limit its dealings or any class thereof to members only.

No association shall, during any year, deal or function with or for nonmembers to an extent exceeding one-half of the value of business done. This provision shall not apply to its sales or services to municipal or governmental bodies; nor to agricultural associations' purchases from or sales to corporate landowners who are not primarily engaged in the business of farming. [C35,§8512-g3; C39, §8512.03; C46, 50, 54,§499.3]

Referred to in §§499.2, 499.49

**499.4 Use of term "co-operative" restricted.** No person or firm, and no corporation hereafter organized, which is not an association defined herein, shall use the word "co-operative" or any abbreviation thereof in its name or advertising or in any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use. [C35, §8512-g4; C39,§8512.04; C46, 50, 54,§499.4]

**499.5 Permissible organizers.** Five or more individuals, or two or more associations, may organize an association. All individual incorporators of agricultural associations must be engaged in producing agricultural products, which term shall include landlords and tenants as specified in section 499.13. [C35,§8512-g5; C39,§8512.05; C46, 50, 54,§499.5]

**499.6 Objects.** Associations may be formed either:

1. To conduct a mercantile, manufacturing, mechanical or mining business, or to construct or operate telephone or electric transmission lines; or

2. To produce, grade, blend, preserve, process, store, warehouse, market, sell or handle any agricultural product, or any by-product thereof; or to purchase, produce, sell or supply machinery, petroleum products, equip-

ment, fertilizer, supplies, business or educational service to or for those engaged as bona fide producers of agricultural products; or to finance any such activities; or to engage in any co-operative activity connected with any of said purposes; or for any number of these purposes. [C35,§8512-g6; C39,§8512.06; C46, 50, 54,§499.6]

Referred to in §§499.2, 499.7

**499.7 Powers.** Except as expressly limited in its articles, each association shall have power to do anything permitted anywhere in this chapter, and also:

1. To conduct any business enumerated in section 499.6 which its articles specify; and to conduct such business either as principal or as agent for its members.

2. To borrow any amounts of money, and give any form of obligation or security therefor.

3. To make advances to patrons or members, or members of member-associations, and take any form of obligation or security therefor.

4. To acquire, hold, transfer or pledge any obligation or security representing funds actually advanced or used for any co-operative activity; or stock, memberships, bonds or obligations of any co-operative organization dealing in any product handled by the association, or any by-product thereof.

5. To make any contract, indorsement or guaranty it deems desirable incident to its transfer or pledge of any obligation or security.

6. To acquire, own or dispose of any real or personal property deemed convenient for its business, including patents, trade-marks and copyrights.

7. To exercise any power, right or privilege suitable or necessary for, or incident to, promoting or accomplishing any of its powers, purposes or activities, or granted to ordinary corporations, save such as are inconsistent with this chapter.

8. To exercise any of its powers anywhere.

No association organized under this chapter shall engage in the business of banking. Provided, however, that nothing in this chapter shall be construed in any way to repeal or change chapter 531, relating to co-operative banks. [C35,§8512-g7; C39,§8512.07; C46, 50, 54, §499.7]

**499.8 Contracts authorized.** An agricultural association may contract with any member for his exclusive sale to or through it, of all or any part of his agricultural products or other designated commodities. Such contracts may permit the association to take and sell the property without acquiring title thereto, and pay the member the sale price less costs and expenses of selling, which may include the member's pro rata portion of the association's annual outlay for overhead, interest, preferred dividends, reserves or other specified charges. Such contracts must be for a specified time, not less than one year. Each contract shall fix a

period of at least ten days during each year after the first, within which either party may terminate it without affecting any liability previously accrued. [C35,§8512-g8; C39,§8512.08; C46, 50, 54,§499.8]

Referred to in §499.9

**499.9 Penalties—performance—injunction—arbitration.** Contracts permitted by section 499.8 may provide that the member pay the association any sum, fixed in amount or by a specified method of computation, for each violation thereof; also all the association's expenses of any suit thereon, including bond premiums and attorney's fees. All such provisions shall be enforced as written, whether at law or in equity, and shall be deemed proper measurement of actual damages, and not penalties or forfeitures.

The association may obtain specific performance of any such contract, or enjoin its threatened or continued breach, despite the adequacy of any legal or other remedy.

If the association files a verified petition, showing an actual or threatened breach of any such contract and seeking any remedy therefor, the court or any judge thereof shall, without notice or delay but on such bond as it deems proper, issue a temporary injunction against such breach or its continuance.

The parties to such contracts may agree to arbitrate any controversy subsequently arising thereunder, and fix the number of arbitrators and method of their appointment. Such agreements shall be valid and irrevocable, except on such grounds as invalidate contracts generally. If they specify no method for appointing arbitrators, or if either party fails to follow such method, or if for any reason arbitrators are not named or vacancies filled, either party may apply to the district court to designate the necessary arbitrator, who shall then act under the agreement with the same authority as if named in it. Unless otherwise agreed, there shall be but one arbitrator. [C35, §8512-g9; C39,§8512.09; C46, 50, 54,§499.9]

**499.10 Co-operative agreements.** Any association may make any agreement or arrangement with any other association or co-operative organization for the co-operative or more economical carrying on of any of its business. Any number of such associations or organizations may unite to employ or use, or may separately employ or use, the same methods, means or agencies for conducting their respective businesses. [C35,§8512-g10; C39,§8512.10; C46, 50, 54,§499.10]

**499.11 Legality declared.** No association, contract, method or act which complies with this chapter shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen business or fix prices arbitrarily, or to accomplish any improper or illegal purpose. [C35,§8512-g11; C39,§8512.11; C46, 50, 54,§499.11]

**499.12 Exemption of private property.** The private property of the members or stock-

holders shall be exempt from execution for the debts of the corporation. [C35,§8512-g12; C39, §8512.12; C46, 50, 54,§499.12]

**499.13 Membership — eligibility.** No membership or share of common stock shall ever be issued to, or held by, any party not eligible to membership in the association under its articles. Individuals may be made eligible only if they are engaged in producing products marketed by the association, or if they customarily consume or use the supplies or commodities it handles, or use the services it renders. Farm tenants, and landlords who receive a share of agricultural products as rent, may be made eligible to membership in agricultural associations as producers. Other associations engaged in any directly or indirectly related activity may be made eligible to membership. Federated associations may be formed whose membership is restricted to co-operative associations. [C35,§8512-g13; C39,§8512.13; C46, 50, 54,§499.13]

Referred to in §499.5

**499.14 Membership in nonstock associations.** Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote. [C35,§8512-g14; C39,§8512.14; C46, 50, 54,§499.14]

**499.15 Contents of certificates.** The association shall issue certificates of membership or stock, each of which state the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption or cancellation. [C35,§8512-g15; C39,§8512.15; C46, 50, 54,§499.15]

**499.16 Subscriptions—issuing certificates.** If the articles permit, any eligible subscriber for common stock or membership may vote and be treated as a member, after making part payment therefor in cash and giving his note for the balance. Such subscriptions may be forfeited as provided in section 499.32. No stock or membership certificate shall be issued until fully paid for. No subscriber shall hold office until his certificate has been issued. [C35,§8512-g16; C39,§8512.16; C46, 50, 54,§499.16]

Referred to in §499.80

**499.17 Transfer of stock or membership.** No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and all certificates thereof shall

be surrendered to the association on the member's voluntary withdrawal. [C35,§8512-g17; C39,§8512.17; C46, 50, 54,§499.17]

**499.18 Expulsion of members.** The directors may expel any member if he has attempted to transfer his membership or stock in violation of its terms, or has willfully violated any article or bylaw which provides for such penalty. [C35,§8512-g18; C39,§8512.18; C46, 50, 54,§499.18]

**499.19 Cancellation of membership or stock.** If a common stockholder or member dies, or becomes ineligible, or is expelled, his stock or membership shall forthwith be canceled. In cases of expulsion the association shall pay him its value as shown by the books on the date of cancellation, but not more than its original issuing price, within sixty days thereafter. In cases of death or ineligibility, it shall pay such value to him or his personal representative within two years thereafter, without interest. [C35,§8512-g19; C39,§8512.19; C46, 50, 54,§499.19]

**499.20 Withdrawal of members.** The articles may permit and regulate voluntary withdrawal of members and the resulting cancellation of their common stock and memberships. [C35,§8512-g20; C39,§8512.20; C46, 50, 54, §499.20]

**499.21 Obligations not affected.** The death, expulsion or withdrawal of a member shall not impair his contracts, debts, or obligations to the association. [C35,§8512-g21; C39,§8512.21; C46, 50, 54,§499.21]

**499.22 Capital stock.** Associations with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members. [C35, §8512-g22; C39,§8512.22; C46, 50, 54,§499.22]

**499.23 Dividends on common stock.** Unless the articles provide that common stock shall receive no dividends, the directors may declare noncumulative dividends thereon at such rate as they may fix, not exceeding eight percent per annum. [C35,§8512-g23; C39,§8512.23; C46, 50, 54,§499.23]

**499.24 Preferred stock.** Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles, not exceeding eight percent per annum. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be redeemable on terms specified in the

articles. The directors shall determine the time and amount of its issue. [C35,§8512-g24; C39,§8512.24; C46, 50, 54,§499.24]

**499.25 Issuing preferred stock in purchases.** An association may discharge all or any part of obligations incurred in purchasing any business, property or stock, or an interest therein, by issuing its authorized preferred stock in an amount not exceeding the fair market value of the thing purchased. Issuance of such stock in an amount exceeding twenty-five thousand dollars shall be governed by the law as found in sections 492.6 and 492.7. Issuance of such stock in amounts smaller than twenty-five thousand dollars shall be upon the fair market value of the property purchased, as determined through an appraisal made by the directors or a competent appraiser employed by the directors. Within thirty days after such issue, the association shall file with the secretary of state a verified report containing an accurate detailed description of the thing purchased, the valuation thereof by the directors, and the amount of preferred stock thus issued. Such preferred stock shall be valid as though paid for in cash. [C35,§8512-g25; C39,§8512.25; C46, 50, 54,§499.25]

**499.26 Service charges.** Unless the articles otherwise provide, the bylaws or the directors may prescribe charges to be made to each member for services rendered him or upon products bought from or sold to him, and the time and manner of their collection. [C35, §8512-g26; C39,§8512.26; C46, 50, 54,§499.26]

**499.27 Meetings.** Regular meetings of members shall be held at least once each year, the first of which shall be on the date specified in its articles. Unless otherwise provided in the articles or bylaws, subsequent meetings shall be on the same date in each succeeding year.

Unless otherwise provided in the articles, the directors may call special meetings of members, and must do so upon written demand of twenty percent of the members.

Unless he waives it in writing, each member shall have ten days written notice of the time and place of all meetings, and of the purpose of all special meetings. Such notice shall be given to him in person or by mail directed to his address as shown on the books of the association, or if the articles so provide, by publication in a regular publication of general circulation among its members, or a newspaper of general circulation published at the principal place of business of the association. [C35, §8512-g27; C39,§8512.27; C46, 50, 54,§499.27]

**Articles of Incorporation, §499.40**

**499.28 Number of votes.** No member may own more than one membership or share of common stock. Each voting member shall be entitled to one vote and no more at all corporate meetings. [C35,§8512-g28; C39,§8512.28; C46, 50, 54,§499.28]

**499.29 Manner of voting.** Votes shall be cast in person, and not by proxy. The vote of

a member-association shall be cast only by its representative duly authorized in writing. If the articles or bylaws permit, an absent member may cast his signed written vote upon any proposition of which he has been previously notified in writing, and of which a copy accompanies his vote. [C35,§8512-g29; C39, §8512.29; C46, 50, 54,§499.29]

**499.30 Distribution of earnings.** The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.

At least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, or one thousand dollars, whichever is greater. No additions shall be made to surplus whenever it exceeds either fifty percent of such total, or one thousand dollars, whichever is greater.

Not less than one percent nor more than five percent of such earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting co-operation.

After the foregoing, to pay fixed dividends on stock or memberships, if any.

All remaining net earnings shall be allocated to a revolving fund and shall be credited to the account of each member including subscribers described in section 499.16 ratably in proportion to the business he has done with the association during such year. Such credits are herein referred to as "deferred patronage dividends". [C35,§8512-g30; C39,§8512.30; C46, 50, 54,§499.30]

Referred to in §499.31

**499.31 Control of allocation by members.** The members may at any meeting control the amount to be allocated to surplus or educational fund, within the limits specified in section 499.30, or the amount to be allocated to reserves. [C35,§8512-g31; C39,§8512.31; C46, 50, 54,§499.31]

**499.32 Patronage dividends of subscribers.** Patronage dividends to subscribers whose stock or membership is not fully paid in cash shall be applied toward such payment until it is completed. If the articles or bylaws so provide, subscriptions not fully paid within two years may be canceled and all payments or patronage dividends thereon forfeited. [C35, §8512-g32; C39,§8512.32; C46, 50, 54,§499.32]

Referred to in §499.16

**499.33 Use of revolving fund.** The directors may use the revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In such event the deferred patronage dividends credited to mem-

bers shall constitute a charge on the revolving fund and future additions thereto, and on the corporate assets, subordinate to creditors and preferred stockholders then or thereafter existing. Deferred patronage dividends for any year shall have priority over those for any subsequent year. [C35,§8512-g33; C39,§8512.33; C46, 50, 54,§499.33]

Referred to in §§499.35, 499.48

**499.34 Patronage dividend certificates.** If its articles or bylaws so provide, an association may issue transferable or nontransferable certificates for deferred patronage dividends. [C35,§8512-g34; C39,§8512.34; C46, 50, 54,§499.34]

Referred to in §499.35

**499.35 Time of payment.** Credits or certificates referred to in sections 499.33 and 499.34 shall not mature until the dissolution or liquidation of the association, but shall be callable by the association at any time in the order of priority specified in section 499.33. [C35,§8512-g35; C39,§8512.35; C46, 50, 54,§499.35]

Referred to in §499.48

**499.36 Directors.**

1. The affairs of each association shall be managed by a board of not less than five directors, who must be members of the association or officers or members of a member-association. They shall be elected by the members as the articles prescribe.

2. Unless the articles or bylaws otherwise provide, vacancies in the board shall be filled by the remaining directors, the director thus selected to serve for the remainder of the vacant term.

3. The articles or bylaws may permit the directors to select an executive committee from their own number; and may prescribe its authority, which may be coextensive with that of the whole board.

4. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each, the manner of nomination, redistricting or reapportionment, and whether directors shall be directly elected by the members or by delegates chosen by them. Districts shall be so formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. [C35,§8512-g36; C39, §8512.36; C46, 50, 54,§499.36]

Referred to in §499.38

**499.37 Officers and employees.** The directors shall select from their own number a president, one or more vice-presidents, a secretary-treasurer or a secretary and a treasurer, and shall fill vacancies in such offices. Unless the articles or bylaws otherwise provide, said officers shall be chosen for annual terms at the close of the first regular meeting of members in each year.

The directors shall also choose and may remove such other officers and employees as they deem proper, or as the articles or bylaws may prescribe. [C35,§8512-g37; C39, §8512.37; C46, 50, 54,§499.37]

**499.38 Removal of officers and directors.** At any meeting called for that purpose, any officer or director may be removed by vote of a majority of all voting members of the association. A director chosen under section 499.36, subsection 4, may likewise be removed by vote of a majority of all members in his district. [C35,§8512-g38; C39,§8512.38; C46, 50, 54,§499.38]

**499.39 Referendum.** If provided for in the articles of incorporation, any action of directors shall, on demand of one-third of the directors made and recorded at the same meeting, be referred to a regular or special meeting of members called for such purpose. Such action shall stand until and unless annulled by a majority of the votes cast at such meeting, which vote shall not impair rights of third parties previously acquired. [C35,§8512-g39; C39,§8512.39; C46, 50, 54,§499.39]

**499.40 Articles.** Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "co-operative"; and the address of its principal office.

2. The purposes for which it is formed, and a statement that it is organized under this chapter.

3. Its duration, which may be perpetual.

4. The name, occupation and post-office address of each incorporator.

5. The number of directors, their qualifications and terms of office and how they shall be chosen and removed.

6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:

a. That the association shall have capital stock; the classes, par value and authorized number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or

b. That the association shall have no capital stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.

7. The date of the first regular meeting of members. [C35,§8512-g40; C39,§8512.40; C46, 50, 54,§499.40]

Referred to in §§499.42, 499.43

**499.41 Amendments.** Articles may be amended at any meeting called for that purpose, an exact copy of the proposed amendment having been first mailed to each member ten days prior to such meeting, by an affirmative vote of three-fourths of all votes cast, pro-

viding that at least twenty-five percent of all members vote thereon.

Amendments, signed and acknowledged by officers designated for such purpose, shall be filed and recorded as provided in section 499.44. [C35,§8512-g41; C39,§8512.41; C46, 50, 54,§499.41]

Referred to in §499.42

**499.42 Renewal.** An association may extend its duration perpetually, or for any definite time, by resolution adopted by a majority of all its members, or any different vote for which the articles may provide, at a meeting called for that purpose and held before its original expiration.

Unless the association has meanwhile wound up, its duration may be extended in like manner within three years after its original expiration, with the same effect as if done prior thereto, by a vote of two-thirds of all its members.

The resolution must state the name of the association, its original expiration date, and for how long thereafter its duration is extended, and must also adopt, and designate officers to execute, renewal articles of incorporation containing the things required in section 499.40.

The renewal articles shall be signed, filed and recorded as required by section 499.41. Renewal shall not relieve the association from fees, charges or penalties which may have accrued against it. [C35,§8512-g42; C39,§8512.42; C46, 50, 54,§499.42]

**499.43 Existing corporations—option.** Any existing Iowa co-operative corporation may, by a majority vote of all its members, at a meeting called for that purpose and held before its present articles expire, amend its articles so as to comply with this chapter and section 499.40, which may extend its corporate duration. Such amended articles, signed and acknowledged by officers designated for that purpose, shall be filed and recorded, and a certificate of incorporation issued, as required by section 499.44, whereupon such corporation shall be deemed an association under this chapter.

Any such existing corporation whose present articles have now expired, or will expire before January 1, 1938, may adopt this chapter as above provided at any time before that date, with the same effect as though done before such articles expired.

If any shareholder or member of such corporation vote against such amendment, those voting for it shall purchase his stock or interest at its real value, within two years from the date of such vote, paying interest thereon at the rate of six percent until paid. The association may retire the stock or interest thus purchased.

If any shareholder or member of such corporation shall not be eligible to continue membership under such amendment, the association shall within two years after the amendment is filed purchase and retire his stock or membership for its real value.

It shall be presumed that the real value of such stock or interest is its proportionate



share of the corporate assets at book value less liabilities as shown by its books. [C35, §8512-g43; C39, §8512.43; C46, 50, 54, §499.43]

**499.44 Filing and recording—certificate of incorporation.** Articles, amendments, and renewals shall be filed with and approved and recorded by the secretary of state; and recorded in the county where the association has its principal place of business, as required by the general corporation laws.

Upon approving the articles, the secretary of state shall issue a certificate of incorporation, whereupon corporate existence shall begin. [C35, §8512-g44; C39, §8512.44; C46, 50, 54, §499.44]

Referred to in §§499.41, 499.43  
Filing and recording, §491.5

**499.45 Fees.** The following fees shall be paid to the secretary of state:

1. Upon filing articles of incorporation or renewals thereof, ten dollars for authorized capital stock up to twenty-five thousand dollars, and one dollar per one thousand dollars or fraction in excess thereof; or ten dollars if there be no capital stock.

2. Upon filing amendments, one dollar, and if authorized capital stock is increased to an amount exceeding twenty-five thousand dollars, an additional fee of one dollar per thousand dollars or fraction of such excess.

3. Upon filing all articles, renewals, or amendments, a recording fee of fifty cents per page.

4. An annual license fee of one dollar shall be paid by each domestic or foreign association on or before the first day of April in each year, with its annual report. [C35, §8512-g45; C39, §8512.45; C46, 50, 54, §499.45; 56GA, ch 227, §5]

Referred to in §499.49

**499.46 Bylaws.** Unless the articles otherwise provide, the directors may adopt bylaws for the association, which shall remain in force until altered by a vote of a majority of the members, or such larger vote as may be fixed by its articles. Bylaws shall be kept by the secretary subject to inspection by any member at any time. Bylaws may deal with the fiscal or internal affairs of the association or any subject of this chapter in any manner not inconsistent with this chapter or the articles. [C35, §8512-g46; C39, §8512.46; C46, 50, 54, §499.46]

**499.47 Dissolution.**

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.

2. An association may be dissolved by two-thirds of all votes cast at any meeting called for that purpose at which a majority of all voting members vote.

3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up

its affairs. Such trustees shall thereupon have all the powers of the board, including the power to sell and convey all real or personal property and execute conveyances thereof. Within the time fixed in their designation, or any extension thereof, they shall liquidate its assets, pay its debts and expenses, and distribute any remaining funds among the members, and thereupon the association shall stand dissolved and cease to exist. The trustees shall make, sign, and acknowledge a duplicate report of such dissolution, filing one with the secretary of state and one with the recorder of the county where the articles were recorded.

4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose. [C35, §8512-g47; C39, §8512.47; C46, 50, 54, §499.47]

**499.48 Distribution in liquidation.** On dissolution or liquidation, the assets of the association shall first pay liquidation expenses, next its obligations other than patronage dividends or certificates issued therefor; and the remainder shall be distributed in the following priority:

1. To pay preferred stock and any dividends accrued thereon.

2. To pay any deferred patronage dividends or certificates issued therefor. If the fund is insufficient to pay them all, it shall be prorated regardless of the priority specified in sections 499.33 and 499.35.

3. To pay to members or common stockholders the amounts for which their memberships or shares were originally issued, together with such accrued dividends, if any, as the articles provide.

4. Any remaining assets shall be distributed among the members at the date of dissolution or liquidation in proportion to their deferred patronage dividends. [C35, §8512-g48; C39, §8512.48; C46, 50, 54, §499.48]

**499.49 Annual reports.** Each association shall, before April 1 of each year, file a report with the secretary of state on forms prescribed by him, to be accompanied by the annual fee required by section 499.45, subsection 4. Such report shall be sworn to by an officer of the association, or a receiver or trustee liquidating its affairs, and shall state:

1. Its name and address.

2. The names, addresses and occupations of its officers and directors.

3. The number of shares of each class of stock authorized and outstanding and the par value thereof; or, if there be none, the number of members and the amount of membership fees paid in.

4. The nature and character of its business.

5. What percentage of its business was done with or for its own members during the preceding fiscal or calendar year, and what percentage thereof was done with or for each class of nonmembers specified in section 499.3,

6. Any other information deemed necessary by the secretary to advise him whether the association is actually functioning as a co-operative. [C35,§8512-g49; C39,§8512.49; C46, 50, 54, §499.49]

**499.50 Notice of delinquent reports.** Before May 15 the secretary shall send to each association failing to report or pay the fee, a notice by certified mail directed to its principal office specified in its articles, stating the delinquency and its consequences. [C35,§8512-g50; C39, §8512.50; C46, 50, 54, §499.50; 57GA, ch 267, §70]

**499.51 Forfeiture.** If an association fails to file such report or pay such fee before July 1, its corporate rights shall stand forfeited. The secretary shall notify it thereof by mail, remove its name from his list of live corporations, and notify the attorney general who shall cause its affairs to be wound up. [C35, §8512-g51; C39, §8512.51; C46, 50, 54, §499.51]

**499.52 Reinstatement.** If, following such forfeiture, the association shall file the report and pay the annual fee plus a penalty of ten dollars and all actual expenses of any suit begun to wind it up, and shall make a showing of good cause for its delinquency which is satisfactory to the secretary of state, the secretary shall set aside such forfeiture and any such suit shall be dismissed. [C35, §8512-g52; C39, §8512.52; C46, 50, 54, §499.52]

**499.53 Quo warranto.** The right of an association to exist or continue under this chapter may be inquired into by the attorney general, but not otherwise. If from its annual report or otherwise, the secretary of state is informed that it is not functioning as a co-operative, he shall so notify the attorney general, who, if he finds reasonable cause so to believe, shall bring action to oust it and wind up its affairs. [C35, §8512-g53; C39, §8512.53; C46, 50, 54, §499.53]

**499.54 Foreign associations.** Any foreign corporation now or hereafter organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 494.4 were said foreign co-operative corporation a foreign corporation for profit seeking authority to transact business in Iowa under chapter 494. Upon the secretary of state being satisfied that such foreign corporation is so organized and has so complied, he shall issue it a certificate authorizing it to do business in Iowa.

Such foreign associations thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by it which any association might make under this chapter.

If such foreign corporation amends its articles it shall forthwith file a copy thereof with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed, and shall pay the fees prescribed for amendments by section 499.45. [C35, §8512-g54; C39, §8512.54; C46, 50, 54, §499.54; 56GA, ch 232, §1]

Referred to in §499.4  
Foreign corporations, ch 494  
Foreign public utility corporations, ch 495

**499.55 Individual exemptions applicable.** All exemptions or privileges applying to agricultural products in the possession or control of the individual producer shall apply to such products in the possession or control of any association which have been delivered to it by its members. [C35, §8512-g55; C39, §8512.55; C46, 50, 54, §499.55]

**499.56 Conflicting laws.** Any law conflicting with any part of this chapter shall be construed as not applicable to associations formed hereunder. [C35, §8512-g56; C39, §8512.56; C46, 50, 54, §499.56]

**499.57 Reserved powers.** The state reserves the right to modify, amend or repeal this chapter, or any part hereof, and to cancel, modify, repeal or extend any grant, power, permit or franchise obtained or secured under this chapter, at any future time. [C35, §8512-g57; C39, §8512.57; C46, 50, 54, §499.57]

**499.58 Limitation of promotion expense.** No funds of the association shall be used, nor any of its stock or memberships issued for any promotion expenses, either in the form of commissions, fees, salaries or otherwise. [C35, §8512-g58; C39, §8512.58; C46, 50, 54, §499.58]

**499.59 Exemptions from securities act.** None of the exemptions contained in sections 502.4 and 502.5 shall apply to any security issued by any association formed hereunder, when the total amount thereof exceeds twenty-five thousand dollars.

This section shall not apply to certificates of interest or indebtedness issued to members or patrons for revolving fund deductions or for deferred patronage dividends. [C35, §8512-g59; C39, §8512.59; C46, 50, 54, §499.59]

Constitutionality, 46GA, ch 94, §60

**499.60 Chapters inapplicable.** The provisions of chapters 497 and 498 are hereby declared inoperative as to corporations chartered from and after July 4, 1935, but said chapters shall continue in force and effect as to corporations organized or operating thereunder prior to July 4, 1935, so long as any such corporations elect to operate under or renew their charters under said chapters. [C35, §8512-g61; C39, §8512.60; C46, 50, 54, §499.60]

CHAPTER 499A  
MULTIPLE HOUSING ACT

<p>499A.1 Articles. 499A.2 Powers—duration. 499A.3 Members. 499A.4 Dividends. 499A.5 Trustees or managers. 499A.6 Election of officers. 499A.7 Reorganizing prior to expiration of term. 499A.8 Reorganizing after expiration of term. 499A.9 Amendments of articles. 499A.10 Record—effect.</p>	<p>499A.11 Certificate of ownership. 499A.12 Title in trustees. 499A.13 Sale and encumbrance of the premises 499A.14 Taxation. 499A.15 Rules and regulations. 499A.16 Board of directors. 499A.17 Contracts for utilities. 499A.18 Homestead. 499A.19 Election of directors. 499A.20 Title of act. 499A.21 Execution exemption.</p>
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**499A.1 Articles.** Any two or more persons of full age, a majority of whom shall be citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a co-operative basis. A corporation is a person within the meaning of this chapter. The organizers shall adopt, and sign and acknowledge the articles of co-operation, stating the name by which the co-operation shall be known, the location of its principal place of business, its business or objects, the number of trustees, directors, managers or other officers to conduct the same, the names thereof for the first year, the time of its annual meeting, and of annual meeting of its trustees, or directors and the manner in which the articles may be amended. Said articles of co-operation shall be filed with the secretary of state who shall, if he approves the same indorse his approval thereon, record the same, and thereafter forward the same to the county recorder of the county where the principal place of business is to be located, and there it shall be recorded, and upon recording be returned to the co-operation. The said articles shall not be filed by the secretary of state until a filing fee of five dollars together with a recording fee of fifty cents per page is paid, and upon the payment of said fees and the approval of the articles by the secretary of state, he shall issue to said co-operation a certificate of co-operation as a co-operation not for pecuniary profit.

Amendments to the articles may be filed and receive approval as provided herein for articles, and the fee therefor shall be five dollars in each instance, and no amendment shall be effective until the same is approved and the fee therefor is paid. [C50, 54,§499A.1; 56GA, ch 227,§6]

**499A.2 Powers—duration.** Upon filing such articles the persons signing and acknowledging the same and their associates and successors shall become a body co-operative with the name therein stated and shall have power:

1. To have perpetual succession by its name, unless a limited period of duration is stated in its articles of co-operation, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly or by operations of law.

2. To sue and be sued in its co-operative name.

3. To build and construct apartment houses or dwellings.

4. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property or any interest therein.

5. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.

6. To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its co-operative purposes at such rates of interest as the co-operation may determine, to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property.

7. To elect or appoint officers and agents of the co-operation, and to define their duties and fix their compensation.

8. To make and alter bylaws not inconsistent with its articles of co-operation or with the laws of this state, for the administration and the regulation of the affairs of the co-operation.

9. To cease its co-operate activities and surrender its co-operate franchise.

10. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the co-operation is organized. [C50, 54,§499A.2]

**499A.3 Members.** A co-operation may have one or more classes of members. The designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of co-operation or the bylaws. The co-operation must issue certificates or deeds evidencing membership or ownership of a particular interest therein. [C50, 54,§499A.3]

**499A.4 Dividends.** No dividend or distribution of property among the stockholders shall be made until dissolution of the co-operation. [C50, 54,§499A.4]

**499A.5 Trustees or managers.** Such co-operation may, annually or oftener, elect from its members its directors, or managers, at such time and place and in such manner as may be specified in its bylaws, or article of co-operation, who shall have the control and management of its affairs and funds, a majority of whom shall constitute a quorum for the transaction of business, when a vacancy occurs in its governing body, it shall be filled in such manner as shall be provided in the bylaws, or article of co-operation.

The trustee may be one or more persons, or may be a corporation and need not be a member and shall be selected by the directors. [C50, 54,§499A.5]

**499A.6 Election of officers.** If an election of trustees, directors or managers shall not be made on the day designated by the bylaws, the society for that cause shall not be dissolved, but such election may take place on any other day directed in the bylaws. [C50, 54,§499A.6]

**499A.7 Reorganizing prior to expiration of term.** The trustees, directors, or members of any co-operation organized under this chapter may reorganize the same, and all the property and rights thereof shall vest in the co-operation as reorganized. [C50, 54,§499A.7]

**499A.8 Reorganizing after expiration of term.** When the term of a co-operation organized under this chapter has expired, but the organization has continued to act as such co-operation, the directors or members thereof may reorganize, and the property and rights therein shall vest in the reorganized co-operation for the use and benefit of all of the members in the original co-operation. [C50, 54, §499A.8]

**499A.9 Amendments of articles.** Any co-operation organized under this chapter may change its name or amend its articles of co-operation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of co-operation, shall be given by mailing to each member at his last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said co-operation has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. There shall be paid to the secretary of state at the time of the filing of such change or amendment a recording fee of fifty cents per page. [C50, 54,§499A.9; 56GA, ch 227,§7]

Referred to in §499A.10

**499A.10 Record — effect.** The change or amendment provided for in section 499A.9 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of said section having been complied with, the change or amendment shall take effect as a part of the original articles, and the co-operation thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment. [C50, 54,§499A.10]

**499A.11 Certificate of ownership.** The co-operative association shall have the right to purchase real estate for the purpose of erecting apartment houses or apartment buildings and the members shall be the owners thereof. The interest of each individual member shall be evidenced by the issuance of a certificate of ownership or deed to a particular apartment or room therein. Such certificate of ownership or deed shall be executed by the president of the co-operation and attested by its secretary in the name and in the behalf of the co-operation. [C50, 54,§499A.11]

**499A.12 Title in trustees.** The title to the real estate upon which the apartment or other buildings is constructed shall be conveyed to the trustees or trustee who shall hold the said title for the use and benefit of the owners of such apartments or rooms. [C50, 54, §499A.12]

**499A.13 Sale and encumbrance of the premises.** Neither the premises nor the real estate shall be sold by the trustees unless a three-fourths majority of the owners and the board of directors authorize such sale. No mortgage shall be given by the trustees unless such mortgage is authorized by a resolution of three-fourths of the owners and the board of directors of the apartments or rooms in said building, and no such mortgage shall be given unless it is given for the purchase of, or repair and maintenance of, such building. Any mortgage executed by the trustees as above provided shall be prior and superior to any mortgage, lien or encumbrance of any individual against any individual apartment or room or the owners interest therein. [C50, 54, §499A.13]

**499A.14 Taxation.** The real estate shall be taxed in the name of the co-operation, and each person owning an apartment or room shall pay his proportionate share of such tax, and each person owning an apartment as a residence and under the qualifications of the laws of the state of Iowa as such shall receive his proportionate homestead tax credit and each veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit his veterans tax benefit as prescribed by the laws of the state of Iowa. [C50, 54,§499A.14]

Homestead credit, ch 425  
Veterans exemption, §427.3

**499A.15 Rules and regulations.** The members of the co-operation may adopt house rules and bylaws governing the regulation of the premises generally and may adopt rules and regulations as to the maintenance of the individual apartments or rooms as to whether or not said apartments or rooms:

1. Shall be used exclusively as a residence.
2. As to the sale and lease of the individual apartments or rooms.
3. As to the payment of all public services rendered to the apartments or rooms.
4. As to any other item or regulation concerning or pertaining to the building, constructing, repair or regulation of the premises or its occupants.

The members of the co-operation may, by agreement, contract among themselves as to any regulations, house rules, repairs of premises, addition, construction or any other thing in the conducting of the affairs of the co-operation, but such agreement shall not be binding upon innocent purchasers or encumbrances unless it be recorded in the office of the county recorder in the county in which the co-operation is organized. [C50, 54,§499A.15]

**499A.16 Board of directors.** Unless otherwise provided in the agreement, it shall be the duty of the board of directors to maintain generally the building and the grounds. They shall keep in repair as far as practical, the outside wall, stairways, roof, halls, and the structure of the building, and the cost thereof shall be contributed to by each of the apartment owners in proportion as their interest appears. And any default in payment thereof by any owner of any apartment may be assessed against such apartment by the board of directors and such apartment shall be liable therefor. The said sums so unpaid shall be a lien against the said apartment, but shall not be a personal liability of the apartment owners, and shall be prior to any existing lien against the owner but shall be subsequent to any lien placed thereon by the trustee, and upon non-payment upon demand may be enforced as a mortgage against said apartment by the co-operation. [C50, 54,§499A.16]

Referred to in §499A.17

**499A.17 Contracts for utilities.** The members of the co-operative may contract among themselves with reference to all public service requirements, including heat, light and water supplies, of said building, and unless otherwise

provided in the agreement it shall be the duty of the board of directors to furnish such public service requirements and the cost thereof shall be divided proportionately among the apartment owners, and upon nonpayment upon demand, may be enforced as provided by section 499A.16.

In the event that the heating plant and the water supply of such apartment is a general heating plant, then the board of directors may furnish fuel and water to said premises, and each apartment without discrimination, and the cost thereof shall be paid by the several apartment owners in proportion to their interest. [C50, 54,§499A.17]

**499A.18 Homestead.** The ownership of an individual apartment shall constitute a homestead and be exempt from execution, provided the owner otherwise qualifies within the laws of the state of Iowa for such exemption. [C50, 54,§499A.18]

**499A.19 Election of directors.** The directors authorized under this chapter shall be elected by the members of the co-operation. If one member owns more than one apartment he may nevertheless have but one vote at such election. If any apartment or room is owned by more than one member they may, nevertheless, have but one vote at such election. The election of officers shall be made by the board of directors. The officers and board of directors may hire a custodian or janitor for reasonable compensation to generally serve and oversee the apartment building. The annual election of the directors shall be held during the month of January of each year, and they shall serve until their successors are elected and qualified.

The board of directors shall elect as officers, a president and a secretary.

It shall be the duty of the secretary to keep the records of the co-operation, a correct list of the owners and lessees of each apartment, and all such records shall be submitted to any apartment or room owner upon demand at any reasonable time. [C50, 54,§499A.19]

**499A.20 Title of act.** This chapter shall be known and cited as "The Multiple Housing Act of 1947." [C50, 54,§499A.20]

**499A.21 Execution exemption.** Private property of the members shall be exempt from execution for the debts of the co-operation. [C50, 54,§499A.21]

## CHAPTER 500

### COLLECTIVE MARKETING

500.1 Authorization.

500.2 Liquidated damages.

500.3 Applicability of chapter.

**500.1 Authorization.** Persons engaged in the conduct of any agricultural, horticultural, dairy, livestock, mercantile, mining, or manufacturing business in the manner provided in

section 500.3 may act together in associations, corporate or otherwise, for the purpose of collectively producing, processing, preparing for market, handling, and marketing the prod-

ucts of their members. Such persons may organize and operate such associations, and such associations may make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding. [C24, 27, 31, 35, 39, §8513; C46, 50, 54, §500.1]

**500.2 Liquidated damages.** Contracts and agreements entered into between associations and the members thereof may, where damages that may be sustained for the breach thereof are difficult of ascertainment, provide for such penalties as may be agreed upon, which penalties, if the parties thereto so agree, shall be construed as liquidated damages and

be enforceable in the full amount thereof both at law and in equity. [C24, 27, 31, 35, 39, §8514; C46, 50, 54, §500.2]

**500.3 Applicability of chapter.** The provisions of this chapter shall apply:

1. To corporations organized under the provisions of chapter 497.

2. To other incorporated associations or companies organized without capital stock, not for pecuniary profit and for the mutual benefit of their members. [C24, 27, 31, 35, 39, §8515; C46, 50, 54, §500.3]

Referred to in §500.1

## CHAPTER 501

### SALE OF STOCK ON INSTALLMENT PLAN

Referred to in §§422.34, 491.114, 503.2

501.1 Terms defined.

501.2 Certificate—how obtained.

501.3 Approval by commissioner.

501.4 Annual report.

501.5 Bonds or securities deposited.

501.6 Unauthorized companies—penalty.

501.7 Fee.

501.8 Examination.

**501.1 Terms defined.** The term “association” when used in this chapter shall mean any person, firm, company, partnership, association, or corporation, other than building and loan associations and insurance companies and associations, which issue stocks on the partial payment or installment plan. The term “issue” shall mean issue, sell, place, engage in or otherwise dispose of or handle. The term “stock” shall mean certificates, memberships, shares, bonds, contracts, debentures, stocks, tontine contracts, or other investment securities or agreements of any kind or character issued upon the partial payment or installment plan. [S13, §1920-k; C24, 27, 31, 35, 39, §8517; C46, 50, 54, §501.1]

**501.2 Certificate—how obtained.** No association contemplated by this chapter shall issue any stock until it shall have procured from the commissioner of insurance a certificate of authority authorizing it to engage in such business. To procure such certificate of authority it shall be necessary for such association to file with the commissioner of insurance a statement, under oath, showing the name and location of such association, the name and post-office address of its officers, the date of organization, and if incorporated a copy of its articles of incorporation, also, a copy of its bylaws or rules by which it is to be governed, the form of its certificates, stocks, or contracts, all printed matter issued by it, together with a detailed statement of its financial condition and such other information concerning its affairs or plan of business as the commissioner of insurance may require. [S13, §1920-l; C24, 27, 31, 35, 39, §8518; C46, 50, 54, §501.2]

**501.3 Approval by commissioner.** If the commissioner of insurance is satisfied that the

business is not in violation of law or of public policy, and is safe, reliable, and entitled to public confidence, and shall approve the form of certificate of stock or contract, he shall issue to such association a certificate of authority authorizing it to transact business within this state until the first day of March next succeeding the date of such authorization. [S13, §1920-m; C24, 27, 31, 35, 39, §8519; C46, 50, 54, §501.3]

**501.4 Annual report.** During the month of January of each year, every association transacting the business contemplated by this chapter, shall file with the commissioner of insurance a statement showing its condition on the thirty-first day of December preceding. Said statement shall be in such form as shall be prescribed by the commissioner of insurance. If it appears from such statement that such association is doing a safe business and is solvent, the commissioner of insurance may renew its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority to transact business and having revoked the certificate of authority of an association organized under the laws of this state, he shall report his action to the attorney general who shall at once apply to the district court or a judge thereof for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceed-

ing enjoining and restraining the association from transacting business in this state. [S13, §1920-o; C24, 27, 31, 35, 39, §8520; C46, 50, 54, §501.4]

Referred to in §501.8  
Injunctions, ch 664

**501.5 Bonds or securities deposited.** Before any association shall be authorized to transact business contemplated by this chapter, it shall deposit with the commissioner of insurance a bond approved by the commissioner of insurance, guaranteeing the faithful performance of all contracts entered into by such association or securities of the kind designated in subsections 1, 2, 3, and 4 of section 511.8, or such other securities as shall be approved by the commissioner of insurance in the amount of twenty-five thousand dollars, which amount shall remain in possession of the commissioner of insurance until the end of the calendar year in which the association shall first be authorized to transact business. At the end of such calendar year, such association shall deposit with the commissioner of insurance securities of the kind above provided in an amount equal to all its liabilities to persons residing within this state and shall keep such deposit at all times equal to such liability; provided that at no time shall such deposit be reduced below twenty-five thousand dollars except at such time as such association shall be by law closing out its business and its liabilities shall have been reduced below twenty-five thousand dollars. [S13, §1920-p; C24, 27, 31, 35, 39, §8521; C46, 50, 54, §501.5]

Since the enactment of section 501.5, section 511.8 has undergone material changes. See 42GA, ch 199; 43GA, chs 222-224; 45GA, ch 117; 45ExGA, ch 107; repeal and re-enactment by 47GA, ch 213; also repeal and enactment by 51GA, ch 206

**501.6 Unauthorized companies — penalty.** Any member or representative of any association who shall attempt to issue or sell any stock as contemplated by this chapter or to transact any business whatsoever in the name of or on behalf of such association, not authorized to do business within this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not less than one hundred nor more than ten hundred dollars or by both such fine and imprisonment in the discretion of the court. [S13, §1920-q; C24, 27, 31, 35, 39, §8522; C46, 50, 54, §501.6]

**501.7 Fee.** Such association shall pay to the commissioner of insurance for its certificate of authority to transact business, a fee of twenty-five dollars, and for each annual renewal thereof at the time of filing the annual statement ten dollars, which fee shall be by the commissioner of insurance turned into the state treasury as are other fees of his office. [S13, §1920-r; C24, 27, 31, 35, 39, §8523; C46, 50, 54, §501.7]

**501.8 Examination.** Every such association doing business within this state, shall be subject to examination in the same manner as is provided for the examination of insurance companies and shall pay the same fees and costs therefor, and shall so far as is consistent with the plan of business, be subject to the same restrictions and regulations. Such examinations shall be full and complete and in making the same the commissioner of insurance or examiner shall have full access to and may demand the production of all books, securities, papers, moneys, etc., of the association under examination, and may administer oaths, summon and compel the attendance and testimony of any persons connected with such association. If upon such examination, it shall appear that such association does not conduct its business in accordance with law, or if it permits forfeiture of payments by persons holding its stock, after three years from the issuance of said stock or provides for the payment of its expenses other than from earnings, or that any profits, advantage, or compensation of any form or description is given to any member or investor over any other member or investor of the same class, or if beneficiaries are selected or determined or advantages given one over another by any form of chance, lottery, or hazard, or if certificates of stock are by their terms or by any other provision to be redeemed in numerical order or by any arbitrary order or precedence, without reference to the amount previously paid thereon by the holder thereof, or that the affairs are in an unsound condition, or if such association refuses such examination to be made, the commissioner of insurance may revoke its certificate of authority to do business in this state, and having revoked the certificate of authority of an association organized under the laws of this state, he shall report the same to the attorney general, who shall proceed as provided in section 501.4. [S13, §1920-s; C24, 27, 31, 35, 39, §8524; C46, 50, 54, §501.8]

Examination, ch 507

CHAPTER 502  
IOWA SECURITIES LAW

Referred to in §§491.114, 503.1

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**502.1 Title.** This chapter shall be known as the "Iowa Securities Law". [C31, 35,§8581-c1; C39,§8581.01; C46, 50, 54,§502.1]

**502.2 Administration.** The administration of the provisions of this chapter shall be vested in the commissioner of insurance of the state of Iowa.

The commissioner of insurance shall appoint a superintendent in charge of the securities department and may appoint one or more assistants. The superintendent appointed under this chapter shall perform such duties as the commissioner of insurance shall generally or specifically direct. In case of vacancy in the office of commissioner of insurance, by reason of absence, physical disability or other cause, to administer properly the provisions of this chapter, the superintendent appointed under this chapter shall act for and in the stead of the commissioner of insurance, and thereupon the superintendent shall have generally, for the time being, all the power and authority of this chapter conferred upon the commissioner of insurance.

The commissioner of insurance shall also employ, from time to time, such other officers, attorneys, clerks, and employees as are necessary for the administration of this chapter. They shall perform such duties as the commissioner of insurance shall assign to them. [SS15,§§1920-u,-u10; C24, 27,§§8525, 8550; C31, 35,§8581-c2; C39,§8581.02; C46, 50, 54,§502.2]

**502.3 Definitions.** When used in this chapter the following terms shall, unless the text otherwise indicates, have the following respective meanings:

1. "Security" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest in an oil, gas, or mining lease, collateral trust certificate, preorganization certificate, preorganization subscription, any transferable share, invest-

ment contract, or beneficial interest in title to property, interest in or under a profit-sharing or participating agreement or scheme, or any other instrument commonly known as a security.

2. "Person" shall include a natural person, a corporation created under the laws of this or any other state, county, sovereignty, or political subdivision thereof, a partnership, an association, a joint stock company, a trust, and any unincorporated organization. As used herein the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament, or by a court of law or equity, or any public charitable trust.

3. "Sale" or "sell" shall include every disposition, or attempt to dispose, of a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" or "sell" shall also include an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by an agent, or a circular, letter advertisement or otherwise; provided, that a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issuer shall not be deemed a sale, or offer to sell, or option of sale of such other security within the meaning of this definition and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration under the provisions of this chapter, but when such privilege of conversion shall be exercised such conversion shall be subject to the limitations hereinafter provided in subsection 8 of section



502.5; and provided further, that the issue or transfer of a right pertaining to a security and entitling the holder of such right to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale or offer to sell or option of sale of such other security within the meaning of this definition, and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption or registration under the provisions of this chapter; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this chapter.

4. "Dealer" shall include every person other than a salesman who in this state engages either for all or part of his time directly or through an agent in the business of selling any securities issued by another person or purchasing or otherwise acquiring such securities from another for the purpose of reselling them or of offering them for sale to the public, or offering, buying, selling, or otherwise dealing or trading in securities as agent or principal for a commission or at a profit, or who deals in futures or differences in market quotations of prices or values of any securities or accepts margins on purchases or sales or pretended purchases or sales of such securities; provided that the word "dealer" shall not include a person having no place of business in this state who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business.

5. "Issuer" shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any security. Any natural person who acts as a promoter for and on behalf of a corporation, trust or unincorporated association or partnership of any kind to be formed shall be deemed to be an issuer.

6. "Salesman" shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer, to sell securities in any manner in this state. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.

7. "Broker" shall mean dealer as herein defined.

8. "Agent" shall mean salesman as hereinabove defined.

9. "Commissioner of insurance" shall mean the commissioner of insurance of the state of Iowa.

10. "Superintendent" shall mean the superintendent in charge of securities department.

11. "Mortgage" shall be deemed to include a deed of trust to secure a debt. [C31, 35, §8581-c3; C39, §8581.03; C46, 50, 54, §502.3]

**502.4 Exempt securities.** Except as hereinafter otherwise provided, the provisions of

this chapter shall not apply to any of the following classes of securities:

1. Any security issued by, or the principal and interest of which are guaranteed by, the United States or any territory or insular possession thereof, or by the District of Columbia, or by any legal entity (other than a natural person) controlled or supervised by and acting as an instrumentality of the United States, pursuant to authority granted by the Congress of the United States; or by any state or territory of the United States or any political subdivision having the power of taxation; or by any agency or public instrumentality of one or more of the states or territories of the United States or of the political subdivisions of a state or territory.

2. Any security issued by and representing an interest in or a direct obligation of a national bank or by any federal land bank or joint-stock land bank or national farm loan association under the provisions of the federal farm loan act of July 17, 1916, or by any corporation created and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States.

3. Any security issued or guaranteed either as to principal, interest, or dividend by a corporation owning or operating a railroad or any other public service utility; provided that such corporation is subject to regulation or supervision as to its rates, charges, and the issue of its own securities by a public commission, board, or officer of the government of the United States, or of any state of the United States, or of the District of Columbia, or of the Dominion of Canada or any province thereof.

4. Any security issued by a corporation, organized exclusively for educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

5. Securities appearing in any list of securities dealt in on any recognized and responsible stock exchange which has been previously approved by the head of the securities department and which securities have been so listed and dealt in on said exchange pursuant to the official authorization by such exchange, and also all securities senior to or on a parity with any security so listed, or represented by subscription rights which have been so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect. If, after application by any recognized and responsible stock exchange requesting that said exemption be granted to it, the applicant shall fail to convince the commissioner of insurance that it is entitled to such exemption, it is hereby provided that no order of refusal shall be entered until the applicant has been given due notice of not less than twenty days and a hearing on the reasons for such refusal. The commis-

sioner of insurance shall have power at any time to withdraw approval theretofore granted by him to any exchange, and thereupon no security listed on such exchange shall be longer entitled to the benefit of such exemption, only after due notice of not less than twenty days and a copy of the grounds upon which withdrawal was based has been sent by certified mail to the main office of the exchange, citing it to appear at a regularly held hearing and to show cause why the exemption theretofore granted to the exchange should not be withdrawn. The commissioner of insurance shall have the power and authority at any time after twenty days notice and opportunity for hearing has been given to the exchange, and issuer of the security involved, by certified mail, to withdraw the exemption of any such security listed on one or more of the exchanges that had previously been granted an exemption, when, in his opinion, the further sale of the security would work a fraud. Thereafter such security shall not be entitled to the benefit of the exemption except upon the further written order of the commissioner of insurance.

6. Any security issued by and representing an interest in or a direct obligation of a state bank, trust company, or savings institution incorporated under the laws of and subject to the examination, supervision, and control of any state or territory of the United States or of any insular possession thereof; or issued by any building and loan association of this state or by any insurance company under the insurance department of this state.

7. Negotiable promissory notes or commercial paper issued in good faith in the usual course of carrying on and conducting the business of the issuer; provided, that such issue of notes or commercial paper mature in not more than twelve months from date of issue and shall be issued within three months after the date of sale.

8. Any security other than common stock outstanding and in the hands of the public for a period of not less than five years upon which no default in payment of principal, interest, or dividend exists and upon which no such default has occurred for a continuous immediately preceding period of five years or any security issued to refund or refinance such securities; and any common stock outstanding and in the hands of the public in whole or in part for a period of not less than five years upon which dividends have been paid annually for five years next preceding the year of proposed sale or stock dividends thereon or reclassifications thereof, provided this exemption shall not apply to common stock which has been registered with the securities and exchange commission at any time during the five years next preceding the date of sale.

9. Securities evidencing indebtedness due under any contract made in pursuance to the provisions of any statute of any state of the United States providing for the acquisition of personal property under conditional sales contracts.

10. Securities of any co-operative association organized in good faith under the laws of this state exclusively for the purpose of conducting upon the co-operative plan among its stockholders any or all of the following businesses: Any agricultural, dairy, livestock, or produce business; the business of selling, marketing, or otherwise handling, any agricultural, dairy, or livestock products, or other produce, by any co-operative association; the manufacture of any products from any agricultural, dairy, or livestock products, or other produce; any business incidental to any of the above purposes; the operation of a rural telephone among its stockholders. [SS15,§1920-u1; C24, 27,§8526; C31, 35,§8581-c4; C39,§8581.04; C46, 50, 54,§502.4; 57GA, ch 267,§71]

Referred to in §§499.59, 502.6, 502.11, 502.21

**502.5 Exempt transactions.** Except as hereinafter expressly provided, the provisions of this chapter shall not apply to the sale of any security in any of the following transactions:

1. At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy.

2. By or for the account of a pledge holder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

3. An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security.

4. The distribution by a corporation actively engaged in the business authorized by its charter of capital stock, bonds, or other securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings or surplus; or the issuance of securities to the security holders or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock.

5. The sale, transfer, or delivery to any bank, savings institution, trust company, insurance

company, or to any corporation or to any broker or dealer; provided that such broker or dealer is actually engaged in buying and selling securities as a business.

6. The transfer or exchange by one corporation to another corporation of their own securities in connection with a consolidation or merger of such corporations, subject to the approval by the commissioner of insurance of any proposed plan of consolidation or merger. The commissioner of insurance shall have the right to demand any information necessary to assist him in determining that said plan complies with the Iowa securities act.

7. Bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale.

8. The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security exchanged to make such conversion, provided that the security exchanged has been registered under the law or was, when sold, exempt from the provisions of the law and that the security issued and delivered in exchange if sold at the conversion price would at the time of such conversion fall within the class of securities entitled to registration by qualification under the law. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

9. Subscriptions to capital stock made by incorporators in an Iowa corporation, not exceeding twenty-five in number, provided, that no public offering is made or commissions received for such subscriptions and that such subscribers actually sign the articles of incorporation in person and not by agent.

10. Bonds or notes secured by mortgage upon real estate or tangible personal property situated within the state of Iowa where the bonds or notes are sold to not more than twenty purchasers and the total face amount of all bonds or notes secured by a single mortgage does not exceed fifty thousand dollars.

11. The sale in the ordinary and usual course of business by a registered dealer of any security which is a part of an issue which has theretofore been lawfully sold and distributed to the public, in whole or in part, in this state; including as within this exemption any security issued in exchange for such security under a bona fide plan of reorganization of a corporation by order of a court having jurisdiction, or issued under a plan of reorganization previously having become operative through action of security holders of a corporation, but excepting from this exemption securities theretofore sold only in exempt transactions under this section, and when such resale is made in good faith and not directly or indirectly for

the benefit of the issuer of such security or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, however, that this exemption shall not apply if the commissioner of insurance prohibits or has prohibited by specific order the resale of such security, unless the commissioner of insurance shall subsequently remove such prohibition.

12. The sale in the ordinary and usual course of business by a registered dealer of any security provided such sale is reasonably related to the current market price of such security at the time of sale, and provided such security is part of an issue which has been outstanding, in whole or in part, in the hands of the public for a period of not less than three years, or stock dividends thereon or reclassifications thereof, and further provided that information as to the issuer of such security is published in a recognized manual of securities, excepting, however, securities of the following classes:

a. Securities of a class which have been registered with the securities and exchange commission at any time during the three years next preceding the date of sale.

b. Securities of a class in respect to which there have been like issues within three years next preceding the date of sale.

c. Securities issued by other than going concerns.

This exemption shall not apply to any security whose resale is prohibited by specific order of the commissioner of insurance. [SS15, §§1920-u1, u13; C24, 27, §§8526, 8554; C31, 35, §§8581-c5; C39, §§8581.05; C46, 50, 54, §502.5; 56GA, ch 233, §1]

Referred to in §§499.59, 502.3, 502.6, 502.11, 502.21

**502.6 Registration of securities.** No securities except of a class exempt under any of the provisions of section 502.4 or unless sold in any transaction exempt under any of the provisions of section 502.5 shall be sold within this state unless such securities shall have been registered by qualification as hereinafter defined. Registration of stock shall be deemed to include the registration of rights to subscribe to such stock if the application under section 502.7 for registration of such stock includes a statement that such rights are to be issued.

A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commissioner of insurance, in which register of securities shall also be recorded any orders entered by the commissioner of insurance with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection. [C31, 35, §§8581-c6; C39, §§8581.06; C46, 50, 54, §502.6]

**502.7 Registration by qualification.** All securities required by this chapter to be registered before being sold in this state shall be registered only by qualification in the manner provided by this section.

The commissioner of insurance shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which he may require such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commissioner of insurance and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within this state.

The commissioner of insurance may require the applicant to submit to him the following information respecting the issuer and such other information as he may in his judgment deem necessary to enable him to ascertain whether such securities shall be registered pursuant to the provisions of this section:

1. The names and addresses of the directors, trustees, and officers, if the issuer be a corporation or association or trust organized or existing under the common law (as hereinbefore defined), of all partners, if the issuer be a partnership, and of the issuer, if the issuer be an individual.

2. The location of the issuer's principal business office and of its principal office in this state, if any.

3. The purposes of incorporation (if incorporated) and the general character of the business actually to be transacted by the issuer, and the purpose of the proposed issue.

4. A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than ninety days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of such securities then prepared by or for such issuer and/or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this state.

5. A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

6. A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

7. A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration for which such securities have been or are to be issued in payment.

8. The amount of capital stock which is to

be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

9. If the issuer is a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing bylaws. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership or an unincorporated association, or joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization.

All of the statements, exhibits, and documents of every kind required by the commissioner of insurance under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commissioner of insurance.

The commissioner of insurance shall have power to place such conditions, limitations, and restrictions on any registration as may be necessary to carry out the purposes of this chapter and the conditions, limitations, and restrictions, if any, shall be entered in the register of securities or an entry shall be made in the register of securities referring to a formal order of the commissioner of insurance on file showing such conditions, limitations, and restrictions.

The applicant shall pay to the commissioner of insurance at the time of filing the information as hereinbefore prescribed in this section, a fee of one-tenth of one percent of the aggregate par value of the securities to be sold in this state for which the applicant is seeking registration. Such fee shall not be less than twenty-five dollars nor more than one thousand dollars. Par value as used in this section for the purpose of computing fees shall be construed:

In case of stock of no par value to be the price at which the stock is to be offered to the public;

The price at which the security is to be sold or offered for sale to the public in cases where the security is to be sold or offered for sale at a price greater than the stipulated par value.

If upon examination of any application the commissioner of insurance shall find that the sale of security referred to therein would not be fraudulent or would not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based upon unsound business principles, he shall record the registration of such security in the register of securities, and thereupon such security so registered may be sold by the issuer or by any registered dealer, subject, however, to the further order of the commissioner of insurance as hereinafter provided.

So long as any security is sold or offered for sale pursuant to registration by qualifica-

tion under this section, there shall be filed with the commissioner of insurance, each year, within ninety days after the termination of the fiscal year of the issuer of such security, a statement properly verified, which statement shall set forth the financial condition, the amount of assets and liabilities and such other information concerning the financial affairs or the plan of business of the issuer as the commissioner of insurance may require in order to determine whether the continued sale of such securities would result or tend to result in fraud; provided, however, that any applicant for registration by qualification may file with the commissioner of insurance a verified statement that applicant will make no further original distribution under the registration and one statement of condition as required by this paragraph either concurrently therewith or subsequent thereto and thereafter no statement shall be required under this paragraph.

If the application for registration shall be made by a registered dealer, the commissioner of insurance in his discretion may by rule, regulation, or order waive the filing or submission to him of all or any of the statements, exhibits, and documents, including certified public documents referred to in this section, and may require the applicant to file with him a statement with respect to such securities containing the following: Name of issuer; a brief description of the security; the maximum amount of securities to be offered under the registration; the maximum price at which the securities are to be offered for sale; and to furnish to the commissioner of insurance such other information and data concerning the issuer and the securities as the commissioner of insurance may deem necessary to enable him to ascertain whether such securities shall be registered hereunder or such registration continued in effect. [SS15,§§1920-u2,-u3,-u6,-u8; C24, 27,§§8527, 8528, 8531, 8536, 8543; C31, 35, §8581-c8; C39,§8581.07; C46, 50, 54,§502.7; 56GA, ch 233,§2]

Referred to in §§502.6, 502.19, 502.20

**502.8 May limit price and commission.** The commissioner of insurance may also limit the price at which the securities, either of par or no par value, may be sold. In case of a sale by or on behalf of an issuer, the commissioner of insurance may allow a commission not to exceed twenty percent of the sale price, such percentage to include all expenses incidental to such sale, including advertising or any other expense chargeable in any way to the sale of such securities. [C35,§8581-f1; C39,§8581.08; C46, 50, 54,§502.8]

**502.9 Consent to service.** Upon any application for registration under this chapter where the issuer functions or intends to function as a dealer in the manner permitted by section 502.11 and such issuer is not domiciled in this state, there shall be filed with such application the irrevocable written consent of the issuer that suits and actions, growing out

of the violation of any provision or provisions of this chapter, may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on the commissioner of insurance, said consent stipulating and agreeing that such service of such process or pleadings on such commissioner of insurance shall be taken and held in all courts to be as valid and binding as if due service had been made upon the issuer himself, and said written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commissioner of insurance, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner of insurance and another immediately forwarded by certified mail to the principal office of the issuer against which said process or pleadings are directed. [SS15,§1920-u5; C24, 27,§§8534, 8535; C31, 35,§8581-c9; C39, §8581.09; C46, 50, 54,§502.9; 57GA, ch 267,§72]

Referred to in §502.11  
See §491.15

**502.10 Revocation of registration of securities.** The commissioner of insurance may refuse or revoke the registration of any security by entering an order to that effect, with his findings in respect thereto, if after a reasonable notice and a hearing or upon examination into the affairs of the issuer of such security it shall appear that the issuer:

1. Is insolvent; or
2. Has violated any of the provisions of this chapter or any order of the commissioner of insurance of which such issuer has notice; or
3. Has been or is engaged or is about to engage in fraudulent transactions; or
4. Is in any other way dishonest or has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or
5. Is of bad business repute; or
6. Does not conduct its business in accordance with law; or
7. That its affairs are in an unsound condition; or
8. That the enterprise or business of the issuer is not based upon sound business principles.

In making such examination the commissioner of insurance shall have access to and

may compel the production of all the books and papers of such issuer, and he or the superintendent may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located, approved by the commissioner of insurance.

Whenever the commissioner of insurance may deem it necessary, he may also require such balance sheet or income statement, or both to be made more specific in such particulars as the commissioner of insurance shall point out or to be brought down to the latest practicable date.

If any issuer shall refuse to permit an examination to be made by the commissioner of insurance, it shall be proper ground for refusal or cancellation of registration.

If the commissioner of insurance shall deem it necessary he may enter an order suspending the right to sell securities pending any investigation or hearing, provided that the order shall state the grounds of the commissioner of insurance for taking such action.

Notice of the entry of such order shall be given personally or by telephone, telegraph, or mail to the issuer and every registered dealer who shall have notified the commissioner of insurance of an intention to sell such security. [SS15,§1920-u7; C24, 27,§§8539, 8540; C31, 35,§8581-c10; C39,§8581.10; C46, 50, 54, §502.10]

**502.11 Registration of dealers and salesmen.** No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities including securities exempted in section 502.4, except in transactions exempt under section 502.5, unless he has been registered as a dealer or salesman in the office of the commissioner of insurance pursuant to the provisions of this section.

An application for registration in writing shall be filed in the office of the commissioner of insurance in such form as the commissioner of insurance may prescribe, duly verified by oath, which shall state the principal office of the applicant, wherever situated, and the location of the principal office and all branch offices in this state, if any, the name or style of doing business, the names, residence and business addresses of all persons interested in the business as principals, copartners, officers, and directors, specifying as to each his capacity and title, the general plan and character of business and the length of time the dealer has been engaged in business. The commissioner of insurance may also require such additional information as to applicant's previous history, record and association, as he may deem necessary to establish the good repute in business of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner of insurance in actions against such dealer in manner and form as provided in section 502.9.

If the commissioner of insurance shall find that the applicant is of good repute and has complied with the provisions of this section including the payment of the fee hereinafter provided he shall register such applicant as a dealer upon his filing a bond as in section 502.18 provided.

Upon the written application of a registered dealer and general satisfactory showing as to good character and the payment of the proper fee the commissioner of insurance shall register as salesmen of such dealer such natural persons as the dealer may request. Such registration shall cease upon the termination of the employment of such salesman by such dealer.

The names and addresses of all persons approved by registration as dealers or salesmen and all orders with respect thereto shall be recorded in a register of dealers and salesmen kept in the office of the commissioner of insurance which shall be open to public inspection. The fee for such registration and for each annual renewal shall be twenty-five dollars in the case of dealers and three dollars in the case of salesmen, which fees shall be paid at the time the information and application is filed with the commissioner of insurance. Every registration under this section shall expire one year from date of issuance, but new registrations for the succeeding year may be issued upon written application and upon payment of said fee without filing of further statements or furnishing any further information unless specifically required by the commissioner of insurance.

Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with respect to such change.

The commissioner of insurance shall have the power, in connection with any dealer's or salesman's registration, to require the dealer or salesman to furnish the commissioner of insurance, in such form as he may designate, any information or reports deemed necessary to assist the commissioner of insurance in determining whether such registration should remain in force, and to make an investigation of the books, records, property, business and affairs of such dealer or salesman. Every dealer shall, at such time as may be required by the commissioner of insurance, make and file in the office of the commissioner of insurance, a true and correct statement concerning any security sold or offered for sale by such dealer, pursuant to the provisions of section 502.5, subsection 3, or any other provisions of this chapter, showing the name and location of the principal office of the issuer of such security, the names of its managing officers, if it is a

corporation, or of its members, if it is a partnership; its assets, liabilities, and issued capital stock, at the close of its fiscal year then last ended, or at a later date; its gross income, expenses, and fixed charges for the year next preceding such date, or for such time as such issuer of such security has transacted business, if for less than one year, and the approximate price at which such dealer has sold or proposes to sell such security, together with such other information, of which the dealer may have knowledge, as the commissioner of insurance may require, nor shall any dealer sell or offer for sale any security after notice in writing given to it by the commissioner of insurance, that, in his opinion, the sale thereof would be unfair, unjust or inequitable to the purchaser thereof, unless the commissioner of insurance shall subsequently in writing withdraw such objection to the sale thereof.

Any issuer of a security required to be registered under the provisions of this chapter, selling such securities except in exempt transactions as defined in section 502.5, shall be deemed a dealer within the meaning of this section and required to comply with all the provisions hereof, but such issuer shall be required to pay only one fee which shall be either the fee for registration of the security or for dealer's registration, whichever is the greater, and shall not be required to furnish the bond herein prescribed. [SS15,§1920-u15; C24, 27,§§8561, 8563; C31, 35,§8581-c11; C39, §8581.11; C46, 50, 54,§502.11]

Referred to in §§502.9, 502.14, 502.18, 503.12

**502.12 Deposits for special examinations.** Whenever it is necessary for the commissioner of insurance to incur any expense in connection with any application, registration, or license, he shall have the power by written order to require the interested person to make an advance deposit with the commissioner of insurance in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to "securities department investigation fund", from which fund disbursements shall be made upon order of the commissioner of insurance to pay such expenses. Any unexpended portion shall be refunded. On field examinations made by the commissioner of insurance or superintendent or other employee away from the seat of government a per diem prorated upon the salary of such official or employee may be charged in addition to the actual expenses. [C31, 35,§8581-c12; C39,§8581.12; C46, 50, 54,§502.12]

Referred to in §503.10

**502.13 Trust funds.** Every dealer shall segregate from his general fund all trust funds and items placed with said dealer by any individual, firm, or corporation, and shall at all times carry the same in a special trust account in a reputable depository, and all violations of this section shall be prosecuted as provided in section 502.27. [C35,§8581-f2; C39,§8581.13; C46, 50, 54,§502.13]

**502.14 Revocation of dealers' and salesmen's registrations.** Registration under section 502.11 may be refused or any registration granted may be revoked by the commissioner of insurance if after a reasonable notice and a hearing the commissioner of insurance determines that such applicant or registrant so registered:

1. Has violated any provision of this chapter or any regulation made hereunder;

2. Has made a material false statement in the application for registration;

3. Has been guilty of a fraudulent act in connection with any sale of securities, or has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any of such securities or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of the law;

4. Has demonstrated his unworthiness to transact the business of dealer or salesman;

5. Has been convicted of a felony, or any misdemeanor of which an essential element is fraud;

6. Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the sale of a security to such person;

7. Has failed to account to persons interested for all money and/or property received;

8. Has not delivered after a reasonable time, to persons entitled thereto, securities held or agreed to be delivered by the dealer or broker, as and when paid, and due to be delivered;

9. Has made or is making misrepresentations of any essentials or material fact to the commissioner of insurance, or has violated a provision of the laws of any foreign state regulating the sale of securities therein;

10. Is insolvent;

11. Is selling or offering for sale securities through any solicitor and agent not registered in compliance with the provisions of this chapter;

12. Has been refused a license in any state, or that any license in any state theretofore granted the applicant or registrant, or any officer, director, member or partner, manager or trustee thereof has been canceled, suspended, or withdrawn for fraudulent conduct or violation of the law of such state regulating the sale of securities therein;

13. Is or has been using practices in the sale of securities that work or tend to work a fraud;

14. Has refused to furnish or give pertinent data to the commissioner of insurance;

15. Has in the sale of a security stated that a dividend would be paid thereon, when said dividend had not actually been declared by the issuer thereof; or

16. Has in the sale of a security, promised that such security would be listed on a security exchange when no application for such a listing has actually been made to the exchange.



In cases of charges against a salesman notice thereof shall also be given the dealer employing such salesman.

Pending the hearing the commissioner of insurance shall have the power to order the suspension of such dealer's or salesman's registration; provided, such order shall state the cause for such suspension.

During the suspension and pending the hearing, the commissioner of insurance shall have access to and may compel the production of all books and papers of such dealer or salesman, and he or the superintendent may administer oaths to and examine the officers of such dealer or any other person connected therewith, as to its business and affairs and may also require a balance sheet exhibiting assets and liabilities of any such dealer or salesman or his income statement, or both, to be certified to by a public accountant either of this state or of any other state, wherever the dealer's business is located, approved by the commissioner of insurance. If any dealer shall refuse to permit an examination to be made by the commissioner of insurance, it shall be proper ground for cancellation of registration.

In the event the commissioner of insurance determines to refuse or revoke a registration as hereinabove provided he shall enter a final order thereon with his findings on the register of dealers and salesmen and suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all his salesmen.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer or salesman. [SS15,§1920-u15; C24, 27,§8562; C31, 35,§8581-c13; C39,§8581.14; C46, 50, 54, §502.14]

Referred to in §503.12

**502.15 Examinations and insolvency.** The commissioner of insurance may compel every licensed dealer to make a report not later than the tenth of each month of all securities purchased and sold by such dealer and its salesmen during the preceding calendar month, and the books of all dealers, whether they are duly licensed or their license has been suspended, revoked, or canceled, shall at all times be open to examination and inspection by the commissioner of insurance or any of his employees or any person delegated to examine them. If, upon examination, it is found that the dealer is insolvent or if the records are in such condition that the examiner is unable to determine the financial condition of the dealer, the commissioner of insurance may ask the appointment of a receiver to safeguard the interests of the public; the district court in Polk county or the county in which such dealer has its principal place of business shall have au-

thority to appoint such receiver. [C35,§8581-f3; C39,§8581.15; C46, 50, 54,§502.15]

**502.16 Transactions with insolvent dealer.** It shall be unlawful for any person engaged in business as a broker within the meaning of this chapter and who is insolvent, to accept or receive from a customer, ignorant of such broker's insolvency, any money or securities belonging to such customer otherwise than in liquidation of or as security for an existing indebtedness and to thereby cause the customer to lose in whole or in part any money or securities. A person shall be deemed insolvent within the meaning of this chapter whenever the aggregate of his property shall not at a fair value be sufficient in amount to pay his debts. [C35,§8581-f4; C39,§8581.16; C46, 50, 54,§502.16]

**502.17 Hypothecation of customer's securities.** It shall be unlawful for any person engaged in business as a broker, within the meaning of this chapter, who has in his possession for safekeeping or otherwise any securities belonging to a customer without having any lien thereon, to pledge or dispose of the same or any part thereof without such customer's consent; or for one who has in his possession any securities belonging to a customer on which he has a lien for indebtedness due him by the customer, to pledge the same or any part thereof for more than the amount due to him thereon, or otherwise dispose of the same or any part thereof for his own benefit without the customer's consent without having other securities of the kind and amount to which the customer is then entitled, for delivery to him upon demand therefor and tender of the amount due thereon, and to thereby cause the customer to lose such securities or any part thereof. [C35,§8581-f5; C39,§8581.17; C46, 50, 54,§502.17]

**502.18 Bond and conditions.** Any bond required by section 502.11 shall be conditioned that the dealer shall properly account for any moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such dealer in a court of competent jurisdiction in a suit or action brought by a purchaser of securities against such dealer in which it shall be found or adjudged that such securities were sold by the dealer in violation of this chapter or that such purchaser was defrauded in the sale of such securities. Such bond may be drawn to cover the original license and any renewals thereof.

Every such bond shall run in favor of the state of Iowa for the use and benefit of any purchaser of securities sustaining damages as a result of any breach of the conditions thereof, in the sum of five thousand dollars and shall be in such form consistent with the provisions hereof as the commissioner of insurance may prescribe, and shall be executed with surety or sureties satisfactory to the commissioner of insurance. In suits against



the surety upon such bond it shall not be necessary to join such dealer as a party.

Banks or trust companies under the supervision of this state or of the United States which would otherwise be required under the provisions of this chapter to execute as dealers the bond required herein may execute said bond without surety.

One or more recoveries upon any such bond shall not vitiate the same but it shall remain in full force and effect, but no recoveries from the surety upon any such bond shall ever exceed the full amount of the same, and upon suits being commenced in excess of the amount of same the commissioner of insurance may require additional bond, and if the same is not given within ten days the commissioner of insurance may revoke the registration of such dealer.

Any person injured by any breach of the bond given by any dealer may sue on the bond of such dealer in any proper court of the state of Iowa of competent jurisdiction for the recovery of damages, not exceeding the amount of the bond, sustained in consequence of such breach, but no such action shall be brought after two years after the accruing of the cause of action thereon. [SS15, §1920-u16; C24, 27,§8571; C31, 35,§8581-c14; C39, §8581.18; C46, 50, 54,§502.18]

Referred to in §502.11

**502.19 Burden of proof.** It will not be necessary to negative any of the exemptions in this chapter provided in any complaint, information, indictment or any other writ or proceedings laid or brought under this chapter and the burden of proof of any such exemption shall be upon the party claiming the benefit of such exemption and any person claiming the right to register any securities by qualification under section 502.7 shall also have the burden of proving the right so to register such securities. [C31, 35,§8581-c15; C39,§8581.19; C46, 50, 54,§502.19]

**502.20 Escrow agreement.** If the statement containing information as to securities to be registered, as provided for in section 502.7, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trade-mark, process, formulas or good will, or for promotion fees or expenses or for other intangible assets, the amount and nature thereof shall be fully set forth and the commissioner of insurance may require that such securities so issued in payment of such patent right, copyright, trade-mark, process, formulas or good will, or for promotion fees or expenses, or for other intangible assets shall be delivered in escrow to the commissioner of insurance under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent, shown to the satisfaction of said commis-

sioner of insurance to have been actually earned on the investment in any common stock so held, and in case of dissolution or insolvency during the time such securities are held in escrow, that the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full. [C31, 35,§8581-c16; C39, §8581.20; C46, 50, 54,§502.20]

**502.21 Injunctions.** Whenever it shall appear to the commissioner of insurance, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities within this state, including any security exempted under the provisions of section 502.4,\* and including any transaction exempted under the provisions of section 502.5,\* any person, as defined in this chapter, shall have employed, or employs, or is about to employ any device, scheme, or artifice to defraud or for obtaining money or property by means of any false pretense, representation, or promise, or that any such person shall have made, makes or attempts to make, in this state fictitious or pretended purchases or sales of securities or shall have engaged in, or engages in or is about to engage in any practices or transaction or course of business relating to the purchase or sale of securities which is in violation of law or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities, practices, transactions and courses of business are hereby declared to be and are hereinafter referred to as fraudulent practices; or that any person acting as a dealer or salesman within this state without being duly registered as such dealer or salesman as provided in this chapter, the commissioner of insurance may:

1. Require or permit such person to file with him on such forms as he may prescribe, a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale of securities within or from this state by such person, and such other data and information as may be relevant and material thereto.

2. Examine the promoter, seller, broker, dealer, negotiator, advertiser, or issuer of any such securities, and any agents, employees, partners, officers, directors, members, or stockholders thereof, under oath; and examine such records, books, documents, accounts, and papers as may be relevant or material to the inquiry. For this purpose the commissioner of insurance shall have power to require by subpoena the attendance and testimony of witnesses and the production of papers, and the commissioner of insurance may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. The fees and mileage shall be the same as prescribed by law in judicial procedure in the courts of this state in civil cases. Any party

to any hearing before the commissioner of insurance, shall have the right to the attendance of witnesses in his behalf at such hearing, upon making a request therefor to the commissioner of insurance and designating the person or persons sought to be subpoenaed.

3. In cases of disobedience to a subpoena the commissioner of insurance may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the persons to appear before the commissioner of insurance and give evidence or to produce papers as the case may be; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

4. In case any person shall fail or refuse to file any such statement or report or shall fail or refuse to obey any subpoena or summons of the commissioner of insurance, or to give testimony or to answer questions as required, or to produce any books, records, documents, accounts, or papers as required, the commissioner of insurance may apply to a court of competent jurisdiction for the issuance and service of a proper subpoena or summons, directing the party so required to appear before the commissioner of insurance for examination under oath and to produce any books, documents, or other things necessary for such examination. Any person failing to comply with such court subpoena or summons may be cited and punished for contempt of court as in such cases provided in the courts of record.

5. Whenever it shall appear to the commissioner of insurance from any report or statement filed, from any examination made as provided for in this chapter, or from any other source that any person, as defined in this chapter, has engaged in, is engaged in or is about to engage in any practice declared to be illegal and prohibited by the chapter, or that it will be against public interest for any person, as defined in this chapter, to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise, or distribute any securities within or from this state, he may by petition apply to a court of equity for a writ of injunction or the appointment of a receiver, or both. The said petition shall allege that it appears to the commissioner of insurance from an investigation made in accordance with the provisions of this chapter, that such person, as defined in the chapter, is engaged in or is about to engage in practices declared to be illegal and prohibited or that it is against public interests for such person, as defined in this chapter, to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise, or distribute any securities within or from this state, which allegations may be verified generally, and on the filing of said petition the court may issue an injunction restraining such person from continuing such practices or engaging therein or doing any acts in furtherance thereof and/or the court may issue an

injunction restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution within or from this state, of any securities by such person and any agents, employees, brokers, partners, officers, directors, or stockholders thereof, until the court shall otherwise order. [C31, 35,§8581-c17; C39,§8581.21; C46, 50, 54,§502.21]

\*See 45ExGA, ch 106,§19  
Contempts, ch 665

**502.22 Hearings — rules authorized.** The commissioner of insurance shall have the authority to provide the necessary rules and regulations and procedure under which all hearings, examinations, or investigations as provided in this chapter shall be held. [C35, §8581-f6; C39,§8581.22; C46, 50, 54,§502.22]

**502.23 Remedies.** Every sale or contract for sale made in violation of any of the provisions of this chapter shall be voidable at the election of the purchaser and the person making such sale or contract for sale and every director, officer, or agent of or for such seller who shall have personally participated in making such sales and at the time knew of such violations shall be jointly and severally liable to such purchaser in an action at law in any court of competent jurisdiction upon tender to the seller in person or in open court of the securities sold or of the contract made for the full amount paid by such purchaser, together with all taxable court costs and reasonable attorney's fees in any action or tender under this section; provided, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale or contract for sale; and provided further, that no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept an offer in writing of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:

1. In case such securities consist of interest-bearing obligations at the same rate as provided in such obligations; and

2. In case such securities consist of other than interest-bearing obligations at the rate of six percent per annum; less, in every case, the amount of any income from said securities that may have been received by such purchaser. [C31, 35,§8581-c18; C39,§8581.23; C46, 50, 54,§502.23]

**502.24 Appeals.** An appeal may be taken by any person interested from any final order of the commissioner of insurance to the district court of Polk county, by serving upon the commissioner of insurance within twenty days after the date of the entry of such order a written notice of such appeal stating the

grounds upon which a reversal of such final order is sought; a demand in writing for a certified transcript of the record and of all papers on file in his office affecting or relating to such order and executing a bond in the penal sum of one thousand dollars to the state of Iowa, with sufficient surety, to be approved by the clerk of said court conditioned upon the faithful prosecution of such appeal to final judgment, and the payment of all costs as shall be adjudged against the appellant. Thereupon the commissioner of insurance shall within ten days make, certify, and deliver to the appellant such a transcript; and the appellant shall within five days thereafter file the same and a copy of the notice of appeal with the clerk of said court, which said notice of appeal shall stand as appellant's complaint and thereupon said cause shall be entered on the trial calendar of said court for trial de novo and given precedence over all matters pending in said court. The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner of insurance from which the appeal is taken. If the order of the commissioner of insurance shall be reversed said court shall by its mandate specifically direct said commissioner of insurance as to his further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained, provided that the commissioner of insurance shall not thereby be barred from thereafter revoking or altering such order for any proper cause which may thereafter accrue or be discovered. If said order shall be affirmed, said appellant shall not be barred after thirty days from filing a new application provided such application is not otherwise barred or limited. Such appeal shall not in any wise suspend the operation of the order appealed from during the pendency of such appeal unless upon proper order of the court. An appeal may be taken from the judgment of the said district court on any such appeal on the same terms as an appeal is taken in civil actions. [SS15, §1920-u17; C24, 27, §8575; C31, 35, §8581-c19; C39, §8581.24; C46, 50, 54, §502.24]

Presumption of approval of bond, §682.10

**502.25 Fees.** All fees herein provided for shall be collected by the commissioner of insurance, shall be accounted for and paid over to the treasurer of the state at the time and in the manner provided by law; and the commissioner of insurance shall keep a record of the receipts and expenditures incurred in carrying out the provisions of this chapter. [SS15, §1920-u12; C24, 27, §8553; C31, 35, §8581-c20; C39, §8581.25; C46, 50, 54, §502.25]

**502.26 False statements, entries, and representations.** Any person, firm, association, company, or corporation subject to the provisions of this chapter, that shall subscribe or cause to be made any false statement or false entry in any book required to be kept or

relating to any business to be transacted in this state pursuant to the provisions of this chapter, or make or subscribe to any false statement, exhibit or paper filed with the commissioner of insurance, or shall make to the commissioner of insurance, his superintendent, agent, or representative any false or fraudulent statement concerning the proposed plan of business to be transacted, or the nature, value or character of securities to be sold in this state, or shall make to said commissioner of insurance, his superintendent, agent or representative any false statement as to the financial condition of such person, firm, association, company, or corporation shall be deemed guilty of a felony, and upon conviction shall be fined in the sum of not more than five thousand dollars, or imprisoned not to exceed five years in the penitentiary or reformatory, or by both such fine and imprisonment in the discretion of the court. [SS15, §1920-u19; C24, 27, §8577; C31, 35, §8581-c21; C39, §8581.26; C46, 50, 54, §502.26]

**502.27 General violations.** Any person, firm, association, company, or corporation subject to the provisions of this chapter that shall sell or negotiate for the sale of any securities within this state without complying with the provisions of this chapter, or that continues to sell, offer for sale, or negotiates for the sale of securities in this state after his registration has been revoked or canceled by the commissioner of insurance, or that shall otherwise neglect or refuse to comply with any of the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the county jail not to exceed six months or by both such fine and imprisonment in the discretion of the court, and if it shall be found that any such person is guilty of such a violation with the intent to evade the provisions of this chapter he shall be guilty of a felony and upon conviction thereof shall be fined not to exceed five thousand dollars or be imprisoned not to exceed five years in the penitentiary or reformatory or by both such fine and imprisonment in the discretion of the court. [SS15, §1920-u20; C24, 27, §8578; C31, 35, §8581-c22; C39, §8581.27; C46, 50, 54, §502.27; 56GA, ch 233, §3]

Referred to in §502.13

**502.28 False representations.** Any person, firm, association, company, or corporation, or any agent or representative thereof, whether subject to the provisions of this chapter or otherwise, that sells, offers for sale, or negotiates for the sale of any securities within this state, and knowingly makes any false representations or statements as to the nature, character, or value of such security, or the amount of the earning power of such security whether in the nature of interest, dividends, or otherwise, or knowingly makes any other false or fraudulent representation to any person for the purpose of inducing said person to purchase said security, or conceals any material fact in the advertisement or pro-

spectus of such security for the purpose of defrauding the purchaser, or knowingly violates any of the provisions of this chapter with intent to defraud, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the penitentiary or reformatory for not more than five years or by both such fine and imprisonment. [SS15,§1920-u21; C24, 27,§8579; C31, 35,§8581-c23; C39,§8581.28; C46, 50, 54,§502.28]

**502.29 Promotion by state officials and employees.** No state official or employee of the state shall use his name in his official capacity in connection with the indorsement or recommendation of the organization or the promotion of any company or in the disposal to the public of its securities, nor shall anyone use the stationery of the state or of any official thereof in connection with any such transaction. Whoever violates the aforesaid provision shall, upon conviction by any court of competent jurisdiction, be deemed guilty of a misdemeanor and fined in any sum not to exceed five hundred dollars or be punished by confinement in a county jail for not more than ninety days or by both such fine and imprisonment. [C24, 27,§8580; C31, 35,§8581-c24; C39,§8581.29; C46, 50, 54,§502.29]

**502.30 Secret agents — failure to disclose interest.** Any individual, not licensed as a dealer or salesman, who, with intent to secure financial gain for himself, advises and procures or assists in procuring any person to purchase any securities contemplated by this chapter and who receives for such service any commission or reward, without disclosing to the purchaser the fact of his interest shall, in addition to any other penalty, be guilty of a misdemeanor. [C24, 27,§8564; C31, 35,§8581-c25; C39,§8581.30; C46, 50, 54,§502.30]

Punishment, §687.7

**502.31 Statement not open to public.** Any statement, report, or information required to be made or furnished by any person by this chapter shall be for the information of the commissioner of insurance, the attorney general or any public official who may be interested in an official way in receiving such statement, report, or information, but such statement, report, or information shall not be open to public inspection, nor shall it be published or used for private purposes but may be used in an official, legitimate way if need be. [C31, 35,§8581-c26; C39,§8581.31; C46, 50, 54, §502.31]

Constitutionality, 43GA, ch 10,§26

## CHAPTER 503

### MEMBERSHIP SALES

- 503.1 Administration.
- 503.2 Definitions.
- 503.3 Nonapplicability.
- 503.4 Application for authority.
- 503.5 Certificate of authority.
- 503.6 Bond.
- 503.7 Deposit of securities.
- 503.8 Tenure of license—fees.

- 503.9 Financial report.
- 503.10 Examination.
- 503.11 Revocation of certificate—receiver—injunction.
- 503.12 Salesmen—license—revocation.
- 503.13 Misdemeanor.
- 503.14 Commissioner as process agent.

**503.1 Administration.** The administration of the provisions of this chapter shall be vested in the commissioner of insurance, to be administered in the same manner as is provided for in chapter 502. [C35,§8581-e1; C39, §8581.32; C46, 50, 54,§503.1]

**503.2 Definitions.** The term “association” when used in this chapter shall mean any person, firm, company, partnership, association, or corporation other than building and loan associations, insurance companies and associations, and corporations and co-operative associations subject to the provisions of chapters 497, 498 and 501,\* which sell, offer for sale, and/or issue to the public generally memberships or certificates of membership entitling the holder thereof to purchase merchandise, materials, equipment, and/or services on a discount or cost-plus basis.

The term “issue” when used in this chapter shall mean issue, sell, place, engage in or otherwise dispose of or handle.

The term “membership” when used in this chapter shall mean certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder thereof to purchase merchandise, materials, equipment, and/or service, either from the issuer or someone designated by the issuer, either under a franchise or otherwise, whether it be at a discount, cost plus a percentage, cost plus a fixed amount, at a fixed price, or on any other basis. [C35, §8581-e2; C39,§8581.33; C46, 50, 54,§503.2]

45GA, ch 47,§2, editorially divided  
\*See also ch 499

**503.3 Nonapplicability.** This chapter shall not apply to any corporation or association organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans, or legatees of deceased members, or insuring the health of persons, or furnishing

accident indemnity, nor to any benevolent associations or societies. [C35,§8581-e3; C39, §8581.34; C46, 50, 54,§503.3]

**503.4 Application for authority.** No association contemplated by this chapter shall issue any membership until it shall have procured from the commissioner of insurance a certificate of authority authorizing it to engage in such business.

To secure such certificate of authority it shall be necessary for such association to file with the commissioner of insurance an application under oath, showing the name and location of such association, the name and post-office address of its officers, the date of organization, and if incorporated, a certified copy of its articles of incorporation, a copy of its bylaws or rules by which it is to be governed, the form of its certificates or contracts, all printed matter issued by it, together with a detailed statement of its financial condition and such other information concerning its affairs or plan of business as the commissioner of insurance may require. [C35,§8581-e4; C39, §8581.35; C46, 50, 54,§503.4]

Referred to in §503.5

**503.5 Certificate of authority.** Upon the filing of the application referred to in section 503.4, if the commissioner of insurance is satisfied that the business is not in violation of law, or against public policy, and is safe, reliable, and entitled to public confidence, and that the certificate or contract is in proper form, he may issue a certificate of authority authorizing it to transact business within this state for the period of one year from the date of the issuance thereof. [C35,§8581-e5; C39, §8581.36; C46, 50, 54,§503.5]

**503.6 Bond.** Before any association shall be authorized to transact the business contemplated by this chapter, it shall file and deposit with the commissioner of insurance a bond in the penal sum of twenty-five thousand dollars, running to the state of Iowa, for the use and benefit of any purchaser of a membership or contract, conditioned upon the faithful performance of all contracts entered into by such association, to be performed by it or someone designated by it, for whose benefit the same may be made, and providing for the refunding of the amount of the membership fee in the event of the failure of the association, or someone designated by it, to perform its contract or contracts in accordance with the terms and conditions thereof, and the payment of any and all damages sustained as a result of any breach of the conditions of said bond. Said bond shall be in such form, consistent with the provisions hereof, as the commissioner of insurance may prescribe, and shall be executed with surety by a surety company authorized to do business in this state. In suits against the surety company upon such bond it shall not be necessary to join the issuer as a party. [C35, §8581-e6; C39, §8581.37; C46, 50, 54,§503.6]

**503.7 Deposit of securities.** In addition to the filing of the bond as hereinbefore provided, every such association shall on the tenth day of each month deposit with the commissioner of insurance, securities of the kind provided for in section 511.8, in an amount equal to fifty percent of the amount of the sale price of the memberships sold by said association during the previous month, and said association shall keep such deposit at all times equal to fifty percent of the sale price of all outstanding and unredeemed memberships.

For the purpose of determining the amount of such deposit liability, every such association shall file with its deposit on the tenth of each month, a sworn statement showing the names and addresses of all persons to whom memberships were sold during the previous month, together with the selling price, the amount received from each person, and the amount, if any, due from each person.

Said sworn statement shall also show the names and addresses of all persons whose memberships were redeemed and canceled during the previous month, and by whom.

The deposit herein provided for shall be for the protection of all purchasers or holders of memberships in the association making said deposit. [C35,§8581-e7; C39, §8581.38; C46, 50, 54,§503.7]

**503.8 Tenure of license—fees.** The license period for each such association shall be one year, and renewable annually thereafter on the same terms and conditions as provided for in the original qualification.

Such association shall pay to the commissioner of insurance for its certificate of authority to transact business in accordance with this chapter, a fee of one hundred dollars and an annual renewal fee of one hundred dollars to be paid on or before the date of the expiration of the license period both of which fees shall be by the commissioner of insurance turned into the state treasury as are other fees of his office. [C35,§8581-e8; C39, §8581.39; C46, 50, 54,§503.8]

**503.9 Financial report.** During the month of January of each year, or at such other time as the commissioner of insurance may require, every association transacting the business contemplated herein shall file with the commissioner of insurance in such form as he prescribes, a statement showing its financial condition on the thirty-first day of December preceding. [C35,§8581-e9; C39, §8581.40; C46, 50, 54,§503.9]

45GA, ch 47,§8, editorially divided

**503.10 Examination.** Every such association shall be subject to examination by the commissioner of insurance or his representatives, the expense of which shall be paid by the association in the same manner and on the same basis and under the same terms and conditions as is now provided for in section 502.12. In making such examination the com-

missioner of insurance or his representatives, shall have full access to and may demand the production of all books, securities, papers, contracts, moneys, etc., of said association, and may administer oaths, summon and compel the attendance of witnesses and the giving of testimony thereby. [C35,§8581-e10; C39,§8581.41; C46, 50, 54,§503.10]

**503.11 Revocation of certificate—receiver—injunction.** If upon such examination, or at any other time after reasonable notice and a hearing, it shall appear that such association does not conduct its business in accordance with law, or is insolvent, or is doing an unsafe and unsound business, or is conducting its business contrary to public policy, or that the further continuance of its business is hazardous and against the public interest, or if such association upon request refuses to be examined, or fails to make the deposit and reports as herein required, he shall revoke its certificate of authority, and having revoked the certificate of authority of such association he shall report this fact to the attorney general, who shall at once apply to the district court or a judge thereof, for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceeding enjoining and restraining the association from transacting business in this state. [C35,§8581-e11; C39,§8581.42; C46, 50, 54, §503.11]

**503.12 Salesmen—license—revocation.** The salesmen or agents of every association qualified under this chapter, shall be licensed or registered in the same manner and under the same terms and conditions as is provided for in section 502.11, and the license or registration of such salesmen or agents shall be subject to suspension and revocation in the

same manner and under the same terms and conditions as is provided for in section 502.14. [C35,§8581-e12; C39,§8581.43; C46, 50, 54,§503.12]

**503.13 Misdemeanor.** Any member, salesman, agent, or representative of any association, who shall attempt to issue any membership as contemplated by this chapter, or to transact any business whatsoever, in the name of or on behalf of such association not authorized to do business in this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the penitentiary not to exceed five years, or fined not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [C35,§8581-e13; C39, §8581.44; C46, 50, 54,§503.13]

**503.14 Commissioner as process agent.** Every association as defined herein shall, before receiving a certificate of authority to do business in this state, or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner of insurance, and when so made shall be as valid, binding, and effective for all purposes as if served upon the association according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service.

The service of such notice or process on any association shall be in the same manner as is provided for in section 511.28. [C35,§8581-e14; C39,§8581.45; C46, 50, 54,§503.14]

Constitutionality, 45GA, ch 47,§12

## CHAPTER 504

### CORPORATIONS NOT FOR PECUNIARY PROFIT

Referred to in §§375.1, 379A.1, 514.1, 514.2, 591.6

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#### FOREIGN NONPECUNIARY CORPORATIONS

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#### IOWA CENTENNIAL MEMORIAL FOUNDATION

- 504.30 Centennial fund.

## GENERAL PROVISIONS

**504.1 Articles.** Except as may be otherwise specifically provided in this chapter, any three or more persons of full age, a majority of whom shall be citizens of the state, may incorporate themselves for the establishment of churches, colleges, seminaries, lyceums, libraries, fraternal lodges or societies, temperance societies, trades unions or other labor organizations, commercial clubs, associations of business men, agricultural societies, farmers granges, or organizations of a benevolent, charitable, scientific, political, athletic, military, or religious character, or for the acquisition and ownership of rural fire fighting equipment. The incorporators shall adopt, and sign and acknowledge the articles of incorporation, stating the name by which the corporation or association shall be known, the location of its principal office or place of business, its business or objects, the number of trustees, directors, managers, or other officers to conduct the same, the names thereof for the first year, the time of its annual meeting and of annual meeting of its trustees or directors and the manner in which the articles may be amended. Said articles of incorporation shall be filed with the secretary of state who shall, if he approves the same, indorse his approval thereon, record same, and thereafter forward the same to the county recorder of the county where the principal place of business is to be located and there it shall be recorded and, upon recording, be returned to the corporation. The said articles shall not be filed by the secretary of state until a filing fee of five dollars is paid and upon the payment of said fee and the approval of the articles by the secretary of state, he shall issue to said corporation a certificate of incorporation as a corporation not for pecuniary profit. Amendments to articles may be filed and receive approval as provided herein for articles, and the fee therefor shall be five dollars in each instance, and no amendment shall be effective until the same is approved and the fee therefor is paid. [R60, §§1185, 1188, 1190, 1191, 1193, 1197; C73, §§1091, 1092, 1095, 1100; C97, §1642; C24, 27, 31, 35, 39, §8582; C46, 50, 54, §504.1]

Referred to in §§504.3, 504.26

**504.2 Powers—duration.** Upon filing such articles, the persons signing and acknowledging the same, and their associates and successors, shall become a body corporate, with the name therein stated, and may sue and be sued. It may have a corporate seal, alterable at its pleasure, and may take by gift, purchase, devise, or bequest real and personal property for purposes appropriate to its creation, and may make bylaws. It may make contracts, borrow money and transfer property, possessing the same powers in such respects as natural persons. Corporations so organized shall endure for fifty years, unless a shorter period is fixed in the articles, or they are sooner dissolved by three-fourths vote of

all the members thereof, or by act of the general assembly, or by operation of law. [R60, §§1185, 1194, 1198; C73, §§1070, 1096, 1101; C97, §1643; S13, §1643; C24, 27, 31, 35, 39, §8583; C46, 50, 54, §504.2]

S13, §1643, editorially divided

**504.3 Existing corporations — reincorporation.** Any corporation not for pecuniary profit, incorporated in the state prior to July 4, 1943, which may seek to reincorporate or renew its corporate existence, shall proceed in the same manner as provided in section 504.1. [C46, 50, 54, §504.3]

**504.4 County records preserved.** On or before the first day of October, 1943, the county recorder in each county shall prepare and file in the office of the secretary of state a complete alphabetical record, duly certified to by the recorder, showing the name of the corporation, its place of business, date of filing its articles of incorporation, and the book and page where same are recorded in his office, of every corporation not for pecuniary profit having filed articles of incorporation in the office of the recorder of said county since July 4, 1893, together with the same information as to any amendments to articles. The secretary of state shall preserve the said records so filed by him as a part of the permanent records of his office. [C46, 50, 54, §504.4]

**504.5 Specific organizations.** Each grand lodge, state, supreme, or national, and all secret, fraternal, benevolent, or charitable orders, lodges, organizations, societies, or other bodies issuing charters to, and having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state, which may have been heretofore or may hereafter be regularly established and chartered therefrom or thereby, together with each and every subordinate or auxiliary lodge, encampment, tribe, company, council, post, corps, department, society, or other designated organization or body within this state under its properly designated or chartered name as has heretofore been or may hereafter be established and chartered within or for the state by its respective grand lodge, state, supreme, or national, or other governing body, and working under a charter or constitution from its respective grand lodge, state, supreme, or national lodge, organization, or other governing body which may have been heretofore or may hereafter be established therefrom or thereby, including the following: Grand Lodge of Iowa of Ancient, Free and Accepted Masons; The Grand Chapter of Royal Arch Masons of Iowa; The Grand Council of Royal and Select Masters of Iowa; The Grand Commandery of Knights Templar of Iowa; Supreme Council of the Ancient and Accepted Scottish Rite of Freemasonry for the Southern Jurisdiction of the United States; Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for North America; Grand Chapter of

the Order of the Eastern Star of Iowa; Supreme White Shrine; Mystic Order Veiled Prophets of the Enchanted Realm; Daughters of Meokanna; Order of DeMolay; Rainbow Girls; The Grand Lodge of Independent Order of Odd Fellows; The Grand Encampment, I.O.O.F.; The Rebekah State Assembly, I.O.O.F.; The Department Council Patriarch Militant, I.O.O.F.; The Farmers' Alliance; The Grand Lodge Knights of Pythias of Iowa; Pythian Sisterhood; Grand Army of the Republic; Women's Relief Corps Department of Iowa; United War Workers; The Benevolent and Protective Order of Elks of the United States of America; The Western Bohemian Fraternal Association, Z.C.B.J.; The Bohemian Ladies Society, J.C.D.; The Bohemian Benevolent Society, C.S.P.S.; The Bohemian Roman Catholic Benevolent Society, C.R.K.J.P. of Iowa; The Women's Christian Temperance Union; The Grand Lodge Fraternal Order of Eagles; The Knights of Columbus; The Modern Woodmen of America; The Woodmen of the World; The Ancient Order of United Workmen; The American Legion; Catholic Workmen; The Western Bohemian Catholic Union, Z.C.K.J.; The American Legion Auxiliary; Supreme Court of the Independent Order of Foresters; Great Council of the Improved Order of Red Men of the State of Iowa; The Loyal Order of Moose; Home Nest of the Order of Owls; Catholic Daughters of America; Ancient Order of Hibernians; Veterans of Foreign Wars of the United States; Disabled American Veterans; United Spanish War Veterans; the following college societies: Phi Beta Kappa, Delta Theta Phi, Alpha Zeta, Delta Sigma Rho, Acacia, Alpha Gamma Rho, Alpha Sigma Phi, Alpha Tau Omega, Alpha Theta Chi, Chi Phi, Beta Theta Pi, Delta Chi, Delta Tau Delta, Delta Upsilon, Kappa Delta Phi, Kappa Sigma, Lambda Chi Alpha, Phi Delta Theta, Phi Kappa Psi, Pi Kappa Phi, Pi Phi Chi, Sigma Alpha Epsilon, Sigma Chi, Sigma Nu, Sigma Phi Epsilon, Phi Gamma Delta, Phi Alpha Delta, Phi Delta Phi, Phi Delta Chi, Delta Sigma Delta, Xi Psi Phi, Nu Sigma Nu, Phi Chi, Phi Rho Sigma, Achoth, Alpha Chi Omega, Alpha Delta Pi, Alpha Omicron Pi, Alpha Phi, Alpha Xi Delta, Chi Omega, Delta Delta Delta, Delta Gamma, Delta Zeta, Gamma Phi Beta, Kappa Alpha Theta, Kappa Delta, Kappa Kappa Gamma, Pi Beta Phi, Kappa Alpha Psi, Gamma Eta Gamma, Bushnell Guild, Farm House, Silver Lynx, Delta Sigma Pi; The Iowa Press Association, Boy Scouts of America, Boy Scouts of America Local Councils, The Girl Scouts of America, Camp Fire Girls of America, Camp Fire Girls of America Local Councils, and Pathfinder Club International; Firemen's Relief Association of Iowa; Rotary International; Kiwanis International; Katolicky Sokol of America; International Association of Lions Clubs; Chambers of Commerce, Junior Chambers of Commerce, Iowa State Chapter of the P.E.O. Sisterhood, and United Commercial Travelers of America shall, upon compliance with the provisions of section 504.6

be and the same are hereby made and declared corporations not for pecuniary profit, within the state, under the name and title designated in the respective charters or constitutions by which name they shall be capable of suing, and being sued, of pleading and being impleaded in the several courts of this state, the same as natural persons. And each of said organizations shall have power to receive bequests of real and personal property, to hold and to convey both real and personal property, to lease property, and do all other things usually done by corporations for the purpose for which organized, and in the absence of fraud or bad faith, the members, officers, and trustees of any of the above named organizations shall not be personally liable for its debts, obligations, or liabilities. [C46, 50, 54, §504.5]

Referred to in §504.6

**504.6 Filing charter—fee.** Before any grand lodge, state, national, or supreme, or any secret, fraternal, benevolent, or charitable order, lodge, or organization, society, or other body having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state, or any subordinate or auxiliary order, lodge, organization, society, or other body within this state, working under a grand lodge, state, national, or supreme organization, can become a corporation not for pecuniary profit, as provided in section 504.5, it must file with the secretary of state a copy of its charter or constitution duly certified as a true copy thereof by its secretary or other like officer, as the case may be, under the official seal thereof, if any, and such organization, before a certificate of incorporation is issued by the secretary of state, shall pay to that office a fee of five dollars together with a recording fee of fifty cents per page. The secretary of state shall record same and forward same to the county recorder of the county where the corporation headquarters or principal place of business is located, and there it shall be recorded, and upon recording, returned to the corporation. [C46, 50, 54, §504.6; 56GA, ch 227, §8]

Referred to in §504.5

**504.7 Property of extinct religious society—rules.** State, diocesan, or district religious organizations incorporated under this chapter, or those existing by voluntary association and having permanent funds, shall have the power to adopt and enforce rules as to the property of extinct local societies which at any time have been or which may be connected therewith and defining when such a local society shall be considered extinct, and to take charge of and to control the real and personal property of such extinct society. [S13, §1643; C24, 27, 31, 35, 39, §8584; C46, 50, 54, §504.7]

Referred to in §504.25

**504.8 For agricultural, horticultural, and cemetery purposes.** Corporations organized for agricultural or horticultural purposes, and cemetery associations, shall not own to exceed



nine sections of land, and the improvements and necessary personal property for the proper management thereof; and the articles of incorporation shall provide a mode by which any member may at any time withdraw therefrom, and also the mode of determining the amount to be received by such member upon withdrawal, and for the payment thereof to him, subject to the right of creditors of the corporation; and their duration shall be without limit, unless terminated by act of the general assembly. [R60,§1185; C73,§1070; C97, §1644; C24, 27, 31, 35, 39,§8585; C46, 50, 54,§504.8]

Referred to in §504.9

**504.9 Territorial associations.** The power and right to acquire lands to the extent granted by section 504.8 shall be possessed by any association incorporated for cemetery purposes by any territorial legislature of Iowa and now existing even though said incorporation act contains a lesser limitation on such power and right. [C27, 31, 35,§8585-b1; C39, §8585.1; C46, 50, 54,§504.9]

**504.10 Dividend.** No dividend or distribution of property among the stockholders shall be made until the dissolution of the corporation. [C51,§710; R60,§1188; C73,§1093; C97, §1645; S13,§1645; C24, 27, 31, 35, 39,§8586; C46, 50, 54,§504.10]

S13,§1645, editorially divided

**504.11 When society deemed extinct.** When a local religious society shall have ceased to support a minister or leader or regular services and work for two years or more, or as defined by the rules of any incorporated state, diocesan, or district society with which it has been connected, it shall be deemed extinct, and its property may be taken charge of and controlled by such state or similar society of that denomination with which it had been connected. [S13,§1645; C24, 27, 31, 35, 39,§8587; C46, 50, 54,§504.11]

Referred to in §504.25

**504.12 Power to confer degree.** Any corporation of an academical character may confer the degrees usually conferred by such an institution. No academic degree for which compensation is to be paid shall be issued or conferred by such corporation or by any individual conducting an academic course unless the person obtaining the said degree shall have completed at least one academic year of resident work at the institution which grants the degree. [C51,§711; R60,§1189; C73, §1094; C97,§1646; C24, 27, 31, 35, 39,§8588; C46, 50, 54,§504.12]

Referred to in §504.13

**504.13 Penalty.** A violation of section 504.12 by a corporation shall be punished by a fine of not more than one thousand dollars. A violation of section 504.12 by an individual conducting an academic course or by an officer or managing head of a corporation shall be punished by imprisonment in the peni-

tentiary or men's or women's reformatory not more than seven years; or by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [C27, 31, 35,§8588-b1; C39,§8588.1; C46, 50, 54,§504.13]

**504.14 Trustees or managers.** Such corporation may, annually or oftener, elect from its members its trustees, directors, or managers, at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of its affairs and funds, a majority of whom shall constitute a quorum for the transaction of business. When a vacancy occurs in its governing body, it shall be filled in such manner as shall be provided by the bylaws. When the corporation consists of the trustees, directors, or managers of any benevolent, charitable, scientific, or religious institution which is or may be established in the state, and which is or may be under the patronage, control, direction, or supervision of any synod, conference, association, or other ecclesiastical body in any state established agreeably to the laws thereof, such ecclesiastical body may nominate and appoint such trustees, directors, or managers, according to the usages of the appointing body, and may fill any vacancy which may occur among them; and when any such institution may be under the patronage, control, direction, or supervision of two or more of such synods, conferences, associations, or other ecclesiastical bodies, they may severally nominate and appoint such proportion of such trustees, directors, or managers as shall be agreed upon by the bodies immediately concerned, and any vacancy occurring among such appointees last named shall be filled by the synod, conference, association, or body having appointed the last incumbent. [R60,§1195; C73, §1097; C97,§1647; C24, 27, 31, 35, 39,§8589; C46, 50, 54,§504.14]

**504.15 Academical—meetings.** Any corporation of an academical character, the membership of which shall consist of lay members and pastors of churches, delegates to any synod, conference, or council holding annual meetings in states other than Iowa, may hold its annual meetings for the elections of officers and the transaction of business in any such state, at the place where such synod, conference, or council holds its annual meeting; and the election and business transacted shall be of the same effect as if held and transacted at its place of business in this state. [C73,§1098; C97,§1648; C24, 27, 31, 35, 39,§8590; C46, 50, 54,§504.15; 56GA, ch 234,§1]

**504.16 Election of officers.** If an election of trustees, directors, or managers shall not be made on the day designated by the bylaws, the society for that cause shall not be dissolved, but such election may take place on any other day directed in the bylaws. [R60, §1196; C73,§1099; C97,§1649; C24, 27, 31, 35, 39, §8591; C46, 50, 54,§504.16]

**504.17 Reincorporation prior to expiration of term.** The trustees, directors, or members of any corporation organized under this chapter may reincorporate the same, and all the property and rights thereof shall vest in the corporation as reincorporated. [R60,§1199; C73,§1102; C97,§1650; S13,§1650; C24, 27, 31, 35, 39,§8592; C46, 50, 54,§504.17]

**504.18 Reincorporation after expiration of term.** When the term of incorporation of a corporation organized under this chapter has expired, but the organization has continued to act as such corporation, the trustees, directors, or members thereof may reincorporate, and the property and rights therein shall vest in the reincorporation for the use and benefit of all of the shareholders in the original corporation. [C27, 31, 35,§8592-a1; C39,§8592.1; C46, 50, 54,§504.18]

**504.19 Amendment of articles.** Any corporation organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at his last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said corporation has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. If the trustees, directors, or managers of such corporation are appointed by two or more synods, conferences, associations, or other ecclesiastical bodies, such change or amendment shall not be made without the concurrence of a majority of those appointed by each such body. [C97,§1651; C24, 27, 31, 35, 39,§8593; C46, 50, 54,§504.19]

Referred to in §§504.20, 591.6  
Amendments legalized, §591.6

**504.20 Record — effect.** The change or amendment provided for in section 504.19 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of the previous section having been complied with, the change or amendment shall take effect as a part of the original articles, and the corporation thus constituted shall have the same rights, powers, and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment. [C97,§1652; C24, 27, 31, 35, 39,§8594; C46, 50, 54,§504.20]

**504.21 Endowment fund — trustees.** Any presbytery, synod, conference, state or diocesan convention, or other state or district representative body of any religious denomination in this state, now or hereafter incorporated under this chapter, or any assembly, synod, conference, convention, or other general ecclesiastical body of any religious denomination in the United States having local societies in this state and wherever incorporated, may in its articles of incorporation or by amendment thereto create a board, committee, or commission of three or more members for any endowment fund or other fund or property of the denomination represented by such body, and at any regular meeting of such presbytery, synod, conference, state or diocesan convention, or other representative assembly of such denomination in this state, or of such assembly, synod, conference, convention, or other general ecclesiastical body in the United States, may elect not less than three members of such denomination, one of whom shall be a resident freeholder in this state, to serve as trustees of such fund or property; and a copy of such articles of incorporation and amendment, duly certified to by the officer with whom the same have been filed for record, shall be evidence in the courts of this state of the existence of such trust and of the powers of such trustees. [S13,§1652-a; C24, 27, 31, 35, 39,§8595; C46, 50, 54,§504.21]

Referred to in §504.25

**504.22 Powers of trustees.** Such trustees, if chosen to take charge of any endowment or other like fund, may invest, manage, and dispose of the same in accordance with the purpose for which it was created, subject to such regulations as the body by which they were elected may from time to time prescribe; and shall have power to make contracts regarding, and to collect and sue for, and in all ways to control and protect, any property belonging or which should belong to any such funds. [S13,§1652-b; C24, 27, 31, 35, 39,§8596; C46, 50, 54,§504.22]

Referred to in §504.25

**504.23 Extinct religious societies—disposition of property.** When any local religious society shall have become extinct, such trustees of the denomination with which it shall have been at any time connected shall take charge of its property, whether real or personal, and control, dispose of, and use the same in trust, as part of the endowment or other like funds of such denomination within the territorial limits represented by such trustees and the corporation by which they were elected and especially for the work of such denomination at the place where such extinct local society shall have been situated. A transfer of such property by resolution or act of the remaining member or members, representative or representatives, of such extinct local society to such trustees shall operate to pass complete title. If on demand therefor there is a failure or refusal to transfer such property to such

trustees, or if such trustees think proper so to do, they may commence action in equity in the district court of the county where such extinct local society was situated, making parties defendant thereto all persons known to have any interest in or claim upon such property; notice shall be given as in other equitable actions, and said court shall have jurisdiction to enter a decree whereby the title to all the property of such extinct society shall be transferred to such trustees, or for the sale thereof and transfer of the proceeds of such sale to such trustees. Such decree or sale thereunder shall pass good title to such property. Provisions shall be made for the protection of all having claims against such local society or its property. [S13,§1652-c; C24, 27, 31, 35, 39,§8597; C46, 50, 54,§504.23]

Referred to in §504.25

**504.24 Property in trust—use of principal.** The property of any such extinct religious society shall be held and disposed of by such trustees in trust for the work of the denomination in the territorial limits represented by such trustees, and especially in trust for such work at the place where such extinct society was situated or its immediate vicinity within the judgment of the religious body by which such trustees were elected. Only income therefrom shall be used for the general work of such denomination in such territorial limits, but the principal shall be kept as a permanent fund for not less than five years, except that it may be used in the locality where such extinct local society was situated or its immediate vicinity if thought best by such body. No local society of such denomination at such place shall be allowed to demand the use of such principal for its benefit until it has been recognized and approved by and has complied with the reasonable requirements of the body so electing such trustees. If the principal or income in the hands of such trustees is not used in the locality where the extinct local society was situated within the term of five years from the time of the sale or disposition of its property, then the said principal and income, if any, may be used for building or improving other property of the denomination within the territorial limits in which such extinct society was located. [S13,§1652-d; C24, 27, 31, 35, 39,§8598; C46, 50, 54,§504.24]

Referred to in §504.25

**504.25 Contract and rights not affected.** Existing contract and property rights arising under the organization, rules, laws, or canons heretofore adopted by any corporation or organization of a religious character, shall not be affected by the provisions of sections 504.7, 504.11, and 504.21 to 504.24, inclusive, except by consent of the interested parties. [S13, §1652-e; C24, 27, 31, 35, 39,§8599; C46, 50, 54, §504.25]

Act effective July 4, 1911

#### FOREIGN NONPECUNIARY CORPORATIONS

**504.26 Permits.** Any corporation organized under the laws of another state, or of any

territory of the United States, for any of the purposes mentioned in section 504.1, desiring a permit to do business in the state, shall file with the secretary of state a certified copy of its articles of incorporation duly attested by the secretary of state, or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in the state. [C24, 27, 31, 35, 39,§8600; C46, 50, 54,§504.26]

37GA, ch 354,§1, editorially divided  
Referred to in §§504.28, 504.29

**504.27 Record and permit.** If it appears that said foreign corporation is, in fact, organized not for pecuniary profit, the secretary of state shall file said articles of incorporation and issue a permit to such corporation to do business in the state, for which permit the secretary of state shall charge, and receive, a fee of five dollars. Upon the issuance of such permit the corporation shall be entitled to carry on its business in the state. The secretary of state shall number consecutively all such certified copies filed in his office and shall maintain a card index thereof alphabetically arranged and shall preserve the same as permanent records of his office. [C24, 27, 31, 35, 39,§8601; C46, 50, 54,§504.27]

Referred to in §§504.28, 504.29

**504.28 Annual reports.** Any corporation, organized as provided in sections 504.26 and 504.27 shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe and upon a blank to be prepared by him for that purpose. [C24, 27, 31, 35, 39,§8602; C46, 50, 54,§504.28]

**504.29 Forfeiture.** Should any corporation referred to in sections 504.26 and 504.27 fail to comply with the provisions of this chapter, notice of such failure shall be called to its attention by the secretary of state by registered letter and, if such delinquent corporation fails or neglects to comply with this chapter within sixty days from the receipt of such letter from the secretary of state, then and in such case said corporation shall forfeit its right to do business in this state. [C24, 27, 31, 35, 39,§8603; C46, 50, 54,§504.29]

#### IOWA CENTENNIAL MEMORIAL FOUNDATION

**504.30 Centennial fund.** The Iowa centennial memorial foundation established on the fifth day of January, 1949, shall have perpetual existence, and the certificate of incorporation heretofore issued to the Iowa centennial memorial foundation by the secretary of state shall be deemed a valid certificate of perpetual existence, and no corporation fees shall

hereafter be required to renew or continue its existence.

It shall be the duty of the governor to serve as president of the Iowa centennial memorial foundation, and it shall be the duty of the treasurer to serve as treasurer of the Iowa centennial memorial foundation, and it shall be the duty of the attorney general to serve as legal counsel for the Iowa centennial memorial foundation, and it shall be the duty of

the president of the state board of education to serve as secretary of the Iowa centennial memorial foundation.

The duties of the state officials hereinbefore provided with respect to the Iowa centennial memorial foundation shall be a part of their official duties pertaining to their respective offices. [C54,§504.30]

Constitutionality, 54GA, ch 186,§4  
See legalizing Act, 54GA, ch 238,§1

# TITLE XX

## INSURANCE

Referred to in §491.39

### CHAPTER 505

#### INSURANCE DEPARTMENT

Identification and use of publicly owned automobiles, etc., §740.20 et seq

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|-------------------------------|--|
| 505.1 Location.               | 505.8 General powers and duties.               |
| 505.2 Appointment and term.   | 505.9 Ex officio receiver.                     |
| 505.3 Vacancies.              | 505.10 Expenses attending liquidation.         |
| 505.4 Deputy—assistants—bond. | 505.11 Refunds.                                |
| 505.5 Expenses—salary.        | 505.12 Life insurance—annual report.           |
| 505.6 Documents and records.  | 505.13 Other insurance—annual report.          |
| 505.7 Fees.                   | 505.14 Foreign insurers—reciprocal provisions. |

**505.1 Location.** The insurance department of Iowa, as heretofore created and established, with the commissioner of insurance as head thereof, shall be located at the seat of government. [S13,§§1683-r,r1; C24, 27, 31, 35, 39,§8604; C46, 50, 54,§505.1]

**505.2 Appointment and term.** The governor shall, within sixty days following the organization of the regular session of the general assembly in 1927, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a commissioner of insurance, who shall be selected solely with regard to his qualifications and fitness to discharge the duties of this position, devote his entire time to such duties, and serve for four years from July 1 of the year of appointment. The governor with the approval of the executive council may remove said commissioner for malfeasance in office, or for any cause that renders him ineligible, incapable, or unfit to discharge the duties of his office. [S13,§1683-r; C24, 27, 31, 35, 39,§8605; C46, 50, 54,§505.2]

Confirmation, §2.40

**505.3 Vacancies.** Vacancies that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S13,

§1683-r; C24, 27, 31, 35, 39,§8607; C46, 50, 54, §505.3]

**505.4 Deputy—assistants—bond.** The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist him in the performance of his duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the penal sum of ten thousand dollars. [S13,§1683-r2; C24, 27, 31, 35, 39,§8608; C46, 50, 54,§505.4]

**505.5 Expenses—salary.** The commissioner shall be entitled to reimbursement of his actual necessary expenses in attending meetings of insurance commissioners of other states, and in the performance of the duties of his office, not exceeding one thousand dollars annually. He may incur such other and additional expenses as may be authorized by the executive council, not exceeding one thousand dollars annually. His salary shall be six thousand dollars per annum. [S13,§1683-r2; C24, 27, 31, 35, 39,§8610; C46, 50, 54,§505.5]

See biennial salary Act

**505.6 Documents and records.** All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of insurance shall be delivered to, and filed or deposited with, the said commissioner of insurance. [S13, §1683-r4; C24, 27, 31, 35, 39,§8611; C46, 50, 54, §505.6]

**505.7 Fees.** All fees and charges of every character whatsoever which are required by law to be paid by insurance companies and associations shall be payable to the commis-

sioner of insurance whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law. [S13,§1683-r5; C24, 27, 31, 35, 39,§8612; C46, 50, 54,§505.7]

Deposit of fees, §12.10

**505.8 General powers and duties.** The commissioner of insurance shall be the head of the insurance department, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

He shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

He shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business. [S13,§1683-r3; C24, 27, 31, 35, 39,§8613; C46, 50, 54,§505.8]

**505.9 Ex officio receiver.** The commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association, or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership. [C31, 35,§8613-c1; C39,§8613.1; C46, 50, 54,§505.9]

**505.10 Expenses attending liquidation.** All expenses of supervision and liquidation shall be fixed by the commissioner of insurance, subject to approval by the court or a judge thereof, and shall, upon his order, be paid out of the funds of such company, association, or insurance carrier in his hands. [C31, 35, §8613-c2; C39,§8613.2; C46, 50, 54,§505.10]

**505.11 Refunds.** Whenever it appears to the satisfaction of the commissioner of insurance that because of error, mistake, or erroneous interpretation of statute that a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insurance shall have power to refund to such corporation any such excess by applying the amounts thereof toward the payment of taxes, fines, penalties, or license fees already due or which may hereafter become due, until such excess payments have been fully refund-

ed. [C31, 35,§8613-c3; C39,§8613.3; C46, 50, 54, §505.11]

**505.12 Life insurance—annual report.** Before the first day of May the commissioner of insurance shall make an annual report to the governor of the general conduct and condition of the life insurance companies doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies; and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to him by them. [C73,§1176; C97,§1781; C24, 27, 31, 35, 39,§8614; C46, 50, 54,§505.12]

Period covered by report, §17.4

**505.13 Other insurance — annual report.** The commissioner shall cause the information contained in the statements required of the companies, other than life insurance, organized or doing business in the state to be arranged in detail, and prepare the same for printing, which report shall be made to the governor on or before the first day of May of each year. [C73,§1158; C97,§1720; S13,§1720-a; C24, 27, 31, 35, 39,§8615; C46, 50, 54,§505.13]

**505.14 Foreign insurers — reciprocal provisions.** When by the laws of any other state any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Iowa insurance companies actually doing business in such other state, or upon the agents of said companies, which in the aggregate are in excess of the aggregate of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of such other state under the statutes of this state, so long as such laws continue in force the same obligations, prohibitions or restrictions of whatever kind shall in the same manner and for the same purpose be imposed upon insurance companies of such other state doing business in Iowa. For the purpose of this section, an alien insurer shall be deemed to be domiciled in a state designated by it wherein it has (1) established its principal office or agency in the United States, or (2) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or (3) in which it was admitted to do business in the United States. The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes. [C46, 50, 54,§432.2; 56GA, ch 235,§1, 2]

## CHAPTER 506

## ORGANIZATION OF DOMESTIC INSURANCE COMPANIES

- 506.1 Sale of stock or membership — conditions.  
 506.2 Power over organization—certificate.  
 506.3 Promotion expense — unallowable dividends.  
 506.4 General regulation by commissioner.

- 506.5 Unallowable contracts.  
 506.6 Violations.  
 506.7 Liability for illegal sale of stock.  
 506.8 Appeal.  
 506.9 Sale of stock as inducement to insurance.

**506.1 Sale of stock or membership—conditions.** Neither the stock in an insurance company nor the membership in an insurance association in process of organization shall be sold or solicited until such company or association, and the promoters thereof, shall have first complied with all of the statutory provisions regulating the organization of such companies and associations, and also have secured from the commissioner of insurance a certificate indicating full compliance with the provisions of this section. [S13,§1683-r3; C24, 27, 31, 35, 39,§8616; C46, 50, 54,§506.1]

**506.2 Power over organization—certificate.** Before the commissioner of insurance shall issue such certificate of compliance, he shall first be satisfied with the general plan of such organization and the character of the advertising to be used; he shall also fix the time within which such organization shall be completed; he shall also prescribe the method of keeping books and accounts of such corporation and those of fiscal agents. [S13,§1683-r3; C24, 27, 31, 35, 39,§8617; C46, 50, 54,§506.2]

**506.3 Promotion expense—unallowable dividends.** The maximum promotion expense which may be incurred shall in no case exceed twelve and one-half percent of the par value of said stock, and no portion of such amount shall be used in the payment of salaries for officers and directors before the issuance, by the commissioner of insurance, of authority to transact an insurance business. Any amount paid to the company for stock above the par value of the stock shall constitute a contributed surplus but no dividends shall be paid by the company except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus. [C24, 27, 31, 35, 39,§8618; C46, 50, 54, §506.3]

Referred to in §§506.5, 515.25

**506.4 General regulation by commissioner.** The commissioner of insurance shall have power to regulate all other matters in connection with the organization of such domestic corporations, and the sale of stock or the issuing of certificates by all insurance corporations within the state, to the end that fraud may be prevented in the organization of such companies and the sale of their stocks and securities. [S13,§1683-r3; C24, 27, 31, 35, 39,§8619; C46, 50, 54,§506.4]

Referred to in §515.25

**506.5 Unallowable contracts.** No company shall enter into any contract with any promoter, officer, director, or agent of the company or any other person to pay his expenses or to pay him any commission or any compensation for his services in promoting or organizing such company, or in selling its stock in excess of the amount authorized in section 506.3; nor shall it contract with any such person to pay him any part of the premiums arising from the insurance it has written or may write as compensation, directly or indirectly, for aiding in the promotion or for aiding or effecting any consolidation of such company with any other company, without the approval of the commissioner of insurance. [C24, 27, 31, 35, 39,§8620; C46, 50, 54, §506.5]

Referred to in §515.25

**506.6 Violations.** Any person who violates any of the provisions of the preceding sections of this chapter, or who violates any order of the commissioner of insurance made by authority thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not to exceed one thousand dollars, and by imprisonment in the county jail not to exceed six months. [C24, 27, 31, 35, 39,§8621; C46, 50, 54,§506.6]

**506.7 Liability for illegal sale of stock.** Any person, association, or corporation who sells or aids in selling or causes to be sold any stock, certificate of membership, or evidence of interest in any such corporation or association, in violation of law, shall be personally liable to any person to whom he may have sold any stock or certificate of membership or evidence of interest, in an amount equal to the price paid therefor by such person with legal interest, and suit to recover the same may be brought by such purchasers, jointly or severally, in any court of competent jurisdiction. [C24, 27, 31, 35, 39,§8622; C46, 50, 54,§506.7]

**506.8 Appeal.** Any person, corporation, or association aggrieved by any order made by the commissioner of insurance under the provisions of this chapter, may appeal to the district court at the seat of government, by the service of a written notice of such appeal on the commissioner of insurance and attorney general. If such appeal is taken, the commissioner of insurance shall transmit the transcript of the proceedings had before him

to such court, and the cause shall be docketed and tried as an equitable action. [C24, 27, 31, 35, 39,§8623; C46, 50, 54,§506.8]

Docketing appeal, R.C.P. 181 and 356

**506.9 Sale of stock as inducement to insurance.** No insurance company shall issue in this state, or permit its agents, officers, or employees to issue in this state its own stock, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No corporation or stock company, acting as

an agent of an insurance company, or any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give, or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith.

Nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment of this section, or prevent the payment of the dividends or returns therein stipulated to be paid.

It shall be the duty of the commissioner upon being satisfied that any insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending. [C24, 27, 31, 35, 39,§8624; C46, 50, 54,§506.9]

## CHAPTER 507

### EXAMINATION OF INSURANCE COMPANIES

Referred to in §514.10

507.1 "Company" defined.

507.2 Examination required.

507.3 Companies to assist—oaths.

507.4 Examiners—salaries.

507.5 Bond.

507.6 Employment of experts.

507.7 Expenses.

507.8 Payment by company.

507.9 Fees—accounting.

507.10 Suspension or revocation of certificate —receivership.

507.11 Procedure against nonlife companies.

507.12 Procedure against life companies.

507.13 Notice of application.

507.14 Publication of examination.

507.15 Transfer pending examination.

507.16 Unlawful solicitation of business.

507.17 Refusing to be examined.

507.18 Repealed by 53GA, ch 213,§1; see §507.2.

**507.1 "Company" defined.** The word "company" as used in this chapter shall mean all companies or associations organized under the provisions of chapters 508, 510, 511, 515, 518, except county mutuals, and 520, and all companies or associations admitted or seeking to be admitted to this state under the provisions of any of the chapters herein referred to. [S13,§1821-i; C24, 27, 31, 35, 39,§8625; C46, 50, 54,§507.1]

**507.2 Examination required.** The insurance commissioner may at any time examine or inquire into the affairs of any insurance company authorized or seeking to be authorized to transact business in the state of Iowa. Domestic companies shall be examined at least once for each three-year period. [C97,§1753; S13,§§1821-a,h; C24, 27, 31, 35, 39,§§8626, 8642, 9009, 9061; C46, §§507.2, 507.18, 515.130, 518.36; C50, 54,§507.2]

Referred to in §510.12

**507.3 Companies to assist—oaths.** When any company is being examined, the officers, employees, or agents thereof, shall produce for inspection all books, documents, papers,

or other information concerning the affairs of such company, and shall otherwise assist in such examination so far as they can do. The commissioner of insurance, or his legally authorized representative in charge of the examination, shall have authority to administer oaths and take testimony bearing upon the affairs of any company under examination. [S13,§1821-b; C24, 27, 31, 35, 39,§8627; C46, 50, 54,§507.3]

**507.4 Examiners—salaries.** The commissioner of insurance is hereby authorized to appoint insurance examiners, at least one of whom shall be an experienced actuary, and at least one of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the said commissioner, and shall be employed as he may direct.

The said commissioner may, when in his judgment it is advisable, appoint assistants to aid in making examinations. Said examiners



shall be compensated on the basis of the normal work week of the Iowa department of insurance at a per diem to be fixed by the commissioner which shall be in such amount as not to exceed the aggregate sum of one hundred fifty dollars per week in the examination of domestic companies and one hundred eighty dollars per week in the examination of foreign companies. Assistant examiners shall be compensated on the basis of the normal work week of the Iowa insurance department at a per diem to be fixed by the commissioner which shall be in such amount as not to exceed the aggregate sum of ninety dollars per week. Said compensation shall be paid from funds in the state treasury upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9. [S13, §1821-c; C24, 27, 31, 35, 39, §8628; C46, 50, 54, §507.4; 56GA, ch 236, §1]

S13, §1821-c, editorially divided

**507.5 Bond.** Said examiners shall give bond to the state conditioned upon the faithful performance of their duties, in the sum of five thousand dollars, which bond shall be filed with and approved by said commissioner. [S13, §1821-c; C24, 27, 31, 35, 39, §8629; C46, 50, 54, §507.5]

**507.6 Employment of experts.** If in making any examination a situation develops which, in the judgment of the commissioner, requires the services of an expert examiner having special training and knowledge not possessed by the regular examiners of the department, he may also employ such an expert assistant examiner, who shall receive as full compensation for such services the sum of not to exceed twenty-five dollars per day. [C24, 27, 31, 35, 39, §8630; C46, 50, 54, §507.6]

**507.7 Expenses.** Said examiners and assistants and the said commissioner shall receive actual and necessary traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence. [S13, §1821-c; C24, 27, 31, 35, 39, §8631; C46, 50, 54, §507.7]

**507.8 Payment by company.** All bills for expenses of any examination, together with the compensation of the assistants, shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the state under the direction of the executive council, and the commissioner may also revoke the certificate of authority of such company to transact business within this state. [S13, §1821-c; C24, 27, 31, 35, 39, §8632; C46, 50, 54, §507.8]

Referred to in §507.4

**507.9 Fees—accounting.** All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be by him turned into the state treasury

as are other fees of his office. [S13, §1821-c; C24, 27, 31, 35, 39, §8633; C46, 50, 54, §507.9]

Referred to in §507.4  
Deposit of fees, §12.10

**507.10 Suspension or revocation of certificate—receivership.** If upon investigation or examination it shall appear that any company is insolvent or in an unsound condition, or is doing an illegal or unauthorized business, or that it has refused or neglected for more than thirty days to pay final judgment rendered against it in the courts of this state, the commissioner of insurance may suspend its authority to transact business within this state until it shall have complied in all respects with the laws applicable to such company or has paid such judgment, or he may revoke its certificate of authority to transact business within this state and having revoked the certificate of any company organized under the laws of this state, he shall at once report the same to the attorney general, who shall apply to the district court or any judge thereof for the appointment of a receiver to close up the affairs of said company. [S13, §1821-d; C24, 27, 31, 35, 39, §8634; C46, 50, 54, §507.10]

S13, §1821-d, editorially divided  
Referred to in §511.23

**507.11 Procedure against nonlife companies.** In the case of companies organized on the stock plan under the provisions of chapter 515, the above named officers shall proceed as provided in sections 515.85 and 515.86. [S13, §1821-d; C24, 27, 31, 35, 39, §8635; C46, 50, 54, §507.11]

Referred to in §511.23

**507.12 Procedure against life companies.** In case of companies organized under the provisions of chapter 508, said officers shall proceed as provided in sections 508.17 to 508.19, inclusive. [S13, §1821-d; C24, 27, 31, 35, 39, §8636; C46, 50, 54, §507.12]

Referred to in §511.23

**507.13 Notice of application.** No receiver shall be appointed for any company contemplated by this chapter except upon application of the attorney general, unless five days notice shall have been served upon the commissioner and attorney general, stating the time and place of the hearing of such application, at which time and place said officers shall have the right to appear and be heard as to such application and appointment. [S13, §1821-d; C24, 27, 31, 35, 39, §8637; C46, 50, 54, §507.13]

Referred to in §511.23

**507.14 Publication of examination.** The results of any examination shall be published in one or more newspapers of the state or in pamphlet form, when in the opinion of the commissioner of insurance the interests of the public require it. [S13, §1821-d; C24, 27, 31, 35, 39, §8638; C46, 50, 54, §507.14]

**507.15 Transfer pending examination.** Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer. [S13,§1821-e; C24, 27, 31, 35, 39,§8639; C46, 50, 54,§507.15]

**507.16 Unlawful solicitation of business.** Any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty of a misdemeanor and shall be subject

to the penalties provided in sections 511.16 and 511.17, and the provisions of said sections are hereby extended to all companies contemplated by this chapter. [S13,§1821-f; C24, 27, 31, 35, 39,§8640; C46, 50, 54,§507.16]

**507.17 Refusing to be examined.** Should any company decline or refuse to submit to an examination as in this chapter provided, the commissioner of insurance shall at once revoke its certificate of authority, and if such company is organized under the laws of this state, he shall report his action to the attorney general, who shall at once apply to the district court or a judge thereof for the appointment of a receiver to wind up the affairs of the company. [S13,§1821-g; C24, 27, 31, 35, 39, §8641; C46, 50, 54,§507.17]

**507.18** Repealed by 53GA, ch 213,§1. See §507.2.

CHAPTER 507A

UNAUTHORIZED INSURERS PROCESS ACT

507A.1 Title.

507A.2 Purpose.

507A.3 Commissioner as process agent.

507A.4 Conditions precedent to commencing action.

507A.5 Failure to meet demand or defend action.

**507A.1 Title.** This chapter may be cited as the "Iowa Unauthorized Insurers Process Act". [C50, 54,§507A.1]

**507A.2 Purpose.** The purpose of this chapter is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [C50, 54,§507A.2]

**507A.3 Commissioner as process agent.**

1. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (a) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized

to do business therein, (b) the solicitation of applications for such contracts, (c) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (d) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contracts of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

2. Such service of process shall be made by delivering to and leaving with the commissioner of insurance or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner of insurance shall forthwith mail by restricted certified mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by restricted certified mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office showing the name of the sender of the letter and the

name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

3. Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection 2 of this section be valid if served upon any person within this state who, in this state on behalf of such insurer, is

a. Soliciting insurance, or

b. Making, issuing or delivering any contract of insurance, or

c. Collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent within ten days thereafter by restricted certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

4. No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty days from date of the filing of the affidavit of compliance.

5. Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law. [C50, 54,§507A.3; 57GA, ch 267,§73]

Referred to in §507A.4

**507A.4 Conditions precedent to commencing action.**

1. Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either (a) deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such

clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or (b) procure a certificate of authority to transact the business of insurance in this state.

2. The court in any action, suit, or proceeding, in which service is made in the manner provided in subsections 2 or 3 of section 507A.3\* may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1 of this section and to defend such action.

3. Nothing in subsection 1 of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections 2 or 3 of section 507A.3\* hereof on the ground either (a) that such unauthorized insurer has not done any of the acts enumerated in subsection 1 of section 507A.3\*, or (b) that the person on whom service was made pursuant to subsection 3 of section 507A.3\* was not doing any of the acts therein enumerated. [C50, 54,§507A.4]

\*In the enrolled Act this reference was to §507A.2 [Sec. 2 of the Act]

**507A.5 Failure to meet demand or defend action.** In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima-facie evidence that its failure to make payment was vexatious and without reasonable cause. [C50, 54,§507A.5]

## CHAPTER 507B

## INSURANCE TRADE PRACTICES

- 507B.1 Declaration of purpose.  
 507B.2 Definitions.  
 507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.  
 507B.4 Unfair competition and unfair or deceptive acts defined.  
 507B.5 Power of commissioner.  
 507B.6 Hearings, witnesses, appearances, production of books and service of process.  
 507B.7 Cease and desist orders and modifications thereof.  
 507B.8 Judicial review of cease and desist orders.  
 507B.9 Unfair competition and unfair or deceptive acts or practices not defined.  
 507B.10 Judicial review by intervenor.  
 507B.11 Penalty.  
 507B.12 Provisions of chapter additional to other law.  
 507B.13 Immunity from prosecution.

**507B.1 Declaration of purpose.** The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. [56GA, ch 237,§1]

**507B.2 Definitions.** When used in this chapter:

1. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal beneficiary association, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

2. "Commissioner" shall mean the commissioner of insurance of this state. [56GA, ch 237,§2]

**507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.** No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance. [56GA, ch 237,§3]

Referred to in §§507B.5, 507B.8

**507B.4 Unfair competition and unfair or deceptive acts defined.** The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of policy contracts.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as

to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False financial statements.* Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to

examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.* (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; or (b) Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

8. *Rebates.* (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract. (b) Nothing in subsection 7 or paragraph (a) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices: (1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to

policyholders and for the best interests of the company and its policyholders; (2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; (3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. Any violation of any one of sections 515A.16, or 515B.15. [C97,§1782; S13,§§1782, 1820-b; SS15,§1758-f; C24, 27, 31, 35, 39,§§8666, 8759, 9022; C46, 50, 54,§§508.23, 511.20, 515.144; 56GA, ch 237,§§4, 14, 16, 18]

Referred to in §§507B.6, 507B.7, 507B.8, 507B.9  
See also §507B.9

**507B.5 Power of commissioner.** The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 507B.3. [56GA, ch 237,§5]

**507B.6 Hearings, witnesses, appearances, production of books and service of process.**

1. Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 507B.4, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service thereof.

2. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

3. Nothing contained in this chapter shall require the observance at any such hearing of formal rules of pleading or evidence.

4. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The

commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Polk county or the county where such party resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the commissioner under this chapter may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy thereof by restricted certified mail to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order or other process, and mailed by restricted certified mail as aforesaid, shall be proof of the service of the same. [56GA, ch 237,§6; 57GA, ch 267,§95]

Referred to in §507B.9

**507B.7 Cease and desist orders and modifications thereof.**

1. If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 507B.4 and that the person complained of has engaged in such method of competition, act or practice in violation of this chapter, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

2. Until the expiration of the time allowed under section 507B.8, subsection 1, for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he may deem proper, modify or set aside in whole or in part any order issued by him under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after

notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. [56GA, ch 237,§7]

Referred to in §§507B.8, 507B.11

**507B.8 Judicial review of cease and desist orders.**

1. Any person required by an order of the commissioner under section 507B.7 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in sections 507B.3 and 507B.4 hereof, may obtain a review of such order by filing in the district court of Polk county, within ten days from the date of the service of such order, a written petition, duly sworn to, praying that the order of the commissioner be set aside, and stating the specific grounds thereof. If the court shall find that the grounds thus stated, if true, might reasonably justify the modification of the commissioner's order, it shall direct that a copy of such petition be forthwith served upon the commissioner and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of the petition and transcript such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the commissioner, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming or reversing the order of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by reasonable evidence, shall be conclusive.

2. To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which if supported by reasonable evidence shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

3. A cease and desist order issued by the commissioner under section 507B.7 shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in section 507B.7, subsection 2; or

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

4. No order of the commissioner under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state. [56GA, ch 237,§8]

Referred to in §507B.7

**507B.9 Unfair competition and unfair or deceptive acts or practices not defined:**

1. Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging, in this state, in any method of competition or in any act or practice in the conduct of such business which is not defined in section 507B.4, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 507B.6.

The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

2. If such report charges a violation of this chapter and if such method of competition, act or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after ten days after the service of such report, cause a petition to be filed in the district court of this state within the district wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

3. A transcript of the proceedings before the commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence

and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commissioner the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

4. If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are reasonably supported by the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice. [56GA, ch 237,§9]

See also §507B.4

**507B.10 Judicial review by intervenor.** If the report of the commissioner does not charge a violation of this chapter, then any intervenor in the proceedings may within ten days after the service of such report, cause a petition for writ of certiorari to be filed in the district court of Polk county for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of this chapter. [56GA, ch 237,§10]

**507B.11 Penalty.** Any person who violates a cease and desist order of the commissioner under section 507B.7, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Iowa a sum not to exceed fifty dollars, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed five hundred dollars. [C97,§1783; S13,§1820-c; SS15,§1758-f; C24, 27, 31, 35, 39,§§8667, 8760, 9022; C46, 50, 54,§§508.24, 511.21, 515.144; 56GA, ch 237,§§11, 15, 17, 18]

**507B.12 Provisions of chapter additional to other law.** The powers vested in the commissioner by this Act shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive. [56GA, ch 237,§12]

**507B.13 Immunity from prosecution.** If any person shall ask to be excused from attending and testifying or from producing any books,

papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action,

investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced. [56GA, ch 237,§13]

Constitutionality, 56GA, ch 237,§21  
Pending proceedings excepted; 56GA, ch 237,§22

## CHAPTER 508

### LIFE INSURANCE COMPANIES

Referred to in §§507.1, 507.12, 509.5, 510.83, 511.5, 511.8, 511.26, 514A.1, 521.1

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| 508.1 Level premium plan companies.                          | 508.17 Injunction—receivership—dissolution.                 |
| 508.2 Approval of articles.                                  | 508.18 Decree.  |
| 508.3 Requirements of articles.                              | 508.19 Securities.  |
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| 508.5 Capital and surplus required.                          | 508.21 Amount to be deposited.                              |
| 508.6 Deposit of securities—certificate.                     | 508.22 Insolvency of company—procedure.                     |
| 508.7 Loans to officers.                                     | 508.23 and 508.24 Repealed by 56GA, ch 237, §§14, 15.       |
| 508.8 Loan on stock or to prohibited companies.              | 508.25 Policy forms—approval.                               |
| 508.9 Mutual companies—conditions.                           | 508.26 Failure to file copy.                                |
| 508.10 Foreign companies — capital or surplus — investments. | 508.27 Violations.  |
| 508.11 Annual statement.                                     | 508.28 Approval by commissioner — contestability of policy. |
| 508.12 Valuation of policies.                                | 508.29 Authority to write other insurance.                  |
| 508.13 Annual certificate of authority.                      | 508.30 Liability.   |
| 508.14 Violation by domestic company.                        | 508.31 Annuities.   |
| 508.15 Violation by foreign company.                         | 508.32 Proceeds of policy held in trust.                    |
| 508.16 Examination.  |   |

**508.1 Level premium plan companies.** Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies. [C73,§1161; C97,§1768; S13,§1768; C24, 27, 31, 35, 39,§8643; C46, 50, 54,§508.1]

S13,§1768, editorially divided

**508.2 Approval of articles.** Before any such company shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the commissioner of insurance and the attorney general and have the same by them approved. [S13, §1768; C24, 27, 31, 35, 39,§8644; C46, 50, 54,§508.2]

**508.3 Requirements of articles.** Such articles shall show the name, location of principal

place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding of the nature of the business to be transacted and the plan upon which the same is to be conducted. [S13,§1768; C24, 27, 31, 35, 39,§8645; C46, 50, 54,§508.3]

**508.4 Approval of amendments.** All amendments to such articles and amendments hereafter made to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner. [C97,§1768; C24, 27, 31, 35, 39,§8646; C46, 50, 54, §508.4]

**508.5 Capital and surplus required.** No stock life insurance company shall be authorized to transact business under the provisions of this chapter with less than three hundred fifty thousand dollars capital stock fully paid



for in cash and one hundred fifty thousand dollars of surplus paid in in cash or invested as provided by law. Nothing herein contained shall affect companies now authorized to transact business under the provisions of this chapter. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39, §8647; C46, 50, 54,§508.5]

Referred to in §508.9

#### 508.6 Deposit of securities — certificate.

Such securities shall be deposited with the commissioner of insurance and when such deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, he shall issue to such company the certificate hereinafter provided for. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39, §8648; C46, 50, 54, §508.6]

40GA, ch 263, editorially divided

**508.7 Loans to officers.** No part of the capital or other funds shall be loaned directly or indirectly to any officer, director, stockholder, or employee of the company or directly or indirectly to any relative of any officer or director of such company. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39, §8649; C46, 50, 54, §508.7]

**508.8 Loan on stock or to prohibited companies.** No such company shall invest in or make any loan upon its own stock or the stock of any other life insurance company as collateral, or directly or indirectly make any loan to or invest any of its funds in the property of any corporation, firm, association, or trustees, if any officer of the insurance company is an officer or director of such corporation or association, a member of such firm, or a trustee of such trustees. [C24, 27, 31, 35, 39, §8650; C46, 50, 54, §508.8]

**508.9 Mutual companies—conditions.** Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each, a list of which, giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with him of an amount equal to three-fifths of the whole annual premium on said applications, in cash or the securities required by section 508.5, and in addition thereto a deposit of cash or securities of the character provided by law for the investment of funds for life insurance companies in the sum of one hundred thousand dollars, which shall constitute a guaranty fund for the protection of policyholders. In no event shall the contribution to said guaranty fund give to any contributors

thereof, or to any other persons any voting or other power in the management of the affairs of the company by reason of such contribution. Said guaranty fund may be repaid to the contributors thereto with interest at six percent from the date of contribution, at any time, in whole or in part, provided such repayment does not reduce the surplus of the company below the amount of one hundred thousand dollars and then only provided consent in writing for such repayment is obtained from the commissioner of insurance; and on compliance with the provisions of this section, the commissioner shall issue to such mutual company the certificate hereinafter prescribed. [C73, §1163; C97, §1770; C24, 27, 31, 35, 39, §8651; C46, 50, 54, §508.9]

#### 508.10 Foreign companies—capital or surplus—investments.

No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unencumbered real estate within this or the state where such company is located, worth one and two-thirds times the amount loaned thereon, which securities shall, at the time, be on deposit with the superintendent of insurance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company, the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth the amount stated in the certificate. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same. [C73, §1164; C97, §1772; C24, 27, 31, 35, 39, §8652; C46, 50, 54, §508.10]

**508.11 Annual statement.** The president or vice-president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents, and in the course of transmission.
9. The amount of bank stock, with the name of each bank, giving par and market value of the same.
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.
12. The amount of all other bonds, loans, how secured, and the rate of interest.
13. The amount of premium notes and their value on policies in force, if a mutual company.
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
15. The amount of assessments unpaid on stock or premium notes.
16. The amount of interest due and unpaid.
17. The amount of all other securities.
18. The amount of losses due and unpaid.
19. The amount of losses adjusted but not due.
20. The amount of losses unadjusted.
21. The amount of claims for losses resisted.
22. The amount of money borrowed and evidences thereof.
23. The amount of dividends unpaid on stock.
24. The amount of dividends unpaid on policies.
25. The amount required to safely reinsure all outstanding risks.
26. The amount of all other claims against the company.
27. The amount of net cash premiums received.
28. The amount of notes received for premiums.
29. The amount of interest received from all sources.
30. The amount received from all other sources.
31. The amount paid for losses.
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.

33. The amount of commissions and salaries paid to agents.

34. The amount paid to officers for salaries and other compensation.

35. The amount paid for taxes.

36. The amount of all other payments and expenditures.

37. The greatest amount insured on any one life.

38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.

39. The amount of premiums received in this state during the year.

40. The amount paid for losses in this state during the year.

41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.

42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof. [C73,§1167; C97,§1773; C24, 27, 31, 35, 39,§8653; C46, 50, 54,§508.11]

Referred to in §511.3

**508.12 Valuation of policies.** As soon as practicable after the filing of such statement, the commissioner of insurance shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half percent interest, or actuaries' combined experience table of mortality and four percent interest, in all companies organized under the laws of this state. For the purpose of making such valuation he may employ a competent actuary, who shall be paid by the company for which the service is rendered; but the company may make such valuation and it shall be received by the commissioner upon satisfactory proof of its correctness. [C73,§1169; C97,§1774; C24, 27, 31, 35, 39,§8654; C46, 50, 54,§508.12]

C97,§1774, editorially divided

Referred to in §§511.8(10a), 512.45

See Mortality Table at end of Vol. II

**508.13 Annual certificate of authority.** On receipt of the deposit provided in subsection 13 of section 511.8 and the statement, and the statement and evidence of investment of foreign companies, all of which shall be renewed annually, by the first day of March, the commissioner of insurance shall issue a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of April of the ensuing year, or sooner upon thirty days notice given by the commissioner, of the next annual valuation of its policies. Such certificate shall be renewed annually, upon the renewal of the deposit and statement by a domestic company, or of the statement and

evidence of investment by a foreign company, and compliance with the conditions above required, and be subject to revocation as the original certificate. [C73,§1170; C97,§1775; C24, 27, 31, 35, 39,§8657; C46, 50, 54,§508.13]

**508.14 Violation by domestic company.** Upon a failure of any company organized under the laws of this state to make the deposit provided in subsection 13 of section 511.8 or file the statement in the time herein stated, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of such company is located, if the court is in session, if not, to any judge thereof, for an order requiring the company to show cause upon reasonable notice, to be fixed by the court or judge, as the case may be, why its business shall not be discontinued. If, upon the hearing, no sufficient cause is shown, the court shall decree its dissolution. [C73,§1171; C97,§1776; C24, 27, 31, 35, 39,§8658; C46, 50, 54,§508.14]

C97,§1776, editorially divided

**508.15 Violation by foreign company.** Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, shall forfeit and pay the sum of three hundred dollars, to be collected in an action in the name of the state for the use of the school fund, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. [C73, §1171; C97,§1776; C24, 27, 31, 35, 39,§8659; C46, 50, 54,§508.15]

**508.16 Examination.** The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§8660; C46, 50, 54,§508.16]

C97,§1777, editorially divided

**508.17 Injunction — receivership — dissolution.** If upon such examination the commissioner is of the opinion that the company is insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, he shall advise and communicate the facts to the attorney general, who shall at once apply to the district court of the county or any judge thereof, where the home office of a domestic company or an agency of a foreign company is located, for an injunction to restrain the company from transacting further business except the payment of losses already ascertained and due, until further hearing, and for the appointment of a receiver, and, if a domestic company, for the

dissolution of the corporation. The judge of such court may grant a preliminary injunction with or without notice, as he may direct. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§8661; C46, 50, 54,§508.17]

Referred to in §§507.12, 508.19, 511.8(16)

**508.18 Decree.** The court, on the final hearing, may make decree subject to the provisions of section 508.19 as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§8662; C46, 50, 54,§508.18]

Referred to in §§507.12, 508.19, 511.8(16)

**508.19 Securities.** The securities of a defaulting or insolvent company, or a company against which proceedings are pending under sections 508.17 and 508.18, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. [C73,§1173; C97,§1778; C24, 27, 31, 35, 39,§8663; C46, 50, 54,§508.19]

Referred to in §§507.12, 508.18

**508.20 Reinsurance securities—title vested in commissioner.** The title to all securities deposited with the commissioner of insurance by any domestic life insurance company or association which has been, or hereafter shall be, reinsured by a foreign life insurance company, shall be vested in the commissioner for the use and benefit of only the policies of the company reinsured in force at the date of such reinsurance agreement. [C46, 50, 54, §508.20]

Constitutionality, 49GA, ch 271,§5

**508.21 Amount to be deposited.** The reinsuring company shall at all times maintain such deposits in at least the amount of the net reserve, as determined by the commissioner of insurance, on all policies reinsured. [C46, 50, 54,§508.21]

**508.22 Insolvency of company—procedure.** In the event of insolvency or receivership of such reinsuring company or its successors, the commissioner shall be appointed by the district court of the state in and for Polk county as receiver of said insolvent reinsuring company, and shall proceed, subject to the court's approval, to reinsure said policies in another life insurance company or to liquidate the deposits for the sole benefit of the reinsured policies, and pending liquidation or reinsurance, shall have the sole right to collect premiums due on such policies. [C46, 50, 54, §508.22]

**508.23 and 508.24** Repealed by 56GA, ch 237, §§14, 15.

See ch 507B

**508.25 Policy forms—approval.** It shall be unlawful for any insurance company transacting business within this state, under the provisions of this chapter, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with and approved by the commissioner of insurance. [S13,§1783-a; C24, 27, 31, 35, 39,§8668; C46, 50, 54,§508.25]

Referred to in §§508.27, 510.8

**508.26 Failure to file copy.** Should any company decline to file a copy of its form of policies or contracts, the commissioner of insurance shall suspend its authority to transact business within the state until such form of policies or contracts have been so filed and approved. [S13,§1783-c; C24, 27, 31, 35, 39, §8669; C46, 50, 54,§508.26]

S13,§1783-c, editorially divided

**508.27 Violations.** Any company violating any of the provisions of section 508.25 shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than one thousand dollars for each such offense, and the court may also revoke its authority to do business within this state. [S13,§1783-c; C24, 27, 31, 35, 39,§8670; C46, 50, 54,§508.27]

**508.28 Approval by commissioner—contestability of policy.** The commissioner of insurance shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto. The policy shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums. [SS15,§1783-b; C24, 27, 31, 35, 39,§8671; C46, 50, 54,§508.28; 57GA, ch 241,§1]

**508.29 Authority to write other insurance.** Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or

water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property resulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. [S13,§1783-d; C24, 27, 31, 35, 39,§8672; C46, 50, 54,§508.29]

Referred to in §508.30

**508.30 Liability.** Every life insurance company issuing a separate policy, or maintaining a separate department, for the purpose of writing any of the classes of insurance authorized by section 508.29 shall also be subject to all of the provisions applicable to companies authorized to write a similar kind of insurance under the provisions of chapter 515. [C24, 27, 31, 35, 39,§8673; C46, 50, 54,§508.30]

**508.31 Annuities.** Any life insurance company organized on the stock or mutual plan may grant and sell annuities. [C35,§8673-e1; C39,§8673.1; C46, 50, 54,§508.31]

**508.32 Proceeds of policy held in trust.** Any life insurance company organized under the provisions of this chapter and doing business in this state, shall have the power to hold in trust the proceeds of any life insurance policy issued by it, upon such terms and subject to such limitations as to revocation by the policyholder and control by the beneficiary thereunder, as shall have been agreed to in writing by such company and the policyholder; provided that the trust provisions herein contemplated shall in no manner subject said corporation to any of the provisions of the laws of Iowa relating to banks or trust companies; and provided further, that the forms of such trust agreements shall be first submitted to and approved by the commissioner of insurance. [C24, 27, 31, 35, 39,§8674; C46, 50, 54,§508.32]

## CHAPTER 509

### GROUP INSURANCE

- 509.1 Form of policy.
- 509.2 Provisions as part of group life policy.
- 509.3 Provisions as part of accident or health policy.
- 509.4 Number insured.
- 509.5 Authorized companies.
- 509.6 Approval of commissioner.
- 509.7 Grounds for revocation of authority.

- 509.8 Foreign policies.
- 509.9 Foreign companies.
- 509.10 Other provisions in policies.
- 509.11 Voting by policyholders.
- 509.12 Proceeds exempt from execution.
- 509.13 Medical examination waived.
- 509.14 Group insurance on franchise plan.

**509.1 Form of policy.** No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the

employer for the benefit of persons other than the employer, subject to the following requirements:

*a.* The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

*b.* The premium for the group life policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

*c.* The policy must cover at least ten employees at date of issue.

*d.* The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds twenty thousand dollars, unless one hundred fifty percent of the annual compensation of such employee from his employer exceeds twenty thousand dollars, in which event all such term insurance shall not exceed forty thousand dollars or one hundred fifty percent of such annual compensation, whichever is the lesser, except that this limitation shall not apply to amounts of group insurance issued in connection with a pension plan which do not exceed the amount required at normal re-

tirement date to provide the pension specified by the plan.

*e.* Group policies may include dependents of the employee, including the spouse.

2. A policy issued to any one of the following to be considered the policyholder:

*a.* An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergymen, priests, or ministers of the gospel.

*b.* A teachers' association, to insure its members.

*c.* A lawyers' association to insure its members.

*d.* A volunteer fire company, to insure all of its members.

*e.* A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

*f.* A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

*g.* An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

*a.* The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

*b.* The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the in-

sured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor, or the face amount of any loan or loan commitment, totally or partially executed, creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income, or ten thousand dollars, whichever is less.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph "d", the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insur-

ance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies issued to the union exceeds twenty thousand dollars, unless one hundred fifty percent of the annual compensation of such employee from his employer exceeds twenty thousand dollars, in which event all such term insurance shall not exceed forty thousand dollars or one hundred fifty percent of such annual compensation, whichever is the lesser, except that this limitation shall not apply to amounts of group insurance issued in connection with a pension plan which do not exceed the amount required at normal retirement date to provide the pension specified by the plan.

e. Policies may include dependents of the insured, including the spouse.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all

except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which, together with any other term insurance under any group life insurance policies issued to the trustees, exceeds twenty thousand dollars, unless one hundred fifty percent of the annual compensation of such employee from his employer exceeds twenty thousand dollars, in which event all such term insurance shall not exceed forty thousand dollars or one hundred fifty percent of such annual compensation, whichever is the lesser, except that this limitation shall not apply to amounts of group insurance issued in connection with a pension plan which do not exceed the amount required at normal retirement date to provide the pension specified by the plan.

e. Policies may include dependents of the insured, including the spouse.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each, and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to his own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between himself and his employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse. [C24, 27, 31,

§§8675, 8676; C35, §§8684-e1-8684-e3; C39, §§8684.01-8684.03; C46, §§509.1-509.3; C50, 54, §509.1; 56GA, ch 238, §1; ch 239, §§1-4; 57GA, ch 242, §§1-3]

#### 509.2 Provisions as part of group life policy.

No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured, and more favorable to the policyholder, provided, however, that provisions of subsections 6 to 10, inclusive, of this section shall not apply to policies issued to a creditor to insure debtors of such creditor; that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except that first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

2. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime, nor unless it is contained in a written instrument signed by him.

3. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance

to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

5. A provision specifying an equitable adjustment of premiums or benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

6. A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum, not exceeding five hundred dollars, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

7. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subsections 8 to 10, inclusive, following if applicable.

8. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

a. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which matures on the date of such termination, or has matured prior thereto as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination, and

c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such

person then belongs, and to his age attained on the effective date of the individual policy.

Referred to in §509.4

9. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subsection 8 above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and two thousand dollars.

10. A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with subsections 8 or 9 above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [C24, 27, 31, §§8677, 8678; C35, §§8684-e4, -e5; C39, §§8684.04, 8684.05; C46, §§509.4, 509.5; C50, 54, §509.2; 56GA, ch 238, §2]

Referred to in §§509.10, 509.14

**509.3 Provisions as part of accident or health policy.** All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

2. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to his rights under the policy.



3. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class. [C24, 27, 31, §§8677, 8678; C35, §§8684-e4, e6; C39, §§8684.04, 8684.06; C46, §§509.4, 509.6; C50, 54, §509.3]

Referred to in §§509.10, 509.14

**509.4 Number insured.** An insurer may issue policies of individual life, accident, health, hospital, medical or surgical insurance or any combination thereof at reduced rates to employees of a common employer where the total number of employees to be insured is less than twenty-five and more than four. The premium for such policies may be paid wholly or in part by the employer. If such policies shall provide term life insurance renewable only during the continuance of employment with the employer they shall also provide for conversion to a level premium life policy substantially in accordance with the provisions of subsection 8 of section 509.2. [C24, 27, 31, §§8675, 8678; C35, §§8684-e1, e5; C39, §§8684.01, 8684.05; C46, §§509.1, 509.5; C50, 54, §509.4; 56GA, ch 240, §§1, 2]

**509.5 Authorized companies.**

1. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact business under the provisions of chapter 508 may, upon complying with the provisions of said chapter and of this chapter, issue contracts providing for group life, or health, or accident insurance, or combinations thereof as defined in this chapter.

2. Any casualty company organized on the stock or mutual plan, or accident and health association authorized to transact business under the provisions of chapter 510 or chapter 515, or a reciprocal or interinsurance exchange organized under the provisions of chapter 520, may, by complying with the provisions of said chapters and of this chapter, issue contracts providing for health or accident insurance, or combinations thereof, as defined in this chapter. [C24, 27, 31, §8677; C35, §8684-e4; C39, §8684.04; C46, §509.4; C50, 54, §509.5]

**509.6 Approval of commissioner.** No policy or certificate of group insurance shall be issued in this state until the form thereof has been filed with the commissioner of insurance and approved by him. [C24, 27, 31, §8678; C35, §8684-e7; C39, §8684.07; C46, §509.7; C50, 54, §509.6]

Referred to in §§509.7, 509.8

**509.7 Grounds for revocation of authority.** Failure to comply with section 509.6 shall be deemed sufficient grounds for revocation of the certificate of authority of any company so violating. [C35, §8684-e8; C39, §8684.08; C46, §509.8; C50, 54, §509.7]

**509.8 Foreign policies.** Policies of group insurance issued in other states or countries by companies organized in this state may contain any provision required by the laws of the state, territory, district, or country in which

the same are issued, anything in section 509.6 to the contrary notwithstanding. [C24, 27, 31, §8679; C35, §8684-e9; C39, §8684.09; C46, §509.9; C50, 54, §509.8]

**509.9 Foreign companies.** Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain when issued any provision required by the law of the state, territory, or district of the United States under which the company is organized. [C24, 27, 31, §8680; C35, §8684-e10; C39, §8684.10; C46, §509.10; C50, 54, §509.9]

**509.10 Other provisions in policies.** Any group policy may contain any other provisions which meet the approval of the commissioner of insurance, provided such provisions are not in conflict with the standard provisions of sections 509.2 or 509.3. [C24, 27, 31, §8681; C35, §8684-e11; C39, §8684.11; C46, §509.11; C50, 54, §509.10]

**509.11 Voting by policyholders.** If policyholders are entitled to vote at meetings of a domestic insurance company, each policyholder of a group policy shall be entitled to one vote. [C24, 27, 31, §8682; C35, §8684-e12; C39, §8684.12; C46, §509.12; C50, 54, §509.11]

**509.12 Proceeds exempt from execution.** No policy of group insurance, nor the proceeds thereof, when payable to any person insured thereunder, or any beneficiary, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person, or beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the person insured for the payment of his debts. [C24, 27, 31, §8683; C35, §8684-e13; C39, §8684.13; C46, §509.13; C50, 54, §509.12]

**509.13** Repealed by 57GA, ch 243, §1.

**509.14 Group insurance on franchise plan.** It shall be lawful for an authorized insurer to issue life, accident and sickness insurance policies on a franchise plan at reduced rates, covering the members of an association, subject to the following:

1. An "association" as referred to herein shall consist of a labor union, trade association, association of employees, industrial association or professional association, which has been organized and operating more than two years for purposes other than procuring insurance.

2. A "franchise plan" as referred to herein shall consist of an insurance policy or policies covering at least fifty percent of the insurable members of an association, but in no case less than ten. Such policies may be written in the name of the association or may

be written individually for the insured members, subject to the following:

a. A life insurance policy written in the name of the association, shall conform to the provisions of section 509.2.

b. An individual policy on the life of a member of an association, providing for term insurance renewable only during the continuation of membership, shall also provide in the event of termination of membership the same provision for conversion as set out in subsection 8 of section 509.2.

c. An individual life policy written on any basis other than term shall provide that the policyholder may elect to continue it in force upon his termination of membership in the association by giving the insurer a notice in writing of such election within thirty days

thereafter and paying therefor his renewal premium, which the insurer may increase to reflect the normal individual rate for the policyholder as determined by his age and class at the date of issue of his policy.

d. If an accident and sickness policy is written in the name of the association, it shall conform to the provisions of section 509.3.

e. An individual accident and sickness policy shall be subject to the provisions of chapter 514A.

f. Premiums for such policies may be paid entirely from the funds of the association, entirely from the funds of the members or partly from the funds of each.

g. Accident and sickness policies may include the spouse and dependents of the insured. [C54,§509.14]

## CHAPTER 510

### ASSESSMENT LIFE INSURANCE

Referred to in §§507.1, 509.5, 511.5, 511.8, 511.15, 511.26, 512.7, 514A.1, 521.1

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**510.1 Assessment plan.** Every corporation organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members, or insuring the health of persons, or furnishing accident indemnity, shall be styled an association. [C97,§1784; S13,§1784; C24, 27, 31, 35, 39,§8685; C46, 50, 54,§510.1]

S13,§1784, editorially divided

**510.2 Assessment plan of life insurance defined.** Any corporation doing business under this chapter which provides for the payment of policy claims, accumulation of a reserve or emergency fund, the expense of management and prosecution of the business, by pay-

ment of assessments as provided in its contracts, and wherein the liability of the insured to contribute to the payment of policy claims is not limited to a fixed amount, shall be deemed to be engaged in the business of life insurance upon the assessment plan, and shall be subject to the provisions of this chapter, and chapter 511. [C97,§1784; S13,§1784; C24, 27, 31, 35, 39,§8686; C46, 50, 54,§510.2]

**510.3 "Certificate" defined.** "Certificates of membership" or "certificate", when used in this chapter with respect to the insurance of the members, shall be taken to mean and include policy of insurance. [C97,§1785; C24, 27, 31, 35, 39,§8687; C46, 50, 54,§510.3]

C97,§1785, editorially divided

**510.4 Articles—approval.** The articles of incorporation and bylaws of any such association shall show its plan of business, and be submitted to the commissioner of insurance and the attorney general, and if they are found by those officers to comply with the provisions of this title, chapter, and of law, they shall approve the same. [C97,§1785; C24, 27, 31, 35, 39,§8688; C46, 50, 54,§510.4]

**510.5 Record and publication.** When the articles are thus approved, they shall be recorded in the office of the secretary of state, and a notice published within ninety days in the manner and for the time provided in the general incorporation laws. [C97,§1785; C24, 27, 31, 35, 39,§8689; C46, 50, 54,§510.5]

Publication of notice, §491.17 et seq.

**510.6 Right of member to vote.** Every member of any association organized under the provisions of this chapter shall be entitled to vote, either in person or by proxy, at every regular and special meeting of such association. No such association shall limit the right of any member to so vote, unless the proposal to limit shall have first been submitted to the entire membership for vote and shall have been approved by a majority of those voting. [C24, 27, 31, 35, 39,§8690; C46, 50, 54,§510.6]

**510.7 Name.** No such association shall take any name in use by another organization, or one so closely resembling it as to mislead the public as to its identity. [C97,§1786; C24, 27, 31, 35, 39,§8691; C46, 50, 54,§510.7]

**510.8 Conditions for commencing business—approval of policy forms.** Before issuing any policy or certificate of membership, if the association at the time has not a membership sufficient to pay the full amount of its certificate or policy on an assessment, it shall cause all applications for insurance to have printed in red ink, in a conspicuous manner along the margin thereof, the words: "It is understood that the amount of insurance to be paid under this application, and certificate or policy issued thereon, shall depend upon the amount collected from an assessment therefor." It must have actual applications upon at least two hundred fifty lives for at least one thousand dollars each; and it shall file with the commissioner of insurance satisfactory proof that the president, secretary, and treasurer have each given a good and sufficient bond for five thousand dollars for the faithful discharge of their duties as such officers, sworn copies of which shall be filed with him. It shall also file with him a list, verified by the president and secretary, of the applications, giving the name, age, and residence of each applicant, the amount of insurance applied for by each, together with the annual dues and the proposed assessments thereon. Its policy forms shall be approved, as provided by section 508.25. [C97,§1787; S13,§1787; C24, 27, 31, 35, 39,§8692; C46, 50, 54,§510.8]

**510.9 Assessments — diversion of funds.** The articles and bylaws of each such association shall state the objects to which the money to be collected is to be devoted, and no part of the proceeds thereof shall be applied to any other purpose than as stated, and the excess, if any, beyond payment of the benefit, shall be set aside and applied only to like purposes, except that all sums collected for expenses and not used for that purpose may be transferred to the benefit, emergency, or reserve fund. [C97,§1788; S13,§1788; C24, 27, 31, 35, 39,§8693; C46, 50, 54,§510.9]

**510.10 Insurable age — beneficiary and change thereof — assignment.** No association organized or operating under this chapter shall issue a certificate of membership to any person under fifteen or over sixty-five years of age, or unless the beneficiary named in the certificate is the husband, wife, relative, legal representative, heir, creditor, or legatee of the insured member, nor shall any such certificate be assigned. Any certificate issued or assignment made in violation of this section shall be void.

The beneficiary named in the certificate may be changed at any time at the pleasure of the assured, as may be provided for in the articles or bylaws, but no certificate issued for the benefit of a wife or children shall be thus changed so as to become payable to the creditors; provided that the foregoing provisions of this section shall not be applicable except as to certificates issued prior to July 4, 1923, to life associations organized and operating under this chapter issuing life insurance policies or certificates of membership, and any member or policyholder in any such life association shall have the right to designate his beneficiary, and unless the policy is issued without the right of revocation, shall have the right to change the beneficiary in the manner authorized by the rules, laws, and regulations of the association, or as may be provided in the policy contract; and no beneficiary under any policy shall have or obtain any vested right or interest in the death benefits to be payable under said policy, until such benefits shall become due and payable after the death of the insured. [C97,§1789; C24, 27, 31, 35, 39,§8694; C46, 50, 54,§510.10]

Similar provisions, §§512.9, 512.10, 512.56, 512.60, 512.69

**510.11 Business year—annual report—fees.** The annual business of such association organized under the laws of this state shall close on the thirty-first day of December of each year, and it shall within sixty days thereafter prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and furnish such other information as the commissioner, who shall pro-

vide blanks for that purpose, may require, so that its true financial condition may be shown, and shall pay, upon filing each annual statement, the sum of three dollars, and such other fees as are required by the provisions of sections 511.24 to 511.26, inclusive. [C97, §1790; C24, 27, 31, 35, 39, §8695; C46, 50, 54, §510.11]

C97, §1790, editorially divided  
Referred to in §511.3

**510.12 Publication of report—examination and expense.** The commissioner of insurance shall publish such annual statement in detail in his report, and for the purpose of verifying it he may make or cause to be made an examination of the affairs of any such association at its expense, which shall be, if done by him or his clerk, necessary hotel and traveling expenses only, if, by a person not regularly employed in his office, the actual cost thereof, not exceeding ten dollars per day for the time required and actual expenses; but the examination herein provided for shall be in addition to those authorized by the provisions of section 507.2. [C97, §1790; C24, 27, 31, 35, 39, §8696; C46, 50, 54, §510.12]

**510.13 Bonds—supplemental reports.** If the commissioner regards it necessary for the safety of the funds of the association, he may require the bonds of the officers to be increased to an amount not exceeding double the sum for which they are accountable, and he may also require supplemental reports from such association at such time and in such form as he may direct, and it shall be the duty of its officers to furnish the bonds and reports when thus required. [C97, §1790; C24, 27, 31, 35, 39, §8697; C46, 50, 54, §510.13]

Referred to in §511.3

**510.14 Certificate of authority.** Upon compliance with the provisions of this chapter by an association, the commissioner of insurance shall issue to it a certificate, setting forth that it has fully complied with the provisions of this chapter, and is authorized to transact business for a period of one year from April 1 of the year of its issue. [C97, §1796; C24, 27, 31, 35, 39, §8702; C46, 50, 54, §510.14]

**510.15 Foreign companies.** Any association organized under the laws of any other state to carry on the business of insuring the lives of persons, or of furnishing benefits to the widows, orphans, heirs, or legatees of deceased members, or of paying accident indemnity, or surrender value of certificates of insurance, upon the stipulated premium plan or assessment plan, may be permitted to do business in the state by complying with the requirements hereinafter made, but not otherwise. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8703; C46, 50, 54, §510.15]

S13, §1794, editorially divided  
Referred to in §510.23

**510.16 Articles—bylaws—applications and policy.** It shall file with the commissioner of

insurance a copy of its charter or articles of incorporation, duly certified by the proper officers of the state wherein it was organized, together with a copy of its bylaws, application and policy or certificate of membership. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8704; C46, 50, 54, §510.16]

Referred to in §§510.19, 510.23

**510.17 Location—officers—financial showing.** It shall also file with the commissioner a statement, signed and verified by its president and secretary, which shall show the name and location of the association, its principal place of business, the names of its president, secretary, and other principal officers, the number of certificates or policies in force, the aggregate amount insured thereby, the amount paid to beneficiaries in the event of death or accident, the amount paid on the last death loss and the date thereof, the amount of cash or other assets owned by the association and how invested, and any other information which the commissioner may require. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8705; C46, 50, 54, §510.17]

Referred to in §§510.19, 510.23

**510.18 Adequacy of assessments and management.** The statement, papers, and proofs thus filed shall show that the death loss or surrender value of the certificate of insurance or accident indemnity is in the main provided for by assessments upon or contributions by surviving members of such association, and that it is legally organized, honestly managed, and that an ordinary assessment upon its members or other regular contributions to its mortuary fund are sufficient to pay its maximum certificate to the full limit named therein. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8706; C46, 50, 54, §510.18]

Referred to in §§510.19, 510.23

**510.19 Certificate of authority—fee.** Upon its complying with the provisions of sections 510.16 to 510.18, inclusive, and of section 511.27, and the payment of twenty-five dollars, the commissioner shall issue to it a certificate of authority to do business in this state, provided the same right is extended by the state in which said association is organized to associations of the same class in this state. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8707; C46, 50, 54, §510.19]

Referred to in §510.23

**510.20 Examinations.** When the commissioner doubts the solvency of any foreign association, and the failure to pay the full limit named in its certificate or policy shall be such evidence of its insolvency as to require the commissioner to investigate it, he shall for this or other good cause, at the expense of such association, cause an examination of its books, papers, and business to be made. [C97, §1794; S13, §1794; C24, 27, 31, 35, 39, §8708; C46, 50, 54, §510.20]

Referred to in §510.23

**510.21 Examiner's fee — payment.** If the commissioner appoints someone not receiving a regular salary in his office to make this examination, such examiner shall receive ten dollars per day for his services in addition to his actual traveling and hotel expenses, to be paid by the association examined, or by the state on the approval of the executive council, if the association fails to pay the same. [C97,§1794; S13,§1794; C24, 27, 31, 35, 39,§8709; C46, 50, 54,§510.21]

Referred to in §510.23

**510.22 Revocation of certificate.** If upon such examination he finds that the association is not financially sound, or is not paying its policies or certificates in full, or is conducting its business fraudulently, or if it shall fail to make the statement required by law, he may revoke its authority and prohibit it from doing business until it shall again comply with the provisions of this chapter. [C97, §1794; S13,§1794; C24, 27, 31, 35, 39,§8710; C46, 50, 54,§510.22]

Referred to in §510.23

**510.23 Applicability of sections.** The provisions of sections 510.15 to 510.22, inclusive, shall apply to fraternal beneficiary associations doing exclusively an accident insurance business, and upon compliance with the provisions of this chapter, and the provisions of chapter 511, so far as the same are applicable, such associations may be authorized to transact business within this state. [S13,§1794; C24, 27, 31, 35, 39,§8711; C46, 50, 54,§510.23]

Referred to in §514A.1

**510.24 Proceedings to control or wind up.** When any association organized under this title and chapter fails to make its annual statement on or before the first day of March, or is conducting its business fraudulently or not in compliance with law, or is not carrying out its contracts with its members in good faith, the commissioner of insurance shall promptly communicate the fact to the attorney general, who shall at once commence action before the district court of the county in which such association has its principal place of business, giving it reasonable notice thereof. [C97,§1795; C24, 27, 31, 35, 39,§8712; C46, 50, 54,§510.24]

C97,§1795, editorially divided

**510.25 Removal of officers.** If upon a hearing it is found to be advantageous to the holders of certificates of membership therein, said court or judge may remove any officer or officers, and appoint others in their place until the next annual election. [C97,§1795; C24, 27, 31, 35, 39,§8713; C46, 50, 54,§510.25]

**510.26 Receiver.** If it is advantageous to the holders of certificates that the affairs of said corporation be wound up, the court or judge shall so direct, and for that purpose may appoint a receiver who shall treat all legal claims for death benefits as preferred. [C97, §1795; C24, 27, 31, 35, 39,§8714; C46, 50, 54,§510.26]

**510.27 Transfer of membership — division of surplus.** The receiver may also, with the approval of the court or judge, transfer the members of such association who consent thereto to some like solvent association of the state, or divide the surplus accumulated in proportion to the share due each certificate at the time. [C97,§1795; C24, 27, 31, 35, 39, §8715; C46, 50, 54,§510.27]

**510.28 Distribution of surplus.** Any association which provides in the main for the payment of death losses or accident indemnity by assessments upon its members, or stipulated premium plan, may provide for the equitable distribution of any surplus or advance insurance fund accumulated in the course of its business, which may be paid in cash, or applied in the reduction or payment of future premiums, paid-up or extended insurance, as its rules or contracts may provide, and for an equitable surrender value upon the cancellation of a certificate or policy, provided the terms and conditions thereof are set forth in such policy or certificate of membership, and such surrender value shall in the main be accumulated during the term of such policy or certificate. [C97,§1797; C24, 27, 31, 35, 39,§8716; C46, 50, 54,§510.28]

**510.29 Benevolent societies—process.** Nothing in this chapter shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members of any one occupation, guild, profession, or religious denomination, but any such society may, by complying with the provisions hereof, become entitled to all the privileges thereof, in which event it shall be amenable to the provisions of this chapter so far as they are applicable; provided that if organized under the laws of another state or country, they shall file with the commissioner of insurance an agreement in writing authorizing service or notice of process to be made upon the said commissioner, and when so made shall be as valid and binding as if served upon the association within this state. [C97,§1798; S13,§1798; C24, 27, 31, 35, 39,§8717; C46, 50, 54,§510.29]

**510.30 Assessment associations prohibited.** No life, health, or accident insurance company or association, other than fraternal beneficiary associations, which issues contracts, the performance of which is contingent upon the payment of assessments of call made upon its members, shall do business within this state except such companies or associations as are now authorized to do business within this state and which, if a life insurance company or association, shall value their assessment policies or certificates of membership as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [S13,§1798-a; C24, 27, 31, 35, 39,§8718; C46, 50, 54,§510.30]

Referred to in §510.31

**510.31 Exceptions.** The provisions of section 510.30 shall not apply to unincorporated assessment associations now existing in this state, and having policyholders or certificates of membership numbering not less than two hundred fifty, and which were organized or in existence in this state as such unincorporated assessment associations prior to March 23, 1907; but any such unincorporated assessment association now existing in this state, having policyholders or certificates of membership numbering not less than two hundred fifty and which were organized or in existence in this state prior to March 23, 1907, may, by becoming hereafter incorporated in this state, and complying with the provisions of this chapter, become entitled to all of the privileges hereof, in which event it shall become amenable to the provisions of this chapter as far as they are applicable. [C24, 27, 31, 35, 39, §8719; C46, 50, 54, §510.31]

**510.32 Reciprocal authorization.** The commissioner of insurance of this state may authorize any health or accident insurance company or association organized under the laws of any other state or territory, to do business in this state, if, under the laws of such state or territory health and accident insurance companies or associations organized under the laws of this state are permitted to do business in such state. [C24, 27, 31, 35, 39, §8720; C46, 50, 54, §510.32]

**510.33 Separate classes of policyholders.** Any life insurance association, other than fraternal beneficiary associations, incorporated and doing business under the provisions of this chapter, may establish a separate class of members or policyholders to whom it may issue certificates or policies of insurance on the legal reserve or level premium plan, provided that all such policies on the legal reserve or level premium plan shall be valued on a basis not lower than the valuations required for insurance companies operating on the level premium or the natural premium plan under the provisions of chapter 508. [C24, 27, 31, 35, 39, §8721; C46, 50, 54, §510.33]

40GA, ch 171, §3, editorially divided

**510.34 Cash value of policies.** The net cash value of all policies in force on the legal reserve or level premium plan in any such association shall be ascertained in accordance with the basis of valuations which shall be adopted for said policies, and the amount of such ascertained valuation, and all other amounts which shall be accumulated and held in trust for the benefit of members or policyholders of any class or held for the purpose of fulfilling any contract in its policies or certificates, shall be invested in the securities provided in section 511.8, and deposited with the commissioner of insurance as provided in said section. [C24, 27, 31, 35, 39, §8722; C46, 50, 54, §510.34]

**510.35 Trust funds.** An amount of the funds herein provided for, not less than the reserve valuation required to be maintained on all such policies on the legal reserve or level premium plan, shall be held at all times for the exclusive use and benefit of the class of policyholders having policies on said legal reserve or level premium plan. [C24, 27, 31, 35, 39, §8723; C46, 50, 54, §510.35]

**510.36 Reincorporation.** Any existing domestic assessment company or association, or fraternal beneficiary society may, with the written consent of the commissioner of insurance, upon a majority vote of its trustees or directors, amend its articles of incorporation and bylaws in such manner as to transform itself into a legal reserve or level premium company, and upon so doing and upon procuring from the commissioner a certificate of authority, as prescribed by law, to transact business in this state as a legal reserve or level premium company, shall incur the obligations and enjoy the benefits thereof, the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation. The officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided; but such amendment or reincorporation shall not affect existing suits, rights, or contracts. [SS15, §1798-b; C24, 27, 31, 35, 39, §8724; C46, 50, 54, §510.36]

S13, §1798-b, editorially divided  
Referred to in §§510.38, 510.39

**510.37 Valuation of policies.** Any assessment company or fraternal beneficiary society reincorporated to transact life insurance business, shall value its assessment policies or certificates or benefit certificates as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [SS15, §1798-b; C24, 27, 31, 35, 39, §8725; C46, 50, 54, §510.37]

Referred to in §§510.38, 510.39

**510.38 Reinsurance reserve required.** No such company or association shall reorganize under the provisions of sections 510.36 and 510.37 unless it shall have accumulated sufficient surplus to constitute a reinsurance reserve equal to the unearned premium on all outstanding policies or certificates, as prescribed by the statutes of this state relating thereto. [SS15, §1798-b; C24, 27, 31, 35, 39, §8726; C46, 50, 54, §510.38]

Referred to in §510.39

**510.39 Accident or health associations.** Accident or health associations may take advantage of all the provisions of sections 510.36 to 510.38, inclusive, insofar as applicable, and may thereupon transform themselves into stock companies. [SS15, §1798-b; C24, 27, 31, 35, 39, §8727; C46, 50, 54, §510.39]

## CHAPTER 511

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES  
AND ASSOCIATIONS

Referred to in §§507.1, 510.2, 510.23, 521.1

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**511.1 Annual statement of foreign companies.** Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state. [C73, §1166; C97, §1799; C24, 27, 31, 35, 39, §8728; C46, 50, 54, §511.1]

C97, §1799, editorially divided  
 Referred to in §511.3

**511.2 Amended forms of statement.** The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as he may think necessary to elicit a full exhibit of the standing of any such company or association. [C73, §1168; C97, §1799; C24, 27, 31, 35, 39, §8729; C46, 50, 54, §511.2]

Referred to in §511.3

**511.3 Blanks for reports.** All reports contemplated under sections 508.11, 510.11, 510.13, 511.1, 511.2, 512.42, 515.63, and 515.64 may be upon forms furnished by the commissioner of insurance, and who may, at his option upon authority of the executive council, purchase such forms as are approved by the national convention of insurance commissioners, known as convention edition. [S13, §1820-d; C24, 27, 31, 35, 39, §8730; C46, 50, 54, §511.3]

**511.4 Advertisements—who deemed agent.** The provisions of sections 515.122 to 515.126, inclusive, shall apply to life insurance companies and associations. [C97, §1815; C24, 27, 31, 35, 39, §8731; C46, 50, 54, §511.4]

**511.5 Agent's certificate to act.** No person shall, directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of life insurance business, for any company or association contemplated in chapters 508 and 510, except for the purpose of taking applications for organizations, unless the company or association for which he is acting has received a certificate from the commissioner of insurance authorizing it to transact business therein, and unless he shall have received from said commissioner a certificate showing that such company or association has complied with the provisions of law, and that such person is authorized to act for it. [C73, §1166; C97, §1800; C24, 27, 31, 35, 39, §8732; C46, 50, 54, §511.5]

Referred to in §511.6

**511.6 Violations.** Any such company or association that does or solicits new business without the certificates required by the said chapters shall forfeit five hundred dollars for every day's neglect to procure the same. Any person knowingly soliciting applications or making insurance for any company or association having no such certificate from the commissioner of insurance as required, shall forfeit and pay the sum of three hundred dollars, and any person acting for any company or association authorized to transact business without having the agent's certificate prescribed in section 511.5 in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure the same during the time he thus acts. [C73, §1177; C97, §1801; C24, 27, 31, 35, 39, §8733; C46, 50, 54, §511.6]

**511.7 Recovery of penalties.** Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney

of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against him. The penalties, when recovered, shall be paid into the state treasury for the use of the school fund. [C73,§1178; C97,§1802; C24, 27, 31, 35, 39,§8734; C46, 50, 54, §511.7]

**511.8 Investment of funds.** Any company, organized under chapter 508, shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve shall be the net present value of all outstanding policies, and contracts involving life contingencies. Any association, organized under chapter 510, accumulating any moneys to be held in trust for the purpose of the fulfillment of its policies or certificates, contracts, or otherwise, shall invest such accumulations in the securities provided in this section. Wherever, in this section, reference is made to "legal reserve", it shall mean the total accumulations in the case of an association organized under chapter 510. Nothing herein contained shall prohibit a company or association from holding a portion of its legal reserve in cash, and no company organized under chapter 508 shall invest from its surplus, in common stocks, more than an amount equal to five percent of its funds.

1. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings available for fixed charges of the corporation for the five fiscal years next preceding the date of acquisition of the obligations shall have averaged per year not less than one and one-half times the fixed charges to which the corporation is subject as of the date of acquisition, and the net earnings available for fixed charges for the fiscal year immediately preceding the date of acquisition shall have been not less than one and one-half times the fixed charges to which the corporation is subject as of the date of acquisition or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

Referred to in subsections 6b(2), 9f, 15 of this section

b. If adjustment, income, or other contingent interest obligations, the net earnings available for fixed charges of the corporation for the five fiscal years next preceding the date of acquisition of the obligations shall have averaged per year not less than one and one-half times the sum of the fixed charges and the maximum contingent interest to which the corporation is subject as of the date of acquisition, and the net earnings available for fixed charges for each of the two fiscal years immediately preceding the date of acquisition shall have been not less than one and one-half times the sum of the fixed charges and the maximum contingent interest to which the corporation is subject as of the date of acquisition.

The term "net earnings available for fixed charges" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term "fixed charges" as used herein shall include interest on all of the fixed interest-bearing debt of the corporation outstanding and maturing in more than one year as of the date of acquisition.

Referred to in subsections 6a(2), 8, 8b(2), 8c of this section

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.



(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term "preferred dividend requirements" shall mean cumulative or noncumulative dividends whether paid or not.

The term "fixed charges" shall be construed in accordance with subsection 5 above. The term "net earnings available for fixed charges and preferred dividends" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

Referred to in subsection 8a of this section

*b. Guaranteed stocks.*

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "a" of subsection 5 above, except that all guaranteed dividends shall be included in "fixed charges".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

Referred to in subsections 8, 8b(3), 8c of this section

*7. Equipment trust obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

*a.* For vesting of title to such equipment free from encumbrance in a corporate trustee, or

*b.* For creation of a first lien on such equipment.

Referred to in subsections 8, 8b(4) of this section

*8. Further restrictions.* Securities included

under subsections 5, 6 and 7 shall not be eligible:

*a.* If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "a" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

*b.* The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) Two percent of the legal reserve in the securities of any one corporation.

(2) Fifty percent of the legal reserve in the securities described in subsection 5.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in securities described in subsection 7.

*c.* Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing (known commercially as pro forma statements) may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

Referred to in subsections 5, 6, 7, 13, 15 of this section

*9. Real estate bonds and mortgages.*

*a.* Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term, including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by such lien shall not exceed sixty-six and two-thirds percent of the value of the property upon which it is a lien. These limitations shall not apply to obligations described in paragraphs "b", "c", "d", "e" and "f" of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner shall contract to keep the same adequately insured during the life of the loan in some reliable fire insurance company or companies, association or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assigns as its interests may appear at the time of the loss.

Provided further that for the purpose of this subsection a mortgage or deed of trust shall not be deemed to be other than a first lien upon property within the meaning of this subsection by reason of the existence of

taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint drive-ways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act", as heretofore and hereafter amended.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an act of congress of the United States of America approved June 22, 1944, known as Public Law 346—Seventy-eighth Congress, Chapter 268—2nd Session, cited as the "Servicemen's Readjustment Act of 1944", as heretofore and hereafter amended.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946", as heretofore or hereafter amended.

f. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsections 1, 2, or 3 of this section or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan, including but not limited to payments of principal, interest, ground rents, taxes, and the final payments. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of ten percent of the legal reserve.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an act of the federal Parliament

of the Dominion of Canada approved March 18, 1954, cited as the "National Housing Act, 1954", as heretofore and hereafter amended.

Paragraphs b, c, d, e and f referred to in subsection 9a of this section

#### 10. *Real estate.*

a. Any such real estate in this state as is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of any buildings for such purposes, there may be added thereto rooms for rent. Before the company or association shall invest any of its funds in accordance with the provisions of this paragraph it shall first obtain the consent of the executive council of this state. The maximum amount which any such company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve; provided, however, that a stock company may invest such portion of its paid-up capital, in addition to said ten percent of the legal reserve as is not held to constitute a part of its legal reserve, under section 508.12; provided, further, that the total legal reserve of such company shall be equal to or exceed the amount of its paid-up capital stock.

Referred to in subsection 17b(2) of this section

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled. Any farm real estate acquired under this paragraph shall be sold within five years from the date of acquisition unless the commissioner of insurance shall extend the time for such period or periods as seem warranted by the circumstances.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both personal or real property located within the continental limits of the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income, provided,

however, that personal property acquired under the provisions of this subsection is acquired for the purpose of entering into a contract for the sale or use thereof under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. The term "real property" as used in this subsection shall include a leasehold of real estate. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment (for which the necessary data for the railroad company shall have been published) a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment (for which the necessary data for both the railroad company and all class I railroads shall have been published):

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "class I railroads", "balance of income available for the payment of fixed charges", "fixed charges" and "railway operating revenues" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Inter-state Commerce Act; provided that the "balance of income available for the payment of fixed charges" and "railway operating revenues remaining", as

the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "fixed charges" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and such deposit maintained with the commissioner of insurance, and it shall be the duty of the commissioner to designate such places for the keeping of said deposits as will properly safeguard the same. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, such deposit to be evidenced by a certified check, certificate of deposit or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required hereby. No stock company organized under the laws of this state shall be required to make such deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or his successors in office by warranty deed, said real estate to be held by the commissioner and his successors in office in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to check at the discretion of the commissioner.

The securities comprising the deposit of any company or association against which proceedings are pending under sections 508.17 and 508.18 shall vest in the state for the benefit of the policies and contracts for which such deposits were made.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the com-

missioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income thereon unless proceedings against such company or association are pending under sections 508.17 and 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify him of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

#### 17. Rules of valuation.

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. (1) Real estate acquired through foreclosure or in settlement or satisfaction of any indebtedness, shall be valued in an amount not greater than the amount of the unpaid principal of the defaulted indebtedness, plus any amounts actually expended for taxes, acquisition costs, (but not including any interest due or subsequently accrued thereon) and the cost of any additions or improvements.

(2) Real estate acquired and held under the provisions of paragraph "a" of subsection 10 hereof, shall be valued in an amount not greater than the original cost plus any subsequent additions or improvements.

c. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

d. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection. [C73, §§1179-1181; C97, §§1791-1793, 1803, 1804, 1806, 1807; SS15, §1806; C24, 27, 31, 35, 39, §§8698-8701, 8735-8739, 8741, 8742, 8744, 8747; C46, 50, 54, §511.8; 56GA, ch 241, §1; ch 242, §1; ch 243, §1; 57GA, ch 244, §§1-11]

Referred to in §§501.5, 503.7, 508.13, 508.14, 510.34, 511.9, 512.48, 566.15

Similar provisions, §§512.48, 515.35

**511.9 Violations.** The commissioner shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of section 511.8, or for violating the same. [SS15, §1806; C24, 27, 31, 35, 39, §8745; C46, 50, 54, §511.9]

**511.10 Rule of valuation.** All bonds or other evidences of debt having a fixed term and rate, held by any fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows:

1. If purchased at par, at the par value.

2. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

Provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. [C24, 27, 31, 35, 39, §8746; C46, 50, 54, §511.10]

**511.11 Prohibited loans.** No insurance company or association organized under the statutes of this state to transact an insurance business, shall invest its capital, surplus funds, or other assets, in or loan the same on property owned by any officer or director of such company or by any of the immediate members of the family of any such officer or director. [C24, 27, 31, 35, 39, §8748; C46, 50, 54, §511.11]

38GA, ch 348, §13, editorially divided

**511.12 Officers not to profit by investments.** No such officer or director shall gain through the investment of funds of any such company. [C24, 27, 31, 35, 39, §8749; C46, 50, 54, §511.12]

**511.13 Disbursements—vouchers—affidavit.** No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a

voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [S13,§1820-a; C24, 27, 31, 35, 39,§8750; C46, 50, 54,§511.13]

**511.14 Taxes—from what funds payable.** In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association. [C97,§1821; C24, 27, 31, 35, 39,§8751; C46, 50, 54,§511.14]

**511.15 Discrimination against domestic company.** It shall be unlawful for the commissioner of insurance to impose upon companies or associations organized under chapter 510 any rules or regulations, requirements or limitations, that shall not be imposed with equal force upon like companies or associations from other states doing a like business in this state. [C97,§1810; C24, 27, 31, 35, 39,§8754; C46, 50, 54,§511.15]

**511.16 Illegal business.** Any officer, manager, or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C97,§1814; C24, 27, 31, 35, 39, §8755; C46, 50, 54,§511.16]

C97,§1814, editorially divided  
Referred to in §507.16

**511.17 Contracts void—recovery—damages—attorney fees.** All contracts, promises, and agreements made by any person to or with any such company or association concerning any premium, policy, or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premium or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated dam-

ages, together with a reasonable fee to plaintiff's attorney for services in the case. [C97, §1814; C24, 27, 31, 35, 39,§8756; C46, 50, 54, §511.17]

Referred to in §507.16

**511.18 Fraud in procuring insurance.** Any agent, physician, or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both, in the discretion of the court. [C97,§1816; C24, 27, 31, 35, 39,§8757; C46, 50, 54,§511.18]

**511.19 Conspiracy to defraud.** If two or more persons conspire to defraud or obtain any money from any life insurance company or association by means of false statements as to the death of any person insured, or the false appearance of the death of any such person, each shall be punished by imprisonment in the penitentiary not to exceed ten years. Any person who by such means obtains any money or property on the policy or certificate of the person so insured shall be punished by imprisonment in the penitentiary not to exceed fifteen years. Any person who thus attempts to obtain money from any such company or association shall be punished by like imprisonment not to exceed seven years. [C97,§1817; C24, 27, 31, 35, 39,§8758; C46, 50, 54,§511.19]

Conspiracy in general, §719.1

**511.20 and 511.21** Repealed by 56GA, ch 237, §§16, 17.

See ch 507B

**511.22 May not advertise authorized capital.** No insurance company shall be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested. [S13,§1783-g; C24, 27, 31, 35, 39,§8761; C46, 50, 54,§511.22]

Referred to in §511.23

**511.23 Penalties.** Any person, firm, or corporation violating any of the provisions of section 511.22, or sections 515.8 to 515.11, inclusive, or failing to comply with any of the provisions therein, shall be subjected to the penalties provided in sections 507.10 to 507.13, inclusive. [S13,§1783-h; C24, 27, 31, 35, 39,§8762; C46, 50, 54,§511.23]

**511.24 Fees from foreign companies.** When not otherwise provided, each life insurance company doing business in this state, except those organized under the laws thereof, shall pay to the commissioner of insurance the following fees:

1. Upon filing declaration or certified copy of the charter or articles of incorporation, twenty-five dollars.
2. Upon filing the annual statement, twenty dollars.

3. For each certificate of authority and certified copy thereof, two dollars.

4. For each agent's certificate, two dollars.

5. For every copy of any paper filed, the sum of twenty cents per folio, and for certifying and affixing the official seal thereto, one dollar.

6. For valuing policies, ten dollars for each million dollars of insurance or fraction thereof. [C73,§1183; C97,§1818; C24, 27, 31, 35, 39, §8763; C46, 50, 54,§511.24]

C97,§1818, editorially divided  
Referred to in §§510.11, 511.29

**511.25 Fees from domestic companies.** Companies organized under the laws of the state shall pay the following fees:

1. For filing and examination of the first application and the issuance of certificate thereon, ten dollars.

2. For filing each annual statement and issuance of renewal certificate, three dollars.

3. For each agent's certificate, fifty cents. [C73,§1183; C97,§1818; C24, 27, 31, 35, 39,§8764; C46, 50, 54,§511.25]

Referred to in §§510.11, 511.26

**511.26 Fee statute—applicability.** The provisions of the chapter on insurance other than life shall apply as to fees under this chapter and chapters 508 and 510, except as modified by sections 511.24 and 511.25. [C97,§1818; C24, 27, 31, 35, 39,§8765; C46, 50, 54,§511.26]

Referred to in §510.11  
Insurance other than life, ch 515

**511.27 Commissioner as process agent.** Every life insurance company and association organized under the laws of another state or country shall, before receiving a certificate to do business in this state or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner, and when so made shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service. [C73,§1165; C97,§1808; C24, 27, 31, 35, 39,§8766; C46, 50, 54,§511.27]

C97,§1808, editorially divided  
Referred to in §§510.19, 511.29  
Similar provisions, §§491.15, 494.2, 512.22, 515.73, 520.5, 534.74

**511.28 Service of process.** Such notice or process, with a copy thereof, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of

his acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C73,§1165; C97,§1808; C24, 27, 31, 35, 39,§8767; C46, 50, 54,§511.28; 57GA, ch 267, §74]

Referred to in §§503.14, 511.29

**511.29 Interpretation.** The provisions of sections 511.27 and 511.28 are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive. [C97,§1809; C24, 27, 31, 35, 39,§8768; C46, 50, 54,§511.29]

Service generally, ch 617

**511.30 Intoxication as defense.** In any action pending in any court of the state on any policy or certificate of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient defense for the plaintiff to show that such habits or habitual intoxication of the assured were generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due thereon. [C97,§1811; C24, 27, 31, 35, 39,§8769; C46, 50, 54,§511.30]

**511.31 Physician's certificate—estoppel.** In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall be thereby estopped from setting up in defense of the action on such policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery thereof, unless the same was procured by or through the fraud or deceit of the assured. [C97,§1812; C24, 27, 31, 35, 39,§8770; C46, 50, 54,§511.31]

**511.32 Misrepresentation of age.** In all cases where it shall appear that the age of the person insured has been understated in the proposal, declaration or other instrument upon which a policy of life insurance has been founded or issued, then the amount payable under the policy shall be such as the premium paid would have purchased at the correct age; provided, however, that one who, by misstating his age, obtains life insurance not otherwise obtainable shall be entitled to recover from the insurer on account of such policy only the aggregate premiums paid. [C97,§1813; C24, 27, 31, 35, 39,§8771; C46, 50, 54,§511.32]

**511.33 Application for insurance—duty to attach to policy.** All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy,

attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made. [C97,§1819; C24, 27, 31, 35, 39,§8772; C46, 50, 54,§511.33]

C97,§1819, editorially divided  
Referred to in §511.34  
Similar provisions, §§512.14, 515.94

**511.34 Failure to attach—defenses—estoppel.** The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 511.33, it shall forever be precluded from pleading, alleging, or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C97,§1819; C24, 27, 31, 35, 39,§8773; C46, 50, 54,§511.34]

Similar provisions, §§512.15, 515.95

**511.35 Limitation on proofs of loss.** No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting

the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid. [C97,§1820; S13, §1820; C24, 27, 31, 35, 39,§8774; C46, 50, 54, §511.35]

S13,§1820, editorially divided  
Similar provisions, §§514A.3, 515.98, 518.19

**511.36** Repealed by 54GA, ch 188,§11.

**511.37 Policy exempt from execution.** A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his creditors.

The proceeds of an endowment policy payable to the assured on attaining a certain age shall be exempt from liability for any of his debts.

Any benefit or indemnity paid under an accident, health or disability policy shall be exempt to the assured, or in case of his death to the husband or wife and children of the assured, from his debts.

The avails of all policies of life, accident, health or disability insurance payable to the surviving widow shall be exempt from liability for all debts of such beneficiary contracted prior to the death of the assured, but the amount thus exempted shall not exceed fifteen thousand dollars. [C51,§1330; R60,§2362; C73,§§1182, 2372; C97,§1805; C24, 27, 31, 35, 39, §8776; C46, 50, 54,§511.37]

Similar provisions, §§509.12, 512.17, 635.8

## CHAPTER 512

### FRATERNAL BENEFICIARY SOCIETIES, ORDERS, OR ASSOCIATIONS

Referred to in §514A.1

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## GENERAL PROVISIONS

**512.1 Definition.** A fraternal beneficiary association is hereby declared to be a corporation, society, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and having a lodge system, with ritualistic form of work and representative form of government. [C97,§1822; S13,§1822; C24, 27, 31, 35, 39,§8777; C46, 50, 54,§512.1]

S13,§1822, editorially divided  
Referred to in §514A.1

**512.2 Death, sick, and disability benefits.** Such association shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age, provided the period of life at which payment of physical disability benefits on account of old age commences shall not be under seventy years, subject to the compliance by members with its constitution and laws. [C97,§1822; S13,§1822; C24, 27, 31, 35, 39,§8778; C46, 50, 54,§512.2]

Referred to in §427.1, subsection 19

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## EXAMINATION AND RECEIVERSHIP

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ship is confined to the members of any one religious denomination, shall only be required to have a branch system and a representative form of government. Such beneficiary societies or associations shall be governed by the provisions of this chapter, and shall be exempt from the provisions of the statutes of this state, relating to life insurance companies, to the same extent as fraternal beneficiary associations. [S13,§1822; C24, 27, 31, 35, 39,§8779; C46, 50, 54,§512.3]

**512.4 Sick and funeral benefits only.** The provisions of this chapter shall not be construed to include fraternal orders which only provide for sick and funeral benefits. [C97, §1822; S13,§1822; C24, 27, 31, 35, 39,§8780; C46, 50, 54,§512.4]

**512.5 Certificates permitted.** Any fraternal beneficiary society issuing certificates, based upon rates not lower than those required by the mortality table set forth in section 512.43, may issue certificates providing for death benefits upon the term, whole life, or limited payment plan, in which event it shall maintain the required legal reserve on all such certificates, based on the standard adopted for the issuing of such certificates, which said reserve shall be set aside and held as a special reserve



fund for the exclusive benefit of the members contributing thereto. [C24, 27, 31, 35, 39, §8781; C46, 50, 54, §512.5]

38GA, ch 343, §1, editorially divided

**512.6 Benefits.** Any such society may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may permit, provided that such grants shall in no case exceed in value the portion of the reserve to the credit of the members to whom they are made. [C24, 27, 31, 35, 39, §8782; C46, 50, 54, §512.6]

**512.7 Exclusive membership in religious order.** Any corporation heretofore organized under the laws of this or any other state, whose membership is confined to the members of any one religious denomination, and whose plan of business permits, may take advantage of the preceding sections of this chapter by amendment to its articles of incorporation, and by complying with the provisions of sections 512.27 to 512.32, inclusive; provided that such corporations as on March 15, 1907, were and have since continuously been doing business under chapter 510, may take advantage of said sections without raising their mortuary assessment rates or showing that their said rates are such as are required by section 512.43. [SS15, §1822-a; C24, 27, 31, 35, 39, §8783; C46, 50, 54, §512.7]

**512.8 Assessments.** The fund from which the payment of such benefits shall be made and the expenses of such association defrayed shall be derived from beneficiary calls, assessments, or dues collected from its members. [C97, §1823; C24, 27, 31, 35, 39, §8784; C46, 50, 54, §512.8]

**512.9 Qualifications for membership.** Any fraternal beneficiary society or association authorized to do business as such in this state may admit to beneficial membership any person not less than fifteen and not more than sixty-five years of age at nearest birthday, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society, or who has made declaration of insurability acceptable to the society, and any person so admitted prior to attaining the full age of twenty-one years shall be bound by the terms of his or her application and certificate, and by all the laws, rules, and regulations of the society, and shall be entitled to all the rights and privileges of membership therein, as fully and to the same extent as though he or she were not a minor at the time of applying for such beneficial membership; provided, that any beneficial member of a society who shall apply for additional benefits more than six months after becoming a beneficial member shall pass an additional medical examination or make an additional declaration of insurability, as required by the society, provided, however, that a declaration of insurability may be accepted only in cases (1) of an applicant under forty-five years of age

and for insurance not to exceed five thousand dollars, and (2) of insurance on the lives of children under fifteen years of age.

Nothing herein contained shall prevent such society from accepting general or social members to whom no certificates of insurance in any form shall be issued and who shall have no voice or vote in the management of the insurance affairs of the society, nor from issuing juvenile certificates on the lives of children under the age of fifteen years. Any order, society, or association, included in the provisions of this chapter, may issue certificates on the life of any person without regard to age or the requirement of medical examination for an amount not in excess of three hundred dollars. [C97, §§1824, 1839; C24, 27, 31, 35, §§8785, 8821; C39, §8789.1; C46, 50, 54, §512.9]

Similar provisions, §§510.10, 512.56

**512.10 Beneficiaries—vested interest.** No beneficiary shall have or obtain any vested interest in the proceeds of any certificate until such certificate has become due and payable in conformity with the provisions of the insurance contract. The insured member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, bylaws, rules or regulations of the society. Every society may, by its constitution, bylaws, rules or regulations, limit the scope of beneficiaries. [C24, 27, 31, 35, §§8786–8789; C39, §8789.2; C46, 50, 54, §512.10]

Similar provisions, §§510.10, 512.60

**512.11 Association as beneficiary.** Any association or society, whose articles of incorporation, or constitution, or rules, or bylaws, provide that at the time of the admission to membership into such society, every member, when joining shall belong to one occupation or guild, may become a beneficiary as may be provided in its articles of incorporation, or constitution, or rules, or bylaws. [C24, 27, 31, 35, 39, §8790; C46, 50, 54, §512.11]

**512.12 Statutes applicable.** Such associations [dealt with in this chapter\*] shall be governed by this chapter, and shall be exempt from the provisions of the statutes of this state relating to life insurance companies, except as hereinafter provided. [C97, §1825; C24, 27, 31, 35, 39, §8791; C46, 50, 54, §512.12]

\*See *Homesteaders Life v Murphy*, 224 Iowa 173, 177

**512.13 Change in beneficiary notwithstanding contract.** No contract between a member and his beneficiary that the beneficiary or any person for him shall pay such member's assessments and dues, or either of them, shall deprive the member of the right to change the name of the beneficiary. [C97, §1834; C24, 27, 31, 35, 39, §8792; C46, 50, 54, §512.13]

**512.14 Duty to attach copy of application.** All such associations shall, upon the issue or renewal of any beneficiary certificate, attach to such certificate or indorse thereon a true copy of any application or representation of the

member which by the terms of such certificate are made a part thereof. [C97,§1826; C24, 27, 31, 35, 39,§8793; C46, 50, 54,§512.14]

C97,§1826, editorially divided  
 Referred to in §512.15  
 Similar provisions, §§511.33, 515.94

**512.15 Failure to attach.** The omission so to do shall not render the certificate invalid, but if any such association neglects to comply with the requirements of section 512.14 it shall not plead or prove the falsity of any such certificate or representation or any part thereof in any action upon such certificate, and the plaintiff in any such action, in order to recover against such association, shall not be required to either plead or prove such application or representation. [C97,§1826; C24, 27, 31, 35, 39, §8794; C46, 50, 54,§512.15]

Similar provisions, §§511.34, 515.95

**512.16 Where suable.** Such associations may be sued in any county in which is kept their principal place of business, or in which the beneficiary contract was made, or in which the death of the member occurred; but actions to recover old-age, sick, or accident benefits may, at the option of the beneficiary, be brought in the county of his residence. [C97, §1827; C24, 27, 31, 35, 39,§8795; C46, 50, 54, §512.16]

**512.17 Exemption of proceeds.** The proceeds of any beneficiary certificate issued by any such association, and of any claims for benefits, shall be exempt from execution and attachment, to the same extent as the proceeds of any policy of life or endowment insurance, as is now or may hereafter be provided by the laws of this state. [C97,§1828; C24, 27, 31, 35, 39, §8796; C46, 50, 54,§512.17]

Similar provisions, §§509.12, 511.37, 635.8

**512.18 Permit to foreign companies—conditions.** Any such association organized under the laws of any other state shall be permitted to do business in this state, when it shall have filed with the commissioner of insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the commissioner as a person upon whom process may be served as hereinafter provided, if such association shall be shown to be authorized to do business in the state in which it is incorporated or organized. [C97,§1829; C24, 27, 31, 35, 39,§8797; C46, 50, 54,§512.18]

C97,§1829, editorially divided  
 Referred to in §512.32

**512.19 Examination.** The commissioner may personally, or by some person to be designated by him, examine into the conditions, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand therefor. [C97,§1829; C24, 27, 31, 35, 39,§8798; C46, 50, 54,§512.19]

**512.20 Expense.** The expense of such examination shall be limited to five dollars per day and the necessary expenses of travel and for hotel bills. [C97,§1829; C24, 27, 31, 35, 39,§8799; C46, 50, 54,§512.20]

**512.21 Refusal of permit.** If the commissioner, after such examination, is of the opinion that no permit should be granted to such association, he may refuse to issue the same. [C97,§1829; C24, 27, 31, 35, 39,§8800; C46, 50, 54, §512.21]

**512.22 Commissioner as process agent.** Any such association permitted to do business within this state, and not having its principal office within this state, and not organized under the laws of this state, shall appoint, in writing, the commissioner of insurance to be attorney in fact, on whom all process in any action or proceeding against it shall be served, and in such writing shall agree that any process against it which is served on said attorney in fact shall be of the same validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. [C97,§1831; C24, 27, 31, 35, 39,§8801; C46, 50, 54, §512.22]

C97,§1831, editorially divided  
 Similar provisions, §§491.15, 494.2, 511.27, 515.73, 520.5, 534.74

**512.23 Copies.** Copies of such certificate, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original. [C97,§1831; C24, 27, 31, 35, 39,§8802; C46, 50, 54,§512.23]

**512.24 Service—notice to association.** When legal process against any such association is served upon said commissioner, he shall immediately notify the association of such service by letter, postage prepaid, directed and mailed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served on him to such officer. [C97,§1831; C24, 27, 31, 35, 39,§8803; C46, 50, 54,§512.24]

**512.25 Service deemed sufficient.** Service upon such attorney shall be deemed sufficient service upon such association. [C97,§1831; C24, 27, 31, 35, 39,§8804; C46, 50, 54,§512.25]

**512.26 Record of service of process.** The commissioner shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. [C97,§1831; C24, 27, 31, 35, 39,§8805; C46, 50, 54,§512.26]

**512.27 Commencement of business — conditions.** Before any beneficiary society, order, or association shall be authorized to commence business within this state, it shall submit to the commissioner of insurance its bylaws or rules by which it is to be governed, and also

its articles of incorporation, if a corporation, which shall include its plan of business. [S13, §1832; C24, 27, 31, 35, 39, §8806; C46, 50, 54, §512.27]

S13, §1832, editorially divided  
Referred to in §512.7

**512.28 Opinion of attorney general.** The commissioner shall thereupon submit its articles of incorporation to the attorney general for examination, and if found by him to be in harmony with this title, chapter, and with law, he shall so certify upon said articles and return them to the commissioner. [S13, §1832; C24, 27, 31, 35, 39, §8807; C46, 50, 54, §512.28]

Referred to in §512.7

**512.29 Permit—fees.** If the commissioner shall approve the articles and also the bylaws or rules, he shall issue to the society, order, or association a permit in writing, authorizing it to transact business within this state for a period of one year from the first day of April of the year of its issue, for which certificate and all proceedings in connection therewith, there shall be paid to the commissioner a fee of twenty-five dollars, and for each annual renewal thereof a like fee shall be paid. [C97, §1832; S13, §1832; C24, 27, 31, 35, 39, §8808; C46, 50, 54, §512.29]

Referred to in §512.7

**512.30 Required applications.** Before such certificate shall be issued, the fraternal society, order, or association shall have actual bona fide applications upon the lives of at least five hundred persons, residents of this state, for at least one thousand dollars of insurance each, and the commissioner may require the presentation of such applications, signed by the applicants themselves. [S13, §1832; C24, 27, 31, 35, 39, §8809; C46, 50, 54, §512.30]

Referred to in §512.7

**512.31 Renewal of permit conditional.** No renewal of certificate of authority shall be made to any society, order, or association whose membership, in good standing, or the amount of whose insurance in force shall be reduced below the above requirements. [S13, §1832; C24, 27, 31, 35, 39, §8810; C46, 50, 54, §512.31]

Referred to in §512.7

**512.32 Foreign societies—conditions.** Societies, orders, or associations not organized under the laws of this state, in addition to the requirements of the provisions of section 512.18, must also comply with all of the provisions of this chapter, except as to the residence of membership; provided that no such society, order, or association shall be authorized to transact business within this state unless it shall be shown to have actual members, in good standing, of at least one thousand, and at least one million dollars of insurance in force. [S13, §1832; C24, 27, 31, 35, 39, §8811; C46, 50, 54, §512.32]

Referred to in §512.7

**512.33 Employment of agents.** Such association shall not employ paid agents in soliciting or procuring members, except in the organization or building up of subordinate bodies, or granting members inducements to procure new members. [C97, §1833; C24, 27, 31, 35, 39, §8812; C46, 50, 54, §512.33]

**512.34 Meetings in foreign states.** Any such association organized under the laws of this state may provide for the meetings of its legislative or governing body in any other state, territory, or province wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid, in all respects, as if such meetings were held within this state. [C97, §1835; C24, 27, 31, 35, 39, §8813; C46, 50, 54, §512.34]

C97, §1835, editorially divided

**512.35 Voting in foreign state.** Where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, territory, or province shall be valid, as if cast within this state. [C97, §1835; C24, 27, 31, 35, 39, §8814; C46, 50, 54, §512.35]

**512.36 Violations of statute.** Any such association refusing or neglecting to make the report as provided in this chapter shall be excluded from doing business within this state. [C97, §1836; C24, 27, 31, 35, 39, §8815; C46, 50, 54, §512.36]

C97, §1836, editorially divided

**512.37 Delinquency reported — injunction.** The commissioner of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this chapter, give notice in writing to the attorney general, who shall immediately commence an action against such association to enjoin the same from carrying on any business. [C97, §1836; C24, 27, 31, 35, 39, §8816; C46, 50, 54, §512.37]

**512.38 Business prohibited — reinstatement.** No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, or until the costs of such action be paid by it, provided the court shall find that such association was in default, as charged; whereupon the commissioner shall reinstate such association, and not until then shall such association be allowed to again do business in this state. [C97, §1836; C24, 27, 31, 35, 39, §8817; C46, 50, 54, §512.38]

**512.39 Violations.** Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five

dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [C97,§1836; C24, 27, 31, 35, 39,§8818; C46, 50, 54,§512.39]

Referred to in §512.40

**512.40 Illegal business—agents.** Any person who shall act within this state as an officer, agent, or otherwise for any such association which has failed, neglected, or refused to comply with, or which has violated any of the provisions of this chapter, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business as provided for by this chapter, shall be subject to the penalty provided in section 512.39 for the misdemeanor therein specified. [C97,§1837; C24, 27, 31, 35, 39,§8819; C46, 50, 54,§512.40]

**512.41 False representations.** Any officer, agent, or member of such association, who shall obtain any money or property belonging thereto by any false or fraudulent representation, shall be fined not more than five hundred dollars and costs, and stand committed until such fine and costs are paid, or may be imprisoned in the county jail not more than six months. [C97,§1838; C24, 27, 31, 35, 39,§8820; C46, 50, 54,§512.41]

**512.42 Report.** Every such association doing business in this state shall, on or before the first day of March of each year, make, and file with the commissioner of insurance, a report for the year ending on the thirty-first day of December immediately preceding. All reports shall be upon blank forms to be provided by the commissioner, or may be printed in pamphlet form, and shall be verified under oath by the authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the commissioner under the separate title "Fraternal Beneficiary Associations", and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.
2. Amount of indemnity effected thereby.
3. Number of losses or benefit liabilities incurred.
4. Number of losses or benefit liabilities paid.
5. The amount received from each assessment for the year.
6. Total amount paid members, beneficiaries, legal representatives, or heirs.
7. Number and kind of claims for which assessments have been made.
8. Number and kind of claims compromised or resisted, and brief statement of reason.
9. Does association charge annual or other periodical dues or admission fees.

10. How much on each one thousand dollars annually, or per capita, as the case may be.

11. Total amount received, from what source, and the disposition thereof.

12. Total amount of salaries, fees, per diem, mileage, expenses paid to officers, showing amount paid to each.

13. Does the association guarantee, in its certificates, fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations.

14. If so, state amount guaranteed, and the security of such guarantee.

15. Has the association a reserve or emergency fund.

16. If so, how is it created, and for what purpose, the amount thereof, and how invested.

17. Has the association more than one class.

18. If so, how many, and amount of indemnity in each.

19. Number of members in each class.

20. If voluntary, so state, and give date of organization.

21. If organized under the laws of this state, under what law and at what time, giving chapter and year, and date of passage of the act.

22. If organized under the laws of any other state, territory, or province, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

23. Number of certificates of beneficiary membership lapsed during the year.

24. Number in force at beginning and end of year; if more than one class, number in each class.

25. Names and addresses of its presidents, secretary, and treasurer, or corresponding officers.

The commissioner is empowered to make any additional inquiries of any such association relative to the business contemplated by this chapter, and such officer of such association as the commissioner may require shall promptly reply in writing, under oath, to all such inquiries. [C97,§1830; C24, 27, 31, 35, 39, §8822; C46, 50, 54,§512.42]

Referred to in §511.3

RATES

**512.43 Mortuary assessment rates.** No fraternal beneficiary society not admitted to transact business in this state prior to July 4, 1907, shall be incorporated, or given a permit or certificate of authority to transact business within this state, unless it shall first show that the mortuary assessment rates provided for in whatever plan of business it has adopted, including the issuance of term, whole life, or limited payment certificates with withdrawal options, are not lower than is indicated as necessary by the following mortality table:

NATIONAL FRATERNAL CONGRESS MORTALITY TABLE

Age	Number Living	Number Dying	Probability of Dying	Age	Number Living	Number Dying	Probability of Dying
20.	100,000	500	.0050000	60.....	69,801	1,588	.0227504
21	99,500	501	.0050352	61.....	68,213	1,681	.0246434
22	98,999	502	.0050708	62....	66,532	1,778	.0267240
23.	98,497	503	.0051068	63...	64,754	1,880	.0290330
24	97,994	505	.0051535	64....	62,874	1,985	.0315701
25	97,489	507	.0052006	65...	60,889	2,094	.0343904
26.	96,982	510	.0052587	66...	58,795	2,206	.0375202
27.	96,472	513	.0053176	67...	56,589	2,308	.0409620
28	95,957	517	.0053877	68....	54,271	2,430	.0447753
29	95,442	522	.0054693	69....	51,841	2,539	.0489767
30	94,920	527	.0055520	70....	49,302	2,645	.0536489
31	94,393	533	.0056466	71....	46,657	2,744	.0588122
32	93,860	540	.0057532	72....	43,913	2,832	.0644912
33	93,320	548	.0058723	73....	41,081	2,909	.0708113
34	92,772	557	.0060040	74.....	38,172	2,969	.0777795
35	92,215	567	.0061487	75....	35,203	3,009	.0854957
36	91,648	578	.0063067	76....	32,194	3,026	.0939927
37	91,070	591	.0064895	77....	29,168	3,016	.1031010
38	90,479	606	.0066977	78....	26,152	2,977	.1138345
39	89,873	622	.0069209	79...	23,175	2,905	.1253506
40	89,251	640	.0071708	80....	20,270	2,799	.1380858
41	88,611	660	.0074483	81....	17,471	2,659	.1521951
42	87,951	683	.0077657	82....	14,812	2,485	.1677694
43	87,268	708	.0081129	83....	12,327	2,280	.1849599
44	86,568	734	.0084797	84....	10,047	2,050	.2040410
45	85,826	761	.0088668	85....	7,997	1,800	.2250844
46	85,065	790	.0092870	86.....	6,197	1,539	.2483460
47	84,275	822	.0097538	87....	4,658	1,277	.2741520
48	83,453	857	.0102693	88....	3,381	1,023	.3025732
49	82,596	894	.0108238	89.....	2,358	788	.3341815
50	81,702	935	.0114440	90.....	1,570	579	.3687898
51	80,767	981	.0121460	91.....	991	404	.4076690
52	79,786	1,029	.0128970	92.....	587	264	.4497445
53	78,757	1,083	.0137512	93.....	323	161	.4984520
54	77,674	1,140	.0146767	94.....	162	89	.5493827
55	76,534	1,202	.0157054	95.....	73	44	.6027397
56	75,332	1,270	.0168587	96....	29	19	.6551724
57	74,062	1,342	.0181200	97....	10	7	.7000000
58	72,720	1,418	.0194994	98....	3	3	1 0000000
59	71,302	1,501	.0210513				

[S13,§1839-j; C24, 27, 31, 35, 39,§8823; C46, 50, 54, §512.43]

S13,§1839-j, editorially divided  
 Referred to in §§512.5, 512.7, 512.44.

**512.44 Exceptions.** Section 512.43 shall not be construed so as to apply to or affect any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules, or bylaws provide that at the time of the admission to membership each member, when joining, shall belong to one certain occupation or guild. [S13,§1839-j; C24, 27, 31, 35, 39,§8824; C46, 50, 54,§512 44]

**512.45 Valuation of certificates.** The certificate written by any domestic fraternal beneficiary association operating under the provisions of the foregoing mortality table shall be valued in the same manner as provided in section 508 12, except that such valuation shall be based upon the foregoing mortality table and four percent interest.

If the society makes loans on its certificates,

the valuation shall be based upon a mortality table not lower than the American table of mortality and four and one-half percent interest. [S13,§1839-j; C24, 27, 31, 35, 39,§8825; C46, 50, 54,§512.45]

See Mortality Table at end of Vol. II

INVESTMENTS

**512.46 Society to authorize.** Nothing in section 8826 [Code 1939] shall be construed to permit the officials or board of directors of such society, order, or association to make such investment without authority specifically granted by the said society, order, or association through its grand or supreme lodge or convention. [S13,§1839-k, C24, 27, 31, 35, 39, §8827; C46, 50, 54,§512 46]

**512.47 Conveyance to commissioner—valuation.** Any company or association so investing its funds shall convey the real estate thus acquired to the commissioner of insurance by deed, such property to be held by him in trust for the benefit of the members of such asso-

ciation, the value thereof to be determined from time to time by the commissioner. [S13, §1839-k; C24, 27, 31, 35, 39, §8828; C46, 50, 54, §512.47]

**512.48 Schedule of investments.** Any fraternal beneficiary society, order, or association, organized under the laws of this state, accumulating money to be held in trust for the purpose of fulfillment of its certificates or contracts, shall invest such accumulation in the securities provided in section 511.8, and no other. [S13, §1839-l; C24, 27, 31, 35, 39, §8829; C46, 50, 54, §512.48]

S13, §1839-l, editorially divided  
 Referred to in §512.54  
 Similar provisions, §§511.8, 515.35

**512.49 Deposit with commissioner.** All such securities shall be deposited with the commissioner of insurance subject to his approval, and shall remain with him until withdrawn in accordance with the provisions of section 512.53.

Provided that societies, orders, or associations doing business in the Dominion of Canada may there deposit such portion of their securities as is necessary to maintain the required reserves on business written in that country. [S13, §1839-l; C24, 27, 31, 35, 39, §8830; C46, 50, 54, §512.49]

Referred to in §512.54

**512.50 Payment of securities.** Any fraternal beneficiary society, order, or association receiving payments, or partial payments on any securities deposited with the commissioner, shall notify him of such fact giving the amount and date of payment within fifteen days after such payment shall have been made. [S13, §1839-l; C24, 27, 31, 35, 39, §8831; C46, 50, 54, §512.50]

Referred to in §512.54

**512.51 Failure to report payments.** The officers of any society, order, or association which fails to report the receipt of payments or partial payments as above provided shall be liable to a fine in double the amount collected and not reported within the time and in the manner above specified. [S13, §1839-l; C24, 27, 31, 35, 39, §8832; C46, 50, 54, §512.51]

Referred to in §512.54

**512.52 Authority for fund—purpose of withdrawal.** Any society, order, or association required to make a deposit with the commissioner as herein contemplated, shall at the time of making such deposit, designate by what provisions of its articles of incorporation or laws such fund is accumulated and upon making request for withdrawal of any funds shall designate for what purpose such withdrawal is desired. [S13, §1839-l; C24, 27, 31, 35, 39, §8833; C46, 50, 54, §512.52]

Referred to in §512.54

**512.53 Change of securities.** Any society, order, or association, may at any time change its securities on deposit by depositing a like amount in other securities of the same char-

acter and the commissioner shall permit a withdrawal of the same upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited. [S13, §1839-l; C24, 27, 31, 35, 39, §8834; C46, 50, 54, §512.53]

Referred to in §§512.49, 512.54

**512.54 Violations — associations excepted.** The commissioner shall have authority to suspend or revoke the certificate of authority of any society, order, or association failing to comply with any of the provisions of sections 512.48 to 512.53, inclusive, or for violating the same. Nothing in said sections shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules, or bylaws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation, guild, profession, or religious denomination. [S13, §1839-l; C24, 27, 31, 35, 39, §8835; C46, 50, 54, §512.54]

**512.55 Applicability—exceptions.** The provisions of this chapter shall not be construed to apply to organizations, societies, or associations, the membership of which consists of female members of the families of members of any one occupation, guild, profession, or religious denomination, nor shall the provisions of this chapter be construed to apply to auxiliary societies or associations, the membership of which consists of female members of the families of members of any one occupation, guild, profession, or religious denomination. [S13, §1839-l; C24, 27, 31, 35, 39, §8836; C46, 50, 54, §512.55]

BENEFITS ON LIVES OF CHILDREN

**512.56 Authorization.** Any fraternal benefit society authorized to do business in this state may provide in its laws, in addition to other benefits provided therein, for insurance and/or annuities upon the lives of children at any age, upon the application of a relative by blood to the fourth degree, stepfather, stepmother, stepbrother, stepsister, or person responsible for the support of the child, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. [C24, §§8837, 8838; C27, 31, 35, §8842-b1; C39, §8842.1; C46, 50, 54, §512.56]

Referred to in §§512.59, 512.61  
 Similar provisions, §§510.10, 512.9, 512.69

**512.57 Contributions.** The contributions to be made upon such certificate shall be based upon the standard industrial mortality table or the English life table number six, or such other mortality table as may be approved by the commissioner of insurance. [C24, §8841; C27, 31, 35, §8842-b2; C39, §8842.2; C46, 50, 54, §512.57]

Referred to in §§512.58, 512.59

**512.58 Reserve.** Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 512.57. [C24,§8842; C27, 31, 35, §8842-b3; C39,§8842.3; C46, 50, 54,§512.58]

Referred to in §512.59

**512.59 General regulations.** A society shall have full power to provide for means of enforcing payment of contributions, designation and change of beneficiaries, which beneficiary shall be the child itself or a person qualified to make application therefor as provided in section 512.56, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of this and sections 512.56 to 512.58, inclusive. [C24,§8844; C27, 31, 35,§8842-b4; C39,§8842.4; C46, 50, 54,§512.59]

**512.60 No vested interest in new certificate.** Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [C24, 27, 31, 35, 39,§8845; C46, 50, 54,§512.60]

Similar provisions, §§510.10, 512.10

**512.61 Specified payments.** Any society shall have the right to provide in its laws and the certificate issued under section 512.56 for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and bylaws may provide. [C24, 27, 31, 35, 39,§8848; C46, 50, 54,§512.61]

#### FRATERNAL CHARITABLE INSTITUTIONS

**512.62 General power granted.** It shall be lawful for any fraternal beneficiary society, order, or association now organized and existing, or hereafter organized under and by virtue of the laws of this state, or any such society, order, or association organized and existing under and by virtue of the laws of any other state, province, or territory, and now or hereafter admitted to do business within this state, to create, maintain, and operate, for the benefit of its sick, disabled, or distressed members and their families and dependents, out of any general, special, or expense fund, and from any voluntary contributions it may receive therefor, hospitals, asylums, sanatoriums, schools, or homes. [C24, 27, 31, 35, 39,§8850; C46, 50, 54,§512.62]

40GA, ch 172,§1, editorially divided  
Referred to in §512.68

**512.63 Financial powers.** For such purpose any such society, order, or association may own, hold, lease, mortgage, sell, and convey

personal property and real property located within or without this state, with necessary buildings thereon; provided that the amount of the general, special, or expense fund to be expended, as herein provided, shall not exceed such amounts as shall have been or shall be, from time to time, authorized by the legislative or supreme governing body of such society, order, or association. [C24, 27, 31, 35, 39,§8851; C46, 50, 54,§512.63]

**512.64 Charges.** Maintenance, treatment, training, and proper attendance in any such hospital, asylum, sanatorium, school, or home may be furnished free, or a reasonable charge may be made therefor. [C24, 27, 31, 35, 39,§8852; C46, 50, 54,§512.64]

**512.65 Profit prohibited.** No such hospital, asylum, sanatorium, school, or home shall be operated for profit. [C24, 27, 31, 35, 39,§8853; C46, 50, 54,§512.65]

**512.66 General funds protected.** No part of the cost or expense of creating, maintaining, or operating any such hospital, asylum, sanatorium, school, or home shall be defrayed or paid out of the mortuary, sick, disability, or benefit funds of any such society. [C24, 27, 31, 35, 39, §8854; C46, 50, 54,§512.66]

**512.67 Management.** The management of such institutions shall be in such officers as the supreme governing body may designate, and such officers may or may not be members of the society, order, or association. [C24, 27, 31, 35, 39,§8855; C46, 50, 54,§512.67]

**512.68 Legal standing.** Any such hospital, asylum, sanatorium, school, or home, when established in the manner provided by section 512.62, is hereby declared to be a charitable institution, with all the rights, benefits, and privileges given to charitable institutions under and by the constitution and laws of this state. [C24, 27, 31, 35, 39,§8856; C46, 50, 54, §512.68]

40GA, ch 172,§2 editorially divided

**512.69 May be beneficiary.** Such hospital, asylum, sanatorium, school, or home is hereby declared to be competent to be named and to take as beneficiary in and by the benefit certificate of any member of such society, order, or association. [C24, 27, 31, 35, 39,§8857; C46, 50, 54,§512.69]

Similar provisions, §§510.10, 512.56

**512.70 General powers of commissioner.** The commissioner of insurance shall have the same powers, supervision, and control over such hospitals, asylums, sanatoriums, schools, and homes erected by any such society incorporated in this state, as he now has, or may hereafter legally exercise over fraternal beneficiary societies organized or transacting business in this state. [C24, 27, 31, 35, 39,§8858; C46, 50, 54,§512.70]

40GA, ch 172,§3, editorially divided

**512.71 Mismanagement — delinquency reported.** Whenever the commissioner of insurance finds that any such hospital, asylum, sanatorium, school, or home erected by such domestic society is being mismanaged or that the interest of the society or public requires it, the commissioner may direct an order to the officers responsible for such mismanagement or in control of such institution with reference to such mismanagement, and if such officers refuse, neglect, or fail to comply with such order within the time fixed by the commissioner of insurance, the commissioner shall communicate the fact to the attorney general. [C24, 27, 31, 35, 39,§8859; C46, 50, 54,§512.71]

**512.72 Duty of attorney general—decree.** The attorney general shall proceed in the manner provided for in section 512.101, or the court may remove such officers guilty of mismanagement and appoint others until the society may regularly elect or select other officers to succeed those deposed. [C24, 27, 31, 35, 39,§8860; C46, 50, 54,§512.72]

CONSOLIDATION OR REINSURANCE

**512.73 Presenting proposed plan.** When any domestic fraternal beneficiary association shall propose to consolidate or enter into any reinsurance contract with any other association or organization whether domiciled in this or any other state or territory, it shall present its proposed plan of consolidation or reinsurance, together with a statement of the condition of its affairs to the commissioner of insurance for his approval. [S13,§1839-g; C24, 27, 31, 35, 39, §8861; C46, 50, 54,§512.73]

S13,§1839-g, editorially divided  
Referred to in §§512.79, 512.80

**512.74 Submission of plan—notice.** Should the commissioner approve the plan, the same shall be submitted by any association proposing to reinsure its risks or transfer its business, to its local lodges or organizations or to a regular or special meeting of its supreme lodge or governing body to be voted upon, such notice being given as the commissioner may direct. [S13,§1839-g; C24, 27, 31, 35, 39,§8862; C46, 50, 54,§512.74]

Referred to in §§512.79, 512.80

**512.75 Submission to reinsuring association.** If, in the judgment of the commissioner, it is deemed advisable he may also require the plan to be in like manner submitted to the association proposing to accept or reinsure the risks of any other association. [S13,§1839-g; C24, 27, 31, 35, 39,§8863; C46, 50, 54,§512.75]

Referred to in §§512.79, 512.80

**512.76 Multiple consolidation.** In case two or more associations propose to consolidate, the proposed plan of consolidation shall be submitted, as above provided, to all of the associations interested in such consolidation. [S13, §1839-g; C24, 27, 31, 35, 39,§8864; C46, 50, 54, §512.76]

Referred to in §§512.79, 512.80

**512.77 Approval—proxies.** In any of the above cases, a two-thirds vote of all of the members of each association present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and in no case shall proxies be voted. [S13,§1839-g; C24, 27, 31, 35, 39,§8865; C46, 50, 54,§512.77]

Referred to in §§512.79, 512.80

**512.78 Official order of approval.** On presenting to the commissioner satisfactory proof that the foregoing provisions have been complied with and that the required number of votes have been cast in favor of the proposed plan, he shall issue to the association an order to the effect that the plan has been approved, and the same shall be in force and effect from and after the date of such order, and the commissioner shall direct such distribution of the assets of any such association or associations as shall be just and equitable. [S13,§1839-g; C24, 27, 31, 35, 39,§8866; C46, 50, 54,§512.78]

Referred to in §§512.79, 512.80

**512.79 Expenses.** All expenses or costs incident to proceedings under the provisions of sections 512.73 to 512.78, inclusive, shall be paid by the associations interested. [S13,§1839-h; C24, 27, 31, 35, 39,§8867; C46, 50, 54,§512.79]

**512.80 Violations.** Any officer, director, or manager of any association violating or consenting to the violation of any of the provisions of sections 512.73 to 512.78, inclusive, shall be punished by a fine of not less than ten hundred dollars, or by imprisonment in the county jail not less than one year, or by both such fine and imprisonment in the discretion of the court. [S13,§1839-i; C24, 27, 31, 35, 39,§8868; C46, 50, 54,§512.80]

REORGANIZATION

**512.81 Authorization.** Any existing fraternal beneficiary society may amend its articles of incorporation and bylaws in such a manner as to transform itself into a legal reserve level premium company doing business either as a mutual or stock company, but only after complying with the provisions of sections 512.82 to 512.96, inclusive. [C24, 27, 31, 35, 39,§8869; C46, 50, 54,§512.81]

38GA, ch 302,§1, editorially divided  
Referred to in §§512.93, 512.97

**512.82 Submission of plan.** Whenever any such society shall propose to transform itself into a legal reserve level premium company as herein provided, it shall file with the commissioner of insurance, its proposed articles and bylaws, its plan of transformation, setting forth in detail the terms and conditions of such transformation and also the method by which it proposes to protect the interests of its membership. [C24, 27, 31, 35, 39,§8870; C46, 50, 54, §512.82]

Referred to in §§512.81, 512.93, 512.97

**512.83 Notice.** The commissioner may proceed to hear and determine such petition without notice, or, if he deems it necessary that



such notice should be given in order to conserve the interests of the membership, he shall require the society to first notify, by mail, all of the members of such society of the pendency of such petition, the contents of such notice to be determined by the commissioner. [C24, 27, 31, 35, 39,§8871; C46, 50, 54,§512.83]

Referred to in §§512.81, 512.93, 512.97

**512.84 Appearance.** When notice shall have been given, as above provided, any member of said society shall have the right to appear before said commissioner and be heard with reference to said petition. [C24, 27, 31, 35, 39, §8872; C46, 50, 54,§512.84]

Referred to in §§512.81, 512.93, 512.97

**512.85 Examination.** The commissioner may also make such examination into the affairs and conditions of the society as he deems proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers, and may administer oaths. [C24, 27, 31, 35, 39, §8873; C46, 50, 54,§512.85]

Referred to in §§512.81, 512.93, 512.97

**512.86 Authorization order.** If satisfied that the interests of the membership of said society are properly protected and that no reasonable objection to said petition exists, the commissioner may authorize in writing, such transformation, or may first require such modification thereof as may seem to him necessary for the best interests of such membership. [C24, 27, 31, 35, 39,§8874; C46, 50, 54,§512.86]

Referred to in §§512.81, 512.93, 512.97

**512.87 Disposition of assets.** The said commissioner shall make such order and disposition of the assets of any such society as in his judgment may be just and equitable. [C24, 27, 31, 35, 39,§8875; C46, 50, 54,§512.87]

Referred to in §§512.81, 512.93, 512.97

**512.88 Submission to supreme governing body.** The commissioner shall require the plan of transformation to be submitted to the supreme governing body of such society, to be voted upon. When submitted, it shall be either at a regular meeting of said supreme governing body or at a special meeting of same called for that purpose. [C24, 27, 31, 35, 39,§8876; C46, 50, 54,§512.88]

38GA, ch 302,§2, editorially divided  
Referred to in §§512.81, 512.93

**512.89 Notice—vote required—proxies.** A notice of said special meeting, in the form approved by the commissioner of insurance, shall be given in accordance with the requirement of the bylaws of such society. When so submitted, a majority vote of the said supreme governing body present and voting, as authorized by its articles of incorporation and bylaws, shall be necessary to an approval of such plan of transformation; and no proxies shall in any case be voted. [C24, 27, 31, 35, 39,§8877; C46, 50, 54,§512.89]

Referred to in §§512.81, 512.93

**512.90 Referendum.** If the supreme governing body approves the plan of transformation, the board of directors or other managing body of such society shall submit the plan to a referendum vote of the members of such society under such regulations as may be prescribed by the commissioner of insurance, and if the result of such vote shall show that the majority of the members of such society has voted to repeal the action of the supreme governing body, then the same shall be considered as repealed by such society and shall be null and of no effect. [C24, 27, 31, 35, 39,§8878; C46, 50, 54, §512.90]

Referred to in §§512.81, 512.93

**512.91 Approval by commissioner — vote filed.** Any such plan of transformation submitted to the supreme governing body as herein contemplated, must first have been approved by the commissioner of insurance; and the result of said vote must be filed with such commissioner and be by him determined before any transformation shall be so effective. [C24, 27, 31, 35, 39,§8879; C46, 50, 54,§512.91]

Referred to in §§512.81, 512.93

**512.92 Conditions precedent.** No such transformation shall take place until after its plan has been approved by the commissioner, either with or without a hearing as herein provided, and until such approved plan has been adopted by a majority vote of the board of directors or board of trustees of such society; and, if submitted to the supreme governing body, until such approved plan has also been adopted by a majority vote of the said supreme governing body present and voting. [C24, 27, 31, 35, 39, §8880; C46, 50, 54,§512.92]

Referred to in §§512.81, 512.93

**512.93 Scope of reorganization act.** Nothing in sections 512.81 to 512.92, both inclusive, shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, or constitution, rules or bylaws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation or guild. [C31, 35,§8880-d1; C39,§8880.1; C46, 50, 54,§512.93]

Referred to in §512.81

**512.94 Effect of reorganization — officers.** Any such society so transformed, shall incur the obligations and enjoy the benefits thereof the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided. Any society so transformed shall have the power to acquire, own, hold, lease, mortgage, sell, and convey personal and real property, and to provide the necessary funds, and to do all things necessary for the purpose of operating and maintaining

such hospitals, asylums, sanatoriums, schools, or homes as it was operating and maintaining when so transformed and it shall have the power to discontinue operating and maintaining the same and to lease, mortgage, sell, and convey the personal and real property acquired for use in connection therewith. [C24, 27, 31, 35, 39,§8881; C46, 50, 54,§512.94]

38GA, ch 302,§3, editorially divided  
Referred to in §§512.81, 512.96

**512.95 Pending suits.** Such amendment or reincorporation shall not affect existing suits, claims, or contracts. [C24, 27, 31, 35, 39,§8882; C46, 50, 54,§512.95]

Referred to in §512.81

**512.96 Purchase of stock.** Any such fraternal beneficiary society taking advantage of section 512.94, to reorganize into a stock company shall offer to each member of said society the privilege of subscribing for and purchasing his or her proportionate amount of capital stock. [C24, 27, 31, 35, 39,§8883; C46, 50, 54,§512.96]

Referred to in §512.81

**512.97 Valuation of existing certificates.** The existing certificates of membership of any fraternal beneficiary society which shall have transformed itself into a legal reserve level premium life insurance company, in conformity with the provisions of sections 512.81 to 512.87, inclusive, shall be valued as follows:

1. Certificates on which rates of contribution are not on the basis of any table of mortality, valued as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state.

2. Certificates on which the rates of contribution are based upon a standard table of mortality and specified rate of interest, valued in accordance with such standard.

The reserve so ascertained shall be held as a liability by the company in its annual statement rendered to the insurance department. [C24, 27, 31, 35, 39,§8884; C46, 50, 54,§512.97]

**EXAMINATION AND RECEIVERSHIP**

**512.98 "Association" defined.** The term "association" when used in this chapter shall mean any society, order, or association organized or authorized under the provisions of this chapter. [S13,§1839-a; C24, 27, 31, 35, 39,§8885; C46, 50, 54,§512.98]

**512.99 Examination.** The commissioner of insurance may, at any time he may deem it advisable, either in person or by his legally appointed representative, make an examination of, or inquire into the affairs of any fraternal beneficiary association authorized or seeking to be authorized to transact business within this state, provided the examination of associations organized under the laws of this state shall not be less frequent than once during each biennial period. [S13,§1839-b; C24, 27, 31, 35, 39,§8886; C46, 50, 54,§512.99]

**512.100 Officers to assist—oaths.** When an association is being examined, the officers, agents, or employees thereof shall produce for inspection all books, papers, documents, or other information concerning the affairs of the association and shall otherwise assist in the examination. The commissioner of insurance or examiner shall have authority to administer oaths, and may summon and may examine under oath any officer, employee, representative, or agent of any association concerning its affairs or condition. [S13,§1839-c; C24, 27, 31, 35, 39,§8887; C46, 50, 54,§512.100]

**512.101 Revocation or suspension of authority—action by attorney general.** If upon investigation or examination, it shall appear to the satisfaction of the commissioner of insurance that any association is doing an illegal or unauthorized business, or is failing to fulfill its contracts with its members, or is conducting its business fraudulently, or if its membership or the amount of its insurance in force has been reduced below the legal requirement, or should any association decline or refuse to submit to an examination, the commissioner may suspend or revoke its certificate of authority to transact business within this state, and having revoked the certificate of authority of any association organized under the laws of this state, he shall at once report the same to the attorney general who shall apply to the district court or any judge thereof for the appointment of a receiver to wind up the affairs of such association. [S13,§1839-d; C24, 27, 31, 35, 39,§8888; C46, 50, 54,§512.101]

Referred to in §512.72

**512.102 Expenses—how paid.** In addition to the compensation of the assistants, the commissioner of insurance or examiner and assistants shall be entitled to actual and necessary traveling, hotel, and other expenses while conducting examinations away from their respective places of residence, the same to be paid by the treasurer of state upon warrants drawn by the state comptroller, bills therefor having been filed under oath and approved by the comptroller. Such expense and compensation shall, by the commissioner, be charged to and collected from the associations examined and should any association neglect or refuse to pay the same, the commissioner shall at once revoke its certificate of authority to transact business within this state. [S13,§1839-e; C24, 27, 31, 35, 39,§8889; C46, 50, 54,§512.102]

**512.103 Illegal business.** Any officer, manager, agent, or representative of any association who with knowledge that its certificate of authority has been suspended or revoked, or that it is doing an illegal, unauthorized, or fraudulent business solicits insurance for said association, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said association, shall be deemed guilty of a misdemeanor and for every such act, on conviction thereof, shall pay a fine of not less than one hundred

nor more than ten hundred dollars, or be imprisoned in the county jail not more than one year, or be punished by both such fine and imprisonment. [S13,§1839-f; C24, 27, 31, 35, 39, §8890; C46, 50, 54,§512.103]

**512.104 Application for receiver.** No application for the appointment of a receiver for any fraternal beneficiary society, or branch thereof, shall be entertained by any court in this state, unless same is made by the attorney general. [SS15,§1839-m; C24, 27, 31, 35, 39, §8891; C46, 50, 54,§512.104]

**512.105 When commenced.** No such proceedings shall be commenced by the attorney general against any fraternal beneficiary society until the commissioner of insurance has first made an examination of such fraternal beneficiary society, and completed a report upon its affairs, and not until after notice has been duly served on the chief executive officers of the society, and a reasonable opportunity

given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced. [SS15,§1839-m; C24, 27, 31, 35, 39,§8892; C46, 50, 54,§512.105]

**512.106 Examinations confidential.** Pending, during, or after an examination or investigation of such fraternal beneficiary society, the commissioner of insurance shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society until a copy of such examination and investigation shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer such financial statement, investigation, report, or finding, and to make such showing in connection therewith, as it may desire. [SS15,§1839-o; C24, 27, 31, 35, 39,§8893; C46, 50, 54,§512.106]

## CHAPTER 513

### EMPLOYEES MUTUAL INSURANCE

#### 513.1 Exemption.

**513.1 Exemption.** Unless specific reference is made thereto, no provision of this title shall include or apply to domestic societies which limit their membership to the employees of:

1. A particular city or town, or
2. A designated firm, business house, or corporation. [C24, 27, 31, 35, 39,§8894; C46, 50, 54, §513.1]

#### 513.2 Power of commissioner.

**513.2 Power of commissioner.** The commissioner of insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of the laws relating to insurance or to fraternal benefit societies. [C24, 27, 31, 35, 39,§8895; C46, 50, 54,§513.2]

## CHAPTER 514

### MUTUAL HOSPITAL SERVICE

Referred to in §§135B.30, 365A.6

#### 514.1 Insurance laws excluded generally.

#### 514.2 Incorporation.

#### 514.3 Approval by commissioner.

#### 514.4 Directors.

#### 514.5 Contracts for service.

#### 514.6 Rates—approval by commissioner.

#### 514.7 Contracts—approval by commissioner.

#### 514.8 Contracts with hospitals—approval.

#### 514.9 Annual report.

#### 514.10 Examination.

#### 514.11 Costs approved.

#### 514.12 Investment of funds.

#### 514.13 Arbitration of disputes.

#### 514.14 Dissolution or merger.

#### 514.15 Nonexempt from taxation.

#### 514.16 Governmental employees included.

#### 514.17 Physicians and surgeons or dentists—number required.

**514.1 Insurance laws excluded generally.** Any corporation hereafter organized under the provisions of chapter 504 for the purpose of establishing, maintaining, and operating a non-profit hospital service plan, whereby hospital service may be provided by the said corporation or by a hospital with which it has a contract for such service, to such of the public who become subscribers to said plan under a contract which entitles each subscriber to hospital service, or any such corporation organized for

the purpose of establishing, maintaining, and operating a plan whereby medical and surgical service may be provided at the expense of said corporation, by duly licensed physicians and surgeons, dentists, osteopathic physicians, or osteopathic physicians and surgeons, to subscribers under contract, entitling each subscriber to medical and surgical service, as provided in said contract, shall be governed by the provisions of this chapter and shall be exempt from all other provisions of the insurance laws

of this state, unless specifically designated herein, not only in governmental relations with the state but for every other purpose, and no additions hereafter enacted shall apply to such corporations unless they be expressly designated therein. [C39,§8895.01; C46, 50, 54, §514.1; 56GA, ch 244,§1]

**514.2 Incorporation.** Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation shall incorporate under the provisions of chapter 504, as supplemented and amended herein and any acts amendatory thereof. [C39, §8895.02; C46, 50, 54,§514.2]

**514.3 Approval by commissioner.** The articles of incorporation, and any subsequent amendments, of such corporation shall have indorsed thereon or annexed thereto the approval of the commissioner of insurance before the same shall be filed for record. [C39,§8895.03; C46, 50, 54,§514.3]

**514.4 Directors.** At least a majority of the directors of a hospital service corporation must be at all times administrators, or directors, or trustees, or members of the clinical staff of hospitals which have contracted or may contract with such corporation to render to its subscribers hospital service. The board of directors of such corporation shall consist of at least nine members and not more than one shall be from any one hospital.

At least a majority of the directors of a medical service corporation must be at all times physicians or surgeons, dentists, osteopathic physicians, or osteopathic physicians and surgeons, who have contracted or may contract with such corporation to render to its subscribers medical or surgical service. The board of directors of such corporation shall consist of at least nine members. [C39, §8895.04; C46, 50, 54,§514.4; 56GA, ch 244,§2]

**514.5 Contracts for service.** Any hospital service corporation organized under the provisions of said chapter may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care.

Any medical service corporation organized under the provisions of this chapter may enter into contracts with subscribers to furnish medical and surgical service through physicians and surgeons, dentists, osteopathic physicians, or osteopathic physicians and surgeons. [C39, §8895.05; C46, 50, 54,§514.5; 56GA, ch 244,§3]

**514.6 Rates — approval by commissioner.** The rates charged by any such corporation to the subscribers for hospital service or for

medical and surgical service shall at all times be subject to the approval of the commissioner of insurance. [C39,§8895.06; C46, 50, 54,§514.6]

**514.7 Contracts—approval by commissioner.** The contracts by any such corporation with the subscribers for hospital service or for medical and surgical service shall at all times be subject to the approval of the commissioner of insurance. [C39,§8895.07; C46, 50, 54,§514.7]

**514.8 Contracts with hospitals — approval.** The contracts by any such corporation with participating hospitals for hospital service or with participating physicians and surgeons, dentists, osteopathic physicians, or osteopathic physicians and surgeons for medical and surgical service shall at all times be subject to the approval of the commissioner of insurance. [C39,§8895.08; C46, 50, 54,§514.8; 56GA, ch 244,§4]

**514.9 Annual report.** Every such corporation shall annually, on or before the first day of March, file in the office of the commissioner of insurance a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December then next preceding, which shall be in such form and shall contain such matters as the commissioner of insurance shall prescribe. [C39,§8895.09; C46, 50, 54,§514.9]

**514.10 Examination.** Every such corporation shall be subject to examination under the provisions of chapter 507 and any acts amendatory thereto, so far as the chapter may be applicable. [C39,§8895.10; C46, 50, 54,§514.10]

**514.11 Costs approved.** All acquisition costs in connection with the solicitation of subscribers to such hospital service plan or medical service plan and administration costs including salaries paid its officers, if any, shall at all times be subject to the approval of the commissioner of insurance. [C39,§8895.11; C46, 50, 54,§514.11]

**514.12 Investment of funds.** The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of this state for the investment of funds of life insurance companies. [C39,§8895.12; C46, 50, 54,§514.12]

**514.13 Arbitration of disputes.** Any dispute arising between a corporation organized under said chapter and any hospital with which such corporation has a contract for hospital service, or any physician and surgeon, dentist, osteopathic physician, or osteopathic physician and surgeon with whom any such corporation has a contract for medical and surgical service, as provided for herein, may be submitted to the commissioner of insurance for his decision. All decisions and findings of the commissioner of insurance may be reviewed by proper proceedings in a court of competent jurisdiction. [C39, §8895.13; C46, 50, 54,§514.13; 56GA, ch 244,§5]

**514.14 Dissolution or merger.** Any dissolution, merger, or liquidation of a corporation organized under the provisions of said chapter shall be under the supervision of the commissioner of insurance who shall have all powers with respect thereto granted to him under the insurance laws of this state. [C39,§8895.14; C46, 50, 54,§514.14]

**514.15 Nonexempt from taxation.** Every corporation organized under the provisions of this chapter is hereby declared to be a charitable and benevolent institution but its property and funds, including subscribers' contracts, shall not be exempt from taxation. [C39, §8895.15; C46, 50, 54,§514.15]

**514.16 Governmental employees included.** An employee or employees of the state, or of any county, city, or town, or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize the deduction from his or their salary or wages of the amount of his or their subscription payments to any corporation operating a nonprofit hospital service plan or medical service plan as provided in this chapter. The governing body of the state, or of the county, city, or town, or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize deductions from the salaries or wages of employees subscribing to such nonprofit hospital service plan or medical service

plan. The authorization by an employee or employees for deductions from his or their salaries or wages shall be evidenced by a written request signed by the employee directed to and filed with the treasurer of the state, county, city, or town, or of any institution supported in whole or in part by public funds, or any subdivisions thereof, and said treasurer is authorized to draw and deliver checks in favor of the hospital service corporation or medical service corporation stipulated in such authorization for the amount covering the sum total of the deductions authorized. The foregoing provisions are not to be deemed an assignment of salaries or wages. [C46, 50, 54, §514.16]

**514.17 Physicians and surgeons or dentists—number required.** No nonprofit medical service corporation shall be permitted to operate until it shall have entered into contracts with at least one hundred fifty physicians and surgeons licensed to practice medicine and surgery pursuant to chapter 148, or one hundred fifty dentists licensed to practice dentistry pursuant to chapter 153, or at least one hundred fifty physicians and surgeons licensed to practice osteopathy or osteopathy and surgery pursuant to chapter 150, who agree to furnish medical and surgical or dental service and be governed by the bylaws of the corporation. [C46, 50, 54,§514.17; 56GA, ch 244,§6]

## CHAPTER 514A

### ACCIDENT AND HEALTH INSURANCE

Referred to in §509.14

- 514A.1 Definition of accident and sickness insurance policy.
- 514A.2 Form of policy.
- 514A.3 Accident and sickness policy provisions.
- 514A.4 Conforming to statute.
- 514A.5 Application.
- 514A.6 Notice—waiver.

- 514A.7 Age limit.
- 514A.8 Nonapplication to certain policies.
- 514A.9 Violation.
- 514A.10 Judicial review.
- 514A.11 Inconsistent acts not applicable.
- 514A.12 Title and effective date of chapter.

**514A.1 Definition of accident and sickness insurance policy.** The term "policy of accident and sickness insurance" as used herein includes any policy or contract covering insurance against loss resulting from sickness or from bodily injury or death by accident, or both. For the purposes of this chapter the words "policy of accident and sickness insurance" are interchangeable without deviation of meaning with the words "policy of accident and health insurance" or the words "policy of accident or health insurance". The provisions of this chapter shall apply to all individual policies of such accident and sickness insurance as are written by Iowa or non-Iowa companies or associations duly licensed under the provisions of either chapter 508, 510, 515 or 520 also, societies, orders or associations licensed under the provisions of chapter 512 writing sickness and accident policies providing benefits for loss of time.

This chapter shall not apply to an association organized, existing and operating under chapter 510 which limits its contracts to providing benefits for widows, heirs, orphans or legatees of deceased members whose death is caused by accident or accidental means, or of providing benefits for members for specific loss or loss of time from injuries caused by accident or accidental means, nor shall said chapter apply to a fraternal beneficiary association, as defined in section 512.1 and licensed under the provisions of section 510.23 thereof, which limits its contracts to providing benefits to beneficiaries of deceased members whose death is caused by accident or accidental means or of providing benefits for members for specific loss or loss of time from injuries caused by accident or accidental means.

Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the

same or similar lines of business and the ladies' societies or ladies' auxiliaries to such orders shall not be subject to the provisions of this chapter nor shall any religious order be subject to the provisions of this chapter. [C54, §514A.1]

#### 514A.2 Form of policy.

1. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

a. the entire money and other considerations therefor are expressed therein; and

b. the time at which the insurance takes effect and terminates is expressed therein; and

c. it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

d. the style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any indorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

e. the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 514A.3 of this chapter, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "exceptions", or "exceptions and reductions", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

f. each such form, including riders and indorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

g. it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

2. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the

insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in subsection 1 of this section and in section 514A.3. [C54, §514A.2]

Referred to in §514A.12

#### 514A.3 Accident and sickness policy provisions.

1. *Required provisions.* Except as provided in subsection 3 of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

*Entire contract—changes:* This policy, including the indorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be indorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

b. A provision as follows:

*Time limit on certain defenses:* (1) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three year period, nor to limit the application of section 514A.3(2) "a", "b", "c", "d" and "e" in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty or, (b) in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestable":

After this policy has been in force for a period of three years during the lifetime of the

insured, (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(2) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

c. A provision as follows:

*Grace period:* A grace period of . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

d. A provision as follows:

*Reinstatement:* If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions indorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any

period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

e. A provision as follows:

*Notice of claim:* Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

f. A provision as follows:

*Claim forms:* The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

g. A provision as follows:

*Proofs of loss:* Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within

the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

h. A provision as follows:

*Time of payment of claims:* Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

i. A provision as follows:

*Payment of claims:* Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$..... (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

j. A provision as follows:

*Physical examinations and autopsy:* The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reason-

ably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

k. A provision as follows:

*Legal actions:* No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

l. A provision as follows:

*Change of beneficiary:* Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

Subsection 1 referred to in §514A.3(4)

2. *Other provisions.* Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

*Change of occupation:* If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last



filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

b. A provision as follows:

*Misstatement of age:* If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

c. A provision as follows:

*Other insurance in this insurer:* If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for..... (insert type of coverage or coverages) in excess of \$..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

d. A provision as follows:

*Insurance with other insurers:* If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "—expense incurred benefits". The insurer may, at its option, include in this pro-

vision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

e. A provision as follows:

*Insurance with other insurers:* If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "—other benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's

compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

Paragraphs *a, b, c, d, e*, referred to in §514.A3(1)

*f.* A provision as follows:

*Relation of earnings to insurance:* If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

*g.* A provision as follows:

*Unpaid premium:* Upon the payment of a

claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

*h.* A provision as follows:

*Cancellation:* The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

*i.* A provision as follows:

*Conformity with state statutes:* Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

*j.* A provision as follows:

*Illegal occupation:* The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

*k.* A provision as follows:

*Intoxicants and narcotics:* The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Subsection 2 referred to in §514A.3(4)

*3. Inapplicable or inconsistent provisions.* If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

Subsection 3 referred to in §514A.3(2)

*4. Order of certain policy provisions.* The provisions which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections,

shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

5. *Third party ownership.* The word "insured", as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

6. *Requirements of other jurisdictions.*

a. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

b. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

7. *Filing procedure.* The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law. [S13,§1820; C24, 27, 31, 35, 39,§8775; C46, 50,§511.36; C54, §514A.3]

Referred to in §§514A.2(1,e), 514A.2(2), 514A.4, 514A.12

**514A.4 Conforming to statute.**

1. *Other policy provisions.* No policy provision which is not subject to section 514A.3 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

2. *Policy conflicting with this chapter.* A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter. [C54,§514A.4]

Referred to in §514A.12

**514A.5 Application.**

1. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached

to or indorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

2. No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

3. The falsity of any statement in the application for any policy covered by this chapter may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer. [C54, §514A.5]

**514A.6 Notice—waiver.** The acknowledgment by any insurer of the receipt of notice given under any policy covered by this chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy. [C54,§514A.6]

**514A.7 Age limit.** If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [C54,§514A.7]

**514A.8 Nonapplication to certain policies.** Nothing in this chapter shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance

with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [C54,§514A.8]

**514A.9 Violation.** Any person, partnership or corporation willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter, shall forfeit to the people of the state a sum not to exceed one hundred dollars for each such violation, which may be recovered by a civil action. The commissioner may also suspend or revoke the license of an insurer or agent for any such willful violation. [C54, §514A.9]

**514A.10 Judicial review.** Any order or decision of the commissioner under this chapter shall be subject to review by appeal (writ of certiorari) to the district court at the instance of any party in interest. The filing of the appeal (petition for such writ) shall operate

as a stay of any such order or decision until the court directs otherwise. The court may review all the facts and, in disposing of the issue before it, may modify, affirm or reverse the order or decision of the commissioner in whole or in part. [C54,§514A.10]

Constitutionality, 54GA, ch 188,§12

**514A.11 Inconsistent acts not applicable.** All acts or parts of acts inconsistent with this chapter shall not apply to the provisions hereof to the extent of said inconsistency. [C54, §514A.11]

**514A.12 Title and effective date of chapter.** This chapter may be cited as the Uniform Individual Accident and Sickness Act. This chapter shall take effect on the fourth day of July, 1951. A policy, filed with and approved by the insurance commissioner prior to the effective date of this chapter for use, delivery, or issue for delivery to any person in this state, may continue to be used, or delivered, or issued for delivery to any person in this state for a period of five years from and after said effective date without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4; and any rider or indorsement filed with and approved by the insurance commissioner at any time may be used, or delivered, or issued for delivery to any person holding such a policy without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4. [C54,§514A.12]

**CHAPTER 515**

**INSURANCE OTHER THAN LIFE**

Referred to in §§507.1, 507.11, 508.30, 509.5, 511.26, 514A.1, 518.18, 518.40, 519.9, 521.1, 682.14, 682.16

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**515.1 Incorporation.** Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 491, except as modified by the provisions of this chapter. [C73,§1122; C97,§1684; C24, 27, 31, 35, 39,§8896; C46, 50, 54,§515.1]

Referred to in §515.25

**515.2 Articles—approval.** Each such organization shall present to the commissioner of insurance its articles of incorporation, which shall show its name, objects, location of its principal place of business, and amount of its capital stock, who shall submit it to the attorney general for examination, and if found by

him to be in accordance with the provisions of this title, the laws of the United States, and the constitution and laws of the state, he shall certify such fact thereon and return the same to said commissioner, and no articles shall be approved by him or recorded unless accompanied with such certificate. [C73,§1122; C97, §1685; C24, 27, 31, 35, 39,§8897; C46, 50, 54,§515.2]

Referred to in §515.25

**515.3 Certificate—recording.** If the commissioner of insurance approves them, he shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall indorse thereon his certificate thereof, as is required in case of other corporations for pecuniary profit. [C73,§1123; C97,§1686; C24, 27, 31, 35, 39,§8898; C46, 50, 54, §515.3]

Recording, §491.5

**515.4 Name.** If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, he shall refuse his certificate to its articles on that ground. [C73,§1122; C97,§1687; C24, 27, 31, 35, 39,§8899; C46, 50, 54,§515.4]

**515.5 Filing with commissioner.** The articles, when thus certified by the secretary of state as recorded in his office, or a copy thereof certified by him as such, shall be filed in the office of the commissioner of insurance and remain therein. [C73,§1123; C97,§1688; C24, 27, 31, 35, 39,§8900; C46, 50, 54,§515.5]

**515.6 Nature of organization entered on policy.** Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company. [C73,§1140; C97, §1689; S13,§1689; C24, 27, 31, 35, 39,§8901; C46, 50, 54,§515.6]

**515.7 Stock and mutual plan distinguished.** No company shall be organized to do business upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon the mutual plan do business or take risks upon the stock plan. [C73,§1159; C97,§1690, C24, 27, 31, 35, 39,§8902; C46, 50, 54,§515.7]

**STOCK COMPANIES**

**515.8 Paid-up capital required.** No insurance company other than life shall be incorporated to transact business upon the stock plan with less than two hundred thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. No increase of the capital stock of any company shall be made unless the amount of such increase is fully paid up in cash. The

stock shall be divided into shares of not less than ten dollars each. [C73,§1124; C97,§1691; S13,§1783-e; C24, 27, 31, 35, 39,§8903; C46, 50, 54, §515.8]

40ExGA, ch 9,§11, editorially divided  
Referred to in §511.23

**515.9 Reduction of capital or shares.** Any insurance company, other than life, may, upon the vote of a majority of its shares of stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof or the par value of the shares thereof, provided that the total amount of capital shall not be reduced to an amount less than the minimum required by law, but no part of its assets and property shall be distributed to its stockholders without the consent of the insurance commissioner. [C27, 31, 35,§8903-b1; C39,§8903.1; C46, 50, 54,§515.9]

Referred to in §511.23

**515.10 Surplus required.** Such company shall be possessed of a surplus in cash or invested in securities authorized by law, equal to twenty-five percent of such paid-up and outstanding capital at the time certificate of authority is first applied for and issued. [C73, §1124; C97,§1691; C24, 27, 31, 35, 39,§8904; C46, 50, 54,§515.10]

Referred to in §511.23

**515.11 Prohibited loans.** No part of the capital referred to shall be loaned to any officer or stockholder of the company. [S13,§1783-e; C24, 27, 31, 35, 39,§8905; C46, 50, 54,§515.11]

Referred to in §511.23

**MUTUAL COMPANIES**

**515.12 Mutual companies — conditions.** No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workmen's compensation insurance.

2. The maximum single risk shall not exceed twenty percent of the admitted assets, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest, which shall be

equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workmen's compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workmen's compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

5. It shall have in cash or in securities in which insurance companies are authorized to invest, surplus in an amount of not less than ten thousand dollars; provided that the commissioner of insurance, if in his judgment it appears necessary, may require surplus in excess of said amount, but not more than twenty-five thousand dollars. The surplus so required may be advanced in accordance with the provisions of section 515.19.

Provided, however, that such surplus requirements shall not apply to a company which establishes and maintains a guaranty fund as provided by section 515.20. [C73,§1124; C97, §1692; C24, 27, 31, 35, 39,§8906; C46, 50, 54, §515.12]

Referred to in §515.18

**515.13 Reservation.** None of the provisions of subsection 5\* of section 515.12 shall apply to any company heretofore organized and approved by the commissioner of insurance, but which had not completed its organization at the time of the taking effect\*\* of said subsection, nor shall said subsection 5 apply to any company already licensed to issue policies. [C39,§8906.1; C46, 50, 54,§515.13]

\*Omnibus repeal, 47GA, ch 214,§§  
\*\*Effective date, May 28, 1937

**515.14 Membership in mutuals.** Any public or private corporation, board, or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation, board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [C73,§1124; C97,§1693; C24, 27, 31, 35, 39,§8907; C46, 50, 54,§515.14]

**515.15 Voting power.** Every policyholder of such mutual company shall be a member of the company and shall be entitled to one vote,

and such member may vote in person or by proxy as may be provided in the bylaws. [C24, 27, 31, 35, 39,§8908; C46, 50, 54,§515.15]

**515.16 Maximum premium.** The maximum premium payable by any member of a mutual company shall be expressed in the policy and in the application for the insurance. Such maximum may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium, which premium may be made payable in installments or regular assessments. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required, at the time of the organization of such mutual insurance company, of domestic stock insurance companies writing the same kind of insurance; but said surplus shall not be less than one hundred thousand dollars. [C24, 27, 31, 35, 39,§8909; C46, 50, 54,§515.16]

**515.17 Unearned premiums.** Such mutual company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic insurance companies transacting the same kind of insurance; provided that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income, after deducting any so-called dividend or premium returned or credited to the member. [C24, 27, 31, 35, 39,§8910; C46, 50, 54,§515.17]

**515.18 Assessments.** Any such mutual company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each member in proportion to such liability as expressed in his policy; provided the commissioner may by written order, relieve the company from an assessment or other proceedings to restore such assets during the time fixed in such order. [C24, 27, 31, 35, 39,§8911; C46, 50, 54,§515.18]

Referred to in §515.20

**515.19 Advancement of funds.** Any director, officer, or member of any such mutual company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding the maximum statutory rate of interest, shall not be a liability or claim against the company or any of its assets, except as herein provided, and upon approval of the commissioner of insurance may be repaid, but only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of

such advance shall be reported in each annual statement. [C24, 27, 31, 35, 39,§8912; C46, 50, 54, §515.19]

Referred to in §§515.12, 515.20

**515.20 Guaranty fund.** Any mutual company heretofore or hereafter organized under this chapter may establish and maintain a guaranty fund of at least fifty thousand dollars made up of multiples of ten thousand dollars, divided into shares of not less than fifty dollars each, to be invested as provided for the investment of insurance capital and funds by section 515.35. Guaranty shareholders shall be members of the corporation, and provision may be made for representation of the shareholders of such guaranty fund on the board of directors of the corporation, such representation not to exceed one-third of the membership of such board. Guaranty shareholders in such mutual companies shall be subject to the same regulations of law relative to their right to vote as apply to its policyholders. Such guaranty fund shall be applied to the payment of the legal obligations of the corporation only when such corporation has exhausted its assets in excess of the unearned premium reserve and other liabilities; and if such guaranty fund be thus impaired, the directors may restore the whole, or any part thereof, by assessment on its policyholders as provided for in section 515.18. By a legal vote of the policyholders of the corporation, at any regular or special meeting thereof, said guaranty fund may be fully retired or may be reduced to an amount of not less than fifty thousand dollars, provided, that the net surplus of the corporation together with the remaining guaranty fund shall equal or exceed the amount of minimum assets required by this chapter for such companies, and provided, further, that the commissioner of insurance consents thereto. Due notice of such proposed action on the part of the corporation shall be included in the notice given to policyholders and shareholders of any annual or special meeting and notice of such meeting shall also be given in accordance with the provisions of its articles of incorporation. No company with such guaranty fund, which has ceased to do business, shall distribute among its shareholders or policyholders any part of its assets, or guaranty fund, until it has fully performed, or legally canceled, all of its policy obligations. Shareholders of such guaranty fund shall be entitled to interest on the par value of their respective shares at a rate to be fixed by the board of directors, not to exceed seven percent per annum, cumulative, payable semiannually, and payable only out of the surplus earnings of such company, but in no event shall the surplus account of such company be reduced by the payment of such interest below the figure maintained at the time said guaranty fund was established; and provided, further, that no such interest payment shall be made unless the surplus assets remaining after the payment thereof shall at least equal the amount required by the statutes of Iowa to permit such corporation to con-

tinue in business. In the event of the dissolution and liquidation of any corporation having a guaranty fund under the provisions hereof, the shareholders of such fund shall be entitled, after the payment of all valid obligations of the company, to receive the par value of their respective shares, together with any unpaid interest thereon, before there may be any distribution of the assets of said corporation among its policyholders. These provisions are in addition to and independent of the provisions now contained in section 515.19. [C35, §8912-f1; C39,§8912.1; C46, 50, 54,§515.20]

Referred to in §515.12

**515.21 Additional policy provisions.** Such mutual company may insert in any form of policy prescribed by the law of this state any additional provisions or conditions required by its plan of insurance if not inconsistent or in conflict with any law of this state. [C24, 27, 31, 35, 39,§8913; C46, 50, 54,§515.21]

**515.22 Countersigning policies.** Such mutual company shall comply with the provisions of any law applicable to stock insurance companies effecting the same kind of insurance requiring that policies be countersigned and delivered through a resident agent, provided that this requirement shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent. [C24, 27, 31, 35, 39,§8914; C46, 50, 54,§515.22]

#### GENERAL PROVISIONS

**515.23 Existing companies.** The provisions of this chapter\* shall not apply to any company or association of this state now doing business whether organized under chapter 4 or chapter 5, title IX of the Code, as amended [Code of 1897], unless such company or association shall so elect by resolution of its board of directors duly certified to by the president and secretary and filed with and approved by the commissioner, and shall further amend its articles, if necessary, to permit full compliance with this chapter\* and to include such additional kind or kinds of insurance as such company or association intends to transact. On the filing and approval of such resolution and on making such amendment if required, such company may be authorized to transact such kinds of insurance under this chapter. [C24, 27, 31, 35, 39,§8915; C46, 50, 54,§515.23]

\*37GA, ch 429

**515.24 Tax—computation.** For the purpose of determining the basis of any tax upon the “gross amount of premiums”, or “gross receipts from premiums, assessments, fees, and promissory obligations”, now or hereafter imposed upon any fire or casualty insurance company under any law of this state, such gross amount or gross receipts shall consist of the gross premiums or receipts for direct insurance, without including or deducting any amounts received or paid for reinsurance, but with such other deductions as provided by law, and in addition deducting any so-called dividend or return of savings or gains to pol-



icyholders; provided that as to any deposits or deposit premiums received by any such company, the taxable premiums shall be the portion of such deposits or deposit premiums earned during the year with such deductions therefrom as provided by law. [C24, 27, 31, 35, 39, §8916; C46, 50, 54, §515.24]

**515.25 Subscriptions of stock—applications.** After compliance by the incorporators with sections 515.1 and 515.2, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 506.3 to 506.5, inclusive, have been complied with, he shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto. [C73, §1125; C97, §1694; C24, 27, 31, 35, 39, §8917; C46, 50, 54, §515.25]

**515.26 Directors.** The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one, all of whom, in case of a stock company, shall be stockholders, or, in case of a mutual company, be policyholders, or before the company shall effect insurance, be subscribers for stock or for insurance as the case may be. When the paid-up capital for a stock company, or the subscriptions for insurance for a mutual company, shall have been obtained, the incorporators or directors in charge of the business shall give at least ten days written notice by mail to stockholders or subscribers, as the case may be, of a meeting of the stockholders or subscribers, for the election of directors, and such meeting shall be held within thirty days after the paid-up capital or subscriptions have been secured. The directors then elected shall continue in office until their successors have been elected and qualified. [C73, §1126; C97, §1695; C24, 27, 31, 35, 39, §8918; C46, 50, 54, §515.26; 57GA, ch 245, §1]

**515.27 Election.** The annual meetings for the election of directors shall be held at such time as the articles of incorporation or bylaws of the company provide; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policyholders if a mutual company, by giving thirty days notice thereof in some newspaper of general circulation in the county

in which the principal office of the company is located. [C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §8919; C46, 50, 54, §515.27]

C97, §1696, editorially divided

**515.28 Term of office.** The directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted. [C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §8920; C46, 50, 54, §515.28]

**515.29 Classification of directors.** A company may in its articles of incorporation provide that the board of directors be divided into classes holding for a term of not to exceed three years and providing for the election of the members of one class at each annual meeting. [C24, 27, 31, 35, 39, §8921; C46, 50, 54, §515.29]

**515.30 Powers of directors—president.** The directors shall elect by ballot from their own number a president, and fill all vacancies occurring in the board or presidency thereof; and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter. [C73, §1128; C97, §1697; C24, 27, 31, 35, 39, §8922; C46, 50, 54, §515.30]

**515.31 Secretary and other officers.** The board of directors shall have power to appoint a secretary and any other officers or agents necessary for transacting the business of the company, paying such salaries and taking such security of them as is reasonable. [C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §8923; C46, 50, 54, §515.31]

C97, §1698, editorially divided

**515.32 Bylaws.** It may adopt such bylaws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business. [C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §8924; C46, 50, 54, §515.32]

**515.33 Record and inspection.** The directors shall keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policyholders if a mutual company, and to the inspection of persons invested by law with the right thereof. [C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §8925; C46, 50, 54, §515.33]

**515.34 Right to own real estate.** No company organized under this chapter shall purchase, hold, or convey any real estate, save for the purpose and in the manner herein set forth:

1. Such as shall be required for the transaction of its business.
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due.
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted

in the legitimate business of the company, or for money due.

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debt, or obtained by redemption as junior judgment creditor or mortgagee; but it may convey real estate which shall be found in the course of its business not necessary therefor, and all such last-mentioned real estate shall be sold and conveyed within three years after the same has been determined, by the commissioner of insurance, unnecessary, unless the company shall procure a certificate from him that the interest of the company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as he may direct in such certificate. [C73,§1137; C97, §1703; C24, 27, 31, 35, 39,§8926; C46, 50, 54, §515.34]

**515.35 Investments.** Any company organized under the provisions of this chapter shall invest its capital and funds in the following described securities and no other:

1. *Federal and territorial obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the United States, federal farm loan bonds, federal home loan bank bonds, home owners' loan corporation bonds, bonds, notes or obligations representing loans and advances of credit which are eligible for insurance by the federal housing administrator, and bonds, notes or obligations secured by real property or leasehold which the federal housing administrator has insured or has committed himself to insure or debentures issued by such administrator.

Investments in federal insured loans, §682.46

2. *State and municipal obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the state of Iowa or any other state, or any county, city, town, school, road, drainage, or other district, or any civil subdivision or governmental authority of such state or states, or any instrumentality of any such authorized by statute to borrow money and issue securities, provided that the obligations are:

a. General or full faith and credit obligations of the issuing or guaranteeing unit, or

b. Payable from assessments levied for improvement purposes and secured by a lien upon real estate, or

c. Payable from especially designated revenues which are specifically pledged to the payment of principal and interest on such obligations.

3. *Canadian government and municipal obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the Dominion of Canada, or any province thereof, or any municipality or district therein with a population in excess of ten thousand according to the last dominion or provincial census taken prior to the date of such investment, which

are general or full faith and credit obligations of the issuing or guaranteeing unit.

4. *Real estate mortgages.* Mortgages and other interest-bearing securities being first liens upon real estate within this or any other state of the United States worth at least double the amount loaned thereon and secured thereby. Improvements shall not be considered in estimating value unless the owner shall contract to keep the same insured in a reliable fire insurance company or companies, association or associations authorized to transact business in this state, during the life of the loan in a sum at least equal to the excess of the loan above one-half of the value of the ground, exclusive of improvements, the insurance to be made payable in case of loss to the company or association investing its funds as its interests may appear at the time of loss. Any mortgage lien upon real estate shall not for the purpose of this section be held or construed to be other than a first lien, by reason of the fact that drainage or other improvement assessments may have been levied against the real estate covered by said mortgage whether the installment of said assessments be matured or not, provided that in determining the value of such real estate for loan purposes the amount of drainage or other assessment tax unpaid shall be first deducted.

5. *Real estate bonds.* Real estate bonds which are first lien upon real estate within this or any other state of the United States, provided the outstanding indebtedness against the property does not exceed sixty percent of the reasonable value thereof and provided further that the average earnings of the property are at least two and one-half times the interest requirements of all outstanding bonds and indebtedness.

6. *Corporate bonds and stocks.* Bonds or other evidences of indebtedness of any solvent corporation organized under the laws of any of the states of the United States; and, not to exceed thirty percent of its capital and funds, in stock of any solvent dividend-paying corporation, organized under the laws of the United States, or any state thereof, other than the company's own stock, provided that no company may invest an amount in excess of ten percent of its capital and surplus in the stock and/or bonds of any one corporation, and provided further that any such company may purchase or acquire its own stock in furtherance of a general savings and investment plan for employees of such company with the approval of the Iowa state insurance commissioner.

7. *Loans.* Any loans secured by collateral security consisting of any securities enumerated in this section, provided there is a margin of ten percent between the amount of the loan and the value of the securities. [C73, §1130; C97,§1699; S13,§1699; C24, 27, 31, 35, 39, §8927; C46, 50, 54,§515.35]

Referred to in §§515.20, 518.12  
Similar provisions, §§511.8, 512.48

**515.36 Financial statements.** After complying with the requirements of the preceding sections of this chapter, the company shall file with the commissioner of insurance a satisfactory detailed statement showing the financial condition of the company, including all transactions had during its organization, together with a record of all moneys received and disbursed, a list of the stockholders, the amount of stock purchased by each, and the price paid. [C97,§1700; C24, 27, 31, 35, 39,§8928; C46, 50, 54,§515.36]

37GA, ch 429,§14, editorially divided

**515.37 Mutual companies.** The incorporators or officers of such mutual company shall file the statement under oath required of stock companies. [C73,§1131; C97,§1700; C24, 27, 31, 35, 39,§8929; C46, 50, 54,§515.37]

**515.38 Examination — certificate of compliance.** Such commissioner may appoint in writing some disinterested person to make an examination and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are now possessed by it in money or such stock, bonds, and mortgages as are required by the preceding sections of this chapter, he shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by him, and under his oath. [C73,§1131; C97, §1700; C24, 27, 31, 35, 39,§8930; C46, 50, 54, §515.38]

**515.39 Ownership of assets—oath.** The incorporators or officers of any such company, or proposed company, shall be required to state to the commissioner of insurance under oath that the capital or assets exhibited to the person making the examination are actually and in good faith the property of the company examined, and free and clear of any lien or claim on the part of any other person. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8931; C46, 50, 54,§515.39]

**515.40 Form of certificate.** The certificate of examination of a mutual company shall be to the effect that it has received and has in its actual possession:

1. The cash premiums.
2. Actual contracts of insurance upon property, belonging to the signers thereof, and upon which the insurance applied for can properly be issued.
3. Other securities, as the case may be, to the extent and value hereinbefore required. [C97,§1700; C24, 27, 31, 35, 39,§8932; C46, 50, 54, §515.40]

**515.41 Certificate of authority.** The certificate and statements above contemplated shall be filed in the insurance department and the commissioner of insurance shall deliver to the company a copy of the report of the examination, in the event one is made, together with

his written permission for it to commence the business proposed in its articles of incorporation, which permission shall be its authority to commence business and issue policies. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8933; C46, 50, 54,§515.41]

**515.42 Tenure of certificate—renewal—evidence.** Such certificate of authority shall expire on the first day of April next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8934; C46, 50, 54,§515.42]

**515.43 Capital increased.** When the directors of a stock company with less than the maximum capital allowed in this chapter desire to increase the amount, they shall, if authorized by the holders of a majority of the stock to do so, file with the commissioner of insurance an amendment of its articles authorizing such increase, not exceeding the maximum authorized capital, and thereupon shall be entitled to have the increased amount of capital fixed by such amendment, and the examination of securities constituting the increased capital stock shall be made in the same manner as provided for the original capital stock. [C73,§1135; C97,§1701; C24, 27, 31, 35, 39,§8935; C46, 50, 54,§515.43]

**515.44 Dividends.** The directors or managers of a stock company, incorporated under the laws of this state shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus. [C73, §1136; C97,§1702; C24, 27, 31, 35, 39,§8936; C46, 50, 54,§515.44]

Referred to in §515.46

**515.45 Reserve fund required.** In estimating the profits, a reserve for unearned premiums as set out in section 515.47, also a reserve for unpaid losses, expenses, and taxes which have been incurred shall be set up; and there shall also be held as nonadmitted assets all sums due the corporation on bonds and mortgages, bonds, stocks, and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest has not been paid; and such judgment with the interest due or accrued thereon and remaining unpaid, shall also be so held. [C73,§1136; C97,§1702; C24, 27, 31, 35, 39,§8937; C46, 50, 54,§515.45]

39GA, ch 190,§1, editorially divided  
Referred to in §515.46

**515.46 Forfeiture of franchise.** Any dividend made contrary to the provisions of sections 515.44 and 515.45 shall subject the company making it to forfeiture of its franchise. [C73,§1136; C97,§1702; C24, 27, 31, 35, 39,§8938; C46, 50, 54,§515.46]

**515.47 Unearned premium reserve—computation.** The policy liability of any company or association, transacting business under the provisions of this chapter, and the amount such company or association shall hold as a reserve for unearned premiums, shall be computed in the following manner:

1. On all policies written or renewed prior to January 1, 1922, there shall be held as such unearned premium reserve an amount equal to forty percent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations.

2. On all policies written or renewed on and after January 1, 1922, and running one year or less from date of policy or last renewal thereof, shall be held as such unearned premium reserve an amount equal to fifty percent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations.

3. On all policies written or renewed on and after January 1, 1922, and running for more than one year, and not exceeding five years, from date of policy or last renewal thereof there shall be held as such unearned premium reserve an amount of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations, computed in accordance with the following table:

Term for which Policy was written	Reserve for Unearned Premium	
Two years	1st year	3-4
	2nd year	1-4
Three years	1st year	5-6
	2nd year	1-2
	3rd year	1-6
Four years	1st year	7-8
	2nd year	5-8
	3rd year	3-8
	4th year	1-8
Five years	1st year	9-10
	2nd year	7-10
	3rd year	1-2
	4th year	3-10
	5th year	1-10

4. On all policies written or renewed on and after January 1, 1922, and running for more than five years from date of policy or last renewal thereof, there shall be held as such unearned premium reserve an amount of the aggregate gross premiums, less deductions for reinsurance in authorized companies or associations equal to the pro rata unearned pre-

mium on all policies in force. The term "pro rata" used herein shall be such proportion of the gross premiums on policies in force as the number of months unexpired bears to the total number of months for which the policy was written.

5. On all policies written or renewed and for which any premium has been received which would continue a policy in force for a period beyond the term for which it was written, or term covered by last renewal thereof, there shall be held as such unearned premium reserve an amount equal to one hundred percent of such premium on all policies in force.

6. Mutual companies or associations, organized, or doing business under this chapter, shall hold as a reserve for unearned premiums an amount equal to at least forty percent of the aggregate gross premiums written in all policies in force less deductions for reinsurance in authorized companies or associations. [C73,§1136; C97,§1702; C24, 27, 31, 35, 39,§8939; C46, 50, 54,§515.47]

Referred to in §§515.45, 515.71

**515.48 Kinds of insurance.** Any company organized under this chapter or authorized to do business in this state may:

1. Insure dwelling houses, stores and all kinds of buildings and household furniture, and other property against direct or indirect or consequential loss or damage, including loss of use or occupancy and the depreciation of property lost or damaged by fire, smoke, smudge, lightning and other electrical disturbances, collision, falls, wind, tornado, cyclone, volcanic eruptions, earthquake, hail, frost, snow, sleet, ice, weather or climatic conditions, including excess or deficiency of moisture, flood, rain, or drought, rising of the waters of the ocean or its tributaries, bombardment invasion, insurrection, riot, strikes, labor disturbances, sabotage, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, and by explosion whether fire ensues or not, except explosion on risks specified in subsection 6 of this section, provided, however, that there may be insured hereunder the following:

a. Explosion of pressure vessels (not including steam boilers of more than fifteen pounds' pressure) in buildings designed and used solely for residential purposes by not more than four families;

b. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured; and

c. Explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and also against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products; and against accidental injury to sprinklers, pumps, water pipes, elevator tanks

and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid or other substance; and against loss or damage to property of the insured caused by the breakage or leakage thereof; or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings; and against loss of and damage to glass, including lettering and ornamentation thereon, and against loss or damage caused by the breakage of glass; and against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft.

Loss by depreciation as herein referred to may include the cost of repair and replacement.

2. Insure the fidelity of persons holding places of private or public trust, or execute any bond or other obligation whenever the performance or refraining from any contract, act, duty or obligation is required or permitted by law to be made, given, or filed, including all bonds in criminal causes, and insure the maker, drawer, drawee, or indorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

3. Insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property from loss, damage or destruction from any cause, and receive them on deposit.

4. Insure against loss or damage by theft, injury, sickness, or death of animals and to furnish veterinary service.

5. *a.* Insure any person, his family or dependents, against bodily injury or death by accident, or against disability on account of sickness, or accident, including the granting of hospital, medical, surgical and sick care benefits.

*b.* Insure against legal liability, and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as the result of error or negligence in rendering expert, fiduciary or professional service.

*c.* Insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkler system and against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of other apparatus or of water pipes or other conduits or containers or resulting from casual water entering into cracks or openings in buildings or by seepage through building walls, but not including loss or damage resulting from flood; and including insurance against accidental injury of such sprinklers, pumps, apparatus, conduits or containers.

*d.* Insure against loss in consequence of accidents or casualties of any kind to em-

ployees, including workmen's compensation, or to persons or property resulting from any act of an employee, or any accident or casualty to person or property, or both, occurring in or connected with the transaction of insured's business, or from the operation of any machinery connected therewith; or to persons or property for which loss the insured is legally liable including an obligation of the insurer to pay medical, hospital, surgical, funeral or other benefits irrespective of legal liability of insured.

*e.* Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances including aircraft, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile or aircraft when sustained through collision with another object, and insure the assured's own automobile or aircraft against loss or damage, including the loss of use thereof, by fire, lightning, windstorm, tornado, cyclone, hail, burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof, or any one or more of such hazards, whether said automobile or aircraft is held under conditional sale, contract, or subject to chattel mortgages.

*Insurer's liability—unsatisfied judgments, §516.1*

*f.* Insure against loss of or damage to any property of the insured resulting from collision of any object with such property.

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings, and other property growing out of explosion or rupture of boilers, pipes, flywheels, engines, pressure containers, machinery, and similar apparatus of any kind including equipment used for creating, transmitting, or applying power, light, heat, steam, air conditioning or refrigeration.

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten percent, representing anticipated profits, and a further deduction not to exceed thirty-three and one-third percent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

Such coinsurance percentages shall be deducted in advance of the agreed normal loss from the gross covered loss sustained by the insured.

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewelry, jewels, profits, commissions, bank notes, bills of exchange, and other evidence of debt, bot-tomry, and respondentia interest and every

insurance appertaining to or connected with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks; and for loss or damage for which the insured is legally liable to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance, storage or use of the subject matter of such insurance; and insure against loss or damage to silverware, musical instruments, furs, garments, fine arts, precious stones, jewels, jewelry, gold, silver, and other precious metals or valuable items whether used in business, transportation, trade or otherwise; and insure automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgage, or any one or more of such hazards, including insurance against loss by reason of bodily injury to the person including medical, hospital and surgical expense irrespective of legal liability of insured.

10. Insure any additional risk not specifically included within any of the foregoing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise. When such additional kind of insurance is approved by the commissioner, he shall designate within which classification of risks provided for in section 515.49 it shall fall. [C73, §1132; C97, §1709; S13, §1709; C24, 27, 31, 35, 39, §8940; C46, 50, 54, §515.48; 56GA, ch 245, §2]

Referred to in §§515.49, 517.1, 763.11  
Action on liability policy, ch 516

**515.49 Limitation on risks.** No company authorized to transact business in this state as provided in this chapter, shall issue policies of insurance for more than one of the purposes or subsections enumerated in section 515.48, except as herein provided, as follows:

1. Any domestic or foreign insurance company authorized in this state to do the business specified in subsection 1 of section 515.48 may, in addition to the business specified in subsec-

tion 1 insure against the casualties specified in subsection 9 of said section.

2. Any domestic or foreign insurance company authorized in this state to do the business contemplated by either subsection 2 or 5 may in addition to such business insure against the casualties specified in subsections 4 and 6 of section 515.48, and also to insure against theft, larceny, burglary and robbery, or attempt thereof.

3. Any domestic or foreign company authorized in this state to transact the business specified in subsection 5 of section 515.48, if it is possessed of a paid-up capital of three hundred thousand dollars, may, in addition to insuring against the casualties specified in subsection 5 transact the business specified in subsections 2, 3, 4 and 6 of said section, and insure against loss of and damage to glass.

4. Any domestic insurance company authorized in this state to transact the business specified in subsection 5 of section 515.48, and possessed of two hundred fifty thousand dollars paid-up capital stock, may, in addition to insuring against the casualties specified in subsection 5, transact the business specified in subsection 4 of said section, and insure against injury or loss to persons or property, or both, contemplated by subsection 6, and may also insure against loss of or damage to glass.

5. Any foreign insurance company authorized in this state to transact the business specified in subsection 5 of section 515.48, if possessed of a paid-up capital or surplus of three hundred thousand dollars, in addition to insuring against the casualties specified in subsection 5, may insure against the casualties specified in subsections 4 and 6 of said section, and also insure against loss of and damage to glass.

6. Any domestic or foreign insurance company authorized in their state to transact the business specified in subsection 2 of section 515.48, if possessed of paid-up capital stock of five hundred thousand dollars, may, in addition to transacting the business authorized by said subsection 2, transact the business of credit insurance as authorized by subsection 8 of said section.

7. Any foreign or domestic mutual insurance company, when found upon examination by the commissioner of insurance to possess surplus and other funds available for the payment of liabilities equal to the capital stock as by law required of like stock insurance companies may transact the same kinds of insurance permitted to like stock insurance companies.

Providing always, that the charter or articles of incorporation of any such company authorizes the writing of such additional insurance.

No company shall expose itself to loss on any one risk or hazard, to an amount exceeding ten percent of its surplus to policyholders, unless the excess shall be reinsured in some other good and reliable company licensed to do an insurance business in this state. But in no case shall such excess reinsurance ex-

ceed ten percent of the capital of the reinsuring company, and that a certificate of such reinsurance shall be furnished to the insured.

The restrictions as to the amount of risk a company may assume shall not be applicable to a company that receives on deposit and guarantees the safekeeping of books, papers, and moneys and other personal property.

8. Any company organized under this chapter or authorized to transact in the state the kinds of insurance business specified in any subsection of section 515.48 may insure and re-insure risks of every kind or description specified in said section providing it maintains a surplus to policyholders of not less than five hundred thousand dollars. Wherever section 515.48 is referred to herein said section shall be deemed to include all amendments or modifications thereof. [C73,§1132; C97,§1710; S13, §1710; C24, 27, 31, 35, 39,§8941; C46, 50, 54, §515.49]

Referred to in §515.48(10)

**515.50 Loans—reinsurance.** Such company may lend money on bottomry or respondentia, and cause itself to be insured in companies only authorized to do business in this state, against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property on account of any such loan, and generally to do and perform all other matters and things proper to promote these objects. [C73,§1132; C97,§1711; S13,§1711; C24, 27, 31, 35, 39,§8942; C46, 50, 54,§515.50]

**515.51 Execution of policies.** All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested by the secretary thereof. [C73,§1133; C97,§1712; C24, 27, 31, 35, 39,§8943; C46, 50, 54,§515.51]

**515.52 Issuance by licensed agents.** No insurance company shall write, issue, or place, or cause to be written, issued, or placed any policy or contract of insurance or indorsement thereto, covering risks on any property, insurable business activity, or interest, located within, or transacted within this state, including any contract of indemnity or suretyship, except through or by a duly licensed agent of such company, residing within this state, who shall before delivery, countersign said policy or contract of insurance or indorsement thereto. No such resident agent shall countersign such policies, contracts of insurance or indorsements in blank. [C35,§8943-e1; C39,§8943.01; C46, 50, 54,§515.52]

Referred to in §§515.53, 515.54, 515.58-515.61

**515.53 Agents on commission only.** Only resident agents within this state, whose compensation for soliciting and writing insurance is by way of commission figured as a percentage of the premium or membership fee for each policy or contract of insurance written,

may countersign policies, contracts of insurance or indorsements thereto within this state. No branch manager, state agent, special agent, or other supervisory agent, or any other representative of an insurance company whose compensation in the insurance business is derived either in whole or in part by salary may countersign policies, contracts of insurance or indorsements thereto on risks located in this state within the purview of section 515.52. [C39,§8943.02; C46, 50, 54,§515.53]

Referred to in §§515.58-515.61

**515.54 Agent within state countersigning—commission.** In the event policies, contracts of insurance or indorsements thereto on risks located within this state as defined in section 515.52 are contracted for or otherwise originate without the state, then in that event, there shall be payable to the countersigning agent, resident of the state, a commission which shall be not less than five percent of the premium charged for such policy, or contract of insurance or indorsement thereto, provided, however, said countersigning commission shall not exceed one-half of the total commission on any line, form, or type of insurance. Nothing herein shall prevent the payment of a larger commission to the resident countersigning agent if agreed to by the interested parties, as hereinafter provided. [C39, §8943.03; C46, 50, 54,§515.54]

Referred to in §§515.55, 515.56, 515.58-515.61

**515.55 Commission agreements enforceable.** In the event that any insurance company is furnished with a written signed agreement, duly executed by and between a forwarding nonresident agent or broker and a resident countersigning agent, providing for a commission in excess of that provided in section 515.54, then and in that event until notice is received by the company to the contrary, the commission due and payable to the resident countersigning agent shall be as contained in said agreement, and the rights of such resident countersigning agent to enforce payment thereof shall be the same as are applicable to the commission provided for in said section. [C39,§8943.04; C46, 50, 54,§515.55]

Referred to in §§515.56, 515.58-515.61

**515.56 Action on claim.** The resident countersigning agent shall have a direct claim against the insurance company issuing such policy, or contract of insurance or indorsement thereto for his commission in accordance with sections 515.54 and 515.55. The liability of such company for such commission may be enforced in an action at law or equity as the case may be. [C39,§8943.05; C46, 50, 54,§515.56]

Referred to in §§515.58-515.61

**515.57 Records of out-of-state contracts.** It shall be the duty of every resident countersigning agent for business originating without this state but covering property or business transactions within this state, and the insurance companies issuing such policies, to keep a written record of each such transaction



which shall contain the name of the company issuing the policy, the name of the assured, the number of the policy, the expiration date thereof and the amount of the premium payable thereunder, and such record shall be subject to the inspection of the commissioner of insurance for the purpose of verifying the amount of premium tax payable by such company under the provisions of chapter 432. [C39,§8943.06; C46, 50, 54,§515.57]

Referred to in §§515.58-515.61

**515.58 Contracts covered and exempt.** The provisions of sections 515.52 to 515.57, inclusive, shall be applicable to all companies doing business under this chapter and interinsurance exchanges engaged in business under the provisions of chapter 520, when such companies or exchanges are engaged in business on the commission basis, and the agents thereof, but shall not have application to life insurance companies, associations doing business under chapter 518, domestic insurance companies or exchanges, or companies or exchanges who solicit insurance exclusively by salaried representatives who are paid no commission on business written, or to the business of mutual insurance companies obtained through salaried representatives and upon which no commission is paid; nor shall such sections apply to insurance on rolling stock of railroad corporations operating between states, or property in transit from one state to another while in possession of railroads or other common carriers; or to insurance upon ocean marine risks or property in transportation. [C35,§8943-e2; C39, §8943.07; C46, 50, 54,§515.58]

Referred to in §§515.59-515.61

**515.59 Commissioner's power to enforce.** The commissioner of insurance may revoke or suspend the certificate of authority of any insurance company or exchange violating the provisions of any of sections 515.52 to 515.58, inclusive, or the license of any agent violating any of such sections. [C39,§8943.08; C46, 50, 54, §515.59]

Referred to in §§515.60, 515.61

**515.60 Penalty.** Any employee, representative, or agent of an insurance company violating any of the provisions of sections 515.52 to 515.59, inclusive, shall be guilty of a misdemeanor, and upon conviction shall be liable to imprisonment for a term of not to exceed thirty days or for a fine not to exceed one hundred dollars or for both such fine and imprisonment. [C39,§8943.09; C46, 50, 54, §515.60]

Referred to in §515.61

**515.61 Lawful commissions in other states applicable.** If, by the existing or future laws of any state, a higher commission is payable to agents resident of such state on risks located in such state, the policies or contracts of insurance for which originate in this state, then and in that event the resident countersigning agent under sections 515.52 to 515.60, inclusive,

shall be entitled to a like commission on risks located in this state as defined in section 515.52 and which are contracted for or otherwise originate in such other state. [C39,§8943.10; C46, 50, 54,§515.61]

**515.62 Transfer of stock.** Transfers of stock made by any stockholder or his legal representative shall be subject to the provisions of chapters 491 and 492 relative to transfer of shares, and to such restrictions as the directors shall establish in their bylaws, except as hereinafter provided. [C73,§1134; C97,§1713; C24, 27, 31, 35, 39,§8944; C46, 50, 54,§515.62]

**515.63 Annual statement.** The president or the vice-president and secretary of each company organized or authorized to do business in the state shall annually before the first day of March of each year prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

First—The amount of capital stock of the company.

Second—The names of the officers.

Third—The name of the company and where located.

Fourth—The amount of its capital stock paid up.

Fifth—The property or assets held by the company, specifying:

1. The value of real estate owned by the company.

2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

3. The amount of cash in the hands of agents and in the course of transmission.

4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

5. The amount of all other bonds and loans and how secured, with the rate of interest thereon.

6. The amount due the company on which judgment has been obtained.

7. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

8. The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.

9. The amount of assessments on stock and premium notes, paid and unpaid.

10. The amount of interest actually due and unpaid.

11. All other securities and their value.



12. The amount for which premium notes have been given on which policies have been issued.

Sixth—Liabilities of such company, specifying:

1. Losses adjusted and due.
2. Losses adjusted and not due.
3. Losses unadjusted.
4. Losses in suspense and the cause thereof.
5. Losses resisted and in litigation.
6. Dividends in scrip or cash, specifying the amount of each, declared but not due.
7. Dividends declared and due.
8. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.
9. The amount due banks or other creditors.
10. The amount of money borrowed and the security therefor.
11. All other claims against the company.

Seventh—The income of the company during the previous year, specifying:

1. The amount received for premiums, exclusive of premium notes.
2. The amount of premium notes received.
3. The amount received for interest.
4. The amount received for assessments or calls on stock notes, or premium notes.
5. The amount received from all other sources.

Eighth—The expenditures during the preceding year, specifying:

1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.
2. The amount paid for dividends.
3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.
4. The amount paid for salaries, fees, and other charges of officers and directors.
5. The amount paid for local, state, national, and other taxes and duties.
6. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

Ninth—The largest amount insured in any one risk.

Tenth—The amount of risks written during the year then ending.

Eleventh—The amount of risks in force having less than one year to run.

Twelfth—The amount of risks in force having more than one and not over three years to run.

Thirteenth—The amount of risks having more than three years to run.

Fourteenth—The dividends, if any, declared on premiums received for risks not terminated. [C73,§1141; C97,§1714; C24, 27, 31, 35, 39,§8945; C46, 50, 54,§515.63]

C97,§1714, editorially divided  
Referred to in §511.3

**515.64 Accident insurance—record.** Each accident insurance company, or company insuring against accidents, shall keep a register of tickets sold or policies issued by its officers or agents, which register shall show the name and residence of the person insured, the amount of insurance, the date of issue of such ticket or policy, and the time the same will remain in force; and the annual statement of each such company shall show the number of tickets sold and policies issued by it during the year, and the aggregate amount of insurance evidenced by such tickets and policies, classified as to the length of time for which such insurance is given. [C73,§1141; C97,§1714; C24, 27, 31, 35, 39,§8946; C46, 50, 54,§515.64]

Referred to in §511.3

**515.65 Certificate refused.** The commissioner of insurance shall withhold his certificate or permission of authority to do business from any company neglecting or failing to comply with the provisions of this chapter. [C97,§1715; C24, 27, 31, 35, 39,§8947; C46, 50, 54,§515.65]

**515.66 Annual statement of foreign company.** The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state. [C73,§1146; C97,§1716; C24, 27, 31, 35, 39,§8948; C46, 50, 54,§515.66]

**515.67 Inquiry by commissioner.** The commissioner of insurance shall address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto. [C73,§1142; C97,§1718; C24, 27, 31, 35, 39,§8949; C46, 50, 54,§515.67]

**515.68 Forms for statements.** He shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated in other states and foreign governments, who may apply therefor, printed forms of statements required by this chapter, and may from time to time make such changes in the forms as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated. [C73,§1157; C97,§1719; C24, 27, 31, 35, 39,§8950; C46, 50, 54,§515.68]

**515.69 Foreign companies—capital required.** No stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this

chapter, shall, directly or indirectly, take risks or transact any business of insurance in this state unless possessed of two hundred thousand dollars of actual paid-up capital, exclusive of any assets deposited in any state, territory, district, or country for the special benefit or security of those insured therein, but companies organized to insure plate glass, or livestock exclusively, are not required to have a greater capital than one hundred thousand dollars; and such companies organized to insure the health of persons and against personal injuries, disablement or death resulting from traveling or general accidents by land or water, having an actual paid-up capital of one hundred thousand dollars and surplus in an amount to be approved by the commissioner of insurance, exclusive of any assets deposited in other states and territories for the special benefit or security of the insured therein, shall be deemed sufficient within the meaning of this section. [C73,§1144; C97,§1721; SS15,§1721; C24, 27, 31, 35, 39,§8951; C46, 50, 54,§515.69]

**515.70 Alien insurer defined.** An alien insurer is hereby defined to mean an insurance company incorporated or organized under the laws of any country other than the United States. [C46, 50, 54,§515.70]

**515.71 Deposit of securities—amount.** Every alien insurer authorized to transact business in this state shall at all times maintain a deposit with the commissioner of insurance in cash or in securities in which insurance companies are authorized to invest, a sum equal to the unearned premium reserve on all policies covering risks located in this state. Such securities shall be approved, and the amount of such deposit shall be determined, by the commissioner in accordance with section 515.47, provided, that the minimum amount of any deposit shall be twenty-five thousand dollars. The commissioner, in his discretion, may permit the withdrawal of interest earnings.

In lieu of the deposit provided herein any such alien insurer may file with the commissioner a bond of equal amount executed by a licensed United States surety company, so conditioned for the protection of Iowa creditors and policyholders.

No such alien insurer shall be granted a certificate of authority to transact business in this state, or a renewal thereof, until such deposit shall have been made, and the commissioner may revoke the certificate of authority of any such alien insurer which fails to make such deposit within a reasonable period of time after April 23, 1941. [C46, 50, 54,§515.71]

**515.72 Insolvency of company—procedure.** In the event of insolvency or receivership of any such alien insurer the title to the cash or securities so deposited shall vest in the commissioner of insurance for the use and benefit of the policies issued by said insurer and outstanding in this state, and in such event the commissioner shall be appointed receiver of said insurer by the district court, in and for

Polk county, with the right, subject to the court's approval, to reinsure said policies in some insurance company or association authorized to do business in this state, or to liquidate said deposit for the sole benefit of the policies for which said deposit was made. [C46, 50, 54, §515.72]

Constitutionality, 49GA, ch 277,§4

**515.73 Commissioner as process agent.** Any foreign company desiring to transact the business of insurance under this chapter, by an agent or agents in the state, shall file with the commissioner of insurance a written instrument, duly signed and sealed, authorizing such commissioner to acknowledge service of notice or process for and in behalf of such company in this state, and consenting that service of notice or process may be made upon the said commissioner, and when so made shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim, or right, of error, by reason of such acknowledgment of service. [C73,§1144; C97,§1722; C24, 27, 31, 35, 39,§8952; C46, 50, 54,§515.73]

C97,§1722, editorially divided  
Similar provisions, §§491.15, 494.2, 511.27, 512.22, 520.5, 534.74

**515.74 Manner of service.** Such notice or process with a copy thereof may be mailed to the commissioner of insurance at Des Moines, Iowa, in a certified mail letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C97,§1722; C24, 27, 31, 35, 39,§8953; C46, 50, 54,§515.74; 57GA, ch 267,§75]

**515.75 Additional statements—impaired capital.** Such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice-president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty percent thereof, while such deficiency shall continue. [C73,§1144; C97,§1722; C24, 27, 31, 35, 39,§8954; C46, 50, 54,§515.75]

**515.76 Foreign mutual companies—surplus.**

Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

1. In case any such mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two hundred thousand dollars.

2. In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than fifty thousand dollars, provided that the provisions of this section fixing a minimum surplus of fifty thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least two hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company of this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least two hundred thousand dollars. [C73,§1144; C97,§1723; C24, 27, 31, 35, 39,§8955; C46, 50, 54,§515.76]

**515.77 Certificate to foreign company.** When any foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of April, if the commissioner is satisfied that the capital, securities, and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto. [C73,§1146; C97,§1724; C24, 27, 31, 35, 39,§8956; C46, 50, 54,§515.77]

**515.78 Agent's certificate of authority.** No agent shall directly or indirectly act for any insurance company referred to in this chap-

ter, in taking risks or transacting business of insurance in the state, without procuring from the commissioner of insurance a certificate of authority to the effect that such company has complied with all the requirements of this chapter. [C73,§1145; C97,§1725; C24, 27, 31, 35, 39,§8957; C46, 50, 54,§515.78]

**515.79 Notes taken for insurance.** All notes taken for policies of insurance in any company doing business in the state shall state upon their face that they have been taken for insurance, and shall not be collectible unless the company and its agents have fully complied with the laws of the state relative to insurance. [C73,§1146; C97,§1726; C24, 27, 31, 35, 39,§8958; C46, 50, 54,§515.79]

**515.80 Forfeiture of policies—notice.** No policy or contract of insurance provided for in this chapter shall be forfeited or suspended for nonpayment of any premium, assessment, or installment provided for in the policy, or in any note or contract for the payment thereof, unless within thirty days prior to, or on or after the maturity thereof, the company shall serve notice in writing upon the insured that such premium, assessment, or installment is due or to become due, stating the amount, and the amount necessary to pay the customary short rates, up to the time fixed in the notice when the insurance will be suspended, forfeited, or canceled, which shall not be less than thirty days after service of such notice, which may be made in person, or by mailing in a certified mail letter addressed to the insured at his post office as given in or upon the policy, and no suspension, forfeiture, or cancellation shall take effect until the time thus fixed and except as herein provided, anything in the policy, application, or a separate agreement to the contrary notwithstanding. [C97,§1727; C24, 27, 31, 35, 39,§8959; C46, 50, 54,§515.80; 57GA, ch 267,§76]

Referred to in §515.82

**515.81 Cancellation of policy—notice to insured or mortgagee.** At any time after the maturity of a premium, assessment, or installment provided for in the policy, or any note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of any policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may then, if he so elect, have his policy and all contracts or obligations connected therewith, whether in judgment or otherwise, canceled, and they and each of them thereafter shall be void; and in case of suspension, forfeiture, or cancellation of any policy or contract of insurance, the assured shall not be liable for any greater amount than the short rates earned at the date of such suspension, forfeiture, or cancellation and the costs herein provided. The policy may be canceled by the insurance company by giving five days notice of such cancellation, in which event it may retain only the

pro rata premium, and in the event the initial cash premium, or any part thereof, shall not have been paid, then said policy may be canceled by the insurer by giving said notice to the insured and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part or portion of such premium, anything to the contrary in the policy notwithstanding. [C97,§1728; S13,§1728; C24, 27, 31, 35, 39,§8960; C46, 50, 54,§515.81]

Referred to in §515.82

**515.82 Short rates.** The commissioner of insurance shall prepare and promulgate tables of the short rates provided for in sections 515.80 and 515.81, for the various kinds and classes of insurance governed by the provisions of this chapter, which, when promulgated, shall be for the guidance of all companies covered in this chapter and shall be the rate to be given in any notice therein required. No company shall discriminate unfairly between like assureds in the rate or rates so provided. [C97, §1729; C24, 27, 31, 35, 39,§8961; C46, 50, 54, §515.82]

**515.83 Policy restored.** At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs. [C97,§1730; C24, 27, 31, 35, 39, §8962; C46, 50, 54,§515.83]

C97,§1730, editorially divided

**515.84 Right of insured to cancel.** No provision, stipulation, or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled. [C97,§1730; C24, 27, 31, 35, 39,§8963; C46, 50, 54, §515.84]

**515.85 Examination—dissolution.** The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and

the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty percent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge. [C73,§1149; C97,§1731; C24, 27, 31, 35, 39, §8964; C46, 50, 54,§515.85]

Referred to in §507.11

**515.86 Requisition on stockholders—personal liability.** Any company receiving such a requisition from the commissioner of insurance shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the amount fixed by this chapter or the articles of incorporation of said company; and in case any stockholder shall refuse or neglect to pay the amount called for after notice personally given, or by advertisement in such time and manner as the commissioner shall approve, it shall be lawful for the company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to its original capital, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the commissioner, the company paying for the fractional parts of shares, and the directors of such company may issue new stock and dispose of the same, and issue new certificates therefor, to an amount sufficient to make up the original capital of the company. In the event of additional losses accruing upon new risks, taken after the expiration of the period limited by the commissioner in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have

been made up, the directors shall be individually liable to the extent thereof. [C73,§1150; C97,§1732; C24, 27, 31, 35, 39,§8965; C46, 50, 54, §515.86]

Referred to in §507.11

**515.87 Mutual companies—dissolution—personal liability.** If, upon such examination, it shall appear to the commissioner of insurance that the assets of any company organized or operating upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the commissioner for filling up the deficiency in the assets or premium notes, and before such deficiency shall have been made up. [C73,§1151; C97,§1733; C24, 27, 31, 35, 39,§8966; C46, 50, 54,§515.87]

**515.88 Transfers pending investigation.** Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer. [C73,§1151; C97,§1734; C24, 27, 31, 35, 39,§8967; C46, 50, 54,§515.88]

**515.89 Revocation of certificate of foreign company.** The commissioner of insurance shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company; and when it shall appear to his satisfaction that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in its behalf, and cause a notification thereof to be published in some newspaper of general circulation, published at the seat of government, and no agent or agents of such company after such notice shall issue policies or renew any previously issued. [C73,§1152; C97,§1735; C24, 27, 31, 35, 39,§8968; C46, 50, 54,§515.89]

**515.90 Certificates of compliance—how published.** The commissioner of insurance shall annually, as soon as practicable after the first of March, publish in two newspapers of general circulation, a statement made up from the annual report of every insurance company of the character provided for in this chapter and doing business in this state whether organized under the laws of this or any other state, which statements shall contain a synopsis of the company's annual report and shall show that the company has in all respects complied with the laws of the state relating to insurance and is authorized to transact business in the state. The publications as above contemplated shall be made in newspapers published in different

counties, but in the case of companies organized in this state, one publication shall be made in the county in which the home office of the company is located, but no two publications to be made in the same county. The fee for each publication shall be ten dollars, which shall be paid to the commissioner at the time and in the manner provided for in section 515.128, and shall be by him paid to the papers making the publication upon receipt of a bill for same, together with an affidavit by the publisher or foreman showing that such publication has been properly made, the same to be filed within thirty days from the date of such publication. [C73,§1155; C97,§1737; S13,§1737; C24, 27, 31, 35, 39,§8970; C46, 50, 54,§515.90]

**515.91 False statement of assets.** No company transacting the business of fire insurance within the state shall state or represent by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, any funds or assets to be in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business. [C97,§1738; C24, 27, 31, 35, 39,§8971; C46, 50, 54,§515.91]

Referred to in §515.93

**515.92 Statement of capital and surplus.** Every advertisement or public announcement, and every sign, circular, or card issued or published by any foreign company transacting the business of fire insurance in the state, or by any officer, agent, or representative thereof, which shall purport to make known its financial standing, shall exhibit the capital actually paid in in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, and the same shall correspond with the latest verified statement made by the company or association to the commissioner of insurance. No such company shall write, place, or cause to be written or placed, any policy or contract for insurance upon property situated or located in this state except through its resident agent or agents. [C97,§1739; C24, 27, 31, 35, 39,§8972; C46, 50, 54,§515.92]

Referred to in §515.93

**515.93 Violations.** Any violation of the provisions of sections 515.91 and 515.92 shall for the first offense subject the company, association, or individual guilty thereof to a penalty of five hundred dollars, to be recovered in the

name of the state, with costs, in an action instituted by the county attorney, either in the county in which the company, association, or individual is located or transacts business, or in the county where the offense is committed, and such penalty, when recovered, shall be paid into the school fund of the county in which action is brought. Every subsequent violation of said sections shall subject the company, association, or individual to a penalty of one thousand dollars, to be sued for, recovered, and disposed of in like manner. [C97, §1740; C24, 27, 31, 35, 39, §8973; C46, 50, 54, §515.93]

**515.94 Copy of application—duty to attach.** All insurance companies or associations shall, upon the issue or renewal of any policy, attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which, by the terms of such policy, is made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy. [C97, §1741; C24, 27, 31, 35, 39, §8974; C46, 50, 54, §515.94]

C97, §1741, editorially divided  
 Referred to in §515.95  
 Similar provisions, §§511.33, 512.14

**515.95 Failure to attach—effect.** The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 515.94 it shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C97, §1741; C24, 27, 31, 35, 39, §8975; C46, 50, 54, §515.95]

Similar provisions, §§511.34, 512.15

**515.96 Presumption as to value.** In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima-facie evidence of the insurable value of the property at the date of the policy. [C97, §1742; C24, 27, 31, 35, 39, §8976; C46, 50, 54, §515.96]

C97, §1742, editorially divided  
 Similar provision, §518.25

**515.97 Value of building—liability.** The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said insurance company or association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy. [C97, §1742; C24, 27, 31, 35, 39, §8977; C46, 50, 54, §515.97]

Similar provision, §518.24

**515.98 Prima-facie right of recovery.** In an action on such policy it shall only be necessary for the assured to prove the loss of the building insured, and that he has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within his knowledge, and the extent of his loss. [C97, §1742; C24, 27, 31, 35, 39, §8978; C46, 50, 54, §515.98]

Similar provisions, §§511.35, 514A.3, 518.19

**515.99** Repealed by 52GA, ch 263, §5. See §515.138.

**515.100 Notice of loss of personal property by hail.** In case of loss to growing crops by hail, notice of such loss must be given to the company by the insured by mailing a certified mail letter within ten days from the time such loss or damage occurs. [C46, 50, 54, §515.100; 57GA, ch 267, §77]

**515.101 Invalidating stipulations — avoidance.** Any condition or stipulation in an application, policy, or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss. [C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §8980; C46, 50, 54, §515.101]

S13, §1743, editorially divided  
 Referred to in §§515.102, 515.105, 515.106

**515.102 Conditions invalidating policy.** Any condition or stipulation referring:

1. To any other insurance, valid or invalid, or
  2. To vacancy of the insured premises, or
  3. To the title or ownership of the property insured, or
  4. To lien, or encumbrances thereon created by voluntary act of the insured and within his control, except a lien accruing to the benefit of the old-age pension fund as provided for in sections 249.19 and 249.20, or
  5. To the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or
  6. To the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or
  7. To the removal of the property insured, or
  8. To a change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous, or
  9. To the fraud of the insured in the procurement of the contract of insurance—
- shall not be changed or affected by the provision of section 515.101. [C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §8981; C46, 50, 54, §515.102]

Referred to in §§515.105, 515.106

**515.103 and 515.104** Repealed by 52GA, ch 263, §5. See §515.138.

**515.105 Pleadings.** Nothing in sections 515.101 and 515.102 shall be construed to change the limitations or restrictions respecting the pleading or proving of any defense by any insurance company to which it is subject by law. [C97,§1743; S13,§1743; C24, 27, 31, 35, 39,§8984; C46, 50, 54,§515.105]

Referred to in §515.106

**515.106 Applicability of statute.** The provisions of sections 515.101, 515.102, and 515.105 shall apply to all contracts of insurance on real and personal property. [C97,§1743; S13, §1743; C24, 27, 31, 35, 39,§8985; C46, 50, 54, §515.106]

**515.107** Repealed by 52GA, ch 263,§5. See §515.138.

**515.108 More favorable conditions.** Nothing contained in section 515.138 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes. [C24, 27, 31, 35, 39,§8987; C46, 50, 54,§515.108]

**515.109 Forms of policies and indorsements—approval.** The form of all policies, and of applications, and of agreements or indorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance. [C97,§1745; S13,§1745; C24, 27, 31, 35, 39,§8988; C46, 50, 54, §515.109]

S13,§1745, editorially divided

**515.110 Special policy requirements.** Such commissioner shall refuse to authorize it to do business or to renew its permission to do business when the form of policy issued or proposed to be issued does not provide for the cancellation of the same at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance be in a mutual company; and in case any company or association shall issue any policies not containing such provision, it shall be the duty of the commissioner to revoke the authority of such company or association to do business. [C97,§1745; S13,§1745; C24, 27, 31, 35, 39,§8989; C46, 50, 54, §515.110]

**515.111 Coinsurance or contribution clause.** Contracts of insurance against loss or damage by fire or other perils may contain a coinsurance or contribution clause or clause having

similar effect, provided the form setting up the terms of the same has been approved by the commissioner of insurance. [C97,§1746; S13,§1746; C24, 27, 31, 35, 39,§8990–8995, 8997; C46, 50, 54,§515.111–515.116, 515.118; 56GA, ch 245,§1]

**515.112 to 515.116, inc.** Repealed by 56GA, ch 245,§1. See §515.111.

**515.117** Repealed by 52GA, ch 263,§5. See §515.138.

**515.118** Repealed by 56GA, ch 245,§1. See §515.111.

**515.119 Compliance with law—change of articles.** Every insurance company organized under the laws of or doing business in this state shall conform to all the provisions of this chapter and to other laws of this state, whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and bylaws so as to conform thereto, by a vote of a majority of its board of directors. [C73,§1147; C97,§1747; C24, 27, 31, 35, 39,§8998; C46, 50, 54,§515.119]

C97,§1747, editorially divided

**515.120 Violations.** Any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C73,§1147; C97,§1747; C24, 27, 31, 35, 39,§8999; C46, 50, 54,§515.120]

**515.121 Officers punished.** Any president, secretary, or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months. [C73,§1147; C97,§1748; C24, 27, 31, 35, 39,§9000; C46, 50, 54, §515.121]

**515.122 Advertisements.** Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village in which it is located, and the state

or government under the laws of which it is organized. [C73,§1148; C97,§1749; C24, 27, 31, 35, 39,§9001; C46, 50, 54,§515.122]

C97,§1749, editorially divided  
 Referred to in §511.4  
 Applicable to life companies, §511.4

**515.123 "Soliciting agent" defined.** Any person who shall hereafter solicit insurance or procure application therefor shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application or on a renewal thereof, anything in the application, policy, or contract to the contrary notwithstanding. [C73,§1148; C97,§1749; C24, 27, 31, 35, 39,§9002; C46, 50, 54,§515.123]

Referred to in §511.4  
 Applicable to life companies, §511.4

**515.124 Agent—general definition.** The term "agent" used in the foregoing sections of this chapter shall include any other person who shall in any manner directly or indirectly transact the insurance business for any insurance company complying with the laws of this state. [C97,§1750; C24, 27, 31, 35, 39,§9003; C46, 50, 54,§515.124]

C97,§1750, editorially divided  
 Referred to in §511.4  
 Applicable to life companies, §511.4

**515.125 Agent—specific definition.** Any officer, agent, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of his employment, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding. [C97,§1750; C24, 27, 31, 35, 39,§9004; C46, 50, 54,§515.125]

Referred to in §511.4  
 Applicable to life companies, §511.4

**515.126 Exceptions.** Members of mutual assessment associations which pay no commission, reward, or gratuity for the procuring of applications for membership, the income of which associations is derived solely from assessments, dues, and fees collected from its members for the sole purpose of meeting loss and expenses, shall not be deemed to be agents under any section of this chapter. [C24, 27, 31, 35, 39,§9005; C46, 50, 54,§515.126]

Referred to in §511.4  
 Applicable to life companies, §511.4

**515.127 Applicability to organizations and individuals.** The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not. [C73,§1148; C97,§1751; C24, 27, 31, 35, 39,§9006; C46, 50, 54,§515.127]

**515.128 Fees.** There shall be paid to the commissioner of insurance for services required under the provisions of this chapter the following fees, which shall be accounted for by him in the same manner as other fees received in the discharge of the duties of his office:

1. For filing and examination of the first application of any company and accompanying articles of incorporation for organization in this state, and the issuing of the permission to do business, ten dollars.

2. For filing application of any foreign company for certificate to do business in this state, and the accompanying certified copy of charter or articles of incorporation, twenty-five dollars.

3. For permission to foreign company to do business in this state, or certified copy thereof, two dollars.

4. For filing annual statement of a domestic company, and issuing the renewal of the permission required by law to authorize continuance in business, three dollars.

5. For filing annual statement of a foreign company, twenty dollars, and issuing renewal of permission, two dollars.

6. For certificate of authority to agent of foreign company, two dollars.

7. For each certificate of authority to agent of domestic company, fifty cents.

8. For every copy of any paper filed, the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, one dollar.

9. For each certificate for publication of foreign companies, two dollars, and for each certificate for publication of Iowa companies, fifty cents. [C73,§1153; C97,§1752; S13,§1752; C24, 27, 31, 35, 39,§9007; C46, 50, 54,§515.128]

Referred to in §515.90  
 Deposit of fees, §12.10

**515.129 Expenses of examination.** The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by him, and paid on his requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the state comptroller and paid out of the state treasury. [C73,§1156; C97,§1753; C24, 27, 31, 35, 39,§9008; C46, 50, 54, §515.129]

C97,§1753, editorially divided

**515.130** Repealed by 53GA, ch 213,§1. See §507.2.

**515.131 Unlawful combinations—exceptions.** It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state, but any number of insurance companies may appoint the same person or persons, who shall be residents of the state of Iowa, as their common



agent or agents for the purpose of filing, in the manner prescribed by the insurance commissioner of Iowa, the forms of policies and of all permits and riders used generally throughout the state, as required by the laws of this state to be examined and approved by the said commissioner. [C97,§1754; C24, 27, 31, 35, 39,§9010; C46, 50, 54,§515.131]

C97,§1754, editorially divided  
Referred to in §§515.133, 515.134, 515A.19, 515B.18

**515.132 Violations.** Any such company, officer, agent, or employee violating the above provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund. [C97,§1754; C24, 27, 31, 35, 39,§9011; C46, 50, 54,§515.132]

**515.133 Examination of officers and employees.** The commissioner of insurance is authorized to summon before him, for examination under oath, any officer, agent, or employee of any such company suspected of violating any of the provisions of section 515.131, and, on complaint to him in writing by two or more residents of this state charging such company under oath upon their knowledge or belief with violating the provisions of said section, he shall summon any officer, agent, or employee of said company before him for examination under oath. [C97,§1755; C24, 27, 31, 35, 39,§9012; C46, 50, 54,§515.133]

C97,§1755, editorially divided  
Referred to in §515.136

**515.134 Revocation of authority.** If upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of section 515.131, or if any such officer, agent, or employee after being duly summoned shall fail to appear or submit to examination, the commissioner shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom. [C97,§1755; C24, 27, 31, 35, 39,§9013; C46, 50, 54,§515.134]

Referred to in §§515.135, 515.136

**515.135 Appeal.** Either party may appeal from the decision of the commissioner of insurance, made pursuant to section 515.134, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the commissioner, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case de novo, as equitable causes are tried, and on such evidence as either party may produce, and may

reverse, modify, or affirm the decision of the commissioner. [C97,§1756; C24, 27, 31, 35, 39, §9014; C46, 50, 54,§515.135]

Referred to in §515.136  
Docketing appeals, R.C.P. 181, 356  
Presumption of approval of bond, §682.10

**515.136 Incrimination.** The statements and declarations made or testimony given by any such officer, agent, or employee in the investigation before the commissioner of insurance, or upon the hearing and trial before the district court, as provided in sections 515.133 to 515.135, inclusive, shall not be used against the person making the same in any criminal prosecution against him. [C97,§1757; C24, 27, 31, 35, 39, §9015; C46, 50, 54,§515.136]

Incrimination generally, §c22.14 et seq.

**515.137 Insurance in unauthorized companies.** No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two percent of the gross premium paid or agreed to be paid for such policy or contract of insurance. [C97,§1758; C24, 27, 31, 35, 39,§9016; C46, 50, 54,§515.137]

**515.138 Fire insurance contract—standard policy provisions—permissible variations.**

*First.* The printed form of a policy of fire insurance as set forth in subsection sixth shall be known and designated as the "standard policy" to be used in the state of Iowa.

*Second. Standard policy, additions, riders and clauses.* It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles, airplanes, seaplanes, dirigibles, or other aircraft, farm crops until stored, marine and inland marine risks other or different from the standard form of fire insurance policy herein set forth.

There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers; and subject to the approval of the commissioner of insurance, there may be added thereto such device or devices as the insurer or insurers issuing said policy shall desire. Provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

The standard policy provided for herein need not be used for effecting reinsurance between insurers.

If the policy is issued by a mutual, cooperative or reciprocal insurer having special

regulations with respect to the payment by the policyholder of assessments, such regulations shall be printed upon the policy, and any such insurer may print upon the policy such regulations as may be required by its home state or appropriate to its form of organization.

*Third.* Binders or other contracts for temporary insurance may be made and shall be deemed to include all the terms of such standard policy and all such applicable indorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

*Fourth.* Two or more insurers authorized to do in this state the business of fire insurance, may, with the approval of the commissioner of insurance, issue a combination standard form of policy which shall contain the following:

a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

*Fifth.* Appropriate forms of other contracts or indorsements, insuring against one or more of the perils incident to the ownership, use or occupancy of said property, other than fire and lightning, which the insurer is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or indorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged to provide space for the listing of rates and premiums for coverages insured thereunder or under indorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records.

*Sixth.* The form of the standard policy (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

FIRST PAGE OF STANDARD FIRE POLICY

No. ....

(Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.)

(Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and

for additional coverages or perils insured under indorsements attached.)

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND OF..... DOLLARS PREMIUM this company, for the term of .....from the ... day of....., 19...., to the ... day of ....., 19...., at noon, Standard Time, at location of property involved, to an amount not exceeding..... Dollars, does insure..... and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at .....

Secretary. President. Countersigned this ... day of ....., 19.... Agent.

SECOND PAGE OF STANDARD FIRE POLICY

*Concealment—fraud.* This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

*Uninsurable and excepted property.* This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

*Perils not included.* This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

*Other insurance.* Other insurance may be prohibited or the amount of insurance may be limited by indorsement attached hereto.

*Conditions suspending or restricting insurance.* Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring

a. While the hazard is increased by any means within the control or knowledge of the insured; or

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

c. As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

*Other perils or subjects.* Any other peril to be insured against or subject of insurance to be covered in this policy shall be by indorsement in writing hereon or added hereto.

*Added provisions.* The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

*Waiver provisions.* No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

*Cancellation of policy.* This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time,

which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

*Mortgagee interests and obligations.* If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a ten days written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

*Pro rata liability.* This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

*Requirements in case loss occurs.* The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amounts of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE INSURED SHALL RENDER TO THIS COMPANY A PROOF OF LOSS, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examina-

tions under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

*Appraisal.* In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

*Company's options.* It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

*Abandonment.* There can be no abandonment to this company of any property.

*When loss payable.* The amount of loss for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

*Suit.* No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

*Subrogation.* This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

FOURTH PAGE OF STANDARD FIRE POLICY  
Standard Fire Insurance Policy

Expires .....	
Property .....	
	Total
Amount \$.....	Premium \$.....
Insured .....	

SEE INSIDE OF POLICY FOR PERILS COVERED  
No.

(Space of approximately two (2) inches for use of Agent or Insurer.)

(Space of approximately two (2) inches for use of Agent or Insurer.)

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once. [C97, §§1743, 1744, 1746; S13, §§1742-a, 1743, 1744, 1746, 1758-a, 1758-b; C24, §§8979, 8982, 8983, 8986, 8996, 9017, 9018; C27, 31, 35, §§8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021-a1; C39, §§8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021.1; C46, §§515.99, 515.103, 515.104, 515.107, 515.117, 515.138, 515.139, 515.143; C50, 54, §515.138]

Referred to in §§515.108, 515.140, 515.141  
Omnibus repeal, 52GA, ch 263, §6  
Constitutionality, 52GA, ch 263, §7

**515.139** Repealed by 52GA, ch 263, §5. See §515.138.

**515.140 Violations—status of policy.** Any insurance company, its officers or agents, or either of them, violating any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a misdemeanor, and upon complaint made by the commissioner of insurance, or by any citizen of this state, shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same. [S13, §1758-c; C24, 27, 31, 35, 39, §9019; C46, 50, 54, §515.140]

Referred to in §515.141

**515.141 Existing statutes—waiver.** Nothing contained in sections 515.138 and 515.140, nor any provisions or conditions in the standard form of policy provided for in section 515.138, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such pro-

visions or conditions shall be in the interest of the insured. [S13,§1758-d; C24, 27, 31, 35, 39, §9020; C46, 50, 54,§515.141]

**515.142 Policy—formal execution.** Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back, anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated. [SS15, §1758-e; C24, 27, 31, 35, 39,§9021; C46, 50, 54, §515.142]

Referred to in §§515.145, 515.146

**515.143** Repealed by 52GA, ch 263,§5. See §515.138.

**515.144** Repealed by 56GA, ch 237,§18.  
See ch 507B

**515.145 Violations.** Any violation of section 515.142 shall be punished by a fine of not exceeding five hundred dollars. [SS15, §1758-g; C24, 27, 31, 35, 39,§9023; C46, 50, 54, §515.145; 56GA, ch 237,§19]

**515.146 Advertisements by agents.** Nothing contained in section 515.142 shall be construed to prevent any representative of an insurance company from advertising his own individual business without specific mention of the name of the company or companies which he may represent. [SS15,§1758-h; C24, 27, 31, 35, 39, §9024; C46, 50, 54,§515.146; 56GA, ch 237,§20]

## CHAPTER 515A

### CASUALTY INSURANCE RATES

- 515A.1 Purpose of chapter.
- 515A.2 Scope of chapter.
- 515A.3 Making of rates.
- 515A.4 Rate filings.
- 515A.5 Disapproval of filings.
- 515A.6 Rating organizations.
- 515A.7 Deviations.
- 515A.8 Appeal by minority.
- 515A.9 Information to be furnished insureds—  
hearings and appeals of insureds.
- 515A.10 Advisory organizations.

- 515A.11 Joint underwriting or joint reinsurance.
- 515A.12 Examinations.
- 515A.13 Rate administration.
- 515A.14 False or misleading information.
- 515A.15 Assigned risks.
- 515A.16 Rebates prohibited.
- 515A.17 Penalties.
- 515A.18 Hearing procedure and judicial review.
- 515A.19 Laws affected.

**515A.1 Purpose of chapter.** The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-operative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section. [C50, 54,§515A.1]

**515A.2 Scope of chapter.** This chapter applies to casualty insurance, including fidelity, surety and guaranty bonds, and to all other forms of motor vehicle insurance, on risks or operations in this state, written by stock and mutual companies and reciprocal and inter-insurance exchanges, except:

1. Reinsurance, other than joint reinsurance to the extent stated in section 515A.11.
2. Accident and health insurance.
3. Insurance against loss of or damage to aircraft or against liability, other than work-

men's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

4. Insurance written by a county mutual assessment association as provided in chapter 518.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory law of this state, an insurer to which both laws are otherwise applicable shall file with the commissioner of insurance, hereinafter referred to as "commissioner", a designation as to which rate regulatory law shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage. [C50, 54,§515A.2]

#### 515A.3 Making of rates.

1. All rates shall be made in accordance with the following provisions:

a. Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospec-

tive expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state;

b. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

c. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

d. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Except to the extent necessary to meet the provisions of paragraph *d* of subsection 1 of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited. [C50, 54, §515A.3]

Referred to in §§515A.4, 515A.8, 515A.13

#### 515A.4 Rate filings.

1. Every insurer shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the chapter, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (a) the experience or judgment of the insurer or rating organization making the filing, (b) its interpretation of any statistical data it relies upon, (c) the experience of other insurers or rating organizations, or (d) any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided, that nothing contained in this chapter shall be construed as requiring

any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of fifteen days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

5. Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

6. Under such rules and regulations as he shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph *d* of subsection 1 of section 515A.3.

7. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for said insurer as provided in this chapter or in accordance with subsection 6 or 7 of this section. [C50, 54, §515A.4]

Referred to in §515A.5

#### 515A.5 Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 515A.4, the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying

therein in what respects he finds such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective.

2. If within thirty days after a special surety or guaranty filing subject to subsection 5 of section 515A.4 has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 of this section, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing held upon not less than ten days written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

5. No manual of classifications, rules, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 515A.4 shall be disapproved if the rates thereby produced meet the requirements of this chapter. [C50, 54, §515A.5]

#### 515A.6 Rating organizations.

1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (d) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (a) its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, (b) its list of members and subscribers and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and



regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. [C50, 54,§515A.6]

Referred to in §515A.12

**515A.7 Deviations.** Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (1) comprised of a group of manual classifications which is treated as a separate unit for rate

making purposes, or (2) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten days written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing, he may, upon the consent of the applicant, waive such hearing. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner. [C50, 54,§515A.7]

**515A.8 Appeal by minority.** Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the commissioner shall, after a hearing held upon not less than ten days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in paragraph *b* of subsection 1 of section 515A.3, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the commissioner shall apply the standards set forth in section 515A.3. [C50, 54,§515A.8]

**515A.9 Information to be furnished insureds—hearings and appeals of insureds.** Every rating organization and every insurer which



makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. [C50, 54, §515A.9]

#### **515A.10 Advisory organizations.**

1. Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, (b) a list of its members, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (d) an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 515A.12.

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations

issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. [C50, 54, §515A.10]

Referred to in §515A.12

#### **515A.11 Joint underwriting or joint reinsurance.**

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to sections 515A.12 and 515A.17 to 515A.19, inclusive.

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. [C50, 54, §515A.11]

Referred to in §§515A.2, 515A.12

**515A.12 Examinations.** The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 515A.6, and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 515A.10 and of each group, association or other organization referred to in section 515A.11. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officer, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [C50, 54, §515A.12]

Referred to in §§515A.10, 515A.11

#### **515A.13 Rate administration.**

1. *Recording and reporting loss and expense experience.* The commissioner shall promulgate reasonable rules and statistical plans, recently adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience,

in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 515A.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. *Interchange of rating plan data.* Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. *Rules and regulations.* The commissioner may make reasonable rules and regulations necessary to effect the purposes of this chapter. [C50, 54,§515A.13]

**515A.14 False or misleading information.** No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 515A.17. [C50, 54,§515A.14]

**515A.15 Assigned risks.** Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements

and rate modifications to be subject to the approval of the commissioner. [C50, 54, §515A.15]

**515A.16 Rebates prohibited.** No agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of this chapter. No insurer or employee thereof, and no agent, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. [C50, 54,§515A.16]

Referred to in §507B.4

**515A.17 Penalties.** The commissioner may, if he finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than fifty dollars for each such violation, but if he finds such violation to be willful he may impose a penalty of not more than five hundred dollars for each such violation. Such penalties may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not

less than ten days written notice to such person or organization specifying the alleged violation. [C50, 54,§515A.17]

Referred to in §§515A.11, 515A.14

#### **515A.18 Hearing procedure and judicial review.**

1. Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing may, within thirty days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days written notice of the time and place of the hearing. Within fifteen days after such hearing, the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon, the commissioner may suspend

or postpone the effective date of his previous action.

2. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence.

3. Any order or decision of the commissioner shall be subject to review by writ of certiorari to the district court at the instance of any party in interest.

The court shall determine whether the filing of the petition for such writ shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part. [C50, 54,§515A.18]

Referred to in §515A.11

**515A.19 Laws affected.** Compliance with this chapter shall not be deemed to be a violation of section 515.131. [C50, 54,§515A.19]

Referred to in §515A.11  
Constitutionality, 52GA, ch 259,§20

## CHAPTER 515B

### FIRE AND MARINE INSURANCE RATES

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**515B.1 Purpose of chapter.** The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-operative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section. [C50, 54,§515B.1]

**515B.2 Scope of chapter.** This chapter applies to fire, marine and inland marine insurance and allied lines on risks located in this state written by stock and mutual companies and reciprocal and interinsurance exchanges. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner of insurance, hereinafter referred to as "commissioner", or as established by gen-

eral custom of the business, as inland marine insurance.

This chapter shall not apply:

1. To reinsurance, other than joint reinsurance to the extent stated in section 515B.11;

2. To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

3. To insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;

4. To motor vehicle insurance, nor to insurance against liability arising out of the ownership, maintenance or use of motor vehicles;

5. To county mutual assessment associations doing business under chapter 518.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory law of this state, an insurer to which both laws are otherwise applicable shall file with the commissioner a designation as to which rate regulatory law shall be applicable to it with respect to such

kind of insurance, subdivision or combination thereof, or type of coverage. [C50, 54,§515B.2]

#### 515B.3 Making of rates.

1. Rates shall be made in accordance with the following provisions:

a. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

b. Rates shall not be excessive, inadequate or unfairly discriminatory.

c. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurer to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

2. Except to the extent necessary to meet the provisions of paragraph "b" of subsection 1 of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

3. Rates made in accordance with this section may be used subject to the provisions of this chapter. [C50, 54,§515B.3]

Referred to in §§515B.4, 515B.7, 515B.13

#### 515B.4 Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the chapter, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (a) the experience or judgment of the insurer or rating organization making the filing, (b) its interpretation of any statistical data it relies upon, (c) the experience of other insurers or rating organizations, or (d) any other relevant factors. A filing and any supporting informa-

tion shall be open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of fifteen days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

5. Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

6. Under such rules and regulations as he shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practically be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph "b" of subsection 1 of section 515B.3.

7. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsec-

tion 6 or 7 of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required. [C50, 54, §515B.4]

Referred to in §515B.5

#### **515B.5 Disapproval of filings.**

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 515B.4, the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective.

2. If within thirty days after a specific inland marine rate on a risk specially rated by a rating organization, subject to subsection 5 of section 515B.4 has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, he shall send to the rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 of this section, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing held upon not less than ten days written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days written notice to the applicant and to

every insurer and rating organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

5. No manual, minimum, class rate, rating schedule, rating plan, rating rule, or any modification of any of the foregoing which has been filed pursuant to the requirements of section 515B.4 shall be disapproved if the rates thereby produced meet the requirements of this chapter. [C50, 54, §515B.5]

#### **515B.6 Rating organizations.**

1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (d) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (a) its constitution, its articles of

agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, (b) its list of members and subscribers and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such co-operative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter,

and requiring the discontinuance of such activity or practice.

5. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, indorsements or other evidence of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

6. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination. [C50, 54,§515B.6]

Referred to in §515B.12

**515B.7 Deviations.** Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten days written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing, he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 515B.3. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner. [C50, 54,§515B.7]

**515B.8 Appeal by minority.** Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hear-

ing held upon not less than ten days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order. [C50, 54, §515B.8]

**515B.9 Information to be furnished insureds—hearings and appeals of insureds.**

Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who after a hearing held upon not less than ten days written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. [C50, 54, §515B.9]

**515B.10 Advisory organizations.**

1. Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, (b) a list of its members, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (d) an agreement that the commissioner

may examine such advisory organization in accordance with the provisions of section 515B.12.

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate-making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. [C50, 54, §515B.10]

Referred to in §515B.12

**515B.11 Joint underwriting or joint reinsurance.**

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as here-in provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to sections 515B.12 and 515B.16 to 515B.18, inclusive.

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. [C50, 54, §515B.11]

Referred to in §§515B.2, 515B.12

**515B.12 Examinations.** The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 515B.6, and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 515B.10 and of each group, association or other organization referred to in section 515B.11. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory



ry organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [C50, 54, §515B.12]

Referred to in §§515B.10, 515B.11

**515B.13 Rate administration.**

1. *Recording and reporting of loss and expense experience.* The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 515B.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. *Interchange of rating plan data.* Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. *Rules and regulations.* The commissioner may make reasonable rules and regulations necessary to effect the purposes of this chapter. [C50, 54, §515B.13]

**515B.14 False or misleading information.**

No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 515B.16. [C50, 54, §515B.14]

**515B.15 Rebates prohibited.** No agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of this chapter. No insurer or employee thereof, and no agent, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. [C50, 54, §515B.15]

Referred to in §507B.4

**515B.16 Penalties.** The commissioner may, if he finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than fifty dollars for each such violation, but if he finds such violation to be willful he may impose a penalty of not more than five hundred dollars for each such violation. Such penalties may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such sus-



pension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than ten days written notice to such person or organization specifying the alleged violation. [C50, 54,§515B.16]

Referred to in §§515B.11, 515B.14

#### **515B.17 Hearing procedure and judicial review.**

1. Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing may, within thirty days after notice of the order to the insurer or organization make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days written notice of the time and place of the hearing. Within fifteen days after such hearing the commissioner shall affirm, reverse

or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

2. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence.

3. Any order or decision of the commissioner shall be subject to review by writ of certiorari to the district court at the instance of any party in interest.

The court shall determine whether the filing of the petition for such writ shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part. [C50, 54,§515B.17]

Referred to in §515B.11

**515B.18 Laws affected.** Compliance with this chapter shall not be deemed to be a violation of section 515.131. [C50, 54,§515B.18]

Referred to in §515B.11  
Constitutionality, 52GA, ch 260,§19

## CHAPTER 516

### LIABILITY POLICIES — UNSATISFIED JUDGMENTS

516.1 Inurement of policy.

516.2 Settlement.

**516.1 Inurement of policy.** All policies insuring the legal liability of the insured, issued in this state by any company, association or reciprocal exchange shall, notwithstanding any other provision of the statutes, contain a provision providing that, in event an execution on a judgment against the insured be returned unsatisfied in an action by a person who is injured or whose property is damaged, the judgment creditor shall have a right of action against the insurer to the same extent that such insured could have enforced his claim against such insurer had such insured paid such judgment. [C35,§9024-g1; C39,§9024.1; C46, 50, 54,§516.1]

516.3 Limitation on action.

**516.2 Settlement.** No settlement between said insurer and insured, after loss, shall bar said action unless consented to by said judgment plaintiff. [C35,§9024-g2; C39,§9024.2; C46, 50, 54,§516.2]

**516.3 Limitation on action.** Said action may be brought against said insurer within one hundred eighty days from the entry of judgment in case no appeal is taken, and, in case of appeal, within one hundred eighty days after the judgment is affirmed on appeal, anything in the policy or statutes to the contrary notwithstanding. [C35,§9024-g3; C39,§9024.3; C46, 50, 54,§516.3]

## CHAPTER 517

### EMPLOYERS LIABILITY INSURANCE

517.1 Reserve required.

517.2 Terms defined.

**517.1 Reserve required.** Every corporation, association, company, or reciprocal exchange writing any of the several classes of insurance authorized by paragraph "d" of subsection 5 of section 515.48 shall maintain reserves for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable computed as follows:

517.3 Distribution of unallocated payments.

517.4 Reports required.

1. For all liability suits being defended under policies written more than:

a. Ten years prior to the date as of which the statement is made, one thousand five hundred dollars for each suit.

b. Five and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

c. Three and less than five years prior to the

date as of which the statement is made, eight hundred fifty dollars for each suit.

2. For all liability policies written during the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty percent of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred and fifty dollars for each outstanding liability suit on said year's policies.

3. For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present values at four percent interest of the determined and the estimated future payments.

4. For all compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any of such three-year period such reserve shall be not less than the present value at four percent interest of the determined and the estimated unpaid compensation claims under policies written during such year. [C24, 27, 31, 35, 39, §9025; C46, 50, 54, §517.1]

**517.2 Terms defined.** The term "earned premiums" as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less returned premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force.

Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the commissioner of insurance.

The term "compensation" as used in this chapter shall relate to all insurances affected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

The term "liability" shall relate to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

The terms "loss payments" and "loss expense payments" as used herein shall include all payments to claimants, including payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators,

and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated. [C24, 27, 31, 35, 39, §9026; C46, 50, 54, §517.2]

**517.3 Distribution of unallocated payments.** All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding, and five percent to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding, and in the fourth calendar year thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding, and ten percent to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows:

Forty percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding, and a

schedule showing such distribution shall be included in the annual statement.

Whenever, in the judgment of the commissioner of insurance, the liability or compensation loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise. [C24, 27, 31, 35, 39,§9027; C46, 50, 54,§517.3]

**517.4 Reports required.** Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner of insurance may prescribe. [C24, 27, 31, 35, 39,§9028; C46, 50, 54,§517.4]

Annual statement, §515.63

## CHAPTER 517A

### LIABILITY INSURANCE FOR PUBLIC EMPLOYEES

#### 517A.1 Authority to purchase.

**517A.1 Authority to purchase.** All state commissions, departments, boards and agencies and all commissions, departments, boards, districts, municipal corporations and agencies of all political subdivisions of the state of Iowa not otherwise authorized are hereby authorized and empowered to purchase and pay the premiums on liability, personal injury and property damage insurance covering all officers, proprietary functions and employees of such public bodies, including volunteer firemen, while in the performance of any or all of their duties including operating an automobile, truck, tractor, machinery or other vehicles owned or used by said public bodies,

which insurance shall insure, cover and protect against individual personal, corporate or quasi corporate liability that said bodies or their officers or employees may incur.

The amount of insurance that said commissions, departments, boards and agencies may purchase shall not exceed ten thousand dollars for property damage or twenty-five thousand dollars for personal injury or death of one person, and subject to said limit for one person, fifty thousand dollars for personal injury or death of more than one person, arising out of a single accident. [C54,§517A.1; 57GA, ch 246,§1]

## CHAPTER 518

### MUTUAL FIRE, TORNADO, HAILSTORM AND OTHER ASSESSMENT INSURANCE ASSOCIATIONS

Referred to in §§507.1, 515.58, 515A.2, 515B.2, 519.10, 521.1, 616.11

Additional provisions, ch 515

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**518.1 Organization—purpose and powers.**

1. Any number of persons may, by incorporating under chapter 491, enter into contracts with each other for the following kinds of insurance from loss or damage by:

*a.* Any peril or perils resulting in physical loss of or damage to property.

*b.* Theft of personal property.

*c.* Injury, sickness, or death of animals and the furnishing of veterinary service.

*d.* Any automobile or aircraft or other vehicle, including loss, expense, or liability resulting from the ownership, maintenance, or use thereof, but shall not include, by county mutuals, insurance against bodily injury to the person.

2. For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

*a.* An application on blanks furnished by the association and signed by the insured or his representative, which may contain in addition to other provisions; the value of the property, the proper description thereof, the amount of other insurance and the encumbrance thereon, and agreement to be governed by the articles of incorporation and bylaws in force at the time the policy is issued, a representation that the foregoing statements are true as far as the same are known to the insured or material to the risk, and that the insurance shall take effect when approved by the secretary.

*b.* A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

3. Such associations may insure risks of their members or may reinsure risks of other associations or companies; or may organize reinsurance associations for the reinsurance of risks.

4. The words "persons" and "members" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations.

5. Insurance on the property of one or more minors may be granted on application of an adult parent, friend, or guardian who consents to become a member as representing such minor. [C73,§1160; C97,§1759; S13,§1759-a; C24, 27, 31, 35, 39,§9029; C46, 50, 54,§518.1; 57GA, ch 247,§1]

Referred to in §518.7

**518.2 County and state mutual associations.**

Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter, doing business only within the county in which is situated the town or city named in its articles of incorporation as its principal place of business, or the counties contiguous thereto, shall, for the purpose of this chapter, be deemed a county mutual assessment association; all other associations operating here-

under shall, for the purposes of this chapter, be deemed state mutual assessment associations, and such associations may do business throughout the state and in other states where they are legalized and authorized to do business. The words "mutual" and "association" shall be incorporated in and become a part of their name. [C97,§1760; S13,§1759-b; C24, 27, 31, 35, 39,§9030; C46, 50, 54,§518.2]

**518.3 Meetings.** Unless the time and place of holding the annual meeting of the members of any association transacting business under the provisions of this chapter are plainly stated in their articles of incorporation or bylaws, twenty days notice of the time and place of holding of said meetings shall be given to all members of the association. Annual meetings may adjourn from time to time. [S13,§1759-o; C24, 27, 31, 35, 39,§9031; C46, 50, 54,§518.3]

39GA, ch 120,§11, editorially divided

**518.4 Amendments to articles.** Members of the association at such annual meetings shall have power to make or amend articles of incorporation or bylaws as they in their judgment may deem necessary. [S13,§1759-o; C24, 27, 31, 35, 39,§9032; C46, 50, 54,§518.4]

**518.5 Articles and bylaws part of policy.** When such articles of incorporation and bylaws are printed on the policy they become a part thereof and are binding upon the association and the insured alike. [C24, 27, 31, 35, 39,§9033; C46, 50, 54,§518.5]

**518.6 Officers—election.** Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation or bylaws. [C24, 27, 31, 35, 39, §9034; C46, 50, 54,§518.6]

**518.7 Policies — issuance — conditions.** No state mutual assessment association shall issue policies until at least one hundred twenty-five applications have been received in any class as shown by section 518.1, representing the following amount of insurance: Classes one, two, three, and five, two hundred fifty thousand dollars each; class four, one hundred thousand dollars, and no county mutual assessment association shall issue policies until applications for insurance to the amount of fifty thousand dollars representing at least fifty applicants have been received, and no application for insurance during the period of organization shall exceed two percent of the amount required for organization, or after one year of organization, one percent of the total insurance in force, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk. [C97,§1761; S13,§1759-c; C24, 27, 31, 35, 39,§9035; C46, 50, 54,§518.7]

39GA, ch 120,§3, editorially divided

**518.8 Approval by commissioner.** Neither shall any association issue policies of insurance until its articles of incorporation, bylaws, and form of policy shall have been submitted

to the commissioner of insurance and if upon examination of same he finds them to conform to the provisions of this chapter he shall at once issue to the association a certificate authorizing it to transact an insurance business. [C97,§1761; S13,§1759-c; C24, 27, 31, 35, 39,§9036; C46, 50, 54,§518.8]

**518.9 Allowable assessments and fees.** Such associations may collect a policy and contingent fee, and such assessments, provided for in their articles of incorporation and bylaws, as are required to pay losses and necessary expenses, and for the creation and maintenance of an emergency fund for the payment of excess losses and no part of such emergency fund can be claimed by any member whose policy expires or is surrendered for cancellation. [C97,§1765; S13,§1759-h; C24, 27, 31, 35, 39,§9037; C46, 50, 54,§518.9]

39GA, ch 120,§4, editorially divided  
Referred to in §519.11

**518.10 Advance assessments.** Any association may collect assessments for losses and expenses for one year in advance; or for more than one year in advance where such advance assessment does not exceed five mills on each dollar of insurance in force. [S13,§1759-h; C24, 27, 31, 35, 39,§9038; C46, 50, 54,§518.10]

Referred to in §519.11

**518.11 Borrowing money.** In case the funds of any association are not sufficient to pay losses that have been reported or adjusted the association may borrow money for payment of losses until such time as it is practical to make an assessment or until the regular assessment period. [C24, 27, 31, 35, 39,§9039; C46, 50, 54,§518.11]

**518.12 Emergency fund.** Funds raised by such associations which because of temporarily low rate of losses are not needed to pay losses and expenses in any year, may be passed to an emergency fund to be held for payment of excess losses in a subsequent year or years; such fund may be deposited in banks, or at the option of the board of directors may be invested in the classes of securities permitted by section 515.35; but under the direction of the board of directors and with the consent of the commissioner of insurance a part of such fund may be invested in a home office building or loaned to other associations organized under this chapter only when such loan shall be secured by a pledge of future assessments of such other association. [C24, 27, 31, 35, 39, §9040; C46, 50, 54,§518.12]

Referred to in §518.17

**518.13 Policies with fixed premiums.** When the emergency fund of any association reaches an amount equal to one hundred percent of the average cost per thousand on all policies in force for the full term for which assessment is collected and not less than one hundred thousand dollars or such amount of capital stock as is required of domestic companies,

such associations may issue policies of fixed premiums. [C24, 27, 31, 35, 39,§9041; C46, 50, 54,§518.13]

**518.14 Net assets required—liability of members.** Associations using a basis rate whose risks consist principally of store buildings and their contents, manufacturing establishments, public garages, lumber yards, office buildings, hotels, theaters, moving picture houses, stocks of implements or automobiles, shall maintain at all times net assets equal to forty percent of one annual assessment at the basis rate charged for such insurance on all policies in force, less deductions for reinsurance in authorized companies or associations; and may provide in its bylaws and specify in its policies the maximum liability of its members to the association; such liability shall not be less than a sum equal to the basis rate charged by the association for insurance nor greater than a sum equal to three times such basis rate. [S13,§1759-i; C24, 27, 31, 35, 39,§9042; C46, 50, 54,§518.14]

Referred to in §519.11

**518.15 Reserve for unearned premiums.** Every association organized and operating under the provisions of this chapter, except county mutual assessment associations, reinsurance associations for county mutual associations, and associations operating on a post loss basis and not charging any advance assessments or premiums, shall hold as reserve for unearned premiums or assessments an amount equal to at least forty percent of the aggregate gross premiums or assessments in force, on all policies or contracts running one year or less, less deductions for reinsurance in force in authorized companies or associations. On all policies or contracts running more than one year, there shall be maintained such a reserve in an amount equal to at least forty percent of the amount of the aggregate gross premiums in force for any current year and one hundred percent of the amount of the aggregate gross premiums in force for each succeeding year of said terms, less deductions for reinsurance in authorized companies or associations. [C39,§9042.1; C46, 50, 54,§518.15]

Referred to in §518.16

**518.16 Time to comply.** Every association heretofore organized and operating, and to which the provisions of section 518.15 apply, shall not be required to maintain the unearned premium reserve required in said section until December 31, 1940. However, such associations must have established by December 31, 1937, a reserve equal to at least one-fourth of the reserve required by said section; by December 31, 1938, at least one-half of such reserve and by December 31, 1939, at least three-fourths of such reserve. [C39,§9042.2; C46, 50, 54,§518.16]

Omnibus repeal, 47GA, ch 216,§3

**518.17 Hail assessments—payment of losses.** Associations engaged in writing hail insurance may, as concerns such insurance, provide in

their bylaws and policies for a limited assessment in any one year.

The books of any association which relate to hail insurance business shall be closed and balanced as of the thirty-first day of December of each year, and the aggregate amount of assessments and other sums paid by the members during the year, and the aggregate amount of losses paid including those in the process of adjustment and/or litigation during the year, shall be ascertained.

Not less than fifty percent of such aggregate amount of assessments, and other sums paid by the members shall be returned to the members, either through the payment of losses or through discounts, credits, or dividends, to be credited on the assessments required for the current and/or succeeding year, or, at the discretion of the board of directors, may be set aside in the emergency fund as defined in section 518.12, but no sum less than forty percent of such aggregate assessments, and other sums paid by the members, shall be returned to the members through payment of such losses or through discounts, credits, or dividends during the current and/or succeeding year.

In the event that losses sustained exceed a sum equal to fifty percent of such aggregate assessments and other sums paid by the members, such losses shall be paid from any emergency or surplus funds then in existence, and if the total funds available for the payment of losses is insufficient to pay such losses, such funds shall be prorated among the members sustaining such losses.

Such losses shall be due and payable on or before the twentieth day of January of the year succeeding that in which they occur, except such as may be then in dispute or litigation. [C24, 27, 31, 35, 39,§9043; C46, 50, 54, §518.17]

**518.18 Annual report.** Each association doing business under the provisions of this chapter shall, annually, on or before March 1, report to the commissioner of insurance, upon blanks furnished by him, such facts as are required of domestic insurance companies organizing under chapter 515, as are applicable to this chapter. These reports shall be tabulated and published by the commissioner of insurance in the annual report of insurance, one copy of which shall be sent to each association. The county associations, the state associations, and those doing an exclusive tornado, an exclusive hailstorm, or an exclusive automobile insurance business shall be separately classified in said report. [C73,§1160; C97,§§1762, 1763; S13,§§1759-d,e; C24, 27, 31, 35, 39,§9044; C46, 50, 54,§518.18]

**518.19 Proof of loss — sixty-day limit.** In furnishing proofs of loss under any contract of insurance under this chapter for loss or damage it shall be necessary for the insured within sixty days from the time loss or damage occurs, to give notice in writing to the association issuing such contracts of insurance accompanied by an affidavit stating the facts as to how

the loss occurred so far as the same are within the knowledge of the insured, the property destroyed or damaged, and the extent of the loss. [C24, 27, 31, 35, 39,§9045; C46, 50, 54, §518.19]

39GA, ch 120,§6, editorially divided  
Similar provisions, §§511.35, 514A.3, 515.98, 518.22

**518.20 Five-day limit.** In case of damage or loss to livestock by fire or lightning or loss or damage to automobiles or aircraft by theft or fire, notice of such loss must be given the association by mailing written notice within five days from the time such loss or damage occurred. [C24, 27, 31, 35, 39,§9046; C46, 50, 54, §518.20]

**518.21 Ten-day limit.** In case of loss to growing crops by hail, notice of such loss must be given the association by mailing a certified mail letter within ten days from the time such loss or damage occurred. [C24, 27, 31, 35, 39, §9047; C46, 50, 54,§518.21; 57GA, ch 267, §78]

**518.22 Limitation of action.** No action on any loss shall be begun until the date when such loss becomes due in accordance with the articles of incorporation or bylaws of such association and in no event sooner than forty days after such proof has been given to the association and no action can be started after one year from the date such cause of action accrues. [C24, 27, 31, 35, 39,§9048; C46, 50, 54, §518.22]

Similar provisions, §518.19

**518.23 Presumption as to value.** In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima-facie evidence of the insurable value of the building at the date of the policy. [C24, 27, 31, 35, 39,§9049; C46, 50, 54,§518.23]

39GA, ch 120,§7, editorially divided  
Similar provision, §515.96

**518.24 Value of building—liability.** The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy. [C24, 27, 31, 35, 39,§9050; C46, 50, 54,§518.24]

Similar provision, §515.97

**518.25 Value of personal property—value of crops.** In any action on a policy to recover loss or damage on personal property, the association shall not be liable in excess of the amount of damage or loss at the time the loss or damage occurs; provided that the value of growing crops may be stated in the policy or contract. [C24, 27, 31, 35, 39,§9051; C46, 50, 54, §518.25]

**518.26 Arbitration.** No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss

occurs, with any arbitration or appraisal stipulation as to fixing the value of property. No arbitration shall take place except substantially where the property was situated at the time of loss. Contracts of insurance to indemnify against loss by hail to growing crops which stipulate for arbitration shall provide that the decision of the majority of the arbitrators shall be final only as to the arbitration. [C31, 35, §9051-c1; C39, §9051.1; C46, 50, 54, §518.26]

**518.27 Reinsurance — quo warranto.** The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. If the commissioner of insurance is then satisfied that the association has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contracts in good faith; or is transacting business fraudulently or soliciting insurance in territories where it is not legally admitted to do business, or is in such condition as to render the further transaction of business by it hazardous to the public or its policyholders, the business under his supervision and with the consent of the association may be reinsured in some mutual association, or he may present the facts relating thereto to the attorney general and if the circumstances warrant he may commence an action in quo warranto in a court of competent jurisdiction. [C97, §1766; S13, §1759-g; C24, 27, 31, 35, 39, §9052; C46, 50, 54, §518.27]

39GA, ch 120, §8, editorially divided  
Referred to in §518.34

**518.28 Decree — receivership.** Such court shall thereupon notify the officers of such association of a hearing, and unless it shall then appear that some special and good reason exists why such association should not be closed, said association shall be enjoined from carrying on any further business, and some person shall be appointed receiver of such association and shall proceed at once to take possession of the books, papers, moneys, and other assets of the association and shall forthwith, under the direction of the court proceed to close the affairs of the association and to distribute its funds to those entitled thereto, or he may make an assessment pro rata on the membership liable to an assessment to pay the legitimate debts of the association. [C97, §1766; S13, §1759-g; C24, 27, 31, 35, 39, §9053; C46, 50, 54, §518.28]

Referred to in §§518.34, 519.11

**518.29 Cancellation by association—notice.** Any policy of insurance issued by any association operating under the provisions of this chapter may be canceled by the association giving five days written notice thereof to the insured. [S13, §1759-m; C24, 27, 31, 35, 39, §9054; C46, 50, 54, §518.29]

39GA, ch 120, §9, editorially divided

**518.30 Cancellation by insured—conditions.** If the insured shall demand in writing or in

person of the association the cancellation of policy, the association shall immediately advise him by letter to last known address, the amount, if any, due, as his pro rata share of losses and in addition actual expenses incurred on said policy. Upon surrender of his policy and payment of all sums due, his membership shall cease, provided that during the months of May, June, July, and August, hail insurance policies may be canceled only at the option of the officers of the association carrying the risk. On or before the first day of April in each calendar year a member of any mutual hail insurance association doing business in Iowa may cancel his membership and contract or policy of insurance on which at least one annual assessment has been paid and upon which at the time no assessment is past due in such association without being required to pay anything therefor; and it shall be considered that no liability for insurance risks or for expenses shall attach against such member in that particular year if he shall cancel his contract and membership on or before April 1. [S13, §1759-m; C24, 27, 31, 35, 39, §9055; C46, 50, 54, §518.30]

**518.31 Unearned assessments—return.** Upon the cancellation of any policy of insurance issued under the provisions of this chapter all obligations to the association having been paid, the unearned portion of any advance assessment paid, other than the emergency fund, shall be returned to the insured upon the surrender of his policy, the association retaining a pro rata share for losses and in addition actual expenses incurred on said policy. [S13, §1759-m; C24, 27, 31, 35, 39, §9056; C46, 50, 54, §518.31]

**518.32 When pro rata assessment retained.** When the policy is canceled by the association by giving notice thereof it shall retain only the pro rata assessment. [S13, §1759-m; C24, 27, 31, 35, 39, §9057; C46, 50, 54, §518.32]

**518.33 Bonds of officers.** Any state mutual assessment association contemplated by this chapter, before being authorized to do business in this state, shall require its secretary and treasurer to give a fidelity bond, personal or surety, to the association in such sums as the directors shall deem sufficient, no less, however, than ten thousand dollars for each office, which bond after being approved by the president of the association shall be deposited with the commissioner of insurance. [C97, §1767; S13, §1759-n; C24, 27, 31, 35, 39, §9058; C46, 50, 54, §518.33]

39GA, ch 120, §10, editorially divided

**518.34 Additional security—noncompliance.** Should the commissioner of insurance find the surety on said bonds, or the amount thereof, insufficient, he may require additional security, or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice thereof, the commissioner of insurance shall refer

the matter to the attorney general the same as under sections 518.27 and 518.28, and it shall be taken care of by him in accordance therewith. [C97,§1767; S13,§1759-n; C24, 27, 31, 35, 39,§9059; C46, 50, 54,§518.34]

**518.35 Annual tax.** Every state mutual association doing business under this chapter shall on or before the first day of March, each year, pay to the treasurer of state a sum equivalent to two percent of the gross receipts from premiums, assessments, fees, and promissory obligations for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state. [C24, 27, 31, 35, 39,§9060; C46, 50, 54,§518.35]

39GA, ch 120,§12, editorially divided  
Referred to in §518.37

**518.36** Repealed by 53GA, ch 213,§1. See §507.2.

**518.37 Exemption of county mutuals.** County mutual associations shall be exempt from the examination and the payment of tax provided for in section 518.35. [C24, 27, 31, 35, 39, §9062; C46, 50, 54,§518.37]

**518.38 Moneys and credits.** In assessing for taxation the moneys and credits of such mutual insurance corporations, the assessor shall ascertain the debts or liabilities, if any, of the corporation to its policyholders or other persons which liabilities shall be deducted as provided in section 429.4. [C24, 27, 31, 35, 39, §9063; C46, 50, 54,§518.38]

39GA, ch 120,§13, editorially divided  
Assessment of moneys and credits, §429.2

**518.39 "Debt" defined.** In ascertaining such corporate indebtedness, a debt shall be deemed to exist, on account of its liabilities on the policy certificates or contracts of insurance issued by it equal to the amount of surplus or other funds accumulated by such corporation for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose. [C24, 27, 31, 35, 39,§9064; C46, 50, 54,§518.39]

**518.40 Annual fees.** Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire March 1 of the year following the date of issue. [C73,§1160; C97, §1764; S13,§1759-f; C24, 27, 31, 35, 39,§9065; C46, 50, 54,§518.40]

**518.41 Agents to be licensed.** No person or corporation shall solicit any application for insurance for any association, other than county mutuals, in this state without having procured from the commissioner of insurance a license authorizing him to act as agent. Violation of this provision shall be punished by a fine not exceeding twenty-five dollars per day. [C24, 27, 31, 35, 39,§9066; C46, 50, 54,§518.41]

39GA, ch 120,§15, editorially divided

**518.42 License—fee.** The commissioner of insurance shall upon the receipt of payment of fifty cents issue license to act as agent to any person for whom a license is requested by any association doing business under the provisions of this chapter. [C24, 27, 31, 35, 39,§9067; C46, 50, 54,§518.42]

**518.43 Cancellation of license.** The commissioner of insurance may, for a just and reasonable cause, cancel the license of such agent after due notice and hearing. [C24, 27, 31, 35, 39,§9068; C46, 50, 54,§518.43]

## CHAPTER 519

### LIABILITY INSURANCE — CERTAIN PROFESSIONS

519.1 Authorization.

519.2 Incorporation—powers.

519.3 Approval of articles.

519.4 Approval of policy—certificate of authority.

519.5 Conditions.

519.6 Reports.

519.7 Reinsurance reserve.

519.8 Cancellation of policy.

519.9 Fees.

519.10 Powers of commissioner.

519.11 Liability to assessments.

519.12 Foreign companies.

519.13 Construction.

**519.1 Authorization.** Any number of physicians, druggists, dentists, and graduate nurses, licensed to practice their profession in this state, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance against loss by reason of actions at law on account of their alleged

error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss. [C24, 27, 31, 35, 39,§9069; C46, 50, 54,§519.1]

38GA, ch 286,§1, editorially divided  
Action on liability policy, ch 516



**519.2 Incorporation—powers.** All corporations, organized for the purpose of transacting such insurance business under the provisions of this chapter, shall incorporate under the provisions of chapter 491, and be known as mutual corporations; and are hereby empowered to collect such assessments, or premium payments, provided for in their articles of incorporation or bylaws, as are required to pay losses and expenses incurred in the conduct of their business. Such mutual insurance corporations may issue certificates of membership, or policies; and may provide that all assessments, or premium payments, payable thereunder, be made in cash, or on the installment, or assessment plan. [C24, 27, 31, 35, 39, §9070; C46, 50, 54, §519.2]

**519.3 Approval of articles.** The articles of such mutual insurance corporations shall be submitted to, and approved by, the attorney general and the commissioner of insurance before being filed with the secretary of state. [C24, 27, 31, 35, 39, §9072; C46, 50, 54, §519.3]

38GA, ch 286, §2, editorially divided

**519.4 Approval of policy—certificate of authority.** No such mutual insurance corporation shall issue membership certificates, or policies, until its form of certificate, or policy, shall have been submitted to, and approved by, the commissioner of insurance and until it has secured from such commissioner of insurance a certificate authorizing it to transact such an insurance business. [C24, 27, 31, 35, 39, §9073; C46, 50, 54, §519.4]

**519.5 Conditions.** No such certificate shall be issued by the commissioner of insurance until two hundred fifty applications have been received, representing, in the aggregate, one million dollars of insurance, and until the commissioner of insurance has satisfied himself that such mutual insurance corporation has bona fide applications representing the number of applicants and the amount of insurance herein required, and that there is in the possession of such mutual insurance corporation cash assets amounting to not less than ten thousand dollars. [C24, 27, 31, 35, 39, §9074; C46, 50, 54, §519.5]

**519.6 Reports.** Such mutual insurance corporations doing business under the provisions of this chapter shall, annually, in the month of January, report to the commissioner of insurance, upon blanks furnished by him, the same facts, so far as applicable, as are required to be furnished by mutual insurance associations under the statutes of Iowa, which report shall be tabulated by the commissioner of insurance and published by him in the annual report on insurance. [C24, 27, 31, 35, 39, §9075; C46, 50, 54, §519.6]

Annual report, §506.13

**519.7 Reinsurance reserve.** Such mutual insurance corporations shall, annually, set aside and maintain as a reinsurance reserve, an

amount equal to ten percent of the receipts from assessments, or premium payments, during the year until the total amount thus accumulated shall equal forty percent, but not to exceed fifty percent of the amount of the annual assessment, or premium payment, at the rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses, and when so used shall be restored and maintained in like manner as originally accumulated. [C24, 27, 31, 35, 39, §9076; C46, 50, 54, §519.7]

**519.8 Cancellation of policy.** Any certificate of membership, or policy, issued by such a mutual insurance corporation may be canceled by the corporation by giving five days written notice thereof to the insured; or such cancellation may be upon demand of the insured; and such cancellation, when so made, either by the corporation or by the insured, shall be upon a pro rata basis, and the cancellation of such certificate or policy shall release the member from all other future obligations to such corporation. [C24, 27, 31, 35, 39, §9077; C46, 50, 54, §519.8]

**519.9 Fees.** Such a mutual insurance corporation shall pay the same fees for admission into the state, for annual reports, and for annual certificates of authority as are required to be paid by domestic mutual companies organized and doing business under chapter 515; such certificate shall expire March 1 of the year following the date of its issue. [C24, 27, 31, 35, 39, §9078; C46, 50, 54, §519.9]

38GA, ch 286, §6, editorially divided

**519.10 Powers of commissioner.** The commissioner of insurance shall have and exercise the same control over such corporations as he now has over mutual assessment insurance associations organized and doing business under the provisions of chapter 518. [C24, 27, 31, 35, 39, §9079; C46, 50, 54, §519.10]

**519.11 Liability to assessments.** The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in sections 518.9, 518.10, 518.14, and 518.28, shall apply to all mutual insurance corporations organized under the provisions of this chapter. [C24, 27, 31, 35, 39, §9080; C46, 50, 54, §519.11]

**519.12 Foreign companies.** Any mutual insurance association organized under the laws of any other state, for the purpose of transacting the kind of business described in this chapter, and which has been in business not less than one year, and has on hand cash assets in an amount of not less than ten thousand dollars, and has not less than three hundred members, shall upon application, be admitted to do business in this state; and shall thereafter make all reports and be subject to taxation, examination, and supervision by the

commissioner of insurance to the same extent and in the same manner as are domestic corporations organized under the provisions of this chapter. [C24, 27, 31, 35, 39,§9081; C46, 50, 54,§519.12]

**519.13 Construction.** All laws, or parts of laws, in conflict herewith shall be so construed as not to include corporations regulated by this chapter. [C24, 27, 31, 35, 39,§9082; C46, 50, 54, §519.13]

CHAPTER 520

RECIPROCAL OR INTERINSURANCE CONTRACTS

Referred to in §§507.1, 509.5, 514A.1, 515.58, 521.1

- 520.1 Authorization.
- 520.2 Execution of contract.
- 520.3 Office of attorney—foreign office.
- 520.4 Preliminary declaration.
- 520.5 Actions—venue—commissioner as process agent.
- 520.6 Manner of service.
- 520.7 Judgment—satisfaction.
- 520.8 Reports—limitations on risks.
- 520.9 Standard of solvency.
- 520.10 Annual report—examination.
- 520.11 Implied powers of corporations.
- 520.12 Certificate of authority.

- 520.13 Fidelity or surety bonds executed.
- 520.14 Violations—exceptions.
- 520.15 Refusal or revocation of certificate.
- 520.16 Bonds.
- 520.17 Additional security—refusal.
- 520.18 Foreign attorney—bonds.
- 520.19 Annual tax—fees.
- 520.20 Form of policy—construction.
- 520.21 Reinsurance.
- 520.22 Laws applicable.
- 520.23 Deposit of securities by reciprocal or interinsurance exchanges.

**520.1 Authorization.** Individuals, partnerships, and corporations, including independent school districts and municipal corporations, of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, and with individuals, partnerships, and corporations of other states, territories, districts, and countries, providing insurance among themselves from any loss which may be insured against under the law, except life insurance. [C24, 27, 31, 35, 39,§9083; C46, 50, 54,§520.1]

sioner of insurance shall not issue a certificate of authority, or license, as provided in this chapter unless such attorney shall hold a license or certificate of authority from the insurance department of such other state. [C24, 27, 31, 35, 39,§9085; C46, 50, 54,§520.3]

**520.2 Execution of contract.** Such contracts may be executed by an attorney, agent, or other representative herein designated attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. Such attorney shall have the power and authority to execute any and all instruments, papers, and documents incident to and a part of the business of the reciprocal or interinsurance exchange, including deeds for the conveyance of real estate, and acquisition and sale of securities. Such attorney shall have the power and authority to do all things necessary and incident to the management and operation of such business. The certificate of the commissioner of insurance certifying the name of the attorney for any reciprocal or interinsurance exchange shall be sufficient proof of the authority of any such attorney. [C24, 27, 31, 35, 39,§9084; C46, 50, 54,§520.2]

**520.4 Preliminary declaration.** Such subscribers so contracting among themselves, shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or, where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

37GA, ch 180,§2, editorially divided

**520.3 Office of attorney—foreign office.** The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney; provided that, where the principal office of such attorney is located in another state, the commis-

1. The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by any insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.
2. The location of the principal office.
3. The kind or kinds of insurance to be effected.
4. A copy of each form of policy, contract, or agreement under or by which insurance is to be effected.
5. A copy of the form of power of attorney under which such insurance is to be effected.
6. That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or, in case of employers liability or workmen's compensation insurance, covering a total pay roll of not less than two and one-half million dollars.

7. That there is in the possession of such attorney and available for the payment of losses, assets amounting to not less than fifty thousand dollars, and, in case of employers liability or workmen's compensation insurance, that such assets shall amount to not less than one hundred thousand dollars.

8. A financial statement under oath in form prescribed for the annual statement.

9. The instrument authorizing service of process as provided for in this chapter.

10. Certificate showing deposit of funds. [C24, 27, 31, 35, 39, §9086; C46, 50, 54, §520.4]

Referred to in §§520.5, 520.9, 520.18

**520.5 Actions — venue — commissioner as process agent.** Concurrently with the filing of the declaration provided for by the terms of section 520.4, the attorney shall file with the commissioner of insurance, an instrument in writing executed by him for said subscribers, conditioned that, upon the issuance of certificate of authority provided for in this chapter, action may be brought in the county in which the property or person insured thereunder is located, and that service of process shall be had upon the commissioner of insurance or upon the attorney in fact in all suits in this state, whether arising out of such policies, contracts, agreements or otherwise, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. All suits of every kind and description brought against such reciprocal exchange or the subscribers thereto on account of their connection therewith, must be brought against the attorney in fact therefor or the exchange as such, and shall not be brought against any of the subscribers thereto individually on account of their connection with or membership in such reciprocal exchange, and must be brought in the manner and method above provided. [C24, 27, 31, 35, 39, §9087; C46, 50, 54, §520.5]

37GA, ch 180, §4, editorially divided  
Similar provisions, §§491.15, 494.2, 511.27, 512.22, 515.73, 534.74

**520.6 Manner of service.** Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. [C24, 27, 31, 35, 39, §9088; C46, 50, 54, §520.6]

**520.7 Judgment—satisfaction.** A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance, shall be valid and binding against any and all such subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers. [C24, 27, 31, 35, 39, §9089; C46, 50, 54, §520.7]

**520.8 Reports—limitations on risks.** There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under oath of such attorney showing the

maximum amount of indemnity upon a single risk, and, except as to workmen's compensation insurance, no subscriber shall assume on any single risk an amount greater than ten percent of the net worth of such subscriber. [C24, 27, 31, 35, 39, §9090; C46, 50, 54, §520.8]

**520.9 Standard of solvency.** There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, shall not equal two hundred thousand dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least two hundred thousand dollars. For the purpose of said reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than one hundred thousand dollars as to employers liability or workmen's compensation insurance, or less than fifty thousand dollars as to other classes of insurance, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance so to do. In computing the assets required by this section, the amount specified in subsection 7, section 520.4, shall be included. [C24, 27, 31, 35, 39, §9091; C46, 50, 54, §520.9]

**520.10 Annual report — examination.** Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to

furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined. [C24, 27, 31, 35, 39,§9092; C46, 50, 54,§520.10]

**520.11 Implied powers of corporations.** Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred. [C24, 27, 31, 35, 39,§9093; C46, 50, 54,§520.11]

**520.12 Certificate of authority.** Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing him to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. Such license shall be renewed annually upon a showing that the standard of solvency required herein has been maintained, and that all fees and taxes required have been paid. [C24, 27, 31, 35, 39,§9094; C46, 50, 54,§520.12]

**520.13 Fidelity or surety bonds executed.** Fidelity or surety bonds executed by a reciprocal or interinsurance exchange pursuant to authority given by the commissioner of insurance shall be received and accepted as company or corporate bonds, provided, however, that such reciprocal companies before being permitted to qualify for writing fidelity or surety bonds shall be required to maintain a surplus of three hundred thousand dollars. [C46, 50, 54,§520.13]

**520.14 Violations—exceptions.** Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter, or any attorney or representative of such attorney, who shall solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter,

but no attorney, agent, or other person shall make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with. [C24, 27, 31, 35, 39,§9095; C46, 50, 54,§520.14]

**520.15 Refusal or revocation of certificate.** In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the commissioner of insurance and the public announcement of his act, after due notice and opportunity for hearing has been given such attorney so that he may appear and show cause why such action should not be taken. [C24, 27, 31, 35, 39,§9096; C46, 50, 54,§520.15]

**520.16 Bonds.** Where the principal office of the attorney in fact is located in this state the attorney shall give a fidelity bond to the subscribers thereof, personal or surety, in such sum as the commissioner of insurance shall deem sufficient, no less, however, than ten thousand dollars, which bond shall be approved by and deposited with the commissioner of insurance. [C24, 27, 31, 35, 39,§9097; C46, 50, 54,§520.16]

37GA, ch 180,§12, editorially divided

**520.17 Additional security—refusal.** Should the commissioner of insurance consider the surety on said bond, or the amount thereof, insufficient, he may require additional security or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice to furnish the same, the commissioner of insurance may revoke the certificate of authority. [C24, 27, 31, 35, 39,§9098; C46, 50, 54,§520.17]

**520.18 Foreign attorney—bonds.** Where the principal office of the attorney is located in another state, there shall be filed with the commissioner of insurance, in connection with the declaration, provided for by section 520.4, certified copies of all such bonds given by such attorney as security for the funds of subscribers. [C24, 27, 31, 35, 39,§9099; C46, 50, 54,§520.18]

**520.19 Annual tax—fees.** In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall pay annually on account of the transaction of such business in this state, the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of two percent, if a domestic reciprocal organization, and two percent, if a foreign reciprocal organization, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to their accounts as savings, and the amount returned upon canceled policies and rejected applica-

tions covering property situated or on business done within this state. [C24, 27, 31, 35, 39, §9100; C46, 50, 54, §520.19]

**520.20 Form of policy—construction.** The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, provided the same shall not be inconsistent with or in conflict with any law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or indorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such policy or indorsement shall first be filed with and approved by the commissioner of insurance. [C24, 27, 31, 35, 39, §9101; C46, 50, 54, §520.20]

**520.21 Reinsurance.** Such attorney shall not effect any reinsurance on risks in this state unless the insurance carrier granting such reinsurance shall be licensed in this state. [C24, 27, 31, 35, 39, §9102; C46, 50, 54, §520.21]

**520.22 Laws applicable.** Except as provided in this chapter, the making of contracts as herein provided for and such other matters as are properly incident thereto, shall not be subject to the laws of this state relating to insurance, unless they are therein specifically mentioned. [C24, 27, 31, 35, 39, §9103; C46, 50, 54, §520.22]

**520.23 Deposit of securities by reciprocal or interinsurance exchanges.** If the commissioner of insurance or chief insurance officer of any other state or territory of the United States, claiming to proceed under existing or future laws of any such state or territory, shall require reciprocal or interinsurance exchanges of this state or the agents thereof to make any deposit of securities in such other state or territory for the protection of policyholders or otherwise or to make payment of taxes, fines, penalties, certificates of authority, license fees or otherwise or subject them to any restrictions, obligations, conditions, or penalties, greater than are required or imposed by the laws of the state of Iowa relating to reciprocal or interinsurance exchanges, from such exchanges of such other states or territories by the then existing laws of this state, then and in every such case all such reciprocal or interinsurance exchanges of such other states or territories shall be and they are hereby required to make like deposits for like purposes with the insurance department of this state and to pay to the commissioner of insurance taxes, fines, penalties, certificates of authority, license fees and otherwise in an amount equal to the amount of such charges and payments, and shall be subjected to the same restrictions, obligations, conditions, or penalties imposed by the commissioner of insurance or chief insurance officer of such other states under and by virtue of law, upon reciprocal or interinsurance exchanges of this state and the agents thereof. [C46, 50, 54, §520.23]

## CHAPTER 521

### CONSOLIDATION AND REINSURANCE

Securities to be deposited by foreign companies, §§508.20—508.22, 515.70—515.72

- 521.1 "Company" defined.
- 521.2 Life companies—consolidation and reinsurance.
- 521.3 Submission of plan.
- 521.4 Procedure—notice.
- 521.5 Commission to hear petition.
- 521.6 Examination.
- 521.7 Appearance by policyholders.
- 521.8 Authorization.

- 521.9 Unanimous decision required.
- 521.10 Election called.
- 521.11 Approval and filing with commissioner.
- 521.12 Companies other than life—approval of plan.
- 521.13 Consolidation prohibited.
- 521.14 Expenses—how paid.
- 521.15 Violations.

**521.1 "Company" defined.** The word "company" or "companies" when used in this chapter shall mean any company or association organized under the provisions of chapters 508, 510, 511, 515, 518, or 520, except county mutuals. [S13, §1821-n; C24, 27, 31, 35, 39, §9104; C46, 50, 54, §521.1]

Referred to in §§521.2, 521.13, 521.15

**521.2 Life companies—consolidation and reinsurance.** No company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall consolidate with any other company or reinsure its risks, or any part thereof, with any other company, or assume or reinsure the whole or any part of the risks of any other company,

except as hereinafter provided; provided that nothing contained in this chapter shall prevent any company, as defined in section 521.1, from reinsuring a fractional part of any single risk. [S13, §1821-n; C24, 27, 31, 35, 39, §9105; C46, 50, 54, §521.2]

Referred to in §§521.12, 521.15

**521.3 Submission of plan.** When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance, asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The company must also file a statement of its

assets and if a legal reserve company, of the reserve value of its policies or contracts. [S13, §1821-o; C24, 27, 31, 35, 39, §9106; C46, 50, 54, §521.3]

Referred to in §521.15

**521.4 Procedure—notice.** The commission shall proceed to hear and determine such petition, without notice. If the commission shall deem it necessary in order to conserve the interests of the policyholders that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policyholders of the said company or companies of the pendency of such petition, and the time and place at which the same will be heard, the length of time of such notice to be determined by the commission. [S13, §1821-p; C24, 27, 31, 35, 39, §9107; C46, 50, 54, §521.4]

Referred to in §521.15

**521.5 Commission to hear petition.** For the purpose of hearing and determining such petition, a commission consisting of the governor, commissioner of insurance, and attorney general is hereby created. In the inability of the governor to act, the secretary of state may act in his stead. [S13, §1821-q; C24, 27, 31, 35, 39, §9108; C46, 50, 54, §521.5]

S13, §1821-q, editorially divided  
Referred to in §521.15

**521.6 Examination.** The commission may make such examination into the affairs and condition of any company or companies as it may deem proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers before said commission and may administer oaths. [S13, §1821-q; C24, 27, 31, 35, 39, §9109; C46, 50, 54, §521.6]

Referred to in §521.15

**521.7 Appearance by policyholders.** When notice shall have been given as above provided, any policyholder, or stockholder of said company or companies shall have the right to appear before said commission and be heard with reference to said petition. [S13, §1821-q; C24, 27, 31, 35, 39, §9110; C46, 50, 54, §521.7]

Referred to in §521.15

**521.8 Authorization.** Said commission, if satisfied that the interests of the policyholders of said company or companies are properly protected and no reasonable objection to said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policyholders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable. [S13, §1821-q; C24, 27, 31, 35, 39, §9111; C46, 50, 54, §521.8]

Referred to in §521.15

**521.9 Unanimous decision required.** Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of

the policyholders of any such company or companies proposing consolidation or reinsurance. [S13, §1821-q; C24, 27, 31, 35, 39, §9112; C46, 50, 54, §521.9]

Referred to in §521.15

**521.10 Election called.** In case of companies organized on the assessment plan, the commission may require the plan of consolidation or reinsurance to be submitted to the membership of such company or companies to be voted upon. When submitted, it shall be at a meeting called for that purpose, thirty days notice being given, and a two-thirds vote of all the members present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and no proxies shall, in any case, be voted. [S13, §1821-q; C24, 27, 31, 35, 39, §9113; C46, 50, 54, §521.10]

Referred to in §521.15

**521.11 Approval and filing with commissioner.** Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by him determined before any consolidation or reinsurance shall be effected. [S13, §1821-q; C24, 27, 31, 35, 39, §9114; C46, 50, 54, §521.11]

Referred to in §521.15

**521.12 Companies other than life—approval of plan.** When any company or companies not named in section 521.2 desire to consolidate or reinsure, it shall only be necessary for such company or companies to submit the plan of consolidation or reinsurance with any other information that may be required, to the commissioner of insurance and the attorney general and have the same by them approved. [S13, §1821-r; C24, 27, 31, 35, 39, §9115; C46, 50, 54, §521.12]

Referred to in §521.15

**521.13 Consolidation prohibited.** No company or companies as defined by section 521.1 shall consolidate or reinsure with any other company or companies not authorized to transact business in this state. [S13, §1821-s; C24, 27, 31, 35, 39, §9116; C46, 50, 54, §521.13]

Referred to in §521.15

**521.14 Expenses—how paid.** All expenses and costs incident to proceedings under the provisions of this chapter, shall be paid by the company or companies bringing the petition. [S13, §1821-t; C24, 27, 31, 35, 39, §9117; C46, 50, 54, §521.14]

**521.15 Violations.** Any officer, director or stockholder of any company or companies, as defined in section 521.1, violating or consenting to the violation of any of the provisions of sections 521.2 to 521.13, inclusive, shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail for not less than one year, or by both such fine and imprisonment in the discretion of the court. [S13, §1821-u; C24, 27, 31, 35, 39, §9118; C46, 50, 54, §521.15]

## CHAPTER 522

## LICENSING OF INSURANCE AGENTS

- 522.1 License required.  
 522.2 Term of license.  
 522.3 Issuance and revocation.

- 522.4 Fee.  
 522.5 Violations.

**522.1 License required.** No person shall directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of insurance business for any company or association, other than county mutuals or fraternal beneficiary associations, until he has procured from the commissioner of insurance a license authorizing him to act for such company or association as agent. [S13, §1821-k; C24, 27, 31, 35, 39, §9119; C46, 50, 54, §522.1]

S13, §1821-k, editorially divided  
 Referred to in §522.5

**522.2 Term of license.** Said license shall terminate at the end of the insurance year for which such company or association is authorized to transact business. [S13, §1821-k; C24, 27, 31, 35, 39, §9120; C46, 50, 54, §522.2]

**522.3 Issuance and revocation.** The commissioner shall require of each first-time applicant such reasonable proof of character and competency with respect to the type and kind of insurance the applicant proposes to sell as will protect public interest, before issuing such license and may, for good cause, after hearing held within sixty days from the date of application, decline to issue such license or may, for like cause, after hearing, revoke the same. The commissioner is authorized and directed to establish and publish reasonable rules and regulations setting forth the required qualifications for such license. Competency for any applicant not previously licensed shall be established in accordance with the rules and regu-

lations established by the commissioner as provided herein. The commissioner may issue a temporary license for a period of not to exceed six months and for such temporary license may waive the requirements established herein.

Nothing contained herein shall preclude the licensee from engaging in any other lawful business, occupation or profession. Nothing contained herein shall be applicable to duly licensed attorneys providing surety bonds incident to their practice or to persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of health and accident insurance or baggage insurance on personal effects.

The commissioner shall require of each first time applicant an application fee of five dollars. [S13, §1821-k; C24, 27, 31, 35, 39, §9121; C46, 50, 54, §522.3; 57GA, ch 248, §1]

For applications prior to April 1, 1958, see 57GA, ch 248

**522.4 Fee.** The fee charged for such agent's license shall be, for domestic companies, fifty cents, and for companies located outside the state, two dollars. [S13, §1821-k; C24, 27, 31, 35, 39, §9122; C46, 50, 54, §522.4]

**522.5 Violations.** Any person acting as agent or otherwise representing any insurance company or association, in violation of the provisions of section 522.1, shall be liable to a fine of twenty-five dollars for each day he shall so act. [S13, §1821-l; C24, 27, 31, 35, 39, §9123; C46, 50, 54, §522.5]

## CHAPTER 523

## ELECTIONS AND PROPORTIONATE REPRESENTATION

- 523.1 Proxies authorized.  
 523.2 Conditions—revocation.  
 523.3 Filing proxy.

- 523.4 Solicitation by agents—use of funds.  
 523.5 Proportionate representation.  
 523.6 Amendment of articles.

**523.1 Proxies authorized.** Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors. [S13, §1821-x; C24, 27, 31, 35, 39, §9124; C46, 50, 54, §523.1]

S13, §1821-x, editorially divided  
 Referred to in §523.4

**523.2 Conditions—revocation.** No proxy shall be valid unless signed and executed within two months prior to such meeting or election for which said proxy was given, and such proxy shall be limited to thirty days subsequent to the date of such meeting or election, and may be revoked at any time by the policyholder or stockholder who executed the said proxy. [S13, §1821-x; C24, 27, 31, 35, 39, §9125; C46, 50, 54, §523.2]

Referred to in §523.4

**523.3 Filing proxy.** All proxies shall be filed with the company at least one day prior to an election at which they are to be used. [S13, §1821-x; C24, 27, 31, 35, 39,§9126; C46, 50, 54, §523.3]

Referred to in §523.4

**523.4 Solicitation by agents—use of funds.** Soliciting of proxies by an agent of the company either for personal use, or for the use of officers of the company or association, or for any other persons, is forbidden. Nor shall any of the funds of a company or association be expended in procuring proxies. Any violation of this or sections 523.1 to 523.3, inclusive, shall be deemed a misdemeanor and punishable accordingly. [S13,§§1821-y,-z; C24, 27, 31, 35, 39,§9127; C46, 50, 54,§523.4]

Punishment, §687.7

**523.5 Proportionate representation.** The holder or holders, jointly or severally, of not less than one-fifth but less than a majority of the shares of the capital stock of corporations organized on the stock plan under the laws of this state for transacting the business of life or fire insurance, shall be entitled to nominate, to be elected, or appointed, as the case may be, directors or other persons performing the functions of directors by whom, according to the articles of incorporation of such corporations, its affairs are to be conducted. In the event such nomination shall be made, there shall be elected or appointed to the extent

that the total number to be elected or appointed is divisible, such proportionate number from the persons so nominated as the shares of stock held by persons making such nominations bear to the whole number of shares issued; provided the holder or holders of the minority shares of stock shall only be entitled to one-fifth (disregarding fractions) of the total number of directors to be elected for each one-fifth of the entire capital stock of such corporation so held by them; and provided, further, that this section shall not be construed to prevent the holders of a majority of the stock of any such corporation from electing the majority of its directors. Vacancies occurring from time to time shall be filled so as to preserve and secure to such minority and majority stockholders proportionate representation as above provided. [S13,§1821-v; C24, 27, 31, 35, 39,§9128; C46, 50, 54,§523.5]

Referred to in §523.6

**523.6 Amendment of articles.** All such existing corporations shall by amendment to their articles of incorporation, approved by the commissioner of insurance, provide for the nomination, election, or appointment of the directors or other persons by whom its affairs are to be conducted, in conformity with the provisions of section 523.5, and the articles of incorporation of all such corporations hereafter organized shall contain like provisions. [S13,§1821-w; C24, 27, 31, 35, 39,§9129; C46, 50, 54,§523.6]

## CHAPTER 523A

### PREARRANGED FUNERAL PLANS

523A.1 Trust fund established.

523A.2 Deposit of funds.

523A.3 Report to superintendent of banking.

523A.4 Penalty.

**523A.1 Trust fund established.** Whenever an agreement is made by any person, firm or corporation for the final disposition of a dead human body wherein delivery of personal property to be used under a prearranged funeral plan or the furnishing of professional services of a funeral director or embalmer in connection therewith, is not immediately required, eighty percent of all payments made under the agreement, including interest thereon, shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless said funds are sooner released to the person making such payment by mutual consent of the parties. [C54,§523A.1]

Referred to in §§523A.2, 523A.4

**523A.2 Deposit of funds.** All such trust funds shall be deposited in a bank or trust company authorized to transact business in this state within thirty days after the receipt thereof and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in

trust for the designated beneficiary until said trust fund is released under either of the conditions provided in section 523A.1. [C54, §523A.2]

Referred to in §523A.4

**523A.3 Report to superintendent of banking.** Any bank or trust company doing business in this state and receiving such trust deposits shall make report thereof annually to the superintendent of banking, indicating the name and address of each depositor and beneficiary, the amount so deposited and the interest paid on such account. Such annual report shall be made on or before February 1 of the year following the year of deposit. [C54, §523A.3]

**523A.4 Penalty.** Any person, firm or corporation, or any agent or representative thereof, who shall violate any of the provisions of sections 523A.1 and 523A.2, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor. [C54,§523A.4]

Punishment, see §687.7



# TITLE XXI

## BANKS

Referred to in §491.39

### CHAPTER 524

#### BANKING DEPARTMENT

Identification and use of publicly owned automobiles, etc., §740.20 et seq

- 524.1 Superintendent of banking—term.
- 524.2 Appointment—qualifications.
- 524.3 Vacancies.
- 524.4 Removal of superintendent.
- 524.5 Suspension of superintendent.
- 524.6 Deputy superintendent — examiners — employees.
- 524.7 Salaries.
- 524.8 Bond of examiners—qualifications.
- 524.9 Bond of deputy and assistants.
- 524.10 Duties and powers.
- 524.11 Approval of articles.
- 524.12 Appeal.
- 524.13 Time of appeal—decision.
- 524.14 Canceling charters.
- 524.15 Fees for examination.
- 524.16 Expenses.

- 524.17 Payment.
- 524.18 When examiner disqualified.
- 524.19 Information confidential.
- 524.20 Records.
- 524.21 Annual report.
- 524.22 Accounting.
- 524.23 Cost bill—penalty.

#### PRIVATE BANKS

- 524.24 Use of banking terms prohibited.
- 524.25 Violations.
- 524.26 Exceptions.
- 524.27 Construction.
- 524.28 Application for supervision.
- 524.29 Regulations.
- 524.30 Administration—receivership.

**524.1 Superintendent of banking—term.** The superintendent of banking shall have his office at the seat of government. His regular term of office shall be four years from the first day of July of the year of his appointment. [C24, 27, 31, 35, 39,§9130; C46, 50, 54,§524.1]

**524.2 Appointment—qualifications.** The governor shall, within sixty days following the organization of the regular session of the general assembly in 1925, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a superintendent of banking. Such appointee shall be selected solely with regard to his qualification and fitness to discharge the duties of his office, and no person shall be appointed who has not had at least five years executive experience in a state or savings bank in the state. [C24, 27, 31, 35, 39, §9131; C46, 50, 54,§524.2]

Confirmation, §2.40

**524.3 Vacancies.** Vacancies that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular

term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [C24, 27, 31, 35, 39,§9133; C46, 50, 54,§524.3]

**524.4 Removal of superintendent.** The governor may, by and with the consent of a majority of the senate during a session of the general assembly, remove the superintendent of banking for malfeasance in office or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. [C24, 27, 31, 35, 39,§9134; C46, 50, 54,§524.4]

37GA, ch 40,§8, editorially divided

**524.5 Suspension of superintendent.** When the general assembly is not in session the governor may suspend the superintendent of banking so disqualified, and shall appoint another to fill the vacancy thus created, subject, however, to the approval or disapproval of a majority of the senate when next in session; and if the senate shall concur therein he shall be removed from the office. But if the senate shall at the same session fail to concur or to act on the same, said suspension shall thereupon cease. [C24, 27, 31, 35, 39,§9135; C46, 50, 54,§524.5]

**524.6 Deputy superintendent—examiners—employees.** The superintendent of banking subject to the approval of the state banking board may appoint examiners, but not to exceed one examiner for each fifty banks, or major fraction thereof, under his supervision; and may also appoint a deputy superintendent of banking, who shall perform the duties attached to the office of the superintendent of banking during the absence or the inability of the superintendent, and as directed by him; and may also appoint such clerks, stenographers, and special assistants as he may need to discharge in a proper manner the duties imposed upon him by law; but the total number, including the deputy superintendent, shall not exceed one for each one hundred banks and trust companies, or major fraction thereof, under his supervision.

Provided that whenever the proper conduct of the affairs of the office demands, he may, with the approval of the state banking board, appoint such additional bank examiners and employees as may be necessary, any provision of the law for said department to the contrary notwithstanding. Such additional examiners or employees shall be paid out of current or accumulated earnings of the banking department, their salaries to be not greater than those of other similar employees authorized by law. All such appointees shall be removable at the pleasure of said superintendent. [C24, 27, 31, 35, 39,§9136; C46, 50, 54,§524.6]

**524.7 Salaries.** The superintendent, deputy superintendent of banking and all bank examiners shall receive a salary to be fixed by the state banking board, which salaries shall be commensurate with the work done. The state banking board in fixing the salaries of such examiners and the deputy superintendent of banking shall prescribe certain classifications of such employees in accordance with their experience and qualifications so as to establish the following progressive positions of “beginners”, “assistant examiners”, “examiners”, “senior examiners” and “deputy superintendent of banking”, with salary ranges for each patterned after and following, as may be deemed feasible, desirable and practical by the state banking board, those of the national banking department or the board of governors of the Federal Reserve System or of the Federal Deposit Insurance Corporation. In no event, however, shall the salary of any such senior examiner exceed a maximum of eighty-two hundred dollars per year or the maximum salary of the deputy superintendent of banks eighty-five hundred dollars per year. [C24, 27, 31, 35, 39,§9137; C46, 50, 54,§524.7; 56GA, ch 246,§1]

**524.8 Bond of examiners — qualifications.** Each examiner shall give a corporate surety bond to the state, conditioned for the faithful discharge of his duties, for the sum of three thousand dollars, which shall be filed with said superintendent and approved by him. Said examiners shall have had at least three years

experience in practical bank work or as bank examiners. [C24, 27, 31, 35, 39,§9138; C46, 50, 54,§524.8]

**524.9 Bond of deputy and assistants.** The deputy superintendent and all such clerks, stenographers, special assistants, and other employees shall give bond to the state in such sum as shall be fixed by the executive council. [C24, 27, 31, 35, 39,§9139; C46, 50, 54,§524.9]

**524.10 Duties and powers.** The superintendent of banking shall be the head of the banking department of Iowa and shall have general control, supervision, and direction of all banks and trust companies incorporated under the laws of Iowa, and shall be charged with the execution of the laws of this state relating to banks and banking. The organization and reorganization of state and savings banks and trust companies shall be subject to the approval of the superintendent of banking.

He shall have power to adopt and promulgate such rules and regulations as in his opinion will be necessary to properly and effectively carry out and enforce the provisions of this section. [C24, 27, 31, 35, 39,§9140; C46, 50, 54,§524.10]

43GA, ch 30,§13, editorially divided

**524.11 Approval of articles.** Before any state or savings bank shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the superintendent of banking for approval. All amendments to such articles and the renewal articles of incorporation shall also be submitted to and approved by the superintendent of banking. [C31, 35,§9140-c1; C39,§9140.1; C46, 50, 54,§524.11]

Similar provision, §491.35

**524.12 Appeal.** Any person aggrieved by the action of the superintendent of banking in granting or refusing to grant a certificate of authority to engage in banking may appeal to the executive council of the state by filing with the secretary of the council a notice of appeal, in writing, and serving the same upon the superintendent of banking or some employee of the office. [C24, 27, 31, 35, 39,§9141; C46, 50, 54,§524.12]

**524.13 Time of appeal—decision.** Such appeal shall be taken within ten days after the action of the superintendent of banking. When notified of such appeal the executive council shall fix a time and place for the hearing and its findings in the matter shall be final. [C24, 27, 31, 35, 39,§9142; C46, 50, 54,§524.13]

**524.14 Canceling charters.** In the event that any state or savings bank, or trust company which has heretofore been granted a charter or may hereafter be granted a charter to transact business within the state fails to transact the business or perform the duties contemplated by such charter, the superintendent of banking may certify to the attorney general such facts and the attorney general may there-

upon file a petition in the district court of the county in which any such institution is located, and upon the presentation of such petition to the district court an order shall issue setting the date of hearing and prescribing notice thereof, and upon completed service of said notice, hearing shall be had and the court may enter an order canceling such charter and make any further order necessary to terminate the affairs of said corporation. [C31, 35, §9142-c1; C39, §9142.1; C46, 50, 54, §524.14]

**524.15 Fees for examination.** Every bank including every private bank subject to examination and regulation by the banking department and trust company shall pay to the superintendent of banking within ten days after the date of each examination a fee based on the assets of said bank or trust company as the date for the close of business for which such examination is made, as follows: At the rate of one dollar per one thousand dollars of assets on the first twenty-five thousand dollars of assets, and at the rate of three cents per one thousand dollars of assets on all assets over and above twenty-five thousand dollars of assets, provided that no examination shall be made for less than twenty dollars. [C97, §1876; SS15, §1875; C24, 27, 31, 35, 39, §9143; C46, 50, 54, §524.15]

**524.16 Expenses.** The superintendent of banking and examiners shall be entitled to actual and necessary expenses incurred in the examination of banks and trust companies, and the actual and necessary expenses within the state of special assistants and other employees, who may be designated by the superintendent to aid in the official work of this department, shall be allowed. The superintendent of banking shall also be entitled to actual and necessary expenses incurred in attending the district or group meetings and state convention of the Iowa bankers association; the annual convention of the American bankers association, any meetings that may be called by any federal bank supervisory agency, and the annual session, if any, or any conference of state supervisors of banking or banking commissioners, that may be called by said state supervisors of banking, or banking commissioners, or their organization, if any, or for any other meetings relating to his department as may be approved by the state banking board, not to exceed fifteen hundred dollars in any one year, as shall be approved by the said state banking board, and such expenses shall be paid by the treasurer of state on warrants drawn by the comptroller, but the total amount of expense and salaries shall not, in any one year, exceed the amount of fees collected by the department. [C24, 27, 31, 35, 39, §9144; C46, 50, 54, §524.16]

**524.17 Payment.** No payments of any kind shall be made by the treasurer of state to cover expenses and salaries of the banking department or any part thereof, unless there shall be on hand in the office of the treasurer of state

sufficient funds, received as income from said department to pay the same, and such salaries and expenses shall be paid from such funds. The superintendent shall furnish to the comptroller from time to time a list of the salaries as fixed by him or as authorized by the executive council and all salaries shall be paid monthly by the treasurer of state on warrants drawn by the comptroller in conformity with such salary list so furnished. [C24, 27, 31, 35, 39, §9145; C46, 50, 54, §524.17]

**524.18 When examiner disqualified.** No bank examiner shall be assigned by the superintendent of banking to examine a bank or trust company in a county in which he is interested in the business of a bank or trust company. [C97, §§1875, 1876; SS15, §1875; C24, 27, 31, 35, 39, §9146; C46, 50, 54, §524.18]

**524.19 Information confidential.** The information received or obtained by any examination of any bank or trust company shall not be divulged or offered in evidence in any court in this state except in such actions as are brought by the superintendent of banking or under the criminal provision. [C31, 35, §9146-c1; C39, §9146.1; C46, 50, 54, §524.19]

**524.20 Records.** All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of banking shall be delivered to and filed or deposited with the said superintendent of banking. [C24, 27, 31, 35, 39, §9147; C46, 50, 54, §524.20]

**524.21 Annual report.** The superintendent of banking shall, at the time provided by law, make an annual report as to the condition of every bank from which reports have been received, and may embrace in said report such observations and recommendations as he may deem of value. [C97, §1881; C24, 27, 31, 35, 39, §9148; C46, 50, 54, §524.21]

*Time of filing report, §17.8*

**524.22 Accounting.** All fees and charges of every character whatsoever which are required by law to be paid by banks and trust companies shall be payable to the superintendent of banking, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner as now provided for by law. [C24, 27, 31, 35, 39, §9149; C46, 50, 54, §524.22]

*Accounting, §12.10*

**524.23 Cost bill—penalty.** Upon the completion of each examination the bank examiner in charge of said examination shall render a bill for such fee, in triplicate, and shall deliver one copy thereof to the bank, and shall forward one copy to the treasurer of state, and one copy to the superintendent of banking at his office in Des Moines. Failure to place the amount of said fee in the hands of the superintendent of banking within ten days, as hereinbefore provided, shall subject the bank to an additional fee equal to five percent of the amount of such

fee for each day same shall be delinquent. The superintendent shall account for and pay over said fees to the treasurer of state at the time and in the manner as now provided for by law. [C97, §§1875, 1876; SS15, §1875; C24, 27, 31, 35, 39, §9150; C46, 50, 54, §524.23]

Referred to in §528.24  
Accounting, §12.10

PRIVATE BANKS

**524.24 Use of banking terms prohibited.** It shall be unlawful for any individual, partnership, or unincorporated association, or corporation, other than national banking associations, not subject to the supervision or examination of the banking department, to make use of any office sign bearing thereon the word "bank", "banking", "banker", or any derivative, plural or compound, of the word "banking", or word or words in a foreign language having the same or similar meaning, or to make use of any exterior or interior sign bearing thereon such word or words whatsoever to indicate to the general public, or to any individual, that such place or office is the place or office of a bank, nor shall such person or persons, partnership, unincorporated association, or corporation, make any use of or circulate any letterheads, billheads, bank notes, bank receipts, certificates, circulars, or any written or printed, or partly written, or partly printed, papers whatever having thereon any other word or words indicating that such business is the business of a bank. [C24, 27, 31, 35, 39, §9151; C46, 50, 54, §524.24]

38GA, ch 236, §2, editorially divided  
Referred to in §§524.25-524.28

**524.25 Violations.** Any person or persons violating any of the provisions of section 524.24, either individually or as an interested party in any such copartnership or corporation, shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than sixty days nor more than one year, or be punished by both such fine and imprisonment. [C24, 27, 31, 35, 39, §9152; C46, 50, 54, §524.25]

Referred to in §§524.26-524.28

**524.26 Exceptions.** Nothing in sections 524.24 and 524.25 shall be construed as affecting or in any wise interfering with any private bank or

private banker that was engaged in lawful business previous to April 19, 1919. [C24, 27, 31, 35, 39, §9153; C46, 50, 54, §524.26]

Referred to in §§524.27, 524.28

**524.27 Construction.** If any part of sections 524.24 to 524.26, inclusive, shall be declared unconstitutional, it shall not affect any other part of said sections. [C24, 27, 31, 35, 39, §9154; C46, 50, 54, §524.27]

Referred to in §524.28

**524.28 Application for supervision.** Any person, firm, association, business, or trust company doing business as a private bank in this state as permitted under the sections 524.24 to 524.27, inclusive, may request of the superintendent of banks that such bank be subjected to examination and regulation under the laws of this state and under the regulations that may be prescribed by the superintendent of banks. [C35, §9154-f1; C39, §9154.01; C46, 50, 54, §524.28]

Referred to in §§524.29, 524.30

**524.29 Regulations.** The superintendent of banks upon receiving a request as provided in section 524.28, shall make such regulations as to examination and regulation of private banks as will show the condition of such banks conforming generally to the regulations governing savings banks, state banks and trust companies and to insure that the affairs of such banks will be conducted in such manner as will best protect the rights of the parties dealing therewith and of such banks. [C35, §9154-f2; C39, §9154.02; C46, 50, 54, §524.29]

**524.30 Administration—receivership.** From and after the receipt of such request by the superintendent of banks as in section 524.28 provided, the bank making such application shall be subject to such examination and regulation as may be provided in the regulations made by the superintendent of banks and the superintendent of banks shall have power to take possession of any such bank and of its assets and administer the affairs thereof as nearly as may be and in the same manner as he administers the affairs of savings banks, state banks and trust companies and in the event of a receiver being appointed for any such bank, the superintendent of banks shall be the receiver thereof. [C35, §9154-f3; C39, §9154.03; C46, 50, 54, §524.30]

CHAPTER 525

STATE BANKING BOARD

- 525.1 Board created—membership.
- 525.2 Appointment—vacancies.
- 525.3 Tenure.
- 525.4 Compensation and expense.

- 525.5 Source of payment.
- 525.6 Record—audit—payment.
- 525.7 Meetings.
- 525.8 Rights and duties.

**525.1 Board created — membership.** There is hereby created a board to be called the state banking board, composed of five members of which the superintendent of banking shall be ex officio a member and chairman, and four

members who shall be chosen from various sections of the state, so far as it is geographically practical to do so. [C27, 31, 35, §9154-a1; C39, §9154.04; C46, 50, 54, §525.1]

41GA, ch 178, §1, editorially divided

**525.2 Appointment—vacancies.** Said board shall be appointed by the governor. In case of any vacancy in said board the governor shall appoint a new member to fill such vacancy for the unexpired term. [C27, 31, 35, §9154-a2; C39, §9154.05; C46, 50, 54, §525.2]

**525.3 Tenure.** The term of office of each member thereof shall be contemporaneous with the term of office of the superintendent, and each member shall hold his office for such term and until his successor shall have been appointed and qualified. [C27, 31, 35, §9154-a3; C39, §9154.06; C46, 50, 54, §525.3]

**525.4 Compensation and expense.** The members of said board, other than the superintendent of banking, shall receive no salary, but shall be allowed and paid the sum of ten dollars per diem each, for the time actually engaged in performing their duties as members of such board together with all the expenses necessarily incurred and paid out by them in connection therewith. [C27, 31, 35, §9154-a4; C39, §9154.07; C46, 50, 54, §525.4]

**525.5 Source of payment.** Such compensation and expenses shall be paid from the current and accumulated earnings of the banking department. [C27, 31, 35, §9154-a5; C39, §9154.08; C46, 50, 54, §525.5]

**525.6 Record—audit—payment.** The superintendent of banking shall keep a permanent

record in his office containing an itemized statement of the per diem and all expenses incurred by each member of said board, and shall approve all expense accounts before they are submitted to the state comptroller for payment, and thereupon vouchers shall be allowed and paid out of the state treasury as provided by law. [C27, 31, 35, §9154-a6; C39, §9154.09; C46, 50, 54, §525.6]

**525.7 Meetings.** The state banking board shall meet regularly at the office of the superintendent of banking once each month on such date as the board may appoint, and shall meet at such other times as the board may deem necessary, or when called by the chairman of the board, or any two members thereof. [C27, 31, 35, §9154-a7; C39, §9154.10; C46, 50, 54, §525.7]

**525.8 Rights and duties.** The members of said board shall have free access to all the records in the office of the superintendent of banking. Said board shall act in connection with the superintendent in an advisory capacity concerning all matters pertaining to the conduct of the banking department and the administration of the Iowa banking laws. [C27, 31, 35, §9154-a8; C39, §9154.11; C46, 50, 54, §525.8]

Omnibus repeal, 41GA, ch 178, §4

## CHAPTER 526

### SAVINGS BANKS

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**526.1 Organization.** Corporations designated savings banks may be formed by not less than five persons of lawful age, a majority of whom shall be citizens of the state, and must be

organized as provided in this chapter. [C97, §1840; C24, 27, 31, 35, 39, §9155; C46, 50, 54, §526.1]

Referred to in §532.19  
Renewal, §491.33 et seq.

**526.2 Banking powers.** Savings banks may receive on deposit the savings and funds of others, preserve and invest the same, pay interest or dividends thereon, and transact the usual business of such institutions, but shall not have power to issue bank notes, bills, or other evidences of debt for circulation as money. [C97,§1841; C24, 27, 31, 35, 39,§9156; C46, 50, 54,§526.2]

**526.3 Articles of incorporation.** The articles of incorporation of a savings bank shall be signed and acknowledged by the incorporators before some officer authorized to take acknowledgment of deeds, and give:

1. The corporate name.
2. The object for which it is formed.
3. The amount of capital.
4. The time of its existence, which shall not exceed fifty years.
5. The number of its directors.
6. The name and post-office address of each person or officer who shall manage its affairs until the first election, and
7. The name of the city, town, or village, and the county, in which the principal place of business is to be located. [C97,§1842; S13, §1842; C24, 27, 31, 35, 39,§9157; C46, 50, 54,§526.3]

S13,§1842, editorially divided  
Referred to in §532.19

**526.4 Record required.** Such articles shall be filed and recorded in the office of the recorder of deeds of the county of the principal place of business, and in the office of the secretary of state. [C97,§1842; S13,§1842; C24, 27, 31, 35, 39,§9158; C46, 50, 54,§526.4]

Referred to in §§527.4, 532.19

**526.5 Notice of incorporation.** Notice of its incorporation shall be given by publication in some newspaper published in the county wherein the bank is located, once each week, for four consecutive weeks, which notice shall state, in substance, the matters required to be given in the articles of incorporation. [C97, §1842; S13,§1842; C24, 27, 31, 35, 39,§9159; C46, 50, 54,§526.5]

Referred to in §§527.4, 532.19

**526.6 Commencement of business — conditions.** The corporation may commence business when its first directors or officers named in its recorded articles of incorporation shall have furnished the superintendent of banking proof, under oath, that the required capital has been paid in and is held in good faith by said bank, and he has satisfied himself of such fact, for which purpose he may make a personal examination, or cause it to be made, at the expense of such bank, and he is also satisfied that the preceding sections of this chapter have been complied with, and has issued a certificate to that effect, naming therein its first board of directors, notice of which certificate shall be given by the publication thereof once each week for four consecutive weeks in some newspaper printed in the county where its articles are recorded, at the expense

of such bank, and proof of such publication by the oath of the publisher or his foreman filed with said superintendent. [C97,§1843; S13,§1843; C24, 27, 31, 35, 39,§9161; C46, 50, 54,§526.6]

Referred to in §§491.37, 532.19

**526.7 Powers.** The incorporators and their successors shall be a body corporate with the right of succession for the period limited, and shall have power to:

1. Sue and be sued.
2. Have a corporate seal and alter it at pleasure.
3. Purchase, hold, sell, convey, and release from trust or mortgage such real and personal estate as provided for in this chapter.
4. Appoint such officers, agents, employees, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, fix their compensation, and to require of them such security as may be proper for the performance of their duties.
5. Loan and invest the funds of the corporation, to receive deposits of money, to loan and invest the same as provided in this chapter, and to repay such deposits without interest, or with such interest as the bylaws or articles may provide.
6. Make bylaws for the management and regulation of the corporation, its property and affairs, prescribing the condition on which the deposits will be received and interest paid thereon, and the time and manner of dividing the profits, and for carrying on all business within its power. [C97,§1844; C24, 27, 31, 35, 39,§9162; C46, 50, 54,§526.7]

**526.8 Directors—citizenship.** The business and property of such banks shall be managed by a board of directors of not less than five, all of whom shall be shareholders, and at least three-fourths of the directors must be citizens of the state. [C97,§1845; C24, 27, 31, 35, 39,§9163; C46, 50, 54,§526.8]

C97,§1845, editorially divided  
Referred to in §532.19

**526.9 Articles to designate number — changes.** The articles of incorporation shall designate the maximum number of directors, and the stockholders by a majority of all of the votes of the stockholders of such bank may change at any annual meeting by resolution, the number of its directors, as said stockholders may decide, to any number not less than five nor more than the maximum designated in the articles of incorporation or certificate of authorization, provided that said resolution of the stockholders shall after being duly adopted as aforesaid be filed in the office of the superintendent of banking within thirty days after such adoption. [C24, 27, 31, 35, 39,§9164; C46, 50, 54,§526.9]

Referred to in §532.19

**526.10 Amendment of articles.** The maximum number of directors as fixed by the articles of incorporation may be changed in the

manner prescribed by law for changing the said articles of incorporation. [C24, 27, 31, 35, 39, §9165; C46, 50, 54, §526.10]

Referred to in §532.19

**526.11 First meeting—notice.** The call for the first meeting of the directors or trustees shall be signed by one or more persons named in said superintendent's certificate, stating the time and place of meeting, and shall be delivered personally to each director or published at least ten days in some newspaper in the county wherein the principal place of business of the incorporation is located. [C97, §1845; C24, 27, 31, 35, 39, §9168; C46, 50, 54, §526.11]

Referred to in §532.19

**526.12 Officers and employees — bonds.** At their first meeting, and as often thereafter as the bylaws require, they shall elect from their number a president and one or more vice-presidents for the ensuing year, and appoint a treasurer or cashier, and such other officers and employees as may be required, who shall hold their office during the pleasure of the board, and give such security for the faithful performance of their duties as may be required of them by the bylaws. [C97, §1845; C24, 27, 31, 35, 39, §9169; C46, 50, 54, §526.12]

Referred to in §532.19

**526.13 Vacancies on board.** All vacancies in the board of directors shall be filled at its next regular meeting after such vacancy shall arise from among the stockholders, and the person receiving a majority of the votes of the whole number of directors shall be duly elected to fill such vacancy. [C97, §1846; C24, 27, 31, 35, 39, §9170; C46, 50, 54, §526.13]

C97, §1846, editorially divided  
Referred to in §532.19

**526.14 First regular board — tenure.** The directors to succeed those named in the certificate of the superintendent of banking shall be elected at the first annual meeting thereafter, at such time and place, in such manner and upon such notice as shall be provided by the bylaws, and shall hold office until their successors are elected and qualify, which shall be annually thereafter. [C97, §1846; C24, 27, 31, 35, 39, §9171; C46, 50, 54, §526.14]

Referred to in §532.19

**526.15 Manner of elections.** All such elections shall be by ballot, and the persons receiving the greater number of votes cast shall be directors. [C97, §1846; C24, 27, 31, 35, 39, §9172; C46, 50, 54, §526.15]

Referred to in §532.19

**526.16 Postponement.** If an election of directors shall not be held on the day designated, it may be held on any other day, after giving the notice required by the bylaws. [C97, §1846; C24, 27, 31, 35, 39, §9173; C46, 50, 54, §526.16]

Referred to in §532.19

**526.17 Quorum.** A majority of directors shall constitute a quorum for the transaction

of business, but in no case shall a measure be declared carried unless receiving three affirmative votes. [C97, §1846; C24, 27, 31, 35, 39, §9174; C46, 50, 54, §526.17]

Referred to in §532.19

**526.18 Voting of stock — stockholder disqualified.** At all stockholders meetings, and all elections held thereat, each share of stock shall be entitled to one vote. Any stockholder may vote upon his shares in person, or by proxy in writing. Shares belonging to an estate may in like manner be voted by the administrator thereof, and shares belonging to a corporation, association, or society may be voted by any person authorized by its board of directors to do so, but no stockholder shall be entitled to vote who owes the bank any past due indebtedness. [C97, §1847; C24, 27, 31, 35, 39, §9175; C46, 50, 54, §526.18]

Referred to in §532.19  
Similar provision, §491.55

**526.19 Payment.** The deposits shall be paid to the depositor or his representative, when requested, with such interest and under such regulations as the board of directors shall, from time to time, prescribe, not inconsistent with the provisions of this chapter. [C97, §1848; S13, §1848; C24, 27, 31, 35, 39, §9177; C46, 50, 54, §526.19]

Referred to in §532.19

**526.20 Regulations — posting.** Said regulations shall be printed and conspicuously exposed in the business office of the bank, in some place accessible and visible to all; and no alteration which may at any time be made in such rules and regulations shall affect the rights of depositors acquired previously thereto in respect to deposits or interest thereon. [C97, §1848; S13, §1848; C24, 27, 31, 35, 39, §9178; C46, 50, 54, §526.20]

Referred to in §532.19

**526.21 Notice of withdrawal.** Savings banks may require sixty days written notice of the withdrawal of savings deposits, but when there are sufficient funds on hand the officers thereof may, in their discretion, waive this requirement. [C97, §1848; S13, §1848; C24, 27, 31, 35, 39, §9179; C46, 50, 54, §526.21]

Referred to in §532.19

**526.22 Closing of accounts.** They may close any account, upon such written notice as may be provided for in the bylaws, directing a depositor to withdraw his deposits, after which it shall cease to draw interest. [C97, §1848; S13, §1848; C24, 27, 31, 35, 39, §9180; C46, 50, 54, §526.22]

Referred to in §532.19

**526.23 Demand certificates.** Nothing in this chapter shall prevent such banks, in their discretion, issuing certificates of deposit payable upon demand. [C97, §1848; S13, §1848; C24, 27, 31, 35, 39, §9181; C46, 50, 54, §526.23]

Referred to in §532.19

**526.24 Limitation as to interest.** All accounts upon which no deposit or drafts shall be made for a period of ten years in succession shall be so far closed that neither the sum deposited, nor the interest that shall have accrued thereon, shall be entitled to any interest after the expiration of the ten years from the date of the last deposit or draft. This provision, however, shall not apply to endowments for children, to trust estates, nor to other cases where special provision is made therefor at the time of the deposit thereof. [C97,§1849; C24, 27, 31, 35, 39,§9182; C46, 50, 54, §526.24]

Referred to in §532.19

**526.25 Investment of funds.** Each savings bank shall invest its funds or capital, all moneys deposited therein, and all its gains and profits, only as follows:

1. *Federal securities.* In bonds or interest-bearing notes or certificates of the United States.

2. *Federal farm loan bonds.* In farm loan bonds issued under the Act of congress approved July 17, 1916, as amended, where the corporation issuing such bonds is loaning in Iowa; and in bonds of the home owners' loan corporation, as provided for in the act of congress, approved June 13, 1933 [12 USC,§§1461-1468], or in any amendments thereto and in class "A" stock of the federal deposit insurance corporation, as provided for in the act of congress, approved June 16, 1933 [12 USC, §221a et seq.], or in any amendments thereto.

3. *State securities.* In bonds or evidences of debt of this state, bearing interest.

4. *Municipal securities.* In bonds or warrants of any city, town, county, school district, or drainage district of this state, issued pursuant to the authority of law; but not exceeding twenty-five percent of the assets of the bank shall consist of such bonds or warrants.

5. *Real estate bonds and mortgages.* In notes or bonds secured by mortgage or deed of trust upon unencumbered real estate located in Iowa or upon unencumbered real estate in adjoining states, worth at least twice the amount loaned thereon, provided, however, that no loan shall be made upon any town or city real estate located beyond the first two tiers of counties of any adjoining state.

a. Any such loan may be made in an amount not to exceed sixty percent of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize forty percent or more of the principal of the loan within a period of not more than ten years, and

b. The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of the national housing act, as amended;

c. Nor shall such limitations and restrictions apply to real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of title III of the servicemen's readjustment act of 1944,\* as amended, otherwise known as the "G.I. Bill of Rights," when such loans fully comply with the provisions of that act as amended and with all regulations promulgated thereon; provided the amount of such loans held at any one time shall not exceed in the aggregate twenty-five percent of the assets of such bank and provided further, that said loans shall be upon real estate located in Iowa or in the first two tiers of counties in bordering states adjoining Iowa.

Provided, however, that no such loan shall be made upon any real estate located west of the one-hundredth meridian line.

\*58 Stat. L. 291

6. *Federal reserve and land bank stock.* An amount not exceeding ten percent of their capital stock and surplus in the capital stock of corporations chartered or incorporated under the provisions of section 25-a of the federal reserve act, approved December 24, 1919 [12 USC,§§611-631], and a like amount in the capital stock of corporations organized under the laws of this state for the purpose of extending credit to those engaged in agriculture and to agricultural organizations, and an amount not in excess of fifteen percent of their capital stock and surplus in capital stock of any national mortgage association authorized under title III of the national housing act [12 USC, §§1716-1723] approved June 27, 1934, or any amendments thereto, subject, however, to the approval of the superintendent of banking; provided that said investments by savings banks shall in no event exceed in the aggregate twenty percent of the capital stock and surplus of said bank.

7. *Federal housing securities.* In bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in debentures issued by the federal housing administrator pursuant to the national housing act, or amendments to said act, and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under title III of the national housing act, or amendments to said act; but not exceeding twenty-five percent of the assets of the bank or trust company shall consist of such investments. [C97,§1850; S13, §1850; C24, 27, 31, 35, 39,§9183; C46, 50, 54, §526.25]

S13,§1850, editorially divided  
Referred to in §§526.26, 526.32  
Also see §§682.23, 682.45  
Investments in federal reserve and farm loan bank stock,  
§§528.67, 528.70

**526.26 Inapplicable statutes.** No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or



investments in federal housing securities made pursuant to section 526.25 or section 528.14. [C35,§9183-g1; C39,§9183.1; C46, 50, 54,§526.26]

**526.27 Saving clause.** Should any section of this act\* or part thereof be held unconstitutional or invalid, such decisions shall only affect the specific provisions which may be held invalid or unconstitutional and shall not affect the validity of the remaining portions of this act, provided that nothing in this act shall deny equal privileges to national banks located in this state insofar as such banks now or later may be authorized by federal law to carry on federal housing administration loan work. [C35,§9183-g2; C39,§9183.2; C46, 50, 54,§526.27]

\*46GA, ch 98

**526.28 Investments by state banks and trust companies.** The provisions governing the investment of funds or capital, all money deposited therein and all gains and profits of savings banks shall apply with equal force and effect to all state banks and trust companies. [C31, 35,§9183-c1; C39,§9183.3; C46, 50, 54,§526.28]

**526.29 Other investments — savings banks.** It may discount, purchase, sell, and make loans upon commercial paper, notes, bills of exchange, drafts, or any other personal or public security. [C97,§1850; S13,§1850; C24, 27, 31, 35, 39,§9184; C46, 50, 54,§526.29]

Prohibited holdings and loans, §528.9

**526.30 Expense attending loans.** In all cases of loans upon real estate, all the expenses of searches, examination, and certificates of title, or the inspection of property, appraisals of value, and of drawing, perfecting, and recording papers, shall be paid by such borrowers. [C97,§1850; S13,§1850; C24, 27, 31, 35, 39,§9185; C46, 50, 54,§526.30]

**526.31 Insurance.** If buildings are included in the valuation of real estate upon which a loan shall be made, they shall be insured by the mortgagor for at least two-thirds of their value, in some solvent company, and the loss, if any, under the policy of insurance shall be made payable to the bank or its assigns, as its interests may appear. When the mortgagor neglects to procure the insurance as above provided, the mortgagee may procure the same in the mortgagor's name for its benefit, and the premium so paid therefor shall be added to the mortgage debt. [C97,§1850; S13,§1850; C24, 27, 31, 35, 39,§9186; C46, 50, 54,§526.31]

**526.32 Surplus fund — investment.** The directors of any savings bank, state bank or trust company may set apart from its earnings, over and above expenses, a surplus fund, to be maintained as such, separate and apart from earnings usually carried and designated as undivided profits, and which surplus fund shall not be drawn upon for the payment of expenses or dividends, except that it may be made use of as a stock dividend for increasing the capital of the bank. Such surplus shall be invested in the same manner as the capi-

tal of the bank, as provided in section 526.25. [S13,§1850-a; C24, 27, 31, 35, 39,§9187; C46, 50, 54, §526.32]

S13,§1850-a, editorially divided  
Surplus created, §528.57

**526.33 Transfer of surplus to undivided profits.** The directors may transfer said surplus fund, or any part of the same, back to the undivided profits account, and make use of the same, when so transferred, for the payment of expenses and dividends when the deposits of the bank shall be less than ten times the capital, or capital and remaining surplus, and not otherwise. [S13,§1850-a; C24, 27, 31, 35, 39,§9188; C46, 50, 54,§526.33]

**526.34 Real estate holdings.** A savings bank, state bank or trust company, subject to the approval of the superintendent of banking, may purchase, hold, and convey real estate only as follows:

1. Such as shall be necessary for its accommodation in the transaction of its business.

2. Such as shall have been purchased at sales upon foreclosure of mortgages owned by it, or upon judgments or decrees obtained or rendered for debts due it, or such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or such as it may obtain by redemption as junior mortgagee or judgment creditor, and which shall be sold by said bank within ten years after the title shall be vested in it. [C97, §1851; C24, 27, 31, 35, 39,§9190; C46, 50, 54, §526.34; 56GA, ch 247,§1]

**526.35 Interest — dividends.** No dividend shall be declared or paid to stockholders, save out of the undivided profits on hand after paying or setting apart sums sufficient for the payment of all expenses in operating the bank, and of interest to depositors according to the rate fixed therefor by the board of directors from time to time. The bank shall pay interest to the depositors, when due, upon presentation of deposit book or certificate. [C97,§1852; S13, §1852; C24, 27, 31, 35, 39,§9191; C46, 50, 54, §526.35]

Similar provisions, §§528.58, 532.16

**526.36 Shares—transfers.** The capital of savings banks shall be divided into shares of one hundred dollars each or into shares of such less amount as may be provided in the articles of incorporation, issued or acquired only upon full payment of the sums represented by them, transferable on the books of the corporation in such manner as shall be prescribed by law and in its bylaws. Stock owned by any corporation, association, or society may be transferred by any person authorized to do so by its board of directors or trustees. [C97,§1853; C24, 27, 31, 35, 39,§9192; C46, 50, 54,§526.36]

Referred to in §532.19  
Similar provisions, §§527.7, 528.55  
Transfers generally, §491.50 et seq.

**526.37 Deposits—to whom payable.** Deposits made by a person as executor, administrator,

or in any other official capacity, shall be payable to him as such official; if personally made by a minor, to him, although he have no guardian, or his guardian shall not have authorized such payment, and the check, receipt, or acquittance of the minor therefor shall be valid and binding. If a deposit be made in her own name by a woman, then or afterwards married, payment shall be made to her upon her check or receipt; if made by any corporation, association, or society, to any person authorized by its board of directors or trustees to receive the same. [C97,§1854; C24, 27, 31, 35, 39,§9193; C46, 50, 54,§526.37]

Referred to in §532.19

**526.38 Increase of capital stock.** The capital of savings banks may be increased by an affirmative vote of two-thirds of the shares thereof, at a stockholders meeting, called upon a notice signed by the officers of the bank and a majority of its directors, specifying the object of the meeting, its time and place, and the amount of the proposed increase, published once a week for four consecutive weeks before the time fixed, in some newspaper of the county where the bank is located. [C97, §1856; C24, 27, 31, 35, 39,§9194; C46, 50, 54, §526.38]

C97,§1856, editorially divided  
Referred to in §532.19

**526.39 Record of increase—certificate.** If at such meeting the required vote is given, a certificate of the proceedings showing compliance with the foregoing provisions, the amount of capital paid in, the amount to which it is to be increased, and the manner thereof, shall be signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the board of directors, and filed and recorded in the office of the recorder of deeds of the proper county, and with the secretary of state, and a certificate shall thereupon be issued by him in the manner required in the original organization of the bank. When this is done, the stock shall be increased to the amount stated in the certificate. [C97,§1856; C24, 27, 31, 35, 39,§9195; C46, 50, 54,§526.39]

Referred to in §532.19

**526.40 Reorganization as savings bank.** Any bank existing under any law of the state may be reorganized under the provisions of this chapter by filing with the recorder of deeds of the county in which the business is to be conducted, articles of incorporation as required for the organization of savings banks, or such amendment of its articles as will comply with

the provisions of this chapter. [C97,§1858; C24, 27, 31, 35, 39,§9196; C46, 50, 54,§526.40]

C97,§1858, editorially divided  
Referred to in §532.19  
Approval by superintendent, §§491.35, 524.11  
Renewal, §491.33 et seq.

**526.41 Articles—execution—record—certificate.** Such articles or amendment shall be signed by a majority of the directors of such bank, acknowledged before some officer authorized to take the acknowledgment of deeds, and recorded in the office of the proper recorder of deeds and secretary of state, as if the original articles, whereupon the superintendent of banking shall issue his certificate, as in case of the original organization of savings banks, which, when received and published as in such cases required, shall authorize it to transact business. [C97,§1858; C24, 27, 31, 35, 39,§9197; C46, 50, 54,§526.41]

Referred to in §532.19

**526.42 Effect of reorganization.** All the provisions relating to savings banks shall apply to banks thus reorganized, and all its securities, real estate, or property may be then transferred to such new organization. [C97,§1858; C24, 27, 31, 35, 39,§9198; C46, 50, 54,§526.42]

Referred to in §532.19

**526.43 Pre-existing obligations.** Such reorganization shall not discharge the original bank, its directors or stockholders from any liability to its depositors or any other person; and such new savings bank shall be liable for every claim or demand existing against such former organization. [C97,§1858; C24, 27, 31, 35, 39,§9199; C46, 50, 54,§526.43]

Referred to in §532.19

**526.44 Fraudulent representations.** Any bank, banking association, private banker, or person, not incorporated under the provisions of this chapter, or any officer, agent, servant, or employee thereof, who shall advertise, issue, or circulate any card or other paper, or exhibit any sign as a savings bank or savings institution, and any savings bank advertising in any way a greater amount of capital than it has actually paid in, shall forfeit and pay one hundred dollars for each day the offense is continued, to be recovered in a suit brought in the name of the state, by the county attorney, of and for the use of the school fund of the county where such bank is located, and, in addition thereto, shall be guilty of a misdemeanor for each day the same is done or continued. [C97, §1859; C24, 27, 31, 35, 39,§9200; C46, 50, 54, §526.44]

Punishment, §687.7

## CHAPTER 527

## STATE BANKS

- 527.1 "State banks" defined.  
 527.2 Other use of name prohibited.  
 527.3 Incorporation—articles—contents.  
 527.4 Record and notice of incorporation.  
 527.5 Commencement of business—certificate.  
 527.6 Publication of certificate.  
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 527.9 Articles to state number—change by stockholders.  
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**527.1 "State banks" defined.** Associations organized under the general incorporation laws of this state for transacting a banking business, buying or selling exchange, receiving deposits, discounting notes and bills, other than savings banks, shall be designated state banks, and shall have the word "state" incorporated in and made a part of the name of such corporation; and no such corporation shall be authorized to transact business unless the provisions of this Code have been complied with. [C97,§1861; C24, 27, 31, 35, 39,§9202; C46, 50, 54, §527.1]

Exceptions, as to word "state", §528.54  
 Renewal, §491.33 et seq.

**527.2 Other use of name prohibited.** No partnership, individual, or unincorporated association engaged in buying or selling exchange, receiving deposits, discounting notes and bills, or other banking business, shall incorporate or embrace the word "state" in its name, but this section shall not apply to associations organized under the laws of the United States. [C97,§1862; C24, 27, 31, 35, 39, §9203; C46, 50, 54,§527.2]

**527.3 Incorporation — articles — contents.** State banks may be hereafter organized by not less than five persons of lawful age, who shall, prior to the commencement of business, sign and acknowledge articles of incorporation before some officer authorized to take acknowledgments of deeds. Such articles of incorporation shall state:

1. The object of the corporation and the name by which it shall be known.
2. The principal place of business.
3. The time of the commencement and termination of the corporation, which shall in no case exceed twenty years.
4. The amount of capital stock authorized, and the times and conditions in which it shall be paid in.
5. By what officers and persons the affairs of the corporation are to be conducted, and the times at which they will be elected.
6. The highest amount of indebtedness to which the corporation may at any time subject itself.
7. Whether private property, in addition to the liability fixed by law, shall be liable for corporate debts.
8. The name and post-office address of each officer or person who shall manage the affairs of the corporation until the first election.

9. Such other provisions, not contrary to law, which the corporation may adopt for the conduct of the business of the corporation. [C97,§1863; C24, 27, 31, 35, 39,§9204; C46, 50, 54, §527.3]

C97,§1863, editorially divided

**527.4 Record and notice of incorporation.** Such articles shall be filed and recorded, and notice of incorporation given, as provided in sections 526.4 and 526.5 in reference to savings banks. [C97,§1863; C24, 27, 31, 35, 39,§9205; C46, 50, 54,§527.4]

**527.5 Commencement of business—certificate.** No such association shall have the right to commence business until its officers or its stockholders shall have furnished to the superintendent of banking a sworn statement of the paid-up capital, and, when the said superintendent is satisfied as to that fact, he shall issue to such association a certificate authorizing it to commence business. [C97, §1864; S13,§1864; C24, 27, 31, 35, 39,§9207; C46, 50, 54,§527.5]

S13,§1864, editorially divided

**527.6 Publication of certificate.** The association shall cause said certificate to be published in some newspaper printed in the city or town where the association is located, once each week, for at least four weeks, or, if no newspaper is published in such city or town, then in a newspaper published nearest thereto in the county. [C97,§1864; S13,§1864; C24, 27, 31, 35, 39,§9208; C46, 50, 54,§527.6]

**527.7 Shares.** The capital of state banks organized shall be divided into shares of one hundred dollars each or into shares of such less amount as may be provided in the articles of incorporation, issued or acquired only upon full payment of the sum represented by them. [C97,§1865; C24, 27, 31, 35, 39,§9209; C46, 50, 54, §527.7]

Similar provisions, §§526.36, 528.55

**527.8 Directors.** The business and property of each state bank shall be managed by a board of directors of not less than five, all of whom shall be shareholders. [C97,§1866; C24, 27, 31, 35, 39,§9210; C46, 50, 54,§527.8]

**527.9 Articles to state number—change by stockholders.** The articles of incorporation shall designate the maximum number of direc-

tors, and the stockholders by a majority of all of the votes of the stockholders of such bank may change at any annual meeting by resolution, the number of its directors, as said stockholders may decide, to any number not less than five nor more than the maximum designated in the articles of incorporation or certificate of authorization, provided that said resolution of the stockholders shall after being duly adopted as aforesaid be filed in the office of the superintendent of banking within

thirty days after such adoption. [C97,§1866; C24, 27, 31, 35, 39,§9211; C46, 50, 54,§527.9]  
39GA, ch 70,§1, editorially divided

**527.10 Amendment of articles.** The maximum number of directors as fixed by the articles of incorporation may be changed in the manner prescribed by law for changing the said articles of incorporation. [C97,§1866; C24, 27, 31, 35, 39,§9212; C46, 50, 54,§527.10]  
Renewal, §491.33 et seq.

CHAPTER 528

GENERAL PROVISIONS RELATING TO BANKS AND TRUST COMPANIES

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**528.1 Minimum capitalization of banks.** The paid-up capital of state and savings banks and trust companies shall be:

1. In villages, cities and towns having a population of three thousand or less, the capital shall not be less than twenty-five thousand dollars.

2. In cities having a population from three thousand but not exceeding six thousand, the capital shall not be less than fifty thousand dollars.

3. In cities having a population from six thousand but not exceeding fifteen thousand, the capital shall not be less than seventy-five thousand dollars.

4. In cities having a population over fifteen thousand the capital shall not be less than one hundred thousand dollars.

No such bank or trust company shall hereafter be authorized to commence the business of banking until it shall have a paid-in surplus equal to twenty percent of its capital. In addition such bank or trust company shall have a paid-in undivided profits and/or reserve of some reasonable amount but in no instance in excess of twenty percent of the capital, as may be prescribed by the state banking board.

This section shall not apply to state and savings banks and trust companies already established.

The foregoing population requirements shall be based upon the latest federal census. [C97, §§1843, 1864; S13, §§1843, 1864; C24, 27, §§9160, 9206; C31, 35, §9217-c1; C39, §9217.1; C46, 50, 54, §528.1]

Referred to in §528.52  
 Preferred capital stock, §528.127

**528.2 Directors—eligibility.** No person shall be eligible as director of any savings or state

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bank or trust company, nor can that person qualify or serve as such, unless that person owns in his or her own right, shares of stock in such bank or trust company as follows:

1. In those having a capital of less than thirty thousand dollars, shares of stock the par value of which shall be two hundred dollars or more.

2. In those having a capital of thirty thousand dollars or more, shares of stock the par value of which shall be five hundred dollars or more.

The foregoing requirements shall apply to all existing banks and trust companies on January 1, 1930, provided that if the charters of said institutions shall be renewed prior to that date, said provisions shall apply on date of renewal of said charter. Said provisions shall apply at once to charters of all new banks or new trust companies before they are permitted to commence business. [C97, §§1845, 1866; C24, 27, §§9166, 9213; C31, 35, §9217-c2; C39, §9217.2; C46, 50, 54, §528.2]

**528.3 Bonds of officers and employees.** The officers and employees of any state bank, savings bank, or trust company having the care, custody, or control of any funds or securities for any such bank or trust company, shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the said bank or trust company against all losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other criminal act committed by such officer or employee directly or through connivance with others, until all of his accounts with the said bank or trust company shall have been

fully settled and satisfied. The amounts and sureties shall be subject to the approval of the board of directors of any such bank or trust company. The premium on said bonds shall be paid by the said bank or trust company. [C31, 35,§9217-c3; C39,§9217.3; C46, 50, 54,§528.3]

**528.4 Misnomer.** The misnomer of any savings or state bank in any instrument shall not vitiate or impair the same, if such bank be sufficiently described to ascertain the intention of the parties. [C97,§1868; C24, 27, 31, 35, 39,§9218; C46, 50, 54,§528.4]

Referred to in §532.19

**528.5 Compensation of officers.** Officers of savings and state banks may receive for their services a reasonable compensation to be fixed from time to time in the bylaws, or by vote of the board of directors; provided, however, directors as such shall receive only such reasonable compensation as shall be fixed from year to year by the stockholders at their annual meeting and when approved by the superintendent of banking, and a director of such bank who is paid a salary as an active officer thereof shall not draw any added compensation for attendance upon board meetings. [C97,§1869; S13,§1869; C24, 27, 31, 35, 39,§9219; C46, 50, 54,§528.5]

S13,§1869, editorially divided  
Referred to in §§528.7, 532.19

**528.6 Loans to officers or employees—use of funds.** No officer or employee of the bank shall in any manner directly or indirectly use its funds or deposits or any part thereof, except for the regular business transactions of the bank, and no loans shall be made by it to any of them except upon express order of the board of directors, made in the absence of the applicant, duly entered in the records of the board proceedings and only upon the same security as required of others; but the board or directors may by resolution, duly entered in the records of the board proceedings, authorize loans to directors not holding any other office nor being an employee, not exceeding a maximum sum at any one time, which resolution shall be voted upon in the absence of such director.

No active executive officer of any state bank, savings bank, or trust company shall use or borrow for himself, directly or indirectly, any money or other property belonging to any state bank, savings bank or trust company of which he is an officer, in excess of ten percent of the capital and surplus of such bank or trust company, nor shall the total amount loaned to all such active executive officers of any bank or trust company exceed twenty-five percent of the capital and surplus of such bank or trust company.

Where loans are made to such active executive officers they must first be approved by a majority of the board of directors, said approval to be in writing and the active executive officer to whom said loans are made, not voting. The form of said approval shall be as follows:

We, the undersigned, constituting a majority of the ..... of the ..... bank or trust company, do hereby approve a loan of \$..... to .....; it appearing that said loan is not more than ten percent of the capital stock and surplus of ..... bank or trust company; it further appearing that said loan will not make the aggregate of loans to said active executive officers more than twenty-five percent of the capital and surplus of the bank or trust company.

.....  
.....  
.....  
.....

Dated this ..... day of ....., 19....

Provided, if any such active executive officer shall own a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this section as a loan to him. [C97,§1869; S13,§1869; C24, 27, 31, 35, 39,§9220; C46, 50, 54,§528.6]

Referred to in §§528.7, 532.19

**528.7 Violations.** Any such officer, director, or employee of the bank violating any of the provisions of sections 528.5 and 528.6 shall be guilty of embezzlement and shall be imprisoned in the penitentiary not exceeding ten years, or fined in a sum not less than the amount embezzled, or punished by both fine and imprisonment, but nothing in this and sections 528.5 and 528.6 shall prevent or defeat the right to recover upon any note or notes given in violation thereof. [C97,§1869; S13, §1869; C24, 27, 31, 35, 39,§9221; C46, 50, 54,§528.7]

Referred to in §532.19

**528.8 Unsecured loans—conditions.** The superintendent of banking may require, whenever in his judgment it would promote and strengthen the banking industry to do so, that unsecured loans in amounts exceeding five hundred dollars shall not be made except when the request therefor is accompanied by a satisfactory financial statement of such character and setting out such facts as he shall direct. Such financial statement shall be held in strict confidence by the bank to which it is given. Such financial statement shall be attached to the note and, upon request of the borrower, returned to the borrower with the canceled note when the note is paid. [C31, 35,§9221-c1; C39,§9221.1; C46, 50, 54,§528.8]

**528.9 Owning or loaning on its own stock—prior lien of bank.** No state bank, savings bank, or trust company shall make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of any shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within one year from the time of its purchase or acquisition unless the time is extended by the superintendent of banking.

State banks, savings banks, and trust companies shall have prior lien on their debtors' shares of stock for all obligations to the bank subject, however, to loans against the stock which the bank has acknowledged by written notice. [C97,§1850; S13,§1850; C24, 27,§9184; C31, 35,§9221-c2; C39,§9221.2; C46, 50, 54,§528.9]

**528.10 Loans — conditions — gratuities.** No loan or investment shall be made from the funds of any state bank, savings bank, or trust company directly or indirectly except by an active executive officer, and any active executive officer making any loan or investment from the funds of said bank or trust company under or from which or in connection with which he receives or is to receive any gift, gratuity, or compensation whatsoever shall be guilty of a misdemeanor and shall be punished accordingly. [C31, 35,§9221-c3; C39,§9221.3; C46, 50, 54,§528.10]

Investments, §526.28  
Punishment, §687.7

**528.11 Interest on time deposits.** No banking institution or trust company under the jurisdiction of the banking department shall pay interest on savings accounts or certificates of deposit or on any other time deposit at a rate greater than four percent per annum, payable semiannually. No interest in any event shall be paid upon such time deposits for any period less than three months. Any savings accounts or time deposits bearing interest at a rate greater than four percent per annum shall be considered borrowed money and shall be so reported to the superintendent of banking. [C31, 35,§9222-c1; C39,§9222.1; C46, 50, 54, §528.11]

**528.12 Pledge of bank assets.** The cashier or any other officer or employee shall have no power to pledge or hypothecate any notes, bonds, or other obligations owned by said bank or trust company until such power and authority shall have been given, at least annually, to such cashier or other officer or employee pursuant to a resolution by the board of directors, a written record of which proceedings shall first have been made; and a certified copy of said resolution signed by the president and cashier with the corporate seal annexed, shall be conclusive evidence of the grant of such power.

All acts of pledging or hypothecation done by the cashier or other officer or employee of such bank or trust company without the authority from the board of directors shall be null and void, and any such cashier or other officer or employee violating the provisions of this section shall be guilty of embezzlement and shall on conviction thereof be imprisoned in the penitentiary not to exceed twenty years. [C31, 35,§9222-c2; C39,§9222.2; C46, 50, 54,§528.12]

Similar provision, §532.14

**528.13 Pledge to secure public funds.** State and savings banks and trust companies when authorized by the superintendent of banks may pledge a portion of their assets to secure

public funds and such other funds as may be authorized by the superintendent of banking. [C31, 35,§9222-c3; C39,§9222.3; C46, 50, 54,§528.13]

**528.14 Limit of liabilities.** The total liabilities to any savings or state bank of any person, corporation, company, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed twenty percent of the actually paid-up capital and surplus of such bank; provided that they may loan not to exceed one-half of their capital stock to any person, corporation, company, or firm on notes or bonds secured by mortgage or deed of trust upon unencumbered farm land in this state, worth at least twice the amount loaned thereon; but the discount of bona fide bills of exchange drawn against actually existing value, and the discount of commercial or business paper actually owned by the person or persons, corporation, company, or firm negotiating the same, shall not be considered money so borrowed. Provided, further, that irrespective of the provisions of this or any other section of the Code, state banks, savings banks, and trust companies may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to title I, section 2 of the national housing act, or amendments to said act, and may obtain such insurance; and may make such loans secured by real property or leasehold as the federal housing administrator insures or makes a commitment to insure pursuant to the national housing act, or amendments to said act, and may obtain such insurance; but such loans, advances of credits, purchases of obligations representing loans and advances of credit shall in no event exceed, in the aggregate, twenty-five percent of the assets of the bank or trust company.

Obligation of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, or similar documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance shall be subject under this section to a limitation of twenty percent of such capital and surplus. Provided, that such obligations in amounts not to exceed forty percent of such capital and surplus may be permitted when the market value at any time is not less than one hundred twenty percent of the face amount of such obligation, provided further that if such obligations are secured by instruments securing title covering livestock or by a first lien on livestock with sufficient corn and rough feed to fatten said livestock during the term of the note and given for not more than the purchase price of said livestock, they shall be subject under this section to a limitation of forty percent of such capital and surplus. [C97,§1870; SS15,§1870; C24, 27, 31, 35, 39,§9223; C46, 50, 54, §528.14]

Referred to in §§526.26, 528.15, 532.19

**528.15 Suspension of limitations.** Any limitations in section 528.14, upon the amount that may be loaned to any person, corporation, company, or firm by any savings or state bank of the state, is hereby suspended from March 26, 1943, upon any loan made by such bank to any person, corporation, company, or firm for the purpose of financing the production, storage, or marketing of agricultural commodities, or financing war production contracts or war production facilities in general, or for any other purpose, to the extent that such loan is secured or guaranteed by, or covered by commitments or agreements to purchase by any federal reserve bank or by the United States government or any department, bureau, board, commission, or agency of the United States government, or any corporation owned directly or indirectly by the United States government.

Notwithstanding any other provision of law and the limitations on investments contained in section 528.14, any savings or state bank or trust company is authorized to invest any of its available funds, not to exceed in the aggregate ten percent of its total assets, in bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve federal intermediate credit banks or the thirteen banks for co-operatives under the supervision of the farm credit administration. [C46, 50, 54,§528.15; 57GA, ch 249,§1]

**528.16 Oath of directors.** Each director of all state banks, savings banks, and trust companies, before acting as such, shall take an oath that he will diligently, faithfully, and impartially perform the duties imposed upon him by law, that he will not knowingly violate or willingly permit to be violated any of its provisions, that he is the bona fide owner in his own right of the number of shares of stock required to be owned by him as provided in this chapter; that the same is not hypothecated nor in any manner pledged as security for any loan obtained or debt owing by him, which oath shall be signed by such director and certified by the officer before whom it is taken, and filed with, and preserved in the office of, the superintendent of banking. [C97,§1845; C24, 27,§9167; C31, 35, 39,§9224; C46, 50, 54,§528.16]

43GA, ch 30,§12, editorially divided  
Referred to in §532.19

**528.17 Meetings — examining committee.** Such board of directors shall hold at least one meeting each calendar month. At its annual meeting the board shall appoint from its members an examining committee of not less than two, which shall examine the condition of the bank, at least every quarter, and report the same in writing duly signed to the board, which shall cause said report to be recorded in the directors' minute book of the bank. [C97,§1871; S13,§1871; C24, 27,§9224; C31, 35, §9224-c1; C39,§9224.1; C46, 50, 54,§528.17]

Referred to in §532.19

**528.18 Removal of director.** The superintendent of banking, with the approval of the state banking board, may remove any director from office for failure to attend such meetings except for good cause shown. [C31, 35,§9224-c2; C39,§9224.2; C46, 50, 54,§528.18]

Referred to in §532.19

**528.19 Time of examination—report.** One of these examinations shall be made during the month of June, and another one during the month of December, in each year, and these two examinations, besides being recorded in the minute book of the bank, shall be reported to the superintendent of banking on blanks to be supplied by him. [S13,§1871; C24, 27, 31, 35, 39,§9225; C46, 50, 54,§528.19]

S13,§1871, editorially divided  
Referred to in §532.19

**528.20 Failure to report.** In case any bank refuses or neglects to so forward such report, said superintendent shall be authorized to have such examination made by one of his regular examiners, and the bank shall be charged with and required to pay the reasonable expense of such examination. [S13,§1871; C24, 27, 31, 35, 39,§9226; C46, 50, 54,§528.20]

Referred to in §532.19

**528.21 Compensation.** Members of such examining committee shall receive for their services a reasonable compensation, to be fixed by the board at its annual meeting, but in no case shall such compensation exceed thirty-five dollars per day for each day's actual service to each member. [C97,§1871; S13,§1871; C24, 27, 31, 35, 39,§9227; C46, 50, 54,§528.21]

Referred to in §532.19

**528.22 Statements.** All savings and state banks shall make a full, clear, and accurate statement of the condition of the bank, verified by the oath of the president, vice-president, cashier, or assistant cashier, and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors, which statement shall contain:

1. The amount of capital actually paid in.
2. The amount of debts of every kind due to banks, bankers, or persons other than regular depositors.
3. The amount due depositors, including sight and time deposits.
4. The amount subject to be drawn at sight then remaining on deposit with solvent banks or bankers of the country, specifying each city and town and the amount deposited in each and belonging to such bank.
5. The amount of gold and silver coin and bullion belonging to such bank at the time of making such statement.
6. The amount then on hand of legal tender and national bank notes and subsidiary coin.
7. The amount of drafts and checks on other solvent banks, and other cash items not dishonored, then on hand and belonging to such bank.



8. The amount of bills, bonds, and other evidences of debt discounted or purchased by such bank, and then belonging to the same.

9. The value of real or personal property owned by such bank, specifying the amount of each.

10. The amount of undivided profits, if any, then on hand.

11. The total amount of liabilities to such association on the part of the directors thereof. [R60,§1636; C73,§1570; C97,§1872; C24, 27, 31, 35, 39,§9228; C46, 50, 54,§528.22]

C97,§1872, editorially divided  
Referred to in §§528.25, 532.19, 532.20

**528.23 Filing with superintendent.** Said statement shall be transmitted to the superintendent of banking within ten days after the receipt of a request or requisition therefor from him, and by him filed in his office. [R60, §1636; C73,§1570; C97,§1872; C24, 27, 31, 35, 39,§9229; C46, 50, 54,§528.23]

Referred to in §§528.24, 532.19

**528.24 Failure to furnish information.** Any bank or trust company subject to supervision by the superintendent of banking which fails to furnish him the call statement within the time required by section 528.23, or fails to furnish him any report, or other information he is legally authorized to call for, within ten days of his call therefor, or within the time required by law, shall be subject to a penalty of ten dollars for each such day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed and same is filed within such extended time; such penalty to be paid to the superintendent of banking and collected and accounted for by him, pursuant to the provisions of section 524.23. [C24, 27, 31, 35, 39, §9230; C46, 50, 54,§528.24]

Referred to in §532.19

**528.25 Examinations—reports required.** The superintendent of banking may, at any time he may see proper, make or cause to be made an examination of any savings or state bank, or he shall call upon it for a report of its condition upon any given day which has passed, as often as three times or more, at his discretion, each year, which report shall contain the information under section 528.22. [R60, §1637; C73,§1571; C97,§1873; S13,§1873; C24, 27, 31, 35, 39,§9231; C46, 50, 54,§528.25]

S13,§1873, editorially divided  
Referred to in §532.19

**528.26 Publication of reports—expense.** The said superintendent shall cause said report to be published except as hereinafter provided, in one regular issue in some daily, semiweekly, or weekly newspaper in the city or town where such bank is located, or if there be none in such city or town, then, in one regular issue of some daily, semiweekly, triweekly or weekly newspaper printed in said county or in a newspaper in an adjoining county circulating in the territory served by such bank, and the

expense of such publication shall be paid by the bank. [R60,§1637; C73,§1571; C97,§1873; S13,§1873; C24, 27, 31, 35, 39,§9232; C46, 50, 54, §528.26]

Referred to in §532.19

**528.27 Matters not published.** The statement published in the newspaper shall not contain the name of the bank or banks in which the bank making the statement, has on deposit, funds subject to be drawn at sight, nor shall said statement show the amount of liabilities due such bank on the part of the directors thereof, nor contain an itemized statement of reserve. The reserve with respect to the total amount of cash on hand and due from banks may be shown in one sum. [S13,§1873; C24, 27, 31, 35, 39,§9233; C46, 50, 54,§528.27]

Referred to in §532.19

**528.28 Special reports.** The superintendent of banking shall also have power to call for special reports from savings and state banks whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of their condition, which reports shall be verified and attested in the same manner as required in this chapter. [C97,§1874; C24, 27, 31, 35, 39,§9234; C46, 50, 54,§528.28]

Referred to in §532.19

**528.29 Illegal practices—insolvency.** When it shall appear to the superintendent of banking that any savings or state bank has refused to pay its deposits in accordance with the terms on which such deposits were received, or has become insolvent, or that its capital has become impaired, or it has violated the law, or is conducting its business in an unsafe manner, he shall, by an order addressed to such bank, direct a discontinuance of such illegal or unsafe practices, and require conformity with the law. [C73,§1572; C97,§1877; C24, 27, 31, 35, 39,§9235; C46, 50, 54,§528.29]

Referred to in §532.19

**528.30 Examination—oath—evidence.** The said superintendent may appoint an examiner to investigate the affairs of any savings or state bank, who shall have power to administer oaths to any person whose testimony may be required on such examination, and to compel his attendance for the purpose thereof, by subpoena or attachment, in the manner now authorized in respect to witnesses in the courts of the state, and all books and papers which it may be found necessary to inspect on the examination so ordered shall be produced, and their production may be compelled in like manner. [C97,§1877; C24, 27, 31, 35, 39, §9236; C46, 50, 54,§528.30]

Referred to in §§32.19  
Contempts, ch 665

**528.31 Expense of examination.** All expenses thereof shall be paid by the banks examined, in such amount as the said superintendent shall certify to be just and reasonable, but costs taxed as such shall not exceed

those allowed for like services in the district court. [C97,§1877; C24, 27, 31, 35, 39,§9237; C46, 50, 54,§528.31]

Referred to in §532.19

**528.32 Liquidation—right of levy suspended.**

If any such bank shall fail or refuse to comply with the demands made by the said superintendent, or if the said superintendent shall become satisfied that any such bank is in an insolvent or unsafe condition, or that the interests of creditors require the closing of any such bank, he may appoint an additional bank examiner to assist him in the duty of liquidation and distribution, whereupon the right of levy, or execution, or attachment against said bank or its assets shall be suspended. [C73, §1572; C97,§1877; C24, 27, 31, 35, 39,§9238; C46, 50, 54,§528.32]

40GA, ch 189,§1, editorially divided  
Referred to in §532.19

**528.33 Receivership—distribution.** The superintendent of banking may apply to the district court for that district in which said bank is located, or a judge thereof, for the appointment of said superintendent as receiver for such bank, and its affairs shall thereafter be under the direction of the court, and the assets thereof after the payment of the expenses of liquidation and distribution shall be ratably distributed among the creditors thereof, giving preference in payment to depositors. [C73, §1572; C97,§1877; C24, 27, 31, 35, 39,§9239; C46, 50, 54,§528.33]

Referred to in §532.19  
Action limited on claim against closed receivership, 55GA, ch 43  
Priority under general receivership, §680.7

**528.34 Clearings, and purchasers of drafts preferred.** Any draft drawn and issued by any bank or trust company prior to its failure or closing and given in payment of clearings and any money paid in the usual course of business to any bank, or trust company for the purchase of a draft for the bona fide transfer of funds shall be a preferred claim against the assets of the bank or trust company. [C31, 35,§9239-c1; C39,§9239.1; C46, 50, 54,§528.34]

Referred to in §532.19

**528.35 Agreement as to reorganization, consolidation, or sale.** If a majority of the creditors holding direct unsecured and unpreferred obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five percent of all direct unsecured and unpreferred obligations, shall agree in writing to a plan of disposition and distribution of assets through sale to another bank, reopening, reorganization, or consolidation of the bank, the district court in which such receivership is pending, upon application of the superintendent of banking, may order a disposition and distribution, sale to another bank, or reopening, conforming in general to the provisions of such plan. [C27, 31, 35,§9239-a1; C39,§9239.2; C46, 50, 54,§528.35]

Referred to in §§528.40, 528.94, 532.19

**528.36 Agreement by public bodies.** Any county, city, town, township, or school district, through its governing board, may so agree to the extent of its unsecured and unpreferred claims. The state may through the executive council so agree as to its unsecured and unpreferred claims.

Joining in such agreements shall not be a waiver of any preference or of the right to participate in the state sinking fund for public deposits, but after receipt of payment from such fund, or assignment of the deposit to the treasurer of state he shall represent the same and may in his discretion join in such agreements. [C27, 31, 35,§9239-a2; C39,§9239.3; C46, 50, 54,§528.36]

Referred to in §§528.40, 532.19

**528.37 Hearing—notice.** Prior to ordering any such disposition or distribution of assets, the court or judge thereof shall fix the time and place of hearing upon said application and shall by order prescribe the kind and character of notice to be given to all creditors and stockholders. [C27, 31, 35,§9239-a3; C39,§9239.4; C46, 50, 54,§528.37]

Referred to in §§528.40, 532.19

**528.38 Court to determine.** At such hearing the court shall determine the equities of all parties and also determine whether such disposition and distribution is for the best interest of the unsecured creditors. If the plan shall be approved, thereafter and until the assets are distributed, the court shall have power to make such requirements as in his sound discretion will conserve the assets and insure the distribution thereof as provided by law. [C27, 31, 35,§9239-a4; C39,§9239.5; C46, 50, 54,§528.38]

Referred to in §§528.40, 532.19

**528.39 Receivership concluded—report.** If such disposition and distribution shall be ordered, compliance therewith shall be effected and the receivership concluded at the earliest possible date consistent with good business and at the least possible cost to the receivership. At the conclusion of said receivership, the receiver shall file his final report of his doings therein, so provided by law, together with such additional facts as the court may require. [C27, 31, 35,§9239-a5; C39,§9239.6; C46, 50, 54,§528.39]

Referred to in §§528.40, 532.19

**528.40 Secured creditors — contracts with third parties.** Nothing contained in sections 528.35 to 528.39, inclusive, shall affect the rights of secured creditors in the security pledged, or to share in the capital stock assessment, nor affect the rights of depositors or creditors on bonds or other contracts with third parties. [C27, 31, 35,§9239-a6; C39,§9239.7; C46, 50, 54, §528.40]

Referred to in §532.19

**528.41 Attorney for receiver.** The attorney general of the state, or such assistants as may be appointed by the court, shall represent the

superintendent of banks in all proceedings provided for hereunder. [C97,§1877; C24, 27, 31, 35, 39,§9240; C46, 50, 54,§528.41]

Referred to in §532.19  
See §528.121

**528.42 General assignments.** No general assignment for the benefit of creditors shall be of any validity. [C97,§1877; C24, 27, 31, 35, 39, §9241; C46, 50, 54,§528.42]

Referred to in §532.19

**528.43 Superintendent as receiver.** The superintendent of banking henceforth shall be the sole and only receiver or liquidating officer for state incorporated banks and trust companies and he shall serve without compensation other than his stated compensation as superintendent of banking, but he shall be allowed clerical and other expenses necessary in the conduct of the receivership. [C24, 27, 31, 35, 39,§9242; C46, 50, 54,§528.43]

Referred to in §532.19

**528.44 Expenses of liquidation.** All expenses of supervision and liquidation shall be fixed by the superintendent, subject to approval by the court or a judge thereof, and shall upon his certificate be paid out of the funds of such bank in his hands. [C24, 27, 31, 35, 39,§9243; C46, 50, 54,§528.44]

Referred to in §532.19

**528.45 Converted assets—examination.** The court having direction and control of any such receiver, or any judge thereof, may require, upon the motion of said receiver, any person suspected of having taken wrongful possession of any of the effects of a state or savings bank for which said receiver has been appointed, or of having had such effects under his control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court or judge may order the delivery thereof to the receiver. [C24, 27, 31, 35, 39,§9244; C46, 50, 54,§528.45]

Referred to in §532.19

**528.46 Contempt—enforcement of orders.** If, on being served with the order of the court or judge requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any questions which the court or judge thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court or judge requiring him to deliver any such property or effects to the receiver, he may be committed to the jail of the county until he does. [C24, 27, 31, 35, 39, §9245; C46, 50, 54,§528.46]

Referred to in §532.19

**528.47 List of officers, stockholders, and holdings.** The president and cashier of every savings and state bank shall cause to be kept at all times a full and correct list of the names

and residences of the officers, directors, examining committee, and of all the stockholders in the bank, and the number of shares held by each, in the office where its business is transacted. [C97,§1889; S13,§1889; C24, 27, 31, 35, 39,§9255; C46, 50, 54,§528.47]

S13,§1889, editorially divided  
Referred to in §§528.53, 532.19

**528.48 Right to inspect list.** Said list shall be subject to the inspection of all the stockholders and creditors of the bank during business hours of each day in which business may be legally transacted. [C97,§1889; S13,§1889; C24, 27, 31, 35, 39,§9256; C46, 50, 54,§528.48]

Referred to in §§528.53, 532.19

**528.49 Lists filed with superintendent.** A copy of such list, verified by the oath of the president or cashier, shall be transmitted to the superintendent of banking within ten days after each annual meeting.

In addition to such list the superintendent of banking is authorized to require the president or cashier to furnish him with financial statements of the stockholders. [C97,§1889; S13, §1889; C24, 27, 31, 35, 39,§9257; C46, 50, 54, §528.49]

Referred to in §§528.53, 532.19

**528.50 Banking business—exceptions.** No corporation shall engage in the banking business, receive deposits, and transact the business generally done by banks, unless it is subject to and organized under the provisions of this title, or of the banking laws of the state heretofore existing, except that loan and trust companies may receive time deposits subject to the same limitations as are now or may hereafter be prescribed for the receiving of deposits by state banks and issue drafts on their depositories. [C97,§1889; S13,§1889; C24, 27, 31, 35, 39,§9258; C46, 50, 54,§528.50]

Referred to in §§528.53, 532.19

**528.51 Branch banking prohibited—exceptions.** No banking institution shall open or maintain any branch bank. However, as may be authorized by and subject to the jurisdiction of the banking department any banking institution may establish an office for the sole and only purpose of receiving deposits and paying checks and performing such other clerical and routine duties not inconsistent with this section. No banking institution may establish any office beyond those counties contiguous to the county in which said banking institution is located nor in a city or town in which there is already an established banking institution. No office shall be continued at any place after a banking institution has actually commenced business at that place. Nothing in this section shall prohibit national banks the privileges of this section whenever they may be so authorized by federal law. [C27, 31, 35,§9258-b1; C39,§9258.1; C46, 50, 54,§528.51]

Referred to in §§528.53, 532.19  
See §428.12

**528.52 Loan and trust companies.** All such companies and all corporations organized

under the provisions of chapter 491, whose articles of incorporation authorize the acceptance and execution of trusts, and all corporations in whose name the word "trust" is incorporated and forms a part, shall have a full-paid capital of not less than the amount of capital of savings banks, as provided in section 528.1 and shall be subject to examination, regulation and control by the superintendent of banking, like savings and state banks. [C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §9259; C46, 50, 54, §528.52]

Referred to in §§528.53, 532.19

**528.53 Violations.** Any corporation violating sections 528.47 to 528.52, inclusive, shall forfeit its charter at the suit of the attorney general, and said corporation, its officers, directors, and agents, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than two years in the penitentiary, or by both such fine and imprisonment, at the discretion of the court. [C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §9260; C46, 50, 54, §528.53]

Referred to in §532.19

**528.54 Reorganizations—loan and trust companies.** Loan and trust companies organized under the general incorporation laws of the state, which were engaged in the banking business prior to January 1, 1886, and have continued therein since said date, may, by the proper additions to their articles of incorporation, become state banks within the provisions of this title, without incorporating the word "state" in the names of such corporations. [C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §9261; C46, 50, 54, §528.54]

Referred to in §532.19

**528.55 Shares.** The capital of trust companies shall be divided into shares of one hundred dollars each or into shares of such less amount as may be provided in the articles of incorporation. [C31, 35, §9261-c1; C39, §9261.1; C46, 50, 54, §528.55]

Referred to in §532.19  
Similar provisions, §§526.36, 527.7

**528.56 Withdrawal of capital stock.** No corporation organized under the banking laws of this state shall withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital stock, except as hereinafter provided. [C24, 27, 31, 35, 39, §9262; C46, 50, 54, §528.56]

37GA, ch 218, §1, editorially divided  
Referred to in §532.19

**528.57 Surplus required.** No banking institution organized under the laws of this state shall declare or pay any dividend, except dividends required to be paid on class "A" preferred stock issued by such banking institutions to the reconstruction finance corporation, or any other governmental agency, until it has first established a surplus of at least twenty percent of its capital. Whenever such banking institution has created a surplus of twenty percent, it shall credit to surplus from

net earnings not less than ten percent thereof each year until a surplus of fifty percent of the capital has been created. Thereafter each such institution shall maintain a surplus equal to at least fifty percent of its capital, and any reduction of said surplus shall be restored in the same manner as originally created as provided herein. [C31, 35, §9262-c1; C39, §9262.1; C46, 50, 54, §528.57]

Referred to in §532.19

**528.58 Unallowable dividends.** If losses have at any time been sustained, equal to or exceeding undivided profits on hand, no dividends shall be made; and no dividends shall be made by any association formed under the banking laws of the state to an amount greater than the net profits on hand, less the losses and bad debts. [C24, 27, 31, 35, 39, §9263; C46, 50, 54, §528.58]

Referred to in §532.19  
Similar provisions, §§526.35, 532.16

**528.59 Reduction of capital stock.** The capital stock may be reduced by the affirmative vote of the stockholders holding two-thirds of the shares of the capital stock, at a meeting of the stockholders to be called for this purpose in the manner and after the publication of notice as required in case of the increase of the capital stock. No reduction shall be to any amount less than the capital required to authorize the confirmation of such association. [C24, 27, 31, 35, 39, §9264; C46, 50, 54, §528.59]

Referred to in §532.19

**528.60 Approval of reduction or cancellation.** There shall be no reduction of capital or cancellation of stock, until said reduction or cancellation shall first be approved by the superintendent of banking. [C24, 27, 31, 35, 39, §9265; C46, 50, 54, §528.60]

Referred to in §532.19

**528.61 Forged or raised checks—liability of bank.** No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within six months after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised. [S13, §1889-a; C24, 27, 31, 35, 39, §9266; C46, 50, 54, §528.61]

Referred to in §532.19

**528.62 Stop-order on checks and drafts—requirements.** No revocation, countermand, or stop-order, relating to the payment of any check or draft against an account of a depositor, in any bank or trust company, doing business in this state, shall be sufficient unless notice thereof in writing and accurately describing such check or draft shall be given the bank or trust company upon which drawn, previous to the presentment of such check or draft for payment, certification or acceptance to the bank or trust company upon which drawn, and no such notice shall remain in force more than sixty days from the giving of the same unless renewed, which renewal shall

be in writing and shall be in effect for not more than thirty days from date of receipt by service upon such bank or trust company but renewals thereof in writing may be made from time to time. [C31, 35, §9266-d1; C39, §9266.1; C46, 50, 54, §528.62]

Referred to in §532.19

**528.63 Checks must be cleared at par value.**

Checks drawn on any bank or trust company organized under the laws of this state shall be cleared at par by the bank or trust company on which they are drawn.

This section shall not be applicable where checks are sent to banks or trust companies as special collection items.

Any officer or employee of any such bank or trust company who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars and not more than one hundred dollars for each such offense. [C46, 50, 54, §528.63]

Referred to in §532.19

**528.64 Deposit in names of two persons.**

When a deposit shall hereafter be made in any bank or trust company in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or interest or dividend thereon, may be paid to either of said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank, banker, or trust company for any payment so made. [S13, §1889-b; C24, 27, 31, 35, 39, §9267; C46, 50, 54, §528.64]

Referred to in §532.19

See §541.41

**528.65 Safe-deposit boxes—liability.** Any corporation, partnership, or person engaged in the business of renting out lock boxes as safes, for storage or safekeeping of securities and valuables, in a vault in a building under the control of the corporation, partnership, or person, so engaged within this state, may in any lease or contract governing or regulating the use of any such box to or by any customer or customers, limit its liability, as such lessor or bailee in any of the following respects:—

Limit its liability for any loss by negligence to such maximum amount as may be so stipulated, not less however than three hundred times the annual rental of such box or safe.

Stipulate they shall in no event be liable for loss of money, jewelry, or such other articles as may be so excepted against in such lease or contract.

Stipulate that evidence tending to prove that securities, money, valuables, or other articles were left in any such box, or safe upon the last entry by such customer or his authorized agent, and that the same or any part thereof were found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same were lost by any negligence or wrongdoing for which such lessor is respon-

sible, or put upon the lessor the burden of proof that such alleged loss was not the fault of the lessor. [C31, 35, §9267-c1; C39, §9267.1; C46, 50, 54, §528.65]

Referred to in §532.19

**528.66 Securities—deposit with federal treasurer.**

All state and savings banks existing under and by virtue of the laws of this state are authorized and permitted to deposit with the treasurer of the United States such of the securities of the depositing bank as may be required to secure the postal savings funds deposited therein. [S13, §1889-c; C24, 27, 31, 35, 39, §9268; C46, 50, 54, §528.66]

Referred to in §532.19

**528.67 Membership in federal reserve system.**

Any state bank, savings bank, or trust company, organized under the laws of this state is authorized and empowered, upon the passage of a resolution so to do by the board of directors thereof, to become a member of the federal reserve bank system and to invest their funds in the stock of the federal reserve bank in the federal reserve district in which said banks or trust companies are located, and to incur liability therefor. [SS15, §1889-o; C24, 27, 31, 35, 39, §9269; C46, 50, 54, §528.67]

Investment in federal reserve bank stock, §526.25

**528.68 Reserve funds of members federal reserve.**

Any state bank, savings bank, or trust company incorporated under the laws of this state, which is or hereafter may become a member of the federal reserve bank system of the United States of America, shall be required to carry during the period of such membership only such cash reserve funds as may be required from time to time to be maintained by national bank members of said federal reserve bank system. [C24, 27, 31, 35, 39, §9270; C46, 50, 54, §528.68]

**528.69 Cash reserve fund required.** State and savings banks and trust companies doing a commercial business and not located in a reserve city as now or hereafter defined under the provisions of the federal reserve act, as amended, shall hold and maintain an actual net balance equal to not less than seven percent of the aggregate amount of its demand deposits and three percent of its time deposits.

State and savings banks and trust companies doing a commercial business and that may be located in reserve cities as now or hereafter defined by the federal reserve act [38 Stat. L. 251] as amended shall hold and maintain an actual net balance equal to not less than ten percent of the aggregate amount of its demand deposits and three percent of its time deposits; provided that if located in the outlying districts of a reserve city or in territory added to such a city by the extension of its corporate charter it may, upon the approval of the superintendent of banking and state banking board, hold and maintain reserve balances specified for those banks not located in reserve cities.

All savings banks doing exclusive savings

bank business shall at all times keep a cash fund equal to eight percent of their deposits.

Eighty-five percent of such reserve fund required under the provisions of this section for all banks and trust companies located either in or outside of reserve cities may be kept on deposit subject to call, with other banks organized under state or national laws. [C97,§§1860, 1867; SS15,§1860; C24, 27,§§9201, 9216; C31, 35, §9270-c1; C39,§9270.1; C46, 50, 54,§528.69]

Referred to in §532.19

**528.70 Investment in federal reserve and farm loan bank stock.** State banks and trust companies are hereby authorized, subject to the approval of the superintendent of banking, to invest an amount not exceeding ten percent of their capital stock and surplus in the capital stock of corporations chartered or incorporated under the provisions of section 25-a of the federal reserve act, approved December 24, 1919 [12 USC,§§611-631], and a like amount in the capital stock of corporations organized under the laws of this state for the purpose of extending credit to those engaged in agriculture and to agricultural organizations; provided that the said investments by state banks and trust companies shall in no event exceed in the aggregate twenty percent of the capital stock and surplus of said state bank or trust company. [C24, 27, 31, 35, 39,§9271; C46, 50, 54, §528.70]

Similar provision, §526.25, subsection 6

**528.71 Acceptance of drafts.** Any state bank, savings bank, or trust company may accept drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance, or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. [C24, 27, 31, 35, 39,§9272; C46, 50, 54,§528.71]

38GA, ch 66,§1, editorially divided

**528.72 Acceptances limited.** No state bank, savings bank, or trust company shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten percent of its paid-up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; nor shall the total of bills accepted for and money borrowed by any one person, company, firm, or corporation exceed in the aggregate more than twenty percent of its paid-up capital and surplus; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-

half of its paid-up and unimpaired capital stock and surplus. [C24, 27, 31, 35, 39,§9273; C46, 50, 54,§528.72]

**528.73 Superintendent to regulate acceptances.** The superintendent of banking, under such general regulations as he may prescribe, which shall apply to all banks alike regardless of the amount of capital stock and surplus, may authorize any state bank, savings bank, or trust company to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid-up and unimpaired capital stock and surplus; but the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus. [C24, 27, 31, 35, 39,§9274; C46, 50, 54,§528.73]

**528.74 Commission for organizing banks.** No individual, partnership, or corporation shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any bank or trust company in this state, or for securing a subscription to the original capital stock or surplus of any bank or trust company in this state, or to any increase thereof; provided that this section shall not be construed as prohibiting an attorney at law from receiving reasonable compensation for legal service in connection therewith. [C24, 27, 31, 35, 39,§9275; C46, 50, 54,§528.74]

38GA, ch 144,§1, editorially divided  
Referred to in §528.75

**528.75 Violations.** Each and every individual, partnership, or corporation violating the provisions of section 528.74 shall forfeit to the state one hundred dollars, for each and every such violation, and in addition thereto forfeit double the amount of such commission, compensation, or bonus. [C24, 27, 31, 35, 39,§9276; C46, 50, 54,§528.75]

**528.76 Dissolution.** State or savings banks may be dissolved prior to the period fixed in the certificate of incorporation, by the affirmative votes of the stockholders holding three-fourths of the capital, at a meeting of stockholders to be called for this purpose in the manner and after publication of notice as required in case of the increase of its capital. [C97,§1857; S13,§1857; C24, 27, 31, 35, 39,§9277; C46, 50, 54,§528.76]

S13,§1857, editorially divided  
Referred to in §532.19  
Dissolution generally, §491.23

**528.77 Receivership—forced sale.** In case of dissolution of the bank or proceedings to close the same as authorized in this chapter, no receiver appointed thereunder shall be allowed to sell the assets thereof at forced sale, but he shall collect the same with all diligence, and make distribution of the proceeds from time to time to those entitled thereto. [C97,§1857; S13, §1857; C24, 27, 31, 35, 39,§9278; C46, 50, 54, §528.77]

Referred to in §§528.78, 532.19

**528.78 Selling assets—effectuating sales.** After having made diligent effort to collect or realize on the assets as provided in section 528.77 the receiver may sell the remaining assets, in whole or in part, including real estate or any interest therein, and may execute assignments, releases, and satisfactions to effectuate such sales and a receiver may execute assignments, releases, and satisfactions to effectuate sales and transfers made by his predecessors. [C31, 35,§9278-c1; C39,§9278.1; C46, 50, 54,§528.78]

C35,§9278-c1, editorially divided

**528.79 Terminated receivership—removing liens.** The superintendent of banking may sell, release, satisfy, or assign any remaining asset, mortgage, or lien of a bank or trust company receivership which has already been terminated. [C31, 35,§9278-c1; C39,§9278.2; C46, 50, 54,§528.79]

**528.80 Method—court approval.** All of the aforesaid sales, assignments, releases, and satisfactions shall be made only on application approved by the court in which the receivership is or was pending after hearing thereon and on such notice as the court may have prescribed and after it is shown that the consideration for such sale, assignment, release, or satisfaction has been paid. [C31, 35,§9278-c1; C39,§9278.3; C46, 50, 54,§528.80]

**528.81 Receiving deposits when insolvent.** No bank, banking house, exchange broker, deposit office, firm, company, corporation, or person engaged in the banking, brokerage, exchange, or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills, checks, or drafts, or renew any certificate of deposit. [C97,§1884; C24, 27, 31, 35, 39,§9279; C46, 50, 54,§528.81]

Referred to in §532.19

**528.82 Violations.** If any such bank, banking house, exchange broker, deposit office, firm, company, corporation, or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member, or person knowing of such insolvency, who shall knowingly with intent to defraud or receiving financial benefit therefrom receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. [C97,§1885; C24, 27, 31, 35, 39,§9280; C46, 50, 54,§528.82]

Referred to in §532.19

**528.83 Official neglect of officers.** Any officer or officers whose duty it is to make statement

of the condition of their bank and make publication of same, who shall willfully neglect or refuse to perform such duties imposed upon them or either of them, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than three months nor more than three years in the penitentiary. [C97,§1886; C24, 27, 31, 35, 39,§9281; C46, 50, 54,§528.83]

Referred to in §532.19

**528.84 False statements or entries—diversion of funds.** Any owner, director, officer, agent, employee, or clerk of any bank who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the bank to other objects than those authorized by law, shall be punished by a fine not exceeding ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years, and be forever after barred from holding any office created by this chapter. [C97,§1887; C24, 27, 31, 35, 39,§9282; C46, 50, 54,§528.84]

Referred to in §532.19

**528.85 Intentional fraud—unlawful dividends.** Any owner, director, officer, agent, employee, or clerk of any bank who is guilty of intentional fraud, or of deceiving the public or individuals in relation to the means or liabilities of such bank, or who aids, assists, or consents to the payment of dividends which leave insufficient funds with which to meet the liabilities of the bank, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than one year, or by both such fine and imprisonment, at the discretion of the court; and such act shall cause a forfeiture of all the privileges of said bank, and the court may proceed to close the same in the manner prescribed by law. [C97,§1888; C24, 27, 31, 35, 39,§9283; C46, 50, 54,§528.85]

Referred to in §532.19

**528.86 Unauthorized sale of real estate or securities.** It shall be unlawful for any officer or employee of any bank or trust company to offer for sale or promote the sale of any stock, real estate, policies for life or fire insurance, bonds, or other securities unless the sale of the same shall have been sanctioned and approved by the board of directors and said approval entered of record.

Any officer or employee violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished accordingly. [C31, 35,§9283-c1; C39,§9283.01; C46, 50, 54,§528.86]

Punishment, §687.7

**528.87 False certification of checks or deposits.** Any officer of a state or savings bank



or trust company, who shall certify any check, when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who shall issue any certificate of deposit when funds have not been deposited equal in amount to said certificate, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [C31, 35,§9283-c2; C39,§9283.02; C46, 50, 54,§528.87]

**528.88 False statements for credit.** Any person (1) who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, and with intent to defraud respecting the financial condition, or means or ability to pay, of himself or of any other person, firm, or corporation, in which he is interested, or for whom he is acting, for the purpose of procuring and does thereby procure in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale, or indorsement of a bill of exchange, or promissory note, for the benefit of either himself or of such person, firm, or corporation; or (2) who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or of such person, firm, or corporation, in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm, or corporation, either or any of the things of benefit mentioned in the first subdivision of this section; or (3) who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or of such person, firm, or corporation, in which he is interested, or for whom he is acting, with intent to defraud represents on a later day, in writing that such statement theretofore made, if then again made on said day, would then be true, when in fact, said statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or such person, firm, or corporation, either or any of the things of benefit mentioned in the first subdivision of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished accordingly. [C31, 35,§9283-c3; C39,§9283.03; C46, 50, 54,§528.88]

Punishment, §687.7

**528.89 False reports against banks and trust companies.** Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any bank or trust company which imputes, or tends to impute, insolvency or unsound financial condition or financial embarrassment, or

which may tend to cause or provoke or aid in causing or provoking a general withdrawal of deposits from such bank or trust company, or which may otherwise injure or tend to injure the business or good will of such bank or trust company, shall be guilty of a felony and shall be fined not more than five thousand dollars or imprisoned for not more than five years in the penitentiary or be punished by both such fine and imprisonment. [C31, 35,§9283-c4; C39, §9283.04; C46, 50, 54,§528.89]

MANAGEMENT BY SUPERINTENDENT  
Bank stabilization law (S.F.111), §§528.90-528.119

**528.90 Management by superintendent — legal and equitable remedies suspended.** The superintendent of banking shall, upon application of the officers or directors of any state bank, savings bank or trust company or private bank doing a banking business, have the power, with the consent of the executive council or of the governor or of the lieutenant governor, to take over the management of any such bank and may, at his discretion, manage the same either by its officers or a part thereof or by any suitable person or persons he may select for such purpose. Such period of management by the superintendent of banking shall not, however, extend beyond two years from the date of taking possession unless further extended by authority of the executive council. During the period of such management and possession by the superintendent of banking, all the remedies at law or in equity of any creditor or stockholder against any such bank or trust company shall be suspended, and the statute of limitations against such claims shall be tolled during such period. [C35,§9283-e1; C39,§9283.05; C46, 50, 54,§528.90]

Referred to in §§454.7, 454.14, 528.91, 528.92, 528.95, 528.114, 528.123, 528.128

**528.91 Powers of superintendent.** The superintendent of banking, whenever he shall have taken over the management of any such banking institution as provided in section 528.90, shall have the right and power, with the approval of the executive council, to proceed to wind up its affairs as provided by law; or may continue the operation of the same, holding all deposits in the same, taking in deposits and carrying on the same under such rules and regulations as he may make for the conduct of its business and deem for the best interest of the debtors and creditors of such institution, including the right to compromise any rights, claims, and liabilities of such institution. If such institution is kept open for business under the management of the banking department, and new deposits are received, such deposits shall be segregated, and any new assets acquired on account of such deposits shall be segregated and held in trust especially for such new deposits. [C35,§9283-e2; C39, §9283.06; C46, 50, 54,§528.91]

Referred to in §§454.7, 454.14, 528.95, 528.114, 528.123, 528.128

**528.92 Power to reorganize.** However, if in the opinion of the superintendent of bank-



ing it is deemed advisable to reorganize any banking institution as set out in section 528.90, he shall, with the approval of the executive council, have power so to do on such terms and conditions as he may prescribe, including the right to issue stock upon such conditions as he, with the approval of the executive council, may prescribe, for such stock, and which shall be nonassessable. [C35,§9283-e3; C39,§9283.07; C46, 50, 54,§528.92]

Referred to in §§454.7, 454.14, 528.95, 528.114, 528.123, 528.128

**528.93 Power to sell or pledge assets.** If, in the opinion of the superintendent of banking, with the approval of the executive council, it is advisable to sell, hypothecate or pledge or exchange any or all of the assets of such banking institutions by said superintendent, the said superintendent is given the power so to do with the reconstruction finance corporation or with any other party he may select. [C35, §9283-e4; C39,§9283.08; C46, 50, 54,§528.93]

Referred to in §§454.7, 454.14, 528.95, 528.114, 528.123, 528.128

Omnibus repeal, 45GA, ch 156,§6

**528.94 Voluntary agreement — percentage governing.** Nothing in this act\* shall prevent the voluntary adoption of any form of depositors agreement not now or heretofore in contravention of the statutes thereto provided and under any such agreement the percentages as provided in section 528.35, shall be fully applicable. [C35,§9283-e6; C39,§9283.09; C46, 50, 54, §528.94]

Referred to in §§454.7, 454.14, 528.95, 528.114, 528.123, 528.128

\*45GA, ch 156

#### DEPOSITORS AGREEMENTS

**528.95 Power to enter into.** During the period of management by the superintendent of banking of any state bank, savings bank or trust company or private bank pursuant to sections 528.90 to 528.94, inclusive, any county, city, town, township, or school district, by its governing board at the board's discretion, may enter into depositors agreements looking toward the reorganization, reopening, or consolidation of the bank to the extent of its unsecured and unpreferred claims.

The state may so agree through the executive council as to its unsecured and unpreferred claims.

The board of supervisors may at its discretion, enter into such depositors agreements as to taxes for the state, school, townships, cities, towns, motor vehicle fund, primary road fund, or other purposes and for other funds created by law, whether regular, temporary, or special, which have been duly collected by the treasurer of the county and duly and regularly deposited by the county treasurer in a state bank, savings bank, trust company or private bank or any national bank whose deposit liability has been assumed by a state bank, savings bank or trust company or private bank prior to the period of management by the state superintendent of banking.

Any public body hereinbefore named may with depositors of any national bank enter into a depositors agreement with said bank, provided the form of said agreement shall be one that shall have been first approved by the superintendent of banking and by the executive council. Any depositors agreement that has heretofore been entered into by any public body above referred to with any state, savings, national, or private bank or trust company in Iowa and to which depositors agreement no objections have been taken by court action, is hereby legalized and approved. [C35,§9283-e7; C39,§9283.10; C46, 50, 54,§528.95]

Agreements legalized, see 45ExGA, ch 120

**528.96 Depositors agreement — effect.** Joining in such agreement shall not be a waiver of any preference or of the right to participate in state sinking fund for public deposits, but after receipt of payment from such fund or assignment of deposit to the treasurer of state, he shall represent the same and may, with the approval of the executive council, join in such agreements. [C35,§9283-e8; C39,§9283.11; C46, 50, 54,§528.96]

**528.97 Liability of treasurer.** If the treasurer has duly and regularly deposited money in such bank, then after the reorganization, reopening, or consolidation of said bank he shall only be held to account for such amount of the deposit as remains on deposit in such bank after the reorganization, reopening, or consolidation, irrespective of whether a depositors agreement was entered into or not. [C35,§9283-e9; C39,§9283.12; C46, 50, 54,§528.97]

**528.98 Distribution of trustee funds.** Whenever the depositors agreement provides for the appointment of trustees and the subsequent payment of funds by the trustees to the depositors, such payments shall be paid to the county treasurer and by him distributed pro rata to the funds entitled thereto, unless payment has been received from the state sinking fund for public deposits or assignment of the deposit has been made to the treasurer of state and in such event, such payment shall be made to him and credited to the state sinking fund. [C35,§9283-e10; C39,§9283.13; C46, 50, 54, §528.98]

Omnibus repeal, 45GA, ch 157,§5

**528.99 Conditions precedent to reorganization.** Before any savings bank, state bank, private bank, or trust company shall attempt to reorganize or take waivers or depositors agreements from its depositors, the banking department shall make an examination of said bank and shall determine, with the approval of the governor, what can and should be required to be paid by the officers, directors, and stockholders of said bank or trust company and no waivers or depositors agreements shall be taken until the amount so required shall have been paid in full in cash or in other securities to be approved by the governor and the superintendent of banking to the bank or

trust company. Any stockholder, or assignee of such holder, upon paying an amount equal to the sum so required, may present his certificate or certificates of stock to the superintendent of banking, who shall indorse thereon the amount so paid, and thereupon the holder of such stock, or those claiming by, through or under such holder by sale, transfer, assignment or otherwise, shall thereafter be released from any further liability, statutory or otherwise, on such stock or any reissue thereof, to the extent of the amount so paid and indorsed thereon. Provided, however, that the banking department shall, with the approval of the governor, have the right to waive or modify any of the provisions or requirements of this act\* where a bank is not to resume or continue banking operations, and where waivers or depositors agreements are taken as a part of a plan for reorganizing and/or liquidating such bank. [C35,§9283-e12; C39,§9283.14; C46, 50, 54, §528.99]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.100 Applicability to prior waivers.**

Banks or trust companies now operating on waivers or depositors agreements heretofore taken shall be subject to and come within the provisions of this act\*. Except that no unexpired waivers or depositors agreements between such banks or trust companies and their depositors shall be abrogated hereby. [C35,§9283-e13; C39,§9283.15; C46, 50, 54, §528.100]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.101 Segregation of assets—trust certificates.**

Before waivers or depositors agreements are taken as herein provided, the superintendent of banking may authorize the bank to set aside a percentage of its assets to be determined by him and which may be regarded as slow or doubtful and to segregate the same. The superintendent of banking shall determine, with the approval of the governor, the percentage of deposits which may be waived, and shall authorize the issuance of trust certificates by said bank in an amount equal to the deposits so waived and the delivery of such trust certificates to depositors in said bank whose deposits exceed ten dollars, in an amount equal to the amount of deposits so waived by each such depositor. A dividend shall be declared at the end of each year covering the entire net earnings of the bank and the earnings of and collections from the segregated assets, which dividend shall be applied pro rata to the payment of outstanding certificates of trust as herein provided, no dividends on any common stock in such bank shall be paid as long as any trust certificates are outstanding, unless otherwise agreed upon between such bank or trust company and a majority of the depositors holding direct, unsecured and unpreferred obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five percent of the direct, unsecured and unpreferred obli-

gations, and approved by the superintendent of banking. Such certificates shall be preferred in earnings and have preference in liquidation only over the common stock of said bank. [C35, §9283-e14; C39,§9283.16; C46, 50, 54, §528.101]

Referred to in §§454.7, 454.14, 528.103, 528.111, 528.114, 528.115, 528.128

**528.102 Priority of certificates.** All trust certificates issued under the provisions of this act\* shall have preference and priority on all of the assets of the bank ahead of the rights of the holders of the common stock, and shall be paid in full before the common stockholders shall be entitled to any dividends or profits, unless otherwise agreed upon between such bank or trust company and a majority of the depositors holding direct, unsecured and unpreferred obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five percent of the direct, unsecured and unpreferred obligations, and approved by the superintendent of banking. [C35,§9283-e15; C39,§9283.17; C46, 50, 54, §528.102]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.103 Priority under distribution of assets.**

Where trust certificates are issued pursuant to section 528.101, the holders of such certificates in event of the distribution of assets of the bank, shall have a claim ahead of common stockholders or depositors against any assets of said bank which have been segregated for the protection of such trust certificates. [C35, §9283-e16; C39,§9283.18; C46, 50, 54, §528.103]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

**528.104 Certificates nontaxable.**

The trust certificates issued under the provisions of this act\* shall be nonassessable and nontaxable. [C35,§9283-e17; C39,§9283.19; C46, 50, 54, §528.104]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.105 Acceptance of certificates.**

Any county, city, town, township, or school district by its governing board, at the board's discretion, may accept the trust certificates authorized in this act\* for their deposits in any bank issuing the same. The state may so agree through the executive council to accept the trust certificates provided for in this act\*. Any county, city, town, township, or school district which was regularly a depositor in any national bank in Iowa the deposit liabilities of which have been assumed by any savings, state, national or private bank, or trust company, shall be held to be or to have been a depositor in such state incorporated bank or trust company or national bank or private bank. [C35,§9283-e18; C39,§9283.20; C46, 50, 54, §528.105]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.106 Effect of acceptance.** The acceptance of such trust certificates by public bodies shall not be a waiver of their right to partici-

pate in the state sinking fund for public deposits. In event of receivership or bankruptcy, the unpaid balance of any trust certificate held by any such public body shall be construed as a depositor's claim of such public body in accordance with the provisions of chapter 454. [C35,§9283-e19; C39,§9283.21; C46, 50, 54,§528.106]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

**528.107 Liability of treasurer.** If the treasurer of any public body has duly and regularly deposited money in such bank, then after the reorganization, reopening, or consolidation of said bank, he shall only be held to account for such amount of the deposit as remains on deposit in such bank after reorganization, reopening, or consolidation, irrespective of whether such trust certificates as provided herein, have been accepted by the public body or not. [C35,§9283-e20; C39,§9283.22; C46, 50, 54, §528.107]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

**528.108 Majority agreement governs minority.** If a majority of the depositors, holding direct, unsecured, and unpreferred obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five percent of the direct, unsecured, and unpreferred obligations, shall agree to come within the provisions of this act\* by accepting trust certificates as herein provided, then, and in that event, all of the depositors of such bank are bound thereby. [C35,§9283-e21; C39,§9283.23; C46, 50, 54,§528.108]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.109 Retirement of certificates.** Banks coming within the provisions of this act\* shall retire the trust certificates issued hereunder pro rata through the earnings of and the collections from the segregated assets and the net earnings of said bank as hereinbefore provided or agreed upon under the provisions of this act. [C35,§9283-e22; C39,§9283.24; C46, 50, 54,§528.109]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

\*45GA, ch 159, effective date, April 13, 1933

**528.110 Salaries suspended.** Until all trust certificates issued as provided herein, have been paid off and liquidated in full, no salary shall be paid to any officer, director, or employee unless first approved by the superintendent of banking and the governor of the state of Iowa, unless otherwise agreed upon between such bank or trust company and a majority of the depositors holding direct, unsecured, and unpreferred obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five percent of the direct, unsecured, and unpreferred obligations, and approved by the superintendent of banking. [C35,§9283-e23; C39,§9283.25; C46, 50, 54,§528.110]

Referred to in §§454.7, 454.14, 528.111, 528.114, 528.115, 528.128

Omnibus repeal, 45GA, ch 159,§13

#### DEPOSITORS SUPPLEMENTAL AGREEMENTS

**528.111 Certificate holders—number governing.** In the event any state bank, savings bank or trust company organized under the laws of this state, proposing to issue preferred stock pursuant to the laws of this state, shall have theretofore been reorganized and/or recapitalized or shall then be in process of reorganization and/or recapitalization (whether pursuant to the provisions of sections 528.99 to 528.110, inclusive, and amendments thereto, or otherwise) pursuant to a plan of reorganization and/or recapitalization providing that the future earnings or income of such state bank, savings bank or trust company, or any portion thereof be pledged, assigned, or trusted for the benefit of depositors, creditors, or holders of trust certificates of such state bank, savings bank, or trust company (hereinafter, for convenience, referred to as "certificate holders"), the rights of such "certificate holders" in such earnings or income may, with the written consent of a majority of such "certificate holders" holding claims totaling in the aggregate seventy-five percent of the claims of all "certificate holders" for whose benefit such earnings shall have been pledged, assigned, or trusted, be made subordinate, junior, and inferior to the rights of holders of preferred stock issued pursuant to the laws of this state, both as to the payment of dividends and any sinking fund or other requirements, if any, for the retirement of such preferred stock.

Upon such written consent being executed by a majority in number of such "certificate holders" holding claims totaling in the aggregate seventy-five percent of the claims of such "certificate holders", all such "certificate holders" shall be bound thereby whether or not they shall have consented. [C35,§9283-f1; C39, §9283.26; C46, 50, 54,§528.111]

Referred to in §528.118

**528.112 Preferred stock issue.** Such state banks, savings banks, or trust companies shall issue preferred stock of one or more classes in the same manner as provided by law for the issuance of preferred stock in state banks, savings banks, or trust companies organized under the laws of this state. [C35,§9283-f2; C39, §9283.27; C46, 50, 54,§528.112]

**528.113 Public bodies—sinking fund.** The state, through the executive council, in its discretion, and any county, city, town, municipality, township, or school district, in the discretion of its governing board, when a "certificate holder" as defined in section 528.111, may enter into the written consent and subordination agreement as provided in said section, through and by any member or officer designated for that purpose by such public body. Joining in such written consent and subordination agreement shall not be a waiver of any preference or of the right to participate in the state sinking fund for public deposits. [C35,§9283-f3; C39,§9283.28; C46, 50, 54,§528.113]

**528.114 Method of reorganization—approval.** The reorganization of state banks, savings

banks, and trust companies referred to in this act\* and in sections 528.90 to 528.94 and 528.99 to 528.110, both inclusive, and acts amendatory thereto, may with the approval of the superintendent of banking be brought about through the use of the existing corporation or by the organization of a new bank, where such bank as so reorganized acquires all or a portion of the assets, and assumes all or a portion of the liabilities, of one or more existing banks. [C35, §9283-f4; C39, §9283.29; C46, 50, 54, §528.114]

\*45ExGA, ch 112, effective date, December 2, 1933  
 Constitutionality, 45ExGA, ch 112, §9  
 Omnibus repeal, 45ExGA, ch 112, §8

**528.115 Waiver by certificate holders.** In the event any state bank, savings bank, or trust company, organized under the laws of this state, shall have heretofore reorganized and/or recapitalized, or shall be in the process of reorganization and/or recapitalization (whether pursuant to provisions of sections 528.99 to 528.110, inclusive, and amendments thereto, or otherwise), pursuant to the plan of reorganization and/or recapitalization; providing, that the future earnings or income of such state bank, savings bank, or trust company, or any portion thereof, be pledged, assigned, or trustee for the benefit of depositors, creditors, or holders of trust certificates of such state banks, savings banks, or trust companies (hereinafter for convenience referred to as "certificate holders"), the rights of such "certificate holders" in such earnings or income, or the application of the same or any part thereof to payment of trust certificates may, with written consent of the majority of such "certificate holders" holding claims totaling, in the aggregate, seventy-five percent of the claims of all "certificate holders" for whose benefit such earnings have been pledged, assigned, or trustee, be waived and the trust agreement and any other agreements pertaining thereto may be so modified to such extent; and the future earnings and income dealt with in any manner approved by the superintendent of banking.

Upon such written consent being executed by a majority in number of such "certificate holders" holding claims totaling, in the aggregate, seventy-five percent of the claims of such "certificate holders", all such "certificate holders" shall be bound thereby, whether or not they shall have consented. [C35, §9283-f7; C39, §9283.30; C46, 50, 54, §528.115]

Referred to in §528.116

**528.116 Waiver by public bodies.** The state, through the executive council, in its discretion, and any county, city, town, municipality, township, or school district, in the discretion of its governing board, when a "certificate holder", as defined in section 528.115, may enter into the written consent and waiver agreement as provided in said section, through and by any member or officer designated for that purpose by such public body. Joining in such consent and waiver agreement shall not be a waiver of any preference or of the right to participate in the state sinking fund for public deposits. [C35, §9283-f8; C39, §9283.31; C46, 50, 54, §528.116]

**528.117 Governing provisions.** Insofar as the provisions of this act\* may conflict with any other act or parts thereof, the provisions of this act shall control. [C35, §9283-f9; C39, §9283.32; C46, 50, 54, §528.117]

Constitutionality, 45ExGA, ch 113, §4  
 \*45ExGA, ch 113, effective date, February 23, 1934

**528.118 Trusts—segregated assets—liquidation.** Wherever a state bank, savings bank, or trust company has reorganized pursuant to law and the plan of reorganization provides for the creation of a trust fund made up of segregated assets of such bank or trust company against which trust certificates have issued and trustees have been appointed or designated to administer the fund and trust, and the liquidation of the trust assets has reached a point in the judgment of the trustees where the trust should be wound up and the trustees released and discharged and they shall become satisfied that the interests of certificate holders or creditors require the termination of the trust and its liquidation, the superintendent of banking may appoint an examiner in charge or a trustee or trustees of said trust with or without pay but if with pay then not in excess of that fixed by statute for examiners in charge, to assist him in the liquidation and distribution of the assets of the fund, whereupon the right of levy or execution or attachment, if any, against such trust fund or its assets shall be suspended. [C39, §9283.33; C46, 50, 54, §528.118]

**528.119 Accounting — discharge.** In such event, the duties of the trustees as trustees shall be terminated and they shall be released and discharged of any further duties pertaining thereto upon making proper accounting to the superintendent of banking upon such notice as he or the court shall direct, as the case may be. [C39, §9283.34; C46, 50, 54, §528.119]

**528.120 Superintendent as receiver—ratable distribution.** The superintendent of banking may apply to the district court for that district in which the said trust is located or a judge thereof for the appointment of said superintendent of banking as receiver of such trust fund and its affairs shall thereafter be subject to the approval of the court and the fund liquidated in the same manner as provided by law for liquidation of state banks and trust companies, and the assets thereof after the payment of expense of liquidation and distribution shall be ratable distributed among creditors and the holders of trust certificates, giving preference in payment to holders of trust certificates. [C39, §9283.35; C46, 50, 54, §528.120]

**528.121 Attorney for receiver.** The attorney general of the state or such assistants as may be designated by him and approved by the judge or court having jurisdiction thereof shall represent the superintendent of banking in all proceedings provided for hereunder. [C39, §9283.36; C46, 50, 54, §528.121]

See §528.41

**528.122 Public deposits.** In event of such liquidation and distribution of such trust

funds, public bodies as holders of trust certificates may file against and participate in the state sinking fund for public deposits upon the taking over of the fund for liquidation by the superintendent of banking in the same manner as provided by law where a bank is closed and placed in the hands of a receiver, except that all interest due the state sinking fund for public deposits to the date of the reorganization of the bank or trust company, must be paid prior to filing against the state sinking fund. [C39,§9283.37; C46, 50, 54,§528.122]

**528.123 Reports to superintendent.** With respect to all trusts created pursuant to the provisions of sections 528.90 to 528.94, inclusive, and supplementary statutes thereto, it shall be the duty of the superintendent of banking to require periodic reports as often as he may wish from the trustee or trustees in charge of said trusts which reports shall by the superintendent of banking or by whom he may designate to represent him be submitted to the district court for that district in which the said trust is located or a judge thereof for approval in the same manner as now provided by law for liquidation of bank receiverships. [C39,§9283.38; C46, 50, 54,§528.123]

Constitutionality, 47GA, ch 218,§3  
Omnibus repeal, 47GA, ch 218,§2

#### CAPITAL STOCK—CLASSES—NONASSESSABILITY

**528.124 Time and method of amending articles.** Any corporation now organized under the laws of this state as a savings bank, state bank, or trust company may amend its articles of incorporation upon authorization of the stockholders, evidenced by a resolution adopted by the affirmative vote of the amount of stock as required in its articles of incorporation (or if no such provision appears in such articles, then by the affirmative vote of not less than fifty-one percent of the voting stock of said corporation issued and outstanding) at any annual meeting of the stockholders of such corporation, or at any special meeting thereof, called and held in the manner and upon the notice as in this act\* provided. [C35,§9283-f11; C39,§9283.39; C46, 50, 54,§528.124]

\*45ExGA, ch 119, effective date, December 1, 1933

**528.125 Procedure.** At any annual or special meeting of the stockholders of any such corporation, a proposal to amend the articles of incorporation, and/or to provide for the exercise by the corporation of any or all of the powers and rights as specified in section 528.127, may lawfully be considered and passed upon; provided, that at least five days before the day that any such meeting is held, a written notice of the hour, date, and place at which such meeting is to be convened shall have been given by the presiding officer of the board of directors, or such other person as the board may designate, which notice shall state briefly the matters that are to be submitted to and passed upon at such meeting. Such notice shall be deemed sufficiently given if the same is mailed to each voting stockholder of record

by certified mail at his last known address as shown by the records of the corporation, at least five days before the day that such meeting is to be convened; and any meeting thus called shall be a lawful meeting and, provided, the requisite amount of stock is represented thereat, shall be qualified to consider and pass upon the matters specified in such notice, irrespective of contrary provisions of law, if any, or contrary provisions in the articles of incorporation, amendments thereto, or bylaws of any such corporation. [C35,§9283-f12; C39, §9283.40; C46, 50, 54,§528.125; 57GA, ch 267,§79]

Referred to in §528.126

**528.126 Vote required.** Where the right to amend its articles of incorporation and/or to exercise any of the rights and powers as specified in section 528.127, is submitted to either an annual meeting or special meeting of stockholders as provided in section 528.125, an affirmative vote of the amount of stock as required in its articles of incorporation (or if no such provision appears in such articles, then an affirmative vote of fifty-one percent of the voting stock of said corporation issued and outstanding) shall be required to exercise the right or to amend the articles of incorporation for that purpose if such amendment is necessary. At all such meetings, proxies may be voted. [C35,§9283-f13; C39,§9283.41; C46, 50, 54, §528.126]

**528.127 Issuance or decrease of stock — exemption of stockholders.** Any corporation now or hereafter organized under the laws of this state as a savings bank, state bank, or trust company, shall have the power (provided it assumes to have and exercise the same by appropriate provisions in its articles of incorporation, or an amendment thereto duly adopted):

1. To create and issue preferred stock of one or more classes, as well as common stock, and to fix the rights, privileges, preferences, limitations, and conditions of such stock; such rights, privileges, preferences, limitations, and conditions, however, shall not permit such stockholder, either common or preferred, in case of liquidation of such bank, to share in the assets thereof before the depositors shall have been paid in full; provided, that no preferred stock shall be issued by any such corporation unless upon the approval of the superintendent of banking of the state of Iowa.

2. To provide for the decrease of its capital stock upon the authorization of the stockholders of such corporation, evidenced by a resolution adopted by the affirmative vote of the amount of stock as required in its articles of incorporation to authorize such change (or if said articles contain no provisions designating the required majority of stockholders, then by the affirmative vote of not less than fifty-one percent of the stock of said corporation issued and outstanding) either through a reduction of par value of stock issued and outstanding, or by a reduction of the number of shares, and to provide for the exchange of

new shares to be issued for outstanding shares of such corporation, and to provide by similar methods for the increase of the capital stock of such corporation; provided, however, that any such action shall be subject to the approval of the superintendent of banking of the state of Iowa.

3. To declare any or all classes of its stock nonassessable when issued and fully paid for, except as otherwise expressly provided by law.

4. To exempt its stockholders and their private property from liability for the liabilities of the corporation accruing after December 1, 1933.

5. To exempt persons becoming stockholders after December 1, 1933, and their private property, from liability for liabilities of the corporation, whether such liabilities accrued before or after December 1, 1933.

All preferred stock may be sold without first offering the same to the holders of common or preferred stock.

Any preferred stock lawfully issued pursuant to and under the provisions of this act, shall be included in determining whether such banking institution has complied with the minimum capital requirements provided by law for banking institutions in this state. [C35, §9283-f14; C39, §9283.42; C46, 50, 54, §528.127]

Referred to in §§528.125, 528.126

**528.128 Assessment limitations.** Persons becoming holders of stock, either common or preferred, of either a state bank, savings bank or trust company, now organized or hereafter organized, under the laws of this state, and who acquire such stock after December 1, 1933, shall not be held liable to assessment on such stock or to pay any penalty for refusal to pay any assessment on such stock; nor shall such persons be liable to the creditors of any such corporation because of ownership of such stock, nor may any action be maintained against any such person to enforce liability because of the ownership of such stock. Provided, that nothing herein contained shall be construed as relieving or releasing any person who held stock prior to December 1, 1933, in any such corporation existing prior to December 1, 1933, from liability for assessment on stock held by him at or prior to such time or for liabilities of such corporation accruing prior to December 1, 1933, the extent of such liability to be measured by his stock holdings at or prior to December 1, 1933, and provided, further, that nothing herein contained shall create, or be construed as creating any liability, on the part of any stockholder in any such banking corporation, contrary to the provisions of sections 528.90 to 528.94, inclusive, or sections 528.99 to 528.110, inclusive, or acts amendatory thereto. [C35, §9283-f15; C39, §9283.43; C46, 50, 54, §528.128]

Constitutionality and omnibus repeal, 46ExGA, ch 119, §6

## CHAPTER 528A

### PRESERVATION OF BANK RECORDS

528A.1 Time required to preserve.

528A.2 Limit of liability.

528A.3 Photographic records—admissibility.

528A.4 Accrual of causes of action.

528A.5 Applicable to national banks.

**528A.1 Time required to preserve.** Banks shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid balances in favor of depositors of such banks shall not be destroyed. [C50, 54, §528A.1]

Referred to in §528A.2

**528A.2 Limit of liability.** No liability shall accrue against any bank destroying any such records after the expiration of the time provided in section 528A.1, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them. [C50, 54, §528A.2]

**528A.3 Photographic records—admissibility.** Any writing or record, or a photostatic or

photographic reproduction thereof, of any bank whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of said act, transaction, occurrence or event, if made in the regular course of business. [C50, 54, §528A.3]

**528A.4 Accrual of causes of action.** All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual. [C50, 54, §528A.4]

**528A.5 Applicable to national banks.** The provisions of this chapter, so far as applicable, shall apply to the records of national banks. [C50, 54, §528A.5]

## CHAPTER 528B

MERGER, CONSOLIDATION AND CONVERSION OF  
BANKS AND TRUST COMPANIES

- 528B.1 Definitions.  
 528B.2 Resulting national bank.  
 528B.3 Resulting state bank.  
 528B.4 Merger procedure—resulting state bank.  
 528B.5 Merger—approval by stockholders of state banks.  
 528B.6 Effective date of merger—filing of approved agreement certificate of merger as evidence.  
 528B.7 Conversion of national into state banks.  
 528B.8 Continuation of corporate entity—use of old name.  
 528B.9 Dissenting stockholders.  
 528B.10 Trust powers.  
 528B.11 Nonconforming assets or business.  
 528B.12 Book value of assets.

**528B.1 Definitions.** As used in this title:

1. "Bank" means a state or a national bank. The singular "bank" includes the plural "banks" if the context warrants.
2. "Continuing bank" means a merging bank the charter of which becomes the charter of the resulting bank.
3. "Converting bank" means a bank converting from a state to a national bank, or the reverse.
4. "Merger" includes consolidation.
5. "Merging bank" means a party to a merger.
6. "National bank" means a national banking association located in this state.
7. "Resulting bank" means the bank resulting from a merger or conversion.
8. "State bank" means a bank or trust company chartered under the laws of this state. [C54,§528B.1]

**528B.2 Resulting national bank.**

1. Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in section 528B.9.

2. Upon the completion of the merger or conversion, the certificate and charter of any merging or converting state bank shall automatically terminate. [C54,§528B.2]

**528B.3 Resulting state bank.** Upon written approval by the superintendent of banking, banks may be merged to result in a state bank or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the

law of the United States which shall also govern the rights of its dissenting stockholders. [C54,§528B.3]

**528B.4 Merger procedure — resulting state bank.**

1. The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

a. The name of each merging bank and location of each office.

b. With respect to the resulting bank: (1) Its name and the location of the principal and of each additional office which shall not be at places other than pre-existing offices of any merging bank; (2) The name and residence of each director to serve until the next annual meeting of the stockholders; (3) The name and residence of each officer; (4) The amount of capital, the number of shares and the par value of each share; (5) Whether preferred stock is to be issued and the amount, terms, and preferences; (6) The designation of the continuing bank, the charter of which is to be the charter of the resulting bank, together with the amendments to the continuing charter and to the continuing bylaws.

c. Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank.

d. A statement that the agreement is subject to approval by the superintendent of banking and by the stockholders of each merging bank.

e. Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting stockholders of merging banks.

f. Such other provisions as the superintendent of banking may require to enable him to discharge his duties with respect to the merger.

2. After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the superintendent of banking for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

3. Within thirty days after receipt by the superintendent of banking of the papers specified in subsection 1, the superintendent of banking shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The superintendent of banking shall approve the agreement if it appears that:

a. The resulting state bank meets the requirements of state law as to the formation of a new state bank.

b. The agreement provides an adequate capital structure, including surplus, in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

c. The agreement is fair.

d. The merger is not contrary to the public interest.

4. If the superintendent of banking disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate such objections. [C54,§528B.4]

#### **528B.5 Merger—approval by stockholders of state banks.**

1. To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action which vote shall constitute the adoption of the charter and bylaws of the continuing state bank, including the amendments in the merger agreement, as the charter and bylaws of the resulting bank.

2. Notice of the meeting of the stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging bank is located, at least once a week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank, who has not waived such notice in writing; no notice by publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of voting stock. The notice shall state that dissenting stockholders (other than those of the continuing bank) will be entitled to payment of the value of only those shares which are voted against approval of the plan. [C54,§528B.5]

#### **528B.6 Effective date of merger—filing of approved agreement certificate of merger as evidence.**

1. A merger which is to result in a state bank shall, unless a later date is specified in the agreement, become effective upon the filing with the superintendent of banking of the executed agreement together with copies of the resolutions of the stockholders of each merging bank approving it, certified by the bank's president or a vice-president and a secretary.

The charters of the merging banks, other than the continuing bank shall thereupon automatically terminate.

2. The superintendent of banking shall thereupon issue to the resulting bank a certificate of merger, which shall constitute a continuing charter, specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held. [C54,§528B.6]

#### **528B.7 Conversion of national into state banks.**

1. Except as provided in section 528B.10, a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank may be granted a state charter if the superintendent of banking finds that the office of the national bank is legally in operation, that the resulting state bank will have an adequate capital structure, including surplus, in relation to its deposit liabilities and its other activities, not less than the capital structure required for a new state bank and that the officers and directors of the resulting bank are persons of sound judgment and discretion.

2. The national bank may apply for such charter by filing with the superintendent of banking a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank; and the plan of conversion and the proposed articles of incorporation, approved by the stockholders, for the operation of the bank as a state bank. [C54,§528B.7]

#### **528B.8 Continuation of corporate entity—use of old name.**

1. A resulting state or national bank shall be considered the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, duties, and obligations of each merging bank or the converting bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank, and by the charter and bylaws of the resulting bank.

2. A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it deems it more convenient to do so.

3. Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing. [C54,§528B.8]



**528B.9 Dissenting stockholders.**

1. The owner of shares of a state bank, (other than the continuing bank) which were voted against a merger to result in a state bank, or against the conversion of a state bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting state or national bank at any time within thirty days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three appraisers, one to be selected by the owners of two-thirds of the shares involved, one by the board of directors of the resulting state or national bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger or conversion becomes effective the superintendent of banking shall cause an appraisal to be made.

2. The expenses of appraisal shall be paid by the resulting state bank.

3. The resulting state or national bank may fix an amount which it considers to be not more than the value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of that bank entitled to payment

in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank. [C54,§528B.9]

Referred to in §528B.2

**528B.10 Trust powers.** Where a resulting state bank is not to exercise trust powers, the superintendent of banking shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank. [C54, §528B.10]

Referred to in §528B.7

**528B.11 Nonconforming assets or business.** If a merging or converting bank has assets which do not conform to the requirements of state law for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the superintendent of banking may permit a reasonable time to conform with state law. [C54,§528B.11]

**528B.12 Book value of assets.** Without approval by the superintendent of banking no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of a merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion. [C54, §528B.12]

Constitutionality, 55GA, ch 232,§13

## CHAPTER 529

## INSTALLMENT LOANS BY BANKS

- 529.1 Definition.
- 529.2 Lending agency.
- 529.3 Limitation of amount.
- 529.4 Maturity.
- 529.5 Form of note.
- 529.6 Maximum charge.
- 529.7 Delinquency of installment payments.

- 529.8 Repayment of loan before maturity.
- 529.9 Not to restrict or prevent "G. I." loans.
- 529.10 Real estate mortgages—rate.
- 529.11 Applicable to banks only.
- 529.12 Advertising.
- 529.13 Short title.

**529.1 Definition.** An installment loan shall be a loan made by a bank as provided in this chapter, upon a written instrument, the terms of which contain an agreement or a promise of repayment in installments at regular intervals, provided that, installments may be deferred or omitted on a seasonal basis. [C46, 50, 54,§529.1]

**529.2 Lending agency.** All banks operating under this title are authorized to make installment loans as provided in this chapter. The provisions of this chapter, so far as they are applicable, shall also apply and extend to national banks operating in this state, if such banks avail themselves of the provisions of this chapter. [C46, 50, 54,§529.2]

**529.3 Limitation of amount.** No bank shall have outstanding under the provisions of this

chapter any installment loan or loans to any one borrower in an amount in excess of the sum of twenty-five hundred dollars exclusive of charges authorized herein, provided no bank shall have outstanding in such installment loans an aggregate amount in excess of fifteen percent of its total resources. [C46, 50, 54, §529.3]

**529.4 Maturity.** Each such installment loan shall mature within a period of not to exceed thirty-seven months. [C46, 50, 54,§529.4; 56GA, ch 248,§1]

**529.5 Form of note.** Any such installment loan may be made upon a written promissory note of the borrower. The form of said note shall be approved by the superintendent of banking. [C46, 50, 54,§529.5]

**529.6 Maximum charge.** All banks operating under the provisions of this chapter may contract for and receive on any loan, excluding charges, which is repayable in installments, a maximum charge (which shall include interest) determined in accordance with either of the following options:

Option A. The total charge on any such installment loan shall be at a rate not to exceed six dollars per annum upon each one hundred dollars actually loaned to the borrower. Said charge may be included in the face amount of the note, in addition to the amount loaned or advanced. Said charge shall include and be in lieu of any interest, or charge for credit investigation, drawing papers, or any other service charge incidental to making, carrying or servicing said loan.

Option B. The total charge may be any amount not exceeding the equivalent of one percent per month computed on unpaid principal balances. The bank may receive such charge by crediting each payment whenever received, first to the charge at the monthly rate contracted for, and the remainder to principal until the loan is fully paid; or the bank may compute the total charge which would be earned at the monthly rate contracted for if the loan contract were repaid according to its terms and each payment were applied first to the charge and then to principal, and include such total charge in the face of the note.

If the total charge is included in the face of the note pursuant to either Option A or B of this section, and the period of the loan contract is divided into monthly intervals, a first interval of not less than fifteen nor more than forty-five days may be treated as a monthly interval.

In addition to the total charge permitted by this section, no further amount shall be directly or indirectly charged, contracted for, or received on or in connection with any loan made under this chapter, except lawful fees paid to a public officer, adjudged and statutory taxable costs, and the cost of a reasonable amount and kind of insurance customarily required, but at not in excess of standard insurance rates. The borrower shall be free to obtain his insurance from any agent or broker of his own choosing. [C46, 50, 54,§529.6]

**529.7 Delinquency of installment payments.** When any installment is not paid when due, the bank may collect, upon said delinquent installment, interest from date of delinquency at a rate not in excess of one percent per month. [C46, 50, 54,§529.7]

**529.8 Repayment of loan before maturity.** The borrower may prepay his or her installment loan in whole or in part at any time, and when full payment thereof is made before maturity, whether by payment in cash, renewal, or otherwise, or whenever the maturity of the note is accelerated, the borrower shall receive from said bank at the time the loan is paid in full a refund of the unearned loan charge.

The refund shall be so calculated that the borrower will not have paid a charge for the loan at a greater rate when computed on actual unpaid principal balances than he would have paid had the loan been permitted to run to its maturity, and in no event shall the borrower be required to pay in excess of one percent per month interest on the actual unpaid principal balances. All such refunds shall be made in accordance with a uniform refund schedule calculated, prescribed, and approved by the superintendent of banking which shall be adhered to by the lender. [C46, 50, 54,§529.8]

**529.9 Not to restrict or prevent "G. I." loans.** Nothing in this chapter shall in any way restrict or prevent Iowa banking institutions, authorized to make loans under the provisions of this chapter, from making loans under or investing their funds in notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of title III of the "Servicemen's Readjustment Act of 1944" (Public Law 346, 78th Congress) approved June 22, 1944, or acts amendatory or supplemental thereto, and more familiarly known as the "G. I. Bill of Rights" and as such act may be interpreted and operated under rules and regulations that may be promulgated by the veterans' administration. [C46, 50, 54,§529.9]

**529.10 Real estate mortgages — rate.** Notwithstanding any other provision of this chapter, no bank as defined herein shall charge a rate of interest of more than seven cents on the hundred by the year on a first mortgage on real estate. [C46, 50, 54,§529.10]

**529.11 Applicable to banks only.** Nothing in this chapter shall be construed as prohibiting any person, firm, or corporation from making installment loans or from selling goods, merchandise, or property on installment credit. [C46, 50, 54,§529.11]

**529.12 Advertising.** No bank shall publish, disseminate, or distribute any advertising containing any false, misleading, or deceptive statements concerning rates, terms, and conditions for loans made under this chapter. Violation of any of the provisions of this paragraph shall be punishable as provided in section 713.24.

Any statement indicating the amount of the installment or the total charge in dollars required for any loan shall also state the percentage rate per year computed on declining balances of the original principal amount to which the total charge would be equivalent if the loan were repaid according to the contract. The percentage rate stated may be closely approximate rather than exact if the statement so indicates. [C46, 50, 54,§529.12]

**529.13 Short title.** This chapter may be known and referred to as the "Bank Installment Loan Law". [C46, 50, 54,§529.13]

## CHAPTER 530

## STATE-FEDERAL BANKING CO-ORDINATION

530.1 Definition.

530.2 General powers.

530.3 Subrogation of FDIC.

530.4 Examinations by FDIC.

530.5 Pledge or sale of assets to FDIC.

**530.1 Definition.** The term "banking institution", as used in this chapter, shall be construed to mean any state bank, trust company, bank and trust company, banking association, or stock savings bank, which is now or may hereafter be organized under the laws of this state. [C35,§9283-g1; C39,§9283.44; C46, 50, 54, §530.1]

**530.2 General powers.** Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, with the approval of the superintendent of banking, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges, which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators, by virtue of those provisions of section 8 of the federal "Banking Act of 1933" (sec. 12B of the federal reserve act, as amended), [48 Stat. L. ch 89] which establish the federal deposit insurance corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation. [C35, §9283-g2; C39,§9283.45; C46, 50, 54,§530.2]

**530.3 Subrogation of FDIC.** Whenever the federal deposit insurance corporation shall pay, or make available for payment, the insured deposit liabilities of any closed state bank, trust company, bank and trust company, banking association, or stock savings bank, it shall be subrogated to all rights of the depositor to the extent of such payment. Such subrogation in the case of any closed state bank, trust company, bank and trust company, banking association, or stock savings bank shall include the right to receive the same dividends from the proceeds of the assets of said closed bank as would have been payable to such depositor on a claim for the insured deposit, such depositor retaining his claim for any uninsured portion of his deposit. [C35,§9283-g3; C39, §9283.46; C46, 50, 54,§530.3]

**530.4 Examinations by FDIC.** The federal deposit insurance corporation may, at any

time it sees proper, make or cause to be made an examination of any state bank, trust company, bank and trust company, banking association, or stock savings bank that is or may hereafter become a member of its fund, and, upon the application of any such institution to become a member of its fund, shall have the right of such examination for the purpose of determining the applicant's qualification for admission to such fund, and the corporation shall furnish the superintendent of banking with a copy of all such examinations when completed. The superintendent of banking may furnish to said corporation, or to any official or supervising examiner thereof, a copy of any or all examinations made of any such banking institutions and of any and all reports made by the same, and shall give access to said corporation, or any official or supervising examiner thereof, any and all information possessed by the office of said superintendent of banking with reference to the condition or affairs of any such insured institution.

Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 8 of the "Banking Act of 1933" (section 12B of the federal reserve act, as amended), [48 Stat. L. ch 89] or of any amendment of or substitution for the same, to comply with the provisions of said act, its amendments or substitutions, nor to limit the powers of the superintendent of banking with reference to examinations and reports under existing law. [C35,§9283-g4; C39,§9283.47; C46, 50, 54,§530.4]

**530.5 Pledge or sale of assets to FDIC.** With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the superintendent of banking or of a court or by action of its directors or in the event of its insolvency or suspension, the superintendent of banking and/or the receiver or liquidator of such institution with the permission of said superintendent of banking may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, provided, that where said banking institution is in receivership, the order of a court of record of competent jurisdiction shall be first obtained approving such loan, and upon a like order from such court, and, with the permission of said superintendent of banking, the receiver of any such institution and/or the superintendent of banking without such order may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the superintendent of banking or receivers or liquidators to pledge or sell assets

in accordance with any existing law. [C35, §9283-g5; C39, §9283.48; C46, 50, 54, §530.5]

Constitutionality, 46GA, ch 101, §6  
Omnibus repeal, 46GA, ch 101, §7

CHAPTER 531  
CO-OPERATIVE BANKS

Referred to in §499.7

- 531.1 Application for charter.
- 531.2 Articles of incorporation.
- 531.3 Bylaws.
- 531.4 Articles recorded—fee—certificate.
- 531.5 Amendment of bylaws.
- 531.6 Prohibited use of words.
- 531.7 Stock subscriptions required.
- 531.8 Right to transact business.
- 531.9 Real estate.
- 531.10 Loans and investments.
- 531.11 Private property exempt.
- 531.12 Dividends.
- 531.13 Liquidation—distribution of assets.

- 531.14 Supervision and reports.
- 531.15 Examinations.
- 531.16 Violations—procedure.
- 531.17 Insolvency—procedure.
- 531.18 Fiscal year.
- 531.19 Annual and special meetings.
- 531.20 Powers of stockholders.
- 531.21 Oath of directors.
- 531.22 Officers.
- 531.23 Directors—powers.
- 531.24 Compensation.
- 531.25 Statutes applicable.
- 531.26 Suggested bylaws.

**531.1 Application for charter.** Any fifty or more persons, residents of the state of Iowa, may secure a charter for the organization of a co-operative bank by making application therefor to the department of banking and by complying with the conditions of this chapter. At least ten of the persons making the application shall sign as incorporators and acknowledge the articles of incorporation, forms for which may be provided by the banking department.

Such application shall be accompanied by a duplicate copy of the proposed bylaws of the corporation. [C27, 31, 35, §9283-b1; C39, §9283.49; C46, 50, 54, §531.1]

42GA, ch 205, §81, 2, editorially divided

**531.2 Articles of incorporation.** The articles of incorporation shall contain the following:

1. Name of proposed bank and place of doing business. The name selected shall contain the words "Co-operative Bank".
2. Purposes for which the association is formed.
3. Par value of shares of stock, which shall not be less than ten dollars. The amount of capital stock that may be issued need not be fixed in the articles of incorporation or the application therefor.
4. Qualifications for subscribers to capital stock.
5. Date of annual meeting, which shall be the second Tuesday in January of each year, or within ten days thereafter, in the manner in which stockholders shall be notified of meetings, and the number of stockholders constituting a quorum.
6. Number of directors (not less than five), all of whom must be residents of the state and stockholders of the corporation. Names and addresses of directors for the first year shall be inserted in the application. The directors shall be divided into three classes so that the

terms of their service shall not exceed three years.

7. The application shall state the number of shares of stock subscribed for and must be signed by the incorporators whose addresses shall be given.

8. The conditions upon which shares of stock may be subscribed for and paid for, transferred and withdrawn and their par values. [C27, 31, 35, §9283-b2; C39, §9283.50; C46, 50, 54, §531.2]

**531.3 Bylaws.** The bylaws shall contain the following provisions for the management of the corporation:

1. Name and place of doing business.
2. Purposes for which the corporation is formed.
3. Powers and duties of officers and directors.
4. The conditions upon which deposits may be received and withdrawn, and provisions as to the power of the corporation to make loans or to secure additional funds to carry on its business.
5. The conditions upon which loans may be made and repaid by stockholders of the corporation.
6. The method of receipting for money paid in on account of stock, deposits, or loans.
7. The manner in which the surplus fund shall be accumulated.
8. The rate of dividends to be paid on capital stock, and the manner in which dividends shall be determined and paid out.
9. The manner in which voluntary dissolution of the corporation may be effected. [C27, 31, 35, §9283-b3; C39, §9283.51; C46, 50, 54, §531.3]

Referred to in §531.26

**531.4 Articles recorded — fee — certificate.** When the application for incorporation and the bylaws shall have been approved by the

department of banking, the incorporators shall have the articles of incorporation recorded with the secretary of state, for which he shall be paid a fee of ten dollars and a recording fee of fifty cents per page. The secretary of state shall then issue to the association a certificate of incorporation. [C27, 31, 35, §9283-b4; C39, §9283.52; C46, 50, 54, §531.4; 56GA, ch 227, §9]

**531.5 Amendment of bylaws.** The bylaws so approved shall be the bylaws of the corporation. They may be amended by the corporation upon the filing with, and approval of such amendments by the department of banking, and by posting them as in the case of corporations for pecuniary profit, and by compliance with such other requirements as may be contained in the articles of incorporation. [C27, 31, 35, §9283-b5; C39, §9283.53; C46, 50, 54, §531.5]

**531.6 Prohibited use of words.** No banking partnership, association, or group, except such as are formed under the provisions of this chapter, shall use a name or designation containing the words "Co-operative Bank". The use of such name or designation by any other person or associations shall be a misdemeanor subject to a fine not to exceed five hundred dollars. [C27, 31, 35, §9283-b6; C39, §9283.54; C46, 50, 54, §531.6]

**531.7 Stock subscriptions required.** A certificate of incorporation for a co-operative bank shall not be issued until an amount of stock has been subscribed for equal to the capitalization required for a state bank in the place where such bank is to be located. The sale of additional stock shall be regulated by the board of directors. [C27, 31, 35, §9283-b7; C39, §9283.55; C46, 50, 54, §531.7]

**531.8 Right to transact business.** When the certificate of incorporation has been issued and the required capital stock has been paid in cash, the co-operative bank shall open its books for deposits and other business, issue certificates of stock to subscribers, and be entitled to do all the things authorized to be done by state banks. [C27, 31, 35, §9283-b8; C39, §9283.56; C46, 50, 54, §531.8]

**531.9 Real estate.** A co-operative bank shall have power to buy and own real estate upon which the banking business is conducted, and to buy, own, and sell other real estate under the rules and restrictions governing state banks. [C27, 31, 35, §9283-b9; C39, §9283.57; C46, 50, 54, §531.9]

**531.10 Loans and investments.** A co-operative bank shall have power to make loans and invest its funds in the manner and ways granted state banks. [C27, 31, 35, §9283-b10; C39, §9283.58; C46, 50, 54, §531.10]

**531.11 Private property exempt.** The private property of stockholders shall not be liable for the payment of debts of the corporation. [C27, 31, 35, §9283-b11; C39, §9283.59; C46, 50, 54, §531.11]

**531.12 Dividends.** No annual distribution of dividends upon capital stock shall ever exceed eight percent of the par value of the capital stock. After the maximum annual dividend has been paid, and a surplus has been created equal to one-half the capital stock, the net earnings may be distributed or credited to the depositors and the borrowers from the bank, who are stockholders, in proportion to the amount of interest received and accrued to the depositors and the amount of interest paid by and accrued against the obligations of the borrowers. [C27, 31, 35, §9283-b12; C39, §9283.60; C46, 50, 54, §531.12]

**531.13 Liquidation—distribution of assets.** Upon the liquidation of the corporation after payment of all liabilities, the balance of the assets shall be distributed as follows:

1. The capital stock shall be redeemed in full at par together with accrued dividends.

2. All other assets of the bank shall be distributed to the depositors and borrowers then stockholders of the bank in proportions provided for the distribution of profits after payment of dividends on capital stock, but should the assets of the bank after payment of debts as provided herein not be sufficient to redeem all the capital stock at par, then the same shall be paid pro rata to the then stockholders. In case of liquidation the banking department shall have power and authority to take control of the corporation and liquidate the affairs thereof and make the distribution as herein provided. [C27, 31, 35, §9283-b13; C39, §9283.61; C46, 50, 54, §531.13]

**531.14 Supervision and reports.** Co-operative banks shall be subject to supervision by the department of banking and shall report to the department on blank forms supplied by it on the dates reports are required of state banks, notice of which calls shall be sent out by the department of banking. Such reports shall be verified by the oath of the president and treasurer or secretary, or by the oath of a majority of the board of directors. Such further reports shall be made under oath as the department of banking shall at any time demand. [C27, 31, 35, §9283-b14; C39, §9283.62; C46, 50, 54, §531.14]

42GA, ch 205, §13, editorially divided

**531.15 Examinations.** The corporation shall be examined at least once every year by the department of banking. Such department shall have access to all books, papers, securities, and other sources of information in making such examination. The superintendent of the banking department, or any of his deputies, shall have power to subpoena and examine witnesses under oath whether such witnesses are stockholders of the corporation or not, and to examine documents and examine witnesses under oath in regard to documents whether such documents are documents of the corporation or not. [C27, 31, 35, §9283-b15; C39, §9283.63; C46, 50, 54, §531.15]

**531.16 Violations—procedure.** Should it appear to the department of banking that any such corporation has violated any of the provisions of this chapter, it may, by an order, after an opportunity for hearing has been given such corporation, direct any such corporation to discontinue the violations named in the order. [C27, 31, 35,§9283-b16; C39,§9283.64; C46, 50, 54,§531.16]

**531.17 Insolvency—procedure.** If any such corporation is found to be insolvent, or has violated any of the provisions of this chapter, or has failed within a reasonable time to comply with any such order, the department of banking may immediately, or within a reasonable time, take possession of the property and business of such corporation, and retain such possession until such time as said department permits it to resume business, or its affairs are finally liquidated as provided in this chapter. [C27, 31, 35,§9283-b17; C39,§9283.65; C46, 50, 54,§531.17]

**531.18 Fiscal year.** The fiscal year of such corporation shall end on the thirty-first day of December. [C27, 31, 35,§9283-b18; C39,§9283.66; C46, 50, 54,§531.18]

42GA, ch 205,§14, editorially divided

**531.19 Annual and special meetings.** Annual meetings shall be held on the second Tuesday in January, or within ten days thereafter, as provided by the articles of incorporation. Special meetings may be held by order of the president of the board or a majority of the directors, and shall be held upon the request in writing of ten percent of the stockholders. Notice of all meetings shall be given in the manner prescribed in the articles of incorporation and bylaws. At all meetings each stockholder shall have but one vote, irrespective of the number of shares of stock held. [C27, 31, 35,§9283-b19; C39,§9283.67; C46, 50, 54,§531.19]

**531.20 Powers of stockholders.** At any meeting the stockholders, by a majority vote of all, may decide upon any question of interest to the corporation, may overrule the board of directors, and may amend the bylaws by a three-fourths vote of those present and represented by proxy, provided the notice of the meeting shall have specified the question to be considered. [C27, 31, 35,§9283-b20; C39,§9283.68; C46, 50, 54,§531.20]

**531.21 Oath of directors.** Directors as well as all officers, shall be sworn to perform properly the duties of their offices. Such oath shall provide that they shall diligently and honestly administer the affairs of the corporation; that they will not violate or knowingly permit to be violated any of the provisions of law applicable to the corporation; that they are the owners in good faith of at least fifty shares each in the stock of the corporation. Such oath shall be subscribed by the individual

making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the department of banking and preserved in its office. [C27, 31, 35,§9283-b21; C39,§9283.69; C46, 50, 54,§531.21]

**531.22 Officers.** At the first annual meeting and at each annual meeting thereafter, the board of directors shall elect from their number a president, vice-president, secretary and treasurer. The offices of secretary and treasurer may, if the articles of incorporation so provide, be held by one person. Other officers may be elected at the discretion of the directors. [C27, 31, 35,§9283-b22; C39,§9283.70; C46, 50, 54,§531.22]

42GA, ch 205,§16, editorially divided

**531.23 Directors—powers.** The board of directors shall have general management of the affairs, funds, and records of the corporation. They shall meet regularly once each month. Unless the bylaws make other reservations, it shall be the duty of the directors:

1. To act upon all subscriptions for stock and the withdrawal and the expulsion of stockholders.
2. To fix the amount of the surety bond required of each officer of the corporation.
3. To determine the rate of interest allowed on deposits and charged on loans, subject to the limitations of law.
4. To arrange for a place of deposit for the funds of the corporation and for such loans from banks or individuals as they may deem necessary for carrying out the objects of the corporation.
5. To fix the maximum number of shares of stock which may be held by, and the maximum amount which may be loaned to, any one stockholder; to declare dividends; and to recommend amendments to the bylaws.
6. To fill vacancies in the board of directors until the next annual meeting.
7. To have charge of the investment of the funds of the corporation and to perform such other duties as the stockholders may from time to time authorize.
8. To employ such help as may be necessary in conducting the business, and to fix the salaries of the help.

The board of directors shall decide what standing committees are necessary in the operation of the bank and prescribe the duties of such committees, and the president of the board at the first monthly meeting of the board after the annual meeting, shall appoint such standing committees. [C27, 31, 35,§9283-b23; C39,§9283.71; C46, 50, 54,§531.23]

**531.24 Compensation.** No member of the board of directors shall receive any compensation for his services as a member of said board, unless said compensation has been authorized at a stockholders meeting. [C27, 31, 35,§9283-b24; C39,§9283.72; C46, 50, 54,§531.24]

**531.25 Statutes applicable.** All provisions of law relative to state banks shall apply to cooperative banks in so far as they are applicable and not inconsistent with the express provisions of this chapter. [C27, 31, 35, §9283-b25; C39, §9283.73; C46, 50, 54, §531.25]

**531.26 Suggested bylaws.** The department of banking shall prepare suggested bylaws and regulations covering the provisions of section 531.3, which shall be furnished to applicants upon request. [C27, 31, 35, §9283-b26; C39, §9283.74; C46, 50, 54, §531.26]

## CHAPTER 532

### BANKS AND TRUST COMPANIES ADDITIONAL POWERS AS FIDUCIARIES

Referred to in §638.28

532.1 Authorization—additional powers.  
 532.2 Deposit of trust funds—payment.  
 532.3 Reducing burdensome bond by deposit.  
 532.4 Payment of deposited funds.  
 532.5 National banks.  
 532.6 Voting of stock.  
 532.7 Separation of funds—liability.  
 532.8 Analogous rights and duties—compensation—bonds.  
 532.9 Appointment of successor.  
 532.10 Release from liability.  
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532.12 Mandatory use of “trust”, “state”, or “savings”.  
 532.13 Prohibited use of word “trust”.  
 532.14 Indebtedness or liability—exceptions.  
 532.15 Attorney—appointment of—fee.  
 532.16 Dividends.  
 532.17 “Bad debts” defined.  
 532.18 Investment of surplus.  
 532.19 Applicable provisions.  
 532.20 Trust matters—report.  
 532.21 Appointment of nominee.

**532.1 Authorization — additional powers.** Trust companies, state and savings banks existing under the provisions of this title, in addition to the powers already granted to such corporations, shall have power, when so authorized by their articles of incorporation:

1. To be appointed assignee or trustee by deed, and guardian, executor, or trustee by will, and such appointment, upon qualification as herein required, shall be of like force as in case of appointment of a natural person.

2. To be appointed receiver, assignee, guardian, administrator, or other trustee by any court of record in this state, and it shall be lawful for such court to appoint such corporation as such receiver, assignee, guardian, administrator, or other trustee, in the manner provided by law for the appointment of any natural person to such trust; provided any such appointment as guardian shall apply to the estate and not the person.

3. To act as fiscal or transfer agents, or registrar for estates, municipalities, companies, and corporations.

4. To take, accept, and execute any and all such trusts and powers of whatsoever character and description, not in conflict with the laws of the United States or of this state, as may be conferred upon or entrusted or committed to them by any person or persons or any body politic, corporation, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise, or which may be entrusted or committed or transferred to them or vested in them by order of any court of record, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust, and to manage and dispose of such property or estate in accordance with the terms of such trust or power.

5. To issue drafts upon depositories, and to purchase, invest in, and sell promissory notes, bills of exchange, bonds, mortgages, and other securities.

6. To exercise the powers conferred on and to carry on the business of a safe-deposit company. [SS15, §1889-d; C24, 27, 31, 35, 39, §9284; C46, 50, 54, §532.1]

SS15, §1889-d, editorially divided  
 Referred to in §532.5

**532.2 Deposit of trust funds—payment.** Any court having appointed, and having jurisdiction of any receiver, executor, administrator, guardian, assignee, or other trustee, upon the application of such officer or trustee, after such notice to the other parties in interest as the court may direct, and after a hearing upon such application, may order such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, and until the further order of said court, with any such trust company, state or savings bank, and upon deposit of such money, and its receipt and acceptance by such corporation, the said officer or trustees shall be discharged from further care or responsibility therefor. Such deposit shall be paid out only upon the orders of said court. [SS15, §1889-d; C24, 27, 31, 35, 39, §9285; C46, 50, 54, §532.2]

Referred to in §532.5

**532.3 Reducing burdensome bond by deposit.** Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any assignee, receiver, executor, administrator, guardian, or other trustee, the bond required by law of such officer shall seem burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest as the court

shall direct, and after a hearing on such application, the said court may order the said officer or trustee to deposit with any such corporation for safekeeping, such portions or all of the personal assets of said estate as it shall deem proper, and thereupon said court shall, by an order of record, reduce the bond to be given, or theretofore given by such officer or trustee, and the property as deposited shall thereupon be held by the corporation under the orders and directions of said court. [SS15, §1889-d; C24, 27, 31, 35, 39, §9286; C46, 50, 54, §532.3]

Referred to in §§532.5, 682.47

**532.4 Payment of deposited funds.** When any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the corporation in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made, or to his or her legal representatives; provided that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the consent of the legal representatives of said trustee. [SS15, §1889-d; C24, 27, 31, 35, 39, §9287; C46 50, 54, §532.4]

Referred to in §532.5

**532.5 National banks.** When so authorized by any law of the United States now in force or hereafter enacted, national banks may exercise the same powers and perform the same duties as are by sections 532.1 to 532.4, inclusive, conferred upon trust companies, state and savings banks. [SS15, §1889-d; C24, 27, 31, 35, 39, §9288; C46, 50, 54, §532.5]

**532.6 Voting of stock.** In case any corporation shall hold any of its own shares of stock in any of the trust capacities herein authorized, then such shares shall be voted at stockholders meetings by any person so authorized by the board of directors of said corporation. [S13, §1889-e; C24, 27, 31, 35, 39, §9289; C46, 50, 54, §532.6]

**532.7 Separation of funds — liability.** All property, real or personal, received in trust by any such corporation exercising the powers granted by this chapter, shall be kept separate from such funds or property which may be in the possession of such corporation, and shall not be liable for the debts or obligations of such corporation. [S13, §1889-f; C24, 27, 31, 35, 39, §9290; C46, 50, 54, §532.7]

**532.8 Analogous rights and duties—compensation—bonds.** Every state or savings bank, or trust company, acting as guardian, administrator, executor, trustee, assignee, receiver, or custodian shall have the same rights, powers, and privileges as individuals so acting, and receive the same compensation as is or may be allowed individuals for exercising similar offices or trusts, so far as the same are fixed

by statutes, and shall execute a bond for the faithful performance of the trust confided to it in like sum and with like penalties as is required by individuals. [S13, §1889-g; C24, 27, 31, 35, 39, §9291; C46, 50, 54, §532.8]

**532.9 Appointment of successor.** In case any corporation desires to retire from business under this chapter, or in case of the dissolution of any such corporation, the court having jurisdiction of each of the several trusts and appointments held by such corporation shall, upon application of such corporation or its receiver, after such notice to the other parties in interest as the court may direct, and after a hearing upon such application, appoint another corporation, person, or persons as successor trustee or appointee. [S13, §1889-h; C24, 27, 31, 35, 39, §9292; C46, 50, 54, §532.9]

S13, §1889-h, editorially divided

**532.10 Release from liability.** Upon the acceptance of such office by the successor trustee and due qualification therefor, and the transfer of the property in such case held, to the successor trustee then the dissolving corporation shall be discharged from any further responsibility in such trust capacity or appointment. [S13, §1889-h; C24, 27, 31, 35, 39, §9293; C46, 50, 54, §532.10]

**532.11 Return of securities.** The superintendent of banking, upon being furnished with satisfactory evidence of said corporation's release and discharge from all of the obligations and trusts assumed by virtue of this chapter, shall thereupon return to such corporation the securities deposited by it with him. [S13, §1889-h; C24, 27, 31, 35, 39, §9294; C46, 50, 54, §532.11]

**532.12 Mandatory use of "trust", "state", or "savings".** Any trust company, state or savings bank, which under this chapter and by its original or amended articles of incorporation shall be authorized to exercise any of the powers herein granted, shall have the word "trust", "state", or "savings" incorporated in the name thereof. [S13, §1889-i; C24, 27, 31, 35, 39, §9295; C46, 50, 54, §532.12]

S13, §1889-i, editorially divided

**532.13 Prohibited use of word "trust".** No corporation hereinafter organized without complying with the terms of this chapter, and no partnership, individual, or unincorporated association, shall incorporate or embrace the word "trust" in its name. [S13, §1889-i; C24, 27, 31, 35, 39, §9296; C46, 50, 54, §532.13]

**532.14 Indebtedness or liability—exceptions.** Trust companies, state or savings banks, may contract indebtedness or liability for the following purposes: For necessary expenses in managing and transacting their business, for deposits, and to pay depositors, to maintain proper legal reserves, and for other corporate purposes, and the directors of said trust company, state or savings bank shall have the right to pledge as security for said indebted-



ness or liability such assets of said bank or trust company as may be necessary. Nothing herein contained shall limit the issuance by trust companies, of debentures or bonds, the payment of which shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, provided said securities shall be at least equal in amount to the par value of such debentures or bonds, and be first liens upon unencumbered real estate worth at least twice the amount loaned thereon. [S13, §1889-j; C24, 27, 31, 35, 39, §9297; C46, 50, 54, §532.14]

Similar provision, §528.12

**532.15 Attorney—appointment of—fee.** The beneficiaries of any trust held by any such corporation may appoint, by and with the approval of the court having jurisdiction thereof, a practicing attorney in good standing to look after the legal interests of said beneficiaries; and said attorney shall be allowed by the court a reasonable fee for such legal services, to be paid out of said trust estate. [S13, §1889-k; C24, 27, 31, 35, 39, §9298; C46, 50, 54, §532.15]

**532.16 Dividends.** After providing for all expenses, interest, and taxes accrued or due from any corporation exercising the powers herein conferred and deducting all losses and bad debts, the board of directors of said corporation may declare a dividend of so much of the profits of the corporation as they shall judge expedient. [S13, §1889-l; C24, 27, 31, 35, 39, §9299; C46, 50, 54, §532.16]

S13, §1889-l, editorially divided  
Referred to in §532.17  
Similar provisions, §§526.35, 528.58

**532.17 "Bad debts" defined.** All debts past due to any corporation on which interest is past due and unpaid for a period of twelve months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of section 532.16. [S13, §1889-l; C24, 27, 31, 35, 39, §9300; C46, 50, 54, §532.17]

**532.18 Investment of surplus.** Said surplus shall be invested the same as the original capital. [S13, §1889-l; C24, 27, 31, 35, 39, §9303; C46, 50, 54, §532.18]

**532.19 Applicable provisions.** All of the provisions of sections 491.33 to 491.37, inclusive, relating to the renewal of corporate existence of state and savings banks, and all of the provisions of sections 526.1, and 526.3 to 526.6, inclusive, so far as same relate to time and

manner of commencing business, sections 526.8 to 526.24, inclusive, 526.36 to 526.43, inclusive, 528.69, 528.76 and 528.77, and all the provisions of sections 528.4 to 528.7, inclusive, 528.14 to 528.66, inclusive, and 528.81 to 528.85, inclusive, shall apply with equal force and effect to all trust companies organized or reorganized under this chapter. [S13, §1889-m; C24, 27, 31, 35, 39, §9304; C46, 50, 54, §532.19]

S13, §1889-m, editorially divided

**532.20 Trust matters—report.** Any corporation exercising any of the powers herein granted, in addition to matters required by section 528.22, to be given in the statement of conditions, shall give:

A list and brief description of the trusts held by such company, the source of the appointment thereto, and the amount of real and personal estate held by such company by virtue thereof, except that mere mortgage trusts wherein no action has been taken by such company, shall not be included in such statement; said list to be transmitted to the superintendent of banking within thirty days after the receipt of requisition therefor, but such list shall not be published. [S13, §1889-m; C24, 27, 31, 35, 39, §9305; C46, 50, 54, §532.20]

**532.21 Appointment of nominee.** Any state or national bank or trust company, when acting in this state as a fiduciary or a cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any (who are hereby authorized to give such consent), cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered. The records of such bank or trust company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or trust company and be kept separate and apart from the assets of such bank or trust company.

All reports or accounts rendered by the fiduciary shall clearly show the ownership of the investment and the facts regarding its holding, and if the fiduciary relationship pertains to an estate, trust, guardianship, or receivership pending in the district court, or to any other district court matters or proceedings, court approval shall be first obtained to register and hold investments in the name of a nominee or nominees, and all reports or accounts rendered by the fiduciary or fiduciaries in such matters pending in the district or probate court shall require court approval. [57GA, ch 250, §1]

CHAPTER 533  
CREDIT UNIONS

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| <p>533.1 Purpose—administration—organization.<br/>533.2 Amendments.<br/>533.3 Restriction.<br/>533.4 Powers.<br/>533.5 Membership.<br/>533.6 Reports—examinations.<br/>533.7 Fiscal year—meetings.<br/>533.8 Elections.<br/>533.9 Directors and officers.<br/>533.10 Credit committee.<br/>533.11 Auditing committee.<br/>533.12 Capital.</p> | <p>533.13 Special shares and accounts.<br/>533.14 Interest rates.<br/>533.15 Power to borrow.<br/>533.16 Loans.<br/>533.17 Reserves.<br/>533.18 Dividends.<br/>533.19 Expulsion—withdrawal.<br/>533.20 Dissolution.<br/>533.21 Change in place of business.<br/>533.22 Taxation.<br/>533.23 Small loans legislation.</p> |
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**533.1 Purpose — administration — organization.**

*Definition and purpose.* A credit union is hereby defined as a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their savings for their mutual benefit.

*Administration.* The superintendent of banking shall be charged with the execution of the laws of this state relating to credit unions.

*Organization.* Any seven residents of the state of Iowa may apply to the superintendent of banking for permission to organize a credit union.

A credit union is organized in the following manner:

1. The applicants shall execute in duplicate articles of incorporation by the terms of which they agree to be bound. The articles shall state:

a. The name and location of the proposed credit union.

b. The names and addresses of the subscribers to the articles and the number of shares subscribed by each.

c. The par value of the shares of the credit union which shall be five dollars each.

2. Said applicants shall prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

3. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent of banking.

4. The superintendent shall, within thirty days of the receipt of said articles and bylaws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit the members of it and be consistent with the purposes of this chapter.

5. The superintendent shall thereupon notify the applicants of his decision. If it is favor-

able he shall issue a certificate of approval, attached to the duplicate articles of incorporation and return the same, together with the duplicate bylaws to the applicants.

6. The applicants shall thereupon file the said duplicate of the articles of incorporation, with the certificate of approval attached thereto, with the county recorder of the county within which the credit union is to do business, who shall record and index the same and return it, with his certificate of record attached thereto, to the said superintendent of banking for permanent record.

7. The applicants shall thereupon become and be a credit union, incorporated in accordance with the provisions of this chapter.

In order to simplify the organization of credit unions, the superintendent of banking, upon the taking effect of this chapter, or as soon thereafter as sufficient fees shall have accumulated to liquidate the cost of same, shall cause to be prepared an approved form of articles of incorporation and a form of bylaws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven residents of the state, shall supply them without charge with blank articles of incorporation and a copy of said form of suggested bylaws. [C27, 31, 35, §9305-a1; C39, §9305.01; C46, 50, 54, §533.1]

**533.2 Amendments.** The articles of incorporation or the bylaws may be amended by a favorable vote of three-fourths of the members present at any meeting, which number must constitute a quorum provided the proposed amendment was contained in the notice of the meeting. Any and all such amendments must be approved by the superintendent of banking before they become effective. [C27, 31, 35, §9305-a2; C39, §9305.02; C46, 50, 54, §533.2]

**533.3 Restriction.** No person, firm, corporation, copartnership, or association, except a credit union organized under the provisions of this chapter or under the federal credit union act or except the Iowa credit union league, incorporated, or chapters of said league, shall use a name or title containing the words "credit union" or any derivation thereof or

shall represent themselves, in their advertising or otherwise, as conducting business as a credit union.

Any person, firm, corporation, copartnership, or association, upon conviction of the violation of the provisions of this section shall be fined not more than five hundred dollars or imprisoned not more than one year or both; and may be enjoined from such continued use of said words, advertising or other representation. [C27, 31, 35, §9305-a3; C39, §9305.03; C46, 50, 54, §533.3]

Punishment, §687.7

**533.4 Powers.** A credit union shall have the following powers to:

1. Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership.

2. Make loans to members for provident or productive purposes.

3. Make loans to a co-operative society or other organization having membership in the credit union.

4. Deposit in state and national banks and, to an extent which shall not exceed twenty-five percent of its capital, invest in the paid-up shares of building and loan associations and of other credit unions.

5. Invest in any investment legal for savings banks or for trust funds in the state.

6. Borrow money as hereinafter indicated.

7. Assess fines as may be provided by the bylaws for failure to make repayments on loans and payments on shares when due, provided no such fine shall exceed one percent per month on amounts in arrears or five cents, whichever is the larger.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold and dispose of property necessary and incidental to its operation provided, however, that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable it to carry on effectively the business for which it is incorporated. [C27, 31, 35, §9305-a4; C39, §9305.04; C46, 50, 54, §533.4]

**533.5 Membership.** Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe for at least one share, pay the installment thereon and the entrance fee. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups having a common bond of occupation or association or to groups within a well-defined neighborhood, community, or rural district. [C27, 31, 35, §9305-a5; C39, §9305.05; C46, 50, 54, §533.5]

### 533.6 Reports—examinations.

1. Credit unions organized under this chapter shall report to the superintendent of banking annually on or before the first day of February on blanks supplied by him for that purpose. Additional reports may be required. If any report remains in arrears for more than five days, a fine of five dollars for each day such report remains in arrears may be levied against such offending credit union. If such report is not returned within thirty days of the due date, the superintendent of banking may, after written notice to the president of such credit union of his intention to do so, suspend or revoke the certificate of approval, take possession of the business and property of such credit union, and order its dissolution.

2. The superintendent of banking shall examine, or cause to be examined, each credit union annually. Each credit union and all of its officers and agents shall give to the representatives of said superintendent free access to all books, papers, securities, records and other sources of information under their control; and for the purposes of such examination said representatives shall have the power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents. A report of such examination shall be forwarded to the president of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of such report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board.

The superintendent of banking may require any credit union, whose records are inadequate or whose books have not been balanced as of the end of the month not less than thirty days previously or whose affairs are in an unfavorable condition, to submit to an additional examination each year.

Each credit union shall pay to the superintendent of banking a maximum fee for all examinations as follows: During its first three years of operation ten dollars plus twelve and one-half cents per hundred dollars of assets at the time of the examination and each year thereafter fifteen dollars plus twelve and one-half cents per hundred dollars of assets at the time of the examination.

If it shall appear that any credit union is insolvent or that it has violated any of the provisions of this chapter, the superintendent of banking may, after hearing or giving opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty days within which to comply and failure so to do shall afford the said superintendent grounds to revoke the certificate of approval and to apply to the district court of the district in which such credit union is located for the appointment of a receiver to close up the affairs of such credit union. [C27, 31, 35, §9305-a6; C39, §9305.06; C46, 50, 54, §533.6]

**533.7 Fiscal year — meetings.** The fiscal year of all credit unions shall end December 31. Annual meetings shall be held, and special meetings may be held, in the manner indicated in the bylaws.

At all meetings no member shall have more than one vote regardless of the shares held by him. There shall be no voting by proxy. A member other than a natural person may cast a single vote through a delegated agent which agent shall be a member of the organization for which he acts. The majority of members present at any meeting may modify, amend or reverse any act of the board of directors or instruct it to take action not inconsistent with the bylaws or of this chapter. [C27, 31, 35, §9305-a7; C39, §9305.07; C46, 50, 54, §533.7]

**533.8 Elections.** At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes. A record of the names and addresses of the directors, officers and committeemen shall be filed with the superintendent of banking within ten days following each election. [C27, 31, 35, §9305-a8; C39, §9305.08; C46, 50, 54, §533.8]

**533.9 Directors and officers.** Within five days following the organization meeting and each annual meeting the directors shall elect from their own number a president, vice-president, treasurer and secretary, of whom the last two may be the same individual, and also a credit committee of not less than three members and an auditing committee of three members. It shall be the duty of the directors to have general management of the affairs of the credit union, particularly to:

1. Act on applications for membership.
2. Determine interest rates on loans and deposits.
3. Fix the amount of the surety bond which shall be required of all officers and employees handling money.
4. Declare dividends, and to transmit to the members recommended amendments to the bylaws.
5. Fill vacancies which occur in the board between meetings of the members until the next annual meeting and until successors are elected and qualify.
6. Determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.
7. Have charge of investments other than loans to members.

The duties of the officers shall be determined in the bylaws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated. [C27, 31, 35, §9305-a9; C39, §9305.09; C46, 50, 54, §533.9]

**533.10 Credit committee.** The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the indorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee shall meet as often as may be necessary after due notice to each member. [C27, 31, 35, §9305-a10; C39, §9305.10; C46, 50, 54, §533.10]

**533.11 Auditing committee.** The auditing committee shall:

1. Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

2. Make an annual audit and report and submit the same at the annual meeting of the members.

3. By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director, or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote, the auditing committee may call a special meeting of the members to consider any matter submitted to it by said committee. [C27, 31, 35, §9305-a11; C39, §9305.11; C46, 50, 54, §533.11]

**533.12 Capital.** The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan indorsed by him. A credit union may charge an entrance fee as may be provided by the bylaws. [C27, 31, 35, §9305-a12; C39, §9305.12; C46, 50, 54, §533.12]

**533.13 Special shares and accounts.**

1. *Joint accounts.* A member may designate any person or persons to hold shares, deposits, and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance fee. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

2. *Minors.* Shares may be issued and deposits accepted in the name of a minor and such shares and deposits may be withdrawn

by such minor and payments made on such withdrawals shall be valid. No such minor under sixteen years of age shall be entitled to vote in the meetings of the members either personally or through his parent or guardian, nor may he become a director until he shall have reached his eighteenth birthday.

3. *Trust accounts.* If shares and deposits are held in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for such beneficiary. Such shares and deposits may be withdrawn, upon the death of the trustee, by the beneficiary's legal representative. [C27, 31, 35, §9305-a13; C39, §9305.13; C46, 50, 54, §533.13]

**533.14 Interest rates.** Interest rates on loans made by a credit union shall not exceed one percent a month on unpaid balances. [C27, 31, 35, §9305-a14; C39, §9305.14; C46, 50, 54, §533.14]

**533.15 Power to borrow.** A credit union may borrow from any source in total sum which shall not exceed fifty percent of the sum of its share and deposit account balances. [C27, 31, 35, §9305-a15; C39, §9305.15; C46, 50, 54, §533.15]

**533.16 Loans.** A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. No director, officer, or member of committee may borrow from the credit union in which he holds office beyond the amount of his holdings in it in shares and deposits, nor may he endorse for borrowers. Loans secured by a mortgage or deed of trust upon real property may be made only on unencumbered property located in Iowa and in bordering counties of adjacent states and every such loan shall comply with one of the following conditions:

1. If the terms of the instrument securing such loan call for payment at maturity the loan shall not be for a period in excess of five years and the amount loaned shall not exceed fifty percent of the appraised value of the property given as security.

2. If the terms of the instrument securing such loan call for installment payments which are sufficient to retire at least forty percent of the principal of the loan within ten years the amount loaned shall not exceed sixty percent of the appraised value of the property given as security and shall not be for a period in excess of ten years.

3. If the terms of the instrument securing such loan call for monthly installment payments, including principal and interest, at least equal to one percent of the principal of the loan, the amount loaned shall not exceed eighty percent of the appraised value of the property given as security.

The foregoing restrictions or limitations shall not prevent the renewal or extension of

loans and shall not apply to loans which are secured under the provisions of the national housing act, as amended.

No credit union shall loan to any one member more than one hundred dollars or ten percent of its total assets whichever is greater. [C27, 31, 35, §9305-a16; C39, §9305.16; C46, 50, 54, §533.16]

### **533.17 Reserves.**

1. *Legal reserve.* All fees and fines shall, after the payment of organization expenses, be added to the legal reserve of the corporation.

In addition thereto, at the end of each fiscal year until such time as said legal reserve equals ten percent of the sum of the share and deposit account balances of the corporation, there shall be transferred to said reserve not less than ten percent of the corporation's gross income for the year. Thereafter there shall annually be added to said reserve at the end of each fiscal year such percent of the gross earnings, but not exceeding ten percent, as shall be required to maintain said reserve at ten percent of the sum of the said share and deposit account balances.

The legal reserve, including any excess which may be in said reserve at the time this amendment becomes effective, shall belong to the corporation, and shall not be distributed except on dissolution of the credit union. Said legal reserve shall be used to meet losses, except those resulting from an excess of expenses over income.

2. *Special reserve.* However, the superintendent of banking may require a credit union to set aside additional amounts as a special reserve if an examination of its assets should disclose that its legal reserve is inadequate. [C27, 31, 35, §9305-a17; C39, §9305.17; C46, 50, 54, §533.17]

**533.18 Dividends.** The board of directors may, at the end of the fiscal year, declare a dividend from net earnings, which dividend shall be paid on all shares outstanding at the end of the fiscal year. Shares which become fully paid up during the year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full. At any meeting the members may establish a maximum dividend rate which shall be binding on the directors until changed at a subsequent meeting. [C27, 31, 35, §9305-a18; C39, §9305.18; C46, 50, 54, §533.18]

**533.19 Expulsion—withdrawal.** A member may be expelled by a two-thirds vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accrued thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require sixty days notice of intention to withdraw shares and thirty days notice of inten-

tion to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union. [C27, 31, 35, §9305-a19; C39,§9305.19; C46, 50, 54,§533.19]

**533.20 Dissolution.** The process of voluntary dissolution shall be as follows:

1. At a meeting called for the purpose, notice of which purpose must be contained in the call, four-fifths of the entire membership of the credit union may vote to dissolve the credit union. Any member not present at such meeting may, within the next twenty days, vote in favor of dissolution by signing a statement in form approved by the superintendent of banking and such vote shall have as full force and effect as if cast at such meeting.

2. Thereupon they shall file with the superintendent of banking a statement of their consent to dissolution, attested by a majority of the officers and including the names and addresses of the officers and directors.

3. The superintendent shall determine whether or not the credit union is solvent. If such is the fact he shall issue in duplicate a certificate to the effect that this section has been complied with.

4. The certificate shall be filed with the county recorder of the county in which the credit union is located, whereupon the credit

union shall be declared dissolved and shall cease to carry on business except for the purpose of liquidation.

5. The credit union shall continue in existence for three years for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up. [C27, 31, 35,§9305-a20; C39,§9305.20; C46, 50, 54,§533.20]

*Bylaws of existing organizations changed, 52GA, ch 269,§21  
Constitutionality, 52GA, ch 269,§22*

**533.21 Change in place of business.** A credit union may change its place of business on written notice to the superintendent of banking. [C27, 31, 35,§9305-a21; C39,§9305.21; C46, 50, 54, §533.21]

**533.22 Taxation.** A credit union shall be deemed an institution for savings and shall be subject to taxation only as to its real estate, moneys, and credits. The shares shall not be taxed. [C27, 31, 35,§9305-a22; C39,§9305.22; C46, 50, 54,§533.22]

**533.23 Small loans legislation.** Nothing contained in this chapter shall apply to any person engaged in the business of loaning money under chapter 536. [C27, 31, 35,§9305-a23; C39, §9305.23; C46, 50, 54,§533.23]

# TITLE XXII

## BUILDING AND LOAN ASSOCIATIONS

Referred to in §491.39

See also reference in §11.29

### CHAPTER 534

#### ORGANIZATION AND GENERAL REGULATIONS

Referred to in §492.9

##### INCORPORATED ASSOCIATIONS

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INCORPORATED ASSOCIATIONS

**534.1 Defined generally.**

1. Corporations organized under the provisions of this chapter to promote thrift and home ownership by providing for their members a co-operative plan for saving money, and investing money so saved in loans to their members, shall be known as building and loan associations or savings and loan associations.

2. The word "supervisor" as used in this chapter shall mean the supervisor of savings and loan associations provided for in this chapter.

3. "Insurance corporation" as used in this chapter shall mean federal savings and loan insurance corporation, or its successor, organized under the laws of the United States. [C73, §1184; C97, §1890; C24, 27, 31, 35, 39, §9306; C46, 50, 54, §534.1]

C97, §1890, editorially divided

**534.2 Associations—scope.** Domestic building and loan associations or savings and loan associations shall include corporations incorporated under the laws of this state for the purposes herein specified. The term "building and loan associations" shall be construed to include savings and loan associations. [C97, §1890; C24, 27, 31, §9307, 9308; C35, §9308-e1; C39, §9308.1; C46, 50, 54, §534.2]

**534.3 Foreign companies.** Foreign building and loan or savings and loan associations shall include corporations, societies, organizations, or associations incorporated under the laws of another state, territory, country, or nation for the purposes specified herein. [C97, §1890; C24, 27, 31, 35, 39, §9309; C46, 50, 54, §534.3]

**534.4 Organization.** Any number of persons not less than five, residents of the state, may become incorporated as building and loan or savings and loan associations under the general incorporation laws of this state, except as otherwise herein provided, and upon complying with the provisions of this chapter. [C73, §1184; C97, §1891; C24, 27, 31, 35, 39, §9310; C46, 50, 54, §534.4]

**534.5 Capital—commencement of business.** The capital named in the articles of incorpora-

tion shall be taken to mean the authorized capital, and the association may commence business when one hundred shares thereof have been subscribed and the other provisions of this chapter in relation thereto have been complied with. [C97, §1892; C24, 27, 31, 35, 39, §9311; C46, 50, 54, §534.5]

C97, §1892, editorially divided

**534.6 Incorporators committee—treasurer—cash payment—bond.** The incorporators shall appoint an incorporators committee and a treasurer thereof. The subscribers to the capital stock shall pay in cash to such treasurer on their subscriptions, before a certificate of incorporation is issued, an aggregate amount to be determined in relation to the population of the city in which the home office of the association is to be located, on the following basis:

1. In cities having not to exceed ten thousand population the minimum paid-in capital shall be five thousand dollars.

2. In cities having more than ten thousand but less than fifty thousand population, the minimum paid-in capital shall be ten thousand dollars.

3. In cities having more than fifty thousand population and less than one hundred thousand population, the minimum paid-in capital shall be twenty-five thousand dollars; and

4. In cities having more than one hundred thousand population, the minimum paid-in capital shall be thirty-five thousand dollars.

The population of any such city shall be determined by the said supervisor in accordance with the latest federal census.

The treasurer of the incorporators committee shall file with the said supervisor a fidelity bond, signed by himself and an authorized surety company acceptable to the supervisor, in a penal sum at least equal to the required paid-in capital and expense fund as hereinafter required, payable to the supervisor of building and loan associations. Such bond shall assure the safekeeping and delivery to the association, after issuance of a certificate of incorporation, and after the association's authorized officers have filed the required bonds of all of such required paid-in capital and expense fund,



or in the event of failure to complete organization, such bond shall assure the return to the persons providing such paid-in capital and expense fund of the amounts contributed thereto by them, less any necessary costs and expenses. [C39,§9311.1; C46, 50, 54,§534.6]

**534.7 Directors.** Such associations shall be governed by a board of directors who shall be elected annually by the stockholders, and who shall hold their office for not less than one nor more than five years, and, if for a longer period than one year, it shall be so arranged that the terms of an equal number thereof, as nearly as may be, shall expire each year. [C97,§1892; C24, 27, 31, 35, 39,§9312; C46, 50, 54,§534.7]

**534.8 Articles.** The articles of incorporation shall show:

1. The names and residences of the incorporators.
2. The name of the association and its principal place of business.
3. The purpose for which such association is formed.
4. The terms and plan of becoming and continuing a member.
5. The plan of making loans.
6. The plan of distributing profits.
7. The plan of equalizing losses.
8. The plan and terms of withdrawal of members.
9. The plan of providing for payment of expenses.
10. The number of shares into which capital stock is to be divided.
11. The classes into which its capital stock is to be divided, and the terms of paying for the same by subscribers.
12. The term of corporate existence.
13. The manner of electing officers and filling vacancies. [C97,§1893; C24, 27, 31, 35, 39, §9313; C46, 50, 54,§534.8]

**534.9 Approval of articles—certificate of authority.**

1. The proposed articles of incorporation for any proposed new association, together with proposed bylaws, shall be presented to the auditor of state and by him submitted to the executive council and if it finds that they are in conformity with the law and based upon a plan equitable in all respects to its members, and further finds from the best sources at its command and from such investigation as it may deem necessary, that the proposed incorporators are persons of good character, ability and responsibility; that a reasonable necessity exists for such new institution in the community to be served; that it can be established and operated without undue injury to existing local thrift and home financing institutions and that the proposed name of such institution is not similar to that of any other association operating in the same community and is not misleading or deceitful, the executive council

shall attach thereto its certificate of approval and enter its approval of record, and thereupon such articles of incorporation shall be recorded in the office of the secretary of state and in the office of the recorder of the county in which the association's principal place of business is to be situated and then be filed in the office of the auditor of state who shall issue a certificate authorizing the association to transact business as a building and loan association.

2. If the executive council does not affirmatively find as to each and all of the said requirements it shall enter its disapproval of record together with a statement of its findings and conclusions and a certificate of incorporation shall not be issued. Upon such disapproval the executive council shall, by certified mail, notify one, or all, of the proposed incorporators of its disapproval together with the reasons for such disapproval, and thereupon, the proposed incorporators, if not satisfied with such action, may within sixty days after the mailing of such notice appeal to the district court of Iowa in and for the county in which the principal place of business of the proposed association is to be located from such findings and disapproval by serving a notice of such appeal upon the auditor of state, setting forth in general terms the decision appealed from and the grounds of the appeal and by filing with the clerk of the said court, within such sixty days, a duly verified petition stating the facts and the grounds of complaint and having attached thereto a copy of the proposed articles of incorporation and bylaws and a copy of the findings and conclusions of the executive council. Such appeal shall be triable as a mandamus proceeding in equity and the findings and decisions of the executive council shall be binding upon the court unless overcome by clear and convincing proof. Any party aggrieved by the order, judgment, or decree of the court may appeal therefrom to the supreme court of Iowa.

3. Before a certificate of authority to do business shall be issued to any such new association, the incorporators shall pay to the treasurer of the incorporators committee, in cash, an amount equal to not less than ten percent of the required minimum capital, which fund shall be in addition to the required minimum paid-in capital and shall, upon issuance of a certificate of incorporation, be paid to the association and shall be set up as a special reserve to be designated "reserve for operating expenses". Such special reserve shall be used only for the purpose of paying the costs and expenses of organization and for paying or contributing toward payment of the operating expenses of such new association during any period or periods during which the association's earnings shall not be sufficient to pay all its expenses in addition to paying dividends to its members at such reasonable rate as shall be approved by the supervisor. Such "reserve for operating expenses" shall be used only for

the purposes herein specified and shall be subject to be refunded in full or in part to the contributors as hereinafter provided.

4. After five years from the date of incorporation, the amounts contributed by the incorporators to such reserve for operating expenses may be refunded to the contributors thereto, but the amounts refunded shall at no time be in excess of accumulated net earnings remaining after paying all expenses and paying or making allowance for payment of reasonable dividends to shareholders since the date of incorporation, and crediting at least the minimum amount required to general reserve. In addition to refunding the amounts contributed to such "reserve for operating expenses", the association may also pay to such contributors interest on the amounts contributed, at rates not in excess of the dividend rates paid members since date of incorporation. No such refund shall be made, or interest paid, without first obtaining written approval of the supervisor.

5. In case of dissolution or liquidation of an association before such contributions to such "reserve for operating expenses" have been refunded, the contributors thereto shall be entitled to such refunds out of moneys or assets remaining, if any, after payment of all debts, expenses, costs, and other liabilities, including refund to all members of the amounts paid in and credited on their share accounts. [C97, §1894; C24, 27, 31, 35, 39, §9315; C46, 50, 54, §534.9; 57GA, ch 267, §80]

**534.10 Conversion of federal association.** Building and loan or savings and loan associations may be effected by conversion of federal savings and loan associations as authorized by the laws of the United States and regulations made thereunder, subject to approval of the auditor of state. An application for approval together with satisfactory proof that the required procedure authorizing conversion to a state association has been taken shall be filed with the auditor of state who shall thereupon, by examination of the applicant or otherwise, ascertain whether or not the converting association is in good financial condition and is honestly and efficiently managed and if his findings are favorable he shall thereupon grant his approval of such conversion. The converting association shall then adopt and file articles of incorporation and bylaws and otherwise comply with the provisions and requirements of the laws of Iowa. Upon completion of conversion and organization as a state association, all assets and properties theretofore belonging to it as a federal association shall by operation of law pass to and vest in it as a state association and all liabilities shall thereupon become its liabilities as a state association. For the purpose of showing devolution of titles, there shall be filed with the auditor of state and with the recorder of the county in which the association's principal place of business is located a report duly verified by the president and the secretary

showing that the required procedure for conversion has been complied with. [C39, §9315.1; C46, 50, 54, §534.10]

**534.11 Amendments — approval.** Amendments to such articles may be made from time to time at any regular or special meeting of the stockholders, and shall in like manner be submitted to the executive council and approved by it. [C97, §1894; C24, 27, 31, 35, 39, §9316; C46, 50, 54, §534.11]

**534.12 Record.** The council shall keep a record of its proceedings with reference to such associations. [C97, §1894; C24, 27, 31, 35, 39, §9317; C46, 50, 54, §534.12]

**534.13 Revocation of certificates.** The executive council shall have the power, and it shall be its duty, to revoke any certificate of authority given to any building and loan or savings and loan association whenever it appears to said council that said association is transacting business illegally, or is unjust and oppressive to its members or the public. [S13, §1894-a; C24, 27, 31, 35, 39, §9318; C46, 50, 54, §534.13]

**534.14 Domestic companies — bonds — custody.** The officers and employees of any domestic building and loan or savings and loan association who sign or indorse checks or handle any funds or securities of such association shall give such bonds or fidelity insurance as the board of directors may require; and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and by the auditor of state. Such bonds shall be deposited and filed with the auditor of state. Such associations may in connection with obtaining such bonds or insurance acquire and hold membership in mutual insurance or bonding companies. No such bond shall be terminated or canceled because of failure to pay premium or for any other cause until after ten days written notice to the supervisor of intention to cancel such bond. [C97, §1895; C24, 27, 31, 35, 39, §9319; C46, 50, 54, §534.14]

Referred to in §534.17

**534.15 Additional bonds.** All such bonds shall be increased or additional securities required by the board of directors or the auditor of state when it becomes necessary to protect the interests of the association or its members. [C97, §1895; C24, 27, 31, 35, 39, §9320; C46, 50, 54, §534.15]

Referred to in §534.17

**534.16 Disqualified sureties.** No director shall be accepted as surety on such bonds, and no person shall be accepted as surety on the bond of more than one officer of said association. [C97, §1895; C24, 27, 31, 35, 39, §9321; C46, 50, 54, §534.16]

Referred to in §534.17

**534.17 Liability of directors.** The directors shall be individually liable for loss to the asso-

ciation or its members caused by their failure to require a compliance with the provisions of sections 534.14 to 534.16, inclusive. [C97,§1895; C24, 27, 31, 35, 39,§9322; C46, 50, 54,§534.17]

**534.18 Banking prohibited.** It shall be unlawful for any building and loan or savings and loan association to receive deposits of money without issuing shares of stock for the same, or to transact a banking business. [C97, §1897; C24, 27, 31, 35, 39,§9328; C46, 50, 54, §534.18]

**534.19 Powers.** All building and loan or savings and loan associations, upon receiving the certificate from the auditor, shall have power, subject to the terms and conditions contained in their articles of incorporation and bylaws:

1. To issue shares of stock to members to be paid for in single, monthly, optional, or irregular payments.

2. To assess and collect from members such dues, membership fees, fines, premiums, and interest on loans as may in the articles of incorporation and bylaws have been provided, and the same shall not be held to be usurious.

3. To permit members, other than holders of guarantee stock, to withdraw all or a part of their stock deposits upon such terms and at such times as the articles of incorporation and bylaws may provide.

4. To acquire, hold, encumber, and convey such real estate and personal property as may be necessary for the transaction of their business.

5. To make loans to members on such terms, conditions, and securities as the articles of incorporation and bylaws provide; said loans to be made only on real estate security, or on the security of their own shares of stock, not to exceed ninety percent of the withdrawal value thereof.

6. To subscribe for, purchase, and hold shares of stock of the federal home loan bank of the district in which Iowa is situated, organized under the act of congress known and cited as the federal home loan bank act, approved July 22, 1932 [12 USC,§1421 et seq.], and do all acts necessary to become and be members of the federal home loan bank system, established under the said act and amendments thereto, and to receive advances from such bank and make deposits with such bank and invest in the bonds and other obligations of the federal home loan banks and to assume the obligations and participate in the benefits of such memberships.

7. To borrow money for the purpose of making loans to its members, paying withdrawals, paying maturities, paying debts, and for any other purposes within the scope and objects of its articles of incorporation, and to execute written obligations evidencing such indebtedness.

8. To pledge its notes and mortgages and other assets as security for the repayment of

borrowed money, and for the repayment of advances received from a federal home loan bank, and to authorize such pledged security to be repledged by such bank.

9. Any such association may provide in its original or amended articles of incorporation that stock shall be treated as issued in proportion to the amounts paid in by and credited to members without regard to any par value. Members holding such stock shall participate in dividends in proportion to their respective investments therein, and shall have one vote in person or by proxy for each one hundred dollars or fraction thereof paid in and credited, but no person shall vote more than ten percent of the total paid-in capital.

10. Any such association shall have power to obtain, continue and pay for insurance of its shares with federal savings and loan insurance corporation.

11. Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as he may prescribe all such reasonable duties as fiscal agent of the United States as he may require, and shall have power to act as agent for any United States government instrumentality.

12. Any such association may buy and sell vendors' real estate contracts; provided, however, that all such contracts shall contain forfeiture provisions as provided for in chapter 656, and provided further that the requirements for loans as set forth in section 534.32 shall be applicable to making and buying of such contracts, except that at the time of purchase of such vendors' contracts the association shall not purchase any such contract for more than seventy-five percent of the value of the real estate therein described appraised as required by section 534.32. No association shall hereafter invest more than fifteen percent of its assets in such vendors' contracts authorized by this subsection.

13. Any such association may own, and rent to members thereof, lock boxes as safes, for storage or safekeeping of securities and valuables. [C73,§§1185, 1186; C97,§1898; S13,§1898; C24, 27, 31, 35, 39,§9329; C46, 50, 54,§534.19; 56GA, ch 249,§1]

S13,§1898, editorially divided

**534.20 Limitation on issue of stock.** Associations having assets of five hundred thousand dollars or less shall not issue to any one member shares of more than ten thousand dollars par value. Associations having assets in excess of five hundred thousand dollars shall not issue to any one member shares of par value in excess of two percent of its assets. These limitations shall not apply to shares issued to the United States government, to home owners' loan corporation, or to any other federal government agency or instrumentality. [C73,§1185; S13,§1898; C24, 27, 31, 35, 39,§9330; C46, 50, 54, §534.20]

**534.21 Joint issuance of shares—naming beneficiary.** Any building and loan association and any federal savings and loan association may issue shares in the joint names of two or more persons with the power of withdrawal in either, or in either or the survivor, and the withdrawal value of such shares may be paid to either of such persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge of such association for the payment so made.

Any such building and loan association and any federal savings and loan association may issue shares in the name of one or more persons with the provision that upon the death of the owner or owners thereof the said shares or the proceeds thereof shall be the property of the person or persons designated by the owner or owners and shown by the records of such association, but such shares or proceeds shall be subject to the debts of the decedent and the payment of Iowa inheritance tax, if any, provided, however, that six months after the date of the death of the owner the receipt or acquittance of the person so designated shall be a valid and sufficient release and discharge of such association for the delivery of such shares or the payment so made. [C35,§9330-e1; C39,§9330.1; C46, 50, 54, §534.21]

**534.22 Foreclosure—debit and credit.** In case of foreclosure, the borrower shall be charged with the full amount of the loan made to him, together with the dues, interest, premium, and fines for which he is delinquent, and he shall be credited with the same value of his pledged shares as if he had voluntarily withdrawn the same. [C97,§1898; S13,§1898; C24, 27, 31, 35, 39,§9331; C46, 50, 54,§534.22]

**534.23 Annual financial statement.** It shall be the duty of the secretary of every such association doing business in this state, before the fifteenth day of February of each year, to prepare and mail to each shareholder a written or printed copy of its statement of assets and liabilities as of the date of its annual closing of its books for the preceding year, or in lieu of mailing such statement it may be published in a newspaper of general circulation published at the place of its home office, or if a newspaper is not published at such place, then such statement may be published in any newspaper of general circulation published in the county in which the home office is situated. [C97,§1898; S13,§1898; C24, 27, 31, 35, 39,§9333; C46, 50, 54,§534.23]

**534.24 Forbidden stocks—rate of dividend.** No building and loan or savings and loan associations shall issue guarantee stock, fully paid stock, or single payment stock, or any stock of any other kind or name which shall receive fixed dividends, or is not subject to all the liabilities of all other classes of stock of said associations, except that it shall be lawful for such associations to issue fully paid stock upon

the payment by the holder thereof of the par value of such stock upon which the dividends to be declared shall not exceed the sum named in said certificate of stock, but in no event shall the dividend exceed eight percent per annum nor the rate of dividend declared upon the other stock of said association, which said stock shall be subject to be called in and redeemed by the said association by giving the holder thirty days notice thereof. [S13,§1898-c; C24, 27, 31, 35, 39,§9334; C46, 50, 54,§534.24]

**534.25 Investments.** A building and loan or savings and loan association may invest its idle funds, or any part thereof, in bonds or interest-bearing obligations of the United States, or of the state of Iowa, or of any county, municipal corporation, township, school district, or other political subdivision of this state or bonds and obligations of a federal home loan bank established by act of congress known as the federal home loan bank act, approved July 22, 1932 [12 USC,§1421 et seq.]. Investments thus made shall at no time exceed ten percent of the assets of the association, except that investments in bonds or interest-bearing obligations of the United States shall not exceed fifty percent of assets.

Such associations may also invest in consolidated bonds and debentures of the federal home loan bank system and in obligations of the federal savings and loan insurance corporation issued pursuant to title IV of the national housing act. Such investments shall not at any time exceed twenty-five percent of the assets of the association.

Such associations may also invest in shares of other savings and loan associations organized under the laws of this state or of the United States, subject to the limitations as to amounts of investments by members in such associations. [C27, 31, 35,§9340-b1; C39,§9340.01; C46, 50, 54,§534.25]

42GA, ch 207,§1, editorially divided  
Investments in federal insured loans, §682.45

**534.26 Deposit of funds.** Funds of such association may be deposited in any state or national bank on certificate of deposit, or the usual bank pass book credit, subject to check by the proper designated officers of such association or in the federal home loan bank of the district in which Iowa is located. [C27, 31, 35, §9340-b2; C39,§9340.02; C46, 50, 54,§534.26]

**534.27 Who may invest.** Banking institutions, trust companies, life insurance companies, assessment life insurance associations, fraternal beneficiary societies, orders and associations, mutual benefit societies, mutual insurance companies, nonmutual and mutual life, fire, tornado, hail, windstorm and other assessment insurance associations, co-operative associations, credit unions, trustees of cemetery funds, financial institutions of every kind and character, public officials having the custody of public funds, political subdivisions of the state having control of sinking funds, teachers, firemen and other pension and retirement funds and eleemosynary institutions are

authorized to invest in the shares of savings and loan associations organized under the laws of this state and under the laws of the United States, subject to the limitations as to the amount of shares which may be issued to any one member. [C39,§9340.03; C46, 50, 54,§534.27]

**534.28 Loans to members.** The funds of a building and loan association not used or needed for other authorized purposes shall be invested for the benefit of its shareholders in loans to its members, according to the plan or plans specified in its articles of incorporation, on the security of first liens on real estate or on the security of liens on its own shares of stock, or on both such securities. [C97,§1899; C24, 27, 31, 35,§9340; C39,§9340.04; C46, 50, 54, §534.28]

47GA, ch 220,§3, editorially divided

**534.29 Direct reduction loans — payment.** Each loan secured only by real estate shall require the borrower to make weekly, semi-monthly, or monthly payments which shall be applied first to pay the interest on the unpaid principal and the remainder to reduce the unpaid principal of the debt. [C97,§1899; S13, §1899-a; C24, 27, 31, 35,§§9340, 9341; C39,§9340.05; C46, 50, 54,§534.29]

**534.30 Share accumulation loans—payment.** Each loan secured by both lien on real estate and by shares of an association's stock shall require the borrower to subscribe for and pledge shares of stock in the association of par value at least equal to the amount borrowed and to make weekly, semimonthly or monthly payments on such shares until the payments so made, together with dividends credited thereto, have reached a value equal to his unpaid indebtedness and thereupon such pledged shares shall be canceled and the value thereof shall be applied in payment of the loan; provided, however, that any such association may permit the borrower to withdraw all or portions of the credits to such pledged shares periodically, or whenever specified amounts have been accumulated thereon, and apply the proceeds thereof as partial payments on such loan, or to withdraw for such other purposes as may be approved by its board of directors. [C97,§1899; S13,§1899-a; C24, 27, 31, 35,§§9340, 9341; C39,§9340.06; C46, 50, 54,§534.30]

**534.31 Stock—nonliability—dividends offset.** Shares of stock subscribed for and pledged as above provided and payments made thereon and dividends credited thereto shall in no event be liable for losses sustained by the association and in case of liquidation of the association such payments and dividends shall be offset against and credited to reduce the borrower's indebtedness. [S13,§1898-d; C24, 27, 31, 35,§9336; C39,§9340.07; C46, 50, 54,§534.31]

**534.32 Requirements for loan.** Each loan secured by lien on real estate or by both real estate lien and association's stock shall provide for amortization of all the principal within a

period of not to exceed twenty-five years and shall be secured by a first mortgage on real estate consisting of residence property or combination of residence and business property, and no such loan shall be made in excess of twenty thousand dollars; provided, however, that not to exceed ten percent of an association's assets may be loaned to members on the security of other improved real estate and without regard to said twenty thousand dollars limitation. Real estate securing loans shall be situated in the county in which the principal place of business of the association is located, or in counties immediately adjoining or abutting on such county. No real estate loans shall be made except upon written signed appraisal reports made by two or more competent persons selected by the association's board of directors, either from or outside its membership, and such loans shall not, when made, exceed eighty percent of such appraised value, and all loans must be approved by the board of directors, or a committee thereof, and record made of such approvals; provided, however, that loans insured by the federal housing administration may be made under and in compliance with the National Housing Act of 1954, and pursuant to all of the provisions thereof, as originally enacted and now or hereafter amended, and any loans made under the original statute or the statute as amended are hereby authorized, ratified and confirmed; also provided, however, that loans may be made under and in compliance with the service men's readjustment act of 1944, and pursuant to all of the provisions thereof, as originally enacted and now, or hereafter amended, and any loans made under the original statute or the statute as amended are hereby authorized, ratified and confirmed. Also without regard to any other provision of law, savings and loan associations of this state are authorized to buy and sell any secured loan which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by this state or instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued, and, in connection therewith, to meet the requirements of the federal national mortgage association, a corporation chartered by an Act of Congress, or any successor thereof, savings and loan associations are authorized to make payments of any capital contributions in the nature of subscriptions for stock of such federal national mortgage association or any successor thereof, to receive stock evidencing such capital contributions, and to hold or dispose of such stock. [C97, §1899; C24, 27, 31, 35,§9340; C39,§9340.08; C46, 50, 54,§534.32; 56GA, ch 250,§§1-4]

Referred to in §534.19

**534.33 Additional loans.** If an association holds a first mortgage loan on real estate it may make an additional loan or loans on the security of an additional first lien mortgage or mortgages on the same property, provided the aggregate unpaid principal of such mortgages

does not exceed the percentage of the appraised value of the real estate authorized by law. [C39,§9340.09; C46, 50, 54,§534.33]

**534.34 Share loans.** Loans may also be made upon the security of the pledges of shares of the stock of the lending association held by the borrower, but shall not be made in excess of ninety percent of the fair value of such pledged shares. No stock loans shall be made when applications for withdrawals have been on file and unpaid for more than sixty days because of lack of available funds, unless specifically authorized by the board of directors. [C39,§9340.10; C46, 50, 54,§534.34]

**534.35 Association lien on shares of stock.** Every such association shall at all times have a lien upon the stock of a member as security for repayment of money loaned him and as security for his other indebtedness to the association and such lien shall attach and continue without assignment or pledge to or possession by the association of any stock certificate evidencing such stock ownership. Such lien may be enforced to satisfy any past due indebtedness by charging such indebtedness to the debtor's share credits. [C39,§9340.11; C46, 50, 54,§534.35]

**534.36 Acquired stock—no offset.** A borrowing member shall not without permission of the board of directors be permitted to offset against his indebtedness to such association any stock of the association acquired directly or indirectly from other members. [C39, §9340.12; C46, 50, 54,§534.36]

**534.37 Interest rates variable.** The rate or rates of interest, premium, commission, and other fees to be charged on loans made by such associations and the bases on which different interest rates and charges shall be determined shall from time to time be fixed by the bylaws of the association, but interest charged shall not exceed the maximum interest rate authorized by law. [S13,§§1893-a, 1899-a; C24, 27, 31, 35,§§9314, 9341; C39,§9340.13; C46, 50, 54,§534.37]

Interest, maximum rate, §§535.2-535.6

**534.38 Notes nonnegotiable.** The notes evidencing all loans shall be in nonnegotiable form, except that notes made for loans which are insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof may be made in negotiable form. [C97,§1899; C24, 27, 31, 35,§9340; C39,§9340.14; C46, 50, 54,§534.38]

**534.39 Borrower as member.** Any borrower or vendor contract purchaser not holding or subscribing for stock shall nevertheless be a member of such association and shall be entitled to one vote at any shareholders meeting. [C39,§9340.15; C46, 50, 54,§534.39]

**534.40 Investment—office building.** Any such association may invest an amount not to exceed five percent of its paid-in capital stock

in unencumbered real estate for use wholly or partly as its business office. [C39,§9340.16; C46, 50, 54,§534.40]

Constitutionality, 47GA, ch 220,§13  
Omnibus repeal, 47GA, ch 220,§12

**534.41 Voting shares of stock.** Each member shall have one vote for each one hundred dollars of stock par value owned and held by him at any election, and may vote the same by proxy, but no person shall vote more than ten percent of the outstanding shares at the time of said election. Anyone depositing or transferring stock to the association as collateral security shall be deemed the owner of such stock within the meaning of this section. [C97, §1900; C24, 27, 31, 35, 39,§9342; C46, 50, 54,§534.41]

**534.42 Voting in representative capacity.** Any guardian, executor, administrator, or trustee shall have the right to vote, manage, and control the shares held by him in his representative capacity. [C97,§1901; C24, 27, 31, 35, 39,§9343; C46, 50, 54,§534.42]

**534.43 Minors as members.** Minors may become members of state and federal savings and loan associations and make withdrawals the same as other members, unless notice to the contrary is given in writing to said association by the parent or guardian of said minor. [C24, 27, 31, 35, 39,§9344; C46, 50, 54,§534.43]

**534.44 Membership fee—"expenses" defined.** Building and loan or savings and loan associations may charge as an initial membership fee to purchasers of their stock a fee not to exceed fifty cents per one hundred dollars par value of stock subscribed for or issued, and in no case to exceed a total of ten dollars for any member. Membership fees and expenses of making loans shall not be deemed a part of the expenses of an association. [C97,§1902; C24, 27, 31, 35, 39,§9346; C46, 50, 54,§534.44]

**534.45 Dividends.** After making such provision as it deems advisable for absorbing immediate and possible future losses, the board of directors of such association shall annually, semiannually, or quarterly declare and apportion as a dividend to members, according to its articles of incorporation, such portion of the association's net profits as it may deem available. [C73,§1187; C97,§§1902, 1903; C24, 27, 31, 35,§§9347, 9350; C39,§9347; C46, 50, 54,§534.45]

**534.46 Reserve for contingencies.** As of June 30 and December 31 of each year, before declaring any dividends, the board of directors shall transfer and credit to a general reserve account an amount equivalent to not less than two percent of the net earnings of the association for the preceding six months, called the "accounting period", such transfers to be made at the end of each six months accounting period, until such general reserve account is equal to at least five percent of the total amount paid in by members and credited on shares. If at any time thereafter such general reserve account shall on account of losses be

reduced to less than five percent of the amount paid in and credited on shares, such transfers and credits thereto shall be resumed and continued until such reserve is again equal to at least five percent of the total amount paid in and credited on shares of members. The reserve account so established shall at all times be maintained and used for the sole purpose of absorbing losses incurred by the association and for no other purposes. An association may establish such other and additional special reserves as may be ordered by its board of directors. [C39,§9347.1; C46, 50, 54,§534.46]

**534.47 Expenditures and expenses.** All expenditures and expenses for management and conducting the affairs of such associations, not including membership fees and charges for closing loans, shall be paid from the receipts of interest, premiums, and other sources of profit. Said associations may thus use for expenses in any one year a sum not in excess of the following percentages on their assets, as shown by the last annual report, to wit:

1. Associations with assets not in excess of one hundred thousand dollars, three percent per annum.

2. Associations with assets in excess of one hundred thousand dollars and less than three hundred thousand dollars, two and one-half percent.

3. Associations in excess of three hundred thousand dollars and less than five hundred thousand dollars, two and one-quarter percent.

4. Associations with assets in excess of five hundred thousand dollars and less than eight hundred thousand dollars, one and three-quarters percent.

5. Associations with assets in excess of eight hundred thousand dollars, one and one-half percent. [S13,§1902-a; C24, 27, 31, 35, 39,§9348; C46, 50, 54,§534.47]

**534.48 Compensation of officers and agents.** No officer, employee, or agent of any association shall receive directly or indirectly any salary or other compensation, except for services actually rendered. Any compensation paid in violation of this section may be recovered by the association or by any shareholder or borrower, in the name and for the use of such association, within three years from the receipt of such illegal compensation, from the person accepting the same, or from any officer knowingly consenting to the allowance thereof. [S13,§1902-a; C24, 27, 31, 35, 39,§9349; C46, 50, 54,§534.48]

**534.49 Fines.** Any stockholder in arrears in payments may be fined in a sum not in excess of three cents per share of one hundred dollars each for the first month's delinquency and five cents per share of one hundred dollars each for each succeeding month's delinquency; but said penalty shall only be due and payable from the profits belonging to said delinquent. [S13,§1903-a; C24, 27, 31, 35, 39,§9351; C46, 50, 54,§534.49]

S13,§1903-a, editorially divided

**534.50 Withdrawals.** The terms of withdrawal of a member from such association shall be such that any withdrawing member shall receive a sum not less than he has paid into said association, unless losses have occurred to said association, during the time that said withdrawing member was a member, which exceed the amount of the profits, or any fund created with which to pay such losses, and in that case such withdrawing member shall be charged with his proportionate share of the excess of the losses over the profits, and no more. Such association may provide by its articles of incorporation or bylaws or by resolution of its board of directors, the order in which withdrawals shall be paid, and when dividends shall cease on shares on which withdrawal demands have been made, and what portion of the association's funds or receipts shall be used for payment of withdrawals and matured shares. [S13,§1903-a; C24, 27, 31, 35, 39,§9352; C46, 50, 54,§534.50]

**534.51 Nonborrowing members — withdrawal.** If authorized by the articles of incorporation or bylaws of such association, the board of directors may by a three-fourths vote provide that any nonborrowing member shall withdraw his stock at the end of any dividend period by giving such stockholder thirty days notice of such order, sent by registered mail to the address shown on the records of such association. [S13,§1903-b; C24, 27, 31, 35, 39, §9353; C46, 50, 54,§534.51]

**534.52 Examinations.**

1. The supervisor shall, at least once in each year, without previous notice, examine or cause examination to be made, into the affairs of every association subject to this chapter. If an association is insured under the provisions of title IV of the national housing act, as now or hereafter amended, the supervisor may, in lieu of such examination, accept any examination made by the federal savings and loan insurance corporation. Any such association may, in lieu of such examination by the supervisor, at its option, be examined by a certified public accountant, or by a public accountant qualified and licensed to practice accountancy under the provisions of the Code of Iowa, such examination to be made and reported upon the uniform forms and instructions to be provided by the supervisor. At least two copies of each examination report, signed and verified by the accountant making it, shall promptly be filed with the supervisor. Whenever, in the judgment of the supervisor, the condition of any association renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the supervisor shall cause such work to be done. A copy of every examination report shall be furnished to the association examined, exclusive of confidential comments made by the examiner, and a copy of every report and comments and any other information pertaining to an association may



be furnished to the federal home loan bank board, federal home loan bank, and federal savings and loan insurance corporation. A copy of such examination report shall be presented to the board of directors at its next regular or special meeting, and their action thereon shall be recorded in the minutes, and two certified copies of such minutes shall be transmitted to the supervisor.

2. The supervisor and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by any officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations, in the examination of the directors, officers, agents, or employees of any such association, or any other person, in relation to its affairs, transactions and condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced. [C97,§1904; C24, 27, 31, 35, §9354, 9355; C39,§9354; C46, 50, 54,§534.52]

C97,§1904, editorially divided  
Contempts, ch 665

#### 534.53 Supervisor—examiners—bonds.

1. The auditor of state shall appoint as a deputy, to be known as "supervisor of savings and loan associations", a person who shall be required to have had at least three years of actual experience as active officer or employee in the office of a savings and loan association. Such supervisor shall be appointed and shall assume the duties of his office July 1, 1939, and shall hold his office until July 1, 1941, and thereafter appointments shall be for terms of two years, subject to removal by the executive council for good cause, after due hearing. Such supervisor's salary shall be fixed by the auditor of state, subject to the approval of the comptroller and governor. In addition thereto he shall receive his necessary traveling expenses.

2. The supervisor of savings and loan associations shall have general supervision of all savings and loan associations doing business in this state. He may, with the approval of the auditor of state, appoint examiners and assistants necessary to properly execute the duties of his office. Any examiner so appointed shall have had at least one year of actual experience as examiner, officer, or employee, of a savings and loan association.

3. Before entering upon their duties, the supervisor of savings and loan associations and each examiner appointed by him shall take an oath of office and shall each give bond to the state, signed by a responsible surety company, in the penal sum of two thousand dollars, conditioned upon faithful and impartial discharge of his duty and on proper accounting for all funds and other valuables which may come into his hands. Such bonds shall be approved by and filed with the auditor of state, together with oaths of office of such

officers. [C35,§9354-f1; C39,§9354.1; C46, 50, 54, §534.53]

**534.54 Expenses and per diem.** If the examination is made by the auditor in person, he shall receive his actual expenses. If by another, his actual expenses and the per diem fixed by law, which in either case shall be paid by the association examined. [C97,§1904; C24, 27, 31, 35, 39,§9356; C46, 50, 54,§534.54]

**534.55 Record required.** A record of such examination shall be kept in the auditor's office, showing in detail as to each association all matters connected with the conduct of the business, its financial standing and everything touching its solvency, plan of business, and integrity.

Such examinations and reports, and other information connected therewith, shall be kept confidential in the office of the auditor of state and the supervisor of savings and loan associations, and shall not be subject to publication or disclosure to others except as in this chapter provided. Members of such associations, other than their officers and directors, shall not be entitled to inspection of any such records or information, and shall not be entitled to any information relative to the names of the members of any association, or the amounts invested by them, as disclosed in the auditor's office, or in the records of any such association. [C97,§1904; C24, 27, 31, 35, 39,§9357; C46, 50, 54, §534.55]

**534.56 Revocation of authority.** If any such association refuse to submit to such examination, the auditor shall revoke its certificate of authority. [C97,§1904; C24, 27, 31, 35, 39,§9358; C46, 50, 54,§534.56]

**534.57 Supervisor's annual report.** The supervisor of savings and loan associations shall, as of December 31 of each year, prepare and publish a report showing in general terms the condition of all savings and loan associations doing business in this state, and containing such other general information as in his judgment shall seem desirable. Such reports shall also list the names of all examiners and other assistants employed by him, together with the respective salaries and expenses, and shall list all receipts from savings and loan associations, and shall show all expenditures made on account of the supervision and examinations of such associations. [C97,§1906; C24, 27, 31, 35, 39,§9360; C46, 50, 54,§534.57]

Annual report, §17.4

**534.58 Conservatorship—operation—termination.** If the supervisor, as a result of any examination or from any report made to him, shall find that any savings and loan association is violating the provisions of its certificate of incorporation, or bylaws, or the laws of this state, or of the United States, or any lawful order of the supervisor, or is conducting its business in an unsafe manner, he may, by an order, direct discontinuance of such violation or unsafe practice, and conformance with all



requirements of law. If any such association shall refuse or neglect to comply with such order within the time specified therein, or if it shall appear to the supervisor that any such association is in an unsafe condition or is conducting its business in an unsafe manner, or if he shall find that an impairment of capital exists to such extent that it threatens loss to the members, or if any association refuses to submit its books, papers, and accounts to the inspection of the supervisor or his representative, he, by written order signed by himself and the auditor of state, may appoint a conservator to take charge of the association and manage its business until the supervisor shall permit the board of directors to resume management of the business or shall reorganize the association, or until a receiver shall be appointed to liquidate its affairs. Any conservator so appointed shall, subject to approval of the supervisor and auditor of state, have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the supervisor may remove any director, officer, or employee. While the association is in charge of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit holders of shares, or share accounts, to repurchase such shares, or share accounts, from the association as in the ordinary course of business, or under, and subject to, such rules and regulations as the supervisor may prescribe, and the conservator shall have power to accept payments on shares, or share accounts, but any such payments thereon received by the conservator may be segregated if the supervisor shall so order in writing, and if so ordered, such payments shall not be subject to offset, and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association. The appointment of a conservator shall be evidenced by the supervisor issuing a certificate, signed by himself and by the auditor of state, delivered to the president, or the vice-president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator shall take charge of an association, the supervisor shall determine whether or not he shall restore

the management of the association to the board of directors. Such determination shall be evidenced by the supervisor's certificate under the seal of his office, delivered to the president, or vice-president, or to the board of directors of the association, that the conservator forthwith is redelivering the management of the association to the board of directors of the association then in office. After the management of the association shall have been redelivered to the board of directors of an association, the association shall thenceforth be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the supervisor shall determine whether such association shall be required to reorganize. Such determination shall be evidenced by a certificate, signed by the supervisor, and by the auditor of state, under the seal of his office, delivered to an executive officer of the association stating that unless the association reorganize under the laws of this state within a period of sixty days from the date of such certificate, or within such further time as the supervisor shall approve, the supervisor will proceed to liquidate the association. If the association has the insurance protection provided by title IV of the national housing act, as now or hereafter amended, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the supervisor by registered mail to the federal savings and loan insurance corporation, Washington, D. C. [C39,§9361.1; C46, 50, 54,§534.58]

Referred to in §534.101

**534.59 Quo warranto—receiver.** When any building and loan or savings and loan association is conducting its business illegally, or in violation of its articles of incorporation or by-laws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interests of its members, or its affairs are in an unsafe condition, the auditor of state shall notify the directors thereof, and, if they shall fail to put its affairs upon a safe basis, he shall advise the attorney general thereof, who shall take the necessary steps to wind up its affairs in the manner provided by law. In such proceedings a receiver may be appointed by the court and such proceedings shall be the exclusive liquidation or insolvency proceeding and a receiver shall not be appointed in any other proceedings. [C97,§1907; C24, 27, 31, 35, 39,§9362; C46, 50, 54,§534.59]

**534.60 Reorganization — liquidation.** Any savings and loan association, including one in receivership, may reorganize upon any plan approved by its board of directors and by the supervisor. Such reorganization may include reduction of share credits of its members, not pledged as security for real estate loans, and may also include segregation of assets of uncertain or doubtful value by transfer thereof to trustees for management and liquidation or

by transfer to a separate fund within the association, to be managed and liquidated by the association for the benefit of the members whose share credits have been reduced in connection with such segregation. [C39, §9362.1; C46, 50, 54, §534.60]

**534.61 Voluntary liquidation.** Building and loan or savings and loan associations, by a vote of three-fourths of the shareholders of such associations, represented in person or by proxy, may go into voluntary liquidation upon such plan as shall be determined upon by the shareholders at their meeting. [S13, §1907-a; C24, 27, 31, 35, 39, §9363; C46, 50, 54, §534.61]

S13, §1907-a, editorially divided

**534.62 Supervision during liquidation.** During the period of voluntary liquidation of any such association, the supervisor shall have substantially the same powers and duties as to supervision as before such liquidation, and the persons in charge of such voluntary liquidation shall furnish and deposit with the supervisor such bonds as he shall require and approve, and shall semiannually, or oftener if required by the supervisor, report to him fully as to their doings and progress, and as to the financial condition of the association. Upon completion of such liquidation they shall file with the supervisor a verified final report of such liquidation and disbursement of proceeds and upon approval of such report the supervisor shall issue a written order discharging the liquidators, and their duties shall thereupon cease. [C39, §9363.1; C46, 50, 54, §534.62]

**534.63 Transfer of mortgages—maturity.** In case any such association resolves to go into voluntary liquidation, it shall have power, after crediting the mortgages given by the borrowing member with the full book value of the stock, to sell and assign such mortgages to a similar building and loan association, or to any other parties who will hold the same upon the terms under which such mortgage was given to the association. In that event the said mortgage shall be held to become due, if no other time can be agreed upon between the mortgagor and the association, within three years after the assignment thereof. [S13, §1907-a; C24, 27, 31, 35, 39, §9364; C46, 50, 54, §534.63]

**534.64 Consolidation with other companies.** Any building and loan or savings and loan association organized under the laws of this state shall have authority to consolidate its business and membership with one or more building and loan or savings and loan associations of the same class organized under the laws of this state and to transfer to such association or associations its entire assets subject to its existing liabilities, and upon the consolidation of such associations, if any one or more of said companies shall have heretofore issued guaranty stock, they may provide for the withdrawal and retirement of said guaranty stock, and the same may be withdrawn in accordance with the plan therein adopted.

[S13, §1907-b; C24, 27, 31, 35, 39, §9366; C46, 50, 54, §534.64]

S13, §1907-b, editorially divided

**534.65 Approval by executive council.** The plan of such consolidation, when approved by the board of directors of each of the associations, shall be reduced to writing and submitted to the executive council, and if they find that the plan is in conformity with the law, and equitable in all respects to the members of both associations, they shall attach thereto their certificate of approval. [S13, §1907-b; C24, 27, 31, 35, 39, §9367; C46, 50, 54, §534.65]

**534.66 Approval by members.** Such plan shall then be submitted to the members of both associations, either at the regular meetings or at special meetings called for that purpose, and, if approved by a vote of three-fourths of the shares of stock of each association, the same shall then be filed in the office of the auditor of state, who shall issue a certificate authorizing the consolidation. [S13, §1907-b; C24, 27, 31, 35, 39, §9368; C46, 50, 54, §534.66]

**534.67 Manner of voting.** At such meetings the members may vote in person, or by proxy, or by written ballot mailed or otherwise delivered to the secretary at or before the time of meeting. [S13, §1907-b; C24, 27, 31, 35, 39, §9369; C46, 50, 54, §534.67]

**534.68 Consolidation under receivership.** In any case where a receiver has been appointed for any such association, its membership and business may in like manner be consolidated with, and its assets transferred to, another such association of the same class, but in such case the receiver shall act in place of the board of directors, and the plan must also be approved by the court by which the receiver was appointed. [S13, §1907-c; C24, 27, 31, 35, 39, §9370; C46, 50, 54, §534.68]

**534.69 Foreign companies.** If any foreign building and loan or savings and loan association, as in this chapter defined, desires to transact business within this state, it shall furnish to the executive council a certified copy of its articles of incorporation, or charter and bylaws, and a certified copy of the state laws under which it is organized, together with a report for the year next preceding, verified by its president, vice-president, secretary, and at least three directors, which report shall show:

1. The amount of its authorized capital stock and the par value of each share.
2. The number of shares sold during the year.
3. The number of shares canceled or withdrawn during the year.
4. The number of shares in force at the end of the year.
5. A detailed statement of all funds received during the year and all disbursements.

6. The salaries paid each of its officers.

7. A detailed statement of its assets and liabilities at the end of such year and the nature thereof.

8. Any other matters of fact which the council may require. [C97,§1908; C24, 27, 31, 35, 39,§9371; C46, 50, 54,§534.69]

C97,§1908, editorially divided

**534.70 Approval by council—certificate of authority.** Upon receipt of such report the council, if it finds therefrom that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan and one equitable to its members, shall so certify upon such copy and statement, and, the same being filed with the auditor, he shall issue a like certificate as in the case of domestic associations. [C97,§1908; C24, 27, 31, 35, 39,§9372; C46, 50, 54,§534.70]

**534.71 Conditions attending approval.** No building and loan or savings and loan association, incorporated under the laws of any other state or country, shall be authorized to do business in this state, whose articles of incorporation are not found by the executive council to be in substantial compliance with the laws of this state, and affording equal security and protection to the members thereof. [S13,§1908-a; C24, 27, 31, 35, 39,§9373; C46, 50, 54,§534.71]

Referred to in §534.82

**534.72 Deposit by foreign company.** Every such foreign building and loan or savings and loan association, before the state auditor shall issue to it a certificate, shall comply with the following provisions:

1. It shall deposit with the auditor of state one hundred thousand dollars, either in cash, or bonds of the United States or of the state of Iowa, or of any county or municipal corporation of the state of Iowa, or notes secured by first mortgage, on real estate, or a like amount in such other security as shall be satisfactory to said auditor.

2. Such foreign association may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this chapter. It may also exchange them for other securities of equal value and satisfactory to said auditor. [C97,§1909; C24, 27, 31, 35, 39,§9374; C46, 50, 54, §534.72]

**534.73 Liability of deposit.** The deposit made with the auditor shall be held as security for all claims of resident shareholders of the state against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same. [C97, §1910; C24, 27, 31, 35, 39,§9375; C46, 50, 54, §534.73]

**534.74 Auditor of state as process agent.** Such foreign associations shall also file with the auditor of this state a duly authenticated

copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that, if any legal process or notice affecting such association be served on the said state auditor, and a copy thereof be mailed, postage prepaid, by the party procuring and issuing the same, or his attorney, to said association, addressed to its home office, then such service and mailing of such process or notice shall have the same effect as personal service on said association within this state. [C97, §1911; C24, 27, 31, 35, 39,§9376; C46, 50, 54, §534.74]

C97,§1911, editorially divided

Referred to in §534.75

Similar provisions, §§491.15, 494.2, 511.27, 512.22, 515.73, 520.5

**534.75 Manner of service.** When proceedings have been commenced against, or affecting any foreign building and loan or savings and loan association, as contemplated in section 534.74, and notice has been served upon the auditor of the state, the same shall be by duplicate copies, one of which shall be filed in his office, and the other mailed by him, postage prepaid, to the home office of such association. [C97,§1911; C24, 27, 31, 35, 39, §9377; C46, 50, 54,§534.75]

**534.76 Amendments to articles.** All foreign building and loan or savings and loan associations shall file with the auditor of state, within ten days after their adoption, a duly certified copy of any amendment or amendments to their articles of incorporation or bylaws that may have been adopted. [C97,§1912; C24, 27, 31, 35, 39,§9378; C46, 50, 54,§534.76]

**534.77 Fees—foreign companies.** Foreign building and loan or savings and loan associations shall pay to the auditor of state the following fees, which shall be paid by him into the state treasury: For each application to do business in this state, one hundred dollars; for each certificate of authority and each annual renewal thereof, fifty dollars; for filing each annual statement of the assets of the association, as shown by the statement filed, amounts to fifty thousand dollars or less, three dollars; if more than fifty thousand dollars and less than one hundred thousand dollars, five dollars; if more than one hundred thousand dollars and less than two hundred and fifty thousand dollars, ten dollars; if more than two hundred and fifty thousand dollars, and less than five hundred thousand dollars, twenty dollars; if more than five hundred thousand dollars and less than one million dollars, thirty dollars; and if more than one million dollars, fifty dollars. [C97,§1913; C24, 27, 31, 35, 39,§9379; C46, 50, 54,§534.77]

C97,§1913, editorially divided

Collection by auditor, §11.29

**534.78 Fees—domestic companies.** Domestic building and loan or savings and loan associations shall pay to the auditor of state the sum of twenty-five dollars for each certificate of authority and each renewal thereof, and

for filing each annual statement, fifteen dollars. [C97,§1913; C24, 27, 31, 35, 39,§9380; C46, 50, 54,§534.78]

Collection by auditor, §11.29

**534.79 Annual statement.** All building and loan or savings and loan associations doing business in this state shall, on or before the first day of February of each year, file with the auditor of state a detailed report and financial statement of their business for the year ending the thirty-first day of December next preceding, and such report shall be verified by the president and secretary or by three directors of the association, and such report shall show:

1. The date when the association was incorporated and the par value of each share of stock.

2. The number of shares sold during the year.

3. The number of shares canceled or withdrawn during the year.

4. The number of shares in force at the end of the year.

5. A statement of the assets and liabilities at the end of the year.

6. The salary paid to each of its officers during the year. [C97,§1914; C24, 27, 31, 35, 39, §9382; C46, 50, 54,§534.79]

C97,§1914, editorially divided  
Referred to in §534.81

**534.80 Additional report by foreign company.** All foreign building and loan or savings and loan associations shall, in addition to the above, report the name of each shareholder of such association residing within the state, together with the post-office address of each, and the number of shares owned by each of said persons on the first day of January preceding, and the cash value of each of said shares on said date. [C97,§1914; C24, 27, 31, 35, 39,§9383; C46, 50, 54,§534.80]

Referred to in §534.81

**534.81 Violations.** If an association shall fail or refuse to furnish to the auditor of state the report required in sections 534.79 and 534.80, it shall forfeit the sum of twenty-five dollars for every day such report shall be withheld, and the auditor of state may maintain an action in the name of the state to recover such penalty, and the same shall be paid into the treasury of the state. [C97,§1915; C24, 27, 31, 35, 39,§9384; C46, 50, 54,§534.81]

**534.82 Sale of stock in unauthorized foreign company.** It shall be unlawful for any agent, solicitor, or other person to sell stock or solicit persons to subscribe for stock in any such association named in section 534.71, which has not been authorized to do business in this state, and any person convicted of so doing shall be punished by a fine of not less than fifty nor more than two hundred dollars, and shall be committed to the county jail until the fine and costs are paid. [S13,§1915-a; C24, 27, 31, 35, 39,§9385; C46, 50, 54,§534.82]

**534.83 Discrimination in foreign states.**

When by the laws of any other state, territory, country, or nation, or by the decision or rulings of the appropriate and proper officers thereof, any greater taxes, fines, penalties, licenses, fees, deposits of money or other securities, or other obligations or prohibitions, are demanded of building and loan or savings and loan associations of this state, as a condition to be complied with before doing business in such other state, territory, country, or nation, or their agents therein, than are imposed upon foreign associations doing business in this state, so long as such laws continue in force, the same requirements, obligations, and prohibitions of whatever kind shall be imposed on all building and loan or savings and loan associations of such other state, territory, country, or nation doing business in this state, and upon their agents. It is hereby made the duty of the auditor of state to enforce the provisions of this section. [C97,§1916; C24, 27, 31, 35, 39, §9386; C46, 50, 54,§534.83]

**534.84 Revocation of certificate.** If a certificate of authority to do business shall have been issued to any association, and it shall violate any of the provisions of this chapter, the auditor of state shall revoke the same. [C97,§1917; C24, 27, 31, 35, 39,§9387; C46, 50, 54, §534.84]

**534.85 Criminal offenses.** If any officer, director, or agent of any building and loan or savings and loan association shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power; or if any such officer, director, agent, or employee shall embezzle or convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly do or attempt to do any business for such association that has not procured and does not hold the certificate of authority therefor as in this chapter provided, or shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or statement, or shall knowingly do or solicit business for any building and loan

or savings and loan association which has not procured the required certificate therefor, he shall be fined in any sum not exceeding ten thousand dollars, or imprisoned in the penitentiary not exceeding ten years, or punished by both such fine and imprisonment. [C97, §1918; C24, 27, 31, 35, 39, §9388; C46, 50, 54, §534.85]

Similar provision, §534.100

**534.86 Acknowledgments by employees.** No public officer qualified to take acknowledgments or proofs of execution of written instruments shall by reason of his membership in or being an officer of or employment by a savings and loan association interested in such instrument be disqualified from taking and certifying to the acknowledgment or proof of execution of any written instrument in which such association is interested, and any such acknowledgment or proof heretofore taken or certified is hereby legalized and declared valid. [C39, §9388.1; C46, 50, 54, §534.86]

**534.87 Malicious circulation of reports.** Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any building and loan or savings and loan association which imputes, or tends to impute, insolvency or unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of funds from such building and loan or savings and loan association, or which may otherwise injure or tend to injure the business or good will of such building and loan or savings and loan association, shall be guilty of felony and shall be fined not more than five thousand dollars or be imprisoned for not more than five years in the penitentiary or be punished by both such fine and imprisonment. [C35, §9388-e1; C39, §9388.2; C46, 50, 54, §534.87]

**534.88** Repealed by 55GA, ch 234, §1.

#### UNINCORPORATED ASSOCIATIONS

**534.89 Statutes applicable.** All unincorporated organizations, associations, societies, partnerships, or individuals conducting and carrying on a business, the purpose of which is to create a fund derived from periodical payments by members of such organizations, associations, societies, or other persons, upon contracts or otherwise, as well as from fines, forfeitures, incidental fees, and payment of premiums and interest; which fund is to be loaned or advanced to members of the organization, association, society, or to the persons making such periodical payments, for the purpose of enabling them to acquire the ownership or free possession of real estate, or personal property, or to construct buildings, or any or all of such purposes, shall be deemed building and loan associations; and the provisions of this chapter shall apply to all such building and loan associations so far as the same can be made applicable to unincorporated

organizations, associations, societies, partnerships, or individuals. [S13, §1920-a; C24, 27, 31, 35, 39, §9390; C46, 50, 54, §534.89]

Referred to in §534.90

**534.90 Statement of resources, liabilities, and plan.** Every such unincorporated organization, association, society, partnership, or individual, conducting and carrying on the business defined in section 534.89 shall, before transacting any business in this state, submit to the executive council a full and complete sworn statement of the resources and liabilities of such organization, association, society, partnership, or individual, and of the proposed plan or method of doing business. [S13, §1920-b; C24, 27, 31, 35, 39, §9391; C46, 50, 54, §534.90]

S13, §1920-b, editorially divided

**534.91 Deposit of securities.** No such unincorporated building and loan association shall be permitted to carry on its business within this state unless it shall first deposit with the auditor of state at least fifty thousand dollars of first mortgages and negotiable notes in the same amount secured thereby upon real estate in the state, bearing interest at a rate not less than five percent per annum, which said mortgages shall in no case exceed one-half the actual value of the real estate upon which they are taken. [S13, §1920-b; C24, 27, 31, 35, 39, §9392; C46, 50, 54, §534.91]

Referred to in §534.94

**534.92 Additional deposits.** The auditor of state shall have power and authority to require that such further amount of such securities shall be deposited with him as in his judgment may thereafter be necessary to protect the members of such building and loan association, or the persons making periodical payments thereto. [S13, §1920-b; C24, 27, 31, 35, 39, §9393; C46, 50, 54, §534.92]

Referred to in §§534.94, 534.101

**534.93 Securities held in trust.** The notes, mortgages, and securities so deposited with the auditor of state shall, with all interest and accumulations thereon, be held in trust by him for the purpose of fulfilling and carrying out all contracts made by such building and loan association with the members thereof, and with the persons making periodical payments thereto. [S13, §1920-b; C24, 27, 31, 35, 39, §9394; C46, 50, 54, §534.93]

Referred to in §534.94

**534.94 Approval—certificate of authority.** If the executive council approves the plan or method of business of any such building and loan association, it shall indorse its approval upon the statement of the resources and liabilities and plan of business presented to it, and such statement shall thereupon be filed in the office of the auditor of state, who shall issue a certificate to such building and loan association to transact business within the state, if such association has deposited with him the mortgages and securities required

by the provisions of sections 534.91 to 534.93, inclusive. [S13,§1920-c; C24, 27, 31, 35, 39,§9395; C46, 50, 54,§534.94]

**534.95 Officers to give bonds — approval.**

Every officer of such building and loan association who signs or indorses checks, or handles any of the funds or securities thereof, shall give such bond or fidelity insurance for the faithful performance of his duty in such sum as the auditor of state may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by, and deposited with, the auditor of state. And any such bond may be increased or additional sureties required by the auditor of state whenever in his judgment it becomes necessary to protect the interest of the association or its members, or persons making periodical payments of money thereto. [S13,§1920-d; C24, 27, 31, 35, 39,§9396; C46, 50, 54,§534.95]

**534.96 Examination.** The auditor of state may at any time he may see proper, make, or cause to be made, an examination of any such building and loan association, or he may call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information hereinafter required. [S13, §1920-e; C24, 27, 31, 35, 39,§9397; C46, 50, 54, §534.96]

**534.97 Expense of examination.** The expense of making such examination shall be paid by the building and loan association, and if made by the auditor in person he shall be paid his necessary expenses only; if made by an examiner designated by the auditor, he shall receive not to exceed eighteen dollars a day for the time employed by him, and his necessary expenses. [S13,§1920-f; C24, 27, 31, 35, 39,§9398; C46, 50, 54,§534.97; 56GA, ch 251,§1]

**534.98 Annual reports.** On or before the first day of February of each year, every such building and loan association shall file with the auditor of state its annual report in writing for the year ending on the thirty-first day of December preceding, giving a complete statement in detail of all of its receipts from all sources, and all disbursements made during such year, arranged and itemized as may be required by the auditor of state. Such report shall also show the number of members or persons making periodical payments to such association, the number and amount of loans made to such persons, the interest received therefrom, the number and amounts of mortgages, contracts or other securities held by the association, the actual cash value of the real estate securing such mortgages or contracts, the salary paid to each of its officers during the preceding year, the assets and liabilities of the association at the end of the year, and any other matters which in the judgment of the auditor of state may be required to give him full information as to the

business transacted by such building and loan association. [S13,§1920-g; C24, 27, 31, 35, 39, §9399; C46, 50, 54,§534.98]

Referred to in §534.99

**534.99 Failure to furnish reports.** If any such building and loan association shall fail or refuse to furnish to the auditor of state the report required in section 534.98, the officers or persons conducting the business of such building and loan association shall forfeit the sum of twenty-five dollars for each day that such report is withheld, and the auditor of state may maintain an action, jointly or severally, against them in the name of the state to recover such penalty, and the same shall be paid into the state treasury when recovered by him. [S13,§1920-h; C24, 27, 31, 35, 39,§9400; C46, 50, 54,§534.99]

**534.100 Criminal offenses.** If any officer or agent of any such building and loan association, or any person conducting the business thereof, shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury and punished accordingly. And if any officer, agent, or employee of any such association, or any person transacting the business thereof, shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized so to do; or if any such officer, agent, or employee of such association, or any person transacting the business thereof, shall embezzle, convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly solicit, transact, or attempt to transact any business for any such association which has not procured and does not hold the certificate of authority from the auditor of state to transact business in this state as provided herein; or shall knowingly make, or cause to be made, any false entries in the books of the association, or shall, with intent to deceive any person making an examination of such association, as herein provided, exhibit to the person making the examination any false entry, paper, or statement, he shall be fined in a sum not exceeding ten thousand dollars, or imprisoned in the penitentiary not exceeding ten years, or punished by both such fine and imprisonment. [S13,§1920-i; C24, 27, 31, 35, 39,§9401; C46, 50, 54,§534.100]

Similar provision, §534.85

**534.101 Revocation of certificate—receiver.** If any such building and loan association, holding a certificate of authority to transact business within this state issued by the auditor as herein provided, shall violate any of

the provisions of this chapter, or shall fail to deposit with the auditor of state such further amount of mortgages or securities as he may require under section 534.92, the auditor of state shall at once revoke such certificate and notify the executive council of the revocation thereof; and under the direction of the executive council, application shall be made by the attorney general to the proper court for the appointment of a receiver to wind up the affairs of the association; and in such proceedings the amount due from the borrowing members or persons making periodical payments upon contracts or mortgages given by them, shall be ascertained in the manner provided in section 534.58; and the amounts owing upon such mortgages or contracts from members of the association or persons making periodical payments thereto, shall be treated and considered as due and payable within a reasonable time, to be fixed by the court after the appointment of a receiver. [S13,§1920-j; C24, 27, 31, 35, 39,§9402; C46, 50, 54,§534.101]

#### CONVERSION INTO FEDERAL ASSOCIATION

**534.102 Method of conversion.** If authorized by a vote of not less than three-fourths of the shares represented in person or by proxy at any stockholders meeting any building and loan or savings and loan association organized under the laws of this state shall have power to convert into a federal savings and loan association organized under the act of congress entitled and known as "Home Owners' Loan Act of 1933" [12 USC,§§1461-1468] and to transfer all or any part of its assets, engagements and obligations to such federal savings and loan association upon such terms and conditions and for such consideration as shall be authorized and agreed upon by the boards of directors of such state and such federal savings and loan associations. [C35,§9402-f1; C39,§9402.1; C46, 50, 54,§534.102]

**534.103 Shareholders rights.** When such conversion and transfer of assets are made to a federal savings and loan association all shareholders, including borrowing shareholders, in the state association shall become shareholders in the federal savings and loan association and shall be entitled to receive shares of stock in the federal savings and loan association in lieu of shares of stock canceled in the state association, in such amounts and upon such terms and conditions as shall be approved by the boards of directors of such state and such federal association. [C35,§9402-f2; C39,§9402.2; C46, 50, 54,§534.103]

**534.104 Shareholders option.** The borrowing shareholders whose mortgages have been transferred to a federal savings and loan association shall have a period of thirty days after such transfer is completed and recorded with the county recorder in which to elect whether to continue their loans on the plan, rate of interest and terms of such state association or on the loan plan adopted and used by such federal savings and loan association.

Each borrowing shareholder shall give notice in writing of such election, delivered to the president or secretary of such federal savings and loan association and if such notice is not so given within such thirty-day period it shall be conclusively presumed that borrowing shareholders not giving such notice have elected and accepted and agreed to the loan plan, terms and rate of interest adopted by such federal savings and loan association. [C35,§9402-f3; C39,§9402.3; C46, 50, 54,§534.104]

**534.105 Liquidation.** If only a portion of the assets and business of a state association is transferred to a federal savings and loan association such state association may continue in business for the purpose of liquidating its remaining assets and if authorized by a three-fourths vote of the shares represented at any stockholders meeting it may from time to time make additional transfers of assets to such federal savings and loan association in exchange for stock or may transfer such remaining assets to trustees who shall liquidate the same in the manner authorized, but after any such partial or complete transfer of assets no such state association shall sell or issue any additional shares or accept any payments on stock except on shares still held by it as security for loans not transferred to such federal savings and loan association. [C35, §9402-f4; C39,§9402.4; C46, 50, 54,§534.105]

**534.106 Rights of creditors.** The rights of creditors of a state association shall not be impaired by such transfer of assets to a federal savings and loan association and they shall have the same rights to follow and satisfy their claims out of all transferred assets as if no transfer had been made, or they may elect to accept the obligations of such federal savings and loan association in satisfaction of their claims against such state association. [C35,§9402-f5; C39,§9402.5; C46, 50, 54,§534.106]

**534.107 Association under receivership.** A state association in receivership may convert and transfer all or part of its assets to a federal savings and loan association if in such case the court having jurisdiction of the receivership shall after due notice and hearing approve such conversion and transfer. [C35, §9402-f6; C39,§9402.6; C46, 50, 54,§534.107]

**534.108 Approval by state auditor.** Before any conversion and transfer of assets are made to a federal savings and loan association the proposed plan of conversion and transfer shall either before or after it is authorized by the shareholders be submitted in writing to the auditor of state who shall issue to the state association his written approval thereof if he finds that the proposed plan is legal and that the requirements of law have been complied with. [C35,§9402-f7; C39,§9402.7; C46, 50, 54,§534.108]

**534.109 Report of conversion filed.** When such conversion and transfer are made the president and secretary of the state associa-

tion shall file with the recorder of the county in which the principal place of business of such association is located and with the auditor of state a written report showing in general terms the nature of such conversion and transfer together with true copies of the agreements entered into and transfers made and the resolutions of shareholders and directors authorizing the same. [C35,§9402-f8; C39, §9402.8; C46, 50, 54,§534.109]

**534.110 Federal associations have same rights.** Every federal savings and loan association incorporated under the provisions of home owners' loan act of 1933, as now or hereafter amended, and the holders of shares or accounts issued by any such association shall have all the rights, powers, and privileges, and shall be entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and holders of the shares of such associations, respectively, are entitled to. [C39, §9402.9; C46, 50, 54,§534.110]

Constitutionality, 48GA, ch 231,§22  
Omnibus repeal, 48GA, ch 231,§21

#### PRESERVATION OF RECORDS

**534.111 Period.** Savings and loan associations shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid

accounts in favor of shareholders of such savings and loan associations shall not be destroyed. [56GA, ch 252,§1]

Referred to in §534.112

**534.112 Exemption from liability.** No liability shall accrue against any savings and loan association destroying any such records after the expiration of the time provided in section 534.111, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the savings and loan association or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them. [56GA, ch 252,§2]

**534.113 Limitation of actions.** All causes of action against a savings and loan association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual. [56GA, ch 252,§3]

**534.114 Applicability.** The provisions of this chapter, so far as applicable, shall apply to the records of federal savings and loan associations. [56GA, ch 252,§4]



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VOLUME II

# CODE OF IOWA

1958

CONTAINING

ALL STATUTES OF A GENERAL AND  
PERMANENT NATURE

To and including the acts of a permanent nature of the  
Fifty-seventh General Assembly, 1957



**CHARLES W. BARLOW**  
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DEPUTY CODE EDITOR

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1958

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## ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S13	Supplement 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
Et seq.	And following
HF	House File
SF	Senate File
Ex.	Extra Session
R.C.P.	Rules of Civil Procedure
Stat. L.	Statutes at Large (U.S.)
U.S.C.	United States Code

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**535.1 Denominations of money.** The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given. [C51, §§943, 944; R60, §§1785, 1786; C73, §§2075, 2076; C97, §3037; C24, 27, 31, 35, 39, §9403; C46, 50, 54, §535.1]

**535.2 Rate of interest.** The rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest not exceeding seven cents on the hundred by the year:

1. Money due by express contract.
2. Money after the same becomes due.
3. Money loaned.
4. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
5. Money due on the settlement of accounts from the day the balance is ascertained.
6. Money due upon open accounts after six months from the date of the last item.
7. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated. [C51, §945; R60, §1787; C73, §2077; C97, §3038; C24, 27, 31, 35, 39, §9404; C46, 50, 54, §535.2]

**535.3 Interest on judgments and decrees.** Interest shall be allowed on all money due on judgments and decrees of courts at the rate of five cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding seven cents on the hundred by the year, which rate must be expressed in the

judgment or decree. [C51, §946; R60, §1789; C73, §2078; C97, §3039; C24, 27, 31, 35, 39, §9405; C46, 50, 54, §535.3]

**535.4 Illegal rate prohibited—usury.** No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed. [R60, §1790; C73, §2079; C97, §3040; C24, 27, 31, 35, 39, §9406; C46, 50, 54, §535.4]

**535.5 Penalty for usury.** If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the same shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon such contract at the time judgment is rendered thereon, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum so remaining unpaid without costs, and also against the defendant and in favor of the state, for the use of the school fund of the county in which the action is brought, for the amount of the forfeiture; and in no case where unlawful interest is contracted for shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not. [R60, §1791; C73, §2080; C97, §3041; C24, 27, 31, 35, 39, §9407; C46, 50, 54, §535.5]

**535.6 Interest in excess of two percent per month.** Every person or persons, company, corporation, or firm, and every agent of any person, persons, company, corporation, or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money in the sum or amount of more than three hundred dollars a rate greater than two percent per



month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. [SS15, §3041-a; C24, 27, 31, 35, 39, §9408; C46, 50, 54, §535.6]

**535.7 Assignee of usurious contract.** Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the consideration paid by him therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding. [R60, §1792; C73, §2081; C97, §3042; C24, 27, 31, 35, 39, §9409; C46, 50, 54, §535.7]

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- 536.22 Assistants.
- 536.23 Polk district court—jurisdiction.

**536.1 License and rights thereunder.** No person, copartnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of three hundred dollars or less and charge, contract for, or receive on any such loan a greater rate of interest or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this chapter and without first obtaining a license from the superintendent of banking, hereinafter called the superintendent. The word "person", when used hereinafter, shall include individuals, copartnerships, associations, and corporations unless the context requires a different meaning. [C24, 27, 31, §9410; C35, §9438-f1; C39, §9438.01; C46, 50, 54, §536.1]

tion shall pay to the superintendent the sum of fifty dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and the sum of one hundred dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as a fee for investigating the application and the additional sum of seventy-five dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and one hundred fifty dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as an annual license fee and in full payment of all expenses for examinations under and for administration of this chapter for a period terminating on the last day of the current calendar year; provided, that if the application is filed after June 30 in any year such payment shall be seventy-five dollars as such license fee in addition to the said fee for investigation.

Referred to in §§536.10, 536.13, 536.19

**536.2 Application — fees.** Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted and such further relevant information as the superintendent may require. Such applicant at the time of making such applica-

Every applicant shall also prove, in form satisfactory to the superintendent, that he or it has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that he or it has at least the said amount actually in use in the conduct of such business at such place of business. [C24, 27, 31, §§9411, 9412; C35, §9438-f2; C39, §9438.02; C46, 50, 54, §536.2]

Referred to in §§536.4, 536.8, 536.22

**536.3 Bond.** The applicant shall also at the same time file with the superintendent a bond to be approved by him in which the applicant shall be the obligor, with one or more sureties,

in the sum of one thousand dollars. The said bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this chapter. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the superintendent hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this chapter. [C24, 27, 31, §§9413, 9414; C35, §9438-f3; C39, §9438.03; C46, 50, 54, §536.3]

Referred to in §§536.6, 536.8

**536.4 Grant or refusal of license.** Upon the filing of such application, the approval of such bond and the payment of such fees, the superintendent shall make such investigation of the facts as he may deem necessary or proper.

If the superintendent shall determine from such application or from such investigation that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter, and if the superintendent shall find that the applicant has available or actually in use the assets described in section 536.2, he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the place of business specified in the said application; if the superintendent shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The superintendent shall approve or deny every application for a license hereunder within sixty days from the filing of the application and the approved bond and the payment of the said fees.

If the application is denied the superintendent shall within twenty days thereafter file with the banking department a written transcript of the evidence and decision and findings with respect thereto containing the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof. [C24, 27, 31, §9415; C35, §9438-f4; C39, §9438.04; C46, 50, 54, §536.4]

**536.5 License—form—posting.** Such license shall state the address of the place where the business of making such loans is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and

place of its incorporation. Such license shall be kept conspicuously posted in such place of business and shall not be transferable or assignable. [C24, 27, 31, §§9411, 9418; C35, §9438-f5; C39, §9438.05; C46, 50, 54, §536.5]

**536.6 Additional bond.** If the superintendent shall find at any time that the bond is insecure or exhausted or otherwise of doubtful validity or collectibility, an additional bond to be approved by him, with one or more sureties and of the character specified in section 536.3, in the sum of not more than one thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the superintendent.

Every licensee shall have available at all times for each licensed place of business at least five thousand dollars in assets, either in liquid form or actually in use in the conduct of such business. [C24, 27, 31, §9437; C35, §9438-f6; C39, §9438.06; C46, 50, 54, §536.6]

**536.7 Separate license—change of place of business.** Not more than one place of business where such loans are made shall be maintained under the same license, but the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

Whenever a licensee shall change such place of business to another location he shall at once give written notice thereof to the superintendent who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new place of business. [C24, 27, 31, §§9416, 9419; C35, §9438-f7; C39, §9438.07; C46, 50, 54, §536.7]

**536.8 Annual fee — payment — new bond.** Every licensee shall, on or before the fifteenth day of each December, pay to the superintendent the sum as provided in section 536.2 as an annual license fee for the next succeeding calendar year and shall at the same time file with the superintendent a new bond or renewal of the old bond in the same amount and of the same character as required by section 536.3. [C35, §9438-f8; C39, §9438.08; C46, 50, 54, §536.8]

**536.9 Suspension, revocation or surrender of license.**

1. The superintendent may, upon at least twenty days written notice to the licensee stating the contemplated action and grounds, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

a. The licensee has failed, after ten days notice of default, to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this chapter or to comply with any rule or regulation of the superintendent lawfully made pursuant to and within the authority of this chapter; or that

b. The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the superintendent under and within the authority of this chapter; or that

c. Any fact or condition exists which would clearly have warranted the superintendent in refusing originally to issue such license.

2. If the superintendent shall find that probable cause for revocation of any license exists and that the enforcement of the chapter requires immediate suspension of such license pending investigation, he may, upon five days written notice and a hearing, suspend such license for a period not exceeding thirty days.

3. The superintendent may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all licensed places of business, or to more than one licensed place of business, operated by such licensee, he shall revoke or suspend all of the licenses issued to such licensee or such licenses as such grounds apply to, as the case may be.

4. Any licensee may surrender any license by delivering to the superintendent written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

5. No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

6. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter. The superintendent shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this chapter.

7. Whenever the superintendent shall revoke or suspend a license issued under this chapter, he shall forthwith file with the banking department a written transcript of the evidence and order to that effect and findings with respect thereto containing the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof. [C24, 27, 31,§9436; C35,§9438-f9; C39, §9438.09; C46, 50, 54,§536.9]

**536.10 Examination of business.** For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the superintendent may at any time, either personally or by an individual or individuals duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person en-

gaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the superintendent and his duly designated representatives shall have and be given free access to the place of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The superintendent and all individuals duly designated by him shall have authority to require the attendance of and to examine under oath all individuals whomsoever whose testimony he may require relative to such loans or such business.

The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year. [C24, 27, 31,§9433; C35,§9438-f10; C39,§9438.10; C46, 50, 54,§536.10]

**536.11 Records—annual report by licensee.**

The licensee shall keep such books, accounts, and records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve for at least two years after making the last entry on any loan recorded therein all books, accounts, and records, including cards used in the card system, if any.

Each licensee shall annually on or before the twentieth day of January file a report with the superintendent giving such relevant information as the superintendent reasonably may require concerning the business and operations during the preceding calendar year of the licensed places of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the superintendent who shall make and publish annually an analysis and recapitulation of such reports. [C24, 27, 31,§9434; C35,§9438-f11; C39,§9438.11; C46, 50, 54, §536.11]

**536.12 False representations—miscellaneous restrictions.**

No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, charges, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of three hundred dollars or less, which is false, misleading, or deceptive. The superintendent may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

If any licensee refers in any advertising matter to the rate of charge to be made upon loans the superintendent may require such licensee to state such rate of charge fully and clearly in such manner as he may deem neces-

sary to prevent misunderstanding thereof by prospective borrowers.

No licensee shall take a real estate mortgage as security for any loan made under the provisions of this chapter.

No licensee shall conduct the business of making loans under the provisions of this chapter within any office, room, suite, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the superintendent upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules and regulations lawfully made by him hereunder.

No licensee shall make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

No licensee shall take any confession of judgment or any power of attorney to appear or to confess judgment on behalf of a borrower. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution. [C24, 27, 31, §§9426, 9432; C35, §9438-f12; C39, §9438.12; C46, 50, 54, §536.12]

Referred to in §536.19

### **536.13 Banking board — report — additional restrictions.**

1. It shall be the duty of the state banking board, hereinafter called the board, and it shall have power, jurisdiction, and authority, from time to time to investigate the conditions and find the facts with reference to the business of making small loans, as described in section 536.1, hereinafter referred to as small loans, and after making such investigation, report in writing their findings to the next regular session of the general assembly, and upon the basis of such facts:

a. To classify small loans by a regulation according to such system of differentiation as will reasonably distinguish such classes of loans for the purposes of this chapter, and

b. To determine and fix by a regulation such maximum rate of interest or charges upon each such class of small loans as will induce efficiently managed commercial capital to enter such business in sufficient amounts to make available adequate credit facilities to individuals without the security or financial responsibility usually required by commercial banks.

2. The board may from time to time, commencing March 1, 1935, redetermine and refix by a regulation, in accordance with subsection 1 above, any maximum rate of interest or charges previously fixed by it, but such changed maximum rates shall not affect pre-existing loan contracts lawfully entered into between any licensee and any borrower; all regulations which the board may make respecting rates of

interest or charges shall fix and contain the effective date thereof, which shall not be earlier than thirty days after notice to each licensee by mailing such notice to each licensed place of business.

3. Before fixing any classification of small loans or any maximum rate of interest or charges, or changing any such classification or rate under authority of this section, the board shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard thereon and to introduce evidence with respect thereto.

4. Until March 1, 1935, and until such further time as a different rate is fixed by the board, the maximum rate of interest or charges upon such class or classes of small loans shall be three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred and fifty dollars and two and one-half percent per month on any part of the loan in excess of one hundred fifty dollars.

5. Every licensee hereunder may lend any sum of money not exceeding three hundred dollars in amount and may charge, contract for, and receive thereon interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the board under authority of this section or by the provisions of the preceding subsection 4.

6. The following provisions shall apply to any or all loans in the amount or of the value of three hundred dollars or less made by any licensee hereunder:

Interest shall not be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. The maximum interest permitted shall be computed on the basis of the number of days actually elapsed and for the purpose of such computations a month shall be any period of thirty consecutive days. No licensee shall induce or permit any borrower or borrowers to split up or divide any loan or loans for the purpose of evading any provision of this chapter nor shall any licensee knowingly permit any borrower, nor any husband and wife individually or together, to be indebted to him under more than one contract of loan at the same time. In addition to the rates of interest or charges herein provided for no further or other charge for examination, service, brokerage, commission, expense, fee, or bonus or other thing shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. If any interest or charges in excess of these permitted by this chapter are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever. [C24, 27, 31, §§9420-

9423; C35,§9438-f13; C39,§9438.13; C46, 50, 54, §536.13]

Referred to in §§536.14, 536.19

**536.14 Statement given borrower — payments.** Every licensee shall:

1. Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of subsections 1, 5, and 6 of section 536.13) in the English language showing in clear and distinct terms the lawful maximum rate or rates of interest or charges in effect, the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

2. Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to interest or charges and the amount applied to principal.

3. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest or charges up to the date of such payment.

4. Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled", and release any mortgage, restore any pledge, return any note and any assignment given to the licensee by the borrower.

5. Display prominently in each licensed place of business an accurate schedule, to be approved by the superintendent, of the charges currently to be made upon all loans. [C24, 27, 31,§9425; C35,§9438-f14; C39,§9438.14; C46, 50, 54,§536.14]

Referred to in §536.19

**536.15 Usury—limitation on principal loan.**

No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than three hundred dollars for principal. [C24, 27, 31,§9424; C35,§9438-f15; C39,§9438.15; C46, 50, 54,§536.15]

**536.16 Loan — what constitutes.** The payment of three hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan secured

by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this chapter. [C35,§9438-f16; C39, §9438.16; C46, 50, 54,§536.16]

**536.17 Assignment of wages.** A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee under this chapter, and under such assignment or order a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, nor if the borrower is married unless it is signed in person by both husband and wife, provided, that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien. [C24, 27, 31,§§9427, 9428; C35,§9438-f17; C39,§9438.17; C46, 50, 54,§536.17]

Similar provision, §539.4

**536.18 Interest limited — violation — effect.** No person, except as authorized by this chapter, shall directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of three hundred dollars or less.

The foregoing prohibition shall apply to any person who, by any device, subterfuge, or pretense whatsoever, shall charge, contract for, or receive greater interest, consideration, or charges than authorized by this chapter for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of three hundred dollars or less for which a greater rate of

interest, consideration, or charges than is permitted by this chapter has been charged, contracted for, or received, wherever made, shall be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this chapter, provided, that the foregoing shall not apply to loans legally made in any state or country which then had in effect a regulatory small loan law substantially similar in principle and purpose to this chapter. [C24, 27, 31, §§9429, 9431; C35, §9438-f18; C39, §9438.18; C46, 50, 54, §536.18]

Referred to in §536.19

**536.19 Violations.** Any person, copartnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of sections 536.1, 536.12, 536.13, 536.14, or 536.18, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. [C24, 27, 31, §9435; C35, §9438-f19; C39, §9438.19; C46, 50, 54, §536.19]

**536.20 Nonapplicability of statute.** This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions or licensed pawnbrokers, nor shall it apply to any domestic corporation entitled to the benefits of sections 429.11 to 429.13, inclusive. [C35, §9438-f20; C39, §9438.20; C46, 50, 54, §536.20]

**536.21 Rules and regulations.** The superintendent is hereby authorized and empowered to make such reasonable and relevant rules and regulations as may be necessary for the execution and the enforcement of the provisions of this chapter, in addition hereto and not inconsistent herewith. All rules and regulations shall be filed and entered by the superintendent in the banking department in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. [C35, §9438-f21; C39, §9438.21; C46, 50, 54, §536.21]

**536.22 Assistants.** The superintendent of banking is hereby authorized to employ such competent help as he deems necessary to carry out and perform the provisions of this chapter, and is hereby authorized and empowered to pay such persons so employed from the license fees and investigation fees referred to in section 536.2. [C35, §9438-f22; C39, §9438.22; C46, 50, 54, §536.22]

**536.23 Polk district court—jurisdiction.** The district court in and for Polk county shall have jurisdiction in an equitable action by an aggrieved party to review any final order, demand, finding, or decision of the superintendent or the state banking board, and to grant such relief as may be warranted by the facts under the provisions of this chapter. An appeal to the supreme court may be taken as in other equitable actions. [C35, §9438-f23; C39, §9438.23; C46, 50, 54, §536.23]

Constitutionality, 45ExGA, ch 125, §25  
Omnibus repeal, 45ExGA, ch 125, §24

## CHAPTER 537

### CONTRACTS

537.1 Seals abolished.  
537.2 Consideration implied.

537.3 Failure of consideration.  
537.4 Gaming contracts void.

**537.1 Seals abolished.** The use of private seals in written contracts, or other instruments in writing, by individuals, firms, or corporations that have not adopted a corporate seal, is hereby abolished; but the addition of a seal to any such instrument shall not affect its character or validity in any respect. [C51, §974; R60, §1823; C73, §2112; C97, §3068; S13, §3068; C24, 27, 31, 35, 39, §9439; C46, 50, 54, §537.1]

Corporate seals, §558.2 et seq.

**537.2 Consideration implied.** All contracts in writing, signed by the party to be bound or by his authorized agent or attorney, shall import a consideration. [C51, §975; R60, §1824; C73, §2113; C97, §3069; C24, 27, 31, 35, 39, §9440; C46, 50, 54, §537.2]

Similar provision, §541.24

**537.3 Failure of consideration.** The want or failure, in whole or in part, of the consideration of a written contract may be shown as a defense, total or partial, except as provided in the negotiable instruments law. [C51, §976; R60, §1825; C73, §2114; C97, §3070; C24, 27, 31, 35, 39, §9441; C46, 50, 54, §537.3]

Negotiable instruments law, ch 541

**537.4 Gaming contracts void.** All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect. [C51, §2724; R60, §4366; C73, §4029; C97, §4965; C24, 27, 31, 35, 39, §9442; C46, 50, 54, §537.4]

## CHAPTER 538

## TENDER OF PAYMENT AND PERFORMANCE

Notary fee for noting tender, §77.19

Tender in actions against heirs, §638.20. Tender under offer to compromise, ch 677

538.1 Demand required.

538.2 Tender of labor or property.

538.3 Tender when contract assigned.

538.4 Effect of tender.

538.5 Tender when holder absent from state.

538.6 Offer in writing—effect.

538.7 Nonacceptance of tender.

538.8 Receipt—objection.

**538.1 Demand required.** No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed. [C51,§959; R60,§1806; C73,§2097; C97,§3056; C24, 27, 31, 35, 39,§9443; C46, 50, 54,§538.1]

**538.2 Tender of labor or property.** When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract. [C51,§960, 961; R60, §§1807, 1808; C73,§§2098, 2099; C97,§3057; C24, 27, 31, 35, 39,§9444; C46, 50, 54,§538.2]

**538.3 Tender when contract assigned.** When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, he shall make the tender at the residence of the holder if he resides in the state and no farther from the maker than the payee did at the making thereof. [C51,§962; R60,§1809; C73,§2100; C97,§3058; C24, 27, 31, 35, 39,§9445; C46, 50, 54,§538.3]

**538.4 Effect of tender.** A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or his assignee, and he may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for his reasonable expenses and trouble in so doing. [C51,§§963, 964; R60,§§1810, 1811; C73,§§2101, 2102; C97,§3059; C24, 27, 31, 35, 39,§9446; C46, 50, 54,§538.4]

**538.5 Tender when holder absent from state.** When the holder of an instrument for the payment of money is absent from the state when it becomes due, and the indorsee or assignee of such an instrument has not notified the maker of such indorsement or assignment, the maker may tender payment at the last residence or place of business of the payee before the instrument becomes due, and if there be no person there authorized to receive payment and give proper credit therefor, the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due, and the maker shall not be liable for interest from that date. [C51,§958; R60,§1805; C73,§2103; C97,§3060; C24, 27, 31, 35, 39,§9447; C46, 50, 54,§538.5]

**538.6 Offer in writing—effect.** An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in section 538.7; but if the party to whom the tender is made desires an inspection of the instrument or property tendered, other than money, before making his determination, it shall be allowed him on request. [C51,§967; R60,§1816; C73,§2105; C97,§3061; C24, 27, 31, 35, 39,§9448; C46, 50, 54,§538.6]

**538.7 Nonacceptance of tender.** When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if he sees fit, retain it in his possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to him within a reasonable time, the tender shall be of no effect. [C51,§966; R60,§1815; C73,§2104; C97,§3062; C24, 27, 31, 35, 39,§9449; C46, 50, 54, §538.7]

Referred to in §538.6

**538.8 Receipt—objection.** The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which he may have to the money, instrument, or property tendered, or he will be deemed to have waived it. [C51,§§968, 969; R60,§§1817, 1818; C73,§§2106, 2107; C97,§3063; C24, 27, 31, 35, 39,§9450; C46, 50, 54,§538.8]

## CHAPTER 539

## ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

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 539.2 Assignment prohibited by instrument.  
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**539.1 Assignment of nonnegotiable instruments.** Bonds, duebills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which he promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by indorsement thereon, or by other writing, and the assignee shall have a right of action thereon in his own name, subject to any defense or counterclaim which the maker or debtor had against any assignor thereof before notice of such assignment. [C51,§949; R60,§1796; C73,§2084; C97,§3044; C24, 27, 31, 35, 39,§9451; C46, 50, 54,§539.1]

Nonnegotiable bills of lading, §487.30  
 Related section, R.C.P. 7

**539.2 Assignment prohibited by instrument.** When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may avail himself of any defense or counterclaim against the assignee which he may have against any assignor thereof before notice of such assignment is given to him in writing. [C51,§951; R60,§1798; C73,§2086; C97,§3046; C24, 27, 31, 35, 39,§9452; C46, 50, 54,§539.2]

Referred to in §539.3  
 Related section, R.C.P. 7

**539.3 Assignment of open account.** An open account of sums of money due on contract may be assigned, and the assignee will have a right of action thereon in his own name, subject to such defenses and counterclaims as are allowed against the instruments mentioned in section 539.2, before notice of such assignment is given to the debtor in writing by the assignee. [C51, §952; R60,§1799; C73,§2087; C97,§3047; S13,§3047; C24, 27, 31, 35, 39,§9453; C46, 50, 54,§539.3]

S13,§3047, editorially divided  
 Related section, R.C.P. 7

**539.4 Assignment of wages.** No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by a written instrument, and if married, unless the husband and wife sign and acknowledge the same joint instrument before an officer authorized to take

acknowledgments. [S13,§3047; C24, 27, 31, 35, 39,§9454; C46, 50, 54,§539.4]

Referred to in §§322.6, 736A.5  
 Encumbrance on exempt property, §556.1  
 Similar provision, §536.17

**539.5 Priority.** Assignments of wages shall have priority and precedence in the order in which notice in writing of such assignments shall be given to the employer, and not otherwise. [S13,§3047; C24, 27, 31, 35, 39,§9455; C46, 50, 54,§539.5]

**539.6 Assignor liable.** The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice. [C51,§956; R60,§1803; C73,§2088; C97, §3048; C24, 27, 31, 35, 39,§9456; C46, 50, 54,§539.6]

## ASSIGNMENT OF ACCOUNTS RECEIVABLE

**539.7 Notice of assignment.** A notice of an assignment of accounts receivable or of an intention to assign future accounts receivable may be filed in the office of the recorder of the county where the assignor maintains his principal place of business in this state or, if none, where the assignor resides in this state or, if none, where the transaction producing the account occurred or will occur. [56GA, ch 253, §1]

Referred to in §539.15

**539.8 Execution of notice.** Such notice shall be executed by the assignor and assignee, acknowledged by assignor or assignee and shall set forth the name of assignor and assignee, the nature of the assignor's business out of which the accounts arise or will arise, a statement as to the principal place of business of assignor in this state or information showing the proper county for recording, and the duration of the assignment or future assignment period which shall not exceed three years from the date of filing. [56GA, ch 253,§2]

Referred to in §539.15

**539.9 Priority of assignments.** Where there has been more than one assignment of an account or accounts arising out of the business described in such a notice and as between assignees, an assignment in writing to the assignee whose notice was first filed shall take precedence and be entitled to priority over any



assignment to an assignee who has filed no notice or whose notice was subsequently filed. After filing such notice, an assignment covered thereby shall be valid against any other creditor, successor in interest or purchaser of the assignor. [56GA, ch 253,§3]

Referred to in §539.15

**539.10 Release of assignment.** A notice may be canceled by filing a release executed and acknowledged by the assignee setting forth the names of the assignor and assignee and the date of filing. After payment or satisfaction, the assignor may make written demand upon assignee for a release and the assignee shall file a release within ten days thereafter or forfeit the sum of one hundred dollars to the assignor. [56GA, ch 253,§4]

Referred to in §539.15

**539.11 Information of assigned accounts.** After notice has been filed and before cancellation, and if so directed in writing by the assignor, it shall be the duty of the assignee to furnish to any person such information as his records reveal relative to the assigned accounts. [56GA, ch 253,§5]

Referred to in §539.15

**539.12 "Account receivable" defined.** "Account receivable" means a right to receive payment for goods sold or leased or for services rendered, carried by the assignor in regular course of business as an open account, mutual account or account stated, due or to become due, but excluding (1) wages, salaries or other compensation of employees; (2) rights evidenced by a judgment, chattel mortgage or

other security instrument, or an instrument for the payment of money whether negotiable or not; and (3) public or private construction contract payments. Such an account may be assigned and protected hereunder even though it is not in existence and the particular account is not contemplated at the time of filing notice. [56GA, ch 253,§6]

Referred to in §539.15

**539.13 Creditors.** An assignment of accounts receivable shall not be invalid or fraudulent against creditors by reason of liberty in the assignor to collect or compromise such accounts, to accept the return of goods or by reason of the failure of the assignee to require the assignor to account for proceeds. [56GA, ch 253,§7]

Referred to in §539.15

**539.14 Filing and indexing.** Such assignments shall be filed and indexed as chattel mortgages in the office of the county recorder. Cancellations shall be noted in said index and record. A fee of one dollar shall be charged for each instrument filed or any certificate as to filing or cancellation. [56GA, ch 253,§8]

Referred to in §539.15

**539.15 Validity of assignment.** The provisions of sections 539.7 to 539.14, inclusive, shall not affect the validity of such assignments between the parties thereto or the right of the debtor to pay or otherwise deal with the assignor until given notice of assignment as provided in this chapter and shall not be retroactive. [56GA, ch 253,§9]

## CHAPTER 540

### SURETIES

540.1 Requiring creditor to sue.

540.2 Refusal or neglect of creditor.

540.3 Suit by surety.

540.4 Executor—official bonds.

**540.1 Requiring creditor to sue.** When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that his principal is about to become insolvent or remove permanently from the state without discharging the contract, he may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost. [C51,§970; R60,§1819; C73,§2108; C97,§3064; C24, 27, 31, 35, 39,§9457; C46, 50, 54,§540.1]

Order of liability, R.C.P. 224  
Right of subrogation, §626.19

**540.2 Refusal or neglect of creditor.** If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish him with a true copy of the contract or other writing therefor, and enable him to have the use of the original when requisite in such action, the

surety shall be discharged. [C51,§971; R60, §1820; C73,§2109; C97,§3065; C24, 27, 31, 35, 39, §9458; C46, 50, 54,§540.2]

**540.3 Suit by surety.** When the surety commences such action, he shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages. [C51,§972; R60,§1821; C73,§2110; C97,§3066; C24, 27, 31, 35, 39,§9459; C46, 50, 54,§540.3]

**540.4 Executor—official bonds.** The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians. [C51,§973; R60,§1822; C73,§2111; C97,§3067; C24, 27, 31, 35, 39,§9460; C46, 50, 54,§540.4]

## CHAPTER 541

## NEGOTIABLE INSTRUMENTS LAW

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#### FORM AND INTERPRETATION

**541.1 Form of negotiable instrument.** An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to the order of a specified person or to bearer.
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [S13, §3060-a1; C24, 27, 31, 35, 39, §9461; C46, 50, 54, §541.1]

County warrants, see 165 Iowa 325

**541.2 Certainty as to sum—what constitutes.** The sum payable is a sum certain within the meaning of this chapter although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. [S13, §3060-a2; C24, 27, 31, 35, 39, §9462; C46, 50, 54, §541.2]

**541.3 When promise is unconditional.** An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. [S13, §3060-a3; C24, 27, 31, 35, 39, §9463; C46, 50, 54, §541.3]

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**541.4 Determinable future time—what constitutes.** An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [S13, §3060-a4; C24, 27, 31, 35, 39, §9464; C46, 50, 54, §541.4]

**541.5 Provisions not affecting negotiability.** An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [S13, §3060-a5; C24, 27, 31, 35, 39, §9465; C46, 50, 54, §541.5]

**541.6 Omissions—seal—particular money.** The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. [S13,§3060-a6; C24, 27, 31, 35, 39, §9466; C46, 50, 54,§541.6]

**541.7 When payable on demand.** An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. [S13,§3060-a7; C24, 27, 31, 35, 39,§9467; C46, 50, 54,§541.7]

**541.8 When payable to order.** The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. [S13, §3060-a8; C24, 27, 31, 35, 39,§9468; C46, 50, 54, §541.8]

**541.9 When payable to bearer.** The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexistent or living person not intended to have any interest in it, and such fact was known to the person making it so payable, or known to his employee or other agent who supplies the name of such payee; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. [S13,§3060-a9; C24, 27, 31, 35, 39,§9469; C46, 50, 54,§541.9]

**541.10 Terms—when sufficient.** The negotiable instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof. [S13,§3060-a10; C24, 27, 31, 35, 39,§9470; C46, 50, 54,§541.10]

**541.11 Date—presumption as to.** When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. [S13,§3060-a11; C24, 27, 31, 35, 39, §9471; C46, 50, 54,§541.11]

**541.12 Antedated and postdated.** The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [S13,§3060-a12; C24, 27, 31, 35, 39,§9472; C46, 50, 54,§541.12]

**541.13 When date may be inserted.** When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [S13,§3060-a13; C24, 27, 31, 35, 39,§9473; C46, 50, 54,§541.13]

**541.14 Blanks—when may be filled.** Where the instrument is wanting in any material particular, the person in possession thereof has a prima-facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima-facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. [S13,§3060-a14; C24, 27, 31, 35, 39,§9474; C46, 50, 54,§541.14]

**541.15 Incomplete instrument not delivered.** Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. [S13,§3060-a15; C24, 27, 31, 35, 39,§9475; C46, 50, 54,§541.15]

**541.16 Delivery — when effectual.** Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring

the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [S13,§3060-a16; C24, 27, 31, 35, 39,§9476; C46, 50, 54,§541.16]

**541.17 Construction.** Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay", is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [S13,§3060-a17; C24, 27, 31, 35, 39,§9477; C46, 50, 54,§541.17]

**541.18 Liability of person signing in trade or assumed name.** No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. [S13,§3060-a18; C24, 27, 31, 35, 39,§9478; C46, 50, 54,§541.18]

Use of trade name, §547.1 et seq.

**541.19 Signature by agent—authority—how shown.** The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [S13,§3060-a19; C24, 27, 31, 35, 39,§9479; C46, 50, 54,§541.19]

**541.20 Liability of person signing as agent.** Where the instrument contains, or a person

adds to his signature, words indicating that he signs for or on behalf of the principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability. [S13, §3060-a20; C24, 27, 31, 35, 39,§9480; C46, 50, 54, §541.20]

**541.21 Signature by procuration—effect of.** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [S13,§3060-a21; C24, 27, 31, 35, 39,§9481; C46, 50, 54,§541.21]

**541.22 Effect of indorsement by infant or corporation.** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [S13,§3060-a22; C24, 27, 31, 35, 39,§9482; C46, 50, 54,§541.22]

Liability of minors, ch 599

**541.23 Forged signature—effect of.** Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. [S13,§3060-a23; C24, 27, 31, 35, 39,§9483; C46, 50, 54,§541.23]

#### CONSIDERATION

**541.24 Presumption of consideration.** Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. [S13,§3060-a24; C24, 27, 31, 35, 39, §9484; C46, 50, 54,§541.24]

Similar provision, §537.2

**541.25 Consideration — what constitutes.** Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such, whether the instrument is payable on demand or at a future time. [S13,§3060-a25; C24, 27, 31, 35, 39,§9485; C46, 50, 54,§541.25]

Similar provisions, §§487.54, 542.58, 554.77

**541.26 What constitutes holder for value.** Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [S13,§3060-a26; C24, 27, 31, 35, 39,§9486; C46, 50, 54,§541.26]

**541.27 Lien on instrument constitutes holder for value.** Where the holder has a lien on

the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [S13,§3060-a27; C24, 27, 31, 35, 39,§9487; C46, 50, 54,§541.27]

**541.28 Effect of want of consideration.** Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. [S13,§3060-a28; C24, 27, 31, 35, 39,§9488; C46, 50, 54,§541.28]

Failure of consideration, §537.3

**541.29 Liability of accommodation party.** An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [S13,§3060-a29; C24, 27, 31, 35, 39, §9489; C46, 50, 54,§541.29]

#### NEGOTIATION

**541.30 What constitutes negotiation.** An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery. [S13,§3060-a30; C24, 27, 31, 35, 39, §9490; C46, 50, 54,§541.30]

**541.31 Indorsement—how made.** The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. [S13,§3060-a31; C24, 27, 31, 35, 39,§9491; C46, 50, 54,§541.31]

**541.32 Indorsement must be of entire instrument.** The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorseees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [S13,§3060-a32; C24, 27, 31, 35, 39,§9492; C46, 50, 54,§541.32]

**541.33 Kinds of indorsement.** An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional. [S13,§3060-a33; C24, 27, 31, 35, 39, §9493; C46, 50, 54,§541.33]

**541.34 Special indorsement—indorsement in blank.** A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument

so indorsed is payable to bearer, and may be negotiated by delivery. [S13,§3060-a34; C24, 27, 31, 35, 39,§9494; C46, 50, 54,§541.34]

**541.35 Blank indorsement—how changed to special indorsement.** The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [S13,§3060-a35; C24, 27, 31, 35, 39,§9495; C46, 50, 54,§541.35]

**541.36 When indorsement restrictive.** An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [S13,§3060-a36; C24, 27, 31, 35, 39,§9496; C46, 50, 54,§541.36]

**541.37 Effect of restrictive indorsement—rights of indorsee.** A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument.
2. To bring any action thereon that the indorser could bring.
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorseees acquire only the title of the first indorsee under the restrictive indorsement. [S13,§3060-a37; C24, 27, 31, 35, 39,§9497; C46, 50, 54,§541.37]

**541.38 Qualified indorsement.** A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. [S13,§3060-a38; C24, 27, 31, 35, 39, §9498; C46, 50, 54,§541.38]

**541.39 Conditional indorsement.** Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the conditions have been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. [S13,§3060-a39; C24, 27, 31, 35, 39,§9499; C46, 50, 54,§541.39]

**541.40 Indorsement of instrument payable to bearer.** Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. [S13,§3060-a40; C24, 27, 31, 35, 39,§9500; C46, 50, 54,§541.40]

**541.41 Indorsement where payable to two or more persons.** Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. [S13,§3060-a41; C24, 27, 31, 35, 39,§9501; C46, 50, 54,§541.41]

See §528.64

**541.42 Effect of instrument drawn or indorsed to a person as cashier.** Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. [S13, §3060-a42; C24, 27, 31, 35, 39,§9502; C46, 50, 54, §541.42]

**541.43 Indorsement where name is misspelled.** Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described adding, if he thinks fit, his proper signature. [S13,§3060-a43; C24, 27, 31, 35, 39, §9503; C46, 50, 54,§541.43]

**541.44 Indorsement in representative capacity.** Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [S13,§3060-a44; C24, 27, 31, 35, 39,§9504; C46, 50, 54,§541.44]

**541.45 Time of indorsement—presumption.** Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. [S13,§3060-a45; C24, 27, 31, 35, 39,§9505; C46, 50, 54,§541.45]

**541.46 Place of indorsement—presumption.** Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated. [S13,§3060-a46; C24, 27, 31, 35, 39, §9506; C46, 50, 54,§541.46]

**541.47 Continuation of negotiable character.** An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [S13,§3060-a47; C24, 27, 31, 35, 39, §9507; C46, 50, 54,§541.47]

**541.48 Striking out indorsement.** The owner may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. [S13, §3060-a48; C24, 27, 31, 35, 39,§9508; C46, 50, 54, §541.48]

**541.49 Transfer without indorsement — effect of.** Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the

transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [S13,§3060-a49; C24, 27, 31, 35, 39,§9509; C46, 50, 54,§541.49]

**541.50 When prior party may negotiate instrument.** Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, re-issue and further negotiate the same, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [S13,§3060-a50; C24, 27, 31, 35, 39,§9510; C46, 50, 54,§541.50]

#### RIGHTS OF HOLDER

**541.51 Right of holder to sue—payment.** The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. [S13, §3060-a51; C24, 27, 31, 35, 39,§9511; C46, 50, 54, §541.51]

**541.52 What constitutes a holder in due course.** A holder in due course is a holder who has taken the instrument under the following conditions:

1. That the instrument is complete and regular upon its face.

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [S13,§3060-a52; C24, 27, 31, 35, 39, §9512; C46, 50, 54,§541.52]

**541.53 When person not deemed holder in due course.** Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [S13,§3060-a53; C24, 27, 31, 35, 39,§9513; C46, 50, 54,§541.53]

**541.54 Notice before full amount paid.** Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [S13,§3060-a54; C24, 27, 31, 35, 39,§9514; C46, 50, 54,§541.54]

**541.55 When title defective.** The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consid-



eration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. [S13,§3060-a55; C24, 27, 31, 35, 39, §9515; C46, 50, 54,§541.55]

**541.56 What constitutes notice of defect.** To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. [S13,§3060-a56; C24, 27, 31, 35, 39,§9516; C46, 50, 54,§541.56]

**541.57 Rights of holder in due course.** A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. [S13,§3060-a57; C24, 27, 31, 35, 39,§9517; C46, 50, 54,§541.57]

**541.58 When subject to original defenses.** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [S13,§3060-a58; C24, 27, 31, 35, 39,§9518; C46, 50, 54,§541.58]

**541.59 Who deemed holder in due course.** Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. [S13,§3060-a59; C24, 27, 31, 35, 39,§9519; C46, 50, 54,§541.59]

Note for gambling debt, §537.4  
Paper given for intoxicating liquors, §129.9

#### LIABILITIES OF PARTIES

**541.60 Liability of maker.** The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. [S13,§3060-a60; C24, 27, 31, 35, 39,§9520; C46, 50, 54,§541.60]

**541.61 Liability of drawer.** The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an

express stipulation negating or limiting his own liability to the holder. [S13,§3060-a61; C24, 27, 31, 35, 39,§9521; C46, 50, 54,§541.61]

**541.62 Liability of acceptor.** The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse. [S13,§3060-a62; C24, 27, 31, 35, 39,§9522; C46, 50, 54,§541.62]

**541.63 When person deemed indorser.** A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [S13,§3060-a63; C24, 27, 31, 35, 39,§9523; C46, 50, 54,§541.63]

**541.64 Liability of irregular indorser.** Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [S13,§3060-a64; C24, 27, 31, 35, 39, §9524; C46, 50, 54,§541.64]

**541.65 Warranty where negotiation by delivery.** Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has a good title to it.
3. That all prior parties had capacity to contract.
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subsection 3 of this section do not apply to persons negotiating public or corporate securities, other than bills and notes. [S13, §3060-a65; C24, 27, 31, 35, 39,§9525; C46, 50, 54, §541.65]

Referred to in §§541.66, 541.69

**541.66 Liability of general indorser.** Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subsections 1, 2, and 3 of section 541.65; and

2. That the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [S13,§3060-a66; C24, 27, 31, 35, 39,§9526; C46, 50, 54,§541.66]

**541.67 Liability of indorser where paper negotiable by delivery.** Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. [S13,§3060-a67; C24, 27, 31, 35, 39,§9527; C46, 50, 54,§541.67]

**541.68 Order in which indorsers are liable.** As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally. [S13,§3060-a68; C24, 27, 31, 35, 39,§9528; C46, 50, 54,§541.68]

**541.69 Liability of agent or broker.** Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 541.65, unless he discloses the name of his principal, and the fact that he is acting only as agent. [S13,§3060-a69; C24, 27, 31, 35, 39,§9529; C46, 50, 54,§541.69]

#### PRESENTMENT FOR PAYMENT

**541.70 Effect of want of demand on principal debtor.** Presentment for payment is not necessary in order to charge the person primarily on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [S13,§3060-a70; C24, 27, 31, 35, 39,§9530; C46, 50, 54,§541.70]

Tender in general, ch 538

**541.71 Presentment — instrument payable and not payable on demand.** Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [S13,§3060-a71; C24, 27, 31, 35, 39,§9531; C46, 50, 54,§541.71]

Days of grace, §541.198

**541.72 Sufficient presentment.** Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf.

2. At a reasonable hour on a business day.

3. At a proper place as herein defined.

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [S13,§3060-a72; C24, 27, 31, 35, 39,§9532; C46, 50, 54,§541.72]

Referred to in §541.147

**541.73 Place of presentment.** Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.

2. Where no place of payment is specified and the address of the person to make payment is given in the instrument and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [S13,§3060-a73; C24, 27, 31, 35, 39,§9533; C46, 50, 54,§541.73]

**541.74 Instrument must be exhibited.** The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [S13,§3060-a74; C24, 27, 31, 35, 39,§9534; C46, 50, 54,§541.74]

**541.75 Presentment where instrument payable at bank.** Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [S13,§3060-a75; C24, 27, 31, 35, 39,§9535; C46, 50, 54,§541.75]

**541.76 Presentment where principal debtor is dead.** Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found. [S13,§3060-a76; C24, 27, 31, 35, 39,§9536; C46, 50, 54,§541.76]

**541.77 Presentment to persons liable as partners.** Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [S13,§3060-a77; C24, 27, 31, 35, 39,§9537; C46, 50, 54,§541.77]

**541.78 Presentment to joint debtors.** Where there are several persons, not partners, primarily liable on the instrument, and no place

of payment is specified, presentment must be made to them all. [S13,§3060-a78; C24, 27, 31, 35, 39,§9538; C46, 50, 54,§541.78]

**541.79 When presentment not required to charge the drawer.** Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [S13,§3060-a79; C24, 27, 31, 35, 39, §9539; C46, 50, 54,§541.79]

**541.80 When presentment not required to charge the indorser.** Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. [S13,§3060-a80; C24, 27, 31, 35, 39,§9540; C46, 50, 54,§541.80]

**541.81 Delay in making presentment is excused.** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. [S13,§3060-a81; C24, 27, 31, 35, 39,§9541; C46, 50, 54,§541.81]

Referred to in §541.170

**541.82 Presentment dispensed with.** Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this chapter cannot be made.

2. Where the drawee is a fictitious person.

3. By waiver of presentment, express or implied. [S13,§3060-a82; C24, 27, 31, 35, 39,§9542; C46, 50, 54,§541.82]

**541.83 When instrument dishonored by nonpayment.** The instrument is dishonored by nonpayment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid. [S13,§3060-a83; C24, 27, 31, 35, 39,§9543; C46, 50, 54,§541.83]

**541.84 Liability of person secondarily liable, when instrument is dishonored.** Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder. [S13,§3060-a84; C24, 27, 31, 35, 39,§9544; C46, 50, 54,§541.84]

**541.85 Holidays affecting presentation.** The first day of the week, called Sunday, the first day of January, the twelfth day of February, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, the twenty-fifth day of December, and the following Monday, whenever any of the foregoing named legal holidays may fall

on a Sunday, the day of general election, and any day appointed or recommended by the governor of this state or by the president of the United States as a day of fasting or thanksgiving, shall be regarded as holidays for all purposes relating to the presentation for payment or acceptance, and for the protesting and giving notice of the dishonor of bills of exchange, drafts, bank checks, orders, and promissory notes, and any bank or mercantile paper falling due on any of the days above named shall be considered as falling due on the succeeding business day. [C73,§2094; C97,§3053; S13,§3053; C24, 27, 31, 35, 39,§9545; C46, 50, 54,§541.85]

Not in original uniform act  
Appearance in court, §617.8  
Days of grace, §541.198

**541.86 Time of maturity.** Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday, when that entire day is not a holiday. [S13,§3060-a85; C24, 27, 31, 35, 39,§9546; C46, 50, 54,§541.86]

Referred to in §541.147  
Days of grace, §541.198

**541.87 Time—how computed.** Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [S13,§3060-a86; C24, 27, 31, 35, 39,§9547; C46, 50, 54,§541.87]

Similar provision, §4.1, subsection 23

**541.88 Rule where instrument payable at bank.** Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [S13,§3060-a87; C24, 27, 31, 35, 39,§9548; C46, 50, 54,§541.88]

**541.89 What constitutes payment in due course.** Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [S13, §3060-a88; C24, 27, 31, 35, 39,§9549; C46, 50, 54, §541.89]

**NOTICE OF DISHONOR**

**541.90 Notice of dishonor.** Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. [S13,§3060-a89; C24, 27, 31, 35, 39,§9550; C46, 50, 54,§541.90]

**541.91 By whom given.** The notice may be given by or on behalf of the holder, or by or

on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. [S13,§3060-a90; C24, 27, 31, 35, 39,§9551; C46, 50, 54,§541.91]

**541.92 Notice given by agent.** Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [S13,§3060-a91; C24, 27, 31, 35, 39,§9552; C46, 50, 54,§541.92]

**541.93 Effect of notice given on behalf of holder.** Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [S13,§3060-a92; C24, 27, 31, 35, 39,§9553; C46, 50, 54,§541.93]

**541.94 Effect where notice is given by party entitled thereto.** Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom the notice is given. [S13,§3060-a93; C24, 27, 31, 35, 39,§9554; C46, 50, 54,§541.94]

**541.95 When agent may give notice.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. [S13,§3060-a94; C24, 27, 31, 35, 39,§9555; C46, 50, 54,§541.95]

**541.96 When notice is sufficient.** A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [S13,§3060-a95; C24, 27, 31, 35, 39,§9556; C46, 50, 54,§541.96]

**541.97 Form of notice.** The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. [S13,§3060-a96; C24, 27, 31, 35, 39,§9557; C46, 50, 54,§541.97]

**541.98 To whom notice may be given.** Notice of dishonor may be given either to the party himself or to his agent in that behalf. [S13,§3060-a97; C24, 27, 31, 35, 39,§9558; C46, 50, 54,§541.98]

**541.99 Notice where party is dead.** Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be

one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [S13,§3060-a98; C24, 27, 31, 35, 39,§9559; C46, 50, 54,§541.99]

**541.100 Notice to partners.** Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. [S13,§3060-a99; C24, 27, 31, 35, 39,§9560; C46, 50, 54,§541.100]

**541.101 Notice to persons jointly liable.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. [S13,§3060-a100; C24, 27, 31, 35, 39,§9561; C46, 50, 54,§541.101]

**541.102 Notice to bankrupt.** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [S13,§3060-a101; C24, 27, 31, 35, 39,§9562; C46, 50, 54,§541.102]

**541.103 Time within which notice must be given.** Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter. [S13,§3060-a102; C24, 27, 31, 35, 39,§9563; C46, 50, 54,§541.103]

Days of grace, §541.198

**541.104 Where parties reside in same place.** Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post office in time to reach him in the usual course of the day following. [S13,§3060-a103; C24, 27, 31, 35, 39,§9564; C46, 50, 54,§541.104]

**541.105 Where parties reside in different places.** Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision. [S13,§3060-a104; C24, 27, 31, 35, 39,§9565; C46, 50, 54,§541.105]

Referred to in §541.169

**541.106 When sender deemed to have given due notice.** Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [S13,§3060-a105; C24, 27, 31, 35, 39,§9566; C46, 50, 54,§541.106]

**541.107 Deposit in post office—what constitutes.** Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post-office department. [S13,§3060-a106; C24, 27, 31, 35, 39,§9567; C46, 50, 54,§541.107]

**541.108 Notice to antecedent party—time of.** Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [S13, §3060-a107; C24, 27, 31, 35, 39,§9568; C46, 50, 54, §541.108]

**541.109 Where notice must be sent.** Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or

2. If he live in one place and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section. [S13,§3060-a108; C24, 27, 31, 35, 39, §9569; C46, 50, 54,§541.109]

**541.110 Waiver of notice.** Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. [S13,§3060-a109; C24, 27, 31, 35, 39,§9570; C46, 50, 54,§541.110]

**541.111 Whom affected by waiver.** Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. [S13,§3060-a110; C24, 27, 31, 35, 39,§9571; C46, 50, 54,§541.111]

**541.112 Waiver of protest.** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor. [S13,§3060-a111; C24, 27, 31, 35, 39, §9572; C46, 50, 54,§541.112]

**541.113 When notice is dispensed with.** Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot

be given to or does not reach the parties sought to be charged. [S13,§3060-a112; C24, 27, 31, 35, 39,§9573; C46, 50, 54,§541.113]

**541.114 Delay in giving notice—how excused.** Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [S13,§3060-a113; C24, 27, 31, 35, 39, §9574; C46, 50, 54,§541.114]

**541.115 When notice need not be given to drawer.** Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.

2. Where the drawee is a fictitious person or a person not having capacity to contract.

3. Where the drawer is the person to whom the instrument is presented for payment.

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

5. Where the drawer has countermanded payment. [S13,§3060-a114; C24, 27, 31, 35, 39, §9575; C46, 50, 54,§541.115]

**541.116 When notice need not be given to indorser.** Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment.

3. Where the instrument was made or accepted for his accommodation. [S13,§3060-a115; C24, 27, 31, 35, 39,§9576; C46, 50, 54,§541.116]

**541.117 Notice of nonpayment where acceptance refused.** Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. [S13,§3060-a116; C24, 27, 31, 35, 39,§9577; C46, 50, 54,§541.117]

**541.118 Effect of omission to give notice of nonacceptance.** An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. [S13,§3060-a117; C24, 27, 31, 35, 39,§9578; C46, 50, 54,§541.118]

**541.119 When protest need not be made—when must be made.** Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange. [S13, §3060-a118; C24, 27, 31, 35, 39,§9579; C46, 50, 54, §541.119]

## DISCHARGE OF NEGOTIABLE INSTRUMENTS

**541.120 How instrument discharged.** A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.
3. By the intentional cancellation thereof by the holder.
4. By any other act which will discharge a simple contract for the payment of money.
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [S13,§3060-a119; C24, 27, 31, 35, 39,§9580; C46, 50, 54,§541.120]

**541.121 When persons secondarily liable discharged.** A person secondarily liable on the instrument is discharged:

1. By an act which discharges the instrument.
2. By the intentional cancellation of his signature by the holder.
3. By the discharge of a prior party.
4. By the valid tender of payment made by a prior party.
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.
6. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. [S13, SS15,§3060-a120; C24, 27, 31, 35, 39,§9581; C46, 50, 54,§541.121]

**541.122 Right of party who discharges instrument.** Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and
2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [S13,§3060-a121; C24, 27, 31, 35, 39,§9582; C46, 50, 54,§541.122]

**541.123 Renunciation by holder.** The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily

liable thereon. [S13,§3060-a122; C24, 27, 31, 35, 39,§9583; C46, 50, 54,§541.123]

**541.124 Cancellation — unintentional — burden of proof.** A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. [S13, §3060-a123; C24, 27, 31, 35, 39,§9584; C46, 50, 54, §541.124]

**541.125 Alteration of instrument—effect of.** Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. [S13,§3060-a124; C24, 27, 31, 35, 39, §9585; C46, 50, 54,§541.125]

**541.126 What constitutes a material alteration.** Any alteration which changes:

1. The date.
2. The sum payable, either for principal or interest.
3. The time or place of payment.
4. The number or the relations of the parties.
5. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [S13,§3060-a125; C24, 27, 31, 35, 39, §9586; C46, 50, 54,§541.126]

## BILLS OF EXCHANGE—FORM AND INTERPRETATION

**541.127 "Bill of exchange" defined.** A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. [S13, §3060-a126; C24, 27, 31, 35, 39,§9587; C46, 50, 54, §541.127]

**541.128 Bill not an assignment of funds in hands of drawee.** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. [S13, §3060-a127; C24, 27, 31, 35, 39,§9588; C46, 50, 54, §541.128]

**541.129 Bill addressed to more than one drawee.** A bill may be addressed to two or more drawees jointly, whether they are part-

ners or not; but not to two or more drawees in the alternative or in succession. [S13,§3060-a128; C24, 27, 31, 35, 39,§9589; C46, 50, 54,§541.129]

**541.130 Inland and foreign bills of exchange.** An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [S13,§3060-a129; C24, 27, 31, 35, 39,§9590; C46, 50, 54,§541.130]

**541.131 Bill treated as promissory note.** Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [S13,§3060-a130; C24, 27, 31, 35, 39,§9591; C46, 50, 54,§541.131]

**541.132 Referee in case of need.** The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. [S13,§3060-a131; C24, 27, 31, 35, 39,§9592; C46, 50, 54,§541.132]

ACCEPTANCE .

**541.133 Acceptance—how made.** The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. [S13,§3060-a132; C24, 27, 31, 35, 39,§9593; C46, 50, 54,§541.133]

**541.134 Holder entitled to acceptance on face of bill.** The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored. [S13,§3060-a133; C24, 27, 31, 35, 39, §9594; C46, 50, 54,§541.134]

**541.135 Acceptance by separate instrument.** Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [S13,§3060-a134; C24, 27, 31, 35, 39,§9595; C46, 50, 54,§541.135]

**541.136 Promise to accept—when equivalent to acceptance.** An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [S13,§3060-a135; C24, 27, 31, 35, 39,§9596; C46, 50, 54,§541.136]

**541.137 Time allowed drawee to accept.** The drawee is allowed twenty-four hours after presentment in which to decide whether or

not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. [S13,§3060-a136; C24, 27, 31, 35, 39,§9597; C46, 50, 54,§541.137]

**541.138 Liability of drawee retaining or destroying bill.** Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. [S13,§3060-a137; C24, 27, 31, 35, 39,§9598; C46, 50, 54,§541.138]

**541.139 Acceptance of incomplete bill.** A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. [S13,§3060-a138; C24, 27, 31, 35, 39,§9599; C46, 50, 54,§541.139]

**541.140 Kinds of acceptances.** An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. [S13,§3060-a139; C24, 27, 31, 35, 39,§9600; C46, 50, 54,§541.140]

**541.141 What constitutes a general acceptance.** An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere. [S13,§3060-a140; C24, 27, 31, 35, 39,§9601; C46, 50, 54,§541.141]

**541.142 Qualified acceptance.** An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.
3. Local, that is to say, an acceptance to pay only at a particular place.
4. Qualified as to time.
5. The acceptance of some one or more of the drawees, but not of all. [S13,§3060-a141; C24, 27, 31, 35, 39,§9602; C46, 50, 54,§541.142]

**541.143 Qualified acceptance refused.** The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified

acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto. [S13,§3060-a142; C24, 27, 31, 35, 39,§9603; C46, 50, 54, §541.143]

#### PRESENTMENT FOR ACCEPTANCE

**541.144 When presentment for acceptance must be made.** When presentment for acceptance must be made:

1. When the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [S13,§3060-a143; C24, 27, 31, 35, 39,§9604; C46, 50, 54,§541.144]

Referred to in §541.145

**541.145 Release of drawer and indorser.** Except as herein otherwise provided, the holder of a bill which is required by section 541.144 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. [S13, §3060-a144; C24, 27, 31, 35, 39,§9605; C46, 50, 54, §541.145]

**541.146 Presentment—how made.** Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf, and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [S13,§3060-a145; C24, 27, 31, 35, 39, §9606; C46, 50, 54,§541.146]

**541.147 Days for presentment.** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 541.72 and 541.86. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day. [S13,§3060-a146; C24, 27, 31, 35, 39,§9607; C46, 50, 54,§541.147]

**541.148 Presentment where time is insufficient.** Where the holder of a bill drawn payable elsewhere than at the place of business

or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [S13,§3060-a147; C24, 27, 31, 35, 39,§9608; C46, 50, 54,§541.148]

**541.149 Where presentment is excused.** Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where after the exercise of reasonable diligence, presentment cannot be made.

3. Where although presentment has been irregular, acceptance has been refused on some other ground. [S13,§3060-a148; C24, 27, 31, 35, 39,§9609; C46, 50, 54,§541.149]

**541.150 When dishonored by nonacceptance.** A bill is dishonored by nonacceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this chapter is refused or cannot be obtained; or

2. When a presentment for acceptance is excused and the bill is not accepted. [S13,§3060-a149; C24, 27, 31, 35, 39,§9610; C46, 50, 54, §541.150]

**541.151 Duty of holder where bill not accepted.** Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. [S13,§3060-a150; C24, 27, 31, 35, 39,§9611; C46, 50, 54,§541.151]

**541.152 Rights of holders where bill not accepted.** When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [S13,§3060-a151; C24, 27, 31, 35, 39, §9612; C46, 50, 54,§541.152]

#### PROTEST

**541.153 In what cases protest necessary.** Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. [S13,§3060-a152; C24, 27, 31, 35, 39, §9613; C46, 50, 54,§541.153]

**541.154 Protest—how made.** The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand



and seal of the notary making it, and must specify:

1. The time and place of presentment.
2. The fact that presentment was made and the manner thereof.
3. The cause or reason for protesting the bill.
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [S13,§3060-a153; C24, 27, 31, 35, 39,§9614; C46, 50, 54,§541.154]

**541.155 Protest—by whom made.** Protest may be made by:

1. A notary public; or
2. By any reputable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [S13,§3060-a154; C24, 27, 31, 35, 39,§9615; C46, 50, 54, §541.155]

Interested notary, §77.9; protest fee, §77.19

**541.156 Protest—when to be made.** When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [S13,§3060-a155; C24, 27, 31, 35, 39,§9616; C46, 50, 54,§541.156]

Protest of demand items to banks, §541.201

**541.157 Protest—where made.** A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary. [S13,§3060-a156; C24, 27, 31, 35, 39, §9617; C46, 50, 54,§541.157]

**541.158 Nonacceptance and nonpayment.** A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. [S13,§3060-a157; C24, 27, 31, 35, 39, §9618; C46, 50, 54,§541.158]

**541.159 Protest before maturity where acceptor insolvent.** Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [S13,§3060-a158; C24, 27, 31, 35, 39,§9619; C46, 50, 54,§541.159]

**541.160 When protest dispensed with.** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [S13,§3060-a159; C24, 27, 31, 35, 39,§9620; C46, 50, 54,§541.160]

**541.161 Protest where bill is lost.** Where a bill is lost or destroyed, or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [S13,§3060-a160; C24, 27, 31, 35, 39,§9621; C46, 50, 54,§541.161]

ACCEPTANCE FOR HONOR

**541.162 When bill may be accepted for honor.** Where a bill of exchange has been protested for dishonor by nonacceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. [S13,§3060-a161; C24, 27, 31, 35, 39,§9622; C46, 50, 54,§541.162]

**541.163 Acceptance for honor — how made.** An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [S13,§3060-a162; C24, 27, 31, 35, 39, §9623; C46, 50, 54,§541.163]

**541.164 When deemed to be an acceptance for honor of the drawer.** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [S13, §3060-a163; C24, 27, 31, 35, 39,§9624; C46, 50, 54, §541.164]

**541.165 Liability of acceptor for honor.** The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [S13, §3060-a164; C24, 27, 31, 35, 39,§9625; C46, 50, 54, §541.165]

**541.166 Agreement of acceptor for honor.** The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. [S13,§3060-a165; C24, 27, 31, 35, 39,§9626; C46, 50, 54,§541.166]

**541.167 Maturity of bill payable after sight —accepted for honor.** When a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. [S13,§3060-a166; C24, 27, 31, 35, 39,§9627; C46, 50, 54,§541.167]

**541.168 Protest of bill accepted for honor.** Where a dishonored bill has been accepted for honor supra protest or contains a refer-

ence in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. [S13,§3060-a167; C24, 27, 31, 35, 39,§9628; C46, 50, 54,§541.168]

**541.169 Presentment for payment to acceptor for honor—how made.** Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 541.105. [S13,§3060-a168; C24, 27, 31, 35, 39,§9629; C46, 50, 54,§541.169]

**541.170 When delay in making presentment is excused.** The provisions of section 541.81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [S13,§3060-a169; C24, 27, 31, 35, 39,§9630; C46, 50, 54,§541.170]

**541.171 Dishonor of bill by acceptor for honor.** When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. [S13,§3060-a170; C24, 27, 31, 35, 39,§9631; C46, 50, 54,§541.171]

#### PAYMENT FOR HONOR

**541.172 Who may make payment for honor.** Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [S13,§3060-a171; C24, 27, 31, 35, 39,§9632; C46, 50, 54, §541.172]

**541.173 Payment for honor—how made.** The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. [S13,§3060-a172; C24, 27, 31, 35, 39,§9633; C46, 50, 54,§541.173]

**541.174 Declaration before payment for honor.** The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. [S13,§3060-a173; C24, 27, 31, 35, 39,§9634; C46, 50, 54,§541.174]

**541.175 Preference of parties offering to pay for honor.** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [S13,§3060-a174; C24, 27, 31, 35, 39, §9635; C46, 50, 54,§541.175]

**541.176 Effect on subsequent parties where bill is paid for honor.** Where a bill has been paid for honor all parties subsequent to the

party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [S13,§3060-a175; C24, 27, 31, 35, 39,§9636; C46, 50, 54,§541.176]

**541.177 Refusal to receive payment supra protest.** Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [S13, §3060-a176; C24, 27, 31, 35, 39,§9637; C46, 50, 54, §541.177]

**541.178 Rights of payer for honor.** The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [S13,§3060-a177; C24, 27, 31, 35, 39,§9638; C46, 50, 54, §541.178]

#### BILLS IN A SET

**541.179 Bills in sets constitute one bill.** Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. [S13,§3060-a178; C24, 27, 31, 35, 39,§9639; C46, 50, 54,§541.179]

**541.180 Rights of holders where different parts are negotiated.** Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. [S13,§3060-a179; C24, 27, 31, 35, 39,§9640; C46, 50, 54,§541.180]

**541.181 Liability of holder who indorses two or more parts of a set to different persons.** Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [S13,§3060-a180; C24, 27, 31, 35, 39,§9641; C46, 50, 54,§541.181]

**541.182 Acceptance of bills drawn in sets.** The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [S13, §3060-a181; C24, 27, 31, 35, 39,§9642; C46, 50, 54, §541.182]

**541.183 Payment by acceptor of bills drawn in sets.** When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [S13,§3060-a182; C24, 27, 31, 35, 39,§9643; C46, 50, 54,§541.183]

**541.184 Effect of discharging one of a set.** Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. [S13,§3060-a183; C24, 27, 31, 35, 39,§9644; C46, 50, 54,§541.184]

#### PROMISSORY NOTES AND CHECKS

**541.185 "Promissory note" defined.** A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [S13, §3060-a184; C24, 27, 31, 35, 39,§9645; C46, 50, 54, §541.185]

**541.186 "Check" defined.** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check. [S13,§3060-a185; C24, 27, 31, 35, 39, §9646; C46, 50, 54,§541.186]

**541.187 Within what time a check must be presented.** A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [S13,§3060-a186; C24, 27, 31, 35, 39,§9647; C46, 50, 54,§541.187]

**541.188 Certification of check—effect of.** Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [S13,§3060-a187; C24, 27, 31, 35, 39,§9648; C46, 50, 54,§541.188]

**541.189 Effect where the holder of check procures it to be certified.** Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. [S13,§3060-a188; C24, 27, 31, 35, 39,§9649; C46, 50, 54, §541.189]

**541.190 Check not an assignment—when bank liable.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. [S13, §3060-a189; C24, 27, 31, 35, 39,§9650; C46, 50, 54, §541.190]

#### GENERAL PROVISIONS

**541.191 Short title.** This chapter shall be known as the "Negotiable Instruments Law". [S13,§3060-a190; C24, 27, 31, 35, 39,§9651; C46, 50, 54,§541.191]

**541.192 Definitions and meaning of terms.** In this chapter, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and setoff.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. [S13,§3060-a191; C24, 27, 31, 35, 39,§9652; C46, 50, 54,§541.192]

**541.193 Person primarily liable on instrument.** The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. [S13,§3060-a192; C24, 27, 31, 35, 39,§9653; C46, 50, 54,§541.193]

**541.194 Reasonable time—what constitutes.** In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. [S13,§3060-a193; C24, 27, 31, 35, 39,§9654; C46, 50, 54,§541.194]

**541.195 Time—how computed when last day falls on holiday.** When the day, or last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [S13,§3060-a194; C24, 27, 31, 35, 39,§9655; C46, 50, 54,§541.195]

**541.196 Application of chapter.** The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the passage hereof. [S13,§3060-a195; C24, 27, 31, 35, 39,§9656; C46, 50, 54,§541.196]

**541.197 Law merchant—when governs.** In any case not provided for in this chapter, the rules of the law merchant shall govern. [S13, §3060-a196; C24, 27, 31, 35, 39,§9657; C46, 50, 54,§541.197]

**541.198 Days of grace—demand made on.** A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provi-

sions of this chapter, and the provisions of this chapter as to notice of nonpayment, nonacceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this chapter; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face. [S13,§3060-a198; C24, 27, 31, 35, 39, §9658; C46, 50, 54,§541.198]

Added to the original uniform act by 29GA, ch 130

**541.199 Indemnifying bond to protect payer.**

Whenever a note, bond, bill of exchange, certificate of deposit, check, or other evidence of indebtedness shall have been lost, stolen, or destroyed, and the owner thereof desires payment to be made by the person, firm, or corporation issuing the same, he shall execute and deliver, if demanded, to such person, firm, or corporation, a good and sufficient bond agreeing to indemnify and save harmless the payer thereof. [S13,§3060-a199; C24, 27, 31, 35, 39,§9659; C46, 50, 54,§541.199]

Not in original uniform act

**541.200 Indemnifying bond to protect defendants.**

When an action is brought on a lost note, bond, bill of exchange, draft, certificate of deposit, or other evidence of indebtedness, upon demand of any defendant therein, a good and sufficient bond shall be given to indemnify and save harmless the defendants in said cause. [S13,§3060-a200; C24, 27, 31, 35, 39,§9660; C46, 50, 54,§541.200]

Not in original uniform act

**541.201 Collection, payment, and dishonor of demand items.**

In any case in which a bank receives, other than for immediate payment over the counter, a demand item payable by, at or through such bank and gives credit therefor before midnight of the day of receipt, such bank may have until midnight of its next business day after receipt within which to dishonor or refuse payment of such item. Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by returning the item, or if the item is held for protest or at the time is lost or is not in the possession of the bank, by giving written notice of dishonor, nonpayment,

or revocation; provided that such item or notice is dispatched in the mails or by other expeditious means not later than midnight of the bank's next business day after the item was received. For the purpose of determining when notice of dishonor must be given or protest made under the law relative to negotiable instruments, an item duly presented credit for which is revoked as authorized by this section shall be deemed dishonored on the day the item or notice is dispatched. A bank, revoking credit pursuant to the authority of this section, is entitled to refund of, or credit for, the amount of the item.

For the purposes of this section: (1) An item received by a bank on a day other than its business day, or received on a business day after its regular business hours or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of its next business day; (2) The term "credit" includes payment, remittance, advice of credit, or authorization to charge and, in cases where the item is received for deposit as well as for payment, also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether the item is posted to individual customers' ledgers. [C50, 54,§541.201]

See also §541.156

**541.202 Negotiating instrument on holiday.**

Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state because done or performed on any legal holiday or during any time other than regular banking hours, if such payment, certification, acceptance or other transaction could have been validly done or performed on any other day; provided that nothing herein shall be construed to compel any bank or trust company in this state, which by law or custom is entitled to close for the whole or any part of any legal holiday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any legal holiday except at its own option. [C54, §541.202]

CHAPTER 542

WAREHOUSE RECEIPTS LAW

Referred to in §§543.19, 544.1, 544.26, 554.79

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PART I

THE ISSUE OF WAREHOUSE RECEIPTS

**542.1 Persons who may issue receipts.** Warehouse receipts may be issued by any warehouseman. [S13,§3138-a1; C24, 27, 31, 35, 39,§9661; C46, 50, 54,§542.1]

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 ticular form, but every such receipt must embody within its written or printed terms:

1. The location of the warehouse where the goods are stored;
2. The date of issue of the receipt;
3. The consecutive number of the receipt;
4. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

5. The rate of storage charges;
6. A description of the goods or of the packages containing them;
7. The signature of the warehouseman, which may be made by his authorized agent;
8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein required. [S13,§3138-a2; C24, 27, 31, 35, 39,§9662; C46, 50, 54, §542.2]

Referred to in §543.18

**542.3 Form of receipts—what terms may be inserted.** A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to the provisions of this chapter.
2. In any wise impair his obligation to exercise that degree of care in the safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [S13,§3138-a3; C24, 27, 31, 35, 39,§9663; C46, 50, 54,§542.3]

Referred to in §543.18

**542.4 "Nonnegotiable receipt" defined.** A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. [S13,§3138-a4; C24, 27, 31, 35, 39, §9664; C46, 50, 54,§542.4]

**542.5 "Negotiable receipt" defined.** A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provisions shall be inserted in a negotiable receipt that it is nonnegotiable. Such provisions, if inserted, shall be void. [S13,§3138-a5; C24, 27, 31, 35, 39,§9665; C46, 50, 54,§542.5]

**542.6 Duplicate receipts must be so marked.** When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value

supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [S13,§3138-a6; C24, 27, 31, 35, 39,§9666; C46, 50, 54,§542.6]

**542.7 Failure to mark "not negotiable".** A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable", or "not negotiable". In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. [S13, §3138-a7; C24, 27, 31, 35, 39,§9667; C46, 50, 54, §542.7]

## PART II

### OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

**542.8 Obligation of warehouseman to deliver.** A warehouseman, in the absence of some lawful excuse provided by this chapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

1. An offer to satisfy the warehouseman's lien;
2. An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [S13,§3138-a8; C24, 27, 31, 35, 39,§9668; C46, 50, 54,§542.8]

Referred to in §543.19

**542.9 Justification of warehouseman in delivering.** A warehouseman is justified in delivering the goods, subject to the provisions of sections 542.10, 542.11, and 542.12 to one who is:

1. The person lawfully entitled to the possession of the goods, or his agent;
2. A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or
3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised

by the terms of the receipt or by his mediate or immediate indorsee. [S13,§3138-a9; C24, 27, 31, 35, 39,§9669; C46, 50, 54,§542.9]

Referred to in §§542.10, 542.19, 543.19, 544.26

**542.10 Warehouseman's liability for misdelivery.** Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subsections 2 and 3 of section 542.9 and though he delivered the goods as authorized by said subsections he shall be so liable, if prior to such delivery he had either:

1. Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [S13,§3138-a10; C24, 27, 31, 35, 39,§9670; C46, 50, 54,§542.10]

Referred to in §§542.9, 543.19, 544.26

**542.11 Negotiable receipt must be canceled when goods delivered.** Except as provided in section 542.36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [S13,§3138-a11; C24, 27, 31, 35, 39, §9671; C46, 50, 54,§542.11]

Referred to in §§542.9, 543.19, 544.26

**542.12 Negotiable receipt must be canceled or marked when part of goods delivered.** Except as provided in section 542.36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [S13,§3138-a12; C24, 27, 31, 35, 39,§9672; C46, 50, 54,§542.12]

Referred to in §§542.9, 543.19, 544.26

**542.13 Altered receipts.** The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

1. Immaterial,
2. Authorized, or
3. Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [S13, §3138-a13; C24, 27, 31, 35, 39,§9673; C46, 50, 54, §542.13]

Referred to in §§543.19, 544.26

**542.14 Lost or destroyed receipts.** Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [S13,§3138-a14; C24, 27, 31, 35, 39, §9674; C46, 50, 54,§542.14]

Referred to in §§542.52, 542.54, 543.19, 543.37, 544.26

**542.15 Effect of duplicate receipts.** A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. [S13, §3138-a15; C24, 27, 31, 35, 39,§9675; C46, 50, 54, §542.15]

Referred to in §§543.19, 544.26

**542.16 Warehouseman cannot set up title in himself.** No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [S13,

§3138-a16; C24, 27, 31, 35, 39, §9676; C46, 50, 54, §542.16]

Referred to in §§543.19, 544.26

**542.17 Interpleader of adverse claimants.** If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [S13, §3138-a17; C24, 27, 31, 35, 39, §9677; C46, 50, 54, §542.17]

Referred to in §§542.19, 543.19, 544.26

**542.18 Warehouseman has reasonable time to determine validity of claims.** If someone other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [S13, §3138-a18; C24, 27, 31, 35, 39, §9678; C46, 50, 54, §542.18]

Referred to in §§542.19, 543.19, 544.26

**542.19 Adverse title no defense—exceptions.** Except as provided in sections 542.17 and 542.18 and in sections 542.9 and 542.36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [S13, §3138-a19; C24, 27, 31, 35, 39, §9679; C46, 50, 54, §542.19]

Referred to in §§543.19, 544.26

**542.20 Liability for nonexistence or misdescription of goods.** A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor. [S13, §3138-a20; C24, 27, 31, 35, 39, §9680; C46, 50, 54, §542.20]

Referred to in §§543.19, 544.26

**542.21 Liability for care of goods.** A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise,

but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [S13, §3138-a21; C24, 27, 31, 35, 39, §9681; C46, 50, 54, §542.21]

Referred to in §§543.19, 544.26

**542.22 Goods must be kept separate.** Except as provided in section 542.23, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [S13, §3138-a22; C24, 27, 31, 35, 39, §9682; C46, 50, 54, §542.22]

Referred to in §§543.19, 544.26

**542.23 Fungible goods may be commingled, if warehouseman authorized.** If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [S13, §3138-a23; C24, 27, 31, 35, 39, §9683; C46, 50, 54, §542.23]

Referred to in §§542.22, 543.19, 544.26

**542.24 Liability of warehouseman to depositors of commingled goods.** The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [S13, §3138-a24; C24, 27, 31, 35, 39, §9684; C46, 50, 54, §542.24]

Referred to in §§543.19, 544.26

**542.25 Attachment or levy upon goods for which a negotiable receipt has been issued.** If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishing or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. [S13, §3138-a25; C24, 27, 31, 35, 39, §9685; C46, 50, 54, §542.25]

Referred to in §§543.19, 544.26

**542.26 Creditors' remedies to reach negotiable receipts.** A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from the courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can-



not readily be attached or levied upon by ordinary legal process. [S13,§3138-a26; C24, 27, 31, 35, 39,§9686; C46, 50, 54,§542.26]

Referred to in §§543.19, 544.26

**542.27 What claims included in warehouseman's lien.** Subject to the provisions of section 542.30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. [S13,§3138-a27; C24, 27, 31, 35, 39,§9687; C46, 50, 54,§542.27]

Referred to in §§542.30, 543.19, 544.26

**542.28 Against what property lien may be enforced.** Subject to the provisions of section 542.30, a warehouseman's lien may be enforced:

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted;

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid; and

3. Against all goods deposited at any time by the owner or person in legal possession thereof received in good faith and without notice of encumbrances, and, provided further, that, if the warehouseman has either actual or constructive notice of any prior encumbrance, he may give written notice to such prior encumbrancer and, unless such encumbrancer shall remove such goods within ten days thereafter, the lien of the warehouseman for all services and charges in relation to such goods shall be prior to such encumbrance. [S13,§3138-a28; C24, 27, 31, 35, 39,§9688; C46, 50, 54,§542.28]

Subsection 3 not in original uniform act  
Referred to in §§543.19, 544.26

**542.29 How lien may be lost.** A warehouseman loses his lien upon goods:

1. By surrendering possession thereof; or

2. By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this chapter. [S13,§3138-a29; C24, 27, 31, 35, 39,§9689; C46, 50, 54,§542.29]

Referred to in §§543.19, 544.26

**542.30 Negotiable receipt must state charges for which lien is claimed.** If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges

for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 542.27, although the amount of the charges so enumerated is not stated in the receipt. [S13,§3138-a30; C24, 27, 31, 35, 39,§9690; C46, 50, 54,§542.30]

Referred to in §§542.27, 542.28, 543.19, 544.26

**542.31 Warehouseman need not deliver until lien is satisfied.** A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [S13,§3138-a31; C24, 27, 31, 35, 39,§9691; C46, 50, 54,§542.31]

Referred to in §§543.19, 544.26

**542.32 Warehouseman's lien does not preclude other remedies.** Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [S13,§3138-a32; C24, 27, 31, 35, 39,§9692; C46, 50, 54,§542.32]

Referred to in §§543.19, 544.26

**542.33 Satisfaction of lien by sale.** A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by certified mail letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

1. An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

2. A brief description of the goods against which the lien exists;

3. A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

4. A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is mani-

festly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, and advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this chapter, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. Such sale may be conducted by the sheriff or his deputy or by any constable of the county where such sale is made, and when so conducted, the warehouseman, his representative or assigns, may fairly and in good faith purchase any property sold under the provisions of this chapter. [S13,§3138-a33; C24, 27, 31, 35, 39,§9693; C46, 50, 54,§542.33; 57GA, ch 267,§81]

Referred to in §§542.34, 543.19, 543.25, 544.26  
Last sentence not in original uniform act

**542.34 Perishable and hazardous goods.** If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort, is unable to sell such goods, he may dispose of them in a lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale

made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of section 542.33. [S13,§3138-a34; C24, 27, 31, 35, 39,§9694; C46, 50, 54,§542.34]

Referred to in §§543.19, 544.26

**542.35 Other methods of enforcing liens.** The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [S13,§3138-a35; C24, 27, 31, 35, 39,§9695; C46, 50, 54,§542.35]

Referred to in §§543.19, 544.26

**542.36 Effect of sale.** After the goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [S13,§3138-a36; C24, 27, 31, 35, 39,§9696; C46, 50, 54,§542.36]

Referred to in §§542.11, 542.12, 542.19, 542.54, 543.19, 543.37, 544.26

### PART III

#### NEGOTIATION AND TRANSFER OF RECEIPTS

**542.37 Negotiation of negotiable receipts by delivery.** A negotiable receipt may be negotiated by delivery:

1. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

2. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [S13,§3138-a37; C24, 27, 31, 35, 39, §9697; C46, 50, 54,§542.37]

Referred to in §§543.19, 544.26

**542.38 Negotiation of negotiable receipts by indorsement.** A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner. [S13,§3138-a38; C24, 27, 31, 35, 39,§9698; C46, 50, 54,§542.38]

Referred to in §§543.19, 544.26

**542.39 Transfer of receipts.** A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right. [S13,§3138-a39; C24, 27, 31, 35, 39,§9699; C46, 50, 54,§542.39]

Referred to in §§543.19, 544.26

**542.40 Who may negotiate a receipt.** A negotiable receipt may be negotiated:

1. By the owner thereof; or

2. By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if, at the time of such entrusting, the receipt is in such form that it may be negotiated by delivery. [S13,§3138-a40; C24, 27, 31, 35, 39,§9700; C46, 50, 54,§542.40]

Referred to in §§543.19, 544.26

**542.41 Rights of persons to whom receipt has been negotiated.** A person to whom a negotiable receipt has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [S13,§3138-a41; C24, 27, 31, 35, 39,§9701; C46, 50, 54,§542.41]

Referred to in §§543.19, 544.26

**542.42 Rights of persons to whom receipt has been transferred.** A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is nonnegotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferor or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or by a subsequent purchaser from the transferor of a subsequent sale of the goods

by the transferor. [S13,§3138-a42; C24, 27, 31, 35, 39,§9702; C46, 50, 54,§542.42]

Referred to in §§543.19, 544.26

**542.43 Transfer of negotiable receipt without indorsement.** Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [S13,§3138-a43; C24, 27, 31, 35, 39,§9703; C46, 50, 54,§542.43]

Referred to in §§543.19, 544.26

**542.44 Warranties on sale of receipt.** A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

1. That the receipt is genuine;

2. That he has a legal right to negotiate or transfer it;

3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and

4. That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [S13,§3138-a44; C24, 27, 31, 35, 39,§9704; C46, 50, 54,§542.44]

Referred to in §§543.19, 544.26

**542.45 Indorser not a guarantor.** The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [S13,§3138-a45; C24, 27, 31, 35, 39,§9705; C46, 50, 54,§542.45]

Referred to in §§543.19, 544.26

**542.46 No warranty implied from accepting payment of debt.** A mortgagee, pledgee, or holder for security of a receipt who, in good faith, demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quality or quantity of the goods therein described. [S13,§3138-a46; C24, 27, 31, 35, 39,§9706; C46, 50, 54,§542.46]

Referred to in §§543.19, 544.26

**542.47 When negotiation not impaired by fraud, mistake, or duress.** The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress

to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress. [S13,§3138-a47; C24, 27, 31, 35, 39,§9707; C46, 50, 54,§542.47]

Referred to in §§543.19, 544.26

**542.48 Subsequent negotiation.** Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [S13,§3138-a48; C24, 27, 31, 35, 39,§9708; C46, 50, 54,§542.48]

Referred to in §§543.19, 544.26

**542.49 Negotiation defeats vendor's lien.** Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. [S13,§3138-a49; C24, 27, 31, 35, 39,§9709; C46, 50, 54,§542.49]

Referred to in §543.19

#### PART IV

#### CRIMINAL OFFENSES

**542.50 Issue of receipt for goods not received.** A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-a50; C24, 27, 31, 35, 39,§9710; C46, 50, 54,§542.50]

**542.51 Issue of receipt containing false statement.** A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be

punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S13,§3138-a51; C24, 27, 31, 35, 39, §9711; C46, 50, 54,§542.51]

**542.52 Issue of duplicate receipts not so marked.** A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost or destroyed receipt after proceedings as provided for in section 542.14, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S13,§3138-a52; C24, 27, 31, 35, 39, §9712; C46, 50, 54,§542.52]

**542.53 Receipts which do not state facts.** Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S13,§3138-a53; C24, 27, 31, 35, 39,§9713; C46, 50, 54,§542.53]

**542.54 Delivery of goods without obtaining negotiable receipt.** A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiating of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 542.14 and 542.36, be found guilty of a misdemeanor and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S13,§3138-a54; C24, 27, 31, 35, 39,§9714; C46, 50, 54,§542.54]

**542.55 Negotiation of receipt for mortgaged goods.** Any person who deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by

a fine not exceeding one thousand dollars, or by both. [S13,§3138-a55; C24, 27, 31, 35, 39,§9715; C46, 50, 54,§542.55]

PART V  
INTERPRETATION

**542.56 Common law and equity applicable.**

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. [S13,§3138-a56; C24, 27, 31, 35, 39,§9716; C46, 50, 54,§542.56]

**542.57 Interpretation to give effect to purpose of uniformity.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [S13,§3138-a57; C24, 27, 31, 35, 39,§9717; C46, 50, 54,§542.57]

**542.58 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

“Action” includes the counterclaim, setoff, and suit in equity.

Counterclaim generally, §614.12, and R.C.P. 29 and 30

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder of a receipt” means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

Similar provisions, §§487.54, 541.25, 554.77

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

A thing is done “in good faith” within the meaning of this chapter when it is in fact done honestly whether it be done negligently or not. [S13,§3138-a58; C24, 27, 31, 35, 39,§9718; C46, 50, 54,§542.58]

Referred to in §§428.9, 428.16

CHAPTER 543

BONDED WAREHOUSES FOR AGRICULTURAL PRODUCTS

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**543.1 Terms defined.** As used in this chapter:

1. “Commission” shall mean the Iowa state commerce commission.

2. “Warehouse” shall mean any building, structure, or other protected inclosure in this state used or usable for the storage of agricultural products. Buildings used in connection

with the operation of the warehouse shall be deemed to be a part of the warehouse.

3. "Licensed warehouse" shall mean a warehouse for the operation of which the commission has issued a license in accordance with the provisions of section 543.4.

4. "Agricultural product" shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

5. "Grain" shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products.

6. "Bulk grain" shall mean grain which is not contained in sacks.

7. "Person" shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, but shall not mean the United States or Iowa state government or any subdivision or agency of either.

8. "Warehouseman" shall mean a person who uses or undertakes to use a warehouse for the storage of agricultural products for compensation.

9. "Licensed warehouseman" shall mean a warehouseman who has obtained a license for the operation of a warehouse under the provisions of section 543.4.

10. "Delivery charge" shall mean the charge made by the warehouseman for receiving grain into and delivering grain from the warehouse, exclusive of the warehouseman's other charges. [C24, 27, 31,§9719; C35,§9751-g1; C39, §9751.01; C46, 50, 54,§543.1]

**543.2 Duties and powers of the commission.** The commission is authorized to exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products. The commission may inspect or cause to be inspected any warehouse and may require the filing of reports describing any warehouse or the operation thereof. The commission shall inspect or cause to be inspected every licensed warehouse and the contents thereof not less than once every three months. The commission may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of any warehouse the type or types and the quantity of agricultural products which may be exclusively stored in such warehouse. The commission may prescribe, within the limitations of this chapter, the duties of licensed warehousemen with respect to the care of and responsibility for the contents of licensed warehouses. The commission may from time to time establish and publish standards for agricultural

products by which quality or value of such products may be judged or determined. The commission may from time to time publish such data in connection with the administration of this chapter as may be of public interest. The commission shall have the duty of administration of the further provisions of this chapter. [C24, 27, 31,§§9739, 9744, 9750; C35,§§9751-g22,-g27,-g32; C39,§§9751.22, 9751.27, 9751.32; C46, 50, 54,§543.2]

**543.3 Rules and regulations.** The commission shall from time to time make such rules and regulations as it may deem necessary for the efficient administration of the provisions of this chapter, and may at its discretion designate an employee or officer of the commission to act for the commission in any details connected with such administration, including the issuance of licenses and approval of warehouse bonds in the name of the commission, but not including matters requiring a public hearing or suspension or revocation of licenses. [C24, 27, 31,§9721; C35,§9751-g3; C39, §9751.03; C46, 50, 54,§543.3]

Referred to in §543.4

**543.4 Issuance of license.** The commission is authorized, upon application to it, to issue to any warehouseman or to any person about to become a warehouseman a license or licenses for the operation of a warehouse or warehouses in accordance with the provisions of this chapter and such rules and regulations as may be made by the commission under the authority of section 543.3. A single license may be issued for the operation of two or more warehouses located in the same city or town and operated by the same warehouseman. Licenses to a warehouseman to operate two or more warehouses located in different cities or towns may be issued under a single application but a separate license shall be issued for such operation in each city or town. [C24, 27, 31, §9722; C35,§9751-g4; C39,§9751.04; C46, 50, 54, §543.4]

Referred to in §§543.1, 543.7

**543.5 Application for license.** Each application for a license or licenses shall be in writing subscribed and sworn to by the applicant or a duly authorized representative of the applicant. In addition to any other information required by rule and regulation of the commission the application shall include the following:

1. The name of the individual, partnership, or corporation making the application, the names of all partners if applicant is a partnership, and the names and titles of the principal officers if applicant is a corporation.

2. The principal office or place of business of the applicant.

3. A general description of each warehouse as to storage capacity, type of construction, mechanical equipment, if any, and condition.

4. The approximate location of each warehouse.

5. The type and quantity of agricultural product, or products intended to be stored in each warehouse.

6. A complete financial statement for use of the commission in the administration of this chapter.

7. A tariff on a form to be prescribed by the commission, for storage, conditioning of stored products, and delivery charges. [C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, §543.5]

Referred to in §543.8

**543.6 License to specify type and quantity of products which may be stored.** The commission shall determine with respect to each application for a license whether the warehouse or warehouses described in the application is or are suitable for the proper and safe storage of the particular agricultural product or products intended to be stored therein in the quantities specified in the application, provided that no warehouse shall be found to be suitable and safe for the storage of bulk grain unless such warehouse is equipped with a fixed or portable mechanical device of a type in common use as an adjunct to the movement of bulk grain. Each license issued for the operation of a single warehouse shall specify the type or types and quantities of agricultural products which may be stored in such warehouse. Each license issued to a warehouseman for the operation of two or more warehouses in the same city or town shall specify with respect to each warehouse the type or types and quantities of agricultural product which may be stored in such warehouse. It shall be unlawful for any licensed warehouseman to accept for storage or to store in any licensed warehouse any agricultural product or products other than the type or types and quantities specified in the license for the operation of such warehouse. [C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, §543.6]

**543.7 Tenure of license—renewal.** Each license issued under section 543.4 shall terminate on the thirtieth day of June next after the date of issuance, except that upon a showing satisfactory to the commission that the minimum storage of certain products usually occurs at some other season of the year, the commission may set some other date for termination of licenses relating to the storage of such products. Licenses may from time to time be renewed or extended by a written instrument, which shall likewise terminate on the next anniversary of the effective date of such renewal or extension. [C24, 27, 31, §9727; C35, §9751-g8; C39, §9751.08; C46, 50, 54, §543.7]

**543.8 Amendment of license.** The commission is authorized, upon its own motion, or upon receipt of written application, to amend any license previously issued by it, to change or modify the provisions as to the type and quantity of agricultural products which may be stored in the warehouse or warehouses in respect to which the license was originally is-

sued. Application for amendments to licenses shall include the same information, except as to the financial condition of the applicant, as required by section 543.5 to be included in an original application. Applications for amendments of licenses shall be considered by the commission on the same basis as applications for original licenses, and except as otherwise provided in this chapter, a license when amended shall have the same status, as of the date of the amendment, as though originally issued as amended. [C46, 50, 54, §543.8]

Referred to in §543.12

**543.9 Temporary permits.** Upon receipt of an application for a license to operate a warehouse or an application for amendment of a license, the commission in its discretion may issue a temporary permit to the applicant for such reasonable time, not to exceed thirty days, as in the judgment of the commission, may be necessary or advisable to enable the applicant to comply with the further requirements of this chapter for obtaining a license or an amended license. Such permit, for the temporary period specified in the permit, shall have the same effect as a license and shall entitle and subject the person to whom the permit is issued to the same rights and duties as if he had obtained a license. [C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, §543.9]

**543.10 Suspension or revocation of license.** The commission is empowered after hearing before it and upon information being filed with the commission by the duly authorized head of the warehouse division of the commission or upon complaint filed by any person to suspend or revoke the license of anyone licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule or regulation made in pursuance of the authority therefore granted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the commission in triplicate, and thereupon the commission shall serve the licensee complained against with a copy of the information or the complaint and a copy of the order of the commission fixing the time for hearing thereon, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, it may upon the filing of the information or the complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint. Any licensee aggrieved by the decision of the commission may appeal said decision to the district court by service of notice of appeal upon the commission within thirty days following the filing of the decision of the commission in the office of the commission. The commission shall forthwith upon service of notice of appeal certify the complete record of the proceedings before it to the office of the clerk of the district court. The appeal shall be tried by the court only upon the record so certified to the court. [C24, 27, 31, §9747;

C35,§9751-g29; C39,§9751.29; C46, 50, 54,§543.10; 56GA, ch 254,§1]

**543.11 Suspension or revocation of license for insufficiency of bond or insurance.** Whenever the commission shall determine that a bond filed under the provisions of section 543.12 and approved by the commission, is, or has become, insufficient to secure the faithful performance of the obligations of the licensed warehouseman, or whenever the commission shall determine that insurance is not fully provided as required under section 543.15, it may require the licensed warehouseman to provide additional bond or bonds or additional evidence of insurance coverage so that the bond and insurance shall conform with the requirements of sections 543.12, 543.13, and 543.15, and unless such additional bond or bonds or additional evidence of insurance coverage be provided within the time fixed by the commission for the providing of the same, the license of the licensed warehouseman concerned shall be suspended or revoked. [C24, 27, 31,§9748; C35,§9751-g30; C39,§9751.30; C46, 50, 54,§543.11]

**543.12 Bond required.** Any person applying for a license or licenses to conduct a warehouse or warehouses in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the commission a good and sufficient bond, other than personal security, to secure the faithful performance of his obligations as a warehouseman under the terms of this chapter and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman which may be assumed by him under contracts with depositors of agricultural products in such warehouse. Any person applying for an amended license under the provisions of section 543.8 shall, as a condition to the granting of the amendment to his license, file such additional or substituted bond or such amendment to a bond already on file as will result in a bonded liability in total effect equivalent to the bonded liability which would be required if such person were applying for an original license for the storage of agricultural products of types and in amounts specified in the application for an amended license. [C24, 27, 31, §9723; C35,§9751-g5; C39,§9751.05; C46, 50, 54, §543.12]

Referred to in §§543.11, 543.13

**543.13 Form, amount, sureties, and conditions of bond.** Each bond required under section 543.12 shall be in such form and shall contain such reasonable terms and conditions for the protection of the public as the commission shall prescribe, and shall be indorsed as surety by a bonding company authorized to do business in this state.

1. If the agricultural product intended to be stored by the warehouseman, as specified in his application for a license or for an amended license, is bulk grain, the minimum amount of such bond shall be as follows:

a. For intended storage of bulk grain in any quantity less than forty thousand bushels the minimum amount of the bond shall be three thousand dollars, plus one thousand dollars for each four thousand bushels or fraction thereof in excess of twelve thousand bushels up to a total of forty thousand bushels.

b. For intended storage of bulk grain in any quantity not less than forty thousand bushels and not more than one hundred thousand bushels the minimum amount of the bond shall be ten thousand dollars, plus one thousand dollars for each six thousand bushels or fraction thereof in excess of forty thousand bushels up to a total of one hundred thousand bushels.

c. For intended storage of bulk grain in quantities not less than one hundred thousand bushels, the minimum amount of the bond shall be twenty thousand dollars, plus one thousand dollars for each ten thousand bushels or fraction thereof in excess of one hundred thousand bushels.

2. If the agricultural product or products intended to be stored by the warehouseman, as specified in his application for a license or amended license, are other than bulk grain, the quantity of such product intended to be stored shall be valued at the fair market price on the date of filing the application, and the minimum amount of bond shall be determined with reference to such value as follows:

a. For intended storage of such products of a value less than twenty thousand dollars the minimum amount of the bond shall be three thousand dollars, plus one thousand dollars for each two thousand dollars, or fraction thereof, of value in excess of six thousand dollars up to twenty thousand dollars.

b. For intended storage of such products of a value not less than twenty thousand dollars and not more than fifty thousand dollars the minimum amount of the bond shall be ten thousand dollars plus one thousand dollars for each three thousand dollars, or fraction thereof, of value in excess of twenty thousand dollars up to fifty thousand dollars.

c. For intended storage of such products of a value not less than fifty thousand dollars the minimum amount of the bond shall be twenty thousand dollars plus one thousand dollars for each five thousand dollars, or fraction thereof, of value in excess of fifty thousand dollars.

3. If the agricultural products intended to be stored by the warehouseman, as specified in his application for a license or an amended license, include both bulk grain and other agricultural products the minimum amount of the bond shall be the total of the minimum amount which would have been required for the exclusive storage of the bulk grain plus the minimum amount which would have been required for the exclusive storage of the agricultural products other than bulk grain. One bond, cumulative as to minimum requirements, may be accepted from a warehouseman oper-



ating warehouses in two or more cities or towns. [C24, 27, 31,§9725; C35,§9751-g6; C39, §9751.06; C46, 50, 54,§543.13]

Referred to in §§543.11, 543.34

**543.14 Action on bond.** Any person injured by the breach of any obligation of a warehouseman, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on such bond in his own name in any court of competent jurisdiction to recover any damages he may have sustained by reason of such breach. [C24, 27, 31,§9749; C35,§9751-g31; C39,§9751.31; C46, 50, 54,§543.14]

**543.15 Insurance required.** All agricultural products in storage in a licensed warehouse, or a warehouse operated under temporary permit as provided in this chapter, and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouseman for the current value of such agricultural products against loss by fire, inherent explosion, or windstorm. Such insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of such insurance coverage in form to be approved by the commission shall be filed with the commission. Such insurance shall be provided by, and carried in the name of, the warehouseman. Holders of licensed warehouse receipts, if any, shall have first claim against such insurance as their interests may appear, and owners, other than the warehouseman, of products not covered by licensed warehouse receipts shall have second claim against such insurance as their interests may appear. [C24, 27, 31,§9725; C35,§9751-g7; C39,§9751.07; C46, 50, 54,§543.15]

Referred to in §543.11

**543.16 License required for the storage of bulk grain.** It shall be unlawful for any person other than a licensed warehouseman to place in storage or to accept for storage any bulk grain, and it shall be unlawful for any person to place bulk grain in storage in a warehouse other than a licensed warehouse. The provisions of this section shall not apply to the acceptance and storage of bulk grain if authorized under the provisions of chapter 544. This section shall not apply to the acceptance and storage of bulk grain by a person bonded and licensed under the provisions of a federal law, if and to the extent that such person is authorized under federal law to accept and store bulk grain, but such person shall comply with all other provisions of this chapter which do not conflict with such federal law. This section shall not apply to the storage of bulk grain owned by the person storing the same. [C24, 27, 31,§9722, 9724; C35,§9751-g2; C39,§9751.02; C46, 50, 54,§543.16; 57GA, ch 251,§1]

**543.17 Acceptance of bulk grain for purposes other than storage.** Any warehouseman, whether or not licensed under the provisions of this chapter, may accept a deposit of bulk

grain for the purpose of sale to the warehouseman, for the purpose of processing and cleaning, for the purpose of shipping by the warehouseman for the account of the depositor, for purposes governed by chapter 544, or for any other purpose not inconsistent with other provisions of this chapter. Bulk grain deposited with a licensed warehouseman with instructions to hold for further instructions, or with instructions for any other disposition, may be retained by him in a licensed warehouse for a period of ten days or more provided that any retention for a period of more than nine consecutive days shall, commencing with the tenth day, be deemed to be a retention for storage pending other disposition of the bulk grain and provided further that not later than the tenth day from date of deposit of the bulk grain such licensed warehouseman shall issue warehouse receipts therefor. Any grain, which has been received at any bonded warehouse and for which the actual sale price is not fixed and payment made therefor within ten days after the receipt of said grain, is construed to be grain held in storage within the meaning of the Iowa bonded warehouse law and warehouse receipts shall be issued therefor to the depositor not later than the tenth day after the receipt thereof. Bulk grain deposited with an unlicensed warehouseman for the purpose of processing or cleaning shall be returned to the depositor or otherwise disposed of at his order within ten days from the date of deposit of the grain. Bulk grain deposited with an unlicensed warehouseman for the purpose of shipment for the account of the depositor must be actually shipped within ten days of the date of deposit of the grain. Any grain which has been received at any unlicensed warehouse, and for which the actual sale price is not fixed and payment made therefor within ten days after the receipt of said grain, is construed to be grain held in storage within the meaning of the Iowa bonded warehouse law. If bulk grain is deposited with an unlicensed warehouseman for any other purpose, except as specified in chapter 544, such grain must be returned to the depositor or otherwise disposed of at his instructions within ten days from the date of deposit of the bulk grain. If bulk grain is deposited with an unlicensed warehouseman with instructions to hold for further instructions and such instructions have not been forthcoming the warehouseman on the tenth day shall return the bulk grain to the depositor, providing that a deposit of such bulk grain in a licensed warehouse for the account of the depositor shall be deemed to be a return to the depositor, or at the election of the warehouseman, may purchase such grain on the tenth day at not less than the local market price at the close of business on such tenth day. Provided, however, that in each instance of a deposit of grain by the United States government or any subdivision or agency thereof, a period of thirty days shall be permitted in each instance where a period of ten days is above specified, and action which is specified above to be taken

on the tenth day, shall be taken on the twenty-ninth day. [C24, 27, 31, §9730; C35, §9751-g12; C39, §9751.12; C46, 50, 54, §543.17; 57GA, ch 251, §2]

**543.18 Issuance of warehouse receipts.** For all agricultural products that become storage in a licensed warehouse, warehouse receipts signed by the licensed warehouseman or his authorized agent shall be issued by the licensed warehouseman. Such warehouse receipts shall be in the form required or permitted by sections 542.2 and 542.3, provided, however, that each receipt issued for agricultural products, in addition to the matters specified in section 542.2 shall embody in its written or printed terms:

1. The delivery charge which will be made by the warehouseman.

2. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

3. A statement that the receipt is issued subject to the Iowa bonded warehouse act and the rules and regulations prescribed thereunder.

4. Such other terms and conditions as may be required by rules and regulations of the commission. [C24, 27, 31, §9736, 9737; C35, §9751-g17, 9751-g18; C39, §9751.17, 9751.18; C46, 50, 54, §543.18; 56GA, ch 254, §2]

Referred to in §543.22

**543.19 Rights and obligations with respect to warehouse receipts.** Insofar as not inconsistent with the provisions of this chapter, original or duplicate warehouse receipts issued by licensed warehousemen shall be deemed to have been issued under the provisions of chapter 542 and the provisions of sections 542.8 to 542.49, inclusive, shall be applicable to all transactions involving or incidental to the issuance, negotiation, transfer, sale, indorsement, and other dealings with or relative to such receipts, to transactions involving the delivery or other disposition of storage products, and to the rights, duties, liabilities, and privileges of licensed warehousemen and other persons dealing with such warehousemen. [C46, 50, 54, §543.19]

**543.20 Duplicate receipts.** While an original receipt issued under provisions of this chapter is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the product covered

thereby nor for any part thereof, except that in case of a lost or destroyed receipt a new receipt, shown to be a duplicate of the missing original receipt may be issued by the warehouseman. Such duplicate of original receipt shall be endowed with all rights appertaining to the original. Before issuing such duplicate receipt, if it is a negotiable receipt, the warehouseman shall require an indemnity bond that will fully protect all rights under the missing original receipt. [C24, 27, 31, §9740; C35, §9751-g23; C39, §9751.23; C46, 50, 54, §543.20]

Referred to in §543.38

**543.21 Receipts covering warehouseman's own agricultural products.** A licensed warehouseman may issue a warehouse receipt for agricultural products owned by himself, and dispose of the title to or interest in such products through the medium of such receipt. Such warehouseman, at the time of such disposition of title to or interest in such products shall be deemed to have the custody of such products in the interest of the person acquiring such title or interest, and to be the warehouseman for such products to the same degree and with the same responsibility as though the receipt had been issued against such products owned by the person acquiring such title or interest. The rights of such person acquired through such receipt shall be of the same standing as though such person had made the deposit from owned agricultural products or as the owner of a preferred interest in such products. The extent of interest or title that may be transferred through the medium of such receipt will be subordinate to the equivalent of the warehouseman's usual storage charges, and shall be superior to any and all other interests that the warehouseman may retain, or that he may transfer in any other manner whatsoever. [C35, §9751-g19; C39, §9751.19; C46, 50, 54, §543.21]

**543.22 Receipt for nonfungible products.** When requested by the depositor of other than fungible agricultural products, a receipt omitting the information specified in subsection 2 of section 543.18 may be issued if it has plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable. [C24, 27, 31, §9738; C35, §9751-g20; C39, §9751.20; C46, 50, 54, §543.22]

**543.23 Termination of storage contracts.** The owner of a receipt may terminate a storage contract at will. A storage contract shall have a forced termination:

1. On revocation of the warehouse license or permit.

2. When the warehouseman, upon taking reasonable action to so notify the commission and persons having any ownership interest in the storage product, determines that he will be unable to prevent ruinous deterioration of the products in storage, or determines that goods in storage, because of odor, leakage, inflammability, or explosive nature, will be liable to injure other property.

3. On termination or lawful cancellation of bond provided and failure of the warehouseman to immediately replace same.

4. On termination or lawful cancellation of insurance by insurance company, and failure of warehouseman to immediately replace same. [C35,§9751-g21; C39,§9751.21; C46, 50, 54,§543.23; 56GA, ch 254,§3]

Referred to in §§543.24, 543.25

**543.24 Sale of products in the event of forced termination.** In the event of forced termination of a storage contract as provided in section 543.23, the warehouseman shall provide such reasonable opportunity as the circumstances will permit for the depositor or other person entitled to delivery of the storage products to take possession of the storage product. The warehouseman, in any event, however, may take such prompt action as is necessary to minimize loss, and may sell such products immediately at the best price obtainable, the proceeds of such sale to be applied as though the sale had been held under section 543.25. The warehouseman in the event of forced termination of a storage contract shall be responsible to the depositor or to the holder of the warehouse receipt, for not less than the fair market value of the storage product on the date of forced termination of the storage contract less the lawful storage and delivery charges of the warehouseman. Warehouse receipts, if any have been issued in respect to products stored under the provisions of this chapter, shall be conclusive evidence of the kind, quantity, and quality of the products in respect to which such receipts were issued. [C24, 27, 31,§9741; C35,§9751-g24; C39,§9751.24; C46, 50, 54,§543.24]

**543.25 Sale of products on termination of storage period.** On termination of the storage period other than forced termination as defined in section 543.23, in the absence of a demand for delivery, or mutual agreement for other disposition of the stored products, the warehouseman, if the storage product be other than bulk grain, shall proceed under the provisions of section 542.33, for the satisfaction of his lien by sale. If the storage product is bulk grain the warehouseman shall proceed for the satisfaction of his lien by sale on the local market. Such sale shall be made on the day of termination of the storage period, if a market day, and if not a market day, on the next succeeding market day. The sale price of bulk grain sold under the provisions of this section shall be the best price obtainable but not less than the lowest quoted local market price on the date of the sale. [C24, 27, 31,§9741; C35,§9751-g24; C39,§9751.24; C46, 50, 54,§543.25]

Referred to in §§543.24, 543.26

**543.26 Disposition of proceeds of sale.** After deducting from the proceeds of any sale held under the provisions of section 543.25, an amount sufficient for satisfaction of the warehouseman's lien, including the reasonable charges for attorney fees, notice, advertise-

ment, and sale, if any, the warehouseman shall hold the balance, if any, for delivery on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. If delivery of such balance is not made within ten days from the date of realization thereof, the warehouseman shall pay such balance to the commission to be held by it for the account of the person entitled to such balance. Money received by the commission under the provisions of this section shall be kept in a separate account and due effort shall be made to find and pay to the person entitled thereto all such money, although at the discretion of the commission, any person receiving such money may be required as a condition of such receipt to surrender warehouse receipts or to file an indemnification bond with the commission. If the commission, within two years from the date of receipt thereof, has been unable to find and pay such money to the person or persons entitled to the same, such money shall be paid over to the treasurer of state as miscellaneous receipts. [C24, 27, 31,§9741; C35,§9751-g24; C39,§9751.24; C46, 50, 54,§543.26]

**543.27 Discrimination.** Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its authorized storage capacity permits, any product of the kind he is permitted by his license to store, and which may be tendered to him in a suitable condition for warehousing, in the usual manner and in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. [C24, 27, 31,§9729; C35,§9751-g11; C39,§9751.11; C46, 50, 54,§543.27]

**543.28 Rates.** The commission may from time to time prescribe a minimum charge for storage and a minimum delivery charge. Unless and until otherwise specified by rule of the commission, the minimum storage charge for bulk grain shall be as follows:

1. For the first four months or any part thereof, one-thirtieth of a cent per day per bushel.

2. For the next four months or any part thereof, one thirty-sixth of a cent per day per bushel.

3. Thereafter the minimum rate shall be one forty-fifth of a cent per day per bushel.

The minimum delivery charge for bulk grain shall be two cents per bushel. No delivery charge shall be made for products sold to the warehouseman whether such product has been in storage or not. The specific delivery charge herein provided shall not be mandatory as to grain received into grain elevators from railroad cars nor as to grain sold by a warehouseman and carried as storage for the purchaser.

The storage charges herein provided for shall commence on the date of issuance of the warehouse receipt. Provided, however, that a stor-

age or delivery charge other than that specified above may be made, if such charge is required by the terms of a written contract with the United States government, any of its subdivisions or agencies, providing copy of such contract is filed with the commission.

Rates for storage, conditioning of stored products and delivery charges shall be just, reasonable, and nondiscriminatory, and every unjust, unreasonable, and discriminatory charge for such services or any part thereof and not in accordance with tariffs as herein provided, is prohibited and is hereby declared to be unlawful.

It shall be the duty of every warehouseman at the time of making application for a license, to file a tariff with the commission and to publish the same, which shall contain rates to be charged for storage, conditioning of stored products, and delivery charges, such publication of tariff to be made by the applicant by posting the same in a conspicuous place at the place of business of the applicant. Such tariff shall be in a form as prescribed by the commission and shall become effective at the time the license becomes effective.

In the event that a warehouseman desires to change, alter, or amend a tariff at any time during the period in which his license is in effect, he may do so by filing a new tariff with the commission and by publishing the same by posting in a conspicuous place at his place of business at which time the new tariff shall become effective. [C24, 27, 31, §9737; C35, §9751-g18; C39, §9751.18; C46, 50, 54, §543.28]

**543.29 Separate keeping of deposits.** Every warehouseman conducting a warehouse licensed under this chapter shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited, except that, if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, except that as to grain for which nonnegotiable receipts are issued the warehouseman may deliver like kinds of grain of higher grade in such quantity as will equal in value at the warehouse the grade and quantity of grain described in the receipt. [C24, 27, 31, §9731, 9732; C35, §9751-g13; C39, §9751.13; C46, 50, 54, §543.29]

**543.30 Inspecting and grading.** Grain, flaxseed, or any other fungible agricultural product stored in a warehouse licensed under this chapter for which no separate compartment is provided, and its identity preserved, shall be inspected and graded by a person duly licensed

to grade the same. [C24, 27, 31, §9733; C35, §9751-g14; C39, §9751.14; C46, 50, 54, §543.30]

**543.31 License to classify, grade, or weigh.** The commission may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this chapter, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and certificate the weight thereof, upon condition that such person agree to comply with and abide by the terms of this chapter and of the rules and regulations prescribed hereunder so far as the same relate to him. It shall be construed that any person licensed under the United States grain standards act to grade grain is automatically licensed under the provisions of this section to render such service, and consenting to render the service will be assumed to be an agreement to abide by the terms of this chapter so far as they relate to him. In cities and towns where public weighing is prohibited by ordinance except by persons licensed or otherwise authorized by such city or town, any person so authorized if subject to regulations by the city or town will be construed to be automatically licensed under the provisions of this section, and consenting to render the service will be assumed to be an agreement to abide by the terms of this chapter so far as they relate to him. [C24, 27, 31, §9734; C35, §9751-g15; C39, §9751.15; C46, 50, 54, §543.31]

**543.32 Revocation of license to classify or weigh.** Any license issued to any person to classify or to weigh any agricultural product or products under this chapter may be suspended or revoked by the commission whenever it is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this chapter or of the rules and regulations prescribed hereunder, so far as the same may relate to him or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the commission, whenever it deems necessary, may suspend a license for not to exceed thirty days without hearing. [C24, 27, 31, §9735; C35, §9751-g16; C39, §9751.16; C46, 50, 54, §543.32]

**543.33 Fees.** The commission shall charge, assess, and cause to be collected fees as follows:

1. For each examination or inspection of a warehouse when such examination or inspection is made in connection with the commission's consideration of an application for a license to operate a warehouse, ten dollars.

2. For each examination or inspection of a licensed warehouse which has been structurally changed since issuance of the original license when such examination or inspection is made in connection with the commission's consideration of an application for an amended license, ten dollars.

3. For the renewal or extension of each license, twelve dollars.

4. For the issuance of a license, one dollar for each month or fraction thereof of the period of time for which such license is issued.

All such fees shall be paid over to the treasurer of state as miscellaneous receipts. [C24, 27, 31,§9726; C35,§9751-g9; C39,§9751.09; C46, 50, 54,§543.33]

**543.34 Use of term “bonded warehouse”.**

Upon the filing, with the approval by the commission, of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse may be designated as “bonded” but no warehouse shall be designated as “bonded” and no name or description conveying the impression that it is so bonded, shall be used, unless a bond, as provided for in section 543.13, has been approved by the commission and is uncanceled and on file with the commission, nor unless the license issued under this chapter for the conduct of such warehouse remains in effect. Every warehouseman’s license issued under the provisions of this chapter shall be conspicuously displayed in the office of the warehouse for the operation of which the license has been issued. [C24, 27, 31,§9728; C35, §9751-g10; C39,§9751.10; C46, 50, 54,§543.34]

**543.35 Licensed warehouseman to keep records.** Every licensed warehouseman operating a licensed warehouse shall keep in a place of safety complete and correct records of the storage and withdrawal of all agricultural products handled in each warehouse which he is licensed to operate, and complete records of all original and duplicate receipts issued by him, returned to him and canceled by him, which records shall be always available for inspection by the commission. [C24, 27, 31, §§9743, 9746; C35,§§9751-g26,-g28; C39,§§9751.26, 9751.28; C46, 50, 54,§543.35]

**543.36 Penalties—misdemeanor.** Every person who violates or fails to comply with any of the provisions of this chapter or to comply with any lawfully authorized order, direction, demand, or rule or regulation of the commission shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days or by both such fine and imprisonment. [C24, 27, 31,§9751; C35, §9751-g33; C39,§9751.33; C46, 50, 54,§543.36]

**543.37 Further penalties — misdemeanors.** Every person who fraudulently issues or aids

in fraudulently issuing a warehouse receipt for goods knowing it contains any false statement, every person who issues a negotiable warehouse receipt for goods owned solely or jointly by himself and does not state the fact of such ownership in such receipt, every person, except in the cases provided for in sections 542.14 and 542.36, who delivers goods out of possession of a warehouseman knowing that a negotiable receipt, the negotiating of which would transfer the right to possession of such goods, is outstanding and uncanceled, without obtaining possession of such receipt at or before the time of such delivery, and every person who deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a misdemeanor for each such offense, and upon conviction shall be punished for each such offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [C24, 27, 31,§9751; C35,§9751-g33; C39,§9751.33; C46, 50, 54,§543.37]

**543.38 Further penalties—felonies.** Every person who issues or aids in issuing a warehouse receipt knowing that the goods for which such receipt is issued have not been actually received by the warehouseman, or are not under the actual control of the warehouseman at the time of issuing such receipt, every person who issues or aids in issuing a duplicate or additional negotiable warehouse receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face of the warehouse receipt the word “duplicate”, except in the case of a lost or destroyed receipt, after proceedings as provided for in section 543.20 and every person who shall fraudulently and without proper authority use or shall falsely represent, forge, alter, counterfeit, or simulate any license issued under this chapter, shall be guilty of a felony and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [C24, 27, 31, §9751; C35,§9751-g33; C39,§9751.33; C46, 50, 54, §543.38]

Constitutionality, 50GA, ch 246,§40

## CHAPTER 544

## UNBONDED AGRICULTURAL WAREHOUSES

Referred to in §§543.16, 543.17

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**544.1 Definitions.** Wherever the words “secretary of agriculture” shall appear in this chapter it shall refer to the secretary of agriculture of the state of Iowa in charge of that department.

The word “board” shall refer to any local supervisory board of individual producers appointed by the secretary of agriculture under the provisions of this chapter.

The word “sealer” shall refer to any person whose duty it shall be under the provisions of this chapter to seal any granary, crib, bin, or other receptacle for grain.

The word “certificate” shall refer to any certificate or receipt evidencing the storage of grain under the provisions of this chapter and any rules or regulations promulgated thereunder.

The word “owner” shall refer to and include any person or persons (whether individuals, copartnerships, or corporations) who shall either personally or as guardian, trustee, administrator or executor, have title to or the right of possession of any grain stored under the provisions of this chapter.

The words “grain in storage” shall refer to any grain stored under the provisions of this chapter.

Where the word “owner” is used in this chapter, it shall be construed to be used in the same connection as the word “warehouseman” is used in the uniform warehouse act.

Where the word “certificate” is used in this chapter, it shall be construed to be used in the same connection as the word “receipt” is used in the uniform warehouse act. [C24, 27, 31, 35, 39, §9752; C46, 50, 54, §544.1]

Uniform warehouse act, ch 542

**544.2 Duties of secretary of agriculture.**

The secretary of agriculture shall have general supervision of the administration of the provisions of this chapter. He shall:

1. Make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable effectually to carry out the purposes hereof.

2. Make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins, or other receptacles as may be necessary to protect the grain to be stored therein under the provisions of this chapter.

3. Prepare and have printed under the same conditions as other state printing the necessary blanks, forms, and other printed matter and shall make such charges to persons desiring such printed matter as shall meet the cost of production thereof. [C24, 27, 31, §9790; C35, §9752-g1; C39, §9752.01; C46, 50, 54, §544.2]

**544.3 Fees of secretary of agriculture.** The secretary of agriculture shall receive for services rendered under the provisions of this chapter, three dollars, for each license issued. [C24, 27, 31, §9798; C35, §9752-g2; C39, §9752.02; C46, 50, 54, §544.3]

**544.4 Disposition of fees.** All moneys received by the secretary of agriculture from fees and other sources in connection with the administration of the provisions of this chapter shall be paid into the state treasury and may be drawn upon by him for the purposes thereof, subject to the provisions of the law applicable to disbursements by the secretary of agriculture. [C24, 27, 31, §9799; C35, §9752-g3; C39, §9752.03; C46, 50, 54, §544.4]

**544.5 Board—appointment.** A local supervisory board consisting of not less than three nor more than seven members shall be appointed by the secretary of agriculture in any county upon the application of one or more citizens as hereinafter provided for the purpose of supervising grain in storage and the issuing of certificates against such grain, and generally and under the direction of the secretary of agriculture for carrying out the purposes and enforcing the provisions of this chapter. [C24, 27, 31, §9753; C35, §9752-g4; C39, §9752.04; C46, 50, 54, §544.5]

**544.6 Application for board.** Any person may make application to the secretary of agriculture for the appointment of a board in and for the county in which he resides, or the secretary of agriculture may make such appointments upon his own initiative. When any such application is made the secretary of agriculture shall as soon as practicable investigate the situation and determine upon the advisability or otherwise of making the requested appointment. [C24, 27, 31, §9754; C35, §9752-g5; C39, §9752.05; C46, 50, 54, §544.6]

**544.7 License to board.** Upon the appointment and qualification of the members of such board the secretary of agriculture shall immediately issue a license to it, and prescribe the duties of its officers and the records they shall keep. Each license shall be numbered, and specify the territory which shall be under the jurisdiction of the board and within which certificates may be issued, and such certificates shall bear the names and the license number of the board. It shall also have printed thereon such other directions, rules, and regulations as the secretary of agriculture shall make or promulgate and deem necessary to set forth upon such license. [C24, 27, 31, §9755; C35, §9752-g6; C39, §9752.06; C46, 50, 54, §544.7]

**544.8 Name and number.** A suitable name and a number shall be given to such board by the secretary of agriculture. [C24, 27, 31, §9756; C35, §9752-g7; C39, §9752.07; C46, 50, 54, §544.8]

**544.9 Qualifications of members.** The members of such boards shall at the time of their appointment be producers of grain in the state and residents in the county thereof. [C24, 27, 31, §9757; C35, §9752-g8; C39, §9752.08; C46, 50, 54, §544.9]

**544.10 Oath of members.** Members of such boards shall qualify by taking oath similar to that required of public officials. [C24, 27, 31, §9758; C35, §9752-g9; C39, §9752.09; C46, 50, 54, §544.10]

Oath, §63.10

**544.11 Term of office — vacancies.** They shall continue in office until their successors are appointed by the secretary of agriculture. In the event of vacancies arising by reason of the resignation or upon removal from the district or death of any member or members,

such vacancies shall be filled in manner and form as in the case of original appointments. [C24, 27, 31, §9759; C35, §9752-g10; C39, §9752.10; C46, 50, 54, §544.11]

**544.12 Officers.** Each board shall elect one of its own members as its secretary-treasurer and shall also elect a president and vice-president from its own membership and their duties shall be those of such officers in similar organizations. [C24, 27, 31, §9760; C35, §9752-g11; C39, §9752.11; C46, 50, 54, §544.12]

**544.13 Bond and oath of secretary-treasurer.** Each secretary-treasurer shall furnish a corporate surety bond for the faithful performance of his duties in such amount as shall be determined by the secretary of agriculture, but in no event shall such bond be in an amount less than one thousand dollars. Such bonds shall in every case be subject to the secretary's approval and be deposited with him. The premium thereon shall be payable out of any funds in the hands of the board. [C35, §9752-g12; C39, §9752.12; C46, 50, 54, §544.13]

**544.14 Supervision fund — disbursement.** For the purposes of defraying the expenses of supervision, the owner shall pay to the board at the time of sealing, an amount which shall not exceed one cent per bushel of grain inspected and sealed by the sealer. In no case shall the cost to the owner of the grain, housed in a single warehouse, be less than one dollar, nor more than twenty dollars. Out of the fund thus created the compensation of the sealer, as fixed by the board, subject to the approval of the secretary of agriculture, and all other expenses, shall be paid. [C24, 27, 31, §9795; C35, §9752-g13; C39, §9752.13; C46, 50, 54, §544.14]

**544.15 Compensation of board members.** No compensation shall be paid to members of the board except by the express authorization and approval of the secretary of agriculture, and then only in case such payments may be made without overdrawing upon or unduly depleting the funds in the hands of the board. [C24, 27, 31, §9796; C35, §9752-g14; C39, §9752.14; C46, 50, 54, §544.15]

**544.16 Refunds—distribution to 4-H clubs.** Funds remaining in the treasury of the local warehouse board on December 31, 1950, shall be distributed by the said board to the boys and girls 4-H clubs of the county in which the board is situated under such procedure as may be approved by the secretary of agriculture.

Funds turned over to the secretary of agriculture as trustee shall be distributed to the county organization of 4-H clubs of the counties from which such funds were received. The funds due each county shall be distributed to the boys and girls 4-H clubs equally. [C35, §9752-g15; C39, §9752.15; C46, 50, 54, §544.16]

**544.17 Local sealer.** The board shall submit to the secretary of agriculture the name of some person or persons, none of whom shall be members of said board, who shall, subject

to the approval of the secretary of agriculture, act as the local sealer or sealers, and every such sealer shall have the same authority with respect to the provisions of this chapter and the rules and regulations promulgated thereunder, and the enforcement thereof, as any officer of the peace. [C24, 27, 31, §9762; C35, §9752-g16; C39, §9752.16; C46, 50, 54, §544.17]

**544.18 Bond and oath of sealer.** Each sealer shall furnish a corporate surety bond for the faithful performance of his duties in such amount as shall be determined by the secretary of agriculture, but in no event shall such bond be in an amount less than one thousand dollars. Such bonds shall in every case be subject to the secretary's approval and be deposited with him, the premium thereon shall be payable out of any funds in the hands of the board. Such sealer shall also qualify by taking an oath similar to that required of public officials. [C24, 27, 31, §9763; C35, §9752-g17; C39, §9752.17; C46, 50, 54, §544.18]

**544.19 Duties of sealer.** It shall be the duty of the sealer under the direction of the secretary of agriculture to:

1. Supervise the storage of grain.
2. Ascertain the amount stored by each owner who shall desire to avail himself of the provisions of this chapter.
3. Determine, so far as possible, the grade and quality thereof.
4. Ascertain, prior to the issuance of any certificate, and/or certificate of reinspection that the granary, crib, bin, or other receptacle in which the grain is stored is satisfactory for the storage of such grain, and that such receptacle conforms to the regulations applicable thereto promulgated by the secretary of agriculture.

He shall, before delivering certificate and/or certificate of reinspection to the owner, ascertain that there are no other certificates outstanding upon the grain, and shall seal the granary, crib, bin, or other receptacle in which the grain is stored in the manner hereinafter provided, and thereafter make periodic inspections of the granaries, cribs, bins, or other receptacles so sealed at such times and in such manner as the secretary of agriculture may determine, but in no event less frequently than ninety-day intervals, rendering to the secretary of agriculture with reference to each such subsequent inspection, and to the owner when requested, report or affidavit, in such form as may be required, in regard to the amount and condition of the grain under seal and the condition of the structure within which it is stored.

The sealer shall at the request of any borrower, issue a certificate of reinspection on forms prescribed by the secretary of agriculture for the purpose of enabling said borrower to obtain the renewal or extension of an outstanding obligation secured by the pledge of a farm warehouse certificate. The fees for such reinspection shall be determined and collected in the same manner as hereinbefore provided for original sealing fees. [C24, 27, 31, §9764; C35, §9752-g18; C39, §9752.18; C46, 50, 54, §544.19]

**544.20 Right to enter premises.** The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or the granary, crib, bin, or other receptacle in which it shall have been stored, and the acceptance of a certificate by the owner shall be deemed consent to entry and inspection by the sealer or any person duly authorized thereunto by the secretary of agriculture. [C24, 27, 31, §9765; C35, §9752-g19; C39, §9752.19; C46, 50, 54, §544.20]

**544.21 Fees of sealer.** In the exercise of his powers and functions as an officer of the peace in connection with the provisions of this chapter, the sealer may, at the discretion of the board, be entitled to the same fees as are provided by law for the performance of similar duties. [C24, 27, 31, §9797; C35, §9752-g20; C39, §9752.20; C46, 50, 54, §544.21]

**544.22 Seals and locks.** Seals, locks, or other fastenings employed shall be in accordance with specifications furnished by the secretary of agriculture. [C24, 27, 31, §9766; C35, §9752-g21; C39, §9752.21; C46, 50, 54, §544.22]

**544.23 Unlawful breaking of seals.** Any person unlawfully removing, breaking, or in any manner interfering or tampering with any seal, lock, or other fastening placed upon any granary, crib, bin, or other receptacle for grain under the provisions of this chapter, except when such removal shall be rendered imperative to prevent the damage, loss, or destruction of grain stored therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [C24, 27, 31, §9800; C35, §9752-g22; C39, §9752.22; C46, 50, 54, §544.23]

**544.24 Delivery without obtaining certificates.** An owner, or any officer, agent, or servant of an owner, who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and unanceled, without obtaining the possession of such certificate at or before the time of such delivery, shall, except when ordered by the court, as hereinbefore provided, be found guilty of a misdemeanor, and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [C24, 27, 31, §9803; C35, §9752-g23; C39, §9752.23; C46, 50, 54, §544.24]

**544.25 Unlawful sale, mortgage, or encumbrance.** Any owner who shall, after the issuance of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate, or otherwise encumber, or attempt to take, sell, mortgage, pledge, or otherwise encumber the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of



a misdemeanor and upon conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than one year, or be punished by both such fine and imprisonment. [C24, 27, 31, §9804; C35, §9752-g24; C39, §9752.24; C46, 50, 54, §544.25]

**544.26 Uniform warehouse receipts law.** All the provisions in the uniform warehouse receipts law as found in chapter 542, and as set forth in sections 542.9 to 542.48, inclusive, relative to the negotiation, transfer, sale, or indorsement of warehouse receipts shall, so far as possible, apply to the negotiation, transfer, sale, or indorsement of the certificates provided for herein. [C24, 27, 31, §9805; C35, §9752-g25; C39, §9752.25; C46, 50, 54, §544.26]

**544.27 Certificates—form and contents.** Certificates shall be upon forms prepared by the secretary of agriculture, and every such certificate must embody within its written or printed terms:

1. The name and license number of the board under which such certificate is issued.
2. The consecutive number of the certificate.
3. The date of issue of the certificate.
4. A particular description of the granary, bin, crib, or other receptacle in which the grain is stored, and of the premises upon which it is located.
5. A description of the grain.
6. The name of the owner or owners, whether ownership is sole, joint, or in trust, and the conditions of such ownership, and in the case of tenants the date of termination of the lease.
7. A statement of any loans or other indebtedness made to or owing by the owner which in any manner constitutes a lien, whether statutory or contractual, including both mortgage and landlord's liens, upon the grain, which statement shall be signed by the owner or his agent.
8. A form of waiver of liens which may be signed by the lienholder.
9. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order, and at what place it will be delivered.
10. A facsimile signature of the secretary of agriculture, and the countersignature of the sealer.
11. If the owner is married, a waiver by the spouse of any claim of exemption and a consent to the instrument.
12. Statement that no other certificates are outstanding on the grain represented thereby. [C24, 27, 31, §9767; C35, §9752-g26; C39, §9752.26; C46, 50, 54, §544.27]

**544.28 Amount of certificates.** The sealer shall issue to the owner one or more certificates as herein provided, but the aggregate amount

of the grain represented by such certificate or certificates shall in no event exceed the amount of grain stored and sealed by the sealer and each certificate shall cover a separate granary, crib, or bin. [C24, 27, 31, §9769; C35, §9752-g27; C39, §9752.27; C46, 50, 54, §544.28]

**544.29 Prohibited terms in certificate.** No term or condition shall be inserted in any certificate, whether negotiable or otherwise, which shall in any manner purport to relieve the owner from exercising that degree of care in the safekeeping of the grain in storage which a reasonably prudent man would exercise with regard to similar property of his own. [C24, 27, 31, §9768; C35, §9752-g28; C39, §9752.28; C46, 50, 54, §544.29]

**544.30 Fraudulent issuance of certificates.** An owner, the agent, or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [C24, 27, 31, §9801; C35, §9752-g29; C39, §9752.29; C46, 50, 54, §544.30]

**544.31 Issuance of duplicate certificates.** An owner, or any officer, agent, or servant of any owner, who issues or aids in issuing a duplicate or additional negotiable certificate for grain, knowing that a former negotiable certificate for the same grain, or any part of it, is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost or destroyed certificate after proceedings as provided for in section 544.44, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [C24, 27, 31, §9802; C35, §9752-g30; C39, §9752.30; C46, 50, 54, §544.31]

**544.32 "Board duplicate" certificates.** The sealer shall file with the secretary of the board a duplicate of all certificates delivered by him, and the secretary shall keep an accurate record thereof in a book provided by the secretary of agriculture for the purpose. Such duplicates shall have plainly printed upon the face thereof, "board duplicate, no value". [C24, 27, 31, §9770; C35, §9752-g31; C39, §9752.31; C46, 50, 54, §544.32]

**544.33 Nonnegotiable certificates.** A certificate in which it is stated that the grain stored shall be released or delivered to the owner, or to any other specified person, is a nonnegotiable certificate. [C24, 27, 31, §9772; C35, §9752-g32; C39, §9752.32; C46, 50, 54, §544.33]

**544.34 Marking of certificates.** A nonnegotiable certificate shall have plainly printed or

written upon its face, "nonnegotiable" or "not negotiable". [C24, 27, 31, §9773; C35, §9752-g33; C39, §9752.33; C46, 50, 54, §544.34]

**544.35 Negotiable certificates.** A certificate in which it is stated that the grain stored will be delivered to the bearer, or to the order of any person named in such certificate, is a negotiable certificate. No provision shall be inserted in a negotiable certificate that it is nonnegotiable. Such provisions, if inserted, shall be void. [C24, 27, 31, §9774; C35, §9752-g34; C39, §9752.34; C46, 50, 54, §544.35]

**544.36 Duplicate certificate—filing with recorder.** Before or at the time the owner negotiates the original warehouse certificate he shall file or cause to be filed a duplicate copy of said certificate in the office of the county recorder of the county in which the grain is located, which duplicate shall remain in the custody of the recorder except as hereinafter provided.

Said owner shall then deliver to the assignee said original certificate bearing the stamp of the county recorder, showing the date, time, and number of filing the duplicate thereof. [C24, 27, 31, §9775; C35, §9752-g35; C39, §9752.35; C46, 50, 54, §544.36]

**544.37 Indexing by recorder.** When a duplicate is filed in the office of the recorder, he shall index the same in the chattel mortgage index or other suitable index book showing date of the certificate, the number thereof, to whom issued, kind, quantity, and location of the grain and stamp the original thereof showing the date, time, and number of filing. He shall collect fifty cents for each certificate indexed. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage. [C24, 27, 31, §9776; C35, §9752-g36; C39, §9752.36; C16, 50, 54, §544.37]

**544.38 Record of assignment.** When the owner or holder of a certificate makes written assignment thereof after said instrument is filed, the recorder shall on request of the assignee enter a copy of such assignment upon the duplicate in his office, and enter upon his index book the date of the assignment and the names of the assignor and the assignee. He shall collect twenty-five cents for each such assignment entered. [C24, 27, 31, §9777; C35, §9752-g37; C39, §9752.37; C46, 50, 54, §544.38]

**544.39 Release of certificates.** The owner may secure the cancellation of a certificate by delivering the original to the secretary of agriculture or secretary of the local board, through which it was issued with the request that it be canceled. The secretary of agriculture or secretary of the local board shall stamp the original "canceled", with the date of such cancellation and retain same. Upon notice in writing from the secretary of agriculture or the secretary of the local board through which the certificate was issued that it has been canceled, the county recorder shall release the

duplicate filed of record without charge. [C35, §9752-g38; C39, §9752.38; C46, 50, 54, §544.39]

**544.40 Duty to deliver.** The owner shall, in the absence of some lawful excuse provided by this chapter, deliver the grain stored upon demand made by the holder of a certificate for the grain, or for such part thereof as is represented by the certificate if such demand is accompanied by:

1. A showing that all such liens as may appear upon the certificate and which shall subsist upon the date of the demand have been waived or satisfied.

2. An offer to surrender the certificate if negotiable, with such indorsements as would be necessary for the negotiation of certificate.

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the owner. [C24, 27, 31, §9783; C35, §9752-g39; C39, §9752.39; C46, 50, 54, §544.40]

**544.41 Refusing to deliver—burden of proof.** In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal. [C24, 27, 31, §9784; C35, §9752-g40; C39, §9752.40; C46, 50, 54, §544.41]

**544.42 Right of owner.** The privileges of this chapter shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board. [C24, 27, 31, §9761; C35, §9752-g41; C39, §9752.41; C46, 50, 54, §544.42]

**544.43 Right of appeal.** Any owner aggrieved by any ruling or decision of the board may appeal to the secretary of agriculture whose decision shall be final. [C24, 27, 31, §9791; C35, §9752-g42; C39, §9752.42; C46, 50, 54, §544.43]

**544.44 Procedure in case of complaints.** If any person shall feel aggrieved by any action of the board or of the sealer or any other official, he may submit his complaint in writing to the secretary of agriculture and the secretary of agriculture shall, as soon thereafter as possible, set the matter down for hearing before himself or one of his deputies, at such place as shall be desirable and proper, having regard to the character of the controversy and the locality of the grain and residence of the parties involved. Likewise, the board may present to the secretary of agriculture any proper complaint against any owner and the procedure shall be as nearly as practicable the same as that in the case of charges filed by owners. [C24, 27, 31, §9792; C35, §9752-g43; C39, §9752.43; C46, 50, 54, §544.44]

Referred to in §544.31

**544.45 Orders—correction of abuses.** The secretary of agriculture shall, upon final hear-

ing, make and enter such orders as he shall deem proper for the correction of improper practices, and may suspend the license of the board offending until such orders are obeyed. But such suspension shall in no manner relieve the board or the owners of any liability previously incurred under the provisions of this chapter. [C24, 27, 31, §9793; C35, §9752-g44; C39, §9752.44; C46, 50, 54, §544.45]

**544.46 Costs of hearings.** The costs and expenses of such hearings shall be defrayed by the parties thereto, and shall be apportioned by the secretary of agriculture in such manner as he shall deem just and equitable. [C24, 27, 31, §9794; C35, §9752-g45; C39, §9752.45; C46, 50, 54, §544.46]

CHAPTER 545

LIMITED PARTNERSHIP LAW

Referred to in §§422.15, 422.32

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- 545.55 Impairment of contracts.
- 545.56 Rules for cases not provided for.
- 545.57 Existing limited partnerships converted.
- 545.58 Existing limited partnership continued.

**545.1 "Limited partnership" defined.** A limited partnership is a partnership formed by two or more persons under the provisions of this chapter, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. [C24, 27, 31, 35, 39, §9806; C46, 50, 54, §545.1]

**545.2 Formation.** Two or more persons desiring to form a limited partnership shall sign and acknowledge a certificate and file the same for record in the office of the county recorder of the county in which the principal place of business is located. The same shall be recorded in the miscellaneous records and indexed in the names of all the signers, both as grantors and grantees. Said certificate shall state:

1. The name of the partnership.
2. The character of the business.

3. The location of the principal place of business.

4. The name and place of residence of each member; general and limited partners being respectively designated.

5. The term for which the partnership is to exist.

6. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.

7. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

8. The time, if agreed upon, when the contribution of each limited partner is to be returned.

9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

10. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

11. The right, if given, of the partners to admit additional limited partners.

12. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

13. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner.

14. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution. [C24, 27, 31, 35, 39, §9807; C46, 50, 54, §545.2]

Referred to in §§545.3, 545.46, 545.57

**545.3 Sufficiency of certificate.** A limited partnership is formed if there has been substantial compliance in good faith with the requirements of section 545.2. [C24, 27, 31, 35, 39, §9808; C46, 50, 54, §545.3]

Referred to in §545.57

**545.4 Business which may be carried on.** A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking. [C24, 27, 31, 35, 39, §9809; C46, 50, 54, §545.4]

**545.5 Nature of contribution.** The contributions of a limited partner may be cash or other property, but not services. [C24, 27, 31, 35, 39, §9810; C46, 50, 54, §545.5]

**545.6 Partnership name.** The surname of a limited partner shall not appear in the partnership name:

1. Unless it is also the surname of a general partner, or

2. Unless, prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared. [C24, 27, 31, 35, 39, §9811; C46, 50, 54, §545.6]

Referred to in §545.7

**545.7 Violation—effect.** A limited partner whose name appears in a partnership name contrary to the provisions of section 545.6 is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. [C24, 27, 31, 35, 39, §9812; C46, 50, 54, §545.7]

**545.8 Liability for false statements.** If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

1. At the time he signed the certificate, or

2. Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to

file a petition for its cancellation or amendment as hereinafter provided. [C24, 27, 31, 35, 39, §9813; C46, 50, 54, §545.8]

Referred to in §545.35

**545.9 Limited partner not liable to creditors.**

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. [C24, 27, 31, 35, 39, §9814; C46, 50, 54, §545.9]

**545.10 Additional limited partners.** After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of sections 545.46 to 545.51, inclusive. [C24, 27, 31, 35, 39, §9815; C46, 50, 54, §545.10]

**545.11 Rights, powers, and liabilities.** A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority:

1. To do any act in contravention of the certificate.

2. To do any act which would make it impossible to carry on the ordinary business of the partnership.

3. To confess a judgment against the partnership.

4. To possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

5. To admit a person as a general partner.

6. To admit a person as a limited partner, unless the right so to do is given in the certificate.

7. To continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate. [C24, 27, 31, 35, 39, §9816; C46, 50, 54, §545.11]

**545.12 Rights of limited partners.** A limited partner shall have the same rights as a general partner:

1. To have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

2. To have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable.

3. To have dissolution and winding up by decree of court. [C24, 27, 31, 35, 39, §9817; C46, 50, 54, §545.12]

**545.13 Right to receive profits and income.**

A limited partner shall have the right to

receive a share of the profits or other compensation by way of income, and to the return of his contribution as hereinafter provided. [C24, 27, 31, 35, 39,§9818; C46, 50, 54,§545.13]

**545.14 Mistake—effect.** A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. [C24, 27, 31, 35, 39,§9819, C46, 50, 54,§545.14]

**545.15 One person both general and limited.** A person may be a general partner and a limited partner in the same partnership at the same time. [C24, 27, 31, 35, 39,§9820; C46, 50, 54,§545.15]

**545.16 Partner holding dual relation.** A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contributions, he shall have the rights against the other members which he would have had if he were not also a general partner. [C24, 27, 31, 35, 39,§9821; C46, 50, 54,§545.16]

**545.17 Transactions with limited partner.** A limited partner may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner, in respect to any such claim, shall:

1. Receive or hold as collateral security any partnership property.

2. Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners. [C24, 27, 31, 35, 39,§9822; C46, 50, 54,§545.17]

Referred to in §545.18

**545.18 Violation—effect.** The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of section 545.17 is a fraud on the creditors of the partnership. [C24, 27, 31, 35, 39,§9823; C46, 50, 54,§545.18]

**545.19 Relation of limited partners inter se.** Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way

of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. [C24, 27, 31, 35, 39,§9824; C46, 50, 54,§545.19]

**545.20 Compensation of limited partner.** A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. [C24, 27, 31, 35, 39,§9825; C46, 50, 54,§545.20]

**545.21 Withdrawal of contribution.** A limited partner shall not receive from a general partner or out of partnership property any part of his contribution:

1. Until all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

2. Until the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of section 545.22.

3. Until the certificate is canceled or so amended as to set forth the withdrawal or reduction. [C24, 27, 31, 35, 39,§9826; C46, 50, 54,§545.21]

Referred to in §§545.22, 545.24

**545.22 Return of contribution.** Subject to the provisions of section 545.21, a limited partner may rightfully demand the return of his contribution:

1. On the dissolution of a partnership.

2. When the date specified in the certificate for its return has arrived.

3. After he has given six months notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership. [C24, 27, 31, 35, 39,§9827; C46, 50, 54,§545.22]

Referred to in §545.21

**545.23 Contribution payable in cash.** In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution. [C24, 27, 31, 35, 39,§9828; C46, 50, 54,§545.23]

**545.24 Dissolution.** A limited partner may have the partnership dissolved and its affairs wound up:

1. When he rightfully but unsuccessfully demands the return of his contribution, or

2. When the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subsection 1 of section 545.21 and the limited partner would otherwise be entitled to the return of his contribution. [C24, 27, 31, 35, 39,§9829; C46, 50, 54,§545.24]

**545.25 Liability of limited partner.** A limited partner is liable to the partnership:

1. For the difference between his contribution as actually made and that stated in the certificate as having been made.

2. For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate. [C24, 27, 31, 35, 39,§9830; C46, 50, 54,§545.25]

Referred to in §§545.28, 545.35

**545.26 Limited partner held as trustee.** A limited partner holds as trustee for the partnership:

1. Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned.

2. Money or other property wrongfully paid or conveyed to him on account of his contribution. [C24, 27, 31, 35, 39,§9831; C46, 50, 54, §545.26]

Referred to in §§545.28, 545.35

**545.27 Continuing liability of limited partner.** When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. [C24, 27, 31, 35, 39,§9832; C46, 50, 54,§545.27]

Referred to in §§545.28, 545.35

**545.28 Liability of limited partner—waiver.** The liabilities of a limited partner as set forth in sections 545.25 to 545.27, inclusive, can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities. [C24, 27, 31, 35, 39,§9833; C46, 50, 54,§545.28]

Referred to in §545.35

**545.29 Limited partner's interest in partnership.** A limited partner's interest in the partnership is personal property, and is assignable. [C24, 27, 31, 35, 39,§9834; C46, 50, 54,§545.29]

**545.30 Substituted limited partner.** A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership. [C24, 27, 31, 35, 39,§9835; C46, 50, 54, §545.30]

**545.31 Rights of assignee.** An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled. [C24, 27, 31, 35, 39,§9836; C46, 50, 54,§545.31]

**545.32 Assignee's right.** An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right. [C24, 27, 31, 35, 39,§9837; C46, 50, 54,§545.32]

**545.33 When assignee limited partner.** An assignee becomes a substituted limited partner when the certificate is appropriately amended as hereinafter provided. [C24, 27, 31, 35, 39, §9838; C46, 50, 54,§545.33]

**545.34 Right of substituted limited partner.** The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate. [C24, 27, 31, 35, 39,§9839; C46, 50, 54, §545.34]

**545.35 Liability of assignor.** The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 545.8 and 545.25 to 545.28, inclusive. [C24, 27, 31, 35, 39,§9840; C46, 50, 54,§545.35]

**545.36 Effect of retirement, death, or insanity.** The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

1. Under a right so to do stated in the certificate, or

2. With the consent of all members. [C24, 27, 31, 35, 39,§9841; C46, 50, 54,§545.36]

Referred to in §545.45

**545.37 Death of limited partner.** On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner. [C24, 27, 31, 35, 39,§9842; C46, 50, 54, §545.37]

**545.38 Liability of estate of limited partner.** The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. [C24, 27, 31, 35, 39,§9843; C46, 50, 54, §545.38]

**545.39 Rights of creditors of limited partner.** On due application to a court of compe-

tent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require. The remedies conferred by this section shall not be deemed exclusive of others which may exist. [C24, 27, 31, 35, 39,§9844; C46, 50, 54, §545.39]

**545.40 Redemption.** The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property. [C24, 27, 31, 35, 39, §9845; C46, 50, 54,§545.40]

**545.41 Exemptions.** Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. [C24, 27, 31, 35, 39, §9846; C46, 50, 54,§545.41]

**545.42 Distribution of assets.** In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

1. Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.
2. Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.
3. Those to limited partners in respect to the capital of their contributions.
4. Those to general partners other than for capital and profits.
5. Those to general partners in respect to profits.
6. Those to general partners in respect to capital. [C24, 27, 31, 35, 39,§9847; C46, 50, 54, §545.42]

**545.43 Share in partnership assets.** Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of such claims. [C24, 27, 31, 35, 39,§9848; C46, 50, 54,§545.43]

**545.44 Cancellation of certificate.** The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such. [C24, 27, 31, 35, 39,§9849; C46, 50, 54, §545.44]

**545.45 Amendment of certificate.** A certificate shall be amended:

1. When there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.
2. When a person is substituted as a limited partner.

3. When an additional limited partner is admitted.

4. When a person is admitted as a general partner.

5. When a general partner retires, dies, or becomes insane, and the business is continued under section 545.36.

6. When there is a change in the character of the business of the partnership.

7. When there is a false or erroneous statement in the certificate.

8. When there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

9. When a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate.

10. When the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them. [C24, 27, 31, 35, 39,§9850; C46, 50, 54,§545.45]

**545.46 Requirements for amendment.** The writing to amend a certificate shall:

1. Conform to the requirements of section 545.2 as far as necessary to set forth clearly the change in the certificate which it is desired to make.

2. Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner. [C24, 27, 31, 35, 39,§9851; C46, 50, 54,§545.46]

Referred to in §§545.10, 545.48, 545.50, 545.51

**545.47 Requirement for cancellation.** The writing to cancel a certificate shall be signed by all members. [C24, 27, 31, 35, 39,§9852; C46, 50, 54,§545.47]

Referred to in §§545.10, 545.48, 545.50, 545.51

**545.48 Petition for cancellation or amendment.** A person desiring the cancellation or amendment of a certificate may petition the district court to direct a cancellation or amendment in those cases where any person designated in sections 545.46 and 545.47 as a person who must execute the writing, refuses to do so. [C24, 27, 31, 35, 39,§9853; C46, 50, 54,§545.48]

Referred to in §§545.10, 545.51

**545.49 Order of court.** If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county recorder in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment. [C24, 27, 31, 35, 39,§9854; C46, 50, 54,§545.49]

Referred to in §§545.10, 545.50, 545.51

**545.50 Consummation of cancellation.** A certificate is amended or canceled when there is filed for record in the office of the county recorder:

1. A writing in accordance with the provisions of sections 545.46 or 545.47, or

2. A certified copy of the order of court in accordance with the provisions of section 545.49. [C24, 27, 31, 35, 39,§9855; C46, 50, 54, §545.50]

Referred to in §§545.10, 545.51

**545.51 Amended certificate.** After the certificate is duly amended in accordance with sections 545.46 to 545.50, inclusive, the amended certificate shall thereafter be for all purposes the certificate provided for by this statute. [C24, 27, 31, 35, 39,§9856; C46, 50, 54,§545.51]

Referred to in §545.10

**545.52 Parties to actions.** A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. [C24, 27, 31, 35, 39,§9857; C46, 50, 54,§545.52]

**545.53 Name of law.** This law may be cited as the "Uniform Limited Partnership Act". [C24, 27, 31, 35, 39,§9858; C46, 50, 54,§545.53]

**545.54 Rules of construction.** This law shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it. [C24, 27, 31, 35, 39, §9859; C46, 50, 54,§545.54]

**545.55 Impairment of contracts.** This law shall not be so construed as to impair the

obligations of any contract existing when said law goes into effect, nor to affect any action or proceedings begun or right accrued before it takes effect. [C24, 27, 31, 35, 39,§9860; C46, 50, 54,§545.55]

**545.56 Rules for cases not provided for.** In any case not provided for in this statute the rules of law and equity shall govern. [C24, 27, 31, 35, 39,§9861; C46, 50, 54,§545.56]

**545.57 Existing limited partnerships converted.** A limited partnership formed under any statute of this state prior to the adoption of this chapter, may become a limited partnership hereunder by complying with the provisions of sections 545.2 and 545.3; provided the certificate sets forth:

1. The amount of the original contribution of each limited partner, and the time when the contribution was made.

2. That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners. [C24, 27, 31, 35, 39,§9862; C46, 50, 54, §545.57]

**545.58 Existing limited partnership continued.** A limited partnership formed under any statute of this state prior to the adoption of this chapter, until or unless it becomes a limited partnership hereunder, shall continue to be governed by the provisions of such statute except that such partnership shall not be renewed unless so provided in the original agreement. [C24, 27, 31, 35, 39,§9863; C46, 50, 54,§545.58]

## CHAPTER 546

### AUCTIONEERS

546.1 License may be issued.

546.2 Repealed by 57GA, ch 252,§2.

**546.1 License may be issued.** The county board of supervisors may license any person in its county as an auctioneer for hire, which license, while unexpired, shall be effective any place in the state of Iowa. Such license shall be issued by the county auditor and shall authorize the licensee to conduct the business of an auctioneer for hire for a period of one year. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars. Provided, that a resident of another state may be licensed as an auctioneer in Iowa upon complying with the laws

546.3 Exceptions.

of the state of Iowa relating to the issuance of auctioneers' licenses. [C24, 27, 31, 35, 39,§9864; C46, 50, 54,§546.1; 57GA, ch 252,§1]

Referred to in §546.3

**546.2** Repealed by 57GA, ch 252,§2. See §546.1.

**546.3 Exceptions.** The provisions of section 546.1 shall not be applicable to sales of property under direction or authority of any chattel mortgage, court, or process thereof. [C24, 27, 31, 35, 39,§9866; C46, 50, 54,§546.3]



CHAPTER 546A  
PUBLIC AUCTIONS

See §554.22

546A.1 License required.  
546A.2 Application.  
546A.3 Bond.  
546A.4 Fee.  
546A.5 Issuance of license.

546A.6 Inventory.  
546A.7 Definitions.  
546A.8 Exemptions.  
546A.9 Penalties.

**546A.1 License required.** It shall be unlawful for any person, firm or corporation to sell, dispose of, or offer for sale at public auction at any place outside the limits of any city or town in the state of Iowa, or within the limits of any city or town in the state of Iowa that has not by ordinance enacted pursuant to the provisions of section 368.6 provided for the licensing of sales by auction, any new merchandise, unless such person, firm or corporation and the owners of such merchandise, if it is not owned by the vendors, shall have first secured a license as herein provided and shall have complied with the regulations hereinafter set forth. [C54,§546A.1]

**546A.2 Application.** Any person, firm or corporation desiring such license shall, at least ten days prior to such proposed auction sale, file with the board of supervisors of the county wherein it is proposed to hold such auction sale, an application in writing duly verified by the person, firm or corporation proposing to sell, dispose of or offer for sale any new merchandise at public auction, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm or corporation making the application, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be.

2. The name, residence and post-office address of the auctioneer who will conduct such auction sale.

3. A detailed inventory and description of all such new merchandise to be offered for sale at such auction which inventory shall set forth the cost to the applicant of the several items contained in such inventory.

4. Whether or not the sale at public auction shall be with or without reservation. [C54, §546A.2]

**546A.3 Bond.** At the time of filing said application, and as a part thereof, the applicant shall file and deposit with the board of supervisors a bond, with sureties to be approved by the board of supervisors, in the penal sum of two times the value of the merchandise proposed to be offered for sale at such auction as shown by the inventory filed, running to the state of Iowa, and for the use and benefit of any purchaser of any merchandise at such auction who might have a cause of action of any nature arising from or out of such auction sale against the auctioneer or

applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any department or subdivision thereof, the payment of any fines that may be assessed by any court against the applicant or auctioneer for violation of the provisions of this chapter, and the satisfaction of all causes of actions commenced within one year from date of such auction sale and arising therefrom, provided, however, that the aggregate liability of the surety for all said taxes, fines and causes of action shall in no event exceed the sum of such bond.

In such bond the applicant and the surety shall appoint the chairman of the board of supervisors of the county in which such bond is filed, the agent of the applicant and the surety for the service of process. In the event of such service, the agent on whom such service is made shall, within five days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction.

Such bond shall contain the consent of the applicant and surety that the district court of the county wherein the application and bond is filed shall have jurisdiction of all actions arising against the applicant or surety, or both, arising out of said sale.

The state of Iowa or any subdivision thereof, or any person having a cause of action against the applicant arising out of the sale of such new merchandise may join the applicant and the surety on such bond in the same action, or may in such action sue either such applicant or the surety alone. [C54,§546A.3]

**546A.4 Fee.** At the time of filing said application and bond the applicant shall pay to the county treasurer a license fee in the sum of twenty-five dollars for each day it is proposed to hold such auction sale as shown by the application for such license. [C54,§546A.4]

**546A.5 Issuance of license.** Upon the filing of such application and after the applicant has fully complied with all the provisions of this chapter, the board of supervisors, by its chairman, shall issue to the applicant a license authorizing the holding of such auction sale as proposed in said application. Such license shall not be transferable, and shall be valid only in the county where issued, and shall not be valid in any town or city in such county

which has enacted an ordinance pursuant to section 368.6. [C54,§546A.5]

**546A.6 Inventory.** Within ten days after the last day of said auction the applicant shall file in duplicate with the board of supervisors an inventory of all merchandise sold at such auction and the price received therefor which said inventory shall be verified. The chairman of the board of supervisors shall, immediately after receiving such report and inventory, forward a copy thereof to the state tax commission. [C54,§546A.6]

**546A.7 Definitions.** "New merchandise" as used in this chapter shall mean all merchandise not previously sold at retail. "Auction sale" as used in this chapter shall mean the offering for sale or selling of personal property to the highest bidder or offering for sale or selling of personal property at a high price and then offering the same at successive lower prices until a buyer is secured. [C54,§546A.7]

**546A.8 Exemptions.** The provisions of this chapter shall not extend to the sale at public

auction of livestock, farm machinery or farm produce or other items commonly sold at farm sales, or to auction sales of new merchandise which was assessed personal property tax or is replacement stock of merchandise inventory which was assessed personal property tax in the county in which the sale is to be had, and to auction sales under the direction of any court or court officers of such sales as may be required by law. [C54,§546A.8; 56GA, ch 255, §1]

**546A.9 Penalties.** Any person who shall offer new merchandise for sale at public auction without first securing a license as herein provided, or who shall offer for sale new merchandise different from that shown by, or in excess of the amount and value of, the inventories filed with the application for license, shall be guilty of a misdemeanor and may be punished by a fine not to exceed three hundred dollars or by imprisonment in the county jail not to exceed ninety days. [C54,§546A.9]

Constitutionality, 56GA, ch 239,§10

### CHAPTER 547

#### CONDUCTING BUSINESS UNDER TRADE NAME

- 547.1 Use of trade name—verified statement required.
- 547.2 Change in statement.

- 547.3 Fee for recording.
- 547.4 Penalty.
- 547.5 "Offense" defined.

**547.1 Use of trade name—verified statement required.** It shall be unlawful for any person or copartnership to engage in or conduct a business under any trade name, or any assumed name of any character other than the true surname of each person or persons owning or having any interest in such business, unless such person or persons shall first file with the county recorder of the county in which the business is to be conducted a verified statement showing the name, post-office address, and residence address of each person owning or having any interest in the business, and the address where the business is to be conducted. [C27, 31, 35,§9866-a1; C39,§9866.1; C46, 50, 54, §547.1]

41GA, ch 183,§1, editorially divided  
Signing in trade name, §541.18

**547.2 Change in statement.** A like verified statement shall be filed of any change in ownership of the business, or persons interested therein, and the original owners shall be liable

for all obligations until such certificate of change is filed. [C27, 31, 35,§9866-a2; C39, §9866.2; C46, 50, 54,§547.2]

**547.3 Fee for recording.** The county recorder shall be entitled to charge and receive a fee of one dollar for each verified statement filed under the provisions of this chapter. [C46, 50, 54,§547.3]

**547.4 Penalty.** Any person violating the provisions of this chapter shall, upon conviction, be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding thirty days. [C27, 31, 35,§9866-a3; C39,§9866.3; C46, 50, 54,§547.4]

41GA, ch 183,§2, editorially divided

**547.5 "Offense" defined.** Each day that any person or persons violate the provisions of this chapter shall be deemed to be a separate and distinct offense. [C27, 31, 35,§9866-a4; C39, §9866.4; C46, 50, 54,§547.5]

## CHAPTER 548

## REGISTRATION OF TRADE-MARKS, LABELS, AND ADVERTISEMENTS

Record of trade-marks, §713.18 et seq.

- |   |                                   |
|---|-----------------------------------|
| 548.1 Registration.                       | 548.7 Injunction.                 |
| 548.2 Certification of registration—fees. | 548.8 Damages and general relief. |
| 548.3 Prima-facie proof of right to use.  | 548.9 Persons entitled to sue.    |
| 548.4 Alterations—registration.           | 548.10 Unlawful use.              |
| 548.5 Assignment.                         | 548.11 Penalty.                   |
| 548.6 Expiration of registration—renewal. |                                   |

**548.1 Registration.** Every person, firm, association, or corporation that has heretofore adopted or shall hereafter adopt for their protection any label, trade-mark, or form of advertisement, may file the same for record in the office of the secretary of state by leaving two copies, counterparts, or facsimiles thereof with the secretary of state. Said label, trade-mark, or form of advertisement shall be of a distinctive character and not of the identical form or in any near resemblance to any label, trade-mark, or form of advertisement previously filed for record in the office of the secretary of state. [C97,§5049; C24, 27, 31, 35, 39,§9867; C46, 50, 54,§548.1]

39GA, ch 29, editorially divided  
Referred to in §548.6

**548.2 Certification of registration — fees.** When the said secretary of state is satisfied that the facsimile copies or counterparts filed are true and correct, and that they are not in any manner an infringement or are calculated to deceive, he shall deliver to such person, firm, association, or corporation so filing the same, a duly attested certificate of registration of the same for which he shall receive a fee of five dollars for filing and an additional fee of five dollars for a certificate of registration. [C97,§5049; C24, 27, 31, 35, 39,§9868; C46, 50, 54, §548.2; 56 GA, ch 256,§1]

Referred to in §548.6

**548.3 Prima-facie proof of right to use.** Such certificate of registration shall in all actions and prosecutions be sufficient proof of the adoption of such label, trade-mark, or form of advertisement, and of the right of such person, firm, association, or corporation to adopt and use the same. [C97,§5049; C24, 27, 31, 35, 39,§9869; C46, 50, 54,§548.3]

Referred to in §548.6

**548.4 Alterations — registration.** Should there be at any time any change, alteration, or modification in such label, trade-mark, or form of advertisement so registered, the same shall be registered in the office of the secretary of state in the same manner and upon the payment in amount of the same fees as in the case of the original registration. [C24, 27, 31, 35, 39, §9870; C46, 50, 54,§548.4]

Referred to in §548.6

**548.5 Assignment.** Trade-marks, labels, and forms of advertising registered in the office of the secretary of state may be assigned of rec-

ord by the registrant or record owner thereof, or legal representative of such owner, in the event of the death of the record owner, by the execution of an appropriate written instrument, duly acknowledged and filed in the office of the secretary of state, and upon payment to the secretary of state of a fee of five dollars for each such assignment, said instrument shall be filed by the secretary of state with the original registration of such trade-mark, label, or form of advertising, and the record shall be changed to show the proper ownership thereof in the assignee. [C46, 50, 54,§548.5; 56GA, ch 256,§2]

Referred to in §548.6

**548.6 Expiration of registration—renewal.** The registration provided for in sections 548.1 to 548.5, inclusive, shall, as to all registrations renewed or originally filed after July 4, 1955, expire ten years from the date thereof as shown on the certificate of registration provided for in section 548.2, and may be renewed at any time within three months before or after the date of termination by filing an application for renewal in the office of the secretary of state and the payment of the fees provided for in section 548.2, provided that during the period within which a registration may be renewed the registrant shall have the exclusive right of registration of such label, trade-mark, or form of advertisement. Upon renewal of a registration, a certificate thereof shall be issued as in an original registration. [C46, 50, 54,§548.6; 56GA, ch 256,§3]

**548.7 Injunction.** Every person, firm, association, or corporation adopting a label, trade-mark, or form of advertisement as specified in this chapter, may proceed by action to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof. [C97,§5050; C24, 27, 31, 35, 39,§9871; C46, 50, 54,§548.7]

**548.8 Damages and general relief.** All courts having jurisdiction of such actions shall grant injunctions to restrain such manufacture, use, display, or sale, and shall award the complainant therein such damages resulting from such wrongful manufacture, use, display, or sale, and a reasonable attorney's fee to be fixed by the court, and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court to be destroyed. [C97,§5050; C24, 27, 31, 35, 39,§9872; C46, 50, 54,§548.8]

**548.9 Persons entitled to sue.** Such actions may be prosecuted for the benefit of any firm, association, or corporation by any officer or member thereof. [C97,§5050; C24, 27, 31, 35, 39, §9873; C46, 50, 54,§548.9]

**548.10 Unlawful use.** It shall be unlawful for any person, firm, association, or corporation to imitate any label, trade-mark, or form of advertisement adopted as provided in this chapter, or to knowingly use any counterfeit or imitation thereof, or to use or display such genuine label, trade-mark, or form of adver-

tisement of such person, firm, association, or corporation unless authorized by him or it. [C97,§5051; C24, 27, 31, 35, 39,§9874; C46, 50, 54, §548.10]

Referred to in §548.11

**548.11 Penalty.** Any person violating any provision of section 548.10 shall be imprisoned in the county jail not more than thirty days, or be fined not less than twenty-five nor more than one hundred dollars. [C97,§5051; C24, 27, 31, 35, 39,§9875; C46, 50, 54.§548.11]

## CHAPTER 549

### TRADE-MARKS FOR ARTICLES MANUFACTURED IN IOWA

Repealed by 52GA, ch 272,§1

See §28.7

Record of trade-marks, §713.18 et seq.

## CHAPTER 550

### DISTRIBUTION OF TRADE-MARKED ARTICLES

550.1 Contracts as to selling price.  
550.2 Implied exceptions.  
550.3 Actions for damages.

550.4 Nonapplicability.  
550.5 Definitions.

**550.1 Contracts as to selling price.** No contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trade-mark, brand, or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the state of Iowa by reason of any of the following provisions which may be contained in such contract:

1. That the buyer will not resell such commodity except at the price stipulated by the vendor.

2. That the vendee or producer require in delivery to whom he may resell such commodity to agree that he will not, in turn, resell except at the price stipulated by such vendor or by such vendee. [C35,§9884-g1; C39,§9884.1; C46, 50, 54,§550.1]

46GA, ch 106,§1, editorially divided  
Referred to in §550.3

**550.2 Implied exceptions.** Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

1. In closing out the owner's stock for the purpose of discontinuing delivering such commodity.

2. When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

3. By any officer acting under the orders of any court. [C35,§9884-g2; C39,§9884.2; C46, 50, 54,§550.2]

Referred to in §550.3

**550.3 Actions for damages.** Willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of sections 550.1 and 550.2, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. [C35,§9884-g3; C39,§9884.3; C46, 50, 54, §550.3]

**550.4 Nonapplicability.** This chapter shall not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices. [C35, §9884-g4; C39,§9884.4; C46, 50, 54,§550.4]

**550.5 Definitions.** The following terms, as used in this chapter, are hereby defined as follows:

"Producer" means grower, baker, maker, manufacturer or publisher.

"Commodity" means any subject of commerce. [C35,§9884-g5; C39,§9884.5; C46, 50, 54, §550.5]

Constitutionality, 46GA, ch 106,§5  
Omnibus repeal, 46GA, ch 106,§6

## CHAPTER 551

## UNFAIR DISCRIMINATION

551.1 Unfair discrimination in sales.  
 551.2 Unfair discrimination in purchases.  
 551.3 Violation.  
 551.4 Penalty.  
 551.5 Contracts or agreements.

551.6 Enforcement.  
 551.7 Complaint—to whom made.  
 551.8 Revocation of permit.  
 551.9 Corporation to be enjoined.  
 551.10 Cumulative remedies.

**551.1 Unfair discrimination in sales.** Any person, firm, company, association, or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture, sale, or distribution of any commodity of commerce or commercial services excepting those, the rate of which is now subject to control of cities or towns or other governmental agency, that shall, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections, localities, communities, cities, or towns of this state, by selling such commodity or commercial services excepting those, the rate of which is now subject to control of cities or towns or other governmental agency at a lower price or rate in one section, locality, community, city, or town than such commodity or commercial services excepting those, the rate of which is now subject to control of cities or towns or other governmental agency is sold for by said person, firm, association, company, or corporation, in another section, locality, community, city, or town, after making due allowance in case of telephone service for the difference in the cost of furnishing service in different localities, and in the case of commodities and commercial services other than telephone service, for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage, or distribution shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community, city, or town shall not be in violation of this section. [S13,§5028-b; C24, 27, 31, 35, 39,§9885; C46, 50, 54,§551.1]

S13,§5028-b, editorially divided  
 Referred to in §§551.3-551.9

**551.2 Unfair discrimination in purchases.** Any person, firm, association, company, or corporation, foreign or domestic, doing business in the state, and engaged in the business of purchasing for manufacture, storage, sale, or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities, cities, or towns, in this state, by purchasing such commodity at a higher rate or price in one section, locality, community, city, or town, than is paid for such commodity by such party in another section,

locality, community, city, or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community, city, or town shall not be in violation of this section. [S13, §5028-b; C24, 27, 31, 35, 39,§9886; C46, 50, 54, §551.2]

Referred to in §§551.3-551.9

**551.3 Violation.** Any person, firm, association, company, or corporation, or any officer, agent, or member of any such firm, company, association, or corporation, found guilty of unfair discrimination as defined in sections 551.1 and 551.2, shall be punished as provided in section 551.4. [S13,§5028-b; C24, 27, 31, 35, 39, §9887; C46, 50, 54,§551.3]

Referred to in §551.6

**551.4 Penalty.** Any person, firm, company, association, or corporation violating any of the provisions of sections 551.1 and 551.2, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties. [S13,§5028-c; C24, 27, 31, 35, 39,§9888; C46, 50, 54,§551.4]

Referred to in §§551.3, 551.6

**551.5 Contracts or agreements.** All contracts or agreements made in violation of any of the provisions of sections 551.1 and 551.2 shall be void. [S13,§5028-d; C24, 27, 31, 35, 39, §9889; C46, 50, 54,§551.5]

Referred to in §551.6

**551.6 Enforcement.** It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of sections 551.1 to 551.5, inclusive, by appropriate actions in courts of competent jurisdiction. [S13,§5028-e; C24, 27, 31, 35, 39,§9890; C46, 50, 54,§551.6]

**551.7 Complaint—to whom made.** If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to

refer the matter to the attorney general who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation. [S13,§5028-f; C24, 27, 31, 35, 39, §9891; C46, 50, 54,§551.7]

**551.8 Revocation of permit.** If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state. [S13,§5028-g; C24, 27, 31, 35, 39,§9892; C46, 50, 54,§551.8]

**551.9 Corporation to be enjoined.** If after revocation of its permit such corporation, or

any other corporation not having a permit and found guilty of having violated any of the provisions of sections 551.1 and 551.2, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state of Iowa, to enjoin such corporation from transacting all business of every kind and character in said state. [S13,§5028-h; C24, 27, 31, 35, 39,§9893; C46, 50, 54,§551.9]

**551.10 Cumulative remedies.** Nothing in this chapter shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law. [S13,§5028-i; C24, 27, 31, 35, 39,§9894; C46, 50, 54,§551.10]

## CHAPTER 551A CIGARETTE SALES

551A.1 Short title.  
551A.2 Definitions.  
551A.3 Sales at less than cost—penalty.  
551A.4 Combination sales.  
551A.5 Sales by a wholesaler to a wholesaler.  
551A.6 Sales exceptions.  
551A.7 Transactions permitted to meet lawful competition.

551A.8 Cost determined.  
551A.9 Sales outside ordinary channels of business—effect.  
551A.10 Injunction.  
551A.11 State tax commission—powers and duties.

**551A.1 Short title.** This chapter shall be known and cited as the "Iowa Unfair Cigarette Sales Act". [C50, 54,§551A.1]

**551A.2 Definitions.** When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. "Cigarettes" shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

2. "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, or anyone engaged in the sale of cigarettes.

3. "Wholesaler" means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

4. "Retailer" means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

5. "Sale" and "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

6. "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

7. "Sell at retail", "sale at retail" and "retail sales" shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

8. "Basic cost of cigarettes" shall mean whichever of the two following amounts is lower, namely, (a) the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (b) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less, in either case, all trade discounts and customary discounts for cash, plus the full face value of any stamps which may be required by any cigarette tax act of this state, unless included by the manufacturer in his list price.

9. a. "Cost to wholesaler" shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of said cigarettes in the absence of proof of a lesser or higher cost, plus cartage to

the retail outlet, if furnished or paid for by the wholesaler. Such cartage cost is presumed to be one-half of one percent of the basic cost of the cigarettes in the absence of proof of a lesser or higher cost.

10. *a.* "Cost to the retailer" shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

*b.* The cost of doing business by the said retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost.

*c.* If any retailer in connection with his purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that he shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in paragraph "*b*" of subsection 9. [C50, 54,§551A.2]

Referred to in §§551A.4, 551A.5

#### 551A.3 Sales at less than cost—penalty.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a misdemeanor and be punishable by fine of not less than one hundred dollars, nor more than five hundred dollars.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to him as defined by this chapter shall be evidence of a violation of this chapter. [C50, 54,§551A.3]

**551A.4 Combination sales.** In all offers for sale or sales involving cigarettes and any other item at a combined price, and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions; if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in subsection 8 of section 551A.2. [C50, 54,§551A.4]

**551A.5 Sales by a wholesaler to a wholesaler.** When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the

latter, the cost to the wholesaler, as defined by section 551A.2, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section. [C50, 54, §551A.5]

**551A.6 Sales exceptions.** The provisions of this chapter shall not apply to a sale at wholesale or a sale at retail made (1) in an isolated transaction; (2) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold; (3) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold. [C50, 54,§551A.6]

Referred to in §551A.7

#### 551A.7 Transactions permitted to meet lawful competition.

1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this chapter. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in this chapter. The price of cigarettes offered for sale, or sold under the exceptions specified in section 551A.6 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 551A.8 subsection 2. [C50, 54,§551A.7]

Referred to in §551A.11

#### 551A.8 Cost determined.

1. *Admissible evidence.* In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this chapter purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

2. **Cost survey.** Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this chapter is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this chapter to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance and other expenses. [C50, 54, §551A.8]

Referred to in §§551A.7, 551A.11

**551A.9 Sales outside ordinary channels of business—effect.** In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside of the ordinary channels of trade. [C50, 54, §551A.9]

**551A.10 Injunction.** The state tax commission, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney's fees.

Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by him. [C50, 54, §551A.10]

**551A.11 State tax commission—powers and duties.** The state tax commission may adopt rules and regulations for the enforcement of this chapter and it is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as it shall deem necessary and it shall be permissible to use such cost survey as provided in section 551A.7 subsection 2 and section 551A.8 subsection 2.

Said commission may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules and regulations of the commission promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule or regulation adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Any person aggrieved by the decision, order or finding of the commission relative to suspending or revoking any such permit, may appeal therefrom to the district court in the same manner and subject to the same procedure as is provided in section 422.55, except that the judgment of the district court shall be final. [C50, 54, §551A.11]

Constitutionality, 53GA, ch 226, §12

## CHAPTER 552

### OPTIONS AND BUCKET SHOPS

- 552.1 Dealing in options—bucket shops.
- 552.2 Certain contracts exempted.
- 552.3 Penalty.
- 552.4 Bucket shops and bucket shopping.
- 552.5 Definitions.
- 552.6 Completion of offense.

- 552.7 Keeping or maintaining.
- 552.8 Second offense.
- 552.9 "Accessory" defined.
- 552.10 Statement of purchases or sales furnished on demand.
- 552.11 Prima-facie evidence.

**552.1 Dealing in options—bucket shops.** It shall be unlawful for any person, corporation, association, or society to keep within the state any store, office or other place for the pretended buying or selling of grain, pork, lard, or any mercantile, mining, or agricultural products or corporation stocks, on margins, without any intention of future delivery, whether such pretended contracts are to be performed within or without the state; and no person, corporation, association, or society within the state shall make or enter into any contract or pretended contract, such as is above stated and referred to; the intention of this section being

to prevent and prohibit within the state the business now engaged in and conducted in places commonly known and designated as bucket shops. [C97, §4967; C24, 27, 31, 35, 39, §9895; C46, 50, 54, §552.1]

C97, §4967, editorially divided  
Referred to in §§552.2, 552.3

**552.2 Certain contracts exempted.** Section 552.1 shall not apply or in any way affect any contract for the actual buying or selling of any commodity whatever for present or future delivery, where the actual delivery or receipt of the thing sold is contemplated and in good



faith intended by either of the parties to the contract. [C97,§4967; C24, 27, 31, 35, 39,§9896; C46, 50, 54,§552.2]

**552.3 Penalty.** Any person, whether acting individually or as a member of any copartnership, corporation, association, or society, guilty of violating any of the provisions of section 552.1, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or both. [C97, §4968; C24, 27, 31, 35, 39,§9897; C46, 50, 54,§552.3]

**552.4 Bucket shops and bucket shopping.** It is the intention of this and sections 552.5 to 552.11, inclusive, to prevent, punish, and prohibit, within this state, the business now engaged in and conducted in places commonly known and designated as "bucket shops", and also to include the practice now commonly known as "bucket shopping" by any person or persons, agent, corporations, associations, or copartnerships, who or which ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, cotton, coffee, petroleum, stocks, bonds, or other commodities whatsoever. [S13,§4975-d; C24, 27, 31, 35, 39,§9898; C46, 50, 54,§552.4]

S13,§4975-d, editorially divided  
Referred to in §§552.6, 552.9, 552.11

**552.5 Definitions.** A bucket shop, within the meaning of sections 552.4 to 552.11, inclusive, is defined to be:

1. An office, store, or other place wherein the proprietor or keeper thereof, or other person or agent, either in his or its own behalf, or as the agent or correspondent of any other person, corporation, association, or copartnership within or without the state, conducts the business of making, or offering to make, contracts, agreements, trades, or transactions respecting the purchase or sale, or purchase and sale, of any stocks, grain, provisions, cotton, or other commodity, or personal property:

a. Wherein both parties thereto, or said proprietor or keeper, contemplate or intend that such contracts, agreements, trades, or transactions shall be, or may be closed, adjusted, or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange, upon which the commodities or securities referred to in such contracts, agreements, trades, or transactions are dealt in by competitive buying and selling, and without a bona fide transaction on such board of trade or exchange; or

b. Wherein both parties, or such keeper or proprietor, shall contemplate or intend that such contracts, agreements, trades, or transactions shall be, or may be, deemed closed or terminated when the public market quotations of prices made on such board of trade, or exchange, for the articles or securities named in such contracts, agreements, trades, or transactions, shall reach a certain figure.

2. Any office, store, or other place where the keeper, person, or agent, or proprietor thereof,

either in his or its own behalf, or as an agent, as aforesaid, therein makes, or offers to make, with others, contracts, trades, or transactions for the purchase or sale of any such commodity, wherein the parties thereto do not contemplate or intend the actual or bona fide receipt or delivery of such property, but do contemplate or intend a settlement therefor based upon differences in the price at which said property is, or is claimed to be, bought and sold. [S13,§4975-d; C24, 27, 31, 35, 39,§9899; C46, 50, 54,§552.5]

Referred to in §§552.4, 552.9, 552.11

**552.6 Completion of offense.** The said crime shall be complete against any proprietor, person, agent, or keeper thus offering to make any such contracts, trades, or transactions, whether such offer is accepted or not. [S13, §4975-d; C24, 27, 31, 35, 39,§9900; C46, 50, 54, §552.6]

Referred to in §§552.4, 552.5, 552.9, 552.11

**552.7 Keeping or maintaining.** It shall be unlawful, and the same is hereby made a felony, for any corporation, association, copartnership, person or persons, or agent to keep or cause to be kept, within this state, any such bucket shop; and any corporation, person or persons, or agent whether acting individually or as a member, or as an officer, agent, or employee of any corporation, association, or copartnership, who shall keep, maintain, or assist in the keeping and maintaining of any such bucket shop within this state, shall, upon conviction thereof, be fined in a sum not to exceed one thousand dollars or be imprisoned in the penitentiary not exceeding two years. [S13,§4975-e; C24, 27, 31, 35, 39,§9901; C46, 50, 54,§552.7]

S13,§4975-e, editorially divided  
Referred to in §§552.4, 552.5, 552.8, 552.9, 552.11

**552.8 Second offense.** Any person or persons who shall be guilty of a second offense under section 552.7, in addition to the penalty above prescribed, may, upon conviction, be both fined and imprisoned in the discretion of the court, and, if a corporation, it shall be liable to forfeiture of all its rights and privileges as such; and the continuance of such establishment after the first conviction shall be deemed a second offense. [S13,§4975-e; C24, 27, 31, 35, 39,§9902; C46, 50, 54,§552.8]

Referred to in §§552.4, 552.5, 552.9, 552.11

**552.9 "Accessory" defined.** Any corporation, association, copartnership, person or persons, or agents who shall communicate, receive, exhibit, or display in any manner any statements of quotations of the prices of any property mentioned in sections 552.4 to 552.6, inclusive, with a view to any transactions prohibited in sections 552.4 to 552.11, inclusive, shall be deemed an accessory, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in sections 552.7 and 552.8. [S13,§4975-f; C24, 27, 31, 35, 39, §9903; C46, 50, 54,§552.9]

Referred to in §§552.4, 552.5, 552.11

**552.10 Statement of purchases or sales furnished on demand.** It shall be the duty of every commission merchant, copartnership, association, corporation, person or persons, or agent or broker in this state engaged in the business of buying or selling, or of buying and selling, stocks, bonds, grain, provisions, cotton, or other commodities or personal property for any person, principal, customer, or purchaser, to furnish to any customer or principal for whom such commission merchant, broker, copartnership, corporation, association, person or persons, or agent, has executed any order for the actual purchase or sale of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom it shall

have been sold, as the case may be, the time when, the place where, and the price at which, the same was either bought or sold. [S13,§4975-g; C24, 27, 31, 35, 39,§9904; C46, 50, 54,§552.10]

S13,§4975-g, editorially divided  
Referred to in §§552.4, 552.5, 552.9, 552.11

**552.11 Prima-facie evidence.** In case such commission merchant, broker, person or persons, or agent, copartnership, corporation, or association shall fail to furnish the said statement, the fact of such failure shall be prima-facie evidence that such property was not sold or bought in a legitimate manner, but was bought in violation of sections 552.4 to 552.10, inclusive. [S13,§4975-g; C24, 27, 31, 35, 39,§9905; C46, 50, 54,§552.11]

Referred to in §§552.4, 552.5, 552.9

## CHAPTER 553

### COMBINATIONS, POOLS, AND TRUSTS

Referred to in §422.48

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**553.1 Pools and trusts.** Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association, or individual, creating, entering into, or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation, or understanding with any other corporation, partnership, association, or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state, shall be guilty of a conspiracy. [C97, §5060; C24, 27, 31, 35, 39,§9906; C46, 50, 54,§553.1]

Referred to in §§553.3–553.9

**553.2 Corporation not to enter.** No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director, or stockholder of any corporation, shall enter into any combination, contract, or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with

intent to limit or fix the price or lessen the production or sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article. [C97,§5061; C24, 27, 31, 35, 39, §9907; C46, 50, 54,§553.2]

Referred to in §§553.3–553.9

**553.3 Penalty.** Any corporation, company, firm, or association violating any of the provisions of sections 553.1 and 553.2 shall be fined not less than five hundred nor more than five thousand dollars, and any president, manager, director, officer, agent, or receiver of any corporation, company, firm, or association, or any member of any corporation, company, firm, or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both. [C97,§5062; S13,§5062; C24, 27, 31, 35, 39,§9908; C46, 50, 54,§553.3]

Referred to in §§553.4–553.9

**553.4 Contracts void.** All contracts or agreements in violation of any provisions of sections 553.1 to 553.3, inclusive, shall be void. [C97, §5063; C24, 27, 31, 35, 39,§9909; C46, 50, 54,§553.4]

Referred to in §§553.5–553.9

**553.5 Defense.** Any purchaser of any article or commodity from any individual, company, or corporation transacting business contrary to any provisions of sections 553.1 to 553.4, inclusive, shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment. [C97,§5064; C24, 27, 31, 35, 39,§9910; C46, 50, 54,§553.5]

Referred to in §§553.6–553.9

**553.6 Forfeiture of charter.** Any corporation created or organized by or under the law of this state, which shall violate any provision of sections 553.1 to 553.5, inclusive, shall thereby forfeit its corporate right and franchise, as provided in section 553.7. [C97,§5065; C24, 27, 31, 35, 39,§9911; C46, 50, 54,§553.6]

Referred to in §§553.7–553.9

**553.7 Notice by secretary of state.** The secretary of state, upon satisfactory evidence that any company, or association of persons incorporated under the laws of this state has entered into any trust, combination, or association in violation of the provisions of sections 553.1 to 553.6, inclusive, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination, or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice. [C97, §5066; C24, 27, 31, 35, 39,§9912; C46, 50, 54,§553.7]

Referred to in §§553.6, 553.8, 553.9

**553.8 Enforcement—inquiry by grand jury.** County attorneys, in their counties, and the attorney general shall enforce the provisions of a public nature in sections 553.1 to 553.7, inclusive, and it shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, or combination within their respective counties. [C97,§5067; C24, 27, 31, 35, 39,§9913; C46, 50, 54,§553.8]

C97,§5067, editorially divided

**553.9 Fees of prosecutors.** Any county attorney or the attorney general securing a conviction under the provisions of sections 553.1 to 553.7, inclusive, shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. [C97,§5067; C24, 27, 31, 35, 39, §9914; C46, 50, 54,§553.9]

**553.10 Combinations, pools, and trusts—fixing prices.** It shall be unlawful for any person, company, partnership, association, or corporation owning or operating any business of buying, selling, handling, consigning, or transporting any commodity or any article of commerce:

1. To enter into any agreement, contract, or combination with any other dealer or dealers,

partnership, company, corporation, or association of dealers, whether within or without the state, engaged in like business, for the fixing of the price or prices at which any commodity or any article of commerce should be sold by different dealers or sellers.

2. To divide between said dealers the aggregate or net proceeds of the earnings of such dealers and sellers, or any portion thereof.

3. To form, enter into, maintain, or contribute money or anything of value to any trust, pool, combination, or association of persons of whatsoever character or name, which has for any of its objects the prevention of full and free competition among buyers, sellers, or dealers in any commodity or any article of commerce.

4. To do or permit to be done by his or their authority any act or thing whereby the free action of competition in the buying or selling of any commodity or any article of commerce is restrained or prevented. [S13,§5067-a; C24, 27, 31, 35, 39,§9915; C46, 50, 54,§553.10]

Referred to in §§553.12–553.14

**553.11 Labor—unions.** The labor of a human being either mental or physical is not a commodity or article of commerce and it shall not be unlawful for men and women to organize themselves into or carry on unions for the purpose, by lawful means, of lessening the hours of labor or increasing the wages, or bettering the condition of the members of such organizations, or lawfully carrying out their legitimate purposes. [C24, 27, 31, 35, 39, §9916; C46, 50, 54,§553.11]

Referred to in §553.13

**553.12 Liability.** In case any person, company, partnership, corporation, or association, trust, pool, or combination of whatsoever name shall do, cause to be done, or permit to be done, any act, matter, or thing in section 553.10 prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool, or combination shall be liable to the person, partnership, company, association, or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of said section. [S13,§5067-b; C24, 27, 31, 35, 39,§9917; C46, 50, 54,§553.12]

Referred to in §553.13

**553.13 Violation — penalty.** Any person, partnership, company, association, or corporation subject to the provisions of sections 553.10 to 553.12, inclusive, or any person, trust, combination, pool, or association, or any director, officer, lessee, receiver, trustee, employee, clerk, agent, or any person acting for or employed by them, who shall violate any of the provisions of section 553.10, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined any sum not less than five hundred dollars and not exceeding two thousand dollars or imprisoned in the county

jail for a period not exceeding six months, or both, at the discretion of the court. [S13,§5067-c; C24, 27, 31, 35, 39,§9918; C46, 50, 54,§553.13]

S13,§5067-c, editorially divided

**553.14 Duty of grand jury.** It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, combination, or violation of any provision in section 553.10, in their respective counties. [S13, §5067-c; C24, 27, 31, 35, 39,§9919; C46, 50, 54, §553.14]

**553.15 Gift enterprises.** All gift enterprises, as hereinafter defined, and all trade practices carried on in connection therewith are hereby prohibited and declared to be unlawful. [S13, §5067-d; C24, 27, 31, 35, 39,§9920; C46, 50, 54, §553.15]

**553.16 "Gift enterprise" defined.** Whenever two or more persons enter into any contract arrangement or scheme, whereby for the purpose of inducing the public to purchase merchandise or other property of one of the parties to said scheme, any other party thereto, for a valuable consideration and as a part of such scheme, advertises and induces or attempts to induce the public to believe that he will give gifts, premiums, or prizes to persons purchasing such merchandise or other property of such party to said scheme, and that stamps or tickets will be given by the seller in connection with such sales entitling the purchaser of such property to receive such prizes or gifts from any other party to such scheme, the parties so undertaking and carrying out such scheme shall be deemed to be engaged in a "gift enterprise", unless the articles or things so promised to be given as gifts or premiums with or on account of such purchases, shall be definitely described on such stamp or ticket and the character and value of such promised prize or gift fully made known to the purchaser of such merchandise or other property at the time of the sale thereof, and unless the right of the holder of such stamp or ticket to the gift or premium so promised becomes absolute upon the completion upon the delivery thereof without the holder being required to collect any specified number of other similar stamps or tickets and to present them for redemption together, and the right of the holder of such stamp or ticket to the prize or gift so offered is absolute, and does not depend on any chance, uncertainty, or contingency whatever. [S13,§5067-e; C24, 27, 31, 35, 39,§9921; C46, 50, 54,§553.16]

Referred to in §§553.17, 553.18

**553.17 Violation.** Any person who engages in a gift enterprise such as is defined in section 553.16 or who advertises the same in any manner or who in furtherance of such scheme, as an inducement to purchasers, issues in connection with the sale of any merchandise or other property any such ticket or stamp purporting to be redeemable in some indefinite article not described thereon, only when presented with a collection of other stamps or tickets of

like kind by some other party to such scheme, and which unless presented in the manner aforesaid is not redeemable at all, shall each and all be guilty of a misdemeanor. [S13, §5067-f; C24, 27, 31, 35, 39,§9922; C46, 50, 54, §553.17]

Referred to in §553.18  
Penalty, §687.7

**553.18 "Person" defined.** The word "person" as used in sections 553.16 and 553.17 may in proper cases, in order to make the intent and meaning of the law effective, be construed to mean firm or corporation. [S13,§5067-g; C24, 27, 31, 35, 39,§9923; C46, 50, 54,§553.18]

**553.19 Grain combinations prohibited.** It shall be unlawful for any person, company, partnership, association, or corporation owning or operating any grain elevator or engaged in the business of buying, selling, handling, consigning, or transporting grain:

1. To enter into any agreement, contract, or combination with any other grain dealer, or grain dealers, partnership, company, corporation, or association of grain dealers, whether within or without the state, engaged in like business, for the fixing of prices to be paid for grain by different dealers or buyers.

2. To divide between said dealers the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof.

3. To form, enter into, maintain, or contribute money or anything of value to any trust, pool, combination, or association of persons of whatsoever character or name, which has for any of its objects the prevention of full and free competition among buyers, sellers, or dealers in grain.

4. To do or permit to be done by his or their authority any act or thing whereby the free action of competition in the buying or selling of grain is restrained or prevented. [S13,§5077-a3; C24, 27, 31, 35, 39,§9924; C46, 50, 54,§553.19]

Referred to in §§553.20, 553.21, 553.22

**553.20 Liability for damages.** In case any person, company, partnership, corporation, or association, trust, pool, or combination of whatsoever name shall do, cause to be done, or permit to be done, any act, matter, or thing in section 553.19 prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool, or combination shall be liable to the person, partnership, company, association, or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of said section, together with a reasonable attorney's fee to be fixed by the court in every case of recovery and to be taxed as part of the costs in the case, and the property of any person who may be a member of any such trust, pool, combination, corporation, or association, violating the provisions of said section, shall be liable for the full amount of such judgment. [S13,§5077-a4; C24, 27, 31, 35, 39,§9925; C46, 50, 54,§553.20]

Referred to in §§553.21, 553.22

**553.21 Violation — penalty.** Any person, partnership, company, association, or corporation subject to the provisions of sections 553.19 and 553.20, or any person, trust, combination, pool, or association, or any director, officer, lessee, receiver, trustee, employee, clerk, agent, or any person acting for or employed by them or either of them, who shall violate any of the provisions of section 553.19, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined any sum not less than five hundred dollars and not exceeding two thousand dollars, or imprisoned in the county jail for a period not exceeding six months, or both, at the discretion of the court. [S13,§5077-a5; C24, 27, 31, 35, 39,§9926; C46, 50, 54,§553.21]

S13,§5077-a5, editorially divided

**553.22 Duty of grand jury.** It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, combination or violation of any provision in sections 553.19 and 553.20 in their respective counties. [S13,§5077-a5; C24, 27, 31, 35, 39,§9927; C46, 50, 54,§553.22]

**553.23 Provision part of every contract—**  
**forfeit.** The following provisions shall be deemed and held to be a part of every contract hereafter entered into by any person, firm, or private corporation with the state, or with any county, city, town, city acting under special charter, city acting under commission form of government, school corporation, or with any municipal corporation, now or hereafter created, whether said provision be inserted in such contract or not, to wit:

“The party to whom this contract has been awarded, hereby represents and guarantees that he has not, nor has any other person for or in his behalf, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public officer, whereby he has paid or is to pay to any other bidder or public officer any sum of money or anything of value whatever in order to obtain this contract; and that he has not, nor has another person, for or in his behalf, directly or indirectly, entered into any agreement or arrangement with any other person, firm, corporation, or association which tends to or does lessen or destroy free competition in the letting of this contract, and he hereby agrees that in case it hereafter be established that such representations or guaranties, or any of them, are false, he will forfeit and pay not less than five percent of the contract price but in no event less than three hundred dollars, as liquidated damages to the other contracting party.” [S13,§1279-c; C24, 27, 31, 35, 39,§9928; C46, 50, 54,§553.23]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 741.8, 741.11

**553.24 “Pittsburgh plus”.** There is hereby created a committee consisting of the governor and attorney general, which committee shall have full power and authority to protect and shall be charged with the duty of protecting the state of Iowa and the people thereof against the steel trade practice commonly known as “Pittsburgh plus” and other similar trade practices, and said committee is hereby authorized to use all lawful means for the accomplishment of said purposes. [C24, 27, 31, 35, 39,§9929; C46, 50, 54,§553.24]

# TITLE XXIV

## PERSONAL PROPERTY

### CHAPTER 554

#### SALES LAW

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PART I

FORMATION OF THE CONTRACT

**554.1 Contracts to sell and sales.**

1. A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called price.
2. A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.
3. A contract to sell or a sale may be absolute or conditional.
4. There may be a contract to sell or a sale between one part owner and another. [C24, 27, 31, 35, 39,§9930; C46, 50, 54,§554.1]

**554.2 Capacity—liabilities for necessities.** Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person and to his actual requirements at the time of delivery. [C24, 27, 31, 35, 39, §9931; C46, 50, 54,§554.2]

FORMALITIES OF THE CONTRACT

**554.3 Form of contract or sale.** Subject to the provisions of this chapter and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. [C24, 27, 31, 35, 39,§9932; C46, 50, 54, §554.3]

**554.4 Statute of frauds.**

1. A contract to sell or a sale of any goods or choses in action shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold and actually receive the same or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

2. The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

3. There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. [C24, 27, 31, 35, 39,§9933; C46, 50, 54,§554.4]

See §622.32

**554.5 Applicable statutes.** Sections 622.34 and 622.35 shall apply to sales of goods and choses in action. [C27, 31, 35,§9933-a1; C39, §9933.1; C46, 50, 54,§554.5]

Not part of original uniform act

SUBJECT MATTER OF CONTRACT

**554.6 Existing and future goods.**

1. The goods which form the subject of a contract to sell may be either existing goods,

owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this chapter called "future goods".

2. There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

3. Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. [C24, 27, 31, 35, 39, §9934; C46, 50, 54, §554.6]

#### 554.7 Undivided shares.

1. There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer by force of the agreement becomes an owner in common with the owner or owners of the remaining shares.

2. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. [C24, 27, 31, 35, 39, §9935; C46, 50, 54, §554.7]

Referred to in §554.18

#### 554.8 Destruction of goods sold.

1. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

2. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

a. As avoided; or

b. As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. [C24, 27, 31, 35, 39, §9936; C46, 50, 54, §554.8]

#### 554.9 Destruction of goods contracted to be sold.

1. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the

part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

2. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may, at his option treat the contract:

a. As avoided; or

b. As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. [C24, 27, 31, 35, 39, §9937; C46, 50, 54, §554.9]

### THE PRICE

#### 554.10 Definition and ascertainment of price.

1. The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

2. The price may be made payable in any personal property.

3. Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this chapter shall not apply.

4. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [C24, 27, 31, 35, 39, §9938; C46, 50, 54, §554.10]

#### 554.11 Sale at a valuation.

1. Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

2. Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are hereinafter provided. [C24, 27, 31, 35, 39, §9939; C46, 50, 54, §554.11]

### CONDITIONS AND WARRANTIES

#### 554.12 Effect of conditions.

1. Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the con-



dition should happen or be performed, such first mentioned party may also treat the non-performance of the condition as a breach of warranty.

2. Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. [C24, 27, 31, 35, 39,§9940; C46, 50, 54,§554.12]

**554.13 Definition of “express warranty”.**

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods nor any statement purporting to be a statement of the seller’s opinion only shall be construed as a warranty. [C24, 27, 31, 35, 39,§9941; C46, 50, 54,§554.13]

**554.14 Implied warranties of title.** In a contract to sell or a sale, unless contrary intention appears, there is:

1. An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.

3. An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person not declared or known to the buyer before or at the time when the contract or sale is made.

4. This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. [C24, 27, 31, 35, 39,§9942; C46, 50, 54,§554.14]

**554.15 Implied warranty in sale by description.** Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description, and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. [C24, 27, 31, 35, 39,§9943; C46, 50, 54,§554.15]

**554.16 Implied warranties of quality.** Subject to the provisions of this chapter and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller’s skill or judgment, whether he be the grower or manufacturer or not, there is an implied warranty that the goods shall be reasonably fit for such purpose.

2. Where the goods are bought by description from a seller who deals in goods of that description, whether he be the grower or manufacturer or not, there is an implied warranty that the goods shall be of merchantable quality.

3. If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

4. In the case of a contract to sell or a sale of a specified article under its patent or other trade name there is no implied warranty as to its fitness for any particular purpose.

5. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

6. An express warranty or condition does not negative a warranty or condition implied under this chapter unless inconsistent therewith. [C24, 27, 31, 35, 39,§9944; C46, 50, 54, §554.16]

**SALE BY SAMPLE**

**554.17 Implied warranties in sale by sample.** In the case of a contract to sell or a sale by sample:

1. There is an implied warranty that the bulk shall correspond with the sample in quality.

2. There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 554.48, subsection 3.

3. If the seller is a dealer in goods of that kind there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. [C24, 27, 31, 35, 39,§9945; C46, 50, 54, §554.17]

**PART II**

**TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER**

**554.18 When property passes.** Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 554.7. [C24, 27, 31, 35, 39,§9946; C46, 50, 54,§554.18]

**554.19 Property in specific goods passes when parties so intend.**

1. Where there is a contract to sell specific or ascertained goods, the property in them is

transferred to the buyer at such time as the parties to the contract intend it to be transferred.

2. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case. [C24, 27, 31, 35, 39, §9947; C46, 50, 54, §554.19]

**554.20 Rules for ascertaining intention.** Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

**RULE 1.**

Where there is an unconditional contract to sell specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

**RULE 2.**

Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such things be done.

**RULE 3.**

1. When goods are delivered to the buyer "on sale or return", or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revert the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

2. When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer:

*a.* When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

*b.* If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

**RULE 4.**

1. Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given

either before or after the appropriation is made.

2. Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee, whether named by the buyer or not, for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 554.21. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

**RULE 5.**

If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. [C24, 27, 31, 35, 39, §9948; C46, 50, 54, §554.20]

Referred to in §554.47

**554.21 Reservation of right of possession or property when goods are shipped.**

1. Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

2. Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

3. Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

4. Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides

that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith for value the bill of lading or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or the goods, without notice of the facts making the transfer wrongful. [C24, 27, 31, 35, 39,§9949; C46, 50, 54,§554.21]

Referred to in §554.20

**554.22 Sale by auction.** In the case of sale by auction:

1. Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid, and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.

3. A right to bid may be reserved expressly by or on behalf of the seller.

4. Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. [C24, 27, 31, 35, 39,§9950; C46, 50, 54,§554.22]

Public auctions, see ch 546A

**554.23 Risk of loss.** Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that:

1. Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

2. Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. [C24, 27, 31, 35, 39,§9951; C46, 50, 54,§554.23]

#### TRANSFER OF TITLE

##### **554.24 Sale by a person not the owner.**

1. Subject to the provisions of this chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

2. Nothing in this chapter, however, shall affect:

a. The provisions of any factors acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

b. The validity of any contract to sell or sale under any common law or statutory power of sale or under the order of a court of competent jurisdiction. [C24, 27, 31, 35, 39,§9952; C46, 50, 54,§554.24]

##### **554.25 Sale by one having a voidable title.**

Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. [C24, 27, 31, 35, 39,§9953; C46, 50, 54,§554.25]

##### **554.26 Sale by seller in possession of goods already sold.**

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. [C24, 27, 31, 35, 39,§9954; C46, 50, 54,§554.26]

##### **554.27 Creditors' rights against sold goods in seller's possession.**

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. [C24, 27, 31, 35, 39,§9955; C46, 50, 54,§554.27]

##### **554.28 Definition of "negotiable documents of title".**

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. [C24, 27, 31, 35, 39,§9956; C46, 50, 54,§554.28]

**554.29 Negotiation of negotiable documents by delivery.** A negotiable document of title may be negotiated by delivery:

1. Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

2. Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. [C24, 27, 31, 35, 39, §9957; C46, 50, 54, §554.29]

**554.30 Negotiation of negotiable documents by indorsement.** A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner. [C24, 27, 31, 35, 39, §9958; C46, 50, 54, §554.30]

**554.31 Negotiable documents of title marked "not negotiable".** If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of specified person, or which contains words of like import, has placed upon it the words "not negotiable", "nonnegotiable", or the like, such a document may, nevertheless, be negotiated by the holder and is a negotiable document of title within the meaning of this chapter. But nothing in this chapter contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable", "nonnegotiable", or the like. [C24, 27, 31, 35, 39, §9959; C46, 50, 54, §554.31]

**554.32 Transfer of nonnegotiable documents.** A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document cannot be negotiated, and the indorsement of such a document gives the transferee no additional right. [C24, 27, 31, 35, 39, §9960; C46, 50, 54, §554.32]

**554.33 Who may negotiate a document.** A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the document the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation

the document is in such form that it may be negotiated by delivery. [C24, 27, 31, 35, 39, §9961; C46, 50, 54, §554.33]

**554.34 Rights of person to whom document has been negotiated.** A person to whom a negotiable document of title has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. [C24, 27, 31, 35, 39, §9962; C46, 50, 54, §554.34]

**554.35 Rights of person to whom document has been transferred.** A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. [C24, 27, 31, 35, 39, §9963; C46, 50, 54, §554.35]

**554.36 Transfer of negotiable document without indorsement.** Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [C24, 27, 31, 35, 39, §9964; C46, 50, 54, §554.36]

**554.37 Warranties on sale of document.** A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title, unless a contrary intention appears, warrants:

1. That the document is genuine;
2. That he has a legal right to negotiate or transfer it;
3. That he has knowledge of no fact which would impair the validity or worth of the document; and
4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. [C24, 27, 31, 35, 39,§9965; C46, 50, 54,§554.37]

**554.38 Indorser not a guarantor.** The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. [C24, 27, 31, 35, 39,§9966; C46, 50, 54,§554.38]

**554.39 When negotiation not impaired by fraud, mistake, or duress.** The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake, or duress to intrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress. [C24, 27, 31, 35, 39,§9967; C46, 50, 54, §554.39]

**554.40 Attachment or levy upon goods for which a negotiable document has been issued.** If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. [C24, 27, 31, 35, 39,§9968; C46, 50, 54, §554.40]

**554.41 Creditors' remedies to reach negotiable documents.** A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [C24, 27, 31, 35, 39,§9969; C46, 50, 54,§554.41]

PART III  
PERFORMANCE OF THE CONTRACT

**554.42 Seller must deliver and buyer accept goods.** It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. [C24, 27, 31, 35, 39, §9970; C46, 50, 54,§554.42]

**554.43 Delivery and payment are concurrent conditions.** Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. [C24, 27, 31, 35, 39,§9971; C46, 50, 54,§554.43]

**554.44 Place, time, and manner of delivery.**

1. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

2. Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

3. Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. [C24, 27, 31, 35, 39,§9972; C46, 50, 54,§554.44]

**554.45 Delivery of wrong quantity.**

1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has

used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. [C24, 27, 31, 35, 39,§9973; C46, 50, 54,§554.45]

#### **554.46 Delivery in installments.**

1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

2. Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. [C24, 27, 31, 35, 39,§9974; C46, 50, 54,§554.46]

#### **554.47 Delivery to a carrier on behalf of the buyer.**

1. Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 554.20, rule 5, or unless a contrary intent appears.

2. Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

3. Unless otherwise agreed, where goods are sent by the seller to the buyer under circum-

stances in which the seller knows, or ought to know, that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. [C24, 27, 31, 35, 39,§9975; C46, 50, 54,§554.47]

#### **554.48 Right to examine the goods.**

1. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

3. Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery", or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. [C24, 27, 31, 35, 39,§9976; C46, 50, 54,§554.48]

Referred to in §554.17

**554.49 What constitutes acceptance.** The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. [C24, 27, 31, 35, 39,§9977; C46, 50, 54,§554.49]

**554.50 Acceptance does not bar action for damages.** In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach the seller shall not be liable therefor. [C24, 27, 31, 35, 39,§9978; C46, 50, 54,§554.50]

**554.51 Buyer is not bound to return goods wrongly delivered.** Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the

seller, but it is sufficient if he notifies the seller that he refuses to accept them. [C24, 27, 31, 35, 39,§9979; C46, 50, 54,§554.51]

**554.52 Buyer's liability for failing to accept delivery.** When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. [C24, 27, 31, 35, 39,§9980; C46, 50, 54,§554.52]

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

**554.53 Definition of "unpaid seller".**

1. The seller of goods is deemed to be an unpaid seller within the meaning of this chapter:

a. When the whole of the price has not been paid or tendered.

b. When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

2. In this part of this chapter the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller. [C24, 27, 31, 35, 39,§9981; C46, 50, 54, §554.53]

**554.54 Remedies of an unpaid seller.**

1. Subject to the provisions hereof, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

a. A lien on the goods or right to retain them for the price while he is in possession of them.

b. In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them.

c. A right of resale as limited by this chapter.

d. A right to rescind the sale as limited by this chapter.

2. Where the property in goods has not passed to the buyer the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [C24, 27, 31, 35, 39,§9982; C46, 50, 54,§554.54]

Referred to in §554.70

UNPAID SELLER'S LIEN

**554.55 When right of lien may be exercised.**

1. Subject to the provisions of this chapter, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

a. Where the goods have been sold without any stipulation as to credit.

b. Where the goods have been sold on credit, but the term of credit has expired.

c. Where the buyer becomes insolvent.

2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. [C24, 27, 31, 35, 39,§9983; C46, 50, 54,§554.55]

**554.56 Lien after part delivery.** Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. [C24, 27, 31, 35, 39,§9984; C46, 50, 54,§554.56]

**554.57 When lien is lost.**

1. The unpaid seller of goods loses his lien thereon:

a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

b. When the buyer or his agent lawfully obtains possession of the goods.

c. By waiver thereof.

2. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. [C24, 27, 31, 35, 39,§9985; C46, 50, 54,§554.57]

STOPPAGE IN TRANSITU

**554.58 Seller may stop goods on buyer's insolvency.** Subject to the provisions of this chapter, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the goods at any time while they are in transit and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. [C24, 27, 31, 35, 39,§9986; C46, 50, 54,§554.58]

Referred to in §554.59

**554.59 When goods are in transit.**

1. Goods are in transit within the meaning of section 554.58:

a. From the time when they are delivered to a carrier by land or water, or other bailee, for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

b. If the goods are rejected by the buyer and the carrier or other bailee continues in posses-

sion of them, even if the seller has refused to receive them back.

2. Goods are no longer in transit within the meaning of section 554.58:

a. If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination.

b. If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer.

c. If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

3. If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

4. If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. [C24, 27, 31, 35, 39,§9987; C46, 50, 54,§554.59]

#### **554.60 Ways of exercising the right to stop.**

1. The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal by the exercise of reasonable diligence, may prevent a delivery to the buyer.

2. When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions, of the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. [C24, 27, 31, 35, 39,§9988; C46, 50, 54,§554.60]

#### **RESALE BY THE SELLER**

##### **554.61 When and how resale may be made.**

1. Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a

right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

3. It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods, or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

4. It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

5. The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. [C24, 27, 31, 35, 39,§9989; C46, 50, 54,§554.61]

#### **RESCISSION BY THE SELLER**

##### **554.62 When and how the seller may rescind the sale.**

1. An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. [C24, 27, 31, 35, 39,§9990; C46, 50, 54,§554.62]

##### **554.63 Effect of sale of goods subject to lien or stoppage in transitu.**

Subject to the provisions of this chapter, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or



right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. [C24, 27, 31, 35, 39,§9991; C46, 50, 54, §554.63]

PART V  
ACTIONS FOR BREACH OF THE CONTRACT  
*Remedies of the Seller*

**554.64 Actions for the price.**

1. Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

2. Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

3. Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of subsection 4 of section 554.65 are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. [C24, 27, 31, 35, 39,§9992; C46, 50, 54,§554.64]

**554.65 Action for damages for nonacceptance of the goods.**

1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

4. If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. [C24, 27, 31, 35, 39,§9993; C46, 50, 54,§554.65]

Referred to in §554.64

**554.66 When seller may rescind contract or sale.** Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. [C24, 27, 31, 35, 39, §9994; C46, 50, 54,§554.66]

*Remedies of the Buyer*

**554.67 Action for converting or detaining goods.** Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. [C24, 27, 31, 35, 39,§9995; C46, 50, 54,§554.67]

**554.68 Action for failing to deliver goods.**

1. Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

2. The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. [C24, 27, 31, 35, 39,§9996; C46, 50, 54,§554.68]

**554.69 Specific performance.** Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and condi-

tions as to damages, payment of the price and otherwise, as to the court may seem just. [C24, 27, 31, 35, 39,§9997; C46, 50, 54,§554.69]

#### **554.70 Remedies for breach of warranty.**

1. Where there is a breach of warranty by the seller, the buyer may, at his election:

a. Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price.

b. Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty.

c. Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty.

d. Rescind the contract to sell or the sale and refuse to receive the goods, or, if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

2. When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

3. Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

4. Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods or immediately after an offer to return the goods in exchange for repayment of the price.

5. Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 554.54.

6. The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

7. In the case of breach of warranty of quality, such loss, in the absence of special

circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. [C24, 27, 31, 35, 39,§9998; C46, 50, 54,§554.70]

**554.71 Interest and special damages.** Nothing in this chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. [C24, 27, 31, 35, 39,§9999; C46, 50, 54,§554.71]

#### **PART VI**

#### **INTERPRETATION**

**554.72 Variation of implied obligations.** Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. [C24, 27, 31, 35, 39,§10000; C46, 50, 54,§554.72]

**554.73 Rights may be enforced by action.** Where any right, duty, or liability is declared by this chapter, it may, unless otherwise by this chapter provided, be enforced by action. [C24, 27, 31, 35, 39,§10001; C46, 50, 54,§554.73]

**554.74 Rule for cases not provided for herein.** In any case not provided for in this chapter the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. [C24, 27, 31, 35, 39,§10002; C46, 50, 54,§554.74]

**554.75 Interpretation shall give effect to purpose of uniformity.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. [C24, 27, 31, 35, 39,§10003; C46, 50, 54,§554.75]

**554.76 Provisions not applicable to mortgages.** The provisions of this chapter relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. [C24, 27, 31, 35, 39,§10004; C46, 50, 54,§554.76]

#### **554.77 Definitions.**

1. In this chapter, unless the context or subject matter otherwise requires:

“Action” includes counterclaim, setoff, and suit in equity.

Counterclaim, generally, §614.12, and R.C.P. 29 and 30

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of setoff or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods as proof of the possession or control of the goods or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” includes all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Order” in sections of this chapter relating to documents of title means an order by indorsement on the document.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

“Plaintiff” includes defendant asserting a right of setoff or counterclaim.

“Property” means the general property in goods, and not merely a special property.

“Purchaser” includes mortgagee and pledgee.

“Purchases” includes taking as a mortgagee or as a pledgee.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale, as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods or any legal successor in the interest of such person.

“Specific goods” means goods identified and agreed upon at the time a contract to sell or a sale is made.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as to security therefor.

Similar provisions, §§487.54, 541.25, 542.58

2. A thing is done “in good faith” within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

3. A person is insolvent within the meaning of this chapter who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

4. Goods are in a “deliverable state” within the meaning of this chapter when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. [C24, 27, 31, 35, 39, §10005; C46, 50, 54, §554.77]

**554.78 Chapter not retroactive.** None of the provisions of this chapter shall apply to any sale, or to any contract to sell, made prior to the taking effect of this chapter. [C24, 27, 31, 35, 39, §10006; C46, 50, 54, §554.78]

**554.79 No repeal of uniform warehouse receipt act or uniform bills of lading act.** Nothing in this chapter or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the chapter to make uniform the law of warehouse receipts, or of the chapter to make uniform the law of bills of lading, or of the bulk sales law. [C24, 27, 31, 35, 39, §10007; C46, 50, 54, §554.79]

Sales in bulk, ch 555  
Uniform bills of lading, ch 487  
Warehouse receipts law, ch 542

## CHAPTER 555

### SALES IN BULK

Referred to in §554.79

555.1 Inventory—creditors—notice.

555.2 Meaning of terms.

555.3 Exceptions.

555.4 Purchaser deemed a receiver.

555.5 When purchaser protected.

**555.1 Inventory — creditors — notice.** The sale, transfer, or assignment, in bulk, of any part or the whole of a stock of merchandise and the fixtures pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, transferor, or

assignor, shall be void as against the creditors of the seller, transferor, or assignor:

1. *Inventory.* Unless the seller, transferor, assignor and purchaser, transferee, and assignee, shall, at least seven days before the sale, make a full detailed inventory, showing the quantity and, so far as possible with the

exercise of reasonable diligence, the cost price to the seller, transferor, and assignor of each article to be included in the sale; and

2. *Creditors.* Unless the purchaser, transferee, and assignee demand and receive from the seller, transferor, and assignor a written list of names and addresses of the creditors of the seller, transferor, and assignor, with the amount of the indebtedness due or owing to each and certified by the seller, transferor, and assignor, under oath, to be a full, accurate, and complete list of his creditors, and of his indebtedness; and

3. *Notice.* Unless the purchaser, transferee, and assignee shall, at least seven days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by certified mail, every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms, and conditions thereof. [SS15, §§2911-a, b; C24, 27, 31, 35, 39, §10008; C46, 50, 54, §555.1; 57GA, ch 267, §82]

**555.2 Meaning of terms.** Sellers, transferors and assignors, purchasers, transferees and assignees, under this chapter, shall include corporations, associations, copartnerships, and individuals. [S13, §2911-c; C24, 27, 31, 35, 39, §10009; C46, 50, 54, §555.2]

37GA, ch 64, §2, editorially divided

**555.3 Exceptions.** Nothing contained in this chapter shall apply to sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process. [S13, §2911-c; C24, 27, 31, 35, 39, §10010; C46, 50, 54, §555.3]

**555.4 Purchaser deemed a receiver.** Any purchaser, transferee, or assignee who shall not conform to the provisions of this chapter shall, upon application of any of the creditors of the seller, transferor, or assignor, become a receiver and be held accountable to such creditors for all the goods, wares, merchandise, and fixtures that have come into his possession by virtue of such sale, transfer, or assignment. [C24, 27, 31, 35, 39, §10011; C46, 50, 54, §555.4]

37GA, ch 64, §3, editorially divided

**555.5 When purchaser protected.** Any purchaser, transferee, or assignee who shall conform to the provisions of this chapter shall not be held in any way accountable to any creditor of the seller, transferor, or assignor, or to the seller, transferor, or assignor for any of the goods, wares, merchandise, or fixtures that have come into the possession of said purchaser, transferee, or assignee by virtue of such sale, transfer, or assignment. [C24, 27, 31, 35, 39, §10012; C46, 50, 54, §555.5]

## CHAPTER 556

### CHATTEL MORTGAGES AND CONDITIONAL SALES OF PERSONAL PROPERTY

Referred to in §321.50

#### GENERAL PROVISIONS

- 556.1 Exempt property—mortgage by husband and wife—exceptions.
- 556.2 Right to possession—title.
- 556.3 Sales or mortgages—recording.
- 556.4 Conditional sales.
- 556.5 Filing equivalent of recording.
- 556.6 Receipt.
- 556.7 Option to record.
- 556.8 Time of filing noted—effect.
- 556.9 Index book.
- 556.10 Under name of vendee.
- 556.11 Transfers in representative capacity.
- 556.12 Mortgage void after five years—extension.
- 556.13 Assignments—how made.
- 556.14 Copy furnished and certified—additional filings.

#### GENERAL PROVISIONS

**556.1 Exempt property—mortgage by husband and wife—exceptions.** No encumbrance of personal property which may be held exempt from execution by the head of a family, if a resident of this state, shall be of any validity as to such exempt property only, unless the same be by written instrument, and unless the husband and wife, if both be living,

- 556.15 Certified copies.
- 556.16 Production of original.
- 556.17 Release of mortgages.
- 556.18 Original returned to maker.
- 556.19 Originals destroyed.
- 556.20 Fees.
- 556.21 Real estate mortgage with chattel mortgage clause.

#### SALE OR LEASE OF UTILITY EQUIPMENT

- 556.22 Conditional sale or lease authorized.
- 556.23 Rental as purchase money.
- 556.24 Validity of contract conditioned.
- 556.25 Recording.
- 556.26 Release and satisfaction.
- 556.27 Fees.
- 556.28 Prior contracts not affected.

concur in and sign the same joint instrument; except that an encumbrance of a motor vehicle as defined in section 321.1 given to secure the claim of any person for services or materials, or both, used in repairing, improving or enhancing the value of such motor vehicle need be signed only by the owner of the motor vehicle to be valid. Encumbrances on the property sold, given to secure

the purchase price, need only be signed and acknowledged by the purchaser. [C51,§1193; R60,§2201; C73,§1923; C97,§2906; C24, 27, 31, 35, 39,§10013; C46, 50, 54,§556.1; 57GA, ch 253,§1]

Assignment of wages, §539.4  
Referred to in §321.109

**556.2 Right to possession—title.** In the absence of stipulations in the mortgage, the mortgagee of personal property is entitled to the possession thereof, but the title shall remain in the mortgagor until divested by sale as provided by law. [C51,§1210; R60,§2217; C73,§1927; C97,§2911; C24, 27, 31, 35, 39,§10014; C46, 50, 54, §556.2]

**556.3 Sales or mortgages—recording.** No sale or mortgage of personal property where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and such instrument or a true copy thereof is duly recorded by, or filed and deposited with, the recorder of the county where the mortgagor or vendor resides if he be a resident of this state at the time of the execution of the instrument; but if he be not such a resident then of the county where the property is situated at that time. [C51,§1193; R60, §2201; C73,§1923; C97,§2906; C24, 27, 31, 35, 39, §10015; C46, 50, 54,§556.3]

**556.4 Conditional sales.** No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor and vendee, or by the lessor and lessee, acknowledged by the vendor or vendee, or by the lessor or lessee, and such instrument or a true copy thereof is duly recorded by, or filed and deposited with, the recorder of deeds of the county where the vendee or lessee resides if he be a resident of this state at the time of the execution of the instrument; but if he be not such a resident, then of the county where the property is situated at that time. [C73, §1922; C97,§2905; C24, 27, 31, 35, 39,§10016; C46, 50, 54,§556.4]

Referred to in §556.10

**556.5 Filing equivalent of recording.** Upon receipt of any such instrument or a true copy thereof affecting the title to personal property, the recorder shall indorse thereon the time of receiving it, and shall file the same in his office for the inspection of all persons, and such filing shall have the same force and effect as if recorded at length. [C24, 27, 31, 35, 39, §10017; C46, 50, 54,§556.5]

40ExGA, SF 75,§5, editorially divided

**556.6 Receipt.** Upon request of person presenting such instrument or a true copy thereof for filing, the county recorder shall issue a

receipt therefor, and such receipt shall describe the instrument as to grantor, grantee, date, consideration, and date filed. [C24, 27, 31, 35, 39,§10018; C46, 50, 54,§556.6]

**556.7 Option to record.** The recorder shall, if requested, as soon as practicable, record such instrument or any assignment or release thereof, and enter in his index book in its proper place the page and book where the record may be found, and deliver the instrument to the owner upon request. [C51,§1196; R60,§2204; C73,§1926; C97,§2910; C24, 27, 31, 35, 39,§10019; C46, 50, 54,§556.7]

**556.8 Time of filing noted—effect.** When any such instrument or a true copy thereof of the character above contemplated is filed, the recorder shall note thereon the day and exact time of filing the same, and forthwith enter in his index book the first seven requirements specified in section 556.9; and from the time of said entry the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged. [C51,§1195; R60,§2203; C73, §1925; C97,§2908; C24, 27, 31, 35, 39,§10020; C46, 50, 54,§556.8]

**556.9 Index book.** The county recorder shall keep an index book in which shall be entered a list of instruments affecting title to or encumbrance of personal property, which may be filed under this chapter. Such book shall be ruled into separate columns with appropriate heads, and shall set out:

1. Time of reception.
  2. Name of each mortgagor or vendor.
  3. Name of each mortgagee or vendee.
  4. Date of instrument.
  5. A general description of the kind or nature of the property.
  6. Where located.
  7. Amount secured.
  8. When due.
  9. Page and book where the record is to be found.
  10. Extension.
  11. When released.
  12. Remarks and assignments.
- [C51,§1194; R60,§2202; C73,§1924; C97,§2907; C24, 27, 31, 35, 39,§10021; C46, 50, 54,§556.9]

Referred to in §556.8

**556.10 Under name of vendee.** A sale or contract recorded or filed under the provisions of section 556.4 need only be indexed under the name of the vendee or purchaser. [C39, §10021.1; C46, 50, 54,§556.10]

**556.11 Transfers in representative capacity.** In indexing transfers of personal property made by an administrator, executor, guardian, referee, receiver, sheriff, commissioner, or other person acting in a representative capacity, the recorder shall enter upon such index

book the name and representative capacity of each person executing such instrument, and the owner of the property, if disclosed therein. [C97,§2909; C24, 27, 31, 35, 39,§10022; C46, 50, 54,§556.11]

**556.12 Mortgage void after five years—extension.** Every mortgage so filed shall be void as against the creditors of the person making the same, or as against subsequent purchasers or mortgagees in good faith, after the expiration of five years after the maturity of the debt thereby secured, unless an extension agreement, duly executed by the mortgagor, shall be filed with the instrument to which it relates, and such extension agreement shall operate to continue the lien in the same manner as the original instrument. [C24, 27, 31, 35, 39, §10023; C46, 50, 54,§556.12]

**556.13 Assignments—how made.** A chattel mortgage filed or recorded may be assigned of record by the mortgagee or the record holder thereof, by the execution of an appropriate written instrument, duly acknowledged, and filed in the same office where the mortgage is filed or recorded. If the mortgage is recorded, an assignment thereof may be made by the mortgagee or the record holder of the mortgage executing an assignment on the margin of the record of such mortgage, or, if the mortgage be filed but not recorded, such assignment may be indorsed upon the original instrument, but where the assignment is on the margin of the record or indorsed upon the instrument, the assignor shall be identified and his signature to such assignment witnessed and attested by the recorder or his deputy. [C24, 27, 31, 35, 39,§10024; C46, 50, 54,§556.13]

**556.14 Copy furnished and certified—additional filings.** A duplicate or copy of such mortgage, bill of sale, or other instrument filed under the provisions of this chapter, shall be supplied by the county recorder upon request of any party in interest, and the payment of fees therefor. Such duplicate or copy shall be duly certified by the county recorder and may be filed in other counties of the state in the same manner as herein provided. [C24, 27, 31, 35, 39,§10025; C46, 50, 54,§556.14]

**556.15 Certified copies.** A copy of such original instrument, duly certified by the county recorder in whose office the same shall have been filed, shall be received in evidence in all suits to which it may be applicable. [C24, 27, 31, 35, 39,§10026; C46, 50, 54,§556.15]

40ExGA, SF 75,§13, editorially divided

**556.16 Production of original.** If in any suit or action, the due execution of such instrument or its genuineness be questioned in such manner as to render the production of the original instrument desirable or necessary, then the same may be produced by the recorder of the county in obedience to a proper judicial process or court order. [C24, 27, 31, 35, 39,§10027; C46, 50, 54,§556.16]

**556.17 Release of mortgages.** When the amount due on any chattel mortgage, conditional sales contract, or pledge of personal property is paid, the mortgagee, conditional vendor, pledgee or his personal representative or assignee, or those legally acting for him shall release of record such instrument evidencing the security, at his own expense, by filing with the original instrument a duly executed satisfaction piece or release, or by indorsing a satisfaction on the index book under the heading of "remarks" in the same manner as mortgages are released by marginal satisfaction, and when so released on index book, the recorder shall enter a memorandum thereof on the original instrument or on the record thereof, if recorded.

The fee for the release of any of the above instruments shall be paid directly to the county recorder at the time the original instrument is filed of record.

Any person who fails to comply with the provisions of this section within thirty days after being requested in writing shall forfeit to the mortgagor, conditional vendee or pledgor the sum of twenty-five dollars. [C24, 27, 31, 35, 39,§10028; C46, 50, 54,§556.17; 57GA, ch 254,§1]

**556.18 Original returned to maker.** When any unrecorded chattel mortgage or other instrument of writing or indebtedness, which may have been filed as herein provided, shall have been satisfied, it shall be the duty of the recorder, after making a proper entry of such satisfaction in the index book or record where the original instrument is recorded, to return the original instrument, with any extension, assignment, or release, thereto attached, to the mortgagor or person executing the same, upon request therefor. [C24, 27, 31, 35, 39,§10029; C46, 50, 54,§556.18]

**556.19 Originals destroyed.** In case such unrecorded instrument, with the extension or release thereof, if any, be not returned as hereinbefore provided, after the expiration of five years from the maturity thereof, or the maturity of any extension thereof, the recorder shall destroy such chattel mortgages with the extension or releases thereto attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors, or a committee appointed by the board of supervisors from their own number, to superintend the same, and when so destroyed the date of such destruction shall be entered on the index record under "remarks". [C24, 27, 31, 35, 39,§10030; C46, 50, 54,§556.19]

**556.20 Fees.** The fees to be collected by the county recorder under this chapter shall be as follows:

1. For filing any instrument affecting the title to or encumbrance of personal property, fifty cents each.
2. For recording or making certified copies of such instruments, one dollar for the first

four hundred words and twenty cents for each one hundred additional words or fraction thereof.

3. For the marginal assignment or release of any instrument, fifty cents. [C24, 27, 31, 35, 39, §10031; C46, 50, 54, §556.20]

Fees in general, §335.14

**556.21 Real estate mortgage with chattel mortgage clause.** Real estate mortgages which create an encumbrance on personal property, shall, after being recorded at length, be indexed in the chattel mortgage index book. Said indexing shall show the book and page where said mortgage is recorded and such record and index shall have the same effect as though said mortgage were retained by the recorder as a chattel mortgage, or as though the same had been recorded at length in the chattel mortgage records and indexed accordingly. When such mortgage is released of record, the recorder shall make entry thereof on said chattel mortgage index book. [C24, 27, 31, 35, 39, §10032; C46, 50, 54, §556.21]

#### SALE OR LEASE OF UTILITY EQUIPMENT

##### **556.22 Conditional sale or lease authorized.**

In any contract for the sale of railroad or street railway equipment or rolling stock or power house, electric or other equipment of street or interurban railways or of electric light and power companies or of steam-heating companies, such equipment including engines, boilers, generators, switchboards, transformers, motors, and other machinery and appliances, it may be agreed that the title thereto, although possession thereof be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. [C97, §2051; S13, §2051; C24, 27, 31, 35, 39, §10033; C46, 50, 54, §556.22]

S13, §2051, editorially divided  
Referred to in §556.28

**556.23 Rental as purchase money.** In any contract for the leasing or hiring of such property, it may be stipulated for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee. [C97, §2051; S13, §2051; C24, 27, 31, 35, 39, §10034; C46, 50, 54, §556.23]

Referred to in §556.28

**556.24 Validity of contract conditioned.** No such contract shall be valid as against any subsequent judgment creditor, or subsequent

bona fide purchaser for value without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and acknowledged by the vendee, or lessee, or bailee, as the case may be, in the same manner as deeds are acknowledged or proved.

2. Such instrument or a true copy thereof shall be filed for record in the office of the secretary of state.

3. Each locomotive engine, stationary engine, boiler, switchboard, transformer, motor, other piece of machinery or appliance or car sold, leased, or hired as aforesaid shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor", as the case may be. [C97, §2051; S13, §2051; C24, 27, 31, 35, 39, §10035; C46, 50, 54, §556.24]

Referred to in §556.28  
Acknowledgment of deed, §558.20, et seq.

**556.25 Recording.** The contracts herein authorized or true copies thereof shall be filed with the secretary of state who shall number consecutively all such contracts filed in his office and shall maintain a card index thereof alphabetically arranged, and shall preserve the same as permanent records of his office. [C97, §2052; S13, §2052; C24, 27, 31, 35, 39, §10036; C46, 50, 54, §556.25]

40ExGA, HF 190, §3, editorially divided  
Referred to in §§556.26, 556.28

**556.26 Release and satisfaction.** On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, by separate instrument to be executed and acknowledged by the vendor, lessor, or bailor, or his or its assignee, which said instrument or a photostatic copy thereof shall be filed with the secretary of state, who shall number and index all such declarations as provided in section 556.25. [C97, §2052; S13, §2052; C24, 27, 31, 35, 39, §10037; C46, 50, 54, §556.26]

Referred to in §556.28

**556.27 Fees.** For such service the secretary of state shall charge a filing fee of one dollar for each contract and each declaration. [C97, §2052; S13, §2052; C24, 27, 31, 35, 39, §10038; C46, 50, 54, §556.27]

Referred to in §556.28

**556.28 Prior contracts not affected.** Sections 556.22 to 556.27, inclusive, shall not invalidate or affect in any way any contract of the kind referred to in sections 556.22 to 556.24, inclusive, made prior to April 24, 1894, and any such contract made prior to said date upon compliance with the provisions of said sections 556.22 to 556.27, inclusive, may be recorded as therein provided. [C97, §2053; C24, 27, 31, 35, 39, §10039; C46, 50, 54, §556.28]

# TITLE XXV

## REAL PROPERTY

### CHAPTER 557

#### REAL PROPERTY IN GENERAL

##### GENERAL PRINCIPLES

- 557.1 Who deemed seized.
- 557.2 Estate in fee simple.
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- 557.11 Conveyances by married women.
- 557.12 Conveyances by husband and wife.
- 557.13 Covenants—spouse not bound.
- 557.14 Title and possession of mortgagor.

##### GENERAL PRINCIPLES

**557.1 Who deemed seized.** All persons owning real estate not held by an adverse possession shall be deemed to be seized and possessed of the same. [C51,§1199; R60,§2207; C73,§1928; C97,§2912; C24, 27, 31, 35, 39,§10040; C46, 50, 54, §557.1]

**557.2 Estate in fee simple.** The term “heirs” or other technical words of inheritance are not necessary to create and convey an estate in fee simple. [C51,§1200; R60,§2208; C73,§1929; C97,§2913; C24, 27, 31, 35, 39,§10041; C46, 50, 54, §557.2]

**557.3 Conveyance passes grantor's interest.** Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. [C51,§1201; R60,§2209; C73, §1930; C97,§2914; C24, 27, 31, 35, 39,§10042; C46, 50, 54,§557.3]

**557.4 After-acquired interest — exception.** Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the wife or husband of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee. [C51,§1202; R60, §2210; C73,§1931; C97,§2915; C24, 27, 31, 35, 39, §10043; C46, 50, 54,§557.4]

- 557.15 Tenancy in common.
- 557.16 Cotenant liable for rent.
- 557.17 Partition—cotenant charged with rent.
- 557.18 Vendor's lien.
- 557.19 Fraudulent conveyances.
- 557.20 Rule in Shelley's case.
- 557.21 Devise, bequest, or conveyance not enlarged.

##### REGISTRATION OF FARMS

- 557.22 Authorization—certificate.
- 557.23 Vested interest.
- 557.24 Fee.
- 557.25 Transfer of farm.
- 557.26 Cancellation—fee.

**557.5 Adverse possession.** Adverse possession of real estate does not prevent any person from selling his interest in the same. [C51, §1203; R60,§2211; C73,§1932; C97,§2916; C24, 27, 31, 35, 39,§10044; C46, 50, 54,§557.5]

**557.6 Future estates.** Estates may be created to commence at a future day. [C51,§1204; R60,§2212; C73,§1933; C97,§2917; C24, 27, 31, 35, 39,§10045; C46, 50, 54,§557.6]

**557.7 Contingent remainders.** A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities. [C24, 27, 31, 35, 39,§10046; C46, 50, 54,§557.7]

40ExGA, SF 281,§2, editorially divided  
Referred to in §557.8

**557.8 Applicability.** Section 557.7, except so far as declaratory of existing law, shall apply only to instruments executed on or after July 1, 1925, and to wills and codicils revived or confirmed by a will or codicil executed on or after said date. [C24, 27, 31, 35, 39,§10047; C46, 50, 54,§557.8]

**557.9 Defeating expectant estate.** No expectant estate shall be defeated or barred by an alienation or other act of the owner of the precedent estate, nor by the destruction of



such precedent estate by disseizin, forfeiture, surrender, or merger; provided that on the petition of the life tenant, with the consent of the holder of the reversion, the district court may order the sale of the property in such estate and the proceeds shall be subject to the order of court until the right thereto becomes fully vested. The proceedings shall be as in an action for partition. [C24, 27, 31, 35, 39, §10048; C46, 50, 54, §557.9]

**557.10 Declarations of trust.** Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law. [C51, §1205; R60, §2213; C73, §1934; C97, §2918; C24, 27, 31, 35, 39, §10049; C46, 50, 54, §557.10]

Statute of frauds, §622.32

**557.11 Conveyances by married women.** A married woman may convey or encumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons. [C51, §1207; R60, §2215; C73, §1935; C97, §2919; C24, 27, 31, 35, 39, §10050; C46, 50, 54, §557.11]

**557.12 Conveyances by husband and wife.** Every conveyance made by a husband and wife shall be sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance. [R60, §2255; C73, §1936; C97, §2920; C24, 27, 31, 35, 39, §10051; C46, 50, 54, §557.12]

**557.13 Covenants—spouse not bound.** Where either the husband or wife joins in a conveyance of real estate owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof. [C73, §1937; C97, §2921; C24, 27, 31, 35, 39, §10052; C46, 50, 54, §557.13]

**557.14 Title and possession of mortgagor.** In absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereto. [C51, §1210; R60, §2217; C73, §1938; C97, §2922; C24, 27, 31, 35, 39, §10053; C46, 50, 54, §557.14]

**557.15 Tenancy in common.** Conveyances to two or more in their own right create a tenancy in common, unless a contrary intent is expressed. [C51, §1206; R60, §2214; C73, §1939; C97, §2923; C24, 27, 31, 35, 39, §10054; C46, 50, 54, §557.15]

**557.16 Cotenant liable for rent.** In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover

from such tenants in possession, his or their proportionate part of the rental value of said real estate for the time, not exceeding a period of five years, such real estate shall have been in possession as aforesaid. [C24, 27, 31, 35, 39, §10055; C46, 50, 54, §557.16]

37GA, ch 27, §1, editorially divided

**557.17 Partition—cotenant charged with rent.** In case of partition of such real estate held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their cotenants are entitled. [C24, 27, 31, 35, 39, §10056; C46, 50, 54, §557.17]

**557.18 Vendor's lien.** No vendor's lien for unpaid purchase money shall be enforced in any court of this state after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee is made after suit by the vendor, his executor, or assigns to enforce such lien. [C73, §1940; C97, §2924; C24, 27, 31, 35, 39, §10057; C46, 50, 54, §557.18]

C97, §2924, editorially divided  
Referred to in §557.19

**557.19 Fraudulent conveyances.** Nothing in section 557.18 shall be construed to deprive a vendor of any remedy now existing against conveyance procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud or lien. [C73, §1940; C97, §2924; C24, 27, 31, 35, 39, §10058; C46, 50, 54, §557.19]

**557.20 Rule in Shelley's case.** The rule or principle of the common law known as the rule in Shelley's case is hereby abolished and is declared not to be a part of the law of this state. [S13, §2924-a; C24, 27, 31, 35, 39, §10059; C46, 50, 54, §557.20]

**557.21 Devise, bequest, or conveyance not enlarged.** No express devise, bequest, or conveyance of an estate for life, or other limited estate in real or personal property shall be enlarged or construed to pass any greater estate to the devisee, legatee, or grantee thereof by reason of any devise, bequest, or conveyance to the heirs, heirs of the body, children, or issue of such devisee, legatee, or grantee; but this section shall not in any manner or under any circumstances be so construed as to impair or affect the vested rights of any person in or to any lands or estates acquired prior to July 4, 1907. [S13, §2924-b; C24, 27, 31, 35, 39, §10060; C46, 50, 54, §557.21]

#### REGISTRATION OF FARMS

**557.22 Authorization—certificate.** Any owner of a farm in the state may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the county recorder of the county in which said farm is located.

Such recorder shall furnish to such landowner a proper certificate setting forth said name and a description of such lands. [S13, §2924-c; C24, 27, 31, 35, 39, §10061; C46, 50, 54, §557.22]

S13, §2924-c, editorially divided  
Referred to in §557.24

**557.23 Vested interest.** When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county. [S13, §2924-c; C24, 27, 31, 35, 39, §10062; C46, 50, 54, §557.23]

**557.24 Fee.** Any person having the name of his farm recorded as provided in section 557.22 shall first pay to the county recorder a fee of three dollars, which fee shall be paid to the county treasurer as other fees are paid to the county treasurer by such recorder. [S13, §2924-d; C24, 27, 31, 35, 39, §10063; C46, 50, 54, §557.24]

**557.25 Transfer of farm.** When any owner of a farm, the name of which has been re-

corded as hereinbefore provided, transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance. [S13, §2924-e; C24, 27, 31, 35, 39, §10064; C46, 50, 54, §557.25]

**557.26 Cancellation—fee.** When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder", which shall be signed by the person canceling such name and attested by the county recorder. For such latter service the county recorder shall charge a fee of fifty cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him. [S13, §2924-f; C24, 27, 31, 35, 39, §10065; C46, 50, 54, §557.26]

## CHAPTER 558

### CONVEYANCES

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558.61 Form of transfer book.  
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 558.67 Correction of books and instruments.  
 558.68 Perpetuities prohibited.

**558.1 "Instruments affecting real estate" defined—revocation.** All instruments containing a power to convey, or in any manner relating to real estate, including certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, shall be held to be instruments affecting the same; and no such instrument, when certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded. [C51,§1226; R60,§2234; C73,§1969; C97,§2957; C24, 27, 31, 35, 39,§10066; C46, 50, 54,§558.1]

**558.2 Corporation having seal.** In the execution of any written instrument conveying, encumbering, or affecting real estate by a corporation that has adopted a corporate seal, the seal of such corporation shall be attached or affixed to such written instrument. [C51,§974; R60,§1823; C73,§2112; C97,§3068; S13,§3068; C24, 27, 31, 35, 39,§10067; C46, 50, 54,§558.2]

40ExGA, HF 77,§2, editorially divided  
 Seals generally, §587.1

**558.3 Corporation not having seal.** If the corporation has not adopted a corporate seal, such fact shall be stated in such written instrument. [S13,§3068; C24, 27, 31, 35, 39,§10068; C46, 50, 54,§558.3]

**558.4 Release of corporate lien—omission of seal.** It shall not hereafter be necessary to attach or affix the corporate seal to any release or satisfaction of any mortgage, judgment, or other lien, that is made or entered by any corporation on the page of the official record where any such lien appears, but the officer executing such release or satisfaction shall therein certify that same is executed with authority of the board of directors of such corporation, and the county recorder or deputy shall attach thereto a statement showing the relation such officer then bears to the corporation. [S13,§3068; C24, 27, 31, 35, 39,§10069; C46, 50, 54,§558.4]

**558.5 Contract for deed—presumption of abandonment.** When the record shows that a contract or bond for a deed has been given prior to January 1, 1930, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, such contract shall be deemed abandoned and of no effect and the land freed from any lien or defect on account of such contract. [S13,

§2963-j; C24, 27, 31, 35, 39,§10070; C46, 50, 54, §558.5]

Saving clause, 50GA, ch 252,§4

**558.6 Christian names—variation—effect.** When there is a difference between the christian names or initials in which title is taken, and the christian names or initials of the grantor in a succeeding conveyance, and the surnames in both instances are written the same or sound the same, such conveyances or the record thereof shall be presumptive evidence that the surname in the several conveyances and instruments refers to the same person. [S13,§2963-k; C24, 27, 31, 35, 39,§10071; C46, 50, 54,§558.6]

Saving clause, 50GA, ch 252,§4

**558.7 Assignment of certificate of entry deemed deed.** When the record shows:

1. That the original entry, certificate of entry, receipt, or duplicate thereof has been assigned;

2. That prior or subsequent to such assignment, the United States or state issued a patent or conveyance to the assignor;

3. That no deed of conveyance appears on record from the original entryman or assignor to the assignee; and

4. That the present record owner holds title under such assignment—

such assignment shall have the same force and effect as a deed of conveyance and shall be conclusively presumed to carry all right, title, and interest of the patentee of said real estate, the same as though a deed of conveyance had been subsequently executed by the patentee or assignor to a subsequent grantor. [S13,§2963-n; C24, 27, 31, 35, 39,§10072; C46, 50, 54,§558.7]

**558.8 Affidavits explanatory of title—presumption.** Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file such affidavit. Such affidavit or the record thereof, including all such affidavits now of record, shall raise a presumption from the date of recording that the purported facts stated therein are true; after the lapse of three years from the date of such recording, such presumption shall be conclusive. [C51,§1226; R60,§2234; C73,§1969; C97,§2957; S13,§2963-l; C24, 27, 31, 35, 39,§10073; C46, 50, 54,§558.8]

**558.9 Railroad land grants—duty to record.** Every railroad company which owns or claims real estate in this state, granted by the government of the United States or this state to aid in the construction of its railroad, where it has not already done so, shall place on file and

cause to be recorded, in each county wherein the real estate granted is situated, evidence of its title or claim of title, whether the same consists of patents from the United States, certificates from the secretary of the interior, or governor of this state, or the proper land office of the United States or this state. Where no patent was issued, reference shall be made in said certificate to the acts of congress, and the acts of the legislature of this state, granting such lands, giving the date thereof, and date of their approval under which claim of title is made. [C97,§2939; C24, 27, 31, 35, 39,§10074; C46, 50, 54,§558.9]

**558.10 Patents covering land in different counties.** Where the certificate of the secretary of the interior or the patents cover real estate situated in more than one county, the secretary of state shall, upon the application of any railroad company or its grantee, prepare and furnish, to be recorded, a list of all the real estate situated in any one county so granted, patented, or certified; and all such evidences of title shall be entered by the auditor upon the index, transfer, and plat books. [C97, §2939; C24, 27, 31, 35, 39,§10075; C46, 50, 54, §558.10]

**558.11 Record—constructive notice.** The evidence of title shall be filed with the recorder of deeds of the county in which the real estate is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in other cases of entries upon said index, and the recorder shall receive the same fees therefor as for recording other instruments. [C97,§2940; C24, 27, 31, 35, 39,§10076; C46, 50, 54,§558.11]

Fees, §335.14

**558.12 Transcript of instruments.** Any person interested therein may procure from any recorder in this state a transcript of any instrument affecting real estate which is of record in his office. Such transcript shall be certified by the recorder, and the clerk of the district court shall certify under the seal of his office to the signature of such recorder and his official character. [S13,§2938-a; C24, 27, 31, 35, 39,§10077; C46, 50, 54,§558.12]

Referred to in §558.13  
Fees, §79.3

**558.13 Transcript recorded.** A transcript of the record of any instrument affecting real estate, certified as provided in section 558.12, shall be entitled to record in the office of the recorder of any other county in which is situated any of the real estate affected by such instrument. The effect of the recording of such transcript shall be the same as the recording of the original instrument. [S13,§2938-a; C24, 27, 31, 35, 39,§10078; C46, 50, 54,§558.13]

**558.14 Grantor described as "spouse" or "heir"—presumption.** All conveyances or the record title thereof of real estate executed

prior to January 1, 1930, wherein the grantor or grantors described herself, himself, or themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated. [S13,§2963-e; C24, 27, 31, 35, 39,§10079; C46, 50, 54,§558.14]

Saving clause, 50GA, ch 252,§4

**558.15 Notarial seals of nonresidents—presumption.** Any notarial seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima-facie evidence that the words thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made. [S13,§2943-a; C24, 27, 31, 35, 39,§10080; C46, 50, 54,§558.15]

**558.16 Records transcribed.** The board of supervisors of any county may have copied, indexed, and arranged any deed, probate, mortgage, court, or county record, or government survey belonging or relating to said county, and have a complete index thereof made; and may cause any index of deeds, mortgages, or other records to be correctly copied. [R60, §2258, 2259; C73,§§1971, 1972; C97,§2961; C24, 27, 31, 35, 39,§10081; C46, 50, 54,§558.16]

Referred to in §558.17

**558.17 Compensation.** The board of supervisors may employ any suitable person to perform the labor contemplated in section 558.16, the amount of compensation therefor to be previously fixed by them, not exceeding six cents for each one hundred words of the records proper, and twelve and one-half cents for each one hundred words of indexing. [R60, §2260; C73,§1973; C97,§2962; C24, 27, 31, 35, 39, §10082; C46, 50, 54,§558.17]

**558.18 Certification—effect.** When any such records are copied, the officer to whose office the original records belong shall compare the copy so made with the original, and when found correct, shall attach his certificate in each volume or book of such copied records, to the effect that he has compared such copies with the original and they are true and correct, and such copied records shall thereupon have the same force and effect in all respects as the original records. [R60,§§2261, 2262; C73,§§1974, 1975; C97,§2963; C24, 27, 31, 35, 39,§10083; C46, 50, 54,§558.18]

**558.19 Forms of conveyance.** The following or other equivalent forms of conveyance, varied to suit circumstances, are sufficient for the purposes herein contemplated:

1. FOR A QUITCLAIM DEED

For the consideration of ..... dollars, I hereby quitclaim to ..... all my interest in the following tract of real estate (describing it).

2. FOR A DEED IN FEE SIMPLE WITHOUT WARRANTY

For the consideration of ..... dollars, I hereby convey to ..... the following tract of real estate (describing it).

3. FOR A DEED IN FEE WITH WARRANTY

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" (or other words of warranty, as the party may desire).

4. FOR A MORTGAGE

The same as deed of conveyance, adding the following: "To be void upon condition that I pay", etc. [C51,§1232; R60,§2240; C73,§1970; C97,§2958; C24, 27, 31, 35, 39,§10084; C46, 50, 54, §558.19]

**558.20 Acknowledgments within state.** The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or encumbered, if made within this state, must be before some court having a seal, or some judge or clerk thereof, or some county auditor, or justice of the peace within the county, or notary public within the county of his appointment or in any county in which he has filed with the clerk of the district court a certified copy of his certificate of appointment. Each of the officers above named is authorized to take and certify acknowledgments of all written instruments, authorized or required by law to be acknowledged. [C51,§1217; R60,§2226; C73,§1955; C97,§2942; S13,§2942; C24, 27, 31, 35, 39,§10085; C46, 50, 54,§558.20; 56GA, ch 257,§1]

Certain acknowledgments legalized, §589.4

**558.21 Acknowledgments outside of state.** When made out of the state but within the United States, it shall be before a judge of a court of record, or officer holding the seal thereof, or a commissioner appointed by the governor of this state to take the acknowledgment of deeds, or some notary public, or justice of the peace. [R60,§2245; C73,§1956; C97, §2943; S13,§2943; C24, 27, 31, 35, 39,§10086; C46, 50, 54,§558.21]

Referred to in §558.23

**558.22 Certificate of authenticity.** When made out of the state but within the United States and before a judge, or justice of the peace, a certificate, under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of his office, of the official character of said judge, or justice, and of the genuineness of his signature, shall accompany said certificate of acknowledgment. [R60,§2245; C73, §1956; C97,§2943; S13,§2943; C24, 27, 31, 35, 39, §10087; C46, 50, 54,§558.22]

**558.23 Authorized foreign officials.** The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory, or district of the United States, may also be made before any officer of such state, territory, or district authorized by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as provided in section 558.24, may be recorded in this state, and read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers named in section 558.21. [C97,§2944; C24, 27, 31, 35, 39,§10088; C46, 50, 54,§558.23]

Referred to in §558.24

**558.24 Certificate of authenticity.** To entitle any conveyance or written instrument, acknowledged or proved under section 558.23, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment signed by such officer a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which said officer resides or in which he took such proof or acknowledgment, under the seal of such court. Such certificate shall comply substantially with section 558.25. [C97,§2945; C24, 27, 31, 35, 39,§10089; C46, 50, 54, §558.24]

Referred to in §558.23

**558.25 Form of authentication.** The following form of authentication of the proof or acknowledgment of a deed or other written instrument, when taken without this state and within any other state, territory, or district of the United States, or any form substantially in compliance with the foregoing provisions of this chapter, shall be used:

(Begin with a caption specifying the state, territory, or district, and county or place where the authentication is made.)

"I, ....., clerk of the ..... court in and for said county, which court is a court of record, having a seal (or I, ....., secretary of state of such state or territory), do hereby certify that ....., by and before whom the foregoing acknowledgment or proof was taken, was at the time of taking the same ..... residing

(Name of office held)

or authorized to act in said county, and was duly authorized by the laws of said state, territory, or district to take and certify acknowledgments or proofs of deeds of land in said state, territory, or district, and that said conveyance and the acknowledgment thereof are in due form of law; and, further, that I am well acquainted with the handwriting of said ....., and that I verily believe that the signature to said certificate of acknowledgment or proof is genuine. In testimony where-

of, I have hereunto set my hand and affixed the seal of the said court or state this ..... day of ..... A.D. 19 ...." [C97, §2946; C24, 27, 31, 35, 39, §10090; C46, 50, 54, §558.25]

Referred to in §558.24

**558.26 Acknowledgments by military or naval officers.** In addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by law, any person serving in or with the armed forces of the United States may acknowledge the same wherever located before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy or United States coast guard. Neither the instrument nor the acknowledgment shall be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall be required, but the officer taking the acknowledgment shall indorse thereon or attach thereto a certificate substantially in the following form:

On this the .... day of ....., 19...., before me, ....., the undersigned commissioned officer, personally appeared ....., known to me (or satisfactorily proven) to be serving in or with the armed forces of the United States and to be the person whose name is subscribed to the within instrument and acknowledged that ... he ... executed the same as ..... voluntary act and deed.

.....  
Signature of officer.

.....  
Rank of officer and command to which attached.

Such acknowledgments executed according to the above provisions shall be deemed of the same force and effect as acknowledgments executed before officers authorized to accept acknowledgments.

Any acknowledgments made before March 30, 1943 by any person serving in or with the armed forces of the United States in the manner as prescribed by this section, or substantially so, are hereby legalized and considered sufficient. [C46, 50, 54, §558.26]

**558.27 Acknowledgments outside United States.** When the acknowledgment is made without the United States, it may be before any ambassador, minister, secretary of legation, consul, vice-consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. [C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §10091; C46, 50, 54, §558.27]

**558.28 Authorized foreign officials.** Said instruments may also be acknowledged or proved without the United States before any officer of a foreign country who is authorized

by the laws thereof to certify to the acknowledgments of written documents. [C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §10092; C46, 50, 54, §558.28]

40ExGA, HF 77, §25, editorially divided

**558.29 Certificate of authenticity.** The certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of his signature, and seal if he have any. [C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §10093; C46, 50, 54, §558.29]

**558.30 Certificate of acknowledgment.** The court or officer taking the acknowledgment must indorse upon the deed or instrument a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was made.
2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming him.
3. That such person acknowledged the execution of the instrument to be his voluntary act and deed. [C51, §1219; R60, §2227; C73, §1958; C97, §2948; C24, 27, 31, 35, 39, §10094; C46, 50, 54, §558.30]

**558.31 Proof of execution and delivery in lieu of acknowledgment.** Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:

1. If the grantor dies before making the acknowledgment.
2. If his attendance cannot be procured.
3. If, having appeared, he refuses to acknowledge the execution of the instrument. [C51, §§1220, 1221; R60, §2228; C73, §1959; C97, §2949; C24, 27, 31, 35, 39, §10095; C46, 50, 54, §558.31]

**558.32 Contents of certificate.** The certificate indorsed by the officer upon a deed or other instrument thus proved must state:

1. The title of the officer taking the proof.
2. That it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that, having appeared, he refused to acknowledge the same.
3. The name of the witness by whom proof was made, and that it was proved by him that

the instrument was executed and delivered by the person whose name is thereunto subscribed as a party. [C51,§1222; R60,§2230; C73, §1960; C97,§2950; C24, 27, 31, 35, 39,§10096; C46, 50, 54,§558.32]

**558.33 Subpoenas.** An officer having power to take the proof hereinbefore contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county, in the manner provided for the taking of depositions. [C51,§1225; R60,§2233; C73,§1965; C97,§2956; C24, 27, 31, 35, 39,§10097; C46, 50, 54,§558.33]

Attendance of witnesses, §622.10

**558.34 Use of seal.** The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the officer making the same usually authenticates his formal acts. [C51,§1223; R60,§2231; C73,§1961; C97,§2951; C24, 27, 31, 35, 39,§10098; C46, 50, 54,§558.34]

**558.35 Married women.** The acknowledgment of a married woman, when required by law, may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. [C97,§2960; C24, 27, 31, 35, 39,§10099; C46, 50, 54,§558.35]

**558.36 Attorney in fact.** The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same. [R60,§2251; C73,§1962; C97,§2952; C24, 27, 31, 35, 39,§10100; C46, 50, 54,§558.36]

**558.37 Certificate of acknowledgment.** The person taking the acknowledgment must indorse upon such instrument a certificate, setting forth the following particulars:

1. The title of the person before whom the acknowledgment was taken.
2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is subscribed to the instrument as attorney for the grantor therein named, or that such identity was proved to him by at least one credible witness, to him personally known and therein named.
3. That such person acknowledged said instrument to be the act and deed of the grantor therein named, by him, as such attorney thereunto appointed, voluntarily done and executed. [R60,§2252; C73,§1963; C97,§2953; C24, 27, 31, 35, 39,§10101; C46, 50, 54,§558.37]

**558.38 Officers of corporation.** If the acknowledgment is made by the officers of a corporation, the certificate shall show that such persons as such officers, naming the office of each person, acknowledged the execution of the instrument as provided in section 558.39. [C97,§2954; C24, 27, 31, 35, 39,§10102; C46, 50, 54,§558.38]

Employee of corporation as notary, §77.10

**558.39 Forms of acknowledgment.** The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the seal of the officer shall be attached when necessary under the provision of this chapter. No certificate of acknowledgment shall be held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:  
State of..... }  
County of..... } ss.

On this ..... day of ....., A.D. 19...., before me ....., personally appeared  
(Insert title of acknowledging officer)  
....., to me known to be the person .. named in and who executed the foregoing instrument, and acknowledged that .... executed the same as ..... voluntary act and deed.

.....  
Notary Public in and for said county.

2. In the case of natural persons acting by attorney:

On this ..... day of ....., A. D. 19...., before me ....., personally appeared  
(Insert title of acknowledging officer)  
..... to me known to be the person who executed the foregoing instrument in behalf of ....., and acknowledged that he executed the same as the voluntary act and deed of said .....

3. In the case of corporations or joint-stock associations:

On this ..... day of ....., A. D. 19...., before me, a ....., in  
(Insert title of acknowledging officer)  
and for said county, personally appeared....., to me personally known, who being by me duly  
[ sworn or affirmed ] did say that he is.....

..... of said [ corporation association ], that  
(Insert title of executing officer)

[ the seal affixed to said instrument is the seal of said no seal has been procured by the said ]  
[ corporation association ] and that said instrument was signed and sealed on behalf of the said [ corporation association ] by authority of its board of [ directors trustees ] and the said ..... acknowledged the execution of said instrument to be the voluntary act and deed of said [ corporation association ] by it voluntarily executed.

(In all cases add signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.) [C97,

§2959; C24, 27, 31, 35, 39,§10103; C46, 50, 54, §558.39]

Referred to in §558.38

**558.40 Liability of officer.** Any officer, who knowingly misstates a material fact in either of the certificates mentioned in this chapter, shall be liable for all damages caused thereby, and shall be guilty of a misdemeanor, and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is indorsed. [C51,§1224; R60,§2232; C73,§1964; C97, §2955; C24, 27, 31, 35, 39,§10104; C46, 50, 54, §558.40]

**558.41 Recording.** No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided. [C51,§1211; R60,§2220; C73,§1941; C97,§2925; C24, 27, 31, 35, 39,§10105; C46, 50, 54,§558.41]

**558.42 Acknowledgment as condition precedent.** It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in this chapter, except that affidavits and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy need not be thus acknowledged. [C51,§1212; R60,§2221; C73,§1942; C97,§2926; C24, 27, 31, 35, 39,§10106; C46, 50, 54, §558.42]

**558.43 Assignment by separate instrument.** Recorded mortgages upon real estate may be assigned of record by the mortgagee or the record holder thereof, by the execution of an appropriate written instrument duly acknowledged and recorded in the county in which such real estate is situated. [C24, 27, 31, 35, 39, §10107; C46, 50, 54,§558.43]

40ExGA, HF 77,§89, editorially divided

**558.44 Assignment by marginal entry.** If such mortgage is recorded, an assignment thereof may be made by the mortgagee or the record holder of such mortgage executing an assignment on the margin of the record of such mortgage, and the assignor shall be identified and his signature to such assignment

witnessed and attested by the recorder or his deputy. [C24, 27, 31, 35, 39,§10108; C46, 50, 54, §558.44]

**558.45 Marginal reference.** Where any mortgage, contract, or other instrument constituting an encumbrance upon real estate shall be assigned or released by a separate instrument it shall be the duty of the recorder to enter in the margin of the record of such mortgage, contract, or instrument the character of such assignment or release and the book and page where the same is recorded. [C27, 31, 35,§10108-a1; C39,§10108.1; C46, 50, 54,§558.45]

Dual methods of satisfaction, §655.1

**558.46 Assignment — report to auditor required.** The assignment, sale, or transfer of all real estate mortgages or notes secured by real estate mortgages or other evidences of indebtedness secured by real estate mortgages, shall be reported to the county auditor of the residence of the assignee, by the assignee thereof, within thirty days from the date of the execution of said assignment, sale, or transfer, unless such assignment be recorded in the county recorder's office of the county in which the assignee resides. [C35,§10108-e1; C39, §10108.2; C46, 50, 54,§558.46]

**558.47 When assignment void.** No such assignment shall be of any validity until the same be reported to said county auditor. [C35, §10108-e2; C39,§10108.3; C46, 50, 54,§558.47]

**558.48 Omitted as obsolete.**

**558.49 Index books.** The recorder must keep index books, the pages of which are so divided as to show in parallel columns:

1. Each grantor.
2. Each grantee.
3. The time when the instrument was filed.
4. The date of the instrument.
5. The nature of the instrument.
6. The book and page where the record thereof may be found.
7. The description of the real estate conveyed. [C51,§1213; R60,§2222; C73,§1943; C97, §2935; S13,§2935; C24, 27, 31, 35, 39,§10109; C46, 50, 54,§558.49]

**558.50 Index for affidavits.** In case of affidavits each and every affidavit filed for record shall be indexed in appropriately ruled columns as follows:



Affidavit of	Concerning Whom	Concerning Land in							Remarks
		Lot	Blk.	Addition	Town	Sec.	Twp.	Rng.	

Affiant	Date of Filing				Date of Instrument			Where Recorded	
	Month	Day	Year	Hour	Month	Day	Year	Book	Page
				A. M. P. M.					

[S13,§2935; C24, 27, 31, 35, 39,§10110; C46, 50, 54,§558.50]

**558.51 Separate indexes required.** Separate index books shall be kept for mortgages and satisfactions or releases of same, one for those containing descriptions of lots, and one for those containing land; and separate books for other conveyances of real estate, one for lots, and one for lands; and an index book shall be kept for powers of attorney, affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy; all of above indexes to be arranged alphabetically as provided in section 558.52. [S13,§2935; C24, 27, 31, 35, 39,§10111; C46, 50, 54,§558.51]

**558.52 Alphabetical arrangement.** The entries in such book shall show the names of the respective grantors and grantees, arranged in alphabetical order. When such instrument is executed by an administrator, executor, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index book the name and representative capacity of each person executing the instrument and the owner of the property if disclosed therein. [C51,§1215; R60,§2224; C73,§1945; C97,§2937; C24, 27, 31, 35, 39,§10112; C46, 50, 54,§558.52]

Referred to in §558.51

**558.53 Town lot deeds and mortgages.** The recorder shall index and record all deeds, mort-

gages, and other instruments affecting lots in cities, towns, or villages, the plats whereof are recorded, in separate books from those in which other conveyances of real estate are recorded. [R60,§2241; C73,§1947; C97,§2941; S13, §2941; C24, 27, 31, 35, 39,§10113; C46, 50, 54, §558.53]

**558.54 Deeds covering both lands and lots.** Where any instrument contains a description of land or lots in cities, towns, or villages, the plats whereof are recorded, and other land, he shall record such instrument in but one record and charge but one fee, but shall index in both land and town lot indexes. [S13,§2941; C24, 27, 31, 35, 39,§10114; C46, 50, 54,§558.54]

**558.55 Filing and indexing—constructive notice.** The recorder must indorse upon every instrument properly filed for record in his office, the day, hour, and minute of such filing, and forthwith enter in the index book the entries required to be made therein, except the book and page where the complete record will appear, and such filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by such instruments. [C51,§1214; R60,§2223; C73,§1944; C97,§2936; C24, 27, 31, 35, 39,§10115; C46, 50, 54, §558.55]

**558.56 Marginal entries indexed.** As soon as a marginal assignment or release has been witnessed by the county recorder, the county recorder shall forthwith index the same just

as though such assignment or release had been by separate written instrument. [C31, 35, §10115-c1; C39, §10115.1; C46, 50, 54, §558.56]

**558.57 Entry on auditor's transfer books.** The recorder shall not record any deed or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and indorsement made upon the deed or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this ..... day of ....., 19.....  
My fee 50c paid by recorder.

.....  
Auditor.

[C73, §§1952, 1953; C97, §§2932, 2934; C24, 27, 31, 35, 39, §10116; C46, 50, 54, §558.57]

Referred to in §558.58

**558.58 Recorder to collect and deliver to auditor.** At the time of filing any deed or other instrument mentioned in section 558.57, the recorder shall collect from the person filing the same the recording fee provided by law, also the auditor's transfer fee, and forthwith deliver the deed and the transfer fee to the county auditor, after indorsing upon said instrument the following:

Filed for record, indexed, and delivered to county auditor this ..... day of ....., 19....., at ..... o'clock .....M. Recorder's and auditor's fee \$..... paid.

.....  
Recorder.

[C24, 27, 31, 35, 39, §10117; C46, 50, 54, §558.58]

**558.59 Final record.** Every such instrument shall be recorded, as soon as practicable, in a suitable book to be kept by the recorder for that purpose; after which he shall complete the entries aforesaid so as to show the book and page where the record is to be found. [C51, §1216; R60, §2225; C73, §1946; C97, §2938; C24, 27, 31, 35, 39, §10118; C46, 50, 54, §558.59]

**558.60 Transfer and index books.** The county auditor shall keep in his office books for the transfer of real estate, which shall consist of a transfer book, index book, and plat book. [C73, §1948; C97, §2927; C24, 27, 31, 35, 39, §10119; C46, 50, 54, §558.60]

**558.61 Form of transfer book.** Said transfer book shall be ruled and headed substantially after the following form; and entries therein shall be in numerical order, beginning with section one:

Section No. ...., Township ....., Range.....

Grantee	Grantor	Date of Instrument	Description	Page of Plats
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

[C73, §1949; C97, §2928; C24, 27, 31, 35, 39, §10120; C46, 50, 54, §558.61]

**558.62 Form of index book.** Said index book shall be ruled and headed substantially after the following form:

NAMES OF GRANTEES	PAGES OF TRANSFER BOOK
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

[C73, §1949; C97, §2928; C24, 27, 31, 35, 39, §10121; C46, 50, 54, §558.62]

**558.63 Book of plats—how kept.** The auditor shall keep the book of plats so as to show the number of lot and block, or township and range, divided into sections and subdivisions as occasion may require, and shall designate thereon each piece of real estate, and mark in pencil the name of the owner thereon, in a legible manner; which plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on the scale of not less than four inches to the mile. [C73, §1950; C97, §2929; C24, 27, 31, 35, 39, §10122; C46, 50, 54, §558.63]

**558.64 Entries of transfers.** When a deed of unconditional conveyance of real estate or transcript of decree in a partition proceeding is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book he shall enter in the proper columns the name of the grantee, the grantor, date, and character of the instrument, the description of the real estate, and the number or letter of the plat on which the same is marked. [C73, §1951; C97, §2930; S13, §2930; C24, 27, 31, 35, 39, §10123; C46, 50, 54, §558.64]

**558.65 Council's approval of certain plats.** No conveyances or plats of additions to any city or town or subdivision of any lands lying within or adjacent to any city or town in which streets and alleys and other public grounds are sought to be dedicated to public use, or other conveyances in which streets and alleys are sought to be conveyed to such city or town, shall be so entered, unless such conveyances, plats, or other instruments have indorsed thereon the approval of the council of such city or town, the certificates of such approval to be made by the city clerk. [S13, §2930; C24, 27, 31, 35, 39, §10124; C46, 50, 54, §558.65]

City and town plats, ch 409

**558.66 Title decree—entry on transfer books.** Upon receipt of a certificate from the clerk of the district or supreme court, that the title to real estate has been finally established in any named person by judgment or decree of said court, or by will, the auditor shall enter

the same upon the transfer books, upon payment of a fee of fifty cents, which fee shall be taxed as costs in the cause, collected by the clerk, and paid to the auditor at the time of filing such certificate. [C97,§2931; C24, 27, 31, 35, 39,§10125; C46, 50, 54,§558.66]

Change of title—certification, §606.14

**558.67 Correction of books and instruments.** The auditor from time to time shall correct any error appearing in the transfer books, and shall notify the grantee of any error in description discovered in any instrument filed

for transfer, and permit the same to be corrected by the parties before completing such transfer. [C73,§1954; C97,§2933; C24, 27, 31, 35, 39,§10126; C46, 50, 54,§558.67]

**558.68 Perpetuities prohibited.** Every disposition of property is void which suspends the absolute power of controlling the same, for a longer period than during the lives of persons then in being, and twenty-one years thereafter. [C51,§1191; R60,§2199; C73,§1920; C97,§2901; C24, 27, 31, 35, 39,§10127; C46, 50, 54, §558.68]

## CHAPTER 559

### POWER OF APPOINTMENT

559.1 Release by donee of power.  
559.2 Definition—scope of power.  
559.3 Release by one donee exclusive of others.  
559.4 Limiting release.  
559.5 Disclaimer.

559.6 Delivery.  
559.7 Other lawful means.  
559.8 Declaration of common law.  
559.9 Applicability.

**559.1 Release by donee of power.** A power to appoint which is exercisable by deed, by will, by deed or will, or otherwise, in whole or to any extent in favor of the donee of the power, his estate, his creditors, the creditors of his estate, or others, is releasable, either with or without consideration, by written instrument executed by the donee. If such instrument shall be executed and acknowledged in the manner provided for the execution and acknowledgment of instruments affecting real estate and recorded with the county recorder in the county in which the donee of the power resides or the county of last residence of the donor of the power or the county in which any real estate which may be subject to the power is located, such recording shall be deemed a sufficient delivery of such release.

A power to appoint described herein is releasable with respect to the whole or any part of the property subject to such power and is also releasable in such manner as to reduce or limit the persons or objects, or classes of persons or objects in whose favor such power would otherwise be exercisable.

It is hereby declared that such releases are in accordance with the public policy of this state and are valid and effectual whether heretofore or hereafter made. [C46, 50, 54, §559.1]

Referred to in §§559.2, 559.6

**559.2 Definition—scope of power.** The term "power to appoint" as used in section 559.1, shall mean and include all powers which are in substance and effect powers of appointment, regardless of the language used in creating them and whether they are (1) general, special or otherwise, (2) vested, contingent or conditional, (3) in gross, appendant, simply collateral, in trust or in the nature of a trust or otherwise, (4) exercisable by an instrument amending, revoking, altering or terminating a trust or an estate, or an interest thereunder

or otherwise, (5) exercisable presently or in the future, (6) exercisable in an individual or a fiduciary capacity whether alone or in conjunction with one or more other persons or corporations, (7) powers to invade or consume property, or (8) powers remaining after one or more partial releases have heretofore or hereafter been made with respect to a power to appoint. [C50, 54,§559.2]

**559.3 Release by one donee exclusive of others.** If a power to appoint is or may be exercisable by two or more persons either in an individual or fiduciary capacity in conjunction with one another or successively, a release or disclaimer of the power in whole or in part executed by any one of the donees of the power shall be effective to release or disclaim, to the extent therein provided, all right of such person to exercise or to participate in the exercise of the said power, but unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees. [C50, 54,§559.3]

**559.4 Limiting release.** A release of a power to appoint may also be made for life or lives or for a specified period of time. [C50, 54,§559.4]

**559.5 Disclaimer.** A donee of a power to appoint may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as he might release it. [C50, 54,§559.5]

**559.6 Delivery.** A release or disclaimer may be delivered to any of the following: (1) Any person who could be adversely affected by the exercise of the power; or (2) any trustee of the property to which the power relates; or (3) any person specified for such purpose in the instrument creating the power; or (4) the county recorder as provided in section 559.1. [C50, 54,§559.6]

**559.7 Other lawful means.** Nothing contained in this chapter shall prevent the release of any power to appoint or the disclaimer thereof in any lawful manner. [C50, 54,§559.7]

**559.8 Declaration of common law.** This chapter shall be deemed declaratory of the common law of this state and it shall be liber-

ally construed so as to effectuate the intent that all powers to appoint whatsoever shall be releasable. [C50, 54,§559.8]

**559.9 Applicability.** This chapter shall apply to releases and disclaimers heretofore or hereafter delivered. [C50, 54,§559.9]

Constitutionality, 52GA, ch 275,§9

## CHAPTER 560

### OCCUPYING CLAIMANTS

Referred to in §567.7

560.1 Right to improvements.

560.2 "Color of title" defined.

560.3 Petition—trial—appraisalment.

560.4 Rights of parties to property.

560.5 Tenants in common.

560.6 Waste by claimant.

560.7 Option to remove improvements.

**560.1 Right to improvements.** Where an occupant of real estate has color of title thereto and has in good faith made valuable improvements thereon, and is thereafter adjudged not to be the owner, no execution shall issue to put the owner of the land in possession of the same, after the filing of a petition as hereinafter provided, until the provisions of this chapter have been complied with. [C51, §1233; R60,§2264; C73,§1976; C97,§2964; C24, 27, 31, 35, 39,§10128; C46, 50, 54,§560.1]

**560.2 "Color of title" defined.** Persons of each of the classes hereinafter enumerated shall be deemed to have color of title within the meaning of this chapter, but nothing contained herein shall be construed as giving a tenant color of title against his landlord:

1. *Purchaser at judicial or tax sale.* A purchaser in good faith at any judicial or tax sale made by the proper officer, whether said officer had sufficient authority to make said sale or not, unless want of authority in such officer was known to the purchaser at the time of the sale.

2. *Occupancy for five years.* A person who has by himself or together with those under whom he claims, occupied the premises for a period of five years continuously.

3. *Occupancy and improvements.* A person whose occupancy of the premises has been for a shorter period than five years, if during such occupancy the occupant or those under whom he claims have, with the knowledge or consent of the real owner, express or implied, made any valuable improvements thereon.

4. *Occupancy and payment of taxes.* A person whose occupancy of the premises has been for a shorter period than five years, if such occupant or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment or offer of repayment of the same by the owner thereof, and such occupancy has continued to the time the action is brought by

which the recovery of the real estate is obtained.

5. *Occupancy under state or federal law or contract.* A person who has settled upon any real estate and occupied the same for three years under or by virtue of any law, or contract with the proper officers of the state or of the United States for the purchase thereof and shall have made valuable improvements thereon. [C51,§§1239, 1240; R60,§§2268, 2269; C73,§§1982-1984; C97,§§2967, 2968; C24, 27, 31, 35, 39,§10129; C46, 50, 54,§560.2]

**560.3 Petition — trial — appraisalment.** The petition of the occupant must set forth the grounds upon which he seeks relief, and state as accurately as practicable the value of the real estate, exclusive of the improvements made thereon by the claimant or his grantors, and the value of such improvements. The issue joined thereon must be tried as in ordinary actions and the value of the real estate and of such improvements separately ascertained. [C51,§§1234, 1235; R60,§§2265, 2266; C73,§§1977, 1978; C97,§2965; C24, 27, 31, 35, 39, §10130; C46, 50, 54,§560.3]

**560.4 Rights of parties to property.** The owner of the land may thereupon pay to the clerk of the court, for the benefit of the occupying claimant, the appraised value of the improvements and take the property and an execution may issue for the purpose of putting the owner of the land in possession thereof. Should he fail to make such payment within such reasonable time as the court may fix, the occupying claimant may pay to the clerk of the court, within such time as the court may fix, for the use of the owner of the land, the value of the property exclusive of the improvements and take and retain the property together with the improvements. [C51,§§1236-1238, 1243; R60,§§2267, 2272; C73,§§1979-1981, 1986; C97,§§2966, 2970; C24, 27, 31, 35, 39,§10131; C46, 50, 54,§560.4]

Referred to in §560.5

**560.5 Tenants in common.** Should the owner of the land fail to pay for the improvements and the occupying claimant fail to pay for the land within the time fixed by the court as provided in section 560.4, the parties shall be held to be tenants in common of all the real estate including the improvements, each holding an undivided interest proportionate to the values ascertained on the trial. [C51, §§1236-1238; R60, §2267; C73, §§1979-1981; C97, §2966; C24, 27, 31, 35, 39, §10132; C46, 50, 54, §560.5]

**560.6 Waste by claimant.** If the occupying claimant has committed any injury to the real estate by cutting timber or otherwise, the owner may set the same off against any claim

for improvements made by such claimant. [C51, §1241; R60, §2270; C73, §1985; C97, §2969; C24, 27, 31, 35, 39, §10133; C46, 50, 54, §560.6]

**560.7 Option to remove improvements.** Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without other injury to such real estate at any time before he is evicted therefrom, or he may have the benefit of this chapter by proceeding as herein directed. [C73, §1987; C97, §2971; C24, 27, 31, 35, 39, §10134; C46, 50, 54, §560.7]

## CHAPTER 561

### HOMESTEAD

Referred to in §425.11

561.1 "Homestead" defined.  
 561.2 Extent and value.  
 561.3 Dwelling and appurtenances.  
 561.4 Selecting—platting.  
 561.5 Platted by officer having execution.  
 561.6 Platting under order of court.  
 561.7 Changes—nonconsenting spouse.  
 561.8 Referees to determine exemption.  
 561.9 Referring back—marking off—costs.  
 561.10 Change of circumstances.  
 561.11 Occupancy by surviving spouse.

561.12 Life possession in lieu of dower.  
 561.13 Conveyance or encumbrance.  
 561.14 Devise.  
 561.15 Removal of spouse or children.  
 561.16 Exemption—divorced spouse.  
 561.17 "Family" defined.  
 561.18 Descent.  
 561.19 Exemption in hands of issue.  
 561.20 New homestead exempt.  
 561.21 Debts for which homestead liable.

**561.1 "Homestead" defined.** The homestead must embrace the house used as a home by the owner, and, if he has two or more houses thus used, he may select which he will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead. [C51, §§1250, 1251; R60, §§2282, 2283; C73, §§1994, 1995; C97, §2977; C24, 27, 31, 35, 39, §10135; C46, 50, 54, §561.1]

**561.2 Extent and value.** If within a city or town plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount. [C51, §1252; R60, §2284; C73, §1996; C97, §2978; S13, §2978; C24, 27, 31, 35, 39, §10136; C46, 50, 54, §561.2]

40GA, ch 237, §2, editorially divided

**561.3 Dwelling and appurtenances.** It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of his ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto. [C51, §1253; R60, §2285; C73, §1997; C97, §2978; S13, §2978; C24, 27, 31, 35, 39, §10137; C46, 50, 54, §561.3]

**561.4 Selecting—platting.** The owner, husband, or wife, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be designated by a legal description, or if incapable thereof it shall be marked off by permanent, visible monuments, and the description thereof shall give the direction and distance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the homestead book, which shall be, as nearly as may be, in the form of the record books for deeds, with an index kept in the same manner. [C51, §§1254, 1255; R60, §§2286, 2287; C73, §§1998, 1999; C97, §2979; S13, §2979; C24, 27, 31, 35, 39, §10138; C46, 50, 54, §561.4]

**561.5 Platted by officer having execution.** Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution shall give notice in writing to said owner, and the husband or wife of such owner, if found within the county, to plat and record the same within ten days after service thereof; after which time said officer shall cause said homestead to be platted and recorded as above, and the expense thereof shall be added to the costs in the case. [C51, §1254; R60, §2286; C73, §1998;

S13,§2979; C24, 27, 31, 35, 39,§10139; C46, 50, 54, §561.5]

Referred to in §561.6

**561.6 Platting under order of court.** Upon application made to the district court by any creditor of the owner of the homestead, or other person interested therein, such court shall hear the cause upon the proof offered, and fix and establish the boundaries thereof, and the judgment therein shall be filed and recorded in the manner provided in section 561.5. [C97,§2980; C24, 27, 31, 35, 39,§10140; C46, 50, 54,§561.6]

**561.7 Changes—nonconsenting spouse.** The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

No such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her rights, or those of the children. [C51,§§1256, 1257; R60,§§2288, 2289; C73,§§2000, 2001; C97,§2981; C24, 27, 31, 35, 39,§10141; C46, 50, 54,§561.7]

**561.8 Referees to determine exemption.** When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualifications of jurors. The parties then, commencing with the owner, shall in turn strike off one person each, until three remain. Should either party fail to do so, the sheriff may act for him, and the three as referees shall proceed to examine and ascertain all the facts of the case, and report the same, with their opinion thereon, to the next term of court from which the execution or other process may have issued. [C51,§§1258, 1259; R60,§§2290, 2291; C73,§§2002, 2003; C97, §2982; C24, 27, 31, 35, 39,§10142; C46, 50, 54, §561.8]

**561.9 Referring back—marking off—costs.** The court in its discretion may refer the whole or any part of the matter back to the same or other referees, to be selected in the same manner, or as the parties agree, giving them directions as to the report required of them. When the court is sufficiently advised in the case, it shall make its decision, and may direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and take such other steps as shall be lawful and expedient in attaining the purpose of this chapter. It shall also award costs in accordance with the practice in other cases, as nearly as may be. [C51,§§1260, 1261; R60,§§2292, 2293; C73,§§2004, 2005; C97,§2983; C24, 27, 31, 35, 39, §10143; C46, 50, 54,§561.9]

Costs, ch 625

**561.10 Change of circumstances.** The extent or appurtenances of the homestead thus established may be called in question in like manner, whenever a change in value or circumstances will justify such new proceedings. [C51,§1262; R60,§2294; C73,§2006; C97,§2984; C24, 27, 31, 35, 39,§10144; C46, 50, 54,§561.10]

**561.11 Occupancy by surviving spouse.** Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law, but the setting off of the distributive share of the husband or wife in the real estate of the deceased shall be such a disposal of the homestead as is herein contemplated. [C51,§1263; R60,§2295; C73,§§2007, 2008; C97,§2985; C24, 27, 31, 35, 39,§10145; C46, 50, 54,§561.11]

See also §636.27

**561.12 Life possession in lieu of dower.** The survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased. [C73,§2008; C97,§2985; C24, 27, 31, 35, 39,§10146; C46, 50, 54,§561.12]

40GA, ch 237,§11, editorially divided  
See also §636.27

**561.13 Conveyance or encumbrance.** No conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is valid, unless the husband and wife join in the execution of the same joint instrument, and the instrument sets out the legal description of the homestead, provided however that where the homestead is conveyed or encumbered along with or in addition to other real estate it shall not be necessary to particularly describe or set aside the tract of land constituting such homestead, whether the homestead is exclusively the subject of the contract or not; but such contracts may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead and inchoate dower rights in said homestead specifically relinquishes homestead rights in said instrument it shall not be necessary for such spouse to join in the granting clause of the instrument. [C51,§1247; R60, §2279; C73,§1990; C97,§2974; C24, 27, 31, 35, 39, §10147; C46, 50, 54,§561.13]

For conveyances executed prior to July 4, 1943, see 50GA, ch 254,§2  
Saving clause, 50GA, ch 254,§3

**561.14 Devise.** Subject to the rights of the surviving husband or wife, the homestead may be devised like other real estate of the testator. [C51,§1266; R60,§2298; C73,§2010; C97, §2987; C24, 27, 31, 35, 39,§10148; C46, 50, 54, §561.14]

**561.15 Removal of spouse or children.** Neither husband nor wife can remove the other nor the children from the homestead without the consent of the other. [C51,§1462; R60,§2514; C73,§2215; C97,§3166; C24, 27, 31, 35, 39,§10149; C46, 50, 54,§561.15]

**561.16 Exemption — divorced spouse.** The homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such right shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party. [C51,§1245; R60,§2277; C73,§1988; C97,§§2972, 2973; C24, 27, 31, 35, 39,§10150; C46, 50, 54,§561.16]

**561.17 “Family” defined.** A widow or widower, though without children, shall be deemed a family within the meaning of this chapter, while continuing to occupy the real estate used as a homestead at the death of the husband or wife. [C51,§1246; R60,§2278; C73,§1989; C97, §2973; C24, 27, 31, 35, 39,§10151; C46, 50, 54, §561.17]

**561.18 Descent.** If there be no survivor, the homestead descends to the issue of either husband or wife according to the rules of descent, unless otherwise directed by will. [C51,§1264; R60,§2296; C73,§2008; C97,§2985; C24, 27, 31, 35, 39,§10152; C46, 50, 54,§561.18]

**561.19 Exemption in hands of issue.** Where the homestead descends to the issue of either husband or wife the same shall be held by such issue exempt from any antecedent debts of their parents or their own, except those of the owner thereof contracted prior to its acquisition. [C51,§1264; R60,§2296; C73,§2008; C97, §2985; C24, 27, 31, 35, 39,§10153; C46, 50, 54, §561.19]

**561.20 New homestead exempt.** Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been. [C51,§1257; R60,§2289; C73,§2001; C97,§2981; C24, 27, 31, 35, 39,§10154; C46, 50, 54,§561.20]

**561.21 Debts for which homestead liable.** The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.

4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead. [C51,§§1248, 1249, 1265; R60,§§2280, 2281, 2297; C73,§§1991–1993, 2009; C97,§§2975, 2976, 2986; C24, 27, 31, 35, 39,§10155; C46, 50, 54,§561.21]

Homestead acquired with pension funds, §627.9  
Liability for relief furnished poor person, §252.14

## CHAPTER 562

### LANDLORD AND TENANT

Referred to in §129.12

Landlord's lien, ch 570

- 562.1 Apportionment of rent.
- 562.2 Double rental value—liability.
- 562.3 Attornment to stranger.
- 562.4 Tenant at will—notice to terminate.

- 562.5 Termination of farm tenancies.
- 562.6 Agreement for termination.
- 562.7 Notice—how and when served.

**562.1 Apportionment of rent.** The executor of a tenant for life who leases real estate so held, and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another may recover the proportion of rent which had accrued at the time of the death of such life tenant. [C51,§1267; R60,§2299; C73,§2011; C97, §2988; C24, 27, 31, 35, 39,§10156; C46, 50, 54, §562.1]

**562.2 Double rental value—liability.** A tenant giving notice of his intention to quit leased premises at a time named, and holding over after such time, and a tenant or his assignee willfully holding over after the term, and after notice to quit, shall pay double the rental value thereof during the time he holds over to the person entitled thereto. [C51,§1268; R60,

§2300; C73,§2012; C97,§2989; C24, 27, 31, 35, 39, §10157; C46, 50, 54,§562.2]

**562.3 Attornment to stranger.** The payment of rent, or delivery of possession of leased premises, to one not the lessor, is void, and shall not affect the rights of such lessor, unless made with his consent, or in pursuance of a judgment or decree of court or judicial sale to which the lessor was a party. [C51, §1269; R60,§2301; C73,§2013; C97,§2990; C24, 27, 31, 35, 39,§10158; C46, 50, 54,§562.3]

**562.4 Tenant at will—notice to terminate.** Any person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days notice in writing must be given by either party before he can terminate

such a tenancy; but when in any case, a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval. [C51, §§1208, 1209; R60, §§2216, 2218; C73, §§2014, 2015; C97, §2991; C24, 27, 31, 35, 39, §10159; C46, 50, 54, §562.4]

Three-day forcible entry notice, §§648.3 and 648.4

**562.5 Termination of farm tenancies.** In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon. [R60, §2218; C73, §2015; C97, §2991; C24, 27, 31, 35, 39, §10160; C46, 50, 54, §562.5]

Forcible entry provisions, §§648.3 and 648.4

**562.6 Agreement for termination.** Where an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, it shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue for the following crop

year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other, whereupon the tenancy shall terminate March 1 following; provided further, the tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement. [R60, §2218; C73, §2015; C97, §2991; C24, 27, 31, 35, 39, §10161; C46, 50, 54, §562.6]

Forcible entry provisions, §§648.3 and 648.4

**562.7 Notice—how and when served.** The written notice so required shall be given as follows:

1. By delivery of notice in person on or before November 1 by one party to the other with acceptance of service thereon to be signed by the person receiving the notice, or

2. By service on either party on or before November 1 by a person in behalf of the other party, in the same manner as original notices are served, or

3. By either party sending to the other at his last known address, at least ten days before November 1, a notice by restricted certified mail. [C73, §2016; C97, §2991; C24, 27, 31, 35, 39, §10162; C46, 50, 54, §562.7; 57GA, ch 267, §83]

Forcible entry provisions, §§648.3 and 648.4

## CHAPTER 563

### WALLS IN COMMON

563.1 Resting wall on neighbor's land.

563.2 Contribution by adjoining owner.

563.3 Openings in walls.

563.4 Repairs—apportionment.

563.5 Beams, joists, and flues.

563.6 Increasing height of wall.

563.7 Rebuilding in order to heighten.

563.8 Heightened wall made common.

563.9 Paying for share of adjoining wall.

563.10 Openings in walls—fixtures.

563.11 Disputes—delay—bonds.

563.12 Special agreements—evidence.

**563.1 Resting wall on neighbor's land.** Where building lots have been surveyed and plats thereof recorded, anyone who is about to build contiguous to the land of another may, if there be no wall on the line between them, build a brick, reinforced concrete, or stone wall thereon, when the whole thickness of such wall above the cellar wall does not exceed eighteen inches exclusive of the plastering, and rest one-half thereof on the adjoining land, but the adjoining owner shall not be compelled to contribute to the expense of building said wall. [R60, §1914; C73, §2019; C97, §2994; C24, 27, 31, 35, 39, §10163; C46, 50, 54, §563.1]

**563.2 Contribution by adjoining owner.** If the adjoining owner contributes one-half of the expense of building such wall, then it is a wall in common between them, but if he refuses to contribute, he shall have the right to make it a wall in common by paying to the person who erected or maintained it one-half of its appraised value at the time of using it. [R60, §1915; C73, §2020; C97, §2995; C24, 27, 31, 35, 39, §10164; C46, 50, 54, §563.2]

**563.3 Openings in walls.** No wall shall be built by any person partly on the land of another with any openings therein, and every separating wall between buildings shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary, and if any wall is erected which, under the provisions of this chapter, becomes, or may become, at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of closing any openings therein, but this shall be done at the expense of the owner of such wall. [R60, §1916; C73, §2021; C97, §2996; C24, 27, 31, 35, 39, §10165; C46, 50, 54, §563.3]

**563.4 Repairs—apportionment.** The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to them, and in proportion to the interest of each therein, but every coproprietor of a wall in common may be exonerated from contributing to the same by giving up his right in common, if no building belonging to him is actually supported by such wall. [R60, §1917;



C73,§2022; C97,§2997; C24, 27, 31, 35, 39,§10166; C46, 50, 54,§563.4]

**563.5 Beams, joists, and flues.** Every coproprietor may build against a wall held in common, and cause beams or joists to be placed therein; and any person building such a wall shall, on being requested by his coproprietor, make the necessary flues, and leave the necessary bearings for joists or beams, at such height and distance apart as shall be specified by his coproprietor. [R60,§1918; C73, §2023; C97,§2998; C24, 27, 31, 35, 39,§10167; C46, 50, 54,§563.5]

**563.6 Increasing height of wall.** Every coproprietor may increase the height of a wall in common at his sole expense, and he shall repair and keep in repair that part of the same above the part held in common. [R60, §1919; C73,§2024; C97,§2999; C24, 27, 31, 35, 39, §10168; C46, 50, 54,§563.6]

C97,§2999, editorially divided

**563.7 Rebuilding in order to heighten.** If the wall so held in common cannot support the wall to be raised upon it, one who wishes to have it made higher must rebuild it anew and at his own expense, and the additional thickness of the wall must be placed entirely on his own land. [R60,§1920; C73,§2025; C97, §2999; C24, 27, 31, 35, 39,§10169; C46, 50, 54, §563.7]

**563.8 Heightened wall made common.** The person who did not contribute to the heightening of a wall held in common may cause the raised part to become common by paying one-half of the appraised value of raising it, and half the value of the ground occupied by the additional thickness thereof, if any ground was so occupied. [R60,§1921; C73,§2026; C97, §2999; C24, 27, 31, 35, 39,§10170; C46, 50, 54, §563.8]

**563.9 Paying for share of adjoining wall.** Every proprietor joining a wall has the right of making it a wall in common, in whole or in part, by repaying to the owner thereof one-half of its value, or one-half of the part which he wishes to hold in common, and one-half of

the value of the ground on which it is built, if the person who has built it has laid the foundation entirely upon his own ground. [R60, §1922; C73,§2027; C97,§3000; C24, 27, 31, 35, 39, §10171; C46, 50, 54,§563.9]

**563.10 Openings in walls—fixtures.** Adjoining owners of walls held in common shall not make openings or cavities therein, nor affix nor attach thereto any work or structure, without the consent of the other, or upon his refusal, without having taken all necessary precautions to guard against injury to the rights of the other, to be ascertained by persons skilled in building. [R60,§1923; C73,§2028; C97,§3001; C24, 27, 31, 35, 39,§10172; C46, 50, 54, §563.10]

**563.11 Disputes—delay—bonds.** No dispute between adjoining owners as to the amount to be paid by one or the other, by reason of any of the matters provided in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due on the settlement of the matter between them, either in a court of justice or elsewhere; upon the presentation of such a bond, the clerk shall indorse his approval thereon, and retain the same until demanded by the party for whose benefit it is executed. [R60,§1924; C73,§2029; C97,§3002; C24, 27, 31, 35, 39,§10173; C46, 50, 54,§563.11]

**563.12 Special agreements—evidence.** This chapter shall not prevent adjoining proprietors from entering into special agreements about walls on the lines between them, but no evidence thereof shall be competent unless in writing, signed by the parties thereto or their lawfully authorized agents, or the guardian of either, if a minor, who shall have full authority to act for his ward in all matters relating to walls in common without an order of court therefor. [R60,§1925; C73,§2030; C97,§3003; C24, 27, 31, 35, 39,§10174; C46, 50, 54,§563.12]

Statute of frauds in general, §622.32

## CHAPTER 564

### EASEMENTS

- 564.1 Adverse possession—"use" as evidence.
- 564.2 Light and air.
- 564.3 Footway.
- 564.4 Notice to prevent acquisition.

- 564.5 Effect of notice.
- 564.6 Notice, service, and record.
- 564.7 Evidence.
- 564.8 Action to establish.

**564.1 Adverse possession—"use" as evidence.** In all actions hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as his right, but the fact of adverse possession shall be

established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims. [C73,§2031; C97,§3004; C24, 27, 31, 35, 39,§10175; C46, 50, 54, §564.1]

See Book of Annotations under §614.1

**564.2 Light and air.** Whoever has erected, or may erect, any house or other building near the land of another person, with windows overlooking such land, shall not, by the mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building on such land. [C73, §2032; C97, §3005; C24, 27, 31, 35, 39, §10176; C46, 50, 54, §564.2]

**564.3 Footway.** No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time. [C73, §2033; C97, §3006; C24, 27, 31, 35, 39, §10177; C46, 50, 54, §564.3]

**564.4 Notice to prevent acquisition.** When any person is in the use of a way, privilege, or other easement in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, privilege, or easement of his intention to dispute any right arising from such claim or use. [C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10178; C46, 50, 54, §564.4]

C97, §3007, editorially divided

**564.5 Effect of notice.** Said notice, when served and recorded as hereinafter provided, shall be an interruption of such use, and pre-

vent the acquiring of any right thereto by the continuance thereof. [C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10179; C46, 50, 54, §564.5]

**564.6 Notice, service, and record.** Said notice, signed by the owner of the land, his agent, or guardian, may be served in the same manner as in a civil action, upon the party, his agent, or guardian, if within this state, otherwise on the tenant or occupant, if there be any, and it, with the return thereof, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated. [C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10180; C46, 50, 54, §564.6]

Manner of service, R.C.P. 56 (a)

**564.7 Evidence.** A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof. [C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10181; C46, 50, 54, §564.7]

**564.8 Action to establish.** When notice is given to prevent the acquisition of a right to a way or other easement, it shall be considered so far a disturbance thereof as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in the action prevails, he shall recover costs. [C73, §2035; C97, §3008; C24, 27, 31, 35, 39, §10182; C46, 50, 54, §564.8]

## CHAPTER 565

### GIFTS

565.1 Churches may lease.

565.2 Taxation.

565.3 Gifts to state.

565.4 Management of property.

565.5 Gifts to state institutions.

565.6 Gifts to municipal corporations.

565.7 Trustees appointed by court—bond.

565.8 Tax voted to maintain.

565.9 Amount of levy.

565.10 Disbursement.

565.11 Tax discontinued.

565.12 Condition as to annuity.

565.13 Annuity tax.

565.14 Limitation on acceptance.

565.15 Surplus of tax.

**565.1 Churches may lease.** Church organizations, occupying real property granted to them by the territory or state, may lease the same for business purposes, and occupy other real property with their church edifices, but all of the income derived from such leased real property shall be devoted to maintaining the religious exercises and ordinance of the church to which the grant was originally made, and to no other purpose; and such churches and their affairs shall remain in the control of boards of trustees regularly chosen in accordance with their charters. [C73, §1921; C97, §2902; C24, 27, 31, 35, 39, §10183; C46, 50, 54, §565.1]

C97, §2902, editorially divided

**565.2 Taxation.** Real property so leased shall in all cases be subject to taxation, the same as the real property of natural persons. [C73, §1921; C97, §2902; C24, 27, 31, 35, 39, §10184; C46, 50, 54, §565.2]

Tax exemptions generally, §427.1

**565.3 Gifts to state.** A gift, devise, or bequest of property, real or personal, may be made to the state, to be held in trust for and applied to any specified purpose within the scope of its authority, but the same shall not become effectual to pass the title in such property unless accepted by the executive council in behalf of the state. [C73, §1387; C97, §2903; C24, 27, 31, 35, 39, §10185; C46, 50, 54, §565.3]

Referred to in §565.4

**565.4 Management of property.** If gifts are made to the state in accordance with section 565.3, for the benefit of an institution thereof, the property, if accepted, shall be held and managed in the same way as other property of the state, acquired for or devoted to the use of such institution; and any conditions attached to such gift shall become binding upon the state, upon the acceptance thereof. [C97, §2904; C24, 27, 31, 35, 39, §10186; C46, 50, 54, §565.4]

**565.5 Gifts to state institutions.** Gifts, devises, or bequests of property, real or personal, made to any state institution for purposes not inconsistent with the objects of such institution, may be accepted by its governing board, and such board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which the gift, devise, or bequest was made. [S13,§2904-a; C24, 27, 31, 35, 39,§10187; C46, 50, 54,§565.5]

**565.6 Gifts to municipal corporations.** Counties, cities, towns, the park board of any city or town, and civil townships wholly outside of any city or town, and school corporations, are authorized to take and hold property, real and personal, by gift and bequest; and to administer the same through the proper officer in pursuance of the terms of the gift or bequest. No title shall pass unless accepted by the governing board of the corporation, township, or park board. Conditions attached to such gifts or bequests become binding upon the corporation, township, or park board upon acceptance thereof. [C97,§§740, 2903, 2904; S13,§740; C24, 27, 31, 35, 39,§10188; C46, 50, 54,§565.6]

Gifts, see §380.5

**565.7 Trustees appointed by court—bond.** When made for the establishing of institutions of learning or benevolence, and no provision is made in the gift or bequest for the execution of the trust, the judge of the district court having charge of the probate proceedings in the county shall appoint three trustees, residents of said county, who shall have charge and control of the same, and who shall continue to act until removed by the court. They shall give bond as required in case of executors, and be subject to the orders of said court. [C97,§740; S13,§740; C24, 27, 31, 35, 39,§10189; C46, 50, 54,§565.7]

Bond, §633.43  
General control over trusts, §§604.4, 633.32

**565.8 Tax voted to maintain.** When any county, city, or town shall receive by gift or devise, property, real or personal, for the purpose of establishing any institution of benevolence including hospitals, and no sufficient fund or endowment is provided for its maintenance, or is received upon condition that the donee or devisee provide for aiding the maintenance of such institution by a tax levy upon the assessed property of such municipality, it shall be the duty of the governing board of such municipality to submit by resolution to the qualified electors thereof at a regular or special election the question whether there shall be levied upon the assessed property of such municipality an annual tax not exceeding three-fourths mill on the dollar for the purpose of aiding the maintenance of such institution. The said proposition shall be submitted in the manner provided for similar propositions in the title on elections. [S13,§740; C24, 27, 31, 35, 39,§10190; C46, 50, 54,§565.8]

Manner of submission, §49.43 et seq.

**565.9 Amount of levy.** If a majority of the votes cast at such election on the proposition so submitted shall be in favor of the proposition, the governing board of such municipality shall determine the amount to be levied for such purpose, not exceeding three-fourths mill\* on the dollar, and the amount so fixed shall be levied upon the assessed property of such municipality and collected in the same manner as other taxes of such municipality are levied and collected. [S13,§740; C24, 27, 31, 35, 39,§10191; C46, 50, 54,§565.9]

Referred to in §404.10(10)  
\*Alternate levy, see §404.10(10)

**565.10 Disbursement.** When collected by the county treasurer said tax shall be paid over to the treasurer of the institution authorized to receive the same and shall be paid out on the order of the trustees of such institution who are authorized to manage and control the same, for the purposes for which it was authorized. [S13,§740; C24, 27, 31, 35, 39,§10192; C46, 50, 54,§565.10]

**565.11 Tax discontinued.** The governing board of such municipality may discontinue such levy of tax in the event the institution to be aided thereby is destroyed by the elements and no fund is provided or available for its rebuilding; or after five years of continuance of such tax aid the governing board may, and upon the petition of twenty-five percent of the qualified electors of such municipality as shown by the pollbooks of the last preceding general election, shall, by resolution, resubmit to the qualified electors of such municipality, at a regular or special election, in the same manner hereinbefore specified, the question whether tax aid for such institution shall be discontinued, and if sixty-five percent of the votes cast at such election on the proposition so submitted be in favor of discontinuing tax aid, no further levy of tax shall be made for such purpose. [S13,§740; C24, 27, 31, 35, 39, §10193; C46, 50, 54,§565.11]

**565.12 Condition as to annuity.** When a gift or bequest is conditioned upon the payment of an annuity to the donor, or any other person, the governing board of such municipality may, upon acceptance of such gift or bequest, agree to pay such annuity providing the amount thereof does not exceed five percent of the amount of the gift or bequest and does not exceed the amount realized from a one mill tax levy upon the taxable property of said municipality. [C24, 27, 31, 35, 39,§10194; C46, 50, 54,§565.12]

40GA, ch 239,§10, editorially divided

**565.13 Annuity tax.** To provide for the payment of such annuity, said municipality, through its proper officers, shall annually thereafter levy a tax, not exceeding three-fourths mill,\* sufficient to pay such annuity. [C24, 27, 31, 35, 39,§10195; C46, 50, 54,§565.13]

Referred to in §404.10(10)  
\*Alternate levy, see §404.10(10)

**565.14 Limitation on acceptance.** No agreement shall be made unless the annuity provided for therein, and all annuities provided for under prior agreements, may be paid from the proceeds of one annual tax levy of three-fourths mill. [C24, 27, 31, 35, 39, §10196; C46, 50, 54, §565.14]

**565.15 Surplus of tax.** Any amount collected by a tax so levied and which is not required for the payment of such annuity shall be used for the purposes for which such gift or bequest is made and may be transferred to such fund as will enable it to be used for such purpose. [C24, 27, 31, 35, 39, §10197; C46, 50, 54, §565.15]

## CHAPTER 566

### CEMETERIES AND MANAGEMENT THEREOF

#### MANAGEMENT BY TRUSTEE

- 566.1 Trustee appointed—trust funds.
- 566.2 Requisites of petition.
- 566.3 Approval of court—surplus fund.
- 566.4 Receipt—cemetery record.
- 566.5 Loans—security.
- 566.6 Other investments.
- 566.7 Bond—approval—oath.
- 566.8 Clerk—duty of.
- 566.9 Compensation—costs.
- 566.10 Annual report.
- 566.11 Removal—vacancy filled.
- 566.12 County auditor as trustee.
- 566.13 Accounting.

#### MANAGEMENT BY MUNICIPALITIES

- 566.14 Municipal corporation as trustee.
- 566.15 Authority to invest funds.

#### MANAGEMENT BY TRUSTEE

**566.1 Trustee appointed—trust funds.** The owners of, or any party interested in, any cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of said cemetery and to invest, manage, and control same under the direction of the court; but he shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom to be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation. [S13, §254-a4; C24, 27, 31, 35, 39, §10198; C46, 50, 54, §566.1]

General control over trusts, §§604.4, 633.32

**566.2 Requisites of petition.** Such petition may state the amount proposed to be placed in such trust fund, the manner of investment thereof, the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition. [C24, 27, 31, 35, 39, §10199; C46, 50, 54, §566.2]

40ExGA, HF 82, §2, editorially divided

**566.3 Approval of court — surplus fund.** Such provisions shall all be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from said fund shall not be used except for

- 566.16 Resolution of acceptance—interest.
- 566.17 Delegates to conventions.
- 566.18 Subscribing to publications.

#### MAINTENANCE UNDER COURT ORDER

- 566.19 Settlement of estates — maintenance fund.

#### ABANDONED LOTS

- 566.20 Reversion.
- 566.21 Presumption of abandonment.
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charitable, eleemosynary, or public purposes under the direction of the court. [C24, 27, 31, 35, 39, §10200; C46, 50, 54, §566.3]

**566.4 Receipt—cemetery record.** Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from same, duly attested by the clerk of the court granting letters of trusteeship, and a copy thereof, signed by the trustee and so attested, shall be filed with and recorded by the clerk in a book to be known as the cemetery record, in which shall be recorded all reports and other papers, including orders made by the court or judge relative to cemetery matters. [S13, §254-a5; C24, 27, 31, 35, 39, §10201; C46, 50, 54, §566.4]

**566.5 Loans — security.** Any such trustee shall loan all moneys received by him, under the direction and with the approval of the court, but only as same may be secured by first mortgage upon Iowa real estate, and no loan shall be made or approved, unless it be made to appear upon oath of three disinterested citizens that such real estate is worth at least double the amount of the loan applied for, and that the applicant for the loan has good title thereto. [S13, §254-a6; C24, 27, 31, 35, 39, §10202; C46, 50, 54, §566.5]

40ExGA, HF 82, §4, editorially divided

**566.6 Other investments.** Said trustee may invest said fund in government bonds of the United States, federal farm loan bonds, bonds issued by authority of law by cities, towns,

counties, school or drainage districts at their marketable value. [S13,§254-a6; C24, 27, 31, 35, 39,§10203; C46, 50, 54,§566.6]

**566.7 Bond—approval—oath.** Every such trustee before entering upon the discharge of his duties or at any time thereafter when required by the court or judge, must give bond in such penalty as may be required by the court, approved by the clerk, conditioned for the faithful discharge of his duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk. [S13, §254-a7; C24, 27, 31, 35, 39,§10204; C46, 50, 54, §566.7]

**566.8 Clerk—duty of.** It shall be the duty of the clerk at the time of filing each such receipt, to at once advise the court or judge as to the amount of the principal fund in the hands of such trustee, the amount of bond filed, and whether it is good and sufficient for the amount given. [S13,§254-a8; C24, 27, 31, 35, 39,§10205; C46, 50, 54,§566.8]

**566.9 Compensation — costs.** Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of his duties, including cost of bond, if any. [S13, §254-a9; C24, 27, 31, 35, 39,§10206; C46, 50, 54, §566.9]

**566.10 Annual report.** Such trustee shall make full report of his doings in the month of January following his appointment and in January of each successive year. In each of said reports he shall apportion the net proceeds received from the sum total of the permanent fund and make proper credit to each of the separate funds assigned to him in trust. [S13, §254-a10; C24, 27, 31, 35, 39,§10207; C46, 50, 54, §566.10]

**566.11 Removal—vacancy filled.** Any such trustee may be removed by the court or judge thereof at any time for cause, and in the event of removal or death, the court or judge must appoint a new trustee and require his predecessor or his personal representative to make full accounting. [S13,§254-a11; C24, 27, 31, 35, 39, §10208; C46, 50, 54,§566.11]

**566.12 County auditor as trustee.** In case no trustee is appointed, or if so appointed does not qualify, then such funds, or any funds donated by any person or estate to improvement of cemeteries, unless otherwise provided by law, shall be placed in the hands of the county auditor, who shall receipt for, loan, and make annual reports of such funds in such manner as provided in this chapter. [SS15, §254-a12; C24, 27, 31, 35, 39,§10209; C46, 50, 54, §566.12]

**566.13 Accounting.** The said auditor shall annually turn over the accrued interest in his hands to the cemetery association or other person having control of the cemetery entitled

thereto, who shall use the same in carrying out the provisions of said trust, and who shall file a written report annually with the county auditor. [SS15,§254-a12; C24, 27, 31, 35, 39, §10210; C46, 50, 54,§566.13]

#### MANAGEMENT BY MUNICIPALITIES

**566.14 Municipal corporation as trustee.** Counties, cities, irrespective of their form of government, incorporated towns, boards of trustees of cities or towns to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city or incorporated town, shall be and they are hereby created trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest, and that portion of cemetery lot sales or permanent charges made against cemetery lots which has been set aside in a perpetual care fund, to be used in caring for the property of the donor, or lot owner who by purchase or otherwise has provided for the perpetual care of a cemetery lot in any cemetery, or in accordance with the terms of such donation, bequest, or agreement for sale and purchase of a cemetery lot, and the money or property thus received shall be used for no other purpose. [S13,§740; C24, 27, 31, 35, 39,§10211; C46, 50, 54, §566.14]

**566.15 Authority to invest funds.** The board of supervisors, mayor and council, or board of trustees, as the case may be, shall have authority to receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which has been set aside in a perpetual care fund in such authorized investments as are now set forth in section 511.8, except subsections 9 to 13, inclusive, or as the same may be hereafter amended. Such money must be invested at the market value of such securities, and they shall use the income from such investment in caring for the property of the donor in any cemetery, or as shall be provided in the terms of such gift or donations or agreement for sale and purchase of a cemetery lot. [S13,§740; C24, 27, 31, 35, 39,§10212; C46, 50, 54,§566.15]

**566.16 Resolution of acceptance—interest.** Before any part of the principal may be so invested or used, the said county, city, incorporated town, board of trustees of cities and towns to whom the management of municipal cemeteries has been transferred by ordinance, or civil township shall, by resolution, in accordance with the law as now provided, accept said donation or bequest, and that portion of cemetery lot sales or permanent charges made against cemetery lots which is to be used for perpetual care of cemetery lots, and shall, by said resolution, duly provide for the payment of interest thereon, payable annually, to the cemetery general fund or to the cemetery association, or to the person having charge of said cemetery, to be used in caring for or maintain-

ing the individual property of the donor in said cemetery, or lots which have been sold where, in said sale, provision was made for the perpetual care thereof, all to be in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

In case there is no cemetery association then the income from said fund shall be expended under the direction of the board of supervisors in accordance with the terms of said donation or bequest, or the terms of the sale or purchase of a cemetery lot. [S13,§740; C24, 27, 31, 35, 39,§10213; C46, 50, 54,§566.16]

**566.17 Delegates to conventions.** Every city, county, town, or township having a cemetery under its control may delegate not to exceed two officials from each cemetery so controlled to attend meetings of cemetery officials, and certain expenses, including association dues, not to exceed twenty-five dollars, of said delegates may be paid out of the cemetery fund of said city, county, town, or township. The expense of such delegates shall not exceed the expenses allowed under section 363.61. [C46, 50, 54,§566.17]

**566.18 Subscribing to publications.** The cemetery officials of every city, county, town, or township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, but said subscriptions may be paid out of the cemetery fund of the city, county, town, or township. [C46, 50, 54,§566.18]

#### MAINTENANCE UNDER COURT ORDER

**566.19 Settlement of estates—maintenance fund.** The court in which the estate of any deceased person is administered, before final distribution, may allow and set apart from such estate, a sum sufficient to provide an income adequate to perpetual pay for the care and upkeep of the cemetery lot upon which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter. [C27, 31, 35,§10213-a1; C39,§10213.1; C46, 50, 54,§566.19]

#### ABANDONED LOTS

**566.20 Reversion.** The ownership or right in or to an unoccupied cemetery lot or portion thereof shall upon abandonment revert to the person or corporation having ownership and charge of the cemetery containing such lots. [C31, 35,§10213-d1; C39,§10213.2; C46, 50, 54, §566.20]

44GA, ch 207,§1, editorially divided  
Referred to in §566.27

**566.21 Presumption of abandonment.** The continued failure to maintain or care for a

cemetery lot for a period of ten years shall create and establish the presumption that the same has been abandoned. [C31, 35,§10213-d2; C39,§10213.3; C46, 50, 54,§566.21]

Referred to in §566.27

**566.22 Notice of abandonment.** Abandonment shall not be deemed complete unless after such ten-year period there shall have been given by the reversionary owner to the recorded owner, or if he be deceased or his whereabouts unknown, to the heirs of such deceased, notice declaring the lot to be abandoned. [C31, 35,§10213-d3; C39,§10213.4; C46, 50, 54,§566.22]

Referred to in §566.27

**566.23 Service of notice.** The notice may be served personally on the owner or his heirs, or may be served by the mailing of the notice by certified mail to the owner, or his heirs as the case may be, to their last known address. In the event that the address of the owner or his heirs cannot be ascertained, then notice of such abandonment shall be by one publication in the official newspaper of the county, in which the cemetery is located. [C31, 35,§10213-d4; C39,§10213.5; C46, 50, 54,§566.23; 57GA, ch 267,§84]

Referred to in §566.27

**566.24 Notice of nonabandonment — effect.** If within one year from the time of serving such notice the recorded owner or his heirs shall pay the past due annual care charges against the lot, then shall the presumption of abandonment no longer exist. [C31, 35,§10213-d5; C39,§10213.6; C46, 50, 54,§566.24]

44GA, ch 207,§2, editorially divided  
Referred to in §566.27

**566.25 Reversioner's right to sell.** In case the abandonment has been complete as herein provided the reversionary owner of the abandoned lot or portion thereof may sell the same and convey title thereto. [C31, 35,§10213-d6; C39,§10213.7; C46, 50, 54,§566.25]

Referred to in §566.27

**566.26 Use of fund.** Any funds realized from the sale of such lots or portions thereof shall constitute a fund to be used solely for the perpetual care and upkeep of such lot or portion of lot so sold and likewise any occupied portion thereof. [C31, 35,§10213-d7; C39, §10213.8; C46, 50, 54,§566.26]

Referred to in §566.27

**566.27 Applicability of statute.** Sections 566.20 to 566.26, inclusive, shall not apply to a cemetery lot or tract for which perpetual care has been provided by will, by order of court or by contract with the original grantor. [C31, 35,§10213-d8; C39,§10213.9; C46, 50, 54, §566.27]

CHAPTER 566A  
CEMETERY REGULATIONS

- |   |   |
|---|---|
| <p>566A.1 Applicability of chapter.<br/>566A.2 Designation.<br/>566A.3 Guarantee fund.<br/>566A.4 Application to prior cemeteries.<br/>566A.5 Nonperpetual care cemeteries.<br/>566A.6 Perpetual care cemeteries.</p> | <p>566A.7 Commission or bonus unlawful.<br/>566A.8 Discrimination prohibited.<br/>566A.9 Penalty.<br/>566A.10 Extent of offenses.<br/>566A.11 Speculation prohibited.</p> |
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**566A.1 Applicability of chapter.** Any corporation or other form of organization organized or engaging in the business under the laws of the state of Iowa, or wheresoever organized and engaging in the business in the state of Iowa, of the ownership, maintenance or operation of a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations which are churches or religious or established fraternal societies, or incorporated cities or towns or other political subdivisions of the state of Iowa owning, maintaining or operating cemeteries, shall be subject to the provisions of this chapter. [C54,§566A.1]

Referred to in §§566A.7, 566A.8

**566A.2 Designation.** All such organizations subject to the provisions of this chapter shall be, for the purposes hereof, designated either as "perpetual care cemeteries" or "nonperpetual care cemeteries". [C54,§566A.2]

**566A.3 Guarantee fund.** Any such organization subject to the provisions of this chapter which is organized or commences business in the state of Iowa after July 4, 1953 and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court so having jurisdiction shall have full jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult burial space, whichever is the greater.

2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars

for each space up to sixty inches in length, whichever is the greater.

3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each crypt in a public mausoleum, whichever is the greater.

4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a public columbarium.

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars, when it may be withdrawn at the rate of one thousand dollars from the original twenty-five thousand dollars for each additional three thousand dollars added to the fund, until all of the twenty-five thousand dollars has been withdrawn. [C54,§566A.3]

Referred to in §§566A.4, 566A.6

**566A.4 Application to prior cemeteries.** Any such organization subject to the provisions of this chapter which was organized and engaged in business prior to the effective date of this chapter shall be a perpetual care cemetery if it shall at all times subsequent to the effective date of this chapter comply with the requirements of a perpetual care cemetery as set forth in section 566A.3, subsections 1 to 4, inclusive. [C54,§566A.4]

**566A.5 Nonperpetual care cemeteries.** All other organizations subject to the provisions of this chapter shall be nonperpetual care cemeteries.

Each nonperpetual care cemetery shall post in a conspicuous place in the office or offices where sales are conducted a legible sign stating: "This is a nonperpetual care cemetery". The lettering of this sign shall be of suitable size so it is easily read at a distance of fifty feet.

Each nonperpetual care cemetery shall also have printed or stamped at the head of all its contracts, deeds, statements, letterheads and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space therein unless the purchaser thereof is informed that the cemetery is a nonperpetual care cemetery. [C54,§566A.5]

**566A.6 Perpetual care cemeteries.** Any nonperpetual care cemetery after the effective date of this chapter may become a perpetual

care cemetery by placing in the perpetual care trust fund twenty-five thousand dollars or five thousand dollars per acre of all property sold, whichever is the greater, and shall comply with the requirement for a perpetual care cemetery as provided in section 566A.3, subsections 1 to 4, inclusive. [C54,§566A.6]

**566A.7 Commission or bonus unlawful.** It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization. [C54,§566A.7]

Referred to in §566A.10

**566A.8 Discrimination prohibited.** It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery described in section 566A.1 of this chapter solely because of the race or color of such deceased person. Any contract, agreement, deed, covenant, restriction or charter provision at any time entered into, or bylaw, rule or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race or color of

such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. No organization subject to the provisions of this chapter or any director, officer, agent, employee or trustee thereof or therefor, shall be liable for damages or other relief, or be subjected to any action in any court otherwise having jurisdiction in the premises by reason of refusing to commit any act declared unlawful herein. [C54,§566A.8]

Referred to in §566A.10

**566A.9 Penalty.** Any person, firm or corporation violating any of the provisions of this chapter, shall, upon conviction, be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars. [C54, §566A.9]

**566A.10 Extent of offenses.** Each day any person, firm or corporation violates any provision of this chapter, except the commission of any act declared unlawful in section 566A.7 or section 566A.8 of this chapter, shall be deemed to be a separate and distinct offense. [C54,§566A.10]

**566A.11 Speculation prohibited.** No organization subject to the provisions of this chapter nor any person representing it in a sales capacity shall advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes. [C54,§566A.11]

Constitutionality, 55GA, ch 84,§11  
Pending litigation excepted, 55GA, ch 84,§12

## CHAPTER 567

### RIGHTS OF ALIENS

567.1 Acquisition of real estate.  
567.2 Holders of liens—escheat.  
567.3 Corporate holdings—obligation to sell.  
567.4 Contract to sell.

567.5 Escheat.  
567.6 Citizen may initiate proceedings.  
567.7 Limitation.  
567.8 Aliens' inheritances.

**567.1 Acquisition of real estate.** Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

Nothing in this section contained shall prevent aliens from having or acquiring property

of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

This chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings for forfeiture have been commenced. [C73,§§1908, 1909; C97,§2889; C24, 27, 31, 35, 39,§10214; C46, 50, 54,§567.1]

Referred to in §567.2

**567.2 Holders of liens — escheat.** The provisions of this chapter shall not prevent the holder of any lien upon or interest in real estate, acquired before or after July 4, 1888, from taking or holding a valid title to the real estate in which he has such interest, or upon



which he has such lien; nor shall it prevent any nonresident alien enforcing any lien or judgment for any debt or liability which may have been created subsequently to said date, or which he may hereafter acquire, nor from becoming a purchaser at any sale by virtue of such lien, judgment, or liability, if all real estate so acquired shall be sold within ten years after the title shall be perfected in such alien under such sale.

Any real estate owned or held by any nonresident alien, as provided in this and section 567.1 and not disposed of as therein required, shall escheat to the state. [C97,§2890; C24, 27, 31, 35, 39,§10215; C46, 50, 54,§567.2]

Referred to in §§491.67, 567.3

**567.3 Corporate holdings—obligation to sell.**

All corporations organized under the laws of any foreign country, and corporations organized under the laws of any state of the United States, one-half of whose stock is owned and controlled by nonresident aliens, shall have the right to own, hold, and dispose of any real property owned or held by any such corporations on July 4, 1888, or any real property acquired by any such corporations under the provisions of section 567.2; but any such corporation shall sell or dispose of any such property now owned by it on or before March 16, 1910, and in default thereof the provisions of sections 567.5 to 567.7, inclusive, shall be applied thereto. [S13,§2889-a; C24, 27, 31, 35, 39, §10216; C46, 50, 54,§567.3]

Referred to in §567.4

**567.4 Contract to sell.** A bona fide contract for the sale of any such lands owned by any such corporation shall be held and considered as a sale within the provisions of section 567.3 and a good and valid deed of conveyance may be made by such corporation at any time upon the fulfillment of such contract by the purchaser of any such lands. [S13,§2889-b; C24, 27, 31, 35, 39,§10217; C46, 50, 54,§567.4]

**567.5 Escheat.** The county attorney of any county in which any real estate subject to escheat is situated shall proceed by petition in the name of the state against the owner thereof.

The court shall hear and determine the issues presented in said petition, and declare such real estate escheated, or dismiss the petition, as the facts may require.

When such escheat is decreed by the court, the clerk shall notify the governor that the title to such real estate is vested in the state by the decree of said court, and present to the state comptroller a bill of the costs incurred by the county in prosecuting such action, under his official certificate and seal, who shall issue a warrant payable to said clerk, drawn on the state treasurer, to pay the costs so incurred.

Any real estate, the title to which shall be acquired by the state under the provisions of this chapter, shall be sold in the manner provided for the sale of school lands, and the pro-

ceeds of such sales shall become a part of the permanent school fund. [C97,§2891; C24, 27, 31, 35, 39,§10218; C46, 50, 54,§567.5]

Referred to in §§567.3, 567.6  
Sale of school lands, §302.4 et seq.

**567.6 Citizen may initiate proceedings.** Any citizen of the state, knowing of lands which have escheated under the provisions of this chapter, may file a motion or petition in the district court, praying an order directing the county attorney to commence the proceeding provided for in section 567.5; and if, after hearing such proofs as may be offered, it finds there is reasonable ground to believe that any land has escheated, shall direct the county attorney to proceed as provided in this chapter.

If in any such case the county attorney is adversely interested, the court may appoint an attorney to prosecute such action, and fix a reasonable attorney's fee therefor, to be paid as other costs in the case. [C97,§2892; C24, 27, 31, 35, 39,§10219; C46, 50, 54,§567.6]

Referred to in §567.3

**567.7 Limitation.** No action for the recovery of real estate, the title to which is acquired by the state under the provisions of this chapter, shall lie, after the execution and recording of a patent or conveyance thereof by the state, unless such action shall have been commenced within five years after the title became vested in the grantee of the state; but a minor or person of unsound mind shall have the right to bring an action therefor at any time within five years after his disability ceases.

The defendant in any action brought under the provisions of this chapter, if the decree is for the plaintiff, shall be entitled to the benefit of the provisions of the chapter relating to occupying claimants. [C97,§2893; C24, 27, 31, 35, 39,§10220; C46, 50, 54,§567.7]

Referred to in §567.3  
Occupying claimants, ch 560  
Recovery of lands in general, §614.1, subsection 6

**567.8 Aliens' inheritances.**

1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citi-

zens of the respective countries of which such aliens are residents.

2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property. [C54,§567.8]

## CHAPTER 568

### ISLANDS AND ABANDONED RIVER CHANNELS

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**568.1 Sale authorized.** All land between high-water mark and the center of the former channel of any navigable stream, where such channel has been abandoned, so that it is no longer capable of use, and is not likely again to be used for the purposes of navigation, and all land within such abandoned river channels, and all bars or islands in the channels of navigable streams not heretofore surveyed or platted by the United States or the state of Iowa, and all within the jurisdiction of the state of Iowa shall be sold and disposed of in the manner hereinafter provided. [S13,§2900-a2; C24, 27, 31, 35, 39,§10221; C46, 50, 54,§568.1]

Referred to in §§568.2, 568.10

**568.2 Application by county auditor.** It shall be the duty of the county auditor to file written application with the secretary of state, asking that certain land located within the county be surveyed, appraised, and sold, whenever he is satisfied that such land is of the character contemplated by section 568.1. [S13, §2900-a3; C24, 27, 31, 35, 39,§10222; C46, 50, 54, §568.2]

S13,§2900-a3, editorially divided

**568.3 Application by prospective purchaser.** If the county auditor fails or neglects to make such application, then any person desiring to purchase such land may file a written application with the secretary of state, asking that the said land be surveyed, appraised, and sold. [S13,§2900-a3; C24, 27, 31, 35, 39,§10223; C46, 50, 54,§568.3]

**568.4 Form of application.** The said application whether made by the county auditor or by a person desiring to purchase the land, shall contain an accurate description thereof, stating whether the land is abandoned river channel, or land within such abandoned river

channel, or an island or a sand bar in a navigable stream, and giving the number of township and range in which it is located, and the section numbers if possible, and also the estimated acreage. [S13,§2900-a3; C24, 27, 31, 35, 39,§10224; C46, 50, 54,§568.4]

**568.5 Survey.** Upon receiving such application, it shall be the duty of the secretary of state to order a complete survey of such land to be made by the county surveyor of the county wherein the land is situated, and in case of the refusal or inability of such county surveyor to make such survey then the secretary of state shall appoint some other competent surveyor to make such survey. [S13, §2900-a4; C24, 27, 31, 35, 39,§10225; C46, 50, 54, §568.5]

S13,§2900-a4, editorially divided

**568.6 Report of survey.** When such survey is made, a full report thereof, with field notes, shall be filed with the clerk of the state land office, which report and field notes shall constitute the official survey of such land. [S13, §2900-a4; C24, 27, 31, 35, 39,§10226; C46, 50, 54, §568.6]

**568.7 Appraisalment.** Upon the filing of such report, with the accompanying field notes, the secretary of state shall thereupon appoint a commission of three disinterested freeholders of the county wherein the land is situated, to view the land and make appraisalment of the value thereof, which appraisalment shall be returned and filed with the clerk of the state land office in the office of the secretary of state.

The secretary of state, if he deems it necessary, may either go in person or send the clerk of the state land office into the county

to make proper selection of the said commissioners. [S13,§2900-a5; C24, 27, 31, 35, 39,§10227; C46, 50, 54,§568.7]

Referred to in §568.11

**568.8 Contract for survey.** The secretary of state shall make a contract with some surveyor for making such survey; the surveyor to furnish all the chainmen and other attendants and pay all necessary expenses, which contract before it becomes binding shall be submitted to and approved by the executive council. [S13,§2900-a6; C24, 27, 31, 35, 39,§10228; C46, 50, 54,§568.8]

**568.9 Commissioners' compensation.** Commissioners, for their services in making such appraisement shall each be entitled to receive five dollars per day for the actual time employed. [C24, 27, 31, 35, 39,§10229; C46, 50, 54, §568.9]

**568.10 Sale—how effected—rights of occupants.** Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home, continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in him by purchase from the proper authority, or any person who has acquired possession of such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file his application for the purchase thereof at the appraised value with the secretary of state within sixty days after the day the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value.

Any such sale shall be subject to the permanent right of a utility association, company or corporation to continue in possession of a right of way for its underground and aerial plant, including cables, wires, poles, fixtures, piers and abutments, where such right of way has

existed on lands which have become subject to sale under section 568.1. [S13, SS15,§2900-a7; C24, 27, 31, 35, 39,§10230; C46, 50, 54,§568.10]

Referred to in §568.11

**568.11 Lease authorized—lands readvertised—sale.** If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as he can obtain. At the expiration of such lease he shall readvertise the land for sale in the manner provided in section 568.10. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the matter to the executive council, and they may either order the land reappraised in the manner provided in section 568.7, and then advertised and sold in the manner provided in section 568.10, or if they deem it advisable, they may authorize the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in section 568.10. and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value. [S13,§2900-a8; C24, 27, 31, 35, 39,§10231; C46, 50, 54,§568.11]

**568.12 Deed or patent.** When, upon full compliance with the conditions of this chapter, any person shall become entitled to a deed or patent for any land, a deed or patent shall thereupon be executed and delivered to such person by the governor, on behalf of the state, duly attested with the seal of the state attached thereto, which deed shall, in addition to the usual formalities, also recite the name of the party making application to have the land surveyed, appraised, and sold, the date and the amount of the appraisement, the name of the party making final payment and entitled to a deed therefor, whether as bona fide occupant or as highest bidder, and also that such deed is given for the purpose of conveying such title and interest in the land as the state may at the time own and possess, and has the right to convey. A record of such conveyance shall be made and kept by the clerk of the state land office of the secretary of state. [S13, §2900-a9; C24, 27, 31, 35, 39,§10232; C46, 50, 54, §568.12]

**568.13 Previous survey.** When any such land shall be found to have been previously surveyed under and by virtue of any order of a court of record, and the record of such survey has been duly made and preserved, then and in that event, in the discretion of the secretary of state, a duly certified transcript of such record, together with the field notes accompanying the same, if obtainable, may be filed with the clerk of the state land office

in the office of secretary of state, and when so filed shall obviate the necessity for any further survey of such land except when such survey becomes necessary for the purpose of execution of conveyance thereof, and the record of such transcript, when filed, shall constitute the official survey of such land. [S13, §2900-a10; C24, 27, 31, 35, 39, §10233; C46, 50, 54, §568.13]

**568.14 Boundary commission.** If in any proceeding contemplated by the provisions of this chapter, it shall become necessary to determine the boundary line between this state and either of the states adjoining, the matter shall then be at once referred to the executive council, who shall thereupon proceed to confer with the proper authority of such adjoining state, and if the co-operation of the proper authority of such adjoining state shall be obtained, then the executive council shall appoint a commission of three disinterested, competent persons, who shall, in conjunction with the parties acting for such adjoining state, have authority to ascertain and locate the true boundary line between this state and such adjoining state, so far as the particular land under consideration at the time is concerned. The report of the commissioners with a statement of their findings shall be submitted to the executive council, who shall file the same with the clerk of the state land office in the office of the secretary of state. The line so ascertained and located shall constitute the true and permanent boundary line between this state and such other state to the extent such line shall be so ascertainable and located. [S13, §2900-a11; C24, 27, 31, 35, 39, §10234; C46, 50, 54, §568.14]

**568.15 How constituted.** The members of the commission shall be selected with reference to their fitness for the duties required and at least one of them shall be a competent surveyor and civil engineer. [S13, §2900-a12; C24, 27, 31, 35, 39, §10235; C46, 50, 54, §568.15]

**568.16 Purchase money refunded.** If the grantee of the state, or his successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or his successors, administrators, or assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the

provisions of this section shall be certified by the executive council to the state comptroller, who shall draw his warrant therefor, and the same shall be paid out of the general fund. [S13, §2900-a13; C24, 27, 31, 35, 39, §10236; C46, 50, 54, §568.16]

**568.17 Sales and leases for cash.** All sales and leases of land under the provisions of this chapter shall be for cash. All money received for such sales and leases shall be paid into the state treasury by the secretary of state. [S13, §2900-a14; C24, 27, 31, 35, 39, §10237; C46, 50, 54, §568.17]

**568.18 Good faith possession—preference.** If any lands in the present or in any former channel of any navigable river, or island therein, or any lands formed by accretion or avulsion in consequence of the changes of the channel of any such river, have been for ten years or more in the possession of any person, company, or corporation, or of his or its grantors or predecessors in interest under a bona fide claim of ownership, and the person, company or corporation so in possession, or his or its grantors or predecessors in interest, have paid state or county taxes upon said lands for a period of five years, and have in good faith and under bona fide claim of title made valuable improvements thereon, and also in any other case where, in the judgment of the executive council, the person in possession of any land subject to the provisions of this chapter, has, in equity and good conscience, a substantial interest therein, then the said lands shall be sold to the person, company, or corporation so in possession thereof as hereinafter provided. [S13, §2900-a16; C24, 27, 31, 35, 39, §10238; C46, 50, 54, §568.18]

Referred to in §568.20

**568.19 Notice—action to determine title and value—patent.** When any person, company, or corporation so in possession of any such lands shall give to the secretary of state written notice of his or its claim, or whenever the executive council shall deem it advisable, it shall be the duty of the attorney general to bring an action in equity, in the district court of the county in which said lands are situated, against the party in possession thereof to determine the title of the state to such lands, and the value thereof, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest. If the person, company, or corporation in possession of such land shall, after the court has determined the value thereof as herein provided, tender to the secretary of state the amount adjudged to be the value of said lands, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest, a deed or patent of such land shall be executed by the governor, attested by the secretary of state, and delivered to the person, company, or corporation making such tender, as provided by law. If the person, company, or corporation so in possession shall fail to pay to the state

the amount so adjudged within six months after the final determination of the action so brought by the state, then said lands shall be subject to the other provisions of this chapter. [S13,§2900-a17; C24, 27, 31, 35, 39,§10239; C46, 50, 54,§568.19]

Referred to in §568.20

**568.20 Withholding patent — deposit money refunded.** If the land described in any application is covered by the provisions of sections 568.18 and 568.19, and notice thereof is given to the secretary of state as provided in section 568.19, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or his assignee, does not desire to prosecute his application, or if he does not purchase the land under this chapter, then all of the money deposited by him with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the state comptroller, who shall draw his warrant upon the general fund in favor of the person entitled thereto. [S13, §2900-a18; C24, 27, 31, 35, 39,§10240; C46, 50, 54, §568.20]

**568.21 Sale or lease authorized.** The executive council of the state is hereby authorized and empowered to sell, convey, lease, or demise any of the islands belonging to the state which are within the meandered banks of rivers in the state, and to execute and deliver a patent or lease thereof. Nothing in this and sections 568.22 to 568.25, inclusive, shall be construed to apply to islands in the Mississippi or Missouri rivers. [S13,§2900-a28; C24, 27, 31, 35, 39,§10241; C46, 50, 54,§568.21]

Referred to in §568.22

**568.22 Survey—appraisement—sale.** Before a sale of any island is made under the provisions of section 568.21, the executive council shall cause a survey and plat of such island to be made, showing its location and area, and the plat and notes of such survey shall be filed with the secretary of state. The land composing the island shall then be appraised by a commission appointed by the governor, consisting of three disinterested freeholders of

the state, who shall report their appraisement to the executive council. The sale of the island shall then be advertised once each week for four consecutive weeks in some newspaper of general circulation published in the county where the island is located, and proof of such publication filed with the executive council. The sale shall be made upon written bids addressed to the executive council of the state, and the advertisement shall fix the time when such bids will be received and opened. All bids shall be opened by the executive council at the time fixed, and the island may thereupon be sold to the highest bidder and at not less than its appraised value. [S13,§2900-a29; C24, 27, 31, 35, 39,§10242; C46, 50, 54,§568.22]

Referred to in §§568.21, 568.23

**568.23 Lease.** If it shall be deemed expedient to lease any such island, a lease thereof may be made upon written bids addressed to the executive council, and the island proposed to be leased shall be surveyed and platted, and notice of the leasing thereof and of the receiving and opening of bids shall be published, in the manner provided in section 568.22, but no appraisement shall be necessary. Upon the opening of the bids received by the executive council it may make a lease of such island to the highest bidder for such term as is deemed advisable. [S13,§2900-a30; C24, 27, 31, 35, 39, §10243; C46, 50, 54,§568.23]

Referred to in §568.21

**568.24 Sales and leases for cash—expenses.** All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the state comptroller, who shall draw his warrant upon the state treasury for the amount, and the same shall be paid from the general fund. [S13,§2900-a31; C24, 27, 31, 35, 39,§10244; C46, 50, 54,§568.24]

Referred to in §568.21

**568.25 Patent or lease.** When any sale or lease of any island belonging to the state is made by the executive council as herein provided, the governor shall execute and deliver to the purchaser or lessee a patent or a lease thereof, as the case may be, duly attested by the seal of the state. [S13,§2900-a32; C24, 27, 31, 35, 39,§10245; C46, 50, 54,§568.25]

Referred to in §568.21

## CHAPTER 569

### ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATION

569.1 Right to receive conveyance.  
569.2 Bidding in at execution sale.  
569.3 Amount of bid.  
569.4 Costs and expenses.  
569.5 Management.

569.6 Costs, expenses, and proceeds.  
569.7 Execution of deeds and leases.  
569.8 Title under tax deed—sale—apportionment of proceeds.

**569.1 Right to receive conveyance.** When it becomes necessary, to secure the state or any county or other municipal corporation

thereof from loss, to take real estate on account of a debt by bidding the same in at execution sale or otherwise, the conveyance shall

vest in the grantee as complete a title as if it were a natural person. [C73,§1910; C97,§2894; C24, 27, 31, 35, 39,§10246; C46, 50, 54,§569.1]

**569.2 Bidding in at execution sale.** Such real estate shall be bid in, if for the state, by the attorney general, if for the county, by the county attorney, and if for any other municipal corporation, by its attorney or agent appointed for that purpose, the proceeds of any such real estate, when sold, to be covered into the state, county, or municipal treasury, as the case may be, for the use of the general or the special fund to which it rightfully belongs. [C73,§1911; C97,§2895; C24, 27, 31, 35, 39,§10247; C46, 50, 54,§569.2]

Bidding at tax sale, §§391.66, 420.262, 446.19, 455.170

**569.3 Amount of bid.** When real estate is sold as above provided, the fair and reasonable value shall be bid therefor, unless in excess of the judgment, interest, costs, and accruing costs, in which case the bid shall be for such sum only. [C73,§1912; C97,§2896; C24, 27, 31, 35, 39,§10248; C46, 50, 54,§569.3]

**569.4 Costs and expenses.** In all cases in which the state becomes the purchaser of real estate under the provisions of this chapter, the costs and expenses attending such purchases shall be audited and allowed by the state comptroller, and paid out of any money in the state treasury not otherwise appropriated, upon the comptroller's warrant, and charged to the fund to which the indebtedness belonged upon which such real estate was taken.

If the real estate is purchased by a county, the costs and expenses shall be audited by the board of supervisors and paid out of the county treasury, upon a warrant drawn by the auditor on the treasurer, from the fund to which the debt belonged upon which said real estate was purchased.

If the real estate is purchased by any other municipal corporation, then the costs shall be audited and paid by it in the same manner as other claims against it are audited and paid. [C73,§1913; C97,§2897; C24, 27, 31, 35, 39,§10249; C46, 50, 54,§569.4]

**569.5 Management.** When the title to real estate becomes vested in the state, or in a county or municipality under this chapter, or by conveyance under the statutes relating to taxation, the executive council, board of supervisors, or other governing body, as the case may be, shall manage, control, protect by insurance, lease, or sell said real estate on such

terms, conditions, or security as said governing body may deem best. [C73,§§1914-1917, 1919; C97,§§2898, 2899; C24, 27, 31,§§10250-10252, 10254-10256; C35,§10260-e1; C39,§10260.1; C46, 50, 54,§569.5]

**569.6 Costs, expenses, and proceeds.** The cost and expense resulting from the exercise of said powers shall be paid from the fund to which said real estate belongs and the proceeds of a lease or sale shall be credited to said fund. [C73,§§1914-1917, 1919; C97,§§2898, 2899; C24, 27, 31,§§10250-10252, 10254-10256; C35, §10260-e2; C39,§10260.2; C46, 50, 54,§569.6]

**569.7 Execution of deeds and leases.** The said governing body may appoint its chairman, president, or other member to execute and acknowledge, for and on behalf of the state, county, or municipality, leases and deeds of conveyance, but said instruments when executed shall be approved by the said body and said approval spread upon its minutes with the ye and nay vote thereon. A transcript of said minutes certified by the secretary of said body shall be entitled to be recorded in the same manner as the approved instrument is entitled to be recorded. [C73,§§1916, 1918, 1919; C97,§§2898-2900; C24, 27, 31,§§10254, 10257-10260; C35,§10260-e3; C39,§10260.3; C46, 50, 54, §569.7]

**569.8 Title under tax deed—sale—apportionment of proceeds.** When the county acquires title to real estate by virtue of a tax deed such real estate shall be controlled, managed, and sold by the board of supervisors as provided in this chapter, except that any sale thereof shall be for a sum not less than the total amount stated in the tax sale certificate including all indorsements of subsequent general taxes, interests, and costs, without the written approval of a majority of all the tax levying and tax certifying bodies having any interest in said general taxes. All money received from said real estate either as rent or as proceeds from the sale thereof shall, after payment of any general taxes which have accrued against said real estate since said tax sale and after payment of insurance premiums on any buildings located on said real estate and after expenditures made for the actual and necessary repairs and upkeep of said real estate, be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which said real estate was sold. [C35,§10260-g1; C39,§10260.4; C46, 50, 54,§569.8]

# TITLE XXVI

## CERTAIN SPECIAL LIENS

### CHAPTER 570

#### LANDLORD'S LIEN

Landlord and tenant generally, ch 562

Referred to in §321.47

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| 570.1 Lien created—property subjected.                           | 570.6 Lien upon additional property.                    |
| 570.2 Duration of lien.  | 570.7 Action by tenant to recover property.             |
| 570.3 Limitation on lien in case of sale under judicial process. | 570.8 Acts sufficient to constitute taking of property. |
| 570.4 Limitation on lien in case of crop failure.                | 570.9 Sale of crops held by landlord's lien.            |
| 570.5 Enforcement—proceeding by attachment.                      | 570.10 Action barred by payment of rent.                |

**570.1 Lien created—property subjected.** A landlord shall have a lien for his rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution. [C51,§1270; R60,§2302; C73,§2017; C97,§2992; C24, 27, 31, 35, 39,§10261; C46, 50, 54, §570.1]

**570.2 Duration of lien.** Such lien shall continue for the period of one year after a year's rent, or the rent of a shorter period, falls due. But in no case shall such lien continue more than six months after the expiration of the term. [C51,§1270; R60,§2302; C73,§2017; C97, §2992; C24, 27, 31, 35, 39,§10262; C46, 50, 54, §570.2]

**570.3 Limitation on lien in case of sale under judicial process.** In the event that a stock of goods or merchandise, or a part thereof, subject to a landlord's lien, shall be sold under judicial process, order of court, or by an assignee under a general assignment for benefit of creditors, the lien of the landlord shall not be enforceable against said stock or portion thereof, except for rent due for the term already expired, and for rent to be paid for the use of demised premises for a period not exceeding six months after date of sale, any agreement of the parties to the contrary notwithstanding. [C97,§2992; C24, 27, 31, 35, 39, §10263; C46, 50, 54,§570.3]

**570.4 Limitation on lien in case of crop failure.** In cases of farm leases involving the rental of farm lands of forty acres or more, where the tenant has defaulted in the payment of his rent and suit has been commenced aided by landlord's attachment for the enforcement of the landlord's lien, the defendant may file as a defense that the default or inability to

pay is caused or brought about by reason of drought, flood, hail, storms, or other climatic conditions or infestation of pests affecting the crops in controversy. When such a defense has been filed, the issue as to the cause for the default shall be triable as an equitable action. Upon the hearing, if the court finds that the default or inability to pay is due to drought, flood, hail, storm, or other climatic conditions or infestation of pests affecting the crops in controversy, the court may enter a decree pursuant thereto with his finding of fact. Where a decree has been entered finding that the inability to pay was brought about by any of the conditions named in this section, the landlord's lien shall be confined to all of the crops grown and raised upon the premises and to all increase in livestock and hogs raised upon the premises.

The provisions of this section shall not apply to any farm leases executed prior to July 4, 1941. [C46, 50, 54,§570.4]

**570.5 Enforcement—proceeding by attachment.** The lien may be enforced by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk or justice a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required. [C51,§1271; R60,§2303; C73,§2018; C97,§2993; C24, 27, 31, 35, 39,§10264; C46, 50, 54,§570.5]

Attachment, ch 639  
Uncollectible rents, §413.106

**570.6 Lien upon additional property.** If a lien for rent is given in a written lease or

other instrument upon additional property, it may be enforced in the same manner as a landlord's lien and in the same action. [C51, §1271; R60,§2303; C73,§2018; C97,§2993; C24, 27, 31, 35, 39,§10265; C46, 50, 54,§570.6]

**570.7 Action by tenant to recover property.** An action brought by a tenant, his assignee or undertenant, to recover the possession of specific personal property taken under landlord's attachment, may be against the party who sued out the attachment; and the property claimed in such action may, under the writ therefor, be taken from the officer who seized it, when he has no other claim to hold it than that derived from the writ. [R60,§2770; C73,§2575; C97,§3490; C24, 27, 31, 35, 39,§10266; C46, 50, 54, §570.7]

**570.8 Acts sufficient to constitute taking of property.** The indorsement of a levy on the property, made upon the process by the officer holding it, shall be a sufficient taking of the property to sustain an action against the party who sued out the writ. [R60,§2770; C73,§2575;

C97,§3490; C24, 27, 31, 35, 39,§10267; C46, 50, 54, §570.8]

Levy generally, R.C.P. 258 et seq.; §639.26

**570.9 Sale of crops held by landlord's lien.** If any tenant of farm lands, with intent to defraud, shall sell, conceal, or in any manner dispose of any of the grain, or other annual products thereof upon which there is a landlord's lien for unpaid rent, without the written consent of the landlord, he shall be guilty of larceny and punished accordingly. [S13,§4852-a; C24, 27, 31, 35, 39,§10268; C46, 50, 54,§570.9]

Referred to in §570.10  
Larceny, §§709.1, 709.2

**570.10 Action barred by payment of rent.** The payment of the rent for the lands upon which such grain or other annual products were raised at or before the time the same falls due, shall be a bar to any prosecution under section 570.9 and no prosecution shall be commenced until such rent be wholly due. [S13, §4852-b; C24, 27, 31, 35, 39,§10269; C46, 50, 54, §570.10]

## CHAPTER 571

### THRESHERMAN'S OR CORNSHELLER'S LIEN

571.1 Nature of lien.  
571.2 Priority of lien.  
571.3 Preservation of lien.

571.4 Enforcement—time limit.  
571.5 Enforced as chattel mortgage.

**571.1 Nature of lien.** Any person, firm, corporation, or association engaged in operating a machine for the threshing, baling, or combining of any kind of grain or seed; or for the baling of hay, straw, or any other farm product whether done by stationary or movable baler; or for the mechanical husking or shelling of corn; or for doing custom threshing, combining, mechanical husking, baling, or corn shelling for hire, shall have a first lien on grain and seed threshed, or any farm product baled, or on corn shelled or husked, for the reasonable value of such services. [C35,§10269-e1; C39, §10269.1; C46, 50, 54,§571.1]

**571.2 Priority of lien.** Said lien shall be prior and superior to any landlord's lien or mortgage lien upon said grain, seed, or corn. [C35,§10269-e2; C39,§10269.2; C46, 50, 54,§571.2]

**571.3 Preservation of lien.** In order to preserve said lien the person entitled thereto must, within ten days from the completion of the work for which the lien is claimed, file in the office of the clerk of the district court of the county in which said services were rendered an itemized and verified statement setting forth the services rendered, the number of

bushels of grain threshed or corn shelled, the value of said services and the name of the person for whom said services were rendered and the place where said services were rendered; and the clerk of the district court shall note the filing of said verified statement in a book kept by him for that purpose and index the same under the name of the person for whom such service was performed. [C35,§10269-e3; C39,§10269.3; C46, 50, 54,§571.3]

**571.4 Enforcement—time limit.** Proceedings to enforce said lien must be brought within thirty days after the filing of said verified statement and cannot be brought thereafter. [C35,§10269-e4; C39,§10269.4; C46, 50, 54,§571.4]

**571.5 Enforced as chattel mortgage.** Said lien may be foreclosed as a chattel mortgage lien under the provisions of chapter 652, except that the notice of sale need not be published but in lieu thereof may be posted in three public places of the county, one of which shall be the bulletin board in the corridor of the courthouse and one of which shall be the place where the grain or seed or corn is located. [C35,§10269-e5; C39,§10269.5; C46, 50, 54,§571.5]



CHAPTER 572  
MECHANIC'S LIEN

Referred to in §84.9

- 572.1 Definitions and rules of construction.
- 572.2 Persons entitled to lien.
- 572.3 Collateral security before completion of work.
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**572.1 Definitions and rules of construction.**  
For the purpose of this chapter:

1. "Owner" shall include every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians.
2. "Subcontractor" shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts therefor directly with the owner, his agent, or trustee.
3. "Building" shall be construed as if followed by the words "erection, or other improvement upon land".
4. "Material" shall in addition to its ordinary meaning embrace and include machinery, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile, and the use of forms, accessories, and equipment. [C51,§982; R60, §§1866, 1871; C73, §§2144, 2146, C97, §§3096, 3097; C24, 27, 31, 35, 39, §10270; C46, 50, 54, §572.1]

**572.2 Persons entitled to lien.** Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, his agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for material or labor furnished or labor performed. [C51, §981, 1010; R60, §1846;

C73, §2130; C97, §3089; C24, 27, 31, 35, 39, §10271; C46, 50, 54, §572.2]

Homestead liable, §561.21

**572.3 Collateral security before completion of work.** No person shall be entitled to a mechanic's lien who, at the time of making a contract for furnishing material or performing labor, or during the progress of the work, shall take any collateral security on such contract. [C51, §1009; R60, §1845; C73, §2129; C97, §3088; C24, 27, 31, 35, 39, §10272; C46, 50, 54, §572.3]

**572.4 Security after completion of work.** After the completion of such work, the taking of security of any kind shall not affect the right to establish a mechanic's lien unless such new security shall, by express agreement, be given and received in lieu of such lien. [C97, §3088; C24, 27, 31, 35, 39, §10273; C46, 50, 54, §572.4]

**572.5 Extent of lien.** The entire land upon which any building or improvement is situated, including that portion not covered therewith, shall be subject to a mechanic's lien to the extent of the interest therein of the person for whose benefit such material was furnished or labor performed. [R60, §1854; C73, §2140; C97, §3090; C24, 27, 31, 35, 39, §10274; C46, 50, 54, §572.5]

**572.6 In case of leasehold interest.** When the interest of such person is only a leasehold, the forfeiture of the lease for the nonpayment of rent, or for noncompliance with any of the other conditions therein, shall not forfeit or impair the mechanic's lien upon such building or improvement; but the same may be sold to satisfy such lien, and removed by the purchaser within thirty days after the sale thereof. [R60, §1854; C73, §2140; C97, §3090; C24, 27, 31, 35, 39, §10275; C46, 50, 54, §572.6]

**572.7 In case of internal improvement.**

When the lien is for material furnished or labor performed in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, said lien shall attach to the erections, excavations, embankments, bridges, roadbeds, rolling stock, and other equipment and to all land upon which such improvements or property may be situated, except the easement or right of way. [C73,§2132; C97,§3091; C24, 27, 31, 35, 39,§10276; C46, 50, 54,§572.7]

**572.8 Perfection of lien.** Every person who wishes to avail himself of a mechanic's lien shall file with the clerk of the district court of the county in which the building, land, or improvement to be charged with the lien is situated a verified statement or account of the demand due him, after allowing all credits, setting forth:

1. The time when such material was furnished or labor performed, and when completed.

2. The correct description of the property to be charged with the lien. [R60,§1851; C73, §2137; C97,§3092; C24, 27, 31, 35, 39,§10277; C46, 50, 54,§572.8]

Referred to in §572.9

**572.9 Time of filing.** The statement or account required by section 572.8 shall be filed by a principal contractor within ninety days, and by a subcontractor within sixty days, from the date on which the last of the material was furnished or the last of the labor was performed. A failure to file the same within said periods shall not defeat the lien, except as otherwise provided in this chapter. [R60,§1851; C73,§2137; C97,§3092; C24, 27, 31, 35, 39,§10278; C46, 50, 54,§572.9]

Referred to in §572.10

**572.10 Perfecting subcontractor's lien after lapse of sixty days.** After the lapse of the sixty days prescribed in section 572.9, a subcontractor may perfect a mechanic's lien by filing his claim with the clerk of the district court and giving written notice thereof to the owner, his agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served, his agent, or trustee, is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court. [C73,§2133; C97, §3094; SS15,§3094; C24, 27, 31, 35, 39,§10279; C46, 50, 54,§572.10]

Referred to in §572.11  
Service of notice, R.C.P. 56(a)

**572.11 Extent of lien filed after sixty days.** Liens perfected under section 572.10 shall be enforced against the property or upon the bond, if given, by the owner, as hereinafter provided, only to the extent of the balance due from the owner to the contractor at the

time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the subcontractor. [C73,§2133; C97,§3094; SS15, §3094; C24, 27, 31, 35, 39,§10280; C46, 50, 54, §572.11]

**572.12 Time of filing against railway.** Where a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which such labor was done or material furnished within which to file his claim therefor. [R60,§1851; C73,§2137; C97, §3092; C24, 27, 31, 35, 39,§10281; C46, 50, 54, §572.12]

**572.13 Liability of owner to original contractor.** No owner of any building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, shall be required to pay the original contractor for compensation for work done or material furnished for said building, land, or improvement until the expiration of sixty days from the completion of said building, or improvement unless the original contractor shall furnish to the owner:

1. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished any material or performed any labor for said building, land, or improvement, or

2. A good and sufficient bond to be approved by said owner, conditioned that said owner shall be held harmless from any loss which he may sustain by reason of the filing of mechanics' liens by subcontractors. [R60,§1847; C73, §2131; C97,§3093; S13,§3093; C24, 27, 31, 35, 39, §10282; C46, 50, 54,§572.13]

**572.14 Liability to subcontractor after payment to original contractor.** Payment to the original contractor by the owner of any part or all of the contract price of such building, or improvement before the lapse of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor, will not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon said building, land, or improvement if the subcontractor file his lien within the time provided by law for the filing of the same. [S13,§3093; C24, 27, 31, 35, 39, §10283; C46, 50, 54,§572.14]

**572.15 Discharge of subcontractor's lien.** Every mechanic's lien of a subcontractor may be discharged at any time by the owner, principal contractor, or intermediate subcontractor filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by said clerk, conditioned for the payment of any sum for which the claimant may obtain judgment upon his claim. [C97,§3093; S13,§3093; C24, 27, 31, 35, 39,§10284; C46, 50, 54,§572.15]

**572.16 Rule of construction.** Nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in his contract with the principal contractor, unless said owner pays a part or all of the contract price to the original contractor before the expiration of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor. [C97,§3093; S13,§3093; C24, 27, 31, 35, 39,§10285; C46, 50, 54, §572.16]

**572.17 Priority of mechanics' liens between mechanics.** Mechanics' liens shall have priority over each other in the order of the filing of the statements or accounts as herein provided. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10286; C46, 50, 54,§572.17]

**572.18 Priority over other liens.** Mechanics' liens shall be preferred to all other liens which may attach to or upon any building or improvement and to the land upon which it is situated, except liens of record prior to the time of the original commencement of the work or improvements; but the rights of purchasers, encumbrancers, and other persons who acquire interests in good faith and for a valuable consideration, and without notice, after the expiration of the time for filing claims for such liens, shall be prior to the claims of all contractors or subcontractors who have not, at the dates such rights and interests were acquired, filed their claims for such liens. [R60,§§1851, 1853, 1855; C73,§§2137, 2139, 2141; C97,§§3092, 3095; C24, 27, 31, 35, 39,§10287; C46, 50, 54,§572.18]

**572.19 Priority over garnishments of the owner.** Mechanics' liens shall take priority of all garnishments of the owner for the contract debts, whether made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for such lien. [C97,§3095; C24, 27, 31, 35, 39,§10288; C46, 50, 54,§572.19]

**572.20 Priority as to buildings over prior liens upon land.** Mechanics' liens, including those for additions, repairs, and betterments, shall attach to the building or improvement for which the material or labor was furnished or done, in preference to any prior lien, encumbrance, or mortgage upon the land upon which such building or improvement was erected or situated. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10289; C46, 50, 54, §572.20]

**572.21 Foreclosure of mechanic's lien when lien on land.** In the foreclosure of a mechanic's lien when there is a prior lien, encumbrance, or mortgage upon the land the following regulations shall govern:

1. *Lien on original and independent building or improvement.* If such material was furnished or labor performed in the construction of an original and independent building or im-

provement commenced after the attaching or execution of such prior lien, encumbrance, or mortgage, the court may, in its discretion, order such building or improvement to be sold separately under execution, and the purchaser may remove the same in such reasonable time as the court may fix. If the court shall find that such building or improvement should not be sold separately, it shall take an account of and ascertain the separate values of the land, and the building or improvement, and order the whole sold, and distribute the proceeds of such sale so as to secure to the prior lien, encumbrance, or mortgage priority upon the land, and to the mechanic's lien priority upon the building or improvement.

2. *Lien on existing building or improvement for repairs or additions.* If the material furnished or labor performed was for additions, repairs, or betterments upon any building or improvement, the court shall take an accounting of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments; and upon the sale of the premises, distribute the proceeds of such sale so as to secure to the prior mortgagee or lienholder priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lienholder priority upon the enhanced value caused by such additions, repairs, or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10290; C46, 50, 54,§572.21]

**572.22 Record of claim.** The clerk of the court shall indorse upon every claim for a mechanic's lien filed in his office the date and hour of filing and make an abstract thereof in the mechanic's lien book kept for that purpose. Said book shall be properly indexed and shall contain the following items concerning each claim:

1. The name of the person by whom filed.
2. The date and hour of filing.
3. The amount thereof.
4. The name of the person against whom filed.
5. The description of the property to be charged therewith. [R60,§1852; C73,§2138; C97, §3100; C24, 27, 31, 35, 39,§10291; C46, 50, 54, §572.22]

**572.23 Acknowledgment of satisfaction of claim.** When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if he neglects to do so for thirty days after demand in writing, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of his injury. [R60,§§1867-1869; C73,

§2145; C97,§3101; C24, 27, 31, 35, 39,§10292; C46, 50, 54,§572.23]

**572.24 Time of bringing action—court.** An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district or superior court after said lien is perfected. [R60,§1856; C73,§§2142, 2143; C97,§3098; C24, 27, 31, 35, 39,§10293; C46, 50, 54,§572.24]

**572.25 Place of bringing action.** An action to enforce a mechanic's lien shall be brought in the county in which the property to be affected, or some part thereof, is situated. [C73, §§2142, 2578; C97,§§3098, 3493; C24, 27, 31, 35, 39, §10294; C46, 50, 54,§572.25]

**572.26 Kinds of action—amendment.** An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.

Any lien statement may be amended by leave of court in furtherance of justice, except as to the amount demanded. [C51,§985; R60, §4183; C73,§2510; C97,§3429; C24, 27, 31, 35, 39, §10295; C46, 50, 54,§572.26]

**572.27 Limitation on action.** An action to enforce a mechanic's lien may be brought within two years from the expiration of the sixty or ninety days, as the case may be, for filing the claim as provided in this chapter and not afterwards. [C51,§984; R60,§1865; C73,§2529; C97,§3447; S13,§3447; C24, 27, 31, 35, 39,§10296; C46, 50, 54,§572.27]

**572.28 Demand for bringing suit.** Upon the written demand of the owner, his agent, or contractor, served on the lienholder requiring him to commence action to enforce his lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited. [C73,§2143; C97, §3099; C24, 27, 31, 35, 39,§10297; C46, 50, 54, §572.28]

**572.29 Assignment of lien.** A mechanic's lien is assignable, and shall follow the assignment of the debt for which it is claimed. [C97, §3099; C24, 27, 31, 35, 39,§10298; C46, 50, 54, §572.29]

## CHAPTER 573

### LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

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**573.1 Terms defined.** For the purpose of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration.

4. "Material" shall, in addition to its ordinary meaning, embrace feed, gasoline, kero-

sene, lubricating oils and greases, provisions, and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.

5. "Service" shall, in addition to its ordinary meaning, include the furnishing to the contractor of workmen's compensation insurance, and premiums and charges for such insurance shall be considered a claim for service. [C24, 27, 31, 35, 39,§10299; C46, 50, 54,§573.1]

**573.2 Public improvements—bond and conditions.** Contracts for the construction of a public improvement shall, when the contract price equals or exceeds one thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such

bond may also be required when the contract price does not equal said amount. [C24, 27, 31, 35, 39,§10300; C46, 50, 54,§573.2]

**573.3 Bond mandatory.** The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. [C24, 27, 31, 35, 39,§10301; C46, 50, 54,§573.3]

**573.4 Deposit in lieu of bond.** A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, town, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paving district of this state, may be received in an amount equal to the amount of the bond and held in lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety. [C24, 27, 31, 35, 39,§10302; C46, 50, 54, §573.4]

**573.5 Amount of bond.** Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price. [C24, 27, 31, 35, 39,§10303; C46, 50, 54,§573.5]

**573.6 Subcontractors on public improvements.** The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

a. To any extension of time to the contractor in which to perform the contract.

b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only as to such excess increase.

c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted. [S13,§1527-s18; C24, 27, 31, 35, 39,§10304; C46, 50, 54,§573.6]

Referred to in §391A.19

**573.7 Claims for material or labor.** Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation. [C97,§3102; S13, §1989-a57; C24, 27, 31, 35, 39,§10305; C46, 50, 54, §573.7]

**573.8 Highway improvements.** In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract.

But no claims filed for credit extended for the personal expenses or personal purchases of employees for their individual use shall cause any part of the unpaid funds of the contractor to be withheld. [C24, 27, 31, 35, 39, §10306; C46, 50, 54,§573.8]

**573.9 Officer to indorse time of filing claim.** The officer shall indorse over his official signature upon every claim filed with him, the date and hour of filing. [C24, 27, 31, 35, 39,§10307; C46, 50, 54,§573.9]

**573.10 Time of filing claims.** Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39, §10308; C46, 50, 54,§573.10]

**573.11 Claims filed after action brought.** The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action. [C24, 27, 31, 35, 39,§10309; C46, 50, 54, §573.11]

**573.12 Retention from payments on contracts.** Payments made under contracts for the

construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered; said payments to be made for not more than ninety percent of said estimates and to be so made that at least ten percent of the contract price will remain unpaid at the date of the completion of the contract, anything in the contract to the contrary notwithstanding. [S13,§1989-a57; C24, 27, 31, 35, 39,§10310; C46, 50, 54,§573.12]

Referred to in §573.13

#### 573.13 Inviolability and disposition of fund.

No public corporation shall be permitted to plead noncompliance with section 573.12, and the retained percentage of the contract price, which in no case shall be less than ten percent shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided. [S13,§1989-a57; C24, 27, 31, 35, 39,§10311; C46, 50, 54,§573.13]

**573.14 Retention of unpaid funds.** Said fund shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file. [C97,§3104; S13, §1989-a59; C24, 27, 31, 35, 39,§10312; C46, 50, 54, §573.14]

**573.15 Exception.** No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or his authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind, and value of the material furnished for use upon the said public improvement. [C31, 35,§10312-d1; C39,§10312.1; C46, 50, 54,§573.15]

**573.16 Optional and mandatory actions — bond to release.** The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Provided that upon written demand of the contractor served on the person or persons filing said claims requiring him to commence action in court to enforce his claim in the manner as prescribed for original notices, such

action shall be commenced within thirty days thereafter, otherwise such retained and unpaid funds due the contractor shall be released; and it is further provided that, after such action is commenced, upon the general contractor filing with the public corporation or person withholding such funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for such claims so filed, said public corporation or person shall pay to the contractor the amount of such funds so withheld. [C97,§3103; S13, §1989-a58; C24, 27, 31, 35, 39,§10313; C46, 50, 54, §573.16]

Action against surety, §616.15  
Manner of service, R.C.P. 56(a)

**573.17 Parties.** The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants. [C24, 27, 31, 35, 39,§10314; C46, 50, 54,§573.17]

**573.18 Adjudication — payment of claims.** The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation. [C24, 27, 31, 35, 39,§10315; C46, 50, 54,§573.18]

Referred to in §573.19

**573.19 Insufficiency of funds.** When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 573.18, order the claims in each class paid in the order of filing the same. [C97,§3102; S13, §1989-a57; C24, 27, 31, 35, 39,§10316; C46, 50, 54, §573.19]

**573.20 Converting property into money.** When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases. [C24, 27, 31, 35, 39,§10317; C46, 50, 54,§573.20]

**573.21 Attorney fees.** The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established his claim. [C97,§3103; S13,§1989-a58; C24, 27, 31, 35, 39, §10318; C46, 50, 54,§573.21]

**573.22 Unpaid claimants — judgment on bond.** If, after the said retained percentage has been applied to the payment of duly filed

and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims. [C24, 27, 31, 35, 39, §10319; C46, 50, 54, §573.22]

**573.23 Abandonment of public work—effect.**

When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the

performance of the contract. [C24, 27, 31, 35, 39, §10320; C46, 50, 54, §573.23]

**573.24 Notice of claims to highway commission.** If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state highway commission of the filing of all claims. [C24, 27, 31, 35, 39, §10321; C46, 50, 54, §573.24]

**573.25 Filing of claim—effect.** The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter. [C24, 27, 31, 35, 39, §10322; C46, 50, 54, §573.25]

**573.26 Public corporation—action on bond.** Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract. [C24, 27, 31, 35, 39, §10323; C46, 50, 54, §573.26]

CHAPTER 573A

EMERGENCY STOPPAGE OF PUBLIC CONTRACTS

- 573A.1 National emergency.
- 573A.2 Termination of contracts.
- 573A.3 Determination of dispute.
- 573A.4 Rules applicable.
- 573A.5 Jurisdiction.

- 573A.6 Appeal.
- 573A.7 Order of court.
- 573A.8 Limit of payment.
- 573A.9 Application of statute.
- 573A.10 Definitions.

**573A.1 National emergency.** In the event work or construction upon a public improvement is stopped directly or indirectly by or as the result of an order or action of any federal or state authority or of any court because of the occurrence or existence of a situation which the president or the Congress of the United States has declared to be national emergency, and the circumstances or conditions are such that it is and will be impracticable to proceed with such work or construction, then the public corporation and the contractor or contractors may, by written agreement terminate said contract. Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which any party shall pay to the other, or any other person, firm or corporation under the facts and circumstances in the case. [C54, §573A.1]

Referred to in §573A.2

**573A.2 Termination of contracts.** Whenever a public corporation and a contractor or contractors, have entered into a contract for the construction of a public improvement, and any party to such contract desires to terminate said contract because of the occurrence of the event and under the circumstances stated in section 573A.1, and another party thereto will not agree to such termination, or said parties having agreed upon the termination of the

contract cannot agree upon the terms and conditions thereof, then any party may have the issues in dispute determined in the manner hereinafter provided. [C54, §573A.2]

**573A.3 Determination of dispute.** Any party to the contract may have the issue in dispute determined by filing in the district court of the county in which the public improvement or any part thereof is located a verified petition which shall allege in detail the ultimate facts upon which the petitioner relies for the termination of such contract. All subcontractors and the sureties upon all bonds given in connection with the contract and subcontracts shall be made parties to the proceeding. [C54, §573A.3]

**573A.4 Rules applicable.** The rules of civil procedure shall be applicable to such action. The cause shall be tried forthwith in equity, and the court shall give such cases preference over other cases, except criminal cases. [C54, §573A.4]

**573A.5 Jurisdiction.** The district court shall have jurisdiction of the issue which is thus presented, and of all parties including any public corporation as defined in this chapter. The court shall make findings and render its judgment determining the issues involved in accordance with the purpose and spirit of this chapter. [C54, §573A.5]

**573A.6 Appeal.** Any party aggrieved by the findings and judgment of the district court may appeal to the supreme court as in other cases and the case shall be given preference over other cases in the supreme court. [C54, §573A.6]

**573A.7 Order of court.** If the court determines that said contract should be terminated, or if the parties have agreed to its termination, the court shall include in its order:

1. The terms and conditions imposed upon each party to the contract, including the extent of the liability of the sureties upon any bond;

2. The protective requirements, if any be deemed necessary, to protect the property, and provision for the payment of the cost thereof;

3. The determination of the relative rights of the parties involved, including the compensation or payments, if any, which any party shall pay to any other person, firm or corporation under the facts and circumstances of the case.

If the court determines that the contract shall not be terminated, it shall state in its order the reasons therefor. The court shall adjust and assess the costs in such manner

as may be equitable and fair under the circumstances. [C54, §573A.7]

**573A.8 Limit of payment.** In no event shall the public corporation pay or be required to pay compensation or moneys in excess of the total compensation stated in the contract for the construction of the public improvement. [C54, §573A.8]

**573A.9 Application of statute.** The provisions of this chapter shall not apply unless it is specifically contracted for between the contracting parties. [C54, §573A.9]

**573A.10 Definitions.** For the purposes of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, drainage districts, and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration. [C54, §573A.10]

## CHAPTER 574

### MINER'S LIEN

#### 574.1 Nature of miner's lien.

**574.1 Nature of miner's lien.** Every laborer or miner who shall perform labor in opening, developing, or operating any coal mine shall have a lien for the full value of such labor upon all the property of the person, firm, or corporation owning or operating such mine and used in the construction or operation

thereof, including real estate and personal property. Such lien shall be secured and enforced in the same manner as a mechanic's lien. [C97, §3105; C24, 27, 31, 35, 39, §10324; C46, 50, 54, §574.1]

*Mechanic's liens, ch 572*

## CHAPTER 575

### COMMON CARRIER'S LIEN

Referred to in §§576.2, 577.2, 578.2

575.1 Definitions.

575.2 Lien of common carrier.

575.3 Enforcement.

575.4 Personal notice of sale.

575.5 Manner of giving notice.

575.6 Actual notice.

575.7 Sale.

575.8 Sale when owner unknown.

575.9 Inventory—sale in bulk or separate articles.

575.10 Recovery of property by satisfaction of lien.

575.11 Application of proceeds.

575.12 Disposition of unclaimed balance.

575.13 Release of carrier.

575.14 Duties of county treasurer.

575.15 Owner may reclaim—limitation.

575.16 Other remedies.

**575.1 Definitions.** For the purpose of this chapter:

1. "Perishable property" shall include fruits, vegetables, fish, oysters, candies, bakery goods, game, butter, eggs, dairy products, dressed poultry, fresh meats, and other property which

by keeping may deteriorate in value or damage other property; also, gasoline, kerosene, oils, and distillates, dynamite, powder, munitions, and explosives, and other substances, which by reason of odor or leakage, or their volatile, inflammable, explosive, or dangerous



nature, may become damaged or may be dangerous to persons or to other property.

2. "Livestock" shall include animals, live poultry, and birds.

3. "Nonperishable property" shall include all property not defined as perishable property or livestock.

4. "Carrier" shall mean common carrier. [R60,§1903; C73,§2180; C97,§3132; C24, 27, 31, 35, 39,§10325; C46, 50, 54,§575.1]

**575.2 Lien of common carrier.** Every carrier shall have a lien upon all property of every kind in its possession for all lawful charges thereon for transportation, demurrage, storage, handling, keeping, caring for, and, if sold under the provisions of this chapter, for selling the same. [R60,§§1898, 1899; C73,§§2177, 2178; C97, §3130; C24, 27, 31, 35, 39,§10326; C46, 50, 54, §575.2]

Bond to release, ch 584

**575.3 Enforcement.** When any property upon which a carrier has a lien is unclaimed, or no directions have been given for the disposition thereof, or when any of the charges thereon are unpaid, the same may be sold by the carrier after giving the notice herein prescribed. [R60,§§1900-1902; C73,§2179; C97,§3131; S13,§3131; C24, 27, 31, 35, 39,§10327; C46, 50, 54, §575.3]

**575.4 Personal notice of sale.** Notices for the sale of property under the provisions of this chapter shall be given as follows:

1. In the case of perishable property notice may be given, at any time after the arrival of the property at its destination, to the consignee or person designated in the waybill to be notified, and said notice shall state that the property is on hand and that unless all legal charges are paid and the property removed or directions given for the disposition of the same within the time hereinafter prescribed, the property will be sold as provided in this chapter.

2. In the case of livestock the same notice as prescribed in the preceding subsection may be given at any time after the lapse of forty-eight hours from the time of arrival of the property at its destination.

3. In the case of nonperishable property notice may be given in accordance with the provisions of the preceding subsection, but a like notice shall also be given to the consignor.

4. In case no shipping directions have been received for the disposition of the property, the notice required by this section may be given to the person from whom the property was received, if said person and his address are known, otherwise the carrier shall proceed as provided in section 575.8.

1. [R60,§1903; C73,§2180; C97,§3132; C24, 27, 31, 35, 39,§10328; C46, 50, 54,§575.4]

2. [C24, 27, 31, 35, 39,§10328; C46, 50, 54, §575.4]

3. [R60,§§1899, 1901, 1902; C73,§§2178, 2179; C97,§§3130, 3131; S13,§3131; C24, 27, 31, 35, 39, §10328; C46, 50, 54,§575.4]

4. [C24, 27, 31, 35, 39,§10328; C46, 50, 54, §575.4]

Referred to in §575.5

**575.5 Manner of giving notice.** The deposit in the United States post office or public mailing box of a written notice addressed to the person entitled to notice under section 575.4, at the address given in the waybill, with the proper postage thereon, shall constitute the service of notice required by this chapter, but in the case of nonperishable property notice shall be given by certified mail. In case there is no waybill, notice may be given as prescribed in this section to the person entitled thereto at his known place of residence or business. [R60, §§1901, 1903; C73,§§2179, 2180; C97,§§3131, 3132; S13,§3131; C24, 27, 31, 35, 39,§10329; C46, 50, 54, §575.5; 57 GA, ch 267,§85]

**575.6 Actual notice.** Actual notice to the persons entitled to notice shall be sufficient and render the mailing of notice unnecessary, and the time within which said property may be sold shall begin to run from the time of such actual notice. [C24, 27, 31, 35, 39,§10330; C46, 50, 54,§575.6]

**575.7 Sale.** After the required notice has been given, the carrier may make public or private sale of the property at such time and place as in its judgment may be advisable, as follows:

1. In case of perishable property, at any time after the lapse of twenty-four hours from the service of notice.

2. In case of livestock, at any time after the lapse of five days from the service of notice.

3. In case of nonperishable property, at any time after the lapse of ten days from the service of notice. [R60,§§1902, 1903; C73,§§2179, 2180; C97,§§3131, 3132; S13,§3131; C24, 27, 31, 35, 39,§10331; C46, 50, 54,§575.7]

Referred to in §575.8

**575.8 Sale when owner unknown.** When a carrier is in possession of property which is unclaimed or for which no directions have been given for the disposition thereof, and the owner or person entitled thereto, or his address, is unknown, the same may be sold as provided in this chapter, after the lapse of time prescribed in section 575.7 from the receipt of the property or arrival at its destination, without giving the notice heretofore prescribed, except that in the case of nonperishable property, advertisement of the sale, describing the property to be sold, and the time and place of sale, shall be published, after the lapse of the time prescribed before sale can be made, once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the

advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. [R60, §§1899-1901; C73, §§2177-2179; C97, §§3130, 3131; S13, §3131; C24, 27, 31, 35, 39, §10332; C46, 50, 54, §575.8]

Referred to in §575.4

**575.9 Inventory—sale in bulk or separate articles.** Property sold under the provisions of this chapter shall first be listed by the carrier, so as to show the number and kind of articles or packages, or the number of head and kind of livestock, and may be sold in bulk, in lots, or by separate package or articles, or by the head, and the carrier shall keep an accurate account of the separate and aggregate amounts received for all property sold. [R60, §§1899, 1904; C73, §§2177, 2178, 2181; C97, §§3130, 3133; C24, 27, 31, 35, 39, §10333; C46, 50, 54, §575.9]

**575.10 Recovery of property by satisfaction of lien.** At any time before the property is sold any person entitled to the same may pay the amount necessary to satisfy the lien and all charges due the carrier who shall then deliver the property to said person. [C24, 27, 31, 35, 39, §10334; C46, 50, 54, §575.10]

**575.11 Application of proceeds.** The carrier shall make the following disposition of the proceeds of such sale:

1. Apply so much as may be necessary for the payment of all lawful charges for transportation, demurrage, storing, keeping, feeding, and selling, including costs of notices and all expenses connected with the sale and disposition of proceeds.

2. Pay the balance to the consignee or owner or person entitled thereto upon a proper showing that the person claiming it is entitled thereto. [R60, §§1901, 1904; C73, §§2179, 2181; C97, §§3131, 3133; S13, §3131; C24, 27, 31, 35, 39, §10335; C46, 50, 54, §575.11]

**575.12 Disposition of unclaimed balance.** When no claim is made by any person for such balance, within one month after the sale the carrier shall pay the same to the treasurer of the county where such property was sold, taking his receipt therefor, which payment shall be accompanied by a verified list of the prop-

erty sold, showing the amount received, the amount deducted or applied for lawful charges, and the names and addresses of the consignor and consignee as they appear on the waybill. In case there is no waybill the verified list shall show the name and address of the person entitled to notice before the sale of the property, or in case the only notice given was by advertisement then a copy of said advertisement shall be attached to said list. [R60, §1904; C73, §2181; C97, 3133; C24, 27, 31, 35, 39, §10336; C46, 50, 54, §575.12]

**575.13 Release of carrier.** Upon payment to the county treasurer of such balance or in case such property does not sell for an amount in excess of the lawful charges, the carrier shall be released from all further liability in relation to the property. [C24, 27, 31, 35, 39, §10337; C46, 50, 54, §575.13]

**575.14 Duties of county treasurer.** Any county treasurer receiving any funds under the provisions of this chapter, shall make a record in his office of the date and amount received, and shall file and preserve the verified list of property; and if said fund shall remain unclaimed for one year, he shall credit it to the general fund of the county. [R60, §1905; C73, §2182; C97, §3134; C24, 27, 31, 35, 39, §10338; C46, 50, 54, §575.14]

**575.15 Owner may reclaim—limitation.** The rightful owner of any such fund may at any time within ten years after it is credited to the general fund, make claim for said amount to the board of supervisors and on proof of his right thereto, it shall be allowed and paid as other claims against the county. [R60, §1905; C73, §2182; C97, §3134; C24, 27, 31, 35, 39, §10339; C46, 50, 54, §575.15]

Payment of claims, §331.21

**575.16 Other remedies.** The remedy for enforcing the lien herein provided shall not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the carrier's claim as shall not be paid by the proceeds of the sale. [C24, 27, 31, 35, 39, §10340; C46, 50, 54, §575.16]

Attachment to enforce lien, §640.1

## CHAPTER 576

### FORWARDING AND COMMISSION MERCHANT'S LIEN

#### 576.1 Nature of lien.

**576.1 Nature of lien.** Every forwarding and commission merchant shall have a lien upon all property of every kind in his possession, for the transportation and storage thereof, for all lawful charges and services thereon or in connection therewith, and, if sold under the provisions of this chapter, for selling the same. [R60, §§1898, 1899, 1900-1902; C73, §§2177-2179; C97, §§3130, 3131; S13, §3131; C24, 27, 31, 35, 39, §10341; C46, 50, 54, §576.1]

Bond to release, ch 584

#### 576.2 Enforcement of lien.

**576.2 Enforcement of lien.** The lienholder may enforce his lien in the same manner as a common carrier and all the provisions of chapter 575 shall govern such proceedings as far as applicable. [R60, §§1898-1905; C73, §§2177-2182; C97, §§3130-3134; S13, §3131; C24, 27, 31, 35, 39, §10342; C46, 50, 54, §576.2]

Attachment to enforce lien, §640.1

## CHAPTER 577

## ARTISAN'S LIEN

Referred to in §321.47

## 577.1 Nature of lien.

**577.1 Nature of lien.** Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for his service and material while such property is lawfully in his possession, which possession he may retain until such compensation is paid, but such lien shall be subject to all prior liens of record. [R60,§1898; C73,§2177; C97,§3130; C24, 27, 31, 35, 39,§10343; C46, 50, 54,§577.1]

Bond to release, ch 584

## 577.2 Enforcement of lien.

**577.2 Enforcement of lien.** The lienholder may enforce his lien by suit in equity or in the same manner as a common carrier and all the provisions of chapter 575 shall govern such proceedings as far as applicable, except that notice shall be given to the owner or bailor in lieu of the persons specified in said chapter as entitled to notice. [R60,§§1898-1905; C73,§§2177-2182; C97,§§3130-3134; S13,§3131; C24, 27, 31, 35, 39,§10344; C46, 50, 54,§577.2]

Attachment to enforce lien, §640.1

## CHAPTER 578

## COLD STORAGE LOCKER LIEN

Regulation and licensing, ch 172

## 578.1 Storage lien.

**578.1 Storage lien.** Every lessor owning or operating a refrigerated locker plant or plants shall have a lien upon all property of every kind in its possession for all reasonable charges and rents thereon and for the handling, keeping, and caring for the same. [C39,§10344.1; C46, 50, 54,§578.1]

## 578.2 Enforcement of lien.

**578.2 Enforcement of lien.** Said lien may be enforced by a suit in equity or in the same manner as a common carrier, and all provisions of chapter 575 shall govern such proceedings as far as applicable, except that notice shall be given to the owner or lessee in lieu of the persons specified in said chapter as entitled to notice. [C39,§10344.2; C46, 50, 54, §578.2]

## CHAPTER 579

LIEN FOR CARE OF STOCK AND STORAGE OF  
BOATS AND MOTOR VEHICLES

Referred to in §321.47

## 579.1 Nature of lien.

**579.1 Nature of lien.** Livery and feed stable keepers, herders, feeders, keepers of stock and of places for the storage of motor vehicles, boats and boat engines and boat motors shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to all prior liens of record. [C97,§3137; C24, 27, 31, 35, 39,§10345; C46, 50, 54,§579.1]

Bond to release, ch 584

**579.2 Satisfaction of lien by sale.** If such charges and expenses are not paid, the lienholder may sell said stock and property at public auction, after giving to the owner or claimant, if found within the county, ten days

## 579.3 Disposal of proceeds.

notice in writing of the time and place of such sale, and also by posting written notices thereof in three public places in the township where said stock and property were kept or received. [C97,§3137; C24, 27, 31, 35, 39,§10346; C46, 50, 54,§579.2]

Attachment to enforce, §640.1

**579.3 Disposal of proceeds.** Out of the proceeds of such sale the lienholder shall pay all of the charges and expenses of keeping said stock and property, together with the costs and expenses of said sale, and the balance shall be paid to the owner or claimant of the stock and property. [C97,§3137; C24, 27, 31, 35, 39,§10347; C46, 50, 54,§579.3]

## CHAPTER 580

## LIEN FOR SERVICES OF ANIMALS

580.1 Nature of lien—**forfeiture.**

580.2 Period of lien—**sale or removal.**

580.3 Sale or removal prohibited—**penalty.**

580.4 Affidavit of foreclosure.

580.5 Possession and notice.

580.6 Service of notice.

580.7 Joinder of liens.

580.8 Sale—**application of proceeds.**

580.9 Right of contest—**injunction.**

**580.1 Nature of lien—**forfeiture.**** The owner or keeper of any stallion or jack kept for public service shall have a prior lien on the progeny of such stallion or jack, to secure the amount due such owner or keeper for the service resulting in such progeny, but no such lien shall obtain where the owner or keeper misrepresents his animal by a false or spurious pedigree, or fails to substantially comply with the laws of Iowa relating to such animals. [S13,§2341-s; C24, 27, 31,§2967; C35,§10347-a1; C39,§10347.01; C46, 50, 54,§580.1]

Stallions and jacks, ch 162

**580.2 Period of lien—**sale or removal.**** The lien herein provided for shall attach at the birth of such progeny and shall remain in force on such progeny for one year and shall not be lost by reason of any sale, exchange, or removal from the county of the animals subject to such lien. [S13,§2341-t; C24, 27, 31,§2968; C35,§10347-a2; C39,§10347.02; C46, 50, 54,§580.2]

**580.3 Sale or removal prohibited—**penalty.**** It shall be unlawful to sell, exchange, or remove permanently from the county any animal subject to the lien herein provided for, without the written consent of the holder of such lien, and any person violating this provision, shall, on conviction be punished by a fine of not less than twenty-five dollars nor more than fifty dollars. [C24, 27, 31,§2969; C35,§10347-a3; C39, §10347.03; C46, 50, 54,§580.3]

**580.4 Affidavit of foreclosure.** Liens may be enforced by the holder filing with any constable of the county in which the progeny is kept, or with the sheriff of such county, an affidavit which shall, in addition to a demand for foreclosure, contain:

1. A description of the stallion or jack, and of the dam and its progeny.

2. The time and terms of said service.

3. A statement of the amount due for said service. [S13,§2341-u; C24, 27, 31,§2970; C35, §10347-a4; C39,§10347.04; C46, 50, 54,§580.4]

**580.5 Possession and notice.** The constable or sheriff shall, under said affidavit, take immediate possession of said progeny, and give written notice of the sale thereof, which notice shall contain:

1. A copy of the said affidavit.

2. The date and hour when, and the particular place at which, said property will be sold. [S13,§2341-u; C24, 27, 31,§2971; C35,§10347-a5; C39,§10347.05; C46, 50, 54,§580.5]

**580.6 Service of notice.** Said notice shall be served as follows:

1. By posting a duplicate copy for ten days prior to the day of sale in three public places in the township in which the sale is to take place, and

2. If the owner of the progeny resides in the said county, by also serving a duplicate copy on the owner in the manner in which original notices are served, at least ten days prior to the day of sale. [S13,§2341-u; C24, 27, 31,§2972; C35,§10347-a6; C39,§10347.06; C46, 50, 54,§580.6]

Manner of service, R.C.P. 56(a)

**580.7 Joinder of liens.** A foreclosure may embrace liens on more than one progeny of the same stallion or jack when all of said progenies are owned by the same person. In such case there shall be separate sales until an amount is realized sufficient to pay all liens and costs. [C24, 27, 31,§2973; C35,§10347-a7; C39, §10347.07; C46, 50, 54,§580.7]

**580.8 Sale—**application of proceeds.**** If payment of the service fee, and constable costs, be not made prior to the time of sale, as fixed in such notice, the constable may sell property so held by him, or so much thereof as may be necessary, at public auction to the highest bidder, and the proceeds shall be applied, first, to the payment of the costs, and second, in payment of amount due for service fee. Any surplus arising from such sale shall be forthwith paid to the owner of the property sold. [S13, §2341-u; C24, 27, 31,§2974; C35,§10347-a8; C39, §10347.08; C46, 50, 54,§580.8]

**580.9 Right of contest—**injunction.**** The right of the owner or keeper to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary. [S13,§2341-v; C24, 27, 31,§2975; C35,§10347-a9; C39,§10347.09; C46, 50, 54,§580.9]

Injunctions, ch 664

CHAPTER 581  
VETERINARIAN'S LIEN

581.1 Nature of lien.  
581.2 Priority.

581.3 Statement—filing.  
581.4 Enforcement.

**581.1 Nature of lien.** Every veterinarian, licensed and registered in accordance with chapter 169, shall have a lien for the actual and reasonable value of any biological product used and for the actual and reasonable value of any service rendered in the administration of any such biological product used by him in the prevention or control of any contagious livestock disease, providing claim for said lien be filed as hereinafter provided. [C35,§10347-f1; C39,§10347.10; C46, 50, 54,§581.1]

**581.2 Priority.** Said lien shall have priority over all other liens and encumbrances upon said livestock if filed as hereinafter provided. [C35,§10347-f2; C39,§10347.11; C46, 50, 54,§581.2]

**581.3 Statement—filing.** Any veterinarian entitled to a lien under this chapter shall make

an account in writing, duly verified, stating the kind and number and a particular description of livestock upon which such services were rendered, the amount and kind of biological product used and the actual and reasonable value of such services and biological products and the name of the person or persons for whom such services were rendered and file the same in the office of the clerk of the district court in the county in which the person or persons owning such livestock resides, within sixty days after the day on which said services were rendered. Said lien shall be effective from the date of filing. [C35,§10347-f3; C39,§10347.12; C46, 50, 54,§581.3]

**581.4 Enforcement.** The lienholder may enforce his lien by a suit in equity. [C35,§10347-f4; C39,§10347.13; C46, 50, 54,§581.4]

CHAPTER 582  
HOSPITAL LIEN

582.1 Nature of lien.  
582.2 Written notice of lien.

582.3 Duration and enforcement of lien.  
582.4 Lien book—fees.

**582.1 Nature of lien.** Every association, corporation, county, or other institution, including a municipal corporation, maintaining a hospital in the state, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, however, that this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or his heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, his heirs, or personal representatives; provided, further, that the lien herein set forth shall not be applied or considered valid against anyone coming under the workmen's compensation act in this state. [C35,§10347-f5; C39, §10347.14; C46, 50, 54,§582.1]

**582.2 Written notice of lien.** No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known. [C35, §10347-f6; C39,§10347.15; C46, 50, 54,§582.2]

**582.3 Duration and enforcement of lien.** Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as

45ExGA, ch 131,§1, editorially divided  
Workmen's compensation, ch 85

compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. [C35,§10347-f7; C39,§10347.16; C46, 50, 54,§582.3]

**582.4 Lien book—fees.** Every clerk of the district court shall, at the expense of the county, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and such clerk shall be entitled to twelve cents for filing each claim, and at the rate of eight cents per folio for such entry made in the lien docket, and six cents for every search in the office for such lien claim. [C35,§10347-f8; C39,§10347.17; C46, 50, 54, §582.4]

## CHAPTER 583

### HOTELKEEPER'S LIEN

583.1 Definitions.

583.2 Nature of hotelkeeper's lien.

583.3 Enforcement of claim by ordinary action.

583.4 Satisfaction of lien by sale.

583.5 Disposal of proceeds—statement.

583.6 Duty of county treasurer—right of guest.

**583.1 Definitions.** For the purposes of this chapter:

1. "Hotel" shall include inn, rooming house, and eating house, or any structure where rooms or board are furnished, whether to permanent or transient occupants.

2. "Hotelkeeper" shall mean a person who owns or operates a hotel.

3. "Guest" shall include boarder and patron, or any legal occupant of any hotel as herein defined.

4. "Baggage" shall include all property which is in any hotel belonging to or under the control of any guest. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§10348; C46, 50, 54,§583.1]

**583.2 Nature of hotelkeeper's lien.** A hotelkeeper shall have a lien upon the baggage of any guest, which may be in his hotel, for:

1. The accommodations and keep of said guest.

2. The money paid for or advanced to said guest.

3. The extras and other things furnished said guest. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§10349; C46, 50, 54,§583.2]

Bond to release, ch 584

**583.3 Enforcement of claim by ordinary action.** The hotelkeeper may take and retain possession of all baggage and may enforce his claim by an ordinary action. Said baggage shall be subject to attachment and execution for the reasonable charges of the hotelkeeper against the guest, and for the costs of enforcing

the lien thereon. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§10350; C46, 50, 54,§583.3]

Attachment to enforce lien, §640.1

**583.4 Satisfaction of lien by sale.** If the hotelkeeper does not proceed by an ordinary action he shall retain the baggage upon which he has a lien for a period of ninety days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage at public auction after giving ten days notice of the time and place of sale in a newspaper of general circulation in the county where the hotel is situated, and also by mailing a copy of such notice addressed to said guest at the place of residence registered by him in the register of the hotel. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§10351; C46, 50, 54,§583.4]

**583.5 Disposal of proceeds—statement.** From the proceeds of said sale the hotelkeeper shall satisfy his lien, the reasonable expense of storage, and the costs for enforcing the lien, and any remaining balance shall, on demand within six months, be paid to the guest, and if not demanded within said period of time, said balance shall be deposited by the hotelkeeper with the county treasurer of the county in which the hotel is situated, together with:

1. A statement of the hotelkeeper's claim and the costs of enforcing same.

2. A copy of the published notice of sale.

3. A statement of the amounts received for the goods sold at said sale. [C97,§3138; S13, §3138; C24, 27, 31, 35, 39,§10352; C46, 50, 54, §583.5]

Referred to in §583.6

**583.6 Duty of county treasurer — right of guest.** The balance received by the county treasurer under section 583.5 shall be credited by him to the general fund of the county, subject to a right of the guest, or his representa-

tive, to reclaim the same at any time within three years from the date of deposit with the county treasurer. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§10353; C46, 50, 54,§583.6]

CHAPTER 584

RELEASE OF LIENS BY BOND

584.1 Liens subject to release.  
584.2 Requirements of bond.

584.3 Effect of bond.  
584.4 Action on bond.

**584.1 Liens subject to release.** An owner of personal property in this state who disputes, either the existence, on such property, of a common law or statutory lien, or the amount of any such lien, may release such lien, if any, and become entitled to the immediate possession of said property by filing a bond as hereinafter provided. [C24, 27, 31, 35, 39,§10354; C46, 50, 54,§584.1]

also found to have been a lien on said property at the time the bond is filed. [C24, 27, 31, 35, 39,§10355; C46, 50, 54,§584.2]

**584.3 Effect of bond.** When said bond is filed and claimant is given written notice of such filing, the said lien, if any, shall stand released, and the owner shall be entitled to the immediate possession of said property. [C24, 27, 31, 35, 39,§10356; C46, 50, 54,§584.3]

**584.2 Requirements of bond.** Said bond shall be in an amount equal to twice the amount of the lien claimed, shall have one or more sureties, shall be approved by and filed with the clerk of the district court of the county where the property is being held under the claimed lien, and shall be conditioned to pay claimant any sum found to be due and

**584.4 Action on bond.** An action upon said bond shall be brought in the county where the owner of the property resides; when the said owner is a nonresident of this state, the action shall be brought in the county where the bond is filed. [C24, 27, 31, 35, 39,§10357; C46, 50, 54, §584.4]

# TITLE XXVII

## LEGALIZING ACTS

The date given in the six-point note, which indicates the time of taking effect of an act by publication, has been computed on the theory that such acts take effect on the first day following the last publication. (Arnold v. Board, 151 Iowa 155.)

### CHAPTER 585

#### PUBLICATION OF PROPOSED LEGALIZING ACTS

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|--|------------------------------------|
| 585.1 Publication prior to passage.          | 585.4 Cost of publication.         |
| 585.2 Place of publication in certain cases. | 585.5 Subsequent amendment—effect. |
| 585.3 Caption of publication.                |                                    |

**585.1 Publication prior to passage.** No bill which seeks to legalize the official proceedings of any board of supervisors, board of school directors, or city or town council, or which seeks to legalize any warrant or bond issued by any of said official bodies, shall be placed on passage in either house or senate until such bill as introduced shall have been published in full in some newspaper published within the territorial limits of the public corporation whose proceedings, warrants, or bonds are proposed to be legalized, nor until proof of such publication shall have been filed with the chief clerk of the house, and with the secretary of the senate, and a brief minute of such filing entered on the respective journals. [C24, 27, 31, 35, 39, §10358; C46, 50, 54, §585.1]

Additional requirements, §17.19

**585.2 Place of publication in certain cases.** In case no newspaper is published within such territorial limits, the publication required by this chapter shall be made in one newspaper of general circulation published within the county. [C24, 27, 31, 35, 39, §10359; C46, 50, 54, §585.2]

**585.3 Caption of publication.** The publication required by this chapter shall be made under the following caption or heading, to wit:

“Proposed bill for the legalization of the proceedings of (name of official body)”.

If the proposed bill be for the legalization of the bonds or warrants of the public corporation, the caption shall be modified accordingly. [C24, 27, 31, 35, 39, §10360; C46, 50, 54, §585.3]

**585.4 Cost of publication.** If the bill be introduced at the instance of the public body whose proceedings, bonds, or warrants are sought to be legalized, the cost of the aforesaid publication may be paid from the general fund of the public corporation. [C24, 27, 31, 35, 39, §10361; C46, 50, 54, §585.4]

Cost of printing, §17.19

**585.5 Subsequent amendment—effect.** The amendment of the proposed bill after its publication as aforesaid shall not affect its legality, provided the subject matter of the bill is not substantially changed. [C24, 27, 31, 35, 39, §10362; C46, 50, 54, §585.5]

### CHAPTER 586

#### NOTARIES PUBLIC AND ACKNOWLEDGMENTS

- 586.1 Specific defects legalized.

**586.1 Specific defects legalized.** The following acts and instruments are hereby legalized and declared to be as valid as though all defects and irregularities therein as set forth below had never existed; nothing in this section, however, shall affect pending litigation:

1. Official acts performed before 1940 by notaries public during the time that they held over in office without qualifying after the expiration of the preceding term, if such notaries public have since qualified.

2. Acknowledgments taken before 1940 by notaries public outside their jurisdiction.

3. Acknowledgments taken and oaths administered by mayors under section 691, Code 1897, or section 1216 of subsequent codes to and including the Code of 1939 and section 78.2 to and including Code of 1950, in proceedings not connected with their offices.

4. Acknowledgments of deeds, mortgages, school fund mortgages and contracts taken and certified before 1940 by any county audi-



tor, deputy county auditor, or deputy clerk of the district court although such officer was not authorized to take such acknowledgments at the time they were taken.

5. Acknowledgments taken and certified as provided by the Code of 1873, which were taken and certified after September 29, 1897, and prior to April 14, 1898, by officers having authority under the Code of 1873 to take and certify acknowledgments, as though such acknowledgments were taken and certified according to the provisions of the Code of 1897, and as though the officers were authorized to take and certify acknowledgments.

6. Acknowledgments taken, certified, and recorded before 1940 in the proper counties, and which are defective only in the form of the certificate of the officer taking the acknowledgment or because made before an official not qualified to take such acknowledgment but who was qualified to take acknowledgments generally.

7. Acknowledgments taken outside the United States before 1940 by officers authorized by section 10092, to and including the Code of 1939, to take such acknowledgments, whether or not a certificate of authenticity as

provided by section 10093, to and including the Code of 1939, is attached to such instrument; and the certificate of acknowledgment of such officer is hereby made conclusive evidence that such officer was duly qualified to make such certificate of acknowledgment.

8. Any instrument affecting real estate executed before 1940 by an attorney in fact for the grantor where a duly executed and sufficient power of attorney was on file in the county where the land was situated, although the instrument was executed and acknowledged in the form of "A, attorney in fact for B", instead of "B, by A, his attorney in fact"; or if such instrument is duly recorded and there is no record in the county where the land is situated of a power of attorney authorizing the attorney in fact to so act.

9. Any written instrument and the recording thereof, recorded prior to 1940 in the office of the recorder of the proper county, although there is attached to the instrument a defective certificate of acknowledgment. [S13, §§2942-c, -e, -k, -l; SS15, §§2963-v, -x; C24, 27, §§10363-10374; C31, 35, §§10363-10374-b1; C39, §§10363-10374.1; C46, 50, 54, §586.1]

See 54GA, ch 199, §1, effective July 4, 1951  
Saving clause, 54GA, ch 199, §2

## CHAPTER 587

### JUDGMENTS AND DECREES LEGALIZED

- 587.1 Decrees against unknown claimants.
- 587.2 Certain publications of original notices.
- 587.3 Original notices failing to name term.
- 587.4 Decrees for sale of real estate by guardian.
- 587.5 Judgments or decrees respecting wills.
- 587.6 Judgments in probate by circuit courts.
- 587.7 Judgments or decrees quieting title.
- 587.8 Decrees in general—affidavit of nonresidence.

- 587.9 Decrees in general—affidavit of publication.
- 587.10 Affidavit of publication of notice by assistant publisher.
- 587.11 Annulment of marriages—service by publication.
- 587.12 Service by publication under rule 60.

**587.1 Decrees against unknown claimants.** All decrees of court obtained in actions against unknown defendants in which the notice was entitled in the initial or initials of the plaintiff instead of his full Christian name are hereby legalized, and said decrees shall have the same force and effect as if such notice had been entitled in the full name of the plaintiff as was provided for in section 3538, Code of 1897, and as is provided for in section 3538 of the supplement to the Code, 1913. [SS15, §3540-a; C24, 27, 31, 35, 39, §10375; C46, 50, 54, §587.1]

See 36GA, ch 25, §1, effective July 4, 1915  
Re-enacted, 49GA, ch 289, §1, effective July 4, 1941

**587.2 Certain publications of original notices.** No action in which unknown persons were made parties defendant pursuant to the requirements of section 3538, supplemental supplement to the Code, 1915, and in which notice of such action was given by publication between July 1, 1913, and July 1, 1915, for four consecutive weeks, the last publication being

ten days prior to the first day of the term for which said action was brought as shown by proof on file in the office of the clerk of the court where said action was pending, shall be held ineffectual, void, or insufficient because the records fail to show that the court or judge approved said notice before publication or failed to indorse his approval on said notice or failed to designate in which paper said notice should be published as required by section 3539, Code of 1897. [C24, 27, 31, 35, 39, §10376; C46, 50, 54, §587.2]

See 37GA, ch 37, effective July 4, 1917  
Re-enacted, 49GA, ch 289, §2, effective July 4, 1941

**587.3 Original notices failing to name term.** All judgments and decrees heretofore entered by default prior to July 4, 1943, in causes wherein the original notices set out the date when and the place where the court would convene are hereby declared legal and binding, notwithstanding the fact that said original notices fail to name the term at which defend-

ant or defendants was or were required to appear. Nothing contained in this section shall affect pending litigation. [C39,§10376.1; C46, 50, 54,§587.3]

See 48GA, ch 252, effective July 4, 1939  
Re-enacted, 49GA, ch 289,§3, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.4 Decrees for sale of real estate by guardian.** In all cases where decrees and orders of court have been obtained for the sale of real estate by a guardian prior to January 1, 1950, where the original notice shows that service of notice pertaining to the sale of such real estate was made on the minor or ward outside of the state of Iowa, such services of notices are hereby legalized. All decrees so obtained as aforesaid are hereby legalized and held to have the same force and effect as though the service of such original notice had been made on the minor or ward within the state of Iowa. [C24, 27, 31, 35, 39,§10377; C46, 50, 54,§587.4]

See 39GA, ch 88, effective April 2, 1921  
Re-enacted, 49GA, ch 289,§4, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.5 Judgments or decrees respecting wills.** No judgment or decree purporting to set aside any will or the provisions of any will, or to place any construction upon any will or terms of any will, or to aid in carrying out the provisions of any will, and no contract or agreement purporting to be a settlement of any suit or action to set aside any will or the terms of any will, or to place any construction upon any will or any of the terms thereof, shall be held ineffectual, void, or insufficient because the records fail to show proper service of notice on all parties interested, that persons under disability affected by the action were not properly served with notice or represented by guardian or guardian ad litem, either in suit, action, or in a settlement thereof, that all persons interested participated in the settlement, or that any other provisions of law had been complied with which are necessary to make a valid decree, judgment, or settlement; provided more than ten years had elapsed since the judgment, decree, contract, or agreement was filed, entered, or placed on record in the county where the real estate affected thereby is situated. Said decree, judgment, contract, or agreement shall be conclusive evidence of the right, title, or interest it purports to establish or adjudicate insofar as it affects the title to such real estate, and said proceedings therein are hereby made legal and effectual the same as though all provisions of law had been complied with in the obtaining of said decree, judgment, or execution of said contract or agreement, and any judgment, decree, contract, or agreement such as above described which is now of record less than ten years in the county in which the real estate is situated shall, at the expiration of ten years from date of filing, entering, or recording thereof, have the same force and effect as is above given to those now in effect more than

ten years. [S13,§2963-m; C24, 27, 31, 35, 39, §10378; C46, 50, 54,§587.5]

See 35GA, ch 272,§9, effective July 4, 1913  
Re-enacted, 49GA, ch 289,§5, effective July 4, 1941

**587.6 Judgments in probate by circuit courts.** In all cases where matters or proceedings in probate have been heard by the circuit courts or judges outside the county in which such matters or proceedings were pending, and in all cases where orders and judgments in probate matters and proceedings have been made by the circuit courts and judges outside the county in which such proceeding or matter was pending, and where such hearing was had or order or judgment made within the circuit to which the county belonged in which such proceeding or matter was pending, such hearing, order, or judgment shall be held and deemed to be of the same validity and force and effect as if such hearing was had or such order or judgment was made within the county in which such proceeding or matter was pending, and all titles and rights acquired under such orders and judgments shall be held and deemed to be of the same legal force and effect and to be as valid as if such order or judgment had been made within the county in which the proceeding or matter was pending. [C24, 27, 31, 35, 39,§10379; C46, 50, 54,§587.6]

See 21GA, ch 41, effective March 26, 1886  
Re-enacted, 49GA, ch 289,§6, effective July 4, 1941

**587.7 Judgments or decrees quieting title.** No existing judgment or decree quieting title to real estate as against defects arising prior to January 1, 1946, and purporting to sustain the record title shall be held ineffectual because of the failure to properly set out in the petition or notice the derivation or devolution of the interest of the unknown defendants, or on account of the failure of the record to show that such notice was approved by the court or that the same was published as directed by the court, or because of the failure of the record to show that an affidavit was filed by plaintiff showing that personal service could not be made on any defendant in the state of Iowa, or because of the failure of defense by a guardian ad litem for any defendant under legal disability, or where there was more than one tract of real estate described in the same petition and decree, or where the plaintiffs have no joint or common interest in the property or defects of title, or because of failure to comply with any other provision of law. All such decrees are hereby made legal and effectual the same as if all provisions of law had been complied with in obtaining them. [S13,§2963-f; C24, 27, 31, 35, 39,§10380; C46, 50, 54,§587.7]

See 35GA, ch 272,§2, effective July 4, 1913  
Re-enacted, 49GA, ch 289,§7, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.8 Decrees in general—affidavit of non-residence.** In all cases where decrees of court have been obtained prior to January 1, 1945, upon publication of notice before the filing of the affidavit of nonresidence, as provided by

section 3534, Code of 1897, or section 11081, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, effective July 4, 1943, and the same have not been filed as provided by law, but have been filed during the time that the notice was being published, on which such decrees are based, are hereby legalized and such decrees shall have the same force and effect as though the affidavit of non-residence, as provided in said section, was filed at the time of or prior to the first publication of such notice. All decrees so obtained, as aforesaid, are hereby legalized and held to have the same force and effect as though the affidavit of nonresidence had been filed, as by law required. [S13,§3534-a; C24, 27, 31, 35, 39, §10381; C46, 50, 54,§587.8]

See 34GA, ch 224,§1, effective April 12, 1911  
Re-enacted, 49GA, ch 289,§8, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.9 Decrees in general—affidavit of publication.** In all cases where decrees of court have been obtained prior to January 1, 1949, in which the proof of publication of the original notice has been made by the affidavit of the editor of the newspaper or the publisher, manager, cashier, or foreman thereof in which such original notice was published, the same are hereby legalized and such decrees shall have the same force and effect as though the affidavit of the publisher or foreman of the newspaper in which original notice was published had been filed as provided by section 3536, Code of 1897, or section 11085, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, Code 1946, that all decrees obtained as aforesaid are hereby legalized and held to have the same force and effect as though the proof of the publication on the original notice had been made by the affidavit of the publisher or foreman of the newspaper in which such original notice was published. [S13,§3536-a; C24, 27, 31, 35, 39,§10382; C46, 50, 54,§587.9]

See 38GA, ch 89, effective July 4, 1919  
Re-enacted, 49GA, ch 289,§9, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.10 Affidavit of publication of notice by assistant publisher.** All affidavits of proof of publication of any notice or original notice made by the assistant publisher of any newspaper of general circulation, which were executed and filed prior to January 1, 1950, are

hereby legalized, declared valid, binding, and of full force and effect. [C46, 50, 54,§587.10]

Exception as to pending litigation, 49GA, ch 317,§2  
See 49GA, ch 317,§1, effective July 4, 1941; see amendment effective July 4, 1951, 54GA, ch 200

**587.11 Annulment of marriages—service by publication.** All decrees of the courts of this state made and entered of record in actions brought to annul a marriage in which the service of the original notice was made by publication in the manner provided by law for actions for divorce are hereby legalized and validated as fully and to the same extent as if the statute at the time such suit was instituted had provided for service of the original notice by publication in the time and manner aforesaid. [S13,§3187-a; C24, 27, 31, 35, 39,§10383; C46, 50, 54,§587.11]

See 35GA, ch 270, effective July 4, 1913  
Re-enacted, 49GA, ch 289,§10, effective July 4, 1941

**587.12 Service by publication under rule 60.**

1. In all actions or in proceedings in probate where an order, judgment or decree has been entered prior to July 4, 1951, based upon service of notice by publication as provided by rule 60 of the Iowa rules of civil procedure or any statute authorizing publication of notice or upon service of notice by publication or posting pursuant to authorization or direction of any court of competent jurisdiction in the state of Iowa, all such orders, judgments or decrees are hereby declared valid and of full force and effect, unless an action shall be commenced within the time provided in subsection 2 hereof to question such order, judgment or decree, or any right or status created, confirmed or existing thereunder.

2. No action shall be maintained in any court to question any such order, judgment or decree, or any right or status created, confirmed or existing thereunder unless such action shall be commenced within one year from July 4, 1951.

3. The provisions of section 614.8 as to the rights of minors and insane persons and any other provision of law fixing or extending the time within which actions may be commenced shall not be applicable to extend the time within which any such action shall be commenced beyond one year after July 4, 1951. [C54,§587.12]

Exception as to pending litigation, 54GA, ch 210,§4  
Constitutionality, 54GA, ch 210,§5

## CHAPTER 588

### EXECUTION SALES LEGALIZEE

588.1 Failure to make proper entries.

588.2 Homestead selection—deficiency.

**588.1 Failure to make proper entries.** All execution sales heretofore had wherein the execution officer has failed to indorse on the execution the day and hour when received, the levy, sale, or other act done by virtue thereof, with the date thereof, the dates and amounts of any receipts or payment in satisfaction

thereof at the time of the receipt or act done, or has failed to indorse thereon, an exact description of the property levied upon at length with the date of levy, be and the same are hereby legalized and declared to be legal and valid as if all of the provisions of laws as required by sections 11664 to 11668.1, [Code 1939]

both inclusive, had been in all respects strictly and fully complied with. [C35,§10383-e1; C39, §10383.1; C46, 50, 54,§588.1]

See 46GA, ch 169, effective April 28, 1933  
Re-enacted, 47GA, ch 251,§1, effective February 19, 1937

**588.2 Homestead selection—deficiency.** All execution sales of real estate heretofore had in which the execution officer has failed to serve notice upon the titleholders in possession to select their homestead or has defectively served such notice or, having served such notice, has, upon the failure of defendants to select a homestead, neglected to plat the same or has defectively platted the same, or where said execution officer in such sales has offered the property en masse without first offering

the same in the least legal subdivisions, or where said officer has failed to offer property, including the homestead, first separately in least legal subdivisions exclusive of homestead, then offering all property en masse, exclusive of the homestead, then offering the homestead separately, then offering all of the property for sale, en masse, be and the same are hereby legalized and declared to be legal and valid in all particulars as if all of the provisions of the law had been in all respects strictly and fully complied with at the time of said acts or said sales. [C39,§10383.2; C46, 50, 54,§588.2]

See 47GA, ch 251,§2, effective February 19, 1937

## CHAPTER 589

### REAL PROPERTY LEGALIZING ACTS

Dubuque and Pacific R. R. lands, see §10.12

589.1 Acknowledgments—seal not affixed.  
589.2 Conveyances by county.  
589.3 Absence of or defective acknowledgments.  
589.4 Acknowledgments by corporation officers.  
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**589.1 Acknowledgments—seal not affixed.** All deeds, mortgages, or other instruments in writing, for the conveyance of lands which have been made and executed before July 4, 1943, and the officer taking the acknowledgment has not affixed his seal to the acknowledgment; such acknowledgment shall, nevertheless, be good and valid in law and equity, anything in any law passed before July 4, 1943, to the contrary notwithstanding. [S13,§2942-h; C24, 27, 31, 35, 39,§10384; C46, 50, 54,§589.1]

See 13GA, ch 160,§3, effective April 29, 1870; 31GA, ch 146,§3, effective March 24, 1906  
Modified by 50GA, ch 262,§1, effective July 4, 1943

**589.2 Conveyances by county.** All deeds executed before July 4, 1943, by a county judge, or county court, or the chairman of the board of supervisors of any county, and to which the officer executing the same has failed or omitted to affix the county seal, and all deeds where the clerk has failed or omitted to countersign when required so to do, be and the same are hereby legalized and made valid the same in all respects as though the law had in all respects been fully complied with. [C24, 27, 31, 35, 39,§10385; C46, 50, 54,§589.2]

See 18GA, ch 180, effective July 4, 1880  
Modified by 50GA, ch 262,§2, effective July 4, 1943

**589.3 Absence of or defective acknowledgments.** Any instrument in writing affecting the title to real estate within the state of Iowa, to which is attached no certificate of acknowledgment, or to which is attached a defective certificate of acknowledgment, which was, prior to January 1, 1930, recorded or spread upon the records in the office of the recorder of the county in which the real estate described in such instrument is located, is, together with the recording and the record thereof, legalized and declared as valid, legal, and binding as if such instrument had been properly acknowledged and legally recorded. [S13, SS15,§2963-a; C24, 27, 31, 35, 39,§10386; C46, 50, 54,§589.3]

See 13GA, ch 160,§2, effective April 29, 1870; 14GA, ch 110,§2, effective April 17, 1872; 35GA, ch 265,§1, effective July 4, 1913; 36GA, ch 61,§1, effective July 4, 1915; 37GA, ch 388,§1, effective July 4, 1917; 40GA, ch 195,§1, effective July 4, 1923; 50GA, ch 262,§3, effective July 4, 1943

**589.4 Acknowledgments by corporation officers.** The acknowledgments of all deeds, mortgages, or other instruments in writing taken or certified before July 4, 1943, and which instruments have been recorded in the recorder's office of any county of this state, including acknowledgments of instruments made by any

private or other corporation, or to which such corporation was a party, or under which such corporation was a beneficiary, and which have been acknowledged before or certified by any notary public who was at the time of such acknowledgment or certifying a stockholder or officer in such corporation, are hereby declared to be legal and valid official acts of such notaries public, and to entitle such instruments to be recorded, anything in the laws of the state of Iowa in regard to acknowledgments to the contrary notwithstanding. This section shall not affect pending litigation. [C39, §10387.1; C46, 50, 54, §589.4]

See 48GA, ch 253, §1, effective July 4, 1939  
Modified by 50GA, ch 262, §5, effective July 4, 1943

**589.5 Acknowledgments by stockholders.** All deeds and conveyances of lands within this state executed before July 4, 1943, but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of such acknowledgment, an officer or stockholder of a corporation interested in any such deed or conveyance, or otherwise interested therein, are, if otherwise valid, hereby declared effectual and valid in law to all intents and purposes as though acknowledged or proved before an officer not interested therein; and if recorded before July 4, 1943, in the respective counties in which such lands may be, the records thereof are hereby confirmed and declared effectual and valid in law to all intents and purposes as though said deeds and conveyances, so acknowledged or proved and recorded, had (prior to being recorded) been acknowledged or proved before an officer having no interest therein. [S13, §2942-d; C24, 27, 31, 35, 39, §10388; C46, 50, 54, §589.5]

See 27GA, ch 166, effective July 4, 1898  
Modified by 50GA, ch 262, §6, effective July 4, 1943

**589.6 Instruments affecting real estate.** All instruments in writing executed by any corporation prior to July 4, 1943, conveying, encumbering, or affecting real estate, including releases, satisfaction of mortgages, judgments, or any other liens by entry of such release or satisfaction upon the page or pages where such lien appears recorded or entered, where the corporate seal of such corporation has not been affixed or attached thereto, and which are otherwise legally and properly executed, are hereby declared legal, valid, and binding, the same as though the corporate seal had been attached or affixed thereto. [S13, §3068-a; C24, 27, 31, 35, 39, §10389; C46, 50, 54, §589.6]

See 34GA, ch 225, effective July 4, 1911  
Modified by 50GA, ch 262, §7, effective July 4, 1943

**589.7 Sales, contracts, and deeds by corporations.** All sales, contracts, deeds, or conveyances of lands owned by any such corporation\* on July 4, 1888, or acquired by any such corporation under the provisions of section 6 of chapter 85 of the laws of the twenty-second general assembly or section 2890 of the Code [Code of 1897], bearing date on or after July 4,

1888, are hereby legalized and rendered of full force and effect, according to their terms, in so far as their validity or the validity of the titles conveyed thereby may be affected by chapter 85 of the laws of the twenty-second general assembly, or any amendments thereto, or by chapter 1, title XIV, of the Code [Code of 1897]. [S13, §2889-c; C24, 27, 31, 35, 39, §10390; C46, 50, 54, §589.7]

\*“such corporation” refers to §§567.3 and 567.4  
See 28GA, ch 117, §3, effective March 17, 1900

**589.8 Mortgages, trust deeds, and realty liens—releases before July 4, 1933.** Any release or satisfaction of any mortgage or trust deed, or of any instrument in writing creating a lien upon real estate where such release or satisfaction has been recorded in the recorder's office of the county in this state, or upon the margin of the record, where such original instrument was recorded and which release or satisfaction was made by any individual, association, copartnership, assignee, corporation, attorney in fact, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, or commissioner, and which release or satisfaction was executed, filed, and recorded prior to July 4, 1933, is hereby legalized, declared valid, legal and binding and of full force and effect, any defects in the execution, acknowledgment, recording, filing, or otherwise of such releases or satisfactions to the contrary notwithstanding. [S13, §2938-b; C24, 27, 31, 35, 39, §10391; C46, 50, 54, §589.8]

See 37GA, ch 345, effective July 4, 1917  
Modified by 50GA, ch 262, §8, effective July 4, 1943

**589.9 Marginal releases of school-fund mortgages.** The release or satisfaction of any school-fund mortgage entered on the margin of the record of such mortgage by the auditor of the county prior to July 4, 1894, is hereby legalized and given the same force and effect as though such auditor had had, at the time of entering such release or satisfaction, the same power thereafter conferred upon him by chapter 53 of the acts of the twenty-fifth general assembly. [C24, 27, 31, 35, 39, §10392; C46, 50, 54, §589.9]

See 37GA, ch 339, effective July 4, 1917

**589.10 Marginal assignment of mortgage or lien.** In any case where an assignment of a mortgage or other recorded lien on real estate has been made before July 4, 1943, by written assignment thereof on the margin of the record where such mortgage or other lien is recorded or entered, such assignment shall be deemed to have passed all the right, title, and interest therein, which the assignor at the time had, with like force and effect as if such assignment had been made by separate instrument duly acknowledged and recorded; and any such assignment or a duly authenticated copy thereof when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, shall be admissible in evidence as is provided by law for the admission of the records of deeds and mortgages. [SS15,

§2963-x2; C24, 27, 31, 35, 39, §10393; C46, 50, 54, §589.10]

See 34GA, ch 227, §1, effective July 4, 1911  
Modified by 50GA, ch 262, §9, effective July 4, 1943

**589.11 Conveyances by executors, trustees, etc.** In all cases where, prior to the year 1930, an executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner, acting as such in this or any state, has conveyed in such trust capacity real estate lying in this state and such conveyance has been of record since prior to January 1, 1930, in the county where the real estate so conveyed is located and which conveyance purports to sustain the title in the present record owner or owners thereof, such conveyance shall not be held void or insufficient by reason of the fact that due and legal notice of all proceedings with reference to the making of any such conveyance was not served upon all interested or necessary parties, or that such executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute such conveyance, that a bond was not given therefor, or that no report of the sale was made; or such sale or deed of conveyance was not approved by order of court, or that any such foreign executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner was not appointed or qualified in the state of Iowa prior to the making of such conveyance, or that the record thereof fails to disclose compliance with any other provisions of law, and all such conveyances are hereby legalized and declared valid, legal, and binding and of full force and effect. Allotments by referees in partition shall be considered conveyances within the meaning of this section. [S13, SS15, §2963-l; C24, 27, 31, 35, 39, §10394; C46, 50, 54, §589.11]

See 35GA, ch 272, §8, effective July 4, 1913; 36GA, ch 230, effective April 29, 1915; 37GA, ch 388, §2, effective July 4, 1917; 43GA, ch 245, §1, effective March 21, 1929; 50GA, ch 262, §10, effective July 4, 1943

**589.12 Sheriffs' deeds.** No foreclosure proceeding or sale of real estate on execution prior to January 1, 1930, wherein a sheriff's deed was executed and which purports to sustain the record title shall be held ineffectual on account of the failure of the record to show that any of the steps in obtaining said judgment or in the sale of said property were complied with. Such proceedings are hereby legalized and made valid as if the record showed that all the provisions of the law had been complied with. [S13, §2963-c; C24, 27, 31, 35, 39, §10396; C46, 50, 54, §589.12]

See 35GA, ch 272, §4, effective July 4, 1913; 40GA, ch 240, §2, effective July 4, 1923; 50GA, ch 262, §12, effective July 4, 1943

**589.13 Sheriff's deed executed by deputy.** All conveyances of land in this state, executed in this state by a deputy sheriff, and properly recorded in the office of the county recorder of the county wherein the land is located, prior to January 1, 1930, shall have the same force and effect as though such conveyance had been

executed by the sheriff. [C24, 27, 31, 35, 39, §10397; C46, 50, 54, §589.13]

See 34GA, ch 226, §1, effective July 4, 1911; 40GA, ch 240, §1, effective July 4, 1923; 50GA, ch 262, §13, effective July 4, 1943

**589.14 Defective tax deeds.** No sale of real property for taxes made prior to January 1, 1930, wherein the tax deed was executed and which deed purports to sustain the record title, shall be held ineffectual on account of the failure of the record to show that any of the steps in the sale and deeding of said property were complied with; said proceedings are hereby legalized and made valid and effectual as if the record showed that all the provisions of law had been complied with. [S13, §2963-o; C24, 27, 31, 35, 39, §10398; C46, 50, 54, §589.14]

See 43GA, ch 246, §1, effective July 4, 1929  
Modified by 50GA, ch 262, §14, effective July 4, 1943

**589.15 Tax deeds legalized.** That in all instances where tax deeds have been issued by county treasurers in the absence of the report and entry required by section 7283, of the Code, 1939, or corresponding sections of earlier codes relating to collection of costs of serving notices, such tax deeds shall not by reason of omission to make such report and entry be held invalid, but are hereby legalized. Nothing herein contained shall be construed as curing any other defect in tax deeds than that herein specifically described. Nothing herein contained shall be so construed as to affect pending litigation. [C35, §10398-g1; C39, §10398.1; C46, 50, 54, §589.15]

See 46GA, ch 203, effective March 22, 1935  
Modified by 50GA, ch 262, §15, effective July 4, 1943  
Limitation of actions on tax sales and deeds, §448.13

**589.16 Tax sales legalized.** In all instances where a county treasurer heretofore conducted a tax sale at the time provided in section 7259 or section 7262, both of the Code, 1935, sales made at such tax sale or any adjournment thereof shall not be held invalid by reason of the failure of the county treasurer to have brought forward the delinquent tax of prior years upon the current tax lists in use by the said county treasurer at the time of conducting the sale, or by reason of the failure of the county treasurer to have offered all the property unsold before each adjournment of said sale and said tax sales are hereby legalized and declared valid notwithstanding the provisions of section 7193 and section 7259, both of the Code, 1935, provided the delinquent taxes for which the said real estate was sold had been brought forward upon the current tax list of the year preceding the year in which the said tax sale was conducted. Provided, however, that no tax sale so legalized and validated shall affect a special assessment if the same continues to remain a lien notwithstanding a tax deed now or hereafter issued pursuant to such tax sale. [C39, §10398.2; C46, 50, 54, §589.16]

See 48GA, ch 251, effective April 28, 1939

**589.17 Conveyances by spouse under power.** No conveyance of real estate made before July 4, 1941, wherein the husband or wife conveyed

or contracted to convey the inchoate right of dower through the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by such spouse, such power of attorney not having been executed as a part of a contract of separation, shall be held invalid as contravening the provisions of section 3154 of the Code, 1897, or section 10447 of subsequent codes to and including the Code of 1939, but all such conveyances are hereby legalized and made effective. [S'02,§2942-f; C24, 27, 31, 35, 39,§10399; C46, 50, 54,§589.17]

See 29GA, ch 237,§1, effective April 3, 1902; 30GA, ch 118, effective July 4, 1904; 37GA, ch 351,§2, effective July 4, 1917; 50GA, ch 262,§16, effective July 4, 1943

**589.18 Conveyances by foreign executors.** All conveyances of real property made prior to January 1, 1943, by executors or trustees under foreign wills and prior to the date upon which such will was admitted to probate in Iowa or prior to the expiration of three months after the recording of a duly authenticated copy of such will, original record of appointment, qualification, and bond as required by the provisions of section 3295 of the Code of 1897 or sections 11878 to 11881, inclusive, of subsequent codes to and including the Code of 1939, and in which such will was subsequent to said conveyance, probated in Iowa or shall hereafter be probated in Iowa, and in which a duly authenticated copy of the will, original record of appointment, qualification, and bond as required by said sections was subsequent to such conveyance, or shall be hereafter made a matter of record as provided in said sections, are hereby legalized and declared as valid and effectual in law and in equity as though such will had been probated in Iowa prior to such conveyance and as though the provisions of said sections had been strictly complied with; provided nothing in this section shall affect pending litigation. [S13,§3295-c; C24, 27, 31, 35, 39,§10401; C46, 50, 54,§589.18]

See 35GA, ch 273, effective July 4, 1913  
Modified by 50GA, ch 262,§18, effective July 4, 1943

**589.19 Conveyances under school-fund foreclosures.** In any case where the title to real estate has been conveyed prior to January 1, 1943, by the sheriff of any county in the state of Iowa pursuant to sheriff's sale under the foreclosure of permanent school-fund mortgages to the state of Iowa, or to the state of Iowa for the use of the school fund, or to the county for the school fund; and said land has been heretofore sold under authority of the board of supervisors of said county and conveyed under its authority, prior to January 1, 1943, and the full purchase price paid and credited to, and used by, the county for the permanent school fund of said county, all right, title, or interest of the state of Iowa in and to said real estate is hereby relinquished and quitclaimed to the purchaser or his grantees forever, and the title thereto confirmed in such purchaser, or his grantees insofar as the aforesaid erroneous conveyance is concerned. [C31, 35,§10401-c1; C39,§10401.1; C46, 50, 54,§589.19]

See 43GA, ch 276, effective March 23, 1929  
Modified by 50GA, ch 262,§19, effective July 4, 1943

**589.20 Conveyances according to law of other states.** All deeds and conveyances of lands lying and being within this state heretofore executed and which said deeds have been acknowledged or proved according to and in compliance with the laws and usages of the state, territory, or country in which said deeds or conveyances were acknowledged and proved are hereby declared effectual and valid in law to all intents and purposes as though the same acknowledgments had been taken or proof of execution made within this state and in pursuance of the acts and laws thereof, and such deeds so acknowledged or proved as aforesaid shall be admitted to be legally recorded in the respective counties in which such lands may be, anything in the acts and laws of this state to the contrary notwithstanding, and all deeds and conveyances of lands situated within this state which have been acknowledged or proved in any other state, territory, or country according to and in compliance with the laws and usages of such state, territory, or country and which deeds and conveyances have been recorded within this state be and the same are hereby confirmed and declared effectual and valid in law to all intents and purposes as though the said deeds or conveyances so acknowledged or proved and recorded had prior to being recorded been acknowledged or proved within this state.

This act\* shall apply to all deeds, mortgages, and conveyances made, filed, recorded, and proved as contemplated in section 1 of this act prior to January 1, 1884. [C24, 27, 31, 35, 39, §10402; C46, 50, 54,§589.20]

See 13GA, ch 160,§1, effective April 29, 1870; 14GA, ch 110,§1, effective May 1, 1872; 20GA, ch 203, effective July 4, 1884

\*20GA, ch 203

**589.21 Releases and discharges in re real estate.** All releases and discharges of judgments, mortgages, or deeds of trust affecting property in this state made prior to January 1, 1933, by administrators, executors, or guardians appointed by the court of any other state or country without complying with the provisions of section 3308 of the Code of 1897 and sections 11897 to 11899, inclusive, of subsequent codes to and including the Code of 1931 are hereby legalized and declared as valid and effective in law and in equity as though the provisions of said sections had been strictly followed; provided that nothing in this section shall affect pending litigation. [S13,§3308-a; C24, 27, 31, 35, 39,§10403; C46, 50, 54,§589.21]

See 35GA, ch 276, effective July 4, 1913  
Modified by 50GA, ch 262,§20, effective July 4, 1943

**589.22 Certain loans, contracts, and mortgages.** All loans, contracts, and mortgages which are affected by the repeal of chapter 48, acts of the twenty-seventh general assembly, are hereby legalized so far as to permit recovery to be had thereon for interest at the rate of eight percent per annum, but at no greater rate, and nothing contained in such contracts shall be construed to be usurious so as to work

a forfeiture of any penalty to the school fund. [S13,§1898-b; C24, 27, 31, 35, 39,§10404; C46, 50, 54,§589.22]

See 28GA, ch 69,§16, effective May 4, 1900

**589.23 Descriptions referring to defective plats.** The description of land in all instruments, conveyances, and encumbrances describing lots in or referring to plats made by the county auditors of Iowa, or by the county surveyor for the owner, and placed of record by the county recorders of Iowa prior to January 1, 1930, are hereby legalized and the same declared valid and binding the same as though the said plats had been signed and acknowledged and filed and recorded in strict compliance with law. [S13,§924-b; C24, 27, 31, 35, 39,§10405; C46, 50, 54,§589.23]

See 32GA, ch 247,§2, effective March 3, 1907  
Modified by 50GA, ch 262,§21, effective July 4, 1943

**589.24 Defective conveyances—tax deeds—etc.** Any deed of conveyance, or other instrument purporting to convey real estate within the state of Iowa, where such deed or instrument has been recorded in the office of the recorder of any county wherein such real estate is situated, and which said deed or instrument was executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, commissioner, individual, copartnership, association, or corporation, and was executed and

recorded prior to January 1, 1930, and where the grantee or grantees named in such deed or conveyance, or other instrument, his, her, their, or its grantees, heirs, or devisees, by direct line of title or conveyance have been in the actual, open, adverse possession of such premises since said date, be and the same is hereby legalized, declared valid, legal, and binding, and of full force and effect, notwithstanding any defects in the execution of said deed or instrument. [S13,§2963-c; C24, 27, 31, 35, 39,§10406; C46, 50, 54,§589.24]

See 35GA, ch 261,§1, effective April 15, 1913; 43GA, ch 247,§1, effective July 4, 1929; 50GA, ch 262,§22, effective July 4, 1943

Saving clause, 50GA, ch 262,§23

**589.25 Sales of real estate by school district.** All deeds and conveyances of land made by or purporting to be made by any school district or by the board of directors of any school district prior to July 4, 1943, and placed of record prior to July 4, 1943, which deeds or conveyances purport to sustain the record title, are hereby legalized and made valid, even though the record fails to show that all necessary steps in the sale and deeding of the property were complied with. Such deeds and conveyances are legalized and made valid and effectual, as fully and completely as if the record showed that all provisions of law had been complied with, and that the said sales had been duly authorized by the electors of the school district. [56GA, ch 258,§1]

See 56GA, ch 258,§1, effective July 4, 1955

## CHAPTER 590

### WILLS—LEGALIZING ACTS

590.1 Notice of appointment of executors.

590.2 Notice of hearing in probate.

**590.1 Notice of appointment of executors.** In all instances prior to January 1, 1945, where executors or administrators have failed to publish notice of their appointment as required by section 3304, Code of 1897, and section 11890, Codes of 1924, 1927, 1931 and 1939 but have published a notice of appointment, such notice of appointment is hereby legalized and shall have the same force and effect as though the same had been published as directed by the court or clerk. [C24, 27, 31, 35, 39,§10407; C46, 50, 54, §590.1]

See 40GA, ch 208, effective July 4, 1923  
Re-enacted, 49GA, ch 290,§1, effective July 4, 1941  
Also, 54GA, ch 201,§1, effective July 4, 1951

**590.2 Notice of hearing in probate.** In all instances prior to January 1, 1949, where the

clerk of the district court of any county failed to publish notice of the time fixed for hearing of the probate of any will filed in such county as required by section 11865 of the Code [1924 to 1939, inclusive], and section 633.20, Code 1946, but did publish a notice of the time fixed for such hearing signed by himself and addressed to whom it may concern, in a daily or weekly newspaper printed in the county where the will was filed, such notice of time fixed for the hearing of the probate of such will is hereby legalized and shall have the same force and effect as though the same had been published in strict conformity with the requirements of said section. [C46, 50, 54, §590.2]

Effective July 4, 1941  
Re-enacted, 54GA, ch 201,§1, effective July 4, 1951



CHAPTER 591

CORPORATIONS LEGALIZED

- 591.1 Defective publication.
- 591.2 Publication after required time.
- 591.3 Filing of renewals after required time.
- 591.4 Defective notice or acknowledgment, etc.
- 591.5 Notices of incorporation.
- 591.6 Amended articles and change of name.
- 591.7 Co-operative associations or corporations.
- 591.8 Defective organization or renewal.

- 591.9 Interstate bridges—merger and consolidation.
- 591.10 Failure to publish notice of renewal.
- 591.11 Failure to publish notice of amendment.
- 591.12 Effect of foregoing statutes.
- 591.13 Corporation stock—certificates of information.
- 591.14 Failure to file certificate—penalty.

**591.1 Defective publication.** Corporations heretofore incorporated under the laws of the state which have caused notice of their incorporation to be published once each week for four consecutive weeks in some daily, semi-weekly or triweekly newspaper, instead of causing the same to be published in each issue of such newspaper for four consecutive weeks, are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice. [S13,§1613-a; C24, 27, 31, 35, 39,§10408; C46, 50, 54,§591.1; 56GA, ch 259,§1]

See 29GA, ch 226, effective March 12, 1902  
 Re-enacted, 49GA, ch 291,§1, effective July 4, 1941; 54GA, ch 202,§1, effective July 4, 1951; 56GA, ch 259,§1, effective July 4, 1955  
 Referred to in §591.12

**591.2 Publication after required time.** In all instances where the incorporators of corporations organized in this state for pecuniary profit have omitted to publish notice of such incorporation within three months after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices thereafter in the manner and form as required by law, such notices of incorporation are hereby legalized and shall have the same force and effect as though published within said period of three months. [C24, 27, 31, 35, 39,§10409; C46, 50, 54,§591.2; 56GA, ch 259,§2]

See 38GA, ch 272, effective July 4, 1909; 39GA, ch 398, effective March 13, 1921; 40GA, ch 380, effective July 4, 1923; 49GA, ch 291,§2, effective July 4, 1941; 54GA, ch 202,§2, effective July 4, 1951; 56GA, ch 259,§2, effective July 4, 1955  
 Referred to in §591.12

**591.3 Filing of renewals after required time.** In all instances where proper action has been taken prior to July 1, 1954, by the stockholders for renewal of any corporation for pecuniary profit and the certificates showing such proceedings, together with the articles of incorporation, have been filed and recorded in the office of the county recorder and later in the office of the secretary of state, or have been filed and recorded in the office of the secretary of state and later in the office of the county recorder, although there has been failure to file such certificates and articles of incorporation in either or both of the said offices within the time specified therefor by law, such renewals are hereby legalized and shall be held to have the same force and effect as though the filings of the said documents in the said offices

had been made within the periods prescribed by statute. [SS15,§1618-1a; C24, 27, 31, 35, 39, §10410; C46, 50, 54,§591.3; 56GA, ch 259,§3]

See 36GA, ch 54, effective July 4, 1915; 40GA, ch 196, effective July 4, 1923; 43GA, ch 9, effective May 4, 1929; 49GA, ch 291,§3, effective July 4, 1941; 54GA, ch 202,§3, effective July 4, 1951; 56GA, ch 259,§3, effective July 4, 1955  
 Referred to in §591.12

**591.4 Defective notice or acknowledgment, etc.** In all instances where the incorporators of corporations organized in the state prior to January 1, 1954, have failed to publish notices of such incorporation within three months from and after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices within three months after the date required by law in such cases in manner and form as required by law, and in all instances where the number of incorporators or the signatures or acknowledgment thereof were less than the number required by law, or the articles of incorporation were otherwise defective, but where the corporation or association has thereafter been conducted with the requisite number of stockholders or members, such notices of incorporation and the incorporation of corporations or associations so defectively incorporated are in each and every case hereby legalized and all the corporate acts of all such corporations and associations are hereby legalized in all respects. [C24, 27, 31, 35, 39,§10411; C46, 50, 54, §591.4; 56GA, ch 259.4]

See 38GA, ch 158, effective July 4, 1919; 43GA, ch 8, effective April 19, 1929; 49GA, ch 291,§5, effective July 4, 1941; 54GA, ch 202,§4, effective July 4, 1951; 56GA, ch 259,§4, effective July 4, 1955  
 Referred to in §591.12

**591.5 Notices of incorporation.** In all instances where the incorporators of corporations for pecuniary profit have omitted to publish notice of incorporation within three months from the date of the certificate of incorporation issued by the secretary of state, but have published notice thereafter in manner and form as by law required, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months, as to all acts of said corporation from the date of said completed publication. [C24, 27, 31, 35, 39,§10412; C46, 50, 54,§591.5; 56GA, ch 259,§5]

See 37GA, ch 96, effective July 4, 1917  
 Re-enacted by 49GA, ch 291,§5, effective July 4, 1941; 54GA, ch 202,§5, effective July 4, 1951; 56GA, ch 259,§5, effective July 4, 1955  
 Referred to in §591.12

**591.6 Amended articles and change of name.**

Any corporation, organized under chapter 2 of title IX, Code of 1897, or chapter 394, Codes of 1924, 1927, 1931, 1935 and 1939, or chapter 504, Codes of 1946, 1950 and 1954, which shall have heretofore adopted articles of incorporation or changed its name or amended its articles, and some question has arisen as to whether such articles, change in name or amendment was adopted by a majority of the members of such corporation as required by section 1651, Code of 1897, and section 8593, Codes of 1924, 1927, 1931, 1935 and 1939, and section 504.19, Codes of 1946, 1950 and 1954, and such corporation shall have been engaged in the exercise of its corporate functions for the period of at least three years, such articles, change in name or amendment shall be held and considered to have been duly adopted by a majority of all the members of such corporation and are hereby legalized and made valid. [S13,§1642-b; C24, 27, 31, 35, 39,§10413; C46, 50, 54,§591.6; 56GA, ch 259,§6]

See 32GA, ch 250,§2, effective April 19, 1907  
Re-enacted by 49GA, ch 291,§6, effective July 4, 1941;  
54GA, ch 202,§6, effective July 4, 1951; 56GA, ch 259,§6,  
effective July 4, 1955  
Referred to in §591.12

**591.7 Co-operative associations or corporations.**

In all instances where co-operative associations or corporations have been organized under the law as it appears in chapter 389, Code of 1927, where such associations or corporations have filed the original articles rather than a verified copy with the county recorder, or where the secretary of state failed to certify the filing and acceptance of such articles, or where the certificate of the secretary of state contained a facsimile signature rather than the true signature of the secretary of state, or where there is any defect in the articles, notice, procedure or otherwise, the incorporation of such corporation or association and all of the corporate acts thereof are hereby legalized in all respects. [C31, 35,§10413-c1; C39,§10413.1; C46, 50, 54,§591.7; 56GA, ch 259,§7]

See 43GA, ch 398, effective April 26, 1929  
Re-enacted by 49GA, ch 291,§7, effective July 4, 1941;  
54GA, ch 202,§7, effective July 4, 1951; 56GA, ch 259,§7,  
effective July 4, 1955  
Referred to in §591.12

**591.8 Defective organization or renewal.**

In all cases wherein a corporation organized or purporting to have been organized under the laws of this state has adopted articles of incorporation or other instrument of similar import and has functioned as a corporation in carrying out the objects and purposes set forth therein and in the transaction of its business, but has failed to file its articles of incorporation or such other instrument with the secretary of state, or otherwise to comply with the laws of this state relating to the organization of corporations, or to take appropriate action for the renewal of its existence within the period limited by law, and has, subsequent thereto, filed in the office of the secretary of state its renewal articles of incorporation and a certificate of the adoption thereof, paid all fees in connection therewith and has hereto-

fore received a certificate from the secretary of state renewing and extending its corporate existence, the acts, franchises, rights, privileges and corporate existence of any such corporation are hereby legalized and validated and shall have the same force and effect as if all the laws of this state relating to the organization of corporations and the renewal of their corporate existence had been strictly complied with. [C31, 35,§10413-d1; C39,§10413.2; C46, 50, 54,§591.8; 56GA, ch 259,§8]

See 44GA, ch 212, effective March 29, 1931  
Re-enacted by 49GA, ch 291,§8, effective July 4, 1941;  
54GA, ch 202,§8, effective July 4, 1951; 56GA, ch 259,§8,  
effective July 4, 1955  
Referred to in §591.12

**591.9 Interstate bridges—merger and consolidation.**

In all cases wherein any corporation organized or purporting to have been organized under the laws of this state for the purpose of constructing or operating a bridge or both, one extremity of which shall rest in an adjacent state, has attempted to merge or consolidate its stock, property, franchises, assets and liabilities with the stock, property, franchises, assets and liabilities of a corporation organized or purporting to have been organized for a similar purpose under the laws of such adjacent state, and such corporations have in fact united and combined their stock, property, franchises, assets and liabilities, such merger or consolidation, together with the action taken in effecting such merger or consolidation, is hereby legalized and validated, and such corporations so merging or consolidating shall be deemed to have become one corporation under such name as shall have been agreed upon, and such corporation shall be deemed on the date of such merger or consolidation to have succeeded to all the property, rights, privileges, assets and franchises and to have assumed all of the liabilities of such merging or consolidating corporations. [C31, 35,§10413-d2; C39,§10413.3; C46, 50, 54, §591.9; 56GA, ch 259,§9]

See 44GA, ch 211, effective March 27, 1931  
Re-enacted by 49GA, ch 291,§9, effective July 4, 1941;  
54GA, ch 202,§9, effective July 4, 1951; 56GA, ch 259,§9,  
effective July 4, 1955  
Referred to in §591.12

**591.10 Failure to publish notice of renewal.**

In all instances where there has been an omission to publish notice of renewal within three months after the filing of the certificate and articles of incorporation with the secretary of state as provided in section 491.32, Code 1954, but such notice was published thereafter in the manner and form as required by law and proof of publication filed in the office of the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication thereof was filed. [C54,§591.10; 56GA, ch 259,§10]

See 54GA, ch 202,§10, effective July 4, 1951; 56GA, ch 259,§10, effective July 4, 1955  
Referred to in §591.12

**591.11 Failure to publish notice of amendment.**

In all instances where notices of amend-

ments to articles of incorporation have not been published within three months after the filing with and approval by the secretary of state of such amendments, as provided in section 491.20 of the Code 1954, but such notices have been thereafter published in the form and manner as required by law and proof of publication filed with the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication filed with the secretary of state. [C54,§591.11; 56GA, ch 259,§11]

See 54GA, ch 202,§12, effective July 4, 1951; 56GA, ch 259,§11, effective July 4, 1955  
 Referred to in §591.12

**591.12 Effect of foregoing statutes.** Sections 591.1 to 591.11 hereof, both inclusive, shall not affect pending litigation and shall not operate to revive rights or claims previously barred, and shall not permit an action to be brought or maintained upon any claim or cause of action which was barred by any statute which was in force prior to July 4, 1955. [56GA, ch 259,§12]

See 56GA, ch 259,§12, effective July 4, 1955

**591.13 Corporation stock—certificates of information.** In all instances in which corporations, incorporated under the laws of this state, have properly issued any of their capital stock prior to July 4, 1951, and have filed in the office of secretary of state certificates relative thereto containing the specific information required by statute at the time of the issuance

of said stock, although there has been failure to file such certificates in said office within the time specified therefor by law, such filings are hereby legalized and shall be held to have the same force and effect as though the filings of the said certificates had been made within the period prescribed by the statute then in effect. [56GA, ch 260,§1]

See 56GA, ch 260,§1, effective July 4, 1955

**591.14 Failure to file certificate — penalty.** Any corporation organized under the laws of this state which failed to file with the office of secretary of state a certificate relative to any issuance of its capital stock prior to July 4, 1951, containing the specific information required by statute at the time of such issuance of stock may file with the office of the secretary of state subsequent to July 4, 1955 a certificate of issuance of said stock upon first paying to the secretary of state a penalty of ten dollars when said certificate is offered for filing and, provided that the penalty herein provided for is first paid and that said certificate contains the specific information required by section 492.9, said certificate when so filed shall be received by the secretary of state as a compliance with the statutes requiring the filing of such certificates in effect at the time of the issuance of said stock and shall be held to have the same force and effect as though the filing of said certificate had been made within the period prescribed by statute then in effect. [56GA, ch 260,§2]

See 56GA, ch 260,§2, effective July 4, 1955

## CHAPTER 592

### CITIES AND TOWNS—LEGALIZING ACTS

- 592.1 Bonds for garbage disposal plants.
- 592.2 Plats legalized.
- 592.3 City and town plats.
- 592.4 Making and recording plats.
- 592.5 Ordinances and proceedings of council.

- 592.6 Contracts, elections, and ordinances in re libraries.
- 592.7 Changing names of streets.
- 592.8 Taxes for secondary roads.

**592.1 Bonds for garbage disposal plants.** All proceedings of such cities and towns as herein included, heretofore had, subsequent to the adoption of section 696-b [SS '15] by the thirty-sixth general assembly, and prior to the passage of this act,\* providing for the issuance of bonds within the limitations of this act, for the purchase or erection of garbage disposal plants, the vote of the people authorizing such issue and the bonds issued under such proceedings and vote, are hereby legalized and declared legal and valid, the same as though all of the provisions of this act had been included in said section 696-b of the supplemental supplement to the Code, 1915, and such cities may issue and sell such bonds without again submitting such question to vote. [C24, 27, 31, 35, 39,§10414; C46, 50, 54,§592.1]

\*See 37GA, ch 367, effective May 1, 1917

**592.2 Plats legalized.** None of the provisions of this chapter [ch 13, title V, Code of 1897] shall be construed to require replatting in any case where plats have been made and recorded in pursuance of law; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in the required statement or plat, or in the manner or form of acknowledgment, or certificates thereof. [C73,§571; C97,§929; C24, 27, 31, 35, 39, §10415; C46, 50, 54,§592.2]

Code of 1873, effective September 1, 1873 (see §49)  
 Code of 1897, effective October 1, 1897 (see §50)

**592.3 City and town plats.** In all cases where, prior to January 1, 1940, any person, persons, or corporations have laid out any parcel of land into town or city lots and the plat

or plats thereof have been recorded and the same appears to be insufficient because of failure to show certificates of the county judge, county treasurer, or county recorder, or because said certificates are defective, or because of a failure to fully comply with all of the provisions of chapter 321 of the Code, 1939, or corresponding statutes of earlier codes, or because said plat failed to show signatures or acknowledgment of proprietors as provided by law, or because said acknowledgment was defective, and, subsequent to such platting, lots or subdivisions thereof have been sold and conveyed, all such said plats which have not been vacated and have been of record for a period of twenty years or more, are hereby legalized and made of full force and effect as of the date of the making thereof the same as though all certificates had been attached and all the other necessary steps taken as provided by law, and the record thereof shall be conclusive evidence that the person, persons, firm, or corporation were the proprietors of such tract of land and the owners thereof at the time of said platting, and that said tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording such plat. After January 1, 1944, no action shall be brought to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting, adverse to or against a clear, absolute, and unqualified title in fee simple in the owner or owners. After January 1, 1954, no action shall be brought on any cause arising between January 1, 1920, and December 31, 1939, inclusive, to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting between the dates aforesaid, and adverse to or against a clear, absolute, and unqualified title in fee simple in the owner or owners. [C24, 27, 31, 35, 39, §10416; C46, 50, 54, §592.3]

See 37GA, effective July 4, 1917

Modified by 50GA, ch 285, §1, 3, effective July 4, 1943

**592.4 Making and recording plats.** The acts of the county auditors of Iowa, in making and recording plats as authorized under sections 922, 923, and 924 of the Code, 1897, and sections 6289 to 6299, inclusive, of subsequent codes to and including the Code, 1939, without first having properly signed or acknowledged the same, and the acts of the county recorders of Iowa in recording such plats, are hereby legalized and the same declared valid and binding the same as though they had in such respects been made and recorded in strict compliance with law. [S13, §924-a; C24, 27, 31, 35, 39, §10417; C46, 50, 54, §592.4]

See 32GA, ch 247, §1, effective March 3, 1907; 50GA, ch 285, §2, effective July 4, 1943

**592.5 Ordinances and proceedings of council.** All acts, motions, proceedings, resolu-

tions, and ordinances heretofore passed or adopted by the council of any city and incorporated towns in the state on the supposition that the mayor was not a member of such council, and which would conform to the law if the mayor had not been a member of said council, shall for all purposes from the date of such act, motion, proceeding, resolution, or ordinance, be considered as valid and legal as they would have been had the mayor not been a member of such body. [S13, §658-a; C24, 27, 31, 35, 39, §10418; C46, 50, 54, §592.5]

See 29GA, ch 224, §1, effective March 1, 1902

**592.6 Contracts, elections, and ordinances in re libraries.** Where cities or incorporated towns and institutions of learning have established or contracted to establish public libraries to be maintained and controlled jointly as contemplated by this act,\* all contracts, elections, ordinances, and other proceedings made, held, or passed in the manner provided by law are hereby declared as valid and obligatory upon the parties thereto as though the same had been made, held, or passed after the taking effect of this act. [S13, §730-a; C24, 27, 31, 35, 39, §10419; C46, 50, 54, §592.6]

\*See 30GA, ch 24, §3, effective July 4, 1904

**592.7 Changing names of streets.**

WHEREAS, certain cities or towns throughout the state of Iowa have passed ordinances changing the name or names of certain streets in said cities,

Now, therefore, it is provided that the acts of said city and town councils of such cities and towns in enacting said ordinances changing the names of said certain streets are hereby declared valid. On the filing for record of the said ordinances, duly certified by the mayor and city or town clerk, with the county recorder he shall make and record in the records of his office a plat showing the changes in the names of the streets and shall file a copy of said plat with the county auditor. [C24, 27, 31, 35, 39, §10420; C46, 50, 54, §592.7]

See 34GA, ch 228, effective March 30, 1911

Saving clause, 50GA, ch 285, §4

**592.8 Taxes for secondary roads.** All taxes heretofore\* assessed, levied or collected by any county, for secondary road construction and maintenance purposes, on real and personal property within cities and towns located in any such county, be and the same are hereby declared to be legal and valid, and where the same have not been paid, the officers of such counties are hereby empowered and directed to proceed at once to collect the same as other taxes are collected and to use the same for authorized secondary road construction and maintenance purposes. [56GA, ch 261, §1]

\*Effective May 27, 1955

CHAPTER 593  
BONDS LEGALIZED

593.1 Refunding bonds.  
593.2 Drainage bonds.

593.3 Street improvement and sewer bonds.  
593.4 Park bonds and certificates.

**593.1 Refunding bonds.** All bonds which have been heretofore issued under chapter 152 of the laws of the thirty-second general assembly of Iowa and which are subject to the objection that they were issued to refund bonds which had been issued subsequent to the adoption of said chapter are hereby legalized in respect to said objection, the same in effect as if the bonds refunded had been issued prior to the adoption of said chapter. [C24, 27, 31, 35, 39,§10421; C46, 50, 54,§593.1]

See 37GA, ch 262, effective May 2, 1917

**593.2 Drainage bonds.** All such drainage districts\* heretofore organized, and assessments levied and confirmed in respect thereof, and bonds issued in anticipation of the collection of such assessments, are hereby validated and legalized. [C24, 27, 31, 35, 39,§10422; C46, 50, 54,§593.2]

\*See 38GA, ch 135, effective April 11, 1919

**593.3 Street improvement and sewer bonds.** All bonds heretofore issued pursuant to the provisions of section 843 of the Code [Code of

1897] wherein dates of maturity are fixed in said bonds other than April 1, are hereby legalized, notwithstanding such maturities. Nothing in this act\* contained shall affect any pending litigation. [C24, 27, 31, 35, 39,§10423; C46, 50, 54,§593.3]

\*See 39GA, ch 347, effective March 15, 1921

**593.4 Park bonds and certificates.** In all cities covered by the provisions of chapter 312, acts of the thirty-eighth general assembly, which have heretofore caused to be issued park certificates or bonds in anticipation of levies authorized in subsection 2 of section 1 of said chapter, for the purpose of paying the cost of any building constructed or under construction in any public park, such certificates or bonds, as the case may be, which have been issued or shall be issued, and all proceedings relating thereto, are hereby legalized; and in all cases where the levy of the tax authorized under subsection 2 has been made, such levy is hereby legalized. [C24, 27, 31, 35, 39,§10424; C46, 50, 54,§593.4]

See 39GA, ch 125, effective April 8, 1921

CHAPTER 594  
ELECTIONS LEGALIZED

594.1 Elections in re school bonds.

594.2 Elections in re sites and buildings for counties.

**594.1 Elections in re school bonds.** In all cases where an election has been held in any school district, under the provisions of sections 2820-d1 to 2820-d5, inclusive, supplement to the Code, 1913, and a majority of the votes cast, regardless of the sex of the voter, at such election was in favor of the issuance of bonds, such election is hereby declared to be sufficient authorization for the issuance of bonds, and all bonds so authorized, whether heretofore issued or hereafter to be issued, are hereby legalized and validated. [C24, 27, 31, 35, 39, §10425; C46, 50, 54,§594.1]

See 38GA, ch 134, effective April 6, 1919

**594.2 Elections in re sites and buildings for counties.** The provisions of sections 443 of the Code [Code of 1897] and 448 of the supplemental supplement to the Code, 1915, as here amended\* are hereby made retroactive, and shall apply to any election held prior to as well as after with the same effect as if the said amendments had been made prior to the call and holding of such election, and the tax levies and bond issues voted at such prior election are hereby legalized, confirmed, and made valid. [C24, 27, 31, 35, 39,§10426; C46, 50, 54,§594.2]

\*See 37GA, ch 304, effective May 1, 1917

## CHAPTER 594A

## SCHOOL DISTRICTS ORGANIZED

594A.1 Organization or change in boundaries.

**594A.1 Organization or change in boundaries.** All proceedings taken prior to January 1, 1955 purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this Act\* becomes effective involving the organization, reorganization, enlargement or change in boundaries of any school corporation. [56GA, ch 262,§1]

\*See 56GA, ch 262, effective July 4, 1955

# TITLE XXVIII

## DOMESTIC RELATIONS

### CHAPTER 595

#### MARRIAGE

Referred to in §596.1

See also reference in §144.37

595.1 Contract.	595.11 Nonstatutory solemnization—forfeiture.
595.2 Age.	595.12 Fee.
595.3 License.	595.13 Certificate—return.
595.4 Age and qualification—affidavit.	595.14 Contents of return.
595.5 Age and qualification—certificate.	595.15 Inadequate return.
595.6 Filing and record required.	595.16 Husband responsible for return.
595.7 Delivery of blank with license.	595.17 Exceptions.
595.8 Consent of parent.	595.18 Issue legitimized.
595.9 Violations.	595.19 Void marriages.
595.10 Who may solemnize.	595.20–595.28 Repealed by 57GA, ch 255,§1

**595.1 Contract.** Marriage is a civil contract, requiring the consent of the parties capable of entering into other contracts, except as herein otherwise declared. [C51,§1463; R60, §2515; C73,§2185; C97,§3139; C24, 27, 31, 35, 39, §10427; C46, 50, 54,§595.1]

**595.2 Age.** A marriage between a male of sixteen and a female of fourteen years of age is valid; but if either party has not attained the age thus fixed, the marriage will be a nullity or not, at the option of such party, made known at any time before he or she is six months older than the age thus fixed. [C51, §1464; R60,§2516; C73,§2186; C97,§3140; C24, 27, 31, 35, 39,§10428; C46, 50, 54,§595.2]

**595.3 License.** Previous to the solemnization of any marriage, a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage is to be solemnized. Such license must not be granted in any case:

1. Where either party is under the age necessary to render the marriage valid.

2. Where the male is a minor, or the female is under eighteen years of age, unless a certificate of the consent of the parents is filed. If one of the parents is dead such certificate may be executed by the survivor. If both parents are dead the guardian of such minor may execute such certificate. If the parents are divorced, the parent having the legal custody may execute such certificate.

3. Where either party is disqualified from making any civil contract.

4. Where the parties are within the degrees of consanguinity or affinity in which marriages are prohibited by law.

5. Where either party is an idiot, imbecile, insane, or under guardianship as an incompetent. [C51,§§1465, 1466; R60,§§2517, 2518; C73, §2187, 2188; C97,§3141; S13,§3141; C24, 27, 31, 35, 39,§10429; C46, 50, 54,§595.3]

Referred to in §595.8

**595.4 Age and qualification—affidavit.** When an application for a license is made the clerk shall require at least one affidavit from some competent and disinterested person, stating such facts as to age and qualification of the parties as the clerk may deem necessary to determine the competency of the parties to contract a marriage. [C51,§1468; R60,§2520; C73,§2190; C97,§3142; C24, 27, 31, 35, 39,§10430; C46, 50, 54,§595.4]

40ExGA, HF 213,§2, editorially divided

**595.5 Age and qualification—certificate.** If the clerk is acquainted with the age and qualification of the parties, he may execute, in lieu of said affidavit, a certificate stating such fact, and that he knew the parties to be competent to contract a marriage. [C51,§1467; R60,§2519; C73,§2189; C97,§3142; C24, 27, 31, 35, 39,§10431; C46, 50, 54,§595.5]

**595.6 Filing and record required.** The affidavit or certificate, in each case, shall be filed

by the clerk and constitute a part of the records of his office. A memorandum of such affidavit or certificate shall also be entered in the license book. [C51,§1468; R60,§2520; C73, §2190; C97,§3142; C24, 27, 31, 35, 39,§10432; C46, 50, 54,§595.6]

**595.7 Delivery of blank with license.** When a license is issued the clerk shall deliver to the applicant a blank return for the marriage, and give such instructions relative thereto as will insure a complete and accurate return. [C24, 27, 31, 35, 39,§10433; C46, 50, 54,§595.7]

**595.8 Consent of parent.** If either applicant for a license is a minor, a certificate in writing of the parents or guardian, as the case may be, of consent, as provided in section 595.3, must be filed in the office of the clerk, and be acknowledged by them or proven to be genuine, and a memorandum thereof entered in the license book. The false making of such certificate shall be punishable as forgery. [C51, §1469; R60,§2521; C73,§2191; C97,§3143; C24, 27, 31, 35, 39,§10434; C46, 50, 54,§595.8]

Referred to in §595.9  
Punishment, §718.1

**595.9 Violations.** If the clerk issues a license in violation of the provisions of section 595.8, or if a marriage is solemnized without its being procured, the clerk so issuing the same, and the parties married, and all persons aiding them, are guilty of a misdemeanor. [C51,§1470; R60,§2522; C73,§2192; C97,§3144; C24, 27, 31, 35, 39,§10435; C46, 50, 54,§595.9]

Punishment, §687.7

**595.10 Who may solemnize.** Marriages must be solemnized by:

1. A justice of the peace, or the mayor of the city or town wherein the marriage takes place.
2. Some judge of the supreme, district, superior, or municipal court of the state.
3. Some minister of the gospel, ordained or licensed according to the usages of his denomination. [C51,§1472; R60,§2524; C73,§2193; C97, §3145; C24, 27, 31, 35, 39,§10436; C46, 50, 54, §595.10]

**595.11 Nonstatutory solemnization — forfeiture.** Marriages solemnized, with the consent of parties, in any other manner than as herein prescribed, are valid; but the parties thereto, and all persons aiding or abetting them, shall forfeit to the school fund the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days thereafter he makes the required return to the clerk of the district court. [C51,§§1474, 1475; R60,§§2526, 2527; C73, §§2195, 2196; C97,§3147; S13,§3147; C24, 27, 31, 35, 39,§10437; C46, 50, 54,§595.11]

**595.12 Fee.** Any person authorized to solemnize marriage may charge two dollars in each case for officiating and making return. [C51,§2551; R60,§4159; C73,§3828; C97,§3152; C24, 27, 31, 35, 39,§10438; C46, 50, 54,§595.12]

**595.13 Certificate—return.** After the marriage has been solemnized, the officiating minister or magistrate shall:

1. Give each of the parties a certificate of the same.
2. Make return of such marriage within fifteen days to the clerk of the district court, upon the blank provided for that purpose. [C51, §§1473, 1476; R60,§§2525, 2528; C73,§§2194, 2197; C97,§3146; S13,§3146; C24, 27, 31, 35, 39,§10439; C46, 50, 54,§595.13]

**595.14 Contents of return.** The return of a marriage shall state:

1. Full name, age, color, nationality, residence, occupation, place of birth, father's full name, mother's full maiden name, and number of marriage for both bride and groom; also, full maiden name of bride, if a widow.
2. Time and place of ceremony.
3. Witnesses to marriage.
4. Name and office of person officiating. [C24, 27, 31, 35, 39,§10440; C46, 50, 54,§595.14]

40ExGA, HF 213,§5, editorially divided  
Disposition of marriage returns, §144.40

**595.15 Inadequate return.** If the return of a marriage is not complete in every particular, the clerk shall require the person making the same to supply the omitted information. [C24, 27, 31, 35, 39,§10441; C46, 50, 54,§595.15]

**595.16 Husband responsible for return.** When a marriage is consummated without the services of a clergyman or magistrate, the required return thereof shall be made to the clerk by the husband. [C51,§1478; R60,§2530; C73,§2199; C97,§3149; C24, 27, 31, 35, 39,§10442; C46, 50, 54,§595.16]

**595.17 Exceptions.** The provisions of this chapter, so far as they relate to procuring licenses and to the solemnizing of marriages are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation; but each and every denomination and religious society thus exempted from the duties on the part of their members as to procuring a marriage license, before they allow such marriage relation to be entered into in their church, meeting or society, shall require and ascertain that a certificate as provided by chapter 596 has been filed in the office of the clerk of the court; in the county where such marriage ceremony is to take place; and the clerk of the district court shall not make any record or certificate regarding such marriage or marriage ceremony until such certificate has been filed in his office, as provided in section 596.2. [C51,§1477; R60,§2529; C73,§2198; C97, §3148; C24, 27, 31, 35, 39,§10443; C46, 50, 54, §595.17]

**595.18 Issue legitimized.** Illegitimate children became legitimate by the subsequent marriage of their parents. [C51,§1479; R60,§2531; C73,§2200; C97,§3150; C24, 27, 31, 35, 39,§10444; C46, 50, 54,§595.18]



**595.19 Void marriages.** Marriages between the following persons shall be void:

1. Between a man and his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter.

2. Between a woman and her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son.

3. Between first cousins.

4. Between persons either of whom has a husband or wife living, but, if the parties live and cohabit together after the death or divorce of the former husband or wife, such marriage shall be valid. [R60, §§4367, 4368; C73, §4030; C97, §§3151, 4936; S13, §4936; C24, 27, 31, 35, 39, §10445; C46, 50, 54, §595.19]

**Incest, §704.1**  
Similar provision, §598.19, subsection 8

**595.20 to 595.28, inc.** Repealed by 57GA, ch 255, §1.

## CHAPTER 596

### PHYSICAL REQUIREMENTS FOR MARRIAGE LICENSE

Referred to in §595.17

596.1 Examination by physician.

596.2 Certificate by physician.

596.3 Laboratory tests.

596.4 Exception as to pregnant women.

596.5 Reporting venereal diseases.

596.6 Penalty.

596.7 Period of validity of license.

596.8 Applicant from another state—certificate from home physician.

**596.1 Examination by physician.** In addition to the requirements for a marriage license as set out in chapter 595, all persons making application for license to marry shall, at any time within twenty days prior to such application, be examined by a duly licensed physician in this state as to the existence of or freedom from syphilis, and it shall be unlawful for the clerk of the district court of any county in this state to issue a license to marry, except as otherwise provided in this chapter, to any person who fails to present for filing with such clerk a certificate signed by such physician setting forth that said person to the proposed marriage is either free from syphilis or not in a stage whereby it may become communicable as nearly as can be determined by a thorough physical examination and such standard microscopic and serological tests as are necessary for the discovery of syphilis. [C46, 50, 54, §596.1]

**596.2 Certificate by physician.** If, on the basis of negative laboratory and clinical findings, the physician in attendance finds no evidence of syphilis, or if any applicant so infected is not in a stage of the disease whereby it may become communicable, said physician shall issue a certificate to the examinee to that effect on a form prescribed by the commissioner of public health and furnished by the office of the clerk of the district court. Such certificate of negative findings as to each of the parties to a proposed marriage shall be filed with the clerk of the district court of the county wherein the marriage is to be solemnized, at the time application for a license to marry is made. [C46, 50, 54, §596.2]

Referred to in §595.17

**596.3 Laboratory tests.** All standard serological tests for syphilis as required under this chapter shall be made by the state hygienic laboratory of the state department of health or by such other laboratories which are approved by the state department of health. Such tests as may be made by the state hygienic laboratory of the state department of health shall be free of charge. The results of all laboratory tests shall be reported on standard forms prescribed by the commissioner of public health. Said blanks may be destroyed by the clerk of the district court two years after the laboratory date thereon. [C46, 50, 54, §596.3]

**596.4 Exception as to pregnant women.** Irrespective of the laboratory test results and clinical examination findings, the clerk of the district court shall issue a marriage license to parties to a proposed marriage when the woman is pregnant at the time of application, and in lieu of the health certificate required under this chapter such clerk of the district court is hereby authorized to accept an affidavit on a form prescribed by the state department of health, signed by an Iowa licensed physician, stating that the woman is pregnant, which affidavit shall be sealed and available only to the contracting parties or to any interested party securing an order of court. [C46, 50, 54, §596.4]

**596.5 Reporting venereal diseases.** Nothing in this chapter shall impair or affect existing laws or rules or regulations made by authority of law relative to the reporting of cases of venereal disease discovered by physicians in the course of their practice. [C46, 50, 54, §596.5]

**596.6 Penalty.** Any clerk of the district court who shall unlawfully issue a license to marry to any person who fails to present and file the certificate as required in this chapter, and any person or persons who shall disclose or falsify any matter relating or pertaining to the examination of or certificate about any applicant for license to marry or clinical and laboratory tests taken by any party to a proposed marriage, except as may be required by law, and any person who shall obtain a license to marry contrary to the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C46, 50, 54, §596.6]

**596.7 Period of validity of license.** Marriage licenses issued under the provisions of this chapter shall become void and of no effect unless the marriage be solemnized within twenty days following the issuance thereof. [C46, 50, 54, §596.7]

**596.8 Applicant from another state—certificate from home physician.** Where a party making application for the issuance of a mar-

riage license is a nonresident of the state of Iowa and the state of which he is a resident has a law in effect requiring a test to show freedom from syphilis, as provided in this chapter, the said applicant shall be entitled to the issuance of a license provided he furnishes a certificate conforming to the requirements of the state of which he is a resident, signed by a duly licensed physician of said state, showing freedom from disease as provided in this chapter.

Where a person resides in a state which requires no physical examination as a prerequisite to the issuance of a marriage license and desires to make application for a marriage license in this state the said person, as a condition to the issuance of said license, shall be required to file a certificate signed by a duly licensed physician of the state in which the applicant resides, certifying that the said applicant has been examined by said physician and that he is free from syphilis or not in a stage whereby it may become communicable and the certificate shall be signed by the said physician and sworn to by him and his signature acknowledged by an officer authorized to administer oaths. [C46, 50, 54, §596.8]

## CHAPTER 597

### HUSBAND AND WIFE

597.1 Property rights of married women.  
597.2 Interest of spouse in other's property.  
597.3 Remedy by one against the other.  
597.4 Conveyances to each other.  
597.5 Attorney in fact.  
597.6 Insanity—conveyance of property.  
597.7 Proceedings.  
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597.9 Conveyances—revocation.  
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597.12 Nonabatement of action.  
597.13 Annulment of decree.  
597.14 Family expenses.  
597.15 Custody of children.  
597.16 Wages of wife—actions by.  
597.17 Liability for separate debts.  
597.18 Contracts of wife.  
597.19 Husband not liable for wife's torts.

**597.1 Property rights of married women.** A married woman may own in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him. [C73, §2202; C97, §3153; C24, 27, 31, 35, 39, §10446; C46, 50, 54, §597.1]

**597.2 Interest of spouse in other's property.** When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, except as provided in this chapter. [C73, §2203; C97, §3154; C24, 27, 31, 35, 39, §10447; C46, 50, 54, §597.2]

Distributive share, §636.5

**597.3 Remedy by one against the other.** Should the husband or wife obtain possession or control of property belonging to the other

before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried. [C73, §2204; C97, §3155; C24, 27, 31, 35, 39, §10448; C46, 50, 54, §597.3]

**597.4 Conveyances to each other.** A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons. [C73, §2206; C97, §3157; C24, 27, 31, 35, 39, §10449; C46, 50, 54, §597.4]

**597.5 Attorney in fact.** A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the appointment, the same as other persons. [C73, §2210; C97, §3161; C24, 27, 31, 35, 39, §10450; C46, 50, 54, §597.5]

**597.6 Insanity — conveyance of property.** Where either the husband or wife is insane

and incapable of executing a deed or mortgage relinquishing, conveying, or encumbering his or her right to the real property of the other, including the homestead, the other may petition the district court of the county of his or her residence or the county where the real estate to be conveyed or encumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed or mortgage and relinquish or encumber the interest of the insane person in said real estate. [R60,§1500; C73,§2216; C97,§3167; S13,§3167; C24, 27, 31, 35, 39,§10451; C46, 50, 54,§597.6]

**597.7 Proceedings.** The petition shall be verified by the petitioner, and filed in the office of the clerk of the district court of the proper county, notice of which shall be given as in other cases. Upon completed service, the court shall appoint some responsible attorney thereof guardian for the person alleged to be insane, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto, and he shall be allowed by the court a reasonable compensation to be paid as the other costs. [R60,§1501; C73,§2217; C97,§3168; C24, 27, 31, 35, 39,§10452; C46, 50, 54,§597.7]

**597.8 Decree.** Upon the hearing of the petition the court, if satisfied that it is made in good faith by the petitioner, and he is a proper person to exercise the power and make the conveyance or mortgage, and it is necessary and proper, shall enter a decree authorizing the execution of the conveyance or mortgage for and in the name of such husband or wife by such person as the court may appoint. [R60,§1502; C73,§2218; C97,§3169; S13,§3169; C24, 27, 31, 35, 39,§10453; C46, 50, 54,§597.8]

**597.9 Conveyances—revocation.** All deeds executed as provided in this chapter shall convey the interest of such insane person in the real estate described, but such power shall cease and be revoked as soon as he or she shall become of sound mind and apply to the court therefor, but such revocation shall not affect conveyances previously made. [R60,§1503; C73,§2219; C97,§3170; C24, 27, 31, 35, 39,§10454; C46, 50, 54,§597.9]

**597.10 Abandonment of either—proceedings.** In case the husband or wife abandons the other for one year, or leaves the state and is absent therefrom for such term, without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for such period, the district court of the county where the abandoned party resides may, on application by petition setting forth the facts, authorize the applicant to manage, control, sell, and encumber the property of the guilty party for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or

by virtue of the order or decree of the court shall be valid to the same extent as if the same was done by the party owning the property. [C51,§§1456-1459, 1461; R60,§§2508-2511, 2513; C73,§2207; C97,§3158; C24, 27, 31, 35, 39,§10455; C46, 50, 54,§597.10]

Referred to in §§597.11, 597.13  
Service in ordinary actions, ch 617

**597.11 Contracts and sales binding.** All contracts, sales, or encumbrances made by either husband or wife under the provisions of section 597.10 shall be binding on both, and during such absence or confinement the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued accordingly. [C73,§2208; C97,§3159; C24, 27, 31, 35, 39,§10456; C46, 50, 54,§597.11]

C97,§3159, editorially divided  
Referred to in §597.13

**597.12 Nonabatement of action.** No action or proceeding shall abate or be affected by the return or release of the person absent or confined, but he or she may be permitted to prosecute or defend jointly with the other. [C73,§2208; C97,§3159; C24, 27, 31, 35, 39,§10457; C46, 50, 54,§597.12]

Referred to in §597.13

**597.13 Annulment of decree.** The husband or wife affected by the proceedings contemplated in sections 597.10 to 597.12, inclusive, may obtain an annulment thereof, upon filing a petition therefor and serving a notice on the person in whose favor the same was granted, as in ordinary actions; but the setting aside of such decree or order shall not affect any act done thereunder. [C51,§1460; R60,§2512; C73,§2209; C97,§3160; C24, 27, 31, 35, 39,§10458; C46, 50, 54,§597.13]

**597.14 Family expenses.** The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [C51,§1455; R60,§2507; C73,§2214; C97,§3165; S13,§3165; C24, 27, 31, 35, 39,§10459; C46, 50, 54,§597.14]

**597.15 Custody of children.** If the husband abandons the wife she is entitled to the custody of the minor children, unless the district court, upon application for that purpose, shall otherwise direct. [C51,§1462; R60,§2514; C73,§2215; C97,§3166; C24, 27, 31, 35, 39,§10460; C46, 50, 54,§597.15]

**597.16 Wages of wife—actions by.** A wife may receive the wages for her personal labor, and maintain an action therefor in her own name, and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property, as if unmarried. [C73,§2211; C97,§3162; C24, 27, 31, 35, 39,§10461; C46, 50, 54,§597.16]

**597.17 Liability for separate debts.** Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other. [C51,§1453; R60,§2505; C73,§2212; C97,§3163; C24, 27, 31, 35, 39,§10465; C46, 50, 54,§597.17]

**597.18 Contracts of wife.** Contracts may be made by a wife and liabilities incurred, and

the same enforced by or against her, to the same extent and in the same manner as if she were unmarried. [C51,§1454; R60,§2506; C73, §2213; C97,§3164; C24, 27, 31, 35, 39,§10466; C46, 50, 54,§597.18]

**597.19 Husband not liable for wife's torts.** For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be liable therefor, except in cases where he would be jointly liable with her if the marriage did not exist. [C73,§2205; C97,§3156; C24, 27, 31, 35, 39, §10467; C46, 50, 54,§597.19]

## CHAPTER 598

### DIVORCE AND ANNULMENT OF MARRIAGES

598.1 Jurisdiction.  
598.2 Kind of action—joinder.  
598.3 Petition.  
598.4 Verification—evidence.  
598.5 Public hearing—commissioners.  
598.6 Residence—failure of proof.  
598.7 Corroboration of plaintiff.  
598.8 Causes.  
598.9 Husband from wife—other causes.  
598.10 Cross petition.  
598.11 Maintenance during litigation.  
598.12 Attachment.  
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598.14 Alimony—custody of children—changes.  
598.15 Contempt.  
598.16 Forfeiture of rights.  
598.17 Remarriage.  
598.18 Violations.  
598.19 Annulling illegal marriage—causes.  
598.20 Petition.  
598.21 Validity determined.  
598.22 Children—legitimacy.  
598.23 Legitimacy in case of prior marriage.  
598.24 Alimony.  
598.25 Waiting period before decree.

**598.1 Jurisdiction.** The district court in the county where either party resides has jurisdiction of the subject matter of this chapter. [C51,§1480; R60,§2532; C73,§2220; C97,§3171; C24, 27, 31, 35, 39,§10468; C46, 50, 54,§598.1]

**598.2 Kind of action—joinder.** An action for a divorce shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. [R60,§4184; C73,§2511; C97, §3430; C24, 27, 31, 35, 39,§10469; C46, 50, 54, §598.2]

**598.3 Petition.** Except where the defendant is a resident of this state, served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that the plaintiff has been for the last year a resident of the state, specifying the township and county in which he or she has resided, and the length of such residence therein after deducting all absences from the state; that it has been in good faith and not for the purpose of obtaining a divorce only; and in all cases it must be alleged that the application is made in good faith and for the purpose set forth in the petition. [C51,§1481; R60,§2533; C73,§2221; C97,§3172; C24, 27, 31, 35, 39,§10470; C46, 50, 54, §598.3]

**598.4 Verification—evidence.** The petition must be verified by the plaintiff, and its allegations established by competent evidence.

[C51,§1481; R60,§2533; C73,§2222; C97,§3173; C24, 27, 31, 35, 39,§10471; C46, 50, 54,§598.4]

C97,§3173, editorially divided

**598.5 Public hearing—commissioners.** All such actions shall be heard in open court upon the oral testimony of witnesses, or depositions taken as in other equitable actions or by a commissioner appointed by the court. [C73, §2222; C97,§3173; C24, 27, 31, 35, 39,§10472; C46, 50, 54,§598.5]

**598.6 Residence—failure of proof.** If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court. [C73,§2222; C97,§3173; C24, 27, 31, 35, 39,§10473; C46, 50, 54, §598.6]

**598.7 Corroboration of plaintiff.** No divorce shall be granted on the testimony of the plaintiff alone. [C73,§2222; C97,§3173; C24, 27, 31, 35, 39,§10474; C46, 50, 54,§598.7]

**598.8 Causes.** Divorces from the bonds of matrimony may be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage.
2. When he willfully deserts his wife and absents himself without a reasonable cause for the space of two years.
3. When he is convicted of a felony after the marriage.

4. When, after marriage, he becomes addicted to habitual drunkenness.

5. When he is guilty of such inhuman treatment as to endanger the life of his wife. [C51, §1482; R60, §2534; C73, §2223; C97, §3174; C24, 27, 31, 35, 39, §10475; C46, 50, 54, §598.8]

Referred to in §598.10  
Separate maintenance, see 133 Iowa 22

**598.9 Husband from wife—other causes.** The husband may obtain a divorce from the wife for like cause, and also when the wife at the time of the marriage was pregnant by another than the husband, of which he had no knowledge, unless such husband had an illegitimate child or children then living, which at the time of the marriage was unknown to the wife. [C51, §1483; R60, §2535; C73, §2224; C97, §3175; C24, 27, 31, 35, 39, §10476; C46, 50, 54, §598.9]

Referred to in §598.10

**598.10 Cross petition.** The defendant upon a cross petition may obtain a divorce for either of the causes stated in section 598.8, and if the husband is defendant he may, in addition to those causes, have a like decree for the cause stated in section 598.9. [C73, §2225; C97, §3176; C24, 27, 31, 35, 39, §10477; C46, 50, 54, §598.10]

**598.11 Maintenance during litigation.** The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action. [C73, §2226; C97, §3177; C24, 27, 31, 35, 39, §10478; C46, 50, 54, §598.11]

**598.12 Attachment.** The petition may be presented to the court or judge for the allowance of an order of attachment, who, by indorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases. [C73, §2227; C97, §3178; C24, 27, 31, 35, 39, §10479; C46, 50, 54, §598.12]

**598.13 Showing.** In making such orders, the court or judge shall take into consideration the age and sex of the plaintiff, the physical and pecuniary condition of the parties, and such other matters as are pertinent, which may be shown by affidavits, in addition to the pleadings or otherwise, as the court or judge may direct. [C73, §2228; C97, §3179; C24, 27, 31, 35, 39, §10480; C46, 50, 54, §598.13]

**598.14 Alimony — custody of children — changes.** When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right.

Subsequent changes may be made by it in these respects when circumstances render them expedient. [C51, §1485; R60, §2537; C73,

§2229; C97, §3180; C24, 27, 31, 35, 39, §10481; C46, 50, 54, §598.14]

When personal earnings not exempt, §627.11

**598.15 Contempt.** If any party against whom such decree has been entered, shall willfully disobey the same, or secrete his property, he may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense. [C24, 27, 31, 35, 39, §10482; C46, 50, 54, §598.15]

Contempts, ch 665

**598.16 Forfeiture of rights.** When a divorce is decreed the guilty party forfeits all rights acquired by marriage. [C51, §1486; C73, §2230; C97, §3181; S13, §3181; C24, 27, 31, 35, 39, §10483; C46, 50, 54, §598.16]

S13, §3181, editorially divided

**598.17 Remarriage.** In every case in which a divorce is decreed, neither party shall marry again within a year from the date of the filing of said decree unless permission to do so is granted by the court in such decree. Nothing herein contained shall prevent the persons divorced from remarrying each other. [S13, §3181; C24, 27, 31, 35, 39, §10484; C46, 50, 54, §598.17]

Referred to in §598.18

**598.18 Violations.** Any person marrying contrary to the provisions of section 598.17 shall be deemed guilty of a misdemeanor and punished accordingly. [S13, §3181; C24, 27, 31, 35, 39, §10485; C46, 50, 54, §598.18]

Punishment, §687.7

**598.19 Annuling illegal marriage — causes.** Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.
2. Where either party was impotent at the time of marriage.
3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death or divorce of the former spouse of such party.

Similar provision, §595.19, subsection 4

4. Where either party was insane or idiotic at the time of the marriage. [C73, §2231; C97, §3182; C24, 27, 31, 35, 39, §10486; C46, 50, 54, §598.19]

**598.20 Petition.** A petition shall be filed in such cases as in actions for divorce, and all the provisions of this chapter in relation thereto shall apply to such cases, except as otherwise provided. [C73, §2232; C97, §3183; C24, 27, 31, 35, 39, §10487; C46, 50, 54, §598.20]

**598.21 Validity determined.** When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof. [C73, §2233; C97, §3184; C24, 27, 31, 35, 39, §10488; C46, 50, 54, §598.21]

**598.22 Children—legitimacy.** When a marriage is annulled on account of the consanguinity or affinity of the parties, the issue shall be illegitimate; if because of the impotency of the husband, any issue of the wife shall be illegitimate; but when on account of nonage, insanity, or idiocy, the issue will be legitimate as to the party capable of contracting the marriage. [C73,§2234; C97,§3185; C24, 27, 31, 35, 39,§10489; C46, 50, 54,§598.22]

**598.23 Legitimacy in case of prior marriage.** When a marriage is annulled on account of a prior marriage and the parties contracted the second marriage in good faith, believing the prior husband or wife to be dead, that fact shall be stated in the decree of nullity, and the issue of the second marriage begotten before the decree of the court will be the legitimate issue of the parent capable of contracting. [C73,§2235; C97,§3186; C24, 27, 31, 35, 39,§10490; C46, 50, 54,§598.23]

**598.24 Alimony.** In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the de-

creed, and the court may decree such innocent party compensation as in cases of divorce. [C73,§2236; C97,§3187; C24, 27, 31, 35, 39,§10491; C46, 50, 54,§598.24]

**598.25 Waiting period before decree.** Any law or rules of procedure to the contrary notwithstanding, no decree of divorce shall be granted in any divorce proceedings before sixty days shall have elapsed from the day the original notice is served, or from the last day of publication of notice, or from the date that waiver or acceptance of original notice is filed. Provided, however, the court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the substantive rights or interests of any party or person who might be affected by the decree, hold a hearing and grant a decree of divorce prior to the expiration of the sixty-day period, provided that requirements of notice have been complied with. In such case the grounds of emergency or necessity and the facts with respect thereto shall be recited in the decree unless otherwise ordered by the court. [57GA, ch 256,§1]

## CHAPTER 599

### MINORS

599.1 Period of minority.  
599.2 Contracts—disaffirmance.  
599.3 Misrepresentations — engaging in business.

599.4 Payments.  
599.5 Veterans minority disabilities.

**599.1 Period of minority.** The period of minority extends to the age of twenty-one years, but all minors attain their majority by marriage, and females, after reaching the age of eighteen years, may make valid contracts for marriage the same as adults. [C51,§1487; R60,§2539; C73,§2237; C97,§3188; C24, 27, 31, 35, 39,§10492; C46, 50, 54,§599.1]

**599.2 Contracts—disaffirmance.** A minor is bound not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority, except as otherwise provided. [C51, §1488; R60,§2540; C73,§2238; C97,§3189; C24, 27, 31, 35, 39,§10493; C46, 50, 54,§599.2]

**599.3 Misrepresentations—engaging in business.** No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe him capable of contracting. [C51,§1489; R60,§2541; C73,§2239; C97,§3190; C24, 27, 31, 35, 39,§10494; C46, 50, 54,§599.3]

**599.4 Payments.** Where a contract for the personal services of a minor has been made with him alone, and the services are afterwards performed, payment therefor made to him, in accordance with the terms of the contract, is a full satisfaction therefor, and the parent or guardian cannot recover a second time. [C51,§1490; R60,§2542; C73,§2240; C97, §3191; C24, 27, 31, 35, 39,§10495; C46, 50, 54, §599.4]

**599.5 Veterans minority disabilities.** The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the Servicemen's Readjustment Act of 1944, as amended (38 U.S.C. 694, et seq.) and of the minor spouse of any eligible veteran, irrespective of his or her age, in connection with any transaction entered into pursuant to said Act, as amended, is hereby removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing or conveying property or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of veterans affairs pursuant to such Act; provided, nevertheless,

that this section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such

spouse were under no such disability. [C50, 54, §599.5]

CHAPTER 600

ADOPTION

Referred to in §244.9

Birth certificates of adopted children, ch 144

- 600.1 Who may adopt—petition.
- 600.2 Investigation—minimum residence.
- 600.3 Consent to adoption.
- 600.4 Notice of hearing.
- 600.5 Decree—change of name.

- 600.6 Status of the adopted child.
- 600.7 Annulment.
- 600.8 Records of adoption.
- 600.9 Sealing record—order of court.
- 600.10 Disclosure—penal provisions.

**600.1 Who may adopt — petition.** Any person of lawful age may petition the district court of the county in which he or the child resides for permission to adopt any child not his own, but no person other than the parent of a child may assume the permanent care and custody of a child under fourteen years of age except in accordance with the provisions of this chapter or chapter 238. If the petitioner be married, the spouse shall join in the petition unless such spouse is a natural parent of the child. An adult may be adopted, and only such provisions of this chapter shall apply thereto as the court may order. The judges of the district court may designate a municipal court judge to act as judge in adoption matters with jurisdiction in cases arising in the county in which such municipal court is organized.

The petition for adoption shall be verified and filed in triplicate and shall state the name, age, race, residence and religious faith as nearly as may be of the petitioner or petitioners and of the child; the marital status of the petitioner or petitioners; the property rights of the child; the name to be given the child after adoption; if the child be an orphan the name and place of residence of its guardian, if any, and if none, of its next of kin; the name of any licensed child-placing agency as defined in chapter 238, to which such child has been permanently committed or released; the relationship of the child to the petitioner or petitioners; and the facts disclosing consent as required in this section and in section 600.3. The clerk of the court shall forthwith transmit two copies of said petition to the state department of social welfare, or the designated qualified person or agency as directed by the court except in cases of children under the jurisdiction of the board of control of state institutions, and excepting adult adoptions and cases where the investigation is waived by the court as authorized by this chapter. Provided that where the state department does not otherwise receive the petition, the clerk shall immediately forward one copy thereof to the department. [R60, §2600; C73, §2307; C97, §3250; C24, §10496; C27, 31, 35, §10501-b1; C39, §10501.1; C46, 50, 54, §600.1]

Relinquishment of custody, §238.26 et seq.

**600.2 Investigation — minimum residence.** The state department of social welfare, or a

qualified person or agency named by the court, after an order of the court, shall proceed to verify the allegations of the petition; to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make appropriate inquiry to determine whether the proposed foster home is a suitable one for the child. The investigation shall be completed and a report with recommendations made to the court within sixty days from the date of the filing of the petition. No petition shall be granted until the investigation is completed. Nothing herein contained shall prevent the court from conducting any other investigation which it may deem necessary or proper. No petition shall be granted until the child shall have lived for twelve months in the proposed home. Such period of residence may be shortened by the court upon good cause shown when satisfied that the proposed home and the child are suited to each other. The state department of social welfare may, and upon order of the court shall, make a further investigation during the period of residence and a final report with recommendations to the court. The investigation and period of residence may be waived by the court where the petitioner or one of the petitioners is related to the child within the third degree of consanguinity or where the petitioner is married to a natural parent of the child. [C27, 31, 35, §10501-b2; C39, §10501.2; C46, 50, 54, §600.2]

**600.3 Consent to adoption.** No person may assign, relinquish, or otherwise transfer to another his rights or duties with respect to the permanent care or custody of a child under fourteen years of age except in accordance with this chapter. The consent of both parents shall be given to such adoption unless one is dead, or is considered hopelessly insane, or is imprisoned for a felony, or is an inmate or keeper of a house of ill fame, or unless the parents are not married to each other, or unless the parent or parents have signed a release of the child in accordance with the statute on child placing, or unless one or both of the parents have been deprived of the custody of the child by judicial procedure because of unfitness to be its guardian. If not

married to each other, the parent having the care and providing for the wants of the child may give consent. If the child is not in the custody of either parent, but is in the care of a duly appointed guardian, then the consent of such guardian shall be necessary. Where the child is a ward of the state in a state institution the consent of the board of control of state institutions shall be first obtained before said adoption shall be effective. If the child has been given by written release to a licensed child welfare agency in accordance with the statute on child placing, the consent of the agency to whom the release was made shall be necessary. If the parents have been deprived of the custody of the child by a final order of court which has not been appealed, reversed or remanded, and which is not then appealable and the child has not been placed by the court in the custody of the state or a licensed child-placing welfare agency, the court, which has removed the child from the custody of its parents, may give consent to its adoption, upon notice to such person or persons and given in such manner as the court may prescribe. When the child adopted is fourteen years of age or over, his consent shall also be necessary. The consent shall be in writing and verified and a copy shall be attached to the petition. The consent shall refer to and be applicable only to the specific adoption proposed by such petition. Minority of a parent shall not invalidate a consent. [R60, §2601; C73, §2308; C97, §3251; C24, §10497; C27, 31, 35, §10501-b3; C39, §10501.3; C46, 50, 54, §600.3]

Referred to in §600.1  
Child-placing agencies, ch 238  
Consents before January 1, 1957, legalized, 57GA, ch 257, §1

**600.4 Notice of hearing.** When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court may order such notice of a hearing on such petition as he may determine or such notice may be waived. The court shall provide for such hearings in adoption proceedings as may be necessary and shall prescribe notice thereof. All hearings in adoption proceedings shall be private and conducted only in the presence of those persons designated by the court. Upon the time of filing said petition of adoption, such notice of pendency of adoption proceedings as the court shall prescribe shall be given to a divorced parent not having custody of the child. [C27, 31, 35, §10501-b4; C39, §10501.4; C46, 50, 54, §600.4]

**600.5 Decree—change of name.** If upon the hearing the court shall be satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be entered in the office of the clerk, setting forth the facts including as far as known the name of the child, of its parents and of the persons adopting it, and the name under which the child is thereafter to be known, and ordering that from the date thereof, the child shall

be the child of the petitioners. The clerk shall deliver to the foster parents a certified copy of the decree. If desired, the court, in and by said decree, may change the name of the child. [R60, §2601; C73, §2308; C97, §3251; C24, §10498; C27, 31, 35, §10501-b5; C39, §10501.5; C46, 50, 54, §600.5]

**600.6 Status of the adopted child.** Upon the entering of such decree, the rights, duties, and relationships between the child and parent by adoption shall be the same that exist between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock. [R60, §2603; C73, §2310; C97, §3253; S13, §3253; C24, §10500; C27, 31, 35, §10501-b6; C39, §10501.6; C46, 50, 54, §600.6]

Referred to in §§241.17, 249.12

**600.7 Annulment.** If within five years after the adoption, a child develops feeble-mindedness, epilepsy, insanity, or venereal infection, or an otherwise permanent and serious disability as a result of conditions existing prior to the adoption, and of which the adopting parent had no knowledge or notice, a petition setting forth such facts may be filed with the district court of the county where the adoptive parents are residing. If upon hearing the facts alleged are proved, the court may annul the adoption and refer the child to the juvenile court or take such other action as the case may require. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child. [C27, 31, 35, §10501-b7; C39, §10501.7; C46, 50, 54, §600.7]

**600.8 Records of adoption.** The findings of the court in any petition for adoption shall be made a complete record and same shall be filed as are other records of the court, but in addition thereto, the clerk of court shall cause two copies thereof to be sent to the state board of social welfare and also to the state board of control when the child for adoption is a ward of the state. [R60, §2602; C73, §2309; C97, §3252; C24, §10499; C27, 31, 35, §10501-b8; C39, §10501.8; C46, 50, 54, §600.8]

**600.9 Sealing record—order of court to open.** The complete record in adoption proceedings, after filing with the clerk of the court, shall be sealed by said clerk, and the record shall not thereafter be opened except on order of the court. [C46, 50, 54, §600.9]

**600.10 Disclosure—penal provisions.** Every person, excepting adopting parents or adopted child, who discloses any information contained in any adoption papers or proceedings except as may be authorized by order of court and every person who violates any of the provisions of this chapter or who intentionally shall make any false statements with reference to the matters contained herein, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly. [C50, 54, §600.10]



# TITLE XXIX

## JUSTICES OF THE PEACE

### CHAPTER 601

#### JUSTICE OF THE PEACE COURT

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**601.1 Jurisdiction.** The jurisdiction of justices of the peace, when not specially restricted, is coextensive with their respective counties; but does not embrace actions for the recovery of money against actual residents of any other county, except as provided in this chapter. [C51,§2261; R60,§3849; C73,§3507; C97,§4476; C24, 27, 31, 35, 39,§10502; C46, 50, 54, §601.1]

**601.2 Amount in controversy.** Within the prescribed limit, it extends to all civil actions, except those by equitable proceedings, where the amount in controversy does not exceed one hundred dollars; and, by consent of parties in writing, it may be extended to actions where the amount claimed is not more than three hundred dollars. [C51,§2262; R60,§3850; C73,§3508; C97,§4477; C24, 27, 31, 35, 39,§10503; C46, 50, 54,§601.2]

**601.3 Suits brought where party resides.** Actions in all cases may be brought in the township where the plaintiff, or the defendant, or one of several defendants, resides, unless otherwise provided by law. [C51,§2263; R60,§3851; C73,§3509; C97,§4478; C24, 27, 31, 35, 39, §10504; C46, 50, 54,§601.3]

**601.4 Where defendant served.** They may also be brought in any other township of the same county, if actual service on one or more of the defendants is made in such township. [C51,§2264; R60,§3852; C73,§3510; C97,§4479; C24, 27, 31, 35, 39,§10505; C46, 50, 54,§601.4]

**601.5 Replevin.** Actions in replevin may also be brought before any justice in the county in which the property is found. [C51,§2265; R60,§3853; C73,§3511; C97,§4480; C24, 27, 31, 35, 39,§10506; C46, 50, 54,§601.5]

C97,§4480, editorially divided

**601.6 Attachment.** Actions aided by attachment may be brought against nonresidents of

the state in any county and township wherein the property sought to be levied upon is found. [C51,§2265; R60,§3853; C73,§3511; C97,§4480; C24, 27, 31, 35, 39,§10507; C46, 50, 54,§601.6]

**601.7 Nonresident.** Any action against such nonresidents may be brought in any county wherein any defendant is served with notice thereof. [C51,§2266; R60,§3854; C73,§3512; C97,§4480; C24, 27, 31, 35, 39,§10508; C46, 50, 54, §601.7]

**601.8 Written stipulation for place of suit.** On written contracts stipulating for payment at a particular place, action may be brought in the township where the payment was agreed to be made. [C51,§2267; R60,§3855; C73,§3513; C97,§4481; S13,§4481; C24, 27, 31, 35, 39, §10509; C46, 50, 54,§601.8]

S13,§4481, editorially divided  
Referred to in §§601.9, 601.10

**601.9 Costs when plaintiff defaults.** Should action be brought under the provisions of section 601.8 in any county other than that of the residence of the defendant and the plaintiff shall fail to appear at the time fixed for the trial in the original notice, the justice of the peace before whom said action is brought, shall, upon presentation of the copy of the original notice served upon the defendant, docket said cause and enter judgment therein against the plaintiff in favor of the defendant for all costs in the action, which costs shall include all reasonable expenses of the defendant in attending the place of trial and an attorney's fee not to exceed fifteen dollars for defendant's attorney. [S13,§4481; C24, 27, 31, 35, 39,§10510; C46, 50, 54,§601.9]

**601.10 Dismissal without trial on merits.** Should any action brought under the provisions of section 601.8 for any cause, except upon trial upon the merits, be dismissed, the

defendant shall recover like costs and expenses and attorney fees. [S13,§4481; C24, 27, 31, 35, 39,§10511; C46, 50, 54,§601.10]

**601.11 Change of venue for fraud.** Where an action is brought relying upon the foregoing provisions to fix the venue in a township in a county other than the residence of the signer of a written contract, and the defendant files a verified answer setting forth a legal defense alleging fraud in the inception of the contract, and he files therein a motion asking to have said cause transferred to the county of his residence, accompanied by a cost bond of fifty dollars to be approved by the court where the action is brought, the justice before whom such action is brought shall thereupon order the same transferred to such county upon the defendant paying fees of transcript and postage, and all papers and transcript shall forthwith be mailed, by certified mail letter, to the clerk of the district court of the county of defendant's residence, and said cause shall be docketed for trial. [S13,§4481; C24, 27, 31, 35, 39,§10512; C46, 50, 54,§601.11; 57GA, ch 267,§86]

Referred to in §601.12  
Similar provision, R.C.P. 167

**601.12 Dual applications.** If two or more defendants in the same cause apply for change of venue as provided in section 601.11, the justice shall transmit said papers to the county of the defendant making first application. [S13, §4481; C24, 27, 31, 35, 39,§10513; C46, 50, 54, §601.12]

**601.13 Costs and attorney fees.** If, upon trial, the defendant shall establish his defense of fraud, then he shall be entitled to recover, as a part of his costs, the reasonable expense, including attorney's fees, for securing the change of place of trial, but if he shall fail to establish said defense, then he shall be liable to plaintiff, as a part of the costs, for the reasonable additional expense caused to him by reason of such change. [S13,§4481; C24, 27, 31, 35, 39,§10514; C46, 50, 54,§601.13]

**601.14 In adjoining township.** If there is no justice in the proper township qualified or able to act, the action may be commenced in any adjoining township in the same county. If there be no such justice in an adjoining township, it may be commenced before the justice in the same county nearest to the township in which the defendant resides. [C51, §2268; R60,§3856; C73,§3514; C97,§4482; C24, 27, 31, 35, 39,§10515; C46, 50, 54,§601.14]

**601.15 Docket furnished.** The board of supervisors of each county shall furnish to each justice of the peace thereof a well-bound blank record book of not less than four quires, with index, suitable for a docket, upon his certificate that the same is necessary for the business of the office. [C73,§3635; C97,§4483; C24, 27, 31, 35, 39,§10516; C46, 50, 54,§601.15]

**601.16 Entries on docket.** Each justice shall keep such docket by entering therein each

action and each act done, with the proper date as follows:

1. The title of the action.
2. A brief statement of the nature and amount of the plaintiff's demand, and defendant's counterclaim, if any, giving date to each where dates exist.
3. The issuing of the notice and the return thereof.
4. The appearance of the parties.
5. Every adjournment, stating at whose instance and for what time.
6. The granting of a change of place of trial, and the name of the justice to whom the case is sent.
7. The trial, and whether by the justice or by a jury.
8. The verdict and judgment.
9. The issuance of each execution, to whom delivered, the renewals, if any, and the amount of judgment and costs to be collected thereunder.
10. The issuance of each writ of attachment or replevin or other process, to whom delivered, and the particulars thereof.
11. The taking of an appeal, if any.

12. The giving of a transcript for filing in the clerk's office, or for setting off against another judgment.

13. A note of all motions made or demurrers interposed, and whether sustained or overruled. [C51,§2269; R60,§3857; C73,§3515; C97, §4484; C24, 27, 31, 35, 39,§10517; C46, 50, 54, §601.16]

**601.17 Parties—district court procedure applicable.** The parties to the action may be the same as in the district court, and all the proceedings prescribed for that court, so far as applicable and not herein changed, shall be pursued in justices' courts. The powers of the court are only as herein enumerated. [C51, §2270; R60,§3858; C73,§3516; C97,§4485; C24, 27, 31, 35, 39,§10518; C46, 50, 54,§601.17]

**601.18 How commenced.** Actions in justices' courts are commenced by voluntary appearance or by notice. [C51,§2271; R60,§3859; C73, §3517; C97,§4486; C24, 27, 31, 35, 39,§10519; C46, 50, 54,§601.18]

**601.19 Petition not necessary.** No petition need be filed except as in this chapter required. The notice must state the cause of the action in general terms, sufficient to apprise the defendant of the nature of the claims against him. [C51,§2272; R60,§3860; C73,§3518; C97, §4487; C24, 27, 31, 35, 39,§10520; C46, 50, 54, §601.19]

**601.20 Form of notice.** It must be addressed to the defendant by name, but if his name is unknown, a description of him will be sufficient. It must be subscribed by the plaintiff, his attorney, or the justice before whom it is returnable. [C51,§2273; R60,§3861; C73,§3519;

C97,§4488; C24, 27, 31, 35, 39,§10521; C46, 50, 54, §601.20]

**601.21 Amount of judgment claimed.** It must state the amount for which the plaintiff will take judgment if the defendant fails to appear and answer at the time and place therein fixed. [C51,§2274; R60,§3862; C73,§3520; C97, §4489; C24, 27, 31, 35, 39,§10522; C46, 50, 54, §601.21]

**601.22 Time of trial.** The time fixed in the notice must be not less than five nor more than fifteen days from the date, and it must be served not less than five days previous to the trial. [C51,§2275; R60,§3863; C73,§3521; C97, §4490; C24, 27, 31, 35, 39,§10523; C46, 50, 54, §601.22]

**601.23 Service and return.** The service and return thereto must be made in the same manner as in the district court, except no service shall be made by publication other than is herein provided, nor shall any return made by another than the sheriff or a constable of the county be valid unless sworn to. [C51,§2276; R60,§3864; C73,§3522; C97,§4491; C24, 27, 31, 35, 39,§10524; C46, 50, 54,§601.23]

Manner of service, R.C.P. 56(a) et seq.  
Similar provision as to return, R.C.P. 59(a)

**601.24 Defendant may pay officer.** The defendant may at any time pay to the officer having the notice for service, or to the justice of the peace, the amount of the claim, together with the costs which have then accrued, and thereupon the proceedings shall be dismissed. [C51,§2277; R60,§3865; C73,§3523; C97,§4492; C24, 27, 31, 35, 39,§10525; C46, 50, 54,§601.24]

**601.25 Appearance — personal or by agent.** Either of the parties may appear in person or by agent; if by agent, he may be required by the justice to show his authority, if written, or prove it by his oath or otherwise, if verbal. [C51,§2278; R60,§3866; C73,§3524; C97,§4493; C24, 27, 31, 35, 39,§10526; C46, 50, 54,§601.25]

#### RULE OF CIVIL PROCEDURE NO. 354

**Security for costs.** If a defendant in any cause of action in the justice court, at any time more than forty-eight hours prior to the time fixed in the notice for appearance, shall make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, if he is a nonresident of the state or a foreign corporation, before any other proceedings in the action, must file with the justice before whom such action is pending, a bond with sureties to be approved by such justice, in an amount not exceeding one hundred dollars to be fixed by such justice for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other justice court to which it may be carried, either to the defendant or to the officers of the court. The filing of an application for security for costs shall not waive the right of a party to challenge the jurisdic-

tion of the justice court, at the time fixed in the notice. [Report 1943]

Similar provision, §621.1

**601.26 Application for cost bond.** The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavit annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once and none thereafter. [S13,§4493-a; C24, 27, 31, 35, 39,§10528; C46, 50, 54,§601.26]

**601.27 Time for appearance.** The parties in all cases are entitled to one hour in which to appear after the time fixed therefor, but neither party is bound to wait longer for the other. [C51,§2279; R60,§3867; C73,§3525; C97, §4494; C24, 27, 31, 35, 39,§10529; C46, 50, 54, §601.27]

**601.28 Postponement.** Upon the return day, if the justice is actually engaged in other official business, he may postpone proceedings in the case until such business is finished. [C51, §2280; R60,§3868; C73,§3526; C97,§4495; C24, 27, 31, 35, 39,§10530; C46, 50, 54,§601.28]

**601.29 Adjournment.** If from any cause the justice is unable to attend to the trial at the time fixed, or if a jury is demanded, he may adjourn the cause for a period not exceeding three days, nor shall he make more than two such adjournments. [C51,§2281; R60,§3869; C73, §3527; C97,§4496; C24, 27, 31, 35, 39,§10531; C46, 50, 54,§601.29]

**601.30 Showing for.** In case of the absence of witnesses, either party, at his own cost, may have an adjournment, not exceeding sixty days, upon motion supported by an affidavit like that required to obtain a continuance in the district court for a like cause. [C51,§2282; R60,§3870; C73,§3528; C97,§4497; C24, 27, 31, 35, 39,§10532; C46, 50, 54,§601.30]

Showing required, R.C.P. 183

**601.31 Testimony of witness taken.** Either party applying for an adjournment must, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken in writing, to be used as a deposition on the trial of the cause. [C51,§2283; R60,§3871; C73,§3529; C97,§4498; C24, 27, 31, 35, 39,§10533; C46, 50, 54, §601.31]

**601.32 Pleadings.** The pleadings must be substantially the same as in the district court. They may be written or oral, but if required to be verified they must be in writing. If oral, they must in substance be written down by the justice in his docket. [C51,§2284; R60,§3872; C73,§3530; C97,§4499; C24, 27, 31, 35, 39,§10534; C46, 50, 54,§601.32]

Pleadings in district court, ch 619

#### RULE OF CIVIL PROCEDURE NO. 355

**Counterclaims and transfer to district court.** In an action commenced in justice court for the recovery of money

only, where the sum claimed is in excess of twenty-five dollars, any defendant may have the same transferred to the district court by filing with the justice at least twenty-four hours prior to the time for appearance fixed in the notice, a bond with sureties approved by the justice, in double the amount claimed by the plaintiff but in no case less than one hundred dollars and conditioned that such defendant will pay any judgment with costs recovered by the plaintiff against the defendant in the district court. Upon the filing of such bond and the approval of the sureties by the justice, the justice shall forthwith transcript the action to the district court. Where the amount claimed by plaintiff is twenty-five dollars or less any defendant may transfer such a justice court action to the district court upon the filing of an affidavit stating that he has a counterclaim in an amount in excess of the jurisdiction of the court, arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim, and which upon transfer will be filed, and by filing a bond as above provided. Such affidavit and bond shall be filed at least twenty-four hours prior to the time fixed for appearance in the notice. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 356

**Proceedings upon transfer.** Upon transfer of an action from the justice court to the district court, and within five days after the filing of the transcript in the district court the plaintiff shall file a written petition. When petition has been so filed, the defendant shall plead or move thereto within ten days after the filing of the transcript. Thereafter the rules of pleading and practice shall be the same as though the action had originally been commenced in the district court. If the petition is not filed as provided herein the action shall be dismissed at plaintiff's costs. [Report 1943]

**601.33 Written instruments filed.** The original, or a copy, of all written instruments upon which a cause of action or counterclaim is founded must be filed with the claim founded thereon, or a sufficient reason given for not doing so. [C51,§2286; R60,§3874; C73,§3532; C97,§4501; C24, 27, 31, 35, 39,§10536; C46, 50, 54, §601.33]

**601.34 Change of place of trial.** Either party, before the trial is commenced, may have the place of trial changed, upon filing an affidavit that the justice is prejudiced against him, or is a near relative of the other party, or is a material witness for the affiant, or that he cannot obtain justice before him; but no more than one change shall be allowed each party, unless the justice to whom the case is transmitted is related to either party by consanguinity or affinity within the fourth degree, or

is a witness, or has been an attorney employed in the action; in either of which events a second change may be allowed. [R60,§3875; C73,§3533; C97,§4502; C24, 27, 31, 35, 39,§10537; C46, 50, 54,§601.34]

**601.35 Next nearest justice.** When a change is allowed and the fees for transcript are paid, said justice shall transmit all the original papers in the case, and a transcript of his proceedings, to the next nearest justice in the township, if there be any; if not, to the next nearest justice in his county, and said justice shall proceed to try said case, and, if he cannot try the same immediately, he shall then fix a time therefor, of which all parties shall take notice; provided, however, anything herein to the contrary notwithstanding, if any party seeking to have the place of trial changed shall so request and designate a municipal or superior court within the county, said cause and all original papers and transcript shall be removed immediately to such designated municipal court or superior court, if there be such municipal or superior court within the county, and docketed, the filing fee to be paid by plaintiff, for nonpayment of which the cause shall be dismissed. [R60,§3876; C73,§3534; C97,§4503; C24, 27, 31, 35, 39,§10538; C46, 50, 54, §601.35]

**601.36 When change is not effected.** If the person to whom the cause is sent is not a justice, or for any reason, though a justice, cannot act, the court granting the change shall retain jurisdiction of the case for the purpose of perfecting the same and sending it to the next nearest justice who can serve. [C97,§4504; C24, 27, 31, 35, 39,§10539; C46, 50, 54,§601.36]

**601.37 Title to real property.** If the title to real property is put in issue by verified pleadings, or such fact manifestly appears from the proof on the trial of the issue, the justice shall, without further proceedings, certify the cause and papers, with a transcript of his docket showing the reason of such transfer, to the district court, where the same shall be tried on the merits. No cause so transferred shall be dismissed because the justice erred in transferring the same. [C51,§§2287, 2288; R60,§§3877, 3878; C73,§3535; C97,§4505; C24, 27, 31, 35, 39, §10540; C46, 50, 54,§601.37]

Analogous provision as to title, §602.24

**601.38 Other causes severed.** When a case is thus transferred, if there are other causes of action not necessarily connected with the issue of title, they may be severed, retained, and tried before the justice. [C51,§2289; R60,§3879; C73,§3536; C97,§4506; C24, 27, 31, 35, 39,§10541; C46, 50, 54,§601.38]

**601.39 Demand for jury.** Unless one of the parties demands a trial by jury at or before the time for joining issue, it shall be by the justice. [C51,§2290; R60,§3880; C73,§3537; C97,§4507; C24, 27, 31, 35, 39,§10542; C46, 50, 54, §601.39]

**601.40 Dismissal of action.** If the plaintiff fails to appear by himself or agent on the return day or time fixed for the trial, the justice shall dismiss the case and render judgment against him for costs, except as provided in section 601.41. [C51,§2291; R60,§3881; C73,§3538; C97,§4508; C24, 27, 31, 35, 39,§10543; C46, 50, 54, §601.40]

**601.41 On written instrument.** When the action is founded on an instrument in writing, purporting to have been executed by the defendant, calling for a certain sum as due the plaintiff, if the signature of the defendant is not denied under oath, and if the instrument has been filed with the justice previous to the time fixed for appearance, or the action is upon an account which is verified, he may proceed with the cause, whether the plaintiff appears or not. [C51,§2292; R60,§3882; C73,§3539; C97, §4509; C24, 27, 31, 35, 39,§10544; C46, 50, 54, §601.41]

Referred to in §§601.40, 601.42  
Similar provision, R.C.P. 99

**601.42 Default in such case.** In the case provided for in section 601.41, if the defendant does not appear, judgment shall be rendered against him for the amount of the plaintiff's claim. [C51,§2293; R60,§3883; C73,§3540; C97, §4510; C24, 27, 31, 35, 39,§10545; C46, 50, 54, §601.42]

Referred to in §601.44

**601.43 Default in other cases.** Where the plaintiff's claim is not founded upon such written instrument or account, and the defendant does not appear, the justice shall proceed to hear the allegations and proofs of the plaintiff, and render judgment thereon for the amount to which he shows himself entitled, not exceeding the amount stated in the notice. [C51,§2294; R60,§3884; C73,§3541; C97,§4511; C24, 27, 31, 35, 39,§10546; C46, 50, 54, §601.43]

Referred to in §601.44

**601.44 Default as to counterclaim.** In the cases contemplated in sections 601.42 and 601.43, if the defendant has previously filed a counterclaim, founded on a written instrument purporting to have been signed by the plaintiff, calling for a certain sum, or on a verified account, the justice shall allow such counterclaim in the same manner as though the defendant had appeared, and render judgment accordingly. [C51,§2295; R60,§3885; C73,§3542; C97,§4512; C24, 27, 31, 35, 39,§10547; C46, 50, 54, §601.44]

**601.45 Judgment set aside.** Judgment dismissing the cause, or by default, may be set aside by the justice at any time within six days after being rendered, if the party applying therefor shows a satisfactory excuse for his nonappearance. [C51,§2296; R60,§3886; C73, §3543; C97,§4513; C24, 27, 31, 35, 39,§10548; C46, 50, 54, §601.45]

**601.46 New trial.** In such case a new day shall be fixed for trial, and notice thereof given to the other party or his agent. [C51,§2297;

R60,§3887; C73,§3544; C97,§4514; C24, 27, 31, 35, 39,§10549; C46, 50, 54, §601.46]

**601.47 Costs of new trial.** Such orders shall be made in relation to the additional costs thereby created as are equitable. [C51,§2298; R60,§3888; C73,§3545; C97,§4515; C24, 27, 31, 35, 39,§10550; C46, 50, 54, §601.47]

**601.48 Execution recalled.** Any execution which may in the meantime have been issued shall be recalled in the same manner as in cases of appeal. [C51,§2299; R60,§3889; C73, §3546; C97,§4516; C24, 27, 31, 35, 39,§10551; C46, 50, 54, §601.48]

Execution recalled, §601.85

**601.49 Jury summoned.** If a jury be demanded, the justice shall issue his precept to some constable of the township, directing him to summon the requisite number of jurors possessing the same qualifications as are required in the district court. [C51,§2301; R60,§3890; C73, §3547; C97,§4517; C24, 27, 31, 35, 39,§10552; C46, 50, 54, §601.49]

Qualifications, §607.1

**601.50 Selection of jury.** The jury shall consist of six jurors, unless a smaller number be agreed upon between the parties. Each party is entitled to three peremptory challenges and no more. Any deficiency in their number, arising from any cause, may be supplied by summoning others in the manner above directed. [C51,§2302; R60,§3891; C73,§3548; C97,§4518; C24, 27, 31, 35, 39,§10553; C46, 50, 54, §601.50]

**601.51 Discharge of jury.** The justice may discharge the jury, when satisfied that it cannot agree, and shall immediately issue a new precept for summoning another, to appear at a time therein fixed, not more than three days distant, unless the parties otherwise agree. [C51,§2303; R60,§3892; C73,§3549; C97,§4519; C24, 27, 31, 35, 39,§10554; C46, 50, 54, §601.51]

**601.52 Motion in arrest or for new trial—instructions.** No motion in arrest of judgment, to set aside a verdict, or for a new trial, can be entertained by a justice of the peace; nor can the justice give instructions to the jury, but must rule on objections to evidence. [C51, §2304; R60,§3893; C73,§3550; C97,§4520; C24, 27, 31, 35, 39,§10555; C46, 50, 54, §601.52]

**601.53 Verdict.** The verdict of the jury must be general. Where there are several plaintiffs or defendants, it may be for or against one or more of them. [C51,§2305; R60,§3894; C73,§3551; C97,§4521; C24, 27, 31, 35, 39,§10556; C46, 50, 54, §601.53]

**601.54 Judgment entered.** In cases of dismissal, or of judgment by confession, or on the verdict of a jury, the judgment shall be rendered and entered upon the docket forthwith. In all other cases, it shall be done within three days after the cause is submitted to the justice for final action. [C51,§2306; R60,§3895; C73, §3552; C97,§4522; C24, 27, 31, 35, 39,§10557; C46, 50, 54, §601.54]

**601.55 In excess of jurisdiction.** If the sum found for either party exceeds the jurisdiction of the justice, such party may remit the excess and take judgment for the residue, but he cannot afterwards sue for the amount remitted. [C51,§2307; R60,§3896; C73,§3553; C97,§4523; C24, 27, 31, 35, 39,§10558; C46, 50, 54,§601.55]

**601.56 Dismissal.** Instead of remitting the excess, the party obtaining such verdict may elect to have judgment dismissing the action, in which case such party shall pay the costs. [C51,§2308; R60,§3897; C73,§3554; C97,§4524; C24, 27, 31, 35, 39,§10559; C46, 50, 54,§601.56]

**601.57 Mutual judgments set off.** Mutual judgments between the same parties, rendered by the same or different justices, may be set off against each other. [C51,§2309; R60,§3898; C73,§3555; C97,§4525; C24, 27, 31, 35, 39,§10560; C46, 50, 54,§601.57]

Setoff in district court, §626.92

**601.58 As in district court.** When rendered by the same court, the same course shall be pursued as is prescribed in the district court. [C51,§2310; R60,§3899; C73,§3556; C97,§4526; C24, 27, 31, 35, 39,§10561; C46, 50, 54,§601.58]

Setoff in district court, §626.92

**601.59 When by different justices.** If the judgment proposed to be set off was rendered by another justice, the party offering it must obtain a transcript thereof, with a certificate of such justice indorsed thereon, stating that no appeal has been taken, and that the transcript was obtained for the purpose of being used as a counterclaim in that case. [C51,§2311; R60,§3900; C73,§3557; C97,§4527; C24, 27, 31, 35, 39,§10562; C46, 50, 54,§601.59]

**601.60 Transcripts.** Such transcript shall not be given until the time for taking an appeal has elapsed. [C51,§2312; R60,§3901; C73,§3558; C97,§4528; C24, 27, 31, 35, 39,§10563; C46, 50, 54, §601.60]

**601.61 Docket entry.** The justice giving the transcript shall make an entry of the fact in his docket, and all other proceedings in his court shall thenceforth be stayed. [C51,§2313; R60,§3902; C73,§3559; C97,§4529; C24, 27, 31, 35, 39,§10564; C46, 50, 54,§601.61]

**601.62 Execution for balance.** The transcript being presented to the justice who has rendered a judgment between the same parties, if execution has not been issued thereon, he shall strike a balance between the judgments and issue execution for such balance. [C51,§2314; R60,§3903; C73,§3560; C97,§4530; C24, 27, 31, 35, 39,§10565; C46, 50, 54,§601.62]

**601.63 Execution on transcript.** If execution has issued, he shall also issue execution on the transcript filed with him, and deliver it to the officer who has the other execution. [C51,§2315; R60,§3904; C73,§3561; C97,§4531; C24, 27, 31, 35, 39,§10566; C46, 50, 54,§601.63]

**601.64 Execution as setoff.** Such officer shall treat the lesser execution as so much cash collected on the larger, and proceed to collect the balance. [C51,§2316; R60,§3905; C73,§3562; C97,§4532; C24, 27, 31, 35, 39,§10567; C46, 50, 54, §601.64]

**601.65 Costs in case of setoff.** The above rules as to setting off judgments between the same parties are subject to the same prohibition as to setting off costs, when the effect will be to leave an insufficient amount of money actually collected to satisfy the costs of both judgments, as is contained in the rules of proceedings in the district court. [C51,§2317; R60, §3906; C73,§3563; C97,§4533; C24, 27, 31, 35, 39, §10568; C46, 50, 54,§601.65]

Setoff in district court, §626.92

**601.66 Transcript filed.** When the judgment of another justice is thus allowed to be set off, the transcript thereof shall be filed among the papers of the case in which it is to be used, and the proper entry made in the justice's docket. [C51,§2318; R60,§3907; C73,§3564; C97,§4534; C24, 27, 31, 35, 39,§10569; C46, 50, 54, §601.66]

**601.67 Refusal to allow setoff of judgment.** If the justice refuses the judgment as a setoff, he shall so certify on the transcript and return it to the party who offered it. When filed in the office of the justice who gave it, proceedings may be had by him in the same manner as though no transcript had been certified. [C51, §2319; R60,§3908; C73,§3565; C97,§4535; C24, 27, 31, 35, 39,§10570; C46, 50, 54,§601.67]

**601.68 Judgment by confession.** A judgment by confession, without action, may be entered by a justice of the peace for an amount within his jurisdiction, and the provisions of law regulating judgments by confessions in courts of record shall, so far as may be, apply to confessions of judgment before a justice of the peace, and the justice shall enter such judgment on his docket, and may issue execution thereon as in other cases. [C51,§§1837, 1841; R60,§§3397, 3401; C73,§3566; C97,§4536; C24, 27, 31, 35, 39,§10571; C46, 50, 54,§601.68]

Judgment by confession, ch 676

**601.69 Transcripts — filing authorized.** A party obtaining a judgment in the justice's or mayor's court may cause a transcript thereof to be certified to the office of the clerk of the district court in the county. [C51,§2320; R60, §3909; C73,§3567; C97,§4537; C24, 27, 31, 35, 39, §10572; C46, 50, 54,§601.69]

Referred to in §601.70  
See §420.37

**601.70 Prior filings legalized.** All transcripts from mayors' courts heretofore filed in the office of the clerk of the district court as provided in section 601.69, shall have the same force and effect as though from the office of the justice of the peace. [C24, 27, 31, 35, 39, §10573; C46, 50, 54,§601.70]

**601.71 Effect.** The clerk shall file the transcript as soon as received, and enter a memorandum thereof and the time of filing in the judgment docket and lien index, and from such entry it shall be treated in all respects and in its enforcement as a judgment obtained in the district court. No execution shall issue from the justice's court after the filing of such transcript. [C51,§2321; R60,§3910; C73,§3568; C97,§4538; S13,§4538; C24, 27, 31, 35, 39,§10574; C46, 50, 54,§601.71]

Action on transcribed judgment, §614.3  
Lien of transcribed judgment, §624.23 et seq.

**601.72 Executions.** Executions for the enforcement of judgments in a justice's court may be issued, as provided in this chapter, at any time within ten years from the entry of the judgment, but not afterward. [C51,§2322; R60,§3911; C73,§3569; C97,§4539; C24, 27, 31, 35, 39,§10575; C46, 50, 54,§601.72]

Execution on certain judgments prohibited, ch 615

**601.73 Form.** Such execution shall be against the goods and chattels of the defendant therein, and shall be directed to any constable of the county. [C51,§2323; R60,§3912; C73,§3570; C97,§4540; C24, 27, 31, 35, 39,§10576; C46, 50, 54,§601.73]

**601.74 Return.** It must be dated on the day on which it is issued, and made returnable within thirty days thereafter. [C51,§2324; R60,§3913; C73,§3571; C97,§4541; C24, 27, 31, 35, 39,§10577; C46, 50, 54,§601.74]

**601.75 Execution renewable.** If not satisfied when returned, it may be renewed from time to time by an indorsement thereon to that effect, signed by the justice, and dated of the date of such renewal. [C51,§2325; R60,§3914; C73,§3572; C97,§4542; C24, 27, 31, 35, 39,§10578; C46, 50, 54,§601.75]

**601.76 Thirty-day extension.** The indorsement must state the amount paid thereon, and shall continue the execution in full force for thirty days from the date of renewal. [C51,§2326; R60,§3915; C73,§3573; C97,§4543; C24, 27, 31, 35, 39,§10579; C46, 50, 54,§601.76]

**601.77 Garnishment.** Garnishment proceedings under execution shall be the same as in the district court, except, upon return of the garnishment being made to the justice who issued the execution, he shall docket a cause, fix a time, and cite the garnishee then to appear and answer. Judgment against the garnishee shall not be entered until the principal defendant shall have had five days notice of the garnishment proceedings to be served in the same manner as original notices. [C97,§4544; S13,§4544; C24, 27, 31, 35, 39,§10580; C46, 50, 54,§601.77]

Garnishments generally, ch 642  
Notices in district court, §§642.12, 642.14

**601.78 Property sold.** Property levied on before such renewal may be retained by the officer and sold after renewal. [C51,§2327; R60,

§3916; C73,§3574; C97,§4545; C24, 27, 31, 35, 39,§10581; C46, 50, 54,§601.78]

**601.79 Appeal.** Any person aggrieved by the final judgment of a justice may appeal therefrom to the district or a superior court in the county, at his option, in the manner provided by law. [C51,§2328; R60,§3917; C73,§3575; C97,§4546; C24, 27, 31, 35, 39,§10582; C46, 50, 54,§601.79]

Notice of appeal, R.C.P. 357 et seq.

**601.80 Amount in controversy.** No such appeal shall be allowed when the amount in controversy does not exceed twenty-five dollars. [C97,§4547; C24, 27, 31, 35, 39,§10583; C46, 50, 54,§601.80]

#### RULE OF CIVIL PROCEDURE NO. 358

**Filing of bond on appeal.** The appeal bond must be filed in the office of the clerk of the court to which the appeal is taken, within twenty days after the rendition of the judgment appealed from. It shall be in an amount determined by the clerk to be sufficient to secure the judgment and costs of appeal and with sureties approved by said clerk. [Report 1943]

**601.81 By clerk.** If within twenty days the appellant is prepared to take his appeal, and is prevented only by the absence or death of the justice, or his inability to act, he may apply to the clerk of the court to which the appeal may be taken for the allowance thereof. [C51,§2330; R60,§3919; C73,§3577; C97,§4549; C24, 27, 31, 35, 39,§10585; C46, 50, 54,§601.81]

**601.82 How secured.** Such application shall be founded on an affidavit, stating the amount and nature of the judgment, and the time of the rendition thereof, as nearly as practicable, and the reason why he thus applies. [C51,§2331; R60,§3920; C73,§3578; C97,§4550; C24, 27, 31, 35, 39,§10586; C46, 50, 54,§601.82]

**601.83 Action of clerk.** The clerk has thereupon the same power to act in the premises as the justice would have had. He may require the books and papers of the justice to be delivered to him, for which purpose he may issue a precept to the sheriff to that effect, if necessary, and may make out and file the transcript. After this he shall return to the office of the justice of the peace all the papers proper to be kept by the justice. [C51,§2332; R60,§3921; C73,§3579; C97,§4551; C24, 27, 31, 35, 39,§10587; C46, 50, 54,§601.83]

**601.84 Proceedings suspended.** Upon the appeal being perfected, all further proceedings in that court shall be suspended, and the case will be in the court to which the appeal is taken. [C51,§§2334, 2337; R60,§§3923, 3926; C73,§§3581, 3584; C97,§4553; C24, 27, 31, 35, 39,§10589; C46, 50, 54,§601.84]

**601.85 Execution recalled.** If, in the meantime, an execution has been issued, the justice



shall give the appellant a certificate that an appeal has been taken and perfected. Upon that certificate being presented to the constable, he shall cease further action, and release any property taken in execution. [C51, §2335; R60, §3924; C73, §3582; C97, §4554; C24, 27, 31, 35, 39, §10590; C46, 50, 54, §601.85]

**601.86 Papers filed.** Upon the appeal being perfected, the justice shall file in the office of the clerk of the court to which it is taken all the original papers relating to the action, with a transcript of all the entries in his docket. [C51, §2336; R60, §3925; C73, §3583; C97, §4555; C24, 27, 31, 35, 39, §10591; C46, 50, 54, §601.86]

**601.87 Return amended.** The proper court may, by rule, compel the justice to approve an appeal bond, or make or amend his return according to law. [C51, §2338; R60, §3927; C73, §3585; C97, §4556; C24, 27, 31, 35, 39, §10592; C46, 50, 54, §601.87]

Presumption of approval, §682.10

**601.88 Mistakes corrected.** Where an omission or mistake has been made by the justice in his docket entries, and that fact is made unquestionable, the court to which the appeal is taken may correct the mistake or supply the omission, or direct the justice to do so. [C51, §2339; R60, §3928; C73, §3586; C97, §4557; C24, 27, 31, 35, 39, §10593; C46, 50, 54, §601.88]

**601.89 Return—when made.** If an appeal is perfected ten days before the next term of the court to which it is taken, the justice's return must be made at least five days before that term. All such cases must be tried when reached unless continued for cause. [C51, §2340; R60, §3929; C73, §3587; C97, §4558; C24, 27, 31, 35, 39, §10594; C46, 50, 54, §601.89]

**601.90 Affirmance — trial.** If the appellant fails to pay the docket fee and have the case docketed by noon of the second day of the term at which the appeal should properly come on for trial, unless time is extended by the court, the appellee may do so, and have the judgment below affirmed, or have the case set down for trial on its merits, as he may elect. If the appellant, before noon of the next day after an order of affirmance has been granted, shall appear and make a sufficient showing of merits and proper excuse for his default, and pay to the clerk the docket fee, the court in its discretion may set aside the order of affirmance, and the cause shall stand for trial at that term, unless appellee asks a continuance, and the clerk shall pay over to the appellee the docket fee, but, if the appeal at the election of appellee is set down for trial on its merits, and the trial has commenced, the foregoing provision shall not apply. [C97, §4559; C24, 27, 31, 35, 39, §10595; C46, 50, 54, §601.90]

Similar provisions, §601.103 and R.C.P. 181, 356

**RULE OF CIVIL PROCEDURE NO. 357**

**Notice of appeal.** In cases of appeal from the justice court to the district court or superior court, notice of appeal

may be given in either of the following ways:

(a) By the appealing party filing in the justice court on the day on which the judgment is rendered, a written statement signed by such party or his attorney, that such party is appealing from the judgment. It may be made by writing it in the justice's docket.

(b) By the appealing party serving notice of the appeal upon the appellee, his agent, or the attorney who appeared for him, within twenty days after the judgment appealed from is rendered. Such notice shall be served in the same manner as is provided for service of original notice. If the appellee is a nonresident or foreign corporation and does not appear by agent or attorney, or if for any reason it is not possible to make service of such notice upon the appellee, his agent or attorney, the notice of appeal may be served upon the justice who rendered the judgment appealed from. [Report 1943]

Service of notice, R.C.P. 56(a)

**601.91 Trial of appeal.** An appeal brings up the action for trial on the merits alone. All errors, irregularities, and illegalities are to be disregarded under such circumstances, if the action might have been prosecuted in the court to which the appeal is taken. [C51, §2343; R60, §3932; C73, §3590; C97, §4562; C24, 27, 31, 35, 39, §10598; C46, 50, 54, §601.91]

**601.92 Costs of appeal.** The appellant must pay the costs of the appeal, unless he obtains a more favorable judgment than that from which he appealed. [C51, §2345; R60, §3934; C73, §3592; C97, §4564; C24, 27, 31, 35, 39, §10600; C46, 50, 54, §601.92]

**RULE OF CIVIL PROCEDURE NO. 359**

**Dismissal for lack of prosecution.** Any justice court action which is appealed, transferred or taken up by writ of error for review, shall stand for trial or be dismissed for lack of prosecution the same as any case originally brought in the district or superior court. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 360**

**Judgment upon appeal on dismissal for lack of prosecution.** When any judgment has been appealed or taken up by writ of error for review and shall be dismissed in the district or superior court for lack of prosecution, the clerk shall enter judgment against the party or parties appealing in accordance with the judgment of the justice court. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 361**

**Deposit of money in lieu of bond.** When a bond is required any party in lieu of filing a bond, may deposit money

in the sum fixed or specified as the amount of the bond. The rights of parties in and to the money so deposited shall be the same as their rights under the bond if one had been filed. Money deposited with a justice in lieu of a bond shall be transmitted by the justice to the clerk of the court to which the case is appealed, transferred or brought for review by writ of error. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 362

**Additional remedy where exemption claimed.** In any action in justice court where funds are sought to be reached by garnishment, or personal property has been levied upon under attachment or execution, the debtor, in addition to other remedies provided by law, and by motion filed at any time before judgment is entered against the garnishee, or before sale of property taken under attachment or execution, may move for a release of the funds, or certain or all of the personal property on the ground that the same are exempt from attachment or execution. Such motion shall be heard forthwith and the showing or countershowing may be by affidavit or oral testimony or both. The matter of entering judgment against the garnishee or the sale of personal property shall be postponed until the motion is disposed of. [Report 1943]

**601.93 Offer to confess judgment.** Appellant may offer to confess judgment for a certain amount, with costs, and if the final amount recovered be less favorable to the appellee than such offer, he shall pay the costs of appeal. [C51,§2346; R60,§3935; C73,§3593; C97,§4565; C24, 27, 31, 35, 39,§10601; C46, 50, 54,§601.93]

Confession in district court, ch 677

**601.94 Judgment on appeal bond.** Any judgment on the appeal against the appellant shall be entered against him and his sureties, and shall recite the order of liability as principal and surety. [C51,§2347; R60,§3936; C73,§3594; C97,§4566; C24, 27, 31, 35, 39,§10602; C46, 50, 54, §601.94]

Analogous provisions, §§626.17, 626.64 and R.C.P. 224

**601.95 Damages for delay.** If an appeal is taken for delay, the court to which it is taken may award such damages, not exceeding ten percent on the amount of the judgment below, as may seem right. [C51,§2348; R60,§3937; C73, §3595; C97,§4567; C24, 27, 31, 35, 39,§10603; C46, 50, 54,§601.95]

Similar provision, R.C.P. 339

**601.96 Appeal from default—pleadings.** If the appeal is taken from a judgment by default, the defendant may file, before noon of the second day of the term at which the appeal is triable, in the court to which it is taken, and the plaintiff reply thereto as in other cases, any pleadings necessary to properly set forth any defense he may have to the action. In

such case the costs of the trial before the justice shall be taxed to the defendant. [C73, §3596; C97,§4568; C24, 27, 31, 35, 39,§10604; C46, 50, 54,§601.96]

**601.97 Writs of error—when allowed.** Any person aggrieved by an erroneous decision in a matter of law or other illegality in the proceedings of a justice of the peace may, within twenty days after the final decision is made, remove the same, or so much thereof as is necessary, for correction, into the court to which an appeal from such justice might be taken. [C51,§2349; R60,§3938; C73,§3597; C97, §4569; C24, 27, 31, 35, 39,§10605; C46, 50, 54, §601.97]

**601.98 Affidavit—notice.** The basis of the proceedings is an affidavit filed in the office of the clerk, setting forth the errors complained of, and must be filed in the same time, and the notice must be the same as in case of appeal. [C51,§2350; R60,§3939; C73,§3598; C97,§4570; C24, 27, 31, 35, 39,§10606; C46, 50, 54,§601.98]

**601.99 Writ.** The clerk shall thereupon issue an order commanding the justice to certify the record and proceedings, so far as they relate to the facts stated in the affidavit. [C51,§2351; R60,§3940; C73,§3599; C97,§4571; C24, 27, 31, 35, 39,§10607; C46, 50, 54,§601.99]

**601.100 Copy served—return.** A copy of the affidavit shall accompany the order and be served upon the justice, who shall, with the least practicable delay, make the return required. [C51,§2352; R60,§3941; C73,§3600; C97, §4572; C24, 27, 31, 35, 39,§10608; C46, 50, 54, §601.100]

**601.101 Bond.** All proceedings in the justice's court subsequent to judgment may be stayed by a bond, entered into like that required in cases of appeals, and on which judgment shall be entered against the principal and surety in like manner and under like circumstances. [C51,§2353; R60,§3942; C73,§3601; C97, §4573; C24, 27, 31, 35, 39,§10609; C46, 50, 54, §601.101]

**601.102 Amended return.** The court may compel a return to the writ, or an amended return when the first is not full and complete. [C51,§2354; R60,§3943; C73,§3602; C97,§4574; C24, 27, 31, 35, 39,§10610; C46, 50, 54,§601.102]

**601.103 Hearing—dismissal—affirmance.** The action shall stand for hearing on the writ of error at the first term after due notice thereof has been given. In case the party suing out the writ fails to have the return of the justice docketed before noon of the second day of the term at which the case should properly come on for hearing on such writ of error, and to pay the clerk's fees therefor, the appellee, unless time is extended by the court, may cause the action to be docketed and the writ of error dismissed, and, if he so elect, the judgment below affirmed; and the provisions of the section relating to docketing of appeals by appel-

lee shall be applicable to proceedings under writs of error, so far as may be. [C97,§4575; C24, 27, 31, 35, 39,§10611; C46, 50, 54,§601.103]

Similar provisions as to docketing, §601.90, and R.C.P. 181, 356

**601.104 Judgment.** The court may render final judgment, or it may remand the cause to the justice for a new trial, or such further proceedings as shall be deemed proper, and prescribe the notice necessary to bring the parties again before the justice. [C51,§2355; R60,§3944; C73,§3603; C97,§4576; C24, 27, 31, 35, 39,§10612; C46, 50, 54,§601.104]

**601.105 Restitution.** If the court renders a final judgment reversing the judgment of the justice of the peace, after such judgment has been collected in whole or in part, it may award restitution, with interest, and issue execution accordingly, or it may remand the cause to the justice for this purpose. [C51,§2356; R60,§3945; C73,§3604; C97,§4577; C24, 27, 31, 35, 39,§10613; C46, 50, 54,§601.105]

**601.106 Replevin.** The proceedings and verdict in replevin shall be the same as are prescribed in such cases in the district court, except as modified in this chapter. [C51,§2357; R60,§3946; C73,§3605; C97,§4578; C24, 27, 31, 35, 39,§10614; C46, 50, 54,§601.106]

Replevin in general, ch 643

**601.107 Attachment.** Proceedings in attachment, except as modified in this chapter, shall be the same as in the district court, the justice performing the duties with reference thereto which are required of the clerk of that court. The petition must be verified, and claim more than five dollars, and, if a less sum is recovered, the plaintiff shall pay all the costs of the attachment. [C51,§§1884, 2358; R60,§§3245, 3947; C73,§§3024, 3606; C97,§4579; C24, 27, 31, 35, 39,§10615; C46, 50, 54,§601.107]

Attachment and garnishment, ch 639 et seq.

**601.108 Answers of garnishee.** The constable has the same power to administer an oath to the garnishee in attachment or on execution, and to take his answer, as is given to the sheriff in like cases in the district court. [C51,§2360; R60,§3948; C73,§3607; C97,§4580; C24, 27, 31, 35, 39,§10616; C46, 50, 54,§601.108]

Garnishment, ch 642

**601.109 Appearance.** Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action, and the conduct of the same shall be governed by the law relating to garnishments under attachments in the district court. [C51,§2361; R60,§3949; C73,§3608; C97,§4581; C24, 27, 31, 35, 39,§10617; C46, 50, 54,§601.109]

Garnishment, ch 642

**601.110 Attachment without personal service.** In actions in which an attachment is sought, if it is made to appear by affidavit that personal service cannot be had on the defendant within the state, the justice, upon the return day, unless the defendant appear, shall

make an order fixing the day for the trial, not less than sixty days thereafter, and requiring notice to be given by any constable as provided in section 601.111. [R60,§3950; C73,§3609; C97,§4582; C24, 27, 31, 35, 39,§10618; C46, 50, 54,§601.110]

**601.111 Notice by posting.** Upon such order being made, at least sixty days notice of the pendency of such action shall be given by posting up written or printed notices in three public places in the township where the action was commenced, which shall have the effect of a service by publication in the district court, and the justice shall proceed to hear the cause upon the day specified for that purpose; but no bond shall be required of the plaintiff after judgment as may be in the district court. [R60,§3951; C73,§3610; C97,§4583; C24, 27, 31, 35, 39,§10619; C46, 50, 54,§601.111]

Referred to in §601.110  
Service by publication, R.C.P. 60

**601.112 Records deposited with successor.** Every justice of the peace, upon the expiration of his term of office, must deposit with his successor, his official docket, as well as those of his predecessors which may be in his custody, there to be kept as public records. All his official papers shall also be turned over to his successor. [C51,§2377; R60,§3967; C73,§3625; C97,§4584; C24, 27, 31, 35, 39,§10620; C46, 50, 54,§601.112]

**601.113 Records deposited with county auditor.** If his office becomes vacant before his successor is elected, the said docket and papers shall be placed in the hands of the county auditor, and by him turned over to his successor when elected and qualified. [C51,§2378; R60,§3968; C73,§3626; C97,§4585; S13,§4585; C24, 27, 31, 35, 39,§10621; C46, 50, 54,§601.113]

S13,§4585, editorially divided

**601.114 Transcripts by clerk.** During the time of the vacancy in said office, and while the docket and papers are in the hands of the auditor, the clerk of the district court of said county, on the filing of a written request and payment of the fee required by law for the filing of transcripts, by the plaintiff, his agent, or attorney, in any case in which a judgment appears in said docket, shall make a transcript and certify to the same, as provided by law, noting said fact on said docket with date thereof, which transcript, when so made and filed in the office of the clerk of the district court, shall have the same force and effect as though made by a justice of the peace rendering said judgment. [S13,§4585; C24, 27, 31, 35, 39,§10622; C46, 50, 54,§601.114]

Effect of transcript, §601.71

**601.115 Execution or transcript by successor.** The justice with whom the docket of his predecessor is thus deposited may issue or renew execution on or give a transcript of any judgment there entered, in the same manner and with like effect as the justice who rendered the judgment might have done. [C51,

§2379; R60,§3969; C73,§3627; C97,§4586; C24, 27, 31, 35, 39,§10623; C46, 50, 54,§601.115]

C97,§4586, editorially divided  
Similar provision, §601.125

**601.116 Absence, sickness, or inability of justice.** In case of the death, absence, or inability to act of any justice, or the vacation of the office from any cause, execution may be issued from the docket of said justice, or transcript given therefrom, by any other justice in said township, with like effect as might have been done by the justice who rendered the judgment. [C73,§3627; C97,§4586; C24, 27, 31, 35, 39, §10624; C46, 50, 54,§601.116]

**601.117 Successor—how determined.** When two or more justices are equally entitled to be held the successor in office of any justice, the county auditor shall determine by lot which is, and certify accordingly; which certificate shall be in duplicate, one copy of which shall be filed in the office of such auditor, and the other given to such successor. [C51,§§2380, 2381; R60,§§3970, 3971; C73,§3628; C97,§4587; C24, 27, 31, 35, 39,§10625; C46, 50, 54,§601.117]

**601.118 Interchange.** In case of sickness, or other disability, or absence of a justice at the time fixed for a trial of a cause or other proceeding, any other justice of the township may, at his request, attend and transact the business for him without any transfer to another office. The entries shall be made in the docket of the justice at whose office the business is transacted, and the same effect shall be given to the proceedings as though no such interchange of official service had taken place. [C51,§2382; R60,§3972; C73,§3629; C97,§4588; C24, 27, 31, 35, 39,§10626; C46, 50, 54,§601.118]

**601.119 Special constables.** Any justice of the peace, in writing, may specially appoint any person of suitable age to perform any particular duty properly devolving upon a constable, and for that particular purpose the appointee shall be subject to the same obligations and receive the same fees. If such person is appointed to serve an attachment, execution, or order for the delivery of property, he shall, before levying upon the same, execute a bond to the state in a penal sum of not less than two hundred dollars, to be fixed by the justice, with one or more freeholders as sureties, to be approved by and filed with the justice making the appointment, and the usual official oath shall be indorsed thereon and signed. For any breach of such bond, any person injured thereby may bring action thereon in his own name, and recover the same damages as upon a constable's bond in like cases. [C51,§2383; R60, §3973; C73,§3630; C97,§4589; C24, 27, 31, 35, 39, §10627; C46, 50, 54,§601.119]

**601.120 No process to another county.** No process can issue from a justice's court into another county, except when specially authorized. [C51,§2384; R60,§3974; C73,§3631; C97, §4590; C24, 27, 31, 35, 39,§10628; C46, 50, 54, §601.120]

See §§639.17, 639.21, 643.8 et seq.

**601.121 Constables—duties.** Constables are ministerial officers of justices of the peace, and shall serve all warrants, notices, or other process directed to them by and from any lawful authority, and perform all other duties now or hereafter required of them by law. [C51, §§229, 230; R60,§§451, 452; C73,§§398, 399; C97, §579; C24, 27, 31, 35, 39,§10629; C46, 50, 54, §601.121]

**601.122 Sheriff and constable.** The constable is the proper executive officer in a justice's court, but the sheriff may perform any of the duties required of him. The powers and duties of the sheriff in relation to the business of the district court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court. [C51, §2385; R60,§3975; C73,§3632; C97,§4591; C24, 27, 31, 35, 39,§10630; C46, 50, 54,§601.122]

**601.123 Justice his own clerk.** The justice shall be his own clerk, and perform the duty of both judge and clerk. [C51,§2386; R60,§3976; C73,§3633; C97,§4592; C24, 27, 31, 35, 39,§10631; C46, 50, 54,§601.123]

**601.124 Jury fees.** Jury fees in justices' courts shall be taxed as part of the costs. [C51, §2545; R60,§4154; C73,§3811; C97,§4593; C24, 27, 31, 35, 39,§10632; C46, 50, 54,§601.124]

Jury fees, §607.5

**601.125 Powers of successor.** When the term of office of a justice of the peace expires, his successor may issue execution, or renew execution, in the same manner and under the same circumstances as the former justice might have done if his term of office had not expired. [C51,§2387; R60,§3977; C73,§3634; C97,§4594; C24, 27, 31, 35, 39,§10633; C46, 50, 54,§601.125]

Similar provision, §601.115

**601.126 Report of unclaimed witness fees.** Each justice of the peace shall, on the first Monday in January and July each year, pay into the county treasury for the use of the county, all fees of whatsoever kind in his hands at the date of payment and still unclaimed, and shall take from the treasurer duplicate receipts therefor, giving the title of the cause, the names of the witnesses, jurors, officers, or other persons, and the amount each one is entitled to receive, one of which he shall file with the county auditor, who shall charge the amount thereof to the treasurer as so much county revenue, and enter the same upon the proper records as a claim allowed, and, on demand by the persons entitled to said fees, shall issue county orders for the amount due each person, respectively. [C73,§3815; C97, §4595; C24, 27, 31, 35, 39,§10634; C46, 50, 54, §601.126]

**601.127 Penalty.** Any failure to pay over to the county treasurer witness fees, as above provided, is a misdemeanor, and shall be prosecuted as provided by law. [R60,§352; C73,§3816; C97,§4596; C24, 27, 31, 35, 39,§10635; C46, 50, 54, §601.127]

Punishment, §687.7

**601.128 Fees of justice.** Justices of the peace shall be entitled to charge and receive the following fees:

1. For docketing each case in any action, except in garnishment proceedings, one dollar.
2. For issuing each original notice, one dollar.
3. For issuing attachment or order for the delivery of property, fifty cents.
4. For drawing and approving bond, when required in any case, one dollar.
5. For entering judgment by confession after action brought, one dollar.
6. For entering judgment by confession before action brought, two dollars.
7. For entering judgment by default, or on a plea of guilty, one dollar.
8. For entering judgment when contested, one dollar.
9. For additional when a jury is called, two dollars.
10. For issuing venire for jury, fifty cents.
11. For each subpoena in civil action, when demanded, fifty cents.
12. For each oath or affirmation, except in proceedings connected with actions before him, ten cents.
13. For each continuance at the request of either party, one dollar.
14. For setting aside each judgment by default, one dollar.
15. For each information and affidavit, one dollar.
16. For each execution, renewal of execution, or warrant of any kind, one dollar.
17. For each bond or recognition, one dollar.
18. For each mittimus or order of discharge, one dollar.
19. For each official certificate or acknowledgment, fifty cents.
20. For making and certifying transcript or abstract, one dollar.
21. For trial of all actions, civil or criminal, for each six hours or fraction thereof, two dollars.
22. For all money collected and paid over without action, five percent; and for all money collected and paid over after action brought without judgment, two percent, which shall be added to the costs. [C73,§3804; C97,§4597; C24, 27, 31, 35, 39,§10636; C46, 50, 54,§601.128; 56GA, ch 263,§1]

Referred to in §601.130

**601.129 Fees of constable.** Constables shall be entitled to charge and receive the following fees:

1. For serving any notice or civil process, on each person named therein, fifty cents.
2. For copy thereof when required, ten cents.
3. For serving attachment or order for the delivery of property, fifty cents.
4. For traveling fees, going and returning

by the nearest traveled route, per mile, seven cents.

5. For summoning a jury, including mileage, one dollar.
6. For attending the same on trial, for each calendar day, one dollar.
7. For serving execution, besides mileage, fifty cents.
8. For advertising and selling property, seventy-five cents.
9. For advertising without selling, twenty-five cents.
10. For return of execution when no levy is made, ten cents.
11. For serving each subpoena, besides mileage, fifteen cents.
12. For posting up each notice required by law, fifteen cents.
13. For serving each warrant of any kind, seventy-five cents.
14. For attending each trial in a criminal case, for each calendar day, one dollar.
15. For serving each mittimus or order of release, besides mileage, thirty cents.
16. For serving a warrant for the seizure of intoxicating liquors and any other matter connected therewith, the same compensation as allowed a sheriff for a like service.

17. For all money collected on execution and paid over, except costs, five percent, which shall constitute part of the costs. [C73,§3805; C97,§4598; C24, 27, 31, 35, 39,§10637; C46, 50, 54, §601.129]

Referred to in §601.130

**601.130 In criminal cases.** The fees contemplated in sections 601.128 and 601.129, in criminal cases, shall be audited and paid out of the county treasury in any case where the prosecution fails, or where such fees cannot be made from the person liable to pay the same, the facts being certified by the justice and verified by affidavit. The board of supervisors may pay same out of the general fund or the court fund. [C73,§3806; C97,§4599; C24, 27, 31, 35, 39,§10638; C46, 50, 54,§601.130]

Similar provisions, §§337.12, 789.20

**601.131 Accounting for fees—compensation.**

1. Justices of the peace and constables in townships having a population of ten thousand or more shall pay into the county treasury all criminal fees collected in each year.

2. Justices of the peace and constables in townships having a population of under ten thousand shall pay into the county treasury all criminal fees collected in each year in excess of the following sums:

a. In townships having a population of four thousand and under ten thousand, justices one thousand two hundred dollars plus an amount equal to fifty percent of fees collected in excess of one thousand two hundred dollars; constables eight hundred dollars.

b. In townships having a population of under four thousand, justices one thousand two

hundred dollars plus an amount equal to fifty percent of fees collected in excess of one thousand two hundred dollars; constables six hundred twenty-five dollars.

c. In addition they shall pay into the county treasury all criminal fees collected in proceedings in townships other than that in which they were elected.

3. In townships having a population of ten thousand or more, justices of the peace and constables shall receive in full compensation for their services performed in criminal cases during the year, the following sums which shall be paid monthly out of the county treasury:

a. In townships having a population of forty thousand or more, justices thirty-three hundred seventy-five dollars; constables twenty-eight hundred twelve dollars and fifty cents.

b. In townships having a population of twenty-eight thousand and under forty thousand, justices twenty-eight hundred twelve dollars and fifty cents; constables twenty-two hundred fifty dollars.

c. In townships having a population of twenty thousand and under twenty-eight thousand, justices twenty-two hundred fifty dollars; constables eighteen hundred seventy-five dollars.

d. In townships having a population of ten thousand and under twenty thousand, justices eighteen hundred seventy-five dollars; constables fifteen hundred dollars.

4. Justices and constables in all townships having a population of ten thousand and over shall retain such civil fees as may be allowed

by the board of supervisors, not to exceed five hundred dollars per annum, and in townships having a population over fifty thousand, not to exceed one thousand dollars per annum for expenses of their offices actually incurred, and shall pay into the county treasury all the balance of the civil fees collected by them. [C97, §4600; S13, §4600-a; C24, 27, 31, 35, 39, §10639; C46, 50, 54, §601.131]

Duty to account, §79.7

**601.132 Annual report to board of supervisors.** All justices of the peace and constables shall under oath make an annual report to the board of supervisors, upon blanks furnished by the county auditor, of all criminal fees taxed and collected during the year, which report shall also show that all criminal fees and fines collectible by law have been received, such annual report to be made on the first Monday in January, and before the annual settlement shall be made, and accompanied with the receipts of the treasurer for all money paid in to him. [C97, §4600; S13, §4600-b; C24, 27, 31, 35, 39, §10640; C46, 50, 54, §601.132]

**601.133 Quarterly report to county auditor.** Justices of the peace shall make, under oath, quarterly reports, upon blanks furnished by the county auditor, and shall file the same with the county auditor, which reports shall contain a true and correct transcript of all criminal proceedings which have been instituted or adjudicated in their courts, with the names of all attending witnesses and jurors and fees taxed in their favor. [C97, §4600; S13, §4600-c; C24, 27, 31, 35, 39, §10641; C46, 50, 54, §601.133]

# TITLE XXX

## COURTS OF RECORD OF ORIGINAL JURISDICTION

### CHAPTER 602

#### MUNICIPAL COURT

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**602.1 Court established—district defined.** A municipal court may be established in any city having a population of five thousand or more, by proceeding as hereinafter provided. All the civil townships in which such city or any part thereof is located shall constitute the municipal court district. [SS15,§694-c1; C24, 27, 31, 35, 39,§10642; C46, 50, 54,§602.1]

**602.2 Election.** Upon the filing with the city clerk of a petition of not less than fifteen percent of the qualified electors, as shown by the poll list in the last municipal or state election of any municipal court district, the mayor shall, by proclamation published once a week for three consecutive weeks in two newspapers of general circulation published in said municipality, or, if two such newspapers be

not published, then in one such newspaper, submit the question of establishing a municipal court at a general, municipal, or special election to be held at a time specified therein, which time shall be within two months after said petition is filed. If the said proposition is not adopted at such election, said question shall not be resubmitted to the voters of said district within two years thereafter. [SS15, §694-c2; C24, 27, 31, 35, 39,§10643; C46, 50, 54, §602.2]

**602.3 Polling places.** The city council shall for all elections provided for in this chapter designate and provide polling places, select judges and clerks of the election, and furnish booths and ballots for the voters residing in each such township outside the limits of such

city; but no registration of such voters shall be required. [C24, 27, 31, 35, 39, §10644; C46, 50, 54, §602.3]

**602.4 Question submitted—election—certifying result.** At such election the proposition to be submitted shall be, "Shall the proposition to establish a municipal court in the city of (name of city) be adopted?" The election shall be conducted, the vote canvassed, and the result declared in the manner provided by law in respect to other municipal elections. If the majority of the votes cast on said proposition be in favor thereof, said municipal court shall be deemed established. Immediately after such proposition is adopted, the mayor shall transmit to the governor, the secretary of state, and the county auditor, each, a certificate showing that such proposition was adopted. [SS15, §694-c3; C24, 27, 31, 35, 39, §10645; C46, 50, 54, §602.4]

**602.5 Number of judges.** In any municipal court district having a population of less than forty thousand, wherein a municipal court has been established, there shall be one municipal judge; in districts having more than forty thousand and less than sixty thousand inhabitants, there shall be two municipal judges; in districts having more than sixty thousand inhabitants there shall be one municipal judge for each forty thousand inhabitants or major fraction thereof, but no district shall have more than four judges. [SS15, §694-c6; C24, 27, 31, 35, 39, §10646; C46, 50, 54, §602.5]

**602.6 Appointment of officers.** Whenever such court has been established, or whenever any city becomes entitled to an additional judge of such court, the governor shall appoint a judge to fill the position until the beginning of the regular term of office succeeding the next election, or until his successor is elected and qualified. Under like conditions, or, if for any other reason a vacancy shall exist, the other elective officers of the court shall be appointed by the mayor with the approval of the city council. [SS15, §694-c16; C24, 27, 31, 35, 39, §10647; C46, 50, 54, §602.6]

**602.7 Qualification and duties of officers.** Each officer of the court shall be a qualified elector residing in the municipal court district. The judge shall be a practicing lawyer, and shall subscribe to the oath required of judges of the district court, which shall be filed with the city clerk. The duties of the clerk and the bailiff shall be the same, so far as applicable, as those of the clerk of the district court, and of constables and sheriffs, respectively. All regular police officers shall be ex officio special bailiffs when so ordered by a judge, without other compensation than that paid for their services as police officers. [SS15, §§694-c7-c9; C24, 27, 31, 35, 39, §10648; C46, 50, 54, §602.7]

Oath, §63.6

**602.8 Deputy clerks and bailiffs.** The clerk and bailiff, with the approval of the city council,

shall each have power to appoint such deputies as may be necessary to transact the business of the court, whose salaries shall be fixed by the city council. [SS15, §694-c10; C24, 27, 31, 35, 39, §10649; C46, 50, 54, §602.8]

**602.9 Bonds.** The clerk of the court, the deputy clerks, the bailiff, and the deputy bailiffs shall give such bonds as may be required by the city council, which bonds shall be filed with and approved by the city clerk. [SS15, §694-c11; C24, 27, 31, 35, 39, §10650; C46, 50, 54, §602.9]

**602.10 Officers — election and appointment.** Whenever a municipal court has been established, there shall be elected at the following city election a judge or judges thereof; also a clerk and bailiff, unless the council shall appoint the city clerk to act as clerk and a policeman to act as bailiff thereof. [SS15, §§694-c3, -c6; C24, 27, 31, 35, 39, §10651; C46, 50, 54, §602.10]

**602.11 Qualification of officers — term.** The elective officers of the court shall qualify, and their term of office shall begin, on the first day of January after their election. They shall serve for a term of four years. If the city clerk acts as clerk, or a policeman as bailiff, the council shall determine whether or not they shall have compensation additional to their regular salaries, and fix the same if allowed. [SS15, §694-c6; C24, 27, 31, 35, 39, §10652; C46, 50, 54, §602.11]

**602.12 Nomination and election of officers.** The elective officers of the court shall be nominated and elected in the manner provided by law for the nomination and election of other elective officers of the city in such district, except as herein otherwise provided. At all primary and general municipal elections at which officers of the court are to be nominated or elected, as the case may be, there shall be a separate ballot entitled "The Municipal Judiciary Ballot" upon which shall be placed the names of the candidates without party designation. The number of judges, clerks, and bailiffs for whom each elector is entitled to vote shall be designated thereon.

Those receiving the highest number of votes at the primary election, if one be held, shall be nominated for such offices to the extent of twice the number to be filled, if that many or more candidates are voted for at such primary.

The names of all candidates for an office shall be arranged and printed on primary and general election ballots as follows: All precincts shall be arranged in numerical order. The surnames of all candidates for an office shall, for the first precinct in the list, be alphabetically arranged; thereafter for each succeeding precinct the name appearing first in the last preceding precinct shall be placed last so that the name that was second before the change shall be first after the change. [SS15, §§694-c6, -c12-c15; C24, 27, 31, 35, 39, §10653; C46, 50, 54, §602.12]

Nominations of political candidates, §43.112



**602.13 Court of record—records.** The court shall be a court of record, and shall have a seal with the words “Municipal court of . . . . . (inserting name of city), Iowa” thereon. The records of the court shall be kept in substantially the same form and manner as the records of the district court.

The clerk of the municipal court may destroy all court files of civil actions and criminal informations, except those relating to juvenile proceedings, including adoption, after a period of twenty years from date of filing. [SS15,§694-c25; C24, 27, 31, 35, 39,§10654; C46, 50, 54,§602.13]

**602.14 Jurisdiction—civil matters.** It shall have concurrent jurisdiction with the district court in all civil matters where the amount in controversy does not exceed one thousand dollars, except in probate matters, actions for divorce and alimony and separate maintenance, juvenile proceedings unless otherwise authorized, and those directly affecting the title to real estate. [SS15,§694-c18; C24, 27, 31, 35, 39, §10655; C46, 50, 54,§602.14]

**602.15 Criminal matters.** In all criminal matters the court shall exercise the jurisdiction conferred on the district court for the prosecution of misdemeanors, on justice of peace courts, mayors’ courts, and police courts, except that the mayor’s court of any incorporated city or town within such municipal court district other than the city within which said court is established shall have exclusive jurisdiction of prosecutions for the violations of the ordinances of such town. [SS15,§694-c18; C24, 27, 31, 35, 39,§10656; C46, 50, 54,§602.15]

**602.16 Territorial jurisdiction and powers.** The jurisdiction of the municipal court shall be coextensive with the territorial limits of the county. However, in counties having two jurisdictions of the district court, the jurisdiction of the municipal court is restricted to the territory of the district court where the municipal court is situated. The powers exercised by the district court and the judges thereof relating to county attorney informations and the prosecution of misdemeanor offenses is conferred upon and may be exercised by the municipal court and the judges thereof. In all matters of which the municipal court has jurisdiction, the court and the judges shall have the same powers in reference to injunctions, writs, orders, and other proceedings in and out of court as are possessed by the district court and the judges thereof. [SS15,§§694-c18,-c25; C24, 27, 31, 35, 39,§10657; C46, 50, 54,§602.16]

Information by county attorney, §602.29

**602.17 Inferior courts abolished.** Upon the qualification of the officers of the municipal court, the police court, mayor’s court, except in incorporated cities or towns other than the city in which said court is established, justice of the peace courts, and the superior court, in and for the municipal court district, and the offices of police judge, clerk of police court,

justices of the peace, constables, judge and clerk of the superior court, shall be abolished. [SS15,§694-c5; C24, 27, 31, 35, 39,§10658; C46, 50, 54,§602.17]

**602.18 Transfer of causes and records.** All causes pending in the superior court of which the district court has original jurisdiction shall be forthwith transferred to the district court and there docketed, and all records and papers pertaining to the same delivered to and preserved by the clerk. [SS15,§694-c5; C24, 27, 31, 35, 39,§10659; C46, 50, 54,§602.18]

Referred to in §602.20

**602.19 Other causes and records transferred.** All other causes pending in the superior court, and all causes pending in the police court, mayor’s court, except for violation of ordinances of incorporated cities or towns other than that in which said court is established, and justice of the peace courts shall forthwith be transferred to the municipal court and there docketed, and all records and papers pertaining to such causes shall be delivered to the clerk thereof, except that certified copies of such records as have been filed in the district court may be filed with the clerk of the municipal court in lieu of original records. [SS15, §694-c5; C24, 27, 31, 35, 39,§10660; C46, 50, 54, §602.19]

Referred to in §602.20

**602.20 Records transferred to municipal court.** All records and papers of the superior court, police court, mayor’s court, except for violation of ordinances of incorporated cities or towns other than that in which said court is established, and justice of the peace courts not transferred under sections 602.18 and 602.19 shall be transferred to the municipal court. [SS15,§694-c5; C24, 27, 31, 35, 39,§10661; C46, 50, 54,§602.20]

**602.21 Certified copies of records.** The clerk of the district court shall have full power to certify and transcript such records of the superior court as come into his possession; and the clerk of the municipal court shall have full power and authority to certify and transcript such records and certified copies thereof as may come into his possession, and certified copies made by him of said certified copies filed with him shall have the same force and effect as though they were certified copies of the original records. [SS15,§694-c5; C24, 27, 31, 35, 39,§10662; C46, 50, 54,§602.21]

**602.22 Sessions to be continuous — absence of judge—alternate.** There shall be no terms of court, and the court shall be open for business twelve months of the year. There shall always be one judge present each day to hold court and issue such writs and orders as are required. In case of inability of any judge to act, any other judge of any municipal or district court may hold court during such inability; or the governor may appoint a judge to hold court during such inability, who shall

have the same qualifications and shall be paid the same salary and in the same manner as the regular judge.

The words, "inability of any judge to act" as herein used shall include any absence from court duties for reasonable cause, including a reasonable vacation period. In any municipal court having only one judge, the governor shall upon request of the duly elected judge of said court appoint an alternate judge for a term expiring at the same time as the term of the regular judge. The appointment of such alternate judge shall in no way affect the position, rights, or salary of the regular judge. Such alternate judge shall act as judge only in case of the inability of the regular judge to act. The alternate judge shall have the same qualifications as the regular judge and shall subscribe to the same oath which shall be filed with the city clerk. Such alternate judge may practice as an attorney or counselor except at such time as he is acting as judge and holding court for the regular judge. While acting as a judge he shall not act in any manner with respect to any case in which he is interested as an attorney.

The alternate judge shall for such times as he shall act as judge be paid a salary in the same amount and manner as the regular judge. The salary of such alternate judge shall be paid equally from the city treasury and from the court expense fund of the county. [SS15, §§694-c16, c17; C24, 27, 31, 35, 39, §10663; C46, 50, 54, §602.22; 57GA, ch 258, §1]

**602.23 Laws applicable — rules.** All provisions of law relating to the district court and the judges and jurors thereof shall, so far as applicable and when not inconsistent with this chapter, apply to the municipal court and the judges thereof. The judges of the municipal court shall adopt and promulgate rules of practice which shall conform, as nearly as may be, to the rules of the district court of the district in which said municipal court is located. If not established by statute or rule, the judge hearing the cause may prescribe the method of procedure. [SS15, §§694-c4, c20, c25, c26; C24, 27, 31, 35, 39, §10664; C46, 50, 54, §602.23]

**602.24 Change of venue.** All provisions of the law relating to change of venue from the district court shall govern so far as applicable changes of venue from the municipal court. [SS15, §694-c23; C24, 27, 31, 35, 39, §10665; C46, 50, 54, §602.24]

Change of venue, ch 623

**602.25 Causes of action divided.** Causes of action within its jurisdiction shall be divided into the following classes:

Class "A" shall include all equitable actions, actions of forcible entry and detainer, and all ordinary actions, when the amount in controversy exceeds one hundred dollars, and all special actions of which the court has jurisdiction.

Class "B" shall include all ordinary actions when the amount in controversy is one hundred dollars or less.

Class "C" shall include the trial of all public offenses of which this court has jurisdiction, other than for the violation of the city ordinances.

Class "D" shall include search warrant proceedings and all criminal actions for the violation of city ordinances. [SS15, §694-c19; C24, 27, 31, 35, 39, §10666; C46, 50, 54, §602.25]

**602.26 Filing petition—pleadings.** The petition in class "A" cases must be filed with the clerk of the court not less than five days before the date set in the original notice for the appearance of the defendant and unless so filed the defendant shall not be held to appear and answer. Pleadings in class "B" cases shall be the same as for civil actions in justice of the peace courts. [SS15, §§694-c21, c22; C24, 27, 31, 35, 39, §10667; C46, 50, 54, §602.26]

Pleadings in justice courts, §601.32

#### RULE OF CIVIL PROCEDURE NO. 363

**Filing and docketing.** Unless the petition in class "A" cases or the original notice in class "B" cases is filed with the clerk of the court at least five days before the date set in the original notice for appearance, the defendant shall not be held to appear and answer, except that in any municipal court wherein class "B" cases are included in rules prescribing the manner for settlement of controversies by conciliation, the original notice in such conciliation cases need not be filed until the time and the date set forth in the notice for appearance. If the petition or original notice, as the case may be, is not so filed the defendant may have the case dismissed at plaintiff's costs, without notice, by filing a copy of the original notice with the clerk and paying the filing fees. No new action shall be commenced in any court of this state based upon the same claim or demand unless the costs in such dismissed action are fully paid by the claimant and satisfied of record. [Report 1943; amendment 1945]

#### RULE OF CIVIL PROCEDURE NO. 364

**Transfer to district court — in cases brought in the municipal court.** When any defendant files a counterclaim in an amount in excess of the jurisdiction of the court, arising out of the transaction or occurrence that is the subject matter of plaintiff's claim, such defendant, by motion filed with such counterclaim, may have the case transferred to the district court, upon the filing in the municipal court of a bond in an amount, and within the time fixed and with sureties approved by the court. The bond shall be conditioned for the payment of all court costs assessed or adjudged against such defendant by the district court in connection with such case. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 365**

**Manner and proceedings.** Upon transfer of an action from the municipal court to the district court the clerk of the municipal court shall forthwith transmit to the clerk of the district court a transcript of the proceedings, with any original papers, of which he shall retain an authentic copy. The case shall be docketed without fee. The rights of the parties and the practice and procedure shall be the same as in actions originally commenced in district court. [Report 1943]

**602.27 Return day.** In all civil actions, the original notice shall require the defendant, if served within the county, to appear and answer not less than five nor more than fifteen days from the day of service thereof; if served without the county, not less than ten nor more than twenty days from the day of service thereof. [SS15,§694-c22; C24, 27, 31, 35, 39, §10668; C46, 50, 54,§602.27]

**602.28 Criminal actions—how tried.** All criminal actions for the violation of city ordinances shall be tried summarily and without a jury. All other criminal actions shall, except as otherwise provided in this chapter, be triable in the same manner as criminal actions in justice of the peace or other courts having jurisdiction thereof. Prisoners may be committed to either the city or county jail. The judges shall have the same powers of parole and suspension of sentences as are possessed by the judges of the district court.

Misdemeanor cases in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days shall be tried in the same manner as like cases in the district court. [SS15,§§694-c18,-c24; C24, 27, 31, 35, 39,§10669; C46, 50, 54,§602.28]

Referred to in §602.30

Trial in justice court, chs 761, 762

**602.29 Information by county attorney.** The provisions of chapter 769 shall be applicable to the prosecution in the municipal court of cases within its jurisdiction. [C27, 31, 35, §10669-b1; C39,§10669.1; C46, 50, 54,§602.29]

**602.30 Witness fees.** In class "A" cases and in misdemeanor cases specifically mentioned in section 602.28, witnesses shall receive the same fees as witnesses in the district court. In all other cases witness fees shall be the same as in justice of the peace courts. In class "C" and "D" cases, no witness fees shall be paid to any regular police officer of said city, any clerk of said court or his deputy, or any bailiff thereof or his deputy, except when such officers are called as witnesses when not on duty. [SS15, §694-c28; C24, 27, 31, 35, 39,§10670; C46, 50, 54, §602.30]

Witness fees, §622.69 et seq.

**602.31 Payment of witness fees.** The city treasury shall be reimbursed from the county treasury for witness fees and mileage paid in

class "C" cases. Once each month the city treasurer shall certify to the county auditor an itemized statement of such fees, showing in each case the names of the defendants, date of judgment, book and page of the court record, names of witnesses and amount paid to each, whereupon, the county auditor shall issue a warrant therefor payable to the city treasurer without audit, as provided in section 333.3. [C27, 31, 35,§10670-b1; C39,§10670.1; C46, 50, 54,§602.31]

**602.32 Fees, costs, and expenses.** If no provision is made in the laws applicable to the district court for fees, costs, and expenses, they shall be the same as in justice of the peace courts except that the clerk of the municipal court shall charge and collect as fees one-half the amount charged and collected by the clerk of the district court in that county.\* The bailiff may retain the amounts allowed to him by law for mileage and necessary actual expenses in addition to his salary. All other fees, fines, forfeitures, costs, and expenses shall be turned over to the city treasurer by the officer collecting the same on or before the tenth day of each succeeding month, and the city treasurer shall forthwith pay to the county treasurer, for the benefit of the school fund, the portion of the fines and forfeitures collected for the violation of state laws. [SS15,§694-c27; C24, 27, 31, 35, 39,§10671; C46, 50, 54,§602.32; 56GA, ch 264, §4]

Costs in justice court, §§601.123, 601.129

\*See §685.10 (56GA, ch 270,§6)

**602.33 Jury commission.** The city clerk and the city auditor, or in cities not having both such officers, then the city clerk and the city treasurer, and the clerk of the municipal court shall constitute the jury commission. They shall receive no additional compensation, but necessary expenses incurred in the performance of their duties shall be allowed and paid from the city treasury. [SS15,§§694-c29,-c30,-c40; C24, 27, 31, 35, 39,§10672; C46, 50, 54,§602.33]

**602.34 Jury list.** The commission, in the presence and under the supervision of the judge of said court, if only one, and if more than one, a judge of said court designated by the judges thereof, shall, on the establishment of the court, prepare from the pollbooks of the last preceding general election in the territory included in the municipal court district, a list equal in number to one-tenth of all electors thereon qualified for jury service, which shall be known as the "jury list"; and shall, before the last Monday in December following the general municipal election thereafter, prepare such a list from the pollbooks of the preceding general municipal election. [SS15,§694-c32; C24, 27, 31, 35, 39,§10673; C46, 50, 54,§602.34; 57GA, ch 259,§1]

**602.35 Jury list book.** The name of each person on said list shall be entered in alphabetical order in a book kept for that purpose, and opposite each name shall be entered the person's place of residence, giving his street

and number or other definite location if possible. The book shall be kept in the office of the city clerk, and shall be open to the public for inspection and investigation. The jury list may be revised annually on order of the judge. [SS15,§694-c32; C24, 27, 31, 35, 39,§10674; C46, 50, 54,§602.35]

**602.36 Jury—how drawn—when.** When the jury commission shall have completed such jury list, each name contained thereon shall be prepared and deposited in a jury box in the manner required in the district court, which jury box, after being sealed by the jury commissioners, shall be deposited with and remain in the custody of the clerk of the court. On the last Monday of each month, the jury commission shall, in open court and in the presence of the judge or judges, break the seal on said jury box, and draw therefrom the number of names ordered by the court, to constitute the jury panel for the succeeding month. [SS15,§§694-c34-c36,-c39; C24, 27, 31, 35, 39,§10675; C46, 50, 54,§602.36]

Preparation of ballots, §609.15

**602.37 Jury summons—mileage.** The clerk of the municipal court shall forthwith issue a summons to each person drawn to appear in court at such time during the succeeding month as may be ordered by the judge or judges. At such time each juror shall be called and all excuses heard and determined. Jurors shall not be allowed mileage. [SS15,§§694-c37,-c42; C24, 27, 31, 35, 39,§10676; C46, 50, 54,§602.37]

**602.38 Jurors to serve one month—exemptions.** The clerk of the court shall, at the end of each month, check off the jury list the names of all jurors who have served during that month, and such names shall not be again deposited in the jury box until after a new jury list has been prepared, but the names of those who have been drawn and excused from service shall be again deposited therein. Jurors in the district court shall be exempt from service in the municipal court during the biennium in which service was rendered in the district court. [SS15,§§694-c31,-c38; C24, 27, 31, 35, 39,§10677; C46, 50, 54,§602.38]

Exemption from jury service, ch 607

**602.39 Jurors — number — demand for jury.** Demand for trial by jury may be made as provided by rule of court, and if not so made, the cause shall be tried by the court. The jury shall consist of six jurors, unless, in class "A" cases, a jury of twelve is demanded. The party demanding a jury of twelve must at the time deposit with the clerk the sum of six dollars. [SS15,§694-c42; C24, 27, 31, 35, 39,§10678; C46, 50, 54,§602.39]

**602.40 Peremptory challenges in jury of six.** In all cases where the jury consists of six jurors, the clerk shall select eight jurors by lot from the regular panel or additions thereto. Each party shall have the right to peremptorily challenge two jurors and strike off one juror. After all challenges have thus been ex-

ercised or waived, and two jurors have been stricken from the list, the clerk shall read the names of the six jurors remaining who shall constitute the jury selected. [SS15,§694-c43; C24, 27, 31, 35, 39,§10679; C46, 50, 54,§602.40]

**602.41 Instructions.** In all criminal actions and in all civil actions triable to a jury where the amount in controversy exceeds one hundred dollars, the judge shall instruct the jury in writing. Where the amount in controversy in civil actions is one hundred dollars or less, the instructions may be oral. [SS15,§694-c44; C24, 27, 31, 35, 39,§10680; C46, 50, 54,§602.41]

**602.42 Entry judgment — jurisdiction — setting aside default.** Judgment shall be rendered and entered upon the record in all cases within ten days after final submission of the cause, unless for good cause the court extends the time. The court shall retain jurisdiction, for the purpose of correction of errors of the court or in the record, for ten days after the entry of final judgment. Motions to set aside defaults may be made within ten days after the entry thereof. Motions to vacate a judgment or order, because of irregularity in obtaining it, must be made within ninety days from the entry thereof. [SS15,§694-c17; C24, 27, 31, 35, 39,§10681; C46, 50, 54,§602.42]

**602.43 Judgment liens.** Judgments of the court may be by it enforced the same as judgments of the district court, except that no real property shall be levied on or sold on process issued out of said court. Judgments may be made liens on real estate in the county for a period ending ten years after date of entry of such judgments in a municipal court, by filing transcripts thereof in the district court, which thereafter shall have exclusive jurisdiction for the enforcement of such judgments as though rendered in the district court as of the date of filing in said court. [SS15,§694-c46; C24, 27, 31, 35, 39,§10682; C46, 50, 54,§602.43]

Execution on certain judgments prohibited, ch 615  
Judgment liens, §624.23 et seq.

**602.44 Appeals.** The laws relating to appeals from judgments or orders of the district court, or a judge thereof, to the supreme court shall apply to judgments or orders of the municipal court, or a judge thereof, in all civil actions. In class "C" actions, appeals shall be taken direct to the supreme court the same as from the district court. In class "D" actions, appeals shall be taken to the district court as provided in the case of appeals from justice courts. [SS15,§§694-c24,-c45; C24, 27, 31, 35, 39, §10683; C46, 50, 54,§602.44]

Appeals in civil actions, ch 686; in criminal actions, ch 793; to district court, §762.43

**602.45 Judgments superseded.** Whenever a judgment of the court is appealed from and superseded and a transcript of the judgment has been, or thereafter shall be, filed in the district court, the clerk of the municipal court shall certify such fact to the clerk of the district court thereof, who shall note the same on the docket entry of the cause, which shall have

the same effect as though the cause had been appealed from and superseded in the district court. Whenever further action is taken in such causes in the municipal court, the same shall be certified to the clerk of the district court, who shall note the same on the docket entry of said cause. [C24, 27, 31, 35, 39, §10684; C46, 50, 54, §602.45]

**602.46 Shorthand reporter.** Each judge of the municipal court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, insofar as applicable, shall govern, except their compensation which shall be fixed by order of the court not exceeding seventeen dollars and fifty cents per day, in cities and towns having a population of less than seventy thousand, and twenty dollars per day in cities and towns having a population of seventy thousand or more for the time actually engaged in their court duties, and shall be paid one-half by the county and one-half by the city.

All actions included in class "A" hereof, may be reported the same as in the district court, and the reporter's fees shall be taxed therein as costs.

The transcript fees paid reporters shall be the same as in the district court, and may be taxed as part of the costs on appeal. [SS15, §694-c49; C24, 27, 31, 35, 39, §10685; C46, 50, 54, §602.46; 57GA, ch 260, §1]

In district court, §605.6 et seq.; report of trial, §624.9

**602.47 Report of preliminary examinations.** The judge may order the testimony offered upon preliminary examinations taken down and certified by the shorthand reporter and a transcript of the testimony of the witnesses upon such preliminary examination, or the substance of their testimony, prepared by such reporter and filed in the district court with the transcript of proceedings on such preliminary examination. The fees for reporting such preliminary examinations and for transcript of the testimony shall be the same as allowed in civil causes, and shall be taxed as part of the costs in the case. [C24, 27, 31, 35, 39, §10686; C46, 50, 54, §602.47]

Fee, §605.11; payment, §337.12

**602.48 No report in class "B" actions.** No reporter shall be provided for in the trial of actions in class "B" unless the party demanding the same shall pay the fees of the reporter to the clerk in advance, which shall be taxed as costs in the case, unless otherwise ordered by the court. [SS15, §694-c49; C24, 27, 31, 35, 39, §10687; C46, 50, 54, §602.48]

**602.49 Salary.** The annual salary of each municipal judge shall be six thousand five hundred dollars in cities of less than thirty thousand population; seven thousand two hundred dollars in cities of thirty thousand and less than seventy thousand population; and eight thousand dollars in cities of seventy thousand or more population. Upon the designation of any judge of the municipal court to act as

judge of the juvenile court, the annual salary of such municipal court judge so acting shall be increased in the sum of five hundred dollars.

Each clerk shall receive an annual salary of thirty-eight hundred dollars in cities of less than thirty thousand inhabitants; four thousand three hundred dollars in cities of thirty thousand and less than seventy-five thousand inhabitants; five thousand five hundred dollars in cities of seventy-five thousand or more inhabitants. The salary of any clerk of a municipal court whose judge or judges act as judge of the juvenile court shall be increased in the sum of two hundred dollars annually.

Each bailiff shall receive an annual salary of thirty-six hundred dollars in cities of less than thirty thousand inhabitants; thirty-eight hundred fifty dollars in cities of thirty thousand and less than seventy-five thousand inhabitants; four thousand one hundred dollars in cities of seventy-five thousand or more inhabitants; five thousand dollars in cities of one hundred fifty thousand or more inhabitants. The salary of each bailiff of a municipal court whose judge or judges act as judge of the juvenile court shall be increased in the sum of two hundred dollars annually.

The deputy clerks and deputy bailiffs shall receive such compensation as the city council may allow.

The salaries of municipal judges, clerk, bailiff, and all deputies shall be paid, either monthly on the first Monday of each month, or semimonthly on the same days as semimonthly paid employees of such city. Under either method of payment the first month salary shall be paid from the city treasury and the second month salary shall be paid from the court expense fund of the county, thereafter such payments shall alternate from the city treasury to the court expense fund of the county in like manner. [SS15, §694-c47; C24, 27, 31, 35, 39, §10688; C46, 50, 54, §602.49; 56GA, ch 264, §§1, 2; 57GA, ch 258, §2; ch 261, §1]

**602.50 City to provide rooms.** The city council shall provide suitable place for holding said court, and such other rooms and offices as may be necessary for the transaction of the business of said court. All of the other expenses of maintaining said court not otherwise provided for in this chapter shall be paid from the city treasury. Jury fees in class "C" cases and in misdemeanor cases specially mentioned in section 602.28, shall be paid by the county. [SS15, §694-c48; C24, 27, 31, 35, 39, §10689; C46, 50, 54, §602.50; 57GA, ch 262, §1]

**602.51 Abolishing municipal courts.** When a municipal court shall have been established for more than four years, it may be abandoned by proceeding as follows: Upon the filing with the city clerk of a petition of not less than fifteen percent of the qualified electors of such municipal court district as shown by the poll lists of the last municipal or state election, the mayor, by proclamation, shall submit such proposition at a general election. If the ma-

majority of votes cast at such election be in favor of the proposition of abandoning the court, the officers elected at the next succeeding general election shall be those prescribed by law for such cities and townships, and upon the qualification of such officers such municipal court shall be abolished. [SS15,§694-c50; C24, 27, 31, 35, 39,§10690; C46, 50, 54,§602.51]

**602.52 Municipal court buildings authorized.**

Cities having a population of fifty thousand or over shall have the power to erect a municipal court building, and to purchase the grounds therefor, such building when constructed to be used for the housing of the municipal court and such other like purposes as the council from time to time may by ordinance direct, including the housing and retention of persons charged with offenses against the laws of the city and the state. Provided that no such grounds shall be purchased nor any building erected thereon until the question has been submitted to the people at a regular or special election, and approved by a majority of the votes cast at such election voting on said question. [C24, 27, 31, 35, 39,§10691; C46, 50, 54, §602.52]

Vote required to authorize bonds, §75.1

**602.53 Financing and payment.** Such building and grounds shall be financed and paid for in the same manner as jails and station

houses. [C24, 27, 31, 35, 39,§§10692, 10693; C46, 50,§§602.53, 602.54; C54,§602.53]

Jails and station houses, §404.8(3)

**602.54** Repealed by 54GA, ch 159,§104. See §602.53.

**602.55 Election as condition precedent.** No building shall be erected under the provisions of this chapter unless a majority of the legal voters voting thereon vote in favor of the same at a general city election, or at a special election called for such purpose. [C24, 27, 31, 35, 39,§10694; C46, 50, 54,§602.55]

Referred to in §602.56  
Vote required to authorize bonds, §75.1

**602.56 Election—procedure.** The question provided in section 602.55, to be submitted, may be ordered by the city council submitted to a vote at a general city election, or at one specially called for that purpose. Notice of such election shall be given by publication in two newspapers published in said city, once each week, for not less than four consecutive weeks, and the election shall be held not less than seven nor more than ten days after the completion of such publication. The question to be submitted shall be in the following form: "Shall the city of . . . . . erect a municipal court building at a cost not exceeding \$ . . . . ?" [C24, 27, 31, 35, 39,§10695; C46, 50, 54,§602.56]

**602.57** Repealed by 54GA, ch 159,§105.

CHAPTER 603  
SUPERIOR COURT

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603.60 Deposit with clerk district court.  
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**603.1 Establishment and effect of.** Any city in this state containing four thousand inhabitants may establish a superior court as herein-after provided, which, when established, shall take the place of the police court of such city. [C97,§255; S13,§255; C24, 27, 31, 35, 39,§10697; C46, 50, 54,§603.1]

**603.2 Submission to voters.** Upon petition of one hundred citizens of any such city, the mayor, by and with the consent of the council, may, at least ten days before any general or city election, issue a proclamation submitting to the qualified voters of any city the question of establishing said court. Should a majority of all the votes cast upon such proposition be in favor of said court, the same shall be deemed established. [C97,§256; S13,§256-a; C24, 27, 31, 35, 39,§10698; C46, 50, 54,§603.2]

**603.3 Governor to appoint judge.** Whenever such court has been established, the governor shall appoint a judge, who shall hold office until the day following the first Monday in May succeeding the next regular city election and until his successor is elected and qualified. [C24, 27, 31, 35, 39,§10699; C46, 50, 54,§603.3]

**603.4 Judges—terms of office.** Each judge hereafter elected shall hold office for four years from noon of the second secular day of January succeeding his election and shall be elected at the regular municipal election next preceding the expiration of the term of the incumbent as herein provided, and such judge shall be elected quadrennially thereafter. [C97, §256; S13,§256-a; C24, 27, 31, 35, 39,§10700; C46, 50, 54,§603.4]

Temporary provisions, 55GA, ch 246,§1

**603.5 Judge—qualification—bond as clerk.** Said judge shall be a qualified elector of the city, and a practicing attorney at law, and shall subscribe in writing the same oath required of judges of the district court, and file the same with the mayor of the city, and when he acts as clerk thereof he shall give bond to the state in the sum of four thousand dollars, for the faithful discharge of his duties as clerk, which must be filed with and approved by the mayor; and the effect of such election and qualification shall be to abolish the office of police judge of such city. [C97,§257; C24, 27, 31, 35, 39,§10701; C46, 50, 54,§603.5]

Oath, §63.6

**603.6 Vacancy.** In case of vacancy in said office, the governor shall appoint a judge who shall hold office until the next city election, and in case of inability of any judge to act through sickness or any other cause, a judge shall be appointed by the governor to hold office during such inability. [C97,§258; S13, §258-a; C24, 27, 31, 35, 39,§10702; C46, 50, 54, §603.6]

**603.7 Terms.** There shall be held not less than eight nor more than eleven terms of court in each year, the times being arranged by the judge in such manner as shall least conflict with the terms of the district court of the county where said superior court is held, to be fixed by general order made of record, at least ten days before the first term in each year; but, as a police court, it shall always be open for the dispatch of business. [C97,§259; C24, 27, 31, 35, 39,§10703; C46, 50, 54,§603.7]

**603.8 Concurrent jurisdiction.** Said court shall have jurisdiction concurrent with the district court in all civil matters, except in probate matters and actions for divorce, alimony, and separate maintenance. [C97,§260; S13,§260; C24, 27, 31, 35, 39,§10704; C46, 50, 54,§603.8]

S13,§230, editorially divided

**603.9 Exclusive jurisdiction.** It shall have exclusive original jurisdiction to try and determine all actions, civil and criminal, for the violation of city ordinances, and all jurisdiction conferred on police courts as now or as may hereafter be provided by law, and concurrent jurisdiction with justices of the peace. [C97, §260; S13,§260; C24, 27, 31, 35, 39,§10705; C46, 50, 54,§603.9]

**603.10 Writs of error.** Writs of error and appeals may be taken thereto from justices' courts in the township in which the court is held, and, by consent of parties, from any other township in the county. [C97,§260; S13,§260; C24, 27, 31, 35, 39,§10706; C46, 50, 54,§603.10]

**603.11 Criminal actions.** For the trial of criminal actions on information and complaint, the court shall be open at such times and under such rules as it shall prescribe. [C97, §260; S13,§260; C24, 27, 31, 35, 39,§10707; C46, 50, 54,§603.11]

**603.12 Attachment.** In actions by attachment, where real property is levied on by writ of attachment, the officer levying the writ shall make entry thereof in the encumbrance book in the office of the clerk of the district court, in like manner and with like effect as of levies made in the district court. [C97,§260; S13, §260; C24, 27, 31, 35, 39,§10708; C46, 50, 54, §603.12]

Attachment, ch 639

**603.13 Commitments.** Parties may be committed to the city prison for confinement or punishment, instead of the county jail, at the option of the judge. [C97,§260; S13,§260; C24, 27, 31, 35, 39,§10709; C46, 50, 54,§603.13]

**603.14 Substitute judge.** In the absence of the judge, or in case of his inability to act, then, during such time, proceedings for the

violation of city ordinances may be had before a justice of the peace residing in such city. [C97,§260; S13,§260; C24, 27, 31, 35, 39,§10710; C46, 50, 54,§603.14]

**603.15 Changes of venue.** Changes of venue may be taken from said court in all civil actions to the district court of the same or another county, in the same manner, for like causes and with the same effect as the venue is changed from the district court. [C97,§261; S13,§261; C24, 27, 31, 35, 39,§10711; C46, 50, 54, §603.15]

S13,§261, editorially divided  
District court procedure, ch 623

**603.16 Nonresident defendants.** In all civil cases where any party defendant shall, before any pleading is filed by him, file in said cause a motion for a change of venue to the district court of the county, supported by affidavit showing that such party defendant was not a resident of the city where such court is held, at the time of the commencement of the action, the cause, upon such motion, shall be transferred to the district court of the county. [S13, §261; C24, 27, 31, 35, 39,§10712; C46, 50, 54, §603.16]

**603.17 Criminal actions.** All criminal actions, including those for the violation of the city ordinances, shall be tried summarily and without a jury, saving to the defendant the right of appeal to the district court, which appeal shall be taken in the same time and manner as appeals are taken from justices' courts in criminal actions. [C97,§261; S13,§261; C24, 27, 31, 35, 39,§10713; C46, 50, 54,§603.17]

Appeals in justice court, §762.43

**603.18 Transfers to district court.** In case of vacancy in said office for sixty days or more, a district judge of the county may, on application of any party to any proceeding pending in the superior court, enter an order directed to the clerk of that court, or his deputy, or the acting clerk, directing such clerk to forthwith transmit to said district court the files and exhibits in said cause, together with a certified copy of the record in said cause, and thereupon said cause shall be disposed of in the district court as though originally brought therein. [C24, 27, 31, 35, 39,§10714; C46, 50, 54, §603.18]

**603.19 Powers of judge.** The judge shall have the same power in regard to injunctions, writs, orders, and other proceedings, out of court, as are possessed by the judges of the district court. [C97,§262; C24, 27, 31, 35, 39, §10715; C46, 50, 54,§603.19]

**603.20 Court of record—laws applicable.** The superior court shall be a court of record. All statutes governing the district court as to venue, commencement of action, jurisdiction, process, pleadings, practice, modes of trial, judgment, execution, and costs shall apply to and govern the superior courts, except when

the same may be inconsistent with the provisions of this chapter. [C97,§263; C24, 27, 31, 35, 39,§10716; C46, 50, 54,§603.20]

Execution on certain judgments prohibited, ch 615

**603.21 Seal.** Each such court shall have its own seal, with the words "Superior court" and the name of the city and state thereon. [C97,§264; C24, 27, 31, 35, 39,§10717; C46, 50, 54, §603.21]

**603.22 Recorder to act as clerk.** As long as the business of the court can be done without a clerk, the judge shall be the clerk of said court, and the city recorder or city clerk shall be deputy clerk of said court and may perform the duties of his principal as clerk of said court. Whenever, from the accumulation of causes and other demands upon the court, a clerk becomes necessary, the city recorder or clerk shall be the clerk thereof. He shall give bonds as required when the judge acts as clerk, and perform the same services as required by law of the clerk of the district court. [C97, §265; S13,§265; C24, 27, 31, 35, 39,§10718; C46, 50, 54,§603.22]

Clerk of the district court, ch 606

**603.23 Marshal as sheriff.** The city marshal shall be the executive officer of said court, and his duties and authority in court and in executing process shall correspond with those of the sheriff of the county in the district court, and with process from that court. The process of said court may be also served by the sheriff. [C97,§266; C24, 27, 31, 35, 39,§10719; C46, 50, 54, §603.23]

**603.24 Costs in civil actions.** The costs and fees of said courts in civil actions shall be the same as in the district court, except as herein otherwise provided. [C97,§267; C24, 27, 31, 35, 39,§10720; C46, 50, 54,§603.24]

C97,§267, editorially divided  
Costs in general, ch 625

**603.25 Accounting by clerk.** The clerk of the superior court shall account for and pay over to the city all fees that may be paid into the said court, and also all fines for the violation of the city ordinances. Of all other fines he shall render the same account as is provided for justices of the peace. [C97,§267; C24, 27, 31, 35, 39,§10721; C46, 50, 54,§603.25]

Accounting for fine, §762.40 et seq.

**603.26 Violations of ordinances.** In actions for the violation of city ordinances, if unsuccessful, the city shall pay all costs, the same as provided by law for the county in criminal actions prosecuted in the name and on behalf of the state. [C97,§267; C24, 27, 31, 35, 39, §10722; C46, 50, 54,§603.26]

Payment by county, §337.12

**603.27 Criminal actions.** The fees in criminal actions shall be the same as in justices' courts, and shall be paid and accounted for as hereinbefore stated, and as otherwise provided



by law for justices of the peace and their courts. [C97,§267; C24, 27, 31, 35, 39,§10723; C46, 50, 54,§603.27]

Fees. §§601.128, 601.129

**603.28 Right to jury.** When causes are assigned for trial, any party desiring a jury shall then make his demand therefor, or the same shall be deemed to have been waived. Causes in which a jury has been demanded shall be tried first in their order, and when disposition shall have been made of such causes the jury shall be discharged from further attendance at that term. [C97,§268; C24, 27, 31, 35, 39,§10724; C46, 50, 54,§603.28]

**603.29 How jurors drawn.** In order to provide jurors for the superior courts, the county auditor, clerk of the district court and recorder, of the county in which any city having a superior court is located, shall meet at the courthouse on the third Monday of February, April, June, August, October, and December of each year, and proceed, in the manner provided by chapter 609, to draw the names of fifteen persons to act as jurors in said superior court. [C97,§269; C24, 27, 31, 35, 39,§10725; C46, 50, 54,§603.29]

C97,§269, editorially divided

**603.30 Drawing to constitute panel.** The persons whose names are drawn at any drawing under the provisions hereof shall be subject to jury duty, and constitute the regular panel of jurors in said superior court, for the two calendar months commencing with the first day of the month next succeeding the drawing. [C97,§269; C24, 27, 31, 35, 39,§10726; C46, 50, 54,§603.30]

**603.31 Certification to city clerk.** A list of the names of the persons drawn at each drawing provided by this chapter shall be immediately made out and certified by the clerk of the district court, under his hand and seal, and such certified list transmitted by mail to the recorder or clerk of the city in which said superior court is located. [C97,§269; C24, 27, 31, 35, 39,§10727; C46, 50, 54,§603.31]

**603.32 Precept.** A precept of said superior court shall issue, five days before the first day of each term of court, for the jurors constituting the panel for such term, under the provisions hereof, which precept shall be issued and served as provided by law in like cases in the district court. [C97,§269; C24, 27, 31, 35, 39,§10728; C46, 50, 54,§603.32]

Issuance and service, §609.30 et seq.

**603.33 Drawing of jurors—provisions applicable.** The provisions of chapter 609 in relation to the selection and drawing of petit jurors and talesmen for the district courts, shall also apply to the selection and drawing of petit jurors and talesmen for the superior courts in such counties. [C24, 27, 31, 35, 39,§10729; C46, 50, 54,§603.33]

**603.34 Jury of six.** The jury shall consist of six qualified jurors, unless, when a jury is demanded as provided in this chapter, the party at that time shall demand a jury of twelve. [C97,§270; C24, 27, 31, 35, 39,§10730; C46, 50, 54,§603.34]

C97,§270, editorially divided

**603.35 Jury of twelve.** In all civil cases the party requesting a jury of twelve shall at the time of making such demand deposit with the clerk the entire additional expense of the additional jurors, which sum shall be fixed by the court and paid to the clerk at the time of making such demand. [C97,§270; C24, 27, 31, 35, 39,§10731; C46, 50, 54,§603.35]

Referred to in §603.38

**603.36 Talesmen.** Talesmen may be summoned on the order of the court by the marshal from the body of the county. [C97,§270; C24, 27, 31, 35, 39,§10732; C46, 50, 54,§603.36]

**603.37 Accounting.** All such deposits of additional expense for jurors shall be paid into the county treasury at the close of each term of such superior court, and the county treasurer shall give duplicate receipts therefor, one to be held by said clerk, and the other to be presented by him to the county auditor, who shall charge the treasurer with the amount thereof in the proper account. [C97,§270; C24, 27, 31, 35, 39,§10733; C46, 50, 54,§603.37]

**603.38 Juries in certain cities.** In all cities which now have a population of forty thousand or more, and in which superior courts are now or may hereafter be established, it shall be unnecessary in such superior court to make demand for trial by jury, and causes triable to a jury shall be tried to twelve jurors without the additional expense to any of the parties, required by section 603.35. [S13,§280-a; C24, 27, 31, 35, 39,§10734; C46, 50, 54,§603.38]

Referred to in §603.46

**603.39 Manner of drawing.** In providing jurors for superior courts in all such cities, the names of sixty persons shall be drawn by the officers at the times and in the manner provided by chapter 609. [S13,§280-b; C24, 27, 31, 35, 39,§10735; C46, 50, 54,§603.39]

38GA, ch 245,§3, editorially divided  
Referred to in §603.46

**603.40 Drawing to constitute panel.** Such persons whose names are drawn shall be subject to jury duty, and shall constitute the regular panel of jurors in said superior courts for the two calendar months, commencing with the first day of the month succeeding the drawing. [S13,§280-b; C24, 27, 31, 35, 39,§10736; C46, 50, 54,§603.40]

Referred to in §603.46

**603.41 Certification to city clerk.** A list of the names of the persons drawn at each drawing provided by this chapter shall be immediately made out and certified by the clerk of the district court, under his hand and seal,

and such certified list transmitted by mail to the recorder or clerk of the city in which said superior court is located. [C24, 27, 31, 35, 39, §10737; C46, 50, 54, §603.41]

Referred to in §603.46

**603.42 Precept.** A precept of said superior court shall issue at such time or times as the judge of said court shall direct, authorizing and directing the marshal of said city in which said superior court is located, to summon such number of said jurors, in the order of their certification by the clerk of the district court, as the judge of said superior court shall deem necessary, which precept shall be issued and served as provided by law in like cases in the district court. [S13, §280-b; C24, 27, 31, 35, 39, §10738; C46, 50, 54, §603.42]

Referred to in §603.46  
Issuance and service, §609.30

**603.43 Salary of judge.** In all such cities the salary of the judge of the superior court shall be five thousand dollars per annum, and paid quarterly; the first two quarters from the city treasury, and the last two from the county treasury of the county wherein such court is located. [S13, §280-c; C24, 27, 31, 35, 39, §10739; C46, 50, 54, §603.43]

Referred to in §603.46

**603.44 Per diem of shorthand reporters.** In all such cities the compensation of the shorthand reporter in such superior court shall be eight dollars a day for the time actually employed. [S13, §280-d; C24, 27, 31, 35, 39, §10740; C46, 50, 54, §603.44]

Referred to in §603.46

**603.45 Deputy clerk—compensation.** In all such cities there may be appointed by the city council, a deputy clerk of the court, who shall receive such compensation as the city council may allow. [S13, §280-e; C24, 27, 31, 35, 39, §10741; C46, 50, 54, §603.45]

Referred to in §603.46

**603.46 Applicable to certain cities.** Sections 603.38 to 603.45, inclusive, shall apply to cities which now have, or may hereafter have a population of forty-five thousand or more. [S13, §280-f; C24, 27, 31, 35, 39, §10742; C46, 50, 54, §603.46]

**603.47 Challenges.** In all civil cases, where the jury shall consist of six jurors, the challenges allowed to either party shall be limited to three each, but where the jury shall consist of twelve jurors, the same number of challenges shall be allowed to either party as is or may be allowed in the district court. [C97, §271; C24, 27, 31, 35, 39, §10743; C46, 50, 54, §603.47]

In district court, R.C.P. 187 et seq.

**603.48 Appeals to supreme court.** All appeals from judgments or orders of said court or the judge thereof, in civil actions shall be taken to the supreme court in the same manner, under the same restrictions, within the same time, and with the same effect, as ap-

peals are taken from the district court to the supreme court. [C97, §272; C24, 27, 31, 35, 39, §10744; C46, 50, 54, §603.48]

Appeals from district court, ch 686

**603.49 Judgments made liens.** Judgments in said court may be made liens upon real estate in the county in which the city is situated, by filing transcripts of the same in the district court, as provided in this Code in relation to judgments of justices of the peace, and with equal effect, and from the time of such filing they shall be treated in all respects as to their effect and mode of enforcement as judgments rendered in the district court as of that date, and no execution can thereafter be issued from the said superior court on such judgments, and no real property shall be levied on or sold on process issued out of the superior court. Judgments of said court may be made liens upon real estate in other counties in the same manner as judgments in the district courts. [C97, §273; C24, 27, 31, 35, 39, §10745; C46, 50, 54, §603.49]

Real estate in foreign county, §624.24  
Transcripts from justice courts, §601.69 et seq.

**603.50 Informations.** It shall be the duty of the city attorney or solicitor to file informations in the superior court for violations of the city ordinances and prosecute the same, and for such services he shall receive such compensation as the city council shall allow. [C97, §274; C24, 27, 31, 35, 39, §10746; C46, 50, 54, §603.50]

**603.51 Shorthand reporters—compensation.** The judge of each superior court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, insofar as applicable in every respect, shall govern, except the compensation shall not exceed eight dollars a day for the time actually employed. [C97, §275; C24, 27, 31, 35, 39, §10747; C46, 50, 54, §603.51]

Duties in district court, §§605.6, 624.9

**603.52 Salary of judge.** The salary of each superior court judge in all cities shall be five thousand dollars per annum, payable quarterly.

The first two quarters shall, in all cases, be paid from the city treasury, and the last two from the county treasury of the county wherein said court is located. [C97, §278; C24, 27, 31, 35, 39, §10748; C46, 50, 54, §603.52; 56GA, ch 264, §3]

**603.53 Compensation of clerk.** When a clerk or recorder of a city in which such court is established is required to perform the duties of clerk thereof, he shall receive such compensation for such services as the city council may allow. [C97, §279; C24, 27, 31, 35, 39, §10749; C46, 50, 54, §603.53]

**603.54 Compensation of marshal.** The marshal shall receive the same fees and compensation for serving the process of said court, and for other services required of the sheriff in the district court, as the sheriff receives for like services, but in all criminal cases in said court

the marshal shall receive the same fees for his services as are paid to the constable in justice court. [C97,§280; S13,§280; C24, 27, 31, 35, 39, §10750; C46, 50, 54,§603.54]

Sheriff's fees, §237.11; constable's fees, §601.129

**603.55 Question of abolishing court.** Upon the filing with the city clerk of the petition of two hundred of the qualified electors of any city in which a superior court is now or hereafter established, the mayor shall at least ten days before any general election or election for city officers, issue a proclamation submitting to the qualified voters of said city the proposition to abolish the superior court. The ballots shall be printed in the following form: "Shall the proposition to abolish the superior court of ..... be adopted?", and the election shall be conducted in all respects in accordance with the provisions of the election law. [C97,§276; S13,§276; C24, 27, 31, 35, 39, §10751; C46, 50, 54,§603.55]

**603.56 Certificate that court abolished.** If a majority of the votes cast at said election are for abolishing said superior court, the mayor of such city shall immediately transmit a certificate showing such fact to the secretary of state. [C97,§277; C24, 27, 31, 35, 39,§10752; C46, 50, 54,§603.56]

C97,§277, editorially divided

**603.57 Date when court abolished.** Said court shall be abolished, to take effect upon the date of the expiration of the term of office of the judge then upon the bench. [C97,§277; C24, 27, 31, 35, 39,§10753; C46, 50, 54,§603.57]

**603.58 Effect of abolishment.** The effect of such abolition shall be to revive and re-establish in such city the police court and all the powers incident thereto, in the same manner as the law prescribes for cities where superior courts do not exist. [C97,§277; C24, 27, 31, 35, 39,§10754; C46, 50, 54,§603.58]

**603.59 Deposit with city clerk.** The judge of said superior court shall, before retiring from said position, turn over to the clerk of said city the judgment records of his court in which are entered and recorded all judgments and fines for the violation of ordinances of such city, together with all money collected as fines for the violation of such ordinances, and

take the clerk's receipt therefor. [C97,§277; C24, 27, 31, 35, 39,§10755; C46, 50, 54,§603.59]

**603.60 Deposit with clerk district court.** All other books, records, and papers pertaining to said superior court shall be turned over to the clerk of the district court of the county in which such city is situated, and his duplicate receipt taken therefor, together with all the money in the hands of said judge which has come into his hands as judge of said court, one receipt to be filed with the county auditor. [C97,§277; C24, 27, 31, 35, 39,§10756; C46, 50, 54, §603.60]

**603.61 Report to supervisors.** Said judge shall immediately make reports to the board of supervisors and city council as to the disposition made of said books, papers, dockets, and moneys, as herein provided. [C97,§277; C24, 27, 31, 35, 39,§10757; C46, 50, 54,§603.61]

**603.62 Pending actions.** It shall be the duty of the clerk of the district court, upon receipt of such books, dockets, and records belonging to said superior court, to transfer all cases pending before the same, as shown by said record, and of which the district court would have jurisdiction, to the proper appearance docket of the district court, and to notify the parties or their attorneys of such transfer, and such causes shall stand for trial as if brought originally in said court. [C97,§277; C24, 27, 31, 35, 39,§10758; C46, 50, 54,§603.62]

**603.63 Actions transferred to police court.** All causes pending in the superior court at the time it is abolished, of which the district court would not have jurisdiction, shall be transferred to the police court. [C97,§277; C24, 27, 31, 35, 39,§10759; C46, 50, 54,§603.63]

**603.64 Transcripts and executions.** The clerk of the district court shall make transcripts and issue executions from the records of said superior court under the seal of the district court, for which he shall be entitled to charge and receive the same fees as are now allowed for like services in the district court, and all papers so issued shall have the same force and effect as if issued from the superior court during its existence. [C97,§277; C24, 27, 31, 35, 39,§10760; C46, 50, 54,§603.64]

Fees, §606.15

CHAPTER 604  
DISTRICT COURT

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**604.1 General jurisdiction.** The district court shall have general, original, and exclusive jurisdiction of all actions, proceedings, and remedies, both civil and criminal, except in cases where exclusive or concurrent jurisdiction is or may hereafter be conferred upon some other court or tribunal by the constitution and laws of the state, and shall have and exercise all the powers usually possessed and exercised by courts of record. [C51,§1576; R60,§2663; C73,§161; C97,§225; C24, 27, 31, 35, 39,§10761; C46, 50, 54,§604.1]

C57, §225, editorially divided  
Constitution, Art. V, §6

**604.2 Appeals and writs of error.** It shall also possess and exercise jurisdiction in all appeals and writs of error taken in civil and criminal actions and special proceedings authorized to be taken from all inferior courts, tribunals, boards, or officers, under any provisions of the laws of this state, and shall have a general supervision thereof, in all matters, to prevent and correct abuses, where no other remedy is provided. [C51,§1576; R60,§2663; C73,§161; C97,§225; C24, 27, 31, 35, 39,§10762; C46, 50, 54,§604.2]

**604.3 Wills—administration—guardianship.** The district court of each county shall have original and exclusive jurisdiction to:

1. Probate the wills of, and to grant administration upon the estates of, all persons who at the time of their death were residents of the county, and of nonresidents of the state who die leaving property within the county subject to administration, or whose property is afterwards brought into the county.

2. Appoint guardians of the persons and property of all persons resident in the county subject to guardianship.

3. Appoint guardians of the property of all such persons nonresidents of the state who have property within the county subject to guardianship, or whose property is afterwards brought into the county. [C73,§2312; C97,§225; C24, 27, 31, 35, 39,§10763; C46, 50, 54,§604.3]

**604.4 Executors and trustees.** It shall have jurisdiction in all matters in relation to the appointment of executors and trustees, and the management and disposition of the property of and settlement of such estates; provided that where jurisdiction has heretofore been acquired, the same shall be retained until such estate is closed. [C97,§225; C24, 27, 31, 35, 39,§10764; C46, 50, 54,§604.4]

Investment of funds, ch 682  
Similar provision, §633.32

**604.5 Circuit court records.** The district court shall succeed to, and exercise full authority and jurisdiction over, the records of the circuit court, and may enforce all judgments, decrees, and orders thereof in the same manner and to the same extent as it may exercise like jurisdiction and authority over its own records, and, for the purpose of the issuance of process, and of any and all other acts necessary to the due and efficient enforcement of the orders, judgments, and decrees of the circuit court, the records thereof shall be deemed records of the district court. [C73,§§162, 2312; C97,§225; C24, 27, 31, 35, 39,§10765; C46, 50, 54, §604.5]

**604.6 Transcripts—process.** Transcripts and process from the judgments, decrees, and records of the circuit court shall be issued by the clerk of the district court, and under the seal of his office. [C97,§225; C24, 27, 31, 35, 39, §10766; C46, 50, 54,§604.6]

**604.7 Counties bordering on Missouri river.**

The jurisdiction of the courts of the state of Iowa, in counties bordering on the Missouri river, in all civil and criminal actions and proceedings, is hereby declared to extend to the center of the main channel of the Missouri river, where the same now is or may hereafter be, and to all lands and territory lying along said river, which have been adjudged by the United States supreme court or the supreme court of this state to be within the state of Iowa, and to such other lands and territory along said river over which the courts of this state have heretofore exercised jurisdiction. [S13,§395-a; C24, 27, 31, 35, 39,§10767; C46, 50, 54,§604.7]

Related provisions, Admission of Iowa, Constitution, Preamble; also §§1.2, 1.3, 753.6

**604.8 Judicial districts.** For judicial purposes, the state is hereby divided into twenty-one judicial districts, as follows:

The first district shall consist of the county of Lee, and have two judges.

The second district shall consist of the counties of Lucas, Monroe, Wapello, Jefferson, Davis, Van Buren, and Appanoose, and have four judges.

The third district shall consist of the counties of Wayne, Decatur, Clarke, Union, Ringgold, Taylor, and Adams, and have three judges.

The fourth district shall consist of the counties of Woodbury and Monona, and have four judges.

The fifth district shall consist of the counties of Dallas, Guthrie, Adair, Madison, Warren, and Marion, and have three judges.

The sixth district shall consist of the counties of Jasper, Poweshiek, Mahaska, Keokuk, and Washington, and have three judges.

The seventh district shall consist of the counties of Muscatine, Scott, Clinton, and Jackson, and shall have six judges who shall be so elected that each county shall have at least one resident judge. The largest county at the last federal census shall have three resident judges.

The eighth district shall consist of the counties of Iowa and Johnson, and have two judges, who shall not be residents of the same county.

The ninth district shall consist of the county of Polk, and have seven judges.

The tenth district shall consist of the counties of Delaware, Buchanan, Black Hawk, and Grundy, and have three judges.

The eleventh district shall consist of the counties of Story, Boone, Webster, Hamilton, Hardin, Franklin, and Wright, and have four judges.

The twelfth district shall consist of the counties of Bremer, Butler, Floyd, Mitchell, Worth, Cerro Gordo, Hancock, and Winnebago, and have four judges.

The thirteenth district shall consist of the counties of Clayton, Allamakee, Fayette, Winnesiek, Howard, and Chickasaw, and have three judges.

The fourteenth district shall consist of the counties of Buena Vista, Clay, Palo Alto, Kos-

suth, Emmet, Dickinson, Humboldt, and Pocatontas, and have three judges.

The fifteenth district shall consist of the counties of Pottawattamie, Cass, Shelby, Audubon, Montgomery, Mills, Page, Fremont, and Harrison, and shall have five judges.

The sixteenth district shall consist of the counties of Ida, Sac, Calhoun, Crawford, Carroll, and Greene, and have three judges.

The seventeenth district shall consist of the counties of Tama, Benton, and Marshall, and have two judges.

The eighteenth district shall consist of the counties of Linn, Jones, and Cedar, and have four judges.

The nineteenth district shall consist of the county of Dubuque, and have two judges.

The twentieth district shall consist of the counties of Des Moines, Henry, and Louisa, and shall have two judges.

The twenty-first district shall consist of the counties of Cherokee, O'Brien, Osceola, Lyon, Sioux, and Plymouth, and shall have three judges. [C97,§227; SS15,§227; C24, 27, 31, 35, 39,§10768; C46, 50, 54,§604.8; 57GA, ch 263,§1]

SS15,§227, editorially divided  
Temporary provisions as to new judges in 7th and 9th districts, 57GA, ch 263,§2

For changes in districts, see 1GA, ch 26; 2GA, ch 57; 3GA, ch 68; 4GA, ch 146; 5GA, chs 111, 115; 6GA, chs 2, 34, 56, 81, 145, 231, 237, 260; 7GA, ch 94; 10GA, ch 98; 14GA, chs 61, 90; 16GA, ch 56; 21GA, ch 134; 25GA, chs 66, 67; 26GA, chs 121, 122; 28GA, ch 8; 35GA, ch 27

**604.9 Place of holding court.** Courts must be held at the places provided by law, except for the determination of actions, special proceedings, and other matters not requiring a jury, when they may, by consent of the parties therein, be held at some other place. [C51, §1597; R60,§2687; C73,§192; C97,§286; C24, 27, 31, 35, 39,§10769; C46, 50, 54,§604.9]

**604.10 County without courthouse.** When there is no courthouse at the place where the courts are to be held, its sessions shall be at such suitable place as the board of supervisors provides, but if no such place is provided, the court may direct the sheriff to procure one at the expense of the county. [C51,§§1573, 1574; R60,§§2660, 2661; C73,§§173, 174; C97,§239; C24, 27, 31, 35, 39,§10770; C46, 50, 54,§604.10]

**604.11 City or town to provide courtroom.** Where terms are held in any city or town not the county seat, such city or town shall provide and furnish the necessary rooms and places for such terms, free of charge to the county. Any necessary alterations, repairs, or additions to said rooms and places shall be provided at the expense of the county; and the board of supervisors is authorized and empowered to make such alterations, improvements, or additions, the cost thereof not to be in excess of the limitations imposed by section 345.1. [C51,§1566; R60,§2653; C73,§163; C97, §226; C24, 27, 31, 35, 39,§10771; C46, 50, 54, §604.11]

**604.12 Dual county seats.** In any county having two county seats, terms of court shall

be held at each, and, in the county of Pottawattamie, court shall be held at Avoca, as well as at the county seat. [C73,§164; C97,§228; C24, 27, 31, 35, 39,§10772; C46, 50, 54,§604.12]

**604.13 Terms not at county seats—effect—duty of clerk.** When a court shall be held at a place not the county seat, all of the provisions of the statute in relation to district courts shall be applicable thereto, except as herein modified. All proceedings had in said court shall have, within the territory over which said court shall have jurisdiction, the same force and effect as though ordered in the court at the county seat of said county, but transcripts of judgments and decrees rendered therein, levies of writs of attachment upon real estate, mechanics' liens, lis pendens, sales of real estate, redemption, satisfaction of judgments and mechanics' liens, dismissals or decrees in lis pendens, together with all other matters affecting titles to real estate, shall be forthwith certified by the deputy clerk at such place, to the clerk of such court at the county seat, who shall immediately enter the same upon the records in his office. [C97,§230; C24, 27, 31, 35, 39,§10773; C46, 50, 54,§604.13]

**604.14 Terms to be held.** The district judges shall hold four terms of court at each of the places in the several counties of their districts where court is authorized to be held, and, if business requires, then the judges of such district shall, by joint order made at the time of making the assignment of terms hereinafter required and entered of record, provide for regular additional terms. [C97,§229; C24, 27, 31, 35, 39,§10774; C46, 50, 54,§604.14]

**604.15 First district—judges to alternate.** The judges in the first judicial district shall, as nearly as practicable, alternate in holding terms at the places for holding court in said judicial district, and terms may be held simultaneously at both places. [S13,§227-1a; C24, 27, 31, 35, 39,§10775; C46, 50, 54,§604.15]

**604.16 Eighth district—judges to alternate.** The judges in the eighth judicial district shall, as nearly as practicable, alternate in holding terms at the places for holding court in said judicial district, and terms may be held simultaneously at both places. [SS15,§227-8ab; C24, 27, 31, 35, 39,§10776; C46, 50, 54,§604.16]

**604.17 Schedule of terms.** On or before the first day of October in each odd-numbered year the judges shall meet in their respective districts and determine the times and places of holding their courts during the two succeeding calendar years. [C51,§1567; R60,§2654; C73,§165; C97,§232; S13,§232; C24, 27, 31, 35, 39, §10777; C46, 50, 54,§604.17]

S13,§232, editorially divided

**604.18 Filing of schedule.** The plan or schedule thus agreed upon, or ordered by the chief justice of the supreme court when they cannot agree, shall be forthwith forwarded by the district judges to the secretary of state

and the clerk of the district court in each county in such district, and the clerk shall file the same and enter it of record in the journal of the court. [C73,§165; C97,§232; S13,§232; C24, 27, 31, 35, 39,§10778; C46, 50, 54,§604.18]

**604.19 Tabular statement prepared.** The secretary of state shall, within ten days after receiving said orders, or before the first Monday in December after said orders are made, prepare a tabular statement of the times of holding the several courts, as fixed by the several orders in his office, and have printed five thousand copies thereof. [C51,§1568; R60, §2655; C73,§165; C97,§232; S13,§232; C24, 27, 31, 35, 39,§10779; C46, 50, 54,§604.19]

**604.20 Distribution.** Said tabular statement shall be distributed as follows: One copy to each state officer, each county auditor and sheriff, two copies to each judge of the district and superior courts, ten copies each to the state library, the library of the law department of the state university, and the state historical society, thirty-five hundred copies to the clerks of the district court, in proportion to the population of the county, for gratuitous distribution among the attorneys of the county, and the residue for free distribution under the supervision of the secretary of state. [C51, §1567; R60,§2655; C73,§165; C97,§232; S13,§232; C24, 27, 31, 35, 39,§10780; C46, 50, 54,§604.20]

**604.21 Judge to hold one term.** In preparing said plan or schedule, the judges shall so arrange, if practicable, that each judge shall hold at least one term of court during the year in each of the several counties of his district. [C73,§165; C97,§232; S13,§232; C24, 27, 31, 35, 39, §10781; C46, 50, 54,§604.21]

**604.22 Special terms.** A special term may be ordered in any county at any regular term of court in that county, or at any other time, by any judge of the district, for the trial of all causes pending at the last regular term of said court held prior to said special term, in which either party shall have served a trial notice as provided by law, or for receiving pleas of guilty in criminal cases and the entry of judgment thereon. When ordering a special term, the court or judge shall direct whether a grand or trial jury, or both, shall be summoned. [C51,§§1569-1571; R60,§§2656-2658; C73,§166; C97,§233; S13,§233; C24, 27, 31, 35, 39,§10782; C46, 50, 54,§604.22]

Arraignment, plea, and judgment in vacation, §769.23 et seq.

**604.23 Disagreements.** In case the judges of any district are unable to agree as to the manner of holding their courts, or as to the counties in which they are severally to preside, they shall refer the matter to the chief justice of the supreme court, who shall assign said judges to such counties as he may determine. [C97,§231; C24, 27, 31, 35, 39,§10783; C46, 50, 54,§604.23]

C97,§231, editorially divided  
Referred to in §604.24

**604.24 Power to assign judge.** The chief justice of the supreme court shall also have power to assign any district judge, when not occupied in holding court in his own district, to hold court in any other district in the state where any judge may be incapacitated from holding court, or there may arise a necessity therefor. This and section 604.23 shall not be held to affect the right of the judges to interchange holding their terms of court, as now provided by law. [C97,§231; C24, 27, 31, 35, 39, §10784; C46, 50, 54,§604.24]

**604.25 Temporary additional judge.** When, from any cause, the business of the district court of any judicial district of this state cannot be disposed of within a reasonable time by the judges elected within and for such district, then upon the filing of a petition signed by five or more resident attorneys of such district with the clerk of the supreme court, addressed to the chief justice thereof, setting forth the facts, the chief justice, being satisfied that the business of such judicial district demands an additional judge for a temporary period of time to dispose of such business or assist in the disposal of such business, shall name and transfer a judge from some other judicial district where the business of such district will warrant, to the place in the judicial district for which such petition is filed, who shall hold a term of court for such length of time as the chief justice of the supreme court may determine. [S13,§240-b; C24, 27, 31, 35, 39,§10785; C46, 50, 54,§604.25]

S13,§240-b, editorially divided  
Referred to in §604.27

**604.26 Expenses.** The judge so transferred shall be allowed and paid all reasonable and actual expenses while in the performance of his duties in said temporary character, in addition to his salary. [S13,§240-b; C24, 27, 31, 35, 39,§10786; C46, 50, 54,§604.26]

Preparation and audit of claim, §8.6

**604.27 Filing of order.** Upon the order being made for the transfer of such judge as contemplated by section 604.25, such order shall be filed in the office of the clerk of the district court of the county where such judge shall hold a term or part thereof. [S13,§240-c; C24, 27, 31, 35, 39,§10787; C46, 50, 54,§604.27]

S13,§240-c, editorially divided

**604.28 Jurors drawn.** Upon the filing of said order the proper officers, as by statute provided, shall proceed and are hereby empowered as by statute provided, to draw a grand jury and trial jury, if necessary, which shall have the same force and effect as if drawn for a regular term and upon the order of a judge elected for such district in the usual and ordinary transaction of business of such district. [S13,§240-c; C24, 27, 31, 35, 39,§10788; C46, 50, 54,§604.28]

Drawing of jurors, §609.20 et seq.

**604.29 Failure of judge to appear.** If the judge does not appear on the day appointed

for holding the term, the clerk shall make an entry thereof in his record, and adjourn the court until the next day, and so on until the third day, unless he appears, provided three days are allowed for such term, and if he does not appear by five o'clock p. m. of the third day, and before the expiration of the time allotted to the term, it shall stand adjourned until the next regular term. [C51,§§1581, 1582; R60,§§2668, 2669; C73,§§167, 168; C97,§234; C24, 27, 31, 35, 39,§10789; C46, 50, 54,§604.29]

**604.30 Special adjournments.** If the judge is sick, or for any cause is unable to attend court, at the regularly appointed time, he may by letter, telegram, or telephone direct an adjournment to a particular day, and the clerk shall, on the first day thereof, or as soon after as he receives the order, adjourn the court as directed. [C51,§1583; R60,§2670; C73,§169; C97, §235; C24, 27, 31, 35, 39,§10790; C46, 50, 54, §604.30]

Referred to in §604.31

**604.31 Failure of term—effect.** No recognition or other instrument or proceeding shall be rendered invalid by reason of there being a failure of the term; but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in section 604.30. [C51,§1584; R60, §2671; C73,§170; C97,§236; C24, 27, 31, 35, 39, §10791; C46, 50, 54,§604.31]

**604.32 Recognizances continued.** In cases of such continuances or adjournments, persons recognized or bound to appear at the regular term, which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties, if any, shall be liable in case of their nonappearance, in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat. [C51, §1585; R60,§2672; C73,§171; C97,§237; C24, 27, 31, 35, 39,§10792; C46, 50, 54,§604.32]

**604.33 Regular adjournment—effect.** Upon any final adjournment of the court, all business not otherwise disposed of shall stand continued. [C51,§1586; R60,§2673; C73,§172; C97, §238; C24, 27, 31, 35, 39,§10793; C46, 50, 54, §604.33]

**604.34 Decisions and entries in vacation.** With consent of parties, actions and other matters pending in the courts named in this chapter may be taken under advisement by the judges, decided and entered of record in vacation, or at the next term; if so entered in vacation, they shall have the same force and effect from the time of such entry as if done in term time. [C73,§183; C97,§247; C24, 27, 31, 35, 39,§10794; C46, 50, 54,§604.34]

Orders executed outside district, R.C.P. 120  
Vacation procedure in criminal cases, §789.10

**604.35 Expiration of term—pending trials.** Whenever a trial has been commenced, it may be concluded and all proceedings in the case

thereafter conducted in the usual course, whether the time has arrived for commencing a term in another county in the district or not, and without regard to any other court or term thereof. [C73, §§185, 186; C97, §248; C24, 27, 31, 35, 39, §10795; C46, 50, 54, §604.35]

C97, §248, editorially divided

**604.36 Judges may interchange.** The district judges may interchange and hold each other's courts. [C51, §1575; R60, §2662; C73, §175; C97, §240; C24, 27, 31, 35, 39, §10796; C46, 50, 54, §604.36]

**604.37 Judges not to sit together.** In districts in which the district court is composed of more than one judge, the judges shall not sit together in the trial of causes, nor upon the hearing of motions for new trials, but may together hold the same term, making an apportionment of the business between them; and in districts composed of more than one county they may hold terms in different counties at the same time. [C97, §241; C24, 27, 31, 35, 39, §10797; C46, 50, 54, §604.37]

**604.38 Preparation and signing of record.** The clerk shall from time to time make a record of all proceedings of the court, which, when correct, shall be signed by the judge. [C51, §1577; R60, §2664; C73, §176; C97, §242; C24, 27, 31, 35, 39, §10798; C46, 50, 54, §604.38]

C97, §242, editorially divided

**604.39 Signing after term—effect.** When it is not practicable to have all the records prepared and signed during the term, they may

be prepared in vacation and corrected and signed at the next succeeding term; but such delay shall not prevent an execution from issuing in the meantime, and all other proceedings may be had in the same manner as though the record had been signed. [C51, §1578; R60, §2665; C73, §177; C97, §242; C24, 27, 31, 35, 39, §10799; C46, 50, 54, §604.39]

**604.40 Vacation entries.** Entries authorized to be made in vacation shall be signed at the next term of the court. [C51, §1578; R60, §2665; C73, §177; C97, §242; C24, 27, 31, 35, 39, §10800; C46, 50, 54, §604.40]

**604.41 Amending or expunging entry.** The record aforesaid is under the control of the court, and may be amended, or any entry therein expunged, at any time during the term at which it is made, or before it is signed by the judge. [C51, §1579; R60, §2666; C73, §178; C97, §243; C24, 27, 31, 35, 39, §10801; C46, 50, 54, §604.41]

**604.42 Unauthorized alteration.** No record shall be amended or impaired by the clerk or other officer of the court, or by any other person without the order of such court, or of some court of competent authority. [R60, §2984; C73, §2736; C97, §3646; C24, 27, 31, 35, 39, §10802; C46, 50, 54, §604.42]

**604.43 Corrections because of mistakes.** Entries made and signed at a previous term can be altered only to correct an evident mistake. [C51, §1580; R60, §2667; C73, §179; C97, §244; C24, 27, 31, 35, 39, §10803; C46, 50, 54, §604.43]

## CHAPTER 605

### GENERAL PROVISIONS RELATING TO JUDGES AND COURTS

- 605.1 Salary of judges.
- 605.2 Expenses.
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- 605.4 Acts of judge de facto.
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- 605.21 Condition to maintaining action.
- 605.22 Exceptions.
- 605.23 Speedy determination.
- Rule—Death, retirement, or disability of judge, R.C.P. 367.
- Rule—Appeal to district court from administrative body, R.C.P. 368.

**605.1 Salary of judges.** The salary of each judge of the district court shall be ten thousand dollars per year. [C73, §3774; C97, §253; SS15, §253; C24, 27, 31, 35, 39, §10804; C46, 50, 54, §605.1; 56GA, ch 1, §14]

SS15, §253, editorially divided

Referred to in §605.3

For salaries during terms existing July 4, 1955, see 56GA, ch 1, §14

**605.2 Expenses.** Where a judge of the district or supreme court is required, in the dis-

charge of his official duties, to leave the county of his residence or leave the city or town of his residence to perform such duties, he shall be paid such actual and necessary hotel and living expenses not to exceed the sum of nine dollars per day and transportation expenses as shall be incurred. [SS15, §253; C24, 27, 31, 35, 39, §10805; C46, 50, 54, §605.2; 57GA, ch 264, §1]

Referred to in §605.3



**605.3 Contest—to whom salary and expenses paid.** The salary and expense of district judges as provided in sections 605.1 and 605.2 shall be paid to any person who has received a certificate of election as such judge, and has qualified, and is acting thereunder, during the period he so acts without regard to the result of any contest or action brought to test the validity of such election. [C35,§10805-e1; C39,§10805.1; C46, 50, 54,§605.3]

**605.4 Acts of judge de facto.** The right, power, and authority of any such person acting as judge in any and all matters which may come before the court or judge shall be of the same force and effect as if the said person had been duly elected and qualified as such judge. [C35,§10805-e3; C39,§10805.2; C46, 50, 54,§605.4]

**605.5 Audit and payment.** An itemized expense account shall be certified by the party entitled thereto to the state comptroller, which account shall be rendered quarterly and shall be paid in the same manner as the salary of such judge. [SS15,§253; C24, 27, 31, 35, 39, §10806; C46, 50, 54,§605.5]

Preparation and audit of claim, §8.6

**605.6 Shorthand reporter.** Each judge of the district court shall appoint a shorthand reporter who shall, upon the request of either party in a civil case or a criminal case, take and report in full the oral evidence and proceedings in the case, and perform all duties required of him on the trial, as provided by law. [C73,§181; C97,§245; C24, 27, 31, 35, 39,§10807; C46, 50, 54,§605.6]

Detailed report of trial, §624 9

**605.7 Oath—removal.** Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge who appointed him may direct, and may be removed by the judge making such appointment. [C73,§182; C97,§246; C24, 27, 31, 35, 39,§10808; C46, 50, 54,§605.7]

**605.8 Compensation.** Shorthand reporters of the district court shall be paid twenty-five dollars per day for each day's attendance upon said court, under the direction of the judge, out of the county treasury where such court is held, upon the certificate of the judge holding the court, provided however, that the maximum compensation for one-day attendance at court shall not exceed the per diem herein designated. [C73,§3777; C97,§254; SS15,§254-a2. C24, 27, 31, 35, 39,§10809; C46, 50, 54,§605.8; 57GA, ch 260,§2]

SS15,§254-a2, editorially divided

**605.9 Deficiency—how paid.** In case the total per diem of each reporter and his substitute shall not amount to the sum of fifty-four hundred dollars per year, the judge appointing him shall at the end of the year apportion the deficiency so remaining unpaid among the several counties of the district, if there be more than one county in such district, in proportion

to the number of days of court actually held by said judge in such counties, which apportionment shall be by him certified to the several county auditors, who shall issue warrants therefor to said reporter, which warrants shall be paid by the county treasurers out of any funds in the treasury not otherwise appropriated. [SS15,§254-a2; C24, 27, 31, 35, 39,§10810; C46, 50, 54,§605.9; 57GA, ch 260,§3]

**605.10 Expenses.** Where a shorthand court reporter is required, in the discharge of his official duties, to leave the county of his residence or leave the city or town of his residence to perform such duties, he shall be paid his actual and necessary hotel and living expenses not to exceed the sum of six dollars per day and transportation expenses as shall be incurred, which account shall be itemized and approved by the presiding judge of the district court and certified to the county auditor of the county in which such expenses are incurred, and shall be paid in the same manner as the per diem of such reporter is paid. [SS15,§254-a2; C24, 27, 31, 35, 39,§10811; C46, 50, 54,§605.10]

**605.11 Transcript fee.** Shorthand reporters shall also receive such compensation as shall be fixed by rule of the supreme court for transcribing their official notes, to be paid for in all cases by the party ordering the same.

[The compensation of shorthand reporters for transcribing their official notes is hereby fixed at forty cents per page for the original, twenty cents per page for the first carbon copy, and ten cents per page for each additional carbon copy.

A page of transcript shall consist of not less than twenty-five lines written on paper at least 8½x11 inches in size, prepared for binding on the left side, with margins of not more than 1¼ inch on the left nor ¾ inch on the right. Type shall be standard pica with ten letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall not be more than ten spaces from left margin. Pages shall be numbered consecutively in the upper right hand corner. Testimony of a new witness may be started on a new page where the prior witness' testimony ends below the center of the preceding page. Transcripts shall be indexed as to witnesses and exhibits.]\*

[C73,§3777; C97,§254; SS15,§254-a2; C24, 27, 31, 35, 39,§10812; C46, 50, 54,§605.11]

\*By Supreme Court order, May term 1949

**605.12 Taxed as part of costs.** A charge of eight dollars per day for reporting in all cases, except where the defendant in a criminal case is acquitted, shall be taxed as part of the costs in the case by the clerk of the court and paid into the county treasury when collected. [S13, §254-a3; C24, 27, 31, 35, 39,§10813; C46, 50, 54, §605.12]

**605.13 Residence.** The district judge shall be a resident of the district in which he is elected. [C97,§227; SS15,§227; C24, 27, 31, 35, 39, §10814; C46, 50, 54,§605.13]

**605.14 Judge to be attorney.** No person shall be eligible to the office of judge of a court of record, except of police courts, who is not, at the time of his election, an attorney at law, duly admitted to practice under the laws of this state. [S13,§281; C24, 27, 31, 35, 39,§10815; C46, 50, 54,§605.14]

40GA, ch 264, editorially divided

**605.15 Practice prohibited.** During the time that he is holding such office he shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state. Nothing contained in this section shall be construed to prohibit police court judges from practicing as attorneys and counselors in civil matters. [C51,§1587; R60,§2674; C73,§187; C97, §281; S13,§281; C24, 27, 31, 35, 39,§10816; C46, 50, 54,§605.15]

**605.16 Judicial proceedings public.** All judicial proceedings must be public, unless otherwise specially provided by statute or agreed upon by the parties. [C51,§1593; R60,§2683; C73,§189; C97,§283; C24, 27, 31, 35, 39,§10817; C46, 50, 54,§605.16]

Constitution, Art. I,§10

**605.17 When judge disqualified.** A judge or justice is disqualified from acting as such, except by mutual consent of parties, in any case wherein he is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding. This section shall not prevent him from disposing of any preliminary matter not affecting the merits of the case. [C51,§1595; R60,§2685; C73,§190; C97,§284; C24, 27, 31, 35, 39,§10818; C46, 50, 54,§605.17]

Computing relation, §4.1, subsection 24  
Similar provision, §631.5

**605.18 Sunday—permissible acts.** No court can be opened nor any judicial business transacted on Sunday, except to:

1. Give instructions to a jury then deliberating on its verdict.
2. Receive a verdict or discharge a jury.
3. Exercise the powers of a single magistrate in a criminal proceeding.
4. Perform such other acts as are provided by law. [C51,§1596; R60,§2686; C73,§191; C97, §285; C24, 27, 31, 35, 39,§10819; C46, 50, 54, §605.18]

Analogous or related provisions, §§626.6, 639.5, 643.3, 667.3 and R.C.P. 57  
Appearance on holiday, §617.8

**605.19 Rules for conciliation.** The judges of the district court for their districts, the judges of the superior court for their districts, and the judges of the municipal court for their districts may adopt and enforce rules prescrib-

ing the manner of settlement of controversies by conciliation and the duties of the clerks of the several courts in respect thereto; may appoint conciliators or any judge may act as such, but no judge shall preside at the trial of any action involving a controversy in which he has acted as conciliator. [C24, 27, 31, 35, 39, §10820; C46, 50, 54,§605.19]

**605.20 Procedure.** No party shall be represented by counsel, except by consent of the conciliator. The proceedings shall be informal and no record thereof shall be preserved except the agreement of settlement signed by the parties. The judge may direct the same to be filed in the office of the clerk and judgment to be entered thereon. [C24, 27, 31, 35, 39,§10821; C46, 50, 54,§605.20]

**605.21 Condition to maintaining action.** In districts in which rules for conciliation are adopted and the conciliators appointed, no person may maintain an action for the recovery of a disputed claim of one hundred dollars, or less, unless he alleges and proves by certificate of the conciliator that he has made a good-faith effort to settle the controversy. [C24, 27, 31, 35, 39,§10822; C46, 50, 54,§605.21]

40GA, ch 265,§3, editorially divided  
Referred to in §605.22

**605.22 Exceptions.** Section 605.21 shall not apply to suits aided by attachment, or to enforce a lien, or for replevin, or upon written contracts when due, or in cases where the petition states that the defendant is about to change his residence from the county, or where either party to the controversy is a nonresident of the county in which the conciliator is acting. [C24, 27, 31, 35, 39,§10823; C46, 50, 54, §605.22]

**605.23 Speedy determination.** Such judges shall adopt rules for the speedy determination of causes involving comparatively small amounts as stated in such rules, and the clerks shall enter such causes upon a separate short cause calendar. It shall be the duty of the court to set aside a day or days each week when such causes will be heard. Before entering upon the trial of any such cause, the judge or court will, if practicable, bring the parties together and endeavor to secure a settlement thereof by conciliation or arbitration. [C24, 27, 31, 35, 39,§10824; C46, 50, 54,§605.23]

#### RULE OF CIVIL PROCEDURE NO. 367

##### Death, retirement, or disability of judge.

(a) In the event of the death or disability of a judge in the course of a proceeding at which he is presiding, or while a motion for new trial or for judgment notwithstanding the verdict, or for other relief, is pending, any other judge of the district may hear or act upon the same, and, if in his opinion he can proceed with the matter or determine the motion he shall do so; otherwise, he may order a

continuance, declare a mistrial, order a new trial of all or any of the issues, or make such disposition of the matter as the situation warrants.

(b) In the event of the death or disability of a judge who has under advisement an undecided motion, or case tried to him without a jury, any other judge of the district may be called in, or a judge from another district may be appointed by the chief justice of the supreme court to consider the same, and, if by a review of the transcript or a reargument he can, in his opinion, sufficiently inform himself to enable him to render a decision, he shall do so; otherwise he may order a continuance, declare a mistrial, or order a new trial of all or any of the issues, or direct the recalling of any witnesses, or make such disposition of the matter as the situation warrants.

(c) In the event of the death, disability or retirement of a judge before the record for appeal in any case tried by him shall have been settled, the same shall be set-

tled by another judge of the district, or by a judge of another district appointed for that purpose by the chief justice of the supreme court. [Report 1943; amendment 1945]

**RULE OF CIVIL PROCEDURE NO. 368**

**Appeal to district court from administrative body.** Where appeal to the district court from an action or decision of any officer, body or board is provided for by statute and the statute does not provide for the formulation of the issues either before such officer, body or board, or in the district court, the appellant shall file a petition in the district court within ten days after perfecting the appeal, or within such time as may be prescribed by the court. The appellee shall file motion or an answer to such petition within ten days thereafter, or within such further time as may be prescribed by the court. Thereafter the rules of pleading and procedure in actions in the district court shall be applicable. [Report 1943]

**CHAPTER 605A**

**JUDICIAL RETIREMENT SYSTEM**

- 605A.1 System created.
- 605A.2 Administered by state comptroller.
- 605A.3 Notice by judge in writing.
- 605A.4 Deposit by judge—deduction from salary.
- 605A.5 Qualification conditions.

- 605A.6 Retirement.
- 605A.7 Amount of annuity.
- 605A.8 Individual accounts—refunding.
- 605A.9 Payment of annuities.
- 605A.10 Other public employment prohibited.
- 605A.11 Investment of fund.

**605A.1 System created.** A retirement system is hereby created and established to be known as the "Judicial Retirement System", hereinafter called the "system". [C50, 54, §605A.1]

**605A.2 Administered by state comptroller.** The state comptroller shall be vested with authority to administer the system and may promulgate rules therefor not inconsistent with the provisions of this chapter. [C50, 54, §605A.2]

**605A.3 Notice by judge in writing.** This chapter shall not apply to any judge of the district or supreme court until he gives notice in writing, while serving as such a judge, to the state comptroller and treasurer of state, of his purpose to come within its purview. Such notice shall be given within one year after the effective date hereof or within one year after any date on which he takes oath of office as such judge. [C50, 54, §605A.3]

**605A.4 Deposit by judge—deduction from salary.** Each judge coming within the purview of this chapter shall, on or before retirement, pay to the state comptroller for deposit with the state treasurer to the credit of a fund

to be known as the "judicial retirement fund" a sum equal to three percent of his basic salary for services as such judge for the total period of service as a judge of a district or supreme court before the date of said notice, and after the date of the notice there shall be deducted and withheld from the basic salary of each judge coming within the purview of this chapter a sum equal to three percent of such basic salary. Provided that the maximum amount which any judge shall be required to contribute for past service shall not exceed for district judges three thousand dollars and for supreme court judge four thousand dollars. The amounts so deducted and withheld from the basic salary of each said judge shall be paid to the state comptroller for deposit with the treasurer of state to the credit of the judicial retirement fund, and said fund is hereby appropriated for the payment of annuities, refunds, and allowances herein provided. The judges of the district and supreme court coming within the provisions of this chapter shall be deemed to consent and agree to the deductions from basic salary as provided herein, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services rendered by such

judges during the period covered by such payment, except the right to the benefits to which they shall be entitled under the provisions of this chapter. The state shall contribute a sum not exceeding three percent of the basic salary of all judges for the years 1949 and 1950 and thereafter such sums as may be necessary over the amount contributed by the judges to finance the system. [C50, 54,§605A.4]

**605A.5 Qualification conditions.** No person shall be entitled to receive an annuity under this chapter unless he shall have contributed, as herein provided, to the judicial retirement fund for the entire period of his service as a judge of either or both the district and supreme courts. [C50, 54,§605A.5]

**605A.6 Retirement.** Any person who shall have become separated from service as a judge of the district or supreme court and who has had an aggregate of at least six years of service as a judge of either or both the district and supreme courts and shall have attained the age of sixty-seven years, and who shall have otherwise qualified as provided in this chapter, shall be entitled to an annuity as hereinafter provided. [C50, 54,§605A.6]

**605A.7 Amount of annuity.** The annuity of a judge under this system shall be an amount equal to two percent of his average annual basic salary as a judge of either or both the district and supreme courts, multiplied by his years of service as a judge of either or both the district and supreme courts, but no such annuity shall exceed an amount equal to forty percent of the salary that he is receiving at the time he becomes separated from such service. Provided, however, that such annuity shall be reduced by the amount of any social security benefit received by such judge. [C50, 54,§605A.7; 56GA, ch 1,§14]

**605A.8 Individual accounts — refunding.** The amounts deducted and withheld from the basic salary of each judge of the district or supreme court for the credit of the judicial retirement fund and all amounts paid into such fund by each judge shall be credited to the individual account of such judge. In the

event a judge of the district or supreme court becomes separated from service as such judge before he completes an aggregate of six years of service as a judge of either or both the district and supreme courts, the total amount of his contribution to the fund shall be returned to said judge or his legal representatives, and in the event a judge who has completed an aggregate of six years or more of service as a judge of either or both the district and supreme courts, dies before retirement, the total amount of his contribution to the fund shall be paid in one sum to his legal representatives, and in the event an annuitant under this section dies, without having received in annuities an amount equal to the total amount remaining to his credit at the time of his separation from service, the amount remaining to his credit shall be paid in one sum to his legal representatives. [C50, 54, §605A.8]

**605A.9 Payment of annuities.** Annuities granted under the terms of this chapter shall be due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity shall have accrued and shall continue during the life of the annuitant and payment of all annuities, refunds, and allowances granted hereunder shall be made by checks or warrants drawn and issued by the state comptroller. Applications for annuities shall be in such form as the state comptroller may prescribe. [C50, 54,§605A.9]

**605A.10 Other public employment prohibited.** No annuity shall be paid to any person entitled to receive an annuity hereunder while he is serving as a state officer or employee. [C50, 54,§605A.10]

**605A.11 Investment of fund.** So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this chapter shall be invested by the state treasurer in securities of the United States government and the earnings therefrom shall be credited to said fund. [C50, 54,§605A.11]

Omnibus repeal, 53GA, ch 235,§12

## CHAPTER 606

## CLERK OF THE DISTRICT COURT

- |        |                                       |        |  |
|--------|---------------------------------------|--------|--|
| 606.1  | General duties.                       | 606.11 | Pleadings—when deemed filed—removal of papers. |
| 606.2  | Death of judge—notice to comptroller. | 606.12 | Subsequent proceedings.                        |
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| 606.4  | Service of notice.                    | 606.14 | Change in title—certification.                 |
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| 606.9  | Entry of return of notice.            | 606.19 | Salary exclusive.                              |
| 606.10 | Entry of lien—details required.       |        |  |

**606.1 General duties.** The clerk of the district court shall keep his office at the county seat, attend the sessions of the district court himself or by deputy, keep the records, papers, and seal, and record the proceedings of the court as hereinafter directed, under the direction of the judge. [C51,§1577; R60,§343; C73, §194; C97,§287; C24, 27, 31, 35, 39,§10825; C46, 50, 54,§606.1]

Right to select newspapers for publication, §618.7

**606.2 Death of judge—notice to comptroller.** In the event of the death of a judge of the district court, the clerk of the district court of the county in which said judge resided at the time of his death shall immediately notify the state comptroller in writing of the date of the death of said judge. [C46, 50, 54,§606.2]

**606.3 Payment of money—notice.** When money to the amount of five hundred dollars or more is paid to the clerk to be paid to any person, and not disbursed within thirty days, he shall notify the person entitled to receive such money, or for whose account the money is paid, or the attorney of record of such person. [C24, 27, 31, 35, 39,§10826; C46, 50, 54, §606.3]

40GA, ch 266,§2, editorially divided

**606.4 Service of notice.** The notice shall be by certified mail, and shall be mailed within forty days from the receipt of the money, to the last address of the person or attorney known to the clerk, and memorandum thereof entered on the proper record. [C24, 27, 31, 35, 39,§10827; C46, 50, 54,§606.4; 57GA, ch 267,§87]

**606.5 Default—liability.** If the clerk fails to give said notice, he and his bondsmen shall be personally liable for interest on such money from the date of the receipt thereof by him to the date the same is paid to the person or attorney. [C24, 27, 31, 35, 39,§10828; C46, 50, 54, §606.5]

**606.6 Attestation of process.** All process issued by the clerk of the court shall bear date the day it is issued, and be attested in the name of the clerk who issued it, and under the seal of the court. [C51,§1592; R60,§2682; C73,§188; C97,§282; C24, 27, 31, 35, 39,§10829; C46, 50, 54,§606.6]

**606.7 Records and books.** The records of said court shall consist of the original papers filed in all proceedings, and the books to be kept by the clerk thereof as follows:

1. *Record book.* One containing the entries of the proceedings of the court, which may be known as the "record book", and which is to have an index referring to each proceeding in each cause under the names of the parties, both plaintiff and defendant, and under the name of each person named in either party.

2. *Judgment docket.* One containing an abstract of the judgments, having in separate and appropriate columns the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, with the entry of satisfaction, and other memoranda, which book may be known as the "judgment docket", and is to have an index like that required for the record book.

3. *Fee book.* One in which to enter in detail the costs and fees in each action or proceeding under the title of the same, with an index like that required above, and which may be known as the "fee book".

4. *Sale book.* One in which to enter the following matters in relation to any judgment under which real property is sold, entering them after the execution is returned: The title of the action, the date of the judgment, the amount of damages recovered, the total amount of costs, and the officer's return in full; which book may be known as the "sale book", and is to have an index like those required above.

5. *Encumbrance book.* One to be called the "encumbrance book", in which the sheriff shall enter a statement of the levy of every attachment on real estate.

6. *Appearance or combination docket.* One to be known as the "appearance docket", which shall contain all matters required by law to be kept therein; but the entries provided for in this subsection and subsections 2 and 3 may be combined in one book, indexed as provided in subsection 1 hereof, which, when thus kept, shall be known as the "combination docket".

7. *Lien book.* One in which an index of all liens in said court shall be kept. [R60,§§345,

346; C73, §§196, 197; C97, §288; C24, 27, 31, 35, 39, §10830; C46, 50, 54, §606.7]

**606.8 Appearance docket—entries required.**

The clerk shall enter in said appearance docket the titles of all actions or special proceedings that shall be brought in the court, numbering them consecutively in the order in which they shall have been commenced, which numbers shall not be changed during the further progress thereof. In making such entries, the clerk shall set out the full names of all the parties, plaintiffs and defendants, as contained in the petition, or as subsequently made parties by any pleading, proceeding, or order. [C73, §198; C97, §289; C24, 27, 31, 35, 39, §10831; C46, 50, 54, §606.8]

**606.9 Entry of return of notice.** When the original notice shall be returned to the office of the clerk, he shall enter in said docket so much of the return thereon as to show who of the parties have been served therewith, and the manner and time of service. C73, §199; C97, §290; C24, 27, 31, 35, 39, §10832; C46, 50, 54, §606.9]

**606.10 Entry of lien — details required.**

When the clerk of the district court enters a lien, or indexes an action affecting real estate, on the records of his office, he shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made. [C31, 35, §10832-d1; C39, §10832.1; C46, 50, 54, §606.10]

**606.11 Pleadings—when deemed filed—removal of papers.**

The clerk shall, immediately upon the filing thereof, make in the appearance docket a memorandum of the date of the filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause; and no pleading of any description shall be considered as filed in the cause, or taken from the clerk's office, until the said memorandum is made. [C73, §200; C97, §291; C24, 27, 31, 35, 39, §10833; C46, 50, 54, §606.11]

**606.12 Subsequent proceedings.**

Immediately upon the sustaining or overruling of any demurrer or motion, the striking out or amendment of any pleading, trial of the cause, rendition of the verdict, entry of judgment, issuing of execution or any other act or thing done in the progress of the cause, the like memorandum thereof shall be made in said docket, giving the date thereof, and the number of the book and page of the record where such entry shall have been made, it being intended that the appearance docket shall be an index from the commencement to the end of a suit. [C73, §201; C97, §292; C24, 27, 31, 35, 39, §10834; C46, 50, 54, §606.12]

**606.13 Not to be justice or attorney.**

The clerk, or deputy clerk of the district court is prohibited from holding the office of justice of the peace, or practicing, directly or indirectly, as an attorney or solicitor in any of the courts of this state. [C73, §204; C97, §294; C24, 27, 31, 35, 39, §10835; C46, 50, 54, §606.13]

**606.14 Change in title—certification.** Where the title of any real estate is finally established in any person or persons by judgment or decree of said court or of the supreme court, or where title to real estate is changed by judgment, decree, will, proceeding, or order in probate, the clerk of the district court shall certify the same, under the seal of said court, to the county auditor of the county in which said land is located. [C97, §295; C24, 27, 31, 35, 39, §10836; C46, 50, 54, §606.14]

Entry on transfer books, §558.66

**606.15 Fees.** The clerk of the district court shall charge and collect the following fees, all of which shall be paid into the county treasury for the use of the county except as indicated:

1. For filing any petition, appeal, or writ of error and docketing the same, four dollars. Three dollars of such fee shall remain in the county treasury for the use of the county, and one dollar of such fee shall be paid into the state treasury in a fund to be known as the judicial statistics fund. No part of the expense of the statistician shall be paid out of any fund in the state treasury except the judicial statistics fund. Withdrawals therefrom shall be by warrant of the state comptroller upon requisition by the statistician approved by the presiding judge of the supreme court, and any balance remaining at the end of a biennium shall revert to the general fund. In counties having a population of one hundred thousand or over, an additional one dollar shall be charged and collected, to be known as the journal publication fee and to be used for the purposes provided for in section 618.13.
2. For every attachment, one dollar.
3. For every cause tried by jury, three dollars.
4. For every cause tried by the court, one dollar and fifty cents.
5. For every equity case, three dollars.
6. For each injunction or other extraordinary process or order, two dollars.
7. For all causes continued on application of a party by affidavit, one dollar.
8. For all other continuances, thirty cents.
9. For entering any final judgment or decree, one dollar and fifty cents.
10. For taxing costs, one dollar.
11. For issuing execution or other process after judgment or decree, one dollar.
12. For filing and properly entering and indorsing each mechanic's lien, two dollars, and in case a suit is brought thereon, the same to be taxed as other costs in the action.
13. For certificate and seal, one dollar.
14. For filing and docketing transcript of judgment from another county or a justice of the peace or municipal court, one dollar.
15. For entering any rule or order, fifty cents.
16. For issuing writ or order, not including subpoenas, one dollar.

17. For issuing commission to take depositions, one dollar.

18. For entering sheriff's sale of real estate, one dollar.

19. For entering judgment by confession, two dollars.

20. For entering satisfaction of any judgment, fifty cents.

21. For all copies of record, or papers filed in his office, transcripts, and making complete record, twenty cents for each one hundred words.

22. For taking and approving a bond and sureties thereon, one dollar.

23. For receiving and filing a declaration of intention and issuing a duplicate thereof, two dollars. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, four dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, four dollars.

24. In addition to the fees required in the preceding subsection, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with the clerk money sufficient to cover the expense of subpoenaing and paying the legal fees of witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys aforesaid, and the residue, if any, except such as may be necessary to pay the cost of serving subpoenas, shall be returned by the clerk to the petitioner.

25. For certificates and seal to applications to procure pensions, bounties, or back pay for soldiers or other persons entitled thereto, no charge.

26. For making out transcripts in criminal cases appealed to the supreme court, for each one hundred words, twenty cents.

27. In criminal cases, the same fees for same services as in suits between private parties. When judgment is rendered against the defendant, the fees shall be collected from such defendant.

28. For issuing marriage licenses, three dollars each.

29. For all services performed in the settlement of the estate of any decedent, minor, insane person, or other persons laboring under any legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against him, or as may be otherwise provided herein, where the value of the personal property of the estate including real estate sold for the payment of debts of the deceased does not exceed three thousand dollars, four and one-half dollars; where such value is between three thousand dollars and five thousand dollars, seven and one-half dollars; where such value is between five thousand dollars and seven thousand dollars, twelve

dollars; where such value is between seven thousand dollars and ten thousand dollars, fifteen dollars; where such value is between ten thousand dollars and twenty-five thousand dollars, twenty-two and one-half dollars; for each additional twenty-five thousand dollars or major fraction thereof, there shall be taxed the further sum of fifteen dollars.

30. In addition to all other fees, for making a complete record in cases where the same is required by law or directed by an order of the court, for every one hundred words, twenty cents. [C51, §§2527, 2531, 2532; R60, §§430, 436, 1852, 4136, 4140, 4141; C73, §§3781, 3782, 3787; C97, §296; S13, §296; C24, 27, 31, 35, 39, §10837; C46, 50, 54, §606.15; 56GA, ch 270, §7]

**606.16 Accounting for fees.** He shall, on the first Monday in January and July of each year, pay into the county treasury, for the use of the county, all other fees not belonging to his office, in his hands at the date of preceding payment and still unclaimed. [R60, §353; C73, §3786; C97, §300; C24, 27, 31, 35, 39, §10838; C46, 50, 54, §606.16]

C97, §300, editorially divided  
Analogous provision, §12.11

**606.17 Receipts—filing with auditor.** At the time of so doing, he shall take from the treasurer duplicate receipts therefor, giving the title of the cause and style of the court in which the same was pending, with the names of the witnesses, jurors, officers, or other persons, and the amount each one is entitled to receive; one of which receipts he shall file with the county auditor. [R60, §354; C73, §3786; C97, §300; C24, 27, 31, 35, 39, §10839; C46, 50, 54, §606.17]

Analogous provision, §12.12

**606.18 Allowed claims—payment.** The auditor shall charge the amount thereof to the treasurer as so much county revenue, and shall enter the same upon the proper records as a claim allowed, and, on demand and proper proof by the person entitled thereto, shall issue warrant accordingly, providing such demand is made within five years from the time the county treasurer received said fund; and that unless and within one year from July 4, 1933, demand is made upon the county auditor and proper proof is made by the person entitled to any unclaimed fees, which have been paid to the county treasurer, as provided in this chapter, on and prior to July 4, 1930, the person entitled to such unclaimed fees shall be deemed to have waived all right, claim or interest therein, and shall not be permitted to have or make claim therefor. [R60, §356; C73, §3786; C97, §300; C24, 27, 31, 35, 39, §10840; C46, 50, 54, §606.18]

Analogous provision, §12.13

**606.19 Salary exclusive.** The clerk of the district court shall accept the salary herein provided, in full compensation of all services performed by him in his official capacity as such clerk of the district court. [C24, 27, 31, 35, 39, §10841; C46, 50, 54, §606.19]

Salary provided, §340.11

CHAPTER 607  
JURORS IN GENERAL

607.1 Competency.  
607.2 Exemption.  
607.3 Jurors excused.

607.4 False excuse—prohibited requests.  
607.5 Fees of jurors.  
607.6 Clerk to certify attendance.

**607.1 Competency.** All qualified electors of the state, of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, and who can speak, write, and read the English language, are competent jurors in their respective counties. [C51,§1630; R60,§2720; C73,§227; C97,§332; C24, 27, 31, 35, 39, §10842; C46, 50, 54,§607.1]

Electors, Constitution, Art. II,§1; Amendment, 1868; Constitution, (U. S.), Amendment 19

**607.2 Exemption.** The following persons are exempt from liability to act as jurors:

1. Persons holding office under the laws of the United States or of this state.
2. Practicing attorneys, physicians, licensed embalmers, registered nurses, chiropractors, osteopaths, veterinarians, registered pharmacists, dentists, and clergymen.
3. Acting professors or teachers of any college, school, or other institution of learning.
4. Persons disabled by bodily infirmity.
5. Persons over sixty-five years of age.
6. Active members of any fire company.
7. Persons conscientiously opposed to acting as a juror because of religious faith. [C51, §1631; R60,§2721; C73,§228; C97,§333; S13,§333; C24, 27, 31, 35, 39,§10843; C46, 50, 54,§607.2]

Members of national guard, §29.41; of fire companies, §102.1  
Jurors in municipal court, §602.38

**607.3 Jurors excused.** Any person may also be excused from serving on a jury when his own interest or those of the public will be materially injured by his attendance, or when the state of his own health, or the death or sickness of a member of his family, requires his absence from court; provided, however, that the court may, in its discretion, excuse any one or more of the jurors for any cause which to the court may seem advisable. [C51, §1632; R60,§2722; C73,§229; C97,§334; C24, 27, 31, 35, 39,§10844; C46, 50, 54,§607.3]

**607.4 False excuse — prohibited requests.** Any person who knowingly makes any false affidavit, statement, or claim, for the purpose

of relieving himself or another from serving as a juror, or any person who requests the judges of election to return his name as such juror, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days, or the court may punish such person as for contempt. [C97,§334; C24, 27, 31, 35, 39,§10845; C46, 50, 54,§607.4]

Contempts, ch 665

**607.5 Fees of jurors.** Petit jurors shall receive the following fees:

1. For each day's service or attendance in courts of record, including jurors summoned on special venire, five dollars, and for each mile traveled from his residence to the place of trial for each day's service and attendance, ten cents.
2. For each day's service before a justice of the peace, one dollar.
3. No mileage shall be allowed talesmen or jurors before justices.

Grand jurors shall receive for each day's service or attendance, seven dollars, and for each mile traveled each day from his residence to the place of attendance and in the performance of their duties, seven cents, provided, however, that grand jurors shall be entitled to mileage for travel from the place of their residence to the county seat for the purpose of being impaneled. No grand juror shall receive mileage for travel in the performance of his duties when he travels in a vehicle for which another juror is receiving mileage. [C51,§2545; R60,§4154; C73,§3811; C97,§354; S13,§354; C24, 27, 31, 35, 39,§10846; C46, 50, 54,§607.5; 57GA, ch 265,§1]

Jury fees taxed as costs, §601.124

**607.6 Clerk to certify attendance.** Immediately after the adjournment of each term of a court of record, the clerk thereof shall certify to the county auditor a list of the jurors, with the number of days attendance to which each one is entitled. [C73,§3811; C97,§354; S13,§354; C24, 27, 31, 35, 39,§10847; C46, 50, 54,§607.6]



CHAPTER 608  
JURY COMMISSIONS

608.1 Ex officio commission to draw jurors.  
608.2 Appointive commission to select.  
608.3 Limitation on appointment.  
608.4 Manner of appointment.  
608.5 Clerk to notify.  
608.6 Vacancy.

608.7 Qualification—tenure.  
608.8 Instructions to appointive commission.  
608.9 Instructions to judges of election.  
608.10 Compensation and expenses.  
608.11 Assistants.

**608.1 Ex officio commission to draw jurors.** In all counties the clerk of the district court, the county auditor, and the county recorder shall, ex officio, constitute the jury commission to draw jurors, but shall receive no extra compensation as such. [C24, 27, 31, 35, 39,§10848; C46, 50, 54,§608.1]

40ExGA, HF 266,§7, editorially divided

**608.2 Appointive commission to select.** In each county having situated therein a city with a population of fourteen thousand or more, the judge or judges of the district court of the judicial district in which said county is located shall, on or before October 1 of each year in which the general election is held, appoint three competent electors as a jury commission to select and make lists of the names of persons to serve as grand and petit jurors and talesmen for the two years beginning January 1 after such election. [C24, 27, 31, 35, 39,§10849; C46, 50, 54,§608.2]

**608.3 Limitation on appointment.** Not more than two members of the appointive commission shall be residents of the city in which the courthouse of the county in which they are appointed, is located, and no person shall be appointed who has solicited such appointment; nor shall any county officer or attorney at law be appointed a member of such commission. [C24, 27, 31, 35, 39,§10850; C46, 50, 54,§608.3]

**608.4 Manner of appointment.** The appointment shall be in writing, signed by the judge, or a majority of the judges if more than one, and shall be filed and made a matter of record, in the office of the clerk of the district court. If, for any reason, any judge is unable to act, the appointment shall be signed by the judge, or a majority of the judges of such district, who are able to act. [C24, 27, 31, 35, 39,§10851; C46, 50, 54,§608.4]

**608.5 Clerk to notify.** The clerk of the district court shall at once notify each appointive commissioner of his appointment. [C24, 27, 31, 35, 39,§10852; C46, 50, 54,§608.5]

**608.6 Vacancy.** If a vacancy occurs in such appointive commission through death, re-

moval, or inability of a member thereof to act, the judge or judges of the judicial district shall appoint some person to act during the remainder of such unexpired term. [C24, 27, 31, 35, 39,§10853; C46, 50, 54,§608.6]

**608.7 Qualification — tenure.** The appointive commissioners shall qualify on or before the tenth day of October, following their appointment, by taking the oath of office required of civil officers. Said oath shall be subscribed by them and filed in the office of the clerk of the district court. They shall hold office for the term of two years and until their successors are duly appointed and qualified. [C24, 27, 31, 35, 39,§10854; C46, 50, 54,§608.7]

Oath, §68.10

**608.8 Instructions to appointive commission.** It shall be the duty of the judges of the district court to give instructions to appointive jury commissioners at the time of their appointment as to their duties, and to call their especial attention to the provisions of section 609.2. [C24, 27, 31, 35, 39,§10855; C46, 50, 54, §608.8]

40ExGA, HF 266,§13, editorially divided

**608.9 Instructions to judges of election.** When the county auditor transmits the certificate of apportionment of jurors to the judges of the several election precincts, he shall call the attention of such judges to their duties, especially as set forth in section 609.2. [C24, 27, 31, 35, 39,§10856; C46, 50, 54,§608.9]

**608.10 Compensation and expenses.** Each appointive commissioner shall, in addition to his actual expenses, receive a compensation of ten dollars for each day employed by him in the discharge of his official duties. [C24, 27, 31, 35, 39,§10857; C46, 50, 54,§608.10; 56GA, ch 173,§9]

**608.11 Assistants.** The commissioners may employ such assistants in preparing the jury lists as they may deem necessary, and the board of supervisors shall allow reasonable compensation to such assistants. [C24, 27, 31, 35, 39,§10858; C46, 50, 54,§608.11]

## CHAPTER 609

## SELECTION OF JURORS

Referred to in §§603.29, 603.33, 603.39

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**609.1 Jury lists.** The appointive jury commission shall, on the second Monday after the general election is held in each even-numbered year, meet at the courthouse in rooms provided by the county, and, in accordance with the certificate of apportionment furnished by the county auditor, prepare, select, and return on blanks furnished by the county, the following lists, to wit:

1. *Grand jurors.* A list of names and addresses of one hundred fifty electors from which to select grand jurors.

2. *Petit jurors.* A list of names and addresses of electors equal to one-eighth of the whole number of qualified electors in said county who voted in the last preceding general state election as shown by the pollbooks, from which to select petit jurors.

3. *Talesmen.* A list of the names and addresses of electors equal to fifteen percent of the whole number of qualified electors who voted at the last preceding general election, as shown by the pollbooks, in the city or town in which the district court is held and in the township or townships in which such city or town is located (but in no case exceeding five hundred names) from which to select talesmen. [C51,§1633; R60,§2723; C73,§234; C97,§335; S13,§§335, 335-a; C24, 27, 31, 35, 39,§10859; C46, 50, 54,§609.1]

Referred to in §§609.7, 609.47

**609.2 Noneligible names.** The appointive commission, in the preparation of said lists, shall not place thereon the name of any person:

1. Who is not an elector of the state.
2. Who is not of good moral character.

3. Who is not of sound judgment.

4. Who is not in full possession of the senses of hearing and seeing.

5. Who cannot speak, write, and read the English language.

6. Who has served in said county and in the district court as a grand or petit juror since the first day of January preceding the last general election.

7. Who by reason of the condition of his or her health, business, domestic duties, or other circumstances will probably be unable to serve as a juror.

8. Who has, directly or indirectly, requested that his or her name be placed on said lists, or on any of them.

9. Who has been exempted by law from jury service. [C97,§337; S13,§337; C24, 27, 31, 35, 39,§10860; C46, 50, 54,§609.2]

Referred to in §§608.8, 608.9, 609.9  
Exemption, §607.2

**609.3 Judicial division of county.** In counties which are divided for judicial purposes, and in which courts are held at more than one place, each division shall be treated as a separate county, and the grand and petit jurors and talesmen, selected to serve in the respective courts, shall be drawn from the division of the county in which the court is held, at which they are required to serve. [S13, §335-b; C24, 27, 31, 35, 39,§10861; C46, 50, 54, §609.3]

**609.4 Auditor to apportion and certify.** On or before the date of said meeting of the appointive commission, the county auditor shall

apportion the number of grand and petit jurors to be selected among the several election precincts, and the talesmen of which there shall be at least two, among the precincts from which the same are to be drawn, in each case as nearly as practicable in proportion to the number of votes polled in such precincts at the last general election, and certify said apportionment to such commission. [C51, §§1635, 1636; R60, §§2725, 2726; C73, §236; C97, §§336, 337; S13, §337; C24, 27, 31, 35, 39, §10862; C46, 50, 54, §609.4; 56GA, ch 265, §1]

**609.5 Additional information by auditor.**

For the purpose of aiding the appointive commission, in making the lists aforesaid, the county auditor shall furnish said commission with the pollbooks of the last preceding general election, together with the names of all persons who have served as grand or petit jurors, after the first day of January, preceding the last general election. [C97, §337; S13, §337; C24, 27, 31, 35, 39, §10863; C46, 50, 54, §609.5]

Referred to in §609.6

**609.6 Clerk to furnish data.** The clerk of the district court shall furnish the auditor with the names of the jurors called for by section 609.5. [C97, §337; S13, §337; C24, 27, 31, 35, 39, §10864; C46, 50, 54, §609.6]

**609.7 Apportionment in other counties.** The county auditor, in counties having no appointive jury commission, shall, prior to furnishing the election judges the pollbooks, apportion the number of grand and petit jurors to be selected from among the several election precincts, and the talesmen of which there shall be at least two, among the precincts from which the same are to be selected, in each case as nearly as practicable in proportion to the number of votes polled in each precinct at the last preceding general election. Such apportionment shall be computed on the same basis as provided in section 609.1. [C51, §§1635, 1636; R60, §§2725, 2726; C73, §§236, 237; C97, §336; S13, §337; C24, 27, 31, 35, 39, §10865; C46, 50, 54, §609.7; 56GA, ch 265, §2]

**609.8 Certification of apportionment to judges.** In all counties having no appointive jury commission, the county auditor shall, at the time of the furnishing of the pollbooks to the judges of election, furnish them also a certified statement of the number of persons apportioned to the respective precincts to be returned for each grand and petit jury list.

He shall also furnish the judges of election in the city or town in which the district court is held and in the township or townships in which the said city or town is located, with a certified statement of the number of persons to be returned as talesmen.

He shall also furnish the judges of each election precinct in the county with the names of all persons who have served as grand or petit jurors since January 1 preceding. [C51, §§1635, 1636; R60, §§2725, 2726; C73, §§236, 237; C97, §337; S13, §337; C24, 27, 31, 35, 39, §10866; C46, 50, 54, §609.8]

**609.9 Duties of judges of election.** The judges of election of the several precincts shall make selection of the requisite number of persons to serve as grand and petit jurors, and of talesmen, if any, and return separate lists of the names so selected to the county auditor with the return of the election, but shall not place on said lists the name of any person described in section 609.2, or judges or clerks of the election. [C51, §1637; R60, §2727; C73, §238; C97, §337; S13, §337; C24, 27, 31, 35, 39, §10867; C46, 50, 54, §609.9]

Referred to in §609.10

**609.10 Lists by board of supervisors.** If the judges of election in any precinct fail to return any list as provided in section 609.9, the board of supervisors shall, at the meeting held to canvass the votes cast at such election, make and certify such list or lists for the delinquent precincts, and the auditor shall file such certified lists in his office and cause copies thereof to be recorded in the proper election books. [R60, §§2727, 2728; C73, §238; C97, §337; S13, §337; C24, 27, 31, 35, 39, §10868; C46, 50, 54, §609.10]

**609.11 Certification.** When the jury lists are completed, they shall be certified by the appointive commissioners, or by the judges of election for each precinct, as the case may be, in substantially the following form: We, ....., and ....., constituting the appointive jury commission for ..... county, ..... or We, ....., and ....., the judges of election for the ..... precinct of ..... county, ..... do hereby certify that the foregoing grand jury, petit jury, and/or talesmen lists do not, to our knowledge and belief, contain the name of any person:

1. Who is not an elector of the state.
2. Who is not of good moral character.
3. Who is not of good sound judgment.
4. Who is not in full possession of the senses of hearing and seeing.
5. Who cannot speak, write, and read the English language.
6. Who has served in said county and in the district court as a grand or petit juror since the first of January preceding.
7. Who, by reason of the condition of his or her health, business, domestic duties, or other circumstances will probably be unable to serve as a juror.
8. Who has, directly or indirectly, requested that his or her name be placed on said list.
9. Who has been exempted by law from jury service.
10. (In counties not having an appointive jury system.) Who is a judge or clerk at this election.

Dated at ..... this .... day of ..... A.D. 19..  
 .....  
 .....  
 Jury commissioners for .....  
 county, Iowa. Or .....  
 .....  
 .....  
 Judges of election for .....  
 precinct, ..... county, Iowa.  
 [C97,§337; S13,§337; C24, 27, 31, 35, 39,§10869;  
 C46, 50, 54,§609.11]

**609.12 Filing commissioners' lists.** The appointive commissioners shall, after so certifying said lists, place the same in envelopes and on or before the first Monday of December of the year in which such lists are made, deposit the same with the county auditor, who shall file and record the same in the proper record. [C24, 27, 31, 35, 39,§10870; C46, 50, 54,§609.12]

Referred to in §609.13

**609.13 Filing election judges' lists.** The jury lists returned by the judges of election together with the lists prepared by the board of supervisors, if any, shall, on or before the day stated in section 609.12, be filed with and recorded by the county auditor. [C51,§1638; R60,§2728; C73,§238; C97,§337; S13,§337; C24, 27, 31, 35, 39,§10871; C46, 50, 54,§609.13]

**609.14 Lists made official.** The names entered upon said lists and returned as herein provided shall constitute the grand and petit jury lists, and the list of talesmen from which grand and petit jurors and talesmen shall be selected, for the biennial period commencing with the first day of January next after the general election. [C24, 27, 31, 35, 39,§10872; C46, 50, 54,§609.14]

**609.15 Preparation of ballots.** Within five days after such lists are deposited with the county auditor, the auditor and clerk of the court shall prepare therefrom separate ballots, which shall be uniform in size, shape, and appearance, and upon which the names and places of residence of all persons selected for grand and petit jurors and talesmen, shall be written. The names of the classes of jurors shall be kept separate, and each ballot shall be folded, so as to conceal the name written thereon. [C51,§1640; R60,§2730; C73,§240; C97, §338, 342; C24, 27, 31, 35, 39,§10873; C46, 50, 54, §609.15]

**609.16 Names rejected.** In preparing the said ballots the county auditor and clerk shall omit the names of all persons who have served as grand or petit jurors since January 1 preceding. [C51,§1640; R60,§2730; C73,§240; C97, §338; C24, 27, 31, 35, 39,§10874; C46, 50, 54, §609.16]

**609.17 Ballot boxes — sealing and custody.** The ballots containing the names of the grand and petit jurors and talesmen shall be deposited in separate boxes which shall be plainly

marked so as to show the class of jurors whose names are contained therein, and shall have but one aperture through which a hand may be inserted. The boxes shall then be sealed by the auditor, in the presence of the clerk, and deposited with the clerk of the district court. [C97,§342; C24, 27, 31, 35, 39,§10875; C46, 50, 54,§609.17]

**609.18 Petit jury panel.** Petit jurors, in no case less than twenty-four and always in such number as the court or judge may order, shall be drawn for each term at which such jurors are required. [C51,§1642; R60,§2732; C73,§231; C97,§346; C24, 27, 31, 35, 39,§10876; C46, 50, 54, §609.18]

**609.19 Maximum service required.** No person shall be required to attend as a petit juror more than one term in the same biennial period. This exemption shall not apply to talesmen. [C51,§1639; R60,§2729; C73,§239; C97,§341; S13,§335-c; C24, 27, 31, 35, 39,§10877; C46, 50, 54, §609.19]

**609.20 Time for drawing.** Petit and grand jurors shall be drawn by the ex officio commission at the office of the clerk of the district court and at a time to be fixed by said clerk. Said time shall not be less than twenty days nor more than thirty days before the first day of each term at which a petit or grand jury is required to be drawn. [C51,§1641; R60,§2731; C73,§241; C97,§342; C24, 27, 31, 35, 39,§10878; C46, 50, 54,§609.20]

Drawing for special terms, §604.28

**609.21 Notice of drawing.** The said clerk shall, at least five days prior to the day of such drawing, notify in writing the other members of the ex officio commission of the time and place of such drawing. [C24, 27, 31, 35, 39,§10879; C46, 50, 54,§609.21]

**609.22 Drawing of petit jurors.** The members of the ex officio jury commission or a majority thereof, shall meet at the time and place fixed and shall draw from the petit jury box the required number of names of persons to serve as petit jurors, and the persons whose names are so drawn shall constitute the petit jurors for the next ensuing term of the court. [C24, 27, 31, 35, 39,§10880; C46, 50, 54,§609.22]

40ExGA, HF 266,§32, editorially divided

**609.23 Absence of commissioner.** In the absence or inability to act of any one of the ex officio jury commissioners, his deputy shall act as such commissioner in his stead. [C24, 27, 31, 35, 39,§10881; C46, 50, 54,§609.23]

**609.24 Details of drawing.** The appropriate box shall, at the time of the drawing, be first thoroughly shaken in the presence of the commissioners attending the drawing, and thereupon the seal on the opening shall be broken, likewise in the presence of the commissioners. One of said commissioners shall then, without looking at the ballots, successively draw the required number of names from the box, and successively pass said ballots to one of the other commissioners, who

shall open said ballots as they are drawn, and read aloud the names thereon, and enter said names in writing on an appropriate list. [C51, §1641; R60, §2731; C73, §241; C97, §342; C24, 27, 31, 35, 39, §10882; C46, 50, 54, §609.24]

**609.25 Grand jury panel.** A grand jury panel of twelve persons shall be drawn by the said commissioners from the grand jury box at the time of the drawing of the petit jury panel for the January term, and shall be drawn in the same manner and under the same conditions, except as otherwise provided, as are specified for the drawing of said petit jury panel. Such grand jury panel shall constitute the panel from which to select the grand jurors for one year. [C51, §1641, 1642; R60, §2731, 2732; C73, §241; C97, §339; C24, 27, 31, 35, 39, §10883; C46, 50, 54, §609.25]

**609.26 Maximum service permitted.** No person on the list of grand jurors shall be eligible to serve as a grand juror except for one calendar year of the biennial period for which the list is made. [C51, §1642; R60, §2732; C73, §239; C97, §339; S13, §335-c; C24, 27, 31, 35, 39, §10884; C46, 50, 54, §609.26]

**609.27 Number from township limited.** In drawing grand jurors, not more than one person shall be drawn as grand juror from any civil township, except when there are less than twelve civil townships in the county, in which case not more than two persons shall be drawn from any one township. In counties containing a city of more than sixty thousand population, two grand jurors may be drawn from said city. [C97, §339; C24, 27, 31, 35, 39, §10885; C46, 50, 54, §609.27; 56GA, ch 265, §3]

Effect of violation, §776.2

**609.28 Rejecting names.** If more persons shall be drawn from any civil township than is hereby authorized, or any person is drawn who has served during the preceding jury year as grand juror, it is the duty of the commissioners to reject all such names so drawn, and to proceed with the drawing until the required number of jurors shall be secured. [C97, §339; C24, 27, 31, 35, 39, §10886; C46, 50, 54, §609.28]

**609.29 Resealing of box.** After the required number of grand or petit jurors shall have been drawn in the manner provided, and their names entered upon the list, the box or boxes shall again be sealed by the commission, and returned to the custody of the clerk. [C97, §342; C24, 27, 31, 35, 39, §10887; C46, 50, 54, §609.29]

**609.30 Filing list—precept.** The clerk shall file said list or lists, in his office, and immediately issue his precept or precepts to the sheriff, commanding him to summon the persons so drawn to appear at the courthouse at ten o'clock a.m. of the second day of the term, or at such other time as the court or judge may order, to serve as petit or grand jurors, as the case may be. [C51, §1643; R60, §2733; C73, §230,

241; C97, §§342, 345; C24, 27, 31, 35, 39, §10888; C46, 50, 54, §609.30]

**609.31 Sheriff to summon.** The sheriff shall immediately obey such precepts, and on or before the day for the appearance of said jurors must make return thereof, and, on a failure to do so without sufficient cause, may be punished for contempt. [C51, §1644; R60, §2734; C73, §242; C97, §343; C24, 27, 31, 35, 39, §10889; C46, 50, 54, §609.31]

Contempts, ch 665

**609.32 Grand jurors summoned but once.** Except when required at a special term, the twelve persons from which the grand jury is to be impaneled need not be summoned after the first term, but must appear at each succeeding term during the year without summons, under the same penalty as though they had been summoned. [C51, §1646; R60, §2736; C73, §243; C97, §344; C24, 27, 31, 35, 39, §10890; C46, 50, 54, §609.32]

**609.33 Contempt.** If any person summoned fail to appear without sending a sufficient excuse, the court may issue an order requiring him to appear and show cause why he should not be punished for contempt, and unless he render a sufficient excuse for such failure he may be punished for contempt. [C51, §1645; R60, §2735; C73, §230; C97, §345; C24, 27, 31, 35, 39, §10891; C46, 50, 54, §609.33]

Contempts, ch 665

**609.34 Cancellation for illegality.** If the court shall, for any reason, determine that the petit jurors have been illegally drawn, selected, or summoned, it may set aside the precept, under which they were summoned, and direct a sufficient number to be drawn and summoned. In such case, the jury commission shall meet at the office of the clerk of the court, at such time as the court may direct, and in the manner provided for the drawing of an original panel, draw the number of petit jurors required, under the order of the court. The jurors so drawn and summoned shall be required to appear immediately, or at such time as the court may fix. [C97, §342; C24, 27, 31, 35, 39, §10892; C46, 50, 54, §609.34]

**609.35 Discharged jurors — resummoning.** Jurors who have been discharged for any reason may, during the term, be resummoned if the business before the court necessitates such action. [C73, §233; C97, §348; C24, 27, 31, 35, 39, §10893; C46, 50, 54, §609.35]

**609.36 Additional petit jurors.** The court during any term of court, may order as many additional jurors drawn for the term, or for the trial of any particular case, as may be deemed necessary. [C51, §1647; R60, §2737; C73, §232; C97, §347; C24, 27, 31, 35, 39, §10894; C46, 50, 54, §609.36]

Referred to in §609.38

**609.37 Discharge of panel.** The court may at any time discharge the panel of jurors, or

any part of it, and order a new panel, or such number of jurors as may be deemed necessary to be drawn. [C24, 27, 31, 35, 39, §10895; C46, 50, 54, §609.37]

Referred to in §609.38

**609.38 Method of drawing.** The names of the jurors contemplated in sections 609.36 and 609.37 shall be drawn by the commissioners in the manner provided for the drawing of an original panel. [C73, §232; C97, §347; C24, 27, 31, 35, 39, §10896; C46, 50, 54, §609.38]

**609.39 Talesmen.** If the court shall determine that it is probable talesmen will be needed to complete a jury, or if the regular panel has been exhausted, the clerk shall, in the presence of the court, draw such number of names as the court may order from the talesmen box to complete the jury. [C97, §349; C24, 27, 31, 35, 39, §10897; C46, 50, 54, §609.39]

**609.40 Rejection of names.** The clerk, when the court directs, shall reject the names of those known to be unable to serve, or absent from the territory from which drawn. [C97, §349; C24, 27, 31, 35, 39, §10898; C46, 50, 54, §609.40]

**609.41 Talesmen summoned.** The talesmen whose names have been so drawn shall, so far as possible, be immediately summoned by the sheriff to appear forthwith. [C97, §349; C24, 27, 31, 35, 39, §10899; C46, 50, 54, §609.41]

**609.42 Disposition of ballots.** The names of talesmen so drawn, and who serve, shall be placed in a safe receptacle from time to time, until all the ballots are drawn from the talesmen's box, when such ballots shall be returned to the said box, to be drawn in like manner as before. [C97, §349; C24, 27, 31, 35, 39, §10900; C46, 50, 54, §609.42]

**609.43 Talesmen at large.** When the parties to the cause, by agreement entered of record, waive the drawing of talesmen as above provided, the court may direct the sheriff to summon such talesmen from the body of the county. [C97, §349; C24, 27, 31, 35, 39, §10901; C46, 50, 54, §609.43]

**609.44 Disposition of ballots drawn.** All ballots drawn, when the persons do not appear or do not serve (except when permanent ineligibility or disability is shown), shall be re-

turned to the respective boxes from which drawn. The ballots of the petit jurors, except talesmen, so drawn, who appear and serve for any term, shall be destroyed. [C97, §350; C24, 27, 31, 35, 39, §10902; C46, 50, 54, §609.44]

**609.45 Special venire of talesmen.** When a city or town is a party to a suit, the talesmen shall not be drawn therefrom, but in such cases the court shall order a special venire, or may order the talesmen drawn from the petit jury box. [C97, §351; C24, 27, 31, 35, 39, §10903; C46, 50, 54, §609.45]

**609.46 Delinquency of officers.** Any officer whose duty it is to perform any of the services mentioned in this chapter, who shall intentionally fail to perform them as required by law, or who shall act corruptly in the discharge of such duties or any of them, shall be imprisoned in the county jail not less than six months, nor more than one year. [C97, §352; C24, 27, 31, 35, 39, §10904; C46, 50, 54, §609.46]

**609.47 Correcting illegality in original lists.** Should the court for any reason determine that there has been such substantial failure to comply with the law relative to the selection, preparation, or return of grand, petit, or talesmen lists that lawful grand or petit jurors or talesmen cannot be drawn, or when the petit jury list as provided for in subsection 2 of section 609.1 becomes exhausted, or insufficient for the needs of the court, said court shall order the appointive jury commissioners or ex officio jury commissioners as the case may be, to convene at the courthouse at a named time and to prepare lists in lieu of those lists which have been found to be illegal, or such additional list or lists as the court may deem necessary. If the ex officio commissioners are called upon to act, they shall make up the lists in the same manner as such lists are required to be made by appointive commissioners. [S13, §337-a; C24, 27, 31, 35, 39, §10905; C46, 50, 54, §609.47]

**609.48 Notice to commissioners.** Whenever the commission shall be required to meet for the purpose of drawing jurors under the order of the court, the clerk of the court shall at once notify each commissioner of such order, and the time fixed for the meeting of the commission; and, if deemed necessary, the court may order the notice to be served by the sheriff. [C24, 27, 31, 35, 39, §10906; C46, 50, 54, §609.48]

## CHAPTER 610

## ATTORNEYS AND COUNSELORS

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**610.1 Admission to practice.** The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court. [C97,§309; C24, 27, 31, 35, 39,§10907; C46, 50, 54,§610.1]

**610.2 Qualifications for admission.** Every applicant for such admission must be at least twenty-one years of age, of good moral character, and an inhabitant of this state, and must have actually and in good faith pursued a regular course of study of the law for at least three full years, either in the office of a member of the bar in regular practice of this state or other state, or of a judge of a court of record thereof, or in some reputable law school in the United States, or partly in such office and partly in such law school; but, in reckoning such period of study, the school year of any such law school, consisting of not less than thirty-six weeks exclusive of vacations, shall be considered equivalent to a full year. Every such applicant for admission must also have actually and in good faith acquired a general education substantially equivalent to that involved in the completion of a high school course of study of at least four years in extent. [C51,§1610; R60,§2700; C73,§208; C97,§310; S13, §310; C24, 27, 31, 35, 39,§10908; C46, 50, 54,§610.2]

Referred to in Court Rule 106

**610.3 Examinations.** Every such applicant shall also be examined by the court, or by a commission of not less than five members constituted as hereinafter provided, as to his learning and skill in the law; and the court must be satisfied, before admitting to practice, that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, and possesses the requisite learning and skill therein, and has also the general education required by this chapter.

The sufficiency of the general education of the applicant may be determined by examination before the commission, or in such other manner as the supreme court may by rule prescribe. [C97,§311; S13,§311; C24, 27, 31, 35, 39, §10909; C46, 50, 54,§610.3]

**610.4 Board of law examiners.** The attorney general shall, by virtue of his office, be a member of, and the chairman of, the commission provided for by this chapter, and the court shall appoint from the members of the bar of this state at least four other persons who, with the attorney general, shall constitute said commission, which shall be known as the board of law examiners. [S13,§311-a; C24, 27, 31, 35, 39,§10910; C46, 50, 54,§610.4]

S13,§311-a, editorially divided

**610.5 Term of appointment — vacancies.** Each person appointed shall serve for two years, except that in case of a vacancy during the term of office of any commissioner his successor shall be appointed only for the remainder of such term. [S13,§311-a; C24, 27, 31, 35, 39,§10911; C46, 50, 54,§610.5]

**610.6 Oath—compensation.** The members thus appointed shall take and subscribe an oath to be administered by one of the judges of the supreme court to faithfully and impartially discharge the duties of the office, and shall receive such compensation as may be allowed by the supreme court out of the fund arising from the examination fees hereinafter provided for. [S13,§311-a; C24, 27, 31, 35, 39, §10912; C46, 50, 54,§610.6]

**610.7 Temporary appointments—compensation.** The supreme court may also appoint from time to time, when necessary, temporary examiners to assist the commission, who shall serve for one examination only, and shall re-

ceive such compensation as the court may allow, to be paid from the fund aforesaid. [S13, §311-a; C24, 27, 31, 35, 39, §10913; C46, 50, 54, §610.7]

**610.8 Fees—how used.** Every applicant for admission shall pay to the clerk of the supreme court an examination fee of five dollars, payable before the examination is commenced. Practitioners from other states seeking admission to practice in this state as provided by law shall pay an admission fee of ten dollars. The fees thus paid to the clerk shall be retained by him as a special fund to be appropriated as otherwise provided; and any amount thereof remaining in his hands unappropriated on the thirtieth day of June of each year shall be turned over to the state treasury. [S13, §311-b; C24, 27, 31, 35, 39, §10914; C46, 50, 54, §610.8]

Referred to in Court Rule 104

**610.9 Students in law department of university.** Students in the law department of the state university, who are recommended by the faculty of said department as candidates for graduation and as persons of good moral character, who have actually and in good faith studied law for the time and in the manner required by statute, at least one year of such study having been as a student in said department, may be examined at the university by not less than three members of said commission with the addition of such temporary members as may be appointed by the court in accordance with the provisions of this chapter, and upon the certificate of such examiners, that such candidates possess the learning and skill requisite for the practice of law, they shall be admitted without further examination. [C73, §209; C97, §312; S13, §312; C24, 27, 31, 35, 39, §10915; C46, 50, 54, §610.9]

**610.10 Practitioners from other states.** Any person a resident of this state having been admitted to the bar of any other of the United States may, in the discretion of the court, be admitted to practice in this state without examination or proof of period of study, as hereinbefore provided, on proof of the other qualifications required by this chapter, and on satisfactory proof that he has practiced law regularly for not less than one year in the state where admitted to practice, after having been admitted to the bar according to the laws of such state, or on satisfactory proof that he has taught law regularly for one year in a recognized law school in the state of Iowa, after admission to the bar of any other of the United States. [C97, §313; S13, §313; C24, 27, 31, 35, 39, §10916; C46, 50, 54, §610.10]

**610.11 Oath.** All persons on being admitted to the bar shall take an oath or affirmation to support the constitution of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state according to the best of their ability. [C51, §1613; R60, §2703; C73, §208; C97,

§314; C24, 27, 31, 35, 39, §10917; C46, 50, 54, §610.11]

**610.12 Mode of examination.** The supreme court may by general rules prescribe the mode in which examinations under this chapter shall be conducted, and in which the qualifications required as to age, residence, character, general education and term of study shall be proved, and may make any other and further rules, not inconsistent with this chapter, for the purpose of carrying out its object and intent. [C97, §315; S13, §315; C24, 27, 31, 35, 39, §10918; C46, 50, 54, §610.12]

**610.13 Nonresident attorney—appointment of local attorney.** Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this chapter; provided that at the time he enters his appearance he files with the clerk of such court the written appointment of some attorney resident in the county where such suit is pending, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within such county. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by him shall be stricken from the files. [C51, §1612; R60, §2702; C73, §210; C97, §316; S13, §316; C24, 27, 31, 35, 39, §10919; C46, 50, 54, §610.13]

**610.14 Duties of attorneys and counselors.** It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.
3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.
4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.
5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.
6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.
7. Never to reject for any consideration personal to himself the cause of the defenseless or oppressed. [C51, §1614; R60, §2704; C73, §211; C97, §317; C24, 27, 31, 35, 39, §10920; C46, 50, 54, §610.14]



**610.15 Deceit or collusion.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action. [C51,§1615; R60,§2705; C73,§212; C97,§318; C24, 27, 31, 35, 39,§10921; C46, 50, 54,§610.15]

**610.16 Authority.** An attorney and counselor has power to:

1. Execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. Bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. Receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and, upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. [C51,§1616; R60,§2706; C73, §213; C97,§319; C24, 27, 31, 35, 39,§10922; C46, 50, 54,§610.16]

Attorney as surety, §§621.7, 682.5

**610.17 Proof of authority.** The court may, on motion of either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his own oath, or otherwise, the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [C51,§1617; R60,§2707; C73,§214; C97, §320; C24, 27, 31, 35, 39,§10923; C46, 50, 54, §610.17]

**610.18 Attorney's lien—notice.** An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment.

2. Money in his hands belonging to his client.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket opposite the entry of the judgment. [C51,§1618; R60,§2708; C73,§215; C97,§321; C24, 27, 31, 35, 39,§10924; C46, 50, 54,§610.18]

**610.19 Release of lien by bond.** Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by any district judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. [C51,§1619; R60,§2709; C73,§216; C97,§322; C24, 27, 31, 35, 39,§10925; C46, 50, 54,§610.19]

C97,§322, editorially divided

**610.20 Automatic release.** Such lien will be released, unless the attorney, within ten days after demand therefor, files with the clerk a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered. [C73,§216; C97, §322, C24, 27, 31, 35, 39,§10926; C46, 50, 54, §610.20]

**610.21 Unlawful retention of money.** An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a misdemeanor. [C51,§1627; R60,§2717; C73,§224; C97,§330; C24, 27, 31, 35, 39,§10927; C46, 50, 54, §610.21]

Referred to in §610.22  
Punishment, §687.7

**610.22 Excuse for nonpayment.** When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of section 610.21 until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole or any portion thereof to the claimant when he is found entitled thereto. [C51, §§1628, 1629; R60, §§2718, 2719; C73, §§225, 226; C97, §331; C24, 27, 31, 35, 39, §10928; C46, 50, 54, §610.22]

**610.23 Revocation of license.** Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, and a revocation or suspension in one county operates to the same extent in the courts of all other counties. [C51,§1620; R60, §2710; C73,§217; C97,§323; C24, 27, 31, 35, 39, §10929; C46, 50, 54,§610.23]

**610.24 Grounds of revocation.** The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony, or of a misdemeanor involving moral turpitude; in either of which cases the record of conviction is conclusive evidence.

2. When he is guilty of a willful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with or in the course of his profession.

3. A willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached.

5. Soliciting legal business for himself or office, either by himself or representative. Nothing herein contained shall be construed to prevent or prohibit listing in legal or other directories, law lists and other similar publications, or the publication of professional cards in any such lists, directories, newspapers or other publication. [C51,§1621; R60,§2711; C73,§218; C97,§324; C24, 27, 31, 35, 39, §10930; C46, 50, 54,§610.24]

**610.25 Proceedings.** The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it. [C51,§1622; R60,§2712; C73, §219; C97,§325; S13,§325; C24, 27, 31, 35, 39, §10931; C46, 50, 54,§610.25]

S13,§325, editorially divided

**610.26 Costs.** If an action is commenced by direction of the court, the costs shall be taxed and disposed of as in criminal cases; provided that no allowance shall be made in such case for the payment of attorney fees. [S13,§325; C24, 27, 31, 35, 39, §10932; C46, 50, 54, §610.26]

**610.27 Order for appearance—notice—service.** If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation or charge shall have been filed on a day therein fixed, and shall cause a copy of the accusation and order to be served upon him personally. [C51,§1623; R60,§2713; C73,§220; C97,§326; C24,§10933; C27, 31, 35,§10934-b1; C39,§10934.1; C46, 50, 54,§610.27]

42GA, ch 220,§1, editorially divided

**610.28 Copy of accusation—duty of clerk.** The clerk of the district court shall immediately certify to the clerk of the supreme court a copy of the accusation. [C27, 31, 35,§10934-b2; C39,§10934.2; C46, 50, 54,§610.28]

**610.29 Notice to attorney general—duty.** Thereupon the chief justice of the supreme court shall notify the attorney general of such accusation and cause a copy thereof to be delivered to him, and it shall thereupon become

the duty of the attorney general to superintend either through his office, or through a special assistant to be designated by him, the prosecution of such charges. [C27, 31, 35, §10934-b3; C39,§10934.3; C46, 50, 54,§610.29]

**610.30 Trial court.** The supreme court shall designate three district judges to sit as a court to hear and decide such charges. [C27, 31, 35, §10934-b4; C39,§10934.4; C46, 50, 54,§610.30]

**610.31 Time and place of hearing.** The hearing shall be at such time as the chief justice of the supreme court may designate, and shall be held within the county where the accusation was originally filed. [C27, 31, 35,§10934-b5; C39, §10934.5; C46, 50, 54,§610.31]

**610.32 Determination of issues.** The determination of all issues shall be heard before the said judges selected by the supreme court as herein provided for. [C27, 31, 35,§10934-b6; C39, §10934.6; C46, 50, 54,§610.32]

**610.33 Record and judgment.** The records and judgment at such trial shall constitute a part of the records of the district court in the county in which the accusations are originally filed. [C27, 31, 35,§10934-b7; C39,§10934.7; C46, 50, 54,§610.33]

**610.34 Pleadings—evidence—preservation.** To the accusation, the accused may plead or demur and the issues joined thereon shall in all cases be tried by said judges so selected and all of the evidence at such trial shall be reduced to writing, filed and preserved. [C51, §1624; R60,§2714; C73,§221; C97,§327; C24,§10934; C27, 31, 35,§10934-b8; C39,§10934.8; C46, 50, 54, §610.34]

**610.35 Costs and expenses.** The court costs incident to such proceedings, and the reasonable expense of said judges in attending said hearing after being approved by the supreme court shall be paid as court costs by the executive council. [C27, 31, 35,§10934-b9; C39, §10934.9; C46, 50, 54,§610.35]

**610.36 Plea of guilty or failure to plead.** If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires. [C51,§1625; R60,§2715; C73,§222; C97,§328; C24, 27, 31, 35, 39,§10935; C46, 50, 54,§610.36]

**610.37 Appeal.** In case of a removal or suspension being ordered, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by a court of record is final. [C51,§1626; R60,§2716; C73,§223; C97,§329; C24, 27, 31, 35, 39,§10936; C46, 50, 54,§610.37]

**610.38 Certification of judgment.** When a judgment has been entered in any court of record in the state revoking or suspending the license of any attorney at law to practice in the said court, the clerk of the court in

which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause. [S13,§329-a; C24, 27, 31, 35, 39,§10937; C46, 50, 54,§610.38]

# **CIVIL PRACTICE AND PROCEDURE**

# TITLE XXXI

## GENERAL PROVISIONS RELATING TO CIVIL PRACTICE AND PROCEDURE

### CHAPTER 611

#### FORMS OF ACTIONS

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**611.1 "Proceedings" classified.** Every proceeding in court is an action, and is civil, special, or criminal. [R60,§2605; C73,§2504; C97, §3424; C24, 27, 31, 35, 39,§10938; C46, 50, 54, §611.1]

**611.2 Civil and special actions.** A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

Every other proceeding in a civil case is a special action. [R60,§§2606, 2607, 2609; C73, §§2505, 2506; C97,§3425; C24, 27, 31, 35, 39,§10939; C46, 50, 54,§611.2]

**611.3 Forms of action.** All forms of action are abolished, but proceedings in civil actions may be of two kinds, ordinary or equitable. [R60,§§2608, 2610; C73,§2507; C97,§3426; C24, 27, 31, 35, 39,§10940; C46, 50, 54,§611.3]

**611.4 Equitable proceedings.** The plaintiff may prosecute his action by equitable proceedings in all cases where courts of equity, before the adoption of this Code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive. [R60,§2611; C73,§2508; C97,§3427; C24, 27, 31, 35, 39,§10941; C46, 50, 54, §611.4]

**611.5 Action on note and mortgage.** An action on a note, together with a mortgage or deed of trust for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard

therein to the mortgage or deed of trust, shall be by ordinary proceedings. [R60,§4179; C73, §2509; C97,§3428; C24, 27, 31, 35, 39,§10942; C46, 50, 54,§611.5]

Actions on certain judgments prohibited, ch 615  
Related provision, §654.4

**611.6 Ordinary proceedings.** In all other cases, unless otherwise provided, the plaintiff must prosecute his action by ordinary proceedings. [R60,§2612; C73,§2513; C97,§3431; C24, 27, 31, 35, 39,§10943; C46, 50, 54,§611.6]

**611.7 Error — effect of.** An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer to the proper docket. [R60,§2613; C73,§2514; C97,§3432; C24, 27, 31, 35, 39,§10944; C46, 50, 54,§611.7]

**611.8 Correction by plaintiff.** Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterwards on motion in court. [R60,§2614; C73,§2515; C97,§3433; C24, 27, 31, 35, 39,§10945; C46, 50, 54,§611.8]

**611.9 Correction on motion.** The defendant may have the correction made by motion at or before the filing of his answer, where it appears by the provisions of this Code wrong proceedings have been adopted. [R60,§§2615, 2616; C73,§2516; C97,§3434; C24, 27, 31, 35, 39,§10946; C46, 50, 54,§611.9]

**611.10 Equitable issues.** Where the action has been properly commenced by ordinary proceedings, either party shall have the right,

by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings. [R60,§2617; C73,§2517; C97,§3435; C24, 27, 31, 35, 39,§10947; C46, 50, 54,§611.10]

**611.11 Court may order change.** If there is more than one party plaintiff or defendant, who fail to unite on the kind of proceedings to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking it to be done. [C73,§2518; C97,§3436; C24, 27, 31, 35, 39,§10948; C46, 50, 54,§611.11]

**611.12 Errors waived.** An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, save final judgments and interlocutory or final decrees entered of record. [R60,§2619; C73,§2519; C97,§3437; C24, 27, 31, 35, 39,§10949; C46, 50, 54,§611.12]

**611.13 Uniformity of procedure.** The provisions of this Code concerning the prosecution of a civil action apply to both ordinary and equitable proceedings unless the contrary appears, and shall be followed in special actions not otherwise regulated, so far as applicable. [C51,§2516; R60,§§2620, 4173; C73,§2520; C97, §3438; C24, 27, 31, 35, 39,§10950; C46, 50, 54, §611.13]

**611.14 Title of cause.** The title of the cause shall not be changed in any of its stages of transit from one court to another. [R60,§2949; C73,§2721; C97,§3631; C24, 27, 31, 35, 39,§10951; C46, 50, 54,§611.14]

Similar provision, R.C.P. 342(a)

**611.15 Judgments annulled in equity.** Judgment obtained in an action by ordinary proceedings shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counterclaim in the action on which the judgment was recovered. [R60,§2621; C73,§2522; C97,§3440; C24, 27, 31, 35, 39,§10952; C46, 50, 54,§611.15]

See R.C.P. 29

**611.16 Action to obtain discovery.** No action to obtain a discovery shall be brought, except, where a person or corporation is liable either jointly or severally with others by the same contract, an action may be brought against any parties who are liable, to obtain discovery of the names and residences of the others. [R60,§4127; C73,§2523; C97,§3441; C24, 27, 31, 35, 39,§10953; C46, 50, 54,§611.16]

C97,§3441, editorially divided

**611.17 Petition for discovery.** In such action the plaintiff shall state in his petition, in effect, that he has used due diligence, without success, to obtain the information asked to be discovered, and that he does not believe the parties to the contract who are known to him have property sufficient to satisfy his claim. The petition shall be verified. [R60, §4127; C73,§2523; C97,§3441; C24, 27, 31, 35, 39, §10954; C46, 50, 54,§611.17]

**611.18 Costs.** The cost of such action shall be paid by the plaintiff unless the discovery be resisted. [R60,§4127; C73,§2523; C97,§3441; C24, 27, 31, 35, 39,§10955; C46, 50, 54,§611.18]

**611.19 Successive actions.** Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action has arisen thereon or therefrom. [R60,§4128; C73,§2524; C97, §3442; C24, 27, 31, 35, 39,§10956; C46, 50, 54, §611.19]

**611.20 Actions survive.** All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same. [C51,§2502; R60,§3467; C73, §2525; C97,§3443; C24, 27, 31, 35, 39,§10957; C46, 50, 54,§611.20]

Referred to in §611.22

**611.21 Civil remedy not merged in crime.** The right of civil remedy is not merged in a public offense, but may in all cases be enforced independently of and in addition to the punishment of the latter. [C51,§2500; R60,§4110; C73, §2526; C97,§3444; C24, 27, 31, 35, 39,§10958; C46, 50, 54,§611.21]

Referred to in §611.22

**611.22 Actions by or against legal representatives—substitution.** Any action contemplated in sections 611.20 and 611.21 may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if he had survived. If such is continued against the legal representative of the defendant, a notice shall be served on him as in case of original notices. [C51,§1699; R60,§4111; C73,§2527; C97, §3445; C24, 27, 31, 35, 39,§10959; C46, 50, 54, §611.22]

Manner of service, R.C.P. 56(a)

## RULE OF CIVIL PROCEDURE NO. 15

**Substitution at death—limitation.** Any substitution of legal representatives or successors in interest of a deceased party, permitted by statute, must be ordered within two years after the death of the original party. If his right survives entirely to those already parties, the action shall continue among the surviving parties without substitution. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 20**

**Officers—representatives.** When any public official, or any administrator, express trustee or other person in a representative capacity, ceases to be such while a party to a suit, the court may order his successor brought in and substituted for him. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 21**

**Notice to substituted party.** The order for substitution shall fix the time when the substituted party shall appear, and the notice to be given him. In case of substitution of a legal representative of a deceased party the notice shall be served as in case of original notices. In all other cases a shorter time may be prescribed. [Report 1943]

**CHAPTER 612****JOINDER OF ACTIONS**

Rule—Actions joined, R.C.P. 22.

Rule—Actions joined—multiple plaintiffs, R.C.P. 23.

Rule—Permissive joinder of defendants, R.C.P. 24.

Rule—Necessary parties—nonjoinder, R.C.P. 25.

Rule—Parties partly interested, R.C.P. 26.

Rule—Remedy for misjoinder, R.C.P. 27.

Rule—Dependent remedies joined, R.C.P. 28.

**RULE OF CIVIL PROCEDURE NO. 22**

**Actions joined.** A single plaintiff may join in the same petition as many causes of action, legal or equitable, independent or alternative, as he may have against a single defendant. [Report 1943]

Referred to in R.C.P. 31

**RULE OF CIVIL PROCEDURE NO. 23**

**Actions joined—multiple plaintiffs.** Any number of persons who claim any relief, jointly, severally or alternatively, arising out of or respecting the same transaction, occurrence or series of transactions or occurrences, may join as plaintiffs in a single action, when it presents or involves any question of law or fact common to all of them. They may join any causes of action, legal or equitable, independent or alternative, held by any one or more of them which arise out of such transaction, occurrence or series, and which present or involve any common question of law or fact. [Report 1943]

Referred to in R.C.P. 31

**RULE OF CIVIL PROCEDURE NO. 24****Permissive joinder of defendants.**

(a) *Generally.* Any number of defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to all of them is presented or involved.

(b) *Special provisions—joint common carriers.* Sections 613.3 to 613.6, inclusive, of the code, relating to joint common carriers shall remain in force. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 25****Necessary parties—nonjoinder.**

(a) Except as provided in this rule, all persons having a joint interest in any action shall be joined on the same side, but such persons failing to join as plaintiffs may be made defendants. This rule does not apply to class actions under rules 42-47, nor affect the options permitted by sections 613.1 and 613.2 of the code.

(b) A party is indispensable if his interest is not severable, and his absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding his absence his interest would necessarily be inequitably affected by a judgment rendered between those before the court.

(c) If an indispensable party is not before the court, it shall order him brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be obtained by service of original notice in any manner provided by these rules or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities. [Report 1943]

For method of bringing in parties see rule 34

**RULE OF CIVIL PROCEDURE NO. 26**

**Parties partly interested.** A party need not be interested in obtaining or defend-

ing against all the relief demanded. Judgment may be given respecting one or more parties according to their respective rights or liabilities. [Report 1943]

See rule 186

#### RULE OF CIVIL PROCEDURE NO. 27

##### Remedy for misjoinder.

(a) *Parties.* Misjoinder of parties is no ground for dismissal of the action, but parties may be dropped by order of the court on its own motion or that of any party at any stage of the action, on such terms as are just, or any claim against a party improperly joined may be severed and proceeded with separately.

For separate trials as to separate parties, see rule 186

(b) *Actions.* The only remedy for improper joinder of actions shall be by mo-

tion. On such motion the court shall either order the causes docketed separately or strike those causes which should be stricken, always retaining at least one cause docketed in the original case. Before ruling on such motion, the party whose pleading is attacked may withdraw any of the causes claimed to be misjoined. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 28

**Dependent remedies joined.** An action heretofore cognizable only after another has been prosecuted to conclusion may be joined with the latter; and the court shall grant relief according to the substantive rights of the parties. But there shall be no joinder of an action against an indemnitor or insurer with one against the indemnified party, unless a statute so provides. [Report 1943]

## CHAPTER 613

### PARTIES TO ACTIONS

Rule—Real party in interest, R.C.P. 2.

Rule—Assignees—exception, R.C.P. 7.

Rule—Class actions, R.C.P. 42.

Rule—Virtual representation, R.C.P. 43.

613.1 Joint and several obligations.

613.2 Adjudication.

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613.3 Joint common carriers.

613.4 Venue.

613.5 Service.

613.6 Liability of joint carriers.

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613.7 Written instrument.

Rule—Defense by incompetent, prisoner, etc., R.C.P. 13.

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613.8 Actions against state.

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613.10 Rights and liabilities.

Rule—Transfer of interest, R.C.P. 16.

613.11 Women—injury or death.

Rule—Married women—husband and wife, R.C.P. 10.

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Rule—Minors—incompetents, R.C.P. 12.

Rule—Majority of minor, R.C.P. 19.

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Rule—Right of interpleader, R.C.P. 35.

Rule—By defendants, R.C.P. 36.

Rule—Deposit—discharge, R.C.P. 37.

Rule—Substitution of claimant, R.C.P. 38.

Rule—Injunction, R.C.P. 39.

Rule—Costs, R.C.P. 40.

Rule—Sheriff or officer—creditor, R.C.P. 41.

#### RULE OF CIVIL PROCEDURE NO. 2

**Real party in interest.** Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, guardian, trustee of an express trust; or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute, may sue in his own name without joining the party for whose benefit the action is prosecuted. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 7

**Assignees—exception.** The assignment of a thing in action, except transfer of a negotiable instrument for value in good faith before maturity, shall be without

prejudice to any defense, counterclaim or cause of action matured or not, if matured when pleaded, existing against the assignor in favor of the party pleading it. [Report 1943]

Assignment of accounts and nonnegotiable instruments, §§539.1-539.6

#### RULE OF CIVIL PROCEDURE NO. 42

**Class actions.** If the persons composing a class are so numerous that it is impracticable to bring all before the court, such number of them as will insure adequate representation of all may sue or be sued on behalf of all, where the character of the right involved is:

(a) Joint or common, or held primarily by one who has refused to enforce it,



thereby entitling the class or its members to do so; or

(b) Several, and the action seeks to adjudicate claims which do, or may, affect specific property; or

(c) Several, and a common question of law or fact affects the several rights, and a common relief is sought. [Report 1943]

Referred to in R.C.P. 25(a) and 45

#### RULE OF CIVIL PROCEDURE NO. 43

**Virtual representation.** Where persons composing a class which may be increased by others later born, do or may make a claim affecting specific property involved in an action to which all living members of the class are parties, any others later born shall also be deemed to have been parties to the action and bound by any decree rendered therein. [Report 1943]

Referred to in R.C.P. 25(a)

**613.1 Joint and several obligations.** Where two or more persons are bound by contract or by judgment, decree, or statute, whether jointly only, or jointly and severally, or severally only, including the parties to negotiable paper, common orders, and checks, and sureties on the same or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be brought against any or all of them. When any of those so bound are dead, the action may be brought against any or all of the survivors, with any or all of the representatives of the decedents, or against any or all such representatives. [C51, §§1681, 1682; R60, §2764; C73, §2550; C97, §3165; C24, 27, 31, 35, 39, §10975; C46, 50, 54, §613.1]

C97, §3465, editorially divided  
Referred to in R.C.P. 25(a)  
Separate trials, R.C.P. 186

**613.2 Adjudication.** An action or judgment against any one or more of several persons jointly bound shall not be a bar to proceedings against the others. [R60, §2764; C73, §2550; C97, §3465; C24, 27, 31, 35, 39, §10976; C46, 50, 54, §613.2]

Referred to in R.C.P. 25(a)

#### RULE OF CIVIL PROCEDURE NO. 44

**Shareholders' actions.** Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a sufficient reason for not making such effort. [Report 1943]

Referred to in R.C.P. 25(a)

#### RULE OF CIVIL PROCEDURE NO. 45

**Compromise or dismissal.** No class action shall be compromised or voluntarily dismissed without approval of the court.

In actions under rule 42(a), notice of the proposed compromise or dismissal shall be given all members of the class in such manner as the court may prescribe, otherwise notice may be given or omitted as the court may direct. [Report 1943]

For dismissal generally, see rule 215  
Referred to in R.C.P. 25(a)

#### RULE OF CIVIL PROCEDURE NO. 46

**Adequate representation.** Before final judgment in a class action, the court shall inquire and determine that the parties before it adequately represent the class. If it deems such representation inadequate, it may order new parties brought in. [Report 1943]

Referred to in R.C.P. 25(a)

#### RULE OF CIVIL PROCEDURE NO. 47

**Default judgment.** No judgment by default for lack of appearance shall be entered in a class action. If no member of the class appears, the court shall appoint an attorney to represent it, taxing his reasonable fees as costs in the case. [Report 1943]

Referred to in R.C.P. 25(a)

**613.3 Joint common carriers.** In all cases where a railway company bills property to a point beyond the terminus of its own railway and provides by contract that it shall not be liable for the destruction of or damage to such property beyond the terminus of its own railway, and the said property is damaged or destroyed between the place of shipment and place of destination to which it was billed, the initial carrier and the connecting carrier or carriers if more than one, over whose line or lines of railway the property shall have been carried between the place of shipment and said place of destination, may be joined as defendants in one action. [S13, §2074-a; C24, 27, 31, 35, 39, §10977; C46, 50, 54, §613.3]

S13, §2074-a, editorially divided  
Referred to in R.C.P. 24

**613.4 Venue.** Said action may be brought in any county from or into which shipment shall be made, or suit may be brought in any county through which shipment shall be made. [S13, §2074-a; C24, 27, 31, 35, 39, §10978; C46, 50, 54, §613.4]

General provisions as to venue, §616.8  
Referred to in R.C.P. 24

**613.5 Service.** Service of original notice may be made on any of said carriers in any county of the state, where the carrier to be served has a station agent, by serving such notice on such station agent. [S13, §2074-a; C24, 27, 31, 35, 39, §10979; C46, 50, 54, §613.5]

General provision as to service, §617.3  
Referred to in R.C.P. 24

**613.6 Liability of joint carriers.** On proof being made by the owner of the property shipped, that the same has been destroyed or damaged in transit between the said place of shipment and the place of destination, the

liability of a common carrier shall attach to all the defendants, and judgment shall be entered accordingly against them all unless one or more of the defendants shall prove that it was not or they were not liable, in which case judgment shall go only against the remaining defendant or defendants. [S13,§2074-b; C24, 27, 31, 35, 39,§10980; C46, 50, 54,§613.6]

Referred to in R.C.P. 24

**RULE OF CIVIL PROCEDURE NO. 3**

**Public bond.** When a bond or other instrument given to the state, county, school or other municipal corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon, in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 4**

**Partnerships.** Actions may be brought by or against partnerships as such; or against any or all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner not so served or appearing. The court may order absent partners brought in. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 5**

**Foreign corporations.** Foreign corporations may sue and be sued in their corporate name, except as prohibited by statute. [Report 1943]

See §494.9

**RULE OF CIVIL PROCEDURE NO. 6**

**Seduction.** An unmarried female may sue for her own seduction. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 8**

**Injury or death of minor.** A father, or if he be dead, imprisoned or has deserted the family, then the mother, may sue for the expense and actual loss of services resulting from injury to or death of a minor child. [Report 1943]

**613.7 Written instrument.** When an action is founded on a written instrument, it may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument. [C51,§1692; R60,§2786; C73,§2558; C97, §3473; C24, 27, 31, 35, 39,§10988; C46, 50, 54, §613.7]

**RULE OF CIVIL PROCEDURE NO. 13**

**Defense by incompetent, prisoner, etc.** No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reformatory or any state hospital for the insane, or

one judicially adjudged incompetent, or whose physician certifies to the court that he appears to be mentally incapable of conducting his defense. Such defense shall be by guardian ad litem; but the regular guardian or the attorney appearing for a competent party may defend unless the court supersedes him by a guardian ad litem appointed in the ward's interest. [Report 1943]

Referred to in R.C.P. 14 and 298

**RULE OF CIVIL PROCEDURE NO. 9**

**Actions by and against state.** The state may sue in the same way as an individual. No security shall be required of it. It may be sued as provided by any statutes in force at the time. [Report 1943]

Action to abate nuisance, §469.16  
Attachment by state, ch 641  
Right to bid under execution sale, ch 569

**613.8 Actions against state.** Upon the conditions herein provided for the protection of the state, the consent of the state be and it is hereby given, to be made a party in any suit or action which is now pending or which may hereafter be brought in any of the district courts of Iowa, any of the United States district courts within the state or in any other court of or in Iowa having jurisdiction of the subject matter, involving the title to real estate, the partition of real estate, the foreclosure of liens or mortgages against real estate or the determination of the priorities of liens or claims against real estate, for the purpose of obtaining an adjudication touching or pertaining to any mortgage or other lien or claim which the state may have or claim to the real estate involved. The petition in such action shall specifically allege the interest or apparent interest of the state and the specific facts upon which the claim against the state is based and it shall be legally insufficient to allege said claim in general terms. [C35,§10990-g1; C39, §10990.1; C46, 50, 54,§613.8]

Referred to in §613.10

**613.9 Service on state.** Service upon the state shall be made by serving a copy of the original notice with a copy of the petition upon the county attorney for the county, or counties, in which the real estate is located, and by sending a copy of the original notice and petition by certified mail to the attorney general, at Des Moines. The state shall appear within thirty days after the day such notice is served upon the county attorney or within thirty days after such notice is mailed to the attorney general, whichever is later. [C35,§10990-g2; C39,§10990.2; C46, 50, 54,§613.9; 57GA, ch 267,§88]

Referred to in §§362.35, 613.10

**613.10 Rights and liabilities.** After compliance with sections 613.8 and 613.9, the state shall have the same standing as any other defendant and any and all orders, judgments or decrees rendered and entered shall be bind-

ing on the state, the same as on any other defendant, and the state shall have the same rights with respect thereto as any other defendant similarly situated. [C35,§10990-g3; C39, §10990.3; C46, 50, 54,§613.10]

#### RULE OF CIVIL PROCEDURE NO. 16

**Transfer of interest.** Transfer of an interest in a pending action shall not abate it, but may be the occasion for bringing in new parties. [Report 1943]

**613.11 Women—injury or death.** In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. In addition she, or her administrator for her estate, may recover for physician's services, nursing and hospital expense, and the value of her services as wife, or mother, or both, as the case may be, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the husband, as such, of any woman who, or whose administrator, is entitled to recover same. [SS15,§3477-a; C24, 27,§10463; C31, 35,§10991-d1; C39,§10991.1; C46, 50, 54, §613.11]

#### RULE OF CIVIL PROCEDURE NO. 10

**Married women—husband and wife.** A married woman may sue or be sued without joining her husband. If both are sued, she may defend in her own right; and if either fails to defend, the other may defend for both. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 11

**Desertion of family.** When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; under like circumstances the husband shall have the same right. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 12

**Minors—incompetents.** An action of a minor or any person judicially adjudged incompetent shall be brought by his guardian if he have one; otherwise the minor may sue by a next friend, and the incompetent by a guardian appointed by the court for that purpose. The court may dismiss such action or substitute another guardian or friend for the ward's benefit. [Report 1943]

See R.C.P. 298

#### RULE OF CIVIL PROCEDURE NO. 19

**Majority of minor.** If a minor party attains legal majority, he shall continue as a party in his own right. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 14

**Guardian ad litem.** If a party, served with original notice, appears to be subject to rule 13, the court may appoint a guardian ad litem for him, or substitute another, in the ward's interest. Application for such appointment or substitution may be by the ward, if competent, or a minor over fourteen years old; otherwise by his regular guardian or if there be none by any friend, or any party to the action. [Report 1943]

As to insanity, etc., occurring pending suit, see rule 17

For class actions, see rule 42

For answer of guardian ad litem, see rule 71

See R.C.P. 71 and 298

#### RULE OF CIVIL PROCEDURE NO. 17

**Incapacity pending action.** If, during pendency of an action, a party is judicially adjudged incompetent, or confined in any state hospital for the insane, or if his physician certifies to the court that he appears to be mentally incapable of acting in his own behalf, his guardian shall be joined with him, or, if there be none the court shall appoint a guardian ad litem for any party thus adjudged, confined or certified. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 35

**Right of interpleader.** A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against him for the same thing, may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute his liability, wholly or in part. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 36

**By defendants.** A defendant to an action which exposes him to similar liability or litigation may obtain such interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish his claim to the subject of the action, and on his default after due service, the court may decree him barred of such claim. [Report 1943]

For procedure to bring in, see rule 34

#### RULE OF CIVIL PROCEDURE NO. 37

**Deposit—discharge.** If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved, or secured by bond. After such deposit the court, on hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants. [Report 1943]

Referred to in R.C.P. 38

**RULE OF CIVIL PROCEDURE NO. 38**

**Substitution of claimant.** If a defendant seeks an interpleader involving a third person, the latter may appear and make himself a defendant in lieu of the original defendant, who may then be discharged on complying with rule 37. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 39**

**Injunction.** After petition and returns of original notices are filed in an interpleader, the court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order. [Report 1943]

For injunctions generally, see rules 320 et seq.

**RULE OF CIVIL PROCEDURE NO. 40**

**Costs.** Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 41**

**Sheriff or officer — creditor.** When a sheriff or other officer is sued for taking personal property under a writ, or for the property so taken, he may exhibit such writ to the court, with his affidavit that the property involved was taken under it. The attaching or execution creditor shall then be joined with the officer as a defendant; or may join on his own application. Any judgment against the officer and creditor shall provide that the latter's property be first exhausted to discharge it. [Report 1943]

See rule 224

CHAPTER 614

LIMITATIONS OF ACTIONS

GENERAL PROVISIONS

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- 614.2 Death of party to be charged.
- 614.3 Judgments.
- 614.4 Fraud—mistake—trespass.
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- 614.14 Recovery by cestui que trust.
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- 614.23 How "possession" established.

GENERAL PROVISIONS

**614.1 Period of.** Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *In actions for injuries from defects in roads or streets—notice.* Those founded on injury to the person on account of defective roads, bridges, streets, or sidewalks, within three months, unless written notice specifying the time, place, and circumstances of the injury shall have been served upon the county or municipal corporation to be charged within sixty days from the happening of the injury.

Similar provision, §420.45

2. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

3. *Injuries to person or reputation—relative rights — statute penalty — setting aside will.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years; and those brought to set aside a will, within two years

from the time the same is filed in the clerk's office for probate and notice thereof is given; provided that after a will is probated the executor may cause personal service of an original notice to be made on any person interested, which shall contain the name of decedent, the date of his death, the court in which and the date on which the will was probated, together with a copy of said will; said notice shall be served in the same manner as original notices and no action shall be instituted by any person so served after one year from date of service.

4. *Against sheriff or other public officer.* Those against a sheriff or other public officer, growing out of a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the non-payment of money collected on execution, within three years, provided that actions against a sheriff, deputy sheriff, or other peace officer founded on false arrest shall be brought within six months after the exoneration or discharge of the person arrested.

5. *Unwritten contracts — injuries to property—fraud—other actions.* Those founded on

unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsection 9.

**Damages incident to quo warranto, §660.2**

6. *Written contracts — judgments of courts not of record—recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

7. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years.

8. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

9. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years. [C51,§1659; R60, §§1075, 1865, 2740; C73, §§486, 2529; C97, §3447; S13, §§2963-g, 3447; C24, 27, 31, 35, 39, §11007; C46, 50, 54, §614.1]

S13, §3447, editorially divided  
Escheated lands, §667.7  
Legality of municipal bonds, §§408.15, 420.285, 461.23, 463.23  
Sale or mortgage by executor or guardian, §§635.40, 668.23

**614.2 Death of party to be charged.** In all cases where by the death of the party to be charged, the bringing of an action against his estate shall have been delayed beyond the period provided for by statute, the time within which action may be brought against his estate is hereby extended for six months from the date of the death of said decedent. [S13, §3447-a; C24, 27, 31, 35, 39, §11008; C46, 50, 54, §614.2]

**Administration granted, §633.39 et seq.**

**614.3 Judgments.** No action shall be brought upon any judgment against a defendant therein, rendered in any court of record of this state, within nine years after the rendition thereof, without leave of the court, or a judge thereof, for good cause shown, and, if the adverse party is a resident of this state, upon reasonable notice of the application therefor to him; nor on a judgment of a justice of the peace in the state within nine years after the same is rendered, unless the docket of the justice or record of such judgment is lost or destroyed; but the time during which an action on a judgment is prohibited by this section shall not be excluded in computing the statutory period of limitation for an action thereon. [C73, §2521; C97, §3439; S13, §3439; C24, 27, 31, 35, 39, §11009; C46, 50, 54, §614.3]

Action on certain judgments prohibited, ch 815  
Lien of judgments, §624.23

**614.4 Fraud—mistake—trespass.** In actions for relief on the ground of fraud or mistake,

and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved. [C51, §1660; R60, §2741; C73, §2530; C97, §3448; C24, 27, 31, 35, 39, §11010; C46, 50, 54, §614.4]

**614.5 Open account.** When there is a continuous, open, current account, the cause of action shall be deemed to have accrued on the date of the last item therein, as proved on the trial. [C51, §1662; R60, §2743; C73, §2531; C97, §3449; C24, 27, 31, 35, 39, §11011; C46, 50, 54, §614.5]

#### RULE OF CIVIL PROCEDURE NO. 49

**Tolling limitations.** For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, whether the limitation inheres in the statutes creating the remedy or not, the delivery of the original notice to the sheriff of the proper county with the intent that it be served immediately (which intent shall be presumed unless the contrary appears) shall also be deemed a commencement of the action. [Report 1943; amendment 1951]

**614.6 Nonresidence.** The time during which a defendant is a nonresident of the state shall not be included in computing any of the periods of limitation above described. [C51, §1664; R60, §2745; C73, §2533; C97, §3451; C24, 27, 31, 35, 39, §11013; C46, 50, 54, §614.6]

**614.7 Bar in foreign jurisdiction.** When a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this state. [C51, §1665; R60, §2746; C73, §2534; C97, §3452; C24, 27, 31, 35, 39, §11014; C46, 50, 54, §614.7]

**614.8 Minors and insane persons.** The times limited for actions herein, except those brought for penalties and forfeitures, shall be extended in favor of minors and insane persons, so that they shall have one year from and after the termination of such disability within which to commence said action. [C51, §1666; R60, §2747; C73, §2535; C97, §3453; C24, 27, 31, 35, 39, §11015; C46, 50, 54, §614.8]

Referred to in §§587.12, 614.19

**614.9 Exception in case of death.** If the person having a cause of action dies within one year next previous to the expiration of the limitation above provided for, such limitation shall not apply until one year after such death. [C51, §1667; R60, §2748; C73, §2536; C97, §3454; C24, 27, 31, 35, 39, §11016; C46, 50, 54, §614.9]

**614.10 Failure of action.** If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first. [C51,§1668; R60,§2749; C73,§2537; C97,§3455; C24, 27, 31, 35, 39,§11017; C46, 50, 54,§614.10]

**614.11 Admission in writing—new promise.** Causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same. [C51,§1670; R60,§2751; C73,§2539; C97,§3456; C24, 27, 31, 35, 39,§11018; C46, 50, 54,§614.11]

**614.12 Counterclaim.** A counterclaim may be pleaded as a defense to any cause of action, notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred, and was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading it. [R60,§2752; C73,§2540; C97,§3457; C24, 27, 31, 35, 39,§11019; C46, 50, 54, §614.12]

**614.13 Injunction.** When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action, except as herein otherwise provided. [C73,§2541; C97,§3458; C24, 27, 31, 35, 39,§11020; C46, 50, 54,§614.13]

#### SPECIAL LIMITATIONS

**614.14 Recovery by cestui que trust.** In all cases where any deed of trust or declaration of trust has been executed and the real estate affected thereby has been conveyed by the trustee or the surviving spouse or heirs of said trustee and such conveyance was duly recorded in the proper county prior to January 1, 1940, and the interest of the cestui que trust thereunder has not been by such cestui que trust conveyed, or established by proper proceedings in court, no action, suit or proceeding shall be commenced or maintained to foreclose the same, or to establish or recover the interest of the cestui que trust therein, or of the surviving spouse or heirs of the cestui que trust, unless such action, suit, or proceeding be commenced by filing petition and service of notice not later than March 1, 1952. [S13, §3447; C24, 27, 31, 35, 39,§11021; C46, 50, 54, §614.14]

Referred to in §614.16

**614.15 Spouse failing to join in conveyance.** In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, prior to January 1, 1940, conveyed said real estate or any interest therein by deed, mortgage, or other instrument, and the spouse failed to join therein, such spouse

or the heirs at law, personal representatives, devisees, grantees, or assignees of such spouse shall be barred from recovery unless suit is brought therefor within one year after July 4, 1951. But in case the right to such distributive share has not accrued by the death of the spouse making such instrument, then the one not joining is hereby authorized to file in the recorder's office of the county where the land is situated, a notice with affidavit, setting forth affiant's claim, together with the facts upon which such claim rests, and the residence of such claimants; and if such notice is not filed within two years from July 4, 1951, such claim shall be barred forever. Any action contemplated in this section may include land situated in different counties, by giving notice thereof as provided by section 617.13. [S13, §3447-b; C24, 27, 31, 35, 39,§11022; C46, 50, 54, §614.15]

Referred to in §§614.16, 614.20

**614.16 Interpretative clause.** Sections 614.14 and 614.15 shall not affect pending litigation, nor shall they operate to revive rights or claims previously barred, nor permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 4, 1951. [C24, 27, 31, 35, 39,§11023; C46, 50, 54,§614.16]

**614.17 Claims to real estate antedating 1940.** No action based upon any claim arising or existing prior to January 1, 1940, shall be maintained, either at law or in equity, in any court to recover any real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession, when such holder of the record title and his grantors immediate or remote are shown by the record to have held chain of title to said real estate, since January 1, 1940, unless such claimant, by himself, or by his attorney or agent, or if he be a minor or under legal disability, by his guardian, trustee, or either parent shall within one year from and after July 4, 1951, file in the office of the recorder of deeds of the county wherein such real estate is situated, a statement in writing, which shall be duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based.

For the purposes of this and sections 614.18 to 614.20, inclusive, any person who holds title to real estate by will or descent from any person who held the title of record to such real estate at the date of his death or who holds title by decree or order of any court, or under any tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, shall be deemed to hold chain of title the same as though holding by direct conveyance.

For the purposes of this section, such possession of said real estate may be shown of record by affidavits showing such possession, and when said affidavits have been filed and

recorded, it shall be the duty of the recorder to enter upon the margin of said record, a certificate to the effect that said affidavits were filed by the owner in possession, as named in said affidavits, or by his attorney in fact, as shown by the records and in like manner. such affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 4, 1951. [C24, 27, 31, 35, 39,§11024; C46, 50, 54,§614.17]

Referred to in §§614.19, 614.20

**614.18 Claim indexed.** Any such claim so filed, shall be indexed under the description of the real estate involved in a book set apart and specially designed for that purpose to be known as the "claimant's book" and kept in the office of the recorder of the county where such real estate is situated, and said statement, when so indexed, shall be recorded as other instruments affecting real estate. [C24, 27, 31, 35, 39,§11025; C46, 50, 54,§614.18]

Referred to in §§614.17, 614.19, 614.20

**614.19 Minors and insane.** The provisions of section 614.8 as to the rights of minors and insane persons shall not be applicable against the provisions of sections 614.17, 614.18, and 614.20. [C24, 27, 31, 35, 39,§11026; C46, 50, 54, §614.19]

Referred to in §§614.17, 614.20

**614.20 Limitation on act.** Provided, however, that nothing contained in sections 614.17 to 614.19, inclusive, shall be construed as limiting or extending the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, or as limiting or extending the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614.21; and, provided further, that sections 614.17 to 614.19, inclusive, should in no case revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 4, 1951; provided that nothing contained in sections 614.17 to 614.19, inclusive, shall affect pending litigation. [C24, 27, 31, 35, 39,§11027; C46, 50, 54,§614.20]

Referred to in §§614.17, 614.19

**614.21 Foreclosure of ancient mortgages.** No action shall be maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate, after twenty years from the date thereof, as shown by the record of such instrument, unless the record of such instrument shows that less than ten years have elapsed since the date of maturity of the indebtedness or part thereof, secured

thereby, or since the right of action has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension have not yet expired. The date of maturity, when different than as appears by the record of the instrument, and the date of maturity of any extension of said indebtedness or part thereof, may be shown at any time prior to the expiration of the above periods of limitation by the holder of the debt or the owner or assignee of the instrument filing an extension agreement, duly acknowledged as the original instrument was required to be acknowledged, in the office of the recorder where the instrument is recorded, or by noting on the margin of the record of such instrument in the recorder's office an extension of the maturity of the instrument or of the debt secured, or any part thereof; each notation to be witnessed by the recorder and entered upon the index of mortgages in the name of the mortgagor and mortgagee.

From and after July 4, 1946, this section shall also apply to any instrument of the kind described in this section which is not of record but which is described or referred to in any other instrument which is filed of record and the limitation shall be ten years from the due date of the instrument referred to if disclosed in the record and if not so disclosed then within ten years from the date of the record of the instrument containing such reference. [S13, §3447-c; C24, 27, 31, 35, 39,§11028; C46, 50, 54, §614.21]

Referred to in §614.20

**614.22 Action affecting ancient deeds.** No action shall be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from any tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, sheriff's deed which shall have been recorded in the office of the recorder of the county or counties in this state in which the land described in such deed is situated prior to January 1, 1940, unless such action shall be commenced prior to January 1, 1953, and if no action to set aside, cancel, annul, declare void or invalid, or to redeem from any such deed shall be commenced prior to January 1, 1953, then such deed and all the proceedings upon which the same is based shall be conclusively presumed to have been in all things valid and unimpeachable and effective to convey title according to the purport thereof, without exception for infancy, insanity, absence from the state, or other disability or cause; provided that this and section 614.23 shall not apply to any real property described in any such deed which is not on July 4, 1951, in the possession of those claiming title under such deed. [SS15,§3447-d; C24, 27, 31, 35, 39,§11029; C46, 50, 54,§614.22]

Referred to in §614.23  
Legalizing acts, ch 589

**614.23 How "possession" established.** The possession of the persons claiming title as provided for in section 614.22 may be established by affidavit recorded in the office of the recorder of the county or counties in this state

in which the deed to the land referred to in said affidavit is recorded. [SS15,§3447-e; C24, 27, 31, 35, 39,§11030; C46, 50, 54,§614.23]

Referred to in §614.22

CHAPTER 615

SPECIAL LIMITATIONS ON JUDGMENTS

- 615.1 Execution on certain judgments prohibited.
- 615.2 Revival of certain judgments prohibited.

- 615.3 Future judgments without foreclosure.
- 615.4 Former judgments without foreclosure.

**615.1 Execution on certain judgments prohibited.** From and after January 1, 1934, no judgment in an action for the foreclosure of a real estate mortgage or deed of trust or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced and no execution issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years from the entry thereof. [C35,§11033-e1; C39,§11033.1; C46, 50, 54,§615.1]

See also §654.6  
See special limitation, 55GA, ch 43, in re closed banks

**615.2 Revival of certain judgments prohibited.** After January 1, 1934, no action or proceedings shall be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force for a longer period by the voluntary written stipulation of the parties, filed in said

cause. [C35,§11033-e2; C39,§11033.2; C46, 50, 54, §615.2]

Omnibus repeal, 45GA, ch 178,§3

**615.3 Future judgments without foreclosure.** Judgments hereafter rendered on promissory obligations secured by mortgage or deed of trust of real estate, but without foreclosure against said security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim. [C35,§11033-g1; C39,§11033.3; C46, 50, 54,§615.3]

Effective date, May 3, 1935

**615.4 Former judgments without foreclosure.** Judgments heretofore rendered or in actions now pending upon promissory obligations secured by mortgage or deed of trust of real estate, and upon which judgments or actions now pending the holder thereof brought suit direct upon the said promissory obligation without a foreclosure against said security, shall have no force or vitality for any purpose other than a setoff or counterclaim from and after the expiration of two years from the passage of this act\* and no execution shall be issued thereon. [C35,§11033-g2; C39,§11033.4; C46, 50, 54,§615.4]

\*46GA, ch 108, effective date, May 3, 1935

CHAPTER 616

PLACE OF BRINGING ACTIONS

Change of venue, ch 623

- 616.1 Real property.
- 616.2 Injuries to real property.
- 616.3 Local actions.
- 616.4 Nonresident—attachment.
- 616.5 Resident—attachment.
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- 616.8 Certain carriers and transmission companies—actions against.
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- 616.18 Motor vehicle damage actions.
- 616.19 Negotiable paper.
- 616.20 Right of nonresident defendant.
- 616.21 Change of residence.
- Rule—Action brought in wrong county, R.C.P. 175.

**616.1 Real property.** Actions for the recovery of real property, or of an estate therein, or for the determination of such right or inter-

est, or for the partition of real property, must be brought in the county in which the subject of the action or some part thereof is situated.



[C51,§1703; R60,§2795; C73,§2576; C97,§3491; C24, 27, 31, 35, 39,§11034; C46, 50, 54,§616.1]

Real estate foreclosure, §654.3

**616.2 Injuries to real property.** Actions for injuries to real property may be brought either in the county where the property is, or where the defendant resides. [C73,§2577; C97,§3492; C24, 27, 31, 35, 39,§11035; C46, 50, 54,§616.2]

**616.3 Local actions.** Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. *For fines, penalties, or forfeitures.* Those for the recovery of a fine, penalty, or forfeiture imposed by a statute; but when the offense for which the claim is made was committed on a watercourse or road which is the boundary of two counties, the action may be brought in either of them.

2. *Against public officers.* Those against a public officer or person specially appointed to execute his duties, for an act done by him in virtue or under color of his office, or against one who by his command or in his aid shall do anything touching the duties of such officer, or for neglect of official duty.

3. *On official bonds.* Those on the official bond of a public officer.

4. *Actions on bonds of executor or guardian.* Those on the bond of an executor, administrator, or guardian may be brought in the county in which the appointment was made and such bond filed.

5. *Actions on other bonds.* Actions on all other bonds provided for or authorized by law may be brought in the county in which such bond was filed and approved. [R60,§2796; C73, §2579; C97,§3494; S13,§3494; C24, 27, 31, 35, 39, §11036; C46, 50, 54,§616.3]

**616.4 Nonresident—attachment.** An action against a nonresident of the state, when aided by an attachment, may be brought in any county of the state wherein any part of the property sought to be attached may be found, or wherein any part was situated when the action was commenced, or where the defendant is personally served in this state. [C51, §1703; R60,§2797; C73,§2580; C97,§3495; C24, 27, 31, 35, 39,§11037; C46, 50, 54,§616.4]

C97,§3495, editorially divided

**616.5 Resident — attachment.** Except as hereinafter provided, an action against a resident of this state must be brought in the county of his residence, or that in which the contract was to be performed, except that, if an action be duly brought against such defendant in any other county by virtue of any of the provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by attachment. [R60,§2797; C73, §2580; C97,§3495; C24, 27, 31, 35, 39,§11038; C46, 50, 54,§616.5]

**616.6 Transfer — attached property held.** Should such action be brought against a resi-

dent of this state in any other county than that of his residence, he may have the place of trial changed to the district court of the county wherein he resides, in the same manner and upon the same terms as provided in rule of civil procedure 175, and the property attached shall not be released because said action was brought in the wrong county, but shall be held and subject in the same manner as if said action had been brought in the county of defendant's residence. [R60,§2797; C73,§2580; C97,§3495; C24, 27, 31, 35, 39,§11039; C46, 50, 54,§616.6]

**616.7 Place of contract.** When, by its terms, a written contract is to be performed in any particular place, action for a breach thereof may, except as otherwise provided, be brought in the county wherein such place is situated. [C51,§1704; R60,§2798; C73,§2581; C97,§3496; C24, 27, 31, 35, 39,§11040; C46, 50, 54,§616.7]

Change of venue for fraud, §601.11, and R.C.P. 167

**616.8 Certain carriers and transmission companies—actions against.** An action may be brought against any railway corporation, the owner of stages, or other line of coaches or cars, express, canal, steamboat and other river crafts, telegraph and telephone companies, or the owner of any line for the transmission of electric current for lighting, power, or heating purposes, and the lessees, companies, or persons operating the same, in any county through which such road or line passes or is operated. [C73,§2582; C97,§3497; S13,§3497; C24, 27, 31, 35, 39,§11041; C46, 50, 54,§616.8]

Actions against joint common carriers, §613.4  
Similar provision, §486.9

**616.9 Construction companies.** An action may be brought against any corporation, company, or person engaged in the construction of a railway, canal, telegraph or telephone line, oil, gas, or gasoline transmission lines, highway, or public drainage improvement, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the contract or work thereunder, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose. [C73,§2583; C97,§3498; C24, 27, 31, 35, 39,§11042; C46, 50, 54,§616.9]

**616.10 Insurance companies.** Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. [C73,§2584; C97,§3499; C24, 27, 31, 35, 39,§11043; C46, 50, 54,§616.10]

**616.11 Nonlife insurance assessments.** No court other than that of the county in which the member resides shall have jurisdiction of actions to collect assessments levied by associations organized under the provisions of chap-

ter 518, but such actions shall be brought in the county of the member's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the member and the association to the contrary notwithstanding. [C24, 27, 31, 35, 39,§11044; C46, 50, 54,§616.11]

**616.12 Nonlife insurance premiums or notes.**

No court other than that of the county in which the policyholder resides shall have jurisdiction of actions to collect premiums or premium notes payable or given for insurance other than life, but such actions shall be brought in the county of the policyholder's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the policyholder and the company or its agent to the contrary notwithstanding. [C27, 31, 35,§11044-a1; C39,§11044.1; C46, 50, 54,§616.12]

**616.13 Operators of coal mines.**

An action may be brought against any corporation, company, or person, owning, leasing, operating, or maintaining a coal mine, in the county where said mine is located, on any contract, or for any tort, in any manner connected with or growing out of the construction, use, or operation of said mine. [S13,§3499-a; C24, 27, 31, 35, 39,§11045; C46, 50, 54,§616.13]

**616.14 Office or agency.**

When a corporation, company, or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located. [C51,§1705; R60,§2801; C73,§2585; C97,§3500; C24, 27, 31, 35, 39,§11046; C46, 50, 54,§616.14]

Related section, R.C.P. 56 (f, g)

**616.15 Surety companies.**

Suit may be brought against any company or corporation furnishing or pretending to furnish surety, fidelity, or other bonds in this state, in any county in which the principal place of business of such company or corporation is maintained in this state, or in any county wherein is maintained its general office for the transaction of its Iowa business, or in the county where the principal resides at the time of bringing suit, or in the county where the principal did reside at the time the bond or other undertaking was executed; and in the case of bonds furnished by any such company or corporation for any building or improvement, either public or private, action may be brought in the county wherein said building or improvement, or any part thereof is located. [S13,§3500-a; C24, 27, 31, 35, 39,§11047; C46, 50, 54,§616.15]

Surety on public improvements, §573.16

**616.16 Municipal corporations in certain counties.**

Actions against municipal corporations in all counties where terms of the dis-

trict court are held in more than one place must be brought in the county and at the place where terms of the district court are held nearest to where the cause or subject of the action originated. [S13,§3504-a; C24, 27, 31, 35, 39,§11048; C46, 50, 54,§616.16]

**616.17 Personal actions.** Personal actions, except as otherwise provided, must be brought in a county in which some of the defendants actually reside, but if neither of them have a residence in the state, they may be sued in any county in which either of them may be found. [C51,§1701; R60,§2800; C73,§2586; C97,§3501; C24, 27, 31, 35, 39,§11049; C46, 50, 54,§616.17]

C97,§3501, editorially divided  
Referred to in §616.20  
Cross petition against nonresident, R.C.P. 33, 34, and 74

**616.18 Motor vehicle damage actions.** Actions arising out of injuries to a person or damage to property caused by the operation of any motor vehicle may be brought in the county in which the defendant, or one of the defendants, is a resident or in the county in which the injury or damage is sustained.

Where an action is commenced in the county in which the injury or damage occurred, and which county is not the residence of the defendants or one of them, a defendant at any time before answering may file a motion to require the plaintiff to furnish a bond for costs and before any other proceedings in the action the plaintiff must file in the clerk's office a bond to be approved by the clerk in an amount to be fixed by the court for the payment of costs; but in no event shall a bond for costs be required for more than one hundred dollars. [C46, 50, 54,§616.18]

**616.19 Negotiable paper.** In all actions upon negotiable paper, except when made payable at a particular place, in which any maker thereof, being a resident of the state, is defendant, the place of trial shall be limited to a county wherein some one of such makers resides. [C73,§2586; C97,§3501; C24, 27, 31, 35, 39, §11050; C46, 50, 54,§616.19]

Referred to in §616.20

**616.20 Right of nonresident defendant.**

Where an action provided for in sections 616.17 and 616.19 is against several defendants, some of whom are residents and others nonresidents of the county, and the action is dismissed as to the residents, or judgment is rendered in their favor, or there is a failure to obtain judgment against such residents, such nonresidents may, upon motion, have said cause dismissed, with reasonable compensation for trouble and expense in attending at the wrong county, unless they, having appeared to the action, fail to object before judgment is rendered against them. [C73,§2587; C97,§3502; C24, 27, 31, 35, 39, §11051; C46, 50, 54,§616.20]

**616.21 Change of residence.** If, after the commencement of an action in the county of the defendant's residence, he removes therefrom, the service of notice upon him in an-

other county shall have the same effect as if it had been made in the county from which he removed. [C73,§2588; C97,§3503; C24, 27, 31, 35, 39,§11052; C46, 50, 54,§616.21]

#### RULE OF CIVIL PROCEDURE NO. 175

##### Action brought in wrong county.

(a) An action brought in the wrong county may be prosecuted there until termination, unless a defendant, before answer, moves for its change to the proper county. Thereupon the court

shall order the change at plaintiff's cost, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county.

(b) If all such costs are not paid within a time to be fixed by the court, or the papers are not filed in the proper court within twenty days after such order, the action shall be dismissed. [Report 1943]

Referred to in §616.6  
Change of venue generally, ch 623

## CHAPTER 617

### MANNER OF COMMENCING ACTIONS

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#### RULE OF CIVIL PROCEDURE NO. 48

**Commencing actions.** A civil action is commenced by serving the defendant with an original notice. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 50

**Contents of original notice.** The original notice shall be directed to the defendant, and signed by plaintiff or his attorney with the signer's address. It shall name the plaintiff, the court, and the city or town, and county where the court convenes. It shall state either that the petition is on file in the office of the clerk of the court where the action is brought, or that it will be so filed by a stated date, which must not be more than ten days after service. It shall notify defendant to appear before said court within the specified number of days after service required by rule 53 or rule 54, and that unless he so appears, his default will be entered and judgment or decree rendered against him for the relief demanded in the petition. A copy of the petition may be attached; but if it is not or if the service is by publication, the notice shall contain a general statement of the cause

or causes of action and the relief demanded, and, if for money, the amount thereof. [Report 1943]

Referred to in R.C.P. 61  
Commencement of action against nonresident for damages consequent on operation of motor vehicle, see §321.498 et seq.

#### RULE OF CIVIL PROCEDURE NO. 53

**Time for appearance.** A defendant served by publication or by publication and mailing, as provided in rule 60.1, must appear on or before the date fixed in the notice as published, which date shall not be less than twenty days after the day of last publication. If served in any other manner, the defendant shall appear within twenty days after the day the original notice is served on him in all cases where:

(a) A copy of the petition is attached to the original notice; or

(b) The petition is on file when the notice is served, and the notice so states.

In all other cases the defendant shall appear within thirty days after the day such notice is served. Unless he so appears, he will be in default; but if he

does appear, he shall have time to move or plead as provided in rule 85. [Report 1943; amendment 1951]

Referred to in R.C.P. 50, 54 and 230

**617.1 Process — criminal defendant.** Any defendant in any criminal action pending or to be brought in any court in the state of Iowa may be served with process, either civil or criminal, in any other action pending or to be brought against him in the courts of this state while he is present in this state, either voluntarily or involuntarily. [C39,§11056.1; C46, 50, 54,§617.1]

Process in pending cases legalized, 47GA, ch 234,§2

#### RULE OF CIVIL PROCEDURE NO. 55

**Failure to file petition.** If the petition is not filed as stated in the original notice served, any defendant may have the case dismissed as to him, without notice, at plaintiff's cost; and may docket it for this purpose by filing his copy of the original notice, if need be. [Report 1943]

For filing petition and copies, see rule 82

#### RULE OF CIVIL PROCEDURE NO. 52

**By whom served.** Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party, his agent or attorney may take an acknowledgment of service and deliver copy of notice in connection therewith, and may mail copy of original notice when mailing is required or permitted under any rule or statute. [Report 1943; amendment 1951]

#### RULE OF CIVIL PROCEDURE NO. 54

##### Special cases—appearance of garnishee.

(a) Any statute of Iowa which specially requires appearance by a particular defendant, or in a particular action, within a specified time, shall govern the time for appearance in such cases, rather than rule 53.

(b) The officer serving a writ of attachment or execution shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in the manner and as an original notice in civil actions, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law, and, unless answers are required to be taken as provided by statute, it shall cite the garnishee to appear in not less than ten days after service of the notice and at a time specified when court will be in session and a judge will be present, and answer such interrogatories as may be propounded, or he will be liable to pay

any judgment which the plaintiff may obtain against the defendant. [Report 1943; amendment 1945]

Referred to in R.C.P. 50 and 230

#### RULE OF CIVIL PROCEDURE NO. 56

**Personal service.** Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows:

(a) Upon any individual aged eighteen years or more who has not been adjudged incompetent, either by taking his signed, dated acknowledgment of service indorsed on the notice; or by serving him personally; or by serving, at his dwelling house or usual place of abode, any person residing therein who is at least eighteen years old, but if such place is a rooming house, hotel, club or apartment building, the copy shall there be delivered to such a person who is either a member of his family or the manager, clerk, proprietor or custodian of such place.

(b) Upon a minor under eighteen years old, by serving either the guardian of his person or property, unless the notice is served on behalf of such guardian, or his parent, or some person aged eighteen years or more who has his care and custody, or with whom he resides, or in whose service he is employed. Where the notice upon a minor is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint, without prior notice on the ward, a guardian ad litem upon whom service shall be made and who shall defend for the minor.

(c) Upon any person judicially adjudged incompetent but not confined in a state hospital for the insane, by serving the guardian of his person or property, unless the notice is served on behalf of such guardian, or his spouse, or some person aged eighteen years or more who has his care and custody, or with whom he resides. Where the notice upon an incompetent is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint, without prior notice to the ward, a guardian ad litem upon whom service shall be made and who shall defend for the incompetent.

(d) Any person, whether competent or not, confined in a county home, or in any state hospital for the insane, or any patient in the State University of Iowa Hospital or its psychopathic ward, or any patient or inmate of any institution in charge of the Iowa board of

control or of the United States, may be served by the official in charge of such institution or his assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or his affidavit if it is out of Iowa.

(e) If any defendant is a patient in any state or federal hospital for the insane, in or out of Iowa, or has been adjudged incompetent and is confined to a county home, the official in charge of such institution or his assistant shall accept service on his behalf, if in his opinion direct service on the defendant would injuriously affect him, which shall be stated in such acceptance.

(f) Upon a partnership, or an association suable under a common name, or a domestic or foreign corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.

(g) If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

(h) Upon any city or town by serving its mayor or clerk.

(i) Upon any county by serving its auditor or the chairman of its board of supervisors.

(j) Upon any school district, school township or school corporation by serving its president or secretary.

(k) Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by such statute or any statute applicable thereto.

(l) Upon any individual, corporation, partnership or association suable under a common name which shall have filed in this state a consent to service, or shall be subject to service, in any special manner provided by the statutes of this state, either as provided in these rules or as provided in any such consent to service, or in accordance with any such statute relating thereto.

(m) Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary. [Report 1943; amendment 1945]

Referred to in R.C.P. 59, 64 and 283  
Legalizing act, 54GA, ch 211

**617.2 Penalty—amendment.** If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same may be fined by the court not exceeding ten dollars, and he shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case. [R60,§2820; C73,§2606; C97,§3521; C24, 27, 31, 35, 39,§11063; C46, 50, 54,§617.2]

#### RULE OF CIVIL PROCEDURE NO. 57

**Service on Sunday.** Original notice shall not be served on Sunday unless the plaintiff, his agent or attorney indorses thereon his oath that personal service shall be impossible unless then made. [Report 1943]

Analogous or related provisions, §§605.18, 626.6, 639.5, 643.3, 667.3

#### RULE OF CIVIL PROCEDURE NO. 51

**Contents of notice—notice of no personal claim.** A defendant who unreasonably defends when the original notice states that no personal judgment is asked against him, shall pay the costs occasioned thereby. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 59

##### Returns of service.

(a) *Signature — fees.* Iowa officers may make unsworn returns of original notices served by them, as follows: any sheriff or deputy sheriff, as to service in his own or a contiguous county; any other peace officer, or bailiff or marshal, as to service in his own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in rules 56 (d) and 56 (e), shall be proved by the affidavit of the person making the service. If served in the state of Iowa by a person other than such peace officer acting within the territories above defined or in another state by a person other than a sheriff or other peace officer, no fees or mileage shall be allowed therefor.

(b) *Contents.* A return of personal service shall state the time, manner, and place thereof and name the person to whom copy was delivered; and if delivered under rule 56(a) to a person other than defendant, it must also state the facts showing compliance with said rule.

(c) *Indorsement and filing.* If a sheriff receives the notice for service, he shall note thereon the date when received, and serve it without delay in his own or a contiguous county, and upon receiving his fees, shall either file it and his return with the clerk, or deliver it

by mail or otherwise to the person from whom he received it. [Report 1943]

Similar provision as to return, §601.23

**617.3 Public utility and foreign corporations.** If the action is against any corporation or person owning or operating any railway or canal, steamboat or other river craft, or any telegraph, telephone, stage, coach, or car line, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county. [C51,§1727; R60, §2825; C73,§2611; C97,§3529; S13,§3529; C24, 27, 31, 35, 39,§11072; C46, 50, 54,§617.3]

S13,§3529, editorially divided  
Service on joint common carriers, §613.5

**617.4 Consolidated railways.** If the action is against any railway corporation which has merged and consolidated its stock, property, franchises, and liabilities with that of any other railway corporation, as authorized by section 476.4, or which has sold or leased its property and franchises to any other railway corporation as authorized by section 476.23, service of the original notice may be made upon any station, ticket, or other agent of the merged, vendee, or lessee corporation in the county where the action is brought; if there is no such agent in said county, then service may be made upon such agent or person in any other county. [S13,§3529; C24, 27, 31, 35, 39,§11073; C46, 50, 54,§617.4]

**617.5 Insurance company.** If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies. [C97,§3530; C24, 27, 31, 35, 39,§11074; C46, 50, 54,§617.5]

Actions against bonding companies, §§682.20, 682.21

**617.6 Other corporations.** When the action is against any other corporation, service may be made on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation. [C51,§1726; R60,§2824; C73,§2612; C97, §3531; C24, 27, 31, 35, 39,§11077; C46, 50, 54, §617.6]

Last known or acting officers, §496.1  
Public officers as process agents, §§491.15, 494.2, 511.27, 512.22, 515.73, 520.5, 534.74

**RULE OF CIVIL PROCEDURE NO. 60**

**Service by publication — what cases.** After filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may

be served by publication, in any action brought:

(a) For recovery of real property or any estate or interest therein;

(b) For the partition of real or personal property in Iowa;

(c) To foreclose a mortgage, lien, encumbrance or charge on real or personal property;

(d) For specific performance of a contract for sale of real estate;

(e) To establish, set aside or construe a will, if defendant resides out of Iowa, or if his residence is unknown;

(f) Against a nonresident of Iowa or a foreign corporation which has property, or debts owing to it in Iowa, sought to be taken by any provisional remedy, or appropriated in any way;

(g) Against any defendant who, being a nonresident of Iowa, or a foreign corporation, has or claims any actual or contingent interest in or lien on real or personal property in Iowa which is the subject of such action, or to which it relates; or where the action seeks to exclude such defendant from any lien, interest or claim therein;

(h) Against any resident of the state who has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid service, or who keeps himself concealed with like intent;

(i) For divorce or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a defendant who is a nonresident of Iowa or whose residence is unknown;

(j) To quiet title to real estate, against a defendant who is a nonresident of Iowa, or whose residence is unknown;

(k) Against a partnership, corporation or association suable under a common name, when no person can be found on whom personal service can be made;

(l) To vacate or modify a judgment or for a new trial under rules 252 and 253. [Report 1943; amendment 1945]

Referred to in §587.12  
Prior service by publication legalized, 54GA, ch 210; see §587.12  
See §587.8, judgments and decrees legalized  
See also chs 617, 618

**RULE OF CIVIL PROCEDURE NO. 60.1**

**Known defendants.**

(a) In every case where service of original notice is made upon a known defendant by publication, copy of the notice shall also be sent by ordinary mail addressed to such defendant at his last known mailing address, unless an affidavit of a party or his attorney is filed stating that no mailing address is known and that diligent inquiry has been made to ascertain it.

(b) Such copy of notice shall be mailed by the party, his agent or attorney not less than twenty days before the date set for appearance.

(c) Proof of such mailing shall be by affidavit, and such affidavit or the affidavit referred to in rules 60.1(a) shall be filed before the entry of judgment or decree. The court, in its judgment or decree, or prior thereto, shall make a finding that the address to which such copy was directed is the last known mailing address, or that no such address is known, after diligent inquiry. [Report 1951]

Referred to in R.C.P. 53, 234, 251  
See also ch 617

**617.7 Unknown defendants.** Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that he has sought diligently to learn the same. [R60,§2836; C73,§2622; C97, §3538; SS15,§3538; C24, 27, 31, 35, 39,§11082; C46, 50, 54,§617.7]

40ExGA, HF 228,§5, editorially divided

#### RULE OF CIVIL PROCEDURE NO. 61

**Service by publication—unknown defendants.** The original notice against unknown defendants shall be directed to the unknown claimants of the property involved, describing it. It shall otherwise comply with rule 50. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 62

**How published.** Publication of original notice shall be made after the filing of the petition, once each week for three consecutive weeks in a newspaper of general circulation, published in the county where the petition is filed; such newspaper to be selected by the plaintiff or his attorney. [Report 1943; amendment 1951]

See also §618.9

#### RULE OF CIVIL PROCEDURE NO. 63

**Proof of publication.** Before default is taken, proof of such publication shall be filed, sworn to by the publisher or an employee of the newspaper. [Report 1943]

Proof of publication, §622.92

#### RULE OF CIVIL PROCEDURE NO. 64

**Actual service.** Service of original notice in or out of Iowa according to rule 56, supersedes the need of its publication. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 65

**General appearance.** A general appearance is any appearance except a special appearance. It is made either by:

(a) Taking any part in a hearing or trial of the case, personally or by attorney, or

(b) By a written appearance filed with the clerk, or a notation on the appearance docket or oral announcement in open court;

(c) By filing a motion or pleading, other than under a special appearance. [Report 1943]

See also rule 87 limiting the effect of appearance alone.

#### RULE OF CIVIL PROCEDURE NO. 66

**Special appearance.** A defendant may appear specially, for the sole purpose of attacking the jurisdiction of the court, but only before his general appearance. The special appearance shall be in writing, filed with the clerk and shall state the grounds thereof. If his special appearance is erroneously overruled, he may plead to the merits or proceed to trial without waiving such error. [Report 1943]

See also rule 104(a)

#### RULE OF CIVIL PROCEDURE NO. 58

**Member of general assembly.** No member of the general assembly shall be held to appear or answer in any civil action in any court in this state while such general assembly is in session. [Report 1943]

**617.8 Holidays.** No person shall be held to answer or appear in any court on any day now or hereafter made a legal holiday. [C97, §3541; S13,§3541; C24, 27, 31, 35, 39,§11090; C46, 50, 54,§617.8]

Holidays, §541.85; depositions, R.C.P. 141

**617.9 Unserved parties—optional procedure.** When the action is against two or more defendants, and one or more of them shall have been served, but not all, the plaintiff may proceed as follows:

If the action is against defendants who are jointly, or jointly and severally, or severally liable only, he may, without prejudice to his rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if he recovers against those jointly liable only, he may take judgment against all thus liable, which may be enforced against the joint and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property. [R60, §2841; C73,§2627; C97,§3542; C24, 27, 31, 35, 39, §11091; C46, 50, 54,§617.9]

**617.10 Real estate—action indexed.** When a petition affecting real estate is filed, the clerk of the district court where filed shall forthwith index same in an index book to be provided therefor, under the tract number which de-

scribes the property, entering in each instance the cause number as a guide to the record of court proceedings which affect such real estate. If the petition be amended to include other parties or other lands, same shall be similarly indexed. When the cause is finally determined the result shall be indicated in said book wherever indexed. [R60,§2842; C73, §2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39, §11092; C46, 50, 54,§617.10]

S13,§3543, editorially divided  
Exact time of indexing required, §606.10

**617.11 Lis pendens.** When so indexed said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights. [R60,§2842; C73,§2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39,§11093; C46, 50, 54,§617.11]

**617.12 Exceptions.** If the real property affected be situated in the county where the petition is filed it shall be unnecessary to show in said index lands not situated in said county. [R60,§2842; C73,§2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39,§11094; C46, 50, 54,§617.12]

**617.13 Real estate in foreign county—superior court.** When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, or when the action is brought in

the superior court, the plaintiff must, in order to affect third persons with constructive notice of the pendency thereof, file with the clerk of the district court of such county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, who shall at once index and enter a memorandum thereof in the encumbrance book. [R60,§2843; C73,§2629; C97, §3544; C24, 27, 31, 35, 39,§11095; C46, 50, 54, §617.13]

Referred to in §614.15  
40ExGA, HF 228,§8, editorially divided

**617.14 Constructive notice.** From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action. [R60,§2843; C73, §2629; C97,§3544; C24, 27, 31, 35, 39,§11096; C46, 50, 54,§617.14]

**617.15 Notice perpetuated.** Within two months after the determination of the action, there shall also be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same as though rendered in that county, or such notice of pendency shall cease to be constructive notice. [R60,§2843; C73,§2629; C97,§3544; C24, 27, 31, 35, 39,§11097; C46, 50, 54,§617.15]

## CHAPTER 618

### PUBLICATION AND POSTING OF NOTICES

Referred to in §§362.5, 362.7, 362.11, 362.16, 362.19, 362.26, 362.27

618.1 Publications in English.

618.2 Violation.

618.3 "Newspaper" defined.

618.4 Change in name—effect.

618.5 Permissible selection.

618.6 Selection by plaintiff, etc.

618.7 Selection by county officers.

618.8 Refusal to publish.

618.9 Days of publication.

618.10 Payment for publication.

618.11 Fees for publication.

618.12 Fee for posting.

Rule—Effect of notice by posting, R.C.P. 369.

618.13 Publication of docket in certain counties.

618.14 Publication of matters of public importance.

618.15 Service by certified mail.

**618.1 Publications in English.** All notices, proceedings, and other matter whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published wholly in the English language. [C73,§§306, 307; C97,§549; S13,§549; C24, 27, 31, 35, 39,§11098; C46, 50, 54,§618.1]

Referred to in §618.2

**618.2 Violation.** Any public official who violates the provisions of section 618.1 or who willfully fails to make publication as now required of him by law of any notice, report of proceedings or other matter whatsoever, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not

more than one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C97,§550; C24, 27, 31, 35, 39,§11099; C46, 50, 54,§618.2]

Punishment, §687.7

**618.3 "Newspaper" defined.** For the purpose of establishing and giving assured circulation to all notices and/or reports of proceedings required by statute to be published within the state, where newspapers are required to be used, newspapers of general circulation that have been established, published regularly and mailed through the post office of current entry for more than two years and which have had for more than two years a bona fide paid circulation recognized by the



postal laws of the United States shall be designated for the publication of notices and/or reports of proceedings as required by law. [C35,§11099-e1; C39,§11099.1; C46, 50, 54,§618.3; 56GA, ch 266,§1]

Referred to in §618.14

**618.4 Change in name—effect.** A change of name or ownership of a newspaper thus designated that does not affect its general circulation as above required shall in no way disqualify such newspaper for selection in making such publication of legal notices. [C35, §11099-e2; C39,§11099.2; C46, 50, 54,§618.4]

**618.5 Permissible selection.** Publications may be made in a newspaper published once a week or oftener. [C73,§3832; C97,§1293; S13, §1293; C24, 27, 31, 35, 39,§11100; C46, 50, 54, §618.5]

40ExGA, HF 40,§8, editorially divided

**618.6 Selection by plaintiff, etc.** The plaintiff or executor or his attorney, in all publications concerning actions, executions, and estates, may designate the newspaper in which such publication shall be made. [C73,§3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39,§11101; C46, 50, 54,§618.6]

**618.7 Selection by county officers.** The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their respective offices shall be published and the board of supervisors shall designate the newspapers in which all other county notices and proceedings, not required to be published in the official county newspapers, shall be published. [R60,§314; C73,§306; C97,§549; S13, §549; C24, 27, 31, 35, 39,§11102; C46, 50, 54,§618.7]

**618.8 Refusal to publish.** If publication be refused when copy therefor, with the cost or security for payment of the cost, is tendered, such publication may be made in some other newspaper of general circulation at or nearest to the county seat, with the same effect as if made in the newspaper so refusing. [C73, §3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39, §11103; C46, 50, 54,§618.8]

**618.9 Days of publication.** When the publication is in a newspaper which is published oftener than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made. [S13,§1293-a; C24, 27, 31, 35, 39,§11104; C46, 50, 54,§618.9]

Proof of publication, §622.92

**618.10 Payment for publication.** Publications required by law shall, in the first instance, be paid for by the party causing publication, and shall be taxed as costs in the proceeding. [C51,§2558; R60,§4165; C73,§3838; C97,§1296; C24, 27, 31, 35, 39,§11105; C46, 50, 54,§618.10]

**618.11 Fees for publication.** The compensation, when not otherwise fixed, for the publication in a newspaper of any notice, order, citation, or other publication required or allowed by law, shall not exceed one dollar and fifty cents for one insertion, and one dollar for each subsequent insertion, for each ten lines of brevier type. In case of controversy or doubt regarding measurements, style, manner or form, said controversy shall be referred to the state printing board, and its decision shall be final. [C73,§3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39,§11106; C46, 50, 54,§618.11; 57GA, ch 266,§1]

Referred to in §§43.29, 446.10

**618.12 Fee for posting.** In all cases where an officer in the discharge of his duty is required to post an advertisement or notice, he shall, when not otherwise provided, be allowed twenty-five cents, and the same mileage as a sheriff. [C51,§2558; R60,§4165; C73,§3838; C97, §1296; C24, 27, 31, 35, 39,§11107; C46, 50, 54, §618.12]

Proof of posting, §622.94; mileage, §337.11

#### RULE OF CIVIL PROCEDURE NO. 369

**Effect of notice by posting.** Notice by posting shall not be recognized as having any effect, except in probate proceedings, or where expressly authorized by statute. [Report 1943; amendment 1945]

**618.13 Publication of docket in certain counties.** When the petition provided for in rule of civil procedure 70 is filed with the clerk of the district court in a county of one hundred thousand population or over, the names of the parties plaintiff and defendant in such action, the description of the real estate involved, if any, except for quieting title, partition, and suits involving tax assessments, and the names of the attorneys for the plaintiff, and the docket number assigned to such case, may, in the event the majority of the judges of the judiciary district in which such county lies, so direct, be published once in a daily newspaper having a general circulation in said county; such paper to be designated by a majority of the judges of the district court. Provided, that whenever thereafter such case is assigned for trial or any other pleadings are filed therein, or court action taken with reference thereto, except general orders of court for continuations, the title of such case and kind of pleading shall be published, and if it is in an assignment for trial it shall be carried in printed assignment from day to day until final disposition. [C46, 50, 54,§618.13]

Referred to in §§606.15, 622.93, 624.8

**618.14 Publication of matters of public importance.** The governing body of any municipality or other political subdivision of the state is authorized to make publication, as straight matter or display, of any matter of general public importance, not otherwise authorized or required by law, by publication in one or more newspapers, as defined in section 618.3

published in and having general circulation in such municipality or political subdivision, at the legal or appropriate commercial rate, according to the character of the matter published.

In the event there is no such newspaper published in such municipality or political subdivision or in the event publication in more than one such newspaper is desired, publication may be made in any such newspaper having general circulation in such municipality or political subdivision. [C50, 54, §618.14]

Referred to in §§362.26, 366.7, 368.10, 368.35, 368.39, 368A.24, 391A.1(27), 391A.4, 391A.13, 391A.16(4), 391A.25

**618.15 Service by certified mail.** Wherever used in this Code, the following words shall have the meanings respectively ascribed to them unless such meanings are repugnant to the context:

1. The words, "certified mail" mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing.

2. The words, "restricted certified mail" mean any form of certified mail as defined in subsection 1 which carries on the face thereof, in a conspicuous place where it will not be obliterated, the endorsement, "Deliver to addressee only", and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery, and person to whom delivered. [C31, 35, §5079-d16; C39, §5038.06; C46, 50, 54, §321.503; 57GA, ch 267, §§1, 39]

## CHAPTER 619

### PLEADINGS AND MOTIONS

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#### RULE OF CIVIL PROCEDURE NO. 67

**Technical forms abolished.** All common counts, general issues, demurrers, fictions and technical forms of action or pleading, are abolished. The form and sufficiency of all motions and pleadings shall be determined by these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 68

**Allowable pleadings.** The pleadings shall be: Petition, answer, and such counterclaim, reply, amendment, cross-petition or petition of intervention, as these rules allow. [Report 1943]

For counterclaims, see rules 29–32  
 For cross-petitions, see rules 33, 34  
 Motions in general, ch 620

#### RULE OF CIVIL PROCEDURE NO. 69

**Pleadings defined.** “Pleadings” as used in this division, do not include motions. They are the parties’ written statements of their respective claims or defenses. They shall be clear, concise, and avoid repetition or prolixity. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 70

**Petition.** The petition shall state whether it is at law or in equity, the facts constituting the cause or causes of action asserted, the relief demanded, and, if for money, the amount thereof. [Report 1943]

For title, signature, etc., see rule 78  
 Referred to in §618.13

#### RULE OF CIVIL PROCEDURE NO. 79

**Numbered divisions and paragraphs.** Each separate cause of action or defense must be stated in a separately numbered division. Every pleading shall be separated into numbered paragraphs, each of which shall contain, as nearly as may be, a distinct statement. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 72

**Answer.** The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the petition, which denial may be for lack of information. It must state any additional facts deemed to show a defense. It may raise points of law appearing on the face of the petition to

which it responds. It may contain as many defenses, legal or equitable, as the pleader may claim, which may be inconsistent. It may contain a counterclaim which must be in a separate division. [Report 1943]

For counterclaims, see rule 29 et seq. See also rules 79, 103, 105, 110 and 176

#### RULE OF CIVIL PROCEDURE NO. 71

**Answers for ward.** All answers by guardians or guardians ad litem, or filed under rule 14, shall state whether there is a return on file, showing that proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward. [Report 1943]

**619.1 Nonnecessity for prayer.** In the defense part of an answer or reply, it shall not be necessary to make a prayer for judgment. [R60,§2883; C73,§2658; C97,§3569; C24, 27, 31, 35, 39,§11118; C46, 50, 54,§619.1]

#### RULE OF CIVIL PROCEDURE NO. 81

**Correcting or recasting pleadings.** On its own motion or that of any party, the court may order any prolix, confused or multiple pleading, to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose. [Report 1943]

**619.2 Exception.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the defendant shall plead within three days after service of the original notice. [C31, 35,§11121-d1; C39,§11121.1; C46, 50, 54,§619.2]

Referred to in §619.3

**619.3 Exception.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the court shall not extend the time to plead more than two days beyond the time fixed in section 619.2. [C31, 35,§11123-d1; C39,§11123.1; C46, 50, 54,§619.3]

#### RULE OF CIVIL PROCEDURE NO. 82

**Filing, copies, delivery.** All motions and pleadings, with copy, shall be filed with the clerk, except that no copy of the petition need be filed if a copy was attached to the original notice served

upon each defendant. Sufficient additional copies of all motions and pleadings shall be filed to afford a copy for each adverse party appearing, but if more than one such party appear by the same counsel, only one copy need be filed for such parties. It shall be the duty of the pleader to file the required copies with the original if he then knows of the appearances; otherwise, immediately upon receipt of notice thereof to be given by the clerk. The copies shall be mailed or delivered forthwith by the clerk to the attorney of record for the adverse party or parties, if appearance is by attorney; otherwise to the parties. [Report 1943]

Referred to in R.C.P. 123 and 238

**RULE OF CIVIL PROCEDURE NO. 83**

**Failure to file copies.** The court may strike from the files, any pleading of which copies are not filed as above required. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 84**

**Copy fees.** A fee of ten cents per hundred words for each copy shall be taxed with the costs, to be the property of the attorney filing the copy. [Report 1943]

**619.4 Taking files from office.** The original files shall be taken from the clerk's office only on order of the judge by leaving with the clerk a receipt for the same. [C97,§3558; SS15, §3558; C24, 27, 31, 35, 39,§1126; C46, 50, 54, §619.4]

**RULE OF CIVIL PROCEDURE NO. 112**

**Motion for more specific statement.** A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable him to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 91**

**Contract.** Every pleading referring to a contract must state whether it is written or oral. If the contract is the basis of the action or defense, it must be set forth in full. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 105**

**Separate adjudication of law points.** The court may in its discretion, and must on application of either party, made after issues joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such

ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal. [Report 1943]

See also last sentence of rule 176

**RULE OF CIVIL PROCEDURE NO. 103**

**All defenses in answer.** Every defense in bar or abatement, or to the jurisdiction after a general appearance, shall be made in the answer or reply, save as allowed by rule 104. No such defense shall overrule any other. But a party who presents and tries a defense in abatement alone, shall not thereafter be allowed to plead in bar. [Report 1943]

See rules 72, 73 and 104

**RULE OF CIVIL PROCEDURE NO. 104**

**Exceptions.** Every defense in law or fact to any pleading must be asserted in the pleading responsive thereto, if one is required, or if none is required, then at the trial, except that:

(a) Want of jurisdiction of the person, or insufficiency of the original notice, or its service must be raised by special appearance before any other appearance, motion or pleading is filed; and want of jurisdiction of the subject matter may be so raised;

See also rule 66

(b) Failure to state a claim on which any relief can be granted, may be raised by motion to dismiss such claim, filed before answer.

(c) Sufficiency of any defense may be raised by motion to strike it, filed before pleading to it.

(d) Such motions must specify wherein the pleading their attack is claimed to be insufficient. [Report 1943]

Referred to in R.C.P. 103

**RULE OF CIVIL PROCEDURE NO. 117**

**Motion days—disposition of motions.**

(a) At least once each month, beginning on a day specified in advance by the judges of the judicial district, a motion day shall be held in each county. Unless the parties or their counsel file a written stipulation to the contrary, all motions made prior to trial on issues of fact, on file for twenty days or more, must then be submitted. Such motions not orally argued for any reason shall be deemed submitted without argument, unless they are then, or have previously been, set down for argument at some time, any place in the judicial district, not more than ten days thereafter, when they must be submitted without further postponement.

(b) The court may order any motion submitted sooner than herein required, so as not to delay completing the issues or trial of the case.

(c) The trial court shall rule on all motions within thirty days after their

submission, unless it extends the time for reasons stated of record.

(d) A "motion" within this rule is any paper denominated as such, or any other matter requiring attention or order of court before the trial of the issues on their merits. [Report 1943; amendment 1945]

Referred to in R.C.P. 238

#### RULE OF CIVIL PROCEDURE NO. 118

**Specific rulings required.** A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 85

##### Time to move or plead.

(a) *Motions.* Motions attacking a petition must be filed within seven days after the appearance date, unless some other motion allowed before answer is already on file; and then within seven days after such other motion is disposed of. All motions attacking subsequent pleadings must be filed within seven days after such pleading is filed.

(b) *Pleading.* Answer to a petition must be filed within seven days after the appearance date, unless a motion is then on file, in which event answer must be filed within seven days after such motion is so disposed of as to require answer.

(c) *Reply.* Reply must be filed, if at all, within seven days after the answer to which it responds, unless a motion attacking such answer is then on file, in which event, reply must be filed within seven days after such motion is so disposed of as to permit a reply.

(d) *Answer or reply to amendments.* Answer or reply to any amendment, or any substituted or supplemental pleading, must be filed within seven days, unless a motion attacking it is then on file, and then within seven days from the time the motion is so disposed of as to require or permit answer or reply. If the petition be amended before time for answering it, this rule shall not require answer to the amendment to be made prior to the time for answering the original petition.

(e) *Shortening time.* The court may order any motion or pleading to be filed within a shorter time than above, but cannot require a defendant to answer sooner than seven days after the appearance date.

(f) *Extending time.* For good cause, but not ex parte, the court may extend the time to answer or reply for not more than thirty days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court

prescribes, the court may grant a party the right to file a motion, answer or reply where the time to file same has expired.

(g) *Petition for removal to federal court.* The filing of a petition for removal to the federal court, accompanied by the bond required by the removal act, shall suspend the time for filing any motions or pleadings until an order of the federal court is filed in the state court, remanding the cause, or until it is made to appear the removal has not been perfected, whereupon the times hereinabove fixed for motions or pleadings shall begin anew. [Report 1943; amendment 1945]

See rule 86 as to when time for replender begins to run.

Referred to in R.C.P. 53

#### RULE OF CIVIL PROCEDURE NO. 111

**Motions combined.** Motions to strike, for a more specific statement, and to dismiss, shall be contained in a single motion and only one such motion assailing the same pleading shall be permitted, unless the pleading is amended thereafter. [Report 1943]

**619.5 Withdrawal of motion or demurrer.** A motion or demurrer once filed shall not be withdrawn without the consent of the adverse party in writing, or given in open court, or of the court. [R60,§2870; C73,§2642; C97,§3556; C24, 27, 31, 35, 39,§11139; C46, 50, 54,§619.5]

#### RULE OF CIVIL PROCEDURE NO. 110

**Failure to move—effect of overruling motion.** No pleading shall be held sufficient for failure to move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further; and the moving party may always question the sufficiency of the pleading during subsequent proceedings. [Report 1943]

See also R.C.P. 87

#### RULE OF CIVIL PROCEDURE NO. 86

**Pleadings over—election to stand.** If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Presence of counsel when the court announces such ruling or order shall be the equivalent of such mailing or delivery. Unless otherwise provided by order or ruling, such party shall file such further pleading within seven days after such mailing or delivery; and if such party fails to do so within such time, he thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain

undisposed of by such ruling and election. [Report 1943; amendment 1945]

Referred to in R.C.P. 230

**RULE OF CIVIL PROCEDURE NO. 87**

**Appearance alone.** An appearance without motion or pleading shall have the effect only of submitting to the jurisdiction. The court shall have no power to treat such appearance as sufficient to delay or prevent a default or any other order which would be made in absence thereof, or of timely pleading. [Report 1943]

For time of pleading, see rules 85 (a) and 85 (b)  
For defaults, see rule 65; for appearances, see rule 66  
Referred to in R.C.P. 230

**RULE OF CIVIL PROCEDURE NO. 29**

**Compulsory counterclaims.** A pleading must contain a counterclaim for every cause of action then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded. [Report 1943]

Indispensable parties are defined in rule 25 (b)  
See §611.15

**RULE OF CIVIL PROCEDURE NO. 30**

**Permissive counterclaims.** Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any cause of action held by him when the action was originally commenced, and matured when pleaded. [Report 1943]

For prohibited counterclaims, see Code section 643.2, on replevin and rule 275 on partition

**RULE OF CIVIL PROCEDURE NO. 31**

**Joinder of counterclaims.** A party pleading a counterclaim shall have the same right to join more than one cause of action as a plaintiff is granted under rules 22 and 23. [Report 1943]

See also rules 72 and 74

**RULE OF CIVIL PROCEDURE NO. 32**

**Counterclaim not limited.** A counterclaim may, but need not, diminish or defeat recovery sought by the opposing party. It may claim relief in excess of, or different from, that sought in the opponent's pleadings. [Report 1943]

**619.6 Counterclaim by comaker or surety.** A comaker or surety, when sued alone, may, with the consent of his comaker or principal, avail himself by way of counterclaim of a debt or liquidated demand due from the plaintiff at the commencement of the action to such co-

maker or principal, but the plaintiff may meet such counterclaim in the same way as if made by the comaker or principal himself. [R60, §2887; C73, §2661; C97, §3572; C24, 27, 31, 35, 39, §11153; C46, 50, 54, §619.6]

**RULE OF CIVIL PROCEDURE NO. 34**

**Bringing in new parties—procedure.**

(a) When the presence of new parties is required to grant complete relief as to a counterclaim or cross-petition, the court shall order them brought in if jurisdiction can be obtained.

See also rule 74

(b) New parties shall be brought in by serving them with original notice pursuant to division III\* of these rules. [Report 1943]

\*See ch 617 of the Code

**RULE OF CIVIL PROCEDURE NO. 33**

**Cross-petitions.**

(a) *Against coparties.* A cross-petition may be filed by one party against a coparty, on a cause of action arising out of a transaction or occurrence which is the basis of the original action or any counterclaim therein. It may include the claim that such coparty is, or may be, liable to cross-petitioner for all or part of a claim asserted in the principal action against the cross-petitioner.

(b) *Against new parties.* When a defendant to a petition, cross-petition or counterclaim will, if held liable thereon, thereby be entitled to a right of action against one not already a party, he may move to have such party brought in, to the end that the rights of all concerned may be determined in one action. Such motion must be supported by affidavit. [Report 1943]

Referred to in R.C.P. 74

**RULE OF CIVIL PROCEDURE NO. 73**

**Reply.** There shall be a reply to a counterclaim, and to new matter in an answer, responding thereto in the same manner that an answer responds to a petition, but not inconsistent with the petition. Points of law arising on the face of the answer may be raised by reply. [Report 1943]

Under rule 102 facts asserted in a reply are denied by operation of law

For disposition of points of law raised by reply, see rules 105, 176

**RULE OF CIVIL PROCEDURE NO. 74**

**Cross-petition—judgment.** Any cross-petition under rule 33, and the answer and reply as to it, shall be governed by these rules. Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition or counterclaim, it shall not be delayed thereby. [Report 1943]

See also rules 186 and 221

#### RULE OF CIVIL PROCEDURE NO. 78

**Caption and signature.** Each appearance, notice, motion, or pleading shall be captioned with the title of the case, naming the court, parties, and instrument, and shall bear the signature and address of the party or attorney filing it. After the petition, the caption need name only the first of several coparties. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 80

##### Verification abolished—affidavits.

(a) Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion or pleading shall be deemed his certificate that there are good grounds for making the claims therein, and that it is not interposed for delay.

(b) Any motion asserting facts as the basis of the order it seeks, and any pleading seeking interlocutory relief, shall contain affidavit of the person or persons knowing the facts requisite to such relief. A similar affidavit shall be appended to all petitions which special statutes require to be verified. [Report 1943; amendment 1945]

Referred to in R.C.P. 253  
See also R.C.P. 88

**619.7 Mitigating facts.** In any action brought to recover damages for an injury to person, character, or property, the defendant may set forth, in a distinct division of his answer, any facts, of which evidence is legally admissible, to mitigate or otherwise reduce the damages, whether a complete defense or justification be pleaded or not, and he may give in evidence the mitigating circumstances, whether he proves the defense or justification or not. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§11172; C46, 50, 54,§619.7]

C97,§3593, editorially divided

**619.8 Necessity to plead.** No mitigating circumstances shall be proved unless pleaded, except such as are shown by or grow out of the testimony introduced by the adverse party. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§11173; C46, 50, 54,§619.8]

Contributory negligence as mitigating fact, R.C.P. 97

#### RULE OF CIVIL PROCEDURE NO. 75

**Interventions.** Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or defendant or claiming adversely to both. [Report 1943]

Intervention in attachment, §639.60

#### RULE OF CIVIL PROCEDURE NO. 77

**Disposition.** The intervenor shall have no right to delay, and shall pay the costs of the intervention unless he prevails. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 76

**Manner.** Every intervenor shall file a petition, and a separate copy for each party against whom he asserts a right. The clerk shall transmit such copy to the attorney for the adversary party, who shall, without further notice, move or plead thereto within seven days from the date of filing unless the court fixes a shorter time and notice thereof is given. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 106

**Variance—failure of proof.** No variance between pleading and proof shall be deemed material unless it is shown to have misled the opposite party to his prejudice in maintaining his cause of action or defense. But where an allegation or defense is unproved in its general meaning, this shall not be held a mere variance but a failure of proof. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 107

**Special action — proper remedy awarded.** In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show him entitled to another remedy, the court shall permit him on such terms, if any, as it may prescribe, to amend by asking for such latter remedy, which may be awarded. [Report 1943]

**619.9 Amount of proof.** A party shall not be compelled to prove more than is necessary to entitle him to the relief asked for, or any lower degree included therein, nor more than sufficient to sustain his defense. [R60,§2966; C73,§2729; C97,§3639; C24, 27, 31, 35, 39,§11181; C46, 50, 54,§619.9]

#### RULE OF CIVIL PROCEDURE NO. 88

**Amendments.** Any pleading may be amended before a pleading has been filed responding to it. The court, in furtherance of justice, may allow later amendments, including those to conform to the proof and which do not substantially change the claim or defense. The court may impose terms, or grant a continuance with or without terms, as a condition of such allowance. [Report 1943]

Amendment to cure defect, R.C.P. 249

#### RULE OF CIVIL PROCEDURE NO. 89

**Making and construing amendments.** All amendments must be on a separate paper, duly filed, without interlining

or expunging prior pleadings. They will be construed as part of the original pleading which remains in effect, unless they are a complete substitute therefor. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 121

**Interrogatories—time—nature.** In actions other than actions in justice court or class "B" actions in municipal court a party may, after the general appearance of an adversary or before such appearance with leave of court, file in duplicate not over thirty numbered interrogatories to be answered by such adversary. Interrogatories may relate to any matters which can be inquired into under rule 143 and the answers may be used to the same extent as provided in rules 144 and 145 for the use of the deposition of a party. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
Remnant of common law bill of discovery, §611.16

#### RULE OF CIVIL PROCEDURE NO. 122

**More than thirty.** Upon application to the court and showing good cause therefor the court may permit filing more than thirty interrogatories and may then specify the number which may be filed, and the time for filing and answering them. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 124

##### Answers.

(a) Duplicate sworn answers shall be filed, separately answering each interrogatory responsively, and as fully as may be.

(b) Answers for a party not a natural person shall be made by any officer, partner or managing agent, who shall furnish such information as is available to the party. [Report 1943; amendment 1957]

#### RULE OF CIVIL PROCEDURE NO. 123

**Objections—time to answer.** The clerk shall deliver the copy of the interrogatories as provided in rule 82. The party to whom the interrogatories are directed shall file either answers thereto or objections to their propriety within seven days after they are filed, unless the court for good cause, but not ex parte, shall enlarge the time. If objections are filed to any of the interrogatories, the time for answering all the interrogatories shall be suspended until the objections are ruled on. At the hearing upon the objections, if it is determined that any of the interrogatories shall be answered, the court shall fix the time within which the answers shall be made. This rule shall not limit the right to object to the answers if offered in evidence. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 125

##### Protective orders.

(a) The restrictions of rule 141(a) and (d) are applicable for the protection of the parties from whom answers to interrogatories are sought under these rules.

(b) Interrogatories may be filed after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. [Report 1943; amendment 1957]

#### RULE OF CIVIL PROCEDURE NO. 126

**Delivery of answers.** Copies of the answers shall be delivered as provided in rule 82. [Report 1943; amendment 1957]

#### RULE OF CIVIL PROCEDURE NO. 127

**Admission of facts and of genuineness of documents.** After the general appearance of an adverse party, any party may file in duplicate a written request for the admission by any other party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the documents shall be filed with the request unless copies have already been furnished. Within ten (10) days after the filing thereof, or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed shall file in duplicate either (a) a sworn statement specifically admitting or denying the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (b) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections are filed to any of the requests, the time for answering all the requests shall be suspended until the objections are ruled on. At the hearing upon the objections, if it is determined that any of the requests shall be answered, the court shall fix the time within which answers shall be made. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. If the adverse party is an individual, he need only furnish information which is within his personal knowledge. If the adverse party is a public or private cor-



poration or a partnership or association, the sworn statement shall be by an officer, partner or managing agent thereof on the basis of such information as is available to the party. The clerk shall deliver all copies filed hereunder as provided in rule 82. [Report 1943; amendment 1957]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 128

**Effect of admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding. [Report 1943; amendment 1957]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 129

##### **Production of books or documents.**

(a) After issue is joined in any action, any party may file an application for the production or inspection of any books or papers, not privileged, which are in the control of any other party, which are material to a just determination of the cause, for the purpose of having them inspected or copied or photostated. The application shall state with reasonable particularity the papers or books which are called for, and state wherein they are material to a just determination of the cause, and state that they are under the control of the party from whom production is requested. The movant need not use such documents as evidence at the trial.

(b) The court shall fix the time and place for hearing on the application, and prescribe the manner and form of giving notice to the party from whom production is asked, or to his attorney of record. [Report 1943]

Referred to in R.C.P. 131, 132 and 134  
Similar provision, §491.64

#### RULE OF CIVIL PROCEDURE NO. 130

**Order.** The court may order the production or inspection of such books and documents as, in its discretion, it deems material to a just determination of the cause, and on any terms or conditions it deems suitable to protect the documents, their owner, or any other person. [Report 1943]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 131

**Inspection of property.** On motion and hearing, as in rule 129, a party may be ordered to permit his adversary to inspect, view, measure, survey or photograph any personalty or real estate or object or operation thereon, which is relevant to any issue. The order shall

specify the time, manner, place and any terms upon which this shall be done. [Report 1943; amendment 1957]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 132

**Physical or mental examination.** The court may, in its discretion, proceeding as in rule 129, order a physician to examine as to any physical or mental condition of a party which is in controversy in the action. The order shall specify the scope, time, place and manner of the examination and name the examiner. The party examined may have any representative present throughout any such examination. [Report 1943; amendment 1957]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 133

##### **Physical or mental examination—copy of reports—privilege.**

(a) The party thus examined shall be furnished on his request, with a copy of the examiner's findings and conclusions, stated in detail. He shall thereafter, deliver to the examining party a like report of the prior or subsequent findings of any other physician who examines him on the same subject.

(b) If the party examined thus requests and obtains the examiner's report, or takes the examiner's deposition, he waives any privilege in that action or any other involving the same controversy, regarding the testimony of any physician or other person as to the condition for which the examination was ordered.

(c) If either above request is not complied with, the court, on motion may order compliance, or may exclude the testimony of any physician whose report is not thus furnished. [Report 1943]

Referred to in R.C.P. 134

#### RULE OF CIVIL PROCEDURE NO. 134

##### **Refusal to make discovery—consequences.**

(a) *Refusal to answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending or to a court of record in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under rule 150 or upon the refusal of a party to answer any interrogatory submitted under rule 121, the proponent of the question may on like notice make like application for

such an order. If the motion is granted, and if the court finds that the refusal was without substantial justification, the court shall require the refusing party or deponent or the party advising the refusal, or any of them, to pay the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney fees. If the motion is denied, and if the court finds that the motion was made without substantial justification, the court shall require the examining party advising the motion to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney fees.

(b) *Failure to comply with order.*

(1) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be considered a contempt of that court.

(2) *Other consequences.* If any party or an officer, partner or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under rules 129, 130 and 131, to produce any document or other thing for inspection, copying or photographing, or to permit it to be done, or to permit entry upon land or other property, or an order made under rules 132 and 133 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts, shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under rules 127 and 128 to admit the genuineness of any documents or the

truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney fees. No expenses as aforesaid shall be allowed unless the court finds that the admissions sought were of substantial importance and the denial was not made in good faith.

(d) *Failure of party to attend or file answers.* If a party or an officer, partner or managing agent of a party willfully fails to appear before the officer who is to take his deposition or submit to the taking thereof after being served with a proper notice, or willfully fails to continue the taking of his deposition after the commencement thereof, or fails to file answers to interrogatories submitted under rule 121, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against such party. [Report 1943; amendment 1957]

**RULE OF CIVIL PROCEDURE NO. 92**

**Allegation of time or place.** When time is not material, it need not be averred, and if averred, need not be proved. When it is material, the date or duration of a continuous act, must be alleged. The place need be alleged only when it is part of the substance of the issue. [Report 1943]

**619.10 Evidence under denial.** Under a denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove. [R60,§2944; C73, §2704; C97,§3615; C24, 27, 31, 35, 39,§11196; C46, 50, 54,§619.10]

**RULE OF CIVIL PROCEDURE NO. 113**

**Striking improper matter.** Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 94**

**Judicial notice—statutes.** Matters of which judicial notice is taken need not be stated in any pleading. But a pleading asserting any statute, or a right derived therefrom, shall refer to such statute by plain designation. The court shall judicially notice the statutes of any state, territory or other jurisdiction of the United States so referred to. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 95

**Unliquidated damages.** No order shall require any pleading to itemize or apportion unliquidated damages claimed therein, nor to attribute any part thereof to any portion of the claim asserted. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 93

**Exception.** A claim in derogation of general law, or founded on any kind of exception, shall be so pleaded as to set forth such claim or exception. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 102

**What admitted.** Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except (1) allegations of value or amount of damage, (2) allegations of a reply, and (3) facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law. [Report 1943; amendment 1955]

## RULE OF CIVIL PROCEDURE NO. 99

**Account—bill of particulars—denial.** A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account, must specify the items denied, and any items not thus specified shall be deemed admitted. [Report 1943]

For affidavit required for default, see rule 232(a) Similar provision, §601.41

## RULE OF CIVIL PROCEDURE NO. 98

**Permissible conclusions—denials thereof.** Partnership, corporate or representative capacity; or corporate authority to sue or do business in Iowa; or performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction, may be pleaded as legal conclusions, without averring the facts comprising them. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 101

**Defenses to be specially pleaded.** Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 97

**Negligence—mitigation.** In an action by an employee against an employer, or

by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove his freedom from contributory negligence, but defendant may plead and prove contributory negligence in mitigation of damages. [Report 1943]

Contributory and comparative negligence, §479.124

**619.11 Pleading conveyance.** When a party claims by conveyance, he may state it according to its legal effect or name. [R60,§2952; C73,§2723; C97,§3633; C24, 27, 31, 35, 39,§11212; C46, 50, 54,§619.11]

**619.12 Pleading estate.** It shall not be necessary to allege the commencement of either a particular or a superior estate, unless it be essential to the merits of the case. [R60, §2954; C73,§2724; C97,§3634; C24, 27, 31, 35, 39, §11213; C46, 50, 54,§619.12]

**619.13 Injuries to goods.** In actions for injuries to goods and chattels, their kind or species shall be alleged. [R60,§2956; C73,§2725; C97,§3635; C24, 27, 31, 35, 39,§11214; C46, 50, 54, §619.13]

**619.14 Injuries to real property.** In actions for injuries to real property, the petition shall describe the property, and when the injury is to an incorporeal hereditament, shall describe the property in respect of which the right is claimed, as well as the right itself, either by the numbers by which the property is designated in the national survey, or by its abutments, or by its courses and distances, or by any name which it has acquired by reputation certain enough to identify it. [R60,§2958; C73,§2726; C97,§3636; C24, 27, 31, 35, 39,§11215; C46, 50, 54,§619.14]

## RULE OF CIVIL PROCEDURE NO. 96

**Malice.** A party intending to prove malice to affect damages, must aver the same. [Report 1943]

**619.15 Bond—breaches of.** In an action on a bond with conditions, the party suing thereon shall notice the conditions and allege the facts constituting the breaches relied on. [C51, §1818; R60,§2960; C73,§2728; C97,§3638; C24, 27, 31, 35, 39,§11217; C46, 50, 54,§619.15]

## RULE OF CIVIL PROCEDURE NO. 100

**Denying signature.**

(a) *By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party shall not only deny it, but support his denial by his own affidavit that it is not his genuine or authorized signature. He may, on application made during his time to plead, procure an inspection of the original writing.

(b) *By nonparty.* If a pleading copies a nonnegotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine,

unless a party denies it, and supports his denial by affidavit, which denial may be for lack of information. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 90**

**Supplemental pleading.** A party may file a supplemental pleading alleging facts material to the case which have happened subsequent to the commencement of the action, or come to his knowledge since his prior pleading. This shall not be a waiver of the former pleading. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 185**

**Consolidation.** Unless some party shows he will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may

make such orders concerning the proceedings as tend to avoid unnecessary cost or delay. [Report 1943; amendment 1955]

**RULE OF CIVIL PROCEDURE NO. 108**

**Lost pleading—substitution.** If an original pleading is lost or withheld, the court may order a copy substituted, or a substituted pleading filed. [Report 1943]

**619.16 Immaterial errors disregarded.** The court, in every stage of an action, must disregard any error or defect in the proceeding which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect. [R60,§2978; C73,§2690; C97,§3601; C24, 27, 31, 35, 39,§11228; C46, 50, 54,§619.16]

Immaterial exceptions, §624.15

## CHAPTER 620

### MOTIONS AND ORDERS

Rule—Motion defined, R.C.P. 109.

Rule—Proof of facts in motions, R.C.P. 116.

Rule—Notice of motion unnecessary, R.C.P. 114.

Rule—Discretionary notice, R.C.P. 115.

Rule—Order defined, R.C.P. 119.

Rule—When and how entered, R.C.P. 120.

**RULE OF CIVIL PROCEDURE NO. 109**

**Motion defined.** A motion is an application made by any party or interested person for an order. It may contain several objects which grow out of, or are connected with, the action. It is not a "pleading." [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 116**

**Proof of facts in motions.** Evidence to sustain or resist a motion may be by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination. [Report 1943]

Referred to in R.C.P. 167 and 245

**RULE OF CIVIL PROCEDURE NO. 114**

**Notice of motion unnecessary.** A party who has been served with original notice or has appeared, shall take notice of all motions filed in the action which are adverse to him, and of the regular motion day on which they will be heard. [Report 1943]

For motion days and submission and determination of motions, see rule 117

**RULE OF CIVIL PROCEDURE NO. 115**

**Discretionary notice.** The court may require counsel to be apprised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day or pursuant to general assignment. This rule shall be applied to expedite, not to delay, hearings and submissions. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 119**

**Order defined.** Every direction of the court, made in writing and not included in the judgment or decree, is an order. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 120**

**When and how entered.** A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk, regardless of where signed. The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of his attorneys. [Report 1943]

Referred to in R.C.P. 232

For entry of record, see rule 226

For clerk's notice to counsel, see rule 86

Orders entered, R.C.P. 227

CHAPTER 621  
SECURITY FOR COSTS

621.1 Bond for costs.  
621.2 Nonresident intervenor—action in probate.  
621.3 Procedure.  
621.4 Dismissal for failure to furnish.  
621.5 Becoming nonresident.  
621.6 Additional security.  
621.7 Prohibited sureties.

621.8 Judgment on bond.  
621.9 Cash in lieu of bond.

PRETRIAL PROCEDURE

Rule—Pretrial calendar, R.C.P. 135.  
Rule—Pretrial conference, R.C.P. 136.  
Rule—Pretrial conference—record, R.C.P. 137.  
Rule—Orders, R.C.P. 138.  
Rule—Power not enlarged, R.C.P. 139.

**621.1 Bond for costs.** If a defendant, at any time before answering shall make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, or party bringing the action or proceeding, if he is a nonresident of this state, or a private or foreign corporation, before any other proceedings in the action, must file in the clerk's office a bond with sureties to be approved by the clerk, in an amount to be fixed by the court, for the payment of all costs which may legally be adjudged against plaintiff. [R60,§3442; C73,§2927; C97,§3847; S13,§3847; C24, 27, 31, 35, 39,§11245; C46, 50, 54,§621.1]

37GA, ch 47,§2, editorially divided  
Referred to in §§621.4, 621.5  
Similar provision, R.C.P. 354

**621.2 Nonresident intervenor — action in probate.** A nonresident intervenor or party bringing an action in probate shall be required in like manner to give bond on motion of any party required to answer or defend. [S13,§3847; C24, 27, 31, 35, 39,§11246; C46, 50, 54, §621.2]

Referred to in §§621.4, 621.5

**621.3 Procedure.** The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter. [R60,§3448; C73,§2927; C97,§3847; S13, §3847; C24, 27, 31, 35, 39,§11247; C46, 50, 54, §621.3]

Referred to in §§621.4, 621.5

**621.4 Dismissal for failure to furnish.** An action in which a bond for costs is required by sections 621.1 to 621.3, inclusive, shall be dismissed, if a bond is not given in such time as the court allows. [R60,§3443; C73,§2928; C97, §3848; C24, 27, 31, 35, 39,§11248; C46, 50, 54, §621.4]

Referred to in §621.5

**621.5 Becoming nonresident.** If the plaintiff or any intervenor in an action, after its institution and at any time before its final determination, becomes a nonresident of this state, he may be required to give security for costs in the manner provided in sections 621.1 to 621.4, inclusive. [R60,§3444; C73,§2929; C97, §3849; S13,§3849; C24, 27, 31, 35, 39,§11249; C46, 50, 54,§621.5]

**621.6 Additional security.** In an action in which a bond for costs has been given, the defendant may, at any time before trial, make a motion for additional security, and if on such motion the court is satisfied that the surety in the plaintiff's bond has removed from the state, or it is not sufficient for the amount thereof, it may dismiss the action unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff. [R60,§3445; C73,§2930; C97,§3850; C24, 27, 31, 35, 39,§11250; C46, 50, 54,§621.6]

**621.7 Prohibited sureties.** No attorney or other officer of the court shall be received as security in any proceeding in court. [R60, §3446; C73,§2931; C97,§3851; C24, 27, 31, 35, 39, §11251; C46, 50, 54,§621.7]

Similar provision, §682.5

**621.8 Judgment on bond.** After final judgment has been rendered in an action in which security for costs has been given as above required, the court may, on motion of the defendant or any other person having the right to such costs or any part thereof, render judgment summarily, in the name of the defendant or his legal representatives, against the sureties for costs, for the amount of costs adjudged against the plaintiff, or so much thereof as may remain unpaid. [R60,§3447; C73, §2932; C97,§3852; C24, 27, 31, 35, 39,§11252; C46, 50, 54,§621.8]

**621.9 Cash in lieu of bond.** In all cases in which a bond for security for costs is required, the party required to give such security may deposit in cash the amount fixed in said bond with the clerk of the district court or justice of the peace in lieu of said bond. [S13,§3852-a; C24, 27, 31, 35, 39,§11253; C46, 50, 54,§621.9]

PRETRIAL PROCEDURE

RULE OF CIVIL PROCEDURE NO. 135

**Pretrial calendar.** The court may provide for a pretrial calendar in any county, which may extend to all actions, or be limited either to jury or nonjury actions. [Report 1943]

RULE OF CIVIL PROCEDURE NO. 136

**Pretrial conference.** After issues are joined, the court may in its discretion, and shall on request of any attorney in the case, direct all attorneys in the action

to appear before it for a conference to consider:

(a) The necessity or desirability of amending the pleadings;

(b) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;

(c) Limiting the number of expert witnesses;

(d) Settling any facts of which the court is to be asked to take judicial notice;

(e) Any other matter which may aid, expedite or simplify trial of any issue. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 137**

**Pretrial conference — record.** On the request of any interested counsel or the

court, the reporter must record the entire conference, or any designated part thereof. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 138**

**Orders.** The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. [Report 1943; amendment 1957]

**RULE OF CIVIL PROCEDURE NO. 139**

**Restriction on orders.** The court shall not, under any pretrial procedure or other rules, require a party to list or name the witnesses he expects to call to testify at the trial. [Report 1943; amendment 1957]

CHAPTER 622

EVIDENCE

Presumption of death of person missing in action, §634.1z

Applicable to criminal procedure, §782.1

GENERAL PRINCIPLES

- 622.1 Witnesses—who competent.
- 622.2 Credibility.
- 622.3 Interest.
- 622.4 Transaction with person since deceased.
- 622.5 Exceptions.
- 622.6 Depositions taken conditionally.
- 622.7 Husband or wife as witness.
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- 622.97 Authorized use.
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#### DEPOSITIONS

- Rule — Before whom taken, R.C.P. 153.
- Rule — Depositions generally—stipulation, R.C.P. 140.

#### GENERAL PRINCIPLES

**622.1 Witnesses—who competent.** Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases, except as otherwise declared. [C51,§2388; R60,§3978; C73,§3636; C97, §4601; C24, 27, 31, 35, 39,§11254; C46, 50, 54, §622.1]

**622.2 Credibility.** Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility. [C51,§2389; R60,§3979; C73,§3637; C97,§4602; C24, 27, 31, 35, 39,§11255; C46, 50, 54, §622.2]

**622.3 Interest.** No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter. [R60,§3980; C73,§3638; C97,§4603; C24, 27, 31, 35, 39,§11256; C46, 50, 54,§622.3]

**622.4 Transaction with person since deceased.** No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party

- Rule — Restrictions, R.C.P. 141.
- Rule — On written interrogatories, R.C.P. 150.
- Rule — Subpoenas, R.C.P. 155.
- 622.102 Refusal to appear or testify.
- Rule — Letters rogatory, R.C.P. 154.
- Rule — Oral examination—notice, R.C.P. 147.
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- Rule — Notice—service, R.C.P. 156.
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- 622.103 Fees for taking.
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#### PERPETUATING TESTIMONY

- Rule — Common law preserved, R.C.P. 159.
- Rule — Before action—application, R.C.P. 160.
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- Rule — Guardian ad litem, R.C.P. 162.
- Rule — Taking and filing testimony, R.C.P. 164.
- Rule — When ordered — who not examined, R.C.P. 163.
- Rule — Use—limitation, R.C.P. 165.
- Rule — Perpetuating testimony pending appeal, R.C.P. 166.

or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, insane, or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. [R60, §3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39, §11257; C46, 50, 54,§622.4]

C97,§4604, editorially divided  
Referred to in §622.6

**622.5 Exceptions.** This prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or guardian shall be examined on his own behalf, or as to which the testimony of such deceased or insane person or lunatic shall be given in evidence. [R60, §3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39, §11258; C46, 50, 54,§622.5]

**622.6 Depositions taken conditionally.** Any person may have his own deposition, or that of any other person, read in evidence in all cases where his evidence would be incompetent by the provisions of section 622.4, by causing it to be taken, either before or after action is brought, during the lifetime or sanity of

the person against whose executor, heir, or other representative the same is to be used, if such deposition shall have been taken and filed ten days prior to the death or insanity of such person. If after action is brought, such deposition may be taken in the usual manner; if before, then the same may be taken de bene esse, as provided by law. [C73,§3640; C97,§4605; C24, 27, 31, 35, 39,§11259; C46, 50, 54,§622.6]

Perpetuating testimony, R.C.P. 160 et seq.

**622.7 Husband or wife as witness.** Neither the husband nor wife shall in any case be a witness against the other, except:

1. In a criminal prosecution for a crime committed one against the other, or
2. In a civil action or proceeding one against the other, or
3. In a civil action by one against a third party for alienating the affections of the other, or
4. In any civil action brought by a judgment creditor against either the husband or the wife, to set aside a conveyance of property from one to the other on the ground of want of consideration or fraud, and to subject the same to the payment of his judgment. [C51, §2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11260; C46, 50, 54,§622.7]

S13,§4606, editorially divided  
Exception, §731.2

**622.8 Witness for each other.** In all civil and criminal cases the husband and wife may be witnesses for each other. [C51,§2391; R60, §3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11261; C46, 50, 54,§622.8]

**622.9 Communications between husband and wife.** Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [C51,§2392; R60,§3984; C73, §3642; C97,§4607; C24, 27, 31, 35, 39,§11262; C46, 50, 54,§622.9]

**622.10 Communications in professional confidence.** No practicing attorney, counselor, physician, surgeon, or the stenographer or confidential clerk of any such person, who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the party in whose favor the same is made waives the rights conferred. [C51,§§2393, 2394; R60,§§3985, 3986; C73,§3643; C97,§4608; S13,§4608; C24, 27, 31, 35, 39,§11263; C46, 50, 54,§622.10]

**622.11 Public officers.** A public officer cannot be examined as to communications made

to him in official confidence, when the public interests would suffer by the disclosure. [C51, §2395; R60,§3987; C73,§3644; C97,§4609; C24, 27, 31, 35, 39,§11264; C46, 50, 54,§622.11]

**622.12 Judge as witness.** The judge of the court is a competent witness for either party, and may be sworn upon the trial. In such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. [C51,§2408; R60,§4005; C73,§3645; C97,§4610; C24, 27, 31, 35, 39,§11265; C46, 50, 54,§622.12]

**622.13 Civil liability.** No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. [C51,§2396; R60,§3988; C73,§3646; C97,§4611; C24, 27, 31, 35, 39,§11266; C46, 50, 54,§622.13]

**622.14 Criminating questions.** When the matter sought to be elicited would tend to render a witness criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as otherwise provided. [C51,§2397; R60,§3989; C73,§3647; C97,§4612; S13,§4612; C24, 27, 31, 35, 39,§11267; C46, 50, 54, §622.14]

Additional provision, §741.3

**622.15 Exceptions.** In the following cases no witness shall be excused from giving testimony, or from producing any evidence, upon the ground that his testimony or such evidence would tend to render him criminally liable or expose him to public ignominy:

1. In prosecutions against gaming, betting, lotteries, and dealing in options.
2. In prosecutions for creating, entering into or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation, or understanding with any other corporation, partnership, association, or individual to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state.
3. In prosecutions for keeping gambling houses.
4. In prosecutions or proceedings for violations of the statutes relating to intoxicating liquors, including proceedings wherein a peace officer is examined as to his knowledge of violations of such statutes.
5. In prosecutions for the violation of the statutes relating to elections.
6. In prosecutions for making, soliciting, or receiving contributions for political purposes by or to any political committee, party, or candidate, or representative thereof.
7. In actions wherein an election is contested and the matter sought to be elicited relates to the qualification of the witness as a voter, or consists of a statement by the witness as to the candidate for whom the witness



voted when the witness was not a qualified voter.

8. In actions for damages for violation of the laws regulating common carriers.

9. In prosecutions for violations of the statutes relating to the free transportation of persons by common carriers of passengers.

10. In investigations by the state commerce commission into the manner and method pursued by common carriers, subject to their jurisdiction, in conducting their business.

11. In examinations or investigations conducted by any committee of the general assembly.

12. In prosecutions against public officers for unlawfully opening, or divulging the contents of, sealed bids.

13. In proceedings auxiliary to executions.

14. In examinations by the board of control of state institutions, or by a committee thereof, of the affairs of any institution under the control of said board.

15. In any action or investigation in relation to any public work or public contract.

16. In any action, proceeding, investigation, or hearing instituted or held by the state tax commission.

1, 2, 3. [C97,§4612; S13,§4612; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

4. [R60,§1578; C73,§§1538, 1551; C97,§§2399, 2428, 4612; S13,§2428; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

5. [S13,§1137-a2; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

6. [S13,§1641-j; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

7. [C51,§360; R60,§590; C73,§709; C97,§1215; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

8. [C97,§2131; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

9. [S13,§2157-h; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

10. [C97,§2133; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

11. [C73,§17; C97,§21; S13,§2727-a2; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

12. [S13,§1279-b; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

13. [C51,§1956; R60,§3378; C73,§3138; C97, §4075; C24, 27, 31, 35, 39,§11268; C46, 50, 54, §622.15]

14. [S13,§2727-a10; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

15. [S13,§1279-d; C24, 27, 31, 35, 39,§11268; C46, 50, 54,§622.15]

16. [C31, 35, 39,§11268; C46, 50, 54,§622.15]

Referred to in §622.16  
Additional exceptions, §741.3 et seq.

**622.16 Immunity from prosecution.** No person compelled under section 622.15 to testify or produce evidence tending to incriminate him or to expose him to public ignominy shall be prosecuted for any crime which such testi-

mony or evidence tends to prove or to which the same relates. This section shall not exempt any person from prosecution for perjury. [C51,§2397; R60,§3989; C73,§3647; C97,§§2399, 4612; S13,§§2727-a2,-a10, 4612; C24, 27, 31, 35, 39, §11269; C46, 50, 54,§622.16]

**622.17 Previous conviction.** A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof. [C51,§2398; R60, §3990; C73,§3648; C97,§4613; C24, 27, 31, 35, 39, §11270; C46, 50, 54,§622.17]

**622.18 Moral character.** The general moral character of a witness may be proved for the purpose of testing his credibility. [R60,§3991; C73,§3649; C97,§4614; C24, 27, 31, 35, 39,§11271; C46, 50, 54,§622.18]

**622.19 Whole of a writing or conversation.** When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§11272; C46, 50, 54,§622.19]

C97,§4615, editorially divided

**622.20 Detached acts, declarations, or conversations.** When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§11273; C46, 50, 54,§622.20]

**622.21 Writing and printing.** When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent. [C51,§2400; R60, §3993; C73,§3651; C97,§4616; C24, 27, 31, 35, 39, §11274; C46, 50, 54,§622.21]

**622.22 Understanding of parties to agreement.** When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it. [C51,§2401; R60, §3994; C73,§3652; C97,§4617; C24, 27, 31, 35, 39, §11275; C46, 50, 54,§622.22]

**622.23 Historical and scientific works.** Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated. [C51,§2402; R60, §3995; C73,§3653; C97,§4618; C24, 27, 31, 35, 39, §11276; C46, 50, 54,§622.23]

**622.24 Subscribing witness — substitute proof.** When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such

witness, its execution may be proved by other evidence. [C51,§2403; R60,§3996; C73,§3654; C97, §4619; C24, 27, 31, 35, 39,§11277; C46, 50, 54, §622.24]

**622.25 Handwriting.** Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine. [C51,§2404; R60,§3997; C73,§3655; C97,§4620; C24, 27, 31, 35, 39,§11278; C46, 50, 54, §622.25]

**622.26 Private writing — acknowledgment.** Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. [C51,§2407; R60,§4000; C73, §3656; C97,§4621; C24, 27, 31, 35, 39,§11279; C46, 50, 54,§622.26]

**622.27 Entries and writings of deceased person.** The entries and other writings of a person deceased, who was in a position to know the facts therein stated, made at or near the time of the transaction, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law. [C51,§2405; R60,§3998; C73,§3657; C97,§4622; C24, 27, 31, 35, 39,§11280; C46, 50, 54,§622.27]

**622.28 Books of account—when admissible.** Books of account containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

1. They must show a continuous dealing with persons generally, or several items of charge at different times against the other party in the same book or set of books.

2. It must be shown by the party's oath, or otherwise, that they are his books of original entries.

3. It must be shown in like manner that the charges were made at or near the time of the transactions therein entered, unless satisfactory reasons appear for not making such proof.

4. The charges must also be verified by the party or clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why such verification is not made. [C51,§2406; R60,§3999; C73,§3658; C97,§4623; S13,§4623; C24, 27, 31, 35, 39,§11281; C46, 50, 54,§622.28]

S13,§4623, editorially divided  
Referred to in §622.30

**622.29 Loose-leaf system of accounts.** Any loose-leaf or card or other form of entry which may be in use in the ordinary course of business by the party seeking to prove an account against another, and shall have been properly

identified as being the original entry of such account shall be admitted as competent evidence for the purpose of proving such account by deposition or in open court, and it shall be competent for any person whose duties in the ordinary course of such business require a personal knowledge of the records of such business, to verify such account or make deposition or testify in open court with regard to any matters pertaining to such records. [C24, 27, 31, 35, 39,§11282; C46, 50, 54,§622.29]

**622.30 Photographic copies—originals destroyed.**

1. In all cases where depositions are taken by either method provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with his seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 622.28, such copy shall be admitted in evidence with the same force and effect as the original.

2. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law, except if the originals are records, reports or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. [S13,§4623; C24, 27, 31, 35, 39,§11283; C46, 50, 54,§622.30]

Referred to in §324.79

**622.31 Notarial certificate of protest.** The usual protest of a notary public, without proof of his signature or notarial seal, is prima-facie evidence of what it recites concerning the dishonor, and notice thereof, of a bill of exchange

or promissory note, and a copy from his record, properly certified by him, shall receive such faith and credit as it is entitled to by the law and custom of merchants. [C51,§§82, 2414; R60, §§199, 4011; C73,§3668; C97,§4624; C24, 27, 31, 35, 39,§11284; C46, 50, 54,§622.31]

**622.32 Statute of frauds.** Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by his authorized agent:

1. Those made in consideration of marriage.  
2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.

3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.

4. Those that are not to be performed within one year from the making thereof. [C51, §§2409, 2410; R60,§§4006, 4007; C73,§§3663, 3664; C97,§4625; C24, 27, 31, 35, 39,§11285; C46, 50, 54, §622.32]

Referred to in §622.33  
Declarations of trust, §557.10  
Personal property, §554.4; party walls, §563.12

**622.33 Exception.** The provisions of subsection 3 of section 622.32 do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds. [C51,§2411; R60,§4008; C73,§3665; C97, §4626; C24, 27, 31, 35, 39,§11286; C46, 50, 54, §622.33]

**622.34 Contract not denied in the pleadings.** The above regulations, relating merely to the proof of contracts, shall not prevent the enforcement of those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than him who made it. [C51,§2412; R60,§4009; C73, §3666; C97,§4627; C24, 27, 31, 35, 39,§11287; C46, 50, 54,§622.34]

Applicable to sales of goods, §554.5

**622.35 Party made witness.** The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same. [C51,§2413; R60,§4010; C73,§3667; C97,§4628; C24, 27, 31, 35, 39,§11288; C46, 50, 54,§622.35]

Applicable to sales of goods, §554.5

**622.36 Instruments affecting real estate—adoption of minors.** Every instrument in writing affecting real estate, or the adoption of minors, which is acknowledged or proved and certified as required, may be read in evidence without further proof. [C51,§1227; R60,§§2235,

4001; C73,§3659; C97,§4629; C24, 27, 31, 35, 39, §11289; C46, 50, 54,§622.36]

**622.37 Record or certified copy.** When the recording of any instrument in the office of any public officer is authorized by law, the record of such instrument, or a duly authenticated copy thereof, is competent evidence whenever, by the party's own oath or otherwise, the original is shown to be lost, or not belonging to the party wishing to use the same, nor within his control. [C51,§§1228, 1476; R60,§§2528, 4002; C73,§§2197, 3660; C97, §4630; C24, 27, 31, 35, 39,§11290; C46, 50, 54, §622.37]

C97,§4630, editorially divided  
Referred to in §622.39  
Birth certificate, §144.48  
Federal statute, see page lviii of this Code

**622.38 Absence of seal.** In such case, it is no objection to the record that no official seal is appended to the recorded acknowledgment thereof, if, when the acknowledgment purports to have been taken by an officer having an official seal, the record shows, by a scroll or otherwise, that there was such a seal, which will be presumptive evidence that it was attached to the original certificate. [C51,§1228; R60,§4002; C73,§3660; C97,§4630; C24, 27, 31, 35, 39,§11291; C46, 50, 54,§622.38]

Referred to in §622.39

**622.39 Retrospective.** The provisions of sections 622.37 and 622.38 are intended to apply to all instruments heretofore recorded, as well as those hereafter to be recorded. [C51,§1229; R60,§§2237, 4003; C73,§3661; C97,§4631; C24, 27, 31, 35, 39,§11292; C46, 50, 54,§622.39]

**622.40 Presumption rebuttable.** Neither the certificate, the record, nor the transcript therein is conclusive evidence of the facts therein stated. [C51,§1230; R60,§§2238, 4004; C73,§3662; C97,§4632; C24, 27, 31, 35, 39,§11293; C46, 50, 54, §622.40]

**622.41 United States and state patents.** United States and state patents for land in the state, and duly certified copies thereof from the general land office of the United States, or the state land office, that have been or may be recorded in the recorder's office of the county in which the land is situated, shall be matters of record and such record, and copies thereof, certified to by the recorder, may be received and read in evidence in all courts, with like effect as the record of other instruments, and other certified copies of original papers recorded in his office; and such patents and certified copies may be recorded without an acknowledgment. [C97,§4633; S13,§4633; C24, 27, 31, 35, 39,§11294; C46, 50, 54,§622.41]

Referred to in §622.51

**622.42 Field notes and plats.** A copy of the field notes of any surveyor, or a plat made by him and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact

the ascertainment of which requires the exercise of scientific skill or calculation only. [C51, §2431; R60, §4046; C73, §3701; C97, §4634; C24, 27, 31, 35, 39, §11295; C46, 50, 54, §622.42]

Referred to in §622.51

**622.43 Records and entries in public offices.**

Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or papers so filed. [C51, §2432; R60, §4047; C73, §3702; C97, §4635; C24, 27, 31, 35, 39, §11296; C46, 50, 54, §622.43]

Referred to in §622.51

Federal statute, see page lviii of this Code  
Similar provision, §446.36

**622.44 Copies of books of original entries.**

Copies of entries made in the book of "copies of original entries", kept as a record in the office of the county recorder, when such book has been compared with the originals and certified as true copies by the register of the United States land office at which such original entries were made, may, when certified by the recorder to be true copies, be received and read in evidence in all of the courts, with like effect as certified copies of original papers recorded in his office. [R60, §4049; C73, §3704; C97, §4636; C24, 27, 31, 35, 39, §11297; C46, 50, 54, §622.44]

Referred to in §§622.45, 622.51

**622.45 Additional entries.**

Copies of additional entries shall, from time to time, be procured as made, certified as required in section 622.44, and entered in the book of "copies of original entries", until all the lands in the county have been entered and so certified. [R60, §4050; C73, §3705; C97, §4637; C24, 27, 31, 35, 39, §11298; C46, 50, 54, §622.45]

Referred to in §622.51

**622.46 Officer to give copies of records.**

Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof. [C51, §2433; R60, §4051; C73, §3706; C97, §4638; C24, 27, 31, 35, 39, §11299; C46, 50, 54, §622.46]

Referred to in §622.51

**622.47 Maps in office of surveyor general.**

Copies of all maps, official letters, and other documents in the office of the surveyor general of the United States, when certified by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence and contents of the originals, and that they are copies of the originals, notwithstanding such maps, official letters, or other papers, may themselves be copied. [R60, §4052; C73, §3707; C97, §4639; C24, 27, 31, 35, 39, §11300; C46, 50, 54, §622.47]

Referred to in §622.51

**622.48 Certificate as to loss of paper.**

The certificate of a public officer, that he has made diligent and ineffectual search for a paper in his office, is of the same efficacy in all cases as

if such officer had personally appeared and sworn to such facts. [C51, §2434; R60, §4053; C73, §3708; C97, §4640; C24, 27, 31, 35, 39, §11301; C46, 50, 54, §622.48]

Referred to in §622.51

**622.49 Duplicate receipt of receiver of land office.**

The usual duplicate receipt of the receiver of any land office, or the certificate of such receiver that the books of his office show the sale of a tract of land to a certain individual, is proof of title, equivalent to a patent, against all but the holder of an actual patent. [C51, §2435; R60, §4054; C73, §3709; C97, §4641; C24, 27, 31, 35, 39, §11302; C46, 50, 54, §622.49]

Referred to in §622.51

**622.50 Certificate of register or receiver.**

The certificate of the register or receiver of any land office of the United States, as to the entry of land within his district, shall be presumptive evidence of title, in the person entering, to the real estate therein named. [R60, §4055; C73, §3710; C97, §4642; C24, 27, 31, 35, 39, §11303; C46, 50, 54, §622.50]

Referred to in §622.51

**622.51 Official signature presumed genuine.**

In the cases contemplated in sections 622.41 to 622.50, inclusive, the signature of the officer shall be presumed to be genuine until the contrary is shown. [C51, §2436; R60, §4056; C73, §3711; C97, §4643; C24, 27, 31, 35, 39, §11304; C46, 50, 54, §622.51]

**622.52 Judicial record — state or federal courts.**

A judicial record of this state or any court of the United States may be proved by the production of the original, or a copy thereof certified by the clerk or person having the legal custody thereof, authenticated by his seal of office, if he have one. [C51, §2437; R60, §4057; C73, §3712; C97, §4644; C24, 27, 31, 35, 39, §11305; C46, 50, 54, §622.52]

**622.53 Of another state.**

That of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law. [C51, §2438; R60, §4058; C73, §3713; C97, §4645; C24, 27, 31, 35, 39, §11306; C46, 50, 54, §622.53]

**622.54 Of a justice of the peace.**

The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature to his certificate is genuine, is sufficient evidence of such proceedings and judgment. [C51, §2439; R60, §4059; C73, §3714; C97, §4646; C24, 27, 31, 35, 39, §11307; C46, 50, 54, §622.54]

**622.55 Of a foreign country.**

Copies of records and proceedings in the courts of a foreign

country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept.

2. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to his attestation is genuine.

3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court. [C51,§2440; R60,§4060; C73,§3715; C97,§4647; C24, 27, 31, 35, 39,§11308; C46, 50, 54,§622.55]

**622.56 Presumption of regularity.** The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared. [C51, §2512; R60,§4120; C73,§3669; C97,§4648; C24, 27, 31, 35, 39,§11309; C46, 50, 54,§622.56]

**622.57 Executive acts.** Acts of the executive of the United States, or of this or any other state of the Union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments, respectively, or by either branch thereof. [C51,§2441; R60,§4061; C73,§3716; C97, §4649; C24, 27, 31, 35, 39,§11310; C46, 50, 54, §622.57]

**622.58 Proceedings of legislature.** The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order. [C51,§2442; R60,§4062; C73,§3717; C97,§4650; C24, 27, 31, 35, 39,§11311; C46, 50, 54,§622.58]

**622.59 Printed copies of statutes.** Printed copies of the statute laws of this or any other of the United States, or of congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws. [C51,§2443; R60,§4063; C73,§3718; C97,§4651; C24, 27, 31, 35, 39,§11312; C46, 50, 54,§622.59]

**622.60 Written law or public writing.** The public seal of the state or county, affixed to a

copy of the written law or other public writing, is admissible as evidence of such law or writing, respectively. [C51,§2444; R60,§4064; C73,§3719; C97,§4652; C24, 27, 31, 35, 39,§11313; C46, 50, 54,§622.60]

C97,§4652, editorially divided

**622.61 Foreign unwritten law.** The unwritten laws of any other state or government may be proved as facts by parol evidence, or by the books of reports of cases adjudged in their courts. [C51,§2444; R60,§4064; C73,§3719; C97,§4652; C24, 27, 31, 35, 39,§11314; C46, 50, 54, §622.61]

**622.62 Ordinances of city or town.** The printed copies of the ordinance of any municipal corporation, published by its authority, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under its direction, and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court. [R60,§1076; C73,§3720; C97, §4653; C24, 27, 31, 35, 39,§11315; C46, 50, 54, §622.62]

Fees, §606.15

**622.63 Subpoenas.** The clerks of the several courts shall, on application of any person having a cause or matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, if practicable, which may be served by the sheriff, coroner, or any constable of the county, or by the party or any other person. [R60,§4012; C73,§3671; C97,§4658; C24, 27, 31, 35, 39,§11320; C46, 50, 54,§622.63]

C97,§4658, editorially divided

**622.64 Proof of service—costs.** When a subpoena is served by any person other than the sheriff, coroner, or constable, proof thereof shall be shown by affidavit; but no costs for serving the same shall be allowed. [R60,§4012; C73,§3671; C97,§4658; C24, 27, 31, 35, 39,§11321; C46, 50, 54,§622.64]

**622.65 To whom directed—duces tecum.** The subpoena shall be directed to the person therein named, requiring him to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence. [C51, §2415; R60,§4013; C73,§3672; C97,§4659; C24, 27, 31, 35, 39,§11322; C46, 50, 54,§622.65]

**622.66 How far compelled to attend.** Witnesses in civil cases cannot be compelled to attend the district or superior court out of the state where they are served, nor at a distance

of more than one hundred miles from the place of their residence, or from that where they are served with a subpoena, unless within the same county. [C51,§2416; R60,§4014; C73,§3673; C97,§4660; C24, 27, 31, 35, 39,§11323; C46, 50, 54,§622.66]

C97,§4660, editorially divided  
Limit on taxation of costs, §625.2

**622.67 Deposit—effect.** The court or judge, for good cause shown, may, upon deposit with the clerk of the court of sufficient money to pay the legal fees and mileage of a witness, order a subpoena to issue requiring the attendance of such witness from a greater distance within the state. Such subpoena shall show that it is issued under the provisions hereof. [C24, 27, 31, 35, 39,§11324; C46, 50, 54, §622.67]

**622.68 Thirty-mile limit.** No other subpoena but that from the district or superior court can compel his attendance at a greater distance than thirty miles from his place of residence, or of service, if not in the same county. [C51,§2416; R60,§4014; C73,§3673; C97,§4660; C24, 27, 31, 35, 39,§11325; C46, 50, 54,§622.68]

**622.69 Witness fees.** Witnesses in any court of record, except in the police courts, shall receive for each day's attendance three dollars, and in the police courts the same fees and mileage as are allowed before justices of the peace; before a justice of the peace, fifty cents for each day; and in all cases seven cents per mile for each mile actually traveled. [C51,§2544; R60,§4153; C73,§3814; C97,§4661; C24, 27, 31, 35, 39,§11326; C46, 50, 54,§622.69]

C97,§4661, editorially divided

**622.70 Attorney, juror, or officer.** An attorney, juror, or officer, who is in habitual attendance on the court for the term at which he is examined as a witness, shall be entitled to but one day's attendance. [C51,§2544; R60, §4153; C73,§3814; C97,§4661; C24, 27, 31, 35, 39, §11327; C46, 50, 54,§622.70]

**622.71 Peace officer.** No peace officer who receives a regular salary, or any other public official shall, in any case, receive fees as a witness for testifying in regard to any matter coming to his knowledge in the discharge of his official duties in such case in a court in the county of his residence, except police officers who are called as witnesses when not on duty. [C97,§4661; C24, 27, 31, 35, 39,§11328; C46, 50, 54, §622.71]

**622.72 Expert witnesses — fee.** Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed four dollars per day

while so employed. [C73,§3814; C97,§4661; C24, 27, 31, 35, 39,§11329; C46, 50, 54,§622.72]

Superintendent of state hospital, §226.5

**622.73 Fees payable by county.** For attending before the trial jury or court in criminal cases where the defendant is adjudged not guilty, the fees above provided for attending the district or justice's court shall be paid by the county, upon a certificate of the clerk or justice showing the amount of the services to which they are entitled. [C51,§2544; R60,§4153; C73,§3814; C97,§4661; C24, 27, 31, 35, 39,§11330; C46, 50, 54,§622.73]

**622.74 Fees in advance.** Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled, on demand, to receive the legal fees for that day in advance. If not thus paid, they are not compelled to attend or remain as witnesses. [C51,§2417; R60,§4015; C73,§3674; C97,§4662; C24, 27, 31, 35, 39,§11331; C46, 50, 54,§622.74]

**622.75 Reimbursement to party or county.** When the county or any party has paid the fees of any witness, and the same is afterward collected from the adverse party, the county or person so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee, whether it be in the hands of the justice or clerk, or has been paid into the county treasury. [C73,§3817; C97,§4663; C24, 27, 31, 35, 39,§11332; C46, 50, 54,§622.75]

**622.76 Failure to attend or testify—liability.** For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court and subject to be proceeded against by attachment. He is also liable to the party by whom he was subpoenaed for all consequences of such delinquency, with fifty dollars additional damages. [C51,§2418; R60,§4016; C73,§3675; C97, §4664; C24, 27, 31, 35, 39,§11333; C46, 50, 54, §622.76]

Contempts, ch 665  
Similar provisions, §781.7 et seq.

**622.77 Proceedings for contempt.** Before a witness is so liable for a contempt for not appearing, he must be served personally with the process, by reading it to him, and leaving a copy thereof with him, if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to him, if required; or it must appear that a copy of the subpoena, if left at his usual place of residence, came into his hands, with the fees and traveling expenses above mentioned. [C51, §2419; R60,§4017; C73,§3676; C97,§4665; C24, 27, 31, 35, 39,§11334; C46, 50, 54,§622.77]

**622.78 Serving subpoena.** If a witness conceals himself, or in any manner attempts to

avoid being personally served with a subpoena, any sheriff or constable having the subpoena may use all necessary and proper means to serve the same, and may for that purpose break into any building or other place where the witness is to be found, having first made known his business and demanded admission. [C51,§2420; R60,§4018; C73,§3677; C97,§4666; C24, 27, 31, 35, 39,§11335; C46, 50, 54,§622.78]

**622.79 When party fails to obey subpoena.** In addition to the above remedies, if a party to an action in his own right, on being duly subpoenaed, fails to appear and give testimony, the other party may, at his election, have a continuance of the cause at the cost of the delinquent. [C51,§2421; R60,§4024; C73, §3683; C97,§4667; C24, 27, 31, 35, 39,§11336; C46, 50, 54,§622.79]

**622.80 Pleading taken true.** Or if he shows by his own testimony, or otherwise, that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; subject to be reconsidered during the term of the court, upon satisfactory reasons being shown for the delinquency. [C51,§2422; R60,§4025; C73,§3684; C97,§4668; C24, 27, 31, 35, 39,§11337; C46, 50, 54, §622.80]

**622.81 Authority to subpoena.** Any officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify, in the same manner as officers authorized to take depositions. [C97,§4669; C24, 27, 31, 35, 39,§11338; C46, 50, 54,§622.81]

Enforcing attendance, §§622.84, 622.102

**622.82 Prisoner produced.** A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned, and in a criminal case in any county in the state; but in all other cases his examination must be by a deposition. [R60,§4019; C73,§3678; C97,§4670; C24, 27, 31, 35, 39,§11339; C46, 50, 54,§622.82]

**622.83 Deposition of.** While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking thereof. [R60,§4020; C73,§3679; C97, §4671; C24, 27, 31, 35, 39,§11340; C46, 50, 54, §622.83]

**622.84 Subpoenas — enforcing obedience.** When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take such depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in a justice's court, and obedience thereto may be enforced in the same way and to the same extent a justice of the peace might do, or he may report the matter to the district court or

a judge thereof, who may enforce obedience as though the action was pending in said court. [C51,§§2477-2479; R60,§§4021-4023; C73, §§3680-3682; C97,§4672; C24, 27, 31, 35, 39,§11341; C46, 50, 54,§622.84]

Similar provision, §622.102

**622.85 Affidavits—before whom made.** An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state. [R60,§§4030, 4035; C73,§§3689, 3690; C97,§4673; C24, 27, 31, 35, 39, §11342; C46, 50, 54,§622.85]

Perpetuating testimony, R.C.P. 160 et seq.

**622.86 Foreign affidavits.** Those taken out of the state before any judge or clerk of a court of record, or before a notary public, or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within the state. [C51,§2475; R60,§4036; C73,§3691; C97, §4674; C24, 27, 31, 35, 39,§11343; C46, 50, 54, §622.86]

**622.87 How affidavits compelled.** When a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, he may apply by petition to any officer competent to take depositions, stating the object for which he desires the affidavit. [C51, §2480; R60,§4038; C73,§3692; C97,§4675; C24, 27, 31, 35, 39,§11344; C46, 50, 54,§622.87]

**622.88 Subpoena issued.** If the officer is satisfied that the object is legal and proper, he shall issue his subpoena to bring the witness before him, and, if he fails then to make a full affidavit of the facts within his knowledge to the extent required of him by the officer, the latter may proceed to take his deposition by question and answer in the usual way, which may be used instead of an ordinary affidavit. [C51,§2481; R60,§4039; C73, §3693; C97,§4676; C24, 27, 31, 35, 39,§11345; C46, 50, 54,§622.88]

**622.89 Notice.** The officer may, in his discretion, require notice of the taking of such affidavit or deposition to be given to any person interested in the subject matter, and allow him to be present and cross-examine such witness. [C51,§2482; R60,§4040; C73,§3694; C97,§4677; C24, 27, 31, 35, 39,§11346; C46, 50, 54, §622.89]

**622.90 Cross-examination.** The court or officer to whom any affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may require the witness to be brought before it or him and submit to a cross-examination by the opposite party. [C51,§2483; R60,§4041; C73,§3695; C97,§4678; C24, 27, 31, 35, 39,§11347; C46, 50, 54,§622.90]

**622.91 Signature and seal — presumption.** The signature and seal of such officers as are authorized to take depositions or affidavits,

having a seal, and the simple signature of such as have no seal, are presumptive evidence of the genuineness thereof, as well as of the official character of the officer, except as otherwise declared. [C51,§2476; R60,§4037; C73,§3696; C97,§4679; C24, 27, 31, 35, 39,§11348; C46, 50, 54, §622.91]

**622.92 Newspaper publications — how proved.** Publications required to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made, but such affidavit must be made within six months after the last day of publication. [C51,§2427; R60, §4042; C73,§3697; C97,§4680; C24, 27, 31, 35, 39, §11349; C46, 50, 54,§622.92]

Proof of publication, R.C.P. 63

**622.93 Applicability in Polk county.** Proof of the publication of the filing in the district court of the petitions as provided for in section 618.13 and a charge on the basis of one dollar\* for each petition, shall be made once each month by the publisher thereof, presented to the clerk of the district court for verification and approval, and filed with the county auditor to be presented to the board of supervisors, which shall order the claim for such publications paid from the district court funds. [C46, 50, 54,§622.93]

\*See 248 Iowa 913, Daily Record Company v. Arnel

**622.94 Proof of serving or posting notices.** The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting up. [C51,§2428; R60,§4043; C73,§3698; C97,§4681; C24, 27, 31, 35, 39,§11350; C46, 50, 54, §622.94]

Similar provision, §652.9

**622.95 Other facts.** Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit. [C51, §2429; R60,§4044; C73,§3699; C97,§4682; C24, 27, 31, 35, 39,§11351; C46, 50, 54,§622.95]

**622.96 How perpetuated — presumption of fact.** Proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the clerk of the district court of the county where the act is done. The original affidavit appended to the notice or paper, if there is one, and, if not, the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient. [C51,§2430; R60,§4045; C73,§3700; C97,§4683; C24, 27, 31, 35, 39,§11352; C46, 50, 54,§622.96]

REPORTER'S NOTES AS EVIDENCE

**622.97 Authorized use.** The original shorthand notes of the evidence or any part thereof heretofore or hereafter taken upon the trial of

any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evidence on any retrial of the case or proceeding in which the same were taken, and for purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable. [S13,§245-a; C24, 27, 31, 35, 39,§11353; C46, 50, 54,§622.97]

S13,§245-a, editorially divided

**622.98 Transcript must be complete.** No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript. [S13,§245-a; C24, 27, 31, 35, 39,§11354; C46, 50, 54,§622.98]

**622.99 Certification.** It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee, or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence, of any one or more witnesses, upon payment of his fees therefor. [S13,§245-a; C24, 27, 31, 35, 39,§11355; C46, 50, 54,§622.99]

Fees, §605.11

**622.100 Sworn verification.** When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript by him made therefrom, and sworn to by him before any person authorized to administer an oath as a full, true, and complete transcript of the notes of the testimony of the witness, a transcript of whose testimony is demanded, shall have the same force and effect as though duly certified by the reporter of said court. [S13,§245-a; C24, 27, 31, 35, 39,§11356; C46, 50, 54,§622.100]

**622.101 Identification of exhibits.** When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record, or document, as the one referred to by the witness, may be proven either by the reporter or any other person who heard the evidence of the witness given on the stand. [S13,§245-a; C24, 27, 31, 35, 39,§11357; C46, 50, 54,§622.101]

DEPOSITIONS

RULE OF CIVIL PROCEDURE NO. 153

**Before whom taken.**

(a) No deposition shall be taken before any party, or any person financially interested in the action, or an attorney



or employee of any party, or any person related by consanguinity or affinity within the fourth degree to any party, his attorney, or an employee of either of them.

(b) Depositions within the United States or a territory or insular possession thereof may be taken before any person authorized to administer oaths, by the laws of the United States or of the place where the examination is held.

(c) Depositions in a foreign land may be taken before a secretary of embassy or legation, or a consul, vice consul, consul-general or consular agent of the United States, or under rule 154.

(d) When the witness is in the military or naval service of the United States, his deposition may be taken before any commissioned officer under whose command he is serving, or any commissioned officer in the judge advocate general's department. [Report 1943; amendment 1945]

Referred to in R.C.P. 156 and 164  
Depositions ordered by magistrate, §761.8, et. seq.

#### RULE OF CIVIL PROCEDURE NO. 140

**Depositions generally — stipulation.** Depositions shall be governed wholly by these rules, but may be differently taken in any respect if that be in accord with the written stipulation of the parties. Subject to the restrictions in rule 141, a party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action, or for both purposes. [Report 1943; amendment 1957]

#### RULE OF CIVIL PROCEDURE NO. 141

##### Restrictions.

(a) The deponent shall not be required and the court shall not order a deponent or party to produce or submit for inspection any writing obtained or prepared by the adverse party, his attorney, surety, indemnitor or agent, in anticipation of litigation or preparation for trial unless satisfied that the denial of production or inspection will result in an injustice or undue hardship; nor shall the deponent be required or the court order a deponent or party to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions or legal theories, or, except as provided in rule 133, the conclusions of an expert. The deponent shall not be examined on nor shall the court order the production or inspection of any liability insurance policy or indemnity agreement unless such liability insurance policy or indemnity agreement would be admissible in evidence at the trial of the action.

(b) Depositions before answers are all filed, or of a person in prison, may be taken only by leave of court, on such terms as the court prescribes.

(c) Except where the action involves an interest in real estate, depositions for discovery may not be taken where the amount in controversy as shown by the pleadings is less than one thousand dollars, unless leave of court is first obtained, on notice and a showing of just cause therefor, upon such terms as justice may require.

(d) After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court, or the court may make any other order which justice requires to protect the party or witness from annoyance, expense, embarrassment or oppression.

(e) At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or a court of record in the district where the deposition is being taken, may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (d). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order, the court may impose upon either party or upon the witness the requirement to pay

such costs or expenses as the court may deem reasonable. [Report 1943; amendment 1957]

Referred to in R.C.P. 140, 143

**RULE OF CIVIL PROCEDURE NO. 150**

**On written interrogatories.**

(a) A party may take depositions on written interrogatories after first serving all other parties not in default for want of appearance with copies thereof and with a notice stating the name, or title, and address of the officer to take them, and the name and address of the deponents.

(b) The adversary parties may thereafter serve successive interrogatories on each other, but only as follows: cross-interrogatories within ten days after the notice; redirect interrogatories within five days after the latter service; and recross interrogatories within three days thereafter. On application of any party, the court may, for good cause shown, shorten or enlarge the time for serving any such succeeding interrogatories.

(c) Within the time required for cross-interrogatories, the adverse party may elect instead, to appear and orally cross-examine, by serving notice thereof on the party taking the deposition. The latter shall then within five days serve the former with notice of the date, hour and place where the deposition will be taken, which shall allow a reasonable time to enable the adverse party to attend; and may also waive his original written interrogatories and examine the deponent orally. [Report 1943]

Referred to in R.C.P. 134, 155, 156, 158, and 164  
For manner of service see rule 156

**RULE OF CIVIL PROCEDURE NO. 155**

**Subpoena.**

(a) On application of any party, or proof of service of a notice to take depositions under rule 147 or rule 150, the clerk of court where the action is pending shall issue subpoenas for persons named or described in said notice or application. Subpoenas may also be issued as provided in section 622.84 of the Code of Iowa. No subpoena shall call for production of documents unless the court on notice and hearing so orders.

(b) No resident of Iowa shall be thus subpoenaed to attend out of the county where he resides, or is employed, or transacts his business in person. [Report 1943; amendment 1957]

Referred to in R.C.P. 156

**622.102 Refusal to appear or testify.** Any witness who refuses to obey such subpoena or after appearance refuses to testify shall be reported by the officer or commissioner to the district court of the county where the subpoena was issued or to a judge thereof who shall thereupon proceed as if the refusal had

occurred in the district court. [C24, 27, 31, 35, 39, §11367; C46, 50, 54, §622.102]

Similar provision, §622.84

**RULE OF CIVIL PROCEDURE NO. 154**

**Letters rogatory.** A commission or letters rogatory to take depositions in a foreign land shall be issued only when convenient or necessary, on application and notice, and on such terms and with such directions as are just and appropriate. They shall specify the officer to take the deposition, by name or descriptive title, and may be addressed: "To the Appropriate Judicial Authority of (country)". [Report 1943]

Referred to in R.C.P. 153 and 156

**RULE OF CIVIL PROCEDURE NO. 147**

**Oral examination—notice.**

(a) Oral depositions may be taken only in this state, or outside it at a place within one hundred miles from the nearest Iowa point. But, on hearing, on notice, of a motion of a party desiring it, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained on written interrogatories.

(b) The party taking an oral deposition must first serve reasonable notice on all other parties not in default for want of appearance, stating the time and place thereof and the name and address of the deponent, or if that is unknown, a description identifying him or the class or group to which he belongs. The court, on motion of any party so served, may for good cause enlarge or shorten the time.

(c) No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or his attorney of record of notice of the taking of the deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in (b) hereof, is sufficient to require the appearance of a deponent for the deposition.

(d) If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court, as provided in rule 141(d). [Report 1943; amendment 1957]

For manner of serving notice see rule 156. On objecting to notice see rule 153(a)  
Referred to in R.C.P. 155 and 156

**RULE OF CIVIL PROCEDURE NO. 148**

**Conduct of oral examination.**

(a) Deponent shall first be sworn by the officer before whom his deposition is taken. His testimony must be taken stenographically by such officer or a per-

son acting in his presence under his direction and transcribed. The completed deposition must include all objections interposed, including those to the manner of taking it, to the officer's qualification, to any conduct or to any testimony. Evidence objected to shall be taken subject to the objection. Any adverse party may orally cross-examine the deponent; or if he does not participate orally, he may transmit to the officer written interrogatories, which the officer shall put to deponent, whose answers shall be recorded verbatim.

(b) At any time after notice has been given of the taking of a deposition, the court, on its motion or on the motion of any party upon cause shown, may order the deposition to be taken before the court or before a master appointed by the court to preside over the taking of the deposition and rule on any matters which may arise in connection with the taking thereof. The appointment of a master shall be made only upon a showing that some exceptional condition requires such appointment. The master shall exercise the powers permitted by rules 209 and 210 and his rulings or orders shall be subject to review by the court upon notice and hearing. The reasonable fees and expenses of the master shall be allowed as provided in rule 208 and he taxed as costs in the action. [Report 1943; amendment 1957]

For questions which witness need not answer, see rule 143

For stipulating to modify any of the foregoing, see rule 140

Referred to in R.C.P. 151, 156 and 164

#### RULE OF CIVIL PROCEDURE NO. 149

##### Reading and signing.

(a) No oral deposition reported and transcribed by an official reporter of the state of Iowa need be submitted to or read or signed by the deponent.

(b) In other cases, the completed deposition shall be submitted to deponent and read by or to him, and the officer shall note thereon any changes deponent may direct, and his reasons for such direction. Deponent shall then sign the deposition, unless he is ill or cannot be found. If he refuses to sign, the officer shall record such refusal and the reasons given therefor, and himself sign it. A deposition not signed by deponent may, nevertheless, be used at the trial unless the court holds, on motion to suppress under rule 158(f), that deponent refused to sign it for reasons which require its rejection. [Report 1943]

For waiving signature, reading, etc., see rule 140  
Referred to in R.C.P. 151, 156, and 164

#### RULE OF CIVIL PROCEDURE NO. 151

**Answers to interrogatories.** The party taking a deposition on written interrogatories shall promptly transmit a copy of

the notice and all interrogatories to the officer designated in the notice. The officer shall promptly take deponent's answers thereto and complete the deposition, all as provided in rules 148 and 149, except that answers need not be taken stenographically. [Report 1943]

Referred to in R.C.P. 156 and 164

#### RULE OF CIVIL PROCEDURE NO. 142

**Defaults—notice.** If a party requires proof to obtain a judgment upon a default, he may take depositions, after serving notice on the attorney of record for the defaulted party, or, if none, on the clerk. Parties in default need not be given notice as to depositions taken under any other rule. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 143

**Scope of examination.** Subject to the provisions of rule 141, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of the relevant facts; provided that a party shall not be required to list the witnesses he expects to call at the trial. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. [Report 1943; amendment 1957]

#### RULE OF CIVIL PROCEDURE NO. 144

**Use of depositions.** Any part of a deposition, so far as admissible under the rules of evidence, may be used upon the trial or at an interlocutory hearing or upon the hearing of a motion in the same action against any party who appeared when it was taken, or stipulated therefor, or had due notice thereof, either:

(a) To impeach or contradict deponent's testimony as a witness; or

(b) For any purpose if, when it was taken, deponent was a party adverse to the offeror, or was an officer, partner or managing agent of any adverse party which is not a natural person; or

(c) For any purpose, if the court finds that the offeror was unable to procure deponent's presence at the trial by subpoena; or that deponent is out of the state or more than one hundred miles distant from the trial, and such absence was not procured by the offeror; or that deponent is dead, or unable to testify

because of age, illness, infirmity or imprisonment.

(d) On application and notice, the court may also permit a deposition to be used for any purpose, under exceptional circumstances making it desirable in the interests of justice; having due regard for the importance of witnesses testifying in open court. [Report 1943; amendment 1957]

Referred to in R.C.P. 145

#### RULE OF CIVIL PROCEDURE NO. 145

##### Effect of taking or using.

(a) If a party offers only part of a deposition, his adversary may require him to offer all of it relevant to the portion offered; and any other party may offer other relevant parts.

(b) A party does not make deponent his own witness by taking his deposition or using it solely under rules 144 (a), or 144 (b). A party introducing a deposition for any other purpose makes the deponent his witness, but may contradict his testimony by relevant evidence. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 146

**Substituted parties — successive actions.** Substitution of parties does not prevent use of depositions previously taken and filed in the action. If an action is dismissed, depositions legally taken therein may be used in any subsequent action involving the same subject matter, between the same parties, their representatives or successors in interest. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 156

**Notice—service.** Notices or interrogatories under rules 147 to 160 inclusive may be served upon the party, or any attorney of record for him, either by personal delivery or by ordinary United States mail addressed to his address of record. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 152

##### Certification and return—copies.

(a) The officer taking any deposition shall certify thereon that the witness was duly sworn, and that the deposition is a true record of the testimony given and of all objections interposed. He shall seal it securely in an envelope indorsed with the title of the action and "Deposition of (name of witness)", and promptly file it with the clerk or send it to him by registered mail.

(b) The clerk shall immediately give notice of the filing of all depositions to all parties who have appeared in the action.

(c) On payment of his reasonable charges therefor, the officer shall fur-

nish any party or the deponent with a copy of the deposition. [Report 1943]

Referred to in R.C.P. 156 and 164

#### RULE OF CIVIL PROCEDURE NO. 158

##### Irregularities—objections.

(a) *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the party giving the notice.

(b) *Officer.* Objection to the officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

(c) *Interrogatories.* All objections to the form of any written interrogatory served under rule 150 are waived unless the objector serves them on the interrogating party in the time allowed him for serving succeeding interrogatories and, as to the last interrogatories authorized, within three days after the service thereof.

(d) *Taking deposition.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer; and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to when it is taken.

(e) *Testimony.* Except as above provided, testimony taken by deposition may be objected to at the trial on any ground which would require its exclusion if given by a witness in open court, and objections to testimony, or competency of a witness, need not be made prior to or during the deposition, unless the grounds thereof could then have been obviated or removed.

(f) *Motion to suppress.* All objections to the manner of transcribing the testimony, or to preparing, signing, certifying, sealing, indorsing, transmitting, filing the deposition, or the officer's dealing with it, are waived unless made by motion to suppress it, or the part complained of, filed with reasonable promptness after the objector knows of, or could with reasonable diligence discover, the defect. No such motion shall be sustained unless the defect is substantial and materially affects the right of some party. [Report 1943]

Referred to in R.C.P. 149, 156, 164

**622.103 Fees for taking.** Any officer or person taking depositions is authorized to charge therefor ten cents per hundred words, exclusive of the certificate; for administering an oath to each witness, five cents; for certifying to the administration of the oath to and signature of the deposition by each witness, twenty-five

cents; and for the certificate to the deposition or depositions, twenty-five cents, the charge for such certificate including the affixing of the seal thereto, if the person certifying is an officer having a seal; for issuing a subpoena for a witness, twenty-five cents; for certifying to a court the failure of a witness to respond to a subpoena, or his refusal to answer questions or to sign and swear to his deposition, twenty-five cents, with ten cents per hundred words for copies of papers required to be certified in such a case. [C51,§2552; R60,§4160; C73,§3835; C97,§4715; C24, 27, 31, 35, 39,§11397; C46, 50, 54, §622.103]

**622.104 Witness fees.** A witness appearing before an officer directed to take his deposition is entitled to the same fees and mileage as a witness in the court in which the deposition is to be used. If subpoenaed, such a witness is entitled to his fees and mileage in advance, as in other cases. [C97,§4716; C24, 27, 31, 35, 39,§11398; C46, 50, 54,§622.104]

Fees and mileage, §622.69, et seq.

#### RULE OF CIVIL PROCEDURE NO. 157

##### Costs.

(a) *Generally.* Costs of taking and proceeding to procure a deposition shall be advanced by the party taking it, and he cannot use it in evidence until such costs are paid. The costs shall be noted in the return or certificate, and taxed by the clerk. The judgment shall award against the losing party only such portion of these costs as were necessarily incurred for testimony offered and admitted upon the trial.

(b) *Failure to attend.* The court may order the party taking a deposition to pay the adverse party his costs and expenses, including reasonable attorney fees, for attending at the specified time and place for oral cross-examination (being entitled thereto), if the deposition is not then taken for absence of the party, or of the witness due to the party's failure to subpoena him. [Report 1943]

Referred to in R.C.P. 156

#### PERPETUATING TESTIMONY

#### RULE OF CIVIL PROCEDURE NO. 159

**Common law preserved.** The following rules do not limit the court's common law powers to entertain actions to perpetuate testimony. [Report 1943]

Referred to in R.C.P. 156

#### RULE OF CIVIL PROCEDURE NO. 160

**Before action—application.** An application to take depositions to perpetuate testimony for use in an action not yet pending, shall be entitled in the name of the applicant, be supported by affidavit, and show:

(a) That he expects to be a party to an action cognizable in some court of

record of Iowa, which he is then unable to bring or cause to be brought;

(b) The subject matter of such action, and his interest therein;

(c) The facts to be shown by the proposed testimony, and his reasons for desiring to perpetuate it;

(d) The name or description of each expected adverse party, with address if known;

(e) The name and address of each deponent and the substance of his testimony. It shall be filed in the court where the prospective action might be brought. [Report 1943]

Referred to in R.C.P. 156  
Transaction with deceased, §622.4; affidavits, §622.85

#### RULE OF CIVIL PROCEDURE NO. 161

**Notice.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing, the notice shall be served as provided for the service of original notices other than by publication; but if such service cannot with due diligence be so made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, or the court upon a showing of extraordinary circumstances may prescribe a hearing upon less than twenty days notice. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 162

**Guardian ad litem.** Before hearing the application, the court shall appoint some attorney to act as guardian ad litem for any party under legal disability or not personally served with notice, who shall cross-examine for his ward if any deposition is ordered, and unless an attorney has been so appointed the deposition shall not be admissible against such party in any subsequent action. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 164

**Taking and filing testimony.** Depositions shall be taken as directed in said order; and shall be otherwise governed by rules 148 to 153 and 158. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the application was filed shall be deemed to refer to the court in which the petition for such deposition was filed. Unless the court enlarges the time, all such depositions must be filed therein within thirty days after the date fixed for tak-

ing them, and if not so filed cannot be later received in evidence. [Report 1943]

Referred to in R.C.P. 166

**RULE OF CIVIL PROCEDURE NO. 163**

**When ordered—who not examined.** If satisfied that the petition is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that applicant is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated, designating the deponents, the subject matter of their examination, when, where and before whom their deposition shall be taken, and whether orally or on written interrogatories. [Report 1943]

Referred to in R.C.P. 166

**RULE OF CIVIL PROCEDURE NO. 165**

**Use—limitation.** Any party to any later action involving any expected adverse party who was named in the application, and served with notice as hereinbefore required, or involving his privies or successors in interest, may

use such deposition, or a certified copy thereof, if the deponent is dead or insane or his attendance cannot be obtained. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 166**

**Perpetuating testimony pending appeal.** During the time allowed for taking an appeal from judgment of a court of record or during the pendency of such appeal, that court may, on motion, allow testimony to be perpetuated for use in the event of further proceedings before it. The motion shall state the name and address of each proposed deponent, the substance of his expected testimony, and the reason for perpetuating it. If the court finds such perpetuation is proper to avoid a failure or delay of justice, and the depositions are not sought for discovery, it may order them taken as in rules 163 and 164. When taken and filed as thus provided, they shall be used and treated as though they had been taken pending the trial of the action. [Report 1943]

**CHAPTER 623**

**CHANGE OF VENUE**

Wrong county, R.C.P. 175

- Rule—Grounds for change, R.C.P. 167.
- Rule—Limitations, R.C.P. 168.
- Rule—Subsequent change, R.C.P. 169.
- Rule—Where tried, R.C.P. 171.
- Rule—Of whole case, R.C.P. 170.

- Rule—Transferring cause, R.C.P. 173.
- Rule—Costs, R.C.P. 172.
- 623.1 Jury fees in criminal actions.
- Rule—Jury fees in civil actions, R.C.P. 174.

**RULE OF CIVIL PROCEDURE NO. 167**

**Grounds for change.** On motion, the place of trial may be changed as follows:

(a) *County.* If the county where the case would be tried is a party and the motion is by an adverse party, the issue being triable by a jury, and a jury having been demanded;

(b) *Interest of judge.* Where the trial judge is directly interested in the action, or related by consanguinity or affinity within the fourth degree to any party so interested;

(c) *Prejudice or influence.* If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being his agent, servant, employee or attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to rule 116;

(d) *Agreement.* Pursuant to written agreement of the parties;

(e) *Fraud in contract.* A defendant, sued in a county where he does not reside, on a written contract expressly performable in such county, who has filed a sworn answer claiming fraud in the inception of said contract as a complete defense thereto, may have the case transferred to the county of his residence. Within ten days after the transfer is ordered, he must file a bond in an amount fixed by the court, with sureties approved by the clerk, for payment of all costs; and any judgment rendered against him shall include in such costs a reasonable amount fixed by the court for expenses incurred by plaintiff and his attorney by reason of the change. [Report 1943]

Referred to in R.C.P. 168, 169, 171 and 172  
Change when action in wrong county, R.C.P. 175

**RULE OF CIVIL PROCEDURE NO. 168**

**Limitations.** Change of venue shall not be allowed:

- (a) In an appeal from a justice of the peace; or

(b) Under rule 167(c) where the issues are triable to the court alone, except for prejudice of the judge; or

(c) Until the issues are made up, unless the objection is to the judge; or

(d) After a continuance, except for a cause arising since such continuance or not known to movant prior thereto; or

(e) After one change, for any cause then existing, and known or ascertainable with reasonable diligence.

In no event shall more than two changes be allowed to any party. [Report 1943]

Referred to in R.C.P. 169

#### RULE OF CIVIL PROCEDURE NO. 169

**Subsequent change.** Where the case is tried after a change of place of trial, and the jury disagrees or a new trial is granted, the court may in its discretion allow a subsequent change, under rule 167(a), (b), (c) or (d); subject to rule 168. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 171

**Where tried.** Unless the change is under rule 167(e), the court granting it shall order the trial held in a convenient county in the judicial district, or if the ground applies to all such counties, then of another judicial district. If the ground applies only to a judge, the court in its discretion may refuse a change and procure another judge to try the case where it was brought, or the supreme court may designate such other judge. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 170

**Of whole case.** A change may be granted on motion of one of several coparties; and the whole cause shall then be transferred, unless separate trials are granted under rule 186. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 173

**Transferring cause.** When a change is ordered and the required costs paid, the clerk shall forthwith transmit to the proper court his transcript of the proceedings, with any original papers, of which he shall retain an authenticated copy. The case shall be docketed in the second court without fee and shall proceed. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 172

**Costs.** Unless the change is under rule 167(d) or 167(e), the order shall designate generally all costs occasioned by the change, which movant must pay before the change is perfected. Failure to make such payment within ten days from the order waives the change of venue. [Report 1943]

**623.1 Jury fees in criminal actions.** Where the place of trial in any criminal action is changed to any county other than that in which the same was properly commenced, where the trial thereof takes place at a regular term and occupies more than one calendar day, the judge trying it shall certify the number of days so occupied, and the county in which the action was originally commenced shall be liable to the county where the same is tried for the sum of three dollars per day, for each juryman engaged in the trial thereof. [C73, §2597; C97, §3512; C24, 27, 31, 35, 39, §11424; C46, 50, 54, §623.1]

#### RULE OF CIVIL PROCEDURE NO. 174

**Jury fees in civil actions.** If the trial after change consumes more than one calendar day, the court shall certify the number of days consumed; and the county where the action was brought shall pay the county where it was tried a sum equal to three dollars per day for each juror who tried the case. [Report 1943]

## CHAPTER 624

### TRIAL AND JUDGMENT

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**RULE OF CIVIL PROCEDURE NO. 176**

**Trials and issues.** A trial is a judicial examination of issues in an action, whether of law or fact. Issues arise where a pleading of one party maintains a claim controverted by an adverse party. Issues are either of law or fact. An issue of fact arises on a material allegation of fact in a pleading which is denied in an adversary's pleading or by operation of law. All other issues are issues of law which must be tried first. [Report 1943]

For allegations and denials of fact, see rules 70-76;

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For denials by operation of law, see e.g. rule 102  
 For separate trial of law issue, see rule 105

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**RULE OF CIVIL PROCEDURE NO. 177**

**Demand for jury trial.**

(a) Jury trial is waived if not demanded according to this rule; but a demand once filed may not be withdrawn without consent of all parties not in default.

(b) A party desiring jury trial of an issue must file a written demand therefor, either by indorsement on his pleading, or within ten days after the last pleading directed to that issue.

(c) Unless limited to a specific issue, every such demand shall be deemed to include all issues triable to a jury. If



a limited demand is filed, any other party may, within ten days thereafter or such shorter time as the court may order, file his demand for a jury trial of some or all other issues.

(d) Notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues. [Report 1943; amendment 1945]

Referred to in R.C.P. 232

#### RULE OF CIVIL PROCEDURE NO. 178

**To court or jury.** All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds that there is no right thereto or all parties appearing at the trial waive a jury in writing or orally in open court. [Report 1943]

**624.1 Evidence in ordinary actions.** All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as provided by law. [R60,§2999; C73,§2741; C97,§3651; C24, 27, 31, 35, 39,§11430; C46, 50, 54,§624.1]

C97,§3651, editorially divided  
Depositions, R.C.P. 153

**624.2 Ordinary actions—evidence on appeal.** Upon appeal, in ordinary actions no evidence shall go to the supreme court except such as may be necessary to explain any exception taken in the cause, and such court shall hear and try the case only on the legal errors so presented. [R60,§2999; C73,§2741; C97,§3651; C24, 27, 31, 35, 39,§11431; C46, 50, 54,§624.2]

Constitution, Art. V,§4

**624.3 Evidence in equitable actions.** In actions cognizable in equity, wherein issues of fact are joined, the court may order the evidence or any part thereof to be taken in the form of depositions, or either party may take depositions as authorized by law, and may in the discretion of the court be granted a continuance to the second term for that purpose. [R60,§2999; C73,§2742; C97,§3652; S13,§3652; C24, 27, 31, 35, 39,§11432; C46, 50, 54,§624.3]

40ExGA, SF 231,§1, editorially divided

**624.4 Equitable actions—evidence on appeal.** The evidence in actions cognizable in equity shall be presented on appeal to the supreme court, which shall try such causes anew. [R60,§2999; C73,§2742; C97,§3652; S13, §3652; C24, 27, 31, 35, 39,§11433; C46, 50, 54, §624.4]

**624.5 Abstracts in equity causes.** In equitable causes, where the evidence is taken in the form of depositions, the court may require to be submitted with the arguments an abstract of the pleadings and evidence, substan-

tially as required by the rules of the supreme court for abstracts in appeals in equitable causes, except that the same need not be printed. [C97,§3653; C24, 27, 31, 35, 39,§11434; C46, 50, 54,§624.5]

See R.C.P. 340

#### RULE OF CIVIL PROCEDURE NO. 179

##### Findings by court.

(a) The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

(b) On motion joined with or filed within the time allowed for a motion for a new trial, the findings may be enlarged or amended, and the judgment modified accordingly. But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding, without having objected to it by such motion or otherwise. [Report 1943]

**624.6 Trial term.** Causes shall be triable at the first term after legal and timely service has been made. [C51,§1763; R60,§3007; C73, §2744; C97,§3655; C24, 27, 31, 35, 39,§11436; C46, 50, 54,§624.6]

**624.7 Exception.** If the action challenges the legality, validity, or constitutionality of a proposed constitutional amendment, the cause shall be tried either in term time or in vacation within three days after the issues are made up. [C31, 35,§11436-d1; C39,§11436.1; C46, 50, 54,§624.7]

#### RULE OF CIVIL PROCEDURE NO. 186

**Separate trials.** In any action the court may, for convenience or to avoid prejudice, order a separate trial of any claim, counterclaim, cross-claim, or of any separate issue of fact, or any number of any of them. Any claim against a party may be thus severed and proceeded with separately. [Report 1943]

As to separate trial of points of law, see rule 105  
See also rule 74  
Referred to in R.C.P. 170 and 237

#### RULE OF CIVIL PROCEDURE NO. 181

**Trial assignments.** Trial courts shall provide by rule for placing actions on the calendar for trial to court or jury, giving precedence to actions entitled thereto. Such rules shall provide that the court must place any case on the assignment and compel its trial, on request of any party after issues are made up, and shall have no power thereafter to grant any delay except on motion for continuance or consent of all parties in open court. [Report 1943]

**624.8 Calendar.** The clerk shall keep a calendar of criminal causes, arranging them in the order of their commencement and, if the court so order, shall, under the direction of the court or judge, apportion the same to as many days as is believed necessary, and, at the request of any party to a cause or his attorney, shall issue subpoenas accordingly. The clerk shall furnish the court and bar with a sufficient number of copies of the calendar at the first term of court of each year, and shall, at each succeeding term of court during said year, furnish the court and bar with a sufficient number of copies of a supplement thereto, which shall include the new causes only, but the publication of the assignments as provided in section 618.13 shall be in lieu of the publishing of a court calendar except that at the commencement of each term the first two daily publications of said paper shall be furnished free by the publisher to any attorney who shall request the clerk for the same. [C51, §§1761, 1762; R60, §3005; C73, §2747; C97, §3661; C24, 27, 31, 35, 39, §11441; C46, 50, 54, §624.8]

#### RULE OF CIVIL PROCEDURE NO. 182

##### Motions for continuance.

(a) Motions for continuance shall be filed without delay after the grounds therefor become known to the party or his counsel. Such a motion may be amended only to correct a clerical error.

(b) A case shall not lose its place on the calendar when a party applies for time to seek a continuance, unless it is then continued at the option of the other party at applicant's costs, whereupon the clerk shall forthwith enter judgment for costs unless otherwise ordered by the court or agreed by the parties. [Report 1943]

That the motion need not be served, see rule 115

#### RULE OF CIVIL PROCEDURE NO. 183

##### Causes for continuance.

(a) A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the court that substantial justice will be more nearly obtained. It shall be allowed if all parties so agree.

(b) All such motions based on absence of evidence must be supported by affidavit of the party, his agent or attorney, and must show: (1) The name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) What efforts, constituting due diligence, have been made to obtain such witness or his testimony, and facts showing reasonable grounds to believe the testimony will be procured by the next term; (3) What particular facts, distinct from legal conclusions, affiant believes the witness will prove, and that he believes them to be true and knows of no other witness

by whom they can be fully proved. If the court finds such motion sufficient, the adverse party may avoid the continuance by admitting that the witness if present, would testify to the facts therein stated, as the evidence of such witness. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 184

**Objections — ruling — costs.** The adverse party may at once, or within such reasonable time as the court allows, file specific written objections to the motion for continuance, which shall be part of the record. Where the defenses are distinct, the cause may be continued as to any one or more defendants. Every continuance shall be at the cost of the movant unless otherwise ordered by the court. [Report 1943]

**624.9 Detailed report of trial.** In all appealable actions triable by ordinary or equitable proceedings, any party thereto shall be entitled to have reported the whole proceedings upon the trial or hearing, and the court or judge shall direct the reporter to make such report in writing or shorthand, which shall contain the date of the commencement of the trial, the proceedings impaneling the jury, and any objections thereto with the rulings thereon, the oral testimony at length, and all offers thereof, all objections thereto, the rulings thereon, the identification as exhibits, by letter or number or other appropriate mark, of all written or other evidence offered, and by sufficient reference thereto, made in the report, to make certain the object or thing offered, all objections to such evidence and the rulings thereon, all motions or other pleas orally made and the rulings thereon, the fact that the testimony was closed, the portions of arguments objected to, when so ordered by the court, all objections thereto with the rulings thereon, all oral comments or statements of the court during the progress of the trial, and any exceptions taken thereto, the fact that the jury is instructed, all objections and exceptions to instructions given by the court on its own motion, the fact that the case is given to the jury, the return of the verdict and action thereon of whatever kind, and any other proceedings before the court, judge, or jury which might be preserved and made of record by bill of exceptions, and shall note that exception was saved by the party adversely affected to every ruling made by the court or judge. [C97, §3675; C24, 27, 31, 35, 39, §11456; C46, 50, 54, §624.9]

C97, §3675, editorially divided

**624.10 Certification—ipso facto bill.** Such report shall be certified by the trial judge and reporter, when demanded by either party, to the effect that it contains a full, true, and complete report of all proceedings had that are required to be kept, and, when so certified, the same shall be filed by the clerk and, with all matters set out or identified therein, shall

be a part of the record in such action, and constitute a complete bill of exceptions. [C97, §3675; C24, 27, 31, 35, 39, §11457; C46, 50, 54, §624.10]

Certification by successor, R.C.P. 241  
Duty to file translation, R.C.P. 340  
When bill unnecessary, R.C.P. 214 and 241

**624.11 Matters excluded.** On a trial before a jury it shall not be necessary to take down arguments of counsel or statements of the court, except his rulings, when not made in the presence of the jury. [C97, §3675; C24, 27, 31, 35, 39, §11458; C46, 50, 54, §624.11]

#### RULE OF CIVIL PROCEDURE NO. 187

##### Impaneling jury.

(a) *Selection.* The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial he shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. He shall list all jurors so drawn. Before drawing begins, either party may require that the names of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion.

(b) *Oath or examination.* The prospective jurors shall be sworn. The parties may then examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

(c) *Challenges.* Challenges are objections to trial jurors, and may be either to the panel or to an individual juror. Coparties at the trial cannot sever their peremptory challenges, but must join in them unless the court otherwise orders. The court shall determine the law and fact as to all challenges, and must either allow or deny them.

(d) *To panel.* Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at that trial.

(e) *To juror.* Challenge to an individual juror, peremptory or for cause, must be made before the jury is sworn to try the case. A juror peremptorily challenged must be excused without reasons being given. On demand of either party

to a challenge for cause, the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

(f) *For cause.* A juror may be challenged by either party for any of the following causes: (1) conviction of a felony; (2) want of any statutory qualification required to make him a competent juror; (3) physical or mental defects rendering him incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) being guardian, ward, master, servant, landlord or tenant of the adverse party, or a member of his family or in his employ; or being a client of any attorney engaged in the cause; (6) being a party adverse to the challenging party in any civil action; or having complained of or been accused by him in a criminal prosecution; (7) having already sat upon a trial of the same issues; (8) having served as a grand or trial juror in a criminal case based on the same transaction; (9) when it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent him from rendering a just verdict; (10) being interested in a question like the issue to be tried; (11) having requested, directly, or indirectly, that his name be returned as a juror for the regular biennial period; (12) having served in the district court as a grand or petit juror during the last preceding calendar year.

Exemption from jury service is not a ground of challenge, but the privilege of the person exempt.

(g) *Number — striking.* Each side may peremptorily challenge three jurors and must strike off two but before the examination of the jury commences the court may in its discretion authorize and fix the number of additional peremptory challenges where there are two or more parties represented by different counsel. After all challenges for cause are completed, plaintiff and defendant shall alternately make or waive their peremptory challenges by appropriate notations on the jury list. Thereafter each side in like manner shall strike off two jurors from the list.

(h) *Vacancies.* After a peremptory challenge is exercised or a challenge for cause sustained, another juror shall be called and examined before further challenges are made, and shall be subject to being challenged or stricken as are other jurors.

(i) *Jury sworn.* The clerk shall read the names of the twelve jurors who remain on the list after all others have been challenged or stricken. These shall

constitute the jury and shall be sworn substantially as follows:

"You and each of you do solemnly swear (or affirm) that you will well and truly try the issues wherein ..... is plaintiff and ..... is defendant, and a true verdict render; and that you will do so solely on the evidence introduced and in accordance with the instructions of the court; so help you God." [Report 1943]

Referred to in R.C.P. 189  
Jurors, see ch 607 et seq.

**RULE OF CIVIL PROCEDURE NO. 188**

**Saturday a religious day.** No juror whose religious faith requires him to keep the seventh day of the week can be compelled to attend on that day, prior to final submission of the case. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 189**

**Alternate jurors.** The court may impanel one or two alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of two more persons than are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in rule 187. Each party must then strike off one such name, and the one or two remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 190**

**Returning ballots to box.** When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury. [Report 1943]

**624.12 Panel exhausted.** If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries. [C97, §3698; C24, 27, 31, 35, 39, §11482; C46, 50, 54, §624.12]

Juries, see ch 607 et seq.  
Similar provision, §779.2

**RULE OF CIVIL PROCEDURE NO. 203**

**Rendering verdict.**

(a) *Majority.* Before verdict is returned, the parties may stipulate that it may be rendered by a stated majority of the jurors. In the absence of such stipulation a verdict must be unanimous.

(b) *Return—poll.* The jury agreeing on a verdict shall bring it into court, where it shall be read to them, and inquiry made if it is their verdict. A party may then require a poll, which shall be by the clerk of court asking each juror if it is his verdict. If any juror expresses disagreement on such poll or inquiry, the jury shall be sent out for further deliberation; otherwise, the verdict is complete and the jury shall be discharged.

(c) *Sealed.* When, by consent of the parties and the court, the jury has been permitted to seal its verdict and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto. [Report 1943]

Similar provisions, §§785.9, 785.15, 785.16

**RULE OF CIVIL PROCEDURE NO. 191**

**Procedure after jury sworn.** After the jury is sworn, the trial shall proceed in the following order:

(a) The party having the burden of proof on the whole action may briefly state his claim, and by what evidence he expects to prove it;

(b) The other party may similarly state his defense and evidence;

(c) The first above party must then produce his evidence; to be followed by that of the adverse party;

(d) The parties will be confined to rebutting evidence, unless the court in furtherance of justice, permits them to offer evidence in their original case;

(e) But one counsel on each side shall examine the same witness, unless otherwise permitted by the court. [Report 1943]

**624.13 Interlocutory questions.** Upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoining, confining his remarks to the points first stated and a pertinent answer to respondent's argument. Argument on the questions shall then be closed, unless further requested by the court. [R60, §3046; C73, §2779; C97, §3700; C24, 27, 31, 35, 39, §11486; C46, 50, 54, §624.13]

**RULE OF CIVIL PROCEDURE NO. 195**

**Arguments.** The parties may either submit the case or argue it. The party with the burden of the issue shall have the opening and closing argument. In opening, he shall disclose all points he relies on, and if his closing argument refers to any new material point or fact not so disclosed, the adverse party may reply thereto, which shall close the argument. A party waiving opening argu-

ment is limited, in closing, to reply to the adverse argument; otherwise the adverse party shall have the closing argument. The court may limit the time for argument to itself, but not for arguments to the jury. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 196

**Instructions.** The court shall instruct the jury as to the law applicable to all the material issues in the case and such instructions shall be in writing and in consecutively numbered paragraphs and shall be read to the jury without comment or explanation. At the close of the evidence, or such prior time as the court may reasonably fix, any party may file written requests that the jury be instructed as set forth in such requests. Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues, which shall not be part of the record. Before reading them to the jury, the court shall submit to counsel its instructions in their final form, noting this fact of record, and granting reasonable time for counsel to make objections after argument to the jury and before the instructions are read to the jury. Within such time, all objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal. But if the court thereafter revises or adds to the instructions, similar specific objection to the revision or addition may be made in the motion for new trial, and if not so made shall be deemed waived. All instructions and objections, except as above provided, shall be part of the record. [Report 1943]

Instructions in criminal cases, §§780.9, 780.35

#### RULE OF CIVIL PROCEDURE NO. 194

**View.** When the court deems proper, it may order an officer to conduct the jury in a body to view any real or personal property, or any place where a material fact occurred, and to show it to them. No other person shall speak to them during their absence on any subject connected with the trial. [Report 1943]

Similar provision, §780.15

**624.14 Juror as witness.** Section 780.17 shall be applicable to the trial of civil cases. [C27, 31, 35, §11496-b1; C39, §11496.1; C46, 50, 54, §624.14]

#### RULE OF CIVIL PROCEDURE NO. 199

##### Separation and deliberation of jury.

(a) A jury once sworn shall not separate unless so ordered by the court, who

must then advise them that it is the duty of each juror not to converse with any other juror or person, nor suffer himself to be addressed on the subject of the trial; and that, during the trial it is the duty of each juror to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted to him.

(b) On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court. Such officer must not suffer any communication to be made to them, nor make any himself, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered. [Report 1943]

Similar provisions, §§780.19, 780.21, 780.37

#### RULE OF CIVIL PROCEDURE NO. 200

**Discharge — retrial.** The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately or at a future time, as the court directs. [Report 1943]

Similar provision, §§784.3, 784.4

#### RULE OF CIVIL PROCEDURE NO. 193

**Adjournments.** After trial begins, the court may, in furtherance of justice, adjourn it for such time, and on such conditions as to costs or otherwise, as it deems just. [Report 1943]

For admonishing jury on adjournment, see rule 199 (a)

#### RULE OF CIVIL PROCEDURE NO. 198

**What jury may take.** When retiring to deliberate, the jury shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be so taken unless all the evidence is in writing and none has been stricken out. [Report 1943]

Similar provision, §784.1

#### RULE OF CIVIL PROCEDURE NO. 201

**Court open for verdict.** The court may adjourn as to other business while the jury is absent, but shall be open for every purpose connected with the cause submitted to the jury until it returns a verdict or is discharged. [Report 1943]

Similar provision, §784.5

#### RULE OF CIVIL PROCEDURE NO. 192

**Further testimony for mistake.** At any time before final submission, the court may allow any party to offer further testimony to correct an evident

oversight or mistake, imposing such terms as it deems just. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 197

**Additional instructions.** While the jury is deliberating, the court may in its discretion further instruct the jury, in the presence of or after notice to counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record and any objections thereto shall be made in a motion for a new trial. [Report 1943]

Similar provision, §784.2

#### RULE OF CIVIL PROCEDURE NO. 202

**Food and lodging.** The court may order the sheriff to provide suitable food and lodging at the expense of the county for a jury being kept together to try or deliberate on a cause. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 205

**Special verdicts.** The court may require that the verdict consist wholly of special written findings on each issue of fact. It shall then submit in writing questions susceptible of categorical or brief answers, or forms of several special findings that the jury might properly make under the issues and evidence, or submit the issues and require the findings in any other appropriate manner. It shall so instruct the jury as to enable it to find upon each issue submitted. If the submission omits any issue of fact, any party not demanding submission of such issue before the jury retires waives jury trial thereof, and the court may find upon it; failing which, it shall be deemed found in accord with the judgment on the special verdict. The court shall direct such judgment on the special verdict and answers as is appropriate thereto. [Report 1943]

See federal rule 49

#### RULE OF CIVIL PROCEDURE NO. 206

**Interrogatories.** The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. The instructions shall be such as will enable the jury to answer the interrogatories and return the verdict. If both are harmonious, the court shall order the appropriate judgment. If the answers are consistent with each other, but any is inconsistent with the general verdict, the court may order judgment appropriate to the answers notwithstanding the verdict, or a new trial, or send the jury back for further de-

liberation. If the answers are inconsistent with each other, and any is inconsistent with the verdict, the court shall not order judgment, but either send the jury back or order a new trial. [Report 1943]

See federal rule 49

#### RULE OF CIVIL PROCEDURE NO. 204

**Form and entry of verdict.** The verdict shall be in writing, signed by a foreman chosen by the jury. It shall be sufficient in form if it expresses the jury's intent. It shall be filed with the clerk, and entered of record after being put in form by the court if need be. [Report 1943]

For judgment on verdict, see rule 223

#### RULE OF CIVIL PROCEDURE NO. 207

**Reference.** A "master" includes a referee, auditor or examiner. On a showing of exceptional conditions requiring it, the court may appoint a master as to any issues not to be tried to a jury. The clerk shall forthwith furnish the master with a copy of the order appointing him. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 208

**Compensation.** The court shall fix the master's compensation and order it paid or advanced by such parties, or from such fund or property, as it may deem just. Execution may issue on such order at the master's demand. He shall not retain his reports as security for his compensation. [Report 1943]

Referred to in R.C.P. 148

#### RULE OF CIVIL PROCEDURE NO. 209

**Powers.** The order may specify or limit the master's powers or duties or the issue on which he is to report, or the time within which he shall hold hearings or file his report; or specify that he merely take and report evidence. But except as so limited he shall have and exercise power to regulate all proceedings before him; to administer oaths and to do all acts and take all measures appropriate for the efficient performance of his duties; to compel production before him of any witness or party, whom he may himself examine, or of any evidence on any matters embraced in the reference, and to rule on admissibility of evidence. He shall, on request, make a record of evidence offered and excluded. He may appoint a shorthand reporter whose fees shall be advanced by the requesting party. [Report 1943]

Referred to in R.C.P. 148

#### RULE OF CIVIL PROCEDURE NO. 213

**Filing report.** The master shall file with the clerk the original exhibits, and a transcript of the proceedings and evi-

dence before him, if there be one, otherwise his summary thereof, with his report on the matters submitted to him in the order of reference, including separate findings and conclusions if so ordered. He may previously submit a draft of his report to counsel for their suggestions. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 214

**Disposition.** The clerk shall forthwith mail notice of filing the report to all attorneys of record; and within ten days thereafter, unless the court enlarges the time, any party may file written objections to it. Application for action on said report, or objections, shall be by motion, to be heard on such notice as the court prescribes. The report shall have the same effect whether or not the reference was by consent; but where parties stipulate that the master's findings shall be final, only questions of law arising upon the report shall thereafter be considered. The court shall accept the master's findings of fact unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part, or recommit it with instructions. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 210

**Speedy hearing.** Upon his appointment the master shall forthwith notify the parties of the time and place of their first meeting before him, which shall be within twenty days or such other time as the court's order may fix. If a party so notified fails to appear, the master may proceed *ex parte*, or, in his discretion, adjourn to a future day, giving notice thereof to the absent party. It is the duty of the master to proceed with all reasonable diligence; and the court, after notice to the master and the parties, may order him to expedite proceedings or make his report. [Report 1943]

Referred to in R.C.P. 148

#### RULE OF CIVIL PROCEDURE NO. 211

**Witnesses.** Any party may subpoena witnesses before a master as for trial in open court; and a witness failing to appear or testify without good cause shall be subject to the same punishment and consequences. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 212

**Accounts.** The master may prescribe the form for submission of accounts which are in issue before him. In any proper case he may require or receive in evidence the statement of a certified public accountant who testifies as a witness. If any item submitted or stated is objected to, or shown insufficient in form, the master may require that a different form be furnished, or that the

accounts or any item thereof be proved by oral testimony or written interrogatories of the accounting parties, or in such other manner as he directs. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 180

**Exceptions unnecessary.** Exceptions to rulings or orders of court are unnecessary whenever a matter has been called to the attention of the court, by objection, motion or otherwise and the court has ruled thereon. [Report 1943]

This rule has nothing to do with bills of exceptions to complete an otherwise incomplete record, for which see rule 241

#### RULE OF CIVIL PROCEDURE NO. 241

##### Bill of exceptions.

(a) *When necessary.* A bill of exceptions shall be necessary only to effect a showing of material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial; if any.

(b) *Affidavits.* Not more than five affidavits in support of any exception may be filed with the bill. Controverting affidavits, not exceeding five, may be filed within seven days thereafter, the court, for good cause shown, may extend the time for filing such affidavits.

(c) *Certification—judge—bystanders.* The proposed bill of exceptions shall be promptly presented to the trial judge, who shall sign it if it fairly presents the facts. If he refuses, and counsel so certifies, and at least two bystanders attest in writing that the exceptions are correctly stated, the bill thus certified and attested shall be filed and become part of the record.

(d) *Disability.* Whenever the judge or master who tried the cause is for any reason unable to sign a bill of exceptions or certify the shorthand reporter's record, the same may be done by his successor, or by any judge of the court in which the proceeding was pending. [Report 1943]

Referred to in R.C.P. 247 and 340

**624.15 Must be on material point.** No exception shall be regarded in the supreme court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting. [R60,§3111; C73,§2836; C97,§3754; C24, 27, 31, 35, 39,§11548; C46, 50, 54, §624.15]

Errors disregarded, §619.16  
Similar provision, §786.4

#### RULE OF CIVIL PROCEDURE NO. 242

**New trial defined.** A new trial is the re-examination in the same court of any issue of fact or part thereof, after a verdict, or master's report, or a decision of the court. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 243

**Judgment notwithstanding verdict, etc.** Any party may, on motion, have judgment in his favor despite an adverse verdict, or the jury's failure to return any verdict:

(a) If the pleadings of the opposing party omit to aver some material fact or facts necessary to constitute a complete cause of action or defense and the motion clearly specifies such failure or omission; or

See also rule 244 (i)

(b) If the movant was entitled to have a verdict directed for him at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant. [Report 1943]

Referred to in R.C.P. 244, 245, 246, 247, 248, 249, 250 and 349

## RULE OF CIVIL PROCEDURE NO. 244

**New trial.** The aggrieved party may, on motion, have an adverse verdict, decision or report or some portion thereof vacated and a new trial granted, for any of the following causes, but only if they materially affected his substantial rights:

(a) Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial;

(b) Misconduct of the jury or prevailing party;

(c) Accident or surprise which ordinary prudence could not have guarded against;

(d) Excessive or inadequate damages appearing to have been influenced by passion or prejudice;

(e) Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property;

(f) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law;

(g) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial;

(h) Errors of law occurring in the proceedings, or mistakes of fact by the court;

(i) On any ground stated in rule 243, the motion specifying the defect or cause giving rise thereto. [Report 1943; amendment 1945]

For setting aside defaults, see rule 236; other new trials, see rules 251 and 252

Referred to in R.C.P. 245, 246, 247, 248, 249, 250, 252 and 253

## RULE OF CIVIL PROCEDURE NO. 245

**Motion—affidavits.** Motion under rules 243 and 244 shall be in writing; and if based on grounds stated in rule 244(b), 244(c), or 244(g) may be sustained and controverted by affidavits and heard pursuant to rule 116. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 246

**Stay.** If motions under rules 243 or 244 or petition under rule 252 are timely filed, the court may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all further proceedings, executions or process to enforce the judgment, pending disposition of such motion or petition. [Report 1943]

Referred to in R.C.P. 253

## RULE OF CIVIL PROCEDURE NO. 247

**Time for motions and exceptions.** Motions under rules 243 and 244 and bills of exception under rule 241 must be filed within ten days after the verdict, report or decision is filed, or the jury is discharged, as the case may be, unless the court, for good cause shown and not ex parte, grants an additional time not to exceed thirty days. [Report 1943]

Referred to in R.C.P. 335

## RULE OF CIVIL PROCEDURE NO. 248

**Nonwaiver.** Any motion may be filed under rules 243 or 244 without waiving the right to file or rely on any other of such motions.

Motions under rules 243 and 244 may be joined or made separately. If the motion under rule 243 is sustained, the sustaining thereof shall be deemed a denial of the motion under rule 244. Upon an appeal by any party from an order sustaining a motion under rule 243 the supreme court may, if the matter is argued, also review such denial of the motion under rule 244 without the necessity of an appeal therefrom. [Report 1943; amendment 1953]

## RULE OF CIVIL PROCEDURE NO. 249

**Issues tried by consent—amendment.**

In deciding motions under rules 243 or 244, the court shall treat issues actually tried by express or implied consent of the parties but not embraced in the pleadings, as though they had been pleaded. Either party may then amend to conform his pleadings to such issues and the evidence upon them; but failure so to amend shall not affect the result of the trial. [Report 1943]

Amendments generally, R.C.P. 88

**624.16 Costs of new trial.** The cost of all new trials shall either abide the event of the action or be paid by the party to whom such new trial is granted, according to the order of the court, to be made at the time of granting such new trial. [R60,§3117; C73,§2840; C97,



§3762; C24, 27, 31, 35, 39, §11560; C46, 50, 54, §624.16]

#### RULE OF CIVIL PROCEDURE NO. 250

**Conditional new trial.** The court may permit a party to avoid a new trial under rules 243 or 244 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly.

Any such term or condition or judgment entered pursuant thereto shall be deemed of no force and effect and the original judgment entered pursuant to rule 223 shall be deemed reinstated in the event of an appeal. [Report 1943; amendment 1953]

#### RULE OF CIVIL PROCEDURE NO. 215

**Voluntary dismissals.** A party may, without order of court, dismiss his own petition, counterclaim, cross-petition or petition of intervention, at any time before the trial has begun. Thereafter a party may dismiss his action or his claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against him on the merits, unless otherwise ordered by the court, in the interests of justice. [Report 1943]

Referred to in R.C.P. 217

#### RULE OF CIVIL PROCEDURE NO. 216

**Involuntary dismissal.** A party may move for dismissal of any action or claim against him, if the party asserting it fails to comply with these rules or any order of court. After the plaintiff has completed his evidence, a defendant may move for dismissal because plaintiff has shown no right to relief, under the law or facts, without waiving his right to offer evidence thereafter. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 217

**Effect of dismissal.** All dismissals not governed by rule 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 218

**Costs of previously dismissed action.** Where a plaintiff sues on a cause of

action that was previously dismissed against the same defendant in any court of any state or the United States the court may stay such suit until the costs of the prior action are paid. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 219

**Judgment defined.** Every final adjudication of any of the rights of the parties in an action is a judgment. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 220

**For part—in abatement.** A party who succeeds in part only may have judgment expressly for the part on which he succeeds, and against him as to the rest. The findings and judgment must distinguish between matter in abatement and bar; and a judgment in abatement and not on the merits must so declare. [Report 1943]

Bar or abatement, see also rule 103

**624.17 Special execution—pleading.** Where any other than a general execution of the common form is required, the party must state in his pleading the facts entitling him thereto, and the judgment may be entered in accordance with the finding of the court or jury thereon. [R60, §3125; C73, §2852; C97, §3772; C24, 27, 31, 35, 39, §11570; C46, 50, 54, §624.17]

#### RULE OF CIVIL PROCEDURE NO. 221

**As to some parties only.** Where the action involves two or more parties, the court may, in its discretion, and though it has jurisdiction of them all, render judgment for or against some of them only, whenever the prevailing party would have been entitled thereto had the action involved him alone, or whenever a several judgment is proper; leaving the action to proceed as to the other parties. [Report 1943]

See also rule 74

#### RULE OF CIVIL PROCEDURE NO. 235

**Relief in other cases.** The judgment may award any relief consistent with the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed what is demanded against him in the petition as limited by the original notice. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 222

**Judgment on the pleadings, etc.** Any party may, at any time, on motion, have any judgment to which he is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of his claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 223**

**On verdict.** The clerk must forthwith enter judgment upon a verdict when filed, unless it is special, or the court has ordered the case reserved for future argument or consideration. [Report 1943]

For judgment on special verdict, see rule 205  
For judgment on election by standing on or failing to amend pleading, see rule 87

**RULE OF CIVIL PROCEDURE NO. 224**

**Principal and surety—order of liability.** A judgment against principal and surety shall recite the order of their liability upon it. A “surety” includes all persons whose liability on the claim is posterior to that of another. [Report 1943]

See rule 41  
Similar provisions, §§601.94, 626.17, 626.64

**RULE OF CIVIL PROCEDURE NO. 225**

**On counterclaim—excess.** If any party recovers judgment against an adverse party in excess of a judgment recovered by the latter against him, judgment shall be given for the excess, with any other affirmative relief to which either may be entitled. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 226**

**By agreement.** Except in actions for divorce, separate maintenance and annulment of marriage, the clerk shall forthwith enter any judgment upon which all parties agree in open court, or by writing filed with the clerk; and execution may issue forthwith unless otherwise agreed. [Report 1943]

**624.18 Distinction between debt and damages.** In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages. [R60,§3144; C73, §2862; C97,§3782; C24, 27, 31, 35, 39,§11580; C46, 50, 54,§624.18]

**624.19 Court acting as jury.** The provisions of this chapter relative to juries are intended to be applied to the court when acting as a jury on the trial of a cause, so far as they are applicable and not incompatible with other provisions herein contained. [C51,§1823; R60,§3145; C73,§2863; C97,§3783; C24, 27, 31, 35, 39,§11581; C46, 50, 54,§624.19]

**RULE OF CIVIL PROCEDURE NO. 227**

**Entry.** All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made. [Report 1943]

See rule 120

**RULE OF CIVIL PROCEDURE NO. 228**

**Notes surrendered.** The clerk shall not, unless by special order of the court, enter or record any judgment based on

a note or other written evidence of indebtedness until such note or writing is first filed with him for cancellation. [Report 1943; amendment 1945]

**624.20 Satisfaction of judgment.** Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. [C51, §1819; R60,§3141; C73,§2865; C97,§3785; C24, 27, 31, 35, 39,§11583; C46, 50, 54,§624.20]

40ExGA, SF 231,§3, editorially divided

**624.21 Complete record.** In cases where the title to land is involved and expressly settled or determined, the clerk shall make a complete record of the whole cause, except abstracts of title attached to the pleadings, and enter it in the proper book. In no other case need a complete entry be made, except at the request of either party, which party shall pay the costs of said entry. [C51,§1817; R60,§3142; C73,§2866; C97,§3785; C24, 27, 31, 35, 39,§11584; C46, 50, 54,§624.21]

**RULE OF CIVIL PROCEDURE NO. 229**

**Affidavit of identity.** The clerk shall not enter a personal judgment until the creditor, his agent or attorney, files an affidavit stating the full name, occupation and residence of the judgment debtor, to affiant’s information and belief. If such residence is in an incorporated place of more than five thousand population, the affidavit shall include the street number of debtor’s residence and business address, if any. But a judgment entered or recorded without such affidavit shall not be invalid. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 256**

**Judgment discharged on motion.** Where matter in discharge of a judgment has arisen since its rendition, the defendant or any interested person may, on motion in a summary way, have the same discharged in whole or in part, according to the circumstances. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 257**

**Fraudulent assignment—motion.** The court may, on motion, inquire into the assignment of a judgment, or its entry to the use of any party, and cancel the assignment or strike out such use, in whole or in part, whenever it determines the same to be inequitable, fraudulent or done in bad faith. [Report 1943]

**RULE OF CIVIL PROCEDURE NO. 230**

**Default defined.** A party shall be in default whenever he (a) fails to appear as required in rule 53 or 54, or, has appeared, without thereafter filing any motion or pleading as stated in rule 87; or (b) fails to move or plead further as re-

quired in rule 86, unless judgment has already resulted under rule 87; or (c) withdraws his pleading without permission to replead, or withdraws his appearance or fails to present himself for trial; or (d) fails to comply with any order of court or do any act which permits entry of default against him, under any rule or statute. [Report 1943]

Referred to in R.C.P. 231

#### RULE OF CIVIL PROCEDURE NO. 231

**How entered.** If a party not under legal disability or not a prisoner in a reformatory or penitentiary is in default under rule 230(a), the clerk, on demand of the adverse party, must forthwith enter such default of record without any order of court. All other defaults shall be entered by the court. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 236

**Setting aside default.** On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation. [Report 1943]

For new trial after 60 days, see rules 251-253  
Referred to in R.C.P. 253

#### RULE OF CIVIL PROCEDURE NO. 232

**Judgment on default.** Judgment upon a default shall be rendered as follows:

(a) Where the claim is for a sum certain, or which by computation, can be made certain, the clerk, upon request, shall make such computation as may be necessary, and upon affidavit that the amount is due shall enter judgment for that amount, and costs against the party in default.

(b) In all cases the court on request of the prevailing party, shall order the judgment to which he is entitled, and the clerk shall enter the judgment so ordered. If no judge is holding court in the county, such order may be made by a judge anywhere in the judicial district as provided in rule 120. The court may, and on demand of any party not in default shall, either hear any evidence or accounting required to warrant the judgment or refer it to a master; or submit it to a jury if proper demand has been made therefor under rule 177. [Report 1943]

See rules 13, 14, 17 and 71 as to hearings on default against incompetents, prisoners, etc., and guardians ad litem therein

See rules 46 and 47 as to required hearing in defaulted class suit

#### RULE OF CIVIL PROCEDURE NO. 233

**Notice—notice of default in certain cases.** When any judgment other than one in rem has been taken by default against a party served with notice delivered to another person as provided in rule 56(a), the clerk shall immediately give written notice thereof, by ordinary mail to such party at his last known address, or the address where such service was had. The clerk shall make a record of such mailing. Failure to give such notice shall not invalidate the judgment. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 251

##### Retrial after published notice.

(a) *Retrial.* Except in actions for divorce and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in rule 60.1, he or any person legally representing him may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to his defense and trial as though there were no judgment.

(b) *New judgment.* After such retrial, the court may confirm the judgment, or modify or set it aside and order a party to restore any money or property remaining in his possession under it, or to repay the value of any money or property he thus received. [Report 1943; amendment 1951]

For effect on title of good faith purchaser, see rule 254  
Referred to in R.C.P. 254

#### RULE OF CIVIL PROCEDURE NO. 234

**On published service.** No personal judgment shall be entered against a person served only by publication or by publication and mailing, as provided in rule 60.1, unless he has appeared. [Report 1943; amendment 1951]

**624.22 Personal judgment—when authorized.** A personal judgment may be rendered against a defendant, whether he appears or not, who has been served in any mode provided in this Code other than by publication, whether served within or without this state, if such defendant is a resident of the state. [R60,§3164; C73,§2881; C97,§3800; C24, 27, 31, 35, 39,§11601; C46, 50, 54,§624.22]

**624.23 Liens of judgments.** Judgments in the supreme or district court of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all he may subsequently acquire, for the period of ten years from the date of the judgment. [C51,§2485,

2489; R60, §§4105, 4109; C73, §2882; C97, §3801; C24, 27, 31, 35, 39, §11602; C46, 50, 54, §624.23]

Lien under liquor prosecution, §126.15  
Nonlienable judgments in probate, §635.63  
Special limitations on judgments, ch 615

**624.24 When judgment lien attaches.**

When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies. [C51, §§2486, 2487; R60, §§4106, 4107; C73, §§2883, 2884; C97, §3802; S13, §3802; C24, 27, 31, 35, 39, §11603; C46, 50, 54, §624.24]

**624.25 Supreme court judgments.** The lien of judgments of the supreme court of Iowa shall not attach to any real estate until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies. [S13, §3802; C24, 27, 31, 35, 39, §11604; C46, 50, 54, §624.25]

**624.26 Docketing transcript.** Such clerk shall, on the filing of such transcript of the judgment of the supreme or district court of this state or of the circuit or district court of the United States in his office, immediately proceed to docket and index the same, in the same manner as though rendered in the court of his own county. [C51, §2488; R60, §4108; C73, §2885; C97, §3803; C24, 27, 31, 35, 39, §11605; C46, 50, 54, §624.26]

**624.27 Judgment against railway.** A judgment against any railway, interurban railway, or street railway corporation or copartnership, for an injury to any person or property, and any claim for compensation under the workmen's compensation act for personal injuries sustained by their employees arising out of and in the course of their employment, shall be a lien upon the property of such corporation or copartnership within the county where the judgment was recovered or in which occurred the injury for which compensation is due. [C73, §1309; C97, §2075; C24, 27, 31, 35, 39, §11606; C46, 50, 54, §624.27]

37GA, ch 403, §1, editorially divided

**624.28 Priority.** Said lien shall be prior and superior to the lien of any mortgage or trust deed executed since July 4, 1862, by any railway corporation or partnership, and prior and superior to the lien of any mortgage or trust deed executed after August 9, 1897, by any interurban railway or street railway corporation or copartnership. [C73, §1309; C97, §2075; C24, 27, 31, 35, 39, §11607; C46, 50, 54, §624.28]

**RULE OF CIVIL PROCEDURE NO. 237**

**On what claims.** Summary judgment may be entered in an action, upon any claim therein, which is either:

(a) To recover a debt, or some other money demand which is liquidated, with or without interest arising on a negotiable instrument, or on a recognizance, or on a judgment for a stated sum, or on any contract, express or implied, except quasi contract; or

(b) To recover a sum under a statute fixing its amount or creating a liability in the nature of a contract; or

(c) On a guaranty of a debt, or of some other claim that is liquidated; or

(d) To recover specific chattels, with or without damages for their detention, but any such claim for more than nominal damages which is unliquidated, may be severed and retained for separate trial as provided in rule 186; or

(e) To quiet or settle title to real estate or any interest therein; or

(f) To discharge an invalid lien or mortgage. [Report 1943]

Referred to in R.C.P. 238

**RULE OF CIVIL PROCEDURE NO. 238**

**Procedure.** Plaintiff making a claim described in rule 237 may file a motion for summary judgment thereon at any time after defendant appears, before or after answer. He shall support the motion by affidavit of himself or some person with personal knowledge of the facts, verifying the claim and the amount of money, if any, yet due thereon, and his belief that no defense exists against it. The clerk shall mail or deliver the copy of the motion as required in rule 82. Judgment shall be entered as prayed in the motion unless within ten days after it is filed, or such other time as the court may, for good cause, allow, the defendant resists it with affidavits showing facts which the court deems sufficient to permit him to defend. Hearing on the motion, if thus resisted, shall be as provided in rule 117. The court may, on plaintiff's motion, strike any affidavits filed by defendant which it finds insufficient, frivolous or made only for delay. [Report 1943]

Referred to in R.C.P. 240

**RULE OF CIVIL PROCEDURE NO. 239**

**On motion in other cases.** Judgments may be obtained on motion by sureties against principals or cosureties for money due because paid by them as such; by clients against attorneys, by plaintiffs in execution against sheriffs, constables or other officers for money or property collected by them, and for damages; and in

all other cases specially authorized by statute. [Report 1943]

Referred to in R.C.P. 240  
See §626.19

#### RULE OF CIVIL PROCEDURE NO. 240

**Procedure.** If motion under rule 239 is filed in an action already pending, the procedure shall be as in rule 238. Otherwise notice shall be served on the party against whom relief is sought at least ten days before the hearing thereof, stating when the motion will be filed and, in plain ordinary language, its nature and grounds, fixing the time and place of the hearing thereon. If the motion is not filed by the day specified it shall be deemed abandoned, if it is filed the court shall hear it at the time fixed in the notice without further pleadings, and give judgment according to the very right of the matter. [Report 1943]

For declaratory judgments, a species of special action, see rule 261 et seq.

**624.29 Conveyance by commissioner.** Real property may be conveyed by a commissioner appointed by the court:

1. Where, by judgment in an action, a party is ordered to convey such property to another.

2. Where such property has been sold under a judgment or order of the court, and the purchase price has been paid. [R60,§3165; C73, §2886; C97,§3805; C24, 27, 31, 35, 39,§11613; C46, 50, 54,§624.29]

**624.30 Deed.** The deed of the commissioner shall refer to the judgment, orders, and proceedings authorizing the conveyance. [R60, §3166; C73,§2887; C97,§3806; C24, 27, 31, 35, 39, §11614; C46, 50, 54,§624.30]

**624.31 Conveys title.** A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. [R60,§3167; C73,§2888; C97,§3807; C24, 27, 31, 35, 39,§11615; C46, 50, 54,§624.31]

**624.32 Other parties.** A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding. [R60,§3168; C73,§2889; C97,§3808; C24, 27, 31, 35, 39,§11616; C46, 50, 54,§624.32]

**624.33 Approval by court.** A conveyance by a commissioner shall not pass any right until it has been approved by the court, which approval shall be indorsed on the conveyance and recorded with it. [R60,§3169; C73,§2890; C97,§3809; C24, 27, 31, 35, 39,§11617; C46, 50, 54, §624.33]

**624.34 Form.** The conveyance shall be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of such parties shall be recited in the body of the conveyance. [R60,§3170; C73,§2891; C97,§3810; C24, 27, 31, 35, 39,§11618; C46, 50, 54,§624.34]

**624.35 Recorded.** The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it. [R60,§3171; C73,§2892; C97,§3811; C24, 27, 31, 35, 39,§11619; C46, 50, 54,§624.35]

**624.36 Approval in vacation.** Whenever by law it is permitted or required that judicial or other sales and conveyances of land may or shall be confirmed and approved by a court, the judge of the court may, in vacation, approve the same, and cause the proper entry or entries to be made. [C73,§2893; C97,§3812; C24, 27, 31, 35, 39,§11620; C46, 50, 54,§624.36]

**624.37 Satisfaction of judgment — penalty.** When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for him, must acknowledge satisfaction thereof upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so for thirty days after having been requested in writing shall subject the delinquent party to a penalty of fifty dollars, to be recovered in an action therefor by the party aggrieved. [C97,§3804; C24, 27, 31, 35, 39,§11621; C46, 50, 54,§624.37]

### DECLARATORY JUDGMENTS

#### RULE OF CIVIL PROCEDURE NO. 261

**Declaratory judgments permitted.** Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in the next three rules does not limit or restrict the exercise of the general power herein referred to. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

#### RULE OF CIVIL PROCEDURE NO. 262

**Construing contracts, etc.** Any person interested in a contract, oral or written, or a will, or whose rights, status or other legal relations are affected by a statute, or any municipal ordinance, rule, regulation, contract or franchise, may have determined any question of the construction or validity thereof or arising thereunder, and obtain a declaration of rights, status or legal relations thereunder. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

**RULE OF CIVIL PROCEDURE NO. 263**

**Before or after breach.** A contract may be construed either before or after there has been a breach thereof. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

**RULE OF CIVIL PROCEDURE NO. 264**

**Fiduciaries, beneficiaries.** Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian has been appointed, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct executors, administrators, guardians, trustees or other fiduciaries, to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate, guardianship or trust, including questions of construction of wills and other writings. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

**RULE OF CIVIL PROCEDURE NO. 265**

**Discretionary.** The court may refuse to render a declaratory judgment or de-

creed where it would not, if rendered terminate the uncertainty or controversy, giving rise to the proceeding. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

**RULE OF CIVIL PROCEDURE NO. 266**

**Supplemental relief.** Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper. The application therefor shall be by petition in the original case. If the court deems the petition sufficient, it shall, on such reasonable notice as it prescribes, require any adverse party whose rights have been adjudicated to show cause why such relief should not be granted forthwith. [Report 1943]

Referred to in R.C.P. 267, 268 and 269

**RULE OF CIVIL PROCEDURE NO. 267**

**Review.** All orders, judgments or decrees under rules 261-266, inclusive, may be reviewed as other judgments, orders or decrees. [Report 1943]

Referred to in R.C.P. 268 and 269

**RULE OF CIVIL PROCEDURE NO. 268**

**Jury trial.** The right of trial by jury shall not be abridged or extended by rules 261-267. [Report 1943]

Referred to in R.C.P. 269

**RULE OF CIVIL PROCEDURE NO. 269**

**"Person".** The word "person", in rules 261-268, shall include any individual or entity capable of suing or being sued under the laws of Iowa. [Report 1943]

CHAPTER 625

COSTS

- 625.1 Recoverable by successful party.
- 625.2 Witness fees—limitation.
- 625.3 Apportionment generally.
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- 625.13 Dismissal for want of jurisdiction.
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- 625.21 Interest.
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- 625.24 Affidavit required.
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**625.1 Recoverable by successful party.** Costs shall be recovered by the successful against the losing party. [C51,§1811; R60,§3449; C73,§2933; C97,§3853; S13,§3853; C24, 27, 31, 35, 39,§11622; C46, 50, 54,§625.1]

40GA, ch 269,§1, editorially divided

**625.2 Witness fees—limitation.** The losing party, however, shall not be assessed with the

cost of mileage of any witness for a distance of more than one hundred miles from the place of trial, unless otherwise ordered by the court at the time of entering judgment. [S13,§3853; C24, 27, 31, 35, 39,§11623; C46, 50, 54,§625.2]

**625.3 Apportionment generally.** Where the party is successful as to a part of his demand, and fails as to part, unless the case is other-

wise provided for, the court on rendering judgment may make an equitable apportionment of costs. [C51,§1811; R60,§3449; C73,§2933; C97,§3853; S13,§3853; C24, 27, 31, 35, 39,§11624; C46, 50, 54,§625.3]

**625.4 Apportionment among numerous parties.** In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the several judgments rendered; and where there are several causes of action embraced in the same petition, or several issues, the plaintiff shall recover costs upon the issues determined in his favor, and the defendant upon those determined in his favor. [R60,§3451; C73,§2934; C97,§3854; C24, 27, 31, 35, 39,§11625; C46, 50, 54,§625.4]

Apportionment between heirs and devisees, §638.20

**625.5 Liability of successful party.** All costs accrued at the instance of the successful party, which cannot be collected of the other party, may be recovered on motion by the person entitled to them against the successful party. [R60,§3452; C73,§2935; C97,§3855; C24, 27, 31, 35, 39,§11626; C46, 50, 54,§625.5]

**625.6 Cost of procuring testimony.** The necessary fees paid by the successful party in procuring copies of deeds, bonds, wills, or other records filed as a part of the testimony shall be taxed in the bill of costs. [R60,§3453; C73,§2936; C97,§3856; C24, 27, 31, 35, 39,§11627; C46, 50, 54,§625.6]

**625.7 Postage.** Postage paid by the officers of the court, or by the parties, in sending process, depositions, and other papers being part of the record, by mail, shall be taxed in the bill of costs. [R60,§3454; C73,§2937; C97,§3857; C24, 27, 31, 35, 39,§11628; C46, 50, 54, §625.7]

**625.8 Jury fees—report.** There shall be taxed, in every action tried in a court of record by a jury, a jury fee of ten dollars, which, when collected, shall be paid by the clerk into the county treasury; all such fees, not previously reported, to be by him reported to the board of supervisors at each regular session, and by it charged to the treasurer. [C73,§3812; C97,§3872; C24, 27, 31, 35, 39,§11629; C46, 50, 54, §625.8]

**625.9 Transcripts—retaxation.** The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by the supreme court on motion on the appeal, without any motion in the lower court for the retaxation of costs. [C97,§3875; C24, 27, 31, 35, 39,§11631; C46, 50, 54,§625.9]

**625.10 Defense arising after action brought.** When a pleading contains as a defense matter which arose after the commencement of the action, whether such matter of defense is pleaded alone or with other matter of defense

which arose before the action, the party affected by such matter may confess the same, and shall be entitled to the costs of the action to the time of such pleading. [R60,§3455; C73, §2938; C97,§3858; C24, 27, 31, 35, 39,§11632; C46, 50, 54,§625.10]

**625.11 Dismissal of action or abatement.** When a plaintiff dismisses the action or any part thereof, or suffers it to abate by the death of the defendant or other cause, or where the action abates by the death of the plaintiff, and his representatives fail to revive the same, judgment for costs may be rendered against such plaintiff or representative, and, if against a representative, shall be paid as other claims against the estate. [R60,§3456; C73,§2939; C97, §3859; C24, 27, 31, 35, 39,§11633; C46, 50, 54, §625.11]

**625.12 Between coparties.** Coparties against whom judgment has been recovered are entitled, as between themselves, to a taxation of the costs of witnesses whose testimony was obtained at the instance of one of the coparties and inured exclusively to his benefits. [R60, §3457; C73,§2940; C97,§3860; C24, 27, 31, 35, 39, §11634; C46, 50, 54,§625.12]

**625.13 Dismissal for want of jurisdiction.** Where an action is dismissed from any court for want of jurisdiction, or because it has not been regularly transferred from an inferior to a superior court, the costs shall be adjudged against the party attempting to institute or bring up the same. [R60,§3458; C73,§2941; C97, §3861; C24, 27, 31, 35, 39,§11635; C46, 50, 54, §625.13]

**625.14 Costs taxable.** The clerk shall tax in favor of the party recovering costs the allowance of his witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the court may have awarded as costs in the progress of the action, or may allow. [R60,§3459; C73,§2942; C97,§3862; C24, 27, 31, 35, 39,§11636; C46, 50, 54,§625.14]

**625.15 Liability of nonparty.** In actions in which the cause of action shall, by assignment after the commencement thereof, or in any other manner, become the property of a person not a party to the action, such party shall be liable for the costs in the same manner as if he were a party. [R60,§3460; C73,§2943; C97,§3863; C24, 27, 31, 35, 39,§11637; C46, 50, 54, §625.15]

**625.16 Retaxation.** Any person aggrieved by the taxation of a bill of costs may, upon application, have the same retaxed by the court, or by a referee appointed by the court in which the application or proceeding was had, and in such retaxation all errors shall be corrected. [C51,§1813; R60,§3461; C73,§2944; C97,§3864; C24, 27, 31, 35, 39,§11638; C46, 50, 54, §625.16]

C97,§3864, editorially divided

**625.17 Liability of clerk.** If the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of retaxation, and also to the party aggrieved the amount which he may have paid by reason of the allowing of such unlawful charges. [C51,§1813; R60,§3461; C73, §2944; C97,§3864; C24, 27, 31, 35, 39,§11639; C46, 50, 54,§625.17]

**625.18 Bill of costs on appeal.** In cases of appeals from the district court, the clerk, if final judgment is rendered in the supreme court, shall make a complete bill of costs in the court below which shall be filed in the office of the clerk of the supreme court and taxed with the costs in the action therein. [R60,§3462; C73,§2945; C97,§3865; C24, 27, 31, 35, 39,§11640; C46, 50, 54,§625.18]

**625.19 Costs in supreme court.** When the costs accrued in the supreme court and the court below are paid to the clerk of the supreme court, he shall pay so much of them as accrued in the court below to the clerk of said court, and take his receipt therefor. [R60, §3463; C73,§2946; C97,§3866; C24, 27, 31, 35, 39, §11641; C46, 50, 54,§625.19]

**625.20 Duty of clerk below.** On receiving such costs, the clerk of the court below shall charge himself with the money and pay it to the persons entitled thereto. [R60,§3464; C73, §2947; C97,§3867; C24, 27, 31, 35, 39,§11642; C46, 50, 54,§625.20]

**625.21 Interest.** When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. [R60,§3466; C73,§2948; C97,§3868; C24, 27, 31, 35, 39,§11643; C46, 50, 54,§625.21]

Interest on judgments, §635.3

**625.22 Attorney's fees.** When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs:

1. On the first two hundred dollars or fraction thereof recovered, ten percent.
2. On the excess of two hundred to five hundred dollars, five percent.

3. On the excess of five hundred to one thousand dollars, three percent.

4. On all sums in excess of one thousand dollars, one percent. [C97,§3869; C24, 27, 31, 35, 39,§11644; C46, 50, 54,§625.22]

C97,§3869, editorially divided  
Referred to in §625.24

**625.23 Limitations.** If action is commenced and the claim paid off before return day, the amount shall be one-half of the sum above provided, and if it is paid after the return day but before judgment, three-fourths of said sum; but no fee shall be allowed in any case if an action has not been commenced, or expense incurred, nor shall any greater sum be allowed, any agreement in the contract to the contrary notwithstanding. [C97,§3869; C24, 27, 31, 35, 39,§11645; C46, 50, 54,§625.23]

Referred to in §625.24

**625.24 Affidavit required.** The attorney's fee allowed in sections 625.22 and 625.23 shall not be taxed in any case unless it shall appear by affidavit of the attorney, filed with the petition at the commencement of the action, that there has been, and is, no agreement between such attorney and his client, express or implied, nor between him and any other person, except a practicing attorney engaged with him as an attorney in the cause, for any division or sharing of the fee to be taxed, which, when taxed, shall be only in favor of a regular attorney and as compensation for services actually rendered in the action. [C97, §3870; C24, 27, 31, 35, 39,§11646; C46, 50, 54, §625.24]

**625.25 Opportunity to pay.** No such attorney fee shall be taxed if the defendant is a resident of the county and the action is not aided by an attachment, unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought. This provision, however, shall not apply to contracts made payable by their terms at a particular place, the maker of which has not tendered the sum due at the place named in the contract. [C97,§3871; C24, 27, 31, 35, 39,§11647; C46, 50, 54,§625.25]

## CHAPTER 626

### EXECUTIONS

Referred to in §639.23; see also §420.36

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**626.1 Enforcement of judgments and orders.** Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt. [C51,§1885; R60,§3247; C73,§3026; C97,§3954; C24, 27, 31, 35, 39,§11648; C46, 50, 54,§626.1]

Contempts, ch 665: exception, §598.15  
Enjoining enforcement, R.C.P. 329

**626.2 Within what time—to what counties.** Executions may issue at any time before the

judgment is barred by the statute of limitations; and upon those in the district and supreme courts, into any county which the party ordering may direct. [C51,§§1886, 1888; R60, §§3246, 3248; C73,§§3025, 3027; C97,§3955; S13, §3955; C24, 27, 31, 35, 39,§11649; C46, 50, 54, §626.2]

S13,§3955, editorially divided  
Issuance prohibited, ch 615

**626.3 Limitation on number.** Only one execution shall be in existence at the same time. [R60,§3246; C73,§3025; C97,§3955; S13,

§3955; C24, 27, 31, 35, 39,§11650; C46, 50, 54, §626.3]

**626.4 Lost writ.** When the plaintiff in judgment shall file in any court in which a judgment has been entered an affidavit made by himself, his agent or attorney, or by the officer to whom the execution was issued, that an outstanding execution has been lost or destroyed, the clerk of such court may issue a duplicate execution as of the date of the lost execution, which shall have the same force and effect as the original execution, and any levy made under the execution so lost shall have the same force and effect under the duplicate execution as under the original. [S13, §3955; C24, 27, 31, 35, 39,§11651; C46, 50, 54, §626.4]

**626.5 Expiration of lost writ—effect.** When the lost execution shall have expired by limitation and such affidavit is filed, an execution may issue as it might if such lost execution had been duly returned. [S13,§3955; C24, 27, 31, 35, 39,§11652; C46, 50, 54,§626.5]

**626.6 Issuance on Sunday.** An execution may be issued and executed on Sunday, when an affidavit is filed by the plaintiff, or some person in his behalf, stating that he believes he will lose his judgment unless process issues on that day. [R60,§3263; C73,§3028; C97,§3956; C24, 27, 31, 35, 39,§11653; C46, 50, 54,§626.6]

Analogous or related provisions, §§605.18, 639.5, 643.3, 667.3, and R.C.P. 57

**626.7 Issuance on demand.** Upon the rendition of judgment, execution may be at once issued by the clerk on the demand of the party entitled thereto. [R60,§3265; C73,§3029; C97, §3957; C24, 27, 31, 35, 39,§11654; C46, 50, 54, §626.7]

C97,§3957, editorially divided

**626.8 Record kept.** The clerk shall enter on the judgment docket the date of its issuance and to what county and officer issued, the return of the officer, with the date thereof, the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done. [R60,§3265; C73,§3029; C97,§3957; C24, 27, 31, 35, 39,§11655; C46, 50, 54,§626.8]

**626.9 Entries in foreign county.** In case execution is issued to a county other than that in which judgment is rendered, and is levied upon real estate in such county, an entry thereof shall be made upon the encumbrance book of that county by the officer making it, showing the same particulars as are required in case of the attachment of real estate, which shall be bound from the time of such entry. [R60,§3249; C73,§3031; C97,§3958; S13,§3958; C24, 27, 31, 35, 39,§11656; C46, 50, 54,§626.9]

S13,§3958, editorially divided

**626.10 Duplicate returns and record.** If real estate is sold under said execution said officer shall make return thereof in duplicate, one of which shall be appended to the execution and

returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in which said real estate is situated, which shall be filed by the clerk who shall make entries thereof in the sale book in the same manner as if such judgment had been rendered and execution issued from said court. [S13,§3958; C24, 27, 31, 35, 39, §11657; C46, 50, 54,§626.10]

**626.11 Return from foreign county.** When sent into any county other than that in which the judgment was rendered, return may be made by mail. Money cannot thus be sent, except by direction of the party entitled thereto, or his attorney. [C51,§1889; R60,§3250; C73,§3032; C97,§3959; C24, 27, 31, 35, 39,§11658; C46, 50, 54,§626.11]

**626.12 Form of execution.** The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution. [C51,§1890; R60,§3251; C73,§3033; C97,§3960; C24, 27, 31, 35, 39,§11659; C46, 50, 54, §626.12]

**626.13 Property in hands of others.** If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property. [R60,§3252; C73,§3034; C97,§3961; C24, 27, 31, 35, 39,§11660; C46, 50, 54,§626.13]

**626.14 Delivery of possession and money recovery.** If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require him to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution.

The value of the property for which judgment was recovered shall be specified therein, if a delivery thereof cannot be had, and it shall in that respect be regarded as an execution against property. [R60,§3253; C73,§3035; C97, §3962; C24, 27, 31, 35, 39,§11661; C46, 50, 54, §626.14]

**626.15 Performance of other acts.** When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is rendered, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. [R60,§3254; C73,

§3036; C97,§3963; C24, 27, 31, 35, 39,§11662; C46, 50, 54,§626.15]

**626.16 Receipt and return.** Every officer to whose hands an execution may come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from the date of its issuance. [R60,§3255; C73,§3037; C97,§3964; C24, 27, 31, 35, 39,§11663; C46, 50, 54,§626.16]

#### RULE OF CIVIL PROCEDURE NO. 259

**Indorsement.** The officer shall indorse on the execution, the day and hour he receives it; and the levy, sale, or other act done by virtue of it, with the date thereof; and the date and amount of any receipts or payments toward its satisfaction. Each indorsement shall be made at the time of the act or receipt; but no levy or sale under the execution shall be impaired by failure to make any such indorsement at the time here provided. [Report 1943]

Sales legalized, §588.1

**626.17 Principal and surety—order of liability.** The clerk issuing an execution on a judgment against principal and surety shall state in the execution the order of liability recited in the judgment, and the officer serving it shall exhaust the property of the principal first, and of the other defendants in the order of liability thus stated. To obtain the benefits of this section, the order of liability must be recited in the execution, and the officer holding it must separately return thereon the amount collected from the principal debtor and surety. [C51,§1915; R60,§§3258, 3260, 3261, 3303; C73, §§3039, 3041, 3042, 3071; C97,§3966; C24, 27, 31, 35, 39,§11665; C46, 50, 54,§626.17]

C97,§3966, editorially divided

Referred to in §§588.1 [as §11665, Code 1939], 626.18  
Analogous provisions, §§601.94, 626.64, and R.C.P. 224

**626.18 Duty to point out property.** Each person subsequently liable shall, if requested by the officer, point out property owned by the party liable, before him, to obtain the benefits of the provision of section 626.17. [R60,§3259; C73,§3040; C97,§3966; C24, 27, 31, 35, 39,§11666; C46, 50, 54,§626.18]

Referred to in §588.1 [as §11666, Code 1939]

**626.19 Surety subrogated.** When the principal and surety are liable for any claim, such surety may pay the same, and recover thereon against all liable to him. If a judgment against principal and surety has been paid by the surety, he shall be subrogated to all the rights of the creditor, and may take an assignment thereof, and enforce the same by execution or otherwise, as the creditor could have done. All questions between the parties thereto may be heard and determined on motion by the court, or a judge thereof, upon such notice as may be prescribed by it or him. [C97,§3967; C24, 27, 31, 35, 39,§11667; C46, 50, 54,§626.19]

Referred to in §588.1 [as §11667, Code 1939]  
See R.C.P. 239

#### RULE OF CIVIL PROCEDURE NO. 258

**Execution—duty of officer.** An officer receiving an execution must execute it with diligence. He shall levy on such property of the judgment debtor as is likely to bring the exact amount, as nearly as practicable. He may make successive levies if necessary. He shall collect the things in action, by suit in his own name if need be, or sell them. He shall sell sufficient property levied on to satisfy the execution, paying the proceeds, less his own costs, to the clerk. [Report 1943]

Analogous provision, §639.26  
Sales legalized, §588.1

**626.20 Entry on encumbrance book.** If real estate is levied upon, except by virtue of a special execution issued in cases foreclosing recorded liens, the officer making the levy shall make an entry in the encumbrance book in the office of the clerk of the district court of the county where the real estate is located, which entry shall constitute notice to all persons of such levy. Such entry shall contain the number and title of the case, date of levy, date of the entry, amount claimed, description of the real estate levied upon, and signature of the officer. [C31, 35,§11668-c1; C39,§11668.1; C46, 50, 54,§626.20]

Referred to in §588.1 [as §11668.1, Code 1939]  
Analogous provision, §639.28

#### RULE OF CIVIL PROCEDURE NO. 260

**Levy on personalty.** Levy on personalty may be made under an attachment or general execution by either of the following methods, but no lien is created until compliance with one of them.

(a) By the officer taking possession of the property, and appending to the execution its exact description at length, with the date of the levy, and affixing his signature; or

(b) If the creditor or his agent first so request in writing, the officer may view the property, inventory its exact description at length, and append such inventory to the execution, with his signed statement of the number and title of the case, the amount claimed under the execution, the exact location of the property and in whose possession; and file with the county recorder of the county where the property is located his certified transcript of such inventory and statement. Such filing shall then be constructive notice of the levy to all persons. The recorder shall index the transcript as a chattel mortgage and the officer shall release the same on the margin of the index whenever his writ is satisfied or the levy discharged. [Report 1943]

**626.21 Choses in action.** Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder, and an assignment thereof by the

officer shall have the same effect as if made by the defendant. [C51,§1893; R60,§3272; C73, §3046; C97,§3971; C24, 27, 31, 35, 39,§11672; C46, 50, 54,§626.21]

C97,§3971, editorially divided

**626.22 Levy on judgment.** The levy upon a judgment shall be made by entering upon the judgment docket a memorandum of such fact, giving the names of the parties plaintiff and defendant, the court from which the execution issued, and the date and hour of such entry, which shall be signed by the officer serving the execution, and a return made on the execution of his doings in the premises. [C97,§3971; C24, 27, 31, 35, 39,§11673; C46, 50, 54,§626.22]

**626.23 Persons indebted may pay officer.** After the rendition of judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and his receipt shall be a sufficient discharge therefor. [C51,§1894; R60, §3273; C73,§3047; C97,§3972; C24, 27, 31, 35, 39, §11674; C46, 50, 54,§626.23]

**626.24 Levy against municipal corporation—tax.** If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elects not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the clerk of the court in which the judgment was rendered, in satisfaction thereof. [C51,§1896; R60,§3275; C73,§3049; C97, §3973; C24, 27, 31, 35, 39,§11675; C46, 50, 54, §626.24]

**626.25 Corporation stock — debts—property in hands of third persons.** Stock or interest owned by the defendant in any company or corporation, and also debts due him and property of his in the hands of third persons, may be levied upon in the manner provided for attaching the same. [C51,§1892; R60,§3269; C73, §3050; C97,§3974; C24, 27, 31, 35, 39,§11676; C46, 50, 54,§626.25]

Garnishment, ch 642

Levy on corporate stock, §639.22

See §493A.13

**626.26 Garnishment.** Property of the defendant in the possession of another, or debts due him, may be reached by garnishment. [R60,§3270; C73,§3051; C97,§3975; C24, 27, 31, 35, 39,§11677; C46, 50, 54,§626.26]

**626.27 Expiration or return of execution.** Proceedings by garnishment on execution shall not be affected by its expiration or its return. [R60,§3271; C73,§3052; C97,§3976; C24, 27, 31, 35, 39,§11678; C46, 50, 54,§626.27]

C97,§3976, editorially divided

**626.28 Return of garnishment—action docketed.** Where parties have been garnished un-

der it, the officer shall return to the next term thereafter a copy of the execution with all his doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be. [R60,§3271; C73,§3052; C97,§3976; C24, 27, 31, 35, 39,§11679; C46, 50, 54,§626.28]

Garnishment, ch 642

**626.29 Distress warrant by tax commission.** In the service of a distress warrant issued by the Iowa state tax commission for the collection of income tax, sales tax, freight line and equipment car tax, and/or use tax, the property of the taxpayer in the possession of another, or debts due him, may be reached by garnishment. [C39,§11679.1; C46, 50, 54,§626.29]

Referred to in §435.8

Garnishment, ch 642

**626.30 Expiration or return of distress warrant.** Proceedings by garnishment under a distress warrant issued by the Iowa state tax commission shall not be affected by its expiration or its return. [C39,§11679.2; C46, 50, 54, §626.30]

**626.31 Return of garnishment—action docketed.** Where parties have been garnished under a distress warrant issued by the Iowa state tax commission, the officer shall make return thereof to the next term of court in the county where the garnishee lives, if he lives in Iowa, otherwise in the county where the taxpayer resides, if he lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the next term of the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be. [C39,§11679.3; C46, 50, 54,§626.31]

**626.32 Joint or partnership property.** When an officer has an execution against a person who owns property jointly, in common or in partnership with another, such officer may levy on and take possession of the property owned jointly, in common or in partnership, sufficiently to enable him to appraise and inventory the same, and for that purpose shall call to his assistance three disinterested persons, which inventory and appraisal shall be returned by the officer with the execution, and shall state in his return who claims to own the property. [C51,§1917; R60, §3287; C73,§3053; C97,§3977; C24, 27, 31, 35, 39, §11680; C46, 50, 54,§626.32]

Analogous provisions, §639.37 et seq.

**626.33 Lien — equitable proceeding — receiver.** The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court or judge may appoint a receiver under the circumstances provided in the chapter relating to receivers. [R60, §§3289-3291; C73, §3054; C97, §3978; C24, 27, 31, 35, 39, §11681; C46, 50, 54, §626.33]

Receivers, ch 680

**626.34 Mortgaged personal property—payment of mortgage.** Mortgaged personal property not exempt from execution may be taken on attachment or execution issued against the mortgagor, if the officer, or the attachment or execution creditor, within ten days after such levy, shall pay to the holder of the mortgage the amount of the mortgaged debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the holder of the mortgage, or secure the same as in this chapter provided. [C97, §3979; C24, 27, 31, 35, 39, §11682; C46, 50, 54, §626.34]

Applicable to attachments, §639.40

**626.35 Interest on mortgage debt.** When the debt secured by the mortgage is not due as shown by the mortgage, the officer, or the attachment or execution creditor, must also pay or deposit with the clerk interest on the principal sum at the rate specified in the mortgage for the term of sixty days from the date of the deposit, unless the debt secured falls due in a less time, in which case interest shall be deposited for such shorter period. [C97, §3980; C24, 27, 31, 35, 39, §11683; C46, 50, 54, §626.35]

**626.36 Failure to pay, deposit, or give security.** If within ten days after such levy the attachment or execution creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, and the property restored to the possession of the person from whom it was taken and the creditor shall be liable to the holder of the mortgage for any damages sustained by reason of such levy. [C97, §3981; C24, 27, 31, 35, 39, §11684; C46, 50, 54, §626.36]

**626.37 Creditor subrogated.** When such sum is paid to the holder of the mortgage or deposited with the clerk, the attachment or execution creditor shall be subrogated to all the rights of such holder, and the proceeds of the sale of the mortgaged property shall be first applied to the discharge of such indebtedness and the costs incurred under the writ of attachment or execution. [C97, §3982; C24, 27, 31, 35, 39, §11685; C46, 50, 54, §626.37]

**626.38 Holder reinstated.** If, for any reason, the levy upon the mortgaged property is discharged or released without a sale thereof, the

attachment or execution creditor who has paid or deposited the amount of the mortgage debt shall have all the rights under such mortgage possessed by the holder at the time of the levy. If the holder thereof desires to be reinstated in his rights thereunder, he may repay the money received by him, with interest thereon at the rate borne by the mortgage debt for the time it has been held by him, and demand the return of the mortgage, whereupon his rights thereunder shall revert in him, and the attachment or execution creditor shall be entitled to the deposit made, or any part thereof remaining in the hands of the clerk, or any money returned to the clerk by the holder of the mortgage. [C97, §3983; C24, 27, 31, 35, 39, §11686; C46, 50, 54, §626.38]

**626.39 Statement of amount due.** The holder of the mortgage shall, before receiving the money tendered to him by the attaching or execution creditor or deposited with the clerk, state over his signature and under oath, on the back of the mortgage, the amount due or to become due thereon, and deliver the same, together with the note or other evidence of indebtedness secured by said mortgage, to the person paying the said amount or the clerk with whom the deposit is made, and the holder of the mortgage shall only receive the amount so stated to be due, and the surplus, if any, shall be returned to the person making the deposit. [C97, §3984; C24, 27, 31, 35, 39, §11687; C46, 50, 54, §626.39]

**626.40 Indemnifying bond.** When the attaching or execution creditor thus pays or deposits the amount of the claim under the mortgage, he shall not be required to give an indemnifying bond on notice to the sheriff by the holder of the mortgage of his right to the property thereunder, or if one has been given, it shall be released. [C97, §3985; C24, 27, 31, 35, 39, §11688; C46, 50, 54, §626.40]

**626.41 Sale—costs—surplus.** If under execution sale the mortgaged property does not sell for enough to pay the mortgage debt, interest, and costs of sale, the judgment creditor shall be liable for all costs thus made, but if a greater sum is realized, the officer conducting the sale shall at once pay to the mortgage holder the amount due thereunder, and apply the surplus on the execution. [C97, §3986; C24, 27, 31, 35, 39, §11689; C46, 50, 54, §626.41]

**626.42 Statement of indebtedness.** For the purpose of enabling the attaching or execution creditor to determine the amount to be tendered or deposited to hold the levy under the writ of attachment or execution, the person entitled to receive payment of the mortgage debt shall deliver to any such person, upon written demand therefor, a statement in writing under oath, showing the nature and amount of the original debt, the date and the amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid. [C97,

§3987; C24, 27, 31, 35, 39, §11690; C46, 50, 54, §626.42]

**626.43 Contest as to validity or amount.** If the right of the mortgagee to receive such or any sum is for any reason questioned by the levying creditor, he may, within ten days after levy, or after demand is made for a statement of the amount due as above provided, commence an action in equity or contest such right upon filing a bond in a penalty double the amount of such mortgage, or double the value of the property levied upon, conditioned either for the payment of any sum found due on said mortgage to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect, with sureties to be approved by the clerk. [C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11691; C46, 50, 54, §626.43]

S13, §3988, editorially divided

**626.44 Nonresident—service—transfer of action.** If such mortgagee is a nonresident or his residence is unknown, service may be made by publication as in other actions, but if such residence becomes known before final submission, the court may order personal service to be made. If commenced at law, the court may transfer the same to the equity side as in other cases. [C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11692; C46, 50, 54, §626.44]

Service by publication, R.C.P. 60

**626.45 Receiver—decree—costs.** The court may appoint a receiver, and shall determine the amount due on the mortgage, the value of the property levied upon, and all other questions properly presented, and may continue and preserve or dismiss the lien of the levy, the costs to be taxed to the losing party as in other cases. [C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11693; C46, 50, 54, §626.45]

Costs, ch 625

**626.46 Various mortgages—priority.** If there are two or more mortgages, the creditor may admit the validity of one or more, and make the required deposit as to such, and contest the other, and where there are two or more such mortgages, each of which is questioned, a failure to establish the invalidity of all shall not defeat the rights of the levying creditor, but in such case the decree shall determine the priority of liens, and direct the order of payment out of the proceeds of the property which shall be sold under special execution to be awarded in said cause. [C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11694; C46, 50, 54, §626.46]

**626.47 Other remedies.** Nothing in this chapter contained shall be construed to forbid or in any way affect the right of a creditor to contest in any other way the validity of any mortgage. [C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §11695; C46, 50, 54, §626.47]

**626.48 Failure to make statement—effect.** A failure to make the statement, when required

as above provided, shall have the effect to postpone the lien of the mortgage and give the levy of the writ of attachment or execution priority over the claim of the holder thereof. [C97, §3989; C24, 27, 31, 35, 39, §11696; C46, 50, 54, §626.48]

**626.49 Where mortgagee garnished.** If the mortgagee, before the levy of a writ of attachment or execution, has been garnished at the suit of a creditor of the mortgagor, a creditor desiring to seize the mortgaged property under a writ of attachment or execution shall pay to the holder of the mortgage, or deposit with the clerk, in addition to the mortgage debt, the sum claimed under the garnishment, and the provisions of this chapter, so far as applicable, in all respects shall govern proceedings relating thereto. [C97, §3990; C24, 27, 31, 35, 39, §11697; C46, 50, 54, §626.49]

**626.50 Duty to levy—notice of ownership or exemption.** An officer is bound to levy an execution on any personal property in the possession of, or that he has reason to believe belongs to, the defendant, or on which the plaintiff directs him to levy, unless he has received notice in writing under oath from some other person, his agent or attorney, that such property belongs to him; stating the nature of his interests therein, how and from whom he acquired the same, and consideration paid therefor; or from the defendant, that the property is exempt from execution. [C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11698; C46, 50, 54, §626.50]

C97, §3991, editorially divided  
Applicable to attachments, §639.41

**626.51 Failure to give notice—effect.** Failure to give such notice shall not deprive the party of any other remedy. [C97, §3991; C24, 27, 31, 35, 39, §11699; C46, 50, 54, §626.51]

**626.52 Right to release levy.** If after levy he receives such notice, such officer may release the property unless a bond is given as provided in section 626.54. [C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11700; C46, 50, 54, §626.52]

**626.53 Exemption from liability.** The officer shall be protected from all liability by reason of such levy until he receives such written notice. [C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §11701; C46, 50, 54, §626.53]

**626.54 Indemnifying bond—sale and return.** When the officer receives such notice he may forthwith give the plaintiff, his agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the

seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the court from which the execution issued. [R60,§3277; C73,§3056; C97,§3992; C24, 27, 31, 35, 39,§11702; C46, 50, 54,§626.54]

Referred to in §626.52  
Applicable to attachments, §639.41

**626.55 Failure to give bond.** If such bond is not given, the officer may refuse to levy, or if he has done so, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged. [R60, §3278; C73,§3057; C97,§3993; C24, 27, 31, 35, 39, §11703; C46, 50, 54,§626.55]

**626.56 Application of proceeds.** Where property for the sale of which the officer is indemnified sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested. [R60,§3280; C73,§3059; C97,§3994; C24, 27, 31, 35, 39,§11704; C46, 50, 54,§626.56]

**626.57 Executions by justices.** The provisions of the preceding sections, as to bonds, shall apply to proceedings upon executions issued by justices of the peace. Indemnifying bonds shall be returned in such cases with the execution under which they are taken. [R60, §3286; C73,§3060; C97,§3995; C24, 27, 31, 35, 39, §11705; C46, 50, 54,§626.57]

**626.58 Stay of execution — exceptions.** On all judgments for the recovery of money, except those rendered on any appeal or writ of error, or in favor of a laborer or mechanic for his wages, or against one who is surety in the stay of execution, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution, if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows:

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months.

2. If such sum and costs exceed one hundred dollars, six months. [R60,§3293; C73, §3061; C97,§3996; C24, 27, 31, 35, 39,§11706; C46, 50, 54,§626.58]

**626.59 Affidavit of surety.** Officers approving stay bonds shall require the affidavit of

the signers thereof, unless waived in writing by the party in whose favor the judgment is rendered, that they own property not exempt from execution, and aside from encumbrance, to the value of twice the amount of the judgment. [C73,§3062; C97,§3997; C24, 27, 31, 35, 39, §11707; C46, 50, 54,§626.59]

**626.60 Stay waives appeal.** No appeal shall be allowed after a stay of execution has been obtained. [R60,§3294; C73,§3063; C97,§3998; C24, 27, 31, 35, 39,§11708; C46, 50, 54,§626.60]

**626.61 Bond—approval—recording—effect.** The sureties for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against their property, and shall be indexed in the proper judgment docket, as in case of other judgments. [R60,§§3295, 3298; C73,§3064; C97, §3999; C24, 27, 31, 35, 39,§11709; C46, 50, 54, §626.61]

**626.62 Execution recalled.** When the bond is accepted and approved after execution has been issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution with his doings thereon. [R60,§3296; C73,§3065; C97,§4000; C24, 27, 31, 35, 39,§11710; C46, 50, 54,§626.62]

**626.63 Property released.** All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer, upon stay of execution being entered. [R60,§3297; C73,§3066; C97,§4001; C24, 27, 31, 35, 39,§11711; C46, 50, 54,§626.63]

**626.64 Execution against principal and sureties.** At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein, and the liability of such sureties shall be subject to that of their principal as provided in this chapter. [R60,§3299; C73, §3067; C97,§4002; C24, 27, 31, 35, 39,§11712; C46, 50, 54,§626.64]

Analogous provisions, §§601.94, 626.17, and R.C.P. 224

**626.65 Objection by surety.** When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed, if the surety objects thereto at or before the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof cannot be levied of the principal defendant, and the judgment shall recite that the liability of such stay is prior to that of the objecting surety. [R60,§3300; C73,§3068; C97,§4003; C24, 27, 31, 35, 39,§11713; C46, 50, 54,§626.65]

**626.66 Stay terminated by surety.** Any surety for the stay of execution may file with the clerk an affidavit, stating that he verily believes he will be compelled to pay the judgment, interest, and costs thereon unless execution issues immediately, and gives notice thereof in writing to the party for whom he is surety; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk within five days after such notice is given as in other cases. [R60,§3301; C73,§3069; C97,§4004; C24, 27, 31, 35, 39,§11714; C46, 50, 54,§626.66]

**626.67 Other security given.** If other sufficient surety is given, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety. [R60,§3302; C73,§3070; C97,§4005; C24, 27, 31, 35, 39,§11715; C46, 50, 54,§626.67]

**626.68 Lien not released.** Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. [R60,§3303; C73,§3071; C97,§4006; C24, 27, 31, 35, 39,§11716; C46, 50, 54,§626.68]

**626.69 Labor claims preferred.** When the property of any company, corporation, firm, or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee, or assignee, or their property shall be seized by the action of creditors, for the purpose of paying or securing the payment of the debts of such company, corporation, firm, or person, the debts owing to employees for labor performed within the ninety days next preceding the seizure or transfer of such property, to an amount not exceeding one hundred dollars to each person, shall be a preferred debt and paid in full, or if there is not sufficient realized from such property to pay the same in full, then, after the payment of costs, ratably out of the fund remaining. [C97,§4019; S13,§4019; C24, 27, 31, 35, 39,§11717; C46, 50, 54,§626.69]

S13,§4019, editorially divided  
 Referred to in §§626.71, 680.7  
 Labor claims preferred, §§635.67, 680.7, 681.13

**626.70 Exceptions.** Such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines. [C97, §4019; S13,§4019; C24, 27, 31, 35, 39,§11718; C46, 50, 54,§626.70]

**626.71 Statement of claim—allowance.** Any employee desiring to enforce his claim for wages, at any time after the seizure of the property under execution or writ of attachment or under any other authority, and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee, or assignee, or to the court having custody of such property or from which such process issued, or person charged with such property, a statement under oath, showing the amount due after allowing all just credits and setoffs, and the kind of work for which such wages are due, and when performed; and un-

less objection be made thereto as provided in section 626.72, such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, or person charged with the same, subject, however, to the provisions of section 626.69. [C97,§4020; S13,§4020; C24, 27, 31, 35, 39,§11719; C46, 50, 54,§626.71]

**626.72 Contest.** Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee, or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property, provided that where the claim is filed with a person charged with the property other than the officers above enumerated and a contest is made, the cause shall be transferred to the district court, and there docketed and determined. [C97,§4021; S13,§4021; C24, 27, 31, 35, 39,§11720; C46, 50, 54,§626.72]

Referred to in §626.71

**626.73 Priority.** Claims of employees for labor, if not contested, or if allowed after contest, shall have priority over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines as allowed by law. [C97,§4022; C24, 27, 31, 35, 39,§11721; C46, 50, 54,§626.73]

**626.74 Notice of sale.** The officer must give four weeks notice of the time and place of selling real property, and three weeks notice of personal property. [C51,§1905; R60,§3310; C73,§3079; C97,§4023; C24, 27, 31, 35, 39,§11722; C46, 50, 54,§626.74]

Referred to in §626.77

**626.75 Posting and publication—compensation.** Notice shall be given by posting up in at least three public places of the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall be two weekly publications of such notice in some newspaper printed in the county, to be selected by the party causing the notice to be given, and the compensation for such publication shall be the same as is provided by law for legal notices. [C51,§1906; R60,§3311; C73, §3080; C97,§4024; S13,§4024; C24, 27, 31, 35, 39, §11723; C46, 50, 54,§626.75]

Referred to in §626.77

**626.76 Sales by constables.** In constables' sales, the notice shall be posted for two weeks in three public places of the township of the justice, one of them at his office door, without newspaper publication. [C51,§1906; R60,§3311; C73,§3080; C97,§4026; C24, 27, 31, 35, 39,§11724; C46, 50, 54,§626.76]

Referred to in §§626.77, 751.26



**626.77 Penalty for selling without notice.**

An officer selling without the notice prescribed in sections 626.74 to 626.76, inclusive, shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected. [C51,§1907; R60,§3312; C73,§3081; C97,§4027; S13,§4027; C24, 27, 31, 35, 39,§11725; C46, 50, 54,§626.77]

**626.78 Notice to defendant.** If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve him with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule number 56(a) of the rules of civil procedure. [R60,§3318; C73,§3087; C97, §4025; S13,§4025; C24, 27, 31, 35, 39,§11726; C46, 50, 54,§626.78]

S13,§4025, editorially divided  
Referred to in §626.79

**626.79 Setting aside sale.** Sales made without the notice required in section 626.78 may be set aside on motion made at the same or the next term thereafter. [R60,§3318; C73,§3087; C97,§4025; S13,§4025; C24, 27, 31, 35, 39,§11727; C46, 50, 54,§626.79]

**626.80 Time and manner.** The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice. [C51,§1908; R60,§3313; C73,§3082; C97,§4028; C24, 27, 31, 35, 39,§11728; C46, 50, 54,§626.80]

State or municipality as purchaser, ch 569

**626.81 Sale postponed.** When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, or the parties so agree, the officer may postpone the sale for not more than three days without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments shall be made, except by agreement of the parties in writing and made a part of the return upon the execution. [C51,§1909; R60,§3314; C73,§3083; C97,§4029; C24, 27, 31, 35, 39,§11729; C46, 50, 54,§626.81]

**626.82 Overplus.** When the property sells for more than the amount required to be collected, the overplus must be paid to the debtor, unless the officer has another execution in his hands on which said overplus may be rightfully applied, or unless there are liens upon the property which ought to be paid therefrom, and the holders thereof make claim to such surplus and demand application thereon, in which case the officer shall pay the same into the hands of the clerk of the district court, and it shall be applied as ordered by the court. [C51,§1910; R60,§3315; C73,§3084; C97,

§4030; C24, 27, 31, 35, 39,§11730; C46, 50, 54, §626.82]

**626.83 Deficiency — additional execution.**

If the property levied on sells for less than sufficient to satisfy the execution, the judgment holder may order out another, which shall be credited with the amount of the previous sale. The proceedings under the second execution shall conform to those hereinbefore prescribed. [C51,§1911; R60,§3316; C73,§3085; C97,§4031; C24, 27, 31, 35, 39,§11731; C46, 50, 54, §626.83]

**626.84 Plan of division of land.** At any time before nine o'clock a.m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by him, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division. [R60,§3319; C73,§3088; C97,§4032; C24, 27, 31, 35, 39,§11732; C46, 50, 54,§626.84]

**626.85 Failure of purchaser to pay—optional procedure.** When the purchaser fails to pay the money when demanded, the judgment holder or his attorney may elect to proceed against him for the amount; otherwise the sheriff shall treat the sale as a nullity, and may sell the property on the same day, or after postponement as above authorized. [C51, §1913; R60,§3320; C73,§3089; C97,§4033; C24, 27, 31, 35, 39,§11733; C46, 50, 54,§626.85]

**626.86 Sales vacated for lack of lien.** When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and, upon the order being made to set aside the sale, the sheriff or judgment creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate. [R60,§3321; C73,§3090; C97,§4034; C24, 27, 31, 35, 39,§11734; C46, 50, 54,§626.86]

**626.87 Money — things in action.** Money levied upon may be appropriated without being advertised or sold, and so may bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value. [C51,§1914; R60,§3322; C73,§3091; C97,§4035; C24, 27, 31, 35, 39,§11735; C46, 50, 54,§626.87]

**626.88 Real estate of deceased judgment debtor.** When a judgment has been obtained against a decedent in his lifetime, the plaintiff may file his petition in the office of the clerk of the court where the judgment is rendered, against the executor, the heirs, and devisees of

real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same. [C51,§1918; R60,§3323; C73,§3092; C97,§4036; C24, 27, 31, 35, 39,§11736; C46, 50, 54, §626.88]

**626.89 Notice.** The person against whom the petition is filed shall be notified by the plaintiff to appear on the first day of the term and show cause, if any he have, why execution should not be awarded. [C51,§1919; R60,§3324; C73,§3093; C97,§4037; C24, 27, 31, 35, 39,§11737; C46, 50, 54,§626.89]

**626.90 Service and return.** The notice must be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on nonresident defendants may be had in such cases by publication. [C51,§1920; R60,§3325; C73,§3094; C97,§4038; C24, 27, 31, 35, 39, §11738; C46, 50, 54,§626.90]

Service and return, R.C.P. 53  
Service by publication, R.C.P. 60

**626.91 Execution awarded.** At the proper time, the court shall award the execution, unless sufficient cause is shown to the contrary, but the nonage of the heirs or devisees shall not be held such sufficient cause. [C51, §§1921, 1922; R60,§§3326, 3327; C73,§§3095, 3096; C97,§4039; C24, 27, 31, 35, 39,§11739; C46, 50, 54, §626.91]

**626.92 Mutual judgments — setoff.** Mutual judgments, executions on which are in the hands of the same officer, may be set off the one against the other, except the costs, but if the amount collected on the large judgment is sufficient to pay the costs of both, such costs shall be paid therefrom. [C51,§1923; R60,§3328; C73,§3097; C97,§4040; C24, 27, 31, 35, 39,§11740; C46, 50, 54,§626.92]

Setoff in justice courts, §601.57 et seq.

**626.93 Personal property and leasehold interests—appraisement.** Personal property, and leasehold interests in real property having less than two years of an unexpired term, levied upon and advertised for sale on execution, must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff, or, in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith return to said officer a just appraisement, under oath, of said property if they can agree; if they cannot, they shall choose another disinterested householder, and with his assistance shall complete such appraisement, and the property shall not, upon the first offer, be sold for less than two-thirds of said valuation; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received

equal to two-thirds of the appraised value thereof, then it may be sold for one-half of said valuation. [C73,§3100; C97,§4041; C24, 27, 31, 35, 39,§11741; C46, 50, 54,§626.93]

Referred to in §626.94

**626.94 Property unsold—optional procedure.** Subject to the provisions of section 626.93, when property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised, or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added that, if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which he shall proceed as on other executions; or the plaintiff may, in writing filed with the clerk or justice, abandon such levy, upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued. [C51, §1912; R60,§3317; C73,§3086; C97,§4042; C24, 27, 31, 35, 39,§11742; C46, 50, 54,§626.94]

**626.95 Deed or certificate.** If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, according to law, he or his heirs or assigns will be entitled to a deed for the same. [C51,§1925; R60,§3331; C73,§3101; C97, §4044; C24, 27, 31, 35, 39,§11743; C46, 50, 54, §626.95]

**626.96 Duplicate issued in case of loss.** When any person, firm, or corporation to whom a sheriff's certificate of sale has been issued or an assignee thereof shall file in the office of the clerk of the district court in which the certificate was issued and in said action, a verified application signed by the purchaser or assignee, his agent, legal representative or attorney that the outstanding sheriff's certificate of sale in said action has been lost or destroyed, the court or judge shall fix a time for hearing thereon and prescribe the notice therefor and the manner of service thereof on the parties to said action or their successors in interest, and on said hearing if the court finds that the sheriff's certificate of sale issued in said cause has been lost or destroyed, shall order the sheriff of said county to issue a duplicate certificate of sale as of the date of the original certificate which shall have the same force and effect as the original, and any deed executed thereunder shall have the same force and effect as if executed under the original certificate of sale. [C46, 50, 54,§626.96]

**626.97 Cancellation after eight years.** After eight years have elapsed from the date of issuance of any sheriff's certificate of sale, and no action has been taken by the holder of such certificate to obtain a deed thereunder, it shall

be the duty of the sheriff and clerk of the district court to cancel such sale and certificate of record and all rights thereunder shall be barred. [C46, 50, 54, §626.97]

**626.98 Deed.** If the debtor or his assignee fails to redeem, the sheriff then in office must, at the end of the year, execute a deed to the person who is entitled to the certificate as hereinbefore provided, or to his assignee. If the person entitled is dead, the deed shall be made to his heirs. [C51, §1946; R60, §3354; C73, §§348, 3124; C97, §4062; C24, 27, 31, 35, 39, §11744; C46, 50, 54, §626.98]

**626.99 Constructive notice—recording.** The purchaser of real estate at a sale on execution need not place any evidence of his purchase upon record until sixty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser. [C51, §1947; R60, §3355; C73, §3125; C97, §4063; C24, 27, 31, 35, 39, §11745; C46, 50, 54, §626.99]

**626.100 Presumption.** Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof. [C51, §1948; R60, §3356; C73, §3126; C97, §4064; C24, 27, 31, 35, 39, §11746; C46, 50, 54, §626.100]

**626.101 Damages for injury to property.** When real estate has been sold on execution, the purchaser thereof, or any person who has succeeded to his interest, may, after his estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance. [C51, §1949; R60, §3357; C73, §3127; C97, §4065; C24, 27, 31, 35, 39, §11747; C46, 50, 54, §626.101]

Recovery for waste, §658.7

**626.102 Proceedings in justices' courts.** The provisions of this chapter are intended to embrace proceedings in justices' courts so far as they are applicable; and the terms "sheriff" and "clerk" are to be understood as qualified in this chapter in the same manner in this respect as in that relative to attachment. [C51, §1952; R60, §3359; C73, §3129; C97, §4066; C24, 27, 31, 35, 39, §11748; C46, 50, 54, §626.102]

**626.103 Death of holder of judgment.** The death of any or all of the joint owners of a judgment shall not prevent an execution being issued thereon, but on any such execution the clerk shall indorse the fact of the death of such of them as are dead, and if all are dead, the names of their personal representatives, if the judgment passed to the personal representatives, or the names of the heirs of such de-

ceased person, if the judgment was for real property. [R60, §3482; C73, §3130; C97, §4067; C24, 27, 31, 35, 39, §11749; C46, 50, 54, §626.103]

**626.104 Officer's duty.** In acting upon an execution, so indorsed, the sheriff shall proceed as if the surviving owners, or the personal representatives or heirs as above provided, were the only owners of the judgment upon which it was issued, and take bonds accordingly. [R60, §3483; C73, §3131; C97, §4068; C24, 27, 31, 35, 39, §11750; C46, 50, 54, §626.104]

**626.105 Affidavit required.** Before making the indorsements as above provided, an affidavit shall be filed with the clerk by one of the owners of such judgment, or one of such personal representatives or heirs, or their attorney, of the death of such owners as are dead, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives they shall file with the clerk a certificate of their qualification, unless their appointment is by the court from which the execution issues, in which case the record of such appointment shall be sufficient evidence of the fact. [R60, §3484; C73, §3132; C97, §4069; C24, 27, 31, 35, 39, §11751; C46, 50, 54, §626.105]

**626.106 Execution quashed.** Any debtor in such a judgment may move the court or judge to quash an execution on the ground that the personal representatives or heirs of a deceased judgment creditor are not properly stated in the indorsement on the execution, and during the vacation of the court may obtain an injunction, upon satisfactory showing that the persons named as such are not entitled to the judgment on which the execution was issued. [R60, §3486; C73, §3134; C97, §4070; C24, 27, 31, 35, 39, §11752; C46, 50, 54, §626.106]

Injunctions, ch 664

**626.107 Death of part of defendants.** The death of part of the joint debtors in a judgment shall not prevent execution being issued thereon, but, when issued, it shall operate alone on the survivors and their property. [R60, §3485; C73, §3133; C97, §4071; C24, 27, 31, 35, 39, §11753; C46, 50, 54, §626.107]

**626.108 Fee bill execution.** After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court, or a justice of the peace in whose office the judgment is entered, may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner. [C73, §3842; C97, §1299; C24, 27, 31, 35, 39, §11754; C46, 50, 54, §626.108]

## CHAPTER 627

## EXEMPTIONS

Avails of life and accident insurance and wrongful death, §§511.37, 635.8, 635.9

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**627.1 "Family" defined.** The word "family", as used in this chapter, does not include strangers or boarders lodging with the family. [C51,§1900; R60,§3306; C73,§3073; C97,§4012; C24, 27, 31, 35, 39,§11755; C46, 50, 54,§627.1]

**627.2 Who deemed resident.** Any person coming into this state with the intention of remaining shall be considered a resident. [C51, §1902; R60,§3308; C73,§3076; C97,§4014; C24, 27, 31, 35, 39,§11756; C46, 50, 54,§627.2]

C97,§4014, editorially divided

**627.3 Failure to claim exemption.** Any person entitled to any of the exemptions mentioned in this chapter does not waive his rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless he fails or neglects to do so when required in writing by the officer about to levy thereon. [C51,§§1898, 1899; R60, §§3304, 3305, 3308; C73,§3072; C97,§4017; C24, 27, 31, 35, 39,§11757; C46, 50, 54,§627.3]

**627.4 Absconding debtor.** When a debtor absconds and leaves his family, such property as is exempt to him under this chapter shall be exempt in the hands of his wife and children, or either of them. [R60,§3309; C73,§3078; C97,§4016; C24, 27, 31, 35, 39,§11758; C46, 50, 54, §627.4]

**627.5 Purchase money.** None of the exemptions prescribed in this chapter shall be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied. [C73,§3077; C97,§4015; C24, 27, 31, 35, 39,§11759; C46, 50, 54,§627.5]

**627.6 General exemptions.** If the debtor is a resident of this state and the head of a family, he may hold exempt from execution the following property:

1. All wearing apparel of himself and family kept for actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same.
2. One musket or rifle and shotgun.
3. All private libraries, family bibles, portraits, pictures, musical instruments, and paintings not kept for the purpose of sale.

4. A seat or pew occupied by the debtor or his family in any house of public worship.

5. An interest in a public or private burying ground, not exceeding one acre for any defendant.

6. Two cows and two calves.

7. Fifty sheep and the wool therefrom and the materials manufactured from such wool.

8. Six stands of bees.

9. Five hogs, and all pigs under six months.

10. The necessary food for all animals exempt from execution for six months.

11. One bedstead and the necessary bedding for every two in the family.

12. All cloth manufactured by the defendant, not exceeding one hundred yards in quantity.

13. Household and kitchen furniture, not exceeding two hundred dollars in value.

14. All spinning wheels and looms.

15. One sewing machine and other instruments of domestic labor kept for actual use.

16. The necessary provisions and fuel for the use of the family for six months.

17. The proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, professional engineer, architect, clergyman, lawyer, physician, dentist, teacher, or professor.

18. If the debtor is a physician, public officer, farmer, teamster, or other laborer, a team, consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle, by the use of which he habitually earns his living, otherwise one horse.

19. If a printer, a printing press and the types, furniture, and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars.

20. Poultry to the value of fifty dollars.

21. If the debtor is a resident of this state and is the head of a family, and does not own one or more of the foregoing items of property, his wife, if she is an actual member of the family, and owns one or more such items,

and is the debtor, shall be entitled to hold such items exempt from execution.

22. If the debtor is a resident of this state and a woman other than the head of a family, she may hold exempt from execution one sewing machine, and poultry to the value of fifty dollars. [C51,§§1898, 1899; R60,§§3304, 3305, 3308; C73,§3072; C97,§4008; C24, 27, 31, 35, 39,§11760; C46, 50, 54,§627.6]

Exemptions denied, §§126.15, 232.25  
Insurance, proceeds of, §511.87  
Judgment for exempt property, §643.22

**627.7 Motor vehicle.** No motor vehicle shall be held exempt from any order, judgment, or decree for damages occasioned by the use of said motor vehicle upon a public highway of this state. [C31, 35,§11760-c1; C39,§11760.1; C46, 50, 54,§627.7]

**627.8 Pension money.** All money received by any person, a resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him, shall be exempt from execution, whether such pensioner shall be the head of a family or not. [C97,§4009; C24, 27, 31, 35, 39,§11761; C46, 50, 54,§627.8]

**627.9 Homestead bought with pension money.** The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations thereof, shall also be exempt; and such exemption shall apply to debts of such pensioner contracted prior to the purchase of the homestead. [C97,§4010; C24, 27, 31, 35, 39,§11762; C46, 50, 54,§627.9]

**627.10 Personal earnings.** The wages or salary for services of an employee who is the head of a family, to the amount of thirty-five dollars per week and an additional three dollars per week for each dependent under eighteen years of age exclusive of all payroll deductions in the form of taxes, shall be exempt from garnishment. Provided, that when such employee receives no definite or agreed wage or salary but is compensated for his services by commission or profit allowances, such allowances shall be similarly exempt from garnishment to an amount of thirty-five dollars per week and an additional three dollars per week for each dependent under eighteen years of age. All above said exempt amount shall be liable for garnishment, except that no creditor may garnish for more than one hundred fifty dollars plus his costs of garnishment.

Every employer shall pay to such employee such exempt wages or salary or commission or profit allowances not to exceed said amount of the wages or salary or commission or profit allowances earned by him, when due, upon such employee's making and delivering to his employer, his affidavit that he is such head of a family, notwithstanding the service of any notice of garnishment upon such employer,

and the surplus only above such exempt wages or salary or commission or profit allowances shall be held by such employer to abide the event of the garnishment suit. If the amount of wages or salary or commission or profit allowances subject to garnishment shall not equal the costs of the garnishment, whatever remains of costs shall be paid by the person bringing the garnishment proceedings, and judgment shall be entered therefor against him, and no judgment for any such deficiency of costs shall go against the employer or the defendant. No employer so served with garnishment shall in any case be liable to answer for any amount not earned by such employee at the time of the service of the notice of garnishment.

The provisions of this section shall not be applicable to any judgment entered prior to July 4, 1957. [C51,§1901; R60,§3307; C73,§3074; C97,§4011; C24, 27, 31, 35, 39,§11763; C46, 50, 54, §627.10; 57GA, ch 268,§1]

**627.11 Exception under divorce decree.** Where the party in whose favor the order, decree, or judgment was rendered has not remarried, the personal earnings of the debtor shall not be exempt from any order, judgment, or decree for temporary or permanent alimony hereafter rendered in this state, nor from any installment of any such order, judgment, or decree heretofore rendered within this state which, by the provisions thereof, may hereafter become due. [C24, 27, 31, 35, 39,§11764; C46, 50, 54,§627.11]

38GA, ch 65,§1, editorially divided

**627.12 Exception under decree for support of minors.** The personal earnings of the debtor shall not be exempt from any order, judgment, or decree for the support of his minor child or children hereafter rendered in this state nor any installment of any such order, judgment, or decree heretofore rendered in this state which, by the provisions thereof, may hereafter become due. [C24, 27, 31, 35, 39,§11765; C46, 50, 54,§627.12]

Similar provisions, §232.25

**627.13 Workmen's compensation.** Any compensation due or that may become due an employee or dependent under the provisions of chapter 85 shall be exempt from garnishment, attachment, and execution. [C24, 27, 31, 35, 39, §11766; C46, 50, 54,§627.13]

**627.14 Unmarried persons — nonresidents.** There shall be exempt to an unmarried person not the head of a family, and to nonresidents, their own ordinary wearing apparel and trunk necessary to contain the same. [C51,§1902; R60,§3308; C73,§3075; C97,§4013; C24, 27, 31, 35, 39,§11767; C46, 50, 54,§627.14]

**627.15 Persons starting to leave the state.** Where the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing apparel of himself

and family, and such other property, in addition, as he may select, in all not exceeding seventy-five dollars in value; which property shall be selected by the debtor and appraised according to the provisions of this Code relating to the discharge of attached property. [C51, §1902; R60, §3308; C73, §3076; C97, §4014; C24, 27, 31, 35, 39, §11768; C46, 50, 54, §627.15]

Appraisal, §639.46

**627.16 Wages of nonresidents—garnishment.** Wages earned outside of this state by a nonresident of this state, and payable outside of this state, shall in all cases where the garnishing creditor is a nonresident of this state, be exempt from attachment or garnishment where the cause of action arises outside of this state; and it shall be the duty of the garnishee in such cases to plead such exemption, unless the defendant shall be personally served with original notice in this state. [S13, §4071-a; C24, 27, 31, 35, 39, §11769; C46, 50, 54, §627.16]

**627.17 Sending claims out of state.** Whoever, whether as principal, agent, or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resi-

dent and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state, or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as might, but for the exemption laws of this state, have been reached by action in the courts of this state, shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than fifty dollars. [C97, §4018; C24, 27, 31, 35, 39, §11770; C46, 50, 54, §627.17]

**627.18 Public property.** Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied on to pay the debt of any such. [C51, §1895; R60, §3274; C73, §3048; C97, §4007; C24, 27, 31, 35, 39, §11771; C46, 50, 54, §627.18]

## CHAPTER 628

### REDEMPTION

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**628.1 Place of redemption.** All redemptions made under the provisions of this chapter shall be made in the county where the sale is had. [S13, §4051; C24, 27, 31, 35, 39, §11772; C46, 50, 54, §628.1]

S13, §4051, editorially divided

**628.2 When sale absolute.** When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed. [C51, §1924; R60, §§3329, 3330; C73, §§3098, 3099; C97, §4043; C24, 27, 31, 35, 39, §11773; C46, 50, 54, §628.2]

**628.3 Redemption by debtor.** The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such

right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold. [C51, §§1926, 1927; R60, §§3332, 3333; C73, §§3102, 3103; C97, §4045; C24, 27, 31, 35, 39, §11774; C46, 50, 54, §628.3]

C97, §4045, editorially divided

**628.4 Redemption prohibited.** No party who has taken an appeal from the superior or district court, or stayed execution on the judgment, shall be entitled to redeem. [C73, §3102; C97, §4045; C24, 27, 31, 35, 39, §11775; C46, 50, 54, §628.4]

**628.5 Redemption by creditors.** If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption

may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption. [C51,§§1927, 1928; R60,§§3333, 3334; C73,§§3103, 3104; C97,§4046; C24, 27, 31, 35, 39,§11776; C46, 50, 54,§628.5]

C97,§4046, editorially divided

**628.6 Mechanic's lien before judgment.** A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem. [C51,§1927; R60,§3333; C73,§3103; C97,§4046; C24, 27, 31, 35, 39,§11777; C46, 50, 54, §628.6]

**628.7 Probate creditor.** The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court or any judge of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court or judge may direct, and shall be determined with due regard to rights of all persons interested. [C97,§4046; C24, 27, 31, 35, 39,§11778; C46, 50, 54,§628.7]

**628.8 Redemption by creditors from each other.** Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided. [C51,§1929; R60,§3335; C73,§3105; C97, §4047; C24, 27, 31, 35, 39,§11779; C46, 50, 54, §628.8]

**628.9 Senior creditor.** When a senior creditor thus redeems from his junior, he is required to pay off only the amount of those liens which are paramount to his own, with the interest and costs appertaining to those liens. [C51,§1931; R60,§3337; C73,§3107; C97,§4048; C24, 27, 31, 35, 39,§11780; C46, 50, 54,§628.9]

**628.10 Junior may prevent.** The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor. [C51, §1932; R60,§§3338, 3339; C73,§§3108, 3109; C97, §4049; C24, 27, 31, 35, 39,§11781; C46, 50, 54, §628.10]

**628.11 Terms.** The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof. [C51,§1930; R60,§3336; C73,§3106; C97,§4050; C24, 27, 31, 35, 39,§11782; C46, 50, 54,§628.11]

C97,§4050, editorially divided  
Advancements to protect lien, §629.2

**628.12 Mortgage not matured — interest.** Where a mortgagee whose claim is not yet due is the person from whom the redemption is

thus to be made, he shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption. [C51,§1930; R60,§3336; C73,§3106; C97,§4050; C24, 27, 31, 35, 39,§11783; C46, 50, 54,§628.12]

**628.13 By holder of title.** The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of his own lien, or the amount he has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on his own judgment from the time of said credit, in each case including costs.

Redemption may also be made by the titleholder presenting to the clerk of the district court sheriff's certificate of sale properly assigned to the titleholder, whereupon the clerk of the district court shall cancel the said certificate and enter full redemption in the sale book. [C51,§1930; R60,§3336; C73,§3106; C97,§4051; S13, §4051; C24, 27, 31, 35, 39,§11784; C46, 50, 54, §628.13]

**628.14 By junior from senior creditor.** When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from him by virtue of a paramount lien. [C51,§1933; R60,§3341; C73,§3111; C97,§4052; C24, 27, 31, 35, 39,§11785; C46, 50, 54,§628.14]

**628.15 After nine months.** After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided. [C51, §1934; R60,§3342; C73,§3112; C97,§4053; C24, 27, 31, 35, 39,§11786; C46, 50, 54,§628.15]

**628.16 Who gets property.** Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely. [C51,§1935; R60,§3343; C73, §3113; C97,§4054; C24, 27, 31, 35, 39,§11787; C46, 50, 54,§628.16]

**628.17 Claim extinguished.** In case it is thus held by a redeeming creditor, his lien, and the claim out of which it arose, will be held to be extinguished, unless he pursues the course pointed out in sections 628.18 to 628.20, inclusive. [C51,§1936; R60,§3344; C73,§3114; C97,§4055; C24, 27, 31, 35, 39,§11788; C46, 50, 54,§628.17]

**628.18 Mode of redemption.** The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein his affidavit, or that of his agent or attorney, stating as nearly as practicable the nature of his lien and the amount still due and unpaid thereon. [C51,§1938,

1940; R60, §§3346, 3348; C73, §§3116, 3118; C97, §4056; C24, 27, 31, 35, 39, §11789; C46, 50, 54, §628.18]

C97, §4056, editorially divided  
Referred to in §628.17

**628.19 Credit on lien.** If he is unwilling to hold the property and credit the debtor thereon the full amount of his lien, he must state the utmost amount he is willing to credit him with. [R60, §3345; C73, §3115; C97, §4056; C24, 27, 31, 35, 39, §11790; C46, 50, 54, §628.19]

Referred to in §628.17

**628.20 Excess payment — entry and credit.** If the amount paid to the clerk is in excess of the prior bid and liens, he shall refund the excess to the party paying the same, and enter each such redemption made by a lienholder upon the sale book, and credit upon the lien, if a judgment in the court of which he is clerk, the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed. [C51, §§1937, 1939, 1941; R60, §§3340, 3347, 3349; C73, §§3110, 3117, 3119; C97, §4056; C24, 27, 31, 35, 39, §11791; C46, 50, 54, §628.20]

Referred to in §628.17

**628.21 Contest determined.** In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court or a judge thereof as soon as practicable thereafter, upon such notice as it or

he shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made. [C97, §4057; C24, 27, 31, 35, 39, §11792; C46, 50, 54, §628.21]

**628.22 Assignment of certificate.** A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed. [C51, §1942; R60, §3350; C73, §3120; C97, §4058; C24, 27, 31, 35, 39, §11793; C46, 50, 54, §628.22]

**628.23 Redemption of part of property.** When the property has been sold in parcels, any distinct portion may be redeemed by itself. [C51, §1943; R60, §3351; C73, §3121; C97, §4059; C24, 27, 31, 35, 39, §11794; C46, 50, 54, §628.23]

**628.24 Interest of tenant in common.** When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately. [C51, §1944; R60, §3352; C73, §3122; C97, §4060; C24, 27, 31, 35, 39, §11795; C46, 50, 54, §628.24]

**628.25 Transfer of debtor's right.** The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem. [C51, §1945; R60, §3353; C73, §3123; C97, §4061; C24, 27, 31, 35, 39, §11796; C46, 50, 54, §628.25]

## CHAPTER 629

### PROTECTION OF ADVANCEMENTS

629.1 Lienholder's advancements protected—affidavit filed.

629.2 Redemption—payment of advances.  
629.3 Record of lien.

**629.1 Lienholder's advancements protected—affidavit filed.** The holder of a sheriff's sale certificate or junior lien upon any real estate after the delinquency of any taxes or special assessment, or of interest on any senior lien, or breach of any condition of a senior encumbrance, upon payment by him, or performance of the condition broken, shall have a lien upon said real estate for such expenditures and interest thereon of equal priority with the lien so held by him upon his filing with the clerk of the district court in the county in which the land is situated, a verified statement of said expenditures and the dates thereof, together with a description of the real estate, the name of the record owner, and a reference to the lien which he holds, and may recover the same in any action brought for the foreclosure of the junior lien referred to in said verified statement. [C24, 27, 31, 35, 39, §11797; C46, 50, 54, §629.1]

40GA. ch 192, §1, editorially divided

**629.2 Redemption — payment of advances.** When such advancements have been made by the holder of a sheriff's sale certificate the sum so advanced shall be a part of the amount required to redeem from said sheriff's sale. [C24, 27, 31, 35, 39, §11798; C46, 50, 54, §629.2]

**629.3 Record of lien.** It shall be the duty of the clerk of the district court to record the statements so filed in the encumbrance book and to enter the same in the lien index. Payments advanced after execution has been issued upon the junior lien, shall be added to the execution upon receipt, by the sheriff, of a verified statement of such advancements and when the redemption period has expired the clerk shall release them on his record. [C24, 27, 31, 35, 39, §11799; C46, 50, 54, §629.3]



## CHAPTER 630

## PROCEEDINGS AUXILIARY TO EXECUTION

Referred to in §441.9

630.1 Debtor examined.  
 630.2 Affidavit as to property.  
 630.3 By whom order granted.  
 630.4 Debtor interrogated.  
 630.5 Witnesses examined.  
 630.6 Disposition of property.  
 630.7 Receiver—injunction.  
 630.8 Equitable interest sold.  
 630.9 Sheriff as receiver.  
 630.10 Continuance.

630.11 Debtor failing to appear—contempt.  
 630.12 Service of order.  
 630.13 Compensation.  
 630.14 Warrant of arrest.  
 630.15 Bond.  
 630.16 Equitable proceedings.  
 630.17 Answers verified—petition taken as true.  
 630.18 Lien created.  
 630.19 Surrender of property enforced.

**630.1 Debtor examined.** When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the superior, municipal, district, or supreme court to the sheriff of the county where such debtor resides, or if he do not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of such debtor. [C51,§1953; R60,§3375; C73,§3135; C97,§4072; C24, 27, 31, 35, 39,§11800; C46, 50, 54,§630.1]

**630.2 Affidavit as to property.** The like order may be obtained at any time after the issuing of an execution, upon proof, by the affidavit of the party or otherwise, to the satisfaction of the court or judge who is to grant the same, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment. [C51, §1954; R60,§3376; C73,§3136; C97,§4073; C24, 27, 31, 35, 39,§11801; C46, 50, 54,§630.2]

**630.3 By whom order granted.** Such order may be made by the superior or district court in which the judgment was rendered, or by the district court of the county to which execution has been issued, or in vacation by a judge thereof. The debtor may be required to appear and answer before either of such courts or judges, or before a referee appointed for that purpose by the court or judge who issued the order, to report either the evidence or the facts. [C51,§1955; R60,§3377, 3385; C73,§3137; C97,§4074; C24, 27, 31, 35, 39,§11802; C46, 50, 54, §630.3]

**630.4 Debtor interrogated.** The debtor, on his appearance, may be interrogated in relation to any facts calculated to show the amount of his property, or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. The interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken. All examinations and answers under this chapter shall

be on oath. [C51,§1956; R60,§3378; C73,§3138; C97,§4075; C24, 27, 31, 35, 39,§11803; C46, 50, 54, §630.4]

Criminating questions, §§622.14–622.16

**630.5 Witnesses examined.** Witnesses may be required by order of the court or judge, or by subpoenas from the referee, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue. [R60,§3379; C73,§3139; C97,§4076; C24, 27, 31, 35, 39,§11804; C46, 50, 54,§630.5]

**630.6 Disposition of property.** If any property, rights, or credits subject to execution are thus ascertained, an execution may be issued and the same levied upon. The court or judge may order any property of the judgment debtor or not exempt, in the hands of himself or others, or due him, to be delivered up, or in any other mode applied towards the satisfaction of the judgment. [C51,§1957; R60,§3380; C73,§3140; C97,§4077; C24, 27, 31, 35, 39,§11805; C46, 50, 54, §630.6]

**630.7 Receiver—injunction.** The court or judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, or by injunction forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or any interference therewith. [R60,§3381; C73,§3141; C97, §4078; C24, 27, 31, 35, 39,§11806; C46, 50, 54, §630.7]

**630.8 Equitable interest sold.** If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person holding the legal estate or having any lien on or interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey the same, or the debtor's equitable interest therein, in the same manner as is provided for the sale of real estate upon execution. [R60,§3382; C73,§3142; C97,§4079; C24, 27, 31, 35, 39,§11807; C46, 50, 54,§630.8]

Sale of real estate, §626.74 et seq.

**630.9 Sheriff as receiver.** If the sheriff is appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such. [R60,§3383; C73,§3143; C97,§4080; C24, 27, 31, 35, 39,§11808; C46, 50, 54,§630.9]

**630.10 Continuance.** The court, judge, or referee acting under the provisions of this chapter shall have power to continue his proceedings from time to time until they shall be completed. [R60,§3384; C73,§3144; C97,§4081; C24, 27, 31, 35, 39,§11809; C46, 50, 54,§630.10]

**630.11 Debtor failing to appear—contempt.** Should the judgment debtor fail to appear after being personally served with notice to that effect, or should he fail to make full answers to all proper interrogatories propounded to him, he will be guilty of contempt, and may be arrested and imprisoned until he complies with the requirements of the law in this respect. If any person, party, or witness disobey an order of the court, judge, or referee, duly served, such person, party, or witness may be punished as for contempt. [C51,§1958; R60,§3386; C73,§3145; C97,§4082; C24, 27, 31, 35, 39,§11810; C46, 50, 54,§630.11]

Contempts, ch 665

**630.12 Service of order.** The order mentioned herein shall be in writing and signed by the court, judge, or referee making the same, and be served in the same manner as an original notice in other cases. [R60,§3387; C73,§3146; C97,§4083; C24, 27, 31, 35, 39,§11811; C46, 50, 54,§630.12]

**630.13 Compensation.** Sheriffs, referees, receivers, and witnesses shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order or execution. [R60,§3388; C73,§3147; C97,§4084; C24, 27, 31, 35, 39,§11812; C46, 50, 54,§630.13]

**630.14 Warrant of arrest.** Upon proof, to the satisfaction of the court or judge authorized to grant the order aforesaid, that there is danger that the defendant will leave the state, or that he will conceal himself, such court or judge, instead of the order, may issue a warrant for the arrest of the debtor, and for bringing him forthwith before the court or judge, upon which being done, he may be examined in the same manner and with the like effect as is above provided. [C51,§1959; R60,§3389; C73,§3148; C97,§4085; C24, 27, 31, 35, 39,§11813; C46, 50, 54,§630.14]

Approval of warrant and expenses, §§79.12, 79.13

**630.15 Bond.** Upon being brought before the court or judge, he may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that

he will attend from time to time for examination before the court or judge as shall be directed, and will not, in the meantime, dispose of his property, or any part thereof; in default whereof he shall continue under arrest, and may be committed to jail for safekeeping until the examination shall be concluded. [R60,§3390; C73,§3149; C97,§4086; C24, 27, 31, 35, 39,§11814; C46, 50, 54,§630.15]

**630.16 Equitable proceedings.** At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants. [R60,§3391; C73,§3150; C97,§4087; C24, 27, 31, 35, 39,§11815; C46, 50, 54,§630.16]

Referred to in §630.18  
Grantor deemed equitable owner, §639.30

**630.17 Answers verified—petition taken as true.** The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by process of contempt; or, upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require. [R60,§3392; C73,§3151; C97,§4088; C24, 27, 31, 35, 39,§11816; C46, 50, 54,§630.17]

Referred to in §630.18  
Contempts, ch 665

**630.18 Lien created.** In the case contemplated in sections 630.16 and 630.17, a lien shall be created on the property of the judgment debtor, or his interest therein, in the hands of any defendant or under his control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein. [R60,§3393, 3394; C73,§3152; C97,§4089; C24, 27, 31, 35, 39,§11817; C46, 50, 54,§630.18]

**630.19 Surrender of property enforced.** The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution, which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of his power to do so. [R60,§3395; C73,§3153; C97,§4090; C24, 27, 31, 35, 39,§11818; C46, 50, 54,§630.19]

Analogous provisions, §§635.14, 680.10

# TITLE XXXII

## PROBATE

### CHAPTER 631

#### PROBATE COURT

631.1 Probate court always open.  
631.2 Time and place of hearings.  
631.3 Place of hearing—noncontest or agreement.  
631.4 Notice.  
631.5 Judge disqualified—procedure.  
631.6 Concurrent jurisdiction.  
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631.8 Certified copies affecting foreign real estate.  
631.9 Process revoked.  
631.10 Bonds filed—approval.  
631.11 Transfer to another county.  
631.12 Certified copy filed.  
631.13 Certified copy recorded.

**631.1 Probate court always open.** The district court shall always be open for the transaction of probate business. [C73,§2313; C97,§3261; C24, 27, 31, 35, 39,§11819; C46, 50, 54,§631.1]

C97,§3261, editorially divided

**631.2 Time and place of hearings.** The hearing of any matter requiring notice, except in case of proof of wills, shall be had only in term time, or at such time and place as the judge may appoint. [C73,§2313; C97,§3261; C24, 27, 31, 35, 39,§11820; C46, 50, 54,§631.2]

**631.3 Place of hearing — noncontest or agreement.** In cases where there is no contest, or by agreement, such hearing may be had at any place within the judicial district in which the business is pending. [C97,§3261; C24, 27, 31, 35, 39,§11821; C46, 50, 54,§631.3]

**631.4 Notice.** When a judge fixes a time and place of hearing thereof, he shall direct what notice shall be given, and no hearing shall be had until proof is made of the giving of such notice. When no notice is prescribed by the judge or court as above provided, the same notice shall be given as in commencing a civil action. [C73,§2314; C97,§3262; C24, 27, 31, 35, 39,§11822; C46, 50, 54,§631.4]

Time of notice, R.C.P. 53

**631.5 Judge disqualified—procedure.** Where the judge is a party, or connected by blood or affinity with a person interested nearer than the fourth degree, or is personally interested in any probate matter, he shall order the same transferred to the district court of another district, or to be heard before another judge of the same district, or procure a judge of another district to hold his court for the hearing of such matter. [C73,§2317; C97,§3263; C24, 27, 31, 35, 39,§11823; C46, 50, 54,§631.5]

Computing relation, §4.1, subsection 24  
Similar provision, §605.17

**631.6 Concurrent jurisdiction.** When a case is originally within the jurisdiction of the courts of two or more counties, that one which first takes cognizance thereof by the commencement or the proceedings shall retain the same throughout. [C51,§1274; R60,§2306; C73,§2318; C97,§3264; C24, 27, 31, 35, 39,§11824; C46, 50, 54,§631.6]

**631.7 Extent of jurisdiction.** The court of the county in which a will is probated, or in which administration or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate and the sale and distribution thereof. [R60,§2472; C73,§2319; C97,§3265; C24, 27, 31, 35, 39,§11825; C46, 50, 54,§631.7]

C97,§3265, editorially divided

**631.8 Certified copies affecting foreign real estate.** A certified copy of any order, judgment, or deed, affecting real estate in any county other than that in which administration or guardianship is originally granted, shall be furnished to and entered by the clerk of the district court of the county where such real estate is situated in the probate records of said court. [C97,§3265; C24, 27, 31, 35, 39,§11826; C46, 50, 54,§631.8]

**631.9 Process revoked.** Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued. [C51,§1275; R60,§2307; C73,§2320; C97,§3266; C24, 27, 31, 35, 39,§11827; C46, 50, 54,§631.9]

**631.10 Bonds filed—approval.** All bonds relating to probate matters shall be filed in the office of the clerk of said court, and shall not be sufficient until examined by him, and his approval indorsed thereon. [C51,§1276; R60,§2308; C73,§2321; C97,§3267; C24, 27, 31, 35, 39,§11828; C46, 50, 54,§631.10]

**631.11 Transfer to another county.** In any proceeding in probate the court may, on written showing, supported by affidavit and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county, when it is made to appear that such transfer will be in furtherance of justice, and the same shall thereupon be pending in such other county. [C24, 27, 31, 35, 39, §11829; C46, 50, 54, §631.11]

**631.12 Certified copy filed.** The clerk of the court ordering the transfer shall retain the original files and papers, but shall make a cer-

tified copy thereof, and of all record entries pertaining to the proceedings, and at once file the same in the office of the clerk of the court to which the transfer has been made. [C24, 27, 31, 35, 39, §11830; C46, 50, 54, §631.12]

Referred to in §631.13

**631.13 Certified copy recorded.** The clerk of the court to which the proceedings are transferred shall record at length, in the probate records of his county, the certified copy of the record entries referred to in section 631.12. [C24, 27, 31, 35, 39, §11831; C46, 50, 54, §631.13]

## CHAPTER 632

### CLERK OF PROBATE COURT

632.1 Probate powers of clerk.  
632.2 Jurisdiction of clerk terminated.  
632.3 Clerk's actions reviewed.  
632.4 Docketing and hearing.  
632.5 Validity of clerk's orders.  
632.6 Clerk not to prepare reports.  
632.7 Bonds—approval.  
632.8 Annual examination.

632.9 Reapproval or disapproval—procedure.  
632.10 Probate docket.  
632.11 Probate record.  
632.12 Bond record.  
632.13 Calendar.  
632.14 Delinquent inventories and reports.  
632.15 Consular representatives—notice.

**632.1 Probate powers of clerk.** The clerk of the district court shall have and exercise within his county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment, when not contested, of resident administrators, executors, and guardians of minors, and fixing and determining the amount of the bond thereof and the approval of any and all bonds given by administrators, executors, trustees, and guardians in the discharge of their several trusts.
2. The examination and approval of all intermediate or interlocutory accounts or reports of administrators, executors, and guardians.
3. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within his jurisdiction, as provided for in this Code.
4. The admission to probate of wills of decedents, when not contested, and the making of necessary orders in relation thereto, including orders for the issuance of commissions to take depositions and proof may be made before the clerk in the same manner as is made in open court. [C73, §2315; C97, §250; C24, 27, 31, 35, 39, §11832; C46, 50, 54, §632.1]

38GA, ch 357, §1, editorially divided  
Referred to in §632.3

**632.2 Jurisdiction of clerk terminated.** If, on or before the date set for hearing before the clerk, written objections to the probate of such will shall be filed, the clerk shall proceed no further, but the proceedings shall stand for trial before the district court on such objections without further notice. [C24, 27, 31, 35, 39, §11833; C46, 50, 54, §632.2]

**632.3 Clerk's actions reviewed.** Any person aggrieved by any order made or entered by the clerk, under the powers conferred in section 632.1, may have the same reviewed in court, on motion filed at the next term and not afterwards, unless upon good cause shown within one year, and upon such notice as the court or a judge thereof may prescribe. [C97, §251; C24, 27, 31, 35, 39, §11834; C46, 50, 54, §632.3]

C97, §251, editorially divided

**632.4 Docketing and hearing.** Upon the filing of such motion, the clerk shall place the cause or proceeding on the docket without additional docket fee, and the matter shall stand for hearing or trial de novo in open court. [C97, §251; C24, 27, 31, 35, 39, §11835; C46, 50, 54, §632.4]

**632.5 Validity of clerk's orders.** The records, orders, and judgments made and entered by the clerk as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and be of the same force, validity, and effect, and shall be entitled to the same faith and credit as if made by the court or by the judge thereof. [C97, §252; C24, 27, 31, 35, 39, §11836; C46, 50, 54, §632.5]

C97, §252, editorially divided

**632.6 Clerk not to prepare reports.** No clerk, deputy, or employee shall make or assist in making, drafting, or filling out any report of any administrator, executor, guardian, assignee, receiver, trustee, or any other report to be filed in his office. [C97, §252; C24, 27, 31, 35, 39, §11837; C46, 50, 54, §632.6]

**632.7 Bonds—approval.** The clerk shall approve the bonds of all guardians, executors, administrators, and trustees. [C97, §268; S13,

§3268; C24, 27, 31, 35, 39, §11838; C46, 50, 54, §632.7]

S13, §3268, editorially divided

**632.8 Annual examination.** During the month of June in each year the clerk shall examine into the sufficiency of the sureties, and amount of penalty of all executors', administrators', guardians', and trustees' bonds in force in his office which have been executed more than six months prior thereto. [C97, §3268; S13, §3268; C24, 27, 31, 35, 39, §11839; C46, 50, 54, §632.8]

**632.9 Reapproval or disapproval — procedure.** If the clerk finds the said bonds sufficient, he shall note thereon his examination and reapproval, but if he finds the same insufficient, or the sureties shall not requalify on being required by him to do so, he shall note his disapproval thereon, notifying the principal thereof by certified mail letter, and place the matter upon the calendar of the court at the next term for the proper order. [C97, §3268; S13, §3268; C24, 27, 31, 35, 39, §11840; C46, 50, 54, §632.9; 57GA, ch 267, §89]

**632.10 Probate docket.** The clerk shall keep a book to be known as the "probate docket", which shall show:

1. The name of every deceased person whose estate is administered, and who dies seized of any real estate situated within the county, and the date of his death.

2. The names of all the heirs at law and the surviving spouse of such deceased person, and their ages and places of residence, so far as they can be ascertained.

3. The name of each person as to whom application for guardianship of the person or property has been made or granted.

4. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the record where a complete record thereof may be found. [C73, §2490; C97, §3411; C24, 27, 31, 35, 39, §11841; C46, 50, 54, §632.10]

**632.11 Probate record.** He shall also keep a book which shall be known as the "probate

record", which shall contain full and complete journal entries of all orders or other proceedings had in probate matters, and where real estate is sold or mortgaged by an executor, administrator, or guardian, under an order of court therefor, a complete record of the same, including the petition, notice, return of service, and all other papers filed, with the orders made, report, deed of conveyance or mortgage, and order of approval. [C73, §2492; C97, §3413; C24, 27, 31, 35, 39, §11842; C46, 50, 54, §632.11]

**632.12 Bond record.** The clerk shall also keep a book known as "records of bonds", in which he shall record all bonds given by executors, administrators, and guardians. [C73, §2493; C97, §3414; C24, 27, 31, 35, 39, §11843; C46, 50, 54, §632.12]

**632.13 Calendar.** The clerk shall keep a court calendar, and enter thereon only such cases in probate as require the action of the court. [C97, §3269; C24, 27, 31, 35, 39, §11844; C46, 50, 54, §632.13]

C97, §3269, editorially divided

**632.14 Delinquent inventories and reports.** On the first day of each term the clerk shall report to the presiding judge all estates wherein an inventory or report is due by law or under the order of the court, and which has not been filed. [C97, §3269; C24, 27, 31, 35, 39, §11845; C46, 50, 54, §632.14]

**632.15 Consular representatives — notice.** Whenever in the course of any administration or guardianship proceeding, it shall appear that subjects, citizens, and/or nationals of any foreign country are interested, either as heirs, devisees, legatees, or otherwise, the clerk of the probate court shall give notice by mail to the consular representative of such country for Iowa, of the pendency of such proceeding and of the particular interest of such foreign subject. Failure to give such notice shall in no event and in no manner affect title to property. Notice need not be given unless the consular representative shall have filed his address with the clerk. [C27, 31, 35, §11845-b1; C39, §11845.1; C46, 50, 54, §632.15]

Analogous provision, §85.53

## CHAPTER 633

### WILLS AND LETTERS OF ADMINISTRATION

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#### GENERAL PROVISIONS

**633.1 Disposal of property by will.** Any person of full age and sound mind may dispose by will of all his property, subject to the rights of homestead and exemption created by law, and the distributive share in his estate given by law to the surviving spouse, except sufficient to pay his debts and expenses of administration. [C51,§1277; R60,§2309; C73,§2322; C97,§3270; C24, 27, 31, 35, 39,§11846; C46, 50, 54,§633.1]

40ExGA, SF 237,§1, editorially divided  
 Suppression or destruction of will, §713.5

**633.2 Presumption attending devise to spouse.** Where the survivor is named as a devisee in a will, it shall be presumed, unless the intention is clear and explicit to the contrary, that such devise is in lieu of such distributive share, homestead, and exemptions. [C97,§3270; C24, 27, 31, 35, 39,§11847; C46, 50, 54,§633.2]

**633.3 Limitation on disposal by will.** No devise or bequest to a corporation organized under the chapter relating to corporations not for profit or to a foreign corporation of a similar character, or to a trustee for the use or benefit of any such corporation, shall be valid in excess of one-fourth of the testator's estate after the payment of debts, if a spouse, child, child of deceased child, or parent survive the testator. [C51,§1277; R60,§§1198, 2309; C73,§§1101, 2322; C97,§3270; C24, 27, 31, 35, 39, §11848; C46, 50, 54,§633.3]

**633.4 After-acquired property.** Property to be subsequently acquired may be devised, when the intention is clear and explicit. [C51,§1278; R60,§2310; C73,§2323; C97,§3271; C24, 27, 31, 35, 39,§11849; C46, 50, 54,§633.4]

**633.5 Verbal wills.** Personal property to the value of three hundred dollars may be bequeathed by a verbal will witnessed by two competent persons, but if such bequest is of

greater value, it shall be valid only to that extent. [C51,§1279; R60,§2311; C73,§2324; C97, §3272; C24, 27, 31, 35, 39,§11850; C46, 50, 54, §633.5]

**633.6 Soldier or mariner.** A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed. [C51,§1280; R60,§2312; C73,§2325; C97,§3273; C24, 27, 31, 35, 39,§11851; C46, 50, 54, §633.6]

**633.7 Formal execution.** All other wills, to be valid, must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and witnessed by two competent persons. [C51,§1281; R60,§2313; C73,§2326; C97, §3274; C24, 27, 31, 35, 39,§11852; C46, 50, 54, §633.7]

C97,§3274, editorially divided

**633.8 Defect cured by codicil.** If a codicil is duly executed to a will defectively executed and clearly identified in such codicil, the will and codicil shall be considered one instrument and the execution of both sufficient. [C97, §3274; C24, 27, 31, 35, 39,§11853; C46, 50, 54,§633.8]

**633.9 Interest of witness.** No subscribing witness to a will can derive any benefit therefrom unless it be signed by two competent and disinterested persons as witnesses thereto, besides himself, but if, without a will, he would be entitled to any portion of the testator's estate, he may receive such portion to the extent in value of the amount devised. [C51,§§1282, 1283; R60,§§2314, 2315; C73,§§2327, 2328; C97,§3275; C24, 27, 31, 35, 39,§11854; C46, 50, 54,§633.9]

**633.10 Revocation — cancellation.** Wills can only be revoked in whole or in part by being canceled or destroyed by the act or direction of the testator, with the intention of so revoking them, or by the execution of subsequent wills. When done by cancellation,

the revocation must be witnessed in the same manner as the making of a new will. [C51, §§1288, 1289; R60, §§2320, 2321; C73, §§2329, 2330; C97, §3276; S13, §3276; C24, 27, 31, 35, 39, §11855; C46, 50, 54, §633.10]

**633.11 Deposit with clerk.** A will sealed up and indorsed may be deposited with the clerk of the court, who shall file and preserve the same until the death of the testator, unless he sooner demands it. [C51, §1290; R60, §2322; C73, §2331; C97, §3277; C24, 27, 31, 35, 39, §11856; C46, 50, 54, §633.11]

**633.12 Executors.** If no executors are named in a will, or if those named fail to qualify and act, the court admitting it to probate shall appoint one or more to carry it into effect. [C51, §§1299, 1302; R60, §§2331, 2334; C73, §§2332, 2333; C97, §3278; C24, 27, 31, 35, 39, §11857; C46, 50, 54, §633.12]

Banks as executors, ch 532

**633.13 After-born children.** Whenever a testator shall have a legitimate child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child so after-born unprovided for by any settlement, and neither provided for nor mentioned in such will, every such child shall succeed to and inherit the same interest in such parent's real and personal estate as though no will had been made, and the said interest shall be taken ratably from the interests of heirs, devisees, and legatees. [C51, §§1284, 1285; R60, §§2316, 2317; C73, §§2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §11858; C46, 50, 54, §633.13]

**633.14 Claims in disregard of will.** All claims which it becomes necessary to satisfy, and all amounts necessary to be paid from the estate of a testator in disregard of or in opposition to the provisions of a will, shall be taken ratably from the interests of heirs, devisees, and legatees. [S13, §3279-a; C24, 27, 31, 35, 39, §11859; C46, 50, 54, §633.14]

**633.15 Devise—legacy—bequest.** The word "devisee", as used in this title, shall, when applicable, be construed to embrace "legatees", and the word "devised" shall, in like cases, be understood as comprising the word "bequeathed". [C51, §1286; R60, §2318; C73, §2336; C97, §3280; C24, 27, 31, 35, 39, §11860; C46, 50, 54, §633.15]

**633.16 Heirs of devisee.** If a devisee die before the testator, his heirs shall inherit the property devised to him, unless from the terms of the will a contrary intent is manifest. [C51, §1287; R60, §2319; C73, §2337; C97, §3281; C24, 27, 31, 35, 39, §11861; C46, 50, 54, §633.16]

**633.17 Custodian — filing — penalty.** Any person having the custody of a will shall, as soon as he is informed of the death of the testator, file the same with the clerk. Any person who fails to produce the same after receiving reasonable notice so to do may be committed to jail until he does, and shall

be liable for all damages occasioned by his failure. [C51, §§1291, 1292; R60, §§2323, 2324; C73, §§2338, 2339; C97, §3282; C24, 27, 31, 35, 39, §11862; C46, 50, 54, §633.17]

Criminal offenses, §713.5

**633.18 Probate.** After the will is produced, the clerk shall open and read the same, and a day shall be fixed by the court or clerk for proving it, which may be postponed from time to time in the discretion of the court. [C51, §1293; R60, §2325; C73, §2340; C97, §3283; C24, 27, 31, 35, 39, §11863; C46, 50, 54, §633.18]

C97, §3283, editorially divided

**633.19 Contest—jury trial.** When the probate of a will is contested, either party to the contest shall be entitled to a jury trial thereon. [C97, §3283; C24, 27, 31, 35, 39, §11864; C46, 50, 54, §633.19]

Guardian ad litem, §638.37

Limitation on action to set aside, §614.1, subsection 3

**633.20 Notice of hearing.** The clerk shall give notice of the time fixed, by publishing a notice, signed by himself and addressed to all whom it may concern, in a daily or weekly newspaper printed in the county where the will is filed, once each week, for three consecutive weeks, the last publication of which shall be at least ten days before the time fixed for such hearing. The court or the judge in vacation, or clerk, in his discretion, may prescribe a different notice. [C51, §1294; R60, §2326; C73, §2341; C97, §3284; S13, §3284; C24, 27, 31, 35, 39, §11865; C46, 50, 54, §633.20]

Referred to in §590.2 [as §11865, Code 1939]

**633.21 Proof—depositions.** The proof may be made by the oral testimony of the subscribing witnesses taken in open court, or by deposition when they reside outside of the state or judicial district in which the will is to be proven. When by deposition, the court or judge shall order the issuance of a commission to some officer authorized by the laws of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by him, shall mark it as "exhibit . . . . .", and cause the witness to connect his identification with it as such exhibit. Before sending the commission out, the clerk shall make and retain in his office a true copy of such will. [C97, §3285; C24, 27, 31, 35, 39, §11866; C46, 50, 54, §633.21]

Additional proof authorized, §622.24

Referred to in §633.22

**633.22 Witnesses absent in armed forces.** Where it appears to the court that a will cannot be proven as provided in section 633.21, because all of the subscribing witnesses to the will at the time the will is offered for probate are serving in or are present with the armed forces of the United States or as merchant seamen, or other persons outside the limits of the United States by permission, assignment, or direction of any department or official of the United States in connection with any ac-

tivity pertaining to or connected with the prosecution of any war in which the United States is then engaged, or are dead or mentally or physically incapable of testifying or otherwise unavailable, in the course of such service, the court may admit the will to probate upon the testimony in person or by deposition of at least two credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, or upon other sufficient proof of such handwriting. The foregoing provision shall not preclude the court, in its discretion, from requiring in addition, the testimony in person or by deposition of any available subscribing witness, or proof of such other pertinent facts and circumstances as the court may deem necessary to admit the will to probate. [C46, 50, 54, §633.22]

**633.23 Certificate of probate.** A will, when admitted to probate, shall have a certificate of such fact indorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it or the record thereof, or the transcript of such record properly authenticated, may be read in evidence in all courts without further proof. [C51, §1300; R60, §2332; C73, §2342; C97, §3286; C24, 27, 31, 35, 39, §11867; C46, 50, 54, §633.23]

**633.24 Record—copy for executor.** After being proved and allowed, the will, together with the certificate hereinbefore required, shall be recorded in a book kept for that purpose, and the clerk shall cause the same, or an authenticated copy thereof, to be placed in the hands of the executor therein named or otherwise appointed. [C51, §§1295, 1298; R60, §§2327, 2330; C73, §§2343, 2344; C97, §3287; S13, §3287; C24, 27, 31, 35, 39, §11868; C46, 50, 54, §633.24]

S13, §3287, editorially divided

**633.25 Record in foreign county.** Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded such record may be read in evidence in all courts without further proof. [S13, §3287; C24, 27, 31, 35, 39, §11869; C46, 50, 54, §633.25]

**633.26 Costs of transcript.** The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in

which event it shall be paid by the owner of the real estate involved. [S13, §3287; C24, 27, 31, 35, 39, §11870; C46, 50, 54, §633.26]

**633.27 Married woman as executor.** A married woman may act as executor, independent of her husband. [C51, §1304; R60, §2336; C73, §2345; C97, §3288; C24, 27, 31, 35, 39, §11871; C46, 50, 54, §633.27]

**633.28 Minors as executors.** If a minor under eighteen years of age is nominated as an executor, there will be a vacancy as to him until he reaches that age. [C51, §1305; R60, §2337; C73, §2346; C97, §3289; C24, 27, 31, 35, 39, §11872; C46, 50, 54, §633.28]

**633.29 Vacancies.** If a person nominated as executor refuses to accept the trust, or neglects to appear within ten days after his appointment and give bond as hereinafter prescribed, or if an executor removes his residence from the state, the office shall be vacant. [C51, §1303; R60, §2335; C73, §2347; C97, §3290; C24, 27, 31, 35, 39, §11873; C46, 50, 54, §633.29]

**633.30 Filling vacancies.** In case of a vacancy, letters of administration with the will annexed may be granted to some other person, or, if there be another executor competent to act, he may be allowed to proceed by himself in administering the estate. [C51, §1307; R60, §2339; C73, §2348; C97, §3291; C24, 27, 31, 35, 39, §11874; C46, 50, 54, §633.30]

**633.31 Substitution—effect.** The substitution of other executors shall occasion no delay in the administration of the estate. The periods hereinafter mentioned within which acts are to be performed after the appointment of executors shall all, unless otherwise declared, be computed from the issuing of the letters to the first general executor. [C51, §1308; R60, §2340; C73, §2349; C97, §3292; C24, 27, 31, 35, 39, §11875; C46, 50, 54, §633.31]

**633.32 Trustees to give bond.** Trustees appointed by will or by the court must qualify and give bonds the same as executors, and shall be subject to control or removal by it in the same manner, and others appointed. [C73, §2350; C97, §3293; C24, 27, 31, 35, 39, §11876; C46, 50, 54, §633.32]

Conditions of bond, §§64.2, 64.4  
Investment of funds, §682.23  
Similar provision, §604.4

**633.33 Foreign probated wills.** A will probated in any other state or country shall be admitted to probate in this state, without the notice required in the case of domestic wills, on the production of a copy thereof and of the original record of probate, authenticated by the attestation of the clerk of the court in which such probate was made, or, if there be no clerk, by the attestation of the judge thereof, and the seal of office of such officers, if they have a seal. [C51, §1296; R60, §2328; C73, §2351; C97, §3294; C24, 27, 31, 35, 39, §11877; C46, 50, 54, §633.33]



**633.34 Foreign wills—procedure.** All provisions of law relating to the carrying into effect of domestic wills after probate shall, so far as applicable, apply to foreign wills admitted to probate in this state. [C73,§2352; C97,§3295; C24, 27, 31, 35, 39,§11878; C46, 50, 54, §633.34]

C97,§3295, editorially divided

**633.35 Sales.** If the executors or trustees under such wills are empowered to sell and convey real estate, then, upon the production and recording in the proper probate record of a copy of the original record of the appointment, qualification, and bond, unless bond was waived in the will, duly authenticated in the manner foreign wills are required to be, such executors or trustees may, in conformity with the power granted in such wills, sell and convey real estate within any county in this state where such probate and proof of qualification may be of record, without further qualifying in this state, and without reporting such sale to the district court in this state for approval. [C97,§3295; C24, 27, 31, 35, 39,§11879; C46, 50, 54, §633.35]

**633.36 Effect—pending domestic appointment.** Such sales and conveyances shall have the same force as if made by executors or trustees qualified within this state and reported to and approved by the district court, unless, at the time of the execution and delivery of said deed, letters testamentary or of administration upon the estate of such decedent shall have been granted in this state and remain in force, and due notice thereof has been given in such county, if other than one in which such letters were granted here, as required in reference to actions affecting real estate; in which case, any conveyance shall be made subject to all the rights acquired under the appointment and letters granted in this state. [C97,§3295; C24, 27, 31, 35, 39,§11880; C46, 50, 54, §633.36]

**633.37 Time limit on sales.** No such conveyance shall be made by such executor or trustee until three months after the recording of a duly authenticated copy of the will, original record of appointment, and qualification and bond, unless bond was waived in the will, in the proper probate record of the county where the land is situated. [C97,§3295; C24, 27, 31, 35, 39,§11881; C46, 50, 54,§633.37]

**633.38 Probate conclusive—setting aside.** Wills, foreign or domestic, shall not be carried into effect until admitted to probate as hereinbefore provided, and such probate shall be conclusive as to the due execution thereof, until set aside by an original or appellate proceeding. [C51,§1297; R60,§2329; C73,§2353; C97, §3296; C24, 27, 31, 35, 39,§11882; C46, 50, 54, §633.38]

Limitation on action to set aside, §614.1, subsection 3

**633.39 Administration granted.** In other cases, where an executor is not appointed by

will, administration shall be granted to any suitable person or persons on the request and application of:

1. The surviving spouse.
2. The next of kin.
3. Creditors.

4. Any other person showing good grounds therefor. [C51,§§1311, 1312; R60,§§2343, 2344; C73,§§2354, 2355; C97,§3297; C24, 27, 31, 35, 39, §11883; C46, 50, 54,§633.39]

Banks as administrators, ch 532

**633.40 Time allowed.** To each of the above classes, in succession, a period of twenty days, commencing with the burial of the deceased, is allowed within which to apply for administration. [C51,§1313; R60,§2345; C73,§2356; C97, §3298; C24, 27, 31, 35, 39,§11884; C46, 50, 54, §633.40]

**633.41 Special administrators.** When, from any cause, general administration or probate of a will cannot be immediately granted, one or more special administrators may be appointed to collect and preserve the property of the deceased, and no appeal from such appointment shall prevent their proceeding in the discharge of their duties. [C51,§§1320, 1321; R60,§§2352, 2353; C73,§§2357, 2358; C97,§3299; C24, 27, 31, 35, 39,§11885; C46, 50, 54,§633.41]

**633.42 Inventory—preservation of property.** They shall make and file an inventory of the property of the deceased in the same manner as is required of general executors or administrators, and shall preserve such property from injury, and for that purpose may do all needful acts under the direction of the court, but shall take no steps in relation to the allowance of claims against the estate. Upon the granting of full administration, the powers of the special administrators shall cease, and all the business be transferred to the general executor or administrator. [C51,§§1322–1324; R60,§§2354–2356; C73,§§2359–2361; C97,§3300; C24, 27, 31, 35, 39,§11886; C46, 50, 54,§633.42]

**633.43 Bond—oath.** Every executor or administrator, except as herein otherwise declared, before entering on the discharge of his duties, must give a bond in such penalty as may be required by the court, to be approved by the clerk, conditioned for the faithful discharge of the duties imposed on him by law, according to the best of his ability, and take and subscribe an oath the same in substance as the condition of the bond, which oath and bond must be filed with the clerk. [C51, §§1316, 1317; R60,§§2348, 2349; C73,§§2362, 2363; C97,§3301; C24, 27, 31, 35, 39,§11887; C46, 50, 54, §633.43]

Referred to in §635.23  
Conditions of bond, §§64.2, 64.4  
Exemption from bond, §635.51  
Premiums paid by estate, §682.15

**633.44 New bond.** New bonds may be required by the court or judge thereof, to be given in a new penalty and with new securities, when it is found necessary. [C51,§1318;

R60,§2350; C73,§2364; C97,§3302; C24, 27, 31, 35, 39,§11888; C46, 50, 54,§633.44]

**633.45 Letters.** After filing the bond, the clerk shall issue letters testamentary or of administration, as the case may be, under the seal of the court, giving the executor or administrator the power authorized by law. [C51, §1319; R60,§2351; C73,§2365; C97,§3303; C24, 27, 31, 35, 39,§11889; C46, 50, 54,§633.45]

Investment of funds, §682.23

**633.46 Notice of appointment.** The executors or administrators first appointed and qualified for the settlement of the estate shall, within ten days after the receipt of their letters, publish such notice of their appointment as the court or clerk may direct, which direction shall be entered in the probate record. [C51,§§1357, 1358; R60,§§2389, 2390; C73,§2366; C97,§3304; C24, 27, 31, 35, 39,§11890; C46, 50, 54, §633.46]

Legalizing act, §590.1

**633.47 Limitation on administration.** Administration shall not be originally granted after five years from the death of the decedent, or from the time his death was known, in case he died out of the state. [C51,§1325; R60,§2357; C73,§2367; C97,§3305; S13,§3305; C24, 27, 31, 35, 39,§11891; C46, 50, 54,§633.47]

**633.48 Exception—newly discovered personalty.** When personal property belonging to the estate of decedent is discovered after the expiration of said five years, administration may be granted after the five-year limit, for the purpose only of making proper disposition and distribution thereof. [S13,§3305; C24, 27, 31, 35, 39,§11892; C46, 50, 54,§633.48]

**633.49 Will executed in foreign state or country.** A last will and testament executed without this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said last will and testament is in writing and subscribed by the testator. [C97, §3309; C24, 27, 31, 35, 39,§11893; C46, 50, 54, §633.49]

#### APPOINTMENT OF FOREIGN ADMINISTRATOR

**633.50 Authorization.** If administration of the estate of a deceased nonresident has been granted in accordance with the laws of the state or country where he resided at the time of his death, the person to whom it has been committed may, upon his application and upon qualifying in the manner required of nonresident executors, be appointed to administer upon the property of the deceased in this state, unless another had been previously appointed. [C51,§1309; R60,§2341; C73,§2368; C97, §3306; C24, 27, 31, 35, 39,§11894; C46, 50, 54, §633.50]

C97,§3306, editorially divided

**633.51 Conditions attending appointment.** The original letters or other authority conferring his power upon such administrator, or an attested copy thereof, must be filed and recorded with the clerk of the proper court, and a bond, with resident sureties, given in such an amount as the court shall prescribe, conditioned for the payment of all claims allowed to residents of the state, and the payment of all legacies and distributive shares coming to such residents, so far as the assets thereof shall extend, before such appointment can be made. [C51,§1310; R60,§2342; C73,§2369; C97, §3306; C24, 27, 31, 35, 39,§11895; C46, 50, 54, §633.51]

**633.52 Removal of property—payment of claims.** In such cases, the court or judge may require payment of all claims filed and allowed or proved belonging to residents of this state, and of all legacies or distributive shares payable to such residents, before allowing the estate to be removed from the state. [C97,§3306; C24, 27, 31, 35, 39,§11896; C46, 50, 54,§633.52]

#### ASSIGNMENTS AND SATISFACTIONS BY FOREIGN FIDUCIARY OFFICERS

**633.53 Mortgages and judgments.** Judgments rendered by any court in the state of Iowa, and mortgages, or deeds of trust executed as mortgages, on property in this state, and belonging to an estate, trust, or to a person under guardianship may, in whole or in part as to any particular property, be released and discharged or be assigned by an executor, administrator, guardian, trustee, receiver, referee, assignee, or commissioner, or anyone acting in a fiduciary capacity appointed by a court of record of any foreign state or country, when no resident executor, administrator, guardian, receiver, referee, assignee, commissioner, or person acting in a fiduciary capacity has been appointed or qualified in this state. Such release, satisfaction, discharge, or assignment may be made in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state. [S13,§3307-a; C24, 27, 31, 35, 39,§11897; C46, 50, 54,§633.53]

**633.54 Certificate of appointment and authority.** Before a release, satisfaction, discharge, or assignment by such foreign officer shall be effective, a certificate executed by the judge or clerk of the court making the appointment, with seal attached, if such officer has a seal, shall be recorded. Said certificate shall show the name of the court making the appointment, the date of the same, and that such foreign officer has not been discharged at the time of the execution of the release, satisfaction, discharge, or assignment and is authorized to execute the same. [C97,§3308; SS15, §3308; C24, 27, 31, 35, 39,§11898; C46, 50, 54, §633.54]

**633.55 Filing of certificate.** The certificate aforesaid shall be filed for record:

1. In case of judgments, in the office of the

clerk of the court in which the judgment is of record or in which it has been filed, or

2. In case of mortgages, or deeds of trust, in the office of the county recorder of the county in which the mortgage or deed of trust is of record. [C97,§3308; SS15,§3308; C24, 27, 31, 35, 39,§11899; C46, 50, 54,§633.55]

**633.56 Record—index of satisfaction.** Such certificate shall be recorded by the proper

officer in the judgment records of the court in which the same appears of record, or in the appropriate chattel or real estate records, as the case may be, and the record of such release, satisfaction, discharge, or assignment shall be properly indexed. [C97,§3308; SS15, §3308; C24, 27, 31, 35, 39,§11900; C46, 50, 54, §633.56]

## CHAPTER 634

### ESTATES OF ABSENTEES

#### Guardianship, ch 671

634.1 Administration authorized—petition.  
634.2 Notice.  
634.3 Service.  
634.4 Proof of service—filing.  
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634.7 Sale of real estate.

634.8 Procedure in sale of real estate.  
634.9 Decree as to heirs.  
634.10 Additional notice.  
634.11 Rights of absentee barred—sale by spouse.  
634.12 Missing soldiers or sailors—presumption of death.

**634.1 Administration authorized—petition.** Administration may be had on the estate of an absentee. A petition therefor must be filed in the office of the clerk of the district court and must allege:

1. That the absentee was a resident of this state and has, without known cause, absented himself from his usual place of residence, and concealed his whereabouts from his family, for a period of seven years.

2. That said absentee has property in this state (describing it with reasonable certainty), all or part of which is situated in the county in which the petition is filed.

3. The names of the persons, so far as known to the petitioner, who would be entitled to share in the estate of the absentee if he were dead.

4. Facts showing that the petitioner is a party who would be entitled to administer on the estate of said absentee in case the absentee were known to be dead. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11901; C46, 50, 54,§634.1]

**634.2 Notice.** Upon the filing of such petition, the court, or a judge thereof in vacation, shall prescribe the notice and the return day therein, which shall be addressed to and served upon said absentee and the said beneficiaries of his estate. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11902; C46, 50, 54,§634.2]

**634.3 Service.** Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for eight consecutive weeks, in a newspaper designated by the court or judge, and

2. Personally upon all the known or alleged beneficiaries of the estate of said absentee, residing within the state, in the manner and

for the length of time required for the service of original notices. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11903; C46, 50, 54,§634.3]

Time and manner of service, R.C.P. 53 and 56(a)

**634.4 Proof of service—filing.** Proof of the publication and personal service of said notice shall be filed with the clerk aforesaid on or before the day set for hearing. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11904; C46, 50, 54, §634.4]

**634.5 Hearing—continuance—orders.** If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person to appear for the absentee and all beneficiaries not appearing, and said cause shall thereupon stand continued until the next term of said court, and the court shall have authority to make further continuance upon proper showing. Said person shall investigate the matters and things alleged in the petition. The court shall hear the proofs and, if satisfied of the truth of the allegations of the petition, shall order the issuance of letters of administration upon the estate of said absentee as though said absentee were known to be dead. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39, §11905; C46, 50, 54,§634.5]

**634.6 Administration.** The person to whom the administration is granted shall proceed to administer and dispose of the estate in the same manner that administrators are required to dispose of and administer the estates of decedents. [S13,§3307-a; C24, 27, 31, 35, 39,§11906; C46, 50, 54,§634.6]

**634.7 Sale of real estate.** Such administrator may, under the orders of the court, sell and dispose of all real estate and other property owned by such absentee, and after the payment of legal costs, expenses, and claims,

make distribution of the proceeds thereof to the persons entitled thereto. [S13,§3307-a; C24, 27, 31, 35, 39,§11907; C46, 50, 54,§634.7]

**634.8 Procedure in sale of real estate.** The provisions of law regarding application, notice, and manner of sale of real estate for the payment of debts by administrators shall be followed so far as applicable. [S13,§3307-a; C24, 27, 31, 35, 39,§11908; C46, 50, 54,§634.8]

Procedure for sale, §635.23 et seq.

**634.9 Decree as to heirs.** Prior to any order of distribution, the court shall hear proof and determine the legal heirs and beneficiaries of said absentee, and their respective interests in such estate. [S13,§3307; C24, 27, 31, 35, 39, §11909; C46, 50, 54,§634.9]

**634.10 Additional notice.** Before determining said heirs and beneficiaries the court may prescribe further and additional notices and the service thereof. [C24, 27, 31, 35, 39,§11910; C46, 50, 54,§634.10]

**634.11 Rights of absentee barred—sale by spouse.** Administration upon the estate of an absentee shall forever bar his or her right of homestead and statutory distributive share or interest in and to any real estate owned or held by the spouse of such absentee, or in which said spouse may have a legal or equitable interest, and a conveyance thereof by such spouse after one year from and after such administration has been granted, shall be free and clear of any claim or right of homestead or statutory distributive share on the part of such absentee. [S13,§3307-b; C24, 27, 31, 35, 39,§11911; C46, 50, 54,§634.11]

**634.12 Missing soldiers or sailors—presumption of death.**

1. A written finding of presumed death,

made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such finding, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and P. L. 408, Ch. 371, 2d Session 78th Congress; 50 U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state, as evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his disappearance.

2. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in subsection 1 or by any other law of the United States to make same, shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

3. For the purposes of subsections 1 and 2 of this section, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima-facie evidence of his authority so to certify. [C46, 50, 54,§634.12]

Constitutionality, 51GA, ch 226,§1

## CHAPTER 635

### SETTLEMENT OF ESTATES

Referred to in §249.18

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**635.1 Inventory and report.** Within thirty days after his qualification, each executor, administrator, or testamentary trustee shall, any will to the contrary notwithstanding, make and return to the clerk, under oath, a full and detailed report, and inventory of the property of the deceased, as far as the same has come to his knowledge, as follows:

1. Name and last residence of decedent.
2. Date of death.
3. Whether decedent left a will.
4. Name and post-office address of executor, administrator, or trustee.
5. Name, age, and post-office address of surviving wife or husband, if any.
6. If testate, name, age, and post-office address of each beneficiary under will.
7. Relationship of each beneficiary to the testator.
8. If intestate, name, age, and post-office address of each heir at law.
9. Relationship of each heir at law to decedent.
10. Inventory of all the real estate of the decedent, giving amount, and an accurate description of each tract.
11. Whether the property passes in possession and enjoyment in fee, for life, or for a term of years.
12. Personal property inventoried as general assets of the deceased.
13. Personal property regarded as exempt.
14. Notes, bonds, stocks, book accounts, and like items. [C51,§1328; R60,§2360; C73,§2370; C97,§3310; S13,§1481-a26; C24,§§7319, 11913; C27, 31, 35, 39,§11913; C46, 50, 54,§635.1]

Referred to in §§450.14, 450.73

State tax commission to furnish blanks, §450.14

**635.2 Reporting failure to court.** The failure of the executor, administrator, or trustee promptly to make said report shall be forthwith reported by the clerk to the district court if in session, or to a judge thereof, if in vacation, for such order as may be necessary to enforce the making and filing of said report. [C27, 31, 35,§11913-b1; C39,§11913.1; C46, 50, 54, §635.2]

**635.3 Supplemental inventories.** A supplemental inventory must be made in the same manner whenever the existence of additional property is discovered. [C51,§1333; R60,§2365; C73,§2376; C97,§3310; C24, 27, 31, 35, 39,§11914; C46, 50, 54,§635.3]

C97,§3310, editorially divided

**635.4 Filing mandatory.** Inventories as above provided must be filed in all cases, notwithstanding the provisions of any will or the action of any heirs or devisees waiving the filing thereof, and no administration shall be closed until the same has been filed. The court shall enforce the filing thereof whenever the executor or administrator fails to do so. [C97,§3310; C24, 27, 31, 35, 39,§11915; C46, 50, 54,§635.4]

**635.5 Appraisal—waiver.** All personal property inventoried by the executor or administrator shall be valued by three appraisers, who shall be appointed immediately on the filing of the inventory unless the court or judge or clerk of the district court in vacation shall by an order entered of record waive the valuation of the property so inventoried. [C51, §1331; R60,§2363; C73,§2373; C97,§3311; S13,§3311; C24, 27, 31, 35, 39,§11916; C46, 50, 54,§635.5]

S13,§3311, editorially divided

Appraisal for inheritance tax, §450.24 et seq.

**635.6 Qualification—duties.** The clerk shall issue to them a notice of their appointment, accompanied by a copy of the inventory returned by the executor or administrator, and they shall qualify by taking an oath faithfully and impartially to make the required valuation, and in making the same they shall fix a value to each item of property separately as it appears in the inventory. If any portion of the decedent's personal property is situated in another county, the same appraisers may serve, or others may be appointed. [C51,§1332; R60,§2364; C73,§§2374, 2378; C97,§3311; S13,§3311; C24, 27, 31, 35, 39,§11917; C46, 50, 54,§635.6]

**635.7 Exempt personal property.** When the deceased leaves a widow, all personal property which in his hands as the head of a family would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her property, and be exempt in her hands as in the hands of the decedent. [C51,§1329; R60,§2361; C73,§2371; C97,§3312; C24, 27, 31, 35, 39,§11918; C46, 50, 54,§635.7]

**635.8 Proceeds of insurance.** The avails of any life or accident insurance, or other sum of money made payable by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the deceased, except by special contract or arrangement, and shall be disposed of like other property left by the deceased. [C51,§1330; R60,§2362; C73,§§1182, 2372; C97,§3313; C24, 27, 31, 35, 39,§11919; C46, 50, 54,§635.8]

C97,§3313, editorially divided  
Similar provisions, §§509.13, 511.37, 512.17

**635.9 Damages for wrongful death.** When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, but if the deceased leaves a husband, wife, child, or parent, it shall not be liable for the payment of debts. [R60,§4111; C73,§2526; C97,§3313; C24, 27, 31, 35, 39,§11920; C46, 50, 54,§635.9]

**635.10 When "heir" embraces surviving spouse.** The words "heirs", or "legal heirs" or other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured. [C97,§3313; C24, 27, 31, 35, 39,§11921; C46, 50, 54,§635.10]

**635.11 Share of survivor.** The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates. [C97,§3313; C24, 27, 31, 35, 39,§11922; C46, 50, 54,§635.11]

Distribution of personal property, §636.1

**635.12 Allowance to widow and children.** The court shall, if necessary, set off to the

widow and children of the decedent under fifteen years of age, or to either, sufficient of his property, of such kind as is appropriate, to support them for the period of administration but not to exceed twelve months from the time of his death, and may, on the petition of the widow or other person interested, review such allowance and increase or diminish the same, and make such orders in the premises as shall be right and proper. [C51,§1338; R60,§2370; C73,§§2375, 2377; C97,§3314; C24, 27, 31, 35, 39,§11923; C46, 50, 54,§635.12]

C97,§3314, editorially divided

**635.13 Application for allowance.** Applications for such allowance shall state under oath the number of children under fifteen years of age, the amount of property already set apart to the widow, the value of her deceased husband's estate, the amount of its indebtedness, the value of all property owned by the widow, and what allowance, if any, has heretofore been made to her. [C97,§3314; C24, 27, 31, 35, 39,§11924; C46, 50, 54,§635.13]

**635.14 Discovery of assets.** The court or judge may require any person suspected of having taken wrongful possession of any of the effects of the deceased, or of having had such effects under his control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that he has the wrongful possession of any such property, the court or judge may order the delivery thereof to the executor or administrator. [C51,§1334; R60,§2366; C73,§2379; C97,§3315; C24, 27, 31, 35, 39,§11925; C46, 50, 54,§635.14]

Referred to in §635.16  
Analogous provisions, §§630.19, 680.10

**635.15 Commitment.** If, on being served with the order of the court or judge requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any question which the court or judge thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court or judge requiring him to deliver the property to the executor or administrator, he may be committed to the jail of the county until he does. [C51,§1335; R60, 2367; C73,§2380; C97,§3316; C24, 27, 31, 35, 39,§11926; C46, 50, 54,§635.15]

Referred to in §635.16

**635.16 Recovering transferred real estate.** When it is probable that the known and acknowledged property of the deceased will not be sufficient for the payment of his debts, any person to whom the legal title of any real estate was conveyed by the decedent, or any person through whom such title has subsequently passed, or any person claiming an interest therein, may be required to appear and submit to an examination as provided in sections 635.14 and 635.15, subject to the penalties therein described, and the court or judge shall direct the executor or administrator to

file a petition in equity to secure to the estate the title to any real estate which, in the event of the insufficiency of the personal property, would be assets for the payment of debts. [C73,§2381; C97,§3317; C24, 27, 31, 35, 39,§11927; C46, 50, 54,§635.16]

**635.17 Compounding claims.** The executor or administrator, with the approval of the court, may compound with any debtor of the estate who may be thought unable to pay his whole debt. [C51,§1336; R60,§2368; C73,§2382; C97,§3318; C24, 27, 31, 35, 39,§11928; C46, 50, 54, §635.17]

**635.18 Mortgage as assets — satisfaction.** The interest of a deceased mortgagee shall be included among his personal assets and, upon the mortgage being paid off, satisfaction shall be entered by the executor or administrator. [C51,§1337; R60,§2369; C73,§2383; C97,§3319; C24, 27, 31, 35, 39,§11929; C46, 50, 54,§635.18]

**635.19 Unauthorized devise or bequest — security to sustain.** When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the claims of the creditors, to the extent of the value of the property devised. [C51,§1339; R60, §2371; C73,§2384; C97,§3320; C24, 27, 31, 35, 39, §11930; C46, 50, 54,§635.19]

**635.20 Funds collected—paid out.** When no different direction is given by will, debts due the estate, as far as practicable, shall be collected, and the debts owing by the estate paid off therewith, to the extent of the means thus obtained. [C51,§1340; R60,§2372; C73,§2385; C97, §3321; C24, 27, 31, 35, 39,§11931; C46, 50, 54, §635.20]

Investment of funds, §682.23

**635.21 Sale of personal property.** The court, on the application of the executor, administrator or trustee, from time to time shall direct the sale of such portions of the personal effects as are of a perishable nature, or which from any cause would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and charges upon the estate. [C51,§1341; R60,§2373; C73, §2386; C97,§3322; C24, 27, 31, 35, 39,§11932; C46, 50, 54,§635.21]

**635.22 Mortgage of personal property.** Upon application by the administrator, executor, or trustee the court or judge may, on such notice as shall be prescribed by the court to be given to all heirs in the estate, authorize the administrator, executor, or trustee to mortgage or encumber the personal property of the estate as would be to the best interests thereof, either to pay debts or to preserve assets or enhance the value thereof. [C39,§11932.1; C46, 50, 54, §635.22]

**635.23 Sale or mortgage of real estate—application.** If the personal effects are found in-

adequate to satisfy the debts and charges, a sufficient portion of the real estate may be ordered sold or mortgaged for that purpose, application therefor being made in the court granting administration, and only after a full statement of all the claims against the estate, and after rendering a full account of the disposition made of the personal estate.

Before any such sale or mortgage can be executed, the executor or administrator must give security to the satisfaction of the court or judge, the penalty of which shall be at least double the value of the property to be sold or of the money to be raised by the mortgage, on condition that he faithfully account for and apply all money received by him by virtue of such sale or mortgage under the direction of the court or judge. Where an approved surety company bond is furnished, said bond may be fixed in a lesser amount, but in no case less than the value of the property to be sold or of the money to be raised by the mortgage, with twenty-five percent added thereto; provided, however, that in all cases the court or judge in determining the amount of the bond may take into consideration the condition of the estate, the amount of money to be actually received by the fiduciary and the nature and amount of the bond already furnished by the executor or administrator pursuant to the provisions of section 633.43 and reduce the amount of the bond required by the provisions of this section or order that no additional bond be required. [C51,§§1342, 1343; R60,§§2374, 2375; C73,§§2387, 2388; C97,§3323; C24, 27, 31, 35, 39, §11933; C46, 50, 54,§635.23]

Applicability to guardianship, §668.22

**635.24 Time, place of hearing, and service.** The court or judge shall fix the time and place of hearing of the application, and prescribe the time and manner of service of the notice of such hearing on all persons interested in such real estate. [C51,§1344; R60,§2376; C73, §2389; C97,§3324; C24,§§11934, 11935; C27, 31, 35, 39,§11935; C46, 50, 54,§635.24]

Referred to in §635.45  
Guardian ad litem, §638.37  
Service by publication, R.C.P. 60, 60.1

**635.25 Order conditional on service.** No order for the sale or mortgage of such real estate shall be granted until proof of service as above provided is made. [C51,§1344; R60, §2376; C73,§2389; C97,§3324; C24, 27, 31, 35, 39, §11936; C46, 50, 54,§635.25]

Referred to in §635.45

**635.26 Method of sale.** The real estate shall, when to the interest of the estate, be divided into parcels, appraised as the personal estate was, and the appraisal filed in like manner; but when a part cannot be sold without material prejudice to the general interests of the estate, the court may order the sale of the whole, or of such parts as can be sold advantageously. [C51,§§1345, 1346; R60,§§2377, 2378; C73,§§2390, 2391; C97,§3325; C24, 27, 31, 35, 39,§11937; C46, 50, 54,§635.26]

Appraisal of personal property, §635.5 et seq.

**635.27 Public or private sale — notice — credit.** Property may be permitted to be sold at private sales when the court is satisfied that the interest of the estate will be thereby promoted, but in other cases sales must be made at public auction, after giving the same notice as is necessary for the sale of like property on execution, but it may be ordered to be sold on a partial credit of not more than twelve months. [C51,§§1347, 1348, 1350; R60,§§2379, 2380, 2382; C73,§§2392, 2393, 2395; C97,§§3326; C24, 27, 31, 35, 39,§11938; C46, 50, 54,§635.27]

C97,§3326, editorially divided  
Notice of sale, §626.74 et seq.

**635.28 Limitation on private sale.** No property can be sold at private sale for less than the appraisal, without the express approval of the court or judge. [C51,§1349; R60,§2381; C73,§2394; C97,§3326; C24, 27, 31, 35, 39,§11939; C46, 50, 54,§635.28]

**635.29 Borrowing money.** If the court is satisfied that it will be for the best interest of the estate that the real estate shall be withheld, it may, upon the application hereinbefore provided for, order the executor or administrator to borrow money thereon, and execute a note or notes in the name of such officer, secured by mortgage on any real estate belonging to the estate not exempt as a homestead, to secure the payment thereof, and with the proceeds pay the debts shown in the statement set out in the application, and report his action therein to the court. [C97,§3327; C24, 27, 31, 35, 39,§11940; C46, 50, 54,§635.29]

**635.30 Bond to prevent sale.** Any person interested in the estate may prevent a sale of the whole or any part of the real estate by giving bond to the satisfaction of the court, conditioned that he will pay all demands against the estate to the extent of the value of the property thus kept from sale, as soon as called upon by the court for that purpose. [C51, §1351; R60,§2383; C73,§2396; C97,§3328; C24, 27, 31, 35, 39,§11941; C46, 50, 54,§635.30]

C97,§3328, editorially divided  
Referred to in §635.45

**635.31 Breach of bond—procedure.** If the conditions of such bond are broken, the property will be liable for the debts unless it has passed into the hands of innocent purchasers, and the executor or administrator may take possession thereof and sell it under the direction of the court, or he may prosecute the bond, or pursue both remedies at the same time, if the court so directs. [C51,§1352; R60, §2384; C73,§2397; C97,§3328; C24, 27, 31, 35, 39, §11942; C46, 50, 54,§635.31]

Referred to in §635.45

**635.32 Effect of bond.** If the conditions of the bond are complied with, the property shall pass by devise, distribution, or descent in the same manner as though there had been no debts against the estate. [C51,§1353; R60,§2385; C73,§2398; C97,§3329; C24, 27, 31, 35, 39,§11943; C46, 50, 54,§635.32]

Referred to in §635.45

**635.33 Report for approval.** All sales, deeds, and mortgages shall be reported to the court for approval as soon as practicable after being made. [C97,§3331; C24, 27, 31, 35, 39,§11944; C46, 50, 54,§635.33]

C97,§3331, editorially divided  
Referred to in §635.46

**635.34 Requirements.** Reports of the sale or mortgage of real estate must be sworn to, and state:

1. The term at which the order therefor was obtained.
2. Whether the property was appraised, and, if so, the appraised value.
3. Whether sold at public or private sale.
4. The terms of sale.
5. Whether the additional bond required has been given and approved.
6. The opinion of the persons making them as to whether the sale is an advantageous one and should be approved, or otherwise. [C97, §3331; C24, 27, 31, 35, 39,§11945; C46, 50, 54, §635.34]

Referred to in §635.46

**635.35 Approval by court required.** When real estate is sold or mortgaged, the conveyances or mortgages thereof, executed by the executor or administrator, shall not be valid until approved by the court. [C51,§1354; R60, §2386; C73,§2399; C97,§3330; C24, 27, 31, 35, 39, §11946; C46, 50, 54,§635.35]

C97,§3330, editorially divided  
Referred to in §635.46  
Guardian ad litem, §638.37

**635.36 Approval recorded and indorsed.** Said approval shall be entered of record, and a certificate thereof indorsed on the deed or mortgage, with the signature of the clerk and the seal of the court affixed thereto. [C51,§1355; R60,§2387; C73,§2400; C97,§3330; C24, 27, 31, 35, 39,§11947; C46, 50, 54,§635.36]

Referred to in §635.46

**635.37 Effect of conveyance — presumption.** When so indorsed, said conveyance or mortgage shall pass to the purchaser all the interest of the deceased therein prior to his death, in case of sales, and create a lien thereon, in case of mortgages, and be presumptive evidence of the validity thereof, and of the regularity of all the proceedings connected therewith. [C51,§1355; R60,§2387; C73,§2400; C97,§3330; C24, 27, 31, 35, 39,§11948; C46, 50, 54, §635.37]

Referred to in §635.46

**635.38 Record in foreign county.** When the subject of the sale, conveyance, or mortgage is located in a county other than that in which administration is granted, a complete transcript of the record of all proceedings relating thereto shall be filed by the administrator in the office of the clerk of the district court in such county, and he shall cause the same



to be copied at length in the probate records of such county. [C97,§3331; C24, 27, 31, 35, 39, §11949; C46, 50, 54,§635.38]

Referred to in §685.46

**635.39 Transcript of court conveyances — recording—effect.** Any person interested therein may procure from the clerk of any district court in this state a transcript of any conveyance executed by any executor, administrator, guardian, or trustee, which has been recorded in the office of the clerk of the district or circuit courts of this state, in the county in which such real estate is situated, for more than ten years, and such transcript when certified by the clerk of the district court of such county, under the seal of his office, may be filed in the office of the recorder of such county, and shall have the same effect, when so recorded, as the original conveyance. [C24, 27, 31, 35, 39,§11950; C46, 50, 54,§635.39]

Referred to in §635.46

**635.40 Limitation of action.** No action for the recovery of any real estate sold or mortgaged by an executor or administrator can be maintained by any person claiming under the deceased, unless brought within five years after the sale by him or under the foreclosure of such mortgage. [C51,§1356; R60,§2388; C73, §2401; C97,§3332; C24, 27, 31, 35, 39,§11951; C46, 50, 54,§635.40]

Referred to in §635.46

**635.41 Federal stock — authority to purchase.** When any court of competent jurisdiction shall enter an order authorizing any executor, administrator, guardian, trustee, or other person in a fiduciary capacity, to execute a real estate mortgage to encumber any property under his control in such capacity to secure a loan obtained or to be obtained from any association or corporation, created or which may be created by authority of the United States and as an instrumentality of the United States, such court may authorize the executor, administrator, guardian, trustee, or other fiduciary, to purchase stock in any association or corporation, created or which may be created by authority of the United States and as an instrumentality of the United States, when such purchase of stock is necessary or required as an incident or condition of obtaining the loan, and to mortgage the property under his control in such capacity for this purpose, as well as to make payment for the stock so purchased from the proceeds of the loan so obtained. [C35, §11951-g1; C39,§11951.1; C46, 50, 54,§635.41]

**635.42 Refinancing liens on realty.** If a decedent held an interest in real estate, any part of which was exempt to him or is exempt to his spouse or issue as a homestead or otherwise, and any part of said real estate is subject to a lien or liens, claims and charges, on which a payment is delinquent, due, or about to become due, whether a claim for the debt for which said lien exists has been filed in the

estate or not, and the court or judge having jurisdiction of said estate is satisfied on consideration of the circumstances that it is for the best interests of said estate and the owners of said real estate or any interest therein to extend or refinance such lien or liens and the indebtedness secured thereby, and to pay any claims and charges against the estate; the court or judge may authorize and order the executor or administrator to borrow money for such purposes, and mortgage all or any part of said real estate therefor, and to execute or join in the execution of a note or notes and a mortgage or mortgages on the same, and from the proceeds thereof also pay the necessary or required commission or other expenses of securing said loans. [C35,§11951-g2; C39,§11951.2; C46, 50, 54,§635.42]

**635.43 Waiver by incompetents of exemption.** Any such mortgage shall have the effect of waiving any exemption as homestead or otherwise of any minor or incompetent or person under legal disability owning an interest in said real estate as fully as such owner could do if he were sui juris. [C35,§11951-g3; C39, §11951.3; C46, 50, 54,§635.43]

**635.44 Application for authority.** The application for such authority and order shall be verified by the executor or administrator, shall describe the property and the interest of the owners therein together with the nature of any exemptions in favor of any of them, shall contain a full statement of the liens thereon, and claims or charges to be paid, and the purposes and objects of the proposed loan to be secured by said mortgage and the reasons urged as justifying the same as promoting the best interests of the estate and the owners of said real estate. [C35,§11951-g4; C39,§11951.4; C46, 50, 54,§635.44]

**635.45 Notice of application.** The notice of said application and the procedure thereon shall be that prescribed in sections 635.24, 635.25, 635.30, 635.31 and 635.32. [C35,§11951-g5; C39,§11951.5; C46, 50, 54,§635.45]

46GA, ch 112,§4, editorially divided

**635.46 Mortgage—requirements.** Mortgages executed by such authority shall be in compliance with sections 635.33 to 635.39, inclusive, and section 635.40 shall apply to mortgages hereunder. [C35,§11951-g6; C39,§11951.6; C46, 50, 54,§635.46]

**635.47 Express finding required.** Upon the hearing on the application, authority shall not be granted to the executor or administrator by the court or judge except upon an express finding that such mortgage and waiver of exemptions of homestead or otherwise for the purposes stated therein will promote the best interests of the estate and the owners of the real estate and any interest therein. [C35, §11951-g7; C39,§11951.7; C46, 50, 54,§635.47]

**635.48 Possession of real property.** If there is no heir or devisee present and competent to

take possession of the real estate left by the decedent, the executor or administrator may do so, and demand and receive the rents and profits, and do all other acts relating thereto which may be for the benefit of the persons entitled to the same. [C73,§2402; C97,§3333; C24, 27, 31, 35, 39,§11952; C46, 50, 54,§635.48]

**635.49 Proceeds—account.** Such executor or administrator, under the direction of the court, may apply the profits thereof to the payment of taxes and claims against the estate of the deceased, if the personal assets are insufficient, and account to the heirs or devisees therefor, deducting therefrom the payments made as above provided, together with a reasonable compensation for his own services, to be fixed by the court. [C73,§§2403, 2404; C97,§3334; C24, 27, 31, 35, 39,§11953; C46, 50, 54,§635.49]

**635.50 Minor heirs — payment of taxes.** When there are minor heirs for whom no guardian has been appointed, the executor or administrator shall pay, out of any assets in his hands, all taxes assessed against the estate, not otherwise provided for, and be credited therefor as for the payment of other claims against the estate. [C73,§2405; C97,§3335; C24, 27, 31, 35, 39,§11954; C46, 50, 54,§635.50]

**635.51 Procedure prescribed by will.** When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered, may exempt the executor from the necessity of giving bond, and prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age. [C51, §1326; R60,§2358; C73,§2406; C97,§3336; C24, 27, 31, 35, 39,§11955; C46, 50, 54,§635.51]

See §635.1

**635.52 Business continued—inventory.** The court, in its discretion, may authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage, but such authority shall not exempt him from returning a full inventory and appraisalment, and making reports, as in other cases. [C51, §1327; R60,§2359; C73,§2407; C97,§3337; C24, 27, 31, 35, 39,§11956; C46, 50, 54,§635.52]

**635.53 Claims against estate—form.** Claims against the estate shall be clearly stated, and, if founded upon a written instrument, the same or a copy thereof and of all indorsements thereon shall be attached as a part of the statement, and if upon account, an itemized copy shall be attached, showing the balance. [C51,§1359; R60,§2391; C73,§2408; C97,§3338; C24, 27, 31, 35, 39,§11957; C46, 50, 54,§635.53]

C97,§3338, editorially divided

**635.54 Verification and filing.** Said statement must be sworn to and filed with the clerk of the district court. [C51,§1359; R60,

§2391; C73,§2408; C97,§3338; C24, 27, 31, 35, 39, §11958; C46, 50, 54,§635.54]

**635.55 Notice of hearing—exceptions.** Ten days notice of the hearing thereof, which shall be at some regular term of the court, accompanied by a copy of the claim, shall be served on one of the executors or administrators in the manner required for commencing ordinary actions, unless the same has been approved by the executor or administrator, in which case it may be allowed by the clerk, without notice, and so entered upon the probate calendar. [C51,§§1359, 1361; R60,§§2391, 2393; C73,§2408; C97,§3338; C24, 27, 31, 35, 39,§11959; C46, 50, 54, §635.55]

Service of notice, R.C.P. 56(a)

**635.56 How entitled.** All claims filed against the estate shall be entitled in the name of the claimant against the executor or administrator as such, naming the estate, and in all further proceedings thereon this title shall be preserved. [C73,§2409; C97,§3339; C24, 27, 31, 35, 39,§11960; C46, 50, 54,§635.56]

**635.57 Claims deemed denied.** All claims filed, and not expressly admitted in writing signed by the executor or administrator, with the approbation of the court, shall be considered as denied, without any pleading on behalf of the estate, but special defenses must be pleaded. [C73,§2410; C97,§3340; S13,§3340; C24, 27, 31, 35, 39,§11961; C46, 50, 54,§635.57]

S13,§3340, editorially divided

**635.58 Burden of proof.** The burden of proving that a claim is unpaid shall not be placed upon the party filing a claim against the estate; but the executor or administrator may on the trial of said cause, subject the claimant to an examination on the question of payment, or consideration, but the estate shall not be concluded or bound thereby. [C97,§3340; S13, §3340; C24, 27, 31, 35, 39,§11962; C46, 50, 54, §635.58]

**635.59 Hearing—trial by jury.** If a claim filed against the estate is not fully admitted by the executor or administrator, the court may hear and allow the same, or may submit it to a jury, and on the hearing, unless otherwise provided, all provisions of law applicable to an ordinary action shall apply. [C51,§§1360, 1362; R60,§§2392, 2394; C73,§2411; C97,§3341; C24, 27, 31, 35, 39,§11963; C46, 50, 54,§635.59]

**635.60 Demands not due.** Demands not yet due may be presented, proved, and allowed as other claims. Notwithstanding the provisions of section 635.70 if a claim is filed on a demand not yet due, which demand is secured by a mortgage on real estate, it may be paid by the estate at the same time it could have been paid if it had been due when filed. [C51,§1364; R60,§2396; C73,§2413; C97,§3342; C24, 27, 31, 35, 39,§11964; C46, 50, 54,§635.60]

**635.61 Contingent liabilities.** Contingent liabilities must be presented and proved, or the

executor or administrator shall be under no obligation to make any provision for satisfying them when they accrue. [C51,§1365; R60,§2397; C73,§2414; C97,§3343; C24, 27, 31, 35, 39,§11965; C46, 50, 54,§635.61]

**635.62 Referees.** Claims against an estate, and counterclaims thereto, may, in the discretion of the court, be proved before one or more referees, to be agreed upon by the parties or appointed by the court, and their decision, entered upon the record, shall become the decision of the court. [C51,§1366; R60,§2398; C73, §2415; C97,§3344; C24, 27, 31, 35, 39,§11966; C46, 50, 54,§635.62]

**635.63 Actions pending.** Actions pending against the decedent at the time of his death may be prosecuted to judgment, his executor or administrator being substituted as defendant, and any judgment rendered therein shall be placed in the catalogue of established claims, but shall not be a lien. [C51,§1368; R60, §2400; C73,§2416; C97,§3345; C24, 27, 31, 35, 39, §11967; C46, 50, 54,§635.63]

**635.64 Executor interested.** If either of the executors or administrators is interested in favor of a claim against the estate, he shall not serve in any manner connected therewith, and if all are thus interested, the court shall appoint some competent person a temporary executor or administrator in relation to such claims. [C51,§1369; R60,§2401; C73,§2417; C97, §3346; C24, 27, 31, 35, 39,§11968; C46, 50, 54, §635.64]

**635.65 Expenses of funeral — allowance to widow.** As soon as the executor or administrator is possessed of sufficient means over and above the expenses of administration, he shall pay off the charges of the last sickness and funeral of deceased, and next, any allowance made by the court for the maintenance of the widow and minor children. [C51,§1370, 1371; R60,§§2402, 2403; C73,§§2418, 2419; C97, §3347; C24, 27, 31, 35, 39,§11969; C46, 50, 54, §635.65]

Referred to in §249.18  
Allowance for cemetery maintenance, §566.19

**635.66 Other demands — order of payment.** Other demands against the estate shall be payable in the following order:

1. Debts entitled to preference under the laws of the United States.
2. Public rates and taxes.
3. Claims filed within six months after the first publication or posting of the notice given by the executors or administrators of their appointment.
4. Legacies and the distributive shares, if any. [C51,§1372; R60,§2404; C73,§2420; C97, §3348; S13,§3348; C24, 27, 31, 35, 39,§11970; C46, 50, 54,§635.66]

S13,§3348, editorially divided

**635.67 Labor as preferred claim.** In payment of claims of the third class, all debts

owing to employees for labor performed within the ninety days next preceding the death of the decedent, having been filed as by law provided, shall be preferred and paid in full before any other claims of said class are paid. If there is not sufficient property to pay said claims in full the same shall be applied ratably on all such claims. [S13,§3348; C24, 27, 31, 35, 39,§11971; C46, 50, 54,§635.67]

Labor claims preferred, §§626.69, 680.7, 681.13

**635.68 When claims barred.** All claims not filed as hereinbefore provided, within six months from the giving of the notice aforesaid, will be barred, except as to actions against decedent pending in the district or supreme court at the time of his death, or unless peculiar circumstances entitle the claimant to equitable relief. [C51,§1373; R60,§2405; C73, §2421; C97,§3349; C24, 27, 31, 35, 39,§11972; C46, 50, 54,§635.68]

**635.69 Payment of claims—classes.** After the expiration of the time for filing the claims of the third of the above classes, the executors or administrators shall proceed to pay off all claims against the estate in the order above stated, as fast as the means of so doing come into their hands, but no payment can be made to a claimant in any one class until those of a previous class are satisfied. [C51,§1374, 1376; R60,§§2406, 2408; C73,§§2422, 2424; C97,§3350; C24, 27, 31, 35, 39,§11973; C46, 50, 54,§635.69]

**635.70 Demands not due.** Demands not yet due may be paid, if the holder will consent to such a rebate of interest as the court thinks reasonable; otherwise, the money to which he would be entitled shall be invested until his debt becomes due. [C51,§1377; R60,§2409; C73, §2425; C97,§3352; C24, 27, 31, 35, 39,§11975; C46, 50, 54,§635.70]

Referred to in §635.60

**635.71 Order of payment—dividends.** Within their respective classes, debts shall be paid in the order in which they are filed, unless it is likely there will not be sufficient means with which to pay the whole of the debts of any one class, in which case the court shall from time to time order a dividend of the means on hand among all the creditors of that class, and the executors or administrators shall pay the several amounts accordingly. [C51,§1378, 1379; R60,§§2410, 2411; C73,§§2426, 2427; C97,§3353; C24, 27, 31, 35, 39,§11976; C46, 50, 54,§635.71]

**635.72 Encumbrances — unexecuted purchases.** The executor or administrator may, with the approval of the court, use funds belonging to the estate to pay off encumbrances upon lands owned by the deceased, or to purchase lands claimed or contracted for by him, prior to his death. [C51,§1380; R60,§2412; C73, §2428; C97,§3354; C24, 27, 31, 35, 39,§11977; C46, 50, 54,§635.72]

**635.73 Delivery of specific legacies — security.** Specific legacies of property may by the

court be turned over to the legatees at any time upon their giving unquestionable security by bond, or upon real estate, as may be ordered by the court or judge, to restore the property or refund the amount at which it was appraised, if wanted for the payment of debts. [C51,§1381; R60,§2413; C73,§2429; C97,§3355; C24, 27, 31, 35, 39,§11978; C46, 50, 54,§635.73]

Referred to in §635.75

**635.74 Money.** Legacies payable in money may be paid on like terms, whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed. [C51,§1382; R60,§2414; C73, §2430; C97,§3356; C24, 27, 31, 35, 39,§11979; C46, 50, 54,§635.74]

Referred to in §635.75

**635.75 Legacies—payment after six months.** After the expiration of the six months allowed for filing claims, such legacies may be paid without requiring the security provided for in sections 635.73 and 635.74, if means are retained to pay off all the claims proved or pending. [C51,§1383; R60,§2415; C73,§2431; C97,§3357; C24, 27, 31, 35, 39,§11980; C46, 50, 54,§635.75]

**635.76 Order of paying legacies.** If the testator has not prescribed the order in which legacies are to be paid, and if no security is given as above provided, in order to expedite their time of payment, they may be paid in the order in which they are given in the will, where the estate is sufficient to pay all. [C51, §1384; R60,§2416; C73,§2432; C97,§3358; C24, 27, 31, 35, 39,§11981; C46, 50, 54,§635.76]

**635.77 Ratable payment.** When not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably. [C51, §1385; R60,§2417; C73,§2433; C97,§3359; C24, 27, 31, 35, 39,§11982; C46, 50, 54,§635.77]

**635.78 Estate insufficient.** Such must be the mode pursued when there is danger that the estate will prove insufficient to pay all the legacies, unless security is given to refund as above provided. [C51,§1386; R60,§2418; C73, §2434; C97,§3360; C24, 27, 31, 35, 39,§11983; C46, 50, 54,§635.78]

**635.79 Failure to pay claims.** If the executor or administrator fails to make any payment in accordance with the order of the court, any person aggrieved thereby may, on ten days notice to him and his sureties, apply to the court for judgment against them on their bond. [C51,§1387; R60,§2419; C73,§2435; C97,§3361; C24, 27, 31, 35, 39,§11984; C46, 50, 54,§635.79]

C97,§3361, editorially divided

**635.80 Hearing and judgment.** The court shall hear the application in a summary manner, and may render judgment against them for the amount of money directed to be paid, and costs, and issue executions against them therefor. If any of the obligors are not served, the same proceedings in relation to them may be had with the same effect as in an action by ordinary proceedings under similar circumstances. [C51,§1389; R60,§2421; C73,§2435; C97,§3361; C24, 27, 31, 35, 39,§11985; C46, 50, 54, §635.80]

## CHAPTER 636

### DESCENT AND DISTRIBUTION OF INTESTATE'S PROPERTY

Aliens' inheritances, §567.8

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**636.1 Personal property.** The personal property of the deceased not necessary for the payment of debts, nor otherwise disposed of, shall be distributed to the same persons and in the same proportions as though it were real estate. [C51,§1390; R60,§2422; C73,§2436; C97,§3362; C24, 27, 31, 35, 39,§11986; C46, 50, 54,§636.1]

**636.2 Payment of shares.** The distributive shares shall be paid over as soon as the executor or administrator can properly do so. [C51,§1391; R60,§2423; C73,§2437; C97,§3363; C24, 27, 31, 35, 39,§11987; C46, 50, 54,§636.2]

**636.3 In kind—proceeds distributed.** The property itself shall be distributed in kind when that can be satisfactorily and equitably done. In other cases, the court may direct the property to be sold, and the proceeds distributed. [C51,§1392; R60,§2424; C73,§2438; C97,§3364; C24, 27, 31, 35, 39,§11988; C46, 50, 54,§636.3]

**636.4 Partial distribution.** When the circumstances of the family require it, the court may, in addition to what is set apart for their use, direct a partial distribution of the money or effects on hand, at any time after filing the inventory and appraisal, upon the execution of security like that required of legatees in like cases. [C51,§1393; R60,§2425; C73,§2439; C97,§3365; C24, 27, 31, 35, 39,§11989; C46, 50, 54,§636.4]

Security required of legatees, §635.73

**636.5 Dower.** One-third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the wife had made no relinquishment of her right, shall be set apart as her property in fee simple, if she survive him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband. [C51,§§1394, 1421; R60,§2477; C73,§2440; C97,§3366; C24, 27, 31, 35, 39,§11990; C46, 50, 54,§636.5]

C97,§3366, editorially divided  
 Referred to in §636.7  
 Dower not subject to contract, §597.2; not affected by will, §36.21

**636.6 Coextensive right of husband.** All provisions made in this chapter in regard to the widow of a deceased husband shall be applicable to the surviving husband of a deceased wife. [C51,§1421; R60,§2479; C73,§2440; C97,§3366; C24, 27, 31, 35, 39,§11991; C46, 50, 54,§636.6]

**636.7 Dower to embrace homestead.** The distributive share of the survivor shall be set off so as to include the ordinary dwelling

house given by law to the homestead, or so much thereof as will be equal to the share allotted to her by section 636.5, unless she prefers a different arrangement; but no such arrangement shall be permitted unless there be sufficient property remaining to pay the debts of the decedent. [C51,§1395; R60,§2426; C73,§2441; C97,§3367; C24, 27, 31, 35, 39,§11992; C46, 50, 54,§636.7]

**636.8 Dower denied.** As against a purchaser from a nonresident alien, the survivor shall not be entitled to a distributive share in the estate of the deceased, if at the time of the purchase such survivor was also a nonresident alien. [C73,§2442; C97,§3368; C24, 27, 31, 35, 39,§11993; C46, 50, 54,§636.8]

**636.9 Setting off dower—time limit.** The survivor's share may be set off by the mutual consent of all parties in interest, or by referees appointed by the court or the judge thereof, the application therefor to be made in writing, after twenty days from the death of the intestate and within ten years, which application must describe the land in which the share is claimed, and pray the appointment of referees to set it off. [C51,§§1396, 1397; R60,§§2427, 2428; C73,§§2443, 2444; C97,§3369; C24, 27, 31, 35, 39,§11994; C46, 50, 54,§636.9]

**636.10 Referees—notice.** The court or judge shall fix the time for making the appointment of the referees, and direct such notice thereof and of the application to be given to all parties interested therein as it thinks proper. [C51,§1398; R60,§2429; C73,§2445; C97,§3370; C24, 27, 31, 35, 39,§11995; C46, 50, 54,§636.10]

**636.11 Survey — mode of setting off.** The referees may employ a surveyor, if necessary, and must cause the shares to be marked off by metes and bounds, and make report of their proceedings to the court as early as practicable. [C51,§1399; R60,§2430; C73,§2446; C97,§3371; C24, 27, 31, 35, 39,§11996; C46, 50, 54,§636.11]

**636.12 Report—delinquency.** The court or judge may require a report by such a time as it thinks reasonable, and if the referees fail to obey this or any other of its orders, it may discharge them and appoint others in their stead, and impose upon them the payment of all costs previously made, unless they show good cause against it. [C51,§1400; R60,§2431; C73,§2447; C97,§3372; C24, 27, 31, 35, 39,§11997; C46, 50, 54,§636.12]

**636.13 Confirmation — new reference.** The court may confirm the report, or set it aside

and refer the matter to the same or other referees, at its discretion. [C51,§1401; R60, §2432; C73,§2448; C97,§3373; C24, 27, 31, 35, 39, §11998; C46, 50, 54,§636.13]

C97,§3373, editorially divided  
Referred to in §636.15

**636.14 Confirmation conclusive—possession.** Said confirmation, after the lapse of thirty days, unless appealed from, shall be binding and conclusive, and the survivor may bring an action to obtain possession of the land set apart. [C51,§1402; R60,§2433; C73,§2449; C97, §3373; C24, 27, 31, 35, 39,§11999; C46, 50, 54, §636.14]

Referred to in §636.15

**636.15 Right contested.** Nothing in sections 636.13 and 636.14 shall prevent any person interested from controverting the right of the survivor to the shares thus set apart, before confirmation of the report of the referees. [C51,§1403; R60,§2434; C73,§2450; C97,§3374; C24, 27, 31, 35, 39,§12000; C46, 50, 54,§636.15]

**636.16 Sale — division of proceeds.** If the referees report that the property or any part of it cannot be readily divided, the court may order the whole sold and one-third of the proceeds paid over to the survivor. [C51, §1404; R60,§2478; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§12001; C46, 50, 54,§636.16]

C97,§3375, editorially divided

**636.17 Purchase of new homestead.** With any money thus obtained, the survivor may procure a homestead, which shall be exempt from liability for all debts from which the former homestead would have been exempt. [C51,§1406; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§12002; C46, 50, 54,§636.17]

**636.18 Security to avoid sale.** No sale shall be made if anyone interested gives security to the satisfaction of the court, conditioned to pay the survivor the appraised value of the share, with eight percent interest on the same, within such reasonable time as it may fix, not exceeding one year. [C51,§1405; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§12003; C46, 50, 54, §636.18]

**636.19 Security by survivor.** If no such arrangement is made, such survivor may keep the property by giving like security to pay the claims of all others interested upon like terms. [C51,§1405; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§12004; C46, 50, 54,§636.19]

**636.20 Sale prohibited.** Such sale shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or use thereof, or shall consent that the court divide it by rent, profits, or use. [C51,§1405; R60,§2478; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§12005; C46, 50, 54,§636.20]

**636.21 Dower right unaffected by will.** The survivor's share cannot be affected by any

will of the spouse unless consent thereto is given as hereinafter provided. [C51,§1407; R60, §2435; C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§12006; C46, 50, 54,§636.21]

38GA, ch 192,§1, editorially divided

**636.22 Election between will and dower—notice.** Where a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within sixty days from the date when the will of a decedent has been admitted to probate, it shall be the duty of the executor appointed to administer the will of such decedent in this state, to cause to be served, in the manner required for service of original notice, upon the surviving spouse, a notice in writing, advising such surviving spouse that the will of such decedent has been admitted to probate, stating the name of the court and the date when the will was admitted to probate, and requiring that such spouse, within six months after the completed service of such notice, elect whether he or she shall take or refuse to take under the provisions of the will of such decedent, and that such election may be made in open court or by writing filed in such court. [C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§12007; C46, 50, 54,§636.22]

Referred to in §636.27  
Service of notice, R.C.P. 56(a)

**636.23 Record of election.** Said election, when made, shall be entered on the proper records of the court. [C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§12008; C46, 50, 54, §636.23]

Referred to in §636.27

**636.24 Notice by interested party.** The same notice may be given by any other person interested in the estate of decedent, and shall have the same force and effect as if given by the executor. [C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§12009; C46, 50, 54,§636.24]

**636.25 Election by law—exception.** In case such surviving spouse does not make such election within six months from the date of the completed service of such notice, or if such surviving spouse shall be the executor of the will and fails, within six months after the will is admitted to probate, to file with the clerk of the court an election to refuse to take under the provisions of the will of the deceased, it shall be conclusively presumed that such survivor consents to the provisions of the will and elects to take thereunder; unless within such period of six months an affidavit should be filed setting forth that such surviving spouse is mentally incapable of making such election. [C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§12010; C46, 50, 54,§636.25]

**636.26 Insane spouse—election by court.** In case such an affidavit is so filed, the court shall fix a time and place of hearing and cause a notice thereof, containing the requirements above set out, to be served upon said surviving spouse in such manner and for such

time as the court may direct, and at said hearing, a guardian ad litem shall be appointed to represent such spouse and the court shall enter an order electing for and in behalf of such spouse, as it shall deem under the evidence to be for the best interests of such spouse. [S13,§3376; C24, 27, 31, 35, 39,§12011; C46, 50, 54,§636.26]

**636.27 Election between dower and homestead occupancy—notice.** Within six months after written notice to the survivor, given by any heir of a deceased intestate, or by the administrator of his estate in case a sale of the real estate is necessary to pay debts, the survivor may elect to take the distributive share, or the right to occupy the homestead, which election shall be made and entered of record as provided in sections 636.22 and 636.23. [C97, §3377; S13,§3377; C24, 27, 31, 35, 39,§12012; C46, 50, 54,§636.27]

S13,§3377, editorially divided  
Referred to in §636.29  
See also §§561.11, 561.12

**636.28 Failure to elect—effect.** In case of a failure to make such election, the right to occupy the homestead in lieu of the distributive share shall be waived. [C97,§3377; S13, §3377; C24, 27, 31, 35, 39,§12013; C46, 50, 54, §636.28]

**636.29 Mentally incapable spouse—election.** When such surviving spouse is mentally incapable of making such election, the court on petition being filed alleging such disability, may set the matter down for hearing at such time and place as it may deem best, and direct what notice thereof shall be given; and at such hearing the court may enter an order electing for such spouse, which shall be the election, under section 636.27, of the person under such disability. [S13,§3377; C24, 27, 31, 35, 39,§12014; C46, 50, 54,§636.29]

**636.30 Setting off dower.** In case of an election of the distributive share, such distributive share may be set off to such surviving spouse under disability on the petition of the guardian of such spouse and under the provisions for setting off the survivor's share. [S13,§3377; C24, 27, 31, 35, 39,§12015; C46, 50, 54, §636.30]

**636.31 Descent to children.** Subject to the rights and charges hereinbefore provided, the remaining estate of which the decedent died seized shall, in the absence of a will, descend in equal shares to his children, unless one or more of them is dead, in which case the heirs of such shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though such child had outlived its parents. [C51,§§1408, 1409; R60, §§2436, 2437; C73,§§2453, 2454; C97,§3378; C24, 27, 31, 35, 39,§12016; C46, 50, 54,§636.31]

**636.32 Absence of issue.** If the intestate leaves no issue, the whole of the estate to the amount of fifteen thousand dollars, after the

payment of the debts and expenses of administration, and one-half of all of the estate in excess of said fifteen thousand dollars shall go to the surviving spouse and the other one-half of said excess shall go to the parents. If no spouse, the whole shall go to the parents. In case of an adopted child, the parents by adoption shall inherit as if they were the natural parents. [C51,§1410; R60,§2495; C73, §2455; C97,§3379; S13,§§3379, 3381-a; C24, 27, 31, 35, 39,§12017; C46, 50, 54,§636.32]

**636.33 Appraisal.** Prior to the settlement of every such estate in which there is a surviving spouse it shall be the duty of the court to appoint three competent, disinterested appraisers, whose duty it shall be, after first being duly sworn, to appraise such estate and to make their report to the court, duly verified, at such time as the court may direct by order. In such appraisement, the homestead, if any, shall be appraised separately. [C24, 27, 31, 35, 39,§12018; C46, 50, 54,§636.33]

Appraisalment for inheritance tax, §450.24 et seq.

**636.34 Procedure determined by court.** The court shall at the time it appoints such appraisers, determine the kind of notice, the time for appearance, the method of service, whether by publication or otherwise. [C24, 27, 31, 35, 39,§12019; C46, 50, 54,§636.34]

37GA, ch 250,§3, editorially divided

**636.35 Notice.** Said notice shall designate the names of such appraisers, the time and place of such appraisement, and the date on which such appraisers shall file with the clerk of the court the report of their appraisement, directed to all persons interested in such appraisement. [C24, 27, 31, 35, 39,§12020; C46, 50, 54,§636.35]

**636.36 Objections.** All persons interested in and having objections to such report and appraisement, shall appear thereto and file their objections before noon of the second day after the day fixed in said notice for the filing of the report of such appraisement. [C24, 27, 31, 35, 39,§12021; C46, 50, 54,§636.36]

**636.37 Trial.** Such objections, if any, shall be tried to the court as in equity, and the final order of the court in the matter of such appraisement shall have the same force and effect as a decree of the court in equity. [C24, 27, 31, 35, 39,§12022; C46, 50, 54,§636.37]

**636.38 Right of spouse to select property.** Thereafter, and after the payment of debts and costs of administration, the surviving spouse shall have the right to select from the property so appraised, at its appraised value so fixed, property equal to the sum of fifteen thousand dollars in value, which selection shall be in writing filed with the clerk of the court. [C24, 27, 31, 35, 39,§12023; C46, 50, 54,§636.38]

**636.39 Surviving parent.** If one of the parents is dead, the portion which would have gone to such deceased parent shall go to the

survivor, including the portion which would have belonged to the intestate's spouse, had one been living. [C51,§1411; R60,§2496; C73, §2456; C97,§3380; C24, 27, 31, 35, 39,§12024; C46, 50, 54,§636.39]

**636.40 Heirs of parents.** If both parents are dead, the portion which would have fallen to their share by the above rules shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on, through ascending ancestors and their issue. [R60,§2497; C73,§2457; C97, §3381; C24, 27, 31, 35, 39,§12025; C46, 50, 54, §636.40]

**636.41 Spouse and heirs.** If heirs are not thus found, the portion uninherited shall go to the spouse of the intestate, or the heirs of such spouse if dead, according to like rules, and if such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead, such heirs taking by right of representation. [C51,§1413; R60,§2439; C73,§2458; C97,§3382; C24, 27, 31, 35, 39,§12026; C46, 50, 54,§636.41]

**636.42 Heirs of parents by adoption.** If the adopted parent or parents, if more than one, be dead, the portion which would have gone to such parent or parents had they or either of them survived the intestate, shall be disposed of in the same manner as if such parent or parents had outlived the intestate and died in possession of such share, and so on through their ascending ancestors. [S13,§3381-b; C24, 27, 31, 35, 39,§12027; C46, 50, 54,§636.42]

**636.43 Natural parents.** If heirs are not thus found, the portion thus uninherited shall go to the natural parents of the intestate, and in case of their death then to their heirs under the ordinary rules of descent. [S13,§3381-c; C24, 27, 31, 35, 39,§12028; C46, 50, 54,§636.43]

**636.44 Advancements.** Property given by an intestate by way of advancement to an heir, for the purposes of the division and distribution thereof shall be considered part of the estate, and be taken by him toward his share of the estate at what it would be worth if in the condition in which it was given to him, but if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof. [C51, §§1419, 1420; R60,§§2445, 2446; C73,§2459; C97, §3383; C24, 27, 31, 35, 39,§12029; C46, 50, 54, §636.44]

Gifts inter vivos, ch 565

**636.45 Illegitimate children — inherit from mother.** Illegitimate children inherit from their mother, and she from them. [C51,§1415; R60, §2441; C73,§2465; C97,§3384; C24, 27, 31, 35, 39,§12030; C46, 50, 54,§636.45]

**636.46 From father.** They shall inherit from the father when the paternity is proven during

his life, or they have been recognized by him as his children; but such recognition must have been general and notorious, or else in writing. Under such circumstances, if the recognition has been mutual, the father may inherit from his illegitimate children. [C51, §§1416, 1417; R60,§§2442, 2443; C73,§§2466, 2467; C97,§3385; C24, 27, 31, 35, 39,§12031; C46, 50, 54, §636.46]

Paternity determined, ch 675

**636.47 Feloniously causing death.** No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him, any portion of his estate. [C97,§3386; S13, §3386; C24, 27, 31, 35, 39,§12032; C46, 50, 54, §636.47]

S13,§3386, editorially divided  
Referred to in §636.49

**636.48 Insurance beneficiary feloniously causing death.** No beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate. [C97,§3386; S13,§3386; C24, 27, 31, 35, 39,§12033; C46, 50, 54,§636.48]

Referred to in §636.49

**636.49 Distribution to other heirs or insured.** In every instance mentioned in sections 636.47 and 636.48, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled shall become subject to distribution among the other heirs of such deceased person, according to the foregoing rules of descent and distribution in case of death, and in case of disability the benefits thereunder shall be paid to the disabled person. [C97, §3386; S13,§3386; C24, 27, 31, 35, 39,§12034; C46, 50, 54,§636.49]

**636.50 Escheat.** If there is property remaining uninherited, it shall escheat to the state. [C51,§1414; R60,§2440; C73,§2460; C97, §3387; C24, 27, 31, 35, 39,§12035; C46, 50, 54, §636.50]

Payable to county treasurer, see §302.2

**636.51 Proceedings for escheat.** When the judge or clerk of the district court has reason to believe that any property of the estate of an intestate within the county should by law escheat, he must forthwith inform the state comptroller thereof, and appoint some suitable person administrator to take charge of such property, unless an executor or administrator has already been appointed for that purpose in some county in the state. [C51, §1443; R60,§2468; C73,§2461; C97,§3388; C24, 27, 31, 35, 39,§12036; C46, 50, 54,§636.51]



**636.52 Notice to persons interested.** The administrator must give such notice of the death of the deceased and the amount and kind of property left by him within the state as, in the opinion of the judge or clerk appointing him, will be best calculated to notify those interested, or supposed to be interested, in the property. [C51,§1444; R60,§2469; C73, §2462; C97,§3389; C24, 27, 31, 35, 39,§12037; C46, 50, 54,§636.52]

**636.53 Sale—proceeds.** If within six months from the giving of such notice no claimant thereof appears, such property may be sold and the proceeds, under the direction of the state comptroller, paid over by the administrator for the benefit of the school fund. If real estate, the sale shall be conducted and the proceeds treated like those of school lands. [C51,§1445; R60,§2470; C73,§2463; C97,§3390; C24, 27, 31, 35, 39,§12038; C46, 50, 54,§636.53]

**636.54 Payment to person entitled.** The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing himself entitled thereto. [C51,§1446; R60,§2471; C73,§2464; C97,§3391; C24, 27, 31, 35, 39,§12039; C46, 50, 54,§636.54]

**636.55 Land patented to person deceased.** Where a patent has been or may be issued by the state to a person who had died, or who dies before the date of such patent, the title to the land patented shall inure to and vest in the heirs, devisees, or assignees of such patentee, as if the patent had issued to him during his life. [C97,§3392; C24, 27, 31, 35, 39,§12040; C46, 50, 54,§636.55]

## CHAPTER 637

### UNIFORM SIMULTANEOUS DEATH ACT

637.1 No sufficient evidence of survivorship.  
637.2 Beneficiaries of another person's disposition of property.  
637.3 Joint tenants or tenants by the entirety.  
637.4 Insurance policies.

637.5 Chapter not retroactive.  
637.6 Does not apply if decedent provides otherwise.  
637.7 Uniformity of interpretation.  
637.8 Short title.

**637.1 No sufficient evidence of survivorship.** Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. [C46, 50, 54,§637.1]

**637.2 Beneficiaries of another person's disposition of property.** Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived. [C46, 50, 54,§637.2]

**637.3 Joint tenants or tenants by the entirety.** Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. [C46, 50, 54,§637.3]

**637.4 Insurance policies.** Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [C46, 50, 54,§637.4]

**637.5 Chapter not retroactive.** This chapter shall not apply to the distribution of the property of a person who has died before it takes effect.\* [C46, 50, 54,§637.5]

\*50GA, ch 274, effective July 4, 1943

**637.6 Does not apply if decedent provides otherwise.** This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter. [C46, 50, 54,§637.6]

**637.7 Uniformity of interpretation.** This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it. [C46, 50, 54,§637.7]

**637.8 Short title.** This chapter may be cited as the "Uniform Simultaneous Death Act." [C46, 50, 54,§637.8]

Constitutionality, 50GA, ch 274,§10  
Omnibus repeal, 50GA, ch 274,§9

## CHAPTER 638

## ACCOUNTING OF EXECUTORS AND ADMINISTRATORS

- 638.1 Reference — examination of accounts — fees.  
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**638.1 Reference—examination of accounts —fees.** In matters of accounts of executors and administrators, the court may appoint a referee, which referee, in all counties having a population of less than one hundred thousand shall, whenever in the opinion of the court it seems fit and proper, be the clerk of the district court of the county in which the estate is being probated, as referee, who shall have the powers and perform all the duties therein of referees appointed by the court in a civil action. All fees received by any county officer as such referee shall become a part of the fees of his office and shall be accounted for as such. [C73,§2412; C97,§3393; C24, 27, 31, 35, 39,§12041; C46, 50, 54,§638.1]

Referees, R.C.P. 207

**638.2 First report.** On the expiration of six and within seven months from the first publication or notice of his appointment, and sooner if required by the court, the executor or administrator shall render his account to the court, showing the condition of the estate, its debts and effects, the amount of money received, and the disposition made of it. [C51, §1422; R60,§2447; C73,§2469; C97,§3394; C24, 27, 31, 35, 39,§12042; C46, 50, 54,§638.2]

C97,§3394, editorially divided

**638.3 Additional reports.** From time to time, as may be required by the court, he shall render further accounts until the estate is finally settled. Such account shall embrace all matters directed by the court and pertinent to the subject. [C51,§§1422, 1423; R60,§§2447, 2448; C73,§2469; C97,§3394; C24, 27, 31, 35, 39, §12043; C46, 50, 54,§638.3]

**638.4 Final settlement — time limit.** Said final settlement shall be made within three

years, unless otherwise ordered by the court. [C73,§2469; C97,§3394; C24, 27, 31, 35, 39,§12044; C46, 50, 54,§638.4]

**638.5 Examination of executor.** He may be examined under oath by the court upon any matter relating to his accounts, when the vouchers and proofs in relation thereto are not sufficiently full and satisfactory. [C51, §1424; R60,§2449; C73,§2470; C97,§3395; C24, 27, 31, 35, 39,§12045; C46, 50, 54,§638.5]

C97,§3395, editorially divided

**638.6 Accounting at inventoried value.** He must account for all the property inventoried at the price at which it was appraised, as well as for all other property coming into his hands belonging to the estate. [C51,§1425; R60, §2450; C73,§2471; C97,§3395; C24, 27, 31, 35, 39, §12046; C46, 50, 54,§638.6]

**638.7 Presumption from appraisement.** The appraisement shall be presumptive evidence of the value of an article and so regarded, either for or against him. [C51,§1426; R60, §2451; C73,§2472; C97,§3396; C24, 27, 31, 35, 39, §12047; C46, 50, 54,§638.7]

**638.8 Profit and loss.** He shall derive no profit from the sale of property for a higher price than the appraisement, nor is he chargeable with any loss occurring without his fault. [C51,§1427; R60,§2452; C73,§2473; C97,§3397; C24, 27, 31, 35, 39,§12048; C46, 50, 54,§638.8]

**638.9 Mistakes corrected.** Mistakes in settlements may be corrected in the probate court at any time before his final settlement and discharge, and after that time by equitable proceedings, on showing such grounds as will justify the interference of the court. [C51,

§1432; R60,§2457; C73,§2474; C97,§3398; C24, 27, 31, 35, 39,§12049; C46, 50, 54,§638.9]

**638.10 Settlement contested.** Any person interested in the estate may attend upon the settlement of his accounts and contest the same. [C51,§1431; R60,§2456; C73,§2475; C97,§3399; C24, 27, 31, 35, 39,§12050; C46, 50, 54, §638.10]

C97,§3399, editorially divided  
Guardian ad litem, §638.37

**638.11 Opening settlement.** Accounts settled in the absence of any person adversely interested, and without notice to him, may be opened within three months on his application. [C51,§1431; R60,§2456; C73,§2475; C97,§3399; C24, 27, 31, 35, 39,§12051; C46, 50, 54,§638.11]

**638.12 Discharge.** Upon final settlement, an order shall be entered discharging him from further duties and responsibilities. [C51,§1434; R60,§2459; C73,§2476; C97,§3400; C24, 27, 31, 35, 39,§12052; C46, 50, 54,§638.12]

**638.13 Judgment—execution.** If judgment is rendered against an executor or administrator for costs in any action prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appears to the court that such action was prosecuted or defended without reasonable cause. In other cases, the execution shall be awarded against him in his representative capacity only. [C51,§1433; R60,§2458; C73,§2477; C97,§3401; C24, 27, 31, 35, 39,§12053; C46, 50, 54, §638.13]

**638.14 Receipts by one executor.** One of the several executors or administrators may receive and receipt for any money, which receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for by himself, and this shall not charge his coexecutor or coadministrator, except so far as it can be shown to have come into his hands. [C51,§1442; R60,§2467; C73,§2478; C97,§3402; C24, 27, 31, 35, 39,§12054; C46, 50, 54,§638.14]

**638.15 Notice of order—publication.** When the court shall make an order affecting an executor or administrator, and it cannot be personally served upon him, service thereof may be made by publication of a notice, stating the substance of such order, in some newspaper published in the county where such order was made, once each week, for four weeks in succession, which publication may be proved as in case of original notice. [R60,§§2474, 2475; C73,§§2479, 2480; C97,§3403; S13,§3403; C24, 27, 31, 35, 39,§12055; C46, 50, 54,§638.15]

**638.16 Effect.** Service as above shall be as effectual as if personally made, and actions and proceedings may be commenced and prosecuted in all respects as if such notices or orders had been personally served. [R60,§2476; C73,§2481; C97,§3404; C24, 27, 31, 35, 39,§12056; C46, 50, 54,§638.16]

**638.17 Failure to account.** Any executor or administrator failing to account, upon being required to do so by the court or as he is required to do by law, shall, for every such failure, forfeit one hundred dollars, to be recovered in a civil action on his bond for the benefit of the estate by anyone interested therein. [C51,§1428; R60,§2453; C73,§2482; C97,§3405; C24, 27, 31, 35, 39,§12057; C46, 50, 54, §638.17]

**638.18 Executor of executor.** An executor or administrator has no authority to act in a matter wherein his decedent was merely executor, administrator, or trustee. [C51,§1438; R60,§2463; C73,§2483; C97,§3406; C24, 27, 31, 35, 39,§12058; C46, 50, 54,§638.18]

**638.19 Executors in their own wrong.** Any person who, without being regularly appointed as executor or administrator, intermeddles with the property of a deceased person, is responsible only to the regular executor or administrator, when appointed, for the value of all property taken or received by him, and for all damage caused by his acts to the estate of the deceased. [C51,§1439; R60,§2464; C73,§2484; C97,§3407; C24, 27, 31, 35, 39,§12059; C46, 50, 54,§638.19]

**638.20 Action against heirs and devisees—costs—tender.** In an action against the heirs and devisees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he was the sole defendant. [C51,§§1440, 1441; R60,§§2465, 2466; C73,§§2485, 2486; C97,§3408; C24, 27, 31, 35, 39,§12060; C46, 50, 54,§638.20]

**638.21 Specific performance—how enforced.** When a person who is under such obligation to convey real estate as might have been enforced against him, if living, dies before making such conveyance, the court may enforce a specific performance of such contract by the executor or administrator, and require him to execute the conveyance accordingly, and it shall not be necessary to make any other than the executor or administrator party defendant to such proceedings in the first instance, but the court in its discretion may direct other persons interested to be made parties, and may cause them to be notified thereof in such manner as it may think expedient, or the heirs and devisees, upon their own motion, may at any time be made defendants, and such conveyances may be authorized upon the petition of the executor or administrator. [C51,§§1435, 1436; R60,§§2460, 2461; C73,§§2487, 2488; C97,§3409; C24, 27, 31, 35, 39,§12061; C46, 50, 54, §638.21]

**638.22 Executors considered as one.** In an action against several executors or administrators, they shall be considered one person, and

judgment may be taken and execution issued against all as such, although only part were served with notice. [C51,§1437; R60,§2462; C73, §2489; C97,§3410; C24, 27, 31, 35, 39,§12062; C46, 50, 54,§638.22]

**638.23 Compensation.** Executors and administrators shall be allowed such reasonable fee as may be determined by the court, for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory for Iowa inheritance tax purposes which shall be received as full compensation for all ordinary services:

For the first one thousand dollars, six percent.

For the overplus between one and five thousand dollars, four percent.

For all sums over five thousand dollars, two percent. [C51,§1429; R60,§2454; C73,§2494; C97, §3415; C24, 27, 31, 35, 39,§12063; C46, 50, 54, §638.23; 57GA, ch 270,§1]

38GA, ch 391,§1, editorially divided

**638.24 Attorney fee.** There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the administrator's or executor's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for administrators and executors. [C24, 27, 31, 35, 39,§12064; C46, 50, 54,§638.24]

**638.25 Expenses and extraordinary services.** Such further allowances as are just and reasonable may be made by the court to administrators, executors, and their attorneys for actual necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate and tax matters. [C51,§1430; R60,§2455; C73,§2495; C97, §3415; C24, 27, 31, 35, 39,§12065; C46, 50, 54, §638.25]

**638.26 Itemized claims required.** The court shall allow and fix from time to time the compensation of guardians, trustees, and receivers and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of from time to time during the period of time they continue to act in such capacities. [C31, 35,§12065-d1; C39,§12065.1; C46, 50, 54,§638.26]

**638.27 Affidavit relative to compensation.** In no case shall the compensation of executors, administrators, guardians, trustees, receivers, and their attorneys be allowed or paid until there shall have been filed with the clerk of the district court in which administration of the estate is pending an affidavit of the executor, administrator, guardian, trustee, receiver, or attorney as the case may be stating that there is no contract, agreement, or arrangement, either oral or written, express or im-

plied, contemplating any division of compensation for such services, or participation therein, directly or indirectly, by any other person, firm, or corporation with such executor, administrator, guardian, trustee, receiver, or attorney unless it be with a regular and bona fide law partner or with one jointly serving with them in the same capacity in relation to the estate in which such compensation is allowed, in which event the affidavit shall show such fact. [C31, 35,§12065-d2; C39,§12065.2; C46, 50, 54,§638.27]

Referred to in §638.28

**638.28 Affidavit for corporate fiduciary.** In any case where a corporation is acting as a fiduciary under and by virtue of the provisions of chapter 532, the affidavit required by section 638.27 shall be executed and made by the president or some executive officer of such corporation. [C31, 35,§12065-d3; C39,§12065.3; C46, 50, 54,§638.28]

**638.29 Removal of executor.** After letters testamentary, of special administration, or of administration with the will annexed, or general administration, shall have been granted to any person, he may be removed by the court or judge thereof, when the interests of the estate require it, for any of the following causes:

1. When by reason of age, continued sickness, imbecility, or change of residence, or any other cause, he becomes incapable of discharging his trust in such manner as the interest and proper management of the estate may require.

2. When he shall fail or refuse to return inventories or accounts of sales of the estate, or to make reports of the condition thereof, or fails or refuses to comply with any order of the court or judge thereof, or fails to seasonably apply for authority to sell personal or real estate for the payment of debts or claims against the estate when it shall be necessary for him to do so, or fails or refuses to discharge any of the duties prescribed for him by law, or shall be guilty of any waste or maladministration of the estate, or where for any other reason it appears for the best interests of the estate.

3. Where it is shown to the court or judge thereof by his sureties that he has become or is likely to become insolvent, in consequence of which such sureties have suffered or will suffer loss. [C51,§1306; R60,§2338; C73, §2496; C97,§3416; C24, 27, 31, 35, 39,§12066; C46, 50, 54,§638.29]

**638.30 Petition.** Petition for the removal of executors or administrators, or for the purpose of requiring additional sureties, shall be filed in the court from which the letters were issued by any person interested in the estate, which petition must be verified by oath, and specify the grounds of complaint. [C73, §2497, 2498; C97,§3417; C24, 27, 31, 35, 39, §12067; C46, 50, 54,§638.30]

**638.31 Citation—how served.** Upon the filing of such petition, a citation shall issue to the person complained of, requiring him to appear and answer the complaint, and if he is not a resident of the county where it is made, notice thereof shall be served upon him in such manner as the court or judge thereof or clerk may direct. [C73, §§2499, 2500; C97, §3418; C24, 27, 31, 35, 39, §12068; C46, 50, 54, §638.31]

**638.32 Property delivered — penalty.** Upon the removal of any executor or administrator, he shall be required by order of the court or judge to deliver to the person who may be entitled thereto all the property in his hands or under his control belonging to the estate, and if he fails or refuses to comply with any proper order of the court, he may be committed to the jail of the county until he does. [C73, §§2501, 2502; C97, §3419; C24, 27, 31, 35, 39, §12069; C46, 50, 54, §638.32]

**638.33 Probate reports—accounts.** Each report of an executor, administrator, guardian, or trustee shall be self-explanatory, so that the clerk or court, from a perusal thereof, may understand the matter in hand without explanations or being compelled to examine or refer to other papers in the case. All accountings must state the debit and credit and show the balances. Guardians' and trustees' accounts must show the amount of interest earned since appointment or last report, and how and upon what security the trust fund is invested. All reports and accounts must be verified. [C97, §3420; C24, 27, 31, 35, 39, §12070; C46, 50, 54, §638.33]

Similar provision, §638.35

**638.34 Final report.** Each executor or administrator shall, in his final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating its nature and extent.

2. Whether the deceased died testate or intestate.

3. The name, age, and place of residence of the surviving spouse, or that none survived the deceased.

4. The name, age, and place of residence of each of the heirs and their relationship to the deceased.

5. The name, age, and place of residence of each legatee or devisee, and whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

6. The name of the guardian or trustee for any heir, legatee, or devisee and the court from which his letters were issued. [C73, §2491; C97, §3412; C24, 27, 31, 35, 39, §12071; C46, 50, 54, §638.34]

Fiduciaries' reports, §§422.27, 632.33 et seq.

**638.35 Orders in probate—applications.** All applications for orders in probate must be made in writing, verified and self-explanatory, so that the clerk or court from a perusal

thereof may understand the relief sought without explanations. [C97, §3421; C24, 27, 31, 35, 39, §12072; C46, 50, 54, §638.35]

Similar provision, §638.33

**638.36 Notice of application for discharge.** Unless notice be waived in writing, no administrator, executor, guardian, or trustee shall be discharged from further duty or responsibility upon final settlement, until notice of the application shall have been served upon all persons interested as required for the commencement of a civil action, unless a different service be ordered by the court or judge, which order may be made before or after filing the final report. [C97, §3422; C24, 27, 31, 35, 39, §12073; C46, 50, 54, §638.36]

**638.37 Attorney appointed for minors and persons not represented.** At or before the hearing of petitions and contests for the probate of wills, letters testamentary or of administration, for sales of real estate and confirmation thereof, settlements and distributions of estates, and all other proceedings in this title, where all the parties interested in the estate are required to be notified thereof, the court in its discretion may appoint some competent attorney at law to represent therein the devisees, legatees, heirs, or creditors of the decedent who are minors and have no general guardian in the county, or who are nonresidents of the state, and those interested who, though they are neither minors nor nonresidents, are unrepresented. [C97, §3423; C24, 27, 31, 35, 39, §12074; C46, 50, 54, §638.37]

C97, §3423, editorially divided

**638.38 Order and authority thereunder.** The order making the appointment must specify the names of the parties, so far as known, for whom the attorney is appointed, and he will be authorized to represent such parties in all such proceedings subsequent to his appointment. [C97, §3423; C24, 27, 31, 35, 39, §12075; C46, 50, 54, §638.38]

**638.39 Compensation.** He shall be paid for his services out of the estate, as a part of the cost of administration, a fee to be fixed by the court, and upon distribution it may be charged to the party represented by him. [C97, §3423; C24, 27, 31, 35, 39, §12076; C46, 50, 54, §638.39]

**638.40 Substitution — division of fee.** The court may substitute another attorney for the one first appointed, in which case the fees must be divided in proportion to the services rendered. [C97, §3423; C24, 27, 31, 35, 39, §12077; C46, 50, 54, §638.40]

**638.41 Small legacies to minors or incompetents—payment.** Whenever a minor or an incompetent shall become entitled under the terms of a will to a bequest or legacy, or to a distributive share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution thereof, and the value of such bequest, legacy, distributive share, or interest shall not exceed the sum of five hun-

dred dollars, and no legal guardian of the person or property of such minor or incompetent has been heretofore appointed, the district court having jurisdiction of the distribution of such funds may in its discretion, upon the application of the executor, administrator, or trustee, as the case may be, enter an order authorizing such executor, administrator, or trustee to pay such bequest, legacy, share, or interest to the parents or natural guardian of such minor or incompetent, or to the person

with whom such minor or incompetent resides, for the use of such minor or incompetent, and the receipt of such person or persons therefor, when presented to the court or filed with the report of distribution of any such executor, administrator, or trustee, shall have the same force and effect as though such payment had been made to a duly appointed and qualified legal guardian of the person or property of such minor or incompetent. [C39,§12077.1; C46, 50, 54,§638.41]

# TITLE XXXIII

## PARTICULAR ACTIONS AND SPECIAL PROCEEDINGS

### CHAPTER 639

#### ATTACHMENT

Referred to in §445.4

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**639.1 Method.** The plaintiff in a civil action may cause the property of the defendant not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed. [C51,§1846; R60,§3172; C73,§2949; C97,§3876; C24, 27, 31, 35, 39,§12078; C46, 50, 54,§639.1]

**639.2 Proceedings auxiliary.** If it be subsequent to the commencement of the action, a separate petition or an amendment to the petition must be filed, and in all cases the pro-

ceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto. [C51,§1847; R60,§3173; C73,§2950; C97,§3877; C24, 27, 31, 35, 39,§12079; C46, 50, 54,§639.2]

**639.3 Grounds.** The petition or amendment to petition which asks an attachment, must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such.

2. That he is a nonresident of the state.

3. That he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts.

4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors.

5. That the defendant is about to dispose of his property with intent to defraud his creditors.

6. That he has absconded, so that the ordinary process cannot be served upon him.

7. That he is about to remove permanently out of the county, and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff.

8. That he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.

9. That he is about to remove his property or a part thereof out of the county with intent to defraud his creditors.

10. That he is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors.

11. That he has property or rights in action which he conceals.

12. That the debt is due for property obtained under false pretenses. [C51,§1848; R60, §3174; C73,§2951; C97,§3878; C24, 27, 31, 35, 39, §12080; C46, 50, 54,§639.3]

C97,§3878, editorially divided

**639.4 Alternative statement of grounds.** The causes for the attachment shall not be stated in the alternative. [R60,§3242; C73,§3021; C97, §3878; C24, 27, 31, 35, 39,§12081; C46, 50, 54, §639.4]

**639.5 Issued on Sunday.** Where the petition states, in addition to the other facts required, that the plaintiff will lose his claim unless the attachment issues and is served on Sunday, it may be issued and served on that day. [C73, §2952; C97,§3879; C24, 27, 31, 35, 39,§12082; C46, 50, 54,§639.5]

Analogous or related provisions, §§605.18, 626.6, 643.3, 667.3, and R.C.P. 57

**639.6 On contract — amount due.** If the plaintiff's demand is founded on contract, the petition must state that something is due, and, as nearly as practicable, the amount, which must be more than five dollars in order to authorize an attachment. [C51,§1849; R60,§3175; C73,§2953; C97,§3880; C24, 27, 31, 35, 39,§12083; C46, 50, 54,§639.6]

**639.7 Value of property attached.** The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in value than that amount. [C51,§1850; R60,§3176; C73,§2954; C97,§3881; C24, 27, 31, 35, 39,§12084; C46, 50, 54, §639.7]

**639.8 Allowance of value in other cases.** If the demand is not founded on contract, the original petition must be presented to some judge of the supreme or district court, or the judge of the court from which the issuance of a writ of attachment is sought, who shall make an allowance thereon of the amount in value of the property that may be attached. [C51,§1851; R60,§3177; C73,§2955; C97,§3882; C24, 27, 31, 35, 39,§12085; C46, 50, 54,§639.8]

**639.9 For debts not due — grounds.** The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states one or more of the following grounds:

1. That the defendant is about to dispose of his property with intent to defraud his creditors.

2. That he is about to remove or has removed from the state, and refuses to secure the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time the debt was contracted.

3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors.

4. That the debt was incurred for property obtained under false pretenses. [C51,§1852; R60,§3178; C73,§2956; C97,§3883; C24, 27, 31, 35, 39,§12086; C46, 50, 54,§639.9]

**639.10 Appearance—judgment —perishable property.** If, at the time of the service of the attachment, the claim upon which suit is brought is not due, the defendant need not appear in the action until the maturity of the demand, unless he elects to plead, in which event the cause shall stand for trial when it is reached in its regular order, and no final judgment shall be rendered therein before the maturity of the debt unless such election is made, but if perishable property is levied upon, it may be sold as in other attachment cases. [R60,§§3179, 3180; C73,§§2957, 2958; C97,§3884; C24, 27, 31, 35, 39,§12087; C46, 50, 54,§639.10]

**639.11 Bond.** In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case, except in a class B case in municipal court, less than two hundred fifty dollars in a court of record, or less than fifty dollars if in a justice court or a class B case in municipal court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment. [C51,§1853; R60,§3181; C73,§2959; C97,§3885; C24, 27, 31, 35, 39,§12088; C46, 50, 54,§639.11]

**639.12 Bond for levy on real property only.** In any case where only real property is sought to be attached, the plaintiff shall file such bond



in a penalty to be fixed by the court or the clerk, and in such cases, the clerk shall issue a writ thereunder and shall direct therein that real property only shall be attached. [C31, 35, §12088-d1; C39, §12088.1; C46, 50, 54, §639.12]

**639.13 Additional security.** The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied that the surety on the plaintiff's bond has removed from the state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time, to be fixed by the court or judge, security is given by the plaintiff. [R60, §3182; C73, §2960; C97, §3886; C24, 27, 31, 35, 39, §12089; C46, 50, 54, §639.13]

**639.14 Action on bond.** In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorney's fees to be fixed by the court; and if it be shown such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [C51, §1854; R60, §3183; C73, §2961; C97, §3887; C24, 27, 31, 35, 39, §12090; C46, 50, 54, §639.14]

Referred to in §445.4

**639.15 Remedy for falsely suing out—counterclaim.** The fact stated as a cause of attachment shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but he may in his discretion sue thereon by way of counterclaim, and in such case shall recover damages as in an original action on such bond. [R60, §3238; C73, §3017; C97, §3888; C24, 27, 31, 35, 39, §12091; C46, 50, 54, §639.15]

**639.16 Writ to sheriff.** The clerk shall issue a writ of attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated. [C51, §1856; R60, §3185; C73, §2962; C97, §3889; C24, 27, 31, 35, 39, §12092; C46, 50, 54, §639.16]

**639.17 Several writs to different counties.** Attachments may be issued from the district court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court. [C51, §1855, 1858; R60, §3184; C73, §2963; C97, §3890; C24, 27, 31, 35, 39, §12093; C46, 50, 54, §639.17]

C97, §3890, editorially divided

**639.18 Surplus levy.** If more property is attached in the aggregate than the plaintiff is entitled to, the surplus must be abandoned, and

the plaintiff pay all costs incurred in relation to such surplus. [C51, §1858; R60, §3184; C73, §2963; C97, §3890; C24, 27, 31, 35, 39, §12094; C46, 50, 54, §639.18]

**639.19 Property attached.** The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable. [C51, §1857; R60, §3186; C73, §2964; C97, §3891; C24, 27, 31, 35, 39, §12095; C46, 50, 54, §639.19]

**639.20 Several attachments.** Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [R60, §3187; C73, §2965; C97, §3892; C24, 27, 31, 35, 39, §12096; C46, 50, 54, §639.20]

**639.21 Following property.** If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal. [R60, §3188; C73, §2966; C97, §3893; C24, 27, 31, 35, 39, §12097; C46, 50, 54, §639.21]

Analogous provisions, §§643.8, 643.9

**639.22 Corporation stock.** Stock or interest owned by the defendant in any company is attached by notifying the president or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached. [C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3894; C24, 27, 31, 35, 39, §12098; C46, 50, 54, §639.22]

See §493A.13

**639.23 Judgments—money—things in action.** Judgments, money, bank bills, and other things in action may be levied upon by the officer under an attachment in the same manner as levies are made under execution, except that notice of such levy shall be given as in levies by attachment, and after judgment such property shall be sold, appropriated, or transferred as provided for in the chapter on executions. [C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3895; C24, 27, 31, 35, 39, §12099; C46, 50, 54, §639.23]

Levy on judgments, moneys, etc., §§626.21, 626.22

**639.24 Property in possession of another.** Property of defendant in possession of another, and of which defendant is entitled to the immediate possession, may be seized under attachment by taking possession thereof, in the same manner as though found in the defendant's possession. [C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3896; C24, 27, 31, 35, 39, §12100; C46, 50, 54, §639.24]

**639.25 Garnishment.** Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided. [C51, §1859,

1860; R60,§3194; C73,§2967; C97,§3897; C24, 27, 31, 35, 39,§12101; C46, 50, 54,§639.25]

Garnishment, ch 642

**639.26 When property bound.** Property capable of manual delivery, and attached otherwise than by garnishment, is bound thereby from the time manual custody thereof is taken by the officer under the attachment. [C51, §§1859, 1860, 1874; R60, §§3194, 3215; C73, §§2967, 2969; C97, §3898; C24, 27, 31, 35, 39, §12102; C46, 50, 54, §639.26]

Analogous provision, R.C.P. 258

**639.27 Real estate.** Real estate or equitable interests therein may be attached. [R60, §3243; C73, §3022; C97, §3899; C24, 27, 31, 35, 39, §12103; C46, 50, 54, §639.27]

C97, §3899, editorially divided

**639.28 Lien.** The levy shall be a lien thereon from the time of an entry made and signed by the officer making the same upon the encumbrance book in the office of the clerk of the county in which the land is situated, showing the levy, the date thereof, name of the county from which the attachment issued, title of the action, and a description of the land levied on. [R60, §3243; C73, §3022; C97, §3899; C24, 27, 31, 35, 39, §12104; C46, 50, 54, §639.28]

Analogous provision, §626.20

**639.29 Levy on equitable interest.** In case of a levy upon any equitable interest in real estate, such entry shall show, in addition to the foregoing matters, the name of the person holding the legal title, and the owner of the alleged equitable interest, where known. [C97, §3899; C24, 27, 31, 35, 39, §12105; C46, 50, 54, §639.29]

**639.30 Lands fraudulently conveyed.** The grantor of real estate conveyed in fraud of creditors shall, as to such creditors, be deemed the equitable owner thereof, and such interest may be attached as above provided, when the petition alleges such fraudulent conveyance and the holder of the legal title is made a party to the action. [C97, §3899; C24, 27, 31, 35, 39, §12106; C46, 50, 54, §639.30]

Conveyances annulled in auxiliary proceedings, §630.16

**639.31 Notice to defendant—return.** When any property is attached, the officer making the levy shall at once give written notice thereof to the defendant, if found within the county in which the levy is made, and the fact of the giving of such notice, or that the defendant is not found within the county, shall be shown by the officer's return. [C51, §§1859, 1860; R60, §3194; C73, §2967; C97, §3900; C24, 27, 31, 35, 39, §12107; C46, 50, 54, §639.31]

C97, §3900, editorially divided

**639.32 Notice to party in possession.** A like notice shall be given to the party in possession of the property attached. [C51, §1860; R60, §3194; C73, §2967; C97, §3900; C24, 27, 31, 35, 39, §12108; C46, 50, 54, §639.32]

**639.33 Service when party absent.** If the party required to be notified is not found at his usual place of business or residence, such notice may be served upon a member of his family over fourteen years of age at such place. [C97, §3900; C24, 27, 31, 35, 39, §12109; C46, 50, 54, §639.33]

**639.34 Examination of defendant.** Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the judge of any court by affidavit that the defendant has property within the state not exempt, the defendant may be required by such judge to attend before him, or before the court in which the action is pending, or a commissioner appointed for that purpose, and give information on oath respecting his property. [R60, §3189; C73, §2968; C97, §3901; C24, 27, 31, 35, 39, §12110; C46, 50, 54, §639.34]

**639.35 Money paid clerk.** All money attached by the sheriff, or coming into his hands by virtue of the attachment, shall forthwith be paid over to the clerk, to be by him retained till the further action of the court. [C51, §§1875, 1882; R60, §3217; C73, §2971; C97, §3902; C24, 27, 31, 35, 39, §12111; C46, 50, 54, §639.35]

**639.36 Other property.** The sheriff shall make such disposition of other attached property as may be directed by the court or judge, and, where there is no direction upon the subject, he shall safely keep the property subject to the order of the court. [R60, §3218; C73, §2972; C97, §3903; C24, 27, 31, 35, 39, §12112; C46, 50, 54, §639.36]

**639.37 Common, joint, or partnership property.** In executing an attachment against a person who owns property jointly or in common with another, or who is a member of a partnership, the officer may take possession of such property so owned jointly, in common, or in partnership, sufficiently to enable him to inventory and appraise the same, and for that purpose shall call to his assistance three disinterested persons; which inventory and appraisal shall be returned by the officer with the attachment, and such return shall state who claims to own such property. [R60, §3190; C73, §2973; C97, §3904; C24, 27, 31, 35, 39, §12113; C46, 50, 54, §639.37]

C97, §3904, editorially divided  
Analogous provisions, §626.32

**639.38 Lien acquired—action to determine interest.** The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after he obtains judgment in the action in which the attachment issued, commence action by equitable proceedings to ascertain the na-

ture and extent of such interest and to enforce the lien. [C73,§2974; C97,§3904; C24, 27, 31, 35, 39,§12114; C46, 50, 54,§639.38]

**639.39 Receiver.** If deemed necessary or proper, the court or judge may appoint a receiver under the circumstances and conditions provided in chapter 680. [C73,§2974; C97,§3904; C24, 27, 31, 35, 39,§12115; C46, 50, 54,§639.39]

**639.40 Mortgaged personal property.** Mortgaged personal property may be levied on under attachment in the method provided for levying execution thereon. [C97,§3905; C24, 27, 31, 35, 39,§12116; C46, 50, 54,§639.40]

Manner of levying, §626.34 et seq.

**639.41 Indemnifying bond.** The provisions as to notice of ownership and indemnifying bond to be given in cases of levies under execution shall in all respects be applicable to levies made under writs of attachment. [C97, §3906; C24, 27, 31, 35, 39,§12117; C46, 50, 54, §639.41]

Indemnifying bond, §626.54 et seq.

Notice of ownership, §626.50 et seq.

**639.42 Bond to discharge.** If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged, and restitution made of property taken or proceeds thereof. [R60, §3191; C73,§2994; C97,§3907; C24, 27, 31, 35, 39, §12118; C46, 50, 54,§639.42]

C97,§3907, editorially divided

Similar provisions, §§639.45, 643.12, 667.7

**639.43 Automatic appearance.** The execution of such bond shall be deemed an appearance of such defendant to the action. [R60, §3192; C73,§2994; C97,§3907; C24, 27, 31, 35, 39, §12119; C46, 50, 54,§639.43]

**639.44 Judgment on bond.** Such bond shall be part of the record. If judgment go against the defendant, the same shall be entered against him and sureties. [R60,§3193; C73, §2995; C97,§3908; C24, 27, 31, 35, 39,§12120; C46, 50, 54,§639.44]

**639.45 Delivery bond.** The defendant, or any person in whose possession any attached property is found, or any person making affidavit that he has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, or after the return of the writ, by the clerk, in a penalty at least double the value of the property sought to be released, but if that sum would exceed double the amount of the claim for which an attachment is sued out, then in such sum as equals double the amount of such claim, conditioned that such property or its appraised value shall be delivered to the sheriff, to satisfy any judgment which may be obtained against the defendant

in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court. [C51,§1876; R60,§3219; C73,§2996; C97,§3909; C24, 27, 31, 35, 39,§12121; C46, 50, 54,§639.45]

Similar provisions, §§639.42, 643.12, 667.7

**639.46 Appraisal.** To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by him to make the appraisal faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them. [C51,§§1877, 1878; R60,§3220; C73,§2997; C97,§3910; C24, 27, 31, 35, 39,§12122; C46, 50, 54, §639.46]

**639.47 Defense in action on delivery bond.** In an action brought upon such bond, it shall be a sufficient defense that the property for the delivery of which the bond was given did not, at the time of the levy, belong to the defendant against whom the attachment was issued, or was exempt from seizure under such attachment. [C51,§1879; R60,§3221; C73, §2998; C97,§3911; C24, 27, 31, 35, 39,§12123; C46, 50, 54,§639.47]

**639.48 Perishable property — examination.** When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualifications of jurors to examine the same. [C51, §1881; R60,§3222; C73,§2999; C97,§3912; S13,§3912-a; C24, 27, 31, 35, 39,§12124; C46, 50, 54,§639.48]

S13,§3912-a, editorially divided

**639.49 Notice.** The sheriff shall give the defendant, if within the county, three days notice of such hearing, and he may appear before such jury and have a personal hearing. [C51,§1881; R60,§3222; C73,§2999; C97,§3912; S13, §3912-a; C24, 27, 31, 35, 39,§12125; C46, 50, 54, §639.49]

**639.50 Determination and sale.** If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, he shall thereupon give the same notice as for sale of goods on execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives his written consent, such sale may be made without such finding. [C51,§1881; R60,§3222; C73,§2999; C97, §3912; S13,§3912-a; C24, 27, 31, 35, 39,§12126; C46, 50, 54,§639.50]

Notice of sale, §626.74 et seq.

**639.51 Sheriff's return.** The sheriff shall return upon every attachment what he has done under it, which must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisal above contemplated when such has been made. [R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §12127; C46, 50, 54, §639.51]

C97, §3923, editorially divided

**639.52 Garnishment.** When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of his return. [R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §12128; C46, 50, 54, §639.52]

**639.53 Description of real estate.** Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where he can do so, by a reference to the book and page where the deed under which the defendant holds is recorded. [R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §12129; C46, 50, 54, §639.53]

**639.54 Bonds, notices, and moneys.** He shall return with the writ all bonds taken under it, any notice of claim to such property by another than the defendant, any indemnifying bond given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to him thereunder. [R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §12130; C46, 50, 54, §639.54]

**639.55 Time of return.** Such return must be made immediately after he has attached sufficient property, or all that he can find; or, at latest, on the first day of the first term on which the defendant is notified to appear. [R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §12131; C46, 50, 54, §639.55]

**639.56 Judgment—satisfaction—special execution.** If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by him delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under his control. [R60, §3232; C73, §3011; C97, §3924; C24, 27, 31, 35, 39, §12132; C46, 50, 54, §639.56]

**639.57 Court may control property.** The court may from time to time make and enforce proper orders respecting the property, sales, and application of the money collected. [R60, §3233; C73, §3012; C97, §3925; C24, 27, 31, 35, 39, §12133; C46, 50, 54, §639.57]

**639.58 Expenses for keeping.** The sheriff shall be allowed by the court the necessary

expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs. [R60, §3234; C73, §3013; C97, §3926; C24, 27, 31, 35, 39, §12134; C46, 50, 54, §639.58]

**639.59 Surplus.** Any surplus of the attached property and its proceeds shall be returned to the defendant. [R60, §3235; C73, §3014; C97, §3927; C24, 27, 31, 35, 39, §12135; C46, 50, 54, §639.59]

**639.60 Intervention—petition.** Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or any attached debt, present his petition verified by oath to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in or lien on it, under any other attachment or otherwise, and setting forth the facts upon which the claim is founded. [R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §12136; C46, 50, 54, §639.60]

C97, §3928, editorially divided  
Intervention generally, R.C.P. 75

**639.61 Hearing and orders.** The petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may impanel a jury to inquire into the facts. If it is found that the petitioner has a title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect his rights. [R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §12137; C46, 50, 54, §639.61]

**639.62 Costs.** The costs of such proceedings shall be paid by either party at the discretion of the court. [R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §12138; C46, 50, 54, §639.62]

**639.63 Discharge on motion.** A motion may be made to discharge the attachment or any part thereof, at any time before trial, for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held. [R60, §3239; C73, §3018; C97, §3929; C24, 27, 31, 35, 39, §12139; C46, 50, 54, §639.63]

**639.64 Automatic discharge—canceling entry on encumbrance book.** If the judgment is rendered in the action for the defendant, or, if the action is dismissed by the court, by the plaintiff, or, by agreement of the parties, or, if judgment has been entered for the plaintiff and has been satisfied of record, the attachment shall, subject to the right of appeal, automatically be discharged and the property attached, or its proceeds, shall be returned to the defendant. If the attachment has been entered on the encumbrance book, it shall be the duty of the clerk to cancel such attachment, and in his entry of cancellation, he shall refer to the entry in the case showing his authority to cancel said attachment. [R60, §3236; C73, §3015;

C97,§3930; C24, 27, 31, 35, 39,§12140; C46, 50, 54, §639.64]

**639.65 Perfecting appeal from order of discharge.** When an attachment has been discharged, if the plaintiff then announces his purpose to appeal from such order of discharge, he shall have two days in which to perfect his appeal, and during that time such discharge shall not operate to divest any lien or claim under the attachment, nor shall the property be returned, and the appeal, if so perfected, shall operate as a supersedeas thereof. [R60,§3240; C73,§3019; C97,§3931; C24, 27, 31, 35, 39,§12141; C46, 50, 54,§639.65]

Perfecting appeal, R.C.P. 336 and 353

**639.66 Appeal from judgment against plaintiff.** If a judgment in the action be also given against the plaintiff, he must, within the same time, take his appeal thereon, or such discharge shall be final. [R60,§3241; C73,§3020; C97,§3932; C24, 27, 31, 35, 39,§12142; C46, 50, 54, §639.66]

**639.67 Liberal construction — amendments.** This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the

court shall give the plaintiff a reasonable time to perfect such defective proceedings. [R60, §3242; C73,§3021; C97,§3933; C24, 27, 31, 35, 39, §12143; C46, 50, 54,§639.67]

Amendments generally, R.C.P. 88 and 249

**639.68 Sheriff—constables.** The word “sheriff”, or “officer”, as used in this chapter is meant to apply to constables when the proceedings are in a justice’s court, or the like officer of any other court. [C51,§1883; R60,§3244; C73, §3023; C97,§3934; C24, 27, 31, 35, 39,§12144; C46, 50, 54,§639.68]

**639.69 Certificate of release.** When real estate or an equitable interest therein is attached in any county other than that in which the action is commenced, or is pending, and the action is dismissed, or the attachment is dissolved and discharged or satisfied, the clerk of the court of the county wherein such action is pending must issue a certificate directed to the clerk of the court in which the land is situated giving date of release and setting forth a true copy of the order or release and he shall be allowed as compensation for such service the sum of fifty cents, to be taxed as a part of the costs in the case. [S13,§3934-a; C24, 27, 31, 35, 39,§12145; C46, 50, 54,§639.69]

**639.70 Filing and recording.** The clerk of the court receiving such certificate shall file and record the same upon the margin of the encumbrance book at place where the original entry of attachment is found. [S13,§3934-b; C24, 27, 31, 35, 39,§12146; C46, 50, 54,§639.70]

## CHAPTER 640

### SPECIFIC ATTACHMENT

#### Seizure of boats or rafts, ch 667

640.1 When authorized.

640.2 Fraudulently induced sales.

640.3 Granted by court or judge—terms.

640.4 Form of writ.

640.5 Bond to discharge.

**640.1 When authorized.** In an action to enforce a mortgage of or a lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein for the security of his rights, where it satisfactorily appears by the petition, verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the state, or where plaintiff states on oath that he has reasonable cause to believe, and does believe, that unless prevented by the court the property will be sold, concealed, or removed, an attachment may be granted against the property. [R60,§3225; C73, §3000; C97,§3913; C24, 27, 31, 35, 39,§12147; C46, 50, 54,§640.1]

Referred to in §640.3

**640.2 Fraudulently induced sales.** In an action by a vendor of property fraudulently

purchased to vacate the contract and have a restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff’s claim, and is verified, an attachment against the property may be granted. [R60,§3226; C73,§3001; C97,§3914; C24, 27, 31, 35, 39,§12148; C46, 50, 54,§640.2]

Referred to in §640.3

**640.3 Granted by court or judge—terms.** The attachment in the cases mentioned in sections 640.1 and 640.2 may be granted by the court in which the action is brought, or by the judge of any court, upon such terms and conditions as to security by the plaintiff for the damages which may be occasioned, and with such directions as to the disposition to be made of the property attached as may be just and proper under the circumstances of each case. [R60,§3227; C73,§3002; C97,§3915; C24, 27, 31, 35, 39,§12149; C46, 50, 54,§640.3]

**640.4 Form of writ.** The attachment shall describe the specific property against which it is issued, and have indorsed upon it the direction of the court or judge as to the disposition to be made of the attached property, and be directed, executed, and returned as other attachments. [R60,§3230; C73,§3003; C97,§3916; C24, 27, 31, 35, 39,§12150; C46, 50, 54,§640.4]

**640.5 Bond to discharge.** The court may, in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to release the attached property. [R60,§3231; C73,§3004; C97, §3917; C24, 27, 31, 35, 39,§12151; C46, 50, 54, §640.5]

CHAPTER 641  
ATTACHMENT BY STATE

Actions by state, R.C.P. 9

- 641.1 Indebtedness due the state.
- 641.2 Attachment authorized.
- 641.3 No bond required.

- 641.4 Bond to discharge or release.
- 641.5 Sheriff indemnified.

**641.1 Indebtedness due the state.** In all cases in which any person is indebted to the state, or to any officer or agent thereof for the use or benefit of the state, the proper county attorney or attorney general shall demand payment or security therefor, when, in the opinion of said county attorney or attorney general, the debt is not sufficiently secured. [C73,§3005; C97,§3918; C24, 27, 31, 35, 39,§12152; C46, 50, 54, §641.1]

attachment, and no bond shall be required of the plaintiff in such cases, and the sheriff shall not be authorized to require any indemnifying bond in case of such levy. [C73,§3007; C97, §3920; C24, 27, 31, 35, 39,§12154; C46, 50, 54, §641.3]

Referred to in §§641.4, 641.5

**641.2 Attachment authorized.** In all actions for money due to the state, or to any agent or officer for the use of the state, it shall be lawful for an attachment to issue against the property or debts of the defendant not exempt from execution, upon the filing of an affidavit by the county attorney of the proper county, or of the attorney general, that he verily believes that a specific amount therein stated is justly due, and the defendant therein has refused to pay or secure the same, and unless an attachment is issued against the property of the defendant there is danger that the amount due will be lost to the state. [C73,§3006; C97,§3919; C24, 27, 31, 35, 39,§12153; C46, 50, 54,§641.2]

**641.4 Bond to discharge or release.** An attachment levied under the provisions of sections 641.2 and 641.3 may be discharged, or any property taken thereunder may be released, by the execution of a bond with sufficient sureties, as provided by law in other cases of attachment. [C73,§3008; C97,§3921; C24, 27, 31, 35, 39,§12155; C46, 50, 54,§641.4]

Referred to in §641.5  
Delivery bond, §639.45

Referred to in §§641.4, 641.5

**641.3 No bond required.** The attachment so issued shall be levied as in other cases of

**641.5 Sheriff indemnified.** In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under sections 641.2 to 641.4, inclusive, and if a judgment is rendered therefor, the amount thereof, when paid by such sheriff, shall become a claim against the state in his favor, and a warrant therefor shall be drawn by the state comptroller upon proper proof. [C73,§3009; C97,§3922; C24, 27, 31, 35, 39, §12156; C46, 50, 54,§641.5]

## CHAPTER 642

## GARNISHMENT

Referred to in §446.4

- 642.1 Who may be garnished.
- 642.2 Municipal corporations.
- 642.3 Fund in court.
- 642.4 Death of garnishee.
- 642.5 Sheriff may take answers.
- 642.6 Garnishee required to appear.
- 642.7 Examination in court.
- 642.8 Witness fees.
- 642.9 Failure to appear or answer—cause shown.
- 642.10 Paying or delivering.

- 642.11 Answer controverted.
- 642.12 Notice of controverting pleadings.
- 642.13 Judgment against garnishee.
- 642.14 Notice.
- 642.15 Pleading by defendant—discharge of garnishee.
- 642.16 When debt not due.
- 642.17 Negotiable paper—indemnity.
- 642.18 Judgment conclusive.
- 642.19 Docket to show garnishments.
- 642.20 Appeal.

**642.1 Who may be garnished.** A sheriff or constable may be garnished for money of the defendant in his hands; a judgment debtor of the defendant, when the judgment has not been assigned on the record, or by writing filed in the office of the clerk and by him minuted as an assignment on the margin of the judgment docket; and an executor, for money due from decedent. [C51,§1862; R60,§3196; C73,§2976; C97,§3936; C24, 27, 31, 35, 39,§12158; C46, 50, 54,§642.1]

C97,§3936, editorially divided  
Return date, see R.C.P. 54(b)  
Garnishment proceedings by tax commission, §§626.29-626.31

**642.2 Municipal corporations.** A municipal or political corporation shall not be garnished. [R60,§3196; C73,§2976; C97,§3936; C24, 27, 31, 35, 39,§12159; C46, 50, 54,§642.2]

**642.3 Fund in court.** Where the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund. [R60,§3197; C73,§2977; C97,§3937; C24, 27, 31, 35, 39,§12160; C46, 50, 54,§642.3]

**642.4 Death of garnishee.** If the garnishee dies after he has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against his heirs or legal representatives. [R60,§3198; C73,§2978; C97,§3938; C24, 27, 31, 35, 39,§12161; C46, 50, 54, §642.4]

**642.5 Sheriff may take answers.** When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, he shall put to him the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights, or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debts owing the said defendant, whether due or not due, or any

property, rights, or credits belonging to him and now in the possession or under the control of others? If so, state the particulars.

The sheriff shall append the examination to his return. [C51,§§1864, 1865; R60,§§3200, 3201; C73,§2980; C97,§3939; C24, 27, 31, 35, 39, §12162; C46, 50, 54,§642.5]

**642.6 Garnishee required to appear.** If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer as above provided, and he may be so required in any event, if the plaintiff so notifies him. [C51, §1866; R60,§3202; C73,§2981; C97,§3940; C24, 27, 31, 35, 39,§12163; C46, 50, 54,§642.6]

**642.7 Examination in court.** The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff, and such others as the court may think proper. [C51,§1867; R60,§3203; C73,§2982; C97,§3941; C24, 27, 31, 35, 39,§12164; C46, 50, 54, §642.7]

**642.8 Witness fees.** Where the garnishee is required to appear at court, unless he has refused to answer as contemplated above, he is entitled to the pay and mileage of a witness, and may, in like manner, require advance payment before any liability shall arise for nonattendance. [C51,§1868; R60,§3204; C73,§2983; C97,§3942; C24, 27, 31, 35, 39,§12165; C46, 50, 54, §642.8]

Witness fees and mileage, §622.69 et seq.

**642.9 Failure to appear or answer—cause shown.** If, duly summoned, and his fees tendered when demanded, he fails to appear and answer the interrogatories propounded to him without sufficient excuse, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, but for a mere failure to appear no judgment shall be rendered against him until he has had an opportunity to show cause against the same. [C51,§§1869, 1870; R60,§§3205, 3206; C73,§§2984, 2985; C97,§3943; C24, 27, 31, 35, 39,§12166; C46, 50, 54,§642.9]

**642.10 Paying or delivering.** A garnishee may, at any time after answer, exonerate himself from further responsibility by paying over to the sheriff the amount owing by him to the defendant, and placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached. [C51,§1871; R60,§3207; C73,§2986; C97,§3944; C24, 27, 31, 35, 39,§12167; C46, 50, 54,§642.10]

**642.11 Answer controverted.** When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony. [C51,§1872; R60,§3208; C73,§2987; C97,§3945; C24, 27, 31, 35, 39,§12168; C46, 50, 54,§642.11]

**642.12 Notice of controverting pleadings.** No judgment shall be rendered against a garnishee on a pleading which controverts his answer until notice of the filing of the controverting pleading and of the time and place of trial thereon is served on the garnishee for such time and in such manner as the court or judge shall order. A garnishee who has been so notified shall not be entitled to notice of the filing of amendments or of trial thereon. [C27, 31, 35,§12168-b1; C39,§12168.1; C46, 50, 54, §642.12]

**642.13 Judgment against garnishee.** If in any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of his property in his hands, at the time of being served with the notice of garnishment, he will be liable to the plaintiff, in case judgment is finally recovered by him, to the full amount thereof, or to the amount of such indebtedness or property held by the garnishee, and the plaintiff may have a judgment against the garnishee for the amount of money due from the garnishee to the defendant in the main action, or for the delivery to the sheriff of any money or property in the garnishee's hands belonging to the defendant in the main action within a time to be fixed by the court, and for the value of the same, as fixed in said judgment, if not delivered within the time thus fixed, unless before such judgment is entered the garnishee has delivered to the sheriff such money or property. Property so delivered shall thereafter be treated as if levied upon under the writ of attachment in the usual manner. [C51, §§1871, 1873; R60, §§3207, 3209; C73, §§2986, 2988; C97, §3946; C24, 27, 31, 35, 39, §12169; C46, 50, 54, §642.13]

**642.14 Notice.** Judgment against the garnishee shall not be entered until the principal

defendant shall have had ten days notice of the garnishment proceedings, to be served in the same manner as original notices. [C51,§1861; R60,§3195; C73,§2975; C97,§3947; S13,§3947; C24, 27, 31, 35, 39,§12170; C46, 50, 54,§642.14]

Notice in justice court, §601.77

**642.15 Pleading by defendant—discharge of garnishee.** The defendant in the main action may, by a suitable pleading filed in the garnishment proceedings, set up facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged as to that part which is exempt or not liable. [C97,§3948; S13,§3948; C24, 27, 31, 35, 39,§12171; C46, 50, 54,§642.15]

**642.16 When debt not due.** If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity. [R60,§3210; C73,§2989; C97,§3949; C24, 27, 31, 35, 39,§12172; C46, 50, 54,§642.16]

**642.17 Negotiable paper — indemnity.** The garnishee shall not be made liable on a debt due by negotiable paper, unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment. [R60,§3211; C73,§2990; C97,§3950; C24, 27, 31, 35, 39,§12173; C46, 50, 54,§642.17]

**642.18 Judgment conclusive.** The judgment in the garnishment action, condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant. [R60,§3212; C73,§2991; C97,§3951; C24, 27, 31, 35, 39,§12174; C46, 50, 54,§642.18]

**642.19 Docket to show garnishments.** The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment. [R60,§3213; C73,§2992; C97, §3952; C24, 27, 31, 35, 39,§12175; C46, 50, 54, §642.19]

**642.20 Appeal.** An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the money or property. [R60,§3214; C73,§2993; C97,§3953; C24, 27, 31, 35, 39,§12176; C46, 50, 54,§642.20]



## CHAPTER 643

## REPLEVIN

- 643.1 Where brought—petition.
- 643.2 Ordinary proceedings—joinder or counterclaim.
- 643.3 Process on Sunday.
- 643.4 New parties.
- 643.5 Bond.
- 643.6 Filing—purpose of bond.
- 643.7 Writ issued.
- 643.8 Wrongful removal—service.
- 643.9 Following property—duplicate writs.
- 643.10 Execution of writ.
- 643.11 Defendant examined.

- 643.12 Delivery bond.
- 643.13 Release—return of bond.
- 643.14 Inspection—appraisalment.
- 643.15 Return of writ.
- 643.16 Assessment of value and damages—right of possession.
- 643.17 Judgment.
- 643.18 Execution.
- 643.19 Plaintiff's option.
- 643.20 Judgment on bond.
- 643.21 Concealment.
- 643.22 Exemption.

**643.1 Where brought—petition.** An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state:

1. A particular description of the property claimed.
2. Its actual value, and, where there are several articles, the actual value of each.
3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of his interest in the property, whether it be full or qualified ownership.
4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property; but if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process.
5. The facts constituting the alleged cause of detention thereof, according to his best belief.
6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof. [C51,§§1703, 1994, 1995; R60, §3553; C73,§3225; C97,§4163; C24, 27, 31, 35, 39, §12177; C46, 50, 54,§643.1]

**643.2 Ordinary proceedings — joinder or counterclaim.** The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim. [R60, §4175; C73,§3226; C97,§4164; C24, 27, 31, 35, 39, §12178; C46, 50, 54,§643.2]

**643.3 Process on Sunday.** If the plaintiff alleges in his petition that he will lose the property unless process issues on Sunday, the order may be issued and served on that day. [C73,§3227; C97,§4165; C24, 27, 31, 35, 39,§12179; C46, 50, 54,§643.3]

Analogous or related provisions, §§605.18, 626.6, 639.5, 667.3, and R.C.P. 57

**643.4 New parties.** If a third person claims the property or any part thereof, the plaintiff may amend and bring him in as a codefendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervention.

[C51,§§1684, 1999; R60,§3561; C73,§3228; C97, §4166; C24, 27, 31, 35, 39,§12180; C46, 50, 54, §643.4]

Interpleader, R.C.P. 35 to 41  
Intervention, R.C.P. 75

**643.5 Bond.** When the plaintiff desires the immediate delivery of the property, he shall execute a bond to the defendant, with sureties to be approved by the clerk or justice, in a penalty at least equal to twice the value of the property sought to be taken, conditioned that he will appear at the next term of the court, if in a court of record, or on the day fixed in the original notice, if in a justice's court, and prosecute his action to judgment, and return the property, if a return is awarded, and pay all costs and damages that may be adjudged against him. [C51,§1996; R60,§3554; C73,§3229; C97,§4167; C24, 27, 31, 35, 39,§12181; C46, 50, 54, §643.5]

C97,§4167, editorially divid.d

**643.6 Filing—purpose of bond.** Said bond shall be filed with the clerk or justice, and be for the use of any person injured by the proceeding. [C51,§1996; R60,§3554; C73,§3229; C97, §4167; C24, 27, 31, 35, 39,§12182; C46, 50, 54, §643.6]

**643.7 Writ issued.** The clerk or justice shall thereupon issue a writ under his hand, and the seal of the court if a court of record, directed to the proper officer, requiring him to take the property therein described and deliver it to the plaintiff. [C51,§1997; R60,§3555; C73,§3230; C97,§4168; C24, 27, 31, 35, 39,§12183; C46, 50, 54,§643.7]

C97,§4168, editorially divided

**643.8 Wrongful removal—service.** If the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the writ may issue from the county whence the property was wrongfully taken, and may be served in any county where it may be found. [C73,§3230; C97,§4168; C24, 27, 31, 35, 39,§12184; C46, 50, 54,§643.8]

Analogous provision, §639.21

**643.9 Following property — duplicate writs.** When any of the property is removed to an-

other county after the commencement of the action, the officer to whom the writ is issued may follow the same and execute the writ in any county of the state where the property is found. For the purpose of following the property, duplicate writs may be issued, if necessary, and served as the original. [R60,§3556; C73,§3231; C97,§4169; C24, 27, 31, 35, 39,§12185; C46, 50, 54,§643.9]

Analogous provision, §639.21

**643.10 Execution of writ.** The officer must forthwith execute the writ by taking possession of the property therein described, if it is found in the possession of the defendant or his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the writ was placed in the officer's hands, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance and exhibited his authority, if demanded. [C51, §1998; R60,§3557; C73,§3232; C97,§4170; C24, 27, 31, 35, 39,§12186; C46, 50, 54,§643.10]

**643.11 Defendant examined.** When it appears by affidavit that the property claimed has been disposed of or concealed so that the writ cannot be executed, the court or judge, upon verified petition therefor, may compel the attendance of the defendant or other person claiming or concealing the property, and examine him on oath as to the situation of the property, and punish a willful obstruction or hindrance or disobedience of the order of the court in this respect as in case of contempt. [R60,§3558; C73,§3233; C97,§4171; C24, 27, 31, 35, 39,§12187; C46, 50, 54,§643.11]

Contempts, ch 665

**643.12 Delivery bond.** The officer, having taken the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless, before the actual delivery to him, the defendant executes a bond to the plaintiff, with sureties to be approved by the clerk or officer, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if he recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. [R60, §3560; C73,§3234, 3235; C97,§4172; C24, 27, 31, 35, 39,§12188; C46, 50, 54,§643.12]

C97,§4172, editorially divided  
Similar provisions, §§639.42, 639.45, 667.7

**643.13 Release—return of bond.** Said bond shall be delivered to the officer, who shall return the property to the defendant, append the bond to the writ, return it therewith to the officer issuing it, and refer thereto in his return on the writ. [R60,§3559; C73,§3237; C97,§4172; C24, 27, 31, 35, 39,§12189; C46, 50, 54,§643.13]

**643.14 Inspection—appraisal.** When the property is so retained by the defendant, he shall permit the officer and plaintiff to inspect the same, and, if the plaintiff so requests, the officer shall cause it to be examined and ap-

praised by two sworn appraisers chosen by the parties to the action, or, in their default, by the officer himself, in the manner provided for other cases of appraisal, and in case they cannot agree he shall select a third, and an appraisal agreed to by two of them shall be sufficient, and he shall return their appraisal with the writ. [C73,§3236; C97,§4173; C24, 27, 31, 35, 39,§12190; C46, 50, 54,§643.14]

**643.15 Return of writ.** The officer must return the writ on or before the first day of the trial term, or the return day if before a justice, and shall state fully what he has done thereunder. If he has taken any property, he shall describe the same particularly. [R60,§3559; C73,§3237; C97,§4174; C24, 27, 31, 35, 39,§12191; C46, 50, 54,§643.15]

**643.16 Assessment of value and damages—right of possession.** The jury must assess the value of the property and the damages for the taking or detention thereof, whenever by their verdict there will be a judgment for the recovery or the return of the property, and, when required so to do by either party, must find the value of each article, and find which is entitled to the possession, designating his right therein, and the value of such right. [R60,§3082; C73,§3238; C97,§4175; C24, 27, 31, 35, 39,§12192; C46, 50, 54,§643.16]

**643.17 Judgment.** The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party, and shall also award such damages to either party as he may be entitled to for the illegal detention thereof. If the judgment be against the plaintiff for the money value of the property, it shall also be against the sureties on his bond. [C51,§2000, 2001; R60,§3554, 3562, 3567; C73, §3229, 3239; C97,§4176; C24, 27, 31, 35, 39, §12193; C46, 50, 54,§643.17]

**643.18 Execution.** The execution shall require the officer to deliver the possession of the property, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered, subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property. [R60, §3253; C73,§3240; C97,§4177; C24, 27, 31, 35, 39, §12194; C46, 50, 54,§643.18]

**643.19 Plaintiff's option.** If the party found to be entitled to the property be not already in possession thereof by delivery under the provisions of this chapter or otherwise, he may at his option have an execution for the delivery of the specific property, or for the value there-

of as determined by the jury, and if any article of the property cannot be obtained on execution, he may take the remainder, with the value of the missing articles. [R60, §§3563, 3568; C73, §3241; C97, §4178; C24, 27, 31, 35, 39, §12195; C46, 50, 54, §643.19]

**643.20 Judgment on bond.** When property for which a bond has been given as hereinbefore provided is not forthcoming to answer the judgment, and the party entitled thereto so elects, a judgment may be entered against the principal and sureties in the bond for its value. [C73, §3242; C97, §4179; C24, 27, 31, 35, 39, §12196; C46, 50, 54, §643.20]

**643.21 Concealment.** When it appears by the return of the officer or by the affidavit of the plaintiff that any specific property which

has been adjudged to belong to one party has been concealed or removed by the other, the court or a judge may require him to attend and be examined on oath respecting such matter, and may enforce its order in this respect as in case of contempt. [R60, §3564; C73, §3243; C97, §4180; C24, 27, 31, 35, 39, §12197; C46, 50, 54, §643.21]

Contempts, ch 665

**643.22 Exemption.** A money judgment rendered under the provisions of this chapter for property exempt from execution shall also be to the same extent exempt from execution, and from all setoff or diminution by any person, which exemption may, at the election of the party in interest, be stated in the judgment. [R60, §4176; C73, §3244; C97, §4181; C24, 27, 31, 35, 39, §12198; C46, 50, 54, §643.22]

## CHAPTER 644

### LOST PROPERTY

- 644.1 Taking up vessels, rafts, logs, and lumber.
- 644.2 Warrant—appraisal—return—record.
- 644.3 Value under twenty dollars.
- 644.4 Value exceeding twenty dollars.
- 644.5 Advertisement—when title vests.
- 644.6 Lost goods or money.
- 644.7 When owner unknown.
- 644.8 Advertisement.
- 644.9 Record of publication.

- 644.10 Additional publication.
- 644.11 Vesting of title.
- 644.12 Ownership settled.
- 644.13 Compensation.
- 644.14 Costs, charges, and care—assessment.
- 644.15 Proceeds—forfeiture.
- 644.16 Responsibility of taker-up.
- 644.17 Penalty for selling.
- 644.18 Failure to comply.

**644.1 Taking up vessels, rafts, logs, and lumber.** If any person shall stop or take up any vessel or watercraft, or any raft of logs, or part thereof, or any logs suitable for making lumber or hewn timber, or sawed lumber, found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including the cargo, tackle, rigging, and other appendages of such vessel or watercraft, such person, within five days thereafter, provided the same shall not have been previously proved and restored to the owner, shall go before some justice of the peace in the township where such property is found, and make affidavit setting forth the exact description of such property; where and when the same was found; whether any, and if so what cargo, tackle, rigging, or other appendages were found on board or attached thereto; and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him or by any other person to his knowledge. [C51, §§876–878; R60, §1506; C73, §§1509, 1512; C97, §2371; C24, 27, 31, 35, 39, §12199; C46, 50, 54, §644.1]

C97, §2371, editorially divided

**644.2 Warrant—appraisal—return—record.** The said justice shall thereupon issue his warrant, directed to some constable of his township, commanding him to summon three respectable householders of the neighborhood,

who shall proceed without delay to examine and appraise such property, including cargo, tackle, rigging, and other appendages if any there be, and to make report thereof under their hands to the justice issuing such warrant, who shall enter the same, together with the affidavit of the taker-up, at large in his estray book, and within five days shall transmit a certified copy thereof to the county auditor of the proper county, to be by him recorded in his estray book and filed in his office. [C51, §§878–880; R60, §1506; C73, §§1509, 1512; C97, §2371; C24, 27, 31, 35, 39, §12200; C46, 50, 54, §644.2]

**644.3 Value under twenty dollars.** In all cases where the appraisal of any such property shall not exceed the sum of twenty dollars, the finder shall advertise the same on the door of the courthouse, and in three other of the most public places in the county, within five days after the appraisal, and if no person shall appear to claim and prove such property within six months of the time of taking up, it shall vest in the finder. [C51, §§879, 880; R60, §1507; C73, §1513; C97, §2372; S13, §2372; C24, 27, 31, 35, 39, §12201; C46, 50, 54, §644.3]

**644.4 Value exceeding twenty dollars.** If the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of the reception of the

justice's certificate at his office, shall cause an advertisement to be posted on the door of the courthouse, and at three other of the most public places in the county, and also a notice to be published once each week for three weeks successively, in some newspaper printed in this state; and if such property be not claimed or proved within ninety days after the advertisement of the same, as aforesaid, the finder shall deliver the same to the sheriff of the county wherein it was taken up, who shall thereupon proceed to sell it at public auction to the highest bidder for cash, having first given ten days notice of the time and place of sale, and the proceeds of all such sales, after deducting the costs and other necessary expenses, shall be paid into the county treasury. [C51,§881; R60,§1507; C73,§1513; C97,§2372; S13, §2372; C24, 27, 31, 35, 39,§12202; C46, 50, 54, §644.4]

**644.5 Advertisement—when title vests.** In all cases where any vessel, watercraft, logs, or lumber shall be taken up as aforesaid, which shall be of a value less than five dollars, the finder shall advertise the same by posting a notice of such finding in three of the most public places in the neighborhood; but in such cases he shall keep and preserve the same in his possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily when the owner claims the same, provided it shall be done in three months from such taking up or finding; but, if no owner shall claim such property within the time aforesaid, the exclusive right to it shall be vested in the finder. [C51,§876, 877; R60,§1510; C73,§1516; C97,§2375; C24, 27, 31, 35, 39,§12203; C46, 50, 54,§644.5]

**644.6 Lost goods or money.** If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and over, such person shall inform the owner thereof, if known, and make restitution thereof. [C51,§876-879; R60, §1508; C73,§1514; C97,§2373; C24, 27, 31, 35, 39, §12204; C46, 50, 54,§644.6]

**644.7 When owner unknown.** If the owner be unknown, such person shall, within five days after such finding, take such money, bank notes, and a description of any other property before the county auditor of the county where the property was found, and make affidavit of the description thereof, the time when and place where the same was found, and that no alteration has been made in the appearance thereof since the finding; whereupon the county auditor shall enter a description of the property and the value thereof, as nearly as he can determine it, in his estray book, together with the affidavit of the finder. [R60,§1508; C73,§1514; C97,§2373; C24, 27, 31, 35, 39,§12205; C46, 50, 54,§644.7]

**644.8 Advertisement.** The finder of such lost goods, money, bank notes, or other things, shall forthwith give written notice of the finding of such property. Such notice shall con-

tain an accurate description of the property and a statement as to the time when and place where the same was found, and the post-office address of the finder. Said notice shall:

1. Be posted at the door of the courthouse in the county in which the property was found and in three other of the most public places in the said county; and

2. In case the property found shall exceed ten dollars in value, the notice shall be published once each week for three consecutive weeks in some newspaper published in and having general circulation in said county. [C51,§877, 878, 880; R60,§§1509, 1510; C73, §§1510, 1514-1516; C97,§§2372, 2374; S13,§§2372, 2374; C24, 27, 31, 35, 39,§12206; C46, 50, 54,§644.8]

**644.9 Record of publication.** Proof of publication of said notice and of the posting thereof shall be made by affidavits of the publisher and the person posting said notices, and said affidavits shall be filed in the office of the county auditor of said county. [C51,§886; C24, 27, 31, 35, 39,§12207; C46, 50, 54,§644.9]

Referred to in §644.10

**644.10 Additional publication.** The affidavits provided for in section 644.9 shall be entered by the auditor in the proceedings of the board of supervisors and the same shall be published with the proceedings of said board. [C24, 27, 31, 35, 39,§12208; C46, 50, 54,§644.10]

**644.11 Vesting of title.** If no person appears to claim and prove ownership to said goods, money, bank notes, or other things within twelve months of the date when proof of said publication and posting is filed in the office of the county auditor, the right to such property shall irrevocably vest in said finder. [C51,§879, 881; R60,§§1509, 1510; C73,§§1510, 1513, 1515, 1516; C97,§§2372, 2374, 2375; S13, §§2372, 2374; C24, 27, 31, 35, 39,§12209; C46, 50, 54,§644.11]

**644.12 Ownership settled.** In any case where a claim is made to property found or taken up, and the ownership of the property cannot be agreed upon by the finder and claimant, they may make a case before any justice of the peace in the county, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim by his affidavit, and the justice may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law. [C51,§890; R60,§1504; C73,§1517; C97,§2376; C24, 27, 31, 35, 39,§12210; C46, 50, 54,§644.12]

**644.13 Compensation.** As a reward for the taking up of boats and other vessels, and for finding lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten percent upon the value thereof, and for taking up any logs or lumber,

as hereinbefore described, twenty-five cents for each log not exceeding ten, twenty cents for each exceeding ten and not exceeding fifty, fifteen cents for each exceeding fifty, and fifty cents per thousand feet for sawed lumber. [C51,§892; R60,§1514; C73,§§1511, 1518; C97,§2377; C24, 27, 31, 35, 39,§12211; C46, 50, 54,§644.13]

**644.14 Costs, charges, and care—assessment.** The owner shall also be required to pay the finder all such costs and charges as may have been paid by him for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the finder and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties. [C51,§893; R60,§1514; C73,§1518; C97,§2377; C24, 27, 31, 35, 39,§12212; C46, 50, 54, §644.14]

**644.15 Proceeds—forfeiture.** The net proceeds of all sales made by the sheriff, and all money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over; but, if no owner shall appear within such time, the money shall be forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury for the use of the common schools in said county. [C51,§885; R60,§1516; C73,§1519; C97,§2378; C24, 27, 31, 35, 39,§12213; C46, 50, 54,§644.15]

**644.16 Responsibility of taker-up.** If the taker-up of any watercraft, logs, or lumber, or

finder of lost goods, bank notes, or other things, shall take reasonable care of the same, and any unavoidable accident happens thereto without the fault or neglect of the finder or taker-up before the owner shall have an opportunity of reclaiming the same, such taker-up or finder shall not be accountable therefor, if in cases of accident as aforesaid he within ten days thereafter shall certify the same to the county auditor, who shall make an entry thereof in his estray book. [R60,§1517; C73,§1520; C97,§2379; C24, 27, 31, 35, 39,§12214; C46, 50, 54, §644.16]

**644.17 Penalty for selling.** If any person shall trade, sell, loan, or take out of the limits of this state any such property taken up or found as aforesaid, before he shall be vested with the right to the same according to the foregoing provisions, he shall forfeit and pay double the value thereof, to be recovered by any person in an action, one half of which shall go to the plaintiff and the other half to the county. [R60,§1518; C73,§1521; C97,§2380; C24, 27, 31, 35, 39,§12215; C46, 50, 54,§644.17]

**644.18 Failure to comply.** If any person shall take up any boat or vessel, or any logs or lumber, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requirements of this chapter, he shall forfeit and pay the sum of twenty dollars, to be recovered in an action by any person who will sue for the same, one half for the use of the person suing and the other half to be deposited in the county treasury for the use of the common schools; but nothing herein contained shall prevent the owner from having and maintaining his action for the recovery of any damage he may sustain. [R60,§1519; C73, §1522; C97,§2381; C24, 27, 31, 35, 39,§12216; C46, 50, 54,§644.18]

## CHAPTER 645

### PROPERTY STOLEN OR EMBEZZLED

Referred to in §751.30

645.1 Held by officer.  
645.2 Delivered to owner.  
645.3 Proof of title.

645.4 By order of court.  
645.5 When not claimed.  
645.6 Receipt given.

**645.1 Held by officer.** When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold the same subject to the order of the proper magistrate directing the disposal thereof. [C51, §3253; R60,§5049; C73,§4654; C97, §5569; C24, 27, 31, 35, 39,§12217; C46, 50, 54, §645.1]

**645.2 Delivered to owner.** On satisfactory proof of title by the owner of the property, the magistrate before whom the information is laid, or who shall examine the charge against the person accused of stealing or em-

bezzling the same, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in the preservation and keeping thereof, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property. [C51, §3254; R60,§5050; C73,§4655; C97,§5570; C24, 27, 31, 35, 39,§12218; C46, 50, 54,§645.2]

**645.3 Proof of title.** If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its

preservation, to be certified as before provided. [C51,§3255; R60,§5051; C73,§4656; C97, §5571; C24, 27, 31, 35, 39,§12219; C46, 50, 54,§645.3]

**645.4 By order of court.** If the property stolen or embezzled has not been delivered to the owner, the court before which a conviction is had may, on proof of his title, order its restoration. [C51,§3256; R60,§5052; C73,§4657; C97,§5572; C24, 27, 31, 35, 39,§12220; C46, 50, 54, §645.4]

**645.5 When not claimed.** If the property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of the person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred for its preservation, deliver it to the auditor of the county.

to be applied under the direction of the board of supervisors thereof for the benefit of the poor of the county. [C51,§3257; R60,§5053; C73, §4658; C97,§5573; C24, 27, 31, 35, 39,§12221; C46, 50, 54,§645.5]

**645.6 Receipt given.** When money or other property is taken from the defendant arrested upon a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he must deliver to the defendant, and the other he must forthwith file with the clerk of the district court of the county where the depositions and statements are to be sent by the magistrate. [C51, §3258; R60,§5054; C73,§4659; C97,§5574; C24, 27, 31, 35, 39,§12229; C46, 50, 54,§645.6]

**CHAPTER 646**

**RECOVERY OF REAL PROPERTY**

- 646.1 Ordinary proceedings — joinder — counterclaim.
- 646.2 Parties.
- 646.3 Title.
- 646.4 Tenant in common.
- 646.5 Service on agent.
- 646.6 Petition.
- 646.7 Abstract of title.
- 646.8 Unwritten muniments of title — unrecorded conveyances.
- 646.9 Evidence — abstract amended.
- 646.10 Answer.
- 646.11 Landlord substituted.
- 646.12 Possession.
- 646.13 Purchase pending suit.

- 646.14 Order to enter and survey.
- 646.15 Service.
- 646.16 Verdict—special.
- 646.17 General verdict.
- 646.18 Judgment for damages.
- 646.19 Use and occupation.
- 646.20 Improvements set off.
- 646.21 Wanton aggression.
- 646.22 Tenant—extent of liability.
- 646.23 Growing crops—bond.
- 646.24 Writ of possession.
- 646.25 Judgment for rent accruing.  
Rule—Other proceedings not invoked, R.C.P. 255.

**646.1 Ordinary proceedings — joinder — counterclaim.** Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein, except of like proceedings, and as provided in this chapter. [R60,§4177; C73, §3245; C97,§4182; C24, 27, 31, 35, 39,§12230; C46, 50, 54,§646.1]

**646.2 Parties.** Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord, or tenant of the property claimed. [C51,§2002; R60,§3569; C73, §3246; C97,§4183; C24, 27, 31, 35, 39,§12231; C46, 50, 54,§646.2]

**646.3 Title.** The plaintiff must recover on the strength of his own title. [C51,§2020; R60, §3591; C73,§3247; C97,§4184; C24, 27, 31, 35, 39, §12232; C46, 50, 54,§646.3]

**646.4 Tenant in common.** In an action by a tenant in common or joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right

that the defendant either denied the plaintiff's right, or did some act amounting to such denial. [C51,§2027; R60,§3605; C73,§3248; C97,§4185; C24, 27, 31, 35, 39,§12233; C46, 50, 54,§646.4]

**646.5 Service on agent.** When the defendant is a nonresident having an agent of record for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal. [C51,§2004; R60,§3572; C73,§3249; C97, §4186; C24, 27, 31, 35, 39,§12234; C46, 50, 54, §646.5]

**646.6 Petition.** The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of his estate and the extent of his interest therein, and that the defendant unlawfully keeps him out of possession, and the damages, if any, which he claims for withholding the same; but if he claims other damages than the rents and profits, he shall state the facts constituting the cause thereof. [R60,§3570; C73,§3250; C97,§4187; C24, 27, 31, 35, 39,§12235; C46, 50, 54,§646.6]

**646.7 Abstract of title.** The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record. [C73,§3251; C97, §4188; C24, 27, 31, 35, 39,§12236; C46, 50, 54, §646.7]

C97,§4188, editorially divided  
Abstracts, R.C.P. 272

**646.8 Unwritten muniments of title — unrecorded conveyances.** If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor. [C73,§3251; C97,§4188; C24, 27, 31, 35, 39,§12237; C46, 50, 54,§646.8]

**646.9 Evidence — abstract amended.** No written evidence of title shall be introduced on the trial unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, or may be amended by the party setting it out. [C73,§3251; C97, §4188; C24, 27, 31, 35, 39,§12238; C46, 50, 54, §646.9]

**646.10 Answer.** The answer of the defendant, and each if more than one, must set forth what part of the land he claims and what interest he claims therein generally, and if as mere tenant, the name and residence of his landlord. [C51,§2005; R60,§3573; C73,§3252; C97, §4189; C24, 27, 31, 35, 39,§12239; C46, 50, 54, §646.10]

**646.11 Landlord substituted.** When it appears that the defendant is only a tenant, the landlord may be substituted by the service upon him of original notice, or by his voluntary appearance, in which case the judgment shall be conclusive against him. [C51,§2003; R60,§§3571, 3589; C73,§3253; C97,§4190; C24, 27, 31, 35, 39,§12240; C46, 50, 54,§646.11]

**646.12 Possession.** When the defendant makes defense it is not necessary to prove him in possession of the premises. [C51,§2007; R60,§3575; C73,§3254; C97,§4191; C24, 27, 31, 35, 39,§12241; C46, 50, 54,§646.12]

**646.13 Purchase pending suit.** Any person acquiring title to land or any interest therein, after commencement of an action under this chapter to recover the same, shall take subject to notice of and without prejudice to the rights of the parties to such action. [R60,§3578; C73, §3255; C97,§4192; C24, 27, 31, 35, 39,§12242; C46, 50, 54,§646.13]

**646.14 Order to enter and survey.** The court on motion, and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the land in controversy and make survey thereof for the purposes of the action. [C51,

§2021; R60,§3592; C73,§3256; C97,§4193; C24, 27, 31, 35, 39,§12243; C46, 50, 54,§646.14]

**646.15 Service.** The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land. [C51,§2022; R60,§3593; C73,§3257; C97,§4194; C24, 27, 31, 35, 39,§12244; C46, 50, 54,§646.15]

**646.16 Verdict — special.** The verdict may specify the extent and quantity of the plaintiff's estate and the premises to which he is entitled, with reasonable certainty, by metes and bounds and other sufficient description, according to the facts as proved. [R60,§3594; C73,§3258; C97,§4195; C24, 27, 31, 35, 39,§12245; C46, 50, 54,§646.16]

**646.17 General verdict.** A general verdict in favor of the plaintiff, without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition. [R60,§3595; C73, §3259; C97,§4196; C24, 27, 31, 35, 39,§12246; C46, 50, 54,§646.17]

**646.18 Judgment for damages.** If the interest of the plaintiff expires before the time in which he could be put in possession, he can obtain a judgment for damages only. [C51,§2010; R60,§3579; C73,§3260; C97,§4197; C24, 27, 31, 35, 39,§12247; C46, 50, 54,§646.18]

**646.19 Use and occupation.** The plaintiff cannot recover for the use and occupation of the premises for more than five years prior to the commencement of the action. [C51, §2008; R60,§3576; C73,§3261; C97,§4198; C24, 27, 31, 35, 39,§12248; C46, 50, 54,§646.19]

**646.20 Improvements set off.** When the plaintiff is entitled to damages for withholding or using or injuring his property, the defendant may set off the value of any permanent improvements made thereon to the extent of the damages, unless he prefers to avail himself of the law for the benefit of occupying claimants. [C51,§2023; R60,§3596; C73,§3262; C97,§4199; C24, 27, 31, 35, 39,§12249; C46, 50, 54, §646.20]

Occupying claimants, ch 560

**646.21 Wanton aggression.** In case of wanton aggression on the part of the defendant, the jury may award exemplary damages. [C51, §2024; R60,§3597; C73,§3263; C97,§4200; C24, 27, 31, 35, 39,§12250; C46, 50, 54,§646.21]

**646.22 Tenant—extent of liability.** A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of his possession. [R60,§3598; C73,§3264; C97,§4201; C24, 27, 31, 35, 39,§12251; C46, 50, 54,§646.22]

**646.23 Growing crops — bond.** If the defendant avers that he has a crop sowed, plant-

ed, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed, which shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors. [R60,§3599; C73,§3265; C97,§4202; C24, 27, 31, 35, 39,§12252; C46, 50, 54,§646.23]

**646.24 Writ of possession.** When the plaintiff shows himself entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly. [C51,§2009; R60,§3577; C73,§3266; C97,§4203; C24, 27, 31, 35, 39,§12253; C46, 50, 54,§646.24]

**646.25 Judgment for rent accruing.** The plaintiff may have judgment for the rent or rental value of the premises which accrues after judgment and before delivery of possession, by motion in the court in which the judgment was rendered, ten days notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmation thereof. [R60,§3600; C73,§3267; C97,§4204; C24, 27, 31, 35, 39,§12254; C46, 50, 54,§646.25]

RULE OF CIVIL PROCEDURE NO. 255

**Other proceedings not invoked.** Code sections 12255–12257 inclusive [Code 1939] shall not be invoked. Rules 252, 253 and 254 shall apply in lieu thereof. [Report 1943]

CHAPTER 647

RESTORATION OF LOST RECORDS

- 647.1 Action in rem.
- 647.2 Proceedings.
- 647.3 Proof required.

- 647.4 Filing of restored records—effect.
- 647.5 Costs of restoration—how paid.

**647.1 Action in rem.** Whenever the public records in the office of any county official in this state have been or shall hereafter be lost or destroyed in any material part, the said county on relation of said public officer or the owner of any real estate affected thereby, may bring an action in rem in equity in the district court of the state in and for the county in which said real estate is situated against all known and unknown persons, firms, or corporations that might have any interest in said real estate affected by said record, to have said lost or destroyed records restored in whole or in part.

Any number of parcels of land may be included in the same suit; and whenever said action is brought by the owner, the public official in whose office said lost or destroyed public records are required by law to be kept shall be made a defendant therein. [S13,§4227-a; C24, 27, 31, 35, 39,§12258; C46, 50, 54,§647.1]

**647.2 Proceedings.** The petition, notice, and decree in said action to restore any lost or destroyed records, and all proceedings in said suit, so far as the same relate to unknown defendants, shall conform to the statutes of this state applicable to actions against unknown defendants and unknown claimants; and all known defendants shall be served with notice in the time and manner now provided by law; and whenever said action is brought by the owner of said real estate, all clouds

upon said title and defects therein and all adverse claims thereto may be adjudicated in the same suit and title quieted therein.

The provisions of rule number 251 of the rules of civil procedure shall be applicable to defendants served with original notice in such action by publication. [S13,§4227-b; C24, 27, 31, 35, 39,§12259; C46, 50, 54,§647.2]

Unknown claimants, §617.7 and R.C.P. 1(d)

**647.3 Proof required.** No judgment or decree restoring any lost or destroyed record in such action shall be entered by default, but the court must require proof of the facts alleged in reference thereto and the court shall make such finding of facts and decree as may be sustained by the evidence and may order such lost or destroyed record to be prepared by said public official as completely as the circumstances and proof will permit, and said record when so prepared shall be approved by the court and its approval indorsed thereon by the clerk. [S13,§4227-c; C24, 27, 31, 35, 39, §12260; C46, 50, 54,§647.3]

**647.4 Filing of restored records—effect.** All public records restored as provided by this chapter shall be filed, bound, and indexed the same as original records are required to be, and shall have the same force and effect as the original records before their loss or destruction. [S13,§4227-d; C24, 27, 31, 35, 39, §12261; C46, 50, 54,§647.4]



**647.5 Costs of restoration—how paid.** Whenever any public record is restored, as provided in this chapter, all court costs and necessary expenses of restoring the same shall be paid by the county to which said records belong,

whether said action is commenced or prosecuted by a county official or by the owner of any real estate authorized to maintain such action. [SS15,§4227-e; C24, 27, 31, 35, 39,§12262; C46, 50, 54,§647.5]

## CHAPTER 648

### FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

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**648.1 Grounds.** A summary remedy for forcible entry or detention of real property is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.

2. Where the lessee holds over after the termination of his lease.

3. Where the lessee holds contrary to the terms of his lease.

4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.

5. For the nonpayment of rent, when due.

6. When the defendant or defendants remain in possession after the issuance of a valid tax deed. [C51,§§2362, 2363; R60,§§3952, 3953; C73,§§3611, 3612; C97,§4208; C24, 27, 31, 35, 39, §12263; C46, 50, 54,§648.1]

Referred to in §648.13

**648.2 By legal representatives.** The legal representative of a person who, if alive, might have been plaintiff may bring this action after his death. [C51,§2364; R60,§3954; C73,§3613; C97,§4209; C24, 27, 31, 35, 39,§12264; C46, 50, 54, §648.2]

**648.3 Notice to quit.** Before action can be brought in any except the first of the above classes, three days notice to quit must be given to the defendant in writing. [C51,§2365; R60, §3955; C73,§3614; C97,§4210; C24, 27, 31, 35, 39, §12265; C46, 50, 54,§648.3]

40GA, ch 271,§2, editorially divided  
 Landlord and tenant provisions, §§562.4 to 562.7, inc.

**648.4 Notice terminating tenancy.** When the tenancy is at will and the action is based

on the ground of the nonpayment of rent when due, no notice of the termination of the tenancy other than the three-day notice need be given before beginning the action. [C24, 27, 31, 35, 39,§12266; C46, 50, 54,§648.4]

Farm tenancies, §§562.5 to 562.7, inc.  
 See also §562.4

**648.5 Jurisdiction — transfer — appeal.** The district, municipal, and superior courts within the county, and justices of the peace within the township where the subject matter of the action is situated, shall have concurrent jurisdiction of actions for the forcible entry or detention of real property, and the court first acquiring jurisdiction of an action therefor shall retain the same until judgment, unless it is transferred as hereinafter provided. Where an action is brought in the district, superior, or municipal court it shall be tried as an equitable action, and upon presentation of the petition to the court or judge after the same has been filed, the court or judge shall make an order fixing the time and place for hearing upon said petition and shall prescribe that notice of the hearing be personally served upon the defendant or defendants, which service shall be at least five days prior to the date set for hearing. By agreement of the parties, it may be transferred from a justice's court to a municipal, superior, or the district court, or from a superior or a municipal to the district court, and all such actions in which judgment is rendered in a justice's court may be appealed to the district or superior court, as provided by law. [C51,§2367; R60,§3957; C73,§3616; C97, §4211; C24, 27, 31, 35, 39,§12267; C46, 50, 54, §648.5]

**648.6 Municipal court procedure.** This chapter shall apply to actions in the municipal court except insofar as the statutory procedure governing said court is in conflict herewith. [C27, 31, 35,§12267-b1; C39,§12267.1; C46, 50, 54, §648.6]

**648.7 Petition.** The action must be by petition which must be sworn to. When brought before the justice of the peace, a petition must be on file at the time the defendant is required to appear by the notice. [C51,§2366; R60,§3956; C73,§3615; C97,§4212; C24, 27, 31, 35, 39,§12268; C46, 50, 54,§648.7]

39GA, ch 193,§2, editorially divided

**648.8 Venue.** When brought before a justice of the peace, and there is none present or qualified to act in the township where the subject thereof is situated, it may be brought in an adjoining township in the county. If there be no such justice in an adjoining township in the county it may be commenced before the justice in the same county nearest to the township in which the subject thereof is situated. [C51,§2367; R60,§3957; C73,§3616; C97,§4212; C24, 27, 31, 35, 39,§12269; C46, 50, 54,§648.8]

**648.9 Change of venue.** In any such action a change of place of trial may be had as in other cases. [C51,§2367; R60,§3957; C73,§3616; C97,§4212; C24, 27, 31, 35, 39,§12270; C46, 50, 54,§648.9]

Change of venue, §601.34

**648.10 Service by publication.** Where it is made to appear by affidavit that personal service of the original notice in such action cannot be made upon the defendant within the state, the same may be made by publication, if in a court of record, or by posting, if in a justice's court, in the same manner and for the same length of time as is required in other cases where such substituted service may be made. [C97,§4213; C24, 27, 31, 35, 39,§12271; C46, 50, 54,§648.10]

Posting, §601.111; publication, R.C.P. 60

**648.11 Time for appearance.** The time for appearance and pleading if in justice's court must be not less than two or more than six days from the time of completed service of the notice. [C51,§2368; R60,§3958; C73,§3617; C97,§4214; C24, 27, 31, 35, 39,§12272; C46, 50, 54,§648.11]

**648.12 Adjournment.** No adjournment shall be made in justice's courts for more than ten days, except by consent of parties. [C51,§2369; R60,§3959; C73,§3618; C97,§4215; C24, 27, 31, 35, 39,§12273; C46, 50, 54,§648.12]

**648.13 Title in issue.** The question of title can only be investigated in the district court, and can be pleaded in a municipal court or a justice's court only as provided in subsection 4 of section 648.1. [C51,§2371; R60,§3961; C73,§3620; C97,§4216; C24, 27, 31, 35, 39,§12274; C46, 50, 54,§648.13]

37GA, ch 230,§4, editorially divided  
Referred to in §648.17

**648.14 Transfer to district court.** When so put in issue in a justice's court or municipal

court, the justice or the judge of the municipal court shall forthwith, without further proceedings, certify the cause and the papers with a transcript of his docket, showing the reason of such transfer to the district court, where the same shall be tried on the merits, as an equitable action. Such cause shall not be dismissed because of error in transferring the same. [C97,§4216; C24, 27, 31, 35, 39,§12275; C46, 50, 54,§648.14]

Referred to in §648.17

**648.15 How title tried.** When title is put in issue, the cause shall be tried by equitable proceedings. [C97,§4216; C24, 27, 31, 35, 39,§12276; C46, 50, 54,§648.15]

Referred to in §648.17

**648.16 Trial term.** The appearance term shall be the trial term, and no continuance shall be granted for the purpose of taking the testimony in writing. [C97,§4216; C24, 27, 31, 35, 39,§12277; C46, 50, 54,§648.16]

Referred to in §648.17

**648.17 Remedy not exclusive.** Nothing contained in sections 648.13 to 648.16, inclusive, shall prevent a party from suing for trespass or from testing the right of property in any other manner. [C51,§2371; R60,§3961; C73,§3620; C97,§4216; C24, 27, 31, 35, 39,§12278; C46, 50, 54,§648.17]

**648.18 Possession—bar.** Thirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding. [C51,§2372; R60,§3962; C73,§3621; C97,§4217; C24, 27, 31, 35, 39,§12279; C46, 50, 54,§648.18]

**648.19 No joinder or counterclaim.** An action of this kind cannot be brought in connection with any other, nor can it be made the subject of counterclaim. [C51,§2373; R60,§3963; C73,§3622; C97,§4218; C24, 27, 31, 35, 39,§12280; C46, 50, 54,§648.19]

**648.20 Order for removal.** The order for removal can be executed only in the daytime. [C51,§2374; R60,§3964; C73,§3623; C97,§4219; C24, 27, 31, 35, 39,§12281; C46, 50, 54,§648.20]

**648.21 Appeal or writ of error.** An appeal or writ of error, taken from the action of a justice of the peace in such action in the usual way, if the proper security is given, will suspend the execution for costs, and may, with the consent of the plaintiff, prevent a removal under execution, but not otherwise. [C51,§2375; R60,§3965; C97,§4220; C24, 27, 31, 35, 39,§12282; C46, 50, 54,§648.21]

**648.22 Judgment.** If the defendant is found guilty, judgment shall be entered that he be removed from the premises, and that the plaintiff be put in possession thereof, and an execution for his removal shall issue accord-

ingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases. [C51,§2370; R60,§3960; C73, §3619; C97,§4221; C24, 27, 31, 35, 39,§12283; C46, 50, 54,§648.22]

**648.23 Restitution.** The court, on the trial of an appeal, may issue an execution for removal or restitution, as the case may require. [C51,§2376; R60,§3966; C73,§3624; C97,§4222; C24, 27, 31, 35, 39,§12284; C46, 50, 54,§648.23]

## CHAPTER 649

### QUIETING TITLE

649.1 Who may bring action.

649.2 Petition.

649.3 Notice.

649.4 Disclaimer—costs.

649.5 Demand for quitclaim—attorney's fees.

649.6 Equitable proceedings.

649.7 Deeds—recitals—rebuttable and conclusive presumptions.

649.8 Construction of act.

**649.1 Who may bring action.** An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession. [C51,§2025; R60,§3601; C73,§3273; C97,§4223; C24, 27, 31, 35, 39,§12285; C46, 50, 54,§649.1]

**649.2 Petition.** The petition therefor must be under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and that he is credibly informed and believes the defendant makes or may make some claims adverse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff. [R60, §3602; C73,§3274; C97,§4224; C24, 27, 31, 35, 39, §12286; C46, 50, 54,§649.2]

C97,§4224, editorially divided

**649.3 Notice.** The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff's claim, and shall be served as in other cases. [C73,§3274; C97,§4224; C24, 27, 31, 35, 39,§12287; C46, 50, 54,§649.3]

**649.4 Disclaimer—costs.** If the defendant appears and disclaims all right and title adverse to the plaintiff, he shall recover his costs. In all other cases the costs shall be in the discretion of the court. [R60,§3603; C73,§3275; C97,§4225; C24, 27, 31, 35, 39,§12288; C46, 50, 54, §649.4]

**649.5 Demand for quitclaim — attorney's fees.** If a party, twenty days or more before bringing suit to quiet a title to real estate, shall request of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed thereto, and shall also tender to him one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed, and if he shall refuse or neglect to comply therewith, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought,

and the court may, in its discretion, if the plaintiff succeeds, tax, in addition to the ordinary costs of court, an attorney's fee for plaintiff's attorney, not exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city or town, involved, and forty dollars, if but a single tract exceeding forty acres and not more than eighty acres; in cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city or town lots, a reasonable fee may be taxed, not exceeding, however, proportionately, those hereinbefore provided for. [C97, §4226; C24, 27, 31, 35, 39,§12289; C46, 50, 54, §649.5]

**649.6 Equitable proceedings.** In all other respects, the action contemplated in this chapter shall be conducted as other actions by equitable proceedings, so far as the same may be applicable, with the modifications prescribed. [C51,§2026; R60,§3604; C73,§3276; C97, §4227; C24, 27, 31, 35, 39,§12290; C46, 50, 54,§649.6]

**649.7 Deeds—recitals—rebuttable and conclusive presumptions.** In the proof of title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or his assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and his grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such assignment and that it was made in good faith and for a valuable consideration. [C24, 27, 31, 35, 39,§12291; C46, 50, 54, §649.7]

Referred to in §649.8

**649.8 Construction of act.** Section 649.7 shall not be construed to remove the bar of any

other statute of limitations. [C24, 27, 31, 35, 39,§12292; C46, 50, 54,§649.8]

## CHAPTER 650

### DISPUTED CORNERS AND BOUNDARIES

650.1 When allowed.  
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 650.12 Exceptions—hearing in court.  
 650.13 Decree conclusive.  
 650.14 Boundaries by acquiescence established.  
 650.15 Appeal.  
 650.16 Costs.  
 650.17 Boundaries by agreement.

**650.1 When allowed.** When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. [C97,§4228; C24, 27, 31, 35, 39,§12293; C46, 50, 54,§650.1]

C97,§4228, editorially divided

**650.2 County as party.** If any public road is likely to be affected thereby, the proper county shall be made defendant. [C97,§4228; C24, 27, 31, 35, 39,§12294; C46, 50, 54,§650.2]

**650.3 Notice.** Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. [C97,§4229; C24, 27, 31, 35, 39,§12295; C46, 50, 54,§650.3]

**650.4 Nature of action.** The action shall be a special one. [C97,§4230; C24, 27, 31, 35, 39, §12296; C46, 50, 54,§650.4]

C97,§4230, editorially divided

**650.5 Petition.** The only necessary pleading therein shall be the petition of plaintiff describing the land involved, and, so far as may be, the interest of the respective parties, and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. [C97,§4230; C24, 27, 31, 35, 39,§12297; C46, 50, 54,§650.5]

**650.6 Specific issues—acquiescence.** Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue may be tried before commission is appointed, in the discretion of the court. [C97,§4230; C24, 27, 31, 35, 39,§12298; C46, 50, 54,§650.6]

**650.7 Commission.** The court in which said action is brought shall appoint a commission of one or more disinterested surveyors, who shall, at a date and place fixed by the court in the order of appointment, proceed to locate the lost, destroyed, or disputed corners and boundaries. [C97,§4231; C24, 27, 31, 35, 39, §12299; C46, 50, 54,§650.7]

**650.8 Oath—assistants.** The commissioners so appointed shall subscribe and file with the clerk, within ten days from the date of their appointment, an oath for the faithful and impartial discharge of their duties, and shall have the power to appoint necessary assistants. [C97,§4232; C24, 27, 31, 35, 39,§12300; C46, 50, 54,§650.8]

**650.9 Hearing.** At the time and in the manner specified in the order of court, the commission shall proceed to locate said boundaries and corners, and for that purpose may take the testimony of witnesses as to where the true boundaries and corners are located. [C97, §4233; C24, 27, 31, 35, 39,§12301; C46, 50, 54, §650.9]

C97,§4233, editorially divided

**650.10 Finding as to acquiescence.** If that issue is presented, the commission shall also take testimony as to whether the boundaries and corners alleged to have been recognized and acquiesced in for ten years or more have in fact been recognized and acquiesced in, and, if it finds affirmatively on such issue, shall incorporate the same into the report to the court. [C97,§4233; C24, 27, 31, 35, 39,§12302; C46, 50, 54,§650.10]

**650.11 Adjournments—report.** The proceedings may be adjourned by the commission from time to time as may be necessary, but the survey and location of the corners and boundaries must be completed and the report thereof filed with the clerk of the court at least ten days before the first day of the term next following that of its appointment, unless there are good and sufficient reasons for delay. [C97, §4234; C24, 27, 31, 35, 39,§12303; C46, 50, 54, §650.11]

**650.12 Exceptions—hearing in court.** At the term of court after such report is filed, any party interested may file exceptions thereto before noon of the second day of the term, and the court shall hear and determine them, hearing evidence in addition to that reported by the commission, if necessary, and may approve or modify such report, or again refer the matter to the same or another commission for further report. [C97,§4235; C24, 27, 31, 35, 39, §12304; C46, 50, 54,§650.12]

**650.13 Decree conclusive.** The corners and boundaries finally established by the court in such proceeding, or on appeal therefrom, shall be binding upon the parties as the corners or boundaries which had been lost, destroyed, or in dispute. [C97,§4236; C24, 27, 31, 35, 39,§12305; C46, 50, 54,§650.13]

C97,§4236, editorially divided

**650.14 Boundaries by acquiescence established.** If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established. [C97,§4236; C24, 27, 31, 35, 39, §12306; C46, 50, 54,§650.14]

**650.15 Appeal.** There shall be no appeal in such proceeding, except from final judgment of the court, taken in the time and manner that other appeals are, and heard as in an action by ordinary proceedings. [C97,§4237; C24, 27, 31, 35, 39,§12307; C46, 50, 54,§650.15]

Appeal, R.C.P. 336 and 353

**650.16 Costs.** The costs in the proceeding shall be taxed as the court shall think just, and shall be a lien on the land or interest therein owned by the party or parties against whom they are taxed, so far as such land is involved in the proceeding. [C97,§4238; C24, 27, 31, 35, 39,§12308; C46, 50, 54,§650.16]

**650.17 Boundaries by agreement.** Any lost or disputed corner or boundary may be determined by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a plat thereof, which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns. [C97,§4239; C24, 27, 31, 35, 39,§12309; C46, 50, 54,§650.17]

Acknowledgments, §558.20 et seq.

## CHAPTER 651

### PARTITION

Rule—The action—pending probate, R.C.P. 270.

Rule—Petition, R.C.P. 271.

Rule—Abstracts, R.C.P. 272.

Rule—Parties, R.C.P. 273.

Rule—Early appearance, R.C.P. 274.

Rule—Joinder and counterclaim, R.C.P. 275.

Rule—Jurisdiction of property — proceeds, R.C.P. 276.

651.1 Share of absent owner.

651.2 Answer.

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Rule—Division of sale, R.C.P. 278.

Rule—Possession and preservation of property, R.C.P. 282.

Rule—Referees to divide — oath — inability, R.C.P. 283.

Rule—Partition in kind, R.C.P. 284.

Rule—Specific allotment, R.C.P. 285.

651.3 Partition of part.

Rule—Report—notice—hearing, R.C.P. 286.

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651.4 Costs attending transcript.

Rule—Costs, R.C.P. 293.

Rule—Attorney fees, R.C.P. 294.

Rule—Referees to sell—bond, R.C.P. 288.

Rule—Sales — notice — expense — approval, R.C.P. 289.

Rule—Report of sale — notice, R.C.P. 290.

Rule—Approving sale—conveyance, R.C.P. 291

Rule—Deed—validity, R.C.P. 292.

651.5 Sales disapproved.

651.6 Security to refund money.

Rule—Estate less than fee, R.C.P. 277.

Rule—Other fees, R.C.P. 295.

Rule—Final reports, R.C.P. 296.

Rule—Paying small sums, R.C.P. 297.

Rule—Unborn parties, R.C.P. 298.

#### RULE OF CIVIL PROCEDURE NO. 270

**The action—pending probate.** Real or personal property may be partitioned by equitable proceedings. Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be begun until six months after the notice of the administrator's appointment, nor at any time while an application for authority to sell such real estate is pending in the probate proceeding. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 271

**Petition.** The petition shall describe the property and plaintiff's interest therein. It shall name the other owners and all indispensable lienholders as defined in rule 273 (a), and state the nature and extent of each interest or lien, all so far as known. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 272

**Abstracts.** The court may order a complete abstract to be filed covering any

real estate involved, requiring that any party produce any abstract he has or controls, and that plaintiff complete the same, or supply the whole if no part is available. The expense thereof shall be taxed as costs. Such abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 273

##### Parties.

(a) *Indispensable parties.* All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on personalty are also indispensable to its partition.

(b) *Optional parties.* Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate, may also be made parties. [Report 1943]

Referred to in R.C.P. 271

#### RULE OF CIVIL PROCEDURE NO. 274

**Early appearance.** After a petition is filed seeking partition of personalty only, the court may order appearance and hearing at any specified time and place in the judicial district on not less than five days personal service of original notice on all defendants. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 275

**Joinder and counterclaim.** Except as permitted by this rule there shall be no joinder of any other cause of action and no counterclaim. But any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with it, including liens between them. Real and personal property owned by the same persons may be partitioned in the same action; and the same referee may act as to both. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 276

**Jurisdiction of property — proceeds.** The property or its proceeds shall be subject to the order of the court until the right becomes fully vested. After a sale, each party, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs. [Report 1943]

**651.1 Share of absent owner.** The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit, under like order. [C51,§2070; R60,§3648;

C73,§3280; C97,§4243; C24, 27, 31, 35, 39,§12317; C46, 50, 54,§651.1]

**651.2 Answer.** The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interest of any of the other defendants. [C51,§2032; R60,§3610; C73,§3282; C97,§4245; C24, 27, 31, 35, 39,§12318; C46, 50, 54,§651.2]

#### RULE OF CIVIL PROCEDURE NO. 280

**Liens.** The court shall by supplemental decree, adjudge the nature, extent, priority or validity of any lien of any party, not previously determined, after causing the referees to give such notice to the interested parties as it may prescribe, and upon issues made up as the court directs. No partition in kind shall be had until after such adjudication; but a sale need not wait thereon, and the pendency of any such controversy shall not delay distribution of the proceeds to any party not affected by the lien. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 281

**Sale free of liens.** Personalty must be sold free of liens. Real property must be sold free of all liens, except those which are held against the entire property sold. [Report 1943]

For initial or supplemental decree as to liens, see rules 279 and 280

#### RULE OF CIVIL PROCEDURE NO. 279

**Decree.** The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens, may be determined by the same decree, or later supplemental decree or decrees. [Report 1943]

Sale for less than appraisement, see rule 291

#### RULE OF CIVIL PROCEDURE NO. 278

**Division or sale.** Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can only be partitioned by sale. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 282

**Possession and preservation of property.** The court may order the referee to

lease or take possession of any property involved in the action. It may also preserve the property either by injunction or by any other appropriate provision for its care and custody. Expenses incurred under this rule, when allowed by the court, shall be part of the costs. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 283

**Referees to divide — oath — inability.** Referees authorized to make partition in kind shall qualify by taking oath and need give no bond. If they are unable to make such division, they shall so report to the court, which will then order a sale of personal property without further notice. As to real estate, such report will be heard under rule 286, whereupon any further decree of sale or otherwise, may be made which is proper under the exigencies of the case. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 284

**Partition in kind.** The referees who partition real estate in kind shall mark out each parcel by visible monuments, and file report thereof. They may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 285

**Specific allotment.** The court may, for good reasons shown, order referees making a partition in kind to allot a particular tract or article to a particular party. [Report 1943]

**651.3 Partition of part.** When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in this chapter. [C51,§2062; R60,§3640; C73,§3294; C97,§4257; C24, 27, 31, 35, 39,§12332; C46, 50, 54,§651.3]

#### RULE OF CIVIL PROCEDURE NO. 286

**Report — notice — hearing.** Referees shall file a report of their proposed partition in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place of hearing thereon, and the referees shall give at least ten days notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove the report, and refer it to the same or different referees or order a sale. [Report 1943]

Referred to in R.C.P. 283

#### RULE OF CIVIL PROCEDURE NO. 287

##### **Decree—recording.**

(a) *Decree—costs.* On approving a partition in kind, the court shall enter a

decree allotting each party the property or share set off to him, apportioning the costs among the allottees and entering judgment against each for his share thereof, which shall be a lien on the property allotted to him, and for which special execution may issue on demand of anyone interested.

Further as to costs, see rule 293

(b) *Recording.* If the decree involves real estate, the clerk shall file with the recorder of his own county and each other county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, and recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. [Report 1943]

Referred to in R.C.P. 293

**651.4 Costs attending transcript.** The costs of making and recording such transcript shall be taxed as part of the costs in the case. [S13, §4259; C24, 27, 31, 35, 39,§12338; C46, 50, 54, §651.4]

#### RULE OF CIVIL PROCEDURE NO. 293

**Costs.** All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests; except costs created by contests, which shall be taxed against the losing contestant unless otherwise ordered. No contest shall deprive plaintiff's attorney of the fee specified in rule 294. If partition is in kind, costs shall be adjudged, and may be collected as provided in rule 287(a). If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 294

**Attorney fees.** On partition of real estate, but not of personalty, the court shall fix, and tax as costs, a fee in favor of plaintiff's attorney, which cannot exceed the following amount, computed on the sale price, or by appraisement if no sale is made:

1. On the first two hundred dollars or fraction thereof obtained, ten percent;
2. On the excess of two hundred to five hundred dollars, five percent;
3. On the excess of five hundred to one thousand dollars, three percent; and

4. On all sums in excess of one thousand dollars, two percent. Provided further that in contested partition cases, plaintiff's attorney shall receive such additional reasonable compensation as the court may allow, to be taxed as part of the costs. [Report 1943; amendment 1955]

Referred to in R.C.P. 293

#### RULE OF CIVIL PROCEDURE NO. 288

**Referees to sell—bond.** A referee to make sale shall qualify by taking oath. No bond shall be required before the referee conveys real estate unless he is to sell personally or take possession of real estate or is to receive a payment on the sale before conveyance, in which case, he shall give such bond as the court directs. Before conveying real estate, he shall also give bond for one hundred twenty-five percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of his duties in connection with the sale and its proceeds. [Report 1943; amendment 1945]

#### RULE OF CIVIL PROCEDURE NO. 289

##### **Sales—notice—expense—approval.**

(a) *Approval.* All sales shall be subject to the approval of the court, unless it dispenses with approval of a public sale of personalty, which may then be sold on full payment of the price bid.

(b) *Expense.* If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk or assistant; and the expense thereof when allowed by the court, shall be part of the costs.

(c) *Notice of public sale.* The referees shall give notice of the time and place of any public sale, by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to the sale in case of real estate, and at least four days prior thereto in case of personalty. [Report 1943]

Notice, §626.74 et seq.

#### RULE OF CIVIL PROCEDURE NO. 290

##### **Report of sale—notice.**

(a) *Generally.* The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place, in which event the referees shall give notice to the interested parties as the court then directs.

(b) *Notice mandatory.* Such notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing his name and the ad-

dress to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made. The referee shall mail notice of the hearing to such party at his address shown in the request within a time prescribed by the court, which may direct that other parties be also notified. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 291

**Approving sale — conveyance.** The court by express order may approve a private sale though it be for less than the appraised value. No real estate shall be conveyed until the sale is approved by the court; and no conveyance shall be made until the price is fully paid. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 292

**Deed—validity.** A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding. [Report 1943]

**651.5 Sales disapproved.** If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto. [C51, §2058; R60, §3636; C73, §3304; C97, §4269; C24, 27, 31, 35, 39, §12348; C46, 50, 54, §651.5]

**651.6 Security to refund money.** The court in its discretion may require all or any of the parties, before they receive the moneys arising from any sale authorized in this chapter, to give satisfactory security to refund the same, with interest, in case it afterward appears that such parties were not entitled thereto. [C51, §2054; R60, §3632; C73, §3305; C97, §4270; C24, 27, 31, 35, 39, §12349; C46, 50, 54, §651.6]

#### RULE OF CIVIL PROCEDURE NO. 277

**Estate less than fee.** The court shall make suitable provision as to the proceeds of any share held for life or years or in remainder, which may be done by appointing a trustee for the proceeds involved. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 295

**Other fees.** Appraisers and referees in all partition suits, as well as any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 296

**Final reports.** Unless all interested parties waive it in writing, the court shall fix a time and place of hearing the referee's final report, and prescribe the



time and manner of notice which the referees shall give to all interested persons. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 297

**Paying small sums.** Whenever a minor, having no legal guardian, is entitled to proceeds of a partition sale, not in excess of two hundred dollars, the court may order the referee discharged of all liability therefor, by paying them to the minor's parent or natural guardian, or the person with whom he resides, for the use of such minor, and taking a receipt therefor. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 298

**Unborn parties.** When a person not in being may have a contingent or a pros-

pective vested interest as a cotenant of real estate, the court shall have jurisdiction over the interest of such person, and shall appoint a suitable guardian ad litem, to act for him in such proceeding, and rules 12 to 14 shall apply in such cases. The decree of partition and the division or sale thereunder shall be of the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the interest of such person shall be subject to the order of the court until the right thereto becomes fully vested. [Report 1943]

## CHAPTER 652

### FORECLOSURE OF CHATTEL MORTGAGES

Referred to in §§111.6, 321.47, 571.5

652.1 Notice and sale.  
652.2 Notice.  
652.3 Service.  
652.4 Return.  
652.5 Publication of notice.  
652.6 Title of purchaser.

652.7 Attorneys' fees.  
652.8 Bill of sale.  
652.9 Evidence of service perpetuated.  
652.10 Validity of sales.  
652.11 How contested.  
652.12 Deeds of trust.

**652.1 Notice and sale.** A mortgage of personal property to secure the payment of money only, where the time of payment is therein fixed, may be foreclosed by notice and sale, unless a stipulation to the contrary has been agreed upon by the parties, or by action in the proper court. [C51,§2071; R60,§3649; C73,§3307; C97,§4273; C24, 27, 31, 35, 39,§12352; C46, 50, 54,§652.1]

Attachment in aid of foreclosure, §640.1

**652.2 Notice.** The notice must contain a full description of the property mortgaged, together with the time, place, and terms of sale. [C51,§2072; R60,§3650; C73,§3308; C97,§4274; C24, 27, 31, 35, 39,§12353; C46, 50, 54, §652.2]

**652.3 Service.** Such notice must be served on the mortgagor and all purchasers from him subsequent to the execution of the mortgage, and all persons having recorded liens upon the same property which are junior to the mortgage, or they will not be bound by the proceedings. [C51,§2073; R60,§3651; C73,§3309; C97,§4275; C24, 27, 31, 35, 39,§12354; C46, 50, 54, §652.3]

**652.4 Return.** The service and return must be made in the same manner as in the case of the original notice by which civil actions are commenced in courts of record, except that no publication in the newspapers is necessary, the general publication directed in sec-

tion 652.5 being a sufficient service upon all the parties in cases where service is to be made by publication. [C51,§2074; R60,§3652; C73,§3310; C97,§4276; C24, 27, 31, 35, 39,§12355; C46, 50, 54,§652.4]

Service of notice, R.C.P. 56(a)

**652.5 Publication of notice.** After notice has been served upon the parties, it must be published in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner. [C51,§2075; R60,§3653; C73,§3311; C97,§4277; C24, 27, 31, 35, 39,§12356; C46, 50, 54, §652.5]

Referred to in §652.4  
Publication, §626.75

**652.6 Title of purchaser.** The purchaser shall take all the title and interest on which the mortgage operated. [C51,§2076; R60,§3654; C73,§3312; C97,§4278; C24, 27, 31, 35, 39,§12357; C46, 50, 54,§652.6]

**652.7 Attorneys' fees.** If the notes secured by such mortgage, or the mortgage itself, provide for the payment of attorneys' fees, the same fees shall be collected, if an attorney is employed to look after and direct the proceedings, as are provided by law to be collected after judgment in actions upon such contracts. The attorney shall make an affidavit like that required in actions, and have it attached by

the officer or person making sale to his return of the proceedings thereunder. [C97,§4279; C24, 27, 31, 35, 39,§12358; C46, 50, 54,§652.7]

Attorney fees, §625.22 et seq.

**652.8 Bill of sale.** The officer or other person conducting the sale shall execute to the purchaser a bill of sale of the property, which shall be effectual to carry the whole title and interest purchased. [C51,§2077; R60,§3655; C73, §3313; C97,§4280; C24, 27, 31, 35, 39,§12359; C46, 50, 54,§652.8]

**652.9 Evidence of service perpetuated.** Evidence of the service and publication of the notice aforesaid, and of the sale made in accordance therewith, together with any postponement or other material matter, shall be perpetuated by affidavits reciting the facts attached to the bill of sale, and shall constitute the return of the officer or person making the sale, and be receivable in evidence to prove the facts they state. [C51,§2079, 2080; R60, §§3656, 3657; C73,§§3314, 3315; C97,§4281; C24, 27, 31, 35, 39,§12360; C46, 50, 54,§652.9]

Similar provisions, §622.94 et seq.

**652.10 Validity of sales.** Sales made in accordance with the above requirements are valid as to property sold to a purchaser in good faith, whatever may be the equities between the mortgagor and mortgagee. [C51, §2081; R60,§3658; C73,§3316; C97,§4282; C24, 27, 31, 35, 39,§12361; C46, 50, 54,§652.10]

**652.11 How contested.** The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary. [C51,§2082; R60,§3659; C73,§3317; C97,§4283; C24, 27, 31, 35, 39,§12362; C46, 50, 54, §652.11]

**652.12 Deeds of trust.** Deeds of trust of personal property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages. [C51,§2096; R60,§3673; C73,§3318; C97, §4284; C24, 27, 31, 35, 39,§12363; C46, 50, 54, §652.12]

CHAPTER 653

FORECLOSURE OF PLEDGES

653.1 Notice and sale.

653.2 Service by certified mail.

653.3 Additional service on resident.

653.4 Additional service on nonresident.

653.5 Contents of notice.

653.6 Sale—pledgee as bidder.

653.7 Application of proceeds.

653.8 Equitable action.

**653.1 Notice and sale.** The pledgee of personal property held as security for an indebtedness, unless otherwise agreed in writing, may sell such property for the payment of the indebtedness when due by giving the pledgor and any purchaser or assignee of the property or any part of it of which the pledgee has notice in writing, ten days written notice of his intention to sell the same for the payment of such debt. [C97,§4285; C24, 27, 31, 35, 39, §12364; C46, 50, 54,§653.1]

Attachment in action to enforce lien, §640.1

**653.2 Service by certified mail.** The pledgee shall take the address of the pledgor at the time the pledge is made. In all cases the notice shall be served upon the pledgor by certified mail addressed to the address given by the pledgor at the time the property was pledged, or at his last known address. [C24, 27, 31, 35, 39,§12365; C46, 50, 54,§653.2; 57GA, ch 267,§90]

40ExGA, SF 241,§4, editorially divided

**653.3 Additional service on resident.** If the pledgor is a resident of the county in which the property was held the notice shall be posted for ten days in three public places in the township of the pledgor's residence. [C97,§4285; C24, 27, 31, 35, 39,§12366; C46, 50, 54,§653.3]

**653.4 Additional service on nonresident.** If the pledgor is not a resident of the county

where the property is held such notice shall be posted for ten days in three public places of such county. [C24, 27, 31, 35, 39,§12367; C46, 50, 54,§653.4]

**653.5 Contents of notice.** Such notice shall contain a full and accurate description of the property to be sold, the day and hour when, and the place at which the same will be sold. [C97,§4285; C24, 27, 31, 35, 39,§12368; C46, 50, 54,§653.5]

**653.6 Sale—pledgee as bidder.** If redemption is not made before the date thus fixed, the pledgee may sell at public auction, to the highest bidder, the pledged property, or so much of the same as may be necessary to pay the debt, interest, and all costs of making such sale, and may be a bidder at such sale. [C97,§4285; C24, 27, 31, 35, 39,§12369; C46, 50, 54,§653.6]

**653.7 Application of proceeds.** He shall apply the proceeds, first, in the payment of such costs, and second, to the payment of the debt. Any surplus arising from the sale and any property remaining unsold shall be paid or returned to the pledgor or his assigns. [C97, §4285; C24, 27, 31, 35, 39,§12370; C46, 50, 54,§653.7]

**653.8 Equitable action.** Such pledgee may commence an action in equity for the foreclosure of such collaterals or pledges, and the

court shall determine all issues presented as in other equity cases, and render judgment for the amount due from the pledgor, and award special execution for the sale of the collaterals or pledges, and general execution for any balance, or shall render such judgment as may

be necessary to carry out any written agreement of the parties concerning the subject matter; but in all cases a sale may be ordered unless there is a written stipulation to the contrary. [C97,§4286; C24, 27, 31, 35, 39,§12371; C46, 50, 54,§653.8]

## CHAPTER 654

### FORECLOSURE OF REAL ESTATE MORTGAGES

#### Delay of foreclosure, §654.15

654.1 Equitable proceedings.  
 654.2 Deeds of trust.  
 654.3 Venue.  
 654.4 Separate suits on note and mortgage.  
 654.5 Judgment—sale and redemption.  
 654.6 Deficiency—general execution.  
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 654.9 Payment of other liens—rebate of interest.

654.10 Amount sold.  
 654.11 Foreclosure of title bond.  
 654.12 Vendee deemed mortgagor.

#### RENTALS AND RECEIVERSHIP

654.13 Pledge of rents—priority.  
 654.14 Preference in receivership—application of rents.  
 654.15 Moratorium continuance.

**654.1 Equitable proceedings.** No deed of trust or mortgage of real estate shall be foreclosed in any other manner than by action in court by equitable proceedings. [C51,§§2083, 2096; R60,§§3660, 3673, 4179; C73,§3319; C97, §4287; C24, 27, 31, 35, 39,§12372; C46, 50, 54, §654.1]

**654.2 Deeds of trust.** Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages. [C51,§2096; R60,§3673; C73,§3318; C97,§4284; C24, 27, 31, 35, 39,§12373; C46, 50, 54,§654.2]

**654.3 Venue.** An action for the foreclosure of a mortgage of real property, or for the sale thereof under an encumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated. [C73,§2578; C97,§3493; C24, 27, 31, 35, 39,§12374; C46, 50, 54,§654.3]

**654.4 Separate suits on note and mortgage.** If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at his cost. [C51,§2086; R60, §3663; C73,§3320; C97,§4288; C24, 27, 31, 35, 39, §12375; C46, 50, 54,§654.4]

Action on certain judgments prohibited, ch 615  
 Related provision, §611.5

**654.5 Judgment — sale and redemption.** When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the same, with interest and costs. A special execution shall issue accordingly, and the sale thereunder shall be subject to redemption as in

cases of sale under general execution. [C51, §2084; R60,§3661; C73,§3321; C97,§4289; C24, 27, 31, 35, 39,§12376; C46, 50, 54,§654.5]

Redemption, ch 628

**654.6 Deficiency—general execution.** If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise. [C51, §2085; R60,§3662; C73,§3322; C97,§4290; C24, 27, 31, 35, 39,§12377; C46, 50, 54,§654.6]

See also §615.1

**654.7 Overplus.** If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor. [C51,§2089; R60,§3666; C73,§3324; C97,§4291; C24, 27, 31, 35, 39,§12378; C46, 50, 54, §654.7]

**654.8 Junior encumbrancer entitled to assignment.** At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying him the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure, or discontinue it, at his option. [C51,§2088; R60,§3665; C73,§3323; C97,§4292; C24, 27, 31, 35, 39,§12379; C46, 50, 54,§654.8]

**654.9 Payment of other liens—rebate of interest.** If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court or judge thereof, must

be made by the holder, or his lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor. [C51, §2090; R60, §3667; C73, §3325; C97, §4293; C24, 27, 31, 35, 39, §12380; C46, 50, 54, §654.9]

**654.10 Amount sold.** As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed. [C51, §2091; R60, §3668; C73, §3326; C97, §4294; C24, 27, 31, 35, 39, §12381; C46, 50, 54, §654.10]

**654.11 Foreclosure of title bond.** In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file his petition asking the court to require the purchaser to perform his contract, or to foreclose and sell his interest in the property. [C51, §2094; R60, §3671; C73, §3329; C97, §4297; C24, 27, 31, 35, 39, §12382; C46, 50, 54, §654.11]

**654.12 Vendee deemed mortgagor.** The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and his rights may be foreclosed in a similar manner. [C51, §2095; R60, §3672; C73, §3330; C97, §4298; C24, 27, 31, 35, 39, §12383; C46, 50, 54, §654.12]

#### RENTALS AND RECEIVERSHIP

**654.13 Pledge of rents — priority.** Whenever any real estate is encumbered by two or more real estate mortgages which in addition to the lien upon the real estate grant to the mortgagee the right to subject the rents, profits, avails and/or income from said real estate to the payment of the debt secured by such mortgage, the priority of the respective mortgagees under the provisions of their mortgages affecting the rents, profits, avails and/or incomes from the said real estate shall, as between such mortgagees, be in the same order as the priority of the lien of their respective mortgages on the real estate. [C35, §12383-e1; C39, §12383.1; C46, 50, 54, §654.13]

**654.14 Preference in receivership—application of rents.** In any action to foreclose a real estate mortgage where a receiver is appointed to take charge of the real estate, preference shall be given to the owner in actual possession, subject to approval of the court, in leasing the mortgaged premises. The rents, profits, avails and/or income derived from said real estate shall be applied as follows:

1. To the cost of receivership.
2. To the payment of taxes due or becoming due during said receivership.
3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court.

4. The balance shall be paid and distributed as determined by the court. [C35, §12383-e2; C39, §12383.2; C46, 50, 54, §654.14]

Omnibus repeal, 45GA, ch 181, §3

**654.15 Moratorium continuance.** In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner or owners enter appearance and file answer admitting some indebtedness and breach of the terms of the above designated instrument (which admissions cannot after a continuance is granted hereunder, be withdrawn or denied) such owner or owners may apply for a continuance of the foreclosure action when and where the default or inability of such party or parties to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy, or when the governor of the state of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state. Said applications must be in writing and filed at or before final decree. Upon the filing of such application the court shall set a day for hearing of the same and provide by order for notice, to be given to plaintiff, of the time fixed for said hearing. If the court shall on said hearing find that the application is made in good faith, and the same is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests or when the governor of the state of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state, the court may in its discretion continue said foreclosure proceeding or proceedings as follows:

1. If the default or breach of terms of the written instrument or instruments on which the action is based occur on or before the first day of March of any year by reason of any of the causes hereinbefore specified, causing the loss and failure of crops on the land involved in the previous year, then the continuance shall end on the first day of March of the succeeding year.

2. If the default or breach of terms of said written instrument occur after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes hereinbefore set out, then the continuance shall end on the first day of March of the second succeeding year.

3. Only one such continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may in its discretion grant a second continuance for such further period as to the court may seem just and equitable, not to exceed one year.

4. The order shall provide for the appointment of a receiver to take charge of the prop-

erty and to rent the same and the owner or party in possession shall be given preference in the occupancy thereof and the receiver shall collect the rents and income and distribute the proceeds as follows:

a. For the payment of the costs of receivership.

b. For the payment of taxes due or becoming due during the period of receivership.

c. For the payment of insurance on the buildings on the premises.

d. The balance remaining shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited thereon. [C39,§12383.3; C46, 50, 54,§654.15]

Constitutionality, 48GA, ch 245,§2

## CHAPTER 655

### SATISFACTION OF MORTGAGES

655.1 Dual methods.

655.2 Penalty.

655.3 Identification—witnesses.

655.4 Entry of foreclosure.

655.5 Entry of satisfaction.

**655.1 Dual methods.** When the amount due on a mortgage is paid off, the mortgagee, his personal representative or assignee, or those legally acting for him, and in case of payment of a school fund mortgage the county auditor, must acknowledge satisfaction thereof in the margin of the record of the mortgage, or by execution of an instrument in writing, referring to the mortgage, and duly acknowledged and recorded. [C51,§2093; R60,§3670; C73,§3327; C97,§4295; C24, 27, 31, 35, 39,§12384; C46, 50, 54, §655.1]

40ExGA, SF 241,§5, editorially divided  
Duty of recorder, §§558.44, 558.45

**655.2 Penalty.** If he fails to do so within thirty days after being requested in writing, he shall forfeit to the mortgagor or any grantee of the property who has paid the mortgage, the sum of twenty-five dollars. [C51,§2093; R60, §3670; C73,§3327; C97,§4295; C24, 27, 31, 35, 39, §12385; C46, 50, 54,§655.2]

**655.3 Identification—witnesses.** When any mortgage is satisfied on the margin of the record of the mortgage, as above provided,

the person satisfying the same shall be identified to and his signature shall be witnessed by the county recorder or his deputy. [C97, §4295; C24, 27, 31, 35, 39,§12386; C46, 50, 54, §655.3]

Indexing, §558.56

**655.4 Entry of foreclosure.** When a judgment of foreclosure is entered in any court, the clerk shall make upon the margin of the record of the mortgage foreclosed a minute showing that fact, in what court foreclosed, and giving the date of the decree. [C73,§3328; C97,§4296; C24, 27, 31, 35, 39,§12387; C46, 50, 54, §655.4]

C97,§4296, editorially divided

**655.5 Entry of satisfaction.** When the judgment is fully paid off and satisfied upon the judgment docket of such court, the clerk shall enter satisfaction upon the margin of such mortgage, and he shall be allowed as compensation for such service the sum of twenty-five cents, to be taxed as a part of the costs in the case. [C73,§3328; C97,§4296; C24, 27, 31, 35, 39,§12388; C46, 50, 54,§655.5]

## CHAPTER 656

### FORFEITURE OF REAL ESTATE CONTRACTS

Referred to in §534.19

656.1 Conditions prescribed.

656.2 Notice.

656.3 Service.

656.4 Compliance with notice.

656.5 Proof and record of service.

656.6 Scope of chapter.

**656.1 Conditions prescribed.** A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter. [C97,§4299; S13,§4299; C24, 27, 31, 35, 39,§12389; C46, 50, 54,§656.1]

**656.2 Notice.** Such forfeiture and cancellation shall be initiated by the vendor or by

his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, and on the party in possession of said real estate, a written notice which shall:

1. Reasonably identify said contract, and accurately describe the real estate covered thereby.

2. Specify the terms and conditions of said contract which have not been complied with.

3. Notify said party that said contract will stand forfeited and canceled unless said party within thirty days after the completed service of said notice performs the terms and conditions in default, and, in addition, pays the reasonable costs of serving the notice. [C97,§4299; S13,§4299; C24, 27, 31, 35, 39,§12390; C46, 50, 54, §656.2]

**656.3 Service.** Said notice may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication. [C97,§4299; S13,§4299; C24, 27, 31, 35, 39,§12391; C46, 50, 54,§656.3]

*Manner of service, R.C.P. 56(a); publication service, R.C.P. 60, 60.1*

**656.4 Compliance with notice.** The right to forfeit for breach occurring before said notice was served shall terminate if, prior to the expiration of the day for performance as specified in the notice, the party in default performs the terms and conditions as to which he is in default, and pays to the party not in default

the reasonable cost of serving said notice. [C97,§4300; S13,§4300; C24, 27, 31, 35, 39,§12392; C46, 50, 54,§656.4]

**656.5 Proof and record of service.** If the terms and conditions as to which there is default are not performed within said thirty days, the party serving said notice or causing the same to be served, may file for record in the office of the county recorder a copy of the notice aforesaid with proofs of service attached or indorsed thereon (and, in case of service by publication, his personal affidavit that personal service could not be made within this state), and when so filed and recorded, the said record shall be constructive notice to all parties of the due forfeiture and cancellation of said contract. [S13,§4300; C24, 27, 31, 35, 39,§12393; C46, 50, 54,§656.5]

**656.6 Scope of chapter.** This chapter shall be operative in all cases where the intention of the parties, as gathered from the contract and surrounding circumstances, is to sell or to agree to sell an interest in real estate, any contract or agreement of the parties to the contrary notwithstanding. [C97,§4301; C24, 27, 31, 35, 39,§12394; C46, 50, 54,§656.6]

**CHAPTER 657**

**NUISANCES**

*Referred to in §697.5*

*Billboard law violations, §819.10*

*Liquor law violations, §123.60*

- 657.1 Nuisance — what constitutes — action to abate.
- 657.2 What deemed nuisances.
- 657.3 Penalty—abatement.

- 657.4 Process.
- 657.5 Warrant by justice of the peace.
- 657.6 Stay of execution.
- 657.7 Expenses—how collected.

**657.1 Nuisance—what constitutes—action to abate.** Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof. [C51,§§2131-2133; R60,§§3713-3715; C73,§3331; C97,§4302; C24, 27, 31, 35, 39,§12395; C46, 50, 54, §657.1]

*Referred to in §368.3*

**657.2 What deemed nuisances.** The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.
2. The causing or suffering any offal, filth, or noisome substance to be collected or to

remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of opium or hasheesh, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a

public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

Similar provision, §319.10

8. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in cities.

9. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

10. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of any city, unless it be in a building of fireproof construction, is a public nuisance.

11. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

12. Dense growth of all weeds, vines, brush, or other vegetation in any city or town so as to constitute a health, safety, or fire hazard is a public nuisance. [C51, §§2759, 2761; R60, §§4409, 4411; C73, §§4089, 4091; C97, §§5078, 5080; S13, §§713-a, -b, 1056-a19; C24, 27, 31, 35, 39, §§5740, 5741, 6567, 6743, 12396; C46, 50, §§368.3, 368.4, 416.92, 420.54, 657.2; C54, §657.2]

Referred to in §368.3

**657.3 Penalty—abatement.** Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as hereinafter provided. [C51, §2762; R60, §4412; C73, §4092; C97, §5081; S13, §5081; C24, 27, 31, 35, 39, §12397; C46, 50, 54, §657.3]

**657.4 Process.** When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue,

order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. [C51, §2763; R60, §4413; C73, §4093; C97, §5082; C24, 27, 31, 35, 39, §12398; C46, 50, 54, §657.4]

**657.5 Warrant by justice of the peace.**

When the conviction is had upon an action before a justice of the peace and no appeal is taken, the justice, after estimating as aforesaid the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. [C51, §2764; R60, §4414; C73, §4094; C97, §5083; C24, 27, 31, 35, 39, §12399; C46, 50, 54, §657.5]

**657.6 Stay of execution.** Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into an undertaking to the state, in such sum and with such surety as the court or justice may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court; and, upon his failure to perform the condition of his undertaking, the same shall be forfeited, and the court in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking. [C51, §2765; R60, §4415; C73, §4095; C97, §5084; C24, 27, 31, 35, 39, §12400; C46, 50, 54, §657.6]

**657.7 Expenses — how collected.** The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [C51, §2766; R60, §4416; C73, §4096; C97, §5085; C24, 27, 31, 35, 39, §12401; C46, 50, 54, §657.7]

## CHAPTER 658

## WASTE AND TRESPASS

658.1 Treble damages.

658.2 Forfeiture and eviction.

658.3 Who deemed to have committed.

658.4 Treble damages for injury to trees.

658.5 Estate of remainder or reversion.

658.6 Action by heir.

658.7 Purchaser at execution sale.

658.8 Settlers on lands of state.

658.9 Holder of tax certificate.

658.10 Disposition of money.

**658.1 Treble damages.** If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor. [C51, §2134; R60, §3716; C73, §3332; C97, §4303; C24, 27, 31, 35, 39, §12402; C46, 50, 54, §658.1]

**658.2 Forfeiture and eviction.** Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property injured, when the action is brought by the person entitled to the reversion. [C51, §2135; R60, §3717; C73, §3333; C97, §4304; C24, 27, 31, 35, 39, §12403; C46, 50, 54, §658.2]

**658.3 Who deemed to have committed.** Any person whose duty it is to prevent waste, and who fails to use reasonable and ordinary care to avert the same, shall be held to have committed it. [C51, §2136; R60, §3718; C73, §3334; C97, §4305; C24, 27, 31, 35, 39, §12404; C46, 50, 54, §658.3]

**658.4 Treble damages for injury to trees.** For willfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any city or town, or any land held by the state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property. [C51, §2137; R60, §3719; C73, §3335; C97, §4306; C24, 27, 31, 35, 39, §12405; C46, 50, 54, §658.4]

**658.5 Estate of remainder or reversion.** The owner of an estate in remainder or reversion may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years. [C51, §2139; R60, §3721; C73, §3337; C97, §4307; C24, 27, 31, 35, 39, §12406; C46, 50, 54, §658.5]

**658.6 Action by heir.** An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestor as well as in his own time, unless barred by the statute of limitations. [C51, §2140; R60, §3722; C73, §3338; C97, §4308; C24, 27, 31, 35, 39, §12407; C46, 50, 54, §658.6]

**658.7 Purchaser at execution sale.** The purchaser of lands or tenements at execution sale may have and maintain an action against any person for either of the causes above mentioned, occurring or existing after such purchase; but this provision shall not be construed to forbid the person occupying the lands in the meantime from using them in the ordinary course of husbandry, or taking timber with which to make suitable repairs thereon, unless the timber so taken shall be of higher grade than required, in which case he shall be held guilty of waste and liable accordingly. [C51, §§2141-2143; R60, §§3723-3725; C73, §§3339-3341; C97, §4309; C24, 27, 31, 35, 39, §12408; C46, 50, 54, §658.7]

Right of purchaser, §626.101

**658.8 Settlers on lands of state.** Any person settled upon and occupying any portion of the public lands held by the state is not liable as a trespasser for improving or cultivating it in the ordinary course of husbandry, nor for taking and using timber or other materials necessary and proper to enable him to do so, provided the timber and other materials are taken from land properly constituting a part of the "claim" or tract of land so settled upon and occupied by him. [C51, §2144; R60, §3726; C73, §3342; C97, §4310; C24, 27, 31, 35, 39, §12409; C46, 50, 54, §658.8]

**658.9 Holder of tax certificate.** The owner of a treasurer's certificate of purchase of land sold for taxes may recover treble damages of any person willfully committing waste or trespass thereon. [C73, §3343; C97, §4311; C24, 27, 31, 35, 39, §12410; C46, 50, 54, §658.9]

Referred to in §658.10

**658.10 Disposition of money.** All money recovered in an action brought under section 658.9 shall be paid by the officer collecting it to the auditor of the county in which the lands are situated, which shall be held by him, and an entry thereof made in a book kept for that purpose, until the lands are redeemed, or a treasurer's deed therefor executed to the holder of said certificate. If redemption is made, the money shall be paid to the owner of the land, and if not, to the person to whom the deed is executed. [C73, §3344; C97, §4312; C24, 27, 31, 35, 39, §12411; C46, 50, 54, §658.10]



## CHAPTER 659

## LIBEL AND SLANDER

- 659.1 Pleading.  
 659.2 Libel—retraction—actual damages.  
 659.3 Retraction—actual, special, and exemplary damages.

- 659.4 Candidate for office—retraction—time.  
 659.5 Defamatory statement by radio.  
 659.6 Proof of malice.

**659.1 Pleading.** In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff. [R60,§2928; C73, §2681; C97,§3592; C24, 27, 31, 35, 39,§12412; C46, 50, 54,§659.1]

Similar provision, §787.3

**659.2 Libel—retraction—actual damages.** In any action for damages for the publication of a libel in a newspaper, if the defendant can show that such libelous matter was published through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the publisher at the principal place of publication a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn. [SS15,§3592-a; C24, 27, 31, 35, 39,§12413; C46, 50, 54,§659.2]

SS15,§3592-a, editorially divided  
 Referred to in §659.4

**659.3 Retraction—actual, special, and exemplary damages.** If a retraction or correction thereof be not published in as conspicuous a place and type in said newspaper as were the statements complained of, in a regular issue thereof published within two weeks after such service, plaintiff may allege such notice, demand, and failure to retract in his complaint and may recover both actual, special, and exemplary damages if his cause of action be maintained. If such retraction be so published, he may still recover such actual, special, and

exemplary damages, unless the defendant shall show that the libelous publication was made in good faith, without malice, and under a mistake as to the facts. [SS15,§3592-a; C24, 27, 31, 35, 39,§12414; C46, 50, 54,§659.3]

Referred to in §659.4

**659.4 Candidate for office—retraction—time.** If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election; provided that this and sections 659.2 and 659.3 shall not apply to any libel imputing unchastity to a woman. [SS15,§3592-a; C24, 27, 31, 35, 39,§12415; C46, 50, 54,§659.4]

**659.5 Defamatory statement by radio.** The owner, lessee, licensee, or operator of a radio broadcasting station, and the agents or employees of any such owner, lessee, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio broadcast, by one other than such owner, lessee, licensee, or operator, or agent or employee thereof, if such owner, lessee, licensee, operator, agent, or employee shall prove the exercise of due care to prevent the publication or utterance of such statement in such broadcasts. [C39, §12415.1; C46, 50, 54,§659.5]

**659.6 Proof of malice.** In actions for slander or libel, an unproved allegation of the truth of the matter charged shall not be deemed proof of malice, unless the jury on the whole case finds that such defense was made with malicious intent. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§12416; C46, 50, 54, §659.6]

## CHAPTER 660

## QUO WARRANTO

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|--|---|
| Rule—For what causes, R.C.P. 299.            | 660.3 Action against officers of corporation. |
| Rule—No joinder or counterclaim, R.C.P. 301. | 660.4 Corporation dissolved.                  |
| Rule—By whom brought, R.C.P. 300.            | 660.5 Bond.                                   |
| Rule—Petition, R.C.P. 302.                   | 660.6 Action.                                 |
| Rule—Judgment, R.C.P. 303.                   | 660.7 Duty of trustees.                       |
| 660.1 Books and papers.                      | 660.8 Books delivered.                        |
| 660.2 Action for damages.                    | 660.9 Inventory.                              |
| Rule—Costs, R.C.P. 304.                      | 660.10 Powers.                                |
| Rule—Corporation dissolved, R.C.P. 305.      | 660.11 Penalty for refusing to obey order.    |

## RULE OF CIVIL PROCEDURE NO. 299

**For what causes.** A civil action in the nature of quo warranto, triable by equi-

table proceedings, may be brought in the name of the state against any defendant who is:

(a) Unlawfully holding or exercising any public office or franchise in Iowa, or an office in any Iowa corporation; or

(b) A public officer who has done or suffered to be done, an act which works a forfeiture of his office; or

(c) Acting as a corporation in Iowa without being authorized by law so to act; or

(d) A corporation exercising powers not conferred by law, or doing or omitting acts, which work a forfeiture of its corporate rights or privileges; or

(e) A person or corporation claiming under a patent, permit, certificate of convenience and necessity or license of any nature which was granted by the state because of fraud, or mistake or ignorance of a material fact, or the terms of which have expired or been violated by the defendant, or which the defendant has in any manner forfeited. The action in such cases shall be to annul or vacate the patent, permit, certificate or license in question. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 301

**No joinder or counterclaim.** In such action there shall be no joinder of any other cause of action, and no counterclaim. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 300

##### By whom brought.

(a) The county attorney of the county where the action lies may bring it in his discretion, and must do so when directed by the governor, general assembly or the supreme or district court, unless he may be a defendant, in which event the attorney general may, and shall when so directed, bring the action.

(b) If on demand of any citizen of the state, the county attorney fails to bring the action, the attorney general may do so, or such citizen may apply to the court where the action lies for leave to bring it. On leave so granted, and after filing bond for costs in an amount fixed by the court, with sureties approved by the clerk, the citizen may bring the action and prosecute it to completion. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 302

**Petition.** The petition shall state the grounds on which the action is brought, and if it involves an office, franchise or right claimed by others than the defendant, it shall name them; and they may be made parties. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 303

##### Judgment.

(a) The judgment shall determine all rights and claims of all parties respecting the matters involved, and shall include

any provision necessary to enforce their rights as so determined, or to accomplish the objects of the decision.

(b) The judgment shall also determine which party, if any, is entitled to hold any office in controversy.

(c) If a party is unlawfully holding or exercising any office, franchise or privilege, or if a corporation has violated the law by which it exists or been guilty of any act or omission which amounts to a surrender or forfeiture of its privileges, the judgment shall oust such party from such office or franchise, or forfeit such privilege, and forbid such party to exercise or use any such office, franchise or privilege.

(d) If a party has merely exercised powers or privileges to which he was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit him from the further exercise thereof. [Report 1943]

**Manner of qualifying, ch 63**

**660.1 Books and papers.** The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office. [C51,§2159; R60,§3741; C73,§3354; C97,§4322; C24, 27, 31, 35, 39,§12426; C46, 50, 54,§660.1]

**660.2 Action for damages.** When judgment has been rendered in favor of the claimant he may, at any time within one year thereafter, bring an action against the defendant, and recover the damages he has sustained by reason of the act of the defendant. [C51,§2160; R60,§3742; C73,§3355; C97,§4323; C24, 27, 31, 35, 39,§12427; C46, 50, 54,§660.2]

#### RULE OF CIVIL PROCEDURE NO. 304

##### Costs.

(a) Judgment against any defendant or intervenor shall include judgment for the costs of the action. Judgment against a pretended corporation shall adjudge the costs against the person or persons acting as such.

(b) If the action fails, the court may adjudge the costs against any private individual who brought it; otherwise they shall be paid as provided by the statutes governing costs in criminal cases. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 305

**Corporation dissolved.** If the judgment dissolves a corporation, the court shall make appropriate orders for the dissolution as provided by the statutes in force. [Report 1943]

**660.3 Action against officers of corporation.** When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers

shall be jointly and severally liable to an action by anyone injured thereby. [C51,§2173; R60, §3755; C73,§3359; C97,§4327; C24, 27, 31, 35, 39, §12431; C46, 50, 54,§660.3]

**660.4 Corporation dissolved.** If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders. [C51,§2166; R60,§3748; C73,§3360; C97,§4328; C24, 27, 31, 35, 39,§12432; C46, 50, 54,§660.4]

**660.5 Bond.** Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust. [C51,§2167; R60,§3749; C73,§3361; C97,§4329; C24, 27, 31, 35, 39,§12433; C46, 50, 54,§660.5]

**660.6 Action.** Action may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties. [C51,§2168; R60,§3750; C73,§3362; C97,§4330; C24, 27, 31, 35, 39,§12434; C46, 50, 54,§660.6]

**660.7 Duty of trustees.** The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled. [C51,§2169; R60,§3751; C73,§3363; C97, §4331; C24, 27, 31, 35, 39,§12435; C46, 50, 54, §660.7]

**660.8 Books delivered.** The court shall, upon application for that purpose, order any

officer of such corporation, or any other person having possession of any of the effects, books, or papers thereof, in any wise necessary for the settlement of its affairs, to deliver the same to the trustees. [C51,§2170; R60,§3752; C73,§3364; C97,§4332; C24, 27, 31, 35, 39,§12436; C46, 50, 54,§660.8]

**660.9 Inventory.** As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court an inventory, sworn to by each of them, of all the effects, rights, and credits which come to their possession or knowledge. [C51, §2171; R60,§3753; C73,§3365; C97,§4333; C24, 27, 31, 35, 39,§12437; C46, 50, 54,§660.9]

**660.10 Powers.** They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come into their hands. [C51,§2172; R60,§3754; C73,§3366; C97,§4334; C24, 27, 31, 35, 39,§12438; C46, 50, 54,§660.10]

**660.11 Penalty for refusing to obey order.** Any person who without good reason refuses to obey an order of the court, as herein provided, shall be guilty of contempt, and fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail until he complies therewith, and shall be further liable for the damages resulting to any person on account of his disobedience. [C51,§2174; R60, §3756; C73,§3367; C97,§4335; C24, 27, 31, 35, 39, §12439; C46, 50, 54,§660.11]

## CHAPTER 661

### MANDAMUS

661.1 Definition.

661.2 Discretion—exercise of.

661.3 Nature of action.

661.4 Order issued.

661.5 Auxiliary remedy.

661.6 "Enforceable duty" defined.

661.7 Other plain, speedy, and adequate remedy.

661.8 When order granted.

661.9 Petition.

661.10 Other pleadings.

661.11 Trial in vacation.

661.12 Injunction may issue—joinder.

661.13 Peremptory order.

661.14 Form of order—return.

661.15 Performance by another—costs.

661.16 Temporary orders.

661.17 Appeal by state.

**661.1 Definition.** The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. [R60,§3761; C73,§3373; C97,§4341; S13,§4341; C24, 27, 31, 35, 39,§12440; C46, 50, 54,§661.1]

S13,§4341, editorially divided

**661.2 Discretion — exercise of.** Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion. [C51,§2180; R60,§3763; C73,§3373; C97,§4341; S13,§4341; C24, 27, 31, 35, 39,§12441; C46, 50, 54,§661.2]

**661.3 Nature of action.** All such actions shall be tried as equitable actions. [S13,§4341; C24, 27, 31, 35, 39,§12442; C46, 50, 54,§661.3]

**661.4 Order issued.** The order may be issued by the district or superior court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court to any district or superior court, if necessary, and in any other case where it is found necessary for that court to exercise its legitimate power. [C51,§§2179, 2181; R60,§§3761, 3764; C73,§3374; C97,§4342; C24, 27, 31, 35, 39,§12443; C46, 50, 54, §661.4]

**661.5 Auxiliary remedy.** The plaintiff in any action, except those brought for the re-

covery of specific real or personal property, may also, as an auxiliary relief, have an order of mandamus to compel the performance of a duty established in such action. [R60,§3767; C73,§3375; C97,§4343; C24, 27, 31, 35, 39,§12444; C46, 50, 54,§661.5]

C97,§4343, editorially divided

**661.6 “Enforceable duty” defined.** If such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance. [R60,§3767; C73,§3375; C97,§4343; C24, 27, 31, 35, 39,§12445; C46, 50, 54,§661.6]

**661.7 Other plain, speedy, and adequate remedy.** An order of mandamus shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law, save as herein provided. [C51,§2182; R60,§3765; C73,§3376; C97,§4344; C24, 27, 31, 35, 39,§12446; C46, 50, 54,§661.7]

**661.8 When order granted.** The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought. [R60,§3761; C73,§3377; C97,§4345; C24, 27, 31, 35, 39,§12447; C46, 50, 54,§661.8]

**661.9 Petition.** The plaintiff in such action shall state his claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that he sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by him, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty. [R60,§3762; C73,§3378; C97,§4346; C24, 27, 31, 35, 39,§12448; C46, 50, 54,§661.9]

**661.10 Other pleadings.** The pleadings and other proceedings in any action in which a mandamus is claimed shall be the same, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages. [R60,§3766; C73,§3379; C97,§4347; C24, 27, 31, 35, 39,§12449; C46, 50, 54,§661.10]

**661.11 Trial in vacation.** When the speedy determination of the issues in an action of mandamus is urgent, the court or a judge thereof may, upon the filing and presentation of the petition, prescribe the notice and service

thereof necessary to bring the defendant before the court or judge, and shall have power to cause the issues to be made up in term time or vacation and to try and to decide the cause in vacation with the same force and effect as if tried and decided in term time. [C27, 31, 35, §12449-b1; C39,§12449.1; C46, 50, 54,§661.11]

**661.12 Injunction may issue—joinder.** When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of actions specified in this chapter, but no other joinder and no counterclaim shall be allowed. [R60,§4181; C73,§3380; C97,§4348; C24, 27, 31, 35, 39,§12450; C46, 50, 54,§661.12]

**661.13 Peremptory order.** When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus directed to the defendant, commanding him forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue. [R60,§3768; C73,§3381; C97,§4349; C24, 27, 31, 35, 39,§12451; C46, 50, 54,§661.13]

**661.14 Form of order—return.** The order shall simply command the performance of the duty, shall be directed to the party, and may be issued in term or vacation, returnable forthwith, and no return except that of compliance shall be allowed; but time to return it may, upon sufficient grounds, be allowed by the court or judge, either with or without terms. [R60,§3769; C73,§3382; C97,§4350; C24, 27, 31, 35, 39,§12452; C46, 50, 54,§661.14]

**661.15 Performance by another—costs.** The court may, upon application of the plaintiff, besides or instead of proceeding against the defendant by attachment, direct that the act required to be done may be done by the plaintiff or some other person appointed by the court, at the expense of the defendant, and, upon the act being done, the amount of such expense may be ascertained by the court, or by a referee appointed by the court or judge, and the court may render judgment for the amount of the expense and cost, and enforce payment thereof by execution. [R60,§3770; C73,§3383; C97,§4351; C24, 27, 31, 35, 39,§12453; C46, 50, 54, §661.15]

**661.16 Temporary orders.** During the pendency of the action, the court, or judge in vacation, may make temporary orders for preventing damage or injury to the plaintiff until the action is decided. [R60,§3771; C73,§3384; C97, §4352; C24, 27, 31, 35, 39,§12454; C46, 50, 54, §661.16]

**661.17 Appeal by state.** When the state is a party, it may appeal without security. [R60, §3772; C73,§3385; C97,§4353; C24, 27, 31, 35, 39, §12455; C46, 50, 54,§661.17]

## CHAPTER 662

## CERTIORARI

Rule—When writ may issue, R.C.P. 306.  
 Rule—Other remedies, R.C.P. 308.  
 Rule—The writ, R.C.P. 309.  
 Rule—Stay—bond, R.C.P. 310.  
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 Rule—Notice of issuing writ, R.C.P. 311.  
 Rule—Service of writ, R.C.P. 312.

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 Rule—Defective return, R.C.P. 314.  
 Rule—Trial, R.C.P. 315.  
 Rule—Judgment limited, R.C.P. 316.  
 Rule—Nature of proceeding, R.C.P. 317.  
 Rule—Appeal, R.C.P. 318.  
 Rule—Limitation, R.C.P. 319.

## RULE OF CIVIL PROCEDURE NO. 306

**When writ may issue.** A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 308

**Other remedies.** The writ shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or illegality of the acts complained of, unless otherwise specially provided by statute. [Report 1943]

See also rule 107 as to treating petition as one for other proper relief

## RULE OF CIVIL PROCEDURE NO. 309

**The writ.** The writ may be granted only by the district court unless it is directed to that court or a municipal or superior court; and then by the supreme court or a justice thereof. It shall be issued by the clerk of the court where the petition is filed, under its seal. It shall command the defendant to certify to that court, at a specified time and place, a transcript of so much of defendant's records and proceedings as are complained of in the petition or as may be pertinent thereto, together with the facts of the case, describing or referring to them or any of them with convenient certainty; and also to have then and there the writ. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 310

**Stay—bond.** The court or justice granting the writ may, in its or his discretion, stay the original proceedings, though no stay is asked. Such stay, when sought by plaintiff, can be granted only on his filing bond with penalty and conditions, including security for costs, prescribed by such court or justice, and sureties approved by it or its clerk. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 307

**Title.** The petition shall be entitled in the name of the petitioner as plaintiff,

against the inferior tribunal, board or officer as defendant. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 311

**Notice of issuing writ.** The writ may issue without notice on filing the petition, unless it is filed before a final order or decree in the original proceedings, or the plaintiff seeks a stay. Before issuing the writ in the latter cases, the court or justice shall, and in any case may in his discretion, fix a time and place for hearing and prescribe reasonable notice to defendant thereof. Such hearing shall be confined to the sufficiency of the petition, what records or proceedings shall be certified, and the terms of any bond to be given. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 312

**Service of writ.** Unless the defendant accepts service of the writ, it shall be served by a sheriff or deputy sheriff. If directed to a court, service shall be on a judge or clerk thereof; if to a board or other tribunal on its secretary, clerk or any member. Service shall be by delivery of the original writ; and a copy, with return of service, shall be returned to the office of its issuance. [Report 1943]

Personal service, R.C.P. 56

## RULE OF CIVIL PROCEDURE NO. 313

**Return to writ—by whom.** Where the writ is directed to a court, return thereto, if practicable, shall be made and signed by the judge whose action is complained of, otherwise by any judge of that court; where directed to an officer, he shall make and sign the return; where directed to a board or tribunal, return thereto shall be made and signed by its presiding officer, or its clerk or secretary. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 314

**Defective return.** If the return is defective, the court or justice who issued the writ, on his own motion or that of any party, may order a further return; or compel obedience to the writ or to such order, by attachment or citation for contempt. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 315

**Trial.** When full return has been made, the court shall fix a time and

place of hearing, and hear the parties upon the record made by the return. In its discretion, it may receive any transcript of the evidence taken in the original proceeding, and such other oral or written evidence as is explanatory of the matters contained in the return. Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original tribunal, board or officer to sustain its, or his action, unless otherwise specially provided by statute. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 316

**Judgment limited.** Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may

proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 317

**Nature of proceeding.** The action shall be by ordinary proceedings, so far as applicable. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 318

**Appeal.** Appeal to the supreme court lies from a judgment of the district court in a certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 319

**Limitation.** No writ of certiorari shall issue or be sustained unless the petition is filed within six months from the time the inferior tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. [Report 1943]

## CHAPTER 663 HABEAS CORPUS

- 663.1 Petition.
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- 663.40 Plaintiff retained in custody.
- 663.41 Right to be present waived.
- 663.42 Disobedience of order.
- 663.43 Papers filed with clerk.
- 663.44 Costs.

**663.1 Petition.** The petition for the writ of habeas corpus must state:

1. That the person in whose behalf it is sought is restrained of his liberty, and the person by whom and the place where he is so restrained, mentioning the names of the parties, if known, and if unknown describing them with as much particularity as practicable.

2. The cause or pretense of such restraint, according to the best information of the applicant; and if by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.

3. That the restraint is illegal, and wherein.

4. That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.

5. Whether application for the writ has been before made to and refused by any court or judge, and if so, a copy of the petition in that case must be attached, with the reasons for the refusal, or satisfactory reasons given for the failure to do so. [C51,§2213; R60,§3801; C73, §3449; C97,§4417; C24, 27, 31, 35, 39,§12468; C46, 50, 54,§663.1]

**663.2 Verification—presentation to court.** The petition must be sworn to by the person confined, or by someone in his behalf, and presented to some court or officer authorized to allow the writ. [C51,§2214; R60,§3802; C73, §3450; C97,§4418; C24, 27, 31, 35, 39,§12469; C46, 50, 54,§663.2]

**663.3 Writ allowed—service.** The writ may be allowed by the supreme, district, or superior court, or by any judge of either of those courts, and may be served in any part of the state. [C51,§2215; R60,§3803; C73,§3451; C97,§4419; C24, 27, 31, 35, 39,§12470; C46, 50, 54,§663.3]

**663.4 Application—to whom made.** Application for the writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to therefor, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient court or a judge thereof. [C51,§2217; R60,§3805; C73,§3452; C97,§4420; S13, §4420; C24, 27, 31, 35, 39,§12471; C46, 50, 54, §663.4]

S13,§4420, editorially divided  
Referred to in §663.5

**663.5 Inmates of state or federal institutions.** When the applicant is an inmate of or confined in a state or federal institution the provisions of section 663.4 relating to the court to which or the judge to whom applications must be made are mandatory, and the convenience or preference of an attorney or witness or other person interested in the release of the applicant shall not be a sufficient reason to authorize a more remote court or judge to assume jurisdiction. [S13,§4420; C24, 27, 31, 35, 39,§12472; C46, 50, 54,§663.5]

**663.6 Writ refused.** If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge must refuse to allow the writ. [C51,§2218; R60,§3806; C73,§3453; C97,§4421; C24, 27, 31, 35, 39,§12473; C46, 50, 54,§663.6]

**663.7 Reasons indorsed.** If the writ is disallowed, the court or judge shall cause the reasons thereof to be appended to the petition and returned to the person applying for the writ. [C51,§2221; R60,§3809; C73,§3454; C97, §4422; C24, 27, 31, 35, 39,§12474; C46, 50, 54, §663.7]

**663.8 Form of writ.** If the petition is in accordance with the foregoing requirements, and states sufficient grounds for the allowance of the writ, it shall issue, and may be substantially as follows:

The State of Iowa,  
To the sheriff of, etc. (or to A. . . . . B. . . . . ,  
as the case may be):  
You are hereby commanded to have the  
body of C. . . . . D. . . . . , by you unlawfully  
detained, as is alleged, before the court (or  
before me, or before E. . . . . F. . . . . , judge,  
etc., as the case may be), at . . . . . , on . . . . .

(or immediately after being served with this writ), to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises. [C51,§2219; R60,§3807; C73,§3455; C97,§4423; C24, 27, 31, 35, 39,§12475; C46, 50, 54,§663.8]

**663.9 How issued.** When the writ is allowed by a court, it must be issued by the clerk, but when by a judge, he must issue it himself, subscribing his name thereto. [C51, §2220; R60,§3808; C73,§3456; C97,§4424; C24, 27, 31, 35, 39,§12476; C46, 50, 54,§663.9]

**663.10 Penalty for refusing.** Any judge, whether acting individually or as a member of the court, who wrongfully and willfully refuses the allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars. [C51, §2222; R60,§3810; C73,§3457; C97,§4425; C24, 27, 31, 35, 39,§12477; C46, 50, 54,§663.10]

**663.11 Issuance on judge's own motion.** When any court or judge authorized to grant the writ has evidence, from a judicial proceeding before him, that any person within the jurisdiction of such court or officer is illegally imprisoned or restrained of his liberty, such court or judge shall issue the writ or cause it to be issued, on its or his own motion. [C51, §2223; R60,§3811; C73,§3458; C97,§4426; C24, 27, 31, 35, 39,§12478; C46, 50, 54,§663.11]

**663.12 County attorney notified.** The court or officer allowing the writ must cause the county attorney of the proper county to be informed thereof, and of the time and place where and when it is made returnable. [C51, §2240; R60,§3828; C73,§3459; C97,§4427; C24, 27, 31, 35, 39,§12479; C46, 50, 54,§663.12]

**663.13 Service of writ.** The writ may be served by the sheriff, or by any other person appointed in writing for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for a nonperformance of his duty, as though he were the sheriff. [C51, §2224; R60,§3812; C73,§3460; C97,§4428; C24, 27, 31, 35, 39,§12480; C46, 50, 54,§663.13]

**663.14 Mode.** The service shall be made by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service, but a failure in this respect shall not be held material. [C51, §2225; R60,§3813; C73,§3461; C97,§4429; C24, 27, 31, 35, 39,§12481; C46, 50, 54,§663.14]

**663.15 Defendant not found.** If the defendant cannot be found, or if he has not the plaintiff in custody, the service may be made upon any person who has, in the same manner and with the same effect as though he had been made defendant therein. [C51,§2226; R60, §3814; C73,§3462; C97,§4430; C24, 27, 31, 35, 39, §12482; C46, 50, 54,§663.15]

**663.16 Power of officer.** If the defendant conceals himself, or refuses admittance to the person attempting to serve the writ, or if he attempts wrongfully to carry the plaintiff out of the county or the state after the service of the writ, the sheriff, or the person who is attempting to serve or who has served it, is authorized to arrest the defendant and bring him, together with the plaintiff, forthwith before the officer or court before whom the writ is made returnable. [C51,§2227; R60,§3815; C73, §3463; C97,§4431; C24, 27, 31, 35, 39,§12483; C46, 50, 54,§663.16]

**663.17 Arrest.** In order to make the arrest, the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony. [C51,§2228; R60,§3816; C73, §3464; C97,§4432; C24, 27, 31, 35, 39,§12484; C46, 50, 54,§663.17]

Referred to in §663.18  
Arrest, ch 755 et seq.

**663.18 Plaintiff taken.** If the plaintiff can be found, and if no one appears to have the charge or custody of him, the person having the writ may take him into custody and make return accordingly, and to get possession of the plaintiff's person in such cases he possesses the same power as is given by section 663.17 for the arrest of the defendant. [C51, §2229; R60,§3817; C73,§3465; C97,§4433; C24, 27, 31, 35, 39,§12485; C46, 50, 54,§663.18]

**663.19 Defects in writ.** The writ must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent thereof. [C51,§2234; R60,§3822; C73, §3466; C97,§4434; C24, 27, 31, 35, 39,§12486; C46, 50, 54,§663.19]

**663.20 Penalty for eluding writ.** If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing him, he shall, on conviction, be imprisoned in the penitentiary or county jail not more than one year, and fined not exceeding one thousand dollars, and any person knowingly aiding or abetting in any such act shall be subject to like punishment. [C51,§2253; R60, §3841; C73,§3467; C97,§4435; C24, 27, 31, 35, 39, §12487; C46, 50, 54,§663.20]

**663.21 Refusal to give copy of process.** An officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody to any person who demands it and tenders the fees therefor, shall forfeit two hundred dollars to the person who demands it. [C51,§2254; R60,§3842; C73,§3468; C97,§4436; C24, 27, 31, 35, 39,§12488; C46, 50, 54,§663.21]

**663.22 Preliminary writ.** The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings above authorized,

may issue an order to the sheriff, or any other person selected instead, commanding him to bring the plaintiff forthwith before such court or judge. [C51,§2230; R60,§3818; C73,§3469; C97,§4437; C24, 27, 31, 35, 39,§12489; C46, 50, 54, §663.22]

**663.23 Arrest of defendant.** If the evidence is sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the order must also direct the arrest of the defendant. [C51,§2231; R60,§3819; C73, §3470; C97,§4438; C24, 27, 31, 35, 39,§12490; C46, 50, 54,§663.23]

**663.24 Execution of writ—return.** The officer or person to whom the order is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and the defendant must make return to the writ in the same manner as if the ordinary course had been pursued. [C51,§2232; R60,§3820; C73,§3471; C97, §4439; C24, 27, 31, 35, 39,§12491; C46, 50, 54, §663.24]

**663.25 Examination.** The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case. [C51,§2233; R60,§3821; C73,§3472; C97, §4440; C24, 27, 31, 35, 39,§12492; C46, 50, 54, §663.25]

**663.26 Informalities.** Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person. [C51,§2235; R60,§3823; C73,§3473; C97,§4441; C24, 27, 31, 35, 39,§12493; C46, 50, 54,§663.26]

**663.27 Appearance—answer.** Service being made in any of the modes herein provided, the defendant must appear at the proper time and answer the petition, but no verification shall be required to the answer. [C51,§2236; R60, §3824, 4182; C73,§3474; C97,§4442; C24, 27, 31, 35, 39,§12494; C46, 50, 54,§663.27]

**663.28 Body to be produced.** He must also produce the body of the plaintiff, or show good cause for not doing so. [C51,§2237; R60,§3825; C73,§3475; C97,§4443; C24, 27, 31, 35, 39,§12495; C46, 50, 54,§663.28]

**663.29 Penalty—contempt.** A willful failure to comply with the above requirements will render the defendant liable to be attached for contempt, and to be imprisoned till he complies, and shall subject him to the forfeiture of one thousand dollars to the party thereby aggrieved. [C51,§2238; R60,§3826; C73,§3476; C97,§4444; C24, 27, 31, 35, 39,§12496; C46, 50, 54, §663.29]

**663.30 Attachment.** Such attachment may be served by the sheriff or any other person authorized by the court or judge, who shall also be empowered to produce the body of the



plaintiff forthwith, and has, for this purpose, the same powers as are above conferred in similar cases. [C51,§2239; R60,§3827; C73,§3477; C97,§4445; C24, 27, 31, 35, 39,§12497; C46, 50, 54, §663.30]

**663.31 Answer.** The defendant in his answer must state whether he then has, or at any time has had, the plaintiff under his control and restraint, and if so the cause thereof. [C51,§2241; R60,§3829; C73,§3478; C97,§4446; C24, 27, 31, 35, 39,§12498; C46, 50, 54,§663.31]

**663.32 Transfer of plaintiff.** If he has transferred him to another person, he must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor. [C51,§2242; R60,§3830; C73,§3479; C97,§4447; C24, 27, 31, 35, 39,§12499; C46, 50, 54,§663.32]

**663.33 Copy of process.** If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed. [C51,§2243; R60,§3831; C73,§3480; C97,§4448; C24, 27, 31, 35, 39,§12500; C46, 50, 54,§663.33]

**663.34 Demurrer or reply—trial.** The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court. [C51,§2244; R60,§3832; C73,§3481; C97,§4449; C24, 27, 31, 35, 39,§12501; C46, 50, 54,§663.34]

**663.35 Commitment questioned.** The reply may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge, in connection with any other testimony which may then be produced. [C51,§2245; R60,§3833; C73, §3482; C97,§4450; C24, 27, 31, 35, 39,§12502; C46, 50, 54,§663.35]

**663.36 Nonpermissible issues.** It is not permissible to question the correctness of the action of the grand jury in finding a bill of indictment, or of the trial jury in the trial of a cause, nor of a court or judge when lawfully acting within the scope of their authority. [C51,§2246; R60,§3834; C73,§3483; C97,§4451; C24, 27, 31, 35, 39,§12503; C46, 50, 54,§663.36]

**663.37 Discharge.** If no sufficient legal cause of detention is shown, the plaintiff must be discharged. [C51,§2247; R60,§3835; C73,§3484; C97,§4452; C24, 27, 31, 35, 39,§12504; C46, 50, 54, §663.37]

**663.38 Plaintiff held.** Although the commitment of the plaintiff may have been irregular, if the court or judge is satisfied from the

evidence that he ought to be held to bail, or committed, either for the offense charged or any other, the order may be made accordingly. [C51,§2248; R60,§3836; C73,§3485; C97,§4453; C24, 27, 31, 35, 39,§12505; C46, 50, 54,§663.38]

**663.39 Bail increased or diminished.** The plaintiff may also, in any case, be committed, admitted to bail, or his bail be reduced or increased, as justice may require. [C51,§2249; R60,§3837; C73,§3486; C97,§4454; C24, 27, 31, 35, 39,§12506; C46, 50, 54,§663.39]

**663.40 Plaintiff retained in custody.** Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose. [C51, §2250; R60,§3838; C73,§3487; C97,§4455; C24, 27, 31, 35, 39,§12507; C46, 50, 54,§663.40]

**663.41 Right to be present waived.** The plaintiff may, in writing, or by attorney, waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ will in such cases be modified accordingly. [C51,§2251; R60,§3839; C73, §3488; C97,§4456; C24, 27, 31, 35, 39,§12508; C46, 50, 54,§663.41]

**663.42 Disobedience of order.** Disobedience to any order of discharge will subject the defendant to attachment for contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence thereof. [C51, §2252; R60,§3840; C73,§3489; C97,§4457; C24, 27, 31, 35, 39,§12509; C46, 50, 54,§663.42]

**663.43 Papers filed with clerk.** When the proceedings are before a judge, except when the writ is refused, all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county where in the final proceedings were had, and a memorandum thereof shall be entered by the clerk upon his judgment docket. [C51,§2255; R60, §3843; C73,§3490; C97,§4458; C24, 27, 31, 35, 39, §12510; C46, 50, 54,§663.43]

**663.44 Costs.** If the plaintiff is discharged, the costs shall be taxed to the defendant, unless he is an officer holding the plaintiff in custody under a warrant of arrest or commitment, or under other legal process, in which case the costs shall be taxed to the county. If the plaintiff's application is refused, the costs shall be taxed against him, and, in the discretion of the court, against the person who filed the petition in his behalf. [C97, §4459; C24, 27, 31, 35, 39,§12511; C46, 50, 54, §663.44]

## CHAPTER 664

## INJUNCTIONS

Bootlegging, §§128.71-128.73

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|---|--|
| Rule—Independent or auxiliary remedy, R.C.P. 320. | Rule—Statement re prior presentation, R.C.P. 323.              |
| Rule—Temporary—when allowed, R.C.P. 321.          | Rule—Dissolution, R.C.P. 328.                                  |
| Rule—By whom granted, R.C.P. 325.                 | Rule—Bond, R.C.P. 327.   |
| Rule—Outside district, R.C.P. 324.                | Rule—Enjoining proceedings or judgment—venue—bond, R.C.P. 329. |
| Rule—Notice, R.C.P. 326                           | Rule—Violation as contempt, R.C.P. 330.                        |
| Rule—Indorsing refusal, R.C.P. 322.               |  |

## RULE OF CIVIL PROCEDURE NO. 320

**Independent or auxiliary remedy.** An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 321

**Temporary—when allowed.** A temporary injunction may be allowed:

(a) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure him, or,

(b) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual, or,

(c) In any case specially authorized by statute. [Report 1943]

For injunctions in interpleader actions, see rule 39

## RULE OF CIVIL PROCEDURE NO. 325

**By whom granted.** A temporary injunction may be granted by:

(a) The court in which the action is or will be pending;

(b) The supreme court or a justice thereof;

(c) Any other district court, when permitted by rule 324. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 324

**Outside district.** No temporary injunction shall be granted by a district court different from the one where the action is, or will be, pending, except upon affidavit that the application therefor cannot be promptly made to the latter court. [Report 1943]

Referred to in R.C.P. 325 and 328

## RULE OF CIVIL PROCEDURE NO. 326

**Notice.** Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. Such notice and hearing must be had for a temporary injunction to stop the general and ordinary business of a corporation, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 322

**Indorsing refusal.** A court, or justice of the supreme court, refusing a temporary injunction shall indorse the refusal on the petition therefor. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 323

**Statement re prior presentation.** A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 328

**Dissolution.** A party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it. Such motion shall be submitted to that court. But if the injunction was granted by a justice or court of a different district under rule 324, the court or justice that ordered it shall hear the motion, if it be shown by affidavit that prompt hearing cannot be obtained in the court where the action is pending. [Report 1943]

## RULE OF CIVIL PROCEDURE NO. 327

**Bond.** The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be one hundred twenty-five percent of the probable liability to be incurred. Such bond with sureties to be

approved by the clerk, shall be conditioned to pay all damages which may be adjudged against petitioner by reason of the injunction. But in actions for divorce, separate maintenance or annulment of marriage, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 329

**Enjoining proceedings or judgment—venue—bond.** An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained, unless

that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the cause of action enjoined. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 330

**Violation as contempt.** Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly. [Report 1943]

Contempts, ch 665

## CHAPTER 665

### CONTEMPTS

Referred to in §754.3

Liquor injunction, §123.68

665.1 "Court" defined.

665.2 Acts constituting contempt.

665.3 In courts of record.

665.4 Punishment.

665.5 Imprisonment.

665.6 Affidavit necessary.

665.7 Notice to show cause.

665.8 Testimony reduced to writing.

665.9 Personal knowledge of court—record required.

665.10 Warrant of commitment.

665.11 Revision by certiorari.

665.12 Indictment not barred.

**665.1 "Court" defined.** Any officer authorized to punish for contempt is a court within the meaning of this chapter. [C51,§1608; R60, §2698; C73,§3501; C97,§4470; C24, 27, 31, 35, 39, §12540; C46, 50, 54,§665.1]

**665.2 Acts constituting contempt.** The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including justices of the peace, acting in the discharge of an official duty, as hereinafter provided:

1. Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.

2. Any willful disturbance calculated to interrupt the due course of its official proceedings.

3. Illegal resistance to any order or process made or issued by it.

4. Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness.

5. Unlawfully detaining a witness or party to an action or proceeding pending before such court, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding, or abetting any person in evading service of the process of such court.

6. Any other act or omission specially declared a contempt by law. [C51,§1598; R60, §2688; C73,§3491; C97,§4460; C24, 27, 31, 35, 39, §12541; C46, 50, 54,§665.2]

**665.3 In courts of record.** In addition to the above, any court of record may punish the following acts or omissions as contempts:

1. Failure to testify before a grand jury, when lawfully required to do so.

2. Assuming to be an officer, attorney, or counselor of the court, and acting as such without authority.

3. Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which he is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court.

4. Bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn a witness.

5. Disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding in any matter in a manner contrary to law, after it has been removed from such tribunal, magistrate, or officer. [C51,§1599; R60,§2689;

C73,§3492; C97,§4461; C24, 27, 31, 35, 39,§12542; C46, 50, 54,§665.3]

**665.4 Punishment.** The punishment for contempt, where not otherwise specifically provided, shall be:

1. In the supreme court, by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

2. In all other courts of record, by a fine not exceeding five hundred dollars or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

3. In all other courts, by a fine not exceeding ten dollars. [C51,§1600; R60,§2690; C73, §3493; C97,§4462; C24, 27, 31, 35, 39,§12543; C46, 50, 54,§665.4]

**665.5 Imprisonment.** If the contempt consists in an omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it. In that case the act to be performed must be specified in the warrant of the commitment. [C51,§1601; R60,§2691; C73,§3494; C97,§4463; C24, 27, 31, 35, 39,§12544; C46, 50, 54,§665.5]

**665.6 Affidavit necessary.** Unless the contempt is committed in the immediate view and presence of the court, or comes officially to its knowledge, an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises. [C51, §1602; R60,§2692; C73,§3495; C97,§4464; C24, 27, 31, 35, 39,§12545; C46, 50, 54,§665.6]

**665.7 Notice to show cause.** Before punishing for contempt, unless the offender is already in the presence of the court, he must be served personally with a rule to show cause against the punishment, and a reasonable time given him therefor; or he may be brought before the court forthwith, or on a given day, by warrant, if necessary. In either case he may, at his option, make a written

explanation of his conduct under oath, which must be filed and preserved. [C51,§1603; R60, §2693; C73,§3496; C97,§4465; C24, 27, 31, 35, 39, §12546; C46, 50, 54,§665.7]

**665.8 Testimony reduced to writing.** Where the action of the court is founded upon evidence given by others, such evidence must be in writing, and be filed and preserved. [C51, §1604; R60,§2694; C73,§3497; C97,§4466; C24, 27, 31, 35, 39,§12547; C46, 50, 54,§665.8]

C97,§4466, editorially divided

**665.9 Personal knowledge of court—record required.** If the court or judge acts upon personal knowledge in the premises, a statement of the facts upon which the order is founded must be entered on the records of the court, or be filed and preserved when the court keeps no record, and shall be a part of the record. [C51,§1604; R60,§2694; C73,§3497; C97,§4466; C24, 27, 31, 35, 39,§12548; C46, 50, 54,§665.9]

**665.10 Warrant of commitment.** When the offender is committed, the warrant must state the particular facts and circumstances on which the court acted in the premises, and whether the same was in the knowledge of the court or was proved by witnesses. [C51, §1605; R60,§2695; C73,§3498; C97,§4467; C24, 27, 31, 35, 39,§12549; C46, 50, 54,§665.10]

**665.11 Revision by certiorari.** No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari. [C51,§1606; R60,§2696; C73,§3499; C97, §4468; C24, 27, 31, 35, 39,§12550; C46, 50, 54, §665.11]

**665.12 Indictment not barred.** The punishment for a contempt constitutes no bar to an indictment, but if the offender is indicted and convicted for the same offense, the court, in passing sentence, must take into consideration the punishment before inflicted. [C51, §1607; R60,§2697; C73,§3500; C97,§4469; C24, 27, 31, 35, 39,§12551; C46, 50, 54,§665.12]

CHAPTER 666

OFFICIAL BONDS, FINES, AND FORFEITURES

666.1 Official bonds construed.

666.2 Prior judgment no bar.

666.3 Fines and forfeitures.

666.4 By whom action prosecuted.

666.5 Collusion.

666.6 Report of forfeited bonds.

**666.1 Official bonds construed.** The official bond of a public officer is to be construed as a security to the body politic or civil corporation of which he is an officer, and to all the members thereof, severally, who are intended to be secured thereby. [C51,§2145; R60,§3727; C73, §3368; C97,§4336; C24, 27, 31, 35, 39,§12552; C46, 50, 54,§666.1]

Conditions of bond, §64.2

**666.2 Prior judgment no bar.** A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency, except that sureties can be made liable in the aggregate only to the extent of their undertaking. [C51,§2147; R60,§3728; C73, §3369; C97,§4337; C24, 27, 31, 35, 39,§12553; C46, 50, 54,§666.2]

**666.3 Fines and forfeitures.** All fines and forfeitures, after deducting therefrom court costs, court expenses collectible through the clerk of the court, and fees of collection, if any, and not otherwise disposed of, shall go into the treasury of the county where the same are collected for the benefit of the school fund. [C51,§§1158, 2148; R60,§3729; C73,§3370; C97, §4338; C24, 27, 31, 35, 39,§12554; C46, 50, 54, §666.3; 57GA, ch 271,§1]

Constitutional provisions, Art. IX,§4; Art. XII,§4

**666.4 By whom action prosecuted.** Actions for their recovery may be prosecuted by the officers or persons to whom they by law belong, in whole or in part, or by the public officer into whose hands they are to be paid when collected. [C51,§2149; R60,§3730; C73, §3371; C97,§4339; C24, 27, 31, 35, 39,§12555; C46, 50, 54,§666.4]

**666.5 Collusion.** A judgment for a penalty or forfeiture, rendered by collusion, does not prevent another action for the same subject matter. [C51,§2150; R60,§3731; C73,§3372; C97, §4340; C24, 27, 31, 35, 39,§12556; C46, 50, 54, §666.5]

**666.6 Report of forfeited bonds.** Clerks of district, municipal, superior, and police courts, mayors of cities and towns, and justices of the peace shall, on the first Monday in January in each year, make report in writing to the board of supervisors for their respective counties of all forfeited recognizances in their offices; of all fines, penalties, and forfeitures imposed in their respective courts, which by law go into the county treasury for the benefit of the school fund; in what cause or proceeding, when and for what purpose, against whom and for what amount, rendered; whether said fines, penalties, forfeitures, and recognizances have been paid, remitted, canceled, or otherwise satisfied; if so, when, how, and in what manner, and if not paid, remitted, canceled, or otherwise satisfied, what steps have been taken to enforce the collection thereof.

Such report must be full, true, and complete with reference to the matters therein contained, and of all things required by this section to be reported, and be under oath, and any officer failing to make such report shall be guilty of a misdemeanor. [C73,§3974; C97, §1302; C24, 27, 31, 35, 39,§12557; C46, 50, 54, §666.6]

Punishment, §687.7

## CHAPTER 667

### SEIZURE OF BOATS OR RAFTS

667.1 Seizure.

667.2 Petition and warrant.

667.3 Warrant issued on Sunday.

667.4 Service of notice.

667.5 Service of warrant.

667.6 Who may appear.

667.7 Bond to discharge.

667.8 Special execution.

667.9 Sale.

667.10 Fractional share sold.

667.11 Appeal.

667.12 Rights saved.

667.13 Contract alleged.

667.14 Lien.

667.15 Appearance by executing bond.

**667.1 Seizure.** In an action brought against the owners of any boat or raft to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for labor done in, about, or on such boat or raft, or for materials furnished in building, repairing, fitting out, furnishing, or equipping the same, or to recover for the nonperformance of any contract relative to the transportation of persons or property thereon, made by any of the persons aforementioned, or to recover damages for injuries to persons or property done by such boat or raft or the officers or crew thereof in connection with its business, a warrant may issue for the seizure of the same as herein provided. [C51,§2116; R60,§§3693, 3698, 3700; C73,§§3432, 3445, 3447; C97,§4402; C24, 27, 31, 35, 39,§12558; C46, 50, 54,§667.1]

**667.2 Petition and warrant.** The petition must be in writing, sworn to, and filed with the clerk or a justice of the peace, who shall thereupon issue a warrant to the proper of-

ficer, commanding him to seize the boat or raft, its apparel, tackle, furniture, and appendages, and detain the same until released by due course of law. [C51,§2121; R60,§3701; C73, §3433; C97,§4403; C24, 27, 31, 35, 39,§12559; C46, 50, 54,§667.2]

**667.3 Warrant issued on Sunday.** The warrant may be issued on Sunday, if the plaintiff, his agent, or attorney states in his petition that it would be unsafe to delay proceedings. [R60,§3702; C73,§3434; C97,§4404; C24, 27, 31, 35, 39,§12560; C46, 50, 54,§667.3]

Analogous or related provisions, §§605.18, 626.6, 639.5, 643.3, and R.C.P. 57

**667.4 Service of notice.** It shall be sufficient service of the original notice in such an action to serve it on the defendant, or on the master, agent, clerk, or consignee of such boat or raft; if neither of them can be found, it may be served by posting a copy thereof on some conspicuous part of the same. [C51,§2122; R60, §3703; C73,§3435; C97,§4405; C24, 27, 31, 35, 39, §12561; C46, 50, 54,§667.4]

**667.5 Service of warrant.** Any constable or marshal of any city or town may execute the warrant, whether it issues from the office of the clerk of the district or superior court, or of a justice. [R60,§3704; C73,§3436; C97,§4406; C24, 27, 31, 35, 39,§12562; C46, 50, 54,§667.5]

Approval of warrant and expenses, §§79.12, 79.13

**667.6 Who may appear.** Any persons interested in the property seized may appear for the defendant by himself, agent, or attorney, and defend the action, and no continuance shall be granted to the plaintiff while the property is held in custody. [C51,§2123; R60,§3705; C73,§3437; C97,§4407; C24, 27, 31, 35, 39,§12563; C46, 50, 54,§667.6]

**667.7 Bond to discharge.** The property seized may be discharged at any time before final judgment, by giving a bond with sureties, to be approved by the officer executing the warrant, or by the clerk or justice who issued it, in a penalty double the plaintiff's demand, conditioned that the obligors therein will pay the amount which may be found due to the plaintiff, together with the costs. [C51, §2124; R60,§3706; C73,§3438; C97,§4408; C24, 27, 31, 35, 39,§12564; C46, 50, 54,§667.7]

Similar provisions, §§639.42, 639.45, 643.12

**667.8 Special execution.** If judgment is rendered for the plaintiff before the property is thus discharged, a special execution shall be issued against it. If it has been previously discharged, the execution shall issue against the principal and sureties in the bond without further proceedings. [C51,§2125; R60,§3707; C73,§3439; C97,§4409; C24, 27, 31, 35, 39,§12565; C46, 50, 54,§667.8]

**667.9 Sale.** The officer must first sell the furniture or appendages of the boat or raft, if by so doing he can satisfy the demand. If he sells the boat or raft, he must do so to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share thereof, unless the person defending desires a different and equally convenient mode of sale. The officer making the sale shall execute a bill of sale to the purchaser for the interest sold. [C51,§2126; R60,§3708; C73,§3440;

C97,§4410; C24, 27, 31, 35, 39,§12566; C46, 50, 54, §667.9]

**667.10 Fractional share sold.** If a fractional share of the boat or raft is thus sold, the purchaser shall hold such share or interest jointly with the other owners. [C51,§2127; R60,§3709; C73,§3441; C97,§4411; C24, 27, 31, 35, 39,§12567; C46, 50, 54,§667.10]

**667.11 Appeal.** If an appeal is taken by the defendant before the property is discharged as above provided, the appeal bond, if one is filed, will have the same effect in discharging it as the bond above contemplated, and execution shall issue against the obligors therein after judgment in the same manner. [C51, §2128; R60,§3710; C73,§3442; C97,§4412; C24, 27, 31, 35, 39,§12568; C46, 50, 54,§667.11]

Presumption of approval of bond, §682.10

**667.12 Rights saved.** Nothing herein contained is intended to affect the rights of a plaintiff to sue in the same manner as though the provisions of this chapter had not been enacted. [C51,§2129; R60,§3711; C73,§3443; C97, §4413; C24, 27, 31, 35, 39,§12569; C46, 50, 54, §667.12]

**667.13 Contract alleged.** In actions commenced in accordance with the provisions of this chapter, it is sufficient to allege the contract to have been made with the boat or raft itself. [C51,§2130; R60,§3712; C73,§3444; C97, §4414; C24, 27, 31, 35, 39,§12570; C46, 50, 54, §667.13]

**667.14 Lien.** Claims growing out of either of the above causes shall be liens upon the boat or raft, its tackle, and appendages, for the term of twenty days from the time the right of action therefor accrued. [R60,§3699; C73,§3446; C97,§4415; C24, 27, 31, 35, 39,§12571; C46, 50, 54,§667.14]

**667.15 Appearance by executing bond.** The execution by or for the owner of such boat or raft of a bond, whereby possession of the same is obtained or retained by him, shall be an appearance of such owner as a defendant to the action. [R60,§4130; C73,§3448; C97,§4416; C24, 27, 31, 35, 39,§12572; C46, 50, 54,§667.15]

## CHAPTER 668

### GUARDIANS FOR MINORS

Referred to in §§670.1, 672.8

668.1 Natural guardian of the person.  
 668.2 Surviving parent.  
 668.3 Guardian of property.  
 668.4 Minor may choose.  
 668.5 Bond and oath of guardian of property.  
 668.6 Surety company.  
 668.7 Bond and oath of guardian of person.  
 668.8 Inventory and appraisalment.  
 668.9 Duties.  
 668.10 Suits by guardians.  
 Rule—Nonabatement in case of guardianship,  
 R.C.P. 18.

668.11 Foreign real estate.  
 668.12 Certification to foreign counties.  
 668.13 Guardian to complete contracts.  
 668.14 Sale or mortgage of property.  
 668.15 Petition.  
 668.16 Return day—notice.  
 668.17 Optional procedure.  
 668.18 Postponement and publication—reference.  
 668.19 Bond.  
 668.20 Costs.  
 668.21 Deeds—approval.

668.22 Applicable procedure.  
 668.23 Validity of sale—limitation to question.  
 668.24 Account.  
 668.25 Penalty.  
 668.26 Compensation.  
 668.27 Disobedience of orders.

**668.1 Natural guardian of the person.** Parents are the natural guardians of the persons of their minor children, and equally entitled to their care and custody. [C51,§1491; R60,§2543; C73,§2241; C97,§3192; C24, 27, 31, 35, 39,§12573; C46, 50, 54,§668.1]

Guardian of neglected, etc., children, §232.22

**668.2 Surviving parent.** The surviving parent becomes such guardian, but, if there is none, the district court shall appoint one, who shall have the same power and control over his ward as the parents would have, if living. [C51,§§1492, 1498; R60,§§2544, 2550; C73,§§2242, 2249; C97,§3193; C24, 27, 31, 35, 39,§12574; C46, 50, 54,§668.2]

**668.3 Guardian of property.** If a minor owns property, a guardian must be appointed to manage the same. If no guardian has been appointed, money due the minor or other property to which the minor is entitled, not exceeding in the aggregate the sum of five hundred dollars in value, may be paid or delivered to a parent of the minor entitled to the custody of the minor or to the natural guardian, or to the person with whom said minor resides, for such minor, upon written assurance verified by the oath of such person that all of such money or property of the minor does not exceed in the aggregate the sum of five hundred dollars; and the written receipt of such person shall be acquittance of the person making such payment of money or delivery of such property. [C51, §§1493, 1494; R60,§§2545, 2546; C73,§2243; C97, §3194; C24, 27, 31, 35, 39,§12575; C46, 50, 54, §668.3]

**668.4 Minor may choose.** A minor over fourteen years of age, of sound mind, may select the guardian, subject to approval by the district court, or a judge thereof, of the county in which his parents reside, if living with them; if not, of the county of his residence. [C51,§1495; R60,§2547; C73,§2244; C97,§3195; C24, 27, 31, 35, 39,§12576; C46, 50, 54,§668.4]

**668.5 Bond and oath of guardian of property.** Guardians of the property of a minor shall give bond, with surety to be approved by the court or clerk, in a penalty double the value of the personal estate and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians according to law, and must take an oath of the same tenor as the condition of the bond. [C51,§1496; R60,§2548; C73, §2246; C97,§3197; C24, 27, 31, 35, 39,§12577; C46, 50, 54,§668.5]

Referred to in §§668.6, 672.9  
 Conditions of bond, §§64.2, 64.4

668.28 New appointment—delivery of property.  
 668.29 Failure to deliver—penalty.  
 668.30 Action on bond.  
 668.31 Removal—new bond.  
 668.32 Nonresident minors.  
 668.33 Terminating exhausted guardianships.

**668.6 Surety company.** Where an approved surety company bond is furnished, said bond may be fixed in a lesser amount than is provided in section 668.5, but in no case less than the actual value of the personal estate and the rents and profits of the real estate, with twenty-five percent added thereto. [C24, 27, 31, 35, 39,§12578; C46, 50, 54,§668.6]

Referred to in §672.9

**668.7 Bond and oath of guardian of person.** The court or judge may require a bond to be given by the guardian of the person of minors, with like conditions as when the bond is given by a guardian of the property. [C51,§1496; R60,§2548; C73,§2246; C97,§3197; C24, 27, 31, 35, 39,§12579; C46, 50, 54,§668.7]

**668.8 Inventory and appraisement.** Guardians, within fifteen days after their appointment, must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person, and filed in the office of the clerk of the district court. [C51,§1497; R60, §2549; C73,§2248; C97,§3199; C24, 27, 31, 35, 39, §12580; C46, 50, 54,§668.8]

Appraisement, §635.5

**668.9 Duties.** Guardians of the property of minors must prosecute and defend for their wards, may employ counsel therefor, lease lands, loan money, and in all other respects manage their affairs, under proper orders of the court or a judge thereof. [C51,§1499; R60, §2551; C73,§2250; C97,§3200; C24, 27, 31, 35, 39, §12581; C46, 50, 54,§668.9]

Investment of funds, ch 682

**668.10 Suits by guardians.** Any guardian may sue in his own name, describing himself as guardian of the ward for whom he sues. [R60,§1452; C73,§2275; C97,§3224; C24, 27, 31, 35, 39,§12582; C46, 50, 54,§668.10]

C97,§3224, editorially divided

## RULE OF CIVIL PROCEDURE NO. 18

### Nonabatement in case of guardianship.

When a guardianship shall cease by the death of the guardian, his removal, or otherwise, or by the decease of his ward, any action or proceeding then pending shall not abate, but his successor or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be substituted or joined as a party thereto; or, if no application is made for substitution, the court may on its own motion, appoint a special guardian or administrator to represent the deceased party in the action. [Report 1943]

**668.11 Foreign real estate.** The guardian and court making the appointment have power and authority over any property of the minor, situated or being in any other county, to the same extent as if it was situated in the county where the appointment was made. [C73,§2245; C97,§3196; C24, 27, 31, 35, 39,§12584; C46, 50, 54, §668.11]

C97,§3196, editorially divided

**668.12 Certification to foreign counties.** If an order is made by such court affecting the title of lands lying in another county, a certified copy of such order, and of all the papers on which it is founded, shall be transmitted to the clerk of the district court in the county where such lands are situated, who shall enter the same on the proper docket, index, and make a complete record thereof, in the same manner as if the cause in which the order is made had been commenced in his court. [C73, §2215; C97,§3196; C24, 27, 31, 35, 39,§12585; C46, 50, 54,§668.12]

**668.13 Guardian to complete contracts.** The guardian of any person contemplated in this chapter and chapters 669 and 670, providing for the appointment of guardians, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contracts of a guardian who has died or been removed, in the same manner and by like proceedings as the real contracts of one deceased may be, under an order of court, performed by his executor or administrator. [R60,§1454; C73,§2277; C97,§3226; C24, 27, 31, 35, 39,§12586; C46, 50, 54,§668.13]

**668.14 Sale or mortgage of property.** When not in violation of the terms of a will by which a minor holds his real property, it may, upon application by the guardian to, and under the direction of, the district court or judge, be sold or mortgaged, when such sale or mortgage is necessary for the minor's support or education, or where his interest will be thereby promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances. [C51, §1500; R60,§2552; C73,§2257; C97,§3206; C24, 27, 31, 35, 39,§12587; C46, 50, 54,§668.14]

**668.15 Petition.** The petition for that purpose must state the ground thereof and be verified. [C51,§1501; R60,§2553; C73,§2258; C97, §3207; C24, 27, 31, 35, 39,§12588; C46, 50, 54, §668.15]

**668.16 Return day — notice.** The plaintiff may fix the time and place of hearing before the court and, in such case, a notice thereof, together with a copy of the petition, must be served, unless otherwise provided, on the ward in the same manner, and for the same time, before the day of hearing as would be required if the day of hearing was the first day of a term of court, and the notice was a notice of the commencement of an ordinary civil action, except that when service is made by

publication the copy of the petition need not be published. [C51,§1501; R60,§2553; C73,§2258; C97,§3207; C24, 27, 31, 35, 39,§12589; C46, 50, 54, §668.16]

Referred to in §673.3

Time and manner of service, R.C.P. 53 and 56(a)

**668.17 Optional procedure.** The court or judge may, on application therefor, fix, by proper order, the time and place of hearing before the court or judge, and the time of service and the manner thereof. [C24, 27, 31, 35, 39,§12590; C46, 50, 54,§668.17]

Referred to in §673.3

**668.18 Postponement and publication—reference.** The court in its discretion, or the judge thereof, may direct a postponement of the matter, and order such further notice, by publication through the newspapers or otherwise, as may be expedient, and may direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage applied for. [C51,§§1502, 1503; R60,§§2554, 2555; C73,§§2259, 2260; C97,§3208; C24, 27, 31, 35, 39, §12591; C46, 50, 54,§668.18]

Referred to in §673.3

**668.19 Bond.** Before any such sale or mortgage can be executed, the guardian must give security to the satisfaction of the court or judge, the penalty of which shall be at least double the value of the property to be sold or of the money to be raised by the mortgage, conditioned that he will faithfully account for and apply all money received by him, by virtue of such sale or mortgage, under the direction of the court or judge. Where an approved surety company bond is furnished, said bond may be fixed in a lesser amount, but in no case less than the value of the property to be sold or of the money to be raised by the mortgage, with twenty-five percent added thereto. [C51, §1504; R60,§2556; C73,§2261; C97,§3209; C24, 27, 31, 35, 39,§12592; C46, 50, 54,§668.19]

Referred to in §673.3

**668.20 Costs.** When the application for the sale or mortgage of property is resisted, the court may, in its discretion, award costs to the prevailing party, and, when satisfied that there was no reasonable ground for making it, may direct the costs to be paid by the guardian from his own funds. [C51,§1505; R60,§2557; C73,§2262; C97,§3210; C24, 27, 31, 35, 39,§12593; C46, 50, 54,§668.20]

Referred to in §673.3

**668.21 Deeds — approval.** Deeds may be made by the guardian in his own name, but must be returned to the court, and the sale or mortgage be approved, before the same are valid. [C51,§1506; R60,§2558; C73,§2263; C97, §3211; C24, 27, 31, 35, 39,§12594; C46, 50, 54, §668.21]

Referred to in §673.3

**668.22 Applicable procedure.** The rule prescribed in the sale of real property by executors shall be observed in relation to the evi-



dence necessary to show the regularity and validity of the sales of guardians. [C51,§1507; R60,§2559; C73,§2264; C97,§3212; C24, 27, 31, 35, 39,§12595; C46, 50, 54,§668.22]

C97,§3212, editorially divided  
Referred to in §673.3  
Sales by executors, §635.28, et seq.

**668.23 Validity of sale—limitation to question.** No person can question the validity of any such sale after the lapse of five years from the time it was made. [C51,§1508; R60,§2560; C73,§2265; C97,§3212; C24, 27, 31, 35, 39,§12596; C46, 50, 54,§668.23]

Referred to in §673.4

**668.24 Account.** All guardians are required to render an account to the district court, at least once each year, of all moneys or other property in their possession, with all interest which may have accrued on money loaned, belonging to their wards. [R60,§2568; C73, §2254; C97,§3203; C24, 27, 31, 35, 39,§12597; C46, 50, 54,§668.24]

**668.25 Penalty.** In case any guardian shall fail to make such report within the time above specified, he shall forfeit and pay into the county treasury the sum of fifty dollars, and such failure shall be ground for his removal. [R60,§2569; C73,§2255; C97,§3204; C24, 27, 31, 35, 39,§12598; C46, 50, 54,§668.25]

**668.26 Compensation.** Guardians shall receive such compensation as the court may from time to time allow, the amount and the service for which it was made being entered upon the records of the court. [C51,§1515; R60, §2567; C73,§2256; C97,§3205; C24, 27, 31, 35, 39, §12599; C46, 50, 54,§668.26]

**668.27 Disobedience of orders.** A failure to comply with any order of the court or a judge thereof in relation to guardianships shall be ground for removal, and a breach of the guardian's bond. [C51,§1509; R60,§2561; C73,§2251; C97,§3201; C24, 27, 31, 35, 39,§12600; C46, 50, 54, §668.27]

C97,§3201, editorially divided

**668.28 New appointment—delivery of property.** The court or judge may appoint a new guardian, if necessary, and require his predecessor to deliver to the person entitled thereto, within a time fixed by the court or judge, the effects of such ward then in the hands of said predecessor, and may commit him to jail until he complies with such order. [C51,§1509; R60,§2561, 2563; C73,§2251, 2252; C97,§3201; C24, 27, 31, 35, 39,§12601; C46, 50, 54,§668.28]

**668.29 Failure to deliver—penalty.** If property is not delivered in accordance with such

order, the guardian removed shall, in addition to any other remedy, be subject to a penalty, for the benefit of the ward's estate, of one hundred dollars, to be recovered in an action on his bond. [C73,§2252; C97,§3201; C24, 27, 31, 35, 39,§12602; C46, 50, 54,§668.29]

**668.30 Action on bond.** Action for the breach of such bond may be brought by anyone aggrieved thereby, or by such new guardian. [C51,§1509; R60,§2561; C73,§2251; C97,§3201; C24, 27, 31, 35, 39,§12603; C46, 50, 54,§668.30]

**668.31 Removal—new bond.** Guardians may, upon notice given them, be removed by the court at any time for cause, which must be entered of record; and new or additional bonds may be required, if it finds the same necessary for the protection of the estate. [C51,§1510; R60,§2562; C73,§2247; C97,§3198; C24, 27, 31, 35, 39,§12604; C46, 50, 54,§668.31]

**668.32 Nonresident minors.** A guardian may be appointed for a nonresident minor, idiot, lunatic, person of unsound mind, or person under voluntary guardianship who has property in this state, on application to the district court or judge of the county in which such property or any part thereof may be, who shall qualify in the same manner, have the same powers, and be subject to the same rules, as guardians of resident minors. [C73,§2253; C97, §3202; C24, 27, 31, 35, 39,§12605; C46, 50, 54, §668.32; 56GA, ch 268,§1]

**668.33 Terminating exhausted guardianships.** Whenever the assets in charge of a guardian are exhausted, or whenever the property remaining in charge of a guardian of a minor or an incompetent consists of personal property only, and the value thereof does not exceed five hundred dollars, the district court having jurisdiction of said guardianship may, in its discretion, upon the application of the guardian or ward or upon its own motion, enter an order terminating such guardianship and, where property remains, authorizing the guardian to pay and distribute the remaining personal property to the parents or natural guardian of such minor or incompetent, less expenses of administration as approved by the court, or to the person with whom such minor or incompetent resides, for the use of such minor or incompetent, and the receipt of such person or persons therefor, when presented to the court or filed with the report of distribution of any such guardian, shall have the same force and effect as though such payment had been made to the ward after attaining his majority or regaining his competency. [C46, 50, 54,§668.33]

CHAPTER 669  
FOREIGN GUARDIANS

Referred to in §§668.13, 670.1

- 669.1 Appointment.
- 669.2 Procedure.
- 669.3 Bond omitted.
- 669.4 Personal property.

- 669.5 Copy of bond.
- 669.6 Order for delivery.
- 669.7 Record of bond—notice to court.

**669.1 Appointment.** The foreign guardian of any nonresident minor, idiot, lunatic, person of unsound mind or person under voluntary guardianship may be appointed the guardian of the property of such person in this state by the district court or judge thereof, of the county wherein he has any property, for the purpose of selling, mortgaging, or otherwise controlling that and all other property of such person within the state, unless a guardian has previously been appointed. [C51,§1512; R60, §2564; C73,§2266; C97,§3213; C24, 27, 31, 35, 39, §12606; C46, 50, 54,§669.1; 56GA, ch 269,§1]

**669.2 Procedure.** Such appointment may be made upon his filing with the clerk of the district court of the county wherein there is any such property an authenticated copy of the order for his appointment. He shall thereupon qualify like other guardians, except as provided in section 669.3. [C51,§1513; R60, §2565; C73,§2267; C97,§3214; C24, 27, 31, 35, 39, §12607; C46, 50, 54,§669.2]

Bond and oath, §668.5

**669.3 Bond omitted.** Upon the filing of an authenticated copy of the bond and inventory filed by the guardian in a foreign state, if the court or judge is satisfied with the sufficiency and the amount of the security, it may dispense with the filing of an additional bond. [C51,§1514; R60,§2566; C73,§2268; C97,§3215; C24, 27, 31, 35, 39,§12608; C46, 50, 54,§669.3]

Referred to in §669.2

**669.4 Personal property.** Foreign guardians of nonresidents may be authorized by

the district court or judge thereof, of the county wherein such ward has personal property, to receive the same upon complying with the provisions of sections 669.5 to 669.7, inclusive. [C73,§2269; C97,§3216; C24, 27, 31, 35, 39, §12609; C46, 50, 54,§669.4]

**669.5 Copy of bond.** Such foreign guardian shall file in the office of the clerk of the district court, in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting the letters of guardianship, and shall also execute a receipt for the property received by him. [C73,§2270; C97,§3217; C24, 27, 31, 35, 39,§12610; C46, 50, 54,§669.5]

Referred to in §669.4

**669.6 Order for delivery.** Upon the filing of the bond as above provided, and the court or judge being satisfied with the amount thereof, it shall order the personal property of the ward to be delivered to the guardian. [C73, §2271; C97,§3218; C24, 27, 31, 35, 39,§12611; C46, 50, 54,§669.6]

C97,§3218, editorially divided  
Referred to in §669.4

**669.7 Record of bond—notice to court.** The clerk shall spread the bonds and receipt upon the records, and notify by mail the court granting the letters of guardianship of the amount of property allowed to the guardian, and the date of the delivery thereof. [C73, §2271; C97,§3218; C24, 27, 31, 35, 39,§12612; C46, 50, 54,§669.7]

Referred to in §669.4

CHAPTER 670

GUARDIANS FOR DRUNKARDS, SPENDTHRIFTS, LUNATICS, AND PERSONS OF UNSOUND MIND

Referred to in §668.13

- 670.1 Statutes governing guardianship.
- 670.2 Petition—appointment.
- 670.3 Ex officio guardian.
- 670.4 Guardian of drunkard.
- 670.5 Party may apply for guardianship.
- 670.6 Notice not required.
- 670.7 Petition—answer.
- 670.8 Temporary guardian.
- 670.9 Trial.
- 670.10 Presumption of fraud.

- 670.11 Petition to terminate.
- 670.12 Notice and service.
- 670.13 Trial.
- 670.14 Costs.
- 670.15 Limit on application to terminate.
- 670.16 Sale or mortgage of real estate.
- 670.17 Allowance to family.
- 670.18 Insolvent estates.
- 670.19 Custody.

**670.1 Statutes governing guardianship.** The provisions of chapters 668 and 669, and all other laws relating to guardians for minors,

and regulating or prescribing the powers, duties, or liabilities of each, and of the court or judge thereof, so far as the same are applicable,

shall apply to guardians and their wards appointed under sections 670.2 to 670.6, inclusive. [R60,§1451; C73,§2274; C97,§3223; C24, 27, 31, 35, 39,§12613; C46, 50, 54,§670.1]

Additional provisions, ch 222

**670.2 Petition—appointment.** When a petition, verified by affidavit, is presented to the district court that any inhabitant of the county is:

1. An idiot, lunatic, or person of unsound mind; or
2. A habitual drunkard, incapable of managing his affairs; or
3. A spendthrift who is squandering his property;

and the allegations of the petition are satisfactorily proved upon the trial, the court may appoint a guardian of the property of such person. [R60,§1449; C73,§2272; C97,§3219; C24, 27, 31, 35, 39,§12614; C46, 50, 54,§670.2]

Referred to in §§249.32, 670.1, 670.3

**670.3 Ex officio guardian.** The guardian appointed under section 670.2 shall be the guardian of the minor children of his ward, unless the court otherwise orders. [R60,§1449; C73, §2272; C97,§3219; C24, 27, 31, 35, 39,§12615; C46, 50, 54,§670.3]

Referred to in §670.1

**670.4 Guardian of drunkard.** If a person is a habitual drunkard the court may appoint a guardian of his person, whether he has any estate or not. [C73,§2272; C97,§3219; C24, 27, 31, 35, 39,§12616; C46, 50, 54,§670.4]

Referred to in §670.1

**670.5 Party may apply for guardianship.** Any person, other than an idiot or lunatic, may, upon his own application, by verified petition, have a guardian appointed for his person or property, or both, if, in the opinion of the district court or judge to whom the petition is presented, said appointment would inure to the best interest of said applicant. [C24, 27, 31, 35, 39,§12617; C46, 50, 54,§670.5]

Referred to in §§670.1, 670.6

**670.6 Notice not required.** Upon application under section 670.5 no notice of the hearing shall be required. [C24, 27, 31, 35, 39,§12618; C46, 50, 54,§670.6]

Referred to in §670.1

**670.7 Petition—answer.** Such petition shall set forth, as particularly as may be, the facts upon which the application is based, and shall be answered as in other ordinary actions, all the rules of which shall govern so far as applicable and not otherwise provided in this chapter. The applicant shall be plaintiff and the other party defendant. [C73,§2273; C97, §3220; C24, 27, 31, 35, 39,§12619; C46, 50, 54, §670.7]

**670.8 Temporary guardian.** A temporary guardian may be appointed, but only after a hearing on such notice to the defendant and

on such service of said notice as the court or judge shall prescribe. [C73,§2273; C97,§3220; C24, 27, 31, 35, 39,§12620; C46, 50, 54,§670.8]

Referred to in §672.5

**670.9 Trial.** An issue arising on a prayer for the appointment of a temporary guardian shall be tried by the court, or by a judge in vacation. An issue arising on the prayer for the appointment of a permanent guardian shall be tried by the court unless a jury be demanded by either party. [C73,§2273; C97, §3220; C24, 27, 31, 35, 39,§12621; C46, 50, 54, §670.9]

Referred to in §672.6

**670.10 Presumption of fraud.** If a permanent guardian be appointed, all contracts or business transactions of the defendant after the filing of the petition shall be presumed to be a fraud against the rights and interests of the defendant. [C24, 27, 31, 35, 39,§12622; C46, 50, 54,§670.10]

**670.11 Petition to terminate.** At any time, not less than six months after the appointment of such guardian, the person under guardianship may apply to the court, or any judge thereof, by petition, alleging that he is no longer a proper subject thereof and asking that the guardianship be terminated. [C97, §3222; C24, 27, 31, 35, 39,§12623; C46, 50, 54, §670.11]

C97,§3222, editorially divided

**670.12 Notice and service.** Notice of such petition shall be served upon the guardian in such manner and for such length of time as the court or judge may direct, requiring the guardian to answer the same at or before a time fixed therein. [C97,§3222; C24, 27, 31, 35, 39,§12624; C46, 50, 54,§670.12]

**670.13 Trial.** If the guardian shall file an answer denying the allegations of the petition, the court or judge shall try the issue, unless the petitioner demand a jury trial, in which case the issue shall be tried by a jury as soon as practicable. [C97,§3222; C24, 27, 31, 35, 39, §12625; C46, 50, 54,§670.13]

**670.14 Costs.** The costs shall be paid by the ward, unless judgment terminating the guardianship is rendered, and a finding is made that the guardian resisted the petition therefor without reasonable cause, in which event the costs or any part thereof may be taxed against him. [C97,§3222; C24, 27, 31, 35, 39,§12626; C46, 50, 54,§670.14]

**670.15 Limit on application to terminate.** If any petition for terminating such guardianship shall be denied, no other petition shall be filed therefor until at least four months shall have elapsed since the denial of the former one. [C97,§3222; C24, 27, 31, 35, 39,§12627; C46, 50, 54,§670.15]

**670.16 Sale or mortgage of real estate.** Whenever the sale or mortgage of the real estate of such ward is necessary for his support, or for

the support of his family, or the payment of his debts, or will be for the interest of the estate or his children, the guardian may sell or mortgage the same, including the homestead under like proceedings as required by law to authorize the sale of real estate by the guardian of the minor. [R60,§1453; C73,§2276; C97, §3225; S13,§3225; C24, 27, 31, 35, 39,§12628; C46, 50, 54,§670.16]

S13,§3225, editorially divided  
Procedure, §668.14 et seq.

**670.17 Allowance to family.** The court shall, if necessary, set off to the wife and minor children of the insane person, or to either, sufficient of his property, of such kind as it shall deem appropriate, to support them during the period such person is insane. [C97, §3225; S13,§3225; C24, 27, 31, 35, 39,§12629; C46, 50, 54,§670.17]

**670.18 Insolvent estates.** If the estate of such person is insolvent, or will probably be insolvent, the same shall be settled by the guardian in like manner, and like proceedings may be had, as are required by law for the settlement of the insolvent estate of a deceased person. [R60,§1455; C73,§2278; C97,§3227; C24, 27, 31, 35, 39,§12630; C46, 50, 54,§670.18]

**670.19 Custody.** The priority of claim to the custody of any idiot, lunatic, person of unsound mind, habitual drunkard, or spendthrift shall be:

1. The legally appointed guardian.
2. The husband or wife.
3. The parents.
4. The children.

[C73,§2279; C97,§3228; C24, 27, 31, 35, 39,§12631; C46, 50, 54,§670.19]

## CHAPTER 671

### GUARDIANS FOR ABSENTEES

Administration, ch 634

671.1 Petition.  
671.2 Notice and publication.  
671.3 Personal service.  
671.4 Proof of service.  
671.5 Hearing.  
671.6 Evidence transcribed and filed.  
671.7 County attorney to appear.

671.8 Guardian appointed.  
671.9 Qualifications—powers and duties.  
671.10 Termination of guardianship.  
671.11 Expenses chargeable to estate.  
671.12 Control of court—removal.  
671.13 Discharge.

**671.1 Petition.** When any adult person owns property within the state and whose whereabouts are and have been unknown for a period of three months, and whose property is liable to become injured, lost, or damaged by reason of such absence, and when there is no other provision of law authorizing supervision and control over such property, any citizen of the county in which the property or any part thereof is situated may file a petition under oath in the district court of said county, setting forth:

1. The facts of such disappearance;
2. The place where and with whom he last resided;
3. The kind and value of his property;
4. The necessity for care and supervision over said property;

and asking that a guardian be appointed to take charge of, preserve, and control such property. [S13,§3228-a; C24, 27, 31, 35, 39,§12632; C46, 50, 54,§671.1]

S13,§3228-a, editorially divided

**671.2 Notice and publication.** Whereupon, the court or judge shall prescribe a notice to be given to such absentee and order the same to be published in a newspaper published in said county, to be designated by the court or judge, once each week for four successive weeks. [S13,§3228-a; C24, 27, 31, 35, 39,§12633; C46, 50, 54,§671.2]

**671.3 Personal service.** Such notice shall also be served on the county attorney of the county and upon all the members of the family of the absentee residing within the county, for the length of time as is required for the service of original notices. [S13,§3228-a; C24, 27, 31, 35, 39,§12634; C46, 50, 54,§671.3]

Time of service, R.C.P. 53

**671.4 Proof of service.** Proof of the publication and service of such notice shall be filed with said cause. [S13,§3228-a; C24, 27, 31, 35, 39,§12635; C46, 50, 54,§671.4]

**671.5 Hearing.** If at the time stated in such notice for hearing the absentee fails to appear, the court shall hear such petition and the proof offered. [S13,§3228-b; C24, 27, 31, 35, 39, §12636; C46, 50, 54,§671.5]

S13,§3228-b, editorially divided

**671.6 Evidence transcribed and filed.** All evidence given at such hearing shall be taken down by the official reporter and a verified transcript thereof filed in said cause. [S13, §3228-b; C24, 27, 31, 35, 39,§12637; C46, 50, 54, §671.6]

**671.7 County attorney to appear.** At every such hearing the county attorney shall be present and represent the interests of the absentee, and shall be allowed reasonable compensation therefor to be fixed by the court. [S13,§3228-b; C24, 27, 31, 35, 39,§12638; C46, 50, 54,§671.7]

**671.8 Guardian appointed.** If on such hearing the court is satisfied that the person has disappeared for the length of time herein required, and that his whereabouts are unknown to his family or friends, and that his property requires supervision and care, it may appoint some suitable person guardian of the estate of such absentee. [S13,§3228-c; C24, 27, 31, 35, 39,§12639; C46, 50, 54,§671.8]

**671.9 Qualifications — powers and duties.** The person so appointed to act as such guardian shall qualify in the same manner as is required in the case of other guardians, and shall have the same powers and his duties shall be the same as provided for guardians of the estates of minors, so far as applicable. [S13,§3228-d; C24, 27, 31, 35, 39,§12640; C46, 50, 54,§671.9]

Oath and bond, §668.5

**671.10 Termination of guardianship.** If at any time the absentee shall return and claim his property, he shall file in said court his application to terminate such guardianship and, thereupon, the guardian shall make full and complete settlement with such absentee, and after paying the costs of the proceedings and the necessary expenses of the guardian

in executing the trust, shall turn over to such absentee all money and property then in his hands as such guardian, taking receipt therefor, and shall make a final report to the court of his doings as such guardian. [S13,§3228-e; C24, 27, 31, 35, 39,§12641; C46, 50, 54,§671.10]

**671.11 Expenses chargeable to estate.** The estate of such absentee shall be liable for the costs of the proceedings and the necessary expenses incurred by the guardian and allowed by the court. [S13,§3228-f; C24, 27, 31, 35, 39,§12642; C46, 50, 54,§671.11]

**671.12 Control of court — removal.** Such guardian shall at all times be under the control and orders of the court, and may at any time be removed for any cause making it apparent to the court that said guardianship should be terminated or the trust transferred to another person. [S13,§3228-g; C24, 27, 31, 35, 39,§12643; C46, 50, 54,§671.12]

**671.13 Discharge.** When the final report of such guardian shall have been approved by the court he shall be discharged and the proceedings closed, or the trust transferred, as the court may determine. [S13,§3228-h; C24, 27, 31, 35, 39,§12644; C46, 50, 54,§671.13]

## CHAPTER 672

### GUARDIANSHIP OF VETERANS

672.1 Definitions.  
672.2 Applicability of chapter.  
672.3 Petition.  
672.4 Notice—service.  
672.5 Temporary guardian.  
672.6 Trial.  
672.7 Certificate of incompetency.  
672.8 Appointment of guardian.  
672.9 Bond.  
672.10 Limitation on appointment.  
672.11 Reports—hearings.

672.12 Failure to report—effect.  
672.13 Compensation.  
672.14 Investment of funds.  
672.15 Use of funds.  
672.16 Construction of chapter.  
672.17 How chapter cited.  
672.18 Interpretation.  
672.19 Repeal—scope of chapter.  
672.20 Dual guardianship.  
672.21 Discharge of guardian and release of sureties.

**672.1 Definitions.** As used in this chapter, “person” means an individual, a partnership, a corporation, or an association; “Veterans Administration” means the veterans bureau, its predecessors or successors; “income” means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith; “estate” means income on hand and assets acquired partially or wholly with “income”; “benefits” means all moneys paid or payable by the United States through the veterans administration; “administrator” means the administrator of veterans affairs of the United States or his successor; “ward” means a beneficiary of the veterans administration; “guardian” means any fiduciary for the person or estate of a ward. [C31, 35,§12644-c1; C39, §12644.01; C46, 50, 54,§672.1]

**672.2 Applicability of chapter.** Whenever pursuant to any law of the United States or

regulation of the veterans administration, the administrator requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided. [C31, 35,§12644-c2; C39,§12644.02; C46, 50, 54,§672.2]

**672.3 Petition.** A petition for the appointment of a guardian for an incompetent ward may be filed in the district court of the county of which he is a resident. The petition shall set forth:

1. The name, age, and place of residence of the ward, and the name and address of the person or institution, if any, having actual custody of the ward.
2. The name and place of residence of the nearest known relative of the ward.
3. The fact that the ward is entitled to receive moneys payable by or through the veterans administration, and the amount thereof

then due and the amount of probable future payments.

4. The fact that the ward has been rated incompetent on examination by the veterans administration in accordance with the laws and regulations governing the veterans administration. [C31, 35,§12644-c3; C39,§12644.03; C46, 50, 54,§672.3]

**672.4 Notice—service.** Notice of the commencement of the action shall be served in the time, manner, and form as prescribed by the rules of civil procedure of the state and amendments thereto. [C31, 35,§12644-c4; C39, §12644.04; C46, 50, 54,§672.4]

Time and manner of service, R.C.P. 53 and 56(a)

**672.5 Temporary guardian.** A temporary guardian may be appointed as provided by section 670.8. [C31, 35,§12644-c5; C39,§12644.05; C46, 50, 54,§672.5]

**672.6 Trial.** Trial shall be had as provided by section 670.9. [C31, 35,§12644-c6; C39, §12644.06; C46, 50, 54,§672.6]

**672.7 Certificate of incompetency.** Upon trial of an issue arising upon a prayer for the appointment of either a temporary or permanent guardian, a certificate of the administrator, of veterans administration or his representative, setting forth the fact that the defendant ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the veterans administration, shall be prima-facie evidence of the necessity for such appointment, and the court may appoint a guardian for the property of such person. [C31, 35,§12644-c7; C39,§12644.07; C46, 50, 54,§672.7]

**672.8 Appointment of guardian.** Guardians for the estate of minor wards may be appointed as provided by chapter 668. [C31, 35,§12644-c8; C39,§12644.08; C46, 50, 54,§672.8]

**672.9 Bond.** Upon appointment the guardian shall execute and file a bond as provided in the case of guardians of minors in sections 668.5 and 668.6, and chapter 682. The court shall have power from time to time to require the guardian to file an additional bond. [C31, 35,§12644-c9; C39,§12644.09; C46, 50, 54,§672.9]

**672.10 Limitation on appointment.** Except as hereinafter provided, it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for ten wards. In any case, upon presentation of a petition by an attorney of the veterans administration under this section alleging that a guardian is acting in a fiduciary capacity for more than ten wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a

final accounting forthwith from such guardian and shall discharge such guardian in said case. The limitations of this section shall not apply where the guardian is a bank or trust company acting for the estate only and not for the person of the ward. An individual may be guardian of more than ten wards if they are all members of the same family. [C31, 35, §12644-c10; C39,§12644.10; C46, 50, 54,§672.10]

**672.11 Reports—hearings.** Every guardian who shall receive on account of his ward any moneys from the veterans administration shall file with the court annually, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. The court, or a judge thereof, shall fix a time and place for the hearing on such account not less than fifteen and not more than thirty days from the date of filing same, and notice thereof by registered mail shall be given by the guardian to the proper office of the veterans administration not less than fifteen days prior to the date fixed for the hearing, which notice shall include a true copy of the accounting. And a like notice shall be given to the surety on such guardian bonds upon the filing of the final report by said guardian. [C31, 35,§12644-c11; C39,§12644.11; C46, 50, 54,§672.11]

Referred to in §§672.13, 672.14, 672.15

**672.12 Failure to report—effect.** If any guardian shall fail to file an account of the moneys received by him from the veterans administration on account of his ward within thirty days after such account is required by either the court or the veterans administration, or shall fail to furnish the veterans administration a copy of his accounts as required by this chapter, such failure shall be grounds for removal and forfeiture of such guardian's commission as said guardian would otherwise be entitled to receive; provided that the court shall have in addition hereto the same authority to impose penalties and to remove guardians for cause as provided in the general guardianship laws of this state. [C31, 35, §12644-c12; C39,§12644.12; C46, 50, 54,§672.12]

**672.13 Compensation.** Compensation payable to guardians for ordinary services shall not exceed five percent of the income of the ward during any accounting year, provided, however, that the court may grant compensation to such guardian not to exceed twenty-five dollars where five percent of the income of the ward during the accounting year will not adequately compensate the guardian for services performed. In the event of extraordinary services, however, the court may upon petition and after hearing thereon allow the guardian additional compensation. Such petition shall set out the extraordinary services rendered by the guardian and a copy of said petition together with a copy of the notice of

hearing thereon shall be served upon the veterans administration as provided in section 672.11. Compensation as guardian and a fee as attorney shall not be allowed to the same person. No compensation shall be allowed on the corpus of an estate received from the preceding guardian. [C31, 35,§12644-c13; C39, §12644.13; C46, 50, 54,§672.13]

**672.14 Investment of funds.** A guardian may without prior authority of the court invest in bonds or other interest-bearing obligations of the United States, the state of Iowa, or those issued by the cities or counties of Iowa, for the payment of which the faith and credit of the issuing instrumentality of government is pledged. All other investments shall be under orders of the court in such securities in which the guardian has no interest as authorized by section 682.23 provided that said investments shall be made under order of the court after notice to the proper office of the veterans administration in the manner provided in section 672.11. [C31, 35,§12644-c14; C39,§12644.14; C46, 50, 54,§672.14]

**672.15 Use of funds.** A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the veterans administration in the manner provided in section 672.11. [C31, 35,§12644-c15; C39,§12644.15; C46, 50, 54,§672.15]

**672.16 Construction of chapter.** This chapter shall be construed liberally to secure the beneficial intent and purpose thereof, and shall apply only to beneficiaries of the veterans administration. [C31, 35,§12644-c16; C39,§12644.16; C46, 50, 54,§672.16]

**672.17 How chapter cited.** This chapter may be cited as the "Uniform Veterans Guardianship Act". [C31, 35,§12644-c17; C39,§12644.17; C46, 50, 54,§672.17]

**672.18 Interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C31, 35, §12644-c18; C39,§12644.18; C46, 50, 54,§672.18]

**672.19 Repeal—scope of chapter.** All laws or parts of laws relating to beneficiaries of the veterans administration inconsistent with this chapter are hereby repealed. Guardians appointed under this chapter shall be subject to the general guardianship law of the state except insofar as the same is modified by this chapter. Insofar as it may be applicable, this chapter shall apply to guardians of veterans administration beneficiaries heretofore or hereafter appointed under the general laws of the state. [C31, 35,§12644-c20; C39,§12644.19; C46, 50, 54,§672.19]

**672.20 Dual guardianship.** This chapter shall not be construed to require dual guardianship proceedings of the property of the same person, but when a guardian is such both as to moneys paid by the United States through the veterans administration and to other property of the ward, the accounts of the moneys received through the veterans administration shall be kept separate and apart from the accounts of other property. [C31, 35,§12644-c21; C39,§12644.20; C46, 50, 54,§672.20]

**672.21 Discharge of guardian and release of sureties.** In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima-facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final accounting. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final accounting, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [C46, 50, 54,§672.21]

*Saving clause, 51GA, ch 230,§1(22)*

## CHAPTER 673

### SALE OR MORTGAGE OF EXEMPT PROPERTY

673.1 Sale or mortgage authorized.  
673.2 Petition.  
673.3 Notice.

673.4 Sale—requirements.  
673.5 Express finding required.

**673.1 Sale or mortgage authorized.** Whenever any real or personal property, or any interest therein, is owned by any person under guardianship, and any right of exemption, including homestead, as to said property exists in favor of such owner, the court or judge, having jurisdiction of the guardianship, may

authorize and order the guardian on behalf of the ward to waive such exemption as fully as the ward could do if he were sui juris and not under guardianship, and to sell or mortgage or to join with other owners thereof or an executor or administrator of a decedent's estate in a sale or mortgage of such property

when the court or judge finds that such sale or mortgage will promote the best interests of such owner and his estate, any provisions of law inconsistent herewith or to the contrary notwithstanding. [C35,§12644-g1; C39,§12644.21; C46, 50, 54,§673.1]

Sale or mortgage of homestead, §670.16  
 Sale or mortgage of property, §668.14 et seq.

**673.2 Petition.** The petition for such authority and order shall be verified by the guardian, shall describe the property and the interest of the ward therein, together with the nature of any exemption or exemptions in his favor, shall contain a full statement of liens, charges, or other debts to be paid and the purposes and objects of the proposed waiver and sale or mortgage, and the reasons urged as justifying the same as promoting the best interests of the ward and his estate. [C35,§12644-g2; C39,§12644.22; C46, 50, 54,§673.2]

**673.3 Notice.** The notice of said petition and the procedure thereon shall be that prescribed in sections 668.16 to 668.22, inclusive. [C35,§12644-g3; C39,§12644.23; C46, 50, 54,§673.3]  
 46GA, ch 113,§3, editorially divided

**673.4 Sale — requirements.** Section 668.23 shall apply to sales made hereunder. [C35, §12644-g4; C39,§12644.24; C46, 50, 54,§673.4 ]

**673.5 Express finding required.** Upon the hearing on the petition such authority shall not be granted to the guardian by the court or judge except upon an express finding that such waiver and sale or mortgage for the purposes stated therein will promote the best interests of the ward and his estate. [C35, §12644-g5; C39,§12644.25; C46, 50, 54,§673.5]

CHAPTER 674

CHANGING NAMES

- 674.1 Who authorized.
- 674.2 Statement—what to contain.
- 674.3 Description of real estate.
- 674.4 Affidavit of freeholder.
- 674.5 Filing and recording.
- 674.6 Reindexing real estate.
- 674.7 Fees.

- 674.8 Certified copies—fees.
- 674.9 When change effective.
- 674.10 New name of wife and minor children.
- 674.11 Limitation on change.
- 674.12 Indexing real estate in other counties.
- 674.13 Failure to comply.

**674.1 Who authorized.** Any person, under no civil disabilities, who has attained his or her majority and is unmarried, if a female, desiring to change his or her name, may do so as provided in this chapter. [C51,§§2256-2260; R60,§§3844-3848; C73,§§3502-3506; C97, §§4471-4475; S13,§4471-b; C24, 27, 31, 35, 39, §12645; C46, 50, 54,§674.1]

7. The reason or cause for change of name briefly and concisely stated. [S13,§4471-c; C24, 27, 31, 35, 39,§12646; C46, 50, 54,§674.2]  
 S13,§4471-c, editorially divided

**674.2 Statement—what to contain.** Such person shall make and subscribe to a statement under oath showing:

**674.3 Description of real estate.** There shall be incorporated in such statement or attached thereto a concise description of all real estate within this state the title to which is in the person making such statement. [S13,§4471-c; C24, 27, 31, 35, 39,§12647; C46, 50, 54,§674.3]

1. That he or she is a resident of the county where such application is made and of the state for a period of not less than one year.

**674.4 Affidavit of freeholder.** An affidavit of a freeholder of the county shall be attached to such statement to the effect that affiant has personally investigated the facts set out in same and that the same are true; that the person filing such statement is an actual resident of the county and the identical person he or she is represented to be. [S13,§4471-d; C24, 27, 31, 35, 39,§12648; C46, 50, 54,§674.4]

2. His or her place of residence, giving lot and block if in a city, town, or village and street number and business address if any, and the section, township, range, and name of civil township if not in a city or town.

3. The different places of residence and times of such residence for the past five years.

**674.5 Filing and recording.** Such statement shall be presented to the clerk of the district court who shall file same if it is found to be in substantial compliance with all of the provisions of this chapter, and not otherwise, and enter same of record in a book kept for that purpose and index same both under the former name and new name, and shall enter upon the back the date of filing, the book and page where recorded, and serial number thereof, and file same in his office. [S13,§4471-e; C24, 27, 31, 35, 39,§12649; C46, 50, 54,§674.5]

4. Place and date of birth, and, if of foreign birth: the date of immigration to the United States.

5. Legal name and name or names by which such person is usually known and new name as changed or adopted.

6. Names of parents of such person, his or her height, and color of hair and eyes.



**674.6 Reindexing real estate.** When such statement shall have been filed and recorded as herein provided, the clerk shall, if the description of any real estate of that county be contained therein, deliver it to the county recorder who shall index the same, both under the former name and under the new name as changed or adopted, in the manner of indexing transfers of real estate, and enter opposite thereto the description of real estate as found in such statement; such indexing shall be in the index of transfers of land or town property according to the description of said real estate, or both as the case may be. The index shall also show the serial number of such statement and book and page where same is recorded in the office of the clerk of the district court, and the words "change of name" shall be written on said index in red ink, at or opposite to the name. [S13,§4471-f; C24, 27, 31, 35, 39,§12650; C46, 50, 54,§674.6]

**674.7 Fees.** The clerk shall receive a fee of one dollar for his services, and shall also collect ten cents for each separate description of real estate in the statement, which sum shall be paid to the recorder for indexing same. [S13,§4471-g; C24, 27, 31, 35, 39,§12651; C46, 50, 54,§674.7]

S13,§4471-g, editorially divided

**674.8 Certified copies—fees.** The clerk shall, upon demand of any party and the payment of the fee of one dollar, furnish a certified copy of such statement showing the serial number thereof, date of filing, and the book and page of record of same; and, upon the payment of twenty-five cents, shall compare and certify to any correct copy of such statement furnished him for that purpose. [S13, §4471-g; C24, 27, 31, 35, 39,§12652; C46, 50, 54, §674.8]

**674.9 When change effective.** Upon the expiration of thirty days from the time of filing the statement herein provided for, the new name as changed or adopted therein shall become the legal name of the party filing such statement. [S13,§4471-h; C24, 27, 31, 35, 39, §12653; C46, 50, 54,§674.9]

S13,§4471-h, editorially divided

**674.10 New name of wife and minor children.** The surname of such new name shall become the legal surname of the wife and minor children of such person. [S13,§4471-h; C24, 27, 31, 35, 39,§12654; C46, 50, 54,§674.10]

**674.11 Limitation on change.** No person shall change his or her name more than once under the provisions of this chapter. [S13, §4471-h; C24, 27, 31, 35, 39,§12655; C46, 50, 54, §674.11]

**674.12 Indexing real estate in other counties.** Within one year after the filing of such statement, the party changing his or her name shall cause a certified copy thereof to be presented to the recorder of each county in Iowa where there is real estate the legal title to which is in such party, and pay such recorder ten cents for each separate description in such county, and such recorder shall index same in the manner prescribed in this chapter and return same. [S13,§4471-i; C24, 27, 31, 35, 39, §12656; C46, 50, 54,§674.12]

Referred to in §674.13

**674.13 Failure to comply.** Any person failing or neglecting to comply with the provisions of section 674.12 shall be guilty of a misdemeanor and punished accordingly. [S13,§4471-j; C24, 27, 31, 35, 39,§12657; C46, 50, 54,§674.13]

Punishment, §687.7

## CHAPTER 675

### PATERNITY OF CHILDREN AND OBLIGATION OF PARENTS THERETO

See also chapter 252A

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**675.1 Obligation of parents.** The parents of a child born out of wedlock and not legitimized (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses. The father is also liable to pay the expense of the mother's pregnancy and confinement. The obligation of the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock. [C27, 31, 35, §12667-a1; C39, §12667.01; C46, 50, 54, §675.1]

Referred to in §675.25  
Analogous provision, §252.2

**675.2 Recovery by mother from father.** The mother may recover from the father a reasonable share of the necessary support of the child. [C27, 31, 35, §12667-a2; C39, §12667.02; C46, 50, 54, §675.2]

41GA, ch 81, §2, editorially divided

**675.3 Limitation on recovery.** In the absence of a previous demand in writing (served personally or by certified mail addressed to the father at his last known residence or in the manner provided for service of original notices) not more than two years support furnished prior to the bringing of the action may be recovered. [C27, 31, 35, §12667-a3; C39, §12667.03; C46, 50, 54, §675.3; 57GA, ch 267, §91]

Service of notice, R.C.P. 56(a)

**675.4 Recovery by others than mother.** The obligation of the father as hereby provided creates also a cause of action on behalf of the legal representative of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother or by or on behalf of the child or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performance of the obligations imposed upon him. [C27, 31, 35, §12667-a4; C39, §12667.04; C46, 50, 54, §675.4]

**675.5 Discharge of father's obligation.** The obligation of the father other than that under the laws providing for the support of poor relatives is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement. The legal adoption of a child into another family discharges the obligation for the period subsequent to the adoption. [C27, 31, 35, §12667-a5; C39, §12667.05; C46, 50, 54, §675.5]

**675.6 Liability of the father's estate.** The obligation of the father, when his paternity has been judicially established in his lifetime, or has been acknowledged by him in writing or by the part performance of his obligations, is enforceable against his estate in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any,

and the rights of the widow, if any. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum. [C27, 31, 35, §12667-a6; C39, §12667.06; C46, 50, 54, §675.6]

Referred to in §675.22

**675.7 Proceedings to establish paternity.** Proceedings to establish paternity and to compel support by the father may be brought in accordance with the provisions of this chapter. They shall not be exclusive of other proceedings that may be available on principles of law and equity. [C27, 31, 35, §12667-a7; C39, §12667.07; C46, 50, 54, §675.7]

Additional reference, §252.3

**675.8 Who may institute proceedings.** The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend. [C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a8; C39, §12667.08; C46, 50, 54, §675.8]

**675.9 Time of instituting proceedings.** The proceedings may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child. [C27, 31, 35, §12667-a9; C39, §12667.09; C46, 50, 54, §675.9]

**675.10 Venue.** The action shall be by ordinary proceedings entitled in the name of the complainant against the defendant and shall be brought in the district court in the county in which the alleged father is permanently or temporarily resident, or in which the mother or the child resides or is found. [C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a10; C39, §12667.10; C46, 50, 54, §675.10]

41GA, ch 81, §9, editorially divided

**675.11 Nonresident complainant.** It is not a bar to the jurisdiction of the court, that the complaining mother or child resides in another state. [C27, 31, 35, §12667-a11; C39, §12667.11; C46, 50, 54, §675.11]

**675.12 Complaint — where brought.** The complaint may be made to the county attorney. [C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a12; C39, §12667.12; C46, 50, 54, §675.12]

**675.13 Form of complaint — verification.** The complaint may be made in writing, or oral and in the presence of the complainant reduced to writing by the prosecuting attorney. It shall be verified by oath or affirmation of the complainant. [C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a13; C39, §12667.13; C46, 50, 54, §675.13]

**675.14 Substance of complaint.** The complainant shall charge the person named as defendant with being the father of the child. [C51,§848; R60,§1416; C73,§4715; C97,§5629; C24,§12658; C27, 31, 35,§12667-a14; C39,§12667.14; C46, 50, 54,§675.14]

**675.15 Original notice.** An original notice shall be issued as in other civil cases, which notice shall be served as in ordinary actions. [C51,§849; R60,§1417; C73,§4716; C97,§5630; C24,§12659; C27, 31, 35,§12667-a16; C39,§12667.15; C46, 50, 54,§675.15]

Manner of service, R.C.P. 56(a)

**675.16 Lis pendens.** From the time of the filing of such complaint, a lien shall be created upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court. [C51,§850; R60,§1418; C73,§4717; C97,§5631; C24,§12660; C27, 31, 35,§12667-a17; C39,§12667.16; C46, 50, 54,§675.16]

41GA, ch 81,§14, editorially divided

**675.17 Writ of attachment.** The district judge may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized thereunder, and may be revoked at any time by such judge or the district court on a showing made to either for a revocation of the same, and on such terms as such court or judge may deem proper in the premises. [C73,§4718; C97,§5632; C24,§12661; C27, 31, 35,§12667-a18; C39,§12667.17; C46, 50, 54,§675.17]

**675.18 Method of trial.** The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases. [C51,§851, 854; R60,§1419, 1422; C73,§4720; C97,§5634; C24,§12663; C27, 31, 35,§12667-a27; C39,§12667.18; C46, 50, 54,§675.18]

41GA, ch 81,§18, editorially divided

**675.19 County attorney to prosecute.** The county attorney, on being notified of the facts justifying a complaint as provided in this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant. [C73,§4719; C97,§5633; C24,§12662; C27, 31, 35,§12667-a28; C39,§12667.19; C46, 50, 54,§675.19]

**675.20 Exclusion of bystanders.** Unless objection is raised by either party to the action the judge shall exclude from the hearing all persons except the employees of the court, witnesses, and immediate relatives of the parties involved. [C27, 31, 35,§12667-a29; C39,§12667.20; C46, 50, 54,§675.20]

**675.21 Death, absence, or insanity of mother—testimony receivable.** If after the complaint the mother dies or becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. The testimony of the mother taken by deposition as in other

civil cases, may in any such case be read as evidence and in all cases shall be read as evidence if demanded by the defendant. [C27, 31, 35,§12667-a31; C39,§12667.21; C46, 50, 54,§675.21]

**675.22 Death of defendant.** In case of the death of the defendant the action may be prosecuted against the personal representative of the deceased with like effects as if he were living, subject as regards the measure of support to the provision of section 675.6. [C27, 31, 35,§12667-a32; C39,§12667.22; C46, 50, 54,§675.22]

**675.23 Costs payable by county.** If the verdict of the jury at the trial or the finding of the court be in favor of the defendant the costs of the action shall be paid by the county. [C24,§12666; C27, 31, 35,§12667-a33; C39,§12667.23; C46, 50, 54,§675.23]

41GA, ch 81,§22, editorially divided

**675.24 Judgment in general.** If the findings or verdict be against the defendant, the court shall give judgment against him declaring paternity and for support of the child. [C51,§855; R60,§1423; C73,§4721; C97,§5635; C24,§12664; C27, 31, 35,§12667-a35; C39,§12667.24; C46, 50, 54,§675.24]

41GA, ch 81,§23, editorially divided

**675.25 Form of judgment.** The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under section 675.1, as the court directs, until the child reaches the age of sixteen years. The payments may be required to be made at such periods or intervals as the court directs. [C51,§855; R60,§1423; C73,§4721; C97,§5635; C24,§12664; C27, 31, 35,§12667-a36; C39,§12667.25; C46, 50, 54,§675.25]

**675.26 Expenses of confinement.** In addition to providing for support, the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child. [C27, 31, 35,§12667-a37; C39,§12667.26; C46, 50, 54,§675.26]

**675.27 Payment to trustees.** The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. [C27, 31, 35,§12667-a38; C39,§12667.27; C46, 50, 54,§675.27]

41GA, ch 81,§24, editorially divided

**675.28 Report by trustee.** The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over. [C27, 31, 35,§12667-a39; C39,§12667.28; C46, 50, 54,§675.28]

**675.29 Desertion statute applicable.** The provisions of chapter 731, relating to desertion and abandonment of children, shall have the same force and effect in cases of illegitimacy

where paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support, as in cases of children born in wedlock. [C27, 31, 35, §12667-a45; C39, §12667.29; C46, 50, 54, §675.29]

**675.30 Agreement or compromise.** An agreement or compromise made by the mother or child or by some authorized person on their behalf with the father concerning the support of the child shall be binding upon the mother and child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel support of the child. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child. [C27, 31, 35, §12667-a46; C39, §12667.30; C46, 50, 54, §675.30]

**675.31 Continuing jurisdiction.** The court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine the custody in accordance with the interests of the child. [C73, §4722; C97, §5636; C24, §12667; C27, 31, 35, §12667-a47; C39, §12667.31; C46, 50, 54, §675.31]

**675.32 Concurrence of remedies.** A criminal prosecution shall not be a bar to, or be barred by, civil proceedings to compel support; but money paid toward the support of the child shall be allowed for and accredited in determining or enforcing any civil liability. [C27, 31, 35, §12667-a49; C39, §12667.32; C46, 50, 54, §675.32]

**675.33 Limitation of actions.** Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writ-

ing or by the furnishing of support. [C27, 31, 35, §12667-a50; C39, §12667.33; C46, 50, 54, §675.33]

**675.34 Foreign judgments.** The judgment of the court of another state rendered in proceedings to compel support of a child born out of wedlock, and directing payment either of a fixed sum or of sums payable from time to time, may be sued upon in this state and made a domestic judgment so far as not inconsistent with the laws of this state, and the same remedies may thereupon be had upon such judgment as if it had been recovered originally in this state. [C27, 31, 35, §12667-a51; C39, §12667.34; C46, 50, 54, §675.34]

**675.35 Reference to illegitimacy prohibited.** In all records, certificates, or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a declaration by or notice to the mother of a child born out of wedlock, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother and no explicit reference shall be made to illegitimacy, and the term natural shall be deemed equivalent to the term illegitimate when referring to parentage or birth out of wedlock. [C27, 31, 35, §12667-a52; C39, §12667.35; C46, 50, 54, §675.35]

**675.36 Report to registrar of vital statistics.** Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in the same manner. [C27, 31, 35, §12667-a53; C39, §12667.36; C46, 50, 54, §675.36]

## CHAPTER 676

### JUDGMENT BY CONFESSION

Referred to in §677.1

Judgments by confession in justice courts, §601.68

676.1 Judgment by confession—how entered.  
676.2 For money only—contingent liability.

676.3 Statement.  
676.4 Judgment—execution.

**676.1 Judgment by confession—how entered.** A judgment by confession, without action, may be entered by the clerk of the district court. [C51, §1837; R60, §3397; C73, §2894; C97, §3813; C24, 27, 31, 35, 39, §12668; C46, 50, 54, §676.1]

**676.2 For money only—contingent liability.** The judgment can be only for money due or to become due, or to secure a person against con-

tingent liabilities on behalf of the defendant, and must be for a specified sum. [C51, §1838; R60, §3398; C73, §2895; C97, §3814; C24, 27, 31, 35, 39, §12669; C46, 50, 54, §676.2]

**676.3 Statement.** A statement in writing must be made, signed, and verified by the defendant, and filed with the clerk, to the following effect:

1. If for money due or to become due, it

must state concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be.

2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same. [C51,§1839; R60,§3399; C73,§2896; C97,§3815; C24, 27, 31, 35, 39,§12670; C46, 50, 54,§676.3]

**676.4 Judgment—execution.** The clerk shall thereupon make an entry of judgment in his court record for the amount confessed and costs, and shall issue execution thereon as in other cases, when ordered by the party entitled thereto. [C51,§1840; R60,§3400; C73,§2897; C97,§3816; C24, 27, 31, 35, 39,§12671; C46, 50, 54, §676.4]

## CHAPTER 677

### OFFER TO CONFESS JUDGMENT

Offer to confess in justice courts, §601.93

677.1 Offer to confess before action brought.  
677.2 Nonacceptance—costs.  
677.3 Effect of nonaccepted offer.  
677.4 Offer to confess after action brought.  
677.5 Nonacceptance—costs.  
677.6 Effect of nonaccepted offer.  
677.7 Offer to confess after action brought.

677.8 Acceptance—judgment.  
677.9 Effect of nonaccepted offer.  
677.10 Costs.  
677.11 Conditional offer.  
677.12 Acceptance—effect.  
677.13 Nonacceptance—effect.  
677.14 No cause for continuance.

**677.1 Offer to confess before action brought.** Before an action for the recovery of money is brought against any person, he may go before the clerk of the county of his residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person for a specified sum on such cause of action, as provided for in chapter 676. [R60,§3403; C73,§2898; C97,§3817; C24, 27, 31, 35, 39,§12672; C46, 50, 54,§677.1]

C97,§3817, editorially divided

for such sum in full of his demands in the action, or, having had three days notice that the offer would be made, of its amount, and of the time of making it, fails to attend, and on the trial does not recover more than was offered to be confessed, he shall pay the costs of the defendant incurred after the offer. [R60, §3404; C73,§2899; C97,§3818; C24, 27, 31, 35, 39, §12676; C46, 50, 54,§677.5]

**677.6 Effect of nonaccepted offer.** The offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled nor be given in evidence upon the trial. [R60,§3404; C73,§2899; C97,§3818; C24, 27, 31, 35, 39,§12677; C46, 50, 54,§677.6]

**677.7 Offer to confess after action brought.** The defendant in an action for the recovery of money only may, at any time after service of notice and before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for a specified sum with costs. [R60,§3405; C73, §2900; C97,§3819; C24, 27, 31, 35, 39,§12678; C46, 50, 54,§677.7]

C97,§3819, editorially divided

**677.8 Acceptance—judgment.** If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after the offer is made, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer, verified by affidavit; and in either case a minute of the offer and acceptance shall be entered upon the judge's calendar, and judgment shall be rendered by the court accordingly. [R60,§3405; C73,§2900; C97,§3819; C24, 27, 31, 35, 39,§12679; C46, 50, 54,§677.8]

**677.2 Nonacceptance—costs.** If such person, having had the same notice as if he were defendant in an action that the offer would be made, of its amount, and of the time and place of making it, refuses to accept it, and afterwards commences an action upon such cause, and does not recover more than the amount so offered to be confessed, he shall pay all the costs of the action. [R60,§3403; C73,§2898; C97, §3817; C24, 27, 31, 35, 39,§12673; C46, 50, 54, §677.2]

**677.3 Effect of nonaccepted offer.** On the trial thereof the offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence. [R60,§3403; C73,§2898; C97, §3817; C24, 27, 31, 35, 39,§12674; C46, 50, 54, §677.3]

**677.4 Offer to confess after action brought.** After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. [R60,§3404; C73,§2899; C97,§3818; C24, 27, 31, 35, 39,§12675; C46, 50, 54,§677.4]

C97,§3818, editorially divided

**677.5 Nonacceptance—costs.** If the plaintiff, being present, refuses to accept judgment

**677.9 Effect of nonaccepted offer.** If the notice of acceptance is not given in the period limited, the offer shall be treated as withdrawn, and shall not be given in evidence or mentioned on the trial. [R60,§3405; C73,§2900; C97,§3819; C24, 27, 31, 35, 39,§12680; C46, 50, 54, §677.9]

**677.10 Costs.** If the plaintiff fails to obtain judgment for more than was offered by the defendant, he cannot recover costs, but shall pay the defendant's costs from the time of the offer. [R60,§3405; C73,§2900; C97,§3819; C24, 27, 31, 35, 39,§12681; C46, 50, 54,§677.10]

**677.11 Conditional offer.** In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or his attorney an offer in writing that, if he fails in his defense, the amount of recovery shall be assessed at a specified sum. [R60, §3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39, §12682; C46, 50, 54,§677.11]

C97,§3820, editorially divided

**677.12 Acceptance—effect.** If the plaintiff accepts the offer, and gives notice thereof to

the defendant or his attorney within five days after it was served, or within three days if served in term time, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. [R60,§3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39,§12683; C46, 50, 54, §677.12]

**677.13 Nonacceptance—effect.** If the plaintiff does not accept the offer, he shall prove the amount to be recovered as if the offer had not been made, and the offer shall not be given in evidence or mentioned on the trial, and if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense. [R60,§3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39,§12684; C46, 50, 54,§677.13]

**677.14 No cause for continuance.** The making of any offer pursuant to the provisions of this chapter shall not be cause for a continuance of the action or a postponement of the trial. [R60,§3407; C73,§2902; C97,§3821; C24, 27, 31, 35, 39,§12685; C46, 50, 54,§677.14]

## CHAPTER 678

### SUBMITTING CONTROVERSIES WITHOUT ACTION OR IN ACTION

678.1 Agreed statement of facts.

678.2 Affidavit.

678.3 Judgment.

678.4 Record.

678.5 Judgment enforced.

678.6 Submission of cause pending.

678.7 Pleadings abandoned—lien and custody of property.

678.8 Submission of question of law—agreement as to judgment.

678.9 Costs.

**678.1 Agreed statement of facts.** Parties to a question in difference, which might be the subject of a civil action, may, without action, present an agreed statement of the facts to any court having jurisdiction of the subject matter. [C51,§1843; R60,§3408; C73,§3408; C97, §4377; C24, 27, 31, 35, 39,§12686; C46, 50, 54, §678.1]

**678.2 Affidavit.** It must be shown by affidavit that the controversy is real, and that the proceeding is in good faith to determine the rights of the parties thereto. [C51,§1844; R60,§3409; C73,§3409; C97,§4378; C24, 27, 31, 35, 39,§12687; C46, 50, 54,§678.2]

**678.3 Judgment.** The court shall hear and determine the case and render judgment as if an action were pending. [C51,§1845; R60,§3410; C73,§3410; C97,§4379; C24, 27, 31, 35, 39,§12688; C46, 50, 54,§678.3]

**678.4 Record.** The statement, the submission, and the judgment shall constitute the record. [R60,§3411; C73,§3411; C97,§4380; C24, 27, 31, 35, 39,§12689; C46, 50, 54,§678.4]

**678.5 Judgment enforced.** The judgment shall be with costs, and it may be enforced and shall be subject to review in the same

manner as if it had been rendered in an action, unless otherwise provided for in the submission. [R60,§3412; C73,§3412; C97,§4381; C24, 27, 31, 35, 39,§12690; C46, 50, 54,§678.5]

**678.6 Submission of cause pending.** The same may also be done at any time before trial in an action pending, subject to the same requirements and attended by the same results as in a case without action. [R60,§3413; C73,§3413; C97,§4382; C24, 27, 31, 35, 39,§12691; C46, 50, 54,§678.6]

C97,§4382, editorially divided

**678.7 Pleadings abandoned—lien and custody of property.** Such submission of a stated case shall be an abandonment by both parties of all pleadings filed in such cause, and the cause shall stand on the agreed case alone, which must provide for any lien created for attachment, and for any property in the custody of the law, else such lien and custody will be held to be waived. [R60,§3413; C73, §3413; C97,§4382; C24, 27, 31, 35, 39,§12692; C46, 50, 54,§678.7]

**678.8 Submission of question of law—agreement as to judgment.** The parties may, if they think fit, enter into an agreement in writing that, upon the judgment of the court being

given on the question of law raised, particular property therein described, or a sum of money fixed by the parties or to be ascertained by the court or in such manner as the court may direct, shall be delivered to and vested in one of the parties by the other, or, in case of money, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for the transfer and delivery of such property, or for such sum as shall be so

agreed or ascertained, with or without costs, as the case may be. [R60,§3414; C73,§3414; C97, §4383; C24, 27, 31, 35, 39,§12693; C46, 50, 54, §678.8]

**678.9 Costs.** In case no agreement is entered into as to the costs, they shall follow the event of the action, and be recovered by the successful party. [R60,§3415; C73,§3415; C97,§4384; C24, 27, 31, 35, 39,§12694; C46, 50, 54, §678.9]

## CHAPTER 679

### ARBITRATION

679.1 What controversies.

679.2 Written agreement.

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679.13 Force and effect of award.

679.14 Appeal.

679.15 Costs.

679.16 Rights saved.

679.17 Compensation of arbitrators.

679.18 Arbitration by agreement.

**679.1 What controversies.** All controversies which might be the subject of civil action may be submitted to the decision of one or more arbitrators, as hereafter provided. [C51, §2098; R60,§3675; C73,§3416; C97,§4385; C24, 27, 31, 35, 39,§12695; C46, 50, 54,§679.1]

**679.2 Written agreement.** The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign and acknowledge a written agreement, specifying particularly what demands are to be submitted, the names of the arbitrators, and court by which the judgment on their award is to be rendered. [C51,§§2099, 2100; R60, §§3676, 3677; C73,§3417; C97,§4386; C24, 27, 31, 35, 39,§12696; C46, 50, 54,§679.2]

**679.3 What submitted.** The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides. [C51,§2101; R60,§3678; C73,§3418; C97,§4387; C24, 27, 31, 35, 39,§12697; C46, 50, 54,§679.3]

**679.4 Action pending.** A submission to arbitration of the subject matter of an action may also be made by an order of court, upon agreement of parties, after action is commenced. [C51,§2102; R60,§3679; C73,§3419; C97, §4388; C24, 27, 31, 35, 39,§12698; C46, 50, 54, §679.4]

**679.5 Procedure—oaths—evidence.** All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties. Any member of a board of arbitration, whether composed of one

or more arbitrators may administer oaths to witnesses, and the board may accept, demand and call for such evidence as in equity and good conscience the board may deem material and proper, whether strictly legal evidence or not. [C51,§2103; R60,§3680; C73,§3420; C97,§4389; C24, 27, 31, 35, 39,§12699; C46, 50, 54, §679.5]

**679.6 Revocation.** Neither party shall have the power to revoke the submission without the consent of the other. [C51,§2104; R60,§3681; C73,§3421; C97,§4390; C24, 27, 31, 35, 39,§12700; C46, 50, 54,§679.6]

**679.7 Neglect to appear.** If either party neglects to appear before the arbitrators after due notice, except in case of sickness, they may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [C51,§2105; R60,§3682; C73,§3422; C97,§4391; C24, 27, 31, 35, 39,§12701; C46, 50, 54,§679.7]

**679.8 Time for award.** If the time within which the award is to be made is fixed in the submission, one made after that time shall not have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported. [C51,§2106; R60,§3683; C73,§3423; C97,§4392; C24, 27, 31, 35, 39,§12702; C46, 50, 54,§679.8]

**679.9 When time not fixed.** If the time of filing the award is not fixed in the submission, it must be filed within one year from the time the agreement is signed and acknowledged, unless by mutual consent the time is prolonged. [C51,§2107; R60,§3684; C73,§3424; C97, §4393; C24, 27, 31, 35, 39,§12703; C46, 50, 54, §679.9]

**679.10 Award—how made.** The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders. [C51,§2108; R60,§3685; C73,§3425; C97,§4394; C24, 27, 31, 35, 39,§12704; C46, 50, 54,§679.10]

**679.11 Hearing in court.** The award shall be entered on the docket of the court at the term to which it is returned, as an action is entered, and shall be called up and acted upon in its order, but the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award. [C51,§2109; R60,§3686; C73,§3426; C97,§4396; C24, 27, 31, 35, 39,§12705; C46, 50, 54,§679.11]

**679.12 Rejection — rehearing.** The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties, or appointed by the court if they cannot agree. [C51,§2110; R60,§3687; C73,§3427; C97,§4397; C24, 27, 31, 35, 39,§12706; C46, 50, 54,§679.12]

**679.13 Force and effect of award.** When the award has been adopted, it shall be filed and entered on the records, and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly. [C51,§2111; R60,§3688; C73,§3428; C97,§4398; C24, 27, 31, 35, 39,§12707; C46, 50, 54,§679.13]

**679.14 Appeal.** When an appeal is taken from such judgment, copies of the submission

and award, together with all affidavits, shall be filed with the clerk of the supreme court. [C51,§2112; R60,§3689; C73,§3429; C97,§4399; C24, 27, 31, 35, 39,§12708; C46, 50, 54,§679.14]

**679.15 Costs.** If there is no provision in the submission respecting costs, the arbitrators may apportion the same. [C51,§2113; R60, §3690; C73,§3430; C97,§4400; C24, 27, 31, 35, 39, §12709; C46, 50, 54,§679.15]

**679.16 Rights saved.** Nothing herein contained shall be construed to affect in any manner the control of the court over the parties, the arbitrators, or their award; nor to impair or affect any action upon an award, or upon any bond or other engagement to abide an award. [C51,§2115; R60,§3692; C73,§3431; C97, §4401; C24, 27, 31, 35, 39,§12710; C46, 50, 54, §679.16]

**679.17 Compensation of arbitrators.** Arbitrators shall be paid, for each day actually and necessarily engaged in their official duties, two dollars, or such greater sum as the parties to the arbitration agree upon. [C51,§2114; R60, §3691; C73,§3834; C97,§3873; C24, 27, 31, 35, 39, §12711; C46, 50, 54,§679.17]

**679.18 Arbitration by agreement.** Awards by arbitrators who may have been chosen without complying with the provisions of this chapter shall nevertheless be valid and binding upon the parties thereto, as other contracts, and may be impeached only for fraud or mistake, but such award can only be enforced by an action. [C97,§4395; C24, 27, 31, 35, 39,§12712; C46, 50, 54,§679.18]

CHAPTER 680

RECEIVERS

Referred to in §639.39

See reference in §626.33

- 680.1 Appointment.
- 680.2 Permissible proofs.
- 680.3 Oath and bond.
- 680.4 Powers.
- 680.5 Priority of liens.
- 680.6 Taxes as prior claim—nonnecessity to file.

- 680.7 Claims entitled to priority.
- 680.8 Nonapplicability.
- 680.9 Legislative intent.
- 680.10 Discovery of assets.
- 680.11 Contempt.

**680.1 Appointment.** On the petition of either party to a civil action or proceeding, wherein he shows that he has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court or judge shall prescribe, the court, or, in vacation, the judge thereof, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may ap-

point a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to him. [C51,§1656; R60,§§3216, 3419; C73,§§2903, 2970; C97,§3822; C24, 27, 31, 35, 39,§12713; C46, 50, 54,§680.1]

C97,§3822, editorially divided  
Exception as to fraternal beneficiary society, §512.104  
Orders executed outside district, R.C.P. 120

**680.2 Permissible proofs.** Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such or-



der made as will be for the best interest of all parties concerned. [C73,§2903; C97,§3822; C24, 27, 31, 35, 39,§12714; C46, 50, 54,§680.2]

**680.3 Oath and bond.** Before entering upon the discharge of his duties, he must be sworn faithfully to discharge his trust to the best of his ability, and must also file with the clerk a bond with sureties, to be approved by him, in a penalty to be fixed by the court or judge, and conditioned for the faithful discharge of his duties, and that he will obey the orders of the court in respect thereto. [C51,§1657; R60, §3420; C73,§2904; C97,§3823; C24, 27, 31, 35, 39, §12715; C46, 50, 54,§680.3]

**680.4 Powers.** Subject to the control of the court or judge, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to him as may be authorized by law or ordered by the court. [C51,§1658; R60,§3421; C73,§2905; C97,§3824; C24, 27, 31, 35, 39,§12716; C46, 50, 54,§680.4]

**680.5 Priority of liens.** Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination. [C97,§3825; S13,§3825; C24, 27, 31, 35, 39,§12717; C46, 50, 54,§680.5]

S13,§3825, editorially divided

**680.6 Taxes as prior claim—nonnecessity to file.** When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver and claims therefor need not be filed with said receiver. [S13,§3825; C24, 27, 31, 35, 39,§12718; C46, 50, 54,§680.6]

**680.7 Claims entitled to priority.** When the property of any person, partnership, company, or corporation has been placed in the hands of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.

2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.

3. Debts owing to employees for labor performed as defined by section 626.69. [S13, §3825-a; C24, 27, 31, 35, 39,§12719; C46, 50, 54, §680.7]

Referred to in §§680.8, 680.9  
Bank receivership, §528.33  
Labor claims preferred, §§626.69, 635.67, 681.13

**680.8 Nonapplicability.** The provisions of section 680.7 shall not apply to the receivership of state banks, savings banks, loan and trust companies, or private banks, and in the receivership of state banks, savings banks, loan and trust companies, or private banks, no such preference or priority shall be allowed as is provided in said section except for labor as provided by statute. [C27, 31, 35,§12719-a1; C39,§12719.1; C46, 50, 54,§680.8]

Referred to in §680.9

**680.9 Legislative intent.** The provisions of section 680.8 are declaratory of the intent of the legislature and of its interpretation of the provisions of section 680.7. [C27, 31, 35, §12719-a2; C39,§12719.2; C46, 50, 54,§680.9]

**680.10 Discovery of assets.** The court or any judge thereof having direction or control of a receiver may, on its own motion, or on motion of the receiver, require any person suspected of having taken wrongful possession of any of the effects of any person, corporation, or partnership for which said receiver has been appointed, or of having had such effects under his control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court or judge may order the delivery thereof to the receiver. [C27, 31, 35,§12719-b1; C39,§12719.3; C46, 50, 54,§680.10]

Analogous provisions, §§630.19, 635.14

**680.11 Contempt.** If, on being served with the order of the court or judge requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any questions which the court or judge thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court or judge requiring him to deliver any such property or effects to the receiver, he may be committed to the jail of the county until he does. [C27, 31, 35,§12719-b2; C39,§12719.4; C46, 50, 54,§680.11]

CHAPTER 681

ASSIGNMENT FOR BENEFIT OF CREDITORS

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- 681.2 How made.
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- 681.30 Additional security—misconduct.
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**681.1 Must be without preferences.** No general assignment of property by an insolvent person, firm, or corporation, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed. [C51, §§977, 978; R60, §§1826, 1827; C73, §§2115, 2116; C97, §3071; C24, 27, 31, 35, 39, §12720; C46, 50, 54, §681.1]

**681.2 How made.** Every such assignment shall be by an instrument in writing, setting forth the name of the assignor, his residence and business, the name of the assignee and his residence and business, and, in a general way, the property assigned and its location, and the purpose of the assignment. [C97, §3072; C24, 27, 31, 35, 39, §12721; C46, 50, 54, §681.2]

C97, §3072, editorially divided

**681.3 Execution—record and index.** It shall be signed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the assignor resides, and in any other county in the state in which he has real property to be assigned thereby, in the records of deeds, and indexed in the proper index books. [R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12722; C46, 50, 54, §681.3]

**681.4 Inventory—list of creditors.** The assignor shall annex to such instrument an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and a list of his creditors and the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. [R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12723; C46, 50, 54, §681.4]

**681.5 Effect of assignment.** Such assignment shall vest in the assignee the title to any other property belonging to the debtor at

the time of making the assignment, not exempt from execution. [R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12724; C46, 50, 54, §681.5]

**681.6 Filing with clerk.** As soon as such assignment is recorded, it shall be filed, with the inventory and list of creditors, in the office of the clerk of the district court, as shall all subsequent papers connected with such proceedings. [R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12725; C46, 50, 54, §681.6]

**681.7 Inventory and appraisal—bond.** The assignee shall forthwith file with the clerk of the district court where such assignor resides a true and full inventory and valuation of said estate under oath, so far as the same has come to his knowledge, and shall then enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sureties to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the purpose of said assignment. [R60, §1830; C73, §2118; C97, §3073; C24, 27, 31, 35, 39, §12726; C46, 50, 54, §681.7]

**681.8 Notice of assignment—notice to creditors.** The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, which shall be continued, once each week, at least six weeks, and forthwith send a notice by mail to each creditor of whom he shall be informed, directed to his usual place of residence, requiring such creditor to file in the office of the clerk of the district court within three months thereafter his claims under oath. [R60, §1829; C73, §2119; C97, §3074; S13, §3074; C24, 27, 31, 35, 39, §12727; C46, 50, 54, §681.8]

Referred to in §681.9

**681.9 Claims filed.** The claims of all creditors, clearly and distinctly stated and sworn to by the claimant, or by some person ac-

quainted with the facts, shall be filed in the office of the clerk of the district court within three months from the date of the first publication provided for in section 681.8, unless the court extends such time for all or some of such claimants, which it may do in its discretion where peculiar circumstances seem to justify such extension, but in no case shall such time be extended beyond nine months. [C97,§3075; C24, 27, 31, 35, 39,§12728; C46, 50, 54,§681.9]

**681.10 Report required.** At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing the same. [R60,§1831; C73,§2120; C97,§3076; C24, 27, 31, 35, 39,§12729; C46, 50, 54, §681.10]

**681.11 Claims contested.** Any person interested may appear within three months after such report is filed and contest the claim or demand of any creditor by written exceptions thereto filed with the clerk, who shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice and returnable at the next term, at which term the court shall proceed to hear the proofs and allegations of the parties in the case, and render such judgment thereon as shall be just, or it may allow a trial by jury. [R60,§1832; C73,§2121; C97,§3077; C24, 27, 31, 35, 39,§12730; C46, 50, 54,§681.11]

**681.12 Priority of taxes—nonnecessity to file claim.** In all assignments of property for the benefit of creditors, assessments thereof, or taxes levied thereon, whether under the laws of the state or ordinances of municipal corporations, shall be entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with him. [C97,§3078; C24, 27, 31, 35, 39,§12731; C46, 50, 54,§681.12]

Referred to in §681.14

**681.13 Labor claims preferred.** If the claim of any creditor is for personal services rendered the assignor within ninety days next preceding the execution of the assignment, it shall be paid in full. [C97,§3079; C24, 27, 31, 35, 39,§12732; C46, 50, 54,§681.13]

C97,§3079, editorially divided

Referred to in §681.14

Labor claims preferred, §§626.69, 635.67, 680.7

**681.14 Dividends—compensation.** Subject to the provisions contained in sections 681.12 and 681.13, if no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands in proportion to their claims, and as soon

as may be to render a final account of said trust to said court, which may allow such compensation to said assignee in the final settlement as may be considered just and right. [C73,§2122; C97,§3079; C24, 27, 31, 35, 39,§12733; C46, 50, 54, §681.14]

**681.15 Absent creditor.** If, upon making the final dividend to the creditors, the assignee shall be unable, after reasonable efforts, to ascertain the place of residence of any creditor, or any person who is authorized to receive the dividend due him, he shall report the same to the court, with evidence showing diligent attempts to find such creditor or person authorized to receive the dividend, whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors. [C97,§3079; C24, 27, 31, 35, 39,§12734; C46, 50, 54,§681.15]

**681.16 Power of court.** The assignee shall be at all times subject to the order and supervision of the court or judge, and from time to time may be compelled by citation or attachment to file reports of his proceedings and of the situation and condition of the trust, and to proceed in the execution of the duties required by this chapter. [R60,§§1834, 1842; C73,§2123; C97,§3080; C24, 27, 31, 35, 39,§12735; C46, 50, 54, §681.16]

C97,§3080, editorially divided

**681.17 Disposal of property—time limit.** The assignee shall dispose of all personal property and divide the proceeds of the same among creditors as they may be entitled thereto within six months from the date of the assignment, and shall dispose of real estate within one year from such date, and make full settlement by that time, unless the court or judge, for good reason shown, shall extend the time within which such disposition or settlement shall be made. [C97,§3080; C24, 27, 31, 35, 39,§12736; C46, 50, 54,§681.17]

**681.18 Neglect to file inventory or list.** No assignment shall be declared fraudulent or void for want of any list or inventory, as provided in this chapter. [R60,§1835; C73,§2124; C97,§3081; C24, 27, 31, 35, 39,§12737; C46, 50, 54, §681.18]

C97,§3081, editorially divided

**681.19 Examination of debtor.** The court or judge may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, or at the next term, to answer under oath such matters as may be inquired of him, and such debtor may be fully examined under oath as to the amount and situation of his estate, and the names of the creditors and amounts due to each, with their places of residence, and may be compelled to deliver to the assignee any property or estate embraced in the assignment. [R60,§1835; C73,§2124; C97, §3081; C24, 27, 31, 35, 39,§12738; C46, 50, 54, §681.19]

**681.20 Additional inventory and security.** The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [R60,§1836; C73,§2125; C97, §3082; C24, 27, 31, 35, 39,§12739; C46, 50, 54, §681.20]

**681.21 Claims not due.** Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable rebate shall be made when the same are not drawing interest. [R60,§1837; C73,§2126; C97,§3083; C24, 27, 31, 35, 39,§12740; C46, 50, 54,§681.21]  
C97,§3383, editorially divided

**681.22 Claims filed after three months.** All creditors who shall not file their claims within three months from the publication of notice, as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term, and allowed by the court, unless the court has extended the time for filing such claims, except as provided by this chapter. [R60,§1837; C73,§2126; C97, §3083; C24, 27, 31, 35, 39,§12741; C46, 50, 54, §681.22]

**681.23 Sale of property generally.** The assignee may dispose of and sell all the estate assigned, real and personal, which the debtor had at the time of the assignment, may sue for and recover in his name everything belonging or appertaining to said estate, and generally do whatever the debtor might have done in the premises. [R60,§1838; C73,§2127; C97,§3084; C24, 27, 31, 35, 39,§12742; C46, 50, 54, §681.23]  
C97,§3084, editorially divided

**681.24 Sale of real estate.** No sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court or judge shall otherwise order. [R60,§1838; C73,§2127; C97,§3084; C24, 27, 31, 35, 39,§12743; C46, 50, 54,§681.24]  
Sale of real estate, §626.74 et seq.

**681.25 Approval of sales.** No such sales shall be valid until approved by such court or judge. [C97,§3084; C24, 27, 31, 35, 39,§12744; C46, 50, 54,§681.25]

**681.26 Mandatory removal of assignee.** Upon a written application of two-thirds of the creditors in number, and two-thirds in amount, the court shall remove the assignee and appoint in his stead a person approved by the creditors in the same number and

amount. [C97,§3085; C24, 27, 31, 35, 39,§12745; C46, 50, 54,§681.26]  
C97,§3085, editorially divided

**681.27 Permissive removal of assignee.** If an assignee shall reside out of the state, or become insane or otherwise incapable of discharging the trust, the court may, upon ten days notice to him or his attorney, remove him and appoint another in his stead. [C97, §3085; C24, 27, 31, 35, 39,§12746; C46, 50, 54, §681.27]

**681.28 Accounting and delivery.** The person so removed shall immediately turn over to the clerk of the district court, or any person appointed by the court, all moneys and property of the estate in his hands. [C97,§3085; C24, 27, 31, 35, 39,§12747; C46, 50, 54,§681.28]

**681.29 Death of assignee—failure to act.** If an assignee dies before the closing of his trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment to file an inventory and valuation, and give bond as required by this chapter, the district court, or any judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust, who shall, on giving bond with sureties as required of an assignee, have all of the powers of the assignee first appointed, and be subject to all the duties hereby imposed. [R60,§1839; C73,§2128; C97, §3086; C24, 27, 31, 35, 39,§12748; C46, 50, 54, §681.29]  
C97,§3086, editorially divided

**681.30 Additional security—misconduct.** In case any bond or surety is found to be insufficient, or, on complaint before the court or judge, it shall be made to appear that any assignee is guilty of wasting or misapplying the trust estate, such court or judge may require additional security, may remove the assignee and appoint another in his place, and such person so appointed, on giving bond, shall execute such duties, and may demand and sue for all estate in the hands of the person removed, and recover the amount and value of all moneys and property or estate wasted and misapplied, from such person and his sureties. [R60,§1839; C73,§2128; C97,§3086; C24, 27, 31, 35, 39,§12749; C46, 50, 54,§681.30]

**681.31 Power of judge in vacation.** Any judge of the district court in vacation shall have power in cases under this chapter to issue citations and attachments, order the sale of personal or real property, and approve sales and deeds thereof. [C97,§3087; C24, 27, 31, 35, 39,§12750; C46, 50, 54,§681.31]

## CHAPTER 682

## SECURITIES AND INVESTMENTS OF TRUST FUNDS

Referred to in §§388.5, 672.9

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## SURETY BONDS

**682.1 Security to be by bond.** Whenever security is required to be given by law or by order or judgment of a court, and no particular mode is prescribed, it shall be by bond. [C51,§2505; R60,§4113; C73,§246; C97,§355; C24, 27, 31, 35, 39,§12751; C46, 50, 54,§682.1]

**682.2 Payee.** Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be secured thereby; if in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state, but a mere mistake in these respects will not vitiate the security. [C51,§2506; R60,§4114; C73,§247; C97,§356; C24, 27, 31, 35, 39,§12752; C46, 50, 54,§682.2]

**682.3 Defects rectified.** No defective bond or other security or affidavit in any case shall prejudice the party giving or making it, provided it be so rectified, within a reasonable time after the defect is discovered, as not to cause essential injury to the other party. [C51, §2511; R60,§4119; C73,§248; C97,§357; C24, 27, 31, 35, 39,§12753; C46, 50, 54,§682.3]

**682.4 Qualifications of sureties.** The surety in every bond provided for or authorized by

law must be a resident of this state, and worth double the sum to be secured beyond the amount of his debts, and have property liable to execution in this state equal to the sum to be secured, except as otherwise provided by law. Where there are two or more sureties in the same bond, they must in the aggregate have the qualification prescribed in this section. [R60,§4126; C73,§249; C97,§358; S13,§358; C24, 27, 31, 35, 39,§12754; C46, 50, 54,§682.4]

S13,§358, editorially divided  
Referred to in §682.5

**682.5 Attorneys not receivable as surety.** Attorneys at law shall not be accepted as sureties upon any official bonds provided for in section 682.4. [S13,§358; C24, 27, 31, 35, 39, §12755; C46, 50, 54,§682.5]

Referred to in §682.7  
Similar provision, §621.7

**682.6 New bond required.** Whenever the board of supervisors of any county shall have knowledge that any attorney at law is surety upon any official bond, above referred to, it shall require said officer to forthwith file a new bond. [S13,§358; C24, 27, 31, 35, 39,§12756; C46, 50, 54,§682.6]

Referred to in §682.7

**682.7 Surety bound notwithstanding disqualification.** Nothing in sections 682.5 and

682.6 shall exempt such person from any liability upon the bond signed by him. [S13, §358; C24, 27, 31, 35, 39, §12757; C46, 50, 54, §682.7]

**682.8 Affidavit of sureties—effect of.** The officer whose duty it is to take a surety in any bond provided for or authorized by law shall require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths. [R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §12758; C46, 50, 54, §682.8]

C97, §359, editorially divided

**682.9 Effect of affidavit.** The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security. [R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §12759; C46, 50, 54, §682.9]

**682.10 Appeal bonds—presumption.** The filing by an approving officer of a duly tendered appeal bond in an appeal to any court shall carry the presumption until the contrary is established that said officer approved the bond even though no formal approval is indorsed on the bond. [C31, 35, §12759-c1; C39, §12759.1; C46, 50, 54, §682.10]

#### SURETY COMPANIES

**682.11 Certificate of authority.** Any company engaged in the business of becoming surety upon bonds shall file, with the clerk of any county in which it shall do business, a certificate from the commissioner of insurance that it has complied with the law and is authorized to do business in this state. [C97, §359; C24, 27, 31, 35, 39, §12760; C46, 50, 54, §682.11]

**682.12 Certificate revoked—notice.** Should said authority be withdrawn at any time, the commissioner of insurance shall at once notify the clerk of each district court to that effect. [C97, §359; C24, 27, 31, 35, 39, §12761; C46, 50, 54, §682.12]

**682.13 Record by clerk.** The clerk shall keep a book, properly indexed, in which shall be recorded all such certificates and revocations. [C97, §359; C24, 27, 31, 35, 39, §12762; C46, 50, 54, §682.13]

**682.14 Guaranty company as surety.** Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and which company shall have the certificate of the commissioner of insur-

ance authorizing it to do business therein, as provided in chapter 515. [C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12763; C46, 50, 54, §682.14]

SS15, §360, editorially divided  
Referred to in §682.15, 682.18

**682.15 Payment of premiums.** The premium for any such guaranty or surety company bond as defined in section 682.14, may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required. [SS15, §360; C24, 27, 31, 35, 39, §12764; C46, 50, 54, §682.15]

Referred to in §682.18

**682.16 Certificate as authority.** The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of chapter 515 and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same. [C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12765; C46, 50, 54, §682.16]

Referred to in §682.18

**682.17 Limitation on acceptance.** No such security shall be accepted on any bond for an amount in excess of ten percent of the paid-up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten percent of the capital of the reinsuring company and provided that a certificate of such reinsurance shall be furnished to the insured. [C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12766; C46, 50, 54, §682.17]

Referred to in §682.18

**682.18 Criminal bonds.** Nothing contained in sections 682.14 to 682.17, inclusive, shall apply to bonds in criminal cases. [C97, §360; SS15, §360; C24, 27, 31, 35, 39, §12767; C46, 50, 54, §682.18]

**682.19 Release.** Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of this chapter to enable companies created, incorporated, or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons. [C97, §361; C24, 27, 31, 35, 39, §12768; C46, 50, 54, §682.19]

Discharge of sureties, ch 65

**682.20 Suit on bond—service.** Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought. [C97, §362; C24, 27, 31, 35, 39, §12769; C46, 50, 54, §682.20]

C97, §362, editorially divided

**682.21 Commissioner as process agent.** It shall be the duty of the commissioner of insurance, upon service being made upon him, to immediately mail a copy of such notice to such company at their principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company. [C97,§362; C24, 27, 31, 35, 39,§12770; C46, 50, 54,§682.21]

**682.22 Estoppel—stockholders liable.** Any company which shall execute any bond as surety under the provisions of this chapter shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability; and the private property of the stockholders shall be liable for the debts of the corporation to the full amount of the capital stock held by such stockholders. [C97,§363; C24, 27, 31, 35, 39,§12771; C46, 50, 54,§682.22]

#### INVESTMENT OF FUNDS

**682.23 Authorized securities.** All proposed investments of trust funds by fiduciaries shall first be reported to the court or a judge for approval and be approved and unless otherwise authorized or directed by the court under authority of which he or it acts, or by the will, trust agreement, or other document which is the source of authority, a trustee, executor, administrator, or guardian shall invest all moneys received by such fiduciary, to be by him or it invested, in securities which at the time of the purchase thereof are included in one or more of the following classes:

1. *Federal bonds.* Bonds or other interest-bearing obligations of the United States for the payment of which the faith and credit of the United States is pledged.

2. *Federal bank bonds.* Bonds issued by any federal land bank or by the federal farm mortgage corporation or any corporation or governmental agency or instrumentality authorized to issue bonds, or debentures under the act of congress designated as the federal farm loan act, [12 USC,§§641-1012, 1021-1129] and acts amendatory thereof and in bonds issued by any federal home loan bank under the act of congress known and cited as the federal home loan bank act, [12 USC,§§1421-1449] and the acts amendatory thereof.

3. *State bonds.* Bonds or other interest-bearing obligations of any state in the United States for the payment of which the faith and credit of such state is pledged and which state has not defaulted in the payment of any of its bonded debts within the ten preceding years.

4. *Municipal bonds.* Bonds, or other interest-bearing obligations, which are a direct obligation of any county, township, city, village, town, school district, or other municipal corporation or district, having power to levy general taxes, in the state of Iowa, and also bonds, or other interest-bearing obligations, which are a direct obligation of any county,

township, city, village, town, school district, or other municipal corporation or district, having power to levy general taxes, in any adjoining state, having a population of not less than five thousand; and also bonds, or other interest-bearing obligations, which are a direct obligation of any county, township, city, village, town, school district, or other municipal corporation or district, having power to levy general taxes, in any other state, having a population of not less than ten thousand. Provided the total funded indebtedness of any such municipality enumerated in this subsection shall not exceed ten percent of the assessed value of the taxable property therein, as ascertained by the last assessment for tax purposes, and provided further that such municipality or district has not defaulted in the payment of any of its bonded indebtedness within the ten preceding years.

5. *Real estate mortgage bonds.* Notes or bonds of any individual secured by a first mortgage on improved real estate located in this state, provided the aggregate amount of such notes and/or bonds secured by such first mortgage, does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary; except that any such loan may be made in an amount not to exceed sixty percent of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize forty percent or more of the principal of the loan within a period of not more than ten years.

6. *Corporate mortgages.* Notes or bonds of any corporation secured by a first mortgage on improved real estate located in this or any adjoining state upon which no default in payment of principal or interest shall have occurred within five preceding years provided the aggregate amount of such notes and/or bonds secured by such first mortgage does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary.

7. *Railroad bonds.* Bonds of any railroad corporation which are secured by a first lien mortgage or trust deed upon not less than one hundred miles of main track in the United States and which mortgage or trust deed has been outstanding not less than fifteen years and upon which bonds issued thereunder there has been no default in the payment of principal and/or interest since the date of said such trust deed.

8. *Bonds guaranteed by railroad.* Bonds of any corporation secured by a first lien upon any railroad terminal depot, tunnel, or bridge in the United States used by two or more railroad companies which have guaranteed the payment of principal and interest of such bonds and have otherwise covenanted or agreed to pay the same, provided at least one

of said railroad companies meets the following requirements:

a. Has earned net income equal to at least four percent of the par value of its outstanding capital stock for five preceding years, and

b. Has regularly and punctually paid interest and maturing principal on all of its mortgage indebtedness for five preceding years.

c. Has outstanding capital stock of the par value of at least one-third of its total mortgage indebtedness.

9. *Public utility bonds.* Bonds of any corporation supplying either water, electric energy, or artificial manufactured gas or two or more thereof for light, heat, power, water, or other purposes, or furnishing telephone or telegraph service, provided that such bonds are secured by a first mortgage on all property used in the business of the issuing corporation or by a first and refunding mortgage containing provision for retiring all prior liens, and provided further, that the issuing corporation is incorporated within the United States, and if operating entirely outside this state is operating in a state or other jurisdiction having a public utilities commission with regulatory powers, and providing such operating corporation has annual gross earnings of at least one million dollars, seventy-five percent of which gross earnings have come from the sale of water, gas, or electricity, or the rendering of telephone or telegraph service and not more than fifteen percent from any other one kind of business and which corporation has a record on its behalf or for its predecessors or constituent companies, of having officially reported net earnings at least twice its interest charges on all mortgage indebtedness for the period of five years immediately preceding the investment and having outstanding stock the book value of which is not less than two-thirds of its total funded debt, and which corporation shall have all franchises to operate in the territory it serves in which at least seventy-five percent of its gross income is earned, which franchise shall extend at least five years beyond the maturity of such bonds or which have indeterminate permits or agreements with duly constituted public authorities, or in the bonds of any constituent or subsidiary company of any such operating company which are secured by a first mortgage on all property of such constituent or subsidiary company, provided such bonds are to be retired or refunded by a junior mortgage, the bonds of which are eligible hereunder.

10. *Building and loan associations.* Shares of building and loan associations and savings and loan associations, incorporated under the laws of Iowa and in shares of federal savings and loan associations organized under the laws of the United States of America.

11. *Bonds and debentures guaranteed by the federal government.* Bonds, debentures, or other interest-bearing obligations, the pay-

ment of which is guaranteed by the United States of America.

12. *Stock in federal government instrumentalities.* Stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States, when the purchase of said stock is necessary or required as an incident or condition of obtaining a loan from any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States.

13. *Life, endowment or annuity contracts of legal reserve life insurance companies authorized to do business in Iowa.* The purchase of contracts authorized by this subsection shall be limited to executors or the successors to their powers when specifically authorized by will, and to guardians and trustees, in an amount not to exceed twenty-five percent of the value of the ward's property in possession of the fiduciary. Such contract may be issued on the life or lives of a ward or wards or beneficiary or beneficiaries of a trust fund created by will or trust agreement, or upon the life or lives of persons in whose life or lives such ward or beneficiary has an insurable interest. The proceeds or avails of such contract shall be the sole property of the person or persons whose funds are invested therein.

14. *Limitation as to court-approved investments.* Nothing in this section shall be construed as prohibiting investment of such funds in a savings account or time certificate of deposit of a banking institution located in this state and when first approved by the court.

15. *When court approval not required.* Nothing in this section contained shall be construed as requiring investments of trust funds by fiduciaries to be reported to any court or judge for approval where the trust agreement or other document under which the fiduciary is acting is not being administered under the jurisdiction of any court or by its terms specifically exempts the fiduciary from reporting any such investments for approval. [C51,§2507; R60,§4115; C73,§251; C97,§364; S13, §364; C24, 27, 31, 35, 39,§12772; C46, 50, 54, §682.23]

Referred to in §§37.24, 455.162, 672.14, 682.24, 682.25, 682.26

**682.24 Population and indebtedness.** The population specified in section 682.23 shall be determined by the last preceding official federal census. The indebtedness of any municipality or governmental subdivision shall be determined by the official certificate of the officer of such municipality or district in charge of its public accounts. [C31, 35,§12772-c1; C39,§12772.1; C46, 50, 54,§682.24]

Referred to in §682.25

**682.25 Existing investments.** Any fiduciary may by and with the consent of the court having jurisdiction over such fiduciary or under permission of the will or other instru-



ment creating the trust, continue to hold any investment originally received by him or it under the trust or any increase thereof. Such fiduciary may also make investments which he or it may deem necessary to protect and safeguard investments already made according to the provisions of this and sections 682.23 and 682.24. [C31, 35,§12772-c2; C39,§12772.2; C46, 50, 54,§682.25]

Referred to in §682.26  
Omnibus repeal, 43GA, ch 259,§4

#### 682.26 Security subject to court order.

When any investment is made pursuant to approval of the court or judge thereof as required by section 682.23 or made or held by and with the consent of the court as provided in section 682.25, such investment shall not be transferred and any security taken to secure such investment shall not be discharged or impaired prior to payment or satisfaction thereof without an order of the court or judge thereof to that effect, unless otherwise authorized by the will, trust agreement or other document under which the fiduciary is acting. Nothing herein contained shall be construed as requiring the approval of any court or judge thereof to release or discharge of record any mortgage or other lien held by any fiduciary upon the payment or satisfaction thereof in full.

All releases or discharges of record of mortgages or other liens prior to July 4, 1951 by any fiduciary without an order of court where such order was required by section 682.26, Code 1950, are hereby declared to be valid and effective from the filing or recording thereof without such order of court being had and obtained, unless within six months after said date a statement is filed under oath by the claimant or on his behalf if under disability with the county recorder where such release or discharge was filed or recorded setting forth the claim upon which the invalidity of such release or discharge is based. Nothing herein contained shall affect pending litigation. [C51, §2508; R60,§1116; C73,§252; C97,§365; C24, 27, 31, 35, 39,§12773; C46, 50, 54,§682.26]

#### 682.27 Collection, application of funds, and reinvestment.

The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts. [C51,§2509; R60,§4117; C73,§253; C97,§366; C24, 27, 31, 35, 39,§12774; C46, 50, 54,§682.27]

**682.28 Annual accounting.** Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by him, and of the application thereof. [C51,§2510; R60,§4118; C73,§254; C97, §367; C24, 27, 31, 35, 39,§12775; C46, 50, 54,§682.28]

#### ESTATE AND TRUST FUNDS

**682.29 Property or funds in litigation—deposit.** When it is admitted by the pleadings,

or shown by the examination of a party, that he has in his possession, or under his control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by him as trustee for another party, the court, or judge thereof, may order the same to be deposited in the office of the clerk, or delivered to such party, with or without security, subject to the further direction of the court; or may order such money to be deposited in a bank, with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank only upon the check of the clerk, annexed to a certified copy of the order of the court directing such payment. [R60,§3416; C73,§255; C97, §368; C24, 27, 31, 35, 39,§12776; C46, 50, 54, §682.29]

#### 682.30 Enforcement of order.

Whenever a court, or judge in the exercise of its or his authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, such court or judge, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court or judge, and in such cases he has the same power as when acting under an order for the delivery of personal property. [R60,§§3417, 3418; C73, §256, 257; C97,§369; C24, 27, 31, 35, 39,§12777; C46, 50, 54,§682.30]

#### 682.31 Inability to distribute trust funds—

**deposit.** Whenever any administrator, guardian, trustee, or referee shall desire to make his final report, and shall then have in his possession or under his control any funds, moneys, or securities due, or to become due, to any heir, legatee, devisee, or other person, whose place of residence is unknown to such administrator, guardian, trustee, or referee, or to whom payment of the amount due cannot be made as shown by the report on file, such funds, moneys, or securities may upon order of the court and after such notice as the court may prescribe, be deposited with the clerk of the district court of the county wherein such appointment was made. [C97,§370; S13,§370; C24, 27, 31, 35, 39,§12778; C46, 50, 54, §682.31]

S13,§370, editorially divided

#### 682.32 Receipt taken.

If said administrator, guardian, trustee, or referee shall otherwise discharge all the duties imposed upon him by such appointment, he may take the receipt of the clerk of the district court for such funds, moneys, or securities so deposited, which receipt shall specifically set forth from whom said funds, moneys, or securities, were derived, the amount thereof, and the name of the person to whom due or to become due, if known. [C97,§370; S13,§370; C24, 27, 31, 35, 39,§12779; C46, 50, 54,§682.32]

**682.33 Final discharge.** Said administrator, guardian, trustee, or referee may file such

receipt with his final report, and if it shall be made to appear to the satisfaction of the court that he has in all other respects complied with the law governing his appointment and duties, the court may approve such final report and enter his discharge. [C97,§370; S13,§370; C24, 27, 31, 35, 39,§12780; C46, 50, 54,§682.33]

Fiduciaries' reports, §§422.27, 638.34

**682.34 Notice of deposit.** Notice of such contemplated deposit, and of final report, shall be given for the same time and in the same manner as is now required in cases of final report by administrators. [C97,§370; S13,§370; C24, 27, 31, 35, 39,§12781; C46, 50, 54,§682.34]

Notice, §638.36

**682.35 Final report of fiduciary—personal taxes.** No final report of a fiduciary shall be approved by any court unless there is attached thereto and made a part thereof, the certificate of the county treasurer of a county in which the estate is held by the fiduciary that all personal taxes due and to become due the county in such estate matter have been fully paid and satisfied. No charge shall be made by the county treasurer for the issuance of such certificate. [C39,§12781.1; C46, 50, 54, §682.35]

Similar provisions, §§422.27, 450.58

**682.36 Compromise of personal taxes.** For the purpose of facilitating the speedy settlement and distribution of estates, the county treasurer of such county, by and with the consent of the board of supervisors may compromise and agree upon the amount of personal taxes at any time due or to become due the county from such estate and payment in accordance with such compromise or agreement shall be for the satisfaction of all taxes in such estate matter, and no compensation shall be allowed any person because of such compromise or agreement. Provided, however, where an estate is insolvent the board of supervisors may by proper order certified to the court cancel all unpaid personal property taxes. [C39,§12781.2; C46, 50, 54,§682.36]

**682.37 Duty of clerk.** The clerk of the district court with whom any deposit of funds, moneys, or securities shall be made, as provided by any law or an order of court, shall enter in a book, to be provided and kept for that purpose, the amount of such deposit, the character thereof, the date of its deposit, from whom received, from what source derived, to whom due or to become due, if known. [C97,§371; S13,§371; C24, 27, 31, 35, 39, §12782; C46, 50, 54,§682.37]

S13,§371, editorially divided

**682.38 Liability—reports required.** He shall be liable upon his bond for all such funds, moneys, or securities which may be deposited with him, and shall make complete verified statements thereof to the board of supervisors at the January and June sessions each year. [C97,§371; S13,§371; C24, 27, 31, 35, 39,§12783; C46, 50, 54,§682.38]

**682.39 Deposit with county treasurer.** If the funds, moneys, or securities so deposited with the clerk shall not be paid to the person or persons to whom the same are due, or to become due, within six months from the date of its deposit, the clerk shall then, unless otherwise ordered by the court or judge, deposit such funds, moneys, or securities with the county treasurer for the use of the county wherein such appointment was made, taking the treasurer's receipt therefor, countersigned by the county auditor, who shall thereupon charge upon the books of his office and against the treasurer the amount named in such receipts. [C97,§371; S13,§371; C24, 27, 31, 35, 39,§12784; C46, 50, 54,§682.39]

**682.40 Duty of treasurer.** Whenever any funds, moneys, or securities shall be deposited with the county treasurer, as provided in this chapter, he shall enter in a book, provided and kept for that purpose, the date of such deposit, the amount thereof, from whom received, the source from which derived, and the name of the person to whom the same is due or to become due, if known. [C97,§372; C24, 27, 31, 35, 39,§12785; C46, 50, 54,§682.40]

C97,§372, editorially divided

**682.41 Disbursement.** Whenever the claimant therefor, upon proper application made to the district court, shall satisfactorily show to such court that he is the rightful owner of said funds, moneys, or securities and entitled thereto, the court, by order entered of record, shall direct the county auditor to issue a warrant on the county treasurer for said money, funds, or securities, and, upon such order, the said treasurer shall pay to the person named in such order the funds, moneys, or securities to which the claimant shall have shown himself entitled. [C97,§372; C24, 27, 31, 35, 39, §12786; C46, 50, 54,§682.41]

**682.42 Limitation of time to claim funds.** Any person, firm, or corporation entitled to any funds which have been deposited with the clerk of the district court of any county in connection with the settlement or distribution of any estate, trust, guardianship, partition suit, receivership, or any action or proceeding, or any fund which has been deposited with said clerk in connection with the liquidation of any bank, trust company, or other corporation, shall be deemed to have waived all right, claim, or interest therein, and shall not be permitted to have or make claim therefor, unless proper demand and proof is made by the person, firm, or corporation entitled to any of said funds within a period of ten years from the date of deposit of said funds with the said clerk. If said funds are not claimed within said ten-year period they shall become a part of the general fund of the county. [C46, 50, 54,§682.42]

**682.43 Pending litigation — beginning of period.** Where funds are deposited with the clerk of the district court of any county pend-

ing litigation, the period of limitation hereinbefore provided shall not commence to run until the action in connection with which the funds are deposited has been finally adjudicated. [C46, 50, 54, §682.43]

**682.44 Persons under legal disability.** If the person entitled to funds so deposited is subject to legal disability during the time of the deposit of such funds, the duration of such disability may be added to the term in which said funds may be claimed, and may be recovered within such extended period, as a claim against the general fund of said county, on satisfactory showing made to, and order by, a judge of the district court of the county where such funds are on deposit. [C46, 50, 54, §682.44]

#### FEDERAL SECURITIES

**682.45 Federal insured loans.** Insurance companies and building and loan associations, (1) may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to title I, section 2, of the national housing act [12 USC, §§1701-1732], and may obtain such insurance, (2) may make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to title II of the national housing act, and may obtain such insurance.

It shall be lawful for insurance companies, building and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations, subject to the laws of this state, to invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in the debentures issued by the federal housing administrator pursuant to title II of the national housing act, and in securities issued by national mortgage associations or similar credit institutions now or hereafter

organized under title III of the national housing act, and in real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of title III\* of the servicemen's readjustment act of 1944, as amended, otherwise known as the "G. I. Bill of Rights". [C35, §12786-g1; C39, §12786.1; C46, 50, 54, §682.45]

Referred to in §682.46  
\*58 Stat. L. 291

**682.46 Inapplicable statutes.** No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments which may be made, shall be deemed to apply to loans or investments pursuant to section 682.45. [C35, §12786-g2; C39, §12786.2; C46, 50, 54, §682.46]

#### VOLUNTARY AGREEMENTS

**682.47 Deposit and joint control agreements.** It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof, made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.

The provisions of this section shall in no wise impair the power of the court to order deposits of assets and reductions of bonds pursuant to the provisions of section 532.3. [C54, §682.47]

## CHAPTER 683

### PROCEDURE TO VACATE OR MODIFY JUDGMENTS

Rule—Judgment vacated or modified—grounds, R.C.P. 252.

683.1 Time limit.

Rule—Petition, notice, trial, R.C.P. 253.

683.2 Cause of action or defense—necessity.

Rule—Titles and liens protected, R.C.P. 254.

683.3 Injunction.

#### RULE OF CIVIL PROCEDURE NO. 252

**Judgment vacated or modified — grounds.** Upon timely petition and notice under rule 253 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

(a) Mistake, neglect or omission of the clerk;

(b) Irregularity or fraud practiced in obtaining the same;

(c) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record;

(d) Death of a party before entry of the judgment or order, and its entry without substitution of his proper representative;

(e) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 244. [Report 1943]

Referred to in R.C.P. 60, 246, 253, 254 and 255

**683.1 Time limit.** Such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto is a minor or person of unsound mind, and then within one year after the removal of such disability. [R60,§3501; C73, §3157; C97,§4094; C24, 27, 31, 35, 39,§12793; C46, 50, 54,§683.1]

#### RULE OF CIVIL PROCEDURE NO. 253

##### Petition, notice, trial.

(a) *Petition.* A petition for relief under rule 252 must be filed in the original action within one year after the rendition of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they could not have been discovered in time to proceed under rules 236 or 244, and were discovered afterwards. Unless the pleadings in the original action alleged a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 80 (b).

(b) *Notice.* After filing the petition, and also within the year aforesaid, petitioner must serve the adverse party with an original notice in the manner provided in division III of these rules.

(c) *Trial.* The court shall promptly assign the petition for trial, not less than twenty days after notice is served. The petition shall stand denied without answer; otherwise the issues and pleadings, and form and manner of the trial shall be the same, as nearly as may be, as in the trial of an ordinary action to

the court, and with the same right of appeal. No new cause of action shall be introduced.

(d) *Preliminary determination.* The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the cause of action or defense claimed.

(e) *Judgment.* After a stay under rule 246 if the original judgment or order is affirmed, additional judgment shall be entered against the petitioner for the costs of the trial, and also, in the court's discretion, for damages not exceeding ten percent of the judgment affirmed. [Report 1943]

Referred to in R.C.P. 60, 252, 254 and 255

#### 683.2 Cause of action or defense—necessity.

The judgment shall not be vacated on motion or petition until it is adjudged there is a cause of action or defense to the action in which the judgment is rendered. [R60,§3503; C73, §3159; C97,§4096; C24, 27, 31, 35, 39,§12796; C46, 50, 54,§683.2]

C97,§4096, editorially divided

#### RULE OF CIVIL PROCEDURE NO. 254

##### Titles and liens protected.

(a) The title of a good faith purchaser to property sold under the original judgment shall not be affected or impaired by any judgment, order or proceeding under rules 251 to 253 inclusive.

(b) If the original judgment is merely modified pursuant to either of said rules, all liens or securities obtained under it shall be preserved in the modified judgment. [Report 1943]

Referred to in R.C.P. 255

**683.3 Injunction.** The party seeking to vacate or modify a judgment or order may have an injunction suspending proceedings on the whole or part thereof, which shall be granted by the court or a judge thereof upon its being rendered probable, by affidavit or verified petition, or by exhibition of the record, that the party is entitled to the relief asked. [R60,§3505; C73,§3161; C97,§4098; C24, 27, 31, 35, 39,§12799; C46, 50, 54,§683.3]

# TITLE XXXIV

## SUPREME COURT

### CHAPTER 684

#### ORGANIZATION OF SUPREME COURT

- |   |   |
|---|---|
| 684.1 Judges—quorum.                    | 684.11 Failure of judges to attend.           |
| 684.2 Division into sections.           | 684.12 Business continued.                    |
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| 684.5 Terms of court.                   | 684.15 What cases reported.                   |
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| 684.9 Rules for assignment of causes.   | 684.19 Report to general assembly—enrollment. |
| 684.10 Divided court.                   |   |

**684.1 Judges—quorum.** The supreme court shall consist of nine judges, five of whom shall constitute a quorum to hold court, but one alone thereof may adjourn from day to day or to a certain day or until the next term. [C51, §1551; R60, §2627; C73, §139; C97, §193; S13, §193; C24, 27, 31, 35, 39, §12801; C46, 50, 54, §684.1]

**684.2 Division into sections.** The supreme court may be divided into two sections in such manner as it may by rule prescribe. Said sections may hold open court separately and cases may be submitted to each section separately, in accordance with such rules as the court may adopt. [C97, §194; S13, §194; C24, 27, 31, 35, 39, §12802; C46, 50, 54, §684.2]

S13, §194, editorially divided

**684.3 Submission to entire court—rules.** The said supreme court shall also adopt rules for the submission of any case or petition for rehearing whenever differences shall arise between members of either section or whenever the chief justice shall order or direct the submission of said question or petition for rehearing to the whole court. The supreme court shall make all rules and regulations necessary to provide for the submission of cases to the entire bench, or to the separate sections. [C97, §194; S13, §194; C24, 27, 31, 35, 39, §12803; C46, 50, 54, §684.3]

**684.4 Chief justice.** The supreme court shall select one of its members to serve as chief justice for six months, the judges to serve in rotation in such order as may be determined by the court. At the last term of each year, the supreme court shall determine and enter of record who, under this statute, shall be chief justice for the six months period beginning on January 1 thereafter. Likewise

at the May term in each year and on or before June 30, the supreme court shall determine and enter of record who, under this statute, shall be chief justice for the last six months of the year. The presiding chief justice shall appoint one of the other members of the court to act in his place and stead in case of his absence or inability to act and, when so acting, such member shall have all the rights, duties and powers given by statute to the chief justice of the supreme court. [R60, §467; C73, §582; C97, §1066; S13, §1066; C24, 27, 31, 35, 39, §12804; C46, 50, 54, §684.4]

**684.5 Terms of court.** The supreme court shall be held at the seat of government, and shall convene and hold three regular terms each year. The first term shall begin with the second Tuesday of January and end with the first Monday of May; the second shall begin with the first Tuesday after the first Monday of May and end with the third Monday of September; and the third shall begin with the first Tuesday after the third Monday of September and end with the third Saturday of December. [C97, §192; S13, §192-a; C24, 27, 31, 35, 39, §12805; C46, 50, 54, §684.5]

**684.6 Business at each term—docket.** Each of said terms of court shall be for the submission and determination of causes, and for the transaction of such other business as shall properly come before the court. All causes on the docket shall be heard at each term, unless continued or otherwise disposed of by order of the court. The court shall remain in session, so far as practicable, until it is determined what the opinion of the court shall be in all causes submitted to it, except in causes where reargument is ordered. Judgments of affirmance, rulings, and orders in causes sub-

mitted, and orders authorized by law may be made and entered by the court at any time, regardless of the terms of court. [R60,§2623; C73,§133; C97,§192; C24, 27, 31, 35, 39,§12806; C46, 50, 54,§684.6]

**684.7 Recess or adjournment.** The court shall not be required to continue in actual public session during an entire term, but may adjourn from time to time as by order or rule it shall direct; provided, however, that no such recess or adjournment shall be taken for more than thirty days at one time, except during the period from the first Monday in July to the third Monday in September in each year. [S13, §192-b; C24, 27, 31, 35, 39,§12807; C46, 50, 54, §684.7]

**684.8 Causes assigned and submitted.** At each regular or adjourned session of a term of court, causes pending therein may be assigned and submitted, but no more submissions shall be taken or allowed at any one session than in the judgment of the court can be properly considered and determined before the next succeeding session. [S13,§193-a; C24, 27, 31, 35, 39,§12808; C46, 50, 54,§684.8]

**684.9 Rules for assignment of causes.** The court shall by appropriate rules provide for the assignment of causes for hearing at the regular and adjourned sessions thereof, and for reasonable notice to counsel of the time or times at which their cases will be called. [S13,§193-b; C24, 27, 31, 35, 39,§12809; C46, 50, 54,§684.9]

**684.10 Divided court.** When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority, but in such cases opinions may be filed. [C51, §1552; R60,§2628; C73,§140; C97,§195; C24, 27, 31, 35, 39,§12810; C46, 50, 54,§684.10]

**684.11 Failure of judges to attend.** If none of the judges attend on the first day of the term, the clerk must enter the fact on the record, and the court shall stand adjourned until the next day, and so on until the fourth day; then, if none of the judges appear, the court shall stand adjourned until the next term. [C51,§1553; R60,§2629; C73,§141; C97,§196; C24, 27, 31, 35, 39,§12811; C46, 50, 54,§684.11]

**684.12 Business continued.** No process or proceeding shall in any manner be affected by an adjournment or failure to hold court, but all shall stand continued to the next term, without any special order to that effect. [C51, §1554; R60,§2630; C73,§142; C97,§197; C24, 27, 31, 35, 39,§12812; C46, 50, 54,§684.12]

**684.13 Opinions to be filed.** The decisions of the court on all questions passed upon by it, including motions and points of practice, shall be specifically stated, and shall be accompanied with an opinion upon all such as are deemed of sufficient importance, together with any dissent therefrom, which dissent may be stated with or without an opinion. All deci-

sions and opinions shall be in writing and filed with the clerk, except that rulings upon motions may be entered upon the announcement book. [C51,§§1560, 1561; R60,§§2636, 2637; C73, §143; C97,§198; C24, 27, 31, 35, 39,§12813; C46, 50, 54,§684.13]

**634.14 Dissenting opinions.** The records and reports must in all cases show whether a decision was made by a full bench, and whether any and, if so, which of the judges dissented from the decision. [C51,§1562; R60,§2638; C73, §144; C97,§199; C24, 27, 31, 35, 39,§12814; C46, 50, 54,§684.14]

**684.15 What cases reported.** If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench. [C73,§145; C97,§200; C24, 27, 31, 35, 39, §12815; C46, 50, 54,§684.15]

**684.16 Attendance of sheriff of Polk county.** The court may at any time require the attendance and services of the sheriff of Polk county. [C97,§201; C24, 27, 31, 35, 39,§12816; C46, 50, 54, §684.16]

**684.17 Salary.** Each judge of the supreme court hereafter elected shall receive a salary of twelve thousand dollars per year. [C27, 31, 35,§12816-a1; C39,§12816.1; C46, 50, 54,§684.17; 56GA, ch 1,§41]

Constitutional provision, Art. V,§9  
See 56GA, ch 1,§41

**684.18 Rules in civil actions.** The supreme court shall have the power to prescribe all rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings of a civil nature in all courts of this state, for the purpose of simplifying the same, and of promoting the speedy determination of litigation upon its merits. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. [C46, 50, 54,§684.18]

**684.19 Report to general assembly—enrollment.** Any such rules and forms prescribed by the supreme court shall be reported by it to the general assembly within twenty days after the commencement of a regular session and shall take effect July 4 following the adjournment of such session, with such changes, if any, as may have been enacted at such session; and thereafter all laws in conflict therewith shall be of no further force or effect.

At adjournment of the general assembly where such report has been filed, an enrolled copy thereof, together with any changes, shall be made in substantially the same manner as acts are enrolled. The enrolled copy shall be certified as to whether or not any action was taken by the general assembly and if any, what action, and thereupon it shall be filed with the secretary of state and bound with the acts of the general assembly. [C46, 50, 54, §684.19]

## CHAPTER 685

## CLERK OF THE SUPREME COURT AND JUDICIAL STATISTICIAN

## SUPREME COURT CLERK

- 685.1 Appointment.
- 685.2 Office—duties.
- 685.3 Fees to be collected.
- 685.4 Execution for fees.
- 685.5 Deputy—qualification—duties.

## JUDICIAL DEPARTMENT STATISTICIAN

- 685.6 Court statistician appointed.
- 685.7 Assistants.
- 685.8 Duties.
- 685.9 Co-operation of court officers.
- 685.10 Courts affected.

## SUPREME COURT CLERK

**685.1 Appointment.** Within ninety days prior to the first secular day in January, 1927, and every four years thereafter, the judges of the supreme court shall appoint a clerk of the supreme court who shall hold office for four years and until his successor has been appointed and qualified. In case a vacancy occurs, the same shall be filled by appointment for the unexpired portion of the term only. [C73,§583; C97,§1067; S13,§§207-a,b; C24, 27, 31, 35, 39,§12817; C46, 50, 54,§685.1]

**685.2 Office—duties.** The clerk of the supreme court shall have an office at the seat of government, keep a complete record of the proceedings of the court, and allow no opinion filed therein to be removed except by the reporter, which opinions shall be open to examination and may be copied, and, upon request, shall be certified by him. He shall also, when required, make out and certify a copy thereof. He shall promptly announce by mail to one of the attorneys on each side any ruling made or decision rendered, record every opinion rendered as soon as filed, and perform all other duties pertaining to his office. [C51, §§1564, 1565; R60,§§2647-2651; C73,§§146-149; C97,§204; C24, 27, 31, 35, 39,§12818; C46, 50, 54, §685.2]

**685.3 Fees to be collected.** The clerk shall collect the following fees and account for them as provided in section 12.10, and shall also keep account of and report in like manner all uncollected fees:

Upon filing each appeal, three dollars.

Upon entering judgment when the cause has been tried on its merits, two dollars.

Upon each continuance, one dollar.

Upon issuing each execution, one dollar and twenty-five cents.

Upon entering satisfaction of each judgment, fifty cents.

Upon each writ, rule, or order to be served upon any person not in court, twenty-five cents.

For copying an opinion to be transmitted to an inferior court upon reversal of a judgment or an order, to be paid by the party against whom the costs are adjudged, or for a copy of such opinion or any record made at the request of any person, for each hundred words, ten cents. [C51,§2525; R60,§§2949, 4134; C73,§3771; C97,§205; S13,§205; C24, 27, 31, 35, 39, §12819; C46, 50, 54,§685.3]

**685.4 Execution for fees.** If any of the foregoing fees of the clerk are not paid in advance, execution may issue therefor, except where the fees are payable by the county or the state. [C97,§206; C24, 27, 31, 35, 39,§12820; C46, 50, 54,§685.4]

**685.5 Deputy — qualification — duties.** The clerk of the supreme court may appoint, in writing, any person, except one holding a state office, as deputy, which appointment must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner, both the appointment and the revocation to be filed and kept in the office of the secretary of state. The deputy shall qualify by taking the oath of the principal, to be indorsed upon and filed with the certificate of appointment, and, when so qualified, he shall, in the absence or disability of the clerk, perform all of the duties of such clerk pertaining to his office. [C97,§207; SS15,§207; C24, 27, 31, 35, 39,§12821; C46, 50, 54,§685.5]

## JUDICIAL DEPARTMENT STATISTICIAN

**685.6 Court statistician appointed.** There is hereby established in the office of the clerk of the supreme court the position of statistician of the judicial department. The statistician shall be appointed by the supreme court and shall hold office at the pleasure of such court. [56GA, ch 270,§1]

Referred to in §685.10

**685.7 Assistants.** The statistician, with the approval of the supreme court, shall appoint such assistants as are necessary to enable him to perform the powers and duties vested in him. While holding such position, neither the statistician nor his assistants shall practice law in any of the courts of this state. [56GA, ch 270,§2]

Operation and expenses, see §§8.5, subsection 6(c); also 56 GA, ch 270,§3

Referred to in §685.10

**685.8 Duties.** Under the direction of the supreme court the statistician shall:

1. Collect and compile statistical and other data and make reports relating to the business transacted by the courts;

2. Collect statistical and other data and make reports relating to the expenditure of moneys for the maintenance and operation of the judicial system and the offices connected therewith;

3. Obtain reports from clerks of court, judges, justices of the peace, mayors, and magistrates, in accordance with law, or rules prescribed by the supreme court as to cases and other judicial business in which action has been delayed beyond periods of time specified by law or such rules, and make report thereof;

4. Examine the state of the dockets of the courts and determine the need for assistance by any courts;

5. Make reports concerning the overloading and underloading of particular courts;

6. Make recommendations relating to the assignment of judges where courts are in need of assistance;

7. Examine the administrative methods employed in the offices of clerks of courts, probation officers, and sheriffs, and make recommendations regarding the improvement of same;

8. Formulate recommendations for the improvement of the judicial system with reference to the structure of the system of courts, their organization, their methods of operation, the functions which should be performed by various courts, the selection, compensation, number, and tenure of judges and court officials, and as to such other matters as the chief justice and the supreme court may direct; and

9. Attend to such other matters as may be assigned by the chief justice and the supreme court. [56GA, ch 270,§4]

Referred to in §685.10

**685.9 Co-operation of court officers.** The judges, justices of the peace, mayors, magistrates, reporters, clerks of court, probation officers, sheriffs, and all other officers, state and local, shall comply with all requirements made by the statistician or his assistants for information and statistical data bearing on the state of the dockets of the courts, the progress of court business, and such other information as may reflect the business transacted by them and the expenditure of moneys for the maintenance and operation of the judicial system. [56GA, ch 270,§5]

Referred to in §685.10

**685.10 Courts affected.** The provisions of sections 685.6 to 685.9, inclusive, apply to the following courts: Supreme court, district court, superior court, municipal court, police court, justice of the peace court, mayor's court, and all other courts, state and local, which may be established from time to time. Provided however that the fees established for municipal and superior courts shall be one-half of those fees established for district courts prior to May 16, 1955. [56GA, ch 270,§6]

See §606.15, Code 1954, for said fees of district court. Report to general assembly, 56 GA, ch 270,§8

## CHAPTER 686

### PROCEDURE IN THE SUPREME COURT IN CIVIL ACTIONS

- Rule—From final judgment, R.C.P. 331.
- Rule—From interlocutory orders, R.C.P. 332.
- 686.1 Mistake of clerk below.
- 686.2 Motion for new trial.
- Rule—Time for appeal, R.C.P. 335.
- 686.3 Time for appealing in re constitutional test.
- Rule—Amount in controversy, R.C.P. 333.
- Rule—Scope of review, R.C.P. 334.
- 686.4 Coparties not joining.
- 686.5 Appeal from part of judgment or order—effect.
- Rule—How taken—notice—delivery, R.C.P. 336.
- Rule—Record on appeal, R.C.P. 340.
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- 686.14 Remand—process.
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- 686.16 Title not affected.
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- Rule—Rehearings, R.C.P. 350.
- Rule—Procedendo, R.C.P. 351.
- Rule—Certiorari or appeal, R.C.P. 352.
- Rule—Service generally, R.C.P. 353.
- 686.17 Death of party—continuance.
- Rule—Motions to dismiss or affirm, R.C.P. 348.
- Rule—Remands, R.C.P. 349.
- 686.18 Executions.

#### RULE OF CIVIL PROCEDURE NO. 331

##### From final judgment.

(a) All final judgments and decisions of courts of record, and any final ad-

judication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as



provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce or annulment shall also be deemed a final decision.

(b) No interlocutory ruling or decision may be appealed, except as provided in rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party. [Report 1943; amendment 1945; amendment 1951]

Referred to in R.C.P. 332, 353 and 371

#### RULE OF CIVIL PROCEDURE NO. 332

##### From interlocutory orders.

(a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice and hearing as provided in rules 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 331, from a final adjudication in the trial court under rule 86.

(b) The order granting such appeal may be on terms of advancing it for prompt submission. It shall stay further proceedings below, and may require bond. [Report 1943; amendment 1945]

Referred to in R.C.P. 331, 335, 352, 353 and 371

**686.1 Mistake of clerk below.** A mistake of the clerk shall not be ground for an appeal until the same has been presented to and acted upon by the court below. [R60,§3498; C73,§3167; C97,§4104; C24, 27, 31, 35, 39,§12826; C46, 50, 54,§686.1]

**686.2 Motion for new trial.** The supreme court on appeal may review and reverse any judgment or order of the municipal, superior, or district court, although no motion for a new trial was made in such court. [C73,§3169;

C97,§4106; C24, 27, 31, 35, 39,§12828; C46, 50, 54, §686.2]

#### RULE OF CIVIL PROCEDURE NO. 335

**Time for appeal.** Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or for judgment notwithstanding the verdict is filed as provided in rule 247, and then within thirty days after the ruling on such motion; provided however, that, where an application to the supreme court or any justice thereof to grant an appeal in advance of final judgment under rule 332 is made within thirty days from the date of such ruling or decision, the supreme court or any justice thereof may extend the time for filing the notice of appeal in the event the appeal is granted and the appeal, in such event, may be perfected within the time thus specified.

Provided, however, a cross-appeal may be taken within said thirty-day period, or in any event within five days after the appeal is taken. [Report 1943; amendment 1945; amendment 1949]

Referred to in R.C.P. 353 and 371

**686.3 Time for appealing in re constitutional test.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, notice of appeal may be taken within three days from and after the entry of the decree in district court, and not afterwards. [C31, 35,§12832-d1; C39, §12832.1; C46, 50, 54,§686.3]

#### RULE OF CIVIL PROCEDURE NO. 333

**Amount in controversy.** Except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the pleadings, is less than three hundred dollars, unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment. [Report 1943]

Referred to in R.C.P. 331, 353 and 371

#### RULE OF CIVIL PROCEDURE NO. 334

**Scope of review.** Review in equity cases shall be de novo. In all other cases, the supreme court shall constitute a court for correction of errors at law; and findings of fact in jury-waived cases shall have the effect of a special verdict. [Report 1943]

Referred to in R.C.P. 353 and 371

**686.4 Coparties not joining.** Coparties, refusing to join in an appeal, cannot afterwards appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall

be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto. [C51, §§1980, 1981; R60, §§3518, 3519; C73, §§3175, 3176; C97, §4112; C24, 27, 31, 35, 39, §12835; C46, 50, 54, §686.4]

**686.5 Appeal from part of judgment or order—effect.** An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb, delay, or affect the rights of any party to any judgment or order, or part of a judgment or order, not appealed from. [R60, §3510; C73, §3177; C97, §4113; C24, 27, 31, 35, 39, §12836; C46, 50, 54, §686.5]

#### RULE OF CIVIL PROCEDURE NO. 336

**How taken—notice—delivery.** Appeal is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by the appellant or his attorney. It shall specify the parties taking the appeal, and the decree, judgment, order or part thereof appealed from. The clerk shall forthwith mail or deliver a copy of such notice to the attorneys of record for all parties other than the appellant, or to any such party who has no attorney of record, at his last known address. No failure of the clerk to mail or deliver any notice shall affect the validity of the appeal. [Report 1943]

Referred to in R.C.P. 342, 353 and 371

#### RULE OF CIVIL PROCEDURE NO. 340

##### Record on appeal.

(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten abstract of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be copied in full in the printed record, the abstract may so state and refer to them by letter, number or other appropriate designation, without copying them.

The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

The clerk shall forthwith notify the attorneys of record for the appellee of such filing.

(b) If the abstract does not embrace the whole record, and all evidence and proceedings in the transcript, depositions and exhibits, it shall include a concise statement of all points upon which appellant will rely on the appeal, which shall be limited thereto.

(c) Within twenty days after such filing, or such longer time as the trial court may allow or the parties agree to

in writing, any other party to the appeal may, in like manner, file duplicate amendments to appellant's abstract, proposing corrections, substitutions or additions thereto. At the expiration of the time for amendment, either party, on not less than three days written notice, may present the proposed abstract and all such proposed amendments, if any, to the judge before whom the case was tried, who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial, and is in form as provided by these rules. The trial court shall then append to appellant's proposed abstract an order settling the same with any corrections, substitutions or additions it has allowed in conformity with these rules.

(d) Testimony of witnesses may be abstracted wholly or in part in condensed or narrative form, but if any party to the appeal deems any portion thereof to be of particular importance, he may state or substitute that part in question and answer form. Any party dissatisfied with another's proposed narrative statement of any testimony may require the questions and answers comprising it to be substituted for such narrative statement.

(e) Formal parts of all exhibits, and more than one copy of any document, shall be omitted. Documents shall be abridged by omitting formal or irrelevant parts. This rule shall also apply to exhibits to pleadings.

(f) The abstract allowed as above or under paragraph (h) hereof shall constitute the record on which the cause shall be submitted on the appeal. The appellant shall cause it to be printed, so as also to contain in full any exhibits designated in the abstract by number alone, as provided in paragraph (a) hereof.

For correcting record, see rule 341

(g) The supreme court may impose or withhold costs for any addition or substitution of irrelevant matter, or the use of needless questions and answers for the narrative statement. To aid it in this respect only, the clerk of the trial court, at the request of the aggrieved party, shall certify to the supreme court the reporter's transcript, depositions, exhibits and proposed abstract and amendments thereto.

(h) Instead of proceeding under paragraphs (b) and (c) hereof, the parties may file with or include in the abstract proposed by any party to the appeal, their written agreement that it is correct. The trial court shall thereupon certify that such abstract has been so agreed to, and is the record on appeal.

(i) Abstracts and the printed record

shall contain a brief index of their contents, in which the pleadings shall appear in the order of their filing. [Report 1943]

Referred to in R.C.P. 353

**686.6 Filing in re action to test constitutionality.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, an abstract of record shall be filed within five days after the service of notice of appeal, unless additional time, not to exceed three days, be granted by the chief justice. [C31, 35, §12847-d1; C39, §12847.1; C46, 50, 54, §686.6]

#### RULE OF CIVIL PROCEDURE NO. 342

##### Filing and docketing.

(a) Within ninety days after filing notice of appeal, or such longer time as the trial court may grant on application and hearing, appellant shall file the printed record with the clerk of the trial court, with one printed copy for the attorney or attorneys for each other party to the record and for each such party not represented by attorney. The cause shall be entitled as it was in the court below, with the party taking the appeal called the appellant, and all other parties appellees. The clerk shall mail or deliver a copy of the record to each of such attorneys or parties, as provided in rule 336 or rule 353, and shall indorse upon the other copy his certificate of such filing and mailing, and mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

Similar provision, §611.14

(b) When appellant files the printed record in the trial court, he shall forthwith mail or deliver seventeen printed copies thereof, with a filing fee of three dollars, to the clerk of the supreme court, who shall then docket the cause.

(c) If the printed record is not filed by the appellant with the clerk of the trial court within ninety days after filing the notice of appeal or within such further time as fixed by the trial court, the appellee may file with the clerk of the supreme court a copy of the final judgment or order appealed from, or other matters required, certified to by the clerk of the trial court, and cause the case to be docketed, and the appeal upon motion shall be dismissed, or the judgment or order affirmed.

(d) After an appeal to the supreme court is taken and perfected, as provided in rule 336, the failure of appellant to take any further steps to secure the review of the judgment or order appealed from in the manner and within the time specified in these rules shall be ground

for the dismissal of the appeal or for the affirmance of the judgment or order appealed from as provided in paragraph (c) hereof and rule 348. If reasonable excuse be shown for such failure to comply with these rules the supreme court may allow the appeal to stand upon such terms as it deems appropriate. [Report 1943; Court Order December 12, 1945; amendment 1953]

Referred to in R.C.P. 343 and 353

#### RULE OF CIVIL PROCEDURE NO. 341

##### Correcting record—certification.

(a) If anything material to either party is omitted from the record on appeal by error or accident, or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the supreme court, or the supreme court on its own initiative or proper suggestion, may direct the correction thereof; and, if necessary, that further proceedings be had and a supplemental record be prepared and certified in the trial court; or may require the clerk of the trial court to certify to the supreme court any or all of the evidence or proceedings below.

(b) Any part or all of the record, including exhibits, in the trial court shall, at the request of the supreme court or any justice thereof, be certified and transmitted by the clerk of the court below to the supreme court. [Report 1943]

Referred to in R.C.P. 353

**686.7 Transmission.** The transcript of any paper or exhibit required for use in the supreme court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party. [C51, §§1975, 1976; R60, §3511; C73, §3179; C97, §4125; C24, 27, 31, 35, 39, §12855; C46, 50, 54, §686.7]

**686.8 Return of original papers.** If a new trial is granted by the supreme court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded. [C97, §4126; C24, 27, 31, 35, 39, §12856; C46, 50, 54, §686.8]

#### RULE OF CIVIL PROCEDURE NO. 337

##### Supersedeas—bond.

(a) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that he will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value, the obligation of the judgment

or order appealed from, which the supreme court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal, of which appellee is deprived by reason of the appeal.

(b) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount, including costs, unless, in exceptional cases, the trial court fix a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(c) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring the appellee and all others to stay proceedings under it, or such part of it as has been appealed from, when the appeal bond is filed and approved. [Report 1943]

Referred to in R.C.P. 353 and 371

**686.9 Execution on unstayed part of judgment.** The taking of the appeal from part of a judgment or order, and the filing of a bond as above directed, does not stay execution as to that part of the judgment or order not appealed from. [C51,§1985; R60,§3532; C73,§3191; C97,§4129; C24, 27, 31, 35, 39,§12862; C46, 50, 54, §686.9]

**686.10 Execution recalled.** If execution has issued prior to the filing of the bond, the clerk shall countermand the same. [C51,§1987; R60, §3533; C73,§3192; C97,§4130; C24, 27, 31, 35, 39, §12863; C46, 50, 54,§686.10]

**686.11 Surrender of property.** Property levied upon and not sold at the time such countermand is received by the sheriff shall be 'at once delivered to the judgment debtor. [C51,§1988; R60,§3534; C73,§3193; C97,§4131; C24, 27, 31, 35, 39,§12864; C46, 50, 54,§686.11]

**RULE OF CIVIL PROCEDURE NO. 338**

**Bond—hearing on sufficiency.** If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a supersedeas bond tendered by appellant, he may apply to the trial court, on at least three days notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, it shall itself determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in

security or defective in form, it shall discharge such bond and fix a time for filing a new one; all as appears by the circumstances shown at the hearing. [Report 1943]

Refe. red to in R.C.P. 353 and 371

**686.12 Bond for costs.** The appellant may be required to give security for costs under the same circumstances and upon the same showing as plaintiffs in civil actions in the inferior court may be. [R60,§3526; C73,§3210; C97,§4135; C24, 27, 31, 35, 39,§12868; C46, 50, 54, §686.12]

Cost bond, R.C.P. 354 et seq. ; also ch 621

**RULE OF CIVIL PROCEDURE NO. 344**

**Form and contents of briefs.**

(a) Appellant's opening brief shall contain:

(1) A statement of the case, not ordinarily to exceed one page, showing the nature of the action, what the issues were, and how they were decided, and what questions are presented by the appeal;

(2) A statement of the facts, stating the principal facts in narrative form, with references to the pages and lines of the record to support each statement. But if such references are fully supplied in the argument, they may be omitted from this statement.

(3) A statement of errors relied on for reversal when the appeal presents questions of law; or a statement of propositions relied on, when it is triable de novo. The errors or propositions shall be separately stated and numbered, in substantially the order they are presented in the division of the brief.

(4) In separately numbered divisions:  
(First) A statement of the "error" or "proposition" relied on and discussed in that division, with references to the pages and lines of the record, sufficient to show fully the manner in which the error arose and the ruling of the trial court thereon.

(Second) Separately numbered or lettered brief points substantially conforming to the "Statement of Errors" or "Propositions" and stating without argument the grounds of complaint of the ruling and citing authorities supporting each point.

(Third) The argument shall follow the statement of the brief points and authorities in each division, and be confined thereto. Errors or propositions not stated or argued shall be deemed waived.

(b) If two or more errors relied on present closely related propositions of law or fact, the brief points and arguments may be presented in one division.

(c) Argument of any error which relates to the sufficiency of the evidence

to sustain a ruling on any point shall supply full references to the pages and lines of the record, unless such evidence is fully stated, with such references, in the statement of facts.

(d) Appellee's brief and appellant's reply shall follow the above outline as nearly as may be, but without unnecessary repetition.

(e) In citing cases the names of parties must be given. And in citing cases determined by this court, which have been officially reported, reference must be made to the volume and page where the case may be found in the Iowa Reports and also in the North Western Reporter, if reported therein. In citing cases from other jurisdictions, reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. When textbooks are cited, the edition must be designated with the proper volume and page. [Report 1943; Court Order December 12, 1945]

Referred to in R.C.P. 353

#### RULE OF CIVIL PROCEDURE NO. 343

**Filing briefs.** In all cases, whether in equity or at law, the appellant shall file his brief with the clerk of the trial court within forty-five days after filing his record, unless such time is enlarged in accordance with rule 347(b) or suspended under rule 348(d). He shall also file one "service copy" for the clerk's certification, and copies for the other parties or their attorneys as provided in rule 342, which copies the clerk shall forthwith mail or deliver in like manner. The clerk shall indorse upon the "service copy" his certificate of such filing and mailing, and mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

Within thirty days after appellant's brief is thus filed, the appellee shall serve and file his brief in like manner. If he is a cross-appellant he may have until the same time in which to file his opening brief as such cross-appellant and combine it with his brief as appellee.

Appellant shall, within fifteen days thereafter file and serve his reply brief, if any, in like manner. [Report 1943; amendment 1949; amendment 1953]

Referred to in R.C.P. 353

#### RULE OF CIVIL PROCEDURE NO. 346

**Submission and oral argument.** A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will be heard orally only in reply to his adversary's oral argument,

if any. The oral arguments shall conform to rules prescribed by the supreme court. [Report 1943]

Referred to in R.C.P. 353

#### 686.13 Arguments in re constitutional test.

If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the appellant shall file a written argument within ten days after the filing of the abstract and appellee shall file his argument within ten days thereafter, and appellant shall then file his reply within three days. The cause shall then be submitted to the supreme court in regular or special full bench session as soon thereafter as the chief justice may order. [C31, 35, §12871-d1; C39, §12871.1; C46, 50, 54, §686.13]

#### RULE OF CIVIL PROCEDURE NO. 339

**Judgment on bond.** If the supreme court affirms the judgment appealed from, it may, on motion of the appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or may remand the cause to the trial court for the determination of such damages and costs, and the entry of judgment on the bond. [Report 1943]

Referred to in R.C.P. 353 and 371  
Similar provision, §601.95

#### RULE OF CIVIL PROCEDURE NO. 345

**Printing and costs.** All records and briefs filed in the supreme court shall be clear and legible and printed on unruled white paper with type not smaller than small pica. The printing may be with type and leaded lines, offset printing, multigraph, mimeograph, duplicator, or other similar process approved by the court. The printed portion of each page shall be four inches wide and seven inches long with margins of two inches. Headings, and matter specially emphasized, may be printed in bold face. The lines of the Record must be numbered consecutively on each page.

The amount actually paid for printing, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, taxed in the supreme court as costs. [Report 1943 amended January 16, 1947 and June 18, 1948 by order of court under authority of R.C.P. 371]

Referred to in R.C.P. 353

**686.14 Remand—process.** If the supreme court affirms the judgment or order, it may send the cause to the court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require. [C51, §1991; R60, §3539; C73, §3197; C97, §4143; C24, 27, 31, 35, 39, §12875; C46, 50, 54, §686.14]

**686.15 Restitution of property.** If, by the decision of the supreme court, the appellant

becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value. [C51,§1992; R60,§3540; C73,§3198; C97,§4145; C24, 27, 31, 35, 39,§12877; C46, 50, 54,§686.15]

**686.16 Title not affected.** Property acquired by a purchaser in good faith under a judgment subsequently reversed shall not be affected thereby. [C51,§1993; R60,§3541; C73, §3199; C97,§4146; C24, 27, 31, 35, 39,§12878; C46, 50, 54,§686.16]

#### RULE OF CIVIL PROCEDURE NO. 347

##### **Writs and orders in the supreme court.**

(a) *Writs and process.* The supreme court shall issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(b) *Orders.* Every application for an order in the supreme court shall be in writing, served upon the adverse party or his attorney of record, with a notice that it will come on for hearing before the supreme court or a justice thereof at a stated time and place. By stipulation and arrangement with the court or justice the parties may fix the time and place of hearing.

(c) *Hearings.* No order shall be issued except upon reasonable notice and opportunity to make resistance, but if it be made to appear that great and irreparable loss would ensue if the matter were delayed, an order may be entered effective only until final order is made. The supreme court may hear oral arguments on an application for order if it deems them desirable; otherwise, the matter shall be submitted without oral argument. One or more justices may act for the court in such matters. [Report 1943]

Referred to in R.C.P. 332, 343 and 353

#### RULE OF CIVIL PROCEDURE NO. 350

##### **Rehearings.**

(a) No notice of intention to file a petition for rehearing need be given; but the petition and brief thereon shall be filed with the clerk of the supreme court within thirty days after filing the opinion, or such longer time as the chief justice, on written application served on the opposing parties, may allow. The petition and supporting brief must be printed either separately or together. Petitioner shall file eighteen copies thereof, to-

gether with one additional copy for the attorney or attorneys for each other party to the appeal, and each party not represented by attorney. The clerk shall mail or deliver one copy to each such attorney or party forthwith; but his failure shall not impair the petitioner's right to consideration of his petition. The opposing party shall have fifteen days after filing of the petition and brief, in which to file resistance thereto.

(b) The parties shall have such right to argue a petition for rehearing orally on its submission as the court may prescribe by rule.

(c) The court may deny a rehearing, modify its opinion or order a resubmission. If resubmission is ordered, it shall designate the time for filing briefs, and counsel shall be entitled to oral argument on the resubmission; but the order therefor may designate the point or points to be argued. [Report 1943]

Referred to in R.C.P. 353

#### RULE OF CIVIL PROCEDURE NO. 351

**Procedendo.** Unless otherwise ordered by the court, no procedendo shall issue for thirty days after an opinion is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending. [Report 1943]

#### RULE OF CIVIL PROCEDURE NO. 352

**Certiorari or appeal.** If any case is brought to the supreme court by appeal or certiorari, and the court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the court as application to grant an appeal (as provided in rule 332) and conversely an application to grant an appeal may be treated as a petition for certiorari.

Provided, however, nothing in this rule shall operate to extend the time within which an appeal may be taken. [Report 1943; amendment 1949]

#### RULE OF CIVIL PROCEDURE NO. 353

**Service generally.** Whenever service on a party to an appeal is required or permitted under rules 331-350, inclusive, it shall be made by delivering copy to his attorney of record, or if he have none, then by delivery to him or mailing to his last known address, or if no address is known, by leaving a copy for him with the clerk of the supreme court. Delivery of copy within this rule means either handing it to the attorney or party, or leaving it at his office with his clerk or other person in charge thereof, or if no one is in charge leaving it in a

conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over eighteen years of age residing therein; or mailing it to his office address. Service by mail is complete on mailing. Proof of service may be made by written acknowledgment, or by affidavit of the person making the service, who may be an attorney in the case or his clerk. [Report 1943]

Referred to in R.C.P. 332 and 342

**686.17 Death of party—continuance.** The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice. [R60,§3520; C73,§3211; C97, §4150; C24, 27, 31, 35, 39,§12884; C46, 50, 54, §686.17]

#### RULE OF CIVIL PROCEDURE NO. 348

##### Motions to dismiss or affirm.

(a) Appellee's motion to dismiss an appeal or motion to affirm must be in printing or typewriting, supported by printed or typewritten brief, and served on appellant's counsel and filed with the clerk of the supreme court within twenty days after filing the record, if the grounds therefor then exist. If appellee desires to present the motion orally, he shall so request therein, and the court may make such order as it deems proper in regard thereto.

(b) The day immediately preceding the first day of each period, as fixed by the docket for the term, shall be and is hereby designated as motion day and, except when otherwise specially ordered by the court or a judge thereof, such motion day shall be and the same is hereby fixed as the time for submission of every such motion to dismiss, served and filed ten days or more prior thereto, and also every such motion to dismiss to which resistance has been filed. If the chief justice or the court determines oral argument is desirable, such motion shall be assigned for oral argument, otherwise it shall be assigned for submission on the briefs. The clerk shall forthwith notify each party of the time and manner of the submission.

(c) Appellant's resistance, if any, shall be served and filed not less than three days prior to the date fixed for such submission.

(d) The court may rule on the motion to dismiss or motion to affirm before requiring submission of the appeal or may order the motion submitted with the appeal. The time intervening between service of the motion and the court's order overruling the motion, or providing that it be submitted with the appeal, shall be excluded in determining the time within which the parties' respective briefs on the merits must be filed.

(e) If grounds for dismissal of an appeal or affirmance arise after the record is filed, appellee may file and serve such motion to dismiss or motion to affirm and supporting brief. The court shall then determine when and on what notice, the same shall be heard, and whether submission of the appeal shall be stayed and may make appropriate orders respecting the time for filing briefs on the merits. [Report 1943; Court Order December 12, 1945; Court Order March 6, 1956]

Referred to in R.C.P. 342, 343 and 353

#### RULE OF CIVIL PROCEDURE NO. 349

**Remands.** When a judgment is reversed for error in overruling a motion to direct a verdict, or a motion for judgment under rule 243(b), or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the supreme court may enter, or direct the trial court to enter final judgment as if such motion had been initially sustained; providing that, if it appears from the record that the material facts relating thereto were not fully developed at the trial, or if, in the opinion of the supreme court, the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case. [Report 1943; amendment 1945]

Referred to in R.C.P. 353

**686.18 Executions.** Executions issued from the supreme court shall be like those from the district court, attended with the same consequences, and returnable in the same time. [R60,§3552; C73,§3215; C97,§4153; C24, 27, 31, 35, 39,§12888; C46, 50, 54,§686.18]

Execution generally, ch 626

# **CRIMINAL LAW**



# TITLE XXXV

## CRIMINAL LAW

### CHAPTER 687

#### PUBLIC OFFENSES

687.1 Classification.

687.2 "Felony" defined.

687.3 Felonies by females.

687.4 "Misdemeanor" defined.

687.5 Manner of punishment.

687.6 Prohibited acts—misdemeanors.

687.7 Punishment for indictable misdemeanors.

**687.1 Classification.** Public offenses are divided into:

1. Felonies.

2. Misdemeanors. [C51,§2816; R60,§4428; C73, §4103; C97,§5092; C24, 27, 31, 35, 39,§12889; C46, 50, 54,§687.1]

**687.2 "Felony" defined.** A felony is a public offense which may be punished with death, or which is, or in the discretion of the court may be, punished by imprisonment in the penitentiary or men's reformatory. [C51,§2817; R60,§4429; C73,§4104; C97,§5093; C24, 27, 31, 35, 39,§12890; C46, 50, 54,§687.2]

Referred to in §687.3

**687.3 Felonies by females.** Prostitution and resorting to houses of ill fame for the purpose of prostitution shall be deemed felonies, and also all other public offenses committed by females if the offense, under section 687.2, constitutes a felony when committed by a male. [C31, 35,§12890-d1; C39,§12890.1; C46, 50, 54,§687.3]

**687.4 "Misdemeanor" defined.** Every other public offense is a misdemeanor. [C51,§2818;

R60,§4430; C73,§4105; C97,§5094; C24, 27, 31, 35, 39,§12891; C46, 50, 54,§687.4]

**687.5 Manner of punishment.** No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof. [C51,§2819; R60,§4431; C73, §4106; C97,§5095; C24, 27, 31, 35, 39,§12892; C46, 50, 54,§687.5]

**687.6 Prohibited acts—misdemeanors.** When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor. [C51,§2675; R60,§4302; C73,§3966; C97,§4905; C24, 27, 31, 35, 39,§12893; C46, 50, 54,§687.6]

**687.7 Punishment for indictable misdemeanors.** Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [C51, §2676; R60,§4303; C73,§3967; C97,§4906; C24, 27, 31, 35, 39,§12894; C46, 50, 54,§687.7]

Referred to in §§124.4, 204.9, 204.10

### CHAPTER 688

#### PRINCIPALS AND ACCESSORIES

688.1 Distinction between principal and accessory.

688.2 Accessory after the fact.

**688.1 Distinction between principal and accessory.** The distinction between an accessory before the fact and a principal is abrogated, and all persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense, or aid and abet its commission, though not present, must hereafter be indicted, tried, and punished as principals. [C51,§2928; R60, §4668; C73,§4314; C97,§5299; C24, 27, 31, 35, 39, §12895; C46, 50, 54,§688.1]

Corroboration of accomplice, §782.5

**688.2 Accessory after the fact.** An accessory after the fact to the commission of a public offense may be indicted, tried, and punished, though the principal be neither tried nor convicted. [C51,§2929; R60,§4669; C73,§4315; C97,§5300; C24, 27, 31, 35, 39,§12896; C46, 50, 54, §688.2]

## CHAPTER 689

## TREASON AND OFFENSES AGAINST THE GOVERNMENT

689.1 Treason.

689.2 Evidence necessary.

689.3 Misprision of treason.

689.4 Inciting insurrection.

689.5 Inciting treason—display of red flag.

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689.9 Organizations for inciting hostilities.

689.10 Criminal syndicalism.

689.11 Advocating criminal syndicalism.

689.12 Assemblages for promoting.

689.13 Use of buildings—punishment of owner or custodian.

**689.1 Treason.** Whoever, within the jurisdiction of the state, levies war against it or adheres to its enemies, giving them aid and comfort, is guilty of treason, and shall be punished by imprisonment in the penitentiary at hard labor for life. [C51,§2565; R60,§4188; C73,§3845; C97,§4724; C24, 27, 31, 35, 39,§12897; C46, 50, 54,§689.1]

**689.2 Evidence necessary.** No person can be convicted of the crime of treason except upon the evidence of at least two witnesses to the same overt act, or on confession in open court. [C51,§2567; R60,§4190; C73,§3847; C97,§4726; C24, 27, 31, 35, 39,§12898; C46, 50, 54,§689.2]

**689.3 Misprision of treason.** If any person have knowledge of the commission of said crime of treason, and does not as soon as may be disclose such offense to the governor or some judge within the state, he is guilty of misprision of treason, and shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding three years nor less than one year. [C51,§2566; R60,§4189; C73,§3846; C97,§4725; C24, 27, 31, 35, 39,§12899; C46, 50, 54,§689.3]

**689.4 Inciting insurrection.** If any person shall excite an insurrection or sedition amongst any portion or class of the population of this state, or shall attempt by writing, speaking, or by any other means to excite such insurrection or sedition, the person or persons so offending shall be punished by imprisonment in the state penitentiary not exceeding twenty years and shall be fined not less than one thousand nor more than ten thousand dollars. [C24, 27, 31, 35, 39,§12900; C46, 50, 54,§689.4]

**689.5 Inciting treason—display of red flag.** Any person who displays, carries, or exhibits any red flag, or other flag, pennant, banner, ensign, or insignia, or who aids, encourages, or advises such display, carriage, or exhibition, with the intent thereby to himself, or to induce others, to advocate, encourage, or incite anarchy or treason or hostility to the government of the United States or of the state of Iowa, or to insult or disregard the flag of the United States, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars, or be imprisoned not to exceed six months, or both. [C24, 27, 31, 35, 39,§12901; C46, 50, 54,§689.5]

Referred to in §§689.6, 689.7

**689.6 Presumptive evidence.** In all prosecutions for violation of section 689.5, the display, carriage, or exhibition of such red flag, pennant, banner, ensign, or insignia in processions, parades, meetings, or assemblages, shall be presumptive evidence that the same was so displayed, carried, or exhibited with the intent thereby to advocate, teach, encourage, or incite anarchy or treason or hostility to the government of the United States or the state of Iowa, or with intent to insult or disregard the flag of the United States. [C24, 27, 31, 35, 39,§12902; C46, 50, 54,§689.6]

**689.7 Aggravated offense.** If any person so violate the provisions of section 689.5, and be then and there armed with a dangerous weapon, he shall be guilty of a felony and upon conviction shall be imprisoned not to exceed five years. [C24, 27, 31, 35, 39,§12903; C46, 50, 54,§689.7]

**689.8 Inciting hostilities.** Any person who shall in public or private, by speech, writing, printing, or by any other mode or means advocate the subversion and destruction by force of the government of the state of Iowa or of the United States, or attempt by speech, writing, printing, or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to the government of the state of Iowa or of the United States, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [C24, 27, 31, 35, 39,§12904; C46, 50, 54,§689.8]

**689.9 Organizations for inciting hostilities.** Any person who shall become a member of any organization, society, or order organized or formed, or attend any meeting or council or solicit others so to do, for the purpose of inciting, abetting, promoting, or encouraging hostility or opposition to the government of the state of Iowa or to the United States, or who shall in any manner aid, abet, or encourage any such organization, society, order, or meeting in the propagation or advocacy of such a purpose, shall be guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [C24, 27, 31, 35, 39,§12905; C46, 50, 54,§689.9]

**689.10 Criminal syndicalism.** Criminal syndicalism is the doctrine which advocates crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony punishable as provided in sections 689.11 to 689.13, inclusive. [C24, 27, 31, 35, 39, §12906; C46, 50, 54, §689.10]

Referred to in §689.12

**689.11 Advocating criminal syndicalism.** Any person who:

1. By word of mouth or writing, advocates or teaches the duty, necessity, or propriety of crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform; or

2. Prints, publishes, edits, issues, or knowingly circulates, sells, distributes, or publicly displays any book, paper, document, or written matter in any form, containing or advocating, advising, or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or other unlawful methods of terrorism; or

3. Openly, willfully and deliberately justifies, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or other unlawful methods of terrorism with intent to exemplify, spread, or advocate the propriety of the doctrines of criminal syndicalism; or

4. Organizes or helps to organize, or becomes a member of or voluntarily assembles with any society, group, or assemblage of per-

sons formed to teach or advocate the doctrines of criminal syndicalism—is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years, or by a fine of not more than five thousand dollars, or both. [C24, 27, 31, 35, 39, §12907; C46, 50, 54, §689.11]

Referred to in §§689.10, 689.12

**689.12 Assemblages for promoting.** Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal syndicalism as defined in sections 689.10 and 689.11, such an assemblage is unlawful and every person voluntarily participating therein by his aid or instigation is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years or by a fine of not more than five thousand dollars or both. [C24, 27, 31, 35, 39, §12908; C46, 50, 54, §689.12]

Referred to in §§689.10, 689.13

**689.13 Use of buildings—punishment of owner or custodian.** The owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, who willfully and knowingly permits therein any assemblage of persons prohibited by the provisions of section 689.12, or who, after notification by the sheriff of the county or the police authorities that the premises are so used, permits such use to be continued, is guilty of a misdemeanor and punishable by imprisonment in the county jail for not more than one year or by a fine of not more than five hundred dollars or both. [C24, 27, 31, 35, 39, §12909; C46, 50, 54, §689.13]

Referred to in §689.10

## CHAPTER 690

### HOMICIDE

690.1 Murder.

690.2 First degree murder.

690.3 Second degree murder.

690.4 Degree determined.

690.5 Fixing punishment in first degree murder.

690.6 Assault with intent to murder.

690.7 Assault while masked.

690.8 Advising or inciting murder.

690.9 Poisoning food or drink with intent to kill.

690.10 Manslaughter.

690.11 Death from intoxicating liquors.

**690.1 Murder.** Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder. [C51, §2568; R60, §4191; C73, §3848; C97, §4727; C24, 27, 31, 35, 39, §12910; C46, 50, 54, §690.1]

**690.2 First degree murder.** All murder which is perpetrated by means of poison, or lying in wait, or any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem, or burglary, is murder in the first degree, and shall be punished with death, or imprisonment for life at hard labor in the penitentiary, as determined by the jury, or by the court if

the defendant pleads guilty. [C51, §2569; R60, §4192; C73, §3849; C97, §4728; C24, 27, 31, 35, 39, §12911; C46, 50, 54, §690.2]

Referred to in §690.3

**690.3 Second degree murder.** Whoever commits murder otherwise than as set forth in section 690.2 is guilty of murder in the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term of not less than ten years. [C51, §2570; R60, §4193; C73, §3850; C97, §4729; C24, 27, 31, 35, 39, §12912; C46, 50, 54, §690.3]

**690.4 Degree determined.** Upon the trial of an indictment for murder, the jury, if it finds

the defendant guilty, must inquire, and by its verdict ascertain and determine the degree; but if the defendant is convicted upon a plea of guilty, the court must, by the examination of witnesses, determine the degree, and in either case must enter judgment and pass sentence accordingly. [C51,§2571; R60,§4194; C73,§3851; C97,§4730; C24, 27, 31, 35, 39,§12913; C46, 50, 54,§690.4]

**690.5 Fixing punishment in first degree murder.** Upon the trial of an indictment for murder, the jury, if it finds the defendant guilty of murder in the first degree, must direct in its verdict whether the punishment shall be death or imprisonment for life at hard labor in the penitentiary, but if the defendant pleads guilty the court shall so direct, and in either case must enter judgment and pass sentence accordingly. [C97,§4731; C24, 27, 31, 35, 39,§12914; C46, 50, 54,§690.5]

**690.6 Assault with intent to murder.** If any person assault another with intent to commit murder, he shall be imprisoned in the penitentiary not exceeding thirty years. [C51, §2591; R60,§4214; C73,§3872; C97,§4768; S13, §4768; C24, 27, 31, 35, 39,§12915; C46, 50, 54, §690.6]

**690.7 Assault while masked.** Any person within this state, masked or in disguise, who shall assault another with a dangerous weapon shall be deemed guilty of assault with intent to commit murder and shall be punished by imprisonment in the penitentiary for a term not to exceed twenty years. [C24, 27, 31, 35, 39,§12916; C46, 50, 54,§690.7]

**690.8 Advising or inciting murder.** Whoever shall within this state advise, counsel, encourage, advocate, or incite the unlawful killing within or without the state of any human being where no such killing takes place, shall be punished by imprisonment in the state penitentiary for not more than twenty years. [S13,§4750-a; C24, 27, 31, 35, 39, §12917; C46, 50, 54,§690.8]

**690.9 Poisoning food or drink with intent to kill.** If any person mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or willfully poison any spring, well, cistern, or reservoir of water, he shall be imprisoned in the penitentiary not exceeding ten years, and be fined not exceeding one thousand dollars. [C51, §2596; R60,§4219; C73,§3877; C97,§4773; C24, 27, 31, 35, 39,§12918; C46, 50, 54,§690.9]

**690.10 Manslaughter.** Any person guilty of the crime of manslaughter shall be imprisoned in the penitentiary not exceeding eight years, and fined not exceeding one thousand dollars. [C51,§2576; R60,§4199; C73,§3856; C97,§4751; C24, 27, 31, 35, 39,§12919; C46, 50, 54,§690.10]

**690.11 Death from intoxicating liquors.** Any person who sells, gives away, or otherwise furnishes intoxicating liquor contrary to law which causes the death of a human being is guilty of manslaughter and punishable accordingly. [C24, 27, 31, 35, 39,§12920; C46, 50, 54,§690.11]

Related provision, §732.4

## CHAPTER 691

### SELF-DEFENSE

691.1 Lawful resistance in self-defense.  
691.2 Cases in which permitted.

**691.1 Lawful resistance in self-defense.** Lawful resistance to the commission of a public offense may be made by the party about to be injured, or by others. [C51,§2773; R60, §4442; C73,§4112; C97,§5102; C24, 27, 31, 35, 39, §12921; C46, 50, 54,§691.1]

**691.2 Cases in which permitted.** Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person.

691.3 Persons aiding another.

2. To prevent an illegal attempt by force to take or injure property in his lawful possession. [C51,§2774; R60,§4443; C73,§4113; C97, §5103; C24, 27, 31, 35, 39,§12922; C46, 50, 54, §691.2]

**691.3 Persons aiding another.** Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the same. [C51,§2775; R60,§4444; C73,§4114; C97,§5104; C24, 27, 31, 35, 39,§12923; C46, 50, 54,§691.3]

## CHAPTER 692

## DUELING

692.1 Killing in duel.

692.2 Fighting duel—seconds—challenges.

692.3 Accepting challenge—consenting to assist.

692.4 Taunting for not accepting.

**692.1 Killing in duel.** Whoever fights a duel with deadly weapons, and inflicts a mortal wound on his antagonist, is guilty of murder in the first degree, and shall be punished accordingly. [C51,§2572; R60,§4195; C73,§3852; C97,§4747; C24, 27, 31, 35, 39,§12924; C46, 50, 54, §692.1]

Penalty, §690.2

**692.2 Fighting duel — seconds — challenges.** Any person who fights a duel with deadly weapons, or is present thereat as aid, second, or surgeon, or advises, encourages, or promotes the same, although no homicide ensue; and any person who challenges another to fight a duel, or sends or delivers any verbal or written message purporting or intended to be such challenge, although no duel ensue, shall be fined in a sum not exceeding one thousand nor less than four hundred dollars, and imprisoned in the penitentiary not more than three nor less than one year. [C51,§2573; R60,§4196; C73,§3853; C97,§4748; C24, 27, 31, 35, 39,§12925; C46, 50, 54,§692.2]

Referred to in §692.3

**692.3 Accepting challenge — consenting to assist.** Any person who accepts such challenge, or who consents to act as a second, aid, or surgeon on such acceptance, or who advises, encourages, or promotes the same, although no duel ensue, shall be punished as prescribed in section 692.2. [C51,§2574; R60, §4197; C73,§3854; C97,§4749; C24, 27, 31, 35, 39, §12926; C46, 50, 54,§692.3]

**692.4 Taunting for not accepting.** If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred nor less than one hundred dollars, and shall be imprisoned in the county jail not more than six nor less than two months. [C51,§2575; R60,§4198; C73,§3855; C97,§4750; C24, 27, 31, 35, 39,§12927; C46, 50, 54,§692.4]

## CHAPTER 693

## MAYHEM

693.1 Maiming or disfiguring.

**693.1 Maiming or disfiguring.** If any person, with intent to maim or disfigure, cut or maim the tongue; cut out or destroy an eye; cut, slit, or tear off an ear; cut, bite, slit, or mutilate the nose or lip; cut off or disable a limb or any member of another person, he

shall be imprisoned in the penitentiary not more than five years, and fined not exceeding one thousand nor less than one hundred dollars. [C51,§2577; R60,§4200; C73,§3857; C97, §4752; C24, 27, 31, 35, 39,§12928; C46, 50, 54, §693.1]

## CHAPTER 694

## ASSAULTS

694.1 Assault and battery.

694.2 Pointing gun at another.

694.3 Intimidation while masked.

694.4 Assault while masked.

694.5 Assault with intent to commit a felony.

694.6 Assault with intent to inflict bodily injury.

694.7 Assault with intent to commit certain crimes.

**694.1 Assault and battery.** Whoever is convicted of an assault, or an assault and battery, where no other punishment is prescribed, shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51,§2597; R60,§4220; C73,§3878; C97,§4774; C24, 27, 31, 35, 39,§12929; C46, 50, 54,§694.1]

**694.2 Pointing gun at another.** If any person shall willfully draw or point a pistol, revolver, or gun at another, he shall be guilty of a misdemeanor, and be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days; but this section shall not apply to police officers or other persons whose duty it is to execute

process or warrants, or make arrests. [C73, §3879; C97, §4775; C24, 27, 31, 35, 39, §12930; C46, 50, 54, §694.2]

**694.3 Intimidation while masked.** Any person, masked or in disguise, who shall prowl, travel, ride, or walk within this state to the disturbance of the peace or to the intimidation of any person, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county for not less than thirty days nor more than six months, or by both such fine and imprisonment. [C24, 27, 31, 35, 39, §12931; C46, 50, 54, §694.3]

**694.4 Assault while masked.** Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or inclosure of another with intent to inflict bodily injury or injury to property, shall be deemed guilty of assault with intent to commit a felony and such entrance or demand for admission shall be prima-facie evidence of such intent and, upon conviction thereof, such person shall be punished by imprisonment in the penitentiary for a term of not more than ten years. [C24, 27, 31, 35, 39, §12932; C46, 50, 54, §694.4]

**694.5 Assault with intent to commit a felony.** If any person assault another with in-

tent to commit any felony or crime punishable by imprisonment in the penitentiary, where the punishment is not otherwise prescribed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51, §2595; R60, §4218; C73, §3876; C97, §4772; C24, 27, 31, 35, 39, §12933; C46, 50, 54, §694.5]

**694.6 Assault with intent to inflict bodily injury.** If any person assault another with intent to inflict a great bodily injury, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be imprisoned in the penitentiary not exceeding one year. [C51, §2594; R60, §4217; C73, §3875; C97, §4771; S13, §4771; C24, 27, 31, 35, 39, §12934; C46, 50, 54, §694.6]

**694.7 Assault with intent to commit certain crimes.** If any person assault another with intent to maim, rob, steal, or commit arson or burglary, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding one thousand dollars, or both so fined and imprisoned, at the discretion of the court. [C51, §2593; R60, §4216; C73, §3874; C97, §4770; C24, 27, 31, 35, 39, §12935; C46, 50, 54, §694.7]

## CHAPTER 695

### WEAPONS, FIREARMS, AND TOY PISTOLS

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- 695.2 Carrying concealed weapons.
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- 695.26 Selling firearms to minors.
- 695.27 Sale of blank cartridges and giant fire-crackers.
- 695.28 Punishment.

**695.1 Going armed with intent.** Any person who with intent to use the same unlawfully against the person of another goes armed with a pistol, revolver, or other firearm, dagger, dirk, razor, stiletto, or knife having a blade of three inches in length or other dangerous or deadly instrument shall be guilty of a felony and on the conviction thereof shall be punished by a fine not to exceed one thousand dollars or imprisonment in the state prison for not more than five years, or by both such fine and imprisonment, in the discretion of the court. [C35, §12935-g1; C39, §12935.1; C46, 50, 54, §695.1]

**695.2 Carrying concealed weapons.** It shall be unlawful for any person, except as herein-after provided, to go armed with or carry a dirk, dagger, sword, pistol, revolver, stiletto, metallic knuckles, pocket billy, sandbag, skull cracker, slug shot or other offensive or dangerous weapon, except hunting knives adapted and carried as such, concealed either on or about his person, except in his own dwelling house or place of business or other land possessed by him. No person shall carry a pistol or revolver concealed on or about his person or whether concealed or otherwise in any vehicle operated by him, except in his dwell-

ing house or place of business or on other land possessed by him, without a license therefor as herein provided. [S13,§4775-1a; C24, 27, 31, 35, 39,§12936; C46, 50, 54,§695.2]

Referred to in §695.3

**695.3 Punishment.** Any person who shall violate any of the provisions of section 695.2 shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison not more than five years, or by both such fine and imprisonment in the discretion of the court, and in addition thereto may be required to enter into a recognizance with sufficient surety in such sum as the court may order, not exceeding one thousand dollars, to keep the peace and be of good behavior for a period not exceeding one year, provided that in case of the first offense the court may in its discretion reduce the punishment to imprisonment in the county jail of a term not more than three months, or a fine of not more than one hundred dollars. [S13,§4775-11a; C24, 27, 31, 35, 39,§12937; C46, 50, 54,§695.3]

**695.4 Permit to carry concealed weapon.** The sheriff of any county may issue a permit to a resident of his county only, limited to the time which shall be designated therein, to carry concealed or otherwise, a revolver, pistol, or pocket billy. [S13,§4775-3a; C24, 27, 31, 35, 39,§12938; C46, 50, 54,§695.4]

40ExGA, SF 247,§2, editorially divided

**695.5 Application.** Before any permit to go armed with a revolver, pistol, or pocket billy is granted, an application therefor shall be filed with the sheriff. Permits may be issued only on personal application therefor, except that:

1. Chiefs of police may make application for permits for members of their respective departments.

2. Owners, managing officers, or superintendents of banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may make such application for and in behalf of their employees. [S13,§§4775-4a,-7a; C24, 27, 31, 35, 39, §12939; C46, 50, 54,§695.5]

Referred to in §695.23

40ExGA, SF 247,§5, editorially divided

**695.6 Form of application.** The application shall be in writing and state the full name, residence, age, place and nature of the employment or business of the person to whom it is proposed to grant the permit. The application shall be signed by the person making application. [S13,§4775-7a; C24, 27, 31, 35, 39, §12940; C46, 50, 54,§695.6]

Referred to in §695.23

**695.7 Issuance of permit.** It shall be the duty of the sheriff to issue a permit to go armed with a revolver, pistol, or pocket billy to all peace officers and such other persons who are residents of his county, and who, in

the judgment of said official, should be permitted to go so armed. [S13,§4775-3a; C24, 27, 31, 35, 39,§12941; C46, 50, 54,§695.7]

43GA, ch 261,§2, editorially divided

**695.8 Nonresidents.** A nonresident of the state may be issued a permit by the sheriff of any county in which said nonresident is employed or on duty, provided that it shall appear to the sheriff upon investigation, that such nonresident is a fit person to be permitted to go so armed, and any permit issued to such a nonresident shall be valid throughout the state until revoked either by the sheriff issuing the same or upon expiration as provided by law. [C31, 35,§12941-c1; C39,§12941.1; C46, 50, 54,§695.8]

**695.9 Issuance by commissioner.** The commissioner of public safety may, in his discretion, issue a permit to carry concealed a revolver, pistol, pocket billy or other weapon to any officer or employee of the state. Such a permit may also be issued by the commissioner to a nonresident of the state who is engaged in law-enforcing work in this state. The provisions of this chapter relative to permits to carry concealed weapons shall apply insofar as applicable, and the commissioner of public safety shall keep a record of permits issued the same as is required of sheriffs. [C31, 35,§12941-d1; C39,§12941.2; C46, 50, 54,§695.9]

**695.10 Name of holder — transferability.** The permit shall be issued, except as otherwise provided in section 695.12, to the individual whom it permits to go armed and shall not be transferable. [C24, 27, 31, 35, 39,§12942; C46, 50, 54,§695.10]

**695.11 Authority granted by permit.** Permits issued to peace officers or to employees of railroad or express companies shall permit such persons to go armed anywhere within the state while in the discharge of their duties. [S13,§4775-4a; C24, 27, 31, 35, 39,§12943; C46, 50, 54,§695.11]

**695.12 General permits for certain companies.** Banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may obtain a general permit good for any of their employees, only while on duty, actually engaged in guarding any property or the transportation of moneys or other valuables. [S13,§4775-4a; C24, 27, 31, 35, 39,§12944; C46, 50, 54,§695.12]

Referred to in §695.10

**695.13 Duration of permit.** Each such permit shall, unless revoked by notice in writing sent by certified mail to the permit holder by the sheriff issuing same, expire on December 31, following the issuance. [C24, 27, 31, 35, 39,§12945; C46, 50, 54,§695.13; 57GA, ch 267,§92]

**695.14 Expiration of term of office—revocation.** Whenever a permit is issued to any person to carry concealed weapons by virtue of such person being a peace officer, the right of

such person to carry any of said weapons shall cease when said person ceases to be a peace officer. The sheriff may at any time revoke any permit issued by him. [S13,§4775-6a; C24, 27, 31, 35, 39,§12946; C46, 50, 54,§695.14]

**695.15 Duty to carry permit.** It shall be the duty of any person armed with a revolver, pistol, or pocket billy concealed upon his person to have in his immediate possession the permit provided for in this chapter and to produce same for inspection at the request of any peace officer. Failure to so produce such permit shall constitute a misdemeanor. [S13,§4775-8a; C24, 27, 31, 35, 39,§12947; C46, 50, 54,§695.15]

Punishment, §687.7

**695.16 Record of permits issued.** The sheriff shall keep a record showing the names and addresses of all persons to whom permits shall have been issued, together with the dates of issuance and expiration of such permits. [S13, §4775-6a; C24, 27, 31, 35, 39,§12948; C46, 50, 54, §695.16]

**695.17 Prima-facie evidence of violation.** In all prosecutions on the charge of carrying a concealed weapon without a permit, proof that no permit had been issued to the defendant in the county in which the offense was alleged to have been committed shall be prima-facie evidence that the defendant had no permit to carry a concealed weapon. [S13,§4775-8a; C24, 27, 31, 35, 39,§12949; C46, 50, 54,§695.17]

**695.18 Sale of dangerous weapons prohibited.** It shall be unlawful to sell, to keep for sale, or offer for sale, loan, or give away, dirk, dagger, stiletto, metallic knuckles, sandbag, or skull cracker, silencer, and no pistol or revolver shall be sold to any person under the age of twenty-one years. The provisions of this section shall not prevent the selling or keeping for sale of hunting and fishing knives. [S13,§4775-2a; C24, 27, 31, 35, 39,§12950; C46, 50, 54,§695.18]

**695.19 Dealer's permit to sell.** It shall be unlawful for any person, firm, association, or corporation to engage in the business of selling, keeping for sale, exchange, or to give away to any person within the state, any revolver, pistol, or pocket billy, or other weapons of a like character which can be concealed on the person, without first securing a permit from the proper officials having authority to issue such permit. [S13,§4775-9a; C24, 27, 31, 35, 39,§12951; C46, 50, 54,§695.19]

**695.20 Record of permits to sell.** The chief of police, sheriff, or mayor shall have authority to issue permits to sell and shall keep a correct list of all persons to whom permits to sell are issued, together with the number of such permit and the date each is revoked, and furnish the county recorder a copy of all such permits issued and revocations made. [S13, §4775-5a; C24, 27, 31, 35, 39,§12952; C46, 50, 54, §695.20]

**695.21 Report and record of sales.** Every person selling revolvers, pistols, pocket billies, and other weapons of a like character which can be concealed on the person, whether such person is a retail dealer, pawnbroker, or otherwise, shall report within twenty-four hours to the county recorder the sale of any revolver, pistol, or pocket billy and in such report shall set forth the time of selling, age, occupation, place of employment or business, name and residence of such purchaser of said weapon or weapons, together with the number, make, and other marks of identification of such weapon or weapons, and the recorder on receipt of such information shall make a permanent record of the same in a book specially kept for that purpose. [S13,§4775-10a; C24, 27, 31, 35, 39,§12953; C46, 50, 54,§695.21]

Referred to in §695.23

**695.22 Failure to make report.** Every person who shall fail to make such report will be guilty of a misdemeanor, and on being convicted of a second offense his permit shall be revoked. [S13,§4775-10a; C24, 27, 31, 35, 39, §12954; C46, 50, 54,§695.22]

Punishment, §687.7

**695.23 Purchasing under fictitious name.** Any person purchasing a revolver, pistol, or a pocket billy according to the provisions in sections 695.5, 695.6, and 695.21, and giving a fictitious name will be guilty of a misdemeanor. [S13,§4775-10a; C24, 27, 31, 35, 39,§12955; C46, 50, 54,§695.23]

Punishment, §687.7

**695.24 Wholesale dealers and jobbers excepted.** The provisions of the preceding sections of this chapter shall not affect in any respect wholesale dealers or jobbers. [S13, §4775-12a; C24, 27, 31, 35, 39,§12956; C46, 50, 54, §695.24]

**695.25 Display of weapons prohibited.** Any person, firm, or corporation or the agent thereof who shall display in any window facing a public street or alley any pistols, revolvers, blackjacks, slugs, billies, knuckles, daggers, stilettos, or bowie knives, except war relics, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [C24, 27, 31, 35, 39, §12957; C46, 50, 54,§695.25]

**695.26 Selling firearms to minors.** No person shall knowingly sell, present, or give any pistol or revolver to any minor. Any violation of this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days. Nothing herein contained shall prohibit the sale of ammunition to minors who have been licensed to hunt by the state of Iowa and to those minors who by reason of hunting on their own premises are not required by law to have a hunting license. [C97,



§5004; C24, 27, 31, 35, 39, §12958; C46, 50, 54, §695.26; 56GA, ch 271, §1]

**695.27 Sale of blank cartridges and giant firecrackers.** No person shall use, sell, offer for sale, or keep for sale within this state any blank cartridges for toy revolvers or toy pistols, or firecrackers more than five inches in length and more than three-fourths of an inch in diameter; provided caps containing dynamite may be used, kept for sale, or sold when needed for mining purposes, or for danger

signals, or for other necessary uses. [S13, §5028-p; C24, 27, 31, 35, 39, §12959; C46, 50, 54, §695.27; 56GA, ch 271, §2]

Referred to in §695.28  
See also §§111.42, 368.11, 732.17, 732.18

**695.28 Punishment.** Any person violating the provisions of section 695.27 shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [S13, §5028-q; C24, 27, 31, 35, 39, §12960; C46, 50, 54, §695.28]

## CHAPTER 696

### MACHINE GUNS

696.1 Possession.  
696.2 Aiding possession.  
696.3 Punishment.  
696.4 Exceptions.  
696.5 Interpretative clause.  
696.6 Relics.

696.7 Additional exception.  
696.8 Finding or summary seizure.  
696.9 Duty of peace officers—order.  
696.10 Indictment.  
696.11 Evidence.

**696.1 Possession.** No person, firm, partnership, or corporation, except law enforcement officers, shall knowingly have in his or its possession or under his or its control any machine gun of any nature or kind. [C27, 31, 35, §12960-b1; C39, §12960.01; C46, 50, 54, §696.1]

Referred to in §§696.3, 696.4

**696.2 Aiding possession.** No person, firm, partnership, or corporation shall do any act with the intent to enable any other person, firm, partnership, or corporation to obtain possession of such gun. [C27, 31, 35, §12960-b2; C39, §12960.02; C46, 50, 54, §696.2]

Referred to in §§696.3, 696.4

**696.3 Punishment.** A violation of either section 696.1 or section 696.2 shall be punished as follows:

1. If the accused has prior to conviction been convicted of an offense which would constitute a felony under the laws of this state, by imprisonment in the penitentiary or men's or women's reformatory for five years.

2. If such prior conviction for felony be not charged or established, by imprisonment in the penitentiary or men's or women's reformatory for a period not exceeding three years.

3. By a fine in all cases of not less than five hundred dollars nor more than two thousand dollars. [C27, 31, 35, §12960-b3; C39, §12960.03; C46, 50, 54, §696.3]

Referred to in §696.4

**696.4 Exceptions.** Sections 696.1 to 696.3, inclusive, shall not apply to:

1. Peace officers as herein provided.
2. Persons who are members of the national guards.
3. Persons in the service of the government of the United States.

4. Banks. [C27, 31, 35, §12960-b4; C39, §12960.04; C46, 50, 54, §696.4]

Referred to in §696.5

**696.5 Interpretative clause.** Section 696.4 shall not be construed to exempt any person therein specified when the possession charged had no connection with the official duties or service of said person. [C27, 31, 35, §12960-b5; C39, §12960.05; C46, 50, 54, §696.5]

**696.6 Relics.** It shall be a defense that the machine gun or machine which the accused is charged with possessing was a gun which was in general use prior to November 11, 1918, and was, prior to the commencement of the prosecution, rendered permanently unfit for use, and was possessed solely as a relic. [C27, 31, 35, §12960-b6; C39, §12960.06; C46, 50, 54, §696.6]

**696.7 Additional exception.** This chapter shall not apply to any person or persons, firm, or corporation engaged or interested in the improvement, the invention, or manufacture of firearms. [C27, 31, 35, §12960-b7; C39, §12960.07; C46, 50, 54, §696.7]

**696.8 Finding or summary seizure.** Possession of such machine gun by finding or by summary seizure shall not be deemed an offense provided the finder or person seizing immediately delivers the same to some peace officer of the county in which the gun is found. [C27, 31, 35, §12960-b8; C39, §12960.08; C46, 50, 54, §696.8]

**696.9 Duty of peace officers—order.** A peace officer to whom such gun is delivered shall forthwith redeliver it to the sheriff. The sheriff shall forthwith report such possession to the district court or to a judge thereof who, in vacation or term time, may enter a summary order for the destruction of such gun

or such order as may be necessary in order to preserve it as evidence. [C27, 31, 35, §12960-b9; C39, §12960.09; C46, 50, 54, §696.9]

**696.10 Indictment.** When the state relies on prior judgments of convictions of the accused in aggravation of the punishment, such judgments shall be referred to in the indictment or information by stating the court,

date, and place of rendition. [C27, 31, 35, §12960-b10; C39, §12960.10; C46, 50, 54, §696.10]

**696.11 Evidence.** A duly authenticated copy of a judgment of prior conviction of felony shall be prima-facie evidence of such conviction and of the finality and conclusiveness thereof. [C27, 31, 35, §12960-b11; C39, §12960.11; C46, 50, 54, §696.11]

CHAPTER 697

INJURIES BY EXPLOSIVES

697.1 Death caused by high explosives.

697.2 Injury to person.

697.3 Injury to property.

697.4 Putting out high explosives.

697.5 Manufacture of gunpowder—public nuisance.

**697.1 Death caused by high explosives.** If any person willfully deposits or throws in, under, or about any dwelling house, building, boat, vessel, or raft or other inhabited place, where its explosion will or is likely to destroy or injure the same, any dynamite, nitroglycerin, giant powder, or other material, and by reason of the explosion thereof any person is killed, he shall be guilty of murder. [C97, §4796; C24, 27, 31, 35, 39, §12961; C46, 50, 54, §697.1]

Referred to in §§697.2, 697.3  
Murder, §§690.1-690.3

**697.2 Injury to person.** If any person willfully deposits or throws any dynamite, nitroglycerin, or giant powder or other explosive material as provided in section 697.1, and by means of the explosion thereof any person is injured, he shall be guilty of an assault with intent to commit murder. [C97, §4797; C24, 27, 31, 35, 39, §12962; C46, 50, 54, §697.2]

Referred to in §697.3  
Penalty, §690.6

**697.3 Injury to property.** If any person, with intent to destroy or injure any building, boat, vessel, or raft, any bridge, viaduct, or other structure not provided for in sections 697.1, 697.2, and 697.4, deposits or throws in, under, or about such building, boat, vessel, raft, bridge, viaduct, or other structure any dynamite, nitroglycerin, giant powder, or other explosive material, by the explosion of which any such structure will or will be likely to be destroyed or injured, he shall be imprisoned in

the penitentiary not more than fifteen years. [C97, §4798; C24, 27, 31, 35, 39, §12963; C46, 50, 54, §697.3]

**697.4 Putting out high explosives.** If any person, with intent to destroy or injure any inhabited dwelling house, building, boat, vessel, or raft, deposits or throws therein or thereunder, or elsewhere about the same, where its explosion will or is likely to destroy or injure the same, any dynamite, nitroglycerin, giant powder, or other explosive material, he shall be imprisoned in the penitentiary not more than twenty-five years. [C97, §4795; C24, 27, 31, 35, 39, §12964; C46, 50, 54, §697.4]

Referred to in §697.3

**697.5 Manufacture of gunpowder—public nuisance.** If any person carry on the business of manufacturing gunpowder, or of mixing or grinding the composition therefor, in any building within eighty rods of any valuable building erected at the time when such business may be commenced, the building in which such business is thus carried on is a public nuisance, and such person shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as provided in chapter 657. [C51, §§2760, 2762; R60, §§4410, 4412; C73, §§4090, 4092; C97, §§5079, 5081; S13, §5081; C24, 27, 31, 35, 39, §12965; C46, 50, 54, §697.5]

CHAPTER 698

RAPE

698.1 Definition—punishment.

698.2 Jurisdiction of the board of parole.

698.3 Carnal knowledge of imbecile.

698.4 Assault with intent to commit rape.

**698.1 Definition—punishment.** If any person ravish and carnally know any female by force or against her will, or if any person carnally know and abuse any female child

under the age of sixteen years, or if any person over the age of twenty-five years carnally know and abuse any female under the age of seventeen years, he shall be imprisoned in the

penitentiary for life, or any term of years, not less than five, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding. [C51,§2581; R60,§4204; C73,§3861; C97,§4756; C24, 27, 31, 35, 39,§12966; C46, 50, 54,§698.1]

41GA, ch 197,§1, editorially divided  
Corroboration, §782.4  
See additional exception in §789.13

**698.2 Jurisdiction of the board of parole.** When a lesser than the maximum sentence is pronounced, the prisoner shall be subject to the jurisdiction of the board of parole. [C27, 31, 35,§12966-a1; C39,§12966.1; C46, 50, 54,§698.2]

**698.3 Carnal knowledge of imbecile.** If any person unlawfully have carnal knowledge of any female by administering to her any substance, or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual re-

sistance, or have such carnal knowledge of an idiot or female naturally of such imbecility of mind or weakness of body as to prevent effectual resistance, he shall be punished by imprisonment for life or any term of years. [C51,§2583; R60,§4206; C73,§3863; C97,§4758; C24, 27, 31, 35, 39,§12967; C46, 50, 54,§698.3]

**698.4 Assault with intent to commit rape.** If any person assault a female with intent to commit a rape, he shall be imprisoned in the penitentiary not exceeding twenty years, or any term of years, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding, and when sentence is pronounced, the prisoner shall be subject to the jurisdiction of the board of parole. [C51,§2592; R60, §4215; C73,§3873; C97,§4769; C24, 27, 31, 35, 39, §12968; C46, 50, 54,§698.4]

Corroboration, §782.4

## CHAPTER 699

**FORCIBLE MARRIAGE AND DEFILEMENT**

### FORCIBLE MARRIAGE AND DEFILEMENT

699.1 Compelling to marry or be defiled.

**699.1 Compelling to marry or be defiled.** If any person take any woman unlawfully and against her will, and by force, menace, or duress compels her to marry him or any other person, or to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years. No person shall be convicted under

the provisions of this section unless the evidence of the prosecuting witness be corroborated by other evidence tending to connect the defendant with the commission of the crime. [C51,§2582; R60,§4205; C73,§3862; C97, §4757; C24, 27, 31, 35, 39,§12969; C46, 50, 54, §699.1]

Similar provision, §782.4

## CHAPTER 700

### SEDUCTION

700.1 Definition—punishment.

700.2 Marriage a bar to prosecution.

700.3 Desertion after seduction and marriage.

**700.1 Definition—punishment.** If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. [C51,§2586; R60,§4209; C73,§3867; C97, §4762; C24, 27, 31, 35, 39,§12970; C46, 50, 54, §700.1]

Corroboration, §782.4

**700.2 Marriage a bar to prosecution.** If, before judgment upon an indictment, the defendant marry the woman thus seduced, it is

a bar to any further prosecution for the offense. [C51,§2587; R60,§4210; C73,§3868; C97, §4763; C24, 27, 31, 35, 39,§12971; C46, 50, 54, §700.2]

**700.3 Desertion after seduction and marriage.** Every man who shall marry any woman for the purpose of escaping prosecution for seduction, and shall afterwards desert her without good cause, shall be deemed guilty of a misdemeanor and shall be punished accordingly. [C97,§4764; C24, 27, 31, 35, 39,§12972; C46, 50, 54,§700.3]

Punishment, §687.7

CHAPTER 701

ATTEMPT TO PRODUCE ABORTION

701.1 Administration of drugs—use of instruments.

**701.1 Administration of drugs—use of instruments.** If any person, with intent to produce the miscarriage of any woman, willfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscar-

riage shall be necessary to save her life, he shall be imprisoned in the penitentiary for a term not exceeding five years, and be fined in a sum not exceeding one thousand dollars. [R60,§4221; C73,§3864; C97,§4759; SS15,§4759; C24, 27, 31, 35, 39,§12973; C46, 50, 54,§701.1]

CHAPTER 702

ADULTERY

702.1 Punishment—prosecution.

**702.1 Punishment — prosecution.** Every person who commits adultery shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year; and when the crime is committed between parties only one

of whom is married, both shall be punished. No prosecution therefor can be commenced except on the complaint of the husband or wife. [C51,§2705; R60,§4347; C73,§4008; C97, §4932; C24, 27, 31, 35, 39,§12974; C46, 50, 54, §702.1]

CHAPTER 703

BIGAMY

703.1 Definition—punishment.

703.2 Exceptions—absence of spouse.

**703.1 Definition—punishment.** If any person who has a former husband or wife living marry another person, or continue to cohabit with such second husband or wife, he or she, except in the cases mentioned in section 703.2, is guilty of bigamy, and shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51,§2706; R60,§4348; C73, §4009; C97,§4933; C24, 27, 31, 35, 39,§12975; C46, 50, 54,§703.1]

Referred to in §703.2

**703.2 Exceptions—absence of spouse.** The provisions of section 703.1 do not extend to any person whose husband or wife has continually remained beyond seas, or who has voluntarily withdrawn from the other and remained absent, for the space of three years together, the party marrying again not know-

703.3 Knowingly marrying spouse of another.

ing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced from the bonds of matrimony. [C51,§2707; R60,§4349; C73,§4010; C97,§4934; C24, 27, 31, 35, 39,§12976; C46, 50, 54,§703.2]

Referred to in §703.1

**703.3 Knowingly marrying spouse of another.** Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be imprisoned in the penitentiary not exceeding three years, or be fined not more than three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2708; R60,§4350; C73,§4011; C97, §4935; C24, 27, 31, 35, 39,§12977; C46, 50, 54, §703.3]

CHAPTER 704

INCEST

704.1 Definition—punishment.

**704.1 Definition—punishment.** If any persons, being within the degrees of consanguinity or affinity in which marriages are declared by law to be void, carnally know each other, they shall be guilty of incest, and imprisoned

in the penitentiary not exceeding twenty-five years. [R60,§§4367–4369; C73,§4030; C97,§4936; C24, 27, 31, 35, 39,§12978; C46, 50, 54,§704.1]

Void marriages, §595.19

## CHAPTER 705

## SODOMY

## 705.1 Definition.

**705.1 Definition.** Whoever shall have carnal copulation in any opening of the body except sexual parts, with another human being, or shall have carnal copulation with a beast, shall be deemed guilty of sodomy. [S13,§4937-a; C24, 27, 31, 35, 39,§12979; C46, 50, 54,§705.1]

## 705.2 Punishment.

**705.2 Punishment.** Any person who shall commit sodomy, shall be imprisoned in the penitentiary not more than ten years. [C97, §4937; C24, 27, 31, 35, 39,§12980; C46, 50, 54, §705.2]

## CHAPTER 706

## KIDNAPING

## 706.1 Definition—punishment.

## 706.2 Child stealing.

**706.1 Definition—punishment.** If any person willfully, and without lawful authority, forcibly or secretly confine or imprison any other person within the state against his will; or forcibly carry or send such person out of the state; or forcibly seize and confine or inveigle or kidnap any other person with the intent either to cause such person to be secretly confined or imprisoned in the state against his will, or to cause such person to be sent out of the state against his will, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding one thousand dollars, or be both so fined and imprisoned, at the discretion of the court. [C51, §2588; R60,§4211; C73,§3869; C97,§4765; C24, 27, 31, 35, 39,§12981; C46, 50, 54,§706.1]

**706.2 Child stealing.** If any person maliciously, forcibly, or fraudulently take, decoy, or entice away any child under the age of sixteen years with intent to detain or conceal such child from its parents, guardian, or other person or institution having the lawful custody thereof, he shall be imprisoned in the penitentiary not more than ten years, or be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars.

## 706.3 Kidnaping for ransom.

[S13,§254-a46; C24, 27, 31, 35, 39,§12982; C46, 50, 54,§706.2]

**706.3 Kidnaping for ransom.** Whoever kidnaps, takes, or carries away any person, or decoys or entices such person away from any place in this state for the purpose of or with the intention of receiving or securing from anyone any money, property, or thing of value as a ransom, reward, or price for the return of the person so kidnaped, taken, carried, decoyed, or enticed away, as aforesaid, or whoever shall imprison, detain, or hold any person at any place in this state for the purpose or with the intent of receiving or securing from anyone money, property, or thing of value as a ransom, reward, or price for the return, liberation, or surrender of the person so imprisoned, detained, or held, shall be deemed to be guilty of the crime of kidnaping for the purpose of ransom, and upon conviction thereof shall be punished with death or imprisonment for life at hard labor in the penitentiary as determined by the jury, or the court if the defendant pleads guilty. [S13, §4750-b; C24, 27, 31, 35, 39,§12983; C46, 50, 54, §706.3]

## CHAPTER 707

## ARSON

## 707.1 Dwelling house and parcels thereof.

## 707.2 Miscellaneous buildings.

## 707.3 Cribs—agricultural products and personal property.

## 707.4 Defrauding insurers.

## 707.5 Attempts.

## 707.6 Married women.

## 707.7 Setting out fire.

## 707.8 Allowing fire to escape.

**707.1 Dwelling house and parcels thereof.** Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, kitchen, shop, barn, stable or other outhouse that is parcel thereof, or be-

longing to or adjoining thereto, the property of himself or of another, shall be guilty of arson, and upon conviction thereof, be sentenced to the penitentiary for not more than twenty years. [C51,§§2598, 2599; R60,§§4222, 4223; C73, §§3880, 3881; C97,§§4776, 4777; C24,§§12984,

12985; C27, 31, 35, §12991-b1; C39, §12991.1; C46, 50, 54, §707.1]

Referred to in §§707.5, 707.6

**707.2 Miscellaneous buildings.** Any person who willfully and maliciously sets fire or burns or causes to be burned or who aids, counsels or procures the burning of any barn, stable or other building, the property of himself or of another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, the property of himself or of another; or any church, meeting-house, courthouse, workhouse, school, jail or other public building or any public bridge; shall, upon conviction thereof, be sentenced to the penitentiary for not more than ten years. [C51, §§2600, 2601; R60, §§4224, 4225; C73, §§3882, 3883; C97, §§4778, 4779; C24, §§12986, 12987; C27, 31, 35, §12991-b2; C39, §12991.2; C46, 50, 54, §707.2]

Referred to in §§707.5, 707.6

**707.3 Cribs—agricultural products and personal property.** Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any streetcar, railway car, boat, automobile or other motor vehicle; or any other personal property not herein specifically named, such property being the property of another person; shall, upon conviction thereof, be sentenced to the penitentiary for not more than three years, or be fined not to exceed one thousand dollars. [C51, §2602; R60, §4226; C73, §3884; C97, §4780; C24, §12988; C27, 31, 35, §12991-b3; C39, §12991.3; C46, 50, 54, §707.3]

Referred to in §§707.5, 707.6

**707.4 Defrauding insurers.** Any person who willfully and maliciously and with intent to injure or defraud the insurer, sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any goods, wares, merchandise or other chattels or personal property of any kind, the property of himself or of another, which shall at the time be insured by any person or corporation

against loss or damage by fire, shall, upon conviction thereof, be sentenced to the penitentiary for not more than five years. [C51, §2606; R60, §4230; C73, §3888; C97, §4784; C24, §12991; C27, 31, 35, §12991-b4; C39, §12991.4; C46, 50, 54, §707.4]

Referred to in §§707.5, 707.6

**707.5 Attempts.** Any person who willfully and maliciously attempts to set fire to, or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in sections 707.1 to 707.4, inclusive, shall, upon conviction thereof, be sentenced to the penitentiary for not more than two years or fined not to exceed one thousand dollars. [C51, §2603; R60, §4227; C73, §3885; C97, §4781; C24, §12989; C27, 31, 35, §12991-b5; C39, §12991.5; C46, 50, 54, §707.5]

Referred to in §707.6

**707.6 Married women.** Sections 707.1 to 707.5, inclusive, of this chapter extend to a married woman who commits either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband. [C51, §2605; R60, §4229; C73, §3887; C97, §4783; C24, §12990; C27, 31, 35, §12991-b6; C39, §12991.6; C46, 50, 54, §707.6]

**707.7 Setting out fire.** If any person willfully, or without using proper caution, set fire to and burn, or cause to be burned, any prairie or timbered land, or any inclosed or cultivated field, or any road, by which the property of another is injured or destroyed, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or be both so fined and imprisoned in the discretion of the court. [C51, §2607; R60, §4231; C73, §3889; C97, §4785; C24, 27, 31, 35, §12992; C46, 50, 54, §707.7]

**707.8 Allowing fire to escape.** If any person, between the first day of September in any year and the first day of May following, set fire to, burn, or cause to be burned, any prairie or timbered land, and allow such fire to escape from his control, he shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars. [C73, §3890; C97, §4786; C24, 27, 31, 35, §12993; C46, 50, 54, §707.8]

## CHAPTER 708

### BURGLARY

708.1 Definition—punishment.

708.2 Aggravated offense.

708.3 Burglary without aggravation.

708.4 Burglary by means of explosives.

708.5 Burglary by means of electricity.

708.6 Punishment.

708.7 Possession of burglar's tools—evidence.

708.8 Other breakings and enterings.

708.9 Entering bank with intent to rob.

708.10 Attempting to break and enter.

708.11 Breaking and entering car.

**708.1 Definition—punishment.** If any person break and enter any dwelling house in the nighttime, with intent to commit any public

offense; or, after having entered with such intent, break any such dwelling house in the nighttime, he shall be guilty of burglary, and

shall be punished according to the aggravation of the offense, as is provided in sections 708.2 and 708.3. [C51,§2608; R60,§4232; C73, §3891; C97,§4787; C24, 27, 31, 35, 39,§12994; C46, 50, 54,§708.1]

Referred to in §773.37

**708.2 Aggravated offense.** If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so arm himself after having entered such dwelling house, or actually assault any person being lawfully therein, or has any confederate present aiding and abetting in such burglary, he shall be imprisoned in the penitentiary for life or any term of years. [C51,§2609; R60, §4233; C73,§3892; C97,§4788; C24, 27, 31, 35, 39, §12995; C46, 50, 54,§708.2]

Referred to in §§708.1, 708.3, 773.37

**708.3 Burglary without aggravation.** If such offender commit such burglary otherwise than is mentioned in section 708.2, he shall be imprisoned in the penitentiary not exceeding twenty years. [C51,§2610; R60,§4234; C73,§3893; C97,§4789; C24, 27, 31, 35, 39,§12996; C46, 50, 54,§708.3]

Referred to in §§708.1, 773.37

**708.4 Burglary by means of explosives.** Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitroglycerin, dynamite, giant powder, gunpowder, or any other explosive material, shall be deemed guilty of burglary with explosives. [S13,§4799-a; C24, 27, 31, 35, 39,§12997; C46, 50, 54,§708.4]

Referred to in §§708.6, 773.37

**708.5 Burglary by means of electricity.** Any person who, with intent to commit crime, breaks and enters, either by day or night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by the use of electricity as a motive or burning or melting power or agency, or in any form, or by any electrical means whatsoever, or by the use of acetylene gas, or by oxyacetylene gas, or by any gas in any form whatsoever, shall be deemed guilty of burglary with electricity or gas, as the case may be. [S13,§4799-a; C24, 27, 31, 35, 39,§12998; C46, 50, 54,§708.5]

Referred to in §§708.6, 773.37

**708.6 Punishment.** Any person duly convicted of burglary under the terms of sections 708.4 and 708.5 shall be imprisoned in the penitentiary not more than forty years. [S13, §4799-a; C24, 27, 31, 35, 39,§12999; C46, 50, 54, §708.6]

Referred to in §773.37

**708.7 Possession of burglar's tools — evidence.** If any person be found having in his possession at any time any burglar's tools or implements, with intent to commit the crime

of burglary, he shall be imprisoned in the penitentiary not more than fifteen years, or be fined not exceeding one thousand dollars. The court before whom such conviction is had shall order the retention by the sheriff of such tools or implements, to be used in evidence in any court in which such person is tried for the offense herein defined, or that of burglary, and the possession of such tools or implements shall be presumptive evidence of his intent to commit burglary. [C97,§4790; S13, §4790; C24, 27, 31, 35, 39,§13000; C46, 50, 54, §708.7]

Referred to in §773.37

**708.8 Other breakings and enterings.** If any person, with intent to commit any public offense, in the daytime break and enter, or in the nighttime enter without breaking, any dwelling house; or at any time break and enter any office, shop, store, warehouse, railroad car, boat, or vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C51,§2611; R60,§4235; C73,§3894; C97,§4791; C24, 27, 31, 35, §13001; C46, 50, 54,§708.8]

Referred to in §773.37

**708.9 Entering bank with intent to rob.** If any person shall enter or attempt to enter the premises of a bank or trust company or banking association, with intent to hold up and rob any bank or trust company or any banking association, or any person or persons therein, or thought to be therein, of any money or currency or silver or gold or nickels or pennies or of anything of value belonging to said bank or trust company or banking association, or from any person or persons therein; or shall intimidate, injure, wound, or maim any person therein with intent to commit such holdup or "stick-up" or robbery, he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years. [C24, 27, 31, 35, 39, §13002; C46, 50, 54,§708.9]

Referred to in §773.37

**708.10 Attempting to break and enter.** If any person, with intent to commit any public offense, shall attempt to break and enter any dwelling house, at any time, or to enter any dwelling house in the nighttime without breaking, or at any time to break and enter any office, shop, store, warehouse, railroad car, boat, vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C97,§4792; C24, 27, 31, 35, 39,§13003; C46, 50, 54,§708.10]

Referred to in §773.37

**708.11 Breaking and entering car.** If any person unlawfully break and enter any freight or express car which is sealed or locked, in which any goods, merchandise, or valuable things are kept for use, deposit, or transportation, he shall be imprisoned in the peniten-

tiary not more than five years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C97,§4794; C24, 27, 31, 35, 39,§13004; C46, 50, 54,§708.11]

Referred to in §773.37

CHAPTER 709

LARCENY

Larceny of narcotic drugs, §204.22  
Larceny of a motor vehicle, §321.82

- 709.1 Definition.
- 709.2 Punishment.
- 709.3 Measure of value of stolen goods.
- 709.4 Larceny in nighttime.
- 709.5 Larceny in daytime.
- 709.6 Larceny from building on fire or from the person.
- 709.7 Larceny of electric current, water, steam or gas.
- 709.8 Larceny of domestic fowls and animals.
- 709.9 Taking goods from officer.

- 709.10 Custody of property levied on or deposited by officer.
- 709.11 Appropriating found property.
- 709.12 Larceny of logs or lumber.
- 709.13 Punishment.
- 709.14 Double damages for conversion of logs.
- 709.15 Possession as evidence.
- 709.16 Search for lost logs.
- 709.17 Obstructing search—penalty.
- 709.18 Taking property for boat or vessel.
- 709.19 "Common thief" defined.

**709.1 Definition.** If any person steal, take, and carry away of the property of another any money, goods, or chattels, including all domesticated or restrained animals; any writ, process, or public record; any bond, bank note, promissory note, bill of exchange or other bill, or order, or certificate; or any book of accounts respecting money, goods, or other things; or any deed or writing containing a conveyance of real estate; or any contract in force; or any receipt, release, or defeasance; or any instrument or writing whereby any demand, right, or obligation is created, increased, extinguished, or diminished, he is guilty of larceny. [C51,§2612; R60,§4237; C73, §3902; C97,§4831; C24, 27, 31, 35, 39,§13005; C46, 50, 54,§709.1]

thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the thing stolen. [C51,§2625; R60,§4250; C73,§3914; C97,§4849; C24, 27, 31, 35, 39,§13007; C46, 50, 54,§709.3]

40GA, ch 273,§1, editorially divided

**709.2 Punishment.** When the value of the property stolen exceeds twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by fine of not more than one thousand dollars, or by both such fine and imprisonment; when the value does not exceed twenty dollars, by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C51,§2612; R60,§4237; C73, §3902; C97,§4831; C24, 27, 31, 35, 39,§13006; C46, 50, 54,§709.2]

**709.4 Larceny in nighttime.** If any person in the nighttime commit larceny in any dwelling house, store, or any public or private building, or other construction of any type or character, or in any boat, vessel, or watercraft, or in any motor vehicle and/or trailer, when the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2613; R60,§4238; C73,§3903; C97, §4832; C24, 27, 31, 35, 39,§13008; C46, 50, 54, §709.4]

Referred to in §709.5

**709.3 Measure of value of stolen goods.** If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or receipt, or any evidence of debt whatever, or any public security, or any instrument whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished, or diminished, the money due thereon or secured

**709.5 Larceny in daytime.** If any person in the daytime commit larceny as defined in section 709.4, and the value of the property stolen exceeds twenty dollars, he shall be imprisoned in the penitentiary not more than five years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding two hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2614; R60,§4239; C73,§3904; C97, §4833; C24, 27, 31, 35, 39,§13009; C46, 50, 54, §709.5]

**709.6 Larceny from building on fire or from the person.** If any person commit the crime of larceny by stealing from any build-



ing on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, he shall be imprisoned in the penitentiary not exceeding fifteen years. [C51,§2615; R60,§4240; C73,§3905; C97,§4837; C24, 27, 31, 35, 39,§13010; C46, 50, 54,§709.6]

**709.7 Larceny of electric current, water, steam or gas.** If any person willfully, and with intent to defraud, in any manner take from the wires, pipes, meters, or any other apparatus of any electric motor, electric light, water, steam heating, or gas plant or works, any electric current, water, steam, steam heat, or gas, he shall be guilty of larceny and shall be punished accordingly. [S13,§4852-c; C24, 27, 31, 35, 39,§13014; C46, 50, 54,§709.7]

**709.8 Larceny of domestic fowls and animals.** If any person steal, take and carry away, irrespective of value, any domestic fowl or poultry, pig, cow, calf, horse, colt, or other domestic animal, he shall be punished by imprisonment in the penitentiary or men's or women's reformatory not more than five years, or by imprisonment in the county jail not more than one year, or by a fine not more than one thousand dollars, or by both such fine and imprisonment in the county jail. [S13,§4852-d; C24, 27, 31, 35, 39,§13015; C46, 50, 54,§709.8]

**709.9 Taking goods from officer.** If any person, knowingly and without authority of law, take, carry away, secrete, or destroy any goods or chattels while the same are lawfully in the custody of any sheriff, coroner, marshal, constable, or other officer, and held by such officer by virtue of execution, writ of attachment, or other legal process, he shall be guilty of larceny, and, when the value of the property so taken, carried away, secreted, or destroyed exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than one year; and when it does not exceed twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [R60,§4251; C73,§3915; C97,§4850; S13,§4850; C24, 27, 31, 35, 39,§13016; C46, 50, 54,§709.9]

Referred to in §709.10

**709.10 Custody of property levied on or deposited by officer.** The possession or custody of goods and chattels by any person with whom the same have been left or deposited for safekeeping, to be returned for the purpose of being disposed of on legal process, shall be the possession and custody of the officer having or depositing the same and entitled to the custody thereof, and, in a prosecution under section 709.9, the property taken, carried away, secreted, or destroyed, as therein mentioned, may be laid in the officer entitled to the custody thereof at the time of the commission of the offense. [R60,§4252; C73,§3916; C97,§4851; C24, 27, 31, 35, 39,§13017; C46, 50, 54,§709.10]

**709.11 Appropriating found property.** If any person come by finding to the possession

of any personal property of which he knows the owner, and unlawfully appropriate the same or any part thereof to his own use, he is guilty of larceny, and shall be punished accordingly. [C51,§2617; R60,§4242; C73,§3907; C97,§4839; C24, 27, 31, 35, 39,§13018; C46, 50, 54, §709.11]

**709.12 Larceny of logs or lumber.** Whoever shall willfully take, carry away, or otherwise convert to his own use, or sell or dispose of, without the consent of the owner or owners, any pile, logs, or cant suitable to be worked into plank, board, joist, shingles, or other lumber, the property of another, whether the owner thereof be known or unknown, lying or being in any lake, bay, or river in or bordering on this state, or in any tributary of such lake, bay, or river or tributary, or in or on any slough, ravine, island, bottom, or land adjoining any such lake, bay, or river or tributary, such property being so taken, carried away, or otherwise converted or sold or disposed of within this state, or taken possession of with intent to sell or dispose of as aforesaid; or cuts out, mutilates, destroys, or renders illegible the marks or mark thereon, destroying the identification thereof; or in any manner willfully injures any such logs, not his own; or places upon such logs or pieces of timber any mark or device other than the original mark or device, shall be deemed guilty of the crime of larceny. [C97,§4834; C24, 27, 31, 35, 39,§13019; C46, 50, 54,§709.12]

C97,§4834, editorially divided  
Referred to in §§709.14, 709.15

**709.13 Punishment.** On conviction thereof, such person shall be fined not less than fifty dollars and be imprisoned in the county jail not less than three months; and, on a second conviction for a like crime, shall be fined not less than one hundred dollars and be imprisoned in the penitentiary not more than two years. [C97,§4834; C24, 27, 31, 35, 39,§13020; C46, 50, 54,§709.13]

Referred to in §709.15

**709.14 Double damages for conversion of logs.** Every person guilty of any of the offenses described in section 709.12 shall, whether convicted thereof in a criminal prosecution or not, be liable to pay the owner or owners of such pile, log, cant, or other lumber respecting which the offense is committed, double the amount of the value of the same, to be recovered in an action therefor. [C97, §4835; C24, 27, 31, 35, 39,§13021; C46, 50, 54, §709.14]

Referred to in §709.15

**709.15 Possession as evidence.** In any prosecution under sections 709.12 to 709.14, inclusive, if any such pile, log, or cant shall be found in the possession of the defendant, either with or without the mark cut out or destroyed, or partly cut out or destroyed, or partly sawed or manufactured into lumber of any kind, fence posts, fence rails, or stovewood, such

possession shall be presumptive evidence of his guilt. [C97,§4836; C24, 27, 31, 35, 39,§13022; C46, 50, 54,§709.15]

C97,§4836, editorially divided

**709.16 Search for lost logs.** The owner of any such pile, log, cant, or other lumber may at any time lawfully, by himself or agent, enter in a peaceable manner into or upon any mill or mill boom or raft of logs, piles, cant, or other lumber, in any river or its tributaries in or bordering on this state, or on or near the banks of such lakes, bays, or rivers, or their tributaries, in search of any such pile, log, cant, or other lumber which he may have lost. [C97,§4836; C24, 27, 31, 35, 39,§13023; C46, 50, 54,§709.16]

**709.17 Obstructing search — penalty.** Any person who shall willfully prevent or obstruct such search shall, upon conviction thereof, be liable to a penalty of not less than twenty dollars, nor more than fifty dollars, for every such offense. [C97,§4836; C24, 27, 31, 35, 39,§13024; C46, 50, 54,§709.17]

**709.18 Taking property for boat or vessel.** If any owner, master, clerk, or any other person having charge of or belonging to any boat, vessel, or raft take any cordwood or any other species of property from the owner or his agent, without the knowledge of such owner or agent, or without paying the customary price for the same, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months. [C51, §2689; R60,§4329; C73,§3988; C97,§4830; C24, 27, 31, 35, 39,§13025; C46, 50, 54,§709.18]

**709.19 "Common thief" defined.** If any person, having before been twice convicted within the state of larceny, is guilty of another crime of larceny, he shall be deemed a common thief, and imprisoned in the penitentiary not more than seven years, or fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [R60,§4247; C97,§4846; C24, 27, 31, 35, 39,§13026; C46, 50, 54, §709.19]

Referred to in §712.2  
Multifarious convictions, §§712.2, 718.7, 718.11; also ch 747

## CHAPTER 710

### EMBEZZLEMENT

- 710.1 Embezzlement by public officers.
- 710.2 Punishment.
- 710.3 "Officer" defined.
- 710.4 Embezzlement by bailee.
- 710.5 Embezzlement by agents.
- 710.6 Money converted by series of acts.
- 710.7 Retaining money on account of commission.
- 710.8 Retention of actual commission permitted.

- 710.9 Embezzlement by bank officers or employees.
- 710.10 Embezzlement by carrier or persons entrusted.
- 710.11 Embezzlement by executor, administrator, or guardian.
- 710.12 Embezzlement of mortgaged property.
- 710.13 Prima-facie evidence of disposal.

**710.1 Embezzlement by public officers.** If any state, county, township, school, or municipal officer, or officer of any state institution, or other public officer within the state charged with the collection, safekeeping, transfer, or disbursement of public money or property:

1. Fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or

2. Keeps or deposits such money or property in any other place than in such place of custody or deposit, or

3. Unlawfully converts to his own use in any way whatever, or uses by way of investment in any kind of property, or loans without the authority of law, any portion of the public money entrusted to him for collection, safekeeping, transfer, or disbursement, or

4. Converts to his own use any money or property that may come into his hands by virtue of his office—

he shall be guilty of larceny by embezzlement to the amount of so much of said money or

the value of so much of said property as is thus taken, converted, invested, used, loaned, or unaccounted for; and an offer to return and account for, or the actual return and accounting for, such funds or property so embezzled as herein defined shall not relieve such defaulting officer from the crime of larceny by embezzlement or the punishment therefor as fixed in section 710.2. [C51,§2618; R60,§§806, 807, 4243; C73,§3908; C97,§4840; C24, 27, 31, 35, 39, §13027; C46, 50, 54,§710.1]

C97,§4840, editorially divided  
Referred to in §710.3

**710.2 Punishment.** Such officer shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such property converted, and shall be forever after disqualified from holding any office under the laws of the state. [C51,§2618; R60, §4243; C73,§3908; C97,§4840; C24, 27, 31, 35, 39, §13028; C46, 50, 54,§710.2]

Constitution, Art. II, §5  
Referred to in §§710.1, 710.3

**710.3 "Officer" defined.** The words "officer" or "public officer" as used in sections 710.1 and

710.2 shall be defined as any person who is elected, appointed, or employed by the state, county, township, school district, municipality, or any other public body or subdivision thereof. [C46, 50, 54, §710.3]

**710.4 Embezzlement by bailee.** Whoever embezzles or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently convert to his own use, money, goods, or property delivered to him, or any part thereof, which may be the subject of larceny, shall be guilty of larceny and punished accordingly. [C97, §4841; C24, 27, 31, 35, 39, §13030; C46, 50, 54, §710.4]

**710.5 Embezzlement by agents.** If any officer, agent, clerk, or servant of any corporation or voluntary association, or if any clerk, agent, or servant of any private person or copartnership, except persons under the age of sixteen years, or if any attorney at law, collector, or other person who in any manner receives or collects money or other property for the use of and belonging to another, embezzles or fraudulently converts to his own use, or takes and secretes with intent to embezzle or convert to his own use, without the consent of his employer, master, or the owner of the money or property collected or received, any money or property of another, or which is partly the property of another and partly the property of such officer, agent, clerk, servant, attorney at law, collector, or other person, which has come to his possession or under his care in any manner whatsoever, he is guilty of larceny. [C73, §3909; C97, §4842; C24, 27, 31, 35, 39, §13031; C46, 50, 54, §710.5]

C97, §4842, editorially divided  
Referred to in §710.7  
Larceny penalty, §709.2

**710.6 Money converted by series of acts.** If money or property is so embezzled or converted by a series of acts during the same employment, the total amount of the money and the total value of the property so embezzled or converted shall be considered as embezzled or converted in one act, and he shall be punished accordingly. [C73, §3909; C97, §4842; C24, 27, 31, 35, 39, §13032; C46, 50, 54, §710.6]

Referred to in §710.7

**710.7 Retaining money on account of commission.** In a prosecution under sections 710.5 and 710.6, it shall be no defense that such officer, agent, clerk, servant, collector, attorney at law, or other person was entitled to a commission or compensation out of such money or property as compensation or commission for collecting or receiving the same for or on behalf of the owner thereof. [C73, §3909; C97, §4843; C24, 27, 31, 35, 39, §13033; C46, 50, 54, §710.7]

C97, §4843, editorially divided

**710.8 Retention of actual commission permitted.** It shall be lawful for such agent, clerk, servant, attorney at law, collector, or other person to retain his reasonable compen-

sation or collection fee for collecting or receiving the same, but no attorney at law may retain any money or property as compensation, or as money and property on which he has an attorney's lien, after the filing of a bond as provided in regard to such liens. [C73, §3909; C97, §4843; C24, 27, 31, 35, 39, §13034; C46, 50, 54, §710.8]

Bond to release, §610.19

**710.9 Embezzlement by bank officers or employees.** Any officer, director, or employee of a bank who shall in any manner, directly or indirectly, use the funds or deposits of a bank or any part thereof, except for the regular business transactions of the bank, or who secretes, with intent to embezzle or fraudulently convert to his own use, any funds, deposits or any part thereof of any bank and which may be the subject of larceny, or money placed in his hands for the purpose of deposit in the bank, or for remittance to any other person, or to apply on or discharge any obligation held by the bank, either as owner, agent, or trustee, which has been received by him or delivered to him as an officer, director, or employee of a bank or on account of his connection therewith, shall be guilty of embezzlement and shall, on conviction thereof, be imprisoned in the penitentiary not to exceed twenty years. [C27, 31, 35, §13034-a1; C39, §13034.1; C46, 50, 54, §710.9]

**710.10 Embezzlement by carrier or persons entrusted.** If any carrier or other person to whom any money, goods, or other property which may be the subject of larceny has been delivered to be carried for hire, or if any other person entrusted with such property, embezzle or fraudulently convert to his own use any such money, goods, or other property, either in the mass as the same were delivered or otherwise, and before the same were delivered at the place or to the person where and to whom they were to be delivered, he is guilty of larceny. [C51, §2620; R60, §4245; C73, §3910; C97, §4844; C24, 27, 31, 35, 39, §13035; C46, 50, 54, §710.10]

Larceny penalty, §709.2

**710.11 Embezzlement by executor, administrator, or guardian.** If any executor, administrator, or guardian embezzles or fraudulently converts to his own use any money or property collected or received by him or coming into his possession or under his control by virtue of his said office, he is guilty of larceny and the statute of limitations shall not begin to run as to such offense until the settlement of the estate or the attainment of majority by the ward, as the case may be. [S13, §4852-e; C24, 27, 31, 35, 39, §13036; C46, 50, 54, §710.11]

Larceny penalty, §709.2  
Limitation of actions, ch 752

**710.12 Embezzlement of mortgaged property.** If any mortgagor of personal property or purchaser under a conditional bill of sale, while the mortgage or conditional bill of sale

upon it remains unsatisfied, willfully and with intent to defraud, destroys, conceals, sells, or in any manner disposes of the property covered by such mortgage or conditional bill of sale without the written consent of the then holder of such mortgage or conditional bill of sale, he shall be guilty of larceny and punished accordingly. [R60,§4236; C73,§3895; C97, §4852; C24, 27, 31, 35, 39,§13037; C46, 50, 54, §710.12]

Analogous section, §487.47  
Larceny penalty, §709.2

**710.13 Prima-facie evidence of disposal.** Failure to produce the property specifically

described in such mortgage or conditional bill of sale and existing and owned by the mortgagor or debtor at the time it was executed in accordance with the terms thereof, shall be prima-facie evidence that the property described in such mortgage or conditional bill of sale has been destroyed, concealed, sold, or otherwise disposed of by the mortgagor or purchaser. Nothing herein contained shall relieve the mortgagee or seller under conditional bill of sale from making demand for satisfaction or return of the property conveyed by such mortgage or conditional bill of sale. [C31, 35,§13037-c1; C39,§13037.1; C46, 50, 54,§710.13]

## CHAPTER 711

### ROBBERY

711.1 Definition—punishment.

711.2 Robbery with aggravation.

711.3 Robbery without aggravation.

711.4 Train robbery.

**711.1 Definition—punishment.** If any person, with force or violence, or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery, and shall be punished according to the aggravation of the offense, as is provided in sections 711.2 and 711.3. [C51,§2578; R60,§4201; C73,§3858; C97, §4753; C24, 27, 31, 35, 39,§13038; C46, 50, 54, §711.1]

**711.2 Robbery with aggravation.** If such offender at the time of such robbery is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed; or if, being so armed, he wound or strike the person robbed; or if he has any confederate aiding or abetting him in such robbery, present and so armed, he shall be imprisoned in the penitentiary for a term of twenty-five years. [C51,§2579; R60,§4202; C73,§3859; C97, §4754; C24, 27, 31, 35, 39,§13039; C46, 50, 54, §711.2]

Referred to in §§711.1, 711.3

**711.3 Robbery without aggravation.** If such offender commits the robbery otherwise than is mentioned in section 711.2, he shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2580; R60,§4203; C73,§3860; C97,§4755; C24, 27, 31, 35, 39,§13040; C46, 50, 54, §711.3]

Referred to in §711.1

**711.4 Train robbery.** If any person shall:

1. Stop, or attempt to stop, any railway passenger train, with intent to rob any person thereon, or to rob any coach attached thereto,

or to rob any mail pouch, express safe, or box on such train; or

2. Wreck or attempt to wreck, derail, or attempt to derail, any such train, by any means whatever, with intent to commit such robbery; or

3. Obstruct or detain such train, or any locomotive, tender, coach, or car attached thereto, with such intent; or

4. Place upon any railway track, or under any engine, tender, coach, or car any explosive substance, with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

5. Remove any spike, fishplate, frog, rail, switch, tie, stringer, or appliance used on such railway with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

6. Enter any locomotive, tender, coach, or car attached to such train, and take or attempt to take possession thereof, for the purpose of committing such robbery; or

7. Rifle any coach, car, safe, box, or mail pouch on such train; or

8. Take and carry away, with force and arms, any valuable thing whatever from such train, or from any person thereon; or

9. Intimidate, injure, wound, or maim any person thereon, with intent to commit such robbery—

he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor, for life. [S13,§4810-a; C24, 27, 31, 35, 39,§13041; C46, 50, 54,§711.4]

## CHAPTER 712

## RECEIVING STOLEN GOODS

712.1 Punishment.

712.2 Second conviction.

712.3 Receiver convicted without principal.

**712.1 Punishment.** If any person buy, receive, or aid in concealing any stolen money, goods, or property the stealing of which is larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, he shall, when the value of the property so bought, received, or concealed by him exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year; and when the value of the property so bought, received, or concealed by him does not exceed the sum of twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2621; R60,§4246; C73,§3911; C97,§4845; C24, 27, 31, 35, 39,§13042; C46, 50, 54,§712.1]

Receiving, concealing, or selling motor vehicle, §321.77

**712.2 Second conviction.** If any person, after having been convicted of the offense of

buying, receiving, or aiding in the concealment of stolen money, goods, or any property the stealing of which is larceny, or property obtained by robbery or burglary, be again convicted of the like offense, he shall be punished as provided in section 709.19. [C51,§2623; R60, §4248; C73,§3912; C97,§4847; C24, 27, 31, 35, 39, §13043; C46, 50, 54,§712.2]

Multifarious convictions, §§718.7, 718.11; also ch 747

**712.3 Receiver convicted without principal.** In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen property, or property obtained by robbery or burglary, knowing the same was so obtained, it shall not be necessary to aver nor prove on the trial that the person who stole, robbed, or took the property has been convicted. [C51,§2624; R60,§4249; C73,§3913; C97, §4848; C24, 27, 31, 35, 39,§13044; C46, 50, 54, §712.3]

## CHAPTER 713

## FALSE PRETENSES, FRAUDS, AND OTHER CHEATS

713.1 False pretenses.  
 713.2 Receiving goods by false personation.  
 713.3 False drawing or uttering of checks.  
 713.4 Evidence of violation.  
 713.5 Suppression or destruction of will.  
 713.6 Fraudulent conveyances.  
 713.7 Frauds upon hotelkeepers.  
 713.8 Presumptive evidence of fraud.  
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 713.10 Fitting out boat to defraud owner or insurer.  
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 713.13 False warehouse receipts.  
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 713.16 Altering stamps or marks of public officer.  
 713.17 Counterfeiting mark of another.  
 713.18 Registration of bottles, boxes, and containers.  
 713.19 Sale or use of registered containers.  
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713.21 Fraudulently using stamped cask, package, or box.  
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 713.24 Fraudulent advertisements.  
 713.25 Publishers acting in good faith.  
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 713.29 Three-card monte and other games.  
 713.30 Accessories in three-card monte.  
 713.31 Authority and duty to make arrests.  
 713.32 Ejection from public conveyances and places.  
 713.33 Posting copy of law.  
 713.34 Gross fraud or cheat at common law.

## SLUGS IN COIN MACHINES

713.35 Operating by false means—penalty.  
 713.36 Selling slugs or false coins—penalty.  
 713.37 Manufacture—penalty.  
 713.38 Tokens excepted.

**713.1 False pretenses.** If any person designedly and by false pretense, or by any privy or false token, and with intent to defraud, obtain from another any money, goods, or other property, or so obtain the signature of any person to any written instrument, the false making of which would be punished as forgery, he shall be imprisoned in the penitentiary not more than seven years, or be fined not exceed-

ing five hundred dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C51,§2744; R60,§4394; C73,§4073; C97,§5041; C24, 27, 31, 35, 39,§13045; C46, 50, 54,§713.1]

Referred to in §713.3

**713.2 Receiving goods by false personation.** If any person falsely personate or represent

another, and in such assumed character receive any money or property intended to be delivered to the person so personated, with intent to convert the same to his own use, he is guilty of larceny, and shall be punished accordingly. [C51,§2616; R60,§4241; C73,§3906; C97,§4838; C24, 27, 31, 35, 39,§13046; C46, 50, 54, §713.2]

Larceny penalty, §709.2

### 713.3 False drawing or uttering of checks.

Any person who with fraudulent intent shall make, utter, draw, deliver, or give any check, draft, or written order upon any bank, person, or corporation and who secures money, credit, or thing of value therefor, and who knowingly shall not have an arrangement, understanding, or funds with such bank, person, or corporation sufficient to meet or pay the same, shall be guilty of a felony, if such check, draft, or written order shall be for the sum of twenty dollars or more, and shall on conviction thereof be punished as in section 713.1; and if such check, draft, or written order be for less than twenty dollars, such person shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days; provided, however, that if such person has been three times convicted of such offense, he shall on the fourth and all subsequent convictions, be sentenced to the county jail or penitentiary at the discretion of the court, for a period of not to exceed one year. [C24, 27, 31, 35, 39,§13047; C46, 50, 54,§713.3]

**713.4 Evidence of violation.** The fact that payment of said check, draft, or written order when presented in the usual course of business shall be refused by the bank, person, or corporation upon which it is drawn, or that it be protested for nonpayment for lack of such arrangement, understanding, or funds with which to meet the same, shall be material and competent evidence of such lack of arrangement, understanding, or lack of funds. [C24, 27, 31, 35, 39,§13048; C46, 50, 54,§713.4]

**713.5 Suppression or destruction of will.** If any person, having in his possession or under his control any last will of any deceased person, willfully suppress, secrete, deface, or destroy the same, or any codicil belonging thereto, with intent to injure or defraud any devisee, legatee, or other person, he shall be imprisoned in the penitentiary not more than seven years, or be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year. [C51,§2746; R60,§4396; C73, §4075; C97,§5043; C24, 27, 31, 35, 39,§13050; C46, 50, 54,§713.5]

Duty to produce will, §633.17

**713.6 Fraudulent conveyances.** Any person who, knowingly being a party to any conveyance or assignment of any estate or interest in lands, goods, or things in action, or of any rents or profits arising therefrom, or being a

party to any charge on such estate, interest, rents, or profits, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons, and every person who, being privy to or knowing of such fraudulent conveyance, assignment, or charge, puts the same in use as having been made in good faith, shall be imprisoned in the penitentiary not exceeding three years, or may be fined in the discretion of the court not exceeding one thousand dollars, or imprisoned in the county jail not more than one year. [C51,§2745; R60,§4395; C73, §4074; C97,§5042; C24, 27, 31, 35, 39,§13051; C46, 50, 54,§713.6]

**713.7 Frauds upon hotelkeepers.** Any person who shall obtain food, lodging, or other accommodation at any hotel, inn, or boarding or eating house, with intent to defraud the owner or keeper thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days. [C97,§5076; C24, 27, 31, 35, 39,§13052; C46, 50, 54,§713.7]

Referred to in §713.8

**713.8 Presumptive evidence of fraud.** Proof that lodging, food, or other accommodation was obtained by false pretense, or by false or fictitious show or pretense of baggage, or that the party refused or neglected to pay for such food, lodging, or other accommodation on demand, or that he absconded or left the premises without paying or offering to pay for such food, lodging, or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be presumptive evidence of the fraudulent intent mentioned in section 713.7. [C97,§5077; C24, 27, 31, 35, 39,§13053; C46, 50, 54,§713.8]

C97,§5077, editorially divided  
Referred to in §713.9

**713.9 Exception as to regular boarders.** Section 713.8 shall not apply to regular boarders, nor when there has been an agreement for delay in payment. [C97,§5077; C24, 27, 31, 35, 39,§13054; C46, 50, 54,§713.9]

**713.10 Fitting out boat to defraud owner or insurer.** If any person lade, equip, or fit out, or assist in lading, equipping, or fitting out, any raft, boat, or vessel, with intent that the same be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer thereof, or of any property laden on board the same, he shall be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C51, §2754; R60,§4404; C73,§4083; C97,§5055; C24, 27, 31, 35, 39,§13055; C46, 50, 54,§713.10]

Similar provision, §714.15

**713.11 Swindling in sale of grain or seed.** Whoever, either for his own benefit or as the agent of any corporation, company, association, or person, obtains from any other person any thing of value, or procures the signature of any such person as maker, indorser, guarantor, or surety thereon to any bond, bill,

receipt, promissory note, draft, check, or any other evidence of indebtedness, as the whole or part consideration of any bond, contract, or promise given the vendee of any grain, seed, or cereal; binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C97,§5069; C24, 27, 31, 35, 39,§13056; C46, 50, 54,§713.11]

C97,§5069, editorially divided

**713.12 Dealing in certain instruments.** Whoever sells, barterers, or disposes of, or offers to sell, barter, or dispose of, either for his own benefit or as the agent of any corporation, company, association, or person, any bond, bill, receipt, promissory note, draft, check, or other evidence of indebtedness, knowing the same to have been obtained as the whole or part consideration for any bond, contract, or promise given the vendee of any grain, seed, or cereal, binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C97,§5069; C24, 27, 31, 35, 39,§13057; C46, 50, 54,§713.12]

**713.13 False warehouse receipts.** If any person sell, transfer, or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property, or any part thereof, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C73,§4088; C97, §5068; C24, 27, 31, 35, 39,§13058; C46, 50, 54, §713.13]

**713.14 Making false bills of lading.** If any owner of any boat or vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of such boat or vessel, make out and exhibit, or cause to be made out and exhibited, any false estimate of any goods or property laden or pretended to be laden on board such boat or vessel, with intent to injure or defraud any insurer of such boat or vessel or property, or of any part thereof, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not more than three years. [C51,§2755; R60,§4405; C73,§4084; C97,§5056; C24, 27, 31, 35, 39,§13059; C46, 50, 54,§713.14]

**713.15 Making false affidavits or manifests.** If any master or other officer of any boat or

vessel make, or cause to be made, any false affidavit or manifest, or if any owner or other person concerned in such boat or vessel, or in the goods or property laden on board the same, procure any such false affidavit or manifest to be made, or exhibit the same, with intent to injure, deceive, or defraud any insurer of such boat or vessel, or of the goods or property laden on board of the same, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding three thousand dollars and imprisoned in the county jail not exceeding one year. [C51, §2756; R60,§4406; C73,§4085; C97,§5057; C24, 27, 31, 35, 39,§13060; C46, 50, 54,§713.15]

**713.16 Altering stamps or marks of public officer.** If any person falsely alter any stamp, brand, or mark on any cask, package, box, or bale containing merchandise or produce, made by a public officer, appointed for that purpose, in order to denote the quality, weight, or quantity of the contents thereof, with intent to defraud, he shall be fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2749; R60,§4399; C73,§4078; C97,§5046; C24, 27, 31, 35, 39,§13061; C46, 50, 54,§713.16]

**713.17 Counterfeiting mark of another.** If any person counterfeit any mark, stamp, or brand of another, or falsely mark any cask, package, box, or bale as to quality or quantity, with intent to defraud, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not more than six months, or both. [C51,§2750; R60,§4400; C73, §4079; C97,§5047; C24, 27, 31, 35, 39,§13062; C46, 50, 54,§713.17]

**713.18 Registration of bottles, boxes, and containers.** Persons engaged in the manufacture, bottling, or selling of soda water, mineral or aerated waters, cider, milk, cream, or other lawful beverages in bottles, boxes, casks, kegs, or barrels, with their names or other marks of ownership stamped or marked thereon, may file in the office of the recorder of the county in which such articles are manufactured, bottled, or sold a description of the name or marks so used by them, and cause notice thereof to be given by three consecutive publications in a weekly newspaper printed in the English language in said county. [C97,§5052; S13,§5052; C24, 27, 31, 35, 39,§13063; C46, 50, 54, §713.18]

Trade-marks in general, chs 548, 549

**713.19 Sale or use of registered containers.** It shall thereupon be unlawful for any person, without the written consent of the owner, to fill such bottles, boxes, casks, kegs, or barrels so marked or stamped, for the purpose of sale, or to sell, dispose of, buy, or traffic in or wantonly destroy the same, whether filled or not, and any violation of this section shall be a misdemeanor, and any person convicted thereof shall be fined not exceeding one hundred

dollars, or imprisoned in the county jail not exceeding thirty days. [C97,§5052; S13,§5052; C24, 27, 31, 35, 39,§13064; C46, 50, 54,§713.19]

Referred to in §713.20

**713.20 Prima-facie evidence of misuse.** The using by any other person than the rightful owner, without written permission, of any such cask, barrel, keg, bottle, or box, as prohibited in section 713.19, or the possession thereof by any junk dealer, or dealer in such casks, barrels, kegs, bottles, or boxes, the same being marked or stamped and registered as herein required, shall be prima-facie evidence that such use, and the sale or possession, is unlawful, and search warrants may be procured for the discovery and seizure of such bottles, boxes, casks, kegs, or barrels, as in other criminal cases. [C97,§5052; S13,§5052; C24, 27, 31, 35, 39,§13065; C46, 50, 54,§713.20]

**713.21 Fraudulently using stamped cask, package, or box.** If any person, with intent to defraud, use any cask, package, box, or bale, marked, branded, or stamped by another, for the sale of merchandise or produce of an inferior quality or less in quantity or weight than is denoted by such mark, stamp, or brand, he shall be imprisoned in the county jail not more than one year, or fined not exceeding two hundred dollars, or both. [C51,§2751; R60, §4401; C73,§4080; C97,§5048; C24, 27, 31, 35, 39, §13066; C46, 50, 54,§713.21]

**713.22 Binder twine — label required.** No binder twine shall be sold, exposed, or offered for sale within this state, except the same bears upon each ball a stamp or label truly stating the name of the manufacturer or importer and the number of feet to the pound in such ball; provided that a deficiency not exceeding five percent in length stated on the stamp or label shall not be a violation hereof. [S13,§5077-a25; C24, 27, 31, 35, 39,§13067; C46, 50, 54,§713.22]

Referred to in §713.23

**713.23 Punishment.** Any person, firm, or corporation who violates the provisions of section 713.22 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. [S13,§5077-a26; C24, 27, 31, 35, 39,§13068; C46, 50, 54,§713.23]

**713.24 Fraudulent advertisements.** Any person, firm, corporation, or association who, with intent to sell, or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes to be made, published, disseminated, circulated, or placed before the public in this state, either directly or

indirectly, in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation, or statement of fact relating to said merchandise, securities, or service offered for sale, or relating to the sale thereof, which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars or not more than one hundred dollars, or thirty days in jail for each offense. [S13,§5051-a; C24, 27, 31, 35, 39,§13069; C46, 50, 54,§713.24]

Referred to in §§322.6, 529.12, 713.25

**713.25 Publishers acting in good faith.** The provisions of section 713.24 shall not apply to any owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, or circular who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published, or takes part in the publication of such advertisement. [S13,§5051-a; C24, 27, 31, 35, 39,§13070; C46, 50, 54,§713.25]

**713.26 False entries in corporation books.** Any officer, agent, or employee of any corporation who shall knowingly make or knowingly authorize to be made false entries upon the books of such corporation, and any employee of another who shall knowingly make or cause to be made false entries upon the books of his employer, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment not to exceed two years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35, 39,§13071; C46, 50, 54, §713.26]

Similar criminal provision, §491.43

**713.27 Transacting business without license.** If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of the state, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2737; R60, §4380; C73,§4046; C97,§5010; C24, 27, 31, 35, 39, §13072; C46, 50, 54,§713.27]

**713.28 Unlawfully wearing military badges.** Any person who shall willfully wear, display or use the insignia or rosette of the military order of the Loyal Legion of the United States, or wear, display, or use the button, emblem, or insignia of the Grand Army of the Republic, the United Spanish American War Veterans, the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans of the World War, or any other organization, or auxiliary thereof, composed of members or former members of the military or naval forces of the United States, or use the same



to obtain aid or assistance, unless such person is authorized and/or entitled to wear, display or use the same under the rules and regulations or constitutions and bylaws of such organizations, shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding thirty days, or fined not to exceed one hundred dollars. [C97,§5071; C24, 27, 31, 35, 39,§13073; C46, 50, 54,§713.28]

**713.29 Three-card monte and other games.**

Whoever by means of three-card monte, so-called, or any other form or device, sleight of hand, or other means whatever, by use of cards or instruments of like character, obtains from another person any money or other property, shall be guilty of swindling and be fined not less than two hundred nor more than two thousand dollars, or be imprisoned in the penitentiary not more than five years, or both. [C97,§5072; C24, 27, 31, 35, 39,§13074; C46, 50, 54,§713.29]

Referred to in §§713.31, 713.32, 713.33

**713.30 Accessories in three-card monte.** All persons aiding, encouraging, advising, or confederating with, or knowingly harboring or concealing, any such person or persons, or in any manner being accessory to the commission of the above described offense, or confederating together for the purpose of playing such games, shall be deemed principals therein, and punished accordingly. [C97,§5072; C24, 27, 31, 35, 39,§13075; C46, 50, 54,§713.30]

Referred to in §§713.31, 713.33

**713.31 Authority and duty to make arrests.** Any person may, and every conductor and other employee on any railroad car or train, every captain, clerk, and other employee on any boat, every station agent at any railway depot, the officers of any fair or fairgrounds, and the proprietor of any place of public resort and his employees, shall, with or without warrant, arrest any person found in the act of committing any of the offenses mentioned in sections 713.29 and 713.30, or any person whom he or they may have good reason to believe to be guilty of the commission of any such offense. [C97,§5073; C24, 27, 31, 35, 39, §13076; C46, 50, 54,§713.31]

Referred to in §713.33

**713.32 Ejection from public conveyances and places.** Any conductor, captain, hotel-keeper, proprietor or manager of any public conveyance or place of public resort, and the officers of any fair or fairgrounds, shall eject from his car, train, boat, hotel, public conveyance, fairgrounds or place of public resort any person known to him or whom he has good reason to believe to be a three-card monte man, or who offers to wager or bet money or other valuable thing upon what is commonly known as three-card monte, or bet on any trick or game with cards or other gaming device, and any failure, neglect, or refusal to do so, or to suppress or prevent a violation of section 713.29, shall be a misdemeanor. [C97,

§5074; C24, 27, 31, 35, 39,§13077; C46, 50, 54, §713.32]

Referred to in §713.33  
Punishment, §687.7

**713.33 Posting copy of law.** Any person or company operating any public conveyance by which passengers are carried shall keep posted up in such conveyance a copy of sections 713.29 to 713.32, inclusive. [C97,§5075; C24, 27, 31, 35, 39,§13078; C46, 50, 54,§713.33]

**713.34 Gross fraud or cheat at common law.**

Every person who is convicted of any gross fraud or cheat at common law shall be fined not more than two hundred dollars or imprisoned in the county jail not more than one year, or both. [C51,§2752; R60,§4402; C73,§4081; C97,§5053; C24, 27, 31, 35, 39,§13079; C46, 50, 54, §713.34]

SLUGS IN COIN MACHINES

**713.35 Operating by false means—penalty.**

Whoever, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or in connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any parking meter, vending machine, coin-box telephone, or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, use or receive, from or by means of any such, meter, machine, coin box or receptacle, any article of value or service, or the use or enjoyment of any facility or service, without depositing in, delivering to and payment into such meter, machine, coin box or receptacle the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such meter, machine, coin box or receptacle shall be fined not more than one hundred dollars, or imprisoned not more than thirty days. [C50, 54, §713.35]

**713.36 Selling slugs or false coins—penalty.**

Whoever, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or in connection with the sale, use or enjoyment of property or service or other facilities, or whoever, knowingly or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee or user thereof, shall sell, offer for sale, advertise for sale, possess or give away any token, slug, false or counterfeited coin or any device or substance whatsoever which, when placed, deposited or

used in any such meter, machine, coin box or receptacle, will cause the same to operate or function, shall be fined not more than one hundred dollars, or imprisoned not more than thirty days.

The sale, offer for sale, advertisement for sale, possession or giving away of any token, slug, false or counterfeited coin or any device or substance whatsoever which, when placed, deposited or used in any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America, will cause the same to operate or function, shall be prima-facie evidence, within the meaning of this section, of an intent to cheat or defraud or of knowing or having cause to believe that any such token, slug, false or counterfeited coin, device or substance whatsoever is intended for fraudulent or unlawful use. [C50, 54,§713.36]

**713.37 Manufacture — penalty.** The manufacture, sale, offering for sale, advertising for sale or distribution, of a token, disc, blank, washer, check, slug, false coin or other device, whether solid or perforated, with knowledge

or reason to believe that such token, disc, blank, washer, check, slug, false coin or other device may be used in substitution for any lawful coin of the United States of America in any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in connection with the sale, use or enjoyment of property, privilege or service, is hereby prohibited.

Whoever violates this section shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. [C50, 54,§713.37]

**713.38 Tokens excepted.** The provisions of this division shall in no manner limit or restrict the manufacture, sale, offering for sale or advertising for sale, or prohibit the possessing, distributing or giving away of proper tokens for use in operation of the facilities or equipment of any electric street railway, urban motor bus company, interurban motor bus company or motor transportation company operating in this state. [C50, 54,§713.38]

## CHAPTER 714

### MALICIOUS MISCHIEF AND WILLFUL TRESPASS

- 714.1 Malicious injury to buildings and fixtures.
- 714.2 Injuring or terrorizing inhabitants of dwelling.
- 714.3 Defacing buildings.
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- 714.17 Injuries to monuments of state boundaries.
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- 714.20 Defacing or destroying proclamations or notices.
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- 714.23 Injury to gravestones or property in cemetery.
- 714.24 Civil liability.
- 714.25 Hunting upon cultivated or inclosed land.
- 714.26 Island in navigable stream.
- 714.27 Prosecution.
- 714.28 Injury to fire apparatus.
- 714.29 Removal of fire apparatus.
- 714.30 Punishment.
- 714.31 False alarms of fire.
- 714.32 Punishment.

**714.1 Malicious injury to buildings and fixtures.** If any person maliciously injure, deface, or destroy any building or fixture attached thereto, or willfully and maliciously destroy, injure, or secrete any goods, chattels, or valuable papers of another, he shall be imprisoned in the penitentiary not more than five years, or shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, and be liable to the party injured in a sum equal to three times the value of the property so destroyed or injured. [C51,

§2686; R60,§4326; C73,§3985; C97,§4822; S13, §4822; C24, 27, 31, 35, 39,§13080; C46, 50, 54, §714.1]

**714.2 Injuring or terrorizing inhabitants of dwelling.** If any person, with intent to injure or terrorize the inhabitants of any dwelling house, or other building used as a dwelling, or any inhabited boat, vessel, or raft, or with intent to injure or deface any such structure, throws at, against, or into the same any brick, stone, billet of wood, or other missile, or shoots

thereat, with such intent, any gun, pistol, or revolver, he shall be imprisoned in the penitentiary not more than three years, or in the county jail not more than one year, or be fined not more than one thousand dollars. [C97, §4799; C24, 27, 31, 35, 39, §13081; C46, 50, 54, §714.2]

**714.3 Defacing buildings.** If any person willfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse, or other public building, or on any furniture, apparatus, or fixtures therein; or willfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [C51, §2687; R60, §4327; C73, §3986; C97, §4802; C24, 27, 31, 35, 39, §13082; C46, 50, 54, §714.3]

**714.4 Injury to fence, produce, or fixtures.** If any person maliciously or mischievously break down, mar, deface, or injure any fence, hedge, or ditch inclosing lands belonging to another; or throw down or leave open any gate or bars not his own or under his charge, whereby an injury is done to another; or maliciously injure, destroy, or sever from the land of another any produce thereof or anything attached thereto, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, or both. [C97, §4825; C24, 27, 31, 35, 39, §13083; C46, 50, 54, §714.4]

**714.5 Injury to sidewalks.** Any person guilty of willfully and unlawfully injuring or destroying any sidewalk made of wood, brick, stone, cement, or any other material, shall be fined not more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [S13, §4830-b; C24, 27, 31, 35, 39, §13085; C46, 50, 54, §714.5]

**714.6 Trespass by digging, cutting, or carrying away.** If any person willfully commit any trespass by cutting down or destroying any timber or wood standing or growing on the land of another; or by carrying away timber or wood being on such land; or by digging or carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or any other ore or metal; or by taking and carrying from such land any grass, hay, corn, grain, fruit, or other vegetables; or carrying away from any wharf, street, or landing place, any goods whatever in which he has no interest, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or both at the discretion of the court. [C51, §2684; R60, §4324; C73, §3983; C97, §4829; C24, 27, 31, 35, 39, §13086; C46, 50, 54, §714.6]

C97, §4829, editorially divided

**714.7 Value not in excess of fifty dollars.** If in any case the value of the property so cut down, carried away, or otherwise taken shall not exceed the sum of fifty dollars, then the

person so offending shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C73, §3983; C97, §4829; C24, 27, 31, 35, 39, §13087; C46, 50, 54, §714.7]

**714.8 Injury to fruit or ornamental tree.** If any person maliciously or mischievously bruise, break, pull up, carry away, cut down, injure, destroy, or sever from the land any fruit, ornamental, or other tree, vine, or shrub standing or growing on the land of another for ornament or use, he shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine of not more than five hundred dollars, or both. [C51, §2682; R60, §4322; C73, §§3899, 3981; C97, §4826; C24, 27, 31, 35, 39, §13088; C46, 50, 54, §714.8]

**714.9 Stealing or knocking off fruit in daytime.** If any person maliciously or mischievously enter the inclosure of another with intent to knock off, pick, destroy, or carry away, or, having lawfully entered, afterwards wrongfully knocks off, picks, destroys, or carries away any fruit or flower of any tree, shrub, bush, or vine, he shall be fined for the first offense not less than five nor more than one hundred dollars, with the costs of conviction, or be imprisoned in the county jail not exceeding thirty days; and for a second violation he shall be fined not less than ten dollars and costs of conviction, or be imprisoned as above provided. [C73, §3897; C97, §4827; C24, 27, 31, 35, 39, §13089; C46, 50, 54, §714.9]

**714.10 Stealing or knocking off fruit in nighttime.** If any person maliciously or mischievously enter the inclosure of another in the nighttime and knock off, pick, destroy, or carry away any fruit or flower of any tree, shrub, bush, or vine, or if, having so entered with intent to knock off, pick, destroy, or carry away any fruit or flower as aforesaid, he be actually found therein, he shall be fined not less than twenty-five nor more than one hundred dollars and costs of conviction, or imprisoned in the county jail not exceeding thirty days. [C73, §3898; C97, §4828; C24, 27, 31, 35, 39, §13090; C46, 50, 54, §714.10]

**714.11 Injury to vehicle or harness.** If any person maliciously, willfully, and feloniously cut, break, sever, or unfasten any tug, strap, line, or other part of any harness attached to any horse or team, or maliciously and feloniously remove, break, unfasten, or injure any part of any vehicle, he shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [C97, §4823; S13, §4823; C24, 27, 31, 35, 39, §13091; C46, 50, 54, §714.11]

S13, §4823, editorially divided

**714.12 Alteration of manufacturer's serial number.** Any person or corporation removing from or altering, defacing, mutilating, concealing, covering or destroying the manufact-

turer's serial number or other distinguishing mark upon any machine or manufactured article, except a motor vehicle, for the purpose of concealing, destroying or misrepresenting the identity of such machine or manufactured article, or who sells or offers for sale, or who owns or has possession of any machine or manufactured article knowing that the manufacturer's serial number or other distinguishing number or identification mark has been removed, altered, defaced, mutilated, concealed, covered or destroyed with the purpose of concealing, destroying or misrepresenting the identity of such machine or manufactured article, shall be guilty of a misdemeanor. [C31, 35, §13092-d1; C39, §13092.1; C46, 50, 54, §714.12]

Referred to in §714.13  
Punishment, §887.7  
Similar provisions, §§321.80, 321.92

**714.13 Presumption of unlawful alteration.**

It shall be presumed that such serial number, or distinguishing number or identification mark, or portion thereof, was unlawfully removed, altered, defaced, mutilated, concealed, covered or destroyed by said person in violation of the provisions of section 714.12, if it shall appear that said person has had possession or control of any such machine, musical instrument or other goods, wares or merchandise with such serial number or distinguishing number or identification mark, or portion thereof removed, altered, defaced, mutilated, concealed, covered, or destroyed, but such presumption shall not be conclusive. [C31, 35, §13092-d2; C39, §13092.2; C46, 50, 54, §714.13]

**714.14 Injury to rafts or boats.** If any person maliciously cut away, let loose, injure, or destroy any boom or raft of wood, logs, or other lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be fined not exceeding five hundred dollars, and imprisoned in the county jail not more than one year, and forfeit to the person injured double the amount of damages sustained. [C51, §2681; R60, §4321; C73, §3980; C97, §4824; C24, 27, 31, 35, 39, §13093; C46, 50, 54, §714.14]

**714.15 Fraudulent destruction of boats.** If any person cast away, sink, or otherwise destroy any raft, boat, or vessel, within any county, with intent to defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same, or of any part thereof, he shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars and imprisoned in the county jail not exceeding one year. [C51, §2753; R60, §4403; C73, §4082; C97, §5054; C24, 27, 31, 35, 39, §13094; C46, 50, 54, §714.15]

Similar provision, §713.10

**714.16 Injury to public library books or property.** Any person who shall willfully, maliciously, or wantonly tear, deface, mutilate, injure, or destroy, in whole or in part, any

newspaper, periodical, book, map, pamphlet, chart, picture, or other property belonging to any public library or reading room shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars, or imprisoned not more than thirty days. [S13, §4830-a; C24, 27, 31, 35, 39, §13095; C46, 50, 54, §714.16]

**714.17 Injuries to monuments of state boundaries.** If any person willfully dig up, pull down, break, or destroy, or in any other manner injure or remove, any of the cast-iron pillars or other evidences planted and fixed in and along any part of the boundaries of this state, he shall be fined not less than fifty nor more than two hundred dollars, or be imprisoned in the penitentiary for a term of not less than six months, or both. [C51, §2690; R60, §4330; C73, §3989; C97, §4800; C24, 27, 31, 35, 39, §13096; C46, 50, 54, §714.17]

**714.18 Injury to boundary marks, milestones, and signboards.** If any person maliciously take down, injure, or remove any monument erected or any tree marked as a boundary of any tract of land or city or town lot; or destroy, deface, or alter the marks of any such monument or tree made for the purpose of designating such boundary; or injure or deface any milestone, post, or guideboard erected on any public way; or remove, deface, or injure any signboard; or break or remove any lamp or lamppost or extinguish any lamp on any bridge, way, street, or passage, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one year, or both, at the discretion of the court. [C51, §2683; R60, §4323; C73, §3982; C97, §4801; C24, 27, 31, 35, 39, §13097; C46, 50, 54, §714.18]

**714.19 Removal of safeguards or danger signals.** Whoever shall, without the consent of the person in control thereof, willfully remove, throw down, destroy, or carry away from any highway, street, alley, avenue, or bridge, any lamp, obstruction, guard, or other article or things, or extinguish any lamp or other light, erected or placed thereon for the purpose of guarding or inclosing unsafe or dangerous places in said highway, street, alley, avenue, or bridge, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding one year. [S13, §4830-c; C24, 27, 31, 35, 39, §13098; C46, 50, 54, §714.19]

**714.20 Defacing or destroying proclamations or notices.** If any person intentionally deface, obliterate, tear down, or destroy in whole or in part any transcript or extract from or in any law of the United States or of this state, or any proclamation, advertisement, or notification, set up at any place within this state by authority of law or by order of any court, during the time for which the same is to remain set up, he shall be fined in a sum not

exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2688; R60,§4328; C73,§3987; C97,§4803; C24, 27, 31, 35, 39,§13099; C46, 50, 54,§714.20]

**714.21 Violating sepulcher.** If any person, without lawful authority, willfully dig up, disinter, remove, or carry away any human body, or the remains thereof, from its place of interment; or aid, assist, encourage, incite, or procure the same to be done or attempted; or willfully receive, conceal, or dispose of any such human body or the remains thereof; or if any person, with the intent to commit any of the aforesaid acts, partially perform the same, he shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C51,§2714; R60,§4356; C73,§4017; C97,§4945; C24, 27, 31, 35, 39,§13100; C46, 50, 54,§714.21]

C97,§4945, editorially divided

**714.22 Exposing dead bodies.** If any person willfully and unnecessarily, and in an improper manner, indecently expose, throw away, or abandon any human body, or the remains thereof, in any public place, or in any river, stream, pond, or other place, he shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C51,§2714; R60,§4356; C73,§4017; C97,§4945; C24, 27, 31, 35, 39,§13101; C46, 50, 54,§714.22]

**714.23 Injury to gravestones or property in cemetery.** Any person who shall willfully and maliciously destroy, mutilate, deface, injure, or remove any tomb, vault, monument, gravestone, or other structure placed in any public or private cemetery in this state, or any fences, railing, or other work for the protection or ornamentation of said cemetery, or of any tomb, vault, monument, or gravestone, or other structure aforesaid, on any cemetery lot within such cemetery, or shall willfully and maliciously destroy, cut, break, or injure any tree, shrub, plant, or lawn within the limits of said cemetery, or shall willfully and maliciously throw or leave any rubbish, refuse, garbage, waste, litter or foreign substance within the limits of said cemetery, or shall drive at an unusual and forbidden speed over the avenues or roads in said cemetery, or shall drive outside of said avenues and roads, and over the grass or graves of said cemetery, shall be guilty of a misdemeanor, and, upon conviction, punished accordingly, in the discretion of the court. [C51,§2715; R60,§4357; C73,§4021; C97,§588; C24, 27, 31, 35, 39,§13102; C46, 50, 54,§714.23; 56GA, ch 272,§1]

C97,§588, editorially divided  
Punishment, §687.7

**714.24 Civil liability.** Such offender shall also be liable, in an action in the name of the person or corporation having the custody and control of said cemetery grounds, to pay all such damages as have been occasioned by his unlawful act or acts; which money, when re-

covered, shall be applied by said person or corporation to the reparation and restoration of the property so injured or destroyed, if the same can be so repaired or restored. [C97,§588; C24, 27, 31, 35, 39,§13103; C46, 50, 54,§714.24]

**714.25 Hunting or fishing upon cultivated or inclosed land and waters.** Any person who shall hunt with dog or gun upon the cultivated or inclosed lands of another, or who shall fish upon the inclosed or cultivated lands containing or encompassing an artificially constructed pond or ponds of another which have been privately stocked with fish, without first obtaining permission from the owner or occupant thereof, or his agent, shall for each offense be fined not more than ten dollars and costs of prosecution, and shall stand committed until such fine and costs are paid. [C97,§4821; S13,§4821; C24, 27, 31, 35, 39,§13104; C46, 50, 54,§714.25; 57GA, ch 272,§1]

S13,§4821, editorially divided  
Referred to in §714.27

**714.26 Island in navigable stream.** All islands in navigable streams bordering on the state shall be deemed inclosed lands without fences where the owners or lessees thereof post in plain view notices warning others not to trespass thereon. [S13,§4821; C24, 27, 31, 35, 39,§13105; C46, 50, 54,§714.26]

Referred to in §714.27

**714.27 Prosecution.** No prosecution shall be commenced under sections 714.25 and 714.26 except upon the information of the owner or occupant of such cultivated or inclosed lands, or his agent. [C97,§4821; S13,§4821; C24, 27, 31, 35, 39,§13106; C46, 50, 54,§714.27]

**714.28 Injury to fire apparatus.** If any person willfully destroy or injure any engine, hose carriage, hose, hook and ladder carriage, or other thing used and kept for the extinguishment of fires, he shall, upon conviction, be imprisoned in the penitentiary for a period of not less than one nor more than three years. [R60,§1766; C73,§1564; C97,§2466; C24, 27, 31, 35, 39,§13107; C46, 50, 54,§714.28]

**714.29 Removal of fire apparatus.** No person shall remove any engine or other apparatus for the extinguishment of fire from the house or other place where it is kept or deposited, except in time of fire or alarm thereof, unless authorized so to do by the president, director, or foreman of the company to whom the same shall belong. [R60,§1767; C73,§1565; C97,§2467; S13,§2467; C24, 27, 31, 35, 39,§13108; C46, 50, 54,§714.29]

S13,§2467, editorially divided  
Referred to in §714.30

**714.30 Punishment.** Any person violating the provisions of section 714.29 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. [R60,§1767; C73,§1565; C97,§2467; S13,§2467; C24, 27, 31, 35, 39,§13109; C46, 50, 54,§714.30]

**714.31 False alarms of fire.** No person or persons shall cause or give a false alarm of fire, by setting fire to any combustible material, or by crying or sounding an alarm, or by any other means, without cause. [R60,§1768; C73, §1566; C97,§2468; S13,§2468; C24, 27, 31, 35, 39, §13110; C46, 50, 54,§714.31]

S13,§2468, editorially divided  
Referred to in §714.32

**714.32 Punishment.** Any person violating the provisions of section 714.31 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [R60,§1768; C73,§1566; C97,§2468; S13,§2468; C24, 27, 31, 35, 39,§13111; C46, 50, 54,§714.32]

## CHAPTER 715

### ALTERATION, SALE, AND CHARGING OF STORAGE BATTERIES

715.1 Injury to identification mark.  
715.2 Unlawful delivery.  
715.3 Unlawful recharging.

715.4 Unlawful retention.  
715.5 Penalty.

**715.1 Injury to identification mark.** It is unlawful for any person, copartnership, or corporation to remove or deface or alter or destroy, or cause to be removed or defaced or altered or destroyed, the word "rental" or any other word, mark, or character printed or painted or stamped upon or attached to any electric storage battery which has been so placed upon or attached to such electric storage battery to identify the same as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a1; C39,§13111.1; C46, 50, 54,§715.1]

**715.2 Unlawful delivery.** It is unlawful for any person, copartnership, or corporation to sell, dispose of, deliver, or give or attempt to sell, dispose of, deliver, or give to any person, copartnership, or corporation, other than the owner thereof, any electric storage battery upon which the word "rental" or any other word, mark, or character is printed, painted, or stamped, or to which such word, mark, or character is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35, §13111-a2; C39,§13111.2; C46, 50, 54,§715.2]

**715.3 Unlawful recharging.** It is unlawful for any person, copartnership, or corporation engaged in buying, selling, or recharging electric storage batteries to receive or retain in his, their, or its possession, or to recharge, except in cases of emergency, any electric storage battery not owned by such person. copartner-

ship, or corporation upon which the word "rental" or any other word, mark, or character is printed, painted or stamped, or to which such word, or mark, or character, is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a3; C39, §13111.3; C46, 50, 54,§715.3]

**715.4 Unlawful retention.** It shall be unlawful for any person, copartnership, or corporation to retain in his, their, or its possession for a longer period than thirty days, without the consent of the owner, any electric storage battery upon which the word "rental" or any other word, mark, or character is printed, painted, or stamped, or to which any such word, mark, or character is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a4; C39,§13111.4; C46, 50, 54,§715.4]

**715.5 Penalty.** Any person, copartnership, or corporation, and the officers, agents, employees, and members of any copartnership, or corporation, violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding thirty days, or both. [C27, 31, 35,§13111-a5; C39,§13111.5; C46, 50, 54,§715.5]

## CHAPTER 716

## INJURIES TO INTERNAL IMPROVEMENTS AND COMMON CARRIERS

- 716.1 Injury to dams, locks, mills, or machinery.
- 716.2 Injury to levees.
- 716.3 Obstructing public ditches or drains.
- 716.4 Obstructing ditches and breaking levees.
- 716.5 Draining meandered lakes.
- 716.6 Obstructing or defacing roads.
- 716.7 Injury to roads, railways, and other utilities.
- 716.8 Tapping telegraph or telephone wires.
- 716.9 Placing obstructions on railways.
- 716.10 Depositing refuse on track.
- 716.11 Shooting or throwing at train.
- 716.12 Uncoupling locomotive or cars.
- 716.13 Seizing and running locomotive.
- 716.14 Conspiracy to seize locomotive.
- 716.15 Wrongfully running handcar.
- 716.16 Aggravated offense.
- 716.17 Interference with air brake or bell rope.
- 716.18 Power of trainmen to arrest.
- 716.19 Jumping off cars in motion.

**716.1 Injury to dams, locks, mills, or machinery.** If any person maliciously injure or destroy any dam, lock, canal, trench, or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory; or maliciously draw off the water from any mill pond, reservoir, canal, or trench; or destroy, injure, or render useless any engine or the apparatus belonging thereto, prepared or kept for the extinguishing of fires, he shall be imprisoned in the county jail not exceeding one year and be fined not exceeding five hundred dollars. [C51,§2679; R60,§4319; C73,§3978; C97,§4806; C24, 27, 31, 35, 39,§13112; C46, 50, 54, §716.1]

**716.2 Injury to levees.** If any person maliciously injure, break, or cause to be broken, any levee erected to prevent the overflow of land within the state, such person so offending shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [R60,§4332; C73,§3991; C97,§4804; C24, 27, 31, 35, 39,§13113; C46, 50, 54,§716.2]

**716.3 Obstructing public ditches or drains.** If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this state, he shall be compelled to remove the same, and be fined not less than five nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C73,§3992; C97,§4805; C24, 27, 31, 35, 39,§13114; C46, 50, 54,§716.3]

**716.4 Obstructing ditches and breaking levees.** Any person, firm, or corporation diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse, or breaking down any levee established, constructed, or maintained under any provision of law, shall be deemed guilty of a misdemeanor and punished accordingly. [S13, §1989-a15; C24, 27, 31, 35, 39,§13115; C46, 50, 54, §716.4]

Punishment, §687.7

**716.5 Draining meandered lakes.** Every person who shall drain or cause to be drained, or shall attempt to drain in any manner, any

lake, pond, or body of water, which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars; provided this shall not apply where the drainage was or is authorized by law. [SS15,§2900-e; C24, 27, 31, 35, 39,§13116; C46, 50, 54,§716.5]

**716.6 Obstructing or defacing roads.** If any person, without authority or permission from the board of trustees, shall in any manner obstruct, deface, or injure any public road by breaking up, plowing, or digging within the boundary lines thereof, he shall be fined not less than five nor more than twenty-five dollars, or be imprisoned in the county jail not more than thirty days, at the discretion of the court. [C97,§4808; S13,§4808; C24, 27, 31, 35, 39,§13117; C46, 50, 54,§716.6]

**716.7 Injury to roads, railways, and other utilities.** If any person maliciously injure, remove, or destroy any electric railway or apparatus belonging thereto, or any bridge, rail or plank road; or place, or cause to be placed, any obstruction on any electric railway, or on any such bridge, rail or plank road; or willfully obstruct or injure any public road or highway; or maliciously cut, burn, or in any way break down, injure, or destroy any post or pole used in connection with any system of electric lighting, electric railway, or telephone or telegraph system; or break down and destroy or injure or deface any electric light, telegraph or telephone instrument; or in any way cut, break, or injure the wires of any apparatus belonging thereto; or shall willfully tap, cut, injure, break, disconnect, connect, make any connection with, or destroy any of the wires, mains, pipes, conduits, meters, or other apparatus belonging to, or attached to, the power plant or distributing system of any electric light plant, electric motor, gas plant, or water plant; or shall aid or abet any other person in so doing, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment, at the discretion of the court. [C51,§2680;

R60,§4320; C73,§3979; C97,§4807; S13,§4807; C24, 27, 31, 35, 39,§13120; C46, 50, 54,§716.7]

Proof of obstruction, §782.2

**716.8 Tapping telegraph or telephone wires.**

Any person who shall wrongfully or unlawfully tap or connect a wire with the telephone or telegraph wires of any person, company, or association engaged in the transmission of messages on telephone or telegraph lines between the states or in this state, shall be fined not more than five hundred dollars, or imprisoned in the county jail not exceeding six months. [C97,§4816; C24, 27, 31, 35, 39,§13121; C46, 50, 54,§716.8]

**716.9 Placing obstructions on railways.**

If any person shall willfully and maliciously place any obstruction on the track of any railroad in the state, or remove any rail therefrom, or in any other way injure such railroad, or do any other thing thereto whereby the life of any person is or may be endangered, he shall be imprisoned in the penitentiary for life, or for any term not less than two years. [R60,§4331; C73,§3990; C97,§4809; C24, 27, 31, 35, 39,§13122; C46, 50, 54,§716.9]

**716.10 Depositing refuse on track.**

If any person engaged in the dragging of a public highway or private way across a railroad shall cause to be deposited any dirt, gravel, stone, or other substance upon the rails of such railroad, or in such close proximity thereto so that it interferes with or jeopardizes the operation of trains upon such railroad, he shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars. [C27, 31, 35,§13122-a1; C39,§13122.1; C46, 50, 54,§716.10]

**716.11 Shooting or throwing at train.**

If any person throw any stone or other substance whatever, or present or discharge any gun, pistol, or other firearm at any railroad train, car, or locomotive engine, or at any cable, wire or other part of the equipment of any signal system of any railroad, he shall be guilty of a misdemeanor. [C97,§4810; C24, 27, 31, 35, 39, §13123; C46, 50, 54,§716.11]

Punishment, §687.7

**716.12 Uncoupling locomotive or cars.**

If any person shall willfully and maliciously uncouple or detach the locomotive or tender or any of the cars of any railroad train, or in any manner aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding one thousand dollars, or both, at the discretion of the court. [C97,§4812; C24, 27, 31, 35, 39,§13124; C46, 50, 54,§716.12]

**716.13 Seizing and running locomotive.**

If any person shall unlawfully seize upon any locomotive, with or without any express, mail, baggage, or other car attached thereto, and run the same upon any railroad, or aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not

exceeding ten years, or fined not exceeding two thousand dollars, or both fined and imprisoned. [C97,§4813; C24, 27, 31, 35, 39,§13125; C46, 50, 54,§716.13]

**716.14 Conspiracy to seize locomotive.**

If any two or more persons maliciously and willfully confederate together for the purpose of going upon or taking charge of any locomotive engine or car of any railroad company by force and without the consent of the person or persons in charge thereof, or if one or more persons shall go upon any locomotive engine or car of any railroad company armed with a dangerous or deadly weapon for the purpose of committing a public offense thereon, he shall be imprisoned in the penitentiary for not exceeding five years or pay a fine of not exceeding one thousand dollars. [C24, 27, 31, 35, 39, §13126; C46, 50, 54,§716.14]

**716.15 Wrongfully running handcar.**

If any person shall, without permission from the proper authority, wrongfully take or run any handcar upon any railroad in this state, he shall be guilty of a misdemeanor. [C97,§4814; C24, 27, 31, 35, 39,§13127; C46, 50, 54,§716.15]

C97,§4814, editorially divided  
Referred to in §716.17  
Punishment, §687.7

**716.16 Aggravated offense.**

If by such unlawful use of any handcar any locomotive or car is thrown from the track, or a collision produced, or any person injured, he [such person so offending] shall be imprisoned in the penitentiary for a term of not more than five years; and if thereby any person is killed, such person so offending shall be guilty of manslaughter. [C97,§4814; C24, 27, 31, 35, 39, §13128; C46, 50, 54,§716.16]

Referred to in §716.17  
Punishment, §687.7

**716.17 Interference with air brake or bell rope.**

If any person not an employee upon the railroad shall wrongfully interfere with any automatic air brake or bell rope upon any railroad car, or use the same for the purpose of stopping or in any way controlling the movement of the train, he shall be subject to the penalty provided in sections 716.15 and 716.16. [C97,§4815; C24, 27, 31, 35, 39,§13129; C46, 50, 54,§716.17]

C97,§4815, editorially divided

**716.18 Power of trainmen to arrest.**

Any conductor or brakeman on a railroad train shall have power to arrest a person so offending and deliver him to some peace officer on the line of the railroad. [C97,§4815; C24, 27, 31, 35, 39,§13130; C46, 50, 54,§716.18]

**716.19 Jumping off cars in motion.**

If any person not employed thereon, or not an officer of the law in the discharge of his duty, without the consent of the person having the same in charge, get upon or off any locomotive engine or car of any railroad company while the same is in motion, or elsewhere than at



the established depots of such company, or get upon, cling to, or otherwise attach himself to any such engine or car for the purpose of riding upon the same, intending to jump therefrom when such engine or car is in mo-

tion, or, for the purpose of riding thereon without the payment of the usual fare, he shall be guilty of a misdemeanor. [C97,§4811; C24, 27, 31, 35, 39,§13131; C46, 50, 54,§716.19]

Punishment, §687.7

## CHAPTER 717

### INJURIES TO ANIMALS

717.1 Injuries to beasts.

717.2 Impounding animals without food and water.

717.3 Cruelty to animals.

**717.1 Injuries to beasts.** If any person maliciously kill, maim, or disfigure any horse, cattle, or domestic beast of another, or maliciously administer poison to any such animal; or expose any poisonous substance with intent that the same should be taken by such animal, he shall be imprisoned in the penitentiary not exceeding five years, or imprisoned in the county jail not exceeding one year, or be fined not exceeding three hundred dollars. [C51, §2678; R60,§4318; C73,§3977; C97,§4818; C24, 27, 31, 35, 39,§13132; C46, 50, 54,§717.1]

**717.2 Impounding animals without food and water.** If any person impound or confine, or cause to be impounded or confined, in any pound or other place, any creature, and fail to supply the same during such confinement with a sufficient quantity of food and water, he shall be guilty of a misdemeanor. [C73,§4034; C97,§4972; C24, 27, 31, 35, 39,§13133; C46, 50, 54,§717.2]

Punishment, §687.7

**717.3 Cruelty to animals.** If any person torture, torment, deprive of necessary sustenance, mutilate, overdrive, overload, drive when overloaded, cruelly beat, or cruelly kill any animal, or unnecessarily fail to provide the same with proper food, drink, shelter, or protection from the weather, or drive or work the same when unfit for labor, or cruelly abandon the same, or carry the same or cause the same to be cruelly carried on any vehicle or otherwise or shall commit any other act or omission by which unjustifiable pain, distress, suffering, or death is caused or permitted to any animal or animals, whether the acts or omissions herein contemplated be committed either maliciously, willfully, or negligently, and if any person shall knowingly permit such act or omission or shall cause or procure the same to be done he shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51,§2716; R60,§4358; C73,§4031; C97,§4969; S13,§4969; C24, 27, 31, 35, 39,§13134; C46, 50, 54,§717.3]

**717.4 Docking horses prohibited—exceptions.** It shall be unlawful for any person or

717.4 Docking horses prohibited—exceptions.

717.5 Punishment.

717.6 Disturbing stock with firearms or dogs.

717.7 Driving away stock.

persons to dock the tail of any colt or horse of any age, other than horses and colts used for breeding and show purposes, or to procure the same to be done. [S13,§4975-a; C24, 27, 31, 35, 39, §13135; C46, 50, 54,§717.4]

Referred to in §717.5

**717.5 Punishment.** Any person or persons violating any of the provisions of section 717.4 shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. [S13,§4975-b; C24, 27, 31, 35, 39, §13136; C46, 50, 54,§717.5]

**717.6 Disturbing stock with firearms or dogs.** Any person who knowingly discharges firearms of any description within, or in the immediate vicinity of, any inclosure where cattle, hogs, or sheep are being fed for the purpose of fattening the same; or any person who enters such inclosure with firearms or dog, unless such person shall be the owner of said stock, or have the control of the same, or shall have permission from such owner or the person having control thereof to enter said premises, shall be guilty of a misdemeanor. [C73,§3900; C97,§4820; C24, 27, 31, 35, 39,§13137; C46, 50, 54,§717.6]

Punishment, §687.7

**717.7 Driving away stock.** If any person knowingly or willfully drive off, or suffer or permit to be driven off, any stock of another to a distance exceeding one mile from the residence of the owner, or of his agent having charge of such stock, or the range in which such stock is usually in the habit of running, without the consent of such owner or agent, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days; and any justice of the peace in any county through which the stock thus driven off should pass, or in which it may be found, shall have jurisdiction of the offense. [C73,§3896; C97,§4819; C24, 27, 31, 35, 39,§13138; C46, 50, 54,§717.7]

## CHAPTER 718

## FORGERY AND COUNTERFEITING

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| 718.1 Forgery.                                 | 718.14 Possession of tools for counterfeiting.       |
| 718.2 Uttering forged instrument.              | 718.15 Counterfeiting coin.                          |
| 718.3 Public instruments.                      | 718.16 Uttering or possession of counterfeit coin.   |
| 718.4 Counterfeiting bills, notes, or drafts.  | 718.17 Counterfeiting foreign coin.                  |
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| 718.8 Fraudulent alteration of instruments.    | 718.21 Circulation of foreign bank notes.            |
| 718.9 Affixing fictitious signatures.          | 718.22 Allegations of indictment—proof.              |
| 718.10 Obliteration of records or instruments. | 718.23 Series of offenses—jurisdiction.              |
| 718.11 Second and third convictions.           |  |
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| 718.13 Making tools for counterfeiting.        |  |

**718.1 Forgery.** If any person, with intent to defraud, falsely make, alter, forge, or counterfeit any:

1. Public record; or
2. Process issued or purporting to be issued by any competent court, magistrate, or officer; or
3. Pleading or proceeding filed or entered in any court of law or equity; or
4. Attestation or certificate of any public officer, or other person, in relation to any matter wherein such attestation or certificate is required by law, or may be received or be taken as legal proof; or
5. Charter, deed, will, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note; or
6. Order, acquittance, discharge, or accountable receipt for money or other valuable thing; or
7. Acceptance of any bill of exchange or order; or
8. Indorsement or assignment of any bill of exchange, promissory note or order, or of any debt or contract; or
9. Instrument in writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever, is or purports to be created, increased, transferred, conveyed, discharged, or diminished—he shall be imprisoned in the penitentiary not more than ten years or imprisoned in the county jail not exceeding one year, or fined not exceeding one thousand dollars. [C51, §2626; R60, §4253; C73, §3917; C97, §4853; S13, §4853; C24, 27, 31, 35, 39, §13139; C46, 50, 54, §718.1]

Referred to in §718.2

**718.2 Uttering forged instrument.** If any person utter and publish as true any record, process, certificate, deed, will, or any other instrument of writing mentioned in section 718.1, knowing the same to be false, altered, forged, or counterfeited, with intent to defraud, he shall be imprisoned in the peniten-

tiary not more than ten years, or imprisoned in the county jail not exceeding one year, or fined not exceeding one thousand dollars. [C51, §2627; R60, §4254; C73, §3918; C97, §4854; C24, 27, 31, 35, 39, §13140; C46, 50, 54, §718.2]

**718.3 Public instruments.** If any person, with intent to defraud, falsely make, utter, forge, or counterfeit any note, certificate, state bond, warrant, or other instrument, being public security for money or other property, issued or purporting to be issued by authority of this state or any other of the United States; or any indorsement or other writing purporting to transfer the right or interest of any holder of such public security, he shall be imprisoned in the penitentiary not more than twenty years. [C51, §2628; R60, §4255; C73, §3919; C97, §4855; C24, 27, 31, 35, 39, §13141; C46, 50, 54, §718.3]

**718.4 Counterfeiting bills, notes, or drafts.** If any person make, alter, forge, or counterfeit any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company duly authorized for that purpose by any state of the United States, or any other government or country, with intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding three hundred dollars, and imprisoned in the county jail not exceeding one year. [C51, §2629; R60, §4256; C73, §3920; C97, §4856; C24, 27, 31, 35, 39, §13142; C46, 50, 54, §718.4]

Referred to in §718.5

**718.5 Possession of counterfeit papers.** If any person has in his possession any forged, counterfeited, or altered bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued as is mentioned in section 718.4, with intent to defraud, knowing them to be forged, counterfeited, or altered, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding two hundred dollars and imprisoned in the county jail not exceeding one year. [C51, §2630; R60, §4257; C73, §3921; C97, §4857; C24, 27, 31, 35, 39, §13143; C46, 50, 54, §718.5]

**718.6 Uttering counterfeit securities.** If any person utter, pass, or tender in payment as true any false, altered, forged, or counterfeited note, certificate, state bond, warrant, or other instrument of public security, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, knowing the same to be false, altered, forged, or counterfeited, with the intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2631; R60,§4258; C73,§3922; C97,§4858; C24, 27, 31, 35, 39,§13144; C46, 50, 54,§718.6]

Referred to in §718.7

**718.7 Second conviction.** If any person, having been convicted of any of the offenses described in section 718.6, afterward be convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2632; R60,§4259; C73,§3923; C97,§4859; C24, 27, 31, 35, 39,§13145; C46, 50, 54,§718.7]

Multifarious convictions, §§709.19, 712.2, 718.11; also ch 747

**718.8 Fraudulent alteration of instruments.** If any person fraudulently connect together different parts of several genuine bank bills, notes, or other instruments in writing, so as to produce one instrument; or alter any note or instrument in writing in a matter that is material, with intent to defraud, the same shall be forgery in like manner as if such bill or note or other instrument had been forged and counterfeited. [C51,§2636; R60,§4263; C73,§3927; C97,§4863; C24, 27, 31, 35, 39,§13146; C46, 50, 54,§718.8]

**718.9 Affixing fictitious signatures.** If any fictitious or pretended signature of an officer or agent of any corporation be fraudulently affixed to any instrument of writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true, it is a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation have ever existed; and the person guilty thereof shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C51,§2637; R60,§4264; C73,§3928; C97,§4864; C24, 27, 31, 35, 39,§13147; C46, 50, 54,§718.9]

**718.10 Obliteration of records or instruments.** The total or partial erasure or obliteration of any record, process, certificate, deed, will, or any other instrument in writing mentioned in this chapter, with the intent to defraud, shall be deemed forgery, and the offender shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2638;

R60,§4265; C73,§3929; C97,§4865; C24, 27, 31, 35, 39,§13148; C46, 50, 54,§718.10]

Referred to in §718.11

**718.11 Second and third convictions.** If any person, having been convicted of either of the offenses mentioned in section 718.10, be afterward convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten nor less than three years. [C51,§2639; R60,§4266; C73,§3930; C97,§4866; C24, 27, 31, 35, 39,§13149; C46, 50, 54,§718.11]

Multifarious convictions, §§709.19, 712.2, 718.7; also ch 747

**718.12 Existence of corporation—proof.** On the trial of any person for forging or counterfeiting any bill, note, or other evidence of debt purporting to be issued by any incorporated company; or for uttering, passing, or attempting to pass, or having in possession the same with intent to utter or pass, such bill, note, or evidence of debt, it is not necessary to prove the incorporation by the charter or act thereof; but the same may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill, note, or evidence of debt is forged or counterfeit. [C51,§3643; R60,§4270; C73,§3934; C97,§4870; C24, 27, 31, 35, 39,§13150; C46, 50, 54,§718.12]

**718.13 Making tools for counterfeiting.** If any person engrave, make, or mend, or begin to engrave, make, or mend, any plate, block, press, or other tool, instrument, or implement, or make or provide any paper or other materials, adapted and designed for the forging or making any false and counterfeit note, certificate, state bond, warrant, or other instrument of public security for money or other property of this state or any other of the United States, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, he shall be imprisoned in the penitentiary not more than five years. [C51,§2633; R60,§4260; C73,§3924; C97,§4860; C24, 27, 31, 35, 39,§13151; C46, 50, 54,§718.13]

C97,§4860, editorially divided

**718.14 Possession of tools for counterfeiting.** Every person who has in his possession any such plate or block engraved in any part, or any press or other tool, instrument, or implement, paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and forged certificates, notes, bonds, warrants, public securities, or evidences of debt, shall be imprisoned in the penitentiary not more than five years. [C51,§2633; R60,§4260; C73,§3924; C97,§4860; C24, 27, 31, 35, 39,§13152; C46, 50, 54,§718.14]

Similar provision, §718.20

**718.15 Counterfeiting coin.** If any person forge or counterfeit any gold or silver coin, current by law or usage within this state, or if any person have in his possession at the

same time five or more pieces of false money or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2634; R60,§4261; C73,§3925; C97,§4861; C24, 27, 31, 35, 39,§13153; C46, 50, 54,§718.15]

Referred to in §718.16

**718.16 Uttering or possession of counterfeit coin.** Any person who has in his possession any number of pieces less than five of the counterfeit coin mentioned in section 718.15, knowing the same to be false or counterfeit, with intent to utter or pass the same as true, and any person who utters, passes, or tenders in payment any false and counterfeit coin, knowing the same to be false and counterfeit, shall be imprisoned in the penitentiary not exceeding eight years, or fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2635; R60,§4262; C73,§3926; C97,§4862; C24, 27, 31, 35, 39,§13154; C46, 50, 54,§718.16]

**718.17 Counterfeiting foreign coin.** If any person forge or counterfeit any gold or silver coin of any foreign government or country, with intent to export the same to injure or defraud any such government or the citizens thereof, he shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2641; R60, §4268; C73,§3932; C97,§4868; C24, 27, 31, 35, 39, §13155; C46, 50, 54,§718.17]

**718.18 Counterfeiting public seals.** Every person who is convicted of having forged, counterfeited, or falsely altered the great seal of the state; or the seal of any public office authorized by law; or the seal of any court, corporation, city, or county; or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2642; R60,§4269; C73,§3933; C97, §4869; C24, 27, 31, 35, 39,§13156; C46, 50, 54, §718.18]

**718.19 Counterfeiting brands or stamps.** If any person, with intent to defraud, falsely make, forge, or counterfeit any stamp or brand authorized by law to be affixed to any substance or thing whatever; or, knowing such stamp or brand to be counterfeit, use the same as genuine, with intent to defraud, he shall be imprisoned in the penitentiary not exceeding

ten years. [C73,§3935; C97,§4871; C24, 27, 31, 35, 39,§13157; C46, 50, 54,§718.19]

**718.20 Possession of instruments for counterfeiting.** If any person cast, stamp, engrave, make, or amend, or have in his possession any mould, die, press, or other instrument or tool adapted and designed for the forging and counterfeiting of any coin before mentioned, with intent to use the same, or permit the same to be used, for that purpose, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2640; R60,§4267; C73,§3931; C97,§4867; C24, 27, 31, 35, 39,§13158; C46, 50, 54,§718.20]

Similar provision, §718.14

**718.21 Circulation of foreign bank notes.** If any person pay out or offer to pay, or in any manner put in circulation or offer to put in circulation, any bank note, bill, or other instrument intended to circulate as money, issued or purporting to be issued by any bank, individual, or corporation elsewhere than in this state, excepting treasury notes, notes of any bank organized under the law of the United States, or any other description of currency issued by the authority of congress, he shall be fined the sum of five dollars for each note, bill, or other instrument so paid out or offered to be paid out, put in circulation, or offered to be put in circulation. [C73,§4047; C97,§5011; C24, 27, 31, 35, 39,§13159; C46, 50, 54,§718.21]

C97,§5011, editorially divided  
Referred to in §718.22

**718.22 Allegations of indictment—proof.** In prosecutions under section 718.21, it shall not be necessary to state in the indictment or information the name of the bank issuing the notes, nor to prove the existence of the bank or other person purporting to issue them; but it shall be sufficient to allege in general terms the fact of paying out, or attempting to pay out, as the case may be, of bank notes issued out of this state; and the proof may be made as if the particulars were alleged. [C73,§4047; C97,§5011; C24, 27, 31, 35, 39,§13160; C46, 50, 54, §718.22]

**718.23 Series of offenses—jurisdiction.** Any number of offenses may be included in the same prosecution, and where the total fines shall not exceed one hundred dollars, the offense may be tried before a justice of the peace; but when they exceed one hundred dollars, it shall be within the jurisdiction of the district court. [C73,§4047; C97,§5011; C24, 27, 31, 35, 39,§13161; C46, 50, 54,§718.23]

## CHAPTER 719

## CONSPIRACY

719.1 "Conspiracy" defined—common law.

719.2 Conspiracy to prosecute.

**719.1 "Conspiracy" defined—common law.** If any two or more persons conspire or confederate together with the fraudulent or malicious intent wrongfully to injure the person, character, business, property, or rights in property of another, or to do any illegal act injurious to the public trade, health, morals, or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every such offender, and every person who is convicted of a conspiracy at common law, shall be imprisoned in the penitentiary not more than three years. [C51, §2758; R60, §4408; C73, §4087; C97, §5059; C24, 27, 31, 35, 39, §13162; C46, 50, 54, §719.1]

Conspiracy in re insurance, §511.19  
Proof of overt acts, §782.6

**719.2 Conspiracy to prosecute.** If two or more persons conspire or confederate together with intent, falsely and maliciously, to cause or procure another person to be indicted or in any way impleaded or prosecuted for an offense of which he is innocent, whether such person be so impleaded, indicted, or prosecuted or not, they shall be guilty of a conspiracy, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand nor less than one hundred dollars, and imprisoned in the county jail not exceeding one year. [C51, §2757; R60, §4407; C73, §4086; C97, §5058; C24, 27, 31, 35, 39, §13163; C46, 50, 54, §719.2]

## CHAPTER 720

## MALICIOUS THREATS

720.1 Malicious threats to extort.

**720.1 Malicious threats to extort.** If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against

his will, he shall be imprisoned in the penitentiary not more than five years or be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both such fine and imprisonment. [C51, §2590; R60, §4213; C73, §3871; C97, §4767; S13, §4767; C24, 27, 31, 35, 39, §13164; C46, 50, 54, §720.1]

## CHAPTER 721

## PERJURY

721.1 Definition—punishment.

721.2 Subornation of perjury.

721.3 Attempt to suborn.

**721.1 Definition—punishment.** If any person, on oath or affirmation lawfully administered, willfully and corruptly swear or affirm falsely to any material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding in regard to any matter or thing in or respecting which an oath or affirmation is or may be required or authorized by law, he is guilty of perjury, and shall, if the perjury was committed on the trial of a capital crime, be imprisoned in the penitentiary for life or any term not less than ten years; and if committed in any other case, not more than ten years. [C51, §2644; R60, §4271; C73, §3936; C97, §4872; C24, 27, 31, 35, 39, §13165; C46, 50, 54, §721.1]

Referred to in §721.2  
Indictment, §773.27

**721.2 Subornation of perjury.** If any person procure another to commit perjury, he is guilty of subornation of perjury, and shall be punished as provided in section 721.1. [C51, §2645; R60, §4272; C73, §3937; C97, §4873; C24, 27, 31, 35, 39, §13166; C46, 50, 54, §721.2]

**721.3 Attempt to suborn.** If any person endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51, §2646; R60, §4273; C73, §3938; C97, §4874; C24, 27, 31, 35, 39, §13167; C46, 50, 54, §721.3]

## CHAPTER 722

## COMPOUNDING FELONIES

## 722.1 Compounding certain felonies.

**722.1 Compounding certain felonies.** If any person, having knowledge of the commission of any offense punishable with imprisonment in the penitentiary for life, take any money or valuable consideration or gratuity, or any promise therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute the same, or not to give evidence thereof, he shall be imprisoned in the penitentiary not more than six years, or be fined not exceeding one thousand dollars. [C51,§2659; R60,§4286; C73,§3951; C97,§4889; C24, 27, 31, 35, 39,§13168; C46, 50, 54,§722.1]

Referred to in §722.2  
Additional provision, §773.49

## 722.2 Compounding lesser felonies.

**722.2 Compounding lesser felonies.** If any person, having knowledge of the commission of any offense punishable by imprisonment in the penitentiary for a limited term of years, is guilty of the offense described in section 722.1, he shall be imprisoned in the county jail not more than one year, and be fined not exceeding four hundred dollars. [C51,§2660; R60,§4287; C73,§3952; C97,§4890; C24, 27, 31, 35, 39,§13169; C46, 50, 54,§722.2]

## CHAPTER 723

## OBSTRUCTING JUSTICE

## 723.1 Interference with administration of justice.

## 723.2 Injunction to prevent obstruction of justice.

**723.1 Interference with administration of justice.** If any person attempt in any manner to improperly influence, intimidate, impede, or obstruct any petit juror, grand juror, or other officer in any civil or criminal action or proceeding, or any one drawn, summoned, appointed, or sworn as such juror or officer, or any arbitrator or referee, or any witness or any officer in, or of, any court or tribunal in relation to any cause or matter or proceeding pending in, or that may be brought before, such court or tribunal, for which such juror or other officer has been drawn, appointed or in which said witness has been, or may be, called to testify, or in regard to which such officer is, or may be, required to act in his official capacity, or, if any person shall intentionally, or by threat or force, or by any threatening letter or threatening communication, or by any public speech or in any other manner improperly influence, obstruct, or impede, or endeavor or attempt to improperly influence, obstruct, or impede the due administration of justice or the actions or conduct of any such jurors, witnesses, arbitrator, referee, or other officer, he shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the penitentiary not more than one year, or by both such fine and imprisonment. [C51,§2654; R60,§4281; C73,§3946; C97,§4882; C24, 27, 31, 35, 39,§13170; C46, 50, 54,§723.1]

## 723.3 Unlawful solicitation and promotion of action.

**723.2 Injunction to prevent obstruction of justice.** The commission, threat, or attempt to commit any of the acts or things hereinbefore referred to shall be held to be an injury to the general welfare and any person doing or threatening or attempting to do any such acts may be enjoined and restrained at the suit of the state upon the relation of the attorney general. [C24, 27, 31, 35, 39,§13171; C46, 50, 54, §723.2]

**723.3 Unlawful solicitation and promotion of action.** It shall be unlawful for any person, with the intent, or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injuries sustained within this state or for death resulting therefrom, or in any way to promote the prosecution of a suit brought outside of this state for such damages, or to do any act or thing in furtherance thereof, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, copartnership, or corporation subject to personal service within this state. [C24, 27, 31, 35, 39,§13172; C46, 50, 54,§723.3]

## CHAPTER 724

## PROSTITUTION

- 724.1 Punishment.  
 724.2 Soliciting.  
 724.3 Keeping house of ill fame.  
 724.4 Evidence—general reputation.  
 724.5 Terminating lease after conviction.
- 724.6 Leasing house for prostitution.  
 724.7 Permitting minor females to be inmates.  
 724.8 Detention of females.  
 724.9 Enticing to house of ill fame.  
 724.10 Enticing female child for prostitution.

**724.1 Punishment.** If any person, for the purpose of prostitution or lewdness, resorts to, uses, occupies, or inhabits any house of ill fame or place kept for such purpose, or if any person be found at any hotel, boarding house, cigar store, or other place, leading a life of prostitution or lewdness, such person shall be imprisoned in the penitentiary not more than five years. [C97,§4943; C24, 27, 31, 35, 39,§13173; C46, 50, 54,§724.1]

**724.2 Soliciting.** Any person who shall ask, request, or solicit another to have carnal knowledge with any male or female for a consideration or otherwise, shall be punished by imprisonment in the penitentiary not exceeding five years, or imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both such fine and jail imprisonment. [S13,§4975-c; C24, 27, 31, 35, 39,§13174; C46, 50, 54,§724.2]

**724.3 Keeping house of ill fame.** If any person keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, such person shall be imprisoned in the penitentiary not more than five years. [C51,§2710; R60,§4352; C73,§4013; C97,§4939; C24, 27, 31, 35, 39,§13175; C46, 50, 54,§724.3]

**724.4 Evidence — general reputation.** The state, upon the trial of any person indicted for keeping a house of ill fame, may, for the purpose of establishing the character of the house kept by defendant, introduce evidence of the general reputation of such house as so kept. [C97,§4944; C24, 27, 31, 35, 39,§13176; C46, 50, 54,§724.4]

General reputation, §§123.67, 123.89, 126.17, 128.6, 128.40

**724.5 Terminating lease after conviction.** When a tenant, or anyone claiming under him, is convicted of keeping a house of ill fame, the landlord of the premises may terminate the lease therefor, and recover possession thereof in the manner provided in case of violation of the provisions of title VI, relative to intoxicating liquors. [C51, §2711; R60,§4353; C73,§4014; C97,§4940; C24, 27, 31, 35, 39,§13177; C46, 50, 54,§724.5]

**724.6 Leasing house for prostitution.** If any person let any house, knowing that the lessee intends to use it as a place or resort for the purpose of prostitution and lewdness, or knowingly permit such lessee to use the same for such purpose, he shall be fined not exceeding three hundred dollars, or imprisoned in the

county jail not exceeding six months. [C51, §2712; R60,§4354; C73,§4015; C97,§4941; C24, 27, 31, 35, 39,§13178; C46, 50, 54,§724.6]

**724.7 Permitting minor females to be inmates.** Whoever, being the keeper of a house of prostitution, or assignation house, building, or premises in this state where prostitution, fornication, or concubinage is allowed, or practiced, shall suffer or permit any unmarried female under the age of eighteen years to live, board, stop, or room in such house, building, or premises, shall, on conviction, be imprisoned in the penitentiary not less than one year nor more than five years. [S13,§4944-i; C24, 27, 31, 35, 39,§13179; C46, 50, 54,§724.7]

**724.8 Detention of females.** Whoever shall unlawfully detain or confine any female, by force, false pretense, or intimidation, in any room, house, building, or premises in this state, against the will of such female, for purposes of prostitution or with intent to cause such female to become a prostitute, and be guilty of fornication or concubinage therein, or shall by force, false pretense, confinement, or intimidation attempt to prevent any female so as aforesaid detained, from leaving such room, house, building, or premises, and whoever aids, assists, or abets by force, false pretense, confinement, or intimidation, in keeping, confining, or unlawfully detaining any female in any room, house, building, or premises in this state, against the will of such female, for the purpose of prostitution, fornication, or concubinage, shall, on conviction, be imprisoned in the penitentiary not more than ten years. [S13,§4944-j; C24, 27, 31, 35, 39,§13180; C46, 50, 54,§724.8]

**724.9 Enticing to house of ill fame.** If any person inveigle or entice any female, before reputed virtuous, to a house of ill fame, or knowingly conceal or aid or abet in concealing such female so deluded or enticed, for the purpose of prostitution or lewdness, or entice back into a life of prostitution any female who has theretofore been guilty of prostitution and has abandoned it, he shall be imprisoned in the penitentiary not more than ten years. [C51, §2713; R60,§4355; C73,§4016; C97,§4942; C24, 27, 31, 35, 39,§13181; C46, 50, 54,§724.9]

**724.10 Enticing female child for prostitution.** If any person take or entice away any unmarried female under the age of eighteen years for the purpose of prostitution, he shall be imprisoned in the penitentiary not more

than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2584; R60,

§4207; C73,§3865; C97,§4760; C24, 27, 31, 35, 39, §13182; C46, 50, 54,§724.10]

Corroboration, §782.4

## CHAPTER 725

### OBSCENITY AND INDECENCY

725.1 Lewdness—indecent exposure.  
 725.2 Lascivious acts with children.  
 725.3 Immoral plays, exhibitions, and entertainments.  
 725.4 Obscene books or pictures—printing or distributing.  
 725.5 Obscene literature—articles for immoral use.  
 725.6 Circulating obscene matter.

725.7 Advertising drugs for venereal disease.  
 725.8 Giving or showing obscene literature to minors.  
 725.9 Warrants for search or seizure.  
 725.10 Exceptions — doctors — druggists — artists.  
 725.11 Obscene productions by phonograph.  
 725.12 Exhibition of deformed or abnormal persons.

**725.1 Lewdness—indecent exposure.** If any man and woman not being married to each other, lewdly and viciously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness, and designedly makes an open and indecent or obscene exposure of his or her person, or of the person of another, every such person shall be imprisoned in the county jail not exceeding six months, or be fined not exceeding two hundred dollars. [C51,§2709; R60, §4351; C73,§4012; C97,§4938; C24, 27, 31, 35, 39, §13183; C46, 50, 54,§725.1]

a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [S13,§4944-k; C24, 27, 31, 35, 39,§13185; C46, 50, 54,§725.3]

**725.2 Lascivious acts with children.** Any person over eighteen years of age who shall willfully commit any lewd, immoral, or lascivious act in the presence, or upon or with the body or any part or member thereof, of a child of the age of sixteen years, or under, with the intent of arousing, appealing to, or gratifying the lusts or passions or sexual desires of such person, or of such child, or of corrupting the morals of such child, shall be punished by imprisonment in the penitentiary not more than three years, or by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars. [S13, §4938-a; C24, 27, 31, 35, 39,§13184; C46, 50, 54, §725.2]

**725.4 Obscene books or pictures — printing or distributing.** If any person import, print, publish, sell, or distribute any book, pamphlet, ballad, or any printed or written paper containing obscene language or obscene prints, pictures, or descriptions, manifestly tending to corrupt the morals of youth; or introduce into any family, school, or place of education, or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed or written paper, picture, or description, either for the purpose of loan, sale, exhibition, or circulation, or with intent to introduce the same into any family, school, or place of education, he shall be imprisoned in the penitentiary not more than one year, or be fined not exceeding one thousand dollars. [C51,§2717; R60,§4359; C73,§4022; C97,§4951; C24, 27, 31, 35, 39,§13189; C46, 50, 54,§725.4]

**725.3 Immoral plays, exhibitions, and entertainments.** Any person who, as owner, manager, director, or agent, or in any other capacity, prepares, advertises, gives, presents, or participates in any obscene, indecent, immoral, or impure drama, play, exhibition, show, or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act and every owner or lessee or manager of any garden, building, room, place, or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show, or entertainment, or who assents to the use of the same for any such purpose, if it be so used, shall be guilty of

**725.5 Obscene literature — articles for immoral use.** Whoever sells, or offers for sale, or gives away, or has in his possession with intent to sell, loan, or give away any obscene, lewd, indecent, lascivious, or filthy book, pamphlet, paper, drawing, lithograph, engraving, picture, photograph, writing, card, postal card, model, cast, or any instrument or article of indecent or immoral use, or any medicine, article, or thing designed or intended for procuring abortion or preventing conception, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased, or otherwise obtained or made, shall be guilty of a misdemeanor and be fined not more than one thousand nor less than



fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C97, §4952; S13, §4952; C24, 27, 31, 35, 39, §13190; C46, 50, 54, §725.5]

Referred to in §§725.6, 725.10

**725.6 Circulating obscene matter.** Whosoever deposits in any post office within this state, or places in charge of any person to be carried or conveyed, any of the articles or things named in section 725.5, or any circular, handbill, card, advertisement, book, pamphlet, or notice of any kind, giving information, directly or indirectly, when, how, where, or by what means any of the articles or things mentioned in section 725.5 can be purchased or obtained, or knowingly or willfully receives the same to carry or convey, or knowingly carries or conveys the same in any manner, except in the United States mail, shall be fined not more than one thousand dollars, nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C97, §4953; C24, 27, 31, 35, 39, §13191; C46, 50, 54, §725.6]

Referred to in §725.10

**725.7 Advertising drugs for venereal disease.** Whoever prints or publishes, or causes to be printed or published, in any newspaper published or circulated in this state, any advertisement of medicine, drug, nostrum, or apparatus for the cure of private or venereal disease, or shall circulate or distribute any newspaper containing such an advertisement or notice, shall be guilty of a misdemeanor, and be fined not more than one thousand dollars nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C97, §4954; C24, 27, 31, 35, 39, §13192; C46, 50, 54, §725.7]

Referred to in §725.10

**725.8 Giving or showing obscene literature to minors.** Whoever sells, lends, gives away, or shows, or has in his possession with intent to sell, give away, or show, to any minor, any book, pamphlet, magazine, newspaper, story paper or other paper devoted to the publication, or principally made up of, criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust or crime, or exhibits upon any street or highway, or any place within the view, or which may be within the view, of any minor, any of the above described books, papers, or pictures, or uses or employs any minor to give away, sell, or distribute, or who, having the care, custody, or control of any minor, permits him to sell, give away, or distribute, any such books, papers, or pictures, shall be fined not more than five hundred nor less than fifty dollars, or be imprisoned not more than six months in the county jail, or both. [C97, §4955; C24, 27, 31, 35, 39, §13193; C46, 50, 54, §725.8]

Referred to in §725.10

**725.9 Warrants for search or seizure.** Any magistrate or police judge is authorized, on

complaint supported by oath or affirmation of one or more persons, to issue a warrant, directed to the sheriff of the county within which such complaint is made, or to any constable or police officer within said county, directing him or them, or any of them, to search for, seize and take possession of such books, papers, pictures, circulars, articles, and things named in this chapter; and said magistrate or police judge shall deliver personally, or shall transmit, inclosed and under seal, specimens thereof to the county attorney of his county, and shall deposit within the county jail of his county, or other secure place, as to him shall seem meet, inclosed and under seal, the remainder thereof, and shall, upon the conviction of the person or persons offending under the provisions of this chapter, forthwith, in the presence of the person or persons upon whose complaint the seizure or arrest was made, if he or they shall elect to be present, destroy, or cause to be destroyed, the remainder thereof, and shall cause to be entered upon the record of his court the fact of such destruction. [C97, §4956; C24, 27, 31, 35, 39, §13194; C46, 50, 54, §725.9]

Referred to in §725.10

Search warrant procedure, ch 751

**725.10 Exceptions — doctors — druggists — artists.** Nothing in sections 725.5 to 725.9, inclusive, shall be construed to affect teaching in regularly chartered medical colleges, or the publication or use of standard medical books, or the practice of regular practitioners of medicine or druggists in their regular business, or the possession by artists of models in the necessary line of their art. [C97, §4957; C24, 27, 31, 35, 39, §13195; C46, 50, 54, §725.10]

**725.11 Obscene productions by phonograph.** If any person exhibit through a phonograph, or any other instrument for receiving and reproducing the human voice, any story, song, or any other matter containing any obscene, indecent, or immoral language, he shall be imprisoned in the penitentiary not more than one year, or be fined not exceeding one thousand dollars. [C97, §4958; C24, 27, 31, 35, 39, §13196; C46, 50, 54, §725.11]

**725.12 Exhibition of deformed or abnormal persons.** Any person, firm, or corporation who shall exhibit, place on exhibition, or cause to be exhibited in any public place in the state, or in any tent, shed, booth, building, or in any theater, hall, or within any inclosure in the state, any deformed, maimed, idiotic, or abnormal person or human monstrosity, and receive any fee or compensation therefor, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for a term not less than ten days nor more than thirty days, or be punished by both such fine and imprisonment. [S13, §4975-1a; C24, 27, 31, 35, 39, §13197; C46, 50, 54, §725.12]

## CHAPTER 726

## GAMBLING

Possession of gambling devices—licenses revoked, ch 99A

- 726.1 Keeping gambling houses.  
 726.2 "Keeper" defined.  
 726.3 Gaming and betting—penalty.  
 726.4 Wagers—forfeiture.  
 726.5 Possession of gambling devices prohibited.

- 726.6 Pool selling—places used for.  
 726.7 Bullfights and other contests.  
 726.8 Lotteries and lottery tickets.  
 726.9 Minors in billiard rooms — duty of owner.  
 726.10 Punishment.

**726.1 Keeping gambling houses.** If any person keep a house, shop, or place resorted to for the purpose of gambling, or permit or suffer any person in any house, shop, or other place under his control or care to play at cards, dice, faro, roulette, equality, punchboard, slot machine or other game for money or other thing, such offender shall be fined in a sum not less than fifty nor more than three hundred dollars, or be imprisoned in the county jail not exceeding one year, or both. [C51,§2721; R60, §4363; C73,§4026; C97,§4962; C24, 27, 31, 35, 39, §13198; C46, 50, 54,§726.1]

C97,§4962, editorially divided  
 Referred to in §726.2

**726.2 "Keeper" defined.** In a prosecution under section 726.1, any person who has the charge of or attends to any such house, shop, or place is the keeper thereof. [C51,§2721; R60,§4363; C73,§4026; C97,§4962; C24, 27, 31, 35, 39,§13199; C46, 50, 54,§726.2]

**726.3 Gaming and betting—penalty.** If any person play at any game for any sum of money or other property of any value, or make any bet or wager for money or other property of value, he shall be guilty of a misdemeanor. [C51,§2723; R60,§4365; C73,§4028; C97,§4964; C24, 27, 31, 35, 39,§13202; C46, 50, 54,§726.3]

Punishment, §687.7

**726.4 Wagers—forfeiture.** Property, whether real or personal, offered as a stake, or any moneys, property, or other thing of value staked, paid, bet, wagered, laid, or deposited in connection with or as a part of any game of chance, lottery, gambling scheme or device, gift enterprise, or other trade scheme unlawful under the laws of this state shall be forfeited to the state and said personal property may be seized and disposed of under chapter 751. [C24, 27, 31, 35, 39,§13203; C46, 50, 54,§726.4]

Referred to in §751.3

**726.5 Possession of gambling devices prohibited.** No one shall, in any manner or for any purpose whatever, except under proceeding to destroy the same, have, keep, or hold in possession or control any roulette wheel, klon-dyke table, poker table, punchboard, faro, or keno layouts or any other machines used for gambling, or any slot machine or device with an element of chance attending such operation. [S13,§4965-a; C24, 27, 31, 35, 39,§13210; C46, 50, 54,§726.5]

Referred to in §751.3  
 See ch 99A

**726.6 Pool selling—places used for.** Any person who records or registers bets or wagers or sells pools upon the result of any trial or contest of skill, speed, or power of endurance of man or beast, or upon the result of any political nomination or election, and any person who keeps a place for the purpose of doing any such thing, and any owner, lessee, or occupant of any premises, who knowingly permits the same, or any part thereof, to be used for any such purpose, and anyone who, as custodian or depositary thereof, for hire or reward, receives any money, property, or thing of value staked, wagered, or bet upon any such result, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both. [C97,§4966; C24, 27, 31, 35, 39,§13216; C46, 50, 54, §726.6]

Referred to in §99.1

**726.7 Bullfights and other contests.** If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other creatures, he shall be guilty of a misdemeanor. [C73,§4033; C97,§4971; C24, 27, 31, 35, 39,§13217; C46, 50, 54,§726.7]

Punishment, §687.7

**726.8 Lotteries and lottery tickets.** If any person make or aid in making or establishing, or advertise or make public any scheme for any lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive any ticket or part of a ticket in any lottery or number thereof; or have in his possession any ticket, part of a ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his own account or as the agent of another, he shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars, or both. [C51,§2730; R60, §4377; C73,§4043; C97,§5000; C24, 27, 31, 35, 39, §13218; C46, 50, 54,§726.8]

**726.9 Minors in billiard rooms — duty of owner.** No person who keeps a billiard hall where beer is sold, or the agent, clerk, or servant of any such person, or any person having charge or control of any such hall, shall

permit any minor to remain in such hall, or to take part in any of the games known as billiards. The council in any city or town shall have power by ordinance to establish minimum age limits for minors for the purpose of regulating their admittance to billiard halls which do not sell beer and their participation while therein in the games known as pool and billiards. [C97,§5002; C24, 27, 31, 35, 39,§13219; C46, 50, 54,§726.9; 57GA, ch 273,§1]

C97,§5002, editorially divided  
Referred to in §726.10

**726.10 Punishment.** A violation of the provisions of section 726.9 shall be punished by a fine not less than five nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C97, §5002; C24, 27, 31, 35, 39,§13220; C46, 50, 54, §726.10]

## CHAPTER 727

### AFFRAYS AND PRIZE FIGHTING

727.1 "Affray" defined.  
727.2 Engaging in prize fight.  
727.3 Aiding or abetting.

727.4 Prevention of prize fights by peace officer.  
727.5 Boxing contest—sparring exhibition.

**727.1 "Affray" defined.** If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place, to the disturbance of others, they are guilty of an affray, and shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51,§2738; R60,§4386; C73,§4065; C97,§5029; C24, 27, 31, 35, 39,§13221; C46, 50, 54, §727.1]

**727.2 Engaging in prize fight.** Whoever engages as principal in any prize fight shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the penitentiary for a term of not more than one year, or both. [C97,§5036; C24, 27, 31, 35, 39, §13222; C46, 50, 54,§727.2]

**727.3 Aiding or abetting.** Whoever aids or assists in any prize fight shall be fined not exceeding five hundred dollars, or imprisoned in the county jail for not more than one hundred fifty days. [C97,§5037; C24, 27, 31, 35, 39, §13223; C46, 50, 54,§727.3]

**727.4 Prevention of prize fights by peace officer.** Any peace officer who has reason to

believe that any persons are about to engage in a prize fight within the state shall make complaint before some justice of the peace of the county, or other authorized magistrate, and thereupon such justice of the peace or authorized magistrate shall proceed, under chapter 760, to make examination of the charges, and, if he shall find that there is just reason to fear the commission of such offense, he shall require security to keep the peace, to be given as therein provided. [C97,§5038; C24, 27, 31, 35, 39, §13224; C46, 50, 54,§727.4]

**727.5 Boxing contest—sparring exhibition.** Whoever engages in any boxing contest or sparring exhibition with or without gloves for a prize, reward, or anything of value, at which an admission fee is charged or received, either directly or indirectly, and whoever knowingly aids, abets, or assists in any such boxing contest or sparring exhibition, and any owner or lessee of any ground, lot, building, hall, or structure of any kind knowingly permitting the same to be used for such boxing contest or sparring exhibition, shall be fined not exceeding three hundred dollars, or imprisoned in the county jail not exceeding ninety days. [S13, §5038-a; C24, 27, 31, 35, 39,§13225; C46, 50, 54, §727.5]

## CHAPTER 728

### PROFANITY

728.1 Using blasphemous or obscene language.

**728.1 Using blasphemous or obscene language.** If any person publicly use blasphemous or obscene language, to the disturbance of the public peace and quiet, he shall be im-

prisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C97,§5034; S13,§5034; C24, 27, 31, 35, 39,§13226; C46, 50, 54,§728.1]

## CHAPTER 729

### DESECRATION OF SABBATH

Repealed by 56GA, ch 278,§1

CHAPTER 730

DESECRATION OF DECORATION DAY

730.1 Ball games and other sports.

730.2 Punishment.

**730.1 Ball games and other sports.** It shall be unlawful to engage in ball games, horse racing, or sports or entertainments that will interfere with the proper observance of the day which is set apart as Decoration Day (May 30), prior to the hour of three o'clock p.m. of said day. [S13,§5040-a; C24, 27, 31, 35, 39,§13228; C46, 50, 54,§730.1]

S13,§5040-a, editorially divided  
Referred to in §730.2

**730.2 Punishment.** Any violation of section 730.1 shall be punishable by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days in the discretion of the court. [S13,§5040-a; C24, 27, 31, 35, 39,§13229; C46, 50, 54,§730.2]

CHAPTER 731

DESERTION AND ABANDONMENT OF WIFE AND CHILDREN

Referred to in §675.29

731.1 "Desertion" defined.

731.2 Husband or wife may be witness.

731.3 Release on bond conditioned on support.

731.4 Annulment of bond.

731.5 Failure of undertaking — commitment — release.

731.6 Prima-facie evidence.

731.7 Exposing and abandoning child.

**731.1 "Desertion" defined.** Every person who shall, without good cause, willfully neglect or refuse to maintain or provide for his wife, she being in a destitute condition, or who shall, without good cause, abandon his or her legitimate or legally adopted child or children under the age of sixteen years, leaving such child or children in a destitute condition, or shall, without good cause, willfully neglect or refuse to provide for such child or children, they being in a destitute condition, shall be deemed guilty of desertion and, upon conviction, shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for not more than six months. [S13,§4775-a; C24, 27, 31, 35, 39,§13230; C46, 50, 54,§731.1]

**731.2 Husband or wife may be witness.** In all prosecutions under this chapter, the husband or wife shall be a competent witness for the state and may testify to any relevant acts or communications between them, anything in previous statutes to the contrary notwithstanding, provided, however, that no husband or wife shall be called or compelled to testify against the other under this chapter except upon consent of such witness. [S13,§4775-b; C24, 27, 31, 35, 39,§13231; C46, 50, 54,§731.2]

General prohibition, §622.7

**731.3 Release on bond conditioned on support.** If after arrest and before trial, or after conviction and before sentence, the party so arrested or convicted shall appear before the court in which the case is pending or the conviction had, and enter into a bond to the state in a sum to be fixed by the court, which in no event shall exceed the sum of one thousand dollars, with or without sureties as may be

determined by the court, conditioned that such husband will furnish said wife with a necessary and proper home, food, care, and clothing, or that such parent will furnish his or her child or children with a necessary and proper home, food, care, and clothing, then said court may release the defendant. [S13,§4775-c; C24, 27, 31, 35, 39,§13232; C46, 50, 54,§731.3]

S13,§4775-c, editorially divided

**731.4 Annulment of bond.** Said bond shall remain in force so long as the court deems the same necessary; and whenever it shall appear to said court by affidavit or otherwise that such husband or parent is in good faith furnishing his wife, child, or children with the necessary and proper home, food, care, and clothing, the court may annul the said bond. [S13,§4775-c; C24, 27, 31, 35, 39,§13233; C46, 50, 54,§731.4]

**731.5 Failure of undertaking—commitment—release.** Upon failure of said husband or parent to comply with his undertaking he or she may be arrested by the sheriff or other officer upon a warrant issued from the court in which the case is pending or the conviction was had and the court may thereupon order a forfeiture of the undertaking and that the defendant be tried or committed in execution of the sentence, or for good cause shown may release the defendant upon a new undertaking. [S13,§4775-d; C24, 27, 31, 35, 39,§13234; C46, 50, 54,§731.5]

**731.6 Prima-facie evidence.** Proof of the desertion of wife, child, or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary

and proper food, clothing, or shelter, shall be prima-facie evidence that such desertion or neglect was willful. [S13,§4775-e; C24, 27, 31, 35, 39,§13235; C46, 50, 54,§731.6]

**731.7 Exposing and abandoning child.** If the father or mother of any child under the age of six years, or any person to whom such

child has been entrusted or confided, expose such child in any highway, street, field, house, or outhouse, or in any other place, with intent wholly to abandon it, he or she, upon conviction thereof, shall be imprisoned in the penitentiary not exceeding five years. [C51,§2589; R60,§4212; C73,§3870; C97,§4766; C24, 27, 31, 35, 39,§13236; C46, 50, 54,§731.7]

## CHAPTER 731A

### WANTON NEGLECT OF CHILDREN

731A.1 Wanton neglect unlawful.  
731A.2 Definition.

731A.3 Punishment.  
731A.4 Jurisdiction and appeal.

**731A.1 Wanton neglect unlawful.** Wanton neglect on the part of a parent in the care or supervision of his or her child under the age of eighteen years shall be unlawful. [C50, 54, §731A.1]

Referred to in §§731A.2, 731A.3

**731A.2 Definition.** "Wanton neglect" as contemplated by section 731A.1 is willful neglect of such a nature, arising under such circumstances as a parent of ordinary intelligence actuated by normal and natural concern for the welfare of the child would not permit or be a party to. [C50, 54, §731A.2]

**731A.3 Punishment.** A violation of section 731A.1 shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [C50, 54, §731A.3]

**731A.4 Jurisdiction and appeal.** Juvenile courts shall have jurisdiction in the prosecu-

tion of the offense set forth herein, though the defendant or defendants in such actions be adults. Said proceedings in juvenile court shall be commenced by filing a sworn complaint or information and the matter shall be tried summarily and without a jury. Provided, however, that prior to the filing of such complaint or information the probation officer for the territory in question, or the county attorney, shall make such investigation as he may deem necessary, and no such complaint or information shall be filed without the approval of such probation officer or county attorney, except by order of a judge of the juvenile court. Any defendant convicted upon such trial shall have the right of appeal and trial de novo, including the right of trial by jury, in the district court, the same as in case of appeals thereto from the justice courts. [C50, 54, §731A.4]

## CHAPTER 732

### PUBLIC HEALTH AND SAFETY

732.1 Spreading infectious disease.  
732.2 Putting infected person on public conveyance.  
732.3 Throwing dead animals or refuse in stream.  
732.4 Selling drugged liquors.  
732.5 Disposing of liquors to Indians.  
732.6 Use of dangerous fluids forbidden.  
732.7 Punishment.  
732.8 Depositing samples on porches.  
732.9 Punishment.  
732.10 Stench bombs, etc., prohibited.  
732.11 Manufacture or possession.  
732.12 General exceptions.  
732.13 Specific exceptions.

732.14 Punishment.  
732.15 Endurance contests.  
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#### FIREWORKS

732.17 Definitions.  
732.18 Supervised exhibitions—permit.  
732.19 Penalties.

#### ABANDONED REFRIGERATORS

732.20 Nuisance declared.  
732.21 Offense defined.  
732.22 Owner or occupant of premises also liable.  
732.23 Penalty.

**732.1 Spreading infectious disease.** If any person inoculate himself or any other person or suffer himself to be inoculated with the smallpox within the state, or come within the state with the intent to cause the prevalence or spread of this infectious disease, he shall be

imprisoned in the penitentiary not more than three years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C51,§2729; R60, §4375; C73,§4039; C97,§4977; C24, 27, 31, 35, 39, §13237; C46, 50, 54,§732.1]

**732.2 Putting infected person on public conveyance.** If any person shall place or put, or aid or abet in placing or putting, any person upon any railroad car, steamboat, or other public conveyance, knowing such person to be infected with diphtheria, smallpox, or scarlet fever, he shall be fined not more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C51,§2729; R60,§4375; C73,§4039; C97,§4978; C24, 27, 31, 35, 39,§13238; C46, 50, 54,§732.2]

**732.3 Throwing dead animals or refuse in stream.** If any person throw, or cause to be thrown, any dead animal, night soil, or garbage into any river, well, spring, cistern, reservoir, stream, or pond, or in or upon any land adjoining, which is subject to overflow, he shall be imprisoned in the county jail not less than ten nor more than thirty days, or be fined not less than five nor more than one hundred dollars. [C73,§4041; C97,§4979; S13, §4979; C24, 27, 31, 35, 39,§13239; C46, 50, 54, §732.3]

**732.4 Selling drugged liquors.** If any person willfully sell or keep for sale intoxicating, malt, or vinous liquors, which have been adulterated or drugged by admixture with any deleterious or poisonous substance, he shall be fined not exceeding five hundred dollars, or be imprisoned in the penitentiary not exceeding two years. [R60,§4376; C73,§4040; C97,§4980; C24, 27, 31, 35, 39,§13240; C46, 50, 54,§732.4]

Related provision, §690.11

**732.5 Disposing of liquors to Indians.** If any person give, sell, or dispose of any spirituous or intoxicating drinks to any Indian within this state, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year, or both. [C51,§2735; R60,§4378; C73,§4044; C97,§5001; C24, 27, 31, 35, 39,§13241; C46, 50, 54,§732.5]

**732.6 Use of dangerous fluids forbidden.** It shall be unlawful for any person to establish or operate any dye works, pantorium, or cleaning works, in which gasoline, benzine, naphtha, or other explosive or dangerous fluids are used for the purpose of cleaning or renovating wearing apparel or other fabrics, in any building any part of which is used as a residence or lodging house. [S13,§4999-a13; C24, 27, 31, 35, 39,§13242; C46, 50, 54,§732.6]

Referred to in §732.7

**732.7 Punishment.** Any person convicted of violating the provisions of section 732.6 shall be fined in a sum not exceeding fifty nor less than ten dollars. [S13,§4999-a14; C24, 27, 31, 35, 39,§13243; C46, 50, 54,§732.7]

**732.8 Depositing samples on porches.** It shall be unlawful for any person, firm, company, or corporation, either in person or by agent, to deposit any sample of any drugs or medicine upon any porch, lawns, in any vehicle, or any other place where such drugs or

medicine might be picked up by children or other persons. [S13,§4999-a42; C24, 27, 31, 35, 39,§13244; C46, 50, 54,§732.8]

Referred to in §732.9

**732.9 Punishment.** Any person, firm, company, corporation, or agent thereof violating the provisions of section 732.8, shall be guilty of a misdemeanor. [S13,§4999-a43; C24, 27, 31, 35, 39,§13245; C46, 50, 54,§732.9]

Punishment, §687.7

**732.10 Stench bombs, etc., prohibited.** It shall be unlawful to throw, drop, pour, explode, deposit, release, discharge, or expose, or to attempt to throw, drop, pour, explode, deposit, release, discharge, or expose in, upon, or about any theater, restaurant, car, vessel, structure, place of business, place of amusement, or any place of public assemblage, any stench bomb, tear bomb, liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating, or offensive to any of the senses. [C35,§13245-e1; C39,§13245.01; C46, 50, 54,§732.10]

Referred to in §§732.12, 732.14

**732.11 Manufacture or possession.** It shall be unlawful to manufacture or prepare, or to possess any stench bomb, tear bomb, liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating, or offensive, to any of the senses with intent to throw, drop, pour, explode, deposit, release, discharge, or expose the same in, upon, or about any theater, restaurant, car, vessel, structure, place of business, place of amusement, or any other place of public assemblage. [C35,§13245-e2; C39,§13245.02; C46, 50, 54,§732.11]

Referred to in §§732.12, 732.13, 732.14

**732.12 General exceptions.** The provisions of sections 732.10 to 732.14, inclusive, shall not apply to any duly constituted police or military authorities or prison officials or peace officers in the discharge of their duties. [C35, §13245-e3; C39,§13245.03; C46, 50, 54,§732.12]

Referred to in §732.14

**732.13 Specific exceptions.** The provisions of section 732.11 shall not apply to licensed physicians, nurses, pharmacutists, and other persons licensed under the laws of this state; nor to any established place of business or home having tear gas installed as a protection against burglary, robbery, or holdup, nor to any bank or other messenger carrying funds or other valuables; nor to any manufacturer or representative thereof who maintains a permanent place of business in this state for the purpose of manufacturing and/or selling tear gas and tear-gas equipment for such protection, or of supplying tear gas and equipment therefor to regularly constituted peace officers. [C35, §13245-e4; C39,§13245.04; C46, 50, 54,§732.13]

Referred to in §§732.12, 732.14

**732.14 Punishment.** Every person violating any of the provisions of sections 732.10 to

732.14, inclusive, shall be punishable by imprisonment in the county jail for not less than three months and not more than one year, or by a fine of not less than five hundred dollars and not more than two thousand dollars, or by both such fine and imprisonment. [C35, §13245-e5; C39, §13245.05; C46, 50, 54, §732.14]

Referred to in §732.12

**732.15 Endurance contests.** It shall be unlawful for any person or persons, firm or corporation to advertise, operate, maintain, attend, promote or aid in the advertising, operating, maintaining or promoting any mental or physical endurance contest in the nature of a "marathon", "walkathon", "skatathon", or any other such endurance contest of a like or similar character or nature, whether under that or other names. Nothing in this section or section 732.16 shall apply to the continuance of the ordinary amateur or professional athletic events or contests, or high school, college, and intercollegiate athletic sports. [C35, §13245-f1; C39, §13245.06; C46, 50, 54, §732.15]

Referred to in §732.16

**732.16 Penalty.** Any person or persons, firm or corporation participating in, attending or promoting any such contest and violating any of the provisions of section 732.15 shall be fined not less than one hundred dollars, or more than one thousand dollars, or be imprisoned not more than one year or both. [C35, §13245-f2; C39, §13245.07; C46, 50, 54, §732.16]

Referred to in §732.15

#### FIREWORKS

**732.17 Definitions.** The term "fireworks" shall mean and include any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or other device containing any explosive substance. [C39, §13245.08; C46, 50, 54, §732.17]

Referred to in §§732.18, 732.19  
See also §§111.42, 368.11, 695.27

**732.18 Supervised exhibitions—permit.** Except as hereinafter provided it shall be unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided the council of any city or town or the trustees of any township may, upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by such city, town, or township authorities when such fireworks display will be handled by a

competent operator but no such permit shall be required for such display of fireworks at the Iowa state fairgrounds by the Iowa state fair board nor of incorporated county fairs nor of district fairs receiving state aid. After such privilege shall have been granted sales of fireworks for such display may be made for that purpose only; provided further, that nothing in sections 732.17 to 732.19, inclusive, shall be construed to prohibit any resident, dealer, manufacturer, or jobber from selling such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped out of the state; or the sale or use of blank cartridges for a show or theater, or for signal purposes in athletic sports or by railroads, trucks, for signal purposes, or by a recognized military organization; and provided further that nothing in said sections shall apply to any substance or composition prepared and sold for medicinal or fumigation purposes. [C39, §13245.09; C46, 50, 54, §732.18]

Referred to in §732.19  
See also §§111.42, 695.27

**732.19 Penalties.** Any person, firm, copartnership, or corporation violating the provisions of sections 732.17 and 732.18 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. [C39, §13245.10; C46, 50, 54, §732.19]

Referred to in §732.18

#### ABANDONED REFRIGERATORS

**732.20 Nuisance declared.** Discarded, abandoned, unattended, or used refrigerators, iceboxes and similar containers with doors that may become locked, located or allowed to be located on premises outside buildings or residences and accessible to children, are hereby declared to be dangerous and to constitute a public nuisance and a serious menace to life. [56GA, ch 274, §1]

Referred to in §732.23

**732.21 Offense defined.** It shall be unlawful for any person, firm, copartnership, or corporation to place or allow to be placed outside any building or dwelling, or within any unoccupied or abandoned building, dwelling or other structure under his or its control, in a location accessible to children any discarded, abandoned, unattended, or used refrigerators, icebox or other similar container equipped with an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing said door or lid, snap lock or other locking device from said icebox, refrigerator or similar container. [56 GA, ch 274, §2]

Referred to in §732.23

**732.22 Owner or occupant of premises also liable.** The duties of this chapter are imposed alike on the owner of the refrigerator, icebox or similar container and the owner or occupant

of premises where the icebox, refrigerator or similar container is permitted to remain. [56 GA, ch 274,§3]

Referred to in §732.23

**732.23 Penalty.** Any person, firm, copartnership, or corporation violating any of the provisions of sections 732.20 to 732.22, inclu-

sive, shall be guilty of a misdemeanor, and upon conviction thereof, be fined in a sum not to exceed one hundred dollars, or imprisoned in the county jail for a period not to exceed thirty days, and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. [56GA, ch 274,§4]

CHAPTER 733  
DISEASED PLANTS

Iowa Crop Pest Act, ch 267

733.1 Cultivating or selling diseased plants.  
733.2 Seizure of diseased plants.

733.3 Destruction of diseased plants.

**733.1 Cultivating or selling diseased plants.** If any person use, transplant, cultivate, or sell, or bring into this state for the purpose of using, planting, cultivating, or selling, any hop roots, plants, or cuttings which may be diseased in any manner, or infected with lice or vermin of any kind, or which may be brought from any state or country in which the cultivation of hops has been retarded or impaired by the presence of any disease, lice, or vermin of a contagious character, he shall be fined not less than ten, nor more than one hundred dollars, and imprisoned not less than five nor more than twenty days. [C73,§4060; C97,§5022; C24, 27, 31, 35, 39,§13246; C46, 50, 54,§733.1]

Referred to in §733.2

**733.2 Seizure of diseased plants.** If complaint is made before a justice of the peace by one or more responsible persons, that they have good reason to believe that hop roots have been introduced into or are being cultivated in the city or township where they reside, in violation of section 733.1, the justice

before whom such complaint is made shall issue a warrant authorizing any peace officer to seize such roots, and they shall be held in charge by such officer until action has been brought against the person so offending, and the cause determined. [C73,§4061; C97,§5023; C24, 27, 31, 35, 39,§13247; C46, 50, 54,§733.2]

C97,§5023, editorially divided

**733.3 Destruction of diseased plants.** In case it is found that the said plants, roots, or cuttings are diseased, or are infected by lice or vermin of a contagious character, the officer before whom it is brought shall order the said roots, plants, or cuttings to be burned, charging the expense of doing the same as costs upon the party owning or cultivating the roots, plants, or cuttings; and in no case shall he allow them to be planted or delivered to a third party until the fact is established that they are not infected with any vermin or disease of a contagious character. [C73,§4061; C97,§5023; C24, 27, 31, 35, 39,§13248; C46, 50, 54, §733.3]

CHAPTER 734  
DESTRUCTION OF FOOD PRODUCTS

734.1 Waste of food products to increase price.

734.2 Punishment.

**734.1 Waste of food products to increase price.** It shall be unlawful for any person, firm, or corporation to willfully destroy, or negligently suffer to go to waste, with intent to increase the price thereof, any food products of any nature or description, without the authority or consent of the local board of health or local health officer of the city, town, or township in which the food products are located. [C24, 27, 31, 35, 39,§13249; C46, 50, 54, §734.1]

Referred to in §734.2

**734.2 Punishment.** Any person, firm, or corporation violating any of the provisions of section 734.1 shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine in a sum not more than one thousand dollars, or be imprisoned for any length of time not exceeding one year, or be punished by both such fine and imprisonment. [C24, 27, 31, 35, 39,§13250; C46, 50, 54,§734.2]



## CHAPTER 735

## INFRINGEMENT OF CIVIL RIGHTS

735.1 Civil rights defined.  
735.2 Punishment.  
735.3 Religious test.

735.4 Evidence.  
735.5 Penalty.

**735.1 Civil rights defined.** All persons within this state shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, restaurants, chophouses, eating houses, lunch counters, and all other places where refreshments are served, public conveyances, barber shops, bathhouses, theaters, and all other places of amusement. [C97,§5008; C24, 27, 31, 35, 39,§13251; C46, 50, 54,§735.1]

Referred to in §735.2

**735.2 Punishment.** Any person who shall violate the provisions of section 735.1 by denying to any person, except for reasons by law applicable to all persons, the full enjoyment of any of the accommodations, advantages, facilities, or privileges enumerated therein, or by aiding or inciting such denial, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail not to exceed thirty days. [C97,§5008; C24, 27, 31, 35, 39, §13252; C46, 50, 54,§735.2]

**735.3 Religious test.** Any violation of section 4, Article I of the constitution of Iowa is hereby declared to be a misdemeanor. [C35, §13252-f1; C39,§13252.1; C46, 50, 54,§735.3]

Referred to in §§735.4, 735.5

**735.4 Evidence.** If any person, agency, bureau, corporation, or association employed or maintained to obtain, or aid in obtaining, positions for others in the public schools, or positions in any other public institutions in the state, or any individual or official connected with any public school or public institution shall ask, indicate, or transmit orally or in writing the religion or religious affiliations of any person seeking employment in the public schools or any other public institutions, it shall constitute evidence of a violation of section 735.3. [C35,§13252-f2; C39,§13252.2; C46, 50, 54,§735.4]

Referred to in §735.5

**735.5 Penalty.** Any person, agency, bureau, corporation, or association that violates provisions of sections 735.3 and 735.4 shall be guilty of a misdemeanor and upon conviction be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment. [C35,§13252-f3; C39,§13252.3; C46, 50, 54,§735.5]

## CHAPTER 736

## BLACKLISTING EMPLOYEES

736.1 Punishment.  
736.2 Blacklisting employees—treble damages.

736.3 False charges concerning honesty.

**736.1 Punishment.** If any person, agent, company, or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of his discharge, such person, agent, company, or corporation shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and shall be liable for all damages sustained by any such person. [C97,§5027; C24, 27, 31, 35, 39,§13253; C46, 50, 54,§736.1]

Referred to in §736.2

**736.2 Blacklisting employees—treble damages.** If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by

word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 736.1, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment. [C97,§5028; C24, 27, 31, 35, 39, §13254; C46, 50, 54,§736.2]

**736.3 False charges concerning honesty.** Every person who shall by any letter, mark, sign, or designation whatever, or by any verbal statement, falsely and without probable cause, report to any railroad or any other company or corporation, or to any person or firm, or to any of the officers, servants, agents, or employees of any such corporation, person, or firm, that any conductor, brakeman, engineer, fireman, station agent, or any employee of such railroad company, corporation, person, or firm

has received any money or thing of value for the transportation of persons or property or for other service for which he has not accounted to such corporation, person, or firm, or shall falsely and without probable cause report that any conductor, brakeman, engineer, fireman, station agent, or other employee of any railroad company, corporation, firm, or person, neglected, failed, or refused to collect any

money or ticket for transportation of persons or property or other service when it was their duty so to do, shall, on conviction, be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or be imprisoned in the county jail for a period not exceeding thirty days. [SS15,§5028-w1; C24, 27, 31, 35, 39,§13255; C46, 50, 54,§736.3]

## CHAPTER 736A

### LABOR UNION MEMBERSHIP

736A.1 Right to join union.

736A.2 Refusal to employ prohibited.

736A.3 Contracts to exclude unlawful.

736A.4 Union dues as prerequisite to employment—prohibited.

736A.5 Deducting dues from pay unlawful.

736A.6 Penalty.

736A.7 Injunction.

736A.8 Exception.

**736A.1 Right to join union.** It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at his chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void. [C50, 54,§736A.1]

**736A.2 Refusal to employ prohibited.** It shall be unlawful for any person, firm, association or corporation to refuse or deny employment to any person because of membership in, or affiliation with, or resignation or withdrawal from, a labor union, organization or association, or because of refusal to join or affiliate with a labor union, organization or association. [C50, 54,§736A.2]

**736A.3 Contracts to exclude unlawful.** It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom. [C50, 54, §736A.3]

**736A.4 Union dues as prerequisite to employment—prohibited.** It shall be unlawful for any person, firm, association, labor organization or corporation, or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines or assessments to any labor union, labor association or labor organization. [C50, 54,§736A.4]

**736A.5 Deducting dues from pay unlawful.**

It shall be unlawful for any person, firm, association, labor organization or corporation to deduct labor organization dues, charges, fees, contributions, fines or assessments from an employee's earnings, wages or compensation, unless the employer has first been presented with an individual written order therefor signed by the employee, and by his or her spouse, if married, in the manner set forth in section 539.4, which written order shall be terminable at any time by the employee giving at least thirty days written notice of such termination to the employer. [C50, 54,§736A.5]

**736A.6 Penalty.** Any person, firm, association, labor organization, or corporation or any director, officer, representative, agent or member thereof, who shall violate any of the provisions of this chapter or who shall aid and abet in such violation shall be deemed guilty of a misdemeanor. [C50, 54,§736A.6]

**736A.7 Injunction.** Additional to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor association or labor organization, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable. [C50, 54,§736A.7]

**736A.8 Exception.** The provisions of this chapter shall not apply to employers or employees covered by the Federal Railroad Labor Act.\* [C50, 54,§736A.8]

\*45 U.S.C. ch 8  
Constitutionality, 52GA, ch 296,§8

## CHAPTER 736B

## LABOR BOYCOTTS AND STRIKES

736B.1 Contracting to boycott or strike in sympathy.

736B.2 Carrying out boycott or strike.

736B.3 Jurisdictional strike or slow-down.

736B.4 Penalty.

736B.5 Injunction.

**736B.1 Contracting to boycott or strike in sympathy.** It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or otherwise deal with any articles, products or materials:

1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or

2. To force or require any person, firm or corporation to cease selling, transporting or delivering goods or products to any other person, firm or corporation, or

3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association or organization, or

4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization. [C50, 54, §736B.1]

Referred to in §736B.2

**736B.2 Carrying out boycott or strike.** It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents, or a member or members thereof to carry out or attempt to carry out in this state any contract, agreement, arrange-

ment, combination or conspiracy declared unlawful in section 736B.1. [C50, 54, §736B.2]

**736B.3 Jurisdictional strike or slow-down.** It shall be unlawful for any labor union, group, association or organization, or the officers, representatives, agents or members thereof, to cause a stoppage or slow-down of the work or a part of the work of an employer because of a dispute between labor unions, groups, associations or organizations, or the officers, representatives, agents or members thereof, with respect to jurisdiction over, or the right to do the work or a part of the work of such employer. [C50, 54, §736B.3]

**736B.4 Penalty.** Any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for a period of not more than thirty days. [C50, 54, §736B.4]

**736B.5 Injunction.** Additionally to the penal provisions of this chapter, any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable. [C50, 54, §736B.5]

Constitutionality, 52GA, ch 297, §6

## CHAPTER 737

## LIBEL

737.1 "Libel" defined.

737.2 Punishment.

737.3 Indictment for libel.

737.4 Truth given in evidence.

737.5 Publication.

737.6 What constitutes publication.

737.7 Jury determines law and fact.

**737.1 "Libel" defined.** A libel is the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy, tending to provoke him to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation, made public as aforesaid, designed to blacken and

vulgarize the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends. [C51, §2767; R60, §4417; C73, §4097; C97, §5086; C24, 27, 31, 35, 39, §13256; C46, 50, 54, §737.1]

**737.2 Punishment.** Every person who makes, composes, dictates, or procures the same to be done, or who willfully publishes

or circulates such libel, or in any way knowingly or willfully aids or assists in making, publishing, or circulating the same, shall be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars. [C51,§2768; R60,§4418; C73,§4098; C97,§5087; C24, 27, 31, 35, 39,§13257; C46, 50, 54,§737.2]

**737.3 Indictment for libel.** An indictment for a libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter upon which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. [C51,§2924; R60,§4664; C73, §4310; C97,§5294; C24, 27, 31, 35, 39,§13258; C46, 50, 54,§737.3]

Indictments in general, ch 773  
Similar provision, §659.1

**737.4 Truth given in evidence.** In all prosecutions or indictments for libel, the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was true, and was pub-

lished with good motives and for justifiable ends, the defendant shall be acquitted. [C51, §2769; R60,§4419; C73,§4099; C97,§5088; C24, 27, 31, 35, 39,§13259; C46, 50, 54,§737.4]

**737.5 Publication.** No printing, writing, or other thing is a libel unless there has been a publication thereof. [C51,§2770; R60,§4420; C73,§4100; C97,§5089; C24, 27, 31, 35, 39,§13260; C46, 50, 54,§737.5]

**737.6 What constitutes publication.** The delivering, selling, reading, or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated, to one or more persons or to the party libeled, is a publication thereof. [C51,§2771; R60,§4421; C73,§4101; C97,§5090; C24, 27, 31, 35, 39,§13261; C46, 50, 54,§737.6]

**737.7 Jury determines law and fact.** In all prosecutions for libel, the jury, after having received the direction of the court, shall have the right to determine at its discretion the law and the fact. [C51,§§2772, 3015; R60,§§4422, 4811; C73,§§4102, 4438; C97,§5091; C24, 27, 31, 35, 39,§13262; C46, 50, 54,§737.7]

Question of law for jury, §780.23

## CHAPTER 738

### BRIBERY AND CORRUPTION IN ELECTIONS

Referred to in §43.5

For chapters applicable to primary elections, see §43.5  
Offenses under primary election law, §§43.119, 43.120

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| 738.2 Bribe to refrain from voting—payment for work on election day. | 738.18 Misconduct to avoid election.              |
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**738.1 Bribing electors—fine.** Any person offering or giving a bribe to any elector for the purpose of influencing his vote at any election authorized by law, or any elector entitled to vote at such election receiving such bribe, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding one year, or both. [C51,§2691; R60,§4333; C73,§3993; C97,§4914; C24, 27, 31, 35, 39,§13263; C46, 50, 54,§738.1]

**738.2 Bribe to refrain from voting—payment for work on election day.** If any person shall make an agreement with another to pay him any sum of money or other valuable thing in consideration that such other person shall refrain from voting at any election, or shall induce other qualified electors to refrain from voting, or that such other person shall perform any service or labor on any election day in the interest of any candidate for any office who

is to be voted for at such election, or in the interest of any measure or political party, he shall be fined in any sum not less than fifty nor more than three hundred dollars, or be imprisoned in the county jail not exceeding ninety days. [C97,§4915; C24, 27, 31, 35, 39,§13264; C46, 50, 54,§738.2]

Referred to in §§738.3, 738.4

**738.3 Accepting bribe.** Any person who shall, in consideration of any sum of money or other valuable thing, agree to refrain from voting at any public election, or to induce or attempt to induce others to do so, or agree to perform on election day any service in the interest of any candidate, party, or measure in consideration of any money or other valuable thing, or who shall accept money or other valuable thing for such services performed in the interest of any candidate, political party or measure, shall be punished as provided in section 738.2. [C97,§4916; C24, 27, 31, 35, 39, §13265; C46, 50, 54,§738.3]

Referred to in §738.4

**738.4 Exception.** Nothing in sections 738.2 and 738.3 shall be so construed as to punish individuals or committees of any political party for making contracts in good faith for the conveyance of voters to and from polling places and the payment of any reasonable compensation for such service. [C97,§4917; C24, 27, 31, 35, 39,§13266; C46, 50, 54,§738.4]

**738.5 Services for hire.** Any person who shall agree to perform any services in the interest of any candidate in consideration of any money or other valuable thing, or who shall accept any money or other valuable thing for such services performed in the interest of any candidate, or any person paying or offering to pay or giving or offering to give money or other valuable things for such services, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail not exceeding ninety days. [S13, §1087-a32; C24, 27, 31, 35, 39,§13267; C46, 50, 54, §738.5]

Referred to in §738.6

**738.6 Exceptions.** Nothing in section 738.5 shall be construed to prohibit any person from making contracts in good faith for the announcement of his candidacy in the newspapers and for securing the names of voters required to file preliminary nomination papers and the payment of any reasonable compensation for such services. [S13,§1087-a32; C24, 27, 31, 35, 39,§13268; C46, 50, 54,§738.6]

**738.7 Voting more than once.** If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this state, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year. [C51, §2692; R60,§4334; C73,§3994; C97,§4918; C24, 27, 31, 35, 39,§13269; C46, 50, 54,§738.7]

**738.8 Voting when not qualified.** If any person, knowing himself not to be qualified, vote at any election authorized by law, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding six months. [C51,§2693; R60,§4335; C73,§3995; C97,§4919; C24, 27, 31, 35, 39,§13270; C46, 50, 54,§738.8]

**738.9 Voting when not resident of county.** If any person go or come into any county of this state, and vote in such county, not being a resident thereof, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year. [C51, §2694; R60,§4336; C73,§3996; C97,§4920; C24, 27, 31, 35, 39,§13271; C46, 50, 54,§738.9]

**738.10 Voting when not resident of state.** If any person willfully vote who has not been a resident of this state for six months next preceding the election, or who, at the time of the election, is not twenty-one years of age, or who is not a citizen of the United States, or who is not qualified, by reason of other disability, to vote at the place where and time when the vote is to be given, he shall be fined in a sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding one year. [C51,§2695; R60,§4337; C73,§3997; C97, §4921; C24, 27, 31, 35, 39,§13272; C46, 50, 54, §738.10]

**738.11 Counseling to vote when not qualified.** If any person procure, aid, assist, counsel, or advise another to give his vote, knowing that such person is disqualified, he shall be fined not exceeding five hundred nor less than fifty dollars, and be imprisoned in the county jail not exceeding one year. [C51,§2696; R60, §4338; C73,§3998; C97,§4922; C24, 27, 31, 35, 39, §13273; C46, 50, 54,§738.11]

**738.12 Deceiving voter as to ballot.** If any judge or clerk of election furnish an elector with a ticket or ballot, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, or fraudulently or deceitfully change a ballot of any elector, by which such elector is deprived of voting for such candidate or person as he intended, he shall be imprisoned in the county jail not exceeding two years, and be fined not exceeding one thousand dollars nor less than one hundred dollars. [C51,§2697; R60,§4339; C73,§3999; C97,§4923; C24, 27, 31, 35, 39,§13274; C46, 50, 54,§738.12]

**738.13 Duress to prevent voting.** If any person unlawfully and by force, or threats of force, prevent, or endeavor to prevent, an elector from giving his vote at any public election, he shall be imprisoned in the county jail not exceeding six months, and fined not more than two hundred dollars. [C51,§2698; R60,§4340; C73,§4000; C97,§4924; C24, 27, 31, 35, 39,§13275; C46, 50, 54,§738.13]

**738.14 Bribing election officials.** If any person give or offer a bribe to any judge, clerk, or canvasser of any election authorized by law, or any executive officer attending the same, as a consideration for some act done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding seven hundred dollars, and imprisoned in the county jail not exceeding one year. [C51,§2699; R60,§4341; C73,§4001; C97,§4925; C24, 27, 31, 35, 39,§13276; C46, 50, 54,§738.14]

**738.15 Procuring vote by duress.** If any person procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing any civil or criminal action, or any other threat of injury to be inflicted by him or by his means, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year. [C51,§2700; R60,§4342; C73,§4002; C97,§4926; C24, 27, 31, 35, 39,§13277; C46, 50, 54,§738.15]

**738.16 Judges or clerks doing unlawful acts.** If any judge or clerk of any election authorized by law knowingly make or consent to any false entry on the list of voters or pollbooks; or put into the ballot box, or permit to be so put in, any ballot not given by a voter; or take out of such box, or permit to be so taken out, any ballot deposited therein, except in the manner prescribed by law; or by any other act or omission designedly destroy or change the ballots given by the electors, he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding five years. [C51,§2701; R60,§4343; C73,§4003; C97,§4927; C24, 27, 31, 35, 39,§13278; C46, 50, 54,§738.16]

**738.17 Illegally receiving or rejecting votes.** When anyone who offers to vote at any election is objected to by an elector as a person not possessing the requisite qualifications, if any judge of such election unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such judge willfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be fined not more than two hundred nor less than twenty dollars, or be imprisoned in the county jail not exceeding six months. [C51,§2702; R60,§4344; C73,§4004; C97,§4928; C24, 27, 31, 35, 39,§13279; C46, 50, 54,§738.17]

**738.18 Misconduct to avoid election.** If any judge, clerk, or executive officer designedly omit to do any official act required by law, or designedly do any illegal act, in relation to any public election, by which act or omission the votes taken at any such election in any city, town, precinct, township, or district be lost, or the electors thereof be deprived of their suf-

frage at such election, or designedly do any act which renders such election void, he shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both. [C51,§2703; R60,§4345; C73,§4005; C97,§4929; C24, 27, 31, 35, 39,§13280; C46, 50, 54,§738.18]

**738.19 Failure to return pollbooks.** If any judge, clerk, or messenger, after having been deputed by the judges of the election to carry the pollbooks of such election to the place where by law they are to be canvassed, willfully or negligently fail to deliver them within the time prescribed by law, safe, with the seal unbroken, he shall, for every such offense, be fined not more than five hundred nor less than fifty dollars. [C51,§2704; R60,§4346; C73,§4006; C97,§4930; C24, 27, 31, 35, 39,§13281; C46, 50, 54,§738.19]

**738.20 Improper registry and false personation.** Any person who causes his name to be registered, knowing that he is not or will not become a qualified voter in the precinct where his name is registered previous to the next election, or who shall wrongfully personate any registered voter, and any person causing, or aiding or abetting any person in either of said acts, shall be, for each offense, imprisoned in the penitentiary not less than one year. [C73,§4007; C97,§4931; C24, 27, 31, 35, 39,§13282; C46, 50, 54,§738.20]

**738.21 Forgery of papers or ballots.** Any person who shall falsely make, or willfully destroy, any certificate of nomination or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination, or nomination papers, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination, or nomination papers, or in any part thereof, which have been duly filed, or forge or falsely make the official indorsement on any ballot, or substitute therefor any spurious or counterfeit ballot, or make, use, circulate, or cause to be made or circulated as an official ballot, any paper printed in imitation or resemblance thereof, or willfully destroy or deface any ballot, or willfully delay the delivery of any ballots, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [C97,§1136; C24, 27, 31, 35, 39,§13283; C46, 50, 54,§738.21]

**738.22 Political advertisements.** Whoever writes, prints, posts, or distributes, or causes to be written, printed, posted, or distributed, a circular, poster, or advertisement which is designed to promote the nomination or election of a candidate for public office or to injure and defeat the nomination or election of any candidate for public office, or to influence the voters on any constitutional amendment, or

to influence the vote of any member of the legislature, unless there appears upon such circular or poster or advertisement, in a conspicuous place, either the name of the chairman or secretary or of two officers of the organization issuing the same, or of the person who is responsible therefor, with his name and address, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment. [SS15,§4931-a; C24, 27, 31, 35, 39,§13284; C46, 50, 54,§738.22]

SS15,§4931-a, editorially divided  
Referred to in §738.23

**738.23 Exceptions.** Nothing in section 738.22 shall apply to the editorial or news advertisements of any magazine or newspaper where the same is not a political advertisement, nor to cards, posters, lithographs, or circulars, issued by a candidate advertising his own candidacy. [SS15,§4931-a; C24, 27, 31, 35, 39, §13285; C46, 50, 54,§738.23]

**738.24 Illegal voting at primary election.** Whenever any political party shall hold a primary election for the purpose of nominating a candidate for any public office or for the purpose of selecting delegates to any convention of such party, it shall be unlawful for any person not a qualified elector, or any qualified elector not at the time a member in good faith of such political party, to vote at such primary election. [S13,§4919-a; C24, 27, 31, 35, 39,§13286; C46, 50, 54,§738.24]

S13,§4919-a, editorially divided  
Referred to in §§738.25, 738.26, 738.29

**738.25 Punishment.** Any person violating the provisions of section 738.24, and any person knowingly procuring, aiding, or abetting such violation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be

imprisoned in the county jail not to exceed thirty days. [S13,§4919-a; C24, 27, 31, 35, 39, §13287; C46, 50, 54,§738.25]

Referred to in §738.29

**738.26 Prima-facie evidence of illegal voting.** It shall be prima-facie evidence of the violation of section 738.24 for any person who has participated in any primary election of one political party, to vote at a primary election held by another political party, to select candidates to be voted for at the same election; or to select delegates to any convention of the party holding such primary election. [S13, §4919-b; C24, 27, 31, 35, 39,§13288; C46, 50, 54, §738.26]

Referred to in §738.29

**738.27 Judges to examine voters—administer oaths.** Any judge of such primary election shall have power to administer oaths to, and to examine under oath, any person offering to vote at such election, touching his qualifications to participate in such primary election, and it shall be the duty of such judge of election to so examine or cause to be examined any person challenged as to his right to vote. [S13,§4919-c; C24, 27, 31, 35, 39,§13289; C46, 50, 54,§738.27]

S13,§4919-c, editorially divided  
Referred to in §738.29

**738.28 Perjury in examination.** Any person testifying falsely as to any material matter, touching his qualifications to participate in such primary election, shall be deemed guilty of perjury and punished accordingly. [S13,§4919-c; C24, 27, 31, 35, 39,§13290; C46, 50, 54,§738.28]

Referred to in §738.29  
Punishment, §721.1

**738.29 Exception—conventions under caucus system.** Nothing in sections 738.24 to 738.28, inclusive, shall be construed to apply to conventions held under the caucus system. [S13,§4919-d; C24, 27, 31, 35, 39,§13291; C46, 50, 54,§738.29]

## CHAPTER 739

### BRIBERY AND CORRUPTION

- 739.1 Bribery of public officers.
- 739.2 Acceptance of bribes.
- 739.3 Disqualification for holding office.
- 739.4 Corrupt solicitation of places of trust.
- 739.5 Acceptance of reward for securing.
- 739.6 Bribery of jurors or referees.

- 739.7 Acceptance of bribes by such persons.
- 739.8 Jurors acting corruptly.
- 739.9 Sheriff or other officers receiving bribes.
- 739.10 Accepting reward for public duty.
- 739.11 Corruptly influencing officials.
- 739.12 Bribery in athletic contests.

**739.1 Bribery of public officers.** If any person give, offer, or promise to any executive or judicial officer or member of the general assembly, after his election or appointment, and either before or after he has qualified or has taken his seat, any valuable consideration, gratuity, service, or benefit whatever, with intent to influence his act, vote, opinion, or

judgment in any matter, question, cause, or proceeding which may be pending, or which may legally come or be brought before him in his official capacity, he shall be imprisoned in the penitentiary not more than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C51§2647; R60,§4274; C73,§3939;

C97,§4875; C24, 27, 31, 35, 39,§13292; C46, 50, 54,§739.1]

Referred to in §§739.3, 739.5

**739.2 Acceptance of bribes.** If any executive or judicial officer or member of the general assembly accept any valuable consideration, gratuity, service, or benefit whatever, or any promise to make the same or to do any act beneficial to such officer or member, under the agreement or with the understanding that his vote, opinion, decision, or judgment shall be given in any particular manner or upon any particular side of any question, cause, or other proceeding which is or may by law be brought before him in his official capacity, or that in such capacity he will make any particular nomination or appointment, he shall be imprisoned in the penitentiary not more than ten years, or be fined not more than two thousand dollars and imprisoned in the county jail not more than one year. [C51,§2648; R60,§4275; C73,§3940; C97,§4876; C24, 27, 31, 35, 39,§13293; C46, 50, 54, §739.2]

Referred to in §§123.92, 739.3, 739.5

**739.3 Disqualification for holding office.** Every person who is convicted under either section 739.1 or section 739.2 shall forever afterwards be disqualified from holding any office under the laws of the state. [C51,§2649; R60, §4276; C73,§3941; C97,§4877; C24, 27, 31, 35, 39, §13294; C46, 50, 54,§739.3]

Referred to in §§739.4, 739.5  
Constitution, Art. II,§5

**739.4 Corrupt solicitation of places of trust.** If any person, directly or indirectly, give, offer, or promise any valuable consideration or gratuity to any other person not being such officer as is mentioned in section 739.3, with intent to induce such person to procure for him by his interest, influence, or any other means whatever any place of trust within this state, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2650; R60,§4277; C73, §3942; C97,§4878; C24, 27, 31, 35, 39,§13295; C46, 50, 54,§739.4]

Referred to in §739.5

**739.5 Acceptance of reward for securing.** If any person, not being such officer as is referred to in sections 739.1 to 739.4, inclusive, of this chapter, accept and receive of another any valuable consideration or gratuity whatever as a reward for procuring, or attempting to procure, any office or place of trust within the state for any person, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2651; R60,§4278; C73,§3943; C97,§4879; C24, 27, 31, 35, 39,§13296; C46, 50, 54,§739.5]

**739.6 Bribery of jurors or referees.** If any person give, offer, or promise any valuable consideration or gratuity whatever to anyone summoned, appointed, or sworn as a juror, or appointed or chosen arbitrator, umpire, or referee, or to any master in chancery, or appraiser of real or personal estate, or auditor,

with intent to influence the opinion or decision of any such person in any matter, inquest, or cause which may be pending or can legally come before him, or which he may be called on to decide in either of said capacities, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2652; R60,§4279; C73,§3944; C97,§4880; C24, 27, 31, 35, 39,§13297; C46, 50, 54,§739.6]

**739.7 Acceptance of bribes by such persons.** If any person summoned, appointed, or sworn as a juror, or appointed arbitrator, umpire, or referee, or master in chancery, or auditor, or appraiser, as aforesaid, take or receive any valuable consideration or gratuity whatever to give his verdict, award, or report in favor of any particular party, in a matter for the hearing or decision of which such person has been summoned, appointed, or chosen as aforesaid, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C51, §2653; R60,§4280; C73,§3945; C97,§4881; C24, 27, 31, 35, 39,§13298; C46, 50, 54,§739.7]

**739.8 Jurors acting corruptly.** If any person drawn, summoned, or sworn as a juror make any promise or agreement to give a verdict for or against any person in any civil or criminal action, or corruptly receive any paper, evidence or information from anyone in relation to any matter or cause for the trial of which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months. [C51,§2655; R60,§4282; C73,§3947; C97,§4883; C24, 27, 31, 35, 39,§13299; C46, 50, 54,§739.8]

**739.9 Sheriff or other officers receiving bribes.** If any sheriff, deputy sheriff, coroner, or constable, or any marshal, deputy marshal, policeman, or police officer of any city or town, receive from a defendant, or other person, any money or other valuable thing as a consideration or inducement for omitting or delaying to arrest any defendant or to carry him before a magistrate or to prison, or for postponing, delaying, or neglecting the sale of property on execution, or for omitting or delaying to perform any other duty pertaining to his office, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both fined and imprisoned, at the discretion of the court. [C51, §2656; R60,§4283; C73,§3948; C97,§4884; C24, 27, 31, 35, 39,§13300; C46, 50, 54,§739.9]

**739.10 Accepting reward for public duty.** If any state, county, township, city, school, or other municipal officer, not mentioned in this chapter, directly or indirectly accept any valuable consideration, gratuity, service, or benefit whatever, or the promise thereof, other than the compensation allowed him by law,



conditioned upon said officer's doing or performing any official act, casting an official vote, making or procuring the appointment of any person to a place of trust or profit, or using his official influence or authority to give or procure for any person public employment, or conditioned upon said officer's refraining from doing or performing any of the foregoing acts or things, he shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or fined in any sum not less than twenty nor more than three hundred dollars. [C97,§4885; C24, 27, 31, 35, 39,§13301; C46, 50, 54,§739.10]

**739.11 Corruptly influencing officials.** If any person, directly or indirectly, give, offer, or promise, or conspire with others to give, offer, or promise to any officer contemplated in this chapter any valuable consideration, gratuity, service, or benefit whatever, with a view or for the purpose of corruptly influencing said officer's official acts or votes, such person shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or be fined in any sum not exceeding three hundred nor less than twenty dollars. [C97,§4886; C24, 27, 31, 35, 39,§13302; C46, 50, 54,§739.11]

**739.12 Bribery in athletic contests.** Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be sentenced to pay a fine not exceeding ten thousand dollars, or undergo imprisonment not exceeding ten years, or both. [C54,§739.12]

## CHAPTER 740

### MISCONDUCT OR NEGLECT IN OFFICE

740.1 Extortion.  
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**740.1 Extortion.** If any person corruptly and willfully demand and receive of another, for performing any service or official duty for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C51,§2658; R60, §4285; C73,§3950; C97,§4888; C24, 27, 31, 35, 39, §13303; C46, 50, 54,§740.1]

**740.2 False certificate as to witness fees.** If any witness falsely and corruptly certify that as such he has traveled more miles or attended more days than he has actually traveled or attended, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C51,§2658; R60,§4285; C73,§3950; C97,

§4888; C24, 27, 31, 35, 39,§13304; C46, 50, 54, §740.2]

**740.3 Oppression in official capacity.** If any judge or other officer, by color of his office, willfully and maliciously oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year, and be liable to the injured party for any damage sustained by him in consequence thereof. [R60,§§4305, 4306; C73, §3969; C97,§4908; C24, 27, 31, 35, 39,§13305; C46, 50, 54,§740.3]

**740.4 Exercising office without authority.** If any person take upon himself to exercise or officiate in any office or place of authority in this state without being legally authorized; or if any person, by color of his office, willfully

and corruptly oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not more than one year, or be both fined and imprisoned. [C51,§2672; R60,§4299; C73,§3963; C97,§4902; C24, 27, 31, 35, 39,§13306; C46, 50, 54,§740.4]

**740.5 Falsely assuming to be officer.** If a person falsely assume to be a judge, justice of the peace, magistrate, sheriff, deputy sheriff, peace officer, special agent of the Iowa department of public safety, conservation officer, coroner, or constable, and take upon himself to act as such, or require anyone to aid or assist him in any matter pertaining to the duty of any such officer, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding three hundred dollars. [C51,§2671; R60,§4298; C73,§3962; C97,§4901; C24, 27, 31, 35, 39,§13307; C46, 50, 54,§740.5]

**740.6 Stirring up quarrels and suits.** If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney, or counselor at law, encourage, excite or stir up any action, quarrel, or controversy between two or more persons, with intent to injure such persons, he shall be fined not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages. [C51, §2673; R60,§4300; C73,§3964; C97,§4903; C24, 27, 31, 35, 39,§13308; C46, 50, 54,§740.6]

**740.7 Officers failing to pay over fees.** If any officer who by law is authorized to receive and required to pay over fees of office, or who is or may be authorized to impose or collect fines, shall fail, neglect, or refuse to pay over, as prescribed by law, all such fees and fines, he shall be guilty of a misdemeanor, besides being liable in a civil action for the amount of fines and fees illegally withheld or appropriated. [R60,§4308; C73,§3970; C97,§4909; C24, 27, 31, 35, 39,§13309; C46, 50, 54,§740.7]

Punishment, §687.7

**740.8 Misappropriating fees—removal.** Any officer who may be found guilty of the offense of appropriating to his own use fees of office or fines collected for violation of law, or of neglecting to pay over the same as prescribed by law, shall be removed from office by the court before or by whom the offense may be tried and judgment or conviction had; and every person so found guilty shall be fined not exceeding three hundred nor less than ten dollars, or imprisoned in the county jail not exceeding one year, or be both fined and imprisoned, in the discretion of the court. [R60, §4310; C73,§3972; C97,§4911; C24, 27, 31, 35, 39, §13310; C46, 50, 54,§740.8]

**740.9 False entries in relation to fees.** If any officer who by law is authorized or required to keep a court docket, or who is required to keep an account of fees or fines, and pay over or in any way account for the same, shall in any manner falsify such docket or account, or shall fail, neglect, or refuse to

make an entry upon such docket, or account for such fees and fines as are required to be paid over, he shall be guilty of a misdemeanor. [R60,§4309; C73,§3971; C97,§4910; C24, 27, 31, 35, 39,§13311; C46, 50, 54,§740.9]

Punishment, §687.7

**740.10 Taking more than lawful fee.** Any officer who willfully takes higher or other fees than are allowed by law is guilty of a misdemeanor. [C51,§2560; R60,§4167; C73,§3840; C97, §1297; C24, 27, 31, 35, 39,§13312; C46, 50, 54, §740.10]

Punishment, §687.7

**740.11 Failure to take official oath.** If any officer or person willfully fails to take the oath required by law before entering on the discharge of the duties of any office, trust, or station, or makes any contract which contemplates an expenditure in excess of the law under which he was elected or appointed, or fails to report to the proper officer, showing the expenditure of all public moneys with proper vouchers therefor, by the time required by law, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both, at the discretion of the court. [R60,§216, 2184; C73, §3976; C97,§4913; C24, 27, 31, 35, 39,§13313; C46, 50, 54,§740.11]

**740.12 False entries, returns, certificates, or receipts.** If any public officer fraudulently make or give false entries, false returns, false certificates, or false receipts, in cases where entries, returns, certificates, or receipts are authorized by law, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both. [C51,§2677; R60,§4304; C73,§3968; C97,§4907; C24, 27, 31, 35, 39,§13314; C46, 50, 54,§740.12]

**740.13 Solicitation for political purposes.** It shall be unlawful for any person or political organization either directly or indirectly to solicit or demand from any member of the board of control or any employee of any commission, board or agency created under the statutes of Iowa, any contribution of money or any other thing of value for election purposes or for the purpose of paying expenses of any political organization or any person seeking election to public office. [S13,§2727-a36; C24, 27, 31, 35,§13315; C39,§13315.1; C46, 50, 54,§740.13]

Referred to in §§740.17, 740.18

**740.14 Using contributions from nonresidents.** It shall be unlawful for any person or political organization to use any funds donated by a nonresident person, firm, or corporation for the purpose of conducting a campaign for political office. [C39,§13315.2; C46, 50, 54,§740.14]

Referred to in §§740.17, 740.18

**740.15 Using public motor vehicles.** It shall be unlawful for any person to use or permit to be used any motor vehicle owned by the state of Iowa or any political subdivision thereof for the purpose of transporting any political litera-

ture or any person or persons engaging in a political campaign for any political party or any person seeking an elective office. [C39, §13315.3; C46, 50, 54, §740.15]

Referred to in §§740.17, 740.18

**740.16 State employees not to participate.**

It shall be unlawful for any state officer, any state appointive officer, or state employee to leave the place of his or her employment or the duties of his or her office for the purpose of soliciting votes or engaging in campaign work during the hours of employment of any such officer or employee. [C39, §13315.4; C46, 50, 54, §740.16]

Referred to in §§740.17, 740.18

**740.17 Exception.** The provisions of sections 740.13 to 740.16, inclusive, shall not be construed as prohibiting any such officer or employee who is a candidate for political office to engage in campaign at any time or at any place for himself. [C39, §13315.5; C46, 50, 54, §740.17]

Referred to in §740.18

**740.18 Penalty.** Any person who violates any provision of sections 740.13 to 740.17, inclusive, shall be guilty of misdemeanor and shall be punished accordingly. [S13, §2727-a36; C24, 27, 31, 35, §13315; C39, §13315.6; C46, 50, 54, §740.18]

Punishment, §687.7

**740.19 Neglect of duty.** When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to

perform such duty, where no special provision has been made for the punishment of such delinquency, is a misdemeanor. [C51, §2674; R60, §4301; C73, §3965; C97, §4904; C24, 27, 31, 35, 39, §13316; C46, 50, 54, §740.19]

Punishment, §687.7

**740.20 Private use of public property.** No public officer, deputy or employee of the state or any governmental subdivision, having charge or custody of any automobile, machinery, equipment, or other property, owned by the state or a governmental subdivision of this state, shall use or operate the same, or permit the same to be used or operated for any private purpose. [C35, §13316-e1; C39, §13316.1; C46, 50, 54, §740.20]

Referred to in §740.22

**740.21 Labeling publicly owned motor vehicles.** All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of said vehicle designating the bureau, department or commission using it. This label shall be designed to cover not less than one square foot of surface. This section shall not apply to any motor vehicle which shall be specifically assigned by the head of the department or office owning or controlling it, to enforcement of police regulations. [C35, §13316-e2; C39, §13316.2; C46, 50, 54, §740.21]

Referred to in §740.22

**740.22 Punishment.** A violation of sections 740.20 or 740.21 shall be punishable as a misdemeanor. [C35, §13316-e3; C39, §13316.3; C46, 50, 54, §740.22]

Punishment, §687.7

## CHAPTER 741

### GRATUITIES AND TIPS

See *Donahoo v. Huber*, 185 Iowa 753

- 741.1 Accepting or giving.
- 741.2 Punishment.
- 741.3 Testimony tending to incriminate.
- 741.4 Immunity from prosecution.
- 741.5 Exceptions.
- 741.6 Institutional officers not to receive gratuities.

- 741.7 Punishment.
- 741.8 State employees not to be interested in contracts.
- 741.9 State employees not to receive gratuities.
- 741.10 Punishment.
- 741.11 Interest in public contracts.

**741.1 Accepting or giving.** It shall be unlawful for any agent, representative, or employee, officer or any agent of a private corporation, or a public officer, acting in behalf of a principal in any business transaction, to receive, for his own use, directly or indirectly, any gift, commission, discount, bonus, or gratuity connected with, relating to, or growing out of such business transaction; and it shall be likewise unlawful for any person, whether acting in his own behalf or in behalf of any copartnership, association, or corporation, to offer, promise, or give directly or indirectly

any such gift, commission, discount, bonus, or gratuity. [S13, §5028-n; C24, 27, 31, 35, 39, §13317; C46, 50, 54, §741.1]

Referred to in §§741.2, 741.5  
S13, §5028-n, editorially divided

**741.2 Punishment.** Any person violating the provisions of section 741.1 or any of them shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. [S13,

§5028-n; C24, 27, 31, 35, 39,§13318; C46, 50, 54, §741.2.]

Referred to in §741.5

**741.3 Testimony tending to incriminate.** No person shall be excused from attending, testifying, or producing books, papers, contracts, agreements, and documents before any court in obedience to the subpoena of any court having jurisdiction of the misdemeanor on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture. [S13,§5028-o; C24, 27, 31, 35, 39,§13319; C46, 50, 54,§741.3]

S13,§5028-o, editorially divided  
Referred to in §741.5  
Immunity in general, §622.14 et seq.

**741.4 Immunity from prosecution.** No person shall be liable to any criminal prosecution, for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said court or in obedience to its subpoena or in any such case or proceeding, provided that no person so testifying or producing any such books, papers, contracts, agreements, or documents shall be exempted from prosecution and punishment for perjury committed in so testifying. [S13,§5028-o; C24, 27, 31, 35, 39, §13320; C46, 50, 54,§741.4]

Referred to in §741.5

**741.5 Exceptions.** Sections 741.1 to 741.4, inclusive, shall not apply to those cases in which the principals, being the contracting parties, have knowledge of and consent to the payment of a commission to an agent or representative. [S13,§5028-o; C24, 27, 31, 35, 39, §13321; C46, 50, 54,§741.5]

**741.6 Institutional officers not to receive gratuities.** No member of the board of control, or officer, agent, or employee thereof, and no superintendent, officer, manager, or employee of any of the institutions under the charge and control of said board, shall, directly or indirectly, for himself or any other person or for any institution under the charge of said board, receive or accept any gift or gratuity from any person or persons, firm, or corporation who are dealers in goods, merchandise, or supplies which may be used in any of said institutions, or from any employee, servant, or agent of such person or persons, firm, or corporation. [S13,§2727-a33; C24, 27, 31, 35, 39,§13322; C46, 50, 54,§741.6]

S13,§2727-a33, editorially divided  
Referred to in §741.7

**741.7 Punishment.** Any person violating the provisions of section 741.6 shall be deemed

guilty of a misdemeanor, and such violation shall be cause for his removal from office. [S13, §2727-a33; C24, 27, 31, 35, 39,§13323; C46, 50, 54, §741.7]

Punishment, §687.7

**741.8 State employees not to be interested in contracts.** It shall be unlawful for any trustee, warden, superintendent, steward, or any other officer of any educational, penal, charitable, or reformatory institution, supported in whole or in part by the state, to be interested directly or indirectly in any contract to furnish or in furnishing provisions, material, or supplies of any kind, to or for the institution of which he is an officer; and it shall be unlawful for any such trustee, warden, superintendent, steward, or other officer of any state institution, to be directly or indirectly interested in any contract with the state to build, repair, or furnish any institution of which he may be an officer. [C73,§1388; C97,§189; C24, 27, 31, 35, 39, §13324; C46, 50, 54,§741.8]

C97,§189, editorially divided  
Referred to in §741.10  
Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.11

**741.9 State employees not to receive gratuities.** It shall be unlawful for any such trustee, warden, superintendent, steward, or other officer, directly, or indirectly, to receive in money or any valuable thing any commission, percentage, discount, or rebate on any provision, material, or supplies furnished for or to any institution of which he is an officer. [C73, §1388; C97,§189; C24, 27, 31, 35, 39,§13325; C46, 50, 54,§741.9]

Referred to in §741.10

**741.10 Punishment.** Any person violating the provisions of sections 741.8 and 741.9 shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, in the discretion of the court, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. [C97,§190; C24, 27, 31, 35, 39,§13326; C46, 50, 54, §741.10]

**741.11 Interest in public contracts.** Members of boards of supervisors and township trustees shall not buy from, sell to, or in any manner become parties, directly or indirectly, to any contract to furnish supplies, material, or labor to the county or township in which they are respectively members of such board of supervisors or township trustees. [S13, §468-a; C24, 27, 31, 35, 39,§13327; C46, 50, 54, §741.11]

Similar provisions, §§15.3, 18.4, 86.7, 252.29, 262.10, 314.2, 347.15, 368A.22, 372.16, 403.16, 553.23, 741.8

## CHAPTER 742

## RESISTANCE TO EXECUTION OF PROCESS

742.1 Resisting execution of process.

742.2 Calling out power of county.

742.3 Refusing to assist officer.

742.4 Certifying to court names of resisters.

742.5 Refusing to assist.

742.6 Calling out military force or posse.

742.7 Armed forces under command of sheriff.

742.8 Refusing to execute process.

**742.1 Resisting execution of process.** If any person knowingly and willfully resist or oppose any officer of this state, or any person authorized by law, in serving or attempting to execute any legal writ, rule, order, or process whatsoever, or shall knowingly and willfully resist any such officer in the discharge of his duties without such writ, rule, order, or process, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding one thousand nor less than fifty dollars, or be both fined and imprisoned, at the discretion of the court. [C51,§2669; R60, §4296; C73,§3960; C97,§4899; C24, 27, 31, 35, 39, §13331; C46, 50, 54,§742.1]

**742.2 Calling out power of county.** When the sheriff or other officer authorized to execute process has reason to apprehend that resistance will be made, or finds that resistance is made, to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and may call upon the governor for the assistance of the military force to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, their aiders, and abettors, to be held for punishment by law. [C51,§2793; R60,§4489; C73,§4145; C97,§5143; C24, 27, 31, 35, 39,§13332; C46, 50, 54,§742.2]

**742.3 Refusing to assist officer.** If any person, being lawfully required by any sheriff, deputy sheriff, coroner, constable, or other officer, willfully neglect or refuse to assist him in the execution of his office in any criminal case, or in any case of escape or rescue, he shall be imprisoned in the county jail not more than six months, or be fined not more than one hundred dollars. [C51,§2670; R60,§4297; C73,§3961; C97,§4900; C24, 27, 31, 35, 39,§13333; C46, 50, 54,§742.3]

**742.4 Certifying to court names of resisters.** The officers shall certify to the court from which the process issued the names of the resisters, their aiders, and abettors, to the end that they may be punished as for a contempt.

[C51,§2794; R60,§4490; C73,§4146; C97,§5144; C24, 27, 31, 35, 39,§13334; C46, 50, 54,§742.4]

Punishment, §665.4

**742.5 Refusing to assist.** Every person commanded by a public officer to assist him in the execution of process, as provided in this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor. [C51,§2795; R60,§4491; C73,§4147; C97,§5145; C24, 27, 31, 35, 39,§13335; C46, 50, 54, §742.5]

Punishment, §687.7

**742.6 Calling out military force or posse.** If it appears to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he may, on the application of the sheriff, order such posse or military force from any other county or counties as is necessary. [C51,§2796; R60,§4492; C73,§4148; C97,§5146; C24, 27, 31, 35, 39,§13336; C46, 50, 54,§742.6]

**742.7 Armed forces under command of sheriff.** When such armed force is called out, it shall obey the commands of the sheriff or other person appointed by the governor for that purpose, or by a judge of the supreme, district, or superior court, or other magistrate in the order named, but such officer or person shall at all times be subject to the direction of the governor. [C51,§2802; R60,§4498; C73,§4154; C97,§5152; C24, 27, 31, 35, 39,§13337; C46, 50, 54,§742.7]

**742.8 Refusing to execute process.** If any officer authorized to serve process willfully refuse to execute any lawful process to him directed, requiring him to apprehend or confine any person charged with or convicted of any public offense, or willfully delay or omit to execute such process, whereby such person escape, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars, or both fined and imprisoned, at the discretion of the court. [C51,§2657; R60,§4284; C73,§3949; C97,§4887; C24, 27, 31, 35, 39,§13338; C46, 50, 54,§742.8]

## CHAPTER 743

## UNLAWFUL ASSEMBLY AND SUPPRESSION OF RIOTS

743.1 Unlawful assembly.

743.2 "Riot" defined.

743.3 One person may be tried and convicted alone.

743.4 Unlawful assemblages—dispersion.

743.5 Arrest—aid of other persons.

743.6 Refusing to aid.

743.7 Failure of duty.

743.8 Calling aid—arrest of offenders.

743.9 Riotous conduct—injury to person or property.

**743.1 Unlawful assembly.** When three or more persons in a violent or tumultuous manner assemble together to do an unlawful act, or, when together, attempt to do an act, whether lawful or unlawful, in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of an unlawful assembly, and shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars. [C51, §2739; R60, §4387; C73, §4066; C97, §5030; C24, 27, 31, 35, 39, §13339; C46, 50, 54, §743.1]

Referred to in §743.2

**743.2 "Riot" defined.** When three or more persons together and in a violent or tumultuous manner commit an unlawful act, or together do a lawful act in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of a riot, and shall be punished as is provided in section 743.1. [C51, §2740; R60, §4388; C73, §4067; C97, §5031; C24, 27, 31, 35, 39, §13340; C46, 50, 54, §743.2]

**743.3 One person may be tried and convicted alone.** Any person guilty of unlawfully assembling, or of a riot, may alone be tried and convicted thereof, but it must be alleged in the information and proved on the trial that three or more persons were engaged therein. [C51, §2741; R60, §4389; C73, §4068; C97, §5032; C24, 27, 31, 35, 39, §13341; C46, 50, 54, §743.3]

**743.4 Unlawful assemblages — dispersion.** When persons to the number of twelve or more, armed with dangerous weapons, or persons to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in any city or town, any judge, sheriff, and his deputies if they be present, the mayor, aldermen, marshal, constables, and justices of the peace of such city or town must go among the persons assembled, or as near them as may be safe, and command them, in the name of the state, immediately to disperse. [C51, §2797; R60, §4493; C73, §4149; C97, §5147; C24, 27, 31, 35, 39, §13342; C46, 50, 54, §743.4]

Referred to in §743.7

**743.5 Arrest—aid of other persons.** If the persons assembled do not immediately disperse, the magistrate and officers must arrest

them, and for that purpose may command the aid of all persons present or within the county. [C51, §2798; R60, §4494; C73, §4150; C97, §5148; C24, 27, 31, 35, 39, §13343; C46, 50, 54, §743.5]

**743.6 Refusing to aid.** If any person commanded to aid the magistrate or officer neglect to do so without good cause, he is guilty of a misdemeanor. [C51, §2799; R60, §4495; C73, §4151; C97, §5149; C24, 27, 31, 35, 39, §13344; C46, 50, 54, §743.6]

Punishment, §687.7

**743.7 Failure of duty.** If a magistrate or officer, having notice of an unlawful or riotous assembly as defined in section 743.4, neglect to proceed to the place of assembly, or as near thereto as may be with safety, and exercise the authority with which he is invested for suppressing the same and arresting the persons, he is guilty of a misdemeanor. [C51, §2800; R60, §4496; C73, §4152; C97, §5150; C24, 27, 31, 35, 39, §13345; C46, 50, 54, §743.7]

Punishment, §687.7

**743.8 Calling aid—arrest of offenders.** If the persons so assembled and commanded to disperse do not immediately obey, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons, and proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders. [C51, §2801; R60, §4497; C73, §4153; C97, §5151; C24, 27, 31, 35, 39, §13346; C46, 50, 54, §743.8]

**743.9 Riotous conduct—injury to person or property.** If any person or persons, unlawfully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure, or destroy, any dwelling house or other building; or destroy or attempt to injure or destroy any boat or vessel; or perpetrate any premeditated injury on the person of another, not being a felony, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year, and shall also be answerable to any person injured to the full amount of the damages by him sustained. [C51, §2743; R60, §4391; C73, §4070; C97, §5035; C24, 27, 31, 35, 39, §13347; C46, 50, 54, §743.9]

## CHAPTER 744

## DISTURBING PUBLIC ASSEMBLIES

744.1 Disturbance of peace.

744.2 Disturbing congregations or other assemblies.

**744.1 Disturbance of peace.** If any person make or excite any disturbance in a tavern, store, or grocery, or at any election or public meeting, or other place where the citizens are peaceably and lawfully assembled, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C51,§2742; R60,§4390; C73,§4069; C97,§5033; C24, 27, 31, 35, 39,§13348; C46, 50, 54, §744.1]

**744.2 Disturbing congregations or other assemblies.** If any person willfully disturb any assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person willfully disturb or interrupt any school, school meeting, teachers institute lyceum, literary society, or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. [C51,§2718; R60,§4360; C73,§4023; C97,§4959; C24, 27, 31, 35, 39,§13349; C46, 50, 54, §744.2]

**744.3 Evading admission fee to entertainments.** If any person willfully enters any

744.3 Evading admission fee to entertainments.

744.4 Disturbing public fairs.

building or inclosure where any public entertainment or exhibition is being held at which an admission fee is charged, and without paying such fee, or without leave to so enter, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [C97,§4817; C24, 27, 31, 35, 39,§13350; C46, 50, 54,§744.3]

**744.4 Disturbing public fairs.** No person, firm, association or corporation shall cry, hawk, sell or expose for sale upon any public highway or the street of any city or town, within six hundred feet of any state, county or district fairgrounds during the time a fair, or other event or activity, is being conducted thereon, any wares, merchandise or parking or storage space for vehicles, nor conduct a show, riding device, shooting gallery, or game of any kind, in a temporary place of business within four hundred feet of any state, county or district fairgrounds while any such fair or other event or activity is being held. Any violation of the provisions hereof shall constitute a misdemeanor, and upon conviction any such violator shall be fined not less than ten dollars, nor more than one hundred dollars for each such offense. [C27, 31, 35,§13350-b1; C39, §13350.1; C46, 50, 54,§744.4]

## CHAPTER 745

## ESCAPES

745.1 Prison breach—escape—punishment.

745.2 Actual breaking not necessary.

745.3 Violation of parole.

745.4 Jurisdiction.

745.5 Costs and fees.

745.6 Amount certified to comptroller.

745.7 Comptroller to issue warrant.

745.8 Breaking jail—escape.

745.9 Suffering life prisoners to escape.

745.10 Suffering other felons to escape.

745.11 Suffering other prisoners to escape.

745.12 Assisting felon to escape.

745.13 Assisting other prisoners to escape.

745.14 Assisting escape from officer.

745.15 Aiding escapes — bringing liquor or drugs to inmates.

745.16 Placing drugs and articles near institutions.

745.17 Presumptive evidence.

745.18 Attempt to commit act.

**745.1 Prison breach — escape—punishment.**

If any person committed to the penitentiary or to the men's or women's reformatory shall break such prison and escape therefrom or shall escape from or leave without due authority any building, camp, farm, garden, city, town, road, street, or any place whatsoever in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or any officer or employee of the prison whether inside or outside of the prison walls, he shall be deemed guilty of an escape from said penitentiary or reformatory and shall be

punished by imprisonment in said penitentiary or reformatory for a term not to exceed five years, to commence from and after the expiration of the term of his previous sentence. [S13,§4897-a; C24, 27, 31, 35, 39,§13351; C46, 50, 54,§745.1]

Referred to in §§745.2, 745.3, 745.4, 745.5

**745.2 Actual breaking not necessary.** In order to constitute an escape under the provisions of section 745.1, or section 745.8, it is not necessary that the prisoner be within any walls or inclosure nor that there shall be any

actual breaking nor that he be in the presence or actual custody of any officer or other person. [S13,§4987-a; C24, 27, 31, 35, 39,§13352; C46, 50, 54,§745.2]

Referred to in §§745.4, 745.5

**745.3 Violation of parole.** If any person having been paroled from the state penitentiary or state reformatory as provided by law, shall thereafter depart without the written consent of the board of parole from the territory within which by the terms of said parole he is restricted, he shall be deemed to have escaped from the custody within the meaning of section 745.1 and shall be punished as therein provided. [S13,§4897-a; C24, 27, 31, 35, 39, §13353; C46, 50, 54,§745.3]

Referred to in §§745.4, 745.5

**745.4 Jurisdiction.** The jurisdiction of an indictment for the crime of escape as defined in sections 745.1 to 745.3, inclusive, is in the county in which is located the penitentiary or reformatory to which the person charged with such escape has been committed, or in the county in which is located the building, camp, farm, garden, city, town, road, street, or any place in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or any officer or employee of the prison wherefrom he is charged with escaping. [S13,§4897-a; C24, 27, 31, 35, 39,§13354; C46, 50, 54,§745.4]

Referred to in §745.5

**745.5 Costs and fees.** All costs and fees hereafter incurred in prosecutions for violations of sections 745.1 to 745.4, inclusive, shall be paid out of the state treasury from the general fund, in any case where the prosecution fails, or where such fees and costs cannot be collected from the person liable to pay the same, the facts being certified by the clerk of the district court and verified by the county attorney of the county. [S13,§4897-b; C24, 27, 31, 35, 39,§13355; C46, 50, 54,§745.5]

**745.6 Amount certified to comptroller.** The clerk of the district court, in which the case is prosecuted or tried, shall, under his seal of office, certify to the state comptroller a statement of the amount of fees or costs incurred in each case, and such statement shall be approved by the presiding judge in writing appended thereto or indorsed thereon. Should the cause be appealed to the supreme court, the costs there incurred shall be certified to the comptroller by the clerk of that court, but no fees, in such case, for the clerk of either the district or supreme court shall be included or paid from the state treasury. [S13,§4897-c; C24, 27, 31, 35, 39,§13356; C46, 50, 54,§745.6]

**745.7 Comptroller to issue warrant.** On such certificate being filed in the office of the state comptroller, the comptroller shall issue his warrant on the state treasurer for the amount thereof, payable to the clerk of the district or supreme court, as the case may be, and the

clerk shall pay the same to the persons entitled thereto. [S13,§4897-d; C24, 27, 31, 35, 39, §13357; C46, 50, 54,§745.7]

**745.8 Breaking jail—escape.** If any person confined in any jail upon any criminal charge, either before or after conviction for a criminal offense, break jail and escape therefrom, or escape from the custody of the officer charged with his keeping, he shall be guilty of a felony and shall be imprisoned in either the state penitentiary or reformatory not exceeding one year, and fined not exceeding three hundred dollars; but when such jail breaking, or escape from custody, occurs during incarceration after conviction, or before trial for a criminal offense whereof he is afterwards convicted, in either of such cases the sentence to commence from and after the expiration of the sentence upon the original charge. [C51,§2668; R60,§4295; C73,§3959; C97,§4898; S13,§4898; C24, 27, 31, 35, 39,§13358; C46, 50, 54,§745.8]

Referred to in §745.2

**745.9 Suffering life prisoners to escape.** If any jailer or other officer voluntarily suffer any prisoner in custody upon a charge or conviction of a felony punishable by imprisonment for life to escape, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2661; R60,§4288; C73,§3953; C97,§4891; C24, 27, 31, 35, 39,§13359; C46, 50, 54,§745.9]

**745.10 Suffering other felons to escape.** If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any other felony to escape, he shall be imprisoned in the penitentiary not more than eight years, or be fined not more than one thousand dollars. [C51,§2662; R60, §4289; C73,§3954; C97,§4892; C24, 27, 31, 35, 39, §13360; C46, 50, 54,§745.10]

**745.11 Suffering other prisoners to escape.** If any jailer or other officer suffer any prisoner in his custody upon charge or conviction of any public offense to escape, he shall be fined not exceeding one thousand dollars and be imprisoned in the penitentiary not exceeding five years. [C51,§2663; R60,§4290; C73,§3955; C97, §4893; C24, 27, 31, 35, 39,§13361; C46, 50, 54, §745.11]

**745.12 Assisting felon to escape.** If any person by any means whatever aid or assist any prisoner lawfully detained in the penitentiary, or in any jail or place of confinement, for any felony, in an attempt to escape, whether such escape be effected or not, or forcibly rescue any person held in legal custody upon any criminal charge, he shall be imprisoned in the penitentiary not exceeding ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2664; R60,§4291; C73,§3956; C97,§4894; C24, 27, 31, 35, 39,§13362; C46, 50, 54, §745.12]

**745.13 Assisting other prisoners to escape.** Every person who by any means whatever aids



or assists any prisoner lawfully committed to any jail or place of confinement, charged with or convicted of any criminal offense other than a felony, in an attempt to escape, whether such escape be effected or not; or who conveys into such jail or place of confinement any disguise, instrument, arms, or other things proper or useful to facilitate the escape of any prisoner so committed, whether such escape be effected or attempted or not, shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be both fined and imprisoned, at the discretion of the court. [C51,§2665; R60,§4292; C73,§3957; C97,§4895; C24, 27, 31, 35, 39,§13363; C46, 50, 54, §745.13]

**745.14 Assisting escape from officer.** Every person who aids or assists any prisoner in escaping, or attempting to escape, from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer or person who has the lawful charge, with or without a warrant, of such prisoner upon any criminal charge, shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C51,§2666; R60,§4293; C73,§3958; C97,§4896; C24, 27, 31, 35, 39,§13364; C46, 50, 54,§745.14]

**745.15 Aiding escapes — bringing liquor or drugs to inmates.** Any person not authorized by law, who shall bring or pass or cause to be brought into any institution under the management of the board of control of state institutions, or onto the grounds of any such institution, or into any inclosure, building, camp, quarry, farm, garden, or other place used in connection with any such institution in which prisoners, patients, or inmates are required or permitted to be, any opium, morphine, cocaine, or other narcotics, or any intoxicating liquor, or any firearm, weapon, or explosive of any kind, or any rope, ladder, or other instrument or device for use in making or attempting an escape, or shall in any manner aid in such an escape, or who, knowing of such escape, shall conceal such inmate after escape, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in

the penitentiary or reformatory for a term not exceeding five years. [C73,§1663; C97,§2712; S13,§4913-a; SS15,§2713-n16; C24,§§13365, 13369, 13370; C27, 31, 35, 39,§13365; C46, 50, 54,§745.15]

S13,§4913-a, editorially divided  
Referred to in §§745.16-745.18

**745.16 Placing drugs and articles near institutions.** Any person not duly authorized by law who shall place or cause to be placed or aid in placing any of the drugs, liquors, weapons, explosives, or other articles hereinbefore enumerated in or near any road, park, path, walk, grove, hedge, or field where any prisoner, patient, or other inmate of the state institutions specified in section 745.15 is, or is likely to be, with intent that the drug, liquor, weapon, explosive, or other article so placed shall be found by or shall pass into the possession of any such prisoner, patient, or other inmate, shall be punished by imprisonment in the penitentiary or reformatory for a term not exceeding five years, or by a fine of not more than one thousand dollars nor less than one hundred dollars. [S13,§4913-a; C24, 27, 31, 35, 39, §13366; C46, 50, 54,§745.16]

Referred to in §§745.17, 745.18

**745.17 Presumptive evidence.** The bringing or passing or causing to be brought into any of the places designated in sections 745.15 and 745.16, of any rope, ladder, or other instrument or device adapted for use in making an escape, shall be presumptive evidence that it was so brought or passed for such use, and the leaving of any drug, liquor, weapon, explosive, or other article enumerated in said sections in or near any of the places specified in said sections with knowledge that any prisoner, patient, or other inmate is or is likely to be in such place, shall be presumptive evidence that such article was so left to be found by or to pass into the possession of such prisoner, patient, or other person in violation of said sections. [S13,§4913-a; C24, 27, 31, 35, 39,§13367; C46, 50, 54,§745.17]

**745.18 Attempt to commit act.** An attempt to do any of the acts prohibited by sections 745.15 and 745.16 shall be subject to the same punishment as the completed act. [S13,§4913-a; C24, 27, 31, 35, 39,§13368; C46, 50, 54,§745.18]

CHAPTER 746

VAGRANCY

- 746.1 "Vagrants" defined.
- 746.2 "Tramp" defined.
- 746.3 Intimidation or other misconduct.
- 746.4 Entering unoccupied public building.
- 746.5 Complaint—arrest.
- 746.6 Arrest.
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- 746.10 Breach of undertaking.
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- 746.15 Imprisonment.
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- 746.17 Employed while confined—supplies.
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- 746.19 Solitary confinement for refusing to work.
- 746.20 Method of imprisonment.
- 746.21 Proceeds of labor.
- 746.22 Tried jointly.
- 746.23 Fees of officers.
- 746.24 Unlawful fees.
- 746.25 Compensation for keeping.

**746.1 "Vagrants" defined.** The following persons are vagrants:

1. All common prostitutes and keepers of bawdy houses or houses for the resort of common prostitutes.
2. All habitual drunkards, gamesters, or other disorderly persons.
3. All persons wandering about and lodging in barns, outbuildings, tents, wagons, or other vehicles, and having no visible calling or business to maintain themselves.
4. All persons begging in public places, or from house to house, or inducing children or others to do so.
5. All persons representing themselves as collectors of alms for charitable institutions under any false or fraudulent pretenses.
6. All persons playing or betting in any street or public or open place at any game, or pretended game, of chance, or at or with any table or other instrument of gaming.
7. All persons camping on any public highway for the purpose of trading horses. [C51, §3310; R60, §4470; C73, §4130; C97, §5119; S13, §5119; C24, 27, 31, 35, 39, §13371; C46, 50, 54, §746.1]

**746.2 "Tramp" defined.** Any male person sixteen years of age or over, physically able to perform manual labor, who is wandering about, practicing common begging, or having no visible calling or business to maintain himself, and is unable to show reasonable efforts in good faith to secure employment, is a tramp, and any person convicted of being a tramp shall be punished by imprisonment at hard labor in the county jail not exceeding ten days, or by imprisonment in such jail in solitary confinement not exceeding five days. [C97, §5134; C24, 27, 31, 35, 39, §13372; C46, 50, 54, §746.2]

**746.3 Intimidation or other misconduct.** Any tramp who shall wantonly or maliciously, by means of violence, threats or otherwise, put in fear any inhabitant of this state, or shall enter any public building, or any house, barn, or outbuilding belonging to another, with in-

tent to commit an unlawful act, or shall carry any firearm or other dangerous weapon, or indecently expose his person, or be found drunk and disorderly, or shall commit any offense against the laws of the state for which no greater punishment is provided, shall be guilty of a misdemeanor. [C97, §5135; C24, 27, 31, 35, 39, §13373; C46, 50, 54, §746.3]

Punishment, §687.7

**746.4 Entering unoccupied public building.** If any tramp or vagrant, without permission, enter any schoolhouse or other public building in the nighttime, when the same is not occupied by another or others having proper authority to be there, or, having entered the same in the daytime, remain in the same at night when not occupied as aforesaid, or at any time commit any nuisance, use, misuse, destroy, or partially destroy any private or public property therein, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C97, §4793; C24, 27, 31, 35, 39, §13374; C46, 50, 54, §746.4]

**746.5 Complaint—arrest.** Upon complaint made on oath to any magistrate against any person as being such vagrant within his jurisdiction, he may issue a warrant for the arrest of such person, and his examination, and the complaint, warrant, and arrest shall be governed by the provisions of chapter 760, as nearly as practicable, except as herein provided. [C51, §3311; R60, §4471; C73, §4131; C97, §5120; C24, 27, 31, 35, 39, §13375; C46, 50, 54, §746.5]

**746.6 Arrest.** Peace officers shall arrest any vagrant whom they may find at large, and not in the care of some discreet person, and take him before some magistrate of the county, city, or town in which the arrest is made. [R60, §4472; C73, §4132; C97, §5121; C24, 27, 31, 35, 39, §13376; C46, 50, 54, §746.6]

**746.7 Taking before magistrate.** If such arrest is made during the night, the officer may keep the person arrested in confinement

until the next morning, unless bail be given, and if made within the jurisdiction of a police court, he must be taken before such court, unless the judge is absent. [R60,§4473; C73, §4133; C97,§5122; C24, 27, 31, 35, 39,§13377; C46, 50, 54,§746.7]

**746.8 Security for good behavior.** If it appear by the confession of such person, or by competent testimony, that the person arrested is a vagrant, the magistrate may require an undertaking, with sufficient surety, for good behavior for the term of one year thereafter. [R60,§4474; C73,§4134; C97,§5123; C24, 27, 31, 35, 39,§13378; C46, 50, 54,§746.8]

**746.9 Record of conviction — commitment.** The magistrate shall make up, sign, and file with the clerk of the district court of the county, a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge, and shall, in default of such security being given, commit such vagrant to the jail of the county, city, or town, as the case may be, until such security is given or such vagrant discharged according to law. [C51,§3312; R60,§4475; C73,§4135; C97, §5124; C24, 27, 31, 35, 39,§13379; C46, 50, 54, §746.9]

**746.10 Breach of undertaking.** The committing of any of the acts which constitute such person so bound a vagrant shall be a breach of the condition of the undertaking. [C51, §3313; R60,§4476; C73,§4136; C97,§5125; C24, 27, 31, 35, 39,§13380; C46, 50, 54,§746.10]

**746.11 New security.** On a recovery upon the undertaking, the court before which such recovery is had may, in its discretion, require new sureties for good behavior, or commit such vagrant to the county jail for any time not exceeding six months. [C51,§3314; R60, §4477; C73,§4137; C97,§5126; C24, 27, 31, 35, 39, §13381; C46, 50, 54,§746.11]

**746.12 Discharge of bail.** Any person committed to jail on account of failing to furnish undertaking for good behavior may be discharged by any magistrate upon giving the same as was originally required. [C51,§3315; R60,§4478; C73,§4138; C97,§5127; C24, 27, 31, 35, 39,§13382; C46, 50, 54,§746.12]

**746.13 Hearing—jury.** The district court to which the papers are returned shall, on demand of the defendant, impanel a jury to inquire into and determine the truth of the charge made against him, and the rules of practice applicable to trials of misdemeanors shall govern such trial. [C51,§3316; R60,§4479; C73,§4139; C97,§5128; C24, 27, 31, 35, 39,§13383; C46, 50, 54,§746.13]

**746.14 Judgment.** If no jury is demanded, the district court may revise such conviction and discharge such vagrant from the undertaking or confinement absolutely, or upon

sureties for good behavior, in its discretion. [C51,§3317; R60,§4480; C73,§4140; C97,§5129; C24, 27, 31, 35, 39,§13384; C46, 50, 54,§746.14]

**746.15 Imprisonment.** Such district court may, in its discretion, order any such vagrant to be kept in the common jail for any time, not exceeding six months, at hard labor. [C51, §3318; R60,§4481; C73,§4141; C97,§5130; C24, 27, 31, 35, 39,§13385; C46, 50, 54,§746.15]

**746.16 Expenses.** The expenses incurred in pursuance of such order shall be audited by the board of supervisors of the county and paid out of the county treasury. [C51,§3320; R60,§4483; C73,§4143; C97,§5132; C24, 27, 31, 35, 39,§13386; C46, 50, 54,§746.16]

**746.17 Employed while confined—supplies.** Such vagrants may be employed at hard labor as provided in chapter 356, or the court may direct the keeper thereof to furnish them such employment as it shall specify, and for that purpose he may purchase any necessary raw materials and implements, not exceeding such amount as the court shall prescribe, and compel such persons to perform such work as shall be allotted to them. [C51,§3319; R60, §4482; C73,§4142; C97,§5131; C24, 27, 31, 35, 39, §13387; C46, 50, 54,§746.17]

**746.18 Employment when sentenced to hard labor.** The sheriff or keeper of any jail, under the direction of the board of supervisors shall keep all persons sentenced to imprisonment at hard labor in such jail, under the provisions of this chapter, at such work as the board of supervisors may provide, and shall appoint or detail any deputy or other police officer to guard them while at work, or he may turn them over to the municipal authorities of any city or town, to be worked on the streets, or at such labor as may be provided. [C97,§5140; C24, 27, 31, 35, 39,§13388; C46, 50, 54,§746.18]

**746.19 Solitary confinement for refusing to work.** Any tramp sentenced to hard labor, who wantonly or willfully refuses to work, shall be punished by such jailer while so refusing by imprisonment in solitary confinement in the county jail not exceeding ten days, during which time he shall be fed on bread and water; but such punishment shall not exceed the time for which he is sentenced. [C97, §5141; C24, 27, 31, 35, 39,§13389; C46, 50, 54, §746.19]

**746.20 Method of imprisonment.** No sheriff or keeper of any jail shall permit any person convicted of being a tramp to have any tobacco, intoxicating liquors, sporting or illustrated newspaper, cards, or other article of amusement or pastime, or permit such person to be kept or fed otherwise than stated in the commitment, and any person who knowingly violates this section shall be fined not exceeding one hundred nor less than twenty-five dollars. [C97,§5138; C24, 27, 31, 35, 39,§13390; C46, 50, 54,§746.20]

**746.21 Proceeds of labor.** One-half of the net proceeds of such labor shall be paid to the person earning the same, upon his discharge from imprisonment, and the other half shall be paid into the county treasury for the use of the county. [C51,§3321; R60,§4484; C73,§4144; C97,§5133; C24, 27, 31, 35, 39,§13391; C46, 50, 54, §746.21]

**746.22 Tried jointly.** If two or more tramps assemble or congregate together, they shall be tried jointly by the court before whom they are brought, and such court shall be entitled only to fees as for the arrest and trial of one person. [C97,§5136; C24, 27, 31, 35, 39,§13392; C46, 50, 54,§746.22]

**746.23 Fees of officers.** The board of supervisors shall, at any regular or special session, fix the compensation to be allowed the officers in each case under this chapter; to the trial magistrate, not exceeding one dollar; to the peace officer, for all services, not more than one dollar, and mileage as now allowed by law. [C97,§5137; C24, 27, 31, 35, 39,§13393; C46, 50, 54,§746.23]

**746.24 Unlawful fees.** Any officer or magistrate who shall conspire with any person for the purpose of increasing the emoluments of his office, or to evade the provisions of this chapter, or who shall, with such intent, in any manner or by any means, encourage a tramp to remain within his jurisdiction or come within the same, shall be fined not exceeding one hundred dollars, and stand committed until the fine and costs are paid, not to exceed thirty days. [C97,§5139; C24, 27, 31, 35, 39,§13394; C46, 50, 54,§746.24]

**746.25 Compensation for keeping.** No sheriff or jailer shall receive, and no board of supervisors allow, any compensation for keeping or boarding any tramp in the jail or other place in the county, unless such tramp has been duly arrested or committed under the provisions of this chapter, except the board of supervisors of each county may furnish one night's lodging for apparently deserving persons, and those who are sick or disabled may be cared for as the necessities of the case demand. [C97,§5142; C24, 27, 31, 35, 39,§13395; C46, 50, 54,§746.25]

## CHAPTER 747

### HABITUAL CRIMINALS

Multifarious convictions, §§709.19, 712.2, 718.7, (18.11)

747.1 Third conviction of felony.

747.2 Fourth conviction of petty larceny.

747.3 Evidence.

747.4 Duties of jury and judge.

747.5 "Habitual criminal" defined.

747.6 Evidence.

747.7 Pardon for former crime.

**747.1 Third conviction of felony.** Whenever any person has been twice convicted of either of the crimes of burglary, robbery, forgery, counterfeiting, larceny where the value of the property stolen exceeded twenty dollars, or of breaking and entering, with intent to commit a public offense, any dwelling house, office, shop, store, warehouse, railroad car, boat, vessel, or building, in which goods, merchandise, or valuable things, were kept for use, sale, or deposit, or has been convicted of two or more of said crimes, and shall thereafter be convicted of any one of such crimes, committed after such conviction, he shall be imprisoned in the penitentiary for any term not more than forty years, provided such former judgments shall be referred to in the indictment, stating the court, date, and place of rendition. [S13,§4871-a; C24, 27, 31, 35, 39,§13396; C46, 50, 54,§747.1]

Referred to in §§747.3, 773.34

**747.2 Fourth conviction of petty larceny.** Any person over the age of eighteen years who has been three times convicted of larceny where the value of the property stolen did not exceed twenty dollars, upon being convicted the fourth time of said offense shall be imprisoned in the penitentiary not exceeding three years, provided such former judgments

shall be referred to in the indictment, stating the court, date, and place of rendition. [S13, §4871-b; C24, 27, 31, 35, 39,§13397; C46, 50, 54, §747.2]

Referred to in §747.3

**747.3 Evidence.** On the trial of any of said offenses named in sections 747.1 and 747.2, a duly authenticated copy of the record of the former judgment in any court wherein said conviction was had, for either of said crimes against the party indicted, shall be prima-facie evidence of such former conviction and may be used in evidence against said party. [S13, §4871-c; C24, 27, 31, 35, 39,§13398; C46, 50, 54, §747.3]

**747.4 Duties of jury and judge.** Upon any trial when the indictment refers to former convictions of the defendant, the jury, if it finds the defendant guilty, and the court, if the defendant is convicted on a plea of guilty, must also find and determine specially whether the defendant had previously been convicted of either of the crimes referred to in the indictment, and the number of times so convicted. [S13,§4871-d; C24, 27, 31, 35, 39,§13399; C46, 50, 54,§747.4]

**747.5 "Habitual criminal" defined.** Whoever has been twice convicted of crime, sentenced, and committed to prison, in this or any other state, or by the United States, or once in this state and once at least in any other state, or by the United States, for terms of not less than three years each shall, upon conviction of a felony committed in this state after the taking effect of this section, be deemed to be a habitual criminal, and shall be punished by imprisonment in the penitentiary for a term of not more than twenty-five years, provided that no greater punishment is otherwise provided by statute, in which case the law creating the greater punishment shall govern. [S13,§5091-a; C24, 27, 31, 35, 39,§13400; C46, 50, 54,§747.5]

Referred to in §§747.6, 747.7

**747.6 Evidence.** On the trial of any cause, under the provisions of section 747.5, a duly

authenticated copy of the former judgment and commitment, from any court in which such judgment and commitment was had, for either of the said crimes formerly committed by the party indicted under section 747.5, shall be competent and prima-facie evidence of such former judgment and commitment, and may be used in evidence upon the trial of said cause. [S13,§5091-b; C24, 27, 31, 35, 39,§13401; C46, 50, 54,§747.6]

**747.7 Pardon for former crime.** If the person so convicted shall show, to the satisfaction of the court before whom such conviction was had, that he was released from imprisonment, upon either of said sentences, upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered as such under section 747.5. [S13,§5091-a; C24, 27, 31, 35, 39,§13402; C46, 50, 54,§747.7]

# TITLE XXXVI

## CRIMINAL PROCEDURE

### CHAPTER 748

#### MAGISTRATES, PEACE OFFICERS, AND SPECIAL AGENTS

748.1 "Magistrate" defined.  
748.2 Power of magistrates.  
748.3 "Peace officers" defined.

748.4 Duties.  
748.5 "Officers of justice" defined.  
748.6 Power of governor and attorney general.

**748.1 "Magistrate" defined.** The term "magistrate" includes:

1. All judges of the supreme, district, superior, or municipal courts, throughout the state.
2. All justices of the peace, mayors, and judges of the police court, within their respective counties. [C51,§§2778, 2823; R60,§§4439, 4447; C73,§4108; C97,§5097; C24, 27, 31, 35, 39, §13403; C46, 50, 54,§748.1]

**748.2 Power of magistrates.** Magistrates have power to hear complaints, or preliminary informations, issue warrants, order arrests, require security to keep the peace, make commitments, and take bail, as provided by law. [C51,§2778; R60,§4439; C73,§4108; C97, §5098; C24, 27, 31, 35, 39,§13404; C46, 50, 54, §748.2]

**748.3 "Peace officers" defined.** The following are "peace officers":

1. Sheriffs and their deputies.
2. Constables.
3. Marshals and policemen of cities and towns.
4. All special agents appointed by the commissioner of public safety and all members of the state department of public safety excepting the members of the clerical force.
5. Such persons as may be otherwise so designated by law. [C51,§2830; R60,§4440; C73, §4109; C97,§5099; C24, 27, 31, 35, 39,§13405; C46, 50, 54,§748.3]

Referred to in §321.1  
Capitol police, §18.2

**748.4 Duties.** It shall be the duty of a peace officer and his deputy, if any, through-

out the county, township, or municipality of which he is such officer, to preserve the peace, to ferret out crime, to apprehend and arrest all criminals, and insofar as it is within his power, to secure evidence of all crimes committed, and present the same to the county attorney, grand jury, mayor or police courts, and to file informations against all persons whom he knows, or has reason to believe, to have violated the laws of the state, and to perform all other duties, civil or criminal, pertaining to his office or enjoined upon him by law. Nothing herein shall be deemed to curtail the powers and duties otherwise granted to or imposed upon peace officers. [C51,§170; R60,§383; C73,§337; C97,§499; S13, §499; C24,§5181; C27, 31, 35,§13405-b1; C39, §13405.1; C46, 50, 54,§748.4]

Duty to enforce motor vehicle law, §321.6

**748.5 "Officers of justice" defined.** Magistrates and peace officers are sometimes designated as "officers of justice". [R60,§4441; C73, §4110; C97,§5100; C24, 27, 31, 35, 39,§13406; C46, 50, 54,§748.5]

**748.6 Power of governor and attorney general.** The governor and attorney general shall each have the power to call to their aid in the enforcement of the law any peace officer; and when such officers are so called upon it shall be their duty faithfully to render such assistance as may be required, in any part of the state, and such peace officers while so acting shall have the same powers throughout the state as possessed by the sheriff of the county in which such peace officer is acting. [C24, 27, 31, 35, 39,§13411; C46, 50, 54,§748.6]

### CHAPTER 749

#### BUREAU OF CRIMINAL IDENTIFICATION

Identification and use of publicly owned automobiles, etc., §740 20 et seq

749.1 Criminal identification.  
749.2 Finger and palm prints—duty of sheriff and chief of police.

749.3 Equipment.  
749.4 Fingerprints and photographs at institutions.

**749.1 Criminal identification.** The commissioner of public safety may provide in his department a bureau of criminal identification.

He may adopt rules and regulations for the same. The sheriff of each county and the chief of police of each city and town shall

furnish to the department criminal identification records and other information as directed by the commissioner of public safety. [C24, 27, 31, 35, 39, §13416; C46, 50, 54, §749.1]

**749.2 Finger and palm prints — duty of sheriff and chief of police.** It shall be the duty of the sheriff of every county, and the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while intoxicated or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person. [C27, 31, 35, §13417-b1; C39, §13417.1; C46, 50, 54, §749.2]

Referred to in §749.3  
Photographs and Bertillon measurements, §782.8

**749.3 Equipment.** The board of supervisors of each county and the council of each city

affected by the provisions of section 749.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section. [C27, 31, 35, §13417-b2; C39, §13417.2; C46, 50, 54, §749.3]

**749.4 Fingerprints and photographs at institutions.** It shall be the duty of the wardens of the penitentiary and men's reformatory, and superintendents of the women's reformatory, the Iowa training school for boys, and the Iowa training school for girls, to take or procure the taking of the fingerprints, and in the case of the penitentiary, men's reformatory, and women's reformatory only, Bertillon photographs of any person received on commitment to their respective institutions, and to forward such fingerprint records and photographs within ten days after the same are taken to the division of criminal investigation and bureau of identification, Iowa department of public safety, and to the federal bureau of investigation.

It shall also be the duty of the said wardens and superintendent to procure the taking of five by seven inch photographic negative showing a full length view of each convict, prisoner or inmate of the penitentiary, men's reformatory, and women's reformatory in his or her release clothing immediately prior to his or her discharge from the institution either upon expiration of sentence or commitment or on parole, and to forward such photographic negative within two days after the same is taken to the division of criminal investigation and bureau of identification, Iowa department of public safety. [C50, 54, §749.4]

## CHAPTER 750

### POLICE RADIO BROADCASTING SYSTEM

750.1 Contract authorized.

750.2 Expenses.

750.3 Notification to supervisors.

**750.1 Contract authorized.** The commissioner of public safety may enter into such contracts as he may deem necessary for the purpose of utilizing a special radio broadcasting system for law enforcement and police work and for direct and rapid communication with the various peace officers of the state. The said commissioner shall be empowered, subject to the approval of the governor and executive council, to equip divisional headquarters, cars, and motorcycles in his department with radio sending and/or receiving apparatus. [C31, 35, §13417-d1; C39, §13417.3; C46, 50, 54, §750.1]

Referred to in §750.2

**750.2 Expenses.** Any such contract authorized in section 750.1 shall involve no expense to the state, except that the state may buy its own radio remote control system and install

750.4 Duty of supervisors to install—costs.

750.5 Duty of city council to install—costs.

the same in the offices of the department of public safety in broadcasting communications and information direct to the peace officers of the state. [C31, 35, §13417-d2; C39, §13417.4; C46, 50, 54, §750.2]

**750.3 Notification to supervisors.** Whenever the commissioner of public safety has entered into a contract and has established radio broadcasting facilities as is provided in this chapter, he shall at once notify the boards of supervisors of the respective counties that such a radio service has been established. [C31, 35, §13417-d3; C39, §13417.5; C46, 50, 54, §750.3]

44GA, ch 241, §3, editorially divided

**750.4 Duty of supervisors to install—costs.** It shall then be the duty of the board of supervisors of each county to forthwith install in the office of the sheriff, such a locked-in radio

receiving set as may be prescribed by the commissioner of public safety, and such a set in at least one motor vehicle used by the sheriff, for use in connection with said state radio broadcasting system. The board of supervisors of any county may install as many additional such radio receiving sets as may be deemed necessary. The cost of such radio receiving sets and the cost of installation thereof shall be paid from the general fund of the county. [C31, 35,§13417-d4; C39,§13417.6; C46, 50, 54,§750.4]

**750.5 Duty of city council to install—costs.** The council of each city shall, and the council of any town may, install in such place as said council may determine at least one such locked-in radio receiving set as may be prescribed by the commissioner of public safety for use in law enforcement and police work. The cost of any such installation shall be paid from the public safety fund of said city or town. [C31, 35,§13417-d5; C39,§13417.7; C46, 50, 54, §750.5]

CHAPTER 751

SEARCH WARRANTS

Referred to in §§110.20, 127.11, 204.21, 726.4

- 751.1 Definition.
- 751.2 Docketing—trial—nature of proceedings.
- 751.3 When authorized.
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- 751.5 Issuance of warrant.
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- 751.9 Breaking in to execute warrant.
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- 751.20 Procedure.
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- 751.29 Proceeds.
- 751.30 Disposition of stolen or like property.
- 751.31 Utilizing condemned liquors.
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- 751.33 Transportation by carrier.
- 751.34 Utilizing other property.
- 751.35 Costs.
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- 751.39 Officer exceeding authority.
- 751.40 Appeal by claimant.
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- 751.43 Stay of proceedings.

**751.1 Definition.** A search warrant is an order in writing, in the name of the state, signed by a magistrate, other than a judge of the supreme court, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. [C51, §3291; R60,§5024; C73,§4629; C97,§5545; C24, 27, 31,§13418; C35,§13441-g1; C39,§13441.01; C46, 50, 54,§751.1]

**751.2 Docketing—trial—nature of proceedings.** Search warrant proceedings shall be docketed in the name of the state against the property seized and shall be tried as an ordinary action, the county attorney appearing for the state. [C24, 27, 31,§§1967, 13207; C35, §13441-g2; C39,§13441.02; C46, 50, 54,§751.2]

**751.3 When authorized.** A search warrant may be issued:

1. For property which has been stolen or embezzled.
2. For property which has been used as a means or as one of the means of committing or of accomplishing the commission of a felony.

3. For property which is in the possession of a person with the intent to use it as a means of committing a public offense, or which has been delivered by such person to another for the purpose of concealing it.

4. For property which is being used or employed in carrying on, keeping or maintaining a place of any description for the purpose of gambling for money or for any other thing of value.

5. For personal property of the character enumerated in section 726.4.

6. For property of the character specifically enumerated in section 726.5.

7. For cigarettes and cigarette papers, and the containers thereof, received, possessed, kept, stored, sold or given away in violation of any law of this state, or with intent to violate any such law.

8. For intoxicating liquors, including alcohol, brandy, whisky, rum, gin, beer, ale, porter, wine, spirituous, vinous, and malt liquors, manufactured, sold, kept for sale, owned, or possessed in violation of any law of this state, including all instrumentalities, contain-



ers, equipment, articles or things used or employed or intended to be used or employed in effecting said unlawful acts or any of them.

9. For any other property which is legally subject to a search warrant by any law of this state. [C51,§3292; R60,§5025; C73,§4630; C97, §5546; C24, 27, 31,§13419; C35,§13441-g3; C39, §13441.03; C46, 50, 54,§751.3]

Referred to in §751.30

**751.4 Information.** Any credible resident of this state may make application for the issuance of a search warrant by filing before any magistrate, except a judge of the supreme court, a written information, supported by his oath or affirmation, and alleging therein the existence of any ground or grounds specified in this chapter as ground for the issuance of a search warrant and that he believes and has substantial reason to believe that said ground or grounds exist in fact. Said information shall describe with reasonable certainty the person or premises, or both, to be searched, the property to be seized, and the person, if known, in possession of said premises and property. [C51,§2722; R60,§§1565, 4364; C73, §§1544, 1545, 4027; C97,§§2413, 2414, 4963; S13, §§4965-b, 5007-a; SS15,§2413; C24, 27, 31,§§1578, 1968, 1969, 13200, 13211; C35,§13441-g4; C39, §13441.04; C46, 50, 54,§751.4]

**751.5 Issuance of warrant.** If the magistrate is satisfied from his examination of the applicant, and of other witnesses, if any, and of the allegations of the information, of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, directed to any peace officer in the county, commanding him forthwith to search the person or place named for the property specified, and bring said property before him. [C51,§§2722, 3294-3296; R60,§§1565, 4364, 5027-5029; C73, §§1544, 4027, 4632-4634; C97,§§2413, 4963, 5548-5550; S13,§5007-a; SS15,§2413; C24, 27, 31,§§1578, 1970, 13200, 13421, 13423; C35,§13441-g5; C39, §13441.05; C46, 50, 54,§751.5]

**751.6 Form of warrant.** The warrant may be in substantially the following form:

County of ..... }  
State of Iowa. }

To any peace officer of said county:

Proof having been this day made before me as provided by law that (here, with reasonable certainty and in accordance with the information and other proof obtained by the magistrate, designate the property, its location, the person in possession thereof, and the unlawful use or purpose to which it has been, or is being employed or held)

and being satisfied that the foregoing recital relative to said property is probably true, now, therefore, you are commanded to make immediate search of (here state whether the search is of the person of a named person or of said premises, or of both) and if said property or

any part thereof be found you are commanded to bring said property forthwith before me at my office.

Dated at ..... this ..... day of ....., 19.....

(Official title)

[R60,§§1565, 5031; C73,§§1544, 4636; C97,§§2413, 5551; SS15,§2413; C24, 27, 31,§§1970, 13424; C35, §13441-g6; C39,§13441.06; C46, 50, 54,§751.6]

**751.7 By whom served.** A search warrant may in all cases be served by any peace officer, but by no other person, except in aid of the officer on his requisition, he being present and acting in its execution. [C51,§3297; R60,§§1565, 5032; C73,§§1544, 4637; C97,§§2413, 5552; S13, §5007-a; SS15,§2413; C24, 27, 31,§§1578, 1970, 13425; C35,§13441-g7; C39,§13441.07; C46, 50, 54, §751.7]

**751.8 Execution of warrant.** The peace officer to whom such warrant shall be delivered shall, in the daytime or in the nighttime, forthwith obey and execute, as effectually as possible, the commands of said warrant, and forthwith make return of his doings to said magistrate, who shall securely keep all property so seized and the vessels, if any, containing said property until final action be had thereon. [R60,§§1565, 5035; C73,§§1544, 4640; C97,§§5555; SS15,§§2413, 2415; C24, 27, 31,§§1971, 13428; C35, §13441-g8; C39,§13441.08; C46, 50, 54,§751.8]

**751.9 Breaking in to execute warrant.** The officer may break open any outer or inner door or window of a house, or any part thereof, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. [C51,§3298; R60,§5033; C73,§4638; C97,§5553; C24, 27, 31,§13426; C35, §13441-g9; C39,§13441.09; C46, 50, 54,§751.9]

**751.10 Liberating person assisting in execution.** He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or, when necessary, for his own liberation. [R60,§5034; C73,§4639; C97, §5554; C24, 27, 31,§13427; C35,§13441-g10; C39, §13441.10; C46, 50, 54,§751.10]

Breaking out after lawful entrance, §755.10

**751.11 Arrest of persons.** The officer serving a search warrant, shall, in connection therewith, and in addition thereto, make arrest of persons under all circumstances justifying an arrest without a warrant, and take said persons before said magistrate to be dealt with as provided by law. [C35,§13441-g11; C39, §13441.11; C46, 50, 54,§751.11]

**751.12 Return of warrant.** A search warrant must be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of such time the warrant, unless executed, is void. [C51, §3299; R60,§§1565, 5036; C73,§§1544, 4641; C97,

§§2413, 2415, 5556; SS15, §§2413, 2415; C24, 27, 31, §§1581, 1971, 13429; C35, §13441-g12; C39, §13441.12; C46, 50, 54, §751.12]

**751.13 Receipt for property.** When the officer takes any property under the warrant, he must, on demand, give to the person from whom it was taken, or in whose possession it was found, an itemized receipt therefor. [C51, §3300; R60, §5037; C73, §4642; C97, §5557; C24, 27, 31, §13430; C35, §13441-g13; C39, §13441.13; C46, 50, 54, §751.13]

**751.14 Inventory.** The officer must forthwith return the warrant to the magistrate, with a complete inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present. [C51, §3301; R60, §5038; C73, §4643; C97, §5558; C24, 27, 31, §13431; C35, §13441-g14; C39, §13441.14; C46, 50, 54, §751.14]

**751.15 Copy of inventory.** The magistrate, if required, must deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. [C51, §3302; R60, §5039; C73, §4644; C97, §5559; C24, 27, 31, §13432; C35, §13441-g15; C39, §13441.15; C46, 50, 54, §751.15]

**751.16 Notice of hearing.** Said magistrate, in the event of a seizure under said warrant, shall, within forty-eight hours after the officer's return is filed with him, issue a notice of hearing on said seizure, which notice shall:

1. Be addressed:

a. To the person or persons named or described in said information as the owner or keeper or possessor of said property.

b. "To all persons whom it may concern."

2. Describe said property so seized with reasonable certainty, and state where, when, and why the same was seized.

3. Summon said persons and all others whom it may concern to appear before said magistrate within the county at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the filing of said return, and show cause, if any they have, why said property, together with the containers in which the same are contained, if any, should not be forfeited.

4. Be signed by said magistrate. [R60, §1566; C73, §1546; C97, §2415; S13, §4965-b; SS15, §2415; C24, 27, 31, §§1972, 13204, 13205, 13213; C35, §13441-g16; C39, §13441.16; C46, 50, 54, §751.16]

**751.17 Service of notice.** Said notice shall be served at least three days prior to the hearing:

1. By posting a copy thereof in some conspicuous place on or about the building or place where said property was seized.

2. If the person or persons named or described in the information as owner or keeper of the property so seized be resident of said county, then by personally serving said notice

on said person, or by leaving a copy of said notice at the last known usual place of residence of said person with some adult member of his family if found at said residence. [R60, §1566; C73, §1546; C97, §2415; S13, §4965-b; SS15, §2415; C24, 27, 31, §§1973, 13204, 13213; C35, §13441-g17; C39, §13441.17; C46, 50, 54, §751.17]

**751.18 Hearing.** The magistrate must, at the time so fixed, or at an adjournment thereof, proceed to take testimony in relation to the property so seized. [C51, §§3303, 3304; R60, §§5040, 5041; C73, §§4645, 4646; C97, §§5560, 5561; C24, 27, 31, §§13206, 13433, 13434; C35, §13441-g18; C39, §13441.18; C46, 50, 54, §751.18]

**751.19 Substitute magistrate.** Should the magistrate issuing the warrant be absent or for any reason be unable to serve at the time of the hearing aforesaid, any other magistrate of the county, designated by the absent magistrate or by the county attorney, shall act. [S13, §4965-b; C24, 27, 31, §13213; C35, §13441-g19; C39, §13441.19; C46, 50, 54, §751.19]

**751.20 Procedure.** The procedure in the trial of cases not commenced before a judge of the district court may be the same, substantially as in the case of misdemeanors triable before justices of the peace. Proceedings commenced before a judge of the district court may be treated as pending in the district court and be disposed of under the general procedure therein provided except as it may be herein modified. [R60, §1566; C73, §1546; C97, §2415; SS15, §2415; C24, 27, 31, §§1975, 13207; C35, §13441-g20; C39, §13441.20; C46, 50, 54, §751.20]

**751.21 Right to contest forfeiture.** At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said property, or in any part thereof, may appear and show specific and legal cause why the same should not be forfeited. [R60, §1566; C73, §1546; C97, §2415; SS15, §2415; C24, 27, 31, §§1974, 13206; C35, §13441-g21; C39, §13441.21; C46, 50, 54, §751.21]

**751.22 Insufficient description — effect.** When any property shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same, by reason of any alleged insufficiency of description in the warrant, but the claimant shall only have a right to be heard on the merits of the case. [C73, §1545; C97, §2414; C24, 27, 31, §1978; C35, §13441-g22; C39, §13441.22; C46, 50, 54, §751.22]

**751.23 Property restored.** If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken. [C51, §3305; R60, §§1567, 5042; C73, §§1547, 4647; C97, §§2416, 5562; S13, §4965-b; C24, 27, 31, §§1988, 13206, 13214, 13435; C35, §13441-g23; C39, §13441.23; C46, 50, 54, §751.23]

**751.24 Execution, return, and costs.** The officer shall obey said order and make return thereon to the court of his acts thereunder and the costs of the proceeding in such case attending the restoration shall be taxed to and paid by the state. [R60,§1567; C73,§1547; C97, §2416; C24, 27, 31,§1989; C35,§13441-g24; C39, §13441.24; C46, 50, 54,§751.24]

**751.25 Judgment of forfeiture and destruction.** If the magistrate finds that the property or any part thereof seized under the search warrant is of the illegal nature or character alleged in the information, he shall enter judgment of forfeiture to the state of said property, or of the part thereof, as the case may be, and shall, in addition to said judgment of forfeiture, enter an order directing the immediate destruction of all such property which does not have a legitimate use and the sale of all property other than money which may be used legitimately, unless said latter property is otherwise disposed of as in this chapter provided. [R60,§1566; C73,§1546; C97,§2415; S13, §5007-a; SS15,§2415; C24, 27, 31,§§1579, 1979, 13208; C35,§13441-g25; C39,§13441.25; C46, 50, 54, §751.25]

**751.26 Execution—sale—destruction.** Execution shall issue for the sale of all property, except money, which may have a legitimate use, and for the destruction of all property having no legitimate use. Sales shall be made as provided by section 626.76. Due return of the execution shall be made thereon by the officer executing it. [C51,§2722; R60,§§4364, 5048; C73,§§4027, 4653; C97,§§4963, 5568; S13, §§4965-b, 5007-a; C24, 27, 31,§§1579, 1993, 1996, 13201, 13208, 13215, 13441; C35,§13441-g26; C39, §13441.26; C46, 50, 54,§751.26]

**751.27 Limitation on sale.** Property seized under search warrant and forfeited to the state and ordered sold shall be sold only to persons who have legal right to purchase or receive such property. [S13,§5007-a; C24, 27, 31,§1579; C35,§13441-g27; C39,§13441.27; C46, 50, 54,§751.27]

**751.28 Stamping cigarettes, etc.** In the sale of cigarettes and cigarette papers which have been seized on search warrant and forfeited, the officer shall be exempt from the provisions of the law requiring the stamping of such articles before sale. [S13,§5007-a; C24, 27, 31, §1579; C35,§13441-g28; C39,§13441.28; C46, 50, 54, §751.28]

See §98.32

**751.29 Proceeds.** The proceeds derived from a sale and the money seized and forfeited, if any, shall be paid by the peace officer to the county treasurer and by him credited to the school fund of the county. [C24, 27, 31,§§1580, 13209; C35,§13441-g29; C39,§13441.29; C46, 50, 54, §751.29]

**751.30 Disposition of stolen or like property.** If the property taken by virtue of a search warrant was stolen or embezzled, it

must be restored to the owner, upon his making satisfactory proof to the magistrate of his ownership thereof, or of his right of possession thereto, as provided in chapter 615. If it was taken on a warrant issued on the grounds stated in the second or third subsection of section 751.3, the magistrate must retain it in his possession, subject to the order of any other court having jurisdiction to try the offense which the property taken was used as a means of committing, or so intended to be. [C51, §3306; R60,§5043; C73,§4648; C97,§5563; C24, 27, 31,§13436; C35,§13441-g30; C39,§13441.30; C46, 50, 54,§751.30]

**751.31 Utilizing condemned liquors.** When a judgment has been entered decreeing a forfeiture of any intoxicating liquors, the magistrate shall direct the disposition of such liquors and the vessels containing the same:

1. By ordering the destruction thereof; or
2. By ordering any portion thereof consisting of alcohol, brandies, wine, or whisky, to be delivered, for medicinal or scientific purposes, to any state or reputable hospital in the county, or in adjoining counties, or to the board of control of state institutions, or to any reputable educational institution in the state for scientific purposes. [C24, 27, 31,§1990; C35, §13441-g31; C39,§13441.31; C46, 50, 54,§751.31]

**751.32 Dispensation by board of control.** Liquors delivered to the board of control shall be dispensed by it to any state institution or reputable hospital in this state and solely for medical or scientific purposes. [C24, 27, 31, §1991; C35,§13441-g32; C39,§13441.32; C46, 50, 54,§751.32]

**751.33 Transportation by carrier.** When any such liquor is ordered delivered or shipped, the magistrate shall securely attach, or cause to be attached, to the box or package containing the same, a certified copy of the order of the court and thereupon any common carrier may receive, transport, and deliver such liquor to the consignee. The cost of packing and transportation shall be paid by the consignee receiving such liquor. [C24, 27, 31,§1997; C35, §13441-g33; C39,§13441.33; C46, 50, 54,§751.33]

**751.34 Utilizing other property.** When property seized under search warrant has been finally forfeited to the state, and is of a nature useful to peace officers in law enforcement, the magistrate may order it delivered to any state, county, or city law-enforcing agency, and in such case the head, chief, or superintendent of such agency shall receipt to the magistrate therefor, and hold and use such property solely in effecting law enforcement, and deliver the same to his successor and shall be liable therefor on his bond. [C35,§13441-g34; C39,§13441.34; C46, 50, 54,§751.34]

**751.35 Costs.** If no person be made defendant, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in

ordinary criminal prosecution where the prosecution fails.

If the judgment shall be against only one party defendant, he shall be adjudged to pay all the costs of the proceedings.

If such judgment shall be against more than one party defendant claiming distinct interests in said property, the costs of said proceedings and trial shall be, according to the discretion of said magistrate, equitably apportioned among said defendants.

Execution shall be issued on said judgments against said defendants for the amount of costs so adjudged against them. [R60,§1566; C73, §1546; C97, SS15,§2415; C24, 27, 31,§1980; C35, §13441-g35; C39,§13441.35; C46, 50, 54,§751.35]

**751.36 Seizure of other property—disposition.** When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any other things for which a search warrant is allowed by this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial; and as soon as may be afterwards all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant may be destroyed, or otherwise disposed of, under the direction of the court or magistrate. [R60,§5048; C73,§4653; C97,§5568; C24, 27, 31,§13441; C35,§13441-g36; C39,§13441.36; C46, 50, 54,§751.36]

**751.37 Searching prisoner.** When a person charged with an offense is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or evidence to be retained, subject to his order, or the order of the court in which the defendant may be tried. [C51,§3309; R60, §5047; C73,§4652; C97,§5567; C24, 27, 31,§13440; C35,§13441-g37; C39,§13441.37; C46, 50, 54,§751.37]

**751.38 Maliciously suing out warrant.** Whoever maliciously and without probable cause

procures a search warrant to be issued and executed is guilty of a misdemeanor. [C51, §3308; R60,§5045; C73,§4650; C97,§5565; C24, 27, 31,§13438; C35,§13441-g38; C39,§13441.38; C46, 50, 54,§751.38]

Punishment, §687.7

**751.39 Officer exceeding authority.** A peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. [R60,§5046; C73,§4651; C97,§5566; C24, 27, 31,§13439; C35,§13441-g39; C39,§13441.39; C46, 50, 54,§751.39]

Punishment, §687.7

**751.40 Appeal by claimant.** Any person appearing as aforesaid may, when the proceedings are not before a judge of the district court, appeal to the district court from said judgment or forfeiture, as to the whole or any part of said property. [R60,§1566; C73,§1546; C97, SS15,§2415; C24, 27, 31,§1981; C35,§13441-g40; C39,§13441.40; C46, 50, 54,§751.40]

**751.41 Appeal — how taken.** Said appeal shall be taken by filing with the magistrate, within two days after the entry of forfeiture, a written notice of appeal specifically stating the part of the judgment of forfeiture appealed from, and a bond in such reasonable sum as the magistrate may fix and approve, conditioned to pay all costs of the proceedings in case appellant is unsuccessful on his appeal. [C35,§13441-g41; C39,§13441.41; C46, 50, 54, §751.41]

**751.42 Appeal by state.** Where the judgment is against the state, it shall have the same right of appeal, and on the same conditions, except that no bond shall be required. [C24, 27, 31,§1982; C35,§13441-g42; C39,§13441.42; C46, 50, 54,§751.42]

**751.43 Stay of proceedings.** If an appeal be taken, the same shall operate as a stay of proceedings and the property seized under the warrant and involved in the appeal shall not be returned to any claimant thereof nor sold or destroyed or otherwise disposed of until final determination is had. [C24, 27, 31,§1983; C35,§13441-g43; C39,§13441.43; C46, 50, 54,§751.43]

## CHAPTER 752

### LIMITATION OF CRIMINAL ACTIONS

752.1 Actions for murder.

752.2 Eighteen months limitation.

752.3 Three-year limitation.

752.4 One-year limitation.

752.5 Absence from state deducted.

752.6 Time of finding indictment.

**752.1 Actions for murder.** A prosecution for murder may be commenced at any time after the death of the person killed. [C51, §2811; R60,§4513; C73,§4165; C97,§5163; C24, 27, 31, 35, 39,§13442; C46, 50, 54,§752.1]

**752.2 Eighteen months limitation.** An indictment for a public offense must be found

within eighteen months after its commission, in the following cases, and not after:

1. Taking or enticing away an unmarried female under the age of consent, for the purpose of marriage or prostitution.

2. Seducing or debauching an unmarried female of previously chaste character.

3. For rape or adultery.

4. For an assault with intent to commit a rape. [C51,§2812; R60,§4514; C73,§4166; C97,§5164; C24, 27, 31, 35, 39,§13443; C46, 50, 54,§752.2]

**752.3 Three-year limitation.** In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterwards. [C51,§2813; R60,§4515; C73,§4167; C97,§5165; C24, 27, 31, 35, 39,§13444; C46, 50, 54,§752.3]

Accrual in embezzlement by executor, §710.11

**752.4 One-year limitation.** A prosecution for a misdemeanor triable before a justice of the peace, or violation of an ordinance of a city or town, must be commenced within one year after the commission thereof, and not

after. [C73,§4168; C97,§5166; C24, 27, 31, 35, 39, §13445; C46, 50, 54,§752.4]

**752.5 Absence from state deducted.** If, when the offense is committed, the defendant is out of the state, the indictment or prosecution may be found or commenced within the time herein limited after his coming into the state, and no period during which the party charged was not publicly resident within the state is a part of the limitation. [C51,§2814; R60,§4516; C73,§4169; C97,§5167; C24, 27, 31, 35, 39,§13446; C46, 50, 54,§752.5]

**752.6 Time of finding indictment.** An indictment is found, within the meaning of this chapter, when it is duly presented by the grand jury in open court and there filed. [C51,§2815; R60,§4517; C73,§4170; C97,§5168; C24, 27, 31, 35, 39,§13447; C46, 50, 54,§752.6]

## CHAPTER 753

### JURISDICTION OF PUBLIC OFFENSES

753.1 Persons subject to laws of state.

753.2 Jurisdiction of district court.

753.3 Offenses consummated within the state.

753.4 Offenses partly in county.

753.5 Offenses near boundary of two counties.

753.6 Offenses on trains, boats, or aircraft.

753.7 Jurisdiction in any county in certain cases.

753.8 Jurisdiction of bigamy.

753.9 Fighting duel without the state—death within state.

753.10 Conviction or acquittal bars action.

**753.1 Persons subject to laws of state.** Every person, whether an inhabitant of this state or any other state or country, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States. [C51,§2803; R60,§4500; C73,§4155; C97,§5153; C24, 27, 31, 35, 39,§13448; C46, 50, 54,§753.1]

**753.2 Jurisdiction of district court.** The local jurisdiction of the district court is of offenses committed within the county in which it is held, and of such other cases as are or may be provided by law. [R60,§4502; C73,§4156; C97,§5154; C24, 27, 31, 35, 39,§13449; C46, 50, 54, §753.2]

Prison breach, §745.4

**753.3 Offenses consummated within the state.** When the commission of a public offense, committed without the state, is consummated within its boundaries, the defendant is liable to punishment therefor, though he was without the state at the time of its consummation, if he committed the offense through the intervention of an agent within the state, or by any other means proceeding directly from himself.

Jurisdiction thereof is in the county in which the offense is completed. [C51,§2804; R60,§4505; C73,§4157; C97,§5155; C24, 27, 31, 35, 39,§13450; C46, 50, 54,§753.3]

**753.4 Offenses partly in county.** When a public offense is committed partly in one county and partly in another, or when the acts or effects constituting or requisite to the consummation of the offense occur in two or more counties, jurisdiction is in either county, except as otherwise provided by law. [C51, §2806; R60,§4507; C73,§4159; C97,§5157; C24, 27, 31, 35, 39,§13451; C46, 50, 54,§753.4]

**753.5 Offenses near boundary of two counties.** When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county, except as otherwise provided by law. [C51,§2807; R60,§4508; C73, §4160; C97,§5158; C24, 27, 31, 35, 39,§13452; C46, 50, 54,§753.5]

**753.6 Offenses on trains, boats, or aircraft.** When an offense is committed within the jurisdiction of the state on any railroad car while passing over any railroad, or any boat, raft, or vessel navigating a river, lake, or canal, or lying therein in the prosecution of her voyage, or in any kind of aircraft while in flight, the jurisdiction is in any county through which it passes in the course of its trip or voyage, or in the county where the trip or voyage shall begin or terminate. [C51,§2808; R60,§4509; C73, §4161; C97,§5159; C24, 27, 31, 35, 39,§13453; C46, 50, 54,§753.6]

Concurrent state jurisdiction, §§1.3, 604.7

**753.7 Jurisdiction in any county in certain cases.** The jurisdiction of an indictment for the crime of:

1. Forcibly and without lawful authority seizing and confining another, or kidnaping him with intent, against his will, to cause him to be confined or imprisoned within the state, or to be sent out of the state, or

2. Taking or enticing a child under the age of fifteen years away from the parents, guardian, or other person having the legal charge of the person, with intent to detain or conceal such child, or

3. Taking or enticing away an unmarried female of previously chaste character under the age of consent, for the purpose of prostitution, or

4. Taking any woman unlawfully and against her will or by force, menace, or duress, and compelling her to marry against her will, or

5. Seducing and debauching any unmarried woman of previously chaste character—  
is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by the offender in instigating, procuring, promoting, aiding in, or being an accessory to the com-

mission thereof, or in abetting the parties concerned therein. [C51,§2809; R60,§4510; C73, §4162; C97,§5160; C24, 27, 31, 35, 39,§13454; C46, 50, 54,§753.7]

**753.8 Jurisdiction of bigamy.** When the offense of bigamy is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county. [C51,§2810; R60,§4511; C73,§4163; C97,§5161; C24, 27, 31, 35, 39,§13455; C46, 50, 54,§753.8]

**753.9 Fighting duel without the state—death within state.** When an inhabitant or resident of the state, by previous appointment or engagement, fights a duel, or is concerned as second therein, without the jurisdiction of the state, and in such duel a wound is inflicted upon any person whereof he dies within the state, the jurisdiction of the offense is in the county where the death occurs. [C51,§2805; R60,§4506; C73,§4158; C97,§5156; C24, 27, 31, 35, 39,§13456; C46, 50, 54,§753.9]

**753.10 Conviction or acquittal bars action.** When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another. [R60,§4512; C73,§4164; C97,§5162; C24, 27, 31, 35, 39,§13457; C46, 50, 54,§753.10]

## CHAPTER 754

### PRELIMINARY INFORMATION AND WARRANTS OF ARREST

754.1 Definition.

754.2 Form.

754.3 Filing—issuing warrant.

754.4 Form of warrant.

754.5 Directed to peace officer—contents.

754.6 Order for bail—indorsed on warrant.

754.7 Manner of executing warrant.

**754.1 Definition.** A complaint or preliminary information is a statement in writing, under oath or affirmation, made before a magistrate, of the commission or threatened commission of a public offense, and accusing some one thereof. [C51,§2822; R60,§4530; C73,§4111; C97,§5101; C24, 27, 31, 35, 39,§13458; C46, 50, 54, §754.1]

**754.2 Form.** The information may be substantially in the form required in criminal actions triable before a justice of the peace. [C73,§4185; C97,§5182; C24, 27, 31, 35, 39,§13459; C46, 50, 54,§754.2]

C97,§5182, editorially divided  
Form and contents, §762.3 et seq., §773.33

**754.3 Filing—issuing warrant.** When a preliminary information is made before a magistrate, charging the commission of some designated public offense triable on indictment in the county in which such magistrate has local jurisdiction, by which person named therein, he may issue a warrant for the arrest of such person.

Whenever the preliminary information charges a misdemeanor the magistrate may in

his discretion issue a summons instead of a warrant of arrest. The summons shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate issuing the summons at a time and place stated therein.

The summons may be served in the same manner as an original notice in a civil action.

If the person named in the summons is actually served as provided herein and fails without good cause to appear as commanded by the summons, he shall be considered in contempt of court and may be punished by a fine of not more than twenty dollars. Upon such failure to appear, the magistrate shall issue a warrant of arrest for the offense originally charged, and institute proceedings in contempt as provided by chapter 665.

If after issuing a summons the magistrate becomes satisfied that the person to whom such summons has been directed will not appear, he may at once issue a warrant of arrest without waiting for the date mentioned in the summons. [C73,§4185; C97,§5182; C24, 27, 31, 35, 39, §13460; C46, 50, 54,§754.3]

Approval of warrant and expenses, §§79.12, 79.18

**754.4 Form of warrant.** The warrant of arrest on a preliminary information must be substantially in the following form:

State of Iowa,                    }  
County of ..... }

To any peace officer of the state:

Preliminary information upon oath having been this day filed with me, charging that the crime (naming it) has been committed and accusing A..... B..... thereof:

You are commanded forthwith to arrest the said A..... B..... and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ..... this ..... day of....., A. D. ....

C..... D..... (with official title).  
[C51,§2827; R60,§4534; C73,§4186; C97,§5183; C24, 27, 31, 35, 39,§13461; C46, 50, 54,§754.4]

**754.5 Directed to peace officer — contents.** The warrant must be directed to any peace officer in the state; give the name of the defend-

ant, if known to the magistrate; if unknown, may designate him by any name, and must state by name or general description an offense which authorizes a warrant to issue, the time of issuing it, the county, city, town, village, or township where issued, and be signed by the magistrate with his name of office. [C51, §§2828, 2829; R60, §§4535, 4536; C73, §§4187, 4188; C97, §5184; C24, 27, 31, 35, 39, §13462; C46, 50, 54, §754.5]

**754.6 Order for bail—indorsed on warrant.** If the offense stated in the warrant be a misdemeanor, the magistrate issuing it must make an indorsement thereon as follows: "Let the defendant, when arrested, be admitted to bail in the sum of .....dollars", stating the amount in which bail may be taken. [R60, §4537; C73, §4189; C97, §5185; C24, 27, 31, 35, 39, §13463; C46, 50, 54, §754.6]

**754.7 Manner of executing warrant.** The warrant may be delivered to any peace officer for execution, and served in any county in the state. [R60, §4538; C73, §4190; C97, §5186; C24, 27, 31, 35, 39, §13464; C46, 50, 54, §754.7]

## CHAPTER 755

### ARREST: GENERAL PROVISIONS

755.1 "Arrest" defined—time of making.  
755.2 Acts necessary.  
755.3 Persons authorized to make.  
755.4 Arrests by peace officers.  
755.5 Arrests by private persons.  
755.6 Arrests on oral order.  
755.7 Manner of making.  
755.8 Resistance to arrest—use of force.  
755.9 Breaking and entering premises.

755.10 Breaking out after lawful entrance.  
755.11 Summoning aid—refusing to assist.  
755.12 Taking weapons—delivery to magistrate.  
755.13 Escape after arrest—recapture.  
755.14 Arrests by private person—disposition of prisoner.  
755.15 Conveying prisoner to jail—fees and expenses.  
755.16 Public safety department prisoners.

**755.1 "Arrest" defined — time of making.** Arrest is the taking of a person into custody when and in the manner authorized by law, and may be made at any time of any day or night. [C51, §§2837, 2850; R60, §§4545, 4551; C73, §§4197, 4203; C97, §5193; C24, 27, 31, 35, 39, §13465; C46, 50, 54, §755.1]

**755.2 Acts necessary.** An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No unnecessary force or violence shall be used in making the same, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention. [C51, §2838; R60, §§4557-4559; C73, §§4209-4211; C97, §5194; C24, 27, 31, 35, 39, §13466; C46, 50, 54, §755.2]

**755.3 Persons authorized to make.** An arrest may be made by a peace officer or by a private person. [R60, §4546; C73, §4198; C97, §5195; C24, 27, 31, 35, 39, §13467; C46, 50, 54, §755.3]

**755.4 Arrests by peace officers.** A peace officer may make an arrest in obedience to a

warrant delivered to him; and without a warrant:

1. For a public offense committed or attempted in his presence.

2. Where a public offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it.

3. Where he has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

4. Where he has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing him that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge. [C51, §2840; R60, §§4547, 4548; C73, §§4199, 4200; C97, §5196; C24, 27, 31, 35, 39, §13468; C46, 50, 54, §755.4]

**755.5 Arrests by private persons.** A private person may make an arrest:

1. For a public offense committed or attempted in his presence.

2. When a felony has been committed, and he has reasonable ground for believing that the person to be arrested has committed it. [C51,§2846; R60,§4549; C73,§4201; C97,§5197; C24, 27, 31, 35, 39,§13469; C46, 50, 54,§755.5]

**755.6 Arrests on oral order.** A magistrate may orally order a peace officer or a private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate, which order shall authorize the arrest. [C51,§2845; R60,§4550; C73,§4202; C97,§5198; C24, 27, 31, 35, 39, §13470; C46, 50, 54,§755.6]

**755.7 Manner of making.** The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of arrest, of his authority to make it, and that he is a peace officer, if such be the case, and require him to submit to his custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, he must give information thereof and show the warrant, if required. [C51,§§2839, 2841, 2847; R60,§4552; C73, §4204; C97,§5199; C24, 27, 31, 35, 39,§13471; C46, 50, 54,§755.7]

**755.8 Resistance to arrest—use of force.** When the arrest is being made by an officer under the authority of a warrant, if, after information of the intention to make the arrest, the person to be arrested attempts to escape or forcibly resists, the officer may use all necessary means to effect the arrest. [C51,§2844; R60,§4553; C73,§4205; C97,§5200; C24, 27, 31, 35, 39,§13472; C46, 50, 54,§755.8]

**755.9 Breaking and entering premises.** To make an arrest for any public offense, a peace officer, acting with or, when authorized, without a warrant, may break into a house or other building in which the person to be arrested may be, or in which the officer has reasonable grounds for believing he is, after having demanded admittance and explained the purpose for which admittance is desired. In case of a felony, a private person may use like means to make an arrest. [C51,§§2843, 2848; R60,§4554; C73,§4206; C97,§5201; C24, 27, 31, 35, 39,§13473; C46, 50, 54,§755.9]

Referred to in §755.10

**755.10 Breaking out after lawful entrance.** Any person who has lawfully entered a house for the purpose of making an arrest, under the provisions of section 755.9, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself; and an officer may do the same when necessary for the purpose of liberating a per-

son who, acting in his aid and by his command, lawfully entered for the purpose of making an arrest, and is detained therein. [R60, §4555; C73,§4207; C97,§5202; C24, 27, 31, 35, 39, §13474; C46, 50, 54,§755.10]

**755.11 Summoning aid—refusing to assist.** Any person making an arrest may orally summon as many persons as he finds necessary to aid him in making the arrest, and all persons failing to obey such summons shall be guilty of a misdemeanor. [R60,§4556; C73,§4208; C97, §5203; C24, 27, 31, 35, 39,§13475; C46, 50, 54, §755.11]

Punishment, §687.7

**755.12 Taking weapons—delivery to magistrate.** He who makes an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken, to be disposed of according to law. [R60,§4560; C73,§4212; C97,§5204; C24, 27, 31, 35, 39,§13476; C46, 50, 54,§755.12]

**755.13 Escape after arrest—recapture.** If a person after being arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him in any part of the state, and may use the same means to retake as are authorized for an arrest; and this may be done at any time under the original warrant or commitment, when there is one. [C51,§2851; R60,§4561; C73,§4213; C97,§5205; C24, 27, 31, 35, 39,§13477; C46, 50, 54,§755.13]

**755.14 Arrests by private person—disposition of prisoner.** A private person who has arrested another for the commission of an offense must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate. [C51,§§2842, 2849; R60, §§4562–4564; C73,§§4214–4216; C97,§5206; C24, 27, 31, 35, 39,§13478; C46, 50, 54,§755.14]

**755.15 Conveying prisoner to jail—fees and expenses.** Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner from a place distant from the county jail to such jail on an order of commitment, shall be allowed the same fees and expenses as provided for in case of such services by the sheriff. [C73,§3820; C97,§1292; C24, 27, 31, 35, 39,§13479; C46, 50, 54,§755.15]

Sheriff's fees, §337.11

**755.16 Public safety department prisoners.** The sheriff of any county shall accept for custody in the county jail of his respective county any person handed over to him for safekeeping and lodging by any member of the state department of public safety. [C39,§13479.1; C46, 50, 54,§755.16]



## CHAPTER 756

## UNIFORM FRESH PURSUIT LAW

756.1 Authority of officers from another state.  
 756.2 Procedure following arrest.  
 756.3 Construction of statute.

756.4 Officers from District of Columbia.  
 756.5 Definitions of terms.  
 756.6 Name of act.

**756.1 Authority of officers from another state.** Any member of a duly organized state, county, or municipal law-enforcing unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal law-enforcing unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state. [C46, 50, 54, §756.1]

Referred to in §§756.2, 756.3

**756.2 Procedure following arrest.** If an arrest is made in this state by an officer of another state in accordance with the provisions of section 756.1 he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit him to bail for such purpose. If the magistrate determines

that the arrest was unlawful he shall discharge the person arrested. [C46, 50, 54, §756.2]

**756.3 Construction of statute.** Section 756.1 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful. [C46, 50, 54, §756.3]

**756.4 Officers from District of Columbia.** For the purpose of this chapter the word "state" shall include the District of Columbia. [C46, 50, 54, §756.4]

**756.5 Definitions of terms.** The term "fresh pursuit" as used in this chapter shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [C46, 50, 54, §756.5]

Constitutionality, 49GA, ch 95, §7

**756.6 Name of act.** This chapter may be cited as the "Uniform Act on Fresh Pursuit." [C46, 50, 54, §756.6]

## CHAPTER 757

## ARREST BY WARRANT

757.1 Disposition of prisoner.  
 757.2 In case of arrest for felony.  
 757.3 In case of arrest for misdemeanor.  
 757.4 Order for discharge.  
 757.5 Discharge—delivery of warrant and papers.

757.6 Failure to give bail.  
 757.7 Proceedings after arrest.  
 757.8 Hearing before another magistrate.

**757.1 Disposition of prisoner.** An officer making an arrest in obedience to a warrant shall proceed with the person arrested as commanded by the warrant or as provided by law. [R60, §4565; C73, §4217; C97, §5207; C24, 27, 31, 35, 39, §13480; C46, 50, 54, §757.1]

Approval of warrant and expenses, §§79.12, 79.13

**757.2 In case of arrest for felony.** If the offense stated in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, in the event of his absence or inability to act,

before the nearest or most accessible magistrate in the county in which it was issued. [C51, §2831; R60, §4539; C73, §4191; C97, §5187; C24, 27, 31, 35, 39, §13481; C46, 50, 54, §757.2]

**757.3 In case of arrest for misdemeanor.** If the offense stated in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate or the clerk of the district court of the same county in which he was arrested, for the purpose of giving bail, and the magistrate or clerk before whom he is taken in such

county must take bail from him, in the sum indorsed upon the warrant, for his appearance at the district court of the county in which the warrant was issued, on the first day of the following term. [C51,§2832; R60,§4540; C73, §4192; C97,§5188; C24, 27, 31, 35, 39,§13482; C46, 50, 54,§757.3]

Referred to in §757.4  
Similar provision, §763.5

**757.4 Order for discharge.** On taking bail in the case provided for in section 757.3, the magistrate or clerk taking the same must indorse on the warrant his official order for the discharge of the defendant, substantially as follows:

State of Iowa, }  
County of ..... }

To the officer (naming him and his official title, thus A..... B....., sheriff of..... county) having in custody C..... D..... (naming him):

The defendant named in the within warrant of arrest, now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge him from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to the clerk of the district court of .....county, on or before the first day of the next term thereof.

Dated at ...., this .... day of ...., A. D.....  
E..... F..... (with official title).  
[C51,§2833; R60,§4541; C73,§4193; C97,§5189; C24, 27, 31, 35, 39,§13483; C46, 50, 54,§757.4]

C97,§5189, editorially divided

**757.5 Discharge—delivery of warrant and papers.** He must deliver the warrant with the order thereon, together with the undertaking of bail, to the officer having the defendant in custody, who shall forthwith discharge him from arrest, and at once inform the magistrate issuing the warrant of his doings; and the magistrate or clerk, on or before the first day of the next term of the court at which the de-

fendant is required to appear, must deliver or transmit by mail, or otherwise, the warrant with the order thereon, together with the undertaking of bail, to the clerk of the court at which the defendant is required to appear, who shall forthwith file the same in his office. The magistrate who issued the warrant shall return to the clerk, on or before the first day of the next term of the court, the affidavits of the informant and his witnesses upon which the warrant was issued, who shall file all of the same in his office. [C51,§2833; R60,§4541; C73,§4193; C97,§5189; C24, 27, 31, 35, 39,§13484; C46, 50, 54,§757.5]

**757.6 Failure to give bail.** If bail be not forthwith given by the defendant as above provided, the magistrate or clerk must redeliver to the officer the warrant, and the officer must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, if he be absent or unable to act, before the nearest or most accessible magistrate in the county in which the warrant was issued. [C51,§2834; R60,§4542; C73,§4194; C97, §5190; C24, 27, 31, 35, 39,§13485; C46, 50, 54, §757.6]

**757.7 Proceedings after arrest.** In all cases the defendant, when arrested, must be taken before the magistrate or clerk without unnecessary delay, and the officer must at the same time deliver to the magistrate or clerk the warrant, with his return thereon indorsed and subscribed by him with his official title. [C51, §2835; R60,§4543; C73,§4195; C97,§5191; C24, 27, 31, 35, 39,§13486; C46, 50, 54,§757.7]

**757.8 Hearing before another magistrate.** If the defendant be taken before a magistrate in the county in which the warrant was issued, other than the magistrate who issued it as hereinbefore provided, the affidavits on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and his witnesses must be subpoenaed to make new affidavits. [C51,§2836; R60,§4544; C73,§4196; C97,§5192; C24, 27, 31, 35, 39,§13487; C46, 50, 54,§757.8]

CHAPTER 758

ARREST WITHOUT WARRANT

- 758.1 Disposition of prisoner.
- 758.2 Hearing before magistrate.
- 758.3 Transfer for convenience.
- 758.4 Proceedings—same as under warrant.
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- 758.9 Officer's return.

**758.1 Disposition of prisoner.** When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the per-

son making the statement, in the same manner as upon a preliminary information, as nearly as may be. [R60,§4566; C73,§4218; C97, §5208; C24, 27, 31, 35, 39,§13488; C46, 50, 54, §758.1]

**758.2 Hearing before magistrate.** If the magistrate believes from the statements in the

affidavit that the offense charged is triable in the county in which the arrest was made, and there is sufficient ground for a trial or preliminary examination, as the case may require, and it will not be inconvenient for the witnesses on the part of the state that it should be had before him, he shall proceed as if the person arrested had been brought before him on arrest under a warrant, and, if the case be one within his jurisdiction to try and determine, shall order an information to be filed against him. [R60,§4567; C73,§4219; C97,§5209; C24, 27, 31, 35, 39,§13489; C46, 50, 54,§758.2]

C97,§5209, editorially divided

**758.3 Transfer for convenience.** If the magistrate finds that it will be more convenient for the witnesses on the part of the state that such trial or examination should be had before some other magistrate in the county, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before the other magistrate, together with the order of commitment and affidavits, unless the person arrested give bail, when authorized, for his appearance, as in case of arrest under a warrant. [R60,§4568; C73,§4220; C97,§5209; C24, 27, 31, 35, 39,§13490; C46, 50, 54,§758.3]

**758.4 Proceedings—same as under warrant.** Unless bail is given, the peace officer shall take the arrested person before the designated magistrate, and in any case shall deliver to him the affidavits and order of commitment, and when the person arrested is brought or appears before him, he shall proceed as on an arrest under a warrant, and, when necessary, shall order an information to be filed against the person arrested. [R60,§4568; C73,§4220; C97, §5210; C24, 27, 31, 35, 39,§13491; C46, 50, 54, §758.4]

**758.5 Offense triable in another county — transfer.** If the magistrate believes from the statements in the affidavit that the offense charged is triable in a county different from that in which the arrest is made, and there is sufficient ground for a trial or preliminary examination, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before a magistrate in the county in which the offense is triable, and if the offense be a misdemeanor triable on indictment, shall fix in the order the amount of bail which the person arrested may give for his appearance at the district court of the county (naming it) in which the offense is indictable, on the first day of the next term thereof, to answer to an indictment. If the offense charged be a bailable crime, the arrested person may give bail, conditioned as above provided, before a clerk of the district court. [R60,§4569; C73,§4221; C97, §5211; C24, 27, 31, 35, 39,§13492; C46, 50, 54, §758.5]

Referred to in §§758.6, 758.8

**758.6 Bail—commitment—discharge.** If bail be given before a magistrate, as provided in section 758.5, it may be either before the magis-

trate making the order, or the magistrate in the county in which the offense is triable before whom he is taken under the order, or a magistrate of any county through which he passes in going from the county in which the arrest was made to that in which the offense is triable, or, in any bailable case, before the clerk of the district court of either of said counties; and, when given, the magistrate or clerk taking the same shall make, on the order of commitment, an order for the discharge of the person arrested from custody, who shall forthwith be discharged, and shall transmit by mail, or otherwise, to the clerk of the district court of the county at which the person arrested is bound to appear, on or before the first day of the next term thereof and as soon as it can be conveniently done after taking the bail, the affidavits, the order of commitment, and discharge, together with the undertaking of bail, and he shall file the same together in his office. [R60,§4570; C73,§4222; C97,§5212; C24, 27, 31, 35, 39,§13493; C46, 50, 54,§758.6]

Referred to in §758.8

**758.7 Proceedings in case of transfer.** If bail be not given as above provided, or if the offense charged is a felony not bailable, or a misdemeanor triable on information, the magistrate must deliver the affidavits and order of commitment to a peace officer, who shall proceed with the person arrested as directed by the order or provided by law; and the magistrate in the county in which the offense is triable, when the person arrested is brought before him, shall proceed as on an arrest under a warrant, and if the case be within his jurisdiction to try and determine, shall order an information to be filed against the person arrested. [R60,§4571; C73,§4223; C97,§5213; C24, 27, 31, 35, 39,§13494; C46, 50, 54,§758.7]

Referred to in §758.8

**758.8 Proper magistrate to conduct hearing —bail.** In the cases contemplated in sections 758.5 to 758.7, inclusive, the officer having the person arrested in custody, under the order, shall take him before the proper magistrate, in the county in which the offense is triable, which is most convenient for the witnesses on the part of the state; unless, in case of a misdemeanor triable on indictment as hereinbefore provided, the person arrested desires to give bail, in which case he shall take him before the most convenient magistrate in the county in which the offense with which he is charged is triable, or any county through which he passes in going from the county in which the arrest was made to the county in which the offense is triable, or before the clerk of the district court of either of said counties, for the purpose of giving bail. [R60, §4572; C73,§4224; C97,§5214; C24, 27, 31, 35, 39, §13495; C46, 50, 54,§758.8]

**758.9 Officer's return.** In all cases, the peace officer, when he takes a person committed to him under an order as provided in this chapter before a magistrate or clerk of the dis-

strict court, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make his return on such order, and sign such return with his name

of office, and deliver the same to the magistrate or clerk. [R60,§4573; C73,§4225; C97,§5215; C24, 27, 31, 35, 39,§13496; C46, 50, 54,§758.9]

## CHAPTER 759

### UNIFORM CRIMINAL EXTRADITION ACT'

- |        |   |        |                                    |
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**759.1 Definitions.** Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America. [C51,§3282; R60,§4518; C73,§4171; C97,§5169; C24, 27, 31, 35, 39,§13497; C46, 50, 54, §759.1]

**759.2 Arrest of fugitives.** Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [C51,§3283; R60,§4522; C73,§4175; C97,§5172; C24, 27, 31, 35, 39,§13502; C46,§759.6; C50, 54,§759.2]

**759.3 Demand in writing.** No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 759.6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon;

or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. [C51,§3284; R60,§§4521, 4523; C73,§§4174, 4176; C97,§§5171, 5173; C24, 27, 31, 35, 39,§§13501, 13503; C46, §759.5, 759.7; C50, 54,§759.3]

Referred to in §759.6

**759.4 Investigation by attorney general.** When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [C51,§§3284, 3285; R60,§§4523, 4524; C73,§§4176, 4177; C97,§§5173, 5174; C24, 27, 31, 35, 39,§§13503, 13504; C46,§§759.7, 759.8; C50, 54, §759.4]

**759.5 Persons imprisoned in another state.** When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition

of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 759.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [C51,§3283; R60,§4522; C73,§4175; C97,§5172; C24, 27, 31, 35, 39, §13502; C46,§759.6; C50, 54,§759.5]

#### **759.6 Criminal acts committed in third state.**

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 759.3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [R60,§4521; C73,§4174; C97,§5171; C24, 27, 31, 35, 39,§13501; C46,§759.5; C50, 54,§759.6]

Referred to in §§759.3, 759.13, 759.15

**759.7 Warrant for arrest.** If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [C51,§§3283, 3289; R60,§§4522, 4528; C73,§§4175, 4181; C97,§§5172, 5178; C24, 27, 31, 35, 39,§§13502, 13508; C46,§§759.6, 759.12; C50, 54,§759.7]

Referred to in §759.25

**759.8 Authority of warrant.** Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [C51,§3289; R60,§4528; C73,§4181; C97,§5178; C24, 27, 31, 35, 39,§13508; C46,§759.12; C50, 54,§759.8]

Referred to in §759.25

**759.9 Authority of peace officer.** Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process di-

rected to them, with like penalties against those who refuse their assistance. [C24, 27, 31, 35, 39,§13512; C46,§759.16; C50, 54,§759.9]

**759.10 Testing legality of arrest.** No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. [C51, §§3284, 3285; R60,§§4523, 4524; C73,§§4176, 4177; C97,§§5173, 5174; C24, 27, 31, 35, 39,§§13503, 13504; C46,§§759.7, 759.8; C50, 54,§759.10]

Referred to in §759.25

#### **759.11 Penalty for willful disobedience.**

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one hundred dollars or be imprisoned not more than thirty days. [C50, 54,§759.11]

**759.12 Confinement in jail.** The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satis-

factory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [C51,§3290; R60,§4529; C73,§1182; C97,§5179; C24, 27, 31, 35, 39,§§13509, 13512; C46,§§759.13, 759.16; C50, 54, §759.12]

**759.13 Arrest on affidavit.** Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases under section 759.6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 759.6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [R60,§4521; C73,§4174; C97,§5171; C24, 27, 31, 35, 39,§13501; C46,§759.5; C50, 54,§759.13]

**759.14 Arrest without warrant.** The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant. [C51,§3284; R60,§4523; C73,§4176; C97,§5173; C24, 27, 31, 35, 39,§13503; C46,§759.7; C50, 54,§759.14]

**759.15 Holding to await requisition.** If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under sec-

tion 759.6, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged. [C51, §3285; R60,§4524; C73,§4177; C97,§5174; C24, 27, 31, 35, 39,§13504; C46,§759.8; C50, 54,§759.15]

**759.16 Bail—exceptions.** Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state. [C51,§3285; R60,§4524; C73,§4177; C97, §5174; C24, 27, 31, 35, 39,§13504; C46,§759.8; C50, 54,§759.16]

Referred to in §759.17

**759.17 Discharge or recommitment.** If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section 759.16, but within a period not to exceed sixty days after the date of such new bond. [C51,§3286; R60,§4525; C73,§4178; C97,§5175; C24, 27, 31, 35, 39,§13505; C46,§759.9; C50, 54,§759.17]

**759.18 Forfeiture of bond.** If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [C51, §3287; R60,§4526; C73,§4179; C97,§5176; C24, 27, 31, 35, 39,§13506; C46,§759.10; C50, 54,§759.18]

**759.19 Criminal prosecution pending.** If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [C51,§3284; R60,§4523; C73,§4176; C97, §5173; C24, 27, 31, 35, 39,§13503; C46,§759.7; C50, 54,§759.19]

**759.20 Guilt or innocence of person held.** The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. [C51,§3288; R60,§4527; C73,§4180; C97,§5177; C24, 27, 31, 35, 39,§13507; C46,§759.11; C50, 54,§759.20]

**759.21 Warrant recalled.** The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. [C51,§3289; R60,§4528; C73,§4181; C97,§5178; C24, 27, 31, 35, 39,§13508; C46,§759.12; C50, 54,§759.21]

**759.22 Receiving person extradited.** Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. [C51, §3282; R60,§4518; C73,§4171; C97,§5169; C24, 27, 31, 35, 39,§13497; C46,§759.1; C50, 54,§759.22]

**759.23 Application for extradition.** When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach

of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [C50, 54,§759.23]

Referred to in §759.5

**759.24 Expenses — how paid.** When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the comptroller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all necessary and actual traveling expenses incurred in returning the prisoner. [C51,§§3282, 3290; R60,§§4518-4520, 4529; C73,§§4171-4173, 4182-4184; C97,§§5169, 5170, 5179-5181; C24, 27, 31, 35, 39,§§13498-13500, 13509-13511; C46, §759.2-759.4, 759.13-759.15; C50, 54,§759.24]

**759.25 Waiver by person arrested.** Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 759.7 and 759.8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 759.10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer

having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [C50, 54,§759.25]

**759.26 State's rights not deemed waived.** Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any

proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [C50, 54,§759.26]

**759.27 Trial for other crimes.** After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [C50, 54,§759.27]

**759.28 Construction of chapter.** The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. [C50, 54,§759.28]

**759.29 Title.** This chapter may be cited as the "Uniform Criminal Extradition Act." [C50, 54,§759.29]

Constitutionality, 53GA, ch 244,§29  
Omnibus repeal, 53GA, ch 244,§31

## CHAPTER 760

### SECURITY TO KEEP THE PEACE

Referred to in §§727.4, 746.5

760.1 Public offense threatened—complaint—arrest.  
760.2 Proceedings before magistrate.  
760.3 Change of venue—examination.  
760.4 Discharge ordered—costs.  
760.5 Defendant bound over—sureties.  
760.6 Committed to jail.  
760.7 Disposition of papers.

760.8 Assault in presence of court or magistrate.  
760.9 Bond required on conviction.  
760.10 Appearance—time of—forfeiture.  
760.11 Hearing—judgment—costs.  
760.12 Breach of bond.  
760.13 Suit brought by county attorney.  
760.14 Record of conviction must be alleged—evidence.

**760.1 Public offense threatened—complaint—arrest.** When complaint is made before a magistrate that any person has threatened to commit any public offense punishable by law, and such magistrate is satisfied that there is reason to fear the commission thereof, he may issue a warrant for the arrest of the person complained of; and the officer to whom the same shall be delivered for service shall forthwith arrest and bring the accused before such magistrate, or, in case of his absence or inability to act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the state. [R60,§§4447-4454; C73, §4115; C97,§5105; C24, 27, 31, 35, 39,§13513; C46, 50, 54,§760.1]

Approval of warrant and expenses, §§79.12, 79.13

**760.2 Proceedings before magistrate.** When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the same

and who has charge of the person arrested must, at the same time, deliver to the magistrate before whom the person arrested is taken, the warrant, with his return indorsed and subscribed by him. The complaint and other affidavits, if any, on which the warrant was issued must be sent to the magistrate before whom the person arrested is taken, and, if they cannot be procured, the complainant and his witnesses, if any, must be subpoenaed, if necessary, by the magistrate before whom the person arrested is taken, to appear before him and make a new complaint and affidavits. [R60,§4455; C73,§4116; C97,§5106; C24, 27, 31, 35, 39,§13514; C46, 50, 54,§760.2]

**760.3 Change of venue—examination.** When the person complained of is brought before the magistrate, if the charge be controverted, a change of venue may be had as in preliminary examinations, and at the hearing the magistrate must take the testimony in relation thereto, which must be reduced to writing and subscribed by the witnesses. [R60,§4456; C73, §4117; C97,§5107; C24, 27, 31, 35, 39,§13515; C46, 50, 54,§760.3]



**760.4 Discharge ordered—costs.** If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged, and the complainant may be ordered to pay the costs of the proceeding if the magistrate regards the complaint as unfounded and frivolous, and, unless when the proceeding is before a judge of the supreme, district, or superior court, may issue execution therefor; and when the proceeding is before a judge of the supreme, district, or superior court, he shall transmit the complaint, affidavits, warrant, and order to the clerk of the district court of the county, who shall file the same, make a memorandum thereof in the judgment docket, and issue execution therefor immediately. [R60,§4457; C73,§4118; C97,§5108; C24, 27, 31, 35, 39,§13516; C46, 50, 54,§760.4]

**760.5 Defendant bound over—sureties.** If there be just reason to fear the commission of the offense, the person complained of shall be required to enter into an undertaking, in such sum as the magistrate may direct, with one or more sufficient sureties, to abide the order of the district court of the county at the next term thereof, and in the meantime to keep the peace towards the people of the state, and particularly towards the person against whom or whose property there is reason to fear the offense may be committed. [R60,§4458; C73, §4119; C97,§5109; C24, 27, 31, 35, 39,§13517; C46, 50, 54,§760.5]

Referred to in §760.6

**760.6 Committed to jail.** If the undertaking required by section 760.5 be given, the party complained of must be discharged; if not, the magistrate must commit him to prison, specifying in the warrant the requirements to give security, the amount thereof, and the omission to give the same; if committed for not giving such undertaking, he may be discharged by a magistrate upon giving the required bonds. [R60,§§4459, 4460, 4464; C73, §§4120, 4121; C97,§5110; C24, 27, 31, 35, 39, §13518; C46, 50, 54,§760.6]

**760.7 Disposition of papers.** The undertaking, together with the complaints, affidavits, if any, and other papers in the proceeding, must be returned by the magistrate to the district court of the county by the first day of the next term thereof, at which time the case shall stand for trial in the district court in the same manner as appeals from justice's court subject to the provisions of sections 760.10 and 760.11, no notice of appeal being required. [R60, §4461; C73,§4122; C97,§5111; C24, 27, 31, 35, 39, §13519; C46, 50, 54,§760.7]

**760.8 Assault in presence of court or magistrate.** Any person who, in the presence of a court or magistrate, shall assault or threaten to assault another, or to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an

undertaking to keep the peace for a period of time not extending beyond the next term of the district court of the county, as hereinbefore provided, and in case of his omission to comply with said order, he may be committed accordingly. [R60,§4462; C73,§4123; C97,§5112; C24, 27, 31, 35, 39,§13520; C46, 50, 54,§760.8]

**760.9 Bond required on conviction.** The district court, upon the conviction of any person for an offense against the person or property of another, when necessary for the public good, may require the defendant to enter into an undertaking to keep the peace, as hereinbefore provided, and, on his omission to do so, may commit him accordingly. [R60,§4463; C73, §4124; C97,§5113; C24, 27, 31, 35, 39,§13521; C46, 50, 54,§760.9]

**760.10 Appearance—time of—forfeiture.** A person who has entered into an undertaking to keep the peace, when required by a magistrate as hereinbefore provided, must appear on the first day of the next term of the district court of the county, and if the complainant appear and the person bound by the undertaking does not appear, the court may forfeit his undertaking and order the same to be prosecuted, unless his default be excused. [R60, §4465; C73,§4125; C97,§5114; C24, 27, 31, 35, 39, §13522; C46, 50, 54,§760.10]

Referred to in §760.7

**760.11 Hearing — judgment — costs.** If the principal in the undertaking appear, and the complainant does not appear, or if neither of the parties appear, the court shall enter an order discharging the undertaking; but if both parties appear, the court shall hear their proofs, and may require a new undertaking in such sum as it shall prescribe, for a period not exceeding one year, and may commit the defendant until the same be given. Judgment shall be entered against the party held to keep the peace for all the costs of the proceeding, but if it is made to appear to the court that the proceeding was instituted without probable cause, the court may render judgment against the complainant for such costs. [R60,§4466; C73,§4126; C97,§5115; C24, 27, 31, 35, 39,§13523; C46, 50, 54,§760.11]

Referred to in §760.7

**760.12 Breach of bond.** An undertaking to keep the peace is broken by the forfeiture of the same by order of the court, as hereinbefore provided, or upon the conviction of the party bound for a breach of the peace. [R60, §4467; C73,§4127; C97,§5116; C24, 27, 31, 35, 39, §13524; C46, 50, 54,§760.12]

**760.13 Suit brought by county attorney.** Upon the county attorney's producing evidence of such conviction to the district court to which the undertaking is returned, the court must order the enforcement of the undertaking, and the county attorney must thereupon commence an action upon it. [R60,§4468; C73,§4128; C97, §5117; C24, 27, 31, 35, 39,§13525; C46, 50, 54, §760.13]

**760.14 Record of conviction must be alleged—evidence.** In such action, the record of forfeiture or conviction must be alleged as the breach of the undertaking, and is conclusive

evidence thereof. [R60,§4469; C73,§4129; C97, §5118; C24, 27, 31, 35, 39,§13526; C46, 50, 54, §760.14]

CHAPTER 761

PRELIMINARY EXAMINATIONS

- 761.1 Procedure—waiver.
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- 761.4 Examinations—adjournments.
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- 761.6 Absence of jail.
- 761.7 Witnesses.
- 761.8 Depositions.
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- 761.10 Order for taking.
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- 761.13 Private hearing.
- 761.14 Minutes of examination.
- 761.15 Taken in shorthand.
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- 761.17 Discharge—indorsement on minutes.
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- 761.19 Order as to bail.
- 761.20 Warrant of commitment.
- 761.21 Witnesses bound.
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- 761.26 Nonindictable offense—information.
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- 761.28 Witnesses bound—papers transferred.
- 761.29 Liability of informant—costs.
- 761.30 Evidence taken in writing.

**761.1 Procedure — waiver.** When the arrested person is brought before the magistrate, with or without a warrant, upon preliminary information, the magistrate must immediately inform him of the offense with which he is charged, and of his right to counsel in every stage of the proceedings, and must allow him a reasonable time to send for counsel, and, if necessary, adjourn for that purpose. After waiting a reasonable time for or on the appearance of counsel for defendant, the magistrate shall immediately proceed with the preliminary examination, or may allow the defendant to waive the same. [C51,§§2852-2854; R60, §§4575-4577; C73, §§4226-4228; C97, §5216; C24, 27, 31, 35, 39,§13527; C46, 50, 54,§761.1]

**761.4 Examinations — adjournments.** The examination must be terminated at one session unless the magistrate, for good cause shown, adjourn it; but it shall not be adjourned for a longer period than thirty days. [C51,§§2855, 2856; R60,§§4578, 4579; C73,§§4229, 4230; C97, §5218; C24, 27, 31, 35, 39,§13530; C46, 50, 54, §761.4]

**761.5 Commitment or bail.** If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, or require him to give ample bail for his appearance at the time and place to which the examination is adjourned. [C51,§2857; R60,§4580; C73,§4231; C97,§5219; C24, 27, 31, 35, 39,§13531; C46, 50, 54,§761.5]

**761.2 Change of venue — grounds.** Before any evidence is heard, the defendant may have a change of venue, upon filing an affidavit that the magistrate is prejudiced against him, or is a material witness for either party, or that the defendant cannot obtain justice before him, as affiant verily believes. [C73,§4228; C97,§5217; C24, 27, 31, 35, 39,§13528; C46, 50, 54,§761.2]

**761.6 Absence of jail.** If there is no jail in the county, the sheriff must retain the defendant in his custody until the examination. [C51,§2859; R60,§4582; C73,§4232; C97,§5220; C24, 27, 31, 35, 39,§13532; C46, 50, 54,§761.6]

**761.7 Witnesses.** The magistrate must issue subpoenas for any witnesses required by the state or defendant, and those who appear must be examined in the presence of the defendant. [C51,§2860; R60,§4583; C73,§4233; C97,§5221; C24, 27, 31, 35, 39,§13533; C46, 50, 54,§761.7]

C97,§5217, editorially divided  
Similar provision, §762.13 et seq.

**761.3 Procedure on change.** On filing such an affidavit a change of venue must be allowed, and the magistrate must immediately transmit all original papers, and a transcript of the entire record in the case, to the nearest magistrate in the township, if there be one; if not, to the nearest magistrate in the county, who shall proceed with said examination as hereinafter provided; but one such change shall be allowed. [C51,§2854; R60,§4577; C73,§4228; C97, §5217; C24, 27, 31, 35, 39,§13529; C46, 50, 54, §761.3]

**761.8 Depositions.** The deposition of a witness who resides out of the county in which the examination is had may be taken on application of the defendant, on the order of the magistrate, before any officer authorized to take depositions in civil actions; which order shall not be made until three days after the filing with the magistrate of the written interrogatories to be propounded to the witness,

nor until three days after the service of notice on the state, or on the attorney who appears for the state, of the filing of such interrogatories. [C73,§4234; C97,§5222; C24, 27, 31, 35, 39, §13534; C46, 50, 54,§761.8]

Depositions in general, R.C.P. 163

**761.9 Cross-interrogatories.** Before the order to take deposition is made, the state may file cross-interrogatories to be propounded to the witness, which shall be answered by him in the deposition. [C73,§4235; C97,§5223; C24, 27, 31, 35, 39,§13535; C46, 50, 54,§761.9]

**761.10 Order for taking.** At the expiration of three days from the filing of the interrogatories and the service of the notice thereof on the state as above provided, the magistrate may order the testimony of the witness to be taken in answer to the interrogatories and cross-interrogatories, if any, on file. [C73, §4236; C97,§5224; C24, 27, 31, 35, 39,§13536; C46, 50, 54,§761.10]

C97,§5224, editorially divided

**761.11 Exclusion of deposition.** The deposition thus taken may be read in evidence on the examination; nor shall the same be excluded because of any irregularity in the taking of it, if the magistrate is satisfied that the irregularity complained of could work no substantial prejudice to the opposite party. [C73,§4236; C97,§5224; C24, 27, 31, 35, 39,§13537; C46, 50, 54, §761.11]

**761.12 Witnesses separated.** While a witness is under examination before the magistrate he may exclude all others who have not been examined, and may cause the witnesses to be kept separate, that they may not converse with each other until the examination is closed. [C51,§2867; R60,§4591; C73,§4239; C97,§5225; C24, 27, 31, 35, 39,§13538; C46, 50, 54,§761.12]

**761.13 Private hearing.** The magistrate must also, upon request of the defendant, exclude from hearing the examination all persons except the magistrate, his clerk, the peace officer who has the custody of the defendant, the attorney or attorneys representing the state, the defendant and his counsel. [R60,§4592; C73,§4240; C97,§5226; C24, 27, 31, 35, 39,§13539; C46, 50, 54,§761.13]

**761.14 Minutes of examination.** The magistrate shall, in the minutes of the examination, write out or cause to be written out the substance of the testimony given on the examination by each witness, the name, place of residence, business or profession of each witness, and the amount he is entitled to for mileage and attendance. [C51,§2868; R60,§4593; C73,§4241; C97,§5227; C24, 27, 31, 35, 39,§13540; C46, 50, 54,§761.14]

C97,§5227, editorially divided

**761.15 Taken in shorthand.** By agreement of parties or their attorneys, the magistrate may order the examination taken down in shorthand and certified substantially in the

manner provided for taking depositions by a stenographer, but the costs thereof shall not be taxed against the county. [C97,§5227; C24, 27, 31, 35, 39,§13541; C46, 50, 54,§761.15]

**761.16 Certification of proceedings.** After the examination is closed, the magistrate must attach together the complaint, the warrant or order of commitment, if any, under which the defendant was brought before him, the minutes of the examination, including all depositions used, and annex thereto his certificate, which must set forth, in substance, the time and place of examination, and that the minutes thereof are true, which certificate must be officially signed by the magistrate. [C51,§§2869, 2870; R60,§4594; C73,§4242; C97,§5228; C24, 27, 31, 35, 39,§13542; C46, 50, 54,§761.16]

**761.17 Discharge—indorsement on minutes.** If after hearing the testimony it appears to the magistrate that a public offense has not been committed, or that there is no sufficient reason for believing the defendant guilty thereof, he must order him discharged, and such order must be indorsed on the minutes of the examination, or annexed thereto and signed by the magistrate, to the following effect: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, I order him to be discharged." [C51,§2871; R60,§4595; C73,§4243; C97, §5229; C24, 27, 31, 35, 39,§13543; C46, 50, 54, §761.17]

**761.18 Commitment—indorsement on minutes.** If it appears from the examination that a public offense, triable on indictment, has been committed, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall in like manner indorse on or annex to the minutes of the examination an order signed by him to the following effect: "It appearing to me by the within minutes that an offense, triable on indictment (stating generally the nature thereof), has been committed, and that there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same." [C51,§2872; R60, §4596; C73,§4244; C97,§5230; C24, 27, 31, 35, 39, §13544; C46, 50, 54,§761.18]

C97,§5230, editorially divided

**761.19 Order as to bail.** The order shall either state, "and I have admitted him to bail to answer thereto by the bail bond hereto annexed"; or, if bail is not given, "and that he be committed to the county jail until he give bail in the sum of.....dollars (naming it)"; but if the offense is not bailable, the order of commitment shall state, "without bail". [C51,§§2873, 2874; R60,§§4598, 4599; C73,§§4245, 4246; C97,§5230; C24, 27, 31, 35, 39, §13545; C46, 50, 54,§761.19]

**761.20 Warrant of commitment.** If the magistrate order the defendant to be committed, he shall make out a warrant of commit-

ment, officially signed, and deliver it, with the defendant, to the officer to whom he is committed; or, if the officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the warrant of commitment, which may be in the following form:

The State of Iowa,

To the Sheriff of .....County:

An order having been this day made by me that A..... B..... (the name of the defendant) be held to answer upon a charge of (state the offense), you are commanded to receive him into your custody and detain him in the jail of the county until he be legally discharged.

Dated at.....this....day of....., A. D....

G..... H..... (with official title).

[C51,§2875; R60,§4600; C73,§4247; C97,§5231; C24, 27, 31, 35, 39,§13546; C46, 50, 54,§761.20]

**761.21 Witnesses bound.** On holding the defendant to answer, the magistrate may take from each material witness examined by him on the part of the state a written undertaking, to the effect that he will appear and testify at the court to which the defendant is bound to answer, when required in the further progress of the cause, and that he will not evade or attempt to evade the service of a subpoena, or will forfeit the sum of one hundred dollars. [C51,§2876; R60,§4601; C73,§4248; C97,§5232; C24, 27, 31, 35, 39,§13547; C46, 50, 54,§761.21]

**761.22 Security for appearance.** When the magistrate is satisfied by oath or otherwise that there is reason to believe any witness will not fulfill his undertaking and appear and testify unless surety be required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper for his appearance. [C51,§2877; R60, §4602; C73,§4249; C97,§5233; C24, 27, 31, 35, 39, §13548; C46, 50, 54,§761.22]

Referred to in §761.23

**761.23 Minors and married women may be bound.** Minors and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in section 761.22. [C51,§2878; R60,§4603; C73,§4250; C97, §5234; C24, 27, 31, 35, 39,§13549; C46, 50, 54, §761.23]

**761.24 Witness committed.** If a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for the purpose, the magistrate must commit him until he comply or be legally discharged. [C51, §2879; R60,§4604; C73,§4251; C97,§5235; C24, 27, 31, 35, 39,§13550; C46, 50, 54,§761.24]

**761.25 Return to district court.** When a magistrate has discharged a defendant, or held him to answer an indictment, he must return to the district court of the county, on or before its opening, on the first day of the next term

thereof, and as soon after the closing of the examination as practicable, all the papers filed in the proceeding, including therewith the minutes of the evidence, together with the undertaking of bail for the appearance of the defendant, and the undertakings of the witnesses or for them, taken by him. [C51,§2880. R60,§4605; C73,§4252; C97,§5236; C24, 27, 31, 35, 39,§13551; C46, 50, 54,§761.25]

**761.26 Nonindictable offense—information.**

If it appear from the examination that a public offense has been committed which is not triable on indictment, but on information only, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall retain all the papers, and forthwith order an information to be filed against the defendant, before him. [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§13552; C46, 50, 54,§761.26]

C97,§5237, editorially divided

**761.27 Lack of jurisdiction — trial transferred.**

If he have not jurisdiction to try and determine the same, he shall indorse on or annex to the minutes of the examination an order, signed by him, to the following effect: "It appearing to me by the within minutes that the offense of (here state its name or nature generally) has been committed and that there is sufficient reason for believing the defendant guilty thereof, I order that an information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, giving the name of office), and that the defendant be committed to any peace officer to be taken before such magistrate." [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§13553; C46, 50, 54,§761.27]

**761.28 Witnesses bound — papers transferred.**

The magistrate shall thereupon cause each material witness on the part of the state to enter into a written undertaking, to the effect that he will appear forthwith before the magistrate before whom the defendant is to be taken, or he will forfeit the sum of fifty dollars, and deliver the undertaking, with all the other papers, to a peace officer, who shall forthwith take the defendant before such magistrate, and deliver all the papers with the undertakings of the witnesses to the magistrate directed in the order, and make his return thereto, and sign the same with his name of office, and the magistrate before whom he is taken shall thereupon proceed accordingly. [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§13554; C46, 50, 54,§761.28]

Similar provision, §762.47

**761.29 Liability of informant—costs.**

When the defendant is discharged, the justice shall, if he is satisfied that the prosecution is malicious or without probable cause; or if the person commencing the prosecution by filing the information fail to appear by himself, agent, or attorney to prosecute the same or give evidence, and the accused is discharged by reason thereof, the magistrate in his discretion may

tax the costs and render a judgment therefor against such person, subject to the right of appeal therefrom in the manner provided for appeals by prosecuting witnesses in cases of acquittal upon trial. [C73,§4254; C97,§5238; C24, 27, 31, 35, 39,§13555; C46, 50, 54,§761.29]

Appeal, §762.35 et seq.  
Similar provision, §762.34

**761.30 Evidence taken in writing.** On the demand of the county attorney, the magistrate shall take the evidence in writing of the state's witnesses, notwithstanding he has permitted the defendant to waive the preliminary examination. [C97,§5239; C24, 27, 31, 35, 39, §13556; C46, 50, 54,§761.30]

CHAPTER 762

TRIAL OF NONINDICTABLE OFFENSES

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**762.1 Jurisdiction.** Justices of the peace have jurisdiction of, and must hear, try, and determine all public offenses, less than felony, committed within their respective counties, in which the punishment prescribed by law does not exceed a fine of one hundred dollars or imprisonment thirty days. [C51,§3322; R60, §5055; C73,§4660; C97,§5575; C24, 27, 31, 35, 39, §13557; C46, 50, 54,§762.1]

**762.2 Information.** Criminal actions for the commission of a public offense must be commenced before a justice of the peace by an information, subscribed and sworn to, and filed with the justice. [C51,§3323; R60,§5056; C73, §4661; C97,§5576; C24, 27, 31, 35, 39,§13558; C46, 50, 54,§762.2]

**762.3 Contents of information.** Such information must contain:

1. The name of the county and of the justice where the information is filed.
2. The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.
3. A statement of the acts constituting the offense, in ordinary and concise language, and

the time and place of the commission of the offense, as near as may be. [C51,§3324; R60, §5057; C73,§4662; C97,§5577; C24, 27, 31, 35, 39, §13559; C46, 50, 54,§762.3]

"Short form" authorized, §773.33

**762.4 Form of information.** The information may be substantially in the following form:

..... County: }  
 The State of Iowa } Before justice .....  
 against } (here insert the name  
 A.... B...., defendant } of the justice).

The defendant is accused of the crime (here name the offense).

For that the defendant, on the ..... day of ....., A. D. ...., at the (here name the city, town, or township), in the county aforesaid (here state the act or omission constituting the offense as in an indictment). [C51,§3325; R60,§5058; C73,§4663; C97,§5578; C24, 27, 31, 35, 39,§13560; C46, 50, 54,§762.4]

"Short form" authorized, §773.34

**762.5 Filing of information.** The justice must file such information and mark thereon the time of filing the same. [C51,§3326; R60,

§5059; C73,§4664; C97,§5579; C24, 27, 31, 35, 39, §13561; C46, 50, 54,§762.5]

**762.6 Warrant of arrest.** Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, which may be served in like manner. [C51,§3327; R60,§5060; C73,§4665; C97,§5580; C24, 27, 31, 35, 39,§13562; C46, 50, 54,§762.6]

**762.7 Service of warrant.** The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him without unnecessary delay before the justice who issued the same. [C51, §3328; R60,§5061; C73,§4666; C97,§5581; C24, 27, 31, 35, 39,§13563; C46, 50, 54,§762.7]

C97,§5581, editorially divided  
Approval of warrant and expenses, §§79.12, 79.18

**762.8 Service against corporation.** If defendant is a corporation, it may be proceeded against upon notice as in case of indictment. [C97,§5581; C24, 27, 31, 35, 39,§13564; C46, 50, 54,§762.8]

Process against corporation, §774.7 et seq.

**762.9 Appearance of defendant.** When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. [C51,§3329; R60,§5062; C73,§4667; C97, §5582; C24, 27, 31, 35, 39,§13565; C46, 50, 54, §762.9]

C97,§5582, editorially divided

**762.10 Wrong name—waiver.** If he objects that he is wrongly named in the information, he must give his right name, and if he refuses to do so, or does not object that he is wrongly named, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection. [C51,§3329; R60,§5062; C73,§4667; C97,§5582; C24, 27, 31, 35, 39,§13566; C46, 50, 54,§762.10]

**762.11 Pleadings of defendant.** The defendant may plead the same as upon an indictment, orally or in writing, and such pleas shall be entered on the docket of the justice. [C51, §3330; R60,§5063; C73,§4668; C97,§5583; C24, 27, 31, 35, 39,§13567; C46, 50, 54,§762.11]

Pleading, ch 777

**762.12 Trial.** Upon a plea other than that of guilty, if the defendant does not demand a trial by jury, the justice must proceed to try the issue, unless a change of venue be applied for by the defendant. [C51,§3331; R60,§5064; C73,§4669; C97,§5584; C24, 27, 31, 35, 39,§13568; C46, 50, 54,§762.12]

**762.13 Change of venue—grounds.** Before any testimony is heard, a change of place of trial may be applied for by an affidavit filed, stating that the justice is prejudiced against the defendant, or is of near relation to the

prosecutor upon the charge or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes. [R60,§5065; C73,§4670; C97,§5585; C24, 27, 31, 35, 39,§13569; C46, 50, 54,§762.13]

Similar provision, §761.2 et seq.

**762.14 Change allowed — transmission of papers.** If such affidavit be filed, the change of place of trial must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the township, unless said justice be a party to the action, or is related to either party by consanguinity, or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding; and in such case the justice before whom such action or proceeding is commenced shall transmit all the original papers, together with a transcript of all his docket entries, to the next nearest justice in the county against whom none of the above objections exist, who shall proceed with the case as provided in this chapter, but no more than one change of place of trial in the same case shall be allowed. [R60,§5066; C73, §4671; C97,§5586; C24, 27, 31, 35, 39,§13570; C46, 50, 54,§762.14]

**762.15 Jury trial.** Before the justice has heard any testimony upon the trial, the defendant may demand a jury. [C51,§3332; R60, §5067; C73,§4672; C97,§5587; C24, 27, 31, 35, 39, §13571; C46, 50, 54,§762.15]

**762.16 Jury — how obtained.** If a trial by jury is demanded, the justice shall direct any peace officer of the county to make out a list of eighteen inhabitants of the county having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names. [C51,§3333; R60,§5068; C73,§4673; C97,§5588; C24, 27, 31, 35, 39,§13572; C46, 50, 54,§762.16]

Competency of jurors, §607.1

**762.17 Striking names—issue of venire.** In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike them out for either of the parties so neglecting or refusing, and, it being done, he must issue a venire, directed to any peace officer of the county, requiring him to summon the twelve persons whose names remain upon the list to appear before him at the time and place named therein, to make a jury for the trial of the cause. [C51,§3334; R60,§5069; C73,§4674; C97, §5589; C24, 27, 31, 35, 39,§13573; C46, 50, 54, §762.17]

**762.18 Jurors summoned.** The officer to whom such venire is delivered must forthwith summon such jurors, and return the venire to the justice within the time therein specified, naming the persons summoned and the manner of service. [C51,§3335; R60,§5070; C73,§4675;

C97,§5590; C24, 27, 31, 35, 39,§13574; C46, 50, 54, §762.18]

**762.19 Failure to return — new venire.** If the officer by whom the venire is received does not return it as required, he may be punished by the justice as for contempt, and a new venire shall issue for the summoning of the same jurors, which shall be served as above provided. [C51,§3340; R60,§5075; C73,§4680; C97, §5591; C24, 27, 31, 35, 39,§13575; C46, 50, 54, §762.19]

Contempts, ch 665

**762.20 Names of jurors for drawings.** The names of the persons returned as jurors shall be written on separate ballots, folded each in the same manner as nearly as possible, and so that the name is not visible, and shall, under the direction of the justice, be deposited in a box or other convenient thing. [C51,§3336; R60, §5071; C73,§4676; C97,§5592; C24, 27, 31, 35, 39, §13576; C46, 50, 54,§762.20]

**762.21 Drawing jurors.** The justice must then draw out six of the ballots successively, and if any of the persons whose names are drawn do not appear, or are challenged, or are set aside, such further number must be drawn as will make a jury of six, after all challenges have been allowed. [C51,§3337; R60, §5072; C73,§4677; C97,§5593; C24, 27, 31, 35, 39, §13577; C46, 50, 54,§762.21]

**762.22 Challenges.** The same challenges may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed. [C51,§3338; R60,§5073; C73,§4678; C97,§5594; C24, 27, 31, 35, 39,§13578; C46, 50, 54,§762.22]

Challenges, §779.5

**762.23 Bystanders summoned.** If any of the jurors named in the venire cannot be found, or do not attend, or are challenged by either party, so that a sufficient number cannot be obtained, the justice may direct the officer to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors. [C51,§3339; R60,§5074; C73,§4679; C97,§5595; C24, 27, 31, 35, 39,§13579; C46, 50, 54,§762.23]

**762.24 Jury of six.** When six jurors appear and are accepted, they shall constitute the jury. [C51,§3341; R60,§5076; C73,§4681; C97, §5596; C24, 27, 31, 35, 39,§13580; C46, 50, 54, §762.24]

**762.25 Oath of jurors.** The justice must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence." [C51,§3342; R60,§5077; C73,§4682; C97, §5597; C24, 27, 31, 35, 39,§13581; C46, 50, 54, §762.25]

**762.26 Proceedings before jury.** After the jurors are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public. After which, they may either decide in court or retire for consideration. [C51,§3343; R60,§5078; C73,§4683; C97,§5598; C24, 27, 31, 35, 39,§13582; C46, 50, 54,§762.26]

**762.27 Retirement for consideration—oath.** If they do not immediately agree, they must retire with the officer, who shall take the following oath: "You do swear that you will keep the jury together in some private and convenient place, without food or drink, water excepted, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them if they have agreed upon a verdict, and that you will return them into court when they have so agreed." [C51, §3344; R60,§5079; C73,§4684; C97,§5599; C24, 27, 31, 35, 39,§13583; C46, 50, 54,§762.27]

**762.28 Verdict.** When the jury have agreed upon a verdict, they must deliver it publicly to the justice, who shall enter it on his docket. [C51,§3345; R60,§5080; C73,§4685; C97,§5600; C24, 27, 31, 35, 39,§13584; C46, 50, 54,§762.28]

**762.29 Jury kept together.** The jury must be kept together after the cause is submitted to them until they have agreed upon and rendered a verdict, unless, for good cause, the justice sooner discharge them. [C51,§3346; R60, §5081; C73,§4686; C97,§5601; C24, 27, 31, 35, 39, §13585; C46, 50, 54,§762.29]

Referred to in §762.30

**762.30 Jury discharged.** If the jury is discharged as provided in section 762.29, the justice may proceed again to the trial in the same manner as upon the first, and so on till a verdict is rendered. [C51,§3347; R60,§5082; C73, §4687; C97,§5602; C24, 27, 31, 35, 39,§13586; C46, 50, 54,§762.30]

**762.31 Judgment—rules.** When the defendant pleads guilty or is convicted, either by the justice or by a jury, the justice shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment. [C51,§3348; R60,§5083; C73,§4688; C97,§5603; C24, 27, 31, 35, 39,§13587; C46, 50, 54, §762.31]

**762.32 Imprisonment for nonpayment of fine.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. [C51,§3349; R60,§5084; C73,§4689; C97,§5604; C24, 27, 31, 35, 39,§13588; C46, 50, 54,§762.32]

Time of imprisonment, §789.17

**762.33 Defendant discharged.** When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged. [C51,§3350; R60,§5085; C73,§4690; C97,§5605; C24, 27, 31, 35, 39,§13589; C46, 50, 54,§762.33]

**762.34 Costs taxed to prosecutor.** If the prosecuting witness fails to appear by himself, agent, or attorney to prosecute or give evidence on the trial, and defendant is discharged on account of such nonappearance, the justice may, in his discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the justice shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor. [R60,§5086; C73,§4691; C97,§5606; C24, 27, 31, 35, 39,§13590; C46, 50, 54, §762.34]

C97,§5606, editorially divided  
Similar provision, §761.29

**762.35 Appeal.** In either case the prosecuting witness may appeal from such judgment to the district court, by giving notice thereof as provided in this chapter with reference to appeals by defendant, and the fact of the giving of such notice shall be entered by the justice on his record. [C73,§4691; C97,§5606; C24, 27, 31, 35, 39,§13591; C46, 50, 54,§762.35]

Manner of taking, §762.48

**762.36 Transcript of record.** If notice of an appeal is given, the justice shall, without delay, make out, sign, and file in the office of the clerk of the district court a full and true statement of all the testimony admitted on the trial, and on which he bases his finding that the prosecution was malicious or without probable cause, and a transcript of his docket entries, and all other papers on file in the case, and such appeal shall stand for hearing in said court at the term thereof commencing next after said papers are filed. [C73,§4691; C97,§5606; C24, 27, 31, 35, 39,§13592; C46, 50, 54, §762.36]

**762.37 Correction of record.** The court shall have full power to compel the correction by said justice of any error made apparent in his transcript, statement of testimony, or in any papers returned by him, or may make the necessary correction itself, and, on the papers, may affirm or reverse the judgment of the justice, or render such judgment as he should have done. [C73,§4691; C97,§5606; C24, 27, 31, 35, 39,§13593; C46, 50, 54,§762.37]

**762.38 Certificate of conviction.** When a conviction is had upon a plea of guilty, or upon trial, the justice must make and officially sign a certificate thereof, in which it shall be sufficient briefly to state the offense charged, the conviction and judgment thereon, and, if any fine has been collected, the amount thereof. [C51,§3351; R60,§5087; C73,§4692; C97,§5607; C24, 27, 31, 35, 39,§13594; C46, 50, 54,§762.38]

**762.39 Judgment—how executed.** The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of a warrant under the hand of the justice, specifying the particulars of such judgment. [C51,§3354; R60,§5090; C73,§4693; C97,

§5608; C24, 27, 31, 35, 39,§13595; C46, 50, 54, §762.39]

**762.40 Fine—payment to justice.** If a fine is imposed, and paid before commitment, it shall be received by the justice and paid over to the county treasurer within thirty days after the receipt thereof. [C51,§3355; R60,§5091; C73,§4694; C97,§5609; C24, 27, 31, 35, 39, §13596; C46, 50, 54,§762.40]

**762.41 Payment to sheriff.** If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury. [C51,§3356; R60,§5092; C73,§4695; C97,§5610; C24, 27, 31, 35, 39, §13597; C46, 50, 54,§762.41]

**762.42 Receipt for fine.** If the fine, or any part thereof, is paid to the justice or sheriff, he must execute duplicate receipts therefor, one of which he must file without delay with the county auditor. [C51,§3357; R60,§5093; C73,§4696; C97,§5611; C24, 27, 31, 35, 39,§13598; C46, 50, 54,§762.42]

**762.43 Appeal — how taken.** The justice rendering a judgment against the defendant must inform him of his right to an appeal therefrom, and make an entry on the docket of the giving of such information, and the defendant may thereupon take an appeal, by giving notice orally to the justice that he appeals, or by delivering to the justice, not later than twenty days thereafter, a written notice of his appeal, and in either case the justice must make an entry on his docket of the giving of such notice. [C51,§3358; R60,§5095; C73,§4697; C97,§5612; C24, 27, 31, 35, 39,§13599; C46, 50, 54, §762.43]

**762.44 Bail on appeal—form of bond.** The justice must thereupon enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed unless bail in that amount be put in, by an undertaking substantially in the following form:

County of .....

A..... B..... having been convicted before C..... D....., a justice of the peace of said county, of the crime of (here designate it generally as in the information), by a judgment rendered on the .....day of ....., A. D....., and having appealed from said judgment to the district court of said county:

We, A..... B....., and E..... F....., hereby undertake that the said A..... B..... will appear in the district court of said county, at the term thereof to which the appeal is returnable, and submit to the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be) will pay to the state of Iowa



the sum of ..... dollars (the amount of bail fixed).

A..... B.....  
E..... F.....

Accepted by me, at ....., in the town-  
ship of ....., this ... day of .....,  
A. D. ....

C..... D.....  
Justice of the peace.

[C51,§3359; R60,§5096; C73,§4698; C97,§5613; C24,  
27, 31, 35, 39,§13600; C46, 50, 54,§762.44]

**762.45 Qualification of surety.** The bail must possess the qualifications, justify, and be taken in the manner prescribed in chapter 763, and the same proceedings had in all respects, as far as applicable, except as in this chapter otherwise provided. [R60,§5097; C73, §4699; C97,§5614; C24, 27, 31, 35, 39,§13601; C46, 50, 54,§762.45]

**762.46 Officers authorized to take bail.** Bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof. [R60,§5098; C73,§4700; C97,§5615; C24, 27, 31, 35, 39,§13602; C46, 50, 54,§762.46]

**762.47 Witnesses bound over.** When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at the term at which it is returnable, and shall, as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof a certified copy of the entries on his docket, together with all the undertakings and papers in the case. [C51, §3360; R60,§5099; C73,§4701; C97,§5616; C24, 27, 31, 35, 39,§13603; C46, 50, 54,§762.47]

Similar provision, §761.28

**762.48 Trial on appeal—procedure.** The cause shall stand for trial anew in the district

court in the same manner that it should have been tried before the justice, and as nearly as practicable as an issue of fact upon an indictment, without regard to technical errors or defects which have not prejudiced the substantial rights of either party; and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case according to the law, and shall give judgment accordingly. [C51,§§3361-3365; R60,§5100; C73,§4702; C97, §5617; C24, 27, 31, 35, 39,§13604; C46, 50, 54, §762.48]

**762.49 Dismissal of appeals prohibited.** No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed. [R60,§5101; C73,§4703; C97,§5618; C24, 27, 31, 35, 39,§13605; C46, 50, 54,§762.49]

**762.50 Judgment — enforcement.** If any proceedings are necessary to carry the judgment upon the appeal into effect, they shall be had in the district court. [R60,§5102; C73,§4704; C97,§5619; C24, 27, 31, 35, 39,§13606; C46, 50, 54, §762.50]

**762.51 Appeal to supreme court—procedure.** Either party may appeal from the judgment of the district court to the supreme court in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as far as applicable. [C51,§3366; R60, §5103; C73,§4705; C97,§5620; C24, 27, 31, 35, 39, §13607; C46, 50, 54,§762.51]

Similar provision, §793.1 et seq.

**762.52 Judgment upon appeal — execution.** The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal as if it had been taken from a judgment prosecuted by indictment. [C51, §3367; R60,§5104; C73,§4706; C97,§5621; C24, 27, 31, 35, 39,§13608; C46, 50, 54,§762.52]

Procedure, §793.24 et seq.

## CHAPTER 763

### BAIL

Referred to in §762.45

- 763.1 Bailable offenses.
- 763.2 Nonbailable offenses.
- 763.3 Bail on commitment to answer.
- 763.4 Form of bail bond.
- 763.5 Indictment for misdemeanor.
- 763.6 Felony.
- 763.7 Officers required to take bail.
- 763.8 Form of bail bond.
- 763.9 Bail on appeal—conditions.

- 763.10 By whom taken.
- 763.11 Qualifications of surety—insurance companies excepted.
- 763.12 Affidavit by surety.
- 763.13 Examination as to sufficiency.
- 763.14 Order of allowance.
- 763.15 Discharge of defendant.
- 763.16 Disallowance.

**763.1 Bailable offenses.** All defendants are bailable both before and after conviction, by sufficient surety, except for offenses punish-

able with death under the laws of the state when the proof is evident or the presumption great. [C51,§§3212, 3213; R60,§4962; C73,§4107;

C97,§5096; S13,§5096; C24, 27, 31, 35, 39,§13609, C46, 50, 54,§763.1]

S13,§5096, editorially divided

**763.2 Nonbailable offenses.** No defendant convicted of murder in the first degree, or of the crime of treason shall be admitted to bail. [C51,§3211; R60,§4962; C73,§3845; C97,§5096; S13, §5096; C24, 27, 31, 35, 39,§13610; C46, 50, 54, §763.2]

Similar provision, §789.19

**763.3 Bail on commitment to answer.** When a defendant has been held to answer for any bailable offense, sufficient bail must be taken by the magistrate who held him to answer, by any judge of the supreme, or district court, or by the court to which the papers on the preliminary examination are to be returned by the magistrate who held him to answer, or by the clerk thereof, or by any magistrate of the county in which the offense is triable. [C51, §§3216-3218; R60,§4967; C73,§4573; C97,§5500; C24, 27, 31, 35, 39,§13611; C46, 50, 54,§763.3]

**763.4 Form of bail bond.** Bail is put in by a written undertaking, executed by one or more sufficient sureties (with or without the defendant, in the discretion of the court, clerk, or magistrate), accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

County of .....  
An order having been made on the...day of....., A. D. ...., by A..... B....., a justice of the peace (or other magistrate), of the township of....., (or as the case may be) that C..... D..... be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail, in the sum of ..... dollars.

We, E..... F..... and G..... H....., hereby undertake that the said C..... D....., shall appear at the district court of the county of ....., at the next term thereof, and answer said charge, and submit to the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that we will pay to the state of Iowa the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

E..... F.....  
G..... H.....

Accepted by me as....., in the township of ....., in the county of ....., this ... day of ....., A. D. ....

I..... J..... (with official title). [C51,§3219; R60,§4968; C73,§4574; C97,§5501; C24, 27, 31, 35, 39,§13612; C46, 50, 54,§763.4]

Information by county attorney—effect on bail, §769.80

**763.5 Indictment for misdemeanor.** When the offense charged in an indictment is a misdemeanor, the officer serving the warrant, if bail is authorized, must take the defendant before a magistrate in the county in which it

was issued, or in which he is arrested, or before the clerk of the district court of either of such counties, for the purpose of giving bail. [C51,§3227; R60,§4976; C73,§4582; C97, §5502; C24, 27, 31, 35, 39,§13613; C46, 50, 54, §763.5]

Similar provision, §767.3

**763.6 Felony.** If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody according to the command of the warrant. [C51, §3228; R60,§4977; C73,§4583; C97,§5503; C24, 27, 31, 35, 39,§13614; C46, 50, 54,§763.6]

**763.7 Officers required to take bail.** When the defendant is so delivered into custody, if the felony charged be bailable, bail must be taken by that court, or its clerk, or by any magistrate in the same county. [C51,§3229; R60,§4978; C73,§4584; C97,§5504; C24, 27, 31, 35, 39,§13615; C46, 50, 54,§763.7]

**763.8 Form of bail bond.** The bail must be put in by a written undertaking, executed by one sufficient surety, with or without the defendant, in the discretion of the court, clerk, or magistrate, acknowledged before and accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

County of .....

An indictment having been found in the district court of the county of ....., on the.....day of....., A. D. ...., charging A..... B..... with the crime of (designating it as in the warrant), and he having been duly admitted to bail in the sum of ..... dollars:

We, A..... B..... and C..... D....., hereby undertake that the said A..... B..... shall appear and answer the said indictment, and submit to the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that he will pay to the state of Iowa the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

A..... B.....  
C..... D.....  
E..... F.....

Acknowledged before and accepted by me, at....., in the township of ....., in the county of....., this .....day of ....., A. D. ....

G..... H..... (with official title). [R60,§4979; C73,§4585; C97,§5505; C24, 27, 31, 35, 39,§13616; C46, 50, 54,§763.8]

**763.9 Bail on appeal—conditions.** After conviction, upon an appeal to the supreme court, the defendant must be admitted to bail, if it be from a judgment imposing a fine, upon the undertaking of bail that he will, in all respects, abide the orders and the judgment of the supreme court upon the appeal; if from a judgment of imprisonment, upon the under-

taking of bail that the defendant will surrender himself in execution of the judgment and direction of the supreme court, and in all respects abide the orders and judgment of the supreme court upon the appeal. [R60,§4966; C73,§4587; C97,§5506; C24, 27, 31, 35, 39,§13617; C46, 50, 54, §763.9]

C97,§5506, editorially divided

**763.10 By whom taken.** The bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which he is imprisoned, or by the supreme court, or a judge or clerk of any of such courts. [R60,§4981; C73,§4587; C97,§5506; C24, 27, 31, 35, 39,§13618; C46, 50, 54,§763.10]

**763.11 Qualifications of surety — insurance companies excepted.** The surety must be a resident and householder or freeholder within the state, worth the amount specified in the undertaking, exclusive of property exempt from execution. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail.

Insurance companies doing business in this state under the provisions of subsection 2 of section 515.48, may act as surety in such cases, and need not be a resident, householder or freeholder within the state. Such company need not justify as above provided. [C51, §3220; R60,§4969; C73,§4575; C97,§5507; C24, 27, 31, 35, 39,§13619; C46, 50, 54,§763.11]

Referred to in §763.12

Unallowable sureties, §682.5

**763.12 Affidavit by surety.** The surety must in all cases justify by affidavit taken before an officer authorized to administer oaths, and the affidavit must state that each possesses the qualifications prescribed in section 763.11.

Insurance companies and surety companies referred to in section 763.11 need not make such justification. [C51,§3221; R60,§4970; C73, §4576; C97,§5508; C24, 27, 31, 35, 39,§13620; C46, 50, 54,§763.12]

**763.13 Examination as to sufficiency.** The court in which the action is pending, or the

clerk thereof, or the county attorney, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. [C51,§§3222, 3223; R60,§§4971, 4972; C73,§§4577, 4578; C97,§5509; C24, 27, 31, 35, 39,§13621; C46, 50, 54,§763.13]

**763.14 Order of allowance.** When the examination is closed the court, clerk, or magistrate must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits of justification and the undertaking of bail, to be filed with the clerk of the court to which the papers on the preliminary examination are required to be sent. [C51,§3224; R60,§4973; C73,§4579; C97, §5510; C24, 27, 31, 35, 39,§13622; C46, 50, 54, §763.14]

**763.15 Discharge of defendant.** Upon the allowance of bail and the execution of the undertaking, the court, clerk, or magistrate must make an order, signed officially, for the discharge of the defendant, to the following effect:

The State of Iowa,

To the sheriff of the county of.....:

C..... D....., who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated at ....., in the township (town or city) of ....., in the county of ....., this ..... day of ....., A. D.....

K..... L..... (with official title).

[C51,§3225; R60,§4974; C73,§4580; C97,§5511; C24, 27, 31, 35, 39,§13623; C46, 50, 54,§763.15]

**763.16 Disallowance.** If the bail be disallowed, the defendant must be detained in custody until other bail is put in and justified. [C51,§3226; R60,§4975; C73,§4581; C97,§5512; C24, 27, 31, 35, 39,§13624; C46, 50, 54,§763.16]

## CHAPTER 764

### UNDERTAKINGS OF BAIL AS LIENS

764.1 When lien on real estate.

764.2 Attested copies filed in proper counties.

**764.1 When lien on real estate.** Undertakings of bail, immediately after filing by the clerk of the district court, shall be docketed and entered upon the lien index as required for judgments in civil cases, and, from the time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [R60, §5000, 5001; C73,§§4606, 4607; C97,§5513; C24, 27, 31, 35, 39,§13625; C46, 50, 54,§764.1]

Judgment docket and lien book, §606.7

**764.2 Attested copies filed in proper counties.** Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [R60,§5002; C73, §4608; C97,§5514; C24, 27, 31, 35, 39,§13626; C46, 50, 54,§764.2]

Filing of attested copies, §624.24

CHAPTER 765

CASH BAIL

765.1 Deposit in lieu of bail.  
765.2 Cash substituted for bail.

765.3 Bail substituted for cash.  
765.4 Disposition of deposited money.

**765.1 Deposit in lieu of bail.** The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the district court to which the undertaking is required to be sent, the sum mentioned in the order, and, upon delivering to the officer in whose custody he is, a certificate under seal from said clerk of the deposit, he must be discharged from custody. [C51,§3232; R60,§4983; C73,§4589; C97,§5524; C24, 27, 31, 35, 39,§13627; C46, 50, 54,§765.1]

**765.2 Cash substituted for bail.** If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking, and, upon the deposit being made, the bail shall be exonerated. [C51, §3233; R60,§4984; C73,§4590; C97,§5525; C24, 27, 31, 35, 39,§13628; C46, 50, 54,§765.2]

Referred to in §765.3

**765.3 Bail substituted for cash.** If money is deposited as provided in section 765.2, bail

may be given in the same manner as if it had been originally given, upon the order for admission to bail at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken shall thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant, and it shall be done. [C51, §3234; R60,§4985; C73,§4591; C97,§5526; C24, 27, 31, 35, 39,§13629; C46, 50, 54,§765.3]

**765.4 Disposition of deposited money.** When money has been deposited by the defendant, if it remain on deposit at the time of a judgment against him, the clerk, under the direction of the court, shall apply the money in satisfaction of so much of the judgment as requires the payment of money, and shall refund the surplus, if any, to him, unless an appeal be taken to the supreme court, and bail put in, in which case the deposit shall be returned to the defendant. [C51,§3235; R60, §4986; C73,§4592; C97,§5527; C24, 27, 31, 35, 39, §13630; C46, 50, 54,§765.4]

CHAPTER 766

FORFEITURE OF BAIL

766.1 Entry.  
766.2 Notice to show cause.  
766.3 Judgment.

766.4 Forfeiture in justice of the peace court.  
766.5 Clerk to retain funds.  
766.6 Judgment set aside.

**766.1 Entry.** If the defendant fails to appear for arraignment, trial, or judgment, or at any other time when his personal appearance in court is lawfully required, or to surrender himself in execution of the judgment, the court must at once direct an entry of such failure to be made of record, and the undertaking of his bail, or the money deposited instead of bail, is thereupon forfeited. [R60,§4990; C73, §4596; C97,§5515; C24, 27, 31, 35, 39,§13631; C46, 50, 54,§766.1]

**766.2 Notice to show cause.** As a part of the entry of forfeiture as herein provided, the court shall direct the sheriff of the county to give ten days notice in writing, or otherwise, as directed by the court, to the defendant and his sureties to appear and show cause, if any, why judgment should not be entered for the amount of such bail, or money deposited instead of bail. [C24, 27, 31, 35, 39,§13632; C46, 50, 54,§766.2]

40GA. ch 219,§2, editorially divided

**766.3 Judgment.** If the defendant and his sureties fail to appear, judgment shall be entered by the court. If such defendant and his

sureties shall appear at the time fixed and offer objections to the entering of such judgment, the court shall set the case down for immediate hearing as an ordinary action; in such hearing the state shall be plaintiff and the defendant and his sureties defendants. The judgment entered by the court either on default or upon trial shall have the same force and effect as any other judgment of such court. [R60,§§4991-4994; C73,§§4597-4600; C97,§§5516, 5517; C24, 27, 31, 35, 39,§13633; C46, 50, 54,§766.3]

**766.4 Forfeiture in justice of the peace court.** Where forfeiture is entered before a justice of the peace, or a court of limited jurisdiction, or before an examining magistrate, such court or officer, upon the forfeiture of the undertaking, shall within ten days file the same, with a copy of all official entries in relation thereto, in the office of the clerk of the district court of the county; and thereupon it shall be the duty of the clerk of the district court to direct the sheriff to give notice as herein prescribed for appearance before the district court at the date fixed in such notice, and the district court shall then proceed in

the same manner as though such forfeiture had occurred in such court. [C73,§4599; C97, §5518; S13,§5518; C24, 27, 31, 35, 39,§13634; C46, 50, 54,§766.4]

**766.5 Clerk to retain funds.** Where a forfeiture and judgment have been entered as herein provided and the amount of the judgment has been paid to the clerk, he shall hold the same as funds of his office for a period of sixty days from the date of judgment. [C24, 27, 31, 35, 39,§13635; C46, 50, 54,§766.5]

40GA, ch 219,§4, editorially divided

**766.6 Judgment set aside.** Such judgment shall never be set aside unless, within sixty

days from the date thereof, the defendant shall voluntarily surrender himself to the sheriff of the county, or his bondsmen shall, at their own expense, deliver him to the custody of the sheriff within said time, whereupon the court may, upon application, set aside the judgment and in such event the original appearance bond shall stand and the court may order refund of the amount of the judgment paid in to the office of the clerk of the court. Such judgment, however, shall not be set aside unless as a condition precedent thereto the defendant and his sureties shall have paid all costs incurred in connection therewith. [R60, §4994; C73,§4600; C97,§5519; C24, 27, 31, 35, 39, §13636; C46, 50, 54,§766.6]

## CHAPTER 767

### RECOMMITMENT AFTER BAIL

767.1 Grounds for recommitment.

767.2 Contents of order of recommitment.

767.3 Arrest of defendant.

767.4 Commitment—in what cases.

**767.1 Grounds for recommitment.** The district court in which a criminal action is pending, or during the pendency of an appeal from its judgment therein, or in which a judgment is to be carried into effect, may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail, or deposited money instead thereof, in the following cases:

1. When by reason of his failure to appear he has incurred a forfeiture of his bail, or money deposited instead thereof.

2. When it satisfactorily appears to the court that his bail, either by reason of the death of one or more of them, or from any other cause, is insufficient, or have removed from the state.

3. When, after the filing of an indictment, the court finds the bail taken by or money deposited with the committing magistrate insufficient. [C51,§3243; R60,§4995; C73,§4601; C97, §5520; C24, 27, 31, 35, 39,§13637; C46, 50, 54, §767.1]

**767.2 Contents of order of recommitment.** The order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and

committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged. [C51, §3244; R60,§4996; C73,§4602; C97,§5521; C24, 27, 31, 35, 39,§13638; C46, 50, 54,§767.2]

**767.3 Arrest of defendant.** The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the state. [C51,§3245; R60,§4997; C73,§4603; C97, §5522; C24, 27, 31, 35, 39,§13639; C46, 50, 54, §767.3]

**767.4 Commitment—in what cases.** If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order. [C51,§§3246, 3247; R60,§§4998, 4999; C73,§§4604, 4605; C97, §5523; C24, 27, 31, 35, 39,§13640; C46, 50, 54, §767.4]

## CHAPTER 768

### SURRENDER OF DEFENDANT

768.1 Manner of surrendering defendant.

768.2 Arrest of defendant by bail.

768.3 Return of money deposited.

**768.1 Manner of surrendering defendant.** At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he

was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of bail must be delivered to the officer, who shall detain the defendant in his custody thereon as

upon a commitment, and must, by a certificate in writing, acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during term time, at the same term, and upon three clear days notice thereof to the county attorney, with a copy of the undertaking and certificate, may order the bail to be exonerated. [C51, §3236; R60, §4987; C73, §4593; C97, §5528; C24, 27, 31, 35, 39, §13641; C46, 50, 54, §768.1]

**768.2 Arrest of defendant by bail.** For the purpose of surrendering the defendant, the bail, at any time before they are finally charged, and at any place within the state, may themselves arrest him, or, by a written authority indorsed on a certified copy of the undertaking, may empower any person of

suitable age and discretion to do so. [C51, §3237; R60, §4988; C73, §4594; C97, §5529; C24, 27, 31, 35, 39, §13642; C46, 50, 54, §768.2]

**768.3 Return of money deposited.** If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was made or directed in the manner prescribed in this chapter, the court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during the term, at the same term, must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon three clear days notice to the county attorney, with a copy of the certificate. [C51, §3238; R60, §4989; C73, §4595; C97, §5530; C24, 27, 31, 35, 39, §13643; C46, 50, 54, §768.3]

CHAPTER 769

INFORMATION BY COUNTY ATTORNEY

Referred to in §§602.29, 773.41

- 769.1 Offenses prosecuted on information — jurisdiction.
- 769.2 Filing by county attorney.
- 769.3 Indorsement.
- 769.4 Names of witnesses—minutes of evidence.
- 769.5 Additional witnesses.
- 769.6 Verification by oath.
- 769.7 Approval by judge.
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- 769.21 Clerk of grand jury.
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- 769.24 Place of arraignment.
- 769.25 Record required.
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- 769.27 Entry and execution.
- 769.28 Place of rendition.
- 769.29 Transfer of record of proceedings.
- 769.30 Bail—construction.
- 769.31 Form of information.
- 769.32 Transfer of misdemeanor cases.
- 769.33 Duty of clerk.

**769.1 Offenses prosecuted on information—jurisdiction.** Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment, either on indictment, as is now or may be hereafter provided, or on information as herein provided, and the district and supreme courts shall possess and exercise the same power and jurisdiction to hear, try, and determine prosecutions on information, as herein provided, for all such criminal offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictment. [S13, §5239-a; C24, 27, 31, 35, 39, §13644; C46, 50, 54, §769.1]

**769.2 Filing by county attorney.** The county attorney may, at any time when the grand jury is not actually in session, file in the district court, either in term time or in vacation,

an information charging a person with an indictable offense. In judicial districts within which a municipal court exists, the county attorney may at any time, whether or not the grand jury is in session, file an information in the district or municipal court charging a person with a misdemeanor. [S13, §5239-b; C24, 27, 31, 35, 39, §13645; C46, 50, 54, §769.2]

**769.3 Indorsement.** Such information shall be indorsed, “a true information”, which indorsement shall be signed by the county attorney. [S13, §5239-c; C24, 27, 31, 35, 39, §13646; C46, 50, 54, §769.3]

Similar provision, §772.1

**769.4 Names of witnesses—minutes of evidence.** The county attorney shall, at the time of filing such information, indorse or cause to be indorsed thereon the names of the witnesses whose evidence he expects to intro-

duce and use on the trial of the same, and shall also file with such information a minute of the evidence relating to the guilt of the accused of the offense charged of each witness whose name is so indorsed upon the information. [S13,§5239-d; C24, 27, 31, 35, 39,§13647; C46, 50, 54,§769.4]

S13,§5239-d, editorially divided  
Related and similar provisions, §§771.13, 772.3

**769.5 Additional witnesses.** Should the county attorney desire to use on the trial witnesses in addition to those whose names are so indorsed, he shall proceed in the same manner as is provided in such cases in trials on indictment. [S13,§5239-d; C24, 27, 31, 35, 39,§13648; C46, 50, 54,§769.5]

Notice of additional testimony, §780.10 et seq.

**769.6 Verification by oath.** Such information shall be sworn to by the county attorney before some officer authorized by the laws of Iowa to administer oaths. [S13,§5239-e; C24, 27, 31, 35, 39,§13649; C46, 50, 54,§769.6]

S13,§5239-e, editorially divided

**769.7 Approval by judge.** The information, before being filed, shall be presented to some judge of the district court of the county having jurisdiction of the offense, which judge shall indorse his approval or disapproval thereon. If the information receive the approval of the judge, the same shall be filed. If not approved, the charge shall be presented to the next grand jury for consideration. [S13,§5239-e; C24, 27, 31, 35, 39,§13650; C46, 50, 54,§769.7]

**769.8 Information set aside.** At any time after the approval of an information, and prior to the commencement of trial, the court, or any judge thereof, on its own motion may order said information set aside and said cause submitted to the grand jury. [S13, §5239-e; C24, 27, 31, 35, 39,§13651; C46, 50, 54, §769.8]

**769.9 Copy to accused or attorney.** The clerk of the district court shall cause a copy of the information and minutes of evidence to be delivered to the accused, or to his attorney, at or prior to the time of arraignment. [S13,§5239-f; C24, 27, 31, 35, 39,§13652; C46, 50, 54,§769.9]

Similar provision, §772.4

**769.10 Filing by private prosecutor—indorsement—costs.** If the information is filed at the instance of a private prosecutor, the county attorney may indorse such fact upon the information and sign such indorsement, and, in such case, the costs may be taxed in the same manner and under the same limitations as in case of indictments. [S13,§5239-g; C24, 27, 31, 35, 39,§13653; C46, 50, 54,§769.10]

Taxation of costs, §772.2

**769.11 Amendments.** An information may be amended in the same manner and to the same extent that an indictment may be amended. [S13,§5239-h; C24, 27, 31, 35, 39, §13654; C46, 50, 54,§769.11]

Amendments, §778.42 et seq.

**769.12 Statutes applicable.** The information shall be drawn and construed, in matter of substance, as indictments are required to be drawn and construed. All provisions of law applying to prosecutions on indictments and relating to the issuance of warrants, the correction of the name of the accused, the issuing of process, the giving of bail, arraignments, pleadings, trials, change of place of trials, return of verdicts, the taking of exceptions, new trials, arrest of judgments, the entering of judgments and the execution thereof, appeals, except as modified or otherwise provided for in this chapter, and all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as nearly as may be, apply to information and all prosecutions and proceedings thereon. [S13, §5239-i; C24, 27, 31, 35, 39,§13655; C46, 50, 54, §769.12]

**769.13 Warrant for arrest—bail.** Upon the filing of such information the clerk shall issue a warrant for the arrest of the accused, and the court or any judge thereof shall fix the bail, if bail is allowable, and in vacation or in the absence of the judge in term time, the clerk of the court shall fix such bail, the action of the clerk being reviewable by the court or judge thereof. [S13,§5239-j; C24, 27, 31, 35, 39, §13656; C46, 50, 54,§769.13]

Approval of warrant and expenses, §§79.12, 79.13

**769.14 Assistant county attorney may act.** Wherever the words "county attorney" appear in this chapter, the same shall be construed to mean county attorney or the assistant county attorney. [S13,§5239-k; C24, 27, 31, 35, 39, §13657; C46, 50, 54,§769.14]

**769.15 Time of commencing prosecutions.** The time in which criminal prosecutions may be commenced by information shall be the same as in cases of prosecutions by indictment, which time shall be computed from the date of the filing of the initial information. [S13, §5239-l; C24, 27, 31, 35, 39,§13658; C46, 50, 54, §769.15]

Limitations of criminal actions, ch 752

**769.16 Motion to set aside—grounds.** A motion to set aside the information may be made on one or more of the following grounds:

1. When it is not indorsed "a true information", and the indorsement signed by the county attorney.
2. When the minutes of evidence have not been filed with the information.
3. When the names of the witnesses named in such minutes of evidence are not indorsed on the information.
4. When the information has not been verified or filed in the manner herein required.
5. When the information has not been approved as required. [S13,§5239-m; C24, 27, 31, 35, 39,§13659; C46, 50, 54,§769.16]

**769.17 Time of making motion—rulings of court.** Such motion must be made before a plea is entered by the accused. If not so made, the objection shall be deemed waived. If an objection is shown to be true, the court shall sustain said motion, unless the defects are corrected within such time as the court may order. [S13,§5239-m; C24, 27, 31, 35, 39,§13660; C46, 50, 54,§769.17]

**769.18 Subpoenas.** The clerk of the district court, on application of the county attorney, shall issue subpoenas for such witnesses as the county attorney may require, and in such subpoenas shall direct the appearance of said witnesses before the county attorney at a specified time and place; provided that no subpoena shall issue unless an order authorizing same shall have been first made by the court or a judge thereof. [C24, 27, 31, 35, 39,§13661; C46, 50, 54,§769.18]

**769.19 Oath.** The county attorney shall have authority to administer oaths to said witnesses. [C24, 27, 31, 35, 39,§13662; C46, 50, 54, §769.19]

**769.20 Refusal.** In case a witness refuses to appear in obedience to said subpoena, or refuses to testify, the county attorney shall cause said witness to be taken before some judge of the district court of the county who shall proceed with such refusal as though the said refusal had occurred before said judge in a trial in said court. [C24, 27, 31, 35, 39,§13663; C46, 50, 54,§769.20]

**769.21 Clerk of grand jury.** The county attorney, in the taking of testimony, shall be entitled to the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. [C24, 27, 31, 35, 39,§13664; C46, 50, 54,§769.21]

**769.22 Witness fees.** The witnesses afore-said shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney. [C24, 27, 31, 35, 39,§13665; C46, 50, 54,§769.22]

Witness fees and mileage, §622.69 et seq.; payment, §333.3

**769.23 Arraignments — pleas.** An accused prosecuted on information may, in vacation, be arraigned by any judge of the district court, and, in vacation, be required to plead to the information before any such judge. [S13, §5239-n; C24, 27, 31, 35, 39,§13666; C46, 50, 54, §769.23]

S13,§5239-n, editorially divided  
Referred to in §769.29  
Special term authorized, §604.22

**769.24 Place of arraignment.** Arraignments can be made and pleas required, in vacation, only before such judge sitting in chambers at the usual place of holding court in the county

in which the information was filed, or in any other county of the judicial district, or in any county to which the cause may be sent on change of venue. [S13,§5239-n; C24, 27, 31, 35, 39,§13667; C46, 50, 54,§769.24]

Referred to in §769.29

**769.25 Record required.** The proceedings with reference to arraignments and the taking of pleas, in vacation, shall be signed by the judge and filed with the clerk of the court of the county where the information was filed and entered at length in the records of the court with the same force and effect as if made and entered in term time. [S13,§5239-n; C24, 27, 31, 35, 39,§13668; C46, 50, 54,§769.25]

Referred to in §769.29

**769.26 Judgments on written pleas.** Judgments may be rendered in vacation or during a recess of the court, on written pleas of guilty of the offense charged, or of any degree or grade thereof, or of any offense included therein, with the same force and effect as though rendered in term time. [S13,§5239-o; C24, 27, 31, 35, 39,§13669; C46, 50, 54,§769.26]

S13,§5239-o, editorially divided  
Referred to in §769.29  
Special term authorized, §604.22

**769.27 Entry and execution.** Said written plea of guilt, together with the judge's entry of judgment in reference thereto, shall be forthwith filed with the clerk of the court of the county wherein the information was filed and entered at length in the records of said court, and, after such entry, be executed as in case of judgments on indictment. [S13, §5239-o; C24, 27, 31, 35, 39,§13670; C46, 50, 54, §769.27]

Referred to in §769.29  
Execution, ch 791

**769.28 Place of rendition.** Judgments in vacation, or during a recess of the court, can only be rendered by a judge of the district court sitting in chambers at the usual place of holding court in the county where the information was filed, or in any other county of the judicial district, or in any county to which the cause may be transferred on change of venue. [S13,§5239-o; C24, 27, 31, 35, 39,§13671; C46, 50, 54,§769.28]

Referred to in §769.29  
Special term authorized, §604.22

**769.29 Transfer of record of proceedings.** A record of the proceedings and judgment in sections 769.23 to 769.28, inclusive, when signed by the judge shall be sent to the clerk of the district court of the county in which the information was filed, which shall be entered at length in the records of the court and shall have the same force and effect as if made and entered by the court in said county, and the commitment or subsequent proceedings shall be had upon the judgment and record from that county. [S13,§5239-o; C24, 27, 31, 35, 39, §13672; C46, 50, 54,§769.29]

Referred to in §789.10



**769.30 Bail — construction.** Whenever an accused shall be held to answer to the grand jury for an offense and shall give bail, such bail shall be construed as conditioned to answer to any indictment for said offense returned by the grand jury, to which the accused is legally held to answer, and to any information charging said offense filed by the county attorney. [S13,§5239-p; C24, 27, 31, 35, 39,§13673; C46, 50, 54,§769.30]

**769.31 Form of information.** Information shall be, substantially, in the following form:

IN THE DISTRICT COURT OF ..... COUNTY.  
THE STATE OF IOWA,  
vs.  
A..... B..... } INFORMATION.

Comes now ....., as county attorney of ..... county, state of Iowa, and in the name and by the authority of the state of Iowa accuses A..... B..... of the crime of (here insert the name of the offense), committed as follows:

The said A..... B....., on or about the ..... day of ....., A. D.... (inserting the year) in the county of ....., and state of Iowa, (here insert the acts or omissions constituting the offense).

.....  
County Attorney.

State of Iowa,  
..... County } ss.

I, ....., being first duly sworn, do depose and say, that I have made full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

Subscribed and sworn to by ..... before me, the undersigned, this ..... day of ....., A. D. ....

.....  
(Here insert title of official before whom verification is made.)

Upon the information shall be indorsed the following:

(a) A true information.  
.....  
County Attorney.

(b) Names of witnesses:  
.....  
.....  
.....

(c) On this ..... day of ..... A. D. ...., being satisfied from the showing made herein that this cause should (or should not, as the case may be) be prosecuted by information, the same is approved (or disapproved and the charge is ordered submitted to the next grand jury, as the case may be).

.....  
Judge of District Court.

(d) This information duly filed in the district court, this ..... day of ....., A. D....

.....  
(Clerk of the District Court of .....County, State of Iowa.)  
By.....  
Deputy Clerk.

(e) Bail is hereby fixed on the within information in the sum of \$.....

.....  
(Here insert official title of judge or clerk, as case may be.)

[S13,§5239-q; C24, 27, 31, 35, 39,§13674; C46, 50, 54,§769.31]

Short form, §773.24

**769.32 Transfer of misdemeanor cases.** The judges of the district court shall have authority to transfer to the municipal court within their judicial district misdemeanor offenses for trial where either county attorney informations have been filed or indictments have been returned. [C27, 31, 35,§13677-b1; C39,§13677.1; C46, 50, 54,§769.32]

42GA, ch 242,§1, editorially divided

**769.33 Duty of clerk.** Upon making an order for the transfer of such cases the clerk of the district court shall certify and transmit at once to the clerk of the municipal court the indictment or county attorney information, and minutes of evidence, together with a transcript of the record. Thereupon such cases shall be prosecuted to final judgment in the municipal court. [C27, 31, 35,§13677-b2; C39, §13677.2; C46, 50, 54,§769.33]

## CHAPTER 770

## IMPANELING GRAND JURY

770.1	Drawing grand jurors.	770.14	Oath of members.
770.2	Additional drawings.	770.15	General charge of court.
770.3	Challenge to panel—motion.	770.16	Special charge of court.
770.4	Joinder in challenges.	770.17	Clerk—oath.
770.5	Grounds of challenge.	770.18	Expression of opinion—presence before jury.
770.6	Decided by the court.	770.19	Compensation.
770.7	Effect of allowing challenge to panel.	770.20	Shorthand reporter as clerk.
770.8	Dismissal of jurors—new panels.	770.21	Compensation.
770.9	Summoning additional jurors.	770.22	Assistant clerk.
770.10	Effect of violation.	770.23	Member appointed clerk.
770.11	Refilling panel.	770.24	Discharge of grand jury.
770.12	Foreman appointed.		
770.13	Oath of foreman.		

**770.1 Drawing grand jurors.** At the term of court at which grand jurors are required to appear, the names of the twelve persons constituting the panel of the grand jury, except such as may have died, removed from the county, or have been excused by the court, shall, on the second day of each term of court, unless otherwise ordered by the court or judge, be placed by the clerk in a box, and after thoroughly mixing the same, he shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury for that term. Should any of the persons so drawn be excused or fail to attend on said second day of the court, the clerk shall draw other names until the seven grand jurors are secured. [C51,§2881; R60,§§4608–4610; C73,§§4255–4257; C97,§5240; S13,§5240; C24, 27, 31, 35, 39,§13678; C46, 50, 54,§770.1]

S13,§5240, editorially divided

**770.2 Additional drawings.** If, for any reason, the number of grand jurors required is not secured from the twelve persons so constituting such panel, the clerk shall draw from the grand jury box such number of names as the court may direct, and from the persons whose names are so drawn the panel of the grand jury for the term shall be filled, and the court shall issue a venire to secure their attendance. [C51,§2881; R60,§§4609, 4610; C73,§§4256, 4257; C97,§5240; S13,§5240; C24, 27, 31, 35, 39,§13679; C46, 50, 54,§770.2]

**770.3 Challenge to panel — motion.** A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel, only for the reason that it was not selected, drawn, or summoned as prescribed by law. A defendant indicted not having been held to answer, or having been so held after the impaneling of the grand jury, may for the same reasons object to the panel by motion, but the right to make such motion is waived by entering a plea to an indictment. [C51,§§2882, 2883, 2890; R60,§§4611, 4612, 4619; C73,§§4258, 4260, 4266; C97,§5241; C24, 27, 31, 35, 39,§13680; C46, 50, 54,§770.3]

**770.4 Joinder in challenges.** When several persons are held to answer for one and the

same offense, no challenge to the panel can be made unless they all join therein. [C51,§2890; R60,§4619; C73,§4266; C97,§5242; C24, 27, 31, 35, 39,§13681; C46, 50, 54,§770.4]

**770.5 Grounds of challenge.** A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

1. By the state or the defendant, because the grand juror does not possess the qualifications required by law.

2. By the state only because:

a. He is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

b. He is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

c. He is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

d. He is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

3. By the defendant only because:

a. He is a prosecutor upon a charge against the defendant.

b. He has formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial. [C51,§§2882, 2884, 2890; R60,§§4611, 4613, 4619; C73,§§4258, 4259, 4261, 4266; C97,§5243; C24, 27, 31, 35, 39,§13682; C46, 50, 54,§770.5]

Competency of jurors, §607.1  
Computing relationship, §4.1

**770.6 Decided by the court.** Challenges to the panel or to an individual grand juror must be decided by the court. [C51,§2886; R60,§4615; C73,§4262; C97,§5244; C24, 27, 31, 35, 39,§13683; C46, 50, 54,§770.6]

**770.7 Effect of allowing challenge to panel.** If a challenge to the panel be allowed, the

grand jury is prohibited from inquiring into the charge against the defendant by whom it was interposed, and, if it does so and finds an indictment, the court must set it aside. [C51, §2887; R60, §4616; C73, §4263; C97, §5245; C24, 27, 31, 35, 39, §13684; C46, 50, 54, §770.7]

**770.8 Dismissal of jurors—new panels.** If a challenge to an individual grand juror be allowed, he shall not be present at or take any part in the consideration of the charge against the defendant. If a challenge to the panel is allowed, or if by reason of challenges to individual grand jurors being allowed, or if for any cause at any time, the grand jury is reduced to a less number than seven, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the panel has been allowed, or the panel of the jury so reduced below the number required by law shall be filled as the case may be. If a challenge is allowed to the panel, the names of jurors required to impanel a new jury shall be drawn from the grand jury list. [C51, §2888; R60, §4617; C73, §4264; C97, §5246; S13, §5246; C24, 27, 31, 35, 39, §13685; C46, 50, 54, §770.8]

S13, §5246, editorially divided  
Referred to in §770.10

**770.9 Summoning additional jurors.** If such grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, or excused, and if they are exhausted, the additional number required shall be drawn from the grand jury list and the court shall, when necessary, issue a venire to secure the attendance of such additional jurors. The persons so summoned shall serve only in the case, or cases, in which, by reason of challenges, or other causes, the regular panel is set aside or is insufficient in number to find an indictment. [S13, §5246; C24, 27, 31, 35, 39, §13686; C46, 50, 54, §770.9]

Referred to in §770.10

**770.10 Effect of violation.** The grand jury must inform the court of any violation of sections 770.8 and 770.9, which offense shall be punished as a contempt. [C51, §2889; R60, §4618; C73, §4265; C97, §5247; C24, 27, 31, 35, 39, §13687; C46, 50, 54, §770.10]

Contempts, ch 665

**770.11 Refilling panel.** If for any cause the number of grand jurors is reduced below twelve, the court or judge may order the clerk to immediately draw from the grand jury list sufficient additional names to fill the panel, and such new grand jurors so drawn may, if so ordered by the court, serve as regular grand jurors for the county in which they are drawn for the remainder of the year. [C24, 27, 31, 35, 39, §13688; C46, 50, 54, §770.11]

**770.12 Foreman appointed.** From the persons impaneled as grand jurors the court must appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act, before the grand jury is finally discharged. [C51, §2891; R60, §4620; C73, §4267; C97, §5248; C24, 27, 31, 35, 39, §13689; C46, 50, 54, §770.12]

**770.13 Oath of foreman.** The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding." [C51, §2892; R60, §4621; C73, §4268; C97, §5249; C24, 27, 31, 35, 39, §13690; C46, 50, 54, §770.13]

**770.14 Oath of members.** The following oath must thereupon be administered to the other grand jurors: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part." [C51, §2893; R60, §4622; C73, §4269; C97, §5250; C24, 27, 31, 35, 39, §13691; C46, 50, 54, §770.14]

**770.15 General charge of court.** The grand jury, being impaneled and sworn, may be charged by the court, who shall give them such information as may be proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before that body. [C51, §2894; R60, §4623; C73, §4270; C97, §5251; C24, 27, 31, 35, 39, §13692; C46, 50, 54, §770.15]

C97, §5251, editorially divided

**770.16 Special charge of court.** The court shall specially give in his charge the provisions of the law regulating the accounting by public officers for fines and fees collected by them, and those providing for the suppression of intemperance. [C51, §2894; R60, §4623; C73, §4270; C97, §5251; C24, 27, 31, 35, 39, §13693; C46, 50, 54, §770.16]

**770.17 Clerk—oath.** The court may appoint as clerk of the grand jury, a competent person who is not a member thereof. The following oath must be administered to him: "You solemnly swear that you will faithfully and impartially perform the duties of clerk of the grand jury, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof." [C51, §2895; R60, §4624, 4629; C73, §4275; C97, §5256; S13, §5256; C24, 27, 31, 35, 39, §13694; C46, 50, 54, §770.17]

S13, §5256, editorially divided

**770.18 Expression of opinion—presence before jury.** Such clerk shall strictly abstain from expressing an opinion upon any question before the body, either to or in the presence or hearing of it or any member thereof, and shall not be present when any vote is being taken upon the finding of an indictment. [C97,§5256; S13,§5256; C24, 27, 31, 35, 39,§13695; C46, 50, 54, §770.18]

**770.19 Compensation.** Such clerk shall receive compensation at the rate of eight dollars per day for time actually and necessarily employed in the performance of the duties prescribed in this chapter. [C97,§5256; S13,§5256; C24, 27, 31, 35, 39,§13696; C46, 50, 54,§770.19]

**770.20 Shorthand reporter as clerk.** In all counties having a population of more than fifty thousand inhabitants, the court may, if it deems it necessary, appoint as clerk of the grand jury a competent shorthand reporter. [S13,§5256; C24, 27, 31, 35, 39,§13697; C46, 50, 54, §770.20]

**770.21 Compensation.** Such clerk shall receive such compensation as may be fixed by the court at the time of the appointment, but said compensation, in counties having a population of less than seventy-five thousand inhabitants, shall not exceed ten dollars per day for each day actually and necessarily employed in the performance of the duties herein defined.

In all counties having a population of more than seventy-five thousand inhabitants and less than one hundred twenty thousand inhabi-

tants, such clerk shall receive as compensation an annual salary of not to exceed twenty-three hundred dollars.

In counties having a population of one hundred twenty thousand and over and less than one hundred fifty thousand inhabitants, such clerks shall receive an annual salary of thirty-eight hundred dollars.

In counties having a population of one hundred fifty thousand and over, such clerks shall receive an annual salary of forty-eight hundred dollars. [S13,§5256; C24, 27, 31, 35, 39, §13698; C46, 50, 54,§770.21; 57GA, ch 260,§4]

**770.22 Assistant clerk.** In addition thereto the court may, in counties having a population of one hundred twenty thousand inhabitants and over, if it deems it necessary, appoint an assistant clerk of the grand jury and fix his salary therefor. [C24, 27, 31, 35, 39,§13699; C46, 50, 54,§770.22]

**770.23 Member appointed clerk.** If no such appointment is made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. [R60,§4629; C73,§4275; C97,§5257; C24, 27, 31, 35, 39,§13700; C46, 50, 54,§770.23]

**770.24 Discharge of grand jury.** The grand jury, on the completion of its business, shall be discharged by the court, but, whether its business be completed or not, it is discharged by the final adjournment thereof. [C51,§2896; R60,§4625; C73,§4271; C97,§5252; C24, 27, 31, 35, 39,§13701; C46, 50, 54,§770.24]

## CHAPTER 771

### DUTIES OF GRAND JURY

Referred to in §772.8

- 771.1 Indictable offenses.
- 771.2 Special duties.
- 771.3 Access to county jails and public records.
- 771.4 Duty of court and county attorney.
- 771.5 Right of county attorney to appear.
- 771.6 Secrecy of vote.
- 771.7 Subpoenas.
- 771.8 Failure to obey.
- 771.9 Administering oath.
- 771.10 Refusal of witness to testify.
- 771.11 Minutes to be kept.
- 771.12 Minutes read—signing by witness.
- 771.13 Evidence returned and filed.

- 771.14 Member as witness.
- 771.15 Evidence for defendant.
- 771.16 Evidence sufficient for indictment.
- 771.17 Kind of evidence required.
- 771.18 Minutes of preliminary examination.
- 771.19 When presence of witnesses unnecessary.
- 771.20 Minutes of testimony before magistrate.
- 771.21 No indictment found—effect.
- 771.22 Effect of dismissal.
- 771.23 Proceedings secret—disclosure of action.
- 771.24 Disclosure required.
- 771.25 Privilege of jurors.

**771.1 Indictable offenses.** The grand jury shall inquire into all indictable offenses which may be tried within the county, and present them to the court by indictment. [C51,§2897; R60,§4626; C73,§4272; C97,§5253; C24, 27, 31, 35, 39,§13702; C46, 50, 54,§771.1]

**771.2 Special duties.** It is made the special duty of the grand jury to inquire into:

1. The case of every person imprisoned in

the jail of the county on a criminal charge and not indicted.

2. The condition and management of the public prisons within the county.

3. The willful and corrupt misconduct in office of all county officers.

4. The obstruction of highways. [C51,§2902; R60,§4632; C73,§4278; C97,§5261; C24, 27, 31, 35, 39,§13703; C46, 50, 54,§771.2]

**771.3 Access to county jails and public records.** The grand jury is entitled to free access at all reasonable times to the county jails, and to the examination without charge of all public records within the county. [C51,§2904; R60,§4634; C73,§4280; C97,§5263; C24, 27, 31, 35, 39, §13704; C46, 50, 54,§771.3]

**771.4 Duty of court and county attorney.** The grand jury may at all reasonable times ask the advice of the county attorney or the court. [C51,§2905; R60,§4635; C73,§4281; C97,§5264; C24, 27, 31, 35, 39,§13705; C46, 50, 54, §771.4]

C97,§5264, editorially divided

**771.5 Right of county attorney to appear.** The county attorney shall be allowed at all times to appear before the grand jury on his own request for the purpose of giving information relative to any matter cognizable by it, and for the purpose of examining witnesses, when necessary. [C51,§§2905, 2906; R60,§§4635, 4636; C73,§§4281, 4282; C97,§§5264, 5265; C24, 27, 31, 35, 39,§13706; C46, 50, 54,§771.5]

C97,§5265, editorially divided

**771.6 Secrecy of vote.** Neither the county attorney nor any other officer or person except the grand jury must be present when the question is taken upon the finding of an indictment. [C51,§2906; R60,§4636; C73,§4282; C97,§5265; C24, 27, 31, 35, 39,§13707; C46, 50, 54,§771.6]

**771.7 Subpoenas.** The clerk of the court must, when required by the foreman of the grand jury or county attorney, issue subpoenas for witnesses to appear before the grand jury. [C51,§2903; R60,§4633; C73,§4279; C97,§5262; C24, 27, 31, 35, 39,§13708; C46, 50, 54, §771.7]

**771.8 Failure to obey.** If a witness fails to attend before the grand jury in obedience to a subpoena issued for that purpose and duly served, the court shall, upon the application of the county attorney or foreman of the grand jury, coerce the attendance of the witness by attachment, and may punish his disobedience as in the case of a witness failing to attend on the trial. [R60,§4642; C73,§4288; C97,§5271; C24, 27, 31, 35, 39,§13709; C46, 50, 54,§771.8]

Contempts, ch 665

**771.9 Administering oath.** The foreman of the grand jury may administer the oath to all witnesses produced and examined before it. [R60,§4628; C73,§4274; C97,§5255; C24, 27, 31, 35, 39,§13710; C46, 50, 54,§771.9]

**771.10 Refusal of witness to testify.** When a witness under examination before the grand jury refuses to testify or to answer a question put to him, it shall proceed with the witness into open court, and the foreman shall then distinctly state to the court the question and the refusal of the witness, and if upon hearing the witness the court shall decide that he is bound to testify or answer the question propounded, he shall inquire of the witness if he

persists in his refusal, and, if he does, shall proceed with him as in cases of similar refusal in open court. [R60,§4641; C73,§4287; C97,§5270; C24, 27, 31, 35, 39,§13711; C46, 50, 54, §771.10]

Contempts, ch 665

**771.11 Minutes to be kept.** The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment. [R60,§4629; C73,§4275; C97,§5258; S13,§5258; C24, 27, 31, 35, 39,§13712; C46, 50, 54,§771.11]

S13,§5258, editorially divided

**771.12 Minutes read — signing by witness.** When the evidence is taken, it shall be read over to and signed by the witness. [C97,§5258; S13,§5258; C24, 27, 31, 35, 39,§13713; C46, 50, 54, §771.12]

**771.13 Evidence returned and filed.** When an indictment is found, all minutes and exhibits relating thereto shall be returned therewith and filed by the clerk of the court. [C73,§4275; C97,§5258; S13,§5258; C24, 27, 31, 35, 39, §13714; C46, 50, 54,§771.13]

Related provisions, §§769.4, 772.8

**771.14 Member as witness.** If a member of the grand jury knows or has reason to believe that a public offense has been committed, triable in the county, he must declare the same to his fellow jurors, and be sworn as a witness upon the investigation before them. [C51,§2901; R60,§4631; C73,§4277; C97,§5260; C24, 27, 31, 35, 39,§13715; C46, 50, 54,§771.14]

**771.15 Evidence for defendant.** The grand jury is not bound to hear evidence for defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced. [C51,§2900; R60,§4630; C73,§4276; C97,§5259; C24, 27, 31, 35, 39, §13716; C46, 50, 54,§771.15]

**771.16 Evidence sufficient for indictment.** An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it should not. [R60,§4637; C73,§4283; C97,§5266; C24, 27, 31, 35, 39,§13717; C46, 50, 54, §771.16]

**771.17 Kind of evidence required.** An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the minutes of evidence given by witnesses before a committing magistrate. [C51,§§2898, 2899; R60,§4627; C73,§4273; C97,§5254; C24, 27, 31, 35, 39, §13718; C46, 50, 54,§771.17]

**771.18 Minutes of preliminary examination.** All papers and other matters of evidence relating to the arrest and preliminary examination

of the charge against defendants who have been held to answer, returned to the court by magistrates, shall be laid before the grand jury, and shall be competent evidence upon which an indictment may be found. [R60,§4643; C73, §4289; C97,§5272; C24, 27, 31, 35, 39,§13719; C46, 50, 54,§771.18]

C97,§5272, editorially divided

**771.19 When presence of witnesses unnecessary.** The grand jury need not have before it for examination any witness who was examined before the committing magistrate, and whose evidence is returned by such magistrate in the minutes, unless requested by the county attorney. [C97,§5272; C24, 27, 31, 35, 39,§13720; C46, 50, 54,§771.19]

**771.20 Minutes of testimony before magistrate.** If an indictment was found in whole or in part upon the minutes of evidence taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment. [C97,§5272; C24, 27, 31, 35, 39, §13721; C46, 50, 54,§771.20]

**771.21 No indictment found — effect.** If, upon investigation, the grand jury refuses to find an indictment, it shall return all of said papers to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed, and thereupon the court must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given, unless the court, upon good cause shown, direct that the charge should again be submitted to the grand jury, in which case the defendant may be continued in custody, or on bail, until the next term of court. [R60,§4643; C73,§4289; C97,§5272; C24, 27, 31, 35, 39,§13722; C46, 50, 54,§771.21]

Related provision, §795.1

**771.22 Effect of dismissal.** Such dismissal of the charge does not prevent the same from being submitted to a grand jury as often as

the court may direct; but without such direction it cannot be again submitted. [R60,§4644; C73,§4290; C97,§5273; C24, 27, 31, 35, 39,§13723; C46, 50, 54,§771.22]

**771.23 Proceedings secret—disclosure of action.** Every member of the grand jury must keep secret the proceedings of that body and the testimony given before it, except as provided in section 771.24; nor shall any grand juror or officer of the court disclose the fact that an indictment for a felony has been found against a person not in custody or under bail, otherwise than by presenting the same in court or issuing or executing process thereon, until such person has been arrested. A violation of this section is a misdemeanor. [C51, §2907; R60,§4638; C73,§4284; C97,§5267; C24, 27, 31, 35, 39,§13724; C46, 50, 54,§771.23]

Punishment, §687.7

**771.24 Disclosure required.** Any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by him before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice. [C51, §2908; R60,§4639; C73,§4285; C97,§5268; C24, 27, 31, 35, 39,§13725; C46, 50, 54,§771.24]

Referred to in §771.23

**771.25 Privilege of jurors.** No grand juror shall be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before it, except for perjury of which he may have been guilty in making an accusation, or in giving testimony to his fellow jurors. [C51,§2909; R60, §4640; C73,§4286; C97,§5269; C24, 27, 31, 35, 39, §13726; C46, 50, 54,§771.25]

## CHAPTER 772

### FINDING AND PRESENTATION OF INDICTMENT

772.1 Vote necessary—indorsement.

772.2 Indictment at instance of private prosecutor.

772.3 Names of witnesses indorsed.

772.4 Minutes of evidence not public—copy.

772.5 Minutes used on resubmission.

**772.1 Vote necessary—indorsement.** An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be indorsed “a true bill” and the indorsement signed by the foreman of the grand jury. [C51,§2910; R60,§4645; C73,§4291; C97, §5274; S13,§5274-a; C24, 27, 31, 35, 39,§13727; C46, 50, 54,§772.1]

Referred to in §772.2  
Similar provision, §769.3

**772.2 Indictment at instance of private prosecutor.** When an indictment is found at the instance of a private prosecutor, the following must be added to the indorsement required by section 772.1, “found at the instance of” (here state the name of the person) and, in such case, if the prosecution fails, the court trying the cause may tax the costs against him, if satisfied from all the circumstances that the

prosecution was malicious or without probable cause. [R60,§4646; C73,§4292; C97,§5275; C24, 27, 31, 35, 39,§13728; C46, 50, 54,§772.2]

Similar provision, §769.10

**772.3 Names of witnesses indorsed.** When an indictment is found, the names of all witnesses on whose evidence it is found must be indorsed thereon before it is presented in the court, and must be, with the minutes of the evidence of such witnesses, presented to the court by the foreman in the presence of the grand jury, and all of the same marked "filed" by the clerk, as provided in the chapter relating to the duties of the grand jury, and shall remain in his office as a record. [C51,§§2913, 2914; R60,§§4647, 4648; C73,§§4293, 4294; C97, §5276; C24, 27, 31, 35, 39,§13729; C46, 50, 54, §772.3]

Duties of grand jury, ch 771

Similar and related provisions, §§769.4, 771.13

**772.4 Minutes of evidence not public—copy.** Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the county attorney or his assistant or clerk, the defendant and his counsel, or the assistant or clerk of such counsel.

The clerk of the court must, within two days after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy. [C51,§2913; R60,§4647; C73,§4293; C97,§5277; C24, 27, 31, 35, 39,§13730; C46, 50, 54,§772.4]

Similar provision, §769.9

**772.5 Minutes used on resubmission.** When an indictment is held insufficient, and an order is made to resubmit the case to the same or another grand jury, or where the grand jury has ignored a bill and the same has been ordered back to the same or another grand jury for further investigation, it shall be unnecessary to summon the witnesses again before such jury in such cases, but the minutes of the testimony returned with the defective indictment or ignored bill or information shall be detached and returned to the grand jury; and thereupon, without more, such grand jury may find a bill and attach said minutes of the evidence thereto, and return said indictment therewith into court in the usual manner, and may in either case take additional testimony. [C97,§5278; C24, 27, 31, 35, 39,§13731; C46, 50, 54, §772.5]

## CHAPTER 773

### INDICTMENT

Applicable to county attorney information, §769.12

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**773.1 Definition.** An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law

is a public offense, punishable on indictment. [C51,§2915; R60,§4649; C73,§4295; C97,§5279; C24, 27, 31, 35, 39,§13732; C46, 50, 54,§773.1]

**773.2 Form of indictment.** The indictment may be in substantially the following form:

"In the district court of Iowa in and for ..... county.

State of Iowa vs. A. B.

The grand jurors of the county of ..... accuse A. B. of (here state the offense, e. g., treason, manslaughter, robbery, or larceny) and charge that (here the particulars of the offense, for instance, as set forth in section 773.34 may be added with the view to avoiding the necessity for a bill of particulars)."

Illustration for indictment for murder.

The grand jurors of the county of Polk accuse John Doe of murder and charge that on or about the first day of December, 1928, John Doe murdered Richard Roe.

Illustration for indictment for burglary.

The grand jurors of the county of Polk accuse John Doe of burglary and charge that on or about the first day of December, 1928, John Doe committed burglary of the dwelling of Richard Roe.

Illustration for indictment for robbery.

The grand jurors of the county of Polk accuse John Doe of robbery and charge that on or about the first day of December, 1928, John Doe robbed Richard Roe. [R60,§4651; C73, §4297; C97,§5281; C24, 27,§13734; C31, 35,§13732-c1; C39,§13732.01; C46, 50, 54,§773.2]

**773.3 Contents of indictment.** The indictment may charge, and is valid and sufficient if it charges, the offense for which the accused is being prosecuted in one or more of the following ways:

1. By using the name given to the offense by statute.

2. By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense, or in terms of substantially the same meaning, as is sufficient to give the court and the accused notice of what offense is intended to be charged.

The indictment may refer to a section or subsection of any statute creating the crime charged therein, and in determining the validity or sufficiency of such indictment regard shall be had to such reference. [C51,§2916; R60,§§4650, 4652, 4659; C73,§§4296, 4298, 4305, C97,§§5280, 5282, 5289; S13,§5289; C24, 27,§§13733, 13735, 13743; C31, 35,§13732-c2; C39,§13732.02; C46, 50, 54,§773.3]

Referred to in §§773.4, 773.5, 773.10-773.14, 773.16, 773.22, 773.29

**773.4 Absence of particulars—effect.** No indictment which charges the offense in accordance with the provisions of section 773.3 shall be held to be insufficient on the ground that it fails to inform the defendant of the particulars of the offense. [C31, 35,§13732-c3; C39, §13732.03; C46, 50, 54,§773.4]

**773.5 Bill of particulars.**

1. When an indictment charges an offense in accordance with the provisions of section 773.3, but such indictment together with the minutes of the evidence filed therewith fails to inform the defendant of the particulars of the

offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state, the court may, of its own motion, and shall, at the request of the defendant, order the county attorney to furnish a bill of particulars containing such information as may be necessary for these purposes, or the county attorney may of his own motion furnish such bill of particulars.

2. When the court deems it to be in the interest of justice that facts not set out in the indictment or in the minutes of the evidence or in any previous bill of particulars, should be furnished to the defendant, it may order the county attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts, should be so furnished the court shall consider the whole record of the case and the entire course of the proceedings against the defendant.

3. Supplemental bills of particulars or a new bill may be ordered by the court or furnished voluntarily under the conditions above stated.

4. Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

5. When any bill of particulars is furnished it shall be filed and become a part of the record and a copy of such bill shall be given to the defendant upon his request. [C31, 35,§13732-c4; C39,§13732.04; C46, 50, 54,§773.5]

Referred to in §773.6

**773.6 Setting aside indictment.** If it appears from the bill of particulars furnished under section 773.5 that the particulars stated do not constitute the offense charged in the indictment, or that the defendant did not commit that offense, or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of defendant shall set aside the indictment unless the county attorney shall furnish another bill of particulars which so states the particulars as to show that the particulars constitute the offense charged in the indictment and that the offense was committed by the defendant and that it is not barred by the statute of limitations. [C31, 35,§13732-c5; C39,§13732.05; C46, 50, 54,§773.6]

**773.7 Identification of defendant.**

1. In an indictment or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying him is practicable, by stating a fictitious name, or describing him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

2. If the defendant is a corporation, it is sufficient to state the corporate name of such



corporation, or any name or designation by which it has been or is known or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

3. If in the course of the proceedings the true name of a person indicted otherwise than by his true name is disclosed by the defendant or in the proceedings before the court, it shall order the true name of the defendant to be inserted in the indictment and court record wherever his name appears otherwise therein, and the case shall proceed against him in his true name.

4. In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney. [C51, §2916; R60, §§4653, 4659; C73, §§4299, 4305; C97, §§5283, 5289; S13, §5289; C24, 27, §§13736, 13743; C31, 35, §13732-c6; C39, §13732.06; C46, 50, 54, §773.7]

### 773.8 Time of commission of offense.

1. An indictment need contain no allegation of the time of the commission of the offense except in those cases in which time is a material ingredient of the offense.

2. The allegation in an indictment that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment and within the period of limitations prescribed by law for the prosecution of the offense.

3. All allegations of the indictment and bill of particulars shall, unless stated otherwise, be deemed to refer to the same time. [C51, §2916; R60, §§4651, 4655, 4659; C73, §§4297, 4301, 4305; C97, §§5281, 5285, 5289; S13, §5289; C24, 27, §§13734, 13739, 13743; C31, 35, §13732-c7; C39, §13732.07; C46, 50, 54, §773.8]

### 773.9 Place of commission of offense.

1. An indictment need contain no allegation of the place of the commission of the offense, except in those cases in which the place is a material ingredient of the offense.

2. The allegation in an indictment that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

3. All allegations in the indictment and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place. [C51, §2916.2920; R60, §§4651, 4659, 4660; C73, §§4297, 4305, 4306; C97, §§5281, 5289, 5290; S13, §5289; C24, 27, §§13734, 13743, 13749; C31, 35, §13732-c8; C39, §13732.08; C46, 50, 54, §773.9]

**773.10 Means.** An indictment need contain no allegation of the means by which an offense was committed, unless such allegation is necessary to charge an offense under section 773.3. [C31, 35, §13732-c9; C39, §13732.09; C46, 50, 54, §773.10]

**773.11 Value.** An indictment or bill of particulars need contain no allegation of the value or price of any property, unless such allegation is necessary to charge an indictable offense under section 773.3, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged. [C31, 35, §13732-c10; C39, §13732.10; C46, 50, 54, §773.11]

### 773.12 Ownership.

1. An indictment need contain no allegation of the ownership of any property, unless such allegation is necessary to charge the offense under section 773.3.

2. An allegation in an indictment or bill of particulars of ownership of property is supported by proof of possession or right of possession of such property, and any statement in an indictment or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership. [C31, 35, §13732-c11; C39, §13732.11; C46, 50, 54, §773.12]

### 773.13 Intent.

1. An indictment need contain no allegation of the intent with which an act was done, unless such allegation is necessary to charge the offense under section 773.3.

2. An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under section 773.3. [C51, §2927; R60, §4667; C73, §4313; C97, §5298; C24, 27, §13756; C31, 35, §13732-c12; C39, §13732.12; C46, 50, 54, §773.13]

**773.14 Immaterial allegations.** An indictment need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand", nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously", "willfully", "knowingly", "maliciously", or "negligently", nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under section 773.3. [C51, §2920; R60, §4660; C73, §4306; C97, §5290; C24, 27, §13749; C31, 35, §13732-c13; C39, §13732.13; C46, 50, 54, §773.14]

**773.15 Unnecessary allegations.** An indictment need not state any matter not necessary to be proved. [C51, §2920; R60, §4660; C73, §4306; C97, §5290; C24, 27, §13749; C31, 35, §13732-c14; C39, §13732.14; C46, 50, 54, §773.15]

### Surplusage, §773.30

**773.16 Description of place or thing.** Whenever it is necessary in an indictment to describe any place or thing in order to charge an offense under section 773.3 it is sufficient to

describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense. [R60, §§4656, 4657; C73, §§4302, 4303; C97, §§5286, 5287; C24, 27, §§13740, 13741; C31, 35, §13732-c15; C39, §13732.15; C46, 50, 54, §773.16]

**773.17 Identification of others than defendant.**

1. In an indictment or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation, or nickname by which he has been or is known, or, if no better way of identifying such person is practicable, by stating a fictitious name, or stating the name of an office or position held by him, or by describing him as "a certain person", or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

2. It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others".

3. It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

4. In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

5. If in the course of the trial the true name of any person, group, or association of persons, or corporation, described otherwise than by the true name is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment and court record wherever the name appears otherwise. [R60, §4656; C73, §4302; C97, §5286; C24, 27, §13740; C31, 35, §13732-c16; C39, §13732.16; C46, 50, 54, §773.17]

**773.18 Money or securities.** In an indictment in which it is necessary to make an averment as to money, treasury notes or certificates, bank notes or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying

the particular character, number, denomination, kind, species, or nature thereof. [C31, 35, §13732-c17; C39, §13732.17; C46, 50, 54, §773.18]

**773.19 Instruments generally.** Whenever it is necessary in an indictment or bill of particulars to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof; provided that the description, if in a bill of particulars, sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense. [C51, §2925; R60, §4665; C73, §4311; C97, §5295; C24, 27, §13753; C31, 35, §13732-c18; C39, §13732.18; C46, 50, 54, §773.19]

**773.20 Spoken or written words—pictures.** Whenever in an indictment or bill of particulars an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture; provided that when such words or description occur in a bill of particulars, the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made as to enable him to prepare his defense. [C31, 35, §13732-c19; C39, §13732.19; C46, 50, 54, §773.20]

**773.21 Words and phrases.** The words and phrases used in an indictment or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification. [R60, §4657; C73, §4303; C97, §5287; C24, 27, §13741; C31, 35, §13732-c20; C39, §13732.20; C46, 50, 54, §773.21]

**773.22 Prior conviction.** In alleging in an indictment or information a prior conviction of the defendant it is sufficient to allege that the defendant was convicted of a certain offense, stating the name of the offense, if it has one, or otherwise stating the offense in accordance with the provisions of section 773.3, subsection 2. [C31, 35, §13732-c21; C39, §13732.21; C46, 50, 54, §773.22]

See ch 747

**773.23 Negating exception.** No indictment for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense. [C31, 35, §13732-c22; C39, §13732.22; C46, 50, 54, §773.23]

Negating exceptions, §§126.7, 204.19

**773.24 Disjunctive or alternative allegations.** No indictment for an offense which may be

committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents, or results are charged in the disjunctive or alternative. [C31, 35,§13732-c23; C39,§13732.23; C46, 50, 54,§773.24]

**773.25 Indirect or inferential allegations.** No indictment shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts, or circumstances connected with or constituting the offense. [C31, 35,§13732-c24; C39, §13732.24; C46, 50, 54,§773.25]

**773.26 Libel.** No indictment for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libeled of the defamatory matter on which the indictment is founded. [C31, 35, §13732-c25; C39,§13732.25; C46, 50, 54,§773.26]

Additional provision, §736.1

**773.27 Perjury.** An indictment for perjury, or for subornation of, solicitation of, or conspiracy to commit, perjury need not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same. [C51,§2926; R60,§4666; C73, §4312; C97,§5296; C24, 27,§13754; C31, 35,§13732-c26; C39,§13732.26; C46, 50, 54,§773.27]

**773.28 Degrees of offense.** In an indictment for an offense which is divided into degrees it is sufficient to charge that the accused committed the offense. [C31, 35,§13732-c27; C39, §13732.27; C46, 50, 54,§773.28]

**773.29 Repugnant allegation.** No indictment shall be invalid or insufficient by reason of any repugnant allegation contained therein; provided that an offense is charged in accordance with the provisions of section 773.3. [C51,§2920; R60,§4660; C73,§4306; C97,§5290; C24, 27,§13749; C31, 35,§13732-c28; C39,§13732.28; C46, 50, 54, §773.29]

**773.30 Surplusage.** Any allegation unnecessary under existing law or under the provisions of this act\* may, if contained in an indictment, be disregarded as surplusage. [C51, §2920; R60,§4660; C73,§4306; C97,§5290; C24, 27, §13749; C31, 35,§13732-c29; C39,§13732.29; C46, 50, 54,§773.30]

Unnecessary allegations, §773.15

\*43GA, ch 266, Code sections 773.2 to 773.34, inclusive

**773.31 Indictment under prior law.** Nothing contained in this act\* shall be so construed as to make invalid or insufficient any indictment which would have been valid and sufficient

under the law existing at the date of the enactment hereof. [C31, 35,§13732-c30; C39,§13732.30; C46, 50, 54,§773.31]

\*43GA, ch 266, Code sections 773.2 to 773.34, inclusive

**773.32 Rule of interpretation.** Whenever reference is made to what is necessary to be included in an indictment the interpretation shall be that it is necessary to be included in the indictment, information or bill of particulars; and wherever reference is made to what is not necessary to be included in an indictment, the interpretation shall be that it is not necessary to be included in the indictment, information or bill of particulars. [C31, 35,§13732-c31; C39,§13732.31; C46, 50, 54,§773.32]

**773.33 Form of informations.** No preliminary information and no information for a nonindictable offense which charges the offense in accordance with the provisions of this act\* shall be held to be insufficient. [C31, 35, §13732-c32; C39,§13732.32; C46, 50, 54,§773.33]

\*43GA, ch 266, Code sections 773.2 to 773.34, inclusive

**773.34 Permissible forms.** The following forms may be used in the cases in which they are applicable:

Adultery—A. B. committed adultery with C. D.

Affray—A. B. and C. D. made an affray.

Arson—A. B. committed arson of the dwelling of C. D. (Other burnings) A. B. willfully and maliciously burned the warehouse of C. D. A. B. willfully and maliciously set fire to the haystack of C. D.

Assault—A. B. assaulted C. D.

Assault and battery—A. B. committed assault and battery upon C. D.

Assault with intent—A. B. assaulted C. D. with intent to murder (or to rob or to inflict great bodily injury, as the case may be).

Assault while masked—A. B. while masked, assaulted C. D.

Attempt—A. B. attempted to break and enter the dwelling of C. D. with intent to commit a public offense (or attempted to commit arson of the dwelling of C. D., or attempted to produce the miscarriage of C. D., or whatever the indictable attempt may be).

Bigamy—A. B. committed bigamy with C. D.

Bribery—A. B. bribed C. D. (or offered a bribe to C. D., or accepted a bribe from C. D., etc.).

Burglary—A. B. committed burglary of the dwelling of C. D.

Burglary by means of explosives—A. B. committed burglary of the building of C. D. by means of explosives.

Burglary by means of electricity—A. B. committed burglary of the building of C. D. by means of electricity.

(Other breaking and enterings)—A. B. broke and entered the dwelling of C. D. (or A. B. committed an entry of the dwelling of C. D., or A. B. broke and entered office of C. D. as the case may be).

Carrying concealed weapons—A. B. carried concealed weapons.

Cigarettes—A. B. sold cigarettes to C. D. without affixing stamps.

Common felon—A. B. committed burglary of the dwelling of C. D. [or robbed C. D., or set forth any other crime mentioned in section 747.1 after the following convictions (set forth convictions of D. of two prior offenses mentioned in section 747.1, giving the court, date and place of rendition)].

Conspiracy—A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F. or to rob E. F., as the case may be).

Desertion—A. B. deserted his wife C. B. (or his child D. B.).

Embezzlement—A. B. embezzled fifty dollars of C. D.

Failure to report automobile accident—A. B., while operating a motor vehicle, injured C. D. and failed to give notice of the accident.

False pretenses—A. B. obtained an automobile from C. D. by means of false pretenses.

Forgery—A. B. forged a certain instrument purporting to be a promissory note (or describe the note or give its tenor or substance).

Gambling—A. B. gambled with C. D.

Incest—A. B. committed incest with C. D.

Indecent exposure—A. B. made an indecent exposure of his person.

Intoxicating liquors—

Nuisance—A. B. kept a building at (give street and number and city or otherwise describe or identify the building for purposes of abatement) in which he unlawfully possessed intoxicating liquors.

Possession—A. B. unlawfully possessed intoxicating liquors.

Keeping house of ill fame—A. B. kept a house of ill fame.

Kidnaping—A. B. kidnaped C. D.

Larceny—A. B. stole from C. D. a horse worth more than twenty dollars.

Lascivious acts with children—A. B. committed lascivious acts with C. D. who was under sixteen years of age.

Lewdness—A. B. and C. D. lewdly associated together.

Libel—A. B. published a libel concerning C. D. in the form of a letter (book, picture, etc., as the case may be), (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

Malicious mischief—A. B. maliciously injured the building of C. D.

Manslaughter—A. B. unlawfully killed C. D.

Murder—A. B. murdered C. D.

Perjury—A. B. committed perjury by testifying as follows: (Set forth the testimony).

Prostitution—A. B. resorted to a house of ill fame for the purpose of prostitution (or A. B.

was found in a hotel leading a life of prostitution, as the case may be).

Rape—A. D. raped C. D.

Receiving stolen property—A. B. received a stolen watch belonging to C. D. and worth more than twenty dollars, knowing that it had been stolen.

Robbery—A. B. robbed C. D.

Seduction—A. B. seduced C. D.

Sodomy—A. B. committed sodomy with C. D.

Uttering a forged instrument—A. B. uttered as genuine a forged instrument purporting to be a promissory note (or describe the note or give its tenor or substance). [R60,§4651; C73,§4297; C97,§5281; C24, 27,§13734; C31, 35,§13732-c33; C39,§13732.33; C46, 50, 54,§773.34]

Referred to in §773.2

**773.35 Charging but one offense.** The indictment must charge but one offense, but it may be charged in different forms to meet the testimony, and, if it may have been committed in different modes and by different means, may allege the modes and means in the alternative. [C51,§2917; R60,§4654; C73,§4300; C97,§5284; C24, 27, 31, 35, 39,§13737; C46, 50, 54,§773.35]

C97,§5284, editorially divided

**773.36 Charging several offenses.** In case of compound offenses where in the same transaction more than one offense has been committed, the indictment may charge the several offenses and the defendant may be convicted of any offense included therein. [R60,§4654; C73, §4300; C97,§5284; C24, 27, 31, 35, 39,§13738; C46, 50, 54,§773.36]

**773.37 Miscellaneous separate offenses.** An indictment may charge in separate counts:

1. A burglary and one or more other indictable offenses committed in connection with said burglary. The term "burglary" shall embrace any violation of sections 708.1 to 708.11, inclusive, or

2. A robbery and one or more other indictable offenses committed in connection with said robbery, or

3. The forgery of an instrument and the uttering and publishing of said forgery when both offenses are committed by the same person, or

4. A conspiracy and the offense committed in pursuance of said conspiracy, if such offense be indictable, or

5. An attempt to commit an unlawful miscarriage of a woman, and the homicide resulting from such attempt. [C27, 31, 35,§13738-b1; C39,§13738.1; C46, 50, 54,§773.37]

Referred to in §§773.38, 773.41

**773.38 Judgment.** Under section 773.37, separate judgments shall be rendered on each count on which the accused is convicted. [C27, 31, 35,§13738-b2; C39,§13738.2; C46, 50, 54,§773.38]

Referred to in §773.41

**773.39 Larceny, false pretenses and receiving stolen property.** An indictment may charge in separate counts against the same person:

1. An indictable larceny, the obtaining of the same property by false pretenses, and the receiving of the same property with knowledge that it has been obtained by means of a larceny, or

2. The larceny of property and the embezzlement of the same property. [C27, 31, 35, §13738-b3; C39, §13738.3; C46, 50, 54, §773.39]

Referred to in §§773.40, 773.41

**773.40 Judgment.** Under section 773.39 judgment shall not be rendered against the accused on more than one count. [C27, 31, 35, §13738-b4; C39, §13738.4; C46, 50, 54, §773.40]

Referred to in §773.41

**773.41 "Indictment" includes "information".** The term "indictment" as used in sections 773.37 to 773.40, inclusive, shall be deemed to embrace not only an indictment but also a trial information as provided in chapter 769. [C27, 31, 35, §13738-b5; C39, §13738.5; C46, 50, 54, §773.41]

**773.42 Amendment.** The court may, on motion of the state, and before or during the trial, order the indictment so amended as to correct errors or omissions in matters of form or substance. [S13, §5289; C24, 27, 31, 35, 39, §13744; C46, 50, 54, §773.42]

Waiver of defects, §777.3

**773.43 Amendment before trial.** If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon his attorney of record, and an opportunity given the defendant to resist the same. [S13, §5289; C24, 27, 31, 35, 39, §13745; C46, 50, 54, §773.43]

40ExGA, HF 274, §3, editorially divided

**773.44 Amendment during trial.** If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant or of his counsel, and such record shall constitute sufficient notice to the defendant. [C24, 27, 31, 35, 39, §13746; C46, 50, 54, §773.44]

**773.45 Nonpermissible amendment.** Such amendment shall not be ordered when it will have the effect of charging the accused with an offense which is different than the offense which was intended to be charged in the indictment as returned by the grand jury. [S13, §5289; C24, 27, 31, 35, 39, §13747; C46, 50, 54, §773.45]

**773.46 Continuance.** No continuance or delay in trial shall be granted because of such amendment unless it is made to appear that defendant should have additional time to prepare for trial because of such amendment. [S13, §5289; C24, 27, 31, 35, 39, §13748; C46, 50, 54, §773.46]

**773.47 Pleading judicial proceedings.** In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated in the indictment. It is sufficient to state that the judgment or determination was duly made, or the proceedings duly had, before such court or officer; but such jurisdictional facts must be established on the trial. [C51, §2922; R60, §4662; C73, §4308; C97, §5292; C24, 27, 31, 35, 39, §13751; C46, 50, 54, §773.47]

**773.48 Pleading private statute.** In pleading a private statute or right derived therefrom, it is sufficient to refer to the same by its title and the day of its approval, and the court must thereupon take judicial notice thereof. [C51, §2923; R60, §4663; C73, §4309; C97, §5293; C24, 27, 31, 35, 39, §13752; C46, 50, 54, §773.48]

**773.49 Compounding offense.** A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or engagement or promise therefor, upon agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried. [C51, §2930; R60, §4670; C73, §4316; C97, §5301; C24, 27, 31, 35, 39, §13757; C46, 50, 54, §773.49]

## CHAPTER 774

### PROCESS AFTER INDICTMENT

774.1 Bench warrant.

774.2 Warrant ordered—bail fixed.

774.3 Issuance of warrant.

774.4 Form in case of felony.

774.5 Form in case of misdemeanor.

774.6 Proceedings as to bail.

774.7 Process against corporation.

774.8 Service and return.

774.9 When defendant deemed present.

774.10 Indictment against convict in penitentiary.

774.11 Defendant returned—how punished.

**774.1 Bench warrant.** The process upon an indictment for the arrest of an individual shall be a warrant. [R60, §4672; C73, §4318; C97, §5303; C24, 27, 31, 35, 39, §13759; C46, 50, 54, §774.1]

Approval of warrant and expenses, §§79.12, 79.18

**774.2 Warrant ordered—bail fixed.** When an indictment is filed by the clerk of the court against a defendant not in custody nor under bail, or who has not deposited money instead of bail, the judge of the court shall make an

order on the indictment, which shall be signed by him with his name of office, that a warrant issue for the arrest of the defendant, and, if the offense charged be bailable, fix the amount in which bail may be taken. [R60,§4673; C73, §4319; C97,§5304; C24, 27, 31, 35, 39,§13760; C46, 50, 54,§774.2]

**774.3 Issuance of warrant.** The clerk on the application of the county attorney shall at any time after the making of the order of the judge, whether the court be in session or not, issue a warrant into one or more counties. [R60,§4674; C73,§4320; C97,§5305; C24, 27, 31, 35, 39,§13761; C46, 50, 54,§774.3]

**774.4 Form in case of felony.** A warrant, if the offense be a felony, shall be substantially in the following form:

The State of Iowa,  
County of ..... }

To any peace officer in the state:

An indictment having been found in the district court of said county on the .....day of ....., A. D....., (the day on which the indictment is marked "filed" by the clerk of the court) charging A. B. with the crime of (here designate the offense by the name, if it have one, or by a brief general description of it, substantially as in the indictment).

You are hereby commanded to arrest the said A. B. and bring him before said court to answer said indictment, if the said court be then in session in said county, or if not then in session in said county, that you deliver him into the custody of the sheriff of said county.

Given under my hand and the seal of said court at my office in the county aforesaid, this .....day of .....A. D.....

[Seal] Clerk.

By order of the judge of the court.

[R60,§4675; C73,§4321; C97,§5306; C24, 27, 31, 35, 39,§13762; C46, 50, 54,§774.4]

**774.5 Form in case of misdemeanor.** If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take him before a magistrate or the clerk of the district court in said county, or in the county in which you arrest him, that he may give bail to answer the said indictment", and the clerk must make an indorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of .....dollars" (the amount fixed by the judge and indorsed on the indictment). The warrant may be served in any county in the state. [C51,§2935; R60,§§4676-4678; C73,§§4322-4324; C97,§5307; C24, 27, 31, 35, 39,§13763; C46, 50, 54,§774.5]

**774.6 Proceedings as to bail.** If the defendant, when arrested, is brought before a magistrate or the clerk of the district court of any county for the purpose of giving bail, the same proceedings must be had in all respects as if he had been arrested on a warrant of arrest issued by a magistrate on a preliminary information, as nearly as may be. [R60,§4679; C73, §4325; C97,§5308; C24, 27, 31, 35, 39,§13764; C46, 50, 54,§774.6]

Bail, ch 763 et seq.

**774.7 Process against corporation.** The process on an indictment against a corporation shall be a notice under the seal of the court, which shall be issued by the clerk, at any time after the filing of the indictment in his office, on the application of the county attorney, and shall substantially notify the defendant of the finding of the indictment, of the nature of the offense charged, and that it must forthwith appear and answer the same. [C73,§4326; C97, §5309; C24, 27, 31, 35, 39,§13765; C46, 50, 54, §774.7]

C97,§5309, editorially divided

**774.8 Service and return.** Said notice may be served by any peace officer in any county in the state on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof, and shall be returned to the clerk's office without delay, with proper return of its service. [C73,§4326; C97,§5309; C24, 27, 31, 35, 39,§13766; C46, 50, 54,§774.8]

**774.9 When defendant deemed present.** From and after two days from the time of the making of such service, the defendant shall be considered in court, and present to all proceedings had on the indictment. [C73,§4326; C97,§5309; C24, 27, 31, 35, 39,§13767; C46, 50, 54, §774.9]

**774.10 Indictment against convict in penitentiary.** Upon the return of an indictment or upon the filing of a trial information for any offense which may be punished by death or life imprisonment, against any person confined in the penitentiary or men's reformatory, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial. [S13,§§5718-b, 5718-c; C24, 27, 31, 35, 39,§13768; C46, 50, 54,§774.10]

**774.11 Defendant returned—how punished.** If the defendant be found not guilty, he shall be returned to the institution from which he was taken; if convicted he shall be punished as provided by law. [S13,§5718-d; C24, 27, 31, 35, 39,§13769; C46, 50, 54,§774.11]

## CHAPTER 775

## ARRAIGNMENT OF DEFENDANT

775.1 Time of arraignment—waiver—corporation.  
 775.2 Personal presence—when necessary.  
 775.3 Out on bail—failure to appear—arrest.  
 775.4 Right to counsel.  
 775.5 Fee for attorney defending.

775.6 Affidavit required.  
 775.7 Arraignment—by whom made.  
 775.8 Arraignment—how made.  
 775.9 Incorrect name—estoppel.  
 775.10 Entry of true name.  
 775.11 Answer—time granted.

**775.1 Time of arraignment—waiver—corporation.** As soon as practicable after an indictment is found, the defendant must be arraigned thereon, unless he waive the same. Where a corporation is defendant, arraignment shall not be required. [C51,§2931; R60,§4680; C73,§4327; C97,§5310; C24, 27, 31, 35, 39,§13770; C46, 50, 54,§775.1]

**775.2 Personal presence—when necessary.** A person charged with a felony, or in custody without an attorney, must be personally present for arraignment, but in other cases he may appear therefor by counsel. [C51,§2932; R60,§§4681, 4682; C73,§§4328, 4329; C97,§5311; C24, 27, 31, 35, 39,§13771; C46, 50, 54,§775.2]

**775.3 Out on bail—failure to appear—arrest.** If the defendant is at large on bail or deposit of money, and fails to appear for arraignment, or when his personal presence is necessary, the court shall, in addition to the forfeiture of the undertaking of bail or money deposited, enter an order directing the clerk at any time, upon the application of the county attorney, to issue a warrant into one or more counties for his arrest. [C51,§§2933, 2934; R60,§§4683, 4684; C73,§§4330, 4331; C97,§5312; C24, 27, 31, 35, 39,§13772; C46, 50, 54,§775.3]

Approval of warrant and expenses, §§79.12, 79.13

**775.4 Right to counsel.** If the defendant appears for arraignment without counsel, he must, before proceeding therewith, be informed by the court of his right thereto, and be asked if he desires counsel; and if he does, and is unable to employ any, the court must allow him to select or assign him counsel, not exceeding two, who shall have free access to him at all reasonable hours. [C51,§2936; R60,§4685; C73,§4332; C97,§5313; C24, 27, 31, 35, 39,§13773; C46, 50, 54,§775.4]

**775.5 Fee for attorney defending.** An attorney appointed by the court to defend a person indicted for homicide, or any offense the punishment of which may be life imprisonment, shall receive from the county treasury a fee of twenty dollars per day for time actually occupied in court in the trial of defendant. If the prosecution be for any other felony, he shall receive the sum of ten dollars in full for services. Such attorney need not follow the case into another county or into the supreme court, but if he does so shall receive an enlarged compensation on a scale corresponding to that fixed by this section. Only one attorney in any one case shall receive such compensation. [C51,

§§2561–2563; R60,§§1578, 4168–4170; C73,§§3829–3831; C97,§5314; C24, 27, 31, 35, 39,§13774; C46, 50, 54,§775.5]

C97,§5314, editorially divided

**775.6 Affidavit required.** To be entitled to such compensation, the attorney must file with the court his affidavit that he has not directly or indirectly received, or entered into a contract to receive, any compensation for such services from any source. [C51,§2563; R60,§4170; C73,§3831; C97,§5314; C24, 27, 31, 35, 39, §13775; C46, 50, 54,§775.6]

**775.7 Arraignment—by whom made.** The arraignment may be made by the court, or by the clerk or county attorney under its direction. [C51,§2937; R60,§4686; C73,§4333; C97,§5315; C24, 27, 31, 35, 39,§13776; C46, 50, 54,§775.7]

C97,§5315, editorially divided

**775.8 Arraignment — how made.** Arraignment consists in reading the indictment to the defendant, and, unless previously done, delivering to him a copy thereof and the indorsements thereon, and informing him that, if the name by which he is indicted is not his true name, he must then declare what his true name is, or be proceeded against by the name in the indictment, and asking him what he answers to the indictment. [C51,§2938; R60,§4686; C73,§4333; C97,§5315; C24, 27, 31, 35, 39, §13777; C46, 50, 54,§775.8]

**775.9 Incorrect name—estoppel.** If he gives no other name or gives his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named. [C51,§2939; R60,§4687; C73,§4334; C97,§5316; C24, 27, 31, 35, 39,§13778; C46, 50, 54,§775.9]

**775.10 Entry of true name.** If he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted. [C51,§2940; R60,§4688; C73,§4335; C97,§5317; C24, 27, 31, 35, 39,§13779; C46, 50, 54,§775.10]

**775.11 Answer—time granted.** In answer to the arraignment, the defendant may move to set aside the indictment, or demur or plead to it, and is entitled to one day after arraignment, if he demand it, in which to do so. [C51,§§2941, 2942; R60,§§4689, 4690; C73,§4336; C97,§5318; C24, 27, 31, 35, 39,§13780; C46, 50, 54,§775.11]

CHAPTER 776

SETTING ASIDE INDICTMENT

- 776.1 Grounds for setting aside indictment.
- 776.2 Exception.
- 776.3 Correction of indictment.
- 776.4 Objections to selection of grand jury.
- 776.5 Hearing on motion.

- 776.6 Motion overruled—defendant must answer.
- 776.7 Motion sustained—defendant discharged.
- 776.8 Resubmission—bail.
- 776.9 Order to set aside—effect.

**776.1 Grounds for setting aside indictment.** The motion to set aside the indictment can be made, before a plea is entered by the defendant, on one or more of the following grounds, and must be sustained:

1. When it is not indorsed “a true bill” and the indorsement signed by the foreman of the grand jury as prescribed by this Code.
2. When the names of all witnesses examined before the grand jury are not indorsed thereon.
3. When the minutes of the evidence of the witnesses examined before the grand jury are not returned therewith.
4. When it has not been presented and marked “filed” as prescribed by this Code.
5. When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.
6. When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.
7. That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law, except as hereinafter provided. [C51,§2943; R60,§4691; C73,§4337; C97, §5319; C24, 27, 31, 35, 39,§13781; C46, 50, 54, §776.1]

Referred to in §§776.3, 776.4

**776.2 Exception.** A motion to set aside an indictment shall not lie on the ground that the grand jury which returned the indictment was composed of more than one juror from the same civil township. [C31, 35,§13781-c1; C39, §13781.1; C46, 50, 54,§776.2]

See §609.27

**776.3 Correction of indictment.** A motion to set aside the indictment on the ground that the names of all the witnesses examined before the grand jury are not indorsed thereon; or that the name of any other witness than those so examined is indorsed thereon as prescribed in the second subsection of section 776.1, shall not be sustained if the indorsement is corrected by the insertion or striking out of such names or name by the county attorney or the clerk of the court, under the direction of the court, so as to correspond with the minutes required to be kept by the clerk of the grand jury, and returned and preserved with the

indictment to the court. [R60,§4692; C73,§4338; C97,§5320; C24, 27, 31, 35, 39,§13782; C46, 50, 54,§776.3]

**776.4 Objections to selection of grand jury.** The ground of the motion to set aside the indictment mentioned in the seventh subsection of section 776.1 is not allowed to a defendant who has been held to answer before indictment. [R60,§4693; C73,§4339; C97,§5321; C24, 27, 31, 35, 39,§13783; C46, 50, 54,§776.4]

**776.5 Hearing on motion.** The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time. [C51,§2945; R60,§4695; C73,§4340; C97,§5322; C24, 27, 31, 35, 39,§13784; C46, 50, 54, §776.5]

**776.6 Motion overruled — defendant must answer.** If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. [C51, §2946; R60,§4696; C73,§4341; C97,§5323; C24, 27, 31, 35, 39,§13785; C46, 50, 54,§776.6]

**776.7 Motion sustained — defendant discharged.** If the motion be granted, the court must order the defendant, if in custody, to be discharged; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the money deposited be refunded to him, unless the court direct that the case be resubmitted to the same or another grand jury. [C51,§2947; R60,§4697; C73, §4342; C97,§5324; C24, 27, 31, 35, 39,§13786; C46, 50, 54,§776.7]

**776.8 Resubmission—bail.** If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain unless he be admitted to bail; or, if already admitted to bail, or money had been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, if a resubmission has been ordered. [C51,§2948; R60,§4698; C73,§4343; C97,§5325; C24, 27, 31, 35, 39,§13787; C46, 50, 54, §776.8]

**776.9 Order to set aside—effect.** An order to set aside the indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offense. [C51,§2949; R60, §4699; C73,§4344; C97,§5326; C24, 27, 31, 35, 39, §13788; C46, 50, 54,§776.9]



## CHAPTER 777

## PLEADINGS OF DEFENDANT

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 777.16 Issues of fact—trial.  
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 777.19 Personal presence at trial.  
 777.20 Conviction or acquittal—when a bar.  
 777.21 Prosecutions barred.  
 777.22 Other judgments—when a bar.

**777.1 Demurrer or plea.** The only pleading on the part of the defendant is a demurrer or plea. [C51,§2950; R60,§4700; C73,§4345; C97,§5327; C24, 27, 31, 35, 39,§13789; C46, 50, 54, §777.1]

**777.2 Grounds of demurrer.** The defendant may demur to the indictment when it appears upon its face, either:

1. That it does not substantially conform to the requirements of this Code, or
2. That the indictment contains matter which, if true, would constitute a legal defense or bar to the prosecution. [C51,§2952; R60,§4707; C73,§4352; C97,§5328; C24, 27, 31, 35, 39, §13790; C46, 50, 54,§777.2]

**777.3 Failure to demur—waiver.** All objections to the indictment relating to matters of substance and form which might be raised by demurrer shall be deemed waived if not so raised by the defendant before the jury is sworn on the trial of the case. [S13,§5289; C24, 27, 31, 35, 39,§13791; C46, 50, 54,§777.3]

Related provision, §773.42

**777.4 Method of demurring.** A demurrer to the indictment may be filed with the clerk or made in open court, and shall be entered of record substantially in the following form: "The defendant demurs to the indictment". [C51,§2951; R60,§§4701, 4708; C73,§§4346, 4353; C97,§5330; C24, 27, 31, 35, 39,§13792; C46, 50, 54, §777.4]

**777.5 Issues—by whom tried.** An issue of law arises upon a demurrer to the indictment, which must be tried by the court, but no joinder is necessary. [R60,§§4702, 4703; C73,§§4347, 4348; C97,§5329; C24, 27, 31, 35, 39,§13793; C46, 50, 54,§777.5]

**777.6 Time of hearing demurrer.** When a demurrer is filed or entered of record, it must be heard immediately, or at such time as the court may appoint. [C51,§2954; R60,§4709; C73,§4354; C97,§5331; C24, 27, 31, 35, 39,§13794; C46, 50, 54,§777.6]

C97,§5331, editorially divided

**777.7 Jurisdiction in another county—procedure.** If a demurrer is sustained on the

ground that the offense charged was within the exclusive jurisdiction of another county in this state, the same proceedings shall be had as provided in case of the discharge of a jury for want of jurisdiction of the offense charged. [R60,§4710; C73,§4355; C97,§5331; C24, 27, 31, 35, 39,§13795; C46, 50, 54,§777.7]

Discharge for want of jurisdiction, §780.29

**777.8 Absolute discharge.** If a demurrer is sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final and the defendant must be discharged. [R60,§4711; C73,§4356; C97,§5331; C24, 27, 31, 35, 39,§13796; C46, 50, 54,§777.8]

**777.9 Resubmission.** If a demurrer is sustained on any other ground, the defendant must be discharged and his bail exonerated, if bail has been given, unless the court is of opinion, on good cause shown, that the objection can be remedied or avoided in another indictment, in which case the court may order the cause to be resubmitted to the same or another grand jury, and the defendant may be held in custody, if not at large on bail, in which case the undertaking given shall remain in force. [R60,§4712; C73,§4357; C97,§5331; C24, 27, 31, 35, 39,§13797; C46, 50, 54,§777.9]

**777.10 Pleading over—final judgment.** If the demurrer is overruled, the defendant has a right to plead to the indictment; if he fails to do so, final judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [C51,§2955; R60,§4713; C73,§4358; C97,§5332; C24, 27, 31, 35, 39,§13798; C46, 50, 54,§777.10]

**777.11 Pleas to the indictment.** There are but three pleas to the indictment—(1) guilty, (2) not guilty, or (3) of a former judgment of conviction or acquittal of the offense charged. [C51,§2957; R60,§4714; C73,§4359; C97,§5333; C24, 27, 31, 35, 39,§13799; C46, 50, 54,§777.11]

**777.12 Plea of guilty—form—entry.** The plea of guilty can only be made in open court and by the defendant himself, in substantially

the following form: "The defendant pleads that he is guilty of the offense charged in the indictment", and shall be entered of record. The plea may be entered in vacation at the usual place of holding court in any county of the judicial district. [R60, §§4715, 4716; C73, §§4360, 4361; C97, §5334; C24, 27, 31, 35, 39, §13800; C46, 50, 54, §777.12]

Pleas in vacation, §769.23 et seq.  
Special term called, §604.22

**777.13 Other pleas—form—entry.** The other pleas may be in writing, filed with the clerk, or made in open court, in substantially the following form: "The defendant pleads that he is not guilty of the offense charged in the indictment", or, "The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment by the judgment of the . . . . . court of . . . . . (naming it), rendered on the . . . day of . . . . ., A. D. . . . ." (naming the time), which may be pleaded alone or with the plea of not guilty. The pleas shall be entered of record. [C51, §2957; R60, §§4714, 4715; C73, §§4359, 4360; C97, §5335; C24, 27, 31, 35, 39, §13801; C46, 50, 54, §777.13]

**777.14 Failure to plead.** If the defendant fails or refuses to plead to the indictment by demurrer or plea, a plea of not guilty must be entered by the court. [C51, §2963; R60, §4722; C73, §4367; C97, §5336; C24, 27, 31, 35, 39, §13802; C46, 50, 54, §777.14]

**777.15 Withdrawal of plea of guilty.** At any time before judgment, the court may permit the plea of guilty to be withdrawn and other plea or pleas substituted. [C51, §2961; R60, §4717; C73, §4362; C97, §5337; C24, 27, 31, 35, 39, §13803; C46, 50, 54, §777.15]

**777.16 Issues of fact—trial.** An issue of fact arises on a plea of not guilty or of former conviction or acquittal, and no further pleading is necessary. Issues of fact must be tried by a jury. [R60, §§4702, 4704, 4705; C73, §§4347, 4349, 4350; C97, §5338; C24, 27, 31, 35, 39, §13804; C46, 50, 54, §777.16]

C97, §5338, editorially divided

**777.17 Plea of not guilty—evidence admissible.** The plea of not guilty is a denial of every material allegation in the indictment, and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [C97, §5338; C24, 27, 31, 35, 39, §13805; C46, 50, 54, §777.17]

**777.18 Insanity or alibi defense—notice—continuance.** Where the defendant pleads not guilty and proposes to show insanity as a defense, or that he relies on an alibi or that he was at some other place at the time of the alleged commission of the offense charged, he shall, at the time he pleads or at any time thereafter, not later than four days before trial, file a written notice of this purpose, setting forth the names of the witnesses, together with the address and occupation of each, and a statement of the substance of that which the defendant expects to prove by the testimony of each of said witnesses. If the defendant files said notice less than four days before the case is set for trial, the state, on motion of the county attorney, shall be entitled to a continuance of said cause for not to exceed four days. [C46, 50, 54, §777.18]

**777.19 Personal presence at trial.** If a felony is charged, the defendant must be personally present at the trial, but the trial of a misdemeanor may be had in his absence, if he appears by counsel. [R60, §4706; C73, §4351; C97, §5338; C24, 27, 31, 35, 39, §13806; C46, 50, 54, §777.19]

**777.20 Conviction or acquittal—when a bar.** A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place. [R60, §4719; C73, §4364; C97, §5339; C24, 27, 31, 35, 39, §13807; C46, 50, 54, §777.20]

Constitution, Art. I, §12  
See 237 Iowa 1271

**777.21 Prosecutions barred.** When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein. [R60, §4720; C73, §4365; C97, §5340; C24, 27, 31, 35, 39, §13808; C46, 50, 54, §777.21]

**777.22 Other judgments—when a bar.** Except where otherwise provided, the judgment for a defendant on a demurrer, or on an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense, if a resubmission has been ordered. [R60, §4721; C73, §4366; C97, §5341; C24, 27, 31, 35, 39, §13809; C46, 50, 54, §777.22]

CHAPTER 778  
CHANGE OF VENUE

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**778.1 Right to change.** In all criminal cases which may be pending in any of the district courts, any defendant therein, or the state, in cases where defendant is charged with felony, may petition the court for a change of place of trial to another county. [C51,§3270; R60,§4727; C73,§4368; C97,§5342; C24, 27, 31, 35, 39,§13810; C46, 50, 54,§778.1]

**778.2 Petition by defendant.** Such petition, when filed by the defendant, must set forth the nature of the prosecution, the court where the same is pending, and that such defendant cannot receive a fair and impartial trial owing to the prejudice of the judge, or to excitement or prejudice against the defendant in such county, and be verified on information and belief by the affidavit of the defendant. [C51, §3271; R60,§4728; C73,§4369; C97,§5343; C24, 27, 31, 35, 39,§13811; C46, 50, 54,§778.2]

**778.3 Additional verification.** When the ground alleged in the petition filed by the defendant is excitement or prejudice against him in the county, it must be verified by the affidavit of three disinterested persons, residents of the county from which the change is sought, in addition to the affidavit of the petitioner himself. [R60,§4729; C73,§4370; C97,§5344; C24, 27, 31, 35, 39,§13812; C46, 50, 54,§778.3]

**778.4 Petition by state.** Such petition, when filed by the state, shall set forth the nature of the prosecution, the court where the same is pending, and that the state cannot receive a fair and impartial trial in said county owing to excitement or prejudice in such county against the prosecution, and be verified on information and belief by the affidavit of the county attorney or his assistant. [C24, 27, 31, 35, 39,§13813; C46, 50, 54,§778.4]

**778.5 Petition for second change.** When a change in place of trial has been granted to one party to the prosecution, the other party thereto to whom no change has been granted, may, in the county to which the case has been sent, petition for a change in the same manner as though said county was the county in which the case was first pending. In such case, if the change be granted, the case shall not be sent to the county in which it was originally pending. [C24, 27, 31, 35, 39,§13814; C46, 50, 54,§778.5]

**778.6 General terms sufficient.** The petition need not state the facts upon which the belief of the petitioner or other person verifying the same is founded, but may allege the belief of the particular ground thereof in general terms. [R60,§4730; C73,§4371; C97,§5345; C24, 27, 31, 35, 39,§13815; C46, 50, 54,§778.6]

**778.7 Additional testimony.** When the alleged ground in the petition is excitement or prejudice in the county against the petitioner, the court may receive additional testimony by affidavits only, either on the part of the defendant or the state. [R60,§4731; C73,§4372; C97,§5346; C24, 27, 31, 35, 39,§13816; C46, 50, 54, §778.7]

**778.8 Filed with clerk.** The petition and affidavits must be filed with the clerk, and are parts of the record. [R60,§4732; C73,§4373; C97, §5347; C24, 27, 31, 35, 39,§13817; C46, 50, 54, §778.8]

**778.9 Discretion of court.** The court, in the exercise of a sound discretion, must, when fully advised, decide the matter of the petition according to the very right of it. [C51,§3272; R60,§4733; C73,§4374; C97,§5348; C24, 27, 31, 35, 39,§13818; C46, 50, 54,§778.9]

**778.10 Order of change of venue.** If sustained, the court must, if the ground alleged be the prejudice of the judge, order the change of venue to the most convenient county in an adjoining district to which no objection exists. If sustained on the ground of excitement and prejudice in the county, it must be awarded to such county in the same district in which no such objection exists. [C51,§3272; R60,§§4734, 4735; C73,§§4375, 4376; C97,§5349; C24, 27, 31, 35, 39,§13819; C46, 50, 54,§778.10]

**778.11 Transmission of papers.** Upon the change of place of trial to another county, if there be but one defendant in the case, or if all have joined in the petition, the clerk must make out and certify a transcript of all papers on file in the case, including the indictment, and file the same in his office; and all the original papers on file, with a certified copy of all record entries therein, must be without unnecessary delay transmitted to the clerk of the court to which the change is ordered. [C51, §3273; R60,§4736; C73,§4377; C97,§5350; C24, 27, 31, 35, 39,§13820; C46, 50, 54,§778.11]

**778.12 Several defendants—transcripts.** If there be more than one defendant in such case, and all the defendants have not joined in the petition, the clerk must, without unnecessary delay, make out and certify a transcript of all entries appearing on the record, and of all the papers on file in the case, including the indictment, and transmit the same to the clerk of the court to which the change of place of trial is ordered, retaining the originals. [R60, §4737; C73, §4378; C97, §5351; C24, 27, 31, 35, 39, §13821; C46, 50, 54, §778.12]

**778.13 Delivery of accused.** When a change of place of trial to another county has been ordered, if the defendant is in custody, the sheriff of the county from which the change is granted must, on the order of the court, deliver him to the sheriff of the county to which such change is allowed, and upon such delivery, with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant in his custody until legally discharged therefrom, and give a certificate of such delivery. [C51, §3274; R60, §4738; C73, §4379; C97, §5352; C24, 27, 31, 35, 39, §13822; C46, 50, 54, §778.13]

**778.14 Proceedings after change.** The court to which the change is granted must take

cognizance of the cause, and proceed therein to trial, judgment, and execution, in all respects as if the indictment had been found by the grand jury impaneled in such court. [C51, §3275; R60, §4739; C73, §4380; C97, §5353; C24, 27, 31, 35, 39, §13823; C46, 50, 54, §778.14]

**778.15 Cost attending change.** When the place of trial is changed under the provisions of this chapter, the county from which the change was taken shall pay the expenses and charges of removing, delivering, and keeping the defendant, and all other expenses and costs necessary and consequent upon such change and trial, which shall be audited and allowed by the court trying the case; and all such expenses and costs may be recovered by the county to which the trial is changed in an action against the county in which the prosecution was commenced. [C51, §3276; R60, §4740, 4745; C73, §3841, 4381, 4386; C97, §5354; C24, 27, 31, 35, 39, §13824; C46, 50, 54, §778.15]

**778.16 Sheriffs' fees.** For delivering prisoners under the provisions of this chapter, sheriffs are entitled to the same fees as are allowed for the conveyance of convicts to the penitentiary. [C51, §3277; R60, §4741; C73, §4382; C97, §5355; C24, 27, 31, 35, 39, §13825; C46, 50, 54, §778.16]

Fees, §337.11

## CHAPTER 779

### TRIAL JURY

779.1 Rules for drawing.  
779.2 Completion of panel.  
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779.4 Challenges to individual juror.  
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779.11 Peremptory challenges—number.  
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779.14 Vacancy filled.  
779.15 Reading of names.  
779.16 Bias in favor of party—waiver.  
779.17 Jurors sworn.  
779.18 Alternate jurors.

**779.1 Rules for drawing.** The rules for drawing the jury shall be the same as those provided in civil procedure. [R60, §4751; C73, §4389; C97, §5356; C24, 27, 31, 35, 39, §13826; C46, 50, 54, §779.1]

See R.C.P. 187

**779.2 Completion of panel.** If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries. [C51, §2970; R60, §4758; C73, §4396; C97, §5357; C24, 27, 31, 35, 39, §13827; C46, 50, 54, §779.2]

Jurors in general, ch 607 et seq.  
Similar provision, §624.12

**779.3 Challenges to the panel.** All the provisions of law relating to challenges to the panel of trial jurors in civil procedure, the grounds therefor, the manner of exercising

the same, and the effect thereof, shall apply to the panel of trial jurors in criminal cases. [C51, §§2972-2977; R60, §§4760-4765; C73, §§4398-4403; C97, §5358; C24, 27, 31, 35, 39, §13828; C46, 50, 54, §779.3]

Challenge to panel, R.C.P. 187

**779.4 Challenges to individual juror.** A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory. [C51, §2978; R60, §4766; C73, §4404; C97, §5359; C24, 27, 31, 35, 39, §13829; C46, 50, 54, §779.4]

**779.5 Challenges for cause.** A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

1. A previous conviction of the juror of a felony.

2. A want of any of the qualifications prescribed by statute to render a person a competent juror.

3. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render him incapable of performing the duties of a juror.

4. Affinity or consanguinity, within the ninth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

**Computing relationship, §4.1**

5. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his employ on wages.

6. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by him in a criminal prosecution.

7. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

8. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

9. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

10. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

11. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial.

12. Because of his being bail for any defendant in the indictment.

13. Because he is defendant in a similar indictment, or complainant or private prosecutor against the defendant or any other person indicted for a similar offense.

14. Because he is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

15. Because he has been a witness, either for or against the defendant, on the preliminary trial or before the grand jury.

16. Having requested, directly or indirectly, that his name be returned as a juror for the regular biennial period.

17. Having served in the district court as a grand or petit juror during the last preceding

calendar year. [C51, §§2982-2986; R60, §§4767-4771; C73, §4405; C97, §§337, 5360; S13, §337; C24, 27, 31, 35, 39, §13830; C46, 50, 54, §779.5]

**779.6 Examination of jurors.** Upon the trial of a challenge to an individual juror, the juror challenged shall be sworn, if demanded by either party, and examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but his answer shall not afterwards be testimony against him. [C51, §2988; R60, §4773; C73, §4407; C97, §5361; C24, 27, 31, 35, 39, §13831; C46, 50, 54, §779.6]

**779.7 Examination of other witnesses.** Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the fact, and must allow or disallow the challenge. [C51, §§2989, 2990; R60, §§4774, 4775; C73, §§4408, 4409; C97, §5362; C24, 27, 31, 35, 39, §13832; C46, 50, 54, §779.7]

**779.8 Order of challenges for cause.** The state shall first complete its challenge for cause, and the defendant afterwards, until sixteen jurors have been obtained against whom no cause of challenge has been found to exist. [R60, §§4776, 4777; C73, §§4410, 4411; C97, §5363; C24, 27, 31, 35, 39, §13833; C46, 50, 54, §779.8]

**779.9 Order of challenges in general.** The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: To the panel; to an individual juror for cause; to an individual juror peremptorily. [R60, §4781; C73, §4415; C97, §5367; C24, 27, 31, 35, 39, §13834; C46, 50, 54, §779.9]

**779.10 Peremptory challenges.** Peremptory challenges shall be exercised in the same manner as is provided in the trial of civil actions. [R60, §4780; C73, §4414; C97, §5364; C24, 27, 31, 35, 39, §13835; C46, 50, 54, §779.10]

See R.C.P. 187

**779.11 Peremptory challenges—number.** If the offense charged in the indictment or information is or may be punishable with death or imprisonment for life, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors

If the offense charged be any other felony, or if it be a misdemeanor involving a violation of the statutes relative to intoxicating liquors, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged be a misdemeanor other than that specified above, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors. [R60, §4779; C73, §4413; C97, §5365; C24, 27, 31, 35, 39, §13836; C46, 50, 54, §779.11]

**779.12 Multiple charges.** If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of peremptory challenges which they would have if the highest grade of offense charged in the indictment were the only charge. [C27, 31, 35, §13836-b1; C39, §13836.1; C46, 50, 54, §779.12]

**779.13 Clerk to prepare list—procedure.** The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties, commencing with the state, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list. [R60, §4780; C73, §4414; C97, §5363; C24, 27, 31, 35, 39, §13837; C46, 50, 54, §779.13]

**779.14 Vacancy filled.** After each challenge, sustained for cause, or made peremptorily as indicated on the list, another juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors. [R60, §4782; C73, §4416; C97, §5366; C24, 27, 31, 35, 39, §13838; C46, 50, 54, §779.14]

**779.15 Reading of names.** After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors

remaining who shall constitute the jury selected. [C24, 27, 31, 35, 39, §13839; C46, 50, 54, §779.15]

**779.16 Bias in favor of party—waiver.** Bias in a juror against either party is no cause of challenge by the other, and may be waived by the party against whom it exists. [R60, §4784; C73, §4418; C97, §5368; C24, 27, 31, 35, 39, §13840; C46, 50, 54, §779.16]

**779.17 Jurors sworn.** When twelve jurors are accepted they shall be sworn to try the issues. [R60, §4783; C73, §4417; C97, §5369; C24, 27, 31, 35, 39, §13841; C46, 50, 54, §779.17]

**779.18 Alternate jurors.** The court may impanel one or two alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, who are to serve under this chapter, who shall be sworn and subject to examination and challenge for cause as provided in this chapter. Each party must then strike off one such name, and the one or two remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged. [56GA, ch 275, §1]

CHAPTER 780

TRIAL

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**780.1 Joint indictment — separate trials.** When two or more defendants are jointly indicted for felony, any defendant requiring it may be tried separately; in other cases defend-

ants jointly indicted may be tried separately or jointly, in the discretion of the court. [C51, §2992; R60, §4789; C73, §4424; C97, §5375; C24, 27, 31, 35, 39, §13842; C46, 50, 54, §780.1]

**780.2 Continuances.** The provisions of the Code of civil procedure relative to the continuances of the trial of civil causes shall apply to the continuance of criminal actions, but no judgment for costs shall be rendered against a defendant on account thereof, except as in this Code otherwise provided. [C73,§4419; C97,§5370; C24, 27, 31, 35, 39,§13843; C46, 50, 54,§780.2]

C97,§5370, editorially divided  
Continuances, R.C.P. 182 et seq.

**780.3 Time to prepare for trial.** The defendant shall, if he demands it upon entering his plea, be entitled to three days in which to prepare for trial. [C73,§4419; C97,§5370; C24, 27, 31, 35, 39,§13844; C46, 50, 54,§780.3]

**780.4 Mode and manner of trial.** All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making such report and translation a part of the record, and in all other respects, apply to the trial of criminal actions. [R60,§4809; C73, §4436; C97,§5371; C24, 27, 31, 35, 39,§13845; C46, 50, 54,§780.4]

**780.5 Order of trial.** The jury having been impaneled and sworn, the trial must proceed in the following order:

1. *Reading indictment and plea.* The clerk or county attorney must read the indictment and state the defendant's plea to the jury.

2. *Statement of state's evidence.* The county attorney may briefly state the evidence by which he expects to sustain the indictment.

3. *Statement of defendant's evidence.* The attorney for the defendant may then briefly state his defense, and the evidence by which he expects to sustain it.

4. *Offer of state's evidence.* The state may then offer the evidence in support of the indictment.

5. *Offer of defendant's evidence.* The defendant or his counsel may then offer his evidence in support of his defense.

6. *Rebutting or additional evidence.* The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case. [C51, §2991; R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§13846; C46, 50, 54,§780.5]

C97,§5372, editorially divided  
Referred to in §§780.10, 780.14

**780.6 Arguments.** When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the county attorney must commence, the defendant follow by one or two counsel, at his option, unless the court permit him to be heard by a larger number, and the county attorney conclude, confining himself to a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each. [R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§13847; C46, 50, 54,§780.6]

Referred to in §780.14

**780.7 Closing argument by defendant.** When the affirmative of the issue is with the defendant, the court may, in its discretion, award to the defendant the last argument. [R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§13848; C46, 50, 54,§780.7]

Referred to in §780.14

**780.8 Time for argument.** The court shall not restrict counsel as to time in their arguments to the jury. [R60,§4788; C73,§4423; C97, §5372; C24, 27, 31, 35, 39,§13849; C46, 50, 54, §780.8]

Similar provision, R.C.P. 195

**780.9 Instructions.** Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. [R60, §4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39, §13850; C46, 50, 54,§780.9]

**780.10 Notice of additional testimony.** The county attorney, in offering the evidence in support of the indictment in the order prescribed in section 780.5, shall not be permitted to introduce any witness who was not examined before a committing magistrate or the grand jury, and the minutes of whose testimony were not presented with the indictment to the court, unless he shall have given to the defendant, or his attorney of record if the defendant be not found within the county, a notice in writing stating the name, place of residence, and occupation of such witness, and the substance of what he expects to prove by him on the trial, at least four days before the commencement of such trial. [R60,§4786; C73, §4421; C97,§5373; S13,§5373; C24, 27, 31, 35, 39, §13851; C46, 50, 54,§780.10]

S13,§5373, editorially divided

**780.11 Insufficient time for notice—motion.** Whenever the county attorney desires to introduce evidence to support the indictment, of which he shall not have given said four days notice because of insufficient time therefor since he learned said evidence could be obtained, he may move the court for leave to introduce such evidence, giving the same particulars as in the former case, and showing diligence such as is required in a motion for a continuance, supported by affidavit. [R60, §4786; C73,§4421; C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§13852; C46, 50, 54,§780.11]

**780.12 Election as to continuance.** If the court sustains said motion, the defendant shall elect whether said cause shall be continued on his motion, or the witness shall then testify. [C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§13853; C46, 50, 54,§780.12]

**780.13 Examination—limitation.** If said defendant shall not elect to have said cause continued, the county attorney may examine said witness in the same manner and with the same effect as though four days notice had been given defendant or his attorney as hereinbefore provided, except the county attorney,

in the examination of witnesses, shall be strictly confined to the matters set out in his motion. [C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§13854; C46, 50, 54,§780.13]

**780.14 Former conviction or acquittal — order of trial.** When the defendant's only plea is a former conviction or acquittal, the order prescribed in sections 780.5 to 780.7, inclusive, shall be reversed, and the defendant shall first offer his evidence in support of his defense. [R60,§4787; C73,§4422; C97,§5374; C24, 27, 31, 35, 39,§13855; C46, 50, 54,§780.14]

**780.15 View of premises by jury.** When the court is of the opinion that it is proper the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose. [C51,§3009; R60,§4800; C73,§4432; C97,§5380; C24, 27, 31, 35, 39, §13856; C46, 50, 54,§780.15]

C97,§5380, editorially divided  
Similar provision, R.C.P. 194

**780.16 Officers sworn — duty while jury views premises.** The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, nor to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unnecessary delay at a specified time. [R60, §4800; C73,§4432; C97,§5380; C24, 27, 31, 35, 39, §13857; C46, 50, 54,§780.16]

**780.17 Juror as witness—grounds to set aside verdict.** If a juror have personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial, and if, during the retirement of the jury, a juror declares any fact which could be evidence in the cause, as of his own knowledge, the jury must return into court, and the juror must be sworn as a witness and examined in the presence of the parties, if his evidence be admissible; and in support of a motion to set aside a verdict, proof of such declaration may be made by any juror. [C51,§3010; R60,§4801; C73,§4433; C97,§5381; C24, 27, 31, 35, 39,§13858; C46, 50, 54,§780.17]

Applicable in civil cases, §624.14

**780.18 Sickness of juror.** If before the conclusion of a trial a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged, and in such case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled. [C51, §3013; R60,§4804; C73,§4443; C97,§5388; C24, 27, 31, 35, 39,§13859; C46, 50, 54,§780.18]

Similar provision, R.C.P. 189

**780.19 Separation of jury.** The jurors sworn to try an indictment, in the discretion of the court, at any time before the final sub-

mission of the cause to them, may be permitted to separate, except where one of the parties objects thereto, or be kept together in charge of proper officers. [C51,§3011; R60,§4802; C73,§4434; C97,§5382; C24, 27, 31, 35, 39,§13860; C46, 50, 54,§780.19]

C97,§5382, editorially divided  
Similar provision, R.C.P. 199

**780.20 Officers sworn—duty during adjournment.** The officers must be sworn to keep the jury together during the adjournment of the court, and to suffer no person to speak to or communicate with them on any subject connected with the trial, nor do so themselves, and to return them into court at the time to which it adjourns. [R60,§4802; C73,§4434; C97, §5382; C24, 27, 31, 35, 39,§13861; C46, 50, 54, §780.20]

**780.21 Admonition as to communications.** The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them. [C51,§3012; R60,§4803; C73, §4435; C97,§5383; C24, 27, 31, 35, 39,§13862; C46, 50, 54,§780.21]

C97,§5383, editorially divided  
Similar provision, R.C.P. 199

**780.22 Admonition repeated.** Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury. [R60,§4803; C73,§4435; C97, §5383; C24, 27, 31, 35, 39,§13863; C46, 50, 54, §780.22]

**780.23 Questions of law and fact.** On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant and the state to except; questions of facts are to be tried by jury. [C51,§3016; R60,§4812; C73, §4439; C97,§5385; C24, 27, 31, 35, 39,§13864; C46, 50, 54,§780.23]

C97,§5385, editorially divided  
Libel, §737.7

**780.24 Jury bound by instructions.** Although the jury has the power to find a general verdict which includes questions of law as well as fact, it is bound, nevertheless, to receive as law what is laid down as such by the court. [C51,§3016; R60,§4812; C73,§4439; C97,§5385; C24, 27, 31, 35, 39,§13865; C46, 50, 54, §780.24]

**780.25 Higher offense proved — procedure.** If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all



proceedings on the indictment to be suspended, and order the defendant to be committed or continued on bail to answer any new indictment which may be found against him for the higher offense. [C51,§3000; R60,§4791; C73, §4430; C97,§5378; C24, 27, 31, 35, 39,§13866; C46, 50, 54,§780.25]

**780.26 New indictment not found — procedure.** If the indictment for the higher offense be not found and presented at or before the next term, the court must proceed to try the defendant on the original indictment. [C51, §3001; R60,§4792; C73,§4431; C97,§5379; C24, 27, 31, 35, 39,§13867; C46, 50, 54,§780.26]

**780.27 Lack of jurisdiction — no offense charged.** The court may also discharge the jury where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law. [C51,§3002; R60,§4793; C73, §4444; C97,§5389; C24, 27, 31, 35, 39,§13868; C46, 50, 54,§780.27]

**780.28 Crime committed in another state.** If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the county attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender. [C51,§3003; R60,§4794; C73,§4445; C97,§5390; C24, 27, 31, 35, 39,§13869; C46, 50, 54,§780.28]

**780.29 Crime committed in another county.** If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as shall be reasonable to await a warrant from the proper county for his arrest, or, if the offense be bailable, he may be admitted to bail in an undertaking with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the undertaking, to surrender himself upon the warrant, if issued, or that the bail will forfeit such sum as the court may fix, to be mentioned in the undertaking. [C51,§3004; R60,§4795; C73, §4446; C97,§5391; C24, 27, 31, 35, 39,§13870; C46, 50, 54,§780.29]

Referred to in §780.30

**780.30 Papers transmitted to proper county.** In such case, the clerk must transmit, forthwith, a certified copy of the indictment, and all the papers in the action filed with him, except the undertaking mentioned in section 780.29, to the county attorney of the proper county. [C51,§3005; R60,§4796; C73,§4447; C97,

§5392; C24, 27, 31, 35, 39,§13871; C46, 50, 54, §780.30]

**780.31 Defendant discharged—procedure.** If the defendant be not arrested on a warrant from the proper county, he shall be discharged from custody, and his bail, if any, exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking must be discharged. [C51,§3006; R60,§4797; C73,§4448; C97,§5393; C24, 27, 31, 35, 39,§13872; C46, 50, 54,§780.31]

**780.32 Defendant arrested — procedure.** If he be arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate. [C51,§3007; R60,§4798; C73, §4449; C97,§5394; C24, 27, 31, 35, 39,§13873; C46, 50, 54,§780.32]

See §757.3

**780.33 No offense charged — resubmission.** If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his bail, if any, exonerated, or, if he has deposited money instead of bail, that the money deposited be refunded, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case the court may direct that the case be submitted to the same or another grand jury. [C51,§3008; R60,§4799; C73,§4450; C97,§5395; C24, 27, 31, 35, 39,§13874; C46, 50, 54, §780.33]

**780.34 Defendant committed during trial.** When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him committed to the custody of the proper officer to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly. [C51,§3020; R60,§4816; C73,§4451; C97,§5396; C24, 27, 31, 35, 39,§13875; C46, 50, 54,§780.34]

**780.35 Instructions.** The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. [C51,§§3017, 3018; R60,§§4813, 4814; C73, §§4440, 4441; C97,§5386; C24, 27, 31, 35, 39,§13876; C46, 50, 54,§780.35]

In civil cases, R.C.P. 196 et seq.

**780.36 Decision in court—retirement.** After hearing the charge, the jury may either decide in court or retire for deliberation. [C51,§3019; R60,§4815; C73,§4442; C97,§5387; C24, 27, 31, 35, 39,§13877; C46, 50, 54,§780.36]

C97,§5387, editorially divided

**780.37 Officers sworn—duty during deliberations.** If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place without food or drink, water excepted, unless directed by the court, and not to suffer

any person to speak to or communicate with them, nor speak to or communicate with them themselves except to ask them whether they have agreed upon their verdict, and not to communicate to anyone the state of their deliberation or the verdict agreed upon, until after the same shall have been declared in open

court, and received by the court, and to return them into court when they shall have so agreed upon their verdict, unless, by permission of the court, they be sooner discharged. [C51,§3019; R60,§4815; C73,§4442; C97,§5387; C24, 27, 31, 35, 39,§13878; C46, 50, 54,§780.37]

Similar provision, R.C.P. 199

## CHAPTER 781

### WITNESSES

781.1 Subpoenas for witnesses.  
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**781.1 Subpoenas for witnesses.** A magistrate in a criminal action before him, and the clerk of court in any criminal action pending therein, shall issue blank subpoenas for witnesses, signed by him, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or his attorney or the attorney for the state. They may be served in any part of the state. [C51, §§3168, 3170; R60, §§4950, 4951, 4958; C73, §§4561, 4562, 4569; C97, §5492; C24, 27, 31, 35, 39, §13879; C46, 50, 54, §781.1]

C97, §5492, editorially divided

**781.2 Defense witnesses at expense of state.** Witnesses for the defense shall be subpoenaed at the expense of the county only upon the order of the court or judge thereof before which the case is pending, made upon a satisfactory showing that the witnesses are material and necessary for the defense, which order may be made at the time of the trial or other disposition of the case. The board of supervisors shall not allow any claims for fees of witnesses not thus authorized. [C51, §§3168, 3170; R60, §§4950, 4951, 4958; C73, §§3818, 4561, 4562; C97, §5492; C24, 27, 31, 35, 39, §13880; C46, 50, 54, §781.2]

**781.3 Witnesses for defendant—form of subpoena.** Subpoenas for defendant's witnesses shall show whether they are summoned on the order of the court. [C51, §3170; R60, §4950; C73, §4562; C97, §5492; C24, 27, 31, 35, 39, §13881; C46, 50, 54, §781.3]

**781.4 Witnesses for defendant in criminal cases.** Witnesses subpoenaed for the defendant in criminal cases may demand their fees in advance as in civil cases, unless the subpoena shows that it is issued under the order of the judge. [C97, §1298; C24, 27, 31, 35, 39, §13882; C46, 50, 54, §781.4]

Fees in advance in civil cases, §622.74

**781.5 Service of subpoena.** A peace officer must serve without delay within his county, city, or town any subpoena issued in a criminal action, delivered to him for service, and make written return thereof, stating the time, place, and manner of service, but a subpoena may be served by any other adult person. Service thereof is made by delivering a copy and showing the original to the witness. [C51, §§3171, 3172; R60, §§4952, 4953; C73, §§4563, 4564; C97, §5493; C24, 27, 31, 35, 39, §13883; C46, 50, 54, §781.5]

**781.6 Breaking in to serve subpoena.** If a witness conceal himself to avoid the service of a subpoena, the officer may break open doors or windows for the purpose of making service. [C51, §3176; R60, §4954; C73, §4565; C97, §5494; C24, 27, 31, 35, 39, §13884; C46, 50, 54, §781.6]

**781.7 Disobedience of witness.** Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt, as provided in the civil procedure. [C51, §3174; R60, §4955; C73, §4566; C97, §5495; C24, 27, 31, 35, 39, §13885; C46, 50, 54, §781.7]

Contempts, ch 665

Similar provision, §622.76

**781.8 Civil liability.** A witness willfully disobeying a subpoena in a criminal case without good cause shall be liable to the party injured for the amount of the damages sustained by such party. [C51, §3175; R60, §4956; C73, §4567; C97, §5496; C24, 27, 31, 35, 39, §13886; C46, 50, 54, §781.8]

Similar provision, §622.76

**781.9 Forfeiture of bond.** The undertakings of witnesses in criminal cases may be forfeited and enforced like the undertaking of bail. [R60, §4957; C73, §4568; C97, §5497; C24, 27, 31, 35, 39, §13887; C46, 50, 54, §781.9]

Forfeiture of bail, ch 766

**781.10 Depositions.** A defendant in a criminal case, either after preliminary information, indictment, or information, may examine witnesses conditionally or on notice or commission, in the same manner and with like effect as in civil actions. [R60,§4960; C73,§4571; C97, §5498; C24, 27, 31, 35, 39,§13888; C46, 50, 54, §781.10]

Depositions, R.C.P. 153

**781.11 Perpetuating testimony.** A person apprehensive of a criminal prosecution may perpetuate testimony in his favor in the same manner, and with like effect, as may be done in apprehension of any civil action. [R60, §4961; C73,§4572; C97,§5499; C24, 27, 31, 35, 39, §13889; C46, 50, 54,§781.11]

Perpetuating testimony, R.C.P. 160

**781.12 Defendant as witness.** Defendants in all criminal proceedings shall be competent witnesses in their own behalf, but cannot be called as witnesses by the state. [C51,§2388; R60,§3978; C73,§3636; C97,§5484; C24, 27, 31, 35, 39,§13890; C46, 50, 54,§781.12]

**781.13 Cross-examination.** When the defendant testifies in his own behalf, he shall be subject to cross-examination as an ordinary witness, but the state shall be strictly confined therein to the matters testified to in the examination in chief. [C73,§4238; C97,§5485; C24, 27, 31, 35, 39,§13892; C46, 50, 54,§781.13]

**781.14 Attendance of witnesses outside state.** When a petition is filed in the office of a clerk of the district court upon the relation and oath of a prosecuting attorney in another state, which, by its laws, has heretofore or may hereafter make provision for commanding persons within its borders to attend and testify in a criminal action in this state, setting forth that there is a criminal action pending in the courts of such state wherein a person residing or being within the county wherein said court is held is a material witness for the state in such action, to which there is attached a certified copy of the indictment therein, a judge of

said court shall issue an order fixing a time and place for a hearing on said petition, which may be during a session of court or in vacation, and thereupon the clerk shall prepare a notice requiring the said witness to appear before the said judge at the time and place specified in said order to make defense thereto and shall deliver the same to the sheriff of said county for service upon said person. [S13,§5499-b; C24, 27, 31, 35, 39,§13893; C46, 50, 54,§781.14]

**781.15 Costs paid in advance.** All costs of said proceeding, which shall be estimated by the clerk, shall be paid to the clerk at the time said petition is filed. [S13,§5499-c; C24, 27, 31, 35, 39,§13894; C46, 50, 54,§781.15]

**781.16 Order to enforce attendance.** If it shall be shown upon said hearing that the said person is a material and necessary witness for the prosecution in said case, the court shall enter an order commanding said person to appear and testify in said cause in the court in which such criminal action is pending at a certain named time and place, of which order the said person shall take notice. [S13,§5499-d; C24, 27, 31, 35, 39,§13895; C46, 50, 54,§781.16]

**781.17 Fees advanced—protection from service of process.** If any person on whom such order has been made, having been tendered by the party asking for the order ten cents for each mile traveled to and from such court, and the sum of five dollars for each day that his attendance is required, including the time going to and returning from the place of trial, the number of days to be specified in such order, shall unreasonably neglect to attend and testify in such court, he shall be punished in the manner provided for the punishment of disobedience of any order issued from the office of the clerk of the district court; provided that the laws of the state in which the trial is to be held give to persons coming into the state, under such order, protection from the service of papers and arrest. [S13,§5499-e; C24, 27, 31, 35, 39,§13896; C46, 50, 54,§781.17]

## CHAPTER 782

### EVIDENCE

782.1 Rules of evidence.  
782.2 Obstructing highway by railroad.  
782.3 Rape—actual penetration.  
782.4 Corroboration in rape, seduction, and other crimes.

782.5 Corroboration of accomplice.  
782.6 Proof of overt acts.  
782.7 Confession of defendant.  
782.8 Photographs—measurements—Bertillon system.

**782.1 Rules of evidence.** The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of this chapter. [R60,§4805; C73,§§4426, 4556; C97, §5483; C24, 27, 31, 35, 39,§13897; C46, 50, 54, §782.1]

Evidence, ch 622

**782.2 Obstructing highway by railroad.** In a prosecution against a railway company for obstructing a highway or any private way, proof that any such way is in an unsafe condition, or that it is inconvenient for travel at the place of its intersection with such railway, shall be presumptive evidence that such company has obstructed such way. [C73,§4557;

C97,§5486; C24, 27, 31, 35, 39,§13898; C46, 50, 54, §782.2]

Punishment for obstruction, §716.7

**782.3 Rape — actual penetration.** Proof of actual penetration into the body is sufficient to sustain an indictment for rape. [C51,§2997; R60,§4101; C73,§4558; C97,§5487; C24, 27, 31, 35, 39,§13899; C46, 50, 54,§782.3]

**782.4 Corroboration in rape, seduction, and other crimes.** The defendant in a prosecution for rape, or assault with intent to commit rape, or enticing or taking away an unmarried female of previously chaste character for the purpose of prostitution, or aiding or assisting therein, or seducing and debauching any unmarried woman of previously chaste character, cannot be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense. [C51, §2999; R60,§4103; C73,§4560; C97,§5488; C24, 27, 31, 35, 39,§13900; C46, 50, 54,§782.4]

Similar provisions, §§698.1, 699.1, 700.1

**782.5 Corroboration of accomplice.** A conviction cannot be had upon the testimony of an accomplice, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely show the commission of the offense or the circumstances thereof. [C51,§2998; R60, §4102; C73,§4559; C97,§5489; C24, 27, 31, 35, 39, §13901; C46, 50, 54,§782.5]

Accessories, §688.1

**782.6 Proof of overt acts.** Upon a trial for conspiracy, a defendant cannot be convicted unless one or more overt acts alleged in the indictment are proved, when required by law to constitute the offense, but other overt acts not alleged in the indictment may be given in evidence. [C51,§2996; R60,§4790; C73,§4425; C97, §5490; C24, 27, 31, 35, 39,§13902; C46, 50, 54, §782.6]

**782.7 Confession of defendant.** The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the offense was committed. [R60,§4806; C73,§4427; C97, §5491; C24, 27, 31, 35, 39,§13903; C46, 50, 54, §782.7]

**782.8 Photographs—measurements—Bertillon system.** It shall be lawful for the sheriff of any county or the chief of police in any city in this state, to take or procure the taking of the photograph of any person held to answer on a charge of any felony, such person being in the custody of such officer, or to make and record any measurements of such prisoner, by the Bertillon or other system, and to exchange such photographs, or measurements, or copies of the same, with other sheriffs and police officers, or to distribute the same by mail for the purpose of securing evidence for the identification of such person held to answer, if the identity and past record of the said person are unknown to him; and the cost of such photographs and measurements, and of distributing the same, may be allowed by the court as a part of the costs in the case. [S13,§5499-a; C24, 27, 31, 35, 39,§13904; C46, 50, 54,§782.8]

Fingerprints, §749.2

## CHAPTER 783

### INSANITY OF DEFENDANT DURING TRIAL

783.1 Doubt as to sanity—procedure.  
783.2 Method of trial.  
783.3 Finding of insanity—discharge.

783.4 Restored to reason—returned to custody.  
783.5 Insanity after commitment to jail.

**783.1 Doubt as to sanity—procedure.** If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question. [C51,§§3260, 3261; R60,§§5015, 5016; C73,§§4620, 4621; C97,§5540; C24, 27, 31, 35, 39, §13905; C46, 50, 54,§783.1]

**783.2 Method of trial.** Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument. [R60,§5017; C73,§4622; C97,§5541; C24, 27, 31, 35, 39,§13906; C46, 50, 54, §783.2]

**783.3 Finding of insanity—discharge.** If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his dis-

charge will endanger the public peace or safety, the court must order him committed to the department for the criminal insane at Anamosa until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused cannot be raised therein. [C51,§§3262, 3263; R60,§§5018, 5019; C73,§§4623, 4624; C97, §5542; C24, 27, 31, 35, 39,§13907; C46, 50, 54, §783.3]

**783.4 Restored to reason—returned to custody.** If the accused is committed to the department for the criminal insane, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him, or any other, to

be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate, or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary. [C51, §§3264-3267; R60, §§5020-5023; C73, §§4625-4628; C97, §5543; C24, 27, 31, 35, 39, §13908; C46, 50, 54, §783.4]

Referred to in §783.5

**783.5 Insanity after commitment to jail.** If, after conviction for a misdemeanor and judgment of imprisonment in jail, the defendant is suspected of being insane, the same proceedings shall be taken as is provided in chapters 228, 229, and 230, and, if found insane, he shall be committed to the department for the criminal insane at Anamosa, and all subsequent proceedings shall be as provided in section 783.4. [C97, §5544; C24, 27, 31, 35, 39, §13909; C46, 50, 54, §783.5]

## CHAPTER 784

### JURY AFTER SUBMISSION

784.1 Papers taken by jury.  
784.2 Report for information.  
784.3 Discharge of jury—grounds.

784.4 Retrial—when allowed.  
784.5 Adjournment pending deliberation—effect.

**784.1 Papers taken by jury.** Upon retiring for deliberation, the jury may take with it all papers which have been received in evidence, except depositions, and copies of such parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession, also any notes of the testimony or other proceedings taken in the trial by themselves or any of them. [C51, §§3021, 3022; R60, §§4817, 4818; C73, §§4452, 4453; C97, §5397; C24, 27, 31, 35, 39, §13910; C46, 50, 54, §784.1]

Similar provision, R.C.P. 198

**784.2 Report for information.** After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required must be given as provided by law, in the presence of or after oral notice to the county attorney and defendant's counsel. [C51, §3023; R60, §4819; C73, §4454; C97, §5398; C24, 27, 31, 35, 39, §13911; C46, 50, 54, §784.2]

Similar provision, R.C.P. 197

**784.3 Discharge of jury—grounds.** If, after retirement, one of the jury is taken sick so as to prevent further deliberation, or any other accident or cause occurs to prevent its being kept together, the court may discharge it; otherwise the jury cannot be discharged after

the cause is submitted to it until it has agreed upon its verdict and rendered it in open court, unless, by the consent of both parties entered upon the record, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that it can agree. [C51, §§3024, 3025; R60, §§4820, 4821; C73, §§4455, 4456; C97, §5399; C24, 27, 31, 35, 39, §13912; C46, 50, 54, §784.3]

Similar provisions, R.C.P. 189 and 200

**784.4 Retrial—when allowed.** In all cases where a jury is discharged or prevented from giving a verdict, except where the defendant is discharged during the progress of the trial, or after submission to it, the cause may be again tried at the same or another term of the court. [C51, §3026; R60, §4822; C73, §4457; C97, §5400; C24, 27, 31, 35, 39, §13913; C46, 50, 54, §784.4]

Similar provision, R.C.P. 200

**784.5 Adjournment pending deliberation—effect.** While the jury is absent, the court may adjourn from time to time as to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged, but a final adjournment of the court discharges the jury. [C51, §§3027, 3028; R60, §§4823, 4824; C73, §§4458, 4459; C97, §5401; C24, 27, 31, 35, 39, §13914; C46, 50, 54, §784.5]

Similar provision, R.C.P. 201

## CHAPTER 785

## VERDICT

- 785.1 General and special verdicts.  
 785.2 Answers to interrogatories.  
 785.3 Reasonable doubt.  
 785.4 Reasonable doubt as to degree.  
 785.5 Finding offense of different degree.  
 785.6 Finding included offense.  
 785.7 Verdict against one of several.  
 785.8 Verdict as to several defendants.  
 785.9 Return of jury—roll call.  
 785.10 Presence of defendant—when necessary.  
 785.11 Verdict rendered.  
 785.12 Verdict insufficient—reconsideration.  
 785.13 Informal verdict.  
 785.14 Certainty in verdict required.  
 785.15 Jury polled.  
 785.16 Reading and entry of verdict—disagreement.  
 785.17 Defendant discharged on acquittal.  
 785.18 Acquittal on ground of insanity—commitment.

**785.1 General and special verdicts.** The jury must render a general verdict of “guilty” or “not guilty”, which imports a conviction or acquittal on every material allegation in the indictment, except upon a plea of former conviction or acquittal of the same offense, in which case it shall be “for the state” or “for the defendant”, and except in cases submitted to determine the grade of the offense and, when authorized, fixing the punishment therefor. [C51, §§3032–3037; R60, §§4828–4833; C73, §§4463, 4464, 4474–4477; C97, §5405; C24, 27, 31, 35, 39, §13915; C46, 50, 54, §785.1]

C97, §5405, editorially divided

**785.2 Answers to interrogatories.** It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required. [C97, §5405; C24, 27, 31, 35, 39, §13916; C46, 50, 54, §785.2]

In civil cases, R.C.P. 206

**785.3 Reasonable doubt.** Where there is a reasonable doubt of the defendant being proven to be guilty, he is entitled to an acquittal. [R60, §4807; C73, §4428; C97, §5376; C24, 27, 31, 35, 39, §13917; C46, 50, 54, §785.3]

**785.4 Reasonable doubt as to degree.** Where there is a reasonable doubt of the degree of the offense of which the defendant is proven to be guilty, he shall only be convicted of the lower degree. [R60, §4808; C73, §4429; C97, §5377; C24, 27, 31, 35, 39, §13918; C46, 50, 54, §785.4]

**785.5 Finding offense of different degree.** Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense, if punishable by indictment. [C51, §2918; R60, §4835; C73, §4465; C97, §5406; C24, 27, 31, 35, 39, §13919; C46, 50, 54, §785.5]

**785.6 Finding included offense.** In all other cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment. [C51, §3039; R60,

§4836; C73, §4466; C97, §5407; C24, 27, 31, 35, 39, §13920; C46, 50, 54, §785.6]

**785.7 Verdict against one of several.** On an indictment against several, if the jury cannot agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. [C51, §3040; R60, §4837; C73, §4467; C97, §5408; C24, 27, 31, 35, 39, §13921; C46, 50, 54, §785.7]

**785.8 Verdict as to several defendants.** Upon an indictment against several defendants, any one or more may be convicted or acquitted. [C51, §3014; R60, §4810; C73, §4437; C97, §5384; C24, 27, 31, 35, 39, §13922; C46, 50, 54, §785.8]

**785.9 Return of jury—roll call.** When the jury has agreed upon its verdict, it must be conducted into court by the officer having it in charge; the names of the jurors must then be called, and if all do not appear the rest must be discharged without giving a verdict; in such case, the cause may again be tried at the same or another term. [C51, §3029; R60, §4825; C73, §4460; C97, §5402; C24, 27, 31, 35, 39, §13923; C46, 50, 54, §785.9]

Similar provisions, §785.16 and R.C.P. 203

**785.10 Presence of defendant—when necessary.** If the indictment be for a felony, the defendant must be present at the rendition of the verdict; if it be for a misdemeanor, it may be rendered in his absence. [C51, §3030; R60, §4826; C73, §4461; C97, §5403; C24, 27, 31, 35, 39, §13924; C46, 50, 54, §785.10]

**785.11 Verdict rendered.** When the members of the jury have answered to their names, the court or the clerk shall ask them whether they have agreed upon the verdict, and if the foreman answers in the affirmative they must declare the same. [C51, §3031; R60, §4827; C73, §4462; C97, §5404; C24, 27, 31, 35, 39, §13925; C46, 50, 54, §785.11]

**785.12 Verdict insufficient—reconsideration.** If the jury renders a verdict which is neither a general nor special one, the court may direct it to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood, whether to render a general verdict, or

to find the facts specially and leave the judgment to the court. [C51, §§3038, 3041; R60, §§4834, 4838; C73, §§4468, 4478; C97, §5409; C24, 27, 31, 35, 39, §13926; C46, 50, 54, §785.12]

**785.13 Informal verdict.** If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal. [C51, §3042; R60, §4839; C73, §4469; C97, §5410; C24, 27, 31, 35, 39, §13927; C46, 50, 54, §785.13]

C97, §5410, editorially divided

**785.14 Certainty in verdict required.** No judgment of conviction can be given unless the jury expressly finds against the defendant upon the issue, or judgment is given against him upon a special verdict. [C51, §3042; R60, §4839; C73, §4469; C97, §5410; C24, 27, 31, 35, 39, §13928; C46, 50, 54, §785.14]

**785.15 Jury polled.** When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case each member thereof shall be asked whether it is his verdict, and if anyone answers in the negative the jury must be sent out for further deliberation. [C51, §3043; R60, §4840; C73, §4470; C97, §5411; C24, 27, 31, 35, 39, §13929; C46, 50, 54, §785.15]

Similar provision, R.C.P. 208

**785.16 Reading and entry of verdict—disagreement.** When the verdict is given and is such as the court may receive, the clerk may immediately enter it in full upon the record, and must read it to the jury, and inquire of the members thereof whether it is their verdict. If any juror disagrees, the fact must be entered upon the record and the jury again sent out. But if no disagreement is expressed, the verdict is complete and the jury must be discharged from the case. [R60, §4841; C73, §4471; C97, §5412; C24, 27, 31, 35, 39, §13930; C46, 50, 54, §785.16]

Similar provisions, §785.9 and R.C.P. 208

**785.17 Defendant discharged on acquittal.** If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given. [C51, §3045; R60, §4843; C73, §4473; C97, §5413; C24, 27, 31, 35, 39, §13931; C46, 50, 54, §785.17]

**785.18 Acquittal on ground of insanity—commitment.** If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to the insane hospital, or retained in custody, until he becomes sane. [C51, §3044; R60, §4842; C73, §4472; C97, §5414; C24, 27, 31, 35, 39, §13932; C46, 50, 54, §785.18]

## CHAPTER 786

### EXCEPTIONS

- 786.1 Bill of exceptions—purpose.  
786.2 What constitutes record—exceptions unnecessary.  
786.3 Grounds for exceptions.  
786.4 Action affecting substantial right.

- 786.5 Bill by judge.  
786.6 Bill by bystanders.  
786.7 Time to approve bill.  
786.8 Modification of bill.  
786.9 Time allowed to prepare bill.

**786.1 Bill of exceptions—purpose.** The office of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear. [R60, §4846; C73, §4481; C97, §5416; C24, 27, 31, 35, 39, §13933; C46, 50, 54, §786.1]

**786.2 What constitutes record—exceptions unnecessary.** All papers pertaining to the cause and filed with the clerk, and all entries made by him in the record book pertaining to them, and showing the action or decision of the court upon them or any part of them, and the judgment, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record. [R60, §4847; C73, §4482; C97, §5417; C24, 27, 31, 35, 39, §13934; C46, 50, 54, §786.2]

**786.3 Grounds for exceptions.** On the trial of an indictment, exceptions may be taken by the state or by the defendant to any decision

of the court upon matters of law, in any of the following cases:

1. In disallowing a challenge to an individual juror.
2. In admitting or rejecting witnesses or evidence on the trial of any challenge.
3. In admitting or rejecting witnesses or evidence.
4. In deciding any matter of law, not purely discretionary on the trial of the issue. [C51, §3046; R60, §4844; C73, §4479; C97, §5415; C24, 27, 31, 35, 39, §13935; C46, 50, 54, §786.3]

C97, §5415, editorially divided

**786.4 Action affecting substantial right.** Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial. [R60, §4845; C73, §4480;

C97,§5415; C24, 27, 31, 35, 39,§13936; C46, 50, 54, §786.4]

Similar provision, §624.15

**786.5 Bill by judge.** Either party may take an exception to any decision or action of the court, in any stage of the proceedings, not required to be and not entered in the record book, and reduce the same to writing, and tender the same to the judge, who shall sign it if true, and if signed it shall be filed with the clerk and become a part of the record of the cause. [C51,§3047; R60,§4848; C73,§4483; C97, §5418; C24, 27, 31, 35, 39,§13937; C46, 50, 54, §786.5]

C97,§5418, editorially divided

**786.6 Bill by bystanders.** If the judge refuses to sign it, such refusal must be stated at the end thereof, and it may then be signed by two or more attorneys or officers of the court or disinterested bystanders, and sworn to by them, and filed with the clerk, and it shall thereupon become a part of the record of the

cause. [R60,§4848; C73,§4483; C97,§5418; C24, 27, 31, 35, 39,§13938; C46, 50, 54,§786.6]

**786.7 Time to approve bill.** The judge shall be allowed one clear day to examine the bill of exceptions, and the party excepting shall be allowed three clear days thereafter to procure the signatures and file the same. [R60,§4849; C73,§4484; C97,§5419; C24, 27, 31, 35, 39,§13939; C46, 50, 54,§786.7]

**786.8 Modification of bill.** If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly. [R60,§4850; C73,§4485; C97,§5420; C24, 27, 31, 35, 39,§13940; C46, 50, 54,§786.8]

**786.9 Time allowed to prepare bill.** Time must be given to prepare the bill of exceptions when it is necessary; if it can reasonably be done, it shall be settled at the time of taking the exception. [R60,§4851; C73,§4486; C97,§5421; C24, 27, 31, 35, 39,§13941; C46, 50, 54,§786.9]

**CHAPTER 787**

**NEW TRIAL**

787.1 Definition.

787.2 Application—when made.

**787.1 Definition.** A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been given. [C51,§3050; R60,§4852; C73,§4487; C97,§5422; C24, 27, 31, 35, 39,§13942; C46, 50, 54,§787.1]

**787.2 Application—when made.** The application for a new trial can be made only by the defendant, and must be made before judgment. [C51,§3053; R60,§4855; C73,§4490; C97,§5425; C24, 27, 31, 35, 39,§13943; C46, 50, 54,§787.2]

**787.3 Grounds.** The court may grant a new trial for the following causes, or any of them:

1. When the trial has been had in the absence of the defendant, if the indictment be for a felony.
2. When the jury has received any evidence, paper, or document out of court not authorized by the court.
3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case.

787.3 Grounds.

787.4 Effect of a new trial.

4. When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a material matter of law.

6. When the verdict is contrary to law or evidence; but no more than two new trials shall be granted for this cause alone.

7. When the court has refused properly to instruct the jury.

8. When from any other cause the defendant has not received a fair and impartial trial. [C51,§3052; R60,§4854; C73,§4489; C97,§5424; C24, 27, 31, 35, 39,§13944; C46, 50, 54,§787.3]

Knowledge of juror, §780.17

**787.4 Effect of a new trial.** The granting of a new trial places the parties in the same position as if no trial had been had; all the testimony must be produced anew and the former verdict cannot be used or referred to either in the evidence or in argument. [C51, §3051; R60,§4853; C73,§4488; C97,§5423; C24, 27, 31, 35, 39,§13945; C46, 50, 54,§787.4]

**CHAPTER 788**

**ARREST OF JUDGMENT**

788.1 "Motion in arrest" defined—grounds.

788.2 Time of making motion.

788.3 On motion of court.

788.4 Defendant held to answer.

**788.1 "Motion in arrest" defined—grounds.** A motion in arrest of judgment is an application to the court in which the trial was had,

on the part of the defendant, that no judgment be rendered upon a verdict against him, or on a plea of guilty, and shall be granted when



upon the whole record no legal judgment can be pronounced. [C51,§3054; R60,§4856; C73, §4491; C97,§5426; C24, 27, 31, 35, 39,§13946; C46, 50, 54,§788.1]

**788.2 Time of making motion.** The motion may be made at any time before or after judgment, during the same term. [R60,§4859; C73, §4494; C97,§5429; C24, 27, 31, 35, 39,§13947; C46, 50, 54,§788.2]

**788.3 On motion of court.** The court may also, upon its own observation of any of these grounds, arrest the judgment on its own mo-

tion. [C51,§3055; R60,§4857; C73,§4492; C97, §5427; C24, 27, 31, 35, 39,§13948; C46, 50, 54, §788.3]

**788.4 Defendant held to answer.** If the court is of opinion from the evidence on the trial that the defendant is guilty of a public offense of which no legal conviction can be had on the indictment, he may be held to answer the offense in like manner as upon a preliminary examination. [C51,§3057; R60, §4858; C73,§4493; C97,§5428; C24, 27, 31, 35, 39, §13949; C46, 50, 54,§788.4]

CHAPTER 789

JUDGMENT

- 789.1 Judgment of acquittal—time for.
- 789.2 Judgment of conviction—time for.
- 789.3 Presence of defendant.
- 789.4 Forfeiture of bail—warrant of arrest.
- 789.5 Defendant arrested.
- 789.6 Appearance for judgment—showing of cause.
- 789.7 What may be shown for cause.
- 789.8 Insanity.
- 789.9 New trial—motion in arrest.
- 789.10 Motions—proceedings in vacation.

- 789.11 Judgment entered.
- 789.12 Cumulative sentences.
- 789.13 Indeterminate sentences.
- 789.14 Sentences for two or more offenses.
- 789.15 Discretion as to sentence.
- 789.16 Place of commitment.
- 789.17 Imprisonment for fine.
- 789.18 Commitment to jail of another county.
- 789.19 Allowance of bail upon appeal.
- 789.20 Costs—when payable by state.

**789.1 Judgment of acquittal—time for.** Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. [R60,§4860; C73,§4495; C97,§5430; C24, 27, 31, 35, 39,§13950; C46, 50, 54,§789.1]

**789.2 Judgment of conviction—time for.** Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction must be rendered, the court must fix a time for pronouncing judgment, which must be at least three days after the verdict is rendered, if the court remains in session so long, or, if not, as remote a time as can reasonably be allowed; but in no case can it be pronounced in less than six hours after the verdict is rendered, unless defendant consent thereto. [C51,§3058; R60,§§4861, 4862; C73,§4496; C97,§5431; C24, 27, 31, 35, 39,§13951; C46, 50, 54, §789.2]

Suspension of sentence, §247.20 et seq.

**789.3 Presence of defendant.** When judgment is pronounced, if the conviction be for a felony, the defendant must be personally present; if for a misdemeanor, he need not. [C51, §3059; R60,§4863; C73,§4497; C97,§5432; C24, 27, 31, 35, 39,§13952; C46, 50, 54,§789.3]

**789.4 Forfeiture of bail—warrant of arrest.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order

directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant into one or more counties for his arrest, which may be substantially in the following form:

County of..... }  
The State of Iowa. }

To any peace officer in the state:

A..... B....., having been duly convicted on the ..... day of ....., A.D., ....., in the district court of ..... county, of the crime of (here designate it generally, as in the indictment).

You are hereby commanded to arrest the said A..... B..... and bring him before said court for judgment, if it be then in session, or, if not, to deliver him into the custody of the sheriff of said county.

Given under my hand and seal of said court, at my office in ....., in said county, this .....day of....., A.D.....

[Seal.]

.....  
Clerk.

The warrant may be served in any county in the state. [C51,§§3061–3063; R60,§§4865–4868; C73,§§4498–4501; C97,§5433; C24, 27, 31, 35, 39, §13953; C46, 50, 54,§789.4]

Approval of warrant and expenses, §§79.12, 79.13

**789.5 Defendant arrested.** The officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant. [C51,§3064; R60,§4869; C73, §4502; C97,§5434; C24, 27, 31, 35, 39,§13954; C46, 50, 54,§789.5]

**789.6 Appearance for judgment—showing of cause.** When the defendant appears for judgment, he must be informed by the court, or the clerk under its direction, of the nature of the indictment, his plea, and the verdict, if any, thereon, and be asked whether he has any legal cause to show why judgment should not be pronounced against him. [C51,§3065; R60,§4870; C73,§4503; C97,§5435; C24, 27, 31, 35, 39,§13955; C46, 50, 54,§789.6]

**789.7 What may be shown for cause.** He may show for cause against the judgment that he is insane, or any sufficient ground for a new trial, or in arrest of judgment. [R60,§4871; C73,§4504; C97,§5436; C24, 27, 31, 35, 39,§13956; C46, 50, 54,§789.7]

**789.8 Insanity.** If the court is of opinion that there is reasonable ground for believing him insane, the question of his insanity shall be determined as provided in this Code, and if he is found to be insane, such proceedings shall be had as are herein directed. [R60,§4872; C73,§4505; C97,§5437; C24, 27, 31, 35, 39,§13957; C46, 50, 54,§789.8]

Insanity of defendant, ch 783

**789.9 New trial—motion in arrest.** If he moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions. [C51,§3066; R60,§§4873, 4874; C73,§§4506, 4507; C97,§5438; C24, 27, 31, 35, 39,§13958; C46, 50, 54,§789.9]

C24, §13958, editorially divided

**789.10 Motions — proceedings in vacation.** Motions for new trial, or in arrest of judgment, in criminal causes, may be disposed of in vacation at any place within the judicial district with the same force and effect as though done in term time, including the imposition of sentence and the rendition of final judgment. The record of such proceedings in vacation shall be substantially as provided in section 769.29. [C31, 35,§13958-d1; C39,§13958.1; C46, 50, 54, §789.10]

**789.11 Judgment entered.** If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. [C51,§3066; R60,§§4873, 4874; C73, §§4506, 4507; C97,§5438; C24,§13958; C27, 31, 35, §13958-a1; C39,§13958.2; C46, 50, 54,§789.11]

Suspension of sentence, §247.20 et seq.

**789.12 Cumulative sentences.** If the defendant is convicted of two or more offenses, the punishment of each of which is or may be imprisonment, the judgment may be so rendered that the imprisonment upon any one shall commence at the expiration of the imprisonment upon any other of the offenses. [C51,§3070; R60,§4880; C73,§4508; C97,§5439; C24, 27, 31, 35, 39,§13959; C46, 50, 54,§789.12]

**789.13 Indeterminate sentences.** When any person over sixteen years of age is convicted of a felony, except treason or murder or any crime the maximum penalty for which is life imprisonment, the court imposing a sentence of confinement in the penitentiary, men's or women's reformatory shall not fix the limit or duration of the same, but the term of such imprisonment shall not exceed the maximum term provided by law for the crime of which the prisoner was convicted. [S13,§5718-a13; C24, 27, 31, 35, 39,§13960; C46, 50, 54,§789.13]

S13,§5718-a13, editorially divided

Referred to in §789.14

Further exception in case of rape, §§698.1, 698.4

**789.14 Sentences for two or more offenses.** If a person be sentenced for two or more separate offenses and the second or further term is ordered to begin at the expiration of the first and such succeeding term of sentence is specified in the order of commitment, the several terms shall for the purpose of section 789.13 be construed as one continuous term of imprisonment. [S13,§5718-a13; C24, 27, 31, 35, 39,§13961; C46, 50, 54,§789.14]

**789.15 Discretion as to sentence.** Where one is convicted of a felony that is punishable by imprisonment in the penitentiary, or by fine, or by imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. [S13,§5718-a13; C24, 27, 31, 35, 39,§13962; C46, 50, 54,§789.15]

**789.16 Place of commitment.** Any male person who shall be committed to the penitentiary, except those convicted of murder, treason, sodomy, or incest, and who at the time of commitment is between the ages of sixteen and thirty years, and who has never before been convicted of a felony, shall be confined in the men's reformatory; provided, however, that persons between the ages of sixteen and thirty years convicted of rape, robbery, or of breaking and entering a dwelling house in the nighttime with intent to commit a public offense therein, may, as the particular circumstances may warrant, in the discretion of the court, be committed to either the men's reformatory at Anamosa, or the penitentiary at Fort Madison. [S13,§5718-a5; C24, 27, 31, 35, 39,§13963; C46, 50, 54,§789.16]

**789.17 Imprisonment for fine.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every three and one-third dollars of the fine. [C51,§3071; R60,§4881; C73,§4509; C97,§5440; C24, 27, 31, 35, 39,§13964; C46, 50, 54,§789.17]

**789.18 Commitment to jail of another county.** When a person is to be committed to jail, if there is no jail or no sufficient one in the county where the party would be committed under the ordinary provisions of law, the court or magistrate committing may order him to be committed to the jail of some other

county, which shall be the one which is most convenient and safe, and the county to which the cause originally belonged shall be liable for all the expenses thereof. [C51,§3073; R60,§4884; C73,§4510; C97,§5441; C24, 27, 31, 35, 39,§13965; C46, 50, 54,§789.18]

**789.19 Allowance of bail upon appeal.** In all cases, except murder in the first degree and treason, the court rendering judgment must make an order fixing the amount in which bail must be taken, and there shall be no execution of the judgment until such order is made. [R60,§4885; C73,§4511; C97,§5442; C24, 27, 31, 35, 39,§13966; C46, 50, 54,§789.19]

Similar provision, §763.2

**789.20 Costs—when payable by state.** All costs and fees incurred in any criminal case brought against an inmate of any state institution for a crime committed while confined in such institution shall be paid out of the state treasury from the general fund in case the prosecution fails, or where such costs and fees cannot be made from the person liable to pay the same, the facts being certified by the clerk of the district court under his seal of office to the state comptroller, including a statement of the amount of fees or costs incurred, such statement to be approved by the presiding judge in writing appended thereto or indorsed thereon. [C24, 27, 31, 35, 39,§13968; C46, 50, 54, §789.20]

Similar provision, §§337.12, 601.130

## CHAPTER 790

### LIEN OF JUDGMENTS AND STAY OF EXECUTIONS

790.1 Fines lien on real estate.

790.2 Stay of execution.

**790.1 Fines lien on real estate.** Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions. [R60,§5003; C73,§4609; C97, §5531; C24, 27, 31, 35, 39,§13969; C46, 50, 54, §790.1]

Lien book, §606.7; lien of judgments, §624.23 et seq.

**790.2 Stay of execution.** The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein. [R60,§5004; C73,§4610; C97,§5532; C24, 27, 31, 35, 39,§13970; C46, 50, 54,§790.2]

Stay of execution, §626.58 et seq.

## CHAPTER 791

### EXECUTIONS

791.1 Copy of judgment as execution.

791.2 Executions within county of trial.

791.3 Executions outside county of trial.

791.4 Record of discharge.

791.5 Preventing escape—recapture.

791.6 Execution for fine.

791.7 Execution for abatement of nuisance.

**791.1 Copy of judgment as execution.** When a judgment of imprisonment, either in the penitentiary or county jail, is pronounced, an execution, consisting of a certified copy of the entry thereof in the record book, must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution. [C51,§3074; R60,§4886; C73,§4512; C97,§5443; C24, 27, 31, 35, 39,§13971; C46, 50, 54, §791.1]

**791.2 Executions within county of trial.** A judgment for imprisonment, or for imprisonment until a fine is paid, to be executed in the county where the trial is had, shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court. [C51,§§3075-3077; R60,§§4897-4899; C73,§§4513-4515; C97, §5444; C24, 27, 31, 35, 39,§13972; C46, 50, 54, §791.2]

C97,§5444, editorially divided  
Imprisonment for fine, §789.17

**791.3 Executions outside county of trial.** Under all other judgments for imprisonment, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be imprisoned in execution of the judgment, and take his receipt therefor on a duplicate copy thereof, which he must forthwith return to the clerk of the court in which the judgment was rendered, with his return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued. [C51,§3077; R60,§§4898, 4899, 4901; C73,§§4514, 4515; C97,§5444; C24, 27, 31, 35, 39,§13973; C46, 50, 54,§791.3]

**791.4 Record of discharge.** When such defendant is discharged from custody, the jailer or warden of the penitentiary shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance. [C97,§5444; C24, 27, 31, 35, 39,§13974; C46, 50, 54,§791.4]

**791.5 Preventing escape — recapture.** The sheriff, or his deputy, while conveying the defendant to the proper prison, has the same authority to require the assistance of any citizen of the state in securing the defendant, and retaking him if he escapes, as if he were in his own county; and every person who neglects or refuses to assist him when so required shall be punishable accordingly. [C51,§3078; R60,§4900; C73,§4516; C97,§5445; C24, 27, 31, 35, 39,§13975; C46, 50, 54,§791.5]

Punishment, §687.7

**791.6 Execution for fine.** Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner. [R60,§4902; C73, §4518; C97,§5446; C24, 27, 31, 35, 39,§13976; C46, 50, 54,§791.6]

Executions, ch 626

**791.7 Execution for abatement of nuisance.** When the judgment is for the abatement or removal of a nuisance, or for anything other than the payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require him to execute such judgment, and he shall return the same, with his doings under the same thereon indorsed, to the clerk of the court in which the judgment was rendered, within seventy days after the date of the certificate of such certified copy, except as hereinbefore provided for. [R60,§4903; C73,§4519; C97, §5447; C24, 27, 31, 35, 39,§13977; C46, 50, 54, §791.7]

## CHAPTER 792

### EXECUTION OF DEATH PENALTY

792.1 Time of execution.  
792.2 Record sent governor.  
792.3 Copy of judgment authority for execution.  
792.4 Reprieve or suspension.  
792.5 Insanity or pregnancy.  
792.6 Finding of commissioners.  
792.7 Execution suspended.  
792.8 Executive warrant of execution.

792.9 Time and manner of execution.  
792.10 Witnesses to execution.  
792.11 Certificate of execution.  
792.12 Certificate filed and published.  
792.13 Stay of execution by appeal.  
792.14 Proceedings on appeal.  
792.15 Proceedings on affirmance—issuance of warrant.  
792.16 Execution of warrant.

**792.1 Time of execution.** When the court or jury shall direct that a defendant be punished by death, the court pronouncing judgment shall fix the day of the execution thereof, which shall not be less than one year after the day on which the judgment is rendered, and not longer than fifteen months, during which time the defendant shall be imprisoned in the penitentiary. [C97,§4732; C24, 27, 31, 35, 39,§13978; C46, 50, 54,§792.1]

**792.2 Record sent governor.** Immediately after entry of judgment of death, the court rendering the same must transmit by mail to the governor a copy of the indictment, plea, verdict, judgment, and testimony in the case. [C97,§4733; C24, 27, 31, 35, 39,§13979; C46, 50, 54,§792.2]

**792.3 Copy of judgment authority for execution.** When a judgment of death is pronounced, a certified copy of the entry thereof in the record book must be furnished to the officer whose duty it is to execute the same, who shall proceed accordingly, and no other warrant or authority is necessary to require or justify the execution. [C97,§4734; C24, 27, 31, 35, 39,§13980; C46, 50, 54,§792.3]

**792.4 Reprieve or suspension.** The only officers who shall have power to reprieve or suspend the execution of a judgment of death are the governor and, as provided in this chap-

ter, the warden of the penitentiary, except in cases of appeal to the supreme court. [C97, §4735; C24, 27, 31, 35, 39,§13981; C46, 50, 54, §792.4]

**792.5 Insanity or pregnancy.** When the warden of the penitentiary is satisfied that there are reasonable grounds for believing that a defendant in his charge under sentence of death is insane or pregnant, he shall notify the commissioners of insanity of the county wherein the penitentiary is located, who shall be sworn by the warden well and truly to inquire into the facts as to the insanity or pregnancy of the defendant, as the case may be, and return a true report of their findings. [C97,§4736; C24, 27, 31, 35, 39,§13982; C46, 50, 54, §792.5]

**792.6 Finding of commissioners.** The commissioners, after being sworn, shall examine the defendant and hear any evidence that may be presented, and may examine the medical attendants at the penitentiary, if necessary, to ascertain the facts, and make report thereon in writing, signed by not less than a majority of them, finding as to the fact of insanity or pregnancy. [C97,§4737; C24, 27, 31, 35, 39,§13983; C46, 50, 54,§792.6]

**792.7 Execution suspended.** If the report does not show the defendant to be insane or pregnant, the warden shall not suspend the

execution; but if it does, he shall suspend the execution, and immediately transmit the report to the governor. [C97,§4738; C24, 27, 31, 35, 39,§13984; C46, 50, 54,§792.7]

**792.8 Executive warrant of execution.** When a judgment of death from any cause has not been executed on the day appointed by the court therefor, the governor, by a warrant under the seal of the state, shall fix the day of execution, which warrant shall be obeyed by the sheriff, and no one but the governor can then suspend its execution. [C97,§4739; C24, 27, 31, 35, 39,§13985; C46, 50, 54,§792.8]

**792.9 Time and manner of execution.** A judgment of death must be executed by the sheriff of the county in which the judgment was rendered, or his deputy, within the walls of the penitentiary where the defendant is confined, or within a yard or inclosure adjoining thereto, on the day fixed in the judgment, between sunrise and sunset, by hanging by the neck until dead. [C97,§4740; C24, 27, 31, 35, 39, §13986; C46, 50, 54,§792.9]

**792.10 Witnesses to execution.** The sheriff or his deputy must, at least three clear days before executing a judgment of death, notify the judge of the district court who tried the case, or, if he be not in office, another judge of such court, the county attorney and the clerk of the district court of the county in which the judgment was rendered, the sheriff of the county in which the offense was committed, if other than that in which judgment was rendered, and two physicians and twelve respectable citizens of the state to be selected by him to be present as witnesses at such execution. He must also, at the request of the defendant, permit one or more ministers of the gospel, named by him, and any of his relatives, to attend the execution, and also such magistrates, peace officers, and guards as the sheriff shall deem proper, but no minor, and no person other than those herein authorized, shall be present. [C97,§4741; C24, 27, 31, 35, 39, §13987; C46, 50, 54,§792.10]

**792.11 Certificate of execution.** The sheriff or his deputy executing the judgment of death must prepare and sign with his name of office a certificate, setting forth the time and place of the execution, and that judgment was executed upon the defendant according to the foregoing provisions, and cause the certificate to be signed by the public officers, and at least twelve persons, not relations of the defendant, who witnessed the same. [C97,§4742; C24, 27, 31, 35, 39,§13988; C46, 50, 54,§792.11]

**792.12 Certificate filed and published.** The sheriff or his deputy executing such judgment must cause the certificate to be filed in the office of the clerk of the district court of the county in which the judgment was rendered, and cause a copy thereof to be published in one newspaper printed at the capital of the state, and in one in his county. [C97,§4743; C24, 27, 31, 35, 39,§13989; C46, 50, 54,§792.12]

**792.13 Stay of execution by appeal.** An appeal from a judgment of death shall stay the infliction of that punishment, but the defendant is to be retained in custody without bail to abide the judgment thereon. [C97,§4744; C24, 27, 31, 35, 39,§13990; C46, 50, 54,§792.13]

**792.14 Proceedings on appeal.** When an appeal is taken from a judgment of death, the clerk of the district court in which it was rendered shall at once give the defendant or his attorney a certificate, under the seal of the court, certifying that fact, and the sheriff or other officer having the defendant in custody must, upon the delivery to him of the certificate, suspend further proceedings on the judgment until final judgment on the appeal is certified to him by the clerk of the supreme court. [C97,§4745; C24, 27, 31, 35, 39,§13991; C46, 50, 54,§792.14]

**792.15 Proceedings on affirmance—issuance of warrant.** When such judgment is affirmed, the supreme court must cause a copy of its judgment to be delivered to the governor, and to the sheriff whose duty it is to execute such judgment, signed by the clerk thereof and under seal of the court, and the governor shall issue a warrant of execution under the seal of the state, and transmit it by messenger or mail to the sheriff whose duty it is to execute the judgment, directing him, on a day and at an hour therein named, not earlier than the day fixed by the district court, to execute such judgment in the manner required by law. [C97, §4746; C24, 27, 31, 35, 39,§13992; C46, 50, 54, §792.15]

C97,§4746, editorially divided

**792.16 Execution of warrant.** The sheriff shall execute such warrant in the manner provided in this chapter, and report his doings to the governor and the district court whose judgment was appealed from, and make the publication of his doings in the manner provided for in this chapter. If from any cause the judgment is not executed on the day named in the warrant, the governor may appoint another, and so on until it is done. [C97, §4746; C24, 27, 31, 35, 39,§13993; C46, 50, 54, §792.16]

## CHAPTER 793

## APPEALS

Applicable to workmen's compensation cases, §86.33

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| 793.1 Office of appeal—who may appeal.         | 793.14 Informality or defect.             |
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| 793.13 Personal appearance of defendant.       | 793.26 Time of imprisonment deducted.     |

**793.1 Office of appeal — who may appeal.**

The mode of reviewing in the supreme court any judgment, action, or decision of the district court in a criminal case is by appeal. Either the defendant or state may appeal. [R60, §§4904, 4905; C73, §§4520, 4521; C97, §5448; S13, §5448; C24, 27, 31, 35, 39, §13994; C46, 50, 54, §793.1]

S13, §5448, editorially divided

**793.2 Time of taking—from final judgment only.** An appeal can only be taken from the final judgment, and within sixty days thereafter. [R60, §4906; C73, §4521; C97, §5448; S13, §5448; C24, 27, 31, 35, 39, §13995; C46, 50, 54, §793.2]

**793.3 Joinder.** When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their codefendants who do not join shall take no benefit therefrom, yet they may appeal afterwards. [R60, §4917; C73, §4526; C97, §5451; C24, 27, 31, 35, 39, §13996; C46, 50, 54, §793.3]

**793.4 Taking and perfecting.** An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the district court at the time of the rendition of the judgment, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof indorsed thereon or annexed thereto. [R60, §§4907, 4908; C73, §§4523, 4524; C97, §5449; C24, 27, 31, 35, 39, §13997; C46, 50, 54, §793.4]

**793.5 Abstracts and other filings—service.** When an appeal has been taken by the defendant in a criminal case, all filings by the appellant on appeal shall be served on the attorney general. [C27, 31, 35, §13997-b1; C39, §13997.1; C46, 50, 54, §793.5]

**793.6 Duty of clerk when appeal is taken.** When an appeal is taken, the clerk of the court in which the judgment was rendered shall:

1. Forthwith prepare and transmit to the

attorney general a certified copy of the notice of appeal, together with the date of the service and filing thereof.

2. Promptly prepare and transmit to the clerk of the supreme court a transcript of all record entries in the cause, together with copies of all papers in the case on file in his office, except those returned by the examining magistrate on the preliminary examination, all duly certified under the seal of his court. [R60, §4909; C73, §4525; C97, §5450; C24, 27, 31, 35, 39, §13998; C46, 50, 54, §793.6]

Referred to in Court Rule 15

**793.7 Duties of county attorney.** The county attorney shall:

1. When an appeal is taken by the state, at least forty days prior to the term at which the cause is to be heard, prepare and deliver to the attorney general a typewritten manuscript for the abstract of record in the cause.

2. When an appeal is taken by the defendant, prepare and transmit to the attorney general a typewritten manuscript covering all matters which may be required to be embraced in any amended abstract which should be filed by the state in order to properly present said appeal.

3. When served with a notice of appeal in a criminal case, immediately furnish the attorney general with a copy of said notice.

Such manuscripts shall be prepared in ample time so that the same may be printed and filed within the time and in the manner prescribed by law and the rules of the supreme court. [C97, §301; SS15, §301; C24, 27, 31, 35, 39, §13999; C46, 50, 54, §793.7]

**793.8 Transcript at expense of county.** If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried. [C73, §3777; C97, §254; SS15 §254-a2; C24, 27, 31, 35, 39, §14000; C46, 50, 54, §793.8]

**793.9 Appeal by state—effect.** An appeal taken by the state in no case stays the operation of a judgment in favor of the defendant [R60,§4911; C73,§4527; C97,§5452; C24, 27, 31, 35, 39,§14001; C46, 50, 54,§793.9]

**793.10 Appeal by defendant—effect.** An appeal taken by the defendant does not stay the execution of the judgment, unless bail is put in; but where the judgment is imprisonment in the penitentiary, and an appeal is taken within the time provided after judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, or judge thereof, it may, in its discretion, order the sheriff or officer having the defendant in custody to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desires it. [R60,§§4914, 4915; C73,§§4528, 4529; C97, §5453; C24, 27, 31, 35, 39,§14002; C46, 50, 54, §793.10]

**793.11 Bail—proceedings when given.** When an appeal is taken by the defendant, and bail is given, the clerk must give to the defendant, or his attorney, a certificate, under the seal of the court, that an appeal has been taken and bail given, and the sheriff or other officer having the defendant in custody must, upon receiving it, discharge the defendant from custody and cease all further proceedings in execution thereof, and forthwith return to the clerk of the court who issued it the execution under which he acted, with his return thereon; and if it has not been issued, it shall not be until after final judgment on the appeal. [R60, §4916; C73,§4530; C97,§5454; C24, 27, 31, 35, 39, §14003; C46, 50, 54,§793.11]

**793.12 Title of case — how docketed.** The party appealing is the appellant, the adverse party the appellee, but the title of the action shall not be changed on the appeal, and the cause shall be so docketed at the commencement of the period assigned for trying causes from the judicial district from which the appeal comes, which causes shall take precedence of all other business, be tried at the term at which the transcript is filed, unless continued for cause or by consent of the parties, and be decided, if practicable, at the same term. [R60, §§4818, 4819; C73,§§4531, 4532; C97,§5455; C24, 27, 31, 35, 39,§14004; C46, 50, 54,§793.12]

**793.13 Personal appearance of defendant.** The personal appearance of the defendant in the supreme court on the trial of an appeal is in no case necessary. [R60,§4920; C73,§4533; C97,§5456; C24, 27, 31, 35, 39,§14005; C46, 50, 54, §793.13]

**793.14 Informality or defect.** An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the supreme court must direct how it shall be corrected. [R60,§4921; C73,§4534; C97,§5457; C24, 27, 31, 35, 39,§14006; C46, 50, 54, §793.14]

**793.15 Assignment of error.** No assignment of error is necessary. [R60,§4922; C73,§4535; C97,§5458; C24, 27, 31, 35, 39,§14007; C46, 50, 54, §793.15]

See R.C.P. 342 and 343

**793.16 Closing argument.** The defendant is entitled to close the argument. [R60,§4923; C73,§4536; C97,§5459; C24, 27, 31, 35, 39,§14008; C46, 50, 54,§793.16]

**793.17 Rules of procedure.** The record and case may be presented in the supreme court by printed abstracts, arguments, motions, and petitions for rehearing as provided by its rules; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the supreme court shall apply in such cases. [C97,§5461. C24, 27, 31, 35, 39,§14009; C46, 50, 54,§793.17]

**793.18 Decision of supreme court.** If the appeal is taken by the defendant, the supreme court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but cannot increase it. [C51,§§3097, 3098; R60,§4925; C73,§4538; C97,§5462; C24, 27, 31, 35, 39,§14010; C46, 50, 54,§793.18]

C97,§5462, editorially divided

**793.19 Costs on reversal.** In case the judgment of the trial court is reversed or modified in favor of the defendant, on the appeal of defendant, he shall be entitled to recover the cost of printing abstract and briefs, not exceeding one dollar for each page thereof, to be paid by the county from which the appeal was taken. [C97,§5462; C24, 27, 31, 35, 39,§14011; C46, 50, 54,§793.19]

**793.20 Decisions in appeals by state.** If the state appeals, the supreme court cannot reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law. [R60,§4926; C73,§4539; C97,§5463; C24, 27, 31, 35, 39,§14012; C46, 50, 54, §793.20]

**793.21 Reversal — effect.** If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the supreme court shall direct that the defendant be discharged and his bail exonerated, or if money be deposited instead, that it be refunded to him. [C51,§3099; R60, §4927; C73,§4540; C97,§5464; C24, 27, 31, 35, 39, §14013; C46, 50, 54,§793.21]

**793.22 Affirmance—effect.** On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as

the supreme court shall direct, except as otherwise provided. [C51,§3100; R60,§4928; C73,§4541; C97,§5465; C24, 27, 31, 35, 39,§14014; C46, 50, 54,§793.22]

**793.23 Opinion of supreme court.** The opinion of the supreme court must be in writing, filed with its clerk, and recorded. [R60,§4924; C73,§4537; C97,§5460; C24, 27, 31, 35, 39,§14015; C46, 50, 54,§793.23]

**793.24 Decision recorded and transmitted.** The decision of the supreme court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the supreme court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk. [C51,§§3101, 3102;

R60,§§4929, 4930; C73,§§4542, 4543; C97,§5466; C24, 27, 31, 35, 39,§14016; C46, 50, 54,§793.24]

**793.25 Judgment enforced.** Unless some proceeding in the district court is directed, a copy of the judgment of the trial court and decision on appeal, or of the judgment and decision on appeal certified by the clerk of the trial court, shall be delivered to the sheriff, or other proper officer, as an execution, and shall authorize him to execute the judgment of the court, or take any steps required to bring the action to a conclusion. [R60,§4931; C73,§4544; C97,§5467; C24, 27, 31, 35, 39,§14017; C46, 50, 54,§793.25]

**793.26 Time of imprisonment deducted.** If a defendant, imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction. [R60,§4933; C73,§4545; C97,§5468; C24, 27, 31, 35, 39,§14018; C46, 50, 54,§793.26]

## CHAPTER 794

### COMPROMISING CERTAIN OFFENSES

794.1 Compromisable offenses.  
794.2 Procedure.

794.3 Discharge—effect.  
794.4 Limitation.

**794.1 Compromisable offenses.** When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 794.2, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office;

2. Riotously; or,

3. With an intent to commit a felony. [R60,§5106; C73,§4708; C97,§5622; C24, 27, 31, 35, 39,§14019; C46, 50, 54,§794.1]

**794.2 Procedure.** If the party injured in such a case appear before the court to which the papers on a preliminary examination are returned, at any time before trial on an indictment for the offense, or the trial of an appeal in the district court, and acknowledge in writing that he has received satisfaction for

the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. In that case the reasons for the order must be set forth therein and entered upon the minutes. [R60,§5107; C73,§4709; C97,§5623; C24, 27, 31, 35, 39,§14020; C46, 50, 54,§794.2]

Referred to in §§794.1, 794.3

**794.3 Discharge—effect.** The order authorized by section 794.2 is a bar to another prosecution for the same offense. [R60,§5108; C73,§4710; C97,§5624; C24, 27, 31, 35, 39,§14021; C46, 50, 54,§794.3]

**794.4 Limitation.** No public offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter. [R60,§5109; C73,§4711; C97,§5625; C24, 27, 31, 35, 39,§14022; C46, 50, 54,§794.4]



## CHAPTER 795

## DISMISSAL OF CRIMINAL ACTIONS

795.1 Failure to indict.

795.2 Delay in trial.

795.3 Discharge on undertaking.

795.4 Discharge on dismissal.

795.5 Dismissal by court—effect.

**795.1 Failure to indict.** When a person is held to answer for a public offense, if an indictment be not found against him at the next regular term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown. [C51,§3248; R60,§5007; C73,§4613; C97,§5535; C24, 27, 31, 35, 39,§14023; C46, 50, 54,§795.1]

Related provision, §771.21

**795.2 Delay in trial.** If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next regular term of the court in which the indictment is triable after the same is found, the court must order it to be dismissed, unless good cause to the contrary be shown. [C51,§3249; R60,§5008; C73,§4614; C97,§5536; C24, 27, 31, 35, 39,§14024; C46, 50, 54,§795.2]

**795.3 Discharge on undertaking.** If the defendant be not indicted or tried as above provided, and sufficient reason therefor is shown, the court may order the prosecution continued from term to term, and discharge the defendant from custody on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time

to which the same is continued, but no continuance under this section shall be extended beyond the following three terms of the court. [C51,§3250; R60,§5009; C73,§4615; C97,§5537; C24, 27, 31, 35, 39,§14025; C46, 50, 54,§795.3]

**795.4 Discharge on dismissal.** If the court direct the prosecution to be dismissed, the defendant, if in custody, must be discharged, or his bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to him. [R60,§5010; C73,§4616; C97,§5538; C24, 27, 31, 35, 39,§14026; C46, 50, 54, §795.4]

**795.5 Dismissal by court—effect.** The court, upon its own motion or the application of the county attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a misdemeanor; but it is not a bar if the offense charged be a felony. [C51,§§3251, 3252; R60,§§5011–5013; C73,§§4617–4619; C97,§5539; C24, 27, 31, 35, 39,§14027; C46, 50, 54,§795.5]

# **RULES OF CIVIL PROCEDURE**

## RULES OF CIVIL PROCEDURE

Sections 684.18 and 684.19 of the Code provide as follows:

**684.18 Rules in civil actions.** The supreme court shall have the power to prescribe all rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings of a civil nature in all courts of this state, for the purpose of simplifying the same, and of promoting the speedy determination of litigation upon its merits. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

**684.19 Report to general assembly—enrollment.** Any such rules and forms prescribed by the supreme court shall be reported by it to the general assembly within twenty days after the commencement of a regular session

and shall take effect July 4 following the adjournment of such session, with such changes, if any, as may have been enacted at such session; and thereafter all laws in conflict therewith shall be of no further force or effect.

At adjournment of the general assembly where such report has been filed, an enrolled copy thereof, together with any changes, shall be made in substantially the same manner as acts are enrolled. The enrolled copy shall be certified as to whether or not any action was taken by the general assembly and if any, what action, and thereupon it shall be filed with the secretary of state and bound with the acts of the general assembly.

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Pursuant to said sections the Supreme Court reported the following Rules of Civil Procedure effective July 4, 1943. The Rules as printed herein have the subsequent amendments incorporated therein.



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**DIVISION I**  
**OPERATION OF RULES**

**1. Applicability—effective date—statutes affected.**

(a) *Applicability.* These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases.

(b) *Effective date.* These rules will take effect on July 4, 1943. They govern all proceedings in actions brought after they take effect, and also further proceedings in actions then pending, except to the extent that in the opinion of the court in which the action is pending their application in a particular action pending when the rules take effect would not be feasible, or would work injustice, in which event the former procedure applies.

(c) *Commencement of action pending effective date of rules.* Where a defendant has been served with original notice prior to July 4, 1943, for a term of court to be convened after said date, the validity and effect of such notice and of the service thereof shall be determined by the statutes in force at the time of service. Service of original notice on all other defendants in the same or other actions, and the validity and effect thereof shall be governed by these rules.

(d) *Statutes affected.* After these rules take effect courts and litigation shall no longer be governed by the statutes listed in column 1 of the table appended to these rules as Appendix I, and the practice and procedure shall no longer be in accordance therewith. [Report 1943]

**DIVISION II**

**ACTIONS, JOINDER OF ACTIONS AND PARTIES**

See also chapter 613 of the Code

**(A) Parties generally—capacity**

**2. Real party in interest.** Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, guardian, trustee of an express trust; or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute, may sue in his own name without joining the party for whose benefit the action is prosecuted. [Report 1943]

See also ch 613

**3. Public bond.** When a bond or other instrument given to the state, county, school or other municipal corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon, in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided. [Report 1943]

See also ch 613

**4. Partnerships.** Actions may be brought by or against partnerships as such; or against any or all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner not so served or appearing. The court may order absent partners brought in. [Report 1943]

See also ch 613

**5. Foreign corporations.** Foreign corporations may sue and be sued in their corporate name, except as prohibited by statute. [Report 1943]

See also ch 613

**6. Seduction.** An unmarried female may sue for her own seduction. [Report 1943]

See also ch 613

**7. Assignees—exception.** The assignment of a thing in action, except transfer of a negotiable instrument for value in good faith before maturity, shall be without prejudice to any defense, counterclaim or cause of action matured or not, if matured when pleaded, existing against the assignor in favor of the party pleading it. [Report 1943]

See also ch 613

**8. Injury or death of minor.** A father, or if he be dead, imprisoned or has deserted the family, then the mother, may sue for the expense and actual loss of services resulting from injury to or death of a minor child. [Report 1943]

See also ch 613

**9. Actions by and against state.** The state may sue in the same way as an individual. No security shall be required of it. It may be sued as provided by any statutes in force at the time. [Report 1943]

See also ch 613

**10. Married women—husband and wife.** A married woman may sue or be sued without joining her husband. If both are sued, she may defend in her own right; and if either fails to defend, the other may defend for both. [Report 1943]

See also ch 613

**11. Desertion of family.** When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; under like circumstances the husband shall have the same right. [Report 1943]

See also ch 613

**12. Minors—incompetents.** An action of a minor or any person judicially adjudged incompetent shall be brought by his guardian if he have one; otherwise the minor may sue by a next friend, and the incompetent by a guard-

ian appointed by the court for that purpose. The court may dismiss such action or substitute another guardian or friend for the ward's benefit. [Report 1943]

Referred to in R.C.P. 298  
See also ch 613

**13. Defense by incompetent, prisoner, etc.** No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reformatory or any state hospital for the insane, or one judicially adjudged incompetent, or whose physician certifies to the court that he appears to be mentally incapable of conducting his defense. Such defense shall be by guardian ad litem; but the regular guardian or the attorney appearing for a competent party may defend unless the court supersedes him by a guardian ad litem appointed in the ward's interest. [Report 1943]

Referred to in R.C.P. 14 and 298  
See also ch 613

**14. Guardian ad litem.** If a party, served with original notice, appears to be subject to rule 13, the court may appoint a guardian ad litem for him, or substitute another, in the ward's interest. Application for such appointment or substitution may be by the ward, if competent, or a minor over fourteen years old; otherwise by his regular guardian or if there be none by any friend, or any party to the action. [Report 1943]

*As to insanity, etc., occurring pending suit, see rule 17.*

*For class actions, see rule 42.*

*For answer of guardian ad litem, see rule 71.*

Referred to in R.C.P. 71 and 298  
See also ch 613

**(B) Substitution of parties**

**15. Substitution at death—limitation.** Any substitution of legal representatives or successors in interest of a deceased party, permitted by statute, must be ordered within two years after the death of the original party. If his right survives entirely to those already parties, the action shall continue among the surviving parties without substitution [Report 1943]

See also ch 611

**16. Transfer of interest.** Transfer of an interest in a pending action shall not abate it, but may be the occasion for bringing in new parties. [Report 1943]

See also ch 613

**17. Incapacity pending action.** If, during pendency of an action, a party is judicially adjudged incompetent, or confined in any state hospital for the insane, or if his physician certifies to the court that he appears to be mentally incapable of acting in his own behalf, his guardian shall be joined with him, or, if there be none the court shall appoint a guardian ad litem for any party thus adjudged, confined or certified. [Report 1943]

See also ch 613

**18. Nonabatement in case of guardianship.** When a guardianship shall cease by the death of the guardian, his removal, or otherwise, or by the decease of his ward, any action or proceeding then pending shall not abate, but his successor or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be substituted or joined as a party thereto; or, if no application is made for substitution, the court may on its own motion, appoint a special guardian or administrator to represent the deceased party in the action. [Report 1943]

See also ch 668

**19. Majority of minor.** If a minor party attains legal majority, he shall continue as a party in his own right. [Report 1943]

See also ch 613

**20. Officers — representatives.** When any public official, or any administrator, express trustee or other person in a representative capacity, ceases to be such while a party to a suit, the court may order his successor brought in and substituted for him. [Report 1943]

See also ch 611

**21. Notice to substituted party.** The order for substitution shall fix the time when the substituted party shall appear, and the notice to be given him. In case of substitution of a legal representative of a deceased party the notice shall be served as in case of original notices. In all other cases a shorter time may be prescribed. [Report 1943]

See also ch 611

**(C) Joinder—misjoinder and nonjoinder**

**22. Actions joined.** A single plaintiff may join in the same petition as many causes of action, legal or equitable, independent or alternative, as he may have against a single defendant. [Report 1943]

Referred to in R.C.P. 31  
See also ch 612

**23. Multiple plaintiffs.** Any number of persons who claim any relief, jointly, severally or alternatively, arising out of or respecting the same transaction, occurrence or series of transactions or occurrences, may join as plaintiffs in a single action, when it presents or involves any question of law or fact common to all of them. They may join any causes of action, legal or equitable, independent or alternative, held by any one or more of them which arise out of such transaction, occurrence or series, and which present or involve any common question of law or fact. [Report 1943]

Referred to in R.C.P. 31  
See also ch 612

**24. Permissive joinder of defendants.**

(a) *Generally.* Any number of defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to all of them is presented or involved.

(b) *Special provisions—joint common carriers.* Sections 613.3 to 613.6 inclusive of the Code, relating to joint common carriers shall remain in force. [Report 1943]

See also ch 612

## 25. Necessary parties—nonjoinder.

(a) *Remedy for nonjoinder as plaintiff.* Except as provided in this rule, all persons having a joint interest in any action shall be joined on the same side, but such persons failing to join as plaintiffs may be made defendants. This rule does not apply to class actions under rules 42–47, nor affect the options permitted by sections 613.1 and 613.2 of the Code.

(b) *Definition of indispensable party.* A party is indispensable if his interest is not severable, and his absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding his absence his interest would necessarily be inequitably affected by a judgment rendered between those before the court.

(c) *Indispensable party not before court.* If an indispensable party is not before the court, it shall order him brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be obtained by service of original notice in any manner provided by these rules or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities. [Report 1943]

*For method of bringing in parties see rule 34.*

See also ch 612

**26. Parties partly interested.** A party need not be interested in obtaining or defending against all the relief demanded. Judgment may be given respecting one or more parties according to their respective rights or liabilities. [Report 1943]

*See rules 186 and 121.*

See also ch 612

## 27. Remedy for misjoinder.

(a) *Parties.* Misjoinder of parties is no ground for dismissal of the action, but parties may be dropped by order of the court on its own motion or that of any party at any stage of the action, on such terms as are just, or any claim against a party improperly joined may be severed and proceeded with separately.

*For separate trials as to separate parties, see rule 186.*

(b) *Actions.* The only remedy for improper joinder of actions shall be by motion. On such motion the court shall either order the causes docketed separately or strike those causes which should be stricken, always retaining at least one cause docketed in the original case.

Before ruling on such motion, the party whose pleading is attacked may withdraw any of the causes claimed to be misjoined. [Report 1943]

See also ch 612

**28. Dependent remedies joined.** An action heretofore cognizable only after another has been prosecuted to conclusion may be joined with the latter; and the court shall grant relief according to the substantive rights of the parties. But there shall be no joinder of an action against an indemnitor or insurer with one against the indemnified party, unless a statute so provides. [Report 1943]

See also ch 612

## (D) Counterclaims and cross-claims

**29. Compulsory counterclaims.** A pleading must contain a counterclaim for every cause of action then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded. [Report 1943]

*Indispensable parties are defined in rule 25 (b).*

See §611.15  
See also ch 619

**30. Permissive counterclaims.** Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any cause of action held by him when the action was originally commenced, and matured when pleaded. [Report 1943]

*For prohibited counterclaims see Code sec. 643.2, on replevin and rule 275 on partition.*

See also ch 619

**31. Joinder of counterclaims.** A party pleading a counterclaim shall have the same right to join more than one cause of action as a plaintiff is granted under rules 22 and 23. [Report 1943]

*See also rules 72 and 74.*

See also ch 619

**32. Counterclaim not limited.** A counterclaim may, but need not, diminish or defeat recovery sought by the opposing party. It may claim relief in excess of, or different from, that sought in the opponent's pleadings. [Report 1943]

See also ch 619

## 33. Cross-petitions.

(a) *Against coparties.* A cross-petition may be filed by one party against a coparty, on a cause of action arising out of a transaction or occurrence which is the basis of the original action or any counterclaim therein. It may include the claim that such coparty is, or may be, liable to cross-petitioner for all or part of a claim asserted in the principal action against the cross-petitioner.

(Substance of Federal Rule 13-g)  
Referred to in R.C.P. 74

(b) *Against new parties.* When a defendant to a petition, cross-petition or counterclaim will, if held liable thereon, thereby be entitled to a right of action against one not already a party, he may move to have such party brought in, to the end that the rights of all concerned may be determined in one action. Such motion must be supported by affidavit. [Report 1943]

Referred to in R.C.P. 74  
See also ch 619

**34. Bringing in new parties—procedure.**

(a) *When presence necessary for complete relief.* When the presence of new parties is required to grant complete relief as to a counterclaim or cross-petition, the court shall order them brought in if jurisdiction can be obtained.

See also rule 74.

(b) *How brought in.* New parties shall be brought in by serving them with original notice pursuant to division III\* of these rules. [Report 1943]

\*See ch 617 of the Code  
See also ch 619

**(E) Interpleader**

**35. Right of interpleader.** A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against him for the same thing, may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute his liability, wholly or in part. [Report 1943]

See also ch 613

**36. By defendants.** A defendant to an action which exposes him to similar liability or litigation may obtain such interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish his claim to the subject of the action, and on his default after due service, the court may decree him barred of such claim. [Report 1943]

For procedure to bring in see rule 34.

See also ch 613

**37. Deposit—discharge.** If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved, or secured by bond. After such deposit the court, on hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants. [Report 1943]

Referred to in R.C.P. 38  
See also ch 613

**38. Substitution of claimant.** If a defendant seeks an interpleader involving a third person, the latter may appear and make himself a defendant in lieu of the original defendant, who may then be discharged on complying with rule 37. [Report 1943]

See also ch 613

**39. Injunction.** After petition and returns of original notices are filed in an interpleader, the court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order. [Report 1943]

For injunctions generally see rules 320 et seq.

See also ch 613

**40. Costs.** Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader. [Report 1943]

See also ch 613

**41. Sheriff or officer — creditor.** When a sheriff or other officer is sued for taking personal property under a writ, or for the property so taken, he may exhibit such writ to the court, with his affidavit that the property involved was taken under it. The attaching or execution creditor shall then be joined with the officer as a defendant; or may join on his own application. Any judgment against the officer and creditor shall provide that the latter's property be first exhausted to discharge it. [Report 1943]

See rule 224.

See also ch 613

**(F) Class actions**

**42. Class actions.** If the persons composing a class are so numerous that it is impracticable to bring all before the court, such number of them as will insure adequate representation of all may sue or be sued on behalf of all, where the character of the right involved is:

(a) Joint or common, or held primarily by one who has refused to enforce it, thereby entitling the class or its members to do so; or

(b) Several, and the action seeks to adjudicate claims which do, or may, affect specific property; or

(c) Several, and a common question of law or fact affects the several rights, and a common relief is sought. [Report 1943]

Referred to in R.C.P. 25 and 45  
See also ch 613

**43. Virtual representation.** Where persons composing a class which may be increased by others later born, do or may make a claim affecting specific property involved in an action to which all living members of the class are parties, any others later born shall also be deemed to have been parties to the action and bound by any decree rendered therein. [Report 1943]

Referred to in R.C.P. 25 (a)  
See also ch 613

**44. Shareholder's actions.** Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a

sufficient reason for not making such effort. [Report 1943]

Referred to in R.C.P. 25 (a)  
See also ch 613

**45. Compromise or dismissal.** No class action shall be compromised or voluntarily dismissed without approval of the court. In actions under rule 42(a), notice of the proposed compromise or dismissal shall be given all members of the class in such manner as the court may prescribe, otherwise notice may be given or omitted as the court may direct. [Report 1943]

*For dismissal generally, see rule 215.*

Referred to in R.C.P. 25 (a)  
See also ch 613

**46. Adequate representation.** Before final judgment in a class action, the court shall inquire and determine that the parties before it adequately represent the class. If it deems such representation inadequate, it may order new parties brought in. [Report 1943]

Referred to in R.C.P. 25 (a)  
See also ch 613

**47. Default judgment.** No judgment by default for lack of appearance shall be entered in a class action. If no member of the class appears, the court shall appoint an attorney to represent it, taxing his reasonable fees as costs in the case. [Report 1943]

Referred to in R.C.P. 25 (a)  
See also ch 613

### DIVISION III

#### COMMENCEMENT OF ACTIONS

**48. Commencing actions.** A civil action is commenced by serving the defendant with an original notice. [Report 1943]

See also ch 617

**49. Tolling limitations.** For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, whether the limitation inheres in the statutes creating the remedy or not, the delivery of the original notice to the sheriff of the proper county with the intent that it be served immediately (which intent shall be presumed unless the contrary appears) shall also be deemed a commencement of the action. [Report 1943; amendment 1951]

See also ch 614

**50. Contents of original notice.** The original notice shall be directed to the defendant, and signed by plaintiff or his attorney with the signer's address. It shall name the plaintiff, the court, and the city or town, and county where the court convenes. It shall state either that the petition is on file in the office of the clerk of the court where the action is brought, or that it will be so filed by a stated date, which must not be more than ten days after service. It shall notify defendant to appear before said court within the specified number of days after service required by rule 53 or rule 54, and that unless he so appears, his de-

fault will be entered and judgment or decree rendered against him for the relief demanded in the petition. A copy of the petition may be attached; but if it is not or if the service is by publication, the notice shall contain a general statement of the cause or causes of action and the relief demanded, and, if for money, the amount thereof. [Report 1943]

Referred to in R.C.P. 61  
See also ch 617

**51. Notice of no personal claim.** A defendant who unreasonably defends when the original notice states that no personal judgment is asked against him, shall pay the costs occasioned thereby. [Report 1943]

See also ch 617

**52. By whom served.** Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party, his agent or attorney may take an acknowledgment of service and deliver copy of notice in connection therewith, and may mail copy of original notice when mailing is required or permitted under any rule or statute. [Report 1943; amendment 1951]

See also ch 617

**53. Time for appearance.** A defendant served by publication or by publication and mailing, as provided in rule 60.1, must appear on or before the date fixed in the notice as published, which date shall not be less than twenty days after the day of last publication. If served in any other manner, the defendant shall appear within twenty days after the day the original notice is served on him in all cases where:

(a) A copy of the petition is attached to the original notice; or

(b) The petition is on file when the notice is served, and the notice so states.

In all other cases the defendant shall appear within thirty days after the day such notice is served. Unless he so appears, he will be in default; but if he does appear, he shall have time to move or plead as provided in rule 85. [Report 1943; amendment 1951]

Referred to in R.C.P. 60, 64, and 230  
See also ch 617

**54. Special cases—appearance of garnishee.**

(a) Any statute of Iowa which specially requires appearance by a particular defendant, or in a particular action, within a specified time, shall govern the time for appearance in such cases, rather than rule 53.

(b) The officer serving a writ of attachment or execution shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in the manner and as an original notice in civil actions, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law, and, unless

answers are required to be taken as provided by statute, it shall cite the garnishee to appear in not less than ten days after service of the notice and at a time specified when court will be in session and a judge will be present, and answer such interrogatories as may be propounded, or he will be liable to pay any judgment which the plaintiff may obtain against the defendant. [Report 1943; amendment 1945]

Referred to in R.C.P. 50 and 230  
See also ch 617

**55. Failure to file petition.** If the petition is not filed as stated in the original notice served, any defendant may have the case dismissed as to him, without notice, at plaintiff's cost; and may docket it for this purpose by filing his copy of the original notice, if need be. [Report 1943]

*For filing petition and copies, see rule 82.*

See also ch 617

**56. Personal service.** Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows:

(a) Upon any individual aged eighteen years or more who has not been adjudged incompetent, either by taking his signed, dated acknowledgment of service indorsed on the notice; or by serving him personally; or by serving, at his dwelling house or usual place of abode, any person residing therein who is at least eighteen years old, but if such place is a rooming house, hotel, club or apartment building, the copy shall there be delivered to such a person who is either a member of his family or the manager, clerk, proprietor or custodian of such place.

(b) Upon a minor under eighteen years old, by serving either the guardian of his person or property, unless the notice is served on behalf of such guardian, or his parent, or some person aged eighteen years or more who has his care and custody, or with whom he resides, or in whose service he is employed. Where the notice upon a minor is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint, without prior notice on the ward, a guardian ad litem upon whom service shall be made and who shall defend for the minor.

(c) Upon any person judicially adjudged incompetent but not confined in a state hospital for the insane, by serving the guardian of his person or property, unless the notice is served on behalf of such guardian, or his spouse, or some person aged eighteen years or more who has his care and custody, or with whom he resides. Where the notice upon an incompetent is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint,

without prior notice to the ward, a guardian ad litem upon whom service shall be made and who shall defend for the incompetent.

(d) Any person, whether competent or not, confined in a county home, or in any state hospital for the insane, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in charge of the Iowa board of control or of the United States, may be served by the official in charge of such institution or his assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or his affidavit if it is out of Iowa.

(e) If any defendant is a patient in any state or federal hospital for the insane, in or out of Iowa, or has been adjudged incompetent and is confined to a county home, the official in charge of such institution or his assistant shall accept service on his behalf, if in his opinion direct service on the defendant would injuriously affect him, which shall be stated in such acceptance.

(f) Upon a partnership, or an association suable under a common name, or a domestic or foreign corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership. [Report 1943; amendment 1945]

(g) If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

(h) Upon any city or town by serving its mayor or clerk.

(i) Upon any county by serving its auditor or the chairman of its board of supervisors.

(j) Upon any school district, school township or school corporation by serving its president or secretary.

(k) Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by such statute or any statute applicable thereto.

(l) Upon any individual, corporation, partnership or association suable under a common name which shall have filed in this state a consent to service, or shall be subject to service, in any special manner provided by the statutes of this state, either as provided in these rules or as provided in any such consent to service, or in accordance with any such statute relating thereto.

(m) Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary. [Report 1943; amendment 1945]

Referred to in R.C.P. 59, 64, and 233  
See also ch 617

Accepting service by attorney legalized, 54GA, ch 211,§1



**57. Service on Sunday.** Original notice shall not be served on Sunday unless the plaintiff, his agent or attorney indorses thereon his oath that personal service shall be impossible unless then made. [Report 1943]

See also ch 617

**58. Member of general assembly.** No member of the general assembly shall be held to appear or answer in any civil action in any court in this state while such general assembly is in session. [Report 1943]

See also ch 617

**59. Returns of service.**

(a) *Signature—fees.* Iowa officers may make unsworn returns of original notices served by them, as follows: Any sheriff or deputy sheriff, as to service in his own or a contiguous county; any other peace officer, or bailiff or marshal, as to service in his own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in rules 56(d) and 56(e), shall be proved by the affidavit of the person making the service. If served in the state of Iowa by a person other than such peace officer acting within the territories above defined or in another state by a person other than a sheriff or other peace officer, no fees or mileage shall be allowed therefor.

(b) *Contents.* A return of personal service shall state the time, manner, and place thereof and name the person to whom copy was delivered; and if delivered under rule 56(a) to a person other than defendant, it must also state the facts showing compliance with said rule.

(c) *Indorsement and filing.* If a sheriff receives the notice for service, he shall note thereon the date when received, and serve it without delay in his own or a contiguous county, and upon receiving his fees, shall either file it and his return with the clerk, or deliver it by mail or otherwise to the person from whom he received it. [Report 1943]

See also ch 617

**60. Service by publication — what cases.** After filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may be served by publication, in any action brought:

(a) For recovery of real property or any estate or interest therein;

(b) For the partition of real or personal property in Iowa;

(c) To foreclose a mortgage, lien, encumbrance or charge on real or personal property;

(d) For specific performance of a contract for sale of real estate;

(e) To establish, set aside or construe a will, if defendant resides out of Iowa, or if his residence is unknown;

(f) Against a nonresident of Iowa or a foreign corporation which has property, or debts owing to it in Iowa, sought to be taken by any provisional remedy, or appropriated in any way;

(g) Against any defendant who, being a non-resident of Iowa, or a foreign corporation, has or claims any actual or contingent interest in or lien on real or personal property in Iowa which is the subject of such action, or to which it relates; or where the action seeks to exclude such defendant from any lien, interest or claim therein;

(h) Against any resident of the state who has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid service, or who keeps himself concealed with like intent;

(i) For divorce or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a defendant who is a nonresident of Iowa or whose residence is unknown;

(j) To quiet title to real estate, against a defendant who is a nonresident of Iowa, or whose residence is unknown;

(k) Against a partnership, corporation or association suable under a common name, when no person can be found on whom personal service can be made;

(l) To vacate or modify a judgment or for a new trial under rules 252 and 253. [Report 1943; amendment 1945]

Referred to in §587.12  
Prior service by publication legalized, 54GA, ch 210; see §587.12  
See §587.8, judgments and decrees legalized  
See also chs 617, 618

**60.1 Known defendants.**

(a) In every case where service of original notice is made upon a known defendant by publication, copy of the notice shall also be sent by ordinary mail addressed to such defendant at his last known mailing address, unless an affidavit of a party or his attorney is filed stating that no mailing address is known and that diligent inquiry has been made to ascertain it.

(b) Such copy of notice shall be mailed by the party, his agent or attorney not less than twenty days before the date set for appearance.

(c) Proof of such mailing shall be by affidavit, and such affidavit or the affidavit referred to in rule 60.1(a) shall be filed before the entry of judgment or decree. The court, in its judgment or decree, or prior thereto, shall make a finding that the address to which such copy was directed is the last known mailing address, or that no such address is known, after diligent inquiry. [Report 1951]

Referred to in R.C.P. 53, 234, 251  
See also ch 617

**61. Unknown defendants.** The original notice against unknown defendants shall be directed to the unknown claimants of the property involved, describing it. It shall otherwise comply with rule 50. [Report 1943]

See also ch 617

**62. How published.** Publication of original notice shall be made after the filing of the

petition, once each week for three consecutive weeks in a newspaper of general circulation, published in the county where the petition is filed; such newspaper to be selected by the plaintiff or his attorney. [Report 1943; amendment 1951]

See also ch 617

**63. Proof of publication.** Before default is taken, proof of such publication shall be filed, sworn to by the publisher or an employee of the newspaper. [Report 1943]

See also ch 617

**64. Actual service.** Service of original notice in or out of Iowa according to rule 56, supersedes the need of its publication. [Report 1943]

See also ch 617

**65. General appearance.** A general appearance is any appearance except a special appearance. It is made either by:

(a) Taking any part in a hearing or trial of the case, personally or by attorney, or

(b) By a written appearance filed with the clerk, or a notation on the appearance docket or oral announcement in open court;

(c) By filing a motion or pleading, other than under a special appearance. [Report 1943]

*See also rule 87 limiting the effect of appearance alone.*

See also ch 617

**66. Special appearance.** A defendant may appear specially, for the sole purpose of attacking the jurisdiction of the court, but only before his general appearance. The special appearance shall be in writing, filed with the clerk and shall state the grounds thereof. If his special appearance is erroneously overruled, he may plead to the merits or proceed to trial without waiving such error. [Report 1943]

*See also rule 104(a).*

See also ch 617

#### DIVISION IV

#### PLEADINGS AND MOTIONS

See also chapter 619 of the Code

**67. Technical forms abolished.** All common counts, general issues, demurrers, fictions and technical forms of action or pleading, are abolished. The form and sufficiency of all motions and pleadings shall be determined by these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits. [Report 1943]

See also ch 619

**68. Allowable pleadings.** The pleadings shall be: Petition, answer, and such counterclaim, reply, amendment, cross-petition or petition of intervention, as these rules allow. [Report 1943]

*For counterclaims, see rules 29-32. For cross-petitions, see rules 33, 34.*

See also ch 619

**69. Pleadings defined.** "Pleadings" as used in this division, do not include motions. They are the parties' written statements of their respective claims or defenses. They shall be clear, concise, and avoid repetition or prolixity. [Report 1943]

See also ch 619

**70. Petition.** The petition shall state whether it is at law or in equity, the facts constituting the cause or causes of action asserted, the relief demanded, and, if for money, the amount thereof. [Report 1943]

*For title, signature, etc., see rule 78.*

Referred to in §618.13

See also ch 619

**71. Answers for ward.** All answers by guardians or guardians ad litem, or filed under rule 14, shall state whether there is a return on file, showing that proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward. [Report 1943]

See also ch 619

**72. Answer.** The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the petition, which denial may be for lack of information. It must state any additional facts deemed to show a defense. It may raise points of law appearing on the face of the petition to which it responds. It may contain as many defenses, legal or equitable, as the pleader may claim, which may be inconsistent. It may contain a counterclaim which must be in a separate division. [Report 1943]

*For counterclaims, see rule 29 et seq. See also rules 79, 103, 105, 110 and 176.*

See also ch 619

**73. Reply.** There shall be a reply to a counterclaim, and to new matter in an answer, responding thereto in the same manner that an answer responds to a petition, but not inconsistent with the petition. Points of law arising on the face of the answer may be raised by reply. [Report 1943]

*Under rule 102 facts asserted in a reply are denied by operation of law.*

*For disposition of points of law raised by reply, see rules 105, 176.*

See also ch 619

**74. Cross-petition — judgment.** Any cross-petition under rule 33, and the answer and reply as to it, shall be governed by these rules. Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition or counterclaim, it shall not be delayed thereby. [Report 1943]

*See also rules 186 and 221.*

See also ch 619

**75. Interventions.** Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or de-

fendant or claiming adversely to both. [Report 1943]

See also ch 619

**76. Manner.** Every intervenor shall file a petition, and a separate copy for each party against whom he asserts a right. The clerk shall transmit such copy to the attorney for the adversary party, who shall, without further notice, move or plead thereto within seven days from the date of filing unless the court fixes a shorter time and notice thereof is given. [Report 1943]

See also ch 619

**77. Disposition.** The intervenor shall have no right to delay, and shall pay the costs of the intervention unless he prevails. [Report 1943]

See also ch 619

**78. Caption and signature.** Each appearance, notice, motion, or pleading shall be captioned with the title of the case, naming the court, parties, and instrument, and shall bear the signature and address of the party or attorney filing it. After the petition, the caption need name only the first of several coparties. [Report 1943]

See also ch 619

**79. Numbered divisions and paragraphs.** Each separate cause of action or defense must be stated in a separately numbered division. Every pleading shall be separated into numbered paragraphs, each of which shall contain, as nearly as may be, a distinct statement. [Report 1943]

See also ch 619

**80. Verification abolished — affidavits.**

(a) Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion or pleading shall be deemed his certificate that there are good grounds for making the claims therein, and that it is not interposed for delay.

(b) Any motion asserting facts as the basis of the order it seeks, and any pleading seeking interlocutory relief, shall contain affidavit of the person or persons knowing the facts requisite to such relief. A similar affidavit shall be appended to all petitions which special statutes require to be verified. [Report 1943; amendment 1945]

Referred to in R.C.P. 253  
See also R.C.P. 88  
See also ch 619

**81. Correcting or recasting pleadings.** On its own motion or that of any party, the court may order any prolix, confused or multiple pleading, to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose. [Report 1943]

See also ch 619

**82. Filing, copies, delivery.** All motions and pleadings, with copy, shall be filed with the clerk, except that no copy of the petition need be filed if a copy was attached to the original notice served upon each defendant. Sufficient additional copies of all motions and pleadings shall be filed to afford a copy for each adverse party appearing, but if more than one such party appear by the same counsel, only one copy need be filed for such parties. It shall be the duty of the pleader to file the required copies with the original if he then knows of the appearances; otherwise, immediately upon receipt of notice thereof to be given by the clerk. The copies shall be mailed or delivered forthwith by the clerk to the attorney of record for the adverse party or parties, if appearance is by attorney; otherwise to the parties. [Report 1943]

Referred to in R.C.P. 123, 126, 127, and 238  
See also ch 619

**83. Failure to file copies.** The court may strike from the files, any pleading of which copies are not filed as above required. [Report 1943]

See also ch 619

**84. Copy fees.** A fee of ten cents per hundred words for each copy shall be taxed with the costs, to be the property of the attorney filing the copy. [Report 1943]

See also ch 619

**85. Time to move or plead.**

(a) *Motions.* Motions attacking a petition must be filed within seven days after the appearance date, unless some other motion allowed before answer is already on file; and then within seven days after such other motion is disposed of. All motions attacking subsequent pleadings must be filed within seven days after such pleading is filed.

(b) *Pleading.* Answer to a petition must be filed within seven days after the appearance date, unless a motion is then on file, in which event answer must be filed within seven days after such motion is so disposed of as to require answer.

(c) *Reply.* Reply must be filed, if at all, within seven days after the answer to which it responds, unless a motion attacking such answer is then on file, in which event, reply must be filed within seven days after such motion is so disposed of as to permit a reply.

(d) *Answer or reply to amendments.* Answer or reply to any amendment, or any substituted or supplemental pleading, must be filed within seven days, unless a motion attacking it is then on file, and then within seven days from the time the motion is so disposed of as to require or permit answer or reply. If the petition be amended before time for answering it, this rule shall not require answer to the amendment to be made prior to the time for answering the original petition.

(e) *Shortening time.* The court may order any motion or pleading to be filed within a shorter time than above, but cannot require

a defendant to answer sooner than seven days after the appearance date.

(f) *Extending time.* For good cause, but not ex parte, the court may extend the time to answer or reply for not more than thirty days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court prescribes, the court may grant a party the right to file a motion, answer or reply where the time to file same has expired.

(g) *Petition for removal to federal court.* The filing of a petition for removal to the federal court, accompanied by the bond required by the Removal Act, shall suspend the time for filing any motions or pleadings until an order of the federal court is filed in the state court, remanding the cause, or until it is made to appear the removal has not been perfected, whereupon the times hereinabove fixed for motions or pleadings shall begin anew. [Report 1943; amendment 1945]

*See rule 86 as to when time for replender begins to run.*

Referred to in R.C.P. 53  
See also ch 619

**86. Pleading over—election to stand.** If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Presence of counsel when the court announces such ruling or order shall be the equivalent of such mailing or delivery. Unless otherwise provided by order or ruling, such party shall file such further pleading within seven days after such mailing or delivery; and if such party fails to do so within such time, he thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election. [Report 1943; amendment 1945]

Referred to in R.C.P. 230, 331, 332  
See also ch 619

**87. Appearance alone.** An appearance without motion or pleading shall have the effect only of submitting to the jurisdiction. The court shall have no power to treat such appearance as sufficient to delay or prevent a default or any other order which would be made in absence thereof, or of timely pleading. [Report 1943]

*For time of pleading, see rules 85(a), 85(b);*

*For defaults, see rules 230; for appearances, see rules 65 and 66.*

Referred to in R.C.P. 230  
See also ch 619

**88. Amendments.** Any pleading may be amended before a pleading has been filed responding to it. The court, in furtherance of justice, may allow later amendments, including those to conform to the proof and which do not substantially change the claim or defense. The court may impose terms, or grant

a continuance with or without terms, as a condition of such allowance. [Report 1943]

See also ch 619

**89. Making and construing amendments.** All amendments must be on a separate paper, duly filed, without interlining or expunging prior pleadings. They will be construed as part of the original pleading which remains in effect, unless they are a complete substitute therefor. [Report 1943]

See also ch 619

**90. Supplemental pleading.** A party may file a supplemental pleading alleging facts material to the case which have happened subsequent to the commencement of the action, or come to his knowledge since his prior pleading. This shall not be a waiver of the former pleading. [Report 1943]

See also ch 619

**91. Contract.** Every pleading referring to a contract must state whether it is written or oral. If the contract is the basis of the action or defense, it must be set forth in full. [Report 1943]

See also ch 619

**92. Allegation of time or place.** When time is not material, it need not be averred, and if averred, need not be proved. When it is material, the date or duration of a continuous act, must be alleged. The place need be alleged only when it is part of the substance of the issue. [Report 1943]

See also ch 619

**93. Exception.** A claim in derogation of general law, or founded on any kind of exception, shall be so pleaded as to set forth such claim or exception. [Report 1943]

See also ch 619

**94. Judicial notice — statutes.** Matters of which judicial notice is taken need not be stated in any pleading. But a pleading asserting any statute, or a right derived therefrom, shall refer to such statute by plain designation. The court shall judicially notice the statutes of any state, territory or other jurisdiction of the United States so referred to. [Report 1943]

See also ch 619

**95. Unliquidated damages.** No order shall require any pleading to itemize or apportion unliquidated damages claimed therein, nor to attribute any part thereof to any portion of the claim asserted. [Report 1943]

See also ch 619

**96. Malice.** A party intending to prove malice to affect damages, must aver the same. [Report 1943]

See also ch 619

**97. Negligence — mitigation.** In an action by an employee against an employer, or by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove his freedom from contributory negli-

gence, but defendant may plead and prove contributory negligence in mitigation of damages. [Report 1943]

See also ch 619

**98. Permissible conclusions—denials thereof.** Partnership, corporate or representative capacity; or corporate authority to sue or do business in Iowa; or performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction, may be pleaded as legal conclusions, without averring the facts comprising them. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated. [Report 1943]

See also ch 619

**99. Account—bill of particulars—denial.** A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account, must specify the items denied, and any items not thus specified shall be deemed admitted. [Report 1943]

*For affidavit required for default, see rule 232(a).*

See also ch 619

**100. Denying signature.**

(a) *By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party shall not only deny it, but support his denial by his own affidavit that it is not his genuine or authorized signature. He may, on application made during his time to plead, procure an inspection of the original writing.

(b) *By nonparty.* If a pleading copies a non-negotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine, unless a party denies it, and supports his denial by affidavit, which denial, may be for lack of information. [Report 1943]

See also ch 619

**101. Defenses to be specially pleaded.** Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded. [Report 1943]

See also ch 619

**102. What admitted.** Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except (1) allegations of value or amount of damage, (2) allegations of a reply, and (3) facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law. [Report 1943; amendment 1955]

See also ch 619

**103. All defenses in answer.** Every defense in bar or abatement, or to the jurisdiction after a general appearance, shall be made in the answer or reply, save as allowed by rule 104. No such defense shall overrule any other. But a party who presents and tries a defense in abatement alone, shall not thereafter be allowed to plead in bar. [Report 1943]

*See rules 72, 73, and 104.*

See also ch 619

**104. Exceptions.** Every defense in law or fact to any pleading must be asserted in the pleading responsive thereto, if one is required, or if none is required, then at the trial, except that:

(a) Want of jurisdiction of the person, or insufficiency of the original notice, or its service must be raised by special appearance before any other appearance, motion or pleading is filed; and want of jurisdiction of the subject matter may be so raised;

*See also rule 66.*

(b) Failure to state a claim on which any relief can be granted, may be raised by motion to dismiss such claim, filed before answer.

(c) Sufficiency of any defense may be raised by motion to strike it, filed before pleading to it.

(d) Such motions must specify wherein the pleading they attack is claimed to be insufficient. [Report 1943]

*Referred to in R.C.P. 103*  
See also ch 619

**105. Separate adjudication of law points.** The court may in its discretion, and must on application of either party, made after issues joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal. [Report 1943]

*See also last sentence of rule 176.*

See also ch 619

**106. Variance—failure of proof.** No variance between pleading and proof shall be deemed material unless it is shown to have misled the opposite party to his prejudice in maintaining his cause of action or defense. But where an allegation or defense is unproved in its general meaning, this shall not be held a mere variance but a failure of proof. [Report 1943]

See also ch 619

**107. Special action—proper remedy awarded.** In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show him entitled to another remedy, the court shall permit him on such terms, if any, as it may prescribe, to amend

by asking for such latter remedy, which may be awarded. [Report 1943]

See also ch 619

**108. Lost pleading—substitution.** If an original pleading is lost or withheld, the court may order a copy substituted, or a substituted pleading filed. [Report 1943]

See also ch 618

**109. Motion defined.** A motion is an application made by any party or interested person for an order. It may contain several objects which grow out of, or are connected with, the action. It is not a "pleading". [Report 1943]

See also ch 620

**110. Failure to move—effect of overruling motion.** No pleading shall be held sufficient for failure to move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further; and the moving party may always question the sufficiency of the pleading during subsequent proceedings. [Report 1943]

See also R.C.P. 87

See also ch 619

**111. Motions combined.** Motions to strike, for a more specific statement, and to dismiss, shall be contained in a single motion and only one such motion assailing the same pleading shall be permitted, unless the pleading is amended thereafter. [Report 1943]

See also ch 619

**112. Motion for more specific statement.** A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable him to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired. [Report 1943]

See also ch 619

**113. Striking improper matter.** Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party. [Report 1943]

See also ch 619

**114. Notice of motion unnecessary.** A party who has been served with original notice or has appeared, shall take notice of all motions filed in the action which are adverse to him, and of the regular motion day on which they will be heard. [Report 1943]

*For motion days and submission and determination of motions, see rule 117.*

See also ch 620

**115. Discretionary notice.** The court may require counsel to be apprised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day or pursuant to general assignment. This rule shall be applied to expedite, not to delay, hearings and submissions. [Report 1943]

See also ch 620

**116. Proof of facts in motions.** Evidence to sustain or resist a motion may be by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination. [Report 1943]

Referred to in R.C.P. 167 and 245

See also ch 620

**117. Motion days—disposition of motions.**

(a) At least once each month, beginning on a day specified in advance by the judges of the judicial district, a motion day shall be held in each county. Unless the parties or their counsel file a written stipulation to the contrary, all motions made prior to trial on issues of fact, on file for twenty days or more, must then be submitted. Such motions not orally argued for any reason shall be deemed submitted without argument, unless they are then, or have previously been, set down for argument at some time, any place in the judicial district, not more than ten days thereafter, when they must be submitted without further postponement.

(b) The court may order any motion submitted sooner than herein required, so as not to delay completing the issues or trial of the case.

(c) The trial court shall rule on all motions within thirty days after their submission, unless it extends the time for reasons stated of record.

(d) A "motion" within this rule is any paper denominated as such, or any other matter requiring attention or order of court before the trial of the issues on their merits. [Report 1943; amendment 1945]

Referred to in R.C.P. 238

See also ch 619

**118. Specific rulings required.** A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally. [Report 1943]

See also ch 619

**119. Order defined.** Every direction of the court, made in writing and not included in the judgment or decree, is an order. [Report 1943]

See also ch 620

**120. When and how entered.** A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk, regardless of where signed. The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of his attorneys. [Report 1943]

*For entry of record see rule 226.*

*For clerk's notice to counsel, see rule 86.*

Referred to in R.C.P. 232

See also ch 620

## DIVISION V

### DISCOVERY AND INSPECTION

**121. Interrogatories—time—nature.** In actions other than actions in justice court or class

"B" actions in municipal court a party may, after the general appearance of an adversary or before such appearance with leave of court, file in duplicate not over thirty numbered interrogatories to be answered by such adversary. Interrogatories may relate to any matters which can be inquired into under rule 143 and the answers may be used to the same extent as provided in rules 144 and 145 for the use of the deposition of a party. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
See also ch 619

**122. More than thirty.** Upon application to the court and showing good cause therefor the court may permit filing more than thirty interrogatories and may then specify the number which may be filed, and the time for filing and answering them. [Report 1943]

See also ch 619

**123. Objections—time to answer.** The clerk shall deliver the copy of the interrogatories as provided in rule 82. The party to whom the interrogatories are directed shall file either answers thereto or objections to their propriety within seven days after they are filed, unless the court for good cause, but not ex parte, shall enlarge the time. If objections are filed to any of the interrogatories, the time for answering all the interrogatories shall be suspended until the objections are ruled on. At the hearing upon the objections, if it is determined that any of the interrogatories shall be answered, the court shall fix the time within which the answers shall be made. This rule shall not limit the right to object to the answers if offered in evidence. [Report 1943]

See also ch 619

**124. Answers.**

(a) Duplicate sworn answers shall be filed, separately answering each interrogatory responsively, and as fully as may be.

(b) Answers for a party not a natural person shall be made by any officer, partner or managing agent, who shall furnish such information as is available to the party. [Report 1943; amendment 1957]

See also ch 619

**125. Protective orders.**

(a) The restrictions of rule 141(a) and (d) are applicable for the protection of the parties from whom answers to interrogatories are sought under these rules.

(b) Interrogatories may be filed after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. [Report 1943; amendment 1957]

See also ch 619

**126. Delivery of answers.** Copies of the answers shall be delivered as provided in rule 82. [Report 1943; amendment 1957]

See also ch 619

**127. Admission of facts and of genuineness of documents.** After the general appearance of an adverse party, any party may file in duplicate a written request for the admission by any other party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the documents shall be filed with the request unless copies have already been furnished. Within ten days after the filing thereof, or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed shall file in duplicate either (a) a sworn statement specifically admitting or denying the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (b) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections are filed to any of the requests, the time for answering all the requests shall be suspended until the objections are ruled on. At the hearing upon the objections, if it is determined that any of the requests shall be answered, the court shall fix the time within which answers shall be made. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. If the adverse party is an individual, he need only furnish information which is within his personal knowledge. If the adverse party is a public or private corporation or a partnership or association, the sworn statement shall be by an officer, partner or managing agent thereof on the basis of such information as is available to the party. The clerk shall deliver all copies filed hereunder as provided in rule 82. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
See also ch 619

**128. Effect of admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
See also ch 619

**129. Production of books or documents.**

(a) After issue is joined in any action, any party may file an application for the production or inspection of any books or papers, not privileged, which are in the control of any other party, which are material to a just determination of the cause, for the purpose of having them inspected or copied or photostated. The application shall state with reasonable particularity the papers or books which

are called for, and state wherein they are material to a just determination of the cause, and state that they are under the control of the party from whom production is requested. The movant need not use such documents as evidence at the trial.

(b) The court shall fix the time and place for hearing on the application, and prescribe the manner and form of giving notice to the party from whom production is asked, or to his attorney of record. [Report 1943]

Referred to in R.C.P. 131, 132, and 134  
Similar provisions, §491.64  
See also ch 619

**130. Order.** The court may order the production or inspection of such books and documents as, in its discretion, it deems material to a just determination of the cause, and on any terms or conditions it deems suitable to protect the documents, their owner, or any other person. [Report 1943]

Referred to in R.C.P. 134  
See also ch 619

**131. Inspection of property.** On motion and hearing, as in rule 129, a party may be ordered to permit his adversary to inspect, view, measure, survey or photograph any personalty or real estate or object or operation thereon, which is relevant to any issue. The order shall specify the time, manner, place and any terms upon which this shall be done. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
See also ch 619

**132. Physical or mental examination.** The court may, in its discretion, proceeding as in rule 129, order a physician to examine as to any physical or mental condition of a party which is in controversy in the action. The order shall specify the scope, time, place and manner of the examination and name the examiner. The party examined may have any representative present throughout any such examination. [Report 1943; amendment 1957]

Referred to in R.C.P. 134  
See also ch 619

**133. Physical or mental examination—copy of reports—privilege.**

(a) The party thus examined shall be furnished on his request, with a copy of the examiner's findings and conclusions, stated in detail. He shall thereafter, deliver to the examining party a like report of the prior or subsequent findings of any other physician who examines him on the same subject.

(b) If the party examined thus requests and obtains the examiner's report, or takes the examiner's deposition, he waives any privilege in that action or any other involving the same controversy, regarding the testimony of any physician or other person as to the condition for which the examination was ordered.

(c) If either above request is not complied with, the court, on motion may order compli-

ance, or may exclude the testimony of any physician whose report is not thus furnished. [Report 1943]

Referred to in R.C.P. 134, 141  
See also ch 619

**134. Refusal to make discovery — consequences.**

(a) *Refusal to answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending or to a court of record in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under rule 150 or upon the refusal of a party to answer any interrogatory submitted under rule 121, the proponent of the question may on like notice make like application for such an order. If the motion is granted, and if the court finds that the refusal was without substantial justification, the court shall require the refusing party or deponent or the party advising the refusal, or any of them, to pay the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney fees. If the motion is denied, and if the court finds that the motion was made without substantial justification, the court shall require the examining party advising the motion to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney fees.

(b) *Failure to comply with order.*

(1) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be considered a contempt of that court.

(2) *Other consequences.* If any party or an officer, partner or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under rules 129, 130 and 131, to produce any document or other thing for inspection, copying or photographing, or to permit it to be done, or to permit entry upon land or other property, or an order made under rules 132 and 133 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts, shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;



An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under rules 127 and 128 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney fees. No expenses as aforesaid shall be allowed unless the court finds that the admissions sought were of substantial importance and the denial was not made in good faith.

(d) *Failure of party to attend or file answers.* If a party or an officer, partner or managing agent of a party willfully fails to appear before the officer who is to take his deposition or submit to the taking thereof after being served with a proper notice, or willfully fails to continue the taking of his deposition after the commencement thereof, or fails to file answers to interrogatories submitted under rule 121, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against such party. [Report 1943; amendment 1957]

See also ch 619

## DIVISION VI

### PRETRIAL PROCEDURE

**135. Pretrial calendar.** The court may provide for a pretrial calendar in any county, which may extend to all actions, or be limited either to jury or nonjury actions. [Report 1943]

See also ch 621

**136. Pretrial conference.** After issues are joined, the court may in its discretion, and shall on request of any attorney in the case, direct all attorneys in the action to appear before it for a conference to consider:

(a) The necessity or desirability of amending the pleadings;

(b) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;

(c) Limiting the number of expert witnesses;

(d) Settling any facts of which the court is to be asked to take judicial notice;

(e) Any other matter which may aid, expedite or simplify trial of any issue. [Report 1943]

See also ch 621

**137. Pretrial conference—record.** On the request of any interested counsel or the court, the reporter must record the entire conference, or any designated part thereof. [Report 1943]

See also ch 621

**138. Orders.** The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. [Report 1943; amendment 1957]

See also ch 621

**139. Restriction on orders.** The court shall not, under any pretrial procedure or other rules, require a party to list or name the witnesses he expects to call to testify at the trial. [Report 1943; amendment 1957]

See also ch 621

## DIVISION VII

### DEPOSITIONS AND PERPETUATION OF TESTIMONY

See also chapter 622 of the Code

#### (A) Depositions

**140. Depositions generally — stipulation.** Depositions shall be governed wholly by these rules, but may be differently taken in any respect if that be in accord with the written stipulation of the parties. Subject to the restrictions in rule 141, a party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action, or for both purposes. [Report 1943; amendment 1957]

See also ch 622

#### 141. Restrictions.

(a) The deponent shall not be required and the court shall not order a deponent or party to produce or submit for inspection any writing obtained or prepared by the adverse party, his attorney, surety, indemnitor or agent, in anticipation of litigation or preparation for trial unless satisfied that the denial of production or inspection will result in an injustice or undue hardship; nor shall the deponent be required or the court order a deponent or party to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions or legal theories, or, except as provided in rule 133, the conclusions of an expert. The deponent shall not be examined on nor shall the court order the production or inspection of any liability insurance policy or indemnity agreement unless such liability insurance policy or indemnity agreement would be admissible in evidence at the trial of the action.

(b) Depositions before answers are all filed, or of a person in prison, may be taken only by leave of court, on such terms as the court prescribes.

(c) Except where the action involves an interest in real estate, depositions for discovery may not be taken where the amount in controversy as shown by the pleadings is less than one thousand dollars, unless leave of court is first obtained, on notice and a showing of just cause therefor, upon such terms as justice may require.

(d) After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court, or the court may make any other order which justice requires to protect the party or witness from annoyance, expense, embarrassment or oppression.

(e) At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or a court of record in the district where the deposition is being taken, may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (d). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order, the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable. [Report 1943; amendment 1957]

Referred to in R.C.P. 125, 140, 143, 147  
See also ch 622

**142. Defaults—notice.** If a party requires proof to obtain a judgment upon a default, he may take depositions, after serving notice on the attorney of record for the defaulted party,

or, if none, on the clerk. Parties in default need not be given notice as to depositions taken under any other rule. [Report 1943]

See also ch 622

**143. Scope of examination.** Subject to the provisions of rule 141, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of the relevant facts; provided that a party shall not be required to list the witnesses he expects to call at the trial. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. [Report 1943; amendment 1957]

Referred to in R.C.P. 121  
See also ch 622

**144. Use of depositions.** Any part of a deposition, so far as admissible under the rules of evidence, may be used upon the trial or at an interlocutory hearing or upon the hearing of a motion in the same action against any party who appeared when it was taken, or stipulated therefor, or had due notice thereof, either:

(a) To impeach or contradict deponent's testimony as a witness; or

(b) For any purpose if, when it was taken, deponent was a party adverse to the offeror, or was an officer, partner or managing agent of any adverse party which is not a natural person; or

(c) For any purpose, if the court finds that the offeror was unable to procure deponent's presence at the trial by subpoena; or that deponent is out of the state or more than one hundred miles distant from the trial, and such absence was not procured by the offeror; or that deponent is dead, or unable to testify because of age, illness, infirmity or imprisonment.

(d) On application and notice, the court may also permit a deposition to be used for any purpose, under exceptional circumstances making it desirable in the interests of justice; having due regard for the importance of witnesses testifying in open court. [Report 1943; amendment 1957]

Referred to in R.C.P. 121, 145  
See also ch 622

**145. Effect of taking or using.**

(a) If a party offers only part of a deposition, his adversary may require him to offer all of it relevant to the portion offered; and any other party may offer other relevant parts.

(b) A party does not make deponent his own witness by taking his deposition or using it solely under rules 144(a), or 144(b). A party

introducing a deposition for any other purpose makes the deponent his witness, but may contradict his testimony by relevant evidence. [Report 1943]

Referred to in R.C.P. 121  
See also ch 622

**146. Substituted parties—successive actions.** Substitution of parties does not prevent use of depositions previously taken and filed in the action. If an action is dismissed, depositions legally taken therein may be used in any subsequent action involving the same subject matter, between the same parties, their representatives or successors in interest. [Report 1943]

See also ch 622

**147. Oral examination—notice.**

(a) Oral depositions may be taken only in this state, or outside it at a place within one hundred miles from the nearest Iowa point. But, on hearing, on notice, of a motion of a party desiring it, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained on written interrogatories.

(b) The party taking an oral deposition must first serve reasonable notice on all other parties not in default for want of appearance, stating the time and place thereof and the name and address of the deponent, or if that is unknown, a description identifying him or the class or group to which he belongs. The court, on motion of any party so served, may for good cause enlarge or shorten the time.

(c) No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or his attorney of record of notice of the taking of the deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in (b) hereof, is sufficient to require the appearance of a deponent for the deposition.

(d) If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court, as provided in rule 141 (d). [Report 1943; amendment 1957]

*For manner of serving notice see rule 156.  
On objecting to notice see rule 158(a).*

Referred to in R.C.P. 155 and 156  
See also ch 622

**148. Conduct of oral examination.**

(a) Deponent shall first be sworn by the officer before whom his deposition is taken. His testimony must be taken stenographically by such officer or a person acting in his presence under his direction and transcribed. The completed deposition must include all objections interposed, including those to the manner of taking it, to the officer's qualification, to any conduct or to any testimony. Evidence objected to shall be taken subject to

the objection. Any adverse party may orally cross-examine the deponent; or if he does not participate orally, he may transmit to the officer written interrogatories, which the officer shall put to deponent, whose answers shall be recorded verbatim.

(b) At any time after notice has been given of the taking of a deposition, the court, on its motion or on the motion of any party upon cause shown, may order the deposition to be taken before the court or before a master appointed by the court to preside over the taking of the deposition and rule on any matters which may arise in connection with the taking thereof. The appointment of a master shall be made only upon a showing that some exceptional condition requires such appointment. The master shall exercise the powers permitted by rules 209 and 210 and his rulings or orders shall be subject to review by the court upon notice and hearing. The reasonable fees and expenses of the master shall be allowed as provided in rule 208 and be taxed as costs in the action. [Report 1943; amendment 1957]

*For questions which witness need not answer see rule 143.*

*For stipulating to modify any of the foregoing, see rule 140.*

Referred to in R.C.P. 151, 156, and 164  
See also ch 622

**149. Reading and signing.**

(a) No oral deposition reported and transcribed by an official reporter of the state of Iowa need be submitted to or read or signed by the deponent.

(b) In other cases, the completed deposition shall be submitted to deponent and read by or to him, and the officer shall note thereon any changes deponent may direct, and his reasons for such direction. Deponent shall then sign the deposition, unless he is ill or cannot be found. If he refuses to sign, the officer shall record such refusal and the reasons given therefor, and himself sign it. A deposition not signed by deponent may, nevertheless, be used at the trial unless the court holds, on motion to suppress under rule 158(f), that deponent refused to sign it for reasons which require its rejection. [Report 1943]

*For waiving signature, reading, etc., see rule 140.*

Referred to in R.C.P. 151, 156, and 164  
See also ch 622

**150. On written interrogatories.**

(a) A party may take depositions on written interrogatories after first serving all other parties not in default for want of appearance with copies thereof and with a notice stating the name, or title, and address of the officer to take them, and the name and address of the deponents.

(b) The adversary parties may thereafter, serve successive interrogatories on each other, but only as follows: Cross-interrogatories within ten days after the notice; redirect inter-

rogatories within five days after the latter service; and recross interrogatories within three days thereafter. On application of any party, the court may, for good cause shown, shorten or enlarge the time for serving any such succeeding interrogatories.

(c) Within the time required for cross-interrogatories, the adverse party may elect instead, to appear and orally cross-examine, by serving notice thereof on the party taking the deposition. The latter shall then within five days serve the former with notice of the date, hour and place where the deposition will be taken, which shall allow a reasonable time to enable the adverse party to attend; and may also waive his original written interrogatories and examine the deponent orally. [Report 1943]

*For manner of service see rule 156.*

Referred to in R.C.P. 134, 155, 156, 158, and 164  
See also ch 622

**151. Answers to interrogatories.** The party taking a deposition on written interrogatories shall promptly transmit a copy of the notice and all interrogatories to the officer designated in the notice. The officer shall promptly take deponent's answers thereto and complete the deposition, all as provided in rules 148 and 149, except that answers need not be taken stenographically. [Report 1943]

Referred to in R.C.P. 156 and 164  
See also ch 622

**152. Certification and return—copies.**

(a) The officer taking any deposition shall certify thereon that the witness was duly sworn, and that the deposition is a true record of the testimony given and of all objections interposed. He shall seal it securely in an envelope indorsed with the title of the action and "Deposition of (name of witness)", and promptly file it with the clerk or send it to him by registered mail.

(b) The clerk shall immediately give notice of the filing of all depositions to all parties who have appeared in the action.

(c) On payment of his reasonable charges therefor, the officer shall furnish any party or the deponent with a copy of the deposition. [Report 1943]

Referred to in R.C.P. 156 and 164  
See also ch 622

**153. Before whom taken.**

(a) No deposition shall be taken before any party, or any person financially interested in the action, or an attorney or employee of any party, or any person related by consanguinity or affinity within the fourth degree to any party, his attorney, or an employee of either of them.

(b) Depositions within the United States or a territory or insular possession thereof may be taken before any person authorized to administer oaths, by the laws of the United States or of the place where the examination is held.

(c) Depositions in a foreign land may be taken before a secretary of embassy or legation, or a consul, vice-consul, consul-general or consular agent of the United States, or under rule 154.

(d) When the witness is in the military or naval service of the United States, his deposition may be taken before any commissioned officer under whose command he is serving, or any commissioned officer in the judge advocate general's department. [Report 1943; amendment 1945]

Referred to in R.C.P. 156 and 164  
Depositions ordered by magistrate, §761.8  
See also ch 622

**154. Letters rogatory.** A commission or letters rogatory to take depositions in a foreign land shall be issued only when convenient or necessary, on application and notice, and on such terms and with such directions as are just and appropriate. They shall specify the officer to take the deposition, by name or descriptive title, and may be addressed: "To the Appropriate Judicial Authority of (country)". [Report 1943]

Referred to in R.C.P. 153 and 156  
See also ch 622

**155. Subpoena.**

(a) On application of any party, or proof of service of a notice to take depositions under rule 147 or rule 150, the clerk of court where the action is pending shall issue subpoenas for persons named or described in said notice or application. Subpoenas may also be issued as provided in section 622.84 of the Code of Iowa. No subpoena shall call for production of documents unless the court on notice and hearing so orders.

(b) No resident of Iowa shall be thus subpoenaed to attend out of the county where he resides, or is employed, or transacts his business in person. [Report 1943; amendment 1957]

Referred to in R.C.P. 156  
See also ch 622

**156. Notice—service.** Notices or interrogatories under rules 147 to 160 inclusive may be served upon the party, or any attorney of record for him, either by personal delivery or by ordinary United States mail addressed to his address of record. [Report 1943]

See also ch 622

**157. Costs.**

(a) *Generally.* Costs of taking and proceeding to procure a deposition shall be advanced by the party taking it, and he cannot use it in evidence until such costs are paid. The costs shall be noted in the return or certificate, and taxed by the clerk. The judgment shall award against the losing party only such portion of these costs as were necessarily incurred for testimony offered and admitted upon the trial.

(b) *Failure to attend.* The court may order the party taking a deposition to pay the adverse party his costs and expenses, including

reasonable attorney fees, for attending at the specified time and place for oral cross-examination (being entitled thereto), if the deposition is not then taken for absence of the party, or of the witness due to the party's failure to subpoena him. [Report 1943]

Referred to in R.C.P. 156  
See also ch 622

#### 158. Irregularities—objections.

(a) *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the party giving the notice.

(b) *Officer.* Objection to the officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

(c) *Interrogatories.* All objections to the form of any written interrogatory served under rule 150 are waived unless the objector serves them on the interrogating party in the time allowed him for serving succeeding interrogatories and, as to the last interrogatories authorized, within three days after the service thereof.

(d) *Taking deposition.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer; and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to when it is taken.

(e) *Testimony.* Except as above provided, testimony taken by deposition may be objected to at the trial on any ground which would require its exclusion if given by a witness in open court, and objections to testimony, or competency of a witness, need not be made prior to or during the deposition, unless the grounds thereof could then have been obviated or removed.

(f) *Motion to suppress.* All objections to the manner of transcribing the testimony, or to preparing, signing, certifying, sealing, indorsing, transmitting, filing the deposition, or the officer's dealing with it, are waived unless made by motion to suppress it, or the part complained of, filed with reasonable promptness after the objector knows of, or could with reasonable diligence discover, the defect. No such motion shall be sustained unless the defect is substantial and materially affects the right of some party. [Report 1943]

Referred to in R.C.P. 149, 156, and 164  
See also ch 622

#### (B) Perpetuating testimony

159. *Common law preserved.* The following rules do not limit the court's common law powers to entertain actions to perpetuate testimony. [Report 1943]

Referred to in R.C.P. 156  
See also ch 622

160. *Before action—application.* An application to take depositions to perpetuate testi-

mony for use in an action not yet pending, shall be entitled in the name of the applicant, be supported by affidavit, and show:

(a) That he expects to be a party to an action cognizable in some court of record of Iowa, which he is then unable to bring or cause to be brought;

(b) The subject matter of such action, and his interest therein;

(c) The facts to be shown by the proposed testimony, and his reasons for desiring to perpetuate it;

(d) The name or description of each expected adverse party, with address if known;

(e) The name and address of each deponent and the substance of his testimony. It shall be filed in the court where the prospective action might be brought. [Report 1943]

Referred to in R.C.P. 156  
See also ch 622

161. *Notice.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing, the notice shall be served as provided for the service of original notices other than by publication; but if such service cannot with due diligence be so made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, or the court upon a showing of extraordinary circumstances may prescribe a hearing upon less than twenty days' notice. [Report 1943]

See also ch 622

162. *Guardian ad litem.* Before hearing the application, the court shall appoint some attorney to act as guardian ad litem for any party under legal disability or not personally served with notice, who shall cross-examine for his ward if any deposition is ordered, and unless an attorney has been so appointed the deposition shall not be admissible against such party in any subsequent action. [Report 1943]

See also ch 622

163. *When ordered—who not examined.* If satisfied that the petition is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that applicant is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated, designating the deponents, the subject matter of their examination, when, where and before whom their deposition shall be taken, and whether orally or on written interrogatories. [Report 1943]

Referred to in R.C.P. 166  
See also ch 622

164. *Taking and filing testimony.* Depositions shall be taken as directed in said order; and shall be otherwise governed by rules 148 to

153 and 158. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the application was filed shall be deemed to refer to the court in which the petition for such deposition was filed. Unless the court enlarges the time, all such depositions must be filed therein within thirty days after the date fixed for taking them, and if not so filed cannot be later received in evidence. [Report 1943]

Referred to in R.C.P. 166  
See also ch 622

**165. Use—limitation.** Any party to any later action involving any expected adverse party who was named in the application, and served with notice as hereinbefore required, or involving his privies or successors in interest, may use such deposition, or a certified copy thereof, if the deponent is dead or insane or his attendance cannot be obtained. [Report 1943]

See also ch 622

**166. Perpetuating testimony pending appeal.** During the time allowed for taking an appeal from judgment of a court of record or during the pendency of such appeal, that court may, on motion, allow testimony to be perpetuated for use in the event of further proceedings before it. The motion shall state the name and address of each proposed deponent, the substance of his expected testimony, and the reason for perpetuating it. If the court finds such perpetuation is proper to avoid a failure or delay of justice, and the depositions are not sought for discovery, it may order them taken as in rules 163 and 164. When taken and filed as thus provided, they shall be used and treated as though they had been taken pending the trial of the action. [Report 1943]

See also ch 622

**DIVISION VIII**

**CHANGE OF VENUE**

See also chapter 623 of the Code

**167. Grounds for change.** On motion, the place of trial may be changed as follows:

(a) *County.* If the county where the case would be tried is a party and the motion is by an adverse party, the issue being triable by a jury, and a jury having been demanded;

(b) *Interest of judge.* Where the trial judge is directly interested in the action, or related by consanguinity or affinity within the fourth degree to any party so interested;

(c) *Prejudice or influence.* If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being his agent, servant, employee or attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to rule 116;

(d) *Agreement.* Pursuant to written agreement of the parties;

(e) *Fraud in contract.* A defendant, sued in a county where he does not reside, on a written contract expressly performable in such county, who has filed a sworn answer claiming fraud in the inception of said contract as a complete defense thereto, may have the case transferred to the county of his residence. Within ten days after the transfer is ordered, he must file a bond in an amount fixed by the court, with sureties approved by the clerk, for payment of all costs; and any judgment rendered against him shall include in such costs a reasonable amount fixed by the court for expenses incurred by plaintiff and his attorney by reason of the change. [Report 1943]

Referred to in R.C.P. 168, 169, 171, and 172  
Change when action in wrong county, R.C.P. 175  
See also ch 623

**168. Limitations.** Change of venue shall not be allowed:

(a) In an appeal from a justice of the peace; or

(b) Under rule 167(c) where the issues are triable to the court alone, except for prejudice of the judge; or

(c) Until the issues are made up, unless the objection is to the judge; or

(d) After a continuance, except for a cause arising since such continuance or not known to movant prior thereto; or

(e) After one change, for any cause then existing, and known or ascertainable with reasonable diligence.

In no event shall more than two changes be allowed to any party. [Report 1943]

Referred to in R.C.P. 169  
See also ch 623

**169. Subsequent change.** Where the case is tried after a change of place of trial, and the jury disagrees or a new trial is granted, the court may in its discretion allow a subsequent change, under rule 167 (a), (b), (c) or (d); subject to rule 168. [Report 1943]

See also ch 623

**170. Of whole case.** A change may be granted on motion of one of several coparties; and the whole cause shall then be transferred, unless separate trials are granted under rule 186. [Report 1943]

See also ch 623

**171. Where tried.** Unless the change is under rule 167(e), the court granting it shall order the trial held in a convenient county in the judicial district, or if the ground applies to all such counties, then of another judicial district. If the ground applies only to a judge, the court in its discretion may refuse a change and procure another judge to try the case where it was brought, or the supreme court may designate such other judge. [Report 1943]

See also ch 623

**172. Costs.** Unless the change is under rule 167(d) or 167(e), the order shall designate

generally all costs occasioned by the change, which movant must pay before the change is perfected. Failure to make such payment within ten days from the order waives the change of venue. [Report 1943]

See also ch 623

**173. Transferring cause.** When a change is ordered and the required costs paid, the clerk shall forthwith transmit to the proper court his transcript of the proceedings, with any original papers, of which he shall retain an authenticated copy. The case shall be docketed in the second court without fee and shall proceed. [Report 1943]

See also ch 623

**174. Jury fees.** If the trial after change consumes more than one calendar day, the court shall certify the number of days consumed; and the county where the action was brought shall pay the county where it was tried a sum equal to three dollars per day for each juror who tried the case. [Report 1943]

See also ch 623

**175. Action brought in wrong county.**

(a) An action brought in the wrong county may be prosecuted there until termination, unless a defendant, before answer, moves for its change to the proper county. Thereupon the court shall order the change at plaintiff's cost, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county.

(b) If all such costs are not paid within a time to be fixed by the court, or the papers are not filed in the proper court within twenty days after such order, the action shall be dismissed. [Report 1943]

Referred to in §616.6  
See also ch 616

## DIVISION IX

### TRIAL AND JUDGMENT

See also chapter 624 of the Code

#### (A) Trials

**176. Trials and issues.** A trial is a judicial examination of issues in an action, whether of law or fact. Issues arise where a pleading of one party maintains a claim controverted by an adverse party. Issues are either of law or fact. An issue of fact arises on a material allegation of fact in a pleading which is denied in an adversary's pleading or by operation of law. All other issues are issues of law which must be tried first. [Report 1943]

*For allegations and denials of fact, see rules 70-76, 100.*

*For denials by operation of law, see e.g. rule 102.*

*For separate trial of law issue see rule 105.*

See also ch 624

#### **177. Demand for jury trial.**

(a) Jury trial is waived if not demanded according to this rule; but a demand once filed

may not be withdrawn without consent of all parties not in default.

(b) A party desiring jury trial of an issue must file a written demand therefor, either by indorsement on his pleading, or within ten days after the last pleading directed to that issue.

(c) Unless limited to a specific issue, every such demand shall be deemed to include all issues triable to a jury. If a limited demand is filed, any other party may, within ten days thereafter or such shorter time as the court may order, file his demand for a jury trial of some or all other issues.

(d) Notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues. [Report 1943; amendment 1945]

Referred to in R.C.P. 232  
See also ch 624

**178. To court or jury.** All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds that there is no right thereto or all parties appearing at the trial waive a jury in writing or orally in open court. [Report 1943]

See also ch 624

#### **179. Findings by court.**

(a) The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

(b) On motion joined with or filed within the time allowed for a motion for a new trial, the findings may be enlarged or amended, and the judgment modified accordingly. But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding, without having objected to it by such motion or otherwise. [Report 1943]

See also ch 624

**180. Exceptions unnecessary.** Exceptions to rulings or orders of court are unnecessary whenever a matter has been called to the attention of the court, by objection, motion or otherwise and the court has ruled thereon. [Report 1943]

*This rule has nothing to do with bills of exceptions to complete an otherwise incomplete record, for which see rule 241.*

See also ch 624

**181. Trial assignments.** Trial courts shall provide by rule for placing actions on the calendar for trial to court or jury, giving precedence to actions entitled thereto. Such rules

shall provide that the court must place any case on the assignment and compel its trial, on request of any party after issues are made up, and shall have no power thereafter to grant any delay except on motion for continuance or consent of all parties in open court. [Report 1943]

See also ch 624

### 182. Motions for continuance.

(a) Motions for continuance shall be filed without delay after the grounds therefor become known to the party or his counsel. Such a motion may be amended only to correct a clerical error.

(b) A case shall not lose its place on the calendar when a party applies for time to seek a continuance, unless it is then continued at the option of the other party at applicant's costs, whereupon the clerk shall forthwith enter judgment for costs unless otherwise ordered by the court or agreed by the parties. [Report 1943]

*That the motion need not be served; see rule 115.*

See also ch 624

### 183. Causes for continuance.

(a) A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the court that substantial justice will be more nearly obtained. It shall be allowed if all parties so agree.

(b) All such motions based on absence of evidence must be supported by affidavit of the party, his agent or attorney, and must show: (1) The name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) what efforts, constituting due diligence, have been made to obtain such witness or his testimony, and facts showing reasonable grounds to believe the testimony will be procured by the next term; (3) what particular facts, distinct from legal conclusions, affiant believes the witness will prove, and that he believes them to be true and knows of no other witness by whom they can be fully proved. If the court finds such motion sufficient, the adverse party may avoid the continuance by admitting that the witness if present, would testify to the facts therein stated, as the evidence of such witness. [Report 1943]

See also ch 624

**184. Objections—ruling—costs.** The adverse party may at once, or within such reasonable time as the court allows, file specific written objections to the motion for continuance, which shall be part of the record. Where the defenses are distinct, the cause may be continued as to any one or more defendants. Every continuance shall be at the cost of the movant unless otherwise ordered by the court. [Report 1943]

See also ch 624

**185. Consolidation.** Unless some party shows he will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such orders concerning the proceedings as tend to avoid unnecessary cost or delay. [Report 1943; amendment 1955]

See also ch 619

**186. Separate trials.** In any action the court may, for convenience or to avoid prejudice, order a separate trial of any claim, counterclaim, cross-claim, or of any separate issue of fact, or any number of any of them. Any claim against a party may be thus severed and proceeded with separately. [Report 1943]

*As to separate trial of points of law, see rule 105.*

Referred to in R.C.P. 170 and 237  
See also ch 624  
See also rule 74

### 187. Impaneling jury.

(a) *Selection.* The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial he shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. He shall list all jurors so drawn. Before drawing begins, either party may require that the names of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion.

(b) *Oath or examination.* The prospective jurors shall be sworn. The parties may then examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

(c) *Challenges.* Challenges are objections to trial jurors, and may be either to the panel or to an individual juror. Coparties at the trial cannot sever their peremptory challenges, but must join in them unless the court otherwise orders. The court shall determine the law and fact as to all challenges, and must either allow or deny them.

(d) *To panel.* Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at that trial.

(e) *To juror.* Challenge to an individual juror, peremptory or for cause, must be made before the jury is sworn to try the case. A juror peremptorily challenged must be excused without reasons being given. On demand of either party to a challenge for cause,



the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

(f) *For cause.* A juror may be challenged by either party for any of the following causes: (1) Conviction of a felony; (2) want of any statutory qualification required to make him a competent juror; (3) physical or mental defects rendering him incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) being guardian, ward, master, servant, landlord or tenant of the adverse party, or a member of his family or in his employ; or being a client of any attorney engaged in the cause; (6) being a party adverse to the challenging party in any civil action; or having complained of or been accused by him in a criminal prosecution; (7) having already sat upon a trial of the same issues; (8) having served as a grand or trial juror in a criminal case based on the same transaction; (9) when it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent him from rendering a just verdict; (10) being interested in a question like the issue to be tried; (11) having requested, directly, or indirectly, that his name be returned as a juror for the regular biennial period; (12) having served in the district court as a grand or petit juror during the last preceding calendar year.

Exemption from jury service is not a ground of challenge, but the privilege of the person exempt.

(g) *Number—striking.* Each side may peremptorily challenge three jurors and must strike off two but before the examination of the jury commences the court may in its discretion authorize and fix the number of additional peremptory challenges where there are two or more parties represented by different counsel. After all challenges for cause are completed, plaintiff and defendant shall alternately make or waive their peremptory challenges by appropriate notations on the jury list. Thereafter each side in like manner shall strike off two jurors from the list.

(h) *Vacancies.* After a peremptory challenge is exercised or a challenge for cause sustained, another juror shall be called and examined before further challenges are made, and shall be subject to being challenged or stricken as are other jurors.

(i) *Jury sworn.* The clerk shall read the names of the twelve jurors who remain on the list after all others have been challenged or stricken. These shall constitute the jury and shall be sworn substantially as follows:

“You and each of you do solemnly swear (or affirm) that you will well and truly try the issues wherein ..... is plaintiff and ..... is defendant, and a true verdict render; and that you will do so solely on the evidence introduced and in accordance

with the instructions of the court; so help you God.” [Report 1943]

Referred to in R.C.P. 189  
See also chs 607-609, 624

**188. Saturday a religious day.** No juror whose religious faith requires him to keep the seventh day of the week can be compelled to attend on that day, prior to final submission of the case. [Report 1943]

See also ch 624

**189. Alternate jurors.** The court may impanel one or two alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of two more persons than are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in rule 187. Each party must then strike off one such name, and the one or two remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged. [Report 1943]

See also ch 624

**190. Returning ballots to box.** When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury. [Report 1943]

See also ch 624

**191. Procedure after jury sworn.** After the jury is sworn, the trial shall proceed in the following order:

(a) The party having the burden of proof on the whole action may briefly state his claim, and by what evidence he expects to prove it;

(b) The other party may similarly state his defense and evidence;

(c) The first above party must then produce his evidence; to be followed by that of the adverse party;

(d) The parties will be confined to rebutting evidence, unless the court in furtherance of justice, permits them to offer evidence in their original case;

(e) But one counsel on each side shall examine the same witness, unless otherwise permitted by the court. [Report 1943]

See also ch 624

**192. Further testimony for mistake.** At any time before final submission, the court may allow any party to offer further testimony to correct an evident oversight or mistake, imposing such terms as it deems just. [Report 1943]

See also ch 624

**193. Adjournments.** After trial begins, the court may, in furtherance of justice, adjourn

it for such time, and on such conditions as to costs or otherwise, as it deems just. [Report 1943]

*For admonishing jury on adjournment, see rule 199(a).*

See also ch 624

**194. View.** When the court deems proper, it may order an officer to conduct the jury in a body to view any real or personal property, or any place where a material fact occurred, and to show it to them. No other person shall speak to them during their absence on any subject connected with the trial. [Report 1943]

Similar provision, §780.15  
See also ch 624

**195. Arguments.** The parties may either submit the case or argue it. The party with the burden of the issue shall have the opening and closing arguments. In opening, he shall disclose all points he relies on, and if his closing argument refers to any new material point or fact not so disclosed, the adverse party may reply thereto, which shall close the argument. A party waiving opening argument is limited, in closing, to reply to the adverse argument; otherwise the adverse party shall have the closing argument. The court may limit the time for argument to itself, but not for arguments to the jury. [Report 1943]

See also ch 624

**196. Instructions.** The court shall instruct the jury as to the law applicable to all the material issues in the case and such instructions shall be in writing and in consecutively numbered paragraphs and shall be read to the jury without comment or explanation. At the close of the evidence, or such prior time as the court may reasonably fix, any party may file written requests that the jury be instructed as set forth in such requests. Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues, which shall not be part of the record. Before reading them to the jury, the court shall submit to counsel its instructions in their final form, noting this fact of record, and granting reasonable time for counsel to make objections after argument to the jury and before the instructions are read to the jury. Within such time, all objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal. But if the court thereafter revises or adds to the instructions, similar specific objection to the revision or addition may be made in the motion for new trial, and if not so made shall be deemed waived. All instructions and objections, except as above provided, shall be part of the record. [Report 1943]

See also ch 624

**197. Additional instructions.** While the jury is deliberating, the court may in its discretion further instruct the jury, in the presence of or after notice to counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record and any objections thereto shall be made in a motion for a new trial. [Report 1943]

Similar provision, §784.2  
See also ch 624

**198. What jury may take.** When retiring to deliberate, the jury shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be so taken unless all the evidence is in writing and none has been stricken out. [Report 1943]

Similar provision, §784.1  
See also ch 624

**199. Separation and deliberation of jury.**

(a) A jury once sworn shall not separate unless so ordered by the court, who must then advise them that it is the duty of each juror not to converse with any other juror or person, nor suffer himself to be addressed on the subject of the trial; and that, during the trial it is the duty of each juror to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted to him.

(b) On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court. Such officer must not suffer any communication to be made to them, nor make any himself, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered. [Report 1943]

Similar provisions, §§780.19, 780.21, 780.37  
See also ch 624

**200. Discharge—retrial.** The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately or at a future time, as the court directs. [Report 1943]

Similar provisions, §§784.3, 784.4  
See also ch 624

**201. Court open for verdict.** The court may adjourn as to other business while the jury is absent, but shall be open for every purpose connected with the cause submitted to the jury until it returns a verdict or is discharged. [Report 1943]

Similar provision, §784.5  
See also ch 624

**202. Food and lodging.** The court may order the sheriff to provide suitable food and lodging at the expense of the county for a jury being kept together to try or deliberate on a cause. [Report 1943]

See also ch 624

**203. Rendering verdict.**

(a) *Majority.* Before verdict is returned, the parties may stipulate that it may be rendered by a stated majority of the jurors. In the absence of such stipulation a verdict must be unanimous.

(b) *Return—poll.* The jury agreeing on a verdict shall bring it into court, where it shall be read to them, and inquiry made if it is their verdict. A party may then require a poll, which shall be by the clerk of court asking each juror if it is his verdict. If any juror expresses disagreement on such poll or inquiry, the jury shall be sent out for further deliberation; otherwise, the verdict is complete and the jury shall be discharged.

(c) *Sealed.* When, by consent of the parties and the court, the jury has been permitted to seal its verdict and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto. [Report 1943]

Similar provisions, §§785.9, 785.15, 785.16  
See also ch 624

**204. Form and entry of verdict.** The verdict shall be in writing, signed by a foreman chosen by the jury. It shall be sufficient in form if it expresses the jury's intent. It shall be filed with the clerk, and entered of record after being put in form by the court if need be. [Report 1943]

*For judgment on verdict, see rule 223.*

See also ch 624

**205. Special verdicts.** The court may require that the verdict consist wholly of special written findings on each issue of fact. It shall then submit in writing questions susceptible of categorical or brief answers, or forms of several special findings that the jury might properly make under the issues and evidence, or submit the issues and require the findings in any other appropriate manner. It shall so instruct the jury as to enable it to find upon each issue submitted. If the submission omits any issue of fact, any party not demanding submission of such issue before the jury retires waives jury trial thereof, and the court may find upon it; failing which, it shall be deemed found in accord with the judgment on the special verdict. The court shall direct such judgment on the special verdict and answers as is appropriate thereto. [Report 1943]

See federal rule 49  
See also ch 624

**206. Interrogatories.** The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. The instructions shall be such as will enable the jury to answer

the interrogatories and return the verdict. If both are harmonious, the court shall order the appropriate judgment. If the answers are consistent with each other, but any is inconsistent with the general verdict, the court may order judgment appropriate to the answers notwithstanding the verdict, or a new trial, or send the jury back for further deliberation. If the answers are inconsistent with each other, and any is inconsistent with the verdict, the court shall not order judgment, but either send the jury back or order a new trial. [Report 1943]

See federal rule 49  
See also ch 624

**207. Reference.** A "master" includes a referee, auditor or examiner. On a showing of exceptional conditions requiring it, the court may appoint a master as to any issues not to be tried to a jury. The clerk shall forthwith furnish the master with a copy of the order appointing him. [Report 1943]

See also ch 624

**208. Compensation.** The court shall fix the master's compensation and order it paid or advanced by such parties, or from such fund or property, as it may deem just. Execution may issue on such order at the master's demand. He shall not retain his reports as security for his compensation. [Report 1943]

See also ch 624  
Referred to in R.C.P. 148

**209. Powers.** The order may specify or limit the master's powers or duties or the issue on which he is to report, or the time within which he shall hold hearings or file his report; or specify that he merely take and report evidence. But except as so limited he shall have and exercise power to regulate all proceedings before him; to administer oaths and to do all acts and take all measures appropriate for the efficient performance of his duties; to compel production before him of any witness or party, whom he may himself examine, or of any evidence on any matters embraced in the reference, and to rule on admissibility of evidence. He shall, on request, make a record of evidence offered and excluded. He may appoint a shorthand reporter whose fees shall be advanced by the requesting party. [Report 1943]

See also ch 624  
Referred to in R.C.P. 148

**210. Speedy hearing.** Upon his appointment the master shall forthwith notify the parties of the time and place of their first meeting before him, which shall be within twenty days or such other time as the court's order may fix. If a party so notified fails to appear, the master may proceed ex parte, or, in his discretion, adjourn to a future day, giving notice thereof to the absent party. It is the duty of the master to proceed with all reasonable diligence; and the court, after notice to the master and the parties, may order him to expedite proceedings or make his report. [Report 1943]

See also ch 624  
Referred to in R.C.P. 148

**211. Witnesses.** Any party may subpoena witnesses before a master as for trial in open court; and a witness failing to appear or testify without good cause shall be subject to the same punishment and consequences. [Report 1943]

See also ch 624

**212. Accounts.** The master may prescribe the form for submission of accounts which are in issue before him. In any proper case he may require or receive in evidence the statement of a certified public accountant who testifies as a witness. If any item submitted or stated is objected to, or shown insufficient in form, the master may require that a different form be furnished, or that the accounts or any item thereof be proved by oral testimony or written interrogatories of the accounting parties, or in such other manner as he directs. [Report 1943]

See also ch 624

**213. Filing report.** The master shall file with the clerk the original exhibits, and a transcript of the proceedings and evidence before him, if there be one, otherwise his summary thereof, with his report on the matters submitted to him in the order of reference, including separate findings and conclusions if so ordered. He may previously submit a draft of his report to counsel for their suggestions. [Report 1943]

See also ch 624

**214. Disposition.** The clerk shall forthwith mail notice of filing the report to all attorneys of record; and within ten days thereafter, unless the court enlarges the time, any party may file written objections to it. Application for action on said report, or objections, shall be by motion, to be heard on such notice as the court prescribes. The report shall have the same effect whether or not the reference was by consent; but where parties stipulate that the master's findings shall be final, only questions of law arising upon the report shall thereafter be considered. The court shall accept the master's findings of fact unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part, or recommit it with instructions. [Report 1943]

See also ch 624

**215. Voluntary dismissal.** A party may, without order of court, dismiss his own petition, counterclaim, cross-petition or petition of intervention, at any time before the trial has begun. Thereafter a party may dismiss his action or his claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on

the same cause, such dismissal shall operate as an adjudication against him on the merits, unless otherwise ordered by the court, in the interests of justice. [Report 1943]

See also ch 624  
Referred to in R.C.P. 217

**216. Involuntary dismissal.** A party may move for dismissal of any action or claim against him, if the party asserting it fails to comply with these rules or any order of court. After the plaintiff has completed his evidence, a defendant may move for dismissal because plaintiff has shown no right to relief, under the law or facts, without waiving his right to offer evidence thereafter. [Report 1943]

See also ch 624

**217. Effect of dismissal.** All dismissals not governed by rule 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise. [Report 1943]

See also ch 624

**218. Costs of previously dismissed action.** Where a plaintiff sues on a cause of action that was previously dismissed against the same defendant in any court of any state or the United States the court may stay such suit until the costs of the prior action are paid. [Report 1943]

See also ch 624

#### (B) Judgments generally

**219. Judgment defined.** Every final adjudication of any of the rights of the parties in an action is a judgment. [Report 1943]

See also ch 624

**220. For part—in abatement.** A party who succeeds in part only may have judgment expressly for the part on which he succeeds, and against him as to the rest. The findings and judgment must distinguish between matter in abatement and bar; and a judgment in abatement and not on the merits must so declare. [Report 1943]

*Bar or abatement; see also rule 103.*

See also ch 624

**221. As to some parties only.** Where the action involves two or more parties, the court may, in its discretion, and though it has jurisdiction of them all, render judgment for or against some of them only, whenever the prevailing party would have been entitled thereto had the action involved him alone, or whenever a several judgment is proper; leaving the action to proceed as to the other parties. [Report 1943]

*See also rule 74.*

See also ch 624

**222. Judgment on the pleadings, etc.** Any party may, at any time, on motion, have any judgment to which he is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of his claim or defense which is not controverted, leaving the action

to proceed as to any other matter of which such judgment does not dispose. [Report 1943]

See also ch 624

**223. On verdict.** The clerk must forthwith enter judgment upon a verdict when filed, unless it is special, or the court has ordered the case reserved for future argument or consideration. [Report 1943]

*For judgment on special verdict, see rule 205.*

*For judgment on election by standing on or failing to amend pleading, see rule 87.*

See also ch 624

**224. Principal and surety—order of liability.** A judgment against principal and surety shall recite the order of their liability upon it. A "surety" includes all persons whose liability on the claim is posterior to that of another. [Report 1943]

*See rule 41.*

See also ch 624

**225. On counterclaim—excess.** If any party recovers judgment against an adverse party in excess of a judgment recovered by the latter against him, judgment shall be given for the excess, with any other affirmative relief to which either may be entitled. [Report 1943]

See also ch 624

**226. By agreement.** Except in actions for divorce, separate maintenance and annulment of marriage, the clerk shall forthwith enter any judgment upon which all parties agree in open court, or by writing filed with the clerk; and execution may issue forthwith unless otherwise agreed. [Report 1943]

See also ch 624

**227. Entry.** All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made. [Report 1943]

*See rule 120.*

See also ch 624

**228. Notes surrendered.** The clerk shall not, unless by special order of the court, enter or record any judgment based on a note or other written evidence of indebtedness until such note or writing is first filed with him for cancellation. [Report 1943]

See also ch 624

**229. Affidavit of identity.** The clerk shall not enter a personal judgment until the creditor, his agent or attorney, files an affidavit stating the full name, occupation and residence of the judgment debtor, to affiant's information and belief. If such residence is in an incorporated place of more than five thousand population, the affidavit shall include the street number of debtor's residence and business address, if any. But a judgment entered or recorded without such affidavit shall not be invalid. [Report 1943]

See also ch 624

### (C) Defaults and judgments thereon

**230. Default defined.** A party shall be in default whenever he (a) fails to appear as required in rule 53 or 54, or, has appeared, without thereafter filing any motion or pleading as stated in rule 87; or (b) fails to move or plead further as required in rule 86, unless judgment has already resulted under rule 87; or (c) withdraws his pleading without permission to replead, or withdraws his appearance or fails to present himself for trial; or (d) fails to comply with any order of court or do any act which permits entry of default against him, under any rule or statute. [Report 1943]

Referred to in R.C.P. 231  
See also ch 624

**231. How entered.** If a party not under legal disability or not a prisoner in a reformatory or penitentiary is in default under rule 230(a), the clerk, on demand of the adverse party, must forthwith enter such default of record without any order of court. All other defaults shall be entered by the court. [Report 1943]

See also ch 624

**232. Judgment on default.** Judgment upon a default shall be rendered as follows:

(a) Where the claim is for a sum certain, or which by computation, can be made certain, the clerk, upon request, shall make such computation as may be necessary, and upon affidavit that the amount is due shall enter judgment for that amount, and costs against the party in default.

(b) In all cases the court on request of the prevailing party, shall order the judgment to which he is entitled, and the clerk shall enter the judgment so ordered. If no judge is holding court in the county, such order may be made by a judge anywhere in the judicial district as provided in rule 120. The court may, and on demand of any party not in default shall, either hear any evidence or accounting required to warrant the judgment or refer it to a master; or submit it to a jury if proper demand has been made therefor under rule 177. [Report 1943]

*See rules 13, 14, 17 and 71 as to hearings on default against incompetents, prisoners, etc., and guardians ad litem therein.*

*See rules 46 and 47 as to required hearing in defaulted class suit.*

See also ch 624

**233. Notice — notice of default in certain cases.** When any judgment other than one in rem has been taken by default against a party served with notice delivered to another person as provided in rule 56(a), the clerk shall immediately give written notice thereof, by ordinary mail to such party at his last known address, or the address where such service was had. The clerk shall make a record of such mailing. Failure to give such notice shall not invalidate the judgment. [Report 1943]

See also ch 624

**234. On published service.** No personal judgment shall be entered against a person served only by publication or by publication and mailing, as provided in rule 60.1, unless he has appeared. [Report 1943; amendment 1951]

See also ch 624

**235. Relief in other cases.** The judgment may award any relief consistent with the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed what is demanded against him in the petition as limited by the original notice. [Report 1943]

See also ch 624

**236. Setting aside default.** On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation. [Report 1943]

*For new trial after 60 days, see rules 251-253.*

Referred to in R.C.P. 258  
See also ch 624

#### (D) Summary judgments

**237. On what claims.** Summary judgment may be entered in an action, upon any claim therein, which is either:

(a) To recover a debt, or some other money demand which is liquidated, with or without interest arising on a negotiable instrument, or on a recognizance, or on a judgment for a stated sum, or on any contract, express or implied, except quasi contract; or

(b) To recover a sum under a statute fixing its amount or creating a liability in the nature of a contract; or

(c) On a guaranty of a debt, or of some other claim that is liquidated; or

(d) To recover specific chattels, with or without damages for their detention, but any such claim for more than nominal damages which is unliquidated, may be severed and retained for separate trial as provided in rule 186; or

(e) To quiet or settle title to real estate or any interest therein; or

(f) To discharge an invalid lien or mortgage. [Report 1943]

Referred to in R.C.P. 238  
See also ch 624

**238. Procedure.** Plaintiff making a claim described in rule 237 may file a motion for summary judgment thereon at any time after defendant appears, before or after answer. He shall support the motion by affidavit of himself or some person with personal knowledge of the facts, verifying the claim and the amount of money, if any, yet due thereon, and his

belief that no defense exists against it. The clerk shall mail or deliver the copy of the motion as required in rule 82. Judgment shall be entered as prayed in the motion unless within ten days after it is filed, or such other time as the court may, for good cause, allow, the defendant resists it with affidavits showing facts which the court deems sufficient to permit him to defend. Hearing on the motion, if thus resisted, shall be as provided in rule 117. The court may, on plaintiff's motion, strike any affidavits filed by defendant which it finds insufficient, frivolous or made only for delay. [Report 1943]

Referred to in R.C.P. 240  
See also ch 624

**239. On motion in other cases.** Judgments may be obtained on motion by sureties against principals or cosureties for money due because paid by them as such; by clients against attorneys, by plaintiffs in execution against sheriffs, constables or other officers for money or property collected by them, and for damages; and in all other cases specially authorized by statute. [Report 1943]

Referred to in R.C.P. 240  
See also ch 624

**240. Procedure.** If motion under rule 239 is filed in an action already pending, the procedure shall be as in rule 238. Otherwise notice shall be served on the party against whom relief is sought at least ten days before the hearing thereof, stating when the motion will be filed and, in plain ordinary language, its nature and grounds, fixing the time and place of the hearing thereon. If the motion is not filed by the day specified it shall be deemed abandoned, if it is filed the court shall hear it at the time fixed in the notice without further pleadings, and give judgment according to the very right of the matter. [Report 1943]

*For declaratory judgments, a species of special action, see rule 261, et seq.*

See also ch 624

### DIVISION X

#### PROCEEDINGS AFTER JUDGMENT

##### 241. Bill of exceptions.

(a) *When necessary.* A bill of exceptions shall be necessary only to effect a showing of material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial, if any.

(b) *Affidavits.* Not more than five affidavits in support of any exception may be filed with the bill. Controverting affidavits, not exceeding five, may be filed within seven days thereafter; the court, for good cause shown, may extend the time for filing such affidavits.

(c) *Certification—judge—bystanders.* The proposed bill of exceptions shall be promptly presented to the trial judge, who shall sign it if it fairly presents the facts. If he refuses, and counsel so certifies, and at least two bystanders attest in writing that the exceptions are correctly stated, the bill thus certified and

attested shall be filed and become part of the record.

(d) *Disability.* Whenever the judge or master who tried the cause is for any reason unable to sign a bill of exceptions or certify the shorthand reporter's record, the same may be done by his successor, or by any judge of the court in which the proceeding was pending. [Report 1943]

Referred to in R.C.P. 247 and 340  
See also ch 624

**242. New trial defined.** A new trial is the re-examination in the same court of any issue of fact or part thereof, after a verdict, or master's report, or a decision of the court. [Report 1943]

See also ch 624

**243. Judgment notwithstanding verdict, etc.** Any party may, on motion, have judgment in his favor despite an adverse verdict, or the jury's failure to return any verdict:

(a) If the pleadings of the opposing party omit to aver some material fact or facts necessary to constitute a complete cause of action or defense and the motion clearly specifies such failure or omission; or

See also rule 244(i).

(b) If the movant was entitled to have a verdict directed for him at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant. [Report 1943]

Referred to in R.C.P. 244, 245, 246, 247, 248, 249, 250, and 349  
See also ch 624

**244. New trial.** The aggrieved party may, on motion, have an adverse verdict, decision or report or some portion thereof vacated and a new trial granted, for any of the following causes, but only if they materially affected his substantial rights:

(a) Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial;

(b) Misconduct of the jury or prevailing party;

(c) Accident or surprise which ordinary prudence could not have guarded against;

(d) Excessive or inadequate damages appearing to have been influenced by passion or prejudice;

(e) Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property;

(f) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law;

(g) Material evidence, newly discovered, which could not with reasonable diligence

have been discovered and produced at the trial;

(h) Errors of law occurring in the proceedings, or mistakes of fact by the court;

(i) On any ground stated in rule 243, the motion specifying the defect or cause giving rise thereto. [Report 1943]

For setting aside defaults, see rule 236; other new trials, see rules 251 and 252.

Referred to in R.C.P. 245, 246, 247, 248, 249, 250, 252, and 253  
See also ch 624

**245. Motion—affidavits.** Motion under rules 243 and 244 shall be in writing; and if based on grounds stated in rule 244(b), 244(c), or 244(g) may be sustained and controverted by affidavits and heard pursuant to rule 116. [Report 1943]

See also ch 624

**246. Stay.** If motions under rule 243 or 244 or petition under rule 252 are timely filed, the court may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all further proceedings, executions or process to enforce the judgment, pending disposition of such motion or petition. [Report 1943]

Referred to in R.C.P. 253  
See also ch 624

**247. Time for motions and exceptions.** Motions under rules 243 and 244 and bills of exception under rule 241 must be filed within ten days after the verdict, report or decision is filed, or the jury is discharged, as the case may be, unless the court, for good cause shown and not ex parte, grants an additional time not to exceed thirty days. [Report 1943]

Referred to in R.C.P. 335  
See also ch 624

**248. Nonwaiver.** Any motion may be filed under rule 243 or 244 without waiving the right to file or rely on any other of such motions.

Motions under rules 243 and 244 may be joined or made separately. If the motion under rule 243 is sustained, the sustaining thereof shall be deemed a denial of the motion under rule 244. Upon an appeal by any party from an order sustaining a motion under rule 243 the supreme court may, if the matter is argued, also review such denial of the motion under rule 244 without the necessity of an appeal therefrom. [Report 1943; amendment 1953]

See also ch 624

**249. Issues tried by consent—amendment.** In deciding motions under rule 243 or 244, the court shall treat issues actually tried by express or implied consent of the parties but not embraced in the pleadings, as though they had been pleaded. Either party may then amend to conform his pleadings to such issues and the evidence upon them; but failure so to amend shall not affect the result of the trial. [Report 1943]

See also ch 624

**250. Conditional new trial.** The court may permit a party to avoid a new trial under rule 243 or 244 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly.

Any such term or condition or judgment entered pursuant thereto shall be deemed of no force and effect and the original judgment entered pursuant to rule 223 shall be deemed reinstated in the event of an appeal. [Report 1943; amendment 1953]

See also ch 624

**251. Retrial after published notice.**

(a) *Retrial.* Except in actions for divorce and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in rule 60.1, he or any person legally representing him may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to his defense and trial as though there were no judgment.

(b) *New judgment.* After such retrial, the court may confirm the judgment, or modify or set it aside and order a party to restore any money or property remaining in his possession under it, or to repay the value of any money or property he thus received. [Report 1943; amendment 1951]

For effect on title of good faith purchaser, see rule 254.

Referred to in R.C.P. 254  
See also ch 624

**252. Judgment vacated or modified—grounds.** Upon timely petition and notice under rule 253 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

(a) Mistake, neglect or omission of the clerk;

(b) Irregularity or fraud practiced in obtaining the same;

(c) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record;

(d) Death of a party before entry of the judgment or order, and its entry without substitution of his proper representative;

(e) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 244. [Report 1943]

Referred to in R.C.P. 60, 246, 253, 254, and 255  
See also ch 683

**253. Petition, notice, trial.**

(a) *Petition.* A petition for relief under rule 252 must be filed in the original action within one year after the rendition of the

judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they could not have been discovered in time to proceed under rule 236 or 244, and were discovered afterwards. Unless the pleadings in the original action alleged a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 80(b).

(b) *Notice.* After filing the petition, and also within the year aforesaid, petitioner must serve the adverse party with an original notice in the manner provided in division III of these rules.

(c) *Trial.* The court shall promptly assign the petition for trial, not less than twenty days after notice is served. The petition shall stand denied without answer; otherwise the issues and pleadings, and form and manner of the trial shall be the same, as nearly as may be, as in the trial of an ordinary action to the court, and with the same right of appeal. No new cause of action shall be introduced.

(d) *Preliminary determination.* The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the cause of action or defense claimed.

(e) *Judgment.* After a stay under rule 246 if the original judgment or order is affirmed, additional judgment shall be entered against the petitioner for the costs of the trial, and also, in the court's discretion, for damages not exceeding ten percent of the judgment affirmed. [Report 1943]

Referred to in R.C.P. 60, 252, 254, and 255  
See also ch 683

**254. Titles and liens protected.**

(a) The title of a good faith purchaser to property sold under the original judgment shall not be affected or impaired by any judgment, order or proceeding under rules 251 to 253 inclusive.

(b) If the original judgment is merely modified pursuant to either of said rules, all liens or securities obtained under it shall be preserved in the modified judgment. [Report 1943]

Referred to in R.C.P. 255  
See also ch 683

**255. Other proceedings not invoked.**

Code sections 12255-12257 inclusive [Code 1939] shall not be invoked. Rules 252, 253 and 254 shall apply in lieu thereof. [Report 1943]

See also ch 646

**256. Judgment discharged on motion.** Where matter in discharge of a judgment has arisen since its rendition, the defendant or any interested person may, on motion in a summary way, have the same discharged in whole or in part, according to the circumstances. [Report 1943]

See also ch 624

**257. Fraudulent assignment—motion.** The court may, on motion, inquire into the assign-



ment of a judgment, or its entry to the use of any party, and cancel the assignment or strike out such use, in whole or in part, whenever it determines the same to be inequitable, fraudulent or done in bad faith. [Report 1943]

See also ch 624

**258. Execution—duty of officer.** An officer receiving an execution must execute it with diligence. He shall levy on such property of the judgment debtor as is likely to bring the exact amount, as nearly as practicable. He may make successive levies if necessary. He shall collect the things in action, by suit in his own name if need be, or sell them. He shall sell sufficient property levied on to satisfy the execution, paying the proceeds, less his own costs, to the clerk. [Report 1943]

See also ch 626

**259. Indorsement.** The officer shall indorse on the execution, the day and hour he receives it; and the levy, sale, or other act done by virtue of it, with the date thereof; and the date and amount of any receipts or payments toward its satisfaction. Each indorsement shall be made at the time of the act or receipt; but no levy or sale under the execution shall be impaired by failure to make any such indorsement at the time here provided. [Report 1943]

See also ch 626

**260. Levy on personalty.** Levy on personalty may be made under an attachment or general execution by either of the following methods, but no lien is created until compliance with one of them.

(a) By the officer taking possession of the property, and appending to the execution its exact description at length, with the date of the levy, and affixing his signature; or

(b) If the creditor or his agent first so request in writing, the officer may view the property, inventory its exact description at length, and append such inventory to the execution, with his signed statement of the number and title of the case, the amount claimed under the execution, the exact location of the property and in whose possession; and file with the county recorder of the county where the property is located his certified transcript of such inventory and statement. Such filing shall then be constructive notice of the levy to all persons. The recorder shall index the transcript as a chattel mortgage and the officer shall release the same on the margin of the index whenever his writ is satisfied or the levy discharged. [Report 1943]

See also ch 626

## DIVISION XI

### DECLARATORY JUDGMENTS

**261. Declaratory judgments permitted.** Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objec-

tion that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in the next three rules does not limit or restrict the exercise of the general power herein referred to. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**262. Construing contracts, etc.** Any person interested in a contract, oral or written, or a will, or whose rights, status or other legal relations are affected by a statute, or any municipal ordinance, rule, regulation, contract or franchise, may have determined any question of the construction or validity thereof or arising thereunder, and obtain a declaration of rights, status or legal relations thereunder. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**263. Before or after breach.** A contract may be construed either before or after there has been a breach thereof. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**264. Fiduciaries, beneficiaries.** Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian has been appointed, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct executors, administrators, guardians, trustees or other fiduciaries, to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate, guardianship or trust, including questions of construction of wills and other writings. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**265. Discretionary.** The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**266. Supplemental relief.** Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper. The application therefor shall be by petition in the original case. If the court deems the petition sufficient, it shall, on such reasonable notice as it prescribes, require any adverse

party whose rights have been adjudicated to show cause why such relief should not be granted forthwith. [Report 1943]

Referred to in R.C.P. 267, 268, and 269  
See also ch 624

**267. Review.** All orders, judgments or decrees under rules 261-266 inclusive may be reviewed as other judgments, orders or decrees. [Report 1943]

Referred to in R.C.P. 268 and 269  
See also ch 624

**268. Jury trial.** The right of trial by jury shall not be abridged or extended by rules 261-267. [Report 1943]

Referred to in R.C.P. 269  
See also ch 624

**269. "Person."** The word "person", in rules 261-268, shall include any individual or entity capable of suing or being sued under the laws of Iowa. [Report 1943]

See also ch 624

**DIVISION XII**

**PARTITION OF REAL AND PERSONAL PROPERTY**

See also chapter 651 of the Code

**270. The action—pending probate.** Real or personal property may be partitioned by equitable proceedings. Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be begun until six months after the notice of the administrator's appointment, nor at any time while an application for authority to sell such real estate is pending in the probate proceeding. [Report 1943]

See also ch 651

**271. Petition.** The petition shall describe the property and plaintiff's interest therein. It shall name the other owners and all indispensable lienholders as defined in rule 273(a), and state the nature and extent of each interest or lien, all so far as known. [Report 1943]

See also ch 651

**272. Abstracts.** The court may order a complete abstract to be filed covering any real estate involved, requiring that any party produce any abstract he has or controls, and that plaintiff complete the same, or supply the whole if no part is available. The expense thereof shall be taxed as costs. Such abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys. [Report 1943]

See also ch 651

**273. Parties.**

(a) *Indispensable parties.* All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on personalty are also indispensable to its partition.

(b) *Optional parties.* Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate, may also be made parties. [Report 1943]

Referred to in R.C.P. 271  
See also ch 651

**274. Early appearance.** After a petition is filed seeking partition of personalty only, the court may order appearance and hearing at any specified time and place in the judicial district on not less than five days personal service of original notice on all defendants. [Report 1943]

See also ch 651

**275. Joinder and counterclaim.** Except as permitted by this rule there shall be no joinder of any other cause of action and no counterclaim. But any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with it, including liens between them. Real and personal property owned by the same persons may be partitioned in the same action; and the same referee may act as to both. [Report 1943]

See also ch 651

**276. Jurisdiction of property—proceeds.** The property or its proceeds shall be subject to the order of the court until the right becomes fully vested. After a sale, each party, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs. [Report 1943]

See also ch 651

**277. Estate less than fee.** The court shall make suitable provision as to the proceeds of any share held for life or years or in remainder, which may be done by appointing a trustee for the proceeds involved. [Report 1943]

See also ch 651

**278. Division or sale.** Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can only be partitioned by sale. [Report 1943]

See also ch 651

**279. Decree.** The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens,

may be determined by the same decree, or later supplemental decree or decrees. [Report 1943]

*Sale for less than appraisal, see rule 291.*

See also ch 651

**280. Liens.** The court shall by supplemental decree, adjudge the nature, extent, priority or validity of any lien of any party, not previously determined, after causing the referees to give such notice to the interested parties as it may prescribe, and upon issues made up as the court directs. No partition in kind shall be had until after such adjudication; but a sale need not wait thereon, and the pendency of any such controversy shall not delay distribution of the proceeds to any party not affected by the lien. [Report 1943]

See also ch 651

**281. Sale free of liens.** Personalty must be sold free of liens. Real property must be sold free of all liens, except those which are held against the entire property sold. [Report 1943]

*For initial or supplemental decree as to liens, see rules 279 and 280.*

See also ch 651

**282. Possession and preservation of property.** The court may order the referee to lease or take possession of any property involved in the action. It may also preserve the property either by injunction or by any other appropriate provision for its care and custody. Expenses incurred under this rule, when allowed by the court, shall be part of the costs. [Report 1943]

See also ch 651

**283. Referees to divide — oath — inability.** Referees authorized to make partition in kind shall qualify by taking oath and need give no bond. If they are unable to make such division, they shall so report to the court, which will then order a sale of personal property without further notice. As to real estate, such report will be heard under rule 286, whereupon any further decree of sale or otherwise, may be made which is proper under the exigencies of the case. [Report 1943]

See also ch 651

**284. Partition in kind.** The referees who partition real estate in kind shall mark out each parcel by visible monuments, and file report thereof. They may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs. [Report 1943]

See also ch 651

**285. Specific allotment.** The court may, for good reasons shown, order referees making a partition in kind to allot a particular tract or article to a particular party. [Report 1943]

See also ch 651

**286. Report — notice — hearing.** Referees shall file a report of their proposed partition

in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place of hearing thereon, and the referee shall give at least ten days notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove the report, and refer it to the same or different referees or order a sale. [Report 1943]

Referred to in R.C.P. 283

See also ch 651

**287. Decree—recording.**

(a) *Decree—costs.* On approving a partition in kind, the court shall enter a decree allotting each party the property or share set off to him, apportioning the costs among the allottees and entering judgment against each for his share thereof, which shall be a lien on the property allotted to him, and for which special execution may issue on demand of anyone interested.

*Further as to costs, see rule 293.*

(b) *Recording.* If the decree involves real estate, the clerk shall file with the recorder of his own county and each other county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, and recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. [Report 1943]

Referred to in R.C.P. 293

See also ch 651

**288. Referees to sell—bond.** A referee to make sale shall qualify by taking oath. No bond shall be required before the referee conveys real estate unless he is to sell personalty or take possession of real estate or is to receive a payment on the sale before conveyance, in which case, he shall give such bond as the court directs. Before conveying real estate, he shall also give bond for one hundred twenty-five percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of his duties in connection with the sale and its proceeds. [Report 1943; amendment 1945]

See also ch 651

**289. Sales—notice—expense—approval.**

(a) *Approval.* All sales shall be subject to the approval of the court, unless it dispenses with approval of a public sale of personalty, which may then be sold on full payment of the price bid.

(b) *Expense.* If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk

or assistant; and the expense thereof when allowed by the court, shall be part of the costs.

(c) *Notice of public sale.* The referees shall give notice of the time and place of any public sale, by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to the sale in case of real estate, and at least four days prior thereto in case of personalty. [Report 1943]

See also ch 651

#### 290. Report of sale—notice.

(a) *Generally.* The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place, in which event the referees shall give notice to the interested parties as the court then directs.

(b) *Notice mandatory.* Such notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing his name and the address to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made. The referee shall mail notice of the hearing to such party at his address shown in the request within a time prescribed by the court, which may direct that other parties be also notified. [Report 1943]

See also ch 651

**291. Approving sale—conveyance.** The court by express order may approve a private sale though it be for less than the appraised value. No real estate shall be conveyed until the sale is approved by the court; and no conveyance shall be made until the price is fully paid. [Report 1943]

See also ch 651

**292. Deed — validity.** A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding. [Report 1943]

See also ch 651

**293. Costs.** All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests; except costs created by contests, which shall be taxed against the losing contestant unless otherwise ordered. No contest shall deprive plaintiff's attorney of the fee specified in rule 294. If partition is in kind, costs shall be adjudged, and may be collected as provided in rule 287(a). If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies. [Report 1943]

See also ch 651

**294. Attorney fees.** On partition of real estate, but not of personalty, the court shall fix, and tax as costs, a fee in favor of plaintiff's attorney, which cannot exceed the following amount, computed on the sale price, or by appraisement if no sale is made:

1. On the first two hundred dollars or fraction thereof obtained, ten percent;

2. On the excess of two hundred to five hundred dollars, five percent;

3. On the excess of five hundred to one thousand dollars, three percent; and

4. On all sums in excess of one thousand dollars, two percent. Provided further that in contested partition cases, plaintiff's attorney shall receive such additional reasonable compensation as the court may allow, to be taxed as part of the costs. [Report 1943; amendment 1955]

Referred to in R.C.P. 293  
See also ch 651

**295. Other fees.** Appraisers and referees in all partition suits, as well as any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs. [Report 1943]

See also ch 651

**296. Final reports.** Unless all interested parties waive it in writing, the court shall fix a time and place of hearing the referee's final report, and prescribe the time and manner of notice which the referees shall give to all interested persons. [Report 1943]

See also ch 651

**297. Paying small sums.** Whenever a minor, having no legal guardian, is entitled to proceeds of a partition sale, not in excess of two hundred dollars, the court may order the referee discharged of all liability therefor, by paying them to the minor's parent or natural guardian, or the person with whom he resides, for the use of such minor, and taking a receipt therefor. [Report 1943]

See also ch 651

**298. Unborn parties.** When a person not in being may have a contingent or a prospective vested interest as a cotenant of real estate, the court shall have jurisdiction over the interest of such person, and shall appoint a suitable guardian ad litem, to act for him in such proceeding, and rules 12 to 14 shall apply in such cases. The decree of partition and the division or sale thereunder shall be of the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the interest of such person shall be subject to the order of the court until the right thereto becomes fully vested. [Report 1943]

See also ch 651

### DIVISION XIII QUO WARRANTO

See also chapter 660 of the Code

**299. For what causes.** A civil action in the nature of quo warranto, triable by equitable proceedings, may be brought in the name of the state against any defendant who is:

(a) Unlawfully holding or exercising any public office or franchise in Iowa, or an office in any Iowa corporation; or

(b) A public officer who has done or suffered to be done, an act which works a forfeiture of his office; or

(c) Acting as a corporation in Iowa without being authorized by law so to act; or

(d) A corporation exercising powers not conferred by law, or doing or omitting acts, which work a forfeiture of its corporate rights or privileges; or

(e) A person or corporation claiming under a patent, permit, certificate of convenience and necessity or license of any nature which was granted by the state because of fraud, or mistake or ignorance of a material fact, or the terms of which have expired or been violated by the defendant, or which the defendant has in any manner forfeited. The action in such cases shall be to annul or vacate the patent, permit, certificate or license in question. [Report 1943]

See also ch 660

#### **300. By whom brought.**

(a) The county attorney of the county where the action lies may bring it in his discretion, and must do so when directed by the governor, general assembly or the supreme or district court, unless he may be a defendant, in which event the attorney general may, and shall when so directed, bring the action.

(b) If on demand of any citizen of the state, the county attorney fails to bring the action, the attorney general may do so, or such citizen may apply to the court where the action lies for leave to bring it. On leave so granted, and after filing bond for costs in an amount fixed by the court, with sureties approved by the clerk, the citizen may bring the action and prosecute it to completion. [Report 1943]

See also ch 660

**301. No joinder or counterclaim.** In such action there shall be no joinder of any other cause of action, and no counterclaim. [Report 1943]

See also ch 660

**302. Petition.** The petition shall state the grounds on which the action is brought, and if it involves an office, franchise or right claimed by others than the defendant, it shall name them; and they may be made parties. [Report 1943]

See also ch 660

#### **303. Judgment.**

(a) The judgment shall determine all rights and claims of all parties respecting the mat-

### RULES OF CIVIL PROCEDURE, DIV. XIV

ters involved, and shall include any provision necessary to enforce their rights as so determined, or to accomplish the objects of the decision.

(b) The judgment shall also determine which party, if any, is entitled to hold any office in controversy.

(c) If a party is unlawfully holding or exercising any office, franchise or privilege, or if a corporation has violated the law by which it exists or been guilty of any act or omission which amounts to a surrender or forfeiture of its privileges, the judgment shall oust such party from such office or franchise, or forfeit such privilege, and forbid such party to exercise or use any such office, franchise or privilege.

(d) If a party has merely exercised powers or privileges to which he was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit him from the further exercise thereof. [Report 1943]

See also ch 660

#### **304. Costs.**

(a) Judgment against any defendant or intervenor shall include judgment for the costs of the action. Judgment against a pretended corporation shall adjudge the costs against the person or persons acting as such.

(b) If the action fails, the court may adjudge the costs against any private individual who brought it; otherwise they shall be paid as provided by the statutes governing costs in criminal cases. [Report 1943]

See also ch 660

**305. Corporation dissolved.** If the judgment dissolves a corporation, the court shall make appropriate orders for the dissolution as provided by the statutes in force. [Report 1943]

See also ch 660

### DIVISION XIV CERTIORARI

See also chapter 662 of the Code

**306. When writ may issue.** A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally. [Report 1943]

See also ch 662

**307. Title.** The petition shall be entitled in the name of the petitioner as plaintiff, against the inferior tribunal, board or officer as defendant. [Report 1943]

See also ch 662

**308. Other remedies.** The writ shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or illegality of the acts complained of, unless otherwise specially provided by statute. [Report 1943]

*See also rule 107 as to treating petition as one for other proper relief.*

See also ch 662

**309. The writ.** The writ may be granted only by the district court unless it is directed to that court or a municipal or superior court; and then by the supreme court or a justice thereof. It shall be issued by the clerk of the court where the petition is filed, under its seal. It shall command the defendant to certify to that court, at a specified time and place, a transcript of so much of defendant's records and proceedings as are complained of in the petition or as may be pertinent thereto, together with the facts of the case, describing or referring to them or any of them with convenient certainty; and also to have then and there the writ. [Report 1943]

See also ch 662

**310. Stay—bond.** The court or justice granting the writ may, in its or his discretion, stay the original proceedings, though no stay is asked. Such stay, when sought by plaintiff, can be granted only on his filing bond with penalty and conditions, including security for costs, prescribed by such court or justice, and sureties approved by it or its clerk. [Report 1943]

See also ch 662

**311. Notice of issuing writ.** The writ may issue without notice on filing the petition, unless it is filed before a final order or decree in the original proceedings, or the plaintiff seeks a stay. Before issuing the writ in the latter cases, the court or justice shall, and in any case may in his discretion, fix a time and place for hearing and prescribe reasonable notice to defendant thereof. Such hearing shall be confined to the sufficiency of the petition, what records or proceedings shall be certified, and the terms of any bond to be given. [Report 1943]

See also ch 662

**312. Service of writ.** Unless the defendant accepts service of the writ, it shall be served by a sheriff or deputy sheriff. If directed to a court, service shall be on a judge or clerk thereof; if to a board or other tribunal on its secretary, clerk or any member. Service shall be by delivery of the original writ; and a copy, with return of service, shall be returned to the office of its issuance. [Report 1943]

See also ch 662  
Personal service, R.C.P. 56

**313. Return to writ—by whom.** Where the writ is directed to a court, return thereto, if practicable, shall be made and signed by the judge whose action is complained of, otherwise by any judge of that court; where directed to an officer, he shall make and sign the return; where directed to a board or tribunal, return thereto shall be made and signed by its presiding officer, or its clerk or secretary. [Report 1943]

See also ch 662

**314. Defective return.** If the return is defective, the court or justice who issued the writ, on his own motion or that of any party, may order a further return; or compel obedience to the writ or to such order, by attachment or citation for contempt. [Report 1943]

See also ch 662

**315. Trial.** When full return has been made, the court shall fix a time and place of hearing, and hear the parties upon the record made by the return. In its discretion, it may receive any transcript of the evidence taken in the original proceeding, and such other oral or written evidence as is explanatory of the matters contained in the return. Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original tribunal, board or officer to sustain its, or his action, unless otherwise specially provided by statute. [Report 1943]

See also ch 662

**316. Judgment limited.** Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed. [Report 1943]

See also ch 662

**317. Nature of proceeding.** The action shall be by ordinary proceedings, so far as applicable. [Report 1943]

See also ch 662

**318. Appeal.** Appeal to the supreme court lies from a judgment of the district court in a certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions. [Report 1943]

See also ch 662

**319. Limitation.** No writ of certiorari shall issue or be sustained unless the petition is filed within six months from the time the inferior tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. [Report 1943]

See also ch 662

## DIVISION XV INJUNCTIONS

See also chapter 664 of the Code

**320. Independent or auxiliary remedy.** An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage

of the proceedings, and is then known as a temporary injunction. [Report 1943]

See also ch 664

**321. Temporary—when allowed.** A temporary injunction may be allowed:

(a) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure him, or,

(b) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual, or,

(c) In any case specially authorized by statute. [Report 1943]

*For injunctions in interpleader actions, see rule 39.*

See also ch 664

**322. Indorsing refusal.** A court, or justice of the supreme court, refusing a temporary injunction shall indorse the refusal on the petition therefor. [Report 1943]

See also ch 664

**323. Statement re prior presentation.** A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when. [Report 1943]

See also ch 664

**324. Outside district.** No temporary injunction shall be granted by a district court different from the one where the action is, or will be, pending, except upon affidavit that the application therefor cannot be promptly made to the latter court. [Report 1943]

Referred to in R.C.P. 325 and 328  
See also ch 664

**325. By whom granted.** A temporary injunction may be granted by:

(a) The court in which the action is or will be pending;

(b) The supreme court or a justice thereof;

(c) Any other district court, when permitted by rule 324. [Report 1943]

See also ch 664

**326. Notice.** Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. Such notice and hearing must be had for a temporary injunction to stop the general and ordinary business of a corporation, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance. [Report 1943]

See also ch 664

**327. Bond.** The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be one hundred twenty-five percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk, shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for divorce, separate maintenance or annulment of marriage, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable. [Report 1943]

See also ch 664

**328. Dissolution.** A party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it. Such motion shall be submitted to that court. But if the injunction was granted by a justice or court of a different district under rule 324, the court or justice that ordered it shall hear the motion, if it be shown by affidavit, that prompt hearing cannot be obtained in the court where the action is pending. [Report 1943]

See also ch 664

**329. Enjoining proceedings or judgment—venue—bond.** An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained, unless that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the cause of action enjoined. [Report 1943]

See also ch 664

**330. Violation as contempt.** Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly. [Report 1943]

See also ch 664

## DIVISION XVI

### APPELLATE PROCEDURE

See also chapter 686 of the Code

#### 331. From final judgment.

(a) All final judgments and decisions of courts of record, and any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of

divorce or annulment shall also be deemed a final decision.

(b) No interlocutory ruling or decision may be appealed, except as provided in rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party. [Report 1943; amendment 1945; amendment 1951]

Referred to in R.C.P. 332, 353, and 371  
See also ch 686 and Supreme Court rules

**332. From interlocutory orders.**

(a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice, and hearing as provided in rules 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 331, from a final adjudication in the trial court under rule 86.

(b) The order granting such appeal may be on terms of advancing it for prompt submission. It shall stay further proceedings below, and may require bond. [Report 1943; amendment 1945]

Referred to in R.C.P. 331, 335, 352, 353, and 371  
See also ch 686 and Supreme Court rules

**333. Amount in controversy.** Except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the pleadings, is less than three hundred dollars, unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment. [Report 1943]

Referred to in R.C.P. 331, 353, and 371  
See also ch 686 and Supreme Court rules

**334. Scope of review.** Review in equity cases shall be de novo. In all other cases the supreme court shall constitute a court for correction of errors at law; and findings of fact in jury-waived cases shall have the effect of a special verdict. [Report 1943]

Referred to in R.C.P. 353 and 371  
See also ch 686 and Supreme Court rules

**335. Time for appeal.** Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order,

judgment or decree, unless a motion for new trial or for judgment notwithstanding the verdict is filed as provided in rule 247, and then within thirty days after the ruling on such motion; provided however, that, where an application to the supreme court or any justice thereof to grant an appeal in advance of final judgment under rule 332 is made within thirty days from the date of such ruling or decision, the supreme court or any justice thereof may extend the time for filing the notice of appeal in the event the appeal is granted and the appeal, in such event, may be perfected within the time thus specified.

Provided, however, a cross-appeal may be taken within said thirty-day period, or in any event within five days after the appeal is taken. [Report 1943; amendment 1945; amendment 1949]

Referred to in R.C.P. 353 and 371  
See also ch 686 and Supreme Court rules

**336. How taken—notice—delivery.** Appeal is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by the appellant or his attorney. It shall specify the parties taking the appeal, and the decree, judgment, order or part thereof appealed from. The clerk shall forthwith mail or deliver a copy of such notice to the attorneys of record for all parties other than the appellant, or to any such party who has no attorney of record, at his last known address. No failure of the clerk to mail or deliver any notice shall affect the validity of the appeal. [Report 1943]

Referred to in R.C.P. 342, 353, and 371; Court Rule 1  
See also ch 686 and Supreme Court rules

**337. Supersedeas—bond.**

(a) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that he will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value, the obligation of the judgment or order appealed from, which the supreme court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal, of which appellee is deprived by reason of the appeal.

(b) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount, including costs, unless, in exceptional cases, the trial court fix a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(c) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring the appellee and all others to stay proceedings under it,



or such part of it as has been appealed from, when the appeal bond is filed and approved. [Report 1943]

Referred to in R.C.P. 353 and 371  
Referred to in §321A.1  
See also ch 686 and Supreme Court rules

**338. Bond—hearing on sufficiency.** If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a superseas bond tendered by appellant, he may apply to the trial court, on at least three days notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, it shall itself determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one; all as appears by the circumstances shown at the hearing. [Report 1943]

Referred to in R.C.P. 353 and 371  
See also ch 686 and Supreme Court rules

**339. Judgment on bond.** If the supreme court affirms the judgment appealed from, it may, on motion of the appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or may remand the cause to the trial court for the determination of such damages and costs, and the entry of judgment on the bond. [Report 1943]

Referred to in R.C.P. 353 and 371  
Similar provision, §601.95  
See also ch 686 and Supreme Court rules  
(See R.C.P. 371 for procedure to amend Rules 340 to 353, inclusive.)

**340. Record on appeal.**

(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten *abstract* of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be copied in full in the printed record, the abstract may so state and refer to them by letter, number or other appropriate designation, without copying them.

The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

The clerk shall forthwith notify the attorneys of record for the appellee of such filing.

(b) If the abstract does not embrace the whole record, and all evidence and proceedings in the transcript, depositions and exhibits, it shall include a concise statement of all points upon which appellant will rely on the appeal, which shall be limited thereto.

(c) Within twenty days after such filing, or such longer time as the trial court may allow

or the parties agree to in writing, any other party to the appeal may, in like manner, file duplicate amendments to appellant's abstract, proposing corrections, substitutions or additions thereto. At the expiration of the time for amendment, either party, on not less than three days written notice, may present the proposed abstract and all such proposed amendments, if any, to the judge before whom the case was tried, who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial, and is in form as provided by these rules. The trial court shall then append to appellant's proposed abstract an order settling the same with any corrections, substitutions or additions it has allowed in conformity with these rules.

(d) Testimony of witnesses may be abstracted wholly or in part in condensed or narrative form, but if any party to the appeal deems any portion thereof to be of particular importance, he may state or substitute that part in question and answer form. Any party dissatisfied with another's proposed narrative statement of any testimony may require the questions and answers comprising it to be substituted for such narrative statement.

(e) Formal parts of all exhibits, and more than one copy of any document, shall be omitted. Documents shall be abridged by omitting formal or irrelevant parts. This rule shall also apply to exhibits to pleadings.

(f) The abstract allowed as above or under paragraph (h) hereof shall constitute the record on which the cause shall be submitted on the appeal. The appellant shall cause it to be printed, so as also to contain in full any exhibits designated in the abstract by number alone, as provided in paragraph (a) hereof.

*For correcting record, see rule 341.*

(g) The supreme court may impose or withhold costs for any addition or substitution of irrelevant matter, or the use of needless questions and answers for the narrative statement. To aid it in this respect only, the clerk of the trial court, at the request of the aggrieved party, shall certify to the supreme court the reporter's transcript, depositions, exhibits and proposed abstract and amendments thereto.

(h) Instead of proceeding under paragraphs (b) and (c) hereof, the parties may file with or include in the abstract proposed by any party to the appeal, their written agreement that it is correct. The trial court shall thereupon certify that such abstract has been so agreed to, and is the record on appeal.

(i) Abstracts and the printed record shall contain a brief index of their contents, in which the pleadings shall appear in the order of their filing. [Report 1943]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**341. Correcting record—certification.**

(a) If anything material to either party is omitted from the record on appeal by error or accident, or is misstated therein, the parties by

stipulation, or the trial court, either before or after the record is transmitted to the supreme court, or the supreme court on its own initiative or proper suggestion, may direct the correction thereof; and, if necessary, that further proceedings be had and a supplemental record be prepared and certified in the trial court; or may require the clerk of the trial court to certify to the supreme court any or all of the evidence or proceedings below.

(b) Any part or all of the record, including exhibits, in the trial court shall, at the request of the supreme court or any justice thereof, be certified and transmitted by the clerk of the court below to the supreme court. [Report 1943]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**342. Filing and docketing.**

(a) Within ninety days after filing notice of appeal, or such longer time as the trial court may grant on application and hearing, appellant shall file the printed record with the clerk of the trial court, with one printed copy for the attorney or attorneys for each other party to the record and for each such party not represented by attorney. The cause shall be entitled as it was in the court below, with the party taking the appeal called the appellant, and all other parties appellees. The clerk shall mail or deliver a copy of the record to each of such attorneys or parties, as provided in rule 336 or rule 353, and shall indorse upon the other copy his certificate of such filing and mailing, and mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

(b) When appellant files the printed record in the trial court, he shall forthwith mail or deliver seventeen printed copies thereof, with a filing fee of three dollars, to the clerk of the supreme court, who shall then docket the cause.

(c) If the printed record is not filed by the appellant with the clerk of the trial court within ninety days after filing the notice of appeal or within such further time as fixed by the trial court, the appellee may file with the clerk of the supreme court a copy of the final judgment or order appealed from, or other matters required, certified to by the clerk of the trial court, and cause the case to be docketed, and the appeal upon motion shall be dismissed, or the judgment or order affirmed.

(d) After an appeal to the supreme court is taken and perfected, as provided in rule 336, the failure of appellant to take any further steps to secure the review of the judgment or order appealed from in the manner and within the time specified in these rules shall be ground for the dismissal of the appeal or for the affirmance of the judgment or order appealed from as provided in paragraph (c) hereof and rule 348. If reasonable excuse be shown for such failure to comply with these

rules the supreme court may allow the appeal to stand upon such terms as it deems appropriate. [Report 1943; Court Order Dec. 12, 1945; amendment 1953]

Referred to in R.C.P. 343 and 353; Court Rule 11  
See also ch 686 and Supreme Court rules

**343. Filing briefs.** In all cases, whether in equity or at law, the appellant shall file his brief with the clerk of the trial court within forty-five days after filing his record, unless such time is enlarged in accordance with rule 347(b) or suspended under rule 348(d). He shall also file one "service copy" for the clerk's certification, and copies for the other parties or their attorneys as provided in rule 342, which copies the clerk shall forthwith mail or deliver in like manner. The clerk shall indorse upon the "service copy" his certificate of such filing and mailing, and mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

Within thirty days after appellant's brief is thus filed, the appellee shall serve and file his brief in like manner. If he is a cross-appellant he may have until the same time in which to file his opening brief as such cross-appellant and combine it with his brief as appellee.

Appellant shall, within fifteen days thereafter file and serve his reply brief, if any, in like manner. [Report 1943; amendment 1949; amendment 1953]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**344. Form and contents of briefs.**

(a) Appellant's opening brief shall contain:

(1) A statement of the case, not ordinarily to exceed one page, showing the nature of the action, what the issues were, and how they were decided, and what questions are presented by the appeal;

(2) A statement of the facts, stating the principal facts in narrative form, with references to the pages and lines of the record to support each statement. But if such references are fully supplied in the argument, they may be omitted from this statement.

(3) A statement of errors relied on for reversal when the appeal presents questions of law; or a statement of propositions relied on, when it is triable de novo. The errors or propositions shall be separately stated and numbered, in substantially the order they are presented in the division of the brief.

(4) In separately numbered divisions:

(First) A statement of the "error" or "proposition" relied on and discussed in that division, with references to the pages and lines of the record, sufficient to show fully the manner in which the error arose and the ruling of the trial court thereon.

(Second) Separately numbered or lettered brief points substantially conforming to the

"Statement of Errors" or "Propositions" and stating without argument the grounds of complaint of the ruling and citing authorities supporting each point.

(Third) The argument shall follow the statement of the brief points and authorities in each division, and be confined thereto. Errors or propositions not stated or argued shall be deemed waived.

(b) If two or more errors relied on present closely related propositions of law or fact, the brief points and arguments may be presented in one division.

(c) Argument of any error which relates to the sufficiency of the evidence to sustain a ruling on any point shall supply full references to the pages and lines of the record, unless such evidence is fully stated, with such references, in the statement of facts.

(d) Appellee's brief and appellant's reply shall follow the above outline as nearly as may be, but without unnecessary repetition.

(e) In citing cases the names of parties must be given. And in citing cases determined by this court, which have been officially reported, reference must be made to the volume and page where the case may be found in the Iowa Reports and also in the North Western Reporter, if reported therein. In citing cases from other jurisdictions, reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. When textbooks are cited, the edition must be designated with the proper volume and page. [Report 1943; Court Order Dec. 12, 1945]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**345. Printing and costs.** All records and briefs filed in the supreme court shall be clear and legible and printed on unruled white paper with type not smaller than small pica. The printing may be with type and leaded lines, offset printing, multigraph, mimeograph, duplicator, or other similar process approved by the court. The printed portion of each page shall be four inches wide and seven inches long with margins of two inches. Headings, and matter specially emphasized, may be printed in bold face. The lines of the record must be numbered consecutively on each page.

The amount actually paid for printing, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, taxed in the supreme court as costs.

[Report 1943; amended January 16, 1947 and June 18, 1948 by order of court under authority of R.C.P. 371]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**346. Submission and oral argument.** A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will be heard orally only in reply to his adversary's oral argument, if any. The oral argu-

ments shall conform to rules prescribed by the supreme court. [Report 1943]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**347. Writs and orders in the supreme court.**

(a) *Writs and process.* The supreme court shall issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(b) *Orders.* Every application for an order in the supreme court shall be in writing, served upon the adverse party or his attorney of record, with a notice that it will come on for hearing before the supreme court or a justice thereof at a stated time and place. By stipulation and arrangement with the court or justice the parties may fix the time and place of hearing.

(c) *Hearings.* No order shall be issued except upon reasonable notice and opportunity to make resistance, but if it be made to appear that great and irreparable loss would ensue if the matter were delayed, an order may be entered effective only until final order is made. The supreme court may hear oral arguments on an application for order if it deems them desirable; otherwise, the matter shall be submitted without oral argument. One or more justices may act for the court in such matters. [Report 1943]

Referred to in R.C.P. 332, 343, and 353; Court Rule 11  
See also ch 686 and Supreme Court rules

**348. Motions to dismiss or affirm.**

(a) Appellee's motion to dismiss an appeal or motion to affirm must be in printing or typewriting, supported by printed or typewritten brief, and served on appellant's counsel and filed with the clerk of the supreme court within twenty days after filing the record, if the grounds therefor then exist. If appellee desires to present the motion orally, he shall so request therein, and the court may make such order as it deems proper in regard thereto.

(b) The day immediately preceding the first day of each period, as fixed by the docket for the term, shall be and is hereby designated as motion day and, except when otherwise specially ordered by the court or a judge thereof, such motion day shall be and the same is hereby fixed as the time for submission of every such motion to dismiss, served and filed ten days or more prior thereto, and also every such motion to dismiss to which resistance has been filed. If the chief justice or the court determines oral argument is desirable, such motion shall be assigned for oral argument, otherwise it shall be assigned for submission on the briefs. The clerk shall forthwith notify each party of the time and manner of the submission.

(c) Appellant's resistance, if any, shall be

served and filed not less than three days prior to the date fixed for such submission.

(d) The court may rule on the motion to dismiss or motion to affirm before requiring submission of the appeal or may order the motion submitted with the appeal. The time intervening between service of the motion and the court's order overruling the motion, or providing that it be submitted with the appeal, shall be excluded in determining the time within which the parties' respective briefs on the merits must be filed.

(e) If grounds for dismissal of an appeal or affirmance arise after the record is filed, appellee may file and serve such motion to dismiss or motion to affirm and supporting brief. The court shall then determine when and on what notice, the same shall be heard, and whether submission of the appeal shall be stayed and may make appropriate orders respecting the time for filing briefs on the merits. [Report 1943; Court Order Dec. 12, 1945; Court Order Mar. 6, 1956]

Referred to in R.C.P. 342, 343, 353; Court Rule 12  
See also ch 686 and Supreme Court rules

**349. Remands.** When a judgment is reversed for error in overruling a motion to direct a verdict, or a motion for judgment under rule 243(b), or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the supreme court may enter, or direct the trial court to enter final judgment as if such motion had been initially sustained; providing that, if it appears from the record that the material facts relating thereto were not fully developed at the trial, or if, in the opinion of the supreme court, the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case. [Report 1943]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**350. Rehearings.**

(a) No notice of intention to file a petition for rehearing need be given; but the petition and brief thereon shall be filed with the clerk of the supreme court within thirty days after filing the opinion, or such longer time as the chief justice, on written application served on the opposing parties, may allow. The petition and supporting brief must be printed either separately or together. Petitioner shall file eighteen copies thereof, together with one additional copy for the attorney or attorneys for each other party to the appeal, and each party not represented by attorney. The clerk shall mail or deliver one copy to each such attorney or party forthwith; but his failure shall not impair the petitioner's right to consideration of his petition. The opposing party shall have fifteen days after filing of the petition and brief, in which to file resistance thereto.

(b) The parties shall have such right to argue a petition for rehearing orally on its submission as the court may prescribe by rule.

(c) The court may deny a rehearing, modify its opinion or order a resubmission. If resubmission is ordered, it shall designate the time for filing briefs, and counsel shall be entitled to oral argument on the resubmission; but the order therefor may designate the point or points to be argued. [Report 1943]

Referred to in R.C.P. 353  
See also ch 686 and Supreme Court rules

**351. Procedendo.** Unless otherwise ordered by the court, no procedendo shall issue for thirty days after an opinion is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending. [Report 1943]

See also ch 686 and Supreme Court rules

**352. Certiorari or appeal.** If any case is brought to the supreme court by appeal or certiorari, and the court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the court as application to grant an appeal (as provided in rule 332) and conversely an application to grant an appeal may be treated as a petition for certiorari.

Provided, however, nothing in this rule shall operate to extend the time within which an appeal may be taken. [Report 1943; amendment 1949]

See also ch 686 and Supreme Court rules

**353. Service generally.** Whenever service on a party to an appeal is required or permitted under rules 331-350 inclusive, it shall be made by delivering copy to his attorney of record, or if he have none, then by delivery to him or mailing to his last known address, or if no address is known, by leaving a copy for him with the clerk of the supreme court. Delivery of copy within this rule means either handing it to the attorney or party, or leaving it at his office with his clerk or other person in charge thereof, or if no one is in charge leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over eighteen years or age residing therein; or mailing it to his office address. Service by mail is complete on mailing. Proof of service may be made by written acknowledgment, or by affidavit of the person making the service, who may be an attorney in the case or his clerk. [Report 1943]

Referred to in R.C.P. 332 and 342  
See also ch 686 and Supreme Court rules

**DIVISION XVII**

**COURTS OF JUSTICES OF THE PEACE**

See also chapter 601 of the Code

**354. Security for costs.** If a defendant in any cause of action in the justice court, at any time more than forty-eight hours prior to the time fixed in the notice for appearance, shall make

and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, if he is a nonresident of the state or a foreign corporation, before any other proceedings in the action, must file with the justice before whom such action is pending, a bond with sureties to be approved by such justice, in an amount not exceeding one hundred dollars to be fixed by such justice for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other justice court to which it may be carried, either to the defendant or to the officers of the court. The filing of an application for security for costs shall not waive the right of a party to challenge the jurisdiction of the justice court, at the time fixed in the notice. [Report 1943]

Similar provision, §621.1  
See also ch 601

**355. Counterclaims and transfer to district court.** In an action commenced in justice court for the recovery of money only, where the sum claimed is in excess of twenty-five dollars, any defendant may have the same transferred to the district court by filing with the justice at least twenty-four hours prior to the time for appearance fixed in the notice, a bond with sureties approved by the justice, in double the amount claimed by the plaintiff but in no case less than one hundred dollars and conditioned that such defendant will pay any judgment with costs recovered by the plaintiff against the defendant in the district court. Upon the filing of such bond and the approval of the sureties by the justice, the justice shall forthwith transcript the action to the district court. Where the amount claimed by plaintiff is twenty-five dollars or less any defendant may transfer such a justice court action to the district court upon the filing of an affidavit stating that he has a counterclaim in an amount in excess of the jurisdiction of the court, arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim, and which upon transfer will be filed, and by filing a bond as above provided. Such affidavit and bond shall be filed at least twenty-four hours prior to the time fixed for appearance in the notice. [Report 1943]

See also ch 601

**356. Proceedings upon transfer.** Upon transfer of an action from the justice court to the district court, and within five days after the filing of the transcript in the district court the plaintiff shall file a written petition. When petition has been so filed, the defendant shall plead or move thereto within ten days after the filing of the transcript. Thereafter the rules of pleading and practice shall be the same as though the action had originally been commenced in the district court. If the petition is not filed as provided herein the action shall be dismissed at plaintiff's costs. [Report 1943]

See also ch 601

**357. Notice of appeal.** In cases of appeal from the justice court to the district court or

superior court, notice of appeal may be given in either of the following ways:

(a) By the appealing party filing in the justice court on the day on which the judgment is rendered, a written statement signed by such party or his attorney, that such party is appealing from the judgment. It may be made by writing it in the justice's docket.

(b) By the appealing party serving notice of the appeal upon the appellee, his agent, or the attorney who appeared for him, within twenty days after the judgment appealed from is rendered. Such notice shall be served in the same manner as is provided for service of original notice. If the appellee is a nonresident or foreign corporation and does not appear by agent or attorney, or if for any reason it is not possible to make service of such notice upon the appellee, his agent or attorney, the notice of appeal may be served upon the justice who rendered the judgment appealed from. [Report 1943]

See also ch 601

**358. Filing of bond on appeal.** The appeal bond must be filed in the office of the clerk of the court to which the appeal is taken, within twenty days after the rendition of the judgment appealed from. It shall be in an amount determined by the clerk to be sufficient to secure the judgment and costs of appeal and with sureties approved by said clerk. [Report 1943]

See also ch 601

**359. Dismissal for lack of prosecution.** Any justice court action which is appealed, transferred or taken up by writ of error for review, shall stand for trial or be dismissed for lack of prosecution the same as any case originally brought in the district or superior court. [Report 1943]

See also ch 601

**360. Judgment upon appeal on dismissal for lack of prosecution.** When any judgment has been appealed or taken up by writ of error for review and shall be dismissed in the district or superior court for lack of prosecution, the clerk shall enter judgment against the party or parties appealing in accordance with the judgment of the justice court. [Report 1943]

See also ch 601

**361. Deposit of money in lieu of bond.** When a bond is required any party in lieu of filing a bond, may deposit money in the sum fixed or specified as the amount of the bond. The rights of parties in and to the money so deposited shall be the same as their rights under the bond if one had been filed. Money deposited with a justice in lieu of a bond shall be transmitted by the justice to the clerk of the court to which the case is appealed, transferred or brought for review by writ of error. [Report 1943]

See also ch 601

**362. Additional remedy where exemption claimed.** In any action in justice court where

funds are sought to be reached by garnishment, or personal property has been levied upon under attachment or execution, the debtor, in addition to other remedies provided by law, and by motion filed at any time before judgment is entered against the garnishee, or before sale of property taken under attachment or execution, may move for a release of the funds, or certain or all of the personal property on the ground that the same are exempt from attachment or execution. Such motion shall be heard forthwith and the showing or counter-showing may be by affidavit or oral testimony or both. The matter of entering judgment against the garnishee or the sale of personal property shall be postponed until the motion is disposed of. [Report 1943]

See also ch 601

### DIVISION XVIII MUNICIPAL COURT

See also chapter 602 of the Code

**363. Filing and docketing.** Unless the petition in class "A" cases or the original notice in class "B" cases is filed with the clerk of the court at least five days before the date set in the original notice for appearance, the defendant shall not be held to appear and answer, except that in any municipal court wherein class "B" cases are included in rules prescribing the manner for settlement of controversies by conciliation, the original notice in such conciliation cases need not be filed until the time and the date set forth in the notice for appearance. If the petition or original notice, as the case may be, is not so filed the defendant may have the case dismissed at plaintiff's costs, without notice, by filing a copy of the original notice with the clerk and paying the filing fees. No new action shall be commenced in any court of this state based upon the same claim or demand unless the costs in such dismissed action are fully paid by the claimant and satisfied of record. [Report 1943; amendment 1945]

See also ch 602

**364. Transfer to district court—in cases brought in the municipal court.** When any defendant files a counterclaim in an amount in excess of the jurisdiction of the court, arising out of the transaction or occurrence that is the subject matter of plaintiff's claim, such defendant, by motion filed with such counterclaim, may have the case transferred to the district court, upon the filing in the municipal court of a bond in an amount, and within the time fixed and with sureties approved by the court. The bond shall be conditioned for the payment of all court costs assessed or adjudged against such defendant by the district court in connection with such case. [Report 1943]

See also ch 602

**365. Manner and proceedings.** Upon transfer of an action from the municipal court to the district court the clerk of the municipal court shall forthwith transmit to the clerk of

the district court a transcript of the proceedings, with any original papers, of which he shall retain an authentic copy. The case shall be docketed without fee. The rights of the parties and the practice and procedure shall be the same as in actions originally commenced in district court. [Report 1943]

See also ch 602

### DIVISION XIX

#### RULES OF A GENERAL NATURE

**366. Computing time—holidays.** In computing time under these rules the first day shall be excluded and the last day included, and if the last day is a Sunday or holiday, the time shall extend to the next day not a Sunday or holiday. Holidays shall be only: January first, February twelfth and twenty-second, May thirtieth, July fourth, November eleventh, December twenty-fifth, the first Monday in September, the day of general election, and any day proclaimed or designated by the president or the governor as a day of Thanksgiving. [Report 1943]

#### **367. Death, retirement or disability of judge.**

(a) In the event of the death or disability of a judge in the course of a proceeding at which he is presiding, or while a motion for new trial or for judgment notwithstanding the verdict, or for other relief, is pending, any other judge of the district may hear or act upon the same, and, if in his opinion he can proceed with the matter or determine the motion he shall do so; otherwise, he may order a continuance, declare a mistrial, order a new trial of all or any of the issues, or make such disposition of the matter as the situation warrants.

(b) In the event of the death or disability of a judge who has under advisement an undecided motion, or case tried to him without a jury, any other judge of the district may be called in, or a judge from another district may be appointed by the chief justice of the supreme court to consider the same, and, if by a review of the transcript or a reargument he can, in his opinion, sufficiently inform himself to enable him to render a decision, he shall do so; otherwise he may order a continuance, declare a mistrial, or order a new trial of all or any of the issues, or direct the recalling of any witnesses, or make such disposition of the matter as the situation warrants.

(c) In the event of the death, disability or retirement of a judge before the record for appeal in any case tried by him shall have been settled, the same shall be settled by another judge of the district, or by a judge of another district appointed for that purpose by the chief justice of the supreme court. [Report 1943; amendment 1945]

See also ch 605

**368. Appeal to district court from administrative body.** Where appeal to the district court from an action or decision of any officer, body or board is provided for by statute and the statute does not provide for the formula-

tion of the issues either before such officer, body or board, or in the district court, the appellant shall file a petition in the district court within ten days after perfecting the appeal, or within such time as may be prescribed by the court. The appellee shall file motion or an answer to such petition within ten days thereafter, or within such further time as may be prescribed by the court. Thereafter the rules of pleading and procedure in actions in the district court shall be applicable. [Report 1943]

See also ch 605

**369. Effect of notice by posting.** Notice by posting shall not be recognized as having any effect, except in probate proceedings, or where expressly authorized by statute. [Report 1943; amendment 1945]

**370. Comments and footnotes.** All references to sources, comments, and footnotes are incorporated solely for convenience in the use of the rules and do not form a part thereof. [Report 1943]

**371. Power of supreme court to change.** The supreme court shall have power to revoke, change or supplement any of these rules which prescribe the procedure in that court. Under this power the court may revoke, change or supplement any rule in division XVI hereof except rules 331-339 inclusive. Any such change or addition shall take effect at such time as the court shall prescribe. [Report 1943]

**APPENDIX I**  
**STATUTES OF NO FURTHER FORCE AND EFFECT**

References are to statutes of the Codes 1924 to 1939, inc.

(Column 1 of this table contains a list of statutes which are of no further force and effect. Column 2 shows what rule or rules of civil procedure have rendered each of these statutes of no further force and effect.)\*

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\*(That a statute is shown in this table as superseded does not indicate that the procedure has been changed by these rules. The greater portion of the statutes listed as of no further force and effect have been incorporated in the rules, either verbatim or in substance or with slight modifications necessary to make them conform to the system of practice contemplated under the rules.)



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CLERK'S DIRECTION TO ATTORNEYS

All printed matter filed in the office of the clerk of the supreme court should be made up as required by Civil Rule 345, and should be sewed. No cover, staples, or other metal fasteners should be used.

Proof of service or clerk's certificate of mailing or delivery should appear on the cover, with the title of the cause.

Notice of oral argument should appear at the close of the brief.

Attention is called to the requirement of Civil Rule 345 that the attorney shall certify the amount "actually paid" for printing.

The filing fee of three dollars must be paid before the cause will be docketed.

Papers are not considered filed until the time they actually reach this office.

HELEN M. LYMAN,  
*Clerk Supreme Court.*

1958

**PRACTICE AND PROCEDURE**  
**in the**  
**SUPREME COURT**



# The Supreme Court of Iowa

## STATUTES, RULES OF CIVIL PROCEDURE, AND COURT RULES

### REGULATING APPELLATE PRACTICE AND PROCEDURE IN THE SUPREME COURT

#### PUBLISHED HEREIN BY ORDER OF THE COURT

This division contains the essential statutes, Rules of Civil Procedure and Rules of the Supreme Court, pertaining to appellate practice before that tribunal.

**Court Rule 1.** The Rules of Civil Procedure prescribed by this court took effect July 4, 1943. From time to time thereafter such rules have been amended.

#### ORGANIZATION AND ASSIGNMENT OF CAUSES

**Code Sec. 684.1.** The supreme court shall consist of nine judges, five of whom shall constitute a quorum to hold court, but one alone thereof may adjourn from day to day or to a certain day or until the next term.

(Code sections 684.2, 684.3, and Court Rules 2, 3, 5, 7 and 8 are omitted because they refer only to sections or divisions of the supreme court and the court has not sat in divisions since September, 1943, and expects to continue to sit en banc, at least during the foreseeable future.)

**Court Rule 4.** Causes may be advanced to an earlier period or term or passed to a later period as convenience or necessity may warrant and the right to oral argument shall not be affected thereby; said order of advancement may be without notice and by special or general order of the Chief Justice when the prompt filing of briefs makes an earlier submission date possible. If a cause involves a question of public importance or rights which are likely to be lost or greatly impaired by delay, the court may, in its discretion, upon motion duly served, order the submission of the cause in advance of the time at which it would otherwise be submitted.

**Code Sec. 684.4.** The supreme court shall select one of its members to serve as chief justice for six months, the judges to serve in rotation in such order as may be determined by the court. At the last term of each year, the supreme court shall determine and enter of record who, under this statute, shall be chief justice for the six months period beginning on January 1 thereafter. Likewise at the May term in each year and on or before June 30, the supreme court shall determine and enter of record who, under this statute, shall be chief justice for the last six months of the

year. The presiding chief justice shall appoint one of the other members of the court to act in his place and stead in case of his absence or inability to act and, when so acting, such member shall have all the rights, duties and powers given by statute to the chief justice of the supreme court.

**Court Rule 6.** If the chief justice is absent or ill or from any other disability is unable to act and does not select some other member of the court to act as chief justice during his absence or disability the court shall select one of its other members to act during such time.

**Code Sec. 684.5.** The supreme court shall be held at the seat of government, and shall convene and hold three regular terms each year. The first term shall begin with the second Tuesday of January and end with the first Monday of May; the second shall begin with the first Tuesday after the first Monday of May and end with the third Monday of September; and the third shall begin with the first Tuesday after the third Monday of September and end with the third Saturday of December.

**Code Sec. 684.6.** Each of said terms of court shall be for the submission and determination of causes, and for the transaction of such other business as shall properly come before the court. All causes on the docket shall be heard at each term, unless continued or otherwise disposed of by order of the court. The court shall remain in session, so far as practicable, until it is determined what the opinion of the court shall be in all causes submitted to it, except in causes where reargument is ordered. Judgments of affirmance, rulings, and orders in causes submitted, and orders authorized by law may be made and entered by the court at any time, regardless of the terms of court.

**Code Sec. 684.9.** The court shall by appropriate rules provide for the assignment of causes for hearing at the regular and adjourned sessions thereof, and for reasonable notice to counsel of the time or times at which their cases will be called.

**Court Rule 9.** The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians ad litem of the same parties respectively in this court until others are retained or appointed and notice thereof is given the adverse party and the clerk of this court.

**Court Rule 10.** Immediately after the time expires during which causes may be docketed for trial at a term of court, the clerk shall make and have printed, the docket for the term, which shall give all causes for trial, their number, the party appealing, the court and county from which the appeal is brought, the attorneys, the period for which each cause is assigned for trial, whether noticed for oral argument, and any other proper matter for the information of the court and attorneys. Under the direction of the chief justice, the clerk shall so assign motions and petitions for rehearing that they will be submitted to the proper division or the full bench. He shall furnish a copy of the docket to each judge of this court and to each attorney having a cause at the term.

## JURISDICTION

### **R. C. P. 331. From Final Judgment.**

(a) All final judgments and decisions of courts of record, and any final adjudication in the trial court under Rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in Rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce or annulment shall also be deemed a final decision.

(b) No interlocutory ruling or decision may be appealed, except as provided in Rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under Rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party.

Referred to in R.C.P. 332

### **R. C. P. 332. From Interlocutory Orders.**

(a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice, and hearing as provided in Rules 347 and 353, on finding that such ruling or decision involves substantial

rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to Rule 331, from a final adjudication in the trial court under Rule 86.

(b) The order granting such appeal may be on terms of advancing it for prompt submission. It shall stay further proceedings below, and may require bond.

Referred to in R.C.P. 331, 335

**R. C. P. 333. Amount in Controversy.** Except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the pleadings, is less than three hundred dollars, unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment.

Referred to in R.C.P. 331

**R. C. P. 334. Scope of Review.** Review in equity cases shall be de novo. In all other cases the supreme court shall constitute a court for correction of errors at law; and findings of fact in jury-waived cases shall have the effect of a special verdict.

**Code Sec. 686.1.** A mistake of the clerk shall not be ground for an appeal until the same has been presented to and acted upon by the court below.

**Code Sec. 686.2.** The supreme court on appeal may review and reverse any judgment or order of the municipal, superior, or district court, although no motion for a new trial was made in such court.

## APPEALS IN CIVIL CASES

**R. C. P. 335. Time for Appeal.** Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or for judgment notwithstanding the verdict is filed as provided in Rule 247, and then within thirty days after the ruling on such motion; provided however, that, where an application to the supreme court or any justice thereof to grant an appeal in advance of final judgment under Rule 332 is made within thirty days from the date of such ruling or decision, the supreme court or any justice thereof may extend the time for filing the notice of appeal in the event the appeal is granted and the appeal, in such event, may be perfected within the time thus specified.

Provided, however, a cross-appeal may be taken within said thirty-day period, or in any event within five days after the appeal is taken.

**Code Sec. 686.3.** If the action challenges the legality, validity or constitutionality of a pro-

posed constitutional amendment, notice of appeal may be taken within three days from and after the entry of the decree in district court, and not afterwards.

**Code Sec. 686.4.** Coparties, refusing to join in an appeal, cannot afterwards appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto.

**Code Sec. 686.5.** An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb, delay, or affect the rights of any party to any judgment or order, or part of a judgment or order, not appealed from.

**R. C. P. 336. How Taken; Notice; Delivery.** Appeal is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by the appellant or his attorney. It shall specify the parties taking the appeal, and the decree, judgment, order or part thereof appealed from. The clerk shall forthwith mail or deliver a copy of such notice to the attorneys of record for all parties other than the appellant, or to any such party who has no attorney of record, at his last known address. No failure of the clerk to mail or deliver any notice shall affect the validity of the appeal.

Referred to in R.C.P. 342

**R. C. P. 337. Supersedeas; Bond.**

(a) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that he will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value, the obligation of the judgment or order appealed from, which the supreme court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal, of which appellee is deprived by reason of the appeal.

(b) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount, including costs, unless, in exceptional cases, the trial court fix a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(c) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring the appellee and all others to stay proceedings under it, or such part of it as has been appealed from, when the appeal bond is filed and approved.

**R. C. P. 338. Bond; Hearing on Sufficiency.** If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a supersedeas bond tendered by appellant, he may apply to the trial court, on at least three days notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, it shall itself determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one; all as appears by the circumstances shown at the hearing.

**R. C. P. 339. Judgment on Bond.** If the supreme court affirms the judgment appealed from, it may, on motion of the appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or may remand the cause to the trial court for the determination of such damages and costs, and the entry of judgment on the bond.

**Code Sec. 686.9.** The taking of the appeal from part of a judgment or order, and the filing of a bond as above directed, does not stay execution as to that part of the judgment or order not appealed from.

**Code Sec. 686.10.** If execution has issued prior to the filing of the bond, the clerk shall countermand the same.

**Code Sec. 686.11.** Property levied upon and not sold at the time such countermand is received by the sheriff shall be at once delivered to the judgment debtor.

**Code Sec. 686.12.** The appellant may be required to give security for costs under the same circumstances and upon the same showing as plaintiffs in civil actions in the inferior court may be.

**R. C. P. 340. Record on Appeal.**

(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten abstract of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be copied in full in the printed record, the abstract may so state and refer to them by letter, number or other appropriate designation, without copying them.

The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under Rule 241. The cost of the transcript shall be taxed in the trial court.

The clerk shall forthwith notify the attorneys of record for the appellee of such filing.

(b) If the abstract does not embrace the whole record, and all evidence and proceedings in the transcript, depositions and exhibits, it shall include a concise statement of all points upon which appellant will rely on the appeal, which shall be limited thereto.

(c) Within twenty days after such filing, or such longer time as the trial court may allow or the parties agree to in writing, any other party to the appeal may, in like manner, file duplicate amendments to appellant's abstract, proposing corrections, substitutions or additions thereto. At the expiration of the time for amendment, either party, on not less than three days written notice, may present the proposed abstract and all such proposed amendments, if any, to the judge before whom the case was tried, who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial, and is in form as provided by these rules. The trial court shall then append to appellant's proposed abstract an order settling the same with any corrections, substitutions or additions it has allowed in conformity with these rules.

(d) Testimony of witnesses may be abstracted wholly or in part in condensed or narrative form, but if any party to the appeal deems any portion thereof to be of particular importance, he may state or substitute that part in question and answer form. Any party dissatisfied with another's proposed narrative statement of any testimony may require the questions and answers comprising it to be substituted for such narrative statement.

(e) Formal parts of all exhibits, and more than one copy of any document, shall be omitted. Documents shall be abridged by omitting formal or irrelevant parts. This rule shall also apply to exhibits to pleadings.

(f) The abstract allowed as above or under paragraph (h) hereof shall constitute the record on which the cause shall be submitted on the appeal. The appellant shall cause it to be printed, so as also to contain in full any exhibits designated in the abstract by number alone, as provided in paragraph (a) hereof.

(g) The supreme court may impose or withhold costs for any addition or substitution of irrelevant matter, or the use of needless questions and answers for the narrative statement. To aid it in this respect only, the clerk of the trial court, at the request of the aggrieved party, shall certify to the supreme court the reporter's transcript, depositions, exhibits and proposed abstract and amendments thereto.

(h) Instead of proceeding under paragraphs (b) and (c) hereof, the parties may file with or include in the abstract proposed by any party to the appeal, their written agreement that it is correct. The trial court shall thereupon certify that such abstract has been so agreed to, and is the record on appeal.

(i) Abstracts and the printed record shall contain a brief index of their contents, in which the pleadings shall appear in the order of their filing.

**Code Sec. 686.6.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, an abstract of record shall be filed within five days after the service of notice of appeal, unless additional time, not to exceed three days, be granted by the chief justice.

**Code Sec. 686.13.** If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the appellant shall file a written argument within ten days after the filing of the abstract and appellee shall file his argument within ten days thereafter, and appellant shall then file his reply within three days. The cause shall then be submitted to the supreme court in regular or special full bench session as soon thereafter as the chief justice may order.

#### **R. C. P. 341. Correcting Record; Certification.**

(a) If anything material to either party is omitted from the record on appeal by error or accident, or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the supreme court, or the supreme court on its own initiative or proper suggestion, may direct the correction thereof; and, if necessary, that further proceedings be had and a supplemental record be prepared and certified in the trial court; or may require the clerk of the trial court to certify to the supreme court any or all of the evidence or proceedings below.

(b) Any part or all of the record, including exhibits, in the trial court shall, at the request of the supreme court or any justice thereof, be certified and transmitted by the clerk of the court below to the supreme court.

**Code Sec. 686.7.** The transcript of any paper or exhibit required for use in the supreme court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party.

**Code Sec. 686.8.** If a new trial is granted by the supreme court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded.

#### **R. C. P. 342. Filing and Docketing.**

(a) Within ninety days after filing notice of appeal, or such longer time as the trial court may grant on application and hearing, appellant shall file the printed record with the clerk of the trial court, with one printed copy for the attorney or attorneys for each other party to the record and for each such party not represented by attorney. The cause shall be entitled as it was in the court below, with the party taking the appeal called the appellant, and all other parties appellees. The clerk shall mail or deliver a copy of the record to each of such attorneys or parties, as provided in

Rule 336 or Rule 353, and shall indorse upon the other copy his certificate of such filing and mailing, and mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

(b) When appellant files the printed record in the trial court, he shall forthwith mail or deliver seventeen printed copies thereof, with a filing fee of three dollars, to the clerk of the supreme court, who shall then docket the cause.

(c) If the printed record is not filed by the appellant with the clerk of the trial court within ninety days after filing the notice of appeal or within such further time as fixed by the trial court, the appellee may file with the clerk of the supreme court a copy of the final judgment or order appealed from, or other matters required, certified to by the clerk of the trial court, and cause the case to be docketed, and the appeal upon motion shall be dismissed, or the judgment or order affirmed.

(d) After an appeal to the supreme court is taken and perfected, as provided in Rule 336, the failure of appellant to take any further steps to secure the review of the judgment or order appealed from in the manner and within the time specified in these rules shall be ground for the dismissal of the appeal or for the affirmance of the judgment or order appealed from as provided in paragraph (c) hereof and Rule 348. If reasonable excuse be shown for such failure to comply with these rules the supreme court may allow the appeal to stand upon such terms as it deems appropriate.

*Referred to in Court Rule 11; R.C.P. 343*

**Court Rule 11.** In the event the trial court has refused to grant sufficient time, under Rule 342 of the Rules of Civil Procedure, to prepare, print, and file the record on appeal, application may be made to this court for an extension of time, if the right to file the record has not then been lost by delay, and, after notice and hearing, the court may grant additional time if sufficient reasons therefor are found to exist; provided, however, that temporary extensions of time may be granted without notice pursuant to Rule 347 (c) of the Rules of Civil Procedure.

**R. C. P. 343. Filing Briefs.** In all cases, whether in equity or at law, the appellant shall file his brief with the clerk of the trial court within forty-five days after filing his record, unless such time is enlarged in accordance with Rule 347 (b) or suspended under Rule 348 (d). He shall also file one "service copy" for the clerk's certification, and copies for the other parties or their attorneys as provided in Rule 342, which copies the clerk shall forthwith mail or deliver in like manner. The clerk shall indorse upon the "service copy" his certificate of such filing and mailing, and

mail it, so indorsed, to the clerk of the supreme court. The clerk shall also enter in the appearance or combination docket in his office the date of filing and of mailing to the clerk of the supreme court.

Within thirty days after appellant's brief is thus filed, the appellee shall serve and file his brief in like manner. If he is a cross-appellant he may have until the same time in which to file his opening brief as such cross-appellant and combine it with his brief as appellee.

Appellant shall, within fifteen days thereafter file and serve his reply brief, if any, in like manner.

**R. C. P. 344. Form and Contents of Briefs.**

(a) Appellant's opening brief shall contain:

(1) A statement of the case, not ordinarily to exceed one page, showing the nature of the action, what the issues were, and how they were decided, and what questions are presented by the appeal.

(2) A statement of the facts, stating the principal facts in narrative form, with references to the pages and lines of the record to support each statement. But if such references are fully supplied in the argument, they may be omitted from this statement.

(3) A statement of errors relied on for reversal when the appeal presents questions of law; or a statement of propositions relied on, when it is triable de novo. The errors or propositions shall be separately stated and numbered, in substantially the order they are presented in the division of the brief.

(4) In separately numbered divisions:

(First) A statement of the "error" or "proposition" relied on and discussed in that division, with references to the pages and lines of the record, sufficient to show fully the manner in which the error arose and the ruling of the trial court thereon.

(Second) Separately numbered or lettered brief points substantially conforming to the "statement of errors" or "propositions" and stating without argument the grounds of complaint of the ruling and citing authorities supporting each point.

(Third) The argument shall follow the statement of the brief points and authorities in each division, and be confined thereto. Errors or propositions not stated or argued shall be deemed waived.

(b) If two or more errors relied on present closely related propositions of law or fact, the brief points and arguments may be presented in one division.

(c) Argument of any error which relates to the sufficiency of the evidence to sustain a ruling on any point shall supply full references to the pages and lines of the record, unless such evidence is fully stated, with such references, in the statement of facts.

(d) Appellee's brief and appellant's reply shall follow the above outline as nearly as may be, but without unnecessary repetition.

(e) In citing cases the names of parties must be given. And in citing cases determined by this court, which have been officially reported, reference must be made to the volume and page where the case may be found in the Iowa Reports and also in the North Western Reporter, if reported therein. In citing cases from other jurisdictions, reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. When textbooks are cited, the edition must be designated with the proper volume and page.

**R. C. P. 345. Printing and Costs.** All records and briefs filed in the supreme court shall be clear and legible and printed on unruled white paper with type not smaller than small pica. The printing may be with type and leaded lines, offset printing, multigraph, mimeograph, duplicator, or other similar process approved by the court. The printed portion of each page shall be four inches wide and seven inches long with margins of two inches. Headings, and matter specially emphasized, may be printed in bold face. The lines of the record must be numbered consecutively on each page.

The amount actually paid for printing, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, taxed in the supreme court as costs.

**R. C. P. 346. Submission and Oral Argument.** A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will be heard orally only in reply to his adversary's oral argument, if any. The oral arguments shall conform to rules prescribed by the supreme court.

**Court Rule 12.** In preparing term dockets, unless otherwise ordered by the court, the clerk shall place thereon for each January and each September term all causes in which the printed record has been filed twenty-five days before the first day of such term, and for each May term all causes in which the printed record has been filed sixty days before the first day of such term.

**Court Rule 13.** Upon the original submission of causes, whether in equity or at law, appellant shall have the right to open and close the oral argument. Appellant's opening argument and appellee's argument shall not exceed thirty minutes each. Appellant shall have fifteen minutes to reply. The chief justice may extend the time before argument begins or during its course. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

**Court Rule 14.** Before taking up the assignment for any day the chief justice shall make a preliminary call of all causes included therein. The court will then hear the causes in the order assigned.

#### APPEALS FROM MUNICIPAL COURT AND SUPERIOR COURT

**Code Sec. 602.44.** The laws relating to appeals from judgments or orders of the district court, or a judge thereof, to the supreme court shall apply to judgments or orders of the municipal court, or a judge thereof, in all civil actions. In class "C" actions, appeals shall be taken direct to the supreme court the same as from the district court. In class "D" actions, appeals shall be taken to the district court as provided in the case of appeals from justice courts.

**Code Sec. 603.48.** All appeals from judgments or orders of said court or the judge thereof, in civil actions shall be taken to the supreme court in the same manner, under the same restrictions, within the same time, and with the same effect, as appeals are taken from the district court to the supreme court.

#### APPEALS IN CRIMINAL CASES

**Code Sec. 793.1.** The mode of reviewing in the supreme court any judgment, action, or decision of the district court in a criminal case is by appeal. Either the defendant or state may appeal.

**Code Sec. 793.2.** An appeal can only be taken from the final judgment, and within sixty days thereafter.

**Code Sec. 793.3.** When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their codefendants who do not join shall take no benefit therefrom, yet they may appeal afterwards.

**Code Sec. 793.4.** An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the district court at the time of the rendition of the judgment, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof indorsed thereon or annexed thereto.

**Code Sec. 793.5.** When an appeal has been taken by the defendant in a criminal case, all filings by the appellant on appeal shall be served on the attorney general.

**Code Sec. 793.6.** When an appeal is taken, the clerk of the court in which the judgment was rendered shall:

1. Forthwith prepare and transmit to the attorney general a certified copy of the notice of appeal, together with the date of the service and filing thereof.

2. Promptly prepare and transmit to the clerk of the supreme court a transcript of all record entries in the cause, together with copies of all papers in the case on file in his office, except those returned by the examining magistrate on the preliminary examination, all duly certified under the seal of his court.

**Code Sec. 793.7.** The county attorney shall:

1. When an appeal is taken by the state, at least forty days prior to the term at which the cause is to be heard, prepare and deliver to the attorney general a typewritten manuscript for the abstract of record in the cause.

2. When an appeal is taken by the defendant, prepare and transmit to the attorney general a typewritten manuscript covering all matters which may be required to be embraced in any amended abstract which should be filed by the state in order to properly present said appeal.

3. When served with a notice of appeal in a criminal case, immediately furnish the attorney general with a copy of said notice.

Such manuscripts shall be prepared in ample time so that the same may be printed and filed within the time and in the manner prescribed by law and the rules of the supreme court.

**Code Sec. 793.8.** If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried.

**Code Sec. 793.9.** An appeal taken by the state in no case stays the operation of a judgment in favor of the defendant.

**Code Sec. 793.10.** An appeal taken by the defendant does not stay the execution of the judgment, unless bail is put in; but where the judgment is imprisonment in the penitentiary, and an appeal is taken within the time provided after judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, or judge thereof, it may, in its discretion, order the sheriff or officer having the defendant in custody to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desires it.

**Code Sec. 793.11.** When an appeal is taken by the defendant, and bail is given, the clerk must give to the defendant, or his attorney, a certificate, under the seal of the court, that an appeal has been taken and bail given, and the sheriff or other officer having the defendant in custody must, upon receiving it, discharge the defendant from custody and cease all further proceedings in execution thereof, and forthwith return to the clerk of the court who issued it the execution under which he acted, with his return thereon; and if it has not been issued, it shall not be until after the final judgment on the appeal.

**Code Sec. 793.12.** The party appealing is the appellant, the adverse party the appellee, but the title of the action shall not be changed on the appeal, and the cause shall be so docketed at the commencement of the period assigned for trying causes from the judicial district from which the appeal comes, which causes

shall take precedence of all other business, be tried at the term at which the transcript is filed, unless continued for cause or by consent of the parties, and be decided, if practicable, at the same term.

**Code Sec. 793.13.** The personal appearance of the defendant in the supreme court on the trial of an appeal is in no case necessary.

**Code Sec. 793.14.** An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the supreme court must direct how it shall be corrected.

**Code Sec. 793.15.** No assignment of error is necessary.

**Code Sec. 793.16.** The defendant is entitled to close the argument.

**Code Sec. 793.17.** The record and case may be presented in the supreme court by printed abstracts, arguments, motions, and petitions for rehearing as provided by its rules; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the supreme court shall apply in such cases.

**Code Sec. 793.18.** If the appeal is taken by the defendant, the supreme court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but cannot increase it.

**Code Sec. 793.19.** In case the judgment of the trial court is reversed or modified in favor of the defendant, on the appeal of defendant, he shall be entitled to recover the cost of printing abstract and briefs, not exceeding one dollar for each page thereof, to be paid by the county from which the appeal was taken.

**Court Rule 15.** When an appeal is taken in a criminal case and the clerk's transcript of the record, required by section 793.6 of the Code, is filed with the clerk of this court, the cause shall be assigned for submission on such transcript, but the date set for such submission shall be not less than ninety days after the date the appeal was perfected as shown by such transcript.

**Court Rule 16.** If a defendant in a criminal case appeals and desires to submit the case upon a printed abstract of the record, brief and argument, he shall serve on the attorney general and file with the clerk of this court a notice to that effect, before the day set for the submission of the cause under the provisions of Rule 15. In that event, the appellant shall file the printed abstract of the record

with the clerk of this court and serve a copy upon the attorney general within ninety days following the service and filing of the notice of appeal, unless, within such ninety days, additional time be granted by a judge of this court after notice and an opportunity to be heard have been given to the attorney general, and the cause shall be reassigned for submission on a date at least ninety days subsequent to the filing of the printed abstract of the record. Appellant shall serve his brief and argument on the attorney general and file it with the clerk of this court within forty-five days after filing the abstract. The state shall have thirty days after the filing of appellant's brief within which to deny the abstract, serve and file amendment thereto and brief and argument. Appellant shall serve and file his reply brief within fifteen days after the state's brief is filed. A denial by the appellant of the state's additional abstract, if not confessed, will be disregarded unless sustained by a certification of the record.

**Court Rule 17.** When the state appeals in a criminal case, Rule 16 shall govern the time and manner of filing abstracts, denials, amendments, and briefs and arguments, insofar as practicable.

**Court Rule 18.** All printed abstracts, amendments, and briefs and arguments in criminal cases shall be served on the adverse party or his attorney of record and filed with the clerk of this court, with proof of such service. The Rules of Civil Procedure and these rules, relating to the printing of abstracts, printing and filing of arguments, petitions for rehearing, oral arguments, motions and resistances thereto, the certification of the record and the filing of decisions and opinions shall apply in criminal cases insofar as consistent with the provisions of the Code.

**Code Sec. 793.20.** If the state appeals, the supreme court cannot reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law.

**Code Sec. 793.21.** If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the supreme court shall direct that the defendant be discharged and his bail exonerated, or if money be deposited instead, that it be refunded to him.

**Code Sec. 793.22.** On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme court shall direct, except as otherwise provided.

**Code Sec. 793.23.** The opinion of the supreme court must be in writing, filed with its clerk, and recorded.

**Code Sec. 793.24.** The decision of the supreme court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the supreme court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk.

**Code Sec. 793.25.** Unless some proceeding in the district court is directed, a copy of the judgment of the trial court and decision on appeal, or of the judgment and decision on appeal certified by the clerk of the trial court, shall be delivered to the sheriff, or other proper officer, as an execution, and shall authorize him to execute the judgment of the court, or take any steps required to bring the action to a conclusion.

**Code Sec. 793.26.** If a defendant, imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction.

## GENERAL PROVISIONS

### **R. C. P. 347. Writs and Orders in the Supreme Court.**

(a) *Writs and process.* The supreme court shall issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(b) *Orders.* Every application for an order in the supreme court shall be in writing, served upon the adverse party or his attorney of record, with a notice that it will come on for hearing before the supreme court or a justice thereof at a stated time and place. By stipulation and arrangement with the court or justice the parties may fix the time and place of hearing.

(c) *Hearings.* No order shall be issued except upon reasonable notice and opportunity to make resistance, but if it be made to appear that great and irreparable loss would ensue if the matter were delayed, an order may be entered effective only until final order is made. The supreme court may hear oral arguments on an application for order if it deems them desirable; otherwise, the matter shall be submitted without oral argument. One or more justices may act for the court in such matter.

Referred to in Court Rule 11; R.C.P. 332, 343



**R. C. P. 348. Motions to Dismiss or Affirm.**

(a) Appellee's motion to dismiss an appeal or motion to affirm must be in printing or typewriting, supported by printed or typewritten brief, and served on appellant's counsel and filed with the clerk of the supreme court within twenty days after filing the record, if the grounds therefor then exist. If appellee desires to present the motion orally, he shall so request therein, and the court may make such order as it deems proper in regard thereto.

(b) The day immediately preceding the first day of each period, as fixed by the docket for the term, shall be and is hereby designated as motion day and, except when otherwise specially ordered by the court or a judge thereof, such motion day shall be and the same is hereby fixed as the time for submission of every such motion to dismiss, served and filed ten days or more prior thereto, and also every such motion to dismiss to which resistance has been filed. If the chief justice or the court determines oral argument is desirable, such motion shall be assigned for oral argument, otherwise it shall be assigned for submission on the briefs. The clerk shall forthwith notify each party of the time and manner of the submission.

(c) Appellant's resistance, if any, shall be served and filed not less than three days prior to the date fixed for such submission.

(d) The court may rule on the motion to dismiss or motion to affirm before requiring submission of the appeal or may order the motion submitted with the appeal. The time intervening between service of the motion and the court's order overruling the motion, or providing that it be submitted with the appeal, shall be excluded in determining the time within which the parties' respective briefs on the merits must be filed.

(e) If grounds for dismissal of an appeal or affirmance arise after the record is filed, appellee may file and serve such motion to dismiss or motion to affirm and supporting brief. The court shall then determine when and on what notice, the same shall be heard, and whether submission of the appeal shall be stayed and may make appropriate orders respecting the time for filing briefs on the merits.

Paragraph (b) effective March 6, 1956  
Referred to in R.C.P. 342, 343

**R. C. P. 349. Remands.** When a judgment is reversed for error in overruling a motion to direct a verdict, or a motion for judgment under Rule 243(b), or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the supreme court may enter, or direct the trial court to enter final judgment as if such motion had been initially sustained; providing that, if it appears from the record that the material facts relating thereto were not fully developed at the trial, or if, in the opinion of the su-

preme court, the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case.

**Code Sec. 686.14.** If the supreme court affirms the judgment or order, it may send the cause to the court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require.

**Code Sec. 686.15.** If, by the decision of the supreme court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value.

**Code Sec. 686.16.** Property acquired by a purchaser in good faith under a judgment subsequently reversed shall not be affected thereby.

**Code Sec. 686.17.** The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.

**Code Sec. 686.18.** Executions issued from the supreme court shall be like those from the district court, attended with the same consequences, and returnable in the same time.

**Court Rule 19.** Causes not fully argued at the period for which assigned may be passed to a later period or continued to the next term on the court's own motion. Subject to the approval of the court or any judge, causes may also be passed or continued upon stipulation of the parties. If notice of oral argument has been given, such cause will remain for oral argument.

**Court Rule 20.** Each opinion shall show what judges participated therein.

**R. C. P. 350. Rehearings.**

(a) No notice of intention to file a petition for rehearing need be given; but the petition and brief thereon shall be filed with the clerk of the supreme court within thirty days after filing the opinion, or such longer time as the chief justice, on written application served on the opposing parties, may allow. The petition and supporting brief must be printed either separately or together. Petitioner shall file eighteen copies thereof, together with one additional copy for the attorney or attorneys for each other party to the appeal, and each party not represented by attorney. The clerk shall mail or deliver one copy to each such attorney or party forthwith; but his failure shall not impair the petitioner's right to consideration of his petition. The opposing party shall have fifteen days after filing of the peti-

tion and brief, in which to file resistance thereto.

(b) The parties shall have such right to argue a petition for rehearing orally on its submission as the court may prescribe by rule.

(c) The court may deny a rehearing, modify its opinion or order a resubmission. If resubmission is ordered, it shall designate the time for filing briefs, and counsel shall be entitled to oral argument on the resubmission; but the order therefor may designate the point or points to be argued.

**R. C. P. 351. Procedendo.** Unless otherwise ordered by the court, no procedendo shall issue for thirty days after an opinion is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending.

**Court Rule 21.** No procedendo shall issue until the expiration of thirty days from the filing of the opinion, except on order of the court. If a petition for rehearing is timely filed, procedendo shall be withheld pending disposition thereof, unless otherwise ordered by the court. Oral arguments on petitions for rehearing shall be permitted only at the request of the court.

**R. C. P. 352. Certiorari or Appeal.** If any case is brought to the supreme court by appeal or certiorari, and the court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the court as application to grant an appeal (as provided in Rule 332) and conversely an application to grant an appeal may be treated as a petition for certiorari.

Provided, however, nothing in this rule shall operate to extend the time within which an appeal may be taken.

**R. C. P. 353. Service Generally.** Whenever service on a party to an appeal is required or permitted under Rules 331-350 inclusive, it shall be made by delivering copy to his attorney of record, or if he have none, then by delivery to him or mailing to his last known address, or if no address is known, by leaving a copy for him with the clerk of the supreme court. Delivery of copy within this rule means either handing it to the attorney or party, or leaving it at his office with his clerk or other person in charge thereof, or if no one is in charge leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over eighteen years of age residing therein; or mailing it to his office address. Service by mail is complete on mailing. Proof of service may be made by written acknowledgment, or by affidavit of the person making the service, who may be an attorney in the case or his clerk.

Referred to in R.C.P. 332, 342

**Court Rule 22.** The clerk shall make the following distribution of all printed records, abstracts, amendments to abstracts, briefs, and arguments received under the foregoing rules: A copy to each judge of this court, the state law library, the law department of the State University, the law department of Drake University; the remainder shall be placed in the clerk's office, one copy to be kept permanently.

**Court Rule 23.** All taxable fees and costs shall abide the result of the appeal and be taxed to the unsuccessful party, unless otherwise ordered.

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**STATUTES AND RULES FOR ADMISSION  
TO THE  
IOWA BAR**

(Adopted January 12, 1954)

**Code Sec. 610.1 Admission to practice.** The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court.

**Code Sec. 610.12 Mode of examination.** The supreme court may by general rules prescribe the mode in which examinations under this chapter shall be conducted, and in which the qualifications required as to age, residence, character, general education and term of study shall be proved, and may make any other and further rules, not inconsistent with this chapter, for the purpose of carrying out its object and intent.

BOARD OF LAW EXAMINERS

**Court Rule 100** 1. The board of law examiners shall consist of five members, in addition to the attorney general; and an examination for admission to the bar shall be conducted by not less than three members of the board. The regular and temporary appointive members of the board shall be paid \$25.00 each for each day spent in conducting the examinations of the applicants for admission to the bar, as authorized by these rules, and shall also be reimbursed for actual expenses necessarily incurred in the performance of such duties. Said per diem and expense of the members of the board shall be paid by the clerk of this court on the certificate of the attorney general as to accuracy, out of funds in his hands derived from applicants' fees for admission to the bar.

2. No person shall be appointed to more than four successive terms.

**Court Rule 101** Every applicant for admission to the bar must be at least twenty-one years of age, of good moral character, an inhabitant of this state and a citizen of the United States.

**Code Sec. 610.9 Students in law department of university.** Students in the law department of the state university, who are recommended by the faculty of said department as candidates for graduation and as persons of good moral character, who have actually and in good faith studied law for the time and in the manner required by statute, at least one year of such study having been as a student in said department, may be examined at the university by not less than three members of said commission with the addition of

such temporary members as may be appointed by the court in accordance with the provisions of this chapter, and upon the certificate of such examiners, that such candidates possess the learning and skill requisite for the practice of law, they shall be admitted without further examination.

EXAMINATIONS—TIME, PLACE AND MANNER  
OF CONDUCTING

**Court Rule 102** Written examinations shall be held at the capitol, at Des Moines, commencing on the first Tuesday in October, and on the first Tuesday in June; and at the State University commencing on the Monday following the week of the annual commencement of the University; each examination shall be for a period not less than three days, the subjects for examination to be determined by the board of law examiners. Oral examinations of candidates shall be held on the second Tuesday following the completion of the written portion of the June examination at the State University, and on the second Tuesday following the completion of the October written examination, or such earlier dates as the board shall fix. The board shall conduct such oral examinations as it deems necessary and proper. The board shall estimate each examination in percentage on the basis of one hundred percent for the entire examination, and no one shall be recommended by the board for admission who does not, on this basis, receive a grade of at least seventy-five percent.

FORM OF APPLICATION AND TIME AND MANNER  
OF MAKING

**Court Rule 103** The board of law examiners and clerk of this court shall prepare such forms as may be necessary, for application for examination, and the board may make such rules, not inconsistent with the rules of this court, with reference to the method of conducting the examinations herein provided for, as it may deem expedient.

Every applicant for admission to the bar shall make application, under oath, and upon the form prescribed, which will be furnished by the clerk of the supreme court, upon request, and shall file his application with the clerk of the supreme court at least twenty-five (25) days before the first day of the next bar examination. A new and complete application shall be filed for each examination for admission.

## PROOF OF MORAL CHARACTER

**Court Rule 104** The clerk of this court shall make an investigation of the moral fitness of any applicant and may procure the services of any bar association, agency, organization, or individual qualified to make a moral or character report and may use the funds provided in section 610.8 of the Code and Rules 114 and 115 for said purposes.

The information shall be submitted to the attorney general who shall, subject to review by the supreme court, determine whether or not the applicant is of good moral character.

## PROOF OF AGE, PLACE OF RESIDENCE, AND OTHER REQUIREMENTS

**Court Rule 105** Proof of qualifications as to age, place and period of residence, place of parents' residence, time and place of study, shall be by affidavit made before some officer authorized to administer oaths and having a seal. Proof of term of study shall be shown by the affidavit of the dean of such law school; such affidavits must show that the applicant has actually, and in good faith, pursued the study of law in the manner, and for the time prescribed by statute and the rules of the supreme court; and must also show that the affiant is a dean of the law school at which the applicant studied.

## DEGREE FROM LAW SCHOOL REQUIRED

**Court Rule 106** No person shall be permitted to take the examination for admission without proof that he has received the degree of LL.B. or J.D. from a reputable law school as provided in section 610.2 of the Code.

A law school fully approved by the Council of Legal Education of the American Bar Association shall be deemed a reputable law school, as the term is used in section 610.2 of the Code.

## NUMBER DRAWN BY APPLICANT AT BEGINNING OF EXAMINATION

**Court Rule 107** Each applicant permitted to take the law examination at the capitol at Des Moines shall draw a number at the beginning of the examination, by which number he shall be known throughout such examination. Said number shall be furnished by the clerk of the supreme court.

## LIST SHOWING NUMBER DRAWN PREPARED BY CLERK

**Court Rule 108** Said clerk shall prepare a list of the applicants showing the number drawn by each at the beginning of the examination, certify to such facts, seal said list in an envelope immediately after the beginning of said examination and retain the same sealed, in his possession unopened until after the written examination has been completed, and the average made by each applicant set out. On such completion the envelope shall be opened in the presence of the attorney gen-

eral and the correct name entered opposite the number drawn by each applicant, in the presence of the clerk of the supreme court and a representative of the attorney general's office.

## LIST AT STATE UNIVERSITY PREPARED BY DEAN

**Court Rule 109** At each law examination held at the State University, the method of designating the applicants outlined in Rule 108 shall be followed with the exception that the dean of the college of law shall perform the duties required to be performed in Rule 108 by the clerk of the supreme court.

## EMPLOYMENT OF CHARACTER INVESTIGATION SERVICE OF NATIONAL BAR CONFERENCE PERMITTED

**Court Rule 110** The attorney general or the clerk of the supreme court is authorized to employ the character investigation services of the national conference of bar examiners. Such character investigation and report shall be procured in all cases where application for admission on motion is made, and where the required investigation fee has been paid by the applicant. Such service may be utilized in cases of applications for admission upon examination where the same is deemed necessary by the clerk of the supreme court or the board of law examiners. The clerk of the supreme court is authorized to pay the cost of such service to the investigation service of the national conference of bar examiners from investigation fees paid by applicants for admission to the bar.

## TIME ELAPSING BEFORE NEXT EXAMINATION—NUMBER PERMITTED

**Court Rule 111** (1) No candidate for admission to the bar having twice failed to pass the examination, shall be permitted to take another examination until at least ten months shall have elapsed since such failure.

(2) Unless otherwise ordered by the court, no candidate shall be permitted to take more than three examinations.

## PASSING ON SUFFICIENCY OF APPLICATIONS

**Court Rule 112** The authority to pass on the sufficiency of applications for permission to take the bar examination is vested in the attorney general and the clerk of this court, ex officio, subject, however, to review by the board or the court.

## INVESTIGATION TO BE MADE BY CLERK

**Court Rule 113** (1) Immediately upon the filing of the application the clerk of the court shall notify the president of the local bar association of the county in which the applicant resides of the filing of such application. It shall be the duty of the local bar association to investigate the standing and character of

the applicant, and report the same to the clerk of the supreme court at least fifteen days before the date of the holding of the examination.

(2) If there be no local bar association, or if the local bar association fails to act, then the clerk shall notify the county attorney of the county in which the applicant resides, and it shall be his duty to make said investigation and said report as provided herein.

#### FEES REQUIRED

**Code Sec. 610.8 Fees—how used.** Every applicant for admission shall pay to the clerk of the supreme court an examination fee of five dollars, payable before the examination is commenced. Practitioners from other states seeking admission to practice in this state as provided by law shall pay an admission fee of ten dollars. The fees thus paid to the clerk shall be retained by him as a special fund to be appropriated as otherwise provided; and any amount thereof remaining in his hands unappropriated on the thirtieth day of June of each year shall be turned over to the state treasury.

#### INVESTIGATION FEE

**Court Rule 114** Every applicant for admission to the bar upon examination shall, as a part of his application, remit to the clerk of the supreme court an investigation fee in the amount of twenty dollars (\$20.00). This fee shall be in addition to any charge or fee otherwise required, and shall be paid for each examination.

#### ADMISSION OF ATTORNEYS FROM OTHER JURISDICTIONS—FEES

**Court Rule 115** Any person a resident of this state, having been admitted to the bar of any other of the United States or the District of Columbia, may, in the discretion of the court, be admitted to practice in this state, without examination or proof of period of study. Such person, in his application for admission to practice law in this state, in addition to all other requirements of law, shall establish: That he has practiced law five (5) full years under license in such jurisdiction within the seven (7) years immediately preceding the date of his application and still holds a license, provided that the teaching of law as a full-time instructor in a law school approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association in this state or some other state shall, for the purposes of this rule, be deemed the practice of law. In addition to the admission fee of ten dollars (\$10.00) now required by law, such applicant shall pay to the clerk of the supreme court at the time of filing application, an investigation fee in the amount of ninety dollars (\$90.00), no part of said fee to be refunded to any applicant.

#### PROOFS OF QUALIFICATIONS

**Court Rule 116** The following proofs must be filed with the attorney general and the clerk of this court and approved by the attorney general to qualify an applicant for admission under the last preceding Court Rule:

(1) Certificate of admission in state of former residence;

(2) Certificate of clerk or judge of a court of record in such state that he was regularly engaged in practice of law in said state for five years;

(3) Certificate of judge or clerk of district court where applicant intends to practice in this state that he is of good moral character;

(4) Affidavits of two citizens and affidavit of applicant as to age and residence in this state.

Applicants must appear for admission in open session of the supreme court.

#### PROCEDURE ON APPLICATION FOR REINSTATEMENT

**Court Rule 117** Any attorney who has been disbarred by a court of this state, or who has surrendered his certificate to practice law, shall, upon application for readmission to the bar, be subject to the following rules:

(1) A proceeding for reinstatement as a member of the bar must be commenced by a written application to this court, which must be filed with the clerk of this court, and it shall state the age of the applicant, the date of the original admission, the date of disbarment, or surrender of certificate of applicant, and same shall be verified by the oath of the applicant as to the truth of the statements made therein and shall be accompanied by a recommendation of at least three reputable attorneys practicing in the judicial district in which the applicant then lives, and has lived at least one year prior to filing application. If the applicant lives in a judicial district other than the district in which he lived at the time of the disbarment or surrender of his certificate, he shall file a recommendation of three reputable practicing attorneys of such district.

(2) Upon filing of such application and recommendations with the clerk of this court, the clerk shall give written notice thereof to the attorney general, to the county attorney of the county in which the applicant resides, and to the county attorney where applicant resided at the time of disbarment or surrender of certificate, and to each of the judges of the district in which the applicant resided at the time of disbarment or surrender of certificate, and to the president of the State Bar Association, and to the president of the County Bar Association, if there be any, of the residence of the applicant, and of the county where applicant resided when disbarred or when he surrendered his certificate.

(3) Such notice shall contain the date of the disbarment or of the cancellation of the certificate; the date of filing the application, and



the date of hearing thereon fixed by the court, which shall in no case be less than sixty days after the filing of such application for reinstatement.

(4) If an attorney is reinstated it shall be upon such conditions as this court shall prescribe.

#### GRIEVANCE COMMISSIONERS

**Court Rule 118** The members of the committee on grievances of the Iowa State Bar Association and their successors as such are hereby appointed commissioners of this court and are empowered and authorized to take, receive and consider proof concerning complaints against attorneys of this state and conduct of attorneys which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute and to hold hearings on such complaints.

The commissioners herein appointed shall adopt reasonable rules and regulations, consistent with this rule, prescribing the procedure to be followed in proceedings under this rule.

Every complaint against an attorney filed under this rule shall be signed and sworn to by a person or persons aggrieved, by the president and secretary of a regularly organized bar association of this state or by the chairman of a regularly appointed committee of the Iowa State Bar Association and said complaint shall be sufficiently clear and specific in its charges to reasonably inform the attorney against whom the complaint is made of the

misconduct he is claimed to have committed. All complaints, records, reports and papers filed under this rule shall be filed with and preserved by the Iowa State Bar Association at its headquarters office in Des Moines, Iowa.

Hearings before the commissioners shall be private unless the respondent shall request that they be public.

Upon request by or on behalf of such commissioners or an attorney against whom a complaint has been filed, the clerk of the district court of the county in which the hearing is held shall issue subpoenas of all kinds. The commissioners are empowered to cause to be transcribed the evidence of witnesses, who shall be sworn by any person authorized by law to administer oaths, and the commissioners shall report to this court the failure or refusal of any person to attend and testify in response to any subpoena issued as herein provided.

At the conclusion of a hearing upon any complaint against any attorney before such commissioners, if action is deemed necessary, the commissioners are authorized to reprimand the accused and in the event of such reprimand the commissioners shall promptly file their report of such action with the clerk of this court.

If action to revoke or suspend the license of such attorney to practice in the courts of this state appears justified the commissioners are authorized to file or procure the filing of an accusation in the proper court of record in this state and action thereon shall be taken as provided by statute.

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## MORTALITY TABLES

The American Experience Table of Mortality was published in the Code of 1939. As stated in the heading to said table it is "no part of any statute and is set out as a convenience only to meet numerous requests therefor."

From information obtained from the Commissioner of Insurance and numerous experts on insurance law, the Code Editor is advised that the American Experience Table of Mortality is outmoded. Longevity has increased and greater scientific study has been made of the subject of mortality tables since that table was prepared. The result has been that a new and more modern table has been made which is known as the Commissioners 1941 Standard Ordinary Mortality Table. This table has been prepared under the supervision of the National Association of Insurance Commissioners and has been adopted by statute or by the approval of the Insurance Commissioners in practically all of the states including Iowa.

The Code Editor is authorized by the Commissioner of Insurance to say that it is approved by him and used and accepted by him in his official work. It is included herein as a matter of convenience to those who may have use for such a table.

### 1941 C.S.O. MORTALITY TABLE Commissioners Standard Ordinary

Age	Expectation of Life	Age	Expectation of Life	Age	Expectation of Life
1	62.76	34	34.29	67	10.48
2	62.12	35	33.44	68	9.97
3	61.37			69	9.47
4	60.58	36	32.59	70	8.99
5	59.76	37	31.75		
		38	30.91	71	8.52
6	58.92	39	30.08	72	8.08
7	58.08	40	29.25	73	7.64
8	57.22			74	7.23
9	56.35	41	28.43	75	6.82
10	55.47	42	27.62		
		43	26.81	76	6.44
11	54.58	44	26.01	77	6.07
12	53.68	45	25.21	78	5.72
13	52.78			79	5.38
14	51.89	46	24.43	80	5.06
15	50.99	47	23.65		
		48	22.88	81	4.75
16	50.10	49	22.12	82	4.46
17	49.21	50	21.37	83	4.18
18	48.32	51	20.64	84	3.91
19	47.43	52	19.91	85	3.66
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		54	18.48	86	3.42
21	45.66	55	17.78	87	3.19
22	44.77			88	2.98
23	43.88	56	17.10	89	2.77
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		59	15.13	91	2.39
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		64	12.11	96	1.37
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- (2) Rules 121, 124, 125, 126, 127, 128, 134, 138, 139, 140, 141, 143, 144, 147, 148, 155, as reported to the Fifty-seventh General Assembly—see 57GA, chapter 311.
- (3) See also Rules 131, 132.

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